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A
New Law-Dictionary:

CONTAINING
The INTERPRETATION and DEFINITION
OF
WORDS and TERMS uſed in the LAW;
AS ALSO
The LAW and PRACTICE,
UNDER
The Proper HEADS and TITLES.
TOGETHER WITH
Such LEARNING as explains
The Hiſtory and Antiquity of the Law; our *Manners*, *Cuſtoms*, and *Original Government*.

Collected and Abſtracted from
All Dictionaries, Abridgments, Inſtitutes, Commentaries, Reports, Year-Books, Charters, Regiſters, Chronicles, and Hiſtories, Publiſhed to this Time.

Adapted to the Uſe of
Barriſters, Students, and Practiſers of the Law, Members of Parliament, Juſtices of Peace, Clergymen, and other Gentlemen, *&c.*

Originally COMPILED by
GILES JACOB.
And now corrected and greatly enlarged by
J. MORGAN, ESQUIRE.

The Tenth Edition.

LONDON:
Printed by W. STRAHAN and W. WOODFALL, Law-Printers to the King's Moſt Excellent Majeſty:
For W. STRAHAN, J. RIVINGTON and Sons, T. PAYNE, P. URIEL, W. OWEN, T. LONGMAN,
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MDCCLXXXII.

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G.R III.
BRITISH MUSEUM

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M.DCC.LXXXII.

TO

THE RIGHT HONOURABLE

WILLIAM EARL OF MANSFIELD,

LORD CHIEF JUSTICE OF ENGLAND,

&c. &c. &c.

THE FOLLOWING WORK,

IS

(BY HIS LORDSHIP's PERMISSION,)

MOST RESPECTFULLY INSCRIBED,

BY HIS MOST OBEDIENT,

AND OBLIGED HUMBLE SERVANT,

The Editor.

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PREFACE.

NINE EDITIONS having been ſold of this LARGE WORK is a clear proof that it ſtands high in the public opinion. The laſt was greatly enlarged and corrected by Mr. RUFFHEAD, and the EDITOR of this *Tenth Edition*: among other Improvements, one of very great Importance was made, *viz.* the ſubject-matter throughout, wherever neceſſary, was *divided* and *arranged*, under proper heads, very much to the reader's accommodation.

As the laws of a great commercial ſtate are perpetually varying, and the ſcience of juriſprudence continually improving, thoſe variations and improvements were introduced: a great variety of extracts from, and references to the beſt authors, were alſo made; many of which were publiſhed ſince the *Eighth Edition*, others not conſulted by the former EDITORS. The ſame plan hath been here purſued.

The original WORK contained a *great fund of learning*, *uſeful* and *curious*, relative to our ANTIENT HISTORY, LAWS and CUSTOMS: Many additions were made on thoſe ſubjects in the *ninth*, which have been conſiderably increaſed in the preſent edition.

The rapid ſale of that, induced the proprietors to apply to the editor for his aſſiſtance in the publication of a *Tenth Edition*. Their offers were liberal, and he was induced to comply.

He hath been enabled by the kindneſs of his friends, and his own experience, to make many additions, with ſome corrections, and to introduce various deciſions of a late date: he hath likewiſe given the ſubſtance of ſeveral ſtatutes paſſed, ſubſequent to that publication.

Perhaps it may not be preſuming too far to ſay, that the work, in it's preſent form, is the beſt and moſt extenſive of the kind. That it will be very uſeful to the *Lawyer*, the *Magiſtrate*, the *Merchant*, the *Gentleman*, the *Tradeſman*, and to *every one* who is deſirous of being acquainted with the *Laws*, the *Cuſtoms*, and the *Conſtitution* of his Country; the ſubſtance of which is here arranged in a form the moſt uſeful, that of a Dictionary; of all other forms, the moſt convenient. It is obviouſly ſo in a work treating of ſuch peculiar and extenſive ſubjects, and therefore, on that head, it doth not require recommendation.

As it is impoſſible for one volume to contain every thing on ſuch ſubjects, to render the work as uſeful and valuable as may be, REFERENCES are made, on every Occaſion, where neceſſary, to the moſt approved Authors.

It may with truth be affirmed, that the NINTH EDITION hath received the approbation of the beſt judges in this kingdom, as to it's value and utility. It is hoped that the preſent will merit their approbation.

The EDITOR craves for himſelf the indulgence of the public: he hath gone through the preſent (as through the former) edition, with labor and difficulty, beyond expreſſion: The avocations of his profeſſion engaged much of his time; yet he hath done every thing his leiſure and abilities would permit, to render the work worthy of acceptance.

It is much to be wiſhed that men of Buſineſs would ſometimes employ a few leiſure hours in productions which might be uſeful to their country; for, although the man of *reading* may underſtand the *theoretic*, yet he who is converſant in the *practical* part of any profeſſion, muſt poſſeſs advantages that can be acquired by *experience* only.

Although the EDITOR doth not preſume to think that this work is perfect (for what human compoſition is ſo!) yet he may, without preſumption, ſay, it contains a great body of *antient* and *modern* learning; (not the production of him alone, but of many able men,) much more, perhaps, than any performance of the kind, hitherto publiſhed in this Country; and he thinks it will, upon a cloſe examination, appear to be by far the beſt *Law-Lexicon*, and the moſt extenſive *Repertorium*, extant.

The Proprietors have, with reſpect to this, as well as the former EDITION, been at very great expence to give the WORK that ſuperiority they wiſhed it ſhould poſſeſs, and for their ſakes the EDITOR hopes it will be kindly received.

As to himſelf he hath only farther to add, that he wiſhes ſome abler hand, more at leiſure, had undertaken the preſent publication. Such however, as the performance is, he truſts it, with the greateſt diffidence, to the candour of an indulgent public.

A New

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CONTAINING

The Whole Law, and The Practice thereof, under all the Heads and Titles of the Same.

A.

A, The firſt letter of the *alphabet*, which being prefixed to words in *Engliſh*, ſignifies as much as *un* in *French*, as *a* man, *un homme*.

Ab, From the word *abbot*, and in the beginning of any place ſignifieth, that the place belonged to ſome *abbey*.

Abacot, A cap of ſtate, wrought up in the form of two crowns worn by our ancient *Britiſh* kings. *Chron. Angl.* 1463. *Spelman's Gloſſ.*

Abactors, (*abactores*, derived *ab abigendo*) Stealers and drivers away of cattle by herds, or in great numbers. They are thus diſtinguiſhed from *fures*: *nam qui ovem unam ſurripuerit, ut fur coercetur, qui gregem ut* abactor. *MS.*

Abacus, *arithmetick*, From the *abacus*, or table ſtrewed with duſt, on which the ancients made their characters and figures. *Omnium liberalium artium peritus, abacum præcipue, lunarem compotum & curſum rimatus.* Knighton's Chron. lib. 1. c. 3.

Abandum, (*abandonum*) Any thing ſequeſtred, proſcribed, or abandoned. *Abandon, i. e. In bannum res miſſa.*—A thing *bann'd* or denounced as forfeited and loſt; from whence is to *abandon*, deſert, or forſake as loſt and gone.

Abarnare, From the Sax. *Abarian*, to diſcover and diſcloſe to a magiſtrate any ſecret crime.—*Si homo furtivum aliquid in domo ſua occultaverit, & ita fuerit* abarnatus, *rectum eſt ut inde habeat quod quæſivit.* Leg. Canuti Reg. cap. 104.

Abate, As derived from the French *Abbatre*, ſignifies to proſtrate, break down or deſtroy; and in law, to *abate* a caſtle or fort, is interpreted to beat it down. *Old Nat. Brev.* 45. *Weſtm.* 1. *c.* 17. *Abater Maiſon*, is to ruin or caſt down a houſe, and level it with the ground. Thus, to *abate* a writ, is to defeat or overthrow it, by ſome error or exception. *Brit. c.* 48. In the ſtatute *de conjunctim feoffatis*, the writ ſhall be *abated*, that is, ſhall be diſabled and overthrown. 34 *Ed.* 1. *ſtat.* 1. The appeal ſhall *abate*, and be defeated by reaſon of covin or deceit. *Staundf. Pl. Cr.* 148. And the juſtices ſhall cauſe the ſaid writ to be *abated* and quaſhed. 11 *H.* 6. *c.* 2. The word *abate* likewiſe is ſometimes uſed in contradiſtinction to *diſſeiſe*, and as he that puts a perſon out of poſſeſſion of his houſe, land, &c. is ſaid to diſſeiſe; ſo he that ſteps in between the former poſſeſſor and his heir, is ſaid to *abate*. *Kitch.* 173. *Old Nat. Br.* 115.

Abatement, (from the *French*) in *Latin intruſio*, or rather *interpoſitio*, to diſtinguiſh it from intruſion after the death of tenant for life; is uſed in that ſenſe for the act of the *abator*, as the *abatement* and entry of the heir into the land before he hath agreed with the lord. *Old Nat. Brev.* 91.

Abatement, when it relates to writs or plaints, is the quaſhing or deſtroying of the plaintiff's writ or plaint; and under this ſignification, which is moſt general, it is uſed to denote a plea put in by the defendant, in which he ſhews cauſe to the court why he ſhould not be impleaded or ſued, or if impleaded, not in the manner and form he then is; therefore praying that the writ or plaint may *abate*, that is, that the ſuit of the plaintiff may for *that time* ceaſe. *Co. Lit.* 134. *b.* 227. *a.* *F. N. B.* 115. *Cowel.* *Gilb. H. C. P.* 186. *Terms de Ley* 1.

Herein it is material to conſider,

1ſt, What may be pleaded in abatement.

2dly, The time and manner of pleading in abatement.

3dly, The judgment in abatement.

As to what may be pleaded in abatement, the defendant may plead,

I. To the juriſdiction of the court.
II. To the perſon of the plaintiff, as
  1. Outlawry.
  2. Excommunication.
  3. Alienage.
  4. Præmunire.
  5. Popiſh recuſancy.
III. To the perſon of the defendant.
IV. To the writ.
V. To the count or declaration.
VI. Abatement by demiſe of the king, marriage, or death of parties.

I. With reſpect to pleas in abatement to the juriſdiction of the court, it is to be premiſed, that the courts of *Weſtminſter* have a ſuperintendency over all other courts, and may, if they exceed their juriſdiction, reſtrain them by prohibition; or if their proceedings are erroneous, may rectify them by writs of error and falſe judgment. Nothing ſhall be intended within the juriſdiction of an inferior court, but what is expreſsly alledged; ſo that where an action is brought on a promiſe in a court below, not only the *promiſe*, but the *conſideration* of the promiſe, muſt be alledged to ariſe within an inferior juriſdiction;

diction ; becauſe ſuch inferior courts are bounden in their original creation, to cauſes ariſing within the limits of ſuch new-erected juriſdiction ; and therefore if a debtor, that has contracted a debt out of ſuch limited juriſdiction, comes within it, yet they cannot ſue there for ſuch debt, becauſe the *cauſe of action* did not ariſe within ſuch juriſdiction ; and therefore it is not within the limits of their commiſſion to try and determine ; for which reaſon the *conſideration* of the promiſe, which is the cauſe of action, muſt be alledged to be within the juriſdiction of the court ; and not only ſo, but it muſt be proved upon the trial ; and if the plaintiff prove a contract out of the juriſdiction, *that* cannot be given in evidence ; and if it be, the defendant's counſel may tender a bill of exceptions.

There are no pleas to the juriſdiction of the courts at *Weſtminſter* in tranſitory actions, unleſs the plaintiff by his declaration ſhews the cauſe of action accrued within the county palatine, or it be between the ſcholars of *Oxford* and *Cambridge*. 4 *Inſt*. 213. 1 *Sid*. 163. There is a difference between a franchiſe to demand conuſance, and a franchiſe, *ubi breve domini reges non currit*. For in the firſt caſe the tenant or defendant ſhall not plead it, but the lord of the franchiſe muſt demand conuſance ; but in the other caſe, the defendant muſt plead it to the writ. 4 *Inſt*. 224. See titles **Franchiſe, Conuſance, County Palatine.**

Where a franchiſe, either by letters patent or preſcription, hath a privilege of holding pleas within their juriſdiction, if the courts at *Weſtminſter* intrench on their privileges, they muſt demand conuſance, that is, deſire that the cauſe may be determined before them ; for the defendant cannot plead to the juriſdiction : and the reaſon is, becauſe a defendant is arreſted by the king's writ. But within a franchiſe, where the king's writ doth not run, he is not legally convened, and therefore he may plead it to the juriſdiction.

The pleas to the juriſdiction of the courts at *Weſtminſter*, according to chief baron *Gilbert*, are,

Antient demeſne. *Herne's Pl*. 35. See title **Antient demeſne.**

Held of the king's manor. *Hanſ*. 103.

Counties palatine. *Raſt*. 419. *Herne* 7. See title **County palatine.**

Cinque ports. See title **Cinque Ports.**

The plea of *privilege* is likewiſe a plea to the *juriſdiction* of the court, though it doth not ariſe from the matter in variance, not being within the juriſdiction of the court, but it ſubmits to the court, whether it ought to take conuſance of the action, or proceed againſt the defendant in that court, by reaſon of his being a perſon privileged by another court, where he ought properly to be ſued. But the law on this head will properly fall under the diviſion concerning pleas in abatement reſpecting the *perſon* of the *defendant*.

II. As to pleas in abatement to the *perſon* of the *plaintiff*, 1. *Outlawry* may be pleaded in abatement, becauſe the plaintiff having refuſed to appear to the proceſs of the law, thereby loſes its protection ; but this is only a diſability 'till the outlawry is reverſed, or 'till he has obtained a charter of pardon. *Co. Lit*. 128. *Lit ſect*. 197. *Dy*. 23, 222. *Aſſ*. 49. *Br. Nonability* 25.

But this diſability is only pleadable when the plaintiff ſues in his *own right* ; for if he ſues *in auter droit*, as executor or adminiſtrator, or as mayor with his commonalty, outlawry ſhall not diſable him, becauſe the perſon whom he repreſents has the privilege of the law. *Co. Lit*. 128. Nor when the plaintiff brings a writ of error to reverſe an outlawry, ſhall outlawry in that ſuit, or at any ſtranger's ſuit, diſable him ; for if he were outlawed at ſeveral mens ſuits, and one ſhould be a bar to another, he could never reverſe any of them. The outlawry itſelf is no objection ; for that would be *exceptio ejuſdem rei cujus petitur diſſolutio* : nor is another outlawry pleadable in bar to ſuch writ of error ; for then two erroneous outlawries would be irreverſable. *Co. Lit*. 128. *Doct. Plac*. 396.

When *outlawry* is pleaded in *abatement*, the plaintiff ſhall not reply that the outlawry is erroneous, for it is good till reverſed. 1 *Lutw*. 36.

As outlawry is a *dilatory* plea, when it is pleaded in another court than that from whence the outlawry iſſued, the defendant muſt bring in the record immediately. For this being in delay, if the court ſhould give time, and it ſhould not be brought in, then the delay of juſtice would be from the court ; and ſince there is a way of having it immediately, by producing it under the great ſeal, no time ſhall be given to bring it *ſub pede ſigilli* ; but otherwiſe when it is in the ſame court ; for then the record is already in court. *Doct. Placit*. 393. *Stamf*. 103. *Fitz. Coron*. 235.

Outlawry in a county palatine cannot be pleaded in any of the courts of *Weſtminſter* ; for he is only ouſted of his law *within that juriſdiction*, and it ſhall not extend to diſable a man in another county, where they have no power ; for the county *palatine* being a royal juriſdiction within bounds, the loſing the privileges of law within that juriſdiction, can be no diſadvantage to him in another county ; and if he does not live within the *palatine* juriſdiction, he is not obliged to attend there. But it ſeems that outlawry in the county *palatine* of *Lancaſter* may be pleaded in the courts of *Weſtminſter* ; becauſe that county was erected by act of parliament in the time of *Ed*. 3. but *Durham* and *Cheſter* are by preſcription. *Fitz. Coron*. 233. 12 *Ed*. 4. 16. *Doct. Placit*. 396. Yet query, as to this doctrine ? for the ſame reaſon militates againſt it.

Outlawry may be always pleaded in *abatement*, but not in *bar*, unleſs the cauſe of action be forfeited. *Co. Lit*. 128. *b*. *Doct. Pl*. 395.

In *perſonal actions*, where the *damages* are uncertain, *outlawry* cannot be pleaded in *bar* ; but in *actions on the caſe*, where the *debt* to avoid the *law wager*, is turned into *damages*, there *outlawry* may be pleaded in *bar*, for it was veſted in the king, by the forfeiture, as a debt certain, and due to the outlaw : and the turning it into damages, whereby it becomes uncertain, ſhall not diveſt the king of what he was once lawfully poſſeſſed of. 2 *Lutw*. 1604. 3 *Lev*. 29. 2 *Vent* 282. 3 *Leon*. 197, 205. *Cro. Eliz*. 204. *Owen* 22.

2. *Excommunication* is a good plea even to an executor or adminiſtrator, though they ſue in *autre droit* ; for an excommunicate perſon is excluded from the body of the church, and is incapable to lay out the goods of the deceaſed to pious uſes. *Co. Lit*. 134. 43 *E*. 3. 13. *Theol*. 11.

But in an action brought by bailiffs and commonalty, the defendant ſhall not plead excommunication in the bailiffs ; becauſe they ſue as a corporation, and a corporation cannot be excluded from the communion of the viſible church. *Theol*. 11. 30 *E*. 3. 4. *Co. Lit*. 134.

Excommunication is no plea in a *qui tam*, becauſe it is for example ; and the ſtatute having given the informer an ability to ſue, and not excepted excommunicated perſons from the liberty of informing, he is enabled to ſue by the ſtatute, notwithſtanding the cenſures of the church. 12 *Co*. 61.

When excommunication is pleaded in the plaintiff, he ſhall not reply, that he has appealed from the ſentence ; for the ſentence is in force until it is repealed, and whilſt it is in force he cannot appear in any of the courts of juſtice ; but he may reply that he is abſolved, for then his diſability is taken away. *Bro. Excom*. 3. 3 *Bulſ*. 72. 20 *H*. 6. 25. *Roll*. 226.

When prohibition is brought againſt the biſhop, and he pleads excommunication againſt the plaintiff, and in the excommunication there is no cauſe of ſuch excommunication ſhewn, this is not a good plea ; for in ſuch caſe it will be intended, that the excommunication was for endeavouring to hinder the biſhop's proceeding by application to the temporal court ; and if ſuch excommunication were allowed, it would deſtroy all prohibitions, and the plea of excommunication in this caſe is *exceptio ejuſdem rei cujus petitur diſſolutio*. *Theol*. 10, 11, 28 *E*. 3. 27. 8 *Co*. 68.

The court will not receive the certificate of excommunication of one biſhop from another, becauſe they muſt have the certificate from the biſhop whoſe ſubject he was ; and he might have been aſſoiled, that is, diſcharged from the excommunication by his own ordinary after the firſt certificate to the biſhop. *Vide Bro. Excom*.

Fitz. Excom. 8 *Co.* 68. *Co. Lit.* 134. Nor will they receive a certificate; (becauſe he may ſtand aſſoiled by the preſent ordinary that now is,) after the deceaſe of the biſhop who has certified; in fact the court will not receive any certificate, but from ſuch perſon *to whom they can write to aſſoil.* Bro. Excom. 21. Fitz. Excom. 26. 1 Roll. Abr. 883.

3. *Alienage.*—An alien born may be pleaded in *abatement*: but *Jews* may proſecute actions and recover, a plea in *abatement* againſt them being but a diſability ſo long as the king ſhall prohibit them to trade. 1 *Lill. A.*

An alien enemy, or one whoſe king is in enmity with ours, cannot bring any action either real, perſonal, or mixed. Yet ſee Lord *Raym.* 282. *Wells* v. *Williams.*

Theſe pleas are at preſent ſeldom pleaded, and as little regarded. Wars are not now ſo implacable as formerly.

An alien in league ſhall maintain perſonal actions; otherwiſe he would not be able to merchandiſe and trade amongſt us. But he ſhall not maintain real or mixed actions, becauſe there is no neceſſity that he ſhould ſettle amongſt us. *Co. Lit.* 129. *b.* *Yelv.* 198. 1 *Bulſtr.* 134. Little attention would now be paid in *Weſtminſter* Hall to this doctrine; a great law lord has already, with much propriety, declared himſelf diſſatisfied with ſuch opinions. If alienage be pleaded to an alien in league, that muſt be in diſability of the plaintiff; but if it be to an alien enemy, it may be pleaded to the action; becauſe it is forfeited to the king, as a repriſal for the damages committed by the dominion in enmity with him. *Bro. Denizen* 10. *Co. Lit.* 129. *b.*

Where the defendant pleads that the plaintiff is an *alien* in *abatement* of the writ, it is triable where the writ is brought, and the replication muſt conclude to the *country*; but otherwiſe it is ſaid where it is pleaded in *bar*, that the plaintiff is an *alien*, the replication muſt conclude with an *averment*. *Salk.* 2. *Weſt* v. *Sutton*, *Weſt.* 5. *Comb.* 394. *Texell* v. *Hooper* contra. Where the defendant pleaded, that the plaintiff was an *alien*, born at *Roan* in the kingdom of *France*, within the ligeance of the king of *France*, the plaintiff replies, that he is an *alien friend*, born at *Hamborough*, within the ligeance of the *emperor*, and traverſeth that he was born at *Roan*. HOLT inclined it was an ill traverſe, and offered an ill iſſue. *Comb.* 212. See title **Aliens.**

4. *Præmunire.* Perſons attainted of præmunire are incapable of bringing any action; for they are out of the protection of the law. *Lit. ſect.* 199. *Co. Lit.* 129. See title **Præmunire.**

5. *Popiſh recuſancy.* This diſability of popiſh recuſancy convict, is by ſtat. 3 *Ja.* 1. *c.* 5. *ſ.* 11, 12. which diſables to all intents, as excommunication, except where he ſues for lands, tenements, leaſes, annuities, rents, and hereditaments, or for the iſſues and profits thereof, which are not to be ſeized into the hands of the king, his heirs or ſucceſſors.

Of pleading *recuſancy* in diſability, *vide* the caſe of *Curwin* or *Colvin* v. *Fletcher*, Modern Caſes in Law and Equity, 1 *Part*, 43.

III. *Pleas in abatement to the perſon of the defendant.* Of theſe pleas, the plea of *privilege* is one of the moſt material. The officers of each court enjoy the privilege of being ſued only in thoſe courts to which they reſpectively belong; the reaſon whereof is, becauſe of the duty they are under of attending thoſe courts, and leſt their clients cauſes ſhould ſuffer if they were drawn to anſwer to actions in other courts. 2 *Mod.* 297. *Vaugh.* 155. 2 *H.* 7. 2. 2 *Roll. Abr.* 272. 1 *Lutw.* 44. 639. But this is to be underſtood, when the plaintiff can have the ſame remedy againſt the officer in his own court, as in that where he ſues him; for if money be attached in an attorney's hands by foreign attachment in the ſheriff's court in *London*, he ſhall not have his privilege; becauſe in this caſe the plaintiff would be remedileſs. 1 *Sand.* 67, 68. *Turbill's* caſe.

So if a writ of entry, or other real action, be brought againſt an attorney of the *King's Bench*, he cannot plead his privilege; becauſe, if this ſhould be allowed, the plaintiff would have a right without a remedy; for the *King's Bench* hath not cognizance of real actions. 1 *Saund.* 67.

So if an attorney of the *Common Pleas* be ſued in an *appeal*, he ſhall not have his privilege; for his own court hath not cognizance of this action; for this vide 38 *H.* 6. 29. *b.* 9 *E.* 4. 35. *Cro. Car.* 58. 1 *Leon.* 189. 2 *Leon.* 156.

But the privilege, which the courts indulge their officers with, is reſtrained to the ſuits only, which they bring in their *own right*; for if they ſue or are ſued as *executors*, or *adminiſtrators*, they then repreſent common perſons, and are to have no privilege. *Hob.* 177.

So if an officer of one court ſues an officer of another court, the defendant ſhall not plead his privilege; for the attendance of the plaintiff is as neceſſary in his court as that of the defendant in his; and therefore the cauſe is legally attached in the court where the plaintiff is an officer. 2 *Mod. Rep.* 298. *Hamelton verſ.* Juſt. *Scroggs.* 2 *Lev.* 129. 2 *Roll. Abr.* 275. *pl.* 4. *Moor* 556.

So if a privileged perſon brings a *joint action*, or if an action be brought againſt him and others, he ſhall not have his privilege, but this is to be underſtood where the action is *joint*, and cannot be ſevered; for if the action can be ſevered, without doing any injury, the officer ſhall have his privilege. *Dyer* 377. *Godb.* 10. 2 *Roll. Abr.* 275. 2 *Lev.* 129. 1 *Vent.* 298, 9.

An officer ſhall not have his privilege againſt the king; for as the executive power is lodged in the king, it would be unreaſonable that his court, which gives relief to private perſons, ſhould protect any ſubject from being brought to juſtice, for offending againſt the laws, which concern the whole commonwealth. *Bro. Superſed.* 1. 2 *Roll. Abr.* 274. But in any action *qui tam*, at the ſuit of an informer, he ſhall have his privilege. *Lil Reg.* 7. 3 *Lev.* 398. *Lutw.* 193.

If an action be brought in the *King's Bench* againſt an attorney of the *Common Pleas*, it is not enough for him to ſay that *he is an attorney*, for his being an attorney does not abate the plaintiff's bill, when once the action is attached in the *King's Bench*; but he muſt ſhew that *he was an attorney at the time of the plaintiff's exhibiting the bill*; for then it will appear to the court, that the plaintiff might have ſued the defendant there, as a privileged perſon. 1 *Salk.* 1. *Peaſe* v. *Parſons.*

It is ſaid by *Holt* Ch. J. of *B. R.* in the caſe of *Duncombe* v. *Church*, *Comb.* 390. that if a perſon who hath the privilege of being ſued in another court, be in *actual cuſtody* of the *Marſhal*, he cannot plead his privilege; but otherwiſe where he is bailed, and ſo only *ſuppoſed* in *cuſtodia mareſcalli.* 1 Salk. 1. *Jones* v. *Bodinner*, the ſame point.

The court of *King's Bench* will take notice of the privilege of their own officers; as where a FILAZER of the *King's Bench* was arreſted by a writ, he was diſcharged on common bail. *Brown's* caſe. *Salk.* 544.

But where an ATTORNEY of the *Common Pleas* was ſued by a Bill in the *King's Bench*; upon a motion for his being diſcharged, the court, *abſente Holt*, denied it, and put him to *plead* his privilege. 1 *Mod. Ent.* 26.

Here ſhould be obſerved the difference;—the former was an *actual officer*, whoſe attendance was abſolutely neceſſary, and no one to ſupply his place; the latter, an attorney, and the number of attornies is very great.

After a *general imparlance*, an officer cannot plead his privilege, becauſe by imparling he affirms the juriſdiction of the court; but after a *ſpecial imparlance* he may plead his privilege. *Bro. Priv.* 25. 22 *H.* 6. 6, 22, 71. 1 *Roll. Rep.* 294. 1 *Sid.* 29. 2 *Roll. Abr.* 273, 279. *Hard.* 365. 1 *Lutw.* 46 1 *Salk.* 1. And now the common practice is to uſe a *ſpecial imparlance.*

Miſnomer may be pleaded in abatement. But though a defendant may, by pleading in *abatement*, take advantage of a *miſnomer* when there is a miſtake in the writ or declaration, as to the name of baptiſm or ſurname; yet in ſuch a plea he muſt ſet forth his right name, ſo as to give the plaintiff a better writ. *Finch* 363. 9 *H.* 5. 1.

Where a defendant comes in *gratis*, or pleads by the name alledged by the plaintiff, he is eſtopped to alledge any thing againſt it. *Style* 440 Where one is miſnamed in a bond, the writ ſhould be in the right name, and the count ſhew that defendant, by *ſuch* a name, made the bond. To a plea of *miſnomer*, the plaintiff may reply, the defendant was known by the name in the writ. 1 *Salk.* 6.

If *A.* gives a bond by the name of *B.* and he is ſued by that name, if he pleads a *miſnomer*, the Plaintiff may reply, that he made the bond by the name of *B.* and eſtop him by demanding judgment, if againſt his own deed he ſhall be admitted to ſay his name is *A.* defendant may rejoin and ſay, that he made no ſuch deed, and this he muſt do without *oyer*; for if he prays oyer, he admits his name to be *B.* *Salk.* 7. *Linch* v. *Hooke.*

One defendant cannot plead *miſnomer* of his companion; for the other defendant may admit himſelf to be the perſon in the writ. 1 *Lutw.* 36. The defendant, though his name be miſtaken, is not obliged to take advantage of it; and therefore if he be impleaded by a wrong name, and afterwards impleaded by his right name, he may plead in bar the former judgment, and aver that he is *una et eadem perſona.* Gilb. H. C. P. 218.

Where an indictment for a capital crime is *abated* for *miſnomer* of the defendant, the court will not diſmiſs him, but cauſe him to be indicted *de novo* by his true name. 2 *Hawk.* 367. Pleas in *abatement* found againſt a defendant in capital caſes, are not peremptory, as they are in other caſes; but he may afterwards plead over to the felony. *Ib.* 191. *Qu.* If not uſual to plead over to the felony at the ſame time?

A writ may be abated for want of *addition* of the *place, trade, dignity, &c.* of the defendant; as where one pleads there is no ſuch place, or that he is a *baronet* and not a *knight, &c.* 1 Vent. 154. If the *addition* of the defendant's quality and dwelling be omitted in any original writ, in a perſonal action, appeal, or indictment, where exigent may be awarded, the writ ſhall *abate*; but it ſhall not abate for ſurpluſage in the addition. 1 *H.* 5. *cap.* 5.

The name of *earl*, if omitted, abates the writ. *Davis Rep.* 60. *a.* But if a perſon is created an *earl* pending the action, bill, or ſuit, it ſhall not abate. 1 *Ed.* 6. *cap.* 7. *ſect.* 3. But there muſt be an entry on the roll, with a *poſt ultimam continuationem, ſcilt'*, that ſuch a day and year, the king by his letters patent, &c. ſetting it forth with a *profert in cur. &c. quod predict. defendens non dedicit.* 1 Mod. Ent. 31, 32.

The defendant's being under the protection of the law, as by being an *infant, feme covert, &c.* may likewiſe be pleaded in abatement. A feme covert, after an arreſt, giving bail-bond by a wrong name, may plead the *miſnomer*, and ſhe is not eſtopped by the bail-bond, 1 *Salk.* 7. *Linch* v. *Hooke.* See titles **Feme Covert, Infant.**

On the whole, it is proper to obſerve, as to *miſnomers*, the courts at *Weſtminſter* will not abate a writ for a trifling miſtake, as the omiſſion or inſertion of a *letter*, that does not make a *material* variation in the ſound, &c.

With reſpect to *infancy*, it may either be pleaded in bar, or given in evidence, on the general iſſue, unleſs in the *caſe* of *neceſſaries*, when the law binds an infant to his promiſe.

As to *coverture*, it has often been pleaded in bar; but *query*, if it would not be bad on *demurrer*?

IV. With reſpect to pleas in abatement to the *writ*, the writ being the foundation of the ſubſequent proceedings, great certainty and exactneſs is requiſite, to the end that no perſon be arreſted or attached by his goods, unleſs there appear ſufficient grounds to warrant ſuch proceedings; ſo that if the writ vary materially from that in the *Regiſter*, or be defective in ſubſtance, the party may take advantage of it. See 5 *Co.* 12. 9 *H.* 7. 16. 10 *Ed.* 3. 1. *Hob.* 1, 51, 52, 80. *Carth.* 172. But where the writ ſhall not abate for variance from the Regiſter, ſo that it be equivalent. See *Hob.* 1, 51, 52. What variance between a bond and the declaration abates the writ, ſee *Hob.* 116. *Walter* v. *Pigot.* *Moor* 645. 1 *Cro.* 896. *Hob.* 18, 19, 20.

In declaring on bonds, 'tis moſt adviſeable to omit the *alias dict.* for 'tis unneceſſary.

Where a demand is of two things, and it appears the plaintiff hath an action only for one, the writ may not be abated in the whole, but ſhall ſtand for that which is good; but if it appear, that although he cannot have this writ which he hath brought for part, he may have another, the writ ſhall *abate* in the whole. 11 *Rep.* 45. 1 *Saund.* 285. A writ of *ejectment* ſhall be *abated*, on its appearing to the court to be ſued out before the cauſe of action. *Cro. Car.* 572. Now the practice is to ſerve a copy of the declaration in the firſt inſtance.—If judgment goes by default, there is not any one to bring error. If the tenant appears, there are ſeveral inſtances, where the iſſue may be made right, and the variance ſhall not hurt.

In caſe adminiſtration be granted after the action brought, and this appears, the plaintiff's writ *abates.* *Hob.* 145.

V. As to pleas in abatement to the *count* or *declaration*, it is obſervable, that after the party ſuing has declared, the party impleaded may demand *oyer* of the writ; and then, if there be any fault or inſufficiency in the count for a cauſe apparent in itſelf, or if there be a *variance* between the count and the writ, or between the writ and a record, ſpecialty, &c. mentioned in the count, the party impleaded ought to ſhew it, by his pleading, *Theol. lib.* 10. *c.* 1. *ſect.* 5. *Fitz. Count*, 27.

One may plead in *abatement* of a declaration, where 'tis by original; but if the action be by bill, you muſt plead in abatement of the bill only. 5 *Mod.* 144. A little variance between the declaration and the bond pleaded, will not make naught the declaration; but uncertainty will abate it. *Plowd.* 84. The variance of the declaration from the obligation, or other deed on which it is grounded, will ſometimes *abate* the action; and if a declaration aſſign waſte in a town not mentioned in the original writ, the writ of waſte ſhall *abate.* *Hob.* 18, 38.

Likewiſe where the declaration is otherwiſe defective, in not purſuing the writ, or not ſetting forth the cauſe of action with that certainty which the law requires, or laying the offence in a different county from that in which the writ was brought. 1 *New Abr.* 6.

It is a good plea in abatement that *another action* is depending for the *ſame thing*; for whenever it appears on record, that the plaintiff has ſued out two writs againſt the ſame defendant, for the ſame thing, the ſecond writ ſhall abate; and it is not neceſſary that both ſhould be pending at the time of the defendant's pleading in abatement; for if there was a writ in being at the time of ſuing out the ſecond, it is plain the ſecond was vexatious and ill *ab initio.* 9 *H.* 6. 12. 5 *Co.* 61. *Doct. Pl.* 10, 67. But it muſt appear plainly to be for the ſame thing; for an aſſize of lands in one county ſhall not abate an aſſize in another county, for theſe cannot be the ſame lands. 4 *H.* 6. 24. *Doct. Pl.* 10. Vide *poſt.*

In general writs, as *treſpaſs, aſſize, covenant*, where the ſpecial matter is not alledged, and the plaintiff is nonſuited before he counts; and the ſecond writ is ſued pending the other, yet the former ſhall not be pleaded in *abatement*, becauſe it doth not appear to the court that it was for the *ſame thing*; for the firſt writ being general, the plaintiff might have declared for a diſtinct thing from what he demanded by the ſecond writ; but when the firſt is a ſpecial writ, and ſets forth the particular demand, as in a *precipe quod reddat, &c.* there the court can readily ſee that it is for the *ſame thing*; and therefore though the plaintiff be nonſuited before he counts, yet the firſt ſhall abate the ſecond writ, it being apparently brought for the ſame thing. 5 *Co.* 61. *Doct. Pl.* 11, 12. If an action of debt, &c. be depending in an inferior court, a bill for the ſame debt may be brought in any court in *Weſtminſter.* 5 Co. 62. In an action of debt, &c. another action depending in the courts of *Weſtminſter* for the ſame matter, is a good plea in abatement; but a plea of an action in an inferior court is not good, unleſs judgment be given. 5 *Co.* 86.

If a ſecond writ be brought teſted the ſame day the former is abated, it ſhall be deemed to be ſued out after the abatement of the firſt. *Allen* 34.

If an action, pending in the ſame court, be pleaded to a ſecond action brought for the ſame thing, the plaintiff may pray that the record may be inſpected by the court, or demand oyer of it, which if not given him in convenient time, he may ſign his judgment. *Dyer* 227. *Carth.* 453, 517.

VI. With reſpect to abatement by the *demiſe* of the king, or by the *marriage*, or *death* of the parties, it is to be obſerved, that 1. As to the *demiſe* of the king at common law, all patents of juſtices, and commiſſions civil and military, were thereby determined; alſo all ſuits depending in the king's courts were diſcontinued by the death of the king; ſo that the plaintiffs were obliged to commence new actions, or to have re-ſummons or attachment on the former proceſſes, to bring the defendant in; but to prevent the inconvenience, expence and delay which this occaſioned, the ſtatutes of 1 *Ed.* 6. *c.* 7. 7 & 8 *Will.* 3. *c.* 27. and 7 *Ann. c.* 8. were made, which ſee under title **Prerogative.**

Proceedings on an information, in nature of a *quo warranto*, are not abated by the demiſe of the crown. 2 *Stra.* 782. Where the king brings a writ of error in *quare impedit*, it abates by his death. 2 *Stra.* 843.

2. With reſpect to the *marriage* of the parties, *coverture* is a good plea in *abatement*, which may be either before the writ ſued, or pending the writ. By the firſt the writ is abated *de facto*, but the ſecond only proves the writ abateable; both are to be pleaded, with this difference, that coverture, pending the writ, muſt be pleaded, *poſt ultimam continuationem*; whereas coverture before the writ brought, may be pleaded at any time, becauſe the writ is *de facto* abated; but if a feme ſole takes out a writ, and after marries, the writ is abateable; but ſuch plea muſt be *puis darrein continuance.* *Doct. pl.* 3. 1 *Leon.* 168. 169. Vide 2 *Ld. Ray.* 1525. *Comb.* 449. *Lut.* 1639.

If a writ be brought by *A.* and *B.* as baron and feme, whereas they were not married until the ſuit depended, the defendant may plead this in abatement; for though they cannot have a writ in any other form, yet the writ ſhall abate, becauſe it was falſe when ſued out. *Fitz. Brief,* 476. If a writ be brought againſt a feme covert as ſole, ſhe may plead her coverture; but if ſhe neglects to do it, and there is a recovery againſt her as a feme ſole, the huſband may avoid it by writ of error, and may come in at any time and plead it. *Latch* 24. *Stile* 254, 280. 2 *Roll. Rep.* 53. If an action be brought in an inferior court againſt a feme ſole, and pending the ſuit ſhe intermarries, and afterwards removes the cauſe by *habeas corpus*, and the plaintiff declares againſt her as a feme ſole, ſhe may plead coverture at the time of ſuing the *habeas corpus*; becauſe the proceedings here are *de novo*; and the court takes no notice of what was precedent to the *habeas corpus*; but upon motion on the return of the *habeas corpus*, the court will grant a *procedendo*. For though this be a writ of right, yet where it is to abate a rightful ſuit, the court may refuſe it; and the plaintiff had bail below to this ſuit, which by the contrivance he might be ouſted of, and poſſibly by the ſame means of the debt. 1 *Salk.* 8.

In ejectment againſt baron and feme, after verdict for the plaintiff, baron dies between the day of *Niſi prius* and the day in Bank; adjudged that the writ ſhould ſtand good againſt the feme, becauſe it is in nature of a treſpaſs, and the feme is charged for her own act; and therefore the action ſurvives againſt her. So if the wife had died, the baron ſhould have judgment entered againſt him. *Cro. Jac.* 356. *Cro. Car* 509. 1 *Roll. Rep.* 14. *Moor* 469.

If a feme ſole plaintiff, after verdict, and before the day in Bank, takes huſband, ſhe ſhall have judgment, and the defendant cannot plead this coverture, for he has no day to plead it at. *Cro. Car.* 232. 1 *Bulſt.* 5.

If an original be filed againſt a feme ſole, and before the return ſhe marries, you may declare againſt her without taking notice of her huſband, for her intermarriage is no abatement of the writ in fact, but only makes it abateable. *Comb.* 449. 1 *Roll. Rep.* 53.

'Tis now in general held, that if a *feme ſole* commences an action, and pending the ſame marries, the ſuit is abated, but that it is otherwiſe with reſpect to a feme ſole defendant, as ſhe ſhall not take advantage of her own act.

3. As to pleas in abatement by the death of parties, the general rule is, that whenever the death of any party happens pending the writ, and yet the plea is in the ſame condition as if ſuch party were living, there ſuch death makes no alteration or *abatement* of the writ. 1 *New. Abr.* 7.

The death of a plaintiff did in all caſes *abate* the writ before judgment, till the *ſtat.* 8 & 9 *W.* 3. *c.* 11. by which neither the death of plaintiff or defendant after interlocutory judgment ſhall *abate* it, if the action might be originally proſecuted by and againſt the executors or adminiſtrators of the parties: and if there are two or more plaintiffs or defendants, and one or more die, the writ or action ſhall not *abate*, if the cauſe of action ſurvives to the ſurviving plaintiff againſt the ſurviving defendant, &c. *Stat. ibid.*

Before this ſtatute it was held, that if there were two executors, and they brought an action of debt, and one of them died, that the writ ſhould not abate; for in this caſe ſummons and ſeverance lies, after which the one executor does not proceed for a moiety, but for a whole, as repreſentative of the teſtator. *Cro. Eliz.* 652. *Co. Lit.* 139. So in a *quare impedit*, by two jointenants, and one is ſummoned and ſevered, and the ſevered perſon dies, the writ ſhall not abate, becauſe the advowſon is an intire thing, and he proceeded for the whole, after the ſeverance; and ſo he may after the death of the ſevered jointenant. *Dyer* 279.

If there were ſeveral defendants in the original action, and one died, the writ did not abate; becauſe, there being a joint demand, it ſurvives againſt the reſidue; but in this caſe there muſt be a ſuggeſtion on the roll, becauſe it would be error to give judgment againſt a deceaſed perſon. *Hard.* 151, 164. *Stile* 299. 3 *Mod.* 249. *Cro. Car.* 426. 1 *Jones* 367. 1 *Rol. Abr.* 756. 1 *Show. Rep.* 186. But in a writ of error, if there be ſeveral plaintiffs, and one dies, the writ ſhall abate, becauſe the writ of *error* is to ſet perſons *in ſtatu quo*, before the erroneous judgment given below; and they that are plaintiffs in error were diſtinct ſufferers in the judgment, ſince there might be different executions iſſued thereupon, and different repreſentatives were by ſuch judgment affected; and by conſequence the ſurvivor cannot proſecute the writ of error for the whole, leſt by a colluſive perſuaſion, or by negligence or deſign he ſhould hurt the repreſentative of the deceaſed. *Bridg.* 78. *Yelv.* 208. 10 *Co.* 135. 1 *Vent.* 34. 1 *Sid.* 419. *cont.* But if any of the defendants in error die, yet all things ſhall proceed, becauſe the benefit of ſuch judgment goes to the ſurvivor, and he only is to defend it. *Sid.* 419. *Yelv.* 208. 1 *L. Raym.* 439. In an *audita querela*, by two, the death of one ſhall not abate the writ; for the ſurvivor is not to be reſtored to any thing he has loſt, but to diſcharge himſelf of the execution; and thereupon, notwithſtanding the death of the other, he may proceed for a diſcharge *in toto* for himſelf. 1 *Vent.* 34. 3 *Hen.* 7. 1. 3 *Mod.* 249. If there be ſeveral perſons named as plaintiffs in the writ, and one of them was dead at the time of purchaſing the writ, this may be pleaded in *abatement*; becauſe it falſifies the writ; and becauſe the right was in the ſurvivors, at the time of ſuing the writ and the writ not according to the caſe 20 *Hen.* 6. 30, 18 *E.* 4. 1. 2 *H.* 7. 16. 1 *Brownl.* 3, 4. *Cliſt Ent.* 6. *Raſt. Ent.* 126.

By ſtat. 17 *Car.* 2. *c.* 8. (made perpetual by 1 *Jac.* 2. *c.* 17.) it is enacted, that the death of either of the parties between verdict and judgment, ſhall not be alledged for error, ſo as judgment be entered within two terms after ſuch verdict.

Secondly, of the *time* and *manner* of pleading in abatement.

A plea in abatement muſt be put in within *four* days after the return of the writ, becauſe the perſon coming in by the proceſs of the court ought not to have time to delay the plaintiff. *Lutw.* 1181. 2 *Stra.* 1192.

But if a declaration be delivered againſt one in cuſtody, he has the whole term to plead in abatement. *Salk.* 515.

If the declaration be delivered in the vacation, or ſo late in term, that defendant is not bound to plead to it that term, he may plead in abatement, within the firſt four days of next term.

As pleas in abatement enter not into the merits of the cauſe, but are dilatory, the law has laid the following reſtrictions on them. Firſt, by the ſtatute of 4 & 5 *Ann. cap.* 16. for amendment of the law, no dilatory plea is to be received unleſs on oath, and probable cauſe ſhewn to the court. Secondly, No plea in abatement ſhall be received after *reſpondeas ouſter*, for than they would be pleaded *in infinitum*. 2 *Saund.* 41. Thirdly, That they are to be pleaded before imparlance. See *Yelv.* 112. 1 *Lutw.* 46, 178. 2 *Lutw.* 1117. *Doct. Pla.* 224. Except where antient demeſne is pleaded; for this may be done after imparlance, becauſe the lord might reverſe the judgment by writ of diſceit, and it goes in bar of the action itſelf. For this ſee *Dyer in marg.* 210. *Stile* 30. *Latch* 83. 5 *Co.* 105. 9 *Co.* 31. *Hen. Ent.* 103. Fourthly, That when iſſue is joined on them, if it be found againſt him who pleads ſuch dilatory plea, it ſhall be peremptory. 2 *Show. Rep.* 42. 6 *Mod.* 236.

With reſpect to pleas to the *juriſdiction* of the court, it is to be obſerved that the defendant muſt plead *in propria perſona*; for he cannot plead by attorney without leave of the court firſt had, which leave acknowledges the juriſdiction; for the attorney is an officer of the court; and if he put in a plea by an officer of the court, that plea muſt be ſuppoſed to be put in by leave of the court. 1 *New Abr.* 2.

The defendant muſt make but half defence, for if he makes the full defence *quando & ubi curia conſideraverit*, &c. he ſubmits to the juriſdiction of the court. *Lutw.* 9. 1 *Show. Rep.* 386.

If a plea is pleaded to the *juriſdiction* of the court, it ought to conclude with a prayer of judgment in this manner, *viz. The ſaid defendant prays judgment, whether the court will take any farther cognizance of the ſaid plea.* 1 *Mod. Ent.* 34.

As to pleas in *diſability* of the *plaintiff*, they may not be pleaded after a general imparlance. 1 *Lutw.* 19. It may be added, that in pleading *outlawry* in diſability in another court, the ancient way was to have the record of the outlawry itſelf *ſub pede ſigilli* by *certiorari* and *mittimus*; but, this being very expenſive, it is now ſufficient to plead the *capias utlagatum* under the ſeal of the court from whence it iſſues; for the iſſuing of execution could not be without the judgment; and therefore ſuch execution is a proof to the court that there is ſuch a judgment, which is a proof that the defendant's plea of matter of record is proved by a matter of record; and conſequently appears to the court not to be merely dilatory; and therefore on ſhewing ſuch execution, if the plaintiff will plead *nul tiel record*, the court will give the defendant a day to bring it in. *Co. Lit.* 128. *Doct. Placit.* tit. *Outlawry*. But where *excommunication* is pleaded, it is not ſufficient to ſhew the writ *de excommunicato capiendo* under the ſeal of the court; for the writ is no evidence of the continuance of the excommunication, ſince he may be *aſſoiled* by the biſhop, and that will not appear in the king's court, becauſe ſuch aſſoilment is not returned into the king's court from whence the *ſignificavit* is ſent.

If a plea in abatement be pleaded to the *perſon* of the *plaintiff*, there it muſt conclude, *if he ought to be compelled to anſwer*. 1 *Mod. Ent.* 34. If it be pleaded to the *writ*, then the plea concludes with the prayer of *judgment of the writ*, and that the *writ* may be *quaſhed*. When it is to the *action* of the *writ*, there he ſhould ſhew that the party ought not to have *that* writ, but by the matter of his plea ſhould intimate to him how he ſhould have a better. *Latch* 178. *Reſpondere non debet* is a proper beginning to a plea to the *juriſdiction* of the court, but a plea of *ne unques executor*, ought to begin with *petit judic'* de *bill*, 5 Mod. 132, 133, 146. 1 Saund. 283. 2 Saund. 97, 189, 190, 339. Lutw. 44. Show. 4. In a *replication* to a plea in abatement where matter of *fact* is pleaded, the plaintiff muſt pray his damages. *Vide* 1 *Ld. Raym.* 339, 594. 2 *Ld. Raym.* 1022. If upon iſſue verdict be found for him he ſhall have *final judgment*; but where matter of *law* is pleaded, the plaintiff muſt only *maintain* his *writ*. If one pleads matter of *abatement*, and *concludes* in *bar*, *Et petit judicium ſi actionem habere debet*, though he *begins* in *abatement*, and the matter be alſo in *abatement*, yet the *concluſion* being in *bar*, makes it a *bar*; and the reaſon is, becauſe you *admit* the *writ* by concluding ſpecially againſt the *action*. 18 *H.* 6. 27. 32. *H.* 6. 17. 36 *H.* 6. 18. 22 *H.* 6. 536. 1 *Show.* 4. 2 *Ld. Raym.* 1018. If a man pleads matter in *bar*, and *concludes* in *abatement*, it ſhall be taken for a plea in *bar*, from the nature and reaſon of the thing; for the plaintiff can have no writ if he has not a cauſe of action, and therefore the court will take the plea to be in bar. 37. *H.* 6. 24. 36. *H.* 6, 24. 2 *Mod.* 6.

As to the concluſion of a plea in abatement, *vide* 1 *L. Raym.* 337, 593.

A plea was held good in *bar*, though pleaded in *abatement*, and the defendant hath his election to plead, either in bar or abatement; the *nature* of a *plea* in *abatement* is to intitle the plaintiff to a *better writ*; and it hath been expreſsly reſolved, that where the plea is in abatement, and it is of neceſſity that the defendant muſt diſcloſe matter of bar, he ſhall have his election to take it either by way of bar or abatement. 2 *Roll. Rep.* 64. *Salkill* v. *Shilton*. In ſhort, whatever deſtroys the plaintiff's action, and diſables him *for ever* from recovering, may be pleaded in *bar*. But the defendant is not always obliged to plead in bar, but may plead in *abatement*, as in *replevin* for goods, the defendant may plead property in himſelf, or in a ſtranger, either in bar or in *abatement*, for if the *plaintiff* cannot prove property in himſelf, he fails of his action for ever; and it is of no avail to *him* who has the property if *he* has it not. 1 *Vent.* 249. 2 *Lev.* 92. 1 *Salk.* 5, 94. *Carth.* 243.

Where matter of *bar* may be pleaded in *abatement*, *vide* 2 *L. Raym.* 1207, 1208. *Hackett* v. *Tilly*.

Thirdly, *Of the judgment in abatement*. If iſſue be taken upon a plea to the *writ*, judgment againſt the defendant is *peremptory*; but if there be a *demurrer*, it is then only that the plaintiff *anſwers over*. Yelv. 12. Allen 66. Upon a judgment in *waſte* for the damages recovered, the defendant *demurs* partly in *abatement*, and partly in *bar*, the court ſhall give judgment in chief. *Show.* 255. In debt, if the defendant pleads in abatement to the writ, to which the plaintiff imparls, and, at the day given, the defendant makes default, judgment is *final* upon the default, though the plea was only in abatement. 10 *E.* 4. 7. *Mod. Caſes* 5. The judgment for the defendant, on a plea in abatement, is *quod breve*, or *narratio caſſetur*; if iſſued be joined on a *plea* in *abatement*, and it be found for the plaintiff, it ſhall be peremptory againſt the defendant, and the judgment ſhall be *quod recuperet*, becauſe the defendant chuſing to put the whole weight of his cauſe upon this iſſue, when he might have had a plea in chief, is an admittance that he had no other defence. *Yelv.* 112. 2 *Show.* 42. *Str.* 532.

In *abatement*, if iſſue is joined on a matter of *fact*, and found for the plaintiff, the jury who try that iſſue ſhall aſſeſs the damages.—If there is a demurrer to the plea, and adjudged for plaintiff, then a *reſpondeas ouſter* is awarded.

Abatamentum, Is a word of art, and ſignifies an entry by interpoſition. *Co. Lit.* 277. Vide *Plea*, *Writs*, &c.

Abator, Is a perſon that *abateth* or entereth into a houſe or land, void by the death of him that laſt poſſeſſed the ſame, before the heir takes poſſeſſion, and by that means keeps out the heir. *Old. Nat. Br.* 115.

Abatude, Is any thing diminiſhed.—*Moneta* abatuda, is money clipped or diminiſhed in value; *ſi tempore ſolutionis hæc moneta fuerit* abatuda *ſive deteriorata*. Charta Simonis Comitis Leiceſtriæ, *anno* 1290.

Abbacy, *(abbatia)* Is the ſame as to the government of a religious houſe, and the revenues thereof, ſubject to an *abbot*, as a biſhoprick is to a biſhop. This word is uſed in ſome of our antient grants, particularly *anno* 34 & 35 *H.* 8. in a grant to the counteſs of *Pembroke*.

Abbat, or *abbot*, (*abbas* in Latin, in French *abbe*, and in Saxon *abbud*) Is a ſpiritual lord or governor, having the rule of a religious houſe. The word is alſo by ſome derived from the Syriac *abba pater*. Of theſe abbots here in *England* ſome were elective, ſome preſentative; and ſome were *mitred*, and ſome were not; ſuch as were mitred had epiſcopal authority within their limits, being exempted from the juriſdiction of the dioceſan; but the other ſort of *abbots* were ſubject to the dioceſan in all ſpiritual government. The mitred *abbots* were lords of parliament, and called *abbots ſovereign*, and *abbots general*, to diſtinguiſh them from the other *abbots*. And as there were *abbots*, ſo there were alſo *lords priors*, who had exempt juriſdiction, and were likewiſe lords of parliament,

liament. Some reckon twenty-ſix of theſe lords *abbots* and priors that ſat in parliament. Sir *Edw. Coke* ſays, there were twenty-ſeven parliamentary *abbots* and two priors. *Co. Lit.* 97. In the parliament 20 *R.* 2. there were but twenty-five; but *anno* 4 *Ed.* 3. in the ſummons to the parliament at *Winton* more are named. And in *Monaſticon Anglicanum* there is alſo mention of more, the names of which were as follow: *abbots* of *St. Auſtin's Canterbury, Ramſey, Peterborough, Croyland, Eveſham, St. Bennet de Hulmo, Thorneby, Colcheſter, Leiceſter, Winchcomb, Weſtminſter, Cirenceſter, St. Albans, St. Mary's York, Shrewſbury, Selby, St. Peter's Glouceſter, Malmſbury, Waltham, Thorney, St. Edmunds, Beaulieu, Abingdon, Hide, Reading, Glaſtonbury*, and *Oſney*.—And priors of *Spalding, St. John's* of *Jeruſalem*, and *Lewes*.—To which were afterwards added the *abbots* of *St. Auſtin's Briſtol*, and of *Bardeny*, and the priory *de Semplingham*. Theſe *abbeys* and priories were founded by our ancient kings and great men, from the year 602 to 1133. An *abbot* with the monks of the ſame houſe were called the *convent*, and made a corporation; but the *abbot* was not chargeable by the act of his predeceſſor, unleſs it were under the common ſeal, or for ſuch things as came to the uſe of the houſe or convent. *Terms de Ley* 4. By ſtat. 27 *Hen.* 8. *cap.* 28. all *abbeys*, monaſteries, priories, *&c.* not above the value of 200 *l. per ann.* were given to the king, who ſold the lands at low rates to the gentry. *Anno* 29 *H.* 8. the reſt of the *abbeys*, *&c.* made voluntary ſurrenders of their houſes to obtain favour of the king: and *anno* 31 *H.* 8. a bill was brought into the houſe to confirm thoſe ſurrenders; which paſſing, compleated the diſſolution, except the hoſpitals and colleges, which were not diſſolved, the firſt till the 33d, and the laſt till the 37th of *H.* 8. when commiſſioners were appointed to enter and ſeize the ſaid lands, *&c.*

Abbatis, An avener or ſteward of the ſtables; the word was ſometimes uſed for a common hoſtler, pronounced ſhort in the middle ſyllable.—Abbatis *ad cœnam dat equis* abbatis *avenam*. *Spelm.*

Abbrochment, *(abbrocamentum)* The buying up of wares before they are expoſed to ſale in a fair or market, and ſelling the ſame by retail; which is a foreſtalling of a market or fair. *MS. de placit' coram rege* Ed. 3. *penes* J. Trevor, *Mil'*.

Abbuttals, (from the French *aboutir*, to limit or bound) Are the buttings and boundings of lands, eaſt, weſt, north, or ſouth, ſhewing how the ſame lie with reſpect to others; as by what lands, highways, or other places, they are limited and bounded. *Camden* tells us, that limits were diſtinguiſhed by hillocks raiſed in the lands called *Botentines*, whence we have the word *butting*. The ſides on the breadth of lands are properly *adjacentes*, lying or bordering; and the ends in length *abuttantes*, *abutting* or bounding. And in old ſurveys, theſe laſt are called *head-lands*, from *capitare*, to head. The boundaries and *buttals* of corporation and church lands, and of pariſhes, are preſerved by an annual proceſſion. And *abuttals*, or boundaries are of ſeveral ſorts; ſuch as incloſures of hedges, ditches and ſtones in common fields, brooks, rivers, and highways, *&c.* of manors and lordſhips.

Abdicate, *(abdicare)* to renounce or refuſe any thing. *Terms de Ley* 5.

Abdication, *(abdicatio)* In general, is where a magiſtrate, or perſon in office, renounces and gives up the ſame, before the term of ſervice is expired. And this word is frequently confounded with reſignation, but differs from it, in that *abdication* is done purely and ſimply; whereas *reſignation* is in favour of ſome other perſon. *Chamb. Dict.* 'Tis ſaid to be a renunciation, quitting and relinquiſhing, ſo as to have nothing further to do with a thing; or the doing of ſuch actions as are inconſiſtent with the holding of it. On king *James's* leaving the kingdom, and *abdicating* the government, the lords would have had the word *deſertion* made uſe of; but the commons thought it was not comprehenſive enough, for that the king might then have liberty of returning. The *Scots* called it a *forfeiture* of the crown, from the verb *forisfacio*.—This word is fully canvaſſed in the *Parliamentary Debates*, on the abdication of *James* II.

Abditorium, An abditory or hiding-place, to hide and preſerve goods, plate, or money; and is uſed for a cheſt in which reliques are kept, as mentioned in the inventory of the church of *York*, *Mon. Ang. p.* 173.—*Item unum coffeum, & una pixis de* Ebore *ornata cum argento deaurato, item sex* abditoria, *&c.*

Abeched, From the French *abecher*, to feed is an old word, which ſignifies to be ſatisfied.

Abere-murder, *(aberemurdrum)* Plain or downright murder; as diſtinguiſhed from the leſs heinous crimes of manſlaughter and chancemedley. It is derived from the Saxon *æbere*, apparent, notorious, and *mord*, murder; and was declared a capital offence, without fine or commutation, by the laws of *Canute*, *cap* 93. and of *Hen.* 1. *cap.* 13. *Spelm.*

Abet, *(abettare)* From the Saxon *a*, and *bedan* or *beteren*, to ſtir up or incite; or from the French *bouter*, *impellere* or *excitare*. In our law it ſignifies as much as to encourage or ſet on; the ſubſtantive *abetment* is uſed for an encouraging or inſtigation. *Staundf. Pl. Cr.* 105. And *abettor (abbetator)* is an inſtigator or ſettor on; one that promotes or procures a crime. *Old. Nat. Br.* 21. *Abbettors* of murder are ſuch as command, procure, or counſel others to perpetrate the murder; and in ſome caſes theſe *abettors* ſhall be taken as principals, in others but as acceſſaries; their preſence or abſence, at the time of committing the fact, making the difference. *Co. Lit.* 475. Vide *Acceſſaries*, *Hawk. P. C. part* 2. tit. *Acceſſary*, under letter B. and tit. *Appeal*, under letters R. S.

Abeyance, or *abbayance*, (from the Fr. *bayer*) To expect. It is what is in expectation, remembrance, and intendment of law. By a principle of law, in every land there is a fee-ſimple in ſome body, or it is in *abeyance*; that is, though for the preſent it be in no man, yet it is in expectancy belonging to him that is next to enjoy the land. *Co. Lit.* 342. *Lit. c. Diſcontin.* If a man be a patron of a church, and preſents one to the ſame, now the fee of the lands and tenements pertaining to the rectory is in the parſon; but if the parſon die, and the church become void, then is the fee in *abeyance*, until there be a new parſon preſented, admitted, and inducted; for the patron hath not the fee, but only the right to preſent, the fee being in the incumbent that is preſented. *Terms de ley* 6. The frank-tenement of the glebe of a parſonage, during the time the parſonage is void, is in no man; but in *abeyance* or expectation, belonging to him who is next to enjoy it.

If a man makes a leaſe for life, the remainder to the right heirs of *J. S.* the fee-ſimple is an *abeyance* until *J. S.* dies. *Co. Lit.* 342. In this caſe the remainder paſſeth from the grantor preſently; though it veſts not preſently in the grantee, but is ſaid to be in *abeyance* until *J. S.* dies, after whoſe death the heir has a good remainder, and it ceaſes to be in *abeyance*. If lands be leaſed to *A. B.* for life, the remainder to another perſon for years, the remainder for years is in *abeyance* until the death of the leſſee for life, and then it ſhall veſt in him in remainder as a purchaſer, and as a chattel ſhall go to his executors. 3 *Leon.* 23. Where tenant for term of another's life dieth, the freehold of the lands is in *abeyance* till the entry of the occupant.

Fee-ſimple in *abeyance* cannot be charged until it comes *in eſſe* ſo as to be certainly charged or aliened; though by poſſibility it may fall every hour. *Co. Lit.* 378.

The word *abeyance* hath been compared to what the civilians call *hæreditatem jacentem*; for as the civilians ſay lands and goods do *jacere*, ſo the common lawyers ſay, that things in like eſtate are in *abeyance*, as the logicians term it *in poſſe*, or in underſtanding; and as we ſay *in nubibus*, that is, in conſideration of law. See *Plowd. Rep.* 547. *Walſingham's* caſe.

Abgatoria, *abgetorium*, The alphabet, *A, B, C, &c.* This ſeems to be an *Iriſh* word. *Mat. Weſtm.* reports of St. *Patrick*—Abgetoria *quoque* 345 *& eo amplius ſcripſit, totidem epiſcopus ordinavit*—The *Iriſh* ſtill call the alphabet *abghittin*.

Abigeus, For *abigens*, ſignifies a thief who hath ſtolen many cattle, *viz. Si quis ſuum ſurripuerit fur erit, & ſi quis gregem* abigevus *erit*. Bract. Tract. 1. l. 1. 3. cap. 6. 105. *a.*

Ability, The king's iſſue are of *ability* to inherit in *England* whereſoever born; and children of ſubjects born beyond ſea may inherit if their birth were within the allegiance of the king. Stat. 25 *Ed.* 3. Stat. 2. 42 *Ed.* 3. *c.* 10. or born out of allegiance, if children of natural born ſubjects, 7 *Ann. c.* 5. declared to be natural born, 4 *Geo.* 2. *c.* 21.

Natural ſubjects may inherit, and make their title by anceſtors born beyond ſea. 11 & 12 *W.* 3. *c.* 6. 25 *Geo.* 2. *c.* 39. Vide *Naturalization.*

Abiſhering, Is underſtood to be quit of amercements. It originally ſignified a forfeiture or amercement; and is more properly *miſhering* or *miſkering*, according to the learned *Spelman*. It hath ſince been termed a liberty or freedom, becauſe wherever this word is uſed in a grant or charter, the perſons to whom made, have the forfeitures and amercements of all others, and are themſelves free from the controul of any within their fee. *Raſtal's Abr. Terms de Ley*

Abjuration, (*abjuratio*) A forſwearing or renouncing by oath, ſignifies a ſworn baniſhment, or an oath taken to forſake the realm for ever. *Staundſ. Pl. C. l.* 2. *c.* 40. It hath alſo now another ſignification, extending to the perſon as well as place; as to *abjure* the Pretender by oath, whereby a man binds himſelf not to own any regal authority in the perſon called the Pretender, nor ever to pay him any obedience, &c. Formerly in king *Edward* the *Confeſſor's* time, and other reigns down to the 22 *H.* 8. (in imitation of the clemency of the *Roman* emperors towards ſuch as fled to the church) if a man had committed felony here, and he could fly to a church or church-yard before his apprehenſion, he might not be taken from thence to be tried for his crime; but on confeſſion thereof before the juſtice, or before the coroner, he was admitted to his oath to *abjure* or forſake the realm; which privilege he was to have forty days, during which time any perſons might give him meat and drink for his ſuſtenance, but not after, on pain of being guilty of felony: the form of the oath you may read in an antient tract, *de Officio Coronatorum*, and in *Horn's Mirror, lib.* 1. But at laſt, this puniſhment being but a perpetual confinement of the offender to ſome ſanctuary, wherein (upon *abjuration* of his liberty and free habitation) he would chuſe to ſpend his life, as appears by the ſtat. *anno* 22 *H.* 8. *c.* 14. It is enacted 21 *Jac.* 1. *cap.* 28.

"That thence after; no ſanctuary or privilege of ſanctuary ſhould be allowed:" whereupon this *abjuration* ceaſed. 2 *Inſt.* 629. An *abjuration* or deportation for ever into a foreign country, is a civil death, and called (by the Lord *Coke*) a divorce between huſband and wife; and the wife of ſuch a perſon may bring actions, or be impleaded during the natural life of the huſband, which ſhe may not do in any other caſe: alſo ſhe ſhall have her dower or jointure. &c. *Co. Lit.* 133. This is where a perſon ſuffers baniſhment for any crime. By ſtat. 35 *Eliz. cap.* 2. Popiſh recuſants not making the ſubmiſſion of conformity, &c, are to *abjure* the realm. And by 1 *W.* & *M.* 13 *W.* 3. 1 *Geo.* 1. &c. All perſons are to *abjure* the pretended prince of *Wales*; and refuſing the oath, are liable to divers penalties and forfeitures, &c. This *abjuration* oath was invented for the ſecurity of the crown, and the proteſtant religion. See **Oaths**.

Abolition, A deſtroying or effacing, or putting out of memory: it alſo ſignifies the leave given by the king, or judges, to a criminal accuſer to deſiſt from further proſecution. Stat. 25 *H.* 8. *c.* 21.

Abridge, (*abbreviare*) Is derived from the French word *abbreger*, to make ſhorter in words ſo as to retain the ſenſe and ſubſtance. And in the common law it ſignifies particularly the making a declaration or count ſhorter, by ſevering ſome of the ſubſtance from it: a man is ſaid to *abridge* his plaint in aſſiſe; and a woman her demand in action of dower, where any land is put into the plaint or demand which is not in the tenure of the defendant; for if the defendant pleads non-tenure, joint-tenancy, &c. in abatement of the writ, as to part of the lands, the plaintiff may leave out thoſe lands, and pray that the tenant may anſwer to the reſt. The reaſon of this abridgment of the plaint is, becauſe the certainty is not ſet down in ſuch writs, but they run in general; and though the demandant hath abridged his plaint in part, yet the writ will be good for the remainder. *Brook.* tit. *Abridgment*, *vide* 21. *H.* 8. *c.* 3.

Abrogate, (*abbrogare*) To diſannul or take away any thing: as to *abrogate* a law, is to lay aſide or repeal it. Stat. 5 & 6 *Ed.* 6. *c.* 3.

Abſentees, or *des abſentees*, was a parliament ſo called, held at *Dublin* 10 *May* 8 *Hen.* 8. And mentioned in letters patent, dat. 29 *Hen.* 8. 4 *Co. Inſt.* 354.

Abſolve, (*abſolvere*) To *abſolve* one excommunicated, or to pardon, or ſet free from excommunication. *Vide* Aſſoile.

Abſolutions, from *Rome*, high treaſon, &c. Stat. 23 *Eliz. c.* 1. See *Bull.*

Abſoniare, Was a word uſed by the *Engliſh Saxons* in the oath of fealty, and ſignified to ſhun or avoid.—As in the form of the oath among the *Saxons* recorded by Mr. *Somner: In illo Deo, pro quo ſanctum hoc ſanctificatum eſt, volo eſſe nunc domino meo* N. *fidelis & credibilis, & amare quod amat, &* abſoniare *quod* abſoniat, *per Dei rectum, & ſeculi competentiam.*

Abſque hoc, (without this, that, &c.) Are words of exception made uſe of in a *traverſe*; as the defendant pleads that ſuch a thing was done at *B.* &c. *abſque hoc*, that it was done at, &c. *Mod. Ca.* 103.

Accapitum, and *accapitare*, The ſame with relief due to lords of manors.—*Capitali domino* accapitare, *i. e.* to pay a relief to the chief lord. *Fleta, l.* 2. *c* 50.

Accedas ad Curiam, Is a writ that lies where a man hath received falſe judgment in a hundred court, or court-baron. It is directed to the ſheriff; and iſſued out of the Chancery, but returnable into *B. R.* or *C. B.* And is in the nature of the writ *de falſo judicio*, which lies for him that had received falſe judgment in the county-court. In the *Regiſter of Writs*, it is ſaid to be a writ that lies as well for juſtice delayed, as for falſe judgment; and that it is a ſpecies of the writ *recordare*, the ſheriff being to make record of the ſuit in the inferior court, and certify it into the king's court. *Reg. Orig.* 9. 56. *F. N. B.* 18. *Dyer* 169.

Accedas ad Vicecomitem, Where a ſheriff hath a writ called *pone* delivered to him, but ſuppreſſeth it; this writ is directed to the coroner, commanding him to deliver a writ to the ſheriff. *Reg. Orig.* 83.

Acceptance, (*acceptatio*) Is the taking and *accepting* of any thing in good part, and as it were a tacit agreement to a preceding act, which might have been defeated and avoided, were it not for ſuch *acceptance* had. To ſtate the law under this head, it will be proper to conſider the title,

I. *With regard to the acceptance of* rent.

II. *To ſhew how far the acceptance of one eſtate ſhall deſtroy another.*

III. *How far the acceptance of one thing ſhall be a good bar to the demand of another.*

IV. *Where the acceptance of money ſhall diſcharge a bond; and what other ſatisfaction ſhall be good.*

I. With regard to the acceptance of rent, it is neceſſary to ſhew, 1. Where ſuch acceptance ſhall confirm a leaſe.

If a biſhop before the ſtatute 1 *Eliz. c.* 19. *ſ.* 5. leaſed part of his biſhoprick for term of years, reſerving rent, and then died; and after another was made biſhop, who *accepted* and received the rent when due, by this *acceptance*, the leaſe was made good, which otherwiſe the new biſhop might have avoided. It is the ſame if baron and feme ſeiſed of lands in right of the feme, join and make a leaſe or feoffment, reſerving rent; and the baron dies, after whoſe death the feme receives or *accepts* the rent; by this the leaſe or feoffment is confirmed, and ſhall bar her from bringing a *cui in vita*. Co. Lit. 211. Tenant in tail made a leaſe for years, rendering 20 s. rent, and afterwards releaſed 19 s. and died; the iſſue in tail accepted the 12 d. rent: the better opinion was, that by the acceptance of the ſhilling for rent he had affirmed the leaſe, and could not diſtrain for the 19s. rent. *Dyer* 304. Tenant for life, remainder in tail; a ſtranger levies a fine to him in remainder, who leaſed the lands to the conuſor, rendering rent, the tenant for life died, and the iſſue in tail accepted the rent: adjudged, that by the fine and acceptance of the rent, the leaſe was affirmed. *Dyer* 299. See *Smith* againſt *Stapleton*. *Plowd.* 426, 434.

Lord and tenant; the rent is behind many years, the tenant made a feoffment in fee, and the lord accepted the rent of the feoffee which became due in his time; adjudged, that by ſuch acceptance he ſhall loſe all the arrearages, and cannot avow for the ſame. 3 *Rep.* 65. *Penant*'s caſe. Leaſe for years, rendring rent, with a clauſe of re-entry; the leſſee paid the rent, which the leſſor accepted and put into a bag, but afterwards finding braſs money amongſt it, he refuſed to carry it away, and entered for the condition broken; but adjudged unlawful; becauſe after he had accepted the rent he is barred. 5 *Rep.* 113. *Wade*'s caſe.

Acceptance of the next rent due, at a day afterwards, will bar one to enter for a condition broken before by reaſon of non-payment of the rent; becauſe the leſſor thereby affirmeth the leaſe to have continuance. *Co. Lit.* 211. And taking a diſtreſs affirmeth the continuance of the rent; but if rent was due, at a day before, and thereby the condition was broken, one may receive that rent, and yet re-enter: and if he *accept* of part of the rent, he may enter for a condition broken, and retain the lands until he has the whole rent. 3 *Rep.* 64, *Co. Lit.* 203.

If an infant accepts of rent at his full age, it makes the leaſe good, and ſhall bind him. *Plow.* 418.

2. Where the acceptance of rent ſhall not make the leaſe good.

If a parſon, &c. makes a leaſe for years not warranted by the ſtat. 32 *H.* 8. *c.* 34. but is void by his death: *acceptance* of rent by a new parſon or ſucceſſor will not make it good. 1 *Saund.* 241. And if a tenant for life make a leaſe for years, there no *acceptance* will make the leaſe good, becauſe the leaſe is void by his death. *Dyer* 46, 239.

Tenant in tail made a leaſe for years, rendring rent to him and his heirs, and died; his ſon and heir accepted the rent, and was afterwards executed for treaſon, leaving iſſue a ſon; the king accepted the rent, but that did not make the leaſe good, the lands being in his hands by the attainder, and not in the reverter. *Dyer* 115. Leaſe for years, with condition, that the leſſee ſhall not alien or aſſign, without the aſſent of the leſſor, and if he did, that then the leſſor ſhould re-enter: he aſſigned part of the land without aſſent, &c. and then the leſſor, *before notice* of the aſſignment, accepts the rent, and afterwards entered for the condition broken, and adjudged lawful; for the condition being collateral, he might aſſign the land ſo ſecretly, that it may be impoſſible for the leſſor to know it. 3 *Rep.* 65. *Penant*'s caſe. *Cro. Eliz.* 553. S. C.

Leaſe for twenty-one years, rendring rent, on condition, that if the leſſee did let any part of it above three years, then the leaſe to be void, and that the leſſor might enter; he let it out for three years, and ſo from three years to three years, during the term of twenty-one years, if he ſo long lived; the leſſor accepted the rent of the aſſignee, and afterwards entered; this was a breach of the condition, and the acceptance of it afterwards did not diſpenſe with it, becauſe the original leaſe was void and determined. *Cro. Car.* 368. If tenant in tail make a leaſe for years, to commence after his death, rendering rent, in ſuch caſe *acceptance* of rent by the iſſue will not make the leaſe good to bar him, becauſe the leaſe did not take effect in the life of his anceſtor. *Plowd.* 418.

3. How far the acceptance of rent after aſſignment of the term deſtroys the privity of contract between the leſſor and the firſt leſſee.

If a leſſor *accepts* of rent from an aſſignee, knowing of the aſſignment, it bars him from action of debt againſt the leſſee; for the privity of contract is extinguiſhed: but after ſuch *acceptance*, the leſſor or his aſſigns may maintain an action againſt the firſt leſſee upon his covenant for payment of the rent. 1 *Saund.* 241. 3 *Rep.* 24. But, *acceptance* of rent from the aſſignee has been adjudged a ſufficient notice of the aſſignment, ſo that the leſſor could not reſort to the firſt leſſee. 2 *Bulſt.* 151.

Leſſee for years aſſigned his term, and died inteſtate, the leſſor brought debt againſt his adminiſtrator, who pleaded the aſſignment, and that the plaintiff had notice, and had accepted the rent of the aſſignee: adjudged, that by the death of the leſſee, the privity of contract was determined, and the action would not lie againſt the adminiſtrator. *Cro. El.* 715. and cited in *Walker*'s caſe, 3 *Rep.* 24.

II. *How far the acceptance of one eſtate, ſhall deſtroy another.*

If a leſſee, for term of twenty years, *accepts* of a leaſe of the ſame land for ten years, by the leſſee's *acceptance* of the new leaſe, the term of twenty years is determined in law. 2 *Roll. Abr.* 469.

Leaſe for years to *R. B.* rendering rent; the next year a leaſe was made of the ſame lands to the lady *P.* for ninety-nine years; the next year the ſame lands were demiſed to the ſaid *R. B.* for forty-one years, who accepted the leaſe, but that did not extinguiſh his firſt leaſe; becauſe the leſſor by making the intermediate leaſe to the lady *P.* had only a reverſion, and could not afterwards give any intereſt to *R. B.* But if it had not been for this intermediate leaſe, then the acceptance of the ſecond leaſe for forty-one years had been a ſurrender of the firſt. *Hutt.* 104.

If a man hath a leaſe for years, which is good in law, and afterwards accepts a new leaſe of the ſame lands, which is void in law, this is no ſurrender in law of the good leaſe. *Hutt.* 105. *Baker* v. *Willoughby*. *Mills* v. *Whitewood*, *ibid.* S. P.

A man, in conſideration of a marriage to be had with *M.R.* made an eſtate to her for life of certain lands in full ſatisfaction of her dower; afterwards they married, and the huſband died, and the widow brought a writ of dower againſt the heir, who pleaded in bar the acceptance of the eſtate for life: adjudged no good plea; for ſuch acceptance did not bar her of her dower at the common law, becauſe ſhe had no title of dower when the acceptance was made; and beſides no collateral acceptance can bar any right of inheritance or freehold. See 4 *Rep.* 1. *Vernon*'s caſe.

A man made a leaſe of a manor for thirty years, excepting the wood, &c. and afterwards made a leaſe of the woods to the ſame leſſee for ſixty years, and a third leaſe to him of the manor for thirty years, without any exception; reſolved, that by the acceptance of this future leaſe, the leaſe for ſixty years was ſurrendered; becauſe by ſuch acceptance the leſſee had affirmed, that the leſſor had authority to make a new leaſe. 5 *Rep.* 11. *Ives*'s caſe.

In a ſpecial verdict in treſpaſs, the caſe was, a leaſe was made to huſband and wife for their lives, and afterwards they accepted a new leaſe for themſelves and their ſon: *habendum* to all three of them, *a die datus indenturæ*, for the term of their lives with a letter of attorney to make livery: adjudged, that the acceptance of a ſecond leaſe, to commence *a die datus*, was a ſurrender of the firſt, and this by the expreſs agreement in writing of the leſſees themſelves; for otherwiſe the leſſor had no power to make a new leaſe. *Moor* 636.

III. *How far the acceptance of one thing ſhall be a good bar to the demand of another.*

Where the condition of a bond is to pay money, *acceptance* of another thing is good. But if the condition is not for money, but a collateral thing, it is otherwiſe. *Dyer* 56. 9 *Rep.* 79. And the *acceptance* of uncertain things, as cuſtoms, &c. made over, may not be pleaded in ſatisfaction of a certain ſum due on bond. *Cro Car.* 193. If a woman hath title to an eſtate of inheritance, as dower, &c. ſhe ſhall not be barred by any collateral ſatisfaction or recompence: and no collateral *acceptance* can bar any right of inheritance or freehold, without ſome releaſe, &c. 4 *Rep.* 1. When a man is entitled to a thing in groſs, he is not bound to *accept* it by parcels; and if a Leſſor diſtrains for rent, he is not obliged to *accept* part of it; nor in action of detinue, part of the goods, &c. 3 *Salk.* 2.

If a man be bound in 200 quarters of corn, with condition to pay 20 *l.* the obligor may, by agreement, give the obligee any other thing in ſatisfaction of the money; but if the condition had been to pay 100 quarters of corn, there the acceptance of money, or any other thing, had not been good, becauſe the contract was not made for money, but for a collateral thing. *Peyto*'s caſe, 9 *Rep.* 79. Yet *Qu.* If obligee agrees to accept and does accept the ſame in ſatisfaction and diſcharge, why may not the obligor plead the ſame, if the agreement is by deed? *Vide poſt verb. Accord.*

Debt upon bond, conditioned for the obligor to make an aſſurance of ſuch lands to ſuch uſes as in the condition mentioned; the defendant pleaded, that he had made a feoffment of the ſame lands to other uſes than in the condition expreſſed, which the obligee had accepted; and upon demurrer it was adjudged an ill plea; for the obligor ought not to vary from the uſes ſet forth in the condition. 1 *Brownl.* 60.

Acceptance of a *leſs* ſum may be in ſatisfaction of a *greater* ſum, if it be before the day on which the money becomes due. 3 *Bulſt.* 301.

Now, by the ſtat. 12 *Ann. c.* 16. payment *after the day*, ſpecified in the condition, may be pleaded. — And 'tis much to be doubted, whether the caſe in *Godb. fo.* 10. in caſe of money paid *before* the day, is law, for if the money was paid *before* the day, it muſt have been paid *at* the day; and therefore paid *according* to the condition.

IV. *Where the acceptance of money ſhall diſcharge a bond; and what other ſatisfaction ſhall be good.*

Where a leſſer ſum is paid before it is due, and the payment is accepted, it ſhall be good in ſatisfaction of a greater ſum; but after the money is due, then a leſſer ſum, though accepted, ſhall not be a ſatisfaction for a greater ſum. Thus in debt upon bond, conditioned to pay 8 *l.* &c. defendant pleaded payment of 5 *l.* before the day mentioned in the condition, which the obligee accepted in ſatisfaction of the bond; and upon demurrer this was adjudged a good plea. *Moor* 677. *Vide* 3 *Bul.* 301.

But payment after the day of a *leſs* ſum is not good, as the bond is forfeited, at *common law*; and there is not any ſtatute to relieve.

Debt upon bond of 16 *l.* conditioned to pay 8 *l.* 10 *s.* on a certain day; the defendant pleaded, that, before that day, he at the requeſt of the plaintiff, paid to him 5 *l.* which he accepted in ſatisfaction of the debt, and upon demurrer the plaintiff had judgment, becauſe the defendant had pleaded the payment of the 5 *l.* *generally*, without alledging, that it was *in ſatisfaction* of the debt. It is true, he ſets forth, that it was *accepted* in ſatisfaction of the debt, but it ought likewiſe to be *paid* in ſatisfaction. 5 *Rep.* 117. Debt upon bond, conditioned, that in conſideration the plaintiff had paid 12 *l.* to the defendant, he became bound to pay the plaintiff 12 *l.* if he lived one month after the date of that bond; and if not paid at that time, then to pay to him 14 *l.* if he lived ſix months after the date of the bond; the defendant pleaded, that, *after* the ſix months, he paid the plaintiff 8 *l.* and then gave him another bond in the penalty of 20 *l.* conditioned to pay him 10 *l.* on a certain day, in full ſatisfaction of the other bond, and that the plaintiff did accordingly accept the ſaid bond; upon a demurrer to this plea it was held ill; for admitting that one bond might be given in ſatisfaction of another, yet it cannot be after the other is forfeited, as it was in this caſe; becauſe after the forfeiture the penalty is veſted in the obligee, and a leſs ſum cannot be a ſatisfaction for a greater. 1 *Lut.* 464.

It hath been adjudged, that the acceptance of one bond cannot be pleaded in ſatisfaction of another bond. *Cro. Car.* 85. *Moore* 872. *Cro. Eliz.* 716, 727. 2 *Cro.* 579. Thus in debt on a bond of 100 *l.* conditioned for the payment of 52 *l.* 10 *s.* on a *certain day*; the defendant pleaded, that *at the day*, &c. he and his ſon gave a *new bond* of 100 *l.* conditioned for the payment of 52 *l.* 10 *s.* *at another day* then to come, which the plaintiff accepted in ſatisfaction of the *old bond*; and upon demurrer it was adjudged for the plaintiff, becauſe the acceptance of a new bond to pay money at another day, could not be a preſent ſatisfaction for the money due on the day when it was to be paid on the old bond. *Hob.* 68. But it is otherwiſe where the ſecond bond is not given by the obligor, as in debt upon bond againſt the defendant as heir, &c. he pleaded, that his anceſtor, the obligor, died inteſtate, and that *W. R.* adminiſtered, who gave the plaintiff another bond in ſatisfaction of the former: there was a verdict for the defendant: and it being moved in arreſt of judgment, this diſtinction was made, that if the obligor, who gave the firſt bond, had likewiſe given the ſecond, it would not have diſcharged the firſt; but in this caſe the ſecond bond was not given by him who gave the firſt, but by his adminiſtrator, which had mended the ſecurity, becauſe he may be chargeable *de bonis propriis*; and for that reaſon the ſecond bond was held to be a diſcharge of the firſt. 1 *Mod.* 225.

Acceſſary, *acceſſorius vel acceſſorium, (particeps criminis)* Is where a man is guilty of a felonious offence, not principally, but by participation, as by command, advice, or concealment, &c.

The law relating to this title may be reduced under the following diviſions:

I. *Of acceſſaries before the fact.*
II. *Of acceſſaries after the fact.*
III. *Of acceſſaries to felonies, by common law and by ſtatute.*
IV. *Of the proceedings againſt acceſſaries.*

I. An acceſſary *before* the fact is he, that being abſent at the time of the felony committed doth yet procure, counſel, command, or abet another to commit a felony, and it is an offence greater than the acceſſary after; and therefore in many caſes clergy is taken away from acceſſaries *before*, which yet is not taken away from acceſſaries *after*, as in petit treaſon, murder, robbery, and wilful burning, by 4 & 5 *P. & M. c.* 4. 1 *Hale's Hiſtory of the Pleas of the Crown* 615.—If the commander or counſellor be preſent, he is a principal. *H. H. P. C.* 616. Words which ſound in bare permiſſion, make not an acceſſary, as if *A.* ſays he will kill *J. S.* and *B.* ſays, you may do your pleaſure for me, this makes not *B.* acceſſary, 1 *H. H. P. C.* 616. 21 *Hen.* 7, 36, 37. *Cromp.* 41. *b.* If *A.* hires *B.* to mingle or lay poiſon for *C.* and *B.* doth it accordingly, and *C.* is poiſoned; *B.* though abſent; is principal, and *A.* is acceſſary; but if *A.* were preſent at the mingling or laying of the poiſon, though both were abſent at the taking of it, yet both are principal, for they are both equally acting in the poiſoning. But if *A.* buys the materials of the poiſon, knowing and conſenting to the deſign, and deliver them to *B.* to mingle and apply it, or lay it in the abſence of *A.* here it ſeems *A.* is only acceſſary before. *H. H. P. C.* 616 See 3 *Inſt. p.* 50. *State Tr. vol.* 1. *p.* 329.

There cannot be an *acceſſary* before the fact in manſlaughter, becauſe it is committed of a ſudden, and unpremeditated. *H. P. C.* 317. He who counſels or commands any evil ſhall be adjudged *acceſſary* to all that follows upon it, but not to any thing elſe. If a perſon commandeth another to beat ſuch a perſon, and he beats him ſo that he dies of his wounds, the perſon commanding will be *acceſſary* to the murder.

But if the command had been to beat another perſon, or to burn ſuch a houſe, and he burns another, he that commandeth will not be *Acceſſary*. 3 *Inſt.* 51. If I command a perſon to do an unlawful act, as to rob *A. B.* at one place, and he doth it at another; or to rob him on ſuch a day, and he doth it not himſelf, but procures another to do it; or to kill by poiſon, and he does it by violence; in all theſe caſes I ſhall be *acceſſary*: but where the command is to kill *A. B.* and he killeth *A. D.* this difference in ſubſtance will not make the commander *acceſſary*. *Plowd.* 475. If a man counſels a woman to murder the child in her womb, and the woman murder her child after it is born, he is *acceſſary* to the murder. *Dyer* 185.

II. *An* acceſſary *after the fact.*

An *acceſſary* after the fact is he that receives, aſſiſts or comforts any man that hath committed murder or felony, which hath come to his knowledge; but this doth not extend to a woman who receives or aſſiſts her huſband, though a huſband receiving his wife will be *acceſſary:* and a ſervant may be *acceſſary* in relieving his maſter, or aſſiſting him in his eſcape, *&c.* 3 *Inſt.* 108.

If the wife alone, the huſband being ignorant of it, do knowingly receive a felon, the wife is acceſſary and not the huſband. 1 *H. H. P. C.* 621.

But if felons come to the houſe of *D.* and *M.* his wife, and *M.* know them to be felons, though *D.* doth not, and both *D.* and *M.* receive and entertain them, but *M.* conſents not to the felony: adjudged that this makes not *M.* acceſſary. 3 *Inſt.* 108. *cap.* 47. cites *Mi.* 37 *E.* 3, *Dey's* caſe.

But if the huſband and wife both receive a felon knowingly, it ſhall be judged only the act of the huſband, and the wife ſhall be acquitted. 1 *H. H. P. C.* 621.

If a felon comes to the houſe of another, and he permits him to eſcape without arreſt, knowing him to have committed felony, this doth not make a man *acceſſary*; but if he take money of the felon to ſuffer ſuch eſcape, it makes him an *acceſſary:* and ſo it is if he ſhut the fore door of his houſe, whereby the purſuers are deceived, for here is not a bare omiſſion, but an act done. 1 *Hale's Hiſt. P. C.* 619.

By ſtatute 3 *W. & M. c.* 9. §. 4. "Receivers of ſtolen goods, knowing them to be ſtolen, are to be deemed acceſſaries after the fact, and ſuffer as ſuch." But becauſe theſe receivers often concealed the principal felons, and thereby eſcaped being puniſhed as acceſſaries; therefore by 1 *An. c.* 9. §. 2. it is enacted, that "whoſoever ſhall buy or receive ſtolen goods, knowing them to be ſtolen may be proſecuted for a *miſdemeanor*, and puniſhed by fine and impriſonment, tho' the principal felon be not convicted"; and this ſhall exempt them from being puniſhed as acceſſaries, if the principal ſhall afterwards be convicted. But by 5 *An. c.* 31. § 5. it is enacted, that "if any perſon ſhall receive or buy knowingly any ſtolen goods, or knowingly harbour or conceal any felon, he ſhall be taken as *acceſſary* to the felony, and ſhall ſuffer as a felon." This ſtatute does not take away the benefit of clergy; but by ſtat. 4 *Geo.* 1. *c.* 11. §. 1. ſuch perſon may he tranſported for fourteen years. And by this laſt mentioned ſtatute it is alſo enacted, that "whoſoever ſhall take a reward under the pretence of helping any one to ſtolen goods, ſhall ſuffer as a felon, as if he himſelf had ſtolen them, unleſs he cauſe ſuch felon to be apprehended and brought to trial, and give evidence againſt him." Upon this clauſe the famous *Jonathan Wild* was convicted and executed. 10 *Geo.* 1.

If any perſon, knowing another to have commtted piracy, ſhall on the land or ſea receive, entertain, or conceal him, or receive or take into their cuſtody any ſhip, veſſel, or goods, which have been piratically taken, he ſhall be adjudged acceſſary to the piracy. 11 & 12 *W.* 3. *cap.* 7. *ſ.* 9. 10.

Acceſſaries *after* the fact can only be in felonies, and in thoſe felonies where, by the law, judgement of death regularly ought to enſue; and therefore there is no acceſſary in petit larceny, homicide *per infortunium* or homicide *ſe defendendo.* 1 *H. H. P. C.* 618.

III. *Of acceſſaries to felonies by common law and by ſtatute.*

As to felonies at common law it is ſaid, that acceſſaries both before and after are included; and as to felonies by act of parliament; regularly if an act of parliament enact an offence to be felony, though it mention nothing of acceſſaries before or after yet virtually and conſequentially thoſe, who counſel or command the offence, are acceſſaries before and thoſe that knowingly receive the offender, are acceſſaries after; as in the caſe of rape made felony by the ſtatute of *Weſtminſter* 2. *c.* 34. 1 *H. H. P. C.* 613. 2 *Inſt.* 434. *Staundf. P. C. lib.* 1. *c.* 47. But if the act of parliament, that makes the felony, in expreſs terms comprehend *acceſſaries before*, and makes no mention of *acceſſaries after*, namely, receivers or comforters, there it ſeems there can be no acceſſaries after; for the expreſſion of procurers, counſellors, abettors (all which import acceſſaries *before*) makes it evident, that the law-makers did not intend to include acceſſaries after which is an offence of a lower degree than acceſſaries before; as the ſtatute of 8 *Hen.* 6. *c.* 12. for ſtealing of records, the ſtatute of 33 *Hen.* 8. *c.* 8. for witchcraft, *&c.* 1 *H. H. P. C.* 614.

In the higheſt capital offence, namely, *high treaſon*, there are no acceſſaries, neither before nor after; for all conſenters, aiders, abetters, and knowing receivers and comforters of traitors are *principals.* 1 *H. H. P. C.* 613.

In caſes that are criminal but not capital, as in *treſpaſs*, *mayhem*, or *præmunire*, there are no acceſſaries, for all the acceſſaries before are in the ſame degree as principals; and acceſſaries after by receiving the offenders cannot be in law under any penalties as acceſſaries, unleſs the acts of parliament that induce thoſe penalties, do expreſly extend to receivers or comforters, as ſome do. 1 *H. H. P. C.* 613. And though generally an act of parliament, creating a felony, renders (conſequentially) acceſſaries before and after within the ſame penalty, yet the ſpecial penning of the act of parliament in ſuch caſes ſometimes varies the caſe. Thus the ſtatute of 3 *Hen.* 7. *c.* 2. for taking away maidens, *&c.* makes the offender and the procuring and abetting, yea and wittingly receiving alſo, to be all equally principal felonies, and excluded of clergy. 1 *H. H. P. C.* 614.

In what caſes acceſſaries are excluded from clergy, ſee the *quarto* edition of *The Statutes at Large*, title *Acceſſaries*, under the head of *Felonies without Clergy.*

IV. *Of the proceedings againſt acceſſaries.*

By the ſtatute 2 & 3 *Ed.* 6. *c.* 24. the acceſſary is indictable in that county where he was acceſſary, and ſhall be tried there, as if the felony had been committed in the ſame county; and the juſtices, before whom the acceſſary is, ſhall write to the juſtices, *&c.* before whom the principal is attainted, for the record of the attainder. 1 *Hale's Hiſt. P. C.* 623. This writing is to be by writ in the king's name, under the *teſte* of the juſtice ſo ſending it. *Dyer* 253. *b.* The acceſſary may be indicted in the ſame indictment with the principal, and that is the beſt and moſt uſual way; tho' he may be indicted in another indictment, but then ſuch indictment muſt contain the certainty and kind of the principal felony. 1 *H. H. P. C.* 623. Formerly it was held, that the acceſſary might be tried and puniſhed as if the principal had been attainted; and this, although the principal was admitted to his clergy, pardoned, or otherwiſe delivered before attainder. By ſtat. 29 *Geo.* 2. *c.* 30, the buyer or receiver of ſtolen lead, iron, copper, braſs, bell-metal, or ſolder, may be convicted, although the principal hath not been convicted, and ſhall be tranſported for fourteen years. If the principal be erroneouſly attainted, yet the acceſſary ſhall be put to anſwer, and ſhall not take advantage of the error in that attainder; but the principal reverſing the attainder, reverſeth the attainder of the acceſſary. 1 *H. H. P C.* 625.

Where the principal is not attainted, but diſcharged by being burnt in the hand only, the acceſſary after the fact ought to be diſcharged without burning in the hand, on being put to his book. *Cro. Car.* 566. *pl.* 3. *Hill.* 15 *Car. B. R. Steven's* caſe.

The acceſſary ſhall not be conſtrained to anſwer to his indictment, till the principal be tried; but if he will waive that benefit, and put himſelf upon his trial before the principal be tried, he may; and his acquittal or conviction upon ſuch trial is good. But it ſeems neceſſary in ſuch caſe to reſpite judgment till the principal be convicted and attainted; for if the principal be after acquitted, that conviction of the acceſſary is annulled, and no judgment ought to be given againſt him; but if he be acquitted of the acceſſary, that acquittal is good, and he ſhall be diſcharged. 1 *H. H. P. C.* 623, 624.

It ſeems to be ſettled at this day, that if the principal and acceſſary appear together, and the principal plead the general iſſue, the acceſſary ſhall be put to plead alſo; and that if he likewiſe plead the general iſſue, both may be tried by one inqueſt; but that the principal muſt be firſt convicted; and that the jury ſhall be charged, that if they find the principal Not guilty, they ſhall find the acceſſary Not guilty. But it ſeems agreed, that if the principal plead a plea in bar, or abatement, or a former acquittal, the acceſſary ſhall not be forced to anſwer, till that plea be determined; for if it be found for the principal, the acceſſary is diſcharged; if againſt the principal, yet he ſhall after plead over to the felony, and may be acquitted. 1 *H. H. P. C.* 624. 2 *Hawk.* 323. Where there are two principals, the attainder of one of them gives ſufficient foundation to arraign the *acceſſary*. *Jenk. Cent.* 76. Vide *Hawk. P. C.* tit. *Acceſſary* See **Murder**, **Principal**, *&c.*

Accola, An huſbandman who came from ſome other parts or country to till the lands, *eo quod adveniens terram* colat.—And is thus diſtinguiſhed from *Incola, viz.* Accola *non propriam, propriam colit* Incola *terram.* Du Freſne.

Accolade, (from the *French* accoller, *collum amplecti*,) A ceremony uſed in knighthood by the king's putting his hand about the knight's neck.

Accompt, (*computus*) Is a writ or action which lies againſt a bailiff or receiver to a lord or others, who by reaſon of their offices and buſineſſes are to render *accompt*, bnt refuſe to do it. *F. N. B.* 116.

This action is now ſeldom uſed, but it lies in the following caſes:

If a perſon receives money due to me upon an obligation, *&c.* I may either have an action of *accompt* againſt him as my receiver; or action of debt, or on the caſe, as owing me ſo much money as he hath received. 1 *Lill.* 33. If I pay money in my own wrong to another, I may bring an action againſt him for ſo much money received to my uſe; but then he may diſcharge himſelf by alledging it was for ſome debt, or to be paid over by my order to ſome other perſon, which he hath done, *&c.* 1 *Lill.* 30. But if a man have a ſervant, whom he orders to receive money, the maſter ſhall have *accompt* againſt him, if he were his receiver. *Co. Lit.* 172. If money be received by a man's wife to his uſe, action of *accompt* lies againſt the huſband, and he may be charged in the declaration as his own receipt. *Co. Lit.* 295. *Account* does not lie againſt an infant; but it lies againſt a man or woman, that is *guardian, bailiff*, or *receiver*, being of age and diſcovert: and though an apprentice is not chargeable in this action, for what he uſually receives in his maſter's trade; yet upon collateral receipts he ſhall be charged as well as another. *Co. Lit.* 172. *Roll. Abr.* 117. 3 *Leon.* 92.

As to other actions of *accompt*, they will not lie of a thing certain; if a man delivers 10 *l.* to merchandize with, he ſhall not have *account* of the 10 *l.* but of the profits, which are uncertain: and this is one reaſon why this action will not lie for the arrears of rent. 1 *Danv. Abr.* 215. Action of account may be brought againſt a factor that ſells goods and merchandizes upon credit, without a particular commiſſion ſo to do, though the goods are *bona peritura.* 2 *Mod.* 100. If there are two demands in a declaration, to which the defendant pleads an *accompt* ſtated, the plaintiff can never after reſort to the original contract, which is thereby merged and diſcharged in the *accompt*: if *A.* ſells his horſe to *B.* for 10 *l.* and there being divers other dealings between them, they come to an *accompt* upon the whole, and *B.* is found in arrear 5 *l.* *A.* muſt bring his *inſimul computaſſet* for it, but if there be only one debt betwixt the parties, entering into an *accompt* for that would not determine the firſt contract. 1 *Mod. Rep.* 206. 2 *Mod.* 44. It has been held, that mutual demands on an *accompt* are not extinguiſhed by ſettling it, and promiſe to pay the balance; wherefore *aſſumpſit* lies for the original debt. *Fitzgib.* 44. A man having received of another 100 *l.* to be employed in merchandize abroad, covenants at his return to *accompt* to him; this doth not alter the caſe, but notwithſtanding the covenant, action of *accompt* may be brought. 2 *Bulſt.* 256. And if I deliver to another perſon goods or money beyond ſea, to be delivered to me again in *England* at a certain place, and he delivers it not, I may be relieved by this action. *F. N. B.* 18.

But the moſt liberal, extenſive, and beneficial action is for *money had and received* by defendant to plaintiff's uſe, and will lie in almoſt (if not in every) caſe where one hath money of another's in his hands, which he ought to pay him. This form of action is equivalent to a bill in equity.

Accompt may be brought againſt the following perſons:

If a man makes one his *bailiff* of a manor, *&c.* he ſhall have a writ of *accompt* againſt him as a *bailiff*, where a perſon makes one *receiver*, to receive his rents or debts, *&c.* he ſhall have *accompt* againſt him as *receiver*, and if a man makes one his *bailiff* and alſo his *receiver*, then he ſhall have *accompt* againſt him in *both* ways. Alſo a perſon may have a writ of *accompt* againſt a man as bailiff or receiver, where he was not his bailiff or receiver; as if a man receive money for my uſe, I ſhall have an *accompt* againſt him as receiver; or if a perſon deliver money unto another to deliver over unto me, I ſhall likewiſe have *accompt* againſt him as my receiver: ſo if a man enter into my lands to my uſe, and receives the profits thereof, I ſhall have *accompt* againſt him as bailiff. 9 *H.* 6. 36 *H.* 6. 10. *R.* 2. *Fitz Accompt*, 6.

A judgment in *accompt*, as receiver, is no bar to action of *accompt* as bailiff; but 'tis ſaid a bailiff cannot be charged as receiver, nor a receiver as bailiff; becauſe then he might be twice charged. 2 *Lev.* 127. 1 *Danv. Abr.* 220, 221. The heir may have writ of *accompt* before or after his full age, againſt a guardian in ſocage; and if he ſue the guardian for profits of his lands taken before he is fourteen years old, he muſt charge him as guardian; but if it be for taking the profits after that age, there he muſt ſue him as bailiff. *Lit.* 124. *F. N. B.* 118. Where an heir ſues a ſtranger that doth intermeddle with his land, he ſhall charge him in *accompt* as guardian. *F. N. B.* 18.

A man deviſes land to be ſold by his executors, and the money thence ariſing to be diſtributed amongſt his daughters; action of *accompt* lies in this caſe, for the daughters againſt the executors. *Jenk. Cent.* 215. 2 *Roll. Abr.* 285. An action of *accompt* lies againſt a bailiff, not only for what profits he hath made and raiſed, but alſo for what he might have made and raiſed by his care and induſtry, his reaſonable charges and expences deducted. *Co. Lit.* 172. Here the action of *accompt* may be preferable to that for *money had and received*. One merchant may have *accompt* againſt another, where they occupy their trade together; and if one charges me as bailiff of his goods *ad mercandizandum*, I muſt anſwer for the increaſe, and be puniſhed for my negligence; but if he charges me as receiver *ad computandum*, I muſt be anſwerable only for the bare money or thing delivered. *F. N. B.* 117. *Co. Lit.* 272 2 *Leon. Ca.* 245.

If a bailiff or receiver make a deputy, action of *accompt* will not lie againſt the deputy, but againſt him. 1 *Leon.* 32. But ſeveral ſtatutes have extended the benefit of this writ or action.

The ſtatute of 13 *E.* 3. *c.* 23. gives an action of *account* to the executors of a merchant; the ſtatute 25 *Ed.* 3. *c.* 5. to executors of executors; the ſtatute 31 *Ed.* 3. *c.* 11. to adminiſtrators: and by the ſtatute 3 & 4 *Ann.* *c.* 16. actions of *account* may be brought againſt the executors and adminiſtrators of every guardian, bailiff and receiver, and by one jointenant, tenant in common, his executors and adminiſtrators againſt the other as bailiff, for receiving more than his ſhare, and againſt their executors and adminiſtrators.

It may be proper to ſay ſomething concerning the plea and judgment in account; and though the order may ſeem ſomewhat irregular, it will be neceſſary firſt to explain the nature of the judgement, which being rightly underſtood, the diſtinctions as to the method of pleading will be more eaſily conceived.

The uſual judgment is *quod computet*, on which the defendant is taken by *capias ad computandum*: but there are two judgments in this writ, for if the defendant cannot avoid the ſuit by plea, judgment is firſt given, *That he do accompt*; and having done this before the auditors, there is another judgment entered, that the plaintiff ſhall recover of the defendant ſo much as is found in arrear. 11 *Rep.* 40. The firſt judgment is but an award of the court, like to a writ to enquire of damages; and theſe two judgments depend one upon another; for if judgment be to *accompt*, and the party die before he hath ac-

counted, the executor cannot proceed in the action, but it muſt be begun again; and no writ of error will lie upon the firſt till after the ſecond judgment. *Ibid.* Thus it appears, that after the firſt judgment to account, auditors are aſſigned; and

With reſpect to the plea, the following diſtinctions are to be noticed:

What may be pleaded in bar to the action, ſhall not be allowed to be pleaded before the auditors. *Cro. Car.* 82, 161. Some pleas are in bar of the *accompt*, and others in diſcharge before auditors; and ſome pleas will be allowed before auditors, that will not be in bar to the *accompt*. *Dyer* 21. 11 *Rep.* 8. In *accompt* the plaintiff declared of the receipt of money by the hands of a ſtranger; the defendant pleaded a gift of the money afterwards by the plaintiff; this was a good plea as well in bar of the action, as before auditors. *Winch* 9.

The pleas in this action are, *quod nunquam fuit receptor quod plene computavit*, *&c.* It is no plea by an *accomptant* that he was robbed; unleſs he alledges it was without his default and negligence, and then it will be a good plea. *Co. Lit.* 89. That the defendant *never was bailiff*, is the general bar; and it is a good plea in bar, by claiming a property in the things to be *accounted* for. 29 *E.* 3. 47. A defendant, as receiver, cannot wage his law, where he receives the money by another's hands: 'tis otherwiſe where he received it of the plaintiff himſelf. 1 *Cro.* 919. Suppoſing there was not any evidence of the delivery.

It may be proper to add, that the proceſs in *accompt* is ſummons, *pone* and diſtreſs, and, upon a *nihil* returned, the plaintiff may proceed to outlawry. The ſtatute of Limitations, 21 *J.* 1. *c.* 16. doth not bar a man who is a merchant from bringing action of *accompt* for merchandize at any time; but all other actions of *accompts* are within the ſtatute.

In *Chancery* upon an *accompt* of fifteen or twenty years ſtanding, the defendant may be allowed to prove, on his own *oath*, what he cannot otherwiſe make proof of; but here the particulars muſt be named, as to whom the money was paid, for what, and when, *&c.* 1 *Chan. Rep.* 146. And a defendant ſhall be diſcharged upon his oath of ſums under 40*s.* though it is held a plaintiff ſhall not ſo charge another, or be allowed any thing in equity on his oath. 2 *Chan. Caſ.* 249. 1 *Vern.* 283. See *Oath.* Vide *Comyn's Digeſt*, tit. *Accompt.*

Accomptant General, A new officer in the court of *Chancery*, appointed by act of parliament, to receive all money lodged in court, in the place of the maſters, *&c.* He is to convey the money to the Bank, and take the ſame out by order; and ſhall only keep the account with the Bank, for the Bank is to be anſwerable for all money received by them, and not the *Accomptant General*, &c. Stat. 12 *Geo.* 1. *c.* 32. No fees ſhall be taken by this officer or his clerks, on pain of being puniſhed for extortion; but they are to be paid ſalaries. The *Accomptant General* 650*l. per annum*, out of intereſt made of part of the ſuitors money. 12 *Geo.* 2. *cap.* 24. *Vide* 4 *Geo.* 3. *c.* 32. 120*l. per ann.* to his third clerk.

Counterfeiting the hand of the Accomptant General is felony without clergy. 12 *Geo.* 1. *c.* 32. *ſec.* 9.

Accord, (*French*) Is an agreement between two or more perſons, where any one is injured by a treſpaſs, or offence done, or on a contract, to ſatisfy him with ſome recompence; which, if executed and performed, ſhall be a good bar in law, if the other party after the *accord* performed bring any action for the ſame. *Terms de Ley.*

For the right underſtanding of this head, it is to be ſhewn,

I. *In what caſes accord may be pleaded.*
II. *In what manner it may be pleaded.*

I. When a duty is created by deed in certainty, as by bill, bond, or covenant to pay a ſum of money, this duty accruing by writing, ought to be diſcharged by matter of as high a nature; but when no certain duty ariſes by deed, but the action is for a tort or default, *&c.* for which damages are to be recovered, there an *accord* with ſatisfaction is a good plea. 6 *Rep.* 43. In *accord*, one promiſe may be pleaded in diſcharge of another, before breach; but after breach, it cannot be diſcharged without a releaſe in writing. 2 *Mod.* 44. *Accord* with ſatisfaction, upon a covenant broken, is a good plea in ſatisfaction and diſcharge of the *damages*. *Lutw.* 359. And *accord* made before the covenant broken, hath been adjudged a good bar to an action of covenant, as it may be in ſatisfaction of damage to come. 1 *Danv. Abr.* 546.

If a contract *without deed* is to deliver goods, *&c.* there money may be paid by *accord* in ſatisfaction; but if one is bound in an obligation to deliver goods, or to do any collateral thing, the obligee cannot by *accord* give money in ſatisfaction thereof: though, when one is bound to pay money, he may give goods or any other valuable thing in ſatisfaction. 9 *Rep.* 78. 1 *Inſt.* 212. Where damages are *uncertain*, a leſſer thing may be done in ſatisfaction, and in ſuch caſe an *accord* and ſatisfaction is a good plea; but in action of debt on a bond, there a leſſer ſum cannot be paid in ſatisfaction of a greater. 4 *Mod.* 88. *Accord* with ſatisfaction is a good plea in perſonal actions, where damages only are to be recovered; and in all actions which ſuppoſe a wrong *vi & armis*, where a *capias* and *exigent* lie at the common law, in treſpaſs and ejectment, detinue, *&c. accord* is a good plea: So in an appeal of maihem. But in *real* actions it is not a good plea. 4 *Rep.* 1, 9, 70. 9 *Rep.* 77. Of late it hath been held, that upon mutual promiſes an action lies, and conſequently, there being equal remedy on both ſides, an *accord* may be pleaded without execution, as well as an arbitrament. *Raym.* 450. 2 *Jones* 158. *Acceptance* of the thing agreed on in theſe *accords* is the only material thing to make them binding. *Hob.* 178. 5 *Mod.* 86.

II. *As to the manner in which it may be pleaded.*

It is to be obſerved, that *accord executed* only is pleadable in bar, and *executory* not. 1 *Mod.* 69. Alſo in pleading it, it is the ſafeſt by way of *ſatisfaction*, and not of *accord* alone. For if it be pleaded by way of *accord*, a preciſe execution thereof in every part muſt be pleaded: but, by way of ſatisfaction, the defendant need only alledge, that he paid the plaintiff ſuch a ſum, *&c.* in full ſatisfaction of the *accord*, which the plaintiff received. 9 *Rep.* 80. The defendant muſt plead, that the plaintiff *accepted* the thing agreed upon *in full ſatisfaction*, *&c.* And if it be on a *bond*, it muſt be in ſatisfaction of the *money* mentioned in the condition, and *not* of the *bond*; which cannot be diſcharged but by writing under hand and ſeal. *Cro. Jac.* 254, 650.

For further information reſpecting the doctrine of *accords*, ſee title **Acceptance**, which includes a great deal of the law relative to this head.

Account. See **Accompt.**

Accroche, (from the Fr. *accrocher*) To hook or grapple unto. It ſignifies as much as to encroach, and is mentioned in the ſtatute 25 *Ed.* 3. *c.* 8. to that purpoſe. The *French* uſe it for delay; as, *accrocher un proceſs*, to ſtay the proceedings in a ſuit.

Accuſation, (*accuſatio*) To charge any perſon with a crime. By *Magna Charta*, no man ſhall be impriſoned or condemned on any *accuſation*, without trial by his peers, or the law. None ſhall be vexed upon any *accuſation*, but according to the law of the land: and no man may be moleſted by petition to the king, *&c.* unleſs it be by indictment, or preſentment of lawful men, or by proceſs at common law. 25 *Ed.* 3. 28 *Ed.* 3. *c.* 3. None ſhall be compelled to anſwer an *accuſation* to the king, without preſentment, or ſome matter of record. Stat. 42 *Ed.* 3. Promoters of ſuggeſtions are to find ſurety to purſue them, and not making them good, ſhall ſatisfy damages to the party *accuſed*, and pay a fine to the king. 38 *Ed.* 3. *c.* 9. In treaſon there muſt be two lawful *accuſers*. Stat. 5 & 6 *Ed.* 6. *c.* 11. §. 12. 1 *P.* & *M.* *c.* 10. §. 11. A perſon is not obliged to anſwer on oath to a matter by which he may accuſe himſelf of any crime, *&c.* 2 *Mod. Rep.* 278.

Acephali, The levellers in the reign of king *Hen.* 1. who acknowledged no head or ſuperior. *Leges H.* 1. They were reckoned ſo poor that they had not a tenement by which they might acknowledge a ſuperior lord. *Du Cange.*

Ac etiam billæ, Words, or a clauſe of a writ, where the action requires good bail. The ſtat. 13 *Car.* 2. *c.* 2, which enjoins the cauſe of action to be particularly expreſſed in the writ or proceſs which holds a perſon to bail, hath ordained the inſerting of this clauſe in writs; but it ought not to be made out againſt a peer of the realm, or upon a penal ſtatute, or againſt an executor or adminiſtrator, or for any debt under 10 *l.* in the ſuperior courts. Nor in any action of account, action of covenant, *&c.* unleſs the damages are 10 *l.* or more: nor in action of treſpaſs, or for battery, wounding or impriſonment; except there be an order of court for it, or a warrant under the hand of one of the judges of the court out of which the writ iſſues: 1 *Lill. Abr.* 13. See an hiſtorical account of *Ac etiams* in *North*'s Life of Lord keeper *Guildford*, fol. 99, 100.

Achat, (Fr. *achet*) Signifies a contract or bargain. Purveyors by ſtat. 36 *Ed.* 3. were called *achators*, from their frequent making of bargains.

Acherſet, A meaſure of corn, conjectured to be the ſame with our quarter or eight buſhels. The monks of *Peterborough* had an allowance weekly of twelve *acherſetos* de frumento, and eight *acherſetos* de braſio, and ſix *de Grad.* and eleven *acherſetos* de fabis, *&c.*

Acholite, (*acholitus*) An inferior church ſervant, who, next under the ſubdeacon, followed or waited on the prieſts and deacons, and performed the meaner offices of lighting the candles, carrying the bread and wine, and paying other ſervile attendance.

Acknowledgment Money, Is a ſum paid in ſome parts of *England* by tenants on the death of their landlords, as an acknowledgement of their new lords; in like manner as money is uſually paid on the attornment of tenants.—*Solvet* XIId. *ad recognitionem cujuſlibet novi domini de* Hope, *&c.*—*Ex libro Cart. Prior.* Leominſtriæ.—It is in *Latin* called, *Laudativum vel Laudemium, a laudando Domino.*

Acquietandis Plegiis, A writ of *juſticies*, lying for the ſurety againſt a creditor, who refuſes to acquit him after the debt is ſatisfied. *Reg. of Writs* 158.

Acquietantia de Shiris & Hundredis, To be free from ſuits and ſervices in ſhires and hundreds.

Acquietare, Is a law word, ſignifying *quietum reddere. Dr. Wilk. Gloſſ.* And it alſo ſometimes ſignifies to pay. *Mon. Angl. tom.* 1. *fol.* 199.

Acquittal, (from the *French* word *acquitter*, and the Latin compound *acquietare*) To free or diſcharge. It ſignifies in one ſenſe to be free from entries and moleſtations of a ſuperior lord for ſervices iſſuing out of lands; and in another ſignification (the moſt general) it is taken for a deliverance and ſetting free of a perſon from the ſuſpicion of guilt; as he that on trial is diſcharged of a felony, is ſaid to be *acquietatus de felonia*; and if he be drawn in queſtion again for the ſame crime, he may plead *auter faits acquit*; as his life ſhall not be twice put in danger for the ſame offence. 2 *Inſt.* 385. When two are indicted, the one as principal, and the other as acceſſary, the principal being diſcharged, the acceſſary of conſequence will be *acquitted* by *law.*

Acquittal in *fact*, is when a perſon is found Not guilty of the offence by a jury, on verdict, *&c.* But in murder, if a man is *acquitted*, appeal may be brought againſt him. 3 *Inſt.* 273.

If one be *acquitted* on an indictment of murder, ſuppoſed to be done at ſuch a time; and after indicted again in the ſame county, for the murder committed at another time; here, notwithſtanding that variance, the party may plead *auter faits acquit*, by averring it to be the ſame felony: ſo where a perſon is indicted a ſecond time, for robbery upon the ſame perſon, but at another vill, *&c.* 2 *Hawk.* 370. Where a man is diſcharged on ſpecial matter found by the *grand jury*, yet he may be indicted *de novo* ſeven years afterwards, and cannot plead this *acquittal*; as he may upon the ſpecial matter found by the petit jury, and judgment given thereon. *Ibid.* 246.

If a perſon is lawfully *acquitted* on a malicious proſecution, he may bring his action, *&c.* for damages, after he hath obtained a copy of the indictment; but it is uſual for the judges of gaol delivery to deny a copy of an *acquittal* to him who intends to bring an action thereon, when there was probable cauſe for a criminal proſecution. *Carth. Rep.* 421.

Acquittance, (*acquietantia*) Signifieth a diſcharge in writing, of a ſum of money, or debt due; as, where a man is bound to pay rent, reſerved upon a leaſe, *&c.* and the party to whom due, on receipt thereof, gives a writing under his hand witneſſing that he is paid: this will be ſuch a diſcharge in law, that he cannot demand and recover the ſum or duty again, if the *acquittance* be produced. *Termes de Ley* 15. *Dyer* 6, 25, 51. An *acquittance* is a diſcharge and bar in the law to actions, *&c.* And if one acknowledges himſelf to be ſatisfied by deed, it may be a good plea in bar, without any thing received; but an *acquittance*, without ſeal, is only evidence of ſatisfaction, and not pleadable.

'Tis obſerved, that a general receipt or *acquittance* in full of all demands, will diſcharge all debts, except ſuch as are on ſpecialty, *viz.* bonds, bills, and other inſtruments ſealed and delivered; on which account thoſe can be deſtroyed only by ſome other ſpecialty of equal force, ſuch as a general releaſe, *&c.* There being this difference between that and the *general acquittance.* See *Cro. Jac.* 650.

But in ſome caſes a court of equity will order accounts to be opened, even after an acquitance in full of all demands.

And now, in the ſuperior courts of law, the producing an acquittance will not bar the action, if the plaintiff can by any means ſhew a miſtake, and that he has not been paid, or paid ſo much as the acquittance is for.

In ſome caſes payment may be refuſed, unleſs an acquittance is given. Thus the obligor is not bound to pay money upon a ſingle bond, except an *acquittance* be given him by the obligee; nor is he obliged to pay the money before he hath the *acquittance.* But in caſe of an obligation with a condition, it is otherwiſe; for there one may aver payment. And by 3 & 4 *Ann.* *c.* 16. If an action of debt is brought upon a ſingle bill, and the defendant hath paid the money, ſuch payment may be pleaded in bar of the action.

A ſervant may give an *acquittance* for the uſe of his maſter, where ſuch ſervant uſually receives his maſter's rents, *&c.* and a maſter ſhall be bound by it. *Co. Lit.* 112. The manner of tender and payment of money ſhall be generally directed by him who pays it, and not by him who receives it; and the *acquittance* ought to be given accordingly.

Acre, (from the *German* word *acker*, i. e. *ager*) A quantity of land, containing in length 40 perches, and in breadth four perches; or in proportion to it, be the length or breadth more or leſs. By the cuſtoms of various countries, the perch differs in quantity, and conſequently the *acre* of land. It is commonly but 16 feet and a half, but in *Staffordſhire* it is 24 feet. According to the ſtatute 34 *Hen.* 8. concerning the ſowing of flax, it is declared that 160 perches make an *acre*, which is 40 multiplied by four; and the ordinance of meaſuring land, 35 *Ed.* 1. agrees with this account. The word *acre* formerly meant any open ground or field; as *caſtle-acre*, *weſt-acre*, &c. and not a determined quantity of land. Alſo *acre*, or *acre-fight*, is an old ſort of duel fought by ſingle combatants, *Engliſh* and *Scotch*, between the frontiers of their kingdoms, with ſword and lance; and this duelling was called camp-fight, and the combatants champions, from the open field that was the place of trial.

Actilia, Military utenſils.—*Quilibet paratus ſit cum* actiliis *& harneſiis, &c. & quicunq; habet decem libras in bonis, & non habuerit omnia cremorum* actilia, *perdat omnia bona.* Du Cange.

Action, (*actio*) Is the form of a ſuit given by law for recovery of that which is one's due: or it is a legal demand of a man's right. *Co. Lit.* 285. The learned *Bracton* thus defines it, *Actio nihil aliud eſt quam jus proſequendi in judicio quod alicui debetur.* And *actions* are either *criminal* or *civil*; criminal, to have judgment of death, as appeals of death, robbery, *&c.* or only to have judgment for damage to the party, fine to the king and impriſonment, as appeals of maihem, *&c.* *Co. Lit.* 284. 2 *Inſt.* 40. Civil *actions* are ſuch as tend only to the recovery of that which by reaſon of any contract, *&c.* is due to us; as *action* of debt, upon the caſe, *&c.* 2 *Inſt.* 61.

Under *criminal actions* may be claſſed *actions penal*; which lie for ſome penalty or puniſhment to the party ſued, be it corporal or pecuniary. *Bract.*

Actions upon ſtatute, brought upon the breach of any ſtatute, whereby an action is given that lay not before; as where one commits perjury to the prejudice of another, the party that is injured may have a writ upon the ſtatute. Such action is now obſolete.

Actions popular, given on the breach of ſome penal ſtatute, which every man hath a right to ſue for himſelf and the king, by information, action, &c. And becauſe this *action* is not given to one eſpecially, but generally to any that will proſecute, it is called *action popular*, or *qui tam* action. See title Qui tam.

Actions *civil* are divided into *real*, *perſonal*, and *mixed*. Action *real* is that action whereby a man claims title to lands, tenements, or hereditaments, in fee, or for life: and theſe *actions* are poſſeſſory, or aunceſtrel; poſſeſſory, of a man's own poſſeſſion and ſeiſin; or aunceſtrel of the poſſeſſion or ſeiſin of his anceſtor.

Action perſonal is ſuch as one man brings againſt another, on any contract for money or goods, or on account of any offence or treſpaſs; and it claims a debt, goods, chattels, &c. or damages for the ſame.

Action mixed is an *Action* that lieth as well for the thing demanded, as againſt the perſon that hath it; in which the thing is recovered, and likewiſe damages for the wrong ſuſtained: it ſeeks both the thing whereof a man is deprived, and a penalty for the unjuſt detention. But detinue is not an *action mixed*, notwithſtanding the thing demanded and damages for withholding it be recovered; for it is an *action* merely perſonal, brought only for goods and chattels.

In a *real action*, ſetting forth the title in the writ, ſeveral lands held by ſeveral titles may not be demanded in the ſame writ: in *perſonal actions*, ſeveral wrongs may be comprehended in one writ. 8 *Rep.* 87. A bar is perpetual in *perſonal actions*, and the plaintiff is without remedy, unleſs it be by writ of error or attaint: but in *real actions*, if the defendant be barred, he may commence an action of a higher nature, and try the ſame again. 5 *Rep.* 33. Suppoſing he did not at firſt ſue by a writ of *right*, which is the higheſt in the law. *Action of waſte* ſued againſt tenant for life, is in the realty and perſonalty; in the realty, the place waſted being to be recovered, and in the perſonalty, as treble damages are to be recovered. *Co. Lit.* 284.

Many *perſonal actions* die with the perſon. Thus if a leſſee for years commit waſte, and dies, *action of waſte* may not be had againſt his executor or adminiſtrator, for waſte done by the deceaſed. And where a keeper of a priſon permits one in execution to eſcape, and afterwards dieth, no *action* will lie againſt his executors. This muſt be underſtood, of that kind of keeper, to whom the priſon actually belongs, as the *marſhal*, the *warden* of the fleet &c. not of a gaoler who acts as ſervant to a ſheriff, &c. for in ſuch caſe, the death of the gaoler, is not any bar to an action againſt the ſheriff, to whom in fact, the priſon actually belongs. If a battery be committed on a man, and he that is the aggreſſor, or the party on whom committed, die, the *action* is gone. *Co. Lit.* 53. But in *real actions* it is otherwiſe, for they ſurvive.

Again, actions are either *local* or *tranſitory*. *Actions real* and *mixed*, ejectment, waſte, treſpaſſes, *quare clauſum fregit*, &c. are to be laid in the ſame county where the land lieth: *perſonal* and *tranſitory actions*, as debt, detinue, aſſault and battery, &c. may be brought in any county, (except it be againſt officers of places, &c. by ſtatute 21 *Jac.* 1.) *Co. Lit.* 282. Or againſt officers acting under particular acts of parliament, which frequently direct actions againſt them, to be laid in the reſpective counties, where the facts happen. *Actions tranſitory* may be laid in any county, although the ſtatute 6 *R.* 2. enacted, That writs of debt, account, &c. ſhould be commenced in the county where the contracts were made; for that ſtatute was never put in uſe; and yet generally *actions* have been laid in the county where the cauſe of them was ariſing, except as above. If the cauſe of *action* ariſe in two counties, an *action* may be brought in either county: but a nuſance be erected in one county, to the damage of a man in another, the action muſt be brought in *conſulo comitatum*. *Mich.* 8 *Ann. B. R.*

The defendant cannot by his plea oblige the plaintiff to lay his action in a different county from that in which he brought it, unleſs the matter pleaded be local; for in tranſitory actions he muſt move the court on affidavit, that if the plaintiff hath any cauſe of action, ſuch cauſe accrued in the county of, &c. and not where the plaintiff hath laid it, &c. and ſuch motion muſt be made before iſſue joined; for by joining iſſue, he agrees with the plaintiff, as to the manner of bringing the action, and though the court ſeldom refuſes on ſuch an affidavit to change the venue, yet if, before or after the motion made, the plaintiff will enter into a rule, to offer material evidence, in the county where he laid his action, the cauſe will be tried there. 1 *Sid.* 44. 2 *Salk.* 669, 670.

But though the court, on application, ſeldom refuſes to change the venue, yet there are caſes in which the judges have refuſed; as where a peer of the realm brings an action of *ſcandalum magnatum*, the court will not change the venue; becauſe a ſcandal raiſed on a peer reflects on him through the whole kingdom. 2 *Mod.* 215. 1 *Lev.* 56. *S. P.* It was lately denied in the court of king's bench, in the caſe of lord *Sandwich*, againſt *Miller*, after argument. A ſerjeant at law, barriſter, attorney, or any other privileged perſon, whoſe attendance is neceſſary at *Weſtminſter-hall*, may lay his action in *Middleſex*, though the cauſe of action accrued in another county; and the court, on the uſual affidavit, will not change the venue. 2 *Salk.* 668, 670. 2 *Show. Rep.* 176, 177, 242. *S. P.*

But if a privileged perſon be ſued, and the action brought againſt him in the right county, his privilege will not entitle him to have it tried in *Middleſex*. Carth. 126. 2 Salk. 668.

If an attorney lays his action in *London*, the court will change the venue on the uſual affidavit; for, by not laying it in *Middleſex*, he ſeems regardleſs of his privilege. 2 *Vent.* 47.

If the action be grounded on a ſpecialty, the court will not change the venue; for not being dated at any particular place, it may be preſumed to be omitted, that it may charge the defendant at any place. 2 *Mod.* 228.

It is not the courſe of the court to change the venue in an action of eſcape; *per Hale* Ch. Juſt. 2 *Mod.* 228. The court will not change the venue in an action of *covenant*. 1 Lev. 307.

Actions likewiſe are ſaid to be *perpetual* and *temporary*: *Perpetual*, thoſe which cannot be determined by time; and all *actions* may be called perpetual that are not limited to time for their proſecution: *Temporary actions* are thoſe that are expreſly limited; as for example; the ſtatute 7 *H.* 8. *c.* 3. gives *action* within four years after the offence committed: the 1 *Ed.* 6. *c.* 1. within three years; the 31 *Eliz.* *c.* 5. within one year, &c. Since the ſtatute of limitations, all *actions* ſeem to be temporary; or not ſo perpetual, but that they may in time be preſcribed againſt; a *real action* may be preſcribed againſt within *five* years, on a fine levied, or recovery ſuffered. By ſtat. 32. *Hen.* 8. *c.* 2. A writ of right for recovery of lands is to be brought within *ſixty* years: by 21 *Jac.* 1. *c.* 16. Writs of *formedon* for any title to lands in *eſſe*, are to be ſued within *twenty* years; *actions* of debt, on the caſe, of account, detinue, trover and treſpaſs, are to be brought within *ſix* years; of aſſault and battery within *four* years; and ſlander within *two* years: but the right of *action* in theſe caſes is ſaved to infants, feme coverts, perſons beyond ſea, &c. And on a freſh promiſe the time limited may be enlarged; alſo the taking out and filing of a writ, is a good commencement of an *action* to avoid the ſtatute of limitations. 1 *Lill.* 19. But continuances muſt be entered, to the time of declaring.

Actions alſo are *joint* or *ſeveral*; joint, where ſeveral perſons are equally concerned, and the one cannot bring the *action*, or cannot be ſued, without the other; *ſeveral*, in caſe of treſpaſs, &c. done where perſons are to be ſeverally charged, and every treſpaſs committed by many is ſeveral. 2 *Leon.* 77.

Having ſaid thus much concerning the *general* diviſions of actions, it remains to conſider,

I. *By whom, and againſt whom, actions may be brought.*
II. *What particular actions are adapted to particular caſes.*

I. In all *actions* there muſt be a perſon able to ſue; the party ſued muſt be one ſuable for the thing laid; and the plaintiff is to bring his right and proper *action* which the law gives him for relief. 1 *Shep. Abr.* 20. There are three ſorts of *damages* or wrongs, either of which is a ſufficient foundation for an *action*. 1. Where a man ſuffers damage in his *fame* and credit. 2. Where one has damage to his perſon, as by battery, impriſonment, &c. which reſpects his *liberty*. 3. Where a perſon ſuffers any damage in his *property*. *Carth. Rep.* 416.

A man attainted of treaſon or felony, convict of recuſancy, an outlaw, excommunicated perſon, convict of *præmunire*, an alien enemy, &c. cannot bring an *action*, till pardon, reverſal, abſolution, &c. But executors or adminiſtrators, being outlawed, may ſue in the right of the teſtator or inteſtate, though not in their own right. A feme covert muſt ſue with her huſband; and infants are to ſue by guardian, &c. *Co. Lit.* 128. *Actions* may be brought *againſt* all perſons, whether attainted of treaſon or felony, a convict recuſant, outlawed and excommunicate, &c. and a feme covert muſt be ſued with her huſband. A *ſcire facias*, or any writ to which the defendant may plead, or by which a plaintiff may recover, is an *action*. 6 *Rep.* 3. *Salk.* 5.

II. *What particular actions are adapted to particular caſes.*

There are various kinds of actions ſuited to different caſes, as actions of COVENANT, DEBT, DETINUE, TRESPASS, TROVER, &c. which ſee under their reſpective titles.

But where the law has made no proviſion, or rather, where no general action could well be framed before hand, the ways of injuring, and methods of deceiving being ſo various, every perſon is allowed to bring a ſpecial action on his own caſe. 1 *New Abr.* 44. *Co. Lit.* 56. *a.* 6 *Mod.* 53, 54.

This action is, in practice, become the moſt univerſal of any, as moſt of the other actions may, under particular circumſtances, be reſolved into this, which it will be neceſſary, therefore, to conſider ſomewhat largely.

Action upon the *caſe* is a general *action* given for redreſs of wrongs and injuries, done without force, and not particularly provided againſt by law, in order to have ſatisfaction for damage: and in *actions upon the caſe*, the like proceſs is to be had as in *actions* of treſpaſs or debt. 19 *H.* 7. *c.* 9. *Terms de Ley* 17. It is called *action on the caſe*, becauſe the whole cauſe or *caſe*, ſo much as in the declaration (except time and place) is ſet down in the writ; and there is no other action given in the caſe, ſave only where the plaintiff hath his choice to bring this or another *action*. We muſt obſerve that, formerly, all actions were ſued in the court of *Common Pleas*, and there the foundation of the ſuit is, a writ, called an *original*, whereupon the *capias* is grounded, and which *original* (in *caſe*, *int' al'*) contains the nature of the plaintiff's complaint at large.

'Tis the ſame where ſuits are commenced in *B. R.* by *original* out of *Chancery*.

In all caſes, where a man has a temporal loſs, or damage by the *wrong* of another, he may have an action upon the caſe to be repaired in damages. But the particular damage muſt be ſpecially alledged.

This action, as hath been intimated, lies in a great variety of inſtances, which are particularly enumerated in NELSON's Abridgment and COMYN's Digeſt. Of theſe the chief are, 1. Action of the caſe for *words*, which is brought for words ſpoken or written which affect a perſon's life, reputation, office, or trade, or tend to his loſs of preferment, in marriage or ſervice, or to his diſinheritance, or which occaſion him any *particular damage*. This action therefore will lie for charging another with any capital, or other crime. To ſay of another he is a traitor, *action* lies. 1 *Bulſt.* 145. But if one call another a ſeditious traiterous knave, no *action* lieth; becauſe the words imply an intention only, and not an unlawful act. 4 *Rep.* 19. Nor to ſay of a man he deſerves to be hang'd: nor to call another a rogue generally, or ſay he will prove him to be a rogue; though it will lie to ſay a man is a rogue of record. 4 *Rep.* 15. *Danv.* 92. Words which charge a perſon with being a murderer, highwayman, or thief, in expreſs terms, are held *actionable*. 1 *Roll. Abr.* 47. Tho' for ſaying ſuch a one would have taken his purſe on the highway, or have robbed him, an *action* lies not; for nothing is ſhewn to be done in order thereto. *Cro. Eliz.* 250. Likewiſe to ſay a man was in gaol for ſtealing any thing is not *actionable*, for the words do not affirm the theft. *Danv.* 140. But to ſay, I think *A. B.* committed ſuch a felony; or, I dreamt he ſtole a horſe, &c. theſe words are *actionable*. *Dal.* 144. 1 *Danv.* 103. If a felony be done, and common fame is, that ſuch a perſon did it, although one may charge or arreſt him on ſuſpicion of that felony; yet a man may not affirm that he did the ſame, for he may be innocent all the while, and therefore affirming it hath been held *actionable*. *Hob.* 138, 203, 381.

It was heretofore held, that no action would lie for words importing a charge of murder, without an averment that the perſon ſaid to be killed was dead; but the latter and better opinion is, that the party ſhall be intended to be dead, unleſs the contrary appears in the pleadings. 1 *Vent.* 117. *Cro. Jac.* 489. *Sid.* 53. *Cro. Eliz.* 560, 823. Tho' *quære* if the party is proved alive? If one ſay to another, Thou art a buggering rogue, and I could hang thee, *action* lies. 1 *Sid.* 373. And if a man ſay, I know myſelf, and I know you, I never bugger'd a mare, &c. it is *actionable*.

When ſuch words are ſpoken of another maliciouſly, for which, if true, ſuch other might be puniſhed criminally, *action* lies; as, to ſay of a perſon, he hath perjured himſelf; or that he would prove him perjured; or that he was forſworn in the court of Chancery, Common Pleas, &c. are *actionable*: but not to call a perſon forſworn man, unleſs it be ſaid in a court of record. 3 *Inſt.* 163. *Danv.* 87, 89. To ſay a man hath forged an obligation, &c. and he will prove it; this is *actionable*. *Danv.* 130.

Some writers make a difference, where the ſubſequent words are introduced by the word *and*; as, you are a thief, and have ſtolen, &c. which are additional, and ſhall not correct; and the word *for*; as you are a thief, for you have, &c. *Hob.* 386. *Style* 115. *Godb.* 89. The words, He is a maintainer of thieves, and keeps none but thieves in his houſe, will not ſupport an *action*, unleſs it be averred that he knew them to be thieves. *Cro. Eliz.* 746.

To ſay an alehouſe-keeper keeps a bawdy-houſe, *action* lies. *Cro. Eliz.* 582. Though to ſay of an inn-keeper, that he harbours rogues, &c. is not *actionable*; for his inn is common to all gueſts. 2 *Roll. Rep.* 136. To ſay of another he hath the *French* pox, *action* will lie. *Cro. Jac.* 430. But 'tis ſaid, if one ſay that he had had the pox, after cured, no *action* lies; becauſe none will then avoid his company, &c. *Noy.* 151. To call a man a whore-maſter, or a woman whore, no *action* lies; for theſe are merely ſpiritual. *Danv. Abr.* 80. But calling a woman whore in *London*, is *actionable* by the cuſtom of the city.

Words likewiſe are actionable which tend to the diſgrace or detriment of a perſon in *office*, or of a man in the exerciſe of his *profeſſion* or *trade*.

Calling an officer in the government, &c. jacobite, hath been held *actionable*; *aliter* of a private perſon. 7 *Mod. Ca.* 107. To ſay a juſtice of peace doth not adminiſter juſtice, is *actionable*. *Cro. Eliz.* 358. And ſo for other diſgrace in his office.

But it is to be obſerved, that as to words for which an *action* lies, relating to a man's office, they muſt have a plain and direct meaning, to charge him with ſome crime that is puniſhable; and be ſpoken of his office, or otherwiſe they are not *actionable*. 6 *Mod.* 200. Thus the plaintiff, being a *juſtice of peace*, the defendant ſaid *Mr. Stukely covereth and hideth felonies, and is not worthy to be a juſtice of peace*; actionable, for though his office is not named, the words neceſſarily refer to it. 4 *Rep.* 16.

The plaintiff being a *juſtice of peace*, and high ſheriff, the defendant ſaid, *'Tis well known I am a true ſubject; but thou (innuendo* the plaintiff's ſervant) *ſerveſt no true ſubject, and thine own conſcience may accuſe thee thereof*; actionable. 1 *Leon.* 335.

Caſe, &c. for theſe words ſpoken of a juſtice of peace, *He is a forſworn juſtice, and not fit to be a juſtice of peace*; after a verdict for the plaintiff it was inſiſted, that the words were not actionable, becauſe *forſworn* doth not intend *judicial perjury*, and there was no diſcourſe of his office; but adjudged actionable, becauſe the words *forſworn juſtice* ſhew that the defendant intended perjury relating to his office, for *ſermo refert ad conditionem perſonæ*. 1 *Vent.* 50.

Slander, &c. brought by a *doctor of the civil law*, who was alſo a *juſtice of peace* and *chancellor of the biſhoprick of* Norwich, for theſe words, *he is not fit to be a chancellor or a juſtice of peace, he is a knave, a raſcal, and a villain, he is not fit to practiſe, he ought to have his gown pulled over his ears*; actionable, the plaintiff had a verdict, and 40*l*. damages. 2 *Lutw.* 1288.

The defendant ſpoke to an officer, (*viz.*) *You have cozened the ſtate of* 20000 l. *and I will prove it, for you have received* 25000 l. *of the office, and not compounded for it, and have foiſted in words in the order of your commiſſion*; actionable. *Style* 436.

In offices of *profit*, for ſuch words as impute the want either of underſtanding, ability, or integrity to execute them, this *action* lies.

But in offices of *honour*, words that impute want only of ability, are not actionable; as to ſay of a juſtice of peace, *He a juſtice of peace! he is an aſs, and a beetle-headed juſtice*: the reaſon is, becauſe a man cannot help his want of ability, as he may his want of honeſty; otherwiſe where words impute diſhoneſty or corruption. 2 *Salk.* 695. But if *ſpecial* damage can be proved, it is actionable: and indeed in every caſe, where ſpecial damage can be proved, an action will lie.

As to words tending to the diſgrace or detriment of a man in his *profeſſion* or *trade*, it is to be premiſed, that where the words are diſgracing a man's profeſſion, they alſo muſt appear to be ſpoken preciſely of it; for to ſay a perſon hath cozened one in the ſale of certain goods, is not *actionable*; unleſs you ſhew that the party lived by ſuch ſelling. 1 *Roll. Abr.* 62.

To ſay of a *doctor in divinity*, *Doctor S. is robbing the church*; and at another time *Doctor S. hath robbed the church*; actionable. *Cro. Car.* 301, 417.

In *caſe*, &c. in which the plaintiff declared, that he was inſtituted and inducted into a parſonage in, *&c.* and that he executed the office of a paſtor in that church for the ſpace of four years, and that the defendant ſaid of him, *You are a drunkard, a whore-maſter, a common ſwearer, and a common lier, and you have preached falſe doctrine, and deſerve to be degraded*; after a verdict for the plaintiff, it was objected, that the words are not actionable, becauſe they import no civil or temporal damage to the plaintiff; but adjudged actionable, for, if true, he may be degraded, and ſo loſe his freehold. *Allen* 63.

Theſe words ſpoken of a preaching perſon, *Parrat is an adulterer, and had two children by* B. G.'*s wife, and I will cauſe him to be deprived for it*; not actionable; for 'tis a *ſpiritual defamation*, and puniſhable in that court. *Cro. Eliz.* 502.

To ſay of a counſellor, that he is no lawyer; that they are fools who come to him for law, and that he will get nothing by the law, *action* lies. 1 *Danv.* 113. And it is the ſame to ſay he hath diſcloſed ſecrets in a cauſe.

To call a doctor of phyſick fool, aſs, empirick, and mountebank, or ſay he is no ſcholar, are *actionable*. *Cro. Car.* 270. So to ſay of a ſchool-maſter, put not your ſon to him, for he will come away as very a dunce as he went. *Hetl.* 71. Where one ſays of a midwife, that many have periſh'd for her want of ſkill, an *action* will lie. *Cro. Car.* 211. If one calls a merchant bankrupt, *action* lies. 1 *Leon.* 336. And to call a trading perſon bankrupt knave, is *actionable*. 1 *Danv.* 90. Alſo if one ſay of a merchant, that he is a beggarly fellow, and not able to pay his debts; or ſay of a perſon that he is a runaway, and dares not ſhew his face, by reaſon whereof he is diſgraced and injured in his calling, theſe are *actionable*. *Raym.* 184.

Words tending to the loſs of perferment in marriage, *&c.* are actionable. Thus to ſay that a woman hath a baſtard, or is with child; or that a certain perſon hath had the uſe of her body, whereby ſhe loſes her marriage, *action* lies, i. e. by reaſon of the ſpecial damage. If a man is in treaty with a woman to marry, and another tells him, ſhe is under a pre-contract; this doth not imply a ſcandal, but yet, if falſe, an *action* will lie if ſhe loſes her marriage by means of theſe words. To ſay of a man that he lay with a certain woman, *&c.* by which he loſes his marriage, is *actionable*; for in theſe caſes there is a temporal damage. 1 *Danv.* 84.

As to words tending to a perſon's diſinheritance, if one ſays of another that has land by deſcent, that he is a baſtard; *action upon the caſe* lies, as it tends to his diſinheritance. *Co. Ent.* 28. But to ſay of a ſon and heir apparent, that he is a baſtard, *action* lies not until he is diſinherited, or is prejudiced thereby. 1 *Danv.* 83. To ſlander the title of another perſon to his lands is *actionable*; but the words muſt be falſe, and be ſpoken by one that neither hath nor pretendeth title to the land himſelf; and who is not of counſel to him that pretends right. 4 *Rep.* 17. If a man ſhall pretend title to the land another hath in poſſeſſion, and hath no colour of title to it; and ſhall ſay he hath ſuch a deed or conveyance of it, where in truth he hath none, or if he hath any it is a counterfeit and forged deed, and he knows it to be ſo: in this caſe the words may bear an *action*; but if there be any colour for what is ſaid, they will not be *actionable*. *Cro. Jac.* 163. *Yelv.* 80, 88. And the party of whom the words are ſpoken muſt have, or be likely to have, ſome ſpecial damage by the ſpeaking of them; as that he is hindered in the ſale of his lands, or in his preferment in marriage, *&c.* without which it is ſaid *action* doth not lie. 1 *Cro.* 99. *Cro. Jac.* 213, 397. *Poph.* 187. 2 *Bulſt.* 90. The affirming that another hath title to the land, where *actionable*, ſee 4 *Rep.* 175.

If *A.* ſays, that *B.* ſaid that *C.* did a certain ſcandalous thing, *C.* ſhall have *action* againſt *A.* with averment that *B.* never ſaid ſo, whereby *A.* is the author of the ſcandal. Suppoſing *B.* did not in fact ſay ſo. *Cro. Jac.* 406. See 1 *Roll. Abr.* 64.

It is to be obſerved in general, that though ſcandalous words are ſpoken before a man's face, or behind his back, by way of affirmation, or report, when drunk, or ſober; and although they are ſpoken in any other than the Engliſh language, if they are underſtood by the hearers, they are *actionable*: alſo words may be *actionable* in one county, which are not ſo in another, by the different conſtruction, *&c.* 4 *Rep.* 14. *Hob.* 165, 236. But if the defendant can make proof of the words, he may plead a ſpecial juſtification. *Co. Ent.* 26. Yet where the plaintiff has a pardon, after an offence committed, the words are ſtill *actionable*. *Moor* 863. The words to maintain this *action* muſt be direct and certain, that there may be no intendment againſt them: but as ſome words ſeparate, without others joined with them, are not *actionable*; ſo ſome words that are *actionable* may be qualified by the precedent or ſubſequent words, and all the words are to be taken together. 4 *Rep.* 17. 1 *Cro.* 127. *Moor Ca.* 174, 331. vide 4 *Rep.* 20. *Hob.* 126. Where words ſpoken are ſomewhat uncertain, by the precedent conference or ſome circumſtance; with an averment, they may be many times made certain and *actionable*. 2 *Bulſt.* 227. So by the pleadings of the parties, and verdict of a jury for the plaintiff. *Cro. Jac.* 107. The thing charged by the words muſt be that which is poſſible to have been done; for if it be of a thing altogether and apparently impoſſible, no *action* lies. 4 *Rep.* 16. For words ſpoken in purſuit of a proſecution in an ordinary courſe of juſtice; and where a lawyer, in pleading his client's cauſe, ſhall utter words according to his inſtructions; and to ſay of one he is a baſtard, when this is to defend the party's own title, where he himſelf doth claim to be heir of the land that is in queſtion; theſe words will not bear an *action*. *Cro. Jac.* 90. 4 *Rep.* 13.

In this *action* the nature of the words muſt be ſet forth, with the manner of ſpeaking them, the time and place, when and where ſpoken, and before whom, and the damage thereby to the plaintiff; that his credit was, and how, impaired, with the aggravating circumſtances: but it matters not whether the plaintiff doth in his declaration ſet forth all the circumſtantial words as they are ſpoken; ſo as to ſhew the very words that are *actionable*, and the ſubſtance of them, *&c* N. B. The real day is not material, nor is the place, unleſs where it is to govern the conſtruction.

2. Action on the caſe likewiſe lies upon an *aſſumpſit* or undertaking; and ſuch actions are founded on a contract either expreſs or implied by law, and gives the party damages in proportion to the loſs he has ſuſtained by the violation of the contract. 4 *Co.* 92. *Moor* 667. For the law on this head ſee title Aſſumpſit.

3. It has been premiſed, that a ſpecial action on the caſe lies in all inſtances wherein no general action could be framed; it will be neceſſary therefore to point out ſome of thoſe particular caſes to which it is moſt peculiarly applicable.

It was formerly held, that if my fire, by misfortune, burnt the goods of another man, for this wrong he ſhould have *action on the caſe* againſt me: and if my ſervant put a candle or other fire in any place in my houſe, and this burnt my houſe and the houſe of my neighbour, *action of the caſe* lay for him againſt me. 1 *Danv.* 10.

But by ſtat. 6 *Ann.* c. 31. it is enacted, that an action ſhall not be brought againſt any, in whoſe houſe or chamber any fire ſhall accidentally happen: but by the ſame ſtatute it is enacted, that if any ſervant through negligence ſhall cauſe an houſe or outhouſe to be fired, ſuch ſervant, being thereof convicted upon oath before two juſtices, ſhall forfeit 100*l.* unto the churchwardens of the pariſh of &c. to be diſtributed amongſt the ſufferers, as to the churchwardens ſhall ſeem juſt, and upon nonpayment the ſervant ſhall be committed to ſome workhouſe by a warrant of one juſtice, there to be kept eighteen months at hard labour. See the ſtats. 6 *Ann.* c. 31. § 6. 10 *Ann.* c. 14. & 33 *Geo.* 2. c. 30.

Action on the caſe likewiſe lies againſt carriers and others upon the cuſtom of *England*.

If a perſon delivereth goods to a common carrier, to carry them to a certain place, and he loſeth them, *action upon the caſe* lies againſt him; for by the common cuſtom of the realm he ought to carry them ſafely: it is the ſame of a common hoyman or lighterman, who is a water-carrier of goods; but goods in this caſe may be thrown overboard in a tempeſt, to preſerve the paſſengers lives in the lighter, &c. and no *action* lies. 2 *Bulſt.* 280. If a common carrier is robbed of goods, he is chargeable for them, becauſe he had his hire, and took upon himſelf the ſafe delivery of the goods. 1 *Danv.* 13.

If a carrier aſks whether money or plate is contained in a parcel, and is anſwered in the negative, and upon a robbery, and action brought, 'tis proved there was money or plate, we conceive the law does not make the carrier liable, he being deceived.

Caſe, &c. upon the cuſtom of *England* againſt a *maſter* of a *ſhip*, for negligently keeping the plaintiff's goods; adjudged he is rather an *officer* than a ſervant, for he may pawn the ſhip if he ſee occaſion; he may ſell *bona peritura*, &c. and tho' he receives his wages from the *owners*, yet in effect he is paid by the merchant; for 'tis he who pays the owners, and there is no difference between this caſe and that of a hoyman or a common carrier. 1 *Vent.* 190.

In an action on the caſe upon the cuſtom of the realm againſt the defendant, who was maſter of a *ſtage-coach*, the plaintiff ſets forth, that he took a place in the coach for ſuch a town, and that in the journey the defendant, by negligence, loſt the plaintiff's trunk; upon Not guilty pleaded, the evidence was, that the plaintiff gave the trunk to the man who drove the coach, who promiſed to take care of it, but loſt it; and the queſtion was, whether the *maſter* was chargeable, and adjudged that he was not, unleſs the *maſter* takes a *price* for the *carriage of the goods* as well as for the *carriage of the perſon*, and then he is within the cuſtom as a carrier: that a *maſter* is not chargeable for the acts of his *ſervant*, but when they are done in execution of the authority given by the maſter, and then the act of the ſervant is the act of the maſter. 1 *Salk.* 282.

If a mail is robbed, and bills are loſt; by *Holt*, Chief Juſtice, *action lies againſt* the poſt-maſter, as againſt a common carrier, &c. he being paid a ſalary for doing his duty; but 'twas over-ruled by the other juſtices. 1 *Salk.* 17. And we do not know of any other caſe upon this point ſince determined.

A common inn-keeper is chargeable for goods ſtolen in his houſe, and if the inn-keeper be not of ſound memory, it is ſaid *action* lies againſt him: but if the innkeeper be an infant, no *action* will lie againſt ſuch infant. The perſon robbed muſt be a traveller, and gueſt in the inn; if the goods are committed to the hoſt on another account, and are ſtolen, no *action* will lie. So if a man comes to an inn, and, leaving goods there, goes away for two or three days, if in that time they are ſtolen, no *action* lies againſt the inn-keeper; for at the time of the ſtealing he was not his gueſt: but where a man comes on horſeback to an inn, and leaves his horſe with the hoſt, if he goes away from the inn for ſeveral day, and in his abſence the horſe is ſtolen, the inn-keeper ſhall be charged for it; becauſe he had benefit by the continuance of the horſe with him, he being paid for it, and ſo the owner was a gueſt. *Moor* 877. If a man upon a ſpecial agreement boards in an inn for any time and is robbed, the inn-keeper ſhall not anſwer for it. *Latch* 127. for he is not a *gueſt* but a *boarder*. An inn-keeper is liable, though the gueſt doth not acquaint him what goods or money he hath. 8 *Rep.* 33. If an inn-keeper refuſe to entertain his gueſt, *action on the caſe* may be brought againſt him. *Dyer* 158.

This *action* lies for deceit in contracts, bargains, and ſales: if a vintner ſells wine, knowing it to be corrupt, as good and not corrupt, though without warranty, *action* lies. *Danv.* 173. So if a man ſells a horſe, and warrants him to be ſound of his limbs, if he be not, *action on the caſe* lies. A perſon warrants a horſe wind and limb, that hath ſome ſecret diſeaſe known to the ſeller, but not to the buyer, this *action* may be brought: though if one ſell a horſe and warrant him ſound, and he hath at the time viſible infirmities, which the buyer may ſee: *action on the caſe* will not lie. *Yelv.* 114. *Cro. Jac.* 675. Where one ſells me any wares or commodities, and is to deliver that which is good, but delivers what is naught; or ſells any thing by falſe or deceitful weights and meaſures, with or without warranty, *action on the caſe* lies; and ſo where a man doth ſell corrupt victuals, as bread, beer, or other thing for food, and knows it to be unwholeſome. *Dyer* 75. 4 *Rep.* 18. *Cro. Jac.* 270. Yet if the buyer or his ſervant ſhall ſee and taſte the victuals, &c. and like and accept the ſame, no *action* can be maintained. 7 *H.* 4. 16. Nor will *caſe* lie upon a warranty of what is out of a man's power, or of a future thing; as that a horſe ſhall carry a man thirty miles a day, or the like. *Finch* 188. If a man ſells certain packs of wool, and warrants that they are good and merchantable, if they are damaged, *action on the caſe* lies againſt him. 1 *Danv.* 187. The bare affirmation by the ſeller of a particular ſort of diamond, without warranting it to be ſuch, will not maintain an *action*. *Cro. Jac.* 4, 196. But where a man hath the poſſeſſion of a perſonal thing, the affirming it to be his own is a warranty that it is ſo; though it is otherwiſe in caſe of lands, where the buyer at his peril is to ſee that he hath title. 1 *Salk* 210. If a perſon ſells to another cattle or goods, that are not his own, *action on the caſe* lies; ſo if he warrants cloth to be of ſuch a length, that is deficient of it. If a taylor undertakes to make a ſuit of clothes, and ſpoils them, *action* lies: and if a carpenter promiſes to repair my houſe before a certain day, and doth not do it, by which my houſe falls: or if he undertakes to build a houſe for me, and doth it ill, *action on the caſe lies*. 1 *Danv.* 32. If a ſurgeon neglects his patient, or applies unwholeſome medicines, whereby the patient is injured, this *action* lieth.

And if a counſel retained to appear on ſuch a day in court, doth not come, by which the cauſe miſcarries, *action* lies againſt him: ſo if after retainer, he become of counſel to the adverſary againſt the plaintiff. 11 *H.* 6. 18.

For ſtopping up a water-courſe or way; breaking down a party wall; ſtopping of ancient lights, and for any private nuſance to a man's water, light, or air, whereby a perſon is damnified, this *action* lieth. *Cro. Eliz.* 427. *Yelv.* 159. Where a ſmith promiſes to ſhoe my horſe well, if he pricks him, *action on the caſe* lies; and ſo when he refuſes to ſhoe him, on which I travel without, and my horſe is damaged. If a horſe that is hired hath been abuſed by the rider, *action* lies: ſo where goods pawned are not delivered, on offering the money, *Trover* or *Detinue*.

Where any one perſonates another, for cheating at gaming, where a ſurety is not ſaved harmleſs, &c. 2 *Inſt.*

Inſt. 193. If I lend another my horſe to ride ſo far; and he rides farther, or forward and backward; or doth not give him meat, this *action* lieth. *Cro. Eliz.* 14. And where one lends me a horſe for a time, if he take him from me within that time, or diſturb me before I have done what I hired him for; *action on the caſe* lies: and though I ride the horſe out of the way in my journey, he may not take him from me. 8 *Rep.* 146. This *action* lies for keeping a dog accuſtomed to bite ſheep, if the owner *knows* the vicious quality of the dog. But not for a man's dog running at my ſheep, though he kills them, if it be without his conſent and he did not know, that the dog was accuſtomed to bite ſheep. *vide.* 1 *Danv. Abr.* 19. *Hetl.* 171.

Action on the caſe will lie againſt a gaoler for putting irons on his priſoner; or putting him in the ſtocks; or not giving ſufficient ſuſtenance to him, being committed for debt. *F. N. B.* 83. The maſter may in many caſes have this *action* againſt his ſervant, ſteward, or bailiff, for any ſpecial abuſe done to him, and for negligence, *&c.* Alſo it lies for taking or enticing away my ſervant, and retaining him; or threatening a ſervant, whereby I loſe his ſervice. *Lane* 68. *Cro. Eliz.* 777. 1 *Shep. Abr.* 52, 59. A ſervant is truſted with goods and merchandize conſigned to him by a merchant, to pay the cuſtoms for them, and diſpoſe of them to profit; if he deceive the merchant, and have allowance for it on his account, and, to defraud the king, lands ſome of the goods without paying the cuſtoms, by which they are forfeited, *action on the caſe* lieth. *Lane* 65. *Cro. Jac.* 266.

If I truſt one to buy a leaſe or other thing for me, and he buyeth it for himſelf, or doth not buy it, this *action* lies againſt him; but if he doth his endeavour it ſufficeth. *Bro.* 117. Where a man is diſturbed in the uſe of a ſeat in the church, which he hath had time out of mind; a ſteward is hindered in the keeping of his courts; a keeper of a foreſt diſturbed in taking the profits of his office; a bailiff in diſtraining for an amerciament, *&c. Action on the caſe* will lie. *Bendl.* 89. *Lib. Intr.* 5. *Moor* 987. An *action on the caſe* lies for him in reverſion, againſt a ſtranger, for damage to his inheritance, though there be a term *in eſſe.* 3 *Lev.* 360. Alſo if a leſſor comes to the houſe he has demiſed, to ſee if it be out of repair, or any waſte be done, and meets with any diſturbance therein; or if one diſturbs a parſon in taking his tithes, this *action* lies, *Cro. Jac.* 478. 2 *Inſt.* 650. And for ſetting up a new mill on a river, to the prejudice of another who hath an ancient mill, an *action* will lie. *Lib. Intr.* 9.

Action on the caſe likewiſe lies for and againſt commoners, *&c.* for injuries done in commons.

Caſe againſt *R. B.* for ſurcharging the common; it was objected in arreſt of judgment, that *caſe* would not lie, but an aſſiſe; adjudged, that the plaintiff might have either action. *Style* 164.

Caſe, *&c. by a commoner, for digging pits* and ſpreading the gravel, *&c* by which he loſt his common; the defendant pleaded, that he is lord of the ſoil, and that he did dig for coals, doing as little damage to the paſture as he could, and averred, that he had left common ſufficient; and, upon a demurrer to this plea, it was adjudged, that it amounted to no more *than the general iſſue,* and that the lord could not dig pits in the common, for the ſtatute, *Weſt.* 2. *c.* 46. intends only an improvement by encloſing. *Sid.* 106. *Cro. Jac.* 165. 2 *Inſt.* 474.

Action on the caſe may likewiſe be brought for malicious proſecutions: where a ſuit is without ground, and one is arreſted, *action on the caſe* lies for unjuſt vexation: And for falſely and maliciouſly arreſting a perſon for more than is due to the plaintiff, whereby the defendant is impriſoned, for want of bail; or if it be on purpoſe to hold him to bail, *action on the caſe* will lie, after the original *action* is determined. 1 *Lev.* 275. 1 *Salk.* 15. And *action* likewiſe lies againſt ſheriffs, for default in executing writs; permitting eſcapes, *&c.*

Actions on the caſe likewiſe lie for *conſpiracy, eſcape* and *reſcous, nuſances,* &c. which ſee under titles **Conſpiracy, Eſcape, Reſcous and Nuſances,** *&c.* Vide *Com. Dig. V.* 1. tit. *Action, Action upon the caſe,* &c. &c.

Action prejudicial, (otherwiſe called *preparatory,* or *principal)* Is an action which ariſes from ſome doubt in the principal; as in caſe a man ſues his younger brother for lands deſcended from his father, and it is objected againſt him that he is a baſtard; now this point of baſtardy is to be tried before the cauſe can any further proceed: and therefore it is termed *præjudicialis, quia prius judicanda. Bract. lib.* 5. *c.* 4. *num.* 6. *Cowel.*

Action of a writ, Is a phraſe of ſpeech uſed, when one pleads ſome matter, by which he ſhews the plaintiff had no cauſe to have the writ he brought; yet it may be that he may have another *writ* or *action* for the ſame matter. Such a plea is called *a plea to the action of the writ;* whereas, if by the plea it ſhould appear that the plaintiff hath no cauſe to have an *action* for the thing demanded, then it is called *a plea to the action. Cowel. Termes de la ley.*

Actionare, i. e. *In jus vocare,* or to proſecute one in a ſuit at law. *Thorn's Chron.*

Acton Burnel. A ſtatute ſo called, made 13 *Ed.* 1. *ann.* 1285, ordaining the *ſtatute merchant:* it was ſo termed from a place named *Acton Burnel,* where it was made; being a caſtle ſometimes belonging to the family of *Burnel,* and afterwards of *Lovel,* in *Shropſhire. Cowel.*

Actor, The proctor or advocate in civil courts of cauſes. *Actor dominicus,* was often uſed for the lord's bailiff or attorney. *Actor eccleſiæ* was ſometime the forinſick term for the advocate or pleading patron of a church, *Actor villæ* was the ſteward or head bailiff of a town or village. *Cowel.*

Acts done, Are diſtinguiſhed into *acts of God,* the *acts of the law,* and *acts of men.* The *act of God* ſhall prejudice no man: as where the law preſcribeth means to perfect or ſettle any right or eſtate; if by the *act of God* the means in ſome circumſtances become impoſſible, no party ſhall receive any damage thereby. *Co. Lit.* 123. 1 *Rep.* 97. So in an action on the *caſe* againſt a *bargeman* who juſtified, for that there were ſeveral paſſengers in his barge, and a ſudden *tempeſt* ariſing, all the goods in the barge were thrown overboard to ſave the lives of the paſſengers, amongſt which the goods of the plaintiff were thrown over, and that he had not any notice that there was *money in the pack;* adjudged, that the action would not lie, becauſe what the owner of the barge did in this caſe was occaſioned by the *act of God,* and in defence of their lives. 1 *Roll. Rep.* 79. But *qu.* if on ſpecial demurrer, the plea would not have been adjudged bad, as amounting only to the general iſſue?

The acts of the *law* are eſteemed beyond the acts of man: and when to the perfection of a thing divers acts are required, the law hath moſt regard to the original act. 8 *Rep.* 78. The law will conſtrue things to be lawfully done; when it ſtandeth indifferent whether they ſhould be lawful or not: but whatſoever is contrary to law is accounted not done. *Co. Lit.* 42. 3 *Rep.* 74. Our law doth favour ſubſtantial more than circumſtantial *acts;* and regards *deeds* and *acts* more than words: and the law doth not require unneceſſary things. *Plowd.* 10.

As to *acts of men;* that which a man doth by another, ſhall be ſaid to be done by himſelf; but perſonal things cannot be done by another. *Co. Lit.* 158. A man cannot do an *act* to himſelf, unleſs it be where he hath a double capacity; no perſon ſhall be ſuffered to do any thing againſt his own *act;* and every man's *acts* ſhall be conſtrued moſt ſtrongly againſt himſelf. *Plowd.* 140. But if many join in an *act,* and ſome may not lawfully do it; it ſhall be adjudged the *act* of him who might lawfully do the ſame. *Dyer* 192. *Acts* that men are forced by neceſſity and compulſion to do, are not regarded; and an *act* done between perſons ſhall not injure a ſtranger not party or privy thereto. *Plow.* 19. 6 *Rep.* 16.

Where mutual acts are to be done, who is to do the firſt act, ſee title **Condition.**

Acts of parliament, Are poſitive laws, conſiſting of two parts, *(viz.)* the words of the *acts,* and the ſenſe and meaning of them, which being joined make the law. The words of *acts of parliament* ſhall be taken in a lawful ſenſe: caſes of the ſame nature are within the remedy, though out of the letter of the *act;* and ſome *acts* extend by equity to other things than are mentioned therein, *&c. Co. Lit.* 24, 381. Vide *Statute.*

Actuary, *(actuarius)* A clerk that regiſters the acts and conſtitutions of the convocation.

Adcredulitare, To purge one's ſelf of an offence by oath. *Qui in collegio fuerit ubi aliquis occiſus eſt*, adcredulitet *ſe quod eum non percuſſit*. Leges Inæ, c. 36.

Addition, *(additio)* Signifieth a title given to a man beſides his Chriſtian and ſurname, ſetting forth his eſtate, degree, trade, *&c.* As for example; *additions* of eſtate, are yeoman, gentleman, eſquire, *&c.* *Additions* of degree, are knight, earl, marquiſs, and duke: *additions* of trade, are merchant, clothier, carpenter, *&c* There are likewiſe *additions* of place of reſidence, as *London*, *York*, *Briſtol*, &c. And theſe *additions* were ordained that one man might not be grieved or moleſted for another: and that every perſon might be certainly known, and bear his own burden. If one be of the degree of a duke and earl, *&c.* he ſhall have the *addition* of the moſt worthy dignity. 2 *Inſt*. 669. But the titles of duke, marquiſs, and earl, *&c.* are not properly *additions*, but names of dignity. *Termes de Ley* 20. And the title of knight or baronet, is part of the party's name, and ought to be rightly uſed; but the titles of eſquire, gentleman, yeoman, *&c.* being no part of the name, but *additions* as people pleaſe to call them, may be uſed or not uſed, or if varied is not material. 1 *Lill* 34. An earl of *Ireland* is not an *addition* of honour here in *England*, but ſuch a perſon muſt be written by his Chriſtian and ſurname, with the *addition* of eſquire only: and ſons of *Engliſh* noblemen, although they have given them titles of nobility in reſpect of their families; if you ſue them, they muſt be named by their Chriſtian and ſurnames, with the addition of eſquire, as ſuch a one eſquire, *commonly called Lord* A. *&c.* 2 *Inſt*. 596, 666.

By the common law, a man that had no name of dignity, was named by his Chriſtain and ſurname in all writs; which was ſufficient. If he had an inferior name of dignity, as knight, *&c.* he ought to be named by his Chriſtian and ſurname with the name of dignity: but a duke, *&c.* might be ſued by his Chriſtian name only, and name of dignity, which ſtands for his ſurname. 2 *Inſt*. 665, 666. By ſtat. 1 *Hen*. 5. *cap*. 5. It is enacted, that in ſuits or actions where proceſs of outlawry lies, *additions* are to be made to the name of the defendant, to ſhew his eſtate, myſtery, and place of dwelling; and that writs not having ſuch *additions* ſhall abate, if the defendant takes exception thereto, but not by the court *ex officio*. By pleading to iſſue, the party paſſes by the advantage of exception for want of *addition*; for by the common law it is good without *addition*, and the ſtatute gives remedy only by exception. *Cro. Jac*. 610. 1 *Roll*. 780. No *addition* is neceſſary, where proceſs of outlawry doth not lie. 1 *Salk*. 5. If a city be a county of itſelf, wherein are ſeveral pariſhes, *addition* thereof, as *of London* is ſufficient: but *addition* of a pariſh, not in a city, muſt mention the county, or it will not be good. 1 *Danv*. 237. An *addition* after the *alias dictus* is ill; and according to *Holt* Chief Juſtice, if a man of *Wilts* commit felony at *Weſtminſter*, he ſhall be indicted by his name, as of *Weſtm*. 3. *Salk*. 20.

A gentleman by reputation, that is neither ſo by birth, nor by office, nor by creation, but commonly called gentleman, and known by that name, is a ſufficient addition; but if he be named yeoman, he cannot quaſh the indictment. 2 *Inſt*. 668.

Where there are ſeveral defendants of different names, and the ſame addition, it is ſafeſt to repeat the addition of each of their names, applying it particularly to every one of them. 2 *Haw*. 87.

And where a father hath the ſame name and the ſame addition with a defendant being his ſon, the action is abateable, unleſs it add the addition of *the younger* to the other additions; but where the father is the defendant, there is no need of addition of the *elder*. 2 *Hawk*. 187.

Adeling, (from the Saxon *ædelan)* Signifying excellent, was a title of honour amongſt the *angels*; properly belonging to the king's children; it being uſual for the *Saxons* to join the word *ling* to the Chriſtian name, which ſignified a ſon, or the younger. King *Edward the Confeſſor* having no iſſue, and intending to make *Edgar*, his nephew, the heir of the kingdom, gave him the ſtile and title of *Adeling*. Spelm. Gloſſ.

Ademption, or taking away of a legacy; this ariſes from a ſuppoſed alteration of a teſtator's intent, by calling in money due to him on bond, *&c.* that he had expreſly deviſed by will to another perſon. *Talbot's Chan. Ca.* See *Legacy*.

Ad Inquirendum, Is a judicial writ commanding enquiry to be made of any thing relating to a cauſe depending in the king's courts. It is granted upon many occaſions for the better execution of juſtice. *Reg. Judic*.

Adjournment, *(adjournamentum)* The ſame with the *French* word *adjournment*, and ſignifies a putting off until another day, or to another place. As *adjournment* in eyre, by ſtat. is an appointment of a day, when the juſtices in eyre will ſit again. A court, the parliament, and writs, *&c.* may be *adjourn'd*; and the ſubſtance of the *adjournment* of courts is to give licence to all parties that have any thing to do in court to forbear their attendance till ſuch a time. Every laſt day of the term, and every eve of a day in term, which is not *dies juridicus*, or a law day, the court is *adjourned*. 2 *Inſt*. 26. The terms may be *adjourned* to ſome other place, and there the *King's Bench* and other courts at *Weſtminſter* be held: and if the king puts out a proclamation for the *adjournment* of the term, this is a ſufficient warrant to the keeper of the Great Seal to make out writs accordingly; and proclamation is to be made, appointing all perſons to keep their day, at the time and place to which, *&c.* 1 *And*. 279. 1 *Lev*. 176. Though by *Magna Charta* the court of *Common Pleas* is to be held at *Weſtminſter*. But neceſſity will ſometimes ſuperſede the law, as in the caſe of a *plague*, a *civil war*, &c. In the firſt year of king *Car*. 1. a writ of *adjournment* was delivered to all the juſtices, to *adjourn* two returns of *Trinity* term: and in the ſame year *Michaelmas*-term was *adjourned* until *craſtino animarum* to *Reading*; and the king by proclamation ſignified his pleaſure, that his court ſhould be there held. *Cro. Car*. 13, 27. *Anno* 17 *Car*. 2. The court of *B. R.* was adjourned to *Oxford*, becauſe of the plague; and from thence to *Windſor*; and afterwards to *Weſtminſter* again. 1 *Lev*. 176, 178.

On a foreign plea pleaded in *aſſiſe*, &c. the writ ſhall be *adjourned* into the *Common Pleas* to be tried; and after *adjournment*, the tenant may plead a new plea purſuant to the firſt: but if he pleads in abatement a plea triable by the aſſiſe, on which it is *adjourned*, he cannot plead in bar afterwards, *&c.* 1 *Danv. Abr*. 249. The juſtices of aſſiſe have power to *adjourn* the parties to *Weſtminſter*, or to any other place; and by the expreſs words of *Magna Charta*, *cap*. 12. They may *adjourn*, *&c.* into C. B. before the judges there. *Dyer* 132.

If the judges of the court of *King's Bench*, *&c.* are divided in opinion, two againſt two, upon a demurrer or ſpecial verdict (not on a motion) the cauſe muſt be *adjourned* into the *Exchequer Chamber*, to be determined by all the judges of *England*. 3 *Mod*. 156 5 *Mod*, 335.

Adiratus, A price or value ſet upon things ſtolen or loſt, as a recompence to the owner.—*Poterit enim rem ſuam petere ut* adiratam *per teſtimonium proborum hominum* Bract. l. 3. tract. 2. cap, 32.

Adjudication, *(adjudicatio)* A giving or pronouncing by judgment, a ſentance or decree.

Adjura Regis, A writ brought by the king's clerk preſented to a living, againſt thoſe that endeavour to eject him, to the prejudice of the king's title. *Reg. of Writs* 61.

Ad Largum, At large: and there is *title* at large, *aſſiſe* at large, *verdict* at large; to *vouch* at large, *&c.*

Adlegiare, or *aleier* in *French*, is for one to purge himſelf of a crime by oath. In the laws of king *Alfred*, in *Brompt. Chron. cap*. 4, *Si ſe velit* adlegiare, *&c.* And *cap*. 13. *Si accuſetur inde* adlegiet *ſe per ſexaginta hidas*, *&c.*

Admeaſurement, (*admenſuratio*) Is a writ brought for remedy againſt ſuch perſons us uſurp more than their ſhare, to bring them to reaſon. It lies in two caſes; one is termed *admeaſurement of dower (admenſuratio dotis)* where a man's widow after his deceaſe holdeth from the heir more land, *&c.* as dower, than of right belongs to her: and the other is *admeaſurement of paſture (admenſuratio paſturæ)* which lies between thoſe that have common of paſture appendant to their freehold eſtates, or common by vicinage, where any one or more of them ſurcharge the common. *Reg. Orig*. 156, 171. In the firſt caſe, the heir ſhall have this writ againſt the widow, whereby ſhe ſhall be *admeaſured* and the heir reſtored to the overplus; and in the laſt caſe, it may be brought againſt all the other commoners, and him that ſurcharged; for all the commoners ſhall be *admeaſured.* *Terms de Ley* 23. The heir ſhall have a writ of *admeaſurement* of dower, for dower aſſigned in the time of his anceſtor: and if an heir within age aſſign unto the wife more in dower than ſhe ought to have, *&c.* the guardian in right may have a writ of *admeaſurement*. But if the guardian aſſigns dower more than ſhe ought to have, the heir, during his nonage, ſhall not have a writ of *admeaſurement* of dower. 7 *Hen.* 2. 4. Vide 13 *E.* 1. *c.* 7. *& Fitz. N. B.* 148. If the wife after aſſignment of dower do improve the land, and make it better than it was at the time of the aſſignment; an *admeaſurement* doth not lie of that improvement. *Nat. Brevium* 332.

A perſon who hath common appurtenant certain, or common by certain grant, ſhall be *admeaſured*, and a tenant ſhall have *admeaſurement* againſt him: but he who hath a common appurtenant without number, or common in groſs without number, ſhall not be ſtinted, nor ſhall a writ of *admeaſurement* of paſture lie againſt him. If the lord ſurcharge the common, his tenant muſt not have a writ of *admeaſurement*; but an aſſiſe of common againſt the lord. And ſo if the lord do make approvement of the common. And it is ſaid, that if the tenant ſurcharge the common, the Lord ſhall not have a writ of *admeaſurement* againſt him; but he may diſtrain the ſurpluſage cattle. On a ſecond ſurcharge of a common, after *admeaſurement* made, the plaintiff ſhall recover his damages againſt him that was defendant in the firſt writ; and he ſhall forfeit to the king the cattle which he put in over and above the due number after the *admeaſurement* made. *Stat.* 13 *Ed.* 1. *cap.* 7. Vide *c.* 8. *& Fitz. N. B.* 125. The writs of *admeaſurement* of *dower* and *paſture* are *vicontial,* and ſhall be directed unto the ſheriff, and ſhall not be returnable; and they run thus:

A writ of *admeaſurement of dower.*

George *the Third,* &c. *to the ſheriff of,* &c. A. *the ſon* [or *couſin*] *and heir of* B. *hath complained unto us, that* C. *who was the wife of the aforeſaid* B. *hath for dower more of the freehold which was of the aforeſaid* B. *ſometime her huſband, in* N. *than ſhe ought to have, and than belongs to her to have; and therefore we command you that juſtly and without delay you cauſe that dower to be admeaſured, ſo that the aforeſaid* C. *may not have more for dower of the inheritance of the aforeſaid* A. *than ſhe ought to have, and than belongs to her to have, according to her reaſonable dower; and let the aforeſaid* A. *have of that dower that which he ought to have and belongs to him to have, that we may hear no more clamour thereof for want of right,* &c.

A writ of *admeaſurement of paſture.*

George *the Third,* &c. *to the ſheriff of,* &c. *greeting,* A. B. *hath complained to us, that* C. D. *and* E. F. *have unjuſtly ſurcharged their common of paſture in,* &c. *ſo that they have in it more beaſts and cattle than they ought to have, and to them belongeth to have; and therefore we command you, that juſtly and without delay, you cauſe to be admeaſured that paſture, ſo that the ſaid* C. D. *and* E. F. *may not have therein more beaſts and cattle than they ought, and to them it belongs to have, according to their freehold which they have in the ſame town; and that the ſaid* A. B. *may have in that paſture ſo many beaſts and cattle as he ought to have, and belongs to him to have; that we may hear no more clamour thereof,* &c.

Adminicle, *(adminiculum)* Signifies aid, help, or ſupport; being uſed to this purpoſe, *ſtat.* 1 *Ed.* 4. *cap.* 1.

Adminiſtrator, *(Latin)* Is one that hath the goods of a man dying inteſtate committed to his charge by the ordinary, for which he is accountable when thereunto required.

For the better underſtanding this head, it is to be conſidered,

I. *By whom, and to whom, adminiſtration is to be granted.*

II. *Of the intereſt, power, and duty of an adminiſtrator.*

III. *Of ſuits by, and againſt adminiſtrators.*

IV. *How adminiſtration may be revoked.*

I. The biſhop of the dioceſe where the party dies is regularly to grant *adminiſtration:* but when the perſon dying hath goods in ſeveral dioceſes, which are *bona notabilia, adminiſtration* muſt be granted by the archbiſhop in the prerogative court, or it will be void. 1 *Plowd.* 281. See **Bona notabilia.**

At common law, and before the ſtatute of *Weſtm.* 2. *cap.* 19. the ordinary had the abſolute diſpoſal of inteſtates eſtates. And therefore, if a man died inteſtate, neither his wife, child, nor next of kin, had any right to a ſhare of his eſtate, but the ordinary was to diſtribute it according to his conſcience to pious uſes; and ſometimes the wife and children might be amongſt the number of thoſe whom he appointed to receive it; but however the law truſted him with the ſole diſpoſition.

The firſt ſtatute that abridged the power of the ordinary herein, was the *ſtat. Weſt.* 2. 13 *Ed.* 1. *c.* 19. *A. D.* 1285. Whereas after the death of a perſon dying inteſtate, which is bounden to ſome other for debt, the goods come to the ordinary to be diſpoſed; the ordinary from henceforth ſhall be bound to anſwer the debts as far forth as the goods of the dead will extend, in ſuch ſort as the executors of the ſame party would have been bounden, if he had made a teſtament.

Before this ſtatute the ordinary had the abſolute diſpoſal of inteſtates eſtates; and as that ſtatute firſt ſubjected them to an action at the ſuit of creditors, ſo from thence they found, as my Lord *North* obſerves, that what was before very beneficial to them began to be very troubleſome, which obliged them to put the adminiſtration into other hands, taking ſecurity to ſave them harmleſs from ſuits. *Raym.* 497.

But this method did not intirely free them from the trouble they had before; for ſuch perſons, being looked upon as ſervants or attornies to the ordinaries, could not ſue for, nor gather in the inteſtate's eſtate. 2 *Inſt.* 397. *Co. Lit.* 133. 1 *Roll. Abr.* 906. This however was remedied by the *ſtat.* 31 *Ed.* 3. *cap.* 11. *(A. D.* 1357.) Where a man dieth inteſtate, the ordinaries ſhall depute the next and moſt lawful friends to adminiſter his goods, which deputies ſhall have action to demand and recover as executors the debts due to the inteſtate, and ſhall anſwer alſo to others to whom the ſaid dead perſon was holden and bound, in the ſame manner as executors, and ſhall be accountable to the ordinaries as executors. And it is enacted by the *ſtat.* 21 *Hen.* 8, *cap.* 5. *ſect.* 13. In caſe any perſon die inteſtate, or the executors refuſe to prove the teſtament, then the ordinary ſhall grant adminiſtration to the widow, or next akin, or to both, by diſcretion of the ordinary, taking ſurety for true adminiſtration.

Sect. 4. Where divers perſons be in equality of kindred, the ordinary is to be at liberty to accept one or more, taking nothing for the ſame, as in probate of teſtaments, unleſs the goods of the deceaſed amount to above the value of an hundred ſhillings.

• As the law is now ſettled *adminiſtration* muſt be granted, 1ſt, To the huſband, of the wife's goods and chattels. 2. To the wife, of the huſband's goods and chattels. 3. If there be no huſband or wife, to the children, ſons or daughters. 4. If there be no children alive, to the father or mother. 5. Then to a brother or ſiſter of the whole blood, or of the half blood. 6. And if there are none ſuch, to the next of kin, as uncle, aunt, or couſin. 7. Then to a creditor of the deceaſed. 8. And for want of all theſe, to any other perſon, at the diſcretion of the ordinary: or the ordinary may grant to a ſtranger letters *ad colligendum bona defuncti,* to gather up the goods of the deceaſed; or may take them into his own hands, to pay the deceaſed's debts, in ſuch order as an *executor* or *adminiſtrator* ought to pay them: but 'tis ſaid, he or the ſtranger who hath letters *ad colligendum,* cannot ſell them, without making themſelves executors of their own wrong, and action lies only againſt the ordinary, *&c.* *Wood's Inſt.* 333.

Adminiſtration likewiſe may be granted *durante minori ætate* of an infant executor or adminiſtrator.

If one makes an *infant* his *executor*, or dies inteſtate, and the right of *adminiſtration* devolves upon an infant, in theſe caſes the ordinary is to grant adminiſtration during the minority of the infant, *i. e.* in the *firſt* caſe till he arrives at the age of *ſeventeen*, and in the *latter* till he arrives at the age of *twenty-one*, becauſe an infant cannot, before his full age, give bond to adminiſter faithfully. *Godolph.* 102. 5 *Co.* 29. *Hob.* 250. *Yelv.* 128.

And as ſuch an adminiſtrator is but in nature of a curator for the infant, and has no intereſt or benefit in the teſtator or inteſtate's eſtate, but in right of the infant; it has been always held diſcretionary in the ordinary to whom to grant it, and therefore it hath been frequently adjudged, that he is not obliged within the ſtatute 21 *H.* 8. *c.* 5. to grant it to the next of kin either of the deceaſed, or the infant. *Hob.* 250. 1 *Vent.* 219. 1 *Keb.* 549. 3 *Mod.* 24. 1 *New. Abr.* 381.

If an infant, and one of full age, are made executors, he who is of full age may take out adminiſtration *durante minori ætate* of the infant, and may declare as executor or adminiſtrator *durante minori ætate*, and there is no abſurdity in this caſe, that there ſhould be an executor and adminiſtrator to the ſame party. 1 *New. Abr.* 381.

Adminiſtration alſo may be granted *de bonis non*, where the firſt adminiſtrator dies, or the executor dies inteſtate, or without probate of the will.

If a perſon dies inteſtate, and adminiſtration is granted to *J. S.* who dies without having adminiſtred all the inteſtate's goods, in this caſe the ordinary muſt grant adminiſtration of the goods unadminiſtred to another; for the firſt adminiſtrator cannot continue the truſt repoſed in him to his executor or adminiſtrator, becauſe he has no intereſt but what he derives from the act of the ordinary. 1 *New. Abr.* 385.

So if an executor dies inteſtate, adminiſtration *de bonis non cum teſtamento annexo* of the teſtator muſt be granted by the ordinary, for they are not devolved on the adminiſtrator of the inteſtate, becauſe he had them in *auter droit* in order to diſcharge the truſt repoſed in him, but if the executor makes his executor, then the truſt is devolved on him, and after payment of the debts and legacies of the firſt teſtator he has an abſolute property in the goods. 1 *New. Abr.* 386.

If the executor dies before probate, though he adminiſtred in part by diſpoſing of the teſtator's goods, *&c.* his executor cannot be executor to the firſt teſtator, but in this caſe, inſtead of an adminiſtration *de bonis non*, an immediate adminiſtration is granted, becauſe the executor died *ante onus executionis teſtamenti ſuper ſe ſuſceptum*, which is the foundation the ſpiritual courts proceed upon 1. *New. Abr.* 386.

So if an executor refuſes adminiſtration with the will annexed, it is to be granted to another. 1 *New. Abr.* 386.

Beſides all theſe *adminiſtrations*, there is *adminiſtration durante abſentia extra regnum*, where a perſon is abſent abroad; and *adminiſtration pendente lite*, which may be granted by the ordinary as well as *durante minori ætate*.

In theſe caſes adminiſtration is to be granted to the next of kin to the firſt teſtator or inteſtate, but if the teſtator appoints a reſiduary legatee, ſuch legatee is intitled to adminiſtration. 1 *New. Abr.* 385.

II. *With reſpect* [illegible] *the* intereſt *of an adminiſtrator.*

An adminiſtrator, by virtue of his adminiſtration, hath intereſt in all the chattels, real and perſonal, of the inteſtate, and in all the goods and chattels, either in poſſeſſion or action, in like manner as an executor in the goods of the teſtator deceaſed. And all theſe goods and chattels which belonged to the inteſtate at the time of his death and which come to the hands of the adminiſtrator, ſhall be *aſſets*, or ſufficient goods and chattels, to make him chargeable to the creditors, as executors are to creditors and legatees. Before they come to his hands he is not chargeable. *Wood's Inſt.* new edition, 339.

An adminiſtrator can't take advantage by his adminiſtration, (unleſs by paying his own debt firſt, if it is equal in degree with others, or by taking the goods and chattels as they are appraiſed) becauſe the ſurpluſage muſt be diſtributed amongſt the next of kin, if there are any kin, according to the ſtatute of the 22 & 23 *Car.* 2. *c.* 10. hereaſer mentioned. If a debtor takes adminiſtration of the goods and chattels of his creditor, this ſhall not diſcharge the debtor; but his debt ſhall be *aſſets*; becauſe the inteſtate did no act to free him from the debt. Whereas, by making a debtor executor, the teſtator doth thereby releaſe the debt. (But the duty remains, and is *aſſits*. *Co. Lit.* 264. *b.*) When an adminiſtrator (as well as an executor) hath paid funeral charges, debts, *&c.* with his own money, he may retain ſo much of the goods of the inteſtate in kind according to the value, and ſhall have property in them. For by ſuch payment the property is altered from the inteſtate to the adminiſtrator. *Wood's Inſt.* new edition. 339.

As to the *power* of an adminiſtrator, no one, not an executor, can legally do any act, relative to the eſtate or concerns of the deceaſed, till an adminiſtration is granted to him; but after the adminiſtration is granted, his *power* is almoſt equal with that of an executor. Yet if there are many adminiſtrators, one of them cannot ſell goods, releaſe debts, *&c.* without the other, but they muſt all join, becauſe they have but one authority. See 30 *Car.* 2. *c.* 7. 4 & 5 *W.* & *M.* *c.* 24. And ſee title **Executor.**

With regard to the *office* and *duty* of an adminiſtrator, it is the ſame with that of an executor, as to the *burial* of the deceaſed and payment of *funeral* charges, the making of an *inventory* of his goods and chattels, the payment of *debts*, and the paſſing of an *account*. But ſomething more is to be done by an adminiſtrator with repect to diſtributing the effects of inteſtates, which is regulated by the ſtatute, commonly called the Statute of Diſtribution, that is, the 22 & 23 *Car.* 2. *c.* 10. by which it is enacted, that all ordinaries and eccleſiaſtical judges (upon granting adminiſtration) muſt take bond of the adminiſtrator with two or more ſureties, with condition that the adminiſtrator ſhall make a true and perfect inventory of all the goods and chattels of the deceaſed, and exhibit it into the regiſtry of the ordinary's court by ſuch a day: and to adminiſter according to law, and to make a true and juſt account thereof, and to make diſtribution of the ſurpluſage as followeth: *viz.* one third to the wife of the inteſtate, the reſidue among his children, and ſuch as legally repreſent them, if any of them be dead, other than ſuch children (not heirs at law) who ſhall have any eſtate by ſettlement of the inteſtate in his life-time, equal to the other ſhares. Children, other than heirs at law, advanced by ſettlements or portions not equal to other ſhares, ſhall have ſo much of the ſurpluſage as ſhall make the eſtate of all to be equal. But the heir at law ſhall have an equal part in the diſtribution with the other children, without any conſideration of the value of the land which he hath by deſcent or otherwiſe from the inteſtate.

Sect. 5. If there be no children, nor legal repreſentatives of them, one moiety ſhall be allotted to the wife, the reſidue equally to the next of kindred to the inteſtate, in equal degree, and thoſe who repreſent them.

Sect. 6. No repreſentation ſhall be admitted among collaterals after brothers and ſiſters children. And if there be no wife, all ſhall be diſtributed amongſt the children; and if no child, to the next of kin to the inteſtate in equal degree, and their repreſentatives.

Sect. 7. No ſuch diſtribution ſhall be made till one year after the inteſtate's death; and every one, to whom any ſhares ſhall be allotted, ſhall give bond with ſureties in the ſaid courts, that, if debts afterwards appear, he ſhall refund his ratable part thereof, and of the adminiſtrator's.

Sect. 8. In all caſes where the ordinary hath uſed to grant adminiſtration *cum teſtamento annexo*, he ſhall continue ſo to do. *Made perpetual*, 1 *Jac.* 2. *cap.* 17. But by

Stat. 1 *Jac.* 2. *cap.* 17. *ſ.* 6. No adminiſtrator ſhall be cited into court to render an account of the perſonal eſtate of his inteſtate, otherwiſe than by an inventory thereof, unleſs at the inſtance of ſome perſon in behalf of a minor, or having a demand out of ſuch eſtate as a creditor, or next of kin; nor ſhall be compellable to account before any ordinary or judge empowered by the act of 22 & 23 *Car.* 2. *cap.* 10. otherwiſe than as aforeſaid.

Sect. 7. If after the death of a father, any of his children ſhall die inteſtate, without wife or children, in the life-time of the mother, every brother and ſiſter, and their repreſentatives, ſhall have equal ſhare with her.

Upon this clauſe of the ſtatute this caſe has been determined. After the death of the father the ſon died inteſtate, without iſſue, but leaving a wife, a mother, three brothers, a ſiſter, and two nieces, the children of a deceaſed brother: this is within the ſtatute; the inteſtate's wife ſhall have but one moiety, and as to the other moiety, the inteſtate's brothers and ſiſters, *&c.* ſhall come in for an equal ſhare thereof with the mother. 2 *P. Williams* 344.

But if a child dies inteſtate and unmarried, the father ſurviving has the child's whole eſtate at this day, 1 *P. Williams* 48. And this without taking adminiſtration to him. *Pr. Ch.* 260.

Sect. 8. The clauſe in the act of 22 & 23 *Car.* 2. *c.* 10 by which it is provided, that that act ſhall not prejudice the cuſtoms of the city of *London* and province of *York*, ſhall not extend to ſuch part of any inteſtate's eſtate, which an adminiſtrator, by virtue of his being ſo, by pretence of any cuſtom may claim, to exempt the ſame from diſtribution.

It has been held, that a deſcent of lands in the nature of *Borough Engliſh* to the youngeſt ſon, will not prevent his having a full diſtributive ſhare of his father's perſonal eſtate: the right to which veſts immediately on the inteſtate's death: but not ſo as to exclude a poſthumous child. *Wood's Inſt.* new edit. 341.

It has been reſolved likewiſe, that the *half* blood ſhall have a ſhare upon a diſtribution equally with the *whole* blood. *Id.*

It ſeems to have been always holden, that the huſband was intitled to adminiſtration as beſt friend to his wife, within the words of the ſtatute 31 *E.* 3. *ſt.* 1. *c.* 11. but there being ſome doubt, whether ſince the ſtatute of 22 & 23 *Car.* 2. *c.* 10. he was not obliged to make diſtribution amongſt the reſt of her kindred, it was thought proper to ſettle this matter by a ſubſequent law, *viz.*

Stat. 29 *Car.* 2. *cap.* 3. *ſect.* 25. The act of 22 & 23 *Car.* 2. *cap.* 10. ſhall not extend to the eſtates of *feme coverts* that die inteſtate, but that their huſbands may have adminiſtration of their perſonal eſtates, and recover and enjoy the ſame as they might have done before the making of the ſaid act. *Made perpetual,* 1 *Jac.* 2. *c.* 17.

Alſo ſince the ſtatute of 22 & 23 *Car.* 2. *c.* 10. the ordinary may grant adminiſtration to the wife or next a-kin, at his election, but then ſhe muſt have her diſtributive ſhare; alſo the ordinary may grant adminiſtration *quoad* part to the wife, and as to the other part, to the next of kin; in which caſe neither can complain, ſince the ordinary need not have granted any part of the adminiſtration to the party complaining. 1 *Sid.* 179. *Raym.* 93. 1 *Show.* 351. 1 *Salk.* 36.

If there be grandfather, father and ſon, and the father dies inteſtate, the ſon ſhall have the adminiſtration, and not the grandfather, tho' they be both in equal degree as to nearneſs of kindred. 2 *Vern.* 125. ſaid *arguendo.*

Since the making this ſtatute 22 & 23 *Car.* 2. *c.* 10. a queſtion hath been made, if a father die inteſtate, leaving only one ſon, which ſon alſo dies inteſtate, whether adminiſtration ſhould be granted, to the next of kin, of the *father*, or of the ſon? The latter determination hath been, that, by this ſtatute of diſtribution of inteſtates eſtates, a right is veſted in one child, where there is one and no more *(viz.)* a right to ſue for the eſtate; and by conſequence, if he die, before the eſtate is recovered and actually in his poſſeſſion, it muſt go to his adminiſtrator, and not to the adminiſtrator of the father. *Palmer* v. *Allcock.* 3 *Mod.* 58. Vide *Shower* 26. and 2 *Vern.* 274.

So where a perſon died inteſtate, leaving two, who were next a-kin, in equal degree to him, one of them died inteſtate within the year, and before diſtribution; adjudged, that *an intereſt was veſted in him*, and his next of kin ſhall have adminiſtration, like the caſe of a *reſiduary legatee* dying before probate of the will, (*viz.*) his next of kin ſhall have the adminiſtration, and the next of the teſtator. *Show.* 25.

Adminiſtration was granted to the *grandmother*; and the *aunt* moved for a *mandamus*, but it was denied; for ſhe is as near of kin as the *aunt*, or rather nearer, becauſe ſhe is in the right line aſcending. 1 *Salk.* 38, 39.

III. *Of ſuits by and againſt adminiſtrators.*

Againſt an *adminiſtrator* and for him, action will lie, as for and againſt an executor, and he ſhall be charged to the value of the goods, and no further; unleſs it be by his own falſe plea, or by waſting the goods of the inteſtate. An executor or *adminiſtrator* ſhall never be charged *de bonis propriis*, but where he doth ſome wrong; as by ſelling the teſtator's goods, and converting the money to his own uſe, concealing or waſting them, or by pleading what is falſe. *Dyer* 210. 2 *Roll. Rep.* 295. But this plea muſt be of a fact, within his own knowledge. If an *adminiſtrator* plead *plene adminiſtravit*, and 'tis found againſt him, the judgment ſhall be *de bonis propriis*, becauſe 'tis a falſe plea, and that upon his own knowledge. 2 *Cro.* 191. *Contra* where he pleads ſuch a plea, and that he hath no more than to ſatisfy ſuch a judgment, *&c.* the recovery ſhall be *de bonis teſtatoris*, *&c.* 2 *Rol. Rep.* 400. This muſt mean, where ſuch plea is true in fact. Upon *plene adminiſtravit* pleaded by an *adminiſtrator*, the plaintiff muſt prove his debt, or he ſhall recover but a penny damages, though there be aſſets; becauſe the plea only admits the debt, but not the *quantum*. 1 *Salk.* 296.

Special bail is not required of *adminiſtrators* in any action brought againſt them for the debt of the inteſtate; except where they have waſted the goods of the deceaſed: nor ſhall coſts be had againſt *adminiſtrators*. Vide *New Abr.* tit. *Coſts.* Where an *adminiſtrator* is plaintiff, he muſt ſhew by whom *adminiſtration* was granted; for that only intitles him to the action: but if an *adminiſtrator* is defendant, the plaintiff need not ſet forth by whom *adminiſtration* was granted, for it may not be within his knowledge. *Sid.* 228. 1 *Lutw.* 301. If a ſtranger, that is not *adminiſtrator*, take the goods and adminiſter in his own wrong, he ſhall be charged and ſued as an executor. *Terms de Ley* 24. And generally an *adminiſtrator* ſhall be charged by others, for any debt or duty due from the deceaſed, as he himſelf might have been charged in his life-time; ſo far as he hath any of the inteſtate's eſtate, to diſcharge the ſame. *Co. Lit.* 219. *Dyer* 14.

An *adminiſtrator*'s power is given by the *adminiſtration*, therefore he can do nothing until that be granted; and yet as to goods taken away before the *adminiſtration* ſhall relate ſo as to give the *adminiſtrator* an action for them. *Fitzherb.* 2. 6. If a man have judgment for land in a real or mix'd action, and for damages, and then dies; his executor or *adminiſtrator*, not the heir, ſhall have execution for the damages; but not for the land. *Fitz. Admin.* 53. *March* 9.

IV. *How adminiſtration may be revoked.*

The ordinary ought not to repeal letters of *adminiſtration* which he hath duly granted; but if they are granted to ſuch perſons who ought not by law to have them, he may revoke them. 1 *Lill.* 38. For juſt cauſe they may be revoked, and where a perſon is a lunatick, *&c.* And if granted where not grantable, they may be repealed by the delegates. 1 *Lev.* 157, 186. If *adminiſtration* is granted, and afterwards a will is produced and proved, the *adminiſtration* ſhall be revoked; and all acts done by the *adminiſtrator* are void. 2 *Rol. Abr.* 907. If a citation is granted againſt a ſtranger *adminiſtrator*, and his *adminiſtration* is revoked by ſentence, yet all acts done by him *bona fide* as *adminiſtrator* are good till the revocation; the *adminiſtration* being only voidable. 6 *Rep.* 18. 8 *Rep.* 135. But if there is any fraud, a creditor may have relief upon the ſtat. 13 *Eliz. cap.* 5. And when the firſt *adminiſtration* is merely void, as granted by a wrong perſon, *&c.* it is otherwiſe: ſo when there is an appeal from the grant of the *adminiſtration*, to ſuſpend the former decree. 5 *Rep.* 30. *Adminiſtration* was granted to *J. S.* and he releaſed all actions, and after the *adminiſtration* was revoked, and declared void; this releaſe was held good. 1 *Brownl.* 51. *Qu.* if it had been without conſideration? If an *adminiſtrator* give goods away, and then *adminiſtration* is revoked or repealed, 'tis ſaid the gift is good; except it be by *covin*, when it ſhall be void only againſt a creditor by ſtatute: and where the *adminiſtrator*, after many goods adminiſtered, had his *adminiſtration* revoked, and it was committed to *B.* who ſued the firſt *adminiſtrator* for goods unduly adminiſtered; it was held, that there was no remedy but in *Chancery*. 6 *Rep.* 19. *Clayt.* 44. 4 *Shep. Abr.* 89. See *Hob.* 266. But we conceive, in ſuch a caſe as this, the ſecond adminiſtrator might maintain an action at law againſt the firſt, for money had and received, *&c.* or trover for any goods remaining in his poſſeſſion or by him converted, and not duly adminiſtered?

In 2 *Leon* 155. 'tis ſaid, where the firſt adminiſtration is *void*, the adminiſtrator, who, under that adminiſtration, takes the goods, is a treſpaſſer. And this we apprehend to be law, becauſe at the time of taking he had not any authority. Letters of *adminiſtration* obtained by fraud are void. 3 *Rep.* 78. 6 *Rep.* 18, 19. 8 *Rep.* 143. Vide *Com. Dig.* 1 *V.* tit. *Adminiſtration* and *Adminiſtrator*, and the Table to *Coke's Reports*, ſame title.

Adminiſtratrix, *(Lat.)* She that hath goods and chattles of an inteſtate committed to her charge, as an *adminiſtrator*.

Admiral, *(admiralius, admirallus, admiralis, capitaneus* or *cuſtos maris)* is derived of the *French amerel*, and ſignifies an high officer or magiſtrate, that hath the government of the king's navy, and the determining of all cauſes belonging to the ſea. This word is alſo ſaid to have its derivation from the Saxon *aen mereal*, over all the ſea: and in ancient time the office of the *admiralty* was called *cuſtodia maritimæ Angliæ*. *Co. Lit.* 260. It appears that antiently the *Admirals* of *England* had juriſdiction of all cauſes of merchants and mariners, happening not only upon the main ſea, but in all foreign parts within the king's dominions, and without them, and were to judge them in a ſummary way, according to the laws of *Oleron* and other ſea laws. 4 *Inſt.* 75. In the time of king *Ed.* 1. and king *John*, all cauſes of merchants and mariners, and things ariſing upon the main ſea, were tried before the lord *Admiral*: but the firſt title of *Admiral* of *England*, expreſly conferred upon a ſubject, was given by patent of king *Rich.* 2. to the earl of *Arundel* and *Surry*. Of late times this high office has been generally executed by commiſſioners; who by ſtatute are empowered to uſe and execute the like authorities as lord *admiral*. 2 *W.* & *M. cap.* 2. In the reign of *Ed.* 3. the court of *admiralty* was eſtabliſhed, and *Ric.* 2. limited its juriſdiction.

By the ſtatute 13 *Rich.* 2. *ſt.* 1. *c.* 5. it is enacted, that *upon complaint of incroachments made by the admirals and their deputies, the admirals and their deputies ſhall meddle with nothing done within the realm, but only with things done upon the ſea*. For the conſtruction of this ſtatute, ſee 2 *Bulſtr.* 323. 3 *Bulſt.* 205. 13 *Co.* 52.

By *ſtat.* 15 *Ric.* 2. *c.* 3. it is declared, that *all contracts, pleas and quarrels, and other things done within the bodies of counties by land or water, and of wreck, the admiral ſhall have no conuſance, but they ſhall be tried*, &c. *by the law of the land; but of the death of a man, and of mayem done in great ſhips, being in the main ſtream of great rivers beneath the points near the ſea, and in no other place of the ſame river, the admiral ſhall have conuſance; and alſo to arreſt ſhips in the great flotes, for the great voyages of the king and the realm, ſaving to the king his forfeitures; and ſhall have juriſdiction in ſuch flotes during ſuch voyages, only ſaving to lords*, &c. *their liberties*.

By the ſtatute 2 *Hen.* 4. *c.* 11. reciting the 13 *R.* 2. *c.* 5. it is enacted, *that he that finds himſelf aggrieved againſt the form of the ſtatute, ſhall have his action by writ grounded upon the caſe againſt him that ſo purſues in the admiralty, and recover double damages againſt him, and he ſhall incur the pain of* 10 l. *if he be attainted*.

By the ſtatute 28 *Hen.* 8. *cap.* 15. it is enacted, that "all felonies and robberies, *&c.* upon the ſea, or in any haven, river, creek or place, where the admiral or admirals have, or pretend to have power, authority or juriſdiction, ſhall be inquired, tried, heard, determined and adjudged in ſuch ſhires and places in the realm, as ſhall be limited by the king's commiſſion or commiſſions to be directed for the ſame, in like form and condition as if any ſuch offence or offences had been committed or done in or upon the land; and ſuch commiſſions ſhall be had under the king's great ſeal, directed to the admiral or admirals or to his or their lieutenant, deputy or deputies, and to three or four ſuch other ſubſtantial perſons as ſhall be named or appointed by the lord chancellor of *England* for the time being, from time to time, and as oft as need ſhall require, to hear and determine ſuch offences after the common courſe of the laws of the land, uſed for felonies and robberies, *&c.* done and committed upon the land within this realm": *And it is further enacted*, "that if any perſon or perſons happen to be indicted for any ſuch offence done, or hereafter to be done upon the ſeas, or in any other place above limited, that then ſuch order, proceſs, judgment and execution, ſhall be uſed, had, and done, and made to and againſt every ſuch perſon and perſons ſo being indicted, as againſt felons, *&c.* for any felony, *&c.* upon the land, by the laws of the land is accuſtomed; and ſuch as ſhall be convict of any ſuch offence, by virdict, confeſſion or proceſs, by authority of any ſuch commiſſion, ſhall have and ſuffer ſuch pains of death, loſſes of lands, goods and chattels, as if they had been attainted and convicted of ſuch offence done upon the land; and alſo, that they ſhall be excluded from the benefit of the clergy."

It was held *(Yelv.* 134.) that by force of this ſtatute, acceſſaries to this offence could not be tried; but this is remedied by 11 & 12 *W.* 3. *cap.* 7. by which their aiders and comforters, and the receivers of their goods are made acceſſaries, and to be tried as pirates by 28 *Hen.* 8. *cap.* 15. alſo the ſaid ſtatute 11 & 12 *W.* 3. directs how pirates may be tried beyond ſea, according to the Civil law, by commiſſion under the great ſeal of *England*.

By the ſtatute 5 *Eliz. cap.* 5. ſeveral offences in the act mentioned, if done on the main ſea, or coaſts of the ſea, being no part of the body of any county, and without the precinct, juriſdiction and liberties of the cinque-ports, and out of any haven and pier, ſhall be tried before the admiral or his deputy, and other juſtices of *oyer* and *terminer*, according to the ſtatute of 28 *H.* 8. *c.* 15.

By the ſtatute 1 *Ann. cap.* 9. captains and mariners belonging to ſhips, and deſtroying the ſame at ſea, ſhall be tried in ſuch places as ſhall be limited by the king's commiſſion, and according to 28 *H.* 8. *c.* 15.

The ſtatute 10 *Ann. cap.* 10. directs how the trial of officers and ſoldiers, that either upon land out of *Great Britain*, or at ſea, hold correſpondence with a rebel enemy.

And by the ſtatute 4 *Geo.* 1. *cap.* 11. all perſons who ſhall commit any offence for which they ought to be adjudged pirates, felons, or robbers by 11 & 12 *W.* 3. may be tried and judged for every ſuch offence according to the form of 28 *H.* 8. *c.* 15. and ſhall be excluded from the benefit of clergy.

The juriſdiction of the lord admiral therefore is confined to the main ſea, or coaſts of the ſea, not being within any county. Thus, the *admiralty* hath cogniſance of the death or maim of a man, committed in any ſhip riding in great rivers, beneath the bridges thereof, next the ſea: but by the common lay, if a man be killed upon any arm of the ſea, where the land is ſeen on both ſides, the coroner is to inquire of it, and not the *admiral*; for the county may take cogniſance of it; and where a county may inquire, the lord *admiral* has no juriſdiction. 3 *Rep.* 107.

All ports and havens are *infra corpus comitatus*, and the *admiral* hath no juriſdiction of any thing done in them: between high and low water-mark, the common law and *admiral* have juriſdiction by turns; one upon the water and the other upon the land. 3 *Inſt.* 113. Every commander, officer, and ſoldier of ſhips of war, ſhall obſerve the commands of the *admiral*, *&c.* on pain of death or other puniſhment. 13 *Car.* 2. *cap.* 9.

The lord *admiral* hath power to grant commiſſions to inferior vice-*admirals*, *&c.* to call courts martial, for the trial of offences againſt the articles of war; and theſe courts determine by plurality of voices, *&c.* *Stat. Ibid.* *Admiralty* proceſs is made out in the name of the *admiral*, who has under him a judge of the *admiralty*: and though the proceeedings are according to the Civil law, and the maritime laws of *Rodes* and *Oleron*, the ſea being without the common law: yet by the ſeveral ſtatutes abovementioned

tioned certain offences at ſea may be tried by ſpecial com-miſſion to the lord *admiral, &c.* according to the laws of *England.*

The *admiralty* is ſaid not to be a court of record, by reaſon it proceeds by the *Civil* law. 4 *Inſt.* 135. But the *admiralty* has juriſdiction where the common law can give no remedy; and all maritime cauſes, or cauſes ariſing wholly upon the ſea, it hath cogniſance of. *Vide* as to the juriſdiction of the admiralty. 1 *Com. Dig.* 289. and *Seq.* The *admiralty* hath juriſdiction in caſes of freight, mariners wages, breach of charter-parties, though made within the realm; if the penalty be not demanded: and likewiſe in caſe of building, mending, ſaving, and victualling ſhips, *&c.* ſo as the ſuit be againſt the ſhip, and not againſt the parties only. 2 *Cro.* 216. Mariners wages are contracted on the credit of the ſhip, and they may all join in ſuits in the *admiralty*; whereas at common law they muſt all ſever: the maſter of a ſhip contracts on the credit of the owners, and not of the ſhip; and therefore he cannot proſecute in the *admiralty* for his wages. 1 *Salk.* 33. It is allowed by the common lawyers and civilians, that the lord *admiral* hath cogniſance of ſeamens wages, and contracts, and debts for making ſhips; alſo of things done in navigable rivers, concerning damage done to perſons, ſhips, goods, annoyances of free paſſage, *&c.* And of contracts, and other things done beyond ſea, relating to navigation and trade by ſea. *Wood's Inſt.* 218. But if a contract be made beyond ſea, for doing of an act or payment of money within this kingdom; or the contract is upon the ſea, and not for a marine cauſe, it ſhall be tried by a jury; for where part belongs to the common law, and part to the *admiral,* the common law ſhall be preferred. And contracts made beyond ſea may be tried in *B. R.* and a fact be laid to be done in any place in *England,* and ſo tried here. 2 *Bulſtr.* 322.

Where a contract is made in *England,* and there is a converſion beyond ſea, the party may ſue in the *admiralty,* or at common law. 4 *Leon.* 257. So where a bond is made and delivered in *France:* but we apprehend, if 'tis under ſeal, it can't be ſued in the *admiralty.* An obligation made at ſea, it has been held, cannot be ſued in the *admiral's* court; becauſe it takes its courſe, and binds according to the common law. *Hob.* 12. The court of *admiralty* cannot hold plea of a matter ariſing from a contract made upon the land, tho' the contract was concerning things belonging to the ſhip: but the *admiralty* may hold plea for the ſeamens wages, *&c.* becauſe they become due for labour done on the ſea; and the contract made upon land, is only to aſcertain them. 3 *Lev.* 60. Though where there is a ſpecial agreement in writing, by which ſeamen are to receive their wages, in any other manner than uſual; or if the agreement at land be *under ſeal,* ſo as to be more than a parol contract, it is otherwiſe. 1 *Salk.* 31. See *Hob.* 79.

If the maſter pawns the ſhip on the high ſea out of neceſſity for tackling or proviſion, without the conſent of the owners, it ſhall bind them; but 'tis otherwiſe where the ſhip is pawned for the maſter's debt: the maſter can have no credit abroad, but upon the ſecurity of the veſſel; and the *admiralty* gives remedy in theſe caſes. 1 *Salk.* 35. The maſter hath a right to hypothecate the ſhip, for any debt, incurred on her account. Vide *Co. Lit.* 134, 140. Tho' the agreement is made, and the money lent at land. 1 *Lord Ray.* 152. *Benzen* v. *Jefferies.* Sale of goods (taken by piracy) in open market, is not binding by the *admiral* law, ſo that the owner may retake them; but at common law the ſale is binding, of which the *admiralty* muſt take notice. 1 *Roll Abr.* Vide 1 *Vent.* 308.

If a ſhip is taken by pirates upon the ſea, and the maſter, to redeem the ſhip, contracts with the pirates to pay them 50 *l.* and pawns his perſon for it, and the pirates carry him to the iſle of *S.* and there he pays it with money borrowed, and gives bond for the money, he may ſue in the admiralty for the 50 *l.* becauſe the original cauſe aroſe upon the ſea, and what followeth was but acceſſory and conſequential. *Hard.* 183.

If goods delivered on ſhipboard are imbezilled, all the mariners ought to contribute to the ſatisfaction of the party that loſt his goods, by the maritime law, and the cauſe is to be tried in the *admiralty.* 1 *Lill.* 368. By the cuſtom of the *admiralty,* goods may be attached in the hands of a third perſon, *in cauſa maritima & civili,* and they ſhall be delivered to the plaintiff after defaults, on caution to reſtore them, if the debt, *&c.* be diſproved in a year and a day; and if the party refuſe to deliver them, he may be impriſoned *quouſque, &c.* *March Rep.* 204.

The court of *admiralty* may cauſe a party to enter into bond in nature of caution or ſtipulation, like bail at common law; and if he render his body, the ſureties are diſcharged; and execution ſhall be of the goods, or of the body, *&c.* not of the lands. *Godb.* 260. 1 *Shep. Abr.* 129. See 1 *Salk.* 33. *T. Ray.* 78. 2 *Lord Ray.* 1286. *Fitzg.* 197. A perſon in execution, on judgment in the *admiral's* court, upon a contract made on the land in *New England* was diſcharged, being out of the *admiralty* juriſdiction. 3 *Cro.* 603. 1 *Cro.* 685. And where ſailors cloaths were bought in St. *Katherine's* pariſh near the Tower, *London,* which were delivered in the ſhip; on a ſuit in the *admiralty* for the money, prohibition was granted; for this was within the county: ſo of a ſhip lying at *Blackwall, &c.* *Owen* 122. *Hughes's Abr.* 113. But the *admiralty* may proceed againſt a ſhip, and the ſails and tackle, when they are on ſhore, altho' alledged to be detained at land: yet upon alledging offer of a plea, claiming property therein, and refuſal of the plea, on this ſuggeſtion a prohibition ſhall be had. 1 *Show.* 179.

If there be a war with the *Dutch,* and an *Engliſhman,* having letters of mark, takes an *Oſtender* for a *Dutch* ſhip, and brings it into a haven, and libels againſt it to have it condemned as a prize; but ſentence be given that it is no prize; the *Oſtender* may libel in the admiralty againſt the captain, for the damage the ſhip received while it lay in the port; for the original taking being at ſea, the bringing it into the port, in order to have it condemned, is but a conſequence thereof. 1 *Lev.* 243. 1 *Sid.* 367.

If an *Engliſh* ſhip takes a *French* ſhip richly laden, the *French* being in enmity with us, and ſuch ſhip is libelled againſt, and after due notice on the *exchange,* &c. declared a lawful prize, the king's proctor may exhibit a libel in the admiralty court, to compel the taker (who ſent the ſhip to *Barbadoes,* and converted the lading to his own uſe) to anſwer the value of the prize to the king; although it was objected, that by the firſt ſentence the property was veſted in the king, and that this ſecond libel was in nature of an action of trover, of which the court of admiralty cannot hold plea. *Carth.* 399.

If the owner of a ſhip victuals it and furniſhes it to ſea, with letters of repriſal, and the maſter and mariners when they are at ſea commit piracy upon a friend of the king, without the notice or aſſent of the owner, yet by this the owner ſhall loſe his ſhip by the admiral law, and our law ought to take notice thereof. 1 *Rol. Abr.* 530. But ſee 1 *Roll. Rep.* 285.

By the Civil law and cuſtom of merchants, if the ſhip be caſt away, or periſh through the mariners defaults, they loſe their wages; ſo if taken by pirates, or if they run away; for if it were not for this policy, they would forſake the ſhip in a ſtorm, and yield her up to enemies in any danger. 1 *Sid.* 179. 1 *Mod* 93. 1 *Vent.* 146.

The *admiralty* court may award execution upon land; tho' not hold plea of any thing ariſing on land. 4 *Inſt.* 141. And upon letters miſſive or requeſt, the *admiralty* here may award execution on a judgment given beyond ſea, where an *Engliſhman* flies or comes over hither, by impriſonment of the party, who ſhall not be delivered by the common law. 1 *Roll. Abr.* 530. When ſentence is given in a foreign *admiralty,* the party may libel for execution of that ſentence here; becauſe all courts of *admiralty* in *Europe* are governed by the civil law. *Sid.* 418. Sentences of any *admiralty* in another kingdom are to be credited, that ours may be credited there, and ſhall not be examined at law here; but the king may be petitioned, who may cauſe the complaint to be examined; and, if he finds juſt cauſe, may ſend to his embaſſador where the ſentence was given, to demand redreſs, and, upon failure thereof, will grant letters of marque and repriſal. *Raym.* 473.

If one is ſued in the *admiralty,* contrary to the ſtatutes 13 *R.* 2. *ſt.* 1. *c.* 5. & 15 *R.* 2. *c.* 3. he may have a *ſuperſedeas,* to cauſe the judge to ſtay the proceedings, and alſo have action againſt the party ſuing. 10 *Rep.* 75. A ſhip being privately arreſted by *admiralty* proceſs only, and no ſuit, it was adjudged a proſecution within the meaning of the ſtatutes; and double damages, *&c.* ſhall be recovered. 1 *Salk.* 31, 32. And if an erroneous judgment is given in the *admiralty*, appeal may be had to delegates appointed by commiſſion out of *Chancery*, whoſe ſentence ſhall be final. *Stat.* 8 *Eliz. cap.* 5.

Appeals may be brought from the inferior *admiralty* courts to the lord high *admiral:* but the lord warden of the *cinque ports* hath juriſdiction of *admiralty* exempt from the *admiralty* of *England.* A writ of error doth not lie upon a ſentence in the admiralty, but an appeal. 4 *Inſt.* 135. And vide *id.* 339. By the *ſtat.* 22 *Geo.* 2. *c.* 3. His majeſty's commiſſion to all the privy counſellors then and for the time being, and to the lord chief baron of the court of *Exchequer*, the juſtices of the *King's Bench* and *Common Pleas*, and barons of the ſaid court of *Exchequer*, then and for the time being, for hearing and determining appeals from ſentences in cauſes of prizes pronounced in the courts of *admiralty*, in any of his majeſty's dominions, declared valid, although ſuch chief baron, juſtices and barons are not of the privy counſel. But no ſentence ſhall be valid, unleſs the major part of the commiſſioners preſent be of the privy counſel. See *ſtat.* 29 *Geo.* 2. *cap.* 34. and *Com. Dig.* 1 *V.* tit. *Admiralty.*

Admiſſion, *(Admiſſio)* Is when a patron of a church having preſented to it, the biſhop upon examination admits the clerk, by ſaying *admitto te habilem. Co. L.* 344. *a.* It is properly the ordinary's declaration that he approves of the preſentee, to ſerve the cure of the church to which he is preſented. *Co. L.* 344. *a.* All perſons are to have epiſcopal ordination before they are admitted to any parſonage or benefice; and if any ſhall preſume to be admitted, not having ſuch ordination, *&c* he ſhall forfeit 100*l.* *Stat.* 13 *&* 14 *Car.* 2. *c* 4. No perſon is to be admitted into a benefice with cure of 30*l. per ann.* in the king's books, unleſs he is a batchelor of divinity at leaſt, or a preacher lawfully allowed by ſome biſhop, *&c.* Action of the caſe will not lie againſt the biſhop, if he refuſe to admit a clerk to be qualified according to the canons (as for any crime or impediment, illiterature, *&c.*) but the remedy is by writ *quare non admiſit*, or *admittendum clericum* brought in that county where the refuſal was. 7 *Rep.* 3.

The ordinary may refuſe a clerk preſented to him, if he be *minus idoneus*, as outlawed, excommunicated, within age. 2 *Inſt.* 632. Or *mere laicus.* 2 *Inſt.* 632. 5 *Co.* 58. *a.* Or *criminoſus*, as a heretick or ſchiſmatick, *&c.* 2 *Inſt* 632. *Dal.* 51. Or a manſlayer, felon, *&c.* 5 *Co.* 58. Or guilty of any offence for which he ought to be deprived. 5 *Co.* 58. *a* Or if he be illiterate. 2 *Inſt.* 632. *Caſes in parliament* 91. And to ſay *quod fuit minus ſufficiens in literaturâ & eâ ratione inhabilis*, is ſufficient; for it is in the negative, and doth not conſiſt of a ſingle inſtance, but general ignorance. Vide 4 *Mod.* 135. *Ca. Parl.* 92. 3 *Lev.* 114. *Salk.* 539.

If the patron brings a *quare impedit* againſt the biſhop upon refuſal of his clerk the *cauſe of refuſal* is traverſable. If it be a *ſpiritual* matter, and the *clerk* is *living*, it ſhall be tried by the metropolitan. 2 *Inſt.* 632. 5 *Co.* 58. *a.* If it be a temporal matter, or a ſpiritual matter when the party is *dead*, it ſhall be tried by the country. 5 *Co.* 58. *a.* 2 *Inſt* 632.

Admittendo Clerico, A writ where a man has recovered his right of preſentation againſt the biſhop. *Reg. Orig.* 33. If a man do recover his preſentation in the *Common Pleas* againſt the biſhop, then he may have a writ to the ſame biſhop to *admit* his clerk, or unto the metropolitan: a perſon recovers an advowſon, and ſix months paſs; yet, if the church be void, the patron may have a writ to the biſhop; and if the church is void when the writ comes to the biſhop, the biſhop is bound to *admit* his clerk. Vide *Hut.* 24. *Hob.* 152. 4. 2 *Inſt.* 273. & *Com. Dig.* 3 *V.* 400. Where a man recovers againſt another than the biſhop, this writ ſhall go to the biſhop; and the party may have an *alias* and a *pluries*, if the biſhop do not execute the writ, and an *attachment* againſt the biſhop, if need be. *New Nat. Br.* 84. In a *quare impedit* betwixt two ſtrangers, if there appears to the court a title for the king, they ſhall award a writ unto the biſhop, for the king. See **Clerico Admittando,**

Admittendo in ſocium, A writ for aſſociating certain perſons to juſtices of aſſize. *Reg. Orig.* 206. Knights and other gentlemen of the county are uſually aſſociated with judges in holding their *aſſizes* on the circuits.

Adnichiled, From the Latin *nihil*, written of old *Nichil*, and ſignifies annulled, cancelled, or made void. *Stat.* 28 *Hen* 8.

Ad quod Damnum, Is a writ which ought to be iſſued before the king grants certain liberties, as a fair, market, *&c.* which may be prejudicial to others: it is directed to the ſheriff to inquire what damage it may do, for the king to grant a market, fair, *&c.* *Terms de ley* 25.

Stat. 27 *Ed.* 1. *ſtat.* 2. *ſect.* 1. ordains, *that ſuch as would purchaſe new parks ſhall have writs out of Chancery to inquire concerning the ſame.*

Sect. 4. *In like manner they ſhall do that will purchaſe any fair, market, warren, or other liberty.*

This writ is likewiſe uſed to inquire of lands given in *mortmain* to any houſe of religion, *&c.* And it is a damage to the country, that a freeholder who hath ſufficient lands to paſs upon aſſizes and jury, ſhould alien his lands in mortmain, by which alienation his heir ſhould not have ſufficient eſtate after the death of the father to be ſworn in aſſizes and juries. *F. N. B.* 121.

The writ *ad quod damnum* is alſo had for the turning and changing of ancient highways; which may not be done without the king's licence obtained by this writ, on inquiſition found that ſuch a change will not be detrimental to the public. *Vaugh. Rep.* 341. Ways turned without this authority are not eſteemed highways, ſo as to oblige the inhabitants of the hundred to make amends for robberies; nor have the ſubjects an intereſt therein to juſtify going there. 3 *Cro* 267. If any one change an highway without this authority, he may ſtop the way at his pleaſure. But ſee the ſtatute 8 *&* 9 *W.* 3. *c.* 16 for enlarging of highways by order of juſtices of peace, *&c.* Where any common highway ſhall be incloſed after a writ of *ad quod damnum* executed, any perſon aggrieved by ſuch incloſure may complain to the juſtices at the next quarter-ſeſſions; but if no ſuch complaint or appeal be made, then the inquiſition and return, recorded by the clerk of the peace, ſhall be for ever binding,

The river *Thames is an highway*, and cannot be diverted without an *ad quod damnum*, and to do ſuch a thing ought to be by patent of the king. *Noy* 105.

If there be an *ancient trench or ditch coming from the ſea*, by which boats and veſſels uſed to paſs to the town, if the ſame be *ſtopped* in any part by outrageouſneſs of the ſea, and a man will *ſue to the king to make a new trench, and to ſtop the ancient trench*, &c. they ought firſt to ſue a writ of *ad quod damnum*, to enquire what damage it will be to the king or others. *F. N. B.* 225. *E.*

And if the king will grant to any city the *aſſiſe of bread and beer*, and the keeping of weights and meaſures, an *ad quod damnum* ſhall be firſt awarded, and when the ſame is certified, *&c.* then to make the grant. *F. N. B.* 225. *E.*

It appears by the writs in the Regiſter, that in antient times, upon every grant, confirmation, *&c.* or licence made by the king, firſt a writ *ad quod damnum* was to be awarded, to inquire of the truth thereof, and what damage the king might have by the ſame: but now the practice is contrary; and in the patents of common grants of licence are put in the end theſe words—*Et hoc abſque aliquo brevi de* ad quod damnum, *ſeu aliquibus aliis brevibus ſive inquiſitionibus aut mandatis ſuperinde habend. fiend. aut proſequend.* &c. Vide *Com. Dig.* 1 *V.* 302, *&c.*

Adreſtare, *addreſſare*, i. e. *ad rectum ire, recto ſtare*, To do right, ſatisfy or make amends. *Gerv. Dorobern. anno* 1170.

Ad terminum qui preteriit, A writ of entry, that lies for the leſſor and his heirs, where a leaſe has been made of lands or tenements, for term of life, or years; and after the term is expired, the lands are withheld from the leſſor by the tenant, or other perſon that poſſeſſeth the ſame: and it likewiſe lies for the heir of the leſſor. *F. N. B.* 201.

Now by *ſtat.* 4. *Geo.* 2. *c.* 28. Tenant wilfully holding over, after demand and notice in writing for delivering poſſeſſion, ſhall pay *double* the yearly value. The modern and moſt eaſy way of recovering poſſeſſion of lands *&c.* held by perſons, not having title, is by ejectment; after judgment in ejectment, the annual value of the premiſſes, during the wrongful holding, may be recovered in an action of treſpaſs, for the meſne profits, in which action may alſo be recovered, the coſts of the ejectment.

Advent, *(adventus)* A time containing about a month preceding the feaſt of the nativity of our Saviour *Chriſt*. It begins from the *Sunday* that falls either upon St. *Andrew*'s day, being the 30th of *November*, or next to it, and continues to the feaſt of *Chriſt*'s nativity, commonly called *Chriſtmas*. Our anceſtors ſhewed great reverence and devotion to this time, in regard to the approach of the ſolemn feſtival: for *in* adventu *Domini nulla aſſiſa debet capi. Int. placita de temp. regis Johan.* Ebor. 126. But the ſtatute *Weſt.* 1. *cap.* 48. ordained that, notwithſtanding the uſual ſolemnity and times of reſt, it ſhould be lawful (in reſpect of juſtice and charity, which ought at all times to be regarded) to take aſſiſes of *novel diſſeiſin*, *mort d'anceſtor*, *&c.* in the time of *Advent*, *Septuageſima*, and *Lent*. This is alſo one of the ſeaſons, from the beginning of which to the end of the octaves of the *Epiphany*, the ſolemnizing of marriages is forbidden, without ſpecial licence, as we may find from theſe old verſes,

Conjugium adventus *probibit*, Hilarique *relaxat*;
Septuagena *vetat*, *ſed* Paſchæ octava *reducit*;
Rogatio *vetitat*, *concedit* trina *poteſtas*.

Ad ventrem Inſpiciendum, A writ mentioned in the ſtatute 12 *Ed.* 2. See *Ventre Inſpiciendo*, by which a woman is to be ſearched, whether ſhe be with child by a former huſband, on her withholding lands from the heir.

Adventure, A thing ſent to ſea, the *adventure* whereof the perſon, ſending it, ſtands to out and home. *Lex Mercat.* Vide *Adventure*.

Adultery, *(adulterium, quaſi ad alterius thorum) Anno* 1. *Hen* 7. *cap.* 7. and in divers old authors termed *advowtry*, is the ſin of incontinence between two married perſons; and if but one of the perſons be married, it is nevertheleſs *adultery:* but in this laſt caſe it is called ſingle *adultery:* to diſtinguiſh it from the other, which is double. This crime is ſeverely puniſhed by the laws of God, and the ancient laws of the land: the *Julian law*, among the old *Romans*, made it death; but in moſt countries at this time the puniſhment is by fine, and ſometimes baniſhment: in *England* it is puniſhed by fine, penance, *&c.* King *Edmund*, a Saxon, *Leg. ſuar'*, *cap.* 4. Adulterium *affici juſſit inſtar homicidii.* And *Canutus* the *Dane*, *Hominem* adulterum *in exilium relegari juſſit, fœminam naſum & aures præcidi.* Leg. par. 2. c. 6. & c. 50. Leg. Hen. 1. cap. 12.—*Rex, &c. Vic.* South'ton, *Præcipimus tibi quod diligenter inquiri facias per legales homines de viſn.* Candeur. *ſi* Robertus Pincerna *habens ſuſpectum* Will. Wake *qui cum uxore ſua* adulterium *committeret, probibuit ei ingreſſum domus ſuæ, & ſi idem* Will. *poſt probibitionem illam domum ipſius* Roberti *ingreſſus* adulterium *prædictum commiſit, inde præfatus* Robertus *mentula eum privavit, & ſi inquiſitio dederit, quod ita ſit, tunc eidem* Roberto & *ſuis qui cum eo erant ad hoc faciend. terr. & catalla ſua occaſione illa in manum noſtram ſeiſita, in pace eſſe facias, donec aliud inde tibi præcipimus, &c.* Clauſ. 14. Joh. m. 2. Perhaps this might be in ſome meaſure agreeable to a law made by *William* the Conqueror, that whoever forced a woman ſhould loſe his genitals, the offending parts.

Before the ſtatute 22, 23 *Car.* 2. *c.* 1. which makes malicious maiming felony, it was a queſtion, whether cutting off the privy members of a man, taken in *adultery* with another man's wife, was felony or not? For, according to Bracton, *ſequitur pœna aliquando capitalis:* but *anno* 13 *H.* 3. one *John*, a *monk*, being taken by *Henry Hull* in the act with his wife, he cut off the privy members of the monk, and was only indicted for a maihem. 3 *Inſt.* 118. If a wife elope from her huſband, and live with the *adulterer*, (without being reconciled to the huſband) ſhe ſhall forfeit her dower. *Co. Lit.* 36. 2 *Inſt* 435. And there is a notable cauſe concening *Margaret*, the wife of *John de Camois*, who with her huſband's conſent lived in *adultery* with Sir *William Pannel*, yet loſt her dower. 2 *Inſt.* *Adultery* being a thing temporal, as well as ſpiritual, is againſt the peace, *&c.*

Advocate, Is the patron of a cauſe aſſiſting his client with advice, and who pleads for him: it is the ſame by the Civil and Eccleſiaſtical laws as a counſellor by the common law. The eccleſiaſtical, or church *advocate*, was originally of two ſorts; either an *advocate* of the cauſes and intereſt of the church, retained as a counſellor and pleader of its rights; or an *advocate*, or patron of the preſentation and advowſon. Both theſe offices at firſt belonged to the founders of churches and convents, and their heirs, who were bound to protect and defend their churches, as well as to nominate or preſent to them.—As *Ailwin*, founder of *Ramſey* abbey, *proruit in medium, ſe Rameſienſis eccleſiæ* advocatum, *ſe poſſeſſionum ejus tutorem allegans. Lib. Rameſ. ſect.* 49. But when the patrons grew negligent in their duty, or were not of ability or intereſt in the courts of juſtice, then the religious began to retain law *advocates*, to ſolicit and proſecute their cauſes. *Vide* Spelman.

Advocati, Were thoſe which we now call patrons of churches, and reſerved to them, and their heirs, a liberty to preſent a perſon on any avoidance. *Blount.*

Advocatione Decimarum, A writ that lies for tithes, demanding the fourth part, or upwards, that belong to any church. *Reg. Orig.* 29.

Advow, *(advocare)* To juſtify or maintain an act formerly done. For example: one takes a diſtreſs for rent, and he that is diſtrained ſues the replevin: now the diſtrainer, juſtifying or maintaining the act, is ſaid to *advow* or *avow:* and hence comes *advowant* and *advowry*. *Old Nat. Br.* 43. Now called *avowant* and *avowry*, the *d* being dropped in *ſpelling*, as well as in *pronunciation*. The ſignification of this word is alſo to bring forth any thing: antiently when ſtolen goods were bought by one, and ſold to another, it was lawful for the right owner to take them wherever they were found; and he in whoſe poſſeſſion they were found, was bound *advocare, i. e.* to produce the ſeller to juſtify the ſale; and ſo on till they found the thief. Afterwards the word was taken for any thing which a man acknowledged to be his own, or done by him, and in this ſenſe it is mentioned in *Fleta, lib.* 1. *cap.* 5. *par.* 4. *Si vir ipſum in domo ſua ſuſceperit, nutrierit &* advocaverit *filium ſuum.* See **Avowry.**

Advowee, or *avowee, (advocatus)* Is uſed for him that hath right to preſent to a benefice: and by 25 *Ed.* 3. *ſtat.* 5. we find *advowee paramount* is taken for the king, the higheſt patron.—Advocatus *eſt ad quem pertinet jus* advocationis *alicujus eccleſiæ, ut ad eccleſiam, nomine proprio non alieno, poſſit præſentare.* Fleta, lib. 5. c. 14.

Advowſon, *(advocatio)* Signifies the right of preſentation to a church or benefice: and he who hath this right to preſent is ſtiled *patron:* becauſe they that originally obtained the right of preſentation to any church, were maintainers of, or benefactors to, the ſame church. When the Chriſtian religion was firſt eſtabliſhed in *England*, kings began to build cathedral churches, and to make biſhops; and afterwards, in imitation of them, ſeveral lords of manors founded particular churches on ſome part of their own lands, and endowed them with glebe, reſerving to themſelves and their heirs a right to preſent a fit perſon to the biſhop, when the ſame ſhould become void: and this is called an *advowſon*, and he that hath this right of preſentation is termed the patron, it being preſumed that he who founded the church will *avow* and take it into his protection, and be a patron to defend it in its juſt rights. 1 *Nelſ. Abr.* 184. See further as to the *origin* of *lay patronages*, Wilſon Rep. part 2. 183.

Under this head it may be proper,

I. *To conſider the ſeveral kinds of advowſon.*
II. *How advowſons may lapſe.*
III. *How they may be gained by uſurpation.*

I. Advowſons are of two kinds; *appendant*, and in *groſs:* *Appendant*, is a right of preſentation dependant upon a manor, lands, *&c.* and paſſes in a grant of the manor as incident to the ſame; and when manors were firſt created, and lands ſet apart to build a church on ſome part thereof, the *advowſon* or right to preſent to that church became *appendant* to the manor. *Advowſon* in *groſs* is a right ſubſiſting by itſelf, belonging to a *perſon*, and not to a manor, lands, *&c.* So that when an *advowſon appendant* is ſevered by deed or grant from the corporeal inheritance to which it was appendant, then it becomes an *advowſon in groſs*. *Co. Lit.* 121, 122.

If he that is ſeiſed of a manor, to which an advowſon is appendant, grants one or two acres of the manor, together with the advowſon; the advowſon is appendant to ſuch acre; eſpecially after the grantee hath preſented. *Watſon's Compleat Incumbent, c.* 7.

But this feoffment of the acre with the advowſon ought to be by *deed*, to make the advowſon appendant; and the acre of land and the advowſon ought to be granted by *the ſame clauſe* in the deed; for if one, having a manor with an advowſon appendant, grant an acre parcel of the ſaid manor, and by another clauſe in the ſame deed grants the advowſon; the advowſon in ſuch caſe ſhall not paſs as appendant to the acre: but if the grant had been of the *intire manor*, the advowſon would have paſſed as appendant. So if a huſband, ſeiſed in right of his wife of a manor to which an advowſon is appendant, doth alien the manor by acres to divers perſons, ſaving one acre; the advowſon ſhall be appendant to that acre. Or if a leſſee for life of a manor to which an advowſon belongs, alien one acre, with the advowſon appendant, the advowſon is thereby appendant to that acre. *Watſ. c* 7.

The right of advowſon, tho' appendant to a manor, caſtle, or the like, may be ſevered from it in other ways, and being ſevered, becomes *an advowſon in groſs*; and this may be effected divers ways: as, 1. If a manor or other thing to which it is appendant is granted, and the advowſon excepted. 2. If the advowſon is granted alone, without the thing to which it was appendant. 3. If an advowſon appendant is preſented to by the patron, as an advowſon in groſs. *Gibſ.* 757.

A diſappendancy may alſo be temporary; that is, the appendancy, tho' turned into groſs, may return; as, 1. If the advowſon is excepted in a leaſe of a manor for life; during the leaſe, it is in groſs, but when the leaſe expires it is appendant again. 2. If the advowſon is granted for life, and another enfeoffed of the manor with the appurtenances; in ſuch caſe at the expiration of the grant it ſhall be appendant, and ſo in other caſes.

But with reſpect to the king, by the ſtatute of *prærogativa regis*, 17 Ed. 2. c. 15. *When the king giveth or granteth land or a manor with appurtenances; without he make expreſs mention in his deed or writing, of advowſon of churches when they fall, belonging to ſuch manor or land, at this day the king reſerveth to himſelf ſuch advowſons, albeit that among other perſons it hath been obſerved otherwiſe.*

Yet when he *reſtoreth*, as in caſe of the reſtitution of a biſhop's temporalties; then advowſons paſs without expreſs mention, or any words equivalent thereto. 10 *Co.* 64.

The law, in the caſe of a common perſon, is thus ſet down by *Rolle*, out of the antient books: If a man ſeiſed of a manor to which an advowſon is appendant, aliens that manor, without ſaying *with the appurtenances* (and much more without *naming* the advowſon) yet the advowſon ſhall paſs; for 'tis parcel of the manor. 2 *Rol. Abr.* 60.

An advowſon being an inheritance incorporeal, and not lying in manual occupation, cannot paſs by *livery*; but may be granted by *deed*, or by *will*, either for the inheritance, or for the right of one or more turns, or for as many as ſhall happen within a time limited.

But this general rule, with regard to advowſons in groſs, next avoidances, and the like, is to be underſtood with two limitations.

Firſt, That it extends not to eccleſiaſtical perſons of any kind or degree, who are ſeiſed of advowſons in the right of their churches; nor to maſters and fellows of colleges, nor to guardians of hoſpitals, who are ſeiſed in right of their houſes; all theſe being reſtrained (the biſhops by the 1 *Eliz. cap.* 19. and the reſt by the 13 *Eliz. cap.* 10.) from making any grants but of things *corporeal*, of which a rent or annual profit may be reſerved; and advowſons and next avoidances, which are *incorporeal* and lie in grant, cannot be of that ſort; and therefore ſuch grants, however confirmed, are void againſt the ſucceſſor; tho' they have been adjudged to be good againſt the grantors (as biſhop, dean, maſter, or guardian) during their own times.

Corporeal hereditaments are ſaid to lie in *livery* (as actual poſſeſſion may be given of them). *Incorporeal* are ſaid to lie in grant (for the reverſe of the preceding reaſon). And they paſs merely by the delivery of the deed. Vide *Bracton, l.* 2. c. 18. *Blackſtone's Commentaries*, 2 *V.* 317.

Secondly, Where the right of granting is abſolute and indiſputable; yet a grant cannot be made by a common perſon, *whilſt the church is void*, ſo as to be intitled thereby to ſuch void turn; for however the avoidance that ſhall happen next after, or the inheritance of the advowſon, may be granted when the church is void; the void turn itſelf (being a mere ſpiritual thing and annexed to the perſon of the patron) is not grantable: it is then (as the law books ſpeak) a thing in *power* and *authority*, a thing in *action* and *effect*; the *execution* of the advowſon, and not the *advowſon*. This is the doctrine and language of all the books; which alſo ſay, that if two have a grant of the next avoidance, and one releaſeth all right and title to the other while the church is void: ſuch releaſe for the ſame reaſon is void. But all this is to be underſtood of common perſons only, and not of the king, whoſe grant of a void turn hath been adjudged to be good. *Gibſ.* 758. *Watſ. c.* 10.

And with reſpect to clergymen, it is to be obſerved, that by 12 *Ann. ſtat.* 2. *c.* 12. they are prohibited from purchaſing the next avoidances of livings.

But this act being only reſtrictive upon clergymen, all other perſons continue to purchaſe next avoidances as they did before, and preſent thereunto as they think proper.

As to advowſons in groſs, there cannot be any deſcent thereof from the brother to the ſiſter of the intire blood, where there is a brother of the half blood; but the ſame ſhall deſcend to the brother of the half blood, unleſs the firſt had preſented to it in his life-time, and then it ſhall deſcend to the ſiſter, ſhe being the next heir of the intire blood. *Watſ. c.* 8. We take it for granted, that in this caſe the brother of the half blood muſt take as heir of the *anceſtor*, who laſt preſented, he being by the exerciſe of that right, *&c.* the perſon laſt actually ſeiſed.

So if one be ſeiſed of an advowſon in fee, and the church doth become void, the void turn is a chattel; and if the patron dieth before he doth preſent, the avoidance doth not go to his heir, but to his executor. *Watſ. c.* 9.

But if the incumbent of a church be alſo ſeiſed in fee of the advowſon of the ſame church, and die; his heir, and not his executors, ſhall preſent; for altho' the advowſon doth not deſcend to the heir at the death of the anceſtor, and by his death the church become void, ſo that the avoidance may be ſaid in this caſe to be ſevered from the advowſon before it deſcend to the heir, and veſted in the executor; yet both the avoidance and deſcent to the heir happening at the ſame inſtant, the title of the heir ſhall be preferred as the more antient and worthy. *Watſ. c.* 9. *fo.* 72.

By laſt will and teſtament, the right of preſenting to to the next avoidance, or the inheritance of an advowſon, may be deviſed to any perſon; and if ſuch deviſe be made by the incumbent of the church, the inheritance of the advowſon being in him, it is good, tho' he die incumbent; for altho' the teſtament hath no effect but by the death of the teſtator, yet it hath an inception in his lifetime. And ſo it is, tho' he appoint by his will who ſhall be preſented by the executors, or that one executor ſhall preſent the other, or doth deviſe that his executors ſhall grant the advowſon to ſuch a man. *Watſ. c.* 10.

Advowſons are either *preſentative*, *collative*, or *donative*.

An advowſon *preſentative* is, where the patron does preſent or offer his clerk to the biſhop of the dioceſe, to be inſtituted in his church.

This may be done either by word or writing. The king may preſent by word, or in writing under any ſeal; who otherwiſe cannot do any legal act, but by matter of record. But where an *aggregate corporation* doth preſent, it muſt be under ſeal. The preſentation to a vicarage doth of common right belong to the parſon. If a *feme covert* hath title to preſent, the preſentation muſt be by huſband and wife and in both their names, except in caſe of the *queen* conſort. *Wood's Inſt.* 155, *&c.*

And if *feme covert* is ſeiſed of an advowſon, and the church becometh void, and the wife dieth, the huſband ſhall preſent to the advowſon. A *guardian* by ſocage or by nurture cannot preſent to a vacant living in right of the heir, or in his name, becauſe he can make no benefit of it, or account for it, though it is ſometimes practiſed, and made good by time. Therefore the infant ſhall preſent of whatſoever age. Vide *Co. Lit.* 17. *b.* If a common patron preſents firſt one clerk, and then *another*, the biſhop may inſtitute which he pleaſes; unleſs he revokes the preſentation of one of them before he is admitted by the biſhop. If there is a right of nomination in one, and a right of preſentation in another, to the ſame benefice; he that has the right of nomination is the true patron, and the other is obliged to preſent the clerk which is nominated. *Id.* 156.

An advowſon *collative* is that advowſon which is lodged in the biſhop; for *collation* is the giving of a benefice by a biſhop, when he is the original patron thereof, or he gains a right by *lapſe*.

Inſtitution is given by the biſhop upon a preſentation of a patron; but *collation* is an immediate inſtitution, becauſe the biſhop is both *patron* and *ordinary*. *Inſtitution* and *collation* are in effect (for the moſt part) the ſame, and are terms made uſe of to diſtinguiſh the *perſons*, who have the *power* to *beſtow* the benefice. (But where they differ, ſee of *Lapſe* and *Uſurpation poſtea)* Id. 157, *&c.*

An advowſon *donative* is, when the king or other patron (in whom the advowſon of the church is lodged) does, by a ſingle donation in writing, put the clerk into poſſeſſion, without preſentation, inſtitution, or induction. Donatives are either of churches parochial, chapels, prebends, *&c.* and may be exempt from all ordinary juriſdictions, ſo that the ordinary cannot viſit them, and conſequently cannot demand procurations. If the true patron of a church or chapel *donative* doth once preſent to the ordinary, and his clerk is admitted and inſtituted, it becomes a church *preſentative*, and ſhall never have the privilege of a *donative* afterwards. Yet if a ſtranger preſents to ſuch a *donative*, and inſtitution is given, all is void. *Id.* 158.

The right of *donation* deſcends to the heir (the anceſtor dying ſeiſed, where the church became void in his lifetime) and not to the executor, which it would had it been a *preſentative* benefice. *Wilſon Rep. part* 2. 150, 1.

There's not any caſe in the books to exclude the heir of a donative from his turn in this caſe. And a patron of a *donative* can never be put out of poſſeſſion by an *uſurpation*. Id. ibid.

Advowſons were formerly moſt of them appendant to manors, and the patrons parochial barons; the lordſhip of the manor, and patronage of the church were ſeldom in different hands till *advowſons* were given to religious houſes; but of late times the lordſhip of the manor and the *advowſon* of the church have been divided; and now not only lords of manors, but mean perſons have, by purchaſe, the dignity of patrons of churches, to the great prejudice thereof. By the common law the right of patronage is a real right fixed in the patrons or founders, and their heirs, wherein they have as abſolute a property as any other man hath in his lands and tenements: for *advowſons* are a temporal inheritance, and lay fee; they may be granted by deed or will, and are aſſets in the hands of heirs or executors. *Co. Lit.* 119. A recovery may be ſuffered of an *advowſon*; a wife may be endowed of it; a huſband tenant by the curteſy; and it may be forfeited by treaſon or felony. 1 *Rep.* 56. 10 *Rep.* 55. If an *advowſon* deſcends to coparceners, and the church, after the death of their anceſtors, becomes void, the eldeſt ſiſter ſhall firſt preſent. 13 *E.* 1. *c.* 5. *ſ.* 5. And when coparceners, jointenants, *&c.* are ſeiſed of an *advowſon*, and partition is made to preſent by turns, each ſhall be ſeiſed of their ſeparate eſtate. 7 *Ann. c.* 18.

Perſons ſeiſed of *advowſons*, being papiſts, are diſabled to make preſentations, and the chancellors of the univerſities ſhall preſent. 1 *W. & M. cap.* 26. And preſentations to *advowſons*, &c. for money or other reward, ſhall be void, *&c.* *Stat.* 31 *Eliz. c.* 6.

Beſides the ſtatutes above taken notice of, there are ſeveral other ſtatutes reſpecting this title which will more properly be treated of under the particular heads of **Darrein Preſentment, Lapſe, Preſentation, Quare impedit, Simony, Uſurpation,** &c.

II. *How advowſons may lapſe.*

A *lapſe* is a title given to the ordinary, to collate to a church, by the neglect of the patron to preſent to it within ſix months after avoidance. Or a *lapſe* is a devolution of a right of preſenting from the patron to the biſhop; from the biſhop to the archbiſhop; from the archbiſhop to the king. The term in which the title by *lapſe* commences from one to the other ſucceſſively is *ſix* months, or half a year according to the calendar, not accounting twenty-eight days to the month, as in other caſes, becauſe this computation is by the Eccleſiaſtical law, and becauſe *tempus ſemeſtre*, in the ſtat. of *Weſt.* 2. *chap.* 5. is intended of half a year, the whole year containing 365 days, which being divided, the half year for the patron to preſent is 182 days. The day in which the church becomes void is not to be reckoned as part of the ſix months. *Wood's Inſt.* 160. But for the law on this head, ſee title *Lapſe*.

III. *How they may be gained by uſurpation.*

An *uſurpation* muſt commence upon a *preſentation*, not a *collation*, and is ſettled by inſtitution ſix months before a *quare impedit* brought. But as to this head ſee title *Uſurpation* and *Quare impedit*. Vide *Com. Dig.* 1 *V.* tit. *Advowſon.*

Advowſon of the Moiety of the Church, *(advocatio medietatis eccleſiæ)* Is where there are two ſeveral patrons and two ſeveral incumbents in one and the ſame church, the one of the one moiety, the other of the other moiety thereof. *Co. Lit.* 17. *b. Medietas advocationis*, a moiety of the *advowſon*, is where two muſt join in the preſentation, and there is but one incumbent; as where there are two parceners; and though they agree to preſent by turns, yet each of them hath but the moiety of the church. *Co. Lit* 17. *b.* But vide 7 *Ann. c.* 18.

Advowſon of Religious Houſes, Where any perſons founded any *houſe of religion*, they had thereby the *advowſon* or patronage thereof, like unto thoſe who built and endowed pariſh churches. And ſometimes theſe patrons had the ſole nomination of the abbot, or prior, *&c.* either by inveſtiture or delivery of a paſtoral ſtaff: or by direct preſentation to the dioceſan; or if a free election were left to the *religious*, a *conge d'eſlire*, or licence for election, was firſt to be obtained of the patron, and the elect confirmed by him. *Kennet's Paroch. Antiq.* 147, 163.

Aerie, *(aerie accipitrum)* *airy* of goſhawks, is the proper term for hawks, for that which of other birds we call a neſt. *Stat.* 9 *H.* 3. *c.* 12. And it is generally ſaid to come from the *French* word *aere*, a hawk's neſt. The liberty of keeping theſe *aeries* of hawks was a privilege, granted to great perſons: and the preſerving the *aeries* in the kings foreſts was one ſort of tenure of lands by ſervice. *Anno* 20 *Ed.* 1. *Simon de Raghton & al' tenent terras in Raghton, &c. per ſerjantiam cuſtodiendi* aerias *auſturcorum domini regis.*

Æſtimatio Capitis, *(pretium hominis)* King *Athelſtane* ordained that fines ſhould be paid for offences committed againſt ſeveral perſons according to their degrees and quality, by *eſtimation* of their *heads*. *Creſſ. Ch. Hiſt.* 834. *Leg. Hen.* 1.

Ætate Probanda, A writ that lay to inquire, whether the king's tenant holding in chief by chivalry, was of full age to receive his lands into his own hands. It was directed to the eſcheator of the county; but is now diſuſed, ſince wards and liveries are taken away by the ſtatute. *Reg. Orig.* 294.

Affeerers, *(afferatores)* From the Fr. *affier*, to affirm. They are thoſe that in courts-leet upon oath, ſettle and moderate the fines and amercements, impoſed on ſuch perſons as have committed faults, arbitrarily puniſhable, *viz.* that have no expreſs penalty appointed by ſtatute: and they are alſo appointed for moderating amercements, in courts baron. The perſons nominated to this office affirm upon their oaths what penalty they think in conſcience ought to be inflicted on the offenders. This word is uſed *Stat.* 25 *Ed.* 3. *c.* 7. Where mention is made, that the juſtices before their riſing in every ſeſſions ſhall cauſe the amerciaments to be *affeered.* And this ſeems to be agreeable to *Magna Charta*, by which it is ordained, that perſons are to be amerced after the manner of the fault; and the amerciaments ſhall be aſſeſſed by the oath of honeſt and lawful men of the vicinage. 9 *Hen.* 3. *cap.* 14. Vide *Com. Dig.* 4 *V.* 139. tit. *Leet*, (O. 2.)

Affiance, The plighting of troth between a man and a woman, upon agreement of marriage: it is derived from the *Latin* word *affidare*, and ſignifies as much as *fidem ad alium dare.* Lit. ſect. 39.

Affinare, To plight one's faith, or give or ſwear fealty. *i. e.* fidelity. *M. S. Dom. de Farendon* 22.

Affidatio Dominorum, An oath taken by the lords in parliament, *anno* 3 *Hen.* 6. *Rot. Parl.*

Affidatus, Signifies a tenant by fealty, alſo a retainer. —Affidatio *accipitur pro mutua fidelitatis connexione, tam in ſponſaliis, quam inter dominum & vaſſalum—proles de* affidata & *non maritata, non eſt hæres* MS. *Arth. Trevor Ar.* Vide *Spelm.*

Affidari, *ſeu* affidari *ad arma*, to be muſtered and inrolled for ſoldiers upon an oath of fidelity. *Dom. de Farendon MS.* 55.

Affidavit, Signifies in law an oath in writing; and to make *affidavit* of a thing, is to teſtify it upon oath. An *affidavit*, generally ſpeaking, is an oath in writing, ſworn before ſome perſon who hath authority to adminiſter ſuch oath: and the true place of habitation, and true addition of every perſon who ſhall make an *affidavit*, is to be inſerted in his *affidavit.* 1 *Lill. Abr.* 44. 46. *Affidavits* ought to ſet forth the matter of fact only, which the party intends to prove by his *affidavit*; and not to declare the merits of the cauſe, of which the court is to judge. 21 *Car.* 1. *B. R.* The plaintiff or defendant (having authority to take *affidavits*) may take *affidavit* in a cauſe depending; yet it will not be admitted in evidence at the trial, but only upon motions. 1 *Lill.* 44. When an *affidavit* hath been read in court, it ought to be filed, that the adverſe party may ſee it, and take a copy. *Paſch.* 1655. An *affidavit* taken before a maſter in *Chancery* will not be of any force in the court of *King's Bench*, or other courts, nor ought to be read there; for it ought to be made before one of the judges of the court wherein the cauſe is depending, or a commiſſioner in the country, appointed for taking *affidavits. Style's Rep.* 455. *Stat.* 29 *Car.* 2. *c.* 5. The judges, *&c.* of the courts at *Weſtminſter* by commiſſion may impower perſons in the ſeveral counties of *England* to take *affidavits* concerning matters depending in their ſeveral courts, as maſters in *Chancery* extraordinary uſed to do. Where *affidavits* are taken by commiſſioners in the country according to the ſtatute 29 *Car.* 2. and 'tis expreſs'd to be in a cauſe depending between two certain perſons, and there is no ſuch depending, thoſe *affidavits* cannot be read, becauſe the commiſſioners have no authority to take them; (and for that reaſon the party cannot be convicted of perjury upon them); but if there is ſuch a cauſe in court and *affidavits* taken concerning ſome collateral matter, they may be read. *Salk.* 461.

Affidavits are uſually for certifying the ſervice of proceſs, or other matters touching the proceedings in a cauſe; or in ſupport of, or againſt motions, in caſes, where the court determines matters *&c.* in a ſummary way.

If a perſon exhibits a bill in equity for the diſcovery of a deed, and prays relief thereupon, he muſt annex an affidavit to his bill, that he has not ſuch deed in his poſſeſſion, or that it is not in his power to come at it; for otherwiſe he takes away the juriſdiction of the common law courts, without ſhewing any probable cauſe why he ſhould ſue in equity. 1 *Chan. Ca.* 11, 231. 1 *Vern.* 59, 180, 247.

But if he ſeeks diſcovery of the deed only, or that it may be produced at a trial at law, he need not annex ſuch affidavit to his bill; for it is not to be preſumed that in either of theſe caſes he would do ſo abſurd a thing, as exhibit a bill, if he had the deed in his poſſeſſion. 1 *Vern.* 180, 247.

In bills of interpleader, the party who prefers it muſt make affidavit that he does not collude with either of the other parties. 1 *New Abr.* 66.

An affidavit muſt ſet forth the matter poſitively, and all material circumſtances attending it, that the court may judge whether the deponent's concluſion be juſt or not. 1 *New. Abr.* 66.

And therefore, on motion to put off a trial for want of a material witneſs, it muſt appear that ſufficient endeavours were made uſe of to have him at the time appointed, and that he cannot poſſibly be preſent, though he may on further time given. *Farreſt.* 121. *Comb.* 421, 422.

Upon a rule to ſhew cauſe, the party who obtained the rule, offered ſeveral new affidavits, and this diverſity was taken, *viz.* where they contain new matter, and where they tend only to confirm what was alledged and ſworn when the rule was made; in the latter caſe they may be read, not in the former. 1 *Salk.* 461.

There being one *affidavit* againſt another relating to a judgment, the matter was referred to a trial at law upon a feigned iſſue, to ſatisfy the conſcience of the court as to the fact alledged. *Comberb.* 399.

See *Stat.* 17 *Geo.* 2. *c.* 7. for taking and ſwearing *affidavits* to be made uſe of in any of the courts of the county *palatine* of *Lancaſter.*

Vide as to modern determinations in ſeveral caſes relative to affidavits, *Wilſon's Rep. part* 1. 231, 279, 335; *part* 2. 121, 124, 227, 371.

In what caſes affidavits are made neceſſary by ſtatute, ſee titles **Abatement, Bail.**

Affinage, (Fr. *affinage*) Refining of metal, *purgatio metalli*; *inde*, fine and refine.

Affirm, (*affirmare*) Signifies to ratify or confirm a former law or judgment: ſo is the ſubſtantive *affirmance* uſed *anno* 8 *Hen.* 6. *c.* 12. And the verb itſelf by *Weſt's Symbol. part* 2. tit. *Fines*, *ſect.* 152. 19 *H.* 7. *cap.* 20.

Affirmation, An indulgence allowed by law to the people called *quakers*, who in caſes where an oath is required from others, may make a ſolemn *affirmation* that what they ſay is true; and if they make a falſe *affirmation*, they are ſubject to the penalties of perjury: but this relates only to oaths to the government, and on public occaſions; for quakers may not give teſtimony on *affirmation*, in any criminal cauſe, *&c.* *Stat* 7 & 8 *W.* 3. *c.* 34. and *Stat.* 22 *G.* 2. *c.* 46. See *Quakers.* But if a quaker will ſubmit to take the uſual oath, he may give evidence in a criminal cauſe.

Afforare, To ſet a value or price on a thing. *Et quod amerciament. prædictor. tenentium* afforentur & *taxentur per ſacramentum parium. Charta anno* 1316. *apud Thorn.* Du Cange.

Afforatus, Appraiſed or valued, as things vendible in a fair or market. —*Retinuit rex poteſtatem pardonandi ei omnimoda amerciamenta tam* afforata, *quam non* afforata, *tam de ſe quam de omnibus hominibus.* Cartular Glaſton. *MS. f.* 58

Afforciament, (*afforciamentum*) A fortreſs, ſtrong hold, or other fortification. —*Pro reparatione murorum & aliorum* afforciamentorum *dictæ civitatis*, *&c.* Pryn Animad. on Coke, *fol.* 184.

Afforciare, To add, increaſe, or make ſtronger. —— *Cum juratores in veritate dicenda ſunt ſibi contrarii, de conſilio curiæ* afforcietur *aſſiſa, ita quod apponantur alii juxta numerum majoris partis quæ diſſenſerit.* Bract. lib 4. c. 19. *viz.* Let the witneſſes be increaſed.

Afforeſt, (*afforeſtare*) To turn ground into a foreſt. *Chart. de Foreſt. c.* 1 When foreſt ground is turned from foreſt to other uſes, it is called *diſafforeſted. Vide* Foreſt.

Affray, Is derived from the *Fr.* word *effrayer*, to *affright*, and it formerly meant no more; as where perſons appeared with armour or weapons not uſually worn, to the terror of others. *Stat.* 2 *Ed.* 3. *c.* 3. But now it ſignifies a ſkirmiſh or fighting between two or more, and there muſt be a ſtroke given, or offered, or a weapon drawn, otherwiſe it is not an *affray.* 3 *Inſt.* 158. *An affray is a public offence to the terror of the kings's ſubjects,* *and*

and ſo called, becauſe it affrighteth and maketh men afraid. 3 *Inſt.* 158.

From this laſt definition it ſeemeth clearly to follow, that there may be an *aſſault*, which will not amount to an affray, as where it happens in a private place, out of the hearing or ſeeing of any, except the parties concerned, in which caſe it cannot be ſaid to be to the terror of the people. 1 *Hawk.* 134.

Alſo it is ſaid, that no quarrelſome or threatening words whatſoever ſhall amount to an affray; and that no one can juſtify laying his hands on thoſe who ſhall barely quarrel with angry words, without coming to blows; yet it ſeemeth, that the conſtable may, at the requeſt of the party threatened, carry the perſon who threatens to beat him before a juſtice in order to find ſureties. 1 *Hawk.* 135.

Alſo, it is certain, that it is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the meſſenger of ſuch a challenge; or even barely to endeavour to provoke another to ſend a challenge, or to fight; as by diſperſing letters to that purpoſe, full of reflections, and inſinuating a deſire to fight. 1 *Hawk* 135.

But admitting that bare words do not, in the judgment of law, carry in them ſo much terror as to amount to an affray, yet it ſeems certain, that in ſome caſes there may be an affray, where there is no actual violence; as where a man arms himſelf with dangerous and unuſual weapons, in ſuch a manner as will naturally cauſe a terror to the people; which is ſaid to have been always an offence at the common law, and is ſtrictly prohibited by ſtatute 2 *Ed.* 3. *c.* 3.

A conſtable may require *affrayers* to depart, and if they reſiſt, he may call others to his aſſiſtance; who, if they refuſe to aſſiſt him, may be fined and impriſoned: and a private perſon, or ſtander-by, may put a ſtop to an *affray*, and ſeize the offenders, where perſons are aſſembled in a tumultous manner to break the peace. 3 *Inſt.* 158. *H. P. C.* 135. In caſe a perſon be dangerouſly wounded, any man may apprehend the offender, and carry him before a juſtice, in the ſame manner as a conſtable. *Dalt.* 35. In a very dangerous *affray*, a conſtable can juſtify commitment, till the offenders find ſureties for the peace. *Lamb.* 139. He may likewiſe put the *affrayers* in the ſtocks till he can procure proper aſſiſtance to convey them to gaol. *Dalt.* 38.

If an affray be in an houſe, the conſtable may break open the doors to preſerve the peace; and if affrayers fly to an houſe, and he follow with freſh ſuit, he may break open the door to take them. 1 *Hawk.* 137.

But in caſes of *affrays*, the conſtable muſt apprehend the perſons offending before the *affray* is over, or elſe he may not do it without a warrant from a juſtice, except it be in extraordinary caſe; as where a perſon is wounded dangerouſly. *Dalt.* 36. In the caſe of a ſudden *affray*, through paſſion or exceſs of drinking, the conſtable may put the perſons in priſon, if there be one in the vill, until the heat of their paſſion and intemperance is over, though he deliver them afterwards; or till he can bring them before a juſtice of peace, and that to avoid the preſent danger. 2 *Hale's Hiſt. P. C.* 90, 95. If a conſtable is hurt in an *affray*, he may have his remedy by action of treſpaſs, and have damages; but the *affrayers*, if they are hurt, ſhall have no remedy. *Lamb.* 141. And where any other perſons receive harm from the *affrayers*, they may have remedy by action againſt them. *Dalt* 35.

A juſtice of peace may commit *affrayers*, until they find ſureties for the peace. And there is no doubt but that a juſtice of peace may and muſt do all ſuch things to that purpoſe, which a private man or conſtable are either enabled or required by the law to do: but it is ſaid, that he cannot without a warrant authorize the arreſt of any perſon for an affray out of his own view; yet it ſeems clear, that in ſuch caſe he may make his warrant to bring the offender before him, in order to compel him to find ſureties for the peace. 1 *Hawk.* 137.

It is inquirable in the court leet; and puniſhable by juſtices of peace in their ſeſſions, by fine and impriſonment. And it differs from aſſault, in that it is a wrong to the public; whereas aſſault is of a private nature. *Lamb. lib.* 2. yet indictment lies, as being a breach of the public peace.

Affreightment, (*affretamentum*) The freight of a ſhip, from the French *fret*, which ſignifies the tons. *Pat.* 11. *Hen.* 4. See *Charter-Party.*

Affri, vel *affra*, Bullocks, or horſes or beaſts of the plough. — *Vicecomes liberet ei omnia catalla debitoris, exceptis bobus & affris carucæ.* Weſtm. 2. c. 18. *Et communium paſturæ ad decem boves & duos affros in prædictis paſturis.* Mon Angl. par. 2. f. 291. And in the county of *Northumberland*, the people to this day call a dull or ſlow horſe, a falſe *aver* or *afer*. Spelm. Gloſſ.

African Company, The royal *African company* of merchants eſtabliſhed by king *Charles*, II. for trading to *Africa*. And all perſons may trade thither, as well as the company, paying 10 *per cent.* on exportation of goods, for maintaining the forts, *&c.* And the like duty upon importation; on payment of which duties they ſhall be protected in their trade. *Stat.* 9 & 10 *W.* 3. Vide *Merchant.* See *Stat.* 23 *Geo.* 2. *c.* 31. for extending and improving the trade to *Africa*, and *Stat.* 24 *Geo.* 2. *c.* 49. and alſo *Stat.* 25 *Geo.* 2. *c.* 40. for application of a ſum of money therein mentioned, granted to his Majeſty, for a compenſation to the *African company*, for their charter, lands, forts, caſtles, ſlaves, military ſtores, and other effects; and to veſt the lands, forts, caſtles, ſlaves, military ſtores, and other effects, in the company of merchants trading to *Africa*, &c.

Agalma, The impreſſion or image of any thing on a ſeal: — *ego* Dunſtanus *hanc libertatem crucis* agalmate *conſignavi*,—Chart. Edg. Reg. pro Weſtmonaſt. Eccleſ. anno 698.

Age, (*ætas*, Fr. *age*) In common acceptation ſignifies a man's life from his birth to any certain time, or the day of his death: it alſo hath relation to that part of time wherein men live. But in the law it is particularly uſed for thoſe ſpecial times which enable perſons of both ſexes to do certain acts, which before through want of years and judgment they are prohibited to do. As for example; a man at twelve years of *age* ought to take the oath of allegiance to the king: at fourteen, which is his *age* of diſcretion, he may conſent to marriage, and chuſe his guardian: and at twenty-one he may alien his lands, goods and chattles: a woman at nine years of age is dowable: at twelve ſhe may conſent to marriage; at fourteen ſhe is at years of diſcretion, and may chuſe a guardian; and at twenty-one ſhe may alienate her lands, *&c.* *Co. Lit* 78.

If at the time of the marriage the huſband be above fourteen, and the wife under twelve, when ſhe attains the age of twelve years, the huſband may diſagree as well as the wife, and ſo *vice verſa.* *Co. Lit.* 79.

A diſagreement to the marriage, before the age of conſent, is of no force; for, if the huſband diſagree before fourteen and marry another, the iſſue of the ſecond marriage is a baſtard. 1 *Rol.* 341. *Contra. Dyer* 13. *a. in marg.* If after the age of conſent, the huſband or wife diſagree by parol, yet cohabit as huſband and wife, this amounts to an agreement. 1 *Rol.* 341. Vide *Com. D. V.* 1. tit. *Baron and Feme.*

There are ſeveral other *ages* mentioned in our ancient books, relating to aid of the lord, wardſhip, *&c.* now of no uſe. *Co. Lit.* The *age* of twenty-one is the full *age* of man or woman; which enables them to contract and manage for themſelves, in reſpect to their eſtates, until which time they cannot act with ſecurity to thoſe who deal with them; for their acts are in moſt caſes either void or voidable. *Perk.* But a perſon under twenty one may contract for neceſſaries ſuitable to his quality; and it ſhall bind him; alſo one under *age* may be executor of a will. *Co. Lit.* 171. And at fourteen years of *age* a perſon may diſpoſe of goods and perſonal eſtate by will; though not of lands till the *age* of twenty one. It hath been adjudged, that if one be born on the firſt of *February* at eleven o'clock at night, and the laſt of *January* in the one and twentieth year at one o'clock in the morning, he makes his will of lands, *&c.* and dies; yet ſuch will is good, for he then was of *age.* *Mod. Caſ.* 260. A perſon under the *age* of twenty-one may make a purchaſe; but at his full *age* he may agree or diſagree to it. *Co. Lit.* 2. *b.* So where perſons marry, the man under the *age* of fourteen, or the woman within twelve, they may diſagree to the marriage at thoſe *ages:* and the law is the ſame in the other caſes.

Perſons under the *age* of fourteen are not generally puniſhable for crimes; but if they do any treſpaſs, they muſt anſwer for the damage. *Co. Lit.* 247. 2 *Roll. Abr.* 547.

As to their not being *generally* puniſhable for crimes before the age of fourteen, the rule is general, yet hath its exceptions founded on the nature of the caſe, and the judgment of the infant. At *Bury* ſummer aſſizes, 1748, a boy of ten years of age was convicted of *murder*, and that with great juſtice and propriety, he having done a variety of acts, with that deliberation, which ſhewed his judgment ſufficiently ripe to render him *accountable for his actions.* *Vide* the caſe of William York. *Forſter's Rep.* 70, *&c.*

Fourteen is the *age* by law to be a witneſs; and in ſome caſes a perſon of nine years of *age* hath been allowed to give evidence. 2 *Hawk.* 434. None may be a member of parliament under the *age* of twenty-one years; and no man can be ordained prieſt till twenty-four; nor be a biſhop till thirty years of age.

Age-Prier, (*ætatem precari,* or *ætatis precatio)* Is when an action being brought againſt a perſon under age for lands which he hath by deſcent, he by petition or motion ſhews the matter to the court, and prays that the action may ſtay till his full age, which the court generally agrees to. *Terms de Ley* 30. This is called *parol demurrer, i. e.* a ſtaying or delaying of the plea or ſuit. *Parol* ſignifies the *plea* or *ſuit.—Demurrer,* to *ſtay* or *abide.* But as a purchaſer, a minor ſhall not have *age prier:* nor in a writ of aſſize, becauſe it is of his own wrong, and this writ ſhall not be delayed; or in a writ of dower; or of partition. *Stat.* 3 *Ed.* 1. 38 *Ed.* 3. *Hob.* 342. In a writ of debt againſt an heir, he ſhall have his age, for at full age he may plead *riens per deſcent*, or a releaſe to his anceſtor, and be diſcharged. *Danv. Abr.* 259. See *Parol Demurrer.*

Agenfrida, The true lord or owner of any thing.—*Si porcus non fuerit ibi ſæpius quam ſemel det* agenfrida *unum ſolidum.* Leg. Inæ, c. 50. *apud* Brompt. c. 45.

Agenhine, A gueſt at an inn after three nights, when accounted one of the family. See *Hoghenhine.*

Agent and Patient, Is when a perſon is the doer of a thing, and the party to whom done: as where a woman endows herſelf of the beſt part of her huſband's poſſeſſions, this being the ſole act of herſelf to herſelf, makes her *agent and patient.* Alſo if a man be indebted unto another, and afterwards he makes the creditor his executor, and dies, the executor may retain ſo much of the goods of the deceaſed as will ſatisfy his debt; and by this retainer he is *agent and patient*, that is, the party to whom the debt is due, and the perſon that pays the ſame. But a man ſhall not be judge in his own cauſe, *quia iniquum eſt aliquem ſuæ rei eſſe judicem.* 8 Rep. 138.

Agild, Signifies to be free from penalties, not ſubject to the cuſtomary fine or impoſition. Sax. *a gild, ſine mulcta.* Leges Aluredi, cap 6. *Si utlagata efficiat ut occidatur, pro eo quod contra Dei rectum & regis imperium ſtet—jaceat* agild. In Leg. Hen. 1. c. 88. *Agilde* was a perſon ſo vile, that whoever kill'd him was to pay no mulct for his death.

Agiler, From the Sax. *a gile*, an obſerver or informer.

Agillarius, An hey-ward, herd-ward, or keeper of cattle in a common field. Towns and villages had their hey-wards, to ſuperviſe and guard the greater cattle, or common herd of kine and oxen, and keep them within due bounds; and if theſe were ſervile tenants, they were privileged from all cuſtomary ſervices to the lord, becauſe they were preſumed to be always attending their duty, as a ſhepherd on his flock. And lords of manors had likewiſe their hey-wards, to take care of the tillage, harveſt work, *&c.* and ſee that there were no incroachments made on their lordſhips: but this is now the buſineſs of bailiffs. *Kennet's Paroch. Antiq.* 534, 576.

Agiſt, (from the Fr. *giſte*, a bed or reſting-place) Signifies to take in and feed the cattle of ſtrangers in the king's foreſt, and to gather up the money due for the ſame. *Chart. de Foreſta,* 9 *H.* 3. *c.* 9. The officers appointed for this purpoſe are called *agiſters*, or *giſt-takers*, and are made by the king's letters patent: there are four of them in every foreſt wherein the king hath any pawnage. *Manw. For. Laws* 80. They are alſo called *agiſtators*, to take account of the cattle *agiſted.*

Agiſtment, *(agiſtamentum)* Is where other men's cattle are taken into any ground, at a certain rate *per* week: it is ſo called, becauſe the cattle are ſuffered *agiſer*, that is, to be levant and couchant there: and many great farms are employed to this purpoſe. 2 *Inſt.* 643. Our graziers call cattle which they thus take into keep *giſements;* and to *giſe* or *juice* the ground, is when the occupier thereof feeds it not with his own ſtock, but takes in the cattle of others to *agiſt* or paſture it. *Agiſtment* is likewiſe the profit of ſuch feeding in a ground or field: and extends to the depaſturing of barren cattle of the owner, for which tithes ſhall be paid to the parſon. There is *agiſtment of ſea-banks*, where lands are charged with a tribute to keep out the ſea. *Terræ agiſtatæ* are lands whoſe owners are bound to keep up the ſea-banks. *Spelm. in Romney-Marſh.*

Agitatio Animalium in Foreſta, The drift of beaſts in the foreſt. *Leg. Foreſt.*

Agius, (Gr. *i. e.* holy.)—*Ego triumphalem trophæum* agiæ *crucis impreſſi.* Mon. Angl. p. 15, 17.

Agnus Dei, A piece of white wax in a flat oval form, like a ſmall cake, ſtamp'd with the figure of the lamb, and conſecrated by the pope. *Agnus Dei*, croſſes, *&c.* are not permitted to be brought into this kingdom, on pain of *præmunire.* *Stat.* 13 *Eliz. c.* 2.

Agraria Lex, A law made by the *Romans* for diſtribution of lands among the common people.

Agreement, *agreamentum (aggregatio mentium)* Signifies a joining together of two or more minds in any thing done, or to be done. *Plowd.* 17.

But I. *It is to be obſerved, that the perſons whoſe minds are ſo joined together, ſhould be ſuch as are capable of binding themſelves by their agreements.* For

A perſon *non compos* is not capable of entering into any agreement, as an agreement is an act of the underſtanding which they are incapable of; and therefore they are to be under the care of their curators or guardians, by a commiſſion from the public. 1 *New Abr.* 67. See title **Ideots and Lunaticks.**

Alſo an infant, for the ſame reaſon, is generally incapable of contracting, except for neceſſaries, *&c.* See **Infant.**

A wife during the intermarriage is incapable of entring into any agreement *in pais*, being under power of her huſband. See title **Baron and Feme.**

The anceſtor ſeiſed in fee may by his agreement bind his heir; therefore if *A.* agrees to ſell lands, and receives part of the purchaſe money, but dies before a conveyance is executed, and a bill is brought againſt the heir, he will be decreed to convey, and the money ſhall go to the executor, eſpecially if there are more debts due than the teſtator's perſonal eſtate is ſufficient to pay. 2 *Vern.* 215. *Abr. Eq.* 265. But

If tenant in tail agrees to convey, or bargains and ſells the lands for valuable conſideration, without fine or recovery, and dies before the fine or recovery be levied or ſuffered, the iſſue is not bound either in law or equity; for equity cannot ſet aſide the ſtatute *de donis;* which ſays, That *voluntas donatoris obſervetur;* nor can the court ſet up a new manner of conveyancing, and thereby ſuperſede fines and recoveries; for thereby the king would loſe the perquiſites by fines, or the writs of entry and fines for alienation. *Hob.* 203. 1 *Chan. Ca.* 171. 1 *Lev.* 239. 2 *Vent.* 350. Yet

If there be tenant in tail in equity as of a truſt, or under an equitable agreement, and he for valuable conſideration bargains and ſells the land without fine or recovery, this ſhall bind his iſſue, becauſe the ſtatute *de donis* doth not extend to it, being an intail in equity and a creature of the court. 1 *Chan. Ca.* 234. 2 *Chan. Ca.* 64. 1 *Vern.* 13, 440. 2 *Vern.* 133, 583, 702.

II. *The agreement ſo entered into may be of different kinds, as,*

1ſt, An *Agreement* executed already at the beginning; as where money is paid for the thing agreed, or other ſatiſfaction made. 2dly, An *agreement* after an act done by another; as where one doth ſuch a thing, and another perſon *agrees* to it afterwards, which is executed alſo: and 3dly, An *agreement* executory, or to be performed *in futuro*. This laſt ſort of *agreement* may be divided into two parts; one certain at the beginning, and the other when, the certainty not appearing at firſt, the parties *agree* that the thing ſhall be performed upon the certainty known. *Terms de Ley* 31. See titles **Condition, Contract, Covenant.**

Agreements likewiſe may be either in writing *or by* parol.

The common law required no other ſolemnity in paſſing lands or tenements, but that of livery and ſeiſin, which being a tranſlation of the feud *coram paribus curtis*, and teſtified by them, was held an act of ſufficient notoriety to direct the lord of whom to demand his ſervices, and ſtrangers againſt whom to commence their actions; but now by the ſtat. 29 *Car.* 2. *c.* 3. *ſect.* 1. it is enacted, that "all leaſes, eſtates, intereſts of freehold, or terms of years, or any uncertain intereſts of, in, or out of any meſſuages, manors, lands, tenements or hereditaments, made or created by livery and ſeiſin only, or by parol, and not put in writing, and ſigned by the parties ſo making or creating the ſame, or their agents thereunto lawfully authoriſed by writing, ſhall have the force and effect of leaſes or eſtates at will only, and ſhall not either in law or equity be deemed or taken to have any other or greater force or effect; any conſideration for making any ſuch parol leaſes or eſtates, or any former uſage to the contrary notwithſtanding."

Sect. 2. "Except leaſes not exceeding the term of three years from the making thereof, whereupon the rent reſerved to the landlord, during ſuch term, ſhall amount unto two third parts, at the leaſt, of the full improved value of the thing demiſed."

Sect. 3. *Alſo it is enacted*, that "no leaſes, eſtates or intereſts, either of freehold or terms of years, or any uncertain intereſt, not being copyhold or cuſtomary intereſt of, in, to or out of any meſſuages, manors, lands, tenements or hereditaments ſhall be aſſigned, granted or ſurrendered, unleſs it be by deed or note in writing, ſigned by the party ſo aſſigning, granting or ſurrendring the ſame, or their agents thereunto lawfully authoriſed; by writing or by act or operation of law."

Sect. 4. *And it is further enacted*, that "no action ſhall be brought whereby to charge any executor or adminiſtrator, upon any ſpecial promiſe to anſwer damages out of his own eſtate, or whereby to charge the defendant upon any ſpecial promiſe to anſwer for the debt, default or miſcarriages of another perſon, or to charge any perſon upon any agreement made upon conſideration of marriage, or upon any contract or ſale of lands, tenements or hereditaments, or any intereſt in or concerning them, or upon any agreement that is not to be performed within the ſpace of one year from the making thereof, unleſs the agreement upon which ſuch action ſhall be brought, or ſome *memorandum* or note thereof ſhall be in writing, ſigned by the party to be charged therewith, or ſome other perſon by him thereunto lawfully authoriſed."

Sect. 17. *It is enacted*, that "no contract for the ſale of any goods, wares and merchandiſes for the price of 10l. *ſterling*, or upwards, ſhall be allowed to be good, except the buyer ſhall accept part of the goods ſo ſold, and actually receive the ſame, or give ſomething in earneſt to bind the bargain, or in part of payment; or that ſome note or *memorandum*, in writing, of the ſaid bargain be made and ſigned by the parties to be charged, or their agents thereunto lawfully authoriſed."

In the conſtruction of this ſtatute, the following points have been reſolved.

That if there be a parol agreement for the purchaſe of lands, and a bill brought for a ſpecifick execution thereof, and the ſubſtance of the agreement ſet forth in the bill, and *confeſſed by the defendant's anſwer*, that in ſuch caſe the court will decree a ſpecifick execution; becauſe there is no danger of perjury, which was the principal thing the ſtatute intended to prevent. *Abr. Eq.* 19. ſed q.

Alſo a parol agreement which is intended to be reduced into writing, but prevented by *fraud*, may be decreed in equity; as if upon a marriage-treaty, inſtructions are given by the huſband to draw a ſettlement, and by him privately countermanded; and afterwards he draws in the woman, by perſwaſions and aſſurances of ſuch ſettlement to marry him. *Abr. Eq.* 19.

So where a parol agreement was concerning the lending of money on a mortgage, and the conveyance propoſed was an abſolute deed from the mortgagor; and a deed of defeaſance from the mortgagee, and after the mortgagee had got the deed of conveyance, he refuſed to execute the defeaſance, yet it was decreed againſt him on the point of fraud. *Abr. Eq.* 20.

Every *agreement* ought to be perfect, full and compleat, being the mutual conſent of the parties; and ſhould be executed with a recompence, or be ſo certain as to give an action or other remedy thereon. *Plowd.* 5. Any thing under hand and ſeal, which imports an *agreement* will amount to a covenant: and a *proviſo*, by way of *agreement*, amounts likewiſe to a covenant; and action may be brought upon them. 1 *Lev.* 155. An *agreement* being put in writing only for remembrance, doth not change its nature; but if it be put in writing ſealed and delivered, it is of greater force. *Hob.* 79. Where an *agreement* for the purchaſe of lands, being in writing, and ſigned by both the parties, but not ſealed; it was held good in *chancery*, and decreed to be executed. Though where a perſon gives a guinea, &c. earneſt, without *agreement* in writing it is otherwiſe. *Preced. Chanc.* 16, 560.

A note of an *agreement*, ſign'd by one party only, will bind both in equity: ſo it is of *agreements* in *part executed*, by delivering *poſſeſſion* of the lands, though neither party ſign them. *Abr. Caſ. Eq.* 21. But if any eſtate in poſſeſſion or reverſion be made to me, I muſt *agree* to it, before it will be ſettled; for I may refuſe, and ſo avoid it: a releaſe, deed, or bond, is made and delivered to another to my uſe, this will veſt in me without any *agreement* of mine; but, if I *diſagree* to it, I make the deed void. *Dyer* 167. And regularly where a man hath once *diſagreed* to the party himſelf, he can never after *agree*: and obligation being made to my uſe, and tendered to me, if I refuſe it, and after *agree* again and will accept it; now this *agreement* afterwards will not make the obligation good, that was void by the refuſal. *Co. Lit.* 79. 5 *Rep.* 119.

An *agreement* may be as well in the party's abſence, as in his preſence; but a *diſagreement* muſt be to the perſon himſelf to whom made. 2 *Rep.* 69. When an eſtate is made to a *feme covert*, it is good till *diſagreement* without any *agreement* of the huſband: though a new eſtate granted to the wife where ſhe hath an eſtate before, as by the taking of a new leaſe, and making a ſurrender in law, will not veſt till the huſband *agree* to it. *Hob.* 204. A forced agreement of the party is accounted no *agreement*, and therefore he that did *agree* to the thing ſhall not be compelled to perform it. 1 *Lill.* 48.

If an *agreement* be in the nature of a *penalty*, the courts of equity will not relieve againſt it; for the terms ſhall be judged the meaſure of ſatisfaction to the parties. *Preced. Chan.* 102.

III. *As to a remedy, for a breach*, &c.

In many caſes the party injured by breach of an agreement, may have a remedy either by action at Common law, or have recourſe to a court of equity; but here a general rule muſt be obſerved, that wherever the matter of the bill is merely in damages, there the remedy is at law, becauſe the damages cannot be aſcertained by the conſcience of the chancellor, and therefore muſt be ſettled by a jury. See *Abr. Eq.* 16.

But if there be matter of fraud mixt with the damages; as if *A.* ſues *B.* on a covenant at law for damages, and *B.* files a bill for an injunction upon this equitable ſuggeſtion, that the covenant was obtained by fraud, if *A.* files his croſs bill for relief upon that covenant, the court will retain it, becauſe the validity of the covenant is diſputed in that court, and on a head properly cognizable there; if the validity of the deed be eſtabliſhed, the court will direct an iſſue for the *quantum* of the damages. *Abr. Eq.* 17. 1 *Chan. Rep.* 158.

So where the agreement is to do ſomething in *ſpecie*, as to convey lands, execute a deed, &c. there it will be proper to apply to a court of equity for a *ſpecifick* execution to which the party is intitled, if the agreement be good, and ſufficiently proved, when otherwiſe he could only recover *damages* at law. 1 *Chan. Ca.* 42.

But here it muſt be obſerved, that agreements, out of which an equity can be raiſed for a decree in ſpecie, ought to be obtained with all imaginable fairneſs, and without any mixture tending to ſurprize or circumvention; and that they be not unreaſonable in themſelves. *Abr. Eq.* 17.

As where by a marriage agreement the ſon's intended wife was to have more than would have been left for the father (though indebted), his wife and two daughters unpreferred; the court would not decree it, principally, by reaſon of the extremity of it, but left the party to his remedy at law. 2 *Chan. Ca.* 17.

Alſo in equity voluntary conveyances are good againſt the parties, and cannot be revoked, nor will the court interpoſe in behalf of one volunteer againſt another; but if they affect creditors, purchaſers, or younger children, the court will ſet them aſide. 1 *Chan Rep.* 173. 1 *Vern.* 100, 464.

If there be a defective conveyance, without an equitable conſideration, a court of equity will not oblige the party to make it good, tho' there be a covenant for further aſſurances; as if a man makes a feoffment to a ſtranger without livery, the feoffer or heir ſhall not be obliged to make good that feoffment, but it ſhall be conſtrued in equity to be an eſtate at will, as it is in law. 2 *Vent.* 365. 2 *Vern.* 40, 475.

Agri, In our law, denotes arable land in the common fields. *Forteſcue.*

Aid, *(auxilium)* Is all one with the French *aide*, and is generally underſtood to be a ſubſidy granted to the crown. By the ancient law of the land, the king and any lord of the realm might lay an *aid* upon their tenants, for knighting an eldeſt ſon, or marriage of a daughter; but this was taken away by the ſtatute 12 *Car.* 2. *c.* 24. This impoſition, which was often levied in former times, ſeems to have deſcended to us from *Normandy*, or rather from the feudal law. *Grand Cuſtom c.* 35. It is ſaid to differ from tax in ſignification; for taxes were anciently levied at the will of the lord, upon any occaſion whatſoever, but *aids* could not be levied but where it it was lawful and cuſtomary ſo to do; as to make the eldeſt ſon a knight, marry the eldeſt daughter, or to redeem the lord from priſon. By ſtat. 34 *Ed.* 1. *c.* 1. It is ordained that the king ſhall levy no *aid* or tax without his parliament.

Aid of the King, *(auxilium regis)* Is where the King's tenant prays *aid of the king*, on account of rent demanded of him by others. A city or borough, that hold a fee-farm of the king, if any thing be demanded againſt them which belongs thereto, they may pray in *aid of the king*: and the king's bailiffs, collectors, or accountants ſhall have *aid of the king*. In theſe caſes, the proceedings are ſtopp'd till the king's council are heard to ſay what they think fit, for avoiding the king's prejudice: and this *aid* ſhall not in any caſe be granted after iſſue; becauſe the king ought not to rely upon the defence made by another, *Jenk. Cent.* 64. *Terms de Jey* 35. *Stat.* 4 *Ed.* 1. and 14 *Ed.* 3. See the Tables to the Statutes.

Aid-Prayer, *(auxilium petere)* A word made uſe of in pleading, for a petition in court to call in help from another perſon that hath an intereſt in the thing conteſted: this gives ſtrength to the party praying in *aid*, and to the other likewiſe, by giving him an opportunity of avoiding a prejudice growing towards his own right. As tenant for life, by the curteſy, for term of years, *&c.* being impleaded, may pray in *aid* of him in reverſion; that is, deſire the court that he may be called by writ to alledge what he thinks proper for the maintenance of the right of the perſon calling him, and of his own. *F. N. B.* 50.

Aid ſhall be granted to the defendant in *ejectione firmæ*, when the title of the land is in queſtion: leſſee for years ſhall have *aid* in treſpaſs; and tenants at will: but tenant in tail ſhall not have *aid* of him in remainder in fee; for he himſelf hath the inheritance. *Danv. Abr.* 292. In a writ of replevin, the avowry being for a real ſervice, *aid* is granted before iſſue; and in action of treſpaſs after iſſue joined, if there be cauſe, it ſhall be had for the defendant, tho' never for the plaintiff. *Jenk. Cent.* 64. *Fitz. Abr.* 7. There ought to be privity between a perſon that joins in *aid* and the other to whom he is joined; otherwiſe joinder in *aid* ſhall not be ſuffered. *Danv.* 318. There is a prayer in *aid* of *patrons*, by parſons, vicars, *&c.* And between *coparcencers*, where one coparcencer ſhall have *aid* of the other to recover *pro rata*. *Co. Lit.* 341. *b.* And alſo ſervants, having done any thing lawfully in right of their *maſters* ſhall have *aid* of them. *Terms de Ley* 34.

Aile, (of the French *aieul*, i. e. *avus)* Signifies a writ which lies where a man's grandfather or great grandfather (called *Beſaile)* being ſeiſed of lands and tenements in fee-ſimple, the day that he died, and a ſtranger abateth or entreth the ſame day, and diſpoſſeſſes the heir of his inheritance. *F. N. B.* 222. The aunt and the neice ſhall join in a writ of *aiel* of the ſeiſin of their grandfather. And the writ run thus: *Rex vic. &c. Prec.* A. B. *quod juſte, &c. redd.* B. & D. *unum meſſuagium, &c. de quo* D. avus *præd.* B. & *proavus præd.* D. *cujus hæred. ipſi ſunt, fuit ſeiſitus, &c.*

Aſiamenta, Includes any liberty of paſſage, open way, water-courſe, *&c.* for the *eaſe* and accommodation of tenants. *Kitch.*

Al, *(ald)* Words which begin with *al* or *ald* in the names of places, ſignify antiquity; as *Alborough*, *Aldworth*, *&c.*

Alanerarius, A manager and keeper of dogs, for the ſport of hawking, from *alanus*, a dog, known to the ancients. *Du Freſne.* But Mr. *Blount* renders it a faulconer. —Robertus *de* Chedworth *vice-com.* Linc. *liberavit lvi s. viii d.* Johanni de Bellovento, *pro putura ſeptem leporariorum & trium falconum &* alanerarii & *pro vadiis unius bracenarii.* 16 *E.* 1.

Alba, (the *alb)* A ſurplice or white ſacerdotal veſt, anciently uſed by officiating prieſts.

Alba firma, This word is uſed by my lord *Coke*, and ſeems to ſignify a tenure.—*Duplex eſt tenura in com.* Weſtmorland, *ſcilicet, una per* albam firmam, & *alia per cornagium, &c.* 2 Inſt. 10. When quit-rents, payable by freeholders of manors, were reſerved in ſilver, or white money, they were anciently called *white rents*, or *blanch farms*, *reditus albi*; in contradiſtinction to rents reſerved in work, grain, &c. which were called *reditus nigri*, or *black maile*. 2 Inſt. 19.

In *Scotland* this kind of ſmall payment is called *blench-holding*, or *reditus albæ firmæ*. *Black. Com.* 2 V. 42. n.

Albergellum, The ſame with *halſberga: omnis homo, &c. habet* albergellum & *capellum ferreum, lanceam & gladium.* It here ſignifies a defence for the neck. *Hoveden* 611.

Albinatus jus, Is the *droit d'aubaine* in *France*, whereby the king, at the death of an alien, is entitled to all he is worth, unleſs he has peculiar exemption. *Black. Com.* 1 V. 372. *Albinatus* is derived from *alibi natus*. *Spelm. Gloſs.* 24.

Album, Is a word made uſe of for white rent, paid in ſilver. *Rot. Parl.* 6 *H.* 3.

Alder, Signifies the firſt; as *alder beſt*, is the beſt of all; *alder lieſeſt*, the moſt dear.

Alderman, (Sax. *ealderman*, Lat. *aldermannus)* Hath the ſame ſignification in general as ſenator, or ſenior: but at this day, and long ſince, thoſe are called *aldermen* who are aſſociates to the civil magiſtrate of a city or town corporate. *Stat.* 24 *H.* 8. *cap.* 13. An *alderman* ought to be an inhabitant of the place, and reſident where he is choſen; and if he removes, he is incapable of doing his duty in the government of the city or place, for which he may be disfranchiz'd. *Mod. Rep.* 36. *Alderman Langham* was a freeman of the city of *London*, and choſen *alderman* of ſuch a ward, and being ſummoned to the court of *aldermen* he appeared, and the oath to ſerve the office was tendered to him, but he refuſed to take it, in contempt of the court, *&c.* whereupon he was committed to *Newgate*; and it was held good. *March Rep.* 179.

The *aldermen* of *London*, *&c.* are exempted from ſerving inferior offices; nor ſhall they be put upou aſſiſes, or ſerve on juries, ſo long as they continue to be *aldermen*. 2 *Cro* 585.

In *Spelman's Gloſſary* we find that we had anciently a title of *aldermannus totius Angliæ*; witneſs this inſcription on a tomb in *Ramſey abbey*—*Hic requieſcit* D. Ailwinus *inclyti regis* Eadgari *cognatus*, *totius* Angliæ aldermannus, & *hujus ſacri cænobii miraculoſus fundator*, And this officer was in nature of Lord Chief Juſtice of *England*. *Spelm.* *Alderman* was one of the degrees of nobility among the *Saxons*, and ſignified an earl; ſometimes applied to a place, it was taken for a general, with a civil juriſdiction as well as military power; which title afterwards was uſed for a judge, but it literally imports no more than elder.

There was likewiſe *aldermannus hundredi:* which dignity was firſt introduced in the reign of *Hen.* 1. Among his laws, *cap.* 8. we read, *præſit autem ſingulis hominum novenis decimus, et toti ſimul hundredo unus de melioribus, et vocatur* aldermannus, *qui Dei leges et hominum jura vigilanti ſtudeat obſervantia promovere.* Du Freſne. Cowel.

Alæ Eccleſiæ, The wings or ſide-iſles of the church, from the French *Les ailes de l'Eſgliſe.—Ad baſes pilariorum murus erat tabulis marmoreis compoſitus, qui chorum cingens & preſbyterium, corpus eccleſiæ lateribus, quæ* alæ *vocantur, dividebat.* Gervaſ. Dorobern' *in deſcript. eccl.* Cantuar.'

Alecenarium, A ſort of hawk called a *lanner*. See *Putura*.

Alehouſes, Are to be licenſed by juſtices of peace, who take recognizances of alehouſe-keepers not to ſuffer diſorders in their houſes, and they have power to put down *alehouſes*, *&c.* But the act is not to reſtrain ſelling of *ale* in fairs. 5 & 6 *Ed.* 6. *c.* 25. *Alehouſe-keepers* are liable to a penalty of 20*s.* for keeping *alehouſes* without licence; not exceeding 40*s.* nor under 10*s.* for ſelling *ale* in ſhort meaſure; and 10*s.* for permitting tippling, *&c.* and perſons retailing *ale* or beer, *alehouſe-keepers*, *&c.* ſhall ſell their *ale* by a full ale quart or pint, according to the *ſtandard* in the *Exchequer*, marked from the ſaid ſtandard; and ſub-commiſſioners, or collectors of exciſe, are to provide ſubſtantial ale quarts and pints in every town in their diviſions; and mayors and chief officers to mark meaſures, or forfeit 5*l.* by ſtatute 1 *Jac.* 1. *c.* 9. 3 *Car.* 1. *c.* 3. 11 & 12 *W.* 3. *c.* 15. See *Inns*, *Brewers*.

By the 17 *Geo.* 2. *c.* 17. *ſect.* 18. A penalty is inflicted on *alehouſe-keepers* having licence to retail ſpirituous liquors, exerciſing particular trades, during the continuance of ſuch licence. And by the 30 *Geo.* 2. *c.* 24. *ſect.* 14. A penalty likewiſe is inflicted on publicans permitting journeymen, *&c.* to game in their houſes.

By the 2 *Geo.* 2. *c.* 28. *ſect.* 11. Licences are to be granted at public meetings of the juſtices only.

By the ſtat. 26 *Geo.* 2. *c.* 31. Juſtices on granting licences are to take recogniſances in 10*l.* with ſureties in the like ſum for the maintaining good order. Licences to be granted to none, not licenſed the preceding year, unleſs they produce certificates of their good character. Licence only to extend to that place for which it was granted. Licences to be granted on the firſt of *September*, or within twenty days after, yearly, and to be for one year only; penalty of ſelling ale, *&c.* without a licence, firſt offence 40*s.* ſecond offence 4*l.* third offence 6*l.*

By the 6 *Geo.* 1. *c.* 21. *ſect.* 56. Ale-licences are to be duly ſtamped, before recognizances taken.

By 26 *Geo.* 2. *c.* 13. *ſect.* 12. Juſtices being brewers, malſters, diſtillers, or victuallers, are reſtrained from granting licences.

The ſtamp duty by ſtat. 9 *Ann.* *c.* 23. is one ſhilling, and by ſtat. 29 *Geo.* 2. *ſect* 1. every licence is charged with a further duty or ſtamp of 20*s.* And by laſt-mentioned act, *ſect.* 20. If any perſon ſhall write any licence without ſuch ſtamp, he ſhall forfeit 10*l.* with coſts, to be recovered as ſtamp penalties; and the licence ſhall not be available till the duty ſhall be paid, and alſo a penalty of 5*l.*

By the ſtatutes 16 *Geo.* 2. *c.* 8. *ſect.* 8. and 24 *Geo.* 2. *c.* 40. *ſect.* 9. No perſon ſhall retail any diſtilled ſpirituous liquors, without a licence from the officer of exciſe, taken out ten days before, for which he ſhall pay 40*s.* yearly. And by ſtatutes 16 *Geo.* 2. *c.* 8. *ſect.* 11. and 29 *Geo.* 2. *c.* 12 *ſect.* 22. Such perſons ſhall be firſt licenſed to ſell ale or ſpirituous liquors by two or more juſtices of the peace. And by the ſtatutes 9 *Geo.* 2. *c.* 23. *ſect.* 14. and 24 *Geo.* 2. *c.* 40. *ſect.* 28, 29. The juſtice's clerk ſhall have 2*s.* 6*d.* and no more for ſuch licence.

Aler ſan jour, *(Fr.)* To go without day, *viz.* to be finally diſmiſſed the court, becauſe there is no further day aſſigned for appearance. *Kitch.* 146.

Ale-Silver, A rent of tribute annually paid to the lord-mayor of *London*, by thoſe that ſell *ale* within the liberty of the city. *Antiq. Purvey.* 183.

Aleſtake, A may-pole called *aleſtake*, becauſe the country people drew much *ale* there: but it is not the common may-pole, but rather a long ſtake drove into the ground, with a ſign on it, that *ale* was to be ſold.

Ale-taſter, Is an officer appointed in every court leet, ſworn to look to the aſſize and goodneſs of *ale* and beer, *&c.* within the precincts of the lordſhip. *Kitch.* 46. In *London* there are *ale-conners*, who are officers appointed to *taſte ale* and beer, *&c.* in the limits of the city.

Alfet, (Sax. *alfæth*) A cauldron or furnace, wherein boiling water was put for a criminal to dip his arm in up to his elbow, and there hold it for ſome time. *Du Cange*.

Alias, A ſecond or further writ, iſſued from the courts at *Weſtminſter*, after a *capias*, *&c.* ſued out without effect.

Alias dictus, Is the manner of deſcription of a defendant, when ſued on any ſpecialty, as a bond, *&c.* where after his *name*, and common addition, then comes the *alias dict.* and deſcribes him again by the very name and addition, whereby he is bound in the writing. *Dyer* 50. *Jenk. Cent.* 119. 'Tis unneceſſary to ſet forth the *alias dict.* therefore better to omit it, as a variance may be fatal. See *Miſnomer*.

Alien, *(alienus, alienigena)* One born in a ſtrange country, out of the allegiance of the king: but a man born out of the land, ſo as it be within the limits of the king's obedience beyond ſea; or born of *Engliſh* parents out of the obedience of the king, if the parents at the time of the birth were of ſuch obedience, is no *alien*.

If an *Engliſh* merchant goes beyond ſea, and takes an alien wife, the iſſue ſhall inherit him; ſo it is if an *Engliſh-woman* goes beyond ſea and takes an alien huſband, the children there born ſhall inherit her; for though the ſtatute 25 *Ed.* 3. *c.* 2. be in the conjunctive, yet it hath been conſtrued in the disjunctive to hinder this diſability; and the word *and* being taken inſtead of *or*, as ſometimes it is, it being unreaſonable that the child ſhould not inherit the parent that is of ability, for the defect of the other that is not. *Cro. Car.* 601, 602. *Lit. Rep.* 22, 24. *S. C.* 1 *Sid.* 198. *S. C.* cited. See *Lit. Rep.* 27. and *Bro.* tit. *Denizen* 6.

There are two incidents regularly that are neceſſary to make a ſubject born; firſt, that his parents, at the time of his birth, be under the actual obedience of the king; Secondly, that the place of his birth be within the king's dominions. 7 *Rep.* 18. *Calvin's caſe* And it is the place of the birth that makes the diſability of an *alien* to have lands, *&c.* The blood is not the diſability, but the place where born. *Cro. Jac.* 539. And if one born out of the king's obedience come and reſide in *England*, his children, begotten and born here, are not *aliens* but denizens. 7 *Rep.* 18. *Calvin's caſe.*

Children of an ambaſſador in a foreign country, by a wife being an *Engliſh* woman, by the common law, are natural-born ſubjects, and not *aliens*. 7 *Rep.* 11. And if an *Engliſh* merchant living beyond ſea marries a wife there, and hath a child by her, and dies, this child is born a denizen, and ſhall be heir to him, notwithſtanding the wife be an *alien*. *Cro. Car.* 605. *March* 91. Thoſe who are born in the *Engliſh* plantations, are ſubjects born. *Danv. Abr.* 324.

An *alien* cannot hold land by deſcent or purchaſe, or be tenant by the curteſy, or in dower. 5 *Rep.* 502. But all perſons, being the king's natural-born ſubjects, may inherit, as heirs to their anceſtors, though their anceſtors were *aliens*, by ſtatute 11 & 12 *W.* 3. *c.* 6. In caſe an *alien* purchaſe land, the king upon office found ſhall have it. *Co. Lit.* 2. So if an alien purchaſe any eſtate of freehold in houſes, lands, tenements or hereditaments, the king upon office found ſhall have them. If an alien be made denizen and purchaſe land, and die without iſſue, the lord of the fee ſhall have the eſcheat, and not the king. But as to a leaſe for years, there is a difference between a leaſe for years of a houſe for the habitation of a merchant ſtranger being an alien, whoſe king is in league with ours, and a leaſe for years of lands, meadows, paſtures, woods, and the like. For if he take a leaſe for years of lands, meadows, &c. upon office found the king ſhall have it. But of a houſe for habitation, he may take a leaſe for years as incident to commerce, for without an habitation he cannot merchandize or trade. But if he depart or relinquiſh the realm, the king ſhall have the leaſe. So it is if he die poſſeſſed thereof, neither his executors or adminiſtrators ſhall have it, but the king: for he had it only for habitation, as neceſſary to his trade or traffick, and not for the benefit of his executor or adminiſtrator. But if the alien be no merchant, then the king ſhall have the leaſe for years, tho' it were for his habitation, and ſo it is if he be an alien enemy. *Co. Lit.* 2 *b.* This doctrine is rather obſolete.

As an alien cannot inherit himſelf, ſo he cannot be inherited; the grandfather born in *England*, the ſon an alien, the grandſon born in *England*, the grandſon ſhall not inherit the grandfather, becauſe he muſt then repreſent the father, who cannot be repreſented; but if the father be an alien, and two brothers born in *England*, they may inherit each other, becauſe the deſcent is immediate, and they don't take by repreſentation of the father. 1 *Sid.* 193, 198. 1 *Vent.* 413 *to* 429. *Hard.* 224. *Co. Lit.* 8. *Cont.*

If the eldeſt ſon be an alien, the younger brother born in *England* ſhall inherit the father; otherwiſe it were if the eldeſt ſon were attainted, becauſe the eldeſt ſon and all his deſcendants are before the younger brother, and the younger cannot inherit before that line is extinct; and it is a foreign preſumption, to ſuppoſe that any of that line ſhould come over and have children in *England*; but the perſon attainted is ſuppoſed to have all his children reſiding in the kingdom under the king's allegiance; therefore there is a line continuing before that of the younger brother. 1 *Vent.* 417. *Co. Lit.* 8. *a.* 1 *Sid.* 195.

For the ſame reaſon, if an alien hath four ſons, the two eldeſt aliens, and the two younger naturalized, and one of the younger ſons purchaſe lands and dies, the eldeſt brother having iſſue born within the realm, the younger brother, and not the iſſue of the eldeſt, ſhall inherit. *Hard.* 224.

If an alien hath a ſon an alien, and afterwards is made a denizen, and hath a ſecond ſon, the ſecond ſon ſhall inherit though the eldeſt ſon be alive. *Cro. Jac.* 539. Vide *Co. Lit.* 8. *a.* &c. very full on this ſubject.

If an alien enemy comes here *ſub ſalvo conductu*, he may maintain an action. So if an alien amy come hither in time of peace *per licentiam domini regis*, as the *French* proteſtants did, and lives here *ſub protectione*, and a war afterwards happens between the two nations, he may maintain an action, for ſuing is but a conſequential right of protection; and therefore an alien enemy, that is here in peace under protection, may ſue a bond; *aliter* of one commorant in his own country. 1 *Salk.* 46.

Aliens may obtain goods and perſonal eſtate, by trade, &c. And may maintain actions for the ſame; they may alſo have actions of aſſault and battery, and for ſupport of their credit. 2 *Bulſt.* 134. But they cannot bring any real action, unleſs it be for an houſe for neceſſary habitation, being for the benefit of trade. 7 *Rep. Calvin's Caſe.* And an *alien* enemy cannot maintain any action whatſoever, nor get any thing lawfully within this realm. *Terms de Ley* 36.

An alien friend may be an adminiſtrator, and ſhall have adminiſtration of leaſes, as well as perſonal things, becauſe he hath them in another's right, and not to his own uſe. *Cro. Car.* 8. 1. *Vent.* 417. *S. C.* cited.

But it has been long doubted, whether an alien enemy ſhould maintain an action as executor; for on the one hand it is ſaid, that by the policy of the law, alien enemies ſhall not be admitted to actions to recover effects which may be carried out of the kingdom, to weaken ourſelves and enrich the enemy; and therefore publick utility muſt be preferred to private convenience; but on the other hand it is ſaid, that theſe effects of the teſtator are not forfeited to the king by way of repriſal, becauſe they belong not to the alien enemy, for he is to recover them for others; and if the law allows ſuch alien enemies to poſſeſs the effects as well as an alien friend, it muſt allow them power to recover, ſince in that there is no difference, and by conſequence he muſt not be diſabled to ſue for them; if it were otherwiſe it would be a prejudice to the king's ſubjects, who could not recover their debts from the alien executor, by his not being able to get in the aſſets of the teſtator. *Cro. Eliz.* 683. *Molloy* 870. *Carter* 49, 191. *Skin.* 370.

An *alien* enemy coming into this kingdom, and taken in war, ſhall ſuffer death by the martial law; and not be indicted at the Common law, for the indictment muſt conclude *contra ligeantiam ſuam*, &c. And ſuch was never in the protection of the king. *Molloy de jur. Marit.* 417. *Aliens*, living under the protection of the king, may have the benefit of a general pardon. *Hob.* 271. No *alien* ſhall be returned on any jury, nor be ſworn for trial of iſſues between ſubject and ſubject, &c. but where an *alien* is party in a cauſe depending, the inqueſt of jurors are to be half denizens, and half *aliens*: but in caſes of high treaſon, this is not allowed. 2 *Inſt.* 17. An *alien* ſhall not have any vote in choice of knights of the ſhire, or burgeſſes to parliament. *Hob.* 270. And perſons that are *aliens*, or born out of the realm, are incapable to be members of parliament, enjoy offices, &c. *Stat.* 12 *W.* 3. *cap.* 2.

Aliens are to take an oath to be true to the king, and obedient to his laws. Vide 14 *H.* 8. 21 *H.* 8. *cap.* 16. 32 *H.* 8. *c.* 16. No *alien* ſhall be a factor abroad, in the *Engliſh* plantations, under penalties. *Stat.* 12 *Car.* 2. *cap.* 18. See *Artificers.* See *Stat.* 11 & 12 *W.* 3. *c.* 6. for enabling ſubjects to inherit, notwithſtanding their father and mother were *aliens.* And *Stat.* 25 *Geo.* 2. *c.* 39. for obviating ſome doubts thereupon. See farther titles **Denizen** **Naturalization.** *Vide* alſo, *Com. Dig.* 1 V. 320. *tit. Alien*, & *Seq.*

The moſt uſeful and beſt pleading in actions brought by an alien, is both excluſive and incluſive, viz. *extra ligeantiam domini regis*, &c. *et infra ligeantiam alterius regis.* 7 *Rep.* 16. *b.* cites 9 *E.* 4. 7. *et Lib. Intrat. fo.* 244. But for the pleadings under this title ſee title **Abatement.**

Alienation, (from *alienare* to alien) A tranſferring the property of a thing to another: It chiefly relates to lands and tenements; as to *alien* land in fee, is to ſell the fee-ſimple thereof, &c. And to *alien* in mortmain, is to make over lands or tenements to a religious houſe or body politick; for which the king's licence is to be obtained. *Stat.* 15 *R.* 2. *c.* 5. Fines for *alienations* are taken away by ſtatute; except fines due by particular cuſtoms of manors. 12 *Car.* 2. *c.* 24. §. 1. *Danv. Abr.* 327. All perſons who have a right to lands may generally *alien* them to others: but ſome *alienations* are forbidden: as an *alienation* by a particular tenant, ſuch as tenant for life, &c. which incurs a forfeiture of the eſtate. *Co. Lit.* 118. For if leſſee for life, by livery *aliene* in fee, or make a leaſe for the life of another, or gift in tail, it is a forfeiture of his eſtate: ſo if tenant in dower, tenant for another's life, tenant for years, &c. do *aliene* for a greater eſtate than they lawfully may make. *Co. Lit.* 233, 251. Conditions in feoffments, &c. that the feoffee ſhall not *aliene*, are void. *Co. Lit.* 206. *Hob.* 261. And it is the ſame where a man poſſeſſed of a leaſe for years, or other thing, gives and ſells his whole property therein, upon ſuch condition: but one may grant an eſtate in fee, on condition that the grantee ſhall not *aliene* to a particular perſon, &c. And where a reverſion is in the donor of an eſtate, he may reſtrain an *alienation* by condition. *Lit.* 361. *Wood's Inſt.* 141. Eſtates in tail, for life, or years, where the whole intereſt is not parted with, may be made with condition not to *aliene* to others, for the preſervation of the lands granted in the hands of the firſt grantee.

Alimony, *(alimonia)* Signifies nouriſhment or maintenance: and in a legal ſenſe, it is taken for that allowance which a married woman ſues for and is entitled to, upon any occaſional ſeparation from her huſband. *Terms de Ley* 38. Where a woman is divorced *a menſa & thoro*, ſhe may ſue her huſband in her own name for *alimony* or maintenance out of the huſband's eſtate, during the ſeparation, either in the *Chancery* or *Spiritual* court; and it will be allowed, except it be in caſes of elopement and adultery. *Co. Lit.* 235. *a.* But the *Spiritual* court is the proper court to ſue in for *alimony:* and the not allowing a wife maintenance is not an offence within the ſtatute 1 *Eliz. c.* 1. but a neglect of the huſband's duty, and a breach of his vow. 12 *Rep.* 30. A man may be ſued in the *Spiritual* court for beating his wiſe, and he may be ordered to pay her ſo much *per* week *alimony:* but a prohibition hath been granted by *B. R.* in ſuch a caſe; and the wife may have ſureties of the peace for unreaſonable beating her. *Trin.* 11 *Jac.* 1. *Moor* 874.

Alimony was anciently expreſſed by *rationabile eſtoverium*, reaſonable maintenance.—*Rex vic.* Bucks *ſalutem. Præcipimus tibi quod de maritagio* Emmæ de Pinkney *uxoris* Laurentii Penire, *qui excommunicatus eſt, eo quod prædictam* Emmam *affectione maritali non tractat, eidem Emmæ* rationabile eſtoverium *ſuum invenias, donec idem* Laurentius *vir ſuus eam tanquam uxorem ſuam tractaverit, ne iteratus clamor ad nos inde perveniat.*—Rot. 7 Hen. 3.

Allaunds, *ab alanis, Scythiæ gente,* Hare-hounds.

Allay, (Fr. in Lat. *allaya)* A word uſed for the tempering and mixture of other metals with ſilver or gold. *Stat.* 9 *H.* 5. This *allay* is to augment the weight of the ſilver or gold, ſo as it may defray the charge of coinage, and to make it the more fuſile. A pound weight of ſtandard gold, by the preſent ſtandard in the mint, is twenty-two carats fine, and two carats *allay:* and a pound weight of right ſtandard ſilver conſiſts of eleven ounces two-penny weight of fine ſilver, and eighteen penny weight of *allay. Lound's Eſſay upon Coins, pag.* 19. & 9 *H.* 5. *St.* 1. *c.* 11. One penny weight of angel gold is worth four ſhillings and two-pence; of crown gold, three ſhillings and ten-pence: and one ounce of pure ſilver is worth five ſhillings and four-pence; and with *allay*, five ſhillings. *Mod. Juſt. tit. Coin, pag.* 120.

Allegiance, *allegiantia*, (formerly called *ligeance*, from the Latin *alligare & ligare*, i. e. *ligamen fidei)* Is the ſworn *allegiance*, or faith and obedience, which every ſubject owes to his prince. It is either perpetual, where one is a ſubject born; or where one hath the right of a ſubject by naturalization, &c. or it is temporary, by reaſon of reſidence in the king's dominions. To ſubjects born, it is an incident inſeparable; and as ſoon as born they owe by birth-right obedience to their ſovereign: and it cannot be confined to any kingdom, but follows the ſubject whereſoever he goeth. The ſubjects are hence called *liege people*, and are bound by this *allegiance* to go with the king in his wars, as well within as without the kingdom. *Co. Lit.* 2, 329. 2 *Inſt.* 741.

All perſons above the age of twelve years are to be required to take the oath of *allegiance* in courts-leet. And there are ſeveral ſtatutes requiring the oath of *allegiance* and ſupremacy, &c. to be taken under penalties: juſtices of peace may ſummon perſons above the age of eighteen years to take theſe oaths. 1 *Eliz. c.* 1. 1 *W. & M. c.* 1. & *c.* 8. 1 *Ann. Stat.* 1. *c.* 22. For the other ſtatutes reſpecting allegiance ſee 5 *Eliz. c.* 1. *ſect.* 5.—11 *El. c.* 1. —3 *Jac.* 1. *c.* 4.—7 *Jac.* 1. *c.* 6.—25 *Car.* 2. *c.* 2.—7 & 8 *W.* 3. *c.* 24. & 27.—13 & 14 *W.* 3. *c.* 6.—1 *Ann. c.* 22.—6 *Ann. c.* 14.—8 *Ann. c.* 15.—1 *Geo.* 1. *c.* 13.—2 *Geo.* 2. *c.* 31.—And ſee title **Oaths**.

Allegiare, To defend or juſtify by due courſe of law. —*Si quis ſe velit* allegiare *ſecundum regis Weregildum hoc faciat.* Leges Alured, cap. 4. Spelm.

Aller Good, The word *aller* is uſed to make what is added to ſignify ſuperlatively; as *aller good* is the greateſt good.

Alleviare, Signifies to levy or pay an accuſtomed fine. Some of our ancient hiſtorians mention ſuch fines paid by perſons to their lords for redemption of their daughters, or for a licence to marry them. *Brady's Pref. to Eng. Hiſt.* 64.

Allocation, *(allocatio)* In a legal ſenſe is an allowance made upon account in the *Exchequer*; or more properly a placing or adding to a thing.

Allocatione Facienda, A writ for allowing to an accountant ſuch ſums of money as he hath lawfully expended in his office; directed to the lord treaſurer, and barons of the *Exchequer*, upon application made. *Reg. Orig.* 206.

Allocato Comitatu, Is a new writ of *exigent* allowed, before any other *county court* holden, on the former not being fully ſerved, or complied with, &c. *Fitz. Exig.* 14.

Allodial. This is where an inheritance is held without any acknowledgment to any lord or ſuperior; and therefore is of another nature from that which is feodal. *Allodial* lands are free lands, which a man enjoys without paying any fine, rent, or ſervice to any other. See *Alodium.* And *Black Com.* 2 *V.* 47, 60, 105.

Alluminor, (from the Fr. *allumer*, to lighten) Is uſed for one who coloureth or painteth upon paper or parchment; and the reaſon is, becauſe he gives light and ornament by his colours to the letters or other figures. The word is uſed *ſtat.* 1 *R.* 3. *c.* 9.

Almanack, Is part of the law of *England*, of which the courts muſt take notice, in the returns of writs, &c. but the *almanack* to go by is that annex'd to the *Book of Common Prayer.* Mod. Caſ. 41, 81. See *Year* and *Stat.* 24 *G.* 2. *c.* 23. and 25 *Geo.* 2. *c.* 30. for correcting the calendar and regulating the commencement of the year.

The diverſity of fixed and moveable feaſts was condemned *per tot. cur.* for we know neither the one nor the other but by the almanacks, and we are to take notice of the courſe of the moon. 6 *Mod.* 150, 160. *Paſch.* 3 *Ann. B. R.* in the caſe of *Harvey* v. *Broad.*—*ibid.* 196. *S. C.* and *Holt* Ch. J. ſaid, that at the council of *Nice* they made a calculation moveable for *Eaſter* for ever, and that is received here in *England*, and become part of the law; and ſo in the calendar eſtabliſhed by act of parliament.—2 *Salk.* 626. *pl.* 8. *S. C.* accordingly; *per cur.*

Whether ſuch a day of the month was on a *Sunday* or not, and ſo not a *dies juridicus*, is triable by the country or the almanack. *Dyer* 182. *pl* 55. *Vide poſt.*

It was ſaid that the court might judicially take notice of almanacks, and be informed by them; and cited *Robert's* caſe in the time of Lord *Catline*; and *Coke* ſaid, that ſo was the caſe of *Galery* v. *Banbury*, and judgment accordingly. 1 *Leo.* 242. *pl.* 328. *Paſch.* 29 *Eliz. B. R. Page* v. *Fawcett.*——*Cro. Eliz.* 227. *pl.* 12. *S. C.* and held that examination by almanacks was ſufficient, and a trial *per pais* not neceſſary, tho' the error aſſigned, *viz.* that the 16 *Feb.* on which day judgment was ſaid to be given, was on a *Sunday*, was an error in fact; and the judgment was reverſed.

Almaria, for *armaria*: The archives of a church, a library.——*Omnia etiam eccleſiæ* almaria *confregit, chartas & privilegia quædam igne cremavit.* Gervaſ. Dorob. in R. 2.

Almner, or **Almoner**, *(eleemoſynarius)* An officer of the king's houſe, whoſe buſineſs it is to diſtribute the king's *alms* every day. He ought to admoniſh the king to beſtow his alms, eſpecially upon ſaints days and holidays; and he is likewiſe to viſit the ſick, widows that are poor prisoners and other neceſſitous people, and to relieve them under their wants; for which purpoſe he hath the forfeitures of deodands, and the goods of *felo's de ſe*, allowed him by the king. *Fleta, lib.* 2. *cap.* 22. The lord *almoner* has the diſpoſition of the king's diſh of meat, after it comes from the table, which he may give to whom he pleaſes; and he diſtributes four-pence in money, a two-penny loaf of bread, and a gallon of beer; or inſtead thereof three-pence daily at the court gate to twenty-four poor perſons of the king's pariſh, to each of them that allowance. This officer is uſually ſome biſhop.

Almsfeoh, or *almeſfeoh*, Saxon for *alms money:* It has been taken for what we call *Peter Pence*, firſt given by *Ina* king of the *Weſt Saxons*, and anciently paid in *England* on the firſt of *Auguſt.* It was likewiſe called *romeſeoh, romeſcot*, and *heorthpening.* Selden's Hiſt. Tithes 217.

Almutiam, A garment which covered the head and ſhoulders of prieſts. *Quæſivit epiſcopus in quali habitu eſſet? Reſponſum eſt, quod in tunica de Burneto &* almutio *ſine cuculla.* W. Thorn. 1330.

Alnage, (Fr. *aulnage)* Signifies a meaſure, particularly the meaſuring with an ell. *Stat.* 17 *Ed.* 4 cap. 5.

Alnager, or *aulnager*, (Fr. *alner*, Lat. *ulniger)* Is properly a meaſurer by the ell; and the word *aulne* in *French* ſignifieth *an ell.* An *aulnager* with us is a public ſworn officer of the king's, whoſe place it is to examine into the aſſiſe of cloths, made throughout the land, and to fix ſeals upon them; and another branch of his office is to collect a ſubſidy or *aulnage* duty granted to the king. He hath his power by *Stat.* 25 *Ed.* 3. *Stat.* 4. *c.* 1. and ſeveral other ancient ſtatutes; which appoint his fees, and inflict a puniſhment for putting his ſeal to deceitful cloth, *&c. viz.* a forfeiture of his office, and the value. 27 *Ed.* 3. *Stat.* 1. *c.* 4. 3 *R.* 2. *c.* 2. But there are now three officers belonging to the regulation of clothing, who bear the diſtinct names of *ſearcher*, *meaſurer*, and *aulnager*; all which were formerly compriſed in one perſon. 4 *Inſt.* 31. And becauſe the ſubjects of this kingdom ſhould not be abuſed, an office of *ſearching* is eſtabliſhed by act of parliament. See the Oct. Index to the Stats. *tit. Drapery.*

By 11 & 12 *W.* 3. *c.* 20. Alnage duties are taken away.

Alnetum, A place where *alders* grow; or a grove of *alder trees*.——Alnetum *eſt ubi alni arbores creſcunt.*—— Domeſday-Book.

Alodium, or *allodium*, In *Domeſday* ſignifies a free manor: and *alodarii* lords of manors, or lords paramount. *Quando moritur* alodarius, *rex inde habet relevationem terræ, &c.* Domeſday, tit. Kent. Co. Lit. 1, 5. See **Fee**, and Dalrymple's Feudal Tenures. Alſo *Black. Com.* 2 V. 42, 60, 105.

Aloberium, *A purſe.* This word is mentioned in *Fleta, lib.* 2. *c.* 82. *par.* 2.

Altarage, *(altaragium)* The offerings made upon the *altar*, and alſo the profit that ariſes to the prieſt by reaſon of the *altar*, *obventio altaris. Mich.* 21 *Eliz.* It was declared that by *altarage* is meant tithes of wool, lambs, colts, calves, pigs, chickens, butter, cheeſe, fruits, herbs, and other ſmall tithes with the offerings due: the caſe of the vicar of *Weſt-Haddon* in *Northamptonſhire.* But the word *altarage* at firſt is thought to ſignify no more than the caſual profits ariſing to the prieſt, from the peoples voluntary oblations at the *altar*; out of which a portion was aſſigned by the parſon to the vicar: ſince that, our parſons have generally contented themſelves with the greater profits of glebe, and tenths of corn and hay; and have left the ſmall tithes to the officiating prieſts: and hence it is that vicarages are endowed with them. *Terms de ley* 39. 2 *Cro.* 516.

It ſeems to be certain, that the religious, when they allotted the altarage in part or in whole to the vicar or chaplain, did mean only the cuſtomary and voluntary offerings at the altar, for ſome divine office or ſervice of the prieſt, and not any ſhare of the ſtanding tithes, whether predial or mixt. *Kenn. Paroch. Antiq. Gloſſ.*

In the caſe of *Franklyn* and the maſter and brethren of *St. Croſs*, *T.* 1721, it was decreed, that where *altaragium* is mentioned in old endowments, and ſupported by uſage, it will extend to ſmall tithes, but not otherwiſe. *Bumb.* 79.

Alteration, *(alteratio)* Is the changing of a thing: and when witneſſes are examined upon exhibits, *&c.* they ought to remain in the office, and not to be taken back into private hands, by whom they may be altered. *Hob.* 254.

Alto & Baſſo. By this is meant the abſolute ſubmiſſion of all differences. *Pateat univerſis per præſentes quod* Willielmus T. *de* Y & Thomas G. *de* A. *poſuerunt ſe in* alto & baſſo *in arbitrio quatuor hominum, viz.—de quadam querela pendente, &c. Et prædicti quatuor homines judicaverunt, &c.* Dat. anno 2 Hen. 5.

Amabyr, vel **Amvabyr**, A cuſtom in the honour of *Clun*, belonging to the earls of *Arundell*: *Pretium virginitatis domino ſolvendum.* LL. *eccl. Gul.* Howeli Dha, *regis* Walliæ. *Puella dicitur eſſe deſertum regis, & ob hoc regis eſt de ea* amvabyr *habere.* This cuſtom *Henry* earl of *Arundel* releaſed to his tenants. *Anno* 3 & 4 *P.* & *M.*

Ambactus, A ſervant or client. *Cowel.*

Ambaſſador, *(legatus)* Is a ſervant of the ſtate, repreſenting the king in a foreign country, to take care of the public affairs. And *ambaſſadors* are either ordinary, or extraordinary; the ordinary *ambaſſadors* are thoſe who reſide in the place whither ſent; and the time of their return being indefinite, ſo is their buſineſs uncertain, ariſing from emergent occaſions; and commonly the protection and affairs of the merchants is their greateſt care: the extraordinary *ambaſſadors* are made *pro tempore*, and employed upon ſome particular great affairs, as condolements, congratulations, or for overtures of marriage, *&c.* Their equipage is generally very magnificent; and they may return without requeſting of leave, unleſs there be a reſtraining clauſe in their commiſſion. *Molloy* 144.

An agent repreſents the affairs only of his maſter; but an *ambaſſador* ought to repreſent the greatneſs of his maſter, and his affairs. *Ibid.* By the laws of nations, none under the quality of a ſovereign prince can ſend any *ambaſſador*: a king that is deprived of his kingdom and royalty, hath loſt his right of legation. No ſubject, though ever ſo great, can ſend or receive an *ambaſſador*; and if a vice-roy does it, he will be guilty of high treaſon: the electors and princes of *Germany* have the privilege of ſending and reception of *ambaſſadors*; but it is limited only to matters touching their own territories, and not of the ſtate of the empire. It is ſaid there can be no *ambaſſador* without letters of credence from his ſovereign, to another that hath ſovereign authority: and if a perſon be ſent from a king or abſolute potentate, though in his letters of credence he is termed an agent, yet he is an *ambaſſador*, he being for the public. 4 *Inſt.* 153.

Ambaſſadors may, by a precaution, be warned not to come to the place where ſent; and if they then do it, they ſhall be taken for enemies; but being once admitted, even with enemies in arms, they ſhall have the protection of the laws of nations, and be preſerved as princes. *Moll.* 146. If a baniſhed man be ſent as an *ambaſſador* to the place from whence he is baniſhed, he may not be detained or moleſted there. 4 *Inſt.* 153. The killing of an *ambaſſador* has been adjudged high treaſon. 3 *Inſt.* 8. Some *ambaſſadors* are allowed, by conceſſion, to have juriſdiction over their own families; and their houſes permitted to be ſanctuaries: but where perſons who have greatly offended fly to their houſes, after demand and refuſal to deliver them up, they may be taken from thence. *Ambaſſadors* cannot be defended when they commit any thing againſt the ſtate, or the perſon of the king with whom they reſide. 4 *Inſt.* 152. An *ambaſſador*, guilty of treaſon againſt the king's life, may be condemned and executed; but for other treaſons, he ſhall be ſent home, with demand to puniſh him, or to ſend him back to be puniſhed. 4 *Inſt.* 152. 1 *Roll. Rep.* 185.

If a foreign *ambaſſador* commits any crime here, which is *contra jus gentium*, as treaſon, felony, *&c.* or any other crime againſt the law of nations, he loſeth the privilege of an *ambaſſador*, and is ſubject to puniſhment as a private alien; and he need not be remanded to his ſovereign, but of curteſy. *Danv. Abr.* 327. But if a thing be only *malum prohibitum* by an act of parliament, private law, or cuſtom of the realm, and it is not *contra jus gentium*, an *ambaſſador* ſhall not be bound by them. 4 *Inſt.* 153. And it is ſaid *ambaſſadors* may be excuſed of practices againſt the ſtate where they reſide, (except it be in point of conſpiracy, which is againſt the law of nations) becauſe it doth not appear whether they have it *in mandatis*; and then they are excuſed by neceſſity of obedience. *Bac. Max.* 26.

By the civil law, the perſon of an *ambaſſador* may not be arreſted; and the moveable goods of *ambaſſadors*, which are accounted an acceſſion to their perſons, cannot be ſeiſed on, as a pledge, nor for payment of debts, tho' by leave of the king or ſtate where they are reſident; but on refuſal of payment, letters of requeſt are to go to his maſter, *&c. Molloy* 157. *Danv.* 328.

By our ſtatute law, an *ambaſſador*, or public miniſter, or his domeſtic ſervants, regiſtred in the ſecretary's office, and thence tranſmitted to the ſheriff's office of *London* and *Middleſex*, are not to be arreſted; if they are, the proceſs ſhall be void, and the perſons ſuing out and executing it ſhall ſuffer ſuch penalties and corporal puniſhments as the lord chancellor or either of the chief juſtices ſhall think fit. *Stat.* 7 *Ann. cap.* 12. Alſo the goods of an *ambaſſador*, or of his ſervants, ſhall not be diſtrained. *Stat. Ibid.*

4 *Geo.* 2. *Widmore* v. *Alvarez*: In the caſe of the *French* ambaſſador, it was ruled, that the perſon need not lie in the houſe, but he muſt do ſome *actual ſervice* there.

Upon a motion to ſuperſede a proceſs againſt the defendant, upon the ſtatute 7 *Ann. c.* 12. as being in the ſervice of a foreign ambaſſador; the court held, that to be a privileged ſervant within the act, it is not required that the party actually live in the ambaſſador's houſe; yet it is not enough that the party be regiſtred in the ſecretary's office as a ſervant; but when he comes for the benefit of the act, he muſt ſhew the *nature of his ſervice*, that the court may judge, whether he be a domeſtic ſervant within the meaning of the act of parliament. In this caſe, it was objected againſt the defendant, that he was a trader, and ſo expreſly excluded from privilege by the ſtatute: to which Mr. Solicitor General, who was counſel for the defendant, anſwered, that by traders within this act, muſt be underſtood ſuch as may have the benefit of the ſtatutes concerning bankrupts, which infants are not intitled to, as it was determined in one *Whitlock*'s caſe; and that the defendant could prove he had exerciſed no trade ſince his full age. *Fitzgib. Rep.* 200.

A chaplain to an ambaſſador, who does not do any duty in the ambaſſador's houſe, ſhall not be protected. *Seacomb* v. *Bowley*. *Wilſ. Rep. part* 1. 20.

The court of *B. R.* refuſed to allow *Carolino* protection, as interpreter to the ambaſſador from the *Bey* of *Tripoly*, it not appearing that he was a *domeſtic* ſervant. *Wilſ. Rep. part* 1. 78, 9.

To what laws an ambaſſador, &c. is ſubject, vide *Blackſton's Com.* 1 *V.* 253, 4, &c.

Ambidexter, *(Lat.)* One that can uſe his left hand as well as his right; or that plays on both ſides. But in a legal ſenſe, it is taken for a juror or embraceor, who takes money of both parties for giving his verdict; and ſuch a one ſhall be impriſoned, never more be of a jury, and further puniſhed at the king's pleaſure. 5 *Ed.* 3. *c.* 10. *Crompt. Juſt.* 156. See *Decies tantum.*

Ambra, (Sax. *amber*, Lat. *amphora)* A veſſel among the *Saxons:* it contained a meaſure of ſalt, butter, meal, beer, &c. *Leg. Inæ Weſt Sax.*

Ambry, The place where the arms, plate, veſſels, and every thing which belong'd to houſekeeping were kept; and probably the *ambry* at *Weſtminſter* is ſo called, becauſe formerly ſet apart for that uſe: or rather the *aumonery*, from the Latin *eleemoſynaria*, an houſe adjoining to an abbey, in which the charities were laid up for the poor.

Amenable, (Fr. *amener)* To bring or lead unto: or *amainable* (from the Fr. *Main*, a hand) ſignifies tractable, that may be led or governed: and in our books it is commonly applied to a woman, that is governable by her huſband. *Cow. Interp.* It alſo, in the modern ſenſe, ſignifies to be reſponſible, or ſubject to anſwer, &c. in a court of juſtice.

Amendment, *(emendatio)* The correction of an error committed in any proceſs, which may be *amended* after judgment; and if there be any error in giving the judgment, the party is driven to his writ of error; though where the fault appears to be in the clerk who writ the record, it may be *amended.* *Terms de Ley* 39.

At common law there was little room for amendments, which appears by the ſeveral ſtatutes of *amendments and jeofails*, and likewiſe by the conſtitution of the courts; for, ſays *Britton*, the judges are to record the parols [or pleas] deduced before them in judgment; alſo, ſays he, *Ed.* 1. granted to the juſtices to record the pleas pleaded before them, but they are not to eraſe their records, nor amend them nor record againſt their inrolment, nor any way ſuffer their records to be a warrant to juſtify their own miſdoings, nor eraſe their words, nor amend them, nor record againſt their inrolment. This ordinance of *Ed.* 1. was ſo rigidly obſerved, that when juſtice *Ingham*, in his reign, moved with compaſſion for the circumſtances of a poor man who was fined 13 *s.* 4 *d.* erazed the record, and made it 6 *s.* 8 *d.* he was fined 800 marks, with which, 'tis ſaid, a clock-houſe at *Weſtminſter* was built, and furniſhed with a clock; but as to the clock, it has been denied by authors of credit. Notwithſtanding what is mentioned above, there were ſome caſes that were amendable at Common law.

Original writs are not *amendable* at Common law, for if the writ be not good, the party may have another: judicial writs may and have been often *amended.* 8 *Rep.* 157.

Whatever at Common law *might be* amended *in civil caſes*, *was at* Common law *amendable in criminal caſes*, and ſo it is at this day; reſolved by *Holt* Ch. J. *Powell* and *Powis* J. 1 *Salk.* 51. *pl.* 14.

Tho' *miſawarding of proceſs on the roll* might be amended at Common law the *ſame term*, becauſe it was the act of the court; yet if any clerk at Common law iſſued out an *erroneous proceſs on a right award of the court*, that was never amended in any caſe at the Common law. 1 *Salk.* 51. *pl.* 14.

Statutes of amendment *extend only* to pleadings of record, therefore pleadings, while *in paper*, are amendable by the Common law. Anciently all pleas were *ore tenus* at the bar; and then, if any error was ſpied in them it was preſently amended. Since that cuſtom is changed, the motion to amend, becauſe all in paper, ſucceeded in the room of it; and it is a motion that the court cannot refuſe: but they may refuſe it if the party deſiring it *refuſe to pay coſts*, or the amendment deſired ſhould amount to a *new plea.* 10 *Mod.* 88.

But the law reſpecting *amendments* has been much extended by the following ſtatutes: By

Stat. 14 *Ed.* 3. *c.* 6. It is aſſented, that by the miſpriſion of a clerk in any place wheresoever it be, no proceſs ſhall be annulled or diſcontinued, by miſtaking in writing one ſyllable or one letter too much or too little; but as ſoon as the thing is perceived, by challenge of the party, or in other manner, it ſhall be haſtily amended in due form, without giving advantage to the party that challengeth the ſame, becauſe of ſuch miſpriſion.

By this ſtatute the juſtices had liberty, on challenge of the party, to amend the proceſs where the clerk had miſtaken one ſyllable or letter, and the judges afterwards conſtrued the ſtatute ſo favourably, that they *extended it to a word*; but they were not ſo well agreed, whether they could make theſe amendments, as well *after* as *before* judgment; for they thought their authority was determined by the judgment; and therefore to put an end to the diverſity of opinions by the following ſtatute, *viz.* 9 *H.* 5. *c.* 4. It is declared that the judges ſhall have the ſame power, as well after as before judgment, as long as the record in proceſs is before them. *Gilb. H. C. B.* 110.

This ſtatute is confirmed by ſtatute 4 *Hen.* 6. *c.* 3. with an exception, that it ſhall not extend to proceſs on outlawry, or to records or proceſſes in *Wales.* But according to 2 *Sand.* 40. this laſt exception, and the like exception in 8 *Hen.* 6. *c.* 15. ſeem to be annulled by the ſtatute 27 *Hen.* 8. *c.* 26. by which it is enacted, that the laws of *England* ſhall be uſed, practiſed and executed in *Wales.*

Though the foregoing ſtatutes gave the judges a greater power than they had before, yet it was found that they were too much cramped, having authority to amend nothing but *proceſs*, which they did not conſtrue in a large ſignification, ſo as to comprehend the whole proceedings in real and perſonal actions, and criminal and common pleas, but confined it to the *meſne proceſs and jury proceſs.* 8 *Co.* 157. *a.* And therefore, to enlarge the authority of the courts, the ſtatute 8 *Hen.* 6. *c.* 12. gives power to amend what they ſhall think in their diſcretion to be the miſpriſion of their clerks in any record, proceſs, and plea, warrant of attorney, writ, panel, or return. *Gilb. H. C. P.* 110.

There are only two ſtatutes of amendments, *viz.* the 14 *Ed.* 3. *Stat.* 1. *c.* 6. and 8 *H.* 6. *c.* 12. & 15. the reſt are reckoned to be ſtatutes of jeofails, and not of amendments; *per Powell* J. 1 *Salk.* 51. *pl.* 14. *Mich.* 3 *Ann.* *B. R.* in caſe of *The Queen* v. *Tutchin.*—And *ibid.* he held that the 8 *H.* 6. was only to inlarge the ſubject-matter of 14 *Ed.* 3. and that 14 *E.* 3. extends only to proceſs out of the roll, *viz.* writs that iſſue out of the record, and not to proceedings in the roll itſelf; but that the 14 *E.* 3. extends not to the king, becauſe of theſe words *(challenge of the party)* and that the ſtatute 8 *H.* 6. has always been conſtrued in imitation of the act of *Ed.* 3. and the exception in the ſtatute of *H.* 6. was only *ex abundanti cautela*; and all judges and ſages of the law in all ages have taken it not to extend to the crown; and the caſes on the other ſide are not to be relied upon.

Farther by Stat. 8 *Hen.* 6. *c.* 15. "The king's juſtices, before whom any miſpriſion ſhall be found, be it in any records and proceſſes depending before them, as well by way of error as otherwiſe, or in the returns of the ſame, by ſheriffs, coroners, bailiffs of franchiſes, or any other, by miſpriſion of the clerks of any of the ſaid courts, or of the ſheriffs, coroners, their clerks, or other officers clerks, or other miniſters whatſoever, in writing one letter or one ſyllable too much or too little, ſhall have power to amend the ſame.

As theſe ſtatutes only extended to what the juſtices ſhould interpret the miſpriſion of their clerks, and other officers, it was found by experience, that many juſt cauſes were overthrown *for want of form*, and other failings, not aided by this ſtatute, though they were good in ſubſtance; and therefore the ſtatutes of jeofail were made. *Gilb. H. C. B.* 111. See **Jeofail.**

By the foregoing ſtatutes the faults and miſtakes of clerks are in many caſes *amendable:* the miſpriſion of a clerk in matter of fact is *amendable*; though not in matter of law. *Palm.* 258. If there be a miſtake in the legal form of the writ, it is not *amendable:* there is a diverſity between the negligence and ignorance of the clerk that makes out writs; for his negligence (as if he have the copy of a bond, and do not purſue it) this ſhall be *amended*; but his ignorance in the legal courſe of original writs is not *amendable.* 8 *Rep.* 159. A party's name was miſtaken in an original writ; and it appearing to the court that the curſitor's inſtructions were right, the writ was *amended* in court; and they *amended* all the proceedings after. 2 *Vent.* 152. *Cro. Car.* 74. If a thing which the plaintiff ought to have entered himſelf, being a matter of ſubſtance, be totally omitted, this ſhall not be *amended*; but otherwiſe it is if omitted only in part and miſentered. *Danv. Abr.* 346. By the Common law a writ of error, returned and filed, could not be *amended*; becauſe it would alter the record: but now by *Stat.* 5 *Geo.* 1. *cap.* 13. Writs of error, wherein there ſhall be any variance from the original record, or other defect, may be *amended* by the court where returnable.

When the award of a writ of inquiry on the roll is good, the writ ſhall be *amended* by the roll. *Carth.* 70. The court cannot *amend* to make a new writ; or to alter a good writ, and adapt it to another purpoſe, *&c.* only when the writ is bad and vicious on the face of it. *Mod. Caſ.* 263, 310.

With reſpect to declarations, a declaration grounded on an original writ may not be *amended*, if the writ be erroneous: though if it be on a bill of *Middleſex* or a *latitat*, it is *amendable.* 1 *Lill. Abr.* 67. Declarations upon any penal ſtatutes, *qui tam*, *&c.* may not be *amended* after iſſue joined. 2 *Mod.* 144. (but *vide Poſt.)* And indictments of treaſon, and felony, writs of appeal, *&c.* are excepted out of the ſtatutes of *amendments*; though ſome things in them are *amendable* at Common law. *Mod. Caſ.* 269.

A plaintiff may *amend* his declaration in matter of form after a general iſſue pleaded, before entry thereof, without payment of coſts: if he *amend* in ſubſtance, he is to pay coſts, or give imparlance; and if he *amend* after a ſpecial plea, though he would give imparlance, he muſt pay coſts. 1 *Lill.* 58. A declaration in ejectment, laid the demiſe before the time; this was not *amendable*, for it would alter the iſſue, and make a new title in the plaintiff, 1 *Salk.* 48. The plaintiff declared on the ſtatute of *Winton* for a robbery done to himſelf, when it ſhould have been of his ſervants; he had leave to *amend.* 3 *Lev.* 347. If a defendant pleads a plea to the right, or in abatement, the plaintiff may *amend* his declaration; but not where he demurs, for this fault may be the cauſe of the demurrer. 1 *Salk.* 50. A demurrer may be *amended*, after the parties have joined in demurrer, if it be only in paper. *Style* 48. Where a plea ſhall be *amended*, when in paper, or on record, *&c.* ſee the ſtatute 4 *Geo.* 2. *c.* 26.

As to the amendments of records, *&c.* an iſſue entered upon record, with leave of the court may be *amended*; but not in a material thing, or in that which will deface the record. 1 *Lill. Abr.* 61. A record may be *amended* by the court in a ſmall matter, after iſſue joined, ſo as the plea be not altered. *Danv. Abr.* 338. If on a writ of error a record is *amended* in another court in affirmance of the judgment, it muſt be *amended* in the court where judgment was given. *Hardr.* 505. Where the record of *niſi prius* does not agree with the original record, it may be *amended* after verdict, provided it do not change the iſſue: but a record ſhall not be *amended* to attaint the jury, or prejudice the authority of the judge. A general or ſpecial verdict may be *amended* by the notes of the clerk of aſſiſe in civil cauſes; but not in criminal actions. 1 *Salk.* 47. The iſſue roll ſhall be *amended* by the imparlance roll, which is precedent: but a roll may not be *amended* after verdict, when there is nothing to *amend* it by; tho' ſurpluſage may be rejected, and ſo make it good. *Cro. Car.* 92. 1 *Sid.* 135.

In an action on the ſtatute of *uſury*, a verdict was given for the plaintiff, and taken on one of the counts, in the declaration.—The other counts being found for defendant.—Motion in *arreſt* of *judgment.*—The principal cauſe was, the *chriſtian* name of one of the perſons mentioned in that count (rightly named, in that count, before) was miſtaken, in the *iſſue roll*, which had been carried in, whereby the count was rendered abſurd, and bad. The court gave leave to file a *right bill,* (the proceedings being by *bill,)* and afterwards amended the *iſſue roll*, by the bill.—The *niſi prius* roll was right.—*Gardner qui tam v. Brown B. R. Tin. T.* 15 *Geo.* 3. This was done, as an *amendment* at *Common law.*

A miſtake of the clerk in entering a judgment; as where it was that the defendant recovered, inſtead of the plaintiff, *&c.* was ordered to be *amended.* *Cro. Jac.* 631. *Hutt.* 41. A judgment may be *amended* by the paper book ſigned by the maſter. 1 *Salk.* 50. At Common law, the judges may *amend* their judgments of the ſame term; and by ſtatute of another term. 8 *Rep.* 156. 14 *E.* 3. If judgments are not well entered, on payment of coſts they will be ordered to be ſo: when judgments are entered, 'tis ſaid the defects therein being the act of the court, and not the miſpriſion of the clerk, are not *amendable.* *Golſb.* 104. Miſtakes in returns of writs, fines and recoveries, made by mutual aſſent of parties may be amended. 5 *Rep.* 45. Judgment ſhall not be ſtaid after verdict, for that an original wants form, or varies from the record in point of form, which are *amendable.* 5 *Rep.* 45. After verdict given in any court of record, there ſhall be no ſtay of judgment for want of form in any writ, or inſufficient returns of ſheriffs, variance in form between the original writ and declaration, *&c.* *Stat.* 32 *H.* 8. 18 *Eliz.* *Vide* 5 *Geo.* 1. *c.* 13. Where judgment ſhall not be reverſed for defects in form or ſubſtance. And ſee title **Jeofail.**

In the caſe of *Newcomb* v. *Green B. R.* the *poſtea* was amended by the judges notes. *Wilſ. Rep. part* 1. 33. 2 *Stra.* 1197. *S. C.*

As to amendment, and the ſtatutes relative thereto, vide *Blackſt. Com.* 3 *V.* 406, *&c.* And ſee *Buller's Niſi Prius*, 296, *&c.*

Amendments are uſually made in affirmance of judgments; and ſeldom or never to deſtroy them: and where *amendments* were at Common law, the party was to pay a fine for leave to *amend.* 3 *Salk.* 29. Vide *Com. D.* 1 *V.* tit. *Amendment.*

Amerciament, *amerciamentum,* (from the Fr. *merci)* ſignifies the pecuniary puniſhment of an offender againſt the king or other lord in his court, that is found to be in *miſericordia,* i. e. to have offended, and to ſtand at the *mercy* of the king or lord. The author of *Terms de Ley* ſaith, that *amerciament* is properly a penalty aſſeſſed by the peers or equals of the party *amerced*, for the offence done; for which he putteth himſelf at the mercy of the lord. *Terms de Ley* 40. And by the ſtatute of *Magna Charta*, a freeman is not to be *amerced* for a ſmall fault, but proportionable to the offence, and that by his peers. 9 *H.* 3. *c.* 4. *Amerciaments* are a more merciful penalty than a fine; for which, if they are too grievous, a releaſe may be ſued by an ancient writ called *moderata miſericordia.* The difference between *amerciaments* and fines, is this; fines are ſaid to be puniſhments certain, and grow expreſly from ſome ſtatute; but *amerciaments* are ſuch as are arbitrarily impoſed. *Kitch.* 78. Alſo fines are impoſed and aſſeſſed by the court: *amerciaments* by the country: and no court can impoſe a fine, but a court of record: other courts can only *amerce.* 8 *Rep.* 39, 41.

A court-leet can *amerce* for public nuſances only. 1 *Saund.* 135. For a fine and all *amerciaments* in a court-leet, a diſtreſs is incident of common right: but for *amerciament* in a court baron, diſtreſs may not be taken but by preſcription. 11 *Rep.* 45. When an *amerciament* is agreed on, the lord may have an action of debt, or diſtrain for it, and impound the diſtreſs, or ſell it at his pleaſure: but he cannot impriſon for it. 8 *Rep.* 41, 45. *Vide* the caſe of the *Duke of Bedford* v. *Alcock, B. R. Wilſ. Rep. part* 1. 248. In courts baron the *amerciaments* ought to be affeered; but 'tis otherwiſe of fines impoſed by a court of record. 2 *Inſt.* 27. An *amerciament* of a freeholder muſt be affeered by freeholders of the manor, or debt will not lie for it. *Baldwin* v. *Tudge, Wilſ. Rep.* 2—20. In the court baron, tenants not doing ſuit of court, perſons making any incroachments, not performing what is ordered, or for other miſdemeanors there puniſhable, are to be *amerced:* theſe *amerciaments* are made upon preſentment of the jury; and if they are grounded upon a void preſentment, the *amerciaments* are alſo void. 1 *Lill. Abr.* 72.

There is alſo *amercement* in pleas in the courts of record, when a defendant delays to tender the thing demanded by the king's writs, on the firſt day. *Co. Lit.* 116. And in all perſonal actions without force, as in debt, detinue, *&c.* if the plaintiff be nonſuited, barred, or his writ abate for matter of form, he ſhall be *amerced:* but if on judicial proceſs, founded on a judgment and record, the plaintiff be nonſuited, barred, *&c.* he ſhall not be *amerced.* 1 *Nelſ. Abr.* 206. And an Infant, if nonſuited, is not to be *amerced:* 'tis otherwiſe when at age. *Jenk. Cent.* 258. The *capias pro fine* is taken away, by 5 *W & M. c.* 12.

Sheriffs are to be *amerced* for the faults of their officers; and clerks of the peace are *amerceable* in *B. R.* for groſs faults in indictments removed thither. *Hill.* 21 *Car.* The *amerciament* of the ſheriff, or other officer of the king, is called *amerciament* royal. *Terms de Ley.* A town ſhall be *amerced* for the eſcape of a murderer, in the day-time: and if the town be walled, 'tis ſaid, it ſhall be ſubject to *amercement*, whether by day or night. 3 *Inſt.* 53. *Amerciaments* are likewiſe in ſeveral other caſes. See *Blackſt. Com.* 3 *V.* 159.

Ameſſe, (from the Lat. *amictus)* Is taken for a prieſtly garment.

Amicia, (the ſame with *almutium)* A cap made with goats or lambs ſkins: that part whereof which covered the head was ſquare, and one part of it hung behind, and covered the neck. *Monaſticon,* 3 *tom. p.* 36.

Amictus, Was the uppermoſt of the ſix garments worn by prieſts, tied ronnd the neck, and it covered the breaſt and heart.—*Ne inde ad linguam tranſeat mendacium, ne vanitates cogitet.*—Amictus, *alba, cingulem, ſtola, manipulus & planeta.*—Theſe were the ſix garments of prieſts.

Amicus Curiæ, If a judge is doubtful or miſtaken in matter of law, a ſtander-by may inform the court, as *amicus curiæ.* 2 *Co. Inſt.* 178. In ſome caſes, a thing is to be made appear by ſuggeſtion on the roll by motion; ſometimes by pleading, and ſometimes as *amicus curiæ.* 2 *Keb.* 548. Any one as *amicus curiæ* may move to quaſh a vicious indictment; for if there were a trial and verdict, judgment muſt be arreſted. *Comberb.* 13. A counſel urged, that he might, as *amicus curiæ,* inform the court of an error in proceedings, to prevent giving falſe judgment; but it was denied, unleſs the party was preſent. 2 *Show. Rep.* 297.

Amittere Legem Terræ, To loſe and be deprived of the liberty of ſwearing in any court: as to become infamous, renders a perſon incapable of being an evidence. Vide *Glanvil, lib.* 2. And ſee the ſtatute 5 *Eliz. cap.* 9. againſt perjury. So a man that is outlawed, *&c.* is ſaid *to loſe his law,* i. e. is put out of the protection of the law, as leaſt ſo far as relates to the ſuing in any of his majeſty's courts of juſtice, tho' he may be ſued.

Ammobragium, A ſervice.—*Terræ in com.* Flint. *tenentur de domino rege per certa ſervitia, & per* ammobragium *quod ad quinque ſolidos extenditur cum accederit.* Pat. 7 Ed. 2.

Amneſty, *(amneſtia, oblivio)* An act of pardon or *oblivion,* ſuch as was granted at the reſtoration by king *Charles* II.

Amnicum Inſulæ, Iſles upon the weſt coaſt of *Britain.* Blount.

Amortization, *(amortizatio,* Fr. *amortiſſement)* Is an alienation of lands or tenements in mortmain, *viz.* to any corporation or fraternity, and their ſucceſſors, *&c.* And the right of *amortization* is a privilege or licence of taking in mortmain. *Jus* amortizationis *eſt privilegium ſeu licentia capiendi in manum mortuam.* In the ſtatute *de libertatibus perquirendis anno* 27 Ed. 1. Stat. 2. the word *amortiſentent* is uſed.

Amortize, (Fr. *amortir)* Is to alien lands in mortmain. See *Mortmain,* and the *Stat.* 7 *Ed.* 1. *Stat.* 2. of *amortizing* lands.

Ampliation, *(ampliatio)* An enlargement, but in ſenſe of law it is a referring of judgment, till the cauſe is further examined.

Amy, *(amicus)* In law *prochein amy* is the next friend to be truſted for an infant. And infants are to *ſue* by *prochein amy (i. e.* next friend) or *guardian,* and *defend* by *guardian. Alien amy* is a foreigner here ſubject to ſome prince in friendſhip with us.

An, Jour & Waſte, (Fr.) Year, day and waſte; a forfeiture of lands to the king by tenants committing felony, and afterwards the land falls to the lord.

Anceſtor, (*anteceſſor*) Signifies as much as *predeceſſor,* or one that has gone before in a family: but the law makes a difference between what we commonly call an anceſtor and a predeceſſor; the one being applied to a natural perſon and his anceſtors, and the other to a body politic and their predeceſſors. *Co. Lit.* 78. *b.* A prepoſſeſſor of an eſtate hath been called *anceſtor.*

Anceſtrel, What relates to or hath been done by one's anceſtors; as *homage, anceſtrel,* &c.

Anchor, Is a meaſure of brandy, *&c.* containing ten gallons. *Lex Mercat'.*

Anchorage, (*ancoragium*) A duty taken of ſhips for the uſe of the haven where they caſt anchor. *MS. Arth. Trevor, Ar.* The ground in ports and havens belonging to the king, no perſon can let any anchor fall thereon, without paying therefore to the king's officers.

Ancients, Gentlemen of the *inns* of *court.* In *Gray's inn* the ſociety conſiſts of *benchers, ancients, barriſters,* and *ſtudents* under the bar; and here the *ancients* are of the oldeſt barriſters. In the *Middle Temple,* ſuch as have gone through, or are paſt their readings, are termed *ancients;* the inns of *Chancery* conſiſt of *ancients* and ſtudents or clerks; and from the *antients* one is yearly choſen the principal or treaſurer.

Ancient Demeſne, or *demain* (*vetus patrimonium domini*). Is a tenure whereby all the manors belonging to the crown in the days of St. *Edward,* and *William,* called the *Conqueror,* were held. The number and names of all manors, after a ſurvey made of them, were written in the book of *Domeſday;* and thoſe which by that book appear to have at that time belonged to the crown, and are contained under the title *terra regis,* are called *ancient demeſne. Kitch.* 98. The lands which were in the poſſeſſion of *Edward the confeſſor,* and were given away by him, are not at this day ancient demeſne, nor any others, except thoſe writ down in the book of *Domeſday;* and therefore, whether ſuch lands are ancient demeſne or not, is to be tried only by that book. 1 *Salk.* 57. 4 *Inſt.* 269. *Hob,* 188. 1 *Brownl.* 43.

But if the the queſtion is, whether lands be parcel of a manor which is ancient demeſne, this ſhall be tried by a jury. *Salk.* 56, 774. Vide *Com. Dig.* 1 *V.* tit. *Abatement.*

Where ancient demeſne is pleaded as to ſuch a manor, and iſſue is taken whether 'tis ſo or not, this ſhall be tried by the book of *Domeſday;* but if iſſue be taken, that *certain acres are parcel* of the manor of *H.* which is ancient demeſne, *that* ſhall be tried by a jury; for parcel or not parcel is matter of fact, which cannot be tried by that book. 9 *Rep.* caſe of the abbot of *Strata Marcella.*

Fitzherbert tells us, that tenants in *ancient demeſne* had their tenures from ploughing the king's lands, and other works towards the maintenance of the king's freehold, on which account they had liberties granted them. *F. N. B.* 14, 228. And there were two ſorts of theſe tenures and tenants; one that held their lands freely by charter; the other by copy of court-roll, according to the cuſtom of the manor. *Brit. c.* 66. The tenants holding by charter cannot be impleaded out of their manor; for if they are, they may abate the writ by pleading their tenure: they are free from toll, for all things bought and ſold concerning their ſubſtance and huſbandry. And they may not be impanelled upon any inqueſt. *F. N. B.* 14 If tenants in *ancient demeſne* are returned on juries, they may have a writ *de non ponendis in aſſiſis, &c.* and attachment againſt the ſheriff. 1 *Rep.* 105. And if they are diſturbed by taking duties of toll, *&c.* they may have writs of *monſtraverunt*, to be diſcharged. Theſe tenants are free as to their perſons; and their privileges are ſuppoſed to commence by act of parliament; for they cannot be created by grant at this day. 1 *Salk.* 57.

Lands in *ancient demeſne* are extendible upon a ſtatute merchant, ſtaple, or elegit. 4 *Inſt.* 270. No lands ought to be accounted *ancient demeſne* but ſuch as are held in ſocage; and whether it be *ancient demeſne* or not, ſhall be tried by the book of *Domeſday*. A leſſee for years cannot plead in *ancient demeſne:* nor can a lord in action againſt him plead *ancient demeſne*, for the land is frank-fee in his hands, *Danv. Abr.* 660.

In real actions, ejectment, replevin, *&c. ancient demeſne* is a good plea; but not in actions merely perſonal. *Danv.* 658. If in *ancient demeſne* a writ of right cloſe be brought, and proſecuted in nature of a *formedon*; a fine, levied there by the cuſtom, is a bar: and if this judgment be reverſed in *C. B.* that court ſhall only adjudge, that the plaintiff be reſtored to his action in the *court of ancient demeſne*; unleſs there is ſome other cauſe, which takes away its juriſdiction. *Jenk. Cent.* 87. *Dyer* 373. A fine in the king's courts will change *ancient demeſne* to frank-fee at Common law; ſo if the lord enfeoffs another of the tenancy; or if the land comes to the king, *&c.* 4 *Inſt.* 270. See *Fine.*

But if the lord be not a party, he may have a writ of *diſceit*, and avoid the fine or recovery; for lands in ancient demeſne were not originally within the juriſdiction of the courts of *Weſtminſter*; but the tenants thereof enjoy this amongſt other privileges, not to be called from the buſineſs of the plough by any foreign litigation. 7 *Hen.* 4, 44. 1 *Rol. Abr.* 327.

If the lord be party, then the lands become frank-fee, and are within the juriſdiction of the courts of *Weſtminſter*, for the privilege of ancient demeſne being eſtabliſhed for the benefit of lord and tenant, they may deſtroy it at pleaſure. 2 *Rol. Abr.* 324. 1 *Salk.* 57.

With reſpect to *pleading*, it is to be obſerved, that in all actions wherein, if the demandant recovers, the lands would be frank-fee, ancient demeſne is a good plea. 1 *Rol. Abr.* 322.

Therefore in all actions real, or where the realty may come in queſtion, ancient demeſne is a good plea; as *aſſiſe*, writ of *ward of land*, writ of *account* againſt a bailiff of a manor, writ of *account* againſt a guardian, *&c.* See 4 *Inſt.* 270. 1 *Rol. Abr.* 322, 323.

In *replevin* ancient demeſne is a good plea, becauſe by intendment the freehold will come in queſtion. *Godb.* 64. 1 *Bulſt.* 108.

In an *ejectione firmæ* ancient demeſne is a good plea; for by common intendment the right and title of the land will come in queſtion; and if in this action it ſhould not be a good plea, the ancient privileges of thoſe tenants would be loſt, inaſmuch as moſt titles at this day are tried by *ejectment*. *Hob.* 47. 1 *Bulſt.* 108. *Hetl.* 177. *Cro. Eliz.* 826.

But in all actions merely perſonal, as *debt* upon a leaſe, *treſpaſs quare clauſum fregit, &c.* ancient demeſne is no plea. *Hob.* 47. 5 *Co.* 105. Vide *Com. D.* 1 *V.* tit. *Abatement.*

Ancienty, (Fr. *ancienete*, Lat. *antiquitas*) Elderſhip or ſeniority. This word is uſed in the ſtat. of *Ireland*, 14 *Hen.* 3.

Andena, A ſwath in mowing: it likewiſe ſignifies as much ground as a man can ſtride over at once.

Anelacius, A ſhort knife or dagger.—*Loricâ erat indutus, geſtans* anelacium *ad lumbare. Mat. Paris* 277.

Anfeldtyhde, or *anfealtihle*, A ſimple accuſation; for the *Saxons* had two ſorts of accuſation, *viz, ſimplex* and *triplex:* that was called ſingle, when the oath of the criminal and two more was ſufficient to diſcharge him; but his own oath, and the oaths of five more were required to free him *a triplici accuſatione. Somner.* In the laws of *Adelſtan* we read—*Et ſi* anfeldtyhde *ſit, immergatur manus poſt lapidem, vel examen uſque ad Wriſte.* Leg. Adelſtani, cap. 19. apud Brompton.

Angaria, (from the Fr. *angarie*, i. e. perſonal ſervice) Is a troubleſome vexatious duty or ſervice which tenants were obliged to pay their lords; and they performed it in their own perſons.—*Terram liberam ab omnibus* angariis *& exactionibus, &c. MS.* Eliam Aſhmole, *arm.*—*Præſtationes* angariarum *& perangariarum, plauſtrorum & navium.* Impreſſing of ſhips. *Blount.*

Angelica Veſtis, A monkiſh garment which laymen put on a little before their deaths, that they might have the benefit of the prayers of the monks. It was from them called *angelicus*, becauſe they were called *angeli*, who by their prayers *animæ ſaluti ſuccurrebant*. And the word *ſuccurrendum*, in our old books, is underſtood of one who had put on the habit, and was near death: *ſi quis ad ſuccurrendum metu mortis ſe loco prænominato dederit, illic recipietur,* Monaſticon, 1 tom. p. 632.

Angel, Signifies, in the computation of money, ten ſhillings of *Engliſh* coin.

Angild, *(angildum)* The bare ſingle valuation or compenſation of a criminal; from the Sax. *an* one, and *gild*, payment, mulct, or fine. *Una ſolutio, ſi villanus furatus fuerit, &c. Et habeas plegium, admoneas eum de* angildo. *Twigild* was the double mulct or fine; and *trigild* the treble, according to the rated ability of the perſon. Law of *Ina, c.* 20. *Spelm.*

Anhlote, A ſingle tribute or tax. The words *anhlote* and *anſcot* are mentioned in the laws of *William the Conqueror:* and their ſenſe is, that every one ſhould pay according to the cuſtom of the country, his part and ſhare, as ſcot and lot, *&c. Leg. W.* 1. *c.* 64.

Aniens, *(Fr.)* Void, being of no force. *F. N. B.* 214.

Annales, Yearlings, or young cattle of the firſt year. —*Vituli primo anno poſtquam nati ſunt, vituli vocantur; ſecundo compoto* annales *vocantur; tertio boviculi; quarto bovetti.*—Regulæ compoti domus de Farendon, *MS.*

Annats, (*annates*) This word has the ſame meaning with firſt-fruits, *anno* 25 *H.* 8. *c.* 20. The reaſon of the name is, becauſe the rate of the firſt-fruits paid for ſpiritual livings, is after the value of one *year*'s profit. Annates *more ſua appellant primos fructus unius anni ſacerdotii vacantis, aut dimidiam eorum partem.* Pol. Virgil de Invent. rer. lib. 8. c. 2.

Annealing of Tile, (anno 17 *Ed.* 4.) From the Sax. *onælan accendere*, ſignifies the burning or hardening of tile.

Annienteđ, (from the Fr. *anneantir*) Abrogated, fruſtrated, or brought to nothing. *Lit. c.* 3. *ſect.* 741.

Anniverſary Days, (*dies anniverſarii*) Solemn days appointed to be celebrated yearly in commemoration of the death or martyrdom of ſaints; or the days whereon, at the return of every year, men were wont to pray for the ſouls of their deceaſed friends, according to the cuſtom of the *Roman Catholics*, mentioned in the ſtatute of 1 *Ed.* 6. *cap.* 14. and 12 *Car.* 2. *cap.* 13. This was in uſe among our ancient *Saxons*, as you may ſee in *Lib. Rameſ. ſect.* 134.—Anniverſaria dies *ideo repetitur defunctis, quoniam neſcimus qualiter eorum cauſa habeatur in alia vita.* Alcuinus's Divine Offices. The *anniverſary*, or yearly return of the day of the death of any perſon, which the religious regiſtered in their *obitual* or *martyrology*, and annually obſerved in gratitude to their founders and benefactors, was by our forefathers called a *year-day* and a *mind-day*, i. e. a memorial day: and tho' this proceeded from one of the trading arts of the prieſts, who got many a legacy for thus continuing the memorial of their friends; yet, abating the ſuperſtition of it, we muſt confeſs this practice of theirs has been a great advantage to the hiſtory of men and times, by fixing the *obits* of great and good men.

Anni Nubiles, (Lat.) When a woman is under 12 years of age, her age to marry, ſhe is ſaid to be *infra annos nubiles*, and unmarriageable; ſo that it ſignifies the marriageable age of a woman. 2 *Co. Inſt.* 434.

Anno Domini, The computation of time from the incarnation of our Saviour; which is generally inſerted in the dates of all public writings, with an addition of the year of the king's reign, *&c.* The *Romans* began their *æra* of time from the building of *Rome:* the *Grecians* computed by *olympiads*; and the *Chriſtians* reckon from the birth of *Jeſus Chriſt.*

Annoiſance, Annoyance, or *noiſance*, is a word uſed for any hurt done to a public place, as a highway, bridge, river, *&c.* or to any private place, by laying any thing therein that may breed infection, by incroachments, or ſuch like means; and it is alſo taken for the writ brought upon ſuch a tranſgreſſion. This word is mentioned *anno* 22 *H.* 8. *c.* 5. Vide *Nuſance* and *highways*.

Annua Penſione, An ancient writ for providing the king's chaplain unpreferred with a penſion. It was brought where the king had due to him an *annual penſion* from an *abbot* or prior, for any of his chaplains whom he ſhould nominate, (being unprovided of livings) to demand the ſame of ſuch abbot or prior. *Reg. Orig.* 165, 307.

Annuale, A word ſignifying the yearly rent or income of a prebendary.

Annualia, A yearly ſtipend aſſigned to a prieſt for celebrating an anniverſary, or for ſaying continued maſſes one year, for the ſoul of a deceaſed perſon.—*Inhibemus quoque diſtrictius ne aliquis rector eccleſiæ faciat hujuſmodi pactum cum ſuo ſacerdote, videlicet quod ipſe ſacerdos præter cætera ſtipendia poterit recipere* annualia *&* *triennalia.* Conſt. Rob. Groſteſt Epiſcopi Lincoln. in Append. ad Faſcic. p. 411.

Annuity, (*annuus redditus*) Is a yearly rent, payable for term of years, life, or in fee; and it is uſed for a writ that lies againſt a perſon for recovery of ſuch rent. *Reg. Orig.* 158. *Annuity* hath alſo been defined to be a yearly payment of a certain ſum of money, granted to another for life, *&c.* to be received of the grantor or his heirs, ſo that no freehold be charged therewith; whereof a man ſhall never have aſſiſe or other action, but a writ of *annuity*. *Terms de Ley* 44. *Com. D.* 1 *V.* tit. *Action*, &c.,

To make a good grant of an *annuity*, no particular technical mode of expreſſion is neceſſary. For if a man grants *an annuity to another, to be received out of his coffers*, or *to be received out of a bag of money*, or *to be received of a ſtranger*, yet this is ſufficient to charge his perſon, and the ſubſequent words ſhall be rejected. 1 *Roll. Abr.* 227.

So, if a man grant a *rent out of his manor*, when he has not any manor; this is a good annuity. 1 *Rol. Abr.* 227.

Or, If he grant *a rent of* 20 *l. per annum, to be received of his tenants in D.* when he has not any tenant there. 1 *Roll. Abr.* 227.

If a man grant a rent out of land, in which he has nothing, *proviſo that he be not charged for this in a writ of annuity*, it ſhall be a good annuity; for the proviſo, being repugnant, is void. *Co. Lit.* 146. *a.* 2 *Bulſt.* 149.

If a man grant *a rent-charge out of his land*, the grantee has an election to take it as a rent, or as an annuity. *Lit. ſect.* 219. 2 *Bulſt.* 148.

The treatiſe called *Doctor and Student, dial.* 1. *cap.* 3. ſhews ſeveral differences between a rent and an *annuity*, *viz.* that every rent is iſſuing out of land; but an *annuity* chargeth the perſon only, as the grantor and his heirs, who have aſſets by deſcent: for the recovery of an *annuity*, no action lies, but only the writ of *annuity*; (*vide poſt*) but of a rent the ſame remedy lies as for lands; and an *annuity* is never taken for aſſets, becauſe it is no freehold in law; nor ſhall it be put in execution upon a ſtatute merchant, ſtaple, or *elegit*, as a rent iſſuing out of land may. *Dyer* 345. 2 *Rep.* 144

It can ſcarce be conceived that a grant of an annuity can be made, by a deed, without that deed containing words, tantamount to a covenant; therefore, where there are ſuch words, *covenant*, for non-payment, will lie.—I ſhould think the words of the grant itſelf, tantamount to a *covenant* to pay.

If no lands are bound for the payment of an *annuity*, a diſtreſs may not be taken for it. *Dyer* 65. And hence it is, that if a rent be granted out of lands, with a proviſo that the perſon of the grantor ſhall not be charged, that this proviſo is void, becauſe the grantee, having no diſtreſs given by the deed for the recovery of the rent, would be without any manner of remedy, if the proviſo took place. 6 *Co.* 58. *b.*

But if an *annuity* iſſue out of land, (which of late it often doth) the grantee may bring a writ of *annuity*, and make it perſonal, or an aſſiſe, or diſtrain, *&c.* ſo as to make it real. *Co. Lit.* 144. And if the grantee take a diſtreſs; yet he may afterwards have a writ of *annuity*, and diſcharge the land, if he do not avow the taking, which is in nature of an action. 1 *Inſt.* 145. But if the grantee of a rent bring an aſſiſe for it, he ſhall never after have writ of *annuity*; he having elected this to be a rent: ſo if the grantee of an *annuity* avow the taking of a diſtreſs, in a court of record. *Danv. Abr.* 486. And if the grantee purchaſe part of the land out of which an *annuity* is iſſuing, he ſhall never after have a writ of *annuity*. *Co. Lit.* 148.

Where a rent-charge, iſſuing out of lands, granted by tenant for life, *&c.* determines by the act of God; as an intereſt was veſted in the grantee, it is in his election to make it a rent-charge, and ſo charge the lands therewith, or a perſonal thing to charge the perſon of the grantor in *annuity*. 2 *Rep.* 36. *A.* ſeiſed of lands in fee, he and *B.* grant an *annuity* or rent-charge to another; this *prima facie* is the grant of *A.* and confirmation of *B.* But the grantee may have a writ of *annuity* againſt both. If two men grant an *annuity* of 20*l. per ann.* although the perſons be ſeveral, if the deed of grant be not for them ſeverally, yet the grantee ſhall have but one *annuity* againſt them. *Co. Lit.* 144.

When a man recovers in a writ of *annuity*, he ſhall not have a new writ of *annuity* for the arrears due after the recovery, but a *ſcire facias* upon the judgment, the judgment being always executory. 2 *Rep.* 37. No writ of *annuity* lieth for arrearages only when an *annuity* is determined, but for the *annuity* and arrearages. *Co. Lit.* 285. Though, if a rent-charge be granted out of a leaſe for years, it hath been adjudged that the grantee may bring *annuity* when the leaſe is ended. *Moor, cap.* 450. Where an *annuity* is granted to one for life, during the term he ſhall have a writ of *annuity*: and when that is determined, his executors may have action of debt; for the realty is then reſolved into the perſonalty. 4 *Rep.* 49. *New Nat. Br.* 278.

Upon a rent created by way of reſervation, no writ of *annuity* lies. *Danv.* 483. If a man grants a rent out of his manor, or lands, or to be received of his tenants, and he hath no manor, lands, or tenants, yet it may be a good *annuity*, though void as to a rent. *Danv. Abr.* 485. A perſon grants to me 10*l.* every year, that I ſhall be reſident in ſuch a pariſh; an *annuity* lies for this, it being annual at my will; and it is the ſame if a rent be granted payable at the end of a certain number of years, though it be not annual. *Ibid.* 452. A grant is made by a perſon of an *annuity* to another and his heirs, without the grantor's ſaying for him and his heirs, this is determinable by the death of the grantor. *Danv. Abr.* 482. Writ of *annuity* may not be had againſt the grantor's heir, unleſs the grant be for him and his heirs; and there muſt be aſſets to bind the heir, by grant of *annuity* by his anceſtor, when he is named. *Co. Lit.* 144. 1 *Roll. Abr.* 226. But it is otherwiſe in caſe of the grant of a rent out of land, or a grant of a rent whereof the grantor is ſeiſed, for this charges the land, but an annuity charges the perſon only. *Br. Charge, pl.* 54.

An *annuity* granted by a biſhop, with confirmation of dean and chapter, ſhall bind the ſucceſſor of the biſhop. *New Nat. Br.* 340. If the king grant an *annuity*, it muſt be expreſſed by whoſe hands the grantee ſhall receive it, as the king's bailiff, *&c.* or the grant will be void; for the king may not be ſued, and no perſon is bound to pay it if not expreſſed in the patent. *New Nat. Br.* 341. If, where an *annuity* is granted *pro decimis*, the grantor is diſturbed of his tithes, the *annuity* ceaſeth; and ſo it is where any *annuity* is granted to a perſon *pro conſilio*, and the grantee refuſeth to give counſel: for where the cauſe and conſideration of the grant amounts to a condition, and the one ceaſes, the other ſhall determine. *Co. Lit.* 204.

There are now very few, if any, grants of *annuities*, without a covenant for payment, expreſſed or implied; and therefore, where a diſtreſs can't be made, or is not approved of, the grantee may bring an action of *covenant*, and recover the arrears in damages, with coſts of ſuit. And that action is now uſually brought, real actions and writs of *annuity* being much out of uſe.

See more concerning this head under title **Grant.**

Anſel, or *anſul*. See *aunſel* weight—*De pede, pollice, cubito, & palma, de* anſul, *balancibus & menſuris*. Thorn. Chron.

Antejuramentum, and *præjuramentum*. By our anceſtors called *juramentum calumniæ*; in which both the accuſer and the accuſed were to make this oath before any trial or purgation, *viz.* the accuſer was to ſwear that he would proſecute the criminal; and the accuſed was to make oath on the very day that he was to undergo the ordeal, that he was innocent of the crime of which he was charged. *Leg. Athelſtan. apud Lambard* 23. If the accuſer failed to take this oath, the criminal was diſcharged; and if the accuſed did not take his, he was intended to be guilty, and not admitted to purge himſelf. *Leg. Hen.* 1. *c.* 66.

Antiſtitium, A word uſed for monaſtery in our old hiſtories. *Blount.*

Antithetarius, Signifies where a man endeavours to diſcharge himſelf of the fact of which he is accuſed, by recriminating and charging the accuſer with the ſame fact. This word is mentioned in the title of a chapter in the laws of *Canutus, cap.* 47.

Apatiſatio, An agreement or compact made with another. *Upton, lib.* 2. *c.* 12.——*De officio militari, viz. concedimus per præſentes bonum & ſalvum conductum, ac ſalvam guardiam ſive ſecuritatem* apataſationis.

Aporiare, To be brought to poverty.—*Permiſit ſuos ſpoliare patriam*, aporiare *vulgus*. *Walſingham in R.* 2. It hath been uſed ſometimes to ſignify, ſhun or avoid.

Apoſtare, To violate: *apoſtare leges*, and *apoſtatare leges*, wilfully to break or tranſgreſs the laws.—*Qui leges* apoſtabit *terræ ſuæ, reus ſit apud regem*. Leg. Edw. Confeſſoris, c. 35.

Apoſtata Capiendo, A writ that formerly lay againſt one who, having entered and profeſſed ſome order of religion, broke out again, and wandered up and down the country, contrary to the rules of his order: it was directed to the ſheriff for the apprehenſion of the offender, and delivery of him again to his abbot or prior. *Reg. Orig.* 71, 267.

Apothecaries, Are exempted from ſerving offices, *&c.* Their medicines are to be ſearched and examined by the phyſicians choſen by the college of phyſicians, and if faulty ſhall be burnt, *&c.* 32 *Hen.* 8. *c.* 40. 1 *M. Stat.* 2. *c.* 9. And *apothecaries* to the army are to make up their cheſts of medicines at *Apothecaries Hall*, there to be openly viewed, *&c.* under the penalty of 40 *l.* *Stat.* 10 *Ann. cap.* 14. Vide 6 & 7 *W.* 3. *c.* 4. See *Phyſicians*.

Apparator, or **Apparitor**, A meſſenger that ſerves the proceſs of the ſpiritual court. His duty is to cite the offenders to appear; to arreſt them; and to execute the ſentence or decree of the judges, *&c.* *Anno* 21 *Hen.* 8. *cap.* 5. In the year 1316 *Walter* archbiſhop of *Canterbury* granted the following commiſſion to an *apparitor* of his conſiſtory court.—Walterus *Dei gratia* Cant. *archiep. totius Angliæ primas, dilecto filio* Willielmo de Graftone *in* apparitoris *officio, in curia noſtra* Cantuar', *videlicet, in conſiſtorio ac decanatu noſtro eccleſiæ beatæ* Mariæ *de arcubus* London. *Miniſtranti ſalutem, gratiam & benedictionem. Perſonam tuam, eo quod de fidelitate in dicto officio per laudabile teſtimonium apud nos multipliciter commendaris, volentes proſequi cum favore, dictum* apparatoris *officium in curia, conſiſtorio & decanatu prædictis perpetuo poſſidendum tibi conferimus per præſentes: ita tamen quod te fideliter geras in officio prædicto memorato. Volentes & tibi ſpecialiter concedentes, ut cum in miniſterio dicti officii per teipſum perſonaliter vacare non poteris, vel abſens fueris a curia, conſiſtorio & decanatu prædictis, nihilominus per aliam idoneam perſonam, quem ad hoc aſſignandum omnia & ſingula quæ dicto incumbent officio—facere valeas, & jugiter exercere.*—Dat. apud Lambeth. 8 Id. Mart. 1316.

If a monition be awarded to an apparitor, to ſummon a man, and he upon the return of the monition avers that he had ſummoned him, when in truth he had not, and the defendant be thereupon excommunicated; an action on the caſe at Common law will lie againſt the apparitor for the falſhood committed by him in his office, beſides the puniſhment inflicted on him by the eccleſiaſtical court for ſuch breach of truſt. *Ayl. Parerg.* 70. 2 *Bulſt.* 264.

Apparitor Comitatus, An officer formerly called by this name; for which the ſheriffs of *Buckinghamſhire* had a conſiderable yearly allowance; and in the reign of queen *Elizabeth*, there was an order of court for making that allowance: but the cuſtom and reaſon of it are now altered. *Hale's Sher. Acco.* 104.

Apparlement, (From the Fr. *pareillement*, i. e. in like manner) Signifies a reſemblance or likelihood; as *apparlement* of war. 2 *R.* 2. *Stat.* 1. *c.* 6.

Apparura, Furniture and implements; *apparatus. Dominus clamat habere omnes carrectas ferro non ligatas, & omnes carrucas cum tota* apparura. Placit. in Itin. apud Ceſtriam 14 *Hen.* 7. *Carrucarum apparura* is plough-tackle, or all the implements belonging to a plough.

Appeal, *appellum*, (From the Fr. *appel* or *appeller* to accuſe) Is a word uſed in our law for the removal of a cauſe from an inferior court or judge to a ſuperior: but more commonly for the accuſation of a murderer, by a party who had intereſt in the perſon killed; or of a felon by one of his accomplices. *Co. Lit.* 287. It ſignifies as much as *accuſatio* with the Civilians; for as, in the Civil law, cognizance of criminal cauſes is taken either upon inquiſition, denunciation or accuſation; ſo, in the Common law, it is upon indictment, or *appeal*, indictments comprehending both inquiſition and denunciation. And accuſation or *appeal* is a lawful declaration of another man's crime, (being felony at leaſt) before a competent judge, by one that ſets his name to the declaration, and undertakes to prove it, upon the penalty that may enſue of the contrary. *Bract. lib.* 3. *Brit. c.* 22. 25. *Staundf. lib.* 2. *cap.* 6.

There were anciently ſeveral kinds of appeals, which ſeem obſolete at this day; as appeals of treaſon, which might be ſued before the parliament and other courts of law, as well as before the conſtable and marſhal, and were determinable by battle. 2 *Inſt.* 132. *Bract.* 118. 2 *Hawk. P. C.* 161.

But appeals before the parliament are taken away by 1 *H.* 4. *cap.* 14. and thoſe before other law-courts are become obſolete.

But as to the juriſdiction of the conſtable and marſhal, in relation to treaſons committed out of the realm, it ſeems to continue ſtill in force; for in the 7th year of *Charles* the firſt, an appeal of treaſon, ſuppoſed to be committed beyond ſea, was actually commenced before the conſtable and marſhal; who, for want of ſufficient proof to clear the truth, awarded that a duel ſhould be fought between the parties, for the final determination of the matter. See *Ruſhworth's Collect. part.* 2. *vol.* 1. *p.* 112.

Appeals *de pace, de plagis*, and *de impriſonamento* are out of uſe, and have been turned to actions of treſpaſs for many hundred years paſt; alſo the whole learning of appeals of *arſon* ſeems obſolete at this day *Co. Lit.* 288. *a.*

The kinds of appeals, therefore, that ſeem to require any conſideration at this day, are thoſe of death, larceny, and rape, which are capital appeals, and that of mayhem, which is conſidered as a treſpaſs. 1 *New Abr.* 122.

An appeal of death, which is now chiefly in uſe, is a vindictive action which the law gives a wife againſt her huſband's murderer, and to the heir at law againſt one who kills his anceſtor, which, being the ſuit of the ſubject, the king cannot pardon. 1 *New Abr.* 122. And ſee 9 *Hen.* 3. *c.* 34 and 3 *Hen.* 7. *c.* 1.

An appeal of murder is for retribution, or ſatisfaction, as far as the law can give it; *i. e.* life for life.

By *Magna Charta, c.* 34. a woman can't ſue an appeal for the murder of any one, but her huſband.

At the common law, before the ſtatute 9 *Hen.* 3. a woman as well as a man might have had an appeal of death of any of her anceſtors, and therefore the *ſon of a woman* ſhall at this day have an appeal, if he be heir at the death of the anceſtor, for the ſon is not diſabled, but the mother only, for the ſtatute ſays, *propter appellum fæminæ*. 2 *Inſt.* 68.

The *judges* are ſo far *bound to take notice of this ſtatute*, that if a woman brings an appeal of death of her father, or of any other beſides her huſband, they ought *ex officio* to abate it, tho' the defendant takes no exception to it. 2 *Hawk. Pl. C.* 166. *cap.* 23. *ſ.* 42.

A feme ſhall have appeal where ſhe ſhall have no dower, as where ſhe *elopes* from her baron. *Br. Appeal, pl.* 17. cites 50 *E.* 3. 15. *per Ingleby.*

The wife is to be a wife *de facto* to be intitled to *appeal*; and if ſhe marries again, before the *appeal* is brought, or whilſt the ſame is depending, her *appeal* will be gone. 2 *Inſt.* 68, 317. Where a woman has judgment in *appeal*, of the death of her huſband, ſhe cannot have execution if ſhe do not perſonally pray it: a judge went to a woman great with child, to know if ſhe would have execution? She ſaid, Yes, and the *appellee* was hanged. *Jenk. Cent.* 137. But if ſhe marry after the judgment, ſhe cannot pray execution. 2 *Hawk. P. C.* 164.

For the death of an anceſtor who leaves no wife, the heir only can bring an appeal, and ſuch heir muſt himſelf be innocent of the fact, he muſt be heir general according to the courſe of the Common law, and alſo heir male, and in his count muſt ſet forth how he is heir to the deceaſed. 2 *Hawk. P. C.* 165.

The huſband ſhall not have an *appeal* for the death of his wife; but the heir only. *Danv. Abr.* 488. An heir ſhall not have *appeal* for the death of a man married, except the wife kill the huſband; in which caſe the heir may proſecute the *appeal.* 1 *Leon.* 326. *Co. Lit.* 33.

If a wife dies within the year, the heir ſhall have no *appeal. Keilw.* 120. And if after the death of the anceſtor the heir male dies, 'tis ſaid another heir ſhall not have *appeal. H. P. C.* 182. For a perſon that proſecutes an *appeal* muſt be immediate heir to the anceſtor killed, or his ſuit ſhall not be received. *Staundf.* 59. But where an *appeal* lies againſt an heir, the next heir ſhall bring it. *H. P. C.* 182. An infant may proſecute an *appeal*: and it is to be brought where the felony is done, and the party wounded ſhall die. *Staundf.* 63.

But an ideot, or a perſon born deaf and dumb, or one attainted of treaſon or felony, or outlawed in a perſonal action, ſo long as ſuch attainder or outlawry continues in force, cannot bring any appeal whatſoever. 2 *Hawk.* 168. *H. P. C.* 183. 2 *Hawk. P. C.* 162.

The *appellant* is to commence his *appeal* in perſon; but he may proceed by attorney, having a ſpecial warrant of attorney filed. 1 *Salk.* 60. The *appeal* muſt be brought in a year and a day after the death of the perſon murdered: and the count muſt ſet forth the fact, and the length and depth of the wound, the year, day, hour, place where done, and with what weapon, *&c.* And that the party died in a year and a day. 2 *Inſt.* 665. & 6 *Ed.* 1. *c.* 9. Principal and acceſſaries before and after are to be joined in *appeal. Danv. Abr.* 493. And this is to be obſerved, though the acceſſary is guilty in another county. 3 *H.* 7. *c.* 1.

An *appeal* is proſecuted two ways; either by writ, or bill: *appeal* by writ is when a writ is purchaſed out of *Chancery* by one for another, to the intent he may *appeal* a third perſon of ſome felony committed by him, finding pledges that he ſhall do it: *appeal* by bill is where a man of himſelf gives up his accuſation in writing, offering to undergo the burden of *appealing* the perſon therein named. *Bracton.*

This *appeal* may be brought by bill before the juſtices in the *King's Bench*; before juſtices of gaol delivery, and commiſſioners of *oyer* and *terminer*, *&c.* or before the ſheriff and coroner, in the county court: but the ſheriff and coroner have only power to take and enter the *appeal* and count, for it muſt be removed by *Certiorari* into *B. R.*

In *appeal* by original, principals and acceſſaries are generally charged alike without diſtinction, till the plaintiff counts: but 'tis otherwiſe in *appeals* by bill. *Danv.* 494.

There is to be but one *appeal* againſt the principal and acceſſary: if the principal is acquitted, it ſhall acquit the acceſſary; and both ſhall have damages againſt the appellant on a falſe *appeal*, or the acceſſary may bring a writ of conſpiracy. 33 *Hen.* 6. *cap.* 2. 2 *Inſt.* 383. Though, where a perſon is acquitted on a juſt *appeal*, he may be arraigned upon indictment at the king's ſuit: and if a murderer be acquitted upon indictment, or found guilty and pardoned by the king, the wife or heir may bring *appeal. Wood* 629.

When a perſon is indicted for murder, and acquitted thereupon, he is to be bailed till the year and day is paſt, allowed for bringing the *appeal*, if an *appeal* be intended. 3 *Hen.* 7. *cap.* 1.

If the defendant in *appeal* is attaint, or acquit: or the plaintiff nonſuit after appearance, which is peremptory, no other *appeal* lies. *H. P. C.* 188. But if the *appeal* is good and well taken, and afterwards fails, the defendant ſhall be arraigned at the ſuit of the king; 'tis otherwiſe if the appeal was never good or well taken; as if it *abates* for miſnomer, &c. *Staundf.* 147, 148. If there be an indictment and *appeal* depending at the ſame time againſt the ſame perſon, the *appeal* ſhall be tried firſt, if the appellant be ready. *Kel.* 107. Otherwiſe the king would deſtroy the ſuit of the party; for this reaſon the king by his pardon cannot bar an appeal. *Jenk.* 160. *pl.* 4.

The caſe of other appeals than of murder, as of robbery, rape, *&c.* are not within the ſtatute. 3 *H.* 7. *c.* 1. And therefore *auterfoits acquit*, upon an indictment within the year, ſtands at Common law a good bar to an appeal of robbery, or any offence other than murder or manſlaughter; and yet the judges at this day never forbear to proceed upon an indictment of robbery, rape, or other offence, though within the year, becauſe appeals of robbery eſpecially are very rare, and of little uſe, ſince the ſtatute of 21 *H.* 8. *cap.* 11. gives reſtitution to the proſecutor as effectually as upon an appeal. 2 *Hale's Hiſt. P. C.* 250.

Where the appellant doth not proſecute his *appeal*; or in caſe he releaſe to the defendant; the *appellee* may be arraigned at the king's ſuit. If the defendant on an indictment is convicted of manſlaughter, and allowed his clergy, it will bar an *appeal*: though ſome of our books tell us the heir may lodge an *appeal* immediately before clergy had: and others ſay clergy ought to be granted, and that it is unreaſonable an *appeal* ſhould interpoſe preſently to prevent judgment. 3 *Inſt.* 131. If a perſon, immediately after the verdict of manſlaughter, put in an *appeal* of murder, and before the *appeal* is arraigned, the defendant demands his benefit of clergy; this is a good bar to *appeal*, and praying of clergy, is having of clergy, though the court delay calling the party to judgment, *&c.* 1 *Salk.* 60, 62. *Kel.* 93. But formerly it was held, that the court might delay the calling a convict to judgment, and thereby hinder him from his clergy, and make him liable to an *appeal*, eſpecially if the *appeal* were depending: and where the record of a conviction of manſlaughter is erroneous, or inſufficient, *&c.* the offender cannot plead the conviction and clergy had therein, in bar of an *appeal* or ſecond indictment, *&c.* 2 *Hawk. P. C.* 378, 379.

A charter of pardon is no bar of an *appeal*: and if the party be outlawed, *&c.* in *appeal*, and the king pardon him, a *ſcire facias* ſhall iſſue againſt the appellant, who may pray execution, notwithſtanding ſuch pardon; but if returned *ſci. fec.* and he appears not, then the *appellee* ſhall upon the pardon be diſcharged. *H. P. C.* 251. A peer in *appeal* of murder ſhall not be tried by his peers, but by a common jury; though he ſhall upon an indictment for murder. Vide *Stat.* 3 *H.* 7. *c.* 1. directing appeals before the ſheriff and coroners, or at King's Bench, or gaol delivery. No appeals to be purſued in parliament. 1 H. 4. *c.* 14.

No eſſoin is allowed the *appellant*, in *appeal* of death. *Stat.* 13 *Ed.* 1. In *appeal* the court can grant no imparlance, but it may be adjourned, 1 *Sid.* 325. And where *appeal* of death is brought, the defendant cannot juſtify *ſe defendendo*; but muſt plead Not guilty, and the jury are to find the ſpecial matter. *Bro. App.* 122. 3 *Salk.* 37. *Appeal* is the niceſt ſuit in law, for any ſmall matter will abate it; the proceſs muſt bear date the ſame day with the return of the writ; if it be a day afterwards, it is a diſcontinuance; and it varies from all other proceedings, for there can be no amendment of the writ, nor is the diſcontinuance of it helped by any ſtatute. *Nelſ. Abr.* 215.

The court *ex officio* will quaſh the writ for apparent faults appearing on the face of the writ; as where the ſenſe is defective for want of a material word, or where it wants thoſe words of art which the law has appropriated for the deſcription of the offence. 2 *Hawk. P. C.* 184.

Alſo the court will abate the writ when the declaration varies from the writ in ſome material point, either as to the reign of the king, or as to the county wherein the fact is laid, *&c.* 2 *Hawk. P. C.* 184.

The declaration muſt ſet forth the offence with the utmoſt certainty, and likewiſe deſcribe it by ſuch words of art as the law has appropriated to the purpoſe; therefore if the word *felonice* in any appeal, *murdravit* in an appeal of murder, *rapuit* in an appeal of rape, *cepit* in an appeal of larceny, *mayhemiavit* in an appeal of mayhem, be omitted, they cannot be ſupplied by any circumlocution.

A releaſe of all manner of actions, or of all actions criminal, or of all actions concerning pleas of the crown, or of all appeals, or of all demands, is a good bar of any appeal; but a releaſe of all perſonal actions does not bar an appeal of felony, being an action of an higher nature. *Cro. Jac.* 283. *Yelv.* 204. 2 *Hawk. P. C.* 196.

If the appellee pleads a ſpecial plea, which does not amount to a confeſſion of the fact, he muſt at the ſame time plead over to the felony, except in ſpecial caſes; as where ſuch plea would be prejudicial to him, or where his plea declines the juriſdiction of the court. 2 *Hawk. P. C.* 196. *Carth.* 56.

In *appeal of murder* brought by the *wife* for the death of her *huſband*; the appellee pleaded, that ſhe was never *lawfully married* to her huſband, but did not plead *over to the felony*; adjudged, that this plea being to be tried by the *ordinary upon his certificate*, whether the marriage was *lawful or not*, in ſuch caſe the defendant need not plead over to the *felony*; but where the plea is triable by the *Common law*, he muſt plead *over to the felony*. *Cro. Eliz.* 224.

By ſtatute an *appellant*, bringing a falſe *appeal*, ſhall ſuffer a year's impriſonment, yield damages to the party grieved, and pay a fine to the king; and being unable, thoſe that abetted him ſhall be puniſhed in like manner. *Stat.* 13 *Ed.* 1. *c.* 12.

The *form* of an *appeal of murder*.

Wilts. BE it remembered, *That at the general delivery of the gaol of the lord the king, in the county of* W. *held for the ſaid county at,* &c. *in the county aforeſaid, the day,* &c. *in the firſt year of the reign of our ſovereign lord* George *the Third, by the grace of God, of* Great Britain, France, *and Ireland, king, defender of the faith,* &c. *before Sir* F. P. *and* A. D *eſq;* &c. *juſtices of our ſaid lord the king aſſigned to hold pleas,* &c. *and juſtices of the ſaid lord the king, his gaol there of the priſoners in the ſame being to deliver aſſigned,* &c. J. B. *ſon and heir of* T. B. *deceaſed, in his proper perſon, by bill earneſtly appealed* R. D. *late of,* &c. *and* T. E. &c. *in the cuſtody of* W. C. *eſq; ſheriff of the county aforeſaid, to the bar there brought in their proper perſons, of the death of the ſaid* T. B. *his father; and there are pledges of proſecuting his ſaid bill, that is to ſay,* John Doe *and* Richard Roe; *which ſaid bill follows in theſe words:* Wilts ſſ. J. B. *ſon and heir of* T. B. *late of,* &c. *in the county of* W. *eſq; in his proper perſon, earneſtly* appeals R. D. *late of,* &c. *gentleman, and* T. E. *late of,* &c. *in cuſtody of* W. C. *eſq; ſheriff of the county of* W. *aforeſaid, being to the bar brought in their proper perſons, of the death of the ſaid* T. B. *his ſaid father; for that the ſaid* R. D. *not having God before his eyes, but being moved and ſeduced by the inſtigation of the devil, on the day,* &c. *in the year of the reign,* &c. *with force and arms,* &c. *at the pariſh of,* &c. *in the county of* W. *aforeſaid, that is to ſay, in a certain place called,* &c. *in the king's highway there, upon the ſaid* T. B. *in the peace of God and of our ſaid lord the king then and there being, feloniouſly, wilfully, and of his malice forethought, made an aſſault, and the ſaid* R. D. *a certain piſtol of the value of ten ſhillings, then and there charged with gunpowder and a leaden bullet, which piſtol the ſaid* R. D. *in his right hand then and there had, feloniouſly, wilfully, and of his forethought malice, directed againſt the ſaid* T. B. *he ſhot off and diſcharged, and with the ſaid leaden bullet, by force of the ſaid gunpowder out of the piſtol aforeſaid, ſo as aforeſaid directed, ſhot and diſcharged, the ſaid* T. B. *in and upon the right ſide of the breaſt of him the ſaid* T. B. *near his right ſhoulder, then and there feloniouſly, wilfully, and of his malice forethought, ſtruck, pierced and wounded, and then and there the ſaid* R. D. *with the ſaid bullet, ſo ſhot and diſcharged from the ſaid piſtol as aforeſaid, in and upon the ſaid right ſide of the breaſt of him the ſaid* T. B. *near his ſaid right ſhoulder, feloniouſly, wilfully, and of malice forethought, gave to the ſame* T. B. *one mortal wound, of the length and depth,* &c. *of which ſaid mortal wound the ſaid* T. B. *then and there inſtantly died. And the ſaid* T. E. *the ſaid day,* &c. *in the ſame year, at* &c. *aforeſaid, in the place aforeſaid, and in the king's highway aforeſaid, there feloniouſly, wilfully, and of his malice forethought, was preſent, abetting, aiding, comforting and maintaining the ſaid* R. D. *the felony and murder aforeſaid, in manner and form aforeſaid, to do and commit: and ſo the ſaid* R. D. *and* T. E. *the ſaid* T. B. *in manner and form aforeſaid, feloniouſly, wilfully, and of their malice forethought, killed and murdered, againſt the peace of our ſaid lord the king, his crown and dignity,* &c. *And as ſoon as the ſaid felons the ſaid felony and murder had committed, they fled; and the ſaid* J. B. *ſon and heir of the ſaid* T. B. *made freſh purſuit after the ſaid felons,* &c. *And if the ſaid* R. D. *and* T. E. *the felony and murder aforeſaid ſo as aforeſaid done, are willing to avow and affirm, then the ſaid* J. B. *is ready the ſaid felony and murder againſt them the ſaid* R. D. *and* T. E. *to prove, according as the court of our ſaid Lord the now king here ſhall conſider thereof, and hath found pledges to proſecute his* Appeal, *&c.*

Appeal of Maihem, Is the accuſing one that hath *maimed* another: but this being generally no felony, it is in a manner but an action of treſpaſs; and nothing is recovered by it but damages. In an action of aſſault and *maiming*, the court may increaſe damages, on view of the *maihem*, *&c.* And though *maihem* is not felony, in *appeals* and indictments of *maihem*, the words *felonice maihemiavit* are neceſſary. 3 *Inſt.* 63. *Bracton* calls *appeal of maihem appellum de plagis & maihemio*, and writes a whole chapter upon it. *Lib.* 3. *tract.* 2. *cap.* 24. In an *appeal of maihem*, the defendant pleads that the plaintiff had brought an action of treſpaſs againſt him, for the ſame wounding, and had recovered, and damages given, *&c.* And this was a good plea in bar of the *appeal*; becauſe in both actions damages only are to be recovered. 4 *Rep.* 43. And where there is a recovery in aſſault and battery, *&c.* the jury give damages according to the hurt, which was done, and it ſhall be intended a *maihem* at that time; and therefore *appeal of maihem* doth not lie. *Hob.* 94. 1 *Leon.* 318. In *appeal of maihem*, the appellant ought not to plead in abatement of the writ, and likewiſe over to the *maihem*; if he doth, he will loſe the benefit of his plea to the writ. *Moor* 457.

Appeal of Rape, Lies where a *rape* is committed on the body of a woman. 3 *Inſt.* 30. A feme covert, without her huſband, may bring *appeal of rape*: and the *Stat.* 11 *Hen.* 4. *cap.* 13. gives power where a woman is raviſhed, and afterwards conſents to it, for a huſband, or a father, or next of kin, there being no huſband, to bring *appeal of rape*: alſo the criminal, in ſuch caſe, may be attainted at the ſuit of the king. 3 *Inſt.* 131. 6 *R.* 2. *cap.* 6.

If a woman be raviſhed by her next of kin, and conſents to him, and has neither huſband nor father, the next of kin to him ſhall have the appeal; for he has diſabled himſelf by the rape, whereby he becomes a felon. 2 *Inſt.* 434.—*Hale's Hiſt. P. C.* 632. S. P. cites 28 *H.* 6. *Corone* 459.—2 *Hawk. P. C.* 173. *c.* 23. *ſ.* 64. S. P.

If there be no huſband, nor father, then the appeal is given to the heir, whether male or female. *Hale's P. C.* 186.

In appeal of rape of his feme, the *defendant pleaded, Ne unques accouple* in lawful matrimony, *becauſe one was affianced to the feme, and after another married her, and after ſhe came to him who affianced her, and he married her, and ſhe is afterwards raviſhed.* The firſt who married her ſhall have the appeal of rape, for the firſt eſpouſals are good till they are divorced for the precontract, and the opinion here is that, *Ne unques accouple,* &c. in this caſe is not a good plea; for the ſtatute gives it to the barons, *ſi viros habuerint*; ſo that baron in *poſſeſſion ſhall have it,* where eſpouſals are not void. *Br. Appeal,* pl 32. cites 11 *H.* 4. 13.

This ſtatute, as to the huſband, ſhall be conſtrued ſtrictly, and be intended of a huſband in poſſeſſion, tho' there be good cauſe of divorce; for he is her huſband till a divorce be had. See *Br. Parliament, pl.* 89. cites 11 *H.* 4, 14. —— 2 *Hawk. Pl. C.* 173. *cap.* 23. *ſ.* 62. ſays, that *Ne unques accouple*, &c. is a good plea, and ſhall be tried by the biſhop's certificate, who, if the marriage were unlawful by reaſon of a *pre-contract*, ought to certify againſt the appellant.

The ſtatute of *Weſtm.* 1. *c.* 13. enacts that *appeal of rape* ſhall be brought within forty days: but by *Stat. Weſtm.* 2. *c.* 34. relating to this offence, no time is limited for the proſecution; ſo that it may be brought in any reaſonable time. *H. P. C.* 186. *Appeal of rape* is to be commenced in the county where committed: and if a woman be aſſaulted in one county, and raviſhed in another, the *appeal of rape* lies in that county where ſhe was raviſhed. *H. P. C.* 186. It is held, that though formerly the defendant might have his clergy, 'tis taken away by the *Stat.* 18 *Eliz. cap.* 17. *Dyer* 201.

Form of an *Appeal of Rape.*

A. B *of*, &c. *in his proper perſon earneſtly* appeals C. D. *late of*, &c. *in the priſon*, &c. *according to the form of the ſtatute made in the parliament of the lord* Richard *the ſecond, king of* England, *in the ſixth year of his reign held*, &c. *for that the ſaid* C. D. *the day and year*, &c. *at*, &c. *in the county aforeſaid*, M. B. *wife of the ſaid* A. B. *feloniouſly raviſhed, and her carnally knew, againſt the form of the ſtatute aforeſaid*, &c. *And as ſoon as*, &c. *And this (the felony and rape aforeſaid) the ſaid* A. B. *is ready to prove againſt him the ſaid* C. D. *as the court*, &c.

Appeal of Robbery, A remedy given by the Common law, where a perſon is *robbed* of his goods, *&c.* to have reſtitution of the goods ſtolen: as they could not be reſtored on indictment at the king's ſuit, this *appeal* was judged neceſſary. 3 *Inſt.* 242. If a man *robbed* make *freſh purſuit* after, and apprehend and proſecute the felon, he may bring *appeal of robbery* at any time afterwards. *Staundf.* 62.

An *infant* ſhall have an appeal of *robbery*. *St. P. C.* 60. *b. cap.* 9.

Appeal of *felony* lies againſt a feme covert without her baron. *St. P. C.* 62. *cap.* 11.

So it lies againſt an *infant*; and ſo of all others who may commit felony. *Stam. Pl. C.* 62. *cap.* 11.

A woman at this day may have an appeal of robbery, *&c.* for ſhe is not reſtrained thereof. 2 *Inſt* 68.

Adjudged, that an *appeal of robbery* may be brought by the party *robbed* twenty years after the offence committed, and that he ſhall not be bound to bring it within a year and a day, as he muſt do in *appeal* of murder. 4 *Leon.* 16.

But the courts of law would now ſcarce permit a proſecution after ſuch a length of time, unleſs good cauſe could be ſhewn why it had not been ſooner commenced, as that the offender had fled the kingdom, and was but juſt returned, *&c.*

If one man *robs* ſeveral perſons, every one of them may have *appeal*: likewiſe if the *robber* be attainted at the ſuit of one, he ſhall be tried at the ſuit of the reſt, ſo as their *appeals* were commenced before the attainder. *Danv. Abr.* 494. In *appeal of robbery*, the plaintiff muſt declare of all the things whereof he is *robbed*, or they ſhall be forfeited to the king; for the *appellant* can have reſtitution for no more than is mentioned in his *appeal.* 3 *Inſt.* 227. By the Year-book 21 *Ed.* 1. 16. Reſtitution of goods was granted upon an outlawry, in *appeal of robbery*; but a perſon having preferred an indictment againſt a *robber*, and afterwards an *appeal*, on which he was outlawed, the plaintiff moved to have reſtitution of his goods, and it was denied. 2 *Leon.* 108.

If the count or declaration in *appeal of burglary* be ſufficient, and the defendant is convicted at the ſuit of the party upon the *appeal*; he ſhall not be again impeached for the ſame offence at the king's ſuit. 4 *Rep.* 39. By *Stat.* 21 *H.* 8. *cap.* 11. the like reſtitution of ſtolen goods may be had on *indictments* after attainder, as on *appeals*: and *appeals* of *rape* and *robbery* are now much out of uſe; but the *appeal* of *murder* ſtill continues, and is ſometimes brought. *Vide* as to appeal *Black. Com.* 4 *V.* 308, *&c.* and *Hawk. Pleas of the Crown*, tit. *Appeal*, where the ſubject is fully treated, and in a very maſterly manner.

Appeal to Rome. This was ever eſteemed ſo great an interruption to national juſtice, that even at the time the *Roman* Catholic religion was the religion of this kingdom it was prohibited. By the *Stat.* 24 *Hen.* 8. *appealing to Rome* incurs the penalty of a *præmunire*: and it is made treaſon by 13 *Eliz. cap.* 2.

Where an *appeal* in an *eccleſiaſtical cauſe* is made before the biſhop, or his commiſſary, it may be removed to the archbiſhop; and if before an archdeacon, to the Court of Arches, and from the Arches to the archbiſhop; and when the cauſe concerns the king, *appeal* may be brought in fifteen days from any of the ſaid courts to the prelates in convocation. 24 *H.* 8. *c.* 12. And the *Stat.* 25 *H.* 8. *cap.* 19. gives *appeals* from the archbiſhop's courts to the *king* in *Chancery*, who thereupon appoints commiſſioners finally to determine the cauſe; and this is called the Court of Delegates: there is alſo a court of commiſſioners of review; which commiſſion the king may grant as ſupreme head, to review the definitive ſentence given on *appeal* in the Court of Delegates.

On taking away the ſupremacy of the *pope* in this kingdom, this power was lodged in the crown, as *originally* belonging to it. 4 *Inſt.* 340. The dean of *Wells* was deprived of his deanery, by the commiſſary of the biſhop of *Bath* and *Wells*, from which ſentence the dean *appealed* to the archbiſhop, who affirmed it; and thereupon he exhibited an *appeal* to the king in *Chancery*, but found no relief, for the king granted the deanery to one *Turner.* But *anno* 1 *Mar.* the deprived dean obtained another commiſſion to the Delegates, and by their ſentence was reſtored to his deanery; and after the death of queen *Mary*, 1 *Eliz. Turner* had a commiſſion of review, and he was reſtored, though it was inſiſted there ought to be no farther *appeal. Dyer* 273.

In the 39th year of queen *Eliz.* ſentence being given in an eccleſiaſtical cauſe, the party againſt whom it paſſed, appealed to the archbiſhop, &c. who affirmed the ſentence; then he *appealed* to the Delegates, and they repealed both the former ſentences: on which the queen granted a commiſſion *ad revidendum* the ſentence of the Delegates, and it was held lawful. *Cro. Eliz.* 571. The biſhop of *Wincheſter* being made viſitor of *Magdalen* college in *Oxford*, the preſident of the college was deprived by him: the preſident *appealed* to the queen in *Chancery*: reſolved, that the *appeal* doth not lie, for 'tis out of the ſtatutes 24 *&* 25 *H.* 8. *Dyer* 209. See 4 *Mod.* 106. See *Admiral.*

Appearance, In the law ſignifieth the defendant's filing common or ſpecial bail, when he is ſerved with copy of, or arreſted on any proceſs out of the courts at *Weſtminſter*: and there can be no *appearance* in the court of *B. R.* but by ſpecial or common bail. There are four ways for defendants to *appear* to actions; in perſon, or by attorney; by perſons of full age: and by guardians, or next friend, by infants. *Show.* 165.

By the Common law, the plaintiff or defendant, demandant or tenant, could not appear by attorney without the king's ſpecial warrant by writ or letters patent, but ought to follow his ſuit in his own proper perſon; by reaſon whereof there were but few ſuits. *Co. Lit.* 128. 2 *Inſt.* 249. But it is now the common courſe for the plaintiff or defendant, in all manner of actions where there may be an attorney, to appear by attorney, and put in his warrant without any writ from the king for that purpoſe. And therefore, generally, in all actions real, perſonal, and mixt, the demandant or plaintiff, tenant or defendant, may appear by attorney. *F. N. B.* 26.

But in every caſe, where the party ſtands in contempt, the court will not admit him to appear by attorney, but oblige him to appear in perſon. As if he comes in by a *cepi corpus* upon an *exigent*. *F. N. B.* Or, if he be outlawed. 2 *Cro.* 462, 616.

But by *Stat.* 4 *&* 5 *W & M. c.* 18. Perſons outlawed in any caſe, except for treaſon or felony, may *appear* by attorney to reverſe the ſame without bail; except where ſpecial bail ſhall be ordered by the court.

In all caſes where proceſs iſſues forth to take the party's body, if a common *appearance* only, and not ſpecial bail is required, there every ſuch party may *appear* in court in his proper perſon, and file common bail. 1 *Lill. Abr.* 85. *Hill.* 22 *Car. B. R.*

In a capital caſe the party muſt always appear in perſon, and cannot plead by attorney: alſo in criminal offences, where an act of parliament requires that the party ſhould appear in perſon; and likewiſe in appeal, or on attachment. 2 *Hawk. P. C.* 141, 373.

On an indictment, information or action, for any crime whatſoever under the degree of capital, the defendant may, by the favour of the court, appear by attorney; and this he may do as well before plea pleaded, as in the proceeding after, till conviction. 1 *Lev.* 146. *Keilw.* 165. *Dyer* 346. *Cro. Jac.* 462.

If huſband and wife are ſued, the huſband is to make attorney for her. 2 *Saund.* 213.

If an ideot doth ſue or defend, he cannot appear by guardian, *prochein amie*, or attorney, but muſt appear in proper perſon; but otherwiſe of him who becomes *non compos mentis*; for he ſhall appear by guardian if within age, or by attorney if of full age. *Co. Lit.* 135. *b.* 2 *Inſt.* 390. 4 *Co.* 124.

A *corporation aggregate* of many perſons cannot appear in perſon, but by attorney, and ſuch appearance is good. 10 *Rep.* 32. in the caſe of *Sutton's Hoſpital.*

If a man is bound to *appear* in court on the firſt day of the term, it ſhall be intended the firſt day in common underſtanding, *viz.* the firſt day in full term. 1 *Lill.* 83, 2 *Leon.* 4. In caſe the defendant's attorney doth receive a declaration againſt his client from the plaintiff's attorney; this obliges the attorney to appear to it: and if an attorney has a warrant from the defendant to be his attorney in a ſuit depending in *B. R.* and he files common bail accordingly; it has been held, that he muſt *appear* by that warrant in all ſuits againſt the defendant in the ſame term; provided declarations are filed in the office, and copies delivered to the defendant, or his attorney, who filed the bail, before the end of the term in which his bail is filed. For the defendant being, after *appearance* and bail put in, ſuppoſed to be in *cuſtody of the marſhal*, the *attorney* that *appears* for him is bound to receive any declaration that is brought againſt him during that term. *Comp. Attorn. qu. de hoc.*

If the *plaintiff* files common bail for defendant, he only can deliver a declaration by the bye. *Harr.* 1 *V.* 80.

But, when *defendant* has filed *common* or *ſpecial bail* for himſelf, any perſon may *deliver* or *file* a declaration againſt him by the *bye*, at any time during the term wherein the proceſs againſt the defendant is *ret' ſedente curia*; and the practice has been, that the plaintiff, at whoſe ſuit the proceſs is, might declare againſt the defendant, in as many actions as he thinks fit, before the end of the next term, after the ret' of the proceſs. *Ibid.* 80, 81. But I conceive it does not follow from hence, that the attorney who appears for him, in the firſt ſuit, is bound to receive any other declaration, for he may act on the engagement of a third perſon, or from various other reaſons, and yet may not chooſe to be concerned for the defendant generally.

Attorneys ſubſcribing warrants to *appear*, are liable to a penalty of 5*l.* and attachment, upon *non-appearance.* And where an attorney promiſes to appear for his client, the court will compel him to *appear* and put in common bail, in ſuch time as is uſual by the courſe of the court; and that although the attorney ſay he hath no warrant for *appearance:* nor ſhall repealing a warrant of attorney, to delay proceedings, excuſe the attorney for his not *appearing*, who may be compelled by the court. 1 *Lill.* 83, 84. The defendant's attorney is to file his warrant the ſame term he *appears*, and the plaintiff the term he declares, under penalties by *Stat.* 4 & 5 *Ann. cap.* 16.

An attorney is not compellable to appear for any one, unleſs he take his fee, or back the warrant; after which the court will compel him to appear. 1 *Salk.* 87.

If an attorney appears, and judgment is entered againſt his client, the court will not ſet aſide the judgment, tho' the attorney had no warrant, if the attorney be able and reſponſible; for the judgment is regular, and the plaintiff is not to ſuffer when in no default; but if the attorney be not reſponſible or ſuſpicious, the judgment will be ſet aſide; for otherwiſe the defendant has no remedy, and any one may be undone by that means. 1 *Salk.* 86.

Attachment denied by the court againſt an attorney, who appeared for the plaintiff without a warrant; but ſaid an action on the caſe lies. *Comb.* 2.

In actions by original, *appearances* muſt be entered with the Filazer of the county; and if by bill, they ſhall be entered with the Prothonotary: and *appearances* and common bail are to be entered and filed by the defendant within eight days after the return of the proceſs, on which he was arreſted, &c. on pain of forfeiting 5*l.* to the plaintiff, for which the court ſhall forthwith award judgment and execution. 5 & 6 *W. & M. c.* 21. If the defendant does not *appear* and find bail, the plaintiff's attorney is to call upon the ſheriff for the return of the writ, whether the defendant be arreſted, or not; and proceed accordingly.

On two *nihils* returned upon a *ſcire & alias ſcire facias*, they amount to a *ſcire feci*, and the plaintiff giving rule, the defendant is to *appear*, or judgment ſhall be had againſt him by default: and where a defendant doth not plead after *appearance*, judgment may be had againſt him. *Style* 208. Upon a party's *appearing*, errors in writs are in many caſes ſalved, and the party may be obliged to anſwer as if there had been no ſuch error. 2 *Hawk.* 302. Where the firſt proceſs in an inferior court is a *capias* which ought not to be, it is ſalved and made good by *appearance*; for the defendant hath by his *appearing* admitted the writ to be legal. *Lutw.* 954. For, in inferior courts, regularly, a *plaint* ſhould be levied, and *ſummons* iſſued, and returned before ſuing forth the *capias*. On *appearance*, a writ hath had its end, and the plaintiff ſhall declare: alſo an *appearance* takes away all diſcontinuance, and bad proceſs before it. *Jenk. Cent.* 57.

By late ſtatutes, where a defendant is ſerved with a *copy of proceſs*, in actions of debt, &c. under 10*l.* a common *appearance* ſhall be entered, or common bail filed by the plaintiff, if the defendant doth not *appear* within eight days after the return of the writ; on affidavit made of the ſervice of the proceſs. *Stat.* 12 *Geo.* 1. *c.* 26. And a *notice* ſhall be indorſed on the copy of the proceſs, of the intent and meaning of the ſervice, for the defendant to *appear*, &c. by 5 *Geo.* 2. *c.* 17.

A wife may appear without her huſband. *Wilſ. Rep. part* 1. 264. A man may appear before the return of a *capias ad reſpondendum*. *Id.* 39. For the appearance is to the ſuit.

Appearance in perſon and by attorney are very different. Vide 1 *Sid.* 93, 322, 392. 4 *Rep.* 71. 1 *Lev.* 80. *Ray* 59.

Appearance by guardian and next friend. Vide *Infants*, &c.

Appendant, (*appendens*) Is a thing of inheritance, belonging to another inheritance that is *more worthy*. As an advowſon, common, court, &c. may be *appendant* to a manor: common of fiſhing, *appendant* to a freehold: land *appendant* to an office: a ſeat in a church to a houſe, &c. But land is not *appendant* to land, both being corporeal, and one thing *corporeal* may not be *appendant* to another that is *corporeal*; but an *incorporeal* thing may be *appendant* to it. *Co. Lit.* 121. 4 *Rep.* 86. *Danv. Abr.* 500. A foreſt may be *appendant* to an honour; and waifs and eſtrays to a leet. *Co. Lit.* 367. And *incorporeal* things, advowſons, ways, courts, commons, and the like, are properly parcel of and *appendant* to *corporeal* things; as houſes, lands, manors, &c. *Plowd.* 170. 4 *Rep.* 38. If tenant in tail of a manor whereunto an advowſon is *appendant* is diſſeiſed, and the diſſeiſor ſuffers an uſurpation; by the diſſeiſſee's entring into the manor, he is reſtored to the advowſon. *Co. Lit.* 49. But if one diſſeiſe me of common *appendant* belonging to my manor, and during the diſſeiſin I ſell the manor; by this the common is extinct for ever. 4 *E.* 3. 21. 11 *Rep.* 47. *Common* of *eſtovers* cannot be *appendant* to *land*; but to a *houſe* to be ſpent there. *Co. Lit.* 120. By the grant of a *meſſuage*, the *orchard* and *garden* will paſs as *appendant*.

Appendants are ever by preſcription, and this makes diſtinction between appendants and appurtenances, for appurtenances may be created in ſome caſes at this day; as if a man at this day grant to a man and his heirs, common in ſuch a moor for his beaſts, levant or couching *upon his manor*; or if he grant to another common of eſtovers or turbary in fee-ſimple, to be burnt or ſpent *within his manor*; by theſe grants, theſe commons are appurtenant to the manor, and ſhall paſs by the grant thereof; in the Civil law it is called *adjunctum*. *Co. Lit.* 121. *b.*

A way may be *quaſi* appendant to a *houſe*, *&c.* and as ſuch paſs by grant thereof. Cro. Jac. 190. *See Highway* Div. II.

What things may be appendant, vide *Plo. Com.* 103. *b.* 104. *b.* 170.

Appenditia, The *appendages* or pertinences of an eſtate.—*Simon* earl of *Northampton* gave to the knights templars his manor of *Merton in com. Oxon. cum omnibus* appenditiis *ſuis*.—Kennet's Paroch. Antiq. 110. Hence our pentices, or pent-houſes, are called *appenditia domus*, *&c.*

Appennage, or *apennage*, (Fr.) Is derived from *appendendo*; or the *German* word *apanage*, ſignifying a portion. It is uſed for a child's part or portion; and is properly the portion of the king's younger children in *France*, where, by a fundamental law, called the *law of apennages*, the king's younger ſons have dutchies, counties, or baronies granted to them and their heirs, *&c.* the reverſion being reſerved to the crown, and all matters of regality as to coinage, and levying taxes in ſuch territories. *Spelm. Gloſſ.*

Appenſura, The payment of money at the ſcale or by weight.—*Dedit regi præfato* appenſuram *novem librarum puriſſimi auri juxta magnum pondus Normannorum.* Hiſt. Elien. edit. Gale, l. 2. c. 19.

Apples, A duty is granted on all *apples* imported into *Great Britain*, to be paid before landing thereof, by *Stat.* 10 *Geo.* 2. *c.* 27.

By what meaſure apples are to be ſold, ſee 1 *Ann. St.* 1. *c.* 15.

Appodiare, Is a word uſed in old hiſtorians, and ſignifies to lean on, or prop up any thing, *&c.* *Walſingham ann.* 1271. *Mat. Pariſ. Chron. Aulæ Regiæ ann.* 1321.

Apponere, To pledge or pawn.—*Acceptâ à fratre Gulielmo ſummâ non modicâ Normanniam illi* appoſuit. *Neubrigenſis, lib.* 1. *c.* 2.

Apportionment, (*apportionamentum*) Is a dividing of a rent, *&c.* into parts, according as the land out of which it iſſues is divided among two or more. If a ſtranger recovers part of the land, a leſſee ſhall pay, having regard to that recovered, and what remains in his hands. Where the leſſor recovers part of the land, or enters for a forfeiture into part thereof, the rent ſhall be *apportioned*. *Co. Lit.* 148. If a man leaſes three acres, rendering rent, and afterwards grants away one acre, the rent ſhall be *apportioned*. *Co. Lit.* 144. Leſſee for years leaſes for years, rendring rent, and after deviſes this rent to three perſons, this rent may be *apportioned*. *Danv. Abr.* 505. If a leſſee for life or years under rent, ſurrenders part of the land, the *rent* ſhall be *apportioned*: but where the grantee of a rent-charge *purchaſes* part of the land, there all is extinct. *Moor* 231. But *qu.* if a court of equity would not give relief, if denied by a court of law, in ſuch a caſe, the purchaſer being ignorant of the legal conſequences? A *rent-charge*, iſſuing out of land, may not be *apportioned*: nor ſhall things *entire*, as if one holds lands by ſervice to pay yearly to the lord, at ſuch a feaſt, a horſe, *&c.* *Co. Lit.* 149. But if part of the land, out of which a rent-charge iſſues, *deſcends* to the grantee of the rent, this ſhall be *apportioned*. *Danv.* 507.

A grantee of rent releaſes part of the rent to the grantor, this doth not extinguiſh the reſidue, but it ſhall be *apportioned*: for here the grantee dealeth not with the *land*, only the rent. *Co. Lit.* 148. On partition of lands out of which a rent is iſſuing, the rent ſhall be *apportioned*. *Danv. Abr.* 507. And where lands held by leaſe rendring *rent* are extended upon *elegit*, one moiety of the *rent* ſhall be *apportioned* to the leſſor. *Ibid.* 509. If part of lands leaſed is ſurrounded by freſh water, there ſhall be no *apportionment* of rent; but if it be ſurrounded with the ſea, there ſhall be an *apportionment* of the rent. *Dyer* 56.

A man *purchaſes* part of the land where he hath *common appendant*, the common ſhall be *apportioned*: of *common appurtenant* it is otherwiſe, and if by the act of the party, the common is extinct. 8 *Rep.* 79. *Common appendant* and *appurtenant* may be *apportioned* on alienation of part of the land to which it is appendant or appurtenant. *Wood's Inſt.* 199. If where a perſon has *common of paſture ſans number*, part of the land deſcends to him, this being intire and uncertain cannot be *apportioned*: but if it had been *common certain*, it ſhould have been *apportioned*. *Co. Lit.* 149.

Conditions generally are intire, and cannot be *apportioned* by the act of the party. 1 *Nelſ. Abr.* 227. A *contract* may not be divided or *apportioned*, ſo as to ſubject a man to two actions. 1 *Salk.* 65.

Apportum, (from the Fr. *apport*) Signifies properly the revenue or profit which a things brings in to the owner: and it was commonly uſed for a corody or penſion. It hath alſo been applied to an augmentation given to an abbot out of the profits of a manor for his better ſupport.—*Ita quod proficua manerii prædicti nomine* apporti, *quolibet anno præfato* A. *in ſubventionem ſuſtentationis ſuæ ſolverentur*, *&c.* Anno 22 Ed. 3.

Apposal of Sheriffs, The charging them with money received upon their accounts in the exchequer. *Stat.* 22. *&* 23 *Car.* 2.

Appraiſers of goods are to be ſworn to make true *appraiſement*; and, valuing the goods too high, ſhall be obliged to take them at the price *appraiſed*. Statute 11 Ed. 1. *Stat. Acton Burnel.*

Apprendre, (*Fr.*) A fee or profit *apprendre*, is fee or profit to be taken or received. *Anno* 2 *&* 3 *Ed.* 6. *cap.* 8.

Apprentice, (*apprenticius*, Fr. *apprenti*, from *apprendre* to learn) Signifies a young perſon bound by indentures to a tradeſman or artificer, who upon certain covenants is to teach him his myſtery or trade: theſe *apprentices* are a kind of bond-men, differing only in that they are ſervants by covenant, and for a certain term, uſually ſeven years, and they live for the moſt part more reputably. *Smith's Rep. Angl. lib.* 3. *cap.* 8.

It will be proper under this head to conſider

I. *Who may be bound apprentices, and in what manner; and who are compellable to receive them.*

II. *How they are to be provided for and governed during their apprenticeſhips, and in what manner they are to be aſſigned*, &c.

III. *What trades may not be exerciſed without having ſerved an apprenticeſhip.*

IV. *How apprentices may acquire ſettlements.*

V. *For what offences they are puniſhable, and how.*

I. It ſeems clearly agreed, that by the Common law infants, or perſons under the age of twenty-one years, cannot bind themſelves apprentices, in ſuch a manner as to intitle their maſters to an action of covenant, or other action againſt *them* for departing from their ſervice, or other breaches of their indentures; which makes it neceſſary, according to the uſual practice, to get ſome of their friends to be bound for the faithful diſcharge of their offices, according to the terms agreed on. 11 *Co.* 89. *b.* 2 *Inſt.* 379, 580. 3 *Leon.* 63. *Fareſt.* 15. And notwithſtanding the *fifth* of *Eliz. c.* 4. enacts, that although perſons bound apprentices ſhall be within age at the time of making their indentures, they ſhall be bound to ſerve for the years in their indentures contained, as if they were at full age at the time of making of them; it hath been held, that although an infant may voluntarily bind himſelf an apprentice, and, if he continue an apprentice for ſeven years, he may have the benefit to uſe his trade; yet neither at the common law, nor by any words of the abovementioned ſtatute, can a covenant or obligation of an infant, for his apprenticeſhip, bind him; but if he miſbehave himſelf, the maſter may correct him in his ſervice, or complain to a juſtice of peace, to have him puniſhed according to the ſtatute: but no remedy lieth againſt an infant upon ſuch covenant. *Cro. Car.* 179. *Cro. Jac.* 194. *S. P.*

But if any one entices an apprentice from his maſter's ſervice, or harbours him after notice, the maſter may maintain a ſpecial action on the caſe, againſt the perſon ſo doing. Vide 1 *Salk.* 380.

By the cuſtom of *London*, an infant unmarried, and above the age of fourteen, may bind himſelf apprentice to a freeman of *London*, by indenture with proper covenants; which covenants, by the *cuſtom* of *London*, ſhall be as binding as if he were of full age. *Moor* 134. 2 *Bulſt*. 192. 2 *Rol. Rep*. 305. *Palm*. 361. 1 *Mod*. 271. 2 *Keb*. 687. But a waterman's apprentice is not, within the cuſtom of *London*, to bind himſelf being under twenty-one. *Arg*. and *agreed* by all. 6 *Mod*. 69. *Mich*. 2 *Ann*. *B. R*. in the caſe of *Barber* v. *Dennis*.

A freeman's widow may take a maid *apprentice* for ſeven years, and inroll her as a youth; if ſhe be above fourteen years old: and if an exchange woman, that hath a huſband free of *London*, take ſuch *apprentice*, ſhe ſhall be bound to the huſband; and may be made free, at the end of the *apprenticeſhip*, if ſhe be then unmarried. *Lex Londinen*. 48.

By *Stat*. 5 *Eliz*. *c*. 4. *ſect*. 35. The juſtices may compel certain perſons under age to be bound as apprentices, and on refuſal may commit them, *&c*. And by ſtatute 42 *Eliz*. *c*. 2. Churchwardens and overſeers of the poor may bind out poor *apprentices*, by aſſent of two juſtices of peace. And perſons receiving money with poor *apprentices*, where money is given for placing ſuch out, are to give ſecurity for repayment in ſeven years, for the binding out others, *&c*. 7 *Jac*. 1. *c*. 3. And if any perſon refuſe to accept a poor *apprentice*, he ſhall forfeit 10 *l*. *Stat*. 8 *&* 9 *W*. 3. *c*. 30. §. 5. Alſo juſtices of peace and churchwardens, *&c*. may put out poor boys *apprentice* to the ſea-ſervice, 2 *Ann*. *c*. 6.

As to the manner of their being bound—

By the ſtatute 5 *El*. *c*. 4 *ſect*. 25. An apprentice muſt be bound by deed indented.

And as an apprentice can only be bound by deed, ſo it is neceſſary, according to the cuſtom of ſome places, that ſuch deed or indenture be inrolled; as in *London*, if the indentures be not inrolled before the chamberlain within a year, upon a petition to the mayor and aldermen, *&c*. a *ſcire fac'* ſhall iſſue to the maſter, to ſhew cauſe why not inrolled; and if it was through the maſter's default, the apprentice may ſue out his indentures, and be diſcharged: otherwiſe if through the fault of the apprentice; as if he would not come to preſent himſelf before the chamberlain, *&c*. for it cannot be inrolled, unleſs the apprentice be in court and acknowledge it. 2 *Rol. Rep*. 305. *Palm*. 361. 1 *Mod*. 271.

Indentures are likewiſe to be ſtamped, and are chargeable with ſeveral duties by act of parliament.

A duty of 6 *d*. in the pound under 50 *l*. and 12 *d*. in the pound for ſums exceeding it, given with *apprentices* (except poor *apprentices*) is granted by ſtatute; to be paid in a month, within the weekly bills of mortality, and in any other part of *Great Britain*, within two months after indentures executed, *&c*. And if the full ſum agreed be not inſerted, or the duty not paid, indentures ſhall be void, and *apprentices* not capable of following trades; alſo the maſters are liable to penalties. 8 *Ann*. *c*. 9. 9 *Ann*. *c*. 21.

By the *Stat*. 9 *Ann*. *c*. 21. If the maſter ſhall neglect to pay the duties within the time limited, he ſhall forfeit 50 *l*. half to the king, and half, with full coſts, to him who ſhall ſue.

And by the *Stat*. 18 *Geo*. 2. *cap*. 22. *ſect*. 23, 24. If he ſhall neglect to pay the ſame as aforeſaid, he ſhall, beſides all other penalties, forfeit double duty.

But there are ſeveral ſtatutes allowing further time to pay the duties and ſtamp indentures, thro' neglect omitted, *&c*. *Stat*. 6 *&* 7 *Geo*. 1. *c*. 2. 3 *Geo*. 2. *&c*. And acts of indemnity of this nature are uſually paſſed every two or three years.

By the 20 *G*. 2. *cap*. 45. *ſect*. 5. If any maſter, having forfeited the double duty, ſhall pay the ſame, and tender the indenture to be ſtamped, within two years after the determination of the apprenticeſhip, and *before ſuit hath been commenced for the penalties*, the indenture ſhall be valid, and the penalties diſcharged.

Sect. 6. 7. And if after the maſter ſhall have forfeited the double duty, the apprentice ſhall in the preſence of, or by writing under his hand ſigned in the preſence of one witneſs, require his maſter to pay the ſame, and the maſter ſhall not do it in three months; and ſuch apprentice ſhall at any time within two years after the determination of his apprenticeſhip pay the double duty, he may, in three months after ſuch payment, demand of his maſter double the ſum contracted for in the indenture; and if not paid in three months after, may recover the ſame by action at law, with full coſts. And the apprentice immediately after payment of the ſaid double duties, (if his apprenticeſhip ſhall not be then expired) and ſignifying by writing under his hand, that he deſires to be diſcharged from his apprenticeſhip, ſhall be diſcharged accordingly, and ſhall have the ſame benefit of the time he hath ſerved as he would have had in caſe he had been aſſigned, or turned over to a new maſter.

Sect. 8. And where any proſecution ſhall be commenced againſt the maſter for the penalties, if the apprentice ſhall pay the double duty at any time in two years after the end of his apprenticeſhip, he may thereupon exerciſe his trade, and the indenture ſhall be valid, and may be given in evidence.

II. *With regard to their being provided for, &c*—

As by the Stat. 5 *Eliz*. *c*. 4. the juſtices of the peace have a power of impoſing an apprentice on a maſter, in conſequence thereof an indictment lies for diſobedience to their orders, either in not receiving, or receiving and after turning off, or not providing for ſuch apprentice; for tho' an act of parliament preſcribes an eaſier way of proceeding by complaint; yet that does not exclude the remedy by indictment. 6 *Mod*. 163. 1 *Salk*. 381.

The juſtices of peace may diſcharge an apprentice not only on the default of the maſter, but alſo on his own default; for in ſuch caſe it is but reaſonable that the contracts, which were made by their authority, ſhould be diſſolved by the ſame power. *Skin*. 108. 5 *Mod*. 139. 2 *Salk*. 471.

Juſtices may not only diſcharge apprentices, but may oblige the maſter to refund part of the money.

It hath been held, that an order on the maſter to return money is good, tho' it is not averred that he had any with the apprentice; for the order being to *return* money, is as neceſſary a proof of the receipt of it, as if it had been expreſsly alledged: and in this caſe the court ſeemed to be of opinion, that the juſtices had juriſdiction as to diſcharging and obliging the maſter to refund, as well in other trades as thoſe mentioned in the ſtatute; and that the juſtices are not obliged in their orders to ſet forth all the ſteps they take in their proceeding, there being nothing in the act which makes it neceſſary, and that there was a known and eſtabliſhed diſtinction between orders and convictions. *Trin*. 7 *Geo*. 2. *in B. R*. *The king* v. *Amies*.

Juſtices have likewiſe a power to ſettle differences between maſters and apprentices.

By the *Stat*. 20 *Geo*. 2. *c*. 19. Any two juſtices, upon complaint of any *apprentice* put out by the pariſh, or with whom no more than 5 *l*. was paid, of any miſuſage, refuſal of neceſſary proviſions, cruelty, or other ill treatment by his maſter, may ſummon the maſter to appear before them, and upon proof of the complaint on oath to their ſatisfaction, (whether the maſter be preſent or not, if ſervice of the ſummons be proved) to diſcharge ſuch *apprentice* by warrant or certificate, for which no fee ſhall be paid: and on complaint of the maſter againſt any ſuch *apprentice*, touching any miſdemeanor, miſcarriage, or ill behaviour, the juſtices may puniſh the offender by commitment to the houſe of correction, there to be corrected and kept to hard labour, not exceeding a calendar month; or otherwiſe by diſcharging ſuch offender. Either party may appeal to the ſeſſions, and the determination there is to be final. By 31 *G*. 2. *c*. 11. This act is extended to ſervants in huſbandry, though hired for leſs than a year.

With regard to the *aſſigning* of apprentices, it hath been held, that an apprentice is not aſſignable. He cannot be bound nor diſcharged without deed. 1 *Salk*. 68. *pl*. 7. *Mich*. 13 *W*. 3. *B. R*.

But though an apprentice is not *aſſignable*, yet ſuch aſſignment *amounts to a contract between the two maſters*, that the child ſhould ſerve the latter. 1 *Salk*. 68. *pl*. 7. *Mich*. 13 *W*. 3. *B. R*. *Caſter* v. *Eccles Pariſh*.

Likewiſe, by the cuſtom of the city of *London*, an *apprentice* may be turned over from one maſter to another; and if the maſter refuſe to make the *apprentice* free at the end of the term, the chamberlain may make him free: in other corporations, there muſt be a *mandamus* to the mayor, &c. to make him free in ſuch caſe. *Danv. Abr.* 421. *Wood's Inſt.* 51.

But it hath been held, that tho' juſtices of peace have a juriſdiction of diſcharging apprentices, and may bind them to other maſters, that they cannot turn them over; and therefore an order that an apprentice, whoſe maſter was dead, ſhould ſerve the remainder of his time with his maſter's widow's ſecond huſband, was quaſhed; becauſe the juſtices have nothing to do about turning over an apprentice; and that tho' he applied to them, that could not give them a juriſdiction. *Comb.* 324.

It ſeems agreed, that if a man be bound to inſtruct an apprentice in a trade for ſeven years, and the maſter dies, that the condition is diſpenſed with, being a thing perſonal; but if he be bound further, that in the mean time he will find him in meat, drink, and cloathing and other neceſſaries, here the death of the maſter doth not diſpenſe with the condition, but his executors ſhall be bound to perform it as far as they have aſſets. 1 *Sid.* 216. 1 *Keb.* 761, 820. 1 *Lev.* 177.

But if a perſon is bound apprentice by a juſtice of peace, and the maſter happens to die before the term expired, the juſtices have no power to oblige his executor, by their order, to receive ſuch apprentice and maintain him; for by this method the executor is deprived of the liberty of pleading *plene adminiſtravit*, (which he may do, in caſe covenant be brought againſt him) and muſt maintain the apprentice, whether he hath aſſets or not. *Carth.* 231. 1 *Salk.* 66. 1 *Show.* 405. It is ſaid, however, that the executor or adminiſtrator may bind him to another maſter for the remaining part of his time. *Burn.* 38.

But it is ſaid, that in this caſe of the maſter's dying, by the cuſtom of *London*, the executor muſt put the apprentice to another maſter of the ſame trade. 1 *Salk.* 66. *per Holt* Ch. J.

Whatever an apprentice gains is for the uſe of his maſter; and whether he was legally bound or no, is not material, if he was an apprentice *de facto*. *Salk.* 68. For inticing an apprentice to imbezil goods, indictment will lie. 1 *Salk.* 380. A maſter may be indicted for not providing for, or turning away, an apprentice. If a maſter gives an apprentice licence to leave him, it cannot afterwards be recalled. *Mod. Caſ.* 70. An apprentice marries, without the maſter's privity, that will not juſtify his turning him away, but he muſt ſue his covenant. 2 *Vern.* 492. By the cuſtom of the city of *London* a freeman may turn away his apprentice for gaming. *Ibid.* 241. Though if a maſter turns an apprentice away on account of negligence, &c. equity may decree him to refund part of the money given with him. 1 *Vern. Rep.* 460. As no apprentice can be made without writing; ſo none may be diſcharged by his maſter, but by writing under his hand, and with the allowance of a juſtice of peace, by ſtatute. *Dalt.* 121.

III. *As to the exerciſing of trades.*

By the Common law no man may be prohibited to work in any lawful trade, or in more trades than one, at his pleaſure. 11 *Co.* 53.

So that without an act of parliament no man may be reſtrained, either from working in any lawful trade, or uſing divers myſteries or trades; therefore an act of parliament made to reſtrain any perſon herein, muſt be taken ſtrictly, and not favourably as acts made in affirmance of the Common law. *Burn.* 39.

It is enacted by the 5 *Eliz. cap.* 4. *ſect.* 31. "That it ſhall not be lawful to any perſon or perſons, other than ſuch as *now* do lawfully uſe or exerciſe any art, myſtery, or manual occupation, to ſet up, occupy, uſe or exerciſe any craft, miſtery or occupation, *now* uſed or occupied within the realm of *England* or *Wales*, except he ſhall have been brought up therein ſeven years, at the leaſt, as an apprentice, in manner and form aboveſaid; nor to ſet any perſon on work in ſuch myſtery, art or occupation, being not a workman at this day, except he ſhall have been apprentice, as is aforeſaid; or elſe having ſerved *as* an apprentice, as is aforeſaid, ſhall or will become a journeyman, or hired by the year; upon pain that every perſon willingly offending, or doing the contrary, ſhall forfeit and loſe for every default forty ſhillings for every month."

It hath been ruled, that there are many trades within the general words and equity of this act, beſides thoſe which are particularly enumerated therein; yet it ſeems agreed, and hath frequently been adjudged, that in every indictment, &c. it muſt be alledged, that it was a trade *at the time of making the ſtatute*, for the words thereof are, *any craft, miſtery or occupation*, now *uſed*, &c. from whence it ſeems to follow, that a new manufacture, which to all other purpoſes may be called a trade, is yet not a trade within this ſtatute. 2 *Salk.* 611. *Palm.* 528. 1 *Sid.* 175.

Alſo it ſeems agreed, that the act only extends to ſuch trades as imply miſtery and craft, and *require ſkill and experience*; that therefore merchants, huſbandmen, gardeners, &c. are not within the ſtatute; and on this foundation it hath been held, that a hemp-dreſſer is not within the ſtatute, as not requiring much learning or ſkill, and being what every huſbandman doth uſe for his neceſſary occaſions. 8 *Co.* 130. 2 *Bulſt.* 190. *Cro. Car.* 499.

It is clearly agreed, that the following the common trade of a brewer, baker, or cook, is within the ſtatute, as unſkilfulneſs herein may be very prejudicial to the lives and healths of his majeſty's ſubjects; but it is at the ſame time agreed, that the exerciſing of any of theſe trades in a man's own houſe or family, or in a private perſon's houſe, is not within the reſtraint of the ſtatute. 11 *Co.* 54. *a. Cro. Car.* 499. *Hob.* 183, 211. *Moor* 886. 8 *Co.* 129 *Palm.* 542. *Lit. Rep.* 251. *Bridg.* 141.

It hath been held, that this ſtatute doth not reſtrain a man from uſing ſeveral trades, ſo as he had been an apprentice to all; wherefore it indemnifies all petty chapmen in little towns and villages, becauſe their maſters kept the ſame mixed trades there before. *Carth.* 163.

A man may exerciſe as many trades as he hath worked at, or ſerved as an apprentice to, for ſeven years. *Wilſ. Rep. part* 2. 168.

It hath been reſolved, that there is no occaſion for any actual binding, but that the *following a trade* for ſeven years, is a ſufficient qualification within the ſtatute. 1 *Salk.* 67. 2 *Salk.* 613.

By the ſtatutes 2 *P.* & *M. c.* 11. 5 *Eliz. c.* 4. Aliens and denizens are reſtrained to uſe any handicraft or trade therein mentioned, unleſs they have ſerved ſeven years apprenticeſhip within the realm, under the penalty of 40 *s. per* month. *Hutt.* 132. But it hath been adjudged, that if an apprentice ſerve ſeven years beyond ſea, he ſhall be excuſed from the penalties of the ſtatute. 5 *Eliz. c.* 4. And ſo if he ſerves ſeven years, tho' he was never bound. 1 *Salk.* 76.

So it hath been held, that ſerving five years to a trade out of *England* and two in *England*, is ſufficient to ſatisfy the ſtatute; but that there muſt be a ſervice of a *full time*; and therefore ſerving five years in any country, where by the law of the country more is not required, will not qualify a man to uſe the trade in *England*. *Ca. in Law and Eq.* 70.

By the ſtatute 31 *Eliz. cap.* 5. *ſect.* 7. It is enacted, "That all ſuits for uſing a trade without having been brought up in it, ſhall be ſued and proſecuted in the general quarter ſeſſions of the peace, or aſſiſes in the ſame county where the offence ſhall be committed, or otherwiſe inquired of, heard and determined in the aſſiſes, or general quarter ſeſſions of the peace in the ſame county where ſuch offence ſhall be committed, or in the leet within which it ſhall happen, and not in any wiſe out of the ſame county where ſuch offence ſhall happen or be committed."

In the conſtruction of this ſtatute it hath been held, that it reſtrains not a ſuit in the King's Bench or Exchequer, for ſuch offence happening in the ſame county where theſe courts are ſitting; for the negative words of the ſtatute are not, that ſuch ſuits ſhall not be brought in *any other court*, but that they ſhall not be brought in *any other county*; and the prerogative of theſe high courts ſhall not be reſtrained without expreſs words. *Cro. Jac.* 178. *Hob.* 184. 1 *Salk.* 373.

But where the offence is in a different county, ſuch ſuits in theſe, or any other courts out of the proper county ſeem to be within the expreſs words of the ſtatute. *Hob.* 184, 327. *Cro. Jac.* 85.

Infants voluntarily binding themſelves apprentice, and continuing ſeven years, ſhall have the benefit of their trades; but a bond for their ſervice ſhall not bind them. *Cro Car.* 179. See the *Stat.* 6 *G.* 3. *c.* 25. for the better regulating of apprentices, and the *Stats.* 22 *Geo.* 2. *c* 44. & 3 *Geo.* 3. *c.* 8. enabling *ſoldiers* and *mariners* to exerciſe trades. Alſo vide *Oct. Index* to *Stats. tit. Apprentices.*

IV. *As to apprentices acquiring ſettlements, it will be neceſſary to conſider the following ſtatutes.*

By *Stat.* 13 & 14 *Car.* 2. *c.* 12. On complaint by the churchwardens or overſeers within 40 days after any perſon ſhall come to ſettle in any pariſh, on any tenement, under 10 *l.* a year; two juſtices (one of whom to be of the *quorum*) may remove him to the place where he was laſt legally ſettled, either as a native, houſholder, ſojourner, *apprentice* or ſervant, for the ſpace of 40 days at the leaſt.

By 1 *Jac.* 2. *c.* 17. and 3 & 4 *W.* & *M. c.* 11. The ſaid 40 days ſhall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing, and of the publication of ſuch notice in the church.

And by the ſaid ſtatute of 3 & 4 *Will.* & *M. c.* 11. *ſect.* 8. If any perſon ſhall be bound an apprentice by indenture, and inhabit in any town or pariſh, ſuch binding and inhabitation ſhall be adjudged a good ſettlement, though no ſuch notice in writing be delivered and publiſhed.

By 31 *Geo.* 2. *c.* 11. No apprentice bound by any deed, writing or contract, not indented, being firſt legally ſtamped, ſhall be liable to be removed from the town, pariſh or place where he or ſhe ſhall have been ſo bound an apprentice, and reſident forty days, by virtue of any order of removal, granted by two juſtices of the peace of any county, &c. or by virtue of any order of the juſtices at their general or quarter ſeſſions, *by reaſon* or on account of ſuch deed, writing or contract, *not being indented only.*

By ſtatute 12 *Ann. ſt.* 1. *c.* 18. *ſect.* 2. If any perſon ſhall be an apprentice bound by indenture, to any perſon reſiding under a *certificate*, in any pariſh, townſhip, or place, and not afterwards having gained a legal ſettlement in ſuch pariſh, &c. ſuch apprentice, by virtue of ſuch apprenticeſhip, &c. ſhall not gain any ſettlement in ſuch pariſh, &c. but every ſuch apprentice ſhall have his ſettlement in ſuch pariſh, &c. as if he had not been bound apprentice.

And by the 9 & 10 *W. c.* 11. No perſon, who ſhall come into any pariſh by a *certificate*, ſhall be adjudged by any act whatſoever to gain a ſettlement in ſuch pariſh, unleſs he ſhall *bona fide* take a tenement of 10 *l.* a year, or execute an annual office in ſuch pariſh. (And conſequently not by apprenticeſhip.) *Vide* (however) *Ca. of Settlements* 58.

Where one is bound apprentice by *indenture*, it cannot be *diſcharged* but by deed or by ſeſſions, and a *hiring after* he is bound, or any conſequences ariſing upon ſuch hiring, are intirely void whilſt the indenture ſubſiſts, and till it is defeaſanced; for when an apprentice ſerves 40 days, by virtue of the indenture, he cannot gain *another ſettlement*, tho' his *maſter conſents*, becauſe he had a ſettlement by the ſervice under the indenture. Admitted *per cur.* 8 *Mod.* 236. *Paſch.* 10 *Geo. Buckington pariſh* v. *Sevington*

But binding an apprentice and ſerving will not make a ſettlement, *but the ſettlement muſt be by inhabiting*, which cannot be but where the party lodges; *per Forteſcue* and *Raymond* J. 2 *Ld. Raym. Rep* 1731, S. C. by name of *The Inhabitants of* S. *John Baptiſt in Devizes* v. *The inhabitants of Biſhops Cannings.* Vide *Caſes of Settlements* 118. *pl.* 159 *Trin.* 1724. *B. R.*

A poor child being bound apprentice at *A.* was aſſigned over to another maſter that lived in *B.* held he ſhould gain a ſettlement at *B.* where his ſecond maſter lived. 1 *Salk.* 68. *pl.* 7. *Mich.* 13 *W.* 3. *B. R. Caſtor* v. *Aicles pariſh.*

Upon a ſpecial order of ſeſſions the caſe was ſtated, that an apprentice was bound to *A.* in one pariſh, but by agreement ſerved *B.* in another pariſh, and the ſeſſions ſettled him with *B.* and by the court; he gains a ſettlement in the laſt place; for a perſon may ſerve his maſter in another pariſh or place; and altho' he ſerves another man, yet it is by conſent of his maſter, and the benefit accrues to his maſter. *Stran.* 554. *Caſes of S.* 153. *Trin.* 9 *Geo.* 1 Between the pariſhes of *Allhallows on the Wall* and *St. Olave* in *Surry.*

The ſon was bound an apprentice to his father, and *the father gave up his indenture* to the ſon, *and bound him out to a ſervice into another pariſh for a year*, where he ſerved, *but did not cancel the indenture*, and becoming poor the juſtices ordered him laſt legally ſettled in the pariſh where the father lived, becauſe, the indenture being ſtill in force, his apprenticeſhip continued; *per cur.* The indenture not being cancelled, the obligation of the apprentice continues. 6 *Mod.* 190, 191.

V. *As to their puniſhment for particular offences, it is to be obſerved, That*

At Common law, a ſervant or apprentice, without any regard to age, may be guilty of felony in feloniouſly taking away the goods of their maſter, tho' they were goods *under their charge*, as a ſhepherd, butler, &c. and may at this day for any ſuch offence be indicted, as for felony at Common law; but at Common law, if a man had *delivered goods to his ſervant* to *keep*, or *carry* for him, and he carried them away *animo furandi*; this was conſidered only a breach of truſt, but not felony. 1 *Hale's Hiſt. P. C.* 505, 666.

But now by the ſtatute of 21 *H.* 8. *cap.* 7. It is enacted, that ſervants guilty of a breach of truſt in imbeziling money, goods, &c. delivered to them to the value of 40 *s.* or above, are guilty of felony; with a proviſo nevertheleſs, that the act do not extend to apprentices, nor to perſons under the age of eighteen years.

By the act of 27 *H.* 8. *cap.* 17. Clergy was taken away in this caſe, if the indictment were laid ſpecially upon the act of 21 *H.* 8. *c.* 7. and purſuant to the ſame, and by the act 28 *H.* 8. *cap.* 2. this act of 21 *H.* 8. *c.* 7. was made perpetual; but by the act of 1 *Ed.* 6. *cap.* 12. theſe acts were both repealed; but again, by the act of 5 *Eliz. cap.* 10. this act of 27 *H.* 8. *c.* 17. was re-enacted and revived; but it did not revive the act of 27 *H.* 8. *c.* 7. for taking away clergy. But now by 12 *Ann. cap.* 7. clergy in ſuch caſe is taken from facts committed in any houſe or out-houſe, except as to apprentices under the age of fifteen years robbing their maſters. 1 *Hale's P. C.* 666, 667.

The ſtatute however extends only to ſuch as were ſervants to the owner of the goods, both at the time they were delivered, and alſo at the time when they were ſtolen. 1 *Hawk. P. C.* 92.

Therefore a receiver, who having received his maſter's rents runs away with them; or a ſervant, who being intruſted to ſell goods, or to receive money due on a bond, ſells the goods, &c. and departs with the money, is not within the ſtatute. A ſervant who receives his maſter's goods from another ſervant, to keep for the maſter, is as much guilty as if he had received them from the maſter's own hands; becauſe ſuch delivery is looked upon as a delivery by the maſter, *Dyer* 5. *pl.* 2, 3. 3 *Inſt.* 105. 1 *Hawk. P. C.* 92.

As to *apprenticeſhip*, vide *Black. Com.* 1 *V.* 427, 8.

Appropriation, (*appropriatio*, from the Fr, *approprier*) Is the annexing of a benefice. originally *juris divini* & *in patrimonio nullius*, to the proper and perpetual uſe of ſome religious houſe, biſhoprick, college, or ſpiritual perſon, to enjoy for ever. And when appropriation is made, the patron is perpetual parſon, and hath perpetual inſtitution and induction; for the appropriation alone is a ſufficient admiſſion, &c. *Plowd.* 499. To make an appropriation, the king's licence is to be obtained in *Chancery*, (8 *Rep.* 11) the conſent of the ordinary, patron and incumbent, where the church is full, and of the dioceſan, and patron, if the benefice is void. *Plowd.* 496. 15 *R.* 2. *c.* 6. Appropriation made during the vacancy of the benefice is executed immediately; and when the church is full, by apt words, the patron is conſtituted parſon, after it becomes void. 11 *Rep.* 11. An appropriation may be by the king alone, where he himſelf is patron: as when by letters patent he grants the advowſon which he is ſeiſed of in right of his crown to a dean and chapter, *&c.* *Plowd.* 499. No appropriation can be made properly, unleſs to a ſpiritual perſon capable of the cure: it may be to a biſhop, *&c.* and his ſucceſſors. *Danv. Abr.* 511.

The act of endowment by the biſhop might be made, either in the act of appropriation, or by a ſubſequent act and a ſeparate inſtrument; which is mentioned in this place, that in ſearching for endowments in the regiſtries of biſhops, or the court of augmentations, neither the one nor the other ſhould be neglected; for altho' a ſeparate act or inſtrument of endowment may not be found, yet it is poſſible the endowment may have been made in the act of appropriation. *Gibſ.* 719.

Upon the making an appropriation, an annual penſion was reſerved to the biſhop and his ſucceſſors, commonly called an *indemnity*, and payable by the body to whom the appropriation was made. The ground of which reſervation, in an ancient appropriation in the regiſtry of the archbiſhop of *Canterbury*, is expreſſed to be, for a recompence of the profits which the biſhop would otherwiſe have received during the vacation of ſuch churches. *Gibſ.* 719.

Where appropriations are made, a vicar is to be endowed to ſerve the cure: and formerly in licences of appropriation, it was expreſſed that the dioceſan ſhould alſo provide a convenient ſum of money to be yearly paid out of the fruits, towards the ſuſtentation of the poor of the pariſh. *Stat.* 15 *R.* 2. *c.* 6. A vicarage endowed may not be appropriated; but it may be united to another church, or to a dean and chapter, or college, with the king's conſent. *Hob.* 307.

A vicarage by endowment becomes a benefice diſtinct from the parſonage. As the vicar is endowed with ſeparate revenues, and is now enabled by the law to recover his temporal rights, without aid of parſon or patron; ſo hath he the whole cure of ſouls transferred to him, by inſtitution from the biſhop. It is true, in ſome places, both the parſon and the vicar do receive inſtitution from the biſhop to the ſame church, as it is in the caſe of *ſinecures*: the original of which was thus: the rector (with proper conſent) had a power to intitle a vicar in his church, to officiate under him; and this was often done; and by this means, two perſons were inſtituted to the ſame church, and both to the cure of ſouls, and both did actually officiate. So that however the rectors of *ſinecures*, by having been long excuſed from reſidence, are in the common opinion diſcharged from the cure of ſouls, (which is the reaſon of the name); and however the cure is ſaid in the law-books to be in them *habitualiter* only; yet in ſtrictneſs of law, and with regard to their original inſtitution, the cure is in them *actualiter*, as much as it is in the vicar. *Gibſ.* 719.

The parſon, by making the endowment, acquires the patronage of the *vicarage*. For in order to the appropriation of a parſonage, the inheritance of the advowſon was to be transferred to the corporation to which the church was to be appropriated; and then, the vicarage being derived out of the parſonage, the parſon of common right muſt be patron thereof. So that if the parſon makes a leaſe of the parſonage, (without making a ſpecial reſervation to himſelf of the right of preſenting to the vicarage) the patronage of the vicarage paſſeth as incident to it. But it was held in the 21 *Ja.* that the pariſhioners may preſcribe for the choice of a vicar. And before that, in the 16 *Ja.* in the caſe of *Shirley* and *Underhill*, it was declared by the court, that tho' the advowſon of the vicarage of common right is appendant to the rectory, yet it may be appendant to a manor; as having been reſerved ſpecially upon the appropriation. *Gibſ.* 719.

An appropriation cannot regularly be granted over, neither can it endure longer than the body ſpiritual to which it was at firſt appropriated, becauſe by the appropriation not only the *glebe and tithes* do paſs, which might be granted away if that could be granted over, but it alſo giveth the perſon, to whom the appropriation is made, a ſpiritual function; it makes him parſon of the church, and ſupplieth inſtitution and induction, which, being the higheſt parts of a truſt, cannot for that reaſon be aſſigned over, and therefore every inſtrument of appropriation runs thus, (*viz.*) That they and *their ſucceſſors* ſhall be parſons, and not they and *their aſſigns*; for by the uſual words, that they ſhall hold the church *to their own uſe*, they are made parſons. *Hob.* 307. *Wright* verſus *Gerard*.

But thoſe to whom granted may make leaſes of the profits. *Plowd.* 499. If after an appropriation a clerk is preſented to the biſhop, and inſtituted and inducted, the benefice returns to its former nature, and the appropriation is diſſolved. 7 *Rep.* 13. But if leſſee for years of an appropriation preſents thereto, this *diſappropriation* ſhall not bind him in the reverſion. *Danv.* 513. If a feme endowed of an advowſon appropriate, preſents to it, the appropriation is diſſolved. *Co. Lit.* 46. If a man recovers the advowſon in writ of right, this diſappropriates the church: and diſſolution of the ſpiritual corporation diſappropriates an appropriation. Though appropriation cannot properly be made, except to ſpiritual perſons, and their ſucceſſors; yet by the ſtatute 31 *H.* 8. *c.* 13. the kings patentees (although laymen) are rendered capable of parſonages appropriate of diſſolved monaſteries; but theſe are generally called impropriations. Appropriations have been judged an abuſe and robbery of the church and pariſh prieſts, *&c.* *Kennet's Paroch. Antiq.* 433.

The form of a *grant of appropriation*:

Sciatis quod nos dedimus, &c. decano & capitulo eccleſiæ cathedralis, &c. Advocation' rectoriæ eccleſiæ parochialis, de, &c. Habend. & tenend. &c. iiſdem decano & capitulo & ſucceſſoribus ſuis in perpetuum. Et ulterius ſciatis per præſentes quod nos de gratia noſtra ſpeciali ac authoritate noſtr. regia ſuprema & eccleſiaſtica, qua nunc fungimur, pro nobis, hæredibus & ſucceſſoribus noſtris concedimus & licentiam damus prædict. decano & capitulo & ſucceſſoribus ſuis rectoriam & eccleſiam prædict. quando per mortem, reſignationem, vel deprivationem, aut per aliquem alium modum quemcunque vacare contigerit, immediate in ſuos proprios uſus tenere ſibi & ſucceſſoribus ſuis in perpetuum poſſint & valeant abſque moleſtatione & impedimento noſtro, hæredum aut ſucceſſorum noſtrorum, ac hoc abſque aliqua præſentatione, inductione ſive admiſſione alicujus incumbentis ad eandem rectoriam extunc in poſterum ſiend', ac ulterius.

An appropriation by the patron, or firſt founder, is thus: *Ego* A. B. *de*, &c. *conceſſi eccleſiam & advocationem meam de* H. *cum terris & decimis omnibus ad eam pertinentibus, decano de, &c.*

Vide, on the ſubject of *appropriation*, *Black. Com.* 1 *V.* 385. 6.

Appropriare Communiam, To diſcommon, and incloſe any parcel of land, that was before open common.—*Anno D.* 1299. The prior and convent of *Burceſter*, granted to the rector of *Aſherugge* and the *bon hommes* of that place, *quod ſibi poſſint* appropriare, *& includere pro voluntate ſua tres acras de* communi *paſtura in Blakethorn*, *&c.* Paroch. Antiq. 336.

Approve, (*approbare*) To augment a thing to the utmoſt: to approve land is to make the beſt benefit of it, by increaſing the rent, *&c.* 2 *Inſt.* 474.

Approvement Is where a man hath common in the lord's waſte, and the lord makes an incloſure of part of the waſte for himſelf, leaving ſufficient common with egreſs and regreſs for the commoners. *Reg. Jud.* 8, 9. If there be not ſufficient common left for the tenant, he may have a writ of aſſiſe, and ſhall recover treble damages. *Stat.* 3 & 4 *Ed.* 6. *c.* 3. And a commoner may break down an incloſure, if the lord doth incloſe part of the common, and not leave ſufficient room in the reſidue. But if any, upon juſt title of approvement, do make a hedge or ditch for that purpoſe, which afterwards is thrown down in the night by perſons unknown, the towns adjoining may be diſtrained to make ſuch hedge, *&c.* for which there is a *noſtanter* writ. *Stat.* 13 *Ed.* 1. *c.* 46. 2 *Inſt.* 474. Approvement is to be only by incloſure; and the lord may not, by the ſtatutes of approvement, dig pits for gravel, or coal, *&c.* 1 *Roll. Abr.* 90.

405. 9 *Rep.* 112. Approvement may be made between neighbour and neighbour: though one of them dwell in another town, if the commons join together; and if the lord hath common in the tenant's ground, the tenant may approve. 2 *Inſt.* 475. The common is to be common appendant or appurtenant, to be ſubject to approvement, and not common in groſs to a certain number. The word approvement is alſo uſed for the profits of the lands themſelves. *Cromp. Juriſd.* 152. And the ſtatute of *Merton* 20 *H.* 3. makes mention of land newly approved. *F. N. B.* 71. Approvement *ann.* 43 *Eliz. c.* 11. is the ſame with improvement.—*Idem* approveamentum.—*Cum omnibus* approveamentis & *aliis pertinentiis ſuis.* Mon. Angl. 607. See farther title **Incloſure**, and *Black. Com.* 2 *V.* 34. and 3 *V.* 240, 1.

Approver, or **Prover**, *(approbator)* Is one that confeſſing felony committed by himſelf, appealeth or accuſeth others to be guilty of the ſame crime. He is called *approver* in this ſenſe, becauſe he muſt *prove* what he hath alledged; and that proof was anciently by battle, or the country, at the election of him appealed: and the form of this accuſation you may find in *Crompt. Juſt.* 250. See alſo *Bracton, lib.* 3. *Staundſ. Pl. Cor.* 52. If a perſon indicted of treaſon or felony, not diſabled to accuſe, upon his arraignment, before any plea pleaded, and before competent judges, confeſſeth the indictment, and takes an oath to reveal all treaſons and felonies that he knoweth of; and therefore prays a coroner to enter his appeal, or accuſation againſt thoſe that are partners in the crime contained in the indictment; ſuch a one is an *approver.* 3 *Inſt.* 129. *H. P. C.* 192. Though the approver is ſworn to diſcover all treaſons and felonies, he is not to be an approver but of the offence whereof he is indicted: and this accuſation of himſelf, and oath, makes his accuſation of another of the ſame crime to amount to an indictment; and if his partners are convicted, the king is to pardon him, as to his life: but he ought not to be ſuffered to continue in the kingdom.

Coroners may award proceſs to the ſheriff againſt appellees in the ſame county, on the diſcovery of the approver: and the juſtices of jaol-delivery, &c. have power to award proceſs in any county to apprehend and try them. 2 *Hawk. Pl. Cor.* 208. A man may be an approver againſt any perſon within the realm, if there be ſuch a perſon, and he be named of the county where he dwells; but if there be no ſuch perſon, the approver ſhall be hanged for his falſe appeal. *Ibid.* 206. When a perſon hath once pleaded Not guilty, he cannot be an approver. 3 *Inſt.* 129. And perſons attainted of treaſon or felony ſhall not be approvers; their accuſation will not then be of ſuch credit as to put a man upon his trial. 2 *Hawk.* 205. Vide 5 *H.* 4. *cap.* 2. as to charters of pardon.

Infants under age of diſcretion may not be approvers: and it being in the diſcretion of the court to ſuffer one to be an approver, this method of late hath ſeldom been practiſed. But we have, in caſes of burglary and robbery on the highway, what ſeems to amount to the ſame, by ſtatute; it being ordained, that where perſons charged with ſuch crimes, out of priſon, diſcover two others concerned in the crime, they ſhall have a pardon, &c. *Stat.* 5 *Ann. c.* 31.

Approvers, *Anno* 9 *H.* 6. Bailiffs of lords in their franchiſes are called their *approvers:* and approvers in the marches of *Wales* were ſuch as had licence *de vendre & acheter* beaſts, &c. But by the ſtatute 2 *Ed.* 3. *c.* 12. approvers are ſuch as are ſent into counties to increaſe the farms of hundreds, &c. held by ſheriffs. Such perſons as have the letting of the king's demeſnes, in ſmall manors, are called approvers of the king *(approbatores regis) anno* 51 *H.* 3. And in the *Stat.* 1 *Ed.* 3. *c.* 8. Sheriffs are called the king's approvers.

Appruare, To take to his own uſe or profit, *viz. domini vaſtorum & boſcorum,* &c. Appruare *ſe poſſunt de vaſtis,* &c. W. 2. c. 20.

Appurtenances, *(pertinentia)* Derived from the French *appartenir*, to belong to, ſignify things both corporeal and incorporeal appertaining to another thing as principal: as hamlets to a chief manor; and common of paſture, piſcary, &c. Alſo liberties and ſervices of tenants. *Brit. cap.* 39. If a man grant common of eſtovers to be burnt in his manor, theſe are appurtenant to the manor; for things appurtenant may be granted at this day. *Co. Lit.* 121. Common appurtenant may be to a houſe, paſture, &c. Outhouſes, yards, orchards, and gardens are appurtenant to a meſſuage; but lands cannot *properly* be ſaid to be appurtenant to a meſſuage. 1 *Lill. Abr.* 91. And one meſſuage cannot be appurtenant to another. *Ibid.* Lands cannot, in the true ſenſe of the words *cum pertinentiis*, be appurtenant to the houſe; but the word *pertinens* may be taken in the ſenſe of uſually letten or occupied with the houſe. *Plowd.* 170. Lands ſhall paſs in a leaſe or deviſe of a houſe with the appurtenances, as pertaining to the ſame, when it hath been uſed and occupied with it ten years or more; which is judged a ſufficient time to make it appertaining to the houſe. *Cro. El.* 704.

By the later authorities, lands will not paſs by the word *appurtenances*, but only ſuch things which do properly belong to the houſe; as where a man was ſeiſed of two houſes and of eighty acres of land belonging to one of them, known by a *particular name*, and made a feoffment of the houſe and eighty acres to *B.* who made another feoffment to the ſaid feoffor, by which he took back the ſame houſe and lands, and *forty acres more by another name*; and about ten years afterwards he deviſed this houſe, and all the *lands thereunto appertaining*, to his youngeſt ſon; adjudged, that tho' *he uſed thoſe forty acres with the houſe for ten years and more*, yet it would not paſs by theſe words *thereunto appertaining*, becauſe they were conveyed to him by a new name. *Palm.* 375. *Loftus* verſus *Baker*. *Godb.* 352. *S. C.* reported by the name of *Knight*'s caſe. *Cro. Car.* 57. *Hearn* verſus *Allen, S. P. Hutt.* 85. *S. C. Litt. Rep.* 8. *S. C.*

Lands, a common. &c. may be appurtenant to a houſe; though not a way. 3 *Salk.* 40. Grant of a manor, without the words *cum pertinentiis*, 'tis ſaid will paſs all things belonging to the manor. *Owen's Rep.* 31. Where a perſon hath a meſſuage, &c. to which eſtovers are *appurtenant*, and it is blown down or burnt by the act of God; if the owner re-edify it, in the ſame place and manner as before, he ſhall have the ancient appurtenances. 4 *Rep.* 86. A turbary may be appurtenant to a houſe; ſo a ſeat in a church, &c. but not to land; for the things muſt agree in nature and quality. 3 *Salk.* 40. *Vide* tit. *Appendant*, and ſee *Plo. Com.* 103. *b.* 104. *b.* 170. Alſo vide *Com. D.* 1 *V.* tit. *Appendant* and *Appurtenant*.

Aquage, (aquagium, *quaſi aquæ agium*, i. e. *aquæductus* & aquægangium) A water-courſe.——*Non liceat alicui de cætero facere dammas vel fordas aut alia impedimenta in aliquibus landeis, watergangiis, foſſatis ſive* aquagiis *communibus in mariſco prædicto.* Ordin. Mariſ. de Romney fact. temp. Hen. 3. & Ed. 1. p. 72.

Arabant, *(ad curiam domini)* Was intended of thoſe who held by the tenure of ploughing and tilling the lord's lands within the manor. *Spelm. Gloſſ.*

Arace, *(angl.)* To raſe, from the French *aracher, evellere.*

Araho, *In araho conjurare, i. e.* To make oath in the church, or ſome other holy place; for, according to the *Ripuarian* laws, all oaths were made in the church upon the relicks of ſaints.

Aratrum Terræ, As much as can be tilled with one plough.—*Hoc manerium eſt* 30 aratrorum. *Thorn. anno* 616. *Aratura terræ* is the ſervice which the tenant is to do for his lord in ploughing his land.

Arbitrator, *(Lat.)* Is a private extraordinary judge between party and party, choſen by mutual conſent, to determine controverſies between them. *Weſt. Symb. ſect.* 21. And *arbitrators* are ſo called, becauſe they have an *arbitrary* power; for if they obſerve the ſubmiſſion, and keep within due bounds, their ſentences are definitive, from which there lies no appeal. 1 *Roll. Abr.* 251. The award of *arbitrators* is definitive, and being choſen by the parties, they are not tied to ſuch formalities of law as judges in other caſes are; and yet they have as great power as other judges to determine the matters in variance; but their determination muſt be certain, and it is to be according to the expreſs condition of the bond, or rule, by which the parties ſubmit themſelves to their judgment. 1 *Nelſ. Abr.* 234. *Dyer* 356. The *Chancery* will not give relief againſt the award of the *arbitrators*, except it be for corruption, *&c.* And where their award is not ſtrictly binding by the rules of law, a court of equity can decree a performance. *Chanc. Rep.* 279. 1 *Vern.* 24. But when *arbitrators* make their award upon one day, they cannot make another award between the parties on any other day. 26 *Hen.* 6. 52. 39 *Hen.* 6. 12. The *arbitrators* may agree upon a thing one day, and of another thing another time, and at laſt make an award of the whole. 47 *Ed.* 3. 21. 2 *Mod. Entr. Engl.* 262.

When the matter is referred to two, and they cannot agree, but leave it to be determined by a third perſon, his determination is called an *umpirage*. 8 *Rep.* 98. But the *arbritrators* are to refuſe, and declare they will make no award, before the umpire ſhall proceed: though an umpire's award ſhall be good where the arbitrators make a void award, which is no award. 1 *Lill. Abr.* 170. It is ſaid an umpirage cannot be made till the arbitrators time is out; and if any other power be given to the umpire it is not good, for two perſons cannot have a ſeveral juriſdiction at one time. 1 *Mod. Rep.* 15.

The arbitrators are perſons indifferently choſen, to determine the matters in controverſy according to their own minds, whether they be matters of law or fact; infants, perſons excommunicate, outlawed, *&c.* may be arbitrators; for every perſon muſt uſe his own diſcretion in the choice of his judges, and being at liberty to chuſe whom he likes beſt, cannot afterwards object the want of honeſty or underſtanding to them, or that they have not done him juſtice. *Weſt. Symb.* 2 *part*, *ſect.* 27.

The arbitrators are perſons truſted with the authority, and it is not within their power to aſſign it.

Neither *natural* nor *legal diſabilities* do hinder any one from being an arbitrator; if they are incompetent judges, the fault is thoſe that chuſe them.

Before we diſmiſs this article, it will be neceſſary briefly to conſider,

What things may be ſubmitted to arbitration, and *by whom.*

It is held clearly, that all chattels perſonal, and perſonal actions, ſuch as treſpaſs, conſpiracy, maintenance, and things of an uncertain nature, may be determined by arbitration, and the right transferred by naked award, though the ſubmiſſion were not by deed; for theſe being transferrable by the party himſelf without any ſolemnity, whatever the parties themſelves could do, may be done by the arbitrators, who are their ſubſtitutes, and ſtand in their place; and if on theſe ſubmiſſions without deed, the arbitrators award one party a ſum certain, he may bring an action of debt for it; but if the award be of doing ſome other thing, which is beneficial to him, he muſt have his action on the caſe. 22 *Hen.* 6. 39. 9 *Co.* 78. 1 *Roll. Abr.* 242.

Bonds are generally executed and exchanged between the parties at variance, to perform the award, for the non-performance of which action of debt may be brought on the bond. The defendant may pray oyer of the bond and condition, and then plead according to the nature of his caſe, and the plaintiff reply thereto, or demur, as occaſion requires; ſo that the whole of the caſe will by theſe means come before the court.

A debt on a ſpecialty or record, tho' certain, may be ſubmitted and transferred by an award, *amongſt other things*, but not by itſelf. 1 *Lev.* 192. But freehold, or inheritance of lands, cannot be determined by arbitrament; and therefore there cannot be a partition by an award; for freehold doth not paſs without livery. 1 *Roll. Abr.* 242. So the intereſt of an eſtate for years cannot be transferred by an award; for it is a chattel real. 1 *Roll. Abr.* 242. *Contr. Dyer* 183. *a. in marg.* 2 *Leon.* 104. *Cro. Eliz.* 223.

But *qu.* if parties, by bond, or rule of court, ſubmit ſuch queſtions to arbitration, are they not bound to perform whatever is legally directed by the arbitrators, and conſequently obliged if ſo directed to make due conveyances, or otherwiſe be liable to an action on the bond, or an attachment, upon the rule of reference, made a rule of court? See the next clauſe.

If a man be bound to ſtand to an award, and the arbitrators make an award, that *land ſhall be conveyed*; if the party refuſes the conveyance, he forfeits the obligation. 1 *Roll. Abr.* 244. So, if an award be, that one ſhall pay ſo much in ſatisfaction of a ſpecialty; though the ſpecialty is not thereby diſcharged, yet if he commences an action upon the ſpecialty afterwards, he forfeits his obligation. 1 *Roll. Abr.* 242. 2 *Cro.* 447.

An annuity is not determinable by award, for it is reckoned in nature of a freehold, and therefore cannot paſs without the deed of the party. 9 *Hen.* 6. 60. 14 *Hen.* 4. 19. 3 *Hen.* 4. 6. 1 *Roll. Abr.* 266. but *vide ante*, and *poſt*.

It has been doubted, whether leaſes for years, being chattels real, could be transferred by award; therefore it ſeems ſafeſt when the controverſy relates to theſe, that the parties be bound in mutual obligations to perform the award, and then if the arbitrators award that one ſhall aſſign, transfer, *&c.* the leaſe to the other, if he refuſes, he forfeits his obligation. 1 *Roll. Abr.* 242. 9 *Co.* 78. 6 *Co.* 41.

Cauſes criminal are not arbitrable, becauſe they ought to be puniſhed for the common good. *Weſt. Symb. part* 2. *ſect.* 33.

Alſo cauſes matrimonial ſeem not arbitrable, becauſe marriage ought to be free, and religion diſallows the ſevering thoſe whom the church hath joined. *Weſt. Symb. part* 2. *ſect.* 33. 1 *Roll. Abr.* 252. But the damages a perſon ſuſtained by a promiſe of marriage, or any thing relating to a marriage portion, may be ſubmitted. 16 *Ed.* 4. 2.

Debts due by ſpecialty cannot be diſcharged by naked award; but if the ſubmiſſion were by bond, the award would be a good bar, for one ſpecialty may be diſſolved by another. 1 *Hen.* 7. 16. *b.* *Dyer* 51. 6 *Co.* 44.

A certain and fixed debt is not diſcharged by an award, but the end and deſign of an arbitration is to reduce uncertain debts and duties to a certainty; and to award a man a certain debt is to give him no more, nor do any greater thing for him than was done before, for now he can have but an action, and that he might have had before, and to give him leſs than he had before is to do him a manifeſt injuſtice, which the arbitrator cannot do. *Cro. Jac.* 99, 447, 647. 3 *Hen.* 4. 4. 4 *Hen.* 7. 6. 10 *Hen.* 7. 4. 1 *Roll. Abr.* 264.

Submiſſions are likewiſe *general*; as of all controverſies, debts, dues, *&c.* and here the arbitrators are not obliged to determine all matters diſcloſed, but their arbitration of ſome things will be good, tho' they leave other things undone; but where the ſubmiſſion is ſpecial or conditional, *ita quod* an award be made of all controverſies depending, they ought to determine all matters whereof they have notice, becauſe here, by the expreſs words of the authority, I do not own his determination, unleſs all matters in controverſy are ſettled; and therefore to determine one without the others, is to act contrary to the authority; but if, upon ſuch a ſubmiſſion, the arbitrators make an award but of one thing, it ſhall be intended there were no others to make an award of, unleſs the other ſide ſhew there was, and that the arbitrators had notice thereof. *Cro. Eliz.* 839. *Cro. Jac.* 200, 355. 8 *Co.* 98. *Dyer* 216. 1 *Roll. Abr.* 257. 1 *Saund.* 32. 1 *Brownl.* 63.

As to the perſons who may ſubmit to arbitration, it is to be obſerved, that

Perſons that cannot contract, cannot ſubmit to arbitration, therefore femes covert, and perſons compelled by threats and impriſonment cannot ſubmit. 9 *Ed.* 3. 23. 10 *Hen.* 6. 14, 19. *Latch* 27.

The huſband may ſubmit the chattels he hath in right of his wife to an award, for he may diſpoſe of them. *Style* 351. *March* 77, 78.

If the huſband ſubmits to arbitration the chattels the wife hath as executrix or adminiſtratrix, this ſhall bind the wife, becauſe the wife cannot perſonate any one without the huſband during coverture. 21 *Hen.* 7. 29. 1 *Roll. Rep.* 269. *Cro. Jac.* 447.

If an infant ſubmit to arbitration, he may execute or avoid it at his election, as he may all other his contracts. 13 *Hen.* 4. 12. 10 *H.* 6. 14. *March* 111, 141. 1 *Jones* 164. 1 *Lev.* 17. 1 *Roll. Abr.* 730.

Perſons attainted or outlawed cannot ſubmit to arbitration, for they have no property, and cannot by the law controvert any thing. 3 *Hen.* 6. 26. 5 *Hen.* 7. 16.

A dean without the chapter, a mayor without his commonalty, the maſter of a college or hoſpital without his fellows, cannot ſubmit to an award, for the ſubmiſſion has the force of a contract, and they cannot contract without them. 21 *Ed.* 4. 13.

If one party and the deputy or attorney of the other party ſubmit to an award, this is well enough, for the act of my deputy is my own act. *Dyer* 21. 1 *Roll. Abr.* 244. 2 *Mod.* 228.

If ſeveral perſons do a treſpaſs, and one of the wrongdoers and the party to whom it is done ſubmit to arbitration, and an award is made, the other perſons ſhall take advantage of it by way of extinguiſhment of the treſpaſs; the ſame law where the party releaſes to one of them; for in both caſes a ſatisfaction really is, or is preſumed to be made, and a man cannot receive *a double compenſation* for the ſame wrong. 1 *Salk.* 70. *Carth.* 412. 20 *Hen.* 6. 12. *a.* 41. *a.* *Rol. Abr.* 268.

An award may be good in part, tho' bad in part. *Wilſ. Rep. part* 2. 267, 293. See more concerning this head under title *Award.* And *Stat.* 9 & 10 *W.* 3. *c.* 15. and the next title.

Arbitrament, *(arbitrium)* Is the ſentence or determination pronounced by *arbitrators,* and publiſhed when they have heard all parties. And *arbitrament* is either general, of all actions, demands, quarrels, &c. or ſpecial, of ſome certain matters in controverſy: it may be alſo abſolute, or conditional. 8 *Rep.* 98. To every *arbitrament* five things are incident. 1. Matter of controverſy. 2. Submiſſion. 3. Parties to the ſubmiſſion. 4. *Arbitrators.* 5. Giving up the *arbitrament.* *Hardr.* 44. *Arbitrators* cannot refer *arbitrament* to others, if the ſubmiſſion be not ſo: but an *arbitrament* that one ſhall releaſe to another, by advice of a certain perſon, this is good; becauſe it is a reference only for the execution of it. *Jenk. Cent.* 129. *Vide Danv. Abr.* 513. 9 *Rep.* 78. 1 *Rol. Abr.* 244, 342. See *Arbitrator.* Vide *Com. D.* 1 *V.* 401, &c.

Arca Cyrographica, *ſive cyrographorum judæorum,* This was a common cheſt with three locks and keys, kept by certain Chriſtians and jews, wherein all the contracts, mortgages, and obligations belonging to the Jews were kept, to prevent fraud; and this by order of K. *Rich. I.* *Hoveden's Annals, p.* 745.

Archery, A ſervice of keeping a bow, for the uſe of the lord to defend his caſtle.—Johannes *de, &c. qui tenet de dom. reg. in capite per ſerjantiam* archeriæ. *Co. Litt. ſect.* 157.

Archbiſhop, *(archiepiſcopus)* Is the chief of the clergy in his province, and is that ſpiritual ſecular perſon, who hath ſupreme power under the king in all eccleſiaſtical cauſes: and the manner of his creation and conſecration, by an *archbiſhop* and two other biſhops, &c. you may find in the *Stat.* 25 *Hen.* 8. *c.* 20. An *archbiſhop* is ſaid to be inthroned, when a biſhop is ſaid to be inſtalled; and there are four things to compleat a biſhop or *archbiſhop,* as well as a parſon: firſt, election, which reſembles preſentation; the next is confirmation, and this reſembles admiſſion; next, conſecration, which reſembles inſtitution; and the laſt is inſtallation, reſembled to induction. 3 *Salk.* 72. In ancient times the *archbiſhop* was biſhop over all *England,* as *Auſtin* was, who is ſaid to be the firſt *archbiſhop* here; but before the *Saxon* conqueſt the *Britains* had only one biſhop, and not any *archbiſhop.* 1 *Roll. Rep.* 328. 2 *Roll.* 440.

But at this day, the eccleſiaſtical ſtate of *England* and *Wales* is divided only into two provinces or archbiſhopricks, to wit, *Canterbury* and *York.* Each archbiſhop hath within his province biſhops of ſeveral dioceſes. The archbiſhop of *Canterbury* hath under him within his province, of ancient foundations, *Rocheſter, London, Wincheſter, Norwich, Lincoln, Ely, Chicheſter, Saliſbury, Exeter, Bath* and *Wells, Worceſter, Coventry* and *Litchfield, Hereford, Landaff, St. David's, Bangor,* and *St. Aſaph;* and four founded by king *Henry* 8. erected out of the ruins of diſſolved monaſteries, viz. *Glouceſter, Briſtol, Peterborough,* and *Oxford.* The archbiſhop of *York* hath under him four, *viz.* the biſhop of the county palatine of *Cheſter,* newly erected by king *Henry* 8. and annexed by him to the archbiſhoprick of *York;* the county palatine of *Durham; Carliſle;* and the *iſle of Man,* annexed to the province of *York* by king *Hen.* 8. but a greater number this archbiſhop anciently had, which time hath taken from him. *Co. Lit.* 94.

The *archbiſhop* of *Canterbury* is now ſtiled *metropolitanus & primus totius Angliæ;* and the *archbiſhop* of *York* ſtiled *primus & metropolitanus Angliæ.* They are called *archbiſhops* in reſpect of the biſhops under them; and metropolitans, becauſe they were conſecrated at firſt in the metropolis of the province. 4 *Inſt.* 94. Both the *archbiſhops* have diſtinct provinces, wherein they have ſuffragan biſhops of ſeveral dioceſes, with juriſdiction under them. And each hath two concurrent juriſdictions, one as ordinary, or the biſhop himſelf within his dioceſe; the other as ſuperintendant throughout his whole province of all eccleſiaſtical matters, to correct and ſupply the defects of other biſhops. The *archbiſhop* of *Canterbury* hath the privilege to crown all the kings of *England;* and to have prelates to be his officers; as for inſtance; the biſhop of *London* is his provincial dean; the biſhop of *Wincheſter,* his chancellor; the biſhop of *Lincoln,* his vice-chancellor; the biſhop of *Saliſbury,* his precentor; the biſhop of *Worceſter,* his chaplain, &c. It is the right of the *archbiſhop* to call the biſhops and clergy of his province to convocation, upon the king's writ: he hath a juriſdiction in caſes of appeal, where there is a ſuppoſed default of juſtice in the ordinary; and hath a ſtanding juriſdiction over his ſuffragans: he confirms the election of biſhops, and afterwards conſecrates them, &c. And he may appoint coadjutors to a biſhop that is grown infirm. He may confer degrees of all kinds; and cenſure and excommunicate, ſuſpend or depoſe, for any juſt cauſe, &c. 2 *Roll. Abr.* 223. And he hath power to grant diſpenſations in any caſe, formerly granted by the ſee of *Rome,* not contrary to the law of God: but if the caſe is new and extraordinary, the king and his counſel are to be conſulted. *Stat.* 25 *H.* 8. *c.* 21, 28. *H.* 8. *c.* 16. §. 6. He may retain eight chaplains: and, during the vacancy of any ſee, he is guardian of the ſpiritualties. *Stat. ibid.* and 21 *H.* 8. *c.* 13.

The archbiſhop of *Canterbury* hath the precedency of all the clergy; next to him the archbiſhop of *York;* next to him the biſhop of *London;* next to him the biſhop of *Durham;* next to him the biſhop of *Wincheſter;* and then all the other biſhops of both provinces after the ſeniority of their conſecration; but if any of them be a privy counſellor, he ſhall take place next after the biſhop of *Durham.* *Co. Lit.* 94. 1 *Ought. Ord. Jud.* 486.

The firſt archbiſhop of *York,* that we read of, was *Paulinus,* who, by pope *Gregory's* appointment, was made archbiſhop there, about the year of our Lord 622. *Godol.* 14.

The archbiſhop of *York* hath the privilege to crown the queen conſort, and to be her perpetual chaplain. *Chamberlain's Preſent State* 65.

The archbiſhop of *Canterbury* is the firſt peer of the realm, and hath precedence, not only before all the other clergy, but alſo (next and immediately after the blood royal) before all the nobility of the realm: and as he hath the precedence of all the nobility, ſo alſo of all the great officers of ſtate. *God.* 13.

The archbiſhop of York hath the precedence over all dukes, not being of the blood royal; as alſo before all the great officers of ſtate, except the lord chancellor. *God.* 14.

Archdeacon, *(archidiaconus)* Is one that hath eccleſiaſtical dignity, and juriſdiction over the clergy and laity next after the biſhop throughout the dioceſs, or in ſome part of it only. *Archdeacons* had anciently a ſuperintendant power over all the parochial clergy in every deanery in their precincts; they being the chiefs of the deacons; though they have no original juriſdiction, but what they have got is from the biſhop, either by preſcription or compoſition; and Sir *Simon Degg* tells us, that it appears an *archdeacon* is a meer ſubſtitute to the biſhop; and what authority he hath is derived from him, his chief office being to viſit and inquire, and *epiſcopo nunciare,* &c. In ancient times *archdeacons* were employed in ſervile duties of collecting and diſtributing alms and offerings; but at length, by a perſonal attendance on the biſhops, and a delegation to examine and report ſome cauſes, and commiſſions to viſit the remoter parts of the dioceſes, they became, as it were, overſeers of the church; and by degrees advanced into conſiderable dignity and power. *Lanfranc*, archbiſhop of *Canterbury*, was the firſt prelate in *England* who inſtituted an *archdeacon* in his dioceſe, which was about the year 1075. And an *archdeacon* is now allowed to be an ordinary, as he hath a part of the epiſcopal power lodged with him. He viſits his juriſdiction once every year: and he hath a court, where he may inflict penance, ſuſpend, or excommunicate perſons, prove wills, grant adminiſtrations, and hear cauſes eccleſiaſtical, *&c.* ſubject to appeal to the biſhop of the dioceſe. It is one part of the office of an *archdeacon* to examine candidates for holy orders, and to induct clerks within his juriſdiction, upon receipt of the biſhop's mandate. 2 *Cro.* 556. 1 *Lev.* 193. *Wood's Inſt.* 30.

Archdeaconries are commonly given by biſhops, who do therefore prefer to the ſame by collation: but if an archdeaconry be in the gift of a layman, the patron doth preſent to the biſhop, who inſtitutes in like manner as to another benefice; and then the dean and chapter do induct him, that is, after ſome ceremonies, place him in a ſtall in the cathedral church to which he belongeth, whereby he is ſaid to have a place in the choir. *Watſ. c.* 15.

Archdeacons, by the 13 & 14 *Car.* 2. *c.* 4. are to read the Common Prayer and declare their aſſent thereunto, as other perſons admitted to eccleſiaſtical benefices; and alſo muſt ſubſcribe the ſame before the ordinary; but they are not obliged by the 13 *Eliz. c.* 12. to ſubſcribe and read the thirty-nine articles; for altho' an archdeaconry be a benefice with cure, yet it is not ſuch a benefice with cure as ſeems to be intended by that ſtatute, but only ſuch benefices with cure as have particular churches belonging to them. *Watſ. c.* 15. And they are to take the oaths at the ſeſſions, as other perſons qualifying for offices.

The judge of the archdeacon's court (where he doth preſide himſelf) is called the official. *Wood's Inſt.* 30.

By the ſtatute of the 24 *Hen.* 8. *c.* 12. An appeal lieth from the archdeacon's to the biſhop's court.

And it hath been alſo held, that where the archdeacon hath a peculiar juriſdiction, he is totally exempt from the power of the biſhop, and the biſhop cannot enter there, and hold court; and in ſuch caſe, if the party who lives within the peculiar be ſued in the biſhop's court, a prohibition ſhall be granted; for the ſtatute intends that no ſuit ſhall be *per ſaltum*: but if the archdeacon hath not a peculiar, then the biſhop and he have a concurrent juriſdiction, and the party may commence his ſuit either in the archdeacon's court or the biſhop's, and he hath election to chooſe which he pleaſeth: and if he commence in the biſhop's court, no prohibition ſhall be granted; for if it ſhould, it would confine the biſhop's court to determine nothing but appeals, and render it incapable of having any cauſes originally commenced there. *L. Raym.* 123.

An archdeacon is a miniſterial officer, and cannot refuſe a churchwarden elected by the pariſh. *Rex* v. *Martin Rice*, 1 *L. Raym.* 138.

Arches Court, *(curia de arcubus)* The chief and moſt ancient conſiſtory court belonging to the archbiſhop of *Canterbury* for the debating of ſpiritual cauſes. It is ſo called from the church in *London*, commonly called *St. Mary Le Bow*, (where it was formerly held) which church is named *Bow Church* from the ſteeple which is raiſed by pillars, built *archwiſe*, like ſo many bent bows. *Cowel.*

The judge of this court is ſtiled the Dean of the *Arches*, or Official of the *Arches* court: he hath extraordinary juriſdiction in all eccleſiaſtical cauſes, except what belong to the prerogative court; alſo all manner of appeals from biſhops or their chancellors or commiſſaries, deans and chapters, archdeacons, *&c.* firſt or laſt are directed hither: he hath ordinary juriſdiction throughout the whole province of *Canterbury*, in caſe of appeals; ſo that upon any appeal made, he, without any farther examination of the cauſe, ſends out his citation to the appellee, and his inhibition to the judge from whom the appeal was made. Of this ſee more 4 *Inſt.* 337. But he cannot cite any perſon out of the dioceſe of another, unleſs it be on appeal, *&c.* 23 *H.* 8. *c.* 9.

In another ſenſe the dean of the *arches* has a peculiar juriſdiction of thirteen pariſhes in *London*, called a deanery, (being exempt from the authority of the biſhop of *London*) of which the pariſh of *Bow* is the principal. The perſons concerned in this court, are the judge, advocates, regiſters, proctors, *&c.* And the foundation of a ſuit in theſe courts, is a citation for the defendant to appear; then the libel is exhibited, which contains the action, to which the defendant muſt anſwer; whereupon the ſuit is conteſted, [illegible] are produced, and the cauſe determined by the judge, upon hearing the advocates on the law and fact; when follows the ſentence or decree thereupon.

This court (as alſo the court of peculiars, the admiralty court, the prerogative court, and the court of delegates for the moſt part) is now held in the hall belonging to the college of Civilians, commonly called Doctors Commons. *Floy.* 21.

From this court the appeal is to the king in Chancery; by the 25 *Hen.* 8. *c.* 19.

Archives, (*archiva*, from *arca*, a cheſt) The *Rolls*, or any place where ancient records, charters, and evidences, belonging to the crown and kingdom, are kept; alſo the *Chancery*, *Exchequer office*, *&c.* And it hath been ſometimes uſed for repoſitories in libraries.

Arerieſment, Surpriſe, affrightment.—To the great *arerieſment* and *eſtenyſement* of the Common law. *Rot. Parl.* 21 *Ed.* 3.

Arierban, The edict of the king, commanding all his tenants to come into the army: if they refuſe, then to be deprived of their eſtates.

Arentare, To rent out, or let at a certain rent.—Richardus de Armeſtone *ballivus manerii de* Kingsford *malitioſe & per violentiam dictos religioſos de eadam piſcaria ejecit, & ipſum domino ſuo* arentari *fecit in* 12 *ſol. quos idem dominus per* 6 *annos recepit.* Conſuetud. Domus de Farendon, MS. fol. 53.

Argentum Album, Silver coin, or pieces of bullion that anciently paſſed for money. By *Domeſday tenure*, ſome rents to the king were paid in *argento albo*, common ſilver pieces of money; other rents in *libris urſis & penſatis*, in metal of full weight and purity: in the next age, that rent which was paid in money, was called *blanch fearm*; and afterwards *white-rent*; and what was paid in proviſion, was termed *black mail.* Spelm. Gloſſ. See **Alba Firma.**

Argentum Dei, God's money; *i. e.* money given in earneſt upon the making of any bargain; hence comes *arles*, earneſt.——Adam de Holt *vendidit quintam partem manerii de* Berterton Henrico Scot, *& cepit de prædicto* Henrico *tres denarios de* argento Dei *præ manibus.* Placit. apud Caſt. 2 *Ed.* 3.

Argil, or **Argoil,** Clay, lime, and ſometimes gravel; alſo the lees of wine, gathered to a certain hardneſs. *Law Fr. Dict.*

Argumentoſus. A word which ſignifies *ingenious*, mentioned by our hiſtorian *Neubrigenſis. In picturis quoque opera* argumentoſo *vocamus.* Lib. 1. c. 14.

Arietum Levatio, An old ſportive exerciſe, ſuppoſed to be the ſame with running at the *quintal.*

Arma dare, To dub or make a knight. *Anno Dom.* 1144. 10 *Steph. Ego* Brientius *filius comitis, quem bonus rex* Henricus *nutrivit & cui* arma dedit *& honorem*, A. D. 1278. 31 *Ed.* 3. Arma *capere* is to be made a knight. *Kennet's Paroch. Antiq. p.* 288. And in *Walſingham, p.* 507. *Die Dominica in Vigilia Purificationis* Edwardus *juvenis ſuſcepit* arma *militaria.* The word *arma*, in theſe places, ſignifies only a ſword; but ſometimes a knight was made by giving him the whole armour.—Lanfrancus Dorobernenſis *epiſcopus cum lorica induit, & galeam capiti impoſuit, eique & regis filio militiæ cingulum in nomine Dei cinxit.* Ordericus Vitalis, lib. 8. de Henrico, *&c.*

Arma Libera, A ſword and a lance which were uſually given to a ſervant when he was made free. *Leg. Will. cap.* 65.

Arma moluta, Sharp weapons that cut, oppoſed to ſuch as are blunt, which only break or bruiſe. *Bract. lib.* 3. Arma moluta *plagam faciunt, ſicut gladius & hujuſmodi: Ligna vero & lapides, bruſuras, orbes & ictus, qui judicari non poſſunt ad plagam, ad hoc ut inde venire poſſit ad duellum.* They are called *arma emolita* by *Fleta, lib.* 1. *c.* 33 *par.* 6.

Arma Reverſata, This was when a man was convicted of treaſon or felony: thus our hiſtorian *Knighton*, ſpeaking of *Hugh Spenſer*, tells us, *Primo veſtierunt eum uno veſtimento cum* armis *ſuis* reverſatis. *Lib.* 3. *p.* 2546.

Armiſcare, Is a ſort of puniſhment decreed or impoſed on an offender by the judge. *Malmſb. lib* 3. *p.* 97. *Walſingham, p.* 430. At firſt it was to carry a ſaddle at his back in token of ſubjection, *viz. Nudis veſtigiis equeſtrem ſellam ad ſatisfaciendum humeris ferret. Brompton* ſays, that in the year 1176, the king of *Scots* promiſed king *Hen.* 2. at *York, Lanceam & ſellam ſuam ſuper altare Sancti* Petri *ad perpetuam hujus ſubjectionis memoriam offerre.*

Armigeri, A title of dignity, belonging to ſuch gentlemen that bear arms: and theſe are either by *curteſy*, as ſons of noblemen, eldeſt ſons of knights, &c. Or by *creation*, ſuch as the king's ſervants, &c. The word *armigeri* has been alſo applied to the higher ſervants in convents. *Paroch. Antiq.* 576. See *Eſquire.*

Armour and **Arms**, In the underſtanding of law, are extended to any thing that a man wears for his defence, or takes into his hands, or uſeth in anger to ſtrike or caſt at another. *Crompt. Juſt.* 65. *Arms* are alſo what we call in Latin *inſignia*, enſigns of honour; as to the original of which, it was to diſtinguiſh commanders in war; for the ancient defenſive *armour* being a coat of mail, &c. which covered the perſons, they could not be diſtinguiſhed, and therefore a certain badge was painted on their ſhields, which was called *arms*; but not made hereditary in families till the time of king *Rich.* 1. on his expedition to regain *Jeruſalem* from the *Turks*: and beſides ſhields with *arms*, they had a ſilk coat drawn over their *armour*, and afterwards a ſtiff coat, on which their *arms* were painted all over, now the herald's coat of *arms*. *Sid. Rep.* 353. By the Common law, it is an offence for perſons to go or ride *armed* with dangerous and unuſual weapons: but gentlemen may wear common *armour* according to their quality, &c. 3 *Inſt.* 160, &c. *St. de defenſ. part. arm.* The king may prohibit force of *arms*, and puniſh offenders according to law; and herein every ſubject is bound to be aiding. *Stat.* 7 *Ed.* 1. *viz.* the above Stat. None ſhall come with *force* and *arms* before the king's juſtices, nor ride *armed* in an affray of the peace, on pain to forfeit their *armour*, and ſuffer impriſonment, &c. 2 *Ed.* 3. *c.* 3.

Imbezilling the king's armour felony. *Stat.* 31 *Eliz. c.* 4. Armour may be exported. 12 *Car.* 2. *c.* 4. *ſect.* 10. Unleſs prohibited by proclamation. 12 *Car.* 2. *c.* 4. *ſect.* 12. Importing arms or ammunition prohibited. 1 *Jac.* 2. *c.* 8.

As to arms for neceſſary defence, vide *Black. Com.* 1 *V.* 143.

As to riding or going armed, vide *Black. Com.* 4 *V.* 148, &c.

Arnalia, *arable grounds.* This word is mentioned in *Domeſday*, tit. *Eſſex*

Arnaldia, *arnoldia*; A ſort of diſeaſe that makes the hair fall off, like the *alopecia*, or like unto a diſtemper in foxes.——*Deinde uterque rex incidit in ægritudinem quam* arnaldiam *vocant, in qua ipſi ad mortem uſque laborantes capillos ſuos depoſuerunt.* Rog. Hoveden, p. 693.

Aromatarius, (*Lat.*) A word often uſed for a *grocer*, but held not good in law proceedings. 1 *Vent.* 142.

Arpen, or *arpent*, Signifies an acre or furlong of ground: and according to the old *French* account in Domeſday-book, 100 perches make an *arpent*. The moſt ordinary acre, called *l'arpent de France*, is one hundred perches ſquare: but ſome account it but half an acre.—*Septem acras terræ & unum* arpentum *quæ me contingebant per eſchaietam.* Ex Reg. Priorat. de Wormſley, fol. 7. where *arpen* ſeems to be ſome quantity leſs than an acre.

Arpentator, A meaſurer or ſurveyor of land.

Arquebuſs, (Fr. *arquebuſe*) A ſhort hand-gun, a caliver or piſtol; mentioned in ſome of our antient ſtatutes. *Law Fr. Dict.*

Arrack. The ſame duty and exciſe payable for brandy and foreign ſpirits, and no more, ſhall be paid for *arrack* imported from the *Eaſt Indies*; and the like allowance to be made on exportation, &c. *St.* 7 *Geo.* 2. *c.* 14.

Arraiatio Peditum, Is uſed in *Pat.* 1. *Ed.* 2. for the *arraying* of foot-ſoldiers.

Arraiers, (*arraiatores*) Such officers as had the care of the ſoldiers *armour*, and whoſe buſineſs it was to ſee them duly accoutred. *Stat.* 12 *R.* 2. *c.* 6. In ſeveral reigns commiſſioners have been appointed for this purpoſe.

Arraign, (from the Fr. *arranger*, to ſet a thing in order) Hath the ſame ſignification in law: but the true derivation is from the French *arraiſonner*, i. e. *ad rationem ponere*, to call a man to anſwer in form of law. A priſoner is *arraigned*, when he is indicted and brought to trial: and to *arraign* a writ of aſſiſe, is to cauſe the demandant to be called to make the plaint, in ſuch manner as the tenant may be obliged to anſwer. *Co. Lit.* 262. But no man is properly *arraigned* but at the ſuit of the king, upon an indictment found againſt him, or other record wherewith he is to be charged: and this *arraignment* is to take care that the priſoner do appear to be tried, and hold up his hand at the bar, for the certainty of the perſon, and plead a ſufficient plea to the indictment. *Co. Lit.* 262, 263.

The priſoner is to hold up his hand only in treaſon and felony; but this is only a ceremony: if he owns that he is the perſon, it is ſufficient without it; and then upon his *arraignment* his fetters are to be taken off; and he is to be treated with all the humanity imaginable. 2 *Inſt.* 315. 3 *Inſt.* 35.

Priſoners are now generally tried in their irons, becauſe taking them off is uſually attended with great pain and trouble.

If in action of ſlander for calling one thief, the defendant juſtifies that he ſtole goods, and iſſue is thereon taken; if it be found for the defendant in *B. R.* and for felony in the ſame county where the court ſits, or before juſtices of aſſiſe, &c. he ſhall be forthwith *arraigned* upon this verdict of twelve men, as on an indictment. 2 *Hale's Hiſt. P. C.* 151.

The pleas upon *arraignment* are either the general iſſue, Not guilty; plea in abatement, or in bar; and the priſoner may demur to the indictment; he may alſo confeſs the fact, but then the court has nothing more to do than to proceed to judgment againſt him. If he ſtands mute, and doth not put himſelf upon trial, he ſhall ſuffer the penance *pain fort & dure*, in caſes of felony, &c. 3 *Inſt.* 217. Standing mute, or not anſwering directly, in certain caſes, excludes offenders from clergy. See 25 *H.* 8. *c.* 3.—1 *Ed.* 6. *c.* 12.—4 & 5 *P.* & *M. c.* 4.—3 & 4 *W.* & *M. c.* 9.—1 *Ann. c.* 9.

By the Common law, if a principal is acquitted, or is pardoned, or dies, the acceſſary ſhall not be *arraigned*. But vide *Stat.* 1 *Ann. cap.* 9. and word *acceſſary*. For the ſolemnity of the *arraignment* and trial of a priſoner, ſee *Dalt. Chap.* 185. *p.* 515.

Array, (*arraya ſive arraiamentum*) An old *French* word, ſignifying the ranking or ſetting forth of a jury of men impanelled upon a cauſe. 18 *H.* 6. *c.* 14. And when we ſay to *array* a panel, that is, to ſet forth the men impanelled one by another. *F. N. B.* 157. To *challenge the array* of the panel, is at once to except againſt all the perſons *arrayed* or impanelled, in reſpect of partiality, &c. *Co. Lit.* 156. If the ſheriff be of affinity to either of the parties; or if any one or more of the jurors are returned at the nomination of either party; or for any other partiality; the *array* ſhall be *quaſhed*. The word *array* alſo relates, in a particular manner, to military order, as to conduct perſons armed, &c. *Stat.* 14 *Car.* 2. *cap.* 3.

Arrearages, (*arreragia*, from the French *arriere, retro*, behind) Is taken for money unpaid at the due time, as rent behind; the remainder due on an account, or a ſum of money remaining in the hands of an accountant. When *arrears* of rent are preſumed in law to be ſatisfied, *vide* Acceptance.

Arrectatus, One ſuſpected of any crime.——*Si autem aliquis* arrectatus *fuerit de morte alicujus periclitantis capiatur & impriſonetur.*——Offic. Coronat. Spelm. Gloſſ.

Arrenatus, *arraigned*, accuſed.——*Stephanus Rabaz, vic. Leiceſt.* arrenatus & *ad rationem poſitus de hoc quod*, &c. Rot. Parl. 21 Ed. 1.

Arrentation, (from the Spaniſh *arrendar*) Is as much as *ad certum redditum dimittere*; and it ſignifies the licenſing the owner of lands in the foreſt, to incloſe them with a low hedge and ſmall ditch, according to the aſſiſe of the foreſt, under a yearly rent: *ſaving the arrentations* is a ſaving power to give ſuch licences. *Ordin. Foreſtæ*, 34 *Ed.* 1.

Arreſt, (*arreſtum*) Cometh of the *Fr.* word *arreſter*, to ſtop, or ſtay. It is a reſtraint of a man's perſon, obliging him to be obedient to the law: and it is defined to be the execution of the command of ſome court of record or officer of juſtice. An *arreſt* is the beginning of impriſonment, where a man is firſt taken, and reſtrained of his liberty, by power or colour of a lawful warrant: alſo it ſignifies the decree of a court, by which a perſon is *arreſted*. 2 *Shep. Abr.* 299.

Arreſts are either in civil or criminal *caſes*.

An arreſt in a *civil cauſe* is defined to be the apprehending or reſtraining one's perſon by proceſs in execution of the command of ſome court, or officer of juſtice. *Wood's Inſt.* 575.

There are ſeveral ſtatutes, ſecuring the liberty of the ſubject, againſt unlawful arreſts. See *Magna Charta*, *c.* 29. 3 *Ed.* 1. *c.* 35.

There are ſtatutes likewiſe protecting the clergy from arreſts while attending divine ſervice. See 50 *Ed.* 3. *c.* 5. 1 *R.* 2 *c.* 15. 1 *Mar. ſeſs.* 2. *c.* 3.

Several perſons are likewiſe by the Common and Statute law of the land privileged from arreſts. Peers of the realm, members of parliament, &c. may not be arreſted, unleſs it be in criminal caſes; but the proceſs againſt them is to be ſummons, diſtreſs infinite, &c. 12 *W.* 3. *c.* 3. But ſee 2 *Ann. c.* 18. & 10 *Geo.* 3. *c.* 50. Alſo corporations and companies muſt be made to appear by *diſtringas*, and cannot be arreſted. *Finch.* 353. 3 *Salk.* 46. Perſons attending upon any courts of record, on buſineſs there, are to be free from *arreſts*. 3 *Inſt.* 141. A clerk of the court ought not to be arreſted for any thing which is not criminal, becauſe he is ſuppoſed to be always preſent in court to anſwer the plaintiff. 1 *Lill.* 94. Arreſts are not to be made within the liberty of the king's palace: nor may the king's ſervants be *arreſted* in any place, without notice firſt given to the lord chamberlain, that he remove them, or make them pay their debts. Ambaſſadors ſervants, &c. freed from arreſts. Vide *Ambaſſador*.

Seamen in the king's ſervice privileged from arreſts for debts under 20 *l.* 1 *Geo.* 2. *c.* 14. *ſect.* 15. 14 *Geo.* 2. *c.* 38. *ſect.* 3.

Soldiers or marines not liable to arreſts for a debt of leſs than 10 *l.* 30 *Geo.* 2. *c.* 6. *ſect.* 64. 30 *Geo.* 2. *c.* 11. *ſect.* 37.

There is this difference between arreſts in civil and criminal caſes, that none ſhall be arreſted for debt, treſpaſs, &c. or other cauſe of action, but by virtue of a precept or commandment out of ſome court: but for treaſon, felony, or breach of the peace, any man may arreſt without warrant or precept. *Terms de Ley* 54.

There are ſeveral ſtatutes likewiſe regulating the iſſuing and execution of warrants for arreſts, and aſcertaining the fees to be taken on ſuch occaſions.

The bailiff's fee for an arreſt, by an ancient ſtatute, is but four-pence, and the ſheriff's twenty-pence: and bailiffs cannot legally take any thing but what is allowed by this ſtatute and other ſubſequent acts. For taking fees not warranted by law, they ſhall render treble damages to the party grieved, and incur a forfeiture of 40 *l.* *Stat.* 23 *Hen.* 6. *cap.* 10. Sheriffs are not to grant warrants for arreſts before the receipt of the writs; if they do, they ſhall forfeit 10 *l.* and damages, and pay a fine to the king. *Stat.* 43 *Eliz. c.* 5. And every warrant to iſſue upon any writ to arreſt any perſon, ſhall have the ſame day and year ſet down thereon as on the writ, under the like penalty of 10 *l.* *Stat.* 6 *Geo.* 1. *c.* 21.

No bailiff, or other officer, ſhall carry any perſon under arreſt to any tavern, alehouſe, &c. without his conſent, ſo as to charge him with any beer, ale, wine, &c. but what he ſhall freely call for: nor ſhall demand or receive more from him for the arreſt or waiting than by law ought to be, until an appearance procured, bail found, &c. Nor take or exact any more for keeping ſuch perſon out of priſon, than what he ſhall of his own voluntary accord truly give: nor take more for lodging than what is reaſonable, or ſhall be adjudged ſo by the next juſtice of peace. *Stat.* 22 & 23 *Car.* 2. *cap.* 2. And by a late act bailiffs, &c. are not to carry any perſon arreſted to a tavern, alehouſe, &c. or the private houſe of ſuch officers, without the free and voluntary conſent of the party; nor carry ſuch perſon to priſon within twenty-four hours from the time of the arreſt; nor take any reward for keeping him out of gaol, &c. *Stat.* 2. *Geo.* 2. *cap.* 22. And ſee 32 *Geo.* 2. *c.* 28. a new act on this ſubject. But if a perſon arreſted refuſe to be carried to ſome convenient houſe of his own nomination, &c. to be kept in ſafe cuſtody during the twenty-four hours before carried to priſon; then the ſheriff's officers, &c. may immediately convey him to gaol, to prevent an eſcape. 3 *Geo.* 2. *c.* 27.

By *Stat.* 29 *Car.* 2. *c.* 7. No writ, proceſs, warrant, &c. (except in caſes of treaſon, felony, or for breach of the peace) ſhall be ſerved on a *Sunday*; on pain that the perſon ſerving them ſhall be liable to the ſuit of the party grieved, and anſwer damages, as if the ſame had been done without writ: an action of falſe impriſonment lies for arreſt on a *Sunday*, and the arreſt is void. 1 *Salk.* 78. A defendant was arreſted on a *Sunday* by a writ out of the *Marſhalſea*; and the court of *B. R.* being moved to diſcharge him, it was denied; and he was directed to bring action of falſe impriſonment. 5 *Mod. Rep.* 95. The defendant being taken upon a *Sunday*, without any warrant, and locked up all that day; on *Monday* morning a writ was got againſt him, by which he was arreſted; it was ruled, that he might have an action of falſe impriſonment, and that an attachment ſhould go againſt thoſe who took him on the *Sunday*. *Mod. Caſ.* 96. Attachments have been often granted againſt bailiffs for making arreſts on *Sunday*: but affidavit is uſually made, that the party might be taken upon another day. 1 *Mod.* 56. A perſon may be retaken on a *Sunday*, where arreſted the day before, &c. *Mod. Caſ.* 231. And a man may be taken on a *Sunday* on an eſcape warrant: when he goes at large out of the rules of the *King's Bench* or *Fleet* priſon, &c. *Stat.* 5 *Ann. c.* 9. Alſo bail may take the principal on a *Sunday*, and confine him till *Monday*, and then render him. 1 *Nelſ.* 258.

No ſpecial writ ſhall be ſued out of the ſuperior courts, unleſs the cauſe of action be 10 *l.* or above, on pain of 10 *l.* and the proceedings thereon to be void, by *Stat.* 5. *Geo.* 2. *c.* 27. This ſtatute, and the *Stat.* 12 *Geo.* 1. *c.* 29. are made perpetual by the *Stat.* 21 *Geo.* 2. *c.* 3.

When a perſon is apprehended for debt, &c. he is ſaid to be arreſted: and writs expreſs *arreſt* by two ſeveral words *capias* and *attachias*, to take and catch hold of a man; for an officer muſt actually lay hold of a perſon, beſides ſaying he arreſt him, or it will be no lawful arreſt. 1 *Lill. Abr.* 96. If a bailiff be kept off from making an arreſt, he ſhall have an action of aſſault: and where the perſon arreſted makes reſiſtance, or aſſaults the bailiff, he may juſtify beating of him. If a bailiff touches a man, which is an arreſt, and he makes his eſcape, it is a reſcous, and attachment may be had againſt him. 1 *Salk.* 79. If a bailiff lays hold of one by the hand, (whom he had a warrant to arreſt) as he holds it out at the window, this is ſuch a taking of him, that the bailiff may juſtify the breaking open of the houſe to carry him away. 1 *Vent.* 306.

When a perſon has committed treaſon or felony, &c. doors may be broke open to arreſt the offender; but not in civil caſes, except it be in purſuit of one arreſted; or where a houſe is recovered by real action, or in ejectment, to deliver poſſeſſion to the perſon recovering. *Plowd.* 5 *Rep.* 91. Action of treſpaſs, &c. lies for breaking open a houſe to make arreſt in a civil action. *Mod. Caſ.* 105. But if it appears a bailiff found an outer door, &c. open, 'tis ſaid he may open the inner door to make an arreſt. *Comber.* 327.

In the caſe of *Lee v. General Ganſel*, the court of King's Bench determined, that the chamber door of a lodger, is not to be conſidered as his *outer* door, but that the ſtreet door being open, the officers had a right to force open the chamber door, the defendant being in the room, and refuſing to open it.

An arreſt in the night, as well as the day, is lawful. 9 *Rep*. 66. And every one is bound by the Common law to aſſiſt not only the ſheriff in the execution of writs, and making arreſts, &c. but alſo his bailiff that hath his warrant to do it. 2 *Inſt*. 193. A bailiff upon an arreſt ought to ſhew at whoſe ſuit, out of what court the writ iſſues, and for what cauſe, &c. but this is when the party arreſted ſubmits himſelf to the arreſt: a bailiff, ſworn and known, need not ſhew his warrant, though the party demands it; nor is any other ſpecial bailiff bound to ſhew his warrant, unleſs it be demanded. 9 *Rep*. 68, 69. An arreſt without ſhewing the warrant, and without telling at whoſe ſuit, until the other demanded it, was held legal; and that this need not be done until the party obeyed and demanded the ſame. *Cro. Jac*. 485. If an action is entered in one of the *compters* of *London*, a city ſerjeant may arreſt the party without the ſheriff's warrant. 1 *Lill. Abr*. 94. And by the cuſtom of *London*, a debtor may be arreſted before the money is due, to make him find ſureties: but not by the Common law. 1 *Nelſ. Abr*. 258.

If a wrong perſon is arreſted; or one for felony, where no felony is done, &c. it will be falſe impriſonment. Attornies, &c. for vexation, maliciouſly cauſing any perſon to be arreſted, where there is no cauſe of ſuit, &c. ſhall ſuffer ſix months impriſonment, and before diſcharged pay treble damages, and forfeit 10*l*. *Stat.* 8 *Eliz. c*. 2.

Sheriffs in *Wales*, and the counties palatine, ſhall not hold to bail on proceſs from *Weſtminſter*, unleſs the debt be ſworn to be 20*l*. 11 & 12 *W*. 3. *c*. 9. *ſect*. 2.

By *Glynn* Ch. J. *Mich*. 1658. If one be arreſted by the ſheriff of the county, within a liberty, without a *non omittas*, yet the arreſt is good; for the ſheriff is ſheriff of the whole county, but the bailiff of the liberty may have his action againſt the ſheriff, for entering of his liberty. But upon a *quo minus*, a ſheriff may enter any liberty, and execute it *impune*. *Pract. Reg*. 72.

With regard to arreſts in *criminal caſes*, it hath already been obſerved, that for *treaſon, felony, or breach of the peace*, any perſon may arreſt without warrant or precept. But the king cannot command any one by word of mouth to be arreſted; for he muſt do it by writ, or order of his courts, according to law: nor may the king arreſt any man for ſuſpicion of treaſon, or felony, as his ſubjects may; becauſe, if he doth wrong, the party cannot have an action againſt him. 2 *Inſt*. 186.

Arreſts by *private perſons* are in ſome caſes *commanded*. Perſons preſent at the committing of a felony muſt uſe their endeavours to apprehend the offender, under penalty of fine and impriſonment. 3 *Inſt*. 117. 4 *Inſt*. 177.

And for this cauſe, by the Common law, if any homicide be committed, or dangerous wound given, whether with, or without malice, or even by miſadventure or ſelf-defence, in any town, or in the lanes or fields thereof, in the day time, and the offender eſcape, the town ſhall be amerced, and if out of a town, the hundred ſhall be amerced. 3 *Inſt*. 53.

And ſince the ſtatute of *Wincheſter c*. 5. which ordains that walled towns ſhall be kept ſhut from ſun-ſetting to ſun-riſing; if the fact happen in any ſuch town by night, or by day, and the offender eſcape, the town ſhall be amerced. 3 *Inſt*. 53.

And, as private perſons are bound to apprehend all thoſe who ſhall be guilty of any of the crimes above mentioned in their view, ſo alſo are they, with the utmoſt diligence, to purſue and endeavour to take all thoſe who ſhall be guilty thereof, out of their view, upon a hue and cry levied againſt them. 3 *Inſt*. 117.

By the vagrant act 17 *Geo*. 2. *c*. 5. Every private perſon may apprehend beggars and vagrants.

And every private perſon is bound to aſſiſt an officer, requiring him to apprehend a felon.

Arreſts alſo by private perſons are, in ſome caſes, *permitted* only; and arreſts of this kind are either on *ſuſpicion* of crimes already done, or ſuppoſed to have been done, or to prevent their being committed.

Many ſufficient cauſes of ſuſpicion to juſtify the arreſt of an innocent perſon for felony are enumerated in 2 *Hawk*. 76. Yet it is holden by ſome, that none of the cauſes there ſpecified will juſtify the arreſting of a man for the *ſuſpicion* of crimes, unleſs a crime was actually committed; but out of this rule, the apprehending a perſon upon hue and cry muſt be excepted. 2 *Hawk*. 76.

As to the arreſting of offenders by *private perſons* of their own authority, *permitted* by law for the *prevention* of *treaſon* or *felony* only intended to be done; it ſeems any one may lay hold of a perſon, whom he ſees upon the point of committing treaſon, or felony, or doing an act which would manifeſtly endanger the life of another, and detain him, till it may be reaſonably preſumed he has changed his purpoſe. 2 *Hawk*. 77. Indeed the law of reaſon ſays thus, and we want not the authority of books to juſtify the poſition.

As to arreſts for inferior offences, no private perſon can arreſt another for a bare breach of the peace after it is over; but it is held, that a private man may arreſt a night-walker, or a common cheat going about with falſe dice, and actually caught playing with them, in order to have him before a juſtice of peace; and the arreſt of any other offenders, by private perſons, for offences in like manner ſcandalous, and prejudicial to the public, ſeems juſtifiable. 2 *Hawk*. 77.

In ſome caſes likewiſe arreſts by private perſons are *rewarded* by law.

By 4 & 5 *W*. & *M*. *c*. 8. Perſons apprehending *highwaymen*, and proſecuting them to conviction, are intitled to a reward of 40*l*. and if they are killed in the attempt, their executors, &c. are intitled to the like reward.

By the 6 & 7 *W*. 3. *c*. 17. Perſons apprehending *counterfeiters* and *clippers* of the *coin*, and proſecuting them to conviction, are intitled to 40*l*.

By the 10 & 11 *W*. 3. *c*. 23. Perſons apprehending *ſhoplifters*, and proſecuting them to conviction, ſhall have a certificate thereof *gratis* from the judge, which certificate (before any benefit has been made of it) may be once aſſigned over, and no more, and the original proprietor, or aſſignee, ſhall by virtue thereof be diſcharged from all pariſh and ward offices, within the pariſh or ward wherein the felony was committed.

By 5 *Ann*. *c*. 31. Perſons who ſhall take any one guilty of *burglary*, or the *felonious breaking* and *entering* any *houſe* in the *day-time*, and proſecute them to conviction, ſhall receive, above the reward given by the above mentioned ſtatute of 10 & 11 *W*. 3. *c*. 23. the ſum of 40*l*. within one month after ſuch conviction.

With regard to arreſts by *public officers*, they may be made either with or without proceſs.

Arreſts without proceſs may be made by *watchmen*, *conſtables*, *bailiffs of towns*, or *juſtices of peace*. For the power of *watchmen*, ſee *Stat*. *Wincheſter*, *c*. 4. It has been holden, that this ſtatute was made in affirmance of the Common law, and that every private perſon may by the Common law arreſt any *ſuſpicious night-walker*, and detain him till he give a good account of himſelf. 2 *Hawk*. 80.

As to arreſts by *conſtables*, they are either made by their own authority, which differs but little from the power of a private perſon, or they are made by a warrant from a juſtice of peace.

As to the juſtifying arreſts by conſtables, by virtue of a warrant from a juſtice of peace, it ſeems clear, that an arreſt, unlawfully made by a conſtable without a warrant, cannot be made good by a warrant taken out afterwards; alſo it hath been holden, that if a conſtable, after he hath arreſted the party by force of any ſuch warrant, ſuffer him to go at large upon his promiſe to come again at ſuch a time, and find ſureties, he cannot afterwards arreſt him by force of the ſame warrant; however, if the party return and put himſelf again under the cuſtody of the conſtable, the conſtable may lawfully detain him, and bring him before the juſtice, in purſuance of the warrant. 2 *Hawk.* 80. *Dyer* 244. *b.*

A conſtable cannot juſtify any arreſt by force of a warrant from a juſtice of peace, which expreſly appears, on the face of it, to be for an offence whereof a juſtice of peace hath no juriſdiction, or to bring the party before him at a place out of the county for which he is a juſtice. 2 *Hawk.* 82.

As to the doctrine of general warrants, it is now ſufficiently exploded. See the caſe of *The King* and *Wilkes* Eſq; *Wilſ. Rep. part* 2. 151, *&c.*

'Tis the better opinion at this day, that any conſtable, or even a private perſon, to whom a warrant ſhall be directed from a juſtice of peace, to arreſt a particular perſon for felony, or any other miſdemeanor within his juriſdiction, may lawfully execute it, whether the perſon mentioned in it be, in truth, guilty or innocent, and whether he were before indicted of the ſame offence or not, and whether any felony were, in truth, committed or not: for, however the juſtice himſelf may be puniſhable for granting ſuch a warrant, without ſufficient grounds, it is reaſonable that he alone be anſwerable for it, and not the officer, who is not to examine or diſpute the reaſonableneſs of his proceeding. *Ib.*

With regard to arreſts by *bailiffs* of *towns*, their power is founded on the above mentioned ſtatute of *Wincheſter*, *c.* 4. And as to arreſts by *juſtices* of *peace*, arreſts by their command are either by word of mouth or by warrant.

A juſtice of peace may, by word of mouth, authoriſe any one to arreſt another, who ſhall be guilty of an actual breach of the peace in his preſence, or ſhall be engaged in a riot in his abſence. 2 *Hawk.* 83. *Dalt. c.* 117.

And a juſtice of peace may lawfully grant a warrant for apprehending, or arreſting perſons charged with treaſon, felony, premunire, or any other offence againſt the peace; and generally, wherever a ſtatute gives one or more juſtices of peace a juriſdiction over any offence, any one juſtice of peace may, by his warrant, cauſe ſuch offenders to be arreſted and brought before him. 2 *Hawk* 84.

But it is ſaid, that anciently no one juſtice of peace could legally make out a warrant for an offence againſt a penal ſtatute, or other miſdemeanor; cognizable only by a ſeſſions of two or more juſtices; for that one ſingle juſtice of peace hath no juriſdiction of ſuch offence, and regularly thoſe only who have juriſdiction over a cauſe can award proceſs concerning it. Yet the long, conſtant, univerſal, and uncontrolled practice of juſtices of peace ſeems to have altered the law in this particular, and to have given them an authority, in relation to ſuch arreſts, not now to be diſputed. *Ibid.*

A juſtice of peace may juſtify the granting a warrant for the arreſt of any perſon upon ſtrong grounds of ſuſpicion of felony, or miſdemeanor, but he ſeems to be puniſhable, as well at the ſuit of the king, as of the party grieved, if he grant any ſuch warrant groundleſly, or maliciouſly, without ſuch a probable cauſe as might induce a candid and impartial man to ſuſpect the party to be guilty. 2 *Hawk.* 84.

Every warrant ought to be under the hand and ſeal of the juſtice of peace, and ſpecify the day it was made out: if it be for the peace or good behaviour, it is adviſable to ſet forth the ſpecial cauſe upon which it is granted, but if it be for treaſon or felony, or other offences of an enormous nature, it is ſaid that it is not neceſſary to ſet it forth, and it ſeems to be rather diſcretionary than neceſſary to ſet it forth in any caſe. 2 *Hawk.* 85.

We apprehend the meaning of this doctrine is, that the warrant need not expreſs the *ſpecies*, but we conceive it abſolutely neceſſary to expreſs the *genus*, as for *treaſon* or *felony*, or *ſuſpicion* of *treaſon* or *felony*.

The warrant may be directed to the ſheriff, bailiff, conſtable, or to any indifferent perſon by name, who is no officer; for, tho' the juſtice may authoriſe any one to be his officer, whom he pleaſes to make ſuch, yet it is moſt adviſable to direct to the conſtable of the precinct wherein it is to be executed; for that no other conſtable, and *a fortiori* no private perſon, is compellable to ſerve it. 2 *Hawk.* 85.

A bailiff or conſtable, if they be ſworn, and commonly known to be officers, and act within their own precincts, need not ſhew their warrant to the party, notwithſtanding he demand the ſight of it; but that theſe and all other perſons whatſoever making an arreſt, ought to acquaint the party with the ſubſtance of their warrant; and all private perſons to whom ſuch warrants ſhall be directed, and even officers, if they be not ſworn and commonly known; and even theſe, if they act out of their own precincts, muſt ſhew their warrants if demanded. 2 *Hawk.* 86.

The ſheriff, having ſuch warrant directed to him, may authoriſe others to execute it; but every other perſon, to whom it is directed, muſt perſonally execute it, yet, it ſeems, that any one may lawfully *aſſiſt* him. 2 *Hawk.* 86.

If a warrant be generally directed to all conſtables, no one can execute it out of his own precinct; but if it be directed to a particular conſtable by name, he may execute it any where within the juriſdiction of the juſtice. 2 *Hawk.* 86.

Where one is authoriſed to arreſt a perſon who ſhelters himſelf in a houſe; if entrance be denied, the officer may juſtify the breaking open the doors, particular inſtances of which are enumerated by *Serjeant Hawkins.* V. *Pleas of the Crown, p.* 86. & 87.

Alſo it is enacted by the 3 & 4 *Jac.* 1. *par.* 35. That upon any lawful writ, warrant or proceſs awarded to any ſheriff or other officer, for the taking of any popiſh recuſant, ſtanding excommunicated for ſuch recuſancy, it ſhall be lawful, if need be, to break any houſe. 2 *Hawk.* 87.

But it hath been reſolved, that where juſtices of peace are, by virtue of a ſtatute, authoriſed to require perſons to come before them to take certain oaths preſcribed by ſuch ſtatute, the officer cannot lawfully break open the doors. 2 *Hawk.* 87.

After preſentment or indictment found in felony, *&c.* the firſt proceſs is a *capias*, to arreſt and impriſon the offender: and if the offender cannot be taken, an exigent is awarded in order to outlawry. *H. P. C.* 209.

Arreſt of Judgment. To move in *arreſt of judgment*, is to ſhew cauſe why judgment ſhould be ſtaid, notwithſtanding verdict given; for in many caſes, though there be a verdict, no judgment can be had. And the cauſes of arreſt of judgment are, want of notice of trial; where the plaintiff before trial treats the jury; the record differing from the deed pleaded; for material defect in pleading; where perſons are miſnamed; or the declaration doth not lay the thing with certainty, *&c.* And here all matters of fact are to be made out by proper affidavits. *Comp. Attorn.* 329, *&c.* Judgment may be arreſted for good cauſe in criminal caſes, as well as civil; if the indictment be inſufficient, *&c.* 3 *Inſt.* 210. Four days are allowed to move in *arreſt of judgment*; and the defendant hath all the term wherein the verdict was given to ſpeak any thing to arreſt it, if the plaintiff hath not given his four days rule, and ſigned his judgment: after which defendant is put to his writ of error. 2 *Lill.* 93. On motion in *arreſt of judgment*, if the court be divided, two judges againſt two, the plaintiff muſt have his judgment; unleſs a rule be made at firſt to ſtay all proceedings, until the court otherwiſe order, *&c.* 2 *Lill. Abr.* 118. But ſuch rule is now always made. See *Jeofails* and *Judgment.*

Arreſt of enqueſt is to plead in arreſt of taking the enqueſt, upon the former iſſue, and to ſhew cauſe why an enqueſt ſhould not be taken. *Bro.* tit. *Replead.* *Vide* on this ſubject *Black. Com.* 3 *V.* 393. What cauſes are not ſufficient. *Id.* 394, *&c.*

Arreſtandis bonis ne diſſipentur, A writ which lies for a man whoſe cattle or goods are taken by another, who during the conteſt doth or is like to make them away, not being of ability to render ſatisfaction. *Reg. Orig.* 126.

Arreſtando ipſum qui Pecuniam Recepit, &c. Is a writ that lieth for apprehending a perſon who hath taken the king's preſt-money to ſerve in wars, and hides himſelf when he ſhould go. *Reg. Orig.* 24.

Arreſto facto ſuper bonis mercatorum alienigenorum, A writ that lies for a denizen againſt the goods of *aliens* found within this kingdom, in recompence of goods taken from him in a foreign country, after denial of reſtitution. *Reg. Orig.* 129. This the ancient civilians called *clarigatio*; but by the moderns it is termed *repriſalia*.

Arretted. *arrectatus, quaſi, ad rectum vocatus*, Is where a man is convened before a judge, and charged with a crime. *Staundf. Pl. Co.* 45. And it is ſometimes uſed for imputed or laid unto; as no folly may be *arretted* to one under age. *Littleton*, cap. *Remitter*. *Chaucer* uſeth the verb *arretteth*, that is, lays blame, as it is interpreted. *Bracton* ſays, *ad rectum habere malefactorem*, i. e. to have the malefactor forth coming, ſo as he may be charged, and put to his trial. *Bract. lib.* 3. *tract.* 2. *cap.* 10. And in another place, *rectatus de morte hominis*, charged with the death of a man. From hence it may with ſome reaſon ſeem, that the word is the ſame with *rectum*.

Arrows. By an ancient ſtatute, all heads for *arrows* ſhall be well brazed, and hardened at the point with ſteel, on pain of forfeiture and impriſonment: and to be marked with the mark of the maker. *Stat.* 7 *H.* 4. *c.* 7.

Arrura,—In the black book of *Hereford*, *De Operationibus* Arruræ, ſignifies days work of ploughing; for antiently cuſtomary tenants were bound to plough certain days for their lord. *Una arrura*, one day's work at the plough: and in *Wiltſhire*, earing is a day's ploughing. *Paroch. Antiq. p.* 41.

Arſon, (from *ardeo*, to burn) Is houſe burning, which is felony at Common law. 3 *Inſt.* 66. It muſt be maliciouſly, voluntarily, and an actual burning: not putting fire only into a houſe, or any part of it, without burning; but if part of the houſe is burnt; or if the fire doth burn, and then goeth out of itſelf, it is felony. 2 *Inſt.* 188. *H. P. C.* 85. The burning of a frame of a houſe is not accounted houſe-burning, becauſe the frame of a houſe cannot come under the word *domus*, neceſſary in every indictment for *arſon*: this was when the law proceedings were in *Latin*; now, of courſe, the word *houſe* is requiſite; and it muſt be the houſe of another, for if a man burns his own houſe only, though with intention to burn others, it was not at Common law felony, but a great miſdemeanor, puniſhable with fine, pillory, &c.

If a houſe is fired by negligence or miſchance, it cannot amount to *arſon*. 3 *Inſt.* 67. *H. P. C.* 85. Where one burns the houſe of another, if it be not wilful and malicious, it is not felony, but only treſpaſs: therefore if *A.* ſhoot unlawfully in a gun at the cattle or poultry of *B.* and by means thereof ſets another's houſe on fire, this is not *arſon*; for though the act he was doing was unlawful, yet he had no intent to burn the houſe. 1 *Hale's Hiſt. P. C.* 569. By *Stat.* 23 *H.* 8. *c.* 11. Burning of houſes, or barns wherein any corn is, is felony without benefit of clergy. And the *Stat.* 22 & 23 *Car.* 2. *c.* 7. makes it felony to ſet barns, ſtables, ſtacks of corn, hay, &c. on fire in the night-time, or any out-houſes, or buildings: but the offender may be tranſported for ſeven years.

By 6 *Annæ*, *c.* 31. Servants, through negligence or careleſneſs, ſetting on fire any dwelling houſe, or out-houſe, ſhall forfeit 100 *l.* to be levied by warrant of two juſtices, and paid to the churchwardens of the pariſh, to be diſtributed to the ſufferers by the fire; or on default ſhall be ſent to the houſe of correction, and there kept to hard labour eighteen months, &c. By 9 *Geo.* 1. *c.* 22. (made perpetual by 31 *Geo.* 2. *c.* 42.) Setting fire to any houſe, barn, or out-houſe, or to any hovel, cockmow, or ſtack of corn, ſtraw, or wood, is made felony without benefit of clergy.

N. B. This muſt be of courſe a wilful act to render it felony.

See farther on this ſubject 3 *Ed.* 1. *c.* 15.—37 *Hen.* 8. *c.* 6.—4 & 5 *P.* & *M.* *c.* 4.—43 *Eliz.* *c.* 13.—1 *Geo.* 1. *Stat.* 2. *c.* 48.—6 *Geo.* 1. *c.* 16.—20 *Geo.* 2. *c.* 52.—& 28 *Geo.* 2. *c.* 19. And *vide* alſo *Black. Com.* 4 *V.* 220, &c.

Arſer in le main, Burning in the hand, is the puniſhment of criminals that have the benefit of clergy. *Terms de Ley.*

Arſura, The trial of money by fire, after it was coined. In *Domeſday* we read, *reddit* 50 *l. ad* arſuram, which is meant of lawful and approved money, whoſe allay was tried by fire.

Art and Part, Is a term uſed in *Scotland* and the north of *England*; when one charged with a crime, in committing the ſame, was both a contriver of, and acted his part in it.

Arthel, A *Britiſh* word, and more truly written *arddel*, ſignifying to avouch; as if a man were taken with ſtolen goods in his hands, he was to be allowed a lawful *arthel* (or vouchee) to clear him of the felony: it was part of the law of *Howel Dda*; according to whoſe laws every tenant holding of any other than of the prince or the lord of the fee, paid a fine *pro defenſione regia*, which was called *arian ardhel*. The privilege of *arthel* occaſioning a delay and exemption of criminals from juſtice, proviſion was made againſt it by *Stat.* 26 *H.* 8. *c.* 6.

Articuli Cleri, *(articles of the clergy)* Are ſtatutes containing certain *articles* relating to the church and clergy, and cauſes eccleſiaſtical. 9 *E.* 2. *Stat.* 1. *c.* 14. 9 *E.* 3. *Stat.* 1.

Articulus, An *article*, or complaint, exhibited by way of libel, in a court chriſtian. Sometimes the religious bound themſelves to obey the ordinary, without ſuch formal proceſs: as *An. Dom.* 1300. The prior and convent of *Burceſter*, ſubmitted themſelves to the official of *Lincoln*, &c.—*Quod poſſint eos et eorum ſucceſſores per omnem cenſuram eccleſiaſticam ad omnium & ſingulorum præmiſſorum obſervationem abſque* articuli, *ſeu libelli, petitione, & quocunque ſtrepitu judiciali compellare.* Paroch. Antiq. p. 344.

Artificers, Are taken for ſuch as are maſters of their arts, or whoſe calling and employment doth conſiſt chiefly of bodily labour. We might, with Mr. *Harris*, more elegantly and ſcientifically define an *artiſt* to be "A man "poſſeſſing an habitual power of becoming the cauſe of "ſome effect, according to a ſyſtem of various and well-"approved precepts." But to the law—

If *artificers* or workmen conſpire not to do any work but at certain prices, &c. they are liable to penalties by the Statute 2 & 3 *Ed.* 6. *c.* 15. A ſtranger, *artificer* in *London*, &c. ſhall not keep above two ſtrangers ſervants; but he may have as many *Engliſh* ſervants and apprentices as he can get. *Stat.* 21 *H.* 8. *c.* 16. *Artificers* in wool, iron, ſteel, braſs, or other metal, &c. perſons contracting with them to go out of this kingdom into a foreign country, ſhall be fined not exceeding 100 *l.* and be impriſoned three months: and *Engliſh artificers* going abroad, not returning in ſix months after warning given by our ambaſſadors, &c. ſhall be diſabled to hold lands by deſcent or deviſe, be incapable to take any legacy, &c. and deemed aliens. *Stat.* 5 *Geo.* 1. *c.* 27.

By the *Stat.* 23 *Geo.* 2. *c.* 13. Perſons convicted of ſeducing artificers in the manufactures of *Great Britain* or *Ireland*, out of the dominions of the crown of *Great Britain*, to forfeit 500 *l.* and to be impriſoned for twelve months; for the ſecond offence to forfeit 1000 *l.* and be impriſoned two years. Proſecution to be commenced within twelve months after the offence committed. *Vide* as to ſeducing and tranſporting of artiſts, *Black. Com.* 4 *V.* 160.

Arundinetum, A ground or place where reeds grow. 1 *Inſt.* 4. And it is mentioned in the book of *Domeſday*.

Arvil-Supper, A feaſt or entertainment made at funerals, in the north part of *England*: *arvil bread* is the bread delivered to the poor at funeral ſolemnities. *Cowel.* And *arvil, arval, arſal*, are uſed for the burial or funeral rites; as,

Come, bring my jerkin, Tibb, I'll to the arvill,
Yon man's dea Seuy Seoun, it makes me marvil.
Yorkſhire Dial. p. 58.

Aſceſterium, *(archiſterium, arciſterium, aciſterium, alcyſterium, architrium)* Is a *Greek* word, and ſignifies a monaſtery. It often occurs in old hiſtories. *Du Cange.*

Aſſach, or *aſſath*, Was a cuſtom of purgation uſed of old in *Wales*, by which the party accuſed did clear himſelf

ſelf by the oaths of 300 men. It is mentioned in ancient *MSS.* and prevailed till the time of *Hen.* 5. when it was abrogated. 1 *H.* 5. *c.* 6.

Aſſart, *(aſſartum)* Fr. *aſſartir,* To make plain. Aſſartum *eſt quod redactum eſt ad culturam.* Fleta, lib. 4. cap. 21. And the word *aſſartum* is by *Spelman* derived from *exertum,* to pull up by the roots: for ſometimes it is wrote *eſſart.* Others derive it from *exaratum* or *exartum,* which ſignifies to plough or cut up. *Manwood,* in his *Foreſt Laws,* ſays it is an offence committed in the foreſt, by pulling up the woods by the roots, that are thickets and coverts for the deer, and making the ground plain as arable land; this is eſteemed the greateſt treſpaſs that can be done in the foreſt to vert or veniſon, as it contains in it waſte and more; for whereas waſte of the foreſt is but the felling down the coverts which may grow up again, *aſſart* is a plucking them up by the roots, and utterly deſtroying them, ſo that they can never afterwards ſpring up again. And this is confirmed out of the red book in the *Exchequer,* in theſe words—Aſſarta *vero dicuntur quæ apud Iſidorum occiſiones nuncupantur, quando foreſtæ nemora vel dumeta, paſcuis & latibulis ferarum opportuna, ſucciduntur: quibus ſucciſis & radicitus avulſis, terra ſubvertitur & excolitur.*—But this is no offence if done with licence; and a man may, by writ of *ad quod damnum,* ſue out a licence to *aſſart* ground in the foreſt, and make it ſeveral for tillage. *Reg. Orig.* 257. Hence lands are called *aſſarted:* and formerly *aſſart rents* were paid to the crown for foreſt lands *aſſarted.* *Stat.* 22 *Car.* 2. *c.* 6. *Aſſartments* ſeem to be uſed in the ſame ſenſe in *Rot. Parl.* Of *aſſarts* you may read more in *Cromp. Juriſ. p.* 203. And *Charta de Foreſta, anno* 9 *H.* 3. *c.* 4. *Manwood, part* 1. *p.* 171.

Aſſault, *(aſſultus)* from the *Fr.* verb *aſſayler,* Signifies a violent injury offered to a man's perſon of a more extenſive nature than battery; for it may be committed by offering a blow, or by terrifying ſpeech. *Lamb. Eiren. lib.* 1. *cap.* 3. But it is ſaid that at this day no words whatſoever, be they ever ſo provoking, can amount to an aſſault, notwithſtanding the many ancient opinions to the contrary. 1 *Hawk. P. C.* 134.

The feudiſts define aſſault thus: aſſultus *eſt impetus in perſonam aut locum, ſive hoc pedibus fiat, vel equo, aut machinis aut quacunque alia re aſſiliatur.* *Zaſius de Feud. p.* 10. *num.* 38. And *aſſilire eſt vim adferre.* *Lib. Feud.* 1. *tit.* 5. *ſect.* 1. Alſo the Lat. *aſſultus* is uſed in this ſenſe in the laws of *Edw. Confeſ. cap.* 12. To ſtrike a man, though he be not hurt with the blow, is an aſſault: and to ſtrike at a perſon, notwithſtanding he be neither hurt nor hit, hath been ſo adjudged. 22 *Lib. Aſſ. pl.* 60. For aſſault doth not always neceſſarily imply a hitting, or blow; becauſe, in treſpaſs for aſſault and battery, a man may be found guilty of the aſſault, and excuſed of the battery. 25 *Ed.* 3. *c.* 24. If a perſon in anger lift up or ſtretch forth his arm, and offer to ſtrike another; or menace any one with any ſtaff or weapon, it is treſpaſs and aſſault in law: and if a man threaten to beat another perſon, or lie in wait to do it, if the other is hindered in his buſineſs, and receives loſs thereby, action lies for the injury. *Lamb. lib.* 1. 22 *Aſſ. pl.* 60. Where a man aſſaults any perſon, beats, or doth him any manner of violence, either with hand, foot, or weapon; or throws any thing at him, drink in his face, &c. whereby he is hurt; it is ſuch an aſſault for which action may be brought, and damages recovered. So ſpitting in a man's face, or treading on his toes.

In many caſes a man may juſtify an aſſault; thus, to lay hands gently upon another, not in anger, is no foundation of an action of treſpaſs and aſſault: the defendant may juſtify *molliter manus impoſuit* in defence of his perſon, or goods; or of his wife, father, mother, or maſter; or for the maintenance of juſtice, *Bract.* 9 *E.* 4. 35 *H.* 6. *c.* 51.

A ſervant, &c. may juſtify an aſſault in defence of a maſter, &c. but not *e cont.* Ni. Pri. p. 18. L. Raym. 62.

If an officer, having a warrant againſt one who will not ſuffer himſelf to be arreſted, beat or wound him in the attempt to take him, he may juſtify it; ſo if a parent in a reaſonable manner chaſtiſe his child, or maſter his ſervant, being actually in his ſervice at that time, or a ſchoolmaſter his ſcholar, or a gaoler his priſoner, or even a huſband his wife (for reaſonable and proper cauſe); or if one confine a friend who is mad, and bind and beat him, &c. in ſuch manner as is proper in his circumſtances; or if a man force a ſword from one who offers to kill another; or if a man gently lays his hand on another, and thereby ſtay him from inciting a dog againſt a third perſon; if I beat one (without wounding him, or throwing at him a dangerous weapon) who wrongfully endeavours with violence to diſpoſſeſs me of my lands or goods, or the goods of another delivered to me to be kept for him, and who *will not deſiſt upon my laying my hands gently on him* and diſturbing him; or if a man beat, wound or maim one who makes an aſſault upon his perſon, or that of his wife, parent, child, or maſter; or if a man fight with, or beat one who attempts to kill any ſtranger; if the beating was actually neceſſary, to obtain the good end propoſed, or rendered neceſſary in defence of the perſon, ſo laying his hands on, by an aſſault from the other; in theſe caſes it ſeems the party may juſtify the aſſault and battery. See 1 *Hawk. P. C.* 130. and the ſeveral authorities there cited.

And on an indictment the party may plead Not guilty, and give the ſpecial matter in evidence; but in an action he muſt plead it ſpecially. 6 *Mod.* 172. Suppoſing it matter of *juſtification.*—If of *excuſe,* it is ſaid it may be given in *evidence,* on the *general iſſue.* Vide *Ni. Pri.* 16.

Alſo in caſes of aſſault, for the aſſault of the wife, child, or ſervant, the huſband, father, and maſter, may have action of treſpaſs, *per quod ſervitium amiſit.* In caſe of a *wife,* huſband and wife ſhould join in the action for the perſonal abuſe of the wife, (the huſband not having ſuſtained any damage.) If the huſband has been damnified, as by tearing her cloaths, &c. or loſs of her aſſiſtance, &c. in his domeſtic concerns, for that peculiar injury to himſelf he alone muſt ſue.

As to *parent* and *child, maſter* and *ſervant,* unleſs injury accrues to the *parent* or *maſter,* the *child* or *ſervant* muſt ſue.

For an aſſault, the wrong-doer is ſubject both to an action at the ſuit of the party, wherein he ſhall render damages; and alſo to an indictment at the ſuit of the king, wherein he ſhall be fined according to the heinouſneſs of the offence. 1 *Hawk.* 134.

But if both are depending at one time, unleſs in very particular caſes, the attorney general, will, on application, grant a *nolle proſequi,* if the party will not diſcontinue his action.

Stat. 8 & 9 *W.* 3. *c.* 11. enacts, That where there are ſeveral defendants to any action of aſſault, &c. and one or more acquitted, the perſon ſo acquitted ſhall recover coſts of ſuit, unleſs the judge certify that there was a reaſonable cauſe for making ſuch perſon a defendant or defendants to ſuch action.

If any perſon aſſault a privy counſellor, in the execution of his office, it is felony. *Stat.* 9 *Ann. c.* 16.

Stat. 6. *Geo.* 1. *c.* 23. *ſect.* 11. If any perſon ſhall wilfully and maliciouſly aſſault any perſon in the public ſtreets or highways, with an intent to tear, ſpoil, cut, burn or deface, and ſhall tear, ſpoil, cut, burn, or deface the garments, &c. of ſuch perſon, it is felony; and the offender may be tranſported for ſeven years.

Aſſaulting perſons in a forcible manner, with intent to commit robbery, is made felony and tranſportation, by *Stat.* 7 *Geo.* 2. *c.* 21. And aſſaulting or threatening a counſellor at law, or attorney employed in a cauſe againſt a man; or a juror giving verdict againſt him; his adverſary for ſuing him, &c. is puniſhable on an indictment, by fine and impriſonment, for the contempt. 1 *Hawk.* 58.

Vide further, as to *aſſault and battery,* *Ni. Pri.* 14 &c. *Black. Com.* 4 *V.* 216, &c. As to *aſſault and battery,* and *falſe impriſonment,* *Ni. Pri.* 21, &c. *Black. Com.* 4 *V.* 218, &c.

Aſſay *of weights and meaſures,* (from the Fr. *eſſay, i. e.* a proof or trial) Is the examination of weights and meaſures, by clerks of markets, &c. *Reg. Orig.* 279.—*Ac aſſiſam &* aſſaiam *Panis, Vini, & Cerviſiæ.* Paten. 37 H. 8. Tho. Marrow.

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Aſſent of *dean* and *chapter* in making leaſes of church lands; *vide* Leaſes. Of the major part of *corporations,* in making by-laws, *vide* By-laws And ſee **Aſſets.**

Aſſeſſors, Thoſe that *aſſeſs* public taxes; as two inhabitants in every pariſh were aſſeſſors for the royal aid, to rate every perſon according to the value of his eſtate. *Anno* 16 & 17 *Car.* 2. There are aſſeſſments of pariſh duties, for raiſing money for the poor, repairing of highways, *&c.* made and levied by rate on the inhabitants; as well as aſſeſſments of public taxes, *&c.* See *Aſſiſors.*

Aſſets, (Fr. *aſſez,* i. e. *ſatis)* Signifies goods enough to diſcharge that burden which is caſt upon the executor or heir, in ſatisfying the debts and legacies of the teſtator or anceſtor. *Bro.* tit. *aſſets.*

Aſſets are *real,* or *perſonal;* where a man hath lands in fee ſimple, and dies ſeiſed thereof, the lands which come to his heir are aſſets *real:* and where he dies poſſeſſed of any *perſonal* eſtate, the goods which come to the executors are aſſets perſonal.

Aſſets are alſo divided into *aſſets per deſcent,* and *aſſets inter maines.* Aſſets by *deſcent* is where a perſon is bound in an obligation, and dies ſeiſed of lands which deſcend to the heir, the land ſhall be aſſets, and the heir ſhall be charged as far as the land to him deſcended will extend.

Aſſets inter maines is when a man indebted makes executors, and leaves them ſufficient to pay his debts and legacies; or where ſome commodity or profit ariſeth to them in right of the teſtator, which are called *aſſets in their hands.* Terms de Ley 56, 77.

As to aſſets by *deſcent* it is to be obſerved, that by the Common law, if an heir had ſold or aliened the lands which were aſſets, before the obligation of his anceſtor was put in ſuit, he was to be diſcharged, and the debt was loſt: but by ſtatute, the heir is made liable to the value of the land by him ſold, in action of debt brought againſt him by the obligee, who ſhall recover to the value of the ſaid land, as if the debt was the proper debt of the heir; but the land which is ſold or aliened *bona fide* before the action brought, ſhall not be liable to execution upon a judgment recovered againſt the heir in any ſuch action. *Stat.* 3 & 4 *W.* & *M. cap.* 14. Where a man binds himſelf and his heirs in a bond; and dies, leaving iſſue two ſons, if the eldeſt ſon enters on the lands by deſcent as heir to the father, and die without iſſue; and then the youngeſt ſon enters, he ſhall be charged with aſſets as heir to the father. *Dyer* 368. Lands which come to the heir by *purchaſe* ſhall not be aſſets; for it is only lands by *deſcent* that are aſſets. 1 *Danv. Abr.* 577.

A reverſion in fee, depending upon an eſtate-tail, is not aſſets; becauſe it lies in the will of the tenant in tail to dock and bar it by fine, *&c.* 6 *Rep.* 56. But after the tail is ſpent, it is aſſets. 3 *Mod.* 257. And a reverſion on an eſtate for life or years ſhall be aſſets. A reverſion expectant upon the determination of an eſtate for life is aſſets, and ought to be pleaded ſpecially by the heir; and the plaintiff in ſuch caſe may take judgment of it *cum acciderit.* Dyer 371. Carthew's Rep. 129. An advowſon is aſſets; but not a preſentation to a church actually void, which may not be ſold. *Co. Lit.* 374. Lands of *ceſtuy que truſt* ſhall be aſſets by deſcent. *Stat.* 29 *Car.* 2. *c.* 3. *ſ.* 12. Alſo

"Eſtate *pur auter vie* ſhall be aſſets in the hands of the heir, if it come to him by reaſon of a ſpecial occupancy, and where there is no ſpecial occupant, it ſhall go to the executors or adminiſtrators of the party that had the eſtate thereof by virtue of the grant, and ſhall be aſſets in their hands."

And lands by deſcent in ancient demeſne will be aſſets in debt. But a copyhold eſtate deſcending to an heir is not aſſets: nor is any *right* to an eſtate aſſets, without poſſeſſion, *&c.* till recovered and reduced into poſſeſſion. *Danv.* 577.

An *annuity* is no aſſets, for it is only a *choſe en action. Br. Aſſets per Deſcent, pl.* 26.

Equity of redemption of an eſtate mortgaged, and a term for years to attend the inheritance are aſſets. 3 *Leon.* 32. An heir may plead *riens per deſcent,* but the plaintiff may reply that he had lands from his anceſtor; and ſpecial matter may be given in evidence, *&c.* 3 & 4 *W.* & *M. c.* 14. 5 *Rep.* 60. A ſpecial judgment againſt aſſets only ſhall have relation to, and bind the lands from the time of the filing the original writ or bill. *Carth. Rep.* 245. As to the heir being bound, vide *Co. L.* 209, 376, 383, 384, 386.

As to aſſets *inter maines*, money decreed in a court of equity by reaſon of executorſhip, or ariſing by ſale of lands by executors; and damages recovered by executors; alſo intereſt of the teſtator's money lent by executors, ſhall be aſſets. 2 *Chan. Rep.* 152. Thoſe goods and chattels, which belonged to the teſtator at his death, and which do come to the hands of the executor, are aſſets, to make the executor chargeable to creditors, &*c.* 6 *Rep.* 47. But ſuch things as are not valuable ſhall not be aſſets: and debts, &*c.* when recovered by the executor after the death of the teſtator, ſhall be accounted aſſets; and not before recovered, for the executor ſhall not be charged for a debt, if he cannot recover it. *Wood's Inſt.* 323. A releaſe of a certain debt due to the teſtator makes it aſſets in the executor's hands; becauſe it ſhall be intended he would not have made the releaſe, unleſs the money had been paid to him. 1 *Nelſ. Abr.* 262.

If an executor of his own wrong, to whom 20*l.* is owing, doth ſeize goods to the value of 20*l.* intending to pay himſelf a debt of that value, this ſhall be aſſets in his hands to make him chargeable to any creditor or legatee. 5 *Rep.* 30.

But if he take out letters of adminiſtration, he may plead *quoad* thoſe effects, *plene adminiſtravit*, againſt any action for recovering a debt, not of a ſuperior degree to his own.

Tho' a plantation be an inheritance, yet, being in a foreign country, it is a chattel to pay debts, and a thing that is a teſtamentary. *Vent.* 358.

Leaſes are aſſets to pay debts, notwithſtanding the aſſent of the executor to the deviſe of them. 1 *Lill. Abr.* 99. Where an executor of leſſee for years receives the profits of the land, they are appropriated to the uſe of the leſſor; but what is over and above the rent ſhall be aſſets. 1 *Salk.* 79. If an executor ſurrenders a term of years which he had as executor, to him in reverſion; or if he purchaſes the reverſion, it is not extinct as to him, but ſhall ſtill remain aſſets in the executor to ſatisfy debts and legacies. 1 *Rep.* 87.

Aſſets in the hands of one executor is aſſets in the hands of others; and if an executor hath goods of the teſtator in any part of the world, he ſhall be charged in reſpect of them. 6 *Rep.* 47. In actions againſt executors, the jury muſt find aſſets of what value; for the plaintiff ſhall recover only according to the value of the aſſets found. 1 *Rol. Rep.* 58.

Aſſewiare, To draw or drain water from marſh grounds.—*Quod ipſi mariſcum prædictum* aſſewiare, *& ſecundum legem Mariſci, Walliis includere & in culturam redigere.—Et Mariſcum illum ſic* aſſewiatum, *incluſum & in culturam redactum tenere.* Mon. Ang. 2 Vol. f. 334.

Aſſidere, or *aſſedare*, To tax equally. *Proviſum eſt generaliter quod præd. quadrageſima hoc modo* aſſideatur *& colligatur. Mat. Pariſ. anno* 1232. Sometimes it hath been uſed to aſſign an annual rent, to be paid out of a particular farm, &*c.* As, *manerium rex* Stephanus *dedit &* aſſedit *eis pro centum marcis.*

Aſſign, *(aſſignare)* Hath two ſignifications; one general, as to ſet over a right to another, or appoint a deputy, &*c.* And the other ſpecial, to ſet forth or point at, as we ſay to aſſign error, aſſign falſe judgment, waſte, &*c.* And in aſſigning of error, it muſt be ſhewn where the error is committed; in falſe judgment, wherein the judgment is unjuſt; in waſte, wherein eſpecially the waſte is done. *F. N. B.* 19, 112. *Reg. Orig.* 72. Alſo juſtices are ſaid to be aſſigned to take aſſiſes. *Stat.* 11 *H.* 6. *c.* 2. And ſee **Aſſignee** and **Aſſignment.**

Aſſignee, *(aſſignatus)* Is he that is deputed or appointed by another to do any act, perform any buſineſs, or enjoy any commodity. And aſſignees may be by deed, or in law: aſſignee by deed is when a leſſee of a term, &*c.* ſells and aſſigns the ſame to another, that other is his aſſignee by deed: aſſignee in law is he whom the law ſo makes, without any appointment of the perſon; as an executor is aſſignee in law to the teſtator. *Dyer* 6. But if there be aſſignee in deed, aſſignee in law is not allowed: if one covenant to do a thing to *J. S.* or his aſſigns by a day, and before that day he dies; if before the day he name any aſſignee, the thing muſt be done to his aſſignee named; otherwiſe to his executor or adminiſtrator, who is aſſignee in law. 27 *H.* 8. 2.

He is called aſſignee, who hath the whole eſtate of the aſſignor: and an aſſignee, though not named in a condition, may pay the money to ſave the land; but he ſhall not receive any money, unleſs he be named. *Co. Lit.* 215. Aſſignees may take advantage of forfeitures on conditions, when they are incident to the reverſion, as for rent, &*c.* 1 *And.* 82. And regularly every aſſignee of the land may take advantage of inherent covenants; alſo aſſignees are bound by ſuch covenants, as a covenant to repair, &*c.* But if it concerns a thing not in being at the time of the demiſe, as to make a new edifice, &*c.* the aſſignee is not bound, except he be named in expreſs words; nor is he when named, if the thing to be done does not concern the thing demiſed, but is collateral to it; or in contracts merely perſonal. 1 *Cro.* 552. 1 *Rol. Abr.* 915. *Plowd.* 284.

Under the word *aſſigns*, the aſſignee of an aſſignee *in perpetuum*, the heir of an aſſignee, or the aſſignee of an heir, ſhall take. *Co. Lit* 384. *b.* So, if a man covenant with another, *his executors and aſſigns*, the aſſignee of an aſſignee, and his executors, and the aſſignee of an executor or adminiſtrator of every aſſignee are included, and ſhall have covenant. 5 *Co.* 17. *b.* But if an obligation be, *to pay ſuch perſons as he ſhall name by his will, or writing*; there muſt be an expreſs nomination, and his executor ſhall not take as aſſignee. *Mo.* 855.

A *deviſee* is an aſſignee *in law*; *per cur.* 2 *Show.* 59.

Where a *power is coupled with an intereſt*, an aſſignee of an executor of an aſſignee may take as aſſignee. 2 *Show.* 57.

An aſſignee is he that poſſeſſes or enjoys a thing in his own right; and deputy is he that does it in the right of another. *Perkins.* See **Condition, Covenant,** &c.

Aſſignment, *(aſſignatio)* Is the ſetting over or transferring the intereſt a man hath in any thing to another.

For the better explaining this head, it will be proper to conſider,

I. *What things are aſſignable.*

II. *Where an aſſignee ſhall take advantage of the covenant of an aſſignor.*

III. *Where an aſſignee ſhall be bound by the covenant of an aſſignor.*

I. Aſſignments may be made of lands in fee, for life, or years; of an annuity, rent-charge, judgment, ſtatute, &*c.* but as to lands they are uſually of leaſes and eſtates for years, &*c.* And no eſtate of freehold, or term for years, ſhall be aſſigned but by deed in writing ſigned by the parties; except by operation of law. *Stat.* 29 *Car.* 2. *c.* 3. A poſſibility, right of entry, title for condition broken, a truſt, or thing in action, cannot be granted or aſſigned over. *Co. Lit.* 214.

But though a bond, being a *choſe in action*, cannot be aſſigned over ſo as to enable the aſſignee to ſue in his own name, yet he has by the aſſignment ſuch a title to the paper and wax, that he may keep or cancel it. *Co. Lit.* 232. And bonds, &*c.* are aſſigned by power of attorney to receive and ſue in the aſſignor's name: but bills of exchange are aſſignable by indorſement, and the aſſignees may recover in their own names by *Stat.* 3 & 4 *Ann. c.* 9.

Alſo in equity a bond is aſſignable for a valuable conſideration paid, and the aſſignee alone becomes intitled to the money; ſo that if the obligor, after notice of the aſſignment, pays the money to the obligee, he will be compelled to pay it over again. 2 *Vern.* 595.

An aſſignee muſt take it ſubject to the ſame equity that it was in the hands of the obligee; as if on a marriage treaty the intended huſband enters into a marriage-brokage bond, which is afterwards aſſigned to creditors, yet it ſtill remains liable to the ſame equity, and is not to be carried into execution againſt the obligor. 2 *Vern.* 428.

Where there is a bond for the performance of covenants in a leaſe, if the leſſee aſſigns the leaſe, he may likewiſe aſſign the bond; but this muſt be before any of the *cove-*

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Aſſent, or conſent. To a legacy of goods, the *aſſent* of the executor is neceſſary, before the legatee may take the ſame; but to a deviſe of lands that are freehold, it is not required. *Co. Lit.* 111. The aſſent of an executor to a deviſe of a legacy, or of any perſonal thing, is ſo neceſſary, that if the legatee or deviſee take the thing without the delivery and aſſent of the executor, he may have an action of treſpaſs. *Keilw.* 128. 1 *Nelſ. Ab.* 260. The Common law takes notice of the aſſent of the executor to the legacy, and doth give him time to conſider of the value of the goods, and ſtate of the debts of the teſtator, that he may pay a legacy with ſafety; the executor being to pay debts before legacies. *Perk.* 570. No property can be transferred to the legatee without the aſſent of the executor: but if the executor doth once aſſent to the legacy, the legatee hath ſuch a property veſted in him that he may take it, though the executor revokes his aſſent afterwards. And there may be an aſſent implied, as well as expreſs; as if the executor offers the legatee money for what is bequeathed him; or directs others to the legatee to buy it, *&c. Plowd.* 543. 4 *Rep.* 28.

When there are many executors, the aſſent of one to a legacy is ſufficient: and one executor may take a legacy without the aſſent of his co-executors. *Perk.* 572. Aſſent may be before or after probate of the will. An infant executor, at the age of ſeventeen years, may aſſent to a legacy: but it has been doubted, whether an *adminiſtrator durante minori ætate* can aſſent. *Cro. Eliz.* 719. A huſband is to give aſſent where his wife is executrix. A court of equity, or the ſpiritual court, may compel an executor to aſſent to a legacy. *March* 97. But an aſſent to a void deviſe will be alſo void. *Plowd.* 525.

Aſſent of *dean* and *chapter* in making leaſes of church lands; *vide* Leaſes. Of the major part of *corporations,* in making by-laws, *vide* By-laws And ſee **Aſſets.**

Aſſeſſors, Thoſe that *aſſeſs* public taxes; as two inhabitants in every pariſh were aſſeſſors for the royal aid, to rate every perſon according to the value of his eſtate. *Anno* 16 & 17 *Car.* 2. There are aſſeſſments of pariſh duties, for raiſing money for the poor, repairing of highways, *&c.* made and levied by rate on the inhabitants; as well as aſſeſſments of public taxes, *&c.* See *Aſſiſors.*

Aſſets, (Fr. *aſſez,* i. e. *ſatis)* Signifies goods enough to diſcharge that burden which is caſt upon the executor or heir, in ſatisfying the debts and legacies of the teſtator or anceſtor. *Bro.* tit. *aſſets.*

Aſſets are *real,* or *perſonal;* where a man hath lands in fee ſimple, and dies ſeiſed thereof, the lands which come to his heir are aſſets *real:* and where he dies poſſeſſed of any *perſonal* eſtate, the goods which come to the executors are aſſets perſonal.

Aſſets are alſo divided into *aſſets per deſcent,* and *aſſets inter maines.* Aſſets by *deſcent* is where a perſon is bound in an obligation, and dies ſeiſed of lands which deſcend to the heir, the land ſhall be aſſets, and the heir ſhall be charged as far as the land to him deſcended will extend.

Aſſets inter maines is when a man indebted makes executors, and leaves them ſufficient to pay his debts and legacies; or where ſome commodity or profit ariſeth to them in right of the teſtator, which are called *aſſets in their hands.* Terms de Ley 56, 77.

As to aſſets by *deſcent* it is to be obſerved, that by the Common law, if an heir had ſold or aliened the lands which were aſſets, before the obligation of his anceſtor was put in ſuit, he was to be diſcharged, and the debt was loſt: but by ſtatute, the heir is made liable to the value of the land by him ſold, in action of debt brought againſt him by the obligee, who ſhall recover to the value of the ſaid land, as if the debt was the proper debt of the heir; but the land which is ſold or aliened *bona fide* before the action brought, ſhall not be liable to execution upon a judgment recovered againſt the heir in any ſuch action. *Stat.* 3 & 4 *W.* & *M. cap.* 14. Where a man binds himſelf and his heirs in a bond; and dies, leaving iſſue two ſons, if the eldeſt ſon enters on the lands by deſcent as heir to the father, and die without iſſue; and then the youngeſt ſon enters, he ſhall be charged with aſſets as heir to the father. *Dyer* 368. Lands which come to the heir by *purchaſe* ſhall not be aſſets; for it is only lands by *deſcent* that are aſſets. 1 *Danv. Abr.* 577.

A reverſion in fee, depending upon an eſtate-tail, is not aſſets; becauſe it lies in the will of the tenant in tail to dock and bar it by fine, *&c.* 6 *Rep.* 56. But after the tail is ſpent, it is aſſets. 3 *Mod.* 257. And a reverſion on an eſtate for life or years ſhall be aſſets. A reverſion expectant upon the determination of an eſtate for life is aſſets, and ought to be pleaded ſpecially by the heir; and the plaintiff in ſuch caſe may take judgment of it *cum acciderit.* Dyer 371. Carthew's Rep. 129. An advowſon is aſſets; but not a preſentation to a church actually void, which may not be ſold. *Co. Lit.* 374. Lands of *ceſtuy que truſt* ſhall be aſſets by deſcent. *Stat.* 29 *Car.* 2. *c.* 3. *ſ.* 12. Alſo

"Eſtate *pur auter vie* ſhall be aſſets in the hands of the heir, if it come to him by reaſon of a ſpecial occupancy, and where there is no ſpecial occupant, it ſhall go to the executors or adminiſtrators of the party that had the eſtate thereof by virtue of the grant, and ſhall be aſſets in their hands."

And lands by deſcent in ancient demeſne will be aſſets in debt. But a copyhold eſtate deſcending to an heir is not aſſets: nor is any *right* to an eſtate aſſets, without poſſeſſion, *&c.* till recovered and reduced into poſſeſſion. *Danv.* 577.

An *annuity* is no aſſets, for it is only a *choſe en action. Br. Aſſets per Deſcent, pl.* 26.

Equity of redemption of an eſtate mortgaged, and a term for years to attend the inheritance are aſſets. 3 *Leon.* 32. An heir may plead *riens per deſcent,* but the plaintiff may reply that he had lands from his anceſtor; and ſpecial matter may be given in evidence, *&c.* 3 & 4 *W.* & *M. c.* 14. 5 *Rep.* 60. A ſpecial judgment againſt aſſets only ſhall have relation to, and bind the lands from the time of the filing the original writ or bill. *Carth. Rep.* 245. As to the heir being bound, vide *Co. L.* 209, 376, 583, 384, 386.

As to aſſets *inter maines*, money decreed in a court of equity by reaſon of executorſhip, or ariſing by ſale of lands by executors; and damages recovered by executors; alſo intereſt of the teſtator's money lent by executors, ſhall be aſſets. 2 *Chan. Rep.* 152. Thoſe goods and chattels, which belonged to the teſtator at his death, and which do come to the hands of the executor, are aſſets, to make the executor chargeable to creditors, *&c.* 6 *Rep.* 47. But ſuch things as are not valuable ſhall not be aſſets: and debts, *&c.* when recovered by the executor after the death of the teſtator, ſhall be accounted aſſets; and not before recovered, for the executor ſhall not be charged for a debt, if he cannot recover it. *Wood's Inſt.* 323. A releaſe of a certain debt due to the teſtator makes it aſſets in the executor's hands; becauſe it ſhall be intended he would not have made the releaſe, unleſs the money had been paid to him. 1 *Nelſ. Abr.* 262.

If an executor of his own wrong, to whom 20*l.* is owing, doth ſeize goods to the value of 20*l.* intending to pay himſelf a debt of that value, this ſhall be aſſets in his hands to make him chargeable to any creditor or legatee. 5 *Rep.* 30.

But if he take out letters of adminiſtration, he may plead *quoad* thoſe effects, *plene adminiſtravit*, againſt any action for recovering a debt, not of a ſuperior degree to his own.

Tho' a plantation be an inheritance, yet, being in a foreign country, it is a chattel to pay debts, and a thing that is a teſtamentary. *Vent.* 358.

Leaſes are aſſets to pay debts, notwithſtanding the aſſent of the executor to the deviſe of them. 1 *Lill. Abr.* 99. Where an executor of leſſee for years receives the profits of the land, they are appropriated to the uſe of the leſſor; but what is over and above the rent ſhall be aſſets. 1 *Salk.* 79. If an executor ſurrenders a term of years which he had as executor, to him in reverſion; or if he purchaſes the reverſion, it is not extinct as to him, but ſhall ſtill remain aſſets in the executor to ſatisfy debts and legacies. 1 *Rep.* 87.

Aſſets in the hands of one executor is aſſets in the hands of others; and if an executor hath goods of the teſtator in any part of the world, he ſhall be charged in reſpect of them. 6 *Rep.* 47. In actions againſt executors, the jury muſt find aſſets of what value; for the plaintiff ſhall recover only according to the value of the aſſets found. 1 *Rol. Rep.* 58.

Aſſewiare, To draw or drain water from marſh grounds.—*Quod ipſi mariſcum prædictum* aſſewiare, *&* *ſecundum legem Mariſci, Walliis includere & in culturam redigere.—Et Mariſcum illum ſic* aſſewiatum, *incluſum & in culturam redactum tenere.* Mon. Ang. 2 Vol. f. 334.

Aſſidere, or *aſſedare*, To tax equally. *Proviſum eſt generaliter quod præd. quadrageſima hoc modo* aſſideatur *& colligatur. Mat. Pariſ. anno* 1232. Sometimes it hath been uſed to aſſign an annual rent, to be paid out of a particular farm, *&c.* As, *manerium rex* Stephanus *dedit &* aſſedit *eis pro centum marcis.*

Aſſign, *(aſſignare)* Hath two ſignifications; one general, as to ſet over a right to another, or appoint a deputy, *&c.* And the other ſpecial, to ſet forth or point at, as we ſay to aſſign error, aſſign falſe judgment, waſte, *&c.* And in aſſigning of error, it muſt be ſhewn where the error is committed; in falſe judgment, wherein the judgment is unjuſt; in waſte, wherein eſpecially the waſte is done. *F. N. B.* 19, 112. *Reg. Orig.* 72. Alſo juſtices are ſaid to be aſſigned to take aſſiſes. *Stat.* 11 *H.* 6. *c.* 2. And ſee **Aſſignee** and **Aſſignment.**

Aſſignee, *(aſſignatus)* Is he that is deputed or appointed by another to do any act, perform any buſineſs, or enjoy any commodity. And aſſignees may be by deed, or in law: aſſignee by deed is when a leſſee of a term, *&c.* ſells and aſſigns the ſame to another, that other is his aſſignee by deed: aſſignee in law is he whom the law ſo makes, without any appointment of the perſon; as an executor is aſſignee in law to the teſtator. *Dyer* 6. But if there be aſſignee in deed, aſſignee in law is not allowed: if one covenant to do a thing to *J. S.* or his aſſigns by a day, and before that day he dies; if before the day he name any aſſignee, the thing muſt be done to his aſſignee named; otherwiſe to his executor or adminiſtrator, who is aſſignee in law. 27 *H.* 8. 2.

He is called aſſignee, who hath the whole eſtate of the aſſignor: and an aſſignee, though not named in a condition, may pay the money to ſave the land; but he ſhall not receive any money, unleſs he be named. *Co. Lit.* 215. Aſſignees may take advantage of forfeitures on conditions, when they are incident to the reverſion, as for rent, *&c.* 1 *And.* 82. And regularly every aſſignee of the land may take advantage of inherent covenants; alſo aſſignees are bound by ſuch covenants, as a covenant to repair, *&c.* But if it concerns a thing not in being at the time of the demiſe, as to make a new edifice, *&c.* the aſſignee is not bound, except he be named in expreſs words; nor is he when named, if the thing to be done does not concern the thing demiſed, but is collateral to it; or in contracts merely perſonal. 1 *Cro.* 552. 1 *Rol. Abr.* 915. *Plowd.* 284.

Under the word *aſſigns*, the aſſignee of an aſſignee *in perpetuum*, the heir of an aſſignee, or the aſſignee of an heir, ſhall take. *Co. Lit* 384. *b.* So, if a man covenant with another, *his executors and aſſigns*, the aſſignee of an aſſignee, and his executors, and the aſſignee of an executor or adminiſtrator of every aſſignee are included, and ſhall have covenant. 5 *Co.* 17. *b.* But if an obligation be, *to pay ſuch perſons as he ſhall name by his will, or writing*; there muſt be an expreſs nomination, and his executor ſhall not take as aſſignee. *Mo.* 855.

A *deviſee* is an aſſignee *in law*; *per cur.* 2 *Show.* 59.

Where a *power is coupled with an intereſt*, an aſſignee of an executor of an aſſignee may take as aſſignee. 2 *Show.* 57.

An aſſignee is he that poſſeſſes or enjoys a thing in his own right; and deputy is he that does it in the right of another. *Perkins.* See **Condition, Covenant,** &c.

Aſſignment, *(aſſignatio)* Is the ſetting over or tranſferring the intereſt a man hath in any thing to another.

For the better explaining this head, it will be proper to conſider,

I. *What things are aſſignable.*

II. *Where an aſſignee ſhall take advantage of the covenant of an aſſignor.*

III. *Where an aſſignee ſhall be bound by the covenant of an aſſignor.*

I. Aſſignments may be made of lands in fee, for life, or years; of an annuity, rent-charge, judgment, ſtatute, *&c.* but as to lands they are uſually of leaſes and eſtates for years, *&c.* And no eſtate of freehold, or term for years, ſhall be aſſigned but by deed in writing ſigned by the parties; except by operation of law. *Stat.* 29 *Car.* 2. *c.* 3. A poſſibility, right of entry, title for condition broken, a truſt, or thing in action, cannot be granted or aſſigned over. *Co. Lit.* 214.

But though a bond, being a *choſe in action*, cannot be aſſigned over ſo as to enable the aſſignee to ſue in his own name, yet he has by the aſſignment ſuch a title to the paper and wax, that he may keep or cancel it. *Co. Lit.* 232. And bonds, *&c.* are aſſigned by power of attorney to receive and ſue in the aſſignor's name: but bills of exchange are aſſignable by indorſement, and the aſſignees may recover in their own names by *Stat.* 3 & 4 *Ann. c.* 9.

Alſo in equity a bond is aſſignable for a valuable conſideration paid, and the aſſignee alone becomes intitled to the money; ſo that if the obligor, after notice of the aſſignment, pays the money to the obligee, he will be compelled to pay it over again. 2 *Vern.* 595.

An aſſignee muſt take it ſubject to the ſame equity that it was in the hands of the obligee; as if on a marriage treaty the intended huſband enters into a marriage-brokage bond, which is afterwards aſſigned to creditors, yet it ſtill remains liable to the ſame equity, and is not to be carried into execution againſt the obligor. 2 *Vern.* 428.

Where there is a bond for the performance of covenants in a leaſe, if the leſſee aſſigns the leaſe, he may likewiſe aſſign the bond; but this muſt be before any of the *cove-*

nants are broken; but if any of the covenants are broken, and the leſſee afterwards aſſigns the leaſe and bond, and the aſſignee puts the bond in ſuit, for thoſe breaches it is maintenance. *Godb.* 81.

'Tis enacted by the ſtatute 7 *Jac.* 1. *c.* 15. *That a debtor to the king ſhall not aſſign any debts to him, but ſuch as did originally grow due to the debtor*; afterwards there was a debtor to the huſband in 2000*l.* by a ſtatute; the huſband made his wife executrix, and died; ſhe married again one *G. D.* who was indebted to the king, and then the huſband and wife aſſigned this ſtatute to the king in ſatisfaction of the debt due to him; adjudged, that the *aſſignment* was good, for tho' the ſecond huſband had the *ſtatute in right of his wiſe*, and by conſequence the debt was not *originally* due to him; yet becauſe he might *releaſe* the ſtatute it is the ſame thing as if he had been *originally* taken in his name. 2 *Cro.* 324.

An *office of truſt* is not grantable or aſſignable to another; and therefore it was adjudged, that the office of a *filazer*, which was an office of truſt, could not be aſſigned, and if it could not be aſſigned, it cannot be extended upon a ſtatute. *Dyer* 7.

A poſſibility, right of entry, or thing in action, or cauſe of ſuit, or title for a condition broken, cannot be granted or aſſigned over by law; for if this were permitted, it would promote maintenance, and prove prejudicial to ſuch as, being able to contend with thoſe with whom the original contract was, might find themſelves depreſſed by a powerful adverſary. *Co. Lit.* 214. 1 *Rol. Abr.* 376. *Skin.* 6, 26.

A *bare power* is not aſſignable, but where it is coupled with an intereſt it may be aſſigned: agreed *per cur.* as where a leaſe was made with power for leſſor, his heirs and aſſigns, to cut down, grub up, and fell trees; and leſſor granted ſome of the trees to defendant who with his ſervants entered and cut them down; and it was objected, that this was a power annexed to the reverſion only, and not aſſignable; and that he might have juſtified under the leſſor, but not in his own right. But judgment *quod querens nil capiat.* The liberty is annexed to the trees, and, as incident to them, aſſignable with them. 2 *Jon.* 206. The leſſor might ſever the trees from the reverſion. 2 *Mod.* 317.

Arrears of rent, &c. is a *choſe in action*, and not aſſignable. See *Skin.* 6.

It hath been doubted if a *leaſe for years before entry* and poſſeſſion be aſſignable. See *Show.* 291.

A leſſee out of poſſeſſion cannot make any aſſignment of his term off the land; but muſt firſt enter, and recontinue his poſſeſſion; or ſeal and deliver the deed upon the land, which puts the aſſignee into actual poſſeſſion. *Daliſ.* 81. But it has been adjudged, that where leſſee *for years* of the *crown* is put out of his eſtate by a ſtranger, yet he may aſſign the term, though he is not in poſſeſſion; becauſe, the reverſion being in the crown, he cannot lawfully be put out of poſſeſſion, but at his own will. *Cro. Eliz.* 275.

If leſſee for years *aſſigns* all his term in his leaſe to another, he cannot reſerve a right in the *aſſignment*; for he hath no intereſt in the thing by reaſon of which the rent reſerved ſhould be paid; and where there is no reverſion there can be no diſtreſs: but debt may lie upon it, as on a contract. 1 *Lill. Abr.* 99. Where the executor of a leſſee *aſſigns* the term, *debt* will not lie againſt him for rent incurred after the *aſſignment*; becauſe there is neither privity of contract, nor eſtate between the leſſor and executor: but if the leſſee himſelf *aſſigns* his leaſe, the privity of contract remains between him and the leſſor, although the privity of eſtate is gone by the *aſſignment*, and he ſhall be chargeable during his life; but after his death, the privity of contract is likewiſe determined. 3 *Rep.* 14. 1 *Nelſ. Abr.* 271. Although a leſſee make an *aſſignment* over of his term, yet *debt* lies againſt him by the leſſor or his heir, (not having *accepted* rent from the *aſſignee*:) but where a leſſee *aſſigns* his term, and the leſſor his reverſion, the privity is determined, and *debt* doth not lie for the reverſioner againſt the firſt leſſee. *Moor* 472. Vide *Barker v. Dormer.* 1 *Sho.* 191.

A man made a leaſe, provided that the leſſee or his *aſſigns* ſhould not alien the premiſes without licence of the leſſor, &c. who after gave licence to the leſſee to alien; by this the leſſee or his aſſigns may alien *in infinitum,* 4 *Rep.* 119.

Adjudged, that ſome things in reſpect of their nature are not aſſignable, or to be granted over; as for inſtance, if the donee in tail holdeth of the donor by *fealty*, he cannot aſſign it over to another, becauſe *fealty* is incident to and inſeparable from the reverſion; ſo if the *founder of a college* grant his foundation, though it be to the king, the grant is void, becauſe it is inſeparable from his blood. 11 *Rep.* 66. *b.* in *Magdalen College*'s caſe.

Several things are aſſignable by acts of parliament, which ſeem not aſſignable in their own nature; as promiſſary notes, by the 3 & 4 *Ann. c.* 9. bail-bonds by the ſheriff, by 4 & 5 *Ann. c.* 16. a judge's certificate for taking and proſecuting a felon to conviction, by 10 & 11 *W.* 3. *c.* 23. a bankrupt's effects by the ſeveral ſtatutes of bankruptcy.

II. *As to what caſes give the aſſignee advantage of the aſſignor's covenant, it is to be obſerved, in general, that*

If the remainder of a term of years be *aſſigned* to another, the aſſignee ſhall have the benefit of a leſſor; and of re-entry upon a leaſe made by the grantor for fewer years, &c. by the *Stat.* 32 *H.* 8. *cap.* 34. And the aſſignee of a reverſion of a term ſhall take advantage of a covenant againſt the leſſee of a ſhorter term; as where leſſee for twenty years makes a leaſe for four years. *Moor* 694, 695. The word *heir* is ſufficient to make an aſſignee; and the grantee of a common perſon is aſſignee to have benefit of a covenant, grant, &c. *Plowd.* 173. A leaſe was made for years of lands, excepting the woods; the leſſor grants the trees to the leſſee, and he aſſigns the land over to another: the trees do not paſs by this aſſignment to the aſſignee. *Goldſb.* 188.

The leſſor demiſed land, and covenanted with the leſſee, his executors and aſſigns, that if he were diſturbed or forced to pay any charge, &c. he ſhould retain ſo much of the rent; afterwards the leſſee made an aſſignment of his term: and it was held, that his aſſignee might have remedy upon the covenant by way of retainer againſt the aſſignee of the reverſion. *Plowd.* 72.

Leſſee for years made an aſſignment of *part of his term*, and the *aſſignee covenanted to repair*; afterwards the leſſee *deviſed the reverſion* of the whole term to another, and died, and the deviſee brought an action of covenant againſt the aſſignee; adjudged, that this deviſee of the reverſion was an aſſignee to take the benefit of this covenant or condition within the ſtatute 32 *H.* 8. *c.* 34. of conditions. *Godb.* 161.

An aſſignee of an aſſignee, an executor or adminiſtrator of an aſſignee, or an aſſignee of an executor, are comprehended under the word *aſſigns*, and theſe ſhall have an action of covenant for a breach of any covenant which runs with the land. 5 *Rep.* 16. *Spencer*'s caſe.

Leſſee for years covenanted for himſelf and his *aſſigns*, that he would not *lop the trees*, &c. afterwards the leſſee died in teſtate, and adminiſtration was granted to *W. R.* who lopped the trees, &c. adjudged, that it was a breach of the covenant, for an adminiſtrator is an aſſignee as well as an executor. *Moor* 44.

Leſſee for life made a leaſe for ſeventeen years, who in the next year aſſigned the term to *B.* who made a leaſe to *W. R.* for fourteen years, rendring rent on certain days, and if behind for three days after, being lawfully demanded, and not paid, the leaſe to be void; he in the reverſion for ſeventeen years, granted all his eſtate and intereſt by parol to one *Rouland*, who demanded the rent, and entered for non-payment; one queſtion was, whether at *Common law*, without the help of the ſtatute 32 *H.* 8. *c.* 34. *of conditions*, the aſſignee of him in reverſion could take the ſame advantage of this leaſe, being void, as the *aſſignee of the term* himſelf might have done, who granted the leaſe for fourteen years? and adjudged, that he might by the *grant of all his eſtate*, if it had been in writing, and that by the *Stat.* 32 *H.* 8. *c.* 34. the grantee of the reverſion of a term, ſhall have the benefit of a condition annexed to a leſſer term derived out of a larger. *Moor* 525.

III. *With reſpect to the caſes in which the aſſignee is bound by the covenant of the aſſignor.*

As the rent iſſues out of the land, the aſſignee generally who has the land, and is privy in eſtate, is debtor in reſpect thereof. 3 *Rep.* 32.

The aſſignee of a term is bound to perform all the covenants annexed to the eſtate; as if *A.* leaſes lands to *B.* and *B.* covenants to pay the rent, repair houſes, *&c.* during the ſaid term, and *B.* aſſigns to *J. S.* the aſſignee is bound to perform the covenants during the life of the firſt leſſee, though the aſſignee be not named, becauſe the covenant runs with the land being made for the maintenance of a thing in *eſſe* at the time of the leaſe made. 1 *Rol. Abr.* 521. *Cro. Eliz.* 457. *Moor* 399. 5 *Co.* 24.

But if *A.* leaſes for years to *B.* and *B.* for himſelf, his executors and adminiſtrators, covenants with *A.* to build a wall upon a part of land demiſed, and after *B.* aſſigns, the aſſignee is not bound by this covenant; for the law will not annex the covenant to a thing not in *eſſe.* 5 *Co.* 15. Yet vide *poſt.*

But if *B.* had covenanted for him and his aſſigns to build the wall, *&c.* this would have bound the aſſignee, becauſe it is to be done upon the land, and the aſſignee is to have the benefit thereof. 5 *Co.* 15.

The leſſee covenanted for himſelf, his executors and adminiſtrators, to leave fifteen acres every year for paſture, without ploughing it, and afterwards he aſſigned his leaſe to the defendant, againſt whom an action of covenant was brought for not leaving fifteen acres in paſture, *&c.* and upon a demurrer to the declaration it was inſiſted for the defendant, that he was not bound by this *covenant*, becauſe he was *aſſignee* of the leſſee, who had covenanted only for his *executors and adminiſtrators*, and not for his *aſſigns*, for they were not named in the covenant; but adjudged this covenant binds him, though not named, becauſe it is *for the benefit of the eſtate*; but it had been otherwiſe if it had been to do a collateral act as to build *de novo*, or the like, for in ſuch caſe the aſſigns of the covenantor are not bound, unleſs named. 2 *Cro.* 125.

Where the *executor of a leſſee aſſigns the term*, *debt* will not lie againſt him for rent incurred after the aſſignment, becauſe there is neither *privity of contract* between the leſſor and the executor, *before the aſſignment*, nor *privity of eſtate*, after the aſſignment, and this was *Verton* and *Sydalis*'s caſe; but where the *leſſee himſelf* aſſigns his leaſe, in ſuch caſe the *privity of contract* ſtill remains between him and the leſſor, though the *privity of eſtate* is gone by the aſſignment, and therefore, notwithſtanding that aſſignment, he ſhall be chargeable *during his life*, but after his death the *privity of contract* is likewiſe determined. 3 *Rep.* 24.

If an *aſſignment* is made by an *aſſignee*, the firſt *aſſignee* is not ſuable for the rent; for if he be accepted by the leſſor, the admiſſion of one aſſignee is the admiſſion of twenty. *Comp. Attorn.* 491. *Aſſignment* by an *aſſignee* diſchargeth him, becauſe he was only chargeable as having the land; and there is no occaſion for giving notice to the leſſor of his *aſſignment* over. *Comberb.* 192.

Leſſee for years rendring rent, covenants to build a houſe on the land in ten years; within which time he aſſigns his term, action lies on the covenant againſt the aſſignee. *Godb.* 60. But where a leſſee covenanted for himſelf and his aſſigns to rebuild a houſe before ſuch a time, which he did not do, but after the time expired he aſſigned the term; adjudged that this covenant will not bind the aſſignee, becauſe *it was broken before* the aſſignment. 1 *Salk.* 199.

Alſo though the covenant be for him and his aſſigns, yet if the thing to be done be merely *collateral*, and no way concern the *thing demiſed*, the covenant ſhall not bind the *aſſignee*; as if it be to build an houſe upon other land of the leſſor, or to pay a collateral ſum. 5 *Co.* 15.

The ſtatute 32 *H.* 8. *c.* 34. *enables grantees of reverſions to enter for conditions broken, and to bring actions of covenant,* &c. *and alſo enables the tenants of particular eſtates as for life,* &c. *to have actions of covenant againſt their grantees*; the queſtion was, if a leſſee for life covenant for himſelf, his *executors and adminiſtrators*, to build a wall on the lands, and afterwards he aſſigns the eſtate to *W. R.* whether he or the grantee of the reverſion may have an action of covenant againſt *W. R.* the aſſignee, if the wall is not built; and adjudged, that he may, though the word *aſſigns* was not in this covenant, but only *executors and adminiſtrators*; for by the acceptance of the poſſeſſion he had made himſelf ſubject to all the covenants which run with the land, and are inherent to it. Such as *paying rent*, *repairing*, *building walls*, &c. and to ſuch he is bound without the ſpecial word *aſſigns*; but not to any collateral covenants. *Moor* 159.

Where tenant for years *aſſigns* his eſtate, no conſideration is neceſſary; for the tenant being ſubject to payment of rent, *&c.* is ſufficient to veſt an eſtate in the aſſignees: in other caſes ſome conſideration muſt be paid. 1 *Mod.* 263. The words required in aſſignments are, *grant*, *aſſign*, *and ſet over*; which may amount to a grant, feoffment, leaſe, releaſe, confirmation, *&c.* 1 *Inſt.* 301. In theſe deeds the aſſignor is to covenant to ſave harmleſs from former grants, *&c.* That he is owner of the land, and hath power to aſſign; that the aſſignee ſhall quietly enjoy, and to make further aſſurance; and the aſſignee may covenant to pay the rent, and perform the covenants, *&c.* See farther, **Aſſignee**, **Condition**, **Covenant.**

Form of an aſſignment of a bond.

TO all people *to whom theſe preſents ſhall come, greeting:* Whereas A. B. *of,* &c. *in and by one bond or obligation, bearing date,* &c. *became bound to* C. D. *of,* &c. *in the penal ſum of,* &c. *conditioned for the payment of,* &c. *and intereſt at a day long ſince paſt, as by the ſaid bond and condition thereof may appear:* And whereas *there now remains due to the ſaid* C. D. *for principal and intereſt on the ſaid bond, the ſum of,* &c. Now know ye, *That the ſaid* C. D. *for and in conſideration of the ſaid ſum of,* &c. *of lawful* Britiſh *money to him in hand paid by* E. F. *of,* &c. *the receipt whereof the ſaid* C. D. *doth hereby acknowledge; he the ſaid* C. D. Hath *aſſigned and ſet over, and by theſe preſents doth aſſign and ſet over, unto the ſaid* E. F. *the ſaid recited bond or obligation, and the money thereupon due and owing, and all his right and intereſt of, in, and to the ſame.* And *the ſaid* C. D. *for the conſideration aforeſaid,* Hath made, *conſtituted and appointed, and by theſe preſents* doth make, *conſtitute and appoint, the ſaid* E. F. *his executors and adminiſtrators, his true and lawful attorney and attornies irrevocable, for him and in his name, and in the name and names of his executors and adminiſtrators, but for the ſole and proper uſe and benefit of the ſaid* E. F. *his executors, adminiſtrators and aſſigns, to aſk, require, demand and receive of the ſaid* A. B. *his heirs, executors and adminiſtrators, the money due to on the ſaid bond; and on non-payment thereof, he the ſaid* A. B. *his heirs, executors and adminiſtrators, to ſue for and recover the ſame; and on payment thereof to deliver up and cancel the ſaid bond, and give ſufficient releaſes and diſcharges therefore, and one or more attorney or attornies under him to conſtitute; and whatſoever the ſaid* E. F. *or his attorney or attornies, ſhall lawfully do in the premiſes, the ſaid* C. D. *doth hereby allow and affirm.* And *the ſaid* C. D. *doth covenant with the ſaid* E. F. *that he the ſaid* C. D. *hath not received, nor will receive the ſaid money due on the ſaid bond, or any part thereof; neither ſhall or will releaſe or diſcharge the ſame, or any part thereof; but will own and allow of all lawful proceedings for recovery thereof, he the ſaid* E. F. *ſaving the ſaid* C. D. *harmleſs, of and from any coſts that may happen to him thereby.* In witneſs, *&c.*

Aſſimulare, To put highways together: it is mentioned in *Leg. Hen.* 1. *c.* 8.

Aſſiſa Cadere. This word ſignifies to be nonſuited; as when there is ſuch a plain and legal inſufficiency in a ſuit, that the complainant can proceed no further on it. *Fleta, lib.* 4. *cap.* 15. *Bracton, lib.* 2. *cap.* 7.

Aſſiſa Cadit in Juratam, Is where a thing in controverſy is ſo doubtful, that it muſt neceſſarily be tried by a jury. *Fleta, lib.* 4. *c.* 15.

Aſſiſa continuanda, A writ directed to the juſtices of *aſſiſe* for the continuation of a cauſe, when certain records alledged cannot be produced in time by the party that has occaſion to uſe them. *Reg. Orig.* 217.

Aſſiſa Proroganda, Is a writ directed to the juſtices aſſigned to take *aſſiſes*, for the ſtay of proceedings, by reaſon of the party's being employed in the king's buſineſs. *Reg. Orig.* 208.

Aſſiſe, (Fr. *aſſis*) According to our ancient books is defined to be an aſſembly of knights, and other ſubſtantial men, with the juſtice, in a certain place, and at a certain time appointed. *Cuſtum. Normand. cap.* 24. This word is properly derived from the *Latin* verb *aſſideo*, to ſit together; and is alſo taken for the court, place or time, when and where the writs and proceſſes of aſſiſe are handled or taken. And in this ſignification aſſiſe is general; as when the juſtices go their ſeveral circuits with commiſſion to take all aſſiſes; or ſpecial, where a ſpecial commiſſion is granted to certain perſons (formerly oftentimes done) for taking an aſſiſe upon one or two diſſeiſins only. *Bract. lib.* 3.

Concerning the general aſſiſe, all the counties of *England* are divided into ſix circuits, and two judges are aſſigned by the king's commiſſion to every circuit, who hold their aſſiſes twice a year in every county, (except *Middleſex*, where the king's courts of record do ſit, and where his courts for his counties palatine are held) and have *five* ſeveral commiſſions.

1. Of *oyer and terminer*, directed to them and many other gentlemen of the county, by which they are empowered to try treaſons, felonies, *&c.* and this is the largeſt commiſſion they have.

2. *Of gaol delivery*, directed to the judges and the clerk of aſſiſe aſſociate, which gives them power to try every priſoner in the gaol committed for any offence whatſoever, but none but priſoners in the gaol; ſo that one way or other they rid the gaol of all the priſoners in it.

3. *Of aſſiſe*, directed to themſelves only and the clerk of aſſiſe, to take aſſiſes, and do right upon writs of aſſiſe brought before them by ſuch as are wrongfully thruſt out of their lands and poſſeſſions: which writs were heretofore frequent, but now men's poſſeſſions are ſooner recovered by ejectments, *&c.*

4. *Of niſi prius*, directed to the judges and clerk of aſſiſe, by which civil cauſes grown to iſſue in the courts above, are tried in the vacation by a jury of twelve men of the county where the cauſe of action ariſes; and on return of the verdict of the jury to the court above, the judges there give judgment.

5. *A commiſſion of the peace*, in every county of the circuits; and all juſtices of the peace of the county are bound to be preſent at the aſſiſes; and ſheriffs are alſo to give their attendance on the judges, or they ſhall be fined. *Bacon's Elem.* 15, 16, *&c.*

There is a commiſſion of the peace, *oyer and terminer* and gaol-delivery of *Newgate*, held eight times in a year, for the city of *London* and county of *Middleſex*, at *Juſtice Hall* in the *Old Bailey*, where the lord mayor is the chief judge.

In *Wales* there are but two circuits, *North* and *South Wales*; for each of which the king appoints two perſons learned in the laws to be judges. *Stat.* 18 *Eliz. c.* 8. If juſtices ſit by force of a commiſſion, and do not adjourn the commiſſion, it is determined. 4 *Inſt.* 265.

The conſtitution of the juſtices of aſſiſe was begun by *Hen.* 2. though ſomewhat different from what they now are: and by *Magna Charta* juſtices ſhall be ſent through every county once a year, who, with the knights of the reſpective ſhires, ſhall take aſſiſes of novel diſſeiſin, *&c.* in their proper ſhires, and what cannot be determined there ſhall be ended by them in ſome other place in their circuit; and if it be too difficult for them, it ſhall be referred to the juſtices of the bench, there to be ended. 9 *Hen.* 3. *c.* 12.

By the *Stat.* 21 *Geo.* 2. *c.* 12. The ſummer aſſiſes in *Buckinghamſhire* ſhall be held at the town of *Buckingham*. Aſſiſe is likewiſe uſed for a *jury*, where aſſiſes of novel diſſeiſin are tried: the panels of aſſiſes ſhall be arrayed, and a copy indented delivered by the ſheriff, *&c.* to the plaintiffs and defendants ſix days before the ſeſſions, *&c.* if demanded, on pain of 40 *l.* by *Stat.* 6 *Hen.* 6. *cap.* 2. And aſſiſe is taken for a writ for recovery of poſſeſſion of things immoveable, whereof any one and his anceſtors have been diſſeiſed. Likewiſe, in another ſenſe, it ſignifies an *ordinance* or ſtatute. *Reg. Orig.* 279. The writs of aſſiſe are the four ſorts following:

Aſſiſe of Novel Diſſeiſin, (*aſſiſa novæ diſſeiſinæ*).

An aſſiſe of *novel diſſeiſin* is a remedy *maxime feſtinam*, for the recovery of lands or tenements, of which the party was diſſeiſed. 2 *Inſt.* 410. And it is called *novel diſſeiſin*, becauſe the juſtices in *eyre* went their circuits from ſeven years to ſeven years; and no aſſiſe was allowed before them, which commenced before the laſt circuit, which was called an *ancient* aſſiſe; and that which was upon a *diſſeiſin* ſince the laſt circuit, an aſſiſe of *novel diſſeiſin*. *Co. Lit.* 153. *b.*

An aſſiſe is called *feſtinum remedium* 1. Becauſe the tenant ſhall not be aſſoined. 2. Shall not caſt a protection. 3. Shall not pray in aid of the king. 4. Shall not vouch any ſtranger, except he be preſent, and will enter preſently into warranty; ſo of receipt. 5. The parol ſhall not demur for the nonage of the plaintiff or defendant. 8 *Co.* 50. *Booth* 262.

It lies where tenant in fee-ſimple, fee-tail, or for term of life, is put out and diſſeiſed of his lands, or tenements, rents, common of paſture, common way, or of an office, toll, *&c.* *Glanv. lib.* 10. *Reg. Orig.* 197. Aſſiſe muſt be of an actual freehold in lands, *&c.* and not a freehold in law: it lieth of common of paſture, where the commoner hath a freehold in it, and the lord or other perſons feed it ſo hard, that all the graſs is eat up; but then the plaintiff muſt count and ſet forth how long the land was fed, and alledge *per quod proficuum ſuum ibidem amiſit*, *&c.* 9 *Rep.* 113. One may have an aſſiſe of land and *rent*, or of ſeveral rents, and offices and profits in his ſoil, all in one writ: and if it be of a rent-charge, or rent-ſeck, it ſhall be general *de libero tenemento* in ſuch a place, and all the lands and tenants of the tenements charged ought to be named in the writ; but in aſſiſe for rent ſervice it is otherwiſe. *Dyer* 31. An aſſiſe may be brought for an office held for life; but then it muſt be an office of profit, not of charge only: of the toll of a mill, or market, aſſiſe lieth; though it may not be brought of ſuit to a mill. 8 *Rep.* 46, 47.

Seiſin of an office may be alledged by taking money for the buſineſs done, and the place where the officer ſat be put in view. *Dyer* 114.

An aſſiſe was brought of the office of a *filazer* of the court of Common Pleas, and the demandant counted *de libero tenemento*, and alledged ſeiſin, by taking money for a *capias*, and the *poſt* was put in *view* where the officer ſate. *Dyer* 114.

An aſſiſe lieth of the office of *regiſter of the admiralty*, and the demandant laid a preſcription to it, viz. *quod quilibet hujuſmodi perſona*, who ſhould be named by the admiral, ſhould be regiſter of the admiralty for life. *Dyer* 153.

It lieth of offices of *woodward*, *park-keeper*, and *keeper of chaſes*, *warrener*, *&c.* but theſe are not at Common law; but by the ſtatute of *Weſtm.* 2. becauſe they are of profits to be taken in *alieno ſolo*: it likewiſe lieth of all other offices and bailiwicks in fee. 8 *Rep.* 47.

In an aſſiſe of a *new office*, it ought to be ſhewed what profits belong to it; but it is otherwiſe of an ancient office, becauſe it is preſumed, that the profit thereof is ſufficiently known. 8 *Rep.* 45.

Tenants in common ſhall each have a ſeveral aſſiſe for his moiety, or part, becauſe they are ſeiſed by *ſeveral titles*; but *twenty jointenants* ſhall have but one aſſiſe in all their names, becauſe they have but one *joint title*; ſo if there are three jointenants, and one of them releaſeth all his right to one of his companions, and then the other two are diſſeiſed of the whole, they ſhall have but one aſſiſe in both their names, for the two parts, becauſe they had a *joint title* to it at the time of the diſſeiſin, and he to whom the releaſe was given ſhall have an aſſiſe in his own name, becauſe of that part he is *tenant in common*. *Co. Lit.* 196.

If leſſee for years, or tenant at will, be ouſted, the leſſor, or he in remainder, may have aſſiſe, becauſe the freehold

hold was in him at the time of the diſſeiſin. *Kel.* 109. Aſſiſe lies for titles, by *Stat.* 32 *Hen.* 8. *c.* 7. *Cro. Eliz.* 559. But not for an annuity, penſion, *&c.* In ſome caſes an aſſiſe will lie, where ejectment will not. Ejectment will not lie *de piſcaria*, by reaſon the ſheriff cannot deliver poſſeſſion of it; but an aſſiſe will lie for it, as it may be viewed by the recognitors. *Cro. Car.* 534. Aſſiſe will ſometimes lie where treſpaſs *vi & armis* doth not. *Vide* 8 *Rep.* 47. 1 *Nelſ. Abr.* 276.

By *Magna Charta*, 9 *Hen.* 3. *cap.* 12. *aſſiſes of novel diſſeiſin*, &c. ſhall be taken in the proper counties, by the king's juſtices: and for eſtovers of wood, profit taken in woods, corn to be received yearly in a certain place; and for toll, tonnage, *&c.* and of offices in fee, an aſſiſe ſhall be; alſo for common of turbary, and of fiſhing, appendant to freehold, *&c.*

In an aſſiſe, the plaintiff muſt prove his title, then his ſeiſin and diſſeiſin: but ſeiſin of part of a rent is ſufficient to have aſſiſe of the whole; and if a man who hath title to enter ſet his foot upon the land and is ouſted, that is a ſufficient ſeiſin. *Comp. Attorn.* 267.

As the writ of aſſiſe reſtores the party to the actual ſeiſin of his freehold, for ſo are the words of the writ, viz *facias tenementum illud ſeiſiri*, *&c.* conſequently the party that brings the writ muſt found it upon an actual ſeiſin, which he has been deveſted of, for otherwiſe this remedy is not commenſurate to his caſe. See 2 *Rol. Abr.* 463.

Therefore if there be lord and tenant by rent-ſervice, and the lord grants the ſervices to another, and the tenant *attorns* by a penny, this being given by way of *attornment*, is not ſufficient ſeiſin to ground an aſſiſe on; *ſecus* if the penny had been given by way of *ſeiſin* of the rent. *Lit. ſect.* 565. *Co. Lit.* 315. 4 *Co.* 9. 10 *Co.* 127.

The firſt proceſs in this action is an original writ iſſued out of Chancery, directed to the ſheriff, commanding him to return a jury, who are called the recognitors of the aſſiſe. An aſſiſe is to be arraigned on the day the writ is returnable, on which day the defendant is to count, and the tenant is to appear and plead inſtantly, unleſs the court thinks proper to allow him an imparlance, which it is ſaid cannot be without ſhewing good cauſe. *Style Reg.* 88.

If in an aſſiſe no tenant of the freehold be mentioned, the defendant may plead it; and where one defendant pleads, no tenant of the freehold named in the writ, if this is found, the writ ſhall abate *quoad* all. *Dyer* 207.

On ſuch a plea of the defendant, the plaintiff ſays that he hath made a feoffment to perſons unknown, and he himſelf hath continually taken the profits; if then they are at iſſue upon the taking the profits, and it be found againſt the defendant, it ſhall not be inquired of the points of the aſſiſe, for the diſſeiſin is acknowledged. 1 *Danv. Abr.* 584. And if the deed of the anceſtor of the plaintiff be pleaded in bar, and this is denied, and found for the plaintiff; the aſſiſe ſhall not inquire of the points of the writ, but only of the damages. *Ibid.* 585.

In an aſſiſe for an office newly erected and conſtituted, the demandant in his plaint muſt ſhew what fee or profit is granted for the exerciſe thereof; for this office cannot have a fee or profit appurtenant to it as an ancient office may; and for an office without fee or profit no aſſiſe lies. 8 *Co.* 49.

But in an aſſiſe for an ancient office, the demandant in his plaint need not ſhew what fee or profit is belonging to it, for it ſhall be intended there is ſome fee or profit. 8 *Co.* 49.

In this ſuit, if the defendant fail to make good the exception which he pleads, he ſhall be adjudged a diſſeiſor, without taking the aſſiſe; and ſhall pay the plaintiff double damages, and be impriſoned a year. *Stat.* 13 *Ed.* 1. *cap.* 25. In aſſiſe the tenant pleads in bar, and the plaintiff makes title, but the tenant doth neither anſwer nor traverſe the title; in this caſe the aſſiſe ſhall be awarded at large. *Cro. Eliz.* 559. And if any other title is found for the plaintiff, he ſhall recover. *Bro. Aſſi.* 281. If a tenant pleads in abatement in an aſſiſe, he muſt at the ſame time plead over in bar; and no imparlance ſhall be allowed, without good cauſe: and where there are ſeveral defendants, and any of them do not appear the firſt day, the aſſiſe ſhall be taken againſt them by default. *Paſch.* 5 *W.* 3.

If aſſiſe be brought againſt a leſſee, he may not plead *aſſiſa non*; for that is the form of the plea in bar for tenant of the freehold: he ought to plead the ſpecial matter, *viz.* his leaſe, the reverſion in the plaintiff, and that he is poſſeſſed, and ſo in without wrong. *Jenk. Cent.* 142. An aſſiſe is to be firſt arraigned, and the plaintiff's counſel prays the court that the defendant may be called; whereupon he is called; and if the defendant appears, then his counſel demand *oyer* of the writ of aſſiſe, and the return of it; which is granted; and then he prays leave to imparl to a ſhort time after, and the jury is adjourned to that day: at the day given by the court, the defendant is again called, and upon his appearance, he pleads to the aſſiſe; and upon this an iſſue is joined between the parties, and the jurors are ſworn to try the iſſue, the counſel proceeding to give them their evidence: after the trial the court gives judgment, and the plaintiff recovering is to have writ of *ſeiſin*, *&c.* 1 *Lill. Abr.* 105, 106.

The jurors that are to try the *aſſiſe* are to view the thing in demand: by writ of *aſſiſe* the ſheriff is commanded, *Quod faciat duodecim liberos & legales homines de vicineto, &c. Videre tenementum illud, & nomina eorum imbreviari, & quod ſummoneat eos per bonas ſummonitiones, quod ſint coram juſtitiariis, &c. parati inde facere recognitionem, &c.*

By *Weſtm.* 2. *cap.* 25. A certificate of aſſiſe is given, which is a writ for the party grieved, by a verdict or judgment given againſt him in an aſſiſe, when he had ſomething to plead, as a record or releaſe, which could not have been pleaded by his bailiff; or when the aſſiſe was taken againſt himſelf by default, to have the deed tried, and the record brought in before the juſtices; and the former jury ſummoned to appear before them at a certain day and place, for a further examination and trial of the matter. See *Booth* 215, 287. 4 *Co.* 4 *b.* 2 *Inſt.* 26.

The plaint need not be ſo certain in *aſſiſe* as in other writs; the judgment being to recover *per viſum recognitorum*; and if the plaint be but ſo certain as that the recognitors may put the demandant into poſſeſſion, it is ſufficient. *Dyer* 84. The demandant in an *aſſiſe* may abridge his plaint at any time after the jury are charged, before verdict. 1 *Danv.* 580. For proceedings in writ of *aſſiſe of novel diſſeiſin*, ſee *Plowd.* 411, 412.

The court of *Common Pleas* or *King's Bench* may hold plea of *aſſiſes* of land in the county of *Middleſex*, by writ out of *Chancery*. 1 *Lill. Abr.* 105. And in cities and corporations an *aſſiſe of freſh force* lies for recovery of poſſeſſion of lands, within forty days after the *diſſeiſin*, as the ordinary *aſſiſe* in the county. *F. N. B.* 7.

Form of a *writ of aſſiſe of novel diſſeiſin.*

GEORGE *the Third*, &c. *To the ſheriff of* W. *greeting.* A. B. *hath complained to us, that* C. D. *unjuſtly and without judgment hath diſſeiſed him of his free tenement or freehold in*, &c. *within thirty years now laſt paſt; and therefore we command you, that if the ſaid* A. *makes you ſecure in proſecuting his claim, then that you cauſe the ſaid tenement to be reſeiſed of the chattels which in it were taken, and the ſame tenement with its chattels to be in peace, until the next* aſſiſes, *when our juſtices into thoſe parts ſhall come; and in the mean time do you cauſe twelve free and lawful men of that venue or neighbourhood to view the ſaid tenement, and their names to be impanelled, and ſummon them by good ſummoners, that they be before our ſaid juſtices at the ſaid* aſſiſes, *ready to make recogniſance thereof; and put by ſureties and ſafe pledges the ſaid* C. *or his bailiff, if he ſhall not be found, that he then be there to hear that recogniſance; and have you there the ſummoners, the names of the pledges, and this writ.* Witneſs, *&c.*

A *count*, or *declaration*, with a plea, iſſue, and judgment in an *aſſiſe*.

Wilts, ſſ. THE aſſiſe *come to recogniſe, whether* C. D. *unjuſtly and without judgment did diſſeiſe*

A. B. of his freehold in, &c. *within thirty years now laſt paſt,* &c. *And whereupon the ſaid* A. *by* T. E. *his attorney complains, that he the ſaid* C. *diſſeiſed him of one meſſuage, twenty acres of land, and,* &c. *with the appurtenances, in,* &c. *And for his title to the tenements and* aſſiſe *aforeſaid, the ſaid* A. *ſaith, that* T. B. *father of him the ſaid* A. *long before the obtaining of the ſaid original writ of* aſſiſe, *was ſeiſed of the tenements aforeſaid with the appurtenances, in his demeſne as of fee; and being ſo ſeiſed thereof, the day and year,* &c. *at,* &c. *aforeſaid, by his indenture, made between him the ſaid* T. *of the one part, and,* &c. *of the other part, which one part thereof with the ſeal of the ſaid* T. *affixed thereto and by him ſigned, the ſaid* A. *here brings into this court, the date whereof is the ſame day and year abovesaid, he for himſelf, his heirs and aſſigns did covenant, grant,* &c. *(here reciting a deed of covenants to levy a fine of the tenements, among other things, and the fine levied accordingly) to the uſe of* A. *and his heirs, &c. By virtue of which fine ſo levied, the ſaid* A. *into the ſaid tenements with the appurtenances entered, and was thereof ſeiſed in his demeſne as of fee, until the aforeſaid* C. D. *him the ſaid* A. *thereof unjuſtly, and without judgment did diſſeiſe as aforeſaid; and this he is ready to verify; whereupon he prays the* aſſiſe, *&c.* And *the ſaid* C. *by,* &c. *his attorney comes,* &c. *and ſaith, that he has nothing in the ſaid tenements with the appurtenances, to put in view of the recognitors of the ſaid* aſſiſe, *and in the plaint or declaration aforeſaid ſpecified, nor had at the day of bringing the original writ of* aſſiſe *aforeſaid, or ever after, nor any injury or diſſeiſin did to the ſaid* A. *And of this he puts himſelf upon the* aſſiſe; *and the ſaid* C. *does ſo likewiſe: therefore let the aſſiſe thereof between them be taken,* &c. *(here follows the* verdict *of the recognitors or jury, for the plaintiff* A.) Therefore *it is conſidered, that the ſaid* A. *do recover againſt the ſaid* C. *his ſeiſin of the ſaid tenements aforeſaid, with the appurtenances, and alſo,* &c. *And the ſaid* C. *is in mercy,* &c. *And hereupon the ſaid* A. *prays the writ of the lord the king, to be directed to the ſheriff of the county aforeſaid, to cauſe to be delivered to him full ſeiſin of the tenements aforeſaid with the appurtenances; and it is granted to him, returnable here,* &c.

Aſſiſe of Mort d'Anceſtor. *(aſſiſa mortis anteſſoris)* is a writ that lieth where a man's father, mother, brother, ſiſter, uncle, aunt, *&c.* died ſeiſed of lands, tenements, rents, *&c.* that were held in fee, and after their deaths a ſtranger abateth. *Reg. Orig.* 223. It is good as well againſt the abator, as any other in poſſeſſion of the land: but it lies not againſt brothers or ſiſters, *&c.* where there is privity of blood between the perſon proſecuting and them. *Co. Lit.* 242. And it muſt be brought within the time limited by the ſtatute of limitations, or the right may be loſt by negligence. If the anceſtor were ſeiſed the day that he died, of any lands, or other eſtate in fee-ſimple, although a ſtranger entereth and diſſeiſeth him of that land the day that he died, ſo that he dieth not ſeiſed of the ſaid land; yet the perſon who is his heir ſhall have the *aſſiſe of mort d'anceſtor*, becauſe the writ doth not ſuppoſe that the *anceſtor* died ſeiſed; but ſaith *parati ſacramento recogn. Si* W. B. *Pater, &c. fuit ſeiſitus die quo obiit, &c.* And the ſame is ſufficient, Although he died not ſeiſed. *Fitz. Nat. Br.* 433. If a man go beyond ſea in pilgrimage, and dieth there; or if he enter into religion, *&c.* his heir ſhall have a writ of *aſſiſe of mort d'anceſtor*, and it ſufficeth that the *anceſtor* was ſeiſed the day he went out of the land, although it was not the day of his death. *Ibid* 434, 435.

By the ſtatute of *Glouceſter*, if tenant by the curteſy alien his wife's inheritance, and dieth, the heir of the wife ſhall have an *aſſiſe of mort d'anceſtor*, if he have not aſſets by deſcent from the tenant by the curteſy; and the ſame ſhall be as well where the wife was not ſeiſed of land the day of her death, as where ſhe was ſeiſed thereof. 6 *Ed.* 1. *New. Nat. Br.* 489. A warden of a college, *&c.* ſhall have *aſſiſe of mort d'anceſtor* of rent where his predeceſſor was ſeiſed. And a man may have *aſſiſe of mort d'anceſtor* of rents, againſt ſeveral perſons in ſeveral counties; having in the end of the writ ſeveral ſummons againſt the tenants: and the proceſs in this writ, is ſummons againſt the party; and if he makes default at the day of the *aſſiſe* returned, then the plaintiff ought to ſue out a reſummons; and if he makes default again, the *aſſiſe* ſhall be taken, *&c. Bro. Aſſiſ.* 88. In a *mort d'anceſtor*, if the tenant ſays, the plaintiff is not next heir, and this is found againſt him, the points of the writ ſhall be inquired of: and in this caſe, the *aſſiſe* may find, that though the plaintiff be the next heir, yet he is not next heir as to this land; for this is in regard of their inquiry at large. *Br. Mort d'An'.* 47. 1 *Danv. Abr.* 584. Damages ſhall be recovered in the *aſſiſe of mort d'anceſtor*; but it lieth not of an eſtate tail, only where the *anceſtor* was ſeiſed in demeſne as of fee. *Bro. Aſſiſ.* If a man be barred in *aſſiſe of novel diſſeiſin*, upon ſhewing a diſcent, or other ſpecial matter, he may have *mort d'anceſtor*, or writ of *entry ſur diſſeiſin*, &c. 4 *Rep.* 43.

Form of a *writ of aſſiſe of mort d'anceſtor*.

GEORGE *the Third,* &c. *To the ſheriff of* W. *Greeting. If* A. B. *ſhall make you ſecure, that he will proſecute his claim, then ſummon,* &c. *Twelve free and lawful men of the neighbourhood of,* &c. *that they be before our juſtices at the firſt* aſſiſes, *when into thoſe parts they ſhall come; or before our juſtices at* Weſtminſter *on the day,* &c. *or before our truſty and beloved,* &c. *and thoſe whom to them we ſhall aſſociate, at a certain day and place, which the ſaid juſtices ſhall cauſe you to know (or to be known to you) ready upon oath to recogniſe, if* W. B. *father of the ſaid* A. &c. *was ſeiſed in his demeſne as of fee, of one meſſuage, and one yardland with the appurtenances in* D. *the day which he died; and whether he died,* &c. *And if the ſaid* A. *be his next heir; and in the mean time, let them ſee the ſaid meſſuage and land, and do you cauſe their names to be impanelled; and ſummons by good ſummoners* C. D. *who now holdeth the ſaid meſſuage and lands, that he be there to hear the recognition: and have you there the ſummoners, and this writ.* Witneſs, *&c.*

Aſſiſe of Darrein Preſentment, *(aſſiſa ultimæ preſentationes)* a writ lying where a man and his anceſtors have preſented a clerk to a church, and after, the church being void, a ſtranger preſents his clerk to the ſame church, whereby the perſon having right is diſturbed. *Reg. Orig.* 30. And a man ſhall have *aſſiſe of darrein preſentment*, although neither he nor his anceſtors did preſent to the laſt avoidance: as if tenant for life or years, or in dower, or by the curteſy, ſuffer an uſurpation in a church, *&c.* and die; he in reverſion who is heir unto the anceſtor who laſt preſented, ſhall have *aſſiſe of darrein preſentment*, if he be diſturbed: but if a man preſent; and then grant the advowſon unto another for life, and he ſuffer one uſurpation, or two, or three uſurpations; now at the next avoidance, he in the reverſion ſhall not have an *aſſiſe of darrein preſentment*, if he be diſturbed to preſent. 10 *Ed.* 3. In this caſe he is put to his *writ* of *right*. If a diſturber preſent to an advowſon, and the patron bring an *aſſiſe of darrein preſentment*, and pending the writ, the incumbent dieth, if the diſturber preſenteth again and dies, yet the patron ſhall have an *aſſiſe of darrein preſentment* upon the firſt diſturbance againſt the heir of the diſturber by journeys accounts. *New Nat. Br.* 71.

Aſſiſe of darrein preſentment doth not lie for one coparcener againſt the other: the church is never litigious between *parceners*; for, if they cannot agree, the ordinary ought to admit the preſentee of the eldeſt: *contra* of *jointenants. Mich.* 15 *Ed.* 3. If a man preſent to a church, and afterwards the parſon doth reſign, *&c.* and the patron preſents again and is diſturbed, he ſhall have this writ, although the former preſentee be living; and the writ ſhall ſuppoſe, that the defendant doth deforce him of the advowſon; and yet the plaintiff by his declaration counteth that he or his anceſtors laſt preſented, by which he ſuppoſeth that he is in poſſeſſion, *&c. New Nat. Br.* 74. A perſon preſents to an advowſon, and after the incumbent dies, and the ordinary doth preſent another by lapſe, on that laſt incumbent's death the right patron ſhall preſent; and if he be diſturbed, he ſhall have an *aſſiſe of darrein preſentment*, notwithſtanding the mean preſentment: but one cannot make title to a preſentment in time of war. *Ibid.* A tenant in tail of an advowſon may have this writ, as well as tenant in fee thereof, and is not put to a *quare impedit*:

and it is ſaid a leſſee for years may bring it, if he hath preſented before, although he hath no freehold; for this aſſiſe is not like an aſſiſe of *novel diſſeiſin*, *F. N. B.* 31. Though he who will generally bring the *aſſiſe of darrein preſentment*, ought to have the ſame eſtate or part thereof, which he had at the time of the firſt preſentment; therefore if ſuch leſſee for years of an advowſon preſents, and after his eſtate is enlarged for life, or in fee; and then the church becomes void, he ſhall not have this writ, becauſe he hath a new eſtate by enlargement, and no part of his former eſtate. *Keilw.* 118. *Mallor. Qu. Imped.* 162.

By *Magna Charta* 9 *H.* 3. *c.* 13. Theſe *aſſiſes of darrein preſentment* are to be always taken before the juſtices of the bench, and there ſhall be determined. In *aſſiſe of darrein preſentment*, the proceſs is ſummons and reſummons, *habeas corpus*, *&c.* And if the writ be brought in *Middleſex*, at the return the aſſiſe ſhall be there arraigned at the bar, and the tenant demanded; if the tenant doth not appear, a reſummons ſhall be awarded; and if upon that he appeareth not, the aſſiſe is to be taken againſt him by default, *&c.* In this aſſiſe ſix of the jury ought to have the view of the church, to the intent that they may put the plaintiff in poſſeſſion, if he recovers: and the judgment is to recover the preſentation and damages, and the value of the church for half a year; and if ſix months be paſt, two years value of the church ſhall be recovered, by *Stat. Weſt.* 2. 13 *Ed.* 1. *cap.* 5.

Form of a *writ of aſſiſe of darrein preſentment.*

GEORGE *the Third*, &c. *To the ſheriff of W. greeting. If* A. B. *ſhall ſecure you*, &c. *then do you ſummon by good ſummoners, twelve free and lawful men of the venue or neighbourhood of* D. *that they be before our juſtices*, &c. *ready to recogniſe upon their oaths what patron in the time of peace preſented the laſt parſon, or incumbent, who is dead, to the church of*, &c. *which is vacant, as it is ſaid, and the advowſon whereof the ſaid* A. *ſaith belongs to him; and in the mean time the church let them view, and do you cauſe their names to be returned, and ſummon* C. D. *who deforced him of that advowſon, that he be there to hear*, &c. *And have you then there the ſummoners and this writ.* Witneſs, *&c*

Aſſiſe de utrum, *(aſſiſa utrum)* Lieth for a parſon againſt a layman, or a layman againſt a parſon, for lands or tenements doubtful, whether they be lay-fee, or free alms belonging to the church. *Bract. lib.* 4. It is a writ of the higheſt nature that a parſon can have: and if a parſon, prebendary, *&c.* loſe by default in a real action, he may have this writ; for it is his writ of right. 6 *Rep.* 8. Theſe are the four kinds of writs of aſſiſe, uſed in actions poſſeſſory; and are called *petit aſſiſes*, in reſpect of the grand aſſiſe: for the law of fees is grounded upon two rights, one of *poſſeſſion*, the other of *property*; and as the *grand aſſiſe* ſerves for the right of property, ſo the *petit aſſiſe* ſerveth to ſettle the right of poſſeſſion. *Horn's Mirr.* At Common law there are but two forms of writs of aſſiſe, viz *aſſiſe de libero tenemento*, and *aſſiſe de communia paſturæ.* 8 Rep. 45. The aſſiſes of *novel diſſeiſin*, &c. and *de communia paſturæ*, were inſtituted by *Hen.* 2. in the place of duels: and therefore *Glanville* tells us, that *Magna aſſiſa eſt regale beneficium clementia principis de conſilio procerum populis indultum, a quo vitæ hominum & ſtatus integritati tam ſalubriter conſulitur, ut in jure, quod quis in libero ſoli tenemento poſſidet, retinendo, duelli caſum homines declinare poſſunt ambiguum, &c.* Glanv. lib. 2. cap. 7.

Aſſiſe of the Foreſt, *(aſſiſa de foreſta)* Is a ſtatute touching orders to be obſerved in the King's foreſt. *Manwood* 35. The ſtatute of view of frank-pledge, *anno* 18 *Ed.* 1. is alſo called the *aſſiſe of the King:* and the ſtatute of bread and ale, 51 *H.* 3. is termed the *aſſiſe of bread and ale.* And theſe are ſo called, becauſe they ſet down and appoint a certain meaſure, or order, in the things they contain. There is further an *aſſiſe of nuſance*, *aſſiſa nocumenti*, where a man maketh a nuſance to the freehold of another, to redreſs the ſame. And beſides *Littleton*'s diviſion of aſſiſes, there are others mentioned by other writers, viz. *aſſiſe at large*, brought by an infant to enquire of a diſſeiſin, and whether his *anceſtor* were of full age, good memory, *&c.* when he made the deed pleaded, whereby he claims his right.

Aſſiſe in point of aſſiſe (aſſiſa in modum aſſiſæ) which is when the tenant as it were ſetting foot to foot with the demandant, without any thing furher, pleads directly to the writ, no wrong, no diſſeiſin.

Aſſiſe out of the point of aſſiſe, is when the tenant pleadeth ſomething by exception; as a foreign releaſe, or foreign matter triable in a foreign county; which muſt be tried by a jury, before the principal cauſe can proceed.

Aſſiſe of right of damages, is where the tenant confeſſeth an ouſter, and referring it to a demurrer in law, whether it were rightly done or not, is adjudged to have done wrong; whereupon the demandant ſhall have a writ of aſſiſe to recover damages. *Bract. lib.* 4. *F. N. B.* 105. Aſſiſes are likewiſe awarded by default of tenants, *&c.*

Aſſiſors, *(aſſiſores) Sunt qui aſſiſas condunt aut taxationes imponunt.*—In *Scotland*, (according to *Skene*) they are the ſame with our jurors; and their oath is this:

We ſhall leil ſuith ſay,
And na ſuith conceal, for nathing we may,
So far as we are charged upon this aſſiſe,
Be God himſelf, and be our part of paradiſe,
And as we will anſwer to God, upon
The dreadful day of dome.

Aſſiſus, Rented or farmed out for ſuch an aſſiſe, or certain aſſeſſed rent in money or proviſions. *Terra aſſiſa* was commonly oppoſed to *terra dominica*; this laſt being held in demain, and occupied by the lord, the other let out to inferior tenants. So among the lands of the Knight's Templars, belonging to their preceptor of *Sandford. Com.* Oxon. *Apud covele de dono Matildis reginæ habentur quatuor hidæ, quarum duæ ſunt in dominico, & duæ* aſſiſæ *ab hominibus apud, &c.*—Kennet's Paroch. Antiq. 141. And hence comes the word to aſſeſs or allot the proportion and rates in taxes and payments by *aſſeſſors.*

Aſſithment, A wiregeld, or compenſation, by a pecuniary mulct: from the prepoſition *ad*, and the Sax. *ſithe*, *vice: quod vice ſupplicii ad expiandum delictum ſolvitur.*

Aſſociation, *(aſſociatio)* Is a writ or patent ſent by the King, either at his own motion, or at the ſuit of a party plaintiff, to the juſtices appointed to take aſſiſes, or of *oyer* and *terminer*, &c. to have others *aſſociated* unto them. And this is uſual where a juſtice of aſſiſe dies; and a writ is iſſued to the juſtices alive to admit the perſon aſſociated: alſo where a juſtice is diſabled, this is practiſed. *F. N. B.* 185. *Reg. Orig.* 201, 206, 223. The clerk of the aſſiſe is uſually aſſociate of courſe; in other caſes, ſome learned ſerjeants at law are appointed. It has been holden, that an aſſociation after another aſſociation allowed and admitted, doth not lie; nor are the juſtices then to admit other aſſociation in that writ afterwards, ſo long as that writ and commiſſion ſtand in force. *Br. Aſſiſ.* 386. *Mich.* 32 *H.* 6. The king may make an aſſociation unto the ſheriff upon a writ of *rediſſeiſin*, as well as upon aſſiſe of *novel diſſeiſin. New Nat. Br.* 416, 417.

Aſſociation of Parliament, In the reign of king *William* III. the parliament entered into a ſolemn aſſociation to defend his majeſty's perſon and government againſt all plots and conſpiracies: and all perſons bearing offices civil or military, were injoined to ſubſcribe the aſſociation, to ſtand by king *William*, on pain of forfeitures and penalties, *&c.* By *Stat.* 7 & 8 *W.* 3 *cap.* 27.

Aſſoile, *(abſolvere)* To deliver from excommunication. *Staundf. Pl. Cr.* 72. In *Stat.* 1 *Hen.* 4. *c.* 10. Mention being made of K. *Edw.* 3. it is added, whom God *aſſoil.*

Aſſumpſit, (from the Lat. *aſſumo)* Is taken for a voluntary promiſe, by which a man aſſumes or takes upon him to perform or pay any thing to another: it comprehends any verbal promiſe, made upon conſideration, and the Civilians expreſs it diverſly, according to the nature of the promiſe, calling it ſometimes *pactum*, ſometimes *promiſſionem*, or *conſtitutum*, *&c.* Terms de Ley.

Here it is to be conſidered,

I. *In what caſes an aſſumpſit is the proper action.*

II. *What words will create an aſſumpſit.*
III. *What conſideration is ſufficient.*
IV. *Of the proceedings.*

I. In every action upon aſſumpſit, there ought to be a conſideration, promiſe, and breach of promiſe. 1 *Leon.* 405. For

An aſſumpſit is an action the law gives a party injured, for the breach or non-performance of a contract legally entered into; it is founded on a *contract* either *expreſs* or *implied* by law, and gives the party damages in proportion to the loſs he has ſuſtained by the violation of the contract. 4 *Co.* 92. *Moor* 667.

But here it muſt be obſerved, that the law diſtinguiſhes between a general *indebitatus aſſumpſit* and a *ſpecial aſſumpſit:* for though they come under the denomination of *actions on the caſe*, and the party is to be recompenſed in damages alike in both, yet the firſt ſeems to be of a ſuperior nature, and will lie in no caſe but where debt will lie; but for a particular undertaking, or collateral promiſe to diſcharge the debt or duty of another, a ſpecial *aſſumpſit* muſt be brought. 1 *New Abr.* 163. Such a promiſe ſhould be in writing, or it may come within the *ſtat.* of *frauds.*

Action on the caſe on aſſumpſit lies for not making a good eſtate of land ſold, according to promiſe; not paying money upon a bargain and ſale, according to agreement; not delivering goods upon promiſe, on demand; this is by expreſs aſſumpſit; an implied aſſumpſit is where goods are ſold, or work is done, *&c.* without any price agreed upon; on *action on the caſe* by *quantum meruit*, the law implies a promiſe and ſatisfaction to the value.

When one becomes legally indebted to another for goods ſold, the law implies a promiſe that he will pay this debt; and if it be not paid, *indebitatus aſſumpſit* lies. 1 *Danv. Abr.* 26. And *indebitatus aſſumpſit* lies for goods ſold and delivered to a ſtranger *ad requiſitionem* of the defendant. *Ibid.* 27. But on *indebitatus aſſumpſit* for goods ſold, you muſt prove a price agreed on, otherwiſe the action will not lie; though this is helped by laying a *quantum meruit* with the *indebit. aſſumpſit*, wherein if you fail in proof of the price agreed on, you may recover the value. *Wood's Inſt.* 536.

If *A.* and *B.* having dealings with each other, make up their accounts, and *B.* is found in arrear, and promiſes to pay the balance, an *aſſumpſit* lies againſt him, and *A.* need not bring a writ of account. *Cro. Jac.* 69. *Yelv.* 70. *S. P.* 1 *Rol. Abr.* 7. *S. P.* 1 *Rol. Rep.* 396. *Bulſt.* 208. *Moor* 854.

So if *A.* gives money, or delivers goods to *B.* to merchandize therewith, and *B.* promiſes to render an account, *aſſumpſit* lies on this expreſs promiſe, as well as account. 1 *Salk.* 9.

So if a tenant, being in arrear for rents, ſettles an account of arrears with his landlord, and promiſes to pay him the ſum in which he is found in arrear, an *aſſumpſit* lies on this promiſe. 1 *Rol. Abr.* 9. *Bro. Account.* 81. *Raym.* 211. 2 *Keb.* 813. Vide *Style* 131, 283. *Cro. Jac.* 602.

But if the obligor in a bond, without any new conſideration, as forbearance, *&c.* promiſes to pay the money, an aſſumpſit will not lie, but the obligee muſt ſtill purſue his remedy by action of debt. 1 *Rol. Abr.* 8. *Hutt.* 34. *Cro. Eliz.* 240. ſeems *contra.*

Where a man comes to buy goods, and they agree upon a price and a day for the payment, and the buyer takes them away, an *aſſumpſit* for the money is the proper action, for *trover* will not lie for the goods, becauſe the property was changed by a lawful bargain, and by that bargain the buyer was to convert the goods before the money was due; but if a man comes to buy goods, and they agree upon a price for preſent money, and the buyer takes the goods away without payment, *trover* lies, becauſe the property is not altered, and therefore the taking away the goods, without payment of the money, is an injurious taking, for which the action lies; but if a man ſells goods on payment of money on a day to come, and the money be paid, and the goods not delivered, *trover* lies, becauſe the property is in the buyer. 1 *New Abr.* 167.

If a man and a woman, being unmarried, mutually promiſe to marry each other, and afterwards the man marries another woman, by which he renders himſelf incapable of performing his contract, an *aſſumpſit* lies, in which the woman ſhall recover damages; for though matrimonial cauſes are regularly cognizable in the ſpiritual courts, yet the *contract* in the preſent caſe being *executory*, and revoked by the huſband by the ſubſequent marriage, could not be inforced by eccleſiaſtical cenſures, as a contract *in præſenti* may; hence therefore, there being no adequate remedy in the ſpiritual courts, and marriage being an *advantage*, and the loſs of it a *temporal loſs*, it is fit there ſhould be a remedy in the *temporal courts*, otherwiſe there would be a failure in juſtice. *Carter* 233. *Dickenſon* and *Holecroft*.

An *indebitatus aſſumpſit* lies for money by cuſtom due for ſcavage; adjudged upon a ſpecial verdict, by which it was found, that the ſum demanded was due by cuſtom, but that there was no expreſs promiſe to pay it. 2 *Lev.* 174.

Indebitatus aſſumpſit will not lie upon a bill of exchange accepted; but *action* upon the cuſtom only. 1 *Vent.* 152.

If one receives my rent, under pretence of title, I may have an *indebitatus aſſumpſit* againſt him. 2 *Mod.* 263.

So where *A.* took out adminiſtration to a perſon ſuppoſed to have died inteſtate, and appointed *J. S.* his attorney, who received money, *&c.* and paid it to the adminiſtrator; afterwards a will appearing, the letters of adminiſtration were called in, and the executor brought an *indebitatus aſſumpſit* againſt the attorney; who objected, 1. That he acting only as attorney for him, who in fact was adminiſtrator, the receipt of the money was not his but the adminiſtrator's: and 2dly, That the action ought to have been a ſpecial *aſſumpſit*, the money being received by ſpecial authority, and that expreſly to the uſe of another; but the court held, that the authority being void, it was a receipt of ſo much money for the uſe of the plaintiff on an implied contract, for which an *indebitatus aſſumpſit* well lies. 1 *Salk.* 27.

If a feme ſole marries a man, who in truth is married to another woman, and he makes a leaſe of her lands and receives the rents, ſhe may bring an *indebitatus aſſumpſit* againſt him for ſo much money received to her uſe; adjudged after verdict, though objected, that he having no right to receive, the tenant remained ſtill liable, and he had his remedy over againſt the huſband; but the court held, that he being viſibly a huſband, the tenant was diſcharged, at leaſt that the recovery in this action would diſcharge the tenant, as it would be a ſatisfaction to the true leſſor. 1 *Salk.* 28.

Where action is brought upon a *contract*, if the plaintiff miſtakes the ſum agreed upon, he fails in his action; but if he brings it upon the *promiſe in law*, ariſing from the debt, there, though he miſtakes the ſum, he ſhall recover. *Alleyn* 29. Every contract made between parties, implies a mutual promiſe for performance: and yet an action may be brought on a reciprocal promiſe by one againſt the other, although he who brings it hath not performed on his ſide. *Dyer* 30, 75. When an *aſſumpſit* or promiſe is the ground of the action, it muſt be preciſely ſet forth. 3 *Lev.* 319. If a promiſe be made without limitation of time for its performance, reaſonable time ſhall be allowed, if there be an immediate conſideration for it; and not time during life. 1 *Lill. Abr.* 112. On promiſe to deliver a thing ſuch a day, the party is bound to do it without requeſt. 1 *Lev.* 284. But if a promiſe be to do any thing upon requeſt, the requeſt is neceſſary to intitle the plaintiff to the action, on which it ſhall ariſe. 1 *Lev.* 48. Tho' in every *indebitatus aſſumpſit*, 'tis alledged the defendant promiſed to pay *on requeſt* and that he was *requeſted*, and *refuſed* payment, yet no requeſt is ever proved. The time for the performance of the promiſe being elapſed, and the promiſe not performed, the law preſumes requeſt, unleſs in a particular caſe where a thing is not to be done, until *requeſt.* For the difference between an *aſſumpſit* in *deed* and in *law*, vide *Gilb. Evid.* 172, 193. and *vide ib.* 204, 5. Every executory contract, and debt that is not upon record, or on a ſpecialty, which may be turned into damage, imports in it an *aſ-*

ſumpſit in law, and one may have debt or action on the caſe upon it at his election; for when a man doth *agree* to pay money, or to deliver any thing, he thereby *promiſeth* to pay or deliver it. *Plowd.* 128. 3 *Cro.* 94.

Every contract executory implies an *aſſumpſit* to pay money at the day agreed, or immediately, if no time be limited. *Mo.* 667.

The *aſſumpſit* in an agreement that will be binding and give action, muſt be compleat and perfect, and duly purſued and obſerved: and if the party that makes the *aſſumpſit*, and he to whom it is made, agree together, and a bond is given and taken for what is promiſed; by this the *aſſumpſit* is diſcharged. Alſo where an *aſſumpſit* is to ſtand to an award, if the award made be void; it will make the *aſſumpſit* void. *Yelv.* 87. 2 *Leon. ca.* 223. 1 *Leon.* 170. *Indeb. aſſump.* lies by a *prothonotary againſt an attorney*, for fees for work done for defendant as attorney. *Holt's Rep.* 20.

Vide *Burr. Rep.* tit. *Action on the Caſe.*

A. promiſes *B.* that when A. *receives* 100*l.* *which* C. *owes* A. *that he will pay* B. 20*l.* *indebitatus aſſumpſit* lies not. Otherwiſe if the money had been *originally the money of* B. *Skin.* 196. For there was not any conſideration. *Indebitatus aſſumpſit* lies for a *cuſtomary fine, ſuper mortem domini. Show.* 35. *Indebitatus aſſumpſit* lies *upon a perſonal contract* for a ſum in groſs, as *pro rebus venditis*; *per Holt* Ch. J. *Show.* 36.

Indebitatus lies for *fees for being knighted. Show.* 78.

Indebitatus aſſumpſit lies for money *paid by miſtake*, on an account or *deceit*; but not for money *paid knowingly on illegal conſideration*, as an uſurious bond. *Salk.* 22.

Indebitatus aſſumpſit will lie *in no caſe but where debt lies*, therefore it lies not on a *wager*, nor upon a *mutual aſſumpſit*, nor againſt the *acceptor of a bill of exchange*; for his acceptance is but a collateral engagement: but lies againſt the *drawer* himſelf; for he was really a debtor by the receipt of the money. 1 *Salk.* 23.

Indebitatus aſſumpſit lies not on *collateral engagements*. See the preceding caſe; and 1 *Salk.* 23. *Butcher* and *Andrews*, which was an *indebitatus aſſumpſit* againſt the father, *for money lent the ſon at the father's requeſt*, and ſo judgment was arreſted; for this was a collateral promiſe, But *per Holt*, Ch. J. if it had been *for ſo much money paid by the plaintiff at the requeſt of the defendant the father to the ſon*, it might have been good; for then it would be the father's debt, and not the ſon's. *Carth.* 446.

Though, as hath been ſaid, *aſſumpſit* lies not for rent uſually reſerved on leaſes; yet if a man promiſe to pay, without a leaſe, ſo much a week as long as *A. B. &c.* permits him to enjoy a warehouſe, *&c.* which is a ſpecial cauſe of promiſe, this action will lie. 2 *Cro.* 592. And if one receive any rent on pretence of title, *aſſumpſit* lies; as it does alſo for the receipt of profits of an office, *&c.* 2 *Mod.* 260.

Now by 11 *Geo.* 2. *c.* 19. §. 14. where the demiſe is not by *deed*, the landlord may recover his rent in an *action on the caſe*, for *uſe and occupation*. Where a perſon pays money upon a miſtake; or if he receives more from another in a reckoning than he ought, or more fees than ſhould be taken, an *aſſumpſit* lies. 1 *Salk.* 22. *Comb.* 447. If a man receives money for the uſe of another perſon, *aſſumpſit* may be had againſt him, which ſupplies the place of action of account: and where money was depoſited on a wager, an *indebitatus* lay for money received to a man's uſe. *Show.* 117.

If where a promiſe is made, one part of it is againſt law, and another part of it lawful, this is ground ſufficient for *aſſumpſit*. 4 *Rep.* 94.

The perſon to whom a promiſe is made, ſhall have the *action*; and not thoſe who are ſtrangers, or for whoſe benefit it is intended. *Danv.* 64. Nor ſhall action be brought againſt one for what another receives, nor at his requeſt, *&c.* 1 *Salk.* 23. But if a man delivers money to *A. B.* to my uſe, I may have an *action on the caſe* againſt him for this money. If a man accouhts, and upon the account is found in arrear to a certain ſum, and preſently in conſideration thereof aſſumes to pay the debt at a day; *action on the caſe* lies for this after the day. *Yelv.* 70. And on a promiſe to pay a ſum of money at ſo much a month, an *action on the caſe* may be brought before the whole is payable; for it is grounded upon the promiſe, which is broken by every Non-payment, and damages, may be recovered; it is not like the caſe of a *bill of debt*, which is founded on the ſpecialty, and cannot be demanded until the entire ſum is due. 2 *Cro.* 504.

Contra of a *bond*, with *a condition*, for payment by inſtallments. The non-payment of any one of the ſums, at the day, is, at law, a forfeiture of the bond.

II. *As to the words by which an aſſumpſit may be created.*

The intent of the parties by and to whom the promiſe or *aſſumpſit* is made, is more to be regarded than the form of words, and this intent and meaning is to be followed, not in the letter, but the ſubſtance of it: if a promiſe be to provide wedding cloaths for a woman, this ſhall be taken for ſuch cloaths to be worn on the wedding or feaſt-day according to the dignity of the perſon. *Poph.* 182. *Yelv.* 87. 3 *Cro.* 53.

All promiſes and contracts are to receive a favourable interpretation; and ſuch conſtruction is to be made, where any obſcurity appears, as will beſt anſwer the intent of the parties; otherwiſe a perſon, by obſcure wording of his contract, might find means to evade and elude the force of it. Hence it is a general rule, that all promiſes ſhall be taken moſt ſtrongly againſt the promiſor, and are not to be rejected, if they can by any means be reduced to a certainty: Therefore;

If *A.* in conſideration that *B.* will marry his daughter, aſſumes and promiſes to give with her a child's part, and that at the time of his death he will give to her as much as to any of his children, except his eldeſt ſon; this is a good promiſe; for though a child's part in itſelf is altogether uncertain, yet being to give as much as to any of his children, the promiſe is certain enough, it being averred what the younger ſon had. 1 *New Abr.* 168. *Poph* 148. 2 *Rol. Rep.* 104.

But if there be a diſcourſe between the father of *A.* and *B.* in relation to a marriage between the ſaid *A.* and the daughter of *B.* and *B. tunc & ibidem* affirms and publiſhes to the father of *A. quod daret ei qui maritaret* his ſaid daughter with his conſent 100*l.* and after *A.* marries the daughter of *B.* with his conſent; yet this affirmance and publication of *B.* ſhall raiſe no promiſe upon which an action upon an *aſſumpſit* may be brought, becauſe theſe words do not include any promiſe. 1 *Rol. Abr.* 6.

If a man promiſes another, in conſideration that he will aſſign to him a certain term, to pay him 10*l.* this is a good *aſſumpſit*, though the time of aſſignment and payment be not appointed; for the 10*l.* ſhall be paid in a convenient time after the aſſignment, which alſo muſt be done in a convenient time, and he ſhall not have time during his life. 1 *Roll. Abr.* 14, 15.

If the plaintiff declares, that whereas there was a communication between the plaintiff and defendant, concerning the bark of certain wood, and that thereupon it was agreed that the defendant ſhould give to the plaintiff two ſhillings per ſeam for all the bark of ſuch wood as the plaintiff ſhould cut, and that thereupon the defendant aſſumed and promiſed to have ready upon a certain day, articles purporting the agreement, and an obligation for the performance thereof, *&c.* the declaration is not good, becauſe not ſaid in what ſum the obligation was to be; and a certain ſum cannot be intended, becauſe the number of ſeams are altogether uncertain; but being after verdict upon the general iſſue, it was adjudged for the plaintiff; but *per cur.* upon demurrer, or ſpecial iſſue, it had been nought. 1 *Sid.* 270. 1 *Keb.* 776.

But if there be an agreement to enter into an obligation for performance of a thing of a certain value, without mentioning in what ſum, it ſhall he according to the value. 1 *Sid.* 240.

III. *What conſideration is ſufficient.*

The conſideration is the ground of the common *action on the caſe*: and no action on the caſe lieth againſt a man for a promiſe where there is no *conſideration* why he ſhould make the promiſe. 1 *Danv.* 53.

A conſideration altogether executed and paſt, is not good to maintain an *aſſumpſit*, for it is not reaſonable that one man ſhould do another a kindneſs, and then charge him with a recompence; for this would be obliging him whether he would or no, and a bringing him under an obligation without his own concurrence; but if it were moved by a precedent requeſt, it is good, and doth amount to a promiſe. 2 *Rol. Abr.* 11, 12.

Therefore if the ſervant of *A.* be arreſted in *London*, for a treſpaſs, and *J. S.* who knows *A.* bails him, and after *A.* for his friendſhip, promiſes to ſave him harmleſs, and *J. S.* comes to be charged, yet this is no conſideration to ground an *aſſumpſit* on, becauſe the bailing, which was the conſideration, was paſt, and executed before. *Dyer* 272. 1 *Rol. Abr.* 11. 2 *Leon.* 225. *Owen* 144.

But it had been otherwiſe if the maſter had before requeſted him to become bail for his ſervant, and the bailing had been after. *Dyer* 172.

In conſideration that he had paid money for the defendant, and obtained a releaſe of his debt, was held a continuing conſideration, becauſe the benefit of it was continuing to the party. 2 *Keb.* 99.

Aſſumpſit, in conſideration *that* N. *the plaintiff, had paid for* B. *the defendant, and at his requeſt*, 10 *l.* at ſuch a day, (which was *a year before*) he promiſed to repay it, *cum inde requiſitus eſſet*. It was objected, that this conſideration was for a thing paſt, and therefore not good. *Sed non allocatur*; for the payment being laid to be *at his requeſt*, the conſideration continues, and ſo is the common courſe. *Cro. Eliz.* 282.

If *A. undertakes* to do a thing *without hire*, as to take brandies out of one cellar, and to lay them down in another cellar, no action lies for the *non-feaſance*; but if he *enters on the doing it*, action lies for a *miſ-feaſance*, if it be through his own neglect, or *miſmanagement*, becauſe it is a deceit; but *not* if by *mere accident*; *per Holt*. 1 *Salk.* 26. *Vide* 3 *Salk.* 11.

Where the *doing a thing will be a good conſideration a promiſe to do* that thing will be ſo too; *per Holt*, Ch. J. 12 *Mod.* 459.

Parting with my note to the defendant is a good conſideration. 7 *Mod.* 12, 13.

A conſideration upon which a promiſe begins, cannot be diſcharged without ſome other conſideration: and conſideration that if a perſon will forbear to ſue another upon a bond, &c. may be a good conſideration to pay the debt, on promiſe to do it. *Cro Jac.* 620, 683. But we conceive there ſhould be a note in writing to avoid the *ſtatute of frauds*, 29 *Car.* 2. *c.* 3. *Vide* the caſe of *Buckmyr v. Darnall.* 2 *L. Ray.* 1085. And the caſe of *Read* executor *v. Naſh. Wilſ. Rep. par.* 1. 305. There it is laid down, that with reſpect to this ſtatute, an *original* promiſe is not within the *ſtatute*. A *collateral* promiſe, is, when it is to pay the debt of another *already* contracted. Two perſons go to an inn-keeper, one hires an horſe, and the other promiſes that if the inn-keeper will deliver the horſe, he will ſee it forthcoming, this promiſe for another, is not good without note in writing: but the perſon is chargeable upon the ſpecial bailment, and ſo good without a note. 1 *Lill.* 118. *Vide* 2 *L. Ray.* 1085. An infant having bought goods and wares died, and made his wife executrix; ſhe being aſked for the money ſays, forbear me till ſuch a time, and I will pay it you; this was held no good *aſſumpſit*, for it wanted a conſideration. 1 *Leon. Ca.* 156. But where an executrix, in conſideration the plaintiff would not moleſt her, but give her a day, promiſed to pay money due from the teſtator; action lay without ſhewing that ſhe had aſſets; for that ſhall be intended, and her promiſe, and the plaintiff's forbearance of the ſuit, was good cauſe of action. *Cro. Jac.* 273. An adminiſtratrix promiſed to pay the plaintiff money, if he would forbear ſuit till ſhe had taken out letters of adminiſtration; this was not a good *aſſumpſit*, for the defendant was not liable to the ſuit as adminiſtratrix till adminiſtration had, ſo there was no conſideration. *Style* 248, 395.

If one, in conſideration I will be bound for him, or for his friend, promiſe to ſave me harmleſs; this is a good conſideration and promiſe: but if one promiſe to another to ſave harmleſs, and ſay not for what, or againſt whom, theſe *aſſumpſits* are uncertain and inſenſible, and therefore void; though if any certainty can be made of them, they may be good. 10 *Rep.* 102. *Dyer* 356. In caſe a promiſe be, that he who hath the fee-ſimple of land, ſhall not alien it; or that a man ſhall not take the profit of his lands, or alien the thing he hath bought; or if it be to ſave a man harmleſs whatſoever he ſhall do, &c. the promiſes ſo made will not bind or bear an action. 10 *Rep.* 101. *Co. Litt.* 206. *Dyer* 304. *Plowd.* 64.

An *aſſumpſit* may be upon a general conſideration; but it doth not lie where the plaintiff has an obligation to pay the money, which is a ſtronger *Lien* than *aſſumpſit*; nor when the party has a recogniſance for the duty, &c. *Jenk. Cent.* 293.

Love or *friendſhip* are not conſiderations to ground actions upon. 2 *Leon.* 30. Alſo—

Idle and inſignificant conſiderations are looked upon as none at all; for where-ever a perſon promiſes without a benefit ariſing to the promiſor, or loſs to the promiſee, it is looked upon as a void promiſe. 2 *Bulſt.* 269.

Laſtly, It is to be obſerved, that *conſiderations* may be *void* as being *againſt law*, for if they are wicked and ill in themſelves, or unlawful, by being prohibited by ſome act of parliament, they are void; therefore if an officer, who, by the duty of his office, is obliged to execute writs, promiſes, in conſideration of money paid him, to ſerve a certain proceſs, an *aſſumpſit* will not lie on this promiſe; for the receipt of the money was extortion, and the conſideration is unlawful. 1 *Rol. Abr.* 16.

So if an executor ſues execution by *elegit*, and *B.* a ſtranger, as a friend to the executor, in conſideration that the ſheriff would forthwith execute the ſaid *elegit*, and of ſix-pence to him by the ſheriff paid, promiſes to pay him 60 *l.* upon which the ſheriff executes the writ, yet no action lies, becauſe the conſideration is againſt law; for the ſheriff ought to do his duty without reward, and this 60 *l.* is no diſcharge of the fees due to the ſheriff, being given by a ſtranger, and not expreſſed for them. 1 *Rol. Abr.* 16.

But if a man brings a *capias* that he has againſt *A.* to the ſheriff, and prays him that he will make *J. S.* his ſpecial bailiff, and promiſes him, if he will make *J. S.* his ſpecial bailiff, that, if *A.* eſcapes from the bailiff, he will bring no action for the eſcape againſt him, this is an *aſſumpſit* upon which an action lies, if he brings any action againſt the ſheriff for the eſcape. 1 *Rol. Abr.* 16. 1 *Leon.* 132. 3 *Leon.* 227. *Cro. Eliz.* 178.

So where the ſheriff takes goods in execution upon a *fieri facias*, and a ſtranger promiſes the officer to pay him the debt, in caſe he will reſtore them, this is a lawful conſideration; for, by the *fieri facias*, he may ſell the goods, and this in effect is doing no more. 1 *Salk.* 28. Vide the law of conſiderations very judiciouſly treated. *Black. Com.* 2 *V.* 444, &c.

IV. *As to the proceedings in aſſumpſit.*

The plaintiff muſt ſet forth every thing eſſential to the gift of the action, with ſuch certainty, that it may appear to the court that there were ſufficient grounds for the action; for if any thing material be omitted, it cannot appear to the court whether the damages given by the jury were in proportion to the demand, or whether the party was at all intitled to a verdict. And therefore, in an action upon the caſe, the plaintiff cannot declare *quod cum* the defendant was indebted to the plaintiff in ſuch a ſum, and that the defendant, in conſideration thereof, *ſuper ſe aſſumpſit* to pay, &c. without ſhewing the *cauſe* of the debt. 10 *Co.* 77.

If in an *aſſumpſit* the plaintiff declares, *quod cum* there were ſeveral reckonings and accounts between the plaintiff and defendant; and at ſuch a day, &c. *inſimul computaverunt* for all debts, reckonings and demands; and the defendant upon the ſaid account was found to be in arrear the ſum of 20 *l.* in conſideration whereof the defendant promiſed to pay, &c. this is a good declaration, without ſhewing it was *pro mercimoniis*, or otherwiſe, wherefore he ſhould have an account; for an account may be for divers cauſes, and ſeveral matters and things may be included and compriſed therein, which *in pede computi* are reduced to a ſum certain, and thereupon being indebted to the plaintiff, it is ſufficient to ground an action. *Cro. Car.* 116.

If in an *aſſumpſit* the plaintiff declares, that the defendant did aſſume and promiſe to pay to the plaintiff ſo much money, and alſo to carry away certain wood before ſuch a day; the defendant as to the money cannot plead that he paid it, and as to the carriage of the wood *non aſſumpſit*, for the promiſe being intire cannot be apportioned. *March* 100.

On an *aſſumpſit* in *law*, *payment*, or any other matter that excuſes payment, may be given in evidence, on the general iſſue. In an *aſſumpſit* in *deed*, it muſt be pleaded. *Gilb. Evid.* 204, 5.

If the plaintiff declares upon an *indebitatus aſſumpſit*, and upon a *quantum meruit*, and the defendant pleads, that after the ſaid ſeveral promiſes made, and before the action brought, the plaintiff and defendant came to an account concerning divers ſums of money, and that the defendant was found in arrear to the plaintiff 30 *l.* and thereupon, in conſideration that the defendant promiſed to pay the ſaid 30 *l.* the plaintiff likewiſe promiſed to releaſe and acquit the defendant of all demands, this is a good plea; for by the account the firſt contract is merged. 2 *Mod.* 43, 44.

The defendant cannot plead that he revoked his promiſe; as if *A.* is in execution at the ſuit of *B.* and *J. S.* deſires *B.* to let him go at large, and that he will ſatisfy him; to which *B.* agrees; though *J. S.* before any thing is done in purſuance of this promiſe and agreement, comes to *B.* and tells him, that he revokes his promiſe, and that he will not ſtand to it; yet ſuch revocation cannot be pleaded in bar to the action. 1 *Rol. Abr.* 32.

In *aſſumpſit* the plaintiff declared, that in conſideration *that he had done the defendant multum & gratiſſimum ſervitium*, he promiſed to pay the plaintiff 10 *l.* and alſo in conſideration that he had done him *multa beneficia*, he promiſed, *&c.* it was moved in arreſt of judgment, that neither of theſe conſiderations were ſufficient, eſpecially the laſt, becauſe there *ought to have been ſome ſervice particularly expreſſed*; and the court for that reaſon held it merely void, and judgment *quod querens nihil capiat*, *&c.* *Vent.* 27.

In an action upon an *aſſumpſit*. if the conſideration be *executory*; as if one promiſes to do ſomething for me, in conſideration of ſomething to be done before by me, to or for him, if I will ſue him for that he is to do for me, I muſt aver, that I have done that which was firſt to be done by me, for till that be done I may not maintain an action upon the promiſe. *Cro. Jac.* 583. *Pain v. Baſtwick.* And *vide Id.* 620.

And where it is *executory*, and averred that it is *executed*, when indeed it is not, the defendant may ſhew it ſpecially, and may take iſſue as well for not performing the conſideration executory, as upon the promiſe; but if he pleads generally *non aſſumpſit*, he cannot call the performance of the conſideration executory, and ſo it is upon a promiſe to do any thing upon condition. 1 *Mod. Ent.* 320.

Aſſumption, The day of the death of a ſaint, ſo called, *Quia ejus anima in cœlum* aſſumitur. Du Cange.

Aſſurance of lands, Is where lands or tenements are conveyed by deed: and there is an *aſſurance* of ſhips, goods and merchandiſe, *&c.* See *Inſurance.*

Aſter, and *Homo Aſter*, A man that is reſident. *Britton* 151.

Aſtrarius Hæres, (from *Aſtre*, the hearth of a chimney) Is where the anceſtor by conveyance hath ſet his heir apparent and his family in a houſe in his life-time. ——*Dicitur ille cui anteceſſor in vita ſua per chartam hæreditatem reſtituit.* *Co. Lit.* 8.

Aſtrum, A houſe or place of habitation, alſo from *aſtre.* —*Præceptum fuit vicecom. quod replegiet corpus* Willielmi J. *quod* Richardus *S.* Valentio *cepit & captum tenuit, qui* Richardus *venit & advocat captionem ut de villano ſuo, & quod cepit ipſum in* Aſtro *ſuo in quo natus fuit, &c.* Placit. Hillar. 18 Ed. 1.

Ategar, A weapon among the *Saxons*, which ſeems to have been a hand-dart, from the Sax. Aeton to fling or throw, and Gar a Weapon. *Spelm.*

Athe, (*Adda*) A privilege of adminiſtring an oath, in ſome caſes of right and property; from the Sax. *ath, othe, juramentum.* It is mentioned among the privileges granted by king *Hen.* 2. to the monks of *Glaſtonbury.* Cartular. Abbat. Glaſton. MS. fol. 14, 37.

Atia, See *Odio & atia*, A writ of enquiry whether a perſon be committed to priſon on juſt cauſe of ſuſpicion.

Atilia, Utenſils or country impliments: *remaneant duo equi carectarii cum carecta & triginta ſex boves cum quatuor carucis &* atiliis. *Blount.*

Atrium, Is taken for a court before the houſe, and ſometimes a church-yard.

Attach, (*attachiare*, from the Fr. *attacher*) Signifies to take or apprehend by commandment of a writ or precept. *Lamb. Eiren. lib.* 1. *cap.* 16. It differs from arreſt, in that he who arreſteth a man carrieth him to a perſon of higher power to be forthwith diſpoſed of; but he that *attacheth* keepeth the party *attached*, and preſents him in court at the day aſſigned; as appears by theſe words of the writ, *Præcipimus tibi quod* attachias *talem & habeas eum coram nobis*, &c. Another difference there is, that arreſt is only upon the body of a man; whereas an *attachment* is oftentimes upon his goods. *Kitch.* 279. A *capias* taketh hold of immoveable things, as lands or tenements, and properly belongs to real actions: but *attachment* hath place rather in perſonal actions. *Bract. lib.* 4. *Attachiamentum eſt diſtrictio perſonalis, & Cape magnum diſtrictio realis. Fleta, lib.* 5. *cap.* 24.

Attachment, (from *attach*) Is a proceſs that iſſues at the diſcretion of the judges of a court of record, againſt a perſon for ſome contempt, for which he is to be committed, and may be awarded by them upon a bare ſuggeſtion, or on their own knowledge, without any appeal, indictment or information; for though, by the ſtatute of *Magna Charta*, none are to be impriſoned *ſine judicio parium vel per legem terræ*; yet this ſummary method of proceeding being abſolutely neceſſary to the furtherance and execution of juſtice, ſeems to have been long practiſed, and is certainly now eſtabliſhed as part of the law of the land. *Lamb. Eiren. lib.* 1. *c.* 16. 1 *New Abr.* 180. See *Weſt.* 2. *c.* 3. But we apprehend it muſt be for a contempt in the face of the court; or in the caſes after mentioned: and if for a contempt in the face of the court, the commitment is by rule of court, not on proceſs, unleſs the party eſcape out of court, before he is ſecured.

All courts of record have a diſcretionary power over their own officers, and are to ſee that no abuſes be committed by them, which may bring diſgrace on the courts themſelves; therefore if a ſheriff or other officer ſhall be guilty of a corrupt practice in not ſerving a writ; as if he refuſe to do it, unleſs paid an unreaſonable gratuity from the plaintiff, or receive a bribe from the defendant, or give him notice to remove his perſon or effects, in order to prevent the ſervice of any writ; the court which awarded it may puniſh ſuch offences in ſuch a manner as ſhall ſeem proper by attachment. *Dyer* 218. 2 *Hawk. P. C.* 142.

But if there be no palpable corruption, nor extraordinary circumſtance of wilful negligence or obſtinacy, the judgment whereof is to be left to the diſcretion of the court; it ſeems not uſual to proceed in this manner, but to leave the party to his ordinary remedy againſt the ſheriff, either by action, or by rule to return the writ, or by an *alias* and *pluries*, which if he have no excuſe for not executing, an attachment goes of courſe. *Hob.* 62. 264. *Noy* 101. *F. N. B.* 38. *Finch* 237. 5 *Mod.* 314, 315.

Generally an *attachment* doth lie for any contempt done againſt the courts at *Weſtminſter*: but the court of *B. R.* will not grant *attachment* againſt one for diſobeying an order made by juſtices of aſſiſe, or a judge at his chamber, except it be entered and made a rule of court; for it is no contempt to the court, but to the judge that made the order. 1 *Lill. Abr.* 121. *Attachment* lies againſt attornies for injuſtice, and baſe dealing by their clients, in delaying ſuits, *&c.* as well as for contempts to the court, 2 *Hawk.* 144. If affidavits to ground an *attachment* are full as to the charge; yet if the party deny ſuch charge by as plain and poſitive affidavits, he ſhall be diſcharged; but if he take a falſe oath, he may be indicted of perjury. *Mod. Caſ. in L. & E.* 81.

Againſt ſheriffs making falſe returns of writs, and againſt bailiffs for frauds in arreſts, and exceeding their power, *&c.* *attachment* may be had. For contempts againſt the king's writs; uſing them in a vexatious manner; altering the teſte, or filling them up after ſealed, *&c.* *attachment* lies. And for contempts of an enormous kind, in not obeying writs, *&c.* *attachment* may be iſſued againſt peers. 2 *Hawk.* 152, 153. For perſuading jurors not to appear on a trial, *attachment* lies againſt the party, for obſtructing the proceeding of the court. 1 *Lill.* 121. The court of *B. R.* may award *attachments* againſt any inferior courts uſurping a juriſdiction, or acting contrary to juſtice. *Salk.* 207. Though it is uſual firſt to ſend out a prohibition.

Attachment lies for proceeding in an inferior court, after a *habeas corpus* iſſued, and a *ſuperſedeas* to ſtay proceedings. 21 *Car. B. R.* And *attachment* may be granted againſt juſtices of peace, for proceeding on an indictment after a *certiorari* delivered to them to remove the indictment. 1 *Lill.* 121. But it doth not lie againſt a corporation. *Attachment* lies againſt a lord that refuſes to hold his court, after a writ iſſued to him for that purpoſe, ſo that his tenant cannot have right done him. *New Nat. Br.* 6, 27.

An attachment is the proper remedy for diſobedience of the rules of court; as of thoſe made in ejectment, arbitrament, *&c.* So where a defendant in account, being adjudged to account before the auditors, refuſes to do it, unleſs they will allow matter diſallowed by the court before, or where one refuſes to pay coſts taxed by the maſter, whoſe taxation the law looks upon as a taxation by the court. 1 *Mod.* 21. 1 *Salk.* 71.

But an attachment is not granted for diſobedience of a rule of *Niſi prius*, unleſs it be firſt made a rule of court; nor for diſobedience of a rule made by a judge at his chamber, unleſs it be entred; nor for diſobedience of any rule without perſonal ſervice. 1 *Salk.* 84.

Alſo an attachment is proper for abuſes of the proceſs of the court; as for ſuing out execution where there is no judgment, bringing an appeal for the death of one known to be alive, making uſe of the proceſs of a ſuperior court, as a ſtale to bring a defendant within the juriſdiction of an inferior court, and then dropping it, uſing ſuch proceſs in a vexatious, oppreſſive, or unjuſt manner, without colour of ſerving any other end by it. 2 *Hawk. P. C.* 154.

Attachments are *uſually granted on a rule to ſhew cauſe*, unleſs the offence complained of be of a flagrant nature, and poſitively ſworn to; in which laſt caſe the party is ordered to attend, which he muſt do in perſon, as muſt every one againſt whom an attachment is granted; and if he ſhall appear to be apparently guilty, the court in diſcretion, on conſideration of the nature of the crime, and other circumſtances, will either commit him immediately, in order to anſwer interrogatories to be exhibited againſt him concerning the contempt complained of, or will ſuffer him to enter into recogniſance to anſwer ſuch interrogatories; which if they be not exhibited within four days, the party may move to have the recognizance diſcharged; otherwiſe he muſt anſwer them, though exhibited after the four days; but in all caſes, if he fully anſwer them, he ſhall be diſcharged as to the attachment, and the proſecutor ſhall be left to proceed againſt him for the perjury, if he thinks fit; but if he deny part of the contempts only, and confeſs other part, he ſhall not be diſcharged as to thoſe denied, but the truth of them ſhall be examined, and ſuch puniſhment inflicted as from the whole ſhall appear reaſonable; and if his anſwer be evaſive as to any material part, he ſhall be puniſhed in the ſame manner as if he had confeſſed it. 2 *Hawk. P. C.* 141. 1 *Salk.* 84. 6 *Mod.* 73. 2 *Jones* 178.

Attachment out of *chancery* may be had of courſe upon affidavit made that the defendant was ſerved with a *ſubpœna*, and appeared not; or upon non-performance of any order or decree; alſo after the return of this *attachment*, that the defendant *non eſt inventus*, *&c.* *Attachment* with proclamation iſſues againſt him, *&c.* *Weſt. Symb.* And for contempts, when a party appears, he muſt upon his oath anſwer interrogatories exhibited againſt him; and if he be found guilty, he ſhall be fined.

But this mode of proceeding by examining a perſon accuſed, on oath, is ſuch an inducement to perjury, and ſo repugnant to nature, (by calling on a man to accuſe himſelf) that though long practiſed, the propriety, if not the legality of ſuch a procedure may juſtly be called in queſtion.

Attachment of *privilege* is where a man by virtue of his privilege calls another to that court whereto he himſelf belongs, and in reſpect thereof is privileged, there to anſwer ſome action: or it is a power to apprehend a man in a place privileged. *Book Entr.* 431. Corporation courts have ſometimes power by charter to iſſue *attachments*, and ſome courts-baron grant *attachments* of debt. *Kitch.* 79.

Attachment, *foreign*, is an *attachment* of the goods of foreigners, found in ſome liberty, to ſatisfy their creditors within ſuch liberty. *Carth. Rep.* 66. And by the cuſtom of ſome places, as *London*, *&c.* a man may *attach* money, or goods, in the hands of a ſtranger. But a foreign *attachment* cannot be had when a ſuit is depending in any of the courts at *Weſtminſter*. *Cro. Eliz.* 691. And nothing is *attachable* but for a certain and due debt: though by the cuſtom of *London* money may be attached before due, as a debt; but not levied before due. *Sid.* 327. 1 *Nelſ. Abr.* 282, 283.

Foreign attachments in *London*, upon plaint of debt, are made after this manner; A. *oweth* B. 100*l.* *and* C. *is indebted to* A. 100*l.* B. *enters an action againſt* A. *of* 200*l.* *and by virtue of that action a ſerjeant* attacheth 100*l.* *in the hands of* C. *as the money of* A. *to the uſe of* B. *which is returned upon that action.* The *attachment* being made, and returned by the ſerjeant, the plaintiff is immediately to fee an attorney before the next court holden for the *compter*; or the defendant may then put in bail to the attachment, and nonſuit the plaintiff: four court days muſt paſs before the plaintiff can cauſe C. the *garniſhee*, in whoſe hands the money was *attached*, to ſhew cauſe why *B.* ſhould not condemn the 100*l.* *attached* in the hands of *C.* as the money of *A.* the defendant in the action (though not in the *attachment*) to the uſe of *B.* the plaintiff: and the garniſhee *C.* may appear in court by his attorney, wage his law, and plead that he hath no money in his hands of the defendant's, or other ſpecial matter; but the plaintiff may hinder his waging of law, by producing two ſufficient citizens to ſwear that the garniſhee had either money or goods in his hands of *A.* at the time of the *attachment*, of which affidavit is to be made before the lord mayor, and being filed, may be pleaded by way of eſtoppel: then the plaintiff muſt put in bail, that if the defendant come within a year and a day into court, and he can diſcharge himſelf of the money condemned in court, and that he owed nothing to the plaintiff at the time in the plaint mentioned, the ſaid money ſhall be forth-coming, *&c.* if the garniſhee fail to appear by his attorney, being warned by the officer to come into court to ſhew cauſe as aforeſaid, he is taken by default for want of appearing, and judgment given againſt him for the goods and money attached in his hands, and he is without remedy either at Common law or in equity; for if taken in execution, he muſt pay the money condemned, though he hath not one penny, or go to priſon; but the garniſhee appearing to ſhew cauſe why the money or goods *attached* in his hands ought not to be condemned to the uſe of the plaintiff, having feed an attorney, may plead as aforeſaid, that he hath no money or goods in his hands of the party's againſt whom the attachment is made, and it will then be tried by a jury, and judgment awarded, *&c.* but after trial, bail may be put in, whereby the *attachment* ſhall be diſſolved, but the garniſhee, *&c.* and his ſecurity will then be liable to what debt the plaintiff ſhall make out to be due, upon the action: and an *attachment* is never thoroughly perfected, till there is a bail, and ſatisfaction upon record. *Privileg. Lond.*

Where a *foreign attachment* is pleaded to an action, the cuſtom is to ſet forth, that he who levied the plaint ſhall have execution of the debt owing by himſelf, and by which he was attached, if the plaintiff in the original action ſhall not diſprove it within a year and a day; now if the plaintiff in the action below doth not ſet forth ſuch conditional judgment given by the court, it is wrong, becauſe he doth not bring his caſe within the cuſtom. *Vide* 2 *Lutw.* 985.

In aſſumpſit, &c. there was evidence given, that the debt was attached by the cuſtom of *London* before the action brought, and that it was condemned there before the plea pleaded; and this evidence was given upon the general iſſue *non aſſumpſit*, and it being inſiſted for the defendant, that this ſhould relate ſo as to defeat the plaintiff's action; it was adjudged, that where there is an attachment and condemnation before the action brought, it may be given *in evidence* upon the general iſſue, becauſe there is an alteration of the property; but if the attachment be only before the action brought, and the condemnation afterwards, the *attachment* may be pleaded in *abatement*, and the *condemnation* may be pleaded in *bar*, but ſhall not be given in evidence on the general iſſue, becauſe by the *condemnation* the property is altered, but not before. 1 *Salk.* 280, 291.

Action of debt, &c. the defendant pleaded in bar, that there was a *cuſtom in London* to attach the debt before the day of payment came; *et per curiam*, ſuch a cuſtom may be good, but to have judgment to recover the debt before the day of payment is come, cannot be a good cuſtom, becauſe the debtee himſelf could not recover in ſuch caſe, and therefore he who made the attachment ſhall not. This cuſtom was pleaded, that the debtee in perſon, or *by his attorney*, may ſwear that the debt is due; but this cannot be good as to the attorney: it was agreed, that goods might be attached by a foreign attachment, and that the value thereof ought to be found before judgment; but that this plea was ill, becauſe the defendant did not aver it, *viz. et hoc paratus eſt verificare. W. Jones* 406.

Money due to an executor or adminiſtrator, as ſuch, cannot be attached. It would give a ſimple contract creditor priority over judgments, &c *Fiſher* v. *Lane* and others 3 *Wilſ.* 297. *C. P.* And a caſe of the ſame kind, lately determined in *B. R.*

In an action on the caſe the plaintiff had judgment againſt the defendant, and he owing 60*l.* to one *G. D.* he entered a plaint againſt him in *London*, and attached the 60*l.* in the hands of the ſaid defendant, againſt whom the plaintiff had recovered as aforeſaid, and had execution according to the cuſtom; afterwards the plaintiff brought a *ſci fa.* againſt the defendant, to ſhew cauſe why he ſhould not have execution upon the judgment which he had recovered, to which the defendant pleaded the *execution upon the attachment*; and upon demurrer to that plea it was adjudged againſt the defendant, becauſe a duty which accrueth by matter *of record*, cannot be attached by the *cuſtom of* London; for judgments obtained in the king's courts ſhall not be defeated or avoided by ſuch particular cuſtoms, they being of ſo high a nature, that they cannot be reached by attachment. 1 *Leon.* 29.

Debtor and creditor being both citizens of *London*, the debtor delivered ſeveral goods to the *Exeter* carrier then in *London*, to carry and deliver them at *Exeter*, and the creditor attached them in the hands of the *carrier* for the debt due to him from his debtor; adjudged, that the action ſhould be diſcharged, becauſe the *carrier* is priviledged in his perſon and goods, and not only in the goods which are his own, but in thoſe of other men, of which he is in poſſeſſion, for he is anſwerable for them. 1 *Leon.* 189.

An executor ſubmitted to an award, and the arbitrators awarded, that the defendant ſhould pay the executor 350*l.* This money is not attachable in his hands by any creditor of his teſtator, though it is aſſets in his hands when recovered, becauſe it was not due to the teſtator *tempore mortis*, and the cuſtom of foreign attachments extends only to ſuch debts. 1 *Vent.* 111.

A ſum of money was to be paid at *Michaelmas*, and it was attached before that day; adjudged, that a *foreign attachment* cannot reach a debt *before it is due*; therefore, though the judgment on the attachment was after *Michaelmas*, yet the money being attached before it was due, it is for that reaſon void. *Cro. Eliz.* 184.

Attachment of the Foreſt, Is one of the three courts held there. *Manwood* 90, 99. The lower court is called the *attachments*; the middle one, *the ſwainmote*; the higheſt, *the juſtice in Eyre's ſeat*. The *court of attachment* ſeemeth to be ſo called, becauſe the *verderors* of the foreſt have therein no other authority, but to receive the *attachments* of offenders againſt *vert and veniſon*, taken by the reſt of the officers, and to enroll them, that they may be preſented and puniſhed at the next *juſtice ſeat. Manwood* 93. And this *attaching* is by three means; 1. By goods and chattels. 2. By the body, pledges, and mainpriſe. 3. By the body only. This court is kept every forty days. See *Crompton*, in his *Court of the Foreſt*.

Attainder, (*attincta* and *attinctura*) Is when a man hath committed treaſon, &c. and after conviction ſentence is paſſed on him: or where a perſon is *attainted* of treaſon, and condemned by parliament.

A man is *attainted* by appearance, or by proceſs: *attainder* on appearance is by confeſſion, or verdict, &c. Confeſſion, when the priſoner upon his indictment being aſked whether Guilty or Not guilty, anſwers Guilty, without putting himſelf upon his country; (and formerly confeſſion was allowed before the coroner in ſanctuary; whereupon the offender was to abjure the realm, and this was called *attainder* by abjuration.) *Attainder* by verdict is when the priſoner at the bar pleadeth Not guilty, and is found Guilty by the verdict of the jury of life and death. And *attainder* by proceſs, (otherwiſe termed *attainder* by default or outlawry) is when the party flieth, and is not found, until he have been five times publickly called or proclaimed in the county, on the laſt whereof he is outlawed upon his default. *Staundſ. Pl. Co.* 44, 122, 182. Alſo perſons may be attainted by act of parliament.

Acts of attainder of criminals have been paſſed in ſeveral reigns, on the diſcovery of plots and rebellions, from the reign of king *Charles* II. when an act was made for the *attainder* of ſeveral perſons guilty of the murder of king *Charles* I. to this time; among which, that for *attainting* Sir *John Fenwick*, for conſpiring againſt king *William*, is the moſt remarkable; it being made to *attaint* and convict him of high treaſon on the oath of one witneſs, juſt after a law had been enacted, That no perſon ſhould be tried or *attainted* of high treaſon where corruption of blood is incurred, but by the oath of two lawful witneſſes, unleſs the party confeſs, ſtand mute, &c. *Stat.* 7 & 8 *W.* 3. *cap.* 3. But in the caſe of Sir *John Fenwick*, there was ſomething extraordinary; for he was indicted of treaſon, on the oaths of two witneſſes; though but one only could be produced againſt him on his trial. It was pretended Sir *John* had tampered with and prevailed on one of the witneſſes to withdraw.

Attainder of a criminal is larger than conviction; a man is convicted when he is found guilty by verdict, or confeſſes the crime, before judgment had; but not *attainted* till judgment is alſo paſſed upon him. *Co. Lit.* 390. A perſon *attainted* of high treaſon forfeits all his lands, tenements and hereditaments; his blood is corrupted, and he and his poſterity are rendered baſe; and this corruption of blood cannot be taken off but by act of parliament. *Co. Lit.* 391. But if one commits treaſon, and dies before *attainder*, he forfeits nothing: and one ſlain in open rebellion, ſhall forfeit nothing, if he be not *attainted* by parliament. 3 *Inſt.* 12. And collateral blood may inherit on an *attainder*; though the lineal blood is barred. If an *attainted* perſon marries an heireſs, and has iſſue by her; it is ſaid that iſſue ſhall inherit, for he claims only from the mother. *Jenk. Cent.* 3.

But *qu.* if it muſt not be to the inheritance of the mother, only, as the father has not any inheritable blood in him?

In the caſe of felony, where land is given in tail to *A.* and the heirs male of his body, under the ſtatute of *Weſtm.* 2. and he commits murder, or any felony, his heir ſhall have the land, and the blood is not corrupted: though in caſe of treaſon, where the father hath lands, and is *attainted*, it is otherwiſe by the 26. *H.* 8. *c.* 13. *Ibid.* 82. *Vide* 1 & 2 *Ph.* & *M. c.* 10.

Grandſather, father and *ſon*; the *grandſather* was *tenant in tail*, the *father* was attainted of treaſon; here, though the blood is corrupted, yet the ſon would formerly inherit *per formam doni*; but ſince the ſtatute 26 *H.* 8. *c.* 13. which gives the forfeiture of the *lands of tenants in tail* for treaſon, the law is otherwiſe; and by the attainder of the tenant in tail the iſſue in tail is barred. 8 *Rep.* in *Digby's* caſe.

In treaſon for counterfeiting the coin, although by a late ſtatute corruption of blood is ſaved; yet the lands of the offender are forfeited immediately to the king on *attainder*, it being a diſtinct penalty from corruption of blood: for the corruption may be ſaved, and the forfeiture remain, &c. And accordingly ſo it is provided by ſome ſtatutes. 1 *Salk.* 85.

Adjudged, that an attainder of felony makes a forfeiture of the eſtate to the lord only by way of eſcheat *pro defectu tenentis*, and the not deſcending is the conſequence of the corruption of blood. 1 *Salk.* 85.

T. S. having an eſtate for three lives, was attainted on the ſtatute 8 & 9 *Will.* 3. *c.* 26. of treaſon for counterfeiting *the coin*, by which ſtatute *corruption of blood* is ſaved; and for that reaſon it was a queſtion, whether the lands were forfeited to the king, which were given to Baron *Lovell* as forfeited, who brought a bill in the Exchequer to redeem, and had a decree, from which there was an appeal to the houſe of lords, where the judges held, that in treaſon the lands came to the king as an *immediate forfeiture*, which was a diſtinct penalty from *corruption of blood*, for the *corruption* may be ſaved, and the forfeiture ſtill remain. 1 *Salk.* 85.

Huſband and wife were tenants in *ſpecial tail*; they had iſſue a ſon, the huſband was attainted of treaſon, and died, the wife continued in poſſeſſion as tenant in ſpecial tail, and the ſon was reſtored by act of parliament, and made inheritable to his father, *ſaving to the king all advantages which he might have by the attainder*; the wife died; adjudged, that the father had not any eſtate forfeitable, for the *wife* being likewiſe tenant in *ſpecial tail*, the eſtate ſurvived to her, and was not impeached by the attainder, and ſhe dying, the ſon is then inheritable to the eſtate tail, which might certainly have been barred by a common recovery ſuffered by the wife, and in ſuch caſe the king would have been bound. 1 *Leon.* 157.

Covenant to ſtand ſeiſed to the uſe of himſelf for life, remainder to *Thomas Palmer*, the eldeſt ſon of his brother *John Palmer* for life, remainder to the eldeſt ſon of Sir *Thomas Palmer* in tail male, remainder to his own right heirs; afterwards the covenantor was attainted of treaſon, and executed before the birth of any ſon of *Thomas*; adjudged that this attainder was a bar to the after-born ſon, and that the fee-ſimple was veſted in the crown, diſcharged of all remainders. *Moor* 815.

Attainders may be reverſed or falſified, by writ of error, or by plea; if by writ of error, it muſt be by the king's leave, &c. And when by plea, it may be by denying the treaſon, pleading a pardon by act of parliament, &c. 3 *Inſt.* 232.

By a king's taking the crown upon him, all *attainders* of his perſon are *ipſo facto* purged, without any reverſal. *Co. Lit.* 43. *Wood* 17. This is a very peculiar doctrine, though the declaration of parliament, *viz.* made in favour of *Henry* the 7th. If the intelligent reader will conſider it a moment, a comment muſt appear unneceſſary.

Lands coming to the king by *attainder* of treaſon, afterwards granted to another, ſhall be holden as if there were no *attainder*. 7 *Ed.* 4. *c.* 5. The 8 *W.* 3. *c.* 5. requires Sir *George Barclay*, major general *Holmes*, and other perſons to ſurrender themſelves to the lord chief juſtice, or ſecretaries of ſtate; or to be *attainted*. By the 13 *W.* 3. *c.* 3. the pretended *Prince of Wales* is under *attainder* of treaſon, &c. And by 1 *Geo.* 1. *c.* 16. the late *duke of Ormond* and others are *attainted*. And beſides theſe acts of *attainder*, we have lately had *bills for inflicting pains and penalties*, as thoſe againſt the late *biſhop of Rocheſter*, &c. *Stat.* 9 *Geo.* 1. *c.* 17. See *Evidence*.

Attachiamenta bonorum, A diſtreſs taken upon goods or chattels, where a man is ſued for perſonal eſtate or debt, by the legal attachiators or bailiffs, as ſecurity to anſwer an action. There is likewiſe *attachiamenta de ſpinis & boſco*, a privilege granted to the officers of a foreſt, to take to their own uſe, thorns, bruſh, and wind-fall within their precincts.—*John Fitz Nygel*, foreſter of *Bernwood*, *A. D.* 1230. *ſibi habere ſolebat in eadem foreſta videlicet* attachiamentum *de Spinis, de Boſco ſicut & de* [illegible] *qui ventis proſternuntur.* Kennet's Paroch. Antiq. p. [illegible]

Attaint, (*attincta*) Is a writ that lieth after judgment againſt a jury that have given a falſe verdict in any court of record, in an action real or perſonal, where the debt or damages amount to above 40*s.* *Stat.* 5 & 34 *Ed.* 3. *c.* 7. It is called *attaint*, becauſe the party that obtains it endeavours thereby to ſtain or *taint* the credit of the jury with perjury, by whoſe verdict he is grieved; and if the verdict be found falſe, then the puniſhment by the Common law was, that the jurors meadows ſhould be ploughed up, their houſes broke down, woods grubbed up, and all their lands and tenements be forfeited to the crown; but if it paſſed againſt him that brought the attaint, then he was to be impriſoned and ranſomed at the king's will. *Glanv. lib.* 2. By the ſtatute 23 *H.* 8. *c.* 3. the ſeverity of the Common law is mitigated, where a petty jury is attainted; for that ſtatute enacts, That upon untrue verdicts before judges of record, the thing in demand extending to 40*l.* value, attaints ſhall be granted againſt the petty jury; the proceſs to be ſummons, reſummons, and diſtreſs infinite, &c. but the defendants may plead, they gave a true verdict, &c. to bar the attaint: and the grand jury is to try the verdict of the petty jury on the attaint; and if ſuch petty jury be found to have given an untrue verdict, they ſhall each forfeit 20*l.* to be divided between the king and the plaintiff, and incur ſeveral fines at the diſcretion of the juſtices, and be diſabled to give teſtimony in any court. Alſo an attaint ſhall lie for a perſonal thing under the value of 40*l.* in manner as aforeſaid; but here the forfeiture of each petty juror ſhall be but 5*l.* &c. *Stat. Ibid.*

It may be material, however, under this head, to ſtate more particularly,

I. *By and againſt whom attaint may be brought.*
II. *In what caſes it will lie.*
III. *Of the proceedings in attaint.*

I. The party grieved may have writ of attaint againſt the other party, (whether plaintiff or defendant) and againſt the jurors or ſuch of them as ſhall be then living; it is ſaid any one that is hurt by the falſe verdict may bring this writ; and if the verdict be for matter of land, the remedy commonly runs with the land, ſo that any party or privy, as an heir or executor may have it. *F. N. B.* 109. *Co. Lit.* 294.

Attaint was brought upon the ſtatute 23 *H.* 8. *c.* 3. againſt the *executors of Sir John Barker*, whereas the verdict was in a cauſe between him and one *Auſtin*, and the ſtatute gives an attaint between the parties, and doth not mention *heirs or executors*, yet this attaint was held good; ſo an executor ſhall have reſtitution upon the ſtatute 21 *H.* 8. though that ſtatute does not mention executors. 1 *And* 24, 25.

Where *treſpaſs* is brought *againſt baron and feme*, and the plaintiff *recovers*, the *baron alone ſhall not have attaint*, for it ſhall be brought according to the record. *Br. Baron and feme, pl.* 22. *Succeſſors of a parſon* ſhall have error or attaint of judgment againſt the predeceſſor. *Br. Attaint, pl.* 110. *None ſhall have attaint but he that may be reſtored* to the thing loſt by the judgment; *per Bramſtone* Ch. J. *Mar.* 210. Reverſioners may have an attaint upon a falſe verdict, &c. againſt a particular tenant, who ſhall be reſtored to his poſſeſſion, and the reverſioner to his arrearages. *Stat.* 9 *R.* 2. *c.* 3. This action muſt be brought againſt the jurors, and the parties to the firſt ſuit; or, if the parties be dead, their heirs, or executors, or any other for the moſt part that recovered by the firſt judgment. *Dyer* 201. If all the jurors but one are dead, the action is gone, and no attaint can be brought; and where any one dies depending the ſuit, it is gone; but not by the death of the defendant that recovered in the firſt action. *Dyer* 139. *Hob.* 227.

II. *As to the caſes in which an attaint lies.*

Attaint lies where a jury gives a verdict contrary to evidence: where a judge declares the law erroneouſly, judgment may be reverſed; but in this caſe the jury ſhall be excuſed. *Vaugh.* 145. Attaint lies not for that which is not given in evidence; nor upon an inqueſt of office, &c. or when a thing found is impertinent to the iſſue. *Hob.* 53. *Co. Lit.* 355. And no attaint lieth where the king is ſole party, and the jury find for him. 4 *Leon.* 46. *aliter* where the ſuit is *tam pro domino rege quam pro ſeipſo.* 4 *Leon.* 46. An attaint may be brought where any material falſhood is found, though ſome truth may be found with it; as where a jury ſhall find a man guilty of many treſpaſſes, who is guilty but of one treſpaſs. So if a jury find any thing againſt the Common or Statute law, that all men are to take notice of, this may make them chargeable in attaint. *Bro.* 44. *Hob.* 227.

Where the *evidence given* to the jury is *falſe in part*, tho' it be *in a point not material*, yet this is ſufficient excuſe for their not giving him credit in any other part of his evidence, and ſo had no cauſe to find their verdict upon this oath againſt the party againſt whom it was given. *Cro. Eliz.* 309, 310. It lies againſt a jury, for *finding the bond of Edward* the bond of *Edmond. Palm.* 286.

The jury may be attainted two ways; 1ſt, where they *find contrary to evidence*; 2dly, where they find *out of the compaſs of the allegata.* But to attaint them for finding contrary to evidence is not eaſy, becauſe they may have evidence of their own conuſance of the matter by them, or they may find upon diſtruſt of the witneſſes, or their own proper knowledge; but if they find upon evidence that does not prove the *allegata*, there it is eaſy to ſubject them to an attaint, becauſe it is manifeſt that what is ſo found is an evidence not correſponding to their iſſue, and this was the only curb they had over the jurors; for the judge being beſt maſter of the *allegata*, if they did not follow his direction touching the proof, they were then liable to the danger of an attaint; and therefore *ſince the judges*, from the difficulty of attainting the jury *have granted new trials*, whereby *jurors* have been freed from the fear of attaint, they *have taken a great liberty in giving verdicts*; but ſince *the attaint is only diſuſed, and not taken away*, 'tis neceſſary that a certain matter ſhould be brought before them; and therefore in *treſpaſs*, the quantity and value of the thing demanded muſt be ſo conveniently deſcribed, that if the jury find *damages* beyond ſuch quantities and value, it may be *apparently exceſſive*, and they ſubject to the attaint; and ſo *on ſpecial contracts*, they muſt be ſet forth ſo preciſely, that *if evidence be given of another contract*, and not in the allegations, *and yet the jury find for the plaintiff, they may be ſubject to an attaint*; and were it otherwiſe, if the plaintiff had a jury to his turn, and the judge ſhould direct that the plaintiff be nonſuit, yet if the plaintiff would ſtand the trial, the judge muſt give poſitive directions to find for the defendant, there would be no means of compelling the jury to find according to the direction of the judge, if they were not under the terror of an attaint, if they did otherwiſe; ſo this is the only curb that the law has put in the hands of the judges to reſtrain jurors from giving corrupt verdicts. *Gilb. H. C. B.* 128. But this doctrine does not imply that a jury are at all events to follow the direction of a judge. They are to uſe their own diſcretion. Vide *Hawles on Juries.*

Where a jury finds a thing which is *out of the iſſue*, there a verdict is void, becauſe they are ſworn to try the iſſue between the parties, according to the evidence given; ſo that whatſoever they try beſides the iſſue, is not *per juratores*; and therefore if that matter ſo tried is falſe, 'tis no perjury, nor doth an attaint lie againſt them. *Hob.* 53.

III. *With regard to the proceedings in attaint.*

The proceſs to be iſſued is directed by the 23 *H* 8. *c.* 3. already mentioned: and by the ſaid ſtatute if any of the petit jury appear at the return of the writ of attaint, the plaintiff ſhall aſſign the falſe oath of the verdict untruly given. And if the defendant, or any of the petit jury appear not on diſtreſs, the grand inqueſt ſhall be taken by default.

The petit jury can plead no plea, but ſuch as may excuſe them of the falſe oath. 1 *Rol. Abr.* 285.

The petit jury cannot plead that the plaintiff in the *attaint* was tenant after the *attaint* purchaſed. 1 *Rol. Abr.* 285. The plaintiff in *attaint* may not produce more witneſſes, nor give further matter in evidence, than what was depoſed in the firſt action; but the defendant in *attaint* may give new matter in evidence to inforce the firſt verdict, and the plaintiff ſhall have time to diſprove it. *Dyer* 59. 1 *Nelſ. Abr.* 288. 1 *Rol. Abr.* 285.

In an *attaint* the plaintiff cannot give in evidence a record which was not given to the petit jury; for they were not bound to find it, if it was not ſhewn to them. 1 *Rol. Abr.* 285.

In the court of *King's Bench* and *Common Pleas*, and the court of *Huſtings* of *London*, *attaint* may be brought; and the plaintiff ſetting aſide the verdict, ſhall have reſtitution, &c. But if the firſt verdict be affirmed, the plaintiff ſhall be impriſoned and fined. 11 *H.* 7. *c.* 21.

In *attaint* the parties and the jury appeared and demanded *oyer* of the record upon which the *attaint* was founded, which record being in the Common Pleas, they had it, and thereupon the plaintiff aſſigned the falſe oath; the defendants pleaded, that they made a good and lawful oath; upon which they were at iſſue, and in the ſame term the record was removed by a writ of error into the King's Bench; adjudged, that notwithſtanding it was thus removed, the court of Common Pleas might proceed if the proceſs for the grand jury were returned. *Dyer* 284.

Attaint was brought in the Common Pleas againſt a jury, for a verdict given in the King's Bench, whereupon the record was removed from that court to the *Common Pleas*, and there the verdict was affirmed; adjudged, that the plaintiff in the action ſhall have execution according to the verdict, for the record is in the King's Bench, and nothing but the *tenor* thereof in the Common Pleas; but if the verdict had been ſet aſide, and execution had been put upon it before it was ſet aſide, then the court of Common Pleas might have awarded reſtitution to the party grieved. *Cro. Eliz.* 371.

A nonſuit in *attaint* is peremptory: and no *ſuperſedeas* is grantable upon *attaint.* *Co. Lit* 227.

An *attaint* as well as a writ of error ſhall follow the nature of the action upon which 'tis founded; ſo that if ſummons and ſeverance lies in the firſt action; it ſhall do ſo likewiſe in the *attaint*, but this is not a *ſuperſedeas* as a writ of error is; adjudged likewiſe, if damages are recovered againſt ſeveral in an action of conſpiracy, all of them muſt join in an *attaint*, and the nonſuit of one of them ſhall not hurt the reſt. 6 *Rep.* 25.

But adjudged, that where an aſſiſe was brought againſt *three coparceners*, who all pleaded that there was no tenant of the freehold named in the writ, and the jury found that two of them were diſſeiſors and tenants, &c. and that the *third had nothing*, &c. and afterwards they all three joined in an *attaint*, and after appearance the third ſiſter, who was acquitted as aforeſaid by the ſaid verdict, was now nonſuited in the *attaint*, in that caſe the *attaint* was abated, becauſe ſhe had no cauſe to bring an *attaint*, for there was no verdict againſt her. 1 *Leon.* 317.

In an *attaint* the plaintiff ſhall recover againſt all the jurors, tenants, and defendants, the coſts and damages, which he ſhall ſuſtain by delay or otherwiſe in that ſuit; and if the defendant's plea in bar be found againſt him, the plaintiff will have judgment to be reſtored to what he loſt, with damages, by *Stat.* 11 *H.* 6. *c.* 4. and 15 *H.* 6. *c.* 5.

Beſides the ſtatutes abovementioned in the courſe of this article, there are others to which it will be ſufficient barely to refer, as the ſubject of them is in a great meaſure grown obſolete. See 3 *Edw.* 1. *c.* 38. 14 *Edw.* 2. *c.* 2. 1 *Edw.* 3. *c.* 6. 28 *Edw.* 3. *c.* 8. 18 *Hen.* 6. *c.* 2. 37 *Hen.* 8. *c.* 5.

This writ to *attaint* ſo many men of ſuch a foul crime is ſeldom uſed, unleſs the corruption be very groſs and apparent: and inſtead of *attaint*, where the verdict is ſuppoſed to be given againſt evidence, it is now uſual to have new trials granted; but an iſſue found by verdict ſhall be always intended true, until reverſed by *attaint*, according to our old books. *Co. Lit.* 227. The *writ* of *attaint* is generally to ſummon a jury to inquire if the former jurors made a falſe oath, and who were the jury of the firſt inqueſt, *&c.* and to have them before the lord the king, or before the juſtices, *&c.* *F. N. B.* 252, 253.

Form of a count in attaint.

Bedford, ſſ. A *Jury of twenty-four,* &c. *of the neighbourhood of* C. *come to recogniſe whether the jurors, by whom a certain inquiſition was lately ſummoned before the lord the king at* Weſtminſter, *by bill without the writ of our ſaid lord the king, between* A. B. *and* C. D. *of a certain treſpaſs,* &c. *to the ſaid* A. *by the ſaid* C. *done, and afterwards before the beloved and faithful of our ſaid lord the king,* &c. *juſtices aſſigned to take the aſſiſes,* &c. *in the county aforeſaid taken, have made a falſe oath therein, as the ſaid* C. *grievouſly complaining to our ſaid lord the king ſaith, or not,* &c.

Attainted. See **Attainder.**

Attal Sariſin, The inhabitants and miners of *Cornwal,* called an old deſerted mine, that is given over, by this name of *attal Sariſin, i. e.* the leavings of the *Saraſins, Saſſins,* or *Saxons.* Cowel.

Attegia, (from the Lat. *ad.* and *tego)* A little houſe. 'Tis mentioned in *Ethelwerd, lib.* 4. *Hiſt. Angl. cap.* 3. —*Pellunt ingenuos paſſim,* attegias *figunt in oppido.*

Attendant, *(attendens)* Signifies one that owes a duty or ſervice to another, or in ſome ſort depends on him. Where a wife is endowed of lands by a guardian, *&c.* ſhe ſhall be attendant on the guardian, and on the heir at his full age. *Terms de Ley.*

Attermining, (from the Fr. *attermine)* Is uſed for a time or term granted for payment of a debt. *Ordinatio de libertatibus perquirendis, ann.* 27 *Ed.* 1. And in the *Stat. Weſtm.* 2. it ſeems to ſignify the purchaſing or gaining a longer time for payment of debts.—Atterminent *querentes uſque in proximum parliamentum.* Weſt. 2. c. 4.

Attile, *(attilium, attilamentum)* The rigging or furniture of a ſhip. This word is mentioned in *Fleta, lib.* 1. *c.* 25. *Batelius (i. e.* the boat) *cum omni onere &* Attillamento.

Attornare Rem, To *attorn* or turn over money and goods, *viz.* to aſſign or appropriate them to ſome particular uſe and ſervice. *Kennet's Paroch. Antiq. p.* 283.

Attornato faciendo vel recipiendo, A writ to command a ſheriff or ſteward of a county-court, or hundred court, to receive and admit an attorney, to appear for the perſon that owes ſuit of court. *F. N. B.* 156. Every perſon that owes ſuit to the county-court, court-baron, *&c.* may make an attorney to do his ſuit. *Stat.* 20 *H.* 3 *c.* 10.

Attorney, *(attornatus)* Is he that is appointed by another man to do any thing in his abſence. *Weſt. Symb. Crompt. Juriſdict.* 105. An attorney is either publick, in the courts of record, the *King's Bench* and *Common Pleas, &c.* and made by warrant from his client: or private, upon occaſion for any particular buſineſs, who is commonly made by letter of attorney. In antient times thoſe of authority in courts had it in their power whether they would ſuffer men to appear or ſue by any other but themſelves: and the king's writs were to be obtained for the admiſſion of attornies: but, ſince that, attornies have been allowed by ſeveral ſtatutes. As by 27 *Ed.* 1. *St.* 2. *&c.* Attornies may be made in ſuch pleas whereon appeal lieth not: in criminal caſes there will be no attornies admitted. *Stat.* 6 *Ed.* 1. *St.* 1. *c.* 8. An infant ought not to appear by attorney, but by guardian; for he cannot make an attorney, but the court may aſſign him a guardian; 1 *Lill. Abr.* 138. Infants, after they come to full age, may ſue by attorney, though admitted before by guardian, *&c.* In action againſt baron and feme, the feme being within age, ſhe muſt appear by guardian: but if they bring an action, the huſband ſhall make attorney for both. 1 *Danv. Abr.* 607. And it is ſaid, that where baron and feme are ſued, though the wife cannot make attorney, the huſband may do it for both of them. 2 *Sand.* 213. One *non compos mentis,* being within age, is to appear by guardian; but after he is of age he muſt do it by attorney. *Co. Lit.* 135. An ideot is not to appear by attorney, but in proper perſon. A corporation cannot appear otherwiſe than by attorney, who is made by deed under the ſeal of the corporation. *Plowd.* 91. Perſons that owe ſuit to county-courts, *&c.* making attornies. See *Stat.* 20 *H.* 3. *c.* 10.

Attornies at Law, Are ſuch perſons as take upon them the buſineſs of other men, by whom they are retained.

Before the ſtatute of *Weſt.* 2. *c.* 10. [13 *Ed.* 1. *A. D.* 1285.] all attornies were made by letters patent under the great ſeal, commanding the juſtices to admit the perſon to be his attorney. Theſe patents, where they were obtained, ſeemed to have been inrolled by a proper officer, called the clerk of the warrants; and alſo the courts inrolled thoſe patents on which any proceedings were. If ſuch letters patent could not be obtained, the perſons were obliged to appear each day in court in their proper perſons. *Gilb. H. C. P.* 32, 33.

The ſaid ſtatute of *Weſt.* 2. *c.* 10. gives to all perſons a liberty of appearing, and appointing an attorney, as if they had letters patent; and therefore the clerk of the warrants received each perſon's warrant, and upon the warrant it equally appeared to the court, that he had appointed ſuch a one his attorney to the end of the cauſe, unleſs revoked; ſo that on each act there is no occaſion of the plaintiff's and defendant's preſence, as was uſed before that time. This authority continues till judgment, and for a year and a day, and afterwards to ſue out execution, and for a longer time, if they continue execution; but if not, the judgment is ſuppoſed to be ſatisfied; and to make it appear otherwiſe, the plaintiff muſt again come into court, which he either does by a *ſcire fac'* or an action of debt on the judgment. *Gilb. H. C. P.* 33.

Who may make attornies, ſee farther 20 *H.* 3. *c.* 10. —12 *Edw.* 2. *c.* 1.—7 *Ric.* 2. *c.* 14.

Parties to fines, as well demandant or plaintiff as tenants or defendants, that will acknowledge their right of lands unto others in pleas of *warrantia chartæ, covenant, &c.* before the fines paſs, ſhall appear perſonally, ſo that their age, ideocy, or other default (if any be) may be diſcerned: provided that if any, by age, impotency, or caſualty, is not able to come into court, one of the juſtices ſhall go to the party and receive his cognizance, and ſhall take with him a knight or man of good fame. Barons of the Exchequer and juſtices ſhall not admit attornies, but in pleas that paſs before them, and where they be aſſigned. Reſerving to the Chancellor his authority in admitting attornies, and to the Chief Juſtices. *Stat.* 15. *Edw.* 2. *ſtat.* 1.

In reſpect of the ſeveral courts, there are attornies at large; and attornies ſpecial, belonging to this or that court only. An attorney may be a ſolicitor in other courts, by a ſpecial retainer: one may be attorney on record, and another do the buſineſs; and there are attornies who manage buſineſs out of the courts, *&c.* *Anno.* 4. *H.* 4. it was enacted, that the juſtices ſhould examine attornies, and remove the unſkilful; and attornies ſhall ſwear to execute their offices truly, *&c.*

By 3 *Jac.* 1. *c.* 7. Attornies *&c.* ſhall not be allowed any fees laid out for counſel, or otherwiſe, unleſs they have tickets thereof ſigned by them that receive ſuch fees; and they ſhall give in true bills to their clients of all the charges of ſuits, under their hands, before the clients ſhall be charged with the payment thereof; if they delay their clients ſuit for gain; or demand more than their due fees and diſburſements, the clients ſhall recover coſts and treble damages; and they ſhall be for ever after diſabled to be attornies: none ſhall be admitted attornies in courts of record, but ſuch as have been brought up in the ſaid courts, or are well practiſed and ſkilled, and of an honeſt diſpoſition; and no attorney ſhall ſuffer any other to follow a ſuit in his name, on pain of forfeiting 20 *l.* to be divided between the king and the party grieved. This ſtatute, as to fees to counſel, doth not extend to matters tranſacted in inferior courts, but only to ſuits in the courts of *Weſtminſter Hall.* Carth. 147. Attornies, *&c.* are to take the oaths to the government, under penalties and diſability to practice. 13 *W.* 3. *cap.* 6.

By the *Stat.* 12 *Geo.* 1. *cap.* 29. If any who hath been convicted of forgery, perjury, *&c.* ſhall practiſe as an attorney or ſolicitor in any ſuit or action in any court, the judge where ſuch action ſhall be brought hath power to tranſport the offender for ſeven years, by ſuch ways, and under ſuch penalties as felons.

The act 2 *Geo*. 2, *c*. 23. ordains, That all attornies ſhall be ſworn, admitted and inrolled, before allowed to ſue out writs in the courts at *Weſtminſter*; and after the firſt of *December* 1730 none ſhall be permitted to practiſe but ſuch as have ſerved a clerkſhip of five years to an attorney, and they ſhall be examined, ſworn and admitted in open court; and attornies ſhall not have more than two clerks at one time, *&c.* every writ and copy of any proceſs ſerved on a defendant, and alſo every warrant made out thereon, ſhall be indorſed with the name of the attorney by whom ſued forth; and no attornies or ſolicitors ſhall commence any action for fees till a month after the delivery of their bills ſubſcribed with their hands: alſo the parties chargeable may in the mean time get ſuch bills taxed, and upon the taxation the ſum remaining due is to be paid in full of the ſaid bills, or in default the parties ſhall be liable to attachment, *&c.* And the attorney is to pay the coſts of taxation, if the bill be reduced a ſixth part.

There is a penalty of 50*l*. inflicted, and diſability to practiſe, for acting contrary to this ſtatute. By the 6 *Geo*. 2. *cap*. 27. Perſons having ſerved five years as clerks to attornies, though not bound by contract; or who had been bound, but not ſerved five years; and ſons of attornies that ſerved that time with their fathers, *&c.* were to be ſworn and admitted. By 12 *Geo*. 2. *c*. 13. Attornies, *&c.* that act in any county-court, without being admitted according to the ſtatute 2 *Geo*. 2. *c*. 23. ſhall forfeit 20*l*. recoverable in the courts of record; and no attorney, who is a priſoner in any priſon, ſhall ſue out any writ, or proſecute ſuits; if he doth, the proceedings ſhall be void, and ſuch attorney, *&c.* is to be ſtruck off the roll. But ſuits commenced before by them may be carried on. A *quaker* ſerving a clerkſhip, and taking his ſolemn affirmation inſtead of an oath, ſhall be admitted an attorney.

By the *Stat*. 22 *Geo*. 2. *c*. 46. Perſons bound clerks to attornies or ſolicitors are to cauſe affidavits to be made and filed of the execution of the articles, names and places of abode of attorney or ſolicitor, and clerk, and none to be admitted till the affidavits be produced and read in court; no attorney having diſcontinued buſineſs to take any clerk. Clerks are to ſerve actually during the whole time, and make affidavits thereof. Perſons admitted ſworn clerks in *Chancery*, or ſerving a clerkſhip to ſuch, may be admitted ſolicitors. By the *Stat*. 23 *Geo*. 2. *c*. 26. Any perſon, duly admitted a ſolicitor, may be admitted an attorney, without any fee for the oath, or any ſtamp to be impreſſed on the parchment, whereon his admiſſion ſhall be wrote.

Attornies of courts, *&c.* ſhall not receive or procure any blank warrant for arreſts from any ſheriff, without writ firſt delivered, on pain of ſevere puniſhment, expulſion, *&c.* And no attorney ſhall make out a writ with a clauſe *ac etiam billæ*, &c. where ſpecial bail is not required by law. *Paſch*. 15 *Car*. 2. Attornies are to enter and file warrants of attorney in every ſuit, on pain of 10*l*. and impriſonment. *Stat*. 32 *H*. 8. *c*. 30. And the plaintiff's attorney is to file his warrant the term he declares, and the defendant his the term he appears. 4 *Ann*. *c*. 16. §. 3. Action upon the caſe lies for a client againſt his attorney, if he appear for him without a warrant; or if he plead a plea for him, for which he hath not his warrant. 1 *Lill*. *Abr*. 140. But if an attorney appear without warrant, and judgment is had againſt his client, the judgment ſhall ſtand, if the attorney be reſponſible: *contra*, if the attorney be not reſponſible. 1 *Salk*. 88.

Action lies againſt an attorney for ſuffering judgment againſt his client by *nil dicit*, when he had given him a warrant to plead the general iſſue: this is underſtood where it is done by covin. 1 *Danv*. *Abr*. 185. If an attorney makes default in a plea of land, by which the party loſes his land, he may have a writ of deceit againſt the attorney, and recover all in damages. *Ibid*. An attorney owes to his client ſecrecy and diligence, as well as fidelity; and if he take reward on the other ſide, or cauſe an attorney to appear and confeſs the action, *&c.* he may be puniſhed. *Hob*. 9.

But action lies not againſt an attorney retained in a ſuit, though he knows the plaintiff hath no cauſe of action; he only acting as a ſervant in the way of his profeſſion. 4 *Inſt*. 117. 1 *Mod*. 209. Though, where an attorney or ſolicitor is found guilty of a groſs neglect, the court of *Chancery* has in ſome caſes ordered him to pay the coſts. 1 *P. Williams* 593. He who is attorney at one time, is attorney at all times, pending the plea. 1 *Danv*. 609. And the plaintiff or defendant may not change his attorney, while the ſuit is depending, without leave of the court, which would reflect on the credit of attornies; nor until his fees are paid. *Mich*. 14 *Car*. A cauſe is to proceed notwithſtanding the death of an attorney therein; and not be delayed on that account. For if an attorney dieth, the plaintiff or defendant may be required to make a new attorney. 2 *Keb*. 275.

An attorney, ſolicitor, *&c.* having fees due to him, may detain writings until his juſt fees are paid: but if there be no fees due to him, the court on motion will compel the delivery of them. 1 *Lill*. 148. Any papers may be detained by an attorney till the money is paid for drawing them; but he cannot detain writings which are delivered to him on a ſpecial truſt, for the money due to him in that very buſineſs, *&c.* if he doth, a rule may be obtained that he ſhall deliver them by ſuch a day, or an attachment ſhall iſſue againſt him. *Mod. Caſ. in Law and Equity* 306. The court will make a rule for delivery of writings when they come to the attorney's hands by way of his buſineſs; and when they come to him in any other manner, the party muſt bring his action. 1 *Salk*. 87.

Attornies have the privilege to ſue and be ſued only in the courts at *Weſtminſter*, where they practiſe: they are not obliged to put in ſpecial bail, when defendants; but when they are plaintiffs, they may inſiſt upon ſpecial bail in all bailable caſes. 1 *Vent*. 299. *Wood's Inſt*. 450. But an attorney of one court, may in that court, hold an attorney of another court to bail. Attornies ſhall not be choſen into offices, againſt their wills. See *Privilege*.

Attorney of the Duchy Court of Lancaſter, *(attornatus curiæ ducatus Lancaſtriæ)* Is the ſecond officer in that court; and ſeems for his ſkill in law to be there placed as *aſſeſſor* to the chancellor, and choſen for ſome ſpecial truſt repoſed in him, to deal between the king and his tenants. *Cowel*.

Attorney General, Is a great officer under the king, made by letters patent. It is his place to exhibit informations, and proſecute for the crown, in matters criminal; and to file bills in the *Exchequer*, for any thing concerning the king in inheritance or profits; and others may bring bills againſt the king's attorney. His proper place in court, upon any ſpecial matters of a criminal nature, wherein his attendance is required, is under the judges, on the left hand of the clerk of the crown: but this is only upon ſolemn and extraordinary occaſions; for uſually he does not ſit there, but within the bar in the face of the court. *Mich*. 22 *Car*. *B*. *R*.

Attornment, *(attornamentum*, from the Fr. *tourner)* Signifies the tenant's acknowledgment of a new lord, on the ſale of lands, *&c.* As where there is tenant for life, and he in reverſion grants his right to another; it is neceſſary the tenant for life agree thereto, which is called *attornment*. It gives no intereſt, but only perfects the grant of another: and tenant in tail is not compellable to *attorn*, on the reverſion being granted; he having an eſtate of inheritance. *Co*. *Lit*. 316, 319. This attornment is in deed, or in law; voluntary and compulſory; and may be made, as ſet down by *Littleton*, in theſe words, *viz*. *I* attorn *to you by force of the grant, or I agree to the grant, or I become your tenant*, *&c.* Or by any words or act which import an aſſent to the grant. *Litt*. 551. 1 *Danv*. 623. It may be made by payment of a penny rent, *&c.* to the grantee. *Co*. *Lit*. 309. Where an eſtate is granted to one for life, remainder to another in fee, attornment to the tenant for life is good to him in remainder. *Co*. *Lit*. 312. By feoffment of a manor, the ſervices do not paſs without attornment. 1 *Danv*. *Abr*. 612. But if a perſon comes to an eſtate by recovery; or where a fine is levied of lands; or by deed of bargain and ſale inrolled, according to the ſtatute, there needs no attornment, they being in by the *Stat.* 27 *H.* 8. *c.* 10. And if a reverſion be deviſed by will to another, the eſtate paſſeth without attornment. 8 *Hen.* 6. This was a large head in our Common law; but now much of this learning is out of uſe.

And by a late ſtatute, it is enacted, That all grants and conveyances of manors, lands, rents, reverſions, *&c.* by fine, or otherwiſe, ſhall be good without the attornment of the tenants of ſuch lands, or of the particular tenant upon whoſe eſtate any ſuch reverſion, *&c.* ſhall be expectant or depending; but notice muſt be given of the grant, to the tenant; before which he ſhall not be prejudiced by payment of any rent to the grantor, or for breach of the condition for non-payment. *Stat.* 4 *Ann. c.* 16. *ſ.* 9. And attornments of lands, *&c.* made by tenants to ſtrangers ſhall be void, and their landlord's poſſeſſion not affected thereby: though this ſhall not extend to vacate any attornment made purſuant to a judgment at law, or with conſent of the landlord; or on a forfeited mortgage, *&c.* by 11 *Geo.* 2. *c.* 19.

Attrapper, *(Fr.)* Taken, or ſeized. *Law Fr. Dict.*

Avage, or *aviſage,* A rent or payment by tenants of the manor of *Writtle* in *Eſſex,* upon St. *Leonard's* day, 6 *November,* for the privilege of pawnage in the lord's woods, *viz.* for every pig under a year old, an halfpenny; for every yearling pig, one penny; and for every hog above a year old, two-pence.

Avantagium, Profit and advantage.—Walterus *Cantuar. archiep. ad feodi firmam tradidit* Johanni *de B. terras in, &c. cum omnibus ſuis utilitatibus ac* avantagiis *inde provenientibus.* Regiſt. Eccl. Chriſti Cantuar. MS. anno 11 Ed. 2.

Auctionarii, *auxionarii,* Sellers, regrators, or retailers. *Placit. Parl.* 18 *Ed.* 1. But more properly brokers.

Audience Court, *(curia audientiæ Cantuarienſis)* Is a court belonging to the archbiſhop of *Canterbury,* having the ſame authority with the court of arches, though inferior to it in dignity and antiquity. It is held in the archbiſhop's palace; and in former times the archbiſhops were wont to try and determine a great many eccleſiaſtical cauſes in their own palaces; but before they pronounced their definitive ſentence, they committed the matter to be argued by men learned in the law, whom they named their auditors: and ſo in time it grew to one ſpecial man, who at this day is called *cauſarum negotiorumque* audientiæ *Cantuarienſis auditor officialis.* And to the office of auditor was formerly joined the chancery of the archbiſhop, which meddleth not with any point of contentious juriſdiction; that is, deciding of cauſes between party and party, but only ſuch as are of office, and eſpecially as are *voluntaria juriſdictionis,* as the granting the cuſtody of ſpiritualties, during the vacancy of biſhopricks, inſtitutions to benefices, diſpenſations, *&c.* but this is now diſtinguiſhed from the audience. The auditor of this court anciently by ſpecial commiſſion was *vicar general* to the archbiſhop, in which capacity he exerciſed eccleſiaſtical juriſdiction of every dioceſe becoming vacant within the province of *Canterbury.* 4 *Inſt.* 337. But now the three great offices of official principal of the archbiſhop, dean or judge of the peculiars, and official of the audience are, and have been for a long time paſt, united in one perſon under the general name of *dean of the arches,* who keepeth his court in Doctors Commons hall. *Johnſ.* 254.

The archbiſhop of *York* hath in like manner his court of audience. *Johnſ.* 255.

Audiendo & terminando, A writ, or rather a commiſſion to certain perſons, when any inſurrection or great riot is committed in any place, for the appeaſing and puniſhment thereof. *F. N. B.* 110. See *Oyer* and *Terminer.*

Audita Querela, Is a writ that lies where a man hath any thing to plead, but *hath not a day in court* to plead it: And it is uſually brought where one is bound in a ſtatute merchant, ſtatute ſtaple, or recogniſance, or judgment is given againſt him for debt, and his body in execution thereupon, at the complaint of the party upon ſuggeſtion of ſome juſt cauſe why execution ſhould not be granted; as a releaſe, or other exception. This writ is granted, by the lord chancellor, to the juſtices of either bench, willing them to grant ſummons to the county where the creditor lives, for his appearance before them at a certain day. *F. N. B.* 102. To writs of execution the defendant cannot plead; ſo that if there be any matter *ſince* the judgment, to diſcharge him of the execution, he is to have *audita querela;* upon which, the juſtices ſhall hear the complaint, and do right: and *audita querela* cannot be brought on a releaſe, until judgment is entered of record. 1 *Mod.* 111.

An *audita querela* is in nature of a ſuit in equity, where a perſon is charged with a debt that is paid, or releaſed, *&c. Cro. Jac.* 29. And there muſt be a charge and burthen come, or coming upon the party that is to have it, of which he ought by law to be diſcharged; and then it is to be in ſuch a caſe wherein he hath no other way to relieve himſelf. *Cro. Jac.* 29. *Cro. Eliz.* 44. And it may be brought againſt the proſecutor himſelf, and ſometimes againſt him and others that ought to bear part of the burthen with him. *Keilw.* 25.

On a ſtatute, the conuſor or his heir may bring *audita querela,* before execution is ſued out; but this may not be done by a ſtranger to the ſtatute, or a purchaſer of the land. 1 *Danv. Abr.* 630. 3 *Rep.* 13. If a leſſee covenants for him and his aſſigns to repair, and the leſſee aſſign over, and the covenant is broken; if the leſſor ſues one of them and recovers damages, and then ſues the other, he may bring *audita querela* for his relief. *Bro.* 74. And where a man hath goods from me by my delivery, and another takes them from him, ſo that he is liable to both our ſuits: and one of us ſue and recover againſt him, and then the other ſues him, his remedy is this writ. *Dyer* 232. One binds himſelf and his heirs in an obligation, if the obligee recover of the heir, and after ſue the executors for the ſame cauſe, *&c.* they may have the writ *audita querela. Plowd.* 439. If two joint and ſeveral obligors are ſued jointly, and both taken in execution, the death or eſcape of one will not diſcharge the other, ſo as to give him this action; but if ſuch obligors be proſecuted ſeverally, and a ſatisfaction is once had againſt one of them, or againſt the ſheriff upon the eſcape of one, the other may have it. *Hob.* 58. 5 *Rep.* 87. Judgment is had againſt a ſheriff on an eſcape of a perſon in execution, and after the firſt judgment is reverſed for error, the ſheriff ſhall have relief by *audita querela.* 8 *Rep.* 142.

If the plaintiff hath had ſatisfaction againſt one treſpaſſer, and he proceed to require it againſt the other, he ſhall have this writ. *Hob.* 66. But *qu.* if it may not be pleaded in bar? Where there is judgment againſt three, and one of them taken in execution, they may all join in *audita querela,* when they have cauſe to have the ſame. 3 *Cro.* 443. A plaintiff, that ſues as adminiſtrator, and recovers judgment and ſues out execution, has his letters of adminiſtration revoked; the defendant muſt be relieved by *audita querela. Style* 417. If one accepts of a leſſer ſum of money for a greater debt, and after the day, and yet ſues the bond; this writ will not lie, becauſe it lieth only where a diſcharge is in law. *Trin.* 18 *Jac.* 1. *B. R.* It may be brought by an infant in the *King's Bench* or *Common Pleas,* to avoid a ſtatute acknowledged by him whilſt he was within age. 1 *Cro.* 208.

If *A.* being within age becomes bail for *B.* and after two *ſcire fa.* and *nihil* returned, judgment is given againſt *A. &c.* he may have an *audita querela,* and avoid the recognizance, and ſo the judgment thereupon of conſequence ſhall be avoided. *Yelv.* 155.

But if *A.* being within age enters into a bond to *B.* who procures C. without any warrant, to appear for *A.* and confeſſes a judgment thereupon, yet *A.* ſhall not have an *audita querela,* but he muſt take his remedy by action of *diſceit* againſt the attorney. *Cro. Jac.* 694.

If a ſtatute be acknowledged to two, of which one is an infant, and they make a defeazance, and after ſue execution contrary to it, an *audita querela* ſhall be brought againſt both; for it does not appear within the deed that he was an infant; alſo the deed of an infant is only voidable, and peradventure he will affirm it. 1 *Rol. Abr.* 312.

The writ of *audita querela* may be had, where a recogniſance or ſtatute entered into is defective, and not good; or being upon an uſurious contract, by dureſs or impriſonment, or where there is a defeaſance upon it, &c. *Moor*, *ca*. 1097. 1 *Brownl*. 39. 2 *Bulſt*. 320. So upon ſhewing an acquittance of the cogniſee, on a ſuggeſtion that he had agreed to deliver up the ſtatute. 1 *Rol*. 309. Where one enters into a ſtatute, and after ſells his lands to divers purchaſers; or judgment is had againſt a man, who leaves land to ſeveral heirs, &c. and one of the purchaſers, or one heir alone is charged, he may have this writ againſt the reſt to contribute to him. 3 *Rep*. 44. 2 *Bulſt*. 15.

If tenant in tail acknowledges a ſtatute and dies, and the cogniſee ſues execution againſt the heir, he may avoid it by aſſiſe, without being put to his *audita querela*. 1 *Rol. Abr*. 304.

So if a diſſeiſor acknowledges a ſtatute, and the diſſeiſee enters, the cogniſee extends the land, the diſſeiſee is not put to his *audita querela* to avoid the extent; the conuſor having only a tortious and unlawful ſeiſin of the land, and conſequently no power to charge it. 1 *Rol. Abr*. 304.

But if *A*. be tenant for life, remainder to *B*. his ſon in tail, and *A*. enters into a recognizance to *C*. and dies; *C*. brings a *ſci. fac*. and *B*. is returned heir and tertenant, and warned, but makes default; he can have no *audita querela* to avoid this execution, becauſe he had a day given him in court to ſet aſide the recognizance, and it was his folly not to appear when warned. *Raym*. 19. 1 *Sid*. 54.

Where a ſtatute or recogniſance is acknowledged before one who hath not power to take it, and afterwards the cogniſor makes a feoffment of the land to another, and the cogniſee taketh out execution, in ſuch caſe the feoffee may have an *audita querela*, and avoid the execution. *Dyer* 27, 35.

If *A*. enters into a ſtatute to *B*. and pays the money at the day aſſigned, upon which the ſtatute is cancelled, and after *B*. forges a new ſtatute in the name of *A*. in this caſe *A*. may relieve himſelf by *audita querela*; for the forged ſtatute having all the eſſentials of a true one, the court was obliged to look on it as ſuch till the contrary appeared, which the cogniſor could not ſet forth before execution, having no day to appear judicially in court, and therefore is put to this writ to avoid the execution founded on the injuſtice of the pretended conuſee. *F. N. B*. 104.

If the conuſee of a ſtatute, upon agreement with the conuſor, delivers up the ſtatute in lieu of an acquittance, and after ſues execution, and the cogniſor prays a re-extent becauſe that the land was extended too low, and has it granted him, he ſhall never avoid the extent by *audita querela*; becauſe by his praying the re-extent he admits the ſtatute good and executory. 1 *Rol. Abr*. 313.

If upon an *elegit* the ſheriff takes an inquiſition, and there are ſeveral lands found ſubject to the extent, and ſeveral values found, and the ſheriff returns, that he has delivered ſome of the lands in particular for the moiety, where it appears according to the values found, that an equal moiety is not delivered to the party who recovered, but more than a moiety; yet this is not void, nor is it a diſſeiſin by the entry, but only voidable by *audita querela*, 1 *Rol. Abr*. 305.

If a man in execution upon a judgment for debt or damages, be delivered out of execution by the ſheriff or gaoler who hath him in execution, with the aſſent of him at whoſe ſuit he is in execution, and after, by colour of this judgment, he takes him again and puts him in priſon, an *audita querela* lies upon this matter, and thereupon he ſhall be delivered. 1 *Rol. Abr*. 307.

But if *A*. be in execution at the ſuit of *B*. and after *A*. eſcapes with the conſent of the ſheriff, and after *A*. returns to the priſon, and the ſheriff keeps him in priſon upon the ſaid execution, *A*. ſhall not be diſcharged by *audita querela*, for *B*. has it ſtill in his election to have him in execution at his ſuit, and ſhall not be compelled to take his remedy againſt the ſheriff for this voluntary eſcape, who perhaps may be worth nothing. 1 *Rol. Abr*. 307.

If a ſtatute be made to baron and feme, and they make a defeaſance, and ſue execution contrary to it, the *audita querela* ſhall be brought againſt both, although the defeaſance be void as to the wife; for this action is in lieu of an anſwer of the execution, which is ſued by both; and this is all one as if the baron alone had made the defeaſance, which would have been a ſufficient diſcharge. 1 *Rol. Abr*. 312.

If a ſtatute be acknowledged to a feme ſole and *J. S.* and after the feme takes huſband, and *J. S.* releaſes, and after execution is ſued, the *audita querela* may be brought againſt the baron and feme and *J. S.* 1 *Rol. Abr*. 312.

If two executors ſue execution for damages recovered by the teſtator, where one hath releaſed, an *audita querela* lies againſt both. 1 *Rol. Abr*. 312.

If *A*. cogniſee of a ſtatute releaſes to the tenant all right, intereſt, and demands, together with all ſuits and executions, and afterwards ſues execution, the tertenant ſhall have an *audita querela* to ſet aſide this execution. *Cro. Eliz*. 40. 1 *And*. 133.

So in treſpaſs or other action, if it be found for the plaintiff by *niſi prius*, and after, before the day in bank, the plaintiff releaſes to the defendant, and after judgment is given for the plaintiff, the defendant ſhall have an *audita querela* upon this matter; becauſe he could not plead the releaſe at the day in bank. 1 *Rol. Abr*. 307.

In an *audita querela*, the proceſs is a *venire facias*, *diſtringas*, *alias*, *pluries*, and if *non eſt inventus* be returned, or *that he hath nothing*, the plaintiff ſhall have a *capias* againſt the defendant. *F. N. B*. 104. *Dyer*, 297. *b*.

If an *audita querela* is founded on a record, or the perſon bringing it is in cuſtody, the proceſs upon it is a *ſcire facias* but if founded on matter of fact, or the party is at large, then the proceſs is a *venire*. 1 *Salk*. 92.

And if there be a default by the defendant upon a *ſcire feci*, or two *nihils* returned, the plaintiff ſhall have judgment. 1 *Salk*. 93. But, where an *audita querela* is ſued *quia timet*, and the party is at large, there ſhall never be a *ſcire facias*. 1 *Salk* 92.

Adjudged, that where the party hath ſome matter which he might have pleaded to the *ſci. fa.* in his diſcharge, and two *nihils* are returned, and judgment againſt him, the *court* will *relieve him upon motion*, without putting him to bring an *audita querela*. 1 *Salk*. 93.

An *audita querela* ſhall be granted out of the court, where the record upon which it is founded, remains, or it may be returnable in the ſame court. *F. N. B*. 105. *b*. And therefore if a man recover in *B. R.* or *C. B.* the defendant having a releaſe after judgment, and before execution, ſhall ſue the *audita querela* out of *B. R.* or *C. B.* where the record is. *F. N. B*. 105. So, if a recognizance be acknowledged in *C. B.* and execution be ſued upon it after releaſe, the defendant ſhall ſue the *audita querela* out of *C. B. F. N. B*. 105. But an *audita querela* may be by original, and upon a judgment in *C. B.* It goes out of chancery returnable in *C. B. F. N. B*. 105.

The writ of *audita querela* ſhall be allowed only in open court. 1 *Bulſt*. 140. 2 *Bulſt*. 97. 2 *Show*. 240.

Upon *audita querela* brought, a *ſuperſedeas* ſhall go to ſtay execution: and the judgment in this action is to be diſcharged of execution. *Hob*. 2. If an *audita querela* be unduly gotten, upon a falſe ſurmiſe, it may be quaſhed. 1 *Bulſt*. 140. *This writ lies* not *after judgment upon a matter which the party might have pleaded before*. *Cro. Eliz*. 35. A bare ſurmiſe is not ſufficient to avoid a judgment; but generally ſome ſpecialty muſt be ſhewn. *Cro. Jac*. 579. Upon a releaſe or other deed pleaded, no *ſuperſedeas* will be granted till the plaintiff in the *audita querela* hath brought his witneſſes into court to prove the deed: and if execution be executed before, bail is to be put in by allowance of the court. 1 *Lill. Abr*. 151.

Upon a motion for an allowance of an *audita querela*, it was held, that *bail muſt be given in court*, and not elſewhere, unleſs in caſes of neceſſity, to be allowed by the court, and then it may be put in before two judges. *Palm*. 422.

And by bail the party is in cuſtody of the law, and if he make not out his *audita querela*, he muſt render his body in execution again, or pay the debt for which he is in execution, or elſe his bail muſt pay it. If after judgment againſt bail, the judgment againſt the principal is reverſed, or the money paid by the principal; the bail may have *audita querela*. *Cro. Jac.* 645. 8 *Rep.* 143. And it may be brought by the bail to avoid an execution againſt them, where no proceſs is ſued forth againſt the principal in his life-time, *&c.* *Goldſb.* 174. Where a plaintiff in *audita querela* gets judgment, he ſhall have reſtitution of his goods, though taken in execution before the writ brought. *Sid.* 74.

A man nonſuited in an *audita querela*, may have a new writ. *F. N.* B. 104. When lands are extended on any ſtatute, *&c.* before the time, *audita querela* lieth. 22, 46 *E.* 3. A writ in the nature of an *audita querela*, has been made out returnable in *B. R.* on a ſpecial pardon, ſetting forth the whole matter. *Jenk. Cent.* 109 And in ſome caſes after a judgment, the *court will relieve the party on motion*, without *audita querela*. 1 *Salk.* 93.

A writ of *audita querela*.

GEORGE *the Third*, &c. *To our juſtices aſſigned to hold pleas before us, greeting. We having received information, by the grievous complaint of* A. B. *That whereas* C. D. *in* Eaſter *term*, &c. *and now hath to the damage of the ſaid* A, &c. *wherefore the ſaid* A. *hath beſought us to provide him relief, and being unwilling that the ſaid* A. *ſhould be any ways injured, and deſirous that what is right and juſt ſhould be done in this caſe: We command you, that in order to hear the complaint of the ſaid* A. *you call before you the aforeſaid parties, and ſuch others as it ſhall ſeem meet to you to convene; and having heard the aforeſaid parties, and their ſeveral reaſons, you cauſe to be done full and ſpeedy juſtice to the ſaid parties, which of right, and according to the laws and cuſtoms of our kingdom, you ſhall ſee ought to be done.* Witneſs, &c.

Auditor, *(Lat.)* Is an officer of the king, or ſome other great perſon, who examines yearly the accounts of all under-officers, and makes up a general book, which ſhews the difference between their receipts and charge, and their ſeveral allowances, commonly called *allocations*: as the *auditors* of the *exchequer* take the accounts of thoſe receivers who collect the revenues. 4 *Inſt.* 106. Receivers general of fee-farm rents, *&c.* are alſo termed *auditors*, and hold their *audits* for adjuſting the accounts of the ſaid rents at certain times and places appointed. And there are *auditors* aſſigned by the court to *audit* and ſettle accounts in actions of account, and other caſes, who are proper judges of the cauſe, and pleas are made before them, *&c.* 1 *Brownl.* 24.

Auditor of the Receipts, An officer of the *exchequer*, that files the tellers bills, and having made an entry of them, gives the lord treaſurer, *&c.* weekly, a certificate of the money received; he makes debentures to the tellers, before they pay any money; and takes their accounts: he alſo keeps the *black book* of receipts, and the treaſurer's key of the treaſury, and ſeeth every teller's money locked up in the treaſury 4 *Inſt.* 107.

Auditores, Is the ſame with *audientes, i. e.* the catechumens, or thoſe who were newly inſtructed in the myſteries of the chriſtian religion before they were admitted to baptiſm; and *auditorium* is that place in the church where they ſtood to hear, and be inſtructed. 'Tis what we now call *navis eccleſiæ*: and in the primitive times, the church was ſo ſtrict in keeping the people together in that place, that the perſon who went from thence in ſermon time was excommunicated. *Blount.*

Auditors of the Impreſt, Are officers in the *exchequer*, who have the charge of *auditing* the great accounts of the king's cuſtoms, naval and military expences, of the *mint*, *&c.* and any money *impreſſed* to men for his majeſty's ſervice. *Pract. Excheq.* 83.

Avenage. (from the Lat. *avena)* A certain quantity of oats paid by a tenant to his landlord as a rent, or in lieu of ſome other duties.

Avenor, *(avenarius*, from the Fr. *avoine, i. e.* oats) Is an officer belonging to the king's ſtables, that provides oats for his horſes; he is mentioned 13 *Car.* 2. *cap.* 8.

Aventura, *Adventures* or trials of ſkill at arms, and ſignifies military exerciſes on horſeback.—*Aſſiſa de armis* 36 *Hen.* 3. *Brady's Append. Hiſt. Eng.* 250. And 'tis mentioned in *Addit. Mat. Pariſ. p.* 149. *Quod nulli conveniant ad turniandum, vel burdandum nec ad alias quaſcunque* aventuras.

Aventure, (properly *adventure)* A *miſchance* cauſing the death of a man: as where a perſon is ſuddenly drowned, or killed by any accident, without felony. *Co. Lit.* 391.

Avera, (*quaſi overa*, from the Fr. *ouvre* and *ouvrage*, *velut* operagium) ſignifies a days work of a ploughman, formerly valued at 8*d.* It is found in *domeſday*. 4 Inſt. 269.

Average, *(averagium)* Is ſaid to ſignify ſervice which the tenant owes to his lord by horſe or carriage: but it is more commonly uſed for a contribution that merchants and others make towards their loſſes, who have their goods caſt into the ſea for the ſafeguard of the ſhip, or of the other goods and lives of thoſe perſons that are in the ſhip, during a tempeſt. It is in this ſenſe called *average*, becauſe it is proportioned and allotted after the rate of every man's goods carried. By the laws of the ſea, in a ſtorm, when there is an extreme neceſſity, the goods, wares, guns, or whatſoever elſe is on board the ſhip, may (by conſulting the mariners) be thrown over-board by the maſter, for the preſervation of the ſhip; and it ſhall be made good by *average* and contribution. *Mo.* 297. But if the maſter takes in more goods than he ought, without leave of the owners and freighters, and a ſtorm ariſeth at ſea, and part of the freighters goods are thrown over-board, the remaining goods are not ſubject to *average*; but the maſter is to make good the loſs out of his own eſtate: and if the ſhip's gear or apparel be loſt by ſtorm, the ſame is not within the *average*. *Leg. Rhod.*

If goods are caſt over-board before half the voyage is performed, they are to be eſtimated at the price they coſt: but if they are ejected afterwards, then at the price as the reſt are ſold at the port of arrival. *Leg. Oleron.* Where goods are given to pirates by way of compoſition to ſave the reſt, there ſhall be *average*, by the civil law. *Moor* 297.——*Average* is likewiſe a ſmall duty, paid to maſters of ſhips when goods are ſent in another man's ſhip, for their care of the goods, over and above the freight——*Paying ſo much freight for the ſaid goods, with primage and* average *accuſtomed.* Words in bills of lading.

Average of Corn Fields, The ſtubble or remainder of ſtraw and graſs left in corn fields after the harveſt is carried away. In *Kent* it is called the *gratten*, and in other parts the *roughings*, *&c.*

Aver Corn, Is a reſerved rent in *corn*, paid by farmers and tenants to religious houſes: and ſignifies by *Somner* corn drawn to the lord's granery, by the working cattle of the tenant. 'Tis ſuppoſed that this cuſtom was owing to the Saxon *cyriac ſceat*, church ſeed, a meaſure of *corn* brought to the prieſt annually on St. *Martin's* day, as an oblation for the firſt-fruits of the earth: under which title the religious had corn-rent paid yearly; as appears by an inquiſition of the eſtate of the abbey of *Glaſtonbury. A. D.* 1201.

Aver Land, Seems to have been ſuch lands as the tenants did plough and manure, *cum* averiis *ſuis*, for the proper uſe of a monaſtery, or the lords of the ſoil. *Mon. Angl.*

Aver Penny, (or *average penny)* Money paid towards the king's *averages* or carriages, or to be freed thereof.—Aver peny *hoc eſt, quietum eſſe de diverſis denariis pro averagiis domini regis.* Raſtal.

Aver Silver, A cuſtom or rent formerly ſo called. *Cowel.*

Averia, Cattle: *Spelman* deduces the word from the Fr. *ouvrer*, to work, as if chiefly working cattle: though it ſeems to be more probably from *avoir*, to have or poſſeſs: the word ſometimes including all perſonal eſtate, as *catalla* did all goods and chattels, This word is uſed for oxen or horſes of the plough; and in a general ſenſe any cattle.——*Homines per* averia *ſua, viz. Equos & boves, & affros graviter diſtrixit. W. Thorn, in Ed.* 2. 'Tis uſed in the ſame ſenſe in *W.* 2. *c.* 18. Averia *elongata*; ſee *Elongata.*

Averiis Captis in Withernam, A writ for the taking of cattle to his uſe, who hath cattle unlawfully diſtrained by another, and driven out of the county where they were taken, ſo that they cannot be replevied by the ſheriff. *Reg. Orig.* 82. If the cattle are put into any ſtrong place in the ſame county, the ſheriff may take the *poſſe comitatus*, and break into it, to make the replevin. But when they are driven out of the county, he hath no authority to purſue them. *Vide* 1 & 2 *P. & M. c.* 12.

Averment, (*verificatio*, from the Fr. *averer, i. e. verificare, teſtari*) Is an offer of the defendant to make good or juſtify an exception pleaded in abatement or bar of the plaintiff's action: and it ſignifies the act, as well as the offer of juſtifying the exception; and not only the form, but the matter thereof. *Co. Litt.* 362. *Averment* is either general, or particular; general, which concludes every plea, &c. or is in bar, or in a replication, or other pleadings, containing matter affirmative, and ought to be with theſe words, *and this he is ready to verify*, &c. Particular *averment* is when the life of tenant for life, or of tenant in tail, &c. is *averred. Ibid.*

In replevin the defendant made cogniſance as bailiff to baron and feme, he being *ſeiſed in right of the feme for rent in aretro exiſten'*; the plaintiff demurr'd ſpecially; for that the *life of the wife was not averr'd*. But *Hale* Ch. J. held, that the rent in *aretro exiſten'* is *quaſi* an averment, and after verdict, or upon a general demurrer, had been good; and *Twiſden* and *Wild* held it good enough on a ſpecial demurrer, which *Hale* doubted, and judgment was for the cogniſor. 2 *Lev.* 88.

He that *claims eſtate from tenant for life, or in tail, or from parſon of a church*, ought to aver his life. *Br. Eſtate. pl.* 18.

Where one thing is to be done in conſideration of another, on contracts, &c. there muſt be an *averment* of performance, but where there is promiſe againſt promiſe, there needs no *averment*; for each party hath his action. 1 *Lev.* 87. The uſe of *averment* being to aſcertain what is alledged doubtfully, deeds may ſometimes be made good by *averment*, where a perſon is not certainly named; but when the deed itſelf is void for incertainty, it cannot be made good by *averment*. 5 *Rep.* 155. *Averment* cannot be made againſt a record, which imports in itſelf an uncontrolable verity. *Co. Lit.* 26.

Where a *ſtatute* is recited, there one may not aver that that there is no ſuch record; for generally an averment, as this is, doth not lie againſt a record; for a record is a thing of ſolemn and high nature, but an averment is but the allegation of the party, (21 *Car. B. R.*) and not ſo much credit in law to be given to it. *Lil. P. R.* 155.

Where D. has *appeared as* an *attorney for A.* in an action brought by *A.* againſt B. *it cannot be aſſigned* for error, *that D. was not* an *attorney*, or that there is *no ſuch perſon in rerum natura*; for it is againſt the record; and the admittance of him for an attorney by the court, makes him an attorney, if he was not an attorney before this admittance; in a writ of error brought in this ſuit, and error aſſigned *ut ſupra*, the defendant in the writ of error in this caſe pleads *in nullo eſt erratum*; this does not confeſs that he was not an attorney; but this plea *eſt quaſi* a demurrer, that this is not an error at all; adjudged and affirmed in error. *Jenk.* 232.

Averment lies not againſt the *proceedings of a court of record*. 2 *Hawk. P. C. c.* 1. *ſect.* 14. Nor ſhall it be admitted againſt a will concerning lands. 5 *Rep.* 68. And an *averment* ſhall not be allowed where the intent of the teſtator cannot be collected out of the words of the will. 4 *Rep.* 44. One may not aver a thing contrary to the condition of an obligation, which is ſuppoſed to be made upon good deliberation, and before witneſſes, and therefore not to be contradicted by a bare *averment*. 1 *Lill. Abr.* 156.

An *averment* of a wicked and unlawful conſideration of giving a bond, may well be pleaded, though it doth not appear on the face of the deed: and any thing which ſhews an obligation to be void may well be averred, although it doth not appear on the face of the bond. Adjudged on demurrer, after two arguments in the caſe of *Collins* and *Blantern*, *C. B. Eaſter*, 7 *Geo.* 3. *Wilſon, par.* 2. *fo.* 347, &c.

N. B. The plea in this caſe was ſettled by *Lord Lifford*, now *Chancellor* of *Ireland*, then Mr. ſerjeant *Hewitt*, and afterwards peruſed and ſigned by Mr. ſerjeant *Glyn*, Mr. ſerjeant *Hewitt* being made a *judge* of *B. R.* before the plea was delivered. *Vide* the plea, *fo.* 345. *Wilſon.*

One cannot avoid a ſtatute-merchant, obligation, releaſe, &c. againſt the party himſelf named in it, by averring a delivery *thereof upon condition*, unleſs he ſhews a writing of the condition. *Br. Faits, pl.* 10. *Sed qu.* for defendant may plead that the bond was delivered as an *eſcrow*, to be delivered upon a certain condition to the obligee. *Wilſ. par.* 2. *fo.* 347.

But 'tis otherwiſe *in detinue* againſt a ſtranger, where the thing is bailed into an indifferent hand; *nota* the diverſity; for there it is averrable contrary againſt the party himſelf. *Br. Faits, pl.* 10.

If an heir is ſued on the bond of his anceſtor, it muſt be *averred* that the heirs of the obligor were expreſly bound. 2 *Saund.* 136. In declaring you ſhew that the obligor bound his heirs. Another conſideration than mentioned in a deed, may be *averred*, where it is not repugnant or contrary to the deed. *Dyer* 146. But a conſideration may not be *averred*, that is againſt a particular expreſs conſideration; nor may *averment* be againſt a conſideration mentioned in the deed, that there was no conſideration given. 1 *Rep.* 176. 8 *Rep.* 155. No *averment* will lie upon a deed of another uſe, againſt the uſes expreſſed in the deed; but where no uſe is expreſſed, or but uncertainly, an *averment* ſhall be admitted, and may ſerve for addition or explication. 2 *Rep.* 75. But *vide* caſe of *Collins* and *Blantern*, before referred unto. If an eſtate is made to a woman that hath a huſband, by fine or deed, for her life; in this caſe it may be *averred* to be made to her for her jointure, although there be another uſe or conſideration expreſſed. 4 *Rep.* 4. *Averment* may be of a uſe upon any fine, or common recovery; though not of any other uſe than what is expreſſed in it: it may be received to reconcile a fine, and the indenture to lead the uſes. *Dyer* 311. 2 *Bulſt.* 235. 1 *And.* 312.

If one has *two manors known by the name of W.* and *levies a fine* of his manor of *W.* he ſhall by averment *aſcertain* which of them it was; *per cur.* 6 *Mod.* 235.

Two manors were known by the name of *W.* and ſometimes diſtinguiſhed with an *alias*; an *annuity* of 200*l. per ann.* is *granted* out of the manor of *W.* one of them is but 80*l. per ann.* and the other of more than the annuity. It is a good averment in law, that the greater manor ſhould be liable to the rent-charge. *Chan. Rep.* 138.

If a piece of ground was anciently called by one name, and of late is called by another, and it is granted to me by this new name; an *averment* may be taken that it is all one thing, and it will make it good. *Dyer* 37, 44. No *averment* lies againſt any returns of writs, that are definitive to the trial of the thing returned; as the return of a ſheriff upon his writs, &c. But it may be where ſuch are not definitive; and againſt certificates upon commiſſions out of any court: alſo againſt the returns of bailiffs of franchiſes, ſo that the lords be not prejudiced by it. *Dyer* 348. 8 *Rep.* 121. 2 *Cro.* 13. When certainty is expreſſed by argument and implication in pleading, there it need not be *averred*. 2 *Bulſt.* 95. 142.

In an action on the caſe for theſe words, viz. *Thy ſon hath robbed me*, the plaintiff cannot maintain the action, without averring, that the defendant had no more ſons; but if the words had been ſpoken to the *ſon* inſtead of the *father* or *to the wife*, viz. *Thy father hath robbed me*, &c. there needs no averment, becauſe a ſon can have but one father, and a huſband but one wiſe. 2 *Cro.* 443.

The father having two ſons, both of one name, levied a fine of lands to the uſe of *W.* his ſon and his heirs; in this caſe the judges cannot take notice to which of his ſons the land doth belong; but if the party averreth, that the cogniſor had two ſons, named *W.* the elder, and

W. the younger, and that his intent was to levy the fine to *W.* the younger, this averment is good, it being of matter of fact not apparent in the fine, but out of it, and therefore it ſhall be tried by a jury: but if a man, by deed executed under his hand and ſeal, giveth goods to one of the ſons of *G. D.* who hath ſeveral ſons at that time, there an averment ſhall not be allowed which ſon he meant; becauſe the deed itſelf being void for incertainty, it cannot be made good by an averment. 5 *Rep.* 155.

A ſpecial *averment* muſt be made upon the pleading of a general pardon, for the party to bring himſelf within the pardon. *Hob.* 67. A perſon may *aver* he is not the ſame perſon on appeal of death in favour of life. 1 *Nelſ. Abr.* 305.

Where a man is to take a benefit by an *act of parliament*, there in pleading he muſt *aver, that he is not a perſon excepted*; but where he claims no benefit by it, but only to keep that which he had before, in ſuch caſe 'tis not neceſſary to make ſuch averment. *Plow. Com.* 488.

In an action upon the ſtatute 32 *H.* 8. *c.* 9. againſt buying pretended titles, if the plaintiff declares, that the defendant, or any of his anceſtors, or any other perſon under whom he claims, were not in poſſeſſion of the land, nor received the rents, &c. by the ſpace of a year, &c. he need not aver, that the title is pretended, becauſe the ſtatute makes it ſo; and therefore 'tis impertinent to aver a thing which clearly appears both by the ſtatute and the declaration. *Plow. Com.* 87.

Pleas merely in the negative, ſhall not be *averred*, becauſe they cannot be proved: nor ſhall what is againſt preſumption of law, or any thing apparent to the court. *Co. Lit.* 362, 373. The ſtatute of *Weſtm.* 2. 13 *Ed.* 1. gives the *averment*, not ſummoned according to law, &c. on a bond given to the ſheriff or gaoler, contrary to the 23 *H.* 6. *c.* 9. there may be *averment* by that ſtatute: upon bonds for uſury, the uſury may be *averred* by virtue of 13 *Eliz. c.* 8. And ſo in caſe of ſimony. *Stat.* 31 *Eliz. c.* 6. But there is no *averment* of maintenance. *Jenk. Cent.* 94, 108, 121. By ſtatute, no exception or advantage ſhall be taken upon a demurrer, for want of *averment* of *hoc paratus eſt*, &c. except the ſame be ſpecially ſet down for cauſe of demurrer. 4 & 5 *Ann. c.* 16.

Averrare. To carry goods in a waggon, or upon loaded horſes, a duty required of ſome cuſtomary tenants.——*Debent fruges domini metere, prata falcare, & carriare &* averrare. Cartular. Glaſton. MS. f. 4.

Augea, A ciſtern for water.——*Epiſcopus* B. *concedit civibus* W. *unum caput pro conductu aquatico cum* augeis *ſuſpiralibus, & cæteris machinis, ſub & ſuper terraneis.* A. D. 1451. Reg. Eccl. Well. MS.

Augmentation, *(augmentatio)* The name of a court erected 27 *H.* 8. for determining ſuits and controverſies relating to monaſteries and abbey lands. The intent of this court was, that the king might be juſtly dealt with touching the profits of ſuch religious houſes, as were given to him by act of parliament. It took its name from the *augmentation* of the revenues of the crown, by the ſuppreſſion of religious houſes: and the office of *augmentation*, which hath many curious records remains to this day, though the court hath been long ſince diſſolved. *Terms de Ley* 68.

Aviſamentum, Advice, or counſel——*De* aviſamento *& conſenſu concilii noſtri conceſſimus,* &c. was the common form of our kings grants.

Aula, *i. e.* A court-baron, *aula ibidem tent. die,* &c. Aula *eccleſiæ* is that which is now termed *navis eccleſiæ.* Eadm. lib. 6. p. 141.

Aulnage. See **Alnage.**

Aumone, (Fr. *aumoſne*, alms) Tenure in *aumone* is where lands are given in alms to ſome church, or religious houſe, upon condition that a ſervice or prayers ſhall be offered at certain times for the repoſe of the donor's ſoul. *Brit.* 164. Vide *Frankalmoign.*

Auncel-weight, *(quaſi hand ſale weight*, or from *anſa*, the handle of the balance) An antient manner of *weighing*, by the hanging of ſcales or hooks at each end of a beam or ſtaff, which by lifting up in the middle with one's finger or hand, diſcovered the equality or difference between the *weight* at one end and the thing *weighed* at the other. This *weighing*, being ſubject to great deceit, was prohibited by ſeveral ſtatutes, and the even balance commanded in its ſtead, 25 *Ed.* 3. *ſt.* 5. *c.* 9. 27 *Ed.* 3. *ſt.* 2. *c.* 10. 34 *Ed.* 3. *c.* 5. And ſee 8 *H.* 6. *c.* 5. and 22 & 23 *Car.* 2. *c.* 12. But notwithſtanding it is ſtill uſed in ſome parts of *England:* and what we now call the *ſtilliards*, a ſort of hand-weighing among butchers, being a ſmall beam with a *weight* at one end, (which ſhews the pounds by certain notches) ſeems to be near the ſame with the *auncel-weight.*

Aunciatus, A word ſignifying antiquated.——*Sicut charta eorum* aunciata *eſt et libertas anterior.* Brompton, lib. 2. cap. 24. par. 6.

Avoidance, In the general ſignification, is when a benefice is void of an incumbent; in which ſenſe it is oppoſed to plenarty. Avoidances are either in *fact*, as by death of the incumbent; or in *law:* and may be by ceſſion, deprivation, reſignation, &c. In the firſt caſe,

Where the avoidance is by the *death of the incumbent*, or by his being made a *biſhop*, in ſuch caſes the patron is to take *notice* of it at his peril; and the ſix months, in which he is to preſent another, ſhall be accounted from the *death of the one*, and the *creation of the other*; but if the avoidance be by *reſignation*, which is the act of the party himſelf, or by *deprivation* which is the act of the law, in both thoſe caſes the patron muſt have notice, and the ſix months ſhall be accounted from the *time of the notice*, and not from the *reſignation* or *deprivation. Dyer* 327.

Where the patron himſelf took *notice* of a *deprivation*, which was obtained at his own proſecution, for not *reading the thirty-nine* articles; yet, in ſuch caſe, *lapſe* ſhall not incur, without an actual notice of the deprivation given to him by the biſhop; for 'tis he, and no other perſon, who is required by the law to give notice, and it muſt not be a general notice, but it muſt be particular, and the cauſe be expreſſed for which he was *deprived.* 6 *Rep.* 29.

Where the biſhop *refuſeth* to inſtitute a clerk, he muſt give notice of ſuch refuſal to the patron himſelf, if he is within that county where the church is become void; but if he is not in that county, then notice muſt be given at the door of that church; but where 'tis doubtful who is patron, and upon *jus patronatus* awarded, 'tis found, that ſuch a one is patron, though it may happen he is not the true patron, yet if he gives him notice, and no preſentation is made within ſix months after ſuch notice, the biſhop may collate to the church; and though that collation ſhall not bind the true patron, yet the biſhop ſhall be excuſed from being a diſturber. 1 *Leon.* 32.

There are *avoidances* by *act of parliament*, wherein there muſt be a judicial ſentence pronounced to make the living void: if a man hath one benefice with cure, &c. and take another with cure without any diſpenſation to hold two benefices, in ſuch caſe the firſt is void by the act 21 *Hen.* 8. *c.* 13. if it was above the value of 8 *l.* During an avoidance, it is ſaid that the houſe and glebe of the benefice are in *abeyance:* but by the *Stat.* 28 *Hen.* 8. *cap.* 11. The profits ariſing during the avoidance are given to the next incumbent towards payment of the firſt fruits; though the ordinary may receive the profits to provide for the ſervice of the church, and ſhall be allowed the charges of ſupplying the cure, &c. for which purpoſe the churchwardens of the pariſh are uſually appointed. The next avoidance of a church may be granted by deed, where the church is full: if a grant be made of the next avoidance when it ſhall happen, and the church is void at that time, this will make the grant void as to that very avoidance, but it may be good for the next turn after that.

And the diſtinction which hath obtained is this: if it come in queſtion, whether the church be full of an incumbent or not, the ſame ſhall be tried by the certificate of the biſhop, who beſt knows of the inſtitution; but if the iſſue to be tried be, whether the church be void or not, the ſame ſhall be tried by a jury at the Common law, unleſs the iſſue to be tried be upon ſome ſpecial act of avoidance, for then the ſame ſhall be tried by the certificate of the biſhop, ſo as the ſpecial cauſe of the avoidance be ſpiritual. *Gib.* 793. *Hughes, c.* 13. 1 *Burn E. L.* 78. And ſee 25 *Ed.* 3. *ſt.* 3. *c.* 8.

If a clerk is *inſtituted* to a benefice of the yearly value of 8*l.* and before induction accepts another benefice with cure, and is inſtituted, the firſt benefice is void by the ſtatute 21 *H.* 8. *c.* 13. for he who is *inſtituted*, only, is properly ſaid to have accepted a benefice within the words of the act. 4 *Rep.* 78.

The patron granted the *next avoidance to two jointly* and *ſeverally*; adjudged, that this grant is not good, becauſe an intereſt cannot be divided; ſo where there was a grant of the next avoidance to three, *habendum* to them and to each of them jointly and ſeverally, the firſt preſented the third, and adjudged good; but if the *biſhop* had refuſed to admit the preſentee, he might have failed in a *quare impedit*, becauſe the ſeverance in the *habendum* is void in law; but it is otherwiſe in caſe of an *authority*, for that may be divided. *Goldſ.* 142.

But if he is *inducted* into a ſecond benefice, the firſt is void *in facto et jure*, and not voidable only, *quoad* the patron, and until he preſents another; and in ſuch caſe the patron ought to take notice of the avoidance at his peril, and preſent within the ſix months. *Cro. Car.* 258.

A grant of the next avoidance is no more than a chattel, and goes to executors. *Right Clerg.* 68.

Avoirdupois, or *averdupois*, (Fr. *avoir du poids*, i. e. *habere pondus*, *aut juſti eſſe ponderis)* Signifies a weight different from that which is called troy weight, which contains but twelve ounces in the pound, whereas this hath ſixteen ounces: and in this reſpect it is probably ſo called, becauſe is is of greater weight than the other. It alſo ſignifieth ſuch merchandizes as are weighed by this weight; and is mentioned in divers ſtatutes, as 9 *Ed.* 3. 27 *Ed.* 3. *c.* 10. 2 *R.* 2. *c.* 1. *Averium ponderis*, full weight, or *avoirdupois.* Cart. 3 Ed. 2.

Avowee, Of a church benefice. *Britt. c.* 29. See *Advowee*.

Avowry, (Fr. *advouerie)* Is where a man takes a diſtreſs for rent or other thing, and the party on whom taken ſues forth a *replevin*, then the taker ſhall juſtify his plea for what cauſe he took it; and if in his own right, he muſt ſhew the ſame, and *avow* the taking; but if he took it in right of another, he muſt make *cogniſance* of the taking, as bailiff or ſervant to the perſon in whoſe right he took the ſame. *Terms de Ley* 70 2 *Lill.* 454. The *avowry* muſt contain ſufficient matter for judgment to have return: but ſo much certainty is not required in an *avowry* as in a declararation; and the *avowant* is not obliged to alledge ſeiſin within the ſtatute of limitations. Nor ſhall a lord be required to *avow* on any perſon in certain; but he muſt alledge ſeiſin by the hands of ſome tenant within forty years. 21 *Hen.* 8. *c.* 19. 1 *Inſt.* 268. In *avowry* ſeiſin in law is ſufficient, ſo that where a tenant hath done homage or fealty, it is a good ſeiſin of all other ſervices to make an *avowry*, though the lord, &c. had not ſeiſin of them within ſixty years. 32 *H.* 8. *cap.* 2. 4 *Rep.* 9. A man may diſtrain and *avow* for rent due from a copyholder to a lord of a manor; and alſo for heriots, homage, fealty, amercements, &c. 1 *Nelſ. Abr.* 315.

If a perſon makes an *avowry* for two cauſes, and can maintain his *avowry* but for one of them, it is a good *avowry:* and if an *avowry* be made for rent, and it appears that part of it is not due, yet the *avowry* is good for the reſt. Suppoſing ſufficient rent due to juſtify a diſtreſs. An *avowry* may be made upon two ſeveral titles of land, though it be but for one rent; for one rent may depend upon ſeveral titles. 1 *Lill. Abr.* 157. *Saund.* 285. If a man takes a diſtreſs for rent reſerved upon a leaſe for years, and afterwards accepts a ſurrender of the lands, be may nevertheleſs *avow*, becauſe he is to have the rent due, notwithſtanding the ſurrender. 1 *Danv. Abr.* 652. Where tenant in tail aliens in fee, the donor may *avow* upon him, the reverſion being in the donor, whereunto the rent is incident. *Ibid.* 650. If there be tenant for life, remainder in fee, the tenant for life may compel the lord to *avow* upon him: but where there is tenant in tail, with ſuch remainder, and the tenant in tail makes a feoffment, the feoffee may not compel the lord to *avow* upon him. 1 *Danv. Abr.* 648. *Co. Lit.* 268. If the tenant enfeoffs another, the lord ought to *avow* upon the feoffor for the arrearages before the feoffment, and not upon the feoffee. 1 *Danv.* 650. The lord may *avow* upon a diſſeiſor. 20 *Hen.* 6. And if a man's tenant is diſſeiſed, he may be compelled to *avow*, by ſuch tenant or his heir. A defendant in replevin may *avow* or juſtify; but if he juſtifies he cannot have a return. 3 *Lev.* 264. The defendant need not *aver* his *avowry* with an *hoc paratus eſt*, &c. The *avowant* ſhall recover his damages and coſts, by 21 *Hen.* 8. *c.* 19. By which ſtatute it is enacted, That if in any *replegiare* for rents, &c. the *avowry*, cogniſance, or juſtification be found for the defendant, or the plaintiff be nonſuit, &c. the defendant ſhall recover ſuch damages and coſts as the plaintiff ſhould have had, if he had recovered. And by 17 *Car.* 2. *c.* 7. When a plaintiff ſhall be nonſuit before iſſue in any ſuit of replevin, &c. removed or depending in any of the courts at *Weſtminſter*, the defendant making ſuggeſtion in the nature of an *avowry* for rent, the court on prayer ſhall award a writ to inquire of the ſum in arrear, and the value of the diſtreſs, &c. Upon return whereof the defendant ſhall recover the arrears, if the diſtreſs amounts to that value, or elſe the value of the diſtreſs with coſts; and where the diſtreſs is not found to the value of the arrears, the party may diſtrain for the reſidue. *Vide* 17 *Car.* 2. *c.* 7. The learning of *avowries* is abridged by the *Stat.* 21 *H.* 8. *c.* 19. and the intricacies of proceſs in *replevin*, &c. much remedied in caſes of diſtreſſes for rent, by the 17 *Car.* 2. *c.* 7. *Vide* 11 *Geo.* 2. *c.* 19. *ſ.* 22. See **Diſtreſs** and **Replevin.**

Aures, A puniſhment by the *Saxon* laws of cutting off the ears, inflicted on thoſe who robbed churches, or were guilty of any other theft. *Fleta*, *lib.* 1. *c.* 38. *par.* 10. And this puniſhment alſo extended to many other crimes as well as theft. *Upton de Militari Officio*, *page* 140.

Auricularius, A ſecretary.—*Quem ſibi* amicularium & auricularium *conſtituerat*. Mon. Angl. p. 120.

Aurum Reginæ, The queen's gold. *Rot. Parl. Ann.* 52 *H.* 3. Vide *Black. Com.* 1 *V.* 221.

Auſcultare. Formerly perſons were appointed in monaſteries to hear the monks read, and direct them how, and in what manner they ſhould do it with a graceful tone or accent, to make an impreſſion on their hearers, which was required before they were admitted to read publickly in the church; and this was called *auſcultare*, *viz.* to read or recite a leſſon.—*Quicunque lecturus vel cantaturus eſt aliquid in monaſterio, ſi neceſſe habeat, ab eo, (viz. Cantore) priuſquam incipiat, debet* auſcultare. *Lanfrancus in Decretis pro ordine Benedict. c.* 5.

Auſturcus, and *Oſturcus*, A goſhawk; from whence we uſually call a faulkoner, who keeps that kind of Hawks, an *oſtringer*. In ancient deeds there has been reſerved, as a rent to the lord, *unum auſturcum*.

Auter Droit, Is where perſons ſue or are ſued in another's right; as executors, adminiſtrators, &c.

Auterfoits acquit, Is a plea by a criminal that he was heretofore *acquitted* of the ſame treaſon or felony: for one ſhall not be brought into danger of his life, for the ſame offence more than once. 3 *Inſt.* 213. We muſt except out of this general rule, the right which the widow hath to ſue an appeal for the death of her huſband, and the heir for the death of his anceſtor. There is alſo plea of *auterfoits convict*, and *auterfoits attaint*; that he was heretofore convicted, or attainted, of the ſame felony. In appeal of death, *auterfoits acquit*, or *auterfoits attaint*, upon indictment of the ſame death, is no plea. *H. P. C.* 244. But in other caſes where a perſon is attainted, it is to no purpoſe that he ſhould be attainted a ſecond time. And conviction of manſlaughter, where clergy is admitted thereon, will bar any ſubſequent proſecution for the ſame death. 2 *Hawk. P. C.* 377.

Authority, Is nothing but a power to do ſomething: it is ſometimes given by *word*, and ſometimes by *writing:* alſo it is by writ, warrant, commiſſion, letter of attorney, &c. and ſometimes by *law*. The *authority* that is given muſt be to do a thing lawful; for if it be for the doing any thing againſt law, as to beat a man, take away his goods, or diſſeiſe him of his lands, this will not be a good *authority* to juſtify him that doth it. *Dyer* 10. *Keilw.* 89. An authority given to another perſon, to do that which a man himſelf cannot do, is void: and where an authority is lawful, the party to whom given muſt do the act in the name of him who gave the authority. 11 *Rep.* 87.

87. Where an authority is given by law, it muſt be ſtrictly purſued; and if a perſon acting under ſuch anthority, exceeds it, he is liable to an action for the exceſs.

An authority in ſome caſes cannot be transferred.

One, who has an authority to do any act for another, muſt execute it himſelf, and cannot transfer it to another; for this being a truſt and confidence repoſed in the party, cannot be aſſigned to a ſtranger whoſe ability and integrity were not ſo well thought of by him for whom the act was to be done. 9 *Co.* 77. *b.* 1 *Rol. Abr.* 330.

If *A.* lends *B.* a horſe to ride to *York*, *B.* cannot let his man ride him; for the licence is a matter of pleaſure annexed to the perſon of *B.* and cannot be transferred; adjudged upon a demurrer, in an action of treſpaſs, for immoderately riding the plaintiff's mare; where the defendant pleaded, that the plaintiff *licentiam eidem dedit equitare*; and that the defendant and his ſervant *alternatim* had rid upon the ſaid mare. 1 *Rol. Abr.* 330. 1 *Mod.* 110.

Some authorities likewiſe determine with the life of the perſon who gave them.

The authority given by letter of attorney muſt be executed during the life of the perſon that gives it; becauſe the letter of attorney is to conſtitute the attorney by repreſentative for ſuch a purpoſe, and therefore can continue in force only during the life of me that am to be repreſented. 2 *Rol. Abr.* 9. *Co. Lit.* 52.

But if any corporation aggregate, as a mayor and commonalty, or dean and chapter, make a feoffment and letter of attorney to deliver ſeiſin, this authority does not determine by the death of the mayor or dean, but the attorney may well execute the power after their death: becauſe the letter of attorney is an authority from the body aggregate, which ſubſiſts after the death of the mayor or dean, and therefore may be repreſented by their attorney; but if the dean or mayor be named by their own private name, and die before livery, or be removed, livery after ſeems not good. *Co. Lit.* 52. 2 *Rol. Abr.* 12.

It is a rule that every authority ſhall be countermandable, and determine by the death of him that gives it, *&c.* But where an intereſt is coupled with an authority, there it cannot be countermanded or determined. *And.* 1 *Dyer* 190.

A deviſe to another *to have the diſpoſing, ſelling, and letting his land*; ſo a deviſe to his ſon, *but that his wife ſhall take the profits*; ſo a deviſe, that his executor ſhall have the *overſight and dealing of his lands*; ſo a deviſe to an infant in tail, but that *G. D.* ſhall have the *overſight* of his will, aad the education of his ſon till of age, and, *to receive, ſet, and let for him*; theſe and ſuch like words give the deviſee an *authority*, but *no intereſt*. *Dyer* 26. *b.* 2 *Leon.* 221. 3 *Leon.* 78, 216. *Moor* 635, S. P. *Cro. Eliz.* 674, 678, 734.

Where *goods* are deviſed to a *particular purpoſe*, there the deviſee hath no *intereſt* in them; as for inſtance, the teſtator deviſed ſeveral legacies, and after thoſe were paid, then he deviſed the reſidue to his wife *to diſpoſe for the good of his ſoul, and payment of his debts*, and made her ſole executrix; adjudged, that by this deviſe ſhe had no *intereſt* in the reſidue, for it was deviſed for a *particular purpoſe*, *viz.* to pay the teſtator's debts. *Dyer* 331.

The law makes a difference where *lands are deviſed to executors to ſell*, and where the deviſe is, that *his lands ſhall be ſold by his executors*; for in the firſt caſe an *intereſt* paſſes to the executors, becauſe the lands are expreſsly deviſed to them, but in the other caſe they have only an authority to ſell. *Goldſ.* 2. *Dyer* 219. *Moor* 61. *Keilw.* 107. *b.* 1 *And.* 145.

The teſtator deviſed, that his executors ſhould receive the *iſſues and profits* of his lands till his ſon came of age, *to pay his debts and legacies, and to breed up his younger children*; the teſtator died, ſo did the executor, during the minority of the ſon, having firſt made *J. S.* his executor; adjudged, that this executor of an executor may diſpoſe of the *iſſues and profits* for the purpoſes mentioned in the will during the infancy of the ſon; becauſe the firſt executor had not only a bare *authority*, but an *intereſt* veſted in him. *Dyer* 210.

An authority may be delegated by deed indented, tho' the attorney be not party to the deed; becauſe the attorney takes nothing by the deed, but has only a naked authority delegated to him; and therefore, ſince a man may take an eſtate in remainder, though he is no party to the deed, *a fortiori* one not party to the deed may receive a naked authority or power by it. 2 *Rol. Abr.* 8, 9.

N. B. Indenting is not neceſſary.

Where the teſtator gives another authority *to ſell his lands*, he may ſell the inheritance, becauſe he gave him the ſame power he had himſelf, and in ſuch caſe the purchaſer ſhall be in by the deviſe. 2 *Rep.* 53.

An authority may be *apportioned* or *divided*, but an *intereſt is inſeparable* from the perſon, and where an act, which is in its nature indifferent, will work *two ways*, the one by an *authority*, and the other by an *intereſt*, the law will attribute it to the *intereſt*. But where an *intereſt and authority* meet, if the party declare, that the thing ſhall take effect by virtue of his *authority*, there it ſhall prevail againſt the *intereſt*. 6 *Rep.* 17.

In many caſes authorities muſt be ſtrictly executed according to the power given.

If a man deviſe that his executors ſhall ſell his land, this gives but a naked authority; and the lands, till the ſale is made, deſcend to the heir at law; and in this caſe all muſt join in the ſale; and if one die, it being a bare authority, cannot ſurvive to the reſt. *Co. Lit.* 112. *b.* 113. *a.* 181. *b.*

But if a man by will give land to executors to be ſold, and one of them die, the ſurvivors may ſell; for the truſt being coupled with an intereſt, ſhall ſurvive together with it. *Co. Lit.* 113. *b.* 181. *b.*

If a letter of attorney be to make livery upon condition, ſo as to make a conditional feoffment, and the attorney delivers ſeiſin abſolutely, the livery is not good; becauſe the attorney had no authority to create an abſolute fee-ſimple; and therefore ſuch abſolute feoffment ſhall not bind the feoffor, becauſe he gave no ſuch authority. 2 *Rol. Abr.* 9.

But if the letter of attorney had been to make livery abſolutely, and the attorney had made it upon condition, this ſeems a good execution of his power, and the feoffment good; becauſe when the attorney had once delivered ſeiſin, he has fully executed his power; and the condition annexed to it being without authority, is void; and therefore ſhall not deſtroy the operation of the livery. 2 *Rol. Abr.* 9.

If a warrant of attorney be given to make livery to one, and the attorney makes livery to two; or if the attorney had authority to make livery of *Black-Acre*, and he made livery of *Black-Acre* and *White-Acre*, though the attorney has in theſe caſes done more, yet there is no reaſon that ſhall vitiate what he has done purſuant to his power, ſince what he did beyond it is a perfect nullity, and void. *Perk. ſect.* 189.

If a letter of attorney be given to *two jointly* to take livery, and feoffor makes livery to one in the abſence of the other, in the name of both, this is void; becauſe they being appointed *jointly* to receive livery, are to be conſidered but as one. *Co. Lit.* 49. *b.* 2 *Rol. Abr.* 8.

But if a feoffment be made to *A.* and *B.* and the feoffor gives a letter of attorney to deliver ſeiſin, and *J. S.* gives livery to *A.* in the abſence of *B.* in the name of both, this is a good livery; for though the intire poſſeſſion be delivered to one only, yet they being jointenants by the deed of feoffment, ſuch livery to one makes no alteration or change in the poſſeſſion; becauſe if the livery had been made to both, each had been placed in the whole poſſeſſion; beſides that, every man being preſumed to accept a gift for his advantage, *A.* is looked upon as the attorney of *B.* to receive the poſſeſſion for him; and therefore the livery to *A.* enures to the benefit of *B.* till he diſagrees to it. *Co. Lit.* 49. 2 *Rol. Abr.* 8.

But if a letter of attorney be made to three *conjunctim & diviſim*, and two only make livery, this is not good, becauſe not purſuant to their authority; for the delegation was to them all three, or to each of them ſeparately; yet if the third was preſent at the time of the livery made by two, though he did not actually join with them in the act of livery, yet the livery is good; becauſe when they all three are upon the land for that purpoſe, and two make livery in the preſence of the third, there is his concurrence to the act, though he did not join in it actually, ſince he did not diſſent to it. *Dyer* 62. 1 *Rol. Abr.* 329. *Co. Lit.* 181. *b.* 1 *Rol. Rep.* 299. *Yelv.* 26.

If a letter of attorney be given to *A.* to make livery of lands already in leaſe, the attorney may enter upon the leſſee in order to make livery; becauſe, whilſt the leſſee continues in poſſeſſion, the attorney cannot deliver ſeiſin of it; and therefore, to execute the power given him by the letter of attorney, it is neceſſary he ſhould have a power to enter upon the leſſee. *Co. Lit.* 52. *Poph.* 103. *Dyer* 131. *a.* 340. *a.*

If a ſheriff makes a warrant to four or three, or a *capias* jointly or ſeverally to arreſt one, two of them may arreſt the party, for the greater expedition of juſtice. *Co. Lit.* 181. *Palm.* 52. 2 *Rol. Rep.* 137.

So if the lord gives licence to a copy-holder for life, to leaſe the copyhold for five years, if the copy-holder *tamdiu vixerit*, and he leaſes it for five years generally without limitation, this is a good execution, and purſuant to the licence; for the leaſe is determinable by his death, by a limitation in law; and therefore as much is implied by law, as if he had made an actual limitation. 1 *Rol. Abr.* 330, 331. *Cro. Jac.* 436. *S. C.*

The king may not give any one authority or licence to do any thing that is *malum in ſe.* 11 *Rep.* 86. See *Licence.*

Autumn, Is the decline of the ſummer. Some computed the years by *autumns*; but the *Engliſh Saxons* by winters; *Tacitus* ſays, that the ancient *Germans* knew the other diviſions of the year, but did not know what was meant by *autumn*. *Lindewood* tells us, in the following lines, when the ſeveral ſeaſons of the year begin.

Dat Clemens Hiemem, *dat* Petrus *ver* Cathedratus,
Æſtuat Urbanus, Autumnat *Bartholomæus*.

Autumnalia, Thoſe fruits of the earth which are ripe in *autumn* or harveſt.

Auxilium ad filium Militem faciendum & filiam Maritandam, A writ formerly directed to the ſheriff of every county where the king or other lord had any tenants, to levy of them an aid towards the knighting of a ſon, and the marrying of a daughter. *F. N. B.* 82. See *Aid.*

Auxilium Curiæ, A precept or order of court for the citing or convening of one party, at the ſuit and requeſt of another, to warrant ſome thing.——*Vocat inde ad warrantiam* Johannem Sutton *de* Dudley *chevaler* & Iſabellam *uxorem, ut habeat eos hoc in* Octabis S. Michaelis, *per* auxilium curiæ. *Kennet's Paroch. Antiq.* 477.

Auxilium facere alicui in Curia Regis. To be another's friend and ſolicitor in the king's court; an office undertaken by ſome courtiers for their dependants in the country——*Sciant præſentes & futuri, quod ego* Bernardus *de S.* Walerico *conceſſi* Rogero de Berkley & *hæredibus ſuis* auxilium & *conſilium meum in curia domini mei regis Angliæ.* Paroch antiq. 126.

Auxilium Regis, The king's aid, or money levied for the king's uſe, and the public ſervice; as where taxes are granted by parliament.

Auxilium Vicecomiti, A cuſtomary aid or duty anciently payable to ſheriffs, out of certain manors, for the better ſupport of their offices. *Prior de* Kime *Com.* Linc. *tenet duas carucatas terræ in* Thorpe *per ſervitium xl. denariorum per annum, ad* auxilium vicecomitis. *Mon. Angl. Tom. p.* 245. An exemption from this duty was ſometimes granted by the king: and the manor of *Stretton* in *Warwickſhire* was freed from it by charter. 14 *H.* 3. *M.* 4.

Await, Seems to ſignify what we now call *way-laying*, or lying in *wait* to execute ſome miſchief. *Stat.* 13 *R.* 2. *Stat.* 2. *c.* 1. It is ordained that no charter of pardon ſhall be allowed before any juſtice for the death of a man ſlain by *await*, or malice prepenſed, &c.

Award, (from the Fr. *agard*) Is the judgment and arbitration of one or more perſons, at the requeſt of two parties who are at variance, for ending the matter in diſpute without public authority: and may be called an *award*, becauſe it is impoſed on both parties to be obſerved by them. *Dictum quod ad cuſtodiendum ſeu obſervandum partibus imponitur. Spelm.* An *award* may be by word, or in writing; but it is uſually in writing; and muſt be exactly according to the ſubmiſſion.

It muſt likewiſe be equal, certain, and final, and the performance of it muſt be poſſible and lawful.

If an *award* be according to the ſubmiſſion by bond, though it is void in law, if it be not obſerved, the obligation will be forfeited. 1 *Danv. Abr.* 515.

The ſubmiſſion to an *award* may be by bond, covenant, or by an *aſſumpſit* or promiſe; or without all this, by a bare agreement to refer the matter to ſuch a perſon or perſons. 10 *Rep.* 131. *Dyer* 270. or by rule of court.

An *award* may be void in ſome part, and good in another part, if it makes an end of all the differences ſubmitted; and if an *award* be good in part, and void in part, the good ſhall be performed. 10 *Rep.* 31. 2 *Saund.* 293. An *award* without a deed of ſubmiſſion, will be a good bar of a treſpaſs. *Danv.* 548. But the delivery of the *award* in writing, under hand and ſeal, &c. muſt be pleaded, and be exactly replied to by the plaintiff, in action of debt on an *award*, or it will be ill on demurrer. *Dyer* 243. 2 *Mod.* 77, 78, 269. Debt on obligation to perform an *award*, which was, that the defendant ſhould enjoy a houſe of which the plaintiff was leſſee for years during the term, paying to the plaintiff 20*s.* yearly, and for non-payment of this the action was brought; and it was held to lie. *Cro. Eliz.* 211. If more is *awarded* than ſubmitted, the *award* will be void; but when an *award* ſeems to extend to more than in the ſubmiſſion, the words *de & ſuper præmiſſis* reſtrain it to the thing ſubmitted. *Cro. Eliz.* 861. So if an award be made of any other thing than what is contained in the ſubmiſſion, it is void; for no acts are my own, or binding to me, unleſs done by me or by commiſſion from me. *Plow.* 396. *Dyer* 242.

If arbitrators award to do an act to a ſtranger, this is good; for the ſtranger is put by the arbitrators in the place of the party, and they have power to award this act, ſince it is not impoſſible or unequal, and it is relating to the ſubmiſſion. *Mo.* 3, 359. 10 *Co.* 131. 3 *Leon.* 62. 1 *Rol. Abr.* 248. *Hard.* 46. 1 *Leon.* 316.

But an award that an act ſhould be done by a ſtranger, is void; becauſe he is not within the ſubmiſſion. *Hard.* 46.

If two ſubmit to an award all actions, and the arbitrators award a releaſe of all actions till the time of the award, ſome books have ſaid, that this is void for the whole, becauſe it extends to things partly in the ſubmiſſion and partly to things out of it, and it is one intire act; for ſay they, to do that act they are not obliged, becauſe not within the ſubmiſſion; and to do an act relating only to things contained in the ſubmiſſion, is another act from what is awarded; others have ſaid, that this is not void, unleſs there are ſhewn, on the other ſide, cauſes of action ariſing between the time of making the award, otherwiſe none ſhall be intended; and then the releaſe only relates to the things in ſubmiſſion. 10 *Co.* 131, 132. 1 *Rol. Rep.* 45, 162, 270. 1 *Rol. Abr.* 242. *Cro. Eliz.* 809. *Cro. Jac.* 353, 447. *Poph.* 137. 1 *Sid.* 365. 2 *Mod.* 169.

But it has been reſolved, and ſeems now ſettled, that the act is not intire; for he may releaſe all actions to the time of the ſubmiſſion; for though there is one deed of releaſe awarded, yet that deed relates to ſeveral things that are dividable in their own nature one from another, and ſo it ſhall be good for what is in the ſubmiſſion, and void for the reſidue. 3 *Lev.* 188. 2 *Mod.* 169. 1 *Salk.* 74. 3 *Lev.* 413. 2 *Lev.* 3.

A ſubmiſſion is of all actions and demands, &c. though there be but one cauſe or matter between them, an *award* may be made for this: and where two things are ſubmitted, and the *award* but of one, it is good, if the arbitrators have no further notice of the other; though if it be of three things, or ſome particulars, with a general clauſe of all other matters, in that caſe they muſt make the *award* for the things particularly named, without any other notice given. *Dyer* 216. *Cro. Jac.* 130. *Godb.* 146.

If two ſubmit all quarrels concerning tithes in a place certain, and the arbitrator awards that one ſhall pay to the other 20 *l.* and the other ſhould releaſe to him all actions, this ſhall be intended all actions concerning tithes, unleſs the contrary appear on the other ſide, and the actions may be ſevered; and this ſhall be good for the acts in the ſubmiſſion, and void for the reſt. *Palm.* 107. 1 *Rol. Rep* 362. *Cro. Jac.* 66.

An award may be good, though made of leſs than is contained in the ſubmiſſion; as if the ſubmiſſion be of all actions, treſpaſſes, demands and controverſies, and the award be made of ſome only, this is good; for no more ſhall be ſuppoſed to be made known to the arbitrator: and if there be other cauſes of action in being, and they be made known to the arbitrator, they muſt be ſhewn on the other ſide; and this as well where the ſubmiſſion is conditional by *ita quod*, as where it is abſolute; for the award being made *de præmiſſis* ſhall be ſuppoſed to ſettle all things *Hob.* 49. 8 *Co.* 98. *Cro. Jac.* 278. 1 *Sand.* 32. 1 *Brownl.* 63. 2 *Brownl.* 310. 1 *Sid.* 12. *Dyer* 216, 242. *Hard.* 45.

If the ſubmiſſion be by divers perſons, and the arbitrators *award* between ſome of them only, this is good: but if a ſubmiſſion is of certain things in ſpecial, with a *proviſo* in the condition, that the *award* may be made of the premiſes, *&c.* by ſuch a day, there the *award* muſt be made of all, or it will be void. 8 *Rep.* 79. *Hob.* 49. an *award* of all actions real, when the ſubmiſſion is of actions perſonal, is not good. *Plowd.* 306. 10. *Rep.* 132. Yet if the ſubmiſſion be of things perſonal, and the *award* is, that one of the parties ſhall do an act real, in ſatisfaction of a perſonal injury, *&c.* or a ſubmiſſion be of one thing, and the *award* made of ſomething incident to or neceſſarily depending upon it; or if the ſubmiſſion is of all actions real and perſonal, and the *award* only of matters perſonal, *&c.* it will be good in theſe caſes; if nothing elſe is notified to the arbitrators. *Dyer* 216.

Where the *ſubmiſſion* is general and conditional to end all *controverſies*, an *indictment for a battery* is not a controverſy between the parties, within the meaning of the ſubmiſſion, for that is the King's ſuit; and if the arbitrators award the ceaſing of ſuch a proſecution, it would be void, becauſe it would be to *obſtruct juſtice.* Reſolved, *Freem. Rep.* 204. *pl.* 208.

A ſubmiſſion of all debts and demands, and a releaſe of all judgments, executions and extents awarded, is a good award. 2 *Sand.* 190.

A ſubmiſſion of all matters between the plaintiff and another, and an award made of things that the party hath in right of his wife, is good; for theſe things are comprehended under the words *all matters.* 10 *Hen.* 6. 18. 3 *Bulſt.* 65.

A ſubmiſſion of all injuries; an award of all debts, duties and treſpaſſes, is a good award; for whatever is againſt law is an injury. 3 *Bulſt.* 312, 313.

A ſubmiſſion of all actions now depending, and an award of all actions, good; for it ſhall be intended actions depending. *Cro. Eliz.* 66, 858.

If there be a controverſy between the parſon and his pariſhioners, whether tithes ſhall be paid in *ſpecie* or not, and they ſubmit all controverſies, and the arbitrators award that they ſhall pay ſo much a year for tithes, this is good; for that was the debate on the award. 1 *Rol. Abr.* 254.

If the ſubmiſſion be of all controverſies to the time of the ſubmiſſion, and the award be that one of them ſhould deliver up an obligation made ſince the ſubmiſſion, in ſatisfaction of all matters, *&c.* this is good; becauſe the bond is given only in ſatisfaction. 1 *Rol. Abr.* 246.

An award may be good, though part of it be made of a thing not within the ſubmiſſion; as if an award be to pay 1000 *l.* and to procure a perſon to be bound to pay *22 l. per ann.* the plaintiff muſt lay the breach in not paying the 1000 *l.* for as to the other part it is wholly void. See 1 *Leon.* 304, 305. *Cro. Jac.* 149. *Poph.* 134. 10 *Co.* 131. 5 *Co.* 78.

Awards likewiſe, as hath been ſaid, muſt be equal.

An *award* made only on one ſide, without any thing on the other, is void in law: as that one ſhall pay or give bond for money to the other party, and he do nothing for it; but if it be to give bond to pay, or to pay a debt, and that the other ſhall be diſcharged of the debt, *&c.* this is good: ſo where it is, that one party ſhall pay money to the other, and then the other ſhall releaſe all actions to him. 8 *Rep.* 72, 98.

Thus in caſe of a treſpaſs ſubmitted, the arbitrators award that one ſhall pay the other 3 *l.* this is void, becauſe only on one ſide; for it is not ſaid for what, and ſo the treſpaſs is not diſcharged, and then the other party hath no advantage by the award; but if it were awarded *de et ſuper præmiſſis*, it would be well enough; likewiſe if the award had been that he ſhall pay 3 *l.* for a treſpaſs, it had been good, and yet one only was to do an act, but then the treſpaſs by that award had been diſcharged. 1 *Rol. Abr.* 253, 254. *Hob.* 49.

Upon a ſubmiſſion of all treſpaſſes, duties, and demands, the *award was, that the defendant ſhould pay to the plaintiff, in ſatisfaction of all treſpaſſes done to him by the defendant before the day of the ſubmiſſion, ſo much.* In debt upon this award defendant demurred to the declaration, and inſiſted that the award was void, it being of one ſide; for the plaintiff was to do nothing. But adjudged good; for *by the payment of the money he is acquitted* of all treſpaſſes done to the plaintiff, and it is a good bar againſt him, and it ſhall not be intended that the arbitrators had notice that the defendant had any cauſe of action againſt the plaintiff, unleſs ſhewn on the defendant's part; and judgment for the plaintiff, *Haughton hæſitante.* *Cro. Jac.* 354.

If an *award* be, *that an obligor in a ſingle obligation ſhall pay the debt*, this is no award, unleſs it be provided that he be diſcharged; for payment in that caſe is no diſcharge. *Hob.* 49. *pl.* 55.

But if the *award* be, *that the one ſhall pay* 10 *l. for treſpaſs*, it is good; for a *ſatisfaction implies a diſcharge*, and that is the reaſon of the judgment in *Baſpool*'s caſe. *Hob.* 49.

If divers treſpaſſes be referred to arbitrament, and the *award* is, that one of the parties ſhall make the other party amends, or give a releaſe, and ſay not what amends, or what releaſe, *&c.* it is void for incertainty. 5 *Rep.* 78. *March* 18.

A naked award is no good plea in treſpaſs, unleſs ſomething be awarded to the plaintiff in amends; for if there be no treſpaſs there is nothing about which an award can be made; and if there be one, and they do not award ſatisfaction, they do not act according to the deſign of their inſtitution, for they are not indifferent, and ſo there is no good award. 1 *Brownl.* 63. *Cro. Eliz.* 904. 1 *Rol. Abr.* 251.

If an award be to pay ſo much money in diſcharge of all actions, a releaſe ſhall be intended to be awarded, unleſs the contrary be ſhewn on the other ſide. 2 *Rol. Rep.* 1.

A ſubmiſſion to award was of all matters in controverſy by rule of court; and award was made, that ſo much money ſhould be paid on one ſide, and nothing was awarded of the other ſide; and moved to ſet it aſide as being an award only *ex parte.* *Per Holt*, The common exceptions againſt an award will not hold here, it being an award upon ſubmiſſion by rule of court; for tho' there be no releaſe awarded of one ſide, yet the ſubmiſſion was of all matters in controverſy; and we will not grant an attachment before they tender a releaſe; for if one comes to have aid of the court, he ſhall do that which is fair and equitable before he has it. 12 *Mod.* 234.

As an award is in nature of a judgment, it ought to be wholly deciſive, for if it doth not determine the matter, it becomes a new controverſy; therefore if the arbitrators award a bond for quiet enjoyment of lands, without appointing a certain ſum, this is a void award, and the party is not obliged to give bond to the value of the land; for then the ſenſe of the award muſt be ſupplied by averment; now if it hath the credit of a judgment, there can be no interpretation made of the award, but by the words of the award itſelf; for if it receives its meaning from any matters out of the award, the mind of the arbitrators is only gueſt at, and not expreſs'd; but the parties intended to be obliged only by what the arbitrators themſelves declare to be their award, and the bond to be according to the value, they cannot aſſign their power to any perſon to aſſeſs the value. 5 *Co.* 77. *Cro.*

Eliz. 432. 1 *Rol. Abr.* 263. *Moor* 359. 1 *Rol. Rep.* 271. *Dyer* 242. *Yelv.* 78.

An *award was to pay money, but expreſſed no place where* it ſhould be paid. Reſolved, that in law this ſhould have a reaſonable conſtruction, and the party ought to have a reaſonable time for the payment; but *Foſter* conceived it not good, becauſe in ſuch caſe the bond of ſubmiſſion would be immediately forfeited, as there was neither time nor place where the money ſhould be paid; but in anſwer to this were cited 3 *H.* 7. and 16 *E.* 4. where it is ſaid, that if an arbitrator awards that one party ſhall pay ſo much ſuch a day, and keeps the award in his pocket till the day be paſt, yet the bond ſhall not be forfeited; and ſo it was adjudged by all the other juſtices. 2 *Brownl.* 211.

If the condition of an obligation be to ſubmit to an award all controverſies between *A.* and *B.* and an award is made that *A.* ſhall permit *B.* to enjoy certain leaſes of lands purchaſed from *J. S.* and that *B.* ſhall pay the rents, and perform the covenants, and deliver to *A.* a true copy of the leaſes, and pay the arrears to the time of the purchaſe from *J. S.* this is a good award as to the rents and covenants, though not particularly ſpecified; for it is true, an award is to be interpreted by its own words, and not by any matter out of the award which doth not appear in the words; but when the words of an award have relation to things certain out of the award, theſe things may be averred; for that is the expreſs mind of the arbitrators, which they have expreſsly referred to; but as to the arrears the award is void, becauſe they have not referred to any matter that falls within the conuzance of *B.* for he cannot compel *A.* or *J. S.* to ſet the time of the purchaſe; and an award of what cannot be certainly done is not a certain determination. 1 *Rol. Abr.* 264.

An award may be good for part only, but then it muſt be final as to that part. 19 Hen. 6. 36. 8 *Ed.* 4. 10.

An award that all ſuits ſhall ceaſe is a final award; ſo an award that one of the parties ſhall not ſue an obligation; for this amounts to an extiguiſhment of the debt.

An award that a ſuit in chancery ſhall be diſmiſſed, is a final award; ſo if the arbitrators award a *retraxit*, or an award that one ſhall not proſecute nor proceed in ſuch a term, ſeems to be good; but an award that one of the parties ſhall be nonſuit is not good, becauſe the party may begin again, ſo that each party ſhall diſcontinue their actions which they have againſt each other; for this is not a final determination. 2 *Mod.* 227. 1 *Lev.* 58. 1 *Rol. Abr.* 54. 1 *Salk.* 75. 6 *Mod.* 282.

If they arbitrate that all controverſies ſhall ceaſe, except that concerning one bond, this is final; for as to the bond, they arbitrate that it ſhall continue in force. *Cro. Jac.* 277, 400.

A conditional award not good, becauſe not final to determine matters in difference; the ſame law where any thing is referred to the arbitrator's future judgment or expoſition. 1 *Sid.* 59. *Cro. Jac.* 508. *Hob.* 218. *Palm.* 110.

An award to give ſuch a releaſe *as council*, &c. *ſhould adviſe*, is good, for this is only a miniſterial, and not a judicial act. *Style* 219.

The performance of what is awarded likewiſe muſt be poſſible and lawful.

If the arbitrators award a thing impoſſible *ex natura rei*, it is void; as if they award a ſum of money to be paid at a day paſt, it is void. 8 *Ed.* 4. 1. *b.* But if they award a thing which cannot be done, but is not in the nature of the act itſelf contradictory or repugnant; this may be a good award; for there is no conſtruction to be made of the award, but by the words thereof. 1 *Rol. Abr.* 248.

An award to levy a fine is good; for though it is an act of the court, yet, by the law and public juſtice of the kingdom, it is not to be refuſed to any man; but if the award be to command the juſtices to do it, this is no good award; for the parties in effect pray leave to agree from the King himſelf, which is quite different from the nature of a command. 1 *Rol. Abr.* 249.

An award to pay ſo much *apud domum J. S.* good; for he is not bound to pay it in the houſe, but as near as he can to it, or it ſhall be intended a common inn; and if the party will not let him pay there, it has been ſaid that the endeavour is ſufficient; for they cannot award any thing that will make the party a treſpaſſer. 1 *Rol. Abr.* 249. 1 *Rol. Rep.* 6. *Cro. Car.* 226. 2 *Bulſt.* 39. 3 *Lev.* 153. An award that one of the parties ſhall *do a thing out of his* power, as to deliver up a deed which is in the cuſtody of *J. S.* is void; agreed *per cur'.* 12 *Mod.* 585. If an arbitrator awards a thing againſt law, this is void. 1 *Rol. Abr.* 249. And a party is not to be made a judge in his own cauſe by award. 1 *Salk.* 71. Where a thing is to be done on payment of money, a tender of the money is as much as an actual payment. *Mod. Caſ.* 33. Action of debt may be brought for money adjudged to be paid by *arbitrators*, declaring on the award; and alſo action of debt upon the bond for not performing the award. *Brownl.* 55.

With reſpect to pleading awards in bar, there is a difference between an accord with ſatisfaction and an award; for in an accord a man muſt plead preſent ſatisfaction, and it is no plea in bar to plead an accord with ſatiſfaction at a day to come; for in all perſonal injuries the law gives damages as an equivalent; and when the party accepts of an equivalent, there is no injury or cauſe of complaint, and therefore a preſent ſatisfaction is a good plea; but where the wrong-doer promiſes a future ſatiſfaction, the injury continues till ſatisfaction is made, and conſequently there is a cauſe of complaint in being, and if the treſpaſs were now barred by this plea, he can have no remedy for the future ſatisfaction, for that ſuppoſes the injury ſtill to have continuance; but where perſons ſubmit to arbitration, the arbitrators are judges of the injury; and if they award money payable at a day to come, that is a good award, and may be a good plea in bar to an action of treſpaſs brought in the mean time, becauſe this thereby becomes the immediate debt attainable by law. 5 *Ed.* 4. 7. *Plowd.* 5. *b.*

A man cannot plead generally the award performed, but he ought to ſet forth the award, and ſhew how he hath performed it. *Moor* 3. *pl.* 9. In pleading a countermand to a ſubmiſſion to arbitrate, it need not be alledged, that the party gave notice to the arbitrators, for without that it is no countermand, and therefore, if no notice be given, iſſue may be joined upon the point *quod non revocavit.* 8 *Co.* 82.

Arbitrators are to make their *award ſecundum allegata & probata*, but they may not injoin any oath to the witneſſes: the *award* ought to be publiſhed; and no one is bound to perform till he can know what the *award* is. 4 *Rep.* 82. *Brownl.* 311. A ſubmiſſion to *award* may be revoked and countermanded, before the *award* made; where there is no ſpecialty to abide the *award* of *J. S.* &c. 8 *Rep.* 8.

By *Stat.* 9 & 10 *W.* 3. *c.* 13. Submiſſions to *awards*, by agreement of the parties, may be made a rule of any of his majeſty's courts of record; and on a rule of court thereupon, the parties ſhall be finally concluded by ſuch arbitrament: and, in caſe of diſobedience thereto, the party refuſing to perform the ſame, ſhall be ſubject to the penalties of contemning a rule of court, &c. unleſs it appears on oath that ſuch *award* was unduly procured, when it ſhall be ſet aſide: but this ſtatute extends only to perſonal matters, for which there is no other remedy but by perſonal action, or by ſuit in equity.

Attachment lies for non-performance of an *award* made a rule of court; after perſonal demand of performance. 1 *Salk.* 83. In making a ſubmiſſion to an *award* a rule of the court of *Chancery*, which the parties may agree to, it muſt be done purſuant to the act of parliament; and the method is to move that court, to confirm the *award*, upon the maſter's report: though if there be ſuch ſubmiſſion to a reference, and the *award* made is to be confirmed by decree, without appeal; yet exceptions may be taken thereto. 2 *Vern.* 109. See 1 *Mod.* 21. And *vide Arbitrator.*

Form of an award on a Submiſſion.

TO all people *to whom this preſent writing indented of* award *ſhall come, greeting.* Whereas *there are ſeveral*

ral accounts depending, and divers controverſies and diſputes have lately ariſen between A. B. *of*, &c. *gent. and* C. D. *of*, &c. *all which controverſies and diſputes are chiefly touching and concerning*, &c. And whereas, *for the putting an end to the ſaid differences and diſputes, they the ſaid* A. B. *and* C. D. *by their ſeveral bonds or obligations bearing date*, &c. *are become bound each to the other of them in the penal ſum of*, &c. *to ſtand to and abide the* award *and final determination of us* E. F. G. H. &c. *ſo as the ſaid* award *be made in writing, and ready to be delivered to the parties in difference on or before*, &c. *next, as by the ſaid obligations, and the conditions thereof may appear.* Now know ye, *That we the ſaid arbitrators, whoſe names are hereunto ſubſcribed, and ſeals affixed, taking upon us the burthen of the ſaid* award, *and having fully examined and duly conſidered the proofs and allegations of both the ſaid parties, do, for the ſettling amity and friendſhip between them, make and publiſh this our* award, *by and between the ſaid parties, in manner following, that is to ſay*; **Imprimis**, *We do* award *and order, that all actions, ſuits, quarrels and controverſies whatſoever had, moved, ariſen or depending between the ſaid parties in law or equity for any manner of cauſe whatſoever, touching the ſaid*, &c. *to the day of the date hereof, ſhall ceaſe and be no further proſecuted, and that each of the ſaid parties ſhall pay and bear his own coſts and charges, in any wiſe relating to or concerning the ſaid premiſſes.* And *we do alſo* award *and order that the ſaid* A. B. *ſhall pay, or cauſe to be paid to the ſaid* C. D. *the ſum of*, &c. *within the ſpace of*, &c. *And alſo at his own coſts and charges do*, &c. And *we do* award *and order that*, &c. And laſtly, *we do* award *and order that the ſaid* A. B. *and* C. D. *on payment of the money abovementioned, ſhall in due form of law execute each to the other of them general releaſes, ſufficient for the releaſing by each to the other of them, his executors and adminiſtrators, of all actions, ſuits, arreſts, quarrels, controverſies and demands whatſoever touching or concerning the premiſſes aforeſaid, or any matter or thing thereunto relating, from the beginning of the world until the day of*, &c. *laſt.* In witneſs, *&c.*

Awm, or *aume*, (Teut. *ohm. i. e. cadus vel menſura)* A meaſure of Rheniſh wine, containg forty gallons; mentioned in the ſtatute 1 *Jac* 1. *c.* 33. and 12 *Car.* 2. *c.* 4. This word is otherwiſe called *awame.*—The rood of Rheniſh wine of *Dordreight* is ten *awmes*, and every *awme* fifty gallons: The rood of *Antwerp* is fourteen *awmes*, and every *awme* thirty-five gallons. By this account it contains different quaintities in ſeveral countries.

Axe and **Axen**, Comes from the *Saxon* verb *axian*, to demand, and from hence we have our *Engliſh* word *aſk*. In *Somerſetſhire*, and ſome other counties of *England*, in the country dialect the word *axe* is made uſe of for *aſk*.

Axel, and *beſaiel*, A writ that lies for an heir diſpoſſeſſed of his inheritance left by his grandfather, or great grandfather, *&c.* See *aile*.

Azaldus, Signifies a poor horſe or jade.—*Affri*, azaldi, *& alii equi valoris, &c.* Clauſ. 4 Ed. 3.

B

Baca, A hook or link of iron, or ſtaple.—*In axibus emptis & carrectis exandis novem denarios in colariis*, bacis *& ſellis ad idem emptis xiii den.*—Conſuetudin. domus de Farendon, MS. penes Wh. Kennet, f. 20.

Baccinium, or *bacina*, A baſon or veſſel to hold water to waſh the hands.—*Non topeta, non mountergia, non* baccinia, *& nil omnino per violentiam exigatur.* Simeon Dunelm. *anno* 1126. Mon. Angl. tom. 3. p. 191.—Petrus *filius* Petri Picot *tenet medietatem Heydenæ per ſerjantiam ſerviendi de* bacinis.—This was a ſervice of holding the *baſon*, or waiting at the *baſon*, on the day of the king's coronation. *Lib. Rub. Scaccar. f.* 137.

Bacheleria, The commonalty as diſtinguiſhed from baronage.—*Feſtivitate* S. Edmundi *Regis & Confeſſoris, in quindenam* S. Michaelis *apud* Weſtmonaſterium, *per dominum regem regaliter celebrata communitas* bacheleriæ *Angliæ ſignificavit domino* Edwardo *filio regis, &c.* Annal. Burton. p. 426. ſub an. 1259.

Batchelor, *(baccalaureus*, from the Fr. *bachelier, viz. tyro*, a learner:) In the univerſities there are *batchelors of arts*, &c. which is the firſt degree taken by ſtudents, before they come to greater dignity. And thoſe that are called *batchelors* of the companies of *London*, are ſuch of each company, as are ſpringing towards the eſtate of thoſe that are employed in council, but as yet are inferiors; for every of the twelve companies conſiſts of a *maſter*, two *wardens*, the *livery*, (which are aſſiſtants in matters of council, or ſuch as the aſſiſtants are choſen out of) and the *batchelors*. The word *batchelor* is uſed 13 *R.* 1. and ſignifies the ſame with *knight-batchelor*. By 3 *E.* 4. *c.* 5. it is a ſimple knight, and not knight banneret, or *Knight of the Bath*. *Anno* 28 *E.* 3. a petition was recorded in the *Tower*, beginning thus: *A noſtre Seigneur le Roy monſtrent votre* ſimple batchelor, *Johan de Bures, &c.* *Batchelor* was antiently attributed to the admiral of *England*, if he were under a baron. In *Pat.* 8 *R.* 2. we read of a *baccalarius regis*. And touching the further etymology of this word, *baccalaurei (teſte Renano) a* bacillo *nominati ſunt, quia primi ſtudii authoritatem quæ per exhibitionem* baculi *concedebatur jam conſecuti fuiſſent, &c.*

Backberinde, *(Sax.)* Signifieth bearing upon the back, or about a man. *Bracton* uſeth it for a ſign or circumſtance of theft apparent, which the Civilians call *furtum manifeſtum*; for, dividing *furtum* into *manifeſtum & non manifeſtum*, he defineth the former thus; *furtum vero manifeſtum eſt, ubi latro deprehenſus eſt ſeiſitus de aliquo latrocinio, ſcil.* handhabend, & backerind, & *inſecutus fuerit per aliquem cujus res illa fuerit.* Bract. lib. 3. tract. 2. cap. 32. *Manwood* remarks it as one of the four circumſtances or caſes, wherein a foreſter may arreſt the body of an offender againſt vert or veniſon in the foreſt: by the aſſiſe of the foreſt of *Lancaſter* (ſays he) *taken with the manner*, is when one is found in the king's foreſt in any of theſe four degrees, *ſtable-ſtand, dog-draw, backbear*, and *bloody-hand*. Manw. 2 part, Foreſt Laws.

Baco, Is a bacon hog, as often uſed in old charters. *Blount.*

Bactile, A candleſtick properly ſo called, when formerly made *ex baculo* of wood, or a ſtick. Hugo *epiſcopus* Dunelmenſis *fecit in eccleſia coram altari tria ex argento* bactilia, *in quibus lumina die noctuque perpetuo ardentia lucerent.* Clodingham Hiſt. Dunelm. apud Wartoni Ang. Sac. p. 1723.

Badger, (from the Fr. *bagage*, a bundle, and thence is derived *bagagier*, a carrier of goods) Signifies with us one that buys corn or victuals in one place, and carries them to another to ſell and make profit by them: and ſuch a one is exempted in the *Stat.* 5 & 6 *Ed.* 6. *c.* 14. from the puniſhment of an ingroſſer within that ſtatute. But by 5 *Eliz. c.* 12. *badgers* are to be licenſed by the juſtices of peace in the ſeſſions; whoſe licences will be in force for one year, and no longer; and the perſons to whom granted muſt enter into a recogniſance that they will not by colour of their licenſes foreſtal, or do any thing contrary to the ſtatutes made againſt foreſtallers, ingroſſers, and regrators. If any perſon ſhall act as a *badger* without licence, he is to forfeit 5 *l.* one moiety to the king, and the other to the proſecutor, leviable by warrant from juſtices of peace, *&c.* *Vide* 13 *El. c.* 25. *ſect.* 20.

Bag, An uncertain quantity of goods and merchandiſe, from three to four hundred. *Lex Mercat'.*

Baga, A bag or purſe.—*Carta Decani Eccleſiæ* Litchfield, *in Mon. Angl. tom.* 3. *page* 237. *Ducentas Marcas pecuniæ in quadam* baga *de Whalley.*—

Bagavel, The citizens of *Exeter* had granted to them by charter from K. *Edw.* 1. a collection of a certain tribute or toll upon all manner of wares brought to that city to be ſold, towards the paving of the ſtreets, repairing of the walls, and maintenance of the city, which was commonly called in old Engliſh *begavel, bethugavel*, and *chippinggavel*. Antiq. of Exeter.

Bahadum, A cheſt or coffer; it is mentioned in *Fleta*, *lib.* 2. *c.* 21.

Bajardour, (Lat. *bajulator)* A bearer of any weight or burden.—*Offerebant duos inciſores in ſua lapicidina, & cariagium petræ uſque ad navim, & de navi uſque duos* bajardours *ſerrituros ad eccleſiam.* Petr. Bleſ. Contin. Hiſt. Croyland, p. 120.

Bail, *ballium*, (from the Fr. *bailler*, which comes of the *Greek* Βάλλειν, and ſignifies to deliver into hands) Is uſed in our Common law for the freeing or ſetting at liberty of one arreſted or impriſoned upon any action, either civil or criminal, on ſurety taken for his appearance at a day and place certain. *Bract. lib.* 3. *tract.* 2. *cap.* 8. The reaſon why it is called *bail*, is becauſe by this means the party reſtrained is delivered into the hands of thoſe that bind themſelves for his forthcoming, in order to a ſafe keeping or protection from priſon: and the end of *bail* is to ſatisfy the condemnation and coſts, or render the defendant to priſon.

With reſpect to bail in *civil caſes* it is to be obſerved, that there is both *common* and *ſpecial bail:* common *bail* is in actions of ſmall concernment, being called common, becauſe any ſureties in that caſe are taken; whereas in cauſes of greater weight, as actions upon bonds, or ſpecialty, *&c.* where the debt amounts to 10*l.* Special *bail* or ſurety muſt be taken, ſuch as ſubſidy men at leaſt, and they according to the value. 4 *Inſt.* 179. For common bail fictitious names only are now uſed.

By *Stat.* 23 *Hen.* 6. *c.* 9. Sheriffs, *&c.* are to let to bail perſons by them arreſted by force of any writ, in any perſonal action, *&c.* upon reaſonable ſureties, having ſufficient within the county to keep their days in ſuch place, *&c.* as the writs require. And the *Stat.* 1 *W. M. ſeſſ.* 2. *c.* 2. (36.) provides againſt exceſſive bail.

By the *Stat.* 12 *Geo.* 1. *c.* 29. None ſhall be held to ſpecial bail on proceſs out of any ſuperior court, where the cauſe of action doth not amount to 10*l.* or upwards; nor out of any inferior court where it doth not amount to 40*s.* Affidavit is to be made of the cauſe of action. *Vide* 21 *Geo.* 2. *c.* 3. And *Affidavit* and *Arreſt*.

In actions of battery, treſpaſs, ſlander, *&c.* though the plaintiff is like to recover large damages, ſpecial bail is not to be had, unleſs by order of court, and the proceſs is marked for ſpecial bail: nor is it required in actions of account, or of covenant, except it be to pay money; nor againſt heirs or executors, *&c.* for the debt of the teſtator, unleſs they have waſted the teſtator's goods. 1 *Danv. Abr.* 681.

Neither is an executor, adminiſtrator or heir, upon the removal of a cauſe out of an inferior court, obliged to put in bail. 2 *Lev.* 204. 1 *Sid.* 418. 1 *Lev.* 945, 268. 2 *Jones* 82. 1 *Salk.* 98. S. P. *cont. Lit. Rep.* 81.

But if there be a *devaſtavit* ſuggeſted, which can only be on an action of debt on a judgment, they muſt find ſpecial bail. 1 *Lev.* 145. 1 *Sid.* 63. 1 *Salk.* 98.

If baron and feme are ſued, the huſband muſt put in bail for both, but if the huſband does not appear upon the arreſt, the wife muſt file common bail before ſhe can be diſcharged; for otherwiſe the plaintiff could not proceed to obtain judgment. *Goldſ.* 127. *Cro. Eliz.* 370. *Cro. Jac.* 445. *Style* 475. 1 *Mod.* 8. 6 *Mod.* 17, 105.

In all actions brought in *B. R.* upon any penal law, the defendant is to put in but common bail. *Yelv.* 53. In actions where damages are uncertain, bail is to be at the diſcretion of the court: on a dangerous aſſault and battery, upon affidavit of ſpecial damages, a judge's hand may be procured for allowance of an *ac etiam* in the writ: and in action of *ſcandalum magnatum* the court on motion ordered ſpecial bail. *Raym.* 74. When bail is taken by the chief juſtice, or other judge on a *habeas corpus*, the bail taken in the inferior court is diſmiſſed; though the laſt bail be not filed preſently, nor till the next term. *Yelv.* 120, 121. Yet it has been held, where a cauſe is removed out of an inferior court by *habeas corpus*, if the bail below offer themſelves to be bail above, they ſhall be taken, not being excepted againſt below, unleſs the cauſe comes out of *London*. For the ſufficiency of the bail there is at the peril of the clerk, and he is reſponſible to the plaintiff; ſo that the plaintiff had not the liberty of excepting againſt them, and the clerk is not reſponſible for their deficiency in the court above, though he was in *London*. 1 *Salk.* 97.

In *London* it is ſaid, ſpecial bail is to be given in action of account, *&c.* But on removal by *habeas corpus* into *B. R.* that court will accept common bail. 2 *Keb.* 404.

There is not only bail to appear, *&c.* on writs of error; but alſo in *audita querela*, a recogniſance of bail muſt be acknowledged; and upon a writ of *attaint*, to proſecute, *&c.* *Jenk. Cent.* 129.

By the *Stat.* 3 *Jac.* 1. *c.* 8. No execution ſhall be delayed by any writ of *error* or *ſuperſedeas* thereupon, unleſs bail ſhall be given, in double the ſum adjudged, to proſecute the writ of error with effect; and alſo to ſatisfy the debt, damages, and coſts adjudged, *&c.*

Note; by the *Stat.* 3 *Jac.* 1. *cap.* 8. When a writ of error is brought *on a judgment had upon a bond to pay money (only)* there ſpecial bail ought to be given; and after a year a *ſcire facias* ought to precede the *levari*, or *fieri facias*. 11 *Mod.* 2.

If a cauſe removed from an inferior court, be remanded back by *procedendo* the ſame term, the original bail in the inferior court are chargeable, but not if remanded in another term. *Cro. Jac.* 363. One taken on a writ of execution is not bailable by law; except an *audita querela* be brought: but where a writ of error is brought and allowed, if the defendant be not in execution, there ſhall not be an execution awarded againſt him, at the requeſt of the bail, though he be preſent in court, 1 *Nelſ. Abr.* 331. The bail ought not to join with the principal, nor the principal with the bail, in a writ of error to reverſe the judgment againſt either. *Cro. Jac.* 384.

On *capias ad ſatisfaciendum* againſt the defendant returned *non eſt inventus*, *ſcire facias* is to iſſue againſt the bail, or an action may be brought. Where a defendant renders his body in diſcharge of the bail, the plaintiff is by the rules of the court to make his choice of proceeding in execution, whether he will charge body, goods, or lands. 1 *Lill.* 183. And if the principal after judgment renders not himſelf in diſcharge of his bail, it is at the election of the plaintiff to take out execution either againſt him or proceed againſt his bail: but if he takes the bail in execution, though he hath not full ſatisfaction, he ſhall vever after take the principal; and if the principal be taken, he may not after meddle with the bail.

Where two are bail, although one be in execution, the plaintiff may take the other. *Cro. Jac.* 320. 2 *Bulſt.* 68. If a principal render himſelf, and there is none to require his commitment, the court is *ex officio* to commit him; and if the plaintiff refuſe him, he ſhall be diſcharged, and an entry made of it upon the record. *Moor, Caſ.* 1249. A defendant having rendered himſelf to diſcharge the bail, and prayed entry of it; the court aſked the plaintiff if he would have execution of his body, and he ſaid no: the bail was diſcharged. 1 *Leon.* 59. See *Hob.* 210.

There muſt be an *exoneretur* entered, to diſcharge the bail. If the defendant dies before a *capias ad ſatisfac.* againſt him returned and filed, the bail will be diſcharged. 1 *Lill.* 177.

The bail upon a writ of error cannot render the party in their diſcharge; becauſe they are bound in a recogniſance that the party ſhall proſecute the writ of error with effect, and pay the money if judgment be affirmed. 1 *Lill. Abr.* 173. Before a *ſcire facias* taken out againſt bail, the principal may render his body in diſcharge of the bail: and if the bail bring in the principal before the return of the ſecond *ſci. fac.* againſt them, they ſhall be diſcharged. 1 *Rol. Abr.* 250. 1 *Lill.* 471. Anciently the bail were to bring in the principal upon the firſt *ſcire fac.* or it would not be allowed. 3 *Bulſt.* 182.

If bail ſurrender the principal at or before the return of the ſecond *ſcire facias*, it is good, although there be not immediate notice of it to the plaintiff; and if, through want of notice, he is at further charge againſt the bail, that ſhall not vitiate the ſurrender, but the bail ſhall not be delivered till they pay ſuch charges: if at any time, after the return of the *capias*, the bail ſurrender the principal at a judge's chamber, and he thereupon is committed to the tipſtaff, from whom he eſcapes, *&c.* this will not be a good ſurrender; but if it be before or on a *capias* returned, it is otherwiſe, the one being an indulgence, and the other matter of right. *Mod. Caſ.* 238.

When a perſon makes his eſcape out of priſon, and is retaken and bailed; the bail ſhall be diſcharged on a writ to the ſheriff commanding him to keep the priſoner in diſcharge of the bail. *Stat.* 1 *Ann. ſt.* 2. *c.* 6. *Sec.* 3. The judges of the courts at *Weſtminſter* have power by ſtatute to appoint commiſſioners in every county to take recogniſances of bail, in cauſes depending in their courts; and to make ſuch rules for juſtifying the bail as they ſhall think fit, *&c.* *Stat.* 4 *&* 5 *W. & M. c.* 4.

The *commiſſioners* are to take bail, but are obliged by rule of court to *keep a book* wherein are the names of the plaintiff, defendant, and bail, and the perſon who tranſmits the ſame, and who makes affidavit that the recogniſance was duly acknowledged in his preſence: on ſuch affidavit the judges make a conditional allocatur, and the bail are to ſtand abſolute, unleſs the plaintiff excepts againſt them within twenty days, and if he excepts, the bail may *juſtify by affidavit before the commiſſioners* in the country. *Gilb. H. C. B.* 32.

If a defendant puts in bail by a wrong name, the proceedings ſhall nevertheleſs be good; for otherwiſe every man impleaded may give a falſe name to his attorney by which he will be bailed, and then plead it in arreſt of judgment. *Goldſb.* 138. But it hath been held, that if the bail be entered in one name, and the declaration and all the proceedings are by a contrary name, it will be erroneous. *Cro. Eliz.* 223. So if there is bail, and the bail be taken off the file, the plaintiff is without remedy: though a *habeas corpus* and *bail-piece* were loſt in *B. R.* new ones were ordered to be made out. *Style* 261.

Stat. 21 *Jac.* 1. *cap.* 26. enacts, That it is felony without benefit of clergy to acknowledge, or procure to be acknowledged, any bail in the name of another perſon not privy or conſenting thereto, provided that it ſhall *not corrupt* the blood, or take away dower.

Stat. 4 *&* 5 *W. & M. cap.* 4. *ſ.* 4. enacts, That any perſon repreſenting or perſonating another before commiſſioners appointed to take bail, ſhall be adjudged guilty of *felony*.

Special bail, which is taken before a judge, or by commiſſioners in the country, when accepted, is to be filed; after *twenty* days notice given of putting in ſpecial bail before a judge, on a *cepi corpus*, if there be no exception the bail ſhall be filed in four days. 1 *Lill. Abr.* 174. Upon a *cepi corpus* twenty days are allowed to except againſt the bail: ſo on a writ of error; and you need not give notice; but you cannot take out execution without giving a four days rule to put in better bail: in all other caſes, notice muſt be given. Upon a *habeas corpus*, eight and twenty days are appointed to except againſt the bail, and after that, if it be not excepted againſt, it ſhall be filed in four days. 1 *Salk.* 98.

As to putting in common bail, or entering a common appearance, *vide* the books of practice by *Richardſon* or *Harriſon*.

The exception to bail put in before a judge, muſt be entered in the bail book, at the judge's chambers at the ſide of the bail there put in, after this manner: *I do except againſt this bail*, A. B. *attorn. for the plaintiff.* And if there be no ſuch exception, the defendant's attorney may take the *bail-piece* from the judge's chamber, and file it. Bail is not properly ſuch until it is filed, when it is of record: but it ſhall be accounted good, till the ſame is queſtioned and diſallowed. When bail are excepted to, they are to juſtify themſelves in open court, by oath of their abilities; or before one of the judges of the court, (by conſent;) or by affidavit before commiſſioners who took the bail.

Bail cannot be juſtified *before a judge in his chamber*, except it be by conſent, or for neceſſity in vacation; but in the latter caſe they ought to be juſtified *again in term*, and upon that the defendant is compelled to accept a declaration to go to trial at the aſſiſes, if it be an iſſuable term; and upon putting in bail, it it not enough to give *notice* of their being put in, but it *ought to be of their names, places of abode, and trade or vocation*, that the plaintiff may know how to enquire after them. 6 *Mod.* 24, 25.

It being doubtful whether Sunday ſhould be reckoned as one day in notice to juſtify bail, it was determined *per Cur.* that for the future Sunday ſhall not be counted one, (it not being a proper day to enquire after bail) but *two days notice muſt be given, of which Sunday ſhall not be one*; upon motion for defendant to juſtify bail, notice was ſerved Saturday *June* 23, to juſtify bail Monday 25; the notice being inſufficient, the bail was not ſuffered to juſtify. *Notes in C. B.* 220.

The court may adjudge bail ſufficient, when the plaintiff will not accept of it. Alſo the court on motion, or a judge at his chamber, will order a common appearance to be taken, when ſpecial bail is not required, on affidavit made by the defendant of the ſmallneſs of the debt due, *&c.* The putting in of a declaration, and the acceptance of it by the defendant's attorney with the privity of the plaintiff's attorney, is an acceptance of the bail.

If a plaintiff accepts of an aſſignment of the bail bond, and the defendant puts in the ſame bail that were put in to the ſheriff at the return of the writ, the plaintiff cannot except againſt them; but 'tis otherwiſe where he hath not taken an aſſignment. *Farreſt. Mod. Caſ.* 62. When a ſheriff hath taken good bail of the defendant, he will on a rule return a *cepi*, and aſſign the bail bond to the plaintiff, which may be done by indorſement without ſtamp; ſo as it be ſtampt before action brought thereupon; and then the defendant and bail may be ſued on the bond, by the plaintiff in his own name, *i. e.* as aſſignee of the ſheriff. *Stat.* 4 *&* 5 *Ann. c.* 16. But if the plaintiff takes an aſſignment of the bail-bond, though the bail is inſufficient, the court will not amerce the ſheriff. 1 *Salk.* 99.

In caſe the defendant doth not put in bail, the attorney for the plaintiff is to call on the ſheriff for his return of the writ; and ſo proceed to an attachment againſt the ſheriff. If on a *cepi corpus* no bail is returned, a rule will be made out to bring in the defendant's body. Though a defendant, with leave of the court, may depoſit money in court inſtead of bail; and in ſuch caſe the plaintiff ſhall be ordered to waive other bail. *Lill. Abr. Trin.* 23. *Car B. R.*

If more damages, *&c.* are recovered than mentioned in the plaint, or than the ſum wherein the bail is bound, the bail will not be liable for the ſurplus. 1 *Salk.* 102.

In *C. P.* and in *B. R.* where ſuits are by original, if the original is in one county, and the *venue* in the declaration laid in another county, the bail are not liable *contra*, where the ſuit is, by *bill* of *Middleſex* or latitat.

If defendant lives in a county, where plaintiff does not chooſe to try his action, and he proceeds in the *C. P.* or by original in *B. R.* he muſt ſue out a *teſtatum*.

A bail cannot be witneſs for the defendant at the trial; but the court, on motion, will diſcharge the bail, upon giving other ſufficient bail. *Wood's Inſt.* 582. Bail-pieces are written on a ſmall ſquare piece of parchment, with the corners cut off at the bottom. A ſpecial bail-piece is in the following form: and all the difference between a ſpecial bail-piece and a common one is, that in the former the real names of the bail, with their additions, are inſerted; whereas in the latter the fictitious names of *John Doe* and *Richard Roe* are inſerted,

Form of a ſpecial *bail-piece*.

Of the term of St. *Michael*, in the firſt year of the reign
of King *George the Third*.

Middleſex, *(to wit)* A. B. *of the pariſh of*, &c. *in the county aforeſaid, gent. is delivered to* bail *upon an arreſt, unto* E. F. *of*, &c. *in the ſaid county, gentleman, and* G. H. *of*, &c. *in the ſame county yeoman.*

T. Edwards, *attorney.* } *At the ſuit of* C. D.

As to bail *for crimes*, at Common law bail was allowed for all offences except murder. 2 *Inſt.* 190. And if the party accuſed could find ſufficient ſureties, he was not to be committed to priſon; for all perſons might be bailed till convicted of the offence; 2 *Inſt.* 186. But by ſtatute it was after enacted, that in caſe of homicide the offender ſhould not be bailed: and by our ſtatutes, murderers, outlaws, houſe-burners, thieves openly defamed, *&c.* are not bailable; but where perſons are guilty of larceny, are acceſſaries to felony, or guilty of light ſuſpicion, they may be admitted to bail. *Stat* 3 *Ed.* 1. *c.* 15.

One indicted and found guilty of the *death of a man by miſadventure*, as by caſting a ſtone over a houſe, and by chance killing a man, woman, or child, is not bailable. *Cook of Bail, &c. c.* 5. cites 3 *Ed.* 3. *Corone* 354.

So if one indicted be found guilty of the death of a man *ſe defendendo*, he ought not by law to be bailed; for, according to *Bracton*'s rule, *invenientur culpabiles.* *Coke of Bail, &c. c.* 5,

One indicted of *conſpiracy, viz.* that he with others conſpired falſely to *indict another of murder or felony*, by means whereof he was indicted, and afterwards convicted, ſhall not be bailed. *Coke of Bail, &c. c.* 5. and ſays, that this was the reſolution of all the judges, upon the queſtion demanded by King *Ed.* III. himſelf, as appears 27 *Aſſ.* 1.

One indicted for *burglary* may be bailed. *Coke of Bail, &c. c.* 5. cites 29 *Aſſ.* 44.

One indicted or appealed of *robbery* may be bailed. *Coke of Bail, &c. c.* 5.

One indicted or appealed of *rape* may be bailed: yet that was no felony at Common law, till the *Stat. Weſtm.* 2. *cap.* 34. *Coke of Bail, &c. c.* 5.

If one be *appealed by an approver*, and be of good and honeſt fame, he may be bailed during the life of the approver. *Coke of Bail, &c. c.* 5.

One indicted for *putting out eyes*, or *cutting out of tongues*, may be bailed; *Coke of Bail, &c. c.* 5

One indicted on *ſuſpicion of robbery* was outlawed, and *taken on the outlawry*, and *brought writ of error*, and being brought to *B. R.* by *habeas corpus*, prayed to be bailed, and took two exceptions to the indictment; 1ſt, That he was in priſon, and knew nothing of the outlawry; 2dly, that the charge is too general, and no body proſecutes; but *per Roll* Ch. J. He cannot be bailed. *Sty.* 418. But ſee 4 & 5 *W. & M. c.* 18. which enacts, that perſons *outlawed*, except for *treaſon* or *felony*, may appear by attorney and reverſe the ſame without bail; except ſpecial bail ſhall be ordered by the court: and that perſons arreſted upon any *capias utlagatum*, except for *treaſon* or *felony*, may be diſcharged by an attorney's engagement to appear: and in caſes where ſpecial bail is required, the ſheriff may take bond with ſureties.

One charged with *buggery* is not bailable; *per Holt* Ch. J. 12 *Mod.* 435.

It was doubted whether perſons committed by rule of court are intitled to the benefit of the *habeas corpus* act; and it was reſolved by two judges, viz. *Eyre* and *Forteſcue*, (*abſente Powis & diſſentiente Pratt*) that none are intitled to make their prayer, but ſuch as are committed by warrant of a juſtice of peace, or ſecretary of ſtate, and not thoſe committed by rule of court; for *that* is not in the meaning of the act of parliament, (*a commitment by warrant.*) 10 *Mod.* 429.

But in the late caſe of *Bingley*, he was brought before a judge of *B. R.* and bailed.—And the judges never denied him an *habeas corpus*, when applied for, though a perſon under ſuch circumſtances, on obtaining *ha' cor'* might perhaps be remanded.

Having thus briefly ſhewn what criminals are bailable, it remains to conſider by whom they may be bailed.

By the Common law the ſheriff might *bail* perſons arreſted on ſuſpicion of felony, or for other offence *bailable*; but he hath loſt this power by the *Stat.* 1 *Ed.* 4. *c.* 2. Juſtices of peace may let to *bail* perſons ſuſpected of felony, or others *bailable*, until the next ſeſſions: though where perſons are arreſted for manſlaughter or felony, being *bailable* by law, they are not to be let to *bail* by juſtices of peace but in open ſeſſions, or where two juſtices (*quorum unas*) are preſent; and the ſame is to be certified with the examinatian of the offender, and the accuſers bound over to proſecute, *&c.* 3 *H.* 7. *c.* 3. 1 & 2 *P. & M. c.* 13. § 3. not to reſtrain Juſtices in *London* and *Middleſex*, and towns corporate. 1 & 2 *P. & M. c.* 13. § 6. If a perſon be dangerouſly wounded, the offender may be *bailed* till the perſon is dead; but 'tis uſual to have aſſurance from ſome ſkilful ſurgeon, that the party is like to do well. 2 *Inſt.* 186. A man arreſted and impriſoned for felony, being *bailable*, ſhall be *bailed* before it appears whether he is guilty or not; but when convicted, or if on examination he confeſſeth the felony, he cannot be *bailed*. 4 *Inſt.* 178. For where in manſlaughter, felony, *&c.* it is certainly known that the party did it, he ought not to be *bailed*.

It is to be obſerved, that the *Stat. Weſt.* 1. 3 *Ed.* 1. *c.* 15. above mentioned, doth not extend to the judges of *B. R. &c.* only to *ſheriffs* and other *inferior officers*. *H. P. C.* 98, 99.—Likewiſe,

Juſtices of goal-delivery not being within the reſtraint of the ſtatute of *Weſtm.* 1. may bail perſons convicted before them of homicide by miſadventure, or ſelf-defence, the better to enable them to purchaſe their pardon. *Cromp.* 154. *a. H. P. C.* 101. *F. N. B.* 246. *S. P. C.* 15.

Alſo it ſeems that in diſcretion they may bail a perſon convicted before them of manſlaughter, upon ſpecial circumſtances, as if the evidence againſt him were ſlight, or if he had purchaſed his pardon. *H. P. C.* 101. *Cromp.* 153.

The court of *B. R. bails* in all caſes, and may *bail* murder, *&c.* If a man is found guilty of murder by the coroner's inqueſt, yet *B. R.* may bail him; for they may examine into the depoſitions taken by the coroner. 1 *Salk.* 104. But if a criminal be indicted of murder, the court will not *bail* him, though upon affidavits of evidence which might diſcharge the proſecution: nor when a perſon is found guilty of any crime by the grand jury, becauſe they cannot have notice of what evidence was before the jury, which by their oath they are obliged to conceal. 1 *Salk.* 104. Yet *vide* 2 *Jones* 222. *cont.* tho' the doctrine in *Salk.* ſeems the moſt rational.

Here it muſt be obſerved, that with reſpect to the nature of the offence, although this court is not tied down by the rules preſcribed by the ſtat. of *Weſtm.* 1. yet it will in diſcretion pay a due regard to thoſe rules, and not admit a perſon to bail who is expreſly declared to be irreplevifable, without ſome particular circumſtances in his favour. 2 *Inſt.* 185, 186, 189. *H. C. P.* 104. 1 *Salk.* 61. 3 *Bulſt.* 113. 2 *Hawk. P. C.* 113, 114. 5 *Mod.* 454.

And therefore if a perſon be attainted of felony, or convicted thereof by verdict general or ſpecial, or notoriouſly guilty of treaſon or manſlaughter, *&c* by his own confeſſion or otherwiſe, he is not to be admitted to bail without ſome ſpecial motive to induce the court to grant it. *Kelynge* 90. *Dyer* 79. 1 *Bulſt.* 87. 2 *Hawk. P. C.* 114.

The defendant was indicted for *murder*, and the trial coming on, the *proſecutor alledged, that there had been great labouring of the jury*, and therefore did *not proceed*, ſuſpecting a partial jury, but brought an appeal; and though by the appeal the indictment ſtill continued, and was not gone, yet the delay being occaſioned by the proſecutor, the party was bailed; but by *Croke* J. If the labouring the jury had been proved, peradventure he would not be bailable. *Bulſt.* 85

The jury on an indictment of *murder* found a *ſpecial verdict*, whereupon the *court were divided*, two againſt one, and thereupon the priſoner moved to be bailed, but all the court denied it; and as for the verdict there was a *curia adviſare*, and the matter adjourned, and the priſoner carried away in cuſtody. *Bulſt.* 89.

Formerly perſons committed for treaſon, by the king's command, or order of council, were not to be delivered without trial, *&c.* But it is ſaid that the court of *B. R.* has power to bail in all caſes of *treaſon*. *Skin.* 163. cites the opinion of the judges in the houſe of lords 1678. in *Zachary Crofton*'s caſe.

Upon a commitment of either houſe of parliament, when it ſtands indifferent on the return of the *habeas corpus*, whether it be legal, or not, the court of *B. R.* ought not to *bail* a priſoner; but when it appears to be illegal, they may do it, as well as on an unwarrantable commitment of the king and council. 2 *Hawk.* 110. And a perſon committed for a contempt, by order of either houſe of parliament, may be diſcharged by *B. R.* after a diſſolution or prorogation, which determine all orders of parliament: alſo it is ſaid on an impeachment, when the parliament is not ſitting, and the party has been long in priſon, *B. R.* may *bail* him. The court of *B. R.* hath *bailed* perſons committed to the *Fleet Priſon* by the Lord Chancellor; when the crime of commitment was not mentioned, or only in general terms, *&c.* 2 *Hawk. P. C.* 111.

And *B. R.* having the control of all inferior courts, may at their diſcretion *bail* any perſon unjuſtly committed by any of thoſe courts. In admitting a perſon to *bail* in the court of *B. R.* for felony, *&c.* a ſeveral recogniſance is entered into to the king in a certain ſum from each of the *bail*, that the priſoner ſhall appear at a certain day, *&c.* And alſo that the *bail* ſhall be liable for the default of ſuch appearance, body for body. And it is at the diſcretion of juſtices of the peace, in admitting any perſon to *bail* for felony, to take the recogniſance in a certain ſum, or body for body: but where a perſon is *bailed* by any court, *&c.* for a crime of an inferior nature, the recogniſance onght to be only in a certain ſum of money, and not body for body. 2 *Hawk.* 115. And the *bail* are to be bound in double the ſum of the criminal. Where perſons are bound body for body, if the offender doth not appear, whereby the recogniſance is forfeited, the *bail* are not liable to ſuch puniſhment to which the principal would be adjudged if found guilty, but only to be fined, *&c.* *Wood's Inſt.* 618. If *bail* ſuſpect the priſoner will fly, they may carry him before a juſtice to find new ſureties; or to be committed in their diſcharge. 1 *Rep.* 99.

The courts of *King's Bench*, *Common Pleas* and *Exchequer*, in term time, and the *Chancery* in the term or vacation, may *bail* perſons by the *habeas corpus* act; but not ſuch as are committed for treaſon, or felony ſpecially expreſſed in the warrant of commitment; unleſs it be where a Seſſions is paſt from the time of commitment of the priſoner, without any proſecution; when he may be *bailed*. And *B. R.* will not admit a perſon to *bail* on the *habeas corpus* ſtatute, on commitment for treaſon or felony, without four ſureties. The court of *B. R.* may *bail* perſons committed by the king's ſpecial command, or by the privy council, on the like circumſtances upon which it will grant bail on other commitments: this is where the crime is ſpecified in the warrant of commitment; and wherever any commitment by the privy council hath not expreſſed with ſome certainty the crime alledged againſt the party, it has been uſual to admit him to *bail* on his *habeas corpus*. 2 *Hawk. P. C.* 107, 109 See *Stat.* 16 *Car.* 1. *cap.* 10 But concerning *bail* on *habeas corpus*, ſee title **Habeas Corpus.**

To refuſe *bail* when any one is *bailable*; or to admit any to *bail* who ought not by law to be admitted, or to take ſlender *bail*, is puniſhable by fine, *&c.* 2 *Inſt* 291. *H. P. C.* 97. And ſee farther, 3 *Edw.* 1. *c.* 15. 27 *Edw.* 1. *St.* 1. *c.* 3. 4 *Edw.* 3. *c.* 2. 1 & 2 *P.* & *M.* *c.* 13. & 31. *Car.* 2. *c.* 2.

No perſon ſhall be *bailed* for felony by leſs than two, and it is ſaid not to be uſual for the *King's Bench* to *bail* a man on a *habeas corpus*, on a commitment for treaſon or felony, without four ſureties; the ſum in which the ſureties are to be bound, ought to be never leſs than 40 *l.* for a capital crime; but it may be higher in diſcretion, on conſideration of the ability and quality of the priſoner, and the nature of the offence; and the ſureties may be examined on oath concerning their ſufficiency, by him that takes the bail; and if a perſon be *bailed* by inſufficient ſureties, he may be required either by him who took the *bail*, or by any other who hath power to *bail* him, to find better ſureties, and on his refuſal may be committed; for inſufficient ſureties are as none. 2 *Hawk. P. C.* 88. *H. P. C.* 97.

But juſtices muſt take care, that under pretence of demanding ſufficient ſurety, they do not make ſo exceſſive a demand, as in effect amounts to a denial of *bail*; for this is looked upon as a great grievance, and is complained of as ſuch by 1 *W.* & *M.* *St.* 2. *c.* 2. (the Bill of Rights) by which it is declared, that exceſſive bail ought not to be required. 2 *Hawk. P. C.* 89.

If where a felony is committed, one is brought before a juſtice on ſuſpicion, the perſon ſuſpected is to be *bailed*, or committed to priſon; but if there is no felony done, he may be diſcharged. *H. P. C.* 98, 106.

Perſons committed for treaſon or felony, and not indicted the next term, are to be bailed. 31 *Car.* 2. *c.* 2. §. 7.

Where bail may have writ of detainer againſt the priſoner. See 1 *Ann.* *St.* 2. *c.* 6. §. 3.

Juſtices of peace are required to bail officers of cuſtoms and exciſe, who kill perſons reſiſting. 9 *Geo.* 2. *c.* 35. §. 35.

The court of *King's Bench* and *Juſticiary* in *Scotland*, not reſtrained from bailing perſons committed for felonies, againſt the laws of cuſtoms or exciſe. 9 *Geo.* 2. *c.* 35. §. 38. 19 *Geo.* 2. *c.* 34. §. 12.

Bailiff, *(ballivus)* From the *French* word *bayliff*, that is, *præfectus provinciæ*, and as the name ſo the office itſelf was anſwerable to that of *France*; where there are eight parliaments, which are high courts from whence there lies no appeal, and within the precincts of the ſeveral parts of that kingdom which belong to each parliament there are ſeveral provinces to which juſtice is adminiſtered by certain officers called *bailiffs*: and in *England* we have ſeveral counties in which juſtice hath been, and ſtill is in ſmall ſuits, adminiſtered to the inhabitants, by the officer whom we now call *ſheriff* or *viſcount*, (one of which names deſcends from the *Saxons*, the other from the *Normans*;) and tho' the ſheriff is not called *bailiff*, yet it is probable that was one of his names alſo, becauſe the county is often called *balliva*: as in the return of a writ, where the perſon is not arreſted, the ſheriff ſaith, *Infranominatus* A. B. *non eſt inventus in* balliva *mea*, *&c.* *Kitch. Ret. Brev. fol.* 285 And in the ſtatute of *Magna charta*, *cap.* 28. and 14 *Ed.* 3. *c.* 9. the word *bailiff* ſeems to compriſe as well ſheriffs, as *bailiffs* of hundreds.

As the realm is divided into counties, ſo every county is divided into hundreds; within which in ancient times the people had juſtice adminiſtered to them by the ſeveral officers of every hundred, which were the *bailiffs*, as thoſe officers do in *France* and *Normandy*, being chief officers of juſtice within their precincts. *Cuſtum. of Normand. cap.* 1. And it appears by *Bracton*, *(lib.* 3. *tract.* 2. *cap.* 34.*)* that *bailiffs* of hundreds might anciently hold plea of appeal and approvers: but ſince that time the hundred courts, except certain franchiſes, are ſwallowed in the county-courts; and now the *bailiff*'s name and office is grown into contempt, they being generally officers to ſerve writs, *&c.* within their liberties. Though in other reſpects, the name is ſtill in good eſteem; for the chief magiſtrates in divers towns, are called *bailiffs*: and ſometimes the perſons to whom the king's caſtles are committed are termed *bailiffs*, as the *bailiff* of *Dover Caſtle*, *&c.*

Of the ordinary *bailiffs* there are ſeveral ſorts, *viz.* *bailiffs* of liberties; ſheriffs *bailiffs*; *bailiffs* of lords of manors; *bailiffs* of huſbandry, *&c.*

Bailiffs of liberties are thoſe *bailiffs* who are appointed by every lord within his liberty, to execute proceſs and do ſuch offices therein, as the *bailiff errant* doth at large in the county; but *bailiffs* errant or itinerant, to go up and down the county to ſerve proceſs, are out of uſe.

Bailiffs of liberties and franchiſes, are to be ſworn to take diſtreſſes, truly impanel jurors, make returns by indenture between them and ſheriffs, *&c.* and ſhall be puniſhed for malicious diſtreſſes, by fine and treble damages, by ancient ſtatutes. Vide 12 *Ed.* 2. *St.* 1. *c.* 5. 14 *Ed.* 3. *St.* 1. *c.* 9. 20 *Ed.* 3. *c.* 6. 1 *Ed.* 3. *St.* 1. *c.* 5. 2 *Ed.* 3. *c.* 4. 4 *Ed.* 3. *c.* 9. 5 *Ed.* 3. *c.* 4. 11 *H.* 7. *c.* 15. 27 *H.* 8. *c.* 24. 3 *Geo.* 1. *c.* 15. §. 10.

The *bailiff* of a *liberty*, may make an inquiſition and extent upon an *elegit*: the ſheriff returned on a writ of *elegit*,

elegit, that the party had not any lands but within the liberty of *St. Edmund's Bury*, and that *J. S. bailiff* there had the execution and return of all writs, and that he inquired and returned an extent by inquiſition, and the *bailiff* delivered the moiety of the lands extended to the plaintiff, who by virtue thereof entered, &c. and it was held a good return. *Cro. Car.* 319. Theſe *bailiffs* of liberties cannot arreſt a man without a warrant from the ſheriff of the county: and yet the ſheriff may not enter the liberty himſelf, at the ſuit of a ſubject, (unleſs it be on a *quo minus*, or *capias utlagatum)* without clauſe in his writ, *Non omittas propter aliquam libertatem*, &c. If the ſheriff, &c. enters the liberty without ſuch power, the lord of the liberty may have an action againſt him; tho' the execution of the writ may ſtand good. 1 *Vent.* 406. 2 *Inſt.* 453.

Sheriffs bailiffs are ſuch who are ſervants to ſheriffs of counties to execute writs, warrants, &c. Formerly *bailiffs* of hundreds were the officers to execute writs; but now it is done by ſpecial *bailiffs*, put in with them by the ſheriff. A *bailiff* of a liberty is an officer which the court takes notice of; though a ſheriff's *bailiff* is not an officer of the court, but only the ſheriff himſelf. *Paſch.* 23. *Car.* 1. *B. R.* The arreſt of the ſheriff's *bailiff* is the arreſt of the ſheriff; and if any reſcous be made of any perſon arreſted, it ſhall be adjudged done to the ſheriff: alſo if the *bailiff* permit a priſoner to eſcape, action may be brought againſt the ſheriff. *Co. Lit.* 61, 168. Sheriffs are anſwerable for miſdemeanors of their *bailiffs*; and are to have remedy over againſt them. 2 *Inſt.* 19. And the court of *B. R.* will puniſh *bailiffs* that miſbehave themſelves in executing proceſs, &c.

Bailiffs of lords of manors are thoſe that collect their rents, and levy their fines and amercements: but ſuch a *bailiff* cannot diſtrain for an amercement without a ſpecial warrant from the lord or his ſteward. *Cro. Eliz.* 698. He cannot give licence to commit a treſpaſs, as to cut down trees, &c. though he may licence one to go over land, being a treſpaſs to the poſſeſſion only, the profits whereof are at his diſpoſal. *Cro. Jac* 337, 377. A *bailiff* may by himſelf, or by command of another take cattle damage-feaſant upon the land. 1 *Danv. Abr.* 685. Yet amends cannot be tendered to the *bailiff*, for he may not accept of amends, nor deliver the diſtreſs when once taken. 5 *Rep.* 76. Theſe *bailiffs* may do any thing for the benefit of their maſters, and it ſhall ſtand good till the maſter diſagrees; but they can do nothing to the prejudice of their maſters. *Lit. Rep.* 70.

Bailiffs of courts baron ſummon thoſe courts, and execute the proceſs thereof; they preſent all pound breaches, cattle-ſtrayed, &c.

Bailiffs of huſbandry are belonging to private men of good eſtates, and have the diſpoſal of the under-ſervants, every man to his labour; they alſo fell trees, repair houſes hedges, &c. and collect the profits of the land for their lord and maſter, for which they render account yearly, &c.

Beſides theſe there are alſo *bailiffs of the foreſt*, of which you may read *Manwood, part* 1. *page* 113.

An Appointment of a *Bailiff* of a Manor.

KNow all men *by theſe preſents, That I* W. B. *of* &c. *Eſq; lord of the manor of* D. *in the county of* G. Have *made, ordained, deputed and appointed, and by theſe preſents* do *make, ordain, depute, and appoint,* J. G. *of,* &c. *my* bailiff, *for me and in my name, and to my uſe, to collect and gather, and to aſk, require, demand and receive of all and every my tenants, that have held, or enjoyed, or now do, or hereafter ſhall hold or enjoy, any meſſuages, lands, or tenements, from, by, or under me, within my ſaid manor of* D. *all rents, and arrears of rent, heriots, and other profits, that now are, or hereafter ſhall become payable, due, owing or belonging to me, within the ſaid manor; and, in default of payment thereof, to diſtrain for the ſame from time to time, and ſuch diſtreſs or diſtreſſes to impound, detain and keep, until payment be made of the ſaid rents and profits, and the arrears thereof. And I do alſo further impower and authorize the ſaid* J. G. *to take care of and inſpect into all and every my meſſuages, lands and woods, within the ſaid manor, and to take an account of all defects, decays, waſtes, ſpoils, treſpaſſes, or other miſdemeanors, committed or permitted within my ſaid manor, or in any meſſuages, lands or woods there; and from time to time, to give me a juſt and true account in writing thereof: and further to act and do all other things that to the office of a* bailiff *of the ſaid manor belongs and appertains, during my will and pleaſure.* In witneſs, &c.

Bailiwick, *(balliva)* Is not only taken for the county; but ſignifies generally that liberty which is exempted from the ſheriff of the county, over which the lord of the liberty appointeth a *bailiff* with ſuch powers within his precinct, as an under-ſheriff exerciſeth under the ſheriff of the county; ſuch as the *bailiff* of *Weſtminſter*, &c. *Stat.* 27 *Eliz. cap.* 12. *Wood's Inſt.* 206.

Bailment, (from *bailer* to deliver) Is a delivery of things to another, ſometimes to be delivered back to the *bailor* that delivered them, ſometimes to the uſe of the *bailee* to whom delivered, and ſometimes to the uſe of a third perſon. This delivery is called a *bailment*; which may be *ſimple*, or *general*, as to keep for my uſe; or *ſpecial*, or *conditional*, to be redelivered when money is paid, &c.

The learning under this head is well exemplified in the caſe of *Coggs* and *Bernard*, which was thus——The defendant did undertake to remove a quantity of brandy from *Brook's Market* to *Water-Lane*, and by reaſon of his neglect one of the caſks broke; and on Not guilty, a verdict was for the plaintiff; and in arreſt of judgment two exceptions were taken: 1ſt, Becauſe in the declaration he was not alledged to be a common porter. 2dly, Becauſe it was not averred that he had a reward.

My lord chief juſtice Holt in his argument on this caſe enumerated ſix ſpecies of bailment.

The firſt is a bare and naked bailment to another, to keep for the uſe of the bailor, which is called *depoſitum*.

2. A delivery of goods to another which are in themſelves uſeful to keep, and theſe are to be reſtored again in ſpecie, which is called *accommodatum*.

3. A delivery of goods for hire, which is called *locatio* or *conductio*.

4. A delivery by way of pledge, which is called *vadium*.

5. A delivery of goods to be carried for a reward.

6. Such a delivery as here in the caſe at bar, where the goods are delivered to do ſome act about them, as the carrying, and without a reward which is called *mandatum*, by *Bracton, lib.* 3. 100. in *Engliſh*, an acting by commiſſion.

As to the *firſt*, if a perſon out of kindneſs keeps the goods of another, he ſhall not be anſwerable if they be ſtolen, without there be a particular default in him: and 2*dly*, ſuch a bailee is not chargeable for a common neglect, for it muſt be a groſs neglect for which he ſhall be liable.

2. A lending *gratis* to uſe for his advantage; there the borrower is ſtrictly bound to keep it, for if he be guilty of the leaſt neglect he ſhall be anſwerable; as if I lend a horſe to go to the *North* of *England*, and he goes to the *Weſt*, and the horſe is ſtole, he ſhall in that caſe be chargeable; for if he had gone as I directed, the horſe, perhaps, would not have been ſtolen; this ſort of bailment is mentioned in *Bracton* 99. but in this caſe, if the horſe had been in the ſtable of the bailee, and ſtolen thence without his default, as perhaps the thieves might firſt have bound the bailee, and then have taken the horſe, he ſhall not be anſwerable; but if he left the ſtable door open, he ſhall for that neglect be anſwerable: *Bracton* ſays he ought to take the utmoſt care, but in no place ſays he ſhall be charged where no default was in him.

3. As to the third bailment, where goods are hired out for a reward, *Bracton* 62. ſays, the hirer is to take all imaginable care, and to reſtore them at the time, and he is bound to ſuch a care as a diligent maſter of a family uſeth to his family, which care, if he ſo uſeth, he ſhall not be bound; now the moſt diligent man is liable to be robbed, and therefore I collect, that if he be ſo careful, as according to *Bracton*'s definition, and be robbed, he ſhall not be liable.

4. If goods be pawned, the pawnee has a ſpecial property, which is in nature of a ſecurity to compel the pawner to pay; and if the goods be the worſe for uſing, the pawnee muſt not uſe them; as clothes, *&c.* but if they be not the worſe for uſing, he may uſe them at his peril; as jewels pawned to a lady, and ſhe keeps them in a box, and they are ſtolen, ſhe ſhall not be charged; but if ſhe goes abroad with them to a play, and there they are ſtolen, ſhe ſhall be anſwerable. *2dly*, If the pawnbroker be at charge in keeping of them, as if it were a horſe, and he gives it meat, he may uſe it for his reaſonable charge he has been at. *Bracton* 99. If a creditor takes a pawn, he is bound to reſtore it upon payment; but if he, notwithſtanding all his diligence, loſe it, he ſhall howſoever recover his debt, 29 *Aſſ. pl.* 28. for the law does not lay upon him an obligation to keep againſt all accidents; but if the money be tendred, and he after detains, and then it is loſt, he ſhall then be liable, for he is then a wrong-doer, and his keeping it after is the occaſion of its being ſtolen, and he is then anſwerable at all events.

5. Goods to be carried for a reward. 1. If you deliver them to a public or common carrier, and they are ſtolen, he muſt be liable, for the law charges him at all events; but yet the act of God, or the enemies of the Queen, may excuſe, and this is a political inſtitution by the laws of *England*, that people may be ſafe in their dealing; for otherwiſe carriers, that are frequently truſted with things of greateſt value, would be often tempted to confederate with thieves. *2dly*, But he who has a particular private employment, though he has a reward, yet he is not bound againſt all events, as a factor or a bailiff, if they do to the beſt of their power; and that is *Southcott*'s caſe, and he is bound no otherwiſe than as his maſter himſelf ſhould do; for it were unjuſt to charge him with what he cannot prevent.

6. To this point; here is a man not intruſted to keep, but to carry, and not to have any thing for his pains, and through his negligence miſcarries, though he be to have nothing, yet it appears there was a neglect, and for that reaſon he is chargeable; but if the goods had been miſuſed by a third perſon in the way as he carried them, and without any neglect of his, I hold that he would not then be liable, becauſe he had nothing for a reward. In this caſe the court reſolved that the plaintiff ſhould have judgment. 1 *New Abr.* 243. *Comyn.* 133. S. C. 2 *Ld. Raym.* 909. S. C. Vide alſo 2 *Inſt.* 89. 4 *Rep.* 83. 1 *Rol. Abr.* 338. *Co. Lit.* 89. *a.* 4 *Co.* 83. *b.* *Doct. & Stud.* 129.

A man leaves a cheſt locked up with another to be kept, and doth not make known to him what is therein; if the cheſt and goods in it are ſtolen, the perſon who received them ſhall not be charged for the ſame, for he was not truſted with them. *Ibid.* And what is ſaid as to ſtealing is to be underſtood of all other inevitable accidents: but it is neceſſary for a man that receives goods to be kept, to receive them in a ſpecial manner, *viz.* to be kept as his own, or at the peril of the owner. 1 *Lill. Abr.* 193, 194. And vide 1 *Rol. Abr.* 338. 2 *Show. pl.* 166.

If I deliver 100*l.* *to* A. *to buy cattle*, and he beſtows 50*l.* of it in cattle, and I bring an action of debt for all, I ſhall be barred in that action for the money beſtowed and charges, *&c.* but for the reſt I ſhall recover. *Hob.* 207.

If one deliver his goods to another perſon, to deliver over to a ſtranger; the deliverer may countermand his power, and require the goods again; and if the *bailee* refuſe to deliver them, he may have an action of account for them. *Co. Litt.* 286.

If *A.* delivers goods to *B.* to be delivered over to *C.* *C.* hath the property, and *C.* hath the action againſt *B.* for *B.* undertakes for the ſafe delivery to *C.* and hath no property or intereſt but in order to that purpoſe. 1 *Rol. Abr.* 606.

But if the bailment were not on valuable conſideration, the delivery is countermandable; and in that caſe, if *A.* the bailor bring trover, he reduces the property again in himſelf, for the action amounts to a countermand; but if the delivery was on a valuable conſideration, then *A.* cannot have trover, becauſe the property is altered, and in trover the property muſt be proved in the plaintiff. 1 *Bulſt.* 68.

If goods be bailed to bail over on a *conſideration precedent, on his part, to whom they ought to be bailed*, the bailor cannot *countermand* it; otherwiſe where it is *voluntary*; and without conſideration. But where *it is in conſideration of a debt*, it is not countermandable; otherwiſe if it be *to ſatisfy the debt of another*; *per Egerton.* 1 *Leon.* 30. *pl.* 36.

And where a man delivers goods to another to be redelivered to the deliverer at ſuch a day, and before the *bailee* doth ſell the goods in market overt; the *bailor* may at the day ſeize and take his goods, for the property is not altered. *Godb.* 160.

If *A.* borrows a horſe to ride to *Dover*, and he rides out of his way, and the owner of the horſe meets him, he cannot take the horſe from him; for *A.* has a ſpecial property in the horſe till the journey is determined; and being in lawful poſſeſſion of the horſe, the owner cannot violently ſeize and take it away, for the continuance of all property is to be taken from the form of the original bargain, which in this caſe was limited till the appointed journey was finiſhed. *Yelv.* 172.

But if *A.* borrows a horſe to go to *Dover*, and goes to other places, the owner may have an action on the caſe againſt him for exceeding the purpoſes of the loan; for ſo far it is a ſecret and fallacious abuſe of his property; but no general action of treſpaſs, becauſe it is not an open and violent invaſion of it. 1 *Rol. Rep.* 128.

As to borrowing a thing periſhable, as corn, wine, or money, or the like, a man muſt, from the nature of the thing, have an abſolute property in them; otherwiſe it could not ſupply the uſes for which it was lent, and therefore he is obliged to return ſomething of the ſame ſort, the ſame in quantity and quality with what is borrowed. *Dr. & Stud.* 129.

If one delivers a ring to another to keep, and he breaks and converts the ſame to his own uſe; or if I deliver my ſheep to another to be kept, and he ſuffers them to be drowned by his negligence; or if the *bailee* of a horſe, or goods, *&c.* kill or ſpoil them, in theſe caſes action will lie. 5 *Rep.* 13. 15 *E.* 4. 20. *b.* 12 *E.* 4, 13.

If a man delivers goods to another, the *bailee* ſhall have a general action of treſpaſs againſt a ſtranger, becauſe he is anſwerable over to the *bailor*; for a man ought not to be charged with an injury to another, without being able to retire to the original cauſe of that injury, and in amends there to do himſelf right. 13 *Co.* 69. 14 *Hen.* 4, 28. 25 *H.* 7. 14.

If a man *bail* goods to one, to *bail* over to another, and the *bailee*, contrary to the truſt in him, doth not deliver but convert them to his own uſe; he ſhall be chargeable both to the *bailor*, and him to whom the goods ought to have been *bailed*. 1 *Bulſt* 68, 69.

Vide on this ſubject of *bailment*, *Ni pri.* 47. *Black. Com.* 2. *v.* 452.

Bairman, A poor inſolvent debtor left bare and naked. ——Bairman *qui debet fieri, jurabit in curia quod nihil habet ultra* 5 *ſolidos &* 5 *denarios.* Stat. Will. Reg. Scot. cap. 17.

Bakers, Making bread under weight, deficient in goodneſs, *&c.* the ſame may be ſeized by juſtices of peace, *&c* and penalties are inflicted by Stat. So for ſelling their large bread at higher price than ſet. *Vide* 51 *H.* 3. *St.* 6. *Ord. pro piſtor. c.* 2. 8 *Ann. c.* 18. 1 *Geo.* 1. *c.* 26. §. 5. *&c.* 3 *Geo.* 2. *c.* 29. §. 2. By the *Stat.* 22 *G.* 2. *c.* 46. §. 21. *Bakers* are to mark on every loaf expoſed to ſale, as white bread a large W. as wheaten bread a large W. H. as houſehold bread a large H. under the penalty of 20*s.* See *Mayors.* See *Bread.*

Balcanifer, or *baldakinifer, i. e.* A ſtandard bearer; it is mentioned in *Matt. Pariſ. Anno* 1237.—*Ea die* Balcanifer, *qui ut alii, qui ceciderunt, cruentiſſimam de ſe reliquit hoſtibus victoriam, &c.*

Balconies, Or open galleries for people to ſtand and behold things, to be to houſes in the chief ſtreets of *London* four foot wide, *&c.* *Stat.* 19 *Car.* 2. *c.* 23.

Bale, *(Fr.)* A pack, or certain quantity of goods or merchandize; as a *bale* of ſilk, cloth, *&c.* This word is uſed in the ſtatute 16 *R.* 2. and is ſtill in uſe.

Balenger, By the *Stat.* 28 *H.* 6. *c.* 5. ſeems to have been a kind of *barge*, or water veſſel. But elſewhere it rather ſignifies a man of war.—*Tandem pene ſolus fugiens in* balengario. *Walſing. in R.* 2. *Hoſtes armaverunt quinque vaſa bellica qualia* ballangarias *appellamus*. Ibid.

Baleuga, A territory or precinct. *Charta Hen.* 2. See *Bannam & Banleuga*.

Baliſtarius, A *baliſter* or croſs-bow man. *Gerrard de la War* is recorded to have been baliſtarius *domini regis*, &*c.* 28 & 29 Hen. 3.

Baliva, Is expounded to ſignify juriſdiction. *Co. Lit.* 105.

Balivo amovendo, A writ to remove a *bailiff* from his office, for want of ſufficient land in the bailiwick. *Reg. Orig.* 78. For if a ſheriff chuſe one to be *bailiff* of a hundred; or if the lord of a liberty elect one to be *bailiff* of the liberty, who hath not land ſufficient in the county to anſwer the king and his people, according to the ſtatute of *Weſtmin.* 2. then this writ ſhall be ſent to the ſheriff to diſcharge ſuch *bailiff*, and chuſe another in his place.

Balkers, Are derived from the word *balk*, becauſe they ſtand higher, as it were on a balk or ridge of ground, to give notice of ſomething to others. *Shep. Epitom.* vide *Conders*.

Ballance of Trade, A computation of the value of all commodities which we buy from foreigners, and on the other ſide the value of our own native products, which we export into neighbouring kingdoms; and the difference or exceſs between the one ſide and the other of ſuch account or computation is called the *ballance of trade:* which exceſs can be anſwered by us in nothing but our coin or bullion. The overplus of goods brought from our colonies in *America*, and other foreign parts, with which we ſupply our neighbours, is computed in time of peace at leaſt to *ballance our trade*.

Ballare, Signifies *ſcopus expurgare*. It is mentioned in *Fleta lib.* 2. *cap.* 87.

Ballaſt, Is gravel or ſand to poiſe ſhips, and make them go upright: and ſhips and veſſels taking in *ballaſt* in the river *Thames*, are to pay ſo much a tun to *Trinity* houſe *Deptford*; who ſhall employ *ballaſtmen*, and regulate them, and their lighters to be marked, &*c.* on pain of 10*l.* *Stat.* 6 *Geo.* 2. *c.* 29.

Ballium, A ſort of fortreſs or bulwark——*Eam civitatem cum exteriori* ballio *caſtri bellatorum ſuorum inſultibus occupavit*. Matt. Weſtm. Anno 1265.

Ban, or *bans*, (from the Brit. *ban*, i. e. *clamor*) Is a proclamation, or public notice; any public ſummons or edict, whereby a thing is commanded or forbidden. It is a word ordinary among the feudiſts; and there is both *bannus* and *bannum* which ſignify two ſeveral things. This word *bans* we uſe here in *England*, eſpecially in publiſhing matrimonial contracts, which is done in the church before marriage, to the end that if any man can ſpeak againſt the intention of the parties, either in reſpect of kindred, precontract, or for other juſt cauſe, they may take their exception in time, before the marriage is conſummated: and in the canon law, Bannæ *ſunt proclamationes ſponſi & ſponſæ in eccleſiis fieri ſolitæ*. But there may be a faculty or licence for the marriage, and then this ceremony is omitted; and miniſters are not to celebrate matrimony between any perſons without a licence, except the *bans* have been firſt publiſhed three ſeveral times; upon pain of ſuſpenſion, &*c.* *Can.* 62. See the *Stat.* 7 & 8 *W.* 3. *c.* 35. See *Marriage* and *Stat.* 26. *Geo.* 2. *c.* 33.

Bancale, A covering of eaſe and ornament for a bench, or other ſeat; mentioned in the *Monaſticon*, *Tom.* 1. *pag.* 222.

Bane, (from the Sax. *bana*, a murderer) Signifies deſtruction or overthrow: as, I will be the *bane* of ſuch a man, is a common ſaying; ſo when a perſon receives a mortal injury by any thing, we ſay it was his *bane:* and he who is the cauſe of another man's death, is ſaid to be *le bane, i. e.* a malefactor. *Bract. lib.* 2. *tract.* 8. *cap.* 1.

Baneret, (banerettus, *miles vexilarius*) Sir *Tho. Smith*, in his *Repub. Angl. cap.* 18. ſays, is a knight made in the field, with the ceremony of cutting off the point of his ſtandard, and making it as it were a *banner*, and accounted ſo honourable that they are allowed to diſplay their arms in the king's army as barons do, and may bear arms with ſupporters. *Cambden*, in his *Brittan. fol.* 109. hath theſe words, baneretti, *cum vaſſalorum nomen jam deſierat, a* baronibus *ſecundi erant; quibus inditum nomen a vexillo; conceſſum illis erat militaris virtutis ergo, quadrato vexillo (perinde ac* barones) *uti, unde &* equites vexillarii *a nonnullis vocantur*, &*c.* It is ſaid that they were anciently called by ſummons to parliament: and that they are next to the barons in dignity, appears by the ſtatute 14 *R.* 2. *c.* 11. and 5 *R.* 2. *Stat.* 2. *cap.* 4. *William de la Pole* was created *baneret* by K. *Edward* the Third, by letters patent, *Anno Regni ſui* 13. And thoſe *banerets*, who are created *ſub vexillis regiis, in exercitu regali, in aperto bello, & ipſo rege perſonaliter præſente, explicatis*, take place of all *Baronets*; as we may learn by the letters patent for creation of Baronets. 4 *Inſt.* 6. Some maintain that knights *banerets* ought not to be made in a civil war: but *Hen.* 7. made divers *banerets* upon the *Corniſh* commotion, in the year 1495. See *Selden's Titles of Honours, f.* 799.

Baniſhment, (Fr. *banniſſement*) *Exilium, abjuratio*, is a forſaking or quitting of the realm; and a kind of civil death, inflicted on an offender: there are two kinds of it, one voluntary and upon oath, called *abjuration*; and the other upon compulſion for ſome offence. *Staundf. Pl. Cr. f.* 117. By *Magna charta*, none ſhall be outlawed or baniſhed his country, but by lawful judgment of his peers, or according to the law of the land. 9 *H.* 3. *c.* 29 And by the common law no perſon ſhall be baniſhed, but by the authority of parliament; or in caſe of abjuration for felony, &*c.* but this is taken away by ſtatute, 3 *Inſt.* 115. *Stat.* 21 *Jac.* 1. *c.* 28. See *Abjuration*.

Bank, (Lat. *bancus*, Fr. *banque*) In our Common law, is uſually taken for a ſeat or bench of judgment; as *Bank le Roy*, the King's Bench, *Bank le Common Pleas*, the Bench of Common Pleas, or the Common Bench; called alſo in Latin *Bancus Regis*, and *Bancus Communium Placitorum*. Cromp. Juſt. 67, 91. *Jus Banci*, or the privilege of the Bench, was anciently allowed only to the king's judges, *qui ſummam adminiſtrant juſtitiam*, for inferior courts were not allowed that privilege.

There are, in each of the terms, ſtated days, called *days in bank, dies in banco*, that is, days of *appearance* in the court of *Common Pleas*. They are generally at the diſtance of about a week from each other, and regulated by ſome feſtival of the church. On ſome one of theſe days in bank all original writs muſt be made returnable; and therefore they are generally called the returns of that term. Vide *Black. Com.* 3 *V.* 277.

The adjournment day, or firſt return day after the *trial* of a cauſe, and whereon the *diſtringas juratores* is returnable, is called a day in *bank*, until *four* days after which, judgment cannot be ſigned. The uſe of which *four* days is, that the party, againſt whom judgment is given, may have an opportunity of moving in arreſt of judgment, if he thinks proper.

There is another ſort of *bank*, which ſignifies a place where a great ſum of money is to let out to uſe, returned by exchange, or otherwiſe diſpoſed of to profit: and a *Bank of England* managed by a governor and directors, eſtabliſhed by parliament, with funds for maintaining thereof, appropriated to ſuch perſons as were ſubſcribers; and the capital ſtock, which is enlarged by divers ſtatutes, is exempted from taxes, accounted a perſonal eſtate aſſignable over, not ſubject to forſeiture; and the company make dividends of the profits half-yearly, &*c.* The funds are redeemable by the parliament, on paying the money borrowed: and the Company of the *Bank* is to continue a corporation, and enjoy annuities till redeemed, &*c.* During the continuance of the *Bank*, no body politick, &*c.* other than the Company, ſhall borrow any ſums on bills payable at demand; and forging or altering *Bank-notes*, or tendering ſuch forged notes in payment, demanding to have them exchanged for money, &*c.* is felony. And officers or ſervants of the Company, that imbezil any *Bank-note*, &*c.* wherewith they are intruſted, being duly convicted, ſhall ſuffer death as felons. *Vide* the ſtatutes 5 & 6 and 8 & 9 *W.* 3. *c.* 20. and 7 *Annæ*, &*c.* See alſo 1 *Geo.* 1. *c.* 12. and 11 *Geo.* 1. *c.* 9. and

15 *Geo.* 2. *c.* 19. and many other Stats. relative to the Bank in the Oct. Index to the Stats. *Tit. Bank.*

Perſons not authoriſed by the Bank, making or uſing moulds, for the marking of paper, with the words *Bank of England*, viſible in the ſubſtance, or having ſuch moulds in their poſſeſſion, are guilty of felony without benefit of clergy. 13 *Geo.* 3. *c.* 79. §. 1.

Penalty of making and iſſuing notes and bills engraved to reſemble thoſe of the Bank, or having the ſum expreſſed in white characters on a black ground, impriſonment, for any ſpace, not exceeding ſix months. *Id.* §. 2.

But innocent perſons poſſeſſed of ſuch notes carrying them for payment, not affected. *Id.* §. 3.

Vide the ſtatute at large. See *Stat.* 24 *Geo.* 2. *c.* 4. for enabling the *Bank of England* to hold general courts and courts of directors in the manner therein mentioned.

Bankers, The moneyed goldſmiths firſt got the name of *bankers* in the reign of K. *Charles* the Second, as by the words of an act of parliament, *anno* 22 & 23 *Car.* 2. appears,——*Whereas ſeveral perſons, being goldſmiths, and others, by taking up or borrowing great ſums of money, and lending out the ſame again for extraordinary hire and profit, have gained and acquired to themſelves the reputation and name of bankers, &c.* thus runs the ſtatute: but *bankers* of late are thoſe goldſmiths and private perſons in whoſe hands money is depoſited and lodged for ſafety, to be drawn out again as the owners have occaſion for it.

Bankrupt, *(bancus ruptus)* Is ſo called, becauſe when the bank or ſtock is broken or exhauſted, the owner is ſaid to be a *bankrupt*. And this word *bankrupt* is derived from the Fr. *banqueroute*, which ſignifies a breaking or failing in the world: *banque* in *French* is as much as *menſa* in *Latin*, and *route* is the ſame as *veſtigium*; and this term is ſaid to be taken originally from the Roman *menſarii*, which were ſet in publick places, and when a tradeſman ſlipped away, with an intention to deceive his creditors, he left only ſome *veſtigia* or ſigns of his table or ſhop behind him. *Cowel.* But a *bankrupt* with us ſignifieth generally either man or woman, that living by buying and ſelling hath gotten other mens goods into his or her hands, and hideth himſelf in places unknown, or in his own houſe, in order to deceive and defraud his creditors. 4 *Inſt.* 277.

For the better underſtanding of this head, it will be proper to conſider,

I. *Who may be a bankrupt, and by what acts a perſon may become ſo.*
II. *Who may take out a commiſſion of bankrupt, and of the power and duty of commiſſioners.*
III. *Of the chuſing of aſſignees, and of their intereſt in the bankrupt's eſtate; with the manner in which creditors are to prove their debts.*
IV. *Of the diſtribution of the bankrupt's eſtate.*
V. *Of the duty, privilege, diſcharge, and certificate of the bankrupt.*

I. By *Stat.* 1 *Jac.* 1. *c.* 15. A *bankrupt* is thus deſcribed, *viz.* All and every perſon who ſhall uſe the trade of merchandiſe by way of bargaining, exchange, bartering, or otherwiſe in groſs, or by ſeeking his or her living by buying and ſelling, who ſhall depart his houſe, or abſent himſelf, or ſuffer himſelf to be arreſted for any debt or other thing not grown due, for money delivered, wares ſold, or other good conſideration; or ſhall ſuffer himſelf to be outlawed, or go to priſon, or fraudulently procure himſelf to be arreſted, or his money or goods attached; or make any fraudulent conveyance of his lands, goods, or chattels, whereby his creditors may be defeated in the recovery of their juſt debts; or being arreſted for debt ſhall lie in priſon ſix months, or more, upon ſuch arreſt or detention, ſhall be adjudged a *bankrupt*.

The 21 *Jac.* 1. *c.* 19. hath other deſcriptions of a *bankrupt*; but they are all declared void by a late ſtatute. It is not buying and ſelling of land, but of perſonal things, that will make a man liable to be a *bankrupt*; nor is it buying only, or ſelling only, but both buying and ſelling. Every one that gets his living by buying and ſelling in trade and merchandiſe, may come under the denomination of a *bankrupt*, upon his failing therein. But adventurers in the *Eaſt-India* company, members of the *Bank of England*, of the *South-Sea* company, and other ſocieties, ſhall not be adjudged *bankrupts*, in reſpect of their ſtock, &c. Alſo no perſon concerned as receiver general of taxes, &c. ſhall be a *bankrupt*: and farmers, graziers, &c. are excepted out of the ſtatutes; as buying and ſelling is not their only or principal means of livelihood. 14 *Car.* 2. *c.* 24. But *vide* the ſtatutes 4 *Ann.* *c.* 17. 5 *Ann.* *c.* 22. 3 *Geo.* 1. *c.* 12. 5 *Geo.* 1. *c.* 24. 10 *Ann.* *c.* 15. 7 *Geo.* 1. *c.* 31. 3 *Geo.* 2. *c.* 29. 5 *Geo.* 2. *c.* 30. 24 *Geo.* 2. *c.* 57. 28 *Geo.* 2. *c.* 13. *ſect.* 22. & 1 *Geo.* 3. *c.* 17. §. 30.

An inn-keeper is not within the ſtatutes, for though he buys proviſions to be ſpent in his houſe, yet he doth not properly ſell it, but utters it to his gueſts at no certain price. *Cro. Car.* 395. A ſhoe-maker hath been adjudged within the ſtatutes, as he lives by his credit in buying leather, and ſelling it again in ſhoes, &c. And carpenters in *London*, weavers, dyers, tanners, bakers, brewers, vintners, &c. may be *bankrupts*: but handicraftmen, huſbandmen, labourers, &c. are not within the ſtatutes. *Cro. Car.* 21. *Cro. Jac.* 585. 3 *Mod.* 330.

It hath lately been determined in the court of King's Bench, that a *victualler*, following the buſineſs of a *victualler* only, is not within the bankrupt laws. In the caſe of *Perkin* v. *Proctor and Green*, vide *Wilſon Rep. par.* 2. *fo.* 382, &c A feme ſole merchant in *London* may be a *bankrupt*. And in *Crooke* and *Pigeon*.

If a merchant gives over his trade, and ſome years after becomes inſolvent for money he owed while a merchant, he is a *bankrupt*: but if it be for new debts, or old debts continued on new ſecurity, it is otherwiſe. 1 *Vent.* 5, 29.

By *Stat.* 5 *Geo.* 2. *c.* 30. *ſect.* 39. Perſons dealing as bankers, brokers, and factors, being frequently intruſted with large ſums of money, and with goods and effects of very great value belonging to other perſons, are declared to be ſubject to all the ſtatutes made concerning *bankrupts*.

By *Stat.* 5 *Geo.* 2. *c.* 30. *ſect.* 40. No driver of cattle, or any receiver general of taxes, ſhall be deemed a bankrupt.

An ironmonger, who buys rod iron, or bar iron, and cauſes it to be worked up into wares, may be a *bankrupt*. *Good.* 11. *Stone* 120.

A ſaleſman may be a *bankrupt*. *Good.* 12.

Perſons reſiding abroad may be adjudged *bankrupts* here. Thus

A man born in *England* goes over to *Ireland*, and there trades and buys goods in *England*, and ſells them in *Ireland*, and being indebted in *England* becomes *bankrupt*, adjudged a *bankrupt* in *England*. *Raym.* 375. A gentleman of the *Temple* went to *Liſbon*, and traded to *England* and broke; it was adjudged, he was a *bankrupt* by reaſon of his trading hither and back again, which gained him credit here, though he was out of the realm. *Salk.* 110.

By 4 *Geo.* 3. *c.* 33. Members of parliament are made ſubject to *bankrupt* laws; but not ſubject to arreſt, except in caſes made *felony* by thoſe laws.

The ſtatutes relating to bankrupts have been adjudged to extend to phyſicians, when they have been proved to have traded or merchandized, or to have bought and ſold goods, effects, and merchandizes, and accordingly on the 29th of *October* 1726, a commiſſion of *bankruptcy* was taken out againſt Doctor *John Lane*, a phyſician in *Briſtol*, and he was found a *bankrupt*, on his being proved a *dealer in copper and lead*. *Dav.* 9. And every one who buys and ſells goods and chattels, &c. and thereby endeavours to get a living, is, in reſpect of ſuch *trading*, ſubject to the *bankrupt* laws, any other profeſſion that they follow being out of the queſtion.

Private gentlemen may be *bankrupts*, though never bred up to trade, but have only inveſted their money in it, in order to make better intereſt thereof, notwithſtanding they have never acted or appeared in the trade, or been known to any perſons trading with the perſon to whom they ſo lent the money, or been perſonally concerned in the buying and ſelling any goods whatſoever. See *Dav.* 9. And why not? For, if intitled to the profits, they ought to be ſubject to all the conſequences of trading.

And ſeveral caſes have of late years been tried before Lord *Mansfield*, particularly in *London*, where ſuch perſons have been adjudged partners, though under the moſt ſubtle contracts, and his determination acquieſced in by by the moſt able lawyers. Conſequently, ſuch perſons would be liable to the bankrupt laws.

A pawnbroker, merely as ſuch, is not liable to the ſtatutes relating to bankrupts, becauſe he does not buy nor ſell for himſelf, and is only a common lender of money at intereſt, and the pledges which he ſells are for the benefit of the borrower; but if he is in any other way a trader, he is then liable to become a *bankrupt*: for if a man hath ſeveral trades, and one is within, but another not within the ſtatutes, he ſhall nevertheleſs be adjudged a trader, ſo as to make him a *bankrupt*.

With reſpect to the *acts* by which a man may become a *bankrupt*, they may be collected from the foregoing and following ſtatutes, and are briefly thus:

1. To depart the realm.

2. To begin to keep his houſe privately, to abſent himſelf from and avoid his creditors.

3. To ſuffer himſelf willingly to be arreſted for any debt, or other thing, not grown due, for money delivered, wares ſold, or any other juſt or lawful cauſe, or good conſideration or purpoſe.

4. To ſuffer himſelf to be outlawed.

5. To yield himſelf to priſon.

6. To depart from his dwelling-houſe, to the intent or purpoſe to defraud or hinder a juſt creditor or creditors of his or their juſt debt or duty. *Stat.* 13 *Eliz. c.* 7. 1 *Jac.* 1. *c.* 15. *ſect.* 2.

7. Willingly or fraudulently to procure himſelf to be arreſted, or his goods, money, or chattels, to be attached or ſequeſtered.

8. To make any fraudulent grant or conveyance of his lands, tenements, goods, or chattels, to the intent, or whereby his creditors ſhall and may be defeated or delayed for the recovery of their juſt debts. 1 *Jac.* 1. *c.* 15. *ſect.* 2. And, if the editor miſtakes not, a warrant of attorney to confeſs a judgment, on which judgment has been entered, and execution levied on *all*, or the greateſt part of the debtor's eſtate and effects, thereby giving an unjuſt preference to one creditor, in prejudice to all the reſt, has been adjudged ſuch a fraudulent conveyance, and, conſequently, an act of bankruptcy.

9. Being arreſted for debt, to lie in priſon two months, after his arreſt, upon that or any other arreſt, or detention for debt.

10. To obtain privilege other than that of parliament.

11. Being arreſted for 100 *l.* or more, to eſcape out of priſon.

12. To prefer to any court any petition or bill againſt any of the creditors, thereby endeavouring to inforce them to accept leſs than their juſt debts, or to procure time, or longer days of payment, than was given at the time of their original contracts. *Stat.* 21 *Jac.* 1. *c.* 19. *ſect.* 2.

13. For a bankrupt to pay, ſatisfy, or ſecure the petitioning creditor his debt. *Stat.* 5 *Geo.* 2. *c.* 30. *ſect.* 24. Vide *Black. Com.* 2 *V.* 478, &c.

By 4 *Geo.* 3. *c.* 33. Neglecting to make ſatisfaction for any juſt debt to the amount of 100 *l.* within two months after ſervice of legal proceſs, for ſuch debt, upon any trader *having privilege of parliament*, is an act of *bankruptcy*.

If a merchant departs the realm with the conſent of his creditors, he does not thereby commit an act of *bankruptcy*. *Dav.* 30.

But if a merchant departs the realm to merchandize, and becomes indebted, and to avoid arreſts, defers his return; this is *tantamount* to a departing of the realm. *Stone* 123.

As to keeping of the houſe, &c. if a man keeps his houſe for a long time, this does not immediately make him a *bankrupt*; but if he conceals himſelf within his houſe but for a day or an hour to delay or defraud his creditors, he is a *bankrupt*. *Palm.* 325.

If a man denies himſelf to a creditor wilfully, knowing he comes for money, and with an intent to defraud and delay him of his debt, ſuch denials are taken to be acts of *bankruptcy*; and ſeveral perſons have been found bankrupts on ſuch accounts.

But in a petition which came on before the late Lord Chancellor *Hardwicke*, on the 6th of *Auguſt* 1743, it was ſaid, that the being denied to a creditor was only an evidence of an act of *bankruptcy*; but that the abſconding was the material part of it. *Dav.* 92, 93.

A merchant trader indebted, keeps in another man's houſe, or on ſhipboard, adjudged a keeping in his houſe: but a withdrawing muſt be on purpoſe to defraud creditors; and if a man goes ſometimes at large, ſo as he may be met with one time or other, it will excuſe him. But this muſt be ſuch a going at large, as that it is evident he did not intend to avoid his creditors, and muſt be a going abroad in the day time, at uſual times of buſineſs, and in the common and uſual way.

Keeping houſe for fear of an attachment in Chancery, is no act of bankruptcy. *Stone* 123.

So if a man abſents himſelf for felony, it is not an act of *bankruptcy*, it not being to defraud the creditor of his juſt debt or duty due to him. *Dav.* 91.

As to an *outlawry*, if a jury on a verdict find a man to be outlawed, it muſt be proved to be done in *fraudem creditorum*, or to defraud his creditors. *Keb.* 11. 2 *Sid.* 69, 114, 176.

A man may be ſo unfortunate as to be outlawed, and know nothing at all of the matter, and may afterwards come and procure the outlawry to be reverſed; and if ſo, it is not an act of *bankruptcy*; and this was determined in the caſe of *Radford* v. *Bildworth*, or *Bludworth*. 1 *Danv.* 688 *p.* 3.

If an outlawry be reverſed for want of proclamations, all done in the mean time by the commiſſioners, is void; but if it were reverſed for error, contrary. *Stone* 124. *Good.* 23.

As to lying in priſon upon an arreſt, it is ſaid, that lying in priſon makes a man a *bankrupt* from the firſt arreſt, that is, from the time of the firſt arreſt upon which he lies in priſon, and not where he puts in ſufficient bail, for that might be infinitely prejudicial and miſchievous, and no man could ever ſafely pay or receive from a tradeſman. *Salk.* 109. adjudged in *B. R.* and affirmed in error. *Came* v. *Coleman.*

But it is held by *Holt* C. J. that if a defendant renders in diſcharge of his bail, and lies in priſon two months, he is a *bankrupt* from the firſt arreſt, not from the render only. *Salk.* 110. 2 *Show.* 519.

Yet in order to make it a compleat act of *bankruptcy*, his lying in priſon two months without putting in bail ought to be proved, otherwiſe a third perſon, who may be an innocent man, may be affected thereby; and the intention or deſire of any man to be a *bankrupt*, or to be unjuſt, ought not to prejudice ſuch innocent perſon, unleſs an eſſential fact, which creates an act of *bankruptcy*, is proved againſt the perſon ſo intending to be a *bankrupt*. *Dav.* 94.

With regard to the bankrupt's paying or ſecuring the debt of the petitioning creditor,

The doing this is declared, ſhall be taken to be ſuch an act of *bankruptcy*, that on good proof ſuch commiſſion ſhall be ſuperſeded, and the Lord Chancellor, &c. may, on any creditor's petitioning, award a new commiſſion.

And ſuch perſon, ſo taking or receiving ſuch goods, or ſatisfaction, ſhall loſe his whole debt, and the money received, and ſhall pay the ſame to ſuch perſons as the commiſſioners ſhall appoint, in truſt for the *bankrupt's* creditors in proportion. See 5 *Geo.* 2. *c.* 30. *ſect.* 24.

But if a banker, who hath many peoples money in his hands, refuſes payment, yet keeps his ſhop open, and as often as he is arreſted gives bail; by this means he may give preference of payment to his friends; and if when he hath done he runs away, ſuch payment ſhall ſtand againſt a commiſſion of *bankruptcy*. *Farreſt. Rep.* 139. If after a plain act of *bankruptcy*, one goes abroad and is a great dealer, yet this will not purge the firſt act of *bank-*

ruptcy; though if he pays off or compounds with his creditors, he is become a new man. *Trin.* 2 *Ann.* 1 *Salk.* 110. The commiſſioners of *bankrupts* have the power to adjudge a man a *bankrupt*; yet in an action the jury muſt find whether he was ſo, or not. 1 *Danv.* 687. He that is a *bankrupt* to one creditor, is accounted in law a *bankrupt* to all the creditors; and being once adjudged ſo, is always ſo to the reſt of the creditors. 22 *Car.* 2. *B. R.*

Where there are two partners in trade, and one breaks, you ſhall not charge the other with the whole; but the eſtate belonging to the joint trade ought to be divided, &c. *Mod. Rep.* 45. And if one of them becomes a *bankrupt*, it will not affect his companion. 3 *Salk.* 61. Acts diſcharging *bankrupts* ſhall not diſcharge any partner in trade, or one jointly bound with the *bankrupt*. 1 *Danv. Abr.* 686. Diſcharge of a *bankrupt*, is not to diſcharge his partner, or ſurety. 10 *Ann.* c. 15. §. 3.

II. *As to the taking out the commiſſion,*

The commiſſion of *bankrupt*, which arms the commiſſioners with all the power which they are to exerciſe over the *bankrupt* and his eſtate, is to be granted by the Lord Chancellor, Lord Keeper, or Commiſſioners of the Great Seal, on the application of *creditors* only; for if twenty ſwear that ſuch a one is a *bankrupt*, yet a commiſſion cannot be awarded without a petition from the creditors for that purpoſe; and this is a matter not diſcretionary, but to be granted *de jure*. 1 *New Abr.* 252.

By 34 *H.* 8. *cap.* 4. "The Lord Chancellor, Treaſurer, &c. were to take order with the bankrupt's lands and goods for payment of his debts."

And by 13 *Eliz. cap.* 7. "The Lord Chancellor or Keeper, upon complaint in writing, ſhall have power, by commiſſion under the Great Seal, to appoint honeſt and diſcreet perſons, who, or the moſt of them, may take ſuch order with the body, &c." By 1 *Jac.* 1. c. 15. The commiſſion does not abate by the *bankrupt*'s death. And

By 5 *Geo.* 2. *cap.* 30. *ſect.* 44. it is enacted, "That no commiſſion of *bankrupt* ſhall abate by the death of the king; and where, by the death of the commiſſioners or otherwiſe, it becomes neceſſary to renew the commiſſion, no more than half fees are payable thereupon."

No commiſſion of *bankrupt* ſhall be granted, unleſs the debt of one creditor amount to 100*l.* or of two creditors to 150*l.* or of three or more to 200*l.* 5 *Geo.* 2. c. 30.

In order to the taking out a commiſſion of *bankrupt*, it is uſual firſt for a creditor to make affidavit before a Maſter in *Chancery*, that the party is indebted in a ſum ſufficient to make him a *bankrupt*; then to petition the Lord Chancellor for a commiſſion; give bond to prove the perſon a *bankrupt*, &c. within ſome or one of the ſtatutes; and next follows the commiſſion, directed to five commiſſioners, (whereof two are to be eſquires of the *quorum*.)

By the 5 *Geo.* 2. c. 30. *ſect.* 22. it is enacted, "That perſons who have bills, bonds, promiſſory notes, or other perſonal ſecurity for their money, payable at a future day, who by the 7 *Geo.* 1. *cap.* 31. are enabled to come in as creditors, and allowed to diſcount ſuch debts, allowing 5*l. per cent.* &c. may (though diſabled by the ſtatute) petition for, or join with others in petitioning for any commiſſion of *bankruptcy*."

By the 13 *Eliz.* c. 7. the commiſſioners have power over the whole eſtate, freehold and copyhold, goods, debts, chattels, and effects of the *bankrupt*, and may ſell his land.

They have no eſtate, and have only power to ſell; and to paſs the eſtate there muſt not only be a deed indented, but the ſame muſt be inrolled alſo. 2 *Show.* 156. *i. e.* as to the real eſtate.

They may break open houſes. *Stat.* 21 *Jac.* 1. c. 19. *ſect.* 8.

But they cannot break open a houſe to ſearch for the *bankrupt*'s goods, unleſs the *bankrupt*'s goods be in the houſe of the *bankrupt*. 2 *Show.* 247.

Bankrupts are to be apprehended, on a commiſſion iſſued and certified, by virtue of a juſtice's warrant; and refuſing to be examined, the commiſſioners may commit them. 5 *Geo.* 2. c. 30.

Alſo commiſſioners may examine *bankrupt*'s wife touching his eſtate. *Stat.* 21 *Jac.* 1. c. 19. *ſect.* 6.

But ſhe cannot be examined againſt her huſband touching his *bankruptcy*, or whether he had committed any act of *bankruptcy*, or as to how and when he became a *bankrupt*; and if they commit her, and though the warrant of commitment mention to be, as well for refuſing to diſcover the goods, &c. of the *bankrupt* as the time and manner of his *bankruptcy*, yet the commitment will be held illegal, and the wife ordered to be diſcharged. 1 *Will. Rep.* 610, 611.

By 1 *Jac.* 1. c. 15. The commiſſioners may commit ſuch perſons as have the *bankrupt*'s goods, or are indebted to him; who refuſe to come before them, or to be ſworn when preſent.

They may likewiſe examine and commit any other perſon, not anſwering interrogatories. *Stat.* 5 *Geo.* 2. c. 30. *ſect.* 16.

A perſon once examined by the commiſſioners of *bankrupts* cannot be examined again without a new commiſſion. 2 *Show.* 102.

Equity will not compel a man to diſcover what goods he really bought of a *bankrupt* after the *bankruptcy*, and before the commiſſion ſued out, where the party has no notice of the *bankruptcy*. 1 *Vern.* 27.

Though ſuch perſons have been examined by the commiſſioners, yet it is ſaid a bill for a diſcovery of the ſame matters may be filed againſt them in Chancery. 2 *Chan. Ca.* 73.

With reſpect to the duty of the commiſſioners, they are by 5 *Geo.* 2. c. 30. to take an oath, before they proceed, for the due execution of their truſt; and by the ſame ſtatute,

The commiſſioners are not to eat, &c. at *bankrupt*'s or creditors expence, or to take more than 20*s.* each commiſſioner for each meeting.

The commiſſioners are to appoint three meetings within forty-two days, but the Lord Chancellor may enlarge the time.

They are to give notice of their meeting in the Gazette, and to admit creditors to prove their debts. Same ſtatute.

The farther particulars of their duty may be collected by attending to the ſubſequent diviſions:

III. *As to the maner of chuſing aſſignees, and their intereſt,* &c.

It is enacted by 5 *Geo.* 2. c. 30. *ſect.* 26. That commiſſioners are to aſſign the *bankrupt*'s effects to ſuch perſons as ſhall be choſen by a major part of the creditors; who (by *ſect.* 35. with conſent of creditors) may compound with debtors, &c. And by the ſame ſtatute, None are to vote for the choice of aſſignees, whoſe debt doth not amount to 10*l.* Notice ſhall be given to creditors to meet and chuſe aſſignees, and prove debts, &c. which they may do without paying contribution.

New aſſignees may be choſen by the creditors; and the old ones ſhall deliver up effects to them, under the penalty of 200*l.* And after the end of four months and within twelve months are to account, and then a dividend ſhall be made; and there may be a ſecond dividend in eighteen months, if the eſtate be not wholly divided on the firſt, which ſhall be final, unleſs any law-ſuit is depending, or the effects are not diſpoſed of, &c.

Aſſignees or commiſſioners may pay off mortgages on the bankrupt's eſtate: likewiſe aſſignees of the commiſſioners ſhall have the benefit of covenants of re-entry, &c. on lands. 2 *Rep.* 25.

All the goods and chattels of the bankrupt, which he was poſſeſſed of at the time of his becoming bankrupt, may be ſold by the commiſſioners; and notwithſtanding the bankrupt ſell them in market overt. Sale of goods by a bankrupt, after an act of bankruptcy, may be avoided by the commiſſioners of bankrupt; and they may in this caſe bring trover for the goods, or debt, or *aſſumpſit* for the value, &c. 3 *Salk.* 60.

By 19 *Geo.* 2. *c.* 32. Payments made by a bankrupt in the way of his trade without notice, are declared valid.

Sale of goods by a *bankrupt* after an act of *bankruptcy* is not merely void, the contract is good between the parties; but it may be avoided by the commiſſioners or aſſignees at pleaſure; therefore they may either bring *trover* for the goods, as ſuppoſing the contract may be void, or may bring debt or *aſſumpſit* for the value, which affirms the contract. 3 *Salk.* 59. *pl.* 2.

The aſſignee of a *bankrupt* exhibits his bill againſt the defendant, to diſcover goods of the *bankrupt*, that came to his hands after the *bankruptcy*. The defendant, by way of plea, ſets forth that he had no goods of the *bankrupt's*, or that ever were his, but what he bought for full and valuable conſideration, and *bona fide*; and that, at the time of the ſale and payment of his money, he had no notice either of the commiſſion, or of any act of *bankruptcy* committed by the *bankrupt*. On long debates, the plea *was* allowed by the Lord *North*, and to take what remedy they could before the commiſſioners, or at law. *Hutchins*, counſel for the defendant, cited a former precedent, but it was not produced. 2 *Chan. Ca.* 135.

A. purcaſes of a man, who had committed an act of *bankruptcy*, but without notice thereof: afterwards a commiſſion is taken out, and there being a term ſtanding out in truſtees, the aſſignee brings a bill againſt them and the purchaſer, to have the term aſſigned to him; but bill diſmiſſed. 2 *Vern* 599.

Offices of inheritance may be ſold; but not offices of truſt, annexed to the perſon for life. If a bankrupt commits felony, it is ſaid his land ſhall not eſcheat, but the commiſſioners may ſell it; and his creditors ſhall have his goods, not the King. *Stone* 126, 130.

Commiſſioners may aſſign debts, *&c.* to the creditors, who may proceed to execution, though the bankrupt dies; perſons ſuſpected to detain any of the bankrupt's goods or eſtate may be arreſted, and ſtill refuſing to deliver them ſhall be committed. *Sed quære?* The uſual method is to bring an action of *trover*.

Freehold and copyhold lands, goods and debts may be aſſigned, tho' transferred into other mens names, except *bona fide*, and on valuable conſideration. *Stat.* 13 *Eliz.* *c.* 7. *ſect.* 7. 1 *Jac.* 1. *c.* 15. *ſect.* 5.

Aſſignees ſhall compound with the lord for fine of copyhold lands, and be admitted. *Stat.* 13 *Eliz.* *c.* 7. *ſect.* 3.

The commiſſioners may ſell a copyhold intailed, which by cuſtom may be intailed and cut off; otherwiſe, if there be no ſuch cuſtom. *Stone* 127. *Billing.* 148.

Aſſignees may ſue actions in their own names for the debts due to the bankrupt, for they are transferred by act of parliament, but yet it is not a debt upon record; but as in debt upon contract defendant might have waged his law againſt the bankrupt, ſo he may againſt the aſſignees. *Geo. Jac.* 105.

But if the commiſſion be not taken out within ſix years, directed by law for ſuing of debts, and the aſſignment made within that time, a defendant in an action may plead the ſtatute of limitations: if the commiſſion be taken out in ſix years, the ſtatute preſerves the debt, being to relieve the creditors againſt fraud, *&c.* 1 *Saund.* 37.

Notice of the aſſignment of the debt is not neceſſary to be given to the debtor, before action brought by the aſſignees for the debt. *Lutw.* 456.

When an action is brought by an aſſignee under a commiſſion of bankrupt, it need not be ſet forth in the declaration how he became aſſignee. *Burnard.* *K. B.* 309. and vide *Carth.* 29.

In caſe of bankruptcy *trover* will lie generally; *per cur'.* 3 *Keb.* 294. *pl.* 22.

Though aſſignees may as aboveſaid bring actions at law in their own names, yet no *bill in equity* ſhall be commenced by any aſſignee or aſſignees, without the conſent of the major part in value of the creditors of ſuch bankrupt, who ſhall be preſent at a meeting of the creditors, purſuant to notice to be given in the *London Gazette* for that purpoſe. 5 *Geo.* 2. *c.* 30. *ſect.* 36.

They may alſo, with the like conſent of creditors, ſubmit diſputes to *arbitration*, and *compound* with debtors to the *bankrupt*'s eſtate. 5 Geo. 2. c. 30, *ſec.* 33, 34.

Aſſignees likewiſe, or the major part of the commiſſioners, may *ſettle* open, unbalanced and mutual *accounts*; and what ſhall appear on the balance before the perſon became bankrupt, and no more, ſhall be claimed or paid on either ſide. 5 *Geo.* 2. *c.* 30. *ſect.* 28.

The aſſignees are to keep fair accounts in their books, of all monies received and paid, and to make oath or affirmation before the commiſſioners of the truth of ſuch accounts. 5 *Geo.* 2. *c.* 30. *ſect.* 33.

Aſſignees may be *removable* on the petition of creditors to the Lord Chancellor, *&c.* and if a new aſſignment is made, the eſtate ſhall be veſted in ſuch new aſſignees; and the commiſſioners ſhall give notice in the *two London Gazettes* that ſhall immediately follow the removal of ſuch aſſignees, and the appointment of the new ones, for the debtors to the *bankrupts* not to pay any money to the old aſſignees. 5 *Geo.* 2. *c.* 30. *ſect.* 31.

If an aſſignee is guilty of a breach of truſt, he will be liable to pay intereſt and coſts.

If one aſſignee dies, the truſt goes to the ſurvivor, and the executors of the deceaſed aſſignee muſt account with the ſurvivor; and if aſſets are denied, he muſt account for aſſets before a Maſter in Chancery.

If the *bankrupt's* real eſtate is conveyed to aſſignees, and one of them dies, this is a jointenancy, and goes to the ſurvivor; and he may alone ſell ſuch eſtate to a purchaſer. But if both die before any conveyance is made, then the heir at law of the ſurvivor muſt convey to ſuch new aſſignees as the court ſhall appoint, or join with ſuch new aſſignees in the conveyance to a purchaſer. *Dav. Bank.* 409.

The law is very clear, that the aſſignees are exactly in the ſame place as the *bankrupt*, and ſtand in his place to every particular, and any agreement entered into ſhall bind them; and though there may not be the ſame remedy againſt them, that is not from the nature but the neceſſity of the thing; for he ſhall make an adequate and compleat ſatisfaction as far as his fortune in the hands of the aſſignees will admit of. *Select Ca. in Ch.* 77.

The aſſignees are bound by all acts done by the *bankrupt* before he becomes ſo, whether of a legal or equitable nature, if they were done upon a valuable conſideration, and without fraud; and whatever diſpoſition of his eſtate he makes, that will affect himſelf, does equally conclude the aſſignees, who ſtand directly in his place. 2 *Eq. Abr.* 101. *pl.* 5.

A. puts out 1000 *l.* at intereſt to the *Eaſt-India* company, and takes bond for it in the name of *J. S.* his wife's relation, and afterwards *A.* is *bankrupt*; *J. S.* is ſummoned before the commiſſioners, but, before his examination, tells the company, that the money was not his, but that they ſhould pay it to the perſon who ſhould bring the bond; and accordingly *A.*'s wife brought the bond, and received the money. The court would not inforce *J. S.* to pay the money. *Ch. Pre.* 18.

A man had deviſed lands, which were in mortgage, to be ſold, and the ſurplus of the money to be paid to his daughter; the daughter married a man who ſoon after became a *bankrupt*, and the commiſſioners aſſigned this intereſt of the wife's; the huſband died, and the aſſignees brought this bill againſt the wife and truſtees, to have the land ſold, and the ſurplus of the money paid to them; but the court would not aſſiſt in ſtripping the wife (who was wholly unprovided for) of this intereſt, but diſmiſſed the bill at the Rolls. *Eq. Ca. Abr.* 54.

The creditors have a right to the *bankrupt*'s goods, by the act of *bankruptcy*, and thereby they are bound: though until aſſignment by the commiſſioners, the property is not transferred out of the *bankrupt*. 1 *Salk.* 108. The commiſſioners are to ſell all the *bankrupt*'s lands in fee, for life, or years, *&c.* and it will be binding againſt the bankrupt and his iſſue, *&c.* 1 *Lill. Abr.* 204. They may ſell all entailed lands in poſſeſſion, reverſion, or remainder, except entailed in the crown, of the gift of the king; and this ſhall bind the iſſue in tail, and all others, which a common recovery might cut off. *Ibid.* 205. If a *bankrupt* grant his lands or goods in the names of other perſons, the commiſſioners, notwithſtanding, may make ſale of them: but not lands, *&c.* conveyed *bona fide* before the party became a *bankrupt*. *Wood's Inſt.* 310. And no purchaſe of lands ſhall be impeached, unleſs the commiſſion of *bankrupt* be ſued out within five years after a man becomes *bankrupt*. Lands held by a *bankrupt* in joint-tenancy may be ſold as to the moiety: alſo lands which a perſon hath in right of his wife, (but not her dower), and lands deviſed to a *bankrupt*, the commiſſioners may ſell.

With reſpect to the manner of *creditors proving their debts*, it may be proper to conſider the nature of their debts, and how far they are legally to be received as creditors.

An aſſignee, or indorſee of a *bankrupt*'s notes at an under value is a creditor for the full ſums, and may ſue out a commiſſion. But it is otherwiſe where he is aſſignee of a bond, or where the indorſement of the note is ſubſequent to the *bankruptcy*. 1 *Peer. Will.* 782.

Perſons who are ſecurity for another may come in as creditors. *Cro. Jac.* 127.

But a ſeller of lands need not come in as a creditor for the remainder of his purchaſe money. 1 *Vern.* 267.

If a creditor advances money to a *bankrupt* after a commiſſion ſued out, though he did not know it, he will loſe his money. 2 *Vern.* 156.

When money is obtained by judgment in action of debt, and the plaintiff becomes *bankrupt*, and a commiſſion of *bankrupt* is taken out againſt him, though the ſheriff may bring the money into court, it ſhall be delivered to the plaintiff, and not the aſſignee of the commiſſion, unleſs he take out a *ſcire facias* againſt the defendant, in order to try the *bankruptcy*. 1 *Vent.* 193. *Qu.* If ſuch a caſe was now to happen whether the courts at *Weſtminſter* would not, on motion, and producing the commiſſion and aſſignment, order the money to be paid over to the aſſignee? the property being diveſted out of the plaintiff, and it being a part of his eſtate and effects, which the aſſignee is to diſtribute. A plaintiff that hath a defendant's body in execution, who becomes *bankrupt*, ſhall not come in to be relieved by the ſtatutes: but if the plaintiff recovers damages, *&c.* againſt the defendant, and hath judgment, and then the defendant becomes bankrupt, the plaintiff is a creditor; for it is a debt due to him, and action of debt lies on the judgment. *Cro. Car.* 166. If a debtor to a bankrupt pays him his debt voluntarily, he muſt pay it over again; but it is otherwiſe in caſe of payment by compulſion of law. 2 *Vent.* 258. Sureties or bail, when they have paid the debt, may come in as creditors. Thoſe that attach goods of the bankrupt, are to come in as creditors. And aliens as well as denizens may come in as creditors; for all ſtatutes concerning bankrupts extend to aliens, who ſhall be ſubject to the laws againſt bankrupts, *&c.* *Hob.* 287. *Stat.* 21 *Jac.* 1. *c.* 19.

Though a creditor comes under a commiſſion of bankrupt, and proves his debt, being prevailed to be an aſſignee, being informed that otherwiſe he will loſe his debt, yet if the bankrupt has no eſtate, the creditor may take the bankrupt in execution, if he will waive any benefit of the ſtatute. 1 *Peer. Will.* 560.

Creditor coming in under a commiſſion, though only to prove his debt, and oppoſe the bankrupt's obtaining his certificate, yet he ſhall not ſue the bankrupt at law, unleſs he will waive all benefit of the commiſſion, as to the dividends; and by the Lord Chancellor *King* ordered, he ſhould waive it as to voting againſt his certificate. But now the creditor is to make his election, whether he will proceed at law, or come in under the commiſſion; and if he has received any dividend, he is to refund it, but may oppoſe the certificate. *Dav. Bank.*

Creditors by recogniſances, ſtatute-ſtaple, or judgments, ſpecialties with penalties, attachments and ſecurities, where no execution or extent ſued out, ſhall only be relieved as to a ratable part with the reſt of the creditors, without any regard to the penalty; and to prove their debt under a commiſſion of bankruptcy. 1 *Peer. Will.* 92.

A trader ſeiſed of lands in fee, gives judgment to *B.* and then ſells the lands to *C.* and afterwards becomes bankrupt; though the judgment-creditor cannot come in for more than his proportion with the bankrupt's creditors; yet it is ſaid that he may extend the land in *C.* the purchaſer's hands, *C.* having purchaſed before the bankruptcy, and this not prejudicing the creditors. So if *A.* the trader gives judgment to *B.* and articles for a valuable conſideration to ſell to *C.* and then becomes a bankrupt; it ſeems the judgment ſhall bind the lands in the hands of *C.* who articled to buy them; but whatever money the purchaſer was to pay the bankrupt, the ſame ſhall be liable to the bankruptcy. 1 *Peer. Will.* 737.

But where a commiſſion iſſues againſt the obligor in a bottomree or *reſpondentia* bond, or the under-writer or aſſurer in an aſſurance, before loſs of the ſhip or goods, the obligee or aſſured may claim, and after loſs prove his debt in like manner as if the loſs had happened before the ſuing forth the commiſſion; and have a proportionable dividend. And the bankrupt ſhall be diſcharged from the debt due by the bond or policy, and have all advantages of the ſtatutes now in force, as if the contingency had happened before the ſuing forth the commiſſion. *Vide Stat.* 19 *Geo.* 2. *c.* 32. §. 2.

If a creditor has 100*l.* due to him from two bankrupts, and proves his debt of 100*l.* under the firſt commiſſion, and receives 40*l.* for the 100*l.* he ſhall only come in as a creditor for 60*l.* under the ſecond commiſſion. 2 *Peer. Will.* 89, 407.

A merchant mortgages his land; the mortgagee may chuſe to come in as a creditor. *Stone* 130.

A. makes a mortgage, and afterwards a commiſſion of bankruptcy is taken out againſt him, and commiſſioners make an aſſignment of his eſtate, and then *B.* lends 2000*l.* to the bankrupt on a ſecond mortgage, having no notice of the bankruptcy, and afterwards he gets in the firſt mortgage. The prior mortgage ſhall not protect the mortgage ſubſequent to the bankruptcy. 2 *Vern.* 157.

A merchant pledges goods, and becomes a bankrupt, the party need not come in. *Stone* 130.

An executor becomes a bankrupt, a legatee ſhall be relieved. *Stone* 131.

If there be an act of bankruptcy committed, and a creditor obtains a judgment ſubſequent to it, then a commiſſion is taken out; now the judgment is thereby avoided. 12 *Mod.* 446.

Rent due to a landlord is a debt of the higheſt nature, and affects the goods, chattels, and ſtock of the tenant upon the premiſes; and (if there is no ſeizure made by the landlord) in the caſe of an execution or extent, a year's rent is to be reſerved for him, as appears by the ſtatute 8 *Ann.* *c.* 14. *ſect.* 1.

But in commiſſions of bankruptcy it is otherwiſe, and though no commiſſion can remove or carry away any goods belonging to the bankrupt, if the landlord ſeizes for the rent before the goods are removed, and he is to be firſt diſcharged, even if there are ſeveral years rent in arrear; yet if the landlord does not ſeize before the commiſſion of bankruptcy carries away the goods from off the premiſes, he muſt then come in as a creditor for his rent, with the reſt of the bankrupt's creditors. *Dav. Bank.* 314.

Alſo if there are not ſufficient goods upon the premiſſes to pay the landlord's rent, he can then only take what goods there are upon the premiſſes, and after they are appraiſed and ſold, as the law, in caſes of diſtreſs for rent, directs; then the landlord may come in as a creditor for the rent remaining due to him, with the reſt of the creditors under the commiſſion. *Dav. Bank.* 314.

As to the *manner* of creditors *proving their debts*, they may prove them without paying any contribution on account of the ſame: and the commiſſioners after they have declared the party to be a bankrupt ſhall cauſe notice thereof to be given in the *London Gazette*, and ſhall appoint a time and place for the creditors to meet, in order to chuſe aſſignees, at which meeting the ſaid commiſſioners ſhall admit the proof of any creditors debts, that ſhall live remote from the place of ſuch meeting of the commiſſioners, by affidavit, or, being quakers, by ſolemn affirmation, and alſo permit any perſon duly authoriſed by letter of attorney from ſuch creditors, oath or affirmation being made of the due execution thereof, either by an affidavit ſworn or affirmation made before a Maſter in Chancery, or before the commiſſioners *viva voce*, and in caſe of creditors reſiding in foreign parts before a magiſtrate where the party ſhall be reſiding, to be, together with ſuch creditors letters of attorney atteſted by a notary public, to vote in the choice of aſſignees.

If any perſon ſhall prove a debt, which ſhall not be really due, and under ſuch fictitious debt ſign the bankrupt's certificate, unleſs the bankrupt ſhall diſcloſe the fraud, and object to the reality of the debt, the certificate ſhall be void, and the bankrupt ſhall not be intitled to be diſcharged from his debts, or to any benefit or allowances under 5 *G.* 2. *c.* 30. *ſect.* 26 & 29.

IV. *Of the diſtribution of the bankrupt's eſtate.*

The commiſſioners, after ſale of the *bankrupt*'s eſtate, are to make diſtribution among the creditors, firſt making the *bankrupt* his allowance, *&c.* After four months, and diſtribution made, no creditor can come in to diſturb it; but he may come in for the reſidue, of which no diſtribution is made. 1 *Danv.* 693. The court of *Chancery* hath ſometimes allowed creditors to come in after diſtribution, upon particular circumſtances which have happened; and the Lord Chancellor ordered the execution of the commiſſion to be ſuſpended. *Chan. Rep.* 307. If commiſſioners refuſe to pay a creditor his proportionable part, he may be relieved in *Chancery*: where the commiſſioners do not purſue the acts of their commiſſion, the party injured muſt bring his action, and ſet forth the finding of the commiſſioners, that the debtor is a *bankrupt*. But if a commiſſion is not duly obtained againſt a perſon, he may traverſe, by ſaying he is not a *bankrupt*. 8 *Rep.* 121. By 1 *Jac.* 1. *c.* 15. In actions againſt commiſſioners, or others under them, executing any matter by force of the 13 *Eliz. c.* 7. or that ſtatute, the defendants may plead Not guilty, or juſtify that it was done by the authority of thoſe acts, *&c.* without ſhewing forth the commiſſion; to which the plaintiff may reply, that the defendant did the fact of his wrong, *&c.* 1 *Danv.* 694.

Creditors before chooſing aſſignees, ſhall fix the method of dividends: and aſſignees ſhall, after the expiration of four months, and within twelve months from the time of iſſuing of ſuch commiſſion, cauſe at leaſt 21 days publick notice to be given in the *London Gazette*, of the time and place the commiſſioners and aſſignees intend to meet, to make a dividend or diſtribution of ſuch *bankrupt*'s eſtate and effects; at which time the creditors, who have not before proved their debts, ſhall then be at liberty to prove the ſame, and upon every ſuch meeting aſſignees ſhall produce their accounts, and the ſaid commiſſioners, or the major part of them, ſhall order ſuch part of the neat produce of the ſaid *bankrupt*'s eſtate, as by ſuch accounts, or otherwiſe, ſhall appear to be in the hands of the ſaid aſſignees, to be forthwith divided amongſt ſuch of the *bankrupt*'s creditors, who have duly proved their debts under ſuch commiſſion, in proportion to their ſeveral and reſpective debts. And a final dividend ſhall be made within eighteen months after the iſſuing of any commiſſion. 5 *Geo.* 2. *c.* 30. *ſect.* 32, 33, and 37.

Creditors, upon what ſecurity ſoever they be, come in all equal, unleſs ſuch as have obtained actual execution before the bankruptcy, or had taken pledges for their juſt debts; and the reaſon is, becauſe, from the act of bankruptcy, all the *bankrupt*'s eſtate is veſted in the commiſſioners who are eſtabliſhed as courts of juſtice touching the *bankrupt*'s eſtate, and before whom the creditors muſt authenticate their debts, in order to receive their dividends; and therefore they muſt equally admit all perſons to make proof of their debts; but ſuch as have pawns or mortgages have a property in the thing ſo pledged, precedent to the tranſlation of the property to the commiſſioners, in which caſe they have only an equity of redemption, and are in no better condition than the *bankrupt* himſelf. *New Abr.* 258. *in notes.* See *Salk.* 108.

Joint debts are to be paid out of the joint ſtock firſt; and if there be any overplus, then that ought to be applied to pay particular debts of each partner; but if there be not enough to pay all the joint debts; and if either of the partners ſhall pay more than a moiety of the joint debts, then ſuch partner is to come in before the commiſſioners of bankrupts, and be admitted as a creditor for what he ſhall pay over and above his moiety. 2 *Chan. Rep.* 226.

On a joint commiſſion of bankruptcy againſt two traders, ſeparate creditors are allowed to come in, for the joint effects are to be applied, firſt to pay the partnerſhip debts, and then the ſeparate debts; and the ſeparate effects to pay the firſt ſeparate creditors, and afterwards the partnerſhip creditors. *Per Cowper, Chan.* 2 *Vern.* 706.

Two partners in trade put in each an equal ſtock, and agreed by covenant, that the ſtock ſhould pay the debts of the ſtock, and neither of their ſeparate debts ſhould charge the ſtock, but only his own eſtate, or to that effect; they both became bankrupts, and a commiſſion iſſued againſt them both; one of them owed ſeparately more than the other; the queſtion was between the ſeparate creditors of each bankrupt, and the creditors on account of the joint ſtock, for theſe would exclude the ſeparate creditors from charging the joint ſtock, but that it ſhould ſatisfy the ſtock debts; but Lord *North* was of a contrary opinion, for the covenant of the partners cannot bind any of the creditors, but only themſelves. 2 *Chan. Ca.* 139.

If one or more of the joint traders become *bankrupt*, his or their proportions only are aſſignable by the commiſſioners to be held in common with the reſt, who were not bankrupts. 12 *Mod.* 446.

V. *Of the duty, privilege, diſcharge, and certificate of the bankrupt.*

The 5 *Geo.* 2. *c.* 30. ordains, that if *bankrupts* do not, after notice in the *Gazette*, ſurrender to the commiſſioners in forty-two days, to be examined, and diſcover and deliver up all their eſtates real and perſonal, they ſhall be adjudged guilty of felony; but the Lord Chancellor may enlarge the time for ſurrendering, not exceeding *fifty* days further: they are to deliver all books of account, writings, *&c.* on oath to the aſſignees; and ſhall be allowed 5 *l. per cent.* ſo as not to exceed 200 *l.* if they pay 10 *s.* in the pound, 7 *l.* 10 *s. per Cent.* not above 250 *l.* if they pay 12 *s.* 6 *d. per* pound, and 10 *l. per Cent.* not exceeding 300 *l.* if they pay 15 *s.* in the pound; but no advantage is given to any *bankrupt*, who hath loſt 5 *l.* a day, or 100 *l.* in a year at gaming, or 100 *l.* by ſtock-jobbing, *&c.* And the body of the *bankrupt* only, not his future eſtate, ſhall be diſcharged, except he pays 15 *s. per* pound. §. 9. On a ſecond bankruptcy, four parts in five in number and value of creditors, not for leſs than 20 *l.* are to ſign certificates, and conſent to the *bankrupt*'s diſcharge, *&c.* of which oath is to be made, and other creditors may be heard againſt it: bonds or notes given to any creditor to conſent to a certificate, ſhall be void; and if the perſon iſſuing any commiſſion have privately more than the other creditors, the commiſſion may be ſuperſeded, and he ſhall loſe his debt. And when the commiſſion is executed, and the party hath conformed to the ſtatutes, his certificate is granted and allowed, *&c.*

The commiſſioners are to certify to the Lord Chancellor, that the *bankrupt* hath conformed, and four parts in five, in number and value, of the creditors muſt ſign the *bankrupt*'s certificate.

The 5 *Geo.* 2. *c.* 30. *ſect.* 13. empowers any judge of the court wherein judgment has been obtained againſt a *bankrupt*, for any debt owing before he became a *bankrupt*, the *bankrupt* being in priſon in execution on ſuch judgment, to diſcharge ſuch *bankrupt* on producing his certificate.

The *Stat.* 5 *Geo.* 2. *c.* 30. *ſect.* 7. extends not to debts due to a *bankrupt* as executor, but it is for this particular reaſon, becauſe they are appropriated to pay teſtator's debts; and if they were aſſigned it would be a wrong, *viz.* a *devaſtavit*; and it being objected, that it extends not to debts due to the *bankrupt* jointly with another, it was anſwered by Ld. Ch. J. *Parker*, in delivering the opinion of the court, that the caſe cited for that purpoſe, from *Lev.* 17. is not determined. *Will. Rep.* 254. *Gilb. Ca.* 323

If a bankrupt has a certificate, and an action be brought againſt him afterwards for a debt precedent to the ſtatute, he may plead his certificate, or otherwiſe he is without relief. 2 *Vern.* 696, 697.

The common method of pleading is, generally, that he became a bankrupt within the intent and meaning of the ſtatutes made and in force concerning bankrupts, and that the cauſe of action accrued before he became a bankrupt. This general plea is given by *Stat.* 5 *Geo.* 2. *c.* 30. *ſect.* 7.

Per Lord C. *Talbot*; Though a creditor of a *bankrupt* under 20*l.* is by the laſt act excluded from aſſent or diſſent to the certificate, yet as he is affected by the conſequence of allowing the certificate, he hath right to petition, and ſhew any fraud againſt allowing the certificate. 7 *Vin. Abr.* 134. *pl.* 18.

The defendant and his partner in trade had a joint commiſſion of bankruptcy taken out againſt them, under which they obtained a certificate. The plaintiff was a ſeparate creditor and had obtained a judgment before the commiſſion or act of bankruptcy; and having now the body of the defendant in execution, the court was moved to diſcharge him, upon the authority of *Howard* v. *Poole*, where it was held, that a ſeparate creditor might come in under a joint commiſſion; and alſo on *Eq. Caſ. Abr.* 55. 2 *Vern.* 707. 2 *Will. Rep.* 500. and the court diſcharged him accordingly. 2 *Stra.* 1157.

If there be two partners, and one of them becomes bankrupt, and, on a ſeparate commiſſion being ſued out againſt him, his certificate is allowed; this does not only diſcharge the bankrupt of what he owed ſeparately, but alſo of what he owed jointly, and on the partnerſhip account; becauſe, by the act of parliament, the bankrupt, upon making a full diſcovery, and obtaining his certificate, is to be diſchaged of all debts. Now, as the debts he owes jointly with another are equally his debts as what he owes on his ſeparate account, conſequently he is to be diſcharged of both his joint and ſeparate debts. And ſo it has been determined by the judges of *B. R.* By the Lord Chancellor *Parker*. 3 *Will. Rep.* 24. in a note.

On a joint commiſſion againſt two partners, the ſeparate creditors, though they have taken out ſeparate commiſſions, ſhall yet be at liberty to come in to oppoſe the allowing of the certificate. 3 *Will. Rep.* 23.

Where two partners are bankrupts, and a joint commiſſion is taken out againſt them, if they obtain an allowance of their certificate, this will bar as well their ſeparate as their joint creditors. 3 *Will. Rep.* 24.

The ſtatute 5 *Geo.* 2. *c.* 30. is general, and takes no notice of ſeparate commiſſions; and a diſcharge under a ſeparate commiſſion has been determined to be a diſcharge of debts, owing under the joint trade: before the ſtatute 10 *Ann. cap.* 15. if there were two partners, and only one party became bankrupt, and a ſeparate commiſſion was taken out againſt him; there was no doubt but the diſcharge of that bankrupt, diſcharged him from all debts which he owed in his joint as well as private capacity; but the great queſtion in that caſe was, whether, by ſuch diſcharge of the bankrupt, the partner of ſuch bankrupt ſhould likewiſe be diſcharged from ſuch debts as he was diſcharged of; and therefore that ſtatute has enacted, that ſuch partner ſhall not be diſcharged; though if a joint debt is diſcharged by a ſeparate commiſſion, there can be no queſtion but a joint commiſſion will diſcharge a ſeparate debt.

Bankrupts concealing or embezzeling goods, to the value of 20*l.* are guilty of felony. 5 *Geo.* 2. *c.* 30.

Affidavit of a debt to make the *party a bankrupt.*

A. B. *of,* &c. *maketh oath that* C. D. *of,* &c. *is truly and juſtly indebted to him this deponent* (one of the creditors) *in the ſum of* 100*l. and upwards; and that he is become a* bankrupt *within the meaning of ſome or one of the ſtatutes made againſt* bankrupts, *as this deponent believes.*

Jurat' die, & coram, &c. A. B.

As to the form of the petition to the Chancellor, it is a matter of courſe, prepared by the clerk at the office, therefore it is not neceſſary to ſet it forth.

A bond to the Lord Chancellor on granting the commiſſion.

KNow all men *by theſe preſents, That I* A. B. *of,* &c. *am held and firmly bound to the right honourable* Robert *Lord* Henley, *Baron of,* &c. *Lord Chancellor of* Great Britain, *in two hundred pounds of good and lawful money of this kingdom, to be paid to the ſaid Lord Chancellor, or to his certain attorney, his executors, adminiſtrators and aſſigns; for which payment, well and truly to be made, I bind myſelf, my heirs, executors and adminiſtrators, firmly by theſe preſents ſealed with my ſeal. Dated this* .... *day of,* &c. *in the* .... *year of the reign of the Lord* George *the Third,* &c. *and in the year of our Lord,* &c.

The Condition of this obligation is ſuch, That if the above bound *A. B.* do and ſhall before the major part of the commiſſioners to be appointed in a commiſſion of *bankrupt* againſt *C. D.* of, *&c.* prove that the ſaid *C. D.* is juſtly indebted unto the ſaid *A. B.* in the ſum of 100*l.* And in like manner prove that the ſaid *C. D.* is become a *bankrupt* within ſome or one of the ſtatutes made againſt *bankrupts*; then this obligation to be void, or elſe to remain, *&c.*

Form of a *commiſſion of bankrupt.*

GEORGE *the Third, by the grace of God, king of* Great Britain, *&c. To our truſty and well beloved* R. C. H. S. H. B. I. T. I. C. *&c. greeting.* Whereas *we are informed that* C. D. *of,* &c. *uſing and exerciſing the trade of,* &c. *by way of bargaining, exchange, bartery,* &c. *ſeeking his living by buying and ſelling, did about ſix months ſince become* bankrupt *within the ſeveral ſtatutes made againſt* bankrupts, *to the intent to defraud and hinder* A. B. *of,* &c. *and other his creditors of their juſt debts and duties to them due and owing:* We therefore *minding the due execution as well of the ſtatutes touching orders for* bankrupts *made in the parliament, begun and holden at* Weſtminſter, *the day, &c. in the thirteenth year of the reign of* Elizabeth *queen of* England *made and provided, as of the ſtatute made in the parliament, begun and holden at* Weſtminſter, *the day,* &c. *in the firſt year of king* James *of* England, *&c. intitled,* An *act, &c. And alſo of the ſtatute made in the parliament, begun and holden,* &c. *in the twenty firſt year of the ſaid king* James *of* England, *&c. And alſo of the ſtatute made in the parliament, holden,* &c. *in the fourth year of the reign of her late majeſty queen* Anne, *intitled* &c. *And alſo of the ſtatute made,* &c. *in the fifth year of the reign,* &c. *Upon truſt of and in the wiſdom and fidelity which we have conceived in you, do by theſe preſents, aſſign, appoint, conſtitute and ordain you our ſpecial commiſſioners for the purpoſe aforeſaid, giving full power and authority unto you, or four or three of you, to proceed according to the ſaid ſtatutes, and every or any of them, not only concerning the ſaid* bankrupt, *his body, lands and tenements, goods, chattels, debts, and other things whatſoever; but alſo concerning all other perſons, who by concealment, claim, or otherwiſe do or ſhall offend touching the premiſſes, or any part thereof, contrary to the intent and meaning of the ſaid ſtatutes, or any of them: and to do and execute all and every thing and things whatſoever, as well for and towards ſatisfaction and payment of the ſaid creditors, as towards and for all other intents and purpoſes, according to the ordinances and proviſions of the ſame ſtatutes; willing and commanding you, four or three of you, whereof,* &c. *to proceed to the execution of this our commiſſion, according to the true intent and meaning of the ſaid ſtatutes, with all diligence and effect.* Witneſs *ourſelf at* Weſtminſter, *the day,* &c. *in the,* &c. *year of our rei*[illegible]

Form of a *bankrupt's certificate.*

To the right honourable *Robert* Lord *Henley*, Baron of, &c. Lord High Chancellor of *Great Britain.*

WE R. C. H. S. H. B. &c. *the major part of the commiſſioners aſſigned and authoriſed in and by a commiſſion of* bankrupt *awarded againſt* C. D. *of, &c. bearing date at* Weſtminſter, *the day of, &c. laſt paſt, having begun to execute the ſaid commiſſion, and found that the ſaid* C. D. *became a* bankrupt *before the date and ſuing out of the ſaid commiſſion, within the true intent and meaning of ſome or one of the ſtatutes made againſt* bankrupts, *do humbly certify to your lordſhip that the ſaid* C. D. *did on,* &c. *ſurrender himſelf to us, and ſubmit himſelf to be examined on oath before us, from time to time, and in all things to conform himſelf to an act made in the fourth and fifth years of her late majeſty queen* Anne, *intitled,* An act to prevent frauds frequently committed by *bankrupts,* &c. *And to the ſeveral other ſtatutes made againſt* bankrupts: *whereupon and for the better diſcovery of the ſaid* bankrupt's *eſtate, and putting in execution the ſaid acts, we the ſaid* R. C. H. S. H. B. &c. *have had ſeveral meetings for the examination of the ſaid* C. D. *and cauſed due notice to be publiſhed in the* Gazette *of the time and place when and where we intended to finiſh his ſaid examination, to the intent that the creditors of the ſaid* C. D. *might be heard againſt the making of this preſent certificate, and alſo admitted to prove their debts: and ſeveral creditors having proved their debts, and none ſhewn any cauſe againſt the making of this certificate:* We do therefore *further certify to your lordſhip, that the ſaid* C. D. *hath upon ſuch examination made a diſcovery of his eſtate and effects, and in all things conformed himſelf according to the direction of the ſaid late acts; and that there doth not appear to us any reaſon to doubt the truth of ſuch diſcovery, or that the ſame is not a full diſcovery of all the eſtate and effects of the ſaid* C. D. *And the rather, for that the perſons who have ſigned this certificate, teſtifying their conſents to the ſame, are full four parts in five, in number and value, of the creditors of the ſaid* C. D. *who have duly proved their ſaid debts.* Witneſs *our hands and ſeals,* &c.

For more precedents, ſee *A General Syſtem of the Laws concerning Bankrupts.*

Banks, No town or freeman ſhall be diſtrained to make *banks* or bridges, but ſuch as of old time have been uſed to make them. *Stat.* 9 *H.* 3. *c.* 15. In *Norfolk* perſons ſhall be diſcharged towards the repair of *ſea-banks*, as they are chargeable to the highways, by 27 *Eliz. c.* 24.

Bannimus, The form of an expulſion of any member from the Univerſity of *Oxford*, by affixing the ſentence in ſome public places, as a denunciation or promulgation of it. And the word *banning* is taken for an exclamation againſt, or curſing of another.

Bannitus, An outlaw, or baniſhed man.——*Vobis præcipimus quod eidem cancellario ad inſequendum, arreſtandum & capiendum dictos malefactores &* bannitos, &c. Pat. Ed. 2.

Banniatus foris, Is uſed in the ſame ſenſe as *bannitus*, ſignifying one outlawed or judicially baniſhed. *Pat.* 25 *H.* 3. *Brady's Hiſt. Ang. Append. p.* 196.

Bannum vel Banleuga, The utmoſt bounds of a manor, or town, ſo uſed 47 *Hen.* 3. *Rot.* 44. &c.——*Notum facio, me eleemoſynam noſtram Chriſto conceſſiſſe & omnibus ſanctis ſuis, &c. viz. primo terram illam a* Twiwella *uſque* Thorney *ubi* bannum *noſtrum ceſſat.* Carta Canuti regis cœnobio Thorneiæ. *Banleuga de Arundel* is taken for all that is comprehended within the limits or lands adjoining, and ſo belonging to the caſtle or town. *Seld. Hiſt. of Tythes, p.* 75.

Barbers, Were incorporated with the *ſurgeons* of *London*; but not to practiſe ſurgery, except drawing of teeth, &c. 32 *H.* 8. *c.* 42. but ſeparated by 18 *Geo.* 2. *c.* 15. See *Surgeon.*

Barbican, (*barbicanum*) A watch-tower, or bulwark. *Mandatum eſt* Johanni de Kilmyngton *cuſtodi caſtri regis & honoris de* Pickering, *quoddam* barbicanum *ante portam caſtri regis prædicti muro lapideo, & in eadem* barbicano *quandam portam cum ponte verſatili, &c. de novo facere, &c.* T. Rege 10 Aug. Clauſ. 17 Ed. 2. m. 39.

Barbicanage, (*barbicanagium*) Money given for the maintenance of a *barbican*, or watch-tower; or a tribute towards the repairing or building a bulwark. *Carta* 17 *Ed.* 3. *Monaſticon Tom.* 1. *p.* 976.

Barca, A barque: *Navis mercatorum & quæ merces exportat.* Gloſſ. Sax. *Ælfrici*, a floteſhip.

Barcarium, (*barcaria*) A ſheep-cote, and ſometimes uſed for a ſheep-walk. *MS. de Placit. Ed.* 3. See *Bercaria.*

Bargain and Sale, Is an inſtrument whereby the property of lands and tenements is for valuable conſideration granted and transferred from one perſon to another: it is called a real contract upon a valuable conſideration, for paſſing of lands, tenements and hereditaments, by deed indented and inrolled. 2 *Inſt.* 672. *Accomp. Conv.* 1 *Vol.* 62.

For the more clearly comprehending the law under this head, it will be proper to conſider,

I. *What things may be bargained and ſold.*

II. *By whom, to whom, and by what words a bargain and ſale may be made.*

III. *Of the conſideration and inrollment of a bargain and ſale.*

IV. *Of the manner of pleading bargains and ſales.*

I. All things, for the moſt part, that are grantable by *deed* in any other way, are grantable by *bargain and ſale*; and lands, rents, advowſons, tithes, &c. may be granted by it, in fee-ſimple, fee-tail, for life, &c. 1 *Rep.* 176. 11 *Rep.* 25.

Any freehold or inheritance in poſſeſſion, reverſion or remainder upon an eſtate for years, or life, or in tail, may be bargained and ſold, but the deed ſhall be inrolled. 2 *Co.* 54. *Dyer* 309. 2 *Inſt.* 671.

But if tenant for life *bargains and ſells* his land by deed inrolled, it will be a forfeiture of his eſtate. 4 *Leon.* 251.

But a man ſeiſed of a freehold may bargain and ſell for years, and this ſhall be executed by the ſtatute of uſes, 27 *H.* 8. *c.* 10. but it need not be inrolled by the ſtatute of inrollments. 8 *Co.* 93. 2 *Rol. Abr.* 204. 2 *Inſt.* 671.

A man poſſeſſed of a term cannot bargain and ſell it ſo as to be executed by the ſtatute. 2 *Co.* 35, 36. *Poph.* 76.

A *bargain and ſale* of the profits of land, is a *bargain and ſale* of the land itſelf; for the profits and the land are the ſame thing in ſubſtance. *Dyer* 71.

A rent in *eſſe* may be bargained and ſold, becauſe this is a freehold within the ſtatute; and before the ſtatute (27 *H.* 8. *c.* 10.) a rent newly created might be bargained and ſold, becauſe when money, as an equivalent, was given, and ceremonies or words of law were wanting, the Chancery ſupplied them; but it ſeems, that ſince the ſtatute, *a rent newly created* cannot be *bargained and ſold*, becauſe there ought to be a freehold in ſome other perſon, to be executed *in ceſtui que uſe*; but here can be no ſeiſin of his rent in the bargainor, becauſe no man can be ſeiſed of a rent in his own land, and conſequently there can be no eſtate to be executed in the bargainee. *Kelw.* 85. 1 *Co.* 126. 1 *And.* 327. 1 *Jones* 179. *Sed qu. de hoc.*

If *A.* by indenture inrolled bargains and ſells lands to *B.* and his heirs, with a way over other lands of *A.* this is void as to the way; for nothing but an uſe paſſes by the deed, and there can be no uſe of a thing not in *eſſe*, as a way, common, &c. before they are created. *Cro. Jac.* 189. But may it not amount to a covenant, that the purchaſer ſhall enjoy?

II. *As to the perſons by whom and to whom bargains and ſales may be made,* it is to be premiſed, that

The king, and all other perſons that cannot be ſeiſed to a uſe, cannot bargain and ſell, for at Common law, when a man had ſold his land for money without giving livery, the uſe only paſſed in equity, and this is now executed and becomes a bargain and ſale by the ſtatute: but antecedent to any ſuch execution there muſt be a uſe well raiſed, which cannot be without a perſon capable of being ſeiſed to a uſe, which the king is not, there being no means to compel him to perform the uſe or truſt; for the Chancery has only a delegated power from the king over the conſciences of his ſubjects; and the king is the univerſal judge of property, and ought to be perfectly indifferent, and not to take upon him the particular defence of any man's eſtate as a truſtee. *Bro. Feoffment to Uſes* 33. *Hard.* 468. *Poph.* 72.

If tenant in tail bargains and ſells his land in fee, this paſſes an eſtate determinable upon the life of the tenant in tail; for at Common law the uſe could not be granted of any greater eſtate than the party had in him; now tenant in tail had an inheritance in him, but he could diſpoſe of it only during his own life; and therefore when he ſells the uſe in fee, *ceſtui que uſe* has a kind of *an inheritance*, yet determining within the compaſs of a life; and the ſtatute executes it in the ſame manner as he has the uſe, and conſequently he will have ſome properties of a tenant in fee, and ſome of a tenant for life only; but if tenant for life bargains and ſells in fee, this paſſes only *an eſtate for life*, for he could not paſs the uſe of an eſtate for life to the bargainee, and the ſtatute executes the poſſeſſion as the party has the uſe. 10 *Co.* 96, 98. 1 *Sand.* 260, 261. 1 *Co.* 14, 15. *Co. Lit.* 151.

A man may bargain and ſell to a corporation, for they may take a uſe, though the money be given by the governors in their natural capacity. 10 *Co.* 24, 34. 2 *Rol. Abr.* 788.

A man may bargain and ſell to his ſon; but then the conſideration of money ought to be expreſſed, and it ought to have all the other circumſtances of a bargain and ſale; but this ſhall operate as a covenant to ſtand ſeiſed, if there be none but the conſideration of natural love and affection expreſſed. 7 *Co.* 40. 2 *Co.* 24. *Cro. Eliz.* 394. 1 *Vent.* 137. 1 *Lev.* 56. But

If a ſon and heir bargains and ſells the inheritance of his father, this is void, becauſe he hath no right to transfer; the ſame law of a releaſe. *Keilw.* 84. *Co. Lit.* 265.

If an infant bargains and ſells his land by deed indented and inrolled, yet he may plead non-age; for notwithſtanding the ſtatute the bargainee claims by the deed as at Common-law, which was, and therefore is ſtill defeazible by non-age. 2 *Inſt.* 673.

If a huſband ſeiſed of lands in right of his wife, or tenant in tail bargains and ſells the trees growing on the lands, and dies before ſeverance, the bargainee cannot afterwards cut them down and take them away. *Mo.* 41.

If a wife joins with her huſband in a bargain and ſale by deed indented and inrolled, of her lands, yet it ſhall not bind her, for the wife cannot be examined by any court without writ, and there is no writ allowed in this caſe, which is for the better ſecurity of wives, who are by our law intirely ſubjected to the will of the huſband. 2 *Inſt.* 673.

If there be two jointenants, and one of them makes a bargain and ſale *of his own* eſtate in fee, and then the other dies, the other moiety ſhall ſurvive to the bargainor; for ſince the freehold is in the bargainor the inheritance continues; but if ſuch jointenant had bargained and ſold *totum ſtatum ſuum* in fee, though he died before inrollment; yet, if the deed were afterwards inrolled, the moiety would not ſurvive, but would paſs to the bargainee. *Cro. Jac.* 53. *Co. Lit.* 186. 1 *Bulſt.* 3.

As to the words neceſſary.

The very words *bargain and ſell* are not of abſolute neceſſity in this deed, for other words equivalent will ſuffice; as if a man ſeiſed of lands in fee by the words *alien* or *grant*, ſell the ſame to another, the deed being made in conſideration of money, and indented and inrolled, will be an effectual *bargain and ſale.* In ſhort, whatever words upon valuable conſideration would have raiſed an uſe of any lands, &c. at Common law, the ſame would amount to a bargain and ſale within this act; as if a man by deed, &c. for a valuable conſideration covenants to ſtand ſeiſed to the uſe of another, &c. 2 *Inſt.* 672. *Cro. Jac.* 210. *Mo.* 54. *Cro. Eliz.* 166.

At Common law, land might be bargained and ſold by words only, for it was the conſideration that in equity raiſed the uſe, but ſince the ſtatute of 27 *Hen.* 8. *c.* 16. lands cannot paſs without indenture. 2 *Inſt.* 675. *Dyer* 229. *Poph.* 48. *Dal.* 63.

Bargains and ſales of lands are to be in writing indented, and inrolled in one of the courts at *Weſtminſter*, or in the county where the lands lie, before the *Cuſtos Rotulorum*, juſtices of the peace, &c. And the inrolment ſhall be made within ſix months after the date of the deeds. *Stat.* 27 *H.* 8. *cap.* 16. Vide *Tab. to Stat. tit. Regiſter.*

III. *As to the conſideration and inrolment.*

There muſt be a good conſideration given, or at leaſt ſaid to be given, for lands in theſe deeds: and for a competent ſum of money, is a good conſideration; but not the general words for divers conſiderations, &c. *Mod. Ca.* 777. Where money is mentioned to be paid in a *bargain and ſale*, and in truth no money is paid, ſome of our books tell us this may be a good *bargain and ſale*; becauſe no averment will lie againſt that which is expreſly affirmed by the deed, except it comes to be queſtioned whether fraudulent or no, upon the ſtatute againſt fraudulent deeds. *Dyer* 90. If no conſideration of money is expreſſed in a deed of *bargain and ſale*, it may be ſupplied by an averment that it was made for money: and after a verdict on a trial, it ſhall be intended that evidence was given at the trial of money paid. 1 *Ventr.* 108. If lands are *bargained and ſold* for money only, the deed is to be inrolled according to the ſtatute; but if it be in conſideration of money, and natural affection, &c. the eſtate will paſs without it. 2 *Inſt.* 672. 2 *Lev.* 56.

If a man, in conſideration of ſo much money to be paid at a day to come, bargains and ſells, the uſe paſſes preſently, and after the day the party has an action for the money, for it is a ſale, be the money paid preſently or hereafter. *Dyer* 337. *a.*

With reſpect to the inrollment.

If the deed of bargain and ſale be not inrolled within the ſix months (which are to be reckoned after twenty-eight days to the month, the day of the date taken excluſively) it is of no force; ſo that if a man bargains and ſells his land to me, and the trees upon it, although the trees might be ſold by deed without inrolment, yet in this caſe if the deed be not inrolled, it will be good neither for the trees nor the land. *Dyer* 90. 7 *Rep.* 40. 2 *Bulſt.* 8. A bargain and ſale of a manor to which an advowſon is appendant by indenture not inrolled, will not paſs the advowſon or the manor, for it was to go as appendant. *Bro. Caſ.* 240.

But in ſome caſes where a deed will not enure by way of bargain and ſale, by reaſon of ſome defect therein, it may be good to another purpoſe. *Dyer* 90.

If two bargains and ſales are made of the ſame land, to two ſeveral perſons, and the laſt deed is firſt inrolled; if afterwards the firſt deed is alſo inrolled within ſix months, the firſt buyer ſhall have the land; for when the deed is inrolled, the bargainee is ſeiſed of the land from the delivery of the deed, and the inrolment ſhall relate to it. *Hob.* 165. *Wood's Inſt.* 259. Neither the death of the bargainor or bargainee, before the inrolment of the deed of bargain and ſale, will hinder the paſſing of the eſtate to the bargainee: but the eſtate of freehold is in the bargainor, until the deed is inrolled; ſo that the bargainee cannot bring any action of treſpaſs before entry had: though it is ſaid he may ſurrender, aſſign, &c. *Cro. Jac.* 52. *Co. Lit.* 147.

A bargainee ſhall have rent which incurs after the bargain and ſale, and before the inrolment. *Sid.* 310. Upon the inrolment of the deed, the eſtate ſettles *ab initio*, by the *Stat.* 27 *H.* 8. *c.* 16. And the ſtatute of inrolment ſays, that it ſhall not veſt, except the deed be inrolled; and when it is inrolled, the eſtate veſts preſently, by the ſtatute of uſes. 1 *Danv. Abr.* 696.

Every deed may be inrolled at Common law, for its ſecurity. If ſeveral ſeal a deed of bargain and ſale, and but one acknowledge it, and thereupon the deed is inrolled; this is a good inrolment within the ſtatute. *Style* 462. None can make a bargain and ſale of lands, that hath not the actual poſſeſſion thereof at the time of the ſale; if he hath not the poſſeſſion, the deed muſt be ſealed upon the land, to make it good. 2 *Inſt.* 672. 1 *Lill.* 290.

Houſes and lands in *London*, and any city, *&c.* are exempted out of the ſtatute of inrolments. 2 *Inſt.* 676. 1 *Nelſ. Abr.* 342.

But the general method now uſed to convey eſtates, is, by *leaſe* and *releaſe*, whereby the *poſſeſſion* and the *fee* immediately paſs without inrolment.

IV. *In regard to the manner of pleading a bargain and ſale*, it is to be obſerved, that

In pleading theſe deeds, the deed itſelf muſt be ſhewn under ſeal. 1 *Inſt.* 225. For though the inrollment being on record is of undoubted veracity, being the tranſaction of the court; yet the private deed has not the ſanction of a record, though publicly acknowledged and inrolled; for it might have been falſely and fraudulently dated, or ill executed. *Co. Lit.* 225. *b.* 251. *b.* 2 *Inſt.* 673. 4 *Co.* 71. 5 *Co.* 53. 2 *Rol. Rep.* 119.

It muſt likewiſe be ſet forth that the inrolment was within ſix months, or *ſecundum formam ſtatuti*, &c. *vide*, *Allen* 19. *Carter* 221. *Style* 34. *S. C.*

In pleading a bargain and ſale, the party ought regularly to aver payment of the money. 1 *Leon.* 170. See *Moor* 504.

In replevin the caſe upon the pleadings was, that the defendant made a title under bargain and ſale, inrolled within ſix months, and the ſtatute of uſes, and did not ſhew that it was *in conſideration of money*; but adjudged, that *after a verdict*, as this caſe was, it ſhall be intended, that evidence was given at the trial of money paid. 1 *Vent.* 108.

The party that claims by any bargain and ſale, muſt ſhew in what court the deed is inrolled, becauſe he muſt ſhew all things in certain that make out his title; otherwiſe his adverſary would be put to an infinite ſearch before he could traverſe with ſecurity. *Yelv.* 213. *Cro. Jac.* 291. S. C. *Yelv.* 313.

We have omitted the form, as uſeleſs;—leaſe and releaſe being the ſafeſt method.

The manner of *inrolling* a *Deed*.

BE it remembered, *That on the . . . day*, &c. *here in the ſame term before the lord the king at* Weſtminſter, *came* A. B. *of*, &c. *in the county of* M. *gentleman, in his proper perſon, and brought here into the court of the ſaid lord the now king, before the king himſelf at* Weſtminſter, *a certain indenture, which he hath acknowledged to be his deed: and he deſired that that indenture in the court of the lord the now king before the ſaid lord the king at* Weſtminſter, *might be of record inrolled: and it is inrolled in form following, that is to ſay*, This indenture, *made*, &c. *(And ſo inrol it* verbatim: The term muſt be at the top of the roll.

Afterwards is *indorſed* on the back of the *deed*,

Inrolled *in the court of the lord the king, before the king himſelf at* Weſtminſter. *of the term of the* Holy Trinity, &c. *in the firſt year of the reign of the lord* George *the Third now king of* Great Britain, *&c.*

Roll———

There is a *bargain and ſale of goods*, for which vide *Contract*, &c.

Barkary, *(barkaria. corticulus)* A tan-houſe or place to keep bark in for the uſe of tanners. *New Book Entr.* tit. *Aſſiſe, Corp. Polit.* 2.

Baron, *(baro)* Is a *French* word, and hath divers ſignifications here in *England*. Firſt, it is taken for a degree of nobility next to a viſcount. *Bracton, lib.* 1. *cap.* 8. ſays they are called *barones, quaſi robur belli.* In which ſignification it agrees with other nations, where *baroniæ* are as much as *provinciæ*: ſo that barons are ſuch as have the government of provinces, as their fee holden of the king; ſome having greater and others leſs authority within their territories. It is probable, that formerly, in this kingdom, all thoſe were called barons that had ſuch ſeigniories as we now call *courts-baron*; as they are at this day called *ſeigneurs* in *France*, who have any manor or lordſhip: and ſoon after the conqueſt, all ſuch came to parliament, and ſat as peers in the lords houſe. But when by experience it appeared that the parliament was too much thronged by theſe barons, who were very numerous it was in the reign of King *John* ordained that none but the *barones majores* ſhould come to parliament, who, for their extraordinary wiſdom, intereſt, or quality, ſhould be ſummoned by writ. After this, men obſerving the eſtate of nobility to be but caſual, and depending merely upon the king's will, they obtained of the king letters patent of this dignity to them and their heirs male, who were called *barons by letters patent*, or by creation, whoſe poſterity are now by inheritance thoſe barons that are called lords of the parliament; of which kind the king may create at his pleaſure. Neverthele ſs there are ſtill barons by writ, as well as barons by letters patent: and thoſe barons who were firſt by writ, may now alſo juſtly be called *barons by preſcription*, for that they and their anceſtors have continued barons beyond the memory of man. The calling up by writ is at this day ſeldom practiſed unleſs it be to ſummon the ſon of ſome lord to parliament, in the life-time of his anceſtor; for creation by letters patent is almoſt altogether in uſe. 2 *Inſt.* 48. The original of barons by writ, *Camden* refers to King *Hen.* 3. and barons by letters patent, or creation, commenced 11 *R.* 2. *Camb. Brit. pag.* 109. To theſe is added a third kind of barons, called *barons by tenure*, which are ſome of our ancient barons; and likewiſe the biſhops, who, by virtue of baronies annexed to their biſhopricks, always had place in the lords houſe of parliament, as barons by ſucceſſion. *Seager of Honour, lib.* 4. *cap.* 13.

There are alſo *barons* by *office*; as the *barons of the Exchequer*, *barons of the Cinque Ports*, &c. of which you may read under their proper heads. In ancient records, the word *baron* included all the nobility of *England*, becauſe regularly all noblemen were barons, though they had a higher dignity; and therefore the charter of King *Ed.* 1. which is an expoſition of what relates to barons in *Magna Charta*, concludes *teſtibus archiepiſcopis, epiſcopis, baronibus, &c.* And the great council of the nobility, when they conſiſted, beſides earls and barons, of dukes, marqueſſes, *&c.* were all comprehended under the name *de la councell de baronage*. *Glanv. cap.* 4. Theſe barons have given them two enſigns to remind them of their duties; firſt, a long robe of ſcarlet, in reſpect whereof they are accounted *de magno concilio regis*; and ſecondly they are girt with a ſword, that they ſhould ever be ready to defend their king and country. 2 *Inſt.* 5. A baron is *vir notabilis & principalis*: and the chief burgeſſes of *London* were in former times barons, before there was a lord mayor, as appears by the city ſeal, and their antient charters.—*Henricus* 3. *Rex. Sciatis nos conceſſiſſe & hac præſenti charta noſtra confirmaſſe* baronibus *noſtris de civitate noſtra* London *quod eligant ſibi mayor de ſeipſis ſingulis annis*, &c. *Spelm. Gloſſ.* The Earl palatines and marches of *England* had anciently their barons under them; but no barons but thoſe who held immediately of the king were peers of the realm. 'Tis certain the king's tenants were called barons; as we may find in *Mat. Pariſ.* and other writers: and in days of old, all men were ſtiled barons; but this, We take it, was only a term in the law, not a title of nobility.

Barony, (*baronia*) Is that honour and territory which gives title to a baron; comprehending not only the fees and lands of temporal barons, but of biſhops alſo who have two eſtates; one as they are ſpiritual perſons, by reaſon of their ſpiritual revenues and promotions; the other grew from the bounty of our *Engliſh* kings, whereby they have baronies and lands added to their ſpiritual livings and preferments. The baronies belonging to biſhops are by ſome called *regalia*, becauſe *ex ſola libera-*

litate regum eis olim conceſſa, & à regibus in feudum tenentur. Blount. Barony, *Bracton* ſays, (*lib.* 2. *cap.* 34.) is a right indiviſible; and therefore if an inheritance be to be divided among coparceners. though ſome capital meſſuages may be divided, yet *ſi capitale meſſuagium ſit caput comitatus vel caput* baroniæ, they may not be parcelled. In antient times thirteen knight fees and a quarter made a tenure *per baroniam,* which amounted to 400 marks *per annum.*

Baronet, (*baronettus*) Is a dignity or degree of honour, which hath precedency before all knights, as knights of the bath, knights bachelors, &c. except *Bannerets,* made *ſub vexillis regiis in exercitu regali in aperto bello, & ipſo rege perſonaliter præſente.* This order of baronets was inſtituted by King *James* I. in the year 1611. with ſuch precedency as aforeſaid, and other privileges, &c. Their number at firſt was but two hundred; but now they are without limitation: they are created by patent with an *habendum ſibi & hæredibus maſculis, &c.* And their dignity, on its firſt inſtitution, was a kind of purchaſed honour, by men of great eſtates, qualified for titles.

Baron and Feme, Are huſband and wife, by our law; and they are adjudged but one perſon. Under this head muſt be conſidered,

I. *The legality of the marriage, and the nature of marriage contracts.*

II. *What acts and agreements of the wife before marriage bind the huſband.*

III. *Of the huſband's power over the perſon of his wife, and of her remedy for any injury done to her by him, and of actions by him for criminal converſation with her.*

IV. *Of his intereſt in her eſtate and property.*

V. *Where the huſband ſhall be liable to the wife's debts contracted before marriage; and therein of a wife that is executrix or adminiſtratrix.*

VI. *Of her contracts during marriage, and how far the huſband is bound by ſuch contracts.*

VII. *Where ſhe alone ſhall be puniſhed for a criminal offence, and where the huſband ſhall be anſwerable for what ſhe does in a civil action.*

VIII. *What acts done by the huſband or wife alone, or jointly with the wife, will bind the wife; and therein of her agreement or diſagreement to ſuch acts after the death of the huſband.*

IX. *Where the huſband and wife muſt join in bringing actions.*

X. *Where they muſt be jointly ſued.*

XI. *Where a wife ſhall be conſidered as a feme ſole.*

XII. *Of divorce, ſeparate maintenance, and pin-money.*

I. *Marriage* is a compact between a man and a woman, for the procreation and education of children, which is to continue during both their lives; and it may be celebrated in a private houſe as well as in a church, 1 *New. Abr.* 283.

Before the time of pope *Innocent* the Third, there was not any ſolemnization of marriage in the church; but the man came to the houſe where the woman inhabited, and led her home to his own houſe, which was all the ceremony then uſed. *Moor* 170. *Per Goldingham,* Doctor of the Civil Law, *arguendo.*

The age of conſent to a marriage in an infant male is fourteen, and in a female twelve; but they may marry before; and if they agree to it when they attain theſe ages, the marriage is good; but they cannot diſagree before then; alſo if one of them be above the age of conſent, and the other under ſuch age, the party ſo above the age may as well diſagree as the other; for both muſt be bound or neither. *Co. Lit.* 33, 78, 79. 2 *Inſt.* 434. 3 *Inſt.* 88, 89. 6 *Co.* 22. 7 *Co.* 43. 1 *Rol. Abr.* 340.

A man within the age of fourteen (his age of conſent to marry) takes a woman to wife, they are *baron and feme,* ſo that he may have treſpaſs *de muliere abducta cum bonis viri, &c.*

By the ſtatute 32 *Hen.* 8. *cap.* 38. it is enacted, "That no reſervation or prohibition (God's law excepted) ſhall trouble or impeach any marriage without the Levitical degrees, and that no perſon, of what eſtate, degree or condition ſoever he be, ſhall be admitted in any of the ſpiritual courts within the King's realm, or any of his Grace's other lands and dominions, to any proceſs, plea or allegation contrary to the ſtatute." For the expoſition of this ſtatute, ſee *Co. Lit.* 24. *a.* 2 *Inſt.* 684. See 25 *Hen.* 8. *c.* 22. 28 *Hen.* 8. *c.* 7. 28 *Hen.* 8. *c.* 16. Before which the eccleſiaſtical courts had the ſole juriſdiction of matrimonial cauſes. See 13 *Ed.* 1. the ſtat. *Circumſpecte agatis. Hob.* 181. *Co. Lit.* 235. 2 *Inſt.* 683, 684. See *Vaugh.* 214. But if a man marries his couſin within the degrees, or his mother or ſiſter, they continue huſband and wiſe till a ſentence of divorce be pronounced. 1 *Rol. Abr.* 340, 357.

By 6 & 7 *Will.* 3. *cap.* 6. By 7 & 8 *Will.* 3. *cap.* 35. By 10 *Ann. cap.* 19. Certain penalties were inflicted on parſons, &c. marrying perſons without publication of bans or licence, as alſo on the man ſo married. And by 26 *Geo.* 2. *cap.* 33.

All bans of matrimony ſhall be publiſhed in an audible manner in the pariſh church, or in ſome public chapel, where the perſons to be married dwell; upon three *Sundays* preceding the ſolemnization of marriage: and when the perſons dwell in divers pariſhes, or chapelries, the bans ſhall be publiſhed in the church or chapel where each of them dwell; and where both or either dwell in any extraparochial place having no church or chapel, then the bans ſhall be publiſhed in the pariſh church or chapel belonging to ſome pariſh or chapelry adjoining to ſuch extraparochial place.

And in all caſes where bans ſhall have been publiſhed, the marriage ſhall be ſolemnized in one of the pariſh churches or chapels where ſuch bans have been publiſhed.

Sect. 2. No parſon, &c. obliged to publiſh bans of matrimony, unleſs the perſons ſhall ſeven days before the time required for the firſt publication, cauſe to be delivered to ſuch parſon, &c. a notice in writing of their chriſtian and ſurnames, and of their reſpective abodes within ſuch pariſh, &c. and of the time during which they have dwelt in ſuch houſes reſpectively.

Sect. 3. No parſon, &c. ſolemnizing marriages between perſons, both or one of whom ſhall be under the age of 21 years, after bans publiſhed, ſhall be puniſhable by eccleſiaſtical cenſures, for ſolemnizing ſuch marriages without conſent of parents or guardians, whoſe conſent is required by law, unleſs ſuch parſon, &c. have notice of the diſſent of ſuch parents or guardians. And in caſe ſuch parents or guardians, or one of them, publicly cauſe to be declared, in the church or chapel where the bans ſhall be ſo publiſhed, at the time of ſuch publication, their diſſent to ſuch marriage, ſuch publication of bans ſhall be void.

Sect. 4. No licence of marriage ſhall be granted by any perſon having authority to grant ſuch licences, to ſolemnize any marriage in any other church or chapel, than in the pariſh church or public chapel belonging to the pariſh or chapelry, within which the uſual place of abode of one of the perſons to be married ſhall have been for four weeks, immediately before the granting of ſuch licence; or where both or either of the parties to be married dwell in an extraparochial place having no church or chapel wherein bans have been uſually publiſhed, then in the pariſh church or chapel belonging to ſome pariſh or chapelry adjoining to ſuch extraparochial place.

Sect. 6. Nothing herein contained ſhall deprive the archbiſhop of *Canterbury* and his officers, of the right which hath hitherto been uſed in virtue of 25 *Hen.* 8. *cap.* 21. of granting ſpecial licences to marry at any convenient time or place.

Sect. 8. If any parſon ſhall ſolemnize matrimony in any other place than a church or public chapel, where bans have been uſually publiſhed, unleſs by ſpecial licence from the Archbiſhop of *Canterbury*; or ſhall ſolemnize matrimony without publication of bans, unleſs licence of marriage be firſt obtained from ſome perſon having authority to grant the ſame; every perſon wilfully ſo offending and convicted ſhall be adjudged guilty of felony, and be tranſported to ſome of his Majeſty's plantations in *America* for 14 years, according to the laws for tranſportation of felons. And all marriages ſolemnized in any other places than a church or public chapel, unleſs by ſpecial licence as aforeſaid, or without publication of bans, or licence of marriage from a perſon having authority to grant the ſame ſhall be void.

Sect. 9. All proſecutions for ſuch felony ſhall be commenced within three years after the offence committed.

Sect. 10. After the ſolemnization of any marriage under a publication of bans, it ſhall not be neceſſary in ſupport of ſuch marriage to give any proof of the dwelling of the parties in the reſpective pariſhes, *&c.* or where the marriage is by licence, it ſhall not be neceſſary to give any proof that the uſual place of abode of one of the parties, for four weeks as aforeſaid, was in the pariſh church or chapelry where the marriage was ſolemnized; nor ſhall any evidence in either of the ſaid caſes be received to prove the contrary in any ſuit touching the validity of ſuch marriage. This clauſe renders a trip to *Scotland* unneceſſary, and almoſt invalidates the act.

Sect. 11. All marriages ſolemnized by *licence*, where either of the parties not being a widower or widow, ſhall be under the age of 21 years, which ſhall be had without the conſent of the father of ſuch of the parties ſo under age, if living, or if deed, of the guardians of the perſon of the party ſo under age, or one of them; and in caſe there be no ſuch guardian, then of the mother, if living and unmarried; or if there be no mother living and unmarried, then of a guardian of the perſon appointed by the court of *Chancery*, ſhall be void.

Sect. 12. In caſe any ſuch guardian or mother, or any of them, whoſe conſent is made neceſſary, ſhall be *non compos mentis*, or beyond the ſeas, or ſhall refuſe their conſent to the marriage, it ſhall be lawful for any perſon deſirous of marrying to apply by petition to the Lord Chancellor, who is hereby impowered to proceed upon ſuch petition in a ſummary way; he may declare the ſame to be proper by an order of court.

Sect. 13. In no caſe ſhall any ſuit or proceeding be had in any eccleſiaſtical court, to compel a celebration of any marriage *in facie eccleſiæ*, by reaſon of any contract of matrimony, whether *per verba de præſenti*, or *per verba de futuro*, entered into after the 25th of *March* 1754.

By *ſect.* 16. forging a regiſter, of marriage, or a licence, or uttering ſame knowing it to be forged, *&c.* is felony.

Sect. 18. Nothing in this act ſhall extend to *Scotland*; nor to any marriages amongſt *Quakers*, or amongſt perſons profeſſing the *Jewiſh* religion, where both the parties to ſuch marriage ſhall be *Quakers*, or perſons profeſſing the *Jewiſh* religion; nor to any marriage ſolemnized beyond the ſeas.

By the 13 *Sec.* of this ſtatute the law for inforcing contracts in the ſpiritual court is altered.

But in theſe cauſes the temporal courts have given a remedy by action, for the breach of promiſe. *Cro. Eliz.* 79. *Carter* 273. In an action againſt huſband and wife, the plaintiff declared that he promiſed to marry the defendant's wife whilſt ſole, and that ſhe the ſame time promiſed to take him for her huſband, and averred that he tendered himſelf, and that ſhe refuſed, *&c.* It was objected that marriage was no advancement to a man, though it was to a woman; alſo that no time was laid when this agreement was to be executed; but the court over-ruled both the objections. *Carth.* 467. *Harriſon* v. *Cage et ux.* 1 *Salk.* 24. S. C. See 2 *Salk.* 437, 438. If a man and an infant at the age of fifteen, promiſe to intermarry, and the man refuſes, and after marries another, ſhe may, notwithſtanding her infancy, maintain an action; for this is a contract which ſhe may at theſe years enter into, being for her advantage; and though it may be voidable as to her, yet it is good againſt the man, who muſt be preſumed to have acted with as much caution as if he had contracted with a perſon of full age. *Trin.* 5 *Geo.* 2. adjudged between *Holt* and *Ward*. *Note*; By the ſtatute of *frauds* and *perjuries*, theſe contracts muſt be reduced into writing. That is contracts in *conſideration* of *marriage* (if not to be performed within one year). But *mutual promiſes to marry each other*, are not within the ſtatute of frauds and perjuries. Vide 1 *Stra.* 34.—Alſo ſee 1 *Lord Ray.* 316. 2 *Show.* 16. *Skin.* 142, 143. 2 *Mod.* 310.

A wife cannot be a witneſs againſt or for her huſband, nor he againſt or for her, (except in caſe of high treaſon), becauſe they are *duæ animæ in una Carne*. 1 *Nelſ. Abr.* 349. At Common law a man could neither in poſſeſſion, reverſion or remainder, limit an eſtate to his wife; but by *Stat.* 27 *H.* 8. *c.* 10. A man may covenant with other perſons to ſtand ſeiſed to the uſe of his wife; or may make any other conveyance to her uſe, but he may not covenant with his wife to ſtand ſeiſed to her uſe, for they are one perſon in law. A man may deviſe lands by will to his wife, becauſe the deviſe doth not take effect till after his death. *Co. Litt.* 112.

A wife cannot deviſe lands to her huſband: for a *feme covert* cannot make a will, as ſhe is ſo entirely under the power of her huſband, that what ſhe doth cannot be called her will. *Nelſ. Abr.* 347.

If a man takes *A. S.* to wife, *per dureſs*, though marriage be ſolemnized *in facie eccleſiæ*, yet it is merely void; and they are not baron and feme, becauſe there is not any conſent; and it cannot be a marriage without conſent. 1 *Rol. Abr.* 340.

II. *As to the acts and agreements of the wife before marriage binding the huſband.*

By the marriage the huſband and wife become one perſon in law, and therefore ſuch an union works an extinguiſhment or revocation of ſeveral acts done by her before the marriage; and this not only for the benefit of the huſband, but likewiſe of the wife, who, if ſhe were allowed at her pleaſure to reſcind and break through, or confirm ſeveral acts, might be ſo far influenced by her huſband, as to do things greatly to her diſadvantage. 4 *Co.* 60. 5 *Co.* 10. *Keilw.* 162. *Co. Lit.* 55. *Hetl.* 72. *Cro. Car.* 304.

But in things which would be manifeſtly to the prejudice of both huſband and wife, the law does not make her acts void; and therefore if a feme ſole makes a leaſe at will, or is leſſee at will, and afterwards marries, the marriage is no determination of her will, ſo as to make the leaſe void; but ſhe herſelf cannot without the conſent of her huſband determine the leaſe in either caſe. 5 *Co.* 10.

So where a warrant of attorney was given to confeſs a judgment to a feme ſole; and the court gave leave, notwithſtanding the marriage, to enter up judgment, for that the authority ſhall not be deemed to be revoked or countermanded, becauſe it is for the huſband's advantage; like a grant of a reverſion to a feme ſole, who marries before attornment, yet the tenant may attorn afterwards; otherwiſe if a feme ſole gives a warrant of attorney, and marries, for that is to charge the huſband. 1 *Salk.* 117, 399.

But if a feme ſole makes her will, and deviſes her land to *J. S.* and afterwards marries him, and then dies, yet *J. S.* takes nothing by the will, becauſe the marriage was a revocation of it; for as the law will not allow a woman under coverture to make a will, leſt ſhe ſhould be influenced by her huſband in the diſpoſition of her eſtate; ſo for the ſame reaſon a will made by a feme ſole is countermanded by the marriage, leſt ſhe ſhould be influenced by her huſband (if it continued after the coverture) to revoke it, or let it ſtand, as it beſt anſwered his intereſt. 4 *Co.* 60.

Agreements between *baron and feme* before marriage, are by the marriage generally extinguiſhed: but if a perſon, in conſideration of marriage, promiſe to leave his wife worth ſo much at his death, this being no duty in the life-time of the huſband, is not extinguiſhed by the marriage. *Cro. Jac.* 571, 623.

Alſo equity will ſet aſide the intended wife's contracts, though legally executed, when they appear to have been entered into with an intent to deceive the huſband, and are in derogation of the rights of marriage; as where a widow made a deed of ſettlement of her eſtate, and married a ſecond huſband, who was not privy to ſuch ſettlement; and it appearing to the court, that it was in confidence of her having ſuch eſtate that the huſband married her, the court ſet aſide the deed as fraudulent; ſo where the intended wife, the day before her marriage, entred privately into a recognizance to her brother, and it was decreed to be delivered up. See 2 *Chan. Rep.* 79, 81. 2 *Vern.* 17.

But where a widow, before her marriage with a ſecond huſband, aſſigned over the greateſt part of her eſtate to truſtees for children by her former huſband; and though it was inſiſted that this was without the privity of the huſband, and done with a deſign to cheat him, yet the court thought, that a widow might thus provide for her children before ſhe put herſelf under the power of a huſband; and it being proved that 8000 *l.* was thus ſettled, and that the huſband had ſuppreſſed the deed, he was decreed to pay the whole money, without directing any account. 1 *Vern.* 408.

A. before marriage with *M.* agrees with *M.* by deed in writing, that ſhe, or ſuch as ſhe ſhould appoint ſhould, during the coverture, receive and diſpoſe of the rents of her jointure, by a former huſband, as ſhe pleaſed. *Per cur.* The aforeſaid *agreement with the feme herſelf* before marriage, was by the marriage *extinguiſhed.* *Chan. Ca.* 21.

The baron before marriage *articled with the feme to make a ſettlement of certain lands, before the marriage ſhould be ſolemnized*; but they *intermarried before the ſettlement.* Then the baron died; and on a bill by the widow for an execution of the articles, it was decreed *againſt the heir* at law of the baron; who objected, that marrying before the execution of the ſettlement was a waiver of the articles, and the benefit of them; and ſhe being the only party with whom they were made, her marriage with the other party before performance was a releaſe in law. 2 *Vent.* 343.

Upon a treaty of marriage the man gave a *bond to the woman, conditioned that if he did permit her to diſpoſe of* 100 *l. then the bond ſhould be void.* Afterwards the marriage took effect, ſo that the *bond became void, yet this was held to be a good agreement*; and the court decreed, that the huſband ſhould give bond to truſtees with the ſame condition; it was held, that a bill may be exhibited by her *procbein amy*; or if truſtees exhibit a bill for or on her behalf, it is good either way. 2 *Freem. Rep.* 205.

A man enters into a bond to his intended wife, conditioned to leave her 1000 *l.* the huſband mortgaged his eſtate, and died, not leaving perſonal aſſets to diſcharge the bond; and it was decreed in equity, that though the bond was void by law, being extinguiſhed by the marriage, yet it ſhould be made good in equity; and that the wife might redeem and hold the land till ſhe was ſatisfied her debt. 2 *Vern.* 480.

III. *As to the power of the huſband over the wife's perſon*, &c.

By marriage the huſband hath power over his wife's perſon; and he may correct his wife. *Dalt.* 284. But if he threaten to kill her, *&c.* ſhe may make him find ſurety of the peace, by ſuing a writ of *ſupplicavit* out of *Chancery* or by preferring *articles* of the *peace* againſt him in the court of *King's Bench,* or ſhe may apply to the *Spiritual Court* for a *divorce propter ſævitiam.* *Crom.* 28. 136. F. N. B. 80. *Hetl.* 149. *cont.* 1 *Sid.* 113, 116. *Dalt. c.* 68. *Lamb.* 7. *Crom.* 133.

But a wife cannot, either by herſelf or her *procbein amy*, bring a *homine replegiando* againſt her huſband, for he has by law a right to the cuſtody of her, and may, if he think fit, confine her, but he muſt not impriſon her; if he does, it will be a good cauſe for her to apply to the ſpiritual court for a divorſe *propter ſævitiam*; and the nature and proceedings in the writ *de homine replegiando* ſhew that it cannot be maintained by the wife againſt her huſband. *Prec. in Ch.* 492.

The courts of law will grant a *habeas corpus* for and relieve a wife from unjuſt impriſonment.

With regard to actions by the huſband for criminal converſation with his wife.

Licence *by huſband* to the wife to lie with another man, cannot be pleaded in bar to an action of treſpaſs by the huſband; nor that ſhe was a *notorious lewd woman*; but theſe matters may be given in mitigation of damages. 12 *Mod.* 232. On licence proved, a verdict ought to be for defendant, the huſband not being damnified.

If adultery be committed with another man's wife *without any force, but by her own conſent,* though the huſband may have aſſault and battery, and lay it *vi & armis*; yet they ſhall in that caſe puniſh him below for that very offence; for an indictment will not lie for ſuch an aſſault and battery; neither ſhall the huſband and wife join in an action at Common law; and therefore they proceed below either civilly, that is, to divorce them, or criminally, becauſe they were not criminally proſecuted above. 7 *Mod.* 81.

IV. *Of the huſband's intereſt in her eſtate*, &c.

He hath likewiſe power over his wife's eſtate; and if ſhe hath a fee, he gaineth a freehold in her right; he alſo gaineth her chattels real, as terms for years, *&c.* and all chattels perſonal, in poſſeſſion of the wife, are the huſband's: but where the wife is out of poſſeſſion, or is poſſeſſed only as executrix, or the chattels are debts and things in action, if they are not recovered by him and his wife, the huſband ſhall not have them. *Co. Lit.* 299, 351. Though money charged on lands, is not in nature of a *choſe in action,* but of rent, and is given to the huſband by the intermarriage. 1 *Chan. Rep.* 189. The law gives the huſband an abſolute power of diſpoſing of her perſonal property, no act of her's being of any force to affect or transfer that, which by the intermarriage ſhe has reſigned to the huſband; but the freehold and inheritance of the wife, is ſubject to other rules and regulations; for the huſband by the marriage does not become abſolute proprietor of the inheritance, but as the governor of the family is ſo far maſter of it as to receive the profits of it during her life, but has no power to make an abſolute ſale of it without her conſent. 10 *Co.* 42. 2 *Inſt.* 510. 1 *Sid.* 11. 1 *Rol. Abr.* 347.

If *baron and feme* are *jointenants* for *years,* the *baron* may diſpoſe of the whole: and if the *baron* hath a term in the right of his *feme,* he may grant over the whole. 1 *Danv.* 702. But he cannot diſpoſe of it by will, if he doth not ſurvive her. *Co. Lit.* 46, 184. And as the huſband ſurviving the wife ſhall enjoy her term, againſt her executors: ſo if the wife ſurvive her huſband, ſhe ſhall have her term for years, or other chattels real again, *if the huſband hath not altered the property.* *Co. Lit.* 351. And if the huſband charges the chattel real of his wiſe with a rent, *&c.* if ſhe ſurvives him, it will not bind her; for ſhe ſhall hold it diſcharged, as ſhe comes in paramount the charge.

A huſband poſſeſſed of a term in his wife's right, may make a leaſe for years of the land, rendering rent to his executors or aſſigns, to commence after his death, 1 *Nelſ. Abr.* 344. But if a leaſe be conveyed by a *feme ſole,* in truſt for the uſe of herſelf, if ſhe afterwards marries, it cannot be diſpoſed of by the huſband: if ſhe dies, he ſhall not have it, but the executors of the wife. *March* 44. See 2 *Vern.* 270. If a promiſe, or bond be to a *feme,* or the *baron and feme,* and the huſband dies before he recovers, or releaſes the ſame, the wife, and not his executors, ſhall be intitled to it. *F. N. B* 121. 7 *Hen.* 6. 2. *Mich.* 17 *Jac.* 1. A man and his wife covenanted by indenture, but the wife did not ſeal it; and it was held, that if the *baron* ſealed and delivered it in the name of the *feme,* it would be the deed of the wife, during the life of the huſband: but if land is given to huſband and wife, and the heirs of their two bodies, and the huſband alone ſuffer a common recovery; this will not bind the eſtate tail, although the husband ſurvive his wife. *Cro. Eliz.* 769. 3 *Rep.* 5, 34.

The wife ſhall be received to defend her right, on the default of the husband, and he cannnot prejudice his wife, as to her freehold and inheritance. *Jenk. Cent.* 79. A husband cannot alien the wife's lands but by *fine* wherein ſhe joins; if he doth, ſhe may recover them after his death by *Cui in vita.* And by ſtatute, where a huſband makes leaſes of his wife's lands, for twenty-one years, *&c.* ſhe is to be made a party, and the rent reſerved to husband and wife, and the heirs of the wife, *&c.* This is of leaſes of lands of the wife's inheritance. *Stat.* 32 *H.* 8. *cap.* 28. If a *feme* having a rent for life takes husband, the *baron* ſhall have action of debt for the rent incurred during the coverture, after the death of the *feme.* 1 *Danv.* 719. And arrears due in the life-time of the husband, after his death, ſhall ſurvive to the wife, if ſhe outlives him, and her adminiſtrators after her death. 2 *Lut.* 1151. A *feme* leſſee for life, rendering rent, takes husband and dies, the *baron* ſhall be charged in action of debt for the rent which was grown during the coverture, becauſe he took the profits out of which the rent ought to iſſue. *Keilw.* 125. *Raym.* 6.

Where a ſtatute or obligation is made to a *baron and feme*, or to her during coverture; the husband only can make a defeaſance of it, and conclude the wife. *Co. Lit.* 351.

If a feme covert ſues a woman in the ſpiritual court for adultery with her husband, and obtains a ſentence againſt her, and coſts, the husband may releaſe theſe coſts, for the marriage continues, and whatever accrues to the wife during coverture, belongs to the husband; *per Holt* Ch. Juſt. on motion for prohibition. 1 *Salk.* 115.

But if the husband and wife be divorced *a menſa & thoro*, and the wife has her alimony, and ſues for defamation or other injury, and there has coſts, and the husband releaſes them, this ſhall not bar the wife, for theſe coſts come in lieu of what ſhe hath ſpent out of her alimony, which is a ſeparate maintenance, and not in the power of her husband. 1 *Rol. Rep.* 426. 3 *Bulſt.* 264. 1 *Rol. Abr* 343. 2 *Rol. Abr.* 293. 1 *Salk.* 115.

A legacy was given to a feme covert, who lived ſeparate from her husband, and the executor paid it to the feme, and took her receipt for it; yet on a bill brought by the husband againſt the executor, he was decreed to pay it over again, with intereſt. 1 *Vern.* 261.

V. *In regard to debts contracted by the wife before marriage.*

If a *feme ſole* indebted takes husband; it is then the debt of the husband and wife, and both are to be ſued for it; but the husband is not liable after the death of the wife, unleſs there be a judgment againſt both during the coverture. 1 *Rol. Abr.* 351. Where there is judgment againſt a *feme ſole*, who marries and dies, the *baron* ſhall not be charged therewith: though if the judgment be had upon *ſcire facias* againſt *baron and feme*, and then the *feme* dies, he ſhall be charged. 3 *Mod.* 186. In action brought againſt a *feme ſole*, if pending the action ſhe marries, this ſhall not abate the action; but the plaintiff may proceed to judgment and execution againſt her, according as the action was commenced. 1 *Lill.* 217. *Trin.* 12 *W.* 3. And if *habeas corpus* be brought to remove the cauſe, the plaintiff is to move for a *procedendo* on the return of the *habeas corpus:* alſo the court of *B. R.* may refuſe it, where brought to abate a juſt action. 1 *Salk.* 8.

In general the husband is liable to the wife's debts contracted before marriage, whether he had any portion with her or not; and this the law preſumes reaſonable, becauſe by the marriage the husband acquires an abſolute intereſt in the perſonal eſtate of the wife, and has the receipt of the rents and profits of her real eſtate during coverture; alſo whatever accrues to her by her labour, or otherwiſe, during the coverture, belongs to the husband; ſo that in favour of creditors, and that no perſon's act ſhould prejudice another, the law makes the husband liable to thoſe debts with which he took her attached. *F. N. B.* 265. 20 *Hen.* 6. 22. *b.* *Moor* 468. 1 *Rol. Abr.* 352. 3 *Mod.* 186.

If baron and feme are ſued on the wife's bond, entered into by the feme before marriage, and judgment is had thereupon, and the wife dies before execution, yet the husband is liable; for the judgment has altered the debt. 1 *Sid.* 337.

When *baron and feme* are ſued, the husband muſt make an attorney for himſelf and his wife. If a wife be arreſted, ſhe ſhall be diſcharged on common bail, let the cauſe of action be what it will: but if *baron and feme* be arreſted, the husband ſhall not be diſcharged, unleſs he give bail for his wife as well as himſelf. *Mod. Caſ.* 17. If judgment be againſt husband and wife, he dies, and ſhe ſurvives, execution may be againſt her. 1 *Rol. Abr.* 890. *l.* 10, 50.

Where a man marries a *widow executrix, &c.* her evidence ſhall not be allowed to charge her ſecond huſband with more than ſhe can prove to have actually come to her hands. Agreed *per. cur.* *Abr. Eq. Ca.* 227. *Hil.* 1719.

D. confeſſed a judgment to F. who made his wife, the plaintiff, *executrix* and died; ſhe *adminiſtered and married a ſecond huſband, and* then *ſhe alone*, without her husband, *acknowledged ſatisfaction, though no real ſatisfaction was made.* The court held that this was not good. *Sid.* 31.

A wife *adminiſtratrix under* 17 ſhall join with her huſband in an action; *per Twiſden* J. *Mod.* 297.

If a feme *executrix takes baron*, and *he releaſes all actions*, this ſhall be a bar during the coverture without queſtion; by the juſtices. But *Choke* doubted if it ſhall be a bar after the death of the baron; but *per Pigot*, once extinct is for ever. *Br Releaſes, pl.* 29.

If a *feme executrix take baron*, and the *baron puts himſelf in arbitrament for death of the teſtator*, and *award is made*, and the *baron dies*, the *feme ſhall be barred; per tot' cur'.* *Brook* ſays, that from hence it ſeems to him, that the releaſe of the baron without the feme is a good bar againſt the feme; *quod conceditur, anno* 39 *H.* 15. and therefore there he excepted thoſe debts in his releaſe, otherwiſe they had been extinct. *Br. Releaſes, pl.* 79.

Obligee made his wife executrix. She married a *ſecond huſband*, who *became bankrupt*, and the commiſſioners aſſigned this debt. But by *Holt* Ch. J. they have no power to aſſign any thing but what is the bankrupt's eſtate, and if the wife dies before aſſignment by him, there muſt be an adminiſtration *de bonis non.* His power to diſpoſe of her eſtate does not make a title in him; and though he may diſpoſe of a *term which he has in jure uxoris*, yet if he becomes a bankrupt, the commiſſioners cannot aſſign over his eſtate; and by *Powel* J. they have nothing to do with the debts of the teſtator, but only with the debts of the bankrupt. *Holt's Rep.* 104, 105.

Where the wife is *executrix and legatee*, if ſhe *claims as executrix*, and dies, if the ſecond baron would have advantage of it, he muſt take letters of *adminiſtration de bonis non* of the firſt husband, and not of the wife; but if ſhe had claimed the land and the term in it *as legatee*, and had *not been in poſſeſſion*, adminiſtration taken of the rights and debts of the wife had been good as to that intent, though his wife was not actually poſſeſſed of it, but only had a right unto it, and of ſuch *things in action* the huſband might be executor or adminiſtrator to his wife; and if the baron takes adminiſtration differently, and brings action he will be nonſuit, and if the *wife before election marries*, the baron may make the election. *Lev.* 216. *pl.* 298. *Mich.* 32 & 33 *Eliz. C. B.* in caſe of *Cheyney* v. *Smith.*

If a man marries an adminiſtratrix to a former husband, who in her widowhood waſted the aſſets of her inteſtate, the husband is liable to the debts of the inteſtate, during the life of the wife; and this ſhall be deemed a *devaſtavit* in him. *Cro. Car.* 603.

VI. *In regard to her contracts during marriage.*

Every gift, grant, or diſpoſition of goods, lands, or other thing whatſoever, and all obligations and feoffments made by a *feme covert*, without her husband's conſent, are void. 1 *H.* 5, 125. *Fitz. Covert.* 18.

The husband is obliged to maintain his wife in neceſſaries: yet they muſt be according to his degree and eſtate, to charge him; and neceſſaries may be ſuitable to a huſband's degree of quality, but not to his eſtate; alſo they may be neceſſaries, but not *ex neceſſitate* to charge the huſband. 1 *Mod.* 129. 1 *Nelſ. Abr.* 354. If a woman buys things for her neceſſary apparel, though without the conſent of her husband, yet the husband ſhall be bound to pay it. *Browal.* 47. And if the wife buys any thing for herſelf, children, or family, and the *baron* does any act precedent or ſubſequent whereby he ſhews his conſent, he may be charged thereupon. 1 *Sid.* 120. Though a wife is very lewd, if ſhe cohabits with her husband, he is chargeable for all neceſſaries for her, becauſe he took her for better, for worſe: and ſo he is if he runs away from her, or turns her away: but *if ſhe goes away from her huſband*, then as ſoon as ſuch ſeparation is notorious, whoever gives her credit doth it at his peril, and the husband is not liable, unleſs he take her again. 1 *Salk.* 119.

Although a husband be bound to pay his wife's debts for her reaſonable proviſion, yet if ſhe parts from him, eſpecially by reaſon of any miſbehaviour, and he allows her a maintenance, he ſhall never after be charged with her debts, till a new cohabitation: but if the husband receive her, or come after her, and lie with her but for a night, that may make him liable to the debts. *Paſch.* 3 *Ann. Mod. Caſ.* 147, 171. If there be an agreement in writing between husband and wife to live ſeparate, and that ſhe ſhall have a ſeparate maintenance, it ſhall bind them both till they both agree to cohabit again; and if the wife is willing to return to her husband, ſhe may; but it has been adjudged, that the husband hath no coercive power over the wife to force her, though he may viſit her, and uſe all lawful means in order to a reconciliation. *Mich. Geo.* 1. *Mod. Caſ. in L. & E.* 22. *Sed quære* as to her *power to return?*

Where there is a ſeparation by conſent, and the wife hath a ſeparate allowance, thoſe who truſt her do it upon her own credit. 1 *Salk.* 116. If a husband makes his wife an allowance for clothes, &c. which is conſtantly paid her, it is ſaid he ſhall not be charged. 1 *Sid.* 109. And if he forbids particular perſons to truſt her, he will not be chargeable: but a prohibition in general, by putting her in the news-papers, is no legal notice not to truſt her. 1 *Vent.* 42. *Sed qu.?*

The *baron* in an account ſhall not be charged by the receipt of his wife, except it came to his uſe. 1 *Danv.* 707. Yet if ſhe uſually receives and pays money, it will bind him in equity. *Abr. Caſ. Eq.* 61. And why not in law, in an action for money had and received? For goods ſold to a wife, to the uſe of the husband, the huſband ſhall be charged, and be obliged to pay for the ſame. *Sid.* 425.

If the *baron is beyond ſea* in any voyage, *and during his abſence the wife buys neceſſaries*, this is a good evidence for a jury to find that the baron *aſſumpſit*. *Sid.* 127.

But ſuch evidence is only preſumptive, and not *concluſive evidence*, and therefore the jury in ſuch caſe finding it ſpecially, the court cannot give judgment againſt the baron; for their being neceſſaries and the employment, with the reſidue of the *ſpecial circumſtances*, is only matter of evidence, upon which the jury ſhould proceed to aſcertain the fact, whether the baron promiſed or not. *Sid.* 127. in caſe of *Manby* v. *Scott*.

And the baron might contradict ſuch preſumptive evidence by other proofs; as that he *gave her ready money* to buy, &c. *Sid.* 127. in caſe of *Manby* v. *Scott*.

If the wife *pawns her cloaths* for money, and afterwards *borrows money to redeem them*, the husband is not chargeable unleſs he were conſenting, or that the firſt ſum came to his uſe. 2 *Show.* 283.

If a wife takes up clothes, as ſilk, &c. and *pawns them before made into clothes*, the husband ſhall not pay for them, becauſe they never came to his uſe; otherwiſe if made up and worn, and then pawned; *per Holt* Ch. J. at *Guildhall.* 1 *Salk.* 118.

A wife may uſe the goods of her husband, but ſhe may not diſpoſe of them: and if ſhe takes them away, it is not felony, for ſhe cannot by our law ſteal the goods of her husband; but if ſhe delivers them to an adulterer, and he receives them, it will be felony in him. 3 *Inſt.* 308, 310.

VII. *As to crimes committed by the wife.*

The will of the wife is ſubject to that of the husband; ſo that if they commit a felony together, ſhe ſhall be neither principal nor acceſſary: and if a wife doth damage to another, ſhe can make no ſatisfaction during the coverture, but the husband muſt do it. *F. N. B.* 188.

But if husband and wife commit treaſon or murder, they ſhall be both found guilty; and the wife ſhall not be diſcharged, on preſumption it was by coercion of the husband. 1 *Hale's Hiſt. P. C.* 47. And a wife, for her own crimes, may be indicted without her husband; and ſhe may ſue and be ſued without her husband, in the ſpiritual court. 9 *Rep.* 72. 2 *Rol. Abr.* 298. So if ſhe commit a theft of her own voluntary act, or by the bare command of her husband, ſhe is puniſhable as much as if ſhe was ſole. *H. P. C.* 65. *Dalt.* 27, 104. *Aſſ. pl.* 40. *Fitz. Coron.* 199.

A man muſt anſwer for the treſpaſſes of his wife: if a *feme covert* ſlander any perſon, &c. the husband and wife muſt be ſued for it, and execution is to be awarded againſt him. 11 *Rep.* 62.

A feme covert generally ſhall anſwer as much as if ſhe were ſole, for any offence not capital againſt the Common law or ſtatute; and if it be of ſuch nature, that it may be committed by her alone, without the concurrence of her husband, ſhe may be puniſhed for it without the huſband by way of indictment, which being a proceeding grounded merely on the breach of the law, the husband ſhall not be included in it for any offence to which he is no way privy. 9 *Co.* 71. *Hawk. P. C.* 3. See *Moor* 813. *Hob.* 93. *Noy* 103. *Savil* 25. *Cro. Jac.* 482. 11 *Co.* 61.

A feme covert lent 20*l.* to be paid at 20*s.* by the week, and one ſhilling and ſixpence intereſt; the borrower paid the intereſt, which amounted to 30*s.* which the wife exacted and received; and this appearing on evidence, in an action brought by the husband for the money, *Holt* Ch. J. ruled it to be an uſurious contract by the husband, ſufficient to diſcharge and avoid the obligation *civiliter*, though not ſufficient to charge the husband *criminaliter*. *Skin.* 348.

If the wife incur the forfeiture of a penal ſtatute, the husband may be made a party to an action or information for the ſame, as he may be generally to any ſuit for a cauſe of action given by his wife, and ſhall be liable to anſwer what ſhall be recovered thereon. See 1 *Hawk. P. C.* 3. and the authorities there cited.

If a feme covert, pretending herſelf to be ſole, marries a ſecond husband, he ſhall have no action againſt the firſt, becauſe this action is founded on the communication and contract of the wife, which will not bind the husband; beſides this is felony. 1 *Sid.* 375. 1 *Lev.* 237.

Husband and wife may be found guilty of *nuſance*, *battery*, &c. and the reaſon why in *burglary*, *larceny*, &c. ſhe is excuſed, is, *becauſe* ſhe could not tell what property the husband might claim in the goods. *Arg.* 10 *Mod.* 63.

Husband and wife were indicted for keeping a *bawdy-houſe and procuring lewdneſs*. The court held the indictment good, and ſaid, that keeping the houſe does not neceſſarily import property, but may ſignify that ſhare of government which the wife has in a family as well as the husband. 10 *Mod.* 63.

Husband and wife were indicted for keeping a *common gaming-houſe*, and held good, and compared it to the caſe of *Queen* v. *Williams*; for as there the wife may be concerned in acts of bawdry, ſo here ſhe may be active in promoting gaming, and furniſh the gueſts with all conveniencies for the purpoſe. 10 *Mod.* 335.

VIII. *Of acts done by one or both jointly or ſeverally, &c.*

At Common law any alienation made by the husband of the wife's land, whether by feoffment, fine or recovery, was a diſcontinuance, and after his death ſhe was put to her *cui in vita*, to reinſtate herſelf; but now by the ſtatute 32 *H.* 8. *cap.* 38. it is provided, *That no fine levied by the husband alone, of lands, being the freehold and inheritance of the wife, ſhall in any wiſe be or make a diſcontinuance, or be otherwiſe prejudicial to her or her heirs, but that the wife and her heirs ſhall and may lawfully enter into the ſaid lands, according to their rights and titles therein.* 2 *Inſt.* 681.

A wife is *ſub poteſtate viri*, and therefore her acts ſhall not bind her, unleſs ſhe levy a fine, &c. when ſhe is examined in private, whether ſhe doth it freely, or by compulſion of the huſband: if *baron and feme* levy a fine, this will bar the *feme*: and where the *feme* is examined by writ, ſhe ſhall be bound; elſe not. 1 *Danv. Abr.* 708. Therefore where *baron and feme* acknowledge a deed to be inrolled, or a ſtatute, *&c.* this will not bind the *feme*. becauſe ſhe is not examined by writ.

If a common recovery be ſuffered by huſband and wife of the wife's lands, this is a bar to the wife; for ſhe ought to be examined upon the recovery. *Pl. Com.* 514. *a.* 10 *Co.* 43. *a.* 1 *Rol.* 347. *l.* 19. *Vide* poſt, this diviſion.

So if huſband and wife are vouchees in a common recovery, the recovery ſhall be a bar, though the wife be not examined; for though it be proper that ſhe be examined, yet that is not neceſſary, and is frequently omitted. *Dict.* 1 *Sid.* 11. per *Roll*, *Sti.* 319, 320.

A wife is diſabled to make contracts, *&c.* 3 *Inſt.* 110. And if a married woman enters into bond as *feme ſole*, if ſhe is ſued as *feme ſole*, ſhe may plead *Non eſt factum*, and the coverture will avoid her bond. 1 *Lill Abr.* 217. A feme covert may plead *non aſſumpſit*, and give coverture in evidence, which makes it no promiſe, *&c. Raym.* 395.

In caſe money be due to the huſband by bill or bond, or for rent on a leaſe, and it is paid to the wife; this ſhall not prejudice him, if after payment he publickly diſagrees to it. 19 *Jac.* 1. *B. R.* 2 *Shep. Abr.* 426. *Contra*, if ſhe is uſed to receive money for him, or if it can be proved the money paid came to his uſe.

If a feme covert levies a fine of her own inheritance without her huſband, this ſhall bind her and her heirs, becauſe they are eſtopped to claim any thing in the land, and cannot be admitted to ſay ſhe was covert againſt the record; but the huſband may enter and defeat it, either during the coverture, to reſtore him to the freehold he held *jure uxoris*, or after her death to reſtore himſelf to his tenancy by the courteſy, becauſe no act of a feme covert can transfer that intereſt which the intermarriage has veſted in the huſband; and if the huſband avoids it during the coverture, the wife or her heirs ſhall never after be bound by it. *Bro. Tit. Fines*, 33 10 *Co.* 43. *Hob.* 225. 7 *Co.* 8. *Co. Lit.* 46.

Leaſe made *by baron and feme* ſhall be ſaid to be the leaſe of them both, till the feme diſagrees, which ſhe cannot do in the life of the baron. *Br. Agreement, pl.* 6.

A man was *infeoffed to the uſe of a feme ſole*, who took an huſband. They both for money ſell the land *to B.* who pays it to the wife, and *ſhe and her huſband do pray the feoffee to make eſtate to B.* Afterwards her huſband dies. Now, by the Chancellor and all the juſtices, ſhe ſhall have aid againſt the firſt feoffee by ſubpoena, to ſatiſfy her for the land; and if the ſecond feoffee were conuſant, a ſubpoena ſhall be againſt him for the land; for all that the wife did during her coverture (as they ſaid) ſhall be taken to be done for fear of the huſband. *Cary's Rep.* 18, 19.

Fine by *E.* to the uſe of himſelf for life, *remainder to his wife that ſhould be at the time of his death, for life*; remainder to the ſon of *E.* in tail. *E.* took to wife *A.* *A fine* levied by *E.* and *A.* his wife, who afterwards ſurvived him, and other uſes declared, is no *bar* to her, becauſe it was uncertain who would be the perſon; but had the *perſon been certain*, there perhaps, notwithſtanding it was but a poſſibility, it might have been a bar; *per Walmſley* J. *Cro Eliz.* 826. *pl.* 31.

The examination of a feme covert is not always neceſſary in levying of fines, becauſe that being provided that ſhe may not at the inſtance of her huſband make any unwary diſpoſition of her property, it follows, that when the huſband and wife do take an eſtate by the fine, and part with nothing, the feme need not be examined; but where ſhe is to convey or paſs any eſtate or intereſt, either by herſelf or jointly with her huſband, there ſhe ought to be examined; therefore if *A.* levies a fine *come ceo* to baron and feme, and they render to the conuzor, the feme ſhall be examined; ſo it is where ſhe takes an eſtate by the fine rendering rent. 2 *Inſt.* 515. 2 *Rol. Abr.* 17.

If baron and feme by fine *ſur conceſſit* grant land to *J. S.* for 99 years, and warrant the ſaid land to *J. S.* during the ſaid term, and the baron dies, and *J. S.* is evicted by one that hath a prior title, he may thereupon bring covenant againſt the feme, notwithſtanding ſhe was covert at the time when the fine was levied. 2 *Saund.* 177. 1 *Sid.* 466. S. C. 1 *Mod.* 290. 2 *Keb.* 684, 703.

A recovery, as well as a fine by a feme covert, is good to bar her, becauſe the *præcipe* in the recovery anſwers the writ of covenant in the fine, to bring her into court, where the examination of the judges deſtroys the preſumption of the law, that this is done by the coercion of the huſband, for then it is to be preſumed they would have refuſed her. 10 *Co.* 43. 2 *Rol. Abr.* 395. *Vide ante* this diviſion.

If a huſband diſſeiſe another to the uſe of his wife, this does not make her a diſſeiſoreſs, ſhe having no will of her own, nor will any agreement of hers to the diſſeiſin during the coverture, make her guilty of the *diſſeiſin*, for the ſame reaſon; but her agreement after her huſband's death will make her a diſſeiſoreſs, becauſe then ſhe is capable of giving her conſent, and that makes her tenant of the freehold, and ſo ſubject to the remedy of the diſſeiſee. 1 *Rol. Abr.* 660. *Bro. Diſſeiſin* 67.

But if a feme covert actually enters and commits a diſſeiſin, either ſole or together with her huſband, then ſhe is a diſſeiſoreſs, becauſe ſhe thereby gains a wrongful poſſeſſion; but ſuch actual entry cannot be to the uſe of her huſband or a ſtranger, ſo as to make them diſſeiſors, becauſe though by ſuch entry ſhe gains an eſtate, yet ſhe has no power of transferring it to another. *Co. Lit.* 357. 1 *Rol. Abr.* 660. *Bro. Diſſeiſin* 15, 67. See 8 *Hen.* 6. 14. *cont.*

If the huſband, ſeiſed of lands in right of his wife, makes a leaſe thereof for years by indenture or deed poll, reſerving rent; all the books agree this to be a good leaſe for the whole term, unleſs the wife, by ſome act after the huſband's death, ſhews her diſſent thereto, for if ſhe accepts rent which becomes due after his death, the leaſe is thereby become abſolute and unavoidable; the reaſon whereof is, that the wife, after her intermarriage, being by law diſabled to contract for, or make any diſpoſition of, her own poſſeſſions, as having ſubjected herſelf and her whole will to the will and power of her huſband; the law therefore transfers the power of dealing and contracting for her poſſeſſions to the huſband, becauſe no other can then intermeddle therewith, and, without ſuch power in the huſband, they would be obliged to keep them in their own manurance or occupation, which might be greatly to the prejudice of both; but to prevent the huſband's abuſing ſuch power, and leſt he ſhould make leaſes to the prejudice of his wife's inheritance, the law has left her at her liberty after his death, either to affirm and make good ſuch leaſe, or defeat and avoid it, as ſhe finds it ſubſervient to her own intereſt; and this ſhe may do, though ſhe joined in ſuch leaſe, unleſs made purſuant to ſtatute 32 *Hen.* 8. *cap.* 28. *Bro. Acceptance* 10. *Bro. Leaſes* 24. *Cro. Jac.* 332. 2 *And.* 42. *Co. Lit.* 45. *Plow.* 137. *Cro. Jac.* 563. *Yelv.* 1. *Cro. Eliz.* 769.

Huſband and wife make a leaſe for years, by indenture, of the wife's lands, reſerving rent; the leſſee enters, the huſband before any day of payment dies; the wife takes a ſecond huſband, and he at the day accepts the rents, and dies; and it was held, that the wife could not now avoid the leaſe, for by her ſecond marriage ſhe transferred her power of avoiding it to her huſband, and his acceptance of the rent binds her, as her own act before ſuch marriage would have done; for he by the marriage ſucceeded into the power and place of the wife, and what ſhe might have done either as to affirming or avoiding ſuch leaſe before marriage, the ſame may the huſband do after the marriage. *Dyer* 159. 1 *Rol. Abr.* 475. 1 *Rol. Rep.* 132.

The huſband being ſeiſed of copyhold lands in right of his wife in fee, makes thereof a leaſe for years not warranted by the cuſtom, which is a forfeiture of her eſtate, yet this ſhall not bind the wife or her heirs after the huſband's death, but that they may enter and avoid the leaſe, and thereby purge the forfeiture; and the diverſity ſeems between this act, which is at an end when the leaſe is expired or defeated by the entry of the lord, or the wife after the huſband's death, and ſuch acts as are a continuing detriment to the inheritance, as wilful waſte by the huſband, which tends to the deſtruction of the manor; ſo of non-payment of rent, denial of ſuit or ſervice; for ſuch forfeitures as theſe bind the inheritance of the wife after the huſband's death; but in the other caſe the huſband cannot forfeit by this leaſe more than he can grant, which is but for his own life. 2 *Rol. Rep.* 344, 361, 372. *Cro. Car.* 7. *Cro. Eliz.* 149. 4 *Co.* 27.

A feme covert is capable of purchaſing, for ſuch an act does not make the property of the huſband liable to any diſadvantage, and the huſband is ſuppoſed to aſſent to this, as being to his advantage, but the huſband may diſagree; and it ſhall avoid the purchaſe; but if he neither agrees nor diſagrees, the purchaſe is good, for his conduct ſhall be eſteemed a tacit conſent, ſince it is to turn to his advantage; but in this caſe, though the huſband ſhould agree to the purchaſe, yet after his death ſhe may waive it, for having no will of her own at the time of the purchaſe, ſhe is not indiſpenſably bound by the contract; therefore if ſhe does not, when under her own management and will, by ſome act expreſs her agreement to ſuch purchaſe, her heirs ſhall have the privilege of departing from it. *Co. Lit.* 3. *a.*

Jointreſs paying off a mortgage was decreed *to hold over* till ſhe or her executor be ſatisfied, and intereſt to be allowed her. *Chan. Caſes* 271.

The huſband gave a voluntary bond after marriage to make a jointure of ſuch value on his wife; the huſband accordingly makes a *jointure*; the wife gives up the bond; the jointure is *evicted*; the jointure ſhall be made good out of the huſband's perſonal eſtate, there being no creditors in the caſe; and the delivery up of the bond by a feme covert could no ways bind her intereſt. *Vern.* 427. *pl.* 402.

A feme covert agrees to ſell *her inheritance*, ſo as ſhe might have 200*l.* of the money ſecured to her; the land is ſold, and the money put out in a truſtee's name accordingly; this money ſhall not be liable to the *huſband's debts*, nor ſhall any *promiſe by the wife*, to that purpoſe, ſubſequent to the firſt original agreement, be binding in that behalf. 2 *Vern.* 64, 65. *pl.* 58. *Trin.* 1688.

IX. *Of joinder in actions*, &c.

In thoſe caſes where the debt or cauſe of action will ſurvive to the wife, the huſband and wife are regularly to join in action; as in recovering debts due to the wife before marriage; in actions relating to her freehold or inheritance, or injuries done to the perſon of the wife. 1 *Rol. Abr.* 347.

But if a feme ſole hath a rent-charge, and rent is in arrear and ſhe marries, and the baron diſtrains for this rent, and thereupon a reſcous is made, this is a tort to the baron himſelf, and he may have an action alone. *Cro. Eliz.* 439. *Owen* 82. S. P. *Moor.* 584. S. C.

So if a feme ſole hath right to have common for life, and ſhe takes huſband, and ſhe is hindered in taking the common, he may have an action alone without his wife, it being *only to recover damages.* 2 *Bulſt.* 14.

But if baron and feme are diſſeiſed of the lands of the feme, they muſt join in action for the recovery of this land. 1 *Bulſt.* 21.

The baron may have an action alone upon the *Stat.* 5 *R.* 2. *ſt.* 1. *c.* 2. for entering into the land of the feme; treſpaſs and taking charters of the inheritance of the feme; *quare impedit*, *&c.* But for perſonal torts, they muſt join, though the baron is to have the damages. 1 *Danv.* 709. 1 *Rol. Rep.* 360. The huſband is to join in actions for battery to the wife; and a wife may not bring any action for wrong to her without her huſband. *Co. Lit.* 132, 326. An action for a battery on the wife, brought by huſband and wife, muſt be laid *to the damage of both.* 2 *Lord Raym.* 1209. For an injury done to the wife alone, action cannot be maintained by the huſband alone, without her; but for aſſault and debauching or lying with the wife, or for a loſs and injury done to the huſband, in depriving him of the converſation and ſervice of his wife, he alone may bring an action; and theſe laſt actions are laid for aſſault, and detaining, *&c.* the wife, *per quod conſortium amiſit*, *&c.* *Cro. Jac.* 538

For taking any thing from the wife, the huſband only is to bring the action, who has the property; for the wife hath not the property. *In all caſes where the feme ſhall not have the thing recovered, but the huſband only, he alone is to bring the action.* 1 *Rol. Rep.* 360. except as above, *&c.* For a perſonal duty to the wife, the baron only may bring the action: and the huſband is intitled to the fruits of his wife's labour, for which he may bring *quantum meruit.* 1. *Lill. Abr.* 227. 1 *Salk.* 114. *Baron and feme* ought to join in actions for debt due to the *feme* before coverture: and where an action will ſurvive to the wife, and ſhe may recover damages, ſhe muſt join with the huſband in the action. 2 *Mod.* 269. In caſe, before marriage, a *feme* enters into articles concerning her eſtate, ſhe is as a ſeparate perſon; and the huſband may be plaintiff in equity againſt the wife. *Preced. Chanc.* 24.

Where the *feme is adminiſtratrix*, the ſuit muſt be in both their names, for by the intermarriage the huſband hath authority to intermeddle with the goods as well as the wife; but in the declaration the granting adminiſtration to the feme muſt be ſet forth. *Vide* the *Books of Entries*, and *Godb.* 40. *pl.* 44.

In action *for goods which the feme hath as executrix*, they muſt join, to the end that the damages thereby recovered may accrue to her as executrix in lieu of the goods. *Went. Off. Ex.* 207.

In battery the plaintiff declared, that on ſuch a day the defendant aſſaulted and *beat his wife.* This *action was brought by the huſband after the death of his wife*, and it being a perſonal wrong is dead with the perſon; and if ſhe had been living, the huſband alone could not have the action, becauſe damages muſt be given for the tort offered to the body of his wife; *quod fuit conceſſum.* *Yelv.* 89.

In an action upon a *trover* before marriage, and a *converſion* after, the baron and feme ought to join; for this action, as a treſpaſs, diſaffirms the property; but the baron ought alone to bring a *replevin, detinue, &c.* for the additions admit and affirm a property in the feme at the time of the marriage, which by conſequence muſt have veſted in the baron. 1 *Sid.* 172. 1 *Keb.* 641. S. C. 1 *Vent.* 261. 2 *Lev.* 107. S. P. and that he may join the wife at his election.

But if *A.* declares, that the defendant being indebted to him and his wife, as executrix to one *J. S.* in conſideration that *A.* would forbear to ſue him for three months, aſſumed, *&c.* and avers that he forbore, and that his wife is ſtill alive, the action is well maintainable by the huſband alone, for this is on a new contract, to which the wife is a ſtranger. *Carth.* 462. 1 *Salk.* 117. *Yelv.* 84. *Cro. Jac.* 110. *S. P.*

In all actions *real* for the land of the wife, the huſband and wife ought to join. *R.* 1 *Bul.* 21. So in actions perſonal for a *choſe in action*, due to the wife before coverture. 1 *Rol.* 347. *l.* 53. *Cro. El.* 537. Vide *Com. Dig.* 1 *V.* 375. *&* *ante* *&* *poſt.*

X. *Of jointly ſuing them.*

The huſband is by law anſwerable for all actions for which his wife ſtood attached at the time of the coverture, and alſo for all torts and treſpaſſes during coverture, in which caſes the action muſt be joint againſt them both; for if ſhe alone were ſued, it might be a means of making the huſband's property liable; without giving him an opportunity of defending himſelf. *Co. Lit.* 133. *Doctr. Placit.* 3. 2 *Hen.* 6. 4.

If goods come to a feme covert by *trover*, the action may be brought againſt huſband and wife, but the converſion may be laid only in the husband, becauſe the wife cannot convert goods to her own uſe; and the action is brought againſt both, becauſe both were concerned in the treſpaſs of taking them. See *Co. Lit.* 351. 1 *Rol. Abr.* 6. *pl.* 7. *Yelv.* 166. *Noy* 79. 1 *Leon* 312. *Cro. Car.* 254, 494. 1 *Rol. Abr.* 348. But in *debt* upon a *devaſtavit* againſt *baron* and *feme* executrix, it ſhall not be laid *quod devaſtaverunt*, for a feme covert cannot waſte. 2 *Lev.* 145.

An action on the caſe was brought againſt baron and feme, for retaining and keeping the ſervant of the plaintiff, and judgment accordingly. 2 *Lev.* 63.

If a leaſe for life or years be made to baron and feme, reſerving rent, an action of debt for rent arrear may be brought againſt both; for this is for the advantage of the wife. 1 *Rol. Abr.* 348.

If an action be brought againſt the husband and wife, and the wife be arreſted, ſhe ſhall be diſcharged upon common bail; for nobody can be ſuppoſed to undertake for a wife who hath no property of her own. 1 *Salk.* 114. *Comb.* 355. 6 *Mod.* 17, 105.

Where a right of action doth accrue to a woman before marriage, as where a bond is made to her and forfeited, there, if ſhe marry, ſhe muſt be joined with the husband in an action of debt againſt the obligor. *Owen* 82.

Where the *feme ſole* is indebted, and afterwards married, ſhe and her husband ſhall both be ſued *for her debts*, and the action muſt be joint againſt both during her life; but if ſhe dieth, the husband ſhall not be charged with her debts, unleſs judgment was had againſt him and his wife during the coverture. *F. N. B.* 120.

XI. *Where a wife ſhall be conſidered as a feme ſole.*

A husband who has abjured the realm, or who is baniſhed, is thereby *civiliter mortuus*; and being diſabled to ſue or be ſued in right of his wife, ſhe muſt be conſidered as a *feme ſole*; for it would be unreaſonable that ſhe ſhould be remedileſs on her part, and equally hard on thoſe who had any demands on her, that not being able to have any redreſs from the husband, they ſhould not have any againſt her. *Bro. Baron and Feme*, 66. *Co. Lit.* 133. 1 *Rol. Rep.* 400. *Moor.* 851. 3 *Bulſt.* 188. 1 *Bulſt.* 140. 2 *Vern.* 104.

In *aſſumpſit* the defendant proved that ſhe was married, and her husband alive in *France*, the plaintiff had judgment, upon which as a verdict againſt evidence ſhe moved for a new trial, but it was denied; for it ſhall be intended that ſhe was divorced: beſides the husband is an alien enemy, and in that caſe, why is not his wife chargeable as a feme ſole? 1 *Salk.* 116. *Deerly* verſus *Dutcheſs of Mazarine*.

By the *cuſtom* of *London*, if a *feme covert* trades by herſelf, in a trade with which her husband *does not intermeddle*, ſhe may ſue and be ſued as a *feme ſole*. 10 *Mod.* 6.

A woman, whoſe husband had left her about twelve years before, had carried on a trade in her own name as a widow, and gave receipts in her own name; being ſued for debt contracted in the courſe of her trade, gave coverture in evidence, and gave evidence of her husband's having been lately alive in *Ireland*; and *Lord Ch. Juſtice Holt* directed the jury to find for the *defendant*; and ſo they did. 12 *Mod.* 603.

Where a married man is tranſported for any felony, *&c.* the wife may be ſued alone, for any debt contracted by her, after the tranſportation.—So determined in a caſe before Mr. Juſtice *Yates*, at *Carliſle*, and afterwards in another caſe, before Lord *Mansfield*, in *Kent*, and both determinations acquieſced in.

XII. *Of divorce, ſeparate maintenance, and pin-money.*

The feme, after divorce, ſhall re-have *the goods which ſhe had before marriage*. Br. Coverture, pl. 82. D. 13 pl. 63. per Fitzherbert Keilw. 122. b. pl. 75.

But if he had given or ſold them without colluſion before the divorce, there is no remedy; but if by colluſion, ſhe may aver the colluſion, and have *detinue* for the whole, whereof the property may be known; and as for the reſt, which conſiſts of money, *&c.* ſhe ſhall ſue in the ſpiritual court. *Br. Deraignment* and *Divorce*, *pl.* 1. cites 26 *H.* 8. 7.

If *a man is bound to a feme ſole*, and after *marries her*, and after they are divorced, *the obligation is revived*. Br. Coverture, pl. 82. Becauſe the divorce being *a vinculo matrimonii*, by reaſon of ſome prior impediment, as precontract, *&c.* makes them never husband and wife *ab initio*; but if the husband had made a feoffment in a fee of the lands of his wife, and then the divorce had been, that would have been a diſcontinuance as well as if the husband had died, becauſe there the intereſt of a third perſon had been concerned, but between the parties themſelves it will have relation to deſtroy the husband's title to the goods, and it proves no more than the common rule, *viz.* that relations will make a nullity between the parties themſelves, but not amongſt ſtrangers. *Lord Raym.* 521. *Hill.* 11 *W.* 3.

If a man *gives lands in tail to baron and feme*, and they have iſſue, and after *divorce is ſued*, now they have only frank tenement, and the iſſue ſhall not inherit. *Br. Tail et dones*, *&c. pl.* 9.

If the baron and feme *purchaſe jointly and are diſſeiſed, and the baron releaſes*, and after they are divorced, the feme ſhall have the *moiety*, tho' before the divorce they were no moieties; for the divorce converts it into moieties. *Br. Deraignment*, *pl.* 18. cites 32 *Hen.* 8.

If baron *alien* the *wife's land*, and then there is a divorce *cauſa præcontractus*, or any other divorce which diſſolves the marriage *a vinculo matrimonii*, the wife during the life of the baron may *enter* by ſtatute 32 *Hen.* 8. *c.* 28. *Dyer* 13. *pl.* 61. But vide *Ld. Raym.* 521.

But if after ſuch alienation and divorce the baron dies, ſhe is put to her *cui in vita ante divortium*; and yet the words of the ſtatute are, that ſuch alienation ſhall be void, but this ſhall be intended to toll the *cui in vita*. Mo. 58. pl. 164. Paſch. 8 Eliz. Broughton *v.* Conway.

Divorce *cauſa adulterii* of the husband; afterwards the wife ſues in the ſpiritual court for a *legacy*; the executor pleads the *releaſe of the baron*; the releaſe binds the wife, for the *vinculum matrimonii* continues. *Cro. Eliz.* 908. Vide 1 *Salk.* 115.

Holt held, that if *feme covert* after divorce *a menſa & thoro*, ſues for a legacy, which, if recovered, comes to her husband, there the husband may releaſe it, becauſe there is no alimony; and if he may releaſe the duty, he may releaſe the coſts. 1 *Salk.* 115. *pl.* 4. S. C. & S. P.

A divorce was *a menſa & thoro*, and then the husband dies inteſtate. The wife by bill pray'd aſſiſtance as to *dower and adminiſtration* (it being granted to another) and *diſtribution*. The Maſter of the Rolls bid her go to law to try if ſhe was intitled to her dower, there being no impediment, and as to that diſmiſſed the bill; and as to the adminiſtration, the granting that is in the eccleſiaſtical court; but the diſtribution more properly belongs to this court; but ſince in that court ſhe is ſuch a wife as *is not intitled to adminiſtration*, he diſmiſs'd the bill as to diſtribution too, and ſaid, if they could repeal that ſentence, ſhe then would be intitled to diſtribution. *Ch. Prec.* 111.

The *eccleſiaſtical court* is the proper court for alimony, and if the perſon *will not obey*, they cannot but excommunicate him. *Het.* 69.

If *baron and feme* are divorced *cauſa adulterii*, which is a divorce *a menſa & thoro*, they continue *baron and feme*: it is otherwiſe in a divorce *a vinculo matrimonii*, which diſſolves the marriage.

As to the conſequences of a ſeparate maintenance.

Where, on a ſeparation, lands are conveyed by the baron in truſt for the feme, Chancery will not bar the feme from *ſuing the baron* in the truſtee's name, and a ſurrender or releaſe by the baron ſhall not be made uſe of againſt the feme. 2 *Chan. Ca.* 102.

A woman living ſeparate from her husband, and having a ſeparate maintenance, *contracts debts*. The *creditors*, by a bill in this court, may follow the ſeparate maintenance whilſt it continues; but when that is determined, and the husband dead, they cannot by a bill charge the jointure with the debts: by Lord Keeper *North*; and the rather, becauſe the executor of the huſband, who may have paid the debt, is no party. *Vern.* 326.

Where the husband, during his cohabitation with the wife, makes her an allowance of ſo much a year for her expences, if ſhe out of her own good houſewifry ſaves any thing out of it, this will be the husband's eſtate, and he ſhall reap the benefit of his wife's frugality, becauſe when he agrees to allow her a certain ſum yearly, the end of the agreement is, that ſhe may be provided with clothes and other neceſſaries, and whatſoever is ſaved out of this, redounds to the husband; *per* Lord Keeper *Finch. Freem. Rep.* 304.

A term was created on the marriage of *A.* with *B.* for raiſing 200*l.* a year for pin-money, and in the ſettlement *A.* covenanted for payment of it. There was an *arrear of one year at A.'s death*, which was decreed, becauſe of the covenant to be charged on a truſt-eſtate ſettled for payment of debts, it being in arrear for one year only; *ſecus* had it been in arrear for ſeveral years. *Chan. Prec.* 26.

The plaintiff's relation (to whom he was heir) allow'd the wife pin-money, which *being in arrear*, he *gave her a note* to this purpoſe; *I am indebted to my wife* 100*l.* *which became due to her ſuch a day*; after *by his will he makes proviſion out of his lands for payment of all his debts, and all monies which he owed to any perſon in truſt for his wife*; and the queſtion was, whether the 100*l.* was to be paid within this truſt; and my Lord Keeper decreed not; for in point of law it was no debt, becauſe a man cannot be indebted to his wife; and it was not money due to any in truſt for her. *Hill.* 1701. between *Cornwall* and the earl of *Montague.* But *quære*; for the teſtator looked on this as a debt, and ſeems to intend to provide for it by his will. *Abr. Eq. Ca.* 66.

Where the wife hath a ſeparate allowance *made before marriage*, and *buys jewels with the money* ariſing thereout, they will not be aſſets liable to the husband's debts. *Chan. Prec.* 295.

Where there is a proviſion for the wife's ſeparate uſe *for clothes*, if the *huſband finds her clothes*, this *will bar the wife's claim*; nor is it material whether the allowance be provided out of the eſtate which was originally the huſband's, or out of what was her own eſtate; for in both caſes her *not having demanded it* for ſeveral years together, ſhall be *conſtrued a conſent from her that he ſhould receive it*; *per* Lord C. *Maccleſfield.* 2 *Wms's Rep.* 82, 84.

So where 50*l.* *a year was reſerved for clothes and private expences*, ſecured by a term for years, and ten years after the husband died, and ſoon after the wife died; the executors in equity demanded 500*l.* for ten years arrear of this pin-money; but it appearing that the *husband maintain'd her*, and *no proof that ſhe ever demanded it*, the claim was diſallowed. 2 *Wms's Rep.* 341.

As to execution where action is againſt husband and wife, or for her contract or tort, vide *Black. Com.* 3 *V.* 414.

Where ſhe is not anſwerable criminally, or for tort, *&c.* done by perſuaſion or coercion of the husband, *&c.* vide *Black. Com.* 4 *V.* 28. *Et e contra, ib.* 4 *V.* 29, 39.

The wife's *jointure* not forfeitable by the treaſon of the husband; tho' her *dowry* is, *per Stat.* 5 *&* 6 *Ed.* 6. *c.* 11. *Black. Com.* 4 *V.* 375. See title **Marriage.**

Bar, or **Barr**, (Lat. *barra*, and in Fr. *barre)* In a legal ſenſe is a plea or peremptory exception of a defendant, ſufficient to deſtroy the plaintiff's action. And it is divided into *bar* to common intendment, and *bar* ſpecial; *bar temporary*, and *perpetual:* bar to a *common intendment* is an *ordinary* or *general* bar, which uſually is a bar to the declaration of the plaintiff: bar *ſpecial* is that which is more than ordinary, and falls out upon ſome ſpecial circumſtance of the fact, as to the caſe in hand. *Termis de Ley.*

Bar *temporary* is ſuch a bar that is good for the preſent, but may afterwards fail: and bar *perpetual* is that which overthrows the action of the plaintiff for ever. *Plowd.* 26. But a plea in bar, not giving a full anſwer to all the matter contained in the plaintiff's declaration is not good. 1 *Lill. Abr.* 211. If one be barred by plea to the *writ*, or to the *action of the writ*, he may have the ſame writ again, or his right action: but if the plea in bar, be to the *action* itſelf, and the plaintiff is barred by judgment, *&c.* it is a bar for ever in *perſonal* actions. 6 *Rep.* 7. And a recovery in debt is a good bar to action on the caſe for the ſame thing: alſo a recovery on *aſſumpſit* in caſe, is a good bar in debt, *&c.* *Cro. Jac.* 110. 4 *Rep.* 94.

In all actions *perſonal*, as debt, account, *&c.* a bar is perpetual, and in ſuch caſe the party hath no remedy, but by writ of error or attaint; but if a man is barred in a real action or judgment, yet he may have an action of as high a nature, becauſe it concerns his inheritance; as for inſtance, if he is barred in a *formedon in deſcender*, yet he may have a *formedon in the remainder*, &c. 6 *Rep.* 7. It has been reſolved, that a bar in any action real or perſonal by judgment upon demurrer, verdict, or confeſſion, is a bar to that action, or any action of the like nature for ever: but, according to *Pemberton* Chief Juſtice, this is to be underſtood, when it doth appear that the evidence in one action would maintain the other; for otherwiſe the court ſhall intend that the party hath miſtaken his action. *Skin.* 57, 58.

Bar to a *common intent* is good: and if an executor be ſued for his teſtator's debt, and he pleadeth that he had no goods left in his hands at the day the writ was taken out againſt him, this is a good bar to a common intendment, till it is ſhewn that there are goods; but if the plaintiff can ſhew by way of replication, that more goods have fallen into his hands ſince that time, then, except the defendant alledge a better bar, he ſhall be condemned in the action. *Plowd.* 26. *Kitch.* 215. *Bro.* tit. *Barre.*

There is a bar material, and a bar at large: bar material may be alſo called ſpecial bar; as when one, in ſtay of the plaintiff's action, pleadeth ſome particular matter, *viz.* a deſcent from him that was owner of the land, *&c.* a feoffment made by the anceſtor of the plaintiff, or the like: a bar at large is, when the defendant, by way of exception, doth not traverſe the plaintiff's title, by pleading, nor confeſs, nor avoid it, but only makes to himſelf a title in his bar. *Kitch.* 68. 5 *H.* 7. 29.

This word bar is likewiſe uſed for the place where ſerjeants and counſellors at law ſtand to plead the cauſes in court; and where priſoners are brought to anſwer their indictments, *&c.* whence our lawyers, that are called to the bar, are termed barriſters. 24 *H.* 8. *c.* 24.

As to the qualities of a plea, ſee farther *Black. Com.* 3 *V.* 308.

Matter of *law* may be pleaded ſpecially, though it may be given in evidence on the general iſſue. 5 *Com. Dig.* 68. 2 *Vent.* 295. 1 *Salk* 344. 2 *Mod.* 276. *Skin.* 362.

As to the words *modo and forma* in pleading, vide 2 *Anderſon* 182. *Co. Lit.* 281. 5 *Com. Dig* 109.

Farther concerning this head, ſee **Abatement, Action, Judgment, Pleading,** *&c.*

Barraſter, Barriſter. *(barraſterius)* Is a counſellor learned in the law, admitted to plead at the bar, and there to take upon him the protection and defence of clients. They are termed *juriſconſulti*; and in other countries called *licentiati in jure:* and antiently *barriſters* at law were called *apprentices* of the law, in Lat. *apprenticii juris nobiliores.* Forteſc. The time before they ought to be called to the bar, by the ancient orders, was eight years, now reduced to five; and the exerciſes done by them (if they were not called *ex gratia)* were twelve grand moots performed in the inns of *Chancery* in the time of the grand readings, and twenty-four petty moots in the term times, before the readers of the reſpective inns: and a *barriſter* newly called is to attend the ſix (or four) next long vacations the exerciſe of the houſe, *viz.* in Lent and Summer, and is thereupon for thoſe three (or two) years ſtiled a vacation *barriſter.* Alſo they are called *utter barriſters, i. e.* pleaders *ouſter* the bar, to diſtinguiſh them from benchers, or thoſe that have been readers, who are ſometimes admitted to plead within the bar, as the king, queen, or prince's counſel are. *Barriſters*, who conſtantly attend the *King's Bench*, *&c.* are to have the privilege of being ſued in tranſitory actions in the county of *Middleſex*. But it hath been queſtioned, whether an action of debt doth lie for their fees; unleſs it be upon ſpecial retainer; for a counſellor's fee is *honorarium quiddam*, not *mercenariam*, as that of an attorney or ſolicitor. 2 *Inſt.* 213, 214, *&c.* *Wood's Inſt.* 448.

Barrator, or Barretor, (Lat. *barractator*, Fr. *barrateur)* A common mover of ſuits and quarrels, either in courts, or elſewhere in the country, that is himſelf never quiet, but at variance with one or other. *Lambert* derives the word *barretor* from the Lat. *balatro*, a vile knave: but the proper derivation is from the Fr. *barrateur*, *i. e.* a deceiver, and this agrees with the deſcription of a common *barretor* in my Lord *Coke*'s Reports, *viz.* that he is a common mover and maintainer of ſuits in diſturbance of the peace, and in taking and detaining the poſſeſſion of houſes and lands, or goods by falſe inventions, *&c.* And therefore it was adjudged, that the indictment againſt him ought to be in theſe words, *viz.* That he is *communis malefactor, calumniator & ſeminator litium & diſcordiarum inter vicinos ſuos, & pacis regis perturbator, &c.* And there it is ſaid that a common *barretor* is the moſt dangerous oppreſſor in the law; for he oppreſſeth the innocent by colour of law, which was made to protect them from oppreſſion. 8 *Rep.* 37. No one can be a *barretor* in reſpect of one act only; for every indictment for ſuch crime muſt charge the defendant with being *communis barractator*, and conclude *contra pacem, &c.* And it hath been holden, that a man ſhall not be adjudged a *barretor* for bringing any number of ſuits in his own right, though they are vexatious, eſpecially if there be any colour for them; for if they prove falſe, he ſhall pay the defendant coſts. 1 *Rol. Abr.* 355. 3 *Mod.* 98.

A *barriſter* at law entertaining a perſon in his houſe, and bringing ſeveral actions in his name, where nothing was due, was found guilty of *barretry*. 3 *Mod.* 97. An attorney is in no danger of being convicted of *barretry*, in reſpect of his maintaining another in a groundleſs action, to the commencing whereof he was no way privy. *Ibid.* A common ſolicitor, who ſolicits ſuits, is a common *barretor*, and may be indicted thereof, becauſe it is no profeſſion in law. 1 *Danv. Abr.* 725. *Barretors* are puniſhed by fine and impriſonment, bound to the good behaviour, *&c.* And belonging to the profeſſion of the law, they ought to be further puniſhed by diſability to practice. 34 *Ed.* 3. *c.* 1. *Hawk. P. C.* 244. Vide *Black. Com.* 4 *V.* 133.

Barrel, *(barillum)* Is a meaſure of wine, ale, oil, *&c.* Of wine it contains the eighth part of a tun, the fourth part of a pipe, and the moiety of a hogſhead; that is, thirty-one gallons and a half. 1 *R.* 3. *c.* 13. Of beer it contains thirty-ſix gallons; and of ale, thirty-two gallons. *Anno* 23 *H.* 8. *c.* 4. and 12 *Car.* 2. *c.* 23. It is declared, that the aſſiſe of herring barrels is thirty-two gallons wine meaſure, containing in every barrel uſually a thouſand full herrings. *Anno* 13 *El. c.* 11. The eel barrel contains thirty gallons. 2 *H.* 6. *c.* 13.

Barriers, (Fr. *barrieres)* Signifies that which the *French* call *jeu de barres*, i. e. *palæſtra*, a martial exerciſe of men armed and fighting together with ſhort ſwords, within certain bars or rails which ſeparated them from the ſpectators; it is now diſuſed here in *England*. There are likewiſe *barrier towns*, or places of defence on the frontiers of kingdoms.

Barrow, (from the Sax. *boerg*, a heap of earth) A large hillock or mount, raiſed or caſt up in many parts of *England*, which ſeem to have been a mark of the Roman *tumuli*, or ſepulchres of the dead. The Sax. *beora* was commonly taken for a grove of trees on the top of a hill. *Kennet's Gloſſ.*

Barter, (from the Fr. *baretre, circumvenire)* Signifies in our books to exchange one commodity for another, or truck wares for wares. *Anno* 1 *R.* 3. *c.* 9. And the reaſon may be, becauſe they that exchange in this manner do endeavour, for the moſt part, one to over-reach and circumvent the other.

Barton, Is a word uſed in *Devonſhire*, for the demeſne lands of a manor; ſometimes the manor-houſe itſelf; and in ſome places for out-houſes and fold-yards. In the *Stat.* 2 & 3 *Ed.* 6. *c.* 12. *barton* lands, and demeſne lands, are uſed as *ſynonyma*. See *Berton*.

Bas Chevaliers, Low or inferior knights by tenure of a bare military fee, as diſtinguiſhed from bannerets, the chief or ſuperior knights: hence we call our ſimple knights, *viz.* knights bachelors, *bas chevaliers*. Kennet's Gloſſ. to Paroch. Antiq.

Baſe Court, (Fr. *cour baſſe)* Is any inferior court, that is not of record, as the court baron, *&c.* *Kitch. fol.* 95, 96.

Baſe Eſtate, (Fr. *bas eſtat)* Is that *eſtate* which *baſe* tenants have in their lands. And *baſe* tenants, according to *Lambert*, are thoſe who perform villainous ſervices to their lords; *Kitchen fol.* 41. makes *baſe* tenure and frank tenure to be contraries, and puts copy-holders in the number of *baſe* tenants; where it may be gathered that every *baſe* tenant holds at the will of the lord: but there is a difference between a *baſe eſtate* and villenage; for to hold in pure villenage is to do all that the lord will command him; and if a copy-holder have but a *baſe eſtate*, he not holding by the performance of every commandment of his lord, cannot be ſaid to hold in villenage: copy-holders are by the cuſtoms of manors, and continuance of time, grown out of that extreme ſervitude wherein they were firſt created.

Baſe Fee, Is a tenure in *fee* at the will of the lord, diſtinguiſhed from ſocage free tenure: but the Lord *Coke* ſays, that *baſe fee* is what may be defeated by limitation, or on entry, *&c.* *Co. Lit.* 1, 18. *Baſſa tenura*, or *baſe* tenure, was a holding by villenage, or other cuſtomary ſervice, oppoſed to *alta tenura*, the higher tenure in *capite* or by military ſervice, *&c.*——*Manerium de* Cheping Farendon *cum pertinentiis eſt de antiquo dominico coronæ domini regis, unde omnia prædicta tenementa ſunt parcella, & de* baſſa tenura *ejuſdem manerii.* Conſuetud. Domus de Farendon, MS. 44.

Bas Ville, The ſuburbs or inferior town, as uſed in *France*.

Baſels, *(baſſelli)* A kind of coin aboliſhed by King *Hen.* 2. *anno* 1158. *Hollingſhed's Chron. p.* 67.

Baſelard, or Baſillard, In the *Stat.* 12 *Rich.* 2. *c.* 6. Signifies a weapon, which Mr. *Speight*, in his Expoſition upon *Chaucer*, calls *pugionem vel ſicam*, a poniard; *arrepto* baſillardo *transfixit, &c.* *Cum alio* baſillardo *penetravit latera ejus, &c.* Knighton, lib. 5. pag. 2731.

Baſileus, A word mentioned in ſeveral of our hiſtorians ſignifying King, and ſeems peculiar to the kings of *England*. *Monaſticon, tom.* 1. *p.* 65. *Ego* Edgar *totius Angliæ* baſileus *confirmavi.*—In many places of the *Monaſticon* this word occurs; and alſo in *Ingulphus, Malmeſbury, Mat. Paris, Hoveden, &c.*

Basket-Tenure of lands. See *Caneſtellus*.

Baſnetum, A *baſnet*, or helmet. By *Inqu.* 22 *Ed.* 4. After the death of *Laurence de Haſtings*, earl of *Pembroke*, it was found thus—*Quod quidem manerium, (i. e. de* Aſton Cantlore) *per ſe teneture de domino rege in capite, per ſervitium inveniendi unum hominem peditem, cum arcu ſine chorda, cum uno* baſneto, *ſive cappa, per xl dies ſumptibus ſuis propriis quotiens fuerit guerra in* Wallia.

Baſſinet, A ſkin with which the ſoldiers covered themſelves. *Blount.*

Baſtard, *(baſtardus)* From the Brit. *baſtaerd, i. e. nothus* or *ſpurius*, is one that is born of any woman not married, ſo that his father is not known by the order of law; and therefore is called *filius populi*, the child of the people.

If a woman be with child by a man, who afterwards marries her, and then the child is born, this child is no *baſtard:* but if a man hath iſſue by a woman before marriage, and after they marry, the iſſue is a baſtard by our law; but legitimate by the Civil law. 2 *Inſt.* 96, 97. If a man marries a woman groſſly big with child by another, and within three days after ſhe is delivered, in our law the iſſue is no baſtard. 1 *Danv. Abr.* 729. And where a child is born within a day after marriage between parties of full age, if there be no apparent impoſſibility that the huſband ſhould be the father of it, the child is no baſtard, but ſuppoſed to be the child of the huſband. 1 *Rol. Abr.* 358. But if the huſband be but eight or nine years of age, or if he be within the age of fourteen, the iſſue is a baſtard: ſo where a husband is gelt, or hath loſt his genitals, &c. which ſhews an impoſſibility to get a child, the iſſue of his wife, though born within marriage, is a baſtard. *Co. Lit.* 244. 1 *Danv.* 728.

By the law of the land a perſon cannot be a baſtard who is born after eſpouſals, unleſs it be by ſpecial matter. If a woman elope from her husband, ſo as he be within the four ſeas, her iſſue ſhall not be a baſtard by our law, though by the ſpiritual law he ſhall: but if the wife continues in adultery and hath iſſue, this is a baſtard in our law. 1 *Danv.* 730. By the common law, if the huſband be *infra quatuor maria*, ſo that by intendment he may converſe with his wife, and the wife hath iſſue, the child will not be a baſtard: but he is a baſtard who is born of a woman when her husband, at and from the time of the begetting to the birth, is *extra quatuor maria*. *Co. Lit.* 244. 2 *Salk.* 483. If a woman hath iſſue, the husband being over ſea ſo long before the birth of the iſſue, which his wife hath in his abſence, that the iſſue cannot be his, this is a *baſtard.* 1 *Danv.* 729. If the husband be only over in *Ireland*, it is otherwiſe.

A divorce *cauſa precontractus*, *cauſa affinitatis*, *cauſa frigiditatis*, &c. *baſtardiſes* the iſſue; not for cauſe ſubſequent to the marriage: but if the man and woman continue husband and wife for all their lives, the iſſue cannot be a *baſtard* by divorce after their death. 1 *Danv.* 730. Where a woman, on divorce *a menſa & thoro*, lives in adultery with another, her children by ſuch other are *baſtards*; for children born in adultery, are born out of the limits of matrimony. Though if husband and wife conſent to live ſeparate, the children born after ſuch ſeparation ſhall be taken to be ligitimate, becauſe the acceſs of the huſband ſhall be preſumed; but if it be found there was no acceſs, then they are *baſtards.* 1 *Salk.* 122.

But this non-acceſs of the husband ought to be proved otherwiſe than upon the wife's oath; as in the following caſe: the defendant *Reading* was adjudged by an order of baſtardy, to be the putative father of a baſtard child, begotten of the wife of one *Almont* of *Shelborn*. The ſaid woman, on the appeal, gave evidence, that the ſaid *Reading* had carnal knowledge of her body in or about *Auguſt* 1732, and ſeveral times ſince; and that her husband had no acceſs to her from *May* 1731, to the time of her examination in that court, being the 3d of *October* 1733, and that the ſaid *Reading* was the father of the ſaid child. And the queſtion on removal of the ſame into the King's Bench was, whether the wife in this caſe could be admitted as an evidence for or againſt her husband, and to baſtardize her own child. And the whole court were of opinion, that the wife could be a witneſs to no other fact but that of incontinence, and that this ſhe muſt be admitted to be a witneſs to from the neceſſity of the thing: But not for the abſence of the husband; which might properly be proved by other witneſſes; and likened it to the caſe of hue and cry, where the perſon robbed ſhall be admitted a witneſs of the fact of robbery, but not to prove any other matter relating thereto, as in what hundred the place was, and the like, becauſe that may be proved by others. 2 *Seſſ. Ca.* 175.

A man who hath iſſue a ſon by a woman before marriage, and afterwards marries the ſame woman, and hath iſſue a ſecond ſon born after the marriage; the firſt of theſe is termed in law a *baſtard eigne*, and the ſecond a *mulier*; by the common law, as hath been ſaid, ſuch *baſtard eigne* is as incapable of inheriting, as if the father and mother had never married; but yet there is one caſe in which his iſſue was let into the ſucceſſion, and that was by the conſent of the lord and perſon legitimate; as if upon the death of the father the *baſtard eigne* enters, and the *mulier* during his whole life never diſturbs him, he cannot upon the death of the *baſtard eigne* enter upon his iſſue. *Lit. ſect.* 399. *Co. Lit.* 245.

To exclude the *mulier* from the inheritance, there muſt not only be an uninterrupted poſſeſſion of the *baſtard eigne* during his life, but a deſcent to his iſſue. *Co. Lit.* 244. 1 *Roſ. Abr.* 624.

No man can baſtardize another after his death, that was a *mulier* by the laws of holy church, and who carried the reputation of legitimate during his life; for a man muſt be baſtardized by the rules of the Civil or Common law: by the rules of the Civil law, this perſon is by ſuppoſition legitimate; and if the Common law be made the judge, he cannot be baſtardized; for it is a rule of Common law, that a perſonal defect dies with the perſon, and cannot after his death be objected to his ſucceſſor that repreſents him; and this rule of law was taken from the humanity of the antients, which would not allow the calumny of the dead, as alſo from an important reaſon of convenience, for pedigrees are often derived through ſeveral perſons, concerning whom there remains little knowledge or remembrance of any thing, but only of their being; and therefore it were an eaſy matter to throw on them the aſperſion of baſtardy by any forged evidence, which cannot be confronted by oppoſite proof; and ſo it is fit to limit a time in which all proofs of baſtardy are to be diſallowed. 7 *Co.* 44. *Jenk. Rep.* 268. 1 *Brownl.* 42. *Co. Lit.* 33. *a.* *Lit. ſect.* 399. *Co. Lit.* 245.

Though this ſeems to be the doctrine of the old books, yet there is this modern caſe. An ejectment was brought by one *Pride*, againſt the earls of *Bath* and *Montague*; *Pride* made title as heir to *George*, duke of *Albemarle*, proving himſelf the ſon of one who was brother to the duke, and that the duke died without iſſue; the defendant gave evidence, that duke *George* had iſſue duke *Chriſtopher*, who conveyed to him; plaintiff gave evidence, that duke *Chriſtopher* was a baſtard, begotten of ſuch a woman, who, at the time of her marriage with the ſaid *George*, duke of *Albemarle*, was married to another man, who was then, and yet living: upon which it was objected, that ſince duke *George* and this woman lived together as man and wife, and were now dead, the plaintiff could not be admitted to baſtardize the iſſue, who was dead alſo; and who, during his whole life, was reputed and taken to be the legitimate ſon of the duke, and ſo ſtiled by the duke himſelf in his deed of ſettlement, and in his will, his ſon and heir; *& quod juſtum non eſt aliquem poſt mortem facere baſtardum.* The court held this true of ſuch a baſtard as is meant by *Littleton*, in his caſe of *baſtard eigne*, and *mulier puiſne*, that is, ſuch a baſtard as is born before the eſpouſals of a father and mother, who afterwards marry; and ſaid, the rule extended only to that caſe. 1 *Salk.* 120. *Pride* v. Earls of *Bath*, &c. 7 *W.* & *M.* 3 *Lev.* 410. S. C. Who tells us, that though the evidence was admitted by *Holt*, and *Gil. Eyre*, who were only in court, the jury were not ſatisfied with it, and gave a verdict for the Earl of *Bath*.

If a woman hath a child forty weeks and eight days after the death of her husband, it ſhall be legitimate, the law having appointed no exact certain time for birth of legitimate iſſues. 1 *Danv.* 726. 2 *Lill. Abr.* 236. If a man or woman marry a ſecond wife or husband, the firſt being living, and have iſſue by ſuch ſecond wife or husband, the iſſue is a *baſtard.* 39 *Ed.* 3. *cap.* 14, &c. Before the ſtatute 2 & 3 *Ed.* 6. *c.* 21. One was adjudged a *baſtard*, *Quia filius ſacerdotis.*

Baſtard is *terminus a quo*, he is the firſt of his family; for he hath no relation of which our law takes any notice; yet this muſt be underſtood as to civil purpoſes, there being a relation as to moral purpoſes; for he cannot marry his own mother, or *baſtard* ſiſter. 3 *Salk.* 66, 67.

A *baſtard* cannot inherit land as heir to his father; nor can any perſon inherit lands as heir to him, but one that is heir of his body. *Lit. Sec.* 401.

But though he cannot inherit to any anceſtor, yet when he hath gotten a name of reputation, he may purchaſe by it; for all ſurnames were originally acquired by reputation. *George Shelly* conveyed lands to the uſe of himſelf, the remainder to *George Shelly* his ſon; whereas in truth *George* was born of one *B.* in matrimony of one *C.* yet was reputed the ſon of *George*, and educated by him; though the boy was but ſix years old, it was ruled that he ſhould take the remainder; for having got by reputation the name of *George Shelly*, theſe words are a certain deſignation of the perſon to take the remainder. But if a remainder be limited to the eldeſt iſſue of *J. S.* whether legitimate or illegitimate, and *J. S.* hath iſſue a baſtard, he ſhall not take this remainder; for it is not veſted in *J. S*, as it was in the other caſe, but is in *contingency*, and the certain time is not defined when this contingency ſhall happen; for the baſtard at his birth does not acquire the reputation of being the iſſue of *J. S*, and ſince the baſtard, when firſt in being, cannot take by virtue of this limitation, he can never take it; for he cannot be underſtood to be the perſon deſigned and marked out by theſe words, if after his birth it depends on the uncertainty of popular reputation, whether he ſhould take the remainder or not; and ſuch a deſignation of the perſon as contains no certainty in itſelf, or no relation to any other certain matter that may reduce it to certainty, is a void limitation. *Co. Lit.* 3. *b.* 6 *Co.* 65. 1 *New Abr.* 309.

But where a remainder is limited to the eldeſt ſon of *Jane S.* whether legitimate or illegitimate, and ſhe hath iſſue, a baſtard ſhall take this remainder, becauſe he acquires the denomination of her iſſue by being born of her body; and ſo it was never uncertain, who was deſigned by this remainder. *Noy* 35.

If parents are married, and afterwards divorced, this gives the iſſue the reputation of children; and ſo doth a ſubſequent marriage of the parents. 6 *Co.* 65. *Hugh's Abr.* 363.

If a man, in conſideration of natural affection and love, covenants to ſtand ſeiſed to the uſe of a baſtard, this is not good; for he is not *de ſanguine patris*; but it is ſaid that a woman may give lands in frank-marriage with her baſtard, becauſe he is of the blood of the mother; but he hath no father, but from reputation only. *Dyer* 374. *And.* 79. 6 *Co.* 77. *Noy* 35.

A court of equity will not ſupply the want of a ſurrender of a copyhold eſtate, in favour of a baſtard, as it will for a legitimate child. *Preced. Chan.* 475.

Baſtardy, in relation to the ſeveral manners of its *trial*, is diſtinguiſhed into general and ſpecial baſtardy. General baſtardy is the baſtardy tried by the biſhop, which in it's notion contains two things. 1ſt, It ſhould not be a baſtard made legitimate by a ſubſequent marriage. 2dly, That it ſhould be a point collateral to the original cauſe of action. 1 *Rol. Abr.* 361.

Formerly baſtards had a way in ſuch iſſues to trick themſelves into legitimation, for they uſed to bring feigned actions, and get ſuborned witneſſes before the biſhop to prove their legitimation, and then got the certificate returned of record, and after that their legitimation could never be conteſted; for being returned of record as a point adjudged by its proper judges, and remaining among the memorials of the court, all perſons were concluded by it; but this created great inconveniencies, as it is taken notice of in the preamble of the 9 *Hen.* 6. *cap.* 11. in the caſe of ſeveral perſons of quality; for the evidence of the contrary parties concerned were never heard at the trial, and yet their intereſt was concluded: To remedy this inconvenience without altering the rules of law, it was enacted, that before any writ to the biſhop there ſhould be a proclamation made in the ſame court, and after that the iſſue ſhould be certified into Chancery, where proclamation ſhould be made once in every month for three months, and then the Chancellor ſhould certify to the court where the plea depends, and afterwards it ſhall be again proclaimed in the ſame court, that all that are concerned may go to the ordinary to make their allegations; and without theſe circumſtances, any writ granted to the ordinary, and all proceedings thereupon, ſhall be utterly void. 1 *Rol. Abr.* 361.

If the ordinary certify or try baſtardy without a writ from the King's temporal courts, it is void; for the ſpiritual juriſdiction within theſe kingdoms is derived from the King, and therefore it muſt be exerciſed in the manner the King hath appointed; for it would be injurious if they ſhould declare legitimation where the rights of inheritance are ſo nearly concerned, without any apparent neceſſity. 1 *Rol. Abr.* 361.

The certificate muſt be under the ſeal of the ordinary, and not under the ſeal of the commiſſary only, for the command is to the biſhop himſelf to certify, and therefore the execution of the command muſt appear to be by the biſhop in proper perſon. 1 *Rol. Abr.* 362.

If a man be certified baſtard, this binds perpetually, though the perſon ſo adjudged a baſtard is not party to the action, for all perſons are eſtopped to ſpeak againſt the memorial of any judicatory; becauſe the act of the public judicatory under which any perſon lives, is his own act; and were he not thus bound, there might be contradiction in certificates. 1 *Rol. Abr.* 362.

If a man be certified baſtard, that doth not bind a ſtranger till returned of record, becauſe it is no judicial act till recorded in the place appointed to record ſuch tranſactions, nor doth it bind the party to the action till judgment thereon, becauſe if he avoid the action he avoids all conſequences of the action; and therefore if the defendant be certified baſtard by the ordinary, yet if the plaintiff be non-ſuit they cannot go on to trial, and ſo the biſhop's certificate never appears of record, and therefore is not binding. 1 *Rol. Abr.* 362.

If a man be certified *mulier*, no man is eſtopped to baſtardize him, for though he may be a *mulier* by the Spiritual law, yet he may be a baſtard by our law; and therefore any man, notwithſtanding the certificate, may plead the iſſue of ſpecial baſtardy. 1 *Rol. Abr.* 362.

Special baſtardy, which is always tried by a jury in the temporal courts, is twofold: 1ſt, Where the baſtardy is the giſt of the action, and the material part of the iſſue. 2dly, Where thoſe are baſtards by the Common law that are *muliers* by the Spiritual law, and ſuch are thoſe that are born before marriage, whoſe parents afterwards intermarry, and whoſe marriage is admitted. 1 *New Abr.* 314. *Co. Lit.* 134. 1 *Rol* 367. *Hob.* 117.

If a man receives any temporal damage by being called a baſtard, and brings his action in the temporal courts, and the defendant juſtifies that the plaintiff is a baſtard, this muſt be tried at Common law, and by writ to the biſhop; for otherwiſe you ſuppoſe an action brought in a court which hath not a capacity to try the cauſe of action. 1 *Brownl.* 1. *Hob.* 179. *Godol.* 479. *Co. Ent.* 29.

If it be found by an aſſiſe taken at large that a man is a baſtard, the temporal courts are judges of it, for the jury cannot be eſtopped to ſpeak truth which may fall within their own knowledge, and what they find becomes the record of the temporal courts, and ſo within their conuzance. *Bro. Baſtardy*, 97.

A *baſtard* by the Common law is made incapable of any eccleſiaſtical benefice; for the ſacraments ought not to be committed to infamous perſons: and it is the law of nature, that a *baſtard* who is born out of lawfull marriage, (unleſs there be ſome particular law to the contrary) has not any relation to his father, who begot him, but ſhall rely on his mother that bore him. *Forteſcue* 88, 89.

By ſtatute a woman with child of a *baſtard*, muſt be firſt examined by a juſtice of peace, and the fact of her being with child proved by her oath, and then the juſtice is to ſend his warrant for the reputed father; when the party is brought before the juſtice, he muſt enter into a recognizance with ſufficient ſureties for his appearance at the next ſeſſions, *&c.* and he may be continued on the recognizance till the woman is delivered of the child: after the child is born, two juſtices *(quorum unus)* reſiding neareſt the place, are to examine the matter by witneſſes, *&c.* and make their order for relief of the pariſh from the *baſtard*: and if the two juſtices cannot agree, they may refer it to the ſeſſions; alſo the putative father may appeal from the order of the two juſtices; or may give ſecurity to the pariſh, *&c.* *Stat.* 18 *Eliz. c.* 3. 3 *Car.* 1. *c.* 4.

The two next juſtices of peace (one being of the *quorum*) may make orders for puniſhing the mother and father of a *baſtard* child; and by order of the juſtices, the churchwardens and overſeers of the poor may ſeize goods, and receive the annual rents of lands, *&c.* of the father and mother to diſcharge the pariſh: and juſtices of the peace have power to commit lewd women having *baſtards* to the houſe of correction, for one year, *&c.* But perſons able to keep them, are not within the ſtatute. It is adjudged murder to conceal the death of a *baſtard* child when born, unleſs there be proof to the contrary that it was ſtill-born. 18 *Eliz. c.* 3. 13 & 14 *Car.* 2. *c.* 12. 7 *Jac.* 1. *c.* 4. 21 *Jac.* 1. *c.* 27.

It hath been adjudged, that in order to convict a woman by force of this laſt ſtatute, there is no need that the indictment be drawn ſpecially, or conclude againſt the form of the ſtatute; for the ſtatute doth not make a new offence, but only makes ſuch concealment an undeniable evidence of murder. 2 *Hawk.* 438.

Alſo, it hath been agreed, that where a woman appears to have endeavoured to conceal the death of ſuch child within the ſtatute, there is no need of any proof that the child was born alive, or that there were any ſigns of hurt upon the body, but it ſhall be undeniably taken that the child was born alive, and murdered by the mother. 2 *Hawk.* 438.

But it hath been adjudged, that where a woman lay in a chamber by herſelf, and went to bed without pain, and waked in the night, and knocked for help but could get none, and was delivered of a child, and put it in a trunk, and did not diſcover it till the following night, yet ſhe was not within the ſtatute, becauſe ſhe knocked for help. 2 *Hawk.* 438.

Alſo, it hath been agreed, that if a woman confeſs herſelf with child beforehand, and afterwards be ſurprized and delivered, no body being with her, ſhe is not within the ſtatute, becauſe there was no intent of concealment; and therefore in ſuch caſes it muſt appear by ſigns of hurt upon the body, or ſome other way, that the child was born alive. 2 *Hawk.* 438.

If a woman be with child, and any gives her a potion to deſtroy the child within her, and ſhe takes it, and it works ſo ſtrongly that it kills her, this is murder; for it was not given to cure her of a diſeaſe, but unlawfully to deſtroy the child within her; and therefore he that gives her a potion to this end, muſt take the hazard, and if it kills the mother, it is murder. 1 *Hal. H. P. C.* 429, 430.

If a woman be quick or great with child, if ſhe take, or any other give her any potion to make an abortion, or if a man ſtrike her, whereby the child within her is killed; though it be a great crime, yet it is not murder nor manſlaughter by the law of *England*, becauſe it is not yet *in rerum natura*, nor can it legally be known, whether it were killed or not: ſo it is, if after ſuch child were born alive, and after die of the ſtroke given to the mother, this is not homicide. 1 *Hal. H. P. C.* 433. Yet the offender may be indicted for a miſdemeanor, at Common law.

If a man procure a woman with child to deſtroy her infant when born, and the child is born, and the woman, in purſuance of that procurement, kill the infant; this is murder in the mother, and the procurer is acceſſary. 1 *Hal. H. P. C.* 433.

If a woman declares herſelf to be with child of a *baſtard*, and on oath before a juſtice charge any perſon with getting it; he may grant his warrant to apprehend the perſon charged, and for bringing him before any juſtice, &c. who may commit him to gaol or the houſe of correction, unleſs he give ſecurity to indemnify the pariſh, or enter into recognizance with ſureties to appear at the next Quarter-Seſſions, and perform ſuch order as ſhall be made purſuant to the ſtatute 18 *Eliz. c.* 3. But in caſe the woman ſhall die, or be married, or miſcarry, &c. or if no order is made in due time, the man ſhall be diſcharged: and no juſtice may ſend for, or compel any woman before ſhe is delivered, and one month after, to anſwer queſtions, &c. *Stat.* 6 *Geo.* 2. *c.* 31. He that gets a *baſtard* in the hundred of *Middleton*, in the county of *Kent*, forfeits all his goods and chattels to the king. *MS. de Temp. Ed.* 3. *Qu.* if now law.

If any one conſpire to charge another to be the father of a *baſtard* child, he may be indicted and puniſhed with public whipping, &c. It is only in the power of the king and parliament to make a *baſtard* legitimate. *Danv. Rep.* 37. See 13 *Geo.* 2. *c.* 29.

Baſtardy, *(baſtardia)* Signifies a defect of birth, objected to one born out of wedlock. *Bract. lib.* 5. *c.* 19. See **Baſtard.**

Baſtard-eigne, *(Fr.)* Is where the eldeſt child of a married perſon is a *baſtard.* See **Baſtard.**

Baſton, *(Fr.)* A ſtaff, or club; and by our ſtatutes it ſignifies one of the warden of the *Fleet*'s ſervants or officers who attend the king's courts with a red ſtaff for taking ſuch into cuſtody who are committed by the court. 1 *R.* 2. *c.* 12. 5 *Eliz. c.* 23. See *Tipſtaff.*

Baſum, *Per* baſum *tolnetum capere.* To take toll by ſtrike; and not by heap; *per baſum*, being oppoſed to *in cumulo vel cantello*——*Tolnetus ad molendinum ſit ſecundum conſuetudinem regni; menſuræ per quas tolnetus capi debet ſint concordantes menſuris domini regis, & capiatur tolnetus per* baſum, *& nichil incumulo vel cantello.* Conſuetud. Domus de Farendon, MS. f. 42.

Batable Ground, Is taken for the land that lay between *England* and *Scotland*, heretofore in queſtion, when they were diſtinct kingdoms, to which it belonged. *Anno* 23 *H.* 8. *c.* 6. and 32 *H.* 8. *cap.* 6. It ſeems to mean, as if we ſhould ſay, litigious or *debatable* ground, *i. e.* land about which there is debate; and by that name *Skene* calls *ground* that is in controverſy. *Camb. Britan.* Tit. *Cumberland.*

Bath, (Lat. *bathon*, called by the Britons *badiza*) Has been termed the city of ſickmen: it is a place of reſort in *Somerſetſhire* famous for its medicinal waters. The chairmen are there to be licenſed by the mayor and aldermen, for carrying perſons to and from the hot *baths*, &c. under the penalty of 10*s.* by ſtatute 7 *Geo.* 1. *c.* 19. And a public *hoſpital* or infirmary for poor is eſtabliſhed in the city of *Bath*, the governors whereof have power to hold all charities, &c. and appoint phyſicians, ſurgeons and other officers: any perſons not able to have the benefit of the *Bath waters*, may be admitted into this hoſpital, their caſe being atteſted by ſome phyſician, and the poverty of the patients certified by the miniſter and churchwaadens of the place where they live, &c. Every perſon ſo admitted, ſhall have the uſe of the old hot *bath*, and be entertained and relieved in the hoſpital; and when cured or diſcharged, ſuch perſons ſhall be ſupplied with 3*l.* each, to defray the expence of removing them back to their pariſhes, &c. *Stat.* 12 *Geo.* 2. *c.* 31.

Batitoria. A fulling mill. It is mentioned in the *Monaſticon, tom.* 2. *page* 832. *Uſque ad ſtagnum molendini ipſius* Willielmi *cum* batitoria *& a gardino ſuo ubique*, &c.

Battel, (Fr. *battaile)* Signifies a trial by combat, which was anciently allowed of in our laws, where the defendant in appeal of murder or felony might fight with the appellant, and make proof thereby whether he be culpable or innocent of the crime. *Glanv. lib.* 14. *c.* 1. When an appellee of felony wages *battel*, he pleads that he is *Not guilty*, and that he is ready to defend the ſame by his body, and then flings down his glove; and if the appellant will join *battel* he replies, That he is ready to make good his appeal by his body upon the body of the appellee, and takes up the glove: and then the appellee lays his right hand on the book, and with his left hand takes the appellant by the right, and ſwears thus: *Hear this thou who calleſt thyſelf* John *by the name of baptiſm, that I who call myſelf* Thomas *by the name of baptiſm, did not feloniouſly murder thy father* W. *by name, on the day and year of*, &c. *at* B. *as you ſurmiſe, nor am any way guilty of the ſaid felony; ſo help me God.* And then he ſhall kiſs the book and ſay; *And this I will defend againſt thee by my body, as this court ſhall award.* Then the appellant lays his right hand on the book, and with his left hand takes the appellee by the right, and ſwears to this effect: *Hear this thou who calleſt thyſelf* Thomas *by the name of baptiſm, that thou didſt feloniouſly on the day, and in the year*, &c. *at B. murder my father* W. *by name; ſo help me God.* And then he ſhall kiſs the book, and ſay; *And this I will prove againſt thee by my body, as this court ſhall award.* This being done, the court ſhall appoint a day and place for the *battle*, and in the mean while the appellee ſhall be kept in cuſtody of the marſhal, and the appellent ſhall find ſureties to be ready to fight at the time and place, unleſs he be an approver, in which caſe he ſhall alſo be kept by the marſhal: and the night before the day of *battle*, both parties ſhall be arraigned by the marſhal, and ſhall be brought into the field before the juſtices of the court where the appeal is depending, at the riſing of the ſun, bare-headed and bare-legged from the knee downwards, and bare in the arms to the elbows, armed only with baſtons an ell long, and four cornered targets: and before they engage, they ſhall both make oath *That they have neither eat nor drank, nor done any thing elſe by which the law of God may be depreſſed, and the law of the devil exalted*: and then, after proclamation for ſilence under pain of impriſonment, they ſhall begin the combat wherein if the appellee be ſo far vanquiſhed that he cannot or will not fight any longer, he may be adjudged to be hanged immediately; but if he can maintain the fight till the ſtars appear, he ſhall have judgment to be quit of the appeal: and if the appellant becomes a crying coward, the appellee ſhall recover his damages, and may plead his acquittal in bar of a ſubſequent indictment or appeal; and the appellant ſhall for his perjury loſe his *liberam legem.* If an appellant becomes blind by the act of God after he has waged *battel*, the court will diſcharge him of the battel; and in ſuch caſe it is ſaid that the appellee ſhall go free.

This trial by battel is at the defendant's choice; but if the plaintiff be under an apparent diſability of fighting, as under age, maimed, *&c.* he may counterplead the wager of battel, and compel the defendant to put himſelf upon his country; alſo any plaintiff may counterplead a wager of battel, by alledging ſuch matters againſt the defendant, as induce a violent preſumption of guilt; as in appeal of death, that he was found lying upon the deceaſed with a bloody knife in his hand, *&c.* for here the law will not oblige the plaintiff to make good his accuſation in ſo extraordinary a manner, when in all appearance he may prove it in the ordinary way. It is a good counterplea of battel that the defendant hath been indicted for the ſame fact; when if appeal be brought, the defendant ſhall not wage battel. And if a peer of the realm bring an appeal, the defendant ſhall not be admitted to wage battel, by reaſon of the dignity of the appellant. 2 *Hawk. P. C.* 426, 427. This trial by battel is before the conſtable and marſhal; but with all its ceremonies is now diſuſed. See *Glanv. lib.* 14. *Bracton, lib.* 3. *Britton, c.* 22. *Smith de Rep. Angl. lib.* 2. *Co. Litt.* 294, *&c.* Vide *Trial by Battel*, deſcribed *Black. Com.* 3 *V.* 339. Vide *Combat.*

Battery, (from the Fr. *batre*, to ſtrike, or Sax. *batte*, a club) Is an injury done to another in a violent manner; as by ſtriking or beating of a man, puſhing, jolting, filipping upon the noſe, *&c.* And it is alſo defined by our law to be a treſpaſs committed by one man upon another *vi & armis & contra pacem, &c.* This offence is puniſhable by action and indictment; on action for the injury at the ſuit of the party, the defendant ſhall render damages, *&c.* And on indictment at the ſuit of the king, for a breach of the peace, he ſhall be fined according to the heinouſneſs of the offence. *Dalt.* 282. 1 *Hawk. P. C.* 134. For here the perſon offending is ſubject to a twofold puniſhment, *viz.* a fine to the king, and damages to the party; though it is uſual only to bring an action for damages, which in battery and maihem the court may increaſe upon view of the record and the perſon. 2 *Rol. Abr.* 572.

But a man may beat another who firſt aſſaults him, in his own defence, and juſtify in an action by ſpecial pleading, as that the battery was occaſioned by his own aſſault; or the defendant may give that in evidence upon *Not guilty* to an indictment: and the record of the conviction of the offender by indictment may ſerve afterwards for evidence in action of treſpaſs for the ſame aſſault and battery. *Terms de Ley.* 2 *Rol. Abr.* 546 By *Holt* Chief Juſtice the leaſt touching of another in anger is a battery: if two or more meet in a narrow paſſage, and without any violence or deſign of harm, the one touches the other gently, it will be no battery: but if either of them uſe violence to force his way in a rude manner, or any ſtruggle is made about the paſſage to that degree as to do hurt, it will be a battery. *Mod. Caſ.* 149. The beating of another in a moderate manner, is lawful in ſome caſes, as the parent of his child, a maſter his ſervant, or apprentice, *&c.* The attorney general will in moſt caſes grant a *noli proſequi*, upon an indictment, where the party injured hath an action depending, unleſs he diſcontinues his action, and engages to proceed by indictment only. See *Aſſault.*

Batus, (*Lat.* from the Sax. *bat*) A boat, and *battellus* a little boat—*Conceſſit etiam idem* Hugo Wake *pro ſe & hæred. ſuis, quod predictus abbas & ſucceſſores ſui & eccleſia ſua de* Croyland *habeat tres* battellos *in* Harnolt, *&c. Chart. Ed.* 1. 20 *Julii* 18 *regni.* Hence we have an old word *batſwain*, for ſuch as we now call *boatſwain* of a ſhip.

Baubella, (*baubles*) A word mentioned in *Hoveden* in *R.* 1. and ſignifies jewels or precious ſtones.—*Tres partes theſauri ſui & omnia* banbella *ſua diviſit.*

Baudekin, (*baldicum*, and *baldekinum*) Cloth of *baudekin*, or gold: it is ſaid to be the richeſt cloth, now called *brocade*, made with gold and ſilk, or tiſſue, upon which figures in ſilk, *&c.* were embroidered. *Anno* 4 *Hen.* 8. *c.* 6. *erat pannus* auro *rigidus, plumatoque opere intertextus*: but ſome writers account it only cloth of ſilk.

Bawdy-Houſe, (*lupanar, fornix*) A houſe of ill fame, kept for the reſort and commerce of lewd people of both ſexes. The keeping of a *bawdy-houſe* comes under the cognizance of the temporal law, as a common nuſance, not only in reſpect of its endangering the public peace by drawing together diſſolute and debauched perſons, and promoting quarrels, but alſo in reſpect of its tendency to corrupt the manners of the people, by an open profeſſion of lewdneſs. 3 *Inſt.* 205. 1 *Hawk. P. C.* 196. Thoſe who keep *bawdy-houſes* are puniſhed with fine and impriſonment; and alſo ſuch infamous puniſhment, as pillory, *&c.* as the court in diſcretion ſhall inflict: and a lodger who keeps only a ſingle room for the uſe of *bawdry*, is indictable for keeping a *bawdy-houſe.* 1 *Salk.* 382. Perſons reſorting to a *bawdy-houſe*, are puniſhable, and they may be bound to the good behaviour, *&c.* But if one be indicted for keeping or frequenting a *bawdy-houſe*, it muſt be expreſly alledged to be ſuch a *houſe*, and that the party knew it; and not by ſuſpicion only. *Poph.* 208. A conſtable, upon information, that a man and woman are gone to a lewd *houſe*, or about to commit fornication or adultery, may, if he finds them together, carry them before a juſtice of peace without any warrant, and the juſtice may bind them over to the ſeſſions. *Dalt* 214

It ſeems always to have been the better opinion, that a man may be bound to his good behaviour, for haunting bawdy-houſes with women of bad fame, as alſo for keeping bad women in his own houſe. 1 *Hawk.* 132.

Conſtables in theſe caſes may call others to their aſſiſtance, enter bawdy-houſes, and arreſt the offenders for a breach of the peace: in *London* they may carry them to priſon; and by the cuſtom of the city, whores and bawds may be carted. 3 *Inſt* 206.

A wife may be indicted together with her huſband, and condemned to the pillory with him for keeping a bawdy-houſe; for this is an offence as to the government of the houſe; in which the wife has a principal ſhare; and alſo ſuch an offence as may generally be preſumed to be managed by the intrigues of her ſex. 1 *Hawk.* 2.

On an indictment for keeping a diſorderly houſe, a female witneſs ſwore, that ſhe was a ſailor's wife, and during her huſband's abſence out of the realm, ſhe had often proſtituted herſelf there: Lord *Raymond* ſaid it was an odious piece of evidence, and ought not to be heard. *Barlow's Juſtice*, tit. *Bawdy-houſe.*

But it is ſaid, a woman cannot be indicted for being a bawd generally; for that the bare ſolicitation of chaſtity is not indictable. 1 *Hawk.* 196. 1 *Salk.* 382.

It was always held infamous to keep a bawdy-houſe; yet ſome of our hiſtorians mention bawdy-houſes publicly allowed here in former times till the reign of *Hen.* 8. and aſſign the number to be eighteen thus allowed on the bank-ſide in *Southwark.* See *Stews* and *Brothel-Houſes.*

If two inhabitants, paying ſcot and lot, ſhall give notice to a conſtable of any perſon keeping a bawdy-houſe, the conſtable ſhall go with them before a juſtice of peace, and ſhall, (upon ſuch inhabitants making oath, that they believe the contents of ſuch notice to be true, and entering into a recognizance of 20*l* each, to give material evidence of the offence,) enter into a recognizance of 30*l.* to proſecute with effect ſuch perſon for ſuch offence at the next ſeſſions; the conſtable ſhall be paid his reaſonable expences by the overſeers of the poor, to be aſcertained by two juſtices; and if the offender be convicted, the overſeers ſhall pay to the two inhabitants 10*l.* each. On the conſtable's entering into ſuch recognizance as aforeſaid, the juſtice ſhall bind over the perſon accuſed to the next ſeſſions, and, if he ſhall think proper, demand ſecurity for ſuch perſon's good behaviour in the mean time. A conſtable neglecting his duty forfeits 20*l.* Any perſon appearing as maſter or miſtreſs, or as having the care or management of any bawdy-houſe, ſhall be deemed the keeper thereof, and liable to be puniſhed as ſuch. *Stat.* 25 *Geo.* 2. *c.* 36.

Form of an *indictment* for keeping a *bawdy-houſe.*

THE *jurors,* &c. *That* A. B. *of,* &c. *the day and year,* &c. *and at divers times before and afterwards, at* H. *in the county aforeſaid, held and kept, and often made uſe of, and ſtill holds and keeps,* &c. *in his houſe there, a common* bawdy-houſe, *entertdiments for lechery and fornication, and permits men and other ſuſpected perſons, and not of good behaviour or fame, carnally to lie with whores, to the great detriment of all the people of our ſovereign lord the king there near dwelling, and to the ill example of all other offenders in ſuch caſes, and againſt the peace,* &c.

Bay, or *pen,* Is a pond-head made up of a great height, to keep in water for the ſupply of a mill, &c. ſo that the wheel of the mill may be driven by the water coming thence, through a paſſage or flood-gate. A harbour where ſhips ride at ſea, near ſome port, is alſo called a *bay*: and this word is mentioned *anno* 27 *Eliz. c.* 19.

Beacon, (from the Sax. *beacen, i. e. ſignum*) A ſignal well known; being a fire maintained on ſome eminence near the coaſts of the ſea, to prevent invaſions, &c. 4 *Inſt.* 148. 8 *Eliz. c.* 13. Hence *beaconage* (*beaconagium*) money paid towards the maintenance of *beacons*: and we ſtill uſe the word *beckon* to give notice unto. See *Stat.* 5 *Hen.* 4. &c. The king hath an excluſive power by commiſſion, under the Great Seal, to appoint them. *Black. Com.* 1 *V.* 265. They are uſually veſted by letters patent in the office of Lord High Admiral. *Ib.* See the power given to the *Trinity Houſe, per Stat.* 8 *Eliz. c.* 13.

Bead, or *bede,* (Sax. *bead, oratio*) A prayer; ſo that to ſay over *beads,* is to ſay over one's prayers. They were moſt in uſe before printing, when poor perſons could not go to the charge of a manuſcript book: though they are ſtill uſed in many parts of the world, where the *Roman* Catholic religion prevails. They are not allowed to be brought into *England,* or any ſuperſtitious things, to be uſed here, under the penalty of a *præmunire,* by *Stat.* 13 *Eliz. c.* 2.

Beam, Is that part of the head of a ſtag where the horns grow, from the Sax. *beam, i. e. arbor*; becauſe they grow out of the head as branches out of a tree. *Beam* is likewiſe uſed for a common balance of weights in cities and towns.

Beams and Ballance, for weighing goods and merchandize in the city of *London,* See *Tonage.*

Bearers, Signifies ſuch as bear down or oppreſs others, and is ſaid to be all one with maintainers.—Juſtices of aſſiſe ſhall inquire of, hear, and determine maintainors, *bearers,* and conſpirators, &c. *Stat.* 4 *Ed.* 3. *c.* 11.

Beaſts *of chaſe* (*feræ campeſtres*) Are five, *viz.* the buck, doe, fox, marten, and roe. *Manw. part* 1. *pag.* 342. *Beaſts of the foreſt* (*feræ Silveſtres*) otherwiſe called *beaſts* of venary, are the hart, hind, boar, and wolf. *Ibid. par.* 2. *c.* 4. *Beaſts* and *fowls* of the *warren,* are the hare, coney, pheaſant, and partridge. *Ibid. Reg. Orig.* 95, 96. &c. *Co. Lit.* 233.

Beau-pleader, (*pulchre placitando,* Fr. *beauplaider, i. e.* to plead fairly) Is a writ upon the ſtatute of *Marlbridge,* 52 *Hen.* 3. *c.* 11. whereby it is enacted, That neither in the circuit of juſtices, nor in counties, hundreds, or courts-baron, any fines ſhall be taken for *fair pleading, viz* for not pleading fairly or aptly to the purpoſe; upon which ſtatute this writ was ordained, directed to the ſheriff, bailiff, or him who ſhall demand ſuch fine, and it is a prohibition not to do it; whereupon an *alias* and *pluries* and *attachment* may be had, &c. *New. Nat. Br.* 596, 597. And *beau-pleader* is as well in reſpect of vicious *pleadings,* as of the *fair pleading,* by way of amendment. 2 *Inſt.* 122.

Bedel, (*bedellus,* Sax. *bydel*) A cryer or meſſenger of a court, that cites men to appear and anſwer: and is an inferior officer of a pariſh, or liberty, very well known in *London,* and the *ſuburbs.* There are likewiſe univerſity *bedels,* and church *bedels*; now called ſummoners and apparitors: and *Manwood* in his *Foreſt Laws,* ſaith there are foreſt *bedels,* that make all manner of garniſhments for the courts of the foreſt, and all proclamations, and alſo execute the proceſs of the foreſt, like unto bailiffs errant of a ſheriff in his county.——Edgarus *interdicit omnibus miniſtris, ideſt vicecomitibus,* bedellis & *balivis,* &c. *Ne introeant fines & limites dicti mariſci.* Ingulph. Hiſt. Croyl.

Bedelary, (*bedelaria*) Is the ſame to a *bedel,* as bailiwick to a bailiff. *Lit. lib.* 3. *cap.* 5.——Will. *filius* Adæ *tenet* bedelarium *hundredi de* Macclesfield, &c. Ex. Rot. Antiq.

Bederepe, alias *biderepe,* (Sax.) Is a ſervice which certain tenants were anciently bound to perform, *viz.* to *reap* their landlord's corn at harveſt; as ſome yet are tied to give them one, two, or three days work, when commanded. This cuſtomary ſervice of inferior tenants was called in the Latin *præcaria bedrepium,* &c.—— *Debent venire in autumno ad praecariam quae vocatur a le* bederepe. *Plac. in Craſt. pur.* 10 *H.* 3. *Rot.* 8. *Surrey.* See *Magna Praccaria.*

Bedeweri, Thoſe which we now call *banditti,* profligate and excommunicated perſons. The word is mentioned in *Mat. Pariſ. anno* 1258.

Beer, It is lawful to export *beer,* &c. paying a cuſtom duty. *Stat.* 22 & 23 *Car.* 2. And ſee 1 *Will.* & *Mar. ſtat.* 1. *cap.* 22. concerning the exportation of beer, as alſo the 11 & 12 *Will.* 3. *cap.* 15. for aſcertaining the meaſure for retailing ale and beer. And ſee alſo **Alehouſes** and **Brewers.**

Beggars, Pretending to be blind, lame, &c. found begging in the ſtreets, are to be removed by the conſtables; and, refuſing to be removed, ſhall be whipt, &c. *Stat.* 12 *Ann. ſt.* 2. *c.* 23. And our ſtatutes have been formerly ſo ſtrict for puniſhing of beggars, that in the reign of King *Hen.* 8. a law was enacted, that ſturdy beggars, convicted of a ſecond offence, ſhould be executed as felons: but this ſtatute was afterwards repealed. See *Rogue.* And vide 13 *Geo.* 2. *c.* 24. 17 *Geo.* 2. *c.* 5. 25 *Geo.* 2. *c.* 36. *ſect.* 12. And 26 *Geo.* 2. *c.* 34. *ſect.* 2.

Behaviour *of perſons.* Vide *Good Behaviour.*

Belgæ, The inhabitants of *Somerſetſhire, Wiltſhire,* and *Hampſhire.* Blount.

Benefice, (*beneficium*) Is generally taken for any eccleſiaſtical living or promotion; and benefices are divided into *elective* and *donative*: ſo alſo it is uſed in the Canon law. 3 *Inſt.* 155. *Duarenus de* Beneficiis, *lib.* 2. *c.* 3. All church preferments and dignities are benefices; but they muſt be given for life, not for years, or at will. Deaneries, prebendaries, &c. are benefices with cure of ſouls, tho' not comprehended as ſuch within the *Stat.* 21 *H.* 8. *c.* 13. of reſidence: but, according to a more ſtrict and proper acceptation, benefices are only rectories, and vicarages.

Beneficia were formerly portions of land, &c. given by lords to their followers for their maintenance; but afterwards, as theſe tenures became perpetual and hereditary, they left their name of *beneficia* to the livings of the clergy, and retained to themſelves the name of *feuds.* And *beneficium* was an eſtate in land at firſt granted for life only, ſo called, becauſe it was held *ex mero beneficio* of the donor; and the tenants were bound to ſwear fealty to the lord, and to ſerve him in the wars, thoſe eſtates being commonly given to military men: but at length, by the conſent of the donor, or his heirs, they were continued for the lives of the ſons of the poſſeſſors, and by degrees paſt into an inheritance: and ſometimes ſuch *benefices* were given to biſhops, and abbots, ſubject to the like ſervices, *viz.* to provide men to ſerve in the wars; and when they as well as the laity had obtained a property in thoſe lands, they were called *regalia* when given by the king; and on the death of a biſhop, *&c.* returned to the king till another was choſen. *Spelm. of Feuds, c.* 2. *Blount, verb.* Beneficium. Lands were anciently held *in beneficio*; and then granted *in alodium perpetuo jure, &c.*

Under this head the following particulars are to be attended to, which include ſeveral requiſites in order to conſtitute a legal title to a benefice, as,

I. *Preſentation*, for which ſee title **Preſentation.**

II. *Examination and refuſal*, &c.

It is very well known, that in the firſt ſettlement of the church of *England*, the biſhops of the ſeveral dioceſes had them under their own immediate care; and that they had the clergy living in a community with them, whom they ſent abroad to ſeveral parts of their dioceſes, as they ſaw occaſion to employ them; but that by degrees, they found a neceſſity of fixing preſbyters within ſuch a compaſs, to attend upon the ſervice of God amongſt the inhabitants, and thoſe precincts, which are ſince called pariſhes, were at firſt much larger; that when lords of manors were inclined to build churches for their own conveniency, they found it neceſſary to make ſome endowments, to oblige thoſe who officiated in their churches to a diligent attendance; that upon this, the ſeveral biſhops were very well content to let thoſe patrons have the nomination of perſons to ſuch churches, provided they were ſatisfied of the fitneſs of thoſe perſons, and that it were not deferred beyond ſuch a limited time. So that the right of patronage is really but a limited truſt; and the biſhops are ſtill, in law, the judges of the fitneſs of the perſons to be employed in the ſeveral parts of their dioceſes. But the patrons never had the abſolute diſpoſal of their benefices upon their own terms; but if they did not preſent fit perſons within the limited time, the care of the places did return to the biſhop, who was then to provide for them. 1 *Still.* 309.

And by the ſtatute of *Articuli Cleri*, 9 *Ed.* 2. *ſt.* 1. *cap.* 13. it is enacted as followeth: "It is deſired, that ſpiritual perſons, whom our lord the king doth preſent unto benefices of the church (if the biſhop will not admit them, either for lack of learning, or for other cauſe reaſonable) may not be under the examination of lay perſons in the caſes aforeſaid, as it is now attempted, contrary to the decrees canonical; but that they may ſue unto a ſpiritual judge for remedy, as right ſhall require. *The anſwer:* Of the ability of a parſon preſented unto a benefice of the church, the examination belongeth to a ſpiritual judge; ſo it hath been uſed heretofore, and ſhall be hereafter."

As to cauſes of refuſal.

The moſt common and ordinary cauſe of refuſal is *want of learning.* But there are alſo many other cauſes for which a clerk preſented may lawfully be refuſed; as, if he be perjured before a lawful judge; or if he be an heretick or ſchiſmatick; or irreligious; or (as is ſaid in the old books) if he is a baſtard, and not diſpenſed withal; or if he is within age; or if he or his patron be excommunicated for the ſpace of forty days; or if he be outlawed; or guilty of forgery; or hath committed ſimony in the procuring the preſentment he brings; or of any other preſentment to a former benefice; or hath committed manſlaughter; that is, if he be attainted thereof, and not pardoned; and that it is ſaid, that the ordinary may refuſe a clerk upon his own knowledge for an offence committed by him, which is a good cauſe of refuſal, although he be not convicted thereof by the law; and this ſhall be tried by iſſue, whether it be true or not: and generally, all ſuch as are ſufficient cauſes of deprivation, are alſo ſufficient cauſes of refuſal. *Watſ. c.* 20.

If the clerk refuſed be the preſentee of a *biſhop*, or other *eccleſiaſtical patron*, the ordinary is not bound to give notice of the refuſal: or if he ſhould do it, ſuch patron can never revoke nor vary his preſentation, by preſenting one afterwards that is better qualified, without the ordinary's conſent; the law ſuppoſing him that is a ſpiritual perſon to be capable of chuſing an able clerk: and ſo lapſe may come upon him unavoidably, if the clerk firſt preſented be juſtly refuſed. But if the clerk preſented be the preſentee of a *lay patron*, and be refuſed by the ordinary, the ordinary in moſt caſes is bound to give notice to the patron of ſuch refuſal: for if in ſuch caſe no notice is given, no lapſe can run, tho' no other clerk be preſented; nor if notice be given, unleſs upon trial the clerk was juſtly refuſed. But if a clerk be for good cauſe refuſed, and notice thereof be in due time and manner given to the patron, and no other clerk be preſented in time; lapſe doth run to the ordinary. *Watſ. c.* 12.

In the caſe of *Hale* and the biſhop of *Exeter*, *M.* 3 *Will.* it was ſaid by the court, That if the ordinary refuſe becauſe he is criminous, he need not give notice of the refuſal; for the crime is as much in the cognizance of the patron as of the biſhop; but if he refuſe becauſe illiterate, he muſt give notice. 2 *Salk.* 539.

III. *Admiſſion*, for which ſee title **Admiſſion.**

IV. *Inſtitution* or *collation*, for which ſee titles **Inſtitution** and **Collation.**

V. *Induction*, and *requiſites after induction*, for which ſee tittle **Induction.**

And ſee 1 *Burn. Eccl. Law, p.* 97.

As to the origin of the term *benefice*, ſee further *Black. Com.* 4 *V.* 106.

Beneficio primo Eccleſiaſtico habendo, A writ directed from the King to the Chancellor, to beſtow the *benefice* that ſhall *firſt* fall in the King's gift, above or under ſuch a value, upon ſuch a particular perſon. *Reg. Orig.* 307.

Benefit of Clergy. See **Clergy.**

Benereth, An antient ſervice which the tenant rendered to his lord with his plough and cart. *Lamb. Itin. p.* 222. *Co. Lit.* 86.

Benevolence, (*benevolentia*) Is uſed in the chronicles and ſtatutes of this realm for a voluntary gratuity given by the ſubjects to the king. *Stow's Annals, p.* 701. And *Stow* ſaith, that it grew from *Edward* the Fourth's days: you may find it alſo *anno* 11 *Hen.* 7. *c.* 10. yielded to that prince in regard of his great expences in wars, and otherwiſe. 12 *Rep.* 119. And by act of parliament, 13 *Car.* 2. *c.* 4. it was given to his majeſty K. *Char.* 2. but with a proviſo that it ſhould not be drawn into future example: ſo that all ſupplies of this nature are now by way of taxes. In other nations *benevolences* are ſometimes given to lords of the fee by their tenants, *&c. Caſſan de Conſuet. Burg. p.* 134, 136.

Benevolentia Regis habenda, The form of purchaſing the king's pardon and favour, in ancient fines and ſubmiſſions, to be reſtored to eſtate, title, or place.—Thomas *de* St. Walerico *dat regi mille marcas, pro habenda* benevolentia regis *&* *pro habendis terris ſuis unde diſſeiſitus fuit.* Paroch. Antiq. p. 172.

Bent. See 15 *Geo.* 2. *c.* 33. for planting the hills on the north-weſt coaſt of the kingdom, with a certain ruſh or ſhrub, called *ſtar* or *bent*, and the penalties of cutting or carrying the ſame away. For the utility of this article, and how excellent a fodder it is in winter, ſee *Dictionary of Huſbandry*, tit. *Bent*, and *Mills's Huſbandry.* 'Tis an article well worth attending to in this country.

Berbiage, (*berbiagium*) *Nativi tenentes manerii de* Caliſtoke *reddunt per ann. de certo redditu vocat.* berbiag. *ad le* Hokeday *xix. s.* MS. Survey of the Dutchy of *Cornwall.*

Berbicaria, A ſheep down, or ground to feed ſheep. *Leg. Alfredi, c.* 9. *Et quod de* berbicaria, *&c. Monaſticon, tom.* 1. *p.* 308.

Bercaria, (*berchery*, from the Fr. *bergerie*) A ſheepfold, or other encloſure for the keeping of ſheep: in *Domeſday* it is written *berquarium.* 2 *Inſt.* 476.—*Mandatum eſt* Robertu de Lexinton, *quod abbati de* Miraval *faciat unam* bercariam *in paſtura de* Fairfield *ad oves ſuas cuſtodiendas.* Clauſ. 9 Hen. 3. m. 12.——*Dedi ſexaginta* *acras terræ ad unam* bercariam *faciendam*.—Mon. Angl. tom. 2. p. 599. *Bercarius* is taken for a ſhepherd: and *bercaria* is ſaid to be abbreviated from *berbicaria*, and *berbex*; hence comes *berbicus* a ram, *berbica*, an ewe, *caro berbicina*, mutton. *Cowel.*

Bereſellarii; There were ſeven churchmen ſo called, anciently belonging to the church of St. *John* of *Beverly*.—*Sed quia eorum turpe nomen* bereſallariorum *patens riſui remanebat, dictos ſeptem de cætero non* bereſellarios *ſed perſonas volumus nuncupari*. Pat. 21 R. 2. par. 3. m. 10 per Inſpex'.

Berefreit, Berfreid, A large wooden tower. *Simeon Dunelm. Anno* 1123.

Berghmaſter, (from the Sax. *berg* a hill, *mons quaſi*, maſter of the mountains) Is a chief officer among the *Derbyſhire* miners, who alſo executes the office of a coroner.—*Juratores dicunt, quod in principio quando mineratores veniunt in campum mineras quærentes, inventa minera, veniunt ad ballivum, qui dicitur* bergmaſter, *et petunt ab eo duas metas, &c.*——Eſc de An. 16 Ed. 1. num. 34. *in Turri London*. The *Germans* call a mountaineer, or miner, a *bergman*.

Bergmoth, or **Berghmote**, Comes from the Sax. *berg*. a hill, and *gemote*, an aſſembly; and is as much as to ſay an aſſembly or court upon a hill, which is held in *Derbyſhire*, for deciding pleas and controverſies among the miners.—*Juratores etiam dicunt quod placita del* berghmoth *debent teneri de tribus ſeptimanis in tres ſeptimanas ſuper mineram de Pecco*. Eſc. 16 Ed. 1. And on this *court of burghmote*, Mr. *Manlove*, in his Treatiſe of the Cuſtoms of the Miners, hath a copy of *verſes*, with *references* to ſtatutes, *&c.* Vide *Squire* on the *Anglo-Saxon Government*.

Beria, *berie*, *berry*, A large open field; and thoſe cities and towns in *England* which end with that word, are built in plain and open places, and do not derive their names from boroughs, as Sir *Henry Spelman* imagines. Moſt of our gloſſographers in the names of places have confounded the word *berie* with that of *bury* and *borough*, as if the appellative of ancient towns; whereas the true ſenſe of the word *berie* is a flat wide campain, as is proved from ſufficient authorities by the learned *Du Freſne*, who obſerves that *Beria Sancti Edmundi*, mentioned by *Mat. Pariſ. ſub ann.* 1174. is not to be taken for the town, but for the adjoining plain. To this may be added, that many flat and wide meads, and other open grounds, are called by the name of *beries*, and *berryfields*: the ſpacious meadow between *Oxford* and *Iſley* was in the reign of king *Athelſtan* called *Bery*. *B.* Twine, *MS.* As is now the largeſt paſture ground in *Quarendon* in the county of *Buckingham*, known by the name of *Beryfield*. And tho' theſe meads have been interpreted demeſne or manor meadows, yet they were truly any flat or open meadows, that lay adjoining to any vil or farm.

Berra, A plain open heath. *Berras eſſartare*, to grub up ſuch barren heaths.

Bernet, *Incendium*, comes from the Sax. *byran*, to burn: it is one of thoſe crimes which by the laws of *Hen.* 1. *cap.* 15. *emendari non poſſunt*. Sometimes it is uſed to ſignify any capital offence. *Leges Canuti apud Brompt. c.* 90. *Leg. Hen.* 1. *c* 12, 47.

Berſa, (Fr. *bers*) A limit or bound.—*Paſturum duorum taurorum per totam* berſam *in foreſta noſtra de* Chippenham, *&c.* Mon. Angl. tom. 2. pag. 210. A park pale.

Berſare, (Germ. *berſen*, to ſhoot) Berſare *in foreſta mea ad tres arcus*. Chart. Ranulf. Comit. Ceſtr. ann. 1218. *viz.* to hunt or ſhoot with three arrows in my foreſt. *Berſarii* were properly thoſe that hunted the wolf.

Berſelet, (*berſeletta*) A hound——*Ad* berſandum *in foreſta cum novem arcubus & ſex* berſelitis. *Chart. Reg. de Quincy.*

Berton, or **Barton**, (*bertona*) Is that part of a country farm where the barns and other inferior offices ſtand, and wherein the cattle are foddered, and other buſineſs is managed. See *Clauſ.* 32. *Ed.* 1. *m.* 17. It alſo ſignifieth a farm, diſtinct from a manor: in ſome parts of the weſt of *England* they call a great farm a *berton*; and a ſmall farm a *living*.——*Bertonarii* were ſuch as we now call farmers or tenants of *bertons*; huſbandmen that held lands at the will of the lord.——*Cum* bertona, *terris & tenementis, quæ* bertonarii *modo tenent ad voluntatem*. Chart. Johan. Epiſc. Exon. 24 Dec. Ann. 1337.

Berewicha, or **Berwica**, Villages or hamlets belonging to ſome town or manor. This word often occurs in *Domeſday: iſtæ ſunt* berewichæ *ejuſdem manerii*.——

Berwick, Merchandize carried into or brought out of *Scotland*, or the iſles thereof, ſhall be brought firſt to *Berwick*, on pain of forfeiture: and the merchants and freemen there ſhall have the farm of the waters royal and fiſhings within the ſeigniory. *Stat.* 22 *Ed.* 4. *c.* 8. The liberties of *Berwick* are declared, by the *Stat.* 1 *Jac.* 1. *c.* 28.

By *Stat.* 20 *Geo.* 2. *c.* 42. *ſect.* 3. *Wales* and *Berwick* upon *Tweed* ſhall be included in all acts of parliament, wherein the kingdom of *England*, or that part of GREAT BRITAIN called *England*, ſhall be mentioned. As to *Berwick*, vide *Black. Com.* 1 *V.* 98. *&c.*

Bery, or **Bury**, The vill or ſeat of habitation of a nobleman, a dwelling or manſion houſe, being the chief of a manor; from the Sax. *beorg*, which ſignifies a hill or caſtle; for heretofore noblemens ſeats were caſtles, ſituate on hills, of which we have ſtill ſome remains. As in *Herefordſhire*, there are the *beries* of *Stockton*, *Hope*, *&c.* It was anciently taken for a ſanctuary.

Beſaile, (Fr. *biſayeul*, *proavus*) The father of the grandfather: and in the Common law it ſignifies a writ that lies where the great grandfather was ſeiſed the day that he died, of any lands or tenements in fee-ſimple; and after his death a ſtranger entereth the ſame day upon him, and keeps out the heir. *F. N. B.* 222. Vide *Booth* on *Real Actions*.

Beſcha, (from the Fr. *bercher*, *fodere*, to dig) A ſpade or ſhovel.——*In communi paſtura turbas, cum una ſola* beſcha *fodient & nihil dabunt*. Prior. Lew. Cuſtumar. de Hecham, pag. 15. Hence perhaps, *una* Beſcata *terra incluſa*—Mon. Ang. tom. 2. fol. 642. may ſignify a piece of land uſually turned up with a ſpade, as gardiners fit and prepare their grounds; or may be taken for as much land as one man can dig with a ſpade in a day.

Beſtials, (*beſtials*) Beaſts or cattle of any ſort; *anno* 4 *Ed.* 3. *c.* 3. it is written *beſtayle*; and is generally uſed for all kinds of cattle, though it has been reſtrained to thoſe purveyed for the king's proviſion. 12 *Car.* 2. *c.* 4.

Betaches. Laymen uſing glebe lands. *Parl.* 14 *Ed.* 2.

Beverches, Bed-works, or cuſtomary ſervices done at the bidding of the lord by his inferior tenants.——*Inter ſervitia cuſtumaria tenentium in* Blebury, *de dominio abbatis & conventus* Reading——*prædictus abbas habebit de eis duas precarias carrucarum per annum, quae vocantur* beverches, *& cum qualibet carruca duos homines qualibet die ad prandium abbatis*. Cartular. Rading. MS. f. 225.

Bewared, An old *Saxon* word ſignifying *expended*; for before the *Britons* and *Saxons* had plenty of money, they traded wholly in exchange of *wares*.

Bidale, or **Bidall**, (*precaria potaria*, from the Sax. *biddan*, to pray or ſupplicate) Is the invitation of friends to drink *ale* at the houſe of ſome poor man, who thereby hopes a charitable contribution for his relief: it is ſtill in uſe in the weſt of *England*: and is mentioned 26 *Hen.* 8. *c.* 6. And ſomething like this ſeems to be what we commonly call *houſe-warming*, when perſons are invited and viſited in this manner on their firſt beginning houſe-keeping.

Bidding of the Beads, (*bidding* from the Sax. *biddan*) was anciently a charge or warning given by the pariſh prieſt to his pariſhioners at ſome ſpecial times to come to prayers, either for the ſoul of ſome friend departed, or upon ſome other particular occaſion. And at this day our miniſters, on the *Sunday* preceding any feſtival or holiday in the following week, give notice of them, and deſire and exhort their pariſhioners to obſerve them as they ought; which is required by our canons. See *Stat.* 27 *Hen.* 8. *c.* 26.

Bidentes, Two yearlings or ſheep of the ſecond year.—*Will. Longſpe A. D.* 1234. granted to the prior and canons noas of *Bereſter*, *paſturam ad quinquaginta* bidentes, *cum dominicis* bidentibus *meis ibidem paſcendis*. Paroch. Antiq. p. 216.

Biduana, A faſting for the ſpace of two days. *Matt. Weſt. p.* 135.

Biga, *bigata*, A cart or chariot drawn with two horſes coupled ſide to ſide; but it is ſaid to be properly a cart with two wheels, ſometimes drawn by one horſe; and in our ancient records it is uſed for any cart, wain or waggon.——*Et quod sunt cum* bigis *&* *carris cum caeteris phaleris ſuper tenementum ſuum*, *&c.* Mon. Angl. tom. 2. fol. 256.

Bigamus, Is a perſon that hath married two or more wives, ſucceſſively after each other, or a widow; for the canoniſts account a man that hath married a widow, to have been twice married. It is mentioned in the ſtatutes 18 *Ed.* 3. *c.* 2. 1 *Ed.* 6. *c.* 12. And 2 *Inſt.* 273.

Bigamy, *(bigamia)* Signifies a double marriage, or marriage of two wives; it is uſed in our law, for an impediment to be a clerk, by reaſon he hath been twice married. 4 *Ed.* 1. *c.* 5. Which ſeems to be grounded upon the words of St. *Paul to Timothy epiſt.* 1. *cap.* 5. *verſ.* 2. *Oportet ergo epiſcopum irreprehenſibilem eſſe & unius uxoris virum:* upon which it is ſaid the canoniſts have founded their doctrine, that he who hath been twice married, may not be a clerk; ſo that they do not only exclude ſuch from holy orders, but alſo deny them all privileges that belong to clerks: but this law is aboliſhed by 1 *Ed.* 6. and ſee the *Stat.* 18 *Eliz. cap* 7. The ſtatute called the *Statute de Bigamis*, is the 4 *Ed.* 1. and the 1 *Jac.* 1. *c.* 11. calls it *bigamy*, where a perſon marries the ſecond wife, *&c.* the firſt being living, which is felony; but this is properly *polygamy*, and not *bigamy*, which laſt is not where a perſon hath two wives together, but where he hath two wives one after another. 2 *Inſt.* 273.

There is a proviſo in the 1 *Jac.* 1. *c.* 11. that the ſaid ſtatute ſhall not extend to any perſon or perſons, who ſhall be at the time of ſuch marriage divorced by a ſentence in the eccleſiaſtical court declared to be void and of no effect; nor to any perſon or perſons, for or by reaſon of any former marriage had or made within age of conſent.

According to the conſtruction of this proviſion, divorces *a menſa et thoro*, *cauſa adulterii* and *ſævitiæ* are within the exception in the ſtatute, though the word *ſeparamus*, and not *divortiamus*, be made uſe of in the ſentence; for the ſtatute being penal, ſhall be conſtrued favourably; and ſuch ſeparations are taken for divorces in common underſtanding. 1 *Hawk. P. C.* 111. 3 *Inſt.* 89. *H. P. C.* 122. *Kel.* 27. *Cro. Car.* 461.

It has been held likewiſe with reſpect to the conſent of parties. If one of the parties only were under the age of conſent at the time of ſuch marriage, the exception extends as well to the party above the age of conſent, as to the other; becauſe the power of diſagreeing was equal on both ſides. *Vide* on this ſubject *Black. Com.* 4 *V.* 163.

Bigot, Is a compound of ſeveral old *Engliſh* words, and ſignifies an obſtinate perſon; or one that is wedded to an opinion, in matters of religion, *&c.* It is recorded that when *Rollo* the firſt duke of *Normandy*, refuſed to kiſs the King's foot, unleſs he held it out him, it being a ceremony required in token of ſubjection for that dukedom, with which the King inveſted him; thoſe who were preſent taking notice of the duke's refuſal, adviſed him to comply with the king's deſire, who anſwered them *ne ſe bigot*; whereupon he was in deriſion called *bigot*, and the *Normans* are ſo called to this day.

Bilagines, (Lat.) By-laws of corporations, *&c.* See *By-laws*.

Bilanciis deferendis, A writ directed to a corporation, for the carrying of weights to ſuch a haven, there to weigh the wool that perſons by our ancient laws were licenſed to tranſport. *Reg. Orig.* 270.

Bilinguis, Signifies generally a double tongued man; or one that can ſpeak two languages; but it is uſed in our law for a jury that paſſeth between an *Engliſhman* and a foreigner, whereof part ought to be *Engliſh*, and part ſtrangers. Though this is properly a jury *de medietate linguæ*. 28 Ed. 3. c. 13.

Bill, *(billa)* Is diverſly uſed: in law proceedings; it is a declaration in writing, expreſſing either the wrong the complainant hath ſuffered by the party complained of, or elſe ſome fault committed againſt ſome law or ſtatute of the realm: and this *bill* is ſometimes addreſſed to the Lord Chancellor of *England*, eſpecially for unconſcionable wrongs done to the complainant; and ſometimes to others having juriſdiction, according as the law directs. It contains the fact complained of, the damage thereby ſuſtained, and petition of proceſs againſt the defendant for redreſs; and it is made uſe of as well in criminal as civil matters. In criminal caſes, when a grand jury upon a preſentment or indictment find the ſame to be true, they indorſe on it *billa vera*; and thereupon the offender is ſaid to ſtand indicted of the crime, and is bound to make anſwer unto it: and if the crime touch the life of the perſon indicted, it is then referred to the jury of life and death, *viz.* the petty jury, by whom if he be found guilty, then he ſhall ſtand convicted of the crime, and is by the judge condemned to death. *Terms de Ley* 86. 3 *Inſt.* 30. See *Ignoramus* and *Indictment*.

Many of the proceedings in the King's Bench are by *bill:* it is the ancient form of proceeding, and was, and yet ſhould be filed in parchment, in all ſuits, not by original. The declaration is a tranſcript of it, or ſuppoſed ſo to be. See *Amendment*.

Bill is alſo a common engagement for money given by one man to another; being ſometimes with a penalty, called *penal bill*, and ſometimes without a penalty, though the latter is moſt frequently uſed. By a *bill* we ordinarily underſtand a ſingle bond, without a condition; and it was formerly all one with an obligation, ſave only its being called a *bill* when in *Engliſh*, and an obligation when in *Latin*. Weſt. Symbol. lib. 2 ſect. 146. A *bill* has been defined to be a writing, wherein one man is bound to another, to pay a ſum of money on a day that is future, or preſently on demand, according to the agreement of the parties at the time it is entered into, and the dealings between them, and it is divided into ſeveral ſorts, as a *bill* that is *ſingle*, a *bill* that is *penal*, *&c.* Where there is a *bill* of 100 *l.* to be paid on demand, it is a duty preſently, and there needs no actual demand. *Cro. Eliz.* 548. And a ſingle obligation or *bill*, upon the ſealing and delivery, is *debitum in præſenti*, though *ſolvendum in futuro*. On a collateral promiſe to pay money on demand, there muſt be a ſpecial demand; but between the parties it is a debt, and ſaid to be ſufficiently demanded by the action: it is otherwiſe where the money is to be paid to a third perſon; or where there is a penalty. 3 *Keb.* 176. If a perſon acknowledge himſelf by *bill* obligatory to be indebted to another in the ſum of 50 *l.* and by the ſame *bill* binds him and his heirs in 100 *l.* and ſays not to whom he is bound, it ſhall be intended he is bound to the perſon to whom the *bill* is made. *Rol. Abr.* 148. A *bill* obligatory written in a book, with the party's hand and ſeal to it, is good. *Cro. Eliz.* 613. And if a man makes a *bill* thus: *I do owe and promiſe to pay to* A. B. 50*l.* &c. *for payment thereof, I bind myſelf to* C. D. *&c.* another perſon; it is good by the words of the firſt part, and the words obligatory to another perſon are void. A man ſays by his deed: *Memorandum, That I* A. B. *have received of* C. D. *the ſum of* 20 *l. which I promiſe to pay to* E. F. *In witneſs whereof I have hereunto ſet my ſeal*, &c. Or if the *bill be, I ſhall pay to* C. D. 20 l. *In witneſs*, &c. and the ſame be ſealed: or if it runs as follows, *I owe to* C. D. 20 l. *to be paid at*, &c. Or, *I had of* C. D. 20 l. &c. *to be repaid him again:* Or, *I* A. B. *do bind myſelf to* C. D. *that he ſhall receive* 20 *l.* &c. All theſe are ſaid to be obligatory. 2 *Rol.* 146. 22 *E.* 4. *c.* 22.

Now bonds, *&c.* are to be on ſtamped paper, *&c.*

Form of a *ſingle Bill* for Money.

KNOW all men *by theſe preſents, That I* A. B. *of*, &c. *do owe and am indebted to* C. D. *of*, &c. *the ſum of fifty pounds of lawful money of* Great Britain, *which I promiſe to pay unto the ſaid* C. D. *his executors, adminiſtrators* *or aſſigns, at and upon the firſt day of* October *next enſuing the date of theſe preſents.* In witneſs *whereof I have hereunto ſet my and and ſeal the* 10*th day of* Auguſt, Anno Domini 1770.

A *Penal Bill* for Payment of Money.

KNOW all men *by theſe preſents, That I* A. B. *of*, &c. *do owe unto* C. D. *of*, &c. *the ſum of one hundred pounds of lawful money of* Great Britain, *to be paid unto the ſaid* C. D. *his executors, adminiſtrators or aſſigns, on*, &c. *next enſuing the date hereof; for which payment, well and truly to be made, I bind myſelf, my heirs, executors, and adminiſtrators, to the ſaid* C. D. *his executors, adminiſtrators and aſſigns in two hundred pounds of like lawful money firmly by theſe preſents.* In witneſs, *&c.*

Bill of Exceptions. *Vide Bath. Ni. pri.* 295. *Black. Com.* 3 V. 31.

Exception to evidence, *&c.* At Common law a writ of error lay for an error in law, apparent in the record, or for error in fact, where either party died before judgment; yet it lay not for an error in law not appearing in the record; and therefore, where the plaintiff or demandant, tenant or defendant, alledged any thing *ore tenus*, which was over-ruled by the judge, this could not be aſſigned for error, not appearing within the record, nor being an error in fact, but in law; and ſo the party grieved was without remedy. 2 *Inſt.* 426. And therefore,

By the ſtatute of *Weſtm* 2. "When one impleaded before any of the juſtices, alledges an exception, praying they will allow it, and if they will not, if he that alledges the exception writes the ſame, and requires the juſtices will put to their ſeals, the juſtices ſhall ſo do; and if one will not another ſhall; and if, upon complaint made of the juſtice, the King cauſe the record to come before him, and the exception be not found in the roll, and the plaintiff ſhew the written exception, with the ſeal of the juſtice thereto put, the juſtice ſhall be commanded to appear at a certain day, either to confeſs or deny his ſeal, and if he cannot deny his ſeal, they ſhall proceed to judgment according to the exception, as it ought to be allowed or diſallowed."

This ſtatute extends to the plaintiff as well as defendant, alſo to him who comes *in loco tenentis*, as one that prays to be received, or the vouchee; and in all actions whether real, perſonal, or mixt. 2 *Inſt.* 427.

The ſtatute extends not only to all pleas dilatory and peremptory, but to prayers to be received, *oyer* of records and deeds, *&c.* alſo to challenges of jurors, and any material evidence offered and over-ruled. 2 *Inſt.* 427. *Dyer* 231 *pl.* 3. *Raym.* 486.

The *exceptions* ought to be put in writing *ſedente curia*, in the preſence of the judge who tried the cauſe, and ſigned by the counſel on each ſide; and then the bill muſt be drawn up and tendered to the judge that tried the cauſe to be ſealed by him; and when ſigned, there goes out a *ſcire facias* to the ſame judge *ad cognoſcendum ſcriptum*, and that is made part of the record, and the return of the judge with the bill itſelf, muſt be entered on the iſſue-roll; and if a writ of error be brought, it is to be returned as part of the record. 1 *Nelſ. Abr.* 373. If a bill of *exceptions* is drawn up, and tendered to the judge for ſealing, and he refuſes to do it, on petition to the Lord Chancellor, he will grant a writ for that purpoſe.

If one of the juſtices ſets his ſeal to the bill, it is ſufficient; but if they all refuſe, it is a contempt in them all; for which the party grieved may have a writ grounded upon the ſtatute, commanding them to put their ſeals, *&c.* 2 *Inſt.* 427. *Raym.* 182. S. P. 2 *Lev.* 327. S. P.

Although no time be appointed by this act when the juſtices ſhall put their ſeals, the party muſt pray the ſame before judgment; but if they deny it, then may they be commanded after judgment to put their ſeals, and then the putting of their ſeals after judgment ſhall be ſufficient. 2 *Inſt.* 427.

When a bill of exceptions is allowed, the court will not ſuffer the party to move any thing in arreſt of judgment on the point on which the bill of exceptions was allowed; for his proper redreſs is by writ of error, and it is preſumed, that the court was ſatisfied in the point when the party tendred his bill of exceptions. 1 *Vent.* 366, 367. 2 *Lev* 237. 2 *Jones.* 117.

Theſe bills of *exceptions*, are to be brought before a verdict given, and extend only to civil actions, not to criminal. *Sid.* 85. 1 *Salk.* 288.

Bill of Exchange, Is in general an order for the payment of money to ſome perſon or to his order, equivalent to the ſum which the drawer hath received. Of theſe there are different kinds, it will be proper therefore to conſider,

I. *The nature of bills of exchange and negotiable notes, and what ſhall be ſo deemed.*

II. *Of the different kinds of bills of exchange, and negotiable notes; wherein* 1. *Of foreign bills.* 2. *Of inland bills.* 3. *Of promiſſory and negotiable notes.*

III. *Of the acceptance.*

IV. *Of the proteſt.*

V. *Of the indorſement.*

VI. *Who ſhall be liable to payment, and to whom, and therein of ſuing the drawer, indorſer, or acceptor.*

VII. *Of the action and remedy, and manner of declaring and pleading, and of the evidence requiſite.*

VIII. *Of bills, loſt, ſtolen or forged.*

I. As the cuſtom of merchants hath eſtabliſhed theſe bills and notes, ſo hath it preſcribed their form, and required that the ſame ſhould be in writing, and drawn by the party, or thoſe having legal authority from him; and ſuch drawing raiſes a contract to pay the ſame without any expreſs promiſe. 3 *New Abr.* 606. *Carth.* 510. *Salk.* 128. *Starky* v. *Cheeſman.*

As to the form of the bill, it is ſaid, that the ſame ſtrictneſs and nicety are not required in penning of bills current between merchant and merchant, as in deeds, wills, *&c.* On the other hand it may happen, that a writing may have the form of a bill of exchange, and yet be otherwiſe. 3 *New Abr.* 606. *Lucas* 287.

As if *A.* draw a bill in this form; *Sir, pray pay to* H. 1945 l. *upon demand, out of the money belonging to the proprietors of the* Devonſhire *mines, being part of the conſideration-money for the purchaſe of the manor of* Weſt-Buckland. This is no ſuch bill of exchange as will intitle *H.* to an action againſt the drawer on the cuſtom of merchants; for it is only a direction or appointment to the caſhier to pay the money, and that out of a particular fund, and doth not anſwer the neceſſity of trade, not being a negotiable note, nor indorſible over; and charging the drawer on ſuch a note, would be liable to this further inconveniency, that hereby every one who gives his ſteward an order or authority to pay money, might be charged for non-payment. *Stran.* 591. 3 *Geo.* 1. *Jenney* v. *Herle. L. Raym* 1361.

So where a bill drawn by an officer upon his agent, requiring him to pay ſo much out of his *growing ſubſiſtence*, was held no bill of exchange, nor the drawer liable, though ſuch bill was accepted; for it concerns neither trade nor credit; but is to be paid out of the growing ſubſiſtence of the drawer; ſo that if the party die, or the fund be taken away, the payment is to ceaſe and determine. 3 *New Abr.* 606.

Alſo it hath been reſolved, that if *A* give a note, *&c.* to *B.* for the payment of a ſum of money when he the ſaid *A.* ſhould marry ſuch a one, *B.* cannot bring an action on ſuch note, and declare as on a bill of exchange, ſetting forth the cuſtom of merchants, *&c.* for that in truth there is no ſuch cuſtom, being only an agreement founded on a marriage brokage, and to pay money on a collateral contingency; which contingency cannot be called trading, ſo as to come within the cuſtom of merchants. 4 *Mod.* 242. *Comb.* 227. S. C. *Pearſon* ver. *Garret.*

The plaintiff declared upon the cuſtom of merchants againſt the defendants as acceptors of a bill of exchange, and the inſtrument run in theſe words,

Meſſrs. Gilly *and Co.*

Pray pay Mr. Richard Banbury *one month after date two hundred pounds on account of freight of the* Veale Galley, Edward Champion; *and this order ſhall be your ſufficient diſcharge for the ſame.*

J. Gibſon.

Accepted for Leſſet *and* Gilly *at* Leghorn, *to pay as remitted from thence at uſance.*

March 18, 1748. H. Gilly.

This was ruled to be a bill of exchange. *Stran.* 1211.

Pay to me or my order ſo much, is a bill of exchange if accepted; and this is the way to make a bill of exchange without the intervention of a third perſon. 1 *Salk.* 130. *Trin.* 2 *Ann. B. R. Butler* v. *Crips.*

It hath been reſolved, that a bill of exchange drawn by a gentleman, who is no trader, ſhall, notwithſtanding, make him reſponſible within the cuſtom of merchants; for otherwiſe perſons of diſtinction travelling abroad would ſuffer in their credit; and it might bring a general inconvenience on trade itſelf, when it came to be known to foreign merchants, that there were ſome who, though they took upon themſelves to draw bills of exchange, yet were not liable to the payment thereof. *Carth.* 82. 1 *Show.* 125. *Witherly* ver. *Sarsfield. Comb.* 45, 152. S. C. ill reported.

II. *As to the different kinds of bills.*

It is to be obſerved, 1. That the cuſtom of merchants, in relation to foreign bills of exchange, ſeems to have prevailed time out of mind; and by this cuſtom, if a merchant abroad draw a bill on a merchant here, or *vice verſa,* requeſting him to pay a certain ſum of money, and the drawer ſets his name to it; this amounts to a promiſe to pay, and ſubjects him, though but a collateral engagement, to an action on the non-payment. 1 *Rol. Abr.* 6. *Cro. Jac.* 306. *Cro. Car.* 301.

And if the drawer, or he on whom the bill is drawn, refuſe to accept it, or having accepted it, refuſe to pay it, the payee, or he in whoſe favour it is drawn, may proteſt it, and ſhall recover againſt the drawer, not only the principal ſum, but likewiſe all intereſt, coſts, and damages, by reaſon of the proteſt or refuſal of acceptance, or payment of the money. *Cro. Car.* 301.

But though the cuſtom of merchants, in relation to bills of exchange, be eſtabliſhed by the Common law, and ſuch bills, being ſecurities for money, are of great credit among them; yet they are not allowed to be ſecurities of as high a nature as bonds or ſpecialties; and therefore it hath been adjudged, that a bill of exchange is within the ſtatute of limitations, and muſt be ſued for within ſix years after it becomes payable. 3 *New Abr.* 602. *Carth.* 3. *Renew* v. *Axton.*

Alſo a bill of exchange is to be conſidered as a ſimple contract debt, in a courſe of adminiſtration, which an executor or an adminiſtrator, cannot diſcharge before debts by bond, without being guilty of a *devaſtavit.* 3 *New Abr.* 602.

So, if a merchant in *London* draw a bill of exchange on his correſpondent in *Newcaſtle,* in favour of *J. S.* and the bill is refuſed, and *J. S.* dies inteſtate, his adminiſtrator, on letters of adminiſtration taken out in *Durham,* cannot bring an action on the cuſtom of merchants, againſt the drawer, and lay the ſame in *London*; for that a bill of exchange is not equal to a bond, or ſpecialty, (which are the deceaſed's goods where they happen to be at his death), but is a ſimple contract, which follows the perſon of the debtor, and makes *bona notabilia* where the debtor reſides; and therefore adminiſtration ought to have been taken out in *London.* 3 *New Abr.* 603. *Carth.* 373. *Yeoman* v. *Bradſhaw. Comb.* 392. S. C.

Alſo this cuſtom ſhall not prevail againſt the privilege of infants, ſo as to bind them; and accordingly it hath been adjudged, that if an infant draw a bill of exchange, infancy is a good plea in bar to an action brought againſt him. 3 *New Abr.* 603. *Carth.* 160. *Williams* v. *Harriſon.*

Bills of exchange are uſually drawn payable on ſight, ſo many days after date, or at ſingle, double or treble uſance; and it is frequent to draw two or three, if abroad or to be ſent abroad, for the ſame ſum, and of the ſame date, for fear of loſs or miſcarriage, which carry a condition with them that only one ſhall be paid. 3 *New Abr.* 603. *Molloy, b.* 2. *cap.* 10. *ſect.* 10.

An *uſance* is ſaid to be regularly a month. *Molloy* 277. 1 *Show.* 317. But yet varies according to the cuſtoms of particular countries, and therefore, where the plaintiff declared on a bill of exchange drawn at *Amſterdam,* payable at *London,* at *two uſances,* and did not ſhew what the *two uſances* were, judgment was given for the defendant; for the court could not take notice of foreign *uſances* which vary, being longer in one place than in an another. 1 *Salk.* 131. *Buckley* ver. *Canbell.* If there are three bills for the ſame ſum, and an action is brought on one of them, and the plaintiff declare, that the money *in billa prædicta mentionat'* is not paid, this is ſufficient without averring that it was not paid on the other bills, becauſe the ſum is the ſame in all the bills. *Carth.* 510. 1 *Salk.* 130. *adjudged.*

2. *With regard to inland bills.*

Inland bills of exchange are thoſe drawn by one merchant reſiding in one part of the kingdom on another reſiding in another place within the ſame kingdom; and theſe alſo being found uſeful to trade and commerce, have been eſtabliſhed on the ſame foot with foreign bills; but at Common law they differ from them in this, that there was no cuſtom of proteſting them, ſo as to ſubject the drawer to intereſt and damages in caſe of non-payment, as there was on foreign bills. 3 *New Abr.* 603. 1 *Salk.* 131. *Borough* v. *Perkins.*

To remedy this inconvenience it was enacted by the 9 & 10 *W.* 3. *c.* 17. That bills of exchange drawn in *England, &c.* of 5*l.* or upwards, payable at a certain number of days, *&c.* after acceptance, three days after it is due may be proteſted, and notice thereof muſt be given in fourteen days after the proteſt. Provided that in caſe of bills loſt or miſlayed, drawer to give another.

But this ſtatute was defective, becauſe it could not operate, unleſs the party, on whom the bill was drawn, accepted it by under-writing the ſame, which few or none cared to do. 3 *New Abr.* 604.

To remedy which it was provided by 3 & 4 *Ann. c.* 9. that in caſe of a party's refuſing to under-write a bill of exchange, ſuch bill may be proteſted for non-acceptance. And it is thereby further provided that no acceptance of inland bills of exchange ſhall be ſufficient, unleſs the ſame be under-written, nor the drawer thereof liable to coſts, *&c.* And that no proteſt ſhall be neceſſary for non-payment, unleſs the bill be drawn for 20*l.* or upwards. It is thereby alſo enacted, that if any perſon accept any ſuch bill of exchange in ſatisfaction of any former debt, it ſhall be eſteemed full payment of ſuch debt, if ſuch perſon *doth not take his due courſe* to obtain payment thereof, by endeavouring to get the ſame accepted and paid, and make his proteſt as aforeſaid. Provided that nothing in the ſaid act contained ſhall extend to *diſcharge any remedy,* that any perſon may have againſt the *drawer, acceptor,* or *indorſer of* ſuch bill.

A writ of error was brought on a judgment by *nil dicit,* in an action againſt the drawer of an inland bill of exchange, and it was objected that ſince the act of 9 & 10 *W.* 3. *c.* 17. no damages ſhall be recovered againſt the drawer upon a bill of exchange, without a proteſt, and therefore the action lies not, there being no proteſt.

But by *Holt* C. J. the ſtatute never intended to deſtroy the action for want of a proteſt, but only to deprive the party of recovering intereſt and coſts upon an inland bill againſt the drawer, without notice of non-payment by proteſt: for before the ſtatute there was this difference between foreign and inland bills of exchange; if a bill was foreign, one could not reſort to the drawer for non-acceptance or non-payment without a proteſt, and reaſonable notice thereof. But in caſe of an inland bill, there was no occaſion for a proteſt; but if any prejudice happened to the *drawer*, by the non-payment of the drawee, and that for want of notice of non-payment, which he to whom the bill is made ought to give, the drawer was not liable; and the word *damages* in the ſtatute, was meant only of damages that the party is at of being longer out of his money by the non-payment of the drawer, than the tenor of the bill purported, and not of damages for the original debt: and the proteſt was ordered for the benefit of the drawer; for if any damages accrue to the drawer for want of a proteſt, they ſhall be borne by him to whom the bill is made; and if no damages accrue to him, then there is no harm done him; and a proteſt is only to give a formal notice, that the bill is not accepted, or is accepted and not paid; and if in ſuch caſe the damage ſuſtained by the drawer, by his delay, amount to the value of the bill, there ſhall be no recovery; but otherwiſe he ought not to loſe his debt; but that ought either to appear by evidence upon *non aſſumpſit* or by ſpecial pleading; and the act is very obſcurely and doubtfully penned, and we ought not by conſtruction upon ſuch an act to take away a man's right. And the judgment was affirmed *per totam curiam.* 1 *Salk.* 131. *L. Raym.* 993.

The defendant took up ſeveral goods of the plaintiff, who ſent his ſervant with a bill to him for the money: The defendant orders the ſervant to write him a receipt in full of the bill, which he did, and thereupon he gave him a note upon a third perſon, payable in two months: The maſter ſent ſeveral times to the third perſon, to preſent him the note, but could not get ſight of him within the time, the party breaks, and all this appearing in evidence, and that the defendant went to ſea the next day after he gave the note, now this action was brought againſt the defendant for the money.

Holt, chief juſtice: If a man gives a note upon a third perſon in payment, and the other takes it abſolutely as payment; yet if the party giving it knew the third perſon to be breaking, or to be in a failing condition, and the receiver of the note uſes all reaſonable diligence to get payment but cannot, this is a fraud, and therefore no payment; for the party failed before the money was payable. The chief juſtice directed for the plaintiff. *Holt's Rep.* 122. *Popley* v. *Aſhley.*

3. *With reſpect to promiſſory and negotiable notes.*

The increaſe of trade, and neceſſity of paper credit, put bankers and others upon an expedient of bringing promiſſory notes within the cuſtom of merchants and making them negotiable, as inland bills of exchange; but this the judges would not admit of, promiſſory notes being only conſidered, by the Common law, as evidences of a debt, and not aſſignable or negotiable in their own nature. 1 *Salk.* 24, 129. 6 *Mod.* 29. But, it being found neceſſary to make uſe of this kind of credit, it was enacted by the 3 & 4 *Ann. c.* 9. That promiſſory notes, payable to order or bearer, may be aſſigned or indorſed, and action maintained thereon, as on inland bills of exchange.

It hath been adjudged, that a note written by the plaintiff, and ſubſcribed by the defendant, is a note *made and ſigned* by the defendant within this act; for the ſigning or ſubſcribing is the lien, and the writing or making is only the mechanical part of it. *Trin.* 6 *Ann. Aſh.* ver. *Baron, in B. R.*

Alſo it hath been held, that a note drawn, in theſe words, *I promiſe to account with* J. S. *or his order, for* 50l. *value received by me, &c.* is a good negotiable note, within the ſtatute 3 & 4 *Ann. c.* 9. and that the word *account* ſhall be conſtrued the ſame as to *pay*, and not to render an account as factor or bailiff; and the rather, becauſe he is not only accountable to *J. S.* but likewiſe to his order; which he cannot be as factor or bailiff, and therefore it muſt be to pay the money to the indorſee, or order of *J. S. Morris* ver. *Lea. Stra.* 629.

III. *Concerning the acceptance.*

It is to be obſerved that an acceptance, by the cuſtom of merchants, as effectually binds the acceptor, as if he had been the original drawer; and that, having once accepted it, he cannot afterwards revoke it. *Cro. Jac.* 308. *Hard.* 487.

A very ſmall matter will amount to an acceptance; and any words will be ſufficient for that purpoſe, which ſhew the party's aſſent or agreement to pay the bill; as if upon the tender thereof to him, he ſubſcribes, *accepted*, or *accepted by me* A. B. or, *I accept the bill, &c.* theſe clearly amount to an acceptance. *Molloy, book.* 2. *cap.* 10. *ſect.* 15.

If the party under-writes the bill, *Preſented* ſuch a day, or only the day of the month; this is ſuch an acknowledgment of the bill as amounts to an acceptance. 3 *New Abr.* 610. *Comb.* 401.

If the party ſays, *Leave your bill with me and I will accept it*, or, *Call for it to-morrow and it ſhall be accepted*; theſe words, according to the cuſtom of merchants, as effectually bind, as if he had actually ſigned or ſubſcribed his name according to the uſual manner.

But if a man ſays, *Leave your bill with me; I will look over my accounts and books between the drawer and me, and call to-morrow, and accordingly the bill ſhall be accepted*; this does not amount to a compleat acceptance; for the mention of his books and accounts ſhews plainly that he intended only to accept the bill, in caſe he had effects of the drawer's in his hands. And ſo it was ruled by the Lord chief Juſtice *Hale* at *Guildhall. Molloy, book* 2. *cap.* 10. *ſect.* 20.

A foreign bill was drawn on the defendant, and being returned for want of acceptance, the defendant ſaid, that *if the bill came back again he would pay it*; this was ruled a good acceptance. 3 *New Abr.* 610. cites *Mich.* 6 *Geo.* 1 *B. R. Carr* v. *Coleman.*

The defendant was ſued as acceptor of a bill of exchange. And upon the evidence it appeared to be a parol acceptance only, which the Chief Juſtice ruled to be ſufficient, that being good at Common law, and the *Stat.* 3 & 4 *Anne, cap.* 9. which requires it to be in writing in order to charge the drawer with damages and coſts, having a proviſo that it ſhall not extend to diſcharge any remedy that any perſon may have againſt the acceptor. Upon this direction the jury found for the plaintiff. But the Chief Juſtice of the Common Pleas having lately ruled it otherwiſe, the court was moved for a new trial. And, in order finally to ſettle this point, it was ordered to be argued: and after argument the court was of opinion, that the direction in the preſent cauſe was right and agreeable to conſtant practice. *Stran.* 1000. 8 *Geo.* 2. *Lumley* v. *Palmer.*

An acceptance, however, may be qualified, as thus; *I accept this bill, half to be paid in money, and half bills.* And this is good by the cuſtom of merchants; for he who may refuſe the bill totally may accept it in part; but he to whom the bill is due may refuſe ſuch acceptance, and proteſt it ſo as to charge the drawer. Alſo it is ſaid, that after ſuch an acceptance, and refuſal of payment, he hath the like liberty of charging the drawer, that he had in caſe the bill had been accepted abſolutely, and payment refuſed. 3 *New Abr.* 611. *Cumb.* 452. *Petit.* v. *Benſon.*

So the drawer may accept the bill to pay it at longer day than that on which it is made payable, and this ſhall bind him, but herein care muſt be taken, that the drawee, by ſuch acceptance or agreement, be not a ſufferer. 1 *Molloy* 283.

A bill was drawn payable the firſt of *January*; the perſon upon whom the bill was drawn, accepts it to be paid the firſt of *March*; the ſervant brings back the bill. The maſter, perceiving this enlarged acceptance, ſtrikes out the firſt of *March*, and puts in the firſt of *January*, and then ſends the bill to be paid. The acceptor then refuſes. Whereupon the perſon, to whom the monies were to be paid, ſtrikes out the firſt of *January*, and puts in the firſt of *March* again. On an action brought on this bill; the queſtion was, whether theſe alterations did not deſtroy the bill? and ruled they did not. *Per* L. Ch. Ju. *Pemberton, Price* and *Shute. Molloy, b.* 2. *c.* 10. *ſect.* 28.

If *A.* draw a bill payable ſuch a day, and the drawee accept it ſome time after, he is liable; and in an action againſt him the plaintiff may declare, that *ſecundum tenorem*

& *effectam billæ* he did not pay, &c. for the effect of the bill is the payment, and not the day of payment. *Carth.* 459, 460. 1 *Salk.* 127, 129. 1 *Lutw.* 233. *Jackſon* ver. *Pigot.*

Having ſhewn what ſhall be a good acceptance, it will be proper to conſider *by whom* the *acceptance* muſt be made.

A bill drawn on two muſt regularly have a joint acceptance; but by the cuſtom of *England,* where there are two joint traders, and one accepts a bill drawn on both for him and partner, it binds both, if it concerns the joint trade; otherwiſe if it concerns the acceptor only in a diſtinct intereſt and reſpect. *Salk.* 126. *Pinkney* v. *Hall.* *L. Raym.* 175.

If a book-keeper, or ſervant, or other perſon have authority, or who uſually tranſacts buſineſs of this nature for the maſter, accept a bill of exchange, this ſhall bind ſuch maſter. 3 *New Abr.* 611.

But another perſon may accept the *bill* for the honour of the drawer; and if he pays the money in default of the party, he is to make a proteſt with declaration that he hath paid the ſame for the drawer's honour.

If a *bill* be accepted, and the perſon who accepted the ſame happens to die before the time of payment, there muſt be a demand made of his executors or adminiſtrators; and on non-payment, a proteſt is to be made, although the money becomes due before there can be adminiſtration, &c. A *bill* may be accepted for part, the party on whom drawn having no more effects in his hands; and there may be a proteſt for the reſidue.

Forging the acceptance of any *bill of exchange,* or the number or principal Sum of any accountable receipt, is made felony. *Stat.* 7 *Geo.* 2. *c.* 22.

IV. *In regard to proteſt.*

A proteſt is only to ſubject the drawer to anſwer in caſe of non-acceptance or non-payment; nor does the ſame diſcharge the party acceptor if once accepted; for the payee, or perſon to whom payable, hath now two remedies, one againſt the drawer, and the other againſt the acceptor. *Molloy, book* 2. *cap.* 10. *ſect.* 17.

A proteſt does not raiſe any debt, but only ſerves to give formal notice that the bill is not accepted, or accepted and not paid; and this by the Common law was, and is ſtill neceſſary on every foreign bill before the drawer can be charged; but it was not required on any inland bill, before the *Stat.* 9 & 10 *W.* 3. *c.* 17. Nor does the want of it ſince that ſtatute deſtroy the remedy, which the party had before againſt the drawer, for the principal. 3 *New Abr.* 612.

If he to whom the bill is to be paid, dies, there can be no proteſt before a probate of his will, or adminiſtration granted; for none but his executors or adminiſtrators can give a legal diſcharge or acquittance for the money, and conſequently no other perſon can ſue for or demand the ſame; and though ſecurity be offered to indemnify the drawee againſt the executors, yet he is not obliged to accept thereof; being a matter left entirely to his conſideration, to judge and determine on the ſufficiency of ſuch ſecurity; and in this caſe it is ſaid, that if a public notary proteſt the bill, an action the caſe lies againſt him. 3 *New Abr.* 612.

If a bill be left with a merchant to accept, which is loſt or miſlaid, he to whom it is payable, is to requeſt the merchant to give him a note for the payment, according to the time limited in the bill; otherwiſe there muſt be two proteſts, the one for non-acceptance, and the other for non-payment; and though ſuch note be given, yet if the merchant happens to fail, there muſt be a proteſt for non-payment in order to charge the drawer. 3 *New Abr.* 613.

The proteſt is uſually made by ſome notary public, and ſuch proteſt is, *prima facie,* good evidence that the bill was not accepted, or, if accepted, that it was not paid, and ſufficient to put the proof on the other ſide. 3 *New Abr.* 613.

As to the *time* in which the *proteſt* is to be made, the law hath not determined it, but the ſame is to be left to a jury, who are to govern themſelves according to the *cuſtom* of *merchants* in theſe caſes, and the *uſage* of *particular countries.*

Merchants generally allow three days after a bill becomes due for the payment, and for non-payment within three days proteſt is made, but is not ſent away till the next poſt after the time of payment is expired, and if *Saturday* be the third day, no proteſt is made till *Monday.* *Molloy* 284. 1 *Show.* 164.

And it is ſaid, that where any *bill* is negotiated, if the ſame be to be paid at a certain day and accepted, the proteſt muſt be on the day of payment; but if payable at ſight, it muſt be proteſted the third day of grace: and when ſuch *bill of exchange* is not paid, the intereſt thereon commences only from the time of demand. 2 *Show.* 164. 6 *Mod.* 138.

A proteſt on a foreign bill of exchange is abſolutely neceſſary to intitle the party to recover againſt the drawer, not only intereſt and coſts, but likewiſe the principal ſum; and for this purpoſe the bill muſt be preſented in a reaſonable time; and in caſe of refuſal or acceptance, or in caſe the drawee cannot be found, it muſt be proteſted in a reaſonable time, and notice of ſuch proteſt, as alſo notice of a proteſt after acceptance and non-payment given to the drawer in a reaſonable time; for though the drawer is bound to the party, to whom the bill is payable, till payment be actually made, yet it is with this condition and proviſo that proteſt be made in due time, and a lawful and ingenuous diligence uſed for the obtaining payment of the money; and the reaſon hereof is, that the drawer might have had effects, or other means of his, upon whom he drew, to reimburſe himſelf the bill, which ſince, for want of timely notice he hath remitted or loſt, it were unreaſonable the drawer ſhould ſuffer through his neglect. 3 *New Abr.* 613.

As to inland bills, though a proteſt was not neceſſary at Common law in order to ſue the drawer, and is only now neceſſary by the *Stat.* 9 & 10 *W.* 3. *c.* 17. and the 3 & 4 *Anne, c.* 9. to intitle the party to intereſt and coſts; yet convenient notice muſt be given by the party, to whom the bill is payable, to the drawer, of the drawee's refuſal of payment, and if any damages accrue to the drawer for want of ſuch notice, it muſt be borne by the perſon to whom the bill is payable; but this muſt be left to a jury, who are to determine herein according to the cuſtom of merchants. 3 *New Abr.* 613.

V. *With reſpect to indorſement.*

Indorſement is a term known in law, which by the cuſtom of merchants transfers the property of the bill or note to the indorſee; and is uſually made on the back of the bill, and muſt be in writing; but the law hath not appropriated any ſet form of words as neceſſary to this ceremony, and therefore it hath been held, that if a man write on the back of a bill of exchange, *This is to be paid to J. S.* or, *The contents of this is to be paid to J. S.* and ſets his hand to it, this is a good indorſement. 3 *New Abr.* 609.

Clark having a bill of exchange payable to him or order, puts his name upon it, leaving a vacant ſpace above, and ſends it to *J. S.* his friend, who got it accepted: but the money not being paid, *Clark* brought an *indebitatus aſſumpſit* againſt the acceptor: and it was objected on evidence, that the property was transferred to *J. S.*

Et per Holt C. J. *J. S.* had it in his power to act either as ſervant or aſſignee: if he had filled up the blank ſpace making the bill payable to him, that would have witneſſed his election to have received it as indorſee; but that being omitted, his intention is preſumed to act only as ſervant to *Clark,* whoſe name he would uſe only in order to write the acquittance over it. 1 *Salk.* 126. *Clark* v. *Pigot.* Plaintiff might not have ſtruck out the indorſement.

A bill payable to a man's *order* is payable to himſelf, and he may bring an action thereon, averring that he made no order, &c. 1 *Salk.* 130. *Comb.* 401.

A bill of exchange was indorſed in this manner: *Pay the contents of this bill unto the order of* J. S. who brought his action as indorſee, averring he had made no order to any body to receive the money; and on demurrer it was objected, that *J. S.* could not maintain an action; becauſe the indorſement was not to him, but to his order:

but the court held the action well brought againſt the indorſor; and that, among tradeſmen, this form of indorſement is commonly uſed, although it is intended to be made payable to the perſon, whoſe order is mentioned. 3 *New Abr.* 609.

Notes payable to *J. S.* or *bearer*, are negotiable, *per* 3 & 4 *Ann. c.* 9.

Alſo, though an aſſignment of a bill, payable to *J. S.* or *bearer*, be no good aſſignment to charge the drawer with an action on the bill, yet it is a good bill between the *indorſer* and *indorſee*, and the *indorſer* is liable to an action for the money; for the *indorſement* is in nature of a *new bill* 1 *Salk.* 125, 133. *Skin.* 343, 411.

So it hath been adjudged, that an *indorſee* of a *bill*, payable to *J. S.* or *bearer*, may maintain an action againſt the *drawer*; on alledging a ſpecial cuſtom, that ſuch bill ſhould bind him, which cuſtom is ſo found, or confeſſed by the defendant. 1 *Salk* 125. 3 *Lev.* 299.

Alſo, in caſes of bills purchaſed at a diſcount, there is ſaid to be this difference, that if it be a bill payable to *A. or bearer*, it is an *abſolute purchaſe*; but if to *A. or order*, and it is indorſed blank, and filled up with an aſſignment, the indorſer muſt warrant it as much as if there had been no diſcount. 1 *Salk.* 128.

A note payable to a *feme ſole, or order*, who afterwards marries, can only be indorſed by the *huſband*. *Ca. L. and Eq.* 246.

If a bill of exchange is made payable to *A. or order*, who indorſes it to *B.* who indorſes it to *C.* which is proteſted for non-payment; *B.* may bring an action on this bill, notwithſtanding his indorſement. 3 *New Abr.* 608. 1 *Show.* 163. *Deckers* v. *Harriat.*

The money is to be paid to him in whoſe favour the bill is drawn, or to the indorſee, in caſe it be indorſed over, of which indorſement the drawer and accepter muſt take notice at their peril; alſo if there are ſeveral indorſers and indorſees, the laſt indorſee is intitled to the money. 3 *New Abr.* 608. *Carth.* 130.

It has been adjudged, that a bill of exchange cannot be indorſed for part, ſo as to ſubject the party to ſeveral actions. 3 *New Abr.* 610. *Carth.* 466. *Hawkins* v. *Cardy.* 1 *Salk.* 65. S. C.

Every indorſer of a bill is liable as the firſt drawer; the indorſer is anſwerable, becauſe the indorſement is in nature of a new bill. 1 *Salk.* 125.

An indorſer is not diſcharged without actual payment of the bill; unleſs there be ſome neglect or default in the indorſee, as where he doth not endeavour to receive the money in convenient time, and then the firſt drawer becomes inſolvent. *Ibid.* 132. An indorſer charges himſelf in the ſame manner as if he had originally drawn the bill: and a plaintiff need not prove the drawer's hand, as the indorſer is a new drawer. 1 *Salk.* 127.

A blank indorſement doth not transfer the property of a bill of exchange; though the perſon to whom indorſed may fill up the indorſement, ſo as to charge the indorſer; for where one indorſes his name on a bill, the indorſee may make what uſe of it he pleaſes, by way of aſſignment, acquittance, &c. 1 *Salk.* 126.

VI. *Who liable, to whom payment to be made, and of ſuing the parties, &c.*

With reſpect to this head, it is to be premiſed, that every drawer of a bill is liable to the payment thereof, as is every accepter and indorſer. Alſo if there are ſeveral indorſers of the ſame bill, the laſt indorſee may bring his action againſt the firſt indorſer, or any of them; for the indorſement is, as it were, a new bill, or at leaſt a warranty, as ſome books expreſs it, by the indorſer that the bill ſhall be paid. 3 *New Abr.* 607.

If a bill be drawn upon *A.* and he accepts it, and afterwards refuſes payment, upon which the bill is proteſted, the perſon to whom it is payable may bring ſeveral actions againſt the accepter and drawer; for the proteſt is no diſcharge of the accepter. 3 *New Abr.* 607.

But though the drawer, accepter, and indorſer are all liable, yet the party can have but one ſatisfaction; and until ſuch ſatisfaction is actually had, he may ſue all, or any of them. 3 *New Abr.* 607.

And not only the drawer, accepter, and indorſer are liable, but alſo, by the cuſtom of merchants, if one merchant draw a bill which is proteſted, and another hearing thereof declare, that he, for the honour of the drawer, will pay the contents, and thereupon ſubſcribes in theſe or like words: *I the underwritten do bind myſelf as principal according to the cuſtom of merchants for the ſum mentioned in the bill of exchange, whereupon this proteſt is made, &c.* this ſhall as effectually bind him as if he had been the original drawer; and by this the perſon to whom the bill is payable hath his remedy both againſt ſuch perſon as ſurety, and alſo againſt the principal; but the principal or original drawer is liable to him who ſubſcribes for his honour. 3 *New Abr.* 608.

A. draws a bill upon *B.* who had effects enough in his hands to anſwer the bill, which ſome time after is proteſted, whereupon the bill is indorſed to *A.* the drawer, who brings an action as indorſee. *Per Parker* C. J. at *Niſi prius*, there being effects, the acceptance was not *upon the honour of the drawer*, and ſo the action is well brought; for when a merchant draws a bill on his correſpondent who accepts it, this is payment; for it makes him debtor to another perſon, who may bring his action; ſo that this is ſuch a payment as may be ſet off upon a former action, and pleaded in bar of ſuch action: But if there were no effects, the action would not lie; for it would have been an acceptance upon honour only, and the money would be recovered only to be recovered again. *Vin. Abr.* tit. *Bills of Exchange* (H. 12.) 12 *Mod. Trin.* 10 *Anne*, *B. R. Loviere* v. *Lanbray.*

If the indorſee of a bill accepts but two-pence from the acceptor, he can never reſort to the drawer. *L. Raym.* 743. *Taſſel* and *Lee* v. *Lewis.*

With reſpect to the perſon intitled to receive the money.

It is to be paid to him in whoſe favour the bill is drawn, or to the *indorſee*, in caſe it be indorſed over; of which indorſement it ſeems the drawer, accepter and drawee muſt take notice at their peril; alſo if there are ſeveral indorſers and indorſees, the laſt indorſee is intitled to the money. *Carth.* 130.

If *A.* draws a bill of exchange, payable to *B.* for the uſe of *C.* and *B.* for valuable conſideration indorſes it over to *D. D.* may bring an action againſt *A.* the drawer; and he cannot plead, that the money was extended in his hands at the ſuit of the king, for a debt due from *C.* for *C.* being only *ceſtui que truſt*, had only an equitable intereſt, and no legal remedy for the money; and *B.* is only reſponſible in equity to *C.* for the breach of truſt. *Carth.* 5. *Skin.* 264. 1 *Show.* 5.

A *bill of exchange* directed to one to pay ſo much for value received, ſhall be a good diſcharge of the debt, if the *bill* be not returned back to the drawer in time, although it be not paid; for keeping the *bill* long, is evidence that he hath agreed to take the merchant as debtor. *Ibid.* 126.

A perſon gives a *bill of exchange*, &c. upon a third perſon to another in payment, and he takes it abſolutely, if the party giving the bill, knew the third perſon to be breaking or in a failing condition, and the receiver of the *bill* uſes all diligence to get payment, but cannot, this is a fraud and no payment; though if a man takes a note or *bill*, and after it is payable makes no demand, ſo that it might be paid if he had been diligent enough, then if the party on whom the *bill* is drawn fails, it is at the peril of him that took it. *Mod. Caſ.* 147. A drawer of a *bill of exchange* is always anſwerable, by the value received, though there be no tender of the *bill* for payment, or it be not proteſted, unleſs the perſon on whom drawn break, and then it is otherwiſe, for in that caſe the party who paid the money for the *bill* loſeth it. 2 *Show.* 319.

According to the caſe of *Banbury* v. *Liſſet* and *Gilly*, *Stra.* 1211. the words value received are abſolutely neceſſary in a *bill of exchange*. So reſolved in that caſe, where it was left to a ſpecial jury of merchants. Vide *Stat.* 3 & 4 *Ann. c.* 9.

VII. *With regard to the action, &c.*

It ſeems agreed, that againſt the drawer an action of *debt*, or a general *indebitatus aſſumpſit* will lie; for he having received the money, the law raiſes a contract, and lays him under an obligation to pay it; but it hath been adjudged that neither an action of debt, nor an *indebitatus aſſumpſit* will lie againſt the accepter of a bill of exchange, and therefore the remedy againſt him muſt be by a ſpecial action on the caſe founded on the cuſtom of merchants; for the acceptance is only a collateral engagement to pay the debt of another, in the ſame manner as a promiſe by a ſtranger to pay, *&c.* if the creditor will forbear his debt. 3 *New Abr.* 614. *Hard.* 485.

Where a bill is drawn payable to *A. B.* or bearer, an aſſignee muſt ſue in the name of him to whom it is made payable, and not in his own name; otherwiſe a ſtranger finding the bill, might recover: if it be made payable to *A. B.* or order, there an aſſignee muſt ſue in his own name, becauſe the order muſt be made by indorſement, *&c.* 3 *Salk.* 67.

As to the manner of declaring on a bill of exchange, it ſeems to be now ſettled, that the cuſtom of merchants concerning bills of exchange being part of the Common law, of which the judges will take notice *ex officio*, it is unneceſſary to ſet forth the cuſtom ſpecially in the declaration: it is ſufficient to ſay, that ſuch a perſon, *according to the uſage and cuſtom of merchants*, drew the bill. 3 *New Abr.* 614.

As by the cuſtom of merchants public notaries uſually proteſt bills, it hath been held, that pleading *proteſtavit ſeu proteſtari cauſavit*, is ſufficient; and that the party may plead *proteſtavit*, and give in evidence that the notary public did it. 3 *New Abr.* 613. *Cumb.* 153.

A perſon may plead the ſtatute of limitations to an action upon a bill of exchange; and it is no good replication, that it was on account between merchants, where it appears to be for *value received*. *Comber.* 190, 392.

Indorſee, in action againſt the indorſer, need not prove the drawer's hand, becauſe, though it be a *forged bill*, the indorſer is bound to pay it. 1 *Salk.* 127. *pl.* 9. *Paſch.* 11 *W.* 3. *coram Holt* at *Guildhall*, *Lambert* v. *Park.*

If a man has a bill of exchange, he may authoriſe another to indorſe his name upon it by parol; and when that is done, it is the ſame as if he had done it himſelf. *Per Holt* Ch. J. 12 *Mod.* 564. *Mich.* 13 *W.* 3. at *Niſi prius*. *Anon'.*

An action on a bill of exchange, being by an executor, and upon a debt laid to be due to teſtator, it was held neceſſary to prove that the acceptance was in the teſtator's time; *per Holt* Ch. J. 12 *Mod.* 447. at *Niſi prius*, *coram Holt*, *Paſch.* 13 *W.* 3. *Anon'.* Where acceptance of a bill of exchange, in ſatisfaction of a former debt, ſhall be deemed payment, ſee 3 & 4 *Ann.* c. 19. *ſect.* 7.

For other matter concerning this head, ſee the foregoing diviſions *ſparſim*.

VIII. *Of bills loſt, ſtolen, or forged.*

Concerning this head it is to be obſerved, that if a bank bill payable to *A. B.* or bearer, be loſt, and it is found by a ſtranger, payment to him would indemnify the bank; yet *A. B.* may have trover againſt the finder, though not againſt his aſſignee for valuable conſideration, which creates a property. 3 *Salk.* 71.

If a poſſeſſor of a bill by any accident loſes it, he muſt cauſe intimation to be made by a *notary public* before witneſſes, that the bill is loſt or miſlaid, requiring that payment be not made of the ſame to any perſon without his privity. And if any bill of exchange for five pounds or upwards, drawn in, or dated at and from any place of this kingdom, ſhall be loſt, the drawer of the bill ſhall give another bill of the ſame tenor, ſecurity being given to indemnify him in caſe the bill ſo loſt be found again. 9 & 10 *W.* 3. c. 17.

Stealing of bills of exchange, notes, *&c.* is felony in the ſame degree, as if the offender had robbed the owner of ſo much money, *&c.* And the forging bills of exchange, or notes for money, indorſements, *&c.* is felony, by *Stat.* 2 *Geo.* 2. c. 25. 9 *Geo.* 2. c. 18. And *vide* 31 *Geo.* 2. c. 22. *ſ.* 78. And by 7 *Geo.* 2. c. 22. Forging the acceptance of a bill of exchange is felony without benefit of clergy.

There are not only bills of exchange, but bills of credit between merchants, the form whereof are as follow:

Form of a bill of exchange.

250 l. ſterling. London, 10 Auguſt 1776.

AT *double uſance pay this my firſt* bill of exchange *to* Mr. C. D. *merchant, or order, the ſum of two hundred and fifty pounds* ſterling, *for the value here received of the ſaid* C. D. *And place it to account as by advice from*

Yours, &c. A. B.

To Mr. *E. F.* merchant,
in *Amſterdam*.

Form of a bill of credit.

THIS preſent writing *witneſſeth, That I* A. B. *of* London, *merchant, do undertake, to and with* C. D. *of*, &c. *merchant, his executors and adminiſtrators, that if he the ſaid* C. D. *do deliver, or cauſe to be delivered unto* E. F. *of*, &c. *or to his uſe, any ſum or ſums of money amounting to the ſum of*, &c. *of lawful* Britiſh *money, and ſhall take a bill under the hand and ſeal of the ſaid* E. F. *confeſſing and ſhewing the certainty thereof; that then I, my executors or adminiſtrators, having the ſame* bill *delivered to me or them, ſhall and will immediately, upon the receipt of the ſame, pay, or cauſe to be paid unto the ſaid* C. D. *his executors or aſſigns, all ſuch ſums of money as ſhall be contained in the ſaid* bill, *at*, &c. *For which payment in manner and form aforeſaid, I bind myſelf, my executors, adminiſtrators and aſſigns, by theſe preſents.* In witneſs, *&c.*

Form of a proteſt of a bill of credit.

KNOW all men, *That I* A. B. *on the day*, &c. *at the uſual place of abode of* C. D. *have demanded payment of the* bill *of which the above is a copy, which the ſaid* C. D. *did not pay, wherefore I the ſaid* A. B. *do hereby proteſt the ſaid* bill. Dated, *&c.*

A common bill *or note for money.*

I *Promiſe to pay to* Mr. C. D. *or order, the ſum of one hundred pounds (for value received) within twenty-one days after the date hereof (or on demand, &c.)* Witneſs *my hand this twentieth day of* Auguſt 1770.
100 *l.* 0 *s.* 0 *d.* A. B.

Vide farther as to bills of exchange, *Black. Com.* 2 *V.* 466. As to forging a bill or note, 4 *V.* 246. As to ſtealing of the ſame, 4 *V.* 234.

Bill of lading, Is a memorandum ſigned by maſters of ſhips, acknowledging the receipt of the merchants goods, *&c.* Vide *Lex Mercatoria.*

Bill of ſale, Is a ſolemn contract under ſeal, whereby a man paſſes the right or intereſt that he hath in goods and chattels; for if a man promiſes or gives any chattels without valuable conſideration, or without delivering poſſeſſion, this doth not alter the property, becauſe it is *nudum pactum unde non oritur actio*; but if a man ſells goods by deed under ſeal duly executed, this alters the property between the parties, though there be no conſideration, or no delivery of poſſeſſion, becauſe a man is eſtopped to deny his own deed, or affirm any thing contrary to the manifeſt ſolemnity of contracting. *Yelv.* 196. *Cro. Jac.* 270. 1 *Brown.* 111. 6 *Co.* 18.

But what is chiefly to be conſidered under this head, is the ſtatute of 13 *Eliz. cap.* 5. by which it is enacted, "That all fraudulent conveyances of lands, *&c.* goods and chattels, to avoid the debt or duty of another, ſhall (as againſt the party only, whoſe debt or duty is ſo endeavoured to be avoided) be utterly void, except grants made *bona fide*, and on a *good* (which is conſtrued a *valuable*) *conſideration*. And by the latter clauſe of that ſtatute it is provided, That all parties to ſuch fraudulent conveyance, who, being privy thereunto, ſhall wittingly juſtify the ſame to be done *bona fide* and on good conſideration, or ſhall alien or aſſign any lands, leaſe or goods ſo to them conveyed as aforeſaid, ſhall forfeit one year's value of the lands, leaſe, rent, common or other profit out of the ſame, and the whole value of the goods; and being thereof convicted ſhall ſuffer half a year's impriſonment without bail; the forfeiture to be divided between the queen and the party grieved.

A. being indebted to *B.* in 400*l.* and to *C.* in 20*l.* *C.* brings debt againſt him, and, pending the writ, *A.* being poſſeſſed of goods and chattels to the value of 300*l.* makes a ſecret conveyance of them all without exception, to *B.* in ſatisfaction of his debt; but, notwithſtanding, continues in poſſeſſion of them, and ſells ſome of them, and others of them, baing ſheep, he ſets his mark on: and reſolved that it was a fraudulent gift and ſale within the aforeſaid ſtatute, and ſhall not prevent *C.* of his execution for his juſt debt; for though ſuch ſale hath one of the qualifications required by the ſtatute, being made to a creditor for his juſt debt, and conſequently on a valuable conſideration; yet it wants the other; for the owners's continuing in poſſeſſion, is a fixed and undoubted character of a fraudulent conveyance, becauſe the poſſeſſion is the only *indicium* of the property of a chattel, and therefore this ſale is not made *bona fide*. 5 *Co.* 80. *Mo.* 638. 2 *Bulſt.* 226.

As the owner's continuing in poſſeſſion of goods after his bill of ſale of them, is an undoubted badge of a fraudulent conveyance, becauſe the poſſeſſion is the only *indicium* of the property of a chattel, which is a thing unfixed and tranſitory; ſo there are other marks and characters of fraud; as a general conveyance of them all without any exception; for it is hardly to be preſumed, that a man will ſtrip himſelf entirely of all his perſonal property, not excepting his bedding and wearing apparel, unleſs there was ſome ſecret correſpondence and good underſtanding ſettled between him and the vendee, for a private occupancy of all, or ſome part of the goods for his ſupport; alſo a ſecret manner of tranſacting ſuch bill of ſale, and unuſual clauſes in it: as that it is made honeſtly, truly, and *bona fide*; are marks of fraud and colluſion; for ſuch an artful and forced dreſs and appearance give a ſuſpicion and jealouſy of ſome defect varniſhed over with it. 3 *Co.* 81. *Mo.* 638.

If goods continue in the poſſeſſion of the vendor after a bill of ſale of them, though there is a clauſe in the bill that he ſhall account annually with the vendee for them, yet it is a fraud; ſince, if ſuch colouring were admitted, it would be the eaſieſt thing in the world to avoid the proviſions and cautions of the aforeſaid act. *Mo.* 638.

If *A.* makes a bill of ſale of all his goods, in conſideration of blood and natural affection, to his ſon, or one of his relations, it is a void conveyance in reſpect of creditors; for the conſiderations of blood, *&c.* which are made the motives of this gift, are eſteemed in their nature inferior to valuable conſiderations, which are neceſſarily required in ſuch ſales, by 13 *Eliz. cap.* 5.

If *A.* makes a bill of ſale to *B.* a creditor, and afterwards to *C.* another creditor, and delivers poſſeſſion at the time of ſale to neither; afterwards *C.* gets poſſeſſion of them, and *B.* takes them out of his poſſeſſion, *C.* cannot maintain treſpaſs, becauſe the firſt bill of ſale is fraudulent againſt creditors, and ſo is the ſecond, yet they both bind *A.* and *B.*'s is the elder title, and the naked poſſeſſion of *C.* ought not to prevail againſt the title of *B.* that is prior, where both are equally creditors, and poſſeſſion at the time of the bill of ſale is delivered over to neither. *Abr. Eq.* 148.

Fraud may be *given in evidence*, to defeat a fraudulent and covinous conveyance, and the party that offers it need not plead it; for the acts to prevent fraud are to be conſtrued favourably in ſuppreſſion of the miſchief; beſides, it were an hardſhip to force the party to plead a thing that is managed with ſo much ſubtlety, that he cannot attain a competent knowledge of it to plead it in due time. 5 *Co.* 60.

Bill of Store, A kind of licence granted at the *cuſtom-houſe* to merchants to carry ſuch ſtores and proviſions as are neceſſary for their voyage, cuſtom free. A *bill of ſufferance* is a licence granted to a merchant, to ſuffer him to trade from one *Engliſh* port to another, without paying cuſtom. *An.* 14 *Car.* 2. c. 11.

Billets of Gold, (Fr. *billet*) Are wedges or ingots of gold, mentioned in the ſtatute 27 *E.* 3. c. 27.

Billet Wood, Is ſmall wood for fuel, which muſt be three foot and four inches long, and ſeven inches and a half in compaſs, *&c.* Juſtices of peace ſhall inquire by the oaths of ſix men of the aſſiſe of *billet*, and being under ſize, it is to be forfeited to the poor. *Stat.* 43 *Eliz. c.* 14. Vide 9 *An. c.* 15. 10 *An. c.* 6. See *Fuel.*

Billingſgate market to be kept every day, and toll is appointed by ſtatute: all perſons buying *fiſh* in this market may ſell the ſame in any other market by retail; but none but fiſhmongers ſhall ſell them in ſhops: if any perſon ſhall buy any quantity of fiſh at *Billingſgate* for others, or any fiſhmonger ſhall ingroſs the market, they incur a penalty of 20 *l.* And fiſh imported by foreigners ſhall be forfeited, and the veſſel, *&c.* See 10 & 11 *W.* 3. *c.* 24. 1 *Geo.* 1. *Stat.* 2. *c.* 18. *ſ.* 1. *&c.* Vide *Fiſh* and *Fiſherman.*

Billus, A ſtick or ſtaff, which in former times was the only weapon for ſervants.—*Si quis in ſervum tranſeat, in ſignum hujus tranſitionis* billum *vel ſtrublum, vel deinceps ad hunc modum ſervitutis arma ſuſcipiat, & in manum domini mittat.* Leg. H. 1. c. 78.

Binnarium, *binna, benna*, Stews or water penned up for feeding and preſerving of fiſh.——*Expenſæ in piſce ad inſtaurandum* binnarium *empto* xii *s.* Conſuetud. Dom. de Farrend. MS. f. 29. *Vide* Stat. 3 Ed. 1.

Biothanetus, One who deſerves to come to an untimely end. *Ordericus Vitalis*, writing of the death of *William Rufus*, who was ſhot by *Walter Tyrrel*, tells us, that the biſhops, conſidering his wicked life and bad *exit*, adjudged him *eccleſiaſtica veluti* biothanetum *abſolutione indignum*. Lib. 10. p. 782.

Birrettum, A thin cap fitted cloſe to the ſhape of the head: and is alſo uſed for the cap or coif of a judge, or ſerjeant at law. *Spelm.*

Births, Burials, and Marriages, &c. By ſtatute, a duty was granted on *births* and *burials* of perſons, from 50 *l.* a duke, *&c.* down to 10 *s.* and 2 *s.* And the like on *marriages*; alſo *bachelors*, above twenty-five years of age, were to pay 1 *s.* yearly. *Stat.* 6 & 7 *W.* 3. *c.* 6. Exp. as to the duties.

Biſacutus, An iron weapon double edged, ſo as to cut on both ſides. *Fecit eidem unam plagam mortalem de quadam* biſacuta. *Fleta. lib.* 1. *c.* 33.

Biſantium, *beſantine*, or *beſant*, An antient coin firſt coined by the Weſtern emperors at *Bizantium* or *Conſtantinople*. It was of two ſorts gold and ſilver; both which were current in *England*. *Chaucer* repreſents the gold *beſantine* to have been equivalent to a ducket; and the ſilver *beſantine* was computed generally at two ſhillings. In ſome old leaſes of land there have been reſerved, by way of rent, *unum* biſantium, *vel duos ſolidos.*

Biſcot, At a ſeſſion of *ſewers* held at *Wigenhale* in *Norfolk*, 9 *Ed.* 3. it was decreed, That if any ſhould not repair his proportion of the banks, ditches and cauſeys by a day aſſign'd, XII*d.* for every perch unrepair'd ſhould be levied upon him, which is called a *bilcot*: and if he ſhould not, by a ſecond day given him, accompliſh the ſame, then he ſhould pay for every perch 2 *s.* which is called *biſcot*. Hiſt. of Imbanking and Draining, f. 254.

Biſhop, (*epiſcopus*) Is the chief of the clergy in his dioceſe, and the archbiſhop's ſuffragan or aſſiſtant. He is elected by the king's *conge d'eſlire*, or licence to elect the perſon named by the king, directed to the dean and chapter; and if they fail to make election in twenty days, they incur the penalty of a *præmunire*, and the king may nominate, *&c.* by letters patent. *Stat.* 25 *H.* 8. *c.* 20. This was to avoid the power of the ſee of *Rome*. The dean and chapter having made their election certify it to the king, and the archbiſhop, *&c.* And then the

King gives the royal aſſent under the Great Seal, directed to the archbiſhop, commanding him to confirm and conſecrate the biſhop elect; and, on confirmation, a biſhop hath juriſdiction in his dioceſe; but he hath not a right to his temporalities till conſecration. The conſecration of biſhops, *&c.* is confirmed by act of parliament.

It is held a biſhop hath three powers; 1ſt, His power of ordination, which is gained on his conſecration, and not before; and thereby he may confer orders, *&c.* in any place throughout the world. 2. His power of juriſdiction, which is limited and confined to his ſee. 3. His power of adminiſtration and government of the revenues; both which laſt powers he gains by his confirmation: and ſome are of opinion, that the biſhop's juriſdiction, as to miniſterial acts, commences on his election. *Palm. Rep.* 473, 474, 475.

The king may not ſeize into his hands the temporalities of biſhops but upon juſt cauſe, and not for a contempt, which is only finable. Biſhops are allowed four years for payment of their firſt fruits, by a late ſtatute, and every biſhop may retain four chaplains. Vide 21 *Hen.* 8. *c.* 13. *ſ.* 14. 8 *Eliz. c.* 1. and *Table to Statutes*, tit. *Biſhops* and *Chaplains*.

A biſhop hath his conſiſtory court, to hear eccleſiaſtical cauſes; and is to viſit the clergy, *&c.* He conſecrates churches, ordains, admits, and inſtitutes prieſts; confirms, ſuſpends, excommunicates, grants licences for marriage, makes probate of wills, *&c. Co. Lit.* 96. 2 *Rol. Abr.* 230. He hath his archdeacon, dean and chapter, chancellor, and vicar-general, to aſſiſt him: may grant leaſes for three lives, or twenty-one years, of land uſually letten, reſerving the accuſtomed yearly rents. *Stat.* 32 *H.* 8. *c.* 28. And vide 1 *El. c.* 19. *ſ.* 5. Leaſes otherwiſe made are void. Biſhops may make concurrent leaſes for twenty-one years, upon leaſes for the like term, with confirmation of dean and chapter. Biſhops are barons and lords of parliament.

See more concerning this title in *Burn's Eccleſiaſtical Law.* And *Black. Com.* 1 *V.* 155, 377, 401. And as to the not electing, or not conſecrating of a biſhop, 4 *V.* 115. And as to the right of a biſhop to try, or be tried, as a peer, 4 *V.* 261, 262.

Biſhopricks, The dioceſe of a biſhop, or that circuit, wherein he hath juriſdiction. With reſpect to the nomination to biſhopricks, vide *Black Com.* 1 *V.* 378. 4 *V.* 107, 408, 423.

Biſſa, (Fr. *biche*) *cerva major*, A hind.—*Decimam venationis noſtræ, ſcil. de cervis*, biſſis, *damis, porcis & laiis* Mon. Angl. vol. 1. fol. 648.

Biſſextile, (*biſſextilis*) Leap year, ſo called becauſe the ſixth day before the calends of *March* is twice reckoned, *viz.* on the 24th and 25th of *February*; ſo that the biſſextile year hath one day more than the others, and happens every fourth year. This intercalation of a day was firſt invented by *Julius Cæſar*, to make the year agree with the courſe of the ſun. And, to prevent all doubt and ambiguity that might ariſe thereupon, it is enacted by the ſtatute *de anno biſſextili*, 21 *H.* 3. That the day increaſing in the leap-year, and the day next before, ſhall be accounted but one day. *Brit.* 209. *Dyer* 17. The new ſtile to be uſed, by *Stat.* 24 *Geo.* 2. *c.* 23. See *Year*, Vide alſo *Black. Com.* 2 *V.* 141.

Biſus, *biſius, mica* biſa, *panis* biſius, (Fr. *pain bis*) Brown bread, a brown loaf. *Cowel.*

Black Act. By *Stat.* 9 *Geo.* 1. *cap.* 22. ſo called, Perſons hunting armed and diſguiſed, and killing or ſtealing deer, or robbing warrens, or ſtealing fiſh out of any river, *&c.* or any perſons unlawfully hunting in his majeſty's foreſts, *&c.* or breaking down the head of any fiſh-pond, or killing, *&c.* of cattle, or cutting down trees, or ſetting fire to houſe, barn, or wood, or ſhooting at any perſon, or ſending anonymous letters, or ſigned with fictitious name, demanding money, *&c.* or reſcuing ſuch offenders, are guilty of felony without benefit of clergy. This act is made perpetual by 31 *Geo.* 2. *c.* 42. And ſee farther 6 *Geo.* 2. *c.* 37. and 27 *Geo.* 2. *c.* 15. Vide *Black. Com.* 4 *V.* 144, 208, 232, 244.

Black-Book, Is a book lying in the *Exchequer.* See *Stat. Annals* 154.

Black Lead. By 25 *Geo.* 2. *c.* 10. Entering mines of black lead, with intent to ſteal, is made felony; and by the ſame act offenders committed or tranſported for entering mines of black lead with intent to ſteal, eſcaping, or breaking priſon, or returning from tranſportation, are excluded from clergy.

Black-Mail, (Fr. *maille*, a link of mail; or ſmall piece of metal or money) Signifies in the north of *England*, in the counties of *Cumberland, Northumberland*, *&c.* a certain rent of money, corn, or other thing, anciently paid to perſons inhabiting upon or near the borders, being men of name and power, allied with certain robbers within the ſaid counties; to be freed and protected from the devaſtations of thoſe robbers. *Anno* 43 *Eliz. cap.* 13. Theſe robbers were called *moſs troopers*, and ſeveral ſtatutes have been made againſt them. The 9 *Ed.* 3. *c.* 4. mentions *black money*; and *black rents* are the ſame with *black mail*; being rents formerly paid in proviſions and fleſh. And by 18 *Car.* 2. *c.* 3. Notorious thieves, or ſpoil-takers in *Northumberland* or *Cumberland* are excluded clergy, or may be tranſported at diſcretion of the judge. Vide *Black. Com.* 2 *V.* 43. 4 *V.* 243.

Black-Rod, The gentleman *uſher of the black rod* is chief gentleman uſher to the king; he belongs to the garter, and hath his name from the *black rod*, on the top whereof ſits a lion in gold, which he carrieth in his hand. He is called in the *Black Book*, fol. 255. *Lator virgæ nigræ, & hoſtiarius*; and in other places *virgæ bajulus.* His duty is *ad portandum virgam coram domino rege ad feſtum ſancti* Georgii *infra caſtrum de* Windſore: and he hath the keeping of the chapter-houſe door, when a chapter of the order of the garter is ſitting; and in the time of parliament, he attends on the houſe of peers. His habit is like to that of the regiſter of the order, and garter king at arms; but this he wears only at the ſolemn times of the feſtival of St. *George*, and on the holding of chapters. The *black rod* he bears, is inſtead of a mace, and hath the ſame authority; and this officer hath anciently been made by letters patent under the great ſeal, he having great power; for to his cuſtody all peers, called in queſtion for any crime, are firſt committed.

Blacks of Waltham, A ſet of deſperate deer ſtealers. See *Waltham Blacks.*

Blackwell-Hall. The public market of *Blackwell-hall* is to be kept every *Thurſday, Friday*, and *Saturday*, at certain hours appointed; and the hall-keepers not to admit any buying or ſelling of *woollen cloth* at the ſaid hall upon any other days or hours, on penalty of 100 *l.* Factors ſelling cloth out of the market, ſhall forfeit 5 *l.* *&c.* Regiſters of all the cloths bought and ſold are to be weekly kept: and buyers of cloth otherwiſe than for ready money, ſhall give notes to the *ſellers* for the money payable; and factors are to tranſmit ſuch notes to the *owners* in twelve days, or be liable to forfeit double value, *&c.* *Stat.* 8 & 9 *W.* 3. *cap.* 9.

Bladarius, A corn-monger, meal-man, or corn-chandler. It is uſed in our records for ſuch a retailer of corn. *Pat.* 1 *Ed.* 3. *par.* 3. *m.* 13. See title **Clothiers.**

Blade, (*bladum*) In the *Saxon* ſignifies generally fruit, corn, hemp, flax, herbs, *&c.* *Will. de Mohun* releaſed to his brother all the manor of *T.*——*Salvo inſtauro ſuo &* blado, *&c.* excepting his ſtock and corn on the ground. Hence *bladier* is taken for an ingroſſer of corn or grain. ——*Sciant quod ego* Willielmus Alreton, *conſenſu & voluntate* Beatricis *uxoris meæ, dedi* Agathæ Gille *pro duabus marcis argenti & una menſura* bladi, *duas ſolidatus redditus in villa* Leominſtr. *&c.* Ex libro Chartar. Priorat. Leominſtriæ.

Blanch-Firmes, In ancient times the crown-rents were many times reſerved *in libris albis*, or *blanch firmes*: In which caſe the buyer was holden *de-albare firmam, viz.* his baſe money or coin, worſe than ſtandard, was molten down in the *Exchequer*, and reduced to the fineneſs of ſtandard ſilver; or inſtead thereof, he paid to the King 12 *d.* in the pound by way of addition. *Lowndes's eſſay upon coins, p.* 5. *Blank farm*, *Blount* ſays, was a white farm; that is where the rent was paid in ſilver, and not in cattle. *Blanks*, a kind of white money coined by *Hen.* 5. in thoſe parts of *France* which were then ſubject to *England*, the value whereof was 8*d*. *Stow's Annals, p.* 586. Theſe were forbidden to be current in this realm. 2 *Hen.* 6. *c.* 9. As to *Blanch rent*, ſee *Black. Com.* 2 *V.* 42. See alſo *Alba Firma*.

Blandford, An act for rebuilding the town of *Blandford* in the county of *Dorſet*, burnt down by fire in the Year 1731, and to determine all differences between proprietors, landlords and tenants of houſes, and concerning ground, &c. *Stat.* 5 *Geo.* 2. *c.* 16.

Blanhornum, A little bell, or rather *ticinium*.—— *Pecoris ticinium, & canis oppa &* blanhornum, *horum trium ſingulum eſt unum ſolidum valen.* Leg. Adelſtan. cap. 8.

Blank-Bar, Is uſed for the ſame with what we call a *common bar*, and is the name of a plea in *bar*, which in an action of treſpaſs is put in to oblige the plaintiff to aſſign the certain place where the treſpaſs was committed: 2 *Cro. Rep.* 594.

Blanks, In judicial proceedings, certain void ſpaces ſometimes left by miſtake. A blank (ſuppoſing ſomething material wanting) in a declaration, abates the ſame, 4 *Ed.* 4, 14. 20 *H.* 6, 18. And ſuch a blank is a good cauſe of demurrer. *Blanks* in the imparlance roll aided *after verdict* for the plaintiff. *Hob.* 76. *Parker v. Parker.*

Blaſarius, Is a word uſed to ſignify an incendiary. *Blount.*

Blaſphemy, (*blaſphemia*) Is an injury offered to God, by denying that which is due and belonging to him, or attributing to him what is not agreeable to his nature. *Lindw. cap.* 1. And *blaſphemies* of God, as denying his being, or providence, and all contumelious reproaches of *Jeſus Chriſt*, &c. are offences by the Common law, puniſhed by fine, impriſonment, pillory, &c. 1 *Hawk. P. C.* 87. And by ſtatute, if any one ſhall by writing, ſpeaking, &c. deny any of the Perſons in the *Trinity*, to be God; aſſert there are more Gods than one, &c. he ſhall be incapable of any office; and for the ſecond offence, be diſabled to ſue any action, to be executor, &c. and ſuffer three years impriſonment. 9 & 10 *W.* 3. *cap.* 32.

Likewiſe by 3 *Jac.* 1. *c.* 21. perſons jeſtingly or prophanely uſing the name of *God*, or of *Jeſus Chriſt*, or of the *Holy Ghoſt*, or of the *Trinity*, in any ſtage play, &c. incurs a penalty of 10*l.*

Ble, Signifies ſight, colour, &c. And *blee* is taken for corn: As to *Boughton* under the *Blee* &c.

Blench, A ſort of tenure of land; as to hold land in *blench*, is by payment of a ſugar-loaf, a couple of capons, a beaver-hat, &c. if the ſame be demanded in the name of *blench*, i. e. *Nomine albæ firmæ.*

Blench-holding, The *white-rents*, or *blanch-farms*, *reditus albi*; this ſmall kind of payment, called in *Scotland blench-holding*, or *reditus albæ firmæ*, *Black. Com.* 2. *V.* 42. *n.* See *Alba Firma*.

Blenheim, A noble and princely houſe erected in honour of the Duke of *Marlborough* at *Woodſtock* near *Oxford*, which with the manor of *Woodſtock* is ſettled on the Duke and his heirs, in conſideration of the eminent ſervices by him performed for the public; and for building of which houſe the ſum of 500,000*l.* was granted by parliament, &c. *Stat.* 3 & 4 *Ann. c.* 6. 5 *Ann. c.* 3. & *c.* 4. 1 *Geo.* 1. *Stat.* 2. *c.* 12. *ſect.* 34.

Bleta, (Fr. *bleche*) *Pete* or combuſtible earth dug up and dried for burning.——*Miniſter & fratres de* Knareſborough *petunt quod ipſe & eorum tenentes fodiunt turbas &* bletas *in* foreſta de Knareſborough. *Rot. Parl.* 35 *Ed.* 1.

Blinks, Boughs broken down from trees, and thrown in a way where deer are likely to paſs.

Bliſſom, Corruptly called *bloſſom*, is when a ram goes to the ewe, from the *Teuton. Blets*, the bowels.

Bloated Fiſh or Herring, Are thoſe which are half dried. *Anno* 18 *Car.* 2. *c.* 2.

Bloncus, (Sax. *blod*) Deep red colour; from whence comes bloat and bloated, *viz.* ſanguine and high coloured, which in *Kent* is called a *blouſing* colour; and a *blouſe* is there a red-faced wench. The prior of *Burceſter*, *A. D.* 1425. gave his liveries of this colour. *Paroch. Antiq.* 376.

Blood, (*ſanguis*) Is regarded in diſcents of lands; for a perſon is to be the next and moſt worthy of *blood* to inherit his anceſtor's eſtate. *Co. Lit.* 13. See *Jenk. Cent.* 203.

Bloodwit, or *bloudwit*, compounded of the Sax. *blod*, i. e. *ſanguis* and *wyte*, an old *Engliſh* word ſignifying *miſericordia*, Is often uſed in ancient charters of liberties for an amercement for bloodſhed. *Skene* writes it *bloudweit*; and ſays *weit* in *Engliſh* is *injuring* and that *bloudweit* is an amerciament or *unlaw* (as the *Scotch* call it) for wrong or injury, as bloodſhed is: for he that hath *bloudweit* granted him, hath free liberty to take all amerciaments of courts for effuſion of blood. *Fleta* ſaith, *Quod ſignificat quietantiam miſericordiæ pro effuſione ſanguinis.* Lib. 1. cap. 47. And, according to ſome writers, *bloodwite* was a cuſtomary fine paid as a compoſition and atonement for ſhedding or drawing of blood; for which the place was anſwerable, if the party was not diſcovered: and therefore a privilege or exemption from this fine or penalty, was granted by the King, or ſupreme Lord, as a ſpecial favour. So king *Henry* II. granted to all tenants within the honour of *Willingford*, *Ut quieti ſint de Hidagiis*, & blodewite, &c.——Paroch. Antiq. 114.

Bloody-Hand, Is one of the four kinds of circumſtances by which an offender is ſuppoſed to have killed deer in the King's foreſt: and it is where a treſpaſſer is apprehended in the foreſt, with his *hands* or other parts *bloody*, though he be not found chaſing or hunting of the deer. *Manwood.* In *Scotland*, in ſuch like crimes, they ſay taken in the fact, or with the *red hand*. See *Backberind.*

Blubber, Is whale oil, before it is thoroughly boiled and brought to perfection. It is mentioned *Stat.* 12 *Car.* 2. *c.* 18.

Bock-hord, or *book-hoard* (*librorum horreum*) A place where books, evidences, or writings are kept.

Bockland, (Sax. *quaſi bookland*) A poſſeſſion or inheritance held by evidence in writing. Bockland *vero eo poſſidendi transferendique lege coercebatur, ut nec dari licuit nec vendi, ſed hæredibus relinquenda erat, in ſcriptis aliter permitteretur;* Terra *inde* hæreditaria *nuncupata.* LL. Aluredi, cap. 36. *Bockland* ſignifies *deed land*; and it commonly carried with it the abſolute property of the *land*, wherefore it was preſerved in writing, and poſſeſſed by the *Thanes* or nobler ſort, as *Prædium nobile, liberum & immune à ſervitiis vulgaribus & ſervilibus*, and was the ſame as *allodium*, deſcendable unto all the ſons, according to the common courſe of Nations and of Nature, and therefore called *gavelkind*; deviſable alſo by will, and thereupon termed *Terræ Teſtamentales*. *Spelm. of Feuds.* This was one of the titles which the *Engliſh Saxons* had to their *lands*, and was always in writing: there was but one more, and that was *Folkland*, *i. e. Terra Popularis*, which paſſed from one to another without any writing. See *Charter-land*. Alſo *vide Squire* on the *Anglo-Saxon Government*.

Boia, Chains or fetters, properly what we call *bernicles*. *Quidam a dolore capitis liberatus eſt; adjungens genæ ſuæ* boias, *quibus S.* Briſtanus *ligatus fuit.* Hiſt. Elien. apud Whartoni Angl. Sac. part 1. p. 618.

Bois, (*Fr.*) Wood, and *ſub-bois*, underwood. See *Boſcus.*

Bolhagium, or *boldagium*, a little houſe or cottage. *Blount.*

Bolt, A *bolt* of ſilk or ſtuff, ſeems to have been a long narrow piece; in the accounts of the priory of *Burceſter*. It is mentioned. *Paroch. Antiq. p.* 574.

Bolting, A term of art uſed in our *Inns of Court*, whereby is intended a private arguing of caſes. The manner of it at *Gray's Inn* is thus: An ancient and two barriſters ſit as judges, three ſtudents bring each a caſe, out of which the judges chuſe one to be argued, which done, the ſtudents firſt argue it, and after them the barriſters. It is inferior to *mooting*, and may be derived from the Sax. *bolt*, a houſe, becauſe done privately in the houſe for inſtruction. In *Lincoln's Inn*, *Mondays* and *Wedneſdays* are the *bolting days*, in vacation time; and *Tueſdays* and *Thurſdays* the *moot days*.

Bona fide. That we ſay is done *bona fide*, which is done really, with a *good faith*, without any fraud or deceit. *Stat.* 13 *Eliz. c.* 5. 12 *Car.* 2. *c.* 18, &c.

Bona geſtura, Good abearing, or good behaviour.—*Et ſi per furorem vel aliquos manutentores renuerit invenire ſufficientem ſecuritatem de ſua* bona geſtura *erga balivos & comburgenſes, &c. a prædicto burgo ejiciatur* MS. Codex de LL. Statutis & conſuetud. Burgi villæ Montgomer. fol. 15. See *Good Behaviour.*

Bonaght, or *bonaghty*, Was an exaction in *Ireland*, impoſed on the people at the will of the lord, for relief of the knights called *bonaghti*, who ſerved in the wars. *Antiq. Hibern. p.* 60.

Bona Notabilia. Where a perſon dies having at the time of his death goods in any other dioceſe, beſides his goods in the dioceſe where he dieth, amounting to the value of 5 *l.* at leaſt, he is ſaid to have *bona notabilia*, and then probate of his will, or granting adminiſtration, belongs to the *archbiſhop* of the *province:* but this doth not prejudice thoſe dioceſes where, by compoſition or cuſtom, *bona notabilia* are rated at a greater ſum. *Can.* 92, 93. *Perkins, ſect.* 489. And in the city of *London bona notabilia* are 10 *l.* by compoſition. 4 *Inſt.* 335. One that hath a debt upon bond or ſpecialty, *&c.* in another dioceſe, hath *bona notabilia.* 1 *Rol. Abr.* 908. Though if a perſon happens to die in another dioceſe, than that wherein he lives, on a journey, what he hath about him above the value of 5 *l. &c.* ſhall not be *bona notabilia. Can.* 93.

There muſt be ſeveral adminiſtrations where a perſon dies leaving *bona notabilia* in each province of *Canterbury* and *York*; for adminiſtration granted in one province doth not extend to goods in the other, becauſe the *archbiſhops* have diſtinct ſupreme juriſdictions; but then there is to be *bona notabilia* in ſeveral dioceſes in each province. *Dyer* 305. 2 *Lev.* 86. If a man dies in one dioceſe, without any goods, and leaves to the value of 5 *l.* in another dioceſe, the archbiſhop of that province may grant adminiſtration, as he hath a general juriſdiction there; though ſuch adminiſtration is voidable by ſentence. *Cro. Eliz.* 457. But where a biſhop grants adminiſtration, and there are *bona notabilia*, ſuch adminiſtration is merely void, for he hath no juriſdiction out of his dioceſe. 5 *Rep.* 30. 1 *Nelſ. Abr.* 381. *Vide Black. Com.* 2 *V.* 509, 510.

Bona Patria, An aſſiſe of country-men or good neighbours: It is ſometimes called *aſſiſa bonæ patriæ*, when twelve or more men are choſen out of any part of the country to paſs upon an aſſiſe; otherwiſe called *juratores*, becauſe they are to ſwear judicially in the preſence of the party, *&c.* according to the practice of *Scotland. Skene.* See *Aſſiſors.*

Bona peritura, Goods that are periſhable. The *Stat.* 13 *E.* 1. *cap.* 4. which enacts, That where any thing eſcapes alive out of a Ship caſt away, the Ship ſhall not be adjudged wreck, but the cargo ſhall be ſaved and kept by the view of the ſheriff, *&c.* in the hands of thoſe of the town where the ſame was found, ſo that if any one within a year and a day can make proof that the goods are his, they ſhall be reſtored to him, *&c.* Ordains, that if the goods within the ſhip be *bona peritura*, ſuch things as will not endure for a year and a day, the ſheriff ſhall ſell them, and deliver the money received to anſwer it. See 26 *Geo.* 2. *c.* 19.

Boncha, A bunch, is derived from the old Lat. *bonna* or *bunna*, a riſing bank, for the bounds of fields: and hence *bown* is uſed in *Norfolk*, for ſwelling or riſing up in a bunch or tumour, *&c.*

Bond, Is a deed or obligatory inſtrument in writing, whereby one doth bind himſelf to another, to pay a ſum of money, or do ſome other act; as to make a releaſe, ſurrender an eſtate, for quiet enjoyment to ſtand to an award, ſave harmleſs, perform a will, *&c.* It contains an obligation, with a penalty: and a condition, which expreſsly mentions what money is to be paid, or other thing to be performed, and the limited time for the performance thereof; for which the obligation is peremptorily binding. It may be made upon parchment or paper, though it is uſually on paper; and be either in the firſt or third perſon; and the condition may be either in the ſame deed, or in another, and ſometimes it is included within, and ſometimes indorſed upon the obligation: but it is commonly at the foot of the obligation. *Bro. Obl.* 67. A *memorandum* on the back of a *bond* may reſtrain the ſame by way of exception. *Moor* 67.

This ſecurity is alſo called a *ſpecialty*; the debt being therein particularly ſpecified in writing, and the party's ſeal; acknowledging the debt or duty, and confirming the contract; rendering it a ſecurity of a higher nature than thoſe entered into without, the *ſolemnity* of a *ſeal*; and therefore *bonds* or *ſpecialties* ſhall be preferred to *ſimple contracts*, in a courſe of *adminiſtration*; and from its being a higher ſecurity, it is held, that for a breach or non-performance an action of *debt* only will lie.

A bond is a choſe in action, which cannot be aſſigned over, ſo as to enable the aſſignee to ſue in his own name; yet he has by the aſſignment ſuch a title to the paper and wax, that he may keep or cancel it. *Co. Lit.* 232.

Alſo in equity a bond is aſſignable for a valuable conſideration paid, and the aſſignee alone becomes intitled to the money; ſo that if the obligor, after notice of the aſſignment, pays the money to the obligee, he will be compelled to pay it over again. 2 *Vern.* 595. *Abr. Eq.* 44.

The aſſignee muſt take it, ſubject to the ſame equity that it was ſubject to in the hands of the obligee. 2 *Vern.* 595. *Abr. Eq.* 44.

If a man enters into a bond of ſuch a ſum, on condition to be void on payment of a leſſer ſum; or if a man bind himſelf in the penalty of 100 *l.* that he will pay 50 *l.* by ſuch a day; after the day of payment is paſt, the penalty or ſum of 100 *l.* is the legal debt; and for ſo much it hath been reſolved, an executor of an obligor of ſuch forfeited bond, may cover the aſſets of his teſtator. 1 *Cro. Car.* 490. 1 *Vent.* 354. 3 *Lev.* 368. *Hill.* 9 *Geo.* 2. *in B. R. The Bank of England* v. *Morris. Annaly's Rep. temp. Hardwicke*, 219, *&c.*

And as the penalty, by the bond's being forfeited, becomes the legal debt; ſo there was no remedy againſt ſuch penalty, but by application to a court of equity, which relieves in thoſe caſes, on payment of principal, intereſt and coſts: alſo tho' at law there can be no remedy beyond the penalty; becauſe in that the obligee ſeems to have taken up his ſecurity; yet as it is on the foundation of doing equal juſtice to both parties that equity proceeds, it will, on any application for a favour from the obligor, compel him to pay the principal, intereſt and coſts, tho' exceeding the penalty. 1 *Show. Parl. Ca.* 15. *Abr. Eq.* 91, 92. 1 *Salk.* 154. 1 *Vern.* 342, 350. 2 *Vern.* 509.

And this rule of compelling the party to do equity who ſeeks equity, ſeems to be the reaſon why an obligee ſhall have intereſt after he has entered up judgment; for tho' in ſtrictneſs it may be accounted his own fault why he did not take out execution, and therefore not intitled to intereſt; yet, as by the judgment he is intitled to the penalty, it does not ſeem reaſonable that he ſhould be deprived of it, but upon paying him principal and the intereſt, which incurred as well before as after the entering up of the judgment. *Abr. Eq.* 92, 288. And ſee farther 4 & 5 *Ann. c.* 16. which will be mentioned hereafter under its proper head.

Having ſhewn the nature of this ſecurity, it may be proper to conſider,

I. *Who may be* obligors *and* obligees.

II. *What words create ſuch ſecurity.*

III. *What ceremonies are requiſite to a bond, wherein of ſigning, ſealing and delivery.*

IV. *Of the condition of a bond, what conditions deemed lawful, &c. and what ſhall be deemed a breach of the ſame.*

V. *Of bonds void, or voidable; alſo how bonds may be diſcharged, and of the manner of pleading performance, &c.*

I. All perſons who are enabled to contract, and whom the law ſuppoſes to have ſufficient freedom and underſtanding for that purpoſe, may bind themſelves in bonds and obligations. 5 *Co.* 119. 4 *Co.* 124. 1 *Rol. Abr.* 340.

But if a perſon is illegally reſtrained of his liberty, by being confined in a common goal or elſewhere, and, during ſuch reſtraint, enters into a bond to the perſon who cauſes the reſtraint, the ſame may be avoided for *dureſs* of impriſonment. *Co. Lit.* 253. 2 *Inſt.* 482. *vid.* tit. *Dureſs.*

So in reſpect of that power and authority which a huſband has over his wife, the bond of a feme covert is *ipſo facto* void, and ſhall neither bind her nor her huſband. See **Baron and Feme.**

So though an infant ſhall be liable for his neceſſaries, ſuch as meat drink, cloaths, phyſic, ſchooling, &c. yet if he bind himſelf in an obligation, with a penalty for payment of any of thoſe, the obligation is void. *Doct. and Stud.* 113. *Co. Lit.* 172. *Cro. Jac.* 494, 560. 1 *Sid.* 112. 1 *Salk.* 279. *Cro. Eliz.* 920. See **Infants.**

Alſo though a perſon *non compos mentis* ſhall not be allowed to avoid his bond, by reaſon of inſanity and diſtraction, as no man can be allowed to ſtultify himſelf, becauſe of the ill conſequences that might attend counterfeit madneſs; yet may a privy in blood, as the heir, and privies in repreſentation, as the executor and adminiſtrator, avoid ſuch bonds; alſo if a lunatick after office found, enters into a bond, it is merely void. 4 *Co.* 124. *Beverley*'s caſe. See **Infants and Lunaticks.**

But if an infant, feme covert, monk, &c. who are diſabled by law to contract, and to bind themſelves in bonds, enter together with a ſtranger, who is under none of theſe diſabilities, into an obligation, it ſhall bind the ſtranger, though it be void as to the infant, &c. 1 *Rol. Rep.* 41.

If a ſervant makes a bill in form, *Memorandum*, that I have received of *Edward Talbot*, to the uſe of my maſter Serjeant *Gaudy*, the ſum of 40*l.* to be paid at *Michaelmas* following, and thereto ſet his ſeal, this is a good obligation to bind himſelf; for though, in the beginning of the deed, the receipt is ſaid to be to the uſe of his maſter, yet the re-payment is general, and muſt neceſſarily bind him who ſealed; and the rather, becauſe otherwiſe the obligee would loſe his debt; he having no remedy againſt Serjeant *Gaudy*. Yelv. 137. Talbot *ver.* Godbolt.

Infants, ideots, as alſo feme coverts may be obligees; and as to this the huſband is ſuppoſed to aſſent, being for his advantage; but if he diſagrees, the obligation hath loſt its force; ſo that after the obligor may plead *non eſt factum*; but if he neither agrees nor diſagrees, the bond is good, for his conduct ſhall be eſteemed a tacit conſent, ſince it is to his advantage. 5 *Co.* 119. *b. Co. Lit.* 3. *a.*

But a feme covert can neither be obligor nor obligee to her huſband, nor *vice verſa*, being but one perſon in law; alſo by the better opinion, a bond entered into, to a feme ſole, by the perſon whom ſhe afterwards marries, is, by the marriage, in law extinguiſhed. See **Baron and Feme.**

An alien may be an obligee, for ſince he is allowed to trade and traffick with us, it is but reaſonable to give him all that ſecurity which is neceſſary in his contracts, and which will the better enable him to carry on his commerce and dealings amongſt us. *Co. Lit.* 129. *b. Moor* 431. *Cro. Eliz.* 142, 683. *Cro. Car.* 9. 1 *Salk.* 46. *Fareſt.* 15. See **Alien.**

Sole corporations, ſuch as biſhops, prebends, parſons, vicars, &c. cannot be obligees, and therefore a bond made to any of theſe, ſhall enure to them in their natural capacities; for no ſole body politick can take a chattel in ſucceſſion, unleſs it be by cuſtom; but a corporation aggregate may take any chattel, as bonds, leaſes, &c. in its political capacity, which ſhall go in ſucceſſion, becauſe it is always in being. *Cro. Eliz.* 464. *Dyer* 48. *a. Co. Lit.* 9. *a.* 46. *a. Hob.* 64. 1 *Roll Abr.* 515.

If a drunken man gives his bond it binds him; and a *bond* without conſideration is obligatory, and no relief ſhall be had againſt it, for it is voluntary, and as a gift. *Jenk. Cent.* 169. A perſon enters voluntarily into a *bond*, though there was not any conſideration for it, if there be no fraud uſed in obtaining the ſame, the *bond* ſhall not be relieved againſt in equity: but a voluntary *bond* may not be paid in a courſe of adminiſtration, ſo as to take place of real debts, even by ſimple contract; yet it ſhall be paid before legacies. 1 *Chan. Caſ.* 157. An heir is not bound, unleſs he be named expreſsly in the *bond*; tho' the executors and adminiſtrators are.

It is clearly agreed that two or more may bind themſelves jointly in an obligation, or they may bind themſelves jointly and ſeverally; in which laſt caſe, the obligee may ſue them jointly, or he may ſue any one of them at his election; but if they are jointly and not ſeverally bound, the obligee muſt ſue them jointly; alſo, in ſuch caſe, if one of them dies, his executor is totally diſcharged, and the ſurvivor and ſurvivors only chargeable. 2 *Rol. Abr.* 148. *Dyer* 19. 310. 5 *Co.* 19. *Dal.* 85. *pl.* 42. 1 *Salk.* 393. *Carth.* 61. 1 *Lutw.* 696.

If three enter into an obligation, and bind themſelves in the words following, *Obligamus nos & utrumque noſtrum per ſe pro toto & in ſolido*, theſe make the obligation joint and ſeveral. *Dyer* 19. *b. pl.* 114.

In a *bond* where ſeveral are bound ſeverally, the obligee is at his election to ſue all the obligors together, or all of them apart, and have ſeveral judgments and executions; but he ſhall have ſatisfaction but once, for if it be of one only, that ſhall diſcharge the reſt. *Dyer* 19, 310. Where two or more are bound in a joint *bond*, and only one is ſued, he muſt plead in abatement, that two more ſealed the *bond*, &c. and aver that they are living, and ſo pray judgment *de billa*, &c. And not demur to the declaration. *Sid.* 420.

If action be brought upon a *bond* againſt two joint and ſeveral obligors jointly, and both are taken by *capias*, here the death or eſcape of one, ſhall not releaſe the other; but the ſame kind of execution muſt be taken forth againſt them: it is otherwiſe when they are ſued ſeverally. *Hob.* 59.

Alſo, if two or more be jointly bound, though regularly one of them alone cannot be ſued, yet if proceſs be taken out againſt all, and one of them only appears, but the others ſtand out to an outlawry, he who appeared ſhall be charged with the whole debt. 9 *Co.* 119.

If a *bond* is made to three, to pay money to one of them, they muſt all join in the action, becauſe they are but as one obligee. *Yelv.* 177.

So if an obligation be made to three, and two bring their action, they ought to ſhew the third is dead. 1 *Sid.* 238, 420. 1 *Vent.* 34.

Though there be ſeveral obligees, yet a perſon cannot be bound to ſeveral perſons ſeverally; and therefore an obligation of 200*l.* to two, *ſolvend'* the one 100*l.* to the one, and the other to the other is a void *ſolvend'*. Dyer 350. *a. pl.* 20. Hob. 172. 2 Brownl. 209. Yelv. 197.

If *A.* bind himſelf in a ſum to *B. ſolvendum* to *C.* who is a ſtranger, a payment to *C.* is a payment to *B.* In an action upon it, the count muſt be upon a bond *ſolvend'* to *B.* 1 *Sid.* 295. 2 *Keb.* 81.

In debt the declaration was, that the defendant became bound in a bond of ——, for the payment of —— to him, his attorney or aſſigns, and on oyer of the bond it appeared, that the *ſolvendum* was to the plaintiff's attorney or aſſigns, without mention of himſelf; and on demurrer for this variance 'twas ſaid that the declaration muſt not be according to the letter of the obligation, but according to the operation of the law thereupon. 6 *Mod.* 228. *Robert* v. *Harnage*.

So if *A.* makes a bond to *B. ſolvendum* to ſuch perſon as he ſhall appoint; if *B.* does appoint one, payment to him is a payment to *B.* and if *B.* appoints none, it ſhall be paid to *B.* himſelf. 6 *Mod.* 228.

If *A.* by his bill obligatory, acknowledges himſelf to be indebted to *B.* in the ſum of 10*l.* to be paid at a day to come, and binds himſelf and his heirs in the ſame bill in 20*l.* but does not mention to whom he is bound, yet the obligation is good, and he ſhall be intended to be bound to *B.* to whom he acknowledged before the 10*l.* to be due. 2 *Rol. Abr.* 148. *Franklin* verſus *Turner*.

II. *As to the words neceſſary.*

A *bond* may be made by any words, in a writing ſealed and delivered, wherein a man doth declare himſelf to have another man's money, or to be indebted to him; but the beſt form of making it, is that which is moſt uſed, 2 *Shep. Abr.* 477. If a *bond* be thus: Know all men by theſe preſents, that I *W. R.* am bound to *A. L.* in the ſum, *&c.* for payment of which, I give full power to him to levy the ſame upon the profits of ſuch lands yearly till it be paid; in this caſe the obligee may ſue upon the obligation, or levy the money according to the ſaid clauſe. 3 *Leon. ca.* 299.

So a writing in this form; Memorandum, I *A. B.* have agreed to pay *H. L.* 20 *l.* tho' this be in the preter-perfect tenſe, yet if it hath all other ceremonies eſſential, it ſhall amount unto an obligation. 1 *Leon* 25.

Debt brought upon a bond of 60 *l.* the bond was in Italian, and the ſum therein expreſſed was in theſe words, viz. *in ceſſanta libris*, and adjudged to be good. *Cro. Jac.* 208. *Parker* v. *Rennady.*

In debt upon a bill obligatory, demanding thirty-two pounds four ſhillings and ſevenpence; the defendant demanded oyer of the bill, and it was *threty*-two *ponds* four ſhillings and 7-pence, ſo *threty* for thirty, and *ponds* for pounds; and on demurrer for this cauſe, it was adjudged for the plaintiff. *Cro. Jac.* 607. *Hulbert* v. *Long.*

An obligation made to one, to the uſe of *A. L.* will be good for him in equity. *Bro. Oblig.* Where a *bond* is made *obligo me*, *&c.* leaving out the words *hæredes, executores & adminiſtratores*, this is good; and the executors and adminiſtrators ſhall be bound by it. *Dyer* 13.

III. *As to the ceremonies neceſſary to a bond or obligation.*

It is ſaid, that there are only three things eſſentially neceſſary to the making a good obligation, *viz writing* in paper or parchment, *ſealing* and *delivery*; but it hath been adjudged not to be neceſſary, that the obligor ſhould ſign or ſubſcribe his name; and that therefore if in the obligation the obligor be named *Erlin*, and he ſigns his name *Erlwin*, that this variation is not material; becauſe ſubſcribing is no eſſential part of the deed, *ſealing* being ſufficient. 2 *Co.* 5. *a.* *Godard*'s caſe. *Noy* 21, 85. *Moor* 28. *Stil.* 97. 2 *Salk.* 462. 5 *Mod* 281.

And though the *ſeal* be neceſſary, and the uſual way of declaring on a bond is, that the defendant *per ſcriptum ſuum obligatorium ſigillo ſuo ſigillatum* acknowledged, *&c.* yet if the word *ſigillat'* be wanting, it is cured by verdict and pleading over; for when he ſaith *per ſcriptum ſuum obligatorium, &c* all neceſſary circumſtances ſhall be intended; and if it were not ſealed, it could not be his deed or obligation. *Dyer* 19. *a.* *Cro. Eliz.* 571, 737. *Cro. Jac.* 420. 2 *Co.* 5. 1 *Vent.* 70. 3 *Lev.* 348. 1 *Salk.* 141. 6 *Mod.* 306.

Alſo tho' ſealing and delivery be eſſential in an obligation, yet there is no occaſion in the bond to mention that it was ſealed and delivered; becauſe, as my Lord *Coke* ſays, theſe are things which are done afterwards. 2 *Co.* 5. *a.*

The name of the obligor ſubſcribed, 'tis ſaid, is ſufficient, though there is a blank for his chriſtian name in the *bond.* *Cro Jac.* 261. Vide *Cro. Jac.* 558. 1 *Mod.* 107. In theſe caſes, though there be a verdict, there ſhall not be judgment. Where an obligor's name is omitted to be inſerted in the *bond*, and yet he ſigns and ſeals it; the court of *Chancery* may make good ſuch an *accident*; and in caſe a perſon takes away a *bond* fraudulently, and cancels it, the obligee ſhall have as much benefit thereby, as if not cancelled. 3 *Chan. Rep.* 99, 184.

An obligation is good though it wants a date, or hath a falſe or impoſſible date; for the date, as hath been obſerved, is not of the ſubſtance of the deed; but herein we muſt take notice, that the day of the delivery of a deed or obligation is the day of the date, though there is no day ſet forth. 2 *Co.* 5. *Godard*'s caſe. *Noy* 21, 85, 86. *Hob.* 249. *Stil.* 97. *Cro. Jac.* 136, 264. *Yelv.* 193. 1 *Salk* 76.

If a man declare on a bond, bearing date ſuch a day, but does not ſay when delivered, this is good: for every deed is ſuppoſed to be delivered and made on the day it bears date; and if the plaintiff declare on a date, he cannot afterwards reply, that it was *primo deliberat'* at another day, for this would be a departure. *Cro. Eliz.* 773. 3 *Lev.* 348. 1 *Salk.* 141. *Vide* 1 *Brownl.* 104. 1 *Lev.* 196.

A plaintiff may ſuggeſt a date in a *bond*, where there is none, or it is impoſſible, *&c.* where the parties and ſum are ſufficiently expreſſed. 5 *Mod.* 282. A *bond* dated on the ſame day on which a releaſe is made of all things *uſque diem datus*, *&c.* is not thereby diſcharged. 2 *Rol. Rep.* 255.

If the bond was delivered before the date, on iſſue, *non eſt factum*, joined on ſuch a deed, the jury are not eſtopped to find the truth, *viz.* that it was delivered before the date, and it is a good deed from the delivery. 2 *Co.* 4, 6. 3 *Keb.* 332.

A perſon ſhall not be charged by a *bond*, though ſigned and ſealed, without delivery, or words, or other thing, amounting to a delivery. 1 *Leon.* 140. But—

A bond or deed may be delivered by words, without any act of delivery; as where the obligor ſays to the obligee, go and take the ſaid writing, or take it as my deed, *&c.* So an actual tradition, without ſpeaking any word, is ſufficient; otherwiſe, a man that is mute could not deliver a deed; but where on an iſſue of *non eſt factum*, the jury found that the defendant ſigned and ſealed the obligation, and laid it on a table, and that the plaintiff came and took it up, this was held not to be the defendant's deed, without other circumſtances found by the jury. *Co. Lit.* 36. *a.* *Cro. Eliz.* 835. *Leon.* 193. *Cro. Eliz.* 122. *Sed qu.* if a very trifling circumſtance will not amount to a delivery. In this caſe, what was the uſe of ſigning and ſealing, and laying it on the table, if not intended for the uſe of the *obligee?* and might not the jury, with clear conſciences, have found a general verdict for the plaintiff?

IV. *With reſpect to the condition*, &c.

It is to be obſerved, that the condition of a bond muſt be to do a thing lawful; and bonds not to uſe trades, till or ſow grounds, *&c.* are unlawful, for they are againſt the good of the public, and the liberty of a freeman; and therefore void: and a condition of a bond to do any act *malum in ſe*, as to kill a perſon, *&c.* is void.

Conditions of bonds are to be not only lawful, but poſſible; and when the matter or thing to be done, or not to be done by a condition, is unlawful or impoſſible, or the condition itſelf repugnant, inſenſible or uncertain, the condition is void, and in ſome caſes the obligation alſo. 10 *Rep.* 120. But ſometimes an obligation may be ſingle, to pay the money, where the condition is impoſſible, repugnant, *&c.* 2 *Mod.* 285. If a thing be poſſible at the time of entering into the bond, and afterwards becomes impoſſible by the act of God, the act of the law, or of the obligee, it is become void; as if a man be bound to appear next term, and dies before, the obligation is ſaved.

A condition of a bond was, that *A. L.* ſhould pay ſuch a ſum upon the 25th of *December*, or appear in *Hillary* term after in the court of *B. R.* He died after the 25th of *December*, and before *Hillary* term, and had not paid any thing: in this caſe the condition was not broken for nonpayment, and the other part is become impoſſible by the act of God. 1 *Mod. Rep.* 265. And when a condition is doubtful, it is always taken moſt favourably for the obligor, and againſt the obligee; but ſo as a reaſonable conſtruction be made as near as can be according to the intention of the parties. *Dyer* 51.

If no time is limited in a bond for payment of the money, it is due preſently and payable on demand. 1 *Brownl.* 53. But the judges have ſometimes appointed a convenient time for payment, having regard to the diſtance of place, and the time wherein the thing may be performed. And if a condition be made impoſſible in reſpect to time, as to make payment of money on the 30th of *February*, *&c.* it ſhall be paid preſently; and here the obligation ſtands ſingle. *Jones* 140. Though if a man be bound in a bond with condition to deliver ſo much corn upon the 29th day of *February* next following, and that month hath then but twenty-eight days; it has been held, that the obligor is not obliged to perform the condition till there comes a leap-year. 1 *Leon.* 101. *Sed qu.* if intent of parties can be ſhewn?

A bond made to enfeoff two perſons, if one dies before the time is paſt, wherein it ſhould be done; the obligor muſt enfeoff the ſurvivor of them, or the condition will be broken: and if it be that *B.* and others ſhall enjoy land, and the obligor and *B.* the obligee do diſturb the reſt; by this the condition is broken. 4 *Hen.* 7. 1. *Co. Lit.* 384. Where one is bound to do an act to the obligee himſelf, the doing it to a ſtranger by appointment of the obligee, will not be a performance of the condition. 2 *Bulſt.* 149. But in ſuch caſe equity would relieve, and probably a judge, on ſuch action coming before him, would order plaintiff to be non-ſuited. If the act be to be done at a certain place, where the obligor is to go to *Rome, &c.* and he is to do the ſole act without limitation of time, he hath term during life to perform the ſame: if the concurrence of the obligor and obligee is requiſite, it may be haſtened by the requeſt of the obligee. 6 *Rep.* 30. 1 *Rol. Abr.* 437. Where no place is mentioned for performance of a condition, the obligor is obliged to find out the perſon of the obligee, if he be in *England*, and tender the money, otherwiſe the bond will be forfeited: but when a place is appointed, he need ſeek no further. *Co. Lit.* 210. *Lit.* 340. And if, where no place is limited for payment of money due on a bond, the obligor, at or after the day of payment, meets with the obligee, and tenders him the money, but he goes away to prevent it, the obligor ſhall be excuſed. 8 *E.* 4.

The obligor, or his ſervant, *&c.* may tender the money to ſave the forfeiture of the bond, and it ſhall be a good performance of the condition, if made to the obligee, though refuſed by him; yet if the obligor be afterwards ſued, he muſt plead that he is ſtill ready to pay it, and tender the money in court. *Co. Lit.* 208.

In the performance of the condition of an obligation the intention of the parties is chiefly to be regarded; and therefore a performance in ſubſtance is ſufficient, though it differ in words or ſome immaterial circumſtance; as if one be bound to deliver the teſtament of the teſtator, if he plead that he had delivered *literas teſtamentarias*, it is ſufficient. *Bro. Condition*, 158. 17 *E.* 4. 3. 1 *Rol. Abr.* 426.

If the condition of an obligation be to procure a lawful diſcharge, this muſt be by a *releaſe*, or ſome *diſcharge* that is *pleadable*, and not by *acquittance*, which is but evidence. 1 *Keb.* 739.

If the party, who is bound to perform the condition, diſables himſelf, this is a breach; as where the condition is, that the feoffee ſhall reinfeoff, or make a gift in tail, *&c.* to the feoffor, and the feoffee, before he performs it, make a feoffment or gift in tail, or leaſe for life or years in *præſenti* or *futuro* to another perſon, or marry or grant a rent-charge, or be bound in a ſtatute or recogniſance, or become profeſſed; in all theſe caſes the condition is broken; for the feoffee has either diſabled himſelf to make any eſtate, or to make it in the ſame plight or freedom in which he received it; and being once diſabled, he is ever diſabled, though his wife ſhould die, or the rent, *&c.* ſhould be diſcharged, or he ſhould be deraigned, *&c.* before the time of the reconveyance. *Co. Lit.* 221, 222. *Poph.* 110. 1 *Co.* 25. *a.* 1 *Rol. Abr.* 447. 5 *Co.* 21. *a.*

Where the condition is in the *conjunctive*, regularly both parts muſt be performed; yet, to ſupply the intention of the parties, it is held, that if a condition in the *conjunctive* be *not poſſible* to be performed, it ſhall be taken in the *disjunctive*; as if the condition be, that he *and* his executors ſhall do ſuch a thing. this ſhall be taken in the *disjunctive*, becauſe he cannot have an executor in his life-time; ſo if the condition be, that he *and* his aſſigns ſhall ſell certain goods, this ſhall be taken in the *disjunctive*, becauſe both cannot do it. 1 *Rol. Abr.* 444. *Owen* 52. 1 *Leon.* 74. *Goulſ.* 71.

V. *Bonds may be either void or voidable.*

As if an infant ſeal a bond, and be ſued thereon, he is not to plead *non eſt factum*, but muſt avoid the bond by ſpecial pleading; for this bond is only voidable, and not in itſelf void. 5 *Rep.* 119. But if a bond be made by a feme covert, ſhe may plead her coverture, and conclude *non eſt factum, &c.* her bond being void. 10 *Rep.* 119. Or plead *non eſt factum* and give coverture in evidence. If a bond depends upon ſome other deed, and the deed becomes void, the bond is alſo void.

A bond made with condition not to give evidence againſt a felon, *&c.* is void; but the defendant muſt plead the ſpecial matter. *Vide Wilſon, par.* 2. *p.* 341, *&c.* Condition of a bond to indemnify a perſon from any legal proſecution, is againſt law, and void. 1 *Lutw.* 667. And if a ſheriff takes a bond as a reward for doing of a thing, it is void. 3 *Salk.* 75. Interlineation in a bond in a place not material, will not make the bond void; but if it be altered in a part material, it ſhall be void. 1 *Nelſ. Abr.* 391. And a bond may be void by raſure, *&c.* As where the date, *&c.* is raſed after delivery; which goes through the whole. 5 *Rep.* 23. If the words in a bond at the end of the condition, *That then this obligation to be void*, are omitted, the condition will be void; but not the obligation.

Bonds may likewiſe be diſcharged by act of the party or by act of law.

The acceptance of a new bond will not diſcharge the old one, as a judgment may. *Hob.* 68. One bond cannot be given in ſatisfaction of another; but this is where given by the obligor himſelf, for it may by others. 1 *Mod.* 221. If a bond be to pay money at ſuch at a time, *&c.* it is no plea for the obligor to ſay he did pay it; he muſt ſhew at what time, or elſe it may be taken that the performance was after the time limited. *Noy's Max.* 15. If a bond be of twenty years ſtanding, and no demand be proved thereon, or good cauſe of ſo long forbearance ſhewn to the court, upon pleading *ſolvit ad diem*, it ſhall be intended paid. *Mod. Ca.* 22.

But by 4 *An. c.* 16. If an action of debt be brought on ſingle bill, or judgment, after money paid, ſuch payment may be pleaded in bar. So of a bond with a condition, upon payment of principal and intereſt due by the condition, though ſuch payment was not ſtrictly made according to the condition, yet it may be pleaded in bar.

And it is further enacted by the ſaid ſtatute, *ſect.* 14. "That if at any time, pending an action upon any ſuch bond with a penalty, the defendant ſhall bring into court, where the action is depending, all principal money and intereſt due on ſuch bond, and alſo all ſuch coſts, as have been expended in any ſuit or ſuits in law or equity upon ſuch bond; the ſaid money ſo brought in ſhall be deemed and taken to be in full ſatisfaction and diſcharge of the ſaid bond; and the court ſhall and may give judgment to diſcharge every ſuch defendant of and from the ſame accordingly."

Bonds alſo, as hath been ſaid, may be diſcharged by operation of law.

If ſeveral obligors are bound jointly and ſeverally, and the obligee make one of them his executor, it is a releaſe of the debt, and the executor cannot ſue the other obligor. 8 *Co.* 136. 1 *Salk.* 300. And vide 1 *Jon.* 345.

But though it be a releaſe in law, in regard it is the proper act of the obligee, yet the debt by this is not abſolutely diſcharged, but it remains *aſſets* in his hands, to pay both debts and legacies. *Cro. Car.* 373. *Yelv.* 160.

If a feme ſole obligee take one of the obligors to huſband, this is ſaid to be a releaſe in law of the debt, being her own act. 8 *Co.* 136. *a.* *March.* 128.

If one obligor makes the executor of the obligee his executor, and leaves aſſets, the debt is deemed ſatisfied; for he has power, by way of retainer, to ſatisfy the debt; and neither he nor the adminiſtrator *de bonis non, &c.* of the obligee can ever ſue the ſurviving obligor. *Hob.* 10.

But if two are bound jointly and ſeverally to *A.* and the executor of one of them makes the obligee his executor, yet the obligee may ſue the other obligor. 2 *Lev.* 73.

If two are jointly and ſeverally bound in an obligation, and the obligee releaſe to one of them, both are diſcharged. *Co. Lit.* 232. *a.*

Three were bound jointly and ſeverally in an obligation, and an action was brought againſt one of them, who pleaded, that the ſeal of one of the others was torn off, and the obligation cancelled, and therefore void againſt all. Upon *demurrer* it was adjudged, that the obligation, by the tearing off the ſeal of one of the obligors, became void againſt all, notwithſtanding the obligors were ſeverally bound. 2 *Lev.* 220. 2 *Show.* 289. *Sed qu.* if it was by accident, and not with intent to diſcharge that obligor, if a court of equity would not give relief? Indeed we ſhould think, that as the courts of law are now very liberal in their conſtruction of the Common law, as founded on reaſon, and the univerſal, immutable principles of juſtice, the tearing off one of the ſeals by accident might be pleaded in *reply*.

As to the pleading of performance, the defendant muſt ſet forth in what manner he hath performed it. Thus—

In debt on a bond, with condition for performance of ſeveral things, the defendant pleads *quod conditio ejuſdem facti nunquam infracta fuit per ſe ipſum, &c.* and held an ill plea: becauſe, for ſaving the bond, it is neceſſary for the defendant to ſhew how he hath performed the condition; and this ſort of pleading was never admitted. 2 *Vent.* 156.

So if he had pleaded *performavit omnia*, it had been ill; for the particulars being expreſſed in the condition, he ought to plead to each particularly; but if the condition were for performance of covenants in an indenture, performance were generally a good plea. 1 *Lev.* 302. This muſt be underſtood where the covenants are ſet forth and appear to be all in the *affirmative*. For if ſome are in the *affirmative*, ſome in the *negative*, or any in the *disjunctive*, the defendant ſhould plead *ſpecially*.

In debt on an obligation for payment of money, *&c.* the defendant pleads, that at the time and place *paratus fuit* to pay the money, but that no-body was there to receive it; and held ill on a general demurrer, for want of an *obtulit ſolvere*, for the *tender* only is traverſable, not the *paratus*. 3 Lev. 104.

In debt on a bond with condition, the defendant pleads a collateral plea, which is inſufficient; the plaintiff demurs, and hath judgment, without aſſigning a breach; for the defendant, by pleading a defective plea, by which he would excuſe his non-performance of the condition, ſaves the plaintiff the trouble of aſſigning a breach, and gives him advantage of putting himſelf on the judgment of the court whether the plea be good or not; but if the plaintiff had admitted the plea, and made a replication which ſhewed no cauſe of action, it had been otherwiſe; but if the replication were idle, and the defendant demurred, yet the plaintiff ſhould have judgment, without aſſigning a breach. 1 *Lev.* 55, 84. 3 *Lev.* 17, 24. This muſt mean, if the plea was bad in ſubſtance.

And in all caſes of debt on an obligation with condition, (that of a bond to perform an award only excepted) if the defendants plead a ſpecial matter, that admits and excuſes a non-performance, the plaintiff need only anſwer, and falſify the *ſpecial matter alledged*; for he that excuſes a non-performance admits it, and the plaintiff need not ſhew that which the defendant hath ſuppoſed and admitted. *Salk* 138.

But if the defendant pleads a performance of the condition, though it be not well pleaded, the plaintiff in his replication muſt ſhew a breach; for then he has no cauſe of action, unleſs he ſhew it; and this difference will give the true reaſon, and reconcile the following caſes. 1 *Salk.* 138. 1 *Lev.* 55, 84, 226. 1 *Saund.* 102, 159, 317. 3 *Lev.* 17, 24. 1 *Vent.* 114. *Cro. Eliz.* 320. *Yelv.* 78.

In debt on a bond, the defendant may have ſeveral pleas in bar; as if the plaintiff ſue as executor, the defendant may plead the releaſe of the teſtator for part, and for the reſidue the releaſe of the plaintiff, ſo he may plead payment as to part, and as to the reſt an *acquittance*. 1 *Salk.* 180.

In debt on an obligation the defendant cannot plead *nihil debet*, but muſt deny the deed by pleading *non eſt factum*; for the ſeal of the party continuing, it muſt be diſſolved *eo ligamine quo ligatur*. Hard 332. Hob. 218.

In bonds to ſave harmleſs, the defendant being proſecuted, is to plead *non damnificatus, &c.*

The ſtealing of any bond or bill, *&c.* for money, being the property of any one, made felony as if offenders had taken other goods of like value. See *Stat.* 2 *Geo.* 2. *c.* 25. See *Penalty*.

Bondage, Is ſlavery; and *bondmen*, in *Domeſday*, are called *ſervi*, but rendered different from *villani.—Et de toto tenemento, quod de ipſo tenet in* bondagio *in ſoca de* Nortone *cum pertin.* Mon Angl. 2. par. fol. 609. *Bonda* is ſaid to be a maſter of a family. See *Nativus*.

Bond-Tenants, *copy-holders*, and *cuſtomary-tenants*, ſometimes called *bond-tenants*. For, according to *Calthorpe* on *copyholds*, 51, 54. all thoſe kinds of tenants agree in ſubſtance and kind of tenure; all their lands being holden in one general kind, that is, by *cuſtom* and *continuance of time*; and the diverſity of their names doth not alter the nature of their tenure. Vide *Black. Com.* 2 *V.* 147, 148.

Bonis non Amovendis, A writ directed to the ſheriffs of *London, &c.* where a writ of error is brought, to charge them that the perſon againſt whom judgment is obtained be not ſuffered to remove his goods, till the error is tried and determined. *Reg Orig.* 131.

Books. By 25 *Hen.* 8. *c.* 15. No perſon ſhall buy any printed books brought from beyond ſea to ſell the ſame again, and no one ſhall buy books by retail brought from beyond ſea by any ſtranger. Likewiſe the prices of books, exceſſively increaſed, ſhall be qualified by the king's great officers.

By *Stat.* 7 *Ann. c.* 14. *ſect.* 10. If any book ſhall be taken, or otherwiſe loſt out of any parochial library, any juſtice may grant his warrant to ſearch for it; and if it ſhall be found, it ſhall, by order of ſuch juſtice, be reſtored to the library.

By 12 *Geo.* 2. *c.* 36. No perſon ſhall import or ſell books firſt written and printed in this kingdom, and reprinted abroad, under the penalty of 5 *l.* and double the value of every book ſo imported or ſold.

From the ſeventh to the eleventh century books were very ſcarce. To that was chiefly owing the univerſal ignorance which prevailed, during that period. After the *Saracens* conquered *Egypt* in the ſeventh century, the communication with that country (as to *Europe, &c.*) was almoſt entirely broken off, and the *papyrias* no longer in uſe. So that paper was uſed, and as the price of that was high, books became extremely rare, and of great value. Vide *Robertſon's Hiſtory of Charles the Fifth*, 1 *V.* 233, 234. And *Murat. Ant. Ital. V.* 3. *p.* 833.

In the eleventh century the art of making paper was invented, the number of manuſcripts was thereby increaſed, and the ſtudy of the ſciences greatly facilitated. Vide *Robertſon's Hiſtory of Charles the Fifth*, 1 *V.* 235. *&c.* See *Black. Com.* 2 *V.* 405, *&c.* Though the late judgement in the houſe of lords, as to literary property, is *contra*.

Book of Rates, A ſmall book, declaring the value of goods that pay cuſtom of poundage. 12 *Car.* 2. *c.* 4. 11 *Geo.* 1. *c.* 7.

Bookſellers, And authors of books, *&c.* Vide *Printing*.

Booting, or **Boting Corn,** Rent corn, anciently ſo called. The tenants of the manor of *Haddenham in com. Bucks*, formerly paid *booting corn* to the prior of *Rocheſter*. *Antiq. of Purveyance, fol.* 418. It is thought to be ſo called, as being paid by the tenants by way of *bote*, or *boot*, *viz.* as a compenſation to the lord for his making them leaſes, *&c.*

Bordagium, The tenure called *bordlands*. See *Ordin. Juſt. Itin. in inſula* de Jerſey.

Bordaria, A cottage, from the Sax. *bord, domus.*——*Cum* 18 *ſervis*, 16 *villanis*, 10 *bordis*, *&* 60 *acris prati*, *&c.*

Bordarii, or **Bordbanni.** Theſe words often occur in *Domeſday*, and ſome think they mean *boors*, huſbandmen, or cottagers. In the *Domeſday* inquiſition they were diſtinct from the *villani*; and ſeemed to be thoſe of a leſs ſervile condition, who had a *bord* or cottage, with a ſmall parcel of land allowed to them, on condition they ſhould ſupply the lord with poultry and eggs, and other ſmall proviſions for his *board* or entertainment. Some derive the word *bordarii* from the old *Gall.* *bords*, the limits or extreme parts of any extent; as the *borders* of a country, and the *borderers* inhabitants in thoſe parts.—*Dicuntur* bordarii, *vel quod in tuguriis (quæ cottagia vocant) habitabant*; *ſeu villarum limitibus, quaſi* borderers. *Spelm.*

Bord-Halfpeny, Signifies a ſmall toll, by cuſtom paid to the lord of the town for ſetting up *boards*, tables, booths, *&c.* in fairs and markets: it is derived from three

Saxon words *bræd*, i. e. *board*, *belve*, in behalf of, and *penning*, a toll; which in the whole makes a toll for, or in behalf of *boards*.

Bordlands, The demeſnes which lords keep in their hands for the maintenance of their *board* or table. *Et dominicum quod quis habet ad menſam ſuam & proprie, ſicut ſunt* bordlands, *i. e. dominicum ad menſam. Bract. lib.* 4. tract. 3. c. 9.

Bordlode, Was a ſervice required of tenants to carry timber out of the woods of the lord to his houſe: or it is ſaid to be the quantity of food or proviſion, which the *bordary*, or *bordman*, paid for their *bord-lands*. The old *Scots* had the term of *burd*, and *meet-burd* for victuals and proviſions; and *burden ſack*, for a ſack full of provender: from whence it is probable came our burden.

Bord-Service, A tenure of *bord-lands*; by which ſome lands in the manor of *Fulham in com. Mid.* and elſewhere, are held of the biſhop of *London*, and the tenants do now pay ſix-pence *per* acre in lieu of finding proviſion, anciently for their lord's *board* or table. *Blount.*

Bord-Brigch, *borg-bryce*, or *burg brych*, (*Sax.*) A breach or violation of ſurety-ſhip, pledge-breach, or of mutual fidelity.

Borough, (Fr. *burg*. Lat. *burgus*, Sax. *borhoe*) Signifies a corporate town, which is not a city; and alſo ſuch a town or place as ſends burgeſſes to parliament, the number whereof you may find in *Crompt. Juriſd. f.* 24. *Verſtegan* ſaith, that *burg*, or *burgh*, whereof we make our *borough*, metaphorically ſignifies a town having a wall, or ſome kind of incloſure about it: and all places that in old time had among our anceſtors the name of *borough*, were one way or other fenced or fortified *Lit. ſect.* 164. But ſometimes it is uſed for *villa inſignior*, or a country town of more than ordinary note, not walled. *Lindewood* upon the provincial (*ut ſingula de ſenſibus*) ſays to this effect, *Aliqui interpretantur* burgum *eſſe caſtrum, vel locum ubi ſunt crebra caſtra, vel dicitur* burgus *ubi ſunt per limites habitacula plura conſtituta:* but he afterwards thus defines it: *Burgus dici poteſt villa quæcunque, alia a civitate, in qua eſt univerſitas approbata.* A borough is a place of ſafety, protection and privilege, according to *Somner*; and in the reign of King *Hen.* 2. *burghs* had ſo great privileges, that if a bond-man or ſervant remained in a *borough* a year and a day, he was by that reſidence made a freeman. *Glanville.* And why theſe were called *free burghs*, and the tradeſmen in them *free burgeſſes*, was from a freedom to buy and ſell, without diſturbance, exempt from toll, &c. granted by charter. *Parliament boroughs* are ſaid to be either by charter, or towns holden of the king in *ancient demeſne*. *Brady.* It is conjectured that *borhoe*, or *borough*, was alſo formerly taken for thoſe companies conſiſting of ten families, which were to be pledges for one another: and we are told by ſome writers that it is a ſtreet or row of houſes cloſe to one another. *Bract. lib.* 3. *tract.* 2. *cap.* 10. *Lamb. Duty of Conſt. p.* 8. Vide *Squire's Anglo Saxon Government*, 236, 247, 251, 254, 258, 262, 264. *Trading boroughs* were firſt formed in the time of *Alfred*. *Squire* 247, 251. Vide alſo *Black. Com.* 1 *V.* 114. 2 *V.* 82.

Borough Courts. Vide *Courts*, and *Com. Dig.* 2 *V.* 496. & *ante* & *poſt*.

Borough-holders, or **Burſholders**, *quaſi burhoe ealders*, Are the ſame officers with *borough heads*, or *head-boroughs*; who (according to *Lambert*) were the head men, or chief pledges of *boroughs*, choſen by the reſt to ſpeak and act in their names in thoſe things that concerned them. See *Headborough*. Vide *Black. Com.* 1 *V.* 114, 356. 4 *V.* 406.

Borough-Engliſh, (Sax. *Borhoe Engliſe*) Is a cuſtomary deſcent of lands, in ſome ancient *boroughs*, and copyhold manors, that eſtates ſhall deſcend to the *youngeſt ſon*; or, if the owner hath no iſſue, to his *younger brother*, as in *Edmunton*, &c. *Kitch.* 102. It has been obſerved, that the original of this old cuſtom proceeded from the lords of certain lands having the privilege to lie with their tenants wives the firſt night after marriage; wherefore in time the tenants obtained this cuſtom, on purpoſe that their eldeſt ſons (who might be their lord's baſtards) ſhould be incapable to inherit their eſtates. *Præf.* 3 *Mod. Rep.*

But the reaſon of the cuſtom of borough engliſh (*Littleton* ſays) is becauſe the youngeſt is preſumed in law to be leaſt able to provide for himſelf. *Lit.* 165. This cuſtom goes with the land, and guides the deſcent to the *youngeſt ſon*, although there be a deviſe to the contrary. 2 *Lev.* 138. If a man ſeiſed in fee of lands in borough engliſh, makes a feoffment to the uſe of himſelf and the heirs male of his body, according to the courſe of the Common law; and afterwards die ſeiſed, having iſſue two ſons, the *youngeſt ſon* ſhall have the lands by virtue of the cuſtom, notwithſtanding the feoffment. *Dyer* 179.

If a copyhold in borough engliſh be ſurrendered to the uſe of a perſon and his heirs, the right will deſcend to the *youngeſt ſon* according to the cuſtom. 1 *Mod.* 102. And a *youngeſt ſon* ſhall inherit an eſtate in tail in borough engliſh. *Noy* 106. But an heir at Common law ſhall take advantage of a condition annexed to borough engliſh land; though the youngeſt ſon ſhall be intitled to all actions in right of the land, &c. 1 *Nelſ. Abr.* 396. And the eldeſt ſon ſhall have tithes ariſing out of land borough engliſh; for tithes of common right are not inheritances deſcendable to an heir, but come in ſucceſſion from one clergyman to another. *Ibid.* 347.

Borough engliſh land being deſcendable to the youngeſt ſon, if a younger ſon dies without iſſue male leaving a *daughter*, ſuch *daughter* ſhall inherit *jure repræſentationis*. 1 *Salk.* 243. It hath been adjudged where a man hath *ſeveral brothers*, the *youngeſt* may inherit lands in borough engliſh: yet it is ſaid where a cuſtom is, that land ſhall go to the *youngeſt ſon*, it doth not give it to the *youngeſt uncle*, for cuſtoms ſhall be taken ſtrictly; and thoſe which fix and order the deſcents of inheritance, can be altered only by parliament. *Dyer* 179. 4 *Leon.* 384. *Jenk. Cent.* 220.

By the cuſtom of borough engliſh, the *widow* ſhall have the *whole* of her huſband's lands in dower, which is called her *free-bench*; and this is given to her the better to provide for the younger children, with the care of whom ſhe is intruſted. *Co. Lit.* 33, 111. *F. N. B.* 150. *Mo. pl.* 566. Vide *Black. Com.* 1 *V.* 75. 2 *V.* 83.

Borough Goods, *deviſable*, As before the ſtatutes of 32 *H.* 8. *c.* 1. & 34 *Hen.* 8. *c.* 5. No lands were deviſable at the Common law, but in ancient baronies; ſo at the making of the ſtatute of *Acton Burnel*, 11 *Ed.* 1. *c.* 1. it was doubted whether *goods* were deviſable but in ancient boroughs: for by the writ *de rationabili parte bonorum*, anciently the goods of a man were partible between his wife and children. By the Common law, lands could not be deviſed from the heir; and here it ſeems as if goods were alſo not deviſable from the wife and children, before the ſtatute 11 *Ed.* 1. *c.* 1.

Borel-Folk, *i. e.* Country people, from the Fr. *boure*, *floccus*, becauſe they covered their heads with ſuch ſtuffs. *Blount.*

Borrowing. A man borrows money, corn, or ſuch thing of another; he may not expect the ſame again, but the like, or ſo much: but if one lend me a horſe, &c. he muſt have the ſame reſtored. If a thing lent for uſe be uſed to any other end or purpoſe than that for which it was borrowed, the party may have his action on the caſe for it, though the thing be never the worſe; and if what is borrowed be loſt, although it be not by any negligence of mine, as if I be robbed of it; or where the thing is impaired or deſtroyed by my neglect, admitting that I put it to no more ſervice than that for which borrowed, I muſt make it good: ſo where I borrow a horſe, and put him in an old rotten houſe ready to fall, which falls on and kills him, I muſt anſwer for the horſe. But if ſuch goods borrowed periſh by the act of God in the right uſe of them; as where I put the horſe, &c. in a ſtrong houſe, and it fall and kill him, or it dies by diſeaſe, or by default of the owner, I ſhall not be charged. *Co. Lit.* 89. 29 *Aſſ.* 28. 2 *H.* 7. 11. Vide *Black. Com.* 2 *V.* 454.

Boſcage, (*boſcagium*) Is that food which wood and trees yield to cattle; as maſt, &c. from the Ital. *boſco*, *ſilva*: but *Manwood* obſerves, to be quit *de boſcagio*, is to be diſcharged of paying any duty of wind-fall wood in the foreſt.

Boſcaria, Wood houſes from *boſcus*; or ox houſes from *bos.*——*Ut ipſi poſſunt domos &* boſcaria *ſatis competentia ædificari.* Mon. Angl. tom. 2. fol. 302.

Boſcus, An ancient word uſed in our law, ſignifying all manner of wood: the *Italians* make uſe of *boſco* in the ſame ſenſe; as the *French* do *bois. Boſcus* is divided into high-wood or timber, *hautboys,* and coppice or underwoods, *ſub-bois:* but the high-wood is properly called *ſaltus,* and in *Fleta* we read it *maeremium.*——Cum una Carecta de mortuo *boſco.* Pat. 10 H. 6.

Boſinnus, A certain ruſtical pipe, mentioned in ancient tenures. By inquiſition after the death of *Laurence Haſtings,* earl of *Pembroke,* 22 *E.* 3. the manor of *Aſton Cantlow in com. Warw.* is returned to be held of the king *in capite* by theſe words: *Quod quidem manerium per ſe tenetur de domino rege in capite per ſervitium inveniendi unum hominem peditem, cum quodam arcu ſine corda, cum uno* boſinno *ſine cappa,* &c. Ex Record. Tur. Lond.

Boſtar, An ox ſtall. This word occurs in *Mat. Pariſ. anno* 1234. And in *Ingulphus.*—*Fecit tum borrea,* boſtaria *ovilia, &c.*

Bote, (Sax) Signifies a recompence, ſatisfaction or amends: hence comes *manbote,* compenſation, or amends for a man ſlain, *&c.* In king *Ina*'s laws is declared what rate was ordained for expiation of this offence, according to the quality of the perſon ſlain. *Lamb. cap.* 99. From hence likewiſe we have our common phraſe, *to-boot,* i. e. *compenſationis gratia.* There are *houſe-bote, plough-bote, &c.* privileges to tenants in cutting of wood, *&c. Vide* thoſe words, and *Skene* verb. *Bote.* Vide *Black. Com.* 2 *V.* 35.

Boteleſs, *ſine remedio,* In the charter of *H.* 1. to *Tho.* archbiſhop of *York,* it is ſaid, that no judgment or ſum of money ſhall *acquit* him that commits ſacrilege; but he is in *Engliſh* called *boteleſs, viz.* without emendation. *Lib. Albus penes Cap. de Suthnet. Int. Plat. Trin.* 12 *Ed.* 2. *Ebor* 48. We retain the word ſtill in common ſpeech; as it is *bootleſs* to attempt ſuch a thing; that is, it is in vain to attempt it.

Botellaria, A buttery or cellar, in which the *buts* and *bottles* of wine, and other liquors are repoſited.——*Veniet ad palatium regis, & ibit in* botellarium, *& extrahet a quocunque vaſe in dicta* botellaria *invento, vinum quantum viderit neceſſarium pro factura unius picheri claretti.* Anno 31. Ed. 1.

Botha, A booth, ſtall, or ſtanding in a fair or market.——*Et duas menſuras liberas ad* bothas *ſuas faciendas.* Mon. Angl. 2 par. fol. 132.

Bothagium, *Boothage,* or cuſtomary dues paid to the lord of the manor or ſoil, for the pitching and ſtanding of booths in fairs or markets.——*Picagium, ſtallagium,* bothagium *& tollagium, c. de novo mercato infra villam de* Burceſtor, *Com.* Oxon. *Paroch. Antiq. p.* 680.

Bothna, or *buthna,* ſeems to be a park where cattle are incloſed and fed. *Hector Boetius, lib.* 7. *cap.* 123. *Bothena,* alſo ſigniffes a barony, lordſhip, *&c. Skene.*

Botiler of the king, *(pincernes regis)* Is an officer that provides the King's wines, who (according to *Fleta)* may by virtue of his office take out of every ſhip laden with ſale wines, *Unum dolium eligere in prora navis ad opus regis, & aliud in puppe, et pro qualibet pecia reddere tantum* 20 *ſolid. mercatori. Si autem plura inde habere voluerit, bene licebit, dum tamen pretium fide dignorum judicio pro rege apponatur.* Fleta lib. 2. cap. 21. This officer ſhall not take more wine than he is commanded, of which notice ſhall be given by the *ſteward* of the King's houſe, *&c.* on pain of forfeiting double damages to the party grieved; and alſo to be impriſoned and ranſomed at the pleaſure of the King. *Stat.* 25 *Ed.* 3. *cap.* 21. 45 *Ed.* 3. *c.* 3.

Bottomry, or *bottomree, (fœnus nauticum)* Is when the maſter of a ſhip borrows money upon the keel or *bottom* of his ſhip, and binds the ſhip itſelf; that if the money be not paid by the day aſſigned, the creditor ſhall have the ſhip. But it is generally where a perſon lends money to a merchant, who wants it to traffick, and is to be paid a greater ſum at the return of the ſhip, ſtanding to the hazard of the voyage; in regard to which, though the intereſt be greater than five *per Cent.* or what is allowed by law, it is not uſury. For money lent to ſea is allowed a larger intereſt than money advanced on land, by reaſon it is furniſhed at the hazard of the lender, and if the ſhip periſhes, the lender ſhares in the loſs; ſo that there is no real ſecurity, as in caſe of lands, *&c.* And the greater the danger is, the greater may be the profit reaſonably required for the money advanced. *Lex Mercat.* 122.

Money lent on *bottomree* is either on the bare ſhip (the uſual way) or upon the perſon of the borrower, and ſometimes upon both: the firſt is where a man takes up money, and obliges himſelf, that if ſuch a ſhip ſhall arrive at ſuch a port, then to repay perhaps in long voyages near double the ſum lent; but if the ſhip happens to miſcarry, then nothing. But when money is lent at intereſt, it is delivered at the peril of the borrower, and the profit of this is merely the price of the loan; whereas the profit of the other, is a reward for the danger and adventure of the ſea, which the lender takes upon himſelf, and makes the intereſt lawful. *Sea laws* 206, 207.

Then there is *uſura marina,* joining the advanced money, and the danger of the ſea together; and this is obligatory ſometimes to the borrower's ſhip, goods and perſon. Where bonds or bills of *bottomry* are ſealed, and the money is paid, if the ſhip receives injury by ſtorm, fire, *&c.* before the beginning of the voyage, then the perſon borrowing only runs the hazard, unleſs it be otherwiſe provided; as if the ſhip ſhall not arrive at ſuch a place, at ſuch a time, *&c.* there the contract has its beginning from the time of the ſealing: but if the condition be, that if ſuch a ſhip ſhall ſail from *London* to any port abroad, and ſhall not arrive there, *&c.* then, *&c.* there the contingency hath not its beginning till the departure.

A maſter of a ſhip may not take up money on *bottomry,* in places where his owners reſide, except he be a part owner, and then he may only take up ſo much as his part will anſwer in the ſhip; for if he exceeds that, his own eſtate is liable to make ſatisfaction; but when a maſter is in a ſtrange country, where there are no owners, nor any goods of theirs, nor of his own; and for want of money he cannot perform his voyage, there he may take up money upon *bottomry,* and all the owners are chargeable thereto; but this is underſtood where money cannot be procured by exchange, or any other means; and in the firſt caſe, the owners are liable by their veſſel, though not in their perſons; but they have their remedy againſt the maſter of of the ſhip. *Leg. Oleron, l.* 4. *Vide Molloy, b.* 2. *c.* 11. *ſect.* 11. Some maſters of ſhips who had inſured or taken up money upon *bottomry* to a greater value than their adventure having made it a practice to caſt away and deſtroy the ſhips under their charge. By *Stat.* 10 *Car.* 2. *c.* 6. it is made felony; and the offenders ſhall ſuffer death.

By the *Stat.* 19. *Geo.* 2. *c.* 37. every ſum lent on *bottomree* or at *reſpondentia* upon any ſubjects ſhips to or from the *Eaſt Indies,* ſhall be lent only on the ſhip, or the merchandiſe laden on board her, and ſo expreſſed in the condition of the *bond,* and the benefit of *ſalvage* ſhall be allowed to the *lender,* who alone ſhall have right to make *aſſurance* on the money lent. And no borrower of money, on *bottomree* or at *reſpondentia* as aforeſaid, ſhall recover more on any aſſurance than the value of his intereſt, excluſive of the money borrowed. And if the value of his intereſt doth not amount to the money borrowed, he ſhall be reſponſible to the lender for the ſurplus, notwithſtanding the ſhip and merchandiſe be totally loſt.

By 19 *Geo.* 2. *c.* 32. obligees in bottomree bonds are admitted to claim, and after the loſs or contingency ſhall have happened, to prove their debts, in caſes of *bankruptcy,* in like manner as if the loſs or contingency had happened before the time of the iſſuing of the commiſſion of bankruptcy againſt the obligor.

As to the forms of a *bill of bottomry,* and of a bottomry bond, *&c.* they are printed and ſold by the Stationers.

Vide farther as to *bottomry, Black. Com.* 2 *V.* 458.

Bovata Terræ, As much land as one ox can plough,——*Cujus ſingulæ* bovatæ *ſunt quindecim acræ terræ.* Mon. Angl. par. 3. fol. 91. *See* Oxgang.

Bouche of Court, Commonly called *budge of Court,* was a certain allowance of proviſion from the King, to his knights and ſervants, that attended him in any military expedition. The French *avoir bouche a court*, is to have an allowance at court, of meat and drink: from *bouche*, a mouth. But ſometimes it extended only to bread, beer, and wine. And this was anciently in uſe as well in the houſes of noblemen, as in the King's court, as appears by the following indenture.—*Ceſte endenture fait parentre lui nobles hommes Monſieur* Tho. Beauchamp, *Counte de* Warwick, *d'une part*, *& Monſieur* Johan. Ruſſel *de* Strengeſham *Chevalier, de autre part, teſmoigne que le dit* Johan. *eſt, &c. Et avera pur la pees, &c.* bouche au court *pur lui meſme, &c. Donne a noſtre chaſtel de* Warwich *le* 29 *jour del moys de March, l'an du regne le roy* Richard *le ſecond puis le conqueſt, &c.*

Boverium, or *boveria*, An ox-houſe:——*Loca ubi ſtabulantur* boves. *Gloſſ. in* 10 *Script.* And in the *Monaſticon*, *Ad faciendum ibi* boverias *ſuas & alias domos uſibus neceſſarias, &c.* Mon. Angl. par. 2. fol. 210.

Bovettus, A young ſteer or caſtrated bullock. *Unus* bovettus *mas, quatuor* boviculæ *fœminæ.* Paroch. Antiq. p. 287.

Bovicula, An heifer, or young cow; which in the eaſt riding of *Yorkſhire* is called a *whee*, or *whey*.

Bough of a Tree, Seiſin of land given by it, to hold of the donor, *in capite, Madox's Exchequer.* 1 *V*. 62.

Bound, or *boundary, (bunda)* The utmoſt limits of land, whereby the ſame is known and aſcertained——*Secundum metas, meras*, bundas, *& marchias foreſtæ.* 18 Ed. 3. Itin. Pick. fol. 6. *See* 4 Inſt. 318.

Bound-Bailiffs, Are ſheriffs officers, for executing of proceſs. The ſheriffs being anſwerable for their miſdemeanors, the bailiffs are uſually bound in a bond, for the due execution of their office, and thence are called *bound-bailiffs.* which the common people have corrupted into a much more homely appellation. *Black. Com.* 1 *V*. 345, 6.

Bounties on Exportation. *Vide Black. Com.* 1 *V*. 315.

Bounty of Q. Anne, for maintaining poor clergymen. *Stat.* 2 & 3 *Ann. c.* 11. *Vide* 1 *Geo.* 1. *c.* 10. See alſo 5 *Ann. c.* 24. 6 *Ann. c.* 27. See *Firſt Fruits.*

Bow-bearer, An under officer of the *foreſt*, whoſe office is to overſee, and true inquiſition make, as well of ſworn men as unſworn in every bailiwick of the foreſt; and of all manner of treſpaſſes done, either to vert or veniſon, and cauſe them to be preſented, without any concealment in the next court of attachment, *&c. Crompt. Juriſ. fol.* 201.

Bowyers, One of the ancient companies of the city of *London*. A *bowyer* dwelling in *London*, was to have always ready fifty *bows* of elm, witch-haſle, or aſh, well made and wrought, on pain of 10*s*. for every *bow* wanting; and to ſell them at certain prices, under the penalty of 40*s*. *Stat.* 8 *Eliz. c.* 10. And parents and maſters were to provide for their ſons and ſervants, a *bow* and two *ſhafts*, and cauſe them to exerciſe ſhooting, on pain of 6*s*. and 8*d*. *&c.* by our ancient ſtatutes. 12 *Ed.* 4. 33 *H.* 8.

Bracelets, Hounds, or rather beagles of the ſmaller and ſlower kind——*Rex conſtituit* J. L. *magiſtrum canum ſuorum vocatorum* bracelets, *&c.* Pat. 1 Rich. 2. p. 2. m. 1.

Bracenarius, (Fr. *braconnier)* A huntſman, or maſter of the hounds.——*Rex mandat baronibus quod allocent* Rob. de Chadworth *vicecom.* Lincoln. *lvi s. vii d. quos per præceptum regis liberavit* Johan. de Bellovento *pro putura ſeptem leporariorum & trium falconum & lanerar. & pro vadiis unius* bracenarii *a die, &c. uſque, &c. prox. ſequen. utroque die computato, viz. pro putura cujuſlibet leporarii & falconis* 1 *d. ob & pro vadiis prædicti* bracenarii *per diem* 11 *d.* Anno 26 Ed. 1. Rot. 10. in Dorſo.

Bracetus, A hound: *brachetus* is in Fr. *brachet*, braco *canis ſagax, indagator leporum:* ſo a *braco* was properly the large fleet hound; and *brachetus*, the ſmaller hound; and *brachete* the bitch of that kind.——*Concedo eis duos leporarios & quatuor* bracetos *ad leporem capiendum.* Monaſtic. Ang Tom. 2. pag. 283.

Bracinum, A brewing: the whole quantity of ale brewed at one time, for which *tolſeſtor* was paid in ſome manors. *Brecina* a brew-houſe. *MS. penes* Will. Dugdale, *&c.*

Branding *in the hand*, or *face*, a puniſhment inflicted by law, for various offences, is by burning, with a hot iron, after the offender hath been allowed *clergy. Vide. Black. Com.* 4 *V*. 360, 370.

Brandy, A liquor made chiefly in *France*, and extracted from the lees of wine. In the *Stat.* 20 *Car.* 2. *cap.* 1. upon an argument in the Exchequer *Anno* 1668. whether *brandy* were a *ſtrong water* or *ſpirit*, it was reſolved to be a *ſpirit:* but in the year 1669, by a grand committee of the whole Houſe of Commons, it was voted to be a *ſtrong water* perfectly made. See the *Stat.* 22 *Car.* 2. *cap.* 4. In lieu of cuſtom duties, granted by 7 & 8 *W*. 3. on *brandy* imported from *France*, there ſhall be paid by the importer for every gallon of ſingle proof 1*s*. and double proof 2*s*. *&c.* by *Stat.* 6 *Geo.* 2. *c.* 27. See farther for the duties on brandy, 33 *Geo.* 2. *c.* 9. and 2 *Geo* 2. *c.* 5. And for offences in running brandy, ſee **Cuſtom.**

Braſium, Signifies malt: in the ancient ſtatutes *braſiator* is taken for a brewer, from the Fr. *braſſeur*; and at this day is uſed for a malſter or malt-maker. It was reſolved 18 *Ed.* 2. *Quod vendicio* braſii *non eſt venditio victualium, nec debet puniri ſicut venditio panis, vini & cerviſiæ, & hujuſmodi, contra formam ſtatuti.* To make malt was a ſervice paid by ſome tenants to their lords.——*In manerio de* Pidington *quilibet virgatarius præparabit domino unum quarterium* braſii *per annum, ſi dominus inveniet boſcum ad ſiccandum.* Paroch. Antiq. p. 496.

Braſs, Is to be ſold in open fairs and markets, or in the owners houſes, on pain of 10*l*. and to be worked according to the goodneſs of metal wrought in *London*, or ſhall be forfeited: alſo ſearchers of *braſs* and pewter are to be appointed in every city and borough by head officers, and in counties by juſtices of peace, *&c.* and in default thereof, any other perſon ſkilful in that myſtery, by overſight of the head officer, may take upon him the ſearch of defective *braſs*, to be forfeited, *&c. Stat.* 19 *H.* 7. *c.* 6. *Braſs* and pewter, bell-metal, *&c.* ſhall not be ſent out of the kingdom, on pain of forfeiting double value, *&c.* 33 *Hen.* 8. *c.* 7. 2 & 3 *Ed.* 6. *c.* 37.

Breach of cloſe, Every unwarrantable entry on another's ſoil, the law calls a *treſpaſs*, by *breaking his cloſe*, the words of the writ of treſpaſs. *Black. Com.* 3 *V*. 209.

Breach of Covenant, The not performing of any covenant, expreſſed or implied in a deed, or the doing an act, which the party covenanted not to do. *Vide Black. Com.* 2 *V*. 155, 6. *Vide poſt, Breach of Promiſe.*

Breach of Duty, The not executing any office, employment, or truſt, *&c.* in a due and legal manner. *Vide Black. Com.* 3 *V*. 163, 4.

Breach of Peace, Offences againſt the *public peace*, are either ſuch as are an *actual* breach of the peace, or conſtructively ſo, by aiding to make others break it. *Vide Black. Com.* 4 *V*. 142, *&c.*

Breach of the peace ſeverely amerced in former times. *Madox's Ex.* 1 *V*. 557.

Breach of Pound, The breaking any pound or place where cattle or goods diſtrained are depoſited, to reſcue ſuch diſtreſs. *Vide Black. Com.* 3 *V*. 146.

Breach of Priſon. Breach of priſon, by the offender himſelf, when committed for *any* cauſe, was *felony* at the Common law. 1 *Hal. P. C.* 607. So was *conſpiring* to break it. *Bract. l.* 3. *c.* 9. But this ſeverity is mitigated by the ſtatute *de frangentibus priſonam.* 1 *Ed.* 2. which ſee. To break priſon, when lawfully committed for treaſon or felony, remains ſtill felony at the Common law: if on any inferior charge, it is ſtill puniſhable, as an high miſdemeanor, by fine and impriſonment. 2 *Hawk. P. C.* 128.

Breach of Promiſe, *(violatio fidei)* A breaking or violating a man's word. And *breach* ſignifies where a perſon commits any *breach* of the condition of a bond, or his covenant, *&c.* entered into, on action upon which the *breach* muſt be aſſigned. In debt on bond, conditioned to give account of goods, *&c.* a *breach* muſt be alledged, or the plaintiff will have no cauſe of action. 1 *Saund.* 102. And when a *breach* is aſſigned it muſt not be general, but muſt be particular; as in action of covenant for not repairing of houſes, the *breach* ought to be aſſigned particularly, what is the want of reparation. *Cro. Jac.* 369.

369. But on mutual *promiſe* for one to do an act, and in conſideration thereof another to do ſome act, as to ſell goods, *&c.* for ſo much money; a general *breach* that the defendant hath not performed his part; is well aſſigned. 3 *Lev.* 319.

Where a covenant conſiſts of ſeveral parts in the affirmative, performance generally is a good plea. *Sid.* 215. In caſe of bond for performance of an award, if the defendant pleads any matter by which he admits a non-performance, and excuſes it, the plaintiff in his replication muſt ſhew the award, and aſſign the *breach*, that the court may ſee an award was made, and judge whether it was good or not; for if it ſhould be of a void part thereof, it need not be performed. 1 *Salk.* 138.

Breaches aſſigned ought to be according to the very words of the condition or covenant; when they may be well enough though too general. 1 *Lutw.* 326. Where a thing is to be done by a perſon or his aſſigns, the *breach* is to be that it was done neither by the one nor the other. 5 *Mod.* 133. If a perſon is to tender a conveyance, *&c.* to another, his heirs or aſſigns, *breach* aſſigned that the defendant did not tender a conveyance to the plaintiff, without the words his heirs or aſſigns, is good: but if the tender be to be made by another man, his heirs, *&c.* and not to him, it is otherwiſe. 1 *Salk.* 139.

Where a leſſee for years is to leave all the timber on the land, which was growing there at the time of the leaſe, and he cut down any trees, though he leaves the timber on the land at the end of his leaſe, this is a *breach* of covenant: for in contracts the intention of the parties is chiefly to be conſidered. *Raym.* 464. If ſeveral *breaches* are aſſigned, and the defendant demurs upon the whole declaration, the plaintiff ſhall have judgment for all that are well aſſigned, for they are as ſeveral actions. *Cro. Jac.* 557.

Formerly a plaintiff could aſſign but one *breach* in an action of debt upon a bond for performance of covenants, though ſeveral things were broken; for one *breach* being proved, was a forfeiture of the bond: but in an action of covenant, as many *breaches* might be aſſigned as the plaintiff would, becauſe the plaintiff might have a particular damage upon each covenant broken; and a ſeveral iſſue muſt be taken upon every *breach.* 1 *Nelſ. Abr.* 406.

Now by ſtatute in an action on bond for performance of covenants, the plaintiff may aſſign as many *breaches* as he pleaſes, and the jury ſhall aſſeſs damages and coſts for ſuch covenants as are proved to be broken. *Stat.* 8 & 9 *W.* 3. *cap.* 10. And where judgment ſhall be given for the plaintiff in ſuch action upon a demurrer, *Nil dicet, &c.* he may ſuggeſt on the roll as many *breaches* as he thinks fit; upon which a writ of enquiry ſhall go, *&c.* And if, before execution executed, the defendant brings the coſts and damages into court, execution ſhall be ſtayed; and the plaintiff ſhall acknowledge ſatisfaction, if the execution be executed: but the judgment ſhall ſtill ſtand as a ſecurity to anſwer the future *breach* of any covenant in the deed; for which the plaintiff or his executors, *&c.* may have a *ſcire facias* upon ſuch judgment againſt the defendant. *Stat. ibid.* And ſee **Bond**, **Condition**, and **Covenant.**

Bread and Beer, The aſſize of *bread*, *beer*, and *ale*, *&c.* is granted to the Lord Mayor of *London* and other corporations: bakers, *&c.* not obſerving the aſſiſe to be ſet in the pillory. *Stat.* 51 *H.* 3. *St.* 1. *ord. Piſtor.* & 51 *H.* 3. *St.* 6. *Vide* 2 & 3 *Ed.* 6. *c.* 15.

The aſſiſe of bread is regulated, by 8 *Ann. c.* 18. and 1 *Geo.* 1. *c.* 26. The 3 *Geo.* 2. *c.* 29. inflicts a penalty on ſelling at a higher price than is ſet by the Lord Mayor. By the 22 *Geo.* 2. *c.* 46. bakers marks are to be ſet on their bread. But ſee 31 *Geo.* 2. *c.* 29. containing new regulations concerning the aſſiſe of bread, and to prevent adulteration. And ſee farther 32 *Geo.* 2. *c.* 18. how penalties not appropriated by 31 *Geo.* 2. *c.* 29. ſhall be diſtributed. And laſtly ſee 3 *Geo.* 3. *c.* 6. and 11. wherein there are farther regulations concerning the aſſiſe of bread, and for preventing the adulteration thereof.

Bread of Treet, or **Trite,** *(panis tritici)* Is bread mentioned in the ſtatute 51 *Hen.* 3. of aſſiſe of bread and ale; wherein are particulariſed *waſtel bread, cocket bread,* and *bread of treet,* which anſwer to the three ſorts of bread now in uſe, called white, wheaten, and houſe-hold bread; In religious houſes they heretofore diſtinguiſhed bread by theſe ſeveral names, *panis armigerorum, panis conventualis; panis puerorum, & panis famulorum.* Antiq. Not.

Brecca, (from the Fr. *breche)* A breach or decay. In ſome ancient deeds there have been covenants for repairing *muros &* breccas, *portas & foſſata,* &c.——*De* brecca *aquæ inter* Woolwich & Greenwich *ſupervidend.* Pat. 16 Ric. 2. A duty of 3*d. per* ton on ſhipping was granted for amending and ſtopping of *Dagenham breach,* by *Stat.* 12 *Ann. c.* 17.

Brede, A word uſed by *Bracton* for board; as too large and too *brede,* is proverbially too long and too broad. *Bract. lib.* 3. *tract.* 2. *c.* 15. There is alſo a *Sax.* word *brede* ſignifying deceit. *Leg. Canut. c.* 44.

Bredwite, (Sax. *bread* and *white)* A fine or penalty impoſed for defaults in the aſſiſe of bread: to be exempt from which, was a ſpecial privilege granted to the tenants of the honour of *Wallingford* by King *Hen.* 2. *Paroch. Antiq.* 114.

Brehon. In *Ireland* the judges and lawyers were anciently ſtiled *brehons*; and thereupon the *Iriſh* law called the *brehon law.* 4 Inſt. 358. *Vide Edm. Spencer's* ſtate of *Ireland, p.* 1513. *edit. Hughes.* In a parliament held at *Kilkenny,* 40 *Ed.* 3. under *Lionel* Duke of *Clarence,* the then Lieutenant of *Ireland,* the *brehon law* was formally aboliſhed. *Black. Com.* 1 *V.* 100.

Breiſna, Weather-ſheep.——*Concedo Deo & monachis* 30 breiſnas *ſingulis annis.* Mon. Angl. tom. 1. cap. 406.

Brenagium, A payment in bran, which tenants anciently made to feed their lords hounds. *Blount.*

Bretoyſe, or **Bretoiſe,** The law of the marches of *Wales,* in practiſe among the ancient *Britons.*——*Ego* Henricus de Penebrugge *dedi omnibus liberis burgenſibus meis burgi mei de* Pennebrugge *omnes libertates & liberas conſuetudines ſecundum* legem de Bretoyſe, *&c. Pat. fine dat.* Here *legem de Bretoyſe* is ſaid to ſignify *legem marchiarum*; for *Penebrugge,* now called *Pembridge,* is a town in *Herefordſhire* which borders upon *Wales.*

Breve, Is any writ by which a man is ſummoned or attached to anſwer in action, or whereby any thing is commanded to be done in the King's courts, in order to juſtice, *&c.* It is called *breve* from the brevity of it; and is directed either to the chancellor, judges, ſheriffs, or other officers; the various forms of it you may ſee in the regiſter.——Breve, *quia breviter & paucis verbis intentionem proferentis exponit & explanat, &c. Bract. lib.* 5. *Tract.* 5. *cap.* 17. See *Skene de verb. Breve.* Vide *Writ.*

Breve perquirere, To purchaſe a writ or licence of trial, in the King's courts, by the plaintiff, *qui* breve *perquiſivit:* and hence comes the uſage of paying 6*s*. 8*d*. fine to the King, where the debt is 40*l*. and of 10*s*. where the debt is 100*l*. *&c.* in ſuits and trials for money due upon bond, *&c.*

Breve de Recto, A writ of right, or licence for a perſon ejected out of an eſtate, to ſue for the poſſeſſion of it when detained from him. Vide *Recto.*

Brevia teſtata. It is mentioned by the feodal writers. Vide *Feud. l.* 1. 64. Our modern deeds are in reality nothing more than an improvement or amplification of the *brevia teſtata.* *Black. Com.* 2 *V.* 307.

Brevibus & Rotulis liberandis, A writ or mandate to a ſheriff to deliver unto his ſucceſſor the county, and the appurtenances, with the rolls, briefs, remembrances, and all other things belonging to that office. *Reg. Orig. fol.* 295.

Brewers, Are to put their drink in veſſels mark'd by a cooper, or forfeit 3*s*. 4*d*. a barrel; and not ſelling it at reaſonable rates, appointed by juſtices of peace, incur a forfeiture of 6*s*. for every barrel, kilderkin 3*s*. 4*d* *&c.* by *Stat.* 23 *H.* 8. *cap.* 4. And *brewers* are to make an entry at the exciſe office once a week for liquors brewed, under penalties, *&c.* 12 *Car.* 2. *c.* 24. 15 *Car.* 2. *c.* 30. 7 & 8 *W.* 3. If *brewers* mix any ſugar, moloſſes, *&c.* in brewing beer or ale, they ſhall forfeit 20*l*. *Stat.* 1 *Ann. cap.* 3. See 2 *et* 3 *Ed.* 6. *c.* 15 1

Will. & *M.* *c.* 24. 10 & 11 *Will.* *c.* 21. 9 *Ann.* *c.* 12. 12 *Ann.* *Stat.* 1. *c.* 2. See *Exciſe.*

Bribery, (from the Fr. *briber,* to devour or eat greedily) Is a high offence, where a perſon in a judicial place takes any fee, gift, reward or brocage, for doing his office, but of the King only. 3 *Inſt.* 145. But taken largely it ſignifies the receiving, or offering, any undue reward, to or by any perſon concerned in the adminiſtration of public juſtice, whether judge, officer, &*c.* to act contrary to his duty; and ſometimes it ſignifies the taking or giving a reward for a public office. 3 *Inſt.* 9. To take a bribe of money, though ſmall, is a great fault; and judges ſervants may be puniſhed for receiving bribes. If a judge refuſe a bribe offered him, the offerer is puniſhable. *Forteſcue, cap.* 51.

Bribery in judicial or miniſterial officers is puniſhed by fine and impriſonment. Before the ſtatute 25 *Ed.* 3. Bribery in a judge was looked upon as ſo heinous an offence, that it was ſometimes puniſhed as high treaſon; and it is at this day puniſhable, with forfeiture of office, fine and impriſonment. In the reign of King *James* I. the Earl of *M.* lord treaſurer of *England,* being impeached by the commons for refuſing to hear petitions referred to him by the King, till he had received great *bribes,* &*c.* was, by ſentence of the lords, deprived of all his offices, and diſabled to hold any for the future, or to ſit in parliament; alſo he was fined fifty thouſand pounds, and impriſoned during the King's pleaſure. 1 *Hawk. P. C.* 170. In the eleventh year of King *George* I. the Lord Chancellor *M*——— had a milder puniſhment: he was impeached by the commons with great zeal, for bribery, in ſelling the places of Maſters in Chancery for exorbitant ſums, and other corrupt practices, tending to the great loſs and ruin of the ſuitors of that court; and the charge being made good againſt him, being before diveſted of his office, he was ſentenced by the lords to pay a fine of thirty thouſand pounds, and impriſoned 'till it was paid. *Vide* the *Trial.* *'Tis ſaid that one of the peers (if not two) who voted againſt him, had been poſſeſſed of the office of Chancellor, and ſold the places of Maſters in Chancery, whenever vacant!*

By ſtatute, the chancellor, treaſurer, juſtices of both benches, barons of the exchequer, &*c* ſhall be ſworn not to ordain or nominate any perſon in any office for any gift, brocage, &*c.* 12 *R.* 2. *c.* 2. And the ſale of offices concerning the adminiſtration of public juſtice, &*c.* is prohibited on pain of forfeiture and diſability, &*c.* by 5 & 6 *Ed.* 6. *c.* 16. In the conſtruction of the laſt mentioned ſtatute, it has been reſolved that the offices of the eccleſiaſtical courts are within the meaning of that act, as well as the offices in the courts of Common law; and it hath been adjudged, that one who contracts for an office, contrary to the purport of the ſaid ſtatute 5 & 6 *E.* 6. *c.* 16. is ſo diſabled to hold the ſame, that he cannot be reſtored to a capacity of holding it by any grant or diſpenſation whatſoever. *Cro. Jac* 269, 386. *Hawk. P. C.* 171.

Officers of the cuſtoms, &*c* taking any *bribe* or reward, whereby the crown ſhall be defrauded, ſhall forfeit 100*l.* and be rendered incapable of any office. *Stat.* 14 *Car.* 2. *c.* 11. But there is a ſaving clauſe for the firſt offence, acknowledging it in two months. No perſon ſetting up for member of parliament, ſhall after the teſte of the writ of election, or after any place becomes vacant, give any *bribe* of money, meat, drink, gift, reward, &*c.* in order to be elected, on pain of diſability to ſerve in parliament. 7 *W.* 3. *cap.* 4. And electors taking *bribes,* are diſabled to vote, and to hold any office or franchiſe, and as well he that takes as he that offers a bribe, ſhall forfeit 500 *l.* &*c.* by *Stat.* 2 *Geo.* 2. *c.* 24. And ſee 9 *Geo.* 2. *c.* 38. Taking money to excuſe perſons from ſerving on juries, ſubjects the offender to a fine, not exceeding ten pounds, at the diſcretion of the judge. 3 *Geo.* 2. *c.* 25. *ſect.* 6

As to bribery in magiſtrates, *vide Black. Com.* 4 *V.* 139. And as to bribery in elections, *vide Black. Com.* 1 *V.* 178. See **Parliament.**

Bribour, (Fr. *bribeur*) Seems to ſignify in ſome of our old ſtatutes, one that pilfers other mens goods. 28 *Ed.* 2. *cap.* 1.

Bricolls, An engine mentioned in *Blount,* by which walls were beat down.

Bricks, Are to be made between the 1ſt day of *March* and 29th of *September,* and ſhall be burnt either in kilns, or diſtinct clamps, &*c.* Alſo place-bricks, when burnt, muſt not be leſs than nine inches long, two inches and a half thick, and four and a quarter wide, on pain of forfeiting 20*s.* a thouſand, &*c.* Searchers of bricks and tiles ſhall be appointed by juſtices of peace in their quarter ſeſſions, who are to make preſentments, and may be fined 10 *l.* for defaults: combinations to advance the price of bricks, ingroſſing them, &*c.* incurs a penalty of 20 *l.* And mixing mould, ſoil or mud with brick earth, is liable to penalties. *Stat.* 12 *Geo.* 1. *cap.* 33. 2 *Geo.* 2. *cap.* 15. But bricks may be made of brick earth and ſea-coal aſhes ſifted, not exceeding a certain quantity; and cinders or breeze may be uſed with coal in the burning of bricks, and ſtock-bricks and place-bricks burnt in the ſame clamp, being ſet in diſtant parcels, &*c.* by 3 *Geo.* 2. *c.* 22. and ſee 6 *Geo.* 1. *c.* 6. what quantity of bricks may be carried in one load in *London,* and concerning the carrying of bricks and tiles as ballaſt, ſee **Tiles.**

Bridge, (*pons*) A building of ſtone or wood erected a-croſs a river, for the common eaſe and benefit of travellers. Public bridges, which are of general convenience, are of common right to be repaired by the whole inhabitants of that county in which they lie. *Hale's P. C.* 143. 13 *Co.* 33. *Cro. Car.* 365.

But a corporation aggregate, either in reſpect of a ſpecial tenure of certain lands, or in reſpect of a ſpecial preſcription; alſo any other perſon, by reaſon of ſuch a ſpecial tenure, may be compelled to repair them. *Hale's P. C.* 143. *Dalt. c.* 14. 6 *Mod.* 307.

At Common law thoſe who are bound to repair publick bridges, muſt make them of ſuch heighth and ſtrength, as ſhall be anſwerable to the courſe of the water; and they are not treſpaſſers if they enter on any land adjoining to repair them, or lay the materials neceſſary for the repairs thereon. *Dalt. cap.* 16. If a man erects a bridge for his own uſe, and the people travel over it as a common bridge, he ſhall notwithſtanding repair it: though a perſon ſhall not be bound to repair a bridge, built by himſelf for the common good and public convenience, but the county muſt repair it. 2 *Inſt.* 701. 1 *Salk.* 359. Where inhabitants of a county are indicted for not repairing a bridge, they muſt ſet forth who ought to repair the ſame, and traverſe that they ought. 1 *Vent.* 256. Unleſs perhaps, where the real queſtion is, whether it be a public or a common bridge.

A vill may be indicted for a neglect in not repairing a bridge; and the juſtices of peace in their ſeſſions may impoſe a fine for defaults. And any particular inhabitant of a county, or tenant of land charged to repairs of a bridge, may be made defendants to an indictment for not repairing it, and be liable to pay the fine aſſeſſed by the court for the default of the repairs, who are to have their remedy at law for a contribution from thoſe who are bound to bear a proportionable ſhare of the charge. 6 *Mod.* 307.

If a manor is held by tenure of repairing a bridge, or highway, which manor afterwards comes into ſeveral hands, in ſuch caſe every tenant of any parcel of the demeſnes and ſervices, is liable to the whole charge, but ſhall have contribution of the reſt; and this though the lord may agree with the purchaſers to diſcharge them of ſuch repairs, which only binds the lord, and doth not alter the remedy which the public hath. 1 *Danv. Abr.* 744. 1 *Salk.* 358.

So if a manor, ſubject to ſuch charge, comes into the hands of the crown, yet the duty upon it continues; and any perſon claiming afterwards under the crown, the whole manor, or any part thereof, ſhall be liable to an indictment or information, for want of due repairs. 1 *Salk.* 358.

If part of a bridge lie within a franchiſe, thoſe of the franchiſe may be charged with the repairs for ſo much: alſo, by a ſpecial tenure, a man may be charged with the repairs of one part of a bridge, and the inhabitants of a county are to repair the reſt. *Hawk. P. C.* 221. *Raym.* 384, 385.

Indictments for not repairing of bridges, will not lie but in caſe of common bridges on highways; though it hath been adjudged they will lie for a bridge on a common footway. *Mod. Caſ.* 256. Not keeping up a ferry, being a common paſſage for all the King's people, is indictable, as well as not keeping up bridges. 1 *Salk.* 12. All houſholders dwelling in any county or town, whether they occupy lands or not; and all perſons who have land in their own poſſeſſion, whether they dwell in the ſame county or not, are liable to be taxed as inhabitants, towards the repairs of a public bridge, by the *Stat.* 22 *H.* 8. *cap.* 5. Where it cannot be diſcovered who ought to repair a bridge, it muſt be preſented by the grand jury in Quarter-ſeſſions; and after their inquiry, and the order of ſeſſions upon it, the juſtices may ſend for the conſtables of every pariſh, to appear at a fixed time and place, to make a tax upon every inhabitant, *&c.* But it has been uſual, in the levying of money for repairs of bridges, to charge every hundred with a ſum in groſs, and to ſend ſuch charge to the high conſtables of each hundred, who ſend their warrants to the petty conſtables, to gather it, by virtue whereof they aſſeſs the inhabitants of pariſhes in particular ſums, according to a fixed rate, and collect it; and then they pay the ſame to the high conſtables, who bring it to the ſeſſions.

This method of raiſing money, though it be contrary to the ſtatute 22 *H.* 8. *c.* 5. has been obſerved ſome years paſt; but by the 1 *Ann. cap.* 18. juſtices in ſeſſions, upon preſentment made of want of reparations, are to aſſeſs every town, pariſh, *&c.* in proportion towards the repairs of a bridge; and the money aſſeſſed is to be levied by the conſtables of ſuch pariſhes, *&c.* and being demanded, and not paid in ten days, the inhabitants ſhall be diſtrained; and when the tax is levied, the conſtables are to pay it to the high conſtable of the hundred; who is to pay the ſame to ſuch perſons as the juſtices ſhall appoint, to be employed according to the order of the juſtices, towards repairing of the bridge: and the juſtices may allow any perſon concerned in the execution of the act 3 *d. per* pound out of the money collected. All matters relating to the repairing and amending of bridges, are to be determined in the county where they lie, and no preſentment or indictment ſhall be removed by *certiorari.* And by this ſtatute, the evidence of the inhabitants of thoſe places where the bridges are in decay, ſhall be admitted at any trial upon an information or indictment, *&c.*

By 14 *Geo.* 2. *c.* 33. the juſtices, at their general ſeſſions, may purchaſe or agree with perſons for any piece of land, not above one acre, near to any county-bridge, in order to enlarge or more conveniently rebuild it; and the ground ſhall be paid for out of the money raiſed by ſtatute of 12 *Geo.* 2. *c.* 29. for better aſſeſſing, collecting, and levying of county rates, *&c.* No perſons are compellable to make a new bridge but by act of parliament: and the inhabitants of the whole county cannot of their own authority change a bridge from one place to another. If a man has toll for men and cattle paſſing over a bridge, he is to repair it; and toll may be paid in theſe caſes, by preſcription, or ſtatute. See **County Rates.** And *vide Black. Com.* 1 *V.* 357. 4 *V.* 167, 417.

Bridgemaſters. There are *bridgemaſters* of *London-bridge*, choſen by the citizens, who have certain fees and profits belonging to their office, and the care of the ſaid *bridge*, &c. *Lex Londin.* 283.

Brief, *(brevis)* An abridgment of the client's caſe, made out for the inſtruction of counſel, on a trial at law; wherein the caſe of the party is to be *briefly* but fully ſtated, the proofs muſt be placed in due order, and proper anſwers made to whatever may be objected againſt the client's cauſe, by the oppoſite ſide; and herein great care is requiſite, that nothing be omitted to endanger the cauſe. *Form of a Brief,* ſee *Pract. Solic. p.* 311.

Brief al Eveſque, A writ to the biſhop, which in *Quare Impedit* ſhall go to remove an incumbent, unleſs he recover or be preſented *pendente lite.* 1 Keb. 386

Briefs, or licences to make collection *for loſs by fire.* Stat 4 & 5 Ann cap. 14. *Vide* Church-wardens.

Briga, (Fr. *brigue)* Debate or contention.——*Et toſuit terram illam in* brigam, *& intricavit terram, ſcilicet, per diverſa fraudulentia feoffamenta; Ideo committitur Mareſc. Ebor.* Hill. 18 Ed. 3. Rot. 28.

Brigandine, (Fr. in Lat. *lorica)* Is a coat of mail or ancient armour, conſiſting of many jointed and ſcale-like plates, very pliant and eaſy for the body. This word is mentioned in 4 & 5 *P. & M. cap.* 2. and ſome confound it with *haubergeon*; and others with *brigantine*, a long but low-built veſſel, ſwift in ſailing.

Brigantes, A word uſed in *Yorkſhire, Lancaſhire,* biſhoprick of *Durham, Weſtmoreland,* and *Cumberland. Blount.*

Brigbote, or **Brug-bote,** Signifies to be freed from the reparation of bridges. It is compounded of the Sax. *brig*, a bridge, and *bote*, which is a yielding of amends; or ſupplying a defect: but this is more properly *bruck-bote*, from the Germ. *bruck*, i. e. a bridge, and *bote*, a compenſation; and it is uſed for the liberty or exemption of being free from tribute or contribution towards the mending or re-edifying of bridges. *Fleta, lib.* 1. *c.* 47. *Selden's Titles of Honour, fol.* 622.

Briſtol, A great city, famous for trade: the mayor, burgeſſes, and commonalty of the city of *Briſtol*, are conſervators of the river *Avon* from above the bridge there to *Kings-Road*, and ſo down the *Severn* to the two iſlands called *Holmes*; and the Mayor and juſtices of the ſaid city, may make rules and orders for preſerving the river, and regulating pilots, maſters of ſhips, *&c.* Alſo for the government of their markets: and the ſtreets are to be kept clean and paved; and lamps or lights hung out at night. *Stat.* 11 & 12 *W.* 3. *c.* 23. No perſon ſhall act as a broker in the city of *Briſtol*, till admitted and licenſed by the Mayor and Aldermen, *&c.* on pain of forfeiting 500 *l.* and thoſe who employ any ſuch, to forfeit 50*l* *&c* by *Stat.* 3 *Geo.* 2. *c.* 31. By the *Stat.* 22 *Geo.* 2. *c.* 20. the *Stat.* 11 & 12 *W.* 3. is rendered more effectual ſo far as it relates to the paving and enlightening the ſtreets; and divers regulations are made in relation to the hackney coachmen, halliers, draymen and carters, and the markets and ſellers of hay and ſtraw, within the ſaid city and liberties thereof. See **Brokers.**

Brocage, *(brocagium)* The wages or hire of a broker; which is alſo termed *brokerage.* 12 *R.* 2. *c.* 2. and 11 *H.* 4.—*Ex* broccagio, *vel alio ſiniſtro pacto.* Rot Stat. 31 Ed. 3.

Brocella, This word, as interpreted by Dr. *Thoroten*, ſignifieth a wood; and it is ſaid to be a thicket or covert of buſhes and bruſh wood, from the obſolete Lat. *bruſca, terra* bruſcoſa, & brocia, Fr. *broce, brocelle:* and hence is our *brouce* of wood, and *brouſing* of cattle.——*Dedi unam* brocellam *vocat. &c.* Reg. de Thurgaton, MS.

Brocha, (from the Fr. *broche)* An awl, or large packing needle, the uſe whereof is very well known. A ſpit in ſome parts of *England* is called a *broche*; and from this word comes to pierce or *broach* a barrel. That it was an iron inſtrument, you may learn from the following authority.——Henricus de Havering *tenet manerium de* Norton in *Com.* Eſſex, *per ſerjeantiam inveniendi unum hominem, cum uno equo,* &c. *& uno ſacco de corio, & una* brochia *ferrea.* Anno 13 Ed. 1.

Brochia, A great can or pitcher. *Bract. lib.* 2. *tract.* 1. *cap.* 6. Where it ſeems that he intends *ſaccus* to carry dry, and *brochia* liquid things.

Brodehalfpeny, or **Broadhalfpeny.** See *Bordhalfpeny.*

Brokers, *(broccatores, broccarii & auxionarii)* Are thoſe that contrive, make and conclude bargains and contracts between merchants and tradeſmen, in matters of money and merchandize, for which they have a fee or reward. Theſe are *exchange brokers*; and by the ſtatute 10 *R.* 2. *cap.* 1. they are called *broggers*; alſo *broggers of corn* is uſed in a proclamation of Queen *Elizabeth*, for badgers, *Baker's Chron. fol.* 411. The original of the word is from a trader broken, and that from the Sax. *broc*, which ſignifies misfortune, which is often the true reaſon of a man's breaking; ſo that the broker came from one who was a broken trader by misfortune, and none but ſuch were formerly admitted to that employment; and they were to be freemen of the city of *London*, and allowed and approved by the Lord Mayor and aldermen, for their ability and honeſty.

By the *Stat* 8 & 9 *W*. 3. *cap*. 26. they are to be licenſed in *London* by the Lord Mayor, who adminiſters an oath, and takes bond for the faithful execution of their offices: if any perſons ſhall act as brokers, without being thus licenſed and admitted, they ſhall forfeit the ſum of 500*l*. And perſons employing them 50*l*. And brokers are to regiſter contracts, &c. under the like penalty: alſo brokers ſhall not deal for themſelves, on pain of forfeiting 200*l*. They are to carry about them a ſilver medal, having the king's arms and the arms of the city, &c. and pay 40*s*. a year to the chamber of the city. *Stat*. 6 *Ann*. c. 16. A penalty of 500*l*. is inflicted on lawful brokers ſelling ſhares of ſtock not authoriſed by act of parliament, by *Stat*. 6 *Geo*. 1. *c*. 18.

Brokers negociating or tranſacting contracts on *præmiums* to accept or refuſe ſtock, or in the nature of wagers, &c. relating to the value, incur the like penalty of 500*l*. And negotiating agreements knowingly, for the ſale of ſtock, where the ſeller is not actually poſſeſſed of the ſame, &c. ſhall forfeit 100*l*. And brokers ſhall keep a book called the *broker's book*; in which they ſhall enter all contracts and agreements, with the names of the buyers and ſellers, and day of making contracts, &c. to be produced when required, on pain of 50*l*. *Stat*. 7 *Geo*. 2. *cap*. 8. And ſee farther 3 *Geo*. 2 *c*. 31. concerning the admiſſion of brokers in the city of *Briſtol*.

There are likewiſe *pawn-brokers*, who commonly keep ſhops, and let out money to poor neceſſitous people upon pawns, for the moſt part on extortion; but theſe are more properly *pawn-takers*, and are not of that antiquity or credit as the former; nor do the ſtatutes allow them to be brokers, though now commonly ſo called. Theſe brokers often deal in ſtolen goods, as they buy them cheap, and are a great nuſance: notwithſtanding there is a law declaring that wrongful ſale of goods ſtolen, &c. to and by brokers, ſhall not alter the property; and if they do not diſcover ſuch goods at the requeſt of the owner, they are to forfeit double value. 1 *Jac*. 1. *cap*. 21. The reaſon of exorbitant intereſt being taken by theſe brokers, is the want of witneſſes to prove the contract, or other proof of the money taken, but the party's own evidence; but they may be puniſhed for their extortion on an action, *qui tam*, &c. The borrower may be a witneſs, provided he is not intereſted in the event of the ſuit. See *Pawn*.

Brok, An old ſword or dagger.——*Jurati dicunt ſuper ſacramentum, quod* Johannes de Monemne *miles per* Robertum *armigerum ſuum, percuſſit* Adam Gilbert *capellanum de* Wilton *in gutture quodam gladio, qui dicitur* brok, *per quod propinquior erat morti*, &c. Rot. Parl. 35 Ed. 1.

Broſſus, Bruiſed or injured with blows, wounds, or other caſualty. *Cowel*.

Brothel-Houſes, Lewd places, being the common habitations of proſtitutes. King *Hen*. 8. by proclamation, in the 37th year of his reign, ſuppreſſed all the ſtews or brothel-houſes, which had long continued on the bank ſide in *Southwark*, contrary to the law of God and of the land. 3 *Inſt*. 205. A *brothelman* was a looſe idle fellow; and a *feme bordelier* or *brothelier*, a common whore. And *borelman* is a contraction of *brothelman*. *Chaucer*. See *Bawdy-Houſe*.

Bruere. This the *Latins* call *erica*, and ſignifies heath ground; and *brueria*, briars, thorns, or heath, from the Sax. *brær, briar*.——*Humphry* duke of *Glouceſter* grants the foreſter of *Shotore* and *Stowode*, *tantum de arboribus &* brueriis, *quantum pro veſtura indiguerit, habebit*. Paroch. Antiq. 620.

Bruillus, A wood or grove; Fr. *breil*, *breuil*, a thicket or clump of trees in a park or foreſt. Hence the abby of *Bruer*, in the foreſt of *Wichwood* in *com. Oxon*: and *Bruel*, *Brebul*, or *Brill*, a hunting ſeat of our ancient kings in the foreſt of *Bernwood* in *com. Bucks*.

Bruilletus, A ſmall coppice or wood.——*Dedimus* Willielmo B. *Licentiam claudendi duos* bruilletos, *qui ſunt extra regardum foreſtæ noſtræ quorum unus eſt inter* Swinburn & Eſtorbrig. *Cart. Ric*. 1. *Bruella* ſeems likewiſe to ſignify a little wood, or heathy ground.—*In dominicis boſcis domini epiſcopi, ſcil. in* bruellis *ex parte auſtrali regii itineris*. Reg. Priorat. de Wermeley, ſol. 24.

Bruſcia, Sometimes ſignifies a wood: and in *Mon. Angl. Charta noſtra confirmavimus centum acras tam de terra quam de* bruſcia *de manerio de Riveria*. Monaſt. tom. 1. pag. 773.

Bruſua and **Bruſula**, Brouſe or bruſhwood. *Mon. Angl. tom*. 1. *fol*. 773.

Bubbles. The South-ſea project, and various other ſchemes, ſimilar to the end intended, that of defrauding the ſubject, though different as to the means, called by the name of *bubbles*. The *Stat*. 6 *Geo*. 1. *c*. 18. makes all unwarrantable undertakings by unlawful ſubſcriptions ſubject to the penalties of a *præmunire*.

Bucklarium, A buckler.—*Et quod malefactores noctanter cum gladiis &* bucklariis, *ac aliis armis*, &c. Clauſ. 26 Ed. 1. m. 8. intus.

Buckſtall, A toil to take deer, which by the *Stat*. 19 *Hen*. 7. *c*. 11. is not to be kept by any perſon that hath not a park of his own, under *penalties*. See alſo 3 *Jac*. 1. *c*. 13. There is a privilege of being quit of amerciaments for *buckſtalls*.—*Et ſint quieti de chevagio, hondpeny, &* buckſtall, *& de omnibus miſericordiis*, &c. Privileg. de Semplingham. *See* 4 Inſt. 306.

Buckwheat, Is the ſame with *French* wheat, uſed in many counties of this kingdom: in *Eſſex* it is called *brank*; and in *Worceſterſhire, crap*. It is mentioned in the *Stat*. 15 *Car*. 2. *c*. 5.

Bucinus, A military weapon for a footman.——Petrus de Chetwood *tenet—per ſerjeantiam inveniend. unum hominem peditem, cum una lancea, & uno* bucino *ferreo*, &c. Tenures, pag. 74.

Buggery, or *ſodomy*, Comes from the Italian *buggerare*, to *bugger*; and it is defined to be a carnal copulation againſt nature, and this is either by the confuſion of ſpecies; that is to ſay, a man or a woman with a brute beaſt; or of ſexes, as a man with a man, or man unnaturally with a woman. 12 *Co. Rep*. 36. This ſin againſt God, nature, and the law, it is ſaid was brought into *England* by the *Lombards*. *Rot. Parl*. 50 *Ed*. 3. *numb*. 58. *Stat*. 25 *H*. 8. *cap*. 6. And in ancient times, according to ſome authors, it was puniſhable with burning, though others ſay with burying alive: but at this day it is felony excluded clergy, and puniſhed as other felonies. 25 *H*. 8. *cap*. 6. and 5 *Eliz*. 17.

By the articles of the navy, (22 *Geo*. 2. *c*. 33.) If any perſon in the fleet ſhall commit the unnatural and deteſtible ſin of buggery or ſodomy, with man or beaſt; he ſhall be puniſhed with death by the ſentence of a court martial.

It is felony both in the agent and patient conſenting, except the perſon on whom committed be a boy under the age of diſcretion; when it is felony only in the agent: alſo perſons preſent, aiding and abetting to this crime, are all principals, and the ſtatutes make it felony generally: there may be acceſſaries before and after the fact; but though none of the principal offenders ſhall be admitted to clergy, the acceſſaries are not excluded it. 1 *Hale's Hiſt. P. C*. 670. For many years paſt the crime of buggery has been greatly practiſed in this kingdom, without any exemplary puniſhment of the committers of it; till *anno* 12 *Geo*. 1. a great number of theſe wretches were convicted of the moſt abominable practices, and three of them put to death; which ſeaſonable juſtice ſeems to have given a check to the before growing evil.

In every indictment for this offence, there muſt be the words, *rem habuit veneriam & carnaliter cognovit*, &c. and of conſequence ſome kind of penetration and emiſſion muſt be proved; but any the leaſt degree is ſufficient. 1 *Hawk*. 6. The general words of theſe indictments are, that *A. B*. on ſuch a day, at, &c. with force and arms, made an aſſault upon *C. D*. and then and there wickedly, deviliſhly, feloniouſly, and againſt the order of nature, committed the venerial act with the ſaid *C. D*. and carnally knew him, and then and there wickedly, &c. did with him that ſodomitical and deteſtable ſin called buggery, (not to be named among Chriſtians) to the great diſpleaſure of God, and diſgrace of all mankind, &c. This crime is excepted out of our acts of general pardon. Vide *Black. Com*. 4 *V*. 215.

Buildings. If a houſe new built exceeds the ancient foundation, whereby that is the cauſe of hindering the lights or air of another houſe, action lies againſt the builder. *Hob.* 131. In *London* a man may place ladders or poles upon the ground, or againſt houſes adjoining for building his own; but he may not break ground: and builders of houſes ought to have licence from the mayor and aldermen, *&c.* for a *bourd* in the ſtreets, which are not to be incumbered. *Cit. Lib.* 30, 146. In new building of *London*, it was ordained, that the outſides of the buildings be of brick or ſtone, and the houſes for the principal ſtreets to be four ſtories high, having in the front, balconies, *&c.* by *Stat.* 19 *Car.* 2. *c.* 3.

The laws for regulating of all buildings in the cities of *London* and *Weſtminſter*, and other pariſhes and places in the weekly bills of mortality, the pariſhes of St. *Mary le bone*, and *Paddington*, St. *Pancraſs* and St. *Luke* at *Chelſea*, for preventing miſchiefs by fire, are reduced into one act by *Stat.* 12 *Geo.* 3. *c.* 73. The regulations of this law are ſo numerous, we muſt refer the reader to the ſtatute itſelf.

Bull, *(bulla)* A brief or mandate of the pope or biſhop of *Rome*, from the lead or ſometimes gold ſeal affixed thereto, which *Mat. Paris*, *anno* 1237, thus deſcribes: *In* bulla *domini papæ ſtat imago* Pauli *a dextris crucis in medio bullæ figurata*, *&* Petri *a ſiniſtris.* Theſe decrees of the pope are often mentioned in our ſtatutes, as 25 *Ed.* 3. 28 *H.* 8. *cap.* 16. 1 *&* 2 *P.* *&* *M.* *c.* 8. and 13 *Eliz. cap.* 2. And have been heretofore uſed, and of force in this land: but by the ſtatute 28 *Hen.* 8. *c.* 16. it was enacted, That all bulls, briefs and diſpenſations had or obtained from the biſhop of *Rome*, ſhould be void. And by 13 *Eliz. c.* 2. (vide 23 *Eliz. c.* 1.) If any perſon ſhall obtain from *Rome* any bull or writing to abſolve or reconcile ſuch as forſake their due allegiance, or ſhall give or receive abſolution by colour of ſuch bull, or uſe or publiſh ſuch bull, *&c.* it is high treaſon.

Bull and Boar, By the cuſtom of ſome places, a parſon may be obliged to keep a *bull and a boar* for the uſe of the pariſhioners, in conſideration of his having tithes of calves and pigs, *&c.* 1 *Rol. Abr.* 559. 4 *Mod.* 241.

Bullio Salis, As much *ſalt* as is made at one *wealing* or *boiling:* a meaſure of ſalt, ſuppoſed to be twelve gallons. *Mon. Angl. tom.* 2.

Bullion, (Fr. *billon)* The ore or metal whereof gold is made; and ſignifies with us gold or ſilver in *billet*, in the maſs before it is coined. *Anno* 9 *Ed.* 3. *c.* 2.

Bultel, Is the bran or refuſe of meal after dreſſed; alſo the bag wherein it is dreſſed is called a *bulter*, or rather *boulter*. The word is mentioned in the ſtatute *de aſſiſa panis & cerviſiæ*, *anno* 51 *Hen.* 3. Hence comes *bulted* or *boulted bread*, being the coarſeſt bread.

Bundles, A ſort of records of the *Chancery* lying in the office of the *Rolls*; in which are contained, the *files* of bills and anſwers, of *hab. cor. cum cauſa*, *certiorari's*, attachments, *&c.* *ſcire facias's*, certificates of ſtatute-ſtaple, extents and liberates, *ſuperſedeas's*, bails on ſpecial pardons, bills from the Exchequer of the names of ſheriffs, letters patent ſurrendered and deeds cancelled, inquiſitions, privy ſeals for grants, bills ſigned by the king, warrants of eſcheators, cuſtomers, *&c.*

Burcheta, (from the Fr. *berche)* A kind of gun uſed in foreſts.

Burcifer Regis, Purſe-bearer, or keeper of the king's privy purſe. *Pat.* 17 *Hen.* 8.

Burdare, To jeſt or trifle.——*Quod nulli veniant ad turniandum vel* burdandum, *nec ad alias quaſcunque aventuras*, *&c.* Mat. Paris, Addit. p. 149.

Burgage, *(burgagium)* An ancient tenure proper to boroughs, whereby the inhabitants by cuſtom hold their lands or tenements of the king, or other lord of the borough, at a certain yearly rent. *Old Tenures.* It is a kind of ſocage tenure, and ſignifieth the ſervice whereby the borough is holden; and the king hath nothing to do with heirs of this land, whether they be under fourteen, or above that age, and under twenty-one. *Co. Lit.* 109. *Jenk. Cent.* 127. *Swinburn* ranks it *inter ignobiles tenuras.* And 37 *Hen.* 8. *c.* 20. *Item non utimur facere fidelitatem vel ſervitium forinſecum dominis feodorum pro terris & tenementis noſtris, niſi tantummodo redditus noſtros de eiſdem terris exeuntes; quia tenemus terras & tenementa noſtra per* ſervitium burgagii, *ita quod non habemus medium inter nos & dominum regem.* MS. Codex de LL. Statutis & Conſuetud. Burgi villæ Montgomer. a temp. Hen. 2.—Anciently a dwelling houſe in a borough-town was called a *burgage.* —*Sciant quod ego Editha, &c. Dedi—in liberam, puram & perpetuam eleemoſynam totum illud* burgagium *cum ædificiis & pertin. ſuis quod jacet in villa* Leominſtr. *Ex libro chartarum priorat. Leon'.* Vide *Black. Com.* 2 *V.* 82. 4 *V.* 412.

Burg, A ſmall walled town, or place of privilege, *&c.* See *Borough.*

Burg-bote, (from *burg*, *caſtellum*, and *bote*, *compenſatio)* Is a tribute or contribution towards the building or repairing of caſtles, or walls of a borough or city: from which divers had exemption by the ancient charters of the *Saxon* kings. *Raſtal.* burg-bote *ſignificat quietantiam reparationis murorum civitatis vel* burgi. *Fleta, lib.* 1. *c.* 47

Burgeſſes, *(burgarii & burgenſes)* Are properly men of trade, or the inhabitants of a borough or walled town; but we uſually apply this name to the magiſtrates of ſuch a town, as the bailiff and burgeſſes of *Leominſter*, &c.

In *Germany*, and other countries, they confound *burgeſs* and *citizen*; but we diſtinguiſh them, as appears by the ſtatute 5 *R.* 2. *c.* 4. where the claſſes of the commonwealth are thus enumerated, *count*, *baron*, *banneret*, *chivaleer de countee*; *citizein de citee*; *burgeſs de burgh.* See *Co. Lit.* 80. We now alſo call thoſe *burgeſſes*, who ſerve in parliament, for any borough or corporation: and no man is qualified to be ſuch a burgeſs, that hath not an eſtate of 300*l.* a year, clear of all incumbrances. *Stat.* 9 *Ann. cap.* 7. But ſee *Stat.* 33 *Geo.* 2. *c.* 20. Burgeſſes of our towns are called, in *Domeſday*, the *homines* of the king, or of ſome other great man; but this only ſhews whoſe protection they were under, and is not any infringement of their *civil liberty.* Squire Ang. Sax. Gov. 160. *n.*

Burgenſes & homines burgorum & villarum, *Madox Excheq.* 1 *V.* 333. The aid of burghs, *ib.* 1 *V.* 600, 601. Vide *Borough.*

Burgh-breche, A fine impoſed on the community of a town, for a breach of the peace, *&c.* *Angli omnes decemvirali olim fidejuſſione pacem regiam ſtipulati ſunt, quod autem in hanc commiſſum eſt,* burgh-brech *dicitur, &c.* Leg. Canuti, cap. 55

Burgheriſthe, or *burghberiche*, Is a word uſed in *Domeſday*, ſignifying *violatio pacis in villa.* Blount.

Burgmote, A court of a borough.—*Et habeatur in anno ter* bergeſmotus, *&c. niſi ſæpius ſit, & interſit epiſcopus & aldermanus, & doceant ibi Dei rectum & ſæculi.* LL. Canuti, MS cap. 44.

Burghware, *(quaſi burgiver)* A citizen or *burgeſs.*— Willielmus *rex ſalut.* Willielmum *epiſcopum*, *&* Godfredum Portgreſium, *& omnem* burghware *infra* London. *Charta Willielmi ſen Londinenſibus confecta.*

Burglary, (burglaria, from the Sax. *burg*, *domus*, or *arx*, *&* laron, *furtum)* Is where a man breaketh and entereth the houſe of another in the *night-time*, to the intent to commit ſome felony, *whether the intention be executed or not.* 4 *Co.* 49. In the natural ſignification, burglary is nothing but the robbing of a houſe; but our law reſtrains it to robbing a houſe by *night*, or *breaking in* with an *intent* to rob, or do ſome other felony: and the like offence committed by day is called *houſe-breaking*, to diſtinguiſh it from *burglary.*

It is an offence excluded the benefit of clergy, and may be committed a great many ways: and if a man hath two houſes, and reſides ſometimes in one of the houſes, and ſometimes in the other, if the houſe he doth not inhabit is broken by any perſon in the night, it is burglary. *Poph.* 52. 18. *Eliz. c.* 7.

And when ſeveral come with a deſign to commit burglary, and one does it, while the reſt watch near the houſe, here his act is, by interpretation, the act of all of them. *Wood.* 377. If thieves pretend buſineſs to get into a houſe by night, and thereupon the owner of the houſe opens his door, and they enter and rob the houſe, this is burglary. *Kel.* 42. Though in ſuch a caſe, juries generally find guilty of the *ſtealing*, but not of the burglary. Alſo if a perſon be within the houſe, and ſteal goods, and then open the houſe on the inſide, and go out with the goods, this is burglary, though the thief did not break the houſe. 3 *Inſt.* 64. If a thief unlocks a door, or draws the latch of a room to rob, *&c.* or if one comes down a chimney, opens a window, breaks a hole in the wall, *&c.* all theſe are a breaking: and if the thief ſet his foot over the threſhold of the door of the houſe, or put his hand, piſtol, *&c.* within the door or window, it is an entry ſufficient to make it burglary. *H. P. C.* 80, 81.

Every entrance into the houſe by a treſpaſſer is not a breaking in this caſe, but there muſt be an actual breaking. As if the door of a manſion houſe ſtand open, and the thief enters, this is no breaking. So it is if the window of the houſe be open, and a thief with a hook or other engine draweth out ſome of the goods of the owner, this is no burglary, becauſe there is no actual breaking of the houſe. But if the thief breaketh the glaſs of the window, and with a hook or other engine draweth out ſome of the goods of the owner, this is burglary, for there was an actual breaking of the houſe. 3 *Inſt.* 64. Theſe acts amount to an actual breaking, *viz.* opening the caſement, or breaking the glaſs window, picking open the lock of a door, or putting back the lock, or the leaf of a window, or unlatching the door that is only latched. 1 *Hal. H. P. C.* 552.

One of the *ſervants* of the houſe opened his lady's chamber door, which was faſtened with a braſs bolt, with deſign to commit a rape; and it was ruled to be burglary, and the defendant was convicted and tranſported. *Stran.* 481. *Kel.* 67.

Though the houſe is to be a manſion-houſe, and the out-houſes adjoining to the manſion-houſe are part thereof, wherein this crime may be committed; but not a barn, ſtable, *&c.* at any diſtance from the houſe. 4 *Rep.* 40. Part of a houſe divided from the reſt, having a door of its own to the ſtreet, this is a manſion-houſe of him who hires it. *Kel.* 84.

To break and enter a *ſhop*, not parcel of the manſion-houſe, in which the ſhop-keeper never lodges, but only works or trades there in the day-time, is not burglary, but only larceny; but if he, or his ſervant, uſually or often lodge in the ſhop at night, it is then a manſion-houſe, in which a burglary may be committed. 1 *H. H. P. C.* 557, 558.

It is not neceſſary to make it burglary, that any perſon be actually in the houſe at the very time of the offence committed. 1 *Hawk.* 103.

A chamber in an inn of court, where one uſually lodges, is a manſion-houſe; for every one hath a ſeveral property there. But a chamber where any perſon doth lodge as an inmate, cannot be called his manſion; though if a burglary be committed in his lodgings, the indictment may lay the offence to be in the manſion-houſe of him that let them. 3 *Inſt.* 65. *Kel.* 83. If the owner of the houſe breaks into the rooms of his lodgers, and ſteals their goods it cannot be burglary to break into his own houſe, but it is felony to ſteal their goods. *Wood's Inſt.* 378.

A lodger in an inn hath a ſpecial intereſt in his chamber; ſo that if he opens his chamber door, and takes goods in the houſe, and goes away, it ſeems not to be burglary. And where *A.* enters into the houſe of *B.* in the night, by the doors open, and breaks open a cheſt, and ſteals goods without breaking an inner door; it is no burglary by the Common law, becauſe the cheſt is no part of the houſe: though it is felony ouſted of clergy by ſtatute; and if one break open a counter or cupboard, fixed to a houſe, it is burglary. 1 *Hale's Hiſt. P. C.* 554. See 3 *W. & M. c.* 9.

The intention to commit felony to make burglary muſt be of ſuch a fact, as was felony at Common law; and not of a felony newly made by act of parliament: but the offences of burglary and felony may be joined in the ſame indictment; and where a man commits burglary, and at the ſame time ſteals goods out of the houſe, if he be acquitted of the burglary, he may notwithſtanding be indicted of the larceny. 2 *Hale's Hiſt. P. C.* 245. Taking away goods from a dwelling-houſe in the night or day, where any perſon is therein; and breaking any ſhop, ware-houſe, *&c.* and taking away goods privately to the value of 5 s. though no perſon be therein, is burglary, by *Stat.* 3 *W. & M. c.* 9. 10 & 11 *W.* 3. *c.* 23. And A reward of 40 *l.* is given by the ſtatute for apprehending a burglar, and proſecuting him to conviction. 5 *Ann. cap.* 31.

See *Stat.* 12 *Ann. cap.* 7. by which if any perſon ſhall enter into the manſion-houſe of another, by day or by night, without breaking the ſame, with an intent to commit felony, or being in ſuch houſe ſhall commit any felony, and ſhall in the night-time break the ſaid houſe to get out, he ſhall be guilty of burglary, and ouſted of the benefit of clergy, in the ſame manner as if he had broken and entered the houſe in the night-time, with intent to commit felony.

And ſee 3 *Geo.* 1. *c.* 15. & 6 *Geo.* 1. *c.* 23. concerning payment of the rewards for apprehending and convicting of burglars. See likewiſe 25 *Geo* 2. *c.* 36 which provides, That the charges of proſecuting and convicting a burglar ſhall be paid by the treaſurer of the county where the burglary was committed.

Buri, A word ſignifying huſbandmen.——*In* Upton *ſunt* 18 *villani*, 11 *bordarii*, & *duo* buri, *&c.* Mon. Angl. tom. 3. p. 183.

Burials. Perſons dying are to be *buried* in woollen, on pain of forfeiting 5 *l.* And affidavit is to be made of ſuch burying before a juſtice, *&c.* under the like penalty. *Stat.* 30 *Car.* 2. *c.* 3.

Burneta, Cloth made of dy'd wool. A *burnet* colour muſt be dy'd; but *brunus color* may be made with wool without dying, which we call medleys or ruſſets. *Differentia inter* brunum *colorem* & burnetam; brunus *enim color poteſt fieri ex lana abſque tinctura, viz. ruſſetum:* burnetum *vero requirit tincturam & artificium hominis quoad colorem.* Lyndewood. Thus much is mentioned becauſe this word is ſometimes wrote *bruneta*.

Burning in the Hand. *Vide Branding.*

Burning of houſes, out-houſes, *&c.* Vide *Arſon* and *Black. Com.* 4 *V.* 360, 370. For *Malicious Burning*, *ib.* 243, 4, 5. For *Burning to Death*, *ib.* 4 *V.* 93, 204, 216, 222, 370, 401.

Burrochium, A burrock, or ſmall ware over a river, where wheels are laid for the taking of fiſh. *Cowel.*

Burſa, A purſe. *Reddendo inde ad* burſam *abbatis vi. d. ad feſtum ſancti* Michaelis, *&c.* Ex lib. Chart. Priorat. Leominſtr.

Burſaria, The *burſery*, or exchequer of collegiate and conventual bodies; or the place of receiving and paying, and accounted by the *burſarii*, or *burſers*, *A. D.* 1277. *Computaverumt patres* Radulphus de Meriton, & Stephanus de Oxon. *de* burſaria *domus* Bernceſtre *coram auditoribus. Paroch. Antiq. p.* 288. But the word *burſarii* did not only ſignify the *burſars* of a convent or college; but formerly ſtipendiary ſcholars were called by the name of *burſarii*, as they lived on the *burſe* or fund, or public ſtock of the univerſity. At *Paris*, and among the *Ciſtertian monks*, they were particularly termed by this name:—and *in ea univerſitate (ſcil.* Oxon) *ſunt clara collegia a regibus, reginis, epiſcopis, & principibus fundata, & ex ſtipendiis eorum ſcholaſtici plurimi utuntur, quos* Pariſiis burſarios *vocamus.* Johan. Major. Geſt. Scot. lib. 1. c. 5.

Burſe, *(burſa, cambium, baſilica)* An exchange or place of meeting of merchants.

Burſholders. See *Borough-holders.*

Buſones Comitatus: They are mentioned in *Bracton.* —*Juſticiarii vocatis ad ſe quatuor vel ſex vel pluribus de majoribus comitatus qui dicuntur* buſones comitat. & *ad quorum nutum dependent vota aliorum*, *&c.* Bract. lib. 3. tract. 2. cap. 1. Mr. *Blount* ſays *buſones* is uſed for *barones*.

Buſſa, An old word ſignifying a great ſhip. *Blount's Dict.*

Buſſellus, A buſhel; from *buza*, *butta*, *buttis*, a ſtanding meaſure: and hence *butticella*, *butticellus*, *buſſellus*, a leſs meaſure. Some derive it from the old Fr. *bouts*, leather continents of wine; whence come our leather *budget* and *bottles*. Kennet's Gloſſ.

Buſta and **Buſtus**, *buſca*, and *buſcus*, *etc.* The ſame with *brucia* and *bruſula*.

Buſtard, A large bird of game, uſually found on downs and plains, mentioned in the *Stat.* 25 *Hen.* 8. *cap.* 11.

Butchers, Are to ſell their meat at reaſonable prices, or ſhall forfeit double the value, to be levied by warrant of two juſtices of peace, *etc.* And conſpiring to ſell their meat at certain rates; or ſelling fleſh of cattle dying of the murrain, *etc.* are liable to divers penalties by ſtatutes. Butchers are not to kill meat in their ſcalding-houſes, or within the walls of *London*, &c. Nor buy any fat cattle to ſell again, on pain of forfeiting the value; but this ſhall not extend to ſelling calves, lambs, or ſheep dead, from one butcher to another. *Stat.* 4 *Hen.* 7. 3 *et* 4 *Ed.* 6. *c.* 19. And ſee farther 21 *Hen.* 8. *c.* 8. 22 *Hen.* 8. *c.* 6. 24 *Hen.* 8. *c.* 3. 25 *Hen.* 8. *c.* 1. 27 *Hen.* 8. *c.* 9. 33 *Hen.* 8. *c.* 11. 2 *et* 3 *Ed.* 6. *c.* 15. 1 *Jac.* 1. *c.* 22. 3 *Car. c.* 1.—*Et* 15 *Car.* 2. *c.* 8.

By *Stat.* 5 *Ann. c.* 34. *ſect.* 2. Butchers within ten miles of *London* not to ſell fat cattle alive or dead to one another. But by 7 *Ann. c.* 6. they may ſell dead calves or ſheep. See likewiſe 9 *Ann. c.* 11. and title **Hides.**

Butt, (*butticum*) A meaſure of wine, *&c.* well known among merchants, and containing 126 gallons of *Malmſey* wine, by *Stat.* 1 *R.* 3. *c.* 13.

Butter and Cheeſe. Juſtices of peace in ſeſſions may reſtrain retailing *butter and cheeſe*; which is to be ſold in open ſhop, and not above a barrel of butter or wey of cheeſe at one time, under penalties. 3 *&* 4 *Ed.* 6. *cap.* 21. 21 *Jac.* 1. *cap.* 22. Every kilderkin of butter ſhall contain 112 pounds, the firkin 56, and pot 14 pounds of good butter, beſides the caſks and pots; and old bad butter ſhall not be mixed with good, nor ſhall butter be repacked for ſale, which incurs forfeiture of double value, *&c.* And ſellers and packers of butter ſhall pack it in good caſks, and ſet their names thereon, with the weight of the caſk and butter, on pain of 10*s.* *Stat.* 13 *&* 14 *Car.* 2. *cap.* 26. Butter and cheeſe may be tranſported: buyers of butter are to put marks on caſks; and perſons opening them afterwards, or putting in other butter, *&c.* ſhall forfeit 20*s.* 22 *Car.* 2. *cap.* 13. 4 *&* 5 *W. & M. c.* 7. See farther relating to this ſubject, 9 *Hen.* 6. *c.* 8. 5 *Eliz. c.* 12. 32 *Car.* 2. *c.* 2. & 17 *Geo.* 2. *c.* 8.

Buttons, Made of hair, or other foreign buttons, ſhall not be imported, on pain of forfeiture, *&c.* Alſo buttons are not to be made of cloth, ſtuff, or wood, under penalties. See 4 *W. & M. c.* 5. *c.* 10. 10 *W.* 3. *c.* 2. 4 *Geo.* 1. *c.* 7. See farther 13 *&* 14 *Car.* 2. *c.* 13. 8 *Ann. c.* 6. & 7 *Geo.* 1. *c.* 12. And ſee title *Taylors*.

Butts, The place where archers meet with their bows and arrows to ſhoot at a mark, which we call ſhooting at the *butts*. Alſo *butts* are the ends or ſhort pieces of land in arable ridges and furrows *buttum terræ*, a *butt* of land. —*Dedi decem acras & unum* buttum *terræ, &c.* Cart. M. de Sibbeford, penes Will. Dugdale, Mil. See *Abbuttals*.

Butlerage of Wines, Signifies that impoſition upon wine brought into the kingdom, which the king's *butler* may take of every ſhip, *viz.* 2*s.* for every ton of wine imported by ſtrangers. *Rot. Parl.* 11 *H.* 4. *anno* 1 *H.* 8. *c.* 5. See *Botiler of the King*, and *Priſage*, and *Black. Com.* 1 *V.* 314.

Buthſcarle, *butſecarl, buſcarles,* (buſcarli & buthſecarli) *ſunt qui portus nauticos cuſtodiunt:* Mariners or ſeamen. *Selden's Mare Clauſum, fol.* 184.

Buzonis, Seems to be the ſhaft of an arrow, before it is fledged or feathered.——Radulphs de Stopham *tenet maner. de* Brianſtan. *com.* Dorſet. *per ſerjeantiam inveniend' domino regi garcionem deferentem unum arcum ſine corda, & unum* buzonem *ſine pennis*. S. Ed. 1.

Bye, Words ending in *by* or *bee*, ſignify a dwelling place or habitation, from the Sax. *bye*.

By-Laws, (*bilagines*, from the Goth. *by*, *pagus*, and *lagen*, lex) Are laws made *obiter*, or by the *by*; ſuch as orders and conſtitutions of corporations, for the governing of their members; of courts-leet and court-baron; commoners or inhabitants in vills, *&c* made by common aſſent, for the good of thoſe that made them, in particular caſes whereunto the public law doth not extend; ſo that they lay *reſtrictions* on the parties, not impoſed by the common or ſtatute law: guilds and fraternities of trades, by letters patent of incorporation, may likewiſe make *by-laws*, for the better regulation of trade among themſelves, or with others. *Kitch.* 45, 72. 6 *Rep.* 63.

In *Scotland* thoſe laws are called laws of *birlaw*, or *burlaw*; which are made by neighbours elected by common conſent in the *birlaw courts*, wherein knowledge is taken of complaints betwixt neighbour and neighbour; which men ſo choſen are judges and arbitrators, and ſtiled *birlaw-men*. And *birlaws*, according to *Skene*, are *leges ruſticorum*, laws made by huſbandmen, or townſhips, concerning neighbourhood amongſt them. *Skene, pag.* 33.

A power of making by-laws is included in the very act of incorporating, and incident to every corporation aggregate, without expreſs words in the charter; and all by-laws muſt ever be ſubject and ſquared to the rule of the general law of the realm, as ſubordinate to it. *Hob.* 211.

The inhabitants of a town, without any cuſtom, may make ordinances or *by-laws*, for repairing of a church, or highway, or any ſuch thing, which is *for the general good* of the public: and in ſuch caſes, the greater part ſhall bind all: though if it be for their own private profit, as for the well ordering of their common, or the like, they cannot make *by-laws* without a cuſtom to warrant it; and if there be a cuſtom, the greateſt part ſhall not bind the reſt in theſe caſes, unleſs it be warranted by the cuſtom. 5 *Rep.* 63.

Every city and town corporate hath power to make *by-laws*, for the better government of the body politick. *Hob.* 211. 5 *Mod.* 429. But a corporation cannot make a *by-law* to bind ſtrangers which are not of their body, or to extend to places out of the juriſdiction of the makers: nor may by-laws be made in the form of acts of parliament. 1 *Nelſ. Abr.* 411. Alſo by-laws may not be made to reſtrain a perſon from ſetting up his trade, it being againſt the Common law to reſtrain men from trades: a by-law that *no perſon who is not a freeman* of a corporation ſhall ſet up a trade, under a penalty, hath been adjudged void and againſt law; as it excludes thoſe who have ſerved apprenticeſhips in the corporations, who by law may uſe trades. 1 *Lutw.* 562.

By-laws ought to be for the common good and benefit of all thoſe who live *in the place* where made; and reſtraining men from uſing trades cannot be for common good, ſo that ſuch by-laws have been condemned: but ſuch a by-law warranted by particular *cuſtom*, as that no ſtrange artificer who is not free of that place ſhall uſe any art within the ſame, hath been held good. *Lutw.* 175. A *cuſtom* that no foreign tradeſman ſhall uſe or exerciſe a trade in a town, *&c.* will warrant that which a *grant* cannot do; and where cuſtom has reſtrained, a by-law may be made that upon compoſition foreigners may exerciſe a trade. *Carter* 120.

A by-law by a corporation may inflict a penalty, recoverable by diſtreſs, or action of debt, and be good. 1 *Danv. Abr.* 738. But 'tis ſaid it cannot be made under a certain penalty, to be levied by *diſtreſs and ſale* of the offender's *goods*. 2 *Vent.* 182. For a by-law may not be made on pain of forfeiture of goods: nor may it inflict impriſonment, being contrary to *Magna Charta*. 2 *Inſt.* 54. Where by-laws are good, notice of them is not neceſſary, becauſe they are preſumed for the better government and benefit of all perſons living in thoſe particular limits where made, and therefore all perſons therein are bound to take notice of them. 1 *Lutw.* 404.

The freeholders in a court leet may make by-laws relating to the public good, which ſhall bind every one within the leet. 2 *Danv.* 457. And a court-baron may make by-laws, by cuſtom, and add a penalty for the non-performance of them. But all by-laws are to be *reaſonable*; and ought to be for the *common benefit*, and not private advantage of any particular perſons; and muſt be conſonant to the public laws and ſtatutes, as ſubordinate to them. *Godſb.* 79. And by *Stat.* 19 *H.* 7. *c.* 7. By-laws made by corporations are to be approved by the Lord Chancellor, or Chief Juſtices, *&c.* on pain of 40 *l.* Vide *the Statute*. *Vide* alſo *Black. Com.* 1 *V.* 475. And as to *actions* on *by-laws*, *ib.* 3 *V.* 159.

C.

Cabal, (*cabala*) A junto or private meeting; from a doctrine or ſcience practiſed by the *Jews*. 'Tis a myſterious doctrine among the *Jews*, received by oral tradition from their fathers, and at laſt compiled into a body, in their *Talmud*. It alſo ſignifies a ſkill or ſcience practiſed by the more modern *Jews*, in diſcovering myſteries and expoſitions from the *numbers* that letters of words make.

Caballa (from the Lat. *caballus*) Belonging to a horſe. *Domeſday*.

Cabliſh, (*cablicium*) Signifies bruſhwood, according to the writers of the foreſt laws: but Sir *Henry Spelman* thinks it more properly windfall-wood, becauſe it was written of old *cadibulum*, from *cadere*: or if derived from the Fr. *chabilis*, it alſo muſt be windfall-wood.——*Item dicunt, quod* coppeg & cablicia *vento proſtrat. valent*, &c. Inq. de an. 47 H. 3.

Cables for ſhipping; making them of old materials, which ſhall contain ſeven inches in compaſs when made and tarred, &c. is liable to a forfeiture of four times the value, by *Stat.* 35 *Eliz. c.* 8. And ſee 21 *Hen.* 8. *c.* 12.

Cachepolus or **Cacherellus**, An inferior bailiff, a catchpole.——*In ſtipendiis ballivi XIII s. IV d. in ſtipendiis unius* cachepoli *IX s. VII d. per ann.* &c.——*Conſuetud. domus de* Farendon MS. fol. 23.——And in *Thorn cacherellos* are mentioned, *viz. Seneſchallus & cuſtodes noſtri diligenter inquirant de injuriis per* cacherellos *vicecomitis*, &c.

Cade, Of herrings is 500, of ſprats 1000. *Book of Rates, fol.* 45. But it is ſaid, that anciently 600 made the *cade* of herrings, and ſix ſcore to the hundred, which is called *Magnum Centum*.

Cadet, The younger ſon of a gentleman; particularly applied to a volunteer in the army, waiting for ſome poſt.

Caep Gildum, The reſtoring goods or cattle. *Blount*. See *Ceapgild*.

Cagia, A cage or coop for birds.——*Mandatum eſt vicecom.* Wilts. *quod emat in baliva ſua* 300 *gallinas*, &c. *cum* cagiis, *in quibus eædem gallinæ poni poſſunt*. Ex Rot. Clauſ 38 H. 3.

Calamus, A cane, reed, or quill; compriſed among merchandiſe or drugs to be garbled. 1 *Jac.* 1. *c.* 19.

Calangium and **Calangia**. A challenge, claim, or diſpute.——*Sciant quod ego* Godfridus, &c. *dedi*, &c. *ſine aliqua reclamatione ſeu* calangio, &c. Mon. Angl. Tom. 2. fol. 252.

Calcetum, Calcea, A cauſey or common hard way, maintained and repaired with ſtones and rubbiſh, from the Lat. *calx*, chalk, Fr. *chaux*, whence their *chauſſee* and our *cauſway*, or path raiſed with earth, and paved with chalk-ſtones, or gravel. *Calcearium operationes* were the work and labour done by the adjoining tenants: and *calcagium* was the tax or contribution paid by the neighbouring inhabitants towards the making and repairing ſuch common roads; from which ſome perſons were eſpecially exempted by royal charter. *Kennet's Gloſſ.*

Calefagium, A word ſignifying a right to take fuel yearly.—*Confirmamus panagium, herbagium &* calefagium *in foreſta noſtra*. Blount.

Calendar. See 24 *Geo.* 2. *c.* 23. for the eſtabliſhment of the new ſtile, and 25 *Geo.* 2. *c.* 30. which enacts, that the opening of commons, and doing other things depending on the moveable feaſts ſhall be according to the new calendar.

Calendar of Priſoners. A liſt of all the priſoners names, in the cuſtody of each reſpective ſheriff. Where priſoners are capitally convicted at the aſſizes, the judge may command execution to be done, without any writ. And the uſage now is, for the judge to ſign the calendar, which contains all the priſoners names, with their ſeveral judgments in the margin, and this calendar is left with the ſheriff. As, for a capital felony, it is written oppoſite to the priſoner's name, "hanged by the neck." Formerly in the days of Latin and abbreviation, "*ſuſ per coll.*" for "*ſuſpendatur per collum.*" *Staundeford, P. C.* 182. And this is the only warrant that the ſheriff has, for ſo material an act, as the taking away the life of another. *Vide* Mr. Juſtice *Blackſtone*'s judicious obſervations thereon, *Com.* 4 *V.* 396, 7.

Calends, (*calendæ*) Among the *Romans* was the firſt day of every month, being ſpoken of it by itſelf, or the very day of the new moon, which uſually happen together: and if *pridie*, the day before, be added to it, then it is the laſt day of the foregoing month; as *pridie calend. Septemb.* is the laſt day of *Auguſt*. If any number be placed with it, it ſignifies that day in the former month, which comes ſo much before the month named; as the tenth *calends* of *October* is the 20th day of *September*; for if one reckons backwards, beginning at *October*, the 20th day of *September* makes the 10th day before *October*. In *March, May, July*, and *October*, the *calends* begin at the ſixteenth day, but in other months at the fourteenth; which *calends* muſt ever bear the name of the month following, and be numbered backwards from the firſt day of the ſaid following months. *Hopton's Concord, p.* 69. In the dates of deeds, the day of the month, by *nones, ides*, or *calends*, is ſufficient. 2 *Inſt.* 675. See *Ides*.

Caliburne, The famous ſword of the great King *Arthur*. Hoveden and Brompton in Vita R.

Callico. No perſon ſhall wear in apparel any printed or dy'd callico, on pain of forfeiting 5 *l.* And drapers ſelling any ſuch callico, ſhall forfeit 20 *l.* But this doth not extend to callicoes dyed all blue. *Stat.* 7 *Geo.* 1. *c.* 7. And perſons may wear ſtuff, made of linen yarn and cotton wool, manufactured and printed with any colours in *Great Britain*; ſo as the warp be all linen yarn, without incurring any penalty, by *Stat.* 9 *Geo.* 2. *c.* 4. See *Linen*.

Calling the Plaintiff. It is uſual for a plaintiff, when he or his counſel perceives that he has not given evidence ſufficient to maintain his iſſue, to be voluntarily *nonſuited*, or withdraw himſelf: whereupon the crier is ordered to *call the plaintiff*; and if neither he, nor any one for him, appears, he is nonſuited, the jurors are diſcharged, the action is at an end, and the defendant ſhall recover his coſts. In fact, neither the plaintiff nor any one for him appears, unleſs council, or party, inſiſt on the evidence, ſuch as it is, being ſent to the jury, which is ſeldom done, unleſs council have very good reaſons for it. A *nonſuit* is not (like a *verdict*) a bar to the plaintiff's bringing another action, when he can get better proof, &c.

Callis, The king's highway mentioned in ſome of our ancient authors.——*Tantæ autem gratiæ inhabitantibus fuit* Britanniæ, *quod quatuor in ea* Calles *a fine in finem conſtruxerunt regia ſublimatos auctoritate*, &c. Huntingdon, Lib. 1.

Cambrick. By the *Stat.* 18 *Geo.* 2. *c.* 36. and 21 *Geo.* 2. *c.* 26. No one ſhall *wear* in any garment or apparel, or *vend, utter, ſell*, or *expoſe to ſale*, (except for exportation) or for *hire make up* for, in, or upon, any garment or wearing apparel, any cambrick or *French* lawn, under the penalty of 5 *l.* to the informer, on complaint before a juſtice of peace within ſix days after the offence committed; the penalty to be levied by diſtreſs on the offender's goods. The wearer excuſed on diſcovering and giving ſufficient proof againſt the vender, if ſold after the 24th of *June* 1748. The importation of cambricks and *French* lawns prohibited but on ſecurity of exporting them within three years. See *Stat.* 32 *Geo.* 2. *c.* 32. And ſee 4 *Geo.* 3. *c.* 37. for the eſtabliſhment of a linen manufactury at *Winchelſea* in *Suſſex*.

Cambridge. The ſtatute 14 *Hen.* 8. *cap.* 2. to reſtrain *alien artificers*, and requiring more of them than *denizens*, is not to be extended to ſtrangers dwelling in *Cambridge*. See *Stat.* 32 *H.* 8. *c.* 16. And ſee farther 34 & 35 *Hen.* 8. *c.* 24.—35 *Hen.* 8. *c.* 15.—7 *Geo.* 2. *c.* 10. and 18 *Geo.* 2. *c.* 20.

Camera, From the old Germ. *Cam. Cammer*, crooked; whence comes our Engliſh *kembo*, arms in kembo. But *camera* at firſt ſignified any winding or crooked plat of ground; as *unam* cameram *terræ, i. e.* a nook of land. *Du Freſn.* Afterwards the word was applied to any vaulted or arched building; and by degrees more particularly reſtrained to an upper room or chamber: and it is now often uſed in the law, in the buſineſs of a judge, where perſons are to be brought before him *apud* cameram *ſuam ſituat.* in Serjeants-Inn, *&c.* The preſent *Iriſh* uſe *cama* for a bed. See *Kennet's Gloſſ.*

It is uſed in philoſophy with the word *obſcura*, ſignifying a dark chamber. But more particularly, *camera obſcura* is the name of an optic machine; wherein (the light only coming through a double convex glaſs) objects expoſed to broad day-light, and oppoſite to the glaſs, are repreſented inverted upon any white ſurface, placed within the machine in the focus of the glaſs. The firſt who obſerved this phænomenon was *Baptiſta Porta, lib.* 4. *c.* 2. *Magia naturalis.* A darkened chamber may be made to anſwer the ſame purpoſes. By the uſe of a ſecond glaſs collecting the rays of light, objects are delineated in their natural poſition, *&c.*

Camiſia, A garment belonging to prieſts, called the *Alb.*——*Indutus* camiſia *linea quæ communi nomine dicitur* Alb. *Pet. Bleſenſis.*

Camoca A word uſed to ſignify a garment made of ſilk, or ſomething better: *Unum veſtimentum pro ferialibus diebus album de* camoca. *Mon. Angl. Tom.* 3. *pag.* 81.

Campana bajula A ſmall hand-bell, much in uſe in the ceremonies of the *Roman* church; and retained among us by ſextons, pariſh clerks and criers.——*Quatuor eas muneribus patriarcha donavit, altari videlicet portatili conſecrata*, campana bajula, *baculo inſigni, & tunica ex auro contexta. Reverſi in patriam ſua quiſque dona miraculoſe percepit, &c.* Girald. Camb. apud Wharton. Angl. Sacr. Par. 2. p. 637.

Campartum, Any part or portion of a larger field or ground; which would otherwiſe be in groſs or common. ——*Rex cuſtodi inſularum de* Gernſey, *&c. In perpetuum reddantur decimæ de* camparto *noſtro in eadem inſula.* Prinne Hiſtor. Collect. Vol. 3. p. 89.

Campertum, Is uſed for a corn-field. *Pet. in Parl.* 30 *Ed.* 1.

Campfight, The fighting of two champions or combatants in the field. 3 *Inſt.* 221. See *Champion.*

Campus Maii, or *Martii*, Was an aſſembly of the people every year upon *May Day*, where they confederated together to defend the country againſt all enemies. *Leges Edw. Confeſſor*, cap. 35. *Denuo in* campo Martii *convenere, ubi illi qui ſacramentis inter illos pacem confirmavere, regi omnem culpam impoſuere.* Sim Dunelm. Anno 1094.

Cancelling Deeds. *Vide Black. Com.* 2 *V.* 308, 309.

Cancelling of Wills. *Vide Black. Com.* 2 *V.* 502.

Candles and Chandlers. If any chandlers mix with their wares any thing deceitfully, *&c.* the candles ſhall be forfeited. *Stat.* 23 *Eliz. c.* 8. And a tax or duty is granted on candles, of 4 *d. per* pound for thoſe made with *wax*, and one half-penny a pound for all other candles, (beſides a duty upon tallow) by 8 *Ann. cap.* 9. The makers of candles are not to uſe melting-houſes without making a true entry, on pain of 100*l.* and to give notice of making candles to the exciſe officer for the duties, and of the number, *&c.* or ſhall forfeit 50*l. Stat.* 11 *Geo.* 1. *cap.* 30. *Vide* 23 *Geo.* 2. *c.* 21. and 26 *Geo.* 2. *c.* 32. See *Wax-Chandlers.*

Candlemas-Day, The feaſt of the *purification* of the *Bleſſed Virgin Mary*, being the *ſecond* day of *February*, inſtituted in memory and honour of the purification of the ſaid virgin in the temple of *Jeruſalem*, the fortieth day after her happy child-birth, according to the law of *Moſes*, and the preſentation of our bleſſed Lord. It is called *Candlemas*, or a *Maſs* of *candles*, becauſe before maſs was ſaid that day, the church conſecrated and ſet apart, for ſacred uſe, *candles* for the whole year, and made a proceſſion with hallowed *candles* in remembrance of the divine light, wherewith *Chriſt* illuminated the whole church at his preſentation in the temple, when by old *Simeon* ſtiled, *A light to lighten the* Gentiles, *and to be the glory of his people* Iſrael, *St. Luke, cap.* 2. *ver.* 32.

This feſtival is no day in court, for the judges ſit not; and it is the grand day in that term of all the inns of court, whereon the judges uſually obſerve many ancient ceremonies, and the ſocieties which ſeemed to vie with each other, had ſumptuous entertainments, accompanied with muſick, and almoſt all kinds of diverſions. But the gentlemen of the preſent age are grown wiſer, and apply the money to other and *better* uſes.

Canes opertiæ, Dogs with whole feet, not lawed. ——*Et debent habere* canes opertias *in omni genere canum, & non impediatas.* Antiq. Cuſtumar. de Sutton Colfield.

Caneſtellus, A baſket. In the inquiſition of ſerjeancies, and knight's fees, *anno* 12 & 13 of King *John*, for *Eſſex* and *Hertford*, it appears that one *John* of *Liſton* held a manor by the ſervice of making the King's baſkets.— Johannes de Liſtone *tenet, &c. per ſerjeantiam faciendi* caneſtellos, *&c.* Ex Libro Rub. Scacc. fol. 137.

Canfara, A trial by hot iron formerly uſed in this kingdom. *Si inculpatio ſit, & ſe purgare velit, eat ad ferrum calidum, & adlegiet manum ad* canfaram *quod non falſum fecit.* See *Ordeal.*

Canipulus. This word hath been taken for a ſhort ſword. *Blount.*

Canna, A rod or diſtance in the meaſure of ground. ——*Papa* Clem. *IV. concedit, &c. ut nulli ſeculari vel religioſo, &c. infra ſpatium* 300 cannarum *ab ipſorum eccleſiis menſurandarum.*——*Volumus quamlibet ipſarum* cannarum *octo palmarum longitudinem continere.* Ex Regiſtr. Walt. Giffard Archiepiſc. Ebor. f. 45.

Canon, Is a law or ordinance of the church; and the *Greek* word *canon*, from whence is derived the canon law, ſignifies a rule, becauſe it leads a man ſtreight, neither drawing him from one ſide nor the other, but rather correcting him. The canon law conſiſts partly of certain rules taken out of the ſcripture; partly of the writings of the ancient fathers of the church; partly of the ordinances of general and provincial councils; and partly of the decrees of the Popes in former ages. And it is contained in two principal parts, the decrees and the decretals: the decrees are eccleſiaſtical conſtitutions made by the Pope and Cardinals, and were firſt gathered by *Ivo* biſhop of *Carnat*, who lived about the year 1114, but afterwards perfected by *Gratian*, a *benedictine* monk, in the year 1149, and allowed by Pope *Eugenius*, to be read in ſchools, and alledged for law. They are the moſt ancient, as having their beginning from the time of *Conſtantine* the Great, the firſt Chriſtian Emperor of *Rome.*

The *decretals* are canonical epiſtles written by the Pope, or by the Pope and Cardinals, at the ſuit of one or more perſons for the ordering and determining of ſome matter of controverſy, and have the authority of a law; and of theſe there are three volumes, the firſt whereof was compiled by *Raymundus Barcinius*, chaplain to *Gregory* the Ninth, and at his command about the year 1231. The ſecond volume is the work of *Boniface* the Eighth, collected in the year 1298. And the third volume, called the *Clementines*, was made by Pope *Clement* the Fifth, and publiſhed by him in the council of *Vienna*, about the year 1308. And to theſe may be added ſome novel conſtitutions of *John* the 22d, and ſome other biſhops of *Rome.*

As the *decrees* ſet out the origin of the canon law, and the rights, dignities and decrees of eccleſiaſtical perſons with their manner of election, ordination, *&c.* So the *decretals* contain the law to be uſed in the eccleſiaſtical courts; and the firſt title in every of them, is the title of the Bleſſed Trinity, and of the catholick faith, which is followed with conſtitutions and cuſtoms, judgments and determinations in ſuch matters and cauſes as are liable to eccleſiaſtical cognizance, the lives and converſation of the clergy, of matrimony and divorces, inquiſition of criminal matters, purgation, penance, excommunication, *&c.* But ſome of the titles of the Canon law are now out of uſe, and belong to the Common law: and others are introduced, ſuch as trials of wills, baſtardy, defamation, *&c.*

Trials of tithes were anciently in all caſes had by the Eccleſiaſtical law; though at this time this law only takes place in ſome particular caſes. Thus much for the Canon law in general; and as to the Canon laws of this kingdom, by the ſtatute 25 *Hen.* 8. *c.* 19. it is declared that all Canons not repugnant to the King's prerogative, nor to the laws, ſtatutes and cuſtoms of the realm, ſhall be uſed and executed. By this ſtatute, Canons made in convocation are to be confirmed by the King, and have the royal aſſent: and it has been adjudged that Canons made in convocation, and confirmed by the King, do bind as firmly in all eccleſiaſtical cauſes, as acts of parliament do in other caſes; for, by the common law, every biſhop in his dioceſe, and each archbiſhop in his province, and the convocation may make Canons, which ſhall be binding within their juriſdictions. The convocation for the province of *Canterbury* was held at *London*, *anno* 1603. in the firſt year of the reign of King *James* I. by the King's writ, and they had a licence under the great ſeal, to conſult and agree to ſuch Canons as they ſhould think fit; whereupon they made ſeveral Canons concerning the government of the church, religion, the clergy, *&c.* which had the royal aſſent, and were ratified and confirmed by that King, for him, his heirs and ſucceſſors, purſuant to the ſtatute 25 *H.* 8. *c.* 19. which Canons, thus warranted by act of parliament, are the laws of the land to this day. See *Treatiſe of Laws, p.* 402, *&c.* 1 *Nelſ. Abr.* 416 The general Canon law is no further in force here than it hath been received, and is conſiſtent with the Common or Statute law.

With reſpect to the *effects* of the *Canon law* in *Europe*, in antient times, it's forms and maxims, which were become univerſally reſpectable from their authority in the ſpiritual courts, contributed not a little towards the improvement of *juriſprudence*. But, we muſt not conſider it *politically*, with reſpect to the *end* for which it was framed, but merely as a *code of laws* reſpecting the *rights* and *property* of individuals, and attend only to the civil effects of its deciſions concerning theſe. *Vide Robertſon's Hiſt. Emp. C. V.* 1 *V.* 62, 63.

The plan of eccleſiaſtical *juriſprudence* was more perfect than that in the civil courts: but this was to diſpoſe the laity to ſuffer the uſurpations of the clergy. *Vide id.* 63.

Vide farther as to the Canon law, in *Black. Com.* 1 *V.* 14, 19, 78, 82, 83. 4 *V.* 414, 415.

Canon Religioſorum, A book wherein the *religious of convents* had a fair tranſcript of the rules of their order, which were frequently read among them as their local ſtatutes; and this book was therefore called *Regula* and *Canon*. The public books of the religious were the four following. 1 *Miſſale*, which contained all their offices of devotion. 2. *Martyrologium*, a regiſter of their peculiar ſaints and martyrs, with the place and time of paſſion. 3. *Canon* or *Regula*, the inſtitution and rules of their order. 4. *Necrologium* or *Obituarium*, in which they entered the deaths of their founders and benefactors, to obſerve the days of commemoration of them. *Kennet's Gloſſ.*

Cantel, *(Cantellum)* Seems to ſignify the ſame with what we now call lump, as to buy by meaſure, or by the lump: but according to *Blount* it is that which is added above meaſure.——*Nullum genus bladi vendatur per cumulum ſeu* cantellum, *præter avenam, braſium & farinam. Stat. de Piſtor. cap.* 9. Alſo a piece of any thing, as a *cantel* of *bread*, and the like.

Cantred, *(Cantredus)* A *Britiſh* word from *cant*, or *cantre*, which in the *Britiſh* tongue ſignifies *centum*, and *tret*, a town or village, is in *Wales* an hundred villages: for the *Welſh* divide their countries into *cantreds*, as the *Engliſh* do into hundreds. This word is uſed 28 *H.* 8. *c.* 3.

Capacity, *(capacitas)* An ability, or fitneſs to receive: and in law it is where a man, or body politick, is able to give or take lands, or other things, or to ſue actions. Our law allows the King two capacities, a natural and a politick: in the firſt, he may purchaſe lands to him and his heirs; in the latter, to him and his ſucceſſors. An alien born hath ſufficient *capacity* to ſue in any perſonal action, and is capable of perſonal eſtate; but he is not capable of lands of inheritance; and in a *real* action, it is a good plea of the defendant to ſay the plaintiff is an alien born, and pray if he ſhall be anſwered. *Dyer* 3. Perſons attainted of treaſon or felony, ideots, lunaticks, infants, feme coverts without their huſbands, *&c.* are not capable to make any deed of gift, grant or conveyance, unleſs it be in ſome ſpecial caſes. But all other perſons, void of impediments, are capable of making grants and conveyances, and to ſue and be ſued, being twenty-one years of age; and at fourteen, their age of diſcretion, they are capable by law to marry, be a witneſs, *&c. Co. Lit.* 171, 172.

Vide farther as to capacity to *purchaſe*, and to *convey*, *Black. Com.* 2 *V.* 290. And as to a capacity of *guilt*, *ib.* 4 *V.* 20.

Cape, *(Lat.)* Is a writ judicial, touching plea of lands or tenements; ſo termed, as moſt writs are, of that word in it, which carries the chief intention or end thereof: and this writ is divided into *cape magnum* and *cape parvum*, both of which take hold of things immoveable.

Cape Magnum, or the *grand cape*, Is a writ that lies before appearance to ſummon the tenant to anſwer the default, and alſo over to the demandant: and in the *Old Nat. Brev.* it is defined to be, where a man hath brought a *præcipe quod reddat* of a thing touching plea of land, and the tenant makes default at the day to him given in the original writ, then this writ ſhall go for the King to take the land into his hands; and if the tenant come not at the day given him thereby, he loſeth his land, *&c.* See *Reg. Jud. fol.* 1. *Bract. lib.* 3. *tract.* 3. *c.* 1.

Cape Parvum, or *petit cape*, Is where the tenant is ſummoned in plea of land, and comes on the ſummons, and his appearance is recorded; if at the day given him he prays the view, and having it granted makes default; then this writ ſhall iſſue for the King, *&c.* *Old Nat. Brev.* 162. The difference between the *grand cape* and *petit cape* is, that the *grand cape* is awarded upon the tenant's not appearing or demanding the view in ſuch real actions, where the original writ does not mention the particulars demanded; and the *petit cape* is after appearance or view granted: and whereas the *grand cape* ſummons the tenant to anſwer for the default, and likewiſe over to the demandant: *petit cape* ſummons the tenant to anſwer the default only: and therefore it is called *petit cape*; though ſome ſay it hath its name, not becauſe it is of ſmall force, but by reaſon it conſiſts of few words. *Reg. Jud. fol.* 2. *Fleta, lib.* 2. *c.* 44.

Cape ad Valentiam. This is a ſpecies of *cape magnum*, and is where I am impleaded of lands, and vouch to warrant another, againſt whom the *ſummons ad warrantizandum* hath been awarded, and he comes not at the day given; then if the demandant recover againſt me, I ſhall have this writ againſt the vouchee, and recover ſo much *in value* of the lands of the vouchee, if he hath ſo much; if not, I ſhall have execution of ſuch lands and tenements as ſhall after deſcend to him in fee; or if he purchaſes afterwards, I ſhall have againſt him a reſummons, *&c.* And this writ lies before appearance. *Old Nat. Br.* 161.

Capella. Before the word chapel was reſtrain'd to an oratory or depending place of divine worſhip: it was uſed alſo for any ſort of cheſt, cabinet, or other repoſitory of precious things, eſpecially of religious reliques. *Kennet's Paroch. Antiq. p.* 580.

Capellus, A cap, bonnet, or other covering for the head.——*Capite diſcooperto ſine* capello, *cum una garlanda de latitudine, &c.* Tenures, p. 32.——*Capellus ferreus*, an helmet or iron head-piece, *Quicunque laicus habuerit in catallis ad valentiam decem marcarum habeat halbergellum &* capellum ferri, *& lanceam.* Hoveden, pag. 61.——*Capellus militis* is likewiſe an helmet or military head-piece. *Conſuetud. Domus de Farendon, MS. fol.* 21.

Capias, Is a writ or proceſs of two ſorts; one whereof is called *capias ad reſpondendum*, before judgment, where an original is ſued out, *&c.* to take the defendant and make him anſwer the plaintiff: and the other a writ of execution, after judgment, being of divers kinds, as *capias ad ſatisfaciendum, capias utlagatum, &c.* The *capias ad reſpondendum in C. B.* is drawn from the *præcipe*, which ſerves both for the *original* and *capias*, and the return of the original is the teſte of the *capias*. If a *capias* be ſpecial, in caſe, covenant, *&c.* the cauſe of action muſt be recited at large, and you are to ſet forth the ſubſtance of your intended declaration, as you are alſo in your original. The uſual courſe is to take out the *capias*, and ſue out the original after, although it is ſuppoſed to be ſued out before, becauſe the original cannot be ſo ſpeedily ſued out at all times: and where the cauſe of action is for debt, and requires bail, the beſt way is to make an *ac etiam capias*, the original to which is only a bare *clauſum fregit*; and when you come to judgment, you may file a new original to warrant ſuch judgment.

If a *capias* be ſpecial, by *Præcipe quod reddat*, &c. and there is any miſtake in the name, *alias dictus*, or ſum, it may be pleaded in abatement, and a new original afterwards will not cure it; but you are forced to diſcontinue your action, or enter a *caſſatur*, and to begin *de novo*. There may be an *alias* and a *pluries capias*, bearing teſte from the return of each other, if the defendant be not taken on the firſt writ. See *Pract. Solic. p.* 290.

The word *ſicut alias*, and *ſicut pluries*, diſtinguiſh the *alias* and *pluries* from the *capias*.

Capias ad Satisfaciendum, A judicial writ which iſſues out of the record of a judgment, where there is a recovery in the courts at *Weſtminſter*, of debt, damages, &c. And by this writ the ſheriff is commanded to take the body of the defendant in execution, and him ſafely to keep, ſo that he have his body in court at the return of the writ, to ſatisfy the plaintiff his debt and damages. *Vide* 1 *Lill. Abr.* 249. When the body is taken upon a *ca. ſa.* and the writ is returned and filed, it is an abſolute and perfect execution againſt the defendant, and no other execution can be againſt his lands or goods. Where a perſon dies in execution, his lands and goods are liable to ſatisfy the judgment, by ſtatute 21 *Jac.* 1. *c.* 24. See *Rol. Abr.* 904. In caſe two perſons are bound jointly and ſeverally, and proſecuted in two courts, whereupon the plaintiff hath judgment and execution by *cap. ad ſatisfac.* againſt one of them; if he after have an *elegit* againſt the other, and his lands and goods are delivered upon it, then he that is in priſon ſhall have *audita querela*. *Hob.* 2, 57. Where one taken on a *cap. ad ſatisfaciendum* eſcapes from the ſheriff, and no return is made of the writ, nor any record of the award of the *capias*; the plaintiff may bring a *ſcire fac.* againſt him, and on that what execution he will. *Rol.* 904. And if the defendant reſcue himſelf, the plaintiff ſhall have a new *capias*, the firſt writ not being returned. *Ibid* 901.

A defendant being brought into court by virtue of a *cap. ad ſatisfaciendum*, the plaintiff was aſked, whether he would pray that the priſoner might be committed? who anſwered he would not; becauſe the party was not able to pay, and had eſcaped from the ſheriff, againſt whom he intended to bring his action; therefore the defendant was diſcharged. 1 *And. ca.* 166. A *capias ad ſatisfaciendum* lieth not againſt a peer; nor againſt his executors or adminiſtrators, but where a *devaſtavit* is returned by the ſheriff, &c. 1 *Lill.* 250. If the defendant cannot be taken upon a *capias* in the county where the action is laid, there may iſſue a *teſtatum ca. ſa.* into another county; and ſo of the other writs.

Capias Utlagatum, Is a writ that lies againſt a perſon who is outlawed in any action, by which the ſheriff apprehends the party outlawed, for not appearing upon the *exigent*, and keeps him in ſafe cuſtody till the day of return, and then preſents him to the court, there to be ordered for his contempt; who, in the Common Pleas, was in former times to be committed to the *Fleet*, there to remain till he had ſued out the King's pardon, and appeared to the action. And by a ſpecial *capias utlagatum* in the ſame writ the ſheriff is commanded, to ſeize all the defendant's lands, goods and chattels, for the contempt to the King; and the plaintiff, (after an inquiſition taken thereupon, and returned into the Exchequer) may have the lands extended, and a grant of the goods, &c. whereby to compel the defendant to appear; which when he doth, if he reverſe the outlawry, the ſame ſhall be reſtored to him. *Old. Nat. Br.* 154. A defendant may appear in perſon, and reverſe an outlawry: and in *B. R.* one may appear by attorney, &c. Alſo when a perſon is taken upon a *capias utlagatum*, the ſheriff is to take an attorney's engagement to appear for him, where ſpecial bail is not required; and his bond with ſureties to appear, where it is required. *Stat.* 4 & 5 *W.* & *M.* *c.* 18. This writ is either general, againſt the body; or, as before obſerved, it is ſpecial, againſt the body, lands and goods. See *Outlawry*.

As to the forms of theſe writs they may be found in the common books of practice.

Capias pro Fine, Is where one, who is fined to the King for ſome offence committed againſt a ſtatute, does not diſcharge the fine according to the judgment; whereupon his body is to be taken by this writ, and committed to priſon until he pay the fine. It is uſed in other caſes, for not making out ſome pleas in civil actions. 3 *Rep.* 12. By the *Stat.* 5 *W. et M. c.* 12. *capiatur fines* are taken away in ſeveral caſes. See *Fines for offences*.

Capias in Withernam, A writ lying for cattle in *Withernam*; which is, where a diſtreſs taken is driven out of the county, ſo that the ſheriff cannot make deliverance in replevin, when this writ iſſues to the ſheriff to take as many beaſts of the diſtrainer, &c. *Reg. Orig.* 82, 83. Vide *Withernam*.

Capiatur, (judgment *quod*) Formerly if final judgment was for the plaintiff, it was alſo conſidered that the defendant ſhould be either *amerced*, for his wilful delay of juſtice in not immediately obeying the King's writ, by rendering the plaintiff his due, (5 *Rep.* 49.) or be taken up, *(capiatur)* to pay a fine to the King, in caſe of any forcible injury. But now by *Stat.* 5 *W. et M. c.* 12. *capias* ſhall not iſſue for this fine, but plaintiff ſhall pay 6*s.* 8*d.* and be allowed it againſt defendant in coſts. Therefore in judgments in *Common Pleas*, they enter that the fine is remitted: in *King's Bench* they take no notice of any fine or capias. *Salk.* 54. *Carth.* 390.

Capita, (*diſtribution* by) *i. e.* To every man an equal ſhare of *perſonal* eſtate, when all the claimants claim in their own rights, as in equal degree of kindred, and not *jure repreſentationis*. *Black. Com.* 2 *V.* 517.

Capita, (*ſucceſſion* by) Where the claimants are next in degree to the anceſtor, in their own right, and not by right of repreſentation. *Black Com.* 2 *V.* 217, 218.

Capitale, Signifies a thing which is ſtolen, or the value of it. *Leg. H.* 1. *cap.* 59.

Capitale vivens, Hath been uſed for live cattle.—*Reddam de meo proprio decimas Deo, tam in* viventi capitali, *quam in mortuis fructibus terræ.* Leg. Athelſtan.

Capite, (from *caput, i. e. Rex, unde tenere in* capite, *eſt tenere de rege, omnium terrarum* capite) An ancient tenure, whereby a man held lands of the King immediately as of the crown, whether by knight's ſervice, or in ſocage. This tenure was likewiſe called, tenure holding of the perſon of the King: and a perſon might hold of the King, and not in *capite*; that is, not immediately of the crown, but by means of ſome honour, caſtle, or manor belonging to it. According to *Kitchen*, one might hold land of the King by *knight's ſervice*, and not in *capite*; becauſe it might be held of ſome honour in the King's hands, deſcended to him from his anceſtors, and not immediately of the King, as of his crown. *Kitch.* 129. *Dyer* 44. *F. N. B.* 5.

The very ancient tenure in *capite*, was of two ſorts; the one *principal* and *general*, and the other *ſpecial* or *ſubaltern*; the *principal* and *general* was of the King as *caput regni, et caput generaliſſimum omnium feodorum*, the fountain whence all feuds and tenures have their main original: the *ſpecial* was of a particular ſubject, as *caput feudi, ſeu terræ illius*, ſo called from his being the firſt that granted the land in ſuch manner of tenure; from whence he was ſtiled *capitalis dominus*, &c. But tenure in *capite* is now aboliſhed; and by *Stat.* 12 *Car.* 2. *c.* 24. *All tenures* are turned into *free* and *common ſocage*: ſo that tenures hereafter to be created by the King are to be in common ſocage only; and not by *capite*, knight's ſervice, &c. *Blount*.

Capitilitium, A word uſed to ſignify what we now call poll-money.

Capitium, A covering for the head. It is mentioned in the ſtatute 1 *Hen.* 4. and other old ſtatutes, which preſcribe what *dreſſes* ſhall be worn by all degrees of perſons.

Capituli Agri, The head-lands, lands that lie at the head or upper end of the lands or furrows.——*Canonici* (Burceſter) *conceſſerunt hominibus de* Wrechwike *duas acras prati pro* capitibus *ſuarum croftarum tenus rivulum verſus molendinum, &c.* Kennet's Paroch. Antiq. p. 137.

Capitula Ruralia, Aſſemblies or chapters held by rural deans and parochial clergy within the precinct of every diſtinct deanery; which at firſt were every three weeks, afterwards once a month, and more ſolemnly once a quarter. *Cowel.*

Caption, *(captio)* Is when a commiſſion is executed, the commiſſioners ſubſcribe their names to a certificate, declaring when and where the commiſſion was executed; which in law is called a *caption*. And theſe *captions* relate chiefly to buſineſs of three kinds, *i. e.* to commiſſions to take fines of lands, to take anſwers in chancery, and depoſitions of witneſſes: on the taking of a fine it is thus: Capt. *et cogn. die, &c. anno, &c. apud, &c.* And on the back, *Executio iſtius comm. patet in quandam ſchedul. eidem comm. annex'.* On the taking of an anſwer in Chancery, the *caption* is at bottom as follows: Capt. *fuit hæc reſponſ. ſuper ſerram ſupranominat. def.* Willielmi B. *die & anno, &c. apud, &c. coram nobis, &c.* And on the back of the *commiſſion, Executio iſtius com', &c.* On the taking depoſitions of witneſſes, only the execution on the back is indorſed, as *Executio iſtius comm. in quad. ſchedul. &c.* The *caption* being included in the title of the depoſitions. Sometimes it is uſual to add to the *caption, virtut. commiſſion. dom. regis nobis & al. direct', &c.* Theſe captions and the executions of the commiſſions muſt be now in *Engliſh*, by the late ſtatute, 4 *Geo. 2. c.* 26. And *vide* 5 *Geo. 2. c.* 27. and 6 *Geo. 2. c.* 14.

Captain, *(capitaneus)* One that leadeth or hath the command of a company of *ſoldiers*: and is either general, as he that hath the governance of the whole army: or ſpecial, as he that leads but one band.——There is alſo another ſort of *captains, Qui urbium præfecti ſunt, &c.* Blount.

Captives. An act was made for relief of *captives* taken by *Turkiſh, Mooriſh*, and other pirates, and to prevent taking of others in time to come. *Stat.* 16 & 17 *Car.* 2. *c.* 24. *Vide Black. Com.* 2 *V.* 402.

Capture, *(captura)* The taking of a prey, an arreſt, or ſeizure: and it particularly relates to *prizes* taken by privateers, in time of war, which are to be divided between the captors, *&c.* *Stat.* 14 *Car.* 2. *c.* 14. and 4 & 5 *W. & M. c.* 25. *Vide Black. Com.* 2 *V.* 401.

Caputagium. Some think this word ſignifies head or poll money, or the payment of it: but it is rather what we otherwiſe call *chevagium*.

Caput Anni, New year's day, upon which of old was obſerved the *feſtum ſtultorum*.

Caput Baroniæ, Is the caſtle or chief ſeat of a nobleman; which deſcends to the eldeſt daughter, if there be no ſon, and muſt not be divided among the daughters like unto lands, *&c.*

Caput Jejunii, In our records is uſed for *Aſh Wedneſday*, being the head, or firſt day of the beginning of the *Lent-Faſt*. Paroch. Antiq. p. 132.

Caput loci, The head or upper end of any place; *ad caput villæ*, at the end of the town.

Caput lupinum, Anciently an outlawed felon was ſaid to have *caput lupinum*, and might be knocked on the head like a wolf.—*Now* the wilful killing of ſuch a one would be murder. 1 *Hal. P. C.* 497. And *vide Bracton, fo.* 125.

By the *Athenian* laws, if a criminal would not ſurrender himſelf to juſtice, he might be capitally condemned, and any one might kill him. See *Demoſthenes's third Philippic.*

Car and Char, The names of places beginning with *car* and *char* ſignify a city, from the Brit. *caer, viz. Civitas*, as *Carliſle, &c.*

Caravanna, A *caravan*, or joint company of travellers in the eaſtern countries, for mutual conduct and defence.——*Egreſſa* caravanna *noſtra de* Joppa *verſus exercitum veniebat onuſta victualibus & aliis clitellis neceſſariis.* Gaufrid. Vineſau Richardi Regis, Iter Hieroſol. lib. 5. cap. 52.

Carcan, Is ſometimes expounded for a pillory: as is *carcannum* for a priſon. *LL. Canuti Regis.*

Carcatus, Signifies loaden; a ſhip with her freight.—*De corpore cujuſlibet magnæ navis* carcatæ *cum rebus venalibus* 4 *denar.* Pat. 10 R. 2.

Cards and Dice. A duty of 6 *d. per* pack on all playing *cards*, and of 5 *s.* for every pair of *dice*, ſhall be paid to the crown for thirty-two years; the *cards* and *dice* to be carried to the ſtamp-office and marked, *&c.* And uſing them unſtamped, is liable to a penalty of 5 *l.* *Stat.* 9 & 10 *Ann. c.* 19.

Limitation of the time of proſecution upon bonds for exporting cards and dice, 5 *Geo.* 1. *c.* 19. *ſect.* 48. Penalty on defacing the ſtamp of cards or new-ſpotting dice, 6 *Geo.* 1. *c.* 21. *ſect.* 55. An additional duty of 6 *d.* on every pack of cards, and 5 *s.* on every pair of dice, 19 *Geo.* 2. *c.* 13. There are further regulations concerning the making and ſtamping of cards, by 5 *Geo.* 3. *c.* 46. *ſect.* 9 to 17. See **Stamps.**

Carecta and Carectata, A cart and cartload.——*Quinque* carectatas *clauſtura, ad prædictæ terræ clauſturum ſuſtinendam.* Mon. Angl. tom. 2. f. 340.

Carettarius, or Carectarius, A carter. *Blount.* See *Carreta.*

Cariſtia, Dearth, ſcarcity, dearneſs.——*Rex majori & vic.* London, *ſalutem. Querela archiepiſcoporum, comitum,——quod de bobus, vaccis, mulionibus, &c. Magna et quaſi intolleralibis eſt* cariſtia *hiis diebus ſub, &c.* Pat. 8 Ed. 1.

Caritas, *Ad* caritatem, *poculum* caritatis, A grace cup; or an extraordinary allowance of wine, or other liquor, wherein the religious at feſtivals drank in commemoration of their ſounders and benefactors. *Cartular. Abbat. Glaſton. A. S. f.* 29.

Cark, A quantity of wool, whereof thirty make a ſarpler. *Stat.* 27 *H.* 6. *c.* 2.

Carnarium, A charnel houſe, or repoſitory for the bones of the dead.——*In* carnario *ſubtus capellam, &c. Oſſa humana, &c. humata de licentia ſacriſtæ qui pro tempore fuerit, qui dicti* carnarii *clavem & cuſtodiam habebit ſpecialem, ut uſq; ad reſurrectionem generalem honeſtius conſerventur, a* carnibus *integre denudata reponi volumus & obſervari.——Cartular. fundationis capellæ ſancti* Johannis *in occid. parte eccl.* Norwic. *per* Joh. Norwic. *Epiſc.* Dat. 4 Oct. 1316.

Carno. This word hath been uſed for an immunity or privilege, as appears in *Cromp. Juriſd fol.* 191.

Carpemeals, Cloth made in the Northern parts of *England*, of a coarſe kind, mentioned in 7 *Jac.* 1. *cap.* 16.

Carr, Is a kind of cart with wheels. Vide *Caruca.*

Carrat, A weight of four grains in diamonds, *&c.* And this word it is ſaid was formerly uſed for any weight or burden.

Carreta, Hath been taken for a carriage, cart, or wain load; as *Carreta fœni* is uſed in an old charter for a load of hay. *Kennet's Gloſſ.*

Carrels, Cloſets, or apartments for privacy and retirement.——Three pews or carrels, where every one of the old monks, after they had dined, did reſort, and there ſtudy.—*Davies Mon. of Durham, p.* 31.

Carrick, or Carrack, *(carrucha)* A ſhip of great burden, ſo called of the *Italian* word *carico* or *carco*, which ſignifies a burden or charge: it is mentioned in the ſtatutes 2 *R.* 2. *c.* 4. and 1 *Jac. c.* 33. They were not only uſed in trade, but alſo in war, as *Walſingh. in Hen.* 5. *f.* 394. *viz. Galli conduxerant claſſem magnarum navium* carricarium, *&c. qua regnum Angliæ moleſtarent.*

Carrier, Is a perſon that carries goods for others for his hire.

A common carrier, having the charge and carriage of goods, is to anſwer for the ſame, or the value to the owner. *Co. Lit.* 78. And where goods are delivered to a carrier, and he is robbed of them, he ſhall be charged, and anſwer for them, becauſe of the hire. 1 *Rol. Abr.* 338.

An hoyman who undertakes to carry goods, muſt deliver them ſafe at all events, except damaged by the act of God, or the King's enemies. *Dall* v. *Hall, Wilſ. par.* 1. *fo.* 281.—*Vide* 1 *Salk.* 18. 1 *Vent.* 190, 238.

If a common carrier, who is offered his hire, and who has convenience, refuſes to carry goods, he is liable to an action in the ſame manner as an inn-keeper who refuſes to entertain a gueſt, or a ſmith who refuſes to ſhoe a horſe. 2 *Show. Rep.* 327.

One brought a box to a carrier, in which there was a large ſum of money, and the carrier demanded of the owner what was in it; he anſwered, it was filled with ſilks, and ſuch like goods; upon which the carrier took it, and was robbed: and adjudged, that the carrier was liable to make it good: but a ſpecial acceptance, as *provided there is no charge of money*, would have excuſed the carrier. 1 *Vent.* 238. 4 *Rep.* 83. A perſon delivered to a carrier's book-keeper two bags of money ſealed up, to be carried from *London* to *Exeter*, and told him that it was 200*l.* and took his receipt for the ſame, with promiſe of *delivery* for 10*s.* *per Cent.* carriage and riſque: though it be proved that there was 400*l.* in the bags, if the carrier be robbed he ſhall anſwer only for 200*l.* becauſe there was a particular undertaking for the carriage of that ſum and no more, and his reward, which makes him anſwerable, extends no farther. *Carthew's Rep.* 486.

If a common carrier loſes goods he is intruſted to carry, a ſpecial action on the caſe lies againſt him, on the cuſtom of the realm; and ſo of a common carrier by boat. 1 *Rol. Abr.* 6. An action will lie againſt a porter, carrier or bargeman, upon his bare receipt of the goods, if they are loſt by negligence. 1 *Sid.* 36. Alſo a lighterman ſpoiling goods he is to carry, by letting water come to them, action of the caſe lies againſt him on the common cuſtom. *Palm.* 528.

If *A.* and ſeveral others take their paſſage in a ferry-boat, and being upon the water a tempeſt ariſes, ſo that they are in danger of being drowned; upon which, to preſerve their lives, ſeveral of the goods are caſt overboard, among which, a pack of goods of *A.*'s of great value is thrown over; *A.* ſhall not have an action againſt the bargeman. 2 *Bulſt.* 280. If one be not a common carrier, and takes hire, he may be charged on a ſpecial *aſſumpſit*; for where hire is taken, a promiſe is implied. *Cro. Jac.* 262.

A common carrier may have action of trover or treſpaſs for goods taken out of his poſſeſſion by a ſtranger; he having a ſpecial property in the goods, and being liable to make ſatisfaction for them to the owner: and where goods are ſtolen from a carrier, he may bring an indictment againſt the felon as for his own goods, though he has only the poſſeſſory, and not the abſolute property; and the owner may likewiſe prefer an indictment againſt the felon. *Kel.* 39.

If a carrier be robbed of goods, either he or the owner may bring an action againſt the hundred, to make it good. 2 *Saund.* 380.

Where a carrier entruſted with goods, opens the pack, and takes away and diſpoſes of part of the goods, this, ſhewing an intent of ſtealing them, will make him guilty of felony. *H. P. C.* 61. And it is the ſame if the carrier receives goods to carry them to a certain place, and carrieth them to ſome other place, and not to the place agreed. 3 *Inſt.* 367. That is, if he do it, with intent to defraud the owner of them. If a carrier, after he hath brought goods to the place appointed, take them away privately, he is guilty of felony; for the poſſeſſion which he received from the owner being determined, his ſecond taking is in all reſpects the ſame as if he were a meer Stranger. 1 *Hawk. P. C.* 90. See *Larceny*, *&c.*

By the 3 *Car.* 1. *c.* 1. Carriers are not to travel on the Lord's Day.

By the *Stat.* 3 *W. & M. c.* 12. The juſtices are to aſſeſs the price of land carriage of goods to be brought into any place within their juriſdiction, by any common carrier, who is not to take more under the penalty of 5*l.* And by the *Stat.* 21 *Geo.* 2. *c.* 28. A carrier is not to take more, for carrying goods from any place to *London*, than is ſettled by the juſtices for the carrying goods from *London* to ſuch a place, under the ſame penalty.

Stat. 24 *Geo.* 2. *c.* 8. *ſect.* 9. Commiſſioners for regulating navigation of the river *Thames* to rate the price of water carriage.

Stat. 30 *Geo.* 2. *c.* 22. *ſect.* 3. Juſtices of the city of *London* to aſſeſs the rates of carrying goods between *London* and *Weſtminſter*.

Carriers and waggoners are to write or paint on their waggons or carts their names and places of abode. See *Cart*, *Highways*.

Carriages how drawn, *&c.* Vide *Carts*, *Waggons*.

Cart-bote, The *Saxon* word *bote*, is of the ſame ſignification with the *French* word *eſtovers*, and *cart-bote* is *wood*, to be employed in making and repairing inſtruments of huſbandry. *Black. Com.* 2 *V.* 35.

Carts, By the *Stat.* 2 *W. & M. Stat.* 2. *c.* 8. *ſect.* 19 & 18 *Geo.* 2. *c.* 33. The wheels of every cart or dray for the carriage of any thing from and to any place where the ſtreets are paved, within the bills of mortality, *&c.* ſhall contain ſix inches in the felly, not be ſhod with iron; nor be drawn with above two horſes, under the penalty of 40*s.* By the *Stat.* 18 *Geo.* 2. *c.* 33. They may be drawn with three horſes and not more, and the wheels being of ſix inches breadth, when worn may be ſhod with iron, if the iron be of the full breadth of ſix inches, made flat, and not ſet on with roſe-headed nails: and no perſon ſhall drive any cart, *&c.* within the limits aforeſaid, unleſs the name of the owner and number of ſuch cart, *&c.* be placed in ſome conſpicuous place of the cart, *&c.* and his name be entered with the commiſſioners of hackney coaches, under the penalty of 40*s.* and every perſon may ſeize and detain ſuch cart till the penalty be paid. By the *Stat.* 1 *Geo.* 1. *c.* 57. 24 *G.* 2. *c.* 43. 27 *G.* 2. *c.* 16. The driver of any ſuch cart, *&c.* riding upon ſuch cart, *&c.* not having a perſon on foot to guide the ſame, ſhall forfeit 10*s.* Any perſon may apprehend the offender. And by the *Stat.* 6 *Geo.* 1. *c.* 6. In *London*, or within ten miles, no perſon ſhall carry in any waggon or cart, having the wheels ſhod with iron, more than twelve ſacks of meal, containing five buſhels each, nor more than twelve quarters of malt, or ſeven hundred and an half of bricks, nor one chaldron of coals, under penalty of forfeiting one of the horſes to any perſon who ſhall ſeize the ſame, in manner as by *Stat.* 5 *Geo.* 1. *c.* 12.

On changing property new owner's name to be affixed, 30 *Geo.* 2. *c.* 22. *ſect.* 5. Carriages travelling with goods for hire to be deemed common ſtage waggons, 30 *Geo.* 2. *c.* 28. *ſect.* 13. See thoſe ſtatutes, and alſo ſee *Highways*, *Waggons*.

Caruca, (Fr. *charrue*) A plough; from the old Gallic *carr*, which is the preſent *Iriſh* word for any ſort of wheeled carriage: hence *charl* and *car*, a ploughman or ruſtick. Vide *Karle*.

Carucage, (*carucagium*) Is a tribute impoſed on every plough, for the public ſervice: and as *hidage* was a taxation by hides, ſo *carucage* was by carucates of land. *Mon. Angl. tom.* 1. *f.* 294.

Carucate, or **Carve of Land**, (*carucata terræ*) A plough-land; which in a deed of *Thomas de Arden*, 19 *Edw.* 2. is declared to be one hundred acres, by which the ſubjects have ſometimes been taxed; whereupon the tribute ſo levied was called *carvagium*, or *carucagium*. *Bract. lib.* 2. *cap.* 26. But *Skene* ſays, it is as great a portion of land as may be tilled in a year and a day by one plough; which alſo is called *bilda*, or *bida terræ*, a word uſed in the old *Britiſh* laws. And now by ſtatute 7 & 8 *W.* 3. *c.* 29. a plough-land, which may contain houſes, mills, paſture, meadow, wood, *&c.* is 50*l.* *per annum*.

Littleton, in his chapter of tenure in ſocage, ſaith, that ſoca *idem eſt quod* carucata, a ſoke or plough-land are all one. *Stow* ſays, King *Hen.* 3. took *carvage*, that is, two marks of ſilver of every knight's fee, towards the marriage of his ſiſter *Iſabella* to the emperor. *Stow's Annals*, *page* 271.

Raſtal, in his expoſition of words, tells us, *carvage* is to be quit, if the King ſhall tax all the lands by *carves*; that is, a privilege whereby a man is exempted from *carvage*. The word *carve* is mentioned in the *Stat.* 28 *Ed.* 1. of wards and reliefs, and in *Magna charta*, *c.* 5. And *anno* 1200. *Facta eſt pax inter* Johannem *regem* Angliæ & P. *regem* Franciæ, *&c.* *Et mutuavit regi* Franciæ 30 *millia marcarum*, *pro quibus collectum eſt* carvagium *in* Angliæ, *ſcil.* 11*s.* *pro quolibet aratro.* Ex Reg. Priorat. de Dunſtable in Bibl. Cotton. See *Co. Lit.* 69. and *Kennet's Gloſſ.*

Carucatarius, He that held lands in *carvage*, or plough-tenure. *Paroch Antiq. p.* 354.

Caſe. See *Actions on the Caſe*. And *Black Com.* 3 *V.* 51, 122. 4 *V.* 435. *Com. Dig.* 1 *V. tit. Action* and *Actions on the Caſe*.

Caſſatum and **Caſſata**, By the *Saxons* called *hide*; by *Bede*, *familia*, is a houſe with land ſufficient to maintain one family; *Rex Angl. Ethelred, de* 310 Caſſatis, *unum trierem*, *&c.* Hoveden anno 1008. And *Hen. Huntingdon*, mentioning the ſame thing, inſtead of *caſſata* writes *bilda*.

Caſhliſte, A *Saxon* word ſignifying a mulct. *Blount.*

Caſſidile, Is a little ſack, purſe, or pocket.—*Protulit in* caſſidile *toxicum mellitum.* Mat. Weſtm.

Caſk, An uncertain quantity of goods; and of ſugar contains from eight to eleven hundred weight. There are alſo *caſks* for liquors, of divers contents; and none ſhall tranſport any wine *caſk, &c.* except for victualling ſhips under a certain penalty, by *Stat.* 35 *Eliz. c.* 11. *ſect.* 2.

Caſſock, or **Caſſula,** A certain garment belonging to the prieſt, *quaſi minor caſſa.* See *Taſſule.*

Caſtel, or **Caſtle,** *(caſtellum)* Is well known to be a fortreſs in a town; and with us is a principal manſion of a nobleman. In the time of *H.* 2. there were in *England* 1115 caſtles; and every caſtle contained a manor: but during the civil wars in this kingdom theſe caſtles were demoliſhed, ſo that generally there is only the ruins or remains of them at this day. 2 *Inſt.* 31.

Caſtellain, *(caſtellanus)* The lord, owner, or captain of a caſtle, and ſometimes the conſtable of a fortified houſe. *Bract. lib.* 5. *tract.* 2. *cap.* 16. 3 *Ed.* 1. *cap.* 7. It hath likewiſe been taken for him that hath the cuſtody of one of the king's manſion-houſes, called by the Lombards *curtes,* in Engliſh courts; though they are not caſtles or places of defence. 2 *Inſt.* 31. And *Manwood,* in his *Foreſt Laws,* ſays, there is an officer of the foreſt called *caſtellanus.*

Caſtellarium, Caſtellarii, The precinct or juriſdiction of a caſtle.—*Et unum toſtum juxta* caſtellarium. *Mon. Angl. tom.* 2. *f.* 402.

Caſtellorum Operatio, Caſtle-work, or ſervice and labour done by inferior tenants, for the building and upholding of caſtles of defence; towards which ſome gave their perſonal aſſiſtance, and others paid their contribution. This was one of the three neceſſary charges, to which all lands among our *Saxon* anceſtors were expreſly ſubject.—*Liberi ab omni ſervitio, excepta trinoda neceſſitate; pontis & arcis conſtructione, & expeditione contra hoſtem.*—And after the conqueſt an immunity from this burden was ſometimes granted. As King *Hen.* II. granted to the tenants within the honour of *Wallingford.*—*Ut ſint quieti de* operationibus caſtellorum. *Paroch. Antiq. pag.* 114. It was unlawful to build any caſtle without leave of the king, which was called *caſtellatio: hæc mittant hominem in miſericordia regis, viz. Infractio pacis, infidelitatis & proditio, deſpectus de eo,* caſtellatio *ſine licentia.* Du Freſne.

Caſtigatory for *ſcolds.* A woman, indicted for being a common ſcold, if convicted, ſhall be ſentenced to be placed on a certain engine of correction, called the trebucket, *caſtigatory,* or *cucking* ſtool, which in the *Saxon* language ſignifies the ſcolding ſtool; though now it is frequently corrupted into *ducking* ſtool, becauſe the reſidue of the judgment is, that, when ſhe is ſo placed therein, ſhe ſhall be plunged in the water for her puniſhment. 3 *Inſt.* 219. *Black. Com.* 4 *V.* 169. Though this puniſhment is now diſuſed, the editor *(J. M.)* remembers to have ſeen the remains of one, on the eſtate of a relation of his in *Warwickſhire,* conſiſting of a long beam, or rafter moving on a fulcrum, and extending to the centre of a large pond, on which end the ſtool uſed to be placed.

Caſtle-ward, *(caſtlegardum, vel wardum caſtri)* An impoſition laid upon ſuch perſons as dwell within a certain compaſs of any caſtle, towards the maintenance of ſuch as watch and ward the caſtle. *Magna charta, cap.* 19, 20. 32 *Hen.* 8. *cap.* 48. It is ſometimes uſed for the circuit itſelf which is inhabited by thoſe that are ſubject to this ſervice. *Caſtle guard rents* were paid by perſons dwelling within the liberty of any caſtle, for the maintaining of watch and ward within the ſame. *Stat.* 22 & 23 *Car.* 2. *c.* 24. *ſect.* 2.

Caſter, and **Cheſter:** The names of places ending in theſe words are derived from the Lat. *caſtrum;* for this termination at the end was given by the *Romans* to thoſe places where they built caſtles.

Caſtration, The offence of mayhem by *caſtration,* is, according to all our old writers, felony: and this altho' the mayhem was committed upon the higheſt provocation. *Bract. fo.* 144. 3 *Inſt.* 62. *Black. Com.* 4 *V.* 206.

Caſual Ejector, In ejectment, a nominal defendant, and who continues ſuch until appearance by or for the tenant in poſſeſſion. Vide *Black. Com.* 3 *V.* 202.

Caſu Conſimili, Is a *writ* of *entry* granted where *tenant* by the *curteſy,* or *tenant* for *life, aliens in fee* or *in tail,* or *for another's life;* and is brought by him *in reverſion* againſt the *party to whom* ſuch tenant ſo aliens to his prejudice, and in the tenant's life-time. It takes its name from this; that the clerks of the Chancery did, by their common aſſent, frame it to the *likeneſs* of the writ called *in caſu proviſo,* according to the authority given them by the *Stat. Weſtm.* 2. *cap.* 24. which ſtatute, as often as there happens a new caſe in Chancery ſomething like a former, yet not ſpecially fitted by any writ, authoriſes them to frame a new form anſwerable to the new caſe, and as *like* the former as they may. 7 *Rep.* 4. See *Fitz. Nat. Br. fo.* 206.

Caſu Proviſo, A *writ* of *entry* given by the ſtatute of *Glouceſter, cap.* 7. where a *tenant in dower* aliens in *fee,* or *for life, &c.* and lies for him in *reverſion* againſt the *alienee. Fitz. N. B.* 205. This writ, and the writ of *caſu conſimili,* ſuppoſes the tenant to have aliened in fee, though it be for life only: and a *caſu proviſo* may be without making any title in it, where a leaſe is made by the demandant himſelf to the tenant that doth alien; but if an anceſtor leaſe for life, and the tenant alien in fee, *&c.* the heir in reverſion muſt have this writ with the title included therein. *F. N. B.* 206, 207.

Caſus Omiſſus, Is where any particular thing is omitted out of, and not provided againſt by a ſtatute, *&c.*

Catals, *Catalla,* Goods and chattels. See *Chattels.*

Catallis captis nomine Diſtrictionis, Is a writ that lies where a houſe is within a borough, for rent going out of the ſame; and warrants the taking of doors, windows, *&c.* by way of diſtreſs for the rent. *Old Nat. Br.* 66. This writ is obſolete, and *qu.* if taking doors or windows by virtue of ſuch writ, was it to iſſue, could now be juſtified?

Catallis Reddendis, A writ which lieth where goods being delivered to any man to keep till a certain day, are not upon demand delivered at the day. It may be otherwiſe called a *writ of detinue:* and is anſwerable to *actio depoſiti* in the Civil law. See *Reg. Orig.* 139. and *Old. Nat. Br.* 63.

Catapulta, A warlike engine to ſhoot darts: but it is rather taken for a croſs bow.——Edmundus Willoughby *tenet unum meſſuagium & ſex bovatas terra in* Carleton *ut de manerio de* Shelford *per ſervitium unius* catapultæ *per annum pro omni ſervitio.* Lib. Schedul. de Term. Mich. 14 H. 4. Notr. fol. 210.

Cataſcopus. This word ſignifies an archdeacon: Herefordenſis *eccleſia* cataſcopus. *Du Cange.*

Catchland. In *Norfolk* there are ſome grounds which it is not known to what pariſh they certainly belong, ſo that the miniſter who firſt ſeizes the tithes, does by that right of pre-occupation enjoy them for that year: and the land of this dubious nature is there called *catchland,* from this cuſtom of ſeizing the tithes. *Cowel. Qu.* if ſuch a cuſtom now exiſts?

Catchpole, (*quaſi,* one that *catches* by the *poll.)* See *Cachepollus.* Sheriffs officers are commonly ſo called.

Cathedral, (*eccleſia cathedralis*) Is the church of the biſhop, and head of the dioceſe: wherein the ſervice of the church is performed with great ceremony. Statutes uſed in the government of cathedral and collegiate churches ſince the reſtauration, *&c.* to be good and valid: but her majeſty might alter, or make new ſtatutes for the ſettling the viſitation of them. *Stat.* 6 *Ann. cap.* 21.

Cathedratick, (*cathedraticum*) Is a ſum of 2 *s.* paid to the biſhop by the inferior clergy, *in argumentum ſubjectionis & ob honorem* cathedræ. *Hiſt. procurat. & Synodals, p.* 82.

Catzurus, A hunting horſe.—Willielmus Fitz Alan *dat regi duos bonos* catzuros, *pro habendis duabus eſriis apud* Norton. *Tenures, pag.* 68. Vide *Chacurus.*

Cattle, Shall be bought in open fair or market, and not ſold again in the ſame market, on pain of forfeiture. 3 & 4 *Ed.* 6. *c.* 19. None may buy any cattle, and ſell them again alive, until he hath fed them five weeks in his own ground, or where he hath common, upon pain to forfeit double the value, by *Stat.* 5 & 6 *Ed.* 6. *c.* 14. Farmers, graziers, *&c.* may not have or keep above 2000 ſheep, accounting 120 to the hundred, on pain of 3*s.* 4*d.* for every ſheep: and he that keeps above 120 ſheep, or 20 beaſts upon any paſture ground proper for milch kine, and not commonable, ſhall yearly for every 60 ſheep or 10 cattle keep one milch cow, and bring up one calf, *&c.* under the penalty of 20*s.* *Stat.* 25 *H.* 8. *c.* 13. 2 & 3 *P.* & *M.* *c.* 3. No cattle may be imported, dead or alive, but ſhall be liable to forfeiture: but horſes, cows, ſwine, *&c.* may be tranſported, paying the duties. 18 *Car.* 2. *cap.* 2. 22 *Car.* 2. *cap.* 13. Factors ſhall not buy cattle, other than ſwine or calves, within 80 miles of *London*, under penalties; and drovers of cattle are to be licenſed by juſtices of peace, *&c.* 22 & 23 *Car.* 2. *c.* 19. 1 *Jac.* 2. *c.* 17. The ſtealing of ſheep, or any other cattle, or wilfully killing them, with intent to ſteal their carcaſes, is felony by 14 *Geo.* 2. *c.* 6. See 15 *Geo.* 2. *c.* 34.

His majeſty, to make regulations for preventing the ſpreading of the diſtemper among the cattle. 30 *Geo.* 2. *c.* 20. *&c.*

Tanners to give notice to the officer before they bring in raw hides. 22 *Geo.* 2. *c.* 46.

His majeſty impowered to prevent the killing of cow-calves, 22 *Geo.* 2. *c.* 46.

Regulations for the ſelling and driving cattle, 22 *Geo.* 2. *c.* 46. & 30 *Geo.* 2. *c.* 20.

Saleſman, broker, or factor, not to buy cattle on his own account, 31 *Geo.* 2. *c.* 40.

Allowance of free importation of cattle from *Ireland*, 32 *Geo.* 2. *c.* 11. See **Hides**.

Regulations to prevent the ſpreading the contagious diſorder among the horned cattle. 10 *Geo.* 3. *c.* 45.

See farther on this ſubject, *Table to Statutes*, tit. *Cattle, Sheep*, &c.

By *Stat.* 22 & 23 *Car.* 2. *c.* 7. Maliciouſly, unlawfully, and willingly to kill any horſes, ſheep, or other cattle in the night-time, is felony; but the felon may make his election to be tranſported for ſeven years.

Cauda terræ, A land's end or the bottom of a ridge in arable land. *Cartul. Abbat. Glaſton. fol.* 117.

Caveat, Is a kind of proceſs in the *ſpiritual court* to ſtop the inſtitution of a clerk to a benefice, or probate of a will, *&c.* When a caveat is entered againſt an inſtitution, if the biſhop afterwards inſtitutes a clerk, it is void; the *caveat* being a *ſuperſedeas*: but a caveat has been adjudged void when entered in the life-time of the incumbent. A caveat entered againſt a will ſtands in force for three months; and this is for the caution of the ordinary, that he do no wrong: though it is ſaid the temporal courts do not regard theſe ſorts of caveats. 1 *Rol. Rep.* 191. 1 *Nelſ. Abr.* 416, 417. Vide *Black. Com.* 3 *V.* 98, 246.

Cavers, Offenders relating to the mines in *Derbyſhire*, who are puniſhable in the *berghmote*, or miners court.

Caulceis, *anno* 6 *H.* 6. *cap.* 5. Ways pitched with flint, or other ſtones. See *Calcetum*.

Caurcines, *(Caurſini)* Were *Italians* that came into *England* about the year 1235, terming themſelves the *pope's merchants*, but driving no other trade than letting out money; and having great banks in *England*, they differed little from *Jews*, ſave (as hiſtory ſays) that they were rather more mercileſs to their debtors. Some will have them called *Caurſines*, *quaſi*, *cauſa urſini*, beariſh and cruel in their cauſes; others *Courſini*, or *Corſini*, as coming from the iſle of *Corſica*: but *Cowel* ſays, they have their name from *Caorſium*, *Caorſi*, a town in *Lombardy*, where they firſt practiſed their arts of uſury and extortion; from whence ſpreading themſelves, they carried their curſed trade through moſt parts of *Europe*, and were a common plague to every nation where they came. The then biſhop of *London* excommunicated them: and King *Hen.* 3. baniſhed them from this kingdom in the year 1240. But being the pope's ſolicitors and money-changers, they were permitted to return in the year 1250; though in a very ſhort time after, they were driven out of the kingdom again for their intolerable exactions. *Mat. Pariſ.* 403.

Cauſa Matrimonii prælocuti, Is a writ which lies where a woman gives land to a man in fee-ſimple, *&c.* to the intent he ſhould marry her, and he refuſeth to do it in any reaſonable time, being thereunto required. *Reg. Orig.* 66. If a woman makes a feoffment to a ſtranger of land in fee, to the intent to infeoff her, and one who ſhall be her huſband; if the marriage ſhall not take effect, ſhe ſhall have the writ of *cauſa matrimonii prælocuti*, againſt the ſtranger, notwithſtanding the deed of feoffment be abſolute. *New Nat. Br.* 456. A woman infeoffed a man upon condition that he ſhould take her to wife, and he had a wife at the time of the feoffment; and afterwards the woman, for not performing the condition, entered again into the land, and her entry was adjudged lawful, though upon a ſecond feoffee. *Lib. Aſſ. anno* 40 *Ed.* 3. The huſband and wife may ſue the writ *cauſa matrimonii prælocuti* againſt another who ought to have married her: but if a man give lands to a woman to the intent to marry him, although the woman will not mary him, *&c.* he ſhall not have his remedy by writ *cauſa matrimonii prælocuti*. New Nat. Br. 455.

Cauſam nobis ſignifices, A writ directed to a mayor of a town, *&c.* who was by the king's writ commanded to give ſeiſin of lands to the king's grantee, on his delaying to do it, requiring him to ſhew cauſe why he ſo delays the performance of his duty.

Cauſes and Effects, In moſt caſes the law hath reſpect to the *cauſe*, or beginning of a thing, as the principal part on which all other things are founded: and herein the *next*, and not the *remote* cauſe is moſt looked upon, except it be in covinous and criminal things: and therefore that which is not good at firſt will not be ſo afterwards; for ſuch as is the cauſe, ſuch is the effect. *Plowd.* 208, 268. If an infant or feme covert make a will, and publiſh it, and after die of full age, or ſole, the will is of no force, by reaſon of the original cauſe of infancy and coverture. *Finch* 12. A lord diſtrains his tenant for rent before due, the tenant may juſtify to make reſcous, the lord having no juſt cauſe to diſtrain. *Co. Lit.* 106. And if a man acknowledge a ſtatute by *dureſs*, *&c.* he may have an *audita querela* to avoid it. *Fitz. Abr.* 104. Where the cauſe ceaſeth, the effect or thing will ceaſe. *Co. Lit.* 13.

Cautione admittenda, Is a writ that lies againſt a biſhop, who holds an excommunicated perſon in priſon for contempt, notwithſtanding he offers ſufficient caution or ſecurity to obey the orders and commandment of holy church for the future. *Reg. Orig.* 66. And if a man be excommunicated, and taken by a writ of *ſignificavit*, and after offers caution to the biſhop to obey the church, and the biſhop refuſeth it; the party may ſue out this writ to the ſheriff to go againſt the biſhop, and to warn him to take caution, *&c.* But if he ſtand in doubt whether the ſheriff will deliver him by that writ, the biſhop may purchaſe another writ, directed to the ſheriff reciting the caſe, and the end thereof; *Tibi præcipimus, quod ipſum* A. B. *a priſona prædict. niſi in præſentia tua cautionem pignorat. ad minus eidem epiſc. de ſatisfaciend. obtulerit, nullatenus deliberas abſque mandato noſtro, ſeu ipſius epiſcopi in hæc parte ſpeciali, &c.* When the biſhop hath taken caution, he is to certify the ſame into the *Chancery*, and thereupon the party ſhall have a writ unto the ſheriff to deliver him. *New Nat. Br.* 142. Vide this ſubject fully treated of in *Britiſh Liberties*.

Ceapgilde, A word derived from the Sax. *ceap*, ſignifying *pecus*, cattle; and *gild*, i. e. *ſolutio*; and hence it is *ſolutio pecudis:* from this *Saxon* word *gild*, it is very probable we have our *Engliſh* word *yield*; as yield, or pay. *Cowel.*

Celer Lecti, Is the top, head, or teſter of a bed.—*Dedit ad cameram prioris unum* lectum *cum* celere & *curtenis blodei coloris.* Hiſt. Elien. apud Whartoni Angl. Sax. par. 1. p. 673.

Cellerarius, The butler in a monaſtery: in the univerſities they are ſometimes called *manciple*, and ſometimes *caterer*, and ſteward.

Cendulæ, Small pieces of wood laid in form of tiles, to cover the roof of a houſe.—*Mandatum ad* cendulas *& lattas noſtras cariandas de parco ad domus reficiendas.* Pat. 4 Hen. 3. p. 1. m. 10.

Cenegild, This is an expiatory mulct, paid by one who killed another, to the kindred of the deceaſed. *Spelm.*

Cenellæ, Acorns, from the oak, in our old writings, *peſſona cenellarum*, is put for the pannage of hogs, or running of ſwine, to feed on acorns.

Cenninga, Was notice given by the buyer to the ſeller, that the thing ſold was claimed by another, that he might appear and juſtify the ſale: it is mentioned in the laws of *Athelſtan apud Brompton, cap.* 4.

Cenſaria, A farm, or houſe and land, let *ad cenſum* at a ſtanding rent: it comes from the Fr. *cenſe*, which ſignifies a farm.—Henricus Sturmy *tenet maneria in com.* Wilts, *per ſervitium cuſtodiendi ballivam totius foreſtæ de* Savernake & cenſariam, *quae vocatur* la ferme *in foreſta praedicta*. Temp. Ed. 3. Tenures, p. 88.

Cenſarii, Farmers.——*Ibi ſunt nunc* 14 cenſarii, *habentes ſeptem carucatas*. Blount.

Cenſuales, A ſpecies or claſs of the *oblati*, or voluntary ſlaves of churches or monaſteries, *i. e.* thoſe who, to procure the protection of the church, bound themſelves to pay an annual tax or quit-rent out of their eſtates to a church or monaſtery. Beſides this, they ſometimes engaged to perform certain ſervices. *Robert. Hiſt. Emp.* C. V. 1 *V.* 271, 2. *Potgieſſerus de Statu Servorum, lib.* 1. *cap.* 1. *ſect.* 6, 7.

Cenſure, A cuſtom called by this name (from the Lat. *cenſus*, which has been expounded to be a kind of perſonal money, paid for every poll) obſerved in divers manors in *Cornwall* and *Devon*, where all perſons reſiding therein above the age of ſixteen are cited to ſwear fealty to the lord, and to pay 11*d. per* poll, and 1*d. per ann.* ever after; and theſe thus ſworn are called *cenſers*.——*Item erat quaedam cuſtuma quae vocatur* cenſure *proveniens de illis qui manent in burgo de* Leſtreythiel. Survey of the Dutchy of *Cornwall*.

Centenarii, Were petty judges under ſheriffs of counties, that had rule of an *hundred*, and judged ſmaller matters among them. 1 *Vent.* 211.

There were inferior judges ſo called in *France:* in the reign of *Charles the Bald* the highways were ſo much infeſted by *banditti*, whoſe acts of violence were become ſo common, that by many they were ſcarce conſidered as criminal, for which reaſon theſe inferior judges, called *centenarii*, were required to take an oath, that they would neither commit any robbery themſelves, nor protect ſuch as were guilty of that crime. *Robert. Hiſt. Emp. Charles* V. 1 *V.* 379. *Capital. edit. Balur. Vol.* 2. *p.* 63. 68. See alſo *Black. Com.* 1 *V.* 115.

Ceola, A large ſhip. The word is mentioned in *Malmeſbury*. Lib. 1. c. 1.

Cepi Corpus, Is a return made by the ſheriff, upon a *capias*, or other proceſs to the like purpoſe, that he hath taken the body of the party. *F. N. B.* 26.

Ceppagium, The ſtumps or roots of trees which remain in the ground after the trees are felled.——*Qui foreſtarii ceperint coopertiones*, ceppagia & *eſchaetas quercuum ſive aliarum arborum, &c.* Fleta, lib. 2. cap. 41.

Ceragium, Cerage, a payment to find candles in the church. *Mat. Paris.* See *Waxſcot*.

Certainty, Is a plain, clear, and diſtinct ſetting down of things, ſo that they may be underſtood. 5 *Rep.* 121. A convenient certainty is required in writs, declarations, pleadings, *&c.* But if a writ abate for want of it, the plaintiff may have another writ: 'tis otherwiſe if a deed become void by incertainty, the party may not have a new deed at his pleaſure. 11 *Rep.* 25, 121. *Dyer* 84. That has certainty enough, that may be made certain: but not like what is certain of itſelf. 4 *Rep.* 97. See *Incertainty.*

In actions that affirm property in the plaintiff, certainty is more neceſſary than in others, yet after verdict the courts have diſpenſed with the certainty formerly neceſſary. *Rep. Temp. Hardwicke, per Annaly, Franklin* and *Reeves* 118, 119.

Certificando de recognitione Stapulæ, Is a writ commanding the mayor of the ſtaple to certify to the lord chancellor a ſtatute ſtaple taken before him, where the party himſelf detains it, and refuſeth to bring in the ſame. *Reg. Orig.* 152. There is the like writ to certify a ſtatute-merchant; and in divers other caſes. *Ibid.* 148, 151, *&c.*

Certificate, Is a writing made in any court to give notice to another court of any thing done therein, which is uſually by way of tranſcript, *&c.* And ſometimes it is made by an officer of the ſame court, where matters are referred to him, or a rule of court is obtained for it, containing the tenor and effect of what is done. The clerks of the crown, aſſize and peace, are to make certificates into *B. R.* of the tenor of indictments, convictions, *&c.* under penalties, by the *Stat.* 34 & 35 *Hen.* 8. *c.* 14. 3 *W.* & *M. c.* 9.

A judge of *Niſi prius* cannot certify for coſts out of court. *Ford* v. *Parr & al'. Wilſ. par.* 2. *fo.* 21. See *Tab. to Satutes*, tit. *Certificate.* As to certificate for *coſts*, vide *Black. Com.* 3 *V.* 214. Into *Chancery, ibid.* 453. Of *Bankrupt, id.* 2 *V.* 482. Of *Poor, id.* 1 *V.* 364. and *Trial by Certificate, id.* 3 *V.* 333.

Certification of Aſſiſe of Novel Diſſeiſin, (*certificatio aſſiſæ novæ diſſeiſinæ, &c.*) Is a writ granted for the re-examining of a matter paſſed by aſſiſe before juſtices: and this is uſed where a man appearing by his bailiff to an aſſiſe brought by another hath loſt the day; and having ſomething more to plead for himſelf, which the bailiff did not, or might not plead for him, deſires a farther examination of the cauſe, either before the ſame juſtices, or others, and obtains letters patent to them to that effect; whereupon he brings a writ to the ſheriff to call both the party for whom the aſſiſe paſſed, and the jury that was impanelled on the ſame, before the ſaid juſtices at a certain day and place, when the ſame is to be examined: and it is called a certificate, becauſe therein mention is made to the ſheriff, that upon the party's complaint of the defective examination, as to the aſſiſe paſſed, the king hath directed his letters patent to the juſtices for the better certifying of themſelves, whether all points of the ſaid aſſiſe were duly examined. *Reg. Orig.* 200. *F. N. B.* 181. *Bracton, lib.* 4. *c.* 13. *Horn's Mirr. lib.* 3.

Certiorari, A writ iſſuing out of the *Chancery* to an inferior court, to call up the records of a cauſe there depending, that juſtice may be done therein, upon complaint that the party who ſeeks the ſaid writ hath received hard uſage, or is not like to have an indifferent trial in the ſaid court. *Fitz. N. B. fol.* 242. A certiorari iſſues ſometimes out of Chancery, and ſometimes out of the King's Bench, and lies where the king would be certified of a record, in any court of record; and the king may ſend ſuch writ to any of the ſaid courts, to certify ſuch record before him *in Banco*, or in the Chancery, or before ſuch other juſtices, where he pleaſes to have the ſame certified. *F. N. B.* 145. Unleſs in caſes excepted by ſtatute.

This writ is either returnable in the King's Bench, and then hath theſe words, *nobis mittatis*; or in the *Common Bench*, and then has *juſticiariis noſtris de banco*; or in the Chancery, and then hath *in Cancellaria noſtra, &c.*

Certiorari lies to the courts of *Wales*; and the cinque ports, counties palatine, *&c.* 2 *Hawk. P. C.* 287. Indictments from inferior courts, and proceedings of the quarter-ſeſſions of the peace, *&c.* may be removed into *B. R.* by certiorari: and it is ſaid a certiorari to remove an indictment is good, although it bear date before the taking thereof: but on a certiorari the very record muſt be returned, and not a tranſcript of it; for if ſo, then the record will ſtill remain in the inferior court. 2 *Lil.* 253. In *B. R.* the very record itſelf of indictments is removed by *certiorari*; but uſually in Chancery, if a *certiorari* be returnable there, it removes only the tenor of the record, and therefore, if it be ſent from thence into the King's Bench, they cannot proceed either to judgment or execution, becauſe they have but ſuch tenor of the record before them. 2 *Hale's Hiſt. P. C.* 215.

And although on a *habeas corpus* to remove a perſon, the court may bail or diſcharge the priſoner: they can give no judgment upon the record of the indictment againſt him, without a *certiorari* to remove it, but the ſame ſtands in force as it did, and new proceſs may iſſue upon it: but it is otherwiſe in civil cauſes. *Ibid.* 211. If an indictment be one, but the offences ſeveral, where four perſons are indicted together; a *certiorari* to remove this indictment againſt two of them, removes it not as to the others, but as to them the record remains below. 2 *Hale's Hiſt.* 214.

Where a *certiorari* is by law grantable for an indictment, at the ſuit of the king, the court is bound to award it, for it is the king's prerogative to ſue in what court he pleaſes: but it is at the diſcretion of the court to grant or not, at the prayer of the defendant; and the court will not grant it for the removal of an indictment before juſtices of goal delivery, without ſome ſpecial cauſe; or where there is ſo much difficulty in the caſe, that the judge deſires it may be determined in *B. R. &c.* Alſo indictments of perjury, forgery, or for heinous miſdemeanors, the court will not grant a *certiorari* to remove at the inſtance of the defendant. 2 *Hawk. P. C.* 287.

Where iſſue is joined in the court below, it is a good objection againſt granting a *certiorari*: and if a perſon doth not make uſe of this writ till the jury are ſworn, he loſes the benefit of it. *Mod. Ca.* 16. *Stat.* 43 *Eliz. c.* 5. After conviction, a *certiorari* may not be had to remove an indictment, *&c.* unleſs there be ſpecial cauſe; as if the judge below is doubtful what judgment is proper to be given, when it may: and after conviction, *&c.* it lies in ſuch caſes where writ of error will not lie. 1 *Salk.* 149. The court on motion in an extraordinary caſe will grant a *certiorari* to remove a judgment given in an inferior court; but this is done where the ordinary way of taking out execution is hindered in the inferior court. 1 *Lill. Abr.* 253.

In common caſes a *certiorari* will not lie to remove a cauſe out of an inferior court, after verdict. It is never ſued out after a writ of error, but where diminution is alledged: and when the thing in demand does not exceed 5 *l.* a *certiorari* ſhall not be had, but a writ of error or attaint. *Stat.* 21 *Jac.* 1. *cap.* 23. A *certiorari* is to be granted on matter of law only: and in many caſes there muſt be a judge's hand for it. 1 *Lill.* 252. *Certiorari's* to remove indictments, *&c.* are to be ſigned by a judge: and to remove orders, the *fiat* for making out the writ muſt be ſigned by ſome judge. 1 *Salk.* 150.

In vacation time a *certiorari* may be granted by any of the judges of *B. R.* and ſecurity is to be found before it is allowed. By ſtatute no *certiorari* is to be granted out of *B. R.* to remove an indictment before juſtices of peace at the ſeſſions before trial, unleſs motion be made in open court, and the party indicted find ſecurity by two perſons in 20 *l.* each to plead to the indictment in *B. R. &c.* And if the defendant proſecuting the *certiorari* be convicted, the court of *B. R.* ſhall order coſts to the proſecutor of the indictment. *Stat.* 5 & 6 *W. & M. cap.* 11. If on a *certiorari* to remove an indictment the party do not find manucaptors in the ſum of 20 *l.* to plead to the indictment and try it, according to the ſtatute, it is no *ſuperſedeas*. *Mod. Ca.* 33. And a *procedendo* may be granted where bail is not put in before a judge, on a *certiorari*.

It has been ruled that a *certiorari* ought not to be granted to remove any order of juſtices, where an appeal lies to the ſeſſions, before the matter is determined on the appeal. 1 *Salk.* 147. Yet *certiorari* lies to juſtices of peace, *&c.* even in caſes where they are impowered by ſtatute finally to hear and determine. 1 *Mod.* 44. But things may not be removed from before juſtices of peace, which cannot be proceeded in by the court where removed; as in caſe of refuſing to take the oaths, *&c.* which is to be certified and inquired into, according to the ſtatute. 1 *Salk.* 145. And where the court which awards the *certiorari* cannot hold plea on the record, there but a tenor of the record ſhall be certified; for otherwiſe if the record was removed into *B. R.* as it cannot be ſent back, there would be a failure of right afterwards. 1 *Danv. Abr.* 792. But a record ſent by *certiorari* into *B. R.* may be ſent after by *mittimus* into *C. B. Ibid.* 789. And a record into *B. R.* may be certified into Chancery, and from thence be ſent by *mittimus* into an inferior court, where an action of debt is brought in an inferior court, and the defendant pleads that the plaintiff hath recovered in *B. R.* and the plaintiff replies *Nul tiel record*, *&c.* 1 *Saund.* 97, 99.

If a *certiorari* be prayed to remove an indictment out of *London* or *Middleſex*, three days notice muſt be given the other ſide, or the *certiorari* ſhall not be granted. *Raym.* 74. The court of *B. R.* will grant a new *certiorari* to affirm a judgment, *&c.* Though generally one perſon can have but one *certiorari*. *Cro. Jac.* 369. Returns of *certiorari's* are to be under ſeal; and the perſon to whom a *certiorari* is directed may make what return he pleaſes, and the court will not ſtop the filing of it, on *affidavit* of its falſity, except where the public good requires it: the remedy for a falſe return is action on the caſe, at the ſuit of the party injured; and information, *&c.* at the ſuit of the king. 2 *Hawk. P. C.* 295.

A *certiorari* being once delivered, makes all ſubſequent proceedings on the record erroneous; whether the proceedings are before or after its return. It is ſaid the Lord Chancellor, or any judge of the courts of record at *Weſtminſter*, may bring a record to one another, without a *certiorari*; but not a judge of an inferior court, *&c.* 1 *Nelſ.* 417, 418. A *certiorari* may be had to inferior courts; but not to a court ſuperior, or that has equal juriſdiction, in which caſe day is given to bring in the record, *&c.* And on a *certiorari* to remove a record out of an inferior court, the ſtile of their court, and power to hold plea, and before whom, ought to be ſhewn on their certificate. *Jenk. Cent.* 114, 232. If a cauſe be removed from an inferior court by *certiorari*, the pledges in the court below are not diſcharged; becauſe a defendant may bring a *certiorari*, and thereby the plaintiff may loſe his pledges. *Skin. Rep.* 244, 246.

Certiorari not granted to remove an indictment from the *Old Bailey*, unleſs on extraordinary occaſions. The *King* v. *Ferguſon*, *Rep. temp. Hardw.* per *Annaly*, 369.

A *certiorari* to remove an order of baſtardy ſhould be applied for in ſix months, *Rex* v. *Howlett*, *Wilſ. par.* 1. *fo.* 35.

Proceedings upon the exciſe laws ſhall not be ſuperſeded by *certiorari*. 12 Car. 2. c. 23 & 24.

Indictments for the repair of highways, pavements, *&c.* not removable but in ſpecial caſes, 13 & 14 *Car.* 2. *c.* 6. 22 *Car.* 2. *c.* 12. & 3 *W. & M. c.* 12. And *vide* tit. *Highways*.

A *certiorari* may be granted to remove an indictment touching the highway, bridges, *&c.* on a ſuggeſtion, *&c.* that the right to repair may come in queſtion. 5 *W. & M. c.* 11.

The ſecurity to be taken on allowance of a *certiorari*, to remove a conviction of deer-ſtealing. 3 *W. & M. c.* 10. On the game laws, 4 & 5 *W. & M. c.* 23. & 5 & 6 *Ann. c.* 14. On the act to prevent exceſſive gaming, 12 *Geo.* 2. *c.* 28.

No judgment or order to be removed by *certiorari*, without ſureties found. 5 *Geo.* 2. *c.* 19.

Certiorari, to remove proceedings of juſtices, to be applied for within ſix calendar months, and upon ſix days notice to the juſtices. 13 *Geo.* 2. *c.* 18.

For the ſeveral caſes in which a *certiorari* is not grantable, ſee the table to the *quarto* edition of the *Statutes at Large*.

Form of a *certiorari* to certify the record of a judgment.

GEORGE *the Third*, &c. *To the mayor and ſheriffs of our city of* E. *and to every of them, in our court at the* Guildhall *there greeting: Whereas* A. B. *hath lately in our ſaid court in the ſaid city, according to the cuſtom of the ſame court, impleaded* C. D. *late of*, &c. *in an action of debt upon demand of thirty pounds; and thereupon, in our ſaid court before you, obtained judgment againſt the ſaid* C. *for the recovery of the ſaid debt: and we, being deſirous for certain reaſons, that the ſaid record ſhould by you be certified to us, do command you, that you ſend under your ſeals the record of the ſaid recovery, with all things touching the ſame, into our court before us at* Weſtminſter, *on the day*, &c. *plainly and diſtinctly, and in as full and ample manner as it now remains before you, together with this writ; ſo that we on the part of the ſaid* A. *may be able to proceed to the execution of the ſaid judgment, and do what ſhall appear to us of right ought to be done.* Witneſs, *&c.*

Cert-Money, (*quaſi* certain *money*) Is *head-money*, paid yearly by the reſiants of ſeveral manors to the lords thereof, for the *certain* keeping of the leet; and ſometimes to the hundred; as the manor of *Hook*, in *Dorſetſhire*, pays *cert-money* to the hundred of *Egerdon*. In ancient records this is called *certum letæ*. See *Common Fine*.

Cerviſarii. The *Saxons* had a duty called *drinclean*, that is, *retributio potus*, payable by their tenants; and ſuch tenants were in *Domeſday* called *cerviſarii*, from *cerviſia*, ale, their chief drink: though *cerviſarius* vulgarly ſignifies a beer or ale brewer.

Cerura, A mound, fence, or incloſure.——Willielmus *de* Lucy *miles, dedit* Thomæ S. *miniſtro domus de* Thelesford, *licentiam domus & portas levare, ædificare, & cum* ceruris *& muris includere, &c.* Cart. priorat. de Thelesford, MS.

Ceſſat Executio. In treſpaſs againſt two perſons, if it be tried and found againſt one, and the plaintiff takes his execution againſt him, the writ will abate as to the other; for there ought to be a *ceſſat executio* till it is tried againſt the other defendant. 10 *Ed.* 4. 11. See *Execution*, &c.

Ceſſavit, Is a writ that lies in divers caſes, upon this general ground, that he againſt whom it is brought, hath for two years neglected to perform ſuch ſervice, or to pay ſuch a rent, as he is tied to by his tenure, and hath not upon his lands or tenements ſufficient goods or chattels to be diſtrained. *F. N. B.* 280. And if a tenant for years of land at a certain rent, ſuffers the rent to be behind two years, and there is no ſuch diſtreſs to be had upon the land; then the landlord ſhall recover the land: but if the tenant come into court before judgment given, and tender the arrearages and damages, and find ſecurity that he ſhall *ceaſe no more* in payment of the rent, then the tenant ſhall not loſe his land. *Terms de Ley*.

By ſtatute, if a fee-farmer ceaſe to pay his rent two years, the leſſor may have a *ceſſavit*, and recover the land: and in this caſe, the heir of the demandant may maintain a *ceſſavit* againſt the heir or aſſignee of the tenant. 6 *Ed.* 1. *cap.* 4. But in other caſes, the heir may not bring this writ for *ceſſure* in the time of his anceſtor: and it lies not but for *annual ſervice, rent*, and *ſuch like*; *not* for *homage* or *fealty*. If a man ceaſe to pay his rent and ſervices for two years, and incloſe the land, ſo as the lord cannot diſtrain, if he lay not open the gates or hedges of the land which make the incloſure, the lord ſhall have a *ceſſavit*, although the tenant hath ſufficient cattle upon the land to be diſtrained for the rent: for the land ought to be open, and likewiſe there ſhould be ſufficient to diſtrain for the rent, *&c.* And where the tenant ſuffereth the land to lie freſh, not occupied for two years together, it is ſaid this writ will lie. *New Nat. Br.* 463, 464.

The lord ſhall have a writ of *ceſſavit* againſt tenant for life, where the remainder is over in fee to another: but the donor of an eſtate-tail ſhall not have a *ceſſavit* againſt the tenant in tail: though if a man make a gift in tail, the remainder over in fee to another, or to the heirs of the tenant in tail, there the lord of whom the lands are holden *immediate*, ſhall have a *ceſſavit* againſt the tenant in tail, becauſe that he is tenant to him, *&c. Ibid.* If the lord diſtrains pending the writ of *ceſſavit* againſt his tenant, the writ ſhall abate. The *writ ceſſavit* is directed to the ſheriff, *To command* A. B. *that*, &c. *he render to* C. D. *one meſſuage, which he holds by certain ſervices, and which ought to come to the ſaid* C. *by force of the ſtatute*, &c. *becauſe the ſaid* A. *in doing thoſe ſervices had ceaſed two years*, &c.

Ceſſavit de Cantaria, Lies where a man gives land to any houſe of religion or parſon, to ſay divine ſervice, provide alms for the poor, *&c.* If the ſaid ſervices be not done in two years, the donor or his heirs ſhall have this writ againſt him that holds the land thus given, after ſuch ceſſure. *Stat. Weſtm.* 2. *cap.* 41.

Ceſſe, Signifies an *aſſeſſment* or tax, and is mentioned in the *Stat.* 22 *Hen.* 8. *cap.* 3. *Ceſſe* or *ceaſſe*, in *Ireland*, is an exaction of victuals, at a certain rate, for ſoldiers in garriſon. *Antiq. Hiberniæ*.

Ceſſion, *(Ceſſio)* A ceaſing, yielding up, or giving over. And is when an eccleſiaſtical perſon is created biſhop, or a parſon of a parſonage takes another benefice, without diſpenſation or otherwiſe not qualified, *&c.* In both caſes their firſt benefices are become void, and are in the law ſaid to be void by *ceſſion*: and to thoſe benefices that the perſon had who was created biſhop, the king ſhall preſent for that time, whoever is patron of them; and in the other caſe the patron may preſent. *Cowel.* Not only a benefice with cure may be ſaid to be void by ceſſion, when the incumbent thereof accepts of another benefice, but alſo when ſuch incumbent is made a biſhop; for thereby all his eccleſiaſtical preferments which he had before, whether with or without cure, are actually void. *Vaugh.* 19. But it is not the election of any one to be a biſhop, and confirmation thereof, that doth void his former preferments, until conſecration be alſo had: and by diſpenſation of retainer, a biſhop may retain ſome, or all of thoſe preferments he was intitled to before he was biſhop. *Dyer* 223. The ceſſion on promotion of a biſhop, not making an avoidance in the common way, and it being by the king's means that the livings are void, whoſe preſentation in ſuch a caſe is only as it were an exchange of one life for another, intitles the king to preſent to thoſe livings, and as he is ſupreme patron. Ceſſion makes a living void, without any reſignation, deprivation, *&c.* Vide *Black. Com.* 1 *V.* 392.

Ceſſor, *(Lat.)* A loiterer; but more particularly uſed for him who *ceaſeth*, or neglects ſo long to perform a duty, that he thereby incurs the danger of the law. *Old Nat. Br.* 136.

Ceſſure, or *ceſſer*, Is uſed for *ceaſing*, giving over; or departing from. *Stat. Weſtm.* 2. *c.* 1.

Ceſtui que Truſt, Is he to whoſe uſe or benefit, another man is enfeoffed or ſeiſed of lands or tenements. *Anno* 12 *Car.* 2. *cap.* 30. And lands of *ceſtui que truſt* may be delivered in execution, where any perſon is ſeiſed in *truſt* for another. 29 *Car.* 2. *c.* 3. And ſee 19 *H.* 7. *c.* 15. 27 *H.* 8. *c.* 10. If the perſon intruſted doth not perform his *truſt*, he is compellable in the Chancery, *&c.*

Ceſtui que Uſe, (Fr. *ceſtui à l' uſe de qui)* Signifies him to whoſe *uſe* any other man is enfeoffed of lands or tenements. 1 *Rep.* 133. Feoffees to uſes were formerly deemed owners of the lands; but now the poſſeſſion is adjudged in *ceſtui que uſe*, and without any entry he may bring aſſiſe, *&c. Stat.* 27 *Hen.* 8. *c.* 10. *Cro. Eliz.* 46. See *Uſe*.

Ceſtui que Vie, Is he for whoſe life any lands or tenements are granted. *Perk.* 97. And if tenant for term of another's life dieth, while *ceſtui que vie* is living; now, by the Common law, he that firſt entereth, ſhall hold the land as occupant during ſuch other perſon's life. *Co. Lit.* 41, 388. But this is prevented by making leaſes for the lives of others to the leſſees, their heirs or executors, during the life of *ceſtui que vie, &c.* And the *Stat.* 29 *Car.* 2. *cap.* 3. charges ſuch lands for debt. See *Occupant*.

Chacea, Is a ſtation of game more extended than a park, and leſs than a foreſt: and is ſometimes taken for the liberty of chaſing or hunting within ſuch a diſtrict. And according to *Blount* it hath another ſignification, *i. e.* the way through which cattle are drove to paſture, commonly called in ſome places a *drove way*; *Ut ſi quis omnino viam obſtruat vel* chaceam *per quam ingredi ſolet paſturæ.* Bracton, lib. 4. c. 44. Vide *Chaſe*.

Chaceare *ad lepores, vel vulpes:* To hunt hare or fox. ——*Licet, &c.* chaceare *ad lepores & vulpes in manerio ſuo de Donham.* Cartular. Abbat. Glaſton. MS. 87.

Chacurus, (from the Fr. *chaſſeur)* A horſe for the chaſe; or rather a hound or dog, a courſer. *Rot.* 7 *Johan.*

Chafe, from the Fr. *chaufer* to heat, whence our *chaſing* diſh.

Chafewax, An officer in *Chancery*, that fitteth the *wax* for ſealing of the writs, and ſuch other inſtruments as are there made to be iſſued out: ſo in *France* calefactores ceræ *ſunt, qui regis literis in Chancellaria ceram imprimunt.* Coraſius.

Chaffers, Seem to ſignify wares or merchandiſe; and we yet uſe *chaffering* for buying and ſelling, though we take it to be generally a kind of bartering of one thing for another. It is mentioned in the *Stat.* of 3 *Ed.* 4. *c.* 4.

Chains, (*hanging* in). By 25 *Geo.* 2. *c.* 37. The judge before whom a murderer is convicted ſhall, in paſſing ſentence, direct him to be executed on the next day but one, (unleſs the ſame ſhall be *Sunday*, and then on the *Monday* following), and that his body be delivered to the ſurgeons, to be diſſected and anatomized; and that the judge may direct his body to be afterwaɹds hung in chains, but in no wiſe to be buried without diſſection. A power is allowed to the judge, upon good and ſufficient cauſe, to reſpite the execution, and relax the other reſtraints of this act. *Black. Com.* 4 *V*. 202.

Chaldron or **Chalder** of coals, contains thirty-ſix buſhels heaped up, according to the buſhel ſealed for that purpoſe at *Guildhall, London*. Stat. 16 & 17 Car. 2. c. 2.

Chalking. The merchants of the ſtaple require to be eaſed of divers new impoſitions, as *chalking*, ironage, wharfage, &c. *Rot. Parl.* 50 *Ed.* 3.

Challenge, *Calumnia* (from the Fr. *chalenger)* is uſed in the law for an exception to jurors, who are returned to paſs on a trial. And this *challenge* to jurors is either made to the *array*, or to the *poll:* to the *array* is, when exception is taken to the whole number impanelled; and to the *poll* is, when ſome one or more are excepted againſt, as not indifferent.

Challenge to jurors is alſo divided into *challenge principal* or *peremptory*; and *challenge pur cauſe, i. e.* upon cauſe or reaſon: *challenge* principal or peremptory, is that which the law allows without cauſe alledged, or further examination; as a priſoner at the bar, arraigned for felony, may *challenge* peremptorily the number allowed him by law, one after another, alledging no cauſe, but his own diſlike, and they ſhall be put off, and new taken in their places: but yet there is a difference between *challenge* principal, and *challenge* peremptory; this being uſed only in matters criminal, and barely without cauſe alledged; whereas that is in civil actions for the moſt part, and by aſſigning ſome ſuch cauſe of exception, as being found true the law allows. *Staundf. P.C.* 124, 157. *Lamb. Eiren. lib.* 4. *cap.* 14. In *treaſon*, and *petit treaſon*, the number of *thirty-five* jurors may be peremptorily *challenged*, without ſhewing any cauſe, in favour of life; and in *murder* and *felony*, *twenty:* and more may be challenged ſhewing cauſe. *Co. Lit.* 155. 22 *H.* 8. *c.* 14. 1 *P. & M. cap.* 10.

A perſon indicted of treaſon may challenge *thirty-five* of thoſe returned on the panel of jurors to try him, without cauſe ſhewn; and if two or more are to be tried, they may *challenge* ſo many each, but then they are to be tried ſingly, or all may *challenge* that number in the whole, and be tried jointly. 3 *Salk.* 81. By *Stat.* 3 *Hen.* 7. *c.* 14. In treaſon for compaſſing to kill the King, &c. no *challenge* ſhall be allowed, but for malice. If a priſoner *challenge* peremptorily more than allowed he is to be dealt with as one ſtanding mute, &c. And ſome ſtatutes which take away the benefit of clergy from felons, exclude thoſe their clergy who peremptorily *challenge* more than *twenty*, whereby they are liable to judgment of death. 2 *Hawk. P. C.* 414. *Vide* 22 *H.* 8. *c.* 14. 28 *H.* 8. *c.* 1. 1 *Ed.* 6. *c.* 12. *ſect.* 11. 3 & 4 *W. & M. c.* 9. But if the offender be within the benefit of clergy, the *challenge* ſhall be over-ruled, and the party put upon his trial.

The *King* cannot *challenge* peremptorily in *murder*, &c. without ſhewing cauſe. *Moor* 595. And by *Stat.* 33 *Ed.* 1. *Stat.* 4. if thoſe who proſecute for the King challenge a juror, they ſhall aſſign the cauſe; and if they alledge not a good cauſe, the inqueſt ſhall be taken. All peremptory *challenges* are to be taken by the party himſelf; and where there are divers *challenges*, they muſt be taken all at once. But there can be no *challenge* till the jury is full; and then the array is to be *challenged* before one of them is ſworn. *Hob.* 235. Where the King is party, if the other ſide *challenge* a juror above the number allowed by law, he ought to ſhew the cauſe of his challenge immediately. 1 *Bulſt.* 191. A defendant ſhall ſhew all cauſes of *challenge*, before the King ſhall ſhew any. 2 *Hawk.* 413. And the King ought not to ſhew his cauſe of *challenge* before all the jurors are called over; for if there are enough beſides thoſe challenged, there will be no occaſion to ſhew any cauſe why he challenged the others: but if there are not enough, then he muſt ſhew the cauſe of his *challenge*. *Raym.* 473.

There may be a principal cauſe of *challenge* to the array, and a *challenge* to the favour: a principal cauſe of *challenge* is in reſpect of partiality or default of the ſheriff, &c. and not in reſpect of the perſons returned; and this partiality in the ſheriff, may be by reaſon of kindred, or affinity to the plaintiff or defendant; or if one of the jury is returned at the nomination of the plaintiff or defendant; if a knight be not returned, when a peer is party, &c. *Co. Lit.* 156, 157.

Challenge to the favour is where the plaintiff or defendant is tenant to the ſheriff, or if the ſheriff's ſon hath married the daughter of the party, &c. and is alſo when either party cannot take any principal *challenge*, but ſheweth cauſe of favour; and cauſes of favour are infinite. But where the King is party, one ſhall not *challenge* the array for favour, though the King may do it. *Wood's Inſt.* 592. Where *challenge* is to the favour, by reaſon of kindred to the ſheriff, you muſt ſhew how kin, and then the *challenge* is good. 1 *Nelſ. Abr.* 423. If one of the parties is of affinity to a juror, the juror hath married the plaintiff's daughter, &c. If a juror hath given a verdict before in the cauſe, matter or title; if one labours a juror to give his verdict; if after he is returned, a juror eats and drinks at the charge of either party; if the plaintiff, &c. be his maſter, or the juror hath any intereſt in the thing demanded, &c. theſe are *challenges* to the favour. 2 *Rol. Abr.* 636. *Hob.* 294.

If the juror is convicted and attainted of treaſon, felony, perjury, adjudged to the pillory, or other puniſhment, whereby he becomes infamous, or is outlawed, or excommunicate; theſe are all principal *challenges:* but in theſe caſes and others, he that challengeth, is to ſhew the record, if he will have it take place as a principal *challenge*; otherwiſe he muſt conclude to the favour, unleſs it be a record of the ſame court. *Co. Lit.* 157. A perſon under proſecution for any crime, may, before indicted, *challenge* any of the grand jury, as being outlawed, &c. or returned at the inſtance of the proſecutor, or not returned by the proper officer, &c. 2 *Hawk. P. C.* 215.

As a peer ought not to be ſworn on juries, he may be *challenged:* but a peer of the realm tried for treaſon or felony, ſhall not *challenge* any of his peers. *Trials per pais* 130. A juror may be challenged for defect, as well as for any crime; as defect of birth, where he is an alien born; of age, becauſe a minor; or of eſtate, for want of ten pounds *per annum* freehold, &c. in the ſame county, or a taleſman five pounds a year, by *Stat* 4 & 5 *W. & M. c.* 24. In corporation towns, freemen, worth forty pounds in goods, are qualified to be jurors for trying of felonies. *Stat.* 23 *Hen.* 8. *c.* 13. But on trials in *London* for high treaſon, every juror ought to have ſuch freehold, &c. as is required by 4 & 5 *W. & M. c.* 24. And common jurors there, are to have lands or goods of one hundred pounds value, &c. by *Stat.* 3 *Geo.* 2. *c.* 25. *ſect.* 19. A principal *challenge*, being found true, is ſufficient without leaving it to triers: but if ſome of a jury are challenged for favour, they ſhall be tried by the reſt of the jury, whether indifferent. *Co. Lit.* 158. And where a *challenge* is made to the array, the court appoint two triers, who are ſworn, and then the cauſe of favour is ſhewed to them, which may be called the iſſue they are to try; and if it is proved, then they give their verdict that they are not indifferently impanelled, and this is entered of record: but if the favour is not proved, then they ſay that the jury was indifferently impanelled, and ſo the trial goes on, without making any entry of the matter. 1 *Bulſt.* 114.

If one take a principal *challenge* againſt a juror, he cannot afterwards *challenge* that juror for favour, and waive his former *challenge:* but a *challenge* may be made to the polls, after made to the array. *Wood* 592. A new jury is to be impanelled by the coroner, where the array is quaſhed for partiality, &c. of the ſheriff. If there be cauſe of *challenge* againſt the ſheriff, the proceſs is to be directed to the coroners; and if there is cauſe of *challenge* againſt them, the court will appoint certain eliſors, againſt whoſe return no *challenge* can be taken to the array, though it may be to the polls. *Trials per pais* 15.

If a plaintiff or defendant have action of battery, &c. againſt the ſheriff, or the ſheriff againſt them, it is cauſe of *challenge:* and if either of the parties have action of debt againſt the ſheriff; or if the ſheriff hath any parcel of land depending on the ſame title as the parties; or if he, or his bailiffs who returned the jury, be under the diſtreſs of either party, &c. Theſe are good cauſes of *challenge.* *Ibid.* 154. Where one of the jurors hath a ſuit at law depending with the plaintiff, it is good *challenge.* *Stile* 129. An action depending betwixt either of the parties and a juror, implying malice, is cauſe of *challenge:* and a juror may be challenged for holding lands by the ſame title as the defendant. 2 *Leon.* 40. If a perſon owes ſuit of court, *&c.* to a lord of a hundred who is plaintiff, it is a principal *challenge,* as he is within the diſtreſs of the plaintiff. *Dyer* 176. But it is ſaid to be no *challenge* that a perſon is in debt to either party. 1 *Nelſ. Abr.* 426. A juror returned by a wrong name, may be challenged and withdrawn, ſo that the jury ſhall not be taken; yet a *tales* may be granted. 1 *Lil. Abr.* 260. And if a juror declares the right of either of the parties, *&c.* it is cauſe of *challenge:* though it hath been ruled that it is not ſufficient cauſe of *challenge,* that a juror delivered his opinion touching the title of the land in queſtion; becauſe his opinion may be altered on hearing the evidence. *Paſch.* 23 *Car. B. R.*

If there are two demandants in a real action, or two tenants, and one *challenge* a juror, and the other will not, the juror (the *challenge* being allowed) ſhall be drawn againſt the reſt. 11 *H.* 6. 15. *Jenk. Cent.* 114. To ſay of a perſon to be tried for any crime, that *he is guilty, or will be hanged, &c.* is good cauſe of *challenge;* but the priſoner muſt prove it by witneſſes, and not out of the mouth of the juryman, who may not be examined: and though a juryman may be aſked upon a *voire dire* whether he hath any intereſt in the caſe, or whether he hath a freehold, *&c.* yet a juryman or a witneſs, ſhall not be examined, whether he hath been convict of felony, or guilty of any crime, *&c.* which would make a man diſcover that of himſelf which tends to make him infamous, and the anſwer might charge him with a miſdemeanor. 1 *Salk.* 153.

Default of hundredors is cauſe of *challenge* by the Common law; but by ſtatute 4 & 5 *Ann. c.* 16. every *venire facias* for trial of iſſues in any court of record, ſhall be awarded of the body of the proper county; though this extends only to civil cauſes, and not to appeals of felony, indictments, *&c.*

In a writ of right, four knights were returned; they muſt appear with their ſwords, or it will be good cauſe of *challenge.* *Moor* 67. If one *challenge* a juror, and the *challenge* is entered, he may not afterwards have him ſworn on the jury. And if the defendant do not appear at the trial when called, he loſeth his *challenge* to the jurors, though he afterwards appear. 1 *Lil. Abr.* 259. When the jury appear at a trial, before the ſecondary calls them to be ſworn, he bids the plaintiff and defendant to attend their *challenges, &c.* Peremptory challenge taken away in *high treaſon,* per 33 *H.* 8. *c.* 23. But this ſeems to be altered or rather repealed by 1 & 2 *P. & M. c.* 10. *ſect.* 7, *&c.* Vide theſe two ſtatutes in the *quarto* edition, with the references, in the margin of the ſame.—Alſo vide 10 & 11 *W.* 3. *c.* 23. 24 *Geo.* 2. *c.* 18. And *Tab. to Stat. tit. Challenge, Juries.* See *Jury.*

Challenge *to fight,* either by word or letter, or to be the bearer of ſuch challenge, puniſhable by fine and impriſonment, on indictment, or information. *Vide Black. Com.* 4 *V.* 149, 150.

Chamberdekins, or *Chamber-deacons,* were certain poor *Iriſh* ſcholars, cloathed in mean habit, and living under no rule: baniſhed *England* by *Stat.* 1 *Hen.* 5. *cap.* 7, 8.

Chamberlain, *(Camerarius)* Is variouſly uſed in our laws, ſtatutes and chronicles: as firſt there is Lord Great Chamberlain of *England,* to whoſe office belongs the government of the palace at *Weſtminſter,* and upon all ſolemn occaſions the keys of *Weſtminſter-Hall,* and the court of *Requeſts* are delivered to him; he diſpoſes of the ſword of ſtate to be carried before the King when he comes to the parliament, and goes on the right hand of the ſword next to the King's perſon: he has the care of providing all things in the Houſe of Lords in the time of parliament; to him belongs livery and lodgings in the King's court, *&c.* And the gentleman uſher of the black rod, yeoman uſher, *&c.* are under his authority.

The Lord Chamberlain of the Houſhold has the overſight and government of all officers belonging to the King's chamber, (except the bed-chamber, which is under the Groom of the Stole), and alſo of the wardrobe; of artificers retained in the King's ſervice, meſſengers, comedians, revels, muſick, *&c.* The ſerjeants at arms are likewiſe under his inſpection; and the King's chaplains, phyſicians, apothecaries, ſurgeons, barbers, *&c.* And he hath under him a Vice-Chamberlain, both being always Privy Counſellors.

There were formerly Chamberlains of the King's courts. 7 *Ed.* 6. *cap.* 1. And there are Chamberlains of the Exchequer, who keep a controlment of the pells of receipts and *exitus,* and have in their cuſtody the leagues and treaties with foreign princes, many ancient records, the two famous books of antiquity called *Domeſday,* and the *Black book of the Exchequer;* and the ſtandards of money, and weights, and meaſures are kept by them. There are alſo Under-chamberlains of the Exchequer, who make ſearches for all records in the treaſury; and are concerned in making out the tallies, *&c* The office of Chamberlain of the Exchequer is mentioned in the *Stat.* 34 & 35 *H.* 8. *cap.* 16. Beſides theſe, we read of a Chamberlain of *North Wales.* *Stow. p.* 641.

A Chamberlain of *Cheſter,* to whom it belongs to receive the rents and revenues of that city; and when there is no prince of *Wales,* and earl of *Cheſter,* he hath the receiving and returning of all writs coming thither out of any of the King's courts.

The Chamberlain of *London,* who is commonly the receiver of the city rents payable into the chamber; and hath great authority in making and determining rights of freemen, concerning apprentices, orphans, &c.

Chambers of the King, *(Regiæ cameræ)* The havens or ports of the kingdom are ſo called in our ancient records. *Mare Clauſ. fol.* 242.

Chambre depinſt, Anciently *St. Edward's chamber,* now called the *painted chamber.*

Champarty, or *champerty, campi partitio,* (from the Fr. *champ,* a field, and *parti* divided, or the Lat *campus,* and *partitio,* becauſe the parties in *champerty,* agree to divide the thing in queſtion) Signifies a bargain with the plaintiff or defendant in any ſuit, to have part of the land, debt, or other thing ſued for, if the party that undertakes it prevails therein. *Co. Lit.* 368. This ſeems to have been an ancient grievance in our nation; for notwithſtanding the ſeveral ſtatutes of 3 *Ed.* 1. *cap.* 25. 13 *Ed.* 1. *c.* 49. 28 *Ed.* 1. *c.* 11. and 33 *Ed.* 1. *Stat.* 2, *&c.* and a form of a writ framed to them; yet 4 *Ed.* 3. *cap* 11. and 32 *Hen.* 8. *c.* 9. enacted, That whereas former ſtatutes provided redreſs for this evil in the *King's Bench* only, from henceforth it ſhould be lawful for juſtices of the *Common Pleas,* juſtices of aſſiſe, and juſtices of peace in their quarter ſeſſions, to inquire, hear and determine this and ſuch like caſes, as well at the ſuit of the King, as of the party: and this offence is puniſhable by Common law and ſtatute; the *Stat.* 33 *Ed* 1. *Stat.* 2. makes the offenders liable to three years impriſonment, and a fine at the King's pleaſure. By the *Stat.* 28 *Ed.* 1. *c.* 11. it is ordained, that no officer, nor any other, ſhall take upon him any buſineſs in ſuit, to have part of the thing in plea; nor none upon any covenant, ſhall give up his right to another; and if any do, and be convicted thereof, the taker ſhall forfeit to the King ſo much of his lands and goods as amounts to the value of the part purchaſed, *&c.* for ſuch maintenance.

In the conſtruction of theſe ſtatutes, it hath been adjudged, that under the word *covenant,* all kinds of promiſes and contracts are included, whether by writing, or parol: that rent granted out of land in variance, is within the ſtatute of *champerty:* and grants of part of the thing in ſuit made merely in conſideration of the maintenance, are within the meaning of this ſtatute; but not ſuch as are made in conſideration of a precedent honeſt debt, which is agreed to be ſatisfied with the thing in demand when recovered, *F. N. B.* 172. 2 *Inſt.* 209. 2 *Rol. Abr.* 113.

It is ſaid not to be material, whether he who brings a writ of *champerty,* did in truth ſuffer any damage by it; or whether the plea wherein it is alledged be determined or not. 1 *Hawk.* 257. A conveyance executed pending a plea, in purſuance of a bargain made before, is not within the ſtatutes againſt *champerty:* and if a man purchaſe

chaſe land of a pa[illegible], pending the writ, if it be *bona fide*, and not to maintain, it is not *champerty*. *F. N. B.* 272. 2 *Rol. Abr.* 113. But it hath been held, that the purchaſe of land while a ſuit of equity concerning it is depending, is within the purview of the ſtatute 28 *E.* 1. *Stat.* 3. *c.* 11. *Moor* 665. A leaſe for life, or years, or a voluntary gift of land, is within the ſtatutes of *champerty*; but not a ſurrender made by a leſſee to his leſſor: or a conveyance relating to lands in ſuit, made by a father to his ſon, *&c.* 1 *Hawk. P. C.* 258.

The giving part of the lands in ſuit, after the end of it, to a counſellor for his wages, is not *champerty*, if there be no precedent bargain relating to ſuch gift; but if it had been agreed between the counſellor and his client before the action brought, that he ſhould have part for his wages, then it would be *champerty*. *Bro. Champert.* 3. And it is dangerous to meddle with any ſuch gift, ſince it carries with it a ſtrong preſumption of *champerty*. 2 *Inſt.* 564. If any attorney follow a cauſe to be paid in groſs, when the thing in ſuit is recovered, it hath been adjudged, that this is *champerty*. *Hob.* 117. Every *champerty* implies maintenance; but every maintenance is not *champerty*; for *champerty* is but a ſpecies of maintenance. *Crom. Jur.* 39. 2 *Inſt.* 208. And puniſhed in the ſame manner. *Black. Com.* 4 *V.* 134, 5.

Champertors, By ſtatute, are thoſe who move pleas or ſuits, or cauſe them to be moved, either by their own procurement, or by others, and ſue them at their proper coſts, to have part of the land in variance, or part of the gain. 33 *Ed.* 1. *Stat.* 2.——Champertores, *vel campi participes, ſunt qui per ſe vel per alios placita movent, vel movere faciunt, & ea ſuis ſumptibus proſequuntur ad campi partem, vel pro parte lucri habenda.* Stat. 2. Artic. ſuper Chart. 11.

Champion, *(campio)* Is taken in the law not only for him that fights a combat in his own cauſe, but alſo for him that doth it in the place or quarrel of another. *Bract. lib.* 3. *tract.* 2. *cap.* 21. And in Sir *Edward Biſhe*'s notes on *Upton*, *fol.* 36. you will find that *Henry de Ferneberg*, for 30 marks fee, did by charter covenant to be *champion* to *Roger* abbot of *Glaſtenbury*. *An.* 42 *Hen.* 3. Theſe *champions*, mentioned in our law books and hiſtories, were uſually hired; and any one might hire them, except parricides, and thoſe who were accuſed of the higheſt offences: before they came into the field, they ſhaved their heads, and made oath that they believed the perſons who hired them, were in the right, and that they would defend their cauſe to the utmoſt of their power; which was always done on foot, and with no other weapon than a ſtick or club, and a ſhield: and before they engaged, they always made an offering to the church, that God might aſſiſt them in the battle. When the battle was over, the puniſhment of a *champion* overcome, and likewiſe of the perſon for whom he fought, was various: If it was the *champion* of a woman for a capital offence, ſhe was burnt, and the *champion* hanged: if it was of a man, and not for a capital crime, he not only made ſatisfaction, but had his right hand cut off; and the man was to be cloſe confined in priſon, till the battle was over. *Bract. lib.* 2. *c.* 35. See *Combat*.

Champion of the King, *(campio regis)* Is an ancient officer, whoſe office it is at the coronation of our Kings, when the King is at dinner, to ride armed *cap-a-pee* into *Weſtminſter-Hall*, and by the proclamation of a herald make a challenge, *That if any man ſhall deny the King's title to the crown, he is there ready to defend it in ſingle combat, &c.* Which being done, the King drinks to him, and ſends him a gilt cup with a cover full of wine, which the *champion* drinks, and hath the cup for his fee. This office, ever ſince the coronation of King *Richard* II. when *Baldwin Freville* exhibited his petition for it, was adjudged from him to Sir *John Dymocke* his competitor, (both claiming from *Marmion)*, and hath continued ever ſince in the family of the *Dymockes*; who hold the manor of *Scrivelſby* in *Lincolnſhire*, hereditary from the *Marmions*, by grand ſerjeanty, *viz.* That the lord thereof ſhall be the King's *champion*, as aboveſaid. Accordingly Sir *Edward Dymocke* performed this office at the coronation of King *Charles* II. And a perſon of the name of *Dymocke* performed it, at the coronation of his preſent majeſty *George the Third*.

Champs des Mars, and *les champs de Mai*, Aſſemblies of the ancient *Gauls*, to deliberate on whatever related to the general welfare of the nation. Theſe aſſemblies were called *champs*, becauſe, according to the cuſtom of all the barbarous nations, they were held in the open air, in ſome plain, capable of containing the vaſt number of perſons who had a right to be preſent. They were denominated *champs de Mars* and *de Mai*, from the months in which they were held. Every freeman ſeems to have had a right to be preſent in theſe aſſemblies. *Robert. Hiſt. Emp. C.* v. 1 *V.* 357.

Chance, Where a man commits an unlawful act, by *misfortune*, or *chance*, and not by deſign, it is a deficiency of the will; as here it obſerves a total neutrality, and doth not co-operate with the deed; which therefore wants one main ingredient of a crime. *Vide Black. Com.* 4 *V.* 26, 7. See *Homicide*.

Chancellor, *(Cancellarius)* Was at firſt only a chief notary or ſcribe under the Emperor, and was called *Cancellarius*, becauſe he ſate *infra Cancellos*; to avoid the crowd of the people. This word is by ſome derived from *Cancello*, and by others from *Cancellis*, an incloſed or ſeparated place, or chancel, encompaſſed with bars, to defend the judges, and other officers from the preſs of the public. And *Cancellarius* originally, as *Lupanus* thinks, ſignified only the regiſter in court; *Grapharios, ſcil. qui conſcribendis & excipiendis judicum actis dant operam:* but this name and officer is of late times greatly advanced, not only in this, but in other kingdoms; for he is the chief adminiſtrator of juſtice, next to the ſovereign, who anciently heard equitable cauſes himſelf.

All other juſtices in this kingdom are tied to the ſtrict rules of the law, in their judgments; but the Chancellor hath power to moderate the written law, governing his judgment by the law of nature and conſcience, and ordering all things *juxta æquum & bonum:* and having the King's power in theſe matters, he hath been called the keeper of the King's conſcience. According to a late treatiſe, the Chancellor originally precided over a political college of ſecretaries, for the writing of treaties, grants, and other public buſineſs; and that the court of equity under the old conſtitution was held before the King and his counſel in the palace, where one ſupreme court for buſineſs of every kind was kept: and at firſt the Chancellor became a judge to hear and determine petitions to the King, which were referred to him; and in the end, as buſineſs increaſed, the people intitled their ſuits to the Chancellor, and not the King: and thus the Chancellor's equitable power had by degrees commencement by preſcription. *Hiſt. Chan. p.* 3, 10, 44, *&c.*

Staundford ſays, the Chancellor hath two powers; one abſolute, the other ordinary; meaning, that although by his ordinary power, in ſome caſes, he muſt obſerve the form of proceeding as other inferior judges; in his abſolute power he is not limited by the law, but by conſcience and equity, according to the circumſtances of things. And though *Polydore Virgil*, in his hiſtory of *England*, makes *William* the Firſt, called the *Conqueror*, the founder of our Chancellors; yet our antiquary Mr. *Dugdale*, has ſhewn that there were many Chancellors of *England* long before that time, which are mentioned in his *Origines Juridiciales*, and catalogues of Chancellors; and Sir *Edward Coke* in his fourth *Inſtitute* ſaith, it is certain, That both the *Britiſh* and *Saxon* Kings had their Chancellors, whoſe great authority under their Kings were in all probability drawn from the reaſonable cuſtom of neighbouring nations and the Civil law.

He that bears this chief magiſtracy, is ſtiled the Lord High Chancellor of *Great Britain*, which is the higheſt honour of the long robe; being made ſo *per traditionem magni ſigilli ſibi per dominum regem*, and by taking his oath: and a Chancellor may be made ſo at will, by patent, but it is ſaid not for life, for being an ancient office, it ought to be granted as hath been accuſtomed. 2 *Inſt.* 87. But Sir *Edward Hide*, afterwards Earl of *Clarendon*, had a patent to be Lord Chancellor for life, though he was diſmiſſed from that office, and the patent declared void. 1 *Sid.* 338.

By the *Stat.* 5 *Eliz. cap.* 18. the Lord Chancellor and Keeper have one and the ſame power; and therefore ſince that ſtatute, there cannot be a Lord Chancellor and Lord Keeper at the ſame time; before there might, and hath been. 4 *Inſt.* 78. King *Hen.* 5. had a great ſeal of gold, which he delivered to the Biſhop of *Durham*, and made him Lord Chancellor, and alſo another of ſilver, which he delivered to the Biſhop of *London* to keep; but at this day there being but one great ſeal, there cannot be a Lord Chancellor and Lord Keeper at once, and becauſe they are but one office, as is declared by 5 *Eliz. c.* 18. and the taking away the ſeal determines the office. 1 *Sid.* 338. But the Lord *Bridgman* was Lord Keeper, and Lord Chief Juſtice of the *Common Pleas*, at the ſame time; which offices were held not to be inconſiſtent. *Ibid.* By 1 *W. & M. cap* 21. Commiſſioners appointed to execute the office of Lord Chancellor, may exerciſe all the authority, juriſdiction, and execution of laws, which the Lord Chancellor, or Lord Keeper, of right ought to uſe and execute, *&c.* ſince which ſtatute this high office hath been ſeveral times in commiſſion; though generally on the diſmiſſion of a Chancellor, till another was appointed.

The Lord Chancellor, now there is no Lord High Steward, is accounted the firſt officer of the kingdom; and he not only keeps the King's great ſeal, but all patents, commiſſions, warrants, *&c.* from the King, are peruſed by him before ſigned: and he has the diſpoſal of all eccleſiaſtical benefices in the gift of the crown under 20*l.* a year *in the King's books*, which has occaſioned this office to be formerly poſſeſſed by a clergyman. He by his oath ſwears well and truly to ſerve the King, and to do right to all manner of people, *&c.* In his judicial capacity, he hath divers aſſiſtants and officers, *viz.* The Maſter of the Rolls, the Maſters in Chancery, *&c.* And in matters of difficulty, he calls one or more of the chief juſtices, and judges to aſſiſt him in making his decrees; though in ſuch caſes they only give their advice and opinion, and have no ſhare of the judicial authority.

As to the Maſter of the Rolls, he hath judicial power; and is an aſſiſtant to the Lord Chancellor when preſent, and his deputy when abſent, but he has certain cauſes aſſigned him to hear and decree, which he uſually doth on certain days appointed at the chapel of the rolls, being aſſiſted by one or more Maſters in chancery: he is, by virtue of his office, chief of the Maſters of Chancery, and chief clerk of the petty-bag office.

The twelve Maſters in Chancery ſit ſome of them in court, and take notice of ſuch references as are made to them, to be reported to the court, relating to matters of practice, the ſtate of the proceedings, accounts, *&c.* and they alſo take affidavits, acknowledge deeds and recogniſances, *&c.*

The ſix clerks in Chancery tranſact and file all proceedings by bill and anſwer; and alſo iſſue out ſome patents that paſs the great ſeal; which buſineſs is done by their under clerks, each of whom has a ſeat there, and whereof every ſix clerk has a certain number in his office, uſually about ten

The curſitors of the court, four and twenty in number, make out all original writs in Chancery, which are returnable in *C. B. &c.* and among theſe the buſineſs of the ſeveral counties is ſeverally diſtributed.

The Regiſter is a place of great importance in this court, and he hath ſeveral deputies under him, to take cogniſance of all orders and decrees, and enter and draw them up, *&c.*

The Maſter of the Subpœna Office iſſues out all writs of *ſubpœna.*

The Examiners are officers in this court, who take the depoſitions of witneſſes, and are to examine them, and make out copies of the depoſitions.

The Clerk of the Affidavits files all affidavits uſed in court, without which they will not be admitted.

The Clerk of the Rolls ſits conſtantly in the rolls to make ſearches for deeds, offices, *&c.* and to make out copies.

The Clerks of the Petty-Bag Office, in number three, have great variety of buſineſs that goes through their hands, in making out writs of ſumm[illegible]s to parliament; *congé d'elires* for biſhops, patents for cuſtomers; *liberates* upon extent of ſtatute-ſtaple, and recovery of recogniſances forfeited, *&c.* And alſo relating to ſuits for and againſt privileged perſons, *&c.* And the clerks of this office have ſeveral clerks under them.

The Uſher of the Chancery had formerly the receiving and cuſtody of all money ordered to be depoſited in court, and paid it back again by order: but this buſineſs hath been of late aſſumed by the Maſters in Chancery.

And *anno* 12 *Geo.* 1. *c.* 32. a new officer was appointed by ſtatute, called Accountant-General, to receive the money lodged in court, and convey the ſame to the Bank, to be there kept for the ſuitors of the court.

Then there is a Serjeant at Arms, to whom perſons ſtanding in contempt are brought up by his ſubſtitute as priſoners.

A Warden of the Fleet, who receives ſuch priſoners as ſtand committed by the court, *&c.*

And beſides theſe officers, there is a Clerk of the Crown in Chancery; Clerk and Controller of the Hanaper; Clerk for inrolling letters patent, *&c.* not employed in proceedings of equity, but concerned in making out commiſſions, patents, pardons, *&c.* under the great ſeal, and collecting the fees thereof. A Clerk of the Faculties, for diſpenſations, licences, *&c.* Clerk of the Preſentations, for benefices of the crown in the Chancellor's gift; Clerk of Appeals, on appeals from the courts of the Archbiſhop to the court of Chancery: and divers other officers, who are conſtituted by the Chancellor's commiſſion.

Chancellor of the Dutchy of Lancaſter, A great officer, whoſe office is principally to determine controverſies between the King and his tenants of the dutchy land, and otherwiſe to direct all the King's affairs belonging to that court. The Chancellor is the chief judge of the Dutchy Court, who in difficult points of law is uſually aſſiſted by two judges of the Common law, out of one court or other, to decide the matter in queſtion: this court is held in *Weſtminſter-Hall*, and was formerly much uſed in relation to ſuits between tenants of dutchy lands, and againſt accountants and others for the rents and profits of the ſaid lands. Under the Chancellor of the Dutchy, are an Attorney of the Court, one Chief Clerk or Regiſter, and ſeveral Auditors, *&c.* This officer is mentioned in the *Stat.* 3 *Ed.* 6. *c.* 1. and 5 *id. c.* 26.

Chancellor of the Exchequer, Is likewiſe a great officer, who it is thought by many was originally appointed for the qualifying extremities in the exchequer: he ſomtimes ſits in court, and in the exchequer-chamber; and with the judges of the court, orders things to the King's beſt benefit. He hath by the *Stat.* 33 *H.* 8. *c.* 39. power with others, to compound for the forfeitures upon penal ſtatutes, bonds and recognizances entered into to the King: he hath alſo great authority in the management of the royal revenue, *&c.* which ſeems of late to be his chief buſineſs, being commonly the firſt commiſſioner of the treaſury. And though the court of equity in the Exchequer-chamber, was intended to be holden before the treaſurer, Chancellor, and barons; it is uſually before the barons only. When there is a Lord-treaſurer, the Chancellor of the Exchequer is Under treaſurer.

Chancellor of the Order of the Garter, Stow's Annals, pag. 706. *Chancellor of the Univerſities.* See 9 Hen. 5. c. 8. *Chancellor of the Dioceſe*, 32 Hen. 8. c. 15. *Chancellor in Cathedral Churches:* his office is thus deſcribed in the *Monaſticon*, and the ſtatute of *Litchfield*, viz.—— *Lictiones legendas in ecclesia per ſe vel per ſuum vicarium auſcultare, male legentes emendare, ſcholas conferre, ſigilla ad cauſas conferre, literas capituli facere & conſignare, libros ſervare, quotieſcunq; voluerit prædicationes in eccleſia vel extra eccleſiam prædicare, & cui voluerit prædicationis officium aſſignare.* Mon. Angl. tom. 3. p. 24, 339.

Chancemedley, (from the Fr. *chance*, lapſus, and *méler*, miſcere) Signifies the caſual killing of a man not without the killer's fault, though without any evil intention; and is where a perſon is doing a lawful act and a perſon is killed by chance thereby: for if the act be unlawful, it is felony. If a perſon caſts (not intending harm) a ſtone, which happens to hit one, whereof he dies: or ſhoots an arrow in a highway, and another that paſſeth by is killed therewith: or if a workman, in throwing down rubbiſh from a houſe, after warning to take care, kills a perſon: or a ſchool-maſter in correcting his ſcholar, a maſter his ſervant, or an officer in whipping a criminal, in a reaſonable manner, happens to occaſion his death: it is chancemedley and miſadventure. 3 *Inſt.* 56. *Dalt.* 351.

But if a man throws ſtones in a highway, where perſons uſually paſs: or ſhoots an arrow, *&c.* in a market place, among a great many people: or if a workman caſt down rubbiſh from a houſe, in cities and towns, where people are continually paſſing: or a ſchool-maſter, *&c.* correct his ſervant or ſcholar, *&c.* exceeding the bounds of moderation, it is man-ſlaughter; and if with an improper inſtrument of correction, as with a ſword or iron bar, or by a kicking, ſtamping, *&c.* in a cruel manner, it is murder. *Terms de Ley*, *H. P. C.* 31, 58, *&c.* *Kel.* 40, 65, 113. If a man whips his horſe in a ſtreet to make him gallop, and the horſe runs over a child and kills it, it is manſlaughter: but if another whips the horſe, it is manſlaughter in him, and chancemedley in the rider. *H. P. C.* 48, 59. And if two are fighting, and a third perſon coming to part them is killed by one of them, without any evil intent, yet this is murder in him; and not manſlaughter by chancemedley or miſadventure: and if they were met with prepenſed malice, the one intending to kill the other, then it is murder in both. *Terms de Ley.* In chancemedley the offender forfeits his goods; but hath a pardon of courſe. *Stat.* 6 *Ed.* 1. *c.* 9. See *Homicide.*

Chancery, *(cancellaria)* Is the higheſt court of judicature in this kingdom next to the parliament, and of very ancient inſtitution. The juriſdiction of this court is of two kinds; *ordinary*, or *legal*; and *extraordinary*, or *abſolute.* The *ordinary* juriſdiction, is that wherein the Lord Chancellor, in his proceedings and judgments, is bound to obſerve the order and method of the Common law; and in ſuch caſes the proceedings have been uſually in *Latin*, and filed or inrolled in the petty-bag office: and the *extraordinary* or *unlimited* power, is that juriſdiction which this court exerciſes in caſes of *equity*, wherein relief is to be had by way of *Engliſh Bill and anſwer.*

The *Ordinary Court* holds plea of recogniſances acknowledged in the Chancery, writs of *ſcire facias* for repeal of letters patent, writs of partition, *&c.* and alſo of all perſonal actions, by or againſt any officer of the court; and by acts of parliament of ſeveral offences and cauſes: all original writs; commiſſions of bankrupt; of charitable uſes; of ideots, and lunacy, *&c.* iſſue out of this court, for which it is always open; and ſometimes a *ſuperſedeas*, or writ of privilege, hath been here granted to diſcharge a perſon out of priſon: one from hence may have an *habeas corpus*, prohibition, *&c.* in the vacation; and here a *ſubpæna* may be had to force witneſſes to appear in other courts, when they have no power to call them. 4 *Inſt.* 79. 1 *Danv. Abr.* 776.

But in proſecuting cauſes, if the parties deſcend to iſſue, this court cannot try it by jury; but the Lord Chancellor delivers the record into the King's Bench to be tried there; and after trial had, it is to be remanded into the Chancery, and there judgment given: though if there be a demurrer in law, it ſhall be argued and adjudged in this court.

When there is a demurer upon part, and iſſue upon part, the record being in *B. R.* that court ought to give judgment, becauſe there can be but one execution; and if the record come thither entirely, they cannot ſend it back again. 1 *Mod. Rep.* 29. But ſee 4 *Inſt.* 80. Upon a judgment given in this court, a writ of error lies returnable in *B. R.* 4 *Inſt.* 80.

The *Extraordinary Court*, or Court of Equity, proceeds by the rules of equity and conſcience, and moderates the rigour of the Common law, conſidering the *intention* rather than the *words* of the law. It gives relief for and againſt infants, notwithſtanding their minority: and for and againſt married women, notwithſtanding their coverture: in ſome caſes a woman may ſue her huſband for maintenance; ſhe may ſue him when he is beyond ſea, *&c.* and be compelled to anſwer without her huſband: all frauds and deceits; for which there is no redreſs at Common law: all breaches of truſt and confidence; and accidents, as to relieve obligors, mortgagors, *&c.* againſt penalties and forfeitures, where the intent was to pay the debt, are here remedied: for in Chancery, a forfeiture, *&c.* ſhall not bind, where a thing may be done after, or compenſation made for it. 1 *Danv.* 752. 2 *Vent.* 352. 1 *Rol. Abr.* 373.

Alſo this court will give relief againſt the extremity of unreaſonable engagements, entered into without conſideration: and make executors, *&c.* give ſecurity and pay intereſt for money that is to lie long in their hands. Here executors may ſue one another, or one executor alone be ſued without the reſt: order may be made for performance of a will: it may be decreed who ſhall have the tuition a child: this court may confirm title to lands, though one hath loſt his writings; render conveyances, defective thro' miſtake, *&c.* good and perfect; but not defects in a voluntary conveyance, unleſs where intended as a proviſion for younger children.

In Chancery, copyholders may be relieved againſt the ill uſage of their lords: incloſures of lands that are common be decreed; and this court may decree money or lands given to charitable uſes: things in action upon aſſignment on conſideration: oblige men to account with each other: avoid the bar of actions, by the ſtatute of limitations, *&c.* for debts thus barred, are ſtill debts in equity, and the duty remains. Where the money may be conſidered as a *depoſitum*, and that there was a truſt. 2 *Vent.* 345. Vide 1 *Danv. Abr.* 749, 750, *&c.* 1 *Salk.* 154.

But in all caſes where the plaintiff can have his remedy at law, he ought not to be relieved in Chancery: and a thing which may be tried by a jury, is not triable in this court. *Danv.* 763. Alſo long leaſes, as for 1000 years; naked promiſes; verbal agreements not executed; eſtates deriv'd under conceal'd titles, *&c.* have been refuſed relief in this court: and mortgages are not relievable in equity after twenty years, where no demand has been made, or intereſt paid, or there are not other particular circumſtances, *&c.* 2 *Vent.* 340. A bond, where neither the principal nor intereſt hath been demanded in 20 years, will be preſumed in equity to be ſatisfied, and be decreed to be cancelled; and a perpetual injunction may be granted to ſtay proceedings thereon. 1 *Ch. Rep.* 79. *Finch. Rep.* 78.

A deed appearing to be cancelled, has been decreed to be a good deed, on ſpecial circumſtances: and a defendant having ſuppreſſed a ſettlement, whereby a remainder in tail was limited, *&c.* upon proof that the deed came to his hands, the plaintiff had a decree in Chancery to hold the eſtate. 1 *Ch. Caſ.* 249. 2 *Vern. Rep.* 380. Articles of agreement upon marriage reduced into writing, though not ſigned by either party, being proved to be agreed to, were decreed to be performed. 2 *Vern.* 200. Alſo an agreement in writing made ſince the ſtatute of frauds, has been decreed to be diſcharged by parol. 1 *Vernon's Rep.* 240. An underhand agreement may be ſet aſide as fraudulent: and articles, a deed of conveyance executed, and a fine in purſuance thereof, were ſet aſide in Chancery for fraud, where the party was impoſed upon. *Ibid.* 205. A deed not fraudulent at firſt, may become ſo afterwards; and if one add a ſeal to a note, which is good without it, he will loſe his ſecurity; and a bill of exchange being gained by fraud, equity will relieve againſt it, and decree that the money ſhall be repaid, *&c.* 2 *Vern.* 123, 162.

A releaſe ſhall be avoided for fraud, where there is *ſuppreſſio veri*, or *ſuggeſtio falſi*; and a releaſe may be ſet aſide in Chancery by reaſon of the miſapprehenſion of the party that gave it. 1 *Vern. Rep.* 20, 32. A will concerning lands, may be avoided in a court of equity when obtained by fraud: a mortgage made by a man ſubſequent to his will ſhall be revocation *pro tanto* only in equity, and not of the whole will, *&c.* 2 *Ch. Rep.* 97. An heir may be relieved in equity againſt a contingent contract, made during his father's life, to pay a large ſum of money, if he outlives his father, when it is unconſcionable.

ſcionable. 2 *Chan. Rep.* 397. And a broker who had made it his buſineſs to ſell goods at extravagant rates to young perſons, to be paid five for one upon the deaths of their fathers, was decreed to deliver up ſecurities thus obtained for great ſums, on payment of what he had really paid to the plaintiff, and for his uſe, *&c.* 1 *Vern.* 467.

A purchaſer of land, without notice of an incumbrance, ſhall not be hurt thereby in equity; and in pleading a purchaſe, the defendant ought to deny notice of incumbrances, *&c.* No intereſt will be allowed in Chancery for book-debts; nor ſhall intereſt money be allowed to be made principal on ſecurities, ſo as to make intereſt upon intereſt, unleſs it be where intereſt money is reduced to a ſtated ſum, *&c.* 3 *Ch. Rep.* 65. 1 *Vern.* 169. 2 *Ch. Rep.* 286.

It has been held, that the court of Chancery cannot aſſeſs damages for a treſpaſs, *&c.* but it ought to be aſcertained by a jury at law, and not otherwiſe. 1 *Ch. Rep.* 230. A bill may be brought for diſcovering the contents of a letter, which would diſcharge the plaintiff of an action at law, before verdict. 3 *Ch. Rep.* 17. Indentures of apprenticeſhip have been decreed to be delivered up, and the money given with the apprentice to be paid back by the maſter, on ill uſage of the apprentice, *&c.* *Finch Rep.* 125. Charity lands being let at a great under-value, as was found by inquiſition, on a commiſſion of charitable uſes, the leaſe was avoided in equity, and the leſſee decreed to pay the arrears in rent according to the firſt value, and to yield up the poſſeſſion. 2 *Vern.* 415.

A grazier's cattle, driving to *London*, were diſtrained in grounds for the innkeeper's rent, and in replevin the landlord had judgment at law; but the grazier was relieved in equity againſt it. 2 *Vern. Rep.* 129. Trials and iſſues at law are frequently directed out of the court of Chancery; and ſometimes it is ordered, that, after trial, the parties ſhall reſort to the court on the equity reſerved, *&c.* This court will not retain a ſuit for any thing under 10*l.* value, except it be in caſes of charity; nor for lands, *&c.* under 40*s.* *per annnm:* and refuſes relief in ſuits where the ſubſtance of them tends to the overthrow of an act of parliament; or any fundamental point of the Common law.

If a man loſes his obligation, he ſhall not be relieved for his debt, being againſt a maxim in law. 1 *Danv.* 754. And an executor in a court of equity ought not to be compelled to pay legacies before bonds, *&c.* for this is againſt the common law: ſo in many other caſes. *Ibid.* 756. And where a man by his own act deſtroys his remedy at law, he ſhall not be relieved in equity: but in caſe of an apparent fraud, or in a dubious caſe in law, of which the party could not have conuſance, relief may be had in equity againſt a ſtatute. *Ibid.* 755, 759. Defendants may not be regularly relieved in Chancery, after judgment at law; though decrees are made in ſuch caſes: but on perſons being committed for non-performance, they have been formerly diſcharged by *habeas corpus.* *Cro. Eliz.* 220. 1 *Rol. Rep.* 252. 1 *Nelſ. Abr.* 432.

It is common to give relief in Chancery, notwithſtanding there is an agreement between the parties that there ſhall be no relief in law or equity. 1 *Mod.* 141, 305. And where a party hath both law and equity on his ſide, it will prevail againſt equity only. 1 *Danv. Abr.* 773. which *vide.* If a portion be given to a woman, provided ſhe marries not without conſent of a certain perſon, although ſhe marries without ſuch conſent, ſhe ſhall be relieved in Chancery, and have her portion: but if the portion, on ſuch marriage, had been limited over to another, it would be otherwiſe. 1 *Danv.* 752. 1 *Mod.* 300. If a father, on the marriage of his ſon, take a bond of the ſon that he ſhall pay him ſo much, *&c.* this is void in equity, being adjudged by coercion while he is under the awe of his father. 1 *Salk.* 158. Alſo where a ſon, without privity of the father, treating the match, gives bond, to return any part of the portion, in equity it is void. *Ibid.* 156. A man is not bound to diſcover the conſideration of a bond generally given, which in itſelf implies a conſideration. *Hard.* 200. If a factor to a merchant hath money in his hands, it ſhall be accounted his own; for equity cannot follow money; but it may goods to make them the merchant's, which may be known, though money cannot. 1 *Salk.* 260.

Money articled to be laid out in land, ſhall be taken as land in equity, and deſcend to the heir. *Ibid.* 154. Perſonal eſtate in the hands of executors, ſhall be applied in diſcharge of the heir, where there are ſufficient aſſets to pay the debts and legacies. 1 *Danv.* 770. There ſhall be no bill in equity againſt an executor, to diſcover aſſets before a ſuit commenced at law. *Hard.* 115. *Sed qu.* Legal aſſets ſhall be applied in a courſe of adminiſtration; but equitable aſſets amongſt all the creditors proportionably, on a bill brought, *&c.* 2 *Vern. Ch. Rep.* 62. Where truſtees convert money raiſed out of land for payment of debts, to their own uſe, the heir ſhall have the land diſcharged, which hath borne its burden, and the truſtees are liable to the debts in equity 1 *Salk.* 153. If leſſee for years, without impeachment of waſte, about the end of his term cuts down timber-trees, the court of Chancery by injunction may ſtop the cutting down of the trees, it being againſt the public good to deſtroy timber. 1 *Rol. Abr.* 380. And tenant after poſſibility of iſſue extinct, or for life, diſpuniſhable of waſte, may be ſtopped in equity from pulling down houſes, *&c.* 1 *Danv.* 761.

The king cannot create a court of equity at this day; but the ſame muſt be done by act of parliament. 4 *Inſt.* 84. And though the power of the Chancery is very great, and it may reſtrain other courts that exceed their juriſdiction, and remove ſuits to itſelf by *certiorari*, yet it is no court of record; and therefore 'tis ſaid can bind the perſon only, and not the eſtate of the defendant, *&c.* And if he will not obey the decree of the court, he muſt be committed to the *Fleet* till he does. 1 *Danv. Abr.* 749.

There are ſeveral ſtatutes relating to the court of Chancery. By 28 *Ed.* 1. *c.* 5. The court of Chancery is to follow the king. By the 18 *Ed.* 3. *ſtat.* 5. The oaths of the clerks in Chancery are appointed. The Chancellor and Treaſurer may correct errors in the Exchequer. Whoſoever ſhall find himſelf grieved with any ſtatute ſhall have his remedy in Chancery. 36 *Ed.* 3. *c.* 9. 31 *Ed.* 3. *ſtat.* 1. *c.* 12. And ſee 15 *R.* 2. *c.* 12. 17 *R.* 2. *c.* 6. & 4 *H.* 8. *c.* 9.

No *ſubpœna*, or other proceſs of appearance, ſhall iſſue out of Chancery, *&c.* till after a bill is filed, (except bills for injunctions to ſtay waſte, or ſuits at law commenced), and a certificate thereof brought to the *ſubpœna* office. 4 & 5 *Ann. c.* 16. And for preventing vexatious ſuits, it is enacted, that upon the plaintiff's diſmiſſing his own bill, or the defendant's diſmiſſing the ſame for want of proſecution, the plaintiff ſhall pay to the defendant full coſts, *&c.* *Stat. ibid.* Perſons in remainder, or reverſion of any eſtate, after the death of another, on making affidavit in the court of Chancery, that they have cauſe to believe ſuch other perſon dead, and his death concealed by the guardian, truſtees or others, may move the Lord Chancellor to order ſuch guardian, truſtees, *&c.* to produce the perſon ſuſpected to be concealed; and if he be not produced, he ſhall be taken to be dead, and thoſe in reverſion, *&c.* may enter upon the eſtate: and if ſuch perſon be abroad, a commiſſion may be iſſued for his being viewed by commiſſioners. *Stat.* 6 *Ann. c.* 18.

Infants under the age of twenty-one years, ſeiſed of eſtates in truſt, or by way of mortgage, are enabled by ſtatute to make conveyances thereof; or they may be compelled thereto, by order of the court of Chancery, *&c.* upon petition and hearing of the parties concerned. 7 *Ann. c.* 9. See the ſtatute of 4 *Geo.* 2. *c.* 10. whereby ideots and lunaticks ſeiſed of eſtates in truſt, *&c.* may make conveyances by order of the Chancery, *&c.* By the following acts the power of the maſters was abridged, on their miſemploying the ſuitors money, which is now to be paid into the *bank* of *England:* and an additional ſtamp-duty, on writs, proceſſes, *&c.* is granted for relief of the ſuitors, and as a common ſtock of the court of Chancery. 12 *Geo.* 1. *c.* 32. & 33. All orders and decrees made and ſigned by the Maſter of the Rolls, ſhall be deemed and taken to be good and valid orders and decrees of the court of Chancery; but not to be inrolled till ſigned by the Lord Chancellor, and ſubject to reverſal, &c. by him. *Stat.* 3 *Geo.* 2. *c.* 30.

A defendant not appearing after *ſubpœna* iſſued, but keeping out of the way to avoid being ſerved with the proceſs; on affidavit that he is not to be found, and ſuſpected to be gone beyond ſea, or to abſcond, &c. the court of Chancery may make an order for his appearance at a certain day, a copy of which is to be publiſhed in the *Gazette*, &c. and then, if he do not appear, the plaintiff's bill ſhall be taken *pro confeſſo*, and defendant's eſtate ſequeſtered, &c. But perſons out of the kingdom, returning in ſeven years, may have a rehearing in ſix months, and be admitted to anſwer; otherwiſe to be barred, by final decree. 5 *Geo.* 2. *c.* 25.

By 12 *Geo.* 2. *c.* 24. Part of the ſuitor's caſh is to be placed out at intereſt, for defraying the charge of the *Accountant General*'s office. And ſee 23 *Geo.* 2. *c.* 25. for making good deficiencies to the clerk of the hanaper, and for augmenting the income of the Maſter of the Rolls.

By 1 *Geo* 3. *c* 1. The king is empowered to grant a ſum not exceeding 5000*l.* *per annum* to the Chancellor.

By 4 *Geo.* 3. *c.* 32. Part of the ſuitor's caſh to be placed at intereſt, to be applied to the *Accountant General*'s third clerk, and other purpoſes.

The proceedings in Chancery are, firſt to file the *bill* of complaint, ſigned by ſome counſel, ſetting forth the fraud or injury done, or wrong ſuſtained, and praying relief. after the bill is filed, proceſs of *ſubpœna* iſſues to compel the defendant to appear: and when the defendant appears, he puts in his *anſwer* to the bill of complaint, if there be no cauſe for plea to the juriſdiction of the court, in diſability of the perſon, or in bar, &c. Then the plaintiff brings his *replication*, unleſs he files exceptions againſt the anſwer as inſufficient, referring it to a Maſter to report, whether it be ſufficient or not; to which report exceptions may be alſo made. The *anſwer*, *replication*, and *rejoinder*, &c. being ſettled, and the parties come to iſſue, witneſſes are to be examined upon *interrogatories*, either in court, or by commiſſion in the country, wherein the parties uſually join; and when the plaintiff and defendant have examined their witneſſes, *publication* is to be made of the *depoſitions*, and the cauſe is to be ſet down for hearing, after which follows the *decree*.

If the plaintiff diſmiſſeth his own bill, or the defendant diſmiſſeth it by reaſon of want of proſecution, as already obſerved, or if the decree is in behalf of the defendant, the bill is diſmiſſed with coſts to be taxed by a Maſter. If the defendant doth not appear, on being ſerved with the proceſs of *ſubpœna*, in order to anſwer, upon affidavit of the ſervice of the writ, an *attachment* will iſſue out againſt him: and if a *non eſt inventus* is returned, an attachment with proclamation goes forth againſt him; and if he ſtands further out in contempt, then a *commiſſion of rebellion* may be iſſued, for apprehending him, and bringing him to the *Fleet* priſon, in the execution whereof the perſons to whom directed may juſtify breaking open doors. If the defendant ſtands further in contempt, a ſerjeant at arms is to be ſent out to take him; and if he cannot be taken, a *ſequeſtration* of his land may be obtained till he appears. And if a decree, when made, be not obeyed, being ſerved upon the party under the ſeal of the court, all the aforementioned proceſſes of contempt will iſſue out againſt him, for his impriſonment till he yields obedience to it.

If a *bill in Chancery* be exhibited againſt a *peer*, the courſe is for the Lord Chancellor to write a letter to him; and if he doth not put in his anſwer, then a *ſubpœna* iſſues, and then an order to ſhew cauſe why a ſequeſtration ſhould not go forth; and if he ſtill ſtands out, then a ſequeſtration ſhall be had; for there can be no proceſs of contempt againſt his perſon. Where there is any *error* in a *decree* in matter of law, there may be a *bill of review*, which is in nature of a writ of error; or an appeal to the Houſe of Lords. A party grieved with a decree in Chancery, on petition to the king, it hath been adjudged, that the matter might be referred by the king to the judges, who may reverſe the decree, &c. 3 *Bulſt.* 116.

But it is now uſual to *appeal to the Houſe of Lords*; which appeals are to be ſigned by two noted counſel, and exhibited by way of petition: the petition or appeal is lodged with the clerk of the houſe of Lords, and read in the houſe, whereon the appellee is ordered to put in his anſwer, and a day fixed for hearing the cauſe; and after counſel heard and evidence given on both ſides, the lords will affirm or reverſe the decree of the Chancery, and finally determine the cauſe by a majority of votes, &c. Though it is obſerved on an *appeal* to the Lords from a decree in Chancery, no proofs will be permitted to be read as evidence, which were not made uſe of in the Chancery. *Preced. Canc.* 212. If a bill be brought where the Lord Chancellor is party to the ſuit, it muſt be directed to the King's Majeſty; for no man may be both judge and party in a cauſe. See *Chancellor.*

And as to the juriſdiction of the court, its modes of proceeding, and the various caſes wherein it relieves, &c. vide *Com. Dig.* 2 *V.* tit. *Chancery*, where thoſe ſubjects are fully and methodically treated of.

Changer. An officer belonging to the king's *mint*, whoſe office conſiſts chiefly in exchanging coin for bullion, brought in by merchants or others: it is written after the old way, *chaunger*. Stat. 2 Hen. 6. cap. 12.

Chanter, *(cantator)* A *ſinger* in the choir of a cathedral church; and is uſually applied to the chief of the ſingers. This word is mentioned in 13 *Eliz. c.* 10. At St. *David*'s cathedral in *Wales*, the chanter is next to the biſhop; for there is no dean. *Camb. Britan.*

Chantry, or **Chauntry.** *(cantaria)* A little church, chapel, or particular altar, in ſome cathedral church, &c. endowed with lands, or other revenues, for the maintenance of one or more prieſts, daily to *ſing maſs*, and officiate divine ſervice for the ſouls of the donors, and ſuch others as they appointed. *Stat.* 37 *Hen* 8. *cap.* 4. 1 *Ed.* 6. *cap.* 14. and 15 *Car.* 2. *cap.* 9. Of theſe chantries mention is made of forty-ſeven belonging to St. *Paul*'s church in *London*, by *Dugdale*, in his hiſtory of that church. In an ancient MS. there is this record—— *Sciant*, &c. *quod ego* Reginaldus Seuard *dedi* Willielmo Crumpe *capellano* Cantariæ *beatæ* Mariæ de Yarpol, *unam parcellam paſturæ*, &c. *Dat apud* Leominſtrie *die* Martis *prox. poſt feſtum Sancti* Hilarii, *An.* 7 *Hen.* 5.

Chapel. *(capella*, Fr. *chapelle)* Is either adjoining to a church, for performing divine ſervice; or ſeparate from the mother-church, where the pariſh is wide, which is commonly called a *chapel of eaſe* And chapels of eaſe are built for the eaſe of thoſe pariſhioners who dwell far from the parochial church, in *prayer* and *preaching* only; for the *ſacraments* and *burials* ought to be performed in the parochial church. 2 *Rol. Abr.* 340.——*Ad* capellam *non pertinet baptiſterium neque ſepultura*. *Selden of Tithes*, *p.* 265.

Theſe chapels are ſerved by inferior curates, provided at the charge of the rector, &c. And the curates are therefore removable at the pleaſure of the rector or vicar: but chapels of eaſe *may be* parochial, and have a right to ſacraments and burials, and to a diſtinct miniſter, by cuſtom; (though ſubject in ſome reſpects to the mother-church:) and *parochial chapels* differ only in name from pariſh churches, but they are ſmall, and the inhabitants within the diſtrict are few. In ſome places chapels of eaſe are endowed with lands or tithes, and in other places by voluntary contributions; and in ſome few diſtricts there are chapels which baptize and adminiſter the ſacraments, and have chapel-wardens; but theſe chapels are not exempted from the viſitation of the ordinary, nor the pariſhioners who reſort thither from contributing to the repairs of the mother-church; eſpecially if they bury there; for the *chapel* generally *belongs to*, and is as it were a *part of* the mother-church; and the pariſhioners are obliged to go to the mother-church, but not to the chapel. 2 *Rol. Abr.* 289. And hence it is ſaid, that the offerings made to any chapel are to be rendered to the mother-church; unleſs there be a cuſtom that the chaplain ſhall have them.

Public chapels, annexed to pariſh churches, ſhall be repaired by the pariſhioners, as the church is; if any other perſons be not bound to do it. 2 *Inſt.* 489. Beſides the fore-mentioned chapels, there are *free* chapels, perpetually maintained and provided with a miniſter, without charge to the rector or pariſh; or that are free and exempt from all ordinary juriſdiction; and theſe are where ſome lands or rents are charitably beſtowed on them, *Stat.* 37 *Hen.* 8. *cap.* 4. 1 *Ed.* 6. *c.* 14. There are alſo *private chapels*, built by noblemen, and others, for private worſhip, in or near their own houſes, maintained at the charge of thoſe noble perſons to whom they belong, and provided with chaplains and ſtipends by them; which may be erected without leave of the biſhop, and need not be conſecrated, though they anciently were ſo, nor are they ſubject to the juriſdiction of the ordinary.

There are likewiſe *chapels in the Univerſities*, belonging to particular colleges, which, though they are conſecrated, and ſacraments are adminiſtered there, yet they are not liable to the viſitation of the *biſhop*, but of the *founder*. 2 *Inſt.* 363.

Chapelry, (*capellania*) Is the ſame thing to a chapel, as a pariſh to a church; being the precinct and limits thereof: it is mentioned in the ſtatute 14 *Car.* 2. *c.* 9.

Chaperon, (*Fr.*) A hood or bonnet, anciently worn by the knights of the garter, as part of the habit of that noble order: but in *heraldry* it is a little eſcutcheon fixed in the forehead of the horſes that draw a hearſe at a funeral. See *Stat.* 1 *R.* 2. *cap.* 17.

Chapiters, (Lat. *capitula*, Fr. *chapitres*, *i. e.* chapters of a book) Signify in our Common law a ſummary of ſuch matters as are to be enquired of, or preſented before juſtices in eyre, juſtices of aſſiſe, or of peace, in their ſeſſions. *Britton*, *cap.* 3. uſeth the word in this ſignification: and chapiters are now moſt commonly called *articles*, and delivered by the mouth of the juſtice in his charge to the inqueſt; whereas, in ancient times, (as appears by *Bracton* and *Britton*) they were, after an exhortation given by the juſtices for the good obſervation of the laws and the king's peace, firſt read in open court, and then delivered in writing to the grand inqueſt, for their better obſervance; and the grand jury were to anſwer upon their oaths to all the articles thus delivered them, and not put the judges to long and learned charges to little or no purpoſe, for want of remembring the ſame, as they do now, when they think their duty well enough performed, if they only preſent thoſe few of many miſdemeanors which are brought before them by way of indictment.

It is to be wiſhed that this order of delivering written articles to grand juries were ſtill obſerved, whereby crimes would be more effectually puniſhed: in ſome inferior courts, as the court leet, *&c.* in ſeveral parts of *England*, it is uſual at this day for ſtewards of thoſe courts to deliver their charges in writing to the juries ſworn to enquire of offences. *Horne*, in his Mirror of juſtices, expreſſes what thoſe articles were wont to contain. *Lib.* 3. *cap. des Articles in Eyre*. And an example of articles of this kind, you may find in the book of aſſiſes. *F.* 138.

Chaplain, (*capellanus*) Is moſt commonly taken for one that is depending upon the king, or other noble perſon, to inſtruct him and his family, and ſay divine ſervice in his houſe, where there is uſually a private chapel for that purpoſe. The *king*, *queen*, *prince*, *princeſs*, *&c.* may retain as many chaplains as they pleaſe; and the king's chaplains may hold any number of benefices of the king's gift, as the king ſhall think fit to beſtow upon them.

An *archbiſhop* may retain *eight* chaplains; a *duke*, or a *biſhop*, *ſix*; *marquis* or *earl*, *five*; *viſcount*, *four*; *baron*, *knight* of the *garter*, or *lord chancellor*, *three*; a *dutcheſs*, *marchioneſs*, *counteſs*, *baroneſs*, the *treaſurer*, and *controller* of the *king's houſe*, the *king's ſecretary*, *dean* of the *chapel*, *almoner*, and *maſter* of the *rolls*, each of them *two*; the *chief juſtice* of the *king's bench*, *&c.* *one*; all which may purchaſe a licence or diſpenſation, and take two benefices with cure of ſouls. *Stat.* 22 *Hen.* 8. *cap.* 13.

Alſo every *judge* of the *King's Bench* and *Common Pleas*; and *chancellor* and *chief baron* of the *Exchequer*, and the *king's attorney* and *ſolicitor general*, may each of them have *one* chaplain, attendant on his perſon, having one benefice with cure, who may be non-reſident on the ſame, by *Stat.* 25 *Hen.* 8. *cap.* 16.

And the *groom* of the *ſtole*, *treaſurer* of the *king's chamber*, and *chancellor* of the *dutchy* of *Lancaſter*, may retain each *one* chaplain. *Stat.* 33 *Hen.* 8. *cap.* 28. If a nobleman hath his full number of chaplains allowed by law, and retains one more, who has diſpenſation to hold plurality of livings, it is not good. *Cro. Eliz.* 723.

A perſon retaining a chaplain, muſt not only be capable thereof at the time of granting the inſtrument of retainer, but he muſt continue capable of qualifying till his chaplain is advanced: and therefore if a duke, earl, *&c.* retain a chaplain, and die; or if ſuch a noble perſon be attainted of treaſon; or if an officer, qualified to retain a chaplain, is removed from his office, the retainer is determined: but where a chaplain hath taken a ſecond benefice before his lord dieth, or is attainted, *&c.* the retainer is in force to qualify him to enjoy the benefices.

And if a *woman* that is *noble* by *marriage*, afterwards marries one under the degree of nobility, her power to retain chaplains will be determined; though it is otherwiſe where a *woman* is *noble* by *deſcent*, if ſhe marry under degree of nobility, for in ſuch caſe her retainer before or after marriage is good. A *baroneſs*, *&c.* during the coverture, may not retain chaplains; if ſhe doth, the lord, her huſband, may diſcharge them, as likewiſe her former chaplains, before their advancement. 4 *Rep.* 118.

A chaplain muſt be retained by letters teſtimonial under hand and ſeal, or he is not a chaplain within the ſtatute; ſo that it is not enough for a ſpiritual perſon to be retained by word only to be a chaplain, by ſuch perſon as may qualify by the ſtatutes to hold livings, *&c.* although he abide and ſerve as chaplain in the family. And where a nobleman hath retained and thus qualified his number of chaplains, if he diſmiſſes them from their attendance upon any diſpleaſure, after they are preferred, yet they are his chaplains at large, and may hold their livings during their lives; and ſuch nobleman, though he may retain other chaplains in his family, meerly as chaplains, he cannot qualify any others to hold pluralities while the firſt are living: for if a nobleman could diſcharge his chaplain when advanced, to qualify another in his place, and qualify other chaplains, during the lives of chaplains diſcharged, by theſe means he might advance as many chaplains as he would, whereby the ſtatutes would be evaded. 4 *Rep.* 90.

Chapter, (*capitulum*) Is a congregation of clergymen *under* the *dean* in a cathedral church: *congregatio clericorum in eccleſia cathedrali, conventuali, regulari vel collegiata*. This collegiate company is metaphorically termed *capitulum*, ſignifying a little head, it being a kind of head, not only to govern the dioceſe in the vacation of the biſhoprick, but alſo in many things to adviſe and aſſiſt the biſhop when the ſee is full, for which, with the dean, they form a council. *Co. Lit.* 103. The chapter conſiſts of *prebends* or *canons*, which are ſome of the chief men of the church, and therefore are called *capita eccleſiæ*: they are a *ſpiritual corporation aggregate*, which they cannot ſurrender without leave of the biſhop, becauſe he hath an intereſt in them; they, with the dean, have power to confirm the biſhop's grants; during the vacancy of an archbiſhoprick, they are guardians of the ſpiritualities, and as ſuch have authority by the *Stat.* 25 *Hen.* 8. *cap.* 21. to grant diſpenſations; likewiſe as a corporation they have power to make leaſes, *&c.*

When the dean and chapter confirm grants of the biſhop, the dean joins with the chapter, and there muſt be the conſent of the major part; which conſent is to be expreſſed by their fixing of their ſeal to the deed, in one place, and at one time, either in the chapter-houſe, or ſome other place; and this conſent is the will of many joined together. *Dyer* 233. A chapter is not capable to take by purchaſe or gift, without the *dean*, who is the *head* of the *body*: but there may be a chapter without a dean, as the chapter of the collegiate church of *Southwell*; and grants by or to them are as effectual as other grants by dean and chapter. Yet where there are chapters without deans, they are not properly chapters: and the chapter in a collegiate church, where there is no epiſcopal ſee, as at *Weſtminſter* and *Windſor*, is more properly called a college.

Chapters are ſaid to have their beginning before deans; and formerly the biſhop had the rule and ordering of things without a dean and chapter, which were conſtituted afterwards; and all the miniſters within his dioceſe were as his chapter, to aſſiſt him in ſpiritual matters. 2 *Rol.*

Rep. 454. 3 *Co.* 75. The biſhop hath a power of viſiting the dean and chapter: but the dean and chapter have nothing to do with what the biſhop tranſacts as ordinary. 3 *Rep.* 75. Though the *biſhop* and *chapter* are but one body, yet their *poſſeſſions* are for the moſt part divided; as the *biſhop* hath his part in right of his *biſhoprick*; the *dean* hath a part in right of his *deanery*; and each *prebendary* hath a certain part in right of his *prebend*; and each too is incorporated by himſelf.

Deans and chapters have ſome of them eccleſiaſtical juriſdiction in ſeveral pariſhes, (beſides that authority they have within their own body), executed by their officials; alſo temporal juriſdiction in ſeveral manors belonging to them, in the ſame manner as biſhops, where their ſtewards keep courts, &c. 2 *Rol. Abr.* 229. It has been obſerved, that though the chapter have diſtinct parcels of the biſhop's eſtate aſſigned for their maintenance, the biſhop hath little more than a power over them in his viſitations, and is ſcarce allowed to nominate half of thoſe to their prebends, who were originally of his family: but of common right it is ſaid he is their patron. *Rol. ibid.*

Charge of juſtices in ſeſſions, &c. See *Chapiters*, or *Chapitres*.

Charge and Diſcharge, A charge is ſaid to be a thing done that bindeth him that doth it, or that which is his, to the performance thereof: and diſcharge is the removal, or taking away of that charge. *Terms de Ley.* Land may be charged divers ways; as by grant of rent out of it, by ſtatutes, judgments, conditions, warranties, &c. Lands in fee-ſimple may be charged in fee; and where a man may diſpoſe of the land itſelf, he may charge it by a rent, or ſtatute, one way or other. *Lit. ſect.* 648. *Moor Ca.* 129. *Dyer* 10. If one charge land in tail, and land in fee-ſimple, and die; the land in fee only ſhall be chargeble. *Bro. Cha.* 9.

Lands intailed may be charged in fee, if the eſtate-tail be cut off by recovery: if tenant in tail charge the land, and after levy a fine or ſuffer a recovery of the lands, to his own uſe; this confirms the charge, and it ſhall continue. 1 *Co. Rep.* 61. A tenant for life charges the land, and then makes a feoffment to a ſtranger, or doth waſte, &c. whereby it is forfeited, he in reverſion ſhall hold it charged during his (the tenant's) life: and if one have a leaſe for life or years of land, and grant a rent out of it; if after he ſurrenders his eſtate, yet the charge ſhall continue ſo long as the eſtate had endured, in caſe it had not been ſurrendered. 1 *Rep.* 67, 145. *Dyer* 10.

If one *jointenant* charge land, and after releaſe to his companion and die, the ſurvivor ſhall hold it charged: but if it had come to him by ſurvivorſhip, it would be otherwiſe. 6 *Rep.* 76. 1 *Shep. Abr.* 325. He that hath a *remainder* or *reverſion* of land, may charge it; becauſe of the *poſſibility* that the land will come into *poſſeſſion*, and then the *poſſeſſion* ſhall be charged. But where one leaſes land for life, and grants the reverſion or remainder over to *A. B.* who charges the land, and dies, and the tenant for life is heir to the fee; in this caſe he ſhall hold it diſcharged, for he had the *poſſeſſion* by *purchaſe*, though he had the *fee* by *diſcent*. *Bro.* 11, 16. 1 *Rep.* 62.

If a rent be iſſuing out of a houſe, &c. and it falls down, the charge ſhall remain upon the ſoil. 9 *E.* 4. 20. But when the eſtate is gone upon which the charge was grounded, there generally the charge is determined. *Co. Lit.* 349. And in all caſes where any *executory* thing is created by *deed*, there by *conſent* of *all* the parties it may be *by deed* defeated and diſcharged. 10 *Rep.* 49. Vide *Diſcharge*.

Charitable Corporation. A ſociety of perſons in the late reign obtained a ſtatute to lend-money to *induſtrious poor*, at 5 *l. per cent.* intereſt on pawns and pledges, to prevent their falling into the hands of the pawn-brokers, and therefore they were called the *Charitable Corporation*: but they likewiſe took 5 *l. per cent.* for the charge of officers, warehouſes, &c. And in the fifth year of King *Geo.* 2. the chief officers of this corporation, by connivance of the principal directors, abſconded and broke, and defrauded the public proprietors of great ſums; for relief of the ſufferers wherein, as to part of their loſſes, ſeveral ſtatutes were made and enacted. See *Stat.* 5 *Geo.* 2. *cap.* 31, 32. 7 *Geo.* 2. *cap.* 11.

Charitable Uſes, Where any lands, &c. are given to *charitable uſes*, commiſſions of inquiry, and deeds how made and taken, &c. See *Chancery* and *Mortmain*. Stat. 9 Geo. 2. c. 36. Lands given to alms and aliened, may be recovered by the donor, 13 *Ed.* 1. *c.* 41. Lands, &c. may be given for the maintenance of houſes of correction, or of the poor, 35 *Eliz. c.* 7. *ſect.* 27. Commiſſioners to inquire of money given to poor priſoners, 22 & 23 *Car.* 2. *c.* 20. *ſect.* 11. 32 *Geo.* 2. *c.* 28. *ſect.* 9, 10. Money given to put out apprentices, either by pariſhes or publick charities, to pay no duty, 8 *Ann. c.* 9. *ſect.* 40. Mr *Norton*'s Will to Charitable Uſes, 6 *Geo.* 2. *c.* 32. 11 *Geo.* 2. *c.* 37.

See *Mortmain*. And *vide* alſo *Black. Com.* 2 *V.* 273, 376. 3 *V.* 428.

Charks, Are pit-coal when *charred* or *charked*, ſo called in *Worceſterſhire*; as ſea-coal thus prepared at *Newcaſtle* is called *coke*

Charre of Lead, Is a quantity of lead conſiſting of thirty *pigs*, each pig containing ſix *ſtone* wanting two pounds, and every ſtone being twelve pounds.—*La* charre *de plumbo conſtat ex* 30 *fotinellis*, & *quælibet fotinella continet* 6 *petras, exceptis duabus libris*, & *quælibet petra conſtat ex* 12 *libris*. Aſſiſa de ponderibus. Rob. 3. R. Scot. cap. 22.

Charta, A word made uſe of not only for a *charter*, for the holding an eſtate; but alſo a ſtatute. See *Magna Charta*.

Charte, A card, chart, or plan which mariners uſe at ſea, mentioned 14 *Car.* 2. *cap.* 33.

Chartel, (Fr. *cartel*) A letter of defiance, or challenge to a ſingle combat; in uſe heretofore to decide difficult controverſies at law, which could not otherwiſe be determined. *Blount*.

Charter, (Lat. *charta*, Fr. *chartres*, i. e. *inſtrumenta*) Is taken in our law for written evidence of things done between man and man: whereof *Bracton, lib.* 2. *cap.* 26. ſays thus, *Fiunt aliquando donationes in ſcriptis, ſicut in* chartis, *ad perpetuam rei memoriam, propter brevem hominum vitam*, &c. And *Britton*, in his 39th chapter, divides *charters* into thoſe of the king, and thoſe of private perſons. *Charters of the king* are thoſe whereby the king paſſeth any grant to any perſon or body politick; as a *charter* of exemption, of privilege, &c.

Charter of pardon, whereby a man is forgiven a felony, or other offence committed againſt the king's crown and dignity; and of theſe there are ſeveral ſorts, viz. *charta pardonationis utlagariæ, charta pardonationis ſe defendendo*, &c. and others mentioned in *Reg Writs* 287, 288, &c. *Charter of the foreſt*, wherein the laws of the foreſt are compriſed, ſuch as the *charter of Canutus*, &c. *Kitch.* 314. *Fleta, lib.* 3. *c.* 14.

Charters of private perſons are deeds and inſtruments for the conveyance of lands, &c. And the purchaſer of lands ſhall have all the *charters*, deeds and evidences as incident to the ſame, and for the maintenance of his title. *Co. Lit.* 6. *Charters* belong to a feoffee, although they be not ſold to him, where the feoffor is not bound to a general warranty of the land; for there they ſhall belong to the feoffor, if they be ſealed deeds or wills in writing: but other *charters* go to the tertenant. *Moor Ca.* 687. The *charters* belonging to the feoffor in caſe of warranty the heir ſhall have, though he hath no land by diſcent, for the poſſibility of diſcent after. 1 *Rep.* 1. See *Magna Charta*.

Charterer, In *Cheſhire*, a freeholder is called by this name. Sir *P. Ley's Antiq. fol.* 356.

Charter-Governments in America. Our colonies, with reſpect to their interior policy, are properly of three ſorts.

1. *Provincial eſtabliſhments*, the conſtitutions of which depend on the reſpective *commiſſions* iſſued by the crown to the governors, and the *inſtructions* which uſually accompany thoſe commiſſions; under the authority of which, provincial aſſemblies are conſtituted, with the power of making local ordinances, *not repugnant to the laws of England*.

2. *Proprietary* governments, granted out by the crown to individuals, in the nature of *feudatory principalities*,

with all the inferior regalities, and ſubordinate powers of legiſlation, which formerly belonged to the owners of *counties palatine*: yet ſtill with theſe expreſs conditions, that the ends for which the grant was made be ſubſtantially purſued, and that nothing be attempted which *may derogate from the authority of the mother country.*

3. *Charter* governments, in the nature of *civil corporations*, with the power of making *by-laws*, for their own *interior* regulation, *not contrary to the laws* of *England*; and with ſuch rights and authorities as are ſpecially given them in their ſeveral charters of incorporation.

The form of government in moſt of them is borrowed from that of *England*. They have a governor named by the king (or in ſome proprietary colonies by the proprietor) who is his repreſentative or deputy; they alſo have courts of juſtice of their own, from whoſe deciſions an appeal lies to the king and council here in *England*.

Their general aſſemblies which are their houſe of commons, together with their council of ſtate, being their upper houſe, with the concurrence of the king, or his repreſentative the governor, make laws ſuited to their own emergency. Such is the account given by *Blackſtone* in his *Com.* 1 *V.* 108.

As to the appeal it may not be improper to obſerve, that we conceive it is only in the nature of a reference, by way of arbitration; the parties entering into bond in *America*, to abide by the determination of the king in council here, as the editor *(J. M.)* hath been informed by a gentlemen well acquainted with the ſubject.

Charter-land, *(terra per chartam)* Is ſuch as a man holds by *charter*, that is by evidence in writing otherwiſe called freehold. *Anno* 19 *H.* 7. *cap.* 13. This in the time of the *Saxons* was called *bockland*, which was held (according to *Lambard)* with more commodious and eaſy conditions than *folkland* was, *i. e.* lands held without writing; becauſe that was *hæreditaria, libera atque immunis*; whereas, *fundus ſine ſcripto cenſum penſitabat annuum, atque officiorum quadam ſervitute eſt obligatus: priorem viri plerumq; (nobiles, atque ingenui; poſteriorem ruſtici fere & pagani poſſidebant: illam nos vulgo* freehold *& per chartam; hanc ad voluntatem domini appellamus.* Lamb. Vide *Black. Com.* 2 *V.* 90.

Charter-party, (Lat. *charta partita*, Fr. *chartre parti*, *i. e.* a deed or writing divided) Is what among merchants and ſea-faring men we commonly call a *pair of indentures*, containing the covenants and agreements made between them, touching their merchandize and maritime affairs. 2 *Inſt.* 673. And *charter-parties* of affreightment ſettle agreements, as to the cargo of ſhips, and bind the maſter to deliver the goods in good condition at the place of diſcharge, according to agreement; and the maſter ſometimes obliges himſelf, ſhip, tackle and furniture, for performance.

The Common-law conſtrues *charter-parties*, as near as may be, according to the intention of them, and not according to the literal ſenſe of traders, or thoſe that merchandiſe by ſea, but they muſt be regularly pleaded. In covenant by *charter-party*, that the ſhip ſhould return to the river of *Thames*, by a certain time, *dangers of the ſea excepted*, and after in the voyage, and within the time of the return, the ſhip was taken upon the ſea by pirates, ſo that the maſter could not return at the time mentioned in the agreement; it was adjudged that this impediment was within the exception of the *charter-party*, which extends as well to any danger upon the ſea by pirates and men of war, as dangers of the ſea by ſhip-wreck, tempeſt, *&c. Stile* 132. 2 *Rol. Abr.* 248.

A ſhip is freighted at ſo much *per* month that ſhe ſhall be out, covenanted to be paid after her arrival at the port of *London*; the ſhip is caſt away coming up from the *Downs*, but the lading is all preſerved, the freight ſhall in this caſe be paid; for the money becomes due monthly by the contract, and the place mentioned is only to aſcertain where the money is to be paid, and the ſhip is intitled to wages, like a mariner that ſerves by the month, who if he dies in the voyage, his executors are to be anſwered *pro rata. Mólloy de Jur. Maritim.* 260. If a part-owner of a ſhip refuſe to join with the other owners in ſetting out of the ſhip, he ſhall not be intitled to his ſhare of the freight; but by the courſe of the admiralty the other owners ought to give ſecurity if the ſhip periſh in the voyage, to make good to the owner ſtanding out his ſhare of the ſhip. Sir *Lionel Jenkins*, in a caſe of this nature, certified that by the law marine and courſe of the admiralty, the plaintiff was to have no ſhare of the freight; and that it was ſo in all places, for otherwiſe there would be no navigation. *Lex Mercat.* 100. See *Freight*.

Forms of *charter-parties* of affreightment are ſold ready printed.

Chartis Reddendis, Is a writ which lies againſt him that hath charters of feoffment entruſted to his keeping, and refuſeth to deliver them. *Reg. Orig.* 159.

Chaſe, (Fr. *chaſſe*) In its general ſignification is a great quantity of woody ground lying open, and privileged for wild beaſts and wild fowl: and the beaſts of *chaſe* properly extend to the buck, doe, fox, *&c.* and in common and legal ſenſe to all the beaſts of the foreſt. *Co. Lit.* 233. But if one have a *chaſe* within a foreſt, and he kill or hunt any ſtag or red deer, or other beaſts of the foreſt, he is fineable. 1 *Jones's Rep.* 278.

A *chaſe* is of a middle nature between a foreſt and a park, being commonly leſs than a foreſt, and not endowed with ſo many liberties, as the courts of attachment, ſwainmote, and juſtice-ſeat; though of a larger compaſs, and ſtored with greater diverſity both of keepers, and wild beaſts or game, than a park.

A *chaſe* differs from a *foreſt* in this, becauſe it may be in the hands of a ſubject, which a foreſt in its proper and true nature cannot; and from a *park*, in that it is not encloſed, and hath a greater compaſs, and more variety of game, and officers likewiſe. *Crompt.* in his *Juriſd. fol.* 148. ſays a foreſt cannot be in the hands of a ſubject, but it forthwith loſeth its name, and becomes a *chaſe*: but *fol.* 197. he ſays, a ſubject may be lord and owner of a foreſt, which though it ſeems a contradiction, yet both ſayings are in ſome ſort true; for the king may give or alienate a foreſt to a ſubject, ſo as when it is once in the ſubject, it loſeth the true property of a foreſt, becauſe the courts called the juſtice-ſeat, ſwainmote, *&c.* do forthwith vaniſh, none being able to make a Lord Chief Juſtice in *Eyre* of the foreſt, but the king, yet it may be granted in ſo large a manner, as there may be attachment, ſwainmote, and a court equivalent to a juſtice-ſeat. *Manwood, part* 2. *c.* 3, 4.

A foreſt and a *chaſe* may have different officers and laws: every foreſt is a *chaſe, & quiddam amplius*; but any *chaſe* is not a foreſt. A *chaſe* is *ad communem legem*, and not to be guided by the foreſt laws; and it is the ſame of parks. 4 *Inſt* 314. A man may have a free *chaſe* as belonging to his manor in his own woods, as well as a warren and a park in his own grounds; for a *chaſe*, warren and park are collateral inheritances, and not iſſuing out of the ſoil; and therefore if a perſon hath a *chaſe* in other men's grounds, and after purchaſeth the grounds, the *chaſe* remaineth. *Ibid.* 318. If a man have freehold in a free *chaſe*, he may cut his timber and wood growing upon it, without view or licence of any; though it is not ſo of a foreſt: but if he cut ſo much that there is not ſufficient for covert, and to maintain the game, he ſhall be puniſhed at the ſuit of the king, and ſo if a common perſon hath a *chaſe* in another's ſoil, the owner of the ſoil cannot deſtroy all the covert, but ought to leave ſufficient thereof, and alſo browſewood, as hath been accuſtomed. 11 *Rep.* 22. And it has been adjudged, that within ſuch *chaſe*, the owner of the ſoil by preſcription may have common for his ſheep, and warren for his conies, but he cannot ſurcharge with more than has been uſual, nor make coney-burrows in other places than hath been uſed. *Ibid.* If a free *chaſe* be incloſed, it is ſaid to be a good cauſe of ſeizure into the king's hands.

It is not lawful to make a *chaſe*, park or warren, without licence from the king under the broad ſeal. See *Black. Com.* 2 *V.* 38, 416. 4 *V.* 408.

Chaſor, An hunting horſe.—*Dederunt mihi unum* chaſorem, *&c. Leg. Will.* 1. *cap.* 22. And in another chapter it is written *eacorem*.

Chaſtellaine, A noble woman: *quaſi caſtelli domina.*

Chaſtity. The *Roman* law (*Ff.* 48, 8. 1.) juſtifies homicide in defence of the chaſtity either of one's ſelf or relations; and ſo alſo, according to *Selden*, (de Legib. Hebræor. l. 4. c. 3.) ſtood the law in the Jewiſh republick. The *Engliſh* law likewiſe juſtifies a woman, killing one who attempts to raviſh her. (*Bac. Elem.* 34. 1 *Hawk. P. C.* 71.) So the huſband or father may juſtify killing a man, who attempts a rape upon his wife or daughter; but not if he takes them in adultery by conſent, for the one is forcible and felonious, but not the other. 1 *Hal. P. C.* 485, 6.

And without doubt the forcibly attempting a crime, of a *ſtill more deteſtable nature*, may be equally reſiſted by the death of the *unnatural aggreſſor*. For the one uniform principle, that runs through our own and all other laws, ſeems to be this; that where a crime, in itſelf capital, is endeavoured to be committed by *force*, it is *lawful* to *repel* that *force* by the *death* of the party attempting. *Black. Com.* 4 *V.* 181.

Chattels, or **Catals**, (*catalla*) Comprehend all goods moveable and immoveable, except ſuch as are in nature of freehold, or parcel of it. The *Normans* call moveable goods only, *chattels*; but this word by the Common law extends to all moveable and immoveable goods: and the *Civilians* denominate not only what we call *chattels*, but alſo land, *bona*. But no eſtate of inheritance or freehold, can be termed in our law goods and chattels; though a leaſe for years may paſs as goods.

Chattels are either *perſonal* or *real: perſonal*, as gold, ſilver, plate, jewels, houſhold-ſtuff, goods and wares in a ſhop, corn ſown on the ground, carts, ploughs, coaches, ſaddles, *&c.* Cattle, *&c.* as horſes, oxen, kine, bullocks, ſheep, pigs, and all tame fowls and birds, ſwans, turkeys, geeſe, poultry, *&c.* and theſe are called perſonal in two reſpects, one becauſe they belong immediately to the perſon of a man; and the other, for that being any way injuriouſly with-held from us, we have no means to recover them but by perſonal action.

Chattels real are ſuch as either appertain not immediately to the perſon, but to ſome other thing by way of dependency, as a box with charters of land, *&c.* or ſuch as are iſſuing out of ſome immoveable thing to a perſon, as a *leaſe*, or *rent* for *term* of *years:* and *chattels real*, concern the realty, lands and tenements, leaſes for years, intereſt in advowſons, in ſtatutes merchant, *&c.* And alſo include corn cut, trees cut, *&c.* *Co. Lit.* 118. *Noy's Max.* 49.

But deeds relating to a freehold, obligation, *&c.* which are things in action, are not reckoned under goods and *chattels*; though if writings are pawned, they may be *chattels:* and money hath not been accounted goods or *chattels*; nor are hawks or hounds ſuch, being *feræ naturæ*. 8 *Rep.* 33. *Terms de Ley* 103. *Kitch.* 32.

A collar of SS. garter of gold, buttons, *&c.* belonging to the dreſs of a knight of the garter, are not jewels to paſs by that name in perſonal eſtate, but enſigns of honour. *Dyer* 59. The law will not ſuffer the *deviſe* of a *perſonal chattel*, with a *remainder* over; but a deviſe of a *chattel real*, with *remainder* over, hath been in ſome caſes adjudged in good equity. 2 *And.* 185. The *uſe* of *perſonal things*, ſuch as plate, jewels, *&c.* may be given to one, and the remainder to another; and in that caſe the property is veſted in the laſt deviſee. *Owen* 33. But a deviſe for the *uſe* of *money* has been adjudged a deviſe of the money itſelf; and ſo a deviſe of the *uſe* of *books, medals, &c.* and *limitations over* have been declared void. 1 *Chan. Rep.* 129. 2 *Chan. Rep.* 167.

Chattels perſonal are, immediately upon the death of the teſtator, in the *actual poſſeſſion* of the *executor*, as the law will adjudge, though they are at never ſo great a diſtance from him; *chattels real*, as leaſes for years of houſes, lands, *&c.* are *not* in the *poſſeſſion* of the *executor* till he makes an *entry*, or hath *recovered* the ſame; except there be a leaſe for years of tithes, where no entry can be made. 1 *Nelſ. Abr.* 437.

Leaſes for years, though for a thouſand years; leaſes at will, eſtates of tenants by *elegit*, *&c.* are *chattels*, and ſhall go to the executor: all obligations, bills, ſtatutes, recogniſances and judgments, ſhall be as a *chattel* in the executors, *&c.* *Bro. Obl.* 18. *F. N. B.* 120.

But if one be ſeiſed of land in fee on which trees and graſs grow, the heir ſhall have theſe, and not the executor; for they are not *chattels* till they are cut and ſevered, but parcel of the inheritance. 4 *Rep.* 63. *Dyer* 273. The game of a park with the park, fiſh in the pond, and doves in the houſe with the houſe, go to the heir, *&c.* and are not *chattels:* though if pigeons, or deer, are tame, or kept alive in a room; or if fiſh be in a trunk, *&c.* they go to the executors as *chattels*. *Noy* 124. 11 *Rep.* 50. *Keilw.* 88.

An owner of *chattels* is ſaid to be *poſſeſſed* of them; as of freehold the term is, that a perſon is *ſeiſed* of the ſame.

Chaud-medley, Is of pretty much the ſame import with *chance-medley*. The former, in its etymology, ſignifies an affray in the *heat* of *blood*, or *paſſion*; the latter, a *caſual* affray. The latter is in common ſpeech too often erroneouſly applied to any manner of homicide by miſadventure; whereas it appears by the *Stat.* 24 *H.* 8. *c.* 5. and our ancient books, (*Staundf. P. C.* 16.) that it is properly applied to ſuch killing, as happens in *ſelf-defence*, upon *ſudden recounter*. 3 *Inſt.* 55, 57. *Foſter* 275, 6. *Black. Com.* 4 *V.* 184.

Chaumpert, A kind of tenure mentioned *Pat.* 35 *Ed.* 3. To the hoſpital of *Bowes* in the iſle of *Guernſey*. Blount.

Chaunter, A ſinger in a cathedral. See *Chanter*.

Chauntry-rents, Are rents paid to the crown by the ſervants or purchaſers of *chauntry-lands*. 22 *Car.* 2. *c.* 6.

Cheats, Are deceitful practices in defrauding or endeavouring to defraud another of his known right, by means of ſome artful device, contrary to the plain rules of common honeſty; as by playing with falſe dice; or by cauſing an illiterate perſon to execute a deed to his prejudice, by reading it over to him in words different from thoſe in which it was written; or by perſuading a woman to execute writings to another as her truſtee, upon an intended marriage, which in truth contained no ſuch thing, but only a warrant of attorney to confeſs a judgment; or by ſuppreſſing a will; and ſuch like. 1 *Hawk.* 188.

Stat. 33 *H.* 8. *cap.* 1. *ſect.* 2. If any perſon falſly and deceitfully get into his hands or poſſeſſion any money or other things of any other perſons by colour of any falſe token, *&c.* being convicted ſhall have ſuch puniſhment by impriſonment, ſetting upon the pillory, or by any corporal pain (except pains of death) as ſhall be adjudged by the perſons before whom he ſhall be convict. See the Statute.

Lord *Coke* obſerves hereupon, that for this offence the offender cannot be *fined*, but *corporal pain* only inflicted. 3 *Inſt.* 133.

But Mr. Serjeant *Hawkins* (p. 188.) obſerves that a perſon has been fined 500*l.* for this offence.

As there are frauds which may be relieved civilly, and not puniſhed criminally (with the complaints whereof the courts of equity do generally abound); ſo there are other frauds, which in a ſpecial caſe may not be helped civilly, and yet ſhall be puniſhed criminally. Thus, if a minor goes about the town, and *pretending to be of age*, defrauds many perſons, by taking credit for a conſiderable quantity of goods, and then inſiſting on his nonage; the perſons injured cannot recover the value of their goods, but they may indict and puniſh him for a common cheat. *Barl.* 100.

By 30 *Geo.* 2. *c.* 24. Perſons convicted of obtaining money or goods by *falſe pretences*, or of ſending threatening letters in order to extort money or goods, may be puniſhed by fine and impriſonment, or by pillory, whipping, or *tranſportation*. Vide *Black. Com.* 4 *V.* 157, 173.

Check-Roll, Is a *roll* or book containing the names of ſuch as are attendants on, and in pay to the King or other great perſonages, as their houſhold ſervants. *Stat.* 19 *Car.* 2. *cap.* 1. It is otherwiſe called the *checquer roll*, and ſeems to take its etymology from the *Exchequer*. 14 *Hen.* 8. *c.* 13.

Chelindra, A ſort of ſhip.——*Obligavit ſe imperator ad* 100 chelindras *&* 50 *galleias ducendas ultra mare.* Mat. Paris, *anno* 1238.

Chelſea, A College erected at *Chelſea,* and a trench made to convey water from the river *Lee* to *London,* to maintain the ſame, by *Stat.* 7 *Jac.* 1. *c.* 9. By late ſtatutes concerning the army, one day's pay in a year is to be deducted out of every officer and ſoldier's pay, for *Chelſea Hoſpital. Stat.* K. *Will.* Q. *Ann.* and K. *Geo.* 1. and 2.

Cheſt, An uncertain quantity of merchandize, wine, &c.

Cheſter. Where felony, &c. is committed by any inhabitant of the palatine of *Cheſter,* in another county, proceſs ſhall be made to the *exigent* where the offence was done, and if the offender then fly into the county of *Cheſter,* the outlawry ſhall be certified to the officers there. 1 *H.* 4. *c.* 18. The ſeſſions for the county palatine of *Cheſter,* is to be kept twice in the year, at *Michaelmas* and *Eaſter:* And juſtices of peace, &c. in *Cheſter* ſhall be nominated by the Lord Chancellor. *Stat.* 27 *H.* 8. *c.* 5. 32 *H.* 8. *c.* 43. Recogniſances of ſtatutes merchant may be acknowledged, and fines levied before the Mayor of *Cheſter,* &c. for lands lying there. 2 & 3 *Ed.* 6. *c.* 31. But no writ of protection ſhall be granted in the county palatine. See *County. Palatine.* And *Black. Com.* 1 *V.* 116. 3 *V.* 78.

Chevage, (*chevagium,* from the Fr. *chef,* i. e. *caput*) Is a tribute or ſum of money formerly paid by ſuch as held lands in villenage to their lords in acknowledgment, and was a kind of head or poll money. Of which *Bracton, lib.* 1. *cap.* 10. ſays thus; Chevagium *dicitur recognitio in ſignum ſubjectionis & dominii de capite ſuo. Lambard* writes this word *chivage;* but it is more properly *cheiſage:* and anciently the *Jews,* whilſt they were admitted to live in *England,* paid *chevage* or poll money to the King, as appears by *Pat.* 8 *Ed.* 1. *par.* 1. It ſeems alſo to be uſed for a ſum of money, yearly given to a man of power for his protection, as a chief *head* or leader: but the Lord *Coke* ſays, that in this ſignification, it is a great miſpriſion for a ſubject to take ſums of money, or other gifts yearly of any, in name of *chevage,* becauſe they take upon them to be their chief heads or leaders. *Co. Lit.* 140.

Chevantia, A loan or advance of money upon credit; Fr. *chavarice,* goods, ſtock.——*Idem prioratus pene deſtructus, & poſſeſſionis ſuæ ad plurimos terminos pro plurimis* chevantiis *alienatæ exiſtunt.* Mon. Ang. Tom. 1. pag. 629.

Cheveril, (*cheverillus*) A young cock, or cockling. *Pat.* 15 *H.* 3.

Cheviſance, (from the Fr. *chevir,* i. e. *Venir a chief de quelque choſe,* to come to the head or end of a buſineſs) Signifies an agreement or compoſition made; an end or order ſet down between a creditor or debtor; or ſometimes an indirect gain in point of uſury, &c. In our ſtatutes it is often mentioned, and moſt commonly uſed *for an unlawful bargain* or *contract. Stat* 37 *Hen.* 8. *c.* 9 13 *Eliz. c.* 5 & 8. 21 *Jac.* 1. *c.* 17. and 12 *Car.* 2. *c.* 13. See *Black. Com.* 2 *V.* 474.

Chevitiæ, and **Cheviſcæ,** Are heads of ploughed lands, *Novem acras terræ cum* cheviſcis *ad ipſas pertinentibus.* Mon. Angl. Tom. 2. f. 116.

Chief Rents, The rents of freeholders of manors often ſo called, *i. e. reditus capitales.*—They are alſo denominated *quit-rents, quieti reditus;* becauſe thereby the tenant goes quit and free of all other ſervices. *Black. Com.* 2 *V.* 42.

Chief Pledge, (*plegius vel vas capitalis*) Mentioned 20 *Hen.* 6. *c.* 8. See *Borough-head* and *Borough-holder.*

Chief (Tenants in) Tenants in *capite,* holding immediately under the King, in right of his crown and dignity. *Black. Com.* 2 *V.* 60.

Children, Are in law a man's iſſue begotten on his wife. In caſe land be given by will to a man and his *children,* who has ſuch alive, the deviſee takes only an eſtate for life; but if there be no child living, it is held to be an eſtate-tail. 1 *Vent.* 214, 225. *Sed qu.* as to the firſt poſition, for the intent of the teſtator ſhould be conſidered. A deviſe to one's *children, prima facie,* refers only to ſuch as are alive at the time of making the will; though were the ſame to *children living at his death,* a child in *ventre ſa mere,* may be looked upon as living. 1 *Peer Williams* 244, 342. Alſo a ſon with which a wife is *priviment enſient,* is adjudged living at the time of the teſtator's death, to prevent an eſtate going over to another, &c. *Ibid.* 486.

If a ſum of money is given in truſt for the *children* of another perſon, and he had only one child and ſeveral *grand-children,* the child only ſhall take; yet it is ſaid if ſuch perſon had not any child living, the grandchildren might have taken by the name of *children.* 2 *Vern.* 106. *Abr. Caſ. Eq.* 202.

A father being about to make his will, and thereby intending to have made proviſions for his younger *children;* his ſon and heir diſſuaded him from doing it, and promiſed that he would take care his brothers and ſiſters ſhould have the proviſions; upon which the father forbore making them, and they were decreed in Chancery againſt the heir; his promiſe being a fraud. *Preced. Canc.* 4. And where a perſon going to ſuffer a recovery, in order to provide for younger *children,* was kept from it by the heir in tail, he promiſing to do for them himſelf; it has been ruled he ſhould do it after the father's death. *Ibid.* 5. See *Adminiſtrator.* See alſo *Poſthumous.*

Childwit, (*Sax.*) Is a fine or penalty of a bond-woman unlawfully begotten with child: *Prior habeat gerſumam de nativa ſua impregnata ſine licentia maritandi. Ex. Reg. Priorat' de* Cokesford. *Cowel* ſays, it ſignifieth a power to take a fine of your bond-woman gotten with child without your conſent: and within the manor of *Writtle in Com. Eſſex,* every reputed father of a baſe child pays to the lord for a fine 3 *s.* 4 *d.* where it ſeems to extend as well to free as bondwomen; and the cuſtom is there called *childwit* to this day.

Chimin, (Fr. *chemin* i. e. *via*) In law phraſe is a way; which is of two ſorts; the King's highway, and a private way.

The *King's highway,* (*chiminus regius*) is that in which the King's ſubjects and all others under his protection, have free liberty to paſs, though the property of the ſoil where the way lies, belongs to ſome private perſon.

A *private way* is that in which one man or more have liberty to paſs through the ground of another, by preſcription or charter; and this is divided into *chimin in groſs,* and *chimin appendant.*

Chimin in groſs is where a perſon holds a way principally and ſolely in itſelf.

Chimin appendant is that way which a man hath as appurtenant to ſome other thing: as if he rent a cloſe or paſture, with covenant for ingreſs and egreſs through ſome other ground in which otherwiſe he might not paſs. *Kitch.* 117. *Co. Lit.* 56.

It is ſaid a way may not be claimed by preſcription as *appendant* or *appurtenant* to an *houſe,* becauſe it is only an *eaſement* and *no intereſt;* but a perſon may *preſcribe* for a way from his houſe through a certain cloſe, &c. to church, though he himſelf hath lands next adjoining to his ſaid houſe, through which of neceſſity he muſt firſt paſs; for the general preſcription ſhall be applied only to the lands of others. *Yelv.* 159. 1 *Danv. Abr.* 785. See *Appendant, Appurtenant,* and *Highway.*

Moſt undoubtedly a man may preſcribe for a way from his houſe, over the land of another to church, to a river, to a town, &c. and back again, as appertaining, &c. See the form of preſcribing for a way in *any* of the antient books of *Entries.*

Chiminage, (*chiminagium*) Is toll due by cuſtom for having a way through a foreſt; and in ancient records it is ſometimes called *pedagium.* Cromp. Juriſd. 189. Co. Lit 56.——*Telonium quod in foreſtis exigebant foreſtarii a plauſtris & equis oneris cauſa eo venientibus.* Chart. Foreſt. cap. 14. *Et nullus foreſtarius qui non ſit foreſtarius de feodo, &c. capiat* chiminagium, &c.

Chimney-Money, Otherwiſe called *hearth-money,* a duty to the crown on houſes. By *Stat.* 14 *Car.* 2. *cap.* 2. Every fire-hearth and ſtove of every dwelling or other houſe within *England* and *Wales* (except ſuch as pay not to church and poor) was chargeable with 2 *s. per annum,* payable at *Michaelmas* and *Lady-Day* to the King and his heirs, and ſucceſſors, &c. which payment was commonly called *chimney-money.* This tax being much complained of, as burthenſome to the people, hath been long ſince taken off, and others impoſed in its ſtead; among which that on windows of houſes, laid 7 *&* 8 *W.* 3. *c.* 18. 5 *Ann. c.* 13. 8 *Ann. c.* 4. 20 *Geo.* 2. *c.* 3. *&c. &c.* has by ſome perſons been eſteemed almoſt equally grievous. See *Fuage.*

Chimnies. What duties payable for ſmall and large backs of chimnies. 2 *Will. & Ma. ſeſſ.* 2. *c.* 4.

China and Japan wares, To what duties liable, *&c.* 3 *&* 4 *Ann. c.* 4. 7 *Geo.* 1. *ſt.* 1. *c.* 21.

Chipp, Cheap, Chipping, Signifies the place to be a market-town, as *Chippenham,* &c. *Blount.*

Chippingavel, or *cheapingavel,* Toll for buying and ſelling.

Chirgemot, *Circgemot chirchgemot,* (Sax.) *forum eccleſiaſticum.* ——— *Quouſque* chirgemot *diſcordantes invenit, vel amore congreget, vel ſequeſtret judicio.* Leg. Hen. 1. c. 8. 4. Inſt. 321.

Chirograph, *(chirographum,* or *ſcriptum chirographatum)* Any public inſtrument of gift or conveyance, atteſted by the ſubſcription and croſſes of witneſſes, was in the time of the *Saxons* called *chirographum*; which being ſomewhat changed in form and manner by the *Normans,* was by them ſtiled *charta:* in following times, to prevent frauds and concealments, they made their deeds of mutual covenant in a *ſcript* and *reſcript,* or in a part and counter-part, and in the middle, between the two copies, they drew the capital *letters of the alphabet,* and then tallied or cut aſunder in an indented manner, the ſheet or ſkin of parchment; which being delivered to the two parties concerned, were proved authentick by matching with and anſwering to one another: and when this prudent cuſtom had for ſome time prevailed, then the word *chirographum* was appropriated to ſuch bipartite writings or indentures.

Anciently when they made a *chirograph* or deed, which required a counter-part, they ingroſſed it twice upon one piece of parchment contrariwiſe, leaving a ſpace between, in which they wrote in great letters the word **Chirograph**; and then cut the parchment in two, ſometimes even and ſometimes with indenture, through the midſt of the word: this was afterwards called *dividenda,* becauſe the parchment was ſo divided or cut; and it is ſaid the firſt uſe of theſe *chirographs* was in *Henry* the Third's time.

Chirograph was of old uſed for a fine; the manner of ingroſſing whereof, and cutting the parchment in two pieces, is ſtill obſerved in the *chirographer's office:* but as to deeds, that was formerly called a *chirograph,* which was ſubſcribed by the proper hand-writing of the vendor or debtor, and delivered to the vendee or creditor: and it differed from *ſyngraphus,* which was in this manner, *viz.* Both parties, as well the creditor as debtor, wrote their names and the ſum of money borrowed, on paper, *&c.* and the word **Syngraphus** in capital letters in the middle thereof, which letters were cut in the middle, and one part given to each party, that upon comparing them (if any diſpute ſhould ariſe) they might put an end to the difference. The *chirographs* of deeds have ſometimes concluded thus:——*Et in hujus rei teſtimonium huic ſcripto in modum* chirographi *confecto viciſſim ſigilla noſtra appoſuimus.* The *chirographs* were called *chartæ diviſæ, ſcripta per* chirographus *diviſa, chartæ per alphabetum diviſæ*; as the *chirographs* of all fines are at this time. *Kennet's Antiq.* 177. *Mon. Angl. tom.* 2. *p.* 94.

Chirographer of Fines, *(chirographus finium & concordiarum* of the Greek Χειρόγραφον, a compound of Χεὶρ, *manus* a hand, and γράφω, *ſcribo,* I write, a writing of a man's hand) Signifies that officer in the *Common Pleas* who ingroſſeth fines acknowledged in that court into a perpetual record, after they are examined and paſſed in the other offices, and that writes and delivers the indentures of them to the party: and this officer makes out two indentures, one for the buyer, another for the ſeller; and alſo makes one other indented piece, containing the effect of the fine, which he delivers to the *cuſtos brevium,* which is called the *foot of the fine.* The *chirographer* likewiſe, or his deputy, proclaims all the fines in the court every term, according to the ſtatute, and endorſes the proclamations upon the backſide of the foot thereof; and always keeps the writ of covenant, and note of the fine: the *chirographer* ſhall take but 4 *s.* fee for a fine, on pain to forfeit his office, *&c. Stat.* 2 *Hen.* 4. *c.* 8. 23 *Eliz. c.* 3. 2 *Inſt.* 468.

Chirurgeon. See *Surgeon.*

Chivalry, *(ſervitium military)* Comes from the Fr. *chevalier,* and in our law, is uſed for a tenure of lands by knights ſervice; whereby the tenant was bound to perform ſervice in war unto the King, or the meſne lord of whom he held by that tenure.

Chivalry was either *general* or *ſpecial*; *general,* where it was only in the feoffment that the tenant held *per ſervitium militare,* without any ſpecification of ſerjeanty, eſcuage, *&c. Special,* when it was declared particularly by what kind of knight-ſervice the land was held.

For the better underſtanding of this tenure, it hath been obſerved, that there is no land but it is holden mediately or immediately of the crown by ſome ſervice; and therefore all our freeholds that are to us and our heirs, are called *feuda* or *feoda,* fees, as proceeding from the King, for ſome ſmall yearly rent, and the performance of ſuch ſervices as were originally laid upon the land at the donation thereof; for as the King gave to the great nobles, his immediate tenants, large poſſeſſions for ever, to hold of him for this or that ſervice or rent; ſo they in time parcelled out to ſuch others as they liked the ſame lands, for rents and ſervices as they thought good: and theſe ſervices were by *Littleton* divided into two ſorts,

Chivalry and *ſocage*; the firſt whereof was martial and military, the other ruſtical; *chivalry* therefore was a tenure of ſervice, whereby the tenant was obliged to perform ſome noble or military office unto his lord, being of two kinds, either *regal,* that is held only of the King, or *common,* where held of a common perſon: that which might be held only of the King was called

Servitium or *ſerjeantia,* and was again divided into *grand* and *petit ſerjeanty*; the *grand ſerjeanty* was where one held lands of the King by ſervice, which he ought to do in his own perſon, as to bear the King's banner or ſpear, to lead his hoſte, or to find a man at arms to fight, *&c. Petit ſerjeanty* was when a man held lands of the King to yield him annually ſome ſmall thing towards his wars, as a ſword, dagger, bow, *&c.*

Chivalry that might be holden of a common perſon, was termed *ſcutagium, eſcuage,* that is ſervice of the ſhield, which was either *uncertain* or *certain*; *eſcuage uncertain* was likewiſe twofold, *firſt,* where the tenant was bound to follow his lord, going in perſon to the king's wars, either himſelf or ſending a ſufficient man in his place, there to be maintained at his coſt ſo long as was agreed upon between the lord and his firſt tenant, at the granting of the fee; and the days of ſuch ſervice ſeem to have been rated by the quantity of land ſo holden; as if it extended to a whole knight's fee, then the tenant was to follow his lord forty days; and if but to half a knights fee, then twenty days; if a fourth part, then ten days, *&c.* and the *other* kind of this eſcuage was called *caſtleward,* where the tenant was obliged, by himſelf or ſome other, to defend a caſtle, as often as it ſhould come to his turn; and theſe were called *eſcuage uncertain*; becauſe it was uncertain how often a man ſhould be called to follow his lord to the wars, or to defend a caſtle, and what his charge would be therein.

Eſcuage certain was where the tenure was ſet at a certain ſum of money to be paid in lieu of ſuch ſervice; as that a man ſhould pay yearly for every knight's fee twenty ſhillings; for half a knight's fee ten ſhillings, or ſome like rate; and this ſervice, becauſe it is drawn to a certain rent, groweth to be of a mixt nature, not merely ſocage, and yet ſocage in effect, being now neither perſonal ſervice nor uncertain. *Littleton.*

The tenure called *chivalry* had other conditions annexed to it: but there is a great alteration made in theſe things by the *Stat.* 12 *Car.* 2. *c.* 24. whereby tenures by *knights ſervice* of the king, or any other perſon, *in capite, &c.* and the fruits and conſequences thereof are taken away and diſcharged; and all tenures are to be conſtrued and adjudged to be free and common *ſocage,* &c.

See as to the *court* of chivalry, *Black. Com.* 3 *V.* 68. 4 *V.* 264. As to its *juriſdiction,* 3 *V.* 103. 4 *V.* 264.

As to *guardian* in chivalry, 1 *V.* 462. As to *tenure* in chivalry, 2 *V.* 62.

Chocolate. See *Coffee.*

Chop-church, *(eccleſiarum permutatio)* Is a word mentioned in a ſtatute of King *Hen.* 6. by the ſenſe of which, it was in thoſe days a kind of trade, and by the judges declared to be lawful: but *Brooke* in his abridgment ſays, it was only *permiſſable* by law: it was without a doubt a nick-name given to thoſe that uſed to change benefices; as to *chop* and *change* is a common expreſſion. 9 *Hen.* 6. *cap.* 65. *Vide Litera miſſa omnibus epiſcopis, &c. contra* Choppe-Churches, *anno* 1391. Spelm. de Con. vol. 2. p. 642.

Choral, *(choralis)* Signifies any perſon that by virtue of any of the orders of the clergy, was in ancient time admitted to ſit and ſerve God in the *choire;* which in *Latin* is termed *chorus:* and Mr. *Dugdale* in his hiſtory of St. *Paul's* Church ſays, that there were formerly ſix *Vicars Choral* belonging to that church.

Chorepiſcopi, *Suffragan* or *Rural Biſhops,* anciently delegated by the prime dioceſan; their authority was reſtrained by ſome councils, and their office by degrees aboliſhed; after whom the *Rural Deans* were ſo commiſſioned to exerciſe epiſcopal juriſdiction, till inhibited by Pope *Alexander* the Third. *Kennet's Paroch. Antiq.* 639.

Choſe, *(Fr.)* A thing; uſed in the Common law with divers epithets; as *choſe local, choſe tranſitory,* and *choſe in action. Choſe local* is ſuch a thing as is annexed to a place, as a mill, and the like: and *choſe tranſitory* is that thing which is moveable, and may be taken away, or carried from place to place: *choſe in action* is a thing incorporeal, and only a *right;* as an annuity, obligation for debt, *&c.* And generally all cauſes of ſuit for any debt, duty, or wrong, are to be accounted *choſes in action:* and it ſeems *choſe in action* may be alſo called *choſe in ſuſpence,* becauſe it hath no real exiſtence or being, nor can properly be ſaid to be in our poſſeſſion. *Bro.* Tit. *Choſe in Action.* 1 *Lil. Abr.* 264.

A perſon diſſeiſes me of land, or takes away my goods; my right or title of entry into the lands, or action and ſuit for it, and ſo for the goods, is a *choſe in action:* ſo a debt on an obligation, and power and right of action to ſue for the ſame. 1 *Brownl.* 33. And a condition and power of re-entry into land upon a feoffment, gift or grant, before the performance of the condition, is of the nature of a *choſe in action. Co. Lit.* 214. 6 *Rep.* 50. *Dyer* 244. If one have an advowſon, when the church becomes void, the preſentation is but as a *choſe in action,* and not grantable: but it is otherwiſe before the church is void. *Dyer* 296. Where a man hath a judgment againſt another for money, or a ſtatute, theſe are *choſes in action.* An annuity in fee to a man and his heirs, is grantable over: but it has been held, that an annuity is a *choſe in action,* and not grantable. 5 *Rep.* 89. *Fitz. Grant,* 45. A *choſe in action* cannot be transferred over; nor is it deviſable: nor can a *choſe in action* be a ſatisfaction, as one bond cannot be pleaded to be given in ſatisfaction for another; but in equity *choſes in action* may be aſſignable; and the King's grant of a *choſe in action* is good. *Cro. Jac.* 170, 371. *Chanc. Rep.* 169.

When bonds are aſſigned, it is done with power of attorney to receive and ſue in the aſſignor's name; ſo that though in this caſe a *choſe in action* is ſaid to be aſſignable over, yet it amounts to little more than a letter of attorney to ſue for the debt. *Wood's Inſt.* 282. 1 *Shep. Abr.* 337. Charters, where the owner of the land hath them in poſſeſſion, are grantable: a poſſibility of an intereſt or eſtate in a term for years, is near to a *choſe in action,* and therefore may not be granted; but a poſſibility, joined with an intereſt, may be a grantable chattel. *Co. Lit.* 265. 4 *Rep.* 66. *Moor Ca.* 1128. And this the law doth provide to avoid multiplicity of ſuits, and the ſubverſion of juſtice, which would follow if theſe things were grantable from one man to another. *Dyer* 30. *Plowd.* 185.

But by releaſe *choſes in action* may be releaſed and diſcharged for ever; but then it muſt be to parties and privies in the eſtate, *&c.* For no ſtranger may take advantage of *things in action;* ſave only in ſome ſpecial caſes; as upon the *Stat.* 32 *Hen.* 8. *cap.* 8. *Co. Lit.* 214. *Yelv.* 9, 85. A *choſe in action;* as an obligation, *&c.* is not within the *Stat.* 21 *Hen.* 8. *c.* 7. concerning larceny by ſervants, in going away with or imbeziling their maſter's goods, to the value of 40*s.* And generally theſe are of no uſe to any but the owner. *Hawk. P. C.* 92, 93. But ſee *Stat.* 2 *Geo.* 2. *cap.* 25. And *Black. Com.* 2 *V.* 389, 397, 442. 4 *V.* 434.

Chriſm, A confection of oil and balſam conſecrated by the biſhop, and uſed in the *Popiſh* ceremonies of baptiſm, confirmation, and ſometimes ordination.

Chriſmale, *Chriſmal, chriſom,* the face-cloth, or piece of linen laid over the child's head at baptiſm, which in ancient times was a perquiſite due to the pariſh prieſt.—*Mulieres ſequentes debent offerre* chriſmalia *infantum, nec* chriſmalia *debent alienari, nec in aliquos uſus mitti debent, niſi in uſus eccleſiæ.* Statut. Aegid. Epiſ. Saliſbur. An. 1256.

Chriſmatis denarii, *Chriſom-pence,* Money paid to the dioceſan, or his ſuffragan, by the parochial clergy, for the *chriſom* conſecrated by them about *Eaſter,* for the holy uſes of the year enſuing. This cuſtomary payment being made in *Lent* near *Eaſter,* was in ſome places called *Quadrageſimals,* and in others *Paſchals* and *Eaſter-pence.* The biſhop's exaction of it was condemned by Pope *Pius* XI. for ſimony and extortion; and thereupon the cuſtom was releaſed by ſome of our *Engliſh* biſhops: as *Robert* biſhop of *Lincoln,* by expreſs charter.——*Sciatis nos remiſiſſe clericis omnibus infra epiſcopatum* Lincolnienſem *paſchalem conſuetudinem quam* chriſmatis denarios *vocant.*——Cartular. Mon. de Bernedy, MS. Cotton.

Chriſtianitatis Curia, The court chriſtian, or eccleſiaſtical judicature. See *Court Chriſtian.*

Chriſtianity. As Dr. *Robertſon* very juſtly obſerves, with reſpect to *chriſtianity,* when firſt introduced into *Europe,* it was corrupted. The people did not receive it pure. The preſumption of men, had added to the ſimple and inſtructive doctrines of *chriſtianity,* the theories of a vain philoſophy, that attempted to penetrate into myſteries, and to decide queſtions which the limited faculties of the human mind are unable to comprehend or to reſolve. *Hiſt. Emp. C. V.* 1 V. 73, 4. However its influence was very great in freeing mankind from the bondage of the feudal policy. *Vide ib.* 268, 9. As to offences againſt *chriſtianity,* ſee *Black. Com.* 4 *V.* 44. *Chriſtianity* is part of the law of *England. Black. Com.* 4 *V.* 59.

Chriſtians, *(primitive)* Were averſe to the principles of *toleration.* The reaſon, as mentioned by Dr. *Robertſon,* was, when the chriſtian revelation declared one ſupreme Being to be the ſole object of religious veneration, preſcribed the form of worſhip moſt acceptable to him, whoever admitted the truth of it held, of conſequence, every other mode of religion to be abſurd and impious, (which was not the caſe among the *Heathens*). Hence the zeal of the firſt converts to the *chriſtian* faith in propagating its doctrines, and the ardour with which they laboured to overturn every other form of worſhip. *Hiſt. Emp. C.* V. 3 *V.* 334.

Church, *(eccleſia)* Is a temple or building conſecrated to the honour of God and religion, and anciently dedicated to ſome ſaint, whoſe name it aſſumed; or it is an *aſſembly of perſons united by the profeſſion of the ſame chriſtian faith, met together for religious worſhip;* and if it hath adminiſtration of the ſacraments and ſepulture, it is in law adjudged a *church.* If the King founds a *church,* he may exempt it from the ordinary's juriſdiction; but it is otherwiſe in caſe of a ſubject.

The manner of founding *churches* in ancient times was, after the founders had made their applications to the biſhop of the dioceſe, and had his licence; the biſhop or his commiſſioners ſet up a croſs, and ſet forth the *church-yard* where the *church* was to be built; and then the founders might proceed in the building of the *church,* and when the *church* was finiſhed, the biſhop was to conſecrate it; and then, and not before, the ſacraments were to be adminiſtred in it. *Stillingfleet's Eccleſiaſt. Caſes.* But by the Common law and cuſtom of this realm, any perſon who is a good chriſtian, may build a *church* without licence from the biſhop, ſo as it be not prejudicial to any ancient *churches;* though the law takes no notice of it as a *church*, till conſecrated by the biſhop, which is the reaſon why *church* and no *church*, &c. is to be tried and certified by the biſhop. And in ſome caſes, though a *church* has been conſecrated, it muſt be conſecrated again; as in caſe any murder, adultery, or fornication be committed in it, whereby it is defiled; or if the *church* be deſtroyed by fire, *&c.*

The ancient ceremonies in conſecrating the ground on which the *church* was intended to be built, and of the *church* itſelf after it was built, were thus: when the materials were provided for building, the biſhop came in his robes to the place, *&c.* and having prayed, he then perfumed the ground with incenſe, and the people ſung a collect in praiſe of that ſaint to whom the *church* was dedicated; then the corner-ſtone was brought to the biſhop, which he croſſed, and laid for the foundation: and a great feaſt was made on that day, or on the ſaint's day to which it was dedicated; but the form of conſecration was left to the diſcretion of the biſhop, as it is at this day.

Some biſhops, who have conſecrated *churches*, on entering into them have pronounced the place to be holy, *In the name of the Father*, &c. then with their retinue of grave divines went round the *church*, repeating the hundredth pſalm, and a form of prayer, concluding, *We conſecrate this church, and ſet it apart to thee*, O *Lord Chriſt*, *as holy ground*, &c. After which turning to the communion table, and having bowed to it ſeveral times, they pronounced bleſſings on thoſe who ſhould be benefactors, and curſes againſt thoſe who ſhould prophane that place: and then a ſermon hath been preached, and the ſacrament adminiſtred with more than common ceremony of bowing, kneeling, *&c.*

A *church* in general conſiſts of three principal parts, that is, the belfrey or ſteeple, the body of the *church* with the iſles, and the chancel: and not only the freehold of the whole *church*, but of the *church-yard*, are in the parſon or rector; and the parſon may have an action of treſpaſs againſt any one that ſhall commit any treſpaſs in the *church* or *church-yard*; as in the breaking of ſeats annexed to the *church*, or the windows, taking away the leads, or any of the materials of the *church*, cutting the trees in the *church-yard*, &c.

The *property* of the bells, books, and other ornaments, and the goods of the *church*, is in the *pariſhioners*; but the *cuſtody* of them is in the *church-wardens*, who may maintain action of treſpaſs againſt ſuch as ſhall wrongfully take them away. 1 *Rol. Rep.* 255. If a man erect a pew in a *church*, or hang up a bell, *&c.* therein, they thereby become *church* goods, though not expreſly given to the *church*; and he may not afterwards remove them. The parſon only is to give licence to bury in the *church*; but for defacing a monument in a *church*, &c. the builder or heir of the deceaſed may have an action. *Cro. Jac.* 367. And a man may be indicted for digging up the graves of perſons buried, and taking away their burial dreſſes, *&c.* The property whereof remains in the party who was the owner when uſed, and it is ſaid an offender was found guilty of felony in this caſe, but had his clergy. *Co. Lit.* 113.

Though the parſon hath the freehold of the *church*, he hath not the fee-ſimple, which is always in obeyance; but in ſome reſpects the parſon hath a fee-ſimple qualified. *Lit.* 644, 645. The uſe of the body of the *church*, and the ſeats fixed to the freehold, is common to all the pariſhioners that pay to the repairs thereof. The chancel of the *church* is to be repaired by the parſon, unleſs there be a cuſtom to the contrary; and for theſe repairs, the parſon may cut down trees in the *church-yard*, but not otherwiſe. 35 *Ed.* 1. *Stat.* 2. *viz. Stat. Ne Rector proſternat*, *&c.* The church-wardens are to ſee that the body of the *church* and ſteeple are in repair; but not any iſle, *&c.* which any perſon claims by preſcription, to him or his houſe: concerning which repairs the Canons require every perſon who hath authority to hold eccleſiaſtical viſitation to view their *churches* within their juriſdictions once in three years, either in perſon, or cauſe it to be done; and they are to certify the defects to the ordinary, and the names of thoſe who ought to repair them; and theſe repairs muſt be done by the church-wardens, at the charge of the pariſhioners. *Can.* 86. 1 *Mod.* 236.

By the Common law, pariſhioners of every pariſh are bound to repair the *church*: but by the Canon law, the parſon is obliged to do it; and ſo it is in foreign countries. 1 *Salk.* 164. In *London* the pariſhioners repair both the *church* and the chancel. The Spiritual court may compel the pariſhioners to repair the *church*, and excommunicate every one of them till it be repaired; but thoſe that are willing to contribute ſhall be abſolved till the greater part agree to a tax, when the excommunication is to be taken off; but the Spiritual Court cannot aſſeſs them towards it. 1 *Mod.* 194. 1 *Vent.* 367. For though this court hath power to oblige the pariſhioners to repair by eccleſiaſtical cenſures; yet they cannot appoint in what ſum, or ſet a rate, for that muſt be ſettled by the church-wardens, *&c.* 2 *Mod.* 8.

Where a *church* is ſo much out of repair, that it is neceſſary to pull it down, in ſuch caſe, upon a general warning to the pariſhioners, the major part, meeting, may make a rate for pulling it down, and rebuilding it on the old foundation, and it ſhall be good; and if any pariſhioner refuſe to pay his proportion, they may libel againſt him in the Eccleſiaſtical Court. 2 *Mod.* 222. And if a *church* be down, and the pariſh is increaſed, the greater part of the pariſh may raiſe a tax for the neceſſary inlarging it, as well as the repairing thereof, *&c.* 1 *Mod.* 237. But in ſome of our books it is ſaid, that if a *church* falls down the pariſhioners are not obliged to rebuild it; though they ought to keep it in due repair. 1 *Ventr.* 35.

In a caſe where church-wardens made a rate for repairs of the *church*, it was adjudged that the pariſhioners ought to aſſeſs the rate, and they are bound to repair the *church*. 1 *Salk.* 165. *Church* rates for repairs, are to be made by the church-wardens and the major part of the pariſhioners, which ſhall bind the others, after a general notice given; and if the pariſhioners refuſe or neglect to meet upon ſuch notice; or, if on meeting they refuſe to make a rate, then the church-wardens and overſeers of the poor may make a rate, and levy it upon the inhabitants, being firſt confirmed by the ordinary or archdeacon. And rates for repairing of *churches*, &c. are of eccleſiaſtical cogniſance; and to be recovered in the Eccleſiaſtical Court: alſo if a pariſh is unequally rated, thoſe who are grieved muſt plead it in the Spiritual Court, being ſued there. 1 *Ventr.* 367. 2 *Rol. Abr.* 291.

Theſe rates muſt be made upon the whole pariſh, and not on particular perſons; and the charge is in *reſpect of the land*, upon every occupier, *&c.* If the owner lives in another pariſh, he ſhall be rated for repairs in the pariſh where the lands lie, and not where he liveth; for though the charge is *upon the perſon*, yet it is in *regard of his lands*: if he let the ſame by leaſe, then he ſhall be charged in reſpect of the rent reſerved, and the farmer ſhall make up the reſt. 2 *Rol. Rep.* 270.

For *church* ornaments, utenſils, *&c.* the charge is upon the *perſonal eſtates* of the *pariſhioners*; and for this reaſon perſons muſt be charged for theſe, where they live: but though generally lands ought not to be taxed for ornaments, yet by ſpecial cuſtom, both lands and houſes may be liable to it. 2 *Inſt.* 489. *Cro. Eliz.* 843. *Hetley* 131. It has been reſolved that no man ſhall be charged for his land to contribute to the *church* reckonings, if he doth not reſide in the ſame pariſh. *Moor* 554.

The communion tables are to be kept in repair in *churches*, and covered in time of divine ſervice with a carpet, *&c.* And the ten commandments to be ſet up at the eaſt end of every *church* or chapel, and other choſen ſentences of ſcripture upon the walls. And at the common charge ſhall be provided a ſtrong cheſt with a hole in the upper part thereof, having three keys, of which one ſhall be kept in the cuſtody of the parſon, and the other two by the church-wardens ſeverally; which cheſt is to be fixed in a proper place in the *church*, to collect the alms for the poor; and the alms ſhall be quarterly diſtributed to the poor, in the preſence of the chief of the pariſh. *Can.* 82, 83.

By ſtatute, *churches* not above ſix pounds a year, in the King's books, by aſſent of the ordinary, patron and incumbent, may be united: and in cities and corporations,

&c. churches may be united by the biſhop, patrons, and chief magiſtrates, unleſs the income exceeds 100*l. per ann.* and then the pariſhioners are to conſent, *&c.* 37 *Hen.* 8. *cap.* 21. 17 *Car.* 2. *cap.* 3.

For compleating of St. *Paul's Church*, and repairing *Weſtminſter-Abbey*, a duty of 2*s. per* chaldron on coals is granted; and the Archbiſhop of *Canterbury*, Biſhop of *London*, Lord Mayor, *&c.* are appointed Commiſſioners: and the *church-yard* is to be incloſed, and no perſons build thereon, except for the uſe of the *church.* 8 & 9 *W.* 3. *cap.* 14.

1 *Ann. cap.* 2. Fifty new *churches* are to be built in or near *London* and *Weſtminſter*, for the building whereof a like duty is granted upon coals, and commiſſioners appointed to purchaſe lands, aſcertain bounds, *&c.* The rectors of which churches ſhall be appointed by the crown, and the firſt church-wardens and veſtrymen, *&c*, are to be elected by the commiſſioners. 9 *Ann. cap.* 22. A duty is alſo granted on coals imported into *London*, to be appropriated for maintaining of miniſters for the fifty new *churches. Stat.* 1 *Geo.* 1. *cap.* 23.

A miniſter, by ordination of prieſthood, receives authority to preach in the *church*, though he is nevertheleſs to have a licence from the biſhop of the dioceſe, *&c.* If a layman be admitted and inſtituted to a benefice, and doth adminiſter the ſacraments, marry, *&c.* theſe acts performed by him during the time he continues parſon in fact, are good. *Cro. Eliz.* 775.

Miniſters are to declare their aſſent to the thirty-nine articles of religion, *&c.* and are bound to read morning and evening prayers, on every holyday, on the 5th of *November*, the 30th of *January*, and on the 29th of *May*, as on the Lord's Day. And if any miniſter ſhall uſe any form of *church* ſervice but ſuch as is in the Book of Common Prayer, *&c.* he ſhall forfeit a year's profit of his living, and ſuffer ſix months impriſonment for the firſt offence; and for the ſecond offence be deprived, *&c. Stat.* 1 *Eliz. c.* 2. And if a parſon, in reading prayers, ſtand or ſit when he is appointed to kneel, or kneel when he ſhould ſtand, *&c.* he is puniſhable by this ſtatute. If any perſons deprave the Book of Common Prayer, *&c.* they ſhall be impriſoned ſix months, and forfeit 100 marks. 13 & 14 *Car.* 2. *cap.* 4. And vide 2 & 3 *Ed.* 6. *c.* 1.

Every perſon is to repair to his pariſh *church* every *Sunday*, on pain of forfeiting 1*s.* for every offence; and being preſent at any form of prayer uſed contrary to the Book of Common Prayer, is puniſhed with ſix months impriſonment, *&c.* 1 *Eliz. cap.* 2. 23 *Eliz. cap.* 1. Perſons above ſixteen years of age, who abſent from *church* above a month, are to forfeit 20*l. per* month, *&c.* But proteſtant diſſenters are exempted from penalties, by 1 *W.* & *M. c.* 18. And a perſon is not ſo bound to go to his pariſh *church*, but upon reaſonable excuſe he may go to another; of which excuſe the ſpiritual courts are judges. 2 *Rol. Rep.* 438, 455. No man ſhall cover his head in the *church* in time of divine ſervice, except he have ſome infirmity, and then with a cap; and all perſons are to kneel and ſtand, *&c.* as directed by the Common Prayer during ſervice. *Can.* 18.

No ill language is to be uſed, or noiſe made in *churches* or *church-yards*; and perſons ſtriking others there, are to be excommunicated, and loſe one of their ears: and a man may not lawfully return blows in his own defence in theſe caſes. 5 & 6 *Ed.* 6. *cap.* 4. Diſturbing miniſters officiating divine ſervice, incurs three months impriſonment, and a forfeiture of 20*l.* by *Stat.* 1 *M. cap.* 3. and 1 *W.* & *M. c.* 18. Any perſon may be indicted for indecent or irreverent behaviour in the *church*; and thoſe that offend againſt the acts of uniformity, are puniſhable either by indictment upon the ſtatute, or by the ordinary, *&c.* See likewiſe the following ſtatutes concerning this head, *Mag. Chart.* 9 *Hen.* 3. *c.* 1.—5 *Ed.* 3.—13 *Ed.* 1. *ſtat.* 2. *c.* 6.—3 *Ed.* 1. *ſtat.* 2.—21 *Ed.* 1. *c.* 3.—9 *Ed.* 2. *ſtat.* 1. *c.* 10.—50 *Ed.* 3. *c.* 5.—1 *Ric.* 2. *c.* 5. & 15 *R.* 2. *c.* 15.——For ſtatutes concerning the churches of particular places, ſee the *Table* to the *Statutes at Large*, quarto edition, title *Churches.*

Church-wardens, *(eccleſiæ guardiani)* Are ancient officers choſen yearly in *Eaſter* week, by the miniſter and pariſhioners of every pariſh, to look to and take care of the church and church-yard, and the things belonging to the ſame.

Under this head it will be proper to conſider,

I. *Of the election of church-wardens, and of exemptions from being elected.*

II. *Of their intereſt in the things belonging to the church.*

III. *Of their power and duty.*

IV. *Of their accounts.*

I. *As to their election.*

They are to be choſen by the joint conſent of the pariſhioners and miniſter; and by cuſtom the miniſter may chooſe one, and the pariſhioners another; or by cuſtom the pariſhioners alone may elect both, though it be againſt the canon. 1 *Vent.* 267. For

By *Can.* 89. All church-wardens or queſtmen in every pariſh, ſhall be choſen by the joint conſent of the miniſter and the pariſhioners, if it may be; but if they cannot agree upon ſuch a choice, then the miniſter ſhall chooſe one, and the pariſhioners another: and without ſuch a joint or ſeveral choice, none ſhall take upon them to be church-wardens.

But although the greateſt part of the pariſhes in *London* chooſe the church-wardens by cuſtom; yet in all the new erected pariſhes the canon ſhall take place (unleſs the act of parliament, in virtue of which any church was erected, ſhall have ſpecially provided that the pariſhioners ſhall chooſe both;) inaſmuch as no *cuſtom* can be pleaded in ſuch new pariſhes. *Gibſ.* 215.

In ſome caſes the lord of the manor preſcribeth for the appointment of church-wardens: and this ſhall not be tried in the eccleſiaſtical court, although it be a preſcription of what appertains to a ſpiritual thing. *God*, 153.

They are ſworn into their offices by the archdeacon; and if the archdeacon refuſeth to ſwear a *church-warden*, a *mandamus* ſhall iſſue to compel him. *Cro. Car.* 551. As the pariſhioners chooſe *church-wardens*, who have a truſt repoſed in them by the pariſh as temporal officers, they are the proper judges of their ability to ſerve, and not the archdeacon who ſwears them. 5 *Mod.* 325.

With reſpect to exemptions concerning this office.

All *peers* of the realm, by reaſon of their dignity, are exempt from the office of church-warden. *Gibſ.* 215. So are all *clergymen*, by reaſon of their order. *Id.* In like manner all *parliament men*, by reaſon of their privilege. *Id.*

If an *attorney* be made a church-warden of a pariſh, he ſhall have a writ of privilege, ſhewing his privilege to be diſcharged thereof, by reaſon of his attendance in court.

No perſon *living out of the pariſh*, although he occupies lands within the pariſh, may be choſen church-warden; becauſe he cannot take notice of abſences from church, nor diſorders in it, for the due preſenting of them. *Gibſ.* 215.

By the 1 *W.* & *M. c.* 18. *Diſſenters* being choſen church-wardens may act by deputy. Teachers of congregations taking the oaths and ſubſcribing the declaration, are exempted from this office.

By 6 *W.* 3. *c.* 4. *Apothecaries* are likewiſe exempted.

By 10 & 11 *W.* 3. *c.* 23. All perſons who have proſecuted a felon to conviction, are exempted from the office in the pariſh where the offence was committed.

II. *As to their intereſt.*

Church-wardens are a corporation to ſue and be ſued for the goods of the church; and they may purchaſe *goods*, but not *lands*, except it be in *London*, by cuſtom.

In the city of *London*, by ſpecial cuſtom, the *church-wardens*, with the miniſter, make a corporation for *lands* as well as *goods*; and may as ſuch, hold, purchaſe and take *lands* for the uſe of the church, *&c.* And there is another cuſtom in *London*, for the pariſhioners to chooſe both *church-wardens* excluſive of the miniſter; who is alſo there excuſed from repairing the chancel of the church. 2 *Cro.* 325. *Co. Lit.* 3. 1 *Rol. Abr.* 330. They may have appeal of robbery for ſtealing the goods of the church. 1 *Rol. Abr.* 393. *Cro Eliz.* 179.

But the *churchwardens* have no right to, or intereſt in, the freehold and inheritance of the church, which alone belongs to the parſon or incumbent. *Comp. Incumb.* 381. Alſo

Churchwardens cannot releaſe to the prejudice of the church; nor can they diſpoſe of the church goods, without the conſent of the veſtry. If they waſte the goods of the church, the new *churchwardens* may have actions againſt them, or call them to account before the ordinary; though the pariſhioners cannot have an action againſt them for waſting the church goods, for they muſt make new *churchwardens*, who muſt proſecute the former, &c. 1 *Danv. Abr.* 788. 2 *Cro.* 145. *Bro. Account* 1.

They have ſuch a ſpecial property in the organ, bells, pariſh-books, bible, chalice, ſurplice, &c. belonging to the church, that for the taking away, or for any damage done any of theſe, they may bring an action at law, and therefore the parſon cannot ſue for them in the ſpiritual court. 1 *New Abr.* 372.

III. *In regard to their power.*

They have, with the conſent of the miniſter, the placing the pariſhioners in the ſeats of the body of the church, appointing gallery-keepers, &c. reſerving to the ordinary a power to correct the ſame: and in *London*, the *churchwardens* have this authority in themſelves.

Particular perſons may *preſcribe* to have a *ſeat*, as belonging to them by reaſon of their eſtates, as being an ancient meſſuage, &c. and the ſeats having been conſtantly repaired by them: alſo one may *preſcribe* to any *iſle* in the church, to *ſit* and *bury* there, *always repairing the ſame.* 3 *Inſt.* 202. *Cro. Jac.* 366. If the ordinary diſplaces a perſon claiming a ſeat in a church by preſcription, a prohibition ſhall be granted, &c. 12 *Rep.* 106. The parſon impropriate has a right to the chief ſeat in the chancel; but by preſcription another pariſhioner may have it. *Noy's Rep.*

Beſides their ordinary power, the *churchwardens* have the care of the benefice during its vacancy: and as ſoon as there is any avoidance, they are to apply to the chancellor of the dioceſe for a ſequeſtration; which being granted, they are to manage all the profits and expences of the benefice for him that ſucceeds, plough and ſow his glebes, gather in tithes, thraſh out and ſell corn, repair houſes, &c. and they muſt ſee that the church be duly ſerved by a curate approved by the biſhop, whom they are to pay out of the profits of the benefice. 2 *Inſt.* 489. They are to join with the overſeers of the poor, in making rates for relief of the poor, ſetting up trades for employing them, placing out poor apprentices, ſettling poor perſons, &c. And in the execution of their whole office, by ſtatutes 43 *Eliz. c.* 2. 13 & 14 *Car.* 2. *c.* 12. 3 *W. & M. c.* 11, &c.

The *churchwardens* have no power to make any rate themſelves, excluſive of the pariſhioners, their duty being only to ſummon the pariſhioners, who are to meet for that purpoſe, and, when they are aſſembled, a rate made by the majority preſent ſhall bind the whole pariſh, although the *churchwardens* voted againſt it. See *Comp. Incumb.* 389.

But if the *churchwardens* give the pariſhioners due notice, that they intend to meet for that purpoſe, and the pariſhioners refuſe to come, or, being aſſembled, refuſe to make any rate, they may make one without their concurrence; for as they are liable to be puniſhed in the eccleſiaſtical courts for not repairing the church, it would be unreaſonable that they ſhould ſuffer by the wilfulneſs and obſtinacy of others. 1 *Vent.* 367. 1 *Mod.* 79, 194.

The *churchwardens*, in ſummoning the pariſhioners, need not do it from houſe to houſe, but a general publick ſummons at the church is ſufficient, and the major part of them, that appear upon ſuch ſummons, will bind the whole pariſh. 1 *Vent.* 367. *Comp. Incumb.* 389.

There may be ſelect *veſtries* elected in pariſhes to make rates, and take the *churchwardens* accounts, &c. But thoſe that do not pay to any church-rates have no votes, except the parſon or vicar.

Concerning their duty.

The *churchwardens* are to take care of the repairs of the church; and if they erect, or add any thing new to the ſame, they muſt have the conſent of the pariſhioners or veſtry; and if in the church, the licence of the ordinary. 2 *Inſt.* 489. 1 *Vent.* 367.

The *churchwardens* ſhall ſuffer no man to preach within their churches, without producing his licence: and they are to keep the keys of the belfrey, and take care that the bells be not rung without good cauſe, to be allowed of by the miniſter and themſelves. *Can.* 50, 80.

Churchwardens are to ſee that all the pariſhioners duly reſort to their pariſh church, and there continue during the time of divine ſervice; they are not to permit any to ſtand idle, walk, or make any noiſe in the church, or to contend for places, &c. they may apprehend thoſe that diſturb the miniſter, &c. and juſtify the appeaſing any diſorder in the church or church-yard; they are to chaſtiſe diſorderly boys, and take off the hats of thoſe who would irreverently keep them on. 1 *Saund.* 13.

Further, they muſt ſearch alehouſes on *Sundays*, that there be no perſons therein, during the divine ſervice; and execute warrants againſt thoſe who profane the Lord's Day, &c. Alſo levy penalties on perſons not coming to church, againſt profaners of the Sabbath in paſtimes, tipling, &c. and for drunkenneſs, curſing and ſwearing, &c. by divers ſtatutes. And they are to preſent to the ordinary all things preſentable by the eccleſiaſtical laws, which relate to the church, the parſon, and pariſhioners: theſe *preſentments* are made upon oath, and uſually twice a year, eſpecially at the viſitation: and what relates to the *church*, is chiefly of repairs, and whether there be a box for alms, in the church, a Bible, Common Prayer Book, and Book of Canons, a deſk for the reader, cuſhion for the pulpit, a communion table, table cloth, cups and covers for bread, flagons and font, a regiſter-book, king's arms ſet up, Lord's prayer, creed and commandments in fair letters, &c.

What concerns the *parſon* is, whether he reads the thirty-nine articles twice a year, and the canons once in the year, preaches every *Sunday* good doctrine, reads the Common Prayer, celebrates the ſacraments, preaches in his gown, viſits the ſick, catechiſes children, marries according to law, &c.

And what relates to the *pariſhioners* is, whether they come to church, and duly attend the worſhip of God, if baptiſm be neglected, women not churched, perſons marrying in prohibited degrees, or without banns or licence, alms-houſes or ſchools abuſed, legacies given to pious uſes, &c. They muſt likewiſe preſent crimes and offences, ſuch as drunkenneſs, fornication, adultery, inceſt, blaſphemy, &c. and by ſtatute popiſh recuſants: and if they refuſe to make preſentments, the parſons or vicars, &c. may preſent to the biſhop all crimes committed in their pariſhes. *Can.* 117. *Cro. Car.* 291. 1 *Vent.* 114.

It is their duty to collect the charity-money upon briefs, which are to be read in churches, and the ſums collected, &c. to be indorſed on the briefs in words at length, and ſigned by the miniſter and *churchwardens*; after which they ſhall be delivered, with the money collected to the perſons undertaking them, in a certain time, under the penalty of 20*l.* A regiſter is to be kept of all money collected, &c. Alſo the undertakers in two months after the receipts of the money, and notice to ſufferers, are to account before a Maſter in Chancery, appointed by the Lord Chancellor. *Stat.* 4 & 5 *Ann. c.* 14.

They are to ſign certificates of receiving the ſacrament by perſons, to qualify them to bear offices, &c. And in *London*, and within the bills of mortality, they muſt fix fire-cocks, keep engines, &c. in their pariſhes, under the penalty of 10*l.* For the maintenance whereof the pariſh is to be aſſeſſed: and the firſt perſon who brings in a pariſh engine, or other large engine with a ſocket, &c. when any fire happens, ſhall be paid as an encouragement 30*s.* the perſon that brings in the ſecond engine 20*s.* and the third 10*s.* &c. *Stat.* 6 *Ann. c.* 31. 7 *Ann. c.* 17.

c. 17. They are likewiſe to levy and receive penalties by particular ſtatutes. 3 *C.* 1. *c.* 3. 9 *Geo.* 2. *c.* 23. 22 *C.* 2. *c.* 8. 16 *C.* 2. *c.* 19. 22 *C.* 2. *c.* 8. & 6 *Ann.* *c.* 31. And ſee 32 *Car.* 2. *c.* 2. 9 & 10 *W.* 3. *c.* 27. 11 *Geo.* 2. *c.* 26. 12 *Geo.* 2. *c.* 29. & 7 *Geo.* 3. *c.* 42.

IV. *Concerning their manner of accounting.*

At the end of the year the *churchwardens* are to yield juſt accounts to the miniſter and pariſhioners, and deliver what remains in their hands to the pariſhioners, or to the new *churchwardens:* in caſe they refuſe, they may be preſented at the next viſitation, or the new officers may by proceſs call them to account before the ordinary, or ſue them by writ of account at Common law. And if all the pariſh have allowed their accounts of the church goods, the ordinary may nevertheleſs call them to account before him too, and puniſh them if he find cauſe; but in laying out their money, they are puniſhable for fraud only, not indiſcretion. If their receipts fall ſhort of their diſburſements, the ſucceeding *churchwardens* may pay them the balance, and place it to their account. 1 *Rol. Abr.* 121. *Can.* 89, 109, *&c.* Diſputes ariſing about *churchwardens* accounts are to be decided before the ordinary: and for diſburſements of any ſum not exceeding 40*s.* the *churchwardens* oath alone is a ſufficient proof; but for all ſums above, receipts are to be produced, *&c.* If *churchwardens* through improvidence, indiſcretion or negligence, either waſte the church goods in their cuſtody, or much damnify the pariſh; on proof thereof they may be removed at any time, by the authority of the ordinary. 8 *El.* 4, 6. 13 *Co.* 70.

By the *Stat.* 3 & 4 *W.* & *M. cap.* 11. In all actions to be brought in the courts of *Weſtminſter*, or at the aſſiſes, for money miſpent by *Churchwardens*, the evidence of the pariſhioners, other than ſuch as receive alms, ſhall be taken and admitted.

Churchwardens are comprehended within the purview of the ſtatutes 7 *Jac.* 1. *cap.* 5. and 21 *Jac.* 1. *cap.* 12. as to pleading the general iſſue to actions brought againſt them, and as to double coſts when they have judgment.

But in action on the caſe againſt a *churchwarden* for a falſe and malicious preſentment, though there be judgment for him, yet he ſhall not have double coſts; for the ſtatute does not extend to ſpiritual affairs.

The ſpiritual court can only order the *churchwardens* accounts to be audited, but cannot make a rate to reimburſe them, becauſe they are not obliged to lay out money before they receive it. *Rep. temp. Hardwicke per Annally.* *p.* 381. *Dawſon* and *Wilkinſon*. *Cro. Car.* 285, 286. See *Church*, *Highways*, *Poor*.

Church-Reeve, Is the ſame with *churchwarden*, (*reve* in the *Sax.* being as much as *guardian* in the *French*) the guardian or overſeer of the church: the word is now out of uſe, but is mentioned by *Chaucer* on the juriſdiction of archdeacons, *viz.*

Of church-reves, *and of teſtaments,*
Of contracts and of lack of ſacraments.

Churcheſſet, or *churchſet*, *ciricſeat*, A *Saxon* word uſed in *Domeſday*, which is interpreted *quaſi ſemen eccleſiæ*, corn paid to the church. *Fleta* ſays, it ſignifies a certain meaſure of wheat, which in times paſt every man on St. *Martin*'s day gave to holy church, as well in the times of the *Britains* as of the *Engliſh*; yet many great perſons, after the coming of the *Romans*, gave that contribution according to the ancient law of *Moſes*, in the name of *firſt fruits*; as in the writ of King *Canutus* ſent to the pope is particularly contained, in which they call it *chirchſed*, as one would ſay *church ſeed.* Selden's Hiſt. Tithes, p. 216.

Church-ſcot, Cuſtomary oblations paid to the pariſh-prieſt; from which duties the religious ſometimes purchaſed an exemption for themſelves and their tenants.

Churle, *ceorle*, *carl*, Was in the *Saxon* time a tenant at will, of free condition, who held ſome land of the *Thanes*, on conditions of rents and ſervices: which *ceorles* were of two ſorts; one that hired the lord's tenementary eſtate, like our farmers; the other that tilled and manured the *demeſnes*, (yielding work and not rent) and were thereupon called his *ſockmen* or *ploughmen*. Spelm.

Cinque Ports, (*quinque portus*) Are thoſe havens that lie towards *France*, and therefore have been thought by our kings to be ſuch as ought to be vigilantly guarded and preſerved againſt invaſion: in which reſpect they have an eſpecial governor, called *Lord warden of the cinque ports*, and divers privileges granted them, as a peculiar juriſdiction; their warden having not only the authority of an admiral amongſt them, but ſending out writs in his own name, *&c.* *Stat.* 32 *Hen.* 8. *c.* 48. 4 *Inſt.* 222.

Cambden tells us, that *Kent* is accounted the key of *England*; and that *William*, called *The Conqueror*, was the firſt who made a conſtable of *Dover* caſtle, and warden of the *cinque ports*, which he did to bring that country under a ſtricter ſubjection to his government; but King *John* was the firſt who granted the privileges to thoſe ports, which they ſtill enjoy: however, it was upon condition that they ſhould provide a certain number of ſhips at their own charge for forty days, as often as the king ſhould have occaſion for them in the wars, he being then under a neceſſity of having a navy for paſſing into *Normondy*, to recover that dukedom which he had loſt. And this ſervice the *barons of the cinque ports* acknowledged and performed, upon the king's ſummons, attending with their ſhips the time limited at their proper coſts, and ſtaying as long after as the king pleaſed at his own charge. *Somner of Rom. Ports in Rent.*

The *cinque ports*, as we now account them, are, *Dover*, *Sandwich*, *Rumney*, *Winchelſea*, and *Rye*; and to theſe we may add *Hythe* and *Haſtings*, which are reckoned as part or members of the *cinque ports:* though by the firſt inſtitution it is ſaid that *Winchelſea* and *Rye* were added as members, and that the others were the *cinque ports*; there are alſo ſeveral other towns adjoining that have the privileges of the ports. Theſe *cinque ports* have certain franchiſes to hold pleas, *&c.* and the king's writs do not run there; but on a judgment in any of the king's courts, if the defendant hath no goods, *&c.* but in the ports; the plaintiff may get the record certified into *Chancery*, and from thence ſent by *mittimus* to the lord warden to make execution. 4 *Inſt.* 223. 3 *Leon.* 3.

The conſtable of *Dover* caſtle is Lord warden of the *cinque ports*. And there are ſeveral courts within the *cinque ports*; one before the conſtable, others within the *ports* themſelves, before the mayors and jurats; another, which is called *curia quinque portuum apud Shepway:* there is likewiſe a court of *Chancery*, in the *cinque ports*, to decide matters of equity; but no original writs iſſue thence. 1 *Danv. Abr.* 793. The juriſdiction of the *cinque ports* is general, extending to perſonal, real, and mix'd actions: and if any erroneous judgment is given in the *cinque ports* before any of the mayors and jurats, writ of error lies not in *B. R.* but it ſhall be redreſſed, according to the cuſtom, by bill in nature of a writ of error *coram domino cuſtode ſeu guardiano quinque portuum apud curiam ſuam*, *&c.* And in theſe caſes the mayor and jurats may be fined, and the mayor removed, *&c.* 4 *Inſt.* 334. *Crompt. Juriſd.* 138.

It has been obſerved that the *cinque ports* are not *jura regalia*, like counties palatine, but are parcel of the county of *Kent:* ſo that if a writ be brought againſt one for land within the *cinque ports*, and he appears and pleads to it, and judgment is given againſt him in the *Common Pleas*, this judgment ſhall bind him; for the land is not exempted out of the county, and the tenant may waive the benefit of his privilege. *Wood's Inſt.* 519.

The *cinque ports* cannot award proceſs of outlawry. *Cro. Eliz.* 910. And a *quo minus* lies to the *cinque ports. ibid.* 911. If a man is impriſoned at *Dover* by the lord warden, an *habeas corpus* may be iſſued; for the privilege that the king's writ lies not there is intended between *party* and *party*, and there can be no ſuch privilege againſt the *king*; and an *habeas corpus* is a *prerogative writ*, by which the king demands an account of the *liberty* of the *ſubject*. *Cro Jac.* 543. 1 *Nelſ. Abr.* 447.

Certiorari lies to the *cinque ports*, to remove indictments; and the juriſdiction that *brev. dom. regis non currit* is only in *civil cauſes* between party and party: but this has been held to extend only to indictments before the mayors, barons, *&c.* as juſtices of peace, on late ſtatutes, *&c. Cro. Car.* 252, 253. 2 *Hawk. P. C.* 286, 287.

Circa, A watch; from which *circuitor*; *quatuor* circuitores *monaſterii quos alio nomine* circas *vocant, juxta præceptum ſancti Benedicti certis horis circuire debent monaſterii officinas.*

Circada, A tribute anciently paid to the biſhop or archdeacon for viſiting the churches. *Du Freſne.*

Circuit, or **Circuity of Action,** (*circuitus actionis*) Is a longer courſe of proceeding to recover a thing ſued for than is needful: as if a perſon grant a rent-change of 10*l.* *per annum* out of his manor of *B.* and after the grantee diſſeiſeth the grantor of the ſame manor, who brings an aſſiſe and recovers the land, and 20*l.* damages, which being paid, the grantee brings his action for 10*l.* of his rent due during the time of the diſſeiſin, which he muſt have had if no diſſeiſin had been: this is called *circuity of action* becauſe as the grantor was to receive 20*l.* damages, and pay 10*l.* rent, he might have received but 10*l.* only for damages, and the grantee might have kept the other 10*l.* in his hands by way of retainer for his rent, and ſo ſaved his action, which appears to be needleſs. *Terms de Ley.* This example ſhews that an action may be rightfully brought for a debt or duty, and yet be wrong; for that it might have been as well otherwiſe anſwered and determined.

Circuits, Certain diviſions of the kingdom appointed for the judges to go, twice a year, for adminiſtering of juſtice, in the ſeveral counties. Theſe circuits are made in the reſpective vacations, after *Hilary* and *Trinity* terms. See *Black. Com.* 3 *V.* 58. and 4 *V.* 415, 417.

Circumſpecte Agatis, Is the title of a ſtatute made *anno* 13 *Ed.* 1. relating to *prohibitions*, preſcribing certain caſes to the judges, wherein the king's prohibition lies not. 2 *Inſt.* 187.

Circumſtantial Evidence, or the *doctrine of preſumptions*, Takes place, next to *poſitive proof*: for when the fact itſelf cannot be demonſtratively evinced, that which comes neareſt to the proof of the fact is the proof of ſuch circumſtances which either *neceſſarily* or *uſually* attend ſuch facts; and theſe are called preſumptions, which are only to be relied upon till the contrary be actually proved. *Co. Lit.* 373. *Black. Com.* 3 *V.* 371.

Circumſtantibus, By-ſtanders; and ſignifies in our law the ſupplying or making up the number of *jurors*, if any impanelled appear not, or appearing are challenged by either party, by adding to them ſo many of thoſe that are preſent or ſtanding by that are qualified as will ſerve the turn. *Stat* 35 *H.* 8. *cap.* 6. The act of ſupplying is uſually called a *tales de circumſtantibus.* See *Tales.*

Citation, (*citatio*) A ſummons to appear, applied particularly to proceſs in the ſpiritual court. The eccleſiaſtical courts proceed according to the courſe of the civil and canon laws, by *citation*, *libel*, &c. A perſon is not generally to be cited to appear out of the dioceſe, or peculiar juriſdiction where he lives; unleſs it be by the archbiſhop, in default of the ordinary; where the ordinary is party to the ſuit, in caſes of appeal, *&c.* And by law a defendant may be ſued where he lives, though it is for ſubſtracting tithes in another dioceſe, *&c.* 1 *Nelſ.* 449. By the *Stat.* 23 *Hen.* 8. *cap.* 9. Every archbiſhop may cite any perſon dwelling in any biſhop's dioceſe within his province for hereſy, *&c* if the biſhop or other ordinary conſents, or if the biſhop or ordinary, or judge, do not his duty in puniſhing the offence. Where perſons are cited out of their dioceſe, and live out of the juriſdiction of the biſhop, a *prohibition* or *conſultation* may be granted: but where perſons live in the dioceſe, if when they are cited they do not appear, they are to be excommunicated, *&c.* The above ſtatute was made to maintain the juriſdiction of inferior dioceſes; and if any perſon is cited out of the dioceſe, *&c.* where the Civil or Canon law doth not allow it, the party grieved ſhall have double damages. If one defame another within the peculiar of the archbiſhop, he may be puniſhed there; although he dwell in any remote place out of the archbiſhop's peculiar. *Godb.* 190.

Citatio ad inſtantiam Partis, Is mentioned in 22 & 23 *Car.* 2. *c.* 9. for laying impoſitions on proceedings at law.

City, (*civitas*) By *Cowel* is a town corporate, which hath a biſhop and cathedral church, which is called *civitat*, *oppidum*, and *urbs*; *civitas*, in regard it is governed by juſtice and order of magiſtracy; *oppidum*, for that it contains a great number of inhabitants: and *urbs*, becauſe it is in due form begirt about with walls. But *Crompton*, in his Juriſdictions, where he reckons up the cities, leaveth out *Ely*, although it hath a biſhop and cathedral church; and puts in *Weſtminſter*, though it hath not at preſent a biſhop: and Sir *Edward Coke* makes *Cambridge* a city; yet there is no mention that it ever was an epiſcopal ſee. Indeed it appears by the *Stat.* 35 *H.* 8. *cap.* 10. that there was a biſhop of *Weſtminſter*; ſince which, by 27 *Eliz. cap.* 5. it is termed a *city*, or borough: and notwithſtanding what the Lord *Coke* obſerves of *Cambridge*, by the *Stat.* 11 *H.* 7. *c.* 4. *Cambridge* is called only a town.

Kingdoms have been ſaid to contain as many cities as they have ſeats of archbiſhops and biſhops; but according to *Blount*, *city* is a word which hath obtained ſince the conqueſt; for in the time of the *Saxons* there were no *cities*, but all great towns were called *burghs*, and even *London* was then ſtiled *London Burgh*; as the capital of *Scotland* is now called *Edinburgh*. And long after the conqueſt the word *city* is uſed promiſcuouſly with the *burgh*, as in the charter of *Leiceſter* it is called both *civitas* and *burgus*; which ſhews that thoſe writers were miſtaken, that tell us every *city* was or is a biſhop's ſee. And tho' the word *city* ſignifies with us ſuch a town corporate as hath uſually a biſhop and cathedral church; yet it is not always ſo. See *Black. Com.* 1 *V.* 114.

As to the antient ſtate of cities and villages, whilſt the feudal policy prevailed they held of ſome great lord, on whom they depended for protection, and were ſubject to his arbitrary juriſdiction. The inhabitants were deprived of the natural and moſt unalienable rights of humanity. For various inſtances thereof, ſee *Robertſ. Hiſt. Emp. Charles* V. 1 *V.* 31.

The freedom of cities was firſt eſtabliſhed in *Italy*, principally owing to the introduction of *commerce*. Ib. 32.

'Twas afterwards gradually introduced into *France* and other countries of *Europe*, and in our own country many cauſes contributed, which a work of this kind will not permit us to enumerate.

Another ſenſe may be affixed to to the term *city*.

Rouſſeau, in his *Social Contract*, l. 1. c. 6. ſays, "This act of aſſociation (*i. e.* of the members of a ſtate) converts the ſeveral individual contracting parties into one moral collective body, compoſed of as many members as there are votes in the aſſembly, which receives alſo from the ſame act its unity and exiſtence. This public perſonage, which is thus formed by all its members, uſed formerly to be denominated a *city*, and at preſent takes the name of a *republic* or *body-politic*. It is alſo called, by its ſeveral members, a *ſtate*, when it is paſſive; the *ſovereign*, when it is active; and ſimply a *power*, when it is compared with other bodies of the ſame nature. With regard to the aſſociates themſelves, they take collectively the name of the *people*; and are ſeparately called *citizens*, as partaking of the ſovereign authority; and *ſubjects*, as ſubjected to the authority of the ſtate."

Rouſſeau has ſubjoined a note, on the term *city*, which I think is worth the attention of every one, who hath not already ſeen it. He ſays, "The true ſenſe of this word is almoſt entirely perverted among the moderns; moſt people take a town for a *city*, and an houſe-keeper for a citizen. Such are ignorant, however, that tho' houſes may form a town, it is the citizens only that form a city. This ſame error formerly coſt the *Carthaginians* very dear. I do not remember, in the courſe of my reading, to have ever found the title of *cives* given to the ſubjects of a prince, not even formerly to the *Macedonians*, nor, in our times to the *Engliſh*, *though more nearly bordering on liberty than any other nation* The *French* are the only people who familiarly take on themſelves the name of *citizens*, becauſe they have no juſt idea of its meaning, as may be ſeen in their dictionaries; for, were it otherwiſe, indeed, they would be guilty of high-treaſon, in aſſuming it. This term is with them rather expreſſive of a *virtue* than of a *privilege*. Hence, when *Bodin* ſpoke of the citizens and inhabitants of *Geneva*, he committed a wretched blunder in miſtaking the one for the other. Mr. *D'Alembert* indeed has avoided this miſtake in the *Encyclopédie*, where he has properly diſtinguiſhed the four orders of the people (and even five, reckoning mere ſtrangers) that are found in our city, and of which two only compoſe the republic: no other *French* author that I know of hath ever comprehended the meaning of the word *citizen*. Vide alſo *Hobbes's Philoſophical Rudiments*, l. 1. c. 5. ſect. 12. & c. 6. &c. Alſo *Encyclopédie tom.* 3. *fo.* 485. *verb. Cité*.

Citizens, (*civis*) Of *London*, are either freemen, or ſuch as reſide and keep a family in the *city*, &c. and ſome are *citizens* and freemen; and ſome are not, who have not ſo great privileges as the others: the *citizens* of *London* may preſcribe againſt a ſtatute, becauſe their liberties are reinforced by ſtatute. 1 *Rol. Rep.* 105.

Civil Law, Is defined to be that *law* which every particular nation, commonwealth or city, has eſtabliſhed peculiarly for itſelf: *jus civile eſt, quod quiſque populus ſibi conſtituit. Juſt. Inſt.* But more ſtrictly the *civil law* is that which the old *Romans* uſed, compiled from the laws of nature and of nations. The twelve tables were alſo the foundation of this law; which for its great wiſdom is as it were the Common law, or the foundation of it, in all well governed kingdoms, a very few only excepted; and no other laws are eſteemed comparable to it for its equity. The *civil law* is either *written* or *unwritten*; and the *written law* is *public* or *private*: *public*, which immediately regards the ſtate of the commonwealth, as the enacting and execution of laws, conſultations about war and peace, eſtabliſhment of things relating to religion, *&c.* *Private*, that more immediately hath reſpect to the concerns of every particular perſon. The *unwritten law* is cuſtom introduced by the tacit conſent of the people only, without any particular eſtabliſhment: the authority of it is great, and it is equal with a written law, if it be wholly uninterrupted, and of a long continuance.

The whole *civil law* is contained in four books or tomes, 1. *The code.* 2. *The pandects or digeſts.* 3. *The inſtitutes.* 4. *The novels or authenticks.* The *code* is divided into twelve books, and was the firſt book of the *civil law*, which the Emperor *Juſtinian* ordered to be collected: it was publiſhed in the year 534, and contains the conſtitutions, *&c.* of fifty-ſix Emperors, and their wiſe councils. The firſt book of it treats of religion, prieſts, *&c.* Other books are upon trade, merchandiſe, the exchequer, *&c*,

The digeſt or pandects, was collected from the works and commentaries of the ancient lawyers, ſome whereof lived before the coming of our Saviour: this tome is divided into fifty books; and upon a more particular diviſion, the whole digeſt is divided into ſeven parts: the firſt part contains the elements of the *law*, as what is juſtice, right, *&c.* The ſecond part treats of judges and judgments: the third part of perſonal action, *&c.* The fourth part of contracts, pawns and pledges: the fifth part of wills, teſtaments, *&c.* The ſixth part of the poſſeſſion of goods: the ſeventh part of obligations, crimes, puniſhments, *&c.* *The inſtitutes* contain a ſyſtem of the whole body of *law*, and are an epitome of the digeſt divided into four books; but ſometimes they correct the digeſt: they are called inſtitutes, becauſe they are of inſtruction, and ſhew an eaſy way to the obtaining a knowledge of the *Civil law:* but they are not ſo diſtinct and comprehenſive as they might be, nor ſo uſeful at this time as they were at firſt. The *novels or authenticks* were publiſhed at ſeveral times without any method: they are termed *novels* as they are new *laws*, and *authenticks*, being authentically tranſlated from the *Greek* into the *Latin* tongue; and the whole volume is divided into nine collations, conſtitutions or ſections, and they again into 168 novels, which alſo are diſtributed into certain chapters: the firſt collation relates to heirs, executors, *&c.* The ſecond, the ſtate of the church: the third is againſt bawds: the fourth concerns marriages, *&c.* The fifth forbids the alienation of the poſſeſſions of the church: the ſixth ſhews the legitimacy of children, *&c.* The ſeventh determines who ſhall be witneſſes: the eighth ordains wills to be good, though imperfect, *&c.* And the ninth contains matter of ſucceſſion in goods, *&c.*

To thoſe tomes of the *Civil law* we may add the *book of feuds*, which contains the cuſtoms and ſervices that the ſubject or vaſſal oweth to his prince or lord, for ſuch lands or fees as he holdeth of him. *The conſtitutions of the Emperor*, are either by a *reſcript*, which is the letter of the Emperor in anſwer to particular perſons who enquire the law of him; or by *edict*, which the Emperor eſtabliſhes of his own accord, that it may be generally obſerved by every ſubject; or by *decree*, which the Emperor pronounces between plaintiff and defendant, upon hearing a particular cauſe. The power of iſſuing forth reſcripts, edicts and decrees, was given to the prince by the *lex regia*, wherein the people of *Rome* wholly ſubmitted themſelves to the government of one perſon, *viz.* *Julius Cæſar*, after the defeat of *Pompey*, &c. And by this ſubmiſſion the prince could not only make *laws*, but was eſteemed above all coercive power of them. The matters wherein the whole *Civil law* is generally exerciſed, relate either to *perſons* in the Common-wealth; or the *things* belonging or not belonging to them; or to the *actions* whereby men claim ſuch things as are due to them by the *law*, *&c.*

The *Civil law* is allowed in this kingdom in the two Univerſities, for the training up of ſtudents, *&c.* In matters of foreign treaties between princes; marine affairs *civil* and *criminal*; in the ordering of martial cauſes; the judgments of enſigns and arms, rights of honour, *&c.* Vide *Treatiſe of Laws*, *pag.* 243, 396. *Ferriers Hiſt. of Civ. Law.* and *Dr. Taylor's Elements.*

Civil List, To defray the extraordinary charge of the *civil liſt*, *viz.* for paying debts and arrears due to his majeſty's ſervants, tradeſmen, *&c.* and other uſes of his civil government, 1,000,000 *l.* was granted by parliament, by *Stat.* 11 *Geo.* 1. *c.* 16. Vide *King's Houſhold.*

Clack Wool, Is to cut off the ſheep's mark, which makes it weigh lighter; as to *force wool*, ſignifies to clip off the upper and hairy part thereof; and to *bard* it, is to cut the head and neck from the reſt of the fleece. *Stat.* 8 *H.* 6. *cap.* 22.

Clades, *Clida*, *cleta*, *cleia*, from the Brit. *clie*, and the Iriſh *clia*, A wattle or hurdle; and a hurdle for penning or folding of ſheep, is ſtill in ſome counties of *England* called a *cley*. Paroch. Antiq. p. 575.

Clarendon, (*conſtitutions* of) Certain *conſtitutions*, made in the reign of *Hen.* 2. *A. D.* 1164, in a great council held at *Clarendon*, whereby the King checked the power of the *Pope*, and his Clergy, and greatly narrowed the total exemption they claimed from the ſecular juriſdiction. *Black. Com.* 4 *V.* 415.

Claretum, A liquor made of wine and honey, clarified or made clear by decoction, *&c.* which the *Germans*, *French*, and *Engliſh*, called *hippocras:* and it was from this, the red wines of *France* were called *claret*.——*Ad hæc etiam in tanta abundantia vinum hic videas, & ſiceram, pigmentum, &* claretum *muſtum & medonem.* Girald. Camb. apud Wharton. Ang. Sax. Par. 2. p. 480.

Claim, (*clameum*) Is a challenge of intereſt in any thing that is in the poſſeſſion of another, or at leaſt out of a man's own, as *claim* by charter, by deſcent, *&c.* And *claim* is either verbal, where one doth by words *claim* and challenge the thing that is ſo out of his poſſeſſion; or it is by an action brought, *&c.* and ſometimes it relates to lands, and ſometimes to goods and chattels. *Lit. Sect.* 420. Where any thing is wrongfully detained from a perſon, this *claim* is to be made; and the party making it, may thereby avoid deſcents of lands, diſſeiſins, *&c.* and preſerve his title, which otherwiſe would be in danger of being loſt. *Co. Lit.* 250. A man who hath preſent right or title to enter, muſt make a *claim*; and in caſe of reverſions, *&c.* one may make a *claim* where he hath right, but cannot enter on the lands: when a perſon dares not make an entry on land, for fear of being beaten or other injury, he may approach as near as he can to the land, and *claim* the ſame; and it ſhall be ſufficient to veſt the ſeiſin in him. 1 *Inſt.* 25.

If nothing doth hinder a man, having right to land, from entering or making his *claim*; there he muſt do ſo, before he ſhall be ſaid to be in poſſeſſion of it, or can grant it over to another: but where the party who hath right, is in poſſeſſion already, and where an entry or *claim* cannot be made, it is otherwiſe. 1 *Rep*. 157. A *claim* will deveſt an eſtate out of another when the party muſt enter into ſome part of the land; but if it be only to bring him into poſſeſſion, he may do it in view. By *claim* of lands in moſt caſes is intended a *claim* with an entry into part of the land, or by a near approach to it. *Co. Lit*. 252, 254. *Poph*. 67. One in reverſion after an eſtate for years, or after a ſtatute merchant, ſtaple, or *elegit*, may enter and make a *claim* to prevent a deſcent, or avoid a collateral warranty. And *claim* of a remainder by force of a condition muſt be upon the land, or it will not be ſufficient. *Co. Lit*. 202.

If a man ſeiſed of lands in right of his wife, make a feoffment in fee on condition, and the huſband dieth, and then the condition is broken, and the heir enters; in this caſe the wife need not *claim* to get poſſeſſion of her eſtate, for the law doth veſt it in her without any *claim*. *Co. Lit*. 202. 8 *Rep*. 43.

The *claim* of the particular tenant, ſhall be good for him in reverſion or remainder; and of him in reverſion, &c. for particular tenant: ſo *claim* of a copyholder, will be good for the lord, &c. But if tenant for years, in a court of record *claim* the fee of his land, it is a forfeiture of his eſtate. *Plowd*. 359. *Co. Lit*. 251. A *claim* may be made by the party himſelf; and ſometimes by his ſervants or deputy: and a guardian in ſocage, &c. may make a claim or enter in the name of the infant that hath right, without any commandment. *Co. Lit*. 245.

Claim or entry ſhould be made as ſoon as may be; and by the Common law it is to be within a year and a day after the diſſeiſin, &c. and if the party who hath unjuſtly gained the eſtate, do afterwards occupy the land, in ſome caſes an aſſiſe, treſpaſs, or forcible entry may be had againſt him. *Lit. Sect*. 426, 430. If a fine is levied of lands, ſtrangers to it are to enter and make a *claim* within five years, or be barred: infants after their age, feme coverts after the death of their huſbands, &c. have the like time, by *Stat*. 1 *R*. 3. *cap*. 7. If a diſſeiſor levy a fine, and the diſſeiſee enters his *claim* in the record of the foot of the fine, this is not ſuch a *claim* as ſhall avoid the ſtatute. 4 *Hen*. 7. *cap*. 24. 1 *Lil. Abr*. 270. See the *Stat*. 4 *Ann. c*. 16. *ſect*. 16. and *Continual Claim*.

Claim of Liberty, Is a ſuit or petition to the King in the Court of *Exchequer*, to have liberties and franchiſes confirmed there by the King's Attorney General. *Co. Ent*. 93.

Clamea admittenda in Itinere per Attornatum, A writ by which the King commands the juſtices in eyre to admit a perſon's claim by attorney who is employed in the King's ſervice, and cannot come in his own perſon. *Reg. Orig*. 19.

Clap-board, Is a board cut in order to make caſks or veſſels; which ſhall contain three feet and two inches at leaſt in length: and for every ſix ton of beer exported, the ſame caſk, or as good, or 200 of *clap-boards* ſhall be imported, by ſtatute 35 *El. c*. 11.

Clarigarius Armorum, An herald at arms. *Blount*.

Clario, A trumpet. *Statimque clangebant* clariones & *tubæ*. Knighton, anno 1346.

Claſſiarius, A ſeaman, or ſoldier ſerving at ſea.——*Omneſque ejus capitaneos, milites* & claſſiarios, &c. Chart. Carol. 5. Imperator. Thomæ Comit. Surr. dat. in urbe Londonienſi, 8 Junii 1522.

Claud, *(Brit.)* A ditch: *Claudere*, to encloſe, or turn open fields into incloſures——*Dedi & conceſſi totam culturam ad* claudendum *& faciendum quicquid inde dictis canonicis placuerit*. Paroch. Antiq. 236.

Claves Inſulæ, Is a term uſed in the *Iſle of Man*, where all ambiguous and weighty caſes are referred to twelve perſons, whom they call *claves inſulæ*, i. e. the keys of the iſland.

Clavia. In the inquiſition of ſerjeanties in the 12th and 13th years of King *John*, within the counties of *Eſſex* and *Hertford*; Boydin Aylet *tenet quatuor lib. terræ in* Bradwell, *per manum* Willielmi *de dono per ſerjeantiam* clavie, *viz*. By the ſerjeanty of the club or mace. *Brady's Append. Introduct. to Eng. Hiſt*. 22.

Clavigeratus, A treaſurer of a church.——*Aliter* Willielmus Wallingford *clavigeratus*. Mon. Angl. tom. 1. p. 184.

Clauſe Rolls, *(rotuli clauſi)* Contain all ſuch matters of record as were committed to cloſe writs: theſe rolls are preſerved in the *Tower*.

Clauſtura, Bruſhwood for hedges and fences. King *Henry* 3. gave to the prior and canons of *Chetwood*, *quinque carucatas* clauſturæ *ad prædictæ terræ* clauſturam *ſuſtinendam*. Paroch. Antiq. 247.

Clauſum fregit, Signifies in our law as much as an action of treſpaſs; and it is a writ ſo called, becauſe the defendant is ſummoned thereby to anſwer *Quare clauſum fregit* of the plaintiff, that is why he did ſuch a treſpaſs. It is the courſe of the *Common Pleas*, to declare in actions (eſpecially upon an *aſſumpſit* or the like) upon a *quare clauſum fregit*, as they do on a *latitat* in the *King's Bench*. 2 *Vent*. 192, 259. But by the Lord *Clarendon*'s orders in Chancery, curſitors of that court are not to make writs of *clauſum fregit*, &c. in *London*, without ſpecial warrant from the Lord Chancellor, or Maſter of the Rolls, unleſs it appear by affidavit that the ſame is the proper cauſe of action, &c. This order is now, we apprehend, totally diſregarded.

In *C. B*. a *pone* in treſpaſs, (and here the proceedings are by *præcipe* or *pone*) according to the ancient courſe, is made out thus: Wilts, ſſ. *ſi* A. B. *fec*. &c. *tunc pone* C. D. *nuper de*, &c. *de placito quare vi & armis* clauſum *& domum ipſius* A. fregit *& alia enormia ei intulit, ad grave dampn. ipſius* A. *et contra pacem*. This is delivered to the filazer of the county to draw out the *capias*, &c. And debt may be added to it, *viz. pone*, &c. C. D. *nuper de*, &c. *in com. tuo* clauſum freg. *apud*, &c. *Ac etiam in debito pro* 50 *l*. &c.

Clauſum Paſchæ, *Stat. Weſtm*. 1. *In craſtino* clauſi paſchæ, or *In craſtino octabis paſchæ*, which is all one, that is the morrow of the *utas* of *Eaſter*. 2 *Inſt*. 157. Clauſum paſchæ, i. e. *Dominica in albis*; *ſic dictum, quod* paſcha claudat. *Blount*.

Clauſura Heyæ, The encloſure of a hedge—Johannes Stanley *Ar. clamat quod ipſe & hæredes ſui ſunt quieti de* clauſura heye *de* Macclesfield, *ſcil*. clauſura *unius rodæ terræ circiter* hayam *prædict*. Rot. Plac. in itinere apud Ceſtriam, ann. 14 H. 7.

Clawa, A cloſe, or ſmall meaſure of land.——*Unam* clawam *terræ cum pertinentiis*. Mon. Angl. tom. 2. pag. 250.

Cleptor, This word is taken for a rogue or thief. *Hoveden anno* 946.

Clergy, *(clerus)* Signifies the aſſembly or body of clerks or eccleſiaſticks, being taken for the whole number of thoſe who are *de clero Domini*, of our Lord's lot or ſhare, as the tribe of *Levi* was in *Judæa*; and are ſeparate from the noiſe and buſtle of the world, that they may have leiſure to ſpend their time in heavenly meditation and prayer.

Sometimes *clergy* is uſed for a plea to an indictment of felony, &c. being an ancient privilege of the church, where a prieſt or one in orders is arraigned of felony, before a ſecular judge, who may pray his *clergy*; which is as much as if he prayed to be delivered to his ordinary, to purge himſelf of the offence objected againſt him. *Staundf. P. C. lib*. 2. *cap*. 41. Anciently the *clergy* ſtrongly inſiſted that by the law of God their perſons were ſo ſacred, that they could not, without a violation of that law, be convened before, and much leſs be puniſhed by, any ſecular judge; but it hath been obſerved that this is not warranted by ſcripture: though all perſons in holy orders have this privilege from the Canon law. 2 *Hawk. P. C*. 337.

It is ſaid by Lord Chief Juſtice *Hale*, that anciently princes converted to Chriſtianity, in favour of the *clergy*, and for encouraging them in their offices and employments, did grant to them very bountiful privileges; as 1ſt, An *exemption* of *places* conſecrated to religious duties from arreſts for crimes, which was the original of ſanctuaries. 2dly, The *exemption* of their *perſons* from criminal proceedings, in ſome caſes capital, before ſecular judges;

and this was the true original of the *privilegium clericale:* the *clergy* increaſing in wealth, power and intereſt, afterwards ſet up for themſelves; and that which they obtained by the favour of princes and ſtates at firſt, they now began to claim as their right, and that of the higheſt nature, *jure divino*; and by their canons and conſtitutions, procured vaſt extenſions of thoſe exemptions. 2 *Hale's Hiſt. P.C.* 323.

As to the *clergy* in general, they are *regular* or *ſecular:* thoſe are *regular* which live under certain rules, being of ſome religious order, and are called men of religion, or *the religious:* ſuch as all Abbots, Priors, Monks, *&c.* The *ſecular* are thoſe that live not under any certain rules of the religious orders; as Biſhops, Deans, Parſons, Vicars, *&c.*

Although the *clergy* claimed an exemption from all ſecular juriſdiction, yet *Mat. Paris* tells us, that ſoon after *William* the *Firſt* had conquered *Harold*, he ſubjected the biſhopricks and abbeys who held *per baroniam*, that they ſhould be no longer free from military ſervice; and for that purpoſe he in an arbitrary manner regiſtred how many ſoldiers every biſhoprick and abbey ſhould provide, and ſend to him and his ſucceſſors in time of war; and having placed theſe regiſters of eccleſiaſtical ſervitude in his treaſury, thoſe who were aggrieved, departed out of the realm: but the *clergy* were not, till then, exempted from all ſecular ſervice; becauſe by the laws of King *Edgar* they were bound to obey the ſecular magiſtrate in three caſes, *viz.* Upon any *expedition to the wars*, and to contribute to the building and repairing of *bridges*, and of *caſtles* for the defence of the kingdom.

It is probable that by expedition to the wars, it was not at that time intended they ſhould perſonally ſerve, but contribute towards the charge: one they muſt do; as appears by the petition to the King, *anno* 1267, *viz. Ut omnes* clerici *tenentes per baroniam vel feudum laicum, perſonaliter armati procederent contra regios adverſarios, vel tantum ſervitium in expeditione regis invenirent, quantum pertineret ad tantam terram vel tenementum.* But their anſwer was, that they ought not to fight with the military but with the ſpiritual ſword, that is with prayers and tears; that they were to maintain peace and not war, and that their baronies were founded on charity; for which reaſon they ought not to perform any military ſervice. *Blount.*

That the *clergy* had greater privileges and exemptions at Common law than the *laity* is certain; for they are confirmed to them by *Magna Charta*, and other ancient ſtatutes; but theſe privileges are in a great meaſure loſt, the *clergy* being included under general words in later ſtatutes; ſo that *clergymen* are liable to all public charges impoſed by act of parliament, where they are not particularly excepted. Indeed they are not at this day to undergo temporal offices, as the office of ſheriff, conſtable, *&c.* (though they are ſometimes in the commiſſion of the peace, in which commiſſion they may either act as juſtices, or not act at their pleaſure) nor are they to ſerve on juries, or obliged to appear at turns and leets; or to be preſſed to ſerve in the wars in perſon, although by ſtatutes they are compellable to contribute to the charge of a war, and to muſters of the militia: their bodies are not to be taken upon ſtatutes merchant or ſtaple, *&c.* for the writ to take the body of the conuſor is *ſi laicus ſit*; and if the ſheriff or any other officer arreſt a *clergyman* upon any ſuch proceſs, it is ſaid an action of falſe impriſonment lies againſt him that does it, or the *clergyman* arreſted may have a *ſuperſedeas* out of *Chancery*.

In action of treſpaſs, account, *&c.* againſt a perſon in holy orders, wherein proceſs of *capias* lies, if the ſheriff return that the defendant is *clericus beneficiatus nullam habens laicum feodum ubi ſummoneri poteſt*; in this caſe the plaintiff cannot have a *capias* to arreſt his body; but the writ ought to iſſue to the biſhop, to compel him to appear, *&c.* But on *execution* had againſt ſuch *clergyman*, a ſequeſtration ſhall be had of the profits of his benefice. *Clergymen* may not be arreſted in the church, or church-yard, while attending on divine ſervice, *&c.* on pain of impriſonment, and ranſom at the King's pleaſure, and likewiſe to make agreement with the party: and he that beats a *clergyman*, may be obliged to do penance in the Spiritual Court

Theſe are all the privileges remaining on civil accounts: though by the Common law, they were to be free from the payment of tolls, in all fairs, and markets, as well for all the goods gotten upon their church livings, as for all goods and merchandiſes by them bought to be ſpent upon their rectories; and they had ſeveral other exemptions, *&c.* Theſe privileges, for the moſt part, have been allowed the *clergy*, that they might with the more freedom attend the ſervice of God and religion, and be reſpected as they ought; and therefore they are not to undertake any ſecular buſineſs, by which they may be diverted from their duty, or be brought into contempt.

They are uſed like other men in criminal caſes; except as to burning in the hand for felony, from which upon producing of their orders, or the ordinary's certificate, they ought to be freed: and though they have had the privilege of the *clergy* for a felony, yet they may again have their *clergy*, and ſo cannot a layman. But ſee *Stat.* 28 *Hen.* 8. *c.* 1. In ancient times *clergymen* convicted of crimes, were delivered over to the ordinary, to be puniſhed by the eccleſiaſtical laws; but this privilege is long ſince aboliſhed, nor was it ever allowed in treaſon or ſacrilege. *Wood's Inſt.* 24. *Parſon's Counc.* 145, *&c.* 2 *Inſt.* 4, 58, *&c.* *Black. Com.* 4 *V.* 358.

Benefit of clergy, we have already ſaid, is an ancient privilege, where one in orders claimed to be delivered to his ordinary to purge himſelf of a felony. And this purgation was to be by his own oath affirming his innocence, and the oaths of twelve compurgators as to their belief of it, before a jury of twelve clerks: if the clerk failed in his purgation, he was deprived of his character, whereby he became a mere layman, or he was to be kept in priſon till a pardon was obtained; but if he purged himſelf, he was ſet at liberty. Sometimes the delivery to the ordinary was without purgation, as upon attainder by confeſſion of the felony, or by verdict, where the felony was notorious, and then the clerk was to be degraded, or kept in priſon by the ordinary, *&c.* though in theſe caſes the ordinaries would frequently proceed to purgation. But purgation is now taken away by *Stat.* 18 *Eliz. cap.* 7. which enacts, that where an offender is admitted to his *clergy*, after burning in the hand, he ſhall not be delivered to the ordinary, but ſhall be enlarged by the court, *&c.* And *the benefit of clergy*, and burning in the hand, comes in the place of purgation at Common law.

In ancient times, in the King's courts, where felonies were determined, the biſhop or his deputy were to attend to inform the court whether the felon could read as a clerk or not; but the court was ſtill to judge of his ſufficiency. Since the *Stat.* 18 *Eliz. c.* 7. every man to whom *benefit of clergy* was granted, hath been put to read at the bar after found guilty, and convicted of felony, and ſo burnt in the hand, and ſet free for the firſt time, if the ordinary's commiſſioner or deputy ſtanding by did ſay,—*Legit ut clericus*; or otherwiſe he was to be hanged. But reading at laſt, as well as purgation, is wholly laid aſide; for by the 5 *Ann. c.* 6. if any perſon convicted of ſuch felony, for which he ought to have the *benefit of the clergy*, doth pray the *benefit* of this act, he ſhall not be required to read, but ſhall be puniſhed as a clerk convict.

A lord of parliament ſhall have the *benefit of his clergy*, though he cannot read, and without burning in the hand, for the firſt time only; and the King may pardon the burning of the hand in others, which is not ſo much in nature of a puniſhment, as a mark to notify that the perſon may have his *clergy* but once.

But he ſhall not be ouſted of his clergy, by the bare mark in his hand, or by a parol averment, without the record teſtifying it, or a tranſcript thereof, according to the following ſtatutes. 2 *H. H.* 373.

By *Stat.* 34 & 35 *H.* 8. *cap.* 14. The clerk of the crown, or of the peace, or of aſſiſe, ſhall certify a tranſcript briefly of the tenor of the indictment, outlawry, or conviction, and attainder, into the King's Bench in 40 days: And the clerk of the crown, when the judges of aſſiſe, or juſtices of the peace write to him for the names of ſuch perſons, ſhall certify the ſame, with the cauſes of the conviction or attainder.

Another method is given by the *Stat.* 3 *W. & M. c.* 9. *ſect.* 7. which enacts, that the clerk of the crown, clerk of the peace, or clerk of aſſiſe, where a perſon admitted to clergy ſhall be convicted, ſhall at the requeſt of the proſecutor, or any other on the King's behalf, certify a tranſcript briefly and in few words, containing the effect and tenor of the indictment and conviction of his having the benefit of *clergy*, and the addition of the party, and the certainty of the felony and conviction, to the judges where ſuch perſon ſhall be indicted for any ſubſequent offence.

Alſo it ſeems, that if the party deny that he is the ſame perſon, iſſue muſt be joined upon it, and it muſt be found upon trial that he is the ſame perſon, before he can be ouſted of *clergy*. 2 *H. H.* 373.

The privilege of *clergy* is ſaid to have its beginning from an encroachment of the *Pope* upon the temporal power, in behalf of the *clergy*, whom he endeavoured to exempt from the juriſdiction of lay judges in caſe of life and member; which the temporal courts would not yield to, but only in part: and firſt they would indict clerks for felony, as well as others, and proceed thereon till the ordinary did demand them; and if the ordinary would not demand them, the King's courts proceeded to conviction, attainder and execution; and if the ordinary did claim clerks before conviction, then an inquiſition was taken whether the party was guilty or not; and if acquitted, he was diſcharged; but if found guilty, then delivered to the ordinary, &c. The privilege ſo reſtrained was confirmed and eſtabliſhed by the ſtatute of *Weſtm.* 1. *cap.* 2. and allowed by divers other acts of parliament; and though originally the *clergy* never intended that any ſhould have that privilege, but thoſe who were in holy orders; yet afterwards they extended it to thoſe who were not ſtrictly in orders, but were aſſiſtants to them in doing divine offices.

As to laymen being admitted to this privilege, it hath been obſerved that in thoſe days few were bred to literature, but thoſe who were actually in orders, or educated for that purpoſe; and therefore the way of trial whether one was a clerk or no, was by reading, of which the court was judge; for if he could not read, the court would not deliver him as a clerk, though the ordinary did claim him; and if he did read, he ſhould be allowed as a clerk, though the ordinary refuſed him: and reading being the way of trial, whether a man was a clerk or not, without further examination into any other qualification, by an equitable conſtruction of the ſtatutes that eſtabliſhed and extended this privilege, all perſons that ſo approved themſelves by reading, were allowed to be clerks. *Linwood* 92, 100. *Kel.* 180.

It appears by our books that laymen that could read had the privilege of *clergy* ſince the 25 *Ed.* 3. which allowance never was condemned in parliament, or complained of as a grievance, but rather approved of: and by the 18 *Eliz. c.* 7. all perſons, as well lay as ſpiritual, have a right to the *benefit* of that ſtatute, for the firſt offence, in the ſame manner as *clergymen*.

Though it was anciently the uſual method for the ordinary to demand the criminal as his clerk, before the court allowed him the *benefit of his clergy*; yet there was no neceſſity for ſuch demand, but the court might without it admit a perſon to the *benefit of clergy*, on ſufficient evidence of his being a clerk, as upon producing letters of orders, or reading as a clerk, &c. except he appeared to have been guilty of ſacrilege, or of breaking the priſon of the ordinary; in which caſes it is ſaid to have been at the diſcretion of the ordinary, whether he ſhould have his *clergy* or not: and as there is no neceſſity that the ordinary ſhould demand the *benefit of the clergy* for a clerk; ſo neither is there any that the priſoner himſelf ſhould demand it, where it ſufficiently appears to the court that he hath a right to it, in reſpect of his being in orders, &c. In which caſe, if the priſoner does not demand it, it is left to the diſcretion of the judge, either to allow, or not allow it him. 2 *Hawk. P. C.* 359.

Thoſe who demand the *benefit of clergy*, are to plead, and put themſelves upon trial; but after a clerk hath put himſelf upon trial, and the inqueſt are charged with him, ſome writers tell us, that he may, if he deſire it, be admitted to his *clergy* before the jury come back; and ſhall not forfeit his goods, unleſs they find him guilty. *Ibid.* 358.

This claim of *clergy* might formerly be made on arraignment, or as ſoon as the priſoner was brought to the bar: afterwards it could not be claimed till after conviction, becauſe it is for the advantage of the King as to the forfeiture of the lands and goods of the criminal convict, and for the advantage of the party himſelf to make his challenges to the inqueſt; and perhaps he may be acquitted, and then he will not need this privilege. 2 *Inſt.* 164, 633. At Common law, if the party had not demanded his *clergy* before conviction, he loſt it: but in the time of *H.* 6. an alteration was made in the method of allowing *clergy, viz.* That the party indicted or appealed, was to anſwer to the felony, and after conviction, upon his demand the judge to allow him his *clergy*; which courſe has been ever ſince obſerved. *Kel.* 100. *Clergy* may be demanded after judgment given againſt a perſon, whether of death, &c. and even under the gallows, if there be a proper judge there, who has power to allow it. 2 *Hawk.* 357.

Perſons admitted to their clergy, may be continued in priſon as a further puniſhment, not exceeding one year. 18 *El. cap.* 7.

By *Stat.* 4 *Geo.* 1. *cap.* 11. Perſons convicted of offences within benefit of clergy (except receivers and buyers of ſtolen goods) may, inſtead of being whipped and burnt in the hand, be tranſported for ſeven years.

A perſon admitted to his *clergy*, forfeits all his goods that he hath at the time of the conviction. 2 *H. H.* 388.

But preſently, upon burning in the hand, he ought to be reſtored to the poſſeſſion of his lands, and from thenceforth to enjoy the profits thereof. 2 *H. H.* 388.

Alſo, it reſtores him to his credit; and conſequently enables him to be a good witneſs. 2 *Hawk.* 364.

And it is holden, that after a man is admitted to his *clergy*, it is actionable to call him felon; becauſe his offence being pardoned by the ſtatute, all the infamy and other conſequences of it are diſcharged. 2 *Hawk.* 365.

Clergy is never allowed by the *Civil* law; ſo that pirates, &c. ſhall not have *clergy*. 1 *Nelſ. Abr.* 449. The *Common* law did not deny *clergy* but in certain caſes; as in high treaſon, or ſacrilege; where a perſon was convict of hereſy; was a *Turk*, *Jew*, or *Infidel*, &c. Alſo *women* are not allowed it; but this is altered by *Stat.* 3 *W. & M. c.* 9.

By ſtatutes, *clergy* is denied in a great many felonies; though it is allowed in all caſes where not expreſly taken away. And where *clergy* is taken away expreſly by any ſtatute, the offence muſt be laid in the indictment to be againſt that very ſtatute, and the words of it, or the offender ſhall have his *clergy*. Kel. 104. H. P. C. 231.

In what caſes the benefit of *clergy* is yet allowed, and in what caſes it is taken away by ſeveral ſtatutes, ſee title *Felony*, &c. and *Table* to *Statutes*, ſame title, &c.

Clerico admittendo, Is a writ directed to the biſhop, for admitting a *clerk* to a benefice, upon a *ne admittas* tried and found for the party that procures the writ. *Reg. Orig.* 31. If a parſon recover a benefice, the patron may have this writ to the biſhop, though the ſix months are paſt, if the church is void, &c. And this ancient writ begins thus: *Rex venerabili in Chriſto patri*, &c. *Cum* A. B. *de*, &c. *in curia noſtra recuperaſſet verſus nos præſentationem ſuam ad vicariam de*, &c. *vobis mandamus quod ad preſentat. ipſius* A. B. *ad vicariam idoneam perſonam* admittatis, &c.

Upon a preſentation to a benefice recovered in a *quare impedit*, or aſſiſe of *darrein preſentment*, the execution is by this writ; directed not to the ſheriff, but to the biſhop or his metropolitan, requiring them to admit and inſtitute the clerk of the plaintiff. *Black. Com.* 3 *V.* 413. Vide **Admittendo Clerico.**

Clerico infra ſacros Ordines conſtituto, non Eligendo in Officium, Is a writ directed to thoſe who have thruſt a bailiwick, or other office upon one in holy orders, charging them to releaſe him. *Reg. Orig.* 143.

Clerico capto per Statutum Mercatorum, &c. A writ for the delivery of a *clerk* out of priſon, who is taken and impriſoned upon the breach of a ſtatute merchant. *Reg. Orig.* 147.

Clerico convicto commiſſo Gaolæ in defectu Ordinarii deliberando, Is an ancient writ that lay for the *delivery* of a *clerk* to his *ordinary*, that was formerly *convicted* of felony, by reaſon his *ordinary did* not challenge him according to the privileges of *clerks*. Reg. Orig. 69.

Clerk, *(clericus)* In the moſt general ſignification, is one that belongs to the holy miniſtry of the church; under which, where the Canon law hath full power, are not only comprehended *ſacerdotes* and *diaconi*, but alſo *ſubdiaconi*, *lectores*, *acolyti*, *exorciſtæ* and *oſtiarii*: but the word has been anciently uſed for a *ſecular prieſt*; in oppoſition to a *religious* or *regular*. *Paroch. Antiq.* 171. And is ſaid to be properly a miniſter or prieſt, one who is more peculiarly called *in ſortem Domini*. Blount.

Clerk, In another ſenſe denotes a perſon who practiſes his pen in any court, or otherwiſe; of which *clerks* there are various kinds, in ſeveral offices, &c. As the *Officers* of the courts of law were formerly often clergymen; hence it is ſaid they go under the term of *clericus*, or *clerk*. And *Temp*. Ed. 1. Johannes Sawell, *clericus domini regis*, was ſuppoſed to ſignify ſecretary or *clerk* of his council. *Antiq. Nottinghamſh.* 317.

Clerk of the acts, Is an officer in the navy office, whoſe buſineſs is to record all orders, contracts, bills, warrants, &c. tranſacted by the lord high admiral, or lords commiſſioners of the admiralty, and commiſſioners of the navy; and is mentioned in the *Stat.* 16 *Car.* 2. *c.* 5. And 22 & 23 *Car.* 2. *c.* 11.

Clerk of Affidavits, In the court of *Chancery*, is an officer that files all *affidavits* made uſe of in court.

Clerk of the Aſſiſe, Is he that writes all things judicially done by the juſtices of *aſſiſe* in their circuits. *Cromp. Juriſd.* 227. This officer is aſſociated to the judge in commiſſion of *aſſiſe*, to take *aſſiſes*, &c.

Clerk of the Bails, An officer belonging to the court of *King's Bench*. He files the bail pieces taken in that court, and attends for that purpoſe.

Clerk of the Check, Is an officer in the King's court, ſo called, becauſe he hath the *check* and controlment of the yeomen of the guard, and all other ordinary yeomen belonging either to the King, Queen, or prince; giving leave, or allowing their abſence in attendance, or diminiſhing their wages for the ſame: he alſo by himſelf or deputy takes the view of thoſe that are to watch in the court, and hath the ſetting of the watch. 33 *H.* 8. *c.* 12. Alſo there is an officer of the ſame name in the King's navy at *Plymouth*, *Deptford*, *Woolwich*, *Chatham*, &c. 19 Car. 2. c. 1.

Clerk Controller of the King's Houſe, Is an officer in the *King's* court, that hath authority to allow or diſallow charges and demands of purſivants, meſſengers of the Green Cloth, &c. He hath likewiſe the overſight of all defects and miſcarriages of any of the inferior officers; and hath a right to ſit in the counting-houſe, with the ſuperior officers, *viz.* the lord ſteward, treaſurer, *controller*, and cofferer of the houſhold, for correcting any diſorders. 33 *H.* 8. *c.* 12.

Clerk of the Crown, *(clericus coronæ)* An officer in the *King's Bench*, whoſe function is to frame, read and record all indictments againſt offenders there arraigned or indicted of any public crime. And when divers perſons are jointly indicted, the *clerk of the crown* ſhall take but one fee, *viz.* 2 *s*. for them all. *Stat.* 2 *H.* 4. *c.* 10. He is otherwiſe termed clerk of the crown-office, and exhibits informations, by order of the court, for divers offences: And on informations exhibited in the crown-office, for treſpaſs, battery, &c. Recogniſances are to be entered into, to proſecute with effect, &c. 4 & 5 *W.* & *M. c.* 22.

Clerk of the Crown in Chancery, Is an officer in that court who continually attends the Lord Chancellor in perſon or by deputy: he writes and prepares for the Great Seal, ſpecial matters of ſtate by commiſſion, or the like, either immediately from his Majeſty's orders, or by order of his council, as well ordinary as extraordinary, *viz.* commiſſions of lieutenancy, of juſtices of aſſiſe, *oyer* and *terminer*, gaol delivery, and of the peace, with their writs of aſſociation, &c. Alſo all general pardons, at the King's coronation; or in parliament, where he ſits in the Lord's houſe in parliament time; and into whoſe office the writs of parliament, with the names of knights and burgeſſes elected thereupon, are to be returned and filed. He hath likewiſe the making out of all ſpecial pardons; and writs of execution upon bonds of ſtatute ſtaple forfeited; which was annexed to his office in the reign of Queen *Mary*, in conſideration of his chargeable attendance.

Clerk of the Declarations, An officer of the court of *King's Bench*, that files all declarations in cauſes there depending, after they are ingroſſed, &c.

Clerk of the Deliveries, Is an officer in the *Tower* of *London*, who exerciſes his office in taking of indentures for all ſtores, ammunition, &c. iſſued from thence.

Clerk of the Errors, *(clericus errorum)* In the court of *Common Pleas*, tranſcribes and certifies into the *King's Bench* the tenor of the records of the cauſe or action, upon which the writ of *error*, made by the curſitor, is brought there to be heard and determined. The *clerk of the errors* in the *King's Bench*, likewiſe tranſcribes and certifies the records of cauſes in that court into the *Exchequer*, if the cauſe or action were by bill: if by original, the Lord Chief Juſtice certifies the record into the houſe of peers in parliament, by taking the tranſcript from the *clerk of the errors*, and delivering it to the Lord Chancellor, there to be determined, according to the ſtatutes 27 *Eliz. c.* 8. and 31 *Eliz. c.* 1. The *clerk of the errors in the Exchequer* alſo tranſcribes the records, certified thither out of the King's Bench, and prepares them for judgment in the court of Exchequer Chamber, to be given by the juſtices of *C. B.* and Barons there. *Stat.* 16 *Car.* 2. *c.* 2. 20 *Car.* 2. *c.* 4.

Clerk of the Eſſoins, Is an officer belonging to the court of Common Pleas, who keeps the *eſſoin rolls*; and the *eſſoin roll* is a record of that court: he has the providing of parchment, and cutting it out into *rolls*, marking the numbers thereon; and the delivery out of all the rolls to every officer of the court; the receiving of them again when they are written, and the binding and making up the whole bundles of every term; which he doth as ſervant of the chief Juſtice. The Chief Juſtice of *C. B.* is at the charge of the parchment of all the rolls, for which he is allowed; as is alſo the Chief Juſtice of *B. R.* beſides the penny for the ſeal of every writ of privilege and outlawry, the ſeventh penny taken for the ſeal of every writ in court under the green wax, or petit ſeal; the ſaid Lord Chief Juſtices having annexed to their offices or places, the cuſtody of the ſaid ſeals belonging to each court.

Clerk of the Eſtreats, *(clericus extractorum)* A clerk or officer belonging to the Exchequer, who every term receives the *eſtreats* out of the Lord Treaſurer's Remembrancer's office, and writes them out to be levied for the King: and he makes ſchedules of ſuch ſums *eſtreated* as are to be diſcharged.

Clerk of the Hanaper, or Hamper, Is an officer in the Chancery, whoſe office is to receive all the money due to the King, for the ſeals of charters, patents, commiſſions and writs; as alſo fees due to the officers for inrolling and examining the ſame. He is obliged to attendance on the Lord Chancellor daily in the term time, and at all times of ſealing, having with him leather bags, wherein are put all charters, &c. After they are ſealed, thoſe bags, being ſealed up with the Lord Chancellor's private ſeal, are delivered to the *controller of the hanaper*, who, upon receipt of them, enters the effect of them in a book, &c. This *hanaper* repreſents what the *Romans* termed *fiſcum*, which contained the Emperor's treaſure; and the Exchequer was anciently ſo called, becauſe *in eo reconderentur* hanapi & *ſcutræ cæteraquæ vaſa quæ in cenſum & tributum perſolvi ſolebant*; or it may be for that the yearly tribute which princes received was in hampers or large veſſels full of money. There being an arrear of 10,590 *l.* 12 *s.* 11 *d* of ſeveral ancient fees and ſalaries, &c. payable out of this office; and there being a remainder of 13,698 *l.* 1 *s.* 11 *d.* of the ſix-penny ſtamp duty on writs granted for relief of the ſuitors of the court of Chancery; it was enacted by the *Stat.* 23 *G.* 2. *c.* 25. that thereout the 10,590*l.* 12*s.* 11*d.* ſhould be paid to the creditors of this office. That the ſaid duty ſhould be made perpetual; and thereout 3000*l. per annum* ſhould be paid to the *clerk of the hanaper*, that the reſidue of the 13,698*l.* 1*s.* 11*d.* ſhould be laid out in government ſecurities, and the intereſt paid to the *clerk of the hanaper*, who ſhould pay 1,200*l.* to the *Maſter of the Rolls.* And that in caſe the revenue of this office ſo augmented, ſhould be more than ſufficient to pay all fees, ſalaries, &c. the clerk ſhould account for the ſurplus.

Clerk of the Inrollments, Is an officer of the *Common Pleas*, that inrolls and exemplifies all fines and recoveries, and returns writs of entry, ſummons and ſeiſin, &c.

Clerk of the Juries, (*clericus juratorum*) An officer belonging to the court of *Common Pleas*, who makes out the writs of *habeas corpora* and *diſtringas*, for the appearance of *juries*; either in that court, or at the aſſiſes, after the jury or panel is retured upon the *venire facias*: he alſo enters into the rolls the awarding of theſe writs; and makes all the continuances from the going out of the *habeas corpora* until the verdict is given.

Clerk of the Market, (*clericus mercati hoſpitii regis*) Is an officer of the King's houſe, to whom it belongs to take charge of the King's meaſures, and keep the ſtandards of them, which are examples of all meaſures throughout the land; as of ells, yards, quarts, gallons, &c. And of weights, buſhels, &c. And to ſee that all weights and meaſures in every place be anſwerable to the ſaid ſtandard: of which office you may read in *Fleta, lib.* 2. *cap.* 8, 9, 10, &c. Touching this officer's duty, there are alſo divers ſtatutes, as 13 *R.* 2. *cap.* 4. and 16 *R.* 2. *c.* 3. by which every clerk of the market is to have weights and meaſures with him when he makes eſſay of weights, &c. mark'd according to the ſtandard; and to ſeal weights and meaſures, under penalties. The 16 *Car.* 1. *c.* 19. enacts, That clerks of the market of the King's or Prince's houſhold, ſhall only execute their offices within the verge; and head officers are to act in corporations, &c. The clerks of markets have generally power to hold a court, to which end they may iſſue out proceſs to ſheriffs and bailiffs to bring a jury before them; and give a charge, take preſentments of ſuch as keep or uſe falſe weights and meaſures; and may ſet a fine upon the offenders, &c. 4 *Inſt.* 274. But if they take any other fee or reward than what is allowed by ſtatute, &c. or impoſe any fines without legal trial; or otherwiſe miſdemean themſelves, they ſhall forfeit 5*l.* for the firſt offence, 10*l.* for the ſecond, and 20*l.* for the third offence, on conviction before a juſtice of peace, &c. *Stat.* 16 *Car.* 1. *c.* 19.

Clerk Marſhal of the King's Houſe, An officer that attends the *marſhal* in his court, and records all his proceedings. 33 *H.* 8. *c.* 22.

Clerk of the Nichils, or Nihils (*clericus nihilorum*) An officer of the court of *Exchequer*, who makes a roll of all ſuch ſums as are *nihiled* by the ſheriffs upon their eſtreats of green wax, and delivers the ſame into the remembrancer's office, to have execution done upon it for the king. See *Stat.* 5 *R.* 2. *c.* 13. *Nihils* are iſſues by way of fine or amercement.

Clerk of the Ordnance, Is an officer in the *Tower*, who regiſters all orders touching the king's *ordnance*.

Clerk of the Outlawries, (*clericus utlagariarum*) An officer belonging to the court of *Common Pleas*, being the ſervant or deputy to the King's Attorney General, for making out writs of *capias utlagatum*, after *outlawry*; the King's Attorney's name being to every one of thoſe writs.

Clerk of the Paper-Office, Is an officer in the court of *King's Bench*, that makes up the paper-books of ſpecial pleadings and demurrers in that court.

Clerk of the Papers, An officer in the *Common Pleas*; who hath the cuſtody of the *papers* of the warden of the *Fleet*, enters commitments and diſcharges of priſoners, delivers out day-rules, &c.

Clerk of a Pariſh. It was held, that a pariſh clerk *is a mere layman*, and ought to be *deprived by them that put him in*, and no other; and if the eccleſiaſtical court meddle with deprivation of the pariſh clerk, they incur a præmunire, and the canon, which wills that the parſon ſhall have election of the pariſh clerk, is merely void to take away the cuſtom that any had to elect him. 2 *Brownl.* 38. *Paſch.* 8 *Jac. C. B. Gaudy* v. *Newman.*

Reſolved, that if the pariſh clerk *miſdemean himſelf in his office*, or in the church, he may be ſentenced for it in the eccleſiaſtical court to excommunication, but not to deprivation. 2 *Brownl.* 38. *Paſch.* 8 *Jac. C. B. Gaudy* v. *Newman.*

Pariſh clerk may *ſue in court Chriſtian for his fees*, which are called *largitiones charitativæ*. Arg. cites the Regiſter, fol. 52. for he is *quodam modo* an officer ſpiritual, cites 21 *Ed.* 4. 47. 2 *Rol. Rep.* 71. *Hill.* 18 *Jac. B. R.* in *Biſhop's caſe.*

Pariſh clerk nominated by the parſon is by Common law an officer, and in *for life*, without deed. 2 *Salk.* 536. *pl.* 27. *Hill.* 10 *Ann. B. R. Pariſh of Gatton* v. *Milwick.*

Clerk of the Parliament Rolls, (*clericus rotulorum parliamenti*) Is that perſon which records all things done in the high court of *parliament*, and ingroſſeth them in parchment *rolls*, for their better preſervation to poſterity: of theſe officers there are two, one in the Lords Houſe, and another in the Houſe of Commons.

Clerk of the Patents, Or of the letters patent under the Great Seal of *England*; an office erected 18 *Jac.* 1.

Clerk of the Peace, (*clericus pacis*) Is an officer belonging to the ſeſſions of the peace: his duty is to read indictments, inrol the proceedings, and draw the proceſs; he keeps the counter-part of the indenture of armour; records the proclamation of rates for ſervants wages; has the cuſtody of the regiſter-book of licences given to badgers of corn; of perſons licenſed to kill game, &c. And he regiſters the eſtates of papiſts and others not taking the oaths. Alſo he certifies into the *King's Bench* tranſcripts of indictments, outlawries, attainders and convictions, had before the juſtices of peace, within the time limited: and by ſtatute, clerks of the peace, &c. are to certify the tenor of every indictment, outlawry, &c. into *B. R* within forty days, under a certain penalty. *Stat.* 34 & 35 *H.* 8. *cap.* 14. And every clerk of the peace is to deliver to the ſheriff within twenty days after *Michaelmas* yearly an eſtreat of all fines, &c. 22 *Car.* 2. *c.* 22. The *cuſtos rotulorum* of the county hath the appointment of the clerk of the peace, who may execute his office by deputy. 37 *H.* 8. *c.* 1. And if a clerk of the peace miſdemeans himſelf, the juſtices of peace in quarter-ſeſſions have power to diſcharge him; and the *cuſtos rotulorum* is to chuſe another reſident in the county, or on his default the ſeſſions may appoint one: the place is not to be ſold, on pain of forfeiting double the value of the ſum given, and diſability to enjoy it, &c. *Stat.* 1 *W.* & *M.* *ſeſſ.* 1. *c.* 21. See the 4 & 5 *W.* & *M.* *c.* 24. For the oath of the clerk of the peace on delivery of the eſtreats, and the 3 *Geo.* 1. *c.* 18. by which the Barons of the Exchequer may amerce the clerk of the peace, for neglecting to return the eſtreats according to the ſaid two acts of 22 & 23 *Car.* 2. *c.* 22. and 4 & 5 *Will.* & *M.* *c.* 24. See *Eſtreats.*

Clerk of the Pell, (*clericus pellis*) Is a clerk belonging to the *Exchequer*, whoſe office is to enter every teller's bill into a parchment roll called *pellis receptorum*, and alſo to make another roll of payments, which is termed *pellis exituum*; wherein he ſets down by what warrant the money was paid; mentioned in the *Stat.* 22 & 23 *Car.* 2. *c.* 22.

Clerk of the Petty-Bag, (*clericus parvæ bagæ*) An officer of the court of *Chancery*. There are three of theſe officers, of whom the Maſter of the Rolls is the chief. Their office is to record the return of all inquiſitions out of every ſhire; to make out patents of cuſtomers, gaugers, controllers, &c. all *conge d'elires* for biſhops, the ſummons of the nobility, and burgeſſes to parliament; commiſſions directed to knights and others of every ſhire, for aſſeſſing ſubſidies and taxes; all offices found *poſt mortem* are brought to the clerks of the petty bag to be filed; and by them are entered all *pleadings* of the Chancery concerning the validity of patents or other things which paſs the Great Seal; they alſo make forth *liberates* upon *extents* of ſtatutes ſtaple, and recovery of recognizances forfeited, and all *elegits* upon them: and all ſuits for or againſt any privileged perſon are proſecuted in their office, *&c.*

Clerk of the Pipe, (*clericus pipæ*) Is an officer in the Exchequer who having the accounts of debts due to the king, delivered and drawn out of the remembrancer's offices, charges them down in the great roll, and is called *clerk of the pipe* from the ſhape of that roll, which is put together like a *pipe:* he alſo writes out warrants to the ſheriffs to levy the ſaid debts upon the goods and chattels of the debtors; and if they have no goods, then he draws them down to the Lord Treaſurer's Remembrancer, to write eſtreats againſt their lands. The ancient revenue of the crown ſtands in charge to him, and he ſees the ſame anſwered by the farmers and ſheriffs: he makes a charge to all ſheriffs of their ſummons of the *pipe*, and green wax, and takes care it be anſwered on their accounts. And he hath the drawing and ingroſſing of all leaſes of the king's lands; having a *ſecondary* and ſeveral clerks under him. In the reign of King *Hen.* 6. this officer was called *ingroſſator magni rotuli.* See *Stat.* 33 *H.* 8. *c.* 22.

Clerk of the Pleas, (*clericus placitorum*) An officer in the court of *Exchequer*, in whoſe office all the officers of the court, upon ſpecial privilege belonging unto them, ought to ſue or be ſued in any action, *&c.* In this office are alſo proſecuted actions at law, by other perſons as well as officers of the court; but the plaintiff ought to be tenant, or debtor to the King, or ſome way accountant to him: now it is only matter of form. The *clerk of the pleas* has under him a great many clerks, who are attornies in all ſuits commenced or depending in the *Exchequer.*

Clerk of the Privy Seal, (*clericus privati ſigilli.*) There are four of the officers which attend the Lord *Privy Seal:* or if there be no Lord *Privy Seal,* the Principal Secretary of State; writing and making out all things that are ſent by warrant from the Signet to the *Privy Seal*, and which are to be paſſed to the Great Seal: alſo they make out *privy ſeals*, upon a ſpecial occaſion of his Majeſty's affairs, as for loan of money, and the like. He that is now called *Lord Privy Seal*, ſeems to have been in ancient times called *clerk of the privy ſeal*; but notwithſtanding to have been reckoned in the number of the great officers of the realm. *Stat.* 12 *R.* 2. *c.* 11. And 27 *H.* 8. *c.* 11.

Clerk of the Rolls, An officer of the Chancery, that makes ſearch for, and copies deeds, offices, *&c.*

Clerk of the Rules, In the court of King's Bench, is he who draws up and enters all the *rules* and orders made in court: and gives rules of courſe on divers writs: this officer is mentioned in the 22 *&* 23 *Car.* 2. *c.* 22.

Clerk of the Sewers, An officer belonging to the commiſſioners of *ſewers*, who writes and records their proceedings, which they tranſact by virtue of their commiſſions, and the authority given them by Statute 13 *Eliz. c.* 9.

Clerk of the Signet, (*clericus ſigneti*) Is an officer continually attendant on his Majeſty's Principal Secretary, who hath the cuſtody of the *privy ſignet*, as well for ſealing his Majeſty's private letters, as ſuch grants as paſs the King's hand by bill ſigned: and of theſe clerks or officers there are four that attend in their courſe, and have their diet at the Secretary's table. The fees of the *clerk of the ſignet*, and privy ſeal, are limited particularly by ſtatute, with a penalty annexed for taking any thing more. See 27 *H.* 8. *c.* 11.

Clerk of the King's Silver, (*clericus argenti regis*) Is an officer belonging to the court of *Common Pleas*, to whom every fine is brought after it hath paſſed the office of the *cuſtos brevium*, and by whom the effect of the writ of covenant is entered into a paper-book; according to which all the fines of that term are recorded in the rolls of the court. And the entry is in this form: Wilts, *ſſ.* A. B. *dat domino regi dimidiam marcam, &c. pro licentia concordandi cum* C. D. *pro talibus terris in, &c. & habet per chirographum per pacem admiſſum, &c.* After the King's ſilver is entered, it is accounted a fine in law, and not before.

Clerk of the Superſedeas's, An officer belonging to the court of Common Pleas, who makes out writs of *ſuperſedeas*, upon a defendant's appearing to the *exigent* on an outlawry, whereby the ſheriff is forbidden to return the *exigent.*

Clerk of the Treaſury, (*clericus theſaurarii*) Is an officer of the Common Pleas, who hath the charge of keeping the records of the court, and makes out all the records of *Niſi prius*; alſo he makes all exemplifications of records being in the *Treaſury*; and he hath the fees due for all ſearches. He is taken to be the ſervant of the Chief Juſtice, and removeable at pleaſure; whereas all other officers of the court are for life: there is a *ſecondary*, or *under clerk of the Treaſury* for aſſiſtance, who hath ſome fees and allowances: and likewiſe an *under-keeper*, that always keeps one key of the *Treaſury* door, and the chief *clerk* of the ſecondary another; ſo that the one cannot come in without the other.

Clerk of the King's Great Wardrobe, An officer of the King's houſhold, that keeps an account or inventory of all things belonging to the royal *wardrobe.* Stat. 1 E. 4. c. 1.

Clerk of the Warrants, (*clericus warrantorum*) An officer belonging to the Common Pleas court, who enters all *warrants* of attorney for plaintiffs and defendants in ſuits; and inrolls deeds of indentures of bargain and ſale, which are acknowledged in the court or before any judges out of the court. And it is his office to eſtreat into the Exchequer all iſſues, fines and amerciaments, which grow due to the King in that court, for which he hath a ſtanding fee or allowance.

Cleronimus, An old word ſignifying heir; it is mentioned in *Mon. Angl. tom.* 3. *p.* 129.

Clipping *the Coin*, An offence pernicious to trade, and an inſult on the prerogative. The offence is *high treaſon*, by 5 *Eliz. c.* 11. Alſo ſee 18 *Eliz. c.* 1. *&* 8 *&* 9 *W.* 3. *c.* 26. Made perpetual by 7 *Ann. c.* 25. againſt buying, ſelling, and having in poſſeſſion any inſtruments *proper only for coining of money.* By 15 *&* 16 *Geo.* 2. *c.* 28. Colouring ſilver coin to make it reſemble gold, or copper to reſemble ſilver, is high treaſon.

Clitones, The eldeſt, and all the ſons of Kings. In the charter of King *Æthelred*—Ethelſtanus Ecbryth, *&c. cum epitheto* clitonis *ſubſcribunt.* Mat. Pariſ. pag. 158.—*Ego* Edgar, *&c.* clito *legitimus præfati regis, &c. Selden's* Notes upon *Eadmerus.*

Clive, Cliff. The names of places beginning or ending with theſe words, ſignify a rock from the old *Saxon.*

Clocks and **Watches.** Dial-plates and caſes not to be exported without the movement, 9 *&* 10 *W.* 3. *c.* 28. *ſect.* 2.—Makers ſhall engrave their names on clocks and watches. 9 *&* 10 *W.* 3. *c.* 28. *ſect.* 2.——Penalties on workmen, *&c.* imbezilling materials of clocks and watches, 27 *Geo.* 2. *c.* 7.

Cloere, A priſon or dungeon; it is conjectured to be of *Britiſh* original: the dungeon or inner priſon of *Wallingford* caſtle, *temp. H.* 2. was called *cloere brien*, i. e. *carcer brieni, &c.* Hence ſeems to come the Lat. *cloaca*, which was anciently the cloſeſt ward or naſtieſt part of the priſon: the old *cloacerius* is interpreted *carceris cuſtos:* and the preſent *cloacerius*, or keeper of a *jakes*, is an office in ſome religious houſes abroad, impoſed on an offending brother, or by him choſen as an exerciſe of humility and mortification. *Cowel.*

Cloſe Rolls and **Cloſe Writs,** Grants of lands, *&c.* from the crown are contained in charters or letters *patent*, that is open letters, *literas patentes:* ſo called becauſe they are not ſealed up, but expoſed to open view, with the Great Seal pendant at the bottom; and are uſually addreſſed by the King to all his ſubjects at large. And therein they differ from other letters of the King, ſealed alſo with his Great Seal, but directed to particular perſons, and for particular purpoſes: which therefore, not being fit for public inſpection, are cloſed up and ſealed on the outſide, and are thereupon called writs *cloſe*, *literæ clauſæ*; and are recorded in the *cloſe-rolls*, in the ſame manner as the others are in the *patent-rolls.* Black. Com. 2 V. 346.

Cloſh, Was an unlawful game forbidden by *Stat.* 17 *Ed.* 4. *c.* 3. and 33 *H.* 8. *c.* 9. It is ſaid to have been the ſame with our *nine-pins*; and is called *cloſhcayles* by the 33 *H.* 8. *c.* 9. At this time it is allowed, and called *hailes*, or *kittles*.

Cloth. No cloth made beyond ſea ſhall be brought into the King's dominions, on pain of forfeiting the ſame, and the importers to be farther puniſhed. *Stat.* 12 *Ed.* 3. *c.* 3.

Clothiers, Are to make broad cloths of certain lengths and breadths, within the liſts; and ſhall cauſe their marks to be woven in the cloths, and ſet a ſeal of lead thereunto, ſhewing the true length thereof. 4 *Ed.* 4. *c.* 1. 27 *H.* 8. *c.* 12. Expoſing to ſale faulty cloths, are liable to forfeit the ſame: and clothiers ſhall not make uſe of flocks or other deceitful ſtuff, in making of broad cloth, under the penalty of 5 *l.* *Stat.* 5 *&* 6 *Ed.* 6. *c.* 6. Juſtices of peace are to appoint ſearchers of cloth yearly, who have power to enter the houſes of clothiers, and perſons oppoſing them ſhall forfeit 10 *l.* *&c.* 39 *Eliz.* *c.* 20. 4 *Jac.* 1. *c.* 2. 21 *Jac.* 1. *c.* 18. All cloth ſhall be meaſured at the fulling-mill, by the maſter of the mill; who ſhall make oath before a juſtice for true meaſuring; and the millman is to fix a ſeal of lead to cloths, containing the length and breadth, which ſhall be a rule of payment for the buyer, *&c.* 10 *Ann.* *c.* 16. By 1 *Geo.* 1. *c.* 15 Broad cloths muſt be put into water for proof, and be meaſured by two indifferent perſons choſen by the buyer and ſeller, *&c.* And clothiers ſelling cloths before ſealed, or not containing the quantity mentioned in the ſeals, incur a forfeiture of the ſixth part of the value.

Perſons taking off, or counterfeiting ſeals, forfeit 20 *l.* And by a late ſtatute, if any weavers of cloth enter into any combination for advancing their wages, or leſſening their uſual hours of work, or depart before the end of their terms agreed, return any work unfiniſhed, *&c.* they ſhall be committed by two juſtices of peace to the houſe of correction for three months: and clothiers are to pay their work-people their full wages agreed in money, under the penalty of 10 *l.* *&c.* *Stat.* 12 *Geo.* 1. *c.* 32. Inſpectors of mills and tenter-grounds to examine and ſeal cloths, are to be appointed by juſtices of peace in ſeſſions; and mill-men ſending clothiers any cloths before inſpected, forfeit 40 *s.* The inſpectors to be paid by the clothiers 2 *d.* *per* cloth. 13 *Geo.* 1. *c.* 23. If any cloth remaining on the tenters, be ſtolen in the night, and the ſame is found upon any perſon, on a juſtice's warrant to ſearch, ſuch offender ſhall forfeit treble value, leviable by diſtreſs, *&c.* or be committed to gaol for three months; but for a ſecond offence he ſhall ſuffer ſix months impriſonment; and the third offence be tranſported as a felon, *&c.* *Stat.* 15 *Geo.* 2 *cap.* 27. See *Drapery*.

Clove, Is the two and thirtieth part of a weigh of cheeſe, *i. e.* eight pounds. 9 *H.* 6. *c.* 8.

Clough, A word made uſe of for valley, in *Domeſday* book. But among merchants, it is an allowance for the turn of the ſcale, on buying goods wholeſale by weight. *Lex Mercat.*

Clunch. In *Staffordſhire*, upon ſinking of a coal-mine, near the ſurface they meet with earth and ſtone, then with a ſubſtance called *blue clunch*, and after that they come to coal.

Cluta, (Fr. *clous*) Shoes, clouted ſhoes; and moſt commonly horſe-ſhoes: it alſo ſignifies the ſtreakes of iron with which cart wheels are bound. *Conſuetud. Dom. de Farend. MS. fol.* 16. Hence *clutarium*, or *cluarium*, a forge where the *clous* or iron ſhoes are made.——*Tenuit duas carucatus terræ de domino rege, in capite, per tale ſervitium deferendo palefridum domini regis, ſuper quatuor pedes de* Cluario *domini regis quotieſcunque ad manerium ſuum de* Mansfield *venerit, &c.* Mon. Angl. tom. 2. pag. 598.

Clypeus. One of a noble family. *Clypei proſtrati*, a noble family extinct.——*Sic nobilis* clypeus *ille mareſcallorum tot & tantis hoſtibus Angliæ formidabilis evanuit.* Mat. Pariſ. 463.

Coach, *(currus)* A convenience well known; and for regulating of hackney coaches in *London*, there are ſeveral ſtatutes. By 9 *Ann.* *c.* 23. Eight hundred hackney coaches and two hundred chairs are allowed in *London* and *Weſtminſter*; which are to be licenſed by commiſſioners, and pay a duty to the crown: and if any perſon drive a hackney coach without licence, he ſhall forfeit 5 *l.* and a chair 40 *s.* Coachmen and chairmen, giving abuſive language, or demanding more than their fare, *&c.* a juſtice of peace may order them to pay not exceeding 20 *s.* to the poor, and not being able to pay it, ſend them to the houſe of correction; and perſons not paying coachmen their fare, or cutting or defacing coaches, *&c.* a juſtice will order ſatisfaction to be made, and on refuſal, may bind them over to the quarter-ſeſſions.

The 1 *Geo.* 1. *c.* 57. ordains, That where coachmen refuſe to go at, or exact more for their hire than is limited by the act, they ſhall forfeit not exceeding 3 *l.* nor under 10 *s.* and the commiſſioners have power to determine it. The fare of hackney coachmen in *London*, or within ten miles thereof, is 10 *s.* *per* day, allowing 12 hours to the day; and by the hour not above 1 *s.* 6 *d.* for the firſt, and 1 *s.* for every hour after: and none are obliged to pay above 1 *s.* for the uſe of any hackney coach for any diſtance not mentioned in the act, which is not above one mile and four furlongs; nor above 1 *s.* 6 *d.* for any diſtance not exceeding two miles: the fare of a hackney chair is 1 *s.* for any diſtance not exceeding a mile, and 1 *s.* 6 *d.* for any diſtance not exceeding a mile and four furlongs. There are certain places and diſtances mentioned in the act for the extent of the reſpective fares; and other diſtances meaſured and rated by the commiſſioners, in purſuance of the ſtatutes

Coachmen are to have numbers to their coaches on tin-plates, or ſhall forfeit 5 *l.* and refuſing any perſon to take the number of their coaches, or giving a wrong number, incurs the forfeiture of a ſum not exceeding 40 *s.* None but licenſed coaches ſhall ply at funerals for hire, under the penalty of 5 *l.*

Drivers of hackney coaches are to give way to perſons of quality, and gentlemen's coaches, on the penalty of 10 *s.* On *Sundays* there were formerly only one hundred and ſeventy-five coaches to ply, but now we believe there are more. There are ſeveral ſtandings of coaches, at the moſt noted parts of the town, ordered by the commiſſioners to be in the middle of ſtreets, *&c.* Vide 5 *&* 6 *W.* *&* *M.* *cap.* 22. 9 *Ann.* *c.* 23. 10 *Ann.* *c.* 19. *ſect.* 158. 12 *Ann.* *ſtat.* 1. *c.* 14. 1 *Geo.* 1. *c.* 57. And 12 *Geo.* 1. *c.* 12. *ſect.* 13. 16 *Geo.* 2. *c.* 26. *ſect.* 3.

The maſters of ſtage coaches are not liable to an action for things loſt by their coachmen, who have money given them to carry the goods; unleſs where any ſuch maſter takes a certain price for the ſame. See 1 *Salk.* 282. By the *Stat.* 20 *Geo.* 2. *c.* 10. A yearly tax of 4 *l.* is laid on every coach, berlin, landau, chariot, calaſh with four wheels, chaiſe marine, chaiſe with four wheels, and caravan kept by any perſon for his own uſe, (except ſuch as are licenſed by the commiſſioners for hackney coaches), and of 40 *s.* on every calaſh, chaiſe and chair with two wheels, drawn by one or more horſes, kept by any perſon for his own uſe. No perſon to pay for more than five ſuch carriages on which 4 *l.* a year is laid, except kept to be let out for hire. This duty to be under the management of the commiſſioners of exciſe. Perſons keeping ſuch coaches, *&c.* yearly to give notice to the exciſe-office, and then pay the duty. Stage coaches and poſt-chaiſes are excepted. Poſt-chaiſes are to be entered at the exciſe-office, and have a figure or mark of diſtinction; and ſo are coaches, *&c.* let out for hire. Coaches, *&c.* kept for ſale are not to be taxed. If any perſon, having paid the duty, ſhall die before the end of the year, no perſon claiming title to the coach, *&c.* ſhall be liable to any tax for the remainder of the year.

Coachmakers. The wares of coachmakers ſhall be ſearched, by perſons appointed by the ſadlers company. *Stat.* 1 *Jac.* 1. *cap.* 22.

Coadjutor, *(Lat.)* A fellow-helper or aſſiſtant; particularly applied to one appointed to aſſiſt a biſhop, being grown old and infirm, ſo as not to be able to perform his duty.

Coal-mines. Maliciouſly ſetting fire to coal-mines, or to any delph of coal, is felony. 10 *Geo.* 2. *c.* 32. *ſect.* 6.

Coals. The ſack of coals is to contain four buſhels of clean coals: and ſea coals brought into the river *Thames*, and ſold, ſhall be after the rate of thirty-ſix buſhels to the chaldron: and one hundred and twelve pounds the hundred, *&c.* The Lord Mayor and court of Aldermen in *London*, and juſtices of the peace of the ſeveral counties, or three of them, are impowered to ſet the price of all coals to be ſold by retail; and if any perſon ſhall refuſe to ſell for ſuch prices, they may appoint officers to enter any wharfs or places where coals are kept, and cauſe the coals to be ſold at the prices appointed. 7 *Ed.* 6. *cap.* 7. 16 *&* 17 *Car.* 2. *cap.* 2. 17 *Geo.* 2. *c.* 35. Commiſſioners are ordained for the meaſuring and marking of keels, and boats for coals at *Newcaſtle*; and veſſels carrying coals before meaſured and marked, ſhall be forfeited, *&c.* 30 *Car* 2. *c.* 8. *&* 6 *&* 7 *W.* 3. *c.* 10. *Engliſh* ſhips trading in coals may be manned with foreigners during war. 2 *W. & M. c.* 17. A duty is laid on coals imported, by *Stat.* 6 *&* 7 *W.* 3. *c.* 18. 9 *&* 10 *W.* 3. *c.* 13. 10 *&* 11 *W.* 3. *c.* 21. 8 *Ann. c.* 4. 9 *Ann. c.* 6, 22 *&* 28. 12 *Ann. ſtat.* 2. *c.* 9. 5 *Geo.* 1. *c* 9. *&* 30 *Geo* 2. *c* 19. For the contents of the coal-buſhel, ſee 12 *Ann. ſtat.* 2. *c.* 17.

Contracts between coal owners and maſters of ſhips, *&c.* for reſtraining the buying of coals are void; and the parties to forfeit 100 *l.* And ſelling coals for other ſorts than they are, ſhall forfeit 50 *l.* Not above fifty laden colliers are to continue in the port of *Newcaſtle*, *&c.* And work-people in the mines there ſhall not be employed who are hired by others, under the penalty of 5 *l*

Coal-ſacks ſhall be ſealed and marked at *Guildhall*, *&c.* and be four feet and two inches in length, and twenty-ſix inches in breadth, on pain of 20 *s.* Alſo ſellers of coals are to keep a lawful buſhel, and put three buſhels to each ſack, which buſhel and other meaſures ſhall be edged with iron, and ſealed; and uſing others, or altering them, incurs a forfeiture of 50 *l.* *&c.* The penalties above 5 *l.* recoverable by action of debt, *&c.* and under that ſum before juſtices of peace. *Stat.* 3 *Geo.* 2. *c.* 26

Owners or maſters of ſhips ſhall not enhance the price of coals in the river of *Thames*, by keeping of turn in delivering of coals there, under the penalty of 100 *l.* *&c.* 4 *Geo.* 2. *c.* 30. The price of ſea-coals imported into *London* and ports adjacent, to be there ſold, may be ſet by the Lord Mayor, *&c.* for one year; and perſons ſelling coals out of any veſſel, yard, or warehouſe, for a higher price, ſhall forfeit 36 *s. per* chaldron, to be levied by warrant of two juſtices. Dealers in coals at *Billingſgate*, *&c.* refuſing to ſign legal contracts, ſhall forfeit 50 *l.* And any perſon vending coals at *Newcaſtle*, that refuſeth to put a loading on ſhipboard, on tender of the price they bear, is liable to the forfeiture of 100 *l.* to be recovered by action in the courts at *Weſtminſter*, within ſix months, by *Stat.* 11 *Geo.* 2. *c.* 15,

By the *Stat.* 19 *Geo.* 2. *c.* 35. Two land coal-meters are to be appointed for the city and liberty of *Weſtminſter*, and that part of the dutchy of *Lancaſter* adjoining thereto, and the ſeveral pariſhes of St. *Giles* in the Fields, St. *Mary le Bon*, and ſuch part of the pariſh of St. *Andrew*, *Holborn*, as lies in the county of *Middleſex*, are to appoint labouring coal-meters. No perſon, after coals delivered from any ſhip, is to break bulk, before the time of delivery at the wharf, in the abſence of a meter or the conſumer, under the penalty of 5 *l.* All contracts for coals to be delivered within the limits aforeſaid (not being leſs than five chaldron) ſhall be for pool meaſure, including the ingrain, and ſhall be ſo underſtood, though the term pool meaſure be omitted in the contract; and ſhall be loaded ſeparately, and delivered without being meaſured, unleſs the buyer deſire it. All coals ſold for wharf meaſure, above eight buſhels, ſhall be meaſured in the preſence of a labouring coal meter. The ſeller to pay 4 *d. per* chaldron to the principal coal-meter, who is to deliver to the ſeller a ticket of the names of the ſeller and conſumer, quantity of coals, *&c.* the ſeller is to deliver the ſame to the conſumer, who is to pay for the metage.

Penalty of altering or refuſing a ticket 5 *l.* Penalty of carrying coals without a ticket 50 *l.* Penalty on falſe ticket or falſe meaſure 5 *l.* Conſumer diſſatisfied may have coals re-meaſured. The carman, on notice in writing, that the conſumer is diſſatisfied, ſhall not quit the cart till the coals are re-meaſured. By 23 *Geo.* 2. *c.* 26. If either of the principal land coal-meters ſhall neglect to ſtation labouring coal-meters, he ſhall forfeit 10 *l.* Every labouring coal-meter neglecting to attend forfeits 40 *s.* For farther regulations of the coal trade, ſee 22 *Geo.* 2. *c.* 37. 31 *Geo.* 2. *c.* 15. 32 *Geo.* 2. *c.* 27. *&* 33 *Geo.* 2. *c.* 15

Coat-armour. *Coats of arms* were not introduced into ſeals, nor indeed into any other uſe, till about the reign of *Richard* the Firſt, who brought them from the Croiſade in the Holy Land; where they were firſt invented and painted on the ſhields of the knights, to diſtinguiſh the variety of perſons of every Chriſtian nation who reſorted thither, and who could not, when clad in complete ſteel, be otherwiſe known or aſcertained. *Black. Com.* 2 *V.* 306.

It is the buſineſs of the *court military*, or the court of *chivalry*, according to Sir *Matthew Hale*, to adjuſt the right of armorial enſigns, bearings, creſts, ſupporters, pennons, *&c.* and alſo rights of place or precedence, where the King's patent or act of parliament (which cannot be over-ruled by this court) have not already determined it. *Black. Com.* 3 *V.* 105.

Cocherings, An exaction or tribute in *Ireland*, now reduced to chief rents. See *Bonaght.*

Cochineal. The importation of cochineal from ports in *Spain* was declared lawful during the late war, *&c.* *Stat.* 6 *Ann. c.* 33. Any perſons may import cochineal into this kingdom, in ſhips belonging to *Great Britain*, or other country in amity, from any place whatſoever, by 7 *Geo.* 2. *cap.* 18.

Cocket, *(cockettum)* Is a ſeal belonging to the King's cuſtom-houſe: or rather a ſcroll of parchment ſealed, and delivered by the officers of the cuſtom-houſe to merchants, as a warrant that their merchandiſes are cuſtomed: which parchment is otherwiſe called *literæ de coketto*, or *literæ teſtimoniales de* coketto. 11 *Hen.* 6. *Reg. Orig.* 179, 192. So it is uſed, 5 *&* 6 *Ed.* 6. *cap.* 14, *&c.* The word *cockettum* or *cocket*, is alſo taken for the cuſtom-houſe or office where goods to be tranſported were firſt entered, and paid their cuſtom, and had a *cocket* or certificate of diſcharge: and *cocketta lana* is wool duly entered and *cocketted*, or authoriſed to be tranſported. *Mem. in Scac.* 23 *Ed.* 1.

Cocket is likewiſe uſed for a ſort of meaſure, as we may read in *Fleta*, *lib.* 2. *cap.* 9. *Panis vero integer quadrantalis frumenti ponderabit unum* cocket *& dimidium:* and it is made uſe of for a diſtinction of bread, in the ſtatute of bread and ale. 51 *H.* 3. *ſtat.* 1. *ord. pro piſtor.* Where mention is made of *waſtel-bread*, cocket *bread*, *bread of treet*, and *bread of common wheat*; the waſtel bread being what we now call the *fineſt bread*, or *French* bread; the *cocket* bread the ſecond ſort of *white bread*; bread of treet, and of common wheat, *brown*, or *houſhold bread*, *&c.*

What we call *cocket*, (as to the King's ſeal) was called *cocket*, and a part of the king's ſeal. *Madox Exch.* 1 *V.* 783. *c.* 18. *& ibid. c.* 1. N. S.

Cockſetus, A boatman, *cockſwain* or coxon. *Cowel.*

Cocula, A cogue, or little drinking-cup, in form of a ſmall boat, uſed eſpecially at ſea, and ſtill retained in a cogue of brandy. Theſe drinking cups are alſo uſed in taverns to drink new ſherry, and other white wines which look foul in a glaſs.

Codicil, *(codicillus*, from *codex*, a book, a writing) Is a ſchedule or ſupplement to a will, where any thing is omitted which the teſtator would add, or he would explain, alter or retract what he hath done; and it is the ſame with a teſtament, but that it is without an executor: and one may leave behind him only one teſtament, but as many codicils as he pleaſes. *Weſt. Symb. p.* 636. A codicil is taken as part of the will; and the codicils ought to be annexed to the teſtament, and the executor is to ſee that they are all performed: if the will or codicils are kept from the executor, he may force the party detaining them to deliver them up by the eccleſiaſtical law, and recover them in the ſpiritual court. *Swinb. pag.* 1. *ſect.* 1. Some writers, comparing a teſtament and a codicil together, call a teſtament a great will, and a codicil a little one.

Coffee, Tea, and Chocolate. The cuſtom duties on coffee, tea, and chocolate, are taken off by ſtatute, and inland duties granted in their ſtead, payable by druggiſts, and all perſons dealing in *coffee, &c.* And entries are to be made of all warehouſes, under penalties and forfeiture of the goods. *Stat.* 10 *Geo.* 1. *c.* 10. The duties to be paid are 2*s. per* pound for coffee, for tea 4*s.* and chocolate 1*s.* 6*d.* But ſee *poſt.* And coffee, *&c.* not to be ſold but in places entered; and if above ſix pounds weight, to have a permit; dealers in coffee and chocolate, coffee-houſe keepers, *&c.* ſhall keep an account of goods ſold every day, and deliver their books to the officers on oath, *&c.* Chocolate ſhall be ſtamped, and chocolate-makers are to make an entry of all chocolate made, under the penalty of 50*l.* And perſons, mixing other drugs with coffee or tea, ſhall forfeit 100*l.* *Stat.* 11 *Geo.* 1. *c.* 30.

See the late ſtatute againſt ſophiſticating tea, and importing cocoa nutſhells or huſks to make chocolate, *&c.* 4 *Geo.* 2. *c.* 14. See 5 *Geo.* 2. *c.* 24. The inland duties on tea altered, 18 *Geo.* 2. *c.* 26. Drawback on tea taken off, 18 *Geo.* 2. *c.* 26. *India* Company may import tea by licence from *European* ports, 18 *Geo.* 2. *c.* 26. Tea may be imported to *Ireland* and the plantations without paying inland duty, 21 *Geo.* 2. *c.* 14. Tea above 6 *lb.* in *Britiſh* ſhips, come from abroad and not employed by the *India Company*, forfeited. 28 *Geo.* 2. *c.* 21. Additional duty on coffee and chocolate, 32 *Geo.* 2. *c.* 10.

Cofra, A coffer, cheſt, or trunk.——*Cuſtos collegii & miniſtri ejuſdem, &c. capientes certam ſummam pecuniæ de* cofris *fundatoris.* Munimenta Hoſpit. SS. Trinit. de Pontefracto, MS. fol. 50.

Cofferer of the King's Houſhold, Is a principal officer of the King's houſe, next under the controller, who, in the counting-houſe, and elſewhere, hath a ſpecial charge and overſight of other officers of the houſhold, to all which, he pays their wages: this officer paſſes his accounts in the Exchequer, and is mentioned in 39 *Eliz.* *c.* 7.

Coggle, A ſmall fiſhing boat, upon the coaſts of *Yorkſhire:* and cogs, (cogones) are a kind of little ſhips, or veſſels, uſed in the rivers *Ouſe* and *Umber.* Stat. 23 H. 8. c. 18.—*Præparatis* cogonibus, *Galleis & aliis Navibus, &c. Mat. Pariſ. anno* 1066. And hence the *cogmen,* boatmen or ſeamen, who after ſhipwreck or loſſes by ſea, travelled and wandered about to defraud the people by begging and ſtealing, till they were reſtrained by divers good laws. *Du Freſne.*

Cognati, Relations by the mother, as the *agnati* are relations by the father.

Cognatione, A writ of couſenage. See *Coſenage.*

Cogniſance, or cognizance, (Fr. *connuſance,* Lat. *cognitio*) Is uſed diverſly in our law: ſometimes it is an acknowledgment of a *fine,* or confeſſion of a thing done; and there is a cogniſance of taking a diſtreſs: ſometimes it is the hearing of a matter judicially; as to take cogniſance of a cauſe: and ſometimes it ſignifies a juriſdiction, as cogniſance of pleas is a power to call a cauſe or plea out of another court; which none can but the King, or by charter. This cogniſance of pleas is a privilege granted by the King to a city or town, to hold plea of all contracts, *&c.* within the liberty of the franchiſe; and when any man is impleaded for ſuch matters in the courts of *Weſtminſter,* the mayor, *&c,* of ſuch franchiſe may aſk cogniſance of the plea, and demand that it ſhall be determined before them: but if the courts at *Weſtminſter* are poſſeſſed of the plea before *cogniſance* be demanded, it is then too late. *Terms de Ley.* See *Stat.* 9 *H.* 4. *c.* 5.

Cogniſance of Pleas extends not to aſſiſes; and when granted, the original ſhall not be removed: it lies not in a *quare impedit,* for they cannot write to the biſhop, nor of a plea out of the county-court, which cannot award a reſummons, *&c.* *Jenk. Cent.* 31, 34. This *cogniſance* ſhall be demanded the firſt day: and if the demandant in a plea of land counterpleads the franchiſe, and the tenant joins with the claim of the franchiſe, and it is found againſt the franchiſe, the demandant ſhall recover the land; but if it be found againſt the demandant, the writ ſhall abate. *Ibid.* 18.

There are *three ſorts of inferior juriſdictions,* one whereof is *tenere placita,* and this is the loweſt ſort; for it is only a concurrent juriſdiction, and the party may ſue there, or in the King's courts, if he will. The ſecond is *conuſance of pleas,* and by this a right is veſted in the lord of the franchiſe to hold the plea, and he is the only perſon who can take advantage of it. The third ſort is an *exempt juriſdiction,* as where the King grants to a great city, that the inhabitants thereof ſhall be ſued within their city, and not elſewhere; this grant may be pleaded to the juriſdiction of this court, if there be a court within that city which can hold plea of the cauſe, and *no-body can take advantage of this privilege but a defendant;* for if he will bring *certiorari,* that will remove the cauſe, *but he may wave it if he will,* ſo that the privilege is only for his benefit. 3 *Salk.* 79, 80. *pl.* 4. *Hil.* 1 *Ann. B. R. Croſſe* v. *Smith.*

King *Hen.* 8. by *letters patent* of the 14th of his reign, and confirmed by parliament, *granted to the univerſity of* Oxford *conuſance of pleas, in which a ſcholar or ſervant of a college ſhould be party, ita quod juſticiarii de utroque banco ſe non intromittant.* An *attorney of C. B. ſued a ſcholar in C. B. for battery;* per cur. This general grant does not extend to take away the ſpecial privilege of any court without ſpecial words. *Lit. Rep.* 304. *Mich.* 5 *C. C. B.* Oxford (Univerſity's) caſe.

If a *ſcholar* of *Oxford* or *Cambridge* be *ſued in Chancery for a ſpecial performance of a contract to leaſe lands in Middleſex,* the Univerſity ſhall not have conuſance, becauſe they cannot ſequeſter the lands. *Gilb. Hiſt. of C. P.* 194. cites 2 *Vent.* 363.

Conuſance muſt be demanded *before an imparlance,* and *the ſame term the writ is returnable, after the defendant appears,* becauſe, till he appears there is no cauſe in court, otherwiſe there would be a delay of juſtice; for if after imparlance, when the defendant has a day already allowed him, he would have two days, ſince when the conuſance is allowed, the franchiſe prefixes a day to both parties to appear before them, and it is the lord's laches if he does not come ſoon enough not to delay the parties. *Gilb. Hiſt. of P. C* 196.

Conuſance was granted to the Univerſity of *Oxford,* (no cauſe being ſhewn to the contrary), in *Eaſter Term,* 9 *Geo.* 2. in the caſe of *Woodcocke* and *Brooke.* Rep. Temp. Hardw. *per Annally,* fol. 241.

Cogniſance alſo ſignifies the badge of a waterman or ſervant, which is uſually the giver's *creſt,* whereby he is known to belong to this or that nobleman or gentleman. Vide *Black. Com* 3 *V.* 300. 4 *V.* 275.

Cogniſance, or *conuſance,* is the anſwer given by a deft. in replevin, who hath acted as *bailiff, &c.* to another in making a diſtreſs, and is tantamount to an avowry.

Cogniſor and Cogniſee, (or *cognizor*) *Cogniſor,* is he that paſſeth or acknowledgeth a fine of lands or tenements to another; and *cogniſee* is he to whom the fine of the ſaid lands, *&c.* is acknowledged. *Stat.* 32 *H.* 8. *c.* 5.

Cognitiones, Enſigns and arms, or a military coat painted with arms——*Cum viderunt hoſtes Chriſti armis, vexillis &* cognitionibus *picturatis, &c.* Mat. Pariſ. 1250.

Cognitionibus Mittendis, Is a writ to one of the King's juſtices of the *Common Pleas,* or other that hath Power to take a fine, who having taken the fine defers to certify it, commanding him to certify it. *Reg. Orig.* 68.

Cognovit Actionem, Is where a defendant acknowledges or confeſſes the plaintiff's cauſe againſt him to be juſt and true, and, before or after iſſue, ſuffers judgment to be entered againſt him without trial. And here the confeſſion generally extends no farther than to what is contained in the declaration; but if the defendant will confeſs more, he may. 1 *Rol.* 929. *Hob.* 178.

Cogware, Is ſaid to be a ſort of coarſe cloths, made in divers parts of *England,* of which mention is made in the 13 *R.* 2. *cap.* 10.

Cohuagium, A tribute paid by thoſe who meet promiſcuouſly in the market or fair; *cobua* ſignifying a promiſcuous multitude of men in a fair or market.—*Quieti ab omni thelonio, paſſagio, pontagio,* cohuagio, *pallagio, &c.* Du Cange.

Coif, *(coifa)* A title given to ſerjeants at law; who are called *ſerjeants of the coif,* from the lawn *coif* they wear on their heads under their caps, when they are created. The uſe of it was anciently to cover *tonſuram clericalem,* otherwiſe called *corona clericalis*; becauſe the crown of the head was cloſe ſhaved, and a border of hair left round the lower part, which made it look like a crown. *Blount.*

Coin, *(cuna pecunia)* Seems to come from the Fr. *coign,* i. e. *angulus,* a corner, whence it has been held, that the ancienteſt ſort of *coin* was ſquare with corners, and not round as it now is: it is any ſort of money *coined.* Cromp. Juriſd. 220. *Coin* is a word collective, which contains in it all manner of the ſeveral ſtamps and ſpecies of money in any kingdom: and this is one of the royal prerogatives belonging to every ſovereign prince, that he alone in his own dominions may order and diſpoſe the quantity, value, and faſhion of his *coin.* But the *coin* of one King is not current in the kingdom of another, unleſs it be at great loſs; though our King by his prerogative may make any foreign *coin* lawful money of *England* at his pleaſure, by proclamation. *Terms de Ley.* If a man binds himſelf by bond to pay one hundred pounds of lawful money of *Great Britain,* and the perſon bound, the obligor, pays the obligee the money in *French, Spaniſh,* or other *coin,* made current either by act of parliament, or the King's proclamation, the obligation will be well performed. *Co. Lit.* 207. But it is ſaid a payment in farthings, is not a good payment. 2 *Inſt.* 517.

When a perſon has accepted of money in payment from another, and put the ſame into his purſe, it is at his peril after his allowance; and he ſhall not then take exception to it as bad, notwithſtanding he preſently reviews it. *Terms de Ley.*

By ſtatute any perſon may break or deface pieces of ſilver money ſuſpected to be counterfeit or diminiſhed, otherwiſe than by wearing: but if ſuch pieces on breaking, &c. are found to be good *coin,* it will be at the breaker's peril, who ſhall ſtand to the loſs of it. 9 & 10 *W.* 3. *c.* 21. *Coins* of gold and ſilver are to paſs, notwithſtanding ſome of them are cracked, or worn, but not if they are clipt. 19 *H.* 7. *c.* 5. Counterfeiting, impairing, or clipping of the King's *coin,* is made high treaſon. 25 *Ed.* 3. *c.* 14. and 18 *Eliz. cap.* 7. It is alſo treaſon to make any ſtamp, dye, mould, &c. for *coining,* except by perſons employed in the mint, &c. Conveying ſuch out of the mint, is the ſame; and ſo is colouring metal reſembling *coin* of gold or ſilver, marking it on the edges, &c. And if any perſon mix blanched copper with ſilver, to make it heavier, and look like gold, or receive, or pay counterfeit milled money, it is felony. 8 & 9 *W.* 3. *c.* 26. Counterfeiting broad pieces of gold, &c. is declared to be treaſon. *Stat.* 6 *Geo.* 2. *cap.* 26. Perſons that waſh or gild any ſhilling, or ſix-pence, or alter the impreſſion, ſo as to make them reſemble a guinea, half guinea, &c. are adjudged guilty of high treaſon; and thoſe who tender in payment, any counterfeit *coin,* knowingly, ſhall be impriſoned ſix months for a firſt offence, two years for the ſecond, and a third ſuffers as felons. 15 *Geo.* 2. *c.* 28. The ſtatutes which ordain milled money to be made, give liberty to any perſon to refuſe hammered ſilver *coin,* as not being the lawful *coin* of this kingdom. 9 *W.* 3. *c.* 2. Counterfeiting of the *coin* extends only to gold and ſilver *coin*; for the *coining* of farthings or half-pence, or pieces to go for ſuch, of copper, incurred a penalty of 5 *l.* for every pound weight, by *Stat.* 9 & 10 *W.* 3. *c.* 33. This offence is now puniſhed with two years impriſonment, and ſurety to be given by the offenders for good behaviour two years more. 15 *Geo.* 2. *c.* 28. *ſect.* 6.

By *Stat.* 11 *Geo.* 2. *c.* 40. *ſect.* 1. the offence is made felony, but no puniſhment being annexed, the court wherein the offender is tried impriſon and fine him, &c But being a felony, it ſubjects the offender to the loſs of his goods and chattels.

Perſons apprehending money-coiners, clippers, &c. are to have 40 *l.* reward; and a guilty perſon diſcovering two others, to be pardoned, &c. 6 & 7 *W.* 3. *c.* 17. *ſect.* 9. 10 *l.* is alſo given as a reward, for apprehending and convicting *coiners* of copper money. In the ſeventh year of King *William* III. an act was made for calling in all the old *coin* of the kingdom, and to melt it down and recoin it; the deficiencies whereof were to be made good at the public charge: and in every hundred pound *coined,* 40 *l.* was to be ſhillings, and 10 *l.* ſix-pences, under certain penalties.

Perſons bringing plate to the *mint* to be *coined,* were to have the ſame weight of money delivered out, as an encouragement: and receivers general of taxes, &c. were to receive money at a large rate *per* ounce. Our guineas have been raiſed and fallen, as money has been ſcarce or plenty, ſeveral times by ſtatute: and *anno* 3 *Geo.* 1. on a ſcarcity of ſilver *coin,* for remedy, guineas were ſunk to 21 *s.* at which they now paſs, by proclamation. See *Money,* and *Black. Com.* 4 *V.* 84, 88, 90, 98, 120.

Coinage, *(cunagium)* Is the ſtamping and making of money, by the King's authority. And there is a duty of 10 *s. per* ton on wine, beer, and brandy imported, called the *coinage duty,* granted for expence of the King's *coinage,* but not to exceed 3000 *l. per ann.*. *Stat.* 18 *Car.* 2. *cap.* 5. This duty for *coinage* hath been continued and advanced, by divers ſtatutes, as 4 & 5 *Ann. c.* 22. 1 *Geo.* 1. *c.* 43. 9 *Geo.* 1. *c.* 19, &c The *coinage* duties are continued for ſeven years, by a late ſtatute; and the commiſſioners of the treaſury, out of the money ariſing by this act, or other public ſupplies, ſhall defray the expence of the *mints* of *England* and *Scotland,* not exceeding 15000 *l.* a year. *Stat.* 4 *Geo.* 2. *c.* 12. By *Stat.* 1 *Geo.* 3. *c.* 16. The coinage-duty is continued for ſeven years from *March* 1, 1761. See *Oct. Index to Stat.* tit. *Money.*

Coliberts. *(coliberti)* Were tenants in ſocage; and particularly ſuch villeins as were manumitted or made freemen. *Domeſday.* But they had not an abſolute freedom; for though they were better than ſervants, yet they had ſuperior lords to whom they paid certain duties, and in that reſpect they might be called ſervants, though they were of middle condition, between freemen and ſervants, ——*Libertate carens* colibertus *dicitur eſſe.* Du Cange.

Collateral, *(collateralis)* from the Lat. *laterale,* ſideways, or that which hangeth by the ſide, not direct: as *collateral aſſurance* is that which is made over and above the deed itſelf: *collateral* ſecurity, is where a deed is made of other land, beſides thoſe granted by the deed of mortgage: and if a man covenants with another, and enters into bond for performance of his covenant, the bond is a *collateral* aſſurance; becauſe it is external, and without the nature and eſſence of the covenant. If a man hath liberty to pitch booths or ſtandings, for a fair or market, in another perſon's ground, it is *collateral* to the ground. The private woods of a common perſon, within a foreſt, may not be cut down without the King's licence; it being a prerogative *collateral* to the ſoil. And to be ſubject to the feeding of the King's deer, is *collateral* to the ſoil of a foreſt. *Cromp. Juriſd.* 185. *Manwood, p.* 66.

Collateral Conſanguinity, or *kindred. Collateral* relations agree with the lineal in this, that they deſcend from the ſame ſtock or anceſtor; but differ in this, that they do not deſcend from each other. *Collateral kinſmen,* therefore, are ſuch as lineally ſpring from one and the ſame anceſtor, who is the *ſtirps* or root, the *ſtipes,* trunk, or common ſtock, from whence theſe relations are branched out. *Vide Black. Com.* 2 *V.* 204, &c.

Collateral Diſcent, and **Collateral Warranty.** See *Diſcent* and *Warranty.*

Collateral Iſſue, Is where a criminal convict pleads any matter, allowed by law, in bar of execution, as *pregnancy,* the King's *pardon,* an *act* of *grace,* or *diverſity* of *perſon, viz.* that he or ſhe is not the ſame that was attainted, &c. whereon iſſue is taken, which iſſue is to be tried, by a jury, *inſtanter. Vide Black. Com.* 4 *V.* 389.

Collatio Bonorum, Is in law where a portion or money advanced by the father to a ſon or daughter, is brought into *hotchpot,* in order to have an equal diſtributory ſhare of his perſonal eſtate, at his death, according to the intent of the *Stat.* 22 & 23 *Car.* 2. *c.* 10. *Abr. Caſ. Eq. p.* 254. See *Hotchpot,* and *Black. Com.* 2 *V.* 517.

Collation of a Benefice, *(collatio beneficii)* Signifies the beſtowing of a *benefice* by the biſhop, when he hath right of patronage. And it differs from inſtitution in this, that inſtitution is performed by the biſhop upon the preſentation of another, and *collation* is his own act of preſentation; and it differeth from a common *preſentation*, as it is the giving of the church to the parſon, and preſentation is the giving or offering of the parſon to the church. But *collation* ſupplies the place of preſentation and inſtitution; and amounts to the ſame as inſtitution, where the biſhop is both patron and ordinary. 1 *Lil. Abr.* 273. Anciently the right of preſentation to all churches, was in the biſhop; and now if the patron neglects to preſent to a church, then this right returns to the biſhop by *collation:* and if the biſhop neglects to collate within ſix months after the lapſe of the patron, then the archbiſhop hath a right to do it; and if the archbiſhop neglects, then it devolves to the King; the one as ſuperior, to ſupply the defects of biſhops; the other as ſupreme, to reform all defects of government.

As a biſhop may neglect to *collate*, ſo it may happen that he may make his *collation* without title; but ſuch a wrongful *collation* doth not put the true patron out of poſſeſſion; for after the *collatee* of the biſhop is inſtituted and inducted, he may preſent his clerk: and *collation* in this caſe, ſhall be intended only as a proviſional incumbency to perform divine ſervice till preſentment is made by the true patron. 1 *Inſt.* 344. By *collation* the church is not full; and a right patron may bring his writ at any time to remove the perſon *collated*; except his right be likewiſe to *collate*, when *plenarty by collation* may be pleaded. *Wood's Inſt.* 159. Where a biſhop gives a benefice as *patron*, he collates to it *jure pleno*; and when by *lapſe*, he doth it *jure devoluto*. The *collation* by lapſe, is in right of the patron, and for his turn: and in aſſiſe of *darrein preſentment*, *&c.* it ſhall be laid as his poſſeſſion. 24 *Ed.* 3. 26. *F. N. B.* 31.

Collatione facta uni poſt Mortem alterius, Is a writ directed to the juſtices of the *Common Pleas*, commanding them to iſſue their writ to the biſhop, for the admiſſion of a clerk in the place of another preſented by the King; who died during the ſuit between the King and the biſhop's clerk: for judgment once paſſed for the King's clerk, and he dying before admitance, the King may beſtow his preſentation on another. *Reg. Orig.* 31.

Collatione Heremitagii, A writ whereby the King conferred the keeping of an *bermitage* upon a clerk. *Reg. Orig.* 303, 308.

Collation of Seals. This was when upon the ſame label, one ſeal was ſet on the back or reverſe of the other. ——*Ad majorem ſecuritatem præmiſſorum ſigillum diſcreti viri officialis domini* Batho Well. *Epiſcopi filo medio per modum* collationis, *ſigillo meo apponi procuravi.* Cartular. Abbat. Glaſton. MS. 105.

Collative Advowſons. An *advowſon collative* is where the biſhop and patron are one and the ſame perſon: in which caſe the biſhop cannot preſent to himſelf; but he does, by the one act of *collation*, or conferring the benefice, the whole that is done in common caſes, by preſentation and inſtitution. *Vide Black. Com.* 2 *V.* 22, 23.

Collectors of money due to the King, not paying the ſame to whom it ought to be paid, ſhall anſwer ſo much *per Cent.* to his majeſty till payment. *Stat.* 20 *Car.* 2. *c.* 2. See *Receivers.*

College, *(collegium)* A particular corporation, company or ſociety of men, having certain privileges founded by the King's licence: and for *Colleges* in reputation, ſee 4 *Rep.* 106, 108.

The eſtabliſhment of Colleges or Univerſities is a remarkable æra in literary hiſtory. The ſchools in Cathedrals and Monaſteries confined themſelves chiefly to the teaching of grammar. There were only one or two maſters employed in that office. But in Colleges, profeſſors were appointed to teach all the different parts of ſcience. The firſt obſcure mention of academical degrees in the Univerſity of *Paris*, (from which the other Univerſities in *Europe* have borrowed moſt of their cuſtoms and inſtitutions), occurs, *A. D.* 1215. *Vide Robertſ. Hiſt. Emp. C. V.* 1 *V.* 323. Vide *Leaſes.*

See the power of viſitors of Colleges well explained in Dr. *Walker*'s caſe. *Rep Temp. Hardw. per Annaly*, 212. Vide *Leaſes.*

Collegiate Church, Is that which conſiſts of a dean and ſecular canons; or more largely, it is a church built and endowed for a ſociety, or body corporate, of a dean or other preſident, and ſecular prieſts, as canons or prebendaries in the ſaid church. There were many of theſe ſocieties diſtinguiſhed from the religious or regulars, before the reformation: and ſome are eſtabliſhed at this time; as *Weſtminſter*, *Windſor*, *Wincheſter*, *Southwell*, *Mancheſter*, &c.

Colligendum bona defuncti, (letters *ad.)* In defect of repreſentatives and creditors to adminiſter to an inteſtate, *&c.* the ordinary may commit adminiſtration to ſuch diſcreet perſon as he approves of, or grant him theſe letters, which neither make him executor nor adminiſtrator; his only buſineſs being to keep the goods in his ſafe cuſtody, and to do other acts for the benefit of ſuch as are entitled to the property of the deceaſed. *Vide Black. Com* 2 *V.* 505.

Colloquium, *(a colloquendo)* A talking together, or affirming of a thing, laid in declarations for words in actions of ſlander, *&c.* *Mod. Caſ.* 203. *Carthew* 90.

Colluſion, *(colluſio)* Is a deceitful agreement or contract between two or more perſons, for the one to bring an action againſt the other, to ſome evil purpoſe, as to defraud a third perſon of his right, *&c.* This *colluſion* is either apparent, when it ſhews itſelf in the face of the act; or, which is more common, it is ſecret, where done in the dark, or covered over with a ſhew of honeſty. And it is a thing the law abhors; wherefore, when found, it makes void all things dependant upon the ſame, though otherwiſe in themſelves good. *Co. Lit.* 109, 360. *Plowd.* 54. *Colluſion* may ſometimes be tried in the ſame action wherein the covin is, and ſometimes in another action, as for lands aliened in mortmain by a *quale jus:* and where it is apparent there needs no proof of it; but when it is ſecret, it muſt be proved by witneſſes, and found by a jury like other matters of fact. 9 *Rep.* 33. The ſtatute of *Weſtm.* 2. 13 *Ed.* 1. *c.* 33. gives the writ *quale jus*, and inquiry in theſe caſes: and there are ſeveral other ſtatutes relating to deeds, made by *colluſion* and fraud. The caſes particularly mentioned by the ſtatute of *Weſtm.* 2. are of *quare impedit*, *aſſiſe*, *&c.* which one corporation brings againſt another, with intent to recover the land or advowſon, for which the writ is brought, held in mortmain, *&c.* *Vide* the ſtatute.

Colonies. See *Charter-governments* in *America. Plantation.*

Colonus, An huſbandman or villager, who was bound to pay yearly a certain tribute, or at certain times in the year to plough ſome part of the lord's land; and from hence comes the word *clown*; who is called by the *Dutch boor.*

Colour, *(color)* Signifies a probable plea, but what is in fact falſe; and hath this end, to draw the trial of the cauſe from the jury to the judges: and therefore *colour* ought to be matter in law, or doubtful to the jury. This *colour* is uſed in aſſiſes, or action of treſpaſs; and every *colour* ought to have theſe qualities following: 1. It is to be doubtful to the *lay gens*, as in caſe of a deed of feoffment pleaded, and it is a doubt whether the land paſſeth by the feoffment, without livery, or not. 2. *Colour* ought to have continuance, though it wants effect. 3. It ſhould be ſuch *colour*, that, if it were effectual, would maintain the nature of the action; as in aſſiſe, to give colour of freehold, *&c.* 10 *Rep.* 88, 90, *a.* 91. *Colour* muſt be ſuch a thing, which is a good *colour* of title, and yet is not any title. *Cro. Jac.* 122. If a man juſtifies his entry for ſuch a cauſe as binds the plaintiff or his heirs for ever, he ſhall not give any *colour:* but if he pleads a deſcent in bar, he muſt give *colour*, becauſe this binds the poſſeſſion, and not the right; ſo that when the matter of the plea bars the plaintiff of his right, no *colour* muſt be given. When the defendant entitles himſelf by the plaintiff; where a perſon pleads to the writ, or to the action of the writ; he who juſtifies for tithes, or where the defendant juſtifies as ſervant: in all theſe caſes no *colour* ought to be given. 10 *Rep.* 91. *Lutw.* 1343. Where the defendant doth not make a ſpecial title to himſelf, or any other, he ought to give *colour* to the plaintiff. *Cro. Eliz.* 76. In treſpaſs for taking and carrying away twenty loads of wood, *&c.* the defendant ſays, that *A. B.* was poſſeſſed of them, *ut de bonis propriis*, and that the plaintiff claiming them by *colour* of a deed after made, took them, and the defendant retook them; and adjudged, that the *colour* given to the plaintiff, makes a good title to him, and confeſſeth the intereſt in him. 1 *Lil. Abr.* 275. *Colour* is for this cauſe, *viz.* Where the defendant juſtifies by title in treſpaſs or aſſiſe, if he do not give the plaintiff *colour*, his plea amounteth only to Not guilty; for if the defendant hath title, he is Not guilty. And this ſhews the true reaſon of giving *colour*. 1 *Rep.* 79, 108. *Terms de Ley* 140. See *Doct. Plac.* 72, 73. *Black. Com.* 3 *V.* 309.

Colour of Office, *(color officii)* Is when an act is evilly done by the countenance of an office; and always taken in the worſt ſenſe, being grounded upon corruption, to which the *office* is as a ſhadow and *colour*. Plowd. Comment. 64. See *Extortion.*

Colpices, *(colpicium, colpiciis)* Young poles, which being cut down, make leavers or lifters; and in *Warwickſhire* they are called *colpices* to this day. *Blount.*

Colpo, A ſmall wax-candle, *à copo de cere:* we read in *Hoveden*, that when the King of *Scots* came to the *Engliſh* court, as long as he ſtaid there, he had every day, *De liberatione triginta ſol. & duodecim vaſſellos dominicos, & quadraginta groſſos longos* colpones *de dominica candela regis, &c. anno* 1194.

Combarones, The fellow barons, or commonalty of the cinque ports: King *Hen.* 3. grants to the barons, or freemen of the port of *Feverſham, quietantiam de omni thelonio, & conſuetudine, ſicut ipſi & anteceſſores ſui, &* combarones *ſui de quinque portubus eam melius & plenius habuerunt tempore Regis* Edwardi. *Placit. temp* Ed. 1. & Ed. 2. But the title of barons of the cinque ports is now given to their repreſentatives in parliament; and the word *combaron* is uſed for a fellow member, the *baron* and his *combaron.*

Comba terræ, From Sax. *cumbe*, Brit. *kum*, Eng. *comb.* a valley or low piece of ground or place between two hills; which is ſtill ſo called in *Devonſhire* and *Cornwall:* hence many villages in other parts of *England* have their names of *comb*, as *Wickcomb, &c.* from their ſituation. *Kennet's Gloſſ.*

Combat, *(Fr.)* Is taken with us for a formal trial between two champions, of a doubtful cauſe or quarrel, by the ſword or baſtons. The laſt caſe of the kind in this kingdom was *anno* 6 *Car.* 1. between *Donald* lord *Rey*, appellant, and *David Ramſey*, Eſq; defendant, both *Scotchmen*, before *Robert* earl of *Lindſey*, lord high conſtable, *Thomas* earl of *Arundel*, earl marſhal, with other lords; when after the court had met ſeveral times in the painted chamber, and other formalities, it was at laſt referred to the King's will and pleaſure, who was inclined to favour *Ramſey.* Co. Lit. 294. Orig. Juridicial. fol. 65.

The trial by *combat* was formerly authorized over all *Europe*; but, as Dr. *Robertſon* juſtly obſerves, "the prohibition of this form of trial was a conſiderable ſtep towards the introduction of ſuch regular government as ſecured public order and private tranquillity." See *Hiſt. Emp. C. V.* 1 *V.* 47, 52, 54, 55, 291, 295, *&c.* See *Battel.*

Combinations to do unlawful acts, are puniſhable before the unlawful act is executed; this is to prevent the conſequence of *combinations*, and conſpiracies, *&c.* 9 *Rep.* 57. See *Confederacy.*

Combuſtio Pecuniæ, The ancient way of trying mixt and corrupt money, by melting it down upon payments into the *Exchequer.* In the time of King *Henry* 2. a conſtitution was made called the *trial by combuſtion*; the practice of which differed little or nothing from the preſent method of *aſſaying* ſilver. But whether this examination of money by *combuſtion*, was to reduce an equation of money only of *ſterling, viz.* a due proportion of allay with copper; or to reduce it to a fine pure ſilver with allay, doth not appear. On making the conſtitution of trial, it was conſidered, that though the money did anſwer *numero & pondere*, it might be deficient in value; becauſe mixed with copper or braſs, *&c.* Vide *Lowndes's Eſſay upon Coin, p.* 5.

Comitatus, A county. *Ingulphus* tells us, That *England* was firſt divided into counties by King *Alfred*; and counties into hundreds, and theſe again into tithings; and *Forteſque* writes, that *regnum* Angliæ *per* comitatus *ut regnum* Franciæ *per ballivatus diſtinguitur.* Sometimes it is taken for a territory or juriſdiction of a particular place, as in *Mat. Pariſ.* anno 1234. *Infra metas illas continentur quædam prædia & etiam civitates & caſtra, quas* comitatui *ſuo aſſignare præſumunt.* And *in Charta, H.* 2. *apud* Hoveden: *Caſtellum de* Nottingham *cum* comitatu, *&c.* And, *De firmis mortuis & debitis, de quibus non eſt ſpes, fiat unus rotulus, & intituletur* comitatus, *& legatur ſingulis annis ſuper computum vicecomitum.* Clauſ. 12 Ed. 1. See *County.*

According to Lord *Littleton*, in his *hiſtory* of *Hen.* 2. *lib.* 2. *fo.* 217. each county was anciently an earldom, ſo that, previous to the reign of K. *Stephen*, there were not any titular earls, nor more earls than counties, though there might be fewer. As to the diviſions of counties into hundreds and tythings, ſee *Ld. Lit. l.* 2. *fo.* 259. Alſo ſee *Bract. l.* 3. *c.* 10.

Comitatu Commiſſo, Is a writ or commiſſion whereby a ſheriff is authorized to take upon him the charge of the county. *Reg. Orig.* 295.

Comitatu & Caſtro Commiſſo, A writ by which the charge of a county, together with the keeping of a caſtle, is committed to the ſheriff. *Reg. Orig. Ibid.*

Comitiva, A companion or fellow traveller; it is mentioned in *Brompton, Regn. H.* 2. And ſometimes it ſignifies a troop or company of robbers; as in *Walſingham, anno* 1366. *Interpellaverunt auxillium regis* Angliæ *contra magnas* comitivas, *&c.*

Commandry, *(præceptoria)* Was any manor or chief meſſuage, with lands and tenements thereto appertaining, which belonged to the priory of *St. John of Jeruſalem in England*; and he who had the government of ſuch a manor or houſe was ſtiled the *commander*, who could not diſpoſe of it but to the uſe of the priory, and only taking thence his own ſuſtenance, according to his degree. *New Eagle* in *Lincolnſhire* was and ſtill is called the *commandry of Eagle*, and did anciently belong to the ſaid priory of St. *John:* ſo *Selbach* in *Pembrokeſhire*, and *Shingay* in *Cambridgeſhire*, were *commandries* in the time of the knights templars, ſays *Cambden:* and theſe in many places of *England* are termed *Temples*, becauſe they formerly belonged to the ſaid templars. *Stat.* 26 *H.* 8. *c.* 2. The manors and lands belonging to the priory of St. *John of Jeruſalem*, were given to King *Hen.* 8. by the *Stat.* 32 *Hen.* 8. about the time of the diſſolution of Abbies and monaſteries; ſo that the name only of *commandries* remains, the power being long ſince extinct.

Commandment, *(præceptum)* Is diverſly taken; as the *commandment of the King*, when upon his own motion he hath caſt any man into priſon. *Commandment of the juſtices*, abſolute or ordinary; abſolute, where upon their own authority they commit a perſon for contempt, *&c.* to priſon, as a puniſhment; ordinary is when they commit one rather for ſafe cuſtody, than for any puniſhment: and a man committed upon ſuch an ordinary *commandment* is repleviſable. *Staundf. P. C.* 72, 73. Perſons committed to priſon by the ſpecial *command* of the King, were not formerly bailable by the court of *King's Bench*; but at this day the law is otherwiſe declared and ſettled, as appears under bail. 2 *Hawk. P. C.* 96.

In another ſenſe of this word; magiſtrates may *command* others to aſſiſt them in the execution of their offices, for the doing of juſtice; and ſo may a juſtice of peace to ſuppreſs riots, apprehend felons; an officer to keep the King's peace, *&c.* *Bro.* 3. A maſter may *command* his ſervant to drive another man's cattle out of his ground, to enter into lands, ſeize goods, diſtrain for rent, or do other things; if the thing be not a treſpaſs to others. *Fitz. Abr.* The *commandment* of a thing is good, where he that *commands* hath power to do it: and a verbal *command* in moſt caſes is ſufficient; unleſs it be where it is given by a corporation, or when a ſheriff's warrant is to a bailiff to arreſt, *&c.* *Bro.* 288. *Dyer* 202. *Commandment* is alſo uſed for the offence of him that willeth another man to tranſgreſs the law, or do any thing contrary to it: and in the moſt common ſignification, it is taken where one willeth another to do an unlawful act; as murder, theft, or the like: which the civilians called *mandatum*. *Bract. lib.* 3. *c.* 19.

He that *commandeth* any one to do an unlawful act, is acceſſary to it and all the conſequences, if it be executed in the ſame manner as *commanded:* but if the *commander* revoke the *command*; or if the execution varies from it, or in the nature of the offence, in ſuch caſe he will not be acceſſary. 2 *Inſt.* 182. 3 *Inſt.* 51, 57. If a man *command* another to commit a felony on a particular perſon, and he doth it on another, as to kill *A.* and he kills *B.* or to burn the houſe of *A.* but he burns the houſe of *B.* or to ſteal one thing, and he ſteals another; or to commit a felony of one kind, and he commits another: it is ſaid that the *commander* is not acceſſary, becauſe the act done varies in ſubſtance from that which was *commanded.* 1 *H. C. P.* 436, 452. And ſee 2 *Hawk.* 316. *Plowd.* 475. But where a perſon *commands* or adviſes another to kill ſuch a one in the night, and he kills him in the day; or to kill him in the fields, and he kills him in the town; or to poiſon him, and he ſtabs or ſhoots him; theſe acts being the ſame felony in *ſubſtance* with that which was intended, and varying only in *circumſtances*, in reſpect to time, place, *&c.* the *commander* is as much an acceſſary as if there had been no variance at all between the *command* and the execution of it. 2 *Hawk.* 316.

If I *command* a man to rob another, and he kills him in the attempt, though he doth not rob him, I am guilty of the murder; it being the direct and immediate effect of an act done in execution of my *command* to commit a felony; and if the *command* be to beat a perſon, and the perſon *commanded* beat him in ſuch a manner that he dies thereof, I am an acceſſary before to the felony; becauſe it happened in the execution of a *command*, which tended to endanger the life of the other. Alſo it is ſaid, that if one *command* another to burn the houſe of a certain perſon, and he *by burning it* burn likewiſe the houſe of another, the *commander* is equally acceſſary to the ſubſequent felony, as to that which was directly *commanded. Ibid.* 315, 316, To *command* or counſel any one to commit burglary, is felony without benefit of clergy. *Stat.* 3 *W. & M. c.* 9.

In forcible entries, *&c.* an infant or feme covert may be guilty in reſpect of actual violence done by them in perſon; though not in regard to what ſhall be done by others at their *command*, becauſe all ſuch *commands* of theirs are void. *Co. Lit.* 357. 1 *Hawk.* 147. In treſpaſs, *&c.* the maſter ſhall be charged criminally for the act of the ſervant, done by his *command*; but ſervants ſhall not be excuſed for committing any crime, when they act by *command of their maſters*; who have no authority over them to give ſuch *command. Doct. & Stud. c.* 42. *H. P. C.* 66. *Kel.* 13. And if a maſter commands his ſervant to diſtrain, and he abuſeth the diſtreſs, the ſervant ſhall anſwer it to the party injured, *&c. Kitch.* 372.

Commarchio, The confines of the land; from whence probably comes the word *marches.*——*Imprimis de noſtris landimeris*, commarchionibus. *Du Cange.*

Commendam, (*eccleſia* commendata, *vel cuſtodia eccleſiæ alicui commiſſa)* Is the holding of a benefice or church-living, which being void, is *commended* to the charge and care of ſome ſufficient clerk, to be ſupplied until it may be conveniently provided of a paſtor: and he to whom the church is *commended*, hath the profits thereof only for a certain time, and the nature of the church is not changed thereby, but is as a thing depoſited in his hands in truſt, who hath nothing but the cuſtody of it, which may be revoked. When a parſon is made biſhop, there is a ceſſion or voidance of his benefice, by the promotion; but if the King by ſpecial diſpenſation gives him power to retain his benefice, notwithſtanding his promotion; he ſhall countinue parſon, and is ſaid to hold it *in Commendam. Hob.* 144. *Latch.* 236. As the King is the means of avoidances on promotions to dignities, and the preſentations thereon belong to him, he often on the creation of biſhops grants them licences to hold their benefices *in commendam*; but this is uſually where the biſhopricks are ſmall, for the better ſupport of the dignity of the biſhop promoted: and it muſt be always before conſecration; for afterwards it comes too late, becauſe the benefice is then abſolutely void. A *commendam*, founded on the ſtatute 25 *H.* 8. *c.* 21. is a diſpenſation from the ſupreme power, to hold or take an eccleſiaſtical living *contra jus poſitivum:* and there are ſeveral ſorts of *commendams*, as a *commendam ſemeſtris*, which is for the benefit of the church without any regard to the *commendatory*, being only a proviſional act of the ordinary, for ſupplying the vacation of ſix months, in which time the patron is to preſent his clerk, and is but a ſequeſtration of the cure and fruits until ſuch time as the clerk is preſented: a *commendam retinere*, which is for a biſhop to retain benefices, on his preferment; and theſe *commendams* are granted on the King's mandate to the archbiſhop, expreſſing his conſent, which continues the incumbency, ſo that there is no occaſion for inſtitution. A *commendam recipere* is to take a benefice *de novo* in the biſhop's own gift, or in the gift of ſome other patron, whoſe conſent muſt be obtained. *Dyer* 228. 3 *Lev.* 381. *Hob.* 143. *Danv.* 79.

A *commendam* may be temporary for ſix or twelve months; two or three years, *&c.* or it may be perpetual, *i. e.* for life, when it is equal to a preſentation, without inſtitution or induction. But all diſpenſations beyond ſix months were only permiſſive at firſt, and granted to perſons of merit: the *commendam retinere* is for one or two years, *&c.* and ſometimes for three or ſix years, and doth not alter the eſtate which the incumbent had before: a *commendam retinere*, as long as the *commendatory* ſhould live and continue biſhop, hath been held good. *Vaugh.* 18.

The *commendam recipere* muſt be for life, as other parſons and vicars enjoy their benefices; and as a patron cannot preſent to a full church, ſo neither can a *commendam reciperi* be made to a church that is then full. *Show.* 414. A benefice cannot be *commended* by parts, any more than it may be preſented unto by parts; as that one ſhall have the glebe, another the tithes, *&c.* Nor can a *commendatory* have a *juris utrum*, or take to him and his ſucceſſors, ſue or be ſued, in a writ of annuity, *&c.* But a *commenda perpetua* may be admitted to do it. 11 *H.* 4. *Compl. Incumb.* 360, See 1 *Nelſ. Abr.* 454.

Commendatory, (*commendatarius*) Is he that hath a church living or preferment *in commendam.*

Commendatory Letters, Are ſuch as are written by one biſhop to another in behalf of any of the clergy, or others of his dioceſe, travelling thither, that they may be received among the faithful: or that the clerk may be promoted; or neceſſaries adminiſtred to others, *&c.* ſeveral forms of theſe letters may be ſeen in our hiſtorians, as in *Bede, lib.* 2. *c.* 18.

Commendatus, One that lives under the protection of a great man. *Spelm. Commendati homines* were perſons who by voluntary homage put themſelves under the protection of any ſuperior lord: for ancient homage was either *predial*, due for ſome tenure; or perſonal, which was by compulſion, as a ſign of neceſſary ſubjection; or voluntary, with a deſire of protection: and thoſe, who by voluntary homage put themſelves under the protection of any men of power, were ſometimes called *homines ejus commendati:* and ſometimes only *commendati*, as often occurs in *Domeſday. Commendati dimidii* were thoſe who depended on two ſeveral lords, and paid one half of their homage to each: and *ſub-commendati* were like under-tenants, under the command of perſons that were dependants themſelves on a ſuperior lord: alſo there were *dimidii ſub-commendati*, who bore a double relation to ſuch depending lords. *Domeſday.* This phraſe ſeems to be ſtill in uſe, in the uſual complement, *Commend me to ſuch a friend*, &c. which is to let him know, *I am his humble ſervant.* Spelm. of Feuds, cap. 20.

Commerce, (*commercium*) Traffick, trade or merchandiſe in buying and ſelling of goods. See *Merchant.*

There is a diſtinction between *commerce* and *trade*; the former relates to our dealings with foreign nations, or our colonies, *&c.* abroad; the other to our mutual traffick and dealings among ourſelves at home.

With reſpect to the eſtabliſhment of commerce in *Europe*, (its firſt origin in *Italy* about the beginning of the eleventh century) ſee *Robertſ. Hiſt. of the Emperor* Charles V. 1 *V*. 32, 33, *&c.* As to the commerce of the ancients, ſee *Monteſquieu L'Eſprit des Loix, L.* 21. *c.* 6. Vide alſo *An Eſſay on Maritime Power and Commerce, by Deſlaudes, publiſhed by Vaillant, in* 1743.

Commiſſary, (*commiſſarius*) Is a title in the eccleſiaſtical law, belonging to one that exerciſeth ſpiritual juriſdiction, in places of a dioceſe which are ſo far from the epiſcopal city, that the chancellor cannot call the people to the biſhop's principal conſiſtory court, without their too great inconvenience. This commiſſary was ordained to ſupply the biſhop's juriſdiction and office in the out-places of the dioceſe; or in ſuch places as are peculiar to the biſhop, and exempted from the juriſdiction of the archdeacon: for where, either by preſcription or compoſition, archdeacons have juriſdiction within their archdeaconries, as in moſt places they have, this *commiſſary* is ſuperfluous and oftentimes vexatious, and ought not to be; yet in ſuch caſes a *commiſſary* is ſometimes appointed by the biſhop, he taking preſtation money of the archdeacon yearly *pro exteriori juriſdictione*, as it is ordinarily called. But this is held to be a wrong to archdeacons and the poorer ſort of people. *Cowel's Interp.* 4 *Inſt.* 338.

There are alſo *commiſſaries* in time of war. Perſons ſent abroad to take care of proviſions for the army.—How well they executed the great truſt repoſed in them, during the late war in *Germany*, is too well known to the preſent age, and it is hoped it will be tranſmitted to poſterity.

Commiſſion, (*commiſſio*) Is taken for the warrant or letters patent, which all men exerciſing juriſdiction either ordinary or extraordinary, have to authoriſe them to hear or determine any cauſe or action: as the *commiſſion* of the judges, *&c.* *Commiſſion* is with us as much as *delegatio* with the civilians; and this word is ſometimes extended farther than to matters of judgment; as the *commiſſion of purveyance*, *&c.* *Commiſſions* of inquiry ſhall be made to the juſtices of one bench or the other, *&c.* and to do lawful things, are grantable in many caſes: alſo moſt of the great officers, judicial and miniſterial, of the realm, are made by *commiſſion*. And by ſuch *commiſſions*, treaſons, felonies, and other offences, may be heard and determined; by this means likewiſe, oaths, cogniſance of fines, and anſwers, are taken, witneſſes examined, offices found, *&c.* *Bro. Abr.* 12. *Rep.* 39. *Stat.* 42 *E.* 3. *c.* 4. And moſt of theſe *commiſſions* are appoined by the King under the Great Seal of *England:* but a *commiſſion* granted under the Great Seal may be determined by a Privy Seal; and by granting another new *commiſſion* to do the ſame thing, the former *commiſſion* determines; and on the death or demiſe of the King, the *commiſſions* of judges and officers generally ceaſe. *Bro. Commiſ.* 2 *Dyer* 289. There was formerly a *high commiſſion* court founded on 1 *Eliz. c.* 1. but it was aboliſhed by act of parliament 17 *Car.* 1. *c.* 11. And by *Stat.* 13 *Car.* 2. *c.* 2. Of *commiſſions* you may ſee divers in the table of the *Regiſter of Writs.* See 4 *Hen.* 4. *c.* 9. 7 *Hen.* 4. *c.* 11. And 1 *Ann. ſt.* 1. *c.* 8. 6 *Ann. c.* 7.

Commiſſion of Anticipation, Was a *commiſſion* under the Great Seal to collect a tax or ſubſidy before the day. 15 *H.* 8.

Commiſſion of Aſſociation, Is a *commiſſion* to *aſſociate* two or more learned perſons with the juſtices in the ſeveral circuits and counties of *Wales*, &c. 18 *Eliz. c.* 9.

Commiſſion of Bankrupt, Where any perſon is become a bankrupt within any of the ſtatutes againſt bankrupts, on ſecurity given to prove the party a bankrupt, *&c.* this commiſſion iſſues from the Lord Chancellor to certain commiſſioners apppointed to take order with the bankrupt's lands and goods, for the ſatisfaction of the creditors. *Stat.* 34 *&* 35 *Hen.* 8. *c.* 4. 13 *Eliz. c.* 7. 1 *Jac.* 1. *c.* 15, *&c.* See *Bankrupt.*

Commiſſion of Charitable Uſes, Goes out of the *Chancery* to the biſhop and others, where lands given to charitable uſes are miſemployed, or there is any fraud or diſputes concerning them, to enquire of and redreſs the abuſe, *&c.* 43 *Eliz. c.* 4.

Commiſſion of Delegates, Is a commiſſion under the Great Seal to certain perſons, uſually two or three temporal lords, as many biſhops, and two judges of the law, to ſit upon an appeal to the King in the court of *Chancery*, where any ſentence is given in any eccleſiaſtical cauſe by the archbiſhop. *Stat.* 25 *H.* 8. *c.* 19. Now generally three of the Common law judges, and two Civilians, ſit as delegates.

Commiſſion to enquire of Faults againſt the Law, Was an ancient commiſſion ſet forth on extraordinary occaſion and corruptions.

Commiſſion of Lunacy, A commiſſion out of *Chancery* to enquire whether a perſon repreſented to be a lunatick be ſo or not, that if lunatick, the King may have the care of his eſtate, *&c.* 17 *Ed.* 2. *c.* 10.

Commiſſion of Rebellion, Otherwiſe called a writ of rebellion, iſſues when a man after proclamation made by the ſheriff, upon a proceſs out of the *Chancery*, on pain of his allegiance, to preſent himſelf to the court by a day aſſigned, makes default in his appearance: and this commiſſion is directed to certain perſons, to the end they, three, two, or one of them apprehend the party, or cauſe him to be apprehended as a *rebel* and contemner of the King's laws, whereſoever found within the kingdom, and bring or cauſe him to be brought to the court on a day therein aſſigned: this writ or commiſſion goes forth after an attachment returned, *non eſt inventus*, *&c.* Terms de Ley.

Commiſſion of Sewers, Is directed to certain perſons to ſee drains and ditches well kept and maintained in the marſhy and fenny parts of *England*, for the better conveyance of the water into the ſea, and preſerving the graſs upon the land, *Stat.* 23 *H.* 8. *c.* 5. 13 *Eliz. c.* 9.

Commiſſion of Treaty with foreign Princes, Is where leagues and treaties are made and tranſacted between ſtates and kingdoms, by their ambaſſadors and miniſters, for the mutual advantage of the kingdoms in alliance.

Commiſſion to take up Men for War, Was a commiſſion to preſs or force men into the king's ſervice. This power of *impreſſing* is much doubted by many; yet, in favour of its legality, much hath been ſaid by a late learned judge. Vide *Foſt. Rep.* 154. *Broadfoot*'s caſe. And *Black. Com.* 1 *V.* 418. *Comb.* 245

Commiſſioner, (*commiſſionarius*) Is he that hath a commiſſion, letters patent, or other lawful warrant to examine any matters, or to execute any public office, *&c.* And ſome *commiſſioners* are to hear and determine offences, without any return made of their proceedings; and others to inquire and examine, and certify what is found. 4 *Hen.* 4. 9. *Commiſſioners* by the Common law muſt purſue the authority of the *commiſſion*, and perform the effect thereof; and they are to obſerve the antient rules of the courts whence they come; and if they do any thing for which they have not authority, it will be void. 2 *Co. Rep.* 25. *Co. Lit.* 157. The office of commiſſioners is to do what they are commanded; and it is neceſſarily implied, that they may do that alſo, without which what is commanded cannot be done: their authority, when appointed on any ſtatute law, muſt be uſed as the ſtatutes preſcribe. 12 *Rep.* 32. If a commiſſion is given to *commiſſioners* to execute a thing againſt law, they are not bound to accept or obey it: *commiſſioners* not receiving a commiſſion may be diſcharged, upon oath before the Barons of the Exchequer, *&c.* and the King by *ſuperſedeas* out of Chancery, may diſcharge *commiſſioners*. Beſides *commiſſioners* relating to judicial proceedings; there are *Commiſſioners* of the *Treaſury*, of the *Cuſtoms*, *wine-licences*, *alienations*, *&c.* of which there is an infinite number.

Committee, Are thoſe to whom the conſideration or ordering of any matter is referred, by ſome court, or by conſent of parties to whom it belongs: as in parliament, a bill either conſented to and paſſed, or denied, or neither, but being referred to the conſideration of certain perſons appointed by the houſe farther to examine it, they are thereupon called a *committee*. And when a parliament is called, and the ſpeaker and members have taken the oaths, and the ſtanding orders of the houſe are read, *committees* are appointed to ſit on certain days, *viz.* the *committee of privileges and elections*, of *religion*, of *grievances*, of *courts of juſtice*, and of *trade*; which are the ſtanding *committees*. But though they are appointed by every new parliament, they do not all of them act, only the *committee* of privileges; and this being not of the whole houſe, is firſt called in the ſpeaker's chamber, from whence it is adjourned into the houſe, every one of the houſe having a vote therein, though not named, which makes the ſame uſually very numerous: and any member may be preſent at any ſelect *committee*; but is not to vote unleſs he be named. The chairman of the *grand committee*, who is always ſome leading member, ſits in the clerk's place at the table, and writes the votes for and againſt the matter referred to them; and if the number be equal, he has a caſting voice, otherwiſe he hath no vote in the *committee*; and after the chairman hath put the queſtion for reporting to the houſe, if that be carried, he leaves the chair, and the ſpeaker being called to his chair, (who quits it in the beginning, and the mace is laid under the table) he is to go down to the bar, and ſo bring up his report to the table. After a bill is read a ſecond time in the Houſe of Commons, the queſtion is put, whether it ſhall be committed to a *committee of the whole houſe*, or a *private committee*; and the *committees* meet in the ſpeaker's chamber, and report their opinion of the bill with the amendments, *&c.* And if there be any exceptions againſt the amendments reported, the bill may be *recommitted*: eight perſons make a *committee*, which may be adjourned by five, *&c.* *Lex Conſtitutionis* 147, 150. There is a *committee of the King*, mentioned in *Weſt's Symb.* tit. *Chancery*, *ſect.* 144. And this hath been uſed, though improperly, for the widow of the King's tenant being dead, who is called the *committee of the King*, that is, one committed by the ancient law of the land to the King's care and protection. *Kitch. fol.* 160. See *Parliament*.

Commitment, Is the ſending of a perſon to priſon by warrant or order, who hath been guilty of any crime: here it is to be conſidered,

I. *What kind of offenders may be committed, and by whom, and in what manner.*
II. *To what priſon they may be committed, and at whoſe charge.*
III. *How they may be removed and diſcharged.*

I. *As to the kind of offenders.*

There is no doubt but that perſons apprehended for offences which are not bailable, and alſo all perſons who neglect to offer bail for offences which are bailable, muſt be committed.—And it is ſaid, that whereſoever a juſtice of peace is impowered by any ſtatute to bind a perſon over, or to cauſe him to do a certain thing, and ſuch perſon being in his preſence ſhall refuſe to be bound, or to do ſuch thing, the juſtice may commit him to the gaol to remain there till he ſhall comply.

It ſeems agreed by all the old books, that whereſoever a conſtable or private perſon may juſtify the arreſting another for a felony or treaſon, he may alſo juſtify the ſending or bringing him to the common gaol; and that every private perſon hath as much authority in caſes of this kind, as the ſheriff, or any other officer, and may juſtify ſuch impriſonment by his own authority, but not by the command of another. 2 *Hawk. P. C.* 116, 117.

But inaſmuch as it is certain, that a perſon lawfully making ſuch an arreſt, may juſtify bringing the party to the conſtable, in order to be carried by him before a juſtice of peace; and inaſmuch as the ſtatutes of 1 & 2 *P. & M. cap.* 13. and 2 & 3 *P. & M. cap.* 10. which direct in what manner perſons brought before a juſtice of the peace for felony, ſhall be examined by him, in order to their being committed or bailed, ſeem clearly to ſuppoſe, that all ſuch perſons are to be brought before ſuch juſtice for ſuch purpoſe; and inaſmuch as the ſtatute of 31 *Car.* 2. *c.* 2. commonly called the *habeas corpus* act, ſeems to ſuppoſe that all perſons, who are committed to priſon, are there detained by virtue of ſome warrant in writing, which ſeems to be intended of a commitment by ſome magiſtrate, and the conſtant tenor of the late books, practice and opinions, are agreeable hereto; it is certainly moſt adviſeable at this day, for any private perſon who arreſts another for felony, to cauſe him to be brought, as ſoon as conveniently he may, before ſome juſtice of peace, that he may be committed or bailed by him. 2 *Hawk. P. C.* 117. *H. P. C.* 91, 112. *Dalt. c.* 118.

It is certain, that the privy council, or any one or two of them, or ſecretary of ſtate, may lawfully commit perſons for treaſon, and for other offences againſt the ſtate, as in all ages they have done. 2 *Hawk. P. C.* 117.

As to the manner of commitment, it is enacted by 2 & 3 *P. & M. c.* 10. That juſtices of peace ſhall examine perſons brought before them for felony, *&c.* or ſuſpicion thereof, before they commit them to priſon, and ſhall bind their accuſers to give evidence againſt them.

A juſtice of the peace may detain a priſoner a reaſonable time, in order to examine him; and it ſaid, that three days is a reaſonable time for this purpoſe. 2 *Hawk. P. C.* 119. *Dalt. c.* 125. 2 *Inſt.* 52, 591.

Every commitment muſt be in writing, and under the hand and ſeal, and ſhew the authority of him that made it, and the time and place, and muſt be directed to the keeper of the priſon. *Hawk. P. C.* 119. It may be either in the King's name, and only teſted by the juſtice, or in the juſtice's name. 2 *Hawk. P. C.* 119.

It may command the gaoler to keep the party in ſafe and cloſe cuſtody; for this being what he is obliged to do by law, it can be no fault to command him ſo to do. 2 *Hawk. P. C.* 119.

It ought to ſet forth the crime with convenient certainty, whether the commitment be by the privy council, or any other authority, otherwiſe the officer is not puniſhable by reaſon of ſuch *mittimus*, for ſuffering the party to eſcape; and the court, before whom he is removed by *habeas corpus*, ought to diſcharge or bail him; and this doth not only hold where no cauſe at all is expreſſed in the commitment, but alſo where it is ſo looſely ſet forth, that the court cannot judge whether it were a reaſonable ground for impriſonment or not. 2 *Hawk. P. C.* 119.

A commitment for high treaſon or felony in general, without expreſſing the particular ſpecies, has been held good. 2 *Hawk. P. C.* 119. But now, ſince the *habeas corpus* act, it ſeems that ſuch a general commitment is not good; and therefore where *A.* and *B.* were committed for aiding and abetting Sir *James Montgomery* to make his eſcape, who was committed by a warrant of a ſecretary of ſtate for high treaſon, on a *habeas corpus*, they were admitted to bail, becauſe it did not appear of what ſpecies of treaſon Sir *James* was guilty. *Skin.* 596. 1 *Salk.* 347. S. C.

It is ſafe to ſet forth that the party is charged upon oath; but this is not neceſſary, for it hath been reſolved, that a commitment for treaſon, or for ſuſpicion of it, without ſetting forth any particular accuſation or ground of the ſuſpicion, is good. 2 *Hawk. P. C.* 120.

Every ſuch *mittimus* ought to have a lawful concluſion, *viz.* that the party be ſafely kept till he be delivered by law, or by order of law, or by due courſe of law, or that he be kept till further order, (which ſhall be intended of the order of law) or to the like effect; and if the party be committed only for want of bail, it ſeems to be a good concluſion of the commitment, that he be kept till he find bail; but a commitment till the perſon who makes it ſhall take further order, ſeems not to be good; and it ſeems that the party committed by ſuch or any other irregular *mittimus* may be bailed. 2 *Hawk. P. C.* 120.

Alſo a commitment grounded on an act of parliament ought to be conformable to the method preſcribed by ſuch ſtatute; as where the churchwardens of *Northampton* were committed on the 43 *Eliz. cap.* 2. and the warrant concluded in the common form, viz. *Until they be duly diſcharged according to law*; but the ſtatute appointing, *that the party ſhould there remain until he ſhould account*, for want of ſuch concluſion they were diſcharged. *Carth.* 152, 153.

II. *To what priſon, and at whoſe charge.*

With regard to this head it is to be obſerved, that all commitments muſt be to ſome priſon within the realm of *England*. For

By the *Stat.* 31 *Car.* 2. *cap.* 2. it is enacted, " That no ſubject of this realm, being an inhabitant or reſiant of this kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, ſhall or may be ſent priſoner into otland, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or into any parts, garriſons, iſlands, or places beyond the ſeas, which then were, or at any time after ſhould be within or without the dominions of his Majeſty."

By 14 *Ed.* 3. *c.* 10. Sheriffs ſhall have the cuſtody of the gaols as before this time they were wont to have, and they ſhall put in ſuch under-keepers for whom they will anſwer. And this is confirmed by 19 *Hen.* 7. *cap.* 10. Alſo by 5 *Hen.* 4 *cap.* 10. it is enacted, "That none be impriſoned by any juſtice of the peace, but only in the common gaol, ſaving to lords, and others who have gaols, their franchiſe in this caſe." And it ſeems that the King's grant, ſince this ſtatute, to private perſons to have the cuſtody of priſoners committed by juſtices of peace, is void. And it is ſaid, that none can claim a priſon as a franchiſe, unleſs he have alſo a gaol delivery.

Alſo it hath been held, that regularly no one can juſtify the detaining a priſoner in cuſtody out of the common gaol unleſs there be ſome particular reaſon for ſo doing; as if the party be ſo dangerouſly ſick, that it would apparently hazard his life to ſend him to the gaol; or there be evident danger of a *reſcous* from rebels, *&c.* yet conſtant practiſe ſeems to authorize a commitment to a meſſenger; and it is ſaid that it ſhall be intended to have been made in order for the carrying of the party to gaol. 2 *Hawk. P. C.* 118.

And it is ſaid, that if a conſtable bring a felon to gaol, and the gaoler refuſe to receive him, the town where he is conſtable ought to keep him till the next gaol delivery. *H. P. C.* 114.

If a perſon arreſted in one county for a crime done in it, fly into another county, and be retaken there, he may be committed by a juſtice of the firſt county to the gaol of ſuch county. *H. P. C.* 93. But by the better opinion, if he had before any arreſt fled into ſuch county, he muſt be committed to the gaol thereof by a juſtice of ſuch county. 2 *Hawk. P. C.* 118. *Dalt. c.* 118. Alſo it ſeems to be laid down as a rule by ſome books, that any offender may be committed to the gaol next to the place where he was taken, whether it lie in the ſame county or not. 2 *Hawk. P. C.* 118.

By *Stat.* 6 *Geo.* 1. *c.* 19. Vagrants and other criminals, offenders, and perſons charged with ſmall offences, may for ſuch offences, or for want of ſureties, be committed either to the common gaol, or houſe of correction, as the juſtices in their judgment ſhall think proper.

By *Stat.* 24 *Geo.* 2. *c.* 55. If a perſon is apprehended, upon a warrant indorſed, in another county, for an offence not bailable, or if he ſhall not there find bail, he ſhall be carried back into the firſt county, and be committed, or, if bailable, bailed by the juſtices in ſuch firſt county.

As to the *charges* of commitment, it is enacted by 3 *Jac.* 1. *c.* 10. Offenders committed are to bear their own charges, and the charges of thoſe who are appointed to guard them; and if they refuſe to pay, the charges may be levied by ſale of their goods. And by 27 *Geo.* 2. *c.* 3. If they have no goods, *&c.* within the county where they are apprehended, the juſtices are to grant a warrant on the Treaſurer of the county for payment of the charges. But in *Middleſex* the ſame ſhall be paid by the overſeers of the poor of the pariſh where the perſon was apprehended.

By the 3 *Edw.* 7. *c.* 3. The ſheriff ſhall certify the names of all priſoners in his cuſtody to the juſtices of gaol-delivery.

III. *How they may be removed and diſcharged.*

As priſoners ought to be committed at firſt to the proper priſon, ſo ought they not to be removed thence, except in ſome ſpecial caſes; and to this purpoſe it is enacted by 31 *Car.* 2. *cap.* 2. "That if any ſubject of this realm ſhall be committed to any priſon, or in cuſtody of any officer or officers whatſoever, for any criminal, or ſuppoſed criminal matter, that the ſaid perſon ſhall not be removed from the ſaid priſon and cuſtody, into the cuſtody of any other officer or officers, unleſs it be by *habeas corpus*, or ſome other legal writ, or where the priſoner is delivered to the conſtable or other inferior officer, to carry ſuch priſoner to ſome gaol; or where any perſon is ſent by order of any judge of aſſize, or juſtice of the peace, to any common workhouſe, or houſe of correction; or where the priſoner is removed from one priſon or place to another within the ſame county, in order to a trial or diſcharge by due courſe of law; or in caſe of ſudden fire or infection, or other neceſſity; upon pain that he who makes out, ſigns, or counterſigns, or obeys or executes ſuch warrant, ſhall forfeit to the party grieved 100*l.* for the firſt offence, 200*l.* for the ſecond, *&c.* 2 *Hawk. P. C.* 118.

As to the manner of their diſcharge.

A perſon legally committed for a crime, certainly appearing to have been done by ſome one or other, cannot be lawfully diſcharged by any other but by the King, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to proſecute him on a proclamation for that purpoſe, by the juſtices of gaol delivery. 2 *Hawk. P. C.* 121.

But if a perſon be committed on a bare ſuſpicion, without any appeal or indictment, for a ſuppoſed crime, where afterwards it appears that there was none; as for the murder of a perſon thought to be dead, who afterwards is found to be alive; it hath been holden that he may be ſafely diſmiſſed without any farther proceeding; for that he who ſuffers him to eſcape, is properly puniſhable only as an acceſſory, where there can be no principal; and it would be hard to puniſh one for a contempt founded on a ſuſpicion appearing in ſo uncontested a manner to be groundleſs. 2 *Hawk. P. C.* 121. But the ſafeſt way for the gaoler, is to have the authority of ſome court, or magiſtrate, for diſcharging the priſoner.

If the words of a ſtatute are not purſued in a commitment, the party ſhall be diſcharged by *habeas corpus*. *Ibid.* 291. See *Bail*, *Impriſonment*.

Commoigne, *(Fr.)* A word ſignifying a fellow monk, that lives in the ſame convent. 3 *Inſt.* 15.

Commonalty, *(populus, plebs,* communitas) *In art. ſuper chartas*, 28 Ed. 1. c. 1. *Toyt le Commune d' Engleterre* ſignifies all the people of *England*. 2 Inſt. 539. But this word is generally uſed for the middle ſort of the King's ſubjects, ſuch of the commons as are raiſed beyond the ordinary ſort, and coming to have the managing of offices, by that means are one degree under burgeſſes, which are ſuperior to them in order and authority; and in companies incorporated they are ſaid to conſiſt of maſters, wardens, and *commonalty*, the firſt two being the chief, and the others ſuch as are uſually called of the livery. The ordinary people, and freeholders, or at beſt knights and gentlemen, under the degree of baron, having been of late years called *communitas regni*, or *tota terræ communitas*; yet antiently, if we credit *Brady*, the barons and tenants *in capite*, or military men, were the *community* of the kingdom; and thoſe only were reputed as ſuch in our moſt ancient hiſtories and records. *Brady's Gloſſ. to his Introduct. to Engl. Hiſt.*

Common, *communia*. *Common* is a right or privilege which one or more perſons claim to take or uſe, in ſome part or portion of that which another man's lands, waters, woods, *&c.* do naturally produce, without having an abſolute property in ſuch land, waters, wood, *&c.* It is called an *incorporeal right*, which lies in *grant*, as if originally commencing on ſome agreement between lords and tenants, for ſome valuable purpoſes, which by age being formed into a preſcription continues, although there be no deed or inſtrument in writing which proves the original contract or agreement. 4 *Co.* 37. 2 *Inſt.* 65. 1 *Vent.* 387.

Under this title is to be conſidered,

I. *The ſeveral kinds of commons.*

II. *The intereſt of the owner of the ſoil; wherein, of* approvement *and* incloſure.

III. *The commoners intereſt in the ſoil; wherein, of* apportionment *and* extinguiſhment.

I. *Of the ſeveral kinds of commons.*

There is not only common of *paſture*, but alſo common of *piſcary* or *fiſhing*; common of *eſtovers*; common of *turbary*, which ſee under their ſeveral heads. The word *common* however, in its moſt uſeful acceptation, ſignifies common of *paſture*, which is divided into *common in groſs*, *common appendant*, *common appurtenant*, and *common per cauſe de vicinage*.

Common in groſs is a liberty to have *common* alone, without any lands or tenements, in another perſon's land, granted by deed to a man and his heirs, or for life, &c. *F. N. B.* 31, 37. 4 *Rep* 30.

Common appendant is a right belonging to a man's arable land, of putting beaſts *commonable* into another's ground.

And *common appurtenant* is belonging to an eſtate for all manner of beaſts *commonable* or not *commonable*. 4 *Rep.* 37. *Plowd.* 161.

Common appendant and appurtenant, are in a manner confounded, as appears by *Fitzherbert*; and are there defined to be a liberty of *common* appertaining to or depending on a freehold; which *common* muſt be taken with beaſts *commonable*, as horſes, oxen, kine, and ſheep; and not with goats, hogs, and geeſe.

But ſome make this difference, that *common appurtenant* may be ſevered from the land whereto it pertains; but not *common appendant*, which, according to Sir *Edward Coke*, had this beginning: when a lord enfeoffed another of arable land, to hold of him in *ſocage*, the feoffee, to maintain the ſervice of his plough, had at firſt, by the curteſy or permiſſion of the lord, *common* in his waſtes for neceſſary beaſts to eat and compoſt his land, and that for two cauſes; one, for that it was tacitly implied in the feoffment, by reaſon the feoffee could not till or compoſt his land without cattle, and cattle could not be ſuſtained without paſture; ſo by conſequence the feoffee had, as a thing neceſſary and incident, *common* in the waſte and lands of the lord: and this may be collected from the ancient books and ſtatutes: and the ſecond reaſon of this *common* was, for the maintenance and advantage of tillage, which is much regarded and favoured by the law. *F. N. B.* 180 4 *Rep.* 37.

Common pur cauſe de vicinage, *common* by reaſon of neighbourhood, is a liberty that the tenants of one lord in one town have to *common* with the tenants of another lord in another town: it is where the tenants of two lords have uſed, time out of mind, to have *common* promiſcuouſly in both lordſhips lying together and open to one another. 8 *Rep.* 78. And thoſe that challenge this kind of *common*, which is uſually called *intercommoning*, may not put their cattle in the *common* of the other lord, for then they are diſtrainable; but they may turn them into their own fields, and if they ſtray into the *neighbouring common*, they muſt be ſuffered. *Terms de Ley.* The inhabitants of one town or lordſhip may not put in as many beaſts as they will, but with regard to the freehold of the inhabitants of the other: for otherwiſe it were no good neighbourhood, upon which all this depends. *Ibid.*

If one lord encloſes the *common*, the other town cannot then *common*; but though the *common of vicinage* is gone, *common appendant* remains. 4 *Rep.* 38. 7 *Rep.* 5. Every *common pur cauſe de vicinage* is a *common* appendant. 1 *Danv. Abr.* 799.

Common appendant is only to ancient arable land; not to a houſe, meadow, paſture, &c. It is againſt the nature of *common appendant* to be appendant to meadow or paſture: but if in the beginning land be arable, and of late a houſe hath been built on ſome part of the land, and ſome acres are employed to meadow and paſture, in ſuch caſe it is appendant; though it muſt be pleaded as appendant to the land, and not to the houſe, paſture, &c. 1 *Nelſ. Abr.* 457. This may be *common* appendant, though it belongs to a manor, farm, or ploughland: and *common* appendant is of *common* right; but it is not *common* appendant, unleſs it has been appendant time out of mind. 1 *Danv.* 746. It may be upon condition; be for all the year, or for a certain time, or for a certain number of beaſts, &c. by uſage: though it ought to be for ſuch cattle as plough and compoſt the land, to which it is appendant. *Ibid.* 797. *Common* appendant may be to *common* in a field after the corn is ſevered, till the ground is reſown: ſo it may be to have *common* in a meadow after the hay is carried of the ſame till *Candlemas*, &c. *Yelv.* 185.

This *common*, which is in its nature without number, by cuſtom may be limited as to the beaſts: *common* appurtenant ought always to be for thoſe *levant and couchant*, and may be *ſans number*. *Plowd.* 161. A man may preſcribe to have *common* appurtenant for all manner of cattle, at every ſeaſon in the year. 25 *Aſſ.* 8. *Common* by preſcription for all manner of *commonable* cattle as belonging to a tenement, &c. muſt be for cattle *levant and couchant* upon the land, (which is ſo many as the land will maintain) or it will not be good: and if a perſon grants *common ſans number*, the grantee cannot put in ſo many cattle, but that the grantor may have ſufficient *common* in the ſame land. 1 *Danv. Abr.* 798, 799. He who hath *common* appendant or appurtenant, can keep but a number of cattle proportionable to his land; for he can *common* with no more than the lands to which his *common* belongs is able to maintain. 3 *Salk.* 93. *Common appurtenant* may be to a houſe, paſture, &c. though *common* appendant cannot; but it ought to be preſcribed for as againſt *common* right: and uncommonable cattle, as hogs, goats, &c. are appurtenant: this *common* may be created by grant at this day; ſo may not *common* appendant. 1 *Inſt.* 122. 1 *Rol. Abr.* 398.

Common appurtenant for a certain number of beaſts may be granted over. 1 *Danv.* 802.

II. *As to the intereſt of the owner of the ſoil.*

The property of the ſoil in the *common* is entirely in the lord; and the uſe of it, jointly in him and the *commoners*.

Lords of manors may depaſture in *commons* where their tenants put in *cattle*; and a preſcription to exclude the lord is againſt law. 1 *Inſt.* 122.

The lord may agiſt the cattle of a ſtranger in the *common* by preſcription: and he may licence a ſtranger to put in his cattle, if he leaves ſufficient room for the *commoners*. 1 *Danv* 795. 2 *Mod.* 6. Alſo the lord may ſurcharge, &c. an overplus of the *common*: and if, where there is not an overplus, the lord ſurcharges the *common*, the *commoners* are not to diſtrain his beaſts; but muſt commence an action againſt the lord. *F. N. B.* 125. But it is ſaid, if the lord of the ſoil put cattle into a *cloſe*, contrary to cuſtom, when it ought to lie freſh, a *commoner* may take the cattle damage-feaſant: otherwiſe it is a general rule that he cannot diſtrain the cattle of the lord. 1 *Danv.* 807.

The lord may diſtrain where the *common* is ſurcharged; and bring action of treſpaſs for any treſpaſs done in the *common*. 9 *Rep.* 113.

A lord may make a pond on the *common*: though the lord cannot dig pits for gravel or coal; the ſtatutes of *approvement* being only by incloſure. 3 *Inſt.* 204. 1 *Sid.* 106. If the lord makes a warren on the *common*, the *commoners* may not kill the conies; but are to bring their action, for they may not be their own judges. 1 *Rol.* 90. 405.

By ſtatute, lords may *approve* againſt their tenants, *viz.* incloſe part of the waſte, &c. and thereby diſcharge it from being *common*, leaving *common* ſufficient; and neighbours as well as tenants claiming *common* of paſture, ſhall be bound by it. 20 *H.* 3. *c.* 4 If the lord encloſes on the *common*, and leaves not *common* ſufficient, the *commoners* may not only break down the incloſures; but may put in their cattle, although the lord ploughs and ſows the land. 2 *Inſt.* 88. 1 *Rol. Abr.* 406.

III. *Of the commoners intereſt in the ſoil.*

A *commoner* hath only a ſpecial and limited intereſt in the ſoil, but yet he ſhall have ſuch remedies as are commenſurate to his right, and therefore may diſtrain beaſts

Scotland, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or into any parts, garriſons, iſlands, or places beyond the ſeas, which then were, or at any time after ſhould be within or without the dominions of his Majeſty."

By 14 *Ed.* 3. *c.* 10. Sheriffs ſhall have the cuſtody of the gaols as before this time they were wont to have, and they ſhall put in ſuch under-keepers for whom they will anſwer. And this is confirmed by 19 *Hen.* 7. *cap.* 10. Alſo by 5 *Hen.* 4 *cap.* 10. it is enacted, "That none be impriſoned by any juſtice of the peace, but only in the common gaol, ſaving to lords, and others who have gaols, their franchiſe in this caſe." And it ſeems that the King's grant, ſince this ſtatute, to private perſons to have the cuſtody of priſoners committed by juſtices of peace, is void. And it is ſaid, that none can claim a priſon as a franchiſe, unleſs he have alſo a gaol delivery.

Alſo it hath been held, that regularly no one can juſtify the detaining a priſoner in cuſtody out of the common gaol unleſs there be ſome particular reaſon for ſo doing; as if the party be ſo dangerouſly ſick, that it would apparently hazard his life to ſend him to the gaol; or there be evident danger of a *reſcous* from rebels, *&c.* yet conſtant practiſe ſeems to authorize a commitment to a meſſenger; and it is ſaid that it ſhall be intended to have been made in order for the carrying of the party to gaol. 2 *Hawk. P. C.* 118.

And it is ſaid, that if a conſtable bring a felon to gaol, and the gaoler refuſe to receive him, the town where he is conſtable ought to keep him till the next gaol delivery. *H. P. C.* 114.

If a perſon arreſted in one county for a crime done in it, fly into another county, and be retaken there, he may be committed by a juſtice of the firſt county to the gaol of ſuch county. *H. P. C.* 93. But by the better opinion, if he had before any arreſt fled into ſuch county, he muſt be committed to the gaol thereof by a juſtice of ſuch county. 2 *Hawk. P. C.* 118. *Dalt. c.* 118. Alſo it ſeems to be laid down as a rule by ſome books, that any offender may be committed to the gaol next to the place where he was taken, whether it lie in the ſame county or not. 2 *Hawk. P. C.* 118.

By *Stat.* 6 *Geo.* 1. *c.* 19. Vagrants and other criminals, offenders, and perſons charged with ſmall offences, may for ſuch offences, or for want of ſureties, be committed either to the common gaol, or houſe of correction, as the juſtices in their judgment ſhall think proper.

By *Stat.* 24 *Geo.* 2. *c.* 55. If a perſon is apprehended, upon a warrant indorſed, in another county, for an offence not bailable, or if he ſhall not there find bail, he ſhall be carried back into the firſt county, and be committed, or, if bailable, bailed by the juſtices in ſuch firſt county.

As to the *charges* of commitment, it is enacted by 3 *Jac.* 1. *c.* 10. Offenders committed are to bear their own charges, and the charges of thoſe who are appointed to guard them; and if they refuſe to pay, the charges may be levied by ſale of their goods. And by 27 *Geo.* 2. *c.* 3. If they have no goods, *&c.* within the county where they are apprehended, the juſtices are to grant a warrant on the Treaſurer of the county for payment of the charges. But in *Middleſex* the ſame ſhall be paid by the overſeers of the poor of the pariſh where the perſon was apprehended.

By the 3 *Edw.* 7. *c.* 3. The ſheriff ſhall certify the names of all priſoners in his cuſtody to the juſtices of gaol-delivery.

III. *How they may be removed and diſcharged.*

As priſoners ought to be committed at firſt to the proper priſon, ſo ought they not to be removed thence, except in ſome ſpecial caſes; and to this purpoſe it is enacted by 31 *Car.* 2. *cap.* 2. "That if any ſubject of this realm ſhall be committed to any priſon, or in cuſtody of any officer or officers whatſoever, for any criminal, or ſuppoſed criminal matter, that the ſaid perſon ſhall not be removed from the ſaid priſon and cuſtody, into the cuſtody of any other officer or officers, unleſs it be by *habeas corpus*, or ſome other legal writ, or where the priſoner is delivered to the conſtable or other inferior officer, to carry ſuch priſoner to ſome gaol; or where any perſon is ſent by order of any judge of aſſize, or juſtice of the peace, to any common workhouſe, or houſe of correction; or where the priſoner is removed from one priſon or place to another within the ſame county, in order to a trial or diſcharge by due courſe of law; or in caſe of ſudden fire or infection, or other neceſſity; upon pain that he who makes out, ſigns, or counterſigns, or obeys or executes ſuch warrant, ſhall forfeit to the party grieved 100*l.* for the firſt offence, 200*l.* for the ſecond, *&c.* 2 *Hawk. P. C.* 118.

As to the manner of their diſcharge.

A perſon legally committed for a crime, certainly appearing to have been done by ſome one or other, cannot be lawfully diſcharged by any other but by the King, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to proſecute him on a proclamation for that purpoſe, by the juſtices of gaol delivery. 2 *Hawk. P. C.* 121.

But if a perſon be committed on a bare ſuſpicion, without any appeal or indictment, for a ſuppoſed crime, where afterwards it appears that there was none; as for the murder of a perſon thought to be dead, who afterwards is found to be alive; it hath been holden that he may be ſafely diſmiſſed without any farther proceeding; for that he who ſuffers him to eſcape, is properly puniſhable only as an acceſſory, where there can be no principal; and it would be hard to puniſh one for a contempt founded on a ſuſpicion appearing in ſo unconteſted a manner to be groundleſs. 2 *Hawk. P. C.* 121. But the ſafeſt way for the gaoler, is to have the authority of ſome court, or magiſtrate, for diſcharging the priſoner.

If the words of a ſtatute are not purſued in a commitment, the party ſhall be diſcharged by *habeas corpus*. *Ibid.* 291. See *Bail*, *Impriſonment*.

Commoigne, *(Fr.)* A word ſignifying a fellow monk, that lives in the ſame convent. 3 *Inſt.* 15.

Commonalty, *(populus, plebs,* communitas) *In art. ſuper chartas*, 28 Ed. 1. c. 1. *Tout le Commune d' Engleterre* ſignifies all the people of *England*. 2 Inſt. 539. But this word is generally uſed for the middle ſort of the King's ſubjects, ſuch of the commons as are raiſed beyond the ordinary ſort, and coming to have the managing of offices, by that means are one degree under burgeſſes, which are ſuperior to them in order and authority; and in companies incorporated they are ſaid to conſiſt of maſters, wardens, and *commonalty*, the firſt two being the chief, and the others ſuch as are uſually called of the livery. The ordinary people, and freeholders, or at beſt knights and gentlemen, under the degree of baron, having been of late years called *communitas regni*, or *tota terræ communitas*; yet antiently, if we credit *Brady*, the barons and tenants *in capite*, or military men, were the *community* of the kingdom; and thoſe only were reputed as ſuch in our moſt ancient hiſtories and records. *Brady's Gloſſ. to his Introduct. to Engl. Hiſt.*

Common, *communia*. *Common* is a right or privilege which one or more perſons claim to take or uſe, in ſome part or portion of that which another man's lands, waters, woods, *&c.* do naturally produce, without having an abſolute property in ſuch land, waters, wood, *&c.* It is called an *incorporeal right*, which lies in *grant*, as if originally commencing on ſome agreement between lords and tenants, for ſome valuable purpoſes, which by age being formed into a preſcription continues, although there be no deed or inſtrument in writing which proves the original contract or agreement. 4 *Co.* 37. 2 *Inſt.* 65. 1 *Vent.* 387.

Under this title is to be conſidered,

I. *The ſeveral kinds of commons.*

II. *The intereſt of the owner of the ſoil; wherein, of* approvement *and* incloſure.

III. *The commoners intereſt in the ſoil; wherein, of* apportionment *and* extinguiſhment.

I. *Of the ſeveral kinds of commons.*

There is not only common of *paſture*, but alſo common of *piſcary* or *fiſhing*; common of *eſtovers*; common of *turbary*, which ſee under their ſeveral heads. The word *common* however, in its moſt uſeful acceptation, ſignifies common of *paſture*, which is divided into *common in groſs*, *common appendant*, *common appurtenant*, and *common per cauſe de vicinage*.

Common in groſs is a liberty to have *common* alone, without any lands or tenements, in another perſon's land, granted by deed to a man and his heirs, or for life, *&c.* *F. N. B.* 31, 37. 4 *Rep* 30.

Common appendant is a right belonging to a man's arable land, of putting beaſts *commonable* into another's ground.

And *common appurtenant* is belonging to an eſtate for all manner of beaſts *commonable* or not *commonable*. 4 *Rep.* 37. *Plowd.* 161.

Common appendant and appurtenant, are in a manner confounded, as appears by *Fitzherbert*; and are there defined to be a liberty of *common* appertaining to or depending on a freehold; which *common* muſt be taken with beaſts *commonable*, as horſes, oxen, kine, and ſheep; and not with goats, hogs, and geeſe.

But ſome make this difference, that *common appurtenant* may be ſevered from the land whereto it pertains; but not *common appendant*, which, according to Sir *Edward Coke*, had this beginning: when a lord enfeoffed another of arable land, to hold of him in *ſocage*, the feoffee, to maintain the ſervice of his plough, had at firſt, by the curteſy or permiſſion of the lord, *common* in his waſtes for neceſſary beaſts to eat and compoſt his land, and that for two cauſes; one, for that it was tacitly implied in the feoffment, by reaſon the feoffee could not till or compoſt his land without cattle, and cattle could not be ſuſtained without paſture; ſo by conſequence the feoffee had, as a thing neceſſary and incident, *common* in the waſte and lands of the lord: and this may be collected from the ancient books and ſtatutes: and the ſecond reaſon of this *common* was, for the maintenance and advantage of tillage, which is much regarded and favoured by the law. *F. N. B.* 180 4 *Rep.* 37.

Common pur cauſe de vicinage, *common* by reaſon of neighbourhood, is a liberty that the tenants of one lord in one town have to *common* with the tenants of another lord in another town: it is where the tenants of two lords have uſed, time out of mind, to have *common* promiſcuouſly in both lordſhips lying together and open to one another. 8 *Rep.* 78. And thoſe that challenge this kind of *common*, which is uſually called *intercommoning*, may not put their cattle in the *common* of the other lord, for then they are diſtrainable; but they may turn them into their own fields, and if they ſtray into the *neighbouring common*, they muſt be ſuffered. *Terms de Ley.* The inhabitants of one town or lordſhip may not put in as many beaſts as they will, but with regard to the freehold of the inhabitants of the other: for otherwiſe it were no good neighbourhood, upon which all this depends. *Ibid.*

If one lord encloſes the *common*, the other town cannot then *common*; but though the *common of vicinage* is gone, *common appendant* remains. 4 *Rep.* 38. 7 *Rep.* 5. Every *common pur cauſe de vicinage* is a *common* appendant. 1 *Danv. Abr.* 799.

Common appendant is only to ancient arable land; not to a houſe, meadow, paſture, *&c.* It is againſt the nature of *common appendant* to be appendant to meadow or paſture: but if in the beginning land be arable, and of late a houſe hath been built on ſome part of the land, and ſome acres are employed to meadow and paſture, in ſuch caſe it is appendant; though it muſt be pleaded as appendant to the land, and not to the houſe, paſture, *&c.* 1 *Nelſ. Abr.* 457. This may be *common* appendant, though it belongs to a manor, farm, or ploughland: and *common* appendant is of *common* right; but it is not *common* appendant, unleſs it has been appendant time out of mind. 1 *Danv.* 746. It may be upon condition; be for all the year, or for a certain time, or for a certain number of beaſts, *&c.* by uſage: though it ought to be for ſuch cattle as plough and compoſt the land, to which it is appendant. *Ibid.* 797. *Common* appendant may be to *common* in a field after the corn is ſevered, till the ground is reſown: ſo it may be to have *common* in a meadow after the hay is carried of the ſame till *Candlemas*, *&c.* *Yelv.* 185.

This *common*, which is in its nature without number, by cuſtom may be limited as to the beaſts: *common* appurtenant ought always to be for thoſe *levant and couchant*, and may be *ſans number*. *Plowd.* 161. A man may preſcribe to have *common* appurtenant for all manner of cattle, at every ſeaſon in the year. 25 *Aſſ.* 8. *Common* by preſcription for all manner of *commonable* cattle as belonging to a tenement, *&c.* muſt be for cattle *levant and couchant* upon the land, (which is ſo many as the land will maintain) or it will not be good: and if a perſon grants *common ſans number*, the grantee cannot put in ſo many cattle, but that the grantor may have ſufficient *common* in the ſame land. 1 *Danv. Abr.* 798, 799. He who hath *common* appendant or appurtenant, can keep but a number of cattle proportionable to his land; for he can *common* with no more than the lands to which his *common* belongs is able to maintain. 3 *Salk.* 93. *Common appurtenant* may be to a houſe, paſture, *&c.* though *common* appendant cannot; but it ought to be preſcribed for as againſt *common* right: and uncommonable cattle, as hogs, goats, *&c.* are appurtenant: this *common* may be created by grant at this day; ſo may not *common* appendant. 1 *Inſt.* 122. 1 *Rol. Abr.* 398.

Common appurtenant for a certain number of beaſts may be granted over. 1 *Danv.* 802.

II. *As to the intereſt of the owner of the ſoil.*

The property of the ſoil in the *common* is entirely in the lord; and the uſe of it, jointly in him and the *commoners*.

Lords of manors may depaſture in *commons* where their tenants put in *cattle*; and a preſcription to exclude the lord is againſt law. 1 *Inſt.* 122.

The lord may agiſt the cattle of a ſtranger in the *common* by preſcription: and he may licence a ſtranger to put in his cattle, if he leaves ſufficient room for the *commoners*. 1 *Danv* 795. 2 *Mod.* 6. Alſo the lord may ſurcharge, *&c.* an overplus of the *common*: and if, where there is not an overplus, the lord ſurcharges the *common*, the *commoners* are not to diſtrain his beaſts; but muſt commence an action againſt the lord. *F. N. B.* 125. But it is ſaid, if the lord of the ſoil put cattle into a *cloſe*, contrary to cuſtom, when it ought to lie freſh, a *commoner* may take the cattle damage-feaſant: otherwiſe it is a general rule that he cannot diſtrain the cattle of the lord. 1 *Danv.* 807.

The lord may diſtrain where the *common* is ſurcharged; and bring action of treſpaſs for any treſpaſs done in the *common*. 9 *Rep.* 113.

A lord may make a pond on the *common*: though the lord cannot dig pits for gravel or coal; the ſtatutes of *approvement* being only by incloſure. 3 *Inſt.* 204. 1 *Sid.* 106. If the lord makes a warren on the *common*, the *commoners* may not kill the conies; but are to bring their action, for they may not be their own judges. 1 *Rol.* 90. 405.

By ſtatute, lords may *approve* againſt their tenants, *viz.* incloſe part of the waſte, *&c.* and thereby diſcharge it from being *common*, leaving *common* ſufficient; and neighbours as well as tenants claiming *common* of paſture, ſhall be bound by it. 20 *H.* 3. *c.* 4. If the lord encloſes on the *common*, and leaves not *common* ſufficient, the *commoners* may not only break down the incloſures; but may put in their cattle, although the lord ploughs and ſows the land. 2 *Inſt.* 88. 1 *Rol. Abr.* 406.

III. *Of the commoners intereſt in the ſoil.*

A *commoner* hath only a ſpecial and limited intereſt in the ſoil, but yet he ſhall have ſuch remedies as are commenſurate to his right, and therefore may diſtrain beaſts damage-feaſant, bring an *action on the caſe*, &c. but not being abſolute owner of the ſoil, he cannot bring a general action of *treſpaſs* for a treſpaſs done upon the *common*. See *Bridg*. 10, 11. *Godb*. 123, 124. 2 *Leon*. 201, 202.

A *commoner* cannot regularly do any thing on the ſoil which tends to the melioration or improvement of the *common*, as cutting down of buſhes, fern, &c. 1 *Sid*. 251. 12 *Hen*. 8. 2. 13 *Hen*. 8. 15. Yet *vide poſt*.

Therefore if a *common* every year in a flood is ſurrounded with water, the *commoner* cannot make a trench in the ſoil to avoid the water, becauſe he has nothing to do with the ſoil, but only to take the graſs with the mouth of the cattle. 1 *Rol. Abr*. 405. 2 *Bulſt*. 116.

Every *commoner* may break the *common* if it be incloſed, and although he does not put his cattle in at the time, yet his right of commonage ſhall excuſe him from being a treſpaſſer. *Lit. Rep*. 38. See 1 *Rol. Abr*. 406. Suppoſing the incloſure made by the lord, and that there is not ſufficient *common*; or that the incloſure is made by any other perſon than the lord.

If a tenant of the freehold ploughs it, and ſows it with corn, the *commoner* may put in his cattle, and therewith eat the corn growing upon the land; ſo if he lets his corn lie in the field beyond the uſual time, the other *commoners* may, notwithſtanding, put in their beaſts. 2 *Leon*. 202, 203.

The *commoner* cannot uſe *common* but with his own proper cattle: but if he hath not any cattle to manure the land, he may borrow other cattle to manure it, and uſe the *common* with them; for by the loan, they are in a manner made his own cattle. 1 *Danv*. 798. Grantee of *common* appurtenant, for a certain number of cattle, cannot *common* with the cattle of a ſtranger: he that hath *common in groſs*, may put in a ſtranger's cattle, and uſe the *common* with ſuch cattle. *Ibid*. 803. *Common* appendant or appurtenant, cannot be made *common in groſs*: and *approvement* extends not to *common in groſs*. 2 *Inſt*. 86.

A *commoner* may diſtrain beaſts put into the *common* by a ſtranger, or every *commoner* may bring action of the caſe, where damage is received. 9 *Rep*. 11. But one *commoner* cannot diſtrain the cattle of another *commoner*, though he may thoſe of a ſtranger, who hath no right to the *common*. 2 *Lutw*. 1238. Unleſs he puts in more than he hath a right for.

Where a *commoner* ſurcharges the *common*, the other *commoners* may have a writ of *admeaſurement*; and admeaſurement is to be according to the quality and quantity of the freehold, and for all the cattle which are upon the land. It lies only by one *commoner* againſt another; but not againſt a *commoner ſans number*; nor againſt the lord, in which caſe there muſt be an aſſiſe. 1 *Danv*. 809. If a man be diſſeiſed of his *common*, he ſhall have an aſſiſe. *New. Nat. Br*. 399.

If any *commoner* incloſes, or builds on the *common*, every *commoner* may have an action for the damage. Where turf is taken away from the *common*, the lord only is to bring the action: but it is ſaid the *commoners* may have an action for the injury, by entering on the *common*, &c. 1 *Rol. Abr*. 89, 398. 2 *Leon*. 201.

If a *commoner* who hath a *freehold* in his *common* be ouſted of, or hindered therein, that he cannot have it ſo beneficially as he uſed to do; whether the interruption be by the lord or any ſtranger, he may have an *aſſiſe* againſt him: but if the *commoner* hath only an *eſtate for years*, then his remedy is by *action on the caſe*. And if it be only a ſmall treſpaſs, that is little or no loſs to the *commoner*, but he hath *common* enough beſides, the *commoner* may not bring any action. 4 *Rep*. 37. 8 *Rep*. 79. *Dyer* 316.

A *commoner* cannot dig clay on the *common*, which deſtroys the graſs, and carrying it away doth damage to the ground: ſo that the other *commoners* cannot enjoy the *common in tam amplo modo* as they ought. *Godb*. 344. Alſo a *commoner* may not cut buſhes, dig trenches, &c. in the *common*, without a cuſtom to do it. 1 *Nelſ*. 462. If he makes any thing *de novo*, he is a treſpaſſer: he can do nothing to impair the *common*; but may reform a thing abuſed, fill up holes, &c. 1 *Brownl*. 208.

A *commoner* may abate hedges erected on a *common*; for though the lord hath an intereſt in the ſoil, by abating the hedges, the *commoner* doth not meddle with it. 2 *Mod*. 65. Any man may by preſcription have *common* and feeding for his cattle in the King's highway, although the ſoil doth belong to another. But the occupation of *common* by uſurpation, will not give title to him that doth occupy it, unleſs he hath had it time beyond memory.

Upon agreement between two *commoners* to encloſe a *common*, a party having intereſt not privy to the agreement, will not be bound; but one or two wilful perſons ſhall not hinder the public good. *Chan. Rep*. 48. *Commons* muſt be driven yearly at *Michaelmas* or within fifteen days after: infected horſes, and ſtone-horſes under ſize, &c. are not to be put into *commons*, under forfeitures, by *Stat*. 32 *H*. 8. *c*. 13. New erected cottages, though they have four acres of ground laid to them, ought not to have *common* in the waſte. 2 *Inſt*. 740. In law proceedings, where there are two diſtinct *commons*, the two titles muſt be ſhewn: cattle are to be alledged *commonable*; and *common* ought to be in lands *commonable*: and the place is to be ſet forth where the meſſuage and lands lie, &c. to which the *common* belongs. 1 *Nelſ*. 462, 463.

Common appendant, becauſe it is of *common* right, ſhall be *apportioned* by the *commoner*'s purchaſe of part of the land in which he hath ſuch *common*; but *common* appurtenant ſhall be extinct by the *commoner*'s purchaſe of part of the land, in which, &c. Both *common* appendant and appurtenant ſhall be *apportioned* by alienation of part of the land to which the *common* is appendant or appurtenant. *Co. Lit*. 122. *Hob*. 235. 8 *Co*. 78. *Owen* 122. 4 *Co*. 37. *Cro. Eliz*. 594.

A releaſe of *common* in one acre, is an extinguiſhment of the whole *common*. See 4 *Co*. 37.

If *A*. hath *common* in the lands of *B*. as appurtenant to a meſſuage, and after *B*. enfeoffs *A*. of the ſaid lands, whereby the *common* is extinguiſhed; and then *A*. leaſes to *B*. the ſaid meſſuage and lands, with all *commons*, &c. *occupat' vel uſitat' cum præd. meſſuagio*; this is a good grant of a new *common* for the time. *Cro. Eliz*. 570. If ſeveral perſons are ſeized of ſeveral parts of a *common*, and a *commoner* purchaſes the inheritance of one part, his entire *common* is extinct. 1 *And*. 159. When a man hath *common* appendant for a certain number of cattle, and to a certain parcel of land, if he ſell part of it, the *common* is not extinguiſhed; for the purchaſer ſhall have *common pro rata*: but it is otherwiſe in *common* appurtenant. 8 *Rep*. 78. 1 *Nelſ*. 460. See *Fitz. Abr. tit. Comm. per tot*.

Common of Eſtovers, Is a right of taking wood out of another man's wood, for houſe-bote, plough-bote, and hay-bote. What botes are neceſſary, tenants may take, notwithſtanding no mention be made thereof in their leaſes; but if a tenant take more houſe-bote than is needful, he may be puniſhed for waſte. *Terms de Ley*. Tenants for life may take upon the land demiſed reaſonable eſtovers, unleſs reſtrained by ſpecial covenant: and every tenant for years hath three kinds of eſtovers incident to his eſtate. 1 *Inſt*. 41. When a houſe having eſtovers appendant or appurtenant, is blown down by wind, if the owner rebuilds it in the ſame place and manner as before, his eſtovers ſhall continue: ſo if he alters the rooms and chambers, without making new chimnies; but if he erect any new chimnies he will not be allowed to ſpend any eſtovers in ſuch new chimnies. 4 *Rep*. 87. 4 *Leon*. 383. If one have a dwelling-houſe whereunto *common of eſtovers* doth belong, and the houſe by fire is burnt down, and a new one built near to the place, or in the place in another form, the eſtovers are gone: but if the old houſe be only ſome of it down, it is otherwiſe; and in all caſes where the alterations to a houſe do no prejudice to the tertenant or owner of the land or wood, the eſtovers will remain. *F. N. B*. 180. Where a man hath eſtovers for life, if the owner cut down all the wood, that there is none left for him, he may bring an *aſſiſe of eſtovers*; and if the tenant have but an eſtate for years, or at will, he may have an action on the caſe. *Moor Ca.* 65. 9 *Rep.* 112. If the tenant who hath *common of eſtovers*, ſhall uſe them to any other purpoſe than he ought, he that owns the wood may bring treſpaſs againſt him: as where one grants twenty loads of wood to be taken yearly in ſuch a wood, ten loads to burn, and ten to repair pales; here he may cut and take the wood for the pales, though they need no amending, but then he muſt keep it for that uſe. 9 *Rep.* 113. *F. N. B.* 58, 159.

Common of Piſcary, Is a liberty of fiſhing in another man's water. *Common of piſcary* to exclude the owner of the ſoil, is contrary to law: though a perſon by preſcription may have a ſeparate right of fiſhing in ſuch water, and the owner of the ſoil be excluded; for a man may grant the water, without paſſing the ſoil: and if one grant *ſeparaliam piſcariam*, neither the ſoil nor the water paſs, but only a right of fiſhing. 1 *Inſt.* 4, 122, 164. 5 *Rep.* 34. No perſon ſhall fiſh in any river without the owner's conſent, under penalties: and nets, angles, *&c.* ſhall be ſeized and deſtroyed, by *Stat.* 22 *&* 23 *Car.* 2. *c.* 25. See *Fiſh* and *Fiſhing*.

Common of Turbary, Is a licence to dig turf upon the ground of another, or in the lord's waſte. This common is appendant or appurtenant to an houſe, and not to lands; for turfs are to be burnt in the houſe: and it may be *in groſs*; but it does not give any right to the land, trees, or mines. It cannot exclude the owner of the ſoil. 1 *Inſt.* 4. 4 *Rep.* 37.

There is a *common* or liberty of digging *coals*, and *gravel*, *ſand*, *&c.* as well as *turf*.

Common Bench, (*bancus communis*, from the Sax. *banc*, bank, and thence metaphorically a *bench*, high ſeat or tribunal) The court of *Common Pleas* was anciently called *Common Bench*, becauſe communia *placita inter ſubditos ex jure noſtro*, *quod* commune *vocant*, *in hoc diſceptantur*. That is, the pleas or controverſies between common perſons are there tried and determined. *Camb. Britan.* 113. In law books and references the court of *Common Pleas* is written *C. B.* from *communi Banco*, (or *C. P.*) And the juſtices of that court are ſtiled *Juſticiarii de Banco*. See *Common Pleas*.

Common Day of Plea in Land, Signifies an ordinary day in court, as *Octabis Hilarii*, *Quindena Paſchæ*, *&c.* It is mentioned in the *Stat.* 51 *H.* 3. *Stat.* 2 *&* *Stat.* 3. concerning general *days in bank*.

Common Fine, (*finis communis*) A ſmall ſum of money, which the reſiants within the liberty of ſome leets pay to the lords, called in divers places *head ſilver* or *head pence*, in others *cert money*; and was firſt granted to the lord, towards the charge of his purchaſe of the *court-leet*, whereby the reſiants have the eaſe to do their ſuit within their own manors, and are not compellable to go to the *ſheriff's turn*: in the manor of *Sheapſhead* in the county of *Leiceſter*, every reſiant pays 1*d.* *per* poll to the lord at the court held after *Michaelmas*, which is there called *common fine*. For this *common fine* the lord may diſtrain; but he cannot do it without a preſcription. 11 *Rep.* 44. There is alſo *common fine of the county*—*Quod* communes *miſericordiæ*, *vel* fines comitatuum *amerciatorum in* finibus *itinerum juſticiariorum*, *&c.* Fleta, lib. 7. c. 48. See Stat. 3 Ed. 1. c. 18.

Commons Houſe of Parliament, Is the lower houſe of parliament, ſo called, becauſe the *commons* of the realm, that is the knights, citizens, and burgeſſes returned to parliament, repreſenting the whole body of the commons, do ſit there *Cromp. Juriſd.* See *Parliament*.

Common Intendment, Is common meaning or underſtanding, according to the ſubject matter, not ſtrained to any extraordinary or foreign ſenſe: *bar to common intendment* is an ordinary or general bar, which is commonly an anſwer to the plaintiff's declaration. There are ſeveral caſes in the law where *common intendment*, and intendment take place: and of *common intendment* a will ſhall not be ſuppoſed to be made by colluſion. *Co. Lit.* 78. See *Co Lit.* 303, *a*, *b*, *&c.*

Common Law, (*Lex Communis*) Is taken for the law of this kingdom ſimply, without any other laws; as it was generally holden before any ſtatute was enacted in parliament to alter the ſame: and the King's courts of juſtice are called the *Common Law Courts*. The *Common Law* is grounded upon the *general cuſtoms* of the *realm*; and includes in it the *law of nature*, the *law of God*, and the *principles* and *maxims* of the *law*: it is founded upon *reaſon*; and is ſaid to be the perfection of *reaſon*, acquired by long ſtudy, obſervation and experience, and refined by learned men in all ages. And it is the common birthright, that the ſubject hath for the ſafe-guard and defence, not only of his goods, lands, and revenues; but of his wife and children, body, fame, and life alſo. *Co. Lit.* 97, 142. *Treatiſe of Laws*, *p.* 2.

According to *Hale*, the *Common law of England*, is the common rule for adminiſtring juſtice, within this kingdom, and aſſerts the King's royal prerogatives, and likewiſe the rights and liberties of the ſubject: it is generally that law, by which the determinations in the King's *ordinary courts* are guided; and this directs the courſe of deſcents of lands; the nature, extent and qualification of eſtates; and therein the manner and ceremonies of conveying them from one to another; with the forms, ſolemnities and obligation of contracts; the rules and directions for the expoſition of deeds, and acts of parliament: the proceſs, proceedings, judgments and executions of our courts of juſtice; alſo the limits and bounds of courts, and juriſdictions; the ſeveral kinds of temporal offences and puniſhments, and their application, *&c.* *Hale's Hiſt. of the Common Law*, *pag.* 24, 44, 45.

As to the *riſe of the Common law*, this account is given by ſome ancient writers: After the decay of the *Roman* empire, three ſorts of the *German* people invaded the *Britains*, *viz.* the *Saxons*, the *Angles*, and the *Jutes*; from the laſt ſprung the *Kentiſh* men, and the inhabitants of the *Iſle of Wight*; from the *Saxons* came the people called *Eaſt*, *South*, and *Weſt Saxons*; and from the *Angles*, the *Eaſt Angles*, *Mercians* and *Northumbrians*: Theſe people having different cuſtoms, they inclined to the different laws by which their anceſtors were governed; but the cuſtoms of the *Weſt Saxons* and *Mercians*, who dwelt in the midland counties, being preferred before the reſt, were for that reaſon called *jus Anglorum*; and by theſe laws thoſe people were governed for many ages: but the *Eaſt Saxons* having afterwards been ſubdued by the *Danes*, their cuſtoms were introduced, and a third law was ſubſtituted, which was called *Dane-lage*; as the other was then ſtiled *Weſt-Saxon-lage*, *&c.* At length the *Danes* being overcome by the *Normans*, *William* called the *Conqueror*, upon conſideration of all thoſe laws and cuſtoms, abrogated ſome, and eſtabliſhed others; to which he added ſome of his own country laws, which he judged moſt to conduce to the preſervation of the peace: and this is what we now call the *Common Law*.

But though we uſually date our *Common law* from hence, this was not the original of the *Common law*; for *Ethelbert*, the firſt Chriſtian King of this nation, made the firſt *Saxon* laws, which were publiſhed by the advice of ſome wiſe men of his council: and King *Alfred* who lived 300 years afterwards, collected all the *Saxon laws* into one book, and commanded them to be obſerved through thewhole kingdom, which before only affected certain parts thereof; and it was therefore properly called the *Common law*, becauſe it was common to the whole nation; and ſoon after it was called the *folc right*, *i. e.* the *peoples right*.

Alfred was ſtiled *Anglicarum legum conditor*: and when the *Danes* had introduced their laws on the conqueſt of the kingdom, they were afterwards deſtroyed; and *Edward the Confeſſor* out of the former laws compoſed a body of the *Common law*; wherefore he is called by our hiſtorians *Anglicarum legum reſtitutor*. *Blount*. In the reign of *Edw.* 1. *Britton* wrote his learned book of the *Common law* of this realm, which was done by the King's command, and runs in his name, anſwerable to the *Inſtitutions* of the *Civil law*, which *Juſtinian* aſſumes to himſelf, though compoſed by others. *Staunf. Prerog.* 6, 21. But *Juſtinian* ought to be intitled to the honour, as the *Inſtitutes* were compoſed by his direction. This *Britton* is mentioned by *Gwin* to be biſhop of *Hereford*.

Bracton, a great lawyer, in the time of *Hen.* 3. wrote a very learned treatiſe of the *Common law of England*, held in great eſtimation; and he was ſaid to be Lord Chief Juſtice of the kingdom. Alſo the famous and learned

Glanvil, Lord Chief juſtice in the reign of *Hen.* 2. wrote a book of the *Common law*, which is ſaid to be the moſt ancient compoſition extant on that ſubject. Beſides theſe, in the time of *Ed.* 4. the renowned lawyer *Littleton* wrote his excellent book of *Engliſh Tenures*. In the reign of King *James* the Firſt, the great oracle of the law, Sir *Edward Coke*, publiſhed his learned and laborious *Inſtitutes* of our law, and commentary on *Littleton*. About the ſame time likewiſe Dr. *Cowel*, a civilian, wrote a ſhort inſtitute of our laws. In the reign of King *George* the Firſt, Dr. *Tho. Wood*, a civilian and common lawyer, and at laſt a divine, wrote an inſtitute of the laws of *England*, which is ſomething after the manner of the inſtitutes of the Civil law.

To conclude the whole of this head, the learned Dr. *Blackſtone*, (now one of his Majeſty's Juſtices of the court of of *Common Pleas*) in the reign of *George* the Third, publiſhed *Commentaries* on the laws of *England*, in 4 volumes *quarto*, the beſt *analytic* and moſt *methodic* ſyſtem of our laws which ever was publiſhed. It is equally adapted for the uſe of ſtudents, and of thoſe gentlemen who chooſe to acquire that knowledge of our laws, which is, in fact, eſſentially neceſſary for every one. An octavo edition of that excellent work is now publiſhed, with many corrections, and ſome ſmall additions.

Common Pleas, *(communia placita)* Is one of the King's courts now conſtantly held in *Weſtminſter Hall*; but in ancient time was moveable, as appears by *Magna Charta, cap.* 11. *Gwyn*, in the preface of his reading, ſays, That till *Hen.* 3. granted the great charter there were but two courts, called the King's courts, *viz.* the *King's Bench* and the *Exchequer*, which were then ſtiled *Curia Domini Regis*, and *Aula Regis*, becauſe they followed the court or the King; and that upon the grant of that charter, the court of *Common Pleas* was erected and ſettled in one certain place, i. e. *Weſtminſter-hall*; and after that, all the writs ran *Quod ſit coram juſticiariis meis apud Weſtm.* whereas before, the party was required by them to appear *Coram me vel juſticiariis meis*, without any addition of place, *&c.* as he obſerves out of the writings of *Glanvil* and *Bracton*. But Sir *Edward Coke* is of opinion in his preface to the eighth report, that the court of *Common Pleas* was conſtituted before the conqueſt; and was not created by *Magna Charta*, at which time there were *Juſticiarii de Banco*, *&c.* Though, before this act, *Common Pleas* might have been held *in Banco Regis*; and all original writs were returnable there.

Writs returnable in this court, are now *coram juſticiariis noſtris apud Weſtm.* But original writs, *&c.* returnable in *B. R.* are, *Coram nobis ubicunque fuerimus in Anglia.* The juriſdiction of the court of *C. P.* is general, and extends itſelf throughout *England*: it holds plea of all civil cauſes at Common law, between ſubject and ſubject, in actions real, perſonal and mixed; and it ſeems to have been the only court for real cauſes. In perſonal and mixed actions it hath a concurrent juriſdiction with the *King's Bench*: but it hath no cogniſance of pleas of the crown; and *Common Pleas* are all pleas that are not ſuch. This court cannot regularly hold plea in any action, real or perſonal, *&c.* but by writ out of *Chancery* returnable here, except it be by bill for or againſt an officer, or other privileged perſon of the court: and except as after mentioned. All actions belonging to this court, come hither either by original, as arreſts and outlawries; or by privilege or attachment, for or againſt privileged perſons; or out of inferior courts, not of record, by *pone*, *recordare*, *accedas ad curiam*, *writ of falſe judgment*, *&c.* Actions popular, and actions penal, of debt, *&c.* upon any ſtatute, are cogniſable by this court: and beſides having juriſdiction for puniſhment of its officers and miniſters; the court of *Common Pleas* may grant prohibitions to keep temporal and eccleſiaſtical courts within due bounds. 4 *Inſt.* 99, 100, 118. In this court are four judges, created by letters patent; the ſeal of the court is committed to the cuſtody of the chief juſtice.

The other officers of the *Common Pleas* are the *Cuſtos Brevium*, three *Prothonotaries* and their *Secondaries*, the Clerk of the *Warrants*, Clerk of the *Eſſoins*, fourteen *Filazers*, four *Exigenters*, a Clerk of the *Juries*, the *Chirographer*, Clerk of the *King's Silver*, the Clerk of the *Treaſury*, Clerk of the *Seal*, of *Outlawries*, and the Clerk of the *Inrolment of Fines and Recoveries*, Clerk of the *Errors*, *&c.* The *Cuſtos Brevium* is the chief clerk in this court, who receives and keeps all writs returnable therein; and all records of *Niſi prius*, which are delivered to him by the clerks of the aſſiſe of every circuit, *&c.* and he files the rolls together, and carries them into the treaſury of records: he alſo makes out exemplifications, and copies of all writs and records, *&c.* The *Prothonotaries* enter and inrol all declarations, pleadings, judgments, *&c.* and they make out all judicial writs, writs of execution, writs of privilege, *procedendo's*, *&c.* The *Secondaries* are aſſiſtants to the *Prothonotaries* in the execution of their offices; and they take minutes, and draw up all orders and rules of court. The *Filazers*, who have the ſeveral counties of *England* divided among them, make out all meſne proceſs, as *capias*, *alias*, *pluries*, &c. between the original writ and the declaration; and they make all writs of *view*, *&c.* The *Exigenters*, appointed for ſeveral counties, make out all exigents and proclamations in order to outlawry. The *Clerk of the Warrants*, enters all warrants of attorney; inrols deeds of bargain and ſale, and eſtreats all iſſues. The *Clerk of the Eſſoins*, keeps the roll of the eſſoins, wherein he enters them, and nonſuits, *&c.* The *Clerk of the Juries*, makes out all writs of *habeas corpora jurator'*, for juries to appear; and he enters the continuances till the verdict given. The *Clerk of the Treaſury* keeps the records of the court, and makes exemplifications of records, copies of iſſues, judgments, *&c.* The *Clerk of the Seals*, ſeals all writs and meſne proceſs; alſo writs of outlawry and ſuperſedeas, and all patents. *The Clerk of the Outlawries*, makes out the writs of *capias utlagatum*. The *Clerk of the Errors* is for the allowance of writs of error, *&c.* The *Clerk of the Inrolments* of fines and recoveries, returns all writs of covenant, writs of entry and ſeiſin, and inrols and exemplifies fines, *&c.* The *Clerk of the King's Silver* enters the ſubſtance of the writ of covenant: and the *Chirographer* ingroſſeth all fines, and delivers the indentures to the parties, *&c.*

To theſe officers may be added, a *Proclamator*; a *Keeper* of the court; *Cryer*; and *Tipſtaffs*; beſides the *Warden of the Fleet*. There are alſo *Attornies* of this court, whoſe number is unlimited; and none may plead at the bar of the court, or ſign any ſpecial pleadings, but *Serjeants* at law.

Common Prayer, *(Preces Publicæ)* Is the liturgy, or prayers uſed in our church. It is the particular duty of clergymen every *Sunday*, &c. to uſe the public form of prayer, preſcribed by the *Book of Common Prayer*: and if any incumbent be reſident upon his living, as he ought to be, and keep a curate, he is obliged by the *act of uniformity*, once every month at leaſt, to read the *Common Prayers* of the church, according as they are directed by the book of *Common Prayer*, in his pariſh church, in his own perſon, or he ſhall forfeit 5 *l.* for every time he fails therein. *Stat.* 13 *&* 14 *Car.* 2. *cap.* 4. Alſo by that ſtatute the book of *Common Prayer* is to be provided in every pariſh, under the penalty of 3 *l.* a month: and the *Common Prayer* muſt be read before every *lecture*; the whole appointed for the day, with all the circumſtances, and ceremonies, *&c.* And by one of the *canons of the church*; miniſters, before all *ſermons*, are to move the people to join in a ſhort *prayer*, for the catholick church; and the whole congregation of Chriſtian people, *&c.* for the King and Royal Family; the miniſters of God's word, nobility, magiſtrates, and whole commons of the realm, *&c.* and conclude with the *Lord's Prayer*. *Can.* 55. Refuſing to uſe the *Common Prayer*, or uſing any other open *prayers*, &c. is puniſhable by *Stat.* 1 *Eliz. c.* 2. See *Church*, *Service*, and *Sacrament*.

Common Weal, Is underſtood in our law to be *bonum publicum*, and is a thing much favoured; and therefore the law doth tolerate many things to be done for common good, which otherwiſe might not be done: and hence it is, that *monopolies* are *void* in law; and that *bonds* and *covenants* to *reſtrain free trade*, *tillage*, or the like, are adjudged *void*. 11 *Co. Rep*. 50. *Plowd*. 25. *Shep. Epit*. 270.

Commorancy, (*commorantia*, from *commoro*) An abiding, dwelling or continuing in any place; as an inhabitant of a houſe in a vill, *&c.* And *commorancy* for a certain time, may make a ſettlement in a pariſh. *Dalt*. See *Poor*.

Commorth, or Comorth, (*comortha*) From the Brit. *cymmorth*, i. e. *ſubſidium*; a contribution which was gathered at marriages, and when young prieſts ſaid or ſung the firſt maſſes, *&c.* 4 *Hen*. 4. *c*. 27. But the 26 *H*. 8. *c*. 6. prohibits the levying any ſuch in *Wales*, or the *Marches*, &c.

Commote, In *Wales* is half a *cantred* or hundred, containing fifty villages. *Stat. Walliæ*, 12 *Ed*. 1. *Wales* was anciently divided into three provinces; and each of theſe were again ſubdivided into *cantreds*, and every *cantred* into *commotes*. *Doderige's Hiſt. Wal. fol*. 2. *Commote* alſo ſignifies a great ſeigniory or lordſhip, and may include one or divers manors. *Co. Lit*. 5.

Communance. The commoners, or tenants and inhabitants, who had the right of common, or commoning in open fields, *&c.* were formerly called the *communance*. Cowel.

Commune Concilium Regni Angliæ, The common council of the King and people aſſembled in parliament.

Communia placita non tenenda in Scaccario, Is an ancient writ directed to the treaſurer and barons of the *Exchequer*, forbidding them to hold plea between common perſons in that court, where neither of the parties belong to the ſame. *Reg Orig*. 187. But little obedience would perhaps be now paid to ſuch a writ, was any officer to dare to iſſue it: for the court of exchequer, ſeems by preſcription, to have attained a concurrent juriſdiction in civil ſuits, with the other courts in *Weſtminſter-hall*.

Communi Cuſtodia, A writ which anciently lay for the lord, whoſe tenant holding by knight's ſervice died, and left his eldeſt ſon under age, againſt a ſtranger that entered the land, and obtained the ward of the body. *F. N. B*. 89. *Reg. Orig*. 161. Since the ſtatute 12 *Car*. 2. *c*. 24. hath taken away wardſhips, this writ is become of no uſe.

Community of the kingdom. *Vide* Commonalty.

Companage, (*Fr.*) Is all kind of food, except bread and drink: and the learned *Spelman* interprets it to be *quicquid cibi* cum pane *ſumitur*. In the manor of *Feſkerton* in the county of *Nottingham*, ſome tenants when they performed their boons or work-days to the lords, had three boon loaves with *companage* allowed them. *Reg. de Thurgarton* cited in *Antiq. Nottingham*.

Companion of the Garter, Is one of the knights of that moſt noble order; at the head of which is the King, as ſovereign. 24 *H*. 8. *c*. 13.

Compaſs, An inſtrument uſed in navigation, by the direction and aſſiſtance whereof veſſels are ſteered to the moſt diſtant parts of the world. It was invented ſoon after the cloſe of the holy war, and thereby navigation was rendered more ſecure as well as more adventrous, the communication between remote nations was facilitated, and they were brought nearer to each other. See *Robertſ. Hiſt. Emp. C*. V. 1 *V*. 78.

Compellativum, An adverſary or accuſer.—*Epiſcopus in* compellativum *adlegiationem docere ne quis alium perperam cogat jurejurando vel in ordalio*. Leg. Athelſtan.

Compertorium, A judicial inqueſt in the Civil law, made by delegates, or commiſſioners to find out and relate the truth of a cauſe. *Paroch. Antiq*. 575.

Compoſition, (*compoſitio*) An agreement or contract between a parſon, patron and ordinary, *&c.* for money or other thing in lieu of tithes. Land may be exempted from the payment of tithes, where *compoſitions* have been made: and real *compoſitions* for tithes are to be made by the concurrent conſent of the parſon, patron and ordinary. Real *compoſitions* are diſtinguiſhed from perſonal contracts; for a *compoſition* called a perſonal contract is only an agreement between the parſon and the pariſhioners, to pay ſo much inſtead of tithes; and though ſuch agreement is confirmed by the ordinary, yet (if the parſon is not a party) that doth not make it a real *compoſition*, becauſe he ought to be a party to the deed of *compoſition*. *March's Rep*. 87. The *compoſitions* for tithes made by the conſent of the parſon, patron and ordinary, by virtue of 13 *Eliz. c*. 10. ſhall not bind the ſucceſſor unleſs made for twenty-one years or three lives, as in caſe of leaſes of eccleſiaſtical corporations, *&c.* *Compoſitions* were at firſt for a valuable conſideration, ſo that though in proceſs of time, upon the increaſe of the value of the lands ſuch *compoſitions* do not amount to the value of the tithes, yet cuſtom prevails, and from hence ariſes what we call a *modus decimandi*. Hob. 29. See *Tithes*.

The word *compoſition* hath likewiſe another meaning, i. e. *deciſio litis*.

Compoſitions were in ancient times allowed for crimes and offences, even for murder.—An expedient employed by the civil magiſtrate, in order to ſet ſome bounds to the violence of private revenge. This cuſtom may be traced back to the antient *Germans*. *Tacit. de Morib. Ger. c*. 21. Vide *Robertſ. Hiſt. Emp. Charles* V. 1 *V*. 278, 299, *&c.* But ſee particularly *Lord Kaim's Hiſt. Law Tr*. 1 *V*. 41, 42, *&c.*

Compoſitio Menſuratum, Is the title of an antient ordinance for meaſures, not printed.

Compoſtum, Dung, ſoil or compoſt laid on lands. *Regiſtr. Eccl. Cantuar. MS*.

Compounding felony, or *theft-bote*, Is where the party robbed not only knows the felon, but alſo takes his goods again, or other amends upon agreement not to proſecute. It was formerly held to make a man an acceſſary; but is now puniſhed only with fine and impriſonment. 1 *Hawk P. C*. 125. Unleſs a party is puniſhed, by virtue of the following act. By *Stat*. 25 *Geo*. 2. *c*. 36. even to advertiſe a reward for the return of things ſtolen, with no queſtions aſked, or words to the ſame purport, ſubjects the advertiſer and the printer to a forfeiture of 50 *l*. each.

Comprint, Intends a ſurreptitious printing of another bookſeller's copy, to make gain thereby, which is contrary to the *Stat*. 14 *Car*. 2. *cap*. 33. and 8 *Ann*. *c*. 19, *&c.* and to Common law.

Compromiſe, (*compromiſſum*) Is defined to be a mutual promiſe of two or more parties at difference, to refer the ending of their controverſy to arbitrators: and *Weſt* ſays it is the faculty or power of pronouncing ſentence between perſons at variance, given to arbitrators by the parties private conſent. *Weſt's Symb. ſect*. 1. Matters *compromiſed*, are alſo matters of law referred, or made an end of.

Compurgator, One that by oath juſtifies another's innocence. *Compurgators* were introduced as evidence in the juriſprudence of the middle ages.——Their number varied according to the importance of the ſubject in diſpute, or the nature of the crime with which a perſon was charged. *Du Cange voc. Juramentum, vol*. 3. *p*. 1599. *Robertſ. Hiſt. Emp. Charles* V. 1 *V*. 49. See *Oath*, and *Black. Com*. 3 *V*. 342, 3. 4 *V*. 361, 407.

Computation, (*computatio*) Is the true account and conſtruction of time; and to the end neither party to an agreement, *&c.* may do wrong to the other, nor the determination of time be left at large, it is to be taken according to the juſt judgment of the law. A deed dated the 20th day of *Auguſt*, to hold from the day of the date, ſhall be conſtrued to begin on the 21ſt day of *Auguſt*: but if in the *habendum* it be to hold from the making, or from thenceforth, it ſhall begin on the day delivered. 1 *Inſt*. 46. 5 *Rep*. 1. If an indenture of leaſe dated the 4th day of *July*, made for three years from thenceforth, be delivered at four of the clock in the afternoon of the ſaid 4th day of *July*, the leaſe ſhall end the 3d day of *July* in the third year: and the law in this *computation* rejects all fractions or diviſions of the day. But ſome have held that rent is not due on the day limited to be paid till the middle of the day, and after noon; in caſe a tenant for life dies at ſuch a critical juncture, *&c.* See *Day* and *Month*.

Computation of miles after the *Engliſh* manner, is allowing 5280 feet, or 1760 yards to each mile; and the ſame ſhall be reckoned not by ſtrait lines, as a bird or arrow may fly, but according to the neareſt and moſt uſual way. *Cro. Eliz*. 212.

Computo, (*Lat.*) Is a writ to compel a bailiff, receiver or accountant, to yield up his accounts: it is founded on the ſtatute of *Weſtm.* 2. *cap.* 12. And alſo lies againſt guardians, *&c.* *Reg. Orig.* 135.

Concealers, (*concelatores,* ſo called *à concelando,* as *mons a movendo,* by an *antiphraſis*) Are ſuch as find out *concealed* lands, *i. e.* ſuch lands as are privily kept from the King by common perſons, having nothing to ſhew for their title or eſtate therein. 39 *Eliz. cap.* 22. There were *concealers of crimes*; and *concealing treaſon,* *&c.* when miſpriſion, ſee *Miſpriſion.*

Conceſſi, A word of frequent uſe in conveyances, creating a covenant in law; as *dedi* makes a warranty. *Co Lit.* 384. This word is of a general extent, and ſaid to amount to a grant, feoffment, leaſe and releaſe, *&c.* 2 *Saund.* 96.

Concionators, Common-council men, freemen, called to the hall or aſſembly, as *moſt worthy.—Quodam tempore cum conveniſſent* concionatores *apud* London, *&c.* Hiſtor. Elien. edit. Gale, c. 46.

Concluſion, (*concluſio*) Is when a man by his own act upon record hath charged himſelf with a duty or other thing, or confeſſed any matter whereby he ſhall be concluded: as if a ſheriff returns that he hath taken the body upon a *capias,* and hath not the body in court at the day of the return of the writ; by the return, the ſheriff is concluded from plea of eſcape, *&c.* *Terms de Ley.* In another ſenſe, this word *concluſion* ſignifies the end of any plea, replication, *&c.* and a plea to the writ is to conclude to the writ; a plea in bar, to conclude to the action, *&c.* *Concluſion* of plea in bar ſhall be, *et hoc paratus eſt verificare:* of pleas tendering iſſue, *et de hoc ponit ſe ſuper patriam.* Kitch. 219, 220. See *Blac. Com.* 3 *V.* 303. and *Co Lit.* 303. *a. b.* *&c.*

Concord, (*concordia*) Is an agreement made between two or more, upon a treſpaſs committed; and is divided into *concord executory* and *concord executed.* *Plowd.* 5, 6, 8. Theſe *concords* and agreements are by way of ſatisfaction for the treſpaſs, *&c.*

Concord is alſo an agreement between parties, who intend the levying of a fine of lands one to the other, how and in what manner the lands ſhall paſs: it is the foundation and ſubſtance of the fine, taken and acknowledged by the party before one of the judges of *C. B.* or by commiſſioners in the country, and in *Latin* begins thus: *Et eſt* concordia *talis ſcilicet quod præd.* A. B. *recogn. tenementa præd. cum pertin' eſſe jus ipſius* C. D. *ut ill. quæ idem* C. D. *habet de dono præd.* A. B. *Et ill. remiſer. & quiet. clam. de ſe & hæred. ſuis præfat.* C. *& hæred. ſuis imperpetuum,* *&c.*

Concubaria, A fold, pen, or place where cattle lie. *Cowel.*

Concubeant, Signifies a lying together. *Stat.* 1 *H.* 7. *cap.* 6.

Concubinage, (*concubinatus*) In common acceptation is the keeping of a whore or concubine: but in a legal ſenſe, it is uſed as an exception againſt her that ſueth for dower, alledging thereby that ſhe was not a wife lawfully married to the party, in whoſe lands ſhe ſeeks to be endowed, but his concubine. *Brit. c.* 107. *Bract. lib.* 4. *tract.* 6. *cap.* 8. There was a *concubinage* allowed in Scripture to the patriarchs, *ſecundum legem matrimonii,* *&c.* Blount.

Conders, (from the Fr. *conduire,* to conduct) Are ſuch as ſtand upon high places near the ſea-coaſt, at the time of herring-fiſhing, to make ſigns with boughs, *&c.* to the fiſhermen at ſea, which way the ſhoals of herrings paſs; for this may be better diſcovered by ſuch as ſtand upon ſome high cliff on the ſhore, by reaſon of a kind of blue colour which the herrings cauſe in the water, than by thoſe that are in the ſhips or boats for fiſhing. Theſe are otherwiſe called *buers* and *balkers, directors* and *guiders,* as appears by the *Stat.* 1 *Jac.* 1. *c.* 23.

Condition, (*conditio*) Is a reſtraint annexed to a thing, ſo that by the non-performance, the party to it ſhall receive prejudice and loſs; and by the performance, commodity and advantage: or it is a reſtriction of mens acts, qualifying or ſuſpending the ſame, and making them uncertain whether they ſhall take effect or not; alſo it is defined to be what is referred to an uncertain chance, which may happen or not happen. *Weſt's Symb. part.* 1. *lib.* 2. *ſect.* 156. And of *conditions* there are divers kinds, *viz.* *conditions* in *deed* and in *law*; *conditions precedent,* and *ſubſequent*; *conditions inherent,* and *collateral,* &c.

A *condition in deed* is that which is joined by expreſs words to a feoffment, leaſe, or other grant; as if a man makes a leaſe of lands to another, reſerving a rent to be paid at ſuch a feaſt, upon *condition* if the leſſee fail in payment, at the day, then it ſhall be lawful for the leſſor to enter.

Condition in *law* is when a perſon grants another an office, as that of keeper of a park, ſteward, bailiff, *&c.* for term of life; here, though there be no *condition* expreſſed in the grant, yet the law makes one, which is, if the grantee do not juſtly execute all things belonging to the office, it ſhall be lawful for the grantor to enter and diſcharge him of his office. *Lit. lib.* 3. *c.* 5. Theſe *conditions* are alſo called *condition expreſſed,* and *condition implied.*

Condition precedent is when a leaſe or eſtate is granted to one for life, upon *condition* that if the leſſee pay to the leſſor a certain ſum at ſuch a day, then he ſhall have fee ſimple; in this caſe the *condition* precedes the eſtate in fee, and on performance thereof gains the fee-ſimple.

Condition ſubſequent is when a man grants to another his manor of *Dale,* &c. in fee, upon *condition* that the grantee ſhall pay to him at ſuch a day ſuch a certain ſum, or that his eſtate ſhall ceaſe; here the *condition* is ſubſequent, and following the eſtate, and upon the performance thereof continues and preſerves the ſame: ſo that a *condition precedent* doth *get* and *gain* the thing or eſtate made upon *condition* by the performance of it; as a *condition ſubſequent keeps* and *continues* the eſtate by the performance of the *condition.* 1 *Inſt.* 201, 327. *Terms de Ley.* If one agree with another to do ſuch an act, and for the doing thereof the other ſhall pay ſo much money; here the doing the act is a *condition precedent* to the payment of the money, and the party ſhall not be compelled to pay till the act is done: but where a day is appointed for the payment of money, which day happens before the thing contracted for can be performed, there the money may be recovered before the thing is done; for here it appears that the party did not intend to make the performance of the thing a *condition precedent.* 3 *Salk.* 95.

Inherent conditions are ſuch as deſcend to the heir with the land granted, *&c.*

A *collateral condition* is that which is annexed to any collateral act.

Conditions are likewiſe *affirmative,* which conſiſt of doing; *negative,* and conſiſt of not doing: ſome are further ſaid to be *reſtrictive,* for not doing a thing; and ſome *compulſory,* as that the leſſee ſhall pay the rent, *&c.*

Alſo ſome *conditions* are *ſingle,* to do one thing only; ſome *copulative,* to do divers things; and others *disjunctive,* where one thing of ſeveral is required to be done. *Co. Lit.* 201.

Among theſe ſeveral kinds of conditions, the caſes which moſt frequently occur fall under the diſtinctions of conditions *precedent* and *ſubſequent.* We ſhall therefore ſpeak of them more at large under the following diviſions, wherein it is to be conſidered,

I. *To what conditions may be annexed: what conditions are good, and by what words they may be created.*

II. *What ſhall be a good performance of a condition, and in what manner the breach of it muſt be taken advantage of.*

III. *Of conditions* precedent *and* ſubſequent.

I. *To what conditions may be annexed: what are good, and by what words they may be created.*

Conditions may be to any eſtate, whether in fee-ſimple, fee-tail, for life or years: they run with the eſtate, and bind in the hands of whomſoever they come. *Lit. Rep.* 128. But a *condition* may not be made but on the part of the leſſor, donor, *&c.* For no man may annex a *condition* to an eſtate, but he that doth create the eſtate itſelf. *Conditions* are good to enlarge or limit eſtates: and there are four incidents, which conditions to create and increaſe an eſtate ought to have. 1. They ſhould have a particular eſtate, as a foundation whereupon the increaſe of the greater eſtate ſhall be built. 2. Such particular eſtate ſhall continue in the leſſee or grantee, until the increaſe happens. 3. It muſt veſt at the time the contingency happens, or it ſhall never veſt. 4. The particular eſtate and increaſe muſt take effect by the ſame deed, or by ſeveral deeds delivered at the ſame time. 8 *Rep.* 75. *Conditions* to create eſtates ſhall be favourably conſtrued: but *conditions* which tend to deſtroy, or reſtrain an eſtate, are to be taken ſtrictly. A feoffment upon *condition*, that the feoffee ſhall not aliene, is void: but a *condition* in a feoffment not to aliene for a particular time, or to a particular perſon, may be good. *Hob.* 13, 261. And if a *condition* is, that tenant in tail ſhall not aliene in fee, *&c.* or tenant for life or years not aliene during the term, theſe *conditions* are good: where the reverſion of an eſtate is in the donor, he may reſtrain an alienation by *condition.* 10 *Rep.* 39. 1 *Inſt.* 222. If one make a gift in *tail*, on *condition* that the donee or his heirs ſhall not aliene; this is good to ſome intents, and void to others: for if he make a feoffment in *fee*, or any other eſtate by which the reverſion is diſcontinued tortiouſly, the donor may enter; but it is otherwiſe if he ſuffer a common recovery. 1 *Inſt.* 223.

A liberty inſeparable from an eſtate cannot be reſtrained; and therefore a *condition* that a tenant in tail ſhall not levy a fine, within the *Stat.* 4 *H.* 7. *c.* 24. or ſuffer a recovery; or not make a leaſe within the *Stat.* 32 *Hen.* 8. *c.* 36. is void and repugnant. But if the *condition* reſtrain levying a fine at Common law, it may be good. 2 *Danv. Abr.* 22. A gift in tail, or in fee, upon condition that a feme ſhall not be endowed; or baron be tenant by the curteſy, is repugnant and void. So is a *condition* in a leaſe, *&c.* that the leſſee ſhall not take the profits: and where a man grants a rent-charge out of land, provided it ſhall not charge the lands. *Co. Lit.* 146.

Conditions repugnant to the eſtate, impoſſible, *&c.* are void: and if they go before the eſtate, the eſtate and *condition* are void; if to follow it, the eſtate is abſolute, and the *condition* void. 1 *Inſt.* 206. 9 *Rep.* 128. But if at the time of entering into a *condition*, a thing be poſſible to be done, and become afterwards impoſſible by the act of God, the eſtate of a feoffee (created by livery) ſhall not be avoided. 2 *Mod.* 204.

A feoffment in fee is made upon *condition*, that the feoffee ſhall within a year go to *Rome*, *&c.* if the feoffee dies before the year ended, yet the eſtate of the feoffee is become abſolute; for the eſtate, once veſted by the livery, ſhall not be diveſted without default in the feoffee. *Ibid.* Where a *condition* is of two parts, one poſſible, and the other not ſo, it is a good *condition* for performing that part which is poſſible. *Cro. Eliz.* 780. Though if a *condition* is of two parts *disjunctive*, and one part becomes impoſſible, by the act of God, the perſon bound is not obliged to perform the other. 1 *Rol. Abr.* 446. *l.* 45. 2 *Mod.* 202, 203. If a condition be in the *copulative*, and is not poſſible to be performed, it is ſaid it may be taken in the disjunctive. 1 *Danv. Abr.* 73.

Where an eſtate is to be wholly created upon a *condition* impoſſible to be performed, there the eſtate ſhall never come *in eſſe*. 1 *Leon. c.* 311. A woman makes a feoffment to a man that is married, upon condition that he ſhall marry her; this condition is not impoſſible, for the man's wife may die, and then he may marry her. 2 *Danv.* 25. A reverſion may be granted in tail upon condition, that if the grantee pays ſo much, he ſhall have the fee. 8 *Rep.* 73. But if a man grants lands, *&c.* for *years*, upon condition that if the leſſee pay 20*s.* within one year, that he ſhall have it for *life:* and that if he after the year pay 20 *s.* he ſhall have the *fee*; though both ſums are paid, he ſhall have *but* an *eſtate* for *life:* the *eſtate* for *life*, at the time of the grant, being only in *contingency*, and a *poſſibility* cannot increaſe upon a *poſſibility*, nor can the *fee* increaſe upon the *eſtate* for *years*. 8 *Rep.* 75.

If a leaſe be made to two, with condition to have fee, and one dies, the ſurvivor may perform the condition, and have the fee; but if they make partition, the condition is deſtroyed. 8 *Rep.* 75, 76. If a feoffee grant the reverſion of part of the land, on a leaſe for years, on which a rent upon condition is reſerved, all the condition is confounded and gone; though if the *leſſee* aſſign part, the condition remains, for *he* cannot diſcharge the eſtate of the condition. 2 *Danv. Abr.* 119. A man makes a feoffment upon condition, and after levies a fine to a ſtranger, the condition is gone. *Ibid.* 120. If a feoffee, upon condition to infeoff another, infeoff a ſtranger; or if it be to reinfeoff the feoffor, and he grant the land to another perſon, upon condition to perform the condition, the condition is broken, becauſe the feoffee hath diſabled himſelf to do it: ſo where ſuch feoffee, upon condition to reinfeoff, *&c.* takes a wife, that the land is ſubject to the dower of the wife; and ſo if the land is recovered, and execution ſued out by another, the condition is broken. *Co. Lit.* 221, 1 *Danv.* 79.

If one diſſeiſe the feoffee, or any other who hath land by juſt title, and thereof infeoff a ſtranger on condition, and the land is lawfully recovered from him that hath the title; by this the condition is deſtroyed: and if a diſſeiſor make a feoffment in fee upon condition; and after the diſſeiſee doth enter upon the feoffee, this doth extinguiſh the condition. *Perk. ſect.* 821. If the feoffee makes a feoffment of all or part of the land to the feoffor, before the condition is broken; the condition is gone for ever: and if he make a leaſe for life or years only, then the condition will be ſuſpended for that time. *Co. Lit.* 218. But it is otherwiſe where the feoffment or leaſe for life or years, are made to any other but the feoffor. *Ibid.* Where the condition of a feoffment is, that if the feoffor or his heir pay a certain ſum of money to the feoffee ſuch a day, and before that day the feoffor dieth without heir: or if the feoffment be made by a woman on condition to pay her 10 *l.* or that the feoffee infeoff her by a certain day, and they intermarry before the day, and the marriage doth continue till after it; in theſe caſes the condition is gone. *Perk. ſect.* 763, 764.

A condition that would take away the whole effect of a grant is void; and ſo it is if it be contrary to the expreſs words of it. Conditions againſt law are void; but what may be prohibited by law may be prohibited by deed. 1 *Inſt.* 206, 220. He that taketh an eſtate in remainder, is bound by condition in a deed, though he doth not ſeal it.

As to the proper words to create a condition.

The word *ſi* will not always make a condition; but ſometimes it makes a limitation, as where a leaſe is made for years, *if A. B.* lives ſo long. And this is contrary to a condition, for a ſtranger may take advantage of an eſtate determined thereby, *&c.* *Co. Lit.* 236. *Dyer* 300. *Sub conditione* is the moſt proper word to make a condition: *proviſo* is as good a word, when not dependant upon another ſentence; but in ſome caſes, the word *proviſo* may make no *condition*, but be only a qualification or explication of a covenant. 2 *Danv.* 1, 2. And neither the word *proviſo*, nor any other, makes a condition, unleſs it is *reſtrictive*. Plowd. 34. 1 Nelſ. 466.

Regularly the word *(pro)* does not import a condition, tho' it has the force of a condition *when the thing granted is* executory, *and the conſideration of the grant is a* ſervice, *or ſome ſuch thing, for which there is no remedy*; *but the ſtopping the thing granted*, as in the caſe of an annuity granted *pro conſilio*, or for executing the office of a ſteward of a court, or the ſervice of a captain or keeper of a fort, here the failure of giving counſel, or performing the ſervice, is a kind of eviction of that which is to be done for the annuity, the grantor having no means either to exact the counſel, or recompence for it, but by ſtopping the annuity; and in theſe caſes the *condition* is *not precedent*, and therefore the *performance* thereof *need not* be *averred* when the annuity is demanded. *Per Hobart* Ch. J. *Hob.* 41. *Mich.* 10 *Jac.* in the caſe of *Cowper* v. *Andrews*.

Of the condition, and the neceſſity of an averment.

As the intent of the teſtator chiefly governs in wills, ſuch conſtruction is always made of the words, as will beſt ſupport his intent, and therefore theſe words *ad faciendum*, *faciendo*, *ea intentione*, *ad effectum*, *&c.* in a will create a *condition*. *Co. Lit.* 204. *a.* See *Deviſe*, *Will.*

A grant to one to the intent he ſhall do ſo and ſo, is no *condition*, but a *truſt* and *conſidence*. *Dyer* 138.

Some words in a leaſe do not make a *condition* but a *covenant*, upon which the leſſor may bring his action. A leaſe being the deed of leſſor and leſſee, every word is ſpoken by both; and a *condition* may be therein, though it ſounds in *covenant*. 1 *Nelſ.* 464. A *covenant* not to grant, ſell, *&c. may* be a *condition*; and *covenant* that, paying the rent, the leſſee ſhall enjoy the land, is *conditional*. 2 *Danv.* 2, 6. Where words are indefinite, and proper to defeat an eſtate, they ſhall be taken to have the force of a *condition*. *Palm.* 503.

II. *With regard to the performance of conditions.*

A condition may be well performed, when it is done as near to the intent as may be: for if the condition of a feoffment be that the feoffee ſhall make an eſtate back to the feoffor and his wife, and the heirs of their two bodies, remainder to the right heirs of the feoffor; in this caſe, if the feoffor die before, the eſtate ſhall be made to the wife without impeachment of waſte, the remainder to the heirs of the body of the huſband begotten on the wife, *&c. Co. Lit.* 219. 8 *Rep.* 69. If a condition be performed in *ſubſtance* and *effect*, it is good although it differs in words; as where it is to deliver letters patent, and the party bound having loſt them, delivers an exemplification, *&c.* 2 *Danv.* 40. Though payment of the money before the day, is payment at the day, in performance of a condition; yet a feoffor, *&c*, cannot re-enter, and reveſt his old eſtate by force of the condition, till the day whereon the condition gives him power to re-enter. *Ibid.* 121. If a man ſeiſed of land in right of his wife, make a feoffment in fee on condition, and dies; if the heir of the feoffor enters for the condition broken, and defeats the feoffment, his eſtate vaniſhes, and preſently it is veſted in the wife. *Co. Lit.* 202. And if a perſon ſeiſed of land, as *heir* on the part of his *mother*, makes a feoffment on *condition* and dieth; tho' the heir on the part of the *father*, who is *heir* at *Common law*, may *enter* for the *condition* broken, the *heir* of the part of the *mother* ſhall enter upon him, and enjoy the land. *Ibid.* 12.

Where there is a condition in a feoffment or leaſe, that if no diſtreſs can be found, the feoffor, *&c.* ſhall re-enter; if the place is not open to the diſtreſs, as if there be only a cupboard in the houſe, which is locked, *&c.* it is all one as if there was no diſtreſs there, and the feoffor, *&c.* may enter. 2 *Danv.* 46. When a rent is to be paid upon condition at a certain day, the leſſor cannot enter for the condition broken, before *demand* of the *rent*. *Ibid.* 98. And the leſſor ought to demand the rent *at the day*, or the condition ſhall not be broken by the non-payment of the rent. A re entry may be given on a feoffment, *&c.* though none be reſerved: if one make a leaſe for life or feoffment upon condition, that if the feoffee or leſſee does ſuch an act, the eſtate ſhall be void: now although the eſtate cannot be void before entry, this is a good condition, and ſhall give an entry to the leſſor, *&c.* by implication. 1 *Rol. Abr.* 408. A leaſe for life on condition, being a freehold, cannot ceaſe without entry; but if it be a leaſe for years, the leaſe is void *ipſo facto*, on breach of the condition without any entry. 1 *Inſt.* 214. If a leaſe for years is, that, on breach of the condition, the term ſhall ceaſe, the term is ended without entry; but where the words are, that the leaſe ſhall be void, it is otherwiſe. *Cro. Car.* 511. 3 *Rep.* 64. Regularly, where one will take advantage of a condition, if he may enter, he muſt do it; and if he cannot enter, he muſt make a claim. *Co. Lit.* 218. Where on condition broken, leſſor brings an *ejectment*, *entry* is not neceſſary; if tenant defends, he is bound by the rule, to confeſs *entry*.

No one can reſerve the power or benefit of re-entry, on breach of a condition to any other but himſelf, his heirs, executors, *&c.* parties and privies, in right and repreſentation: privies in law, grantees of reverſions, *&c.* are to have no advantage by it. But by the *Stat.* 32 *H.* 8. *c.* 28. Grantees of reverſions may take advantage againſt leſſees, *&c.* by action. 1 *Inſt.* 214, 215. *Plowd.* 175. Where one doth enter for a condition broken, it generally makes the eſtate void *ab initio*, and the party comes in of his firſt eſtate; and he ſhall have the land in the ſame manner it was when he parted with it; and his poſſeſſion at the time of making the condition: therefore he ſhall avoid all ſubſequent charges on the lands. 4 *Rep.* 120. *Plowd.* 186. *Co. Lit.* 233. If one enters on a condition performed, he ſhall avoid all incumbrances upon the land after the condition made: and a condition when broken, or performed, *&c.* will defeat the whole eſtate. So that if there be a leaſe for life, remainder in fee, on condition that the leſſee for life ſhall pay 20 *l.* to the leſſor; if he pay not this money, the eſtate in remainder will be avoided alſo. *Dyer* 127. 8 *Rep.* 90. But this may be otherwiſe by ſpecial limitation to an uſe: and if tenant for life, and he in remainder join in a feoffment on condition, that if, *&c.* then the tenant for life ſhall re-enter, this may be good without defeating the whole eſtate; tho' regularly a condition may not avoid part of an eſtate, and leave another part entire, nor can the eſtate be void as to ſome perſons, and good as to others. 8 *Rep.* 190. 1 *Inſt.* 214.

Leſſee for life makes a feoffment on condition, and enters for the condition broken; by this he ſhall be reſtored to his eſtate for life, and reduce the reverſion to the leſſor; and the rent due to the leſſor ſhall be revived: but in this caſe the leſſee will not be in the ſame courſe as he was before, for his eſtate is ſubject to a forfeiture, though he be tenant for life ſtill. *Roll.* 474. *Shep. Abr.* 405.

Tenants by the curteſy, tenant in tail after poſſibility of iſſue extinct, tenant in dower, for life, or years, *&c.* hold their eſtates ſubject to a condition in law, not to grant a greater eſtate than they have, nor to commit waſte, *&c.* 1 *Inſt.* 233. And eſtates made by deed to infants, and feme coverts, upon condition, ſhall bind them, becauſe the charge is on the land. 2 *Danv.* 30. A releaſe of all a man's right may be upon condition; a leſſee may ſurrender upon condition; a contract may be upon condition, *&c.* But a parſon cannot reſign upon condition, any more than be admitted upon condition: and a condition cannot be releaſed on condition. 9 *Rep.* 85.

No perſon ſhall defeat any eſtate of freehold upon condition without ſhewing the deed wherein the condition is contained: but of chattels real or perſonal, *&c.* a man may plead that ſuch grants or leaſes were made upon condition without ſhewing the deeds; and in the caſe of a condition to avoid a freehold, though it may not be pleaded without the deed, it may be given in evidence to a jury, and they may find the matter at large. *Lit.* 374. 5 *Rep.* 40. A condition may be apportioned by act of law, or of the leſſee. 4 *Rep.* 120. But a man cannot by his own act divide, or apportion a condition, which goes to the deſtruction of an eſtate. 1 *Nelſ. Abr.* 474. A condition in a *will* is a thing odious in law, which ſhall not be created without ſufficient words. 2 *Leon.* 40. A deviſe to the heir at law, provided he pay to *A. B.* 20 *l.* is a void condition, becauſe there is no perſon to take advantage of the non-performance. 1 *Lutw.* 797. Yet conditional deviſes, as well of lands as of goods, are allowed by our law, and not being performed, the heir or executors ſhall take advantage of them. 1 *Nelſ.* 467.

Where there are *negative* and *affirmative conditions*, the pleader muſt ſhew, not only that he has *not broke* the *negative* ones, but alſo that he has *performed* the *affirmative* ones. *Fletcher* v. *Richardſon*, *Rep. Temp. Hardw. per Annaly*, 322.

III. *With reſpect to the diſtinction between conditions* precedent *and* ſubſequent

It is to obſerved, that conditions *precedent* are ſuch as muſt be punctually performed before the eſtate can veſt; but on a condition *ſubſequent*, the eſtate is immediately executed: yet the *continuance* of ſuch eſtate dependeth on the breach or performance of the condition. *Co. Lit.* 218. *Eq. Abr.* 108. As if I grant, that if *A.* will go to ſuch a place, about my buſineſs, that he ſhall have ſuch an eſtate, or that he ſhall have 10 *l. &c.* this is a condition *precedent*. 1 *Rol. Abr.* 414. So if I retain a man for 40 *s.* to go with me to *Rome*, this is a condition precedent, for the duty commences by going to *Rome*. 1 *Rol. Abr.* 914. So if a man, by will deviſes certain legacies, and then deviſes all the reſidue of his eſtate to his executor, after debts, legacies, *&c.* paid and diſcharged, this is a condition precedent; ſo that the executor cannot have the reſidue of the eſtate before the debts and legacies are diſcharged. 1 *Rol. Abr.* 415. 1 *Jones* 327. *Cro. Car.* 335.

But if a man deviſes a term to *A.* and that if his wife ſuffers the deviſee to enjoy it for three years, that ſhe ſhall have all his goods as executrix; but if ſhe diſturbs *A.* then he makes *B.* executor, and dies, his wife is executrix preſently; for though in *grants* the eſtate ſhall not veſt till the condition precedent is performed, yet it is otherwiſe in a *will,* which muſt be guided by the intent of the parties; and this ſhall not be conſtrued as a condition *precedent,* but only as a condition to abridge the power of being executrix, if ſhe perform it not. *Cro. Eliz.* 219.

Where the *one promiſe* is the conſideration *of the other,* and where the performance and not the promiſe is, *muſt be gathered from the words and nature of the agreement,* and depends intirely thereupon; for, if there was a *poſitive* promiſe that one ſhould releaſe his equity of redemption, and on the other ſide that the other would pay 7 *l.* then the one might bring his action without any averment of performance; but where the agreement is, that the plaintiff ſhould releaſe his equity of redemption, in conſideration whereof the defendant was to pay him 7 *l.* ſo that the *releaſe is the conſideration,* and therefore, being *executory,* it is a condition *precedent,* which muſt be averred. 12 *Mod.* 455, 460. *Paſch.* 13 *Will.* 3. by *Holt* Ch. Juſtice, in delivering the opinion of the court in the caſe of *Thorp* v. *Thorp.*

If there be a *day ſet for the payment* of money, *or doing the thing* which one promiſes, agrees or covenants to do *for* another thing, and that day *happens to incur before* the time, *the thing* for which the promiſe, agreement or covenant *is made, is to be performed by the tenor of the agreement,* there, though the words be, that the party ſhall pay the money, or do the thing for ſuch a thing, or in conſideration of ſuch a thing; after the day is paſt the other ſhall have action for the money, or other thing, though the thing for which the promiſe, agreement, or covenant was made, be not performed; for it would be repugnant there to make it a condition *precedent*; and therefore they are in that caſe left to mutual remedies, on which, by the expreſs words of the agreement, they have depended. *Per Holt* Ch. Juſtice. 12 *Mod.* 461. *Paſch.* 13 *W.* 3. in the caſe of *Thorp* v. *Thorp.*

M. agrees *to give* A. *ſo much for the uſe of a coach and horſes for a year,* and *A. agreed* further with *M. to keep the coach in repair*; it was averred the coach and horſes were delivered to *M.* but nothing of the repair; and *Holt* Ch. Juſtice held upon this evidence, that *repairing* was not a condition *precedent,* and therefore need not be averred. *Per Holt* Ch. Juſtice at *Guildhall,* and judgment *pro querente.* 12 *Mod.* 503. *Paſch.* 13 *Will.* 3. *Atkinſon* v. *Morris.*

But if the agreement had been that A. had agreed *to give* M. *a coach and horſes for a year, and to repair the coach, and* that *for that* M. *promiſed ſo much money, then* the repairing had been a condition *precedent* neceſſary to be averred. *Per Holt* Ch. Juſtice. 12 *Mod.* 503. *Paſch.* 13 *W.* 3. in *S. C.*

Condition that *A.* ſhall do, and *for the doing* B. *ſhall pay,* is a condition *precedent,* but *time fixed for payment* will verify the condition; *per Holt* Ch. Juſtice. 1 *Salk.* 171. *Paſch.* 13 *Will.* 3. *B. R. Thorp* v *Thorp.*

Where an *award* conſiſts *of divers things,* and one of them is void, and it be expreſly ſaid, *that upon performance of* that *void thing, the other party ſhall do* ſuch a thing, there the doing of the void thing is a condition *precedent,* and muſt be averred before action againſt the other for not doing his part; *but where* there be ſeveral things in an award, and *ſome are good,* and others not; and it is further ſaid, *that upon performance præmiſſorum* the other ſhall releaſe for the purpoſe, there it ſuffices to make *averment of performance of what is well awarded* without more; *per Powell* Juſtice. 12 *Mod.* 588. *Mich.* 13 *W.* 3. in *C. B. Lee* v. *Elkins.*

If *A.* makes a leaſe for five years to *B.* upon condition, that if *B.* pays him 10 *l.* within two years, that then he ſhall have a fee-ſimple in the lands, and make livery and ſeiſin to *B.* this paſſes the freehold immediately, and *B.* has a fee conditional; becauſe if the freehold was not to veſt in *B.* till the condition performed, it would be difficult to determine in whom the freehold lay; for conditions may be inſerted in ſuch deeds as are perfected privately, which might prove greatly prejudicial to ſtrangers. *Lit. ſect.* 350. *Co. Lit.* 216, 217.

But in caſe of a leaſe for life, with ſuch a condition, the freehold paſſes not before the condition performed; becauſe the livery may preſently work upon the freehold. But if a man grants an advowſon, *&c.* (which lie in grant) for years, upon ſuch condition, the grantee ſhall have no fee till the condition performed. *Co. Lit.* 217.

If *A.* leaſes to *B.* for years, upon condition, that if *B.* pays money to *A.* or his heirs, at a day, that *B.* ſhall have the fee, and before the day *A.* is attainted of treaſon and executed; now though the condition became impoſſible by the act and offence of *A.* yet *B.* ſhall not have a fee, becauſe a *precedent* condition to increaſe an eſtate muſt be performed; and if it becomes impoſſible, no eſtate ſhall riſe. *Co. Lit.* 210. Alſo in equity, with reſpect to conditions precedent and ſubſequent, the prevailing diſtinction ſeems to be, to relieve againſt the breach or non-performance, whether the condition be *precedent* or *ſubſequent,* where a *compenſation* can be made. 1 *Vern.* 79, 167. As if *A.* conveys lands to *B. &c.* and their heirs, upon truſt that if *C.* the ſon of *A.* within ſix months after the death of *A.* ſhould ſecure to the truſtees 500 *l.* for the younger children of *C.* then after ſuch ſecurity given, to convey to *C.* and his heirs, and until the time for giving ſuch ſecurity, in truſt for the eldeſt ſon of *C.* and in default of ſuch ſecurity, to convey to ſuch eldeſt ſon and his heirs, if *C.* dies before any ſuch ſecurity given, yet this condition, though *precedent,* being only in nature of a penalty, the intent of the truſt ſhall be regarded, which was to ſecure 500 *l.* for the younger children. 1 *Chan. Ca.* 89.

If a feme covert, having power by will to deviſe lands, deviſes them to her executors, to pay 500 *l.* out of them to her ſon; provided, that if the father gives not a ſufficient releaſe of certain goods to her executors, that then the deviſe of the 500 *l.* ſhould be void, and go to the executors, and after her death a releaſe is tendered to the father, and he refuſes, yet upon making the releaſe after, the money ſhall be paid to the ſon; for it was ſaid to be the ſtanding rule of the court, *that a forfeiture ſhould not bind, where a thing* may *be done after, or a* compenſation *made for it*; as where the condition is to pay money, *&c.* and though it is generally binding, where there is a deviſe over, yet here, it being to go to the executors, it is no more than the law implies. 2 *Vent.* 252.

See more concerning conditions under title *Bond,* and *Black. Com.* 2 *V.* 152, 154, 155. And ſee *Com. Dig.* 2 *V.* tit. *Condition, (p.* 318, *&c.) per tot.*

Conduits, for water in *London,* ſhall be made and repaired, and the Lord Mayor and Aldermen may inquire into defaults therein, *&c.* by the *Stat.* 35 *H.* 8. *c.* 10.

Cone and Key. A woman at the age of fourteen or fifteen years might take the charge of her houſe, and receive *cone and key: cone* or *colne* in the *Sax.* ſignifying *computus,* ſo that ſhe was then held to be of competent years, when ſhe was able to keep the *accounts* and *keys* of the houſe.—*Fœmina in tali ætate poteſt diſponere domui ſuæ & habere* cone & key. *Bract. lib.* 2. *cap.* 37. And there is ſomething to the ſame purpoſe in *Glanv. lib.* 7. *c.* 9.

Coney-burrows, Places where conies or rabbits breed and haunt, *&c.* Commoners cannot lawfully dig up coney-burrows in the common. *Cope* v. *Marſhall & al. Wilſ. par.* 2. *fo.* 51.

Confederacy, *(confœderatio)* Is when two or more combine together to do any damage or injury to another, or to do any unlawful act. And falſe *confederacy* between divers perſons ſhall be puniſhed, though nothing be put in execution: but this *confederacy,* puniſhable by law before

fore it is executed, ought to have theſe incidents; *firſt*, it muſt be declared by ſome matter of proſecution, as by making of bonds, or promiſes the one to the other; *ſecondly*, it ſhould be malicious, as for unjuſt revenge; *thirdly*, it ought to be falſe againſt an innocent perſon; and *laſtly*, it is to be out of court voluntarily. *Terms de Ley*. Where a writ of conſpiracy doth not lie, the *confederacy* is puniſhable: and inquiry ſhall be made of *conſpirators* and *confederators*, who bind themſelves together, *&c.*

Confeſſion, *(confeſſio)* Is where a priſoner is indicted of treaſon or felony, and brought to the bar to be arraigned; and his indictment being read to him, the court demands what he can ſay thereto; then he either confeſſes the offence, and the indictment to be true, or pleads *Not guilty*, &c.

Confeſſion may be made in two kinds, and to two ſeveral ends: the one is, that the criminal may confeſs the offence whereof he is indicted openly in the court, before the judge, and ſubmit himſelf to the cenſure and judgment of the law; which confeſſion is the moſt certain anſwer, and beſt ſatisfaction that may be given to the judge to condemn the offender; ſo that it proceeds freely of his own accord, without any threats or extremity uſed; for if the confeſſion ariſe from any of theſe cauſes, it ought not to be recorded: as a woman indicted for the felonious taking of a thing from another, being thereof arraigned, confeſſed the felony, and ſaid that ſhe did it by commandment of her huſband; the judges in pity would not record her confeſſion, but cauſed her to plead *Not guilty* to the felony; whereupon the jury found that ſhe did the fact by compulſion of her huſband, againſt her will, for which cauſe ſhe was diſcharged. 27 *Aſſiſ. pl.* 50.

The other kind of confeſſion is, when the priſoner confeſſes the indictment to be true, and that he hath committed the offence whereof he is indicted, and then becomes an *approver*, or *accuſer* of others, who are guilty of the ſame offence whereof he is indicted, or other offences with him; and then prays the judge to have a coroner aſſigned him, to whom he may make relation of thoſe offences and the full circumſtances thereof.

There is alſo a third ſort of confeſſion, formerly made by an offender in felony, not in court before the judge, as the other two are, but before the coroner in a church, or other privileged place, upon which the offender, by the ancient law of the land, was to abjure the realm. 3 *Inſt.* 129.

Confeſſion is likewiſe in civil caſes, where the defendant confeſſes the plaintiff's action to be good: by which confeſſion there may be a mitigation of a fine againſt the penalty of a ſtatute; though not after verdict. *Finch* 387. 2 *Keb.* 408. And there is a confeſſion indirectly implied, as well as directly expreſſed in criminal caſes; as if the defendant, in a caſe not capital, doth not directly own himſelf guilty of the crime, but by ſubmitting to a fine owns his guilt; whereupon the judge may accept of his ſubmiſſion to the King's mercy. *Lamb. lib.* 4. *c.* 9.

By this indirect confeſſion, the defendant ſhall not be barred to plead Not guilty to an action, *&c.* for the ſame fact: the entry of it is, that the defendant *poſuit ſe in gratiam regis*, *&c.* And of the direct confeſſion, *quod cognovit indictamentum*, *&c.* And this *laſt* confeſſion carries with it ſo ſtrong a preſumption of guilt, that being entered on record, on indictment of treſpaſs, it eſtops the defendant to plead *Not guilty* to an *action* brought afterwards againſt him for the ſame matter: but ſuch entry of a confeſſion of an indictment of a *capital crime*, it is ſaid, will *not* eſtop a defendant to plead *Not Guilty* to an *appeal*, it being in caſe of life. And where a perſon upon his arraignment actually confeſſes himſelf guilty, or unadviſedly diſcloſes the ſpecial manner of the fact, ſuppoſing that it doth not amount to felony, where it doth; the judges, upon probable circumſtances, that ſuch confeſſion may proceed from fear, weakneſs, or ignorance, may refuſe ſuch a confeſſion, and ſuffer the party to plead. 2 *Hawk.* 333.

A *confeſſion* may be received, and the *plea* of *Not guilty* be withdrawn, though recorded. *Kel.* 11. The confeſſion of the defendant, whether taken upon an examination before juſtices of peace, in purſuance of the 1 *&* 2 *P. & M. c.* 13. or 2 *&* 3 *P. & M. c.* 10. upon a bailment, or commitment for felony; or taken by the Common law, upon an examination before a ſecretary of ſtate, or other magiſtrate, for treaſon or other crimes, is allowed to be given in evidence againſt the party confeſſing; but not againſt others. Alſo two witneſſes of a confeſſion of high treaſon, upon an examination before a juſtice of peace, were ſufficient to convict the perſon ſo confeſſing, within the meaning of 1 *Ed.* 6. *cap.* 12. and 5 *&* 6 *Ed.* 6. *cap.* 11. which required two witneſſes in high treaſon; unleſs the offender ſhould willingly confeſs, *&c.* Bat the 7 *W.* 3. *cap.* 3. requires two witneſſes, except the party ſhall willingly without violence confeſs, *&c.* in open court. 2 *Hawk. P. C.* 429.

It has been held, that whereever a man's confeſſion is made uſe of againſt him, it muſt all be taken together, and not by parcels. *Ibid.* And no confeſſion ſhall, before final judgment, deprive the defendant of the privilege of taking exceptions in arreſt of judgment, to faults apparent in the record. *Ibid.* 333. A demurrer amounts to a *confeſſion* of the indictment as laid, ſo far, that if the indictment be good, judgment and execution ſhall go againſt the priſoner. *Bro.* 86. *S. P. C.* 150. *H. P. C.* 246. And in criminal caſes, not capital, if the defendant demur to an indictment, *&c.* whether in abatement, or otherwiſe, the court will not give judgment againſt him to anſwer over, but final judgment. 2 *Hawk.* 334. Where a priſoner confeſſes the fact, the court has nothing more to do than to proceed to judgment againſt him. And, *confeſſus in judicio pro judicato habetur* 11 Rep. 30. 4 Inſt. 66.

Confeſſor, (Lat. *confeſſor, confeſſionarius)* Hath relation to private confeſſion of ſins, in order to abſolution: and the prieſt who received the auricular confeſſion, had the title of confeſſor, though improperly; for he is rather the confeſſee, being the perſon to whom the confeſſion is made. This receiving the confeſſion of a penitent, was in old *Engliſh* to ſhreve or ſhrive; whence comes the word beſhrieved, or looking like a confeſſed or ſhrieved perſon, on whom was impoſed ſome uneaſy penance. The moſt ſolemn time of confeſſing was the day before *Lent*, which from thence is ſtill called *Shrove-Tueſday*. Cowel.

Confirmation, *(confirmatio*, from the verb *confirmare, quod eſt firmum facere)* Is a conveyance of an eſtate, or right *in eſſe*, from one man to another, whereby a voidable eſtate is made ſure and unavoidable; or a particular eſtate is increaſed, or a poſſeſſion made perfect. And it is a ſtrengthening of an eſtate formerly made, which is voidable, though not preſently void: as for example; a biſhop granteth his chancellorſhip by patent, for term of the patentee's life; this is no void grant, but voidable by the biſhop's death, except it be ſtrengthened by the confirmation of the dean and chapter.

Confirmation, *aut eſt* perficiens, creſcens *aut* diminuens: *Perficiens*, as if feoffee upon condition make a feoffment, and the feoffor confirm the eſtate of the ſecond feoffee: *Creſcens*, that doth always enlarge the eſtate of a tenant; as tenant for years, to hold for life, *&c.* *Diminuens*, as when the lord of whom the land is holden, confirms the eſtate of his tenant, to hold by a leſs rent. 9 *Rep.* 142.

The lord may diminiſh the ſervices of his tenant by confirmation; but not reſerve new ſervices, ſo long as the former eſtate in the tenancy continues: and therefore if he confirm to the tenant, to yield him a hawk, *&c.* yearly it is void. *Lit. ſect.* 539. 1 *Co. Inſt.* 296. Leaſes for years may be confirmed for part of the term, or part of the land, *&c.* But it is otherwiſe of an eſtate of freehold, which being entire, cannot be confirmed for part of the eſtate. 5 *Rep.* 81. There may be a confirmation implied by law, as well as expreſs by deed; where the law by conſtruction makes a confirmation of a grant made to another purpoſe: and a confirmation may enlarge an eſtate, from an eſtate held at will to term of years, or a greater eſtate; from an eſtate for years to an eſtate for life; from an eſtate for life, to an eſtate in tail, or in fee; and from an eſtate in tail to an eſtate in fee-ſimple. 1 *Inſt.* 305. 9 *Rep.* 142. *Dyer* 263. But the confirmation be made to *leſſee* for life or years, of his *term* or *eſtate*, and *not* of the *land*, this doth *not* increaſe the eſtate, though if the leſſor confirm the *land*, to have and to hold the *land* to the leſſee and his heirs, this will inlarge the *eſtate*, and ſo of the reſt. *Co. Lit.* 299. *Plowd.* 40.

In every good confirmation, there muſt be a precedent rightful or wrongful eſtate in him to whom made, or he muſt have the poſſeſſion of the thing as a foundation for the confirmation to work upon; the confirmor muſt have ſuch an eſtate and property in the land, that he may be thereby enabled to confirm the eſtate of the confirmee; the precedent eſtate muſt continue till the confirmation come, ſo that the eſtate to be increaſed comes into it; and it is required that both theſe eſtates be lawful. *Co. Lit.* 296. 1 *Rep.* 146. *Dyer* 109. 5 *Rep.* 15. If one have common of paſture in another's land, and he confirms the eſtate of the tenant of the land, nothing paſſes of the common, but it remains as it was before: ſo if a man have a rent out of the land, and he doth confirm the eſtate which the tenant hath in the land, the rent remaineth. *Lit. ſect.* 537.

Tenant for life makes a leaſe for years to a man, and after leaſes the land to another perſon for years; and he in reverſion confirms the laſt leaſe, and after that the firſt leaſe, this is not good: the ſecond leſſee hath an intereſt before by the confirmation of him in reverſion. But in a like caſe, confirmation of the firſt leaſe, after the ſecond was confirmed, was held good: for the leaſe takes no intereſt by the confirmation, but only to make it durable and effectual. *Moor*, *c.* 180. 1 *Inſt.* 296. *Plowd.* 10.

If a diſſeiſee confirm the land to the diſſeiſor but for one hour, one week, a year, or for life, &c. it is a good confirmation of the eſtate for ever: and if he confirms the eſtate of the diſſeiſor without any word of heirs, he hath a fee-ſimple; and if a diſſeiſor make a gift in tail, and the diſſeiſee doth confirm the eſtate of the donee, it ſhall enure to the whole eſtate: alſo if the diſſeiſor enfeoffs *A.* and *B.* and the heirs of *B.* and the diſſeiſee confirms the eſtate of *B.* for his life; this ſhall extend to his companion, and for the whole fee-ſimple. *Co. Lit.* 291, 297, 299.

But where the eſtate is divided, it is otherwiſe; as if there be an eſtate for life, the remainder over, there the confirmation may be of either of the eſtates: and if the leſſee of a diſſeiſor of a leaſe for twenty years, make a leaſe for ten years; the diſſeiſee may confirm to one of them, and not to the other. 1 *Cro.* 472. 5 *Rep.* 81. If a diſſeiſor or any other make a leaſe for years to begin at a day to come, a confirmation to the leſſee before the leaſe begins will not be good; for there is no eſtate in him. *Co. Lit.* 296.

The tenant in tail of land hath a reverſion in fee expectant; in this caſe, the confirmation of the eſtate-tail will not extend to the reverſion. And if my diſſeiſor make a leaſe for life, the remainder in fee, and I confirm the eſtate of the tenant for life; this ſhall not confirm the eſtate of him in remainder: but if I confirm the remainder eſtate, without any confirmation to tenant for life, it ſhall enure to him alſo. *Co. Lit.* 297, 298. If lands are given to two men, and the heirs of their two bodies begotten, and the donor confirms their eſtate in the lands, to have and to hold to them two and their heirs; this ſhall be conſtrued a joint eſtate for their lives, and after they ſhall have ſeveral inheritances. *Co. Lit.* 299. Tenant in tail, or for life, of land, lets it for years, if after he makes a confirmation of the land to the leſſee for years, to hold to him and his heirs for ever, the leſſee hath only an eſtate for the life of the tenant in tail, &c. and therein his leaſe for years is extinct. *Lit. ſect.* 606.

A freehold for life, and term for years, it is ſaid, cannot ſtand together of the ſame land, in the ſame perſon. 1 *Nelſ. Abr.* 480. If a feme leſſee for years marries, and the leſſor confirms the eſtate of huſband and wife, to hold for their lives, by ſuch a confirmation the term will be drowned; and the huſband and wife are jointenants for their lives. *Co. Lit.* 300. But if the feme were leſſee for life, then by the confirmation to huſband and wife for their lives, the huſband holdeth only in right of his wife for her life; but ſhall take a remainder for his life. *Ibid.* 299. Confirmation to leſſee for life, and a ſtranger to hold for their *lives*, is void, for there is no privity: but it is otherwiſe, if for *years*. 2 *Danv. Abr.* 141. If *tenant for life* grant a rent-charge, &c. to one and his heirs, he in reverſion is to confirm it, otherwiſe it is good only for the life of tenant for life. *Lit.* 529. A tenant for life, and remainder-man in fee, join in a leaſe, this ſhall be taken to be the leaſe of tenant for life, during his life, and confirmation of him in remainder: though after the death of tenant for life, it is the leaſe of him in remainder, and confirmation of tenant for life. 6 *Rep.* 15. 1 *Nelſ. Abr.* 481.

If leſſee for years, without impeachment for waſte, accepts a confirmation of his eſtate for life; by this he hath loſt the privilege annexed to his eſtate for years. 8 *Rep.* 76. Acceptance of rent in ſome caſes makes a confirmation of a leaſe: and if a man leaſes for life, reſerving rent upon a condition of re-entry; if after the condition is broken, by non-payment of the rent, the leſſor diſtrains for the ſaid rent, this act ſhall be a confirmation of the leaſe, ſo as he cannot enter. 2 *Danv.* 128, 129.

What a perſon may defeat by his entry, he may make good by his confirmation. *Co. Lit.* 300. But none can confirm, unleſs he hath a right at the time of the grant; he that hath but a right in reverſion cannot enlarge the eſtate of a leſſee. 2 *Danv.* 140, 141. And where a perſon hath but *intereſſe termini*, he hath no eſtate in him, upon which a confirmation may enure. *Co. Lit.* 290.

As confirmation is to bind the right of him who makes it; but not alter the nature of the eſtate of him to whom made; it ſhall not diſcharge a condition. *Poph.* 51. If *A.* enfeoffs *B.* upon condition, and after *A.* confirms the eſtate of *B.* yet the condition remains: though if *B.* had enfeoffed *C.* ſo that the eſtate of *C.* had been only ſubject to the condition in another deed, and after *A.* had confirmed the eſtate of *C.* this would have extinguiſhed the condition, which was annexed to the eſtate of *B.* 1 *Rep.* 147. A confirmation will take away a condition annexed by law: and by confirmation, a condition after broken in a deed of feoffment is extinguiſhed. 1 *Co. Rep.* 146. Confirmations may make a defeaſible eſtate good; but cannot work upon an eſtate that is void in law. *Co. Lit.* 295.

A confirmation of letters patent, which are void as they are againſt law, is a void confirmation. 1 *Lil. Abr.* 295. If there be lord and tenant, and the tenant having iſſue is attainted of felony, if the King pardons him, and the lord confirms his eſtate, and the tenant dies, his iſſue ſhall not inherit, but the lord ſhall have it againſt his own confirmation: for that could not enable him to take by deſcent, who by the attainder of his father was diſabled. 9 *Rep.* 141.

Grants and leaſes of biſhops not warranted by the *Stat.* 32 *H.* 8. *c.* 28. muſt be confirmed by dean and chapter: and grants and leaſes of parſons, &c. by patron and ordinary. 1 *Inſt.* 297, 300, 301. Biſhops may grant leaſes of their church-lands for three lives, or twenty-one years, having the qualities required by 32 *H.* 8. *c.* 28. and concurrent leaſes for twenty-one years, with confirmation of dean and chapter. See 1 *El. c.* 4. & *c.* 19. If a prebend leaſes parcel of his prebendary, and the biſhop, who is patron, confirms it; this ſhall not bind the ſucceeding biſhop, without confirmation of dean and chapter, becauſe the patronage is parcel of the poſſeſſions of the biſhoprick; but it ſhall bind the preſent biſhop, &c. 2 *Danv.* 139. If a parſon grants a rent, the confirmation of the patron and biſhop, is ſufficient without the dean and chapter, and ſhall be good againſt the ſucceſſor biſhop. *Ibid.* 140. The dean of *Wells* may paſs his poſſeſſions, with the aſſent of the chapter, without any confirmation of the biſhop. *Ibid.* 135. Leaſes of biſhops are affirmed *ex aſſenſu & conſenſu decani & totius capituli.* A confirmation is in nature of a releaſe, and in ſome things is of greater force: and in this deed, it is good to recite the eſtate of the tenant, as alſo of him that is to confirm it; and to mention the conſideration, the words ratify and confirm, are commonly made uſe of; but words give, grant, demiſe, &c. by implication of law, may enure as a confirmation. 1 *Inſt.* 295. *Weſt. Symb.* 1. *p.* 457.

As to *confirmation* of *biſhops*, ſee *Black. Com.* 1 *V.* 378, 380.

Confiſcate, From the Lat. *confiſcare*, and that from *fiſcus*, which ſignifies metonymically the Emperor's treaſure: and as the *Romans* ſay, ſuch goods as are forfeited to the Emperor's treaſury for any offence are *bona confiſcata*, ſo we ſay of thoſe that are forfeited to our King's *Exchequer*. And the *title* to have theſe goods is given to the King by the law, when they are *not claimed* by ſome other: as if a man be indicted for ſtealing the goods of another perſon, when they are in truth his own proper goods, and when the goods are brought in court againſt him, and he is aſked what he ſays to the ſaid goods, if he *diſclaims* them, he ſhall loſe the goods, although that afterwards he be acquitted of the felony, and the King ſhall have them as *confiſcated*; but it is otherwiſe if he do not diſclaim them. It is the ſame where goods are found in the poſſeſſion of a felon, if he *diſavows* them, and afterwards is attainted for other goods, and not for them; for there the goods which he *diſavows* are *confiſcate* to the King; but had he been attainted for the ſame goods, they ſhould have been ſaid to be *forfeited* and not *confiſcate*. So if an appeal of robbery be brought, and the plaintiff leaves out ſome of his goods, he ſhall not be received to enlarge his appeal; and foraſmuch as there is none to have the goods ſo left out, the King ſhall have them as *confiſcate*, according to the rule, *Quod non capit chriſtus, capit fiſcus*. *Staund. P. C. lib.* 3. *cap.* 24.

Goods confiſcated are generally ſuch as are arreſted and ſeized for the King's uſe: but *confiſcare* and *foriſfacere* are ſaid to be *ſynonyma*; and *bona confiſcata* are *bona foriſfacta*. 3 *Inſt.* 227. See *Black. Com.* 1 *V.* 299. 4 *V.* 370.

Conformity to the church of *England*. See *Stat.* 1 *Eliz. c.* 2, *&c.* and *Recuſant*.

Confrairie, *(confraternitas)* A fraternity, brotherhood, or ſociety; as the *confrairie de St.* George, or *les chevaliers de la bleu gartier*, the honourable ſociety of the knights of the garter.

Confreres, *(confratres)* Brethren in a religious houſe; fellows of one and the ſame ſociety. *Stat.* 32 *Hen.* 8. *c.* 24.

Confuſion, *property* by—Where goods of two perſons are ſo intermixed, that the ſeveral portions can no longer be diſtinguiſhed, if the intermixture be by conſent, it is ſuppoſed the proprietors have an intereſt in common, in proportion to their reſpective ſhares: but, if one wilfully intermixes his mony, corn, or hay, with that of another man, without his approbation or knowledge, or caſt gold in like manner into another's melting pot or crucible, our law does not allow any remedy in ſuch caſe; but gives the entire property, without any account, to him, whoſe original dominion (or property) is invaded, and endeavoured to be rendered uncertain, without his own conſent. *Black. Com.* 2 *V.* 405.

Congeable, (From the Fr. *conge*, i. e. leave or permiſſion) Signifies in our law as much as lawful, or lawfully done, or done with permiſſion: as entry congeable, &c. *Lit. ſect.* 420.

Conge d'Accorder, *(Fr.)* Leave to accord or agree, mentioned in the ſtatute of *fines*, 18 *Ed.* 1. in theſe words. —When the original writ is delivered in the preſence of the parties before juſtices, a *pleader* ſhall ſay this, Sir juſtice, *conge d'accorder*; and the juſtice ſhall ſay to him, What ſaith Sir *R.* and name one of the parties, *&c.*

Conge d'Eſlire, *(Fr.* i. e. leave to chooſe) Is the King's licence or permiſſion ſent to a dean and chapter to proceed to the election of a biſhop, when any biſhoprick becomes vacant. According to *Gwyn*, in his preface to his *Readings*, the King of *England*, as ſovereign patron of all biſhopricks, and other eccleſiaſtical benefices, had of ancient time free appointment of all church dignities, when ever they became void, inveſting them firſt *per baculum & annulum*, and afterwards by his letters patent; and in proceſs of time he made the election over to others, under certain forms and conditions; as, that they ſhould at every vacation, before they chooſe, demand of the King *conge d'eſlire*; that is leave to proceed to election, and then, after the election, to crave his royal aſſent, *&c.* And he affirms that King *John* was the firſt that granted this; which was afterwards confirmed by *Stat. Weſt.* 1. 3 *Ed.* 1. *cap.* 1. And by *Articuli Cleri*, 25 *Ed.* 3. *cap.* 1. All the prelacies in *England* were conferred at the pleaſure of the King, and the perſons inveſted by the King's delivery of a ſtaff and ring, till *Archbiſhop Anſelm* denied this royal prerogative; and prevailed with *Pope Paſchal* to abrogate this cuſtom by a ſolemn canon: after which, the firſt biſhop who came in by a regular election, was *Roger* biſhop of *Saliſbury*, *anno* 3 *H.* 1.

By ſtatute, no man is to be preſented to the ſee of *Rome* for the dignity of a biſhop, *&c.* but election is to be by the King's *conge d'eſlire*, or licence, to elect the perſon named by the King; which the dean and chapter muſt do in twenty days, or they will incur a *præmunire*: and if they fail to make election, the King is to nominate, *&c.* by his letters patent. 25 *H.* 8. *c.* 20. The 1 *Ed.* 6. *c.* 6. ouſted the writ of *conge d'eſlire*, and impowered the King to collate to an archbiſhoprick or biſhoprick, abſolutely by letters patent. But this ſtatute was repealed by 1 *M. cap.* 2. though the election by *conge d'eſlire*, as now made, ſeems to be little more than form. See 8 *El. c.* 1. and 39 *El. c.* 8. and *Black. Com.* 1 *V.* 379, 382. 4 *V.* 414.

Congius, An ancient meaſure, containing about a gallon and a pint.—*Et reddat quinque* congios *ceræ & unum Ydromelli*, *&c.* Charta Edmondi Regis, anno 946.

Coningeria, A coney-borough, or warren of conies. ——*Item dicunt, quod idem dominus poteſt capere in duabus* coningeriis *quas habet infra*, *&c.* 100 *cuniculos per annum*, *& valet quilibet cuniculus* 2*d.* Inquiſ. anno 47 H. 3.

Conjugal rights. A ſuit for *reſtitution of conjugal rights* is one of the ſpecies of matrimonial cauſes: and is brought when either the huſband or wife is guilty of the injury of *ſubtraction*, or lives ſeparate from the other without any ſufficient reaſon; in which caſe the eccleſiaſtical juriſdiction will compel them to come together again, *if either party be weak enough to deſire it, contrary to the inclination of the other.* Black. Com. 3 V. 94.

Conjuratio, Is an oath; and *conjuratus*, the ſame with *conjurator*, viz. one who is bound by the ſame oath. *Conjurare* is where ſeveral affirm a thing by oath. *Mon. Angl. Tom.* 1. *p.* 207.

Conjuration, *(conjuratio)* Signifies a plot or compact made by perſons combining by *oath*, to do any public harm: but was more eſpecially uſed for the having (as was ſuppoſed) perſonal conference with the devil, or ſome evil ſpirit, to know any ſecret, or effect any purpoſe. The difference between *conjuration* and *witchcraft* was ſaid to be, that a perſon uſing the one endeavoured by prayers and invocations to compel the devil to ſay or do what he commanded him, the other dealt rather by friendly and voluntary conference, or agreement with the devil or familiar, to have his deſires ſerved, in lieu of blood or other gift offered. Both differed from *enchantment* or *ſorcery*; becauſe they were ſuppoſed to be perſonal conferences with the devil, and theſe were but medicines and ceremonial forms of words uſually called *charms*, without apparition, *Cowel.*

Hawkins, in his Pleas of the Crown, lib. 1. *p.* 5. ſays, that *conjurors* are thoſe who, by force of certain magick words, endeavour to raiſe the devil, and oblige him to execute their commands. *Witches* are ſuch who by way of conference bargain with an evil ſpirit, to do what they deſire of him: and *Sorcerers* are thoſe, who by the uſe of certain ſuperſtitious words, or by the means of images, *&c.* are ſaid to produce ſtrange effects, above the ordinary courſe of nature. All which were anciently puniſhed in the ſame manner as *hereticks*, by the writ *de hæretico comburendo*, after a ſentence in the eccleſiaſtical court: and they might be condemned to the pillory, *&c.* upon an indictment at Common law. 3 *Inſt.* 44. *H. P. C.* 38.

The *Stat.* 1 *Jac.* 1. *c.* 12. againſt *conjuration* and *witchcraft* is repealed; and no proſecution ſhall be commenced on the ſame: but where perſons pretend to exerciſe any kind of *witchcraft* or *conjuration*, *&c.* Or undertake to tell fortunes, or from their ſkill in any crafty ſcience to diſcover where goods ſtolen or loſt may be found; upon conviction,

viction ſhall be impriſoned a year, and ſtand in the pillory once in every quarter, in ſome market-town, and may be ordered to give ſecurity for their good behaviour, by *Stat.* 9 *Geo.* 2. *c.* 5. See 3 *Inſt.* 45, 46. *H. P. C.* 6, 7. *Black. Com.* 4 *V.* 60, 429.

Conqueſt, *Countries got by*, what laws to have for government. See *King*, and *Black. Com.* 2 *V.* 48, 242.

Conſanguineo, Is a writ mentioned in *Reg. Orig. de avo, proavo* & conſanguineo, *&c. f.* 226.

Conſanguineus frater, A brother by the father's ſide. *Black. Com.* 2 *V.* 232

Conſanguinity, *(conſanguinitas)* Is a kindred by blood or birth: as *affinity* is a kindred by marriage: and it is conſiderable in the *diſcent* of lands, who ſhall take it as next of blood, *&c.* And alſo in *adminiſtrations*, which ſhall be granted to the next of kin. Vide *Black. Com.* 1 *V.* 434. 2 *V.* 202. and a very excellent table of *conſanguity*, *Black. Com.* 2 *V.* 203.

Conſcience, *courts* of. Theſe are courts for recovery of ſmall debts, conſtituted by act of parliament, in *London*, and *Weſtminſter*, *&c.* and other trading and populous diſtricts. See *Black. Com.* 3 *V.* 81, *&c.*

Conſecration, See *Biſhops, Church.*

Conſent. In all caſes when any *thing executory* is created by *deed*, it may, by conſent of all perſons that were parties to the creation of it by their deed, be *defeated* and annulled, and therefore it was ſaid, that *warranties, recognizances*, rents, charges, annuities, covenants, leaſes for years, uſes at Common law, *&c.* may, by a *defeaſance* made with the mutual conſent of all that were parties to the creation of them by deed, be annulled, diſcharged, and defeated. 1 *Rep.* 113. *Hill.* 28 *Eliz. in Albany's Caſe.*

A conſent *ex poſt facto* is not of any ſignification; for it cannot be had for things which cannot be otherwiſe; *per Vaughan* Ch. J. *Mod.* 312. *Paſch.* 22 *Car.* 2. *in Chanc. in caſe of Fry* v. *Porter.*

The conſent of the *heir* makes good a *void deviſe. Chanc. Caſes, Trin.* 23 *Car.* 2. *Lord Cornbury* v. *Middleton.* 1 *C. C.* 208. Conſent of remainder-man for life, tho' but *verbal*, is binding, and decreed to confirm building leaſes accordingly. 2 *Chan. Caſes* 28. *Paſch.* 32 *Car.* 2. *Sidney* v. *The Earl of Leiceſter.* Conſent *to a trial* of a title to land *in another county than where the land lies* will not help, it being an error, though ſuch conſent be of record; agreed *per cur'.* 2 *Show.* 98. *pl.* 97. *Paſch.* 32 *Car.* 2. *B. R. Lord Clare* v. *Reach.*

A *burgeſs of a corporation conſenting to be turned out* from his burgeſs's place, and the common council of the corporation removing him accordingly, does not amount to a reſignation, and a peremptory *mandamus* was granted to reſtore him. *Holt's Rep.* 450. *Hill.* 8 *Ann. B. R. The Queen* v. *Mayor of Glouceſter.*

Conſequential *loſſes* or *damages*. It is a *fundamental principle* in law and reaſon, that he who does the firſt wrong ſhall anſwer for all conſequential damages. 12 *Mod.* 639. *Per cur'. Hill.* 13 *Will.* 3. in caſe of *Roſwell* v. *Prior*; (but this admits of limitation.) Though a man does a lawful thing, yet if any damage do thereby befal another, he ſhall anſwer *if he could have avoided it*; and this holds *in all civil caſes*. As if a man *lops a tree*, and the boughs fall upon another *ipſo invito*, yet an action lies. So if a man *ſhoots at butts*, and hurts another unawares. So if I have land thro' which a river runs to your mill, and I lop the ſallows growing on the river ſide which accidently *ſtop the water* ſo as your *mill is hindered.* So if I am building my own houſe, and *a piece of timber falls on my neighbour's houſe*, and breaks part of it. So if a man aſſaults me, and *I lift up my ſtaff to defend myſelf, and ſtrike another* in lifting it up; but it is otherwiſe *in criminal caſes*, for there *actus non facit reum niſi mens ſit rea.* *Per Raymond* J. Arg. *Raym.* 422, 423. *Hill.* 33 & 34 *Car.* 2. *B. R.*

If I have a *pond*, I cannot ſo let it out that it ſhall drown my neighbour's land. Arg. *Het.* 119. cites 6 *Ed.* 4. 6. If a ſtranger *drive my cattle upon your land, whereby they are diſtrained* by you, I ſhall recover againſt the ſtranger for this diſtreſs by you; *per Baron Altham*, Arg. *Lane* 67. cites 9 *Ed.* 4. 4. A *ſmith pricks the horſe* of a ſervant being on his journey to pay money for his maſter to ſave the penalty of a bond, both the maſter and ſervant may have their ſeveral actions on the caſe for the ſeveral wrongs they have thereby ſuſtained; *per Coke* Ch. J. 2 *Bulſ.* 344. *Hill* 12 *Jac. in Caſe of Everard* v. *Hopkins.*

Where one is *party to a fraud*, all which follows by reaſon of that fraud, ſhall be ſaid as done by him. Arg. *Cro. J.* 469. *Hill.* 15 *Jac. B. R. in Caſe of Southern* v. *How.* Action lies *for threatening workmen* to maim and proſecute them, whereby the maſter loſes the ſelling of his goods, the men not daring to go on with their work. *Cro. J.* 567. *pl.* 4. *Paſch.* 18 *Jac. B. R. Garret* v. *Taylor.* *A. breaks the fence* of *B.* by which cattle get into *C.*'s ground, C. ſhall have caſe againſt *A.* but not treſpaſs. *Per Roll. Sty.* 131. *Mich.* 24 *Car. B. R. in the Caſe of Sir A. A. Cowper* v. *St. John.* If A. *beats my horſe by which he runs on* B. *A.* is the treſpaſſer, and not *B.* 2 *Salk.* 631. *Per cur. Paſch.* 7 *W.* 3. *B. R. in Caſe of Gibbon* v. *Pepper.*

He that makes a *fire in his field* muſt ſee that it does no harm, and anſwer the damage if it does; but if a ſudden ſtorm riſeth which he cannot ſtop, it is a matter of evidence, and he muſt ſhew it. 1 *Salk.* 13. *pl.* 4. *Mich.* 9 *Will.* 3. *B. R. Turbervil* v. *Stamp.* If a man keeps a *beaſt of a ſavage nature*, as a lion, *&c.* it is at his peril to keep him up, and he is anſwerable for all the conſequences of his getting looſe; *per Raymond* Ch. J. *Gilb.* 187. *Mich.* 4 *Geo.* 2. *B. R.* in the Caſe of *The King* v. *Huggins.* See *Black. Com.* 3 *V.* 153.

Conſervator, *(Lat.)* A protector, preſerver, or maintainer; or a ſtanding arbitrator, choſen and appointed as a guarantee to compoſe and adjuſt differences that ſhould ariſe between two parties, *&c. Paroch. Antiq. p.* 513.

Conſervator of the Peace, *(conſervator vel cuſtos pacis)* Is he that hath an eſpecial charge to ſee the King's peace kept: and of theſe conſervators *Lambard* ſaith, That before the reign of *Ed.* 3. who firſt created juſtices of the peace, there were divers perſons that by the Common law had intereſt in keeping the peace; ſome whereof had that charge by tenure, as holding lands of the King by this ſervice, *&c.* And others as incident to their offices which they bore, and ſo included in the ſame, that they were nevertheleſs called by the name of their office only: alſo ſome had it ſimply, as of itſelf, and were therefore named *cuſtodes pacis*, wardens or conſervators of the peace. The chamberlain of *Cheſter* is a conſervator of the peace in that county, by virtue of his office. 4 *Inſt.* 212. *Sheriffs* of counties at Common law are conſervators of the peace; and *conſtables*, by the Common law were conſervators, but ſome ſay they were only ſubordinate to the conſervators of the peace, as they are now to the juſtice.

The King's majeſty is, by his office and dignity royal, the principal conſervator of the peace within all his dominions; and may give authority to any other to ſee the peace kept, and to puniſh ſuch as break it: hence it is uſually called the King's peace. The Lord Chancellor or Keeper, the Lord Treaſurer, the Lord High Steward of *England*, the Lord Mareſchal, and Lord High Conſtable of *England*, (when any ſuch officers are in being) and all the juſtices of the court of *King's Bench*, (by virtue of their offices), and the Maſter of the Rolls, (by preſcription), are general conſervators of the peace throughout the whole kingdom, and may commit all breakers of it, or bind them in recogniſances to keep it: the other judges are only ſo in their own courts. The Coroner is alſo a conſervator of the peace within his own county; as is alſo the Sheriff, and both of them may take a recognizance or ſecurity for the peace. Conſtables, tythingmen, and the like, are alſo conſervators of the peace within their own juriſdictions; and may apprehend all breakers of the peace, and commit them till they find ſureties for their keeping it. *Black. Com.* 1 *V.* 350.

Conſervator of the Truce and Safe Conducts, *(conſervator induciarum & ſalvorum regis conductuum)* Was an officer appointed by the King's letters patent, whoſe charge was to inquire of all offences done againſt the King's truce and ſafe conducts upon the main ſea, out of the liberties of the cinque ports, as the admirals cuſtom-ably were wont to do, and ſuch other things as are declared 3 *Hen.* 5. *c.* 6. Two men learned in the law were joined to conſervators of the truce as aſſociates; and maſters of ſhips ſworn not to attempt any thing againſt the truce, *&c.* And letters of requeſt and of marque were to be granted when truce was broken at ſea, to make reſtitution. *Stat.* 4 *H.* 5. *c.* 7. See *Black. Com.* 4 *V.* 69.

There was anciently a *conſervator of the privileges of the Hoſpitallers and Templars.* Weſt. 2. c. 43. And the corporation of the great *level of the fens* conſiſts of a governor, ſix bailiffs, twenty conſervators, and commonalty. *Stat.* 15 *Car.* 2. *c.* 17.

Conſideratio Curiæ, Is often mentioned in law pleadings, and where matters are determined by the court. *Ideo* conſideratum *eſt per* curiam, *i. e.* Therefore it is conſidered and adjudged by the court; for *conſideratio curiæ* is the judgment of the court. In the entry of a judgment for debt, it concludes thus: *Ideo* conſideratum eſt per cur. *quod præd.* A. *recuperet verſus præfat.* B. *debitum ſuum, necnon, &c. pro dampnis ſuis, &c. quam pro miſ. & cuſtag', &c. et præd.* B. *in mia', &c.*

Conſideration, (*conſideratio*) Is the material cauſe, or *quid pro quo,* of any contract, without which it will not be effectual or binding. This conſideration is either *expreſſed;* as when a man bargains to give ſo much, for a thing bought; or to ſell his land for 100 *l.* or grants it in exchange for other lands; or where I promiſe that if one will marry my daughter, or build me a houſe, *&c.* I will give him a certain ſum of money; or one agrees for 20*s.* to do a thing. Or it is *implied,* when the law itſelf enforces a conſideration; as where a perſon comes to an inn, and there ſtaying eats and drinks, and takes lodging for himſelf and horſe, the law preſumes he intends to pay for both, though there be no expreſs contract for it; and therefore if he diſcharge not the houſe, the hoſt may ſtay his horſe: and ſo if a taylor makes a garment for another, and there is no expreſs agreement what he ſhall have for it; he may keep the clothes till he is paid, or ſue the party for the ſame. 5 *Rep.* 19. *Plowd.* 308. *Dyer* 30, 337. Alſo there is a conſideration of nature and blood; and valuable conſideration in deeds and conveyances: but if a man be indebted to divers others, and in conſideration of natural affection, gives all his goods to his ſon, or other relation, this ſhall be conſtrued a fraudulent gift, within the *Stat.* 13 *Eliz. c.* 5. becauſe that act intends a valuable conſideration. *Terms de Ley.*

Conſiderations of natural love, affection, marriage, *&c.* are *good* to raiſe uſes to a man's family: if the uſes are limited to a ſtranger, then it muſt be for a *valuable* conſideration, not for love, affection, *&c.* 1 *Inſt.* 271. 1 *Rep.* 176. A ſale can never be without a *valuable* conſideration: though the law eſtabliſhes free gifts without the ſame. *Noy's Max.* 87. *Hob.* 230. A conſideration ought to be matter of profit and benefit to him to whom it is done; by reaſon of the charge or trouble of him who doth it. *Cro. Car.* 8. If a perſon hath diſburſed ſeveral ſums for another, *without his requeſt,* and afterwards ſuch other ſays, that in conſideration he hath paid the ſaid ſums for him, he promiſes to pay them: this is no conſideration, becauſe it was executed *before.* But it will be otherwiſe, if the ſums were paid *at the requeſt* of the other. *Moor* 220. *Cro. Eliz.* 282. A mere voluntary curteſy will not be a good conſideration of a promiſe: but the value and proportion of the conſideration is not material, to maintain an action; for a ſhilling or a penny, is as much binding as 100*l.* Though in theſe caſes, the jury will give damages proportionably to the loſs. *Hob.* 4. 10 *Rep.* 76.

A conſideration that is void in part, is void in the whole: and if two conſiderations be alledged, and one of them is found falſe by the jury, the action fails. *Hob.* 126. *Cro. Eliz.* 848. But if there be a double conſideration, for the grounding of a promiſe, for the breach whereof an action is brought; though one of the conſiderations be not good, yet if the other be good, and the promiſe broken, the action will lie upon that breach: for one conſideration is enough to ſupport the promiſe. 1 *Lill.* 297. A conſideration muſt be lawful, to ground an *aſſumpſit.* 2 *Lev.* 161. Where conſiderations are valuable, and conſiſt of two or more parts, there the performance of every part ought to be ſhewn. *Cro. Eliz.* 579. In caſe a deed of feoffment be made of lands; or a fine and recovery be paſſed, and no conſideration is expreſſed in the deed, *&c.* for the doing thereof, it ſhall be intended by the law, that it was made in truſt, for the uſe of the feoffor or conuſor; for it ſhall be preſumed he would not part with his land without a conſideration, and yet the deed ſhall be conſtrued to operate ſomething, and that which is moſt reaſonable. 1 *Lill. Abr.* 299.

Conſign, Is a word uſed by merchants, where goods are aſſigned or delivered over to a factor, *&c.* *Lex Mercat.*

Conſilium, (*dies conſilii*) Was a time allowed for one accuſed to make his defence, and anſwer the charge of the accuſer—*In aliis quærat accuſatus* conſilium, *& habeat ab amicis & paribus ſuis, quod nullo jure debet defendi, &c. H.* 1. *c.* 46. It is now uſed for a ſpeedy day appointed to argue a *demurrer;* which the court grants after the demurrer joined on reading the record of the cauſe, *&c.* See *Black. Com.* 4 *V.* 349.

Conſimili caſu, writ of *entry* in. A writ of entry. This and the writ in *caſu proviſo* lay not at Common law, but are given by ſtatute, *Gloc.* 6 *Ed.* 1. *c.* 7. and *Weſtm.* 2. 13 *Ed.* 1. *c.* 24. for the reverſioner after alienation; but during the life of the tenant in dower, or other tenant for life, ſee *F. N. B.* 205, 206. *Black. Com.* 3 *V.* 183 *n.*

Conſiſtor, A magiſtrate ſo called: *teſtibus* Rogero *de* Gant, Willielmo conſiſtore *Ceſtriæ, &c.* Blount.

Conſiſtory, (*conſiſtorium*) Signifies as much as *prætorium,* or tribunal: it is commonly uſed for a council-houſe of eccleſiaſtical perſons, or place of juſtice in the ſpiritual court; a ſeſſion or aſſembly of prelates. And every archbiſhop and biſhop of every dioceſe hath a conſiſtory court, held before his chancellor, or commiſſary in his cathedral church, or other convenient place of his dioceſe, for eccleſiaſtical cauſes. 4 *Inſt.* 338. The biſhop's chancellor is the judge of this court, ſuppoſed to be ſkilled in the Civil and Canon law: and in places of the dioceſe, far remote from the biſhop's *conſiſtory,* the biſhop appoints a commiſſary (*commiſſarius foraneus*) to judge in all cauſes within a certain diſtrict, and a regiſter to enter his decrees, *&c.* 2 *Rol. Abr.* 286. *Seld. Hiſt. of Tithes,* 413, 414.

Conſolidation, (*conſolidatio*) Is uſed for the uniting of two benefices into one. *Stat.* 37 *H.* 8. *c.* 21. Which union is to be by the aſſent of the ordinary, patron and incumbent, *&c.* and to be of ſmall churches lying near together. Vide *Church.* This word is taken from the Civil law, where it ſignifies properly an uniting of the poſſeſſion, occupancy or profit of lands, *&c.* with the property. See *Extinguiſhment.*

Conſpiracy, (*conſpiratio*) Is uſed for an agreement of two or more perſons falſly to indict one, or to procure him to be indicted of felony; who, after acquittal, ſhall have writ of *conſpiracy.* See 33 *Edw.* 1. *ſtat.* 2. 4 *Ed.* 3. *c.* 11. 3 *Hen.* 7. *c.* 13. 1 *Hen.* 5. *c.* 3. & 18 *Hen.* 6. *c.* 12. And writ of conſpiracy lies for him that is indicted of a treſpaſs, and acquitted, though it was not felony: alſo upon an indictment for a riot. 2 *Mod.* 306. 5 *Mod.* 405. Where a man is falſly indicted of any crime, which may prejudice his fame or reputation; and though it doth not import ſlander, if it endangers his liberty; or if the indictment be injurious to his property, *&c.* writ of conſpiracy lieth. 3 *Salk.* 97. But though a conſpiracy to charge falſly be indictable, yet the party ought to ſhew himſelf to be innocent; and the writ of conſpiracy lies not without an acquittal. *Mod. Caſ.* 137, 185, 186. Not only writ of conſpiracy, which is a civil action at the ſuit of the party; but alſo action on the caſe in the nature of a writ of conſpiracy, doth lie for a falſe and malicious accuſation of any crime, whether capital or not capital, even of high treaſon; and though the bill of indictment is found *ignoramus,* or it does not go ſo far as an indictment. And the ſame damages may be recovered in ſuch action, as in a writ of conſpiracy, where the party is lawfully acquitted by verdict. 1 *Rol. Abr.* 111, 112. 9 *Rep.* 56. See *Gilb. Ca.* 185. 10 *Mod.* 148, 214. *Salk.* 15. An action on the caſe is preferable, as being more in uſe, and the proceedings eaſier, and not attended with ſuch niceties as conſpiracy.

If one falſly and maliciouſly procure another to be arreſted, and brought before a juſtice of peace to be examined concerning a felony, *&c.* on purpoſe to vex and diſgrace him, and put him to charges and trouble, although he is not indicted for the ſame, yet he may have an *action on the caſe*; in which he need not aver that he was lawfully acquitted, as he ought to do in a writ of conſpiracy: but he muſt aver that the accuſation was *falſe & malitioſe*, which words are neceſſary in the declaration; and it muſt appear that there was no ground for it. And as an *action on the caſe* may be proſecuted againſt one perſon, where the writ of conſpiracy or indictment doth not lie but againſt two, this action is moſt commonly brought. 1 *Danv. Abr.* 208, 213. 2 *Inſt.* 562, 638.

Conſpirators may be indicted at the ſuit of the King; and at the Common law, one may prefer an indictment againſt conſpirators, who only conſpire together, and nothing is executed: though the conſpiracy ought to be declared by ſome act, or promiſe to ſtand by one another, *&c.* But a bare conſpiracy will not maintain a writ of conſpiracy, at the ſuit of the party, becauſe he is not damaged by it; though it is a ground for an indictment. 9 *Rep.* 56. 2 *Rol. Abr.* 77. If the defendants can ſhew any foundation or probable cauſe of ſuſpicion, they ſhall be diſcharged: and if a man hath good cauſe of ſuſpicion that a perſon is guilty of felony, and cauſes him to be indicted, in proſecution of juſtice, action of conſpiracy will not lie: but it is otherwiſe if the proſecutor impoſes the crime of felony, where no felony was committed. 1 *Rol. Abr.* 115. and *Rep* 438.

An action lies not againſt a juſtice of peace, who ſends out his warrant upon a falſe accuſation; but it lies if he makes it out without any accuſation. 1 *Leon.* 187. Conſpiracies ought to be out of court; for if a proſecution be ordered in a courſe of juſtice, and witneſſes appear againſt a party, *&c.* there ſhall be no puniſhment: and if perſons acted only as jurors in a criminal matter, or judges in open court, there is no ground for proſecution. *S. P. C.* 173. 12 *Rep* 24. If all the defendants but one are acquitted on indictment for conſpiracy, that one muſt be acquitted alſo; becauſe one perſon alone cannot be indicted for this crime: and huſband and wife, being but one perſon, may not be indicted for a conſpiracy. 2 *Rol. Abr.* 708. (This muſt mean, without ſome other perſon being joined with them.) The acquittal of one perſon is the acquittal of another upon indictment of conſpiracy. 3 *Mod* 220. (*i. e.* where only two are indicted, and it is not laid or proved that they conſpired with others, unknown.) Though where one is found guilty, according to the opinion of the Lord Chief Juſtice *Hale*; if the other doth not come in upon proceſs, or if he dies pending the ſuit, judgment ſhall be had againſt the other. 1 *Vent.* 234. Writ of conſpiracy was brought againſt two perſons, and one found Not guilty; the other ſhall not have judgment: but in *action on the caſe*, it had been good. *Cro. Eliz.* 701. If the parties are found guilty of the conſpiracy, upon an indictment of felony, at the King's ſuit; the judgment is, that they ſhall loſe their *frank law* (which diſables them to be put upon any jury, to be ſworn as witneſſes, or to appear in perſon in any of the King's courts) and that their lands, goods and chattels be ſeiſed as forfeited, and their bodies committed to priſon; which is called a *villainous judgment*. 2 *Inſt.* 143, 222. *Crompt. Juſt.* 156.

The matter of the conſpiracy ought to touch a man's life, where this judgment is impoſed. 1 *Hawk. P.C.* 193. For conſpiring to charge a perſon with poiſoning another, *&c.* one of the parties was fined 1000*l.* and ſome others had judgment of the pillory, and to be burnt in the cheek with the letters F. and C. to ſignify falſe conſpirators. *Moor.* 816. Fine and impriſonment is the uſual puniſhment at this day on indictment for *conſpiracy*: and on writ of conſpiracy, *&c.* the party ſhall be fined, and render damages. There is a conſpiracy to maintain ſuits and quarrels; and of victuallers, to ſell their victuals at certain prices; of labourers and artificers, *&c.* puniſhable by ſtatutes 33 *Ed.* 1. *ſt.* 2. 2 *&* 3 *Ed.* 6. *c.* 15.

Conſpirators, (*conſpiratores*) By 33 *E.* 1. *ſt.* 2. are defined to be thoſe that do bind themſelves by oath, covenant, or other alliance, that every of them ſhall aid the other falſly and maliciouſly to indict perſons; or falſly to move or maintain pleas, *&c.* And ſuch as retain men in the country, with liveries, or fees, to maintain their malicious enterpriſes, which extends as well to the takers as the givers; and ſtewards and bailiffs of great lords, who, by their office or power, undertake to bear and maintain quarrels, pleas or debates, that concern other parties than ſuch as relate to the eſtate of their lords or themſelves. 2 *Inſt.* 384, 562. And againſt conſpirators, falſe informers and imbracers of inqueſt, the King hath provided a writ in the *Chancery*; and the juſtices of either bench and juſtices of aſſiſe, ſhall, on every plaint, award inqueſt thereupon. *Stat.* 28 *E.* 1. *c.* 10. From the deſcription of conſpirators, in ſeveral of our old law books, conſpiracy is taken generally, and confounded with *maintenance* and *champerty*. Beſides theſe, there are *conſpirators* in *treaſon*; by plotting againſt the government, *&c.* See *Treaſon.*

Conſpiratione, Is a writ that lies againſt conſpirators. *Reg. Orig.* 134. *F. N. B.* 114.

Conſtable, (*conſtabularius*) is a *Saxon* word, compounded of *Coning*, *i. e.* king, and *ſtaple*, which ſignify the ſtay or hold of the king. This word is diverſly uſed in our law; firſt for the lord *Conſtable* of *England*, whoſe power was anciently ſo extenſive, that ſome time ſince that office hath been thought too great for any ſubject; unleſs at the King's coronation to compleat the grandeur of that ceremony, and for the antient trials by combat, *&c.* In the reign of *Henry* the Fourth, the Lord *North* was made Lord *conſtable* for life: and this office being formerly of inheritance, by tenure of certain manors, the line of the *Bohuns, Earls of Hereford* and *Eſſex*, enjoyed it in right of the manors of *Harlefield*, *Newman*, and *Witenhurſt*, and afterwards it came to the *Staffords*, and Dukes of *Buckingham* as heirs general of them; but *Edward* Duke of *Buckingham* being attainted of high treaſon, *anno* 13 *H.* 8. this office became forfeited to the crown, and ſince that time it was never granted but *pro hac vice*, to be exerciſed at a coronation, *&c.*

The power and juriſdiction of the *lord high conſtable*, was the ſame with the *earl marſhal*, and he ſat as judge, having precedence of the earl marſhal in the marſhal's court: but the *conſtable* of *England* is by ſome of our books alſo called *marſhal*; who takes cogniſance of all matters of war and arms, and had originally ſeveral courts under him; but has now only the *Marſhalſea*; and his office is in force both in time of peace and war, ſo that though the lord *conſtable* had the precedency, yet the court held before them was called the marſhal's court. See *Lex Conſtitutionis, p.* 175, 176. Of this officer or magiſtrate, *Gwin* ſaith to this effect: The *court of the* conſtable *and marſhal* determineth contracts touching deeds of arms out of the realm upon land, and handleth things concerning war within the realm, as combats, blazons of armory, *&c.* which cannot be determined by the Common law; and in theſe matters is commonly guided by the Civil law.

By ſtatute, the *conſtable of England* hath cogniſance of things concerning arms and wars, which cannot be diſcuſſed by the Common law: and when a plea is commenced before the *conſtable* and marſhal, which may be tried at the Common law, the party grieved ſhall have a privy ſeal to cauſe the *conſtable* and marſhal to ceaſe, until it be decided by the King's counſel whether it may be tried there or at the Common law. 13 *R.* 2. *c.* 2. The *conſtable* and marſhal ſhall not have cogniſance of pleas or ſuits that ought to be tried at Common law. *Stat.* 8 *R.* 2. *c.* 5. Appeals of things done out of the realm, are to be tried by the *conſtable* and marſhal of *England*. 1 *H.* 4. *c.* 14. And if a man be wounded on the high ſea, and die of the ſame wound in a foreign country, though this be done in the ſeas belonging to *England*, yet it cannot be inquired of by the Common law, becauſe it is not within any of the counties of this realm: neither can the admiral hear and determine this murder; for though the ſtroke was within his juriſdiction, the death was *infra corpus comitatus*, whereof he cannot inquire: nor is it within the *Stat.* 27 *H.* 8. *c.* 4. becauſe the murder was not committed on the ſea. But by *Stat.* 13 *R.* 2. *ſt.* 1. *c.* 5. The *conſtable* and marſhal may hear and determine the ſame. And *vide* the 2 *Geo.* 2. *c.* 21. Juſtices of goal delivery and *oyer* and *terminer* may try the offender.

The office of *conſtable* of *England* is ſaid to conſiſt in the care of the common peace of the land, in deeds of arms and matters of war: and there is a *conſtable of the Tower*; a *conſtable of Dover caſtle* and of divers other caſtles; but theſe are more properly called *caſtellanes*. Out of the high magiſtracy of the *conſtable* of *England* (ſays *Lambard*) were drawn thoſe inferior *conſtables*, which we call *conſtables of hundreds* and *franchiſes*; and the ſtatute of *Wincheſter*, 13 *E.* 1. appoints for conſervation of the peace, and view of armour, two conſtables in every hundred and franchiſe, who in *Latin* are called *conſtabularii capitales*, *high conſtables*; becauſe continuance of time, and increaſe of people and offences, have under theſe made others neceſſary in every town, called *petty conſtables*, in Latin *ſub-conſtabularii*, which are of like nature, but of inferior authority to the other. And there are other officers, whoſe duty is much the ſame with *conſtables*, as *headboroughs*, *tithingmen*, &c. of which the petty *conſtable* ſeems to be the principal officer, but in his abſence, or where there is no petty *conſtable*, their duty is the ſame.

It has been held, that both high *conſtables* and petty *conſtables* were officers at Common law, before the ſtatute of *Winton*, 13 *Ed.* 1. *cap.* 6. And that by the Common law they might arreſt perſons for a breach of the peace, and carry them before a juſtice to find ſureties for their good behaviour, &c. But my Lord *Coke* ſays, That they were created by 13 *Ed.* 1. *ſt.* 2. *c.* 6. and their duty was thereby limited, though ſubſequent ſtatutes have enlarged their power; but being created by act of parliament, they have no more authority than the act that created them or ſome other acts have given them, and cannot preſcribe as officers at the Common law may. 4 *Inſt.* 267. 2 *Danv. Abr.* 148.

Under this head is to be conſidered,

I. *Their election.*
II. *Their power and duty.*

I. *Of their election.*

Anciently high and petty *conſtables* were appointed by the ſheriff in his tourn, and ſworn there as well as in the leet: and by the Common law, they ought to be choſen in the tourn or leet. *Dalt. cap.* 21. Of common right, a conſtable is to be choſen by the jury in the leet; and if he be preſent, and refuſe to be ſworn, the ſteward may fine him; if he be abſent, he ſhall be ſworn before juſtices of peace; and if ſuch *conſtable* refuſes to be ſworn, the jury muſt preſent his refuſal at the next court, and then he ſhall be amerced, for the ſteward of the leet may not fine him if he is abſent. 1 *Salk* 175. 5 *Mod.* 130.

A high *conſtable* may be choſen at a court-leet by the ſteward, on preſentment of the jury, when cuſtom warrants it; but where ſuch courts are not kept, or there is a neglect in chooſing him, the juſtices at their quarter-ſeſſions may chuſe and ſwear a high *conſtable*; and this is the uſual way obſerved at this time. *Mich.* 21 *Car.* 1. *Mod Juſt.* 133. And he may be ſworn out of ſeſſions, by warrant from thence; and be elected out of the ſeſſions, by the greater number of juſtices in the diviſion. *Ibid.* If one that is elected to the office of *conſtable* refuſe to take the oath to ſerve in that office, a writ of *mandamus* may be had to compel him to do it. 1 *Lil. Abr.* 303. Or he may be indicted. The juſtices of peace may appoint a *conſtable* in ſuch place where there was never any before. 1 *Mod.* 13.

If *conſtables*, headboroughs, &c. die or go out of the pariſh, two juſtices of peace are to ſwear new ones till the lord of the manor hold a court-leet, or till the next quarter-ſeſſions, who ſhall approve of them or appoint others: and if any of them continue above a year, the juſtices of peace may diſcharge them, and put in others till the lord of the manor holds a court. By *Stat.* 13 & 14 *Car.* 2. *cap.* 12. a conſtable's oath runs thus; 'You ſhall well and truly ſerve our ſovereign lord the King, 'and the lord of this leet (if ſworn in a court leet) in the 'office of *conſtable*, in and for the hundred of, &c. or 'pariſh of, &c. for the year enſuing, or until you ſhall 'be thereof diſcharged according to due courſe of law: 'you ſhall well and truly do and execute all things be'longing to the ſaid office, according to the beſt of your 'knowledge. *So help you God.*'

Formerly the oath of a *conſtable* was very long, he being ſworn to ſeveral articles which included his particular duty. High *conſtables* are generally choſen and ſworn by the juſtices of peace in their ſeſſions: and petty *conſtables*, who are their aſſiſtants, in each town, pariſh or vill, the choice of them properly belongs to the court-leet; but at this day they are uſually elected by the pariſhioners, and ſworn by a juſtice of peace, who on juſt cauſe may remove them. 4 *Inſt.* 267.

Theſe *conſtables* are appointed yearly; and are to be men of honeſty, knowledge and ability, not infants, lunaticks, &c. And if they refuſe to ſerve, they may be bound over to the ſeſſions, and indicted, and fined and impriſoned. 8 *Rep.* 41. 5 *Mod.* 96. But *phyſicians*, *apothecaries*, *ſurgeons*, &c. are excuſed by ſtatute from bearing the office of *conſtable*, or other pariſh office. See 5 *H.* 6. *c.* 6. 3 *H.* 8. *c.* 43. 5 *H.* 8. *c.* 6. & 6 *W.* & *M.* *c.* 4. Alſo attornies and officers of the courts at *Weſtminſter*, barriſters at law, aldermen of *London*, &c. are privileged from ſerving the office of *conſtable*: and if a gentleman of quality be choſen *conſtable*, where there are ſufficient perſons beſide, and no ſpecial cuſtom concerning it; it is ſaid ſuch perſons may be relieved in *B. R.* 2 *Hawk. P. C.* 63, 64.

A *conſtable* may make a deputy; but the *conſtable* is anſwerable, and his deputy muſt be ſworn. *Sid.* 355. Diſſenters choſen to the office of *conſtables*, &c. ſcrupling to take the oaths, may execute the office by deputy, who ſhall comply with the law in this behalf. 1 *W.* & *M.* *c.* 18. *Conſtables* may appoint a deputy, or perſon to execute a warrant, when by reaſon of ſickneſs, &c. they cannot do it themſelves. A woman made *conſtable*, by virtue of a cuſtom, that the inhabitants of a town ſhall ſerve by turns, on account of their eſtates or houſes, may procure another to ſerve for her, and the cuſtom is good. 2 *Hawk. P. C.* 63.

II. *Of their power and duty.*

The high *conſtable* has the direction of the petty *conſtables*, headboroughs, and tithing-men, within his hundred: his duty is to keep the peace, and apprehend felons, rioters, *etc.* to make hue and cry after felons; and take care that the watch be duly kept in his hundred; and that the ſtatutes for puniſhing rogues and vagrants be put in execution. He ought to preſent unlawful games, tippling, and drunkenneſs; bloodſhed, affrays, *etc.* He is to execute precepts and warrants, directed to him by juſtices of the peace, and make returns to the ſeſſions of the peace to all the articles contained in his oath, or that concern his office: and ſhall alſo cauſe the petty *conſtables* to make their returns. He is to return all victuallers and alehouſe-keepers that are unlicenſed; and all ſuch perſons as entertain inmates, who are likely to be a charge to the pariſh. He muſt likewiſe preſent the faults of petty *conſtables*, headboroughs, *etc.* who neglect to apprehend rogues, vagrants and idle perſons, whores, night-walkers, mothers of baſtard children like to be chargeable to the pariſh, *etc.* And alſo all defects of highways and bridges, and the names of thoſe who ought to repair them: ſcavengers who neglect their duty; and all common nuſances in ſtreets and highways; bakers who ſell bread under weight; brewers ſelling beer to unlicenſed alehouſes; foreſtallers, regrators, ingroſſers, *etc.* And at every quarter-ſeſſions they are to pay to the treaſurer of the county all ſuch money as hath been levied and received by them, of the churchwardens, *etc.* for the relief of priſons and hoſpitals. *Dalt. Ca.* 28. *Lamb.* 125. By ſtatute, high *conſtables* now collect a general county rate, made by the juſtices in ſeſſions, and aſſeſſed upon every pariſh, *etc.* which the churchwardens and overſeers, out of the money raiſed for the poor, ſhall pay to them within thirty days, or may be levied by diſtreſs; and then they pay the ſame to the treaſurers appointed, as the public ſtock for repairing bridges, gaols, houſes of correction, *etc.* *Stat.* 12 *Geo.* 2. *cap.* 29.

The authority of petty *conſtables*, in their ſeveral towns, tithings, and boroughs, is generally the ſame as the high *conſtable* hath in his hundred: they are to keep the peace in the abſence of the high *conſtable*; and aſſiſt him in making preſentments at the aſſiſes and quarter-ſeſſions, of every thing that is amiſs: they may command affrayers to keep the peace, and depart, *&c.* And may break into a houſe to ſee the peace kept; make freſh purſuit into another county, *&c.* Alſo they may command all perſons to aſſiſt them, to prevent a breach of the peace; juſtify beating another if aſſaulted; and if they happen to be killed, doing their duty, it will be taken to be premeditated murder. They may, without warrant from a juſtice of peace, take into cuſtody any perſons whom they ſee committing a felony or breach of the peace; but if it be out of their ſight, as where a perſon is ſeized by another, *&c.* they may not do it without a warrant from a juſtice. A *conſtable* cannot detain a man at his pleaſure; but only ſtay him to bring him before a juſtice to be examined, *&c.* And this detaining of an offender by the *conſtable* may be for a day, (if he has reaſonable cauſe for ſo doing,) without warrant, and be juſtified. *Dalt. c.* 1. 8 *Lamb.* 125. *H. P. C.* 135. 1 *Leon.* 307. *Moor* 408.

If one abuſes a *conſtable* in the execution of his office, he cannot commit him to priſon there to remain till puniſhed for the offence; but muſt carry him before a juſtice, who may commit him, *&c.* 2 *Danv. Abr.* 149. But it is ſaid, by the original power in the *conſtable*, he may for breach of the peace, and ſome other miſdemeanors, leſs than felony, impriſon a man: and if an offence be committed, for which a *conſtable* may arreſt, he may conveythe offender to the ſheriff or his gaoler; though the ſafeſt way in all caſes is to bring them to a juſtice, to be bailed or committed, as the caſe ſhall require. 2 *Hale's Hiſt. P. C.* 88, 90. The *conſtable*'s office being miniſterial and relative to the juſtices of peace, coroners, ſheriffs, *&c.* their precepts ought to be executed by him, or on default he may be indicted and fined. *Ibid.*

Petty *conſtables* are to execute all warrants of juſtices, and not diſpute it *where the juſtice hath juriſdiction, and the warrant is lawful*: and being ſworn officers, they need not ſhew their warrants when they come to arreſt any one. 10 *Rep.* 76. If any juſtice ſends his warrant to a *conſtable*, *&c.* to bring a perſon before him to anſwer all ſuch matters as ſhall be objected againſt him by another, and doth not ſet forth the ſpecial matter in the warrant, the warrant is unlawful, becauſe it doth not give the offender time and opportunity to find ſureties; and the *conſtable*, if he executes it, is liable to an action of falſe impriſonment. 2 *Inſt.* 521. So if a juſtice of peace ſends a warrant to a *conſtable* to take up one for ſlander, *&c.* the juſtices having no juriſdiction, in ſuch caſes, the *conſtable* ought not to execute it.

The *conſtable* is the proper officer to a juſtice of peace, and bound to execute his lawful warrants; and therefore where a ſtatute authoriſes a juſtice to convict a perſon of any crime, and to levy the penalty, *&c.* without ſaying to whom ſuch warrant ſhall be directed, the *conſtable* is the officer to execute the warrant, and muſt obey it. 5 *Mod.* 130. 1 *Salk.* 381. If a warrant be directed to a *conſtable* by name, commanding him to execute it, though he is not compellable to go out of his own pariſh, yet he may if he will, and execute it in any place in the county, and ſhall be juſtified by the warrant for ſo doing; but if the warrant be directed to all *conſtables*, *&c.* generally, no *conſtable* can execute the ſame out of his precinct. 1 *Salk.* 175. 3 *Salk.* 99.

It is at the election of a *conſtable* to carry an offender before any other juſtice than him who iſſued the warrant; if the warrant be not ſpecial, to bring the offender before the juſtice that granted it. 5 *Rep.* 59. By the *Stat.* 24 *G.* 2. *c.* 55. A conſtable may execute a warrant in any other county, *&c.* if indorſed by a juſtice of ſuch other county, *&c.* and carry the offender before a juſtice of ſuch other county, *&c.* and if the offender ſhall give bail, the conſtable is to deliver the recognizance, examination or confeſſion of the offender, and all other proceedings relating thereto to the clerk of aſſiſes, or clerk of the peace of the county, *&c.* where the offence was committed, under the penalty of 10 *l.* But if the offence ſhall not be bailable, or the offender ſhall not give bail, the *conſtable* ſhall carry the offender before a juſtice of the county where the offence was committed. A *conſtable* is not obliged to return a juſtice's warrant to the juſtice, but may keep the ſame for his own juſtification, in caſe he ſhould be queſtioned for his acting; but he muſt give the juſtice an account of what he hath done upon it. 2 *Ld. Raym.* 1196. And by *Holt* Chief Juſtice, where the *conſtable* returns want of diſtreſs upon a warrant to diſtrain; the juſtice ought to make a record of it, and then give judgment for corporal puniſhment. *Ibid.*

Conſtables, headboroughs, *&c.* out of purſe in their offices, they and the inhabitants may tax all perſons chargeable, by the 43 *El. c.* 2. as every occupier of land, *&c.* which rate being confirmed by two juſtices, the *conſtables* may levy it by diſtreſs and ſale of goods. *Stat.* 13 *&* 14 *Car.* 2. A *conſtable*, by warrant from a juſtice of peace, may ſell the goods of an offender apprehended, to diſcharge the expence of carrying him to priſon: if the offender hath no goods, then the town where he was apprehended muſt be at the expence, and the *conſtable* with three or four of the principal inhabitants, may impoſe a tax on every inhabitant, *&c.* which being allowed by a juſtice, the *conſtable* by his warrant may levy it: and if the inhabitants refuſe to make a tax, two juſtices may by warrant, compel them to do it. 3 *Jac.* 1. *c.* 10. But ſee 27 *Geo.* 2. *c.* 3.

The following is, the further *particular duty* of conſtables:

The *objects of their duty being ranged alphabetically*; *diſtinguiſhed by italics*, and divided into ſeperate clauſes.

Conſtables are not only to command *affrayers* to depart, but call others to their aſſiſtance to ſuppreſs affrays; and they may put *affrayers* in the ſtocks, till they can convey them before a juſtice, *&c.* *Dalt.* 33. *Lamb.* 135, 141. *Conſtables* are to levy the penalties on perſons keeping *alehouſes* without licence, ſelling leſs than meaſure, *&c.* or forfeit 40 *s.* *&c.* 1 *Jac.* 1. *c.* 9. They are to ſtop ſuch perſons as go or ride unlawfully *armed*, in terror of the people; take away their arms, and carry them before a juſtice of peace. *Dalt.* 338. To take up artificers going out of the kingdom, by juſtice's warrant. 5 *Geo.* 1. *c.* 27.

Conſtables ſhall levy penalties on *bakers*, making or ſelling bread wanting weight, deficient in goodneſs, *&c.* and ſelling large bread at a higher price than ſet by mayors, *&c.* 1 *Geo.* 1. *c.* 26. 3 *Geo.* 2. *c.* 29. The *conſtable* of a pariſh is to apprehend mothers of *baſtard* children. *Dalt.* A *conſtable* may, with others called to his aſſiſtance, enter *bawdy-houſes*, and arreſt perſons with lewd women, for breach of the peace. *Mich.* 13 *Hen.* 7. The *conſtable*, and two moſt able inhabitants in the pariſh, are to make an aſſeſſment for the repairs of *bridges*, to be allowed by juſtices. 22 *H.* 8. *c.* 5. The forfeiture for mixing corrupt *butter* with good, and opening caſks, *&c.* is leviable by *conſtables*. 13 *&* 14 *Car.* 2. *c.* 26. 4 *&* 5 *W.* *&* *M.* *c.* 7. By a juſtice's warrant, conſtables ſhall levy penalties for uſing cloth *buttons*, *&c.* upon clothes. 4 *Geo.* 1. *c.* 7. 7 *Geo.* 1. *c.* 12.

Conſtables ſhall provide *carriages* on the marching of ſoldiers, by virtue of a juſtice of peace's warrant, being allowed by the officers 1 *s.* a mile for a waggon, *&c.* See the *Table* to the *Statutes*, tit. *Soldiers*. They may ſeize *cattle* brought from *Ireland*, and cauſe them to be killed, and the fleſh diſtributed among the poor. 18 *Car.* 2. *c.* 2. High *conſtables* may hear and determine complaints of *clothiers*, and their work-people; ſearch for and ſeize ropes, engines, *&c.* for the ſtretching of cloth: ſpinſters, *&c.* imbeziling wool from *clothiers*, ſhall make ſatisfaction, or be whipped by *conſtables*, *&c.* and *conſtables*, by warrant of two juſtices, may enter and ſearch houſes of clothiers for ends and refuſe of yarn, which may not be worked up again, under penalties leviable by the *conſtables*; and they alſo levy by diſtreſs the forfeiture for taking away cloth from the tenters, or yarn, wool, *&c.* left abroad to dry in the night. 4 *E.* 4. *c.* 1. 39 *Eliz.* *c.* 20. 7 *Jac.* 1. *c.* 16. 13 *Geo.* 1. *c.* 23. 14 *Geo.* 2. *c.* 35, *&c.* Where *coals* are ſold by ſacks not lawful meaſure, *&c.* *conſtables* ſhall levy the forfeiture inflicted. 3 *Geo.* 2. *c.* 26. Alſo the penalty for ſelling coals, at higher price than appointed, by juſtice's warrant, *&c.* 11 *Geo.* 2. *c.* 15. *Conſtables*, headboroughs, *&c.* are to levy the fines impoſed on thoſe who ſhall be preſent at unlawful *conventicles*; and by virtue of a juſtice's warrant may enter ſuch places, break open doors upon their being refuſed entrance, and take into cuſtody perſons unlawfully aſſembled, *&c.* 22 *Car.* 2. *c.* 1. To levy penalties on *curriers* who do not carry leather ſufficiently, or that neglect the ſame within certain times. 1 *Jac.* 1. *c.* 22. 12 *Geo.* 2. *c.* 25. They are to be aſſiſting to all perſons appointed by the King for the collecting and management of the *cuſtoms*; and to perſons having a warrant from the lord treaſurer, *&c.* to make a ſearch for goods that have not paid the cuſtoms. 12 *Car.* 2. *c.* 19. 13 & 14 *Car.* 2. *c.* 11. 9 *Geo.* 2. *c.* 35, *&c.*

The penalties on *deer-ſtealers* are to be levied by *conſtables*, by virtue of a juſtice's warrant: and the penalties are 20*l.* for hunting deer in any place incloſed; and 30*l.* for each deer killed, *&c.* And they may enter any ſuſpected place, and carry away veniſon, ſkins of deer, toils, *&c.* 13 *Car.* 2. *ſtat.* 1. *c.* 10. 3 & 4 *W.* & *M.* *c.* 10. By a juſtice's warrant to levy the penalty on *diſtillers*, *&c.* ſelling brandy about the ſtreets, on any bulks or ſheds, *&c.* 6 *Geo.* 2. *c.* 17. And *conſtables*, and other officers of the peace, are to carry unlawful retailers of ſpirituous liquors before a juſtice, *&c.* and refuſing to be aiding in executing the acts againſt *diſtillers*, ſhall forfeit 20*l.* 11 *Geo.* 2. *c.* 26. *Conſtables* are to aſſiſt landlords in taking *diſtreſſes* for rent in arrear; and in the appraiſement of the goods, ſale, *&c.* if the ſame are not replevied in five days. 2 *W.* & *M.* *c* 5 They ſhall give aſſiſtance to ſearchers of *dyed* cloths, in entering and examining whether the cloths or ſtuffs are deceitfully dyed, *&c.* 13 *Geo.* 1. *c.* 24. They are to levy the penalty of 5*s.* on *drunkards*, for the uſe of the poor; or ſhall forfeit 10*s.* 4 *Jac.* 1. *c.* 5.

Conſtables are to attend officers of the *exciſe*, and enter with them into brew-houſes, private houſes, *&c.* for diſcovery of frauds: and by warrant from juſtices, they are to levy the penalties on offenders againſt any law of exciſe, by diſtreſs, *&c.* See *Exciſe Laws* A *conſtable*, permitting a felon to *eſcape*, before arreſted, is guilty of a miſdemeanor, for which he may be indicted and fined; and if the felon be actually in cuſtody, and then he voluntarily permits him to eſcape, it is felony in the *conſtable*; but if the eſcape be involuntary, it is only fineable: he may put a felon in the ſtocks, and lock him in; or put irons upon him, or pinion him, to prevent an eſcape.

A *conſtable* may diſcharge any perſon arreſted on ſuſpicion of *felony*, where no felony is actually committed. *Dalt.* 272 *Cro. Eliz.* 202, 752. *Conſtables ex officio* are to apprehend *felons*, may call other perſons to their aſſiſtance therein, and apprehend any upon ſuſpicion, and carry them before a juſtice, *&c.* A *conſtable*, upon complaint or common fame of a felony, may ſearch ſuſpicious houſes, both for the felon and goods ſtolen; and may juſtify breaking open a houſe to take a felon; and if the felon fly, he is to make an inventory of his goods, ſend hue and cry after him, *&c.* *Dalt.* 289, 340. 27 *El.* *c.* 13. *Conſtables* muſt levy the penalty of 10*s.* for *fiſhing* in a river, without the owner's conſent; and ſearch for unlawful nets, engines, *&c.* Alſo levy forfeitures for uſing engines to deſtroy the breed of fiſh; and ſelling ſea fiſh under certain lengths. 22 & 23 *Car.* 2. *c.* 25. 3 *Jac* 1. *c.* 12. 1 *Geo.* 1. *c.* 18, *&c.* They are to give aſſiſtance to juſtices of the peace, in removing *forcible entries*, *&c.* or ſhall be commited and fined. 5 *Rep.* 2. To prevent *foreſtallers* of markets, ingroſſers, *&c.* 5 & 6 *Ed.* 6. *c.* 14.

Conſtables are to carry higlers, chapmen, victuallers, *&c.* before a juſtice, who have in their cuſtody any hare, or other *game*; and by a juſtice's warrant are to ſearch ſuſpected houſes for *game*, *&c.* They may carry perſons, not qualified to kill game, before a juſtice, for keeping greyhounds, ſetting-dogs, *&c.* See the *Game Acts.* They are to make a ſearch monthly for *gaming houſes*, where unlawful games ſhall be kept; and they may commit the maſters of ſuch houſes, and the gameſters found therein; though it is beſt to carry them before a juſtice of peace: *Conſtables* neglecting their duties in this particular, forfeit 40*s.* They likewiſe levy penalties on perſons for playing at *unlawful games*, ace of hearts, faro, *&c.* adjudged to be a kind of lotteries. 33 *Hen.* 8. *c.* 9. 12 *Geo.* 2. *c.* 28. If gaolers refuſe to receive a felon, the *conſtable* may either ſecure the priſoner in his houſe, or carry him back to the town where apprehended; and to defray the charge of carrying him to *gaol*, *&c.* *Conſtables* have power to ſell the offender's goods, *&c.* or the ſame may be levied by a tax. 10 *H.* 4. *Dalt.* 340. 3 *Jac.* 1. *c* 12. In *London* and *Weſtminſter* the *conſtables*, &c. ſhall make a ſearch for *gunpowder*, in the houſes of perſons keeping a greater quantity than allowed by ſtatute, and remove the ſame. 5 *Geo.* 1. *c.* 26. 11 *Geo.* 1. *c.* 23. And they are to levy the penalty for putting gunpowder on board ſhips, *&c.* above *Blackwall* in the river *Thames.* 5 *Geo.* 1. *c.* 26.

If any *conſtable* refuſe to aſſiſt in putting the laws in execution againſt *hawkers* and *pedlars*, that travel without licences, and are thereby liable to penalties, he ſhall forfeit 40*s.* 8 & 9 *W.* 3. *c.* 25. The penalties of ſelling truſſes of hay, *&c.* under due weight in the *Haymarket*, are leviable by *conſtables.* 2 *W.* & *M.* *ſtat.* 2. *c.* 8. *Conſtables* are to whip *hedge breakers*, *&c* for not making ſatisfaction ordered by a juſtice: they may apprehend perſons ſuſpected of hedge-breaking, or of having in their poſſeſſion any underwood, poles, gates, ſtiles, *&c.* and carry them before a juſtice, *&c.* 43 *El.* *c.* 7. 15 *Car.* 2. *c.* 2. To be aiding and aſſiſting in putting the acts in execution relating to the repairing of the *highways*; under the penalty of 40*s.* And they are to return liſts of perſons qualified for the office of ſurveyor, to the juſtices in their ſeſſions on the 3d of *January* yearly, under the penalty of 20*s.* See the *Highway Acts*, and 22 *Car.* 2. *c.* 12, *&c.* To levy the penalty for privately conveying away *hops*, to avoid paying duty; and forfeiture for adulterating hops, *&c.* 9 *Ann.* *c.* 12. 1 *Geo.* 1. *c.* 12. 7 *Geo.* 2. *c.* 19. *Conſtables* are to be aſſiſting in driving off commons, foreſts, *&c.* *horſes* and cattle; on pain of 40*s.* 32 *H.* 8. *c.* 13. They are to make *hue* and *cry* after offenders where a felony or robbery is committed: to call upon the pariſhioners to aſſiſt in the purſuit; and if the criminal be not found in the precinct of the firſt *conſtable*, he is to give notice to the next *conſtable*, and he to the next, who are to do as the firſt, and continue the purſuit from town to town, and county to county, *&c.* 13 *Ed.* 1. *ſtat.* 2. *c.* 6. 27 *Eliz* *c.* 13. Purſuers of the hue and cry may ſearch ſuſpected houſes, and arreſt all ſuſpicious perſons. And where offenders are not taken, conſtables ſhall levy the tax to ſatisfy an execution, on recovery againſt a hundred, and pay the ſame to the ſheriffs, *etc.* and neglecting to make *hue* and *cry*, ſhall forfeit 5*l.* 8 *Geo.* 2. *c.* 16.

A *conſtable*, on complaint, is to cauſe an *innkeeper* to be indicted and puniſhed, for refuſing to lodge a traveller, or to provide him victuals, *etc.* who offers to pay for the ſame. See 1 *Jac.* 1. *c.* 9. and *Wood's Inſt.* 460, 461. *Conſtables* muſt give in to the juſtices at *Michuelmas* ſeſſions yearly, a liſt of perſons qualified to ſerve on *juries*; and neglecting to return liſts, incurs a forfeiture of 5*l.* 7 and 8 *W.* 3. *c.* 32. *ſect.* 4. And ſee 8 and 9 *W.* 3. *c.* 10. 3 and 4 *Ann.* *c.* 18. *ſect.* 5. And 3 *Geo.* 2. *c.* 25. Theſe liſts of *jurors* are to be made from the rates of each pariſh; and *conſtables*, *etc.* wilfully omitting perſons qualified, or inſerting wrong perſons, ſhall forfeit 20*s.* 3 *Geo.* 2. *c.* 25.

In the time of harveſt a *conſtable* may ſet *labourers*, artificers, and ordinary tradeſmen on work, and put thoſe in the ſtocks who refuſe. 5 *El.* *c.* 4. To levy the forfeiture for breaking down *lamps*, ſet up in the ſtreets of *London*, by virtue of a juſtice's warrant. 9 *Geo.* 2. *c.* 20. But ſee 17 *Geo.* 2. *c.* 29. *Conſtables* are to give their aſſiſtance in collecting the *land tax*; and take diſtreſſes for it, *etc.* when refuſed payment. See the *Land tax Acts.* By warrant from juſtices *conſtables* are to levy the penalties and forfeitures for ſelling inſufficient *leather*, *etc.* 1 *Jac.* 1. *c.* 22.

They have power to ſearch for bad *malt*, and if they find any bad mingled with good, they may, with the advice of a juſtice, cauſe the ſame to be ſold at reaſonable rates. 2 and 3 *Ed.* 6. *c.* 10. And there are divers penalties for making bad malt, and frauds concerning the duty, leviable by *conſtables.* 9 and 10 *W.* 3. *c.* 22. 1 *Geo.* 1. *ſtat.* 2. *c.* 2. But ſee 3 *Geo.* 2. *c.* 7. *ſect.* 13. And 6 *Geo.* 1. *c.* 21. And 2 *Geo.* 2. *c.* 1. *Conſtables* are to ſearch and examine if any perſons uſe other *meaſures* than ſuch as are *Winchester* meaſure, and agreeable to the ſtandard. 22 *Car.* 2. *c.* 8. By warrant from the lieutenancy, *conſtables* are to commit perſons to gaol, refuſing to provide arms for horſe and foot ſoldiers, for the *militia*, if no diſtreſs can be taken. See the *Militia Acts.*

Night walkers of ill fame may be taken up by *conſtables*, and carried before a juſtice of peace, who may bind them to the good behaviour, *&c.* See 5 *Ed.* 3. *c.* 14.

Robbers of *orchards*, *&c.* ſhall be whipped, by order of a juſtice, by the *conſtable* of the place. See the 43 *El.* *c.* 7. 9 *Geo.* 1. *c.* 22.

Conſtables may complain to, and carry before a juſtice of peace, perſons ſuſpected to be *papiſts.* See the *Statutes* againſt *Papiſts.* In the city of *London* they are to be aſſiſting to the college of *phyſicians*, *&c.* in putting their laws in execution. 14 and 15 *H.* 8. *c.* 5. They may command and oblige perſons infected with the *plague* to keep within their houſes, *&c.* And are to levy money, appointed by juſtices, for relief of poor perſons infected. 1 *Jac.* 1. *cap.* 31. *Conſtables* ſhall preſent *popiſh recuſants*, within their liberties, *&c.* and certify to the ſeſſions, ſuch popiſh recuſants convict, who, within twenty days after the arrival at the place of their birth, give in their names to the parſon of the pariſh; and neglecting, to forfeit 20*s.* 35 *Eliz.* *c.* 2. 7 *Jac.* 1. *c.* 6. To levy money due for *poſtage* of letters, under 5 *l.* by juſtice's warrant. 9 *Ann.* *c.* 10. They are at the quarter-ſeſſions to take preſentment of all things againſt the *peace*, and belonging to their offices, *&c.* The conſtables ſhall levy a tax on pariſhes, for relieving *poor pariſhioners.* 43 *Eliz.* *c.* 2:

Conſtables are to ſuppreſs *riots*, and they may *ex officio* commit offenders, *&c.* 17 *R.* 2. *c.* 8. And by 1 *Geo.* 1. *c.* 5. Rioting, where twelve *rioters* continue together an hour after proclamation, is made felony. They are to make a tax and aſſeſſment by warrant from two juſtices on the inhabitants of their pariſhes where a *robbery* on the highway is committed in the *hundred.* 27 *El.* *c.* 13.

See 8 *Geo.* 2. *c.* 16. Conſtables are to whip *wandring rogues*, *&c.* by ſtripping them from the middle upwards, and cauſing them to be laſhed till their bodies be bloody. 1 *Jac.* 1. *c.* 7.

The penalties for ſelling *ſalt* under weight, *&c.* and not entering *ſaltpits*, are to be levied by conſtables. 9 and 10 *W.* 3. *c.* 6. and 44. 7 *Geo.* 2. *c.* 6. *Scavengers* rates in *London* ſhall be made by conſtables and church-wardens, *&c.* and the conſtables to levy forfeitures for defaults of ſcavengers in not carrying away dirt, *&c.* 2 *W.* and *M.* *ſtat.* 2. *c.* 8. 1 *Geo.* 1. *ſtat.* 2. *c.* 52. Conſtables and two houſholders of towns, pariſhes, *&c.* by an old law were to give teſtimonials to *ſervants*: and ſervants not procuring ſuch were not to be retained, but puniſhed as vagrants. 5 *Eliz.* *c.* 10. By virtue of a juſtice's warrant conſtables ſhall ſearch after *ſhoes*, *leather*, *&c.* imbezilled or pawned by journeymen ſhoemakers in *London*, who ſhall make ſatisfaction, *&c.* 9 *Geo.* 1. *c.* 27. Conſtables are to quarter *ſoldiers* in inns, alehouſes, victualing houſes, *&c.* Refuſing to billet *ſoldiers*, they are to be fined not exceeding 40s. nor leſs than 10*s.* and receiving any reward to excuſe quarterage; or if victuallers, *etc.* refuſe *ſoldiers* quartered, they ſhall forfeit not above 5 *l.* nor under 40*s.* If they quarter the wives, children, or ſervants of officers or *ſoldiers*, in any houſe, without conſent of the owner, they forfeit 20*s.* The conſtables, *etc.* ſhall give in liſts to the juſtices of the houſes and perſons obliged to quarter *ſoldiers*, with their names and ſigns, and the number of officers and *ſoldiers* billeted on them. 1 *Geo.* 1. *c.* 47. 7 *Geo.* 1. *c.* 6. See the ſtatutes concerning *ſoldiers.* Perſons ſuſpected of deſertion, may be taken up by conſtables, and carried before a juſtice: and 20*s* reward is given for taking up a deſerter. They are to levy the penalty of 5 *s.* on perſons reſorting to wreſtling, dancing, or other ſports on a *Sunday*; and on perſons doing any worldly labour on that day, *etc.* Alſo 6*s.* 8*d.* on butchers killing meat; and 20*s.* upon carriers, drovers, *etc.* travelling on *Sunday.* 1 *Car.* 1. *c.* 1. 29 *Car.* 2. *c.* 7. On receiving a *ſuperſedeas* from another juſtice, *&c.* Conſtable ſhall diſcharge a perſon taken up by warrant. *Dalt.* To levy the penalty for profane *ſwearing*; which is 1 *s.* for a ſervant, labourer, *&c.* and 2 *s.* for others; and as the crime is repeated, the penalty is to be doubled. 6 and 7 *W.* 3. *c.* 11. 19 *Geo.* 2. *c.* 21.

Conſtables ſhall levy the penalty of 5 *l.* on *taylors* giving greater *wages* than allowed; likewiſe the *wages* of journeymen by diſtreſs, by a juſtice's warrant. 7 *Geo.* 1. *ſtat.* 1. *c.* 13. By warrant from two juſtices, conſtables, *&c.* are to levy ſmall *tithes*, refuſed payment, by diſtreſs and ſale. See 7 and 8 *W.* 3. *c.* 6. and the ſtatutes concerning *tithes.* Conſtables, on information, are to deſtroy *tobacco* planted contrary to the *Stat.* 22 and 23 *Car.* 2. *c.* 26. or be liable to a forfeiture of 5 *s.* for every rod not deſtroyed: and upon warrant to make ſearch, and preſent offences of planting tobacco, *&c.* See 12 *Car.* 2. *c.* 34. 15 *Car.* 2. *c.* 7. *ſect.* 18. 22 and 23 *Car.* 2. *c.* 26. 5 *Geo.* 1. *c.* 11. *ſect.* 19. and the ſtatutes concerning *tobacco.* To execute warrants of commiſſioners for *turnpikes*; and levy the penalty for paſſing through them without paying the toll, *&c.* See 1 *Geo.* 1. *ſtat.* 2. *c.* 19. 5 *Geo.* 2. *c.* 33.

Conſtables, *&c.* are to apprehend *vagrants*, and carry them before a juſtice; and to convey them, by the juſtice's paſs and certificate, to their place of birth or ſettlement, *&c.* being paid the allowances mentioned in the certificates: they are to pay 10 *s.* to any perſon apprehending a vagrant by order of juſtices, which is to be repaid by the high conſtable, *&c.* and refuſing to pay it ſhall forfeit 20*s.* *Vagabonds* lodging in houſes or barns are alſo to be apprehended by conſtables, *&c.* And if they refuſe, or neglect to do their duty, they ſhall forfeit not above 5 *l.* nor leſs than 40*s.* See 13 and 14 *Car.* 2. *c.* 18. 11 and 12 *W.* 3. *c.* 18. 12 *Ann.* *ſtat.* 2, *c.* 23. 13 *Geo.* 2. *c.* 24. 13 *Geo.* 1. *c.* 24. 17 *Geo.* 2. *c.* 25.

Conſtables of towns ſhall ſee that *night watches* be kept, from ſun-ſetting to ſun-riſing, who muſt be able perſons, inhabitants of the place, and *watch* by turns; and not doing it, may put them in the ſtocks, *&c.* 13 *Ed.* 1. *ſtat.* 2. *c.* 4. And conſtables in the large pariſhes of *Weſtminſter* are twice or oftener in every night to go their rounds, and ſee that the watch do their duty, and uſe endeavours to prevent fires, murders, robberies, *&c.* and apprehend malefactors, and perſons ſuſpected. See 2 *Geo.* 2. *c.* 11. 8 *Geo.* 2. *c.* 15. 9 *Geo.* 2. *c.* 8. *c.* 13. *c.* 17. *c.* 19. 23 *Geo.* 2. *c.* 35. 25 *Geo.* 2. *c.* 23. 26 *Geo.* 2. *c.* 97. 29 *Geo.* 2. *c.* 53. They are to execute all *warrants* of juſtices, being lawful, and not out of the juſtices juriſdiction. See the ſtatutes relating to *juſtices* of the peace. Conſtables, being head officers of places, ſhall have in their cuſtody ſealed weights, *&c.* under penalties: perſons buying or ſelling by falſe *weights* or meaſures, forfeit 5 *s.* leviable by conſtables. 8 *H.* 6. *c.* 5. 16 *Car.* 1. *c.* 19. And conſtables are to call together aſſiſtance to ſave ſhips from *wreck*; and no perſons ſhall enter any ſuch ſhips, without leave from the commander, conſtable, *&c.* 12 *Ann.* *cap.* 18.

By the *Stat.* 26 *Geo.* 2. *c.* 31. Conſtables, by the order of the high conſtable, are to give notice to the ſeveral *inn-keepers* and *alehouſe-keepers*, within their reſpective conſtablewicks, of the day and place appointed by the juſtices for granting *licences.*

If a conſtable doth not his duty, he may be indicted and fined by the juſtices of peace; on the other hand, he is protected by law, in the execution of his duty.

By 7 *Jac.* 1. *cap.* 5. If any *action* is brought againſt a conſtable, for any thing done by virtue of his office, he, and alſo all others who in his aid, or by his command, ſhall do any thing concerning his office, may plead the *general iſſue*, and give the ſpecial matter in evidence, and if he recovers he ſhall have *double coſts.* And ſee 21 *Jac.* 1. *c.* 5.

By the *Stat.* 24 *Geo.* 2. *c.* 44. No *action* ſhall be brought againſt any conſtable, or other officer, or any perſon acting by his order, and in his aid, for any thing done in obedience to any warrant of a juſtice of peace, until *demand* of the peruſal and copy of ſuch warrant, and the ſame hath been refuſed or neglected by the ſpace of ſix days; and in caſe after ſuch demand, and compliance therewith, any action ſhall be brought againſt ſuch conſtable, *&c.* without making the juſtice a defendant; then on producing and proving ſuch warrant, the jury ſhall give a verdict for the defendant, notwithſtanding any defect of juriſdiction in ſuch juſtice; and if ſuch action be brought jointly againſt ſuch juſtice, and alſo againſt ſuch conſtable, *&c.* then on proof of ſuch warrant, the jury ſhall find for ſuch conſtable, *&c.* and if the verdict ſhall be given againſt the juſtice, the plaintiff ſhall recover his coſts againſt him, to be taxed ſo as to include coſts plaintiff ſhall be liable to pay to ſuch defendant, *&c.* No action ſhall be brought againſt any conſtable, *&c.* unleſs commenced within ſix calendar months after the act committed.

Stat. 27 *Geo.* 2. *cap.* 20. *ſect.* 2. The conſtable executing a juſtice's warrant for levying a penalty, or other ſum of money directed by any act of parliament, by diſtreſs, may deduct his own reaſonable charges of taking, keeping, and ſelling the goods diſtrained; returning the overplus on demand, after ſuch penalty or ſum of money, and charges deducted. See *Commitment*, *County-rate*, *Juſtices of peace.*

Penalty on conſtables taking money to excuſe from quartering ſoldiers. 4 *Geo.* 3. *c.* 3. *ſect.* 26 and 66.—— High conſtable to obey the orders of the court to be held in purſuance of 31 *Geo.* 2. *c.* 17. *ſect.* 12.—None to be conſtables who are *ſixty-three* or upwards. 31 *Geo.* 2. *c.* 17. *ſect.* 13.

Conſtables of *London*, (which city is divided into twenty-ſix wards, and every ward into the like number of precincts, in each whereof is a conſtable), are *nominated* by the inhabitants of each precinct on St. *Thomas*'s day, and confirmed, or otherwiſe, at the court of *wardmote*; and after they are confirmed, they are *ſworn* in their offices at a court of *aldermen*, on the next *Monday* after twelfth day. The ſubſtance of their oath is,

"To keep the King's peace to the utmoſt of their power; to arreſt affrayers, rioters, and ſuch as make conteſts to the breach of the peace, and carry them to the houſe of correction or compter of one of the ſheriffs; and in caſe of reſiſtance, to make outcry on them, and purſue them from ſtreet to ſtreet, and from ward to ward, till they are arreſted: to ſearch for common nuſances, in their reſpective wards, being required by ſcavengers, *&c.* and upon requeſt to aſſiſt the beadle and raker in collecting their ſalaries and quarterage; to preſent to the Lord Mayor and miniſters of the city, defaults relating to the ordinances of the city; to certify once a month into the mayor's court, the names and ſurnames of all freemen deceaſed; and alſo of the children of ſuch freemen, being orphans."

And by the articles of the wardmote inqueſt, conſtables are to certify the names, ſurnames, place of dwelling, poſſeſſion and trade of every perſon, who ſhall newly come to inhabit in their precincts, and to keep a roll thereof; in order to which, they are to make inquiry at leaſt once a month into what perſons are come to lodge and ſojourn there; and if they find by their own confeſſions, or the record of the aldermens books, that ſuch new comers are ejected from any other ward for bad living, or any miſdemeanor, and refuſe to find ſureties for their good behaviour, warning is to be given to them and their landlords, that they depart; and, on refuſal, they may be impriſoned, and the landlords fined a year's rent agreed for by ſuch new comers. *Calth. Rep.* 129, 138.

Conſtables of *London*, in each ward, are to attend the watch by turns, and go the rounds; and with the beadles every night are to warn ſuch perſons as are to ſerve upon the watch in their ſeveral precincts; and if they refuſe to appear, the conſtable may hire others in their ſtead, and they ſhall pay him according to the cuſtom of the city: but the common council appoint the watchmen. Watchmen are to apprehend night walkers, vagabonds, perſons going armed, *&c.* and may arreſt ſtrangers in the night, and carry them before the conſtable to be examined, and finding cauſe of ſuſpicion ſecure them till the morning; and whether they are horſemen or footmen, or drivers of carriages, or perſons that carry burdens, the watch may ſtay them till the morning, unleſs they can render a good account of themſelves, their company and carriage, *&c.* and conſtables, *&c.* are to be aiding and aſſiſting to the watch; and the watchmen are to obey their orders, in conveying offenders to the compter, which is the common priſon for offenders for the breach of the peace, till they are examined, and puniſhed by the Lord Mayor, *&c.* But conſtables ought to be careful whom they ſend to the compter, for fear of action for falſe impriſonment; proſecution for damages, *&c.*

If any will not obey the arreſt of the watch, they may make hue and cry after them; and for ſuch arreſt of a ſtranger, (eſpecially one ſuſpected), none is liable to puniſhment. *Dalt.* 240. The court of common council are to meet the firſt of *October* yearly, and order a proper number of watchmen, beadles and nightly conſtables for the city of *London* and liberties, and determine ſums to be levied to bear the charge thereof upon each ward; and for raiſing money, the aldermen and common-councilmen of wards, ſhall make a rate and aſſeſſment upon the inhabitants, leviable by diſtreſs; and ſhall appoint their watchmen, ſet down in writing their ſtands and number of rounds, and make orders for regulating the watch, *&c.*

Conſtables to keep watch and ward, from the 10th of *Sept.* to the 10th of *March*, from nine in the evening, till ſeven the next morning, and from 10th of *March* to 10th of *Sept.* from ten in the evening till five next morning. The conſtables ſhall uſe their beſt endeavours, for preventing fires, robberies and diſorders, and arreſt malefactors; and go twice or oftener about their wards, in every night; and the watchmen are to apprehend all ſuſpected perſons, *etc.* and deliver them to the conſtable of the night, who ſhall carry them before a juſtice of peace; conſtables miſbehaving themſelves, to forfeit 20*s.* and the Lord Mayor, or two juſtices for the city, may hear and determine offences, and levy penalties by diſtreſs and ſale of goods, *etc.* *Stat.* 10 *Geo.* 2. *c.* 22.

Conſtables are to certify to the lord mayor, and common council of the city, the names of all ſuch perſons as ſhall interrupt them in the diſcharge of their offices: and a conſtable of *London* has power to execute warrants, *etc.* throughout the whole city, upon occaſion. Such as are choſen into the office are obliged to place the King's arms, and the arms of the city over their doors; and if they reſide in alleys, at the end of ſuch alleys, towards the ſtreets, to ſignify that a conſtable lives there, and that they may be the more eaſily found when wanted. See *Comp. Pariſh Officer*, 6 *Edit. p.* 7, 8, *etc.*

Conſtat, *(Lat.)* Is the name of a certificate, which the clerk of the pipe, and auditors of the *Exchequer*, make at the requeſt of any perſon who intends to plead or move in that court, for the diſcharge of any thing: and the effect of it, is the certifying what does *conſtare* upon *record*, touching the matter in queſtion. 3 and 4 *Ed.* 6. *c.* 4. and 13 *Eliz.* *c.* 6. A *conſtat* is held to be ſuperior to an ordinary certificate, becauſe it contains nothing but what is evident on record. And the exemplification under the great ſeal, of the inrolment of any letters patent, is called a *conſtat*. Co. Lit. 225.

Conſtructive Treaſon. The *Stat.* 25 *Ed.* 3. *c.* 2. was made to define *treaſon*, and prevent the ſubject from being condemned for *conſtructive treaſon*. See *Black Com.* 4 *V.* 75, 76, 85, *etc.*

Conſuetudinarius, A ritual or book, containing the rites and forms of divine offices, or the cuſtoms of abbeys and monaſteries: it is mentioned in *Brompton*.

Conſuetudinibus & Serviciis, Is a writ of right cloſe, which lies againſt the tenant that deforceth his lord of the rent or ſervice due to him. Reg. Orig. 159. *F. N. B.* 151. When the writ is brought by the party in the *right* only, he ſhall count of the ſeiſin of his anceſtor, and the writ be in the *debet*; but when he counts of his own *ſeiſin*, then the writ is in the *debet et ſolet*, *etc.* And if the party ſay in the writ *ut in redditibus et arreragiis*, theſe words prove that the demandant himſelf was ſeiſed of the ſervices; and then if he count in ſuch writ of ſeiſin of his *anceſtors*, and not of his *own ſeiſin*, the writ ſhall abate: ſo that if he will bring a writ of cuſtoms and ſervices of the ſeiſin of his anceſtors, he ought to leave theſe words *ut in redditibus, etc.* out of the writ. Where a perſon brings a writ of cuſtoms and ſervices againſt any tenant, and by count demands homage, the writ ought to make ſpecial mention thereof; as *ut in homagio, etc.* or the writ ſhall abate. *New Nat. Brev.* 338. If this writ be brought againſt tenant for life, where the remainder is over in fee, there the tenant may pray in aid of him in the remainder, *etc.*

Conſul, *(Lat.)* In our law books ſignifies an earl. *Bract. lib.* 1. *c.* 8. tells us, that as *comes* is derived from *comitatu,* ſo *conſul* is derived from *conſulendo*: and in the laws of *Edward the Confeſſor,* mention is made of *vicecomites* and *viceconſules.* Blount. *Conſuls* among the *Romans,* were chief officers, of which two were yearly choſen, to govern the city of *Rome:* but this government of *Rome* has long ſince been abrogated. Our *Conſuls* abroad take care of the affairs and intereſts of merchants, in foreign kingdoms where they are appointed by the King; as at *Liſbon, etc.*

Conſulta Eccleſia, A church full, or provided for, according to *Cowel.*

Conſultation, *(conſultatio)* Is a writ whereby a cauſe being removed by prohibition from the eccleſiaſtical court, to the King's court, is returned thither again; for if the judges of the King's court, upon comparing the libel with the ſuggeſtion of the party, find the ſuggeſtion falſe, or not proved, and therefore the cauſe to be wrongfully called from the eccleſiaſtical court, then upon this *conſultation* or deliberation they decree it to be returned; whereupon the writ in this caſe obtained is called a *conſultation.* *Reg. Orig.* 44, *etc.* Statute of *writ of conſultations,* 24 *Ed.* 1.

This writ is in nature of a *procedendo*; but properly a *conſultation* ought not to be granted, but in caſe where a man cannot recover at the Common law, in the King's courts. *New Nat. Br.* 119. Cauſes of which the eccleſiaſtical or ſpiritual courts have juriſdiction, are of adminiſtrations, admiſſions of clerks, adultery, appeals in eccleſiaſtical cauſes, apoſtacy, general baſtardy, blaſphemy, ſolicitation of chaſtity, dilapidations and church repairs, celebration of divine ſervice, divorces, fornication, hereſy, inceſt, inſtitution of clerks, marriage rites, oblations, obventions, ordinations, commutation of penance, penſions, procurations, ſchiſm, ſimony, tithes, probate of wills, *&c.* and where a ſuit is in the eccleſiaſtical court, for any of theſe cauſes, or the like, and not mixed with any temporal thing; if a ſuggeſtion is made for a prohibition, a *conſultation* ſhall be awarded. 5 *Rep.* 9.

To move for a prohibition in another court, after motion in the *Chancery, &c.* on the ſame libel which is granted, is merely vexatious, for which a *conſultation* ſhall be had. *Cro. Eliz.* 277. Where a *conſultation* is granted upon the right of the thing in queſtion, there a new prohibition ſhall never be granted on the ſame libel; but where granted upon any default of the prohibition, in form, *&c.* there a prohibition may be granted upon the ſame libel again. 1 *Nelſ. Abr.* 485. A *conſultation* muſt be purſuant to the libel, *&c.* Vide *Prohibition.* See *Black. Com.* 3 *V.* 114.

Contempt, *(contemptus)* Is a diſobedience to the rules and orders of a court, which hath power to puniſh ſuch offence; and one may be impriſoned for a *contempt* done in court; but not for a *contempt* out of court, or a private abuſe. *Cro. Eliz.* 689. But for contempt out of court, an attachment may be granted. Attachment alſo lies againſt one for *contempt* to the court, to bring in the offender to anſwer on interrogatories, *etc.* and if he cannot acquit himſelf, he ſhall be fined. 1 *Lill.* 305. If a ſheriff, being required to return a writ directed to him, doth not return the writ, it is a *contempt:* and this word is uſed for a kind of miſdemeanor, by doing what one is forbidden; or not doing what he is commanded. 12 *Rep.* 36. And as this is ſometimes a greater, and ſometimes a leſſer offence; ſo it is puniſhed with greater or leſs puniſhment, by fine, and ſometimes impriſonment. *Dyer,* 128, 177. 1 *Bulſt.* 85. See *Attachment.* See *Black. Com.* 4 *V.* 280.

An attachment of *contempt* may iſſue againſt a biſhop, or other peer: but for not returning a *fieri faciat de bonis eccleſiaſticis,* it is proper to move againſt the chancellor, commiſſary, or official. *Rex* v. *Biſhop of St. Aſaph, Wilſ. par.* 1. *p.* 332.

One committed for a contempt of the Houſe of Commons cannot be bailed by the court of *King's Bench,* the Honourable *Alexander Murray's* caſe, *ib. p.* 299, 300.

It is a contempt to inſtitute a ſuit fictitiouſly, though the demand is real, either to hurt any perſon, or to get the opinion of the court. *Coxe* and *Phillips. Rep. Temp. Hardw. per Annaly,* 237, 239.

Contenement, *(contenementum)* Is ſaid to ſignify a man's countenance or credit, which he hath together with, and by reaſon of, his freehold: in which ſenſe, it is uſed in the ſtatute of 1 *Ed.* 3. and other ſtatutes: and *Spelman* in his *Gloſſary* ſays, Contenementum *eſt æſtimatio et conditionis forma, qua quis in repub. ſubſiſtit.* But *contenement* is more properly that, which is neceſſary for the ſupport and maintenance of men, agreeable to their ſeveral qualities, or ſtates of life: and ſeems to be freehold land, which lieth to a man's tenement, or dwelling-houſe, that is in his own occupation. For by *Magna Charta, cap.* 14. it is enacted, that a freeman ſhall not be amerced, but *ſecundum magnitudinem delicti, ſalvo ſibi* contenemento *ſuo*; *et mercator eodom modo, ſalva merchandiſa*; *et villanus ſalvo wainagio*; that is, as *Glanvil* tells us, he ſhould be amerced, *ſecundum quantitatem feodorum ſuorum et ſecundum facultates, ne nimis gravari inde videantur vel ſuum* contenementum *amittere.* Lib. 9. c. 8.

Contingent Legacy. If a *contingent legacy* be left to any one; as, *when* he attains, or *if* he attains the age of twenty-one, and he dies before that time; it is a *lapſed legacy.* *Dy.* 59. 1 *Eq. Caſ. Abr.* 295. But a legacy to one, *to be paid* when he attains the age of twenty-one years, is a veſted legacy, an intereſt which commences *in præſenti,* although it be *ſolvendum in futuro:* and if the legatee dies before that age, his repreſentatives ſhall receive it out of the teſtator's perſonal eſtate, at the ſame time it would have become payable, in caſe the legatee had lived. *Black. Com.* 2 *V.* 513.

Contingent Remainder, Contingent or *executory* remainders (whereby no preſent intereſt paſſes) are where the eſtate in remainder is limited to take effect, either to a dubious and uncertain *perſon,* or upon a dubious and uncertain *event*; ſo that the particular eſtate may chance to be determined, and the remainder never take effect. 3 *Rep.* 20. *Black. Com.* 2 *V.* 169. And ſee 10 *Rep.* 85.

Contingent Uſe, Is a uſe limited in a conveyance of land, which may, or may not happen to veſt, according to the *contingency* expreſſed in the limitation of ſuch *uſe:* a *uſe* in *contingency* is ſuch which by poſſibility may happen in poſſeſſion, reverſion or remainder. 1 *Rep.* 121. A remainder *contingent* is ſaid to be an eſtate veſted; but on ſuch remainder in executory deviſes, the eſtate deſcends till the *contingency* happens, and nothing is veſted till then. 1 *Vent.* 189.

Continual Claim, Is a claim made from time to time, within every year and day, to land, or other thing, which in ſome reſpect we cannot attain without danger: as if a perſon be diſſeiſed of land, into which, though he hath a right of entry, he dare not enter for fear of beating, *etc.* it behoves him to hold on his right of entry at his beſt opportunity, by approaching as near it as he can, once a year, as long as he lives, and to ſave the right of entry to his heir. *Lit. lib.* 3. *c.* 7.

Continual claim is where it is made, and repeated yearly, ſo as to be within a year and a day before the death of him that hath the lands; and if after he dies ſeiſed, ſo that his heir is in by diſcent, yet he that makes the *claim* may enter, *etc.* but if no *claim* be made, then the entry of the perſon diſſeiſed, *etc.* is taken away, 32 *H.* 8. *cap.* 33.

Though by the ſtatute the diſſeiſor is to have peaceable poſſeſſion for five years, without entry or *continual claim,* for a diſcent on his death, to take away the entry of the diſſeiſee, or his heir; after the five years, the diſſeiſee is to make *continual claim*, as before the ſtatute: the feoffee of a diſſeiſor, abators, *etc.* are out of the ſtatute. As to this *claim*, though the tenant die within the year and day, and it be but once made, it ſhall preſerve the entry of him that maketh it: and if the anceſtor *claim*, and the diſſeiſor die, and then the anceſtor dieth, now his heir may enter: but if an anceſtor or predeceſſor make a *continual claim*, and dieth, and the ſon or ſucceſſor make no *continual claim*, and within the year and day after the *claim* made by the anceſtor, the diſſeiſor dies; this ſhall take away the entry of the ſon or ſucceſſor, for the diſcent was caſt in his time. *Co. Lit.* 250, 251.

If there be tenant for life, remainder for life, the remainder in fee, and the tenant for life alien in fee: if he in remainder for life maketh *continual claim*, before the dying ſeiſed of the alienee, and after the alienee die ſeiſed, and after that the remainder man for life dieth before any entry made by him: in this caſe he in remainder in fee ſhall have benefit by the *claim* of tenant for life, and he may enter upon the heir of the alienee, *&c. Lit. Sect.* 416.

This *claim* ſhall not avoid a diſcent, unleſs it be made by him that hath title to enter, and in whoſe life the dying ſeiſed was: and ſo it is for the *continual claim* of a tenant for life, to give him in remainder advantage, except the diſſeiſor, *&c.* die in the life-time of tenant for life. *Co. Lit.* 250. See *Black. Com.* 2 *V.* 316. 3 *V.* 175.

Continuance, Is the continuing of a cauſe in court, by an entry upon the records there for that purpoſe. There is a *continuance* of the *aſſiſe*, *&c.* And *continuance* of a *writ* or *action* is from one term to another, in caſe where the ſheriff hath not returned a former writ, iſſued out in the ſaid action. *Kitch.* 262. *Continuances* and eſſoins are amendable upon the roll, at any time before judgment: they are the acts of the court, and at Common law they may amend their own acts before judgment, though in another term; but their judgments are only amendable in the ſame term wherein they are given. 3 *Lev.* 431. Upon an original, a term or two or three terms may be meſne between the teſte and the return; and this ſhall be a good *continuance*; for the defendant is not at any prejudice by it, and the plaintiff may give a day to the defendant beyond the common day if he will:

But a *continuance* by *capias* ought to be made from term to term, and there cannot be any meſne term, becauſe the defendant ought not to ſtay ſo long in priſon. 2 *Danv. Abr.* 150. If a man recovers upon demurrer, or by default, *&c.* and a writ of inquiry of damages is awarded, there ought to be *continuances* between the firſt and ſecond judgment, otherwiſe it will be a diſcontinuance; for the firſt is but an award, and not compleat till the ſecond judgment upon the return of the writ of inquiry of damages. *Ibid.* 153. If the plaintiff be nonſuit, by which the defendant is to recover coſts; if the plaintiff will not enter his *continuances*, on purpoſe to ſave the coſts, the defendant ſhall be ſuffered to enter them. *Cro. Jac.* 316, 317. The courſe of the court of *King's Bench* is to enter no *continuance* upon the roll, till after iſſue or demurrer, and then to enter the *continuance* of all upon the back, before judgment: and if it is not entered, it is error. *Trin.* 16 *Jac. B. R.* Vide *Diſcontinuance*.

Continuando, Is a word uſed in a ſpecial declaration of treſpaſs, when the plaintiff would recover damages for ſeveral treſpaſſes in the ſame action: and to avoid multiplicity of ſuits, a man may in one action of treſpaſs recover damages for many treſpaſſes, laying the firſt to be done with a *continuando* to the whole time, in which the reſt of the treſpaſſes were done; which is in this form, Continuando *tranſgreſſionem prædictam*, *&c. a prædicto die*, *&c. uſque talem diem*, including the laſt treſpaſs. *Terms de Ley.*

In treſpaſs with a *continuando* of divers things, though of ſome of thoſe things there could be no *continuando*; yet it ſhall be good for thoſe things for which the *continuando* could be, and not for the others: but if the *continuando* had been particularly of ſuch things whereof a *continuando* could not be, then it had been nought. 3 *Lev.* 94. Every day's treſpaſs is ſaid to be a ſeveral treſpaſs; tho' a *continuando* may not be of men's continuing a treſpaſs day and night, for ſome time together; for mankind muſt take ſome reſt: where cattle do treſpaſs upon ground, they are continually treſpaſſing night and day, and therefore the *continuando* in that caſe is good. 1 *Lill. Abr.* 307. Treſpaſs for breaking an houſe with a *continuando*, is good; and until a re-entry is made, the continuation of the poſſeſſion, is a continuing of the treſpaſs. *Lutw.* 1312.

Contraband Goods, (from *contra*, and the Ital. *bando*, an edict or proclamation) Are thoſe which are prohibited by act of parliament, or the King's proclamation to be imported into, or exported out of this into any other nation: as during the late war with *France*, *French* wines, *&c.* were prohibited by ſtatute to be imported here from thence: and wool, *&c.* is not to be exported from hence to other kingdoms. *Stat.* 27 *E.* 3. *c.* 3. 13 *&* 14 *Car.* 2. 7 *&* 8 *W.* 3. *&c.*

Contracauſator, A criminal, or one proſecuted for a crime: this word is mentioned in *Leg. H.* 1. *cap.* 61.

Contract, (*contractus*) Is a covenant or agreement between two or more perſons, with a lawful conſideration or cauſe. *Weſt. Symb. part* 1. As if a man ſells his horſe or other thing to another, for a ſum of money; or covenants, in conſideration of 20 *l.* to make him a leaſe of a farm, *&c.* theſe are good *contracts*, becauſe there is a *quid pro quo*, or one thing for another: but if a perſon make promiſe to me, that I ſhall have 20 *s.* and that he will be debtor to me therefore, and after I demand the 20 *s.* and he will not give it me, yet I ſhall never have any action to recover this 20 *s.* becauſe this promiſe was no *contract*, but a bare promiſe, or *nudum pactum*; though if any thing were given for the 20 *s.* if it were but to the value of a penny, then it had been a good *contract*.

Every *contract* doth imply in itſelf an *aſſumpſit* in law, to perform the ſame; for a *contract* would be to no purpoſe, if there were no means to enforce the performance thereof. 1 *Lill. Abr.* 308. Where an action is brought upon a *contract*, and the plaintiff miſtakes the *ſum agreed upon*, he will fail in his action: but if he brings his action on the *promiſe* in *law*, which ariſes from the debt, there, although he miſtakes the ſum, he ſhall recover. *Aleyn* 29. *Aſſumpſit* in *deed* muſt be fully proved. *Gilb. Law of Evid.* 193. *Aſſumpſit* in *law*, proof of any part is good. *Ib.* 172. See *Gilb. Law of Evidence*, 204, 205. 2 *Vent.* 154.

There is a diverſity where a *day of payment* is limited on a *contract*, and where not; for where it is limited, the *contract* is good preſently, and an action lies upon it, without payment; but in the other not: If a man buys 20 yards of cloth, *&c.* the *contract* is void, if he do not pay the money preſently; but if day of payment be given, there the one may have an action for the money, and the other trover for the cloth. *Dyer* 30, 293. Where a ſeller ſays to a buyer, he will ſell his horſe for ſo much, and the buyer ſays he will give it; if he preſently tell out the money it is a *contract*; but if he do not it is no *contract*. *Noy's Max.* 87. *Hob.* 41. The property of any thing ſold is in the buyer immediately by the *contract*; though regularly it muſt be delivered to the buyer, before the ſeller can bring his action for the money. *Noy* 88. If one contract to buy a horſe or other thing of me, and no money is paid, or earneſt given, nor day ſet for payment thereof, nor the thing delivered; in theſe caſes, no action will lie for the money, or the thing ſold, but it may be ſold to another. *Plowd.* 128, 309.

All *contracts* are to be certain, perfect, and compleat: For an agreement to give ſo much for a thing as it ſhall be reaſonably worth, is void for incertainty; ſo a promiſe to pay money in a ſhort time, *etc.* or to give ſo much, if he likes the thing when he ſees it. *Dyer.* 91. 1 *Bulſt.* 92. But if I *contract* with another to give him 10*l.* for ſuch a thing, if I like it on ſeeing the ſame; this bargain is ſaid to be perfect at my pleaſure: Though I may not take the thing before I have paid the money; if I do, the ſeller may have treſpaſs againſt me; and if he ſell it to another, I may bring an action on the caſe againſt him. *Noy* 104. If a *contract* be to have for cattle ſold 10 *l.* If the buyer do a certain thing, or elſe to have 20 *l.* it is a good *contract*, and certain enough: And if I agree with a perſon to give him ſo much for his horſe, as *J. S.* ſhall judge him to be worth, when he hath judged it, the *con-*

tract is compleat, and an action will lie on it; and the buyer ſhall have a reaſonable time to demand the judgment of *J. S.* But if he dies before his judgment is given, the *contract* is determined. *Perk. Sect.* 112, 114. *Shep. Abr.* 294.

In *contracts*, the *time* is to be regarded, *in* and *from* which the *contract* is made: The words ſhall be taken in the common and uſual ſenſe, as they are taken in that place where ſpoken; and the law doth not ſo much look upon the *form of words*, as on the *ſubſtance and mind* of the parties therein. 5 *Rep.* 83. 1 *Bulſt.* 175. A *contract* for goods may be made as well by word of mouth, as by deed in writing; and where it is in writing only, not ſealed and delivered, it is all one as by word. But if the *contract* be by writing ſealed and delivered, and ſo turned into a deed; then it is of another nature, and in this caſe generally the action on the verbal *contract* is gone, and ſome other action lies for breach thereof. *Plowd.* 130, 309. *Dyer* 90.

Contracts, not to be performed in a year, are to be in writing, ſigned by the party, *etc.* or no action may be brought on them: But if no day is ſet, or the time is uncertain, they may be good without it. *Stat.* 29 *Car.* 2. *c.* 3. And by the ſame ſtatute, no *contract* for the ſale of goods for 10*l.* or upwards, ſhall be good, unleſs the buyer receive part of the goods ſold; or gives ſomething in earneſt to bind the *contract*; or ſome note thereof be made in writing, ſigned by the perſon charged with the *contract*, *&c.*

If two perſons come to a draper, and one ſays, let this man have ſo much cloth, and I will pay you; there the ſale is to the undertaker only, though the delivery is to another by his appointment: But if a *contract* be made with *A. B.* and the vendor ſcruples to let the goods go without money, and *C. D.* comes to him and deſires him to let *A. B.* have the goods, and undertakes that *he* ſhall pay him for them, that will be a promiſe *within* the ſtatute 29 *Car.* 2. *c.* 3. and ought to be in writing. *Mod. Caſ.* 249.

A *contract* made and entered into upon good conſideration, may for good conſiderations be diſſolved. See *Agreement* and *Sale*. *Uſurious contracts*, vide *Uſury*.

Contrafaction, (*Contrafactio*) A counterfeiting; as contrafactio *ſigilli Regis*, counterfeiting the King's ſeal. *Blount.*

Contra formam Collationis, Is a writ that lay where a man had given lands in perpetual alms, to any late houſes of religion, as to an abbot and convent, or to the warden or maſter of any hoſpital and his convent, to find certain poor men with neceſſaries, and do divine ſervice, *&c.* If they aliened the land, to the diſheriſon of the houſe and church, then the donor or his heirs, ſhould bring this writ to recover the lands. It was had againſt the abbot or his ſucceſſor; not againſt the alienee, though he were tenant of the land: And was founded upon the ſtatute of *Weſtm.* 2. *c.* 1. Reg. Orig. 238. F. N. B. 210.

Contra formam Feoffamenti, A writ that lies for the heir of a tenant enfeoffed of certain lands or tenements, by charter of feoffment from a lord to make certain ſervices and ſuits to his court, who is afterwards diſtrained for more ſervices than are mentioned in the charter. *Reg. Orig.* 176. *Old Nat. Br.* 162.

Contra formam Statuti, Is the uſual concluſion of every indictment, *&c.* laid on an offence created by ſtatute.

If *one ſtatute be relative to another*, *as* where the *former makes the offence*, *the latter adds a penalty*, as the ſtatutes of 1 & 23 *Eliz.* the indictment ought to conclude *contra formam ſtatutorum*. 2 *Hale's Pl. C.* 173. *cap.* 24. cites *Paſch.* 42 *Eliz. B. R. Croke*, *n.* 6. *Dingley* v. *Moore*.

Where there are *ſeveral ſtatutes* and it does not appear on which the information is founded, the concluding *contra formam ſtatuti* is ill. *Cro. Jac.* 142. *pl.* 19. *Broughton* v. *Moor*, cited as adjudged in *Talbot & al'.* Where *one act makes the offence*, and *another gives the penalty*, an information muſt be *contra formam ſtatutorum*, in the caſe of *Talbot and Sheldon*, indicted for recuſancy *contra formam ſtatuti*, 23 *Eliz. c.* 1. and the judgment reverſed becauſe the penalty was demanded; for the 10 *Eliz.* made the offence, and the 23d gave the penalty: But, if the information had been for the offence only, it had been good; *per Coke. Ow.* 135. *Trin.* 9 *Jac.* See 5 *Vin. Abr.* 552—556.

Contramandatio Placiti, Signifies a reſpiting or giving a defendant further time to anſwer; or a countermand of what was formerly ordered. *Leg. H.* 1. *c.* 59.

Contramandatum, Is ſaid to be a lawful excuſe which the defendant in a ſuit by attorney alledgeth for himſelf, to ſhew that the plaintiff hath no cauſe of complaint. *Blount.*

Contrapoſitio, A plea or anſwer.——*Si quis in placito per juſtitiam poſito ſui vel ſuorum cauſam injuſtis conterminationibus vel* contrapoſitionibus *diſſorciet, hanc perdat.* Leg. Hen. 1. c. 34.

Contrarients. In the reign of King *Edw.* 2. *Thomas* Earl of *Lancaſter* taking part with the *Barons* againſt the King, it was not thought fit, in reſpect of their great power, to call them rebels or traitors, but *contrarients*: And hence we have a record of thoſe times, called *Rotulum Contrarientium*.

Contratenere, To with-hold. *Si quis decimas* contrateneat. *Leg. Alfredi apud Brompton*, *c.* 9.

Contribules, *Contribunales*, kindred or couſins. *Lamb. page* 75.

Contribution, (*Contributio*) Is where every one pays his ſhare, or *contributes* his part to any thing. One *parcener* ſhall have *contribution* againſt another; one *heir* have *contribution* againſt another *heir*, in equal degree: And one *purchaſer* have *contribution* againſt another. Alſo *conuſors* in a ſtatute ſhall be equally charged, and not one of them ſolely extended. 3 *Rep.* 12, 13, *&c.* On a ſtatute or recogniſance, there is a *contribution* and ſtay till the full age of the heir, *&c.* and this doth extend to the leſſee for life, or years of the conuſor, who has part of the land liable, and the heir within age the reſidue; for the land of every one them ought to be charged equally, becauſe the whole is liable to the judgment; and this cannot be, if during the nonage, the burden ſhall fall upon one only. *Jenk. Cent.* 36. If lands are *mortgaged*, and then deviſed to one perſon for life, with remainder to another; *both deviſees* ſhall make *contribution* to payment of the mortgage-money. *Chan. Caſ.* 224, 271.

Where goods are caſt into the ſea, for the ſafe-guard of a ſhip, or other goods, *&c.* aboard in a tempeſt; there is a *contribution* among merchants, towards the loſs of the owners. 32 *H.* 8. *c.* 14. And where a *robbery* is committed on the highway, and damages are recovered againſt one or a few perſons, in an action againſt the *hundred*, the reſt of the inhabitants ſhall make *contribution* to the ſame. 27 *Eliz. c.* 13.

Contributione facienda, Is a writ that lieth where there are tenants in common, that are bound to do one thing, and one is put to the whole burden; or who jointly hold a mill *pro indiviſo*, and take the profits equally, and the mill falling into decay, one of them will not repair the mill; now the other ſhall have a writ to compel him to *contribute* to the reparations. And if there be three coparceners of land, that owe ſuit to the Lord's court, and the eldeſt performs the whole; then may ſhe have this writ to compel the other to make their contribution. So where one ſuit is required for land, and that land being ſold to divers perſons, ſuit is demanded of them all, or ſome of them by diſtreſs, as entirely as if all the land were ſtill in one. *Reg. Orig.* 175. *F. N. B.* 162.

Controller, (Fr. *Contrerolleur*, Lat. *Contrarotulator*) Is an overſeer or officer relating to public accounts, *&c.* And we have divers officers of this name; as *controller* of the *King's Houſhold*; of the *Navy*; of the *Cuſtoms*; of the *Exciſe*; of the *Mint*, *&c.* And in our courts, there is the controller of the *Hamper*, of the *Pipe*, and of the *Pell*, *&c.* The office of *Controller of the Houſhold* is to control the accounts of the Green Cloth; and he ſits with the Lord Steward and other Officers in the counting-houſe, for daily taking the accounts of all expences of the houſhold. The *Comptroller of the Navy* controls the payment of wages; examines and audits accounts; and inquires into rates of ſtores for ſhipping, *&c.* *Controllers of the Cuſtoms and Exciſe*, their office is to control the accounts of thoſe revenues: And the *Controller of the Mint* controls the payment of wages, and accounts relating to the ſame. *Controller of the Hamper* is an officer in the *Chancery* attending the Lord Chancellor daily in term-time, and upon ſeal days; whoſe office is to take all things ſealed from the Clerk of the *Hamper*, incloſed in bags of leather, and to note the juſt number and effect of all things ſo received, and enter the ſame in a book, with all the duties appertaining to his Majeſty, and other officers for the ſame. The *Controller of the Pipe* is an officer of the Exchequer, who writes out ſummons twice every year to the ſheriffs to levy the farms and debts of the Pipe; and keeps a controlment of the Pipes, *&c.* *Controller of the Pell* is alſo an officer of the Exchequer; of which ſort there are two, who are the Chamberlains clerks, that do or ſhould keep a controlment of the Pell, of receipts and goings out: And this officer was originally ſuch as took notes of other officers accounts or receipts, to the intent to diſcover if they dealt amiſs, and was ordained for the Prince's better ſecurity. *Fleta, lib.* 1. *cap.* 18. *Stat.* 12 *Ed.* 3. *cap* 3. This laſt ſeems to be the original uſe and deſign of all *Controllers.*

Controver, *(Controuveur)* Signifies in our law one that of his own head deviſes or invents falſe news. 2 *Inſt.* 227.

Convenable, *(Fr.)* Agreeable. *Stat.* 27 *Ed.* 3. *c.* 21. See *Covenable.*

Convenient, *(Conveniens)* Of the uſe of this word, the Lord *Coke* in his inſtitute ſays,—*Non ſolum quod licet ſed quod eſt* conveniens *eſt conſiderandum, nihil quod eſt* inconveniens *eſt licitum.* 1 Inſt. 66.

Convent, *(Conventus)* Signifies the fraternity of an *abbey* or *priory*; as *ſocietas* doth the number of fellows in a college. *Bract. lib.* 2. *c.* 35.

Conventicle, (*Conventiculum*) A private aſſembly or meeting for the exerciſe of religion; firſt attributed in diſgrace to the meetings of *Wickliffe* in this nation, above two hundred years ſince: and now applied to the illegal meetings of the *Nonconformiſts:* It is mentioned in the ſtatutes 2 *Hen.* 4. *c.* 15. 1 *H.* 6. *c.* 3. and 16 *Car.* 2. *c.* 4. which ſtatute was made to prevent and ſuppreſs *conventicles:* And by 22 *Car.* 2. *cap.* 1. It is enacted, that if any perſons of the age of ſixteen years, ſubjects of this kingdom, ſhall be preſent at any *conventicle*, where there are five or more aſſembled, they ſhall be fined 5 *s.* for the firſt offence, and 10 *s.* for the ſecond; and perſons preaching incur a penalty of 20 *l.* Alſo ſuffering a meeting to be held in a houſe, *&c.* is liable to 20 *l.* penalty. Juſtices of peace have power to enter ſuch houſes, and ſeize perſons aſſembled, *&c.* And if they neglect their duty, they ſhall forfeit 100 *l.* And if any conſtable, *&c.* know of ſuch meetings, and do not inform a juſtice of peace, or chief magiſtrate, he ſhall forfeit 5 *l* But the 1 *W.* & *M. c.* 18. ordains that proteſtant diſſenters ſhall be exempted from penalties: Though if they meet in a houſe, with the doors lock'd, barr'd, or bolted, ſuch diſſenters ſhall have no benefit from that ſtatute. Officers of the government, *&c.* preſent at any *conventicle*, at which there ſhall be ten perſons, if the Royal Family be not prayed for in expreſs words, ſhall forfeit 40 *l.* and be diſabled. *Stat.* 10 *Ann. c.* 2. See *Hereſy.*

Conventio, Is a word uſed in ancient law-pleadings, for an agreement or covenant: As *A. B. queritur, &c. de* C. D. *&c. pro eo quod non teneat* conventionem, *&c.* There is a pleaſant *record* of the *court* of the manor of *Hatfield, in Com. Ebor.* held *Anno* 11 *Ed.* 3. which runs thus: Robertus R. *qui obtulit ſe verſus* Johannem J. *de eo quod non teneat* conventionem *inter eos factam, & unde queritur, quod certo die & anno apud, &c.* convenit *inter prædictum* Robertum *et* Johannem, *quod prædictus* Johannes *vendidit prædicto* Roberto *diabolum ligatum in quodam ligamine pro iii d. ob et prædictus* Robertus *tradidit prædicto* Johanni *quoddam* obolum earles *(i. e.* earneſt-money) *per quod proprietas dicti* Diaboli *commoratur in perſona dicti* Roberti *ad habend deliberationem dicti* Diaboli, *infra quartam diem prox. ſequent. Ad quam diem idem* Robertus *venit ad præfatum* Johannem, *et petit deliberationem dicti* Diaboli, *ſecundum* conventionem *inter eos factam; idem* Johannes *prædictum* Diabolum *deliberate noluit, nec adhuc vult, etc. ad grave dampnum ipſius* Roberti *lx. ſol. Et inde producit ſectam, etc. Et prædictus* Johannes *venit, etc. Et non dedicit* coventionem *prædictam. Et quia videtur curiæ quod tale placitum non jacet inter Chriſtianos, Ideo partes prædicti adjournantur uſque in infernum, ad audiendum judicium ſuum. et utraque pars in Miſericordia, etc.*

Conventione, Is a writ that lies for the breach of any covenant in writing, whether real or perſonal: And it is called a *Writ of Covenant.* Reg. Orig. 115. F. N. B. 145.

Convention, Is properly where a parliament is aſſembled, but no act is paſſed, or bill ſigned, *etc.* See *Parliament.*

Convention Parliament. On the abdication of King *James* II. *Anno* 1689. The aſſembly of the ſtates of the kingdom, to take care of their rights and liberties, and who ſettled King *William* and Queen *Mary* on the throne, was called the *Convention:* And the Lords and Commons thus *convened* were declared the two houſes of parliament, notwithſtanding the want of any writ of ſummons, *etc.* *Stat.* 1 *W. and M.*

Conventuals, Are thoſe religious men who are united together in a *convent* or religious houſe. *Cowel.*

Conventual Church, Is a church that conſiſts of regular clerks, profeſſing ſome order of religion; or of Dean and Chapter, or other ſocieties of Spiritual Men.

Converſion, Is where a perſon finding or having the goods of another in his poſſeſſion, converts them to his own uſe, without the conſent of the owner, and for which the proprietor may maintain an action of *Trover* and *Converſion* againſt him.—And refuſal to reſtore goods is, *prima facie,* ſufficient *evidence* of a converſion, tho' it does not amount to a converſion. 10 *Rep.* 56. *Black. Com.* 3 *V.* 152.

Converſos. The *Jews* here in *England* were formerly called *Converſos*, becauſe they were converted to the *Chriſtian* religion. King *Hen.* 3. built an houſe for them in *London*, and allowed them a competent proviſion or ſubſiſtence for their lives; and this houſe was called *Domus Converſorum.* But by reaſon of the vaſt expences of the wars, and the increaſe of thoſe *converts*, they became a burden to the crown; ſo that they were placed in abbeys and monaſteries for their ſupport and maintenance. And the *Jews* being afterwards baniſhed, King *Ed.* 3. in the 51ſt year of his reign, gave this houſe which had been uſed for the converted *Jews*, for the keeping of the Rolls; and it is ſaid to be the ſame which is at this time enjoyed by the Maſter of the Rolls. *Blount.*

Conveyance, Is a deed which paſſes land from one man to another. *Conveyance* by *feoffment*, and *livery*, was the general *conveyance* at common law; and if there was a tenant in poſſeſſion, ſo that livery could not be made, then was the reverſion granted, and the tenant always attorned: Alſo upon the ſame reaſon, a *leaſe*, and *releaſe* was held to be a good *conveyance*, to paſs an eſtate; but the leſſee was to be in actual poſſeſſion, before the releaſe. But the leaſe is now conſidered as operating ſo as to give the poſſeſſion, which it does in point of law.

By the *common law*, when an eſtate did not paſs by feoffment, the vendor made a leaſe for years, and the leſſee actually entered; and the leſſor granted the reverſion to another, and the leſſee attorned: Afterwards, when an inheritance was to be granted, then likewiſe was a leaſe for years uſually made, and the leſſee entered (as before) and then the leſſor releaſed to him: But after the *ſtatute of uſes*, it became an opinion, that if a *leaſe for years* was made upon a valuable conſideration, a *releaſe* might operate upon it without an actual entry of the leſſee; becauſe the ſtatute did execute the leaſe, and raiſed an uſe preſently to the leſſee: And Serjeant *Moor* was the firſt who practiſed this way. 2 *Mod.* 251, 252.

The moſt common *conveyances* now in uſe are *deeds of gift, bargain and ſale, leaſe and releaſe, fines and recoveries, ſettlemnets to uſes,* &c. A ſon did *give* and *grant* lands to his mother, and her heirs; though this was a defective *conveyance* at common law, yet it was adjudged good by way of *uſe*, to ſupport the intention of the donor, and therefore, by theſe words, an *uſe* did ariſe to the mother by way of *covenant to ſtand ſeiſed.* 2 *Lev.* 225. A feoffment without *livery and ſeiſin*, will not enure as a grant; but where made in conſideration of a marriage, *etc.* it has been adjudged, that it did enure as *a covenant to ſtand ſeiſed to uſes.* 2 *Lev.* 213.

Tenant in fee, in conſideration of marriage, *covenanted, granted*, and *agreed* all that meſſuage to the uſe of himſelf for life, then to his wife for life, for her jointure, then to their firſt ſon in tail male, *etc.* Now by theſe words it appeared, that the huſband intended ſome benefit for his wife, wherefore the court ſupplied other words to make the *conveyance* ſenſible. 1 *Lutw.* 782. the words *give* and *grant, etc.* are proper for a *conveyance* at Common law; but it has been held, that though ſome books warrant that *conveyances* ſhall operate according to the words, yet of late the judges have a greater conſideration of the *paſſing the eſtate*, than the *manner* by which it is paſſed. 2 *Lutw.* 1209.

A *conveyance* cannot be fraudulent in part, and good as to the reſt: For if it be fraudulent and void in part, it is void in all, and it cannot be divided. 1 *Lil. Abr.* 311. Fraudulent *conveyances* to deceive creditors, defraud purchaſers, *etc.* are void, by *Stat* 50 *Ed.* 3. *cap.* 6. 13 *Eliz. cap.* 5. 27 *Eliz. cap.* 4. Vide *Deeds*.

Convict, *(Convictus)* Is he that is found guilty of an offence by verdict of a jury. *Staund. P. C.* 186. *Crompton* ſaith, That *conviction* is either when a man is outlawed, or appeareth and confeſſeth, or is found guilty by the inqueſt: And when a ſtatute excludes from clergy perſons found guilty of felony, *etc*, it extends to thoſe who are *convicted* by confeſſion. *Cromp. Juſt.* 9. The law implies a *conviction*, before puniſhment, though not mentioned in a ſtatute: And where any ſtatute makes a ſecond offence felony, or ſubject to a heavier puniſhment than the firſt, it is always implied that ſuch ſecond offence ought to be committed after a *conviction* for the firſt. 1 *Hawk. P. C.* 13, 107.

Judgment amounts to *conviction*; though it doth not follow that every one who is *convict*, is adjudged. *Ibid.* 14. A *conviction* at the King's ſuit may be pleaded to a ſuit by an informer, on a penal ſtatute; becauſe while in force it makes the party liable to the forfeiture, and no one ought to be puniſhed twice for the ſame offence: But *conviction* may not be pleaded to a new ſuit by the King. *Ibid.* 18. A perſon *convicted* or attainted of one felony, may be proſecuted for another, to bring acceſſaries to puniſhment, *etc.* *Fitz. Coron* 379.

On a joint indictment or information, ſome of the defendants may be acquitted, and others *convicted*. 2 *Hawk.* 240. Perſons *convicted* of felony by verdict, *&c.* are not to be admitted to *bail*, unleſs there be ſome ſpecial motive for granting it; as where a man is not the ſame perſon, *&c.* for bail ought to be before trial, when it ſtands indifferent whether the party be guilty, or not. *Ibid.* 99. 114. *Conviction* of felony, and other crimes, diſables a man to be a juror, witneſs, *&c.* By our books, *conviction* and attainder are often confounded.

Conviction, before juſtices of peace. When an act of parliament orders the *conviction* of offenders by *juſtices of peace*, &c. it muſt be intended after ſummons to bring them in, that they may have an opportunity of making their defence; and if it be otherwiſe, the *conviction* ſhall be quaſhed. *Mich.* 2 *Ann. B. R. Mod. Caſ.* 41.

Convict Recuſant, According to the ſtatutes. See *Recuſants*.

Convivium, Signifies the ſame thing among the laity, as *procuratio* doth with the clergy, *viz.* When the tenant by reaſon of his tenure is bound to provide meat and drink for his lord once or oftener in the year. *Blount.*

Convocation, *(Convocatio)* Is the aſſembly of all the clergy, to conſult of eccleſiaſtical matters in time of parliament: And as there are two houſes of parliament, ſo there are two houſes of *convocation*; the one called the *Higher or Upper Houſe*, where the archbiſhops and all the biſhops ſit ſeverally by themſelves; and the other the *Lower Houſe of Convocation*, where all the reſt of the clergy ſit, *i. e.* All deans and archdeacons, one proctor for every chapter, and two proctors for all the clergy of each dioceſe, making in the whole number *one hundred and ſixty-ſix* perſons. Each *convocation* houſe hath a prolocutor, choſen from among themſelves, and that of the lower houſe is preſented to the biſhops, *&c.*

The Archbiſhop of *Canterbury* is the Preſident of the *Convocation*, and prorogues and diſſolves it by mandate from the King. The *convocation* exerciſes juriſdiction in making of canons, with the King's aſſent: For by the *Stat.* 25 *H.* 8. *c.* 19. the *convocation* is not only to be aſſembled by the King's writ; but the canons are to have the royal aſſent: They have the examining and cenſuring of heretical and ſchiſmatical books, and perſons, *&c.* But appeal lies to the King in Chancery, or to his delegates. 4 *Inſt.* 322. 2 *Rol. Abr.* 225. The clergy called to the *convocation*, and their ſervants, *&c.* have the ſame privileges as members of parliament. *Stat.* 8 *H.* 6. *c.* 1.

Conuſance of Pleas, A privilege that a city or town hath to hold pleas. See *Cogniſance.*

Conuſant, (Fr. *Connoiſant)* Knowing or underſtanding: As if the ſon be *conuſant*, and agreed to the feoffment, *&c.* *Co. Lit.* 159.

Coopers, Shall make their veſſels of ſeaſonable wood, and mark them with their own marks, on pain of 3*s.* 4*d.* forfeiture; and the contents of veſſels are appointed to be obſerved under like penalty, as the beer barrel ſhall contain 36 gallons, a kilderkin 18, and firkin 9, *&c.* The wardens of the *Coopers* company in *London*, with an officer of the mayor, are to ſearch all veſſels for ale beer, and ſoap to be ſold there; and to mark them that are right, and they may burn thoſe that be not ſo: And if any *Cooper, &c.* diminiſh a veſſel by taking out the head, or a ſtaff thereof, it ſhall be burnt, and the offender forfeit 3*s.* 4*d.* Alſo *Coopers* are to ſell their veſſels at ſuch rates as ſhall be ordained by juſtices, mayors, *&c.* 23 *H.* 8. *c.* 4. This laſt clauſe is repealed by 8 *Eliz.. cap.* 9.

Coopertio, The head or branches of a tree cut down; though *Coopertio Arborum* is rather the bark of timber trees felled, and the chumps and broken wood. *Cowel.*

Coopertura, A thicket or covert of wood. *Chart. de Foreſta, cap.* 12.

Coparceners, *(Participes)* Otherwiſe called *Parceners*, are ſuch as have equal portion in the inheritance of an anceſtor; and by *law* are the iſſue female, which, in default of heirs male, come in equality to the lands of their anceſtors. *Bract. lib.* 2. *cap.* 30. They are to make partition of the lands; which ought to be made by *coparceners* of full age, *&c.* And if the eſtate of a *coparcener* be in part evicted, the partition ſhall be avoided in the whole. *Lit.* 243. 1 *Inſt.* 173. 1 *Rep.* 87. The crown of *England* is not ſubject to *coparcenary*; and there is no *coparcenary* in dignities, *&c.* *Co. Lit.* 27. *Stat.* 25 *H.* 8. *c.* 22. Vide Parceners.

Copartnerſhip, Is a deed of covenants between merchants, or others, for carrying on a joint trade, *&c.*

Cope, Is a cuſtom or tribute due to the King, or lord of the ſoil, out of the *lead mines* in ſome part of *Derbyſhire*; of which *Maniove* ſaith thus:

Egreſs and regreſs to the King's Highway,
The miners have; and lot *and* cope *they pay:*
The thirteenth diſh of ore within their mine,
To the lord, for lot, *they pay at meaſuring time;*
Six-pence a load for cope *the lord demands,*
And that is paid to the berghmaſter's *hands*, &c.

Agreeable to this you may find in Sir *John Pettus's Fodinæ Regales*, where he treats on this ſubject. This word, by *Domeſday Book*, as Mr. *Hagar* hath interpreted it, ſignifies a hill: and *Cope* is taken for the ſupreme cover, as the *cope of heaven*. Alſo it is uſed for the roof and covering of a houſe; the upper garment of a prieſt, *&c.*

Copia Libelli deliberanda, Is a writ that lies where a man cannot get the copy of a libel at the hand of a judge eccleſiaſtical, to have the ſame delivered to him. *Reg. Orig.* 51.

Coppa, A cop or cock of graſs, hay or corn divided into titheable portions; as the tenth cock, *&c.* This word, in ſtrictneſs, denotes the gathering or laying up the corn in *copes* or heaps, as the method is for barley or oats, *&c.* not bound up, that it may be the more fairly and juſtly tithed: and in *Kent* they ſtill retain the word, a *cop* or *cap* of *hay*, ſtraw, *&c.* *Thorn in Chron.*

Copper and Copper Ore. Copper plates and copper fully wrought, to what duties liable, 4 and 5 *W.* and *M.* *c.* 5. *ſect.* 2. All copper may be exported paying the lawful duties and cuſtoms, 5 *W.* and *M.* *c.* 17.

Copy, *(copia)* Is in a legal ſenſe the tranſcript of an original writing; as the *copy* of a *patent*, of a *charter*, deed, *&c.* A clauſe out of a patent, taken from the chapel of the Rolls, cannot be given in evidence; but you muſt have a true copy of the whole charter examined: it is the ſame of a record. And if upon a trial, you will give part of a copy of an office in evidence to prove a deed, which deed is to prove the party's title to the land in queſtion that gives it in evidence; if that part of the office copy given in evidence, be not ſo much of it as doth any ways concern the land in queſtion, the court will not admit of it: for the court will have a copy of the whole given, or no part of it ſhall be admitted. 1 *Lil. Abr.* 312, 313. Where a deed is inrolled, certifying an atteſted copy is proof of the inrolment; and ſuch copy may be given in evidence. 3 *Lev.* 387. A common deed cannot be proved by a copy or counterpart, when the original may be procured. 10 *Rep.* 92. And a copy of a will of lands, or the probate, is not ſufficient; but the will muſt be ſhewn as evidence. 2 *Rol. Abr.* 74. Copies of court rolls admitted as evidence. See *Evidence.*

Copyhold, *(tenura per copiam rotuli curiæ)* Is a tenure for which the tenant hath nothing to ſhew but the *copy* of the *rolls*, made by the ſteward of the lord's court; on ſuch tenant's being admitted to any parcel of land or tenement belonging to the manor. 4 *Rep.* 25. It is called *baſe tenure*, becauſe held at the will of the lord: And *Fitzherbert* ſays, it was anciently *tenure in villenage*, and that *copyhold* is but a new name. Some *copyholds* are held by the *verge* in *ancient demeſne*; and though they are by *copy*, yet are they a kind of freehold; for if a tenant of ſuch *copyhold* commit felony, the King hath *annum diem et vaſtum*, as in the caſe of freeholders: ſome other *copyholds* are ſuch as the tenants hold by common tenure, called *meer copyhold*, whoſe land, upon felony committed, eſcheats to the lord of the manor. *Kitch.* 81. But *copyhold* land cannot be made at this day; for the pillars of a *copyhold* eſtate are, That it hath been demiſed *time out of mind* by copy of court-roll; and that the tenements are parcel of or within the manor. 1 *Inſt.* 58. 4 *Rep.* 24. A *copyhold* tenant had originally in judgment of law but an eſtate at will; yet cuſtom ſo eſtabliſhed his eſtate, that by the cuſtom of the manor it was deſcendible, and his heirs inherited it: and therefore the eſtate of the *copyholder* is not merely *ad voluntatem domini*, but *ad voluntatem domini ſecundum conſuetudinem manerii*; ſo that the cuſtom of the manor is the life of *copyhold* eſtates; for without a cuſtom, or if *copyholders* break their cuſtom, they are ſubject to the will of the lord: and as a *copyhold* is created by cuſtom, ſo it is guided by cuſtom. 4 *Rep.* 21. A *copyholder*, ſo long as he doth his ſervices, and doth not break the cuſtom of the manor, cannot be ejected by the lord; if he be, he ſhall have treſpaſs againſt him: but if a *copyholder* refuſes to perform his ſervices, it is a breach of the cuſtom, and forfeiture of his eſtate.

Copyholds deſcend according to the rules and maxims of the Common law, (unleſs in particular manors, where there are contrary cuſtoms, of great antiquity); but ſuch cuſtomary inheritances ſhall not be aſſets, to charge the heir in action of debt, *&c.* *Ibid.* Though a leaſe for one year of *copyhold* lands, which is warranted by the Common law, ſhall be aſſets in the hand of an executor. 1 *Vent.* 163. *Copyholders* hold their eſtates free from charges of dower, being created by cuſtom, which is paramount to title of dower. 4 *Rep.* 24. *Copyhold* inheritances have no collateral qualities, which do not concern the deſcent; as to make them aſſets; or whereof a wife may be endowed; a huſband be tenant by the curteſy, *&c.* But by particular cuſtom, there may be dower and tenancy by the curteſy. *Cro. Eliz.* 361. There may be an *eſtate-tail* in *copyhold* lands by cuſtom, with the cooperation of the ſtatute *W.* 2. And a *copyhold* may be entailed by cuſtom, ſo by cuſtom the tail may be cut off by ſurrender. 1 *Inſt.* 60.

A *copyhold* may be barred by a recovery, by ſpecial cuſtom; and a ſurrender may bar the iſſue by cuſtom. A fine and recovery at Common law will not deſtroy a *copyhold* eſtate; becauſe Common law aſſurances do not work upon the aſſurance of the *copyhold:* though *copyhold* lands are within the *Stat* 4 *H.* 7. *c.* 24. of fines and proclamations, and five years non-claim, and ſhall be barred. 1 *Rol. Abr.* 506.

A *plaint* may be made in the court of the manor, in the nature of a *real* action, and a recovery ſhall be had in that *plaint* againſt tenant in tail, and ſuch a *recovery* ſhall be a *diſcontinuance* to the eſtate-tail. 1 *Brownl.* 121. And the ſuffering a recovery by a *copyholder* tenant for life in the lord's court is no forfeiture, unleſs there is a particular cuſtom for it. 1 *Nelſ. Abr.* 507. *Copyholders* may entail *copyhold* lands, and *bar* the *entails* and *remainders*, by *committing* a *forfeiture*, as making leaſe without licence, *&c.* and then the lord is to make three proclamations, and ſeize the *copyhold*, after which the lands are granted to the *copyholder*, and his heirs, *&c.* This is the manner in ſome places, but it muſt be warranted by cuſtom. 2 *Danv. Abr.* 191. *Sid.* 314.

Cuſtoms ought to be time out of memory; to be reaſonable, *&c.* And a cuſtom in deprivation or bar of a *copyhold* eſtate, ſhall be taken ſtrictly; but when for making and maintaining, it ſhall be conſtrued favourably. *Comp. Cop. ſect.* 33. *Cro. El.* 879. An unreaſonable cuſtom, as for a lord to exact exorbitant fines; for a *copyholder* for life to cut down and ſell timber-trees, *&c.* is void. A *copyholder* for life pleaded a cuſtom, that every *copyholder* for life might, in the preſence of two other *copyholders*, appoint who ſhould have his *copyhold* after his death; and that the two *copyholders* might aſſeſs a fine, ſo as not to be leſs than had been uſually paid; and it was adjudged a good cuſtom. 4 *Leon.* 238. But a cuſtom to compel a lord to make a grant, is ſaid to be againſt law; though it may be good to admit a tenant. *Moor* 788.

By the cuſtom of ſome manors, where *copyhold* lands are granted to two or more perſons for lives, the perſon firſt named in the copy may ſurrender all the lands. 1 *Nelſ. Abr.* 497. There are cuſtoms *ratione loci*, different from other places: but though a cuſtom may be applied to a particular place; yet it is againſt the nature of a cuſtom of a manor to apply it to one particular tenant. 1 *Nelſ.* 504. 1 *Lutw.* 126.

There are uſually *cuſtom rolls* of manors, exhibited on oath by the tenants; ſetting forth the bounds of the manor, the royalties of the lord, ſervices of the *copyhold* tenants, the tenures granted, whether for life, *&c.* concerning admittances, ſurrenders, and the rights of the *copyholders*, as to taking timber for repairs, fire-boot, *&c.* Common belonging to the tenants, payment of rent, ſuing in the court of the manor, taking heriots, *&c.* All which cuſtoms are to be obſerved. *Comp. Court Keep.* 21.

When an act of parliament altereth the ſervice, cuſtoms, tenure, and intereſt of land, in prejudice of the lord or tenant, there the general words of ſuch an act ſhall not extend to *copyholds.* 3 *Rep.* 7. *Copyholds* are not within the *Stat.* 27 *H.* 8. *c.* 10. of *jointures*; nor the 32 *H.* 8. *c.* 36. of *leaſes*, *copyholds* being in their nature demiſable only by *copy:* they are not within the ſtatute of *uſes*; nor are *copyholds* extendible in *execution:* but *copyholds* are within the ſtatute of *limitation of actions*; and the 13 *Eliz. c.* 7. *&c.* againſt *bankrupts*. The lord ſhall have the cuſtody of the lands of *ideots*, *&c.* And a *copyholder* is not within the act 12 *Car.* 2. *c.* 24. to diſpoſe of the *cuſtody* and *guardianſhip* of the heir; for if there be a cuſtom for it, it belongs to the lord of the manor. 3 *Lev.* 395. 1 *Nelſ. Abr.* 492, 522.

Copyholders not to vote for knights of the ſhire. 31 *Geo.* 2. *c.* 14. *ſect.* 1. Aſſignees of inſolvent debtors to pay fines for *copyholds*. 1 *Geo.* 3. *c.* 17. *ſect.* 14. *Copyholders* ſhall neither *implead* nor be *impleaded* for their tenements by writ, but by plaint in the lord's court held within the manor: and if on ſuch plaint, erroneous judgment be given, no writ of falſe judgment lies, but petition to the lord in nature of a writ of falſe judgment, wherein errors are to be aſſigned, and remedy given according to law. *Co. Lit.* 60.

Where a man holds *copyhold* lands in truſt to ſurrender to another, *&c.* if he refuſes to ſurrender to the other accordingly, he may be compelled by bill exhibited in the lord's court, who, as chancellor, has power to do right. 1 *Leon.* 2. A *copyholder* may have a formedon in deſcender in the lord's court. *Leſſee* of a *copyholder* for life for one year, ſhall maintain an ejectment. 4 *Rep.* 26. *Moor* 679. It is every day's practice to bring ejectments, to recover the poſſeſſion of copyholds, for defendant by the rule, obliging himſelf to confeſs leaſe, entry, and ouſter, the *title* only can come in queſtion on the trial. But leſſor of plaintiff, before he brings his ejectment, ſhould be admitted.

A manor is loſt when there are no cuſtomary tenants or *copyholders*: and if a *copyhold* comes into the hands of the lord in fee, and the lord leaſes it for one year, or half a year, or for any certain time, it can never be granted by copy after: but if the lord aliens the manor, *&c.* his alienee may re-grant land by copy. If the lord keeps the *copyhold* for a long time in his hand, it is no impediment but that he may after grant it again by copy. 2 *Danv. Abr.* 176, 177. A *copyholder* in fee accepts of a leaſe, grant, or confirmation of the ſame land from the lord, this determines his *copyhold* eſtate. 2 *Cro.* 16. *Cro. Jac.* 253. If a *copyholder* bargains and ſells his *copyhold* to a leſſee for years, *&c.* of the manor, his *copyhold* is *extinguiſhed.* 2 *Danv.* 205. A *copyholder* may grant his eſtate to his lord, by bargain and ſale, releaſe, *&c.* for between lord and tenant the conveyance need not be according to cuſtom. 1 *Nelſ.* 504. A *copyholder* in other caſes cannot alien by deed: though he that hath a right only to a *copyhold* may *releaſe* it by deed. And if a *copyholder* ſurrenders upon condition, he may afterwards *releaſe* the condition by deed. 2 *Danv.* 205. *Cro. Jac.* 36. Alſo one joint *copyholder* may *releaſe* to another, which will be good without any admittance, *&c.* *Ibid.*

A *copyholder* cannot convey or transfer his *copyhold* eſtate to another, otherwiſe than by ſurrender; which is the yielding up of the land by the tenant to the lord, according to the cuſtom of the manor, to the uſe of him that is to have the eſtate: or it is in order to a new grant, and further eſtate in the ſame.

As to *copyhold grants*; which are made either in fee, or for three lives, *&c.* the *lord of the manor* that hath a lawful eſtate therein, whether he be tenant for life or years, tenant by ſtatute merchant, *&c.* or at will, is *dominus pro tempore*, and may grant lands, herbage of lands, a fair, mill, tithes, *etc.* and any thing that concerns lands, by *copy of court*-roll, according to cuſtom; and ſuch grants ſhall bind thoſe in remainder: the rents and ſervices reſerved by them ſhall be annexed to the manor, and attend the owner thereof after their particular eſtates are ended. 4 *Rep.* 23. 11 *Rep.* 18. And if a lord of the manor for the time being, leſſee for life, years, *etc.* take a ſurrender, and before admittance he dieth, or the years or intereſt determine, though the next lord comes in above the leaſe for life or years, or other particular intereſt, yet he ſhall be compelled to make admittance according to the ſurrender. *Co. Lit.* 59. But a lord at will, of a *copyhold* manor, cannot licence a *copyhold* tenant to make a leaſe for years; though he may grant a *copyhold* for life according to the cuſtom: if a lord for life gives licence to a tenant to make a leaſe for years, this leaſe ſhall continue no longer than the life of the lord. 2 *Danv. Abr.* 202

If he that is *dominus pro tempore* of the manor admits one to a *copyhold*, he diſpenſes with all precedent forfeitures; not only as to himſelf, but alſo as to him in reverſion; for ſuch grant and admittance amount to an entry for the forfeiture, and a new grant; but a lord by tort cannot by ſuch admittance purge the forfeiture as to the rightful lord. 1 *Lev.* 26. Grants by copy of court-roll by infants, *etc.* will be binding: and if a guardian in ſocage grants a *copyhold* in reverſion, according to the cuſtom of the manor, this ſhall be a good grant; for he is *dominus pro tempore.* 2 *Rol. Abr.* 41. If baron and feme ſeiſed of a manor in right of the feme grant a *copyhold*, this ſhall bind the feme notwithſtanding her coverture. 4 *Rep.* 23. An executor may make grants of *copyhold* eſtates, according to the cuſtom of the manor, where a deviſe is made that the executor ſhall grant copies for payment of debts. 2 *Danv.* 178.

A manor may be held by copy of court-roll, and the lord of ſuch manor grant copies; and ſuch cuſtomary manor may paſs by ſurrender and admittance, *etc.* A cuſtomary manor may be holden of another manor, and ſuch cuſtomary lord may grant copies and hold courts: but a *copyholder* lord of ſuch a manor cannot hold a court baron to have forfeitures, and hold pleas in a writ of right, *etc.* 1 *Nelſ. Abr.* 524.

All grants of *copyhold* eſtates are to be according to the cuſtom of the manor; and rents and ſervices cuſtomary muſt be reſerved; for what acts of the lord in granting *copyholds* are not confirmed by cuſtom, but only ſtrenghened by the power and intereſt of the lord; have no longer duration than the lord's eſtate continueth. *Comp. Court. Keeper* 421. If by the cuſtom, a *copyhold* may be granted for three lives, and the lord grants it to one for life, remainder to ſuch woman as he ſhall marry, and to the firſt ſon of his body; but theſe remainders are void; and a remainder limited upon a void eſtate in the creation, will be likewiſe void. But if by cuſtom it is demiſable in fee, a ſurrender may be to the uſe of one for life, remainder in tail, remainder in fee. 2 *Danv. Abr.* 203. *Cro. Eliz.* 373. It is held, where by the cuſtom of a manor the lord can grant a *copyhold* for three lives, he may grant it for an eſtate coming within the intent of the cuſtom; as to *A. B.* and his aſſigns, to hold to him and his aſſigns for the lives of three others, and of the longer liver of them ſucceſſively, *etc.* 2 *Ld. Raym.* 994, 1000.

The lord of a manor may himſelf grant a *copyhold* eſtate at any place out of the manor; but the ſteward cannot grant a *copyhold* at a court held out of the manor. 4 *Rep.* 26. Though the ſteward may take ſurrenders out of the manor, as well as the lord. 2 *Danv. Abr.* 181. A ſteward is in place of the lord; and without a command to the contrary may grant lands by copy, *etc.* But if a lord command a ſteward that he ſhall not grant ſuch a copy, if he grants it, it is void: and if the ſteward diminiſhes the ancient rents and ſervices, the grant will be void. *Cro. Eliz.* 699.

Things of neceſſity done by a ſteward, who is but in reputed authority, are good if they come in by preſentment of the jury; as the admittance of an heir upon preſentment, *&c.* Though acts voluntary, as grants of *copyhold*, *&c.* are not good by ſuch ſtewards. *Ibid.* If an under-ſteward hold a court without any diſturbance of the lord of the manor, though he hath no patent nor deputation to hold it, yet it is good; becauſe the tenants are not to examine what authority he hath, nor is he bound to give them an account of it. *Moor* 110. A deputy ſteward may authoriſe another to do a particular act; but cannot make a deputy to act in general. 2 *Salk.* 95.

In *admittances*, in court upon *voluntary* grants, the lord is *proprietor*; in admittances upon *ſurrender*, the lord is *not proprietor* of the lands, but only a neceſſary *inſtrument* of *conveyance*; and in admittances by *deſcent* the lord is a mere *inſtrument*, not being neceſſary to ſtrengthen the heir's title, but only to give the lord his fine. 4 *Rep.* 21, 22. The heir of a *copyholder* may enter, and bring treſpaſs, before admittance, being in by deſcent; and he may ſurrender before admittance: but he is not compleat tenant to be ſworn of the homage, or to maintain a plaint in the lord's court. And if the heir do not come in and be admitted, on the death of his anceſtor, where the ſame is preſented and proclamation made, he may forfeit his eſtate. *Cro. El.* 90. 4 *Rep.* 22, 27.

On ſurrender of a *copyhold*, the ſurrenderor or perſon making the ſame, continues tenant till the admittance of the ſurrendree; and the ſurrendree may not enter upon the lands, or ſurrender before admittance, for he hath no eſtate till then; though it is otherwiſe of the *heir* by *deſcent*, who is in by courſe of law, and the cuſtom caſts the poſſeſſion upon him. *Comp. Court Keep.* 436. A ſurrender is not of any effect until admittance, and yet the ſurrendree cannot be defrauded of the benefit of the ſurrender; for the ſurrenderor cannot paſs away the land to another, or make it ſubject to any other incumbrances; and if the lord refuſe the ſurrendree admittance, he is compellable in *Chancery*. *Comp. Cop. ſect.* 39. A grantee hath no intereſt veſted in him till he is admitted: but admittance of a copyholder for life is an admittance of him in remainder, for they are but one eſtate; and the remainder man may, after the death of tenant for life, ſurrender without admittance. 3 *Lev.* 308. *Cro. El.* 504.

Every admittance upon a deſcent or ſurrender may be pleaded as a grant; and a perſon may alledge the admittance of his anceſtor as a grant; and ſhew the deſcent to him, and that he entered, *&c.* But he cannot plead that his father was ſeiſed in fee, *&c.* and that he died ſeiſed, and the land deſcended to him. 2 *Danv.* 208. Admittance on ſurrender muſt, in all reſpects, agree with the ſurrender; the lord having only a cuſtomary power to admit *ſecundum formam & effectum ſurſum redditionis.* 4 *Rep.* 26. If any are admitted otherwiſe, they ſhall be ſeiſed according to the ſurrender: yet where a voluntary ſurrender is general, without ſaying to whoſe uſe, a ſubſequent admittance may explain it. 2 *Danv.* 187, 204.

In voluntary admittances, if the lord admits any one contrary to cuſtom, it ſhall not bind his heir or ſucceſſor. If a copyholder ſurrender to the uſe of another, and after the lord, having knowledge of it, accepts the rent of ſuch other out of court, this is an admittance in law: and any act, implying the conſent of the lord to the ſurrender, ſhall be adjudged a good admittance. 1 *Nelſ. Abr.* 493. If the ſteward accept a fine of a copyholder, it amounts to an admittance. 2 *Danv.* 189. But delivering a copy is no admittance.

Where a *widow's eſtate* is created by cuſtom, that ſhall be an admittance in law: and her eſtate ariſing out of that of her huſband's, his admittance is the admittance of her. *Hut.* 18. And ſhe who hath a widow's eſtate by the cuſtom of the manor, upon the death of her huſband, need not pay a fine to the lord for the eſtate; for this is only a branch of the huſband's. *Hob.* 181. When a cuſtom is, that the wife of every copyholder for life ſhall have her free bench, after the death of the baron, the law caſts the eſtate upon the wife, ſo that ſhe ſhall have it before admittance, *&c.* 2 *Danv.* 184. But if a wife is entitled to her free bench by cuſtom, and a copyholder in fee ſurrenders to the uſe of another, and then dies; it has been adjudged, that the ſurrendree ſhould have the land, and not the wife; becauſe the wife's title doth not commence till after the death of her huſband; but the plaintiff's title begins with the ſurrender, and the admittance relates to that. 1 *Inſt.* 59. 1 *Salk.* 185.

The widow's title commenceth not by the marriage; if it did, then the huſband could do nothing in his lifetime to prejudice it: but it is plain he may alien or extinguiſh his right, ſo as to bind the eſtate of the widow: the free bench grows out of the eſtate of the huſband; and it is his dying ſeiſed which gives the widow a title, and as the huſband has a defeaſible eſtate, ſo the wife may have her free-bank defeated. 4 *Mod Rep.* 452, 453.

Admittances are never by attorney, for the tenant ought to do fealty: though ſurrenders are oftentimes by attorney. 2 *Danv.* 189. A copyholder in fee may *ſurrender* in court, by letter of attorney: but not out of court, without a ſpecial cuſtom. 9 *Rep.* 75, 76. If one cannot come into court to ſurrender in perſon, the lord may appoint a ſpecial ſteward to go to him, and take the ſurrender. 1 *Leon.* 36. A copyholder being in *Ireland*; the ſteward of a manor here made a commiſſion to one to receive a ſurrender from him there, and it was held good. 2 *Danv.* 181.

The intent of *ſurrenders* is, that the lord may not be a ſtranger to his tenant, and the alteration of the eſtate. As a copyholder cannot transfer his eſtate to a ſtranger, by any other conveyance than ſurrender; ſo if one would exchange a copyhold with another, both muſt ſurrender to each other's uſe, and the lord admit accordingly: and if any perſon would deviſe a copyhold eſtate, he cannot do it by his will: but he muſt ſurrender to the uſe of his laſt will and teſtament, and in his will declare his intent. *Comp. Cop. ſect.* 36, 39. Alſo where a copyholder ſurrenders to the uſe of his will, the lands do not paſs by the will, but by the ſurrender; the will being only declaratory of the uſes of the ſurrender. 1 *Bulſt.* 200. But in caſe of a will, the Chancery will ſupply the defect of a ſurrender, in the behalf of children, if not to diſinherit the eldeſt ſon; and for the benefit of creditors, where a copyhold eſtate is charged by will with the payment of debts, though there is no ſurrender to thoſe uſes, it will be good in equity. 4 *Rep.* 25. 1 *Salk.* 187. 3 *Salk.* 84. Yet it is held, that equity ſhall not ſupply the want of ſuch ſurrender in favour of a grandchild; or baſtard, who is not conſidered as a child; or a wife againſt the heir; nor in behalf of legatees: but where the ſurrender is refuſed, a will of copyhold may be ſufficient without it. *Abr. Caſ. Eq.* 122, 124. *Sed qu.* If courts of equity have not ſupplied the want of a ſurrender, in favour of the widow; againſt the heir?

A *ceſtui que truſt* may deviſe an intereſt in land, *&c.* without ſurrender; and if copyhold lands are in mortgage, the mortgagor can diſpoſe of the equity of redemption by will, without any ſurrender made; becauſe he hath at that time no eſtate in the land, whereof to make a ſurrender. *Preced. Canc.* 320, 322. One jointenant may ſurrender his part in the lands to the uſe of his will, *&c.* And where there are two jointenants of a copyhold in fee, if one of them make a ſurrender to the uſe of his will, and die, and the deviſee is admitted, the ſurrender and admittance ſhall bind the ſurvivor. 2 *Cro.* 100.

A ſurrender may not be to commence *in futuro*; as after the death of the ſurrenderor, *&c.* though copyholds may be ſurrendered to the uſe of a man's will. *March* 177. A copyholder cannot ſurrender an eſtate abſolutely to another, and leave a particular eſtate in himſelf: though he may ſurrender to uſes, *&c.* A copyholder ſurrendered to the uſe of his wife and younger ſon, without mentioning what eſtate; and adjudged, that they had an eſtate for life. 4 *Rep.* 29. If a man having bought a copyhold to himſelf, his wife and daughter, and their heirs, afterwards ſurrenders it to another and his heirs, for ſecuring a ſum of money; after his death, the ſurrendree ſhall not be intitled to the land, it being an advancement for the wife and daughter. 2 *Vern.* 120.

A feme covert may receive a copyhold eſtate, by ſurrender from her huſband, becauſe ſhe comes not in immediately by him, but by the admittance of the lord, according to the ſurrender. 4 *Rep.* 29, *b.* A feme covert is to be ſecretly examined by the ſteward, on her ſurrendering her eſtate. *Co. Lit.* 59. An infant ſurrendered his copyhold, and afterwards entered at full age, and it was held lawful, though the ſurrendree was admitted. *Moor* 597.

By the general cuſtom of copyhold eſtates, copyholders may ſurrender in court, and need not alledge any particular cuſtom to warrant it: but where they ſurrender out of court, into the hands of the lord by cuſtomary tenants, *&c.* cuſtom muſt be pleaded. 9 *Rep.* 75. 1 *Rol. Abr.* 500. And ſurrenders out of court are to be *preſented* at the next court; for it is not an effectual ſurrender till preſented in court. Where a copyholder in fee ſurrenders out of court, and dies before it is preſented, yet the ſurrender, being preſented at the next court, will ſtand good, and *ceſtui que uſe* ſhall be admitted: ſo if *ceſtui que uſe* dies before it is preſented, his heir ſhall be admitted. But if the ſurrender be not preſented at the next court, it is void. *Co. Lit.* 62. 2 *Danv.* 188. If the tenants by whoſe hands the ſurrender was made ſhall die, and this upon proof is preſented in court, it is well enough. 4 *Rep.* 29.

Tenants refuſing to make preſentment, are compellable in the lord's court. And by ſurrender of copyhold lands to the uſe of a mortgagee, the lands are bound in equity, though the ſurrender be not preſented at the next court. 2 *Salk.* 449. When a copyholder ſurrenders upon condition, and this is preſented abſolutely, the preſentment is void; but where a conditional ſurrender is preſented, and the ſteward omits entering the condition, on proof thereof the condition ſhall not be avoided; but the rolls ſhall be amended. 4 *Rep.* 25. A copyholder may ſurrender to the uſe of another, reſerving rent with a condition of re-entry for non-payment, and in default of payment may re-enter. *Ibid.* 21.

If a copyholder of inheritance takes a leaſe for years of his copyhold eſtate, it is a ſurrender in law of his copyhold. Where there is a tenant for life, and remainder in fee, he in remainder may ſurrender his eſtate, if there be no cuſtom to the contrary. 3 *Leon.* 329. If a ſurrender is made with remainders over, caſe lies for him in remainder againſt a copyholder for life, who commits waſte, *&c.* 3 *Lev.* 128. A ſurrendree of a reverſion of a copy-a copyhold is an aſſignee within the equity of the *Stat.* 32 *H.* 8 *c.* 34. to bring action of debt or covenant againſt leſſee, *&c.* 1 *Salk.* 185. A copyholder in fee ſurrenders to the uſe of one for life, with remainder to another for life, remainder to another in fee; as the particular eſtates and remainders make but one eſtate, there is but one fine due to the lord. 2 *Danv.* 191.

Fines are paid to the lord on admittances; and may be due on every change of the eſtate by lord or tenant: in caſe of a ſurrender, the lord may make what fine he pleaſes; but fines are to be reaſonable; they are either certain, by cuſtom, or uncertain; a fine certain is to be paid preſently; but if it be uncertain, the copyholder is to have notice and time to pay it. The lord may have an action of debt for his fine; or may diſtrain by cuſtom. 4 *Rep.* 27. 13 *Rep.* 2.

An *heriot* is a duty to the lord, rendered at the death of the tenant, or on a ſurrender and alienation of an eſtate: and is the beſt beaſt or goods, found in the poſſeſſion of the tenant deceaſed, or otherwiſe, according to cuſtom. And for heriots, reliefs, *etc.* the lord may diſtrain, or bring action of debt. *Plowd.* 96.

Relief is a ſum of money which every copyholder in fee, or freeholder of a manor pays to the lord, on the death of his anceſtor; and is generally a year's profits of his land.

Services ſignify any duty whatſoever accruing unto the lord from tenants; and are not only annual, and accidental; but corporal, as homage, fealty, *etc.* *Comp. Court. Keep.* 7, 8, 9, *etc.*

Copyholds eſcheat, and are *forfeited* in many caſes; *eſcheat* of a *copyhold* eſtate, is either where the lands fall into the hands of the lord for want of an heir to inherit them; or where the copyholder commits felony, *&c.* But before the lord can enter on an eſtate eſcheated, the *homage jury ought to preſent it. Forfeitures* proceeding from treaſons, felonies, alienation by deed, *etc.* a *preſentment* of them muſt be alſo made in court, that the lord may have notice of them. A copyholder refuſing to do ſuit of court, being ſufficiently warned, is a forfeiture of his eſtate; unleſs he be prevented by ſickneſs, inundations of water, *etc.* If the lord demandeth his rent, and the copyholder being preſent denies to pay it at the time required, this is a forfeiture; but if the tenant be not upon the ground when demanded, the lord muſt continue his demand upon the land, ſo that by continual denial in law, it may amount to a denial in fact: though it is ſaid there muſt be a demand from the perſon of the copyholder, and a wilful denial, to make a forfeiture.

A copyholder, not performing the ſervices due to his lord; or if he ſue a replevin againſt the lord, upon the lord's lawful diſtreſs for his rent or ſervices, theſe are forfeitures. If the lord upon admittance of a copyholder, the fine by the cuſtom of the manor being certain, demandeth his fine, and the copyholder denieth to pay it upon demand, this is a forfeiture.

Upon the deſcent of any copyhold of inheritance, the heir by the general cuſtom is tied, upon three ſolemn proclamations, made at three ſeveral courts, to come in and be admitted to his copyhold; or if he faileth therein, this failure worketh a forfeiture; but if an infant come not in to be admitted at three proclamations, it is no forfeiture: ſo of one beyond ſea, *etc.*

An ideot, lunatick, *&c.* though able to take copyholds, yet they are unable to forfeit them: and in reſpect to others, forfeitures may be mitigated by cuſtom, and the copyholder only amerced. By *Stat.* 9 *Geo.* 1. *c.* 29. On default of infants and feme coverts appearing to be admitted tenants to copyhold lands, the lord or his ſteward may name a perſon to be guardian or attorney for them, and by ſuch guardian, *etc.* admit them: and if the uſual fine thereon be not paid in three months, being demanded in writing, the lord may enter on the copyhold, and receive the rents, *etc.* till the fine is paid with all charges. And by this ſtatute no infant or feme covert ſhall forfeit any copyhold lands for their neglect to come to court to be admitted, or refuſal to pay any fine.

The general cuſtom of copyholds allows a copyholder to make a leaſe for one year of his copyhold eſtate, and no more, without incurring a forfeiture; but a copyholder may make a leaſe for one year, and covenant with the leſſee, that, after the end of that year, he ſhall have the ſame for another year, and ſo *de anno in annum* during the ſpace of ſeven years, *&c.* and be no forfeiture. *Cro. Jac.* 300. For this does not amount to a leaſe, but is only a covenant, ſubjecting the covenantor to an action for damages. Though a copyholder may not make a leaſe to hold for one year, and ſo from year to year during his life, excepting one day yearly, *&c.* which will be a forfeiture, being a mere evaſion. But a licence to leaſe may be had. A woman who was a copyholder in fee married, her huſband made a leaſe for years, not warranted by the cuſtom, which was a forfeiture; the huſband died; and adjudged that the lord ſhall not take advantage of this forfeiture after his death, but the wife ſhall enjoy the eſtate. *Cro. Car.* 7. And ſee 4 *Rep.* 21 *to* 25, *&c.*

Livery upon any conveyance of a copyhold eſtate amounts to a forfeiture. And yet if a copyholder for life ſurrender to another in fee, this is no forfeiture; for it paſſeth by the ſurrender to the lord, and not by livery.

If copyholder for life cuts down timber-trees, it is a forfeiture of his copyhold: though ſuch copyholder may take houſe-boot, hedge-boot, and plough-boot, upon his copyhold, of common right, as a thing incident to the grant; if he be not reſtrained by cuſtom, to take them by the aſſignment of the lord or his bailiff. Where a copyholder for life fells timber-trees, the lord may take them, and the eſtate is forfeited: but if under-leſſee for years of a copyholder cut down timber, this ſhall not be a forfeiture of the copyhold eſtate, but the lord is put to his action on the caſe againſt the leſſee. 1 *Bulſt.* 150. *Style* 253. A copyhold granted to two for their lives ſucceſſively, where the cuſtom of the manor is, that they ſhall not fell trees; if the firſt copyholder for life cut down trees, *&c.* it is not only a forfeiture of his own eſtate for life, but of him in remainder. *Moor* 49.

In other caſes, a copyholder for life, committing waſte, ſhall not forfeit the eſtate of him in remainder. *Cro. Eliz.* 880. If copyholder for life, where the remainder is over for life, commits a forfeiture by waſte, *&c.* he in remainder ſhall not enter, but the lord. 2 *Danv.* 198. A copyholder committing waſte voluntary, or permiſſive, this is a forfeiture: voluntary, as if he pull down any houſe, though built by himſelf; lop trees, and ſell them, plough up meadow, whereby the ground is made worſe, *&c.* Permiſſive, if he ſuffer the roof of the houſe to let in rain, or the houſe to fall; or if he permit his meadow ground to be ſurrounded with water, ſo that it becomes marſhy, or his arable land to be thus ſurrounded and become unprofitable, *&c.* theſe and the like are forfeitures. See 2 *Danv. Abr.* 192, 193, 196, *&c.* 1 *Nelſ. Abr.* 509, 510, *&c.* But it muſt be by his wilful default.

If a feme copyholder for life takes huſband, who commits waſte and dies, the eſtate of the feme is forfeited: Though not if a ſtranger commit the waſte, without the aſſent of the huſband. 4 *Rep.* 37. *Sed. qu.* the difference between copyholder for life, and copyholder in fee, in this reſpect; unleſs waſte is diſtinguiſhed from other forfeitures?

Moſt forfeitures are cauſed by acts contrary to the tenure: But a ſucceeding lord of a manor, ſhall not have any advantage of a forfeiture, by waſte done by a copyholder in the time of his predeceſſor. 2 *Sid.* 8. And if a preſent Lord doth any thing whereby he acknowledges the perſon to be his tenant after forfeiture, this acknowledgment is a confirmation of his eſtate. *Coke's Cop.* 61.

The Court of *Chancery* will not relieve a copyhold tenant, againſt a *voluntary* forfeiture, on committing waſte, *&c.* But it doth for *permiſſive* waſte; and when the eſtate is forfeited for non-payment of rent, a fine, or ſuch things, where a value may be ſet on them, and compenſation made the Lord on any laches of time, the tenant may be relieved; for there the land is but in nature of a ſecurity for thoſe ſums. *Preced. Chanc.* 569, 572.

In caſe of making a leaſe for years, without licence, and not warranted by cuſtom, found to be a forfeiture at law, equity has nothing to do with it, to give any remedy;

medy; it is like to a ſeoffment made, or fine levied by particular tenants, againſt which there can be no relief. *Ibid.* 574. Where copyhold lands are purchaſed in fee, in truſt for an alien, the lands are not ſeizable by the King; nor is the truſt forfeited to him; for if the lands were forfeited as purchaſed for ſuch alien, then the lord of the manor would loſe his fines and ſervices, *&c.* *Hard.* 436.

Copyhold eſtates of poor priſoners, aſſigned to creditors, and aſſignees admitted by the Lord, on paying the uſual fine due on a ſurrender, *&c.* See *Stat.* 10 *Geo.* 2. *c.* 26. See *Comp. Court Keeper*, 3*d Edit.* throughout. *Nelſon's Lex Monerior'*, 2*d Edit.* *Coke's Compleat Copyholder.* *And* 4 *Rep.* 21 *to* 25, *&c.*

Coraage, (*Coraagium*) Is a kind of extraordinary impoſition, growing upon ſome unuſual occaſion, and ſeems to be of certain meaſures of corn: For *corus tritici* is a meaſure of wheat. *Bract. lib.* 2. *c.* 116. *Numb.* 6. Who in the ſame chapter, *Numb.* 8. hath theſe words.—— *Sunt etiam quædam communes præſtationes, quæ ſervitia non dicuntur, nec de conſuetudine veniunt, niſi cum neceſſitas intervenerit, vel cum Rex venerit: ſicut ſunt* Hidagia, Coraagia *et* Carvagia, *et alia plura de neceſſitate, et ex conſenſu communi totius Regni introducta, &c.* Blount.

Coracle, A ſmall boat uſed by fiſhermen on ſome parts of the river *Severn*, made of an oval form, of ſplit ſally twigs interwoven, and on that part next the water covered with leather, in which one man, being ſeated in the middle, will row himſelf ſwiftly with one hand, while with the other he manages his net or fiſh-tackle: and coming off the water, he will take the light veſſel on his back, and carry it home. This boat is of the ſame nature as the Indian *canoes*; though not of the ſame form, or employed to the like uſe. But *quere* if not long out of uſe?

Coram non Judice, Is when a cauſe is brought and determined in a court whereof the judges have not any juriſdiction; then it is ſaid to be *Coram non Judice*, and void. 2 *Cro.* 351.

Corbel Stones, Are ſtones wherein images ſtand: The old *Engliſh Corbel*, was properly a nich in the wall of a church, or other ſtructure, in which an image was placed for ornament or ſuperſtition; and the *Corbel* ſtones were the ſmooth poliſhed ſtones, laid for the front and outſide of the *Corbels* or niches. The niches remain on the outſide of very many churches and ſteeples in *England*, though the little ſtatues and reliques are moſt of them broken down. *Paroch. Antiq.* 575.

Cord of Wood, Is a quantity of wood eight feet long, four feet broad, and four feet high, ordained by the ſtatute.

Cordage, (*Fr.*) Is a general appellation for all ſtuff to make ropes, and for all kind of ropes belonging to the rigging of a ſhip: It is mentioned in 15 *Car.* 2. *c.* 13.

Cordiner, From the Fr. *Cordouannier*, a ſhoemaker; we call him vulgarly a *Cordwainer*; and ſo this word is uſed in divers ſtatutes; as 3 *H.* 8. *c.* 10. 5 *H.* 8. *c.* 7. 27 *H.* 8. *c.* 14. 5 *and* 6 *Ed.* 6. *c.* 13. 1 *Jac.* 1. *c.* 22, *etc.* By which laſt ſtatutes the Maſters and Wardens of the *Cordwainers* Company in *London, etc.* are to appoint ſearchers and triers of leather; and leather is not to be ſold before ſearched and ſealed, *etc.*

Cordubanarius, Alſo ſignifies a ſhoemaker. *Cowel.*

Coretes, From the Brit. *Cored*, pools, ponds, *etc.*—— *Et cum ſuis Piſcibus et* Coretibus *anguillarum et cum toto territorio ſuo.* Du Freſne.

Corium Forisfacere, Was where a perſon was condemned to be whipped; which was anciently the puniſhment of a ſervant. *Si quis* corium *ſuum* forisfaciat *et ad eccleſiam incurrat, ſi ei verbatio condonata.* Corium perdere, the ſame: And *corium redimere* is to compound for a whipping.

Corn, No *corn* was formerly to be tranſported, without the King's licence; except for the victualling of ſhips, and in ſome ſpecial caſes, from ſome ports only: And none may buy *corn* to ſell again, without licence from juſtices, *etc.* Stat. 5 *El. c.* 12. But now *corn*, as wheat, barley, oats, *etc.* may be tranſported to ſtates in amity when they exceed not ſuch and ſuch prices, by many ſtatutes; and the exporters of it ſhall pay no duty or cuſtom, but be intitled to bounty-money or a certain allowance for exportation. 3 *Car.* 1. *c.* 4. *ſect.* 24. 12 *Car.* 2. *c.* 4. *ſect.* 11. 15 *Car.* 2. *c.* 7. 22 *Car.* 2. *c.* 13. 1 *and* 2 *P. and M. c.* 5. *ſect.* 7. The tranſportation of *corn* to foreign parts, was prohibited by 8 *Ann. c.* 2. See 2 *Geo.* 2. *cap.* 18. A cuſtom duty is granted on *foreign corn* imported; to be paid according to the price of *Engliſh corn*, and no foreign *corn* ſhall be tranſported from one port of *Great Britain* to another, on pain of forfeiture, and 20*s.* a buſhel. *Stat.* 5 *Geo.* 2. *cap.* 12. If any perſon uſe violence on another perſon to hinder him from buying, or carrying *corn* to any ſea-port town to be tranſported, *etc.* he ſhall be impriſoned by two juſtices, not exceeding three months, and be publickly whipped, *etc.* and committing a ſecond offence, or deſtroying granaries, or *corn* in any boat or veſſel, to be adjudged a felon, and tranſported for ſeven years; And the hundred to make good the damage, if not above 100*l.* as in caſes of robbery; where an offender is not apprehended and convicted within twelve months; but notice muſt be given to the conſtable in two days, *etc.* by 11 *Geo.* 2. *c.* 22. For no ſort of *corn*, meal, flour, bread, biſcuit, beef, *etc.* may be exported, on pain of forfeiting 20*s.* for every buſhel of grain, and 12*d.* every pound weight of bread, *etc.* But his Majeſty before a certain time may permit the exportation of *corn* by proclamation, and notice in the *Gazette*. *Stat.* 14 *Geo.* 2. *c.* 3. See further, 24 *Geo.* 2. *c.* 56. which ordains the bounty, *&c.* The bounty on ground corn to be regulated by weight, 24 *Geo.* 2. *c.* 56. Intereſt to be paid on debentures for the bounty of corn exported. 26 *Geo.* 2. *c.* 15. Corn-market eſtabliſhed at *Weſtminſter*. 31 *Geo.* 2. *c.* 25. *ſect.* 1. Forms of the returns of prices of grain. 31 *Geo.* 2. *c.* 29. *ſect.* 11. Penalty of adulterating corn or flour. 31 *Geo.* 2. *c.* 29. *ſect.* 22. Explained and amended by 3 *Geo.* 3. *c.* 11.

Cornage, (*Cornagium*, from the Lat. *Cornu*) a horn, was a kind of tenure in grand ſerjeanty; the ſervice of which was to blow a horn when any invaſion of the *Scots* was perceived: And by this tenure many perſons held their lands northward, about the wall commonly called the *Picts Wall*. *Cambd. Britan.* 609. This old ſervice of *horn-blowing* was afterwards paid in money, and the ſheriffs accounted for it under the title of *Cornagium*.—— *Memorandum quod cum vicecomes* Cambriæ *ſederet compotum ad ſcaccarium apud* Salop, *idem vicecomes fecit tallagium ſub nomine ſuo lx. lib. tam de* Cornagio, *quam de aliis debitis.* Mem. in Scacc. 6 Ed. 1. Sir *Edward Coke* in his firſt inſtitute, *pag.* 107. ſays *cornage* is alſo called in the old books *Horngeld*; but they ſeem to differ much. See *Horngeld*.

Cornare, To blow in the horn.——*Faciat* cornare *ne videatur furtive facere.* Mat. Pariſ. page 181.

Corn-Rents, By 18 *El. c.* 6. On college leaſes, one third of the old rent to be reſerved in wheat or malt, *&c.* The invention of Lord Treaſurer *Burleigh*, and Sir *Tho. Smith*, who obſerved the value of money to ſink much, and the price of proviſions to riſe greatly, on our communication with the *Indies*; and therefore deviſed this method for upholding the revenues of the colleges. *Black. Com.* 2 *V.* 322.

Cornwall, A royal duchy belonging to the Prince of *Wales*, abounding with mines, and having *Stannary* courts, *&c.* It yields a great revenue to the Prince. How leaſes are to be made of lands in the dutchy of *Cornwall*, for three lives, or thirty-one years, under the ancient rents, *&c.* See Stat. 13 *Car.* 2. *c.* 4. and 12 *Ann. c.* 22. 24 *Geo.* 2. *c.* 50. and 1 *Geo.* 3. *c.* 11. Aſſizes for *Cornwall* not confined to *Launceſton*. 1 *Geo.* 1. *c.* 45. Leaſes of *Prince of Wales* of lands in *Cornwall* where good. 10 *Geo.* 2. *c.* 29. *ſect.* 9, 10 & 11. What leaſes and grants by the King ſhall be good. 33 *Geo.* 2. *c.* 10.

Corody, (*Corodium*) Signifies a ſum of money or allowance of meat, drink, and clothing due to the King from an abbey, or other houſe of religion, whereof he was founder, towards the ſuſtentation of ſuch a one of his ſervants as he thought fit to beſtow it upon. The difference between a *corody* and *penſion* ſeems to be, that a *corody* was allowed towards the maintenance of any of the King's ſervants in an abbey: A *penſion* is given to one of the King's chaplains, for his better maintenance, till he may be provided of a benefice: And of both theſe you may read *Fitz. Nat. Br. fol.* 250. where are ſet down all the *corodies* and penſions that our abbies, when they were ſtanding, were obliged to pay to the King.

Corody is ancient in our laws: And it is mentioned in *Staundf. Prærog.* 44. And by the ſtat. of *Weſtm.* 2. *c.* 25. it is ordained, that an aſſiſe ſhall lie for a *corody*. It is alſo apparent by 34 & 35 *H.* 8. *cap.* 26. that *corodies* belonged ſometimes to biſhops, and noblemen, from monaſteries: And in the *New Terms of Law*, it is ſaid that a *corody* may be due to a common perſon, by grant from one to another; or of common right to him that is a founder of a religious houſe, not holden in *Frank Almoine*; for that tenure was a diſcharge of all *corodies* in itſelf: By this book it likewiſe appears, that a *corody* is either certain or uncertain, and may be not only for life or years, but in fee. *Terms de Ley.* 2 *Inſt.* 630. See the *Monaſticon Anglicanum*, for the form of a grant of a corody.

Corodio Habendo, A writ to exact a *corody* of an abbey or religious houſe. *Reg. Orig.* 264.

Corona Mala, or **Mala Corona**, The clergy who abuſed their character, were formerly ſo called. *Blount.*

Coronare Filium, To make one's ſon a prieſt. Anciently, Lords of Manors, whoſe tenants held by *Villenage*, did prohibit them *coronare filios*, leſt ſuch Lords ſhould loſe a villein by their entering into holy orders: For ordination changed their condition, and gave them liberty, to the prejudice of the Lord, who could before claim them as his *natives* or *born ſervants*——*Homo Coronatus* was one who had received the firſt *tonſure*, as preparatory to ſuperior orders; and the *tonſure* was in form of a *corona*, or crown of thorns, *Cowel*,

Coronatore Eligendo, Is a writ which lies on the death or diſcharge of any *Coroner*, directed to the Sheriff out of the Chancery, to call together the freeholders of the county, for the choice of a new coroner; and to certify into the Chancey, both the election and the name of the party elected, and alſo to give him his oath, &c. *Reg. Orig.* 177. *F. N. B.* 163. There are uſually four coroners in a county, in ſome counties fewer, and in ſome but one, according as the uſage is; and if any of them dieth, or is diſcharged, then ſhall iſſue this *writ*.

Coronatore exonerando, Is a writ for the diſcharge of a coroner, for negligence, or inſufficiency in the diſcharge of his duty: and where coroners are ſo far engaged in any other public buſineſs, that they cannot attend the office; or if they are diſabled by old age or diſeaſe, to execute it; or have not ſufficient lands, &c. they may be diſcharged by this writ. 2 *Inſt.* 32. 2 *Hawk. P. C.* 44. But if any ſuch writ be grounded on an untrue ſuggeſtion, the coroner may procure a commiſſion from the Chancery to inquire thereof; and if the ſuggeſtion be diſproved, the King may make a *ſuperſedeas* to the ſheriff, that he do not remove the coroner; or if he have removed him, that he ſuffer him to execute the office. *Reg. Orig.* 177, 178. *F. N. B.* 164.

Coroner, (*Coronator, a Corona*) is an ancient officer of this realm. Mention is made of him in King *Athelſtan*'s charter to *Beverly*, *Anno* 925. and he is ſo called, becauſe he deals wholly for the King and *Crown*.

Herein is to be conſidered:

I. *The Election and Juriſdiction of the Coroner.*
II. *His Power and Duty, with his Fees for the Execution of his Duty, and his Puniſhment for the Breach of it.*

I. *Of the Election and Juriſdiction of the Coroner.*

This officer, by the ſtat. of *Weſtm. c.* 10. ought to be a ſufficient perſon, that is the wiſeſt and diſcreeteſt knight, that beſt would and might attend upon ſuch an office: and there is a writ in the regiſter, *Niſi ſit Miles*, &c. whereby it appears it was good cauſe to remove a coroner choſen, if he were not a knight, and had not an hundred ſhillings rent of freehold (now obſolete.) Coroners are to be men of good ability, and have lands in fee in the county where choſen, to anſwer all people; and if inſufficient, the county ſhall anſwer for them. 2 *Inſt.* 174. The Lord Chief Juſtice of the King's Bench, is the *ſovereign coroner* of the whole kingdom in perſon whereſoever he is. 4 *Rep.* 57. There are alſo ſpecial coroners, within divers liberties, as well as the ordinary officers in every county; as the *Coroner of the Verge*, which is a certain compaſs about the King's court; who is likewiſe called *Coroner of the King's Houſe*. *Cromp. Juriſ.* 102.

The King's Coroner ſhall execute his office within the Verge. 32 *H.* 8. *c.* 20. *ſect.* 7. And ſome corporations and colleges are licenſed by charter to appoint their coroners within their own precincts. 4 *Inſt.* 271. And for what ariſes on the high ſea, we read of coroners appointed by the King or his Admiral. 2 *Hale's Hiſt. P. C.* 53. See *Coroner of the King's Houſhold*.

II. *Of the Coroners Power, Duty, and Fees*, &c.

The office of coroners eſpecially concerns the pleas of the crown; and they are conſervators of the peace in the county where generally elected. Their authority is *judicial* and *miniſterial*: *Judicial*, where one comes to a violent death, and to take and enter appeals of murder, pronounce judgment upon outlawries, &c. And to inquire of lands and goods, and eſcapes of murderers, treaſure trove, wreck of the ſea, deodands, &c. The *Miniſterial* power is where the coroners execute the King's writs, on exception to the ſheriff, as being party to a ſuit, kin to either of the parties, on default of the ſheriff, &c. 4 *Inſt.* 271. 1 *Plowd.* 73. And the *authority* of coroners does not determine by the demiſe of the King. 2 *Inſt.* 174.

Where coroners are empowered to act as judges, as in taking an inquiſition of death, or receiving an appeal of felony, &c. The act of one of them is of the ſame force as if they had all joined; but after one of them has proceeded to act, the act of another of them will be void: And where they are authoriſed to act only *miniſterially*, in the execution of a proceſs directed to them upon the incapacity of the ſheriff, their acts are void if they do not all join. 2 *Hawk. P. C.* 52. *Hob.* 70.

So that coroners as *miniſters* muſt all join; but as *judges*, they may divide. But two coroners ought to be judges in rediſſeiſin; and though one ſerves to pronounce an outlawry, the entry ought to be in the name of all of them: And ſo of all proceſſes directed to the coroners. *Staundf.* 53. *Jenk. Cent.* 85.

If the ſheriff is either plaintiff or defendant, or one of the cogniſees, the writ muſt be directed to the coroner. *Cro. Car.* 300. But the coroner is not the officer of *B. R.* but where the ſheriff is improper; not where there is no ſheriff; for if the ſheriff die, the coroner cannot execute a writ. In caſe of two coroners, if one is challenged, the other may execute the writ, &c. yet both make but one officer: It is the ſame with two ſheriffs of a city, &c. 1 *Salk.* 144. A *venire facias* ſhall go to the coroner, where the ſheriff is a party, or the defendant is a ſervant to the ſheriff, &c. but it ought to be on a principal challenge to the favour. *Moor* 470.

On defaults of ſheriffs, coroners are to impanel juries, and return iſſues on juries not appearing, &c. 2 *H.* 5. *cap.* 8. As the ſheriff in his torn might inquire of all felonies by the common law, ſaving the death of a man; ſo the coroner can inquire of no felony but of the death of a perſon, and that *ſuper viſum corporis*. 4 *Inſt.* 271. By *magna charta*, *cap.* 17. no ſheriff, &c. or coroner, ſhall hold pleas of the crown: But by ſtat. *Weſtm.* 1. 3 *Ed.* 1. *c.* 10. it is enacted, that coroners ſhall lawfully attach and preſent pleas of the crown; and that ſheriffs ſhall have counter-rolls with the coroners, as well of appeals, as of inqueſts, &c.

Coroners, before the ſtat. *Magna Charta*, might not only receive accuſations againſt offenders, but might try them: But ſince that ſtatute, they cannot proceed ſo far; and appeals before them, are removable into *B. R* &c. by *certiorari*, directed to the coroners and ſheriffs, &c. Though proceſs may be awarded by the ſheriff and coroner, or the coroner only, in the county-court on appeals, till the exigent, &c. 2 *Hawk. P. C.* 51.

By the ſtatute *de Officio Coronatoris*, 4 *Ed.* 1. The coroner is to go to the place where any perſon is ſlain or ſuddenly dead, and ſhall by his warrant to the bailiffs, conſtables, &c. ſummon a jury out of the four or five neighbouring towns, to make inquiry upon view of the body; and the coroner and jury are to inquire into the manner of killing, and all circumſtances that occaſioned the party's death, who were preſent, whether the dead perſon was known, where he lay the night before, *&c.* Examine the body if there be any ſigns of ſtrangling about the neck, or of cords about the members, *&c.* Alſo all wounds ought to be viewed, and inquiry made with what weapons, *&c.* And the coroner may ſend his warrant for witneſſes, and take their examination in writing; and if any appear guilty of the murder, he ſhall inquire what goods and lands he hath, and then the dead body is to be buried. A *coroner* may likewiſe commit the perſon to priſon who is by his inquiſition found guilty of the murder; and the witneſſes are to be bound by recogniſance to appear at the next aſſizes, *etc.*

When the jury have brought in their verdict, the coroner is to inroll and return the inquiſition, whether it be brought in murder, manſlaughter, *etc.* to the juſtices of the next gaol delivery of the county, or certify it into *B. R.* where the murderers ſhall be proceeded againſt. 2 *Rol. Abr.* 32. Upon an inquiſition taken before the coroner, he muſt put into writing the effect of the evidence given to the jury before him; and bind them to appear, *etc.* which is to be certified to the court with the inquiſition; and neglecting it ſhall be fined. 1 *and* 2 *P. and M. cap.* 13. 1 *Lil. Abr.* 327.

The word *Murdravit* is not neceſſary in a coroner's inquiſition; though it is in an indictment for killing another perſon. 1 *Salk.* 377. It is not neceſſary that the inquiſition be taken in the place where the body was viewed. 2 *Hawk.* 48. But a coroner has no authority to take an inquiſition of death without a view of the body; and if the inqueſt be taken by him without ſuch view, it is void. 2 *Lev.* 140

The coroher may in convenient time take up a dead body that hath been buried, in order to view it; but if it be buried ſo long that he can diſcover nothing from the viewing it; or if there be danger of infection, the inqueſt ought not to be taken by the coroner, but by juſtices of peace, by the teſtimony of witneſſes; for none can take it on view, but the coroner. *Bro. Coron.* 167, 173. If the body is buried, the town ſhall be amerced; as it ſhall be if the body is ſuffered to lie ſo long that it ſtinks. 2 *Danv. Abr.* 209, *etc.* Where the body hath lain for ſome time, that it cannot be judged how it came by its death, that muſt be recorded, that at the coming of the juſtices of aſſiſe, the town where, *etc.* may be amerced on ſight of the coroner's rolls.

A coroner may find any nuſance by which the death of a man happens; and the townſhip ſhall be amerced on ſuch finding. 1 *Nelſ. Abr.* 536. If one is ſlain in the day, and the murderer eſcapes, the town where done ſhall be amerced, and the coroner is to inquire thereof on view of the body. 3 *Hen* 7. *c.* 1. A coroner may take an indictment upon view of the body; as alſo an appeal, within a year after the death of one ſlain. *Wood's Inſt.* 491. But a coroner, *ſuper viſum corporis*, cannot make an inquiſition of an accceſſary after the murder; though he may of acceſſaries before the fact. *Moor* 29.

Coroners ought to ſit and inquire on the body of every priſoner that dies in priſon: They have no juriſdiction within the verge of the King's courts; nor of offences, committed at ſea, or between high and low water mark when the tide is in; though they have in arms and creeks of the ſea. 3 *Inſt.* 134. If a body is drowned, and cannot be found to be viewed, the inquiſition muſt be taken by juſtices of peace, on the examination of witneſſes, *etc.* 5 *Rep.* 110.

Where a coroner's inqueſt is quaſhed, he muſt make a new one *ſuper viſum corporis*: And a coroner may attend and amend his inquiſition in matters of form: But if he miſbehaves himſelf, and a *melius inquirendum* is granted upon it, that inquiſition muſt be taken by the ſheriffs or commiſſioners, upon affidavits, and not *ſuper viſum corporis*; becauſe none but a coroner can take inquiſition *ſuper viſum, etc.* and he is not to be truſted again. 1 *Salk.* 190. 2 *Danv. Abr.* 210.

A coroner's inquiſition being final, the coroner ought to hear counſel and evidence on both ſides. 2 *Sid.* 90, 101. The coroner muſt admit evidence, as well againſt the King's intereſt, as for it; but it hath been held, that if a perſon be killed by another, and it is certainly known that he did it, the coroner's jury are to hear the evidence only for the King; and inquire whether the killing were by malice, or without malice, *etc. Per Hale* C. J. Where a coroner would not admit of evidence againſt the King, to prove a *felo de ſe* to be *non compos mentis*, his inquiſition was ſet aſide; and a new inquiſition taken, whereby it was found that the party was *non compos.* 2 *Hale's Hiſt. P. C.* 60. If there be an inquiſition of manſlaughter or murder, and alſo an indictment by the grand jury againſt one, and he is arraigned, and found Not Guilty on the indictment; here it is neceſſary to quaſh the coroner's inquiſition, or to arraign the party upon it, and acquit him on that alſo: For otherwiſe it ſtands as a record againſt him, whereon he may poſſibly be outlawed. 2 *Hale* 65. And where a perſon found guilty by the coroner's inqueſt, pleads, and is acquitted by the petit jury; they muſt give in who it was that killed the man, which ſerves as an indictment againſt that other perſon, and if they cannot tell who, they may mention ſome fictitious name. *Ibid.*

As to the Fees *due for the Execution of his Office.*

By the *Stat.* 3 *Ed.* 1. *cap.* 10. Coroners ſhall demand or take nothing for doing their offices: And by the ancient law of *England*, none having any office concerning the adminiſtration of juſtice, could take any fee for doing his office; and therefore this ſtatute was only in affirmance of the common law. By 3 *Hen.* 7. *cap.* 1. upon an inquiſition taken on view of the body, the coroner ſhall have 13*s.* 4*d.* fee of the goods of the murderer; and if he be gone, then out of the amercement of the town for the eſcape. Though the 1 *H.* 8. *c.* 7. enacts, that where a perſon is ſlain by miſadventure, the coroner is to take no fee, on pain of 40*s.*

Juſtices of aſſiſe and of peace have power to inquire of and puniſh extortions of coroners, and alſo their defaults. *Stat. Ibid.* By the *Stat.* 25 *Geo.* 2. *c.* 29. for every inquiſition, not taken upon the view of a body dying in gaol, which ſhall be taken by any coroner in any townſhip or place contributory to the rates directed by *Stat.* 12 *Geo.* 2. *c.* 29. the ſum of 20*s.* and for every mile which he ſhall travel from the place of his abode, the further ſum of 9*d.* ſhall be paid him out of the money ariſing by the ſaid rates. And that for every inquiſition taken upon the view of a body dying in gaol, ſo much money not exceeding 20*s.* ſhall be paid him as the juſtices at ſeſſions ſhall think fit to allow, out of the money ariſing from the ſaid rates. Provided that over and above the recompence hereby appointed for inquiſitions taken as aforeſaid, the coroner who ſhall take an inquiſition upon the view of a body ſlain or murdered, ſhall have the fee of 13*s.* 4*d.* payable by *Stat.* 3 *H.* 7. *c.* 1. payable out of the goods of the ſlayer or murderer, or out of the amerciaments upon the townſhip, if the ſlayer or murderer eſcape. Coroner taking further fees guilty of extortion.

Provided that no coroner of the King's houſhold, and of the verge of the King's palaces, nor any coroner of the Admiralty, nor of the County Palatine of *Durham*, nor of the city of *London* and borough of *Southwark*, or of any of the franchiſes belonging to the ſaid city, nor any coroner of any city, borough, town, liberty or franchiſe not contributory to the rates directed by *Stat.* 12 *G.* 2. *c.* 29. or within which ſuch rates have not been uſually aſſeſſed, ſhall be intitled to any fee, recompence or benefit given by this act.

With regard to the Puniſhment *of Coroners for Miſbehaviour.*

If a coroner be remiſs in coming to do his office, when he is ſent for, *etc.* he ſhall be amerced by virtue of the above mentioned ſtatute *De coronatoribus. S. P. C.* 51. *Salk.* 377. *H. P. C.* 170.

If a coroner hath been guilty of any corrupt practice, bribery, *etc.* in taking the inquiſition, a *melius inquirendum* may be awarded for taking a new one by ſpecial commiſſioners, *etc.* Coroners concealing felonies, *etc.* are to be fined, and ſuffer one year's impriſonment. 3 *Ed.* 1. *cap.* 9.

cap 9. Alſo for miſmanagement in the coroner, filing the inquiſition may be ſtopped. 1 *Mod.* 82. A coroner's inquiſition is not traverſable: If it be found before the coroner *ſuper viſum corporis*, that one was *felo de ſe*, the executors or adminiſtrators of the deceaſed, it is ſaid, cannot traverſe it. 3 *Inſt.* 55. But it has been held that the inqueſt being moved into *B. R* by *certiorari*, may be there traverſed by the executor or adminiſtrator of the deceaſed. 2 *Hawk.* 54. And it hath been adjudged, that the inquiſition of *felo de ſe* is traverſable; though *fugam fecit* is not. 2 *Leo.* 152.

If a coroner be convicted of extortion, wilful neglect of duty or miſdemeanor in his office, the court before whom he ſhall be ſo convicted, may adjudge that he ſhall be removed from his office.

Coroner of the King's Houſhold, Hath an exempt juriſdiction within the verge, and the coroner of the county cannot intermeddle within it; as the *Coroner of the King's Houſe* may not intermeddle within the county out of the verge. 2 *Hawk.* 45. If an inquiſition be found before the coroner of the county, and the coroner of the verge, where the homicide was committed in the county, and it is ſo entered and certified, it will be error. 4 *Rep.* 45. But if a murder be committed within the verge, and the King removes before any indictment taken by the *Coroner of the King's Houſhold*; the coroner of the county, and the *Coroner of the King's Houſe* ſhall inquire of the ſame: And according to Sir *Edw. Coke*, the coroner of the county might inquire thereof at the Common law. 2 *Hawk.* 45. 2 *Inſt.* 550. If the ſame perſon be coroner of the county, and alſo of the *King's Houſe*, an indictment of death taken before him as coroner, both of the *King's Houſe*, and of the county, is good. 4 *Rep.* 46. 2 *Inſt* 134.

By the *Stat.* 33 *H.* 8. 12. *Par.* 1 & 3. *It is ordained, That all inquiſitions made upon the view of perſons ſlain, within any of the King's palaces or houſes, or any other houſe or houſes wherein his Majeſty ſhall happen to be abiding in his royal perſon, ſhall be taken by the* Coroner *for the time being* of the King's Houſhold, *without any aſſiſting of another coroner of any ſhire within this realm, by the oaths of twelve or more of the yeomen officers* of the King's Houſhold, *returned by the two Clerks Controllers, the Clerks of the Checks, and the Clerks Marſhal, or one of them, of the ſaid Houſhold, to whom the ſaid* Coroner of the Houſhold *ſhall direct his precept; and the ſaid* Coroner *ſhall certify under his ſeal, and the ſeals of ſuch perſons as ſhall be ſworn before him, all ſuch inquiſitions before the Maſter or Lord Steward* of the Houſhold; *who hath the appointment of ſuch coroner*, &c.

Coroner of London. By the charter of King *Ed.* 4. the mayor and commonalty of *London* may grant the office of coroner to whom they pleaſe; and no other coroner but he that belongs to the city, ſhall have any power there: Alſo the Lord Mayor, *&c.* may chuſe two coroners in *Southwark*. When any one is killed, or comes to an untimely death in *London*, the coroner upon notice ſhall attend where the body is, and forthwith cauſe the beadles of the ward to ſummon a jury to make the neceſſary inquiry, how ſuch perſon came by his death: And after inquiſition taken, he ſhall give a certificate to the church-warden, clerk, or ſexton of the pariſh, to the intent the corpſe may be buried: The coroner's fees here formerly amounted to 25 *s.* now to above double that ſum; unleſs the friends of the deceaſed are poor, and then he ſhall execute his office for nothing. *Cit. Lib.* 46, 47. The coroners in *London* and *Middleſex*, and in other *Cities*, *&c.* may bail felons and priſoners, in ſuch manor as hath been heretofore accuſtomed. 1 & 2 *P.* & *M. c.* 13. *ſect.* 6. 1 *Lil. Abr.* 327.

What anciently belonged to coroners, you may read at large in *Bracton, lib.* 3. *tract.* 2. *cap.* 5, 6, 7 & 8. *Britton, cap.* 1. and *Fleta, lib.* 1. *c.* 18.

Corone, *(Fr.)* All matters of the *crown*, were heretofore reduced to this law head or title; they are the things that concern treaſon, felony, and divers other offences, by the Common law, and by ſtatute. *Shep. Epit.* 367.

Corporal Oath, And how it is adminiſtered. See *Oath*.

Corporation, *(Corporatio)* Is a body politic or incorporate, ſo called, as the perſons are made into a *body*, and of capacity to take and grant, *&c.* Or it is an aſſembly and joining together of many into one fellowſhip and brotherhood, whereof one is head and chief, and the reſt are the body; and this head and body knit together, make the *corporation:* Alſo it is conſtituted of ſeveral members like unto the natural body, and framed by *fiction* of law to endure in perpetual ſucceſſion.

Of *corporations* ſome are *ſole*, ſome aggregate; *ſole*, when in one ſingle perſon, as the King, a Biſhop, Dean, *&c.* *Aggregate*, which is the moſt uſual, conſiſting of many perſons, as Mayor and Commonalty, Dean and Chapter, *&c.* Likewiſe *corporations* are *ſpiritual* or *temporal*; ſpiritual, of Biſhops, Deans, Archdeacons, Parſons, Vicars, *&c.* *Temporal*, of Mayors, Commonalty, Bailiffs and Burgeſſes, *&c.* and ſome *corporations* are of a *mixt nature*, compoſed of ſpiritual and temporal perſons, ſuch as heads of colleges and hoſpitals, *&c.* All *corporations* are ſaid to be *Eccleſiaſtical*, or *Lay*.

Herein is to be conſidered:

I. *How they are created.*
II. *Their Intereſt and Juriſdiction.*
III. *How far their Acts are binding.*
IV. *How they are diſſolved.*

I. *How Corporations are created.*

Bodies politic or incorporate may commence and be eſtabliſhed three manner of ways, *viz.* by *preſcription*, by *letters patent*, or by *act of parliament*; but are moſt commonly by patent or charter. 1 *Inſt.* 250. 3 *Inſt.* 202. 3 *Rep.* 73.

In making aggregate *corporations*, there muſt be, 1. Lawful authority. 2. Proper perſons to be incorporated. 3. A name of incorporation. 4. A place, without which no *corporation* can be made. 5. Words ſufficient in law to make a *corporation*. 10 *Rep.* 29, 123. 3 *Rep.* 73. The words *incorpora, funda, &c.* are not of neceſſity to be uſed in making *corporations*; but other words equivalent are ſufficient: And of ancient time, the inhabitants of a town were incorporated, when the King granted to them to have *Guildam Mercatoriam*. 2 *Danv. Abr.* 214. He that gave the firſt poſſeſſions to the *corporation*, is the founder. The pariſhioners or townſmen of a pariſh or town; and tenants of a manor, are to ſome purpoſes a *corporation*. *Co. Lit.* 95, 342.

If the King grants lands to the inhabitants of *B. hæredibus & ſucceſſoribus ſuis*, rendering a rent, for any thing touching theſe lands, this is a *corporation*; though not to other purpoſes: But if the King grants lands *inhabitantibus de* B. and they be not incorporated before, if no rent be reſerved to the King, the grant is void. 2 *Danv.* 214. If the King grants *Hominibus de Iſlington* to be diſcharged of toll, this is a good *corporation* to this intent; but not to purchaſe, *&c.* And by ſpecial words the King may make a limitted *corporation*, or a *corporation* for a ſpecial purpoſe. *Ibid.*

London is a *corporation* by preſcription; but though a *corporation* may be by preſcription, it ſhall be intended that it did originally derive its authority by grant from the King; for the King is the head of the commonwealth, and all the commonwealth, in reſpect of him, is but one *corporation*; and all other *corporations* are but limbs of the greater body. 1 *Lil. Abr.* 330. A mayor and commonalty or *corporation*, cannot make another *corporation*, or commonalty. 1 *Sid.* 290. The city of *London* cannot make a *corporation*, becauſe that can only be created by the crown; but *London*, or any other *corporation*, may make a *fraternity*. 1 *Salk.* 193.

No perſons ſhall bear office in any *corporation*, &c. but ſuch as have received the ſacrament of the church, and taken the oaths. *Stat.* 13 *Car.* 2. *c.* 1. But ſee the *Stat.* 5 *Geo.* 1. *c.* 6. confirming officers in *corporations*. See *By-Laws*.

What perſons are capable of being elected members of a *corporation*, ſee *Rep. Temp. Hardw. per Annaly, p.* 23.

II. *Of the intereſt and juriſdiction of corporations.*

When a *corporation* is duly created, all incidents, as to purchaſe and grant, ſue and be ſued, *&c.* are tacitly annexed to it; and although no power to make laws is given by a ſpecial clauſe to a *corporation*, it is included by law in the very act of incorporating. *Co. Lit.* 264. A new charter doth not merge or extinguiſh any of the ancient privileges of the old charter. And if an ancient *corporation* is incorporated by a new name, yet their new body ſhall enjoy all the privileges that the old *corporation* had. *Raym.* 439 4 *Rep.* 37.

There are uſually granted in charters to *corporations*, divers franchiſes; as felons goods, waifs, eſtrays, treaſure trove, deodands, courts, and cogniſance of pleas, fairs, markets, aſſiſe of bread and beer, &c. 4 *Rep.* 65. Actions ariſing in *corporations* may be tried in the *corporation* courts; but if they try actions which ariſe not within their juriſdictions, and encroach upon the Common law, they ſhall be puniſhed for it. *Lutw.* 1571, 1572. Actions triable there, muſt, in general, mean, thoſe actions wherein the corporation is not intereſted.

There may be a *corporation* without a head: but where there is a head, all acts ought to be by and to the head; nor can they ſue without ſuch head; and if he dies, nothing can be done in the vacancy. 10 *Rep.* 30, 32 *Co. Lit.* 264. If land be given to a mayor and commonalty for their lives, they have an eſtate by intendment not determinable: ſo it is, if a feoffment be made of land to a dean and chapter, without mention of ſucceſſors.

In a caſe of *ſole corporation*, as biſhop, dean, parſon, &c. no *chattel*, either in action or poſſeſſion, ſhall go in ſucceſſion; but the executors or adminiſtrators of the biſhop, parſon, &c. ſhall have them: but it is otherwiſe of a *corporation aggregate*, as a dean and chapter, mayor and commonalty, and the like: for they in the judgment of law never die. And yet the caſe of the *chamberlain of London* differs from all theſe; his ſucceſſor, in his own name, may have execution of a recogniſance acknowledged to his predeceſſor for *orphanage* money; and the reaſon is, becauſe the *corporation* of the chamberlain is by *cuſtom*, which hath enabled the ſucceſſor to take and have ſuch recognizances, obligations, &c. that are made to his predeceſſor. *Terms de Ley.*

Though a *ſole corporation* cannot generally take in ſucceſſion *goods* and *chattels*, &c. yet it may take a *fee-ſimple* in ſucceſſion, by the word ſucceſſors. *Co. Lit.* 8, 9, 46. *Aggregate corporations* may take not only goods and chattels, but lands in fee-ſimple, without the word ſucceſſors, for the reaſon before mentioned. 4 *Inſt.* 249. And ſucceſſion in a body politic, is an inheritance in a body private. If a leaſe for years be made to a biſhop and his ſucceſſors, it is ſaid his executors ſhall have it *in auter droit*; for regularly no chattel can go in ſucceſſion in caſe of a ſole *corporation*, no more than if a leaſe be made to a man and his heirs, it can go to his heirs. *Co. Lit* 46.

Grants of *corporations* are to be by deed, under their common ſeal, and are good without delivery; for the common ſeal gives perfection to *corporation* deeds. *Dav.* 44. An obligation ſealed with the common ſeal of a *corporation*, if the mayor ſigns it, he is ſuable if the *corporation* be diſſolved: but if two of the members ſign it, the particular perſons are not bound by it. 2 *Lev.* 137. *Raym.* 152. A releaſe of a mayor for any ſum of money due to the *corporation*, made in his own name, is not good in law; the *corporation* muſt join and do it by their common ſeal. *Terms de Ley.*

A *corporation* which hath a head, may make a perſonal command without writing; but a *corporation* aggregate without a head cannot. *Lutw.* 1497. A *corporation* aggregate may employ any one in ordinary ſervices, without deed; though not to appear for them, in any act which concerns their intereſt or title. 1 *Ventr.* 47, 48. Such a *corporation* may appoint a bailiff to take a diſtreſs, without deed or warrant. 1 *Salk.* 191. But cannot without deed command a bailiff to enter into lands for a condition broken; for ſuch command without deed is void. *Cro.* 815.

Though a *corporation* cannot do an act *in pais* without their common ſeal, they may do an act upon record; and the reaſon is, becauſe they are eſtopped by the record to ſay it is not their act. 1 *Salk.* 192. A promiſe to a *corporation* is good without deed. 2 *Lev.* 252. The head of a *corporation* aggregate may not be charged with the act of his predeceſſor if it be not by common ſeal, or for ſuch things as come to the uſe of the whole body or ſociety. 1 *And.* 23, 196.

A *corporation* may do an act in that capacity, to one of themſelves in his natural capacity; and any member in his natural capacity may perform an act to the *corporation* it its politic capacity; and ſo they may ſue one another, in their diſtinct capacities. 1 *Shep. Abr.* 436. Treſpaſs for an aſſault and battery, &c. will not lie againſt a *corporation*; but it muſt be brought againſt the perſons that do the treſpaſs by their proper names: though if the beaſts of the *corporation* treſpaſs on a man in his ground, action of treſpaſs lies againſt them for this: proceſs of outlawry will not lie againſt a *corporation*; nor *capias* or exigent, but diſtreſs. 22 *Aſſ.* 67. 39 *Ed.* 3, 13. 21 *Ed.* 4.

A *corporation* cannot ſue, or appear in perſon, but by attorney: they cannot commit treaſon or felony, or be excommunicate, &c. They may not be executors, or adminiſtrators, be jointenants, truſtees, &c. Nor ſhall the members of a *corporation* be regularly witneſſes for the *corporation*. 10 *Rep.* 32. 11 *Rep.* 98. *Co. Lit.* 134. But they may be disfranchiſed, and then be witneſſes; though not ſurrender by conſent. Yet in ſome caſes the judges now admit their teſtimony without disfranchiſement, where the *intereſt* is *remote*. Attachment doth not lie againſt a *corporation*. Raym. 152.

Corporations may have power not only to infranchiſe freemen but to disfranchiſe a member, and deprive him of his freedom; if he doth any act to the prejudice of the body, or contrary to his oath, &c. Though for conſpiring to do any thing contrary to his duty, or for words of contempt againſt the chief officers, he may not be diſfranchiſed; but he may be committed till he find ſureties for his good behaviour. 11 *Rep.* 98. 5 *Mod.* 257. A *corporation* cannot disfranchiſe for breach of a by-law. 1 *Lil.* 331. And one wrongfully disfranchiſed may be reſtored, and have his remedy by *mandamus*, &c. in *B. R.* An alderman or freeman of a corporation cannot be removed from his freedom or place without good cauſe, and a cuſtom to remove them *ad libitum* is void, becauſe the party hath a freehold therein. *Cro. Jac.* 540.

A perſon may be bound to the good behaviour for words ſpoke againſt mayors, &c. but he may not be indicted for it: and if juſtices of a *corporation* deny to do right, it is a forfeiture of their exemption from the inquiry of the juſtices of the county. *Mod. Caſ.* 125, 164. Head officers of *corporations* are to redreſs abuſes of merchant-ſtrangers, &c. or the franchiſe ſhall be ſeized, *Stat.* 9 *Eliz. c.* 3. *ſect.* 1. and have authority in many caſes by ſtatute; for which ſee *Mayors.*

No ſtrangers ſhall ſell by retail any woollen or linen cloth, or mercery wares, in corporate towns, except at fairs, on pain of forfeiture, &c. But ſuch perſons may ſell wares by wholeſale, and cloth of their own making by retail. 1 & 2 *P. & M. cap.* 7. Bodies politic eccleſiaſtical may make leaſes for three lives, or twenty-one years, under the reſtrictions in the acts 1 *Eliz. c.* 19. *ſect.* 5, 13. *Eliz. c.* 20. If land is given in fee to a dean and chapter, or to a mayor and commonalty, &c. and after ſuch body politic or incorporate is diſſolved, the donor ſhall have the land again, and not the lord by eſcheat. *Co. Lit.* 31.

The *corporation* of the city of *London* is to anſwer for all particular miſdemeanors, which are committed in any of the courts of juſtice within the city; and for all other general miſdemeanors committed within the city: ſo it is conceived of all other *corporations*. 1 *Lil. Abr.* 329. If a common officer of a town doth any thing for their common uſe, it is reaſonable the corporate town ſhould be anſwerable for it. 1 *Leon.* 215.

III. *How far the acts of corporations are binding.*

A *corporation* is properly an inveſting the people of the place with the local government thereof, and therefore their laws ſhall be binding to ſtrangers; but a *fraternity* is ſome people of a place united together in reſpect of a myſtery and buſineſs into a company, and their laws and ordinances cannot bind ſtrangers, for they have not a local power. *Salk.* 193.

No maſters and wardens, &c. of any myſtery, or other *corporation*, ſhall make any by-laws or ordinances in diminution mination of the King's prerogative, or againſt the common profit of the people; except the ſame be approved by the Lord Chancellor, or Chief Juſtices, *&c.* on pain of 40 *l.*

And ſuch bodies corporate ſhall not make any acts or ordinances for the reſtraining perſons to ſue in the King's courts for remedy, *&c.* under the like penalty. *Stat.* 19 *Hen.* 7. *cap.* 7. Ordinances made by *corporations*, to be obſerved on pain of impriſonment, or of forfeiture of goods, *&c.* are contrary to *Magna Charta*. 2 Inſt. 47, 54.

But penalties may be inflicted by by-laws, which may be recovered by diſtreſs or action of debt: and a cuſtom for the Lord Mayor and Aldermen of *London*, to commit a citizen for not accepting of the livery, *&c.* was held a good cuſtom, being for the good government of the city. 5 *Mod.* 320.

Corporations may not, by bond, or otherwiſe, reſtrain any apprentice, *&c.* from keeping ſhop in the *corporation* under the penalty of 40 *l.* *Stat.* 28 *H.* 8. *c.* 5.

In acts done by *corporations*, the conſent of the major part ſhall be binding, by 33 *H.* 8. *cap.* 27.

IV. *How corporations are diſſolved.*

A *corporation* may be diſſolved, for it is created upon a truſt; and if that be broken it is forfeited. 4 *Mod.* 58.

Corporations are diſſolved by forfeiture of their charter, miſuſer, *&c*, upon the writ *quo warranto* brought; by ſurrender, or by act of parliament; and if they neglect to chooſe officers, or make falſe elections, *&c.* it is a forfeiture of the *corporation*. 4 *Rep.* 77.

But by *Stat.* 11 *Geo.* 1. *c.* 4. No *corporation* ſhall be diſſolved, for any default to chooſe a mayor, *&c.* but the electors are ſtill to proceed to election; and if no election be made, the court of King's Bench ſhall iſſue a *mandamus* requiring the electors to chooſe ſuch mayor, *&c.*

By 2 *Ann.* *c.* 20. Where perſons intrude into the office of mayor, *&c.* of a *corporation*, a *quo warranto* ſhall be brought againſt the uſurpers, who ſhall be ouſted, and fined: and none are to execute an office in a *corporation* for more than a year. See further *Black. Com.* 1 *V.* 467, 476, 477, 479, 484. 2 *V.* 430. 3 *V.* 80. 4 *V.* 57, 432. And the *Index* to *Rep. Temp. Hardw. per Annaly.*

With reſpect to *corporations*, or communities of old, as obſerved by *Robertſon*, the forming of cities into communities, *corporations*, or bodies politic, and granting them the privilege of municipal juriſdiction, contributed more than any other cauſe to introduce regular government, police and arts, and to diffuſe them over *Europe*. *Louis the Groſs*, in *France*, to counterbalance his potent vaſſals, conferred new privileges on the towns ſituated within his domaine, called *Charters of community*, and formed the inhabitants into *corporations*, or bodies politic, to be governed by a council and magiſtrates of their own nomination. About the ſame period the great cities in *Germany* began to acquire like immunities; and the practice quickly ſpread over *Europe*, and was adopted in *Spain*, *England*, *Scotland*, and all the other feudal kingdoms. See *Hiſt. Emp. C. V.* 1 *V.* 32, 34, *&c.*

Corporeal Inheritance, In houſes, lands, *&c.* Vide *Inheritance*.

Corpſe, *ſtealing of*. If any one in taking up a dead body ſteals the ſhroud, or other apparel, it will be felony. 3 *Inſt.* 110. 12 *Rep.* 113. 1 *Hal. P. C.* 515. But ſtealing the corpſe itſelf, only, is not felony. *Black. Com.* 4 *V.* 236. But it is puniſhable as a miſdemeanor by indictment at Common law.

Corpus Chriſti Day, Is a feaſt inſtituted in the year 1264, in honour of the bleſſed *ſacrament*: to which alſo a *college* in *Oxford* is dedicated. It is mentioned in the *Stat.* 32 *Hen.* 8. *cap.* 21.

Corpus cum Cauſa, Is a writ iſſuing out of the *Chancery*, to remove both the *body* and record, touching the cauſe of any man lying in execution upon a judgment for debt, into the *King's Bench*, &c. there to lie till he have ſatisfied the judgment. *F. N. B.* 251. See *Habeas Corpus*.

Corrector of the Staple, Is a clerk belonging to the *ſtaple*, that writeth and recordeth the bargains of merchants there made. 27 *Ed.* 3. *ſtat.* 2. *cap.* 22 *&* 23.

Corredium and Conredium, The ſame with *corrodium*. See *Corody*.

Corruption of Blood, (*corruptio ſanguinis*) Is an infection growing to the ſtate of a man, and to his iſſue; and is where a perſon is attainted of *treaſon* or *felony*, by means whereof his blood is ſaid to be corrupted, and neither his children, nor any of his blood, can be heirs to him or any other anceſtor: alſo if he is of the nobility, or a gentleman, he and all his poſterity by the attainder are rendered baſe and ignoble: but by pardon of the King, the children born afterwards may inherit the land of their anceſtor, purchaſed at the time of the pardon or after; but ſo cannot they, who were born before the pardon. *Terms de Ley.*

If a man that hath land in right of his wife hath iſſue, and his blood is corrupt by attainder of felony, and the King pardons him; in this caſe, if the wife dies before him, he ſhall not be tenant by the curteſy, for the *corruption of the blood* of that iſſue: though it is otherwiſe, if he hath iſſue after the pardon; for then he ſhould be tenant by the curteſy, although the iſſue which he had before the pardon be not inheritable. 13 *H.* 7. *c.* 17.

A ſon attainted of treaſon or felony in the life of his anceſtor, obtains the King's pardon before the death of his anceſtor, he ſhall not be heir to the ſaid anceſtor, but the land ſhall rather eſcheat to the lord of the fee by the *corruption of blood*. 26 Aſſ. pl. 32 H. 8.

If the father of a perſon attainted die ſeiſed of an eſtate of inheritance, during his life, no younger brother can be heir; for the elder brother, though attainted, is ſtill a brother, and no other can be heir to his father, while he is alive; but if he die before the father, the younger brother ſhall be heir. 2 *Hawk. P. C.* 457. See further *Co. Lit.* 8, 391. *Dyer* 48. 3 *Inſt.* 211.

Corruption of blood from an attainder is ſo high that it cannot be abſolutely ſalved but by *act* of *parliament*; for the King's pardon doth not reſtore the blood ſo as to make the perſon attainted capable either of inheriting others, or being inherited himſelf by any one born before the pardon. 1 *Inſt.* 391, 392. 2 *Hawk.* 458. A ſtatute which ſaves the *corruption of blood*, impliedly ſaves the deſcent of the land to the heir; and it prevents the *corruption of blood* ſo far: alſo it ſaves the wife's dower, *&c.* But nevertheleſs the land ſhall be forfeited for the life of the offender. 3 *Inſt.* 47. 1 *Hawk.* 107.

For counterfeiting the coin or clipping, there is no *corruption of blood*. Stat. 5 Eliz. cap. 11. So on attainder of piracy, *&c.* And in felony by imbezilling the King's ordnance, armour, *&c.* 22, 23 *Car.* 2. *c.* 23. And therefore it ſhall not make any diſinheritance of an heir, *&c.* See *Attainder*. And *Black. Com.* 2 *V.* 251. 4 *V.* 381, 406, 431, 433.

Corſlet, (*Fr.* in Lat. *corpuſculum*) Signifies a little body: and it is uſed with us for an armour to cover the body or trunk of a man, wherewith *pikemen* commonly ſet in the front and flanks of the battle were formerly armed, for the better reſiſtance of the aſſaults of the enemy, and the ſurer guard of the ſoldiers placed behind, who were more ſlightly armed for their ſpeedier advancing to and retreating from fire. 4 *&* 5 *P.* *&* *M.* *c.* 2.

Corſepreſent, (from the Fr. *corpſe preſent*) Is a word ſignifying a mortuary: and the reaſon why it was thus termed ſeems to be, that where a mortuary became due on the death of any man, the beſt or ſecond beaſt was, according to cuſtom, offered or *preſented* to the prieſt, and carried with the *corps*.——*Ego* Brianus *de* Brompton, *&c.* *Volo corpus meum ſepeliri in prioratu majoris Malverniæ inter prædeceſſores meos, & cum corpore meo* Palefriddm *meum cum herneſio & equum ſummarium, cum lecto meo*, *&c.* In Codice MS. penes Gul. Dugdale, Mil. See *Stat.* 21 *H.* 8. *c.* 6. *Mortuary*. And *Black. Com.* 2 *V.* 425.

Corſned Bread, (*panis conjuratus*) *Ordeal bread*: it was a kind of ſuperſtitious trial uſed among the *Saxons*, to purge themſelves of any accuſation, by taking a piece of barley bread, and eating it with ſolemn oaths and execrations, that it might prove *poiſon*, or their laſt morſel, if what they aſſerted or denied were not punctually true. Theſe pieces of bread were firſt execrated by the prieſt, and then offered to the ſuſpected perſon to be ſwallowed by way of purgation: for they believed a perſon, if guilty, could not ſwallow a morſel ſo accurſed; or if he did, it would choak him.

The form was thus: *We beſeech thee, O Lord, that he who is guilty of this theft, when the exorciſed bread is offered to him in order to diſcover the truth, that his jaws may be ſhut, his throat ſo narrow that he may not ſwallow, and that he may caſt it out of his mouth, and not eat it.* *Du Cange.* The old form, or *exorciſmus panis hordeacei vel coſei ad probationem veri*, is extant in *Lindenbrogius, pag.* 107. And in the laws of King *Canute cap.* 6.——*Si quis altari miniſtrantium accuſetur, & amicis deſtitutus ſit, cum ſacramentales non habeat, vadat ad judicium quod Anglice dicitur* corſned, *& fiat ſicut Deus velit, niſi ſuper ſanctum corpus Domini permittatur ut ſe purget:* from which it is conjectured, that *corſned bread* was originally the very ſacramental bread, conſecrated and devoted by the prieſt, and received with ſolemn abjuration, and devout expectance that it would prove mortal to thoſe who dared to ſwallow it with a lie in their mouths; till at length the biſhops and clergy were afraid to proſtitute the communion bread to ſuch raſh and conceited uſes, when to indulge the people in their ſuperſtitious fancies, and idle cuſtoms, they allowed them to practiſe the ſame judicial rite, in eating ſome other morſels of bread, bleſt or curſt to the like uſes.

It is recorded of the perfidious *Godwin, Earl of Kent*, in the time of King *Edward the Confeſſor*, that on his abjuring the murder of the King's brother, by this way of trial, as a juſt judgment of his ſolemn perjury, the bread ſtuck in his throat, and choaked him.——*Cum* Godwinus *comes in menſa regis de nece ſui fratris impetretur, ille poſt multa ſacramenta, tandem per buccellam deglutiendam abjuravit, & buccella guſtata continuo ſuffocatus interiit.*—*Ingulph.* This, with other barbarous ways of purgation, was by degrees aboliſhed: though we have ſtill ſome remembrance of this ſuperſtitious cuſtom in our uſual phraſes of abjuration; as, *I will take the ſacrament upon it*;——*May this bread be my poiſon*;——or, *May this bit be my laſt*, &c.

Cortis, *(curtis)* A court or yard before a houſe. *Blount.*

Cortularium, *(curtilagium)* Is alſo a yard adjoining to a country farm. *Cartul. Glaſton. MS. f.* 42.

Corus, A certain corn-meaſure heaped up, from the Hebr. *cora*, a *hill:* eight buſhels of wheat in a heap, making a quarter, are of the ſhape of a little hill; and probably a *corus* of wheat was eight buſhels; for we read in *Bracton, Decem.* coros *tritici ſive decem quarteria.* Bract. lib. 2. c. 6.

Cosduna, An ancient word for cuſtom or tribute. *Mon. Angl. tom.* 1. *p.* 562.

Coſenage, (Fr. *couſinage*, i. e. kindred, couſinſhip) Is uſed for a writ that lies where the *treſail*, that is, the father of the *beſail*, or great grandfather, being ſeiſed of lands and tenements in fee at his death, and a ſtranger enters upon the heir and abates; then ſhall his heir have his writ of *coſenage*. *Brit. c.* 89. *F. N. B.* 221. A man ſhall not have a writ of *coſenage* of the ſeiſin of his great grandfather, but ſhall be put to his writ of *beſail:* and if a perſon may have a writ of *aiel*, he ſhall not bring a writ of *coſenage*. Alſo on the death of an uncle, writ of *coſenage* doth not lie, becauſe *aſſiſe of mort d'anceſtor* may be had of his ſeiſin: and *coſenage* lies not between privies in blood, no more than *aſſiſe of mort d'anceſtor*, but the party muſt bring *nuper obiit.* New. Nat. Br. 492.

In writs of *coſenage, aiel* and *beſail*, the tenant's anſwer that the plaintiff is not next heir, of the ſame anceſtor by whoſe death he demandeth his lands, ſhall be admitted and inquired; and according to the ſame inquiſition, the juſtices ſhall proceed to judgment. *Stat.* 13 *Ed.* 3. *c.* 20. See *Booth* on *Real Actions.* But now ejectments are generally uſed.

Coſening, Is an offence where any thing is done deceitfully, whether belonging to contracts or not, which cannot be properly termed by any ſpecial name. *Weſt. Symb. p.* 2. *ſect.* 68.

Coſhering. As there were many privileges inherent by right and cuſtom, allowed in the *feudal* laws; ſo were there ſeveral grievous exactions impoſed by the lords on their tenants, by a ſort of prerogative or ſenioral authority, as to lie and feaſt themſelves and their followers at their tenants houſes, *&c.* which were called *coſhering.* *Spelm. of Parliaments. MS.*

Coſmus, A word mentioned by *Blount* for clean.

Coſtard, Apple, whence *coſtard-monger*, i. e. Seller of apples. *Cartular. Abbat. Reading. MS. fol.* 916.

Coſtera, Coaſt, ſea-coaſt.——Richardum T. *ad cuſtodiam* coſteræ *maris in com* Eſſex, *per literas noſtras patentes aſſignavimus, &c.*——Memor. in Scaccar. Paſch. 24 Ed. 1.

Coſts, Are *expenſæ litis*, recovered by the plaintiff in a ſuit, together with his damages: and if the plaintiff be nonſuit or overthrown by lawful trial in any action, the defendant ſhall have coſts. 4 *Jac.* 1. *c.* 3. Alſo putting off trials, inſufficient pleas, *&c.* on their amendment, are liable to *coſts:* but it has been held *coſts* ought not to be paid for the putting off a trial, where no fault was in the party; for *coſts* are only to be paid by ſuch perſons which by their occaſion have cauſed the other party to have been at extraordinary charges: and no *coſts* ſhall be allowed for unreaſonable motions, but only for ſuch as the party was neceſſarily put unto. 1 *Lil. Abr.* 335, 337. The Common law doth not give *coſts* in any caſe; but they are given by ſtatute. See *Stat. of Glouceſter*, 6 *Ed.* 1. *c.* 1.

For the defendant on a writ of error, brought to delay execution, if judgment be affirmed, *coſts* are allowed. 3 *Hen.* 7. *c.* 10. So in actions of waſte; debt upon the ſtatute for tithes; in all ſuits by *ſcire facias*, for malicious treſpaſs, *&c.* 13 *Car.* 2. *cap.* 2. And by ſome ſtatutes double and treble *coſts*, and damages, are given:

But in perſonal actions, actions of treſpaſs, aſſault and battery, actions on the caſe for words, *&c.* if the debt or damage amount not to 40 *s.* or the judge do not certify that the battery was ſufficiently proved, *&c.* no more *coſts* ſhall be allowed than damages. 43 *Eliz. c.* 6. 21 *Jac.* 1. *c.* 16. 22 & 23 *Car.* 2. *c.* 9. *ſect.* 136. Where ſeveral are made defendants in action of treſpaſs, aſſault, *&c.* and one or more is acquitted, they ſhall have *coſts*; unleſs the judge certify there was reaſonable cauſe for making them defendants. 8 & 9 *W.* 3. *cap.* 11.

In an action of treſpaſs removed out of an inferior court into *B. R.* by *habeas corpus*, the plaintiff ſhall have full *coſts*, though the damages are under 40 *s.* And ſo it has been held in action on the caſe for words, where ſpecial damage is received, *&c.* 1 *Ld. Raym.* 395. 2 *Ld. Raym.* 1588.

On a judgment on demurrer upon a plea in abatement, *coſts* are not allowed; they are given only where the merits of the cauſe are determined on the demurrer. *Ibid.* 992. No *coſts* ſhall be allowed the defendant where the ſuit is commenced for the uſe of the King. 24 *H.* 8. *cap.* 8. And *coſts* are not awarded againſt executors or adminiſtrators. *Ibid.* Nor for or againſt one that ſues *in forma pauperis.* Though it has been adjudged that the King ſhall pay *coſts* for amendment; but *contra* for not going to trial, *&c.* 1 *Salk.* 193. And if executors bring an action in their own right, as for converſion or treſpaſs, *&c.* in their own time, and a verdict paſs againſt them, they ſhall pay *coſts.* 2 *Danv. Abr.* 224.

If a plaintiff, being admitted *in forma pauperis*, be afterwards nonſuited, the uſual courſe is to tax *coſts*, and if not paid, to puniſh the plaintiff by whiping; but it is in the diſcretion of the court to ſpare both. 2 *Sid.* 261. Where a *pauper* plaintiff has a decree to recover with *coſts*; he ſhall be allowed no more than he is out of pocket. *Preced. Canc.* 219. An executor, defendant in equity pays no *coſts.* *Abr. Caſ. Eq.* 125.

An heir at law, ſuing for the family eſtate, where he ſhall not pay *coſts*, ſee 1 *Peer Williams* 482. If a ſum certain is given to a ſtranger by ſtatute, as where it is given to the proſecutor, he ſhall have no *coſts*, as he had no right of action till he commenced it; ſo in popular actions, whether the penalty is certain or not, there ſhall be no *coſts.* 1 *Salk.* 206. 1 *Lutw.* 201. Where *coſts* are allowed, it is not neceſſary that the jury ſhould give the *coſts*; but they may leave it to the court to do it, who are beſt able to judge of what *coſts* are fitting to be given. 23 *Car. B. R.*

It is the courſe of the court of *B. R.* to refer the taxing of the *coſts* to the ſecondary of the office, and not to make any ſpecial rules for ſuch matters; except it be in extraordinary caſes. 1 *Lil. Abr.* 338. Where a plaintiff is nonſuit, action of debt may be brought on the judgment for the *coſts*; alſo the defendant may have a *capias ad ſatisfaciendum* againſt him. 1 *Nelſ. Abr.* 550. Where *coſts* are given after a verdict, the court will ſtay proceedings in the ſame court till they are paid, on motion made: but when *coſts* are given for not going on to trial, a party may proceed, though they are not paid. *Sid.* 279. *Sed qu.* if on a motion, the court would not ſtay proceedings till *coſts* paid?

The awarding of *coſts* (in equity) is always diſcretionary in the court: and in caſe of a great fraud, a perſon may be obliged to pay ſuch *coſts* as ſhall be aſcertained by the injured party's oath. 2 *Vern.* 123. Where damages were before recoverable, and a ſtatute increaſes them to double or treble the value, the plaintiff ſhall recover his double or treble damages; and *coſts* alſo, as parcel of the damages, ſhall be trebled. 10 *Co.* 116. *a.* 2 *Inſt.* 289. *Hard.* 152. *Carth.* 297.

But where a new ſtatute gives either ſingle, double or treble damages, where there were no damages recoverable before, there no *coſts* ſhall be allowed, becauſe the party can have nothing more than ſuch new ſtatute has already given, and that his damages only; for the ſtatute of *Glouceſter* cannot operate to add *coſts* to what is given by a ſubſequent ſtatute; becauſe the new ſtatute muſt be conſtrued from itſelf, which gives damages only. 2 *Inſt.* 285. 1 *Salk.* 205. *Carth.* 297.

See *Damages*, &c. And ſee the *Table* to the *Statutes at Large, 4to edition*, in *what* caſes *double* and *treble coſts* are given. Alſo ſee a ſmall *octavo* volume relating to *coſts*, lately publiſhed by Mr. *Serjeant Sayer*, containing the general law of *coſts*, with caſes on all the ſtatutes, very uſeful for practitioners, *&c.*

N. B. *Coſts* are given on informations for not going to trial. *The King* v. *James, Rep. Temp. Hardw. per Annaly, fo.* 159. Statutes which give *coſts* are to be taken ſtrictly. *Ibid. The King* v. *The Inhabitants of Glaſtonby*, 357. Where a cauſe of action ariſes in the time of an executor, he is liable for *coſts* (as plaintiff); but where he is obliged to name himſelf executor, he is not bound to pay *coſts. Ibid. Harris* and *Ux'* v. *Hanna, fo.* 204, 205. There ſhall be no more *coſts* than damages, where the judge certifies on *Stat.* 43 *Eliz. c.* 6. *Walker* v. *Robinſon. Wilſ. par.* 1. *fo.* 93. 2 *Stra.* 1232. S. C. See *Wilſ. par.* 2. 258.

Coſts ſhall follow the verdict upon a trial by conſent, or on a feigned iſſue. *Rex* v. *Phillips. Wilſ. par.* 1. *fo.* 261. *Herbert* v. *Williamſon. Id.* 324. *Coſts* to be allowed when a cauſe goes off and remains untried for want of jurors. *Sparrow* v. *Turner, C. B. Wilſ. par.* 2. *fo.* 366. See *Index* to *Wilſ. Rep.*

Coſts are allowed in *Chancery*, for failing to make anſwer to a bill exhibited; or making an inſufficient anſwer: and if a firſt anſwer be certified by a maſter to be inſufficient, the defendant is to pay 40*s. coſts*; 3*l.* for a ſecond inſufficient anſwer; 4*l.* for a third, *&c.* But if the anſwer be reported good, the plaintiff ſhall pay the defendant 40*s. coſts*. An anſwer is not to be filed, (till when, it is not reputed an anſwer) until *coſts* for contempt in not anſwering are paid. *Practiſ. Attorn.* 1 *edit. pag.* 210, 212. If a plaintiff in Chancery diſmiſſes his bill, or the defendant; or if a decree be obtained for the defendant, *coſts* are allowed by *Stat.* 4 *&* 5 *Ann. c.* 16.

Cot, In the old *Saxon* ſignifies *cottage*, and ſo is ſtill uſed in many parts of *England*.

Cotarius, A cottager: the *cotarii*, or cottagers, are mentioned in *Domeſday*.

Cote and **Cot**. The names of places which begin or end with theſe words or ſyllables, have the ſignification of a little houſe or *cottage*: there are likewiſe *dove-cotes*, which are ſmall houſes or places for the keeping of *doves* or pigeons. *Game Law*, 2 *par. fol.* 133, 135. See *Pigeon-Houſe.*

Cotellus, **Coteria**, Both ſignify a ſmall cottage, houſe or homeſtall. *Cowel.*

Coterellus, *Cotarius* and *coterellus*, according to *Spelman* and *Du Freſne*, are ſervile tenants: but in *Domeſday* and other ancient MSS. there appears a diſtinction as well in their tenure and quality, as in their name. For the *cotarius* had a free ſocage tenure, and paid a ſtated firm or rent in proviſions or money, with ſome occaſional cuſtomary ſervices; whereas the *coterellus* ſeems to have held in mere villenage, and his perſon, iſſue and goods, were diſpoſable at the pleaſure of the lord.——*Edmund* Earl of *Cornwall*, gave to the *bon-bommes* of *Aſherugge*, his manor of *Cheſterton* and *Ambroſden*—*una cum villanis*, coterellis, *eorum cotallis, ſerviciis, ſectis, & omnibus ſuis ubicunque pertinentibus.* Paroch. Antiq. 310.

Coteswold, Is uſed for ſheep cotes and ſheep feeding on hills: from the *Sax. cote* and *wold*, a place where there is no wood.

Cotgare, A kind of refuſe wool, ſo clung or clotted together, that it cannot be pulled aſunder. By *Stat.* 13 *R.* 2. *cap.* 9. It is provided, that neither denizen nor foreigner ſhall make any other refuſe of wools but *cotgare* and *villein.*

Cotland and **Cotſethland**, Land held by a cottager, whether in ſocage or villenage.—*Dimidia acra terræ jacet ibidem inter* cotland, *quam* Johannis Goldering *tenet ex una parte, &* cotland *quam* Thomas Webb *tenet ex altera.* Paroch. Antiq. 532.

Cotſethla, **Cotſetle**, The little ſeat or manſion belonging to a ſmall farm.—*Ego* Thomas de C. *dedi Deo & eccleſiæ* Malmſbury *unam* Cotſetle *in* Culern, *cum omnibus pertinentiis.* Cartular. Malmſbur. MS.

Cotſethus, A cottage-holder, who, by ſervile tenure, was bound to work for the lord. *Cowel. Cotſets* are the meaneſt ſort of men, now termed *cottagers*. And *cotſeti* are thoſe who live in cottages. *Villani vero vel* cotſeti, *vel perdingi, vel qui ſunt hujuſmodi viles, vel inopes perſonæ, non ſunt inter legum judices numerandi.* Leg. Hen. 1. c. 30.

Cottage, *(cotagium)* Is properly a little houſe for habitation, without lands belonging to it. *Stat.* 4 *Ed.* 1. *ſtat.* 1. But by a later ſtatute, the 31 *El. cap.* 7. No man may build a *cottage*, unleſs he lay four acres of land thereto; except it be in market-towns or cities, or within a mile of the ſea, or for the habitation of labourers in mines, ſailors, foreſters, ſhepherds, *&c.* and cottages erected by order of juſtices of peace, *&c.* for poor impotent people, are excepted out of the ſtatute. The four acres of land to make it a *cottage* within this law, are to be freehold, and land of inheritance: and four acres of ground holden by copy, or for life or lives, or for any number of years, will not be ſufficient to make it a lawful cottage. 2 *Inſt.* 737. Alſo the four acres in fee-ſimple, or fee-tail, muſt lie near the cottage, and be occupied therewith, ſo long as the cottage ſhall be inhabited. 2 *Rol. Abr.* 139.

But this ſtatute doth not extend to houſes that are copyhold. 1 *Bulſt.* 50. The penalty of erecting cottages contrary to the ſtatute, is 10*l.* for every erection, and 40*s.* a month for the continuance of it; which is inquirable in the leet, or the offenders may be puniſhed by indictment at the quarter-ſeſſions of the peace, *&c.* And no owner or occupier of any cottage ſhall ſuffer any *inmates*, or more families than one to inhabit therein, on pain to forfeit to the lord of the leet 10*s.* a month: but in cottages built for the poor, more families than one may be placed.

Cottages are oftentimes erected on the waſte at the charge of pariſhes, for poor impotent perſons, by the church-wardens and overſeers of the poor, having obtained leave of the lord of the manor in writing under hand and ſeal; but then it muſt be confirmed by the juſtices in ſeſſions. *Mod. Juſt.* 152. Cottagers of new erected cottages within the memory of man, ought not to have common in the lord's waſte, though they have four acres of land laid to them. *Wood's Inſt.* 445. An exception muſt be underſtood, where right of common originally belonged to the land, by preſcription: the annexing it to, and uſing it with a cottage, cannot bar the right.

Every cottager, *&c.* is obliged to work towards the repairs of the highways, or to hire an able labourer to work on the days appointed by the ſtatute, on pain of forfeiting 1*s.* 6*d.*

1*s*. 6*d*. *per* day. *Stat*. 22 *Car*. 2. But ſee 7 *Geo*. 3. *c*. 42. And title *Highways*.

Cotton Library, For better ſettling and preſerving the *library* kept in the houſe at *Weſtminſter*, called *Cotton-houſe*, in the name and family of the *Cottons* for the benefit of the public, a ſtatute was made 12 *W*. 3. *c*. 7. See *Stat*. 5 *Ann*. *c*. 30. & 26 *Geo*. 2. *c*. 22.

Cottons. Not within 27 *Hen*. 8. concerning the true making of cloth, 27 *H*. 8. *c*. 12. *ſect*. 3. See the *Table* to the *Statutes*, title *Cottons*.

Cotuca, Coat armour. *Ad arma proſiliunt & milites quidem ſuper armatura* cotucas *induerant, vocat*. Quartelois. *Walſing* 114.

Cotuchans, Boors or huſbandmen, of which mention is made in *Domeſday*.

Coucher, or **Courcher,** Signifies a factor that continues abroad in ſome place or country for traffick; as formerly in *Gaſcoign*, for buying of wines. *Stat*. 37 *Ed*. 3. *c*. 16. This word is alſo uſed for the general book wherein any corporation, &*c*. regiſter their particular acts. 3 & 4 *Ed*. 6. *c*. 10.

Covenable, (Fr. *convenable*, Lat. *rationabilis*) Is what is convenient or ſuitable.—*Every of the ſame three ſorts of goods*, &c. *ſhall be good and* covenable, *as in old time hath been uſed*. Stat. 31 Ed. 3. cap. 2. *Covenably* indowed, that is, indowed as is fitting. 4 *H*. 8. *c*. 12. See *Plowd*. 472.

Covenant, (*conventio*) Is the conſent and agreement of two or more perſons to do or not to do ſome act or thing, contracted between them. Alſo it is the declaration the parties make, that they will ſtand to ſuch agreement, relating to lands or other things; and is created by deed in writing, ſealed and executed by the parties: A covenant may likewiſe be implied in the contract, as incident thereto. 2 *Mod*. *Entr*. 91. If the perſons do not perform their covenants, an action of *covenant* is the remedy to recover damages for the breach. *Ibid*.

Under this head is to be conſidered,

I. *The ſeveral kinds of covenants, and by what words they are created.*

II. *What covenants are good and binding, and by whom they may be made.*

III. *Who ſhall take advantage of covenants, and who are bound by them.*

IV. *What ſhall be a performance, and what a breach of covenant.*

I. *Of the ſeveral kinds of covenants, and by what words they are created.*

A *covenant* is generally either in fact or in law: in *fact* is that which is expreſly agreed between the parties, and inſerted in the deed; and *in law*, is that *covenant* which the law intends and implies, though it be not expreſſed in words; as if a leſſor demiſe and grant to his leſſee a houſe or lands, &*c*. for a certain term, the law will intend a *covenant* on the leſſor's part, that the leſſee ſhall, during the term, *quietly enjoy* the ſame againſt all incumbrances. 1 *Inſt*. 384.

There is alſo a *covenant real*, and *covenant perſonal*: a *covenant real* is, that whereby a man ties himſelf to paſs a thing real, as lands or tenements; or to levy a fine of lands, &*c*. And *covenant perſonal*, is where the ſame is annexed to the perſon and merely perſonal; as if a perſon *covenants* with another by deed to build him a houſe, or to ſerve him, &*c*. *F*. *N*. *B*. 145. 5 *Rep*. 10.

Covenants are likewiſe *inherent*, that tend to the ſupport of the land or thing granted; or are *collateral* to it; and are *affirmative*, where ſomewhat is to be performed; or *negative*; *executed*, of what is already done, or *executory*: but a *covenant* being to bind a man, to do ſomething *in futuro*, is for the moſt part *executory*. 1 *Vent*. 176. *Dyer* 112, 271. And where a *covenant* ſhall be conſtrued *dependant* upon another, and when *diſtinct* by itſelf, ſee *Winch* 74. 3 *Cro*. 107.

As to the words by which covenant may be created.

It is held in all caſes where words that begin any ſentence are *conditional*, and give another remedy, they ſhall not be conſtrued a *covenant*; and yet if words of *condition* and covenant are coupled together in the ſame ſentence, as *Provided always, and it is covenanted*, &c. in that caſe they may be adjudged both a *condition* and *covenant*. *March* 103.

The law does not ſeem to have appropriated any ſet form of words, which are abſolutely neceſſary to be made uſe of in creating a *covenant*; and therefore it ſeems that any words will be effectual for that purpoſe, which ſhew the parties concurrence to the performance of a future act; as if leſſee for years covenants to repair, &*c*. *Provided always, and it is agreed, that the leſſor ſhall find great timber*, &*c*. this makes a *covenant* on the part of the leſſor to find great timber, by the word *agreed*, and it ſhall not be a qualification of the *covenant* of the leſſee. 1 *New Abr*. 527.

There is this difference however between a *covenant* and *condition*; a *condition* gives entry, and *covenant* gives an action only. *Owen* 54. A perſon cannot have action of *covenant* upon a verbal agreement, for it cannot be grounded without *writing*, except by ſpecial cuſtom. *F*. *N*. *B*. 145.

II. *What covenants are good and binding, and by whom they may be made.*

All *covenants* between perſons muſt be to do what is *lawful*, or they will not be binding; and if the thing to be done be *impoſſible*, the *covenant* is void. *Dyer* 112. But where the thing is lawful at the time of the *covenant* made, and afterwards the matter agreed to be done is prohibited by act of parliament, yet ſuch *covenant* will be binding. 3 *Mod*. 39. And if a man *covenants* to do a thing *before* a *certain time*; and it becomes *impoſſible* by the act of God, this ſhall not excuſe him, inaſmuch as he hath bound himſelf preciſely to do it. 2 *Danv*. *Abr*. 84.

If a perſon *covenants* expreſly to repair a houſe, and it is burnt down by lightening, or any other accident, yet he ought to repair it; for it was in his power to have provided againſt it by his contract. *Alleyn* 26, 27. 1 *Lil*. *Abr*. 149. But he is not ſo bound by *covenant* in law. Where houſes are blown down by tempeſt, the law excuſes the leſſee in action of waſte; though in a covenant to repair and uphold, it will not. 1 *Plowd*. 29. If a leſſee for years, rendering rent, *covenants* for him and his aſſigns to repair the houſe, and after the leſſee aſſigns over the term, and the leſſor accepts the rent from the aſſignee, and then the *covenant* is broken; notwithſtanding acceptance of rent from the aſſignee, action of covenant lies againſt the firſt leſſee, on his expreſs *covenant* to repair: and this perſonal *covenant* cannot be transferred by the acceptance of the rent. 2 *Danv*. *Abr*. 240.

Action of *covenant* alſo lies on *covenant* for payment of rent againſt ſuch leſſee; but not action of *debt* after acceptance. 3 *Rep*. 24. In *covenant* upon a demiſe, rendering rent, the defendant cannot ſay, that part of it was to be allowed; for this is a *covenant* againſt a *covenant*. *Comb*. 21.

An infant within age may bind himſelf apprentice; but neither at Common law nor by ſtatute may be bound by *covenant* for his apprenticeſhip, ſo as to make him liable to an action of *covenant*, if he depart, &*c*. But by the cuſtom of *London* he may bind himſelf by his *covenant* at fourteen years old. 1 *Cro*. 129. *Winch* 63.

III. *Who ſhall take advantage of covenants, and who are bound by them.*

There may be an agreement and *covenant*, only to be performed by the parties themſelves; and there are ſome *covenants* which none but the party and his *heirs* may take advantage of, being ſuch as concern the *inheritance*, and deſcend to the heir, as knit to the eſtate: *Covenants* in *groſs* go to the executors, &*c*. 1 *Rol*. *Abr*. 520. 2 *Danv*. 235. Not only parties to deeds, but their executors and adminiſtrators, ſhall take advantage of *inherent covenants*, though not named; and every *aſſignee* of the land may have the benefit of ſuch *covenants*: Likewiſe *executors* and *aſſigns* are bound by them, although not named, as a *covenant* to repair, &*c*. 5 *Rep*. 16, 17. 1 *Cro*. 552. If a man *covenants* with another to do any thing, his *heir* ſhall not be bound, *unleſs* he be *expreſly named*: And yet where a leſſee *covenants* to repair, the *heir* ſhall have the benefit of the *covenant*, though not named, *becauſe it runs with the land.* 2 Lev. 92. 5 Rep. 8.

The grantee of a reverſion may bring action of *covenant* againſt a leſſee, as well in the county where the demiſe was made, as in the county where the lands lie. *Carthew* 183. And grantees of reverſions have the like remedy by action of *covenant* againſt termors, as the leſſors and their heirs, *&c.* by *Stat.* 32 *H.* 8. *c.* 28. A perſon *covenants* with another, to pay him money at a time to come, and doth not ſay to his executors, *&c.* if the *covenantee* die before the day, yet his executors or adminiſtrators ſhall have the money. *Dyer* 112, 257. And in *every caſe* where the *teſtator* is bound by a *covenant*, the *executor* ſhall be bound by it; if it be not determined by his death. 48 *Ed.* 3. 2. 2 *Danv.* 232. *Aſſignees* ſhall not have an action upon breach of any *covenant*, before their time. *Cro. Eliz.* 863. An *aſſignee* ſhall be charged in a writ of *covenant* for breach, after the death of the firſt leſſee; as it is a charge on the land, *i. e.* in caſe of repairs. 2 *Danv.* 238.

If *A.* ſeiſed of land in fee, conveys it to *B.* and *covenants* with *B.* his heirs and aſſigns, to make any other aſſurance upon requeſt; and after *B.* conveys it to *C.* who conveys it to *D.* and then *D.* requires *A.* to make another aſſurance, according to the *covenant*; if he refuſes, *D.* ſhall have an action of *covenant* againſt him, as aſſignee to *B.* 2 *Danv.* 236. A leſſor made a leaſe of an houſe for years, excepting two rooms, and free paſſage to them; the leſſee aſſigned the term, and the leſſor brought *covenant* againſt the aſſignee for diſturbing him in his paſſage to thoſe rooms; and adjudged, that the action lies: For the *covenant* goes with the tenement, and binds the aſſignee. (*N. B.* This relates to the *paſſage.*) 1 *Salk.* 196. If a man who leaſes for years, ouſts the leſſee, he ſhall have *covenant* againſt him. 48 *Ed.* 3. 2. See 2 *Danv.* 234. A man grants a watercourſe, and afterwards ſtops it; for this voluntary misfeaſance, *covenant* lies. 1 *Saund.* 322. Though where the *uſe* of a thing is demiſed, and it runs to decay, ſo that the leſſee cannot have the benefit of it, for this nonfeaſance no action of *covenant* lieth: Nor may *covenant* be brought for a thing which was not *in eſſe* at the making of the leaſe. 2 *Danv.* 233.

If one makes a leaſe for years, reſerving a rent, action of *covenant* lies for non-payment of the rent; for the *reddendum* of the rent is an agreement for payment of it, which will make a *covenant*. 2 *Danv.* 230. A leaſe is made to two, and one ſeals the deed, but the other doth not; if he accepts the eſtate and occupies the land, he is bound to perform the *covenants* for payment of the rent, reparations and the like. 1 *Shep. Abr.* 458.

If one man *covenants* to pay another 20*l.* at a day; although he may have action of debt for the 20*l.* yet it is ſaid he may have *covenant* at his election. 2 *Danv.* 229.

It is agreed that *A. B.* ſhall pay to *C. D.* 100*l.* for lands in *E.* this is a mutual *covenant*, whereon action of *covenant* may be brought if *C. D.* will not convey. 1 *Sid.* 423. But where there are mutual *covenants*, and the one not to be performed before a precedent *covenant*, in ſuch caſe the *covenant* is not ſuable till the other is performed: Though if the *covenants* are diſtinct and mutual, ſeveral actions may be brought by and againſt the parties. 1 *Lil. Abr.* 350. 2 *Mod.* 74. In a covenant to pay another ſo much money, he making him an eſtate in ſuch land, *&c.* it has been adjudged, that if he tender the *covenantor* a feoffment, and offer to make livery, he may have action of *covenant* for the money, as if he had made a title. 3 *Salk.* 107. If a perſon *covenants* that he hath good right to grant, *&c.* and he hath no right, it is a breach of *covenant*, for which action of *covenant* lies. 2 *Bul.* 12. Where a man *covenants* that he hath *power to grant*, and that the grantee ſhall *quietly enjoy* notwithſtanding any claiming under him; theſe are diſtinct *covenants*, for one goes to the *title*, and the other to the *poſſeſſion.* 1 *Mod.* 101. A *covenant* for the leſſee to enjoy againſt all men; this extends not to *tortious acts* and entries, *&c.* for which the leſſee hath his proper remedy againſt the aggreſſors. *Vaugh.* 111, 120.

Where there is a *covenant* to ſave harmleſs againſt a *certain perſon*, there the *covenantor* muſt ſave the *covenantee* harmleſs againſt the entry of that perſon, be it by wrong or rightful title: But if it be to ſave harmleſs againſt *all perſons*, the entry and eviction muſt be by *lawful title.* *Cro. Eliz.* 213. Where the *covenant* is to do a thing, and no time appointed for performance, it muſt be done in convenient time. 2 *And.* 73. *Dyer* 57, 150. *Hob.* 28.

But a *covenant* muſt wait upon and join with the *grant*; ſo that if it be to make ſuch aſſurance as ſhall be reaſonably deviſed, it muſt be of an aſſurance that differs not from the bargain: and when the eſtate to which a *covenant* is annexed is at an end, the *covenant* is gone. *Hob.* 276. 1 *Leon.* 179. In an indenture, the word *covenant*, is a word both of leſſor and leſſee; and therefore if the leſſee *covenants* to pay the rent, this is a reſervation. Though when there is a *covenant* for a leſſee to repair, and he makes an *under-leaſe* to one who is in poſſeſſion, the under leſſee is not liable to that *covenant*, in law or equity. 1 *Rol. Rep.* 80. 1 *Vern.* 87.

An expreſs *covenant* in a deed, will qualify the general *covenant* in law: though, on a *covenant* in *law*, the leſſee cannot charge the *executors* or *adminiſtrators* of the leſſor; as he may upon an expreſs *covenant* for quiet enjoyment. *Dyer* 257. See 4 *Rep.* 80. If a leſſor *covenant* with the leſſee that he ſhall have houſe-bote, *&c.* by aſſignment of his bailiff, this is a good *covenant*: and yet it doth not reſtrain the power that the leſſee hath by law to take thoſe things without aſſignment: But if a leſſee *covenants*, that he will not cut any timber, without the leave or aſſignment of the leſſor; by this he will be reſtrained. *Dyer* 19, 115.

IV. *What ſhall be a* performance, *and what a* breach *of Covenant.*

Not any duty or cauſe of action ariſes on a *covenant*, till it is broken: and as to breaches of covenant, if a perſon by his own act diſables himſelf to perform a covenant, it is a breach thereof. 5 *Rep.* 21. Though there can be be no covenant or breach, where a leaſe, *&c.* is void. *Yelv.* 18, 19. But here, although when a covenant concerns the *intereſt* of the leaſe, as where it is for paying rent, it is void, if the leaſe be ſo: yet where covenants are *collateral* to the leaſe and intereſt, though that be void, the covenants may be good. *Owen* 136. And if a covenant to do a thing is performed in ſubſtance, and according to the intent, it is good, though it differs from the words; and on the other hand, although the covenantor performs the letter of his covenant, if he does any act to defeat the intent and uſe of it, he is guilty of a *breach.* Mod. Ent. Engl.

In covenant that a perſon ſhall hold land free from all incumbrances, and be kept indemnified from arrears of rent; there, till an action is brought, or diſtreſs made, he is not damnified; and a ſuit in Chancery is no breach in ſuch caſe; but where a jointure, or dower is recovered, it is. *Skin.* 397. *Moor* 859. *Palm.* 339. If covenants *perpetual* are once broken, and an action is brought, and recovery thereon; upon a new breach, a *ſcire facias* ſhall be had on that judgment, and the plaintiff need not bring a new writ of covenant. *Cro. Eliz.* 5. By 8 & 9 *W.* 3. *c.* 11. When the intention of the parties can be collected out of a deed, for the doing or not doing of the thing, covenant ſhall be had thereupon. *Chanc. Rep.* 294. A covenant, being one part of a deed, is ſubject to the general rules of expoſition of all parts of the deed: And in a covenant the laſt words, that are general, ſhall be expounded by the firſt words, which are ſpecial and particular. *Vent.* 218. Alſo a later covenant cannot be pleaded in bar to a former.

When a covenant is to *two* perſons *jointly*, one of them may not bring action of covenant, or plead alone, but both muſt join. 1 *Nelſ.* 558. If a man is bound to perform all the covenants in an indenture, and they are all in the *affirmative*, he may plead performance generally. *Co. Lit.* 303. Covenants in the *negative* muſt be pleaded ſpecially. *Ibid.* 330. When *ſome* covenants are in the *negative*, and ſome in the *affirmative*, the defendant is to plead *ſpecially* to the *negative* covenants, that he had not done the thing, and *performance* generally as to the affirmative: (*ſed qu.* and *vide poſt.*) And where the *negative* covenants are *againſt law*, and the *affirmative agreeable to law*, *performance* generally may be pleaded. *Moor* 856. If any of the covenants are in the *disjunctive*, ſo that it is in the election of the covenantor to perform the one, or the other, the performance ought to be *ſpecially pleaded*, that it may appear *what part* hath been performed. *Cro. Eliz.* 23. 1 *Nelſ.* 573. And commonly where an act is to be done, according to a covenant, he who pleads performance ought to do it ſpecially. 1 *Leon.* 136.

In debt upon bond for performance of covenants, one whereof for peaceable enjoyment, and free from all incumbrances, and another for farther aſſurance, *&c.* the defendant ſhould plead ſpecially, that the houſe was free from incumbrances at the time of the conveyance made, and not charged at any time ſince, and that no farther aſſurance had been required, or ſuch an aſſurance which he had executed, *&c.* yet where a defendant pleaded generally, in this caſe it was held good. 1 *Lutw.* 603.

Covenants are generally taken moſt ſtrongly againſt the covenantor, and for the covenantee. *Plowd.* 287. But it is a rule in law, that where one thing may have ſeveral intendments, it ſhall be conſtrued in the moſt favourable manner for the covenantor. 1 *Lut.* 490. The common uſe of covenants is for aſſuring of land; quiet enjoyment free from incumbrances; for payment of rent reſerved; and concerning repairs, *&c.* And in deeds of covenant, ſometimes a clauſe for performance, with a penalty, is inſerted in the body of the deed: Other times, and more frequently, bonds for performance, with a ſufficient penalty, are given ſeparate; which laſt being ſued, the jury muſt find the penalty; but on covenant, only the damages. *Wood's Inſt.* 250. Vide the *Stat.* 8 *&* 9 *W.* 3. *c.* 11. And *vide ante* & *poſt*.

Covenant for non-payment of rent, was referred to the maſter as to the rent, and on payment thereof proceſs to ſtay as to *that*, but there being another breach as to not repairing, the plaintiff might proceed for *that*. *Anon. Wilſ. Rep. Par.* 1. *p.* 75. In an action of covenant, it is not neceſſary to aver that the plaintiff performed his covenants. *Jodderell* v. *Cowell. Rep. Temp. Hardw.* 343-4.

By the 8 *&* 9 *W.* 3. *c.* 11. In actions on bonds, *&c.* plaintiff may aſſign as many breaches as he pleaſes, and the jury may aſſeſs damages: on defendant's paying damages, execution may be ſtayed, but judgment ſhall remain to anſwer any farther breach, and plaintiff may have a *ſcire facias* againſt the defendant.

It is held an action of *covenant* may be laid in *London*, for non-payment of rent on a leaſe of lands in any other place. 1 *Sid.* 401. And if, in this action, a ſum be miſcaſt, either two little or two much; it is amendable; and not like to the action of debt, which if alledged leſs than it is, without ſhewing the reſt to be ſatisfied, it is ill. 3 *Keb.* 39. 2 *Cro.* 247. In action of covenant, the plaintiff muſt have recourſe to the deeds or writings, and the circumſtances of time, place, *&c.* and take notice what particular covenant in the deed it is beſt to inſiſt upon, to lay a breach right, *&c.* the words of covenanting are, *covenant*, *grant*, *promiſe*, and *agree*, *&c.* but there needs no great exactneſs in words to make a covenant. See *Bonds*.

Further, this word is taken for the *ſolemn league and covenant*; which was a ſeditious conſpiracy, invented in *Scotland*, voted illegal by parliament, and proviſion is made againſt it, by *Stat.* 14 *Car.* 2. *cap.* 4.

Covenant to ſtand ſeiſed to Uſes, Is when a man that hath a wife, children, brother, ſiſter, or kindred, doth by covenant in writing under hand and ſeal agree that for their or any of their proviſion or preferment, he and his heirs will ſtand ſeiſed of land to their uſe; either in fee-ſimple, fee-tail, or for life. The uſe being created by the *Stat.* 27 *H.* 8. *c.* 10. which conveyeth the eſtate as the uſes are directed; this covenant to ſtand ſeiſed is become a conveyance of the land ſince the ſaid ſtatute. The conſiderations of theſe deeds, are natural affection, marriage, *&c.* and the law allows in ſuch caſes conſideration of blood and marriage, to raiſe uſes, as well as money and other valuable conſideration when a uſe is to a ſtranger. *Plowd.* 302. There are no conſiderations now to raiſe uſes upon covenants to ſtand ſeiſed, but natural love and affection, which is for advancement of blood; and conſideration of marriage, which is the joining of the blood and marriage together: other conſiderations, as money, *&c.* for land, though the words in the deed are *ſtand ſeiſed*, yet they are bargains and ſales, and without *inrolment* they raiſe no uſe. *Carter* 138. *Lil. Abr.* 353.

The uſual covenant to ſtand ſeiſed to uſes need not be by deed indented and inrolled: (ſee above). And where a man limits his eſtate to the uſe of his wife for life, this imports a ſufficient conſideration in itſelf: Alſo if a perſon covenants to ſtand ſeiſed to the uſe of his wife, ſon, or couſin it will raiſe an uſe without any expreſs words of conſideration, for ſufficient conſideration appears. 7 *Rep.* 40.

In caſe of a covenant to ſtand ſeiſed, ſo much of the uſe as the owner doth not diſpoſe of, remains ſtill in him. 1 *Ventr.* 374. And where an uſe is raiſed by way of covenant, the covenantor continues in poſſeſſion; and there the uſes limited, if they are according to law, ſhall riſe and draw the poſſeſſion out of him: but if they are not, the poſſeſſion ſhall remain in him until a lawful uſe ariſeth. 1 *Leon.* 197. 1 *Mod.* 159, 160.

If on a covenant to ſtand ſeiſed to uſes, no uſe doth ariſe, yet it may be good by way of covenant and give remedy to the covenantee in an action; as if the covenant be future, that, in conſideration of a marriage, lands ſhall deſcend or remain to a ſon and the heirs of his body on the body of his wife; in this caſe the covenantee may have *writ of covenant* upon the covenant againſt the covenantor. But if a covenant be that a man and his heirs, ſhall from henceforth ſtand and be ſeiſed to ſuch and ſuch uſes, and the uſes will not ariſe by law: here no action of covenant lies on the covenant, for this action will never lie upon any covenant but ſuch as is either to do a thing hereafter, or where the thing is already done, and not when it is for a thing preſent. *Plowd.* 307, 398. *Finch's Law.* 49. See *Baron* and *Feme*.

Covert Baron, A married woman. *Stat.* 27 *Eliz. cap.* 3. See *Black. Com.* 1 *V.* 442. and *Com. Dig.* 1 *V.* tit. *Baron* and *Feme*.

Coverture, (*Fr.*) Any thing that *covers*; as apparel, a coverlet, *&c.* but it is by our law particularly applied to the ſtate and condition of a *married* woman, who is *ſub poteſtate viri*; and therefore diſabled to contract with any to the damage of herſelf or huſband, without his conſent and privity, or his allowance and confirmation thereof. *Bract. lib.* 1. *c.* 10. *lib.* 2. *c.* 15, *&c.* *Bro. Abr.* When a woman is married, ſhe is called a *Feme Covert*; and whatever is done concerning her, during the marriage, is ſaid to be during the *coverture*: All things that are the wife's, are the huſband's; nor hath the wife power over herſelf, but the huſband: And if the huſband aliene the wife's land, during the *coverture*, ſhe cannot avoid it during his life; but after his death, ſhe may recover by *cui in vita*. Terms de Ley. See *Baron* and *Feme*.

Covin, (*Covina*) Is a deceitful compact between two or more to deceive or prejudice others, as if tenant for life or in tail, conſpires with another, that he ſhall recover the land which he the tenant holds, in prejudice of him in reverſion. *Plowd.* 546. *Covin* is commonly converſant in and about conveyances of land by fine, feoffment, recovery, *&c.* And then it tends to defeat purchaſers of the lands they purchaſe, and creditors of their juſt debts; and ſo it is uſed in deeds of gift of goods: It may be likewiſe ſometimes in ſuits of law, and judgments had in them. But wherever *covin* is, it ſhall never be intended, unleſs it appears and be particularly found: for *covin* and fraud though proved, yet muſt be found by the jury, or it will not be good. *Brownl.* 188. *Bridgm.* 112.

If one make a leaſe to a perſon by *covin*, and after grant another leaſe to another *bona fide*, but without any fine or rent; in this caſe the ſecond leſſee may not avoid the firſt leaſe, becauſe he is not a purchaſer that comes in for money. 3 *Rep.* 83. On recovery by a good title, there may be *covin*; as where tenant for life by aſſent, *&c.*

ſuffers a recovery by *Nil dicit*, without making any defence: And if a man hath a rightful and juſt cauſe of action, and of *covin* and conſent ſhall raiſe up a tenant by wrong againſt whom he may recover; the *covin* doth ſo ſuffocate the right, that the recovery, although it be upon good title, ſhall not bind. *Bro. Covin.* 47. *Co. Lit.* 357. 1 *Shep. Abr.* 365. *A.* is tenant for life, remainder in tail to *B.* and a *præcipe* is brought againſt them as jointenants, by *covin* between the demandant and *A.* and an anſwer procured for *B.* as jointenant, and they join the miſe, (or iſſue) and after make default, whereby final judgment is given; this ſhall not defeat the eſtate of *B.* who may bring a writ of diſceit, and ſhall be reſtored to his land. *Rol. Abr.* 621.

If a man that has a right to certain lands, by *covin* cauſes another to ouſt the tenant of the land, to the intent to recover it from him, and he recovers accordingly againſt him by action tried; yet he ſhall not be remitted to his ancient right; but is in of the eſtate of him who made the ouſter; and an aſſiſe lies againſt him. 2 *Danv. Abr.* 309. Land is aliened, pending a writ of debt, by *covin*, to avoid the extent thereof for the debt; the land ſo aliened ſhall be extended, when the *covin* appears upon the return of the *elegit* by the ſheriff. *Ibid.* 311. If a man makes a deed of gift, &c. of his goods in his life-time by *covin*, to ouſt his creditors of their debts, after his death the donee or vendee ſhall be charged for them. See 50 *H.* 3. *c.* 6. and the ſeveral ſtatutes of *frauds*. If goods are ſold in market overt by *covin*, on purpoſe to bar him that hath right, this ſhall not bar him thereof. 2 *Inſt.* 713. See *Frauds*, &c.

Council. In the city of *London*, there are common *council-men* choſen in every ward at a court of wardmote held by the aldermen of the reſpective wards on St. *Thomas*'s day yearly; They are to be choſen out of the moſt ſufficient men; and ſworn to give true *council* for the common profit of the city, &c. *Lex Londinen.* 117. In the court of *common council*, are made laws for advancement of trade; and committees yearly appointed, &c. But acts made by them, are to have the aſſent of the Lord Mayor and Aldermen, by *Stat.* 11 *Geo.* 1. *c.* 18. and ſee 19 *Geo.* 2. *c.* 8.

Counſellor, (*Conſiliarius*) Is a perſon retained by a client to plead his cauſe in a court of judicature. *A counſellor* at law hath a privilege to enforce any thing which is informed him by his client, if pertinent to the matter, and is not to examine whether it be true or falſe; for it is at the peril of him who informs him. *Cro. Jac.* 90. But after the court hath delivered their opinions of the matter in law depending before them, the *counſel* at the bar are not to urge any thing further in that cauſe. 1 *Lil. Abr.* 355. A *counſellor* muſt not ſet his hand to a frivolous plea, to delay a trial; which argues ignorance or foul practice. *Ibid.* And as *counſellors* have a ſpecial privilege to practice the law, they are puniſhable by attachment, &c. for miſbehaviour. 1 *Hawk. P. C.* 157. But ſometimes men, ſued for money owing, may be under ſuch circumſtances, without default of their own, as to render it abſolutely neceſſary to obtain *time*, by thoſe means the law muſt unavoidably allow, and by obtaining *time*, an innocent man frequently avoids *ruin* to himſelf and family. In ſuch caſes, perhaps, a counſel may, *in foro conſcientiæ*, think himſelf excuſed for ſigning ſuch a plea, as may anſwer ſo ſalutary a purpoſe. No recuſant convict, or non-juror, ſhall practice the law, as a *councellor*, or otherwiſe, under penalties, by *Stat.* 3 *Jac.* 1. *c.* 5. 13 & 14 *W.* 3. *c.* 6.

Counſel, for *priſoners*. No *counſel* is allowed a *priſoner* upon a general iſſue, on indictment of felony, &c. unleſs ſome doubtful point of law ariſe: The court is the priſoner's only *counſel*; and the behaviour of the priſoner in his own defence, is one means of diſcovering the truth. In appeals, and upon ſpecial pleas, &c. the priſoner ſhall have *counſel* aſſigned him by the court: though *counſel* is not to prompt the priſoner in matters of fact. 2 *Hawk.* 400, 401. Proviſion is made for *counſel* for priſoners in treaſon, by *Stat.* 7 & 8 *W.* 3. *c.* 3. which is extended to trials, upon *impeachments*, by 20 *Geo.* 2. *c.* 30.

A man of humanity might wiſh counſel was allowed to priſoners, in *every* caſe: And it ſeems ſomething peculiar, that in all *civil* ſuits, in the moſt trifling cauſes, counſel is allowed; and yet, where a man is tried for his *life*, except in the foregoing caſes, that aſſiſtance is denied him.

Count, Signifies the original declaration of complaint in a real action. As declaration is applied to perſonal, ſo *count* is applicable to real cauſes: but *count* and declaration are oftentimes confounded, and made to ſignify the ſame thing. *F. N. B.* 16, 60. In paſſing a recovery at the common pleas bar, a ſerjeant at law *comnts* upon the *præcipe*, &c. See *Countors* and *Declarations*.

Countee, (Fr. *Comte*) Was the moſt eminent dignity of a ſubject, before the conqueſt; and thoſe who in ancient times were created *countees*, were men of great eſtate: for which reaſon, and becauſe the law intends that they aſſiſt the King with their counſel for the public good, and preſerve the realm by their valour, they had great privileges; as they might not be arreſted for debt or treſpaſs; or be put on juries, &c. Of old the *countee* was *præfectus*, or *præpoſitus comitatus*, and had the charge and cuſtody of the *county*; but this authority the *ſheriff* now hath. 9 *Rep.* 46. A *countee* or *count*, is an earl, in the law *French*. *Law Fr. Dict.*

Countenance. This word ſeems to be uſed for credit or eſtimation. *Old Nat. Br.* 111. And in the *Stat.* 1 *Ed.* 3. *c.* 4. See *Contenement*.

Counter, (*Computatorium* from the Lat. *Computare*) Is the name of two priſons in *London*, the *Poultry counter*, and *Woodſtreet-counter*, for the uſe of the city, to confine debtors, peace-breakers, &c. *Cowel.*

Counterfeits. Perſons obtaining any money, goods, &c. by *counterfeit* letters or falſe tokens, being convicted before juſtices of aſſiſe, or juſtices of peace, are to ſuffer ſuch puniſhment as ſhall be thought fit, under death; as impriſonment, pillory, &c. *Stat.* 33 *H.* 8. *cap.* 1. It was the opinion of Sir *Edward Coke*, that upon this ſtatute the offender could not be fined; and that only corporal pains ought to be inflicted: But it hath been otherwiſe adjudged in *Terry*'s caſe, who, by a falſe note in the name of another, obtained into his hands a wedge of ſilver, of the value of two hundred pounds; and, on conviction thereof, was ſentenced to ſtand in the pillory, pay a fine of five hundred pounds to the King, and be impriſoned during the King's pleaſure. *Cro. Car.* 407.

The obtaining of money from one man to another's uſe, upon a falſe pretence of having a meſſage and verbal order to that purpoſe, is not (at Common law) puniſhable by criminal proſecution; it depending on a bare naked lie, againſt which, common prudence and caution may be a ſecurity. 6 *Mod.* 105. 1 *Hawk. P. C.* 188. Now *per Stat.* 30 *Geo.* 2. *c.* 24. Obtaining money, goods, &c. by falſe pretences, (a very vague expreſſion) the offender is liable to fine and impriſonment, or pillory, or tranſportation for ſeven years.

Counterfeiting the *King's ſeal*, or money, &c. which is treaſon, *vide Treaſon*: And *counterfeiting Exchequer bills*, bank-bills, lottery-orders, &c. which is felony. See *Felony, Fraud*.

Countermand, Is where a thing formerly executed, is afterwards by ſome act or ceremony made void by the party that firſt did it. And it is either actual, by deed; or implied: *Actual*, where a power to execute any authority, &c. is by a formal writing, for that very purpoſe put off for a time, or made void: and *implied*, is where a man makes his laſt will and teſtament, and thereby deviſes his land to *A. B.* if he afterwards enfeoffs another of the ſame land, here this feoffment is a *countermand* to the will, without any expreſs words for the ſame, and the will is void as to the diſpoſition of the land: Alſo if a woman ſeiſed of land in fee-ſimple, makes a will and deviſeth the ſame to *C. D.* and his heirs, if he ſurvives her; and after ſhe intermarries with the ſaid *C. D.* there, by taking him to huſband, and coverture at the time of her death, the will is *countermanded*. *Terms de Ley*. But if a woman makes a leaſe at will, and then marries, this marriage is no *countermand* to the leaſe, without expreſs matter done by the huſband to determine the will.

Where land is deviſed, and after a leaſe made thereof for years only; it ſhall not be a *countermand* of the will, which is good notwithſtanding for the reverſion after the leaſe for years is ended: But in caſe a man have a leaſe for years, and gives it by his will, and after ſurrenders it;

i ; it is a *countermand* of the deviſe, and the deviſee ſhall not have his leaſe. *Dyer* 47. *Goldſb.* 93. If a copyholder like to die, do ſurrender his eſtate to the uſe of his wiſe or children, without any conſideration of money, *&c.* and he recover before the preſentment and admittance, it may be *countermanded*: It is otherwiſe if it be to the uſe of a ſtranger. *Kitch.* 82. If there be a feoffment with letter of attorney to make livery and ſeiſin; and before it is made the feoffor makes a feoffment, or bargain and ſale of the land, or leaſe to another, it will be a *countermand* in law of the authority given by the letter of attorney. 2 *Brownl.* 291. A perſon may *countermand* his command, authority, licence, *&c.* before the thing is done; and if he dies, it is *countermanded*. There is a *countermand* of *notice of trial*, &c. in law proceedings.

Counterpart. When the ſeveral parts of an indenture are interchangeably executed by the ſeveral parties, that part or copy which is executed by the grantor is uſually called the *original*, and the reſt are *counterparts*: though of late it is moſt frequent (and better) for all the parties to execute every part; which renders them all originals. *Black. Com.* 2 *V.* 296.

Counterplea, Is when the tenant in any real action, tenant by the curteſy, or in dower, in his anſwer and plea, vouches any one to warrant his title, or prays in aid of another, who hath a larger eſtate; as of him in reverſion, *&c.* Or where one that is a ſtranger to the action, comes and prays to be received to ſave his eſtate; then that which the demandant alledgeth againſt it, why it ſhould not be admitted, is called a *counterplea*: In which ſenſe it is uſed *Stat.* 25 *Ed.* 3. *cap.* 7. So that *counterplea* is in law a replication to *Aid Prier*; and is called *counterplea to the voucher*: But when the voucher is allowed, and the vouchee comes and demands what cauſe the tenant hath to vouch him, and the tenant ſhews his cauſe, whereupon the vouchee pleads any thing to avoid the warranty; that is termed a *counterplea of the warranty*. *Term: de Ley.* *Stat.* 3 *E.* 1. *cap.* 39. If on demurrer to a *counterplea* of the voucher upon a warranty, it be found againſt the vouchee, judgment ſhall not be peremptory, but only *ſtet vocare*: It is otherwiſe upon a plea to the writ tried by the country. 4 *Rep.* 80 10 *Rep.* 34.

Counter-Rolls, Are the *rolls* which *ſheriffs* of counties have with the *coroners* of their proceedings, as well of appeals, as of inqueſts, *&c.* *Stat.* 3. *Ed.* 1. *c.* 10.

Countors, (Fr. *Contours*) Have been taken for ſuch *ſerjeants* at law, which a man retains to defend his cauſe, and ſpeak for him in any court, for their fees. *Horn's Mirror, lib.* 2. And as in the court of *C. B.* none but ſerjeants at law may plead; they were anciently called *Serjeant Countors.* 1 *Inſt.* 17.

County, (*Comitatus*) Signifies the ſame with *ſhire*, the one coming from the *French*, the other the *Saxons*; and contains a circuit or portion of the realm, into which the whole land is divided, for the better government of it, and the more eaſy adminiſtration of juſtice: So that there is no part of this kingdom that lies not within ſome county; and every county is governed by a yearly officer whom we call a ſheriff. *Forteſcue, cap.* 24. Of theſe *counties*, there are in *England* forty, beſides twelve in *Wales*, making in all fifty-two.

County Palatine. There are four *counties* of ſpecial note, which are therefore termed *Counties Palatine*; as *Lancaſter*, *Cheſter*, *Durham*, and *Ely*; and we read anciently of the *counties* palatine of *Pembroke* and *Hexam*, though they have long ſince loſt their privileges. The chief governors of the *counties* palatine, by ſpecial charter from the King, heretofore did all things touching the adminiſtration of juſtice as abſolutely as the prince himſelf in other *counties*, only acknowledging him their ſuperior and ſovereign: But by the *Stat.* 27 *H.* 8. *cap.* 24. their power is abridged. 4 *Inſt.* 204, 221.

The *counties palatine* are reckoned among the ſuperior courts: And are privileged as to pleas, ſo as no inhabitant of ſuch *counties* ſhall be compelled by any writ to appear or anſwer out of the ſame; except for error, and in caſes of treaſon, *&c.* and the *counties* palatine of *Cheſter* and *Durham*, are by preſcription, where the King's writ ought not to come, but under the ſeal of the *counties* palatine; unleſs it be writs of proclamation. *Cromp. Juriſ.* 137. 1 *Danv. Abr.* 750.

But *certiorari* lies out of *B. R.* to juſtices of a *county* palatine, *&c.* to remove indictments, and proceedings before them. 2 *Hawk. P. C.* 286.

There is a court of Chancery in the *counties* palatine of *Lancaſter* and *Durham*, over which there are Chancellors; that of *Lancaſter* called Chancellor of the Duchy, *&c.* and there is a court of Exchequer at *Cheſter*, of a mixt nature, for law and equity, of which the *Chamberlain of Cheſter* is judge. There is alſo a Chief Juſtice of *Cheſter*; and other juſtices in the other *counties* palatine, to determine civil actions and pleas of the crown.

The biſhops of *Durham* and *Ely*, have thoſe *counties* palatine; and if any erroneous judgment be given in the courts of the biſhoprick of *Durham*, a writ of error ſhall be brought before the biſhop himſelf; and if he give an erroneous judgement thereon, a writ of error ſhall be ſued out returnable in *B. R.* 4 *Inſt.* 218. But it has been held, that *Ely* is not a *county* palatine, only a *royal* franchiſe, having cogniſance of pleas like unto the *Cinque Ports*. Carthew 109. Infants in *counties* palatine enabled to convey by order of the reſpective courts belonging to thoſe *counties*. 4 *Geo.* 3. *c.* 16.

Counties palatine, with *Jura Regalia*, were probably erected at firſt, becauſe they were adjacent to the enemies countries heretofore; as *Lancaſter* and *Durham* to *Scotland*, and *Cheſter* to *Wales*; that the inhabitants might have adminiſtration of juſtice at home, and remain there to ſecure the country from incurſions. 1 *Vent.* 155. The King may make a *county* palatine by his letters patent without parliament. 4 *Inſt.* 201.

Counties Corporate. Beſides the *counties* above mentioned, there are *counties corporate*. *Stat.* 3 *E.* 4. *c.* 5. And they are certain *cities*, with lands and territories, having liberties and juriſdiction by grant from the King: As the *county* of *Middleſex* annexed to the city of *London* by King *Hen.* 1. The *county* of the city of *York*, *anno* 32 *H.* 8. The *county* of the city of *Cheſter*, 42 *Eliz.* The *county* of the city of *Briſtol*, *Norwich*, *Worceſter*, *&c.* and the *county* of the town of *Kingſton* upon *Hull*, *Newcaſtle*, *&c.* *Lamb. Eiren. lib.* 1. *Cromp. Juſt.* 59. And *county*, in another ſignification, is uſed for the *county-court*, kept by the ſheriff within his charge, or by his deputy. *Stat.* 2 *Ed.* 6. *cap.* 25. *Bract. lib.* 3. *cap.* 7. See *Comitatus*.

County-Court, (*Curia Comitatus*) Is by *Lambert* called *Conventus*, in his explication of *Saxon* words, and divided into two ſorts; one retaining the general name, as the *county-court* held every month, by the ſheriff or his deputy: the other called the *turn*, held twice in every year, *viz.* within a month after *Eaſter* and *Michaelmas*; of both which you may read *Cromp. Juriſd. fol.* 241. All adminiſtration of juſtice was at firſt in the King's hands; but afterwards, when by the increaſe of the people the burden grew too great for him; as the kingdom was divided into counties, hundreds, *&c.* So the adminiſtration of juſtice was diſtributed amongſt divers courts; of which the ſheriff had the *county-court* for government of the county, and lords of liberties had their *leets* and *law-days*, for the ſpeedier and eaſier adminiſtring juſtice therein, *&c.*

Before the *courts* at *Weſtminſter* were erected, the *county-courts* were the chief courts of the kingdom: And among the laws of King *Edgar* it is ordained, that there be two *county-courts* kept in the year, in which there ſhall be a biſhop and an alderman, or earl, as judges; one to judge according to the Common law, and the other according to the eccleſiaſtical law: But theſe united powers of a biſhop and earl, to try cauſes, were ſeparated by *William* the Firſt, called the *Conqueror*; and ſoon after the buſineſs of *eccleſiaſtical* cogniſance was brought into its proper *courts*, and the common law buſineſs into the *King's Bench*. *Blount*.

That the *county-court* in ancient times, had the cognition of great matters, appears by *Glanv. lib.* 1. *cap.* 2, 3, 4. by *Bracton*, and *Briton*, in divers places, and *Fleta*, *lib.* 2. *c.* 62. But the power of this court was much reduced by *Magn. Chart. c.* 17. and by 1 *Ed.* 4. *cap.* 1. It had formerly, and now hath the determination of certain debts, &c. under 40*s.* And this *court* holdeth not plea *(de juris)* of any debt or damage to the value of 40*s.* or above; nor of treſpaſs *vi & armis, &c.*

But of debt and other actions perſonal above that ſum, the ſheriff may hold plea by force of a writ of *juſticies*, which is in nature of a commiſſion to him to do it. 4 *Inſt.* 266. Here the plaintiff takes out a ſummons, and if the defendant do not appear, an attachment or *diſtringas* is to be made out againſt him; but if the defendant appears, the plaintiff is to file his declaration, and after the defendant is to put in his anſwer or plea; and the plaintiff having joined iſſue, the trial proceeds, &c. whereupon, if verdict is given for the plaintiff, judgment is entered, and a *fieri facias* may be awarded againſt the defendant's goods, which may be taken by virtue thereof, and be appraiſed and ſold to ſatisfy the plaintiff: But if the defendant hath no goods, the plaintiff is without remedy in this *court*; for no *capias* lies therein, but an action may be brought at Common law, upon the judgment entered. *Greenwood of Courts, p.* 22.

No ſheriff is to enter in the *county-court*, any plaint in the abſence of the plaintiff; nor above one plaint for one cauſe, under penalties: The defendant in the *county-court* is to have lawful ſummons; and two juſtices of peace are to view the eſtreats of ſheriffs, before they iſſue them out of the *county-court*, &c. By *Stat.* 11 *Hen.* 7. *c.* 15. Cauſes are removed out of the *county-court*, by *recordare, pone*, and writ of *falſe judgment*, into *B. R.* &c.

See *Stat.* 23 *Geo.* 2. *c.* 33. for preventing delays and expences in the proceedings in the *county-court* of *Middleſex*, and for the more eaſy and ſpeedy recovery of ſmall debts in the ſaid *county-court*.

County-Rates, Are thoſe ordered by juſtices of peace at their quarter ſeſſions, who may make one general *rate*, to anſwer all former diſtinct rates, which ſhall be aſſeſſed on every pariſh, &c. and collected and paid by the high conſtables of hundreds to treaſurers appointed by the juſtices; which money ſhall be deemed the public ſtock, and be laid out in repairing of bridges, gaols, or houſes of correction, on preſentment made by the grand jury at the aſſiſes or quarter ſeſſions, of their wanting reparation; but appeal lies by the church-wardens and overſeers of the poor of the pariſhes to the juſtices at the next ſeſſions, againſt the *rate* on any particular pariſh. 12 *Geo.* 2. *c.* 29.

Counting-Houſe of the King's Houſhold, *(Domus Computus Hoſpitii Regis)* Is uſually called the *Green Cloth*; where ſit the Lord Steward, and Treaſurer of the King's Houſe, the Comptroller, Maſter of the *Houſhold*, Cofferer, and two Clerks of the *Green Cloth*, &c. for daily taking the accounts of all expences of the *Houſhold*, making proviſions, and ordering payment for the ſame; and for the good government *of the King's Houſhold* ſervants, and paying the wages of thoſe below ſtairs. *Stat.* 39 *Eliz. cap.* 7.

Courier, (from the Fr. *Courir* to ruin) An expreſs meſſenger of haſte.

Courracier, A *French* word ſignifying a horſe courſer. 2 *Inſt.* 719.

Court, *(Curia)* Signifies the King's palace, or manſion; but is more eſpecially the place where juſtice is judicially adminiſtered. The *ſuperior courts* are thoſe at *Weſtminſter*; and of *courts, ſome are of record*, and ſome not; which are accounted *baſe courts*, in reſpect of the reſt: a *court* of record is that *court* which hath power to hold plea, according to the courſe of the Common law, of real, perſonal, and mixed actions, where the debt or damage is 40*s.* or above; as the *King's Bench, Common Pleas, &c.*

A *court* not of record is where it cannot hold plea of debt or damages amounting to 40*s.* but of pleas under that ſum; or where the proceedings are not according to the courſe of the Common law, nor inrolled; as the *county-court*, and the *court-baron*, &c. 1 *Inſt.* 117, 260. 4 *Rep.* 52. 2 *Rol. Abr.* 574.

Every *court* of record is the *King's Court*, though his ſubjects have the benefit of it; and the free uſe of all *courts* of record and not of record, is to be granted to the people: The leet and tourn are the King's *courts*, and of record. 2 *Danv.* 259. The rolls of the ſuperior *courts* of record are of ſuch authority, as no proof will be admitted againſt them; and they are only triable by themſelves. 3 *Inſt.* 71. But as the county-*court*, *court*-baron, &c. are not *courts* of record, the proceedings therein may be denied, and tried by a jury: And upon their judgments, a writ of error lies not; but writ of falſe judgment. 1 *Inſt.* 117.

In the *courts* at *Weſtminſter*, the plaintiff need not ſhew at large in his declaration, that the cauſe of action ariſes within their juriſdiction, it being general: Inferior *courts* are to ſhew it at large, becauſe they have particular juriſdictions. 1 *Lil. Abr.* 371. Alſo nothing ſhall be intended to be within the juriſdiction of an inferior *court*, but what is *expreſly* ſo alledged: And if part of the cauſe ariſes from the inferior juriſdiction, and part thereof without it, the inferior *court* ought not to hold plea. 1 *Lev.* 104. 2 *Rep.* 16. An inferior *court*, not of record cannot impoſe a fine, or impriſon: But the courts of record at *Weſtminſter* may fine, impriſon, and amerce. 11 *Rep.* 43.

The King being the ſupreme magiſtrate of the kingdom, and intruſted with the executive power of the law, all *courts* ſuperior or inferior ought to derive their authority from the crown. *Staundf.* 54. 2 *Hawk. P. C.* 2. Though the King himſelf cannot ſit in judgment in any *court* upon an indictment, becauſe he is one of the parties to the ſuit. *Hawk. Ibid.* The King hath committed all his power judicial to one *court* or other. 4 *Inſt.* 71. And by ſtatute it is enacted, that all perſons ſhall receive juſtice in the King's *court*, and none take any diſtreſs, &c. of his own authority, without award of the King's *courts*. *Stat.* 52 *Hen.* 3. *cap.* 1.

It is ſaid the cuſtoms, precedents, and common judicial proceedings of a *court*, are a law to the *court*: And the determinations of *courts*, make points to be law. 2 *Rep.* 16. 4 *Rep.* 53. *Hob.* 298. All things determinable in *courts*, that are *courts* by the Common law, ſhall be determined by the judges of the ſame *courts*; and the King's writ cannot alter the juriſdiction of a court. 6 *Rep.* 11. The court of *B. R.* regulates all the inferior courts of law in the kingdom, ſo that they do not exceed their juriſdictions, nor alter their forms, &c. 22 *Car. B. R.* And as the court of King's Bench hath a general ſuperintendency over all inferior *courts*, it may award an attachment againſt any ſuch court, uſurping a juriſdiction not belonging to it: But it is ſometimes uſual firſt to award a writ of prohibition, and afterwards an attachment, upon its continuing to proceed. 2 *Hawk.* 149, 150.

If a court, having no juriſdiction of a cauſe depending therein, do nevertheleſs proceed, the judgment in ſuch court is *coram non judice*, and void; and an action lies againſt the judges who give the judgment, and any officer that executes the proceſs under them: Though where they have authority, and give an ill judgment, there the party who executes the proceſs, &c. upon the judgment, ſhall be excuſed. 1 *Lil. Abr.* 370.

Judges of inferiour courts may be puniſhed for miſbehaviour either by information or attachment. *Moravid's Caſe. Rep. Temp. Hardw. per Annaly*, 135. Any defects in the proceedings of an inferior court cannot be amended, by the return which is not part of the record. *Ibid.* The *King* v. *Holmes*, 365. Where an inferior court returns its proceedings, no diminution can be alledged. *Ibid. Sayer* v. *Curtis*, 367.

Action on the caſe lies againſt the plaintiff in an action for ſuing one in an inferior court, where the cauſe of action is out of its juriſdiction. 1 *Vent.* 369. And if a plaintiff on a contract for a large ſum, ſplits it into ſeveral actions for ſmall ſums to give an inferior court juriſdiction, a prohibition ſhall go. *Mod. Caſ.* 90.

Lord *Hardwicke* ſaid, he had ſeen good opinions, that an action of *debt* by *original* will lie in *B. R. Bounds* v. *Allen, Rep. Temp. Hardw. per Annaly*, 317. And now it is every day's practice.

Striking, in the courts at *Weſtminſter*, is puniſhed by cutting off the right hand, and forfeiture of goods, &c. How *contempts* to courts are puniſhable by fine and impriſonment, &c. Vide *Attachment*. See more of *Courts* under *Judges*.

Court of Admiralty, *(curia admiralitatis)* Was erected as generally held, by King *Ed.* 3. for deciding maritime cauſes; and the title of its judge is *Supremæ curiæ* admiralitatis *Angliæ locum tenens, judex ſive præſidens.* The admiralty court is not allowed to be a court of record, becauſe it proceeds by the civil law; and the judge has no power to take ſuch a recogniſance, as a court of record may: the proceſs and proceedings are in the name of the Lord *Admiral*, and by libel; and the plaintiff and defendant enter into a ſtipulation, or bond, for appearance, and to abide the ſentence. 4 *Inſt.* 134, 135. This court hath juriſdiction to determine all cauſes ariſing wholly upon the ſea, out of the juriſdiction of a county: and a judgment of a thing done upon land is void. 1 *Inſt.* 260. If the court of admiralty hold a plea of an agreement made at ſea, but put in writing and *ſealed* in foreign lands, a prohibition may be granted; but not if only a bare remembrance had been made of it at land. *Hob.* 69, 211. See *Latch* 11. By the cuſtom of the admiralty, goods may be attached in the hands of a third perſon *in cauſa civili & maritima.* March 204. See *Admiralty.*

Court-Baron, *(curia baronis)* Is a court which every lord of a manor hath within his own precinct: it is an inſeparable incident to the manor; and muſt be held by preſcription, for it cannot be created at this day. 1 *Inſt.* 58. 4 *Inſt.* 268. A court-baron muſt be kept on ſome part of the manor: and is of two natures.

1. By *Common* law, which is the *barons* or *freeholders court*, of which the freeholders being ſuitors are the judges; and this cannot be a court-baron without two ſuitors at leaſt.

2. By *cuſtom*, which is called the *cuſtomary court:* and concerns the cuſtomary tenants and copyholders, whereof the lord, or his ſteward, is judge. The court-baron may be of this double nature, or one may be without the other: but as there can be no court-baron at Common law without freeholders; ſo there cannot be a cuſtomary court without copyholders or cuſtomary tenants. 4 *Rep.* 26. 6 *Rep.* 11, 12. 2 *Inſt.* 119.

The freeholders court, which hath juriſdiction for trying actions of debt, treſpaſſes, &c. under 40*s.* may be had every three weeks; and is ſomething like a *county-court*, and the proceedings much the ſame: though on recovery of debt, they have not power to make execution, but are to diſtrain the defendant's goods, and retain them till ſatisfaction is made.

The other court-baron, for taking and paſſing of eſtates, ſurrenders, admittances, &c. is held but once or twice in a year, (uſually with the court-leet) unleſs it be on purpoſe to grant an eſtate; and then it is holden as often as requiſite. In this court the homage jury are to inquire that their lords do not loſe their ſervices, duties, or cuſtom; but that the tenants make their ſuits of court; pay their rents and heriots, &c. and keep their lands and tenements in repair; they are to preſent all common and private nuſances, which may prejudice the lord's manor; and every public treſpaſs muſt be puniſhed in this court, by amercement, on preſenting the ſame. By ſtatute, it ſhall be inquired of cuſtomary tenants, what they hold, by what works, rents, heriots, ſervices, &c. And of the lord's woods, and other profits, fiſhing, &c. *Stat. Extent. Manerii,* 4 *Ed.* 1. See *Compleat Court-Keeper.*

Court of Chivalry, *(curia militaris)* Otherwiſe called the *Marſhal-court*; the judges of it are the Lord *Conſtable of England*, and the *Earl Marſhal:* this court is ſaid to be the fountain of the *martial law*, and the Earl Marſhal hath both a judicial and miniſterial power; for he is not only one of the judges, but to ſee execution done. 4 *Inſt.* 123. See *Conſtable.*

Court-Chriſtian, *(curia Chriſtianitatis)* Is an eccleſiaſtical judicature, oppoſed to the civil court, or lay tribunal: and as in ſecular courts, human laws are maintained; ſo in the *Court Chriſtian*, the laws of *Chriſt* ſhould be the rule. And therefore the judges are divines; as archbiſhops, biſhops, archdeacons, &c. 2 *Inſt.* 488. *Courts Chriſtian* are ſo called, becauſe they handle matters eſpecially appertaining to *Chriſtianity*; and were held heretofore by our biſhops from the *pope*, as he challenged the ſuperiority in all cauſes ſpiritual: but ſince his ejection, they hold them by the King's authority, *virtute magiſtratus ſui,* &c. and as the appeal from theſe courts did lie to *Rome*, now by the *Stat.* 25 *H.* 8. *cap.* 19. it lies to the King, in his *Chancery.* 4 *Inſt.* 339. &c. Theſe courts were complained againſt long before the reformation; the biſhops having extended their juriſdiction ſo far, that they had left very little buſineſs for the ſecular judges; for they aſſumed an authority over the clergy, even in criminal caſes, though they had no legal power, but only in the execution of the ſentence of degradation, &c. and took upon them to judge in a great many other things that did not belong to them.

Court of Conſcience, *(curia conſcientiæ)* In the 9th year of King *Hen.* 8. the *court of conſcience in London* was erected: there was then made an act of common council, that the Lord Mayor and Aldermen ſhould aſſign monthly two Aldermen and four diſcreet Commoners, to be commiſſioners to ſit in this court twice a week, to hear and determine all matters brought before them between party and party, between citizens and freemen of *London*, in all caſes where the debt or damage was under 40*s* And this act of Common Council is confirmed by *Stat.* 1 *Jac.* 1. *c.* 14. which impowers the commiſſioners of this court to make ſuch orders between the parties touching ſuch debts, as they ſhall find ſtand to equity and good conſcience. Alſo the *Stat.* 3 *Jac.* 1. *c.* 15. further eſtabliſhes this court; the courſe and practice whereof is by ſummons, to which if the party appear, the commiſſioners proceed ſummarily; examining the witneſſes of both parties, or the parties themſelves on oath, and as they ſee cauſe give judgment. And if the party ſummoned appear not, the commiſſioners may commit him to the Compter priſon till he does; alſo the commiſſioners have power to commit a perſon refuſing to obey their orders, &c.

By a late ſtatute, the proceedings of the court of conſcience are regulated; and in caſe any perſon affront or inſult any of the commiſſioners, on their certifying it to the Lord Mayor, he ſhall puniſh the offender by fine, not exceeding 20*s.* or may impriſon him ten days. 14 *Geo.* 2. *c.* 10.

There are many other courts of conſcience eſtabliſhed of late years by act of parliament, too many to enumerate. See the *Table* to the *Statutes.*

Court of Delegates, *(curia delegatorum)* Is ſo called, becauſe the judges are *delegated*, and ſit by force of the King's commiſſion, under the Great Seal, upon appeals to the King, in three caſes.

1. When a decree or ſentence is given in an eccleſiaſtical cauſe, by the archbiſhop, or any of his officials.

2. When any decree or ſentence is given in an eccleſiaſtical cauſe in places exempt, or peculiars, belonging to the king, or an archbiſhop.

3. When a ſentence is given in the *court* of admiralty in a civil and marine cauſe, according to the Civil law. 4 *Inſt.* 339. *Stat* 25 *Hen.* 8. *c.* 19.

If the *delegates* in eccleſiaſtical cauſes are ſpiritual perſons, they may proceed to excommunication, &c. This is the higheſt court for civil affairs that concern the church. See *Appeal to Rome.*

Courts Eccleſiaſtical, *(curiæ eccleſiaſticæ)* Are thoſe *courts* which are held by the King's authority as ſupreme governor of the church, for matters which chiefly concern religion. 4 *Inſt.* 321. And the *laws and conſtitutions* whereby the church of *England* is governed, are, 1. Divers immemorial *cuſtoms.* 2. Our own *provincial conſtitutions*; and the *canons* made in convocations, eſpecially thoſe in the year 1603. 3. Statutes or *acts of Parliament* concerning the affairs of religion, or cauſes of *eccleſiaſtical* cognizance; particularly the *rubricks* in our Common Prayer-Book, founded upon the ſtatutes of uniformity. 4. The *articles of religion*, drawn up in the year 1562, and eſtabliſhed by 13 *Eliz. cap.* 12. And it is ſaid, by the general *Canon law*, where all others fail. See the 25 *Hen.* 8. *c.* 28.

As to *ſuits* in ſpiritual or *eccleſiaſtical courts*, they are for the reformation of manners, or for puniſhing of hereſy, defamation, laying violent hands on a clerk, and the like; and ſome of their ſuits are to recover ſomething demanded, as tithes, a legacy, contract of marriage, &c. And in cauſes of this nature the courts may give coſts, but not damages: things that properly belong to theſe juriſdictions are matrimonial and teſtamentary; and ſuch defamatory words, for which no action lies at law; as for calling one adulterer, fornicator, uſurer, or the like. 11 *Rep.* 54. *Dyer* 240.

The *proceedings* in the *eccleſiaſtical courts* are according to the *Civil* and *Canon law*, by *citation, libel, anſwer* upon *oath*, proof by *witneſſes*, and *preſumptions, &c.* and after *ſentence*, for contempt, by *excommunication:* and if the ſentence is diſliked, by *appeal.*

The *juriſdiction* of theſe *courts* is *voluntary*, or *contentious:* and the puniſhments inflicted by them are cenſures and puniſhments *pro ſalute animæ*, by way of penance, *&c.* They are not courts of record. Vide *Conſultation* and *Prohibition.*

Court of Huſtings, *(curia huſtingi)* Is the higheſt court of record, holden at *Guildhall*, for the *city of London*, before the Lord Mayor and Aldermen, the Sheriffs, and Recorder. 4 *Inſt.* 247. This *court* determines all pleas *real, perſonal,* and *mixt:* and here all lands, tenements, and hereditaments, rents and ſervices, within the city of *London* and *ſuburbs* of the ſame, are pleadable in two *huſtings*; one called *huſtings of plea of lands*, and the other *huſtings of common pleas.*

In the *huſtings* of *plea of lands*, are brought *writs of right patent* directed to the ſheriffs of *London*, on which writs the tenant ſhall have three ſummonſes at the three *huſtings* next following; and after the three ſummons there ſhall be three eſſoins at three other *huſtings* next enſuing; and at the next *huſtings* after the third eſſoin, if the tenant makes default, proceſs ſhall be had againſt him by *grand cape*, or *petit cape*, *&c.* If the tenant appears, the demandant is to declare in the nature of what writ he will; without making proteſtation to ſue in nature of any writ: then the tenant ſhall have the view, *&c.* and if the parties plead to judgment, the judgment ſhall be given by the Recorder: but no damages, by the cuſtom of the city, are recoverable in any ſuch writ of right patent. *Practiſ. Solic.* 416, 417.

In the *huſtings* of *common pleas* are pleadable writs *ex gravi querela*, writs of *gavelet*, of *dower, waſte, &c.* alſo writs of *exigent* are taken out in the *huſtings*; and at the fifth *huſtings* the outlawries are awarded, and judgment pronounced by the recorder.

If an erroneous judgment is given in the *huſtings*, the party grieved may ſue a *commiſſion* out of *Chancery*, directed to certain perſons to examine the record, and thereupon do right. 1 *Rol. Abr.* 745.

Court Leet, *(leta, viſus franci plegii)* Is a court of record, ordained for puniſhing offences againſt the crown; and is ſaid to be the moſt ancient court of the land. 2 *Danv. Abr.* 289. It enquires of all offences under high treaſon; but thoſe which are to be puniſhed with loſs of life or member, are only inquirable and preſentable here, and to be certified over to the juſtices of aſſiſe. *Stat.* 1 *Ed.* 3. And this *court* is called the *view of frankpledge*, becauſe the King is to be there certified by the view of the ſteward, how many people are within every leet, and have an account of their good manners and government; and every perſon of the age of twelve years, who hath remained there for a year and a day, may be ſworn to be faithful to the King, and the people are to be kept in peace, *&c.* Alſo every one from the age of twelve to ſixty years, that dwells within the leet, is obliged to do ſuit in this court; except peers, clergymen, *&c.* unleſs they are under the *ſheriff's torn.* 4 *Inſt.* 261, 263, *&c.*

A leet is incident to a hundred, as a court-baron to a manor; for by grant of a hundred, a leet paſſeth, and a hundred cannot be be without a leet. *Kitch.* 70. Leets may be held by charter or preſcription; but are commonly claimed by preſcription; and are to be kept twice a year, one time within a month after *Eaſter*, and the other within a month after *Michaelmas*, at a certain place within the precinct: theſe are the uſual times of holding the leet; but if it hath been a cuſtom to keep this court at any other time of the year, it is good if due warning be given. 1 *Inſt.* 115. 2 *Inſt.* 72. The ſteward is the judge of this court, as the *ſheriff* is in the *torn:* and he hath power to elect officers, as conſtables, tithingmen, *&c.* as well as puniſh offenders. 6 *Rep.* 12. 2 *Inſt.* 199.

A preſentment in a *court-leet*, or ſheriff's torn, after the day of preſentment, ſubjects the party to a fine or amerciament; and is not traverſable, except it toucheth the party's freehold; as that one ought to cleanſe the highways, *&c.* by reaſon of his tenure: though ſuch preſentment may be removed into *B. R.* by *certiorari*, where it may be traverſed. *Dyer* 13. 2 *Inſt.* 52. *Kitch.* 86, 91, *&c.*

A *court-leet* may fine, but not impriſon; a ſteward may impoſe a reaſonable fine for a contempt in court; or commit thoſe who make an affray before him, in the execution of his office, or bind them to the peace or good behaviour: but he may not grant ſurety of the peace, unleſs by preſcription. 8 *Rep.* 38. 1 *Saund.* 135.

The uſual method of puniſhment in the *court-leet*, is by *fine* and *amercement*; the former aſſeſſed by the *ſteward*, and the latter by the *jury*: for both of which, the lord may have an action of debt, or take a diſtreſs, *&c.* Twelve freeholders, or reſiants, are to be of the jury: and the particular *articles* to be inquired into, by ſtatute, are, if all that owe ſuit of court are preſent; of cuſtoms withdrawn; purpreſtures in lands, woods, *&c.* of houſes ſet up or beat down, cottages erected contrary to law, and other annoyances; of bounds taken away; ways or waters turned or ſtopped; of thieves, and hues and cries not purſued; of bloodſhed, eſcapes, perſons outlawed, money coiners, treaſure found; aſſiſe of bread and ale, perſons keeping alehouſes without licence; falſe weights and meaſures, unlawful games, offences relating to the game; offences of tanners in ſelling inſufficient leather, of foreſtallers, *&c.* of markets, victuallers and labourers, unlawful fiſhing, idle perſons, *&c.* by ſeveral ſtatutes. All theſe articles are drawn up in form, and given in *charge* by the ſteward.

The lord of the leet ought to have a pillory and tumbrel, to puniſh offenders; and for want thereof the lord may be fined, or the liberty ſeized. 2 *Danv.* 289. Alſo all towns in the leet are to keep ſtocks in repair; and the town that hath none ſhall forfeit 5 *l.* *Ibid.* Stewards of leets, *&c.* are not receive profits to their own uſe, belonging to the lord, on pain of 40 *l.* *Stat.* 1 *Jac.* 1. *c.* 5. Vide *Compleat Court-Keeper.*

Court of Marſhalſea, *(curia palatia)* A court of record to hear and determine cauſes between the ſervants of the King's houſhold and others within the verge; and hath juriſdiction of all matters within the verge of the court, and of pleas of treſpaſs, where either party is of the King's family; and of all other actions perſonal, wherein both parties are the king's ſervants; and this is the original juriſdiction of the *court of marſhalſea.* But the *curia palatii*, erected by King *Charles* I. by letters patent, in the 6th year of his reign, and made a court of record, hath power to try all perſonal actions, as debt, treſpaſs, ſlander, trover, actions on the caſe, *&c.* between party and party, the liberty whereof extends twelve miles about *Whitehall*; which juriſdiction hath ſince been confirmed by King *Charles* the Second: and the judges of this court are the ſteward of the King's houſhold, and knight-marſhal for the time being, and the ſteward of the court, or his deputy, being always a lawyer. *Crompt. Juriſd.* 102. *Kitch.* 199, *&c.* 2 *Inſt.* 548.

This court is kept once a week, in *Southwark:* and the proceedings here are either by *capias* or attachment; which is to be ſerved on the defendant by one of the knight marſhal's men, who takes bond with ſureties for his appearance at the next court; upon which appearance, he muſt give bail, to anſwer the condemnation of the court; and the next court after the bail is taken, the plaintiff is to declare, and ſet forth the cauſe of his action, and afterwards proceed to iſſue and trial by a jury, according to the cuſtom of the Common law courts. If a cauſe is conſiderable, it is uſually removed into *B. R.* or *C. B.* by an *habeas corpus cum cauſa:* otherwiſe cauſes are here brought to trial in four or five court-days. *Practiſ. Solic.* 409, 410.

By ſtatute, the ſteward and marſhal of the King's houſe are not to hold plea of freehold, *&c.* 28 *Ed.* 1. *c.* 3. Error in the *marſhalſea court* may be removed into the *King's Bench.* 10 *Ed.* 3. And the fees of the *marſhalſea* are limited by the *Stat.* 2 *H.* 4. *c.* 23. This *marſhalſea* is that of the houſhold; not the *King's marſhalſea*, which belongs to the King's Bench.

Court Martial, *(curia martialis)* Is a court for puniſhing the offences of officers and *ſoldiers* in time of war. And it appears by our books, that if any perſon in commiſſion, in time of peace, put to death any man by martial law, it is againſt *Magna Charta*, and murder. 3 *Inſt.* 52. Though temporal acts of parliament have of late enabled our Kings to hold *courts martial* in time of peace, &c. By 4 & 5 *W.* & *M. c.* 13. Deſertion and mutiny is puniſhable by a *court martial*: and the King, or the General of the army, may grant commiſſions to any field officer, &c. to call a *court martial*, of thirteen at leaſt commiſſion officers, who are to take an oath for trying truly; and ſentence of death is not to be given unleſs nine concur: and a field-officer is not to be tried by any under the degree of a captain. By a ſubſequent act, *courts martial* may be called within the realm, for trying offenders againſt the laws of war out of the realm; or a deſerter abroad may be ſent back to his regiment to be proceeded againſt. And an acquittal or conviction in a *court martial* is a good bar to an indictment. *Stat.* 7 *Ann. c.* 4. See 1 *Geo.* 1. *c.* 9. 7 *Geo.* 1. *c.* 6. *Court martial at Sea*, vide *Navy*.

Court of Piepowders, *(curia pedis pulveriſati)* Is a court held in fairs, to do juſtice to buyers and ſellers, and for redreſs of diſorders committed in them: ſo called, becauſe they are moſt uſual in ſummer, when the ſuitors to the court have *duſty feet*; and from the expedition in hearing cauſes proper thereunto, before the duſt goes off the feet of the plaintiffs and defendants. 4 *Inſt.* 272. It is a *court of record* incident to every *fair*; and to be held only *during the time* that the *fair* is kept. *Doct.* & *Stud. c.* 5. As to the juriſdiction, the cauſe of action for contract, ſlander, &c. muſt ariſe *in* the fair or market, and not before at any former fair, nor after the fair: it is to be for ſome *matter concerning* the ſame *fair* or *market*; and be done, complained of, heard and determined the ſame day. Alſo the plaintiff muſt make oath that the contract, &c. was *within the juriſdiction* and *time* of the *fair*. *Stat.* 17 *Ed.* 4. *c.* 2. 2 *Inſt.* 220.

The court of *piepowders* may hold a plea of a ſum above 40*s.* and it is ſaid, judgment may be given at another fair, at a court held there, and a writ of error lies upon a judgment given. *Dyer* 133. *F. N. B.* 18. This court may not meddle with any thing done in a *market*, without a *ſpecial cuſtom* for it; but for what is done in a *fair* only: and not there for *ſlanderous words*, unleſs they concern *matters of contract in* the *fair*; as where it is for ſlandering the *wares* of another, and not of his *perſon* in the ſame fair, *Moor, ca.* 854. The ſteward before whom the court is held, is the judge: and the trial is by merchants and traders in the fair; and the judgment againſt the defendant ſhall be *quod amercietur*. If the ſteward proceeds contrary to the ſtatute 17 *Ed.* 4. *c.* 2. he ſhall forfeit 5 *l.*

Court of Requeſts, *(curia requiſitionem)* Was a court of equity, of the ſame nature with the court of *Chancery*, but inferior to it; principally inſtituted for the relief of ſuch petitioners, as in conſcionable caſes addreſſed themſelves by ſupplication to his majeſty. Of this court, the *Lord Privy Seal* was chief judge, aſſiſted by the *Maſters of Requeſts*; and it had beginning about the 9 *H.* 7. according to Sir *Julius Cæſar's* Tractate on this ſubject: though Mr. *Gwyn*, in his *Preface to his Readings*, ſaith it began from a commiſſion firſt granted by King *Hen.* 8.

This court having aſſumed great power to itſelf, ſo that it became burdenſome, *Mich. anno* 40 & 41 *Eliz.* in the court of Common Pleas it was adjudged, upon ſolemn argument, that the *court of Requeſts* was no court of judicature, &c. And by the *Stat.* 16 & 17 *Car.* 1. *c.* 10. it was taken away. 4 *Inſt.* 97. See *Court of Conſcience.*

Court of the Lord Steward of the King's Houſe. The lord ſteward, or, in his abſence, the treaſurer and controller of the King's houſe, and ſteward of the marſhalſea, may inquire of, hear and determine in this court, all treaſons, murders, manſlaughters, bloodſheds, and other malicious ſtrikings, whereby blood ſhall be ſhed, *in any of the palaces* and *houſes of the King*, or in *any other houſe* where his *royal perſon ſhall abide*. And this juriſdiction was given by the *Stat.* 33 *H.* 8. *c.* 12. 3 *Inſt.* 140. But this court was at firſt intended only to inquire of and puniſh felonies, &c. by the King's ſervants againſt any lord or other perſon of the King's council. 3 *H.* 7. *c.* 14.

Court of Star-Chamber, *(curia cameræ ſtellatæ)* A court erected by 3 *H.* 7. *c.* 8. which ordained, That the Lord Chancellor, Treaſurer, and Lord Privy Seal, calling a Biſhop, and Lord of the King's Council, and the two Chief Juſtices to their aſſiſtance, on bill or information might make proceſs againſt maintainors, riotors, perſons unlawfully aſſembling, and for other miſdemeanors, which, through the power and countenance of ſuch as did commit them, lifted up their heads above their faults, and puniſh them as if the offenders had been convicted at law, by a jury, &c. But this act was repealed, and the court diſſolved by *Stat.* 17 *Car.* 1. *c.* 10. To the very great benefit of the ſubject!

Courts of Univerſities. The *courts of the univerſities of Oxford* and *Cambridge* are of a particular nature: they were granted by charters, and confirmed by authority of parliament. See *Stat.* 13 *Eliz. c.* 29. 4 *Inſt.* 227. Theſe courts are called the *chancellor's courts*, and are kept by the vice-chancellors of the univerſities: their juriſdiction extends to all cauſes eccleſiaſtical and civil, (except for *maihem*, *felony*, and relating to *freehold)* where a ſcholar, ſervant, or miniſter of the univerſities is one of the parties to the ſuit. The cauſes are managed by advocates and proctors: and they proceed in a ſummary way, according to the practice of the *Civil law*; and the judges, in their ſentences follow the juſtice and equity of the Civil law, or the laws, ſtatutes and cuſtoms of the univerſities, or the laws of the land, at their diſcretion. *Cro. Car.* 73. If any erroneous judgment be given in theſe courts, appeal lies to the *congregation*; thence to the *convocation*; and thence to the *King* in *Chancery*, by his delegates. *Wood's Inſt.* 526. See *Cognizance.*

Courts of Wales, *(curia principalitatis Walliæ)* The courts of the principality of *Wales*, and their juriſdiction, are ſettled by acts of parliament: and beſides county courts, hundred-courts, courts-leet, &c. by 34 & 35 *H.* 8. *c.* 26. *ſect.* 5. it is enacted, that there ſhall be a *court of grand ſeſſions*, kept twice in every year in every of the twelve counties of *Wales*; and the juſtices of thoſe courts may hold pleas of the crown in as large a manner as the King's Bench, &c. And alſo pleas of aſſiſes, and all other pleas and actions real and perſonal, in as large a manner as the Common Pleas, &c. And errors in judgment before any of the juſtices in the great ſeſſions, ſhall be redreſſed by writ of error out of the Chancery of *England* returnable in *B. R.* The proceedings in theſe courts are according to the laws of *England*: and the King's writs ought not to go into *Wales*; though a *quo minus* out of the Exchequer is often ſent thither. *Sed. qu.* if a *latitat* or *capias* will not run into *Wales?* Or elſe, what neceſſity was there for the *Stat.* 11 & 12 *W.* 3. *c.* 9. whereby it is enacted, ſheriffs in *Wales*, ſhall not hold to bail, on proceſs, iſſuing out of *any of his majeſty's courts of record at Weſtminſter*, unleſs the debt be ſworn to be 20 *l.*

For further ſatisfaction, as to the ſeveral courts within this kingdom, ſee 4 *Inſt.* and *Black. Com.* in many places.

Court-Lands, Demains, or lands kept in the lord's hands, to ſerve his family. See *Curtiles Terræ.*

Couſenage, The writ of and proceedings therein. See *Coſenage.*

Couthutlaugh, (from the Sax. *couth*, i. e. *ſciens*, and *utlagh*, exlex) Is a perſon that willingly and knowingly receives a man *outlawed*, and cheriſhes or conceals him: for which offence he was, in ancient time, to undergo the ſame puniſhment as the outlaw himſelf. *Bract. lib.* 3. *tract.* 2. *cap.* 13.

Cows, One milch *cow* is to be kept to every ten beaſts, and ſixty ſheep, by farmers, &c. on pain of 20*s.* *Stat.* 2 & 3 *P.* & *M. c.* 3.

Craiera, *(crayer)* A ſmall veſſel of lading; a hoy or ſmack. *Pat.* 2 *R.* 2. 14 *Car.* 2. *cap.* 27.

Crail, An engine made uſe of to catch fiſh. *Blount.*

Cranage, *(cranagium)* Is a liberty to uſe a *crane* for drawing up of goods and wares of burden from ſhips and veſſels, at any creek of the ſea or wharf, unto the land, and to make profit of it: it alſo ſignifies the money paid and taken for the ſame. *Stat.* 22 *Car.* 2. *c.* 11.

Crannock, An ancient meaſure of corn.——*Quilibet debet flagellare dimidium* crannock *frumenti ad Semen, & duos buſſellos, &c. in firma ſua.* Catular. Abbot. Glaſton. MS. f. 39.

Craſpicis, Is a word ſignifying a whale, *viz. piſcis craſſus.*

Craſtino Sancti Vincentii, The morrow after the feaſt of St. *Vincent* the Martyr, *i. e.* the 22d of *January*; which is the date of the *ſtatutes* made at *Merton*, *anno* 20 *Hen.* 3. There are likewiſe certain *return days* of *writs* in terms, in the courts at *Weſtminſter*, beginning with *Craſtino, &c.* as *Craſtino animarum* in *Michaelmas* term; *Craſtino Purificationis beatæ Mariæ Virginis*, in *Hilary* term; *Craſtino Aſcenſionis Domini*, in *Eaſter* term; and *Craſtino Sanctæ Trinitatis*, in *Trinity* term. See *Stat.* 32 *H.* 8. *c.* 21. 16 *Car.* 1. *c.* 6. 24 *Geo.* 2. *c.* 48.

Crates, (*Lat.*) Is an iron grate before a *priſon*, uſed in the time of the *Romans.* 1 *Vent.* 304.

Cravare, To impeach. *Si homicida divadietur ibi vel* cravetur, *&c.* Leg. H. 1. c. 30.

Craven, or **Cravent,** Was a word of obloquy, where in the ancient trial by battel, the victory ſhould be proclaimed, and the vanquiſhed acknowledge his fault, or pronounce the word *cravent*, in the name of *Recreantiſſe*, *&c.* and thereupon judgment was given forthwith; after which the *recreant* ſhould become infamous, *&c.* 2 *Inſt.* 248. If the *appellant* join'd battel, and cried *cravent*, he ſhould loſe *liberam legem*; but if the *appellee* cried out *cravent*, he was to be hanged. 3 *Inſt.* 221. See *Black. Com.* 3 *V.* 340. 4 *V.* 342.

Creamer, A foreign merchant; but generally taken for one who hath a ſtall in a fair or market. *Blount.*

Creanſor, *creditor*, (of the Fr. *croyance*) Signifies him that truſts another with any debt, money, or wares: in which ſenſe it is uſed in *Old Nat. Br.* 66. and 38 *Ed.* 3. *c.* 5.

Creaſt, or **Creſt,** (*criſta*) Any imagery, or carved work, to adorn the head of wainſcot, *&c.* like our modern *cornice*: but this word is now applied by the *heralds* to their devices ſet over a coat of arms. *Kennet's Paroch. Antiq.* 573.

Creation-Money. This is mentioned in *Stat.* 12 *Car.* 2. *c.* 1.

Creche, A drinking-cup. *Mon. Angl. tom.* 1. *pag.* 104.

Creditors, Shall recover their debts of executors or adminiſtrators, who in their own wrong waſte, or convert to their uſe the eſtate of the deceaſed, *&c.* *Stat.* 30 *Car.* 2. *c.* 7. Wills and deviſes of lands, *&c.* as to *creditors* on bonds or other ſpecialties, are declared void; and the *creditors* may have actions of debt againſt the *heir* at law and *deviſees.* 3 & 4 *W.* & *M.* *c.* 14. And in favour of *creditors*, whenever it appears to be the teſtator's intent, in a will, that his *lands* ſhould be liable for paying his debts; in ſuch caſe equity will make them ſubject, though there are not expreſs words; but there muſt be more than a bare declaration, or it ſhall be intended out of the *perſonal eſtate.* 2 *Vern. Rep.* 708. Where one deviſes *that all his debts*, &c. ſhall be firſt paid; if his *perſonal eſtate* is not ſufficient to pay the *creditors*, it ſhall amount to a *charge on his real eſtate* for that purpoſe. *Preced. Canc.* 430. See *Debtor* and *Executor.*

Creek, (*creca crecca*) Is a part of a haven where any thing is landed from the ſea: ſo that it is obſerved, if when you are out of the main ſea within the haven, you look round and ſee how many landing places there are, ſo many creeks may be ſaid to belong to that haven. *Cromp. Juriſd. fol.* 110. It is alſo ſaid to be a ſhore or bank whereon the water beats, running in a ſmall channel from any part of the ſea; from the Lat. *crepido.* This word is uſed in the *Stat.* 4 *H.* 4. *c.* 20. and 5 *Eliz.* *c.* 5.

Crementum Comitatus, The ſheriffs of counties anciently anſwered in their accounts for the *improvement* of the King's rents above the ancient *vicontiel* rents, under the title of *Crementum Comitatus*, or *Firma de* Cremento Comitatus. *Hales's Sher. Acco. p.* 36.

Crepare Oculum, To put out an eye; which had a pecuniary puniſhment annexed to it.—*Si quis alii* crepat oculum *ſolvat ei ſexaginta ſolid'.* Leg. H. 1. c. 78.

Cretinus, (*cretena*) A ſudden ſtream or torrent. *Hiſtor. Croyland contin.* 485, 617.

Crocards, A ſort of old baſe money. See *Pollards.*

Crocia, The *croſier* or paſtoral ſtaff, ſo called *a ſimilitudine* crucis, which biſhops, *&c.* had the privilege to carry as the common enſign of their religious office; and being inveſted in their prelacies, by the delivery of ſuch a *croſier*: hence the word *crocia* did ſometimes denote the collation to, or diſpoſal of biſhopricks and abbies, by the donation of ſuch paſtoral ſtaff; ſo as when the King granted large juriſdictions, *exceptis crociis*, it is meant; except the collation or inveſtiture of epiſcopal ſees, *&c.* *Addit. to Cowel.*

Crociarius, The *crociary* or croſs-bearer, who like our virger, went before the prelate, and bore his croſs.——Robertus de Wycombe, *cleritus epiſcopi* Dunelm. *quem vulgo* crociarium *ejus vocant.* Liber de Miraculis Tho: Epiſc. Heref. MS. anno 1290.

Croft, (Sax. *croftum* and *crofta*) A little cloſe adjoining to a dwelling-houſe; and encloſed for paſture or arable; or any particular uſe. In ſome old deeds *cruſta* occurs as the *Latin* word for a *croft*; but *cum* toſtis & croftis, is moſt frequent. *Ingulph.* It ſeems to be derived from the old *Engliſh* word *creaft*, ſignifying *handy craft*; becauſe ſuch grounds are uſually manured and extraordinarily dreſt by the hand and ſkill of the owner.

Croiſes, and *croiſado*, Are mentioned in our ancient law books. See *Croyſes.*

Crok, (*crocus*) Turning up the hair into curls or *croks*; whence comes *crook, crooked, &c.*—*Sciatis quod poteſtatem vobis dedimus ſcindendi capillos clericorum noſtrorum, longas crines habentium, & ad* crocos capillorum *ſuorum deponendos*, *&c.* Pat. 21 H. 3.

Crop, (*croppa*) The ſeeds or products of the harveſt in corn, *&c.* *Fleta, lib.* 2. *cap.* 82.

Croſs-Bows. None ſhall ſhoot in, or keep any croſsbow, hand-gun, hagbut, *&c.* but thoſe who have lands of the value of 100*l.* *per annum*: and no perſon ſhall travel with a croſsbow bent, or gun charged, except in time of war; or ſhoot within a quarter of a mile of any city, or market-town, unleſs for defence of himſelf or his houſe, or at a dead mark, under the penalty of 10*l.* *Stat.* 33 *H.* 8. *cap.* 6.

Croſſes. By *Stat.* 13 *Eliz.* *c.* 2. Croſſes, beads, *&c.* uſed by the Roman Catholicks, are prohibited to be brought into this kingdom, on pain of a *præmunire*, *&c.* And it was uſual in former times for men to erect croſſes on their houſes, by which they would claim the privileges of the *Templars* to defend themſelves againſt their rightful lords; but this was condemned by the *Stat. Weſtm.* 2. *c.* 37. It was likewiſe cuſtomary in thoſe days to ſet up croſſes in places where the *corps* of any of the nobility reſted, as it was carried to be buried, that *a tranſeuntibus pro ejus anima deprecetur.* *Walſing. anno* 1291. There were ſeveral of theſe croſſes erected over *England*, eſpecially in honour to the reſting-places of our Kings, on their bodies being tranſmitted to any diſtant place for burial: but theſe ſuperſtitions ſunk in this kingdom with the *Romiſh religion.*

Croy, Signifieth marſh land.——*Et quia paluſtris hujus* Croyland *ipſum nomen indicat, nam crudam terram & cænoſam ſignificat.* Ingulphus, p. 853.

Croyſes, (*cruce ſignati*) Is uſed by *Britton* for *pilgrims*, becauſe they wear the ſign of the croſs upon their garments. Of theſe and their privileges, *Bracton* hath treated, *lib.* 5. *par.* 2. *cap.* 2. and *par.* 5. *cap.* 9. Under this word are alſo ſignified the *Knights of St. John of Jeruſalem*, created for the defence of pilgrims; and likewiſe all thoſe perſons who in the reigns of K. *Hen.* 2. *Ric.* 1. *Hen.* 3. and *Ed:* 1. *cruce ſignati* took upon them the *croiſado*, dedicating and liſting themſelves to the wars, for the recovery of *Jeruſalem* and the *Holy Land.* Greg. Syntag. lib. 15. cap. 13, 14. See a general account of the *croiſades* in *Robertſon's Hiſt. Emp. C. V. vol.* 1. *pa.* 22. and *Seq.* alſo refer to the index to that volume.

Crown, (*corona*) Signifies the poſſeſſions and dignity of a King of any kingdom. The *crown of England*, according to Dr. *Blackſtone*, is, by Common law and conſtitutional cuſtom *hereditary*; and this in a manner peculiar to itſelf: as the right of inheritance may, from time to time, be changed or limited by act of parliament; under which limitations the crown ſtill continues hereditary. *Black. Com.* 1 *V.* 191. which *vide*. Sometimes our Kings, for political reaſons, have conferred their principalities on whom they pleaſed, eſteeming it lawful to appoint their ſucceſſors after them. For *Edward the Confeſſor* appointed the *crown* after his deceaſe, at ſeveral times, to *William* called the *Conqueror*, and *Edgar* and *Harold*; and *Harold*, after the deceaſe of his father, upon the title left him, was crowned by the Archbiſhop of *York*; but *William of Normandy* having ſlain *Harold* at the battle of *Haſtings*, he claimed the kingdom as well by the nomination of *Edward the Confeſſor*, as by right of conqueſt, and he was crown'd and enjoyed the kingdom for his time. *Bac. Coron.* 4, 27. But, according to *Blackſtone* and others, *conqueror*, from *conqueſtor*, in the feudal times, meant the firſt of the family who acquired the *domaine*.

To come further down, we find that the parliament, (which had the beſt right) have aſſerted their authority in theſe caſes: the crowns of *England* and *France* were entail'd on King *Henry the Fourth*, and his four ſons by act of-parliament. *Stat.* 7 *H.* 4. *c.* 2. And the parliament entail'd the crown on *Henry* the *Sixth*, and his iſſue; alſo *Richard* the *Third* was recogniſed by parliament. But the moſt extraordinary inſtance of this nature was, the nomination and appointment of King *Henry* the *Eighth*, to whom the parliament granted power by his laſt will and teſtament to make conditions and limitations at his pleaſure, for ſettling the inheritance of the crown; and he by his will ordained, that his ſon *Edward* ſhould ſucceed him, and he dying without iſſue, his daughter *Mary*, and, for her want of iſſue, his daughter *Elizabeth* to enjoy the crown in ſucceſſion; with remainders to ſuch as the King by his letters patent, *&c.* ſhould appoint. *Stat.* 35 *Hen.* 8. *c.* 1.

After the death of King *Henry* 8. his ſon *Edward* the *Sixth* ſucceeded; and he was prevailed upon to appoint the Lady *Jane*, daughter to the Duke of *Suffolk*, (who married King *Henry*'s ſiſter) a proteſtant lady, by his letters patent to ſucceed him: but this appointment, ſoon after the death of K. *Edward*, was vacated by Queen *Mary*; the Lady *Jane* beheaded, and the proteſtant reformed religion eclipſed during her reign; but it revived again and received perfection, by her ſucceſſor the glorious Q. *Elizabeth*.

By the *Stat.* 1 *Eliz. c.* 1. the parliament acknowledged the Queen to be right heir to the crown; and by this act the limitation of the crown contained in 35 *H.* 8. is declared to ſtand and remain law for ever. And when King *James* the *Firſt* came to the crown the parliament made a recognition, that upon Queen *Elizabeth*'s death. the crown of *England*, and all the kingdoms, dominions, and rights belonging to the ſame, did by lawful birthright and ſucceſſion *deſcend* to King *James*. *Stat.* 1 *Jac.* 1. *c.* 1.

After this we do not find that the parliament intermeddled in ſettling the ſucceſſion of the crown till the *abdication* of King *James* the *Second*; when the Lords Spiritual and Temporal, and Commons, lawfully repreſenting all the eſtates of the people of the realm, invited over *William, Prince of Orange*, and the Princeſs *Mary*, (eldeſt daughter of King *James* II.) to take care of their rights and liberties; whom they declared to be King and Queen of *England*. And by *Stat.* 1 *W. & M. c.* 2. reciting the *declaration* of the Lords and Commons for ſecuring the *liberties of the kingdom*, upon which the Prince and Princeſs of *Orange* accepted the crown, the ſaid Prince and Princeſs were recogniſed King and Queen of *England*, *&c.* for their lives, and the life of the ſurvivor of them; and after their deaths, the crown was ſettled on the heirs of the body of the ſaid Princeſs; and for want of ſuch iſſue, to the Princeſs *Anne* of *Denmark*, ſiſter to the Queen, and the heirs of her body.

Alſo by 12 *W.* 3. *c.* 2. (after the deceaſe of Q. *Mary* without iſſue) the Princeſs *Sophia of Hanover* (daughter of *Elizabeth*, eldeſt daughter of King *James* the *Firſt*) was declared next in ſucceſſion after King *William*, and the Princeſs *Anne*, and their iſſue; and the crown to remain to the Princeſs *Sophia*, and the heirs of her body being *proteſtants*. By virtue of which laſt ſtatute, his Majeſty King *George* the *Firſt*, eldeſt ſon of the Princeſs *Sophia*, on the death of her Majeſty Queen *Anne* without iſſue, the ſaid Princeſs *Sophia* being likewiſe dead, came to the poſſeſſion of the crown of theſe realms: by theſe laſt acts, *papiſts* are rendered incapable to inherit the crown of *England*; and ſubjects are abſolved from their allegiance to ſuch perſons coming to the crown, and are to join in the communion of the church of *England*.

And this nation is not to be engaged in a war for *defence of dominions not belonging to the crown*.

Perſons endeavouring to deprive the next in ſucceſſion to the crown from ſucceeding, and who attempt it by any overt act, are guilty of high treaſon. *Stat.* 1 *Ann. c.* 2. And if any affirm by writing, *&c.* that the King or Queen of *England* cannot make laws by the authority of parliament to bind the crown, they are guilty of treaſon: and preaching or ſpeaking it incur a *præmunire*. 4 *Ann. c.* 3. Affirming by writing or printing, that any other perſon hath a right to the crown, otherwiſe than according to the *Stat.* 1 *W. & M. &c.* is declared high treaſon. *Stat. Ibid.*

There is no *interregnum* in this kingdom; for when the crown deſcends to the right heir, he is *Rex* before coronation, as there muſt always be a King in whoſe name laws are to be maintained and executed. *Hill.* 1 *Jac.* See *Deſcent of the Crown and King*.

Crown-Office. This is an office belonging to the court of King's Bench, of which the King's Coroner or Attorney there is commonly Maſter. The Attorney General, and Clerk of the Crown exhibit informations in this office, for crimes and miſdemeanors; the one *ex officio*, and the other uſually by order of court; and here informations may be laid for offences and miſdemeanors at Common law, as for *batteries conſpiracies, libelling, nuſances, contempt, ſeditious words, &c* wherein the offender is liable to pay a fine to the King. *Finch* 340. *Show.* 109. By *Stat.* 4 *&* 5 *W. & M. c.* 18.

The Clerk of the Crown in *B. R.* is not to receive or file any information for *treſpaſs, battery, &c.* without expreſs order of court; nor to iſſue any proceſs without taking a recogniſance in 20 *l.* penalty to proſecute with effect; and if the party appear, and the plaintiff do not procure a trial in a year, or if verdict paſs for the defendat, *&c.* the court ſhall award the defendant coſts: but this act doth not extend to informations in the name of the King's Coroner or Attorney, *&c.*

When a *battery* is committed privately, ſo that the perſon injured can make no proof thereof by witneſſes at law; it is uſual to bring an information in this office, or to prefer an indictment, the *moſt legal* method, where the party may be a witneſs for the King, it being his ſuit.

But unleſs the aſſault and battery are very violent, or attended with peculiar circumſtances, it is very oppreſſive, to indict the party in the *Court* of *King's Bench*, as an indictment may be preferred and tried at the ſeſſions. And if *puniſhment* is the object of the proſecutor, perhaps the end might be better anſwered at the *ſeſſions*, for the *Court* of *King's Bench*, conſidering the expence, which is principally born by the Defendant, is very merciful: a rigorous judgment is ſeldom known, and that only in particular caſes, which well deſerve ſevere puniſhment.

Informations in the nature of *quo warranto's* brought by the Attorney General, againſt corporations, *&c.* Vide *Quo Warranto*.

Cruſtum, Was a garment of purple, mix'd with many colours.——*Duas patenas argenteas auro ornatas cum duobus urceolis &* cruſto *aureo*. Mon. Ang. tom. 1. pag. 210.

Cry de Pais, On a robbery or other felony done, hue and cry may be raiſed by the country in the abſence of the conſtable, which is called *cry de pais*. 2 Hale's Hiſt. P. C. 100.

Crypta, A chapel or oratory under ground: *egreſſo toto conventu, accepta abſconſa ſi nox eſt vadit per* cryptam. *Du Cange*.

Cuckingſtool, (*tumbrellum*) Is an engine invented for the puniſhment of *ſcolds*, and unquiet women, by ducking them in water, called in ancient time a *tumbrel*; and ſometimes a *trebuchet*. *Lamb. Eiren. lib.* 1. *c.* 12. And *Bracton* writes this word *tymborella*. In *Domeſday* it is called *cathedra ſtercoris*: and it was in uſe even in the *Saxons* time, by whom it was deſcribed to be *cathedra, in qua rixoſæ mulieres ſedentes aquis demergebantur*. It was anciently alſo a puniſhment inflicted upon *brewers* and *bakers*, tranſgreſſing the laws; who were thereupon in ſuch a ſtool immerged over head and ears *in ſtercore*, ſome ſtinking water. Some think it is a corruption from *ducking ſtool*; others from *choaking ſtool*; *quia hoc modo demerſæ aquis fere ſuffocantur*. Blount. See *Caſtigatory*.

Cude. A *cude cloth* is a chryſom or face-cloth for a child baptized. Vide *Chriſmale*.

Cui ante Divortium, Is a writ that a woman divorced from her huſband hath to recover her lands and tenements which ſhe had in fee ſimple, or in tail, or for life, from him to whom her huſband did alienate them during the marriage, when ſhe could not gainſay it. *Reg. Orig.* 233. *F. N. B.* 240. And the heir ſhall have a *ſur cui ante divortium*, where the wife dieth before the action brought; as well as ſhe ſhall have a *ſur cui in vita*: But of an eſtate-tail, the heir ſhall not have *ſur cui in vita ante divortium*, but ſhall be put to his *formedon* in the deſcender. *New Nat. Br.* 454. See *Black. Com.* 3 *V.* 183.

Cui in Vita, Is a writ of entry, which a widow hath againſt him to whom her huſband alienated her lands or tenements in his life-time; which muſt contain in it, that during his life ſhe could not withſtand it. *Reg. Orig.* 232. *F. N. B.* 193. If huſband and wife be *jointenants* before the coverture, and the huſband alieneth all the land, and dieth, ſhe ſhall have a *cui in vita* for a moiety, and no more: But if they are *joint purchaſers, during the coverture*, and he alien all the land, and dieth, his wife ſhall have a *cui in vita* of the whole land; becauſe that during the coverture, as to *purchaſe*, they are but one perſon in law. *F. N. B.* 187. And from this reaſon, if huſband and wife, and a third perſon, *purchaſe jointly*, and the huſband alieneth all in fee, and dieth, the wife ſhall have a *cui in vita* of a moiety. *Ibid.*

Where the huſband and wife exchange the lands of the wife for other lands, if the wife agree unto the exchange after the huſband's death, ſhe ſhall not have a *cui in vita*. Alſo if the wife do accept of parcel of the land in dower, of which ſhe hath a *cui in vita*, by that acceptance ſhe ſhall be barred of the reſidue. *New Nat. Br.* 430. If the huſband and wife loſe by default the wife's lands, after the death of her huſband, ſhe ſhall have a *cui in vita* to recover thoſe lands ſo loſt by default. *F. N. B.* 187. By Stat. 13 *Ed.* 1. *c.* 3. *Cui in vita* is given to the wife where the deceaſed huſband loſt her lands by default in his life-time: And ſhe ſhall be admitted to defend her right during his life, if ſhe come in before judgment. Likewiſe if tenant in dower, by the curteſy, or for life, do make default, *&c.* the heirs and they to whom the reverſion belongeth, ſhall be admitted to their anſwer, if they come before judgment: And if on default judgment happen to be given, ſuch heirs, *&c.* ſhall have a writ of *entry* for recovery of the ſame, after the death of ſuch tenants. See *Booth* on real actions, and *F. N. B.* and *Black. Com.* 3 *V.* 183.

Culagium, Is when a ſhip is laid up in the dock to be repaired. *MS. Arth. Trevor. Arm. de Plac. Edw.* 3.

Culprit, Is a *reply* of a proper officer *in behalf of the King*, affirming a criminal to be *guilty*, after he hath pleaded Not guilty, without which the iſſue to be tried is not joined: It is compounded of two words, *viz. Cul* and *prit*; the one an abbreviation of *culpabilis*, and the other derived from the *French* word *preſt*, *i. e.* ready; and it is as much as to ſay that he is ready to prove the offender guilty. See *Black. Com.* 4 *V.* 333.

Cultura, This word is often found in old writings, and ſignifies a parcel of arable land. *Blount.*

Culvertage, (*Culvertagium*) Is ſaid by ſome perſons to be derived from *Culum & Vertere*, to turn tail: And in this ſenſe, *ſub nomine* culvertagii, was taken to be on pain of cowardice, or being accounted cowards. But in the opinion of others, it rather ſignifies ſome baſe ſlavery, or the confiſcation of an eſtate; being a *feudal* term for the lands of the vaſſal forfeited and eſcheating to the lord: and *ſub nomine* culvertagii, in this ſignification, was under pain of confiſcation. *Matt. Pariſ. Anno* 1212.

Culward and **Culverd,** Words uſed for a coward, or cowardice. *Chart. Temp. E.* 1.

Cuna Cerviſiæ, A tub of ale. *Domeſday.* But this word is truly *Cuva*.

Cuneus, A mint or place to coin money: *Cuneum monetum* ſignifies the King's ſtamp for coinage; and from the word *cune*, is derived coin. See *Coin*.

Cuntey-Cuntey, Is a kind of trial, as appears by *Bracton*, in theſe words: *In brevi de recto, negotium terminabitur per* Cuntey-Cuntey, *&c.* which is taken to be the *ordinary jury*. Bract. lib. 4. tract. 3. c. 18.

Curagulus, One who taketh care of a thing. *Mon. Ang. Tom.* 2.

Cura Monaſterii, An officer ſo called, who had the charge of a monaſtery.

Curate, (*Curatus*) Is he who repreſents the incumbent of a church, parſon or vicar, and officiates divine ſervice in his ſtead: And in caſe of pluralities of livings, or where a clergyman is old and infirm, it is requiſite there ſhould be a *curate* to perform the cure of the church. He is to be licenſed and admitted by the biſhop of the dioceſe, or by an ordinary, having epiſcopal juriſdiction: and when a *curate* hath the approbation of the biſhop, he uſually appoints the ſalary too; and in ſuch caſe, if he be not paid, the *curate* hath a proper remedy in the eccleſiaſtical court, by a ſequeſtration of the profits of the benefice; but if he hath no licence from the biſhop, he is put to his remedy at common law, where he muſt prove the agreement, *&c.* *Right Clerg.* 127.

By ſtatute, where *curates* are licenſed by the biſhop, they are to be appointed by him a ſtipend not exceeding 50 *l. per ann.* nor leſs than 20 *l.* a year, according to the value of the livings, to be paid by the rector or vicar: And the ſame may be done on any complaint made. *Stat.* 12 *An. c.* 2. One perſon cannot be *curate* in two churches, unleſs ſuch may ſatisfy the law, by reading both morning and evening prayers at each place: Nor can he ſerve one cure on one *Sunday*, and another cure on the next; for he muſt not neglect to read morning and evening prayer in his church every Lord's day; if he doth he is liable to puniſhment. *Comp. Incumb.* 572. But it is otherwiſe where a church or chapel is a member of the pariſh-church; and where one church is not able to maintain a *curate*. *Can.* 48.

A *curate* having no fixed eſtate in his curacy, not being inſtituted and inducted, may be removed at pleaſure by the biſhop or incumbent. *Noy.* But there are *perpetual curates*, as well as temporary, who are appointed where tithes are impropriate, and no vicarage endowed: Theſe are not removeable; and the impropriators are obliged to find them, ſome whereof have certain portions of the tithes ſettled on them. *Stat.* 29 *Car.* 2. *c.* 8. Every clergyman that officiates in a church, (whether incumbent or ſubſtitute) is in our liturgy called a *curate*: *Curates* muſt ſubſcribe the declaration, according to the act of uniformity, or are liable to impriſonment, *&c.*

Curfeu, (of the Fr. *Couvrir*, i. e. *Tegere*, and *Feu*, Ignis,) ſignifies the ringing of a bell, or evening peal, by which *William* the Firſt, called the *Conqueror*, commanded every perſon to rake up or cover over his fire, and put out his light: And in many places of *England* at this day, where a bell is cuſtomarily rung towards bed-time, it is ſaid to ring *curfew*. Stow's Annals.

In the Welch language, *curfa*. ſignifies a *beating*; alſo, a *ſtroke*. *Richards's Antiquæ Linguæ Britanicæ Theſaurus.*

Curia, This word was ſometimes taken for the perſons, as feudatory and other cuſtomary tenants, who did their ſuit and ſervice at the court of the lord. *Kennet's Paroch. Antiq.* 139. And it was uſual for the King's of *England*, in ancient times, to aſſemble the biſhops, peers, and great men of the kingdom to ſome particular place, at the chief feſtivals in the year; and this aſſembly is called by our hiſtorians *curia*; becauſe there they conſulted about the weighty affairs of the nation. And it was therefore called *Solemnis Curia, Auguſtalis Curia, Curia Publica*, *&c.* See *Court*.

Curia adviſare vult, Is a deliberation which a court of judicature ſometimes takes, where there is any point of difficulty, before they give judgment in a cauſe. *New Book Entr.* And when judgment is ſtaid, upon motion to arreſt it; then it is entered by the judges *curia adviſare vult.* Shep. Epit. 682.

Curia Curſus Aquæ, A court held by the lord of the manor of *Graveſend* for the better management of barges and boats uſing the paſſage on the river *Thames* from thence to *London*, and plying at *Graveſend* bridge, *&c.* mentioned in the *Stat.* 2 *Geo.* 2. *c.* 26.

Curia Claudenda, Is a writ to compel another to make a fence or wall, which he ought to make between his land and the plaintiff's, on his refuſing or deferring to do the ſame. *Reg. Orig.* 155. This writ doth not lie but againſt him who hath a cloſe adjoining to the plaintiff's land, who is obliged to incloſe it; and it lieth not but for him who hath a freehold, *&c.* It may be ſued before the ſheriff in the county-court, or in the common pleas: And the judgment is to recover the incloſure and damages. *New Nat. Br.* 282, 283. But, if the occupier of a cloſe adjoining to mine, ought to repair the fence between the cloſes, and do not, and his cattle ſtray into my cloſe and do damage, I may diſtrain them damage feaſant, or drive them out, and bring an action of treſpaſs. If my cattle ſtray into his cloſe and do damage, he has not a right to diſtrain them, nor can he ſupport treſpaſs againſt me for the ſame. Should my cattle after ſtraying into his cloſe, ſtray out of the ſame into any highway, or other place, and be loſt, or treſpaſs in the ground of a third perſon, and be by him diſtrained damage feaſant, and kept till replevied, or I have made ſatisfaction, I may maintain an action againſt the defaulter, *i. e.* againſt the occupier of the adjoining cloſe, for not repairing his fence, whereby ſuch damage hath happened to me. The writ of *curia claudenda* therefore is grown out of uſe.

Curia Domini, The lord's houſe, hall or court, where all the tenants attend at the time of keeping courts.

Curia Penticiarum, Is a court held by the ſheriff of *Cheſter*, in a place there called the *Pendice* or *Pentice*: And it is probable its being originally kept under a *Penthouſe*, or open ſhed covered with boards, gave it its denomination.

Curnock, A meaſure containing four buſhels, or half a quarter. *Fleta, lib.* 2. *c.* 12.

Curriculus, The year, or courſe of a year: *Actum eſt hoc annorum Dominicæ incarnationis quatuor quinquagenis & quinquies, quinis luſtris, & tribus* curriculis. This is the year 1028; for four times 50 make 200, and five times 200 make 1000. Then five *luſtra* are twenty-five years, and three *Curriculi*, three years, making in all the very year.

Curriers, Are perſons that curry and dreſs leather. No currier ſhall uſe the trade of a butcher, tanner, *&c.* or ſhall curry ſkins inſufficiently tanned, or gaſh any hides of leather, on pain of forfeiting for every hide or ſkin 6*s.* 8*d.* And perſons in *London* putting leather to be curried to any but freemen of the Curriers Company; and ſuch curriers not currying the leather ſufficiently, ſhall forfeit the ware or the value, *&c.* *Stat.* 1 *Jac.* 1. *c.* 22. The clauſe relating to freemen is repealed; but if any currier do not curry leather ſent him, within ſixteen days between *Michaelmas* and *Lady-Day*, and in eight days at other times, on conviction before a juſtice, he ſhall forfeit 5*l.* to be levied by diſtreſs, *&c.* yet ſubject to mitigation. 12 *Geo.* 2. *c.* 25. Curriers and ſuch as deal in leather, may cut and ſell it in ſmall pieces in their ſhops to any perſons whatſoever. *Stat. Ibid.* See *Leather, Skins*, &c.

Curſitors, *(Clerici de Curſu)* Clerks belonging to the *Chancery*, who make out original writs; and are called *Clerks of Courſe*, in their oath appointed 18 *Ed.* 3. *ſtat.* 5. There are of theſe clerks twenty-four in number, which make a corporation of themſelves; and to each clerk is allotted a diviſion of certain counties, in which they exerciſe their functions. 2 *Inſt.* 670.

Curſones terræ, Is uſed for ridges of land. 14 *Ed.* 2.

Curſoriæ, A ſort of light ſhips or ſwift ſailers: This word is mentioned in *Hoveden, R.* 1. *Applicuerunt ibi Naves & Buſciæ* 500. *exceptis Galeis &* Curſoriis, *&c.*

Curteſy of England, *(Jus Curialitatis Angliæ)* Is where a man taketh a wife ſeiſed in fee-ſimple, or fee-tail general, or as heireſs in ſpecial tail, and hath iſſue by her, male or female, born alive, which by any poſſibility may inherit, and the wife dies; the huſband holds the lands during his life; and is called *Tenens per legem Angliæ*, or *tenant by the curteſy of England*; becauſe this privilege is not allowed in any other country, except *Scotland.*

Four things are requiſite to give an eſtate by the *curteſy*, *viz.* Marriage, ſeiſin of the wife, iſſue, and death of the wife. *Co Lit.* 30. If land deſcend to the wife after the huſband hath iſſue by her; or if the iſſue be dead at the time of her death, being born alive; the huſband ſhall be tenant by the *curteſy*. Alſo if a child is born alive, it is not material whether it is baptiſed, or ever heard to cry, to make the huſband tenant by the *couteſy*; for if it is born alive, it is enough. 1 *Nelſ. Abr.* 578. But the child muſt be ſuch as by poſſibility may inherit; and therefore if land be given to a woman, and the heirs *male* of her body, and ſhe takes huſband and hath iſſue a daughter, and dies; as this iſſue cannot poſſibly inherit, the huſband ſhall not be tenant by the *curteſy*. *Terms de Ley.*

If the child is rip'd forth of the mother's belly, after her death, though it be alive, it will not entitle tenancy by the curteſy; for this ought to begin by the iſſue, and be conſummate by the death of the wife, and the eſtate of tenant by the curteſy ſhould *avoid* the *immediate* deſcent. *Ibid.* A man ſhall not be tenant by the curteſy of a bare right, title, uſe, reverſion, *&c.* expectant upon an eſtate of freehold, unleſs the particular eſtate is determined during the coverture; nor of a ſeiſin in law: But if a wife dies before a rent becomes due; or in the caſe of an advowſon, before the church becomes void; the huſband ſhall be tenant by the curteſy, though the wife had only a ſeiſin in law; for in this caſe no other ſeiſin could be attained. *F. N. B.* 149. *Co. Lit.* 29, 30, 40.

There is no tenancy by the curteſy of *copyhold* lands, except there be a *ſpecial cuſtom* for it. And where a huſband is entitled to this tenancy, if after the wife is an *ideot*, and her eſtate in the land found: when ſhe dies, he ſhall not be tenant by the curteſy, for the King's title by relation prevents it. *Plowd.* 263. If the wife be ſeiſed in fee of lands, and attaint of felony, but have iſſue by her huſband, and ſhe is hanged, *&c.* it is ſaid the huſband ſhall be a tenant by the curteſy: But yet the land will be forfeited according to *Kitch* 159. 21 *Ed.* 3. 49.

A woman ſeiſed of land had two daughters, and covenanted to ſtand ſeiſed to the uſe of *E.* her eldeſt daughter in tail; on condition that ſhe ſhould pay to her other daughter within a certain time 300*l.* And if *E.* made default, or died without iſſue before ſuch payment, then the land to go to the ſecond daughter; the mother dying, *E.* took a huſband, and had iſſue, and died afterwards without any iſſue living, before the day of payment: It was here held, that her huſband ſhould be tenant by the curteſy. 1 *Leon. ca.* 233. See *Kitch.* 159.

Curteyn, *(Curtana)* Was the name of King *Edward* the *Confeſſor's ſword*; which is the firſt ſword carried before the Kings of *England* at their coronation: And it is ſaid the point of it is broken as an emblem of mercy. *Mat. Pariſ. in Hen.* 3.

Curtilage, *(Curtilagium)* from the Fr. *Cour, Court*, and *Sax. Leagh* locus) Is a court-yard, back-ſide, or piece of ground lying near and belonging to a dwelling-houſe. 4 *Ed.* 1. *cap.* 1. 35 *H.* 8. *c.* 4. 39 *Eliz. c.* 10. 6 *Rep.* 64.——*Mihi dici videtur* curtilagium *à* curtillum & ago, *ſcil. locus ubi* curtis *vel* curtilli *negotium* agitur. *Spelm.* And though it is ſaid to be a yard or garden, belonging to a houſe; it ſeems to differ from a garden, for we find, *cum quodam* gardino & curtilagio. 15 *Ed.* 1. *n.* 34.

Curtiles Terræ, Court lands. It is recorded, that among our *Saxon* anceſtors, the *Thanes* or nobles who poſſeſſed *Bockland*, or hereditary lands, divided them into

Inland and *Outland*: The *Inland* was that which lay moſt convenient for the lord's manſion-houſe; and therefore the lords kept that part in their own hands, for the ſupport of their families, and for hoſpitality: Afterwards the *Normans* called theſe lands *Terras Dominicales*, the demains, or lord's lands: The *Germans* termed them *Terras Indominicatas*, lands in the lord's own uſe: And the *Feudiſts*, *Terras Curtiles*, lands appropriate to the court or houſe of the lord. *Spelm. of Feuds*, *c.* 5.

Cuſtantia, The ſame with *Cuſtagium*, which ſignifies coſts.

Cuſtode admittendo, and **Cuſtode amovendo,** writs for the admitting or removing of guardians. *Reg. Orig.*

Cuſtodes Libertatis Angliæ Authoritate Parliamenti, Was the ſtyle in which writs and all judicial proceſs did run during the grand rebellion, from the murder of King *Charles* I. till the uſurper *Oliver* was declared Protector, *&c.* mentioned and declared traiterous, by ſtatute 12 *Car.* 2. *c.* 3.

Cuſtodiam dare, Was taken for a gift or grant for life. *Du Cange.*

Cuſtom, (*Conſuetudo*) Is a law not written, eſtabliſhed by long uſage, and the conſent of our anceſtors. No law can oblige a free people without their conſent: So whereever they conſent and uſe a certain rule or method as a law, ſuch rule, *&c.* gives it the power of a law; and if it is *univerſal*, then it is *common law*: if *particular* to this or that place, then it is *cuſtom*. 3 *Salk.* 112. And as to the riſe of cuſtoms, when a reaſonable act once done was found to be good and beneficial to the people, then they did uſe it often, and by frequent repetition of the act, it became a cuſtom; which being continued without interruption time out of mind, it obtained the force of a law, to bind the particular places, perſons, and things concerned therein. Thus a cuſtom had beginning and grew to perfection: And a good cuſtom muſt be grounded on *antiquity*, *continuance*, *certainty*, and *reaſon*:

Antiquity, for that it hath been time out of memory, or threeſcore years, as limited by ſtatute; and time out of mind is where no man then living hath heard or known any proof to the contrary: If two or more witneſſes can depoſe that they heard their fathers ſay it was a cuſtom all their time; and that their fathers heard their grandfathers ſay it was ſo alſo in their time; it is enough for the proof of a cuſtom. *Blount. Davis Rep.* 32.

Continuance of a cuſtom ought to be without any interruption time out of memory; for if it be diſcontinued within time of memory, the cuſtom is gone.

Certainty, a cuſtom muſt be certain, becauſe an uncertain thing may not be continued time out of mind:

And cuſtom muſt be *reaſonable*, for unreaſonable things are unlawful. It is otherwiſe ſaid that,

Cuſtoms have four inſeparable incidents: They are to have a *reaſonable commencement*, to be *certain*, and *not ambiguous*; to have *uninterrupted continuance*; and *not* be againſt the *King's prerogative*. And the two pillars of cuſtom, are *common uſage*, and that they be *time out of mind*. Davies 32. 4 *Leon.* 384.

A cuſtom contrary to the public good; or injurious to a multitude, and beneficial only to ſome particular perſons, is repugnant to the law of reaſon, and conſequently void. 2 *Danv.* 424, 427. Cuſtoms ought to be beneficial to all, but may be good where againſt the intereſt of a particular perſon, if for the public good. *Dyer* 60. A cuſtom is not unreaſonable for being injurious to private perſons or intereſts, ſo as it tends to the *general advantage* of the *people*. 3 *Salk.* 112. which *vide*.

A *cuſtom* may be good in ſome caſes where a *preſcription* is not: But *cuſtoms* that are good for the ſubſtance and matter of them, may yet be bad for the manner; if they are uncertain, or mixed with any other cuſtom that is unreaſonable, *&c.* 2 *Bulſt.* 166. 2 *Brownl.* 198.

A *cuſtom* extends over ſome *place* or *vill*: A *preſcription* extends only to *particular perſons*. *Rep. Temp. Hardw. per Annaly. Sharp* v. *Lowther*, *f.* 293. A *preſcription* muſt always be had by way of *que eſtate*. Ibid.

Cuſtom that every one who paſſeth over ſuch a bridge, within the lord's manor, and which the lord doth repair, ſhall pay him one penny, is a good cuſtom; but if it be to pay the lord 12*d.* it will be naught, for it is unreaſonable. *Calth. Cop.* 35. 1 *Bulſt.* 203.

A cuſtom that a lord ſhall have within his manor *liberam faldam*, or *free-fold* throughout the village; and that no other ſhall have it but by agreement with him, and if any take it, the lord may abate the ſame; this hath been held a good cuſtom. 1 *Rol.* 560. Cuſtom for *inhabitants*, as ſuch, to have *common* adjudged void. *Gatewood's Caſe.* 6 *Co.* 60. A cuſtom, that tenants of a manor ſhall grind all the corn they ſpend in their own houſes, in the lord's mill, *&c.* is good: But a cuſtom that every inhabitant of a houſe held of the lord, ſhall grind the corn that he ſpends, or ſhall ſell, at his mill, is void. *Moor*, *ca.* 1217. *Hob.* 149. Cuſtom to have a common bakehouſe in a manor or pariſh, for all the tenants or inhabitants, is a good cuſtom. 2 *Bulſt.* 198.

Cuſtom is and muſt always be alledged to be in many perſons, and ſo it may be claimed by copyholders, or the inhabitants of a place, and when it is claimed, it muſt be as within ſuch a county, hundred, city, borough, manor, pariſh, hamlet, *&c.* *Co. Lit.* 110, 113. 4 *Rep.* 31. A good cuſtom or preſcription hath the force of a grant; as where one and his anceſtors have had a rent time out of mind, and uſed to diſtrain, *&c.* But a cuſtom that begins by extortion of lords of manors, is judged wanting a lawful commencement, and therefore void: And where cuſtom is amongſt many, and they are all dead but one, the cuſtom is gone. *Plowd.* 322. *Dyer* 199. Cuſtoms muſt be conſtrued according to vulgar apprehenſion: And are to be taken ſtrictly, being in derogation of the Common law. 2 *Rol. Abr.* 270. They are not good which are merely in the negative; but if mixed with an affirmative, they may be good. 1 *Rol.* 565.

A cuſtom which may be intended to have had lawful beginning, is a good cuſtom; otherwiſe not: nor will continuance of time make *malum in ſe* good. 1 *Lil. Abr.* 375. Cuſtoms againſt common right and the rule of law, are held good. 8 *Rep.* 126. The law takes notice of cuſtoms of *Gavelkind*, *&c.* which alter deſcents from the Common law, in favour of all the ſons, *&c.*

A cuſtom may extend to and give an infant a power of doing that, which, by the rules of the Common law, he could not do; as an infant at the age of fifteen, may make a feoffment of lands of the nature of gavelkind; but this, like all other cuſtoms, is to be conſtrued ſtrictly, and in ſuch manner as that no prejudice may accrue to the infant thereby; and therefore ſuch feoffment muſt be for valuable conſideration, muſt be made in perſon, and not by attorney, cannot be with warranty, muſt be of lands which deſcend to him in gavelkind, and not of lands by purchaſe; and muſt be of lands in poſſeſſion, not in remainder or reverſion. 1 *New Abr.* 670, 671.

And cuſtoms for an eldeſt daughter to inherit, or a youngeſt ſon, may be good: For theſe, though contrary to a particular rule of law, may have a reaſonable beginning. *Nelſ. Abr.* 579. And by cuſtom a woman may be endowed of a moiety of the huſband's lands, *&c.* Alſo by cuſtom, infants may bind themſelves apprentices, *&c.* 2 *Danv. Abr.* 438.

Regularly a man cannot alledge a cuſtom againſt a ſtatute, becauſe that is the higheſt matter of record in law: But a cuſtom may be alledged againſt a *negative* ſtatute, which is made in affirmance of the Common law. 1 *Inſt.* 115. And acts of parliament do not always take away the force of cuſtoms. Cuſtom pleaded againſt cuſtom is not good. 2 *Danv. Abr.* 436. A cuſtom is to be poſitively alledged, by uſage in fact. *Lutw.* 1319.

General cuſtoms which are uſed throughout *England*, and are the Common law, are to be determined by the judges: But *particular cuſtoms*, ſuch as are uſed in ſome certain town, borough, city, *&c.* ſhall be determined by jury. *Doct. & Stud.* *c.* 7, 10 1 *Inſt.* 110. *Conſuetudo pro lege ſervatur*, *&c.* ſaith *Bracton*, *lib.* 3. *c.* 3. And cuſtom is ſaid to be *altera lex*: But the judges of the court of *B. R.* or *C. B.* can over-rule a cuſtom though it be one of the cuſtoms of *London*, if it be againſt *natural reaſon*, *&c.* 1 *Mod.* 212.

As to the manner of laying a *cuſtom*, and the difference between alledging a thing by way of *cuſtom*, or by way of *preſcription*. See 6 *Co*. 60. *Hob*. 113. *Cro. Eliz*. 441. *Popb*. 201. *Style* 477. 1 *Lev*. 176. 1 *Vent*. 386. 3 *Lev*. 160. *Cartb*. 192.

Cuſtom of London. The city of *London* hath divers particular cuſtoms, different from any other place. By the cuſtom of *London*, when a citizen and freeman dies, his goods and chattels ſhall be divided into three parts; the wife to have one part, the executors another, to diſcharge legacies, *&c.* and the children unprovided for the other third part. 2 *Danv. Abr*. 311, 312. If a freeman of *London* hath no wife, but children, the half of his perſonal eſtate goes to them, and he may diſpoſe of the other moiety; ſo if he have a wife and no children, the half belongs to her; but if he have both wife and children, then one third part belongs to the wife, another third to the children, and he may diſpoſe of the other third; and if he dies inteſtate, the remaining third is to be diſtributed according to the ſtatute. 2 *Nelſ. Abr*. 1139. But ſee 11 *Geo*. 1. *c*. 18. *poſt*.

An *after-born* child ſhall come in with the others, for a *cuſtomary* ſhare of a freeman's eſtate. And where any child dies, before one and twenty, his ſhare ſurvives to the other children; but in caſe he die after that age, at which time he might make a will of it, there, on his dying inteſtate, it ſhall go according to the ſtatute of diſtributions. *Preced. Canc*. 499, 537. A deviſe or ſettlement of lands, does not bar a child of his part of the perſonal eſtate by the cuſtom: but where a wife is to have a certain ſum out of the huſband's eſtate, it ſhall be intended in ſatisfaction of her ſhare. 2 *Vern*. 753. 1 *Chan. Caſ*. 160.

A freeman of *London* dies without iſſue, his widow is to have her widow's chamber, and a moiety of the reſt of the eſtate; and in an extraordinary caſe, ſhe was allowed the benefit of the other moiety for life by virtue of her huſband's will. 1 *Vern*. 132. 2 *Vern. Rep*. 110.

By the ſtatute 11 *Geo*. 1. *c*. 18. Freemen, by will, may now give and diſpoſe of their perſonal eſtates, to whom they think fit; yet if they die inteſtate, ſuch eſtates ſhall be ſubject to, and be diſtributed agreeable to the cuſtom of the city. Where a freeman dies, and leaves orphan children under age, unmarried, the court of orphans hath the cuſtody of their bodies and goods, by the cuſtom of *London*: It is alſo the ſame, though he dies, or the children were born out of *London*. 1 *Mod*. 80.

By the city cuſtom, action on the caſe lies for calling a married woman a whore; for in *London* ſuch woman may be carted: And this reaches to all the inhabitants within *London*. 2 *Danv*. 310. 1 *Lil*. 378.

A woman that uſeth a trade in *London*, without her huſband, is chargeable without him as a *feme ſole* merchant: She ſhall plead as ſole, and if condemned, be put in priſon till ſhe pay the debt; alſo the bail for her are liable, if ſhe abſent herſelf; and the huſband ſhall not be charged. *Privil. Londini*.

It is the cuſtom of the city of *London*, that where a perſon is educated in one trade, he may ſet up another. 1 *Saund*. 312. If a debtor be about to fly, he may be arreſted by the cuſtom of *London*, before the day, to find better ſecurity. *Hob*. 86. Where two perſons are bound as ſureties for another, and recovery is had againſt one of them, he may have contribution againſt the other, by the city laws. 2 *Danv. Abr*. 310. Debts on ſimple contract will maintain an action in *London*, as well as debts on ſpecialty: And it is the cuſtom of the city, that action of debt ſhall be maintained upon ſuch a contract againſt executors or adminiſtrators, who ſhall be chargeable therewith, as if it were upon a bond or obligation. 8 *Co. Rep*. 126. 5 *Rep* 82.

There is a foreign attachment, by the cuſtom of *London*, of money, *&c.* in the hands of a third perſon, where one man owes another any debt, *&c.* See *Attachment*.

By a cuſtom of *London*, every tenant at will of any houſe above 40*s*. *per ann*. in the city, ought to give, or to have, half a year's warning, on leaving it: And a landlord recovered half a year's rent, where the tenant had left the houſe, *&c.* without ſuch warning. *Comber*. 384. If any cuſtom of *London* be pleaded and denied, it ſhall be tried by writ to the Lord Mayor and Aldermen, to certify whether there be ſuch a cuſtom; who ſhall make certificate by the mouth of their Recorder. *Cro. Car*. 516. The courts of *Weſtminſter* of courſe take notice of the cuſtoms of *London*; but not of any other place, without being alledged. 1 *Rol. Rep*. 106.

Cuſtom of Merchants. If two joint merchants occupy their ſtock and merchandiſe in common, one of them naming himſelf a merchant, ſhall have an account againſt the other, and charge him as receiver. *Co. Lit*. 172. By the cuſtom of merchants, where a merchant orders his factor to buy goods of a particular perſon, there the merchant is debtor, and not the factor: but it is otherwiſe where the merchant orders his factor to buy goods generally, without ſaying of whom; here the factor is debtor, though the goods come to the uſe of the merchant. 1 *Lil*. 376. The cuſtom of merchants as to bills of exchange, *&c.* See *Bills of Exchange*.

Cuſtoms (*Cuſtuma*) Are uſed for the tribute or toll that merchants pay to the King, for carrying out and bringing in merchandiſe. *Stat*. 14 *Ed*. 3. *c*. 21. They are duties payable to the crown for goods exported and imported, and are due to the King of common right; *firſt*, becauſe the ſubject hath leave to depart the kingdom, and to export the commodities thereof; *ſecondly*, for the intereſt which the King hath in the ſea, and as he is guardian of, and maintains all the ports, wherein the commodities are exported or imported; and *laſtly*, for that the King protects merchants from enemies and pirates. *Dyer* 43.

The word cuſtom comprehends *Magna & Antiqua Cuſtuma*, which is payable out of our own native commodities, as for wool, woolfels, and leather; and *parva cuſtuma*, which are cuſtoms payable by merchants, ſtrangers, and deniſens; and theſe began in the reign of *Edw*. I. when the parliament granted him 3*d*. in the pound for all merchandiſes exported and imported. *Ibid*. 165. But that which is granted by parliament, is properly called a *ſubſidy*; and ſometimes granted to the King for life; and there are ſeveral ſorts of theſe ſubſidies, as *tonnage*, a duty granted out of every ton of wine imported, which was firſt granted by parliament to King *Edward* III. And *poundage*, a ſubſidy granted for all goods exported and imported, except wines, *&c.* and is uſually the twentieth part of the value of the goods, or 12*d*. in the pound; and this was firſt given to *Hen*. 6. for life. 1 *Nelſ. Abr*. 583, 584.

In the reign of *Edward* III. the great charter for free traffick was confirmed; And *anno* 6 *Ed*. III. it was enacted, that no new cuſtoms could be levied, nor ancient increaſed, but by authority of parliament. 2 *Inſt*. 60. But though the King cannot lay any impoſition on merchandiſe without conſent of parliament; yet by his prerogative he may reſtrain merchants from trading without his royal licence. In the 14th year of *Ed*. 3. it was enacted in parliament, that a mark ſhould be paid as cuſtom for a ſack of wool. *Anno* 4 *H*. 8. Collecters were appointed of the ſubſidy of cloth of gold, ſilver, velvet, *&c.* And 1 *Eliz*. Duties were granted on ſweets, wines, *&c.* And *ann*. 12 *Car*. 2. *c* 4. The ſubſidies of *tonnage* and *poundage*, *&c.* were granted to King *Charles* during his life; as they have been ſince to his royal ſucceſſors, down to his Majeſty King *George* III. And many and various are the duties of cuſtoms granted on foreign goods and merchandiſe, in the reign of King *James* II. K. *William*, Q. *Anne*, and his late and preſent Majeſty.

The tonnage duty granted to King *Charles* II. was for every ton of french wine, brought into the port of *London*, by merchants natural ſubjects, 4*l*. 10*s*. by alien ſtrangers, 6*l*. for *Malmſeys*, *Tents*, *Alicants*, *Sacks*, *Canaries*, *Malagas*, *Maderaſs*, and all other ſweet wines, by native ſubjects, 2*l*. 5*s*. the ton; by ſtrangers and aliens 3*l*. *&c.* The *poundage* duty was 12*d*. in the pound value for all *merchandiſe goods*, according to the *book of rates*, except woollen cloths made in *England*, and for all *woollen broad cloths*, to be paid after the rate of each 64 pounds in weight, by ſubjects 3*s*. 4*d*. and ſtrangers 6*s*. 8*d*. *Stat*. 12 *Car*. 2. *c*. 4.

If goods and merchandiſe are brought by a merchant to a port or haven, and there part thereof ſold but never put on land, they muſt pay the cuſtoms; and diſcharging them out of the ſhip into another upon the ſale, amounts in law to a putting them upon the land, ſo that if the cuſtom duties are not paid, the goods will be forfeited. *Hill.* 24 *Eliz.* 12 *Co. Rep.* 18.

By the ſtatute 21 *Geo.* 2. *c.* 2. over and above all ſubſidies of *tonnage* and *poundage*, and other duties whatſoever already payable on any goods or merchandiſes imported, a further ſubſidy of *poundage* of 12*d.* in the pound is given to his Majeſty, his heirs and ſucceſſors, payable by the importer according to the rate of the ſame goods, as valued in the *book of rates.* Unrated *Eaſt-India* goods are to pay 5 *l. per cent.* of the groſs price, for they ſhall be ſold at the candle.

By the *Stat.* 19 *Geo.* 2. *c.* 34. If any perſons, to the number of three, or more, armed with offenſive weapons, ſhall be aſſembled in order to be aiding in the illegal exportation of goods prohibited to be exported, or the running uncuſtomed goods, or the illegal relanding any goods, or reſcuing the ſame, after ſeizure, from any officer, or from the place where they ſhall be lodged, or in the reſcuing any perſon apprehended for any offence made felony by any act relating to the cuſtoms or exciſe, or preventing the apprehending any perſon guilty of any ſuch offence; or in caſe any perſons to the number of three, or more, ſo armed, ſhall be ſo aſſiſting, or, if any perſon ſhall have his face blacked, or wear any maſk, or other diſguiſe, when paſſing with ſuch goods, or ſhall forcibly hinder, obſtruct, aſſault, oppoſe, or reſiſt any officer of his Majeſty's revenue, in ſeizing ſuch goods, or ſhall maim or dangerouſly wound any ſuch officer in his attempting to go on board any veſſel, or ſhoot at or dangerouſly wound any ſuch perſon when on board and in the execution of his office, every ſuch perſon ſhall be guilty of felony. and ſuffer death.

On information on oath of any perſon's being guilty of any of the above offences, the juſtice may certify the information to one of the Secretaries of State, who is to lay it before his Majeſty; whereupon his Majeſty may make an order, requiring the offender to ſurrender himſelf in forty days after publication thereof in the *Gazette*; and in default thereof, the order being publiſhed twice in the *Gazette*, and proclaimed in two markets near where the offence was committed, and a copy thereof affixed in ſome public place there, the offender ſhall be attainted of felony, and ſuffer death. Any perſon habouring or aiding any ſuch offender after the time for his ſurrender expired, knowing him to have been ſo required to ſurrender, being proſecuted within a year, ſhall be tranſported for ſeven years. Offences made felony by this act, may be ſued in any county.

If any officer, &c. in the ſeizing, &c. ſuch goods, or in the endeavouring to apprehend any ſuch offender, ſhall be beat, wounded, maimed, or killed, or the goods be reſcued, the inhabitants of the rape, lath or hundred, unleſs the offender be convicted within ſix months, ſhall forfeit 100*l.* to the executors of any officer killed; and pay damages to any officer beat, &c. not exceeding 40*l.* and for any goods reſcued, not exceeding 200*l.* A reward of 500*l.* for apprehending any offender; a perſon wounded in apprehending an offender to have 50*l.* extraordinary, and the executors of a perſon killed, to have 100*l.*

Ships and veſſels outward-bound, are not to take in any goods, till the veſſel, &c. is entered with the collectors of the cuſtoms; and before departure, the contents of the lading is to be brought in under the hands of the laders, &c. Alſo when ſhips arrive from beyond ſea, the maſters are to make a true entry upon oath, of the lading, goods, ſhip, &c. under the penalty of 100*l.* And if any concealed goods are found after clearing, for which the duties have not been paid, the maſter of the veſſel ſhall be ſubject to the like penalty. *Stat.* 13 & 14 *Car.* 2. *c.* 11.

Officers of the cuſtoms may ſearch ſhips. 13 & 14 *Car.* 2. *c.* 11. *ſect.* 4. Having writ of *aſſiſtance*, may ſearch houſes, *ſect.* 4. The penalty of abuſing officers, *ſect.* 6. Keepers of wharfs, keys, &c. landing or ſhipping goods, without the preſence of ſome officer of the cuſtoms, ſhall forfeit 100*l.* And reſiſting officers of the cuſtoms, in the execution of their office, is liable to a fine not exceeding 100*l.* *Stat. Ibid.* But by 6 *Geo.* 1. *c.* 21. Where officers of the cuſtoms are hindered in the execution of their duty, by perſons armed to the number of eight, the offenders are to be tranſported for ſeven years.

If any goods are put into any veſſel to be carried beyond ſea; or be brought from beyond ſea, and unſhipped to be landed, the duties not being paid, nor agreed for at the cuſtom houſe; the ſame ſhall be forfeited; one moiety to the King, the other to the ſeizer, &c. And by late ſtatutes, foreign goods taken in at ſea, by any coaſting veſſel, &c. ſhall be forfeited, and treble value.

To prevent clandeſtine running of goods, foreign brandy, &c. imported in veſſels under forty tons, the veſſel and brandy to be forfeited: If any perſon conceal run goods, he ſhall forfeit them, and treble value; and the like penalty is inflicted for offering ſuch goods to ſale. 8 *Geo.* 1. *c.* 18. & 11 *Geo.* 1. *c.* 7.

The commiſſioners of the cuſtoms, &c. ſhall cauſe all goods ſeized for unlawful importation, or non-payment of duties, to be publickly ſold; and damaged wines for diſtillation, &c. And one or more juſtices of peace, of the county where any ſeizure ſhall be made by officers of run goods, &c. mentioned in informations before them, may adminiſter an oath to any perſon ſkilled in the nature and quality of the goods, to view the ſame, and make a return of the ſpecies and value; and after they ſhall be condemned and ſold. *Stat.* 12 *Geo.* 1. *cap.* 26.

By a late act, where three perſons are aſſembled and armed with fire-arms, &c. to be aſſiſting in the running of goods, they ſhall be guilty of felony and tranſported, and 50*l.* to be paid for apprehending ſuch offenders; alſo the like reward to any of them for diſcovering others. All perſons two or more in company, found paſſing within five miles from the ſea-coaſts, with any horſes, cart, &c. wherein are put above ſix pounds of tea, or five gallons of brandy, or other foreign goods of 30*l.* value, landed without entry, and not having permits, and who ſhall carry offenſive weapons, &c. or aſſault any of the officers of the cuſtoms, ſhall be adjudged runners of goods, and be tranſported as felons, and all the goods to be ſeized and forfeited: And ſuſpected perſons lurking near the coaſts, not giving a good account of themſelves, may be ſent by a juſtice to the houſe of correction for a month; and informers to have 20*s.* for every offender ſo taken.

If any perſon offers any tea, brandy, &c. to ſale, without a permit, the perſons to whom offered may ſeize and carry it to the next warehouſe belonging to the cuſtoms or exciſe; and the ſeizers ſhall have a third part, &c. And watermen, carmen, porters, &c. in whoſe cuſtody run goods are found, ſhall forfeit treble value, or be committed for three months.

Ships and veſſels from foreign parts, having on board tea, or brandy, rum, &c. in caſks under ſixty gallons, (except for the uſe of ſeamen) found at anchor, or hovering near any port, or within two leagues of the ſhore, and not proceeding in their voyages, unleſs in caſes of unavoidable neceſſity, all ſuch tea, &c. ſhall be forfeited.

Perſons *offering* any *bribe* to officers of the cuſtoms, to connive at the running of goods, to forfeit 50*l.* and obſtructing ſuch officers in entering or ſearching ſhips, incurs a forfeiture of 100*l.* And if an officer be wounded or beaten on board a ſhip, the offenders to be tranſported, &c. *Stat.* 9 *Geo.* 2. *c.* 35.

There is a *draw-back* allowed merchants for ſome goods and merchandiſe; and they have allowances of ſo much *per cent.* out of the cuſtoms, where goods are defective, or receive damage, &c.

By ſtatute, no cuſtomer or comptroller of the cuſtoms, ſhall have any ſhips of his own, or meddle with the freight of ſhips, 14 *R.* 2. *c.* 10. And no ſearcher, ſurveyor, &c. or their clerks, deputies, or ſervants, may have any ſuch ſhips of their own; nor ſhall uſe merchandiſe, keep a wharf, inn or tavern, or be factor, attorney, &c. to a merchant, under the penalty of 40*l.* Stat. 20 *H.* 6. *c.* 5. Cuſtomers, collectors, or comptrollers, ſhall not conceal cuſtoms duly entered and paid, on pain to forfeit the treble value of merchandiſe ſo cuſtomed, and to make fine and ranſom to the King. 3 *H.* 6. *c.* 3. If any perſons employed about the cuſtoms and ſubſidies *take a bribe*,

bribe, or connive at any falſe entry, they ſhall forfeit 100*l.* and be incapable of any employment under the King. Stat. 13 & 14 *Car.* 2. *c.* 11. Alſo if any officer of the revenue, ſhall make any colluſive ſeizure of foreign goods, to the intent the ſame may eſcape payment of the duties, he is to forfeit 500*l.* and be incapable of ſerving his Majeſty; and the importer and owner ſhall forfeit treble the value of the goods ſo colluſively ſeized, &*c.* 5 *Geo.* 1. *c.* 11. Officers of the cuſtoms, &*c.* are not to trade in brandy, coffee, &*c.* or any exciſeable liquor, on pain of 50 *l.* and forfeiture of offices. 12 *Geo.* 1. *c.* 28. For farther particulars concerning cuſtoms, ſee *Table* to ſtatutes at large, *4to Edit.* and ſee *Information.*

Cuſtoms and Services, Belonging to the tenure of lands, are ſuch as tenants owe unto their lords; which being with-held from the lord, he may have a writ of *cuſtoms and ſervices.* See *Conſuetudinibus* & *Servitiis.*

Cuſtos Brevium, Is a principal clerk belonging to the court of *Common Pleas*, whoſe office is to receive and keep all the writs returnable in that court, and put them upon files, every return by itſelf; and to receive of the *prothonotaries* all the records of *Niſi prius*, called the *Poſtea's*; for they are firſt brought in by the clerk of aſſiſe of every circuit to the prothonotory, who enters the iſſue in the cauſes, to enter the judgment: And four days after the return thereof, the prothonotory enters the verdict and judgment thereupon, into the rolls of the court; whereupon he afterwards delivers them over to the *cuſtos brevium*, who binds them into a bundle. He makes entry likewiſe of all writs of covenant, and the concord upon every fine; and maketh forth exemplifications, and copies of all writs and records in his office, and of all fines levied.

The *fines* after they are engroſſed, are divided between the *cuſtos brevium* and the *chirographer*; the chirographer always keeps the writ of covenant and the note, and the *cuſtos brevium* the concord and the foot of the fine; upon which foot of the fine, the chirographer cauſeth the proclamations to be indorſed, when they are proclaimed. This officer is made by the King's letters patent: And in the court of *King's Bench*, there is alſo a *cuſtos brevium & rotulorum*, who fileth ſuch writs as are in that court filed, and all warrants of attorney, &*c.* and whoſe buſineſs it is to make out the records of *Niſi prius*, &*c.*

Cuſtos Placitorum Coronæ, An officer which ſeems to be the ſame with him we now call *cuſtos rotulorum.* Bract. lib. 2. c 5.

Cuſtos Rotulorum, Is he who hath the coſtody of the rolls or records of the ſeſſions of the peace, and alſo of the commiſſion of the peace itſelf. He is always a juſtice of the peace of the *quorum* in the county where appointed, and uſually ſome perſon of quality: But he is rather termed an officer or miniſter, than a judge. *Lamb. Eiren. lib.* 4. *cap.* 3. *p.* 373. The *cuſtos rotulorum* in every county, is appointed by a writing ſigned by the King's hand, which ſhall be a warrant to the Lord Chancellor to put him in commiſſion: And he may execute his office by deputy; and hath power to appoint the clerk of the peace, &*c*, *Stat.* 37 *H.* 8. *cap.* 1. By ſtat. 1 *W.* & *M. c.* 21. The *cuſtos rotulorum* is to nominate and appoint the clerk of the peace; but not to ſell the place, on pain of forfeiting the office of *cuſtos rotulorum*, and other penalties, &*c.* The *cuſtos rotulorum*, two juſtices of the peace, and the clerk of the peace, are to inroll deeds of bargain and ſale of lands of papiſts, &*c.* by 3 *Geo.* 1. *cap.* 18.

Cuſtos of the Spiritualties, *(Cuſtos Spiritualitatis)* Is he that exerciſeth the ſpiritual or eccleſiaſtical juriſdiction of a dioceſe, during the vacancy of any ſee; who with us in *England* is the archbiſhop by preſcription: But (according to *Gwyn*) ſome deans and chapters challenge this right by ancient charters from the Kings of this land. *Cowel.*

Cuſtos of the Temporalties, (*Cuſtos Temporalium*) The perſon to whoſe cuſtody a vacant ſee or abbey was committed by the King, as ſupreme Lord; who, as a ſteward of the goods and profits, was to give an account to the *Eſcheator*, and he into the *Exchequer:* His truſt continued till the vacancy was ſupplied, and the ſucceſſor obtained the King's writ *De Reſtitutione Temporalium*, which was uſually after conſecration.

Cut-purſe. If any perſon *clam* & *ſecrete*, and without the knowledge of another, cut his purſe or pick his pocket, and ſteal from thence to the value of 12 *d.* it is felony excluded clergy. 8 *Eliz. c.* 14. See *Black. Com.* 4 *V.* 241. 3 *Inſt.* 68. See *Felony.*

Cutts, Flat bottomed boats, built low and commodiouſly, uſed in the channel for tranſporting of horſes. *Stow. Annal. p.* 412.

Cutter of the Tallies, Is an officer in the Exchequer, to whom it belongs to provide wood for the *tallies*, and to cut the ſum paid upon them, &*c.*

Cuve, Is a *French* word, in Engliſh *keeve*, from whence comes *keever*, a tub or vat for *brewing.* Cowel.

Cyclas, A long garment cloſe upwards, and open or large below. *Matt. Pariſ. Anno* 1236. ſpeaking of the citizens of *London*, tell us, they were *ſericis veſtimentis ornati*, Cycladibus *auri textis circundati.*

Cynebote. This words ſignifies the ſame with *Cenegild.* Blount.

Cyricbryce, (Sax.) *Irruptio in Eccleſiam.* Leg. Eccl. Canuti Regis.

D.

DA, *(Fr.)* A word affirmative for yes. *Law. Fr. Dict.*

Dag, A gun; *un Dagg*, a ſmall gun, or hand-gun. See *Haque.*

Dagenham-Breach, A duty is granted on coals imported in *London* to repair the walls, and banks thereof; to be collected and diſpoſed by truſtees, &*c.* Stat. 12 *Ann. St.* 2. *c.* 17. See 7 *Geo.* 1. *c.* 20. *ſec.* 32.

Dagus or **Dais**, The chief or upper table in a monaſtery; from a cloth called *dais*, with which the tables of Kings were covered.

Dakir. The ſtat. 51 *H.* 3. *ſt.* 1. *De compoſitione ponderum & menſurarum* aſcertains a *laſt* of hides to conſiſt of twenty *dickers*, and every *dicker* of ten hides. See *Dicker.*

Dalmatica, A garment with large open ſleeves, at firſt worn only by biſhops, tho' ſince made a diſtinction of degrees; ſo called, becauſe it came originally from *Dalmatia.*

Dalus, Dailus, Dailia, A certain meaſure of land. ——*Et totam* Dailam *mariſci tam de roſſa quam de prato*, &*c.* *Mon. Ang. tom.* 2. *p.* 211. In ſome places it is taken for a ditch or *vale*, whence comes *dale.* The *dali prati* have been eſteemed ſuch narrow ſlips of paſture, as are left between the ploughed furrows in arable land; which in ſome parts of *England* are called *doles:* The preſent *Welch* uſe this word for low meadow by the river ſide. And this ſeems to be the original name and nature of *Deal* in *Kent*, where *Cæſar* landed, and fought the *Britains:* Cæſar *ad* Dole *bellum pugnavit.* Nennius.

Damage, *(Damnum)* Signifies generally any hurt or hindrance that a man receives in his eſtate: But particularly, a part of what the jurors are to enquire of and bring in, when an action paſſeth for the plaintiff: For after verdict given of the principal cauſe, the jury are aſked touching *coſts* and *damages*, which comprehend a recompence for what the plaintiff hath ſuffered, by means of the wrong done him by the defendant. *Co. Lit.* 257. This word *damage* is taken in law, in two ſeveral ſignifications, the one *properly* and *generally*, the other *relatively:* *Properly*, as it is in caſes wherein *damages* are founded upon the ſtatute of 2 *H.* 4. *c.* 1. and 8 *H.* 6. *c.* 9. where *coſts* are included within the word *damages*, and taken as *damages:*

But when the plaintiff declares for the wrong done to him, to the *damage* of ſuch a ſum, this is to be taken *relatively* for the *wrong* which paſſed before the writ brought, and is aſſeſſed by reaſon of the foregoing treſpaſs, and cannot extend to *coſts* of ſuit, which are future, and of another nature. 10 *Rep.* 116, 117. Greater coſts may be given in ſome caſes, than the *damages* laid in the plaintiff's declaration; for the plaintiff's declaration is only for the *damage* done him by the defendant; But the coſts are given

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in reſpect of the plaintiff's ſuit to recover his *damages*, which may be ſometimes greater than the *damage*. 1 *Lil. Abr.* 384.

Herein is to be conſidered,

I. *In what actions damages may be recovered, and againſt whom.*

II. *How damages are to be aſſeſſed, increaſed, and mitigated.*

I. *In what actions damages may be recovered, and againſt whom.*

In *perſonal* and *mixed* actions, *damages* were recovered at common law: But in *real* actions, no *damages* were recoverable, becauſe none were *demanded* by the count or writ: Whereas in actions *perſonal*, the plaintiff counts *ad dampnum* for the injury; and if he recovers no *damages*, he hath no coſts. 10 *Rep.* 111, 117. In a *perſonal* action, the plaintiff ſhall recover *damages* only for the tort done *before* the action brought; and therein he counts for his *damages*: In a *real* action, he *recovers* his *damages* pending the writ; and therefore *never counts* for his *damages*. 10 *Rep.* 117. By the ſtat. of *Glouc.* 6 *Ed.* 1. *cap.* 1. *Damages* are given in real actions, aſſiſes of *novel diſſeiſin*, *mort d' anceſtor*, *&c.* and ſhall be recovered againſt the alienee of a diſſeiſor, as well as againſt the diſſeiſor himſelf; and the demandant ſhall have of the tenant likewiſe coſts of ſuit; but not expences for trouble and loſs of time. 2 *Inſt.* 288. See farther *Stat.* 6 *Ed.* 1. *c.* 1. 2 *Inſt.* 284, 286. 2 *Danv. Abr.* 448.

No *damages* could be recovered at the common law, but againſt the wrong doer, and by him to whom the wrong was done. 2 *Inſt.* 284. *Damages* ſhall be recovered in writ of admeaſurement of dower; but not in a writ of admeaſurement of paſture. 2 *Danv.* 457. In writ of partition, by one coparcener againſt another, it is ſaid no *damages* ſhall be had: In a formedon, no *damages* ſhall be recovered: ſo in a *nuper obiit*, writ of account, writ of execution, *&c.* *Ibid.* 455, 456. *Damages* and coſts are due in a writ of annuity; and if the jury find for the plaintiff, and do not aſſeſs *damages*, it will be error; though he may after verdict releaſe the *damages*, and take judgment for the annuity. 11 *Rep.* 56. *Dyer* 320, 369.

In battery, impriſonment, and taking of goods, againſt three perſons; one commits the battery, another the impriſonment, the third takes the goods, all at one time, all are guilty of the whole, and to be charged in *damages*. 3 *Lev.* 324. See 10 *Rep.* 66, 69.

II. *How damages are to be aſſeſſed, increaſed, and mitigated.*

In real actions, *damages* are aſſeſſed by writ of enquiry: When the jury find the iſſue for the plaintiff, they are to aſſeſs the *damages*. And in actions upon the caſe, *&c.* where *damages* are uncertain, it is left to the jury to inquire of them: In debt, which appears certain to the court what it is, the *damages* aſſeſſed by the jury are ſmall, in fact only nominal, as one ſhilling; and the maſter in *B. R.* taxeth the coſts; which is added thereto, and called *damages*. 1 *Lill.* 390. When judgment is given by default, in action of debt, the court is to aſſeſs the *damages*, and not the jury: So if judgment by *nil dicit*, in action of debt.

Where exceſſive *damages* have been given, or there hath been any miſdemeanor in executing a writ of enquiry; the court hath ſometimes relieved the defendant by a new writ of enquiry. 2 *Danv.* 464. And where *damages* are exceſſive, on motion the defendant may have a new trial. *Style* 465. 1 *Nelſ. Abr.* 587. In treſpaſs againſt two, one comes and pleads Not guilty, and it is found againſt him; and afterwards another comes and pleads the like, and is found Guilty by another inqueſt; in this caſe, the firſt jury ſhall aſſeſs all the *damages* for the treſpaſs. *New Nat. Br.* 236. Treſpaſs againſt divers defendants, they plead Not guilty ſeverally, and the jury finds them all Guilty: The jury muſt aſſeſs the *damages jointly*, for it is but *one entire treſpaſs*, and made *joint* by the declaration. 11 *Rep.* 5.

If action is brought for two ſeveral cauſes of action, one of which is not actionable, if intire *damages* are given, the verdict is void: *Contra* if the *damages* are ſevered. And where *damages* are intirely aſſeſſed, and they ought not to be given for ſome part; no judgment can be given on the verdict. 10 *Rep.* 130. Where damages are awarded for delay of execution, and being kept out of the money, they are uſually aſſeſſed by allowing the party what lawful intereſt he might have. 1 *Salk.* 208.

Where the plaintiff ſhall have no more coſts than *damages*, unleſs the jury finds more than 40*s.* in actions of treſpaſs, on the caſe, *&c.* See Stat. 43 *Eliz.* *c.* 6. 21 *Jac.* 1. *c.* 16. 22 & 23 *Car.* 2. *c.* 9. *ſec.* 136. 11 & 12 *W.* 3. *c.* 9. but in *wilful treſpaſs* certified by the judge, the plaintiff ſhall have coſts. *Per* 8 *W.* 3. *c.* 11. *ſ.* 4.

In action upon the caſe the jury may find leſs *damages* than the plaintiff lays in his declaration; but ought not to find more, though coſts may be increaſed beyond the ſum mentioned in the declaration for *damages*: The plaintiff may releaſe part of the *damages*, upon entering up his judgment. 10 *Rep.* 115. If he does not, but takes judgment for damages (excluſive of coſts) to a larger amount, than laid in the declaration, it is error, and not within any of the ſtatutes of amendment or jeofails ſo lately determined in *B. R.* *Sandiford* v. *Benn*.

In actions upon any bond, *&c.* for non-performance of covenants, the jury ſhall aſſeſs *damages* for thoſe the plaintiff proves broken; and the plaintiff may aſſign as many breaches as he thinks fit. 8 & 9 *W.* 3. *c.* 11.

Damages are not to be given for that which is not contained in the plaintiff's declaration; and only for what is materially alledged. 1 *Lill.* 381.

When *damages* double or treble are given in an action newly created by ſtatute; if no *damages* were formerly recoverable, there the demandant or plaintiff ſhall recover thoſe *damages* only, and ſhall not have coſts, being a new creation in recompence where there was none before: As upon ſtat. 1 & 2 *P.* & *M.* *c.* 12. for driving of diſtreſſes out of the hundred, *&c.* whereby *damages* are given, the plaintiff ſhall recover no coſts, only his *damages*, becauſe this action is newly given. But in an action upon the ſtat. 8 *H.* 6. *c.* 9. of forcible entry, which giveth treble *damages*, the plaintiff ſhall recover his *damages* and his coſts to the treble, by reaſon he was entitled to ſingle *damages* before by the common law; and the ſtatute, as part of the *damages*, increaſes the coſts to treble; and when a ſtatute increaſes *damages*, coſts ſhall likewiſe be increaſed. 2 *Inſt.* 289. 10 *Rep.* 116.

In ſome caſes double, treble *damages*, *&c.* are allowed: For not ſetting forth tithes; diſtreſſes wrongfully taken; reſcous, *&c.* Treble *damages* are incurred by ſtatute. Though if it be not found by the jury, that the plaintiff hath ſuſtained ſome *damage* in caſes where treble *damages*, *&c.* are inflicted by law, no *damages* can be awarded. 2 *Danv. Abr.* 449.

How *damages* given to a perſon ſued for an act done in the execution of his office, are to be aſſeſſed and recovered, ſee *Valentine* and *Fawcet*, *Rep. temp. Hardw. per Annaly*, 138, 139.

Plaintiff may take judgment *de melioribus damnis* where ſeveral damages are given, or enter a *remittitur*. *Sabin* v. *Long*, *Wilſ. Rep. par.* 1. *fo.* 30.

The court in their diſcretion may increaſe the *damages* in *mayhem*. *Id.* *Brown* v. *Seymour*, *par.* 1. *fo.* 5. and *vide* 3 *Salk.* 115. 2 *Inſt.* 200. 2 *Danv.* 449, 452. In debt for a penalty in articles of agreement, the jury ought to aſſeſs *damages* on the breach aſſigned, according to the *Stat.* 8 & 9 *W.* 3. *c.* 10. and ſhall not find the debt; if they do, a *venire facias de novo* ſhall iſſue. *Id.* *Drage*, *Eſq*; v. *Brand*, *par.* 2. *fo.* 377.

In what caſes double, treble, and quadruple *damages* are given, ſee *Table* to *Statutes at large*, quarto edition, title *Damages*.

Damage-cleer, (*damna clericorum*) Was a fee aſſeſſed of the tenth part in the *Common Pleas*, and the twentieth part in the *King's Bench* and *Exchequer*, out of all *damages* exceeding five marks, recovered in thoſe courts, in actions upon the caſe, covenant, treſpaſs, battery, *&c.* wherein the *damages* were uncertain; which the plaintiff was obliged to pay to the *prothonotary*, or the chief officer of the court wherein recovered, before he could have execution for the *damages:* this was originally a gratuity given to the *prothonotaries* and their clerks, for drawing ſpecial writs and pleadings; but it is taken away by ſtatute, and if any officer in the King's courts, take any money in the name of *damage-cleer*, or any thing in lieu thereof, he ſhall forſeit treble the value. *Stat.* 17 *Car.* 2. *c.* 6.

Damage-feaſant, or *faiſant*, Is when a ſtranger's beaſts are found in another perſon's ground without his leave or licence, (and without the fault of the poſſeſſor of the cloſe, which may happen from his not repairing his fences,) and there doing *damage*, by feeding, or otherwiſe, to the graſs, corn, woods, *&c* In which caſe, the tenant whom they *damage* may diſtrain and impound them, as well by night as in the day, leſt the beaſts eſcape before taken; which may not be done for rent, ſervices, *&c.* only in the day-time. *Stat.* 51 *H.* 3. *ſtat.* 4. 1 *Inſt.* 142. If a man take my cattle, and put them into the land of another, the tenant of the land may take theſe cattle *damage-feaſant*, though I who am the owner, was not privy to the cattle's being there *damage-feaſant*; and he may keep them againſt me till ſatisfaction of the *damages.* 2 *Danv. Abr.* 364.

But if one comes to diſtrain *damage-feaſant*, and to ſeize the cattle, and the owner drives them out before they are taken, he cannot diſtrain them *damage-feaſant*, but is put to his action of treſpaſs; for the cattle ought to be actually upon the land *damage-feaſant*, at the time of the diſtreſs. 1 *Inſt.* 161. 9 *Rep.* 22. He that hath but the *poſſeſſion* of, and no title to the land, may juſtify taking a diſtreſs *damage-feaſant*. Plowd. 431. If a man puts cattle to paſture at ſo much a week with another, who after gives notice that he will not have them there any longer; in this caſe the owner of the ground may diſtrain them *damage-feaſant*, though the cattle be in lawfully at firſt: ſo where a leſſee holds after his eſtate is ended. 43 *Edw.* 3. *Kelw.* 69 But the owner of the cattle ſhould have proper notice and reaſonable time allowed for taking away his cattle.

Beaſts belonging to the plough, or beaſts of huſbandry, ſheep, horſes joined to a cart, and it is ſaid a horſe with a rider on it, may be diſtrained *damage-feaſant*, though not for rent. 1 *Sid.* 422, 440. But the owner may tender amends, before the cattle are impounded; and then the detainer is unlawful: alſo if when impounded the pound-door is open, the owner may take them out. 5 *Rep.* 76.

A greyhound may be taken *damage-feaſant*, running after conies in a warren: ſo a man may take a ferret that another hath brought into his warren, and taken conies with. If a perſon bring nets and gins through my warren, I cannot take them out of his hands. 2 *Danv.* 633 But if men are rowing up my water, and endeavouring with nets to catch fiſh in my *ſeveral* piſcary, I may take their oars and nets, and detain them as *damage-feaſant*, to ſtop their further fiſhing; though I cannot cut their nets. *Cro. Car.* 228. See *Black. Com.* 3 *V.* 6.

Dam, A boundary, or confinement; as to *dam* up, or *dam* out: *infra damnum ſuum*, within the bounds or limits of his own property or juriſdiction. *Bract. lib.* 2. *c.* 37.

Damiſella, A light damoſell or miſs. *Stat.* 12 *Ed.* 1. See *Pimp Tenure.*

Damnum abſque injuria. If one man keeps a ſchool in ſuch a place, another may do ſo likewiſe in the ſame place, though he draw away the ſcholars from the other ſchool; and this is *damnum abſque injuria:* but he muſt not do any thing to diſturb the other ſchool. 3 *Salk.* 10.

Dan. Anciently the better ſort of men in this kingdom had the title of *Dan*; as the *Spaniards Don*, from the Lat. *Dominus.*

Danegelt, or **Dane-geld,** (*danegildum*) Is compounded of the words *dane* and *gelt*, the latter in *Dutch* ſignifying money; and was a tax or tribute of 1 *s.* and after of 2 *s.* upon every hide of land through the realm, laid upon our anceſtors the *Saxons* by the *Danes*, when they lorded it here. *Camb. Brit.* 83, 142. According to ſome accounts, this tax was levied for clearing the ſeas of *Daniſh* pirates; which heretofore greatly annoyed our coaſts: but King *Ethelred* being much diſtreſſed by the continual invaſions of the *Danes*, to procure his peace, was compelled to charge his people with very heavy payments called *danegelt*, which he paid to the *Danes* at ſeveral times. *Hoveden par. poſt. Annal.* 344. *Ingulph.* 510. *Selden's Mare Clauſ.* 190. This *danegelt* was releaſed by St. *Edward the Confeſſor*; but levied again by *William* the Firſt and Second: then it was releaſed again by King *Henry* the Firſt, and finally by King *Stephen.* It is probable that this antient tax might be a precedent for our *land-tax* of 3 *s.* and 4 *s.* in the pound, when firſt granted.

Danelage, Was the law of the *Danes* when they governed a third part of this kingdom. See *Merchenlage*, and *Black. Com.* 1 *V.* 65. 4 *V.* 405.

Dangeria, A payment in money made by foreſt tenants, that they might have liberty to plough and ſow in time of *pannage* or maſt-feeding. *Manw. For. Laws.*

Dapifer, (*a dapes ferendo*) Was at firſt a domeſtick officer, like unto our *ſteward of the houſhold*: or rather *clerk of the Kitchen:* but by decrees it was uſed for any fiduciary ſervant, eſpecially the chief ſteward or head bailiff of an honour or manor. There is mention made in our ancient records of *dapifer regis*; which is taken for ſteward of the King's houſhold. *Cowel.*

Dardus, *i. e.* A dart: in *Wales* an oak is called a *dar.*

Dare ad Remanentiam, To give away in fee, or for ever *Glanv. lib.* 7. *cap.* 1. This ſeems to be only of a *remainder.*

Darrein, Is a corruption from the Fr. *dernier*, viz. *ultimus*, the laſt; in which ſenſe we uſe it: as *darrein continuance*, &c.

Darrein Preſentment, (*ultima præſentatio*). See *Aſſiſe of Darrein Preſentment*, and *Black. Com.* 3 *V.* 245.

Date of a deed, Is the deſcription of the time, *viz.* the day, month, year of our Lord, year of the reign, *&c.* in which the deed was made. 1 *Inſt.* 6. But the *ancient* deeds had no *dates*, only of the month and the year; to ſignify that they were not made in haſte, or in the ſpace of a day; but upon longer and more mature deliberation. *Blount.* If in the *date* of a deed, the year of our Lord is right, though the year of the King's reign be miſtaken, it ſhall not hurt it. *Cro. Jac.* 261. A deed was *dated* 30th *March* 1701, without *anno Domini* and *anno Regni*; and it was adjudged that both the year of the Lord and of the King were implicitly in the deed. 2 *Salk.* 658. A deed is good, though it hath no *date* of the day or place, or if the *date* be miſtaken, or though it hath an impoſſible *date*, as the 30th of *February*, *&c.* But he that doth plead ſuch a deed, without any *date*, or with an impoſſible *date*, muſt ſet forth the time when it was delivered. 2 *Rep.* 5. 1 *Inſt.* 46. If no *date* of a deed be ſet forth, it ſhall be intended that it had none; and in ſuch caſe it is good from the delivery; for every deed or writing hath a *date* in law, and that is the day in which it is delivered: and a deed is no deed till the delivery, and that is the *date* of it. *Mod. Ca.* 244. 1 *Nelſ. Abr.* 525.

An impoſſible date of a bond, *&c.* is no date at all; but the plaintiff muſt declare on the bond as made at a certain time: and if the expreſs *date* be inſenſible, the real *date* is the delivery. 2 *Salk*, 463. Where there is none, or an impoſſible *date*, the plaintiff may count of any *date.* 1 *Lill. Abr.* 393. If there be a miſtaken *date*, or a *date* be impoſſible, *&c.* the plaintiff may ſurmiſe a legal *date* in the declaration, whereupon the defendant is to anſwer to the deed, and not to the *date.* *Yelv.* 194. If a deed bears *date* at a place out of the realm, it may be averred that the place mentioned in the deed is in ſome county in *England*; and here the place is not traverſable; without this the deed cannot be tried. 1 *Inſt.* 261. A deed may be *dated* at one time, and ſealed and delivered at another: but every deed ſhall be intended to be delivered on the ſame day it bears *date*, unleſs the contrary is proved. 2 *Inſt.* 674. Though there can be no delivery of a deed before the day of the *date*; yet after there may. *Yelv* 138. So that a deed may be *dated* back on a time paſt, but not at a day to come. See *Deed*, and *Black. Com.* 2 *V.* 304.

Dative, or **Datif,** (*dativus*) Signifies that which may be given or diſpoſed of at will and pleaſure. *Stat.* 9 *R.* 2. *c.* 4.

Davata terræ, Davach, A portion of land ſo called in *Scotland*. Skene.

Day, (*dies*) Is a certain ſpace of time, containing twenty-four hours; and if a fact be done in the night, you muſt ſay in law proceedings *in nocte ejuſdem diei. Dierum alii ſunt* naturales, *alii* artificiales: *dies* naturalis *conſtat de 24 horis, & continet diem ſolarem & noctem, & eſt ſpatium in quo ſol progreditur ab oriente in occidentem, & ab occidente iterum in orientem: dies* artificialis, *ſive ſolaris, incipit in ortu ſolis & deſinit in occaſu.* Co. Lit. 135. By this deſcription, the *natural day* conſiſts of twenty-four hours, and contains the ſolar *day* and the night: and the *artificial day* begins from the riſing of the ſun, and ends when it ſets. *Day*, in legal underſtanding, is the *day of appearance* of the parties, or continuance of the ſuit where a *day* is given, &c. And there is a *day* of appearance in court by the *writ*, and by the *roll*; by *writ*, when the ſheriff returns the writ; by *roll*, when he hath a day by the roll, and the ſheriff returns not the writ, there the defendant, to ſave his freehold, and prevent loſs of iſſues, impriſonment, &c. may appear by the *day* he hath by the roll. *Co. Lit.* 135.

In *real* actions there are *dies communes*, common *days*; and in all ſummons there muſt be 15 *days* after the ſummons before the appearance: and before the ſtatute of *articuli ſuper chartas*, in all ſummons and attachment in plea of land, there ſhould be contained 15 *days*. *Co. Lit.* 134.

As to offences in *B. R.* if the offence be committed in another county than where the court ſits, and the indictment be removed by *certiorari*, there muſt be fifteen *days* between every proceſs and the return thereof; but if it be committed in the ſame county where the bench ſits, they may ſit *de die in diem*; but this they will very rarely do. *Ibid.* There is a *day* called *dies ſpecialis*, as in an aſſiſe in the King's Bench or Common Pleas, the attachment need not be 15 *days* before the appearance; otherwiſe it is before juſtices aſſigned; but generally in aſſiſes the judges may give a ſpecial day at their pleaſure, and are not bound to the common *days*; and theſe days they may give as well out of term as within.

There is alſo a *day* of grace, *dies gratiæ*, and generally this is granted by the court at the prayer of the demandant or plaintiff, in whoſe delay it is; but it is never granted where the King is party, by *aid prier* of the tenant or defendant; nor where any lord of parliament, or peer of the realm is tenant or defendant.

And ſometimes the *day* that is *quarto die poſt*, is called *dies gratiæ*, for the very *day* of return is the *day* in law, and to that *day* the judgment hath relation, but no default ſhall be recorded till the fourth *day* be paſt; unleſs it be in a writ of right, where the law alloweth no *day* but the *day* of the return. *Co. Lit.* 135.

There are ſeveral *return days* in the terms; and if either of them happen upon a *Sunday*, the *day* following is taken inſtead of it; for *Sunday* is *dies non juridicus*; and ſo is *Aſcenſion-day* in *Eaſter* term, *St. John Baptiſt* in *Trinity* term, *All Saints* and *All Souls* in *Michaelmas* term, and the *Purification of the Virgin Mary* in *Hilary* term. 2 *Inſt.* 264.

Days in Bank are *days* ſet down by ſtatute, or order of the court, when writs ſhall be returned, or when the party ſhall appear upon the writ ſerved. *Stat.* 51 *H.* 3. *ſtat.* 2. & *ſtat.* 3. 32 *Hen.* 8. *cap.* 21. And by the ſtatute *de anno biſſextili* 21 *H.* 3. the *day* increaſing in the leap-year, and the day next going before are to be accounted but one *day*. It is commonly ſaid that the *day* of *Niſi prius*, and the *day in the Bank*, is all one *day*; but this is to be underſtood as to pleading, not to other purpoſes. 1 *Inſt.* 135. But after iſſue found for the plaintiff at the *Niſi prius*, if a day be given *in Banco*, and the defendant makes default, judgment ſhall be given againſt him. 2 *Danv. Ab.* 477. and *vide Id.* 476.

To be diſmiſſed *without day*, is to be finally diſmiſſed the court: and when the juſtices before whom cauſes were depending, do not come on the *day* to which they were continued, whether ſuch abſence be occaſioned by death, or otherwiſe, they are ſaid to be *put without day*: but may be revived, or recontinued by re-ſummons, re-attachment, &c. 2 *Hawk. P. C.* 300. *Vide* 1 *E.* 6. *c.* 7. Alſo by the Common law, all proceedings upon any indictment, &c. whereon no judgment had been given, were determined by the demiſe of the King, and nothing remained but the indictment, original writ, &c. which were *put without day*, till re-continued by re-attachment to bring in the defendants to plead *de novo*: though this is remedied by *Stat.* 4 *and* 5 *W.* 3. *c.* 18. and 1 *Ann. c.* 8. by which ſuch proceſs, *etc.* are to continue in the ſame force after the King's demiſe, as they would have done if he had lived.

In action of treſpaſs, if the *day* laid in the declaration be either *before* or *after* the actual *day* on which the treſpaſs is committed, it is not material, if a treſpaſs be proved. *Co. Lit.* 283. *a.* But *N. B.* The *day* laid muſt be before the firſt *day* of that term of which the declaration is intituled, or if the treſpaſs be committed within the term, there muſt be a ſpecial memorandum of ſome particular day, (if by bill) or of ſome general return day, (if in *C. P.* or *B. R.* by original writ) *ſubſequent* to the day whereon the treſpaſs was committed: and ſo as to other actions, where the cauſe of action ariſes *within* the term.

See further as to *Day in Bank*, *Black. Com.* 3 *V.* 277. *Day in Court*, *id.* 316. *Day of Grace*, *id.* 278.

Day-light. In reſpect to *day-light*, before *ſun-riſing* and after *ſun-ſetting*, is accounted part of the day by the Common law; as to *robberies* committed in the day-time, when the *hundred* is liable. 7 *Rep.* 6. The law regularly rejects all fractions and diviſions of a day, for the incertainty. 5 *Rep.* 1. 1 *Inſt.* 135. See *Computation*.

Day-rule. See *Day-writ*.

Day-writ. The King may *grant writ of warrantia diei* to any perſon, which ſhall ſave his default *for one day*, be it *in plea of land or other action*, and be the cauſe true, or not; and this by his prerogative, *quod nota*. *Br. Prerogative, pl.* 142. cites *F. N. B.* 7.

It is againſt law to grant liberty to *priſoners in execution*, by other writs than *day-writs*, (or rules) *Chan. Rep.* 67. 9 *Car.* 1. *Regault* v. *Clobery*.

No priſoner *committed by B. R.* ought to have the benefit of the *day-rule* of going abroad in term time, for their impriſonment is their puniſhment for their contempt, or miſbehaviour. 2 *Show.* 88. *pl.* 80. *Hill.* 31 *and* 32 *Car.* 2. *B. R. The King* v. *Deane*.

One in execution had a *habeas corpus from the Lord Keeper* (which they call a day-writ) *returnable three or four days after its teſte*. By virtue of this writ, he went to the wine-licence office, but never to any inn of court or Chancery, or to the Lord Keeper's, and this in the vacation. *Per Pemberton* Ch. J. This is a *habeas* out of Chancery, which they may ſend at any time, and by virtue of the King's writ, the party was brought out of the priſon-houſe, and that is juſtifiable. Then all the day, *ſo long as there was a keeper with him*, he was in cuſtody ſtill, and returning to priſon at night, it is well enough, and no eſcape; though Chancery may examine the contempt, that is nothing to *B. R.* 2 *Show.* 298. *pl.* 229. *Paſch.* 35 *Car.* 2. *B. R. Harwood* v. *Manlove*.

A priſoner taken on an *eſcape warrant before the ſitting of the court* the ſame day, ſhall be diſcharged, if his name was entered with the clerk the night before; but not if it was entered the ſame morning only. 8 *Mod.* 80. *Trin.* 8 *Geo. Wilkinſon* v. *Matthews*.

Entry of the name in the petition for a day-rule, ſignifies little, unleſs it be *read in court*. 8 Mod. The King *v.* Dunbar. 240, 241.

Days-man, In the North of *England*, an arbitrator, or elected judge, is uſually termed a *dies-man*, or *days-man*: and Dr. *Hammond* ſaith, that the word *day* in all idioms ſignifies judgment.

Dayeria, *Dairy*, from *dey*, *deie*, Sax. *dag*, was at firſt the *daily* yield of milch-cows, or profit made of them. In *Lorrain* and *Champaign* they uſe the word *dayer*, for the meeting of the *day*-labouring people to give an account of their daily work, and receive the wages of it. A *dairy* in the *North* is called *milkneſs*; as the *dairy-maid* is in all parts a *milk-maid*: ſhe is termed *androchia* by *Fleta*, *lib.* 2. *cap.* 87.——*Compotus* Henrici D. *et* Johannæ *uxoris ſuæ de omnibus exitibus et proventibus de* dayri *domini prioris ne* Burnceſtre. *Paroch. Antiq.* 548.

Daywere of Land. As much arable land as could be ploughed up in one day's work; or one *journey*, as the farmers ſtill call it. Hence any young artificer who aſſiſts a maſter workman in *daily* labour, is called a *journeyman*.—*Confirmavi abbati & conventui de* Rading, *tres acras & ſexdecim* daywere *de terra arabili*. Cartular. Rading, MS. f. 90.

Deadly Feud, Is a profeſſion of an irreconcileable hatred, till a perſon is revenged even by the death of his enemy. It is mentioned in *Stat.* 43 *El. c.* 13. And ſuch enmity and revenge were allowed by the old *Saxon* laws; for where any man was killed, if a pecuniary ſatisfaction was not made to the kindred of the ſlain, it was lawful for them to take up arms againſt the murderer, and revenge themſelves on him: and this is called *deadly feud*; which it is conjectured was the original of an *appeal*. *Blount.* Vide *Feud*, and *Black. Com.* 4 *V.* 243.

Dead Pledge, (*mortuum vadium*) A pledge of lands or goods. See *Mortgage*.

Deaf, dumb, and blind. A man who *could neither ſpeak nor hear* committed felony, and was arraigned and therefore was commanded to priſon. *Br. Corone, pl.* 216. cites 26 *Edw.* 3. See *Thel Dig.* 6. *lib.* 1. *c.* 7.

One who had made his will, and became ill, and (as it ſeems) had *loſt his ſpeech*; the ſame will was delivered into his hands, and *it was ſaid to him, that he ſhould deliver it to the vicar, if it ſhould be his laſt will, otherwiſe he ſhould retain it*; *and he delivered it to the vicar, and this was held a good will.* Thel. Dig. 6. lib. 1. cap. 7. ſ. 8. *cites* 44 Aſſ. 36.

It appearing by oath, that the defendant was both *ſenſeleſs and dumb*, and therefore could not inſtruct his counſel to draw his anſwer; it was ordered that *no attachment*, or other proceſs of contempt, ſhould be awarded againſt the defendant for not anſwering, without ſpecial order of the court. *Cary's Rep.* 132. cites 22 *Eliz. Altham* v. *Smith*.

One that is *deaf* and wholly deprived of his hearing cannot *give*, and ſo one that is *dumb* and cannot ſpeak. Yet (according to the opinion of ſome) they may *conſent by ſigns and nods*; but it is generally held, that he that is *dumb* cannot make a gift, becauſe he cannot conſent to it. *Co. Inſt.* 107. But generally thoſe who are deaf and dumb can, in ſome meaſure, converſe with people acquainted with them by ſigns, with the fingers, &c. therefore *qu.* if a gift by ſuch a one would not be good, if depoſed to, by perſons acquainted with his ſigns, if ſuch perſons are unintereſted? See the laſt caſe under this head.

If a blind man has underſtanding, he may *deliver a deed* ſealed by him. *Jenk.* 222. *pl.* 75. *ad finem.*

The lord ſhall have the *cuſtody of a copyholder* that is deaf and dumb; for elſe he ſhall be prejudiced in his rents and ſervices, and adjudged for the grantee of the lord againſt the prochein amy of the copyholder. *Cro. Jac.* 105. *pl.* 43. *Mich.* 3 *Jac. B. R. Eavers* v. *Skinner*.

One born *deaf* and *dumb*, who ſignified by ſigns that ſhe underſtood what ſhe was about to do, was allowed to *levy a fine* of lands; by *Bridgman* Ch. J. & *al'* juſtices. *Cart* 53 *Trin.* 18 *Car.* 2. *C. B. Martha Elliot*'s caſe.

Deafforeſted, This word ſignifies *diſcharged* from being *foreſt*; or that is freed and exempted from the foreſt laws. 17 *Car.* 1. *c.* 16.——Johannes *Dei gratia*, &c. *Volumus & firmiter præcipimus quod* foreſta *de* Brerewood *& homines in illa manentes & hæredes eorum ſint* deafforeſtati *imperpetuum*, &c. *Dat.* 13 Martii *anno Regni noſtri* 5.—There is likewiſe *deawarrenata*, as well as *deafforeſtata*; which is when a *warren* is *diſwarrened*, or broke up and laid in common. King *Henry* the Third, in a charter to the citizens of *London*, grants to them,—*Quod tota warrena de* Stanes *cum pertin. ſuis ſit* dewarrenata & deafforeſtata *in perpetuum*. Placit. temp. Ed. 1. *and* Ed. 2 MS. fol. 144.

Dean, (*decanus*, from the *Greek* Δίκα, *decem*) Is an eccleſiaſtical governor or dignitary, ſo called, as he preſides over ten canons or prebendaries at the leaſt. And we call him a *dean*, that is next under the biſhop, and chief of the chapter, ordinarily in a cathedral church, the reſt of the ſociety being called *capitulum*, the chapter. As there are two foundations of cathedral churches in *England*, the *old* and the *new*, the new erected by King *Hen.* VIII. ſo there are two means of creating thoſe *deans*: for thoſe of the *old* foundation, as the *dean of St. Paul's, York*, &c. are exalted to their dignity much like biſhops; the King firſt ſending out his *conge d'elire* to the chapter to chooſe ſuch *dean*, and the chapter then chooſing, the King afterwards yielding his royal aſſent, and the biſhop confirming him, and giving his mandate to inſtall him.

Thoſe of the *new* foundation, whoſe deaneries were tranſlated from priories and convents, to *dean* and chapter, as the *deans* of *Canterbury, Durham, Ely, Norwich, Wincheſter*, &c. are donative, and inſtalled by a ſhorter courſe, by virtue of the King's letters patent, without either election or confirmation; and are viſitable only by the Lord Chancellor, or by ſpecial commiſſion from the King: but the letters patent are preſented to the biſhop for inſtitution, and a mandate for inſtalment goes forth. 1 *Inſt.* 95. *Davis* 46, 47.

There are ſome cathedral churches which never had a *dean*; as that of *St. David* and *Landaff*, where the biſhop is head of the chapter, and in his abſence the archdeacon: and there is alſo a *dean* without a chapter, ſuch as the *dean* of *Battel* in *Suſſex*: then there is a *dean* without a juriſdiction, as the *dean* of the *Chapel Royal*, &c. in which ſenſe this word is applied to the chief of certain *peculiar* churches or chapels. *Spelm.*

There are *four* ſorts of *deans*; a *dean* who hath a chapter, ſuch as the *dean* of *Canterbury*, &c. A *dean* without a chapter, as the *dean* of *Bocking*, who hath a court and juriſdiction to hold plea of all eccleſiaſtical matters ariſing in ſeveral pariſhes within his peculiar; and who is conſtituted by commiſſion from the archbiſhop of *Canterbury*, like to the *dean of the arches*. The *dean* of *Battel*, founded by *William* the Firſt, ſtiled the Conqueror, who hath eccleſiaſtical juriſdiction within the liberty of *Battel*, and is preſentable by the Duke of *Montagu*, and inſtituted and inducted by the biſhop of *Chicheſter*; but not ſubject to his viſitation. And *rural deans*, who had firſt juriſdiction over deaneries, as every dioceſe is divided into archdeaconries and deaneries; but afterwards their power was diminiſhed, and they were only the biſhops ſubſtitutes to grant letters of adminiſtration, probate of wills, &c. And now their office is wholly extinguiſhed, for the archdeacons and chancellors of biſhops execute the authority which *rural deans* had through all the dioceſes of *England*. 1 Nelſ. Abr. 596, 597.

There are likewiſe *deputy deans* and *commendatory deans*, who cannot confirm any grants, &c. But a commendatory *dean* may, with the chapter, chooſe a biſhop. And if a *dean* be elected biſhop, and before conſecration doth obtain diſpenſation to hold his deanery *in commendum*, ſuch *dean* may well confirm, &c. for his old title remains, and therefore confirmations, and other acts done by him, as *dean*, are good in law. *Latch* 237, 250. *Palm. Rep.* 460.

A *dean* and chapter are the biſhop's council, to aſſiſt him in the affairs of religion, &c. to conſult in deciding difficult controverſies, and conſent to every grant which the biſhop ſhall make to bind his ſucceſſors, &c.

A *dean* that is ſolely ſeiſed of a diſtinct poſſeſſion, hath an abſolute fee in him as well as a biſhop. 1 *Inſt.* 325. A deanery is a ſpiritual promotion, and not a temporal one, though the *dean* be appointed by the King: and the *dean* and chapter may be in part ſecular, and in part regular. *Dyer* 10. *Palm.* 500. As a deanery is a ſpiritual dignity, a man cannot be *dean* and prebendary in the ſame church. *Dyer* 273. See *Chapter*.

Death of Perſons, There is a *natural* death of a man, and a *civil* death: natural, where nature itſelf expires, and extinguiſhes; and civil, is where a man is not actually dead, but is adjudged ſo by law; as where he enters into religion, &c. If any perſon for whoſe life any eſtate hath been granted, remain beyond ſea, or is otherwiſe abſent *ſeven* years, and no proof made of his being living, ſuch perſon ſhall be accounted naturally dead; though if the party be after proved living at the time of eviction of any perſon, then the tenant, &c. may re-enter, and recover the profits. *Stat.* 19 *Car.* 2. *c.* 6. And perſons in reverſion or remainder, after the death of another, upon affidavit that they have cauſe to believe ſuch other dead, may move the Lord Chancellor to order the perſon to be produced; and if he be not produced, he ſhall be taken as dead; and thoſe claiming may enter, *&c.* 6 *Ann. c.* 18.

A man ſeiſed in fee of lands, made a leaſe in reverſion to *L. D.* for ninety-nine years, to commence after the *deaths* of *J. D.* and *E. D.* who had then a leaſe in poſſeſſion for the like term, if they or either of them ſo long lived: the plaintiff poſitively proved the *death* of *J. D.* but as to the *death* of *E. D.* the proof was that he had been reputed dead, and no body had heard of him for fifteen years paſt, and the defendant not being able to prove that he was alive at any time within ſeven years, this caſe was adjudged within the act 19 *Car.* 2. *c.* 6. *Carthew* 246.

In law proceedings, the death of either party, between the verdict and judgment, ſhall not be error; ſo as judgment be entered in two terms. 17 *Car.* 2. *c.* 8.

A corporation never dies. *Wilſ. par.* 1. *fo.* 184.

Where the plaintiff dies after a verdict and before the day in *bank*, though the entry of the judgment be right, yet a *ſcire facias* muſt be ſued out before execution iſſue. *Wilſ. par.* 1. *fo.* 302. *Earl* v. *Brown.*

Warrant of attorney to confeſs a judgment to two, one dies before the judgment entered, leave given to the ſurvivor to enter it up. *Id. par.* 1. *fo.* 312. *Todd.* v. *Dodd.*

If defendant dies before the time given to plead expires, judgment aſſigned afterwards is irregular. *Id. par.* 1. *fo.* 315. *Wallop* v. *Irwin.*

Where, on the death of parties to a ſuit, the writ, *&c.* ſhall abate, ſee 8 & 9 *W.* 3. *c.* 11. and *Abatement*, *Death* of judges, *&c.* vide *Day.*

De bene eſſe. To take or do any thing *de bene eſſe*, is in law ſignification to accept or allow it as well done for the preſent; but when it comes to be more fully examined or tried, to ſtand or fall according to the merit of the thing in its own nature. As in *Chancery*, upon motion to have one of the leſs principal defendants in a cauſe examined as a witneſs, the court (not then thoroughly examining the juſtice of it, or not hearing what may be objected on the other ſide) will often order ſuch a defendant to be examined *de bene eſſe, viz.* That his depoſitions ſhall be taken, and allowed or ſuppreſſed at the hearing of the cauſe, upon the full debate of the matter, as the court ſhall think fit; but in the interim they have a *well being*, or conditional allowance. 3 *Cro.* 68.

Where a complainant's witneſſes are aged, or ſick, or going beyond ſea, whereby the plaintiffthinks he is in danger of loſing their teſtimony, the court of *Chancery* will order them to be examined *de bene eſſe*; ſo as to be valid, if the plaintiff hath not an opportunity of examining them afterwards; as if they die before anſwer, or do not return, *&c.* In either of which caſes, the depoſitions may be made uſe of in the court of *Chancery*, or at law: but if parties are alive and well, or do return, *&c.* after anſwer, theſe depoſitions are not to be of force, for the witneſſes muſt be re-examined. *Practiſ. Attorn. edit.* 1. *p.* 232.

So alſo at Common law, the judges frequently take bail *de bene eſſe*, that is, to be allowed or diſallowed upon the exception, or approbation of the plaintiff's attorney; however, in the interim, they are good, or have a conditional allowance. *Cowel.* Declarations likewiſe are ſometimes delivered *de bene eſſe.* See the books of practice. And ſee further *Black. Com.* 3 *V.* 383.

Debenture. A ſoldier's debenture, *(ſtipendia debita)* is in the nature of a bond or bill, to charge the government to pay the *ſoldier creditor*, or his aſſigns, the ſum due upon the auditing the account of his arrears: it was firſt ordained by an act made during *Oliver*'s uſurpation, *anno* 1649, and is mentioned in the act of oblivion, 12 *Car.* 2. *cap.* 8. They uſe debentures likewiſe in the *Exchequer*; and debentures are given to the *King's ſervants*, for the payment of their wages, board-wages, *&c.* Alſo there are cuſtom-houſe debentures, *etc.*

Debet & detinet, Are *Latin* words uſed in the bringing of writs and actions. And an action ſhall be always in the *debet et detinet*, when he who makes a bargain or contract, or lends money to another, or he to whom a bond is made, bringeth the action againſt him who is bounden, or party to the contract and bargain, or unto the lending of the money, *etc.* See *New Nat. Br.* 119.

In debt againſt huſband and wife, for a debt due from the wife before coverture, the writ ſhall be in the *debet et detinet. Ibid.* Debt againſt an heir, is to be in the *debet et detinet*, or it will be nought; if an heir be to bring debt, it ſhall be in the *detinet:* and if a man be bound to another, and makes his executor, and dies, if the money due in the time of the teſtator be refuſed to be paid by the executor, the action muſt be brought againſt him only in the *detinet*; and ſo in all actions brought by executors as executors, though the duty accrued in their own time.

But *debet et detinet* lies by an executor on his own contract: and if a leſſee for years makes his executor and dies, for rent due after the teſtator's death, there the action ſhall be in the *debet et detinet.* It is the like law in caſes of adminiſtrators, as it is not certain what ſhall be recovered, only according to the aſſets. 5 *Rep.* 31.

An executor upon a *devaſtavit* ſhall be charged in the *debet et detinet*, the action being upon a judgement. 1 *Lil. Abr.* 399. See *Debt* and *Executor.*

Debet & ſolet, Are alſo formal words made uſe of in writs: and ſome writs have theſe words in them, which ought not to be omitted. Likewiſe according to the diverſity of the caſe, both *debet* and *ſolet* are uſed, or *debet* alone: as a *quod permittat* may be in the *debet et ſolet*, or in the *debet* only, as the demandant claims. And if a perſon ſues to recover any right, whereof his anceſtor was diſſeiſed by the tenant of his anceſtor, then he uſeth the word *debet* alone in his writ, becauſe his anceſtor only was diſſeiſed, and the eſtate diſcontinued: but if he ſue for any thing that is now firſt of all denied him, then he uſeth *debet et ſolet*, by reaſon his anceſtor before him, and he himſelf uſually enjoyed the thing ſued for, until the preſent refuſal of the tenant. *Reg. Orig.* 140. The writ of *ſecta molendini* is a writ of right, in the *debet et ſolet, etc.* *F. N. B.* 98.

Debt, *(debitum)* In common parlance is a ſum of money due from one perſon to another. And if an action be brought, and plaintiff recovers judgment, he may by our law take either the perſon, or his real or perſonal eſtate in execution, *i. e.* the moiety of his real eſtate, or the whole of the perſonal, if not more than ſufficient for payment of the ſum recovered and charges.

It may not be improper to obſerve, that the firſt hint of attaching *moveables*, for the recovery of a debt was taken from the Canon law. *Robert. Hiſt. Emp.* Charles V. 1 *V.* 316.

In the legal ſenſe of the word, *debt* is ſaid to be an action which lieth where a man oweth another a certain ſum of money, by obligation, or bargain for a thing ſold, or by contract, *etc.* and the debtor will not pay the debt at the day agreed; then the creditor ſhall have action of debt againſt him for the ſame. And if money be due upon any ſpecialty, action of debt only lies; for no other action may be brought for it: if a man contract to pay money for a thing which he hath bought; and the ſeller takes bond for the money, the contract is diſcharged, ſo that he ſhall not have action of debt upon the *contract*, but on the *bond.* New Nat. Br. 268.

Herein it is to be conſidered,

I. *In what caſes it will lie, and by whom, and againſt whom it may be brought.*
II. *In what manner it may be brought, as where in the* debet *and* detinet, *and where in the* detinet *only.*
III. *How it may be extinguiſhed.*

I. *In what caſes* debt *will lie, and by whom, and againſt whom it may be brought.*

If one binds himſelf in a ſingle obligation, or with condition, to pay money at a day; or to deliver corn, or the like, and do not perform it accordingly, the obligee may bring action of *debt* for it. *F. N. B.* 120. A man acknowledges by deed, that he hath ſo much of the money of *J. S.* due to him in his hands; here debt may be brought: and debt will lie on a talley ſealed. *F. N. B.* 122. 1 *H.* 6. 55. *A.* delivers 20*l.* to *B.* to buy goods, and *B*. gives a receipt to *A*. teſtifying the delivery and receipt of the 20*l*. but doth not promiſe to deliver the goods, &c. *A*. may maintain debt upon this receipt. *Dyer* 20. 2 *Bulſt*. 256. If one binds himſelf to pay *A. B*. 10*l*. at one day, and 10*l*. at another, after the firſt day action of debt lies for 10*l*. being a ſeveral duty. 2 *Danv. Abr*. 501. The nature of the bond, and of the condition, (if there is any) muſt be carefully attended to, to ſee if by non-payment of the firſt ſum the bond is forſeited. *Vide. Co. Lit*. 292. *b*.

If I agree with a taylor *for a certain price* to make me a ſuit of clothes, the taylor may have a general action of *debt* againſt me for the money; though *if the price is not agreed on*, there lies action *on the caſe* only, or ſpecial action of debt upon the ſpecial contract, which the law may imply on a *quantum meruit*. Wood's Inſt. 544. And debt may be made action on the caſe, by proving money lent, or goods delivered, &c. whereupon promiſe of payment is implied in law. A man owes another a ſum of money, and hath his note under hand, without ſeal, action of debt on a *mutuatus* lies; but the defendant may wage his law: in action on the *caſe* brought upon promiſe of payment, the defendant cannot wage his law. 4 *Rep*. 93.

Action of *debt* lies upon a *parol contract*, and ſo doth *action on the caſe*. 1 *Lil*. 403. And *vide* 9 *Rep*. 87. If goods or money are delivered to a third perſon for my uſe, I may have action of debt or account for them. 2 *Danv*. 404. Where money is delivered to a perſon, to be re-delivered again, the property is altered, and debt lies: but where a horſe, or any goods are thus delivered, there *detinue* lies, becauſe the property is not altered; and the thing is known, whereas money is not. *Owen* 86. 1 *Nelſ. Abr*. 603.

Action of debt lies againſt the huſband, for goods which were delivered or ſold to the wife, if they come to the uſe of the huſband. 1 *Lil*. 400. If one delivers meat, drink, or clothes, to an infant, and he promiſes to pay for them, action of debt, or on the caſe, will lie againſt the infant. Though debt may not be brought on an *account ſtated* with an infant: and what is delivered muſt be averred to be for the neceſſary uſe of the infant. 1 *Lil. Abr*. 401. That is, in the plaintiff's *replication*, ſuppoſing the defendant pleads *infancy*. An attorney ſhall have action of debt againſt his client, for money, which he hath paid to any perſon for the client, for coſts of ſuit, or unto his counſel, &c.

An heir mediate may be ſued in debt as if he were immediate heir, &c. The heir may not bring action of debt for a debt due to his anceſtor; though it be by ſpecialty, by which the party is bound to pay it to him and his heirs: the executor ſhall nevertheleſs have the action. *Dyer* 368. *F. N. B*. 120. Action of debt lies not againſt executors, upon a ſimple contract made with the teſtator. 9 *Rep*. 87.

Before the *Stat*. 32 *H*. 8. *c*. 37. the heirs or executors of a man ſeiſed of a rent-ſervice, rent-charge, &c. in fee-ſimple, or fee-tail, had no remedy for the arrearages incurred in the life-time of the owner of ſuch rents: but by that ſtatute, the executors and adminiſtrators of tenants in fee-ſimple, fee-tail, or for life, of any rent, ſhall have *action of debt* for all arrearages of rent due in the life of the teſtator. 1 *Inſt*. 162. 2 *Danv*. 492.

A feme ſole ſeized of a rent in fee, &c. which is behind and unpaid, takes huſband, and the rent is behindagain, and then the wife dieth, by the *Stat*. 32 *Hen*. 8. *c*. 37. the huſband ſhall have the arrears due before marriage, and he hath a double remedy for the ſame. 1 *Inſt*. 162.

But by *Stat*. 8. *Ann. cap*. 17. Any perſon having rent in arrear upon any leaſe for life or lives, may bring *action of debt* for ſuch rent, as where rent is due on a leaſe for years. Action of *debt* will lie againſt a leſſee, for rent due after the aſſignment of the leaſe; for the perſonal privity of contract remains, notwithſtanding the privity of eſtate is gone. 3 *Rep*. 22. But after the death of the leſſee, it is then a real contract, and runs with the land. *Cro. Eliz*. 555. When a leaſe is ended, the duty in reſpect of the rent remains, and debt lieth by reaſon of the privity of contract between leſſor and leſſee. 2 *Cro*. 227. 1 *Nelſ. Abr*. 604. If debt be brought by an executor for arrears of rent ended, it is local ſtill, and muſt be laid where the land lies. *Hob*. 37. Action of debt may be had againſt the *leſſee* in any place; but if it be brought againſt an *aſſignee*, it muſt be where the land lieth: and upon the *privity* of *contract*, it is to be brought againſt the leſſee where the land is. *Latch* 197, 271. 2 *Leon*. *c*. 28.

Debt for rent on a leaſe againſt *aſſignee* is local. See the caſe of *Barker* v. *Dormer*, *Shower*, 1 *V*. (the ſecond in point of time) *fo*. 191, &c. an excellent caſe containing much uſeful learning on the locality of actions, &c. *contra*; in *debt* and *covenant*.

In ſome caſes action of debt will lie, although there be no contract betwixt the party that brings the action, and him againſt whom brought; for there may be a duty created by law, for which action will lie. 2 *Saund*. 343, 366. Debt lieth againſt a ſheriff, for money levied in execution. 1 *Lil. Abr*. 403. Action of debt lies againſt a gaoler for permitting a priſoner committed in execution to eſcape; becauſe thereupon the law makes the gaoler debtor: but where the party is not in execution, there action on the caſe only lies for damages ſuffered by the eſcape. 1 *Saund*. 218. 1 *Lil. Abr*. 402.

A perſon may have debt upon an arbitrament: alſo debt lies for money recovered upon a judgment, &c. And upon a recovery in the ſuperior courts at *Weſtminſter*, he muſt bring the action in *Middleſex*, the record being there; but a *ſci. fac*. to execute judgment, muſt be where the original was, and follow it. *New Nat. Br*. 267, 268, &c. When judgment is had in the *King's Bench*, and a writ of error brought in the *Exchequer* chamber, or in Parliament; yet an action of debt will lie on the judgment: in this caſe, if the plaintiff levies part of his money, by *elegit*, he may likewiſe bring debt for the reſidue. 1 *Sid*. 184, 236.

If a man recovers debt or damages in *London*, on action brought there by the cuſtom of the city, which lies not at Common law; when it is become a debt by the judgment, action of debt lies in the courts at *Weſtminſter* upon this judgment. 2 *Danv*. 449.

Action of debt will lie for breach of a by-law; or, for amercement in a court-leet, &c. 1 *Lil*. 400. And action of debt is ſometimes grounded on an act of parliament; as upon the 2 *Ed*. 6. *c*. 13. for not ſetting out tithes: the 27 *El*. *c*. 13. againſt the hundred for a robbery, &c. Againſt phyſicians in *London*, for practiſing without licence, by 14 & 15 *H*. 8. *c*. 5. By aſſignees of a commiſſion of bankrupt. 1 *Jac*. 1. *c*. 15, &c. A college ſhall have action of debt for commons of any ſtudent, adjudged, *Paſch*. 9 *Jac*. *B. R*.

The inns of court, particularly the *Inner* and *Middle Temple*, take bonds in the name of their treaſurer, &c. of ſtudents, in which, generally, two gentlemen of the ſociety are bound as ſureties.

For debt to a biſhop, or parſon, after his death, his executors ſhall have the action: but of a dean and chapter, mayor and commonalty, &c. the ſucceſſors are intitled to the action of debt. *F. N. B*. 120. Action of debt lies on a recogniſance; ſo upon a ſtatute merchant, it being in nature of a bond or obligation: but it is otherwiſe in caſe of a ſtatute ſtaple. 2 *Danv*. 497.

In bringing this action, it is a general rule, that the party himſelf, to whom the debt is originally due, whilſt he doth live muſt bring the action; and after his death, his executors, &c. And the action muſt be brought againſt the party himſelf that doth originally owe the debt, whilſt he is living; and after his death, it may be brought againſt the executor, if he make any; or otherwiſe againſt the adminiſtrator; and if the ordinary appoint none, againſt the ordinary himſelf; and if he die poſſeſſed of the goods, againſt his executor, &c. And alſo againſt executors of executors *in infinitum*. *Dyer* 24, 471. 3 *Rep*. 9. 2 *Brownl*. 207.

II. *In what manner it may be brought, as where in the* debet *and* detinet, *and where in the* detinet *only*. See *Diviſion* I.

In debt, if it be demanded by original, the proceſs is ſummons, attachment and diſtreſs; and upon a default of ſufficiency, on a *nihil* returned, proceſs to the outlawry, &c. And the judgment in debt, where the demand is in the *debet & detinet*, is to recover the debt, damages and coſts of ſuit; and the defendant *in miſericordia*. 1 *Shep. Abr*. 523. Where the plaintiff in debt declares on ſome ſpecialty, or contract for a ſum of money, it muſt be certainly demanded, and no other; and the demand can't be of a leſſer ſum, but it muſt be ſhewn how the remainder was ſatisfied: but in an action upon a ſtatute, that gives a certain ſum for the penalty; though leſs be recovered than the plaintiff lays, it will be good. *Cro. Jac*. 498. If action of debt is brought on a ſpecialty, bill, bond, leaſe, &c. the ſeveral writings muſt be well conſidered by which the plaintiff warrants his action, and the ſum due is to be rightly ſet forth; and if it be debt for rent, the time of commencement, and ending, &c. In debt on ſingle bill the defendant may plead payment (before the action brought) in bar; and pending an action, on bond, &c. the defendant may bring in principal, intereſt and coſts: and the court ſhall give judgment to diſcharge the defendant. *Stat*. 4 & 5 *Ann*. *c*. 16.

If the action be brought for money, it muſt be in the *debet & detinet*; but if goods or chattels, it muſt be in the *detinet* only. 50 *E*. 3. 16. 1 *Rol. Abr*.—If an *executor* brings debt for any thing in right of his teſtator, it muſt be in the *detinet* only. *Moor* 566. 1 *Rol. Abr*. 602, 603.

If an *executor* brings an action upon an obligation made to the teſtator, where the day of payment incurred after the death of the teſtator, yet the writ ſhall be in the *detinet* only, for he brings the action as *executor*. *Lane* 80. *S. P.* 20 *H*. 6. 5. 1 *Rol. Abr*. 602. *S. C.*

So if a man binds himſelf to the teſtator to pay him 100 *l*. when ſuch a thing ſhall happen; if it happens after the death of the teſtator, yet the writ by the *executor* ſhall be in the *detinet* only. 20 *H*. 6. 6. 1 *Rol. Abr*. 602.

If in an *account* an *executor* recovers a debt due to his teſtator, in action for the arrearages thereupon, the writ ſhall be in the *detinet* only, for though the action is converted into a debt by the *account*, yet it is the ſame thing which was received in the life of the teſtator, *Cro. Eliz*. 326. *Cro. Jac*. 545. 5 *Co*. 31.

If the *executor* ſells the goods of the teſtator for a certain ſum, he ſhall have action for this in the *debet & detinet*. 1 *Rol. Abr*. 602.

If an *executor* having lands by an *extent* upon a ſtatute made to the teſtator, and naming himſelf *executor*, by deed leaſes them for three years, rendering rent, &c. if an action is afterwards brought by him for his rent, it muſt be in the *debet & detinet*, becauſe it is founded upon his *own* contract. *Lane* 80. *Cro. Jac*. 685. *Winch* 80. *S. C.* *Brown*. 205. 1 *Mod*. 185. *S. P.*

So an executor, being leſſee for years of a rectory in the right of the teſtator, may have action upon 2 *E*. 6. *c*. 13. for not ſetting out tithes in the *debet & detinet*, becauſe founded upon a wrong in his *own* time, and by the ſtatute it is given to the party *grieved*. *Cro. Jac*. 545.

Alſo action againſt an *executor* ſhall be in the *detinet* only, for he is chargeable no farther than he has aſſets. 11 *H*. 4. 16. 1 *Rol. Abr*. 603.

In an action againſt an executor for rent, incurred in the life of the teſtator, the writ ſhall be in the *detinet* only. 11 *H*. 6. 36. 1 *Rol. Abr*. 603.

But if an action be brought againſt an executor for the arrearages of a rent, reſerved upon a leaſe for years, and incurred *after* the death of the teſtator, the writ ſhall be in the *debet & detinet*, becauſe the executor is charged of his *own* poſſeſſion. 1 *Rol. Abr*. 603. *Cro. Eliz*. 711. *Moor* 566. 1 *Brownl*. 56. *Cro. Jac*. 411. And the declaration is againſt him as *aſſignee*, not as *executor*.

If an action is brought againſt *baron* and *feme*, upon an *obligation* entered into by the *feme before* marriage, it ſhall be in the *debet et detinet*; for by the marriage all the perſonal goods and power of diſpoſing of the real eſtate are by law given the huſband, which he has to his *own* uſe, and not as *executors*, who have them only to the uſe of another. 5 *Co*. 36. 3 *Leon*. 206. *S. C.*

So if an action is brought upon a *bond* againſt the *heir* of the obligor, it ſhall be in the *debet et detinet*, becauſe he hath the aſſets in his own right. 5 *Co*. 36.

III. *How a debt may be* extinguiſhed.

If a man accepts an *obligation* for a debt due by ſimple contract, this extinguiſhes the *contract*, but the acceptance of an *obligation*, for a debt due by another *obligation*, is no bar of the firſt obligation. 13 *H*. 4. *c*. 1. 1 *Roll. Abr*. 604. *i. e.* if between the ſame parties.

In *debt* upon an *obligation*, the defendant cannot plead *nil debet*, but muſt *deny* the *deed* by pleading *non eſt factum*, for the ſeal of the party continuing, it muſt be diſſolved *eo ligamine quo ligatum eſt*. Hard. 332.

But if the debt be due by *ſimple contract*, then he may plead *nil debet*, for it does not appear that there is any *debt* continuing. *Hob*. 218.

In *debt* for *rent*, if it be by *deed*, the proper plea is *non eſt factum*; but if it be *without deed*, the defendant may plead *non dimiſit*, nothing in arrear, or that he never entered. 2 *Inſt*. 651. *Hard*. 332.

In *debt* for the arrears of an *annuity* granted for life, *nil debet* is no good plea, for the action is merely founded upon the *deed*, for without it no action can be maintained, and tho' by the death of the grantee the nature of the action is changed, the annuity being determined; yet this proves not but that the action is founded upon the deed. *Keilw*. 147.

But in *debt* for the arrears of a *rent-charge*, by will deviſed to the plaintiff's wife for life, againſt the *adminiſtrator* of the occupier of the land, *nil detinet* is a good plea, for the will is no deed, nor wants any delivery; adjudged, and ſaid the action was not ſo much grounded upon the *will* itſelf as upon the *ſtatute*, by which men are enabled by will to diſpoſe of their lands and rents iſſuing out thereof. *Hard*. 322.

In debt upon 2 & 3 *E*. 6. *c*. 13. for not ſetting forth tithes, Not guilty, or *nil debet* are good iſſues. 2 *Inſt*. 651. *Cro. Eliz*. 621. *S. P.*

The reaſon why *Not guilty* is a good plea in this caſe is, becauſe by the action the defendant is charged with a *tort*, and if he is not guilty of the *tort*, he does not *owe* the *debt*. So on the coal act, for not meaſuring with a lawful meaſure, or not delivering the ingrain, &c. &c.

In *debt* upon a *contract*, the defendant cannot plead the contract was for a leſs ſum, or otherways than the plaintiff has declared, and traverſe the contract in the declaration laid, but may wage his law. *Moor* 49. In ſuch caſe, *quære* if on plea of *nil debet*, the plaintiff will not be nonſuited on proving a contract, *varying in ſubſtance*, from that laid in the declaration? See farther *Black. Com*. 2 *V*. 464. 3 *V*. 153, &c. 158, 9.

Debt to the King. Under this word *debitum* all things due to the King are comprehended; as all rents, fines, iſſues, and amercements, and other duties received or levied by the ſheriff; for debt in the larger ſenſe ſignifies whatever any man owes. 2 *Inſt*. 198. The *King's debt* is to be ſatisfied before that of a ſubject, and until his *debt* be paid, he may protect the *debtor* from the arreſt of others. 1 *Inſt*. 130. But by ſtatute, notwithſtanding the King's protection, creditors may proceed to judgment againſt his *debtor*, with a *ceſſet executio* till the *King's debts* be paid. 25 *Ed*. 3. *St*. 5. *c*. 19. Lands, &c. of the *King's debtor* and accountant, may be ſold as well after his death, as in his life-time: But if the accountant or *debtor to the King* had a *quietus* during his life, his heir ſhall be diſcharged of the *debt*. 27 *Eliz. cap*. 3. A perſon being in *debt* to the King, purchaſes a leaſe to him and his wife, and dies: the term in the wife's hands is liable to the *debt*. 2 *Rol. Abr*. 157. Though it is ſaid if he purchaſe lands to him and his wife for life, and to their heirs; ſuch lands in the hands of the wife, are not extendible after the huſband's death, for the *King's debt*. *Dyer* 255.

If a tenant in tail, becomes *indebted* to the King, by receipt of the *King's money*, or otherwiſe; unleſs it be by *judgment*, *recogniſance*, *obligation*, or other *ſpecialty* originally due to the King, or ſome other to his uſe; and then dies, the land in the hands of the iſſue in tail ſhall not be extended: But it may, in either of thoſe four caſes. 7 *Rep*. 21, 22. By the Common law, the *King* for his *debt* had execution of the body, lands, and goods of the *debtor*: By *Magna Charta*, 9 *H*. 3. *c*. 8. the *King's debt* ſhall not be levied on lands, where the goods and chattels of the *debtor* are ſufficient to levy the *debt*; for in ſuch caſe, the ſheriff ought not to extend the lands and tenements of the *King's debtor*, or of his heir, &c. 2 *Inſt*. 19.

Alſo pledges ſhall not be diſtrained, when the principal is ſufficient: Though in both caſes it muſt be made appear to the ſheriff; in the one. that there are goods and chattels enough, and in the other, that the ſheriff may levy the *King's debt* on the principal. *Ibid.* Sheriffs having received the *King's debts,* upon their next account are to diſcharge the *debtors,* on pain to forfeit treble value; and the ſheriffs are to give tallies to the *King's debtors* on payment. *Stat.* 3 *Ed.* 1. *c.* 19. See *Execution,* and *Black. Com.* 5 *V.* 420.

The King's debtor committed by the court of Exchequer to the *Fleet,* brought into *B. R.* by *habeas corpus,* and ſurrendered in diſcharge of his bail, may be removed again to the *Fleet* by an *habeas corpus* from the Exchequer. *Wilſ. Rep. Par.* 1. *fo.* 248. *Chitty's Caſe.*

Debtee Executor. If a perſon indebted to another makes his creditor or debtee his executor; or if ſuch creditor obtains letters of adminiſtration to his debtor; he may retain ſufficient to pay himſelf before any other creditors whoſe debts are of equal degree. 1 *Rol. Abr.* 922. *Plowd.* 543. *Black. Com.* 3 *V.* 18. *&c.*

Debtors. It is held, that debt follows the perſon of the *debtor,* being on ſimple contract; and not of the creditor, as to actions brought, *&c.* 3 *Keb.* 163. Where a *debtor* is made *executor* of a will, the debt is ſaid to be aſſets, becauſe it is extinguiſhed not by releaſe, but in the way of legacy. 1 *Salk.* 303. By ſtatute 8 & 9 *W.* 3. *c.* 18. Two thirds in number and value of creditors might make compoſitions with *debtors,* and bind all the reſt; making oath before a maſter in Chancery how their debts became due, *&c.* But this act was repealed by 9 & 10 *W.* 3. *c.* 29. and ſee 10 *Ann. c.* 20. There have been ſeveral ſtatutes for diſcharging poor *inſolvent debtors* out of priſon, where they have had no eſtate or effects to pay their creditors, *&c. Robertſon* in his *Hiſt. Emp. Char.* V. 1 *V.* 254,5, *&c.* ſays, By the ancient law of France no perſon could be arreſted or confined in priſon on account of any private debt. *Ordon. des Rois de France, tom.* 1. *p.* 72, 80. If any perſon was arreſted upon any pretext, but his having been guilty of a capital crime, it was lawful to reſcue him out of the hands of the officers who had ſeiſed him. *Ordon.* 3. *p.* 17. Freedom from arreſt on account of debt ſeems likewiſe to have been enjoyed in other countries. *Gudenus Sylloge Diplom.* 473. In ſociety, while it remained in its rudeſt and moſt ſimple form, debt ſeems to have been conſidered as an obligation merely perſonal. Men had made ſome progreſs towards refinement before creditors acquired a right of ſeizing the property of their debtors in order to recover payment. The expedients for this purpoſe were all introduced originally in communities, and we can trace the gradual progreſs of them. 1. The ſimpleſt and moſt obvious ſpecies of ſecurity was, that the perſon who ſold any commodity ſhould receive a pledge from him who bought it, which he reſtored upon receiving payment. Of this cuſtom there are veſtiges in ſeveral charters of community. *D'Ach.* ix. 185. xi. 377. ——2. When no pledge was given, and the debtor became refractory or inſolvent, the creditor was allowed to ſeize his effects with a ſtrong hand, and by his private authority; the citizens of *Paris* are warranted by the royal mandate, "*ut ubicumque, et quocumque modo poterunt, tantum capiant, unde pecuniam ſibi debitum integre et plenariè habeant, et inde ſibi invicem adjutores exiſtant.*" Ordon. &c. tom. 1. p. 6. This rude practice, ſuitable only to the violence of a ſtate of nature, was tolerated longer than one can conceive to be poſſible in any ſociety, where laws and order were at all known. The ordonance authorizing it was iſſued, *A. D.* 1134. and that which corrects the law, and prohits creditors from ſeizing the effects of their debtors, unleſs by a warrant from a magiſtrate, and under his inſpection, was not publiſhed until the year 1351. *Ordon. tom* 2. 438. It is probable, however, that men were taught, by obſerving the diſorders which the former mode of proceeding occaſioned, to correct it in practice long before a remedy was provided by a law to that effect. Every diſcerning reader will apply this obſervation to many other cuſtoms and practices which I have mentioned. New cuſtoms are not always to be aſcribed to the laws which authorize them. Theſe ſtatutes only give a legal ſanction to ſuch things as the experience of mankind has previouſly found to be proper and beneficial.—3. As ſoon as the interpoſition of the magiſtrate became requiſite, regular proviſion was made for attaching or diſtraining the moveable effects of a debtor; and if his moveables were not ſufficient to diſcharge the debt, his immoveable property, or eſtate in land, was liable to the ſame diſtreſs, and was ſold for the benefit of his creditor. *D'Ach. ix. p.* 184, 185. xi. *p.* 348. 380. As this regulation afforded the moſt compleat ſecurity to the creditor, it was conſidered as ſo ſevere, that humanity pointed out ſeveral limitations in the execution of it. Creditors were prohibited from ſeizing the wearing apparel of their debtors, their beds, the door of their houſe, their inſtruments of huſbandry, *&c. D'Ach.* ix. 184. xi. 377. Upon the ſame principles, when the power of diſtraining effects became more general, the horſe and arms of a gentleman could not be ſeized. *D'Ach.* ix. 185. As hunting was the favourite amuſement of martial nobles, the Emperor Lodovicus Pius prohibited the ſeizing of a hawk on account of any compoſition or debt. *Capitul. lib.* iv. *ſect.* 21. But if the debtor had no other moveables, even theſe priviledged articles might be ſeized.——4. In order to render the ſecurity of property compleat within a community, every perſon who was admitted a member of it, was obliged to buy or build a houſe, or to purchaſe lands, within its precincts, or at leaſt to bring into the town a conſiderable portion of his moveables *per quæ juſtitiari poſſit, ſi quid forte in eum querelæ evenerit.* D'Ach. xi. 326. Ordon. 1. 367. Libertates S. Georgii de Eſperanchia. Hiſt. de Dauphine, tom. 1. p. 26.——5. That ſecurity might be as perfect as poſſible; in ſome towns the members of the community ſeem to have been bound for each other. *D'Ach.* x. 644.——6. All queſtions with reſpect to property were tried within the community, by magiſtrates and judges, which the citizens elected or appointed. Their deciſions were more equal and fixed than the ſentences which depended on the capricious and arbitrary will of a baron who thought himſelf ſuperior to all laws. *D'Ach.* x. 644, 646. xi. 344. & *paſſim. Ordon.* 3. 204. 7. No member of a community could be burdened by any arbitrary tax; for the ſuperior lord who granted the charter of community, accepted of a fixed cenſus or duty in lieu of all demands. *Ordon. tom.* 3. 204. *Libertates de Calma. Hiſt. de Dauphine. tom.* 1. *p.* 19. *Libert. St. Georgii de Eſperanchia, ibid. p.* 26. Nor could the members of a community be diſtreſſed by an unequal impoſition of the ſum to be levied on the community. Regulations are inſerted in the charters of ſome communities concerning the method of determining the quota of any tax to be levied on each inhabitant. *D'Ach.* xi. 350, 365. St. *Louis* publiſhed an ordonance concerning this matter, which extended to all the communities. *Ordon. tom.* 1. 186. Theſe regulations are extremely favourable to liberty, as they veſt the power of proportioning the taxes in a certain number of citizens choſen out of each pariſh, who were bound by ſolemn oath to decide according to juſtice.—That the more perfect ſecurity of property was one great object of thoſe who inſtituted communities, we learn, not only from the nature of the thing, but from the expreſs words of ſeveral charters, of which I ſhall only mention that granted by *Alienor,* Queen of *England* and Dutcheſs of *Guienne,* to the community of Poitiers, "*ut ſua propria melius defendere poſſint, et magis integre cuſtodire.*" Du Cange Voc. Communia, v. 11. p. 863.——Such are ſome of the capital regulations eſtabliſhed in communities during the twelfth and thirteenth centuries. Theſe may be conſidered as the firſt rudiments of law and order, and contributed greatly to introduce regular government among all the members of ſociety. See *Priſoners.*

Debts, *priority* of. An executor or adminiſtrator in payment of debts, muſt obſerve the rules of *priority*; otherwiſe, on deficiency of aſſets, he muſt anſwer thoſe of a higher nature out of his own eſtate. And, *firſt,* He may pay *funeral charges* and expences of proving the will, or taking letters of adminiſtration, and the like. If the eſtate is inſolvent, the funeral expences allowed, will be only 40*s.* *Secondly,* Debts due to the *King* on *record* or *ſpecialty.* *Thirdly,* Such debts as are by particular ſtatutes to be preferred to all others; as the *forfeitures* for not *buryiug* in *woollen,* money due on *poor rates,* for *letters* to the *poſt-office,* and ſome others. *Fourthly, Debts* of *record*; as judgments, (docketted according to the ſtatute

4 & 5 *W. & M. c.* 20.) *ſtatutes* and *recogniſances*. *Fifthly*, Debts due on *ſpecial contracts*; as for rent, (for which the leſſor hath often a better remedy in his own hands, by diſtraining) or upon *bonds*, *covenants*, and the like under *ſeal*. *Laſtly*, Debts on *ſimple contracts*, *viz.* Upon notes unſealed, and verbal promiſes. Among theſe ſimple contracts, *ſervants wages* are, by ſome, with reaſon, preferred to any other. *Black. Com.* 2 *V.* 511.

Deceit, (*Deceptio*) Is a ſubtle trick or device, whereunto may be drawn all manner of craſt and colluſion, uſed to deceive and defraud another, by any means whatſoever, which hath no other or more proper name than *deceit* to diſtinguiſh the offence. *Weſt. Symb. Sect.* 68. And there is a writ called *Breve deceptionis* that lies for one that receives injury or damage from him that doth any thing *deceitfully* in the name of another perſon; which writ is either original or judicial. *Reg. Orig.* 112. *Old Nat. Br.* 50. *Deceit* is an offence at Common law, and by ſtatute: And all practices of defrauding or endeavouring to defraud another of his right, are puniſhable by fine and impriſonment; and if for cheating, pillory, *&c.* Serjeants, counſellors, attornies, and others doing any manner of *deceit*, are to be impriſoned a year and a day; alſo pleaders by *deceit* ſhall be expelled the court. *Stat.* 3 *Ed.* 1. *cap.* 29. For obtaining money, *&c.* by falſe pretences, ſee 30 *Geo.* 2. *c.* 24.

If a fine be levied by *deceit*; or if one recover land by *deceit*, the fine, and the recovery, ſhall be void. 3 *Rep.* 77. And if a man be attorney for another in a real action againſt the demandant, and afterwards by covin between ſuch attorney and the demandant, the attorney makes default, by which the land is loſt, the tenant who loſt the land ſhall have a writ of *deceit* againſt the attorney. *F. N. B.* 96.

In a *præcipe quod reddat*, if the ſheriff return the tenant ſummoned, where he was not ſummoned, by which the defendant loſeth his land by default at the grand *cape* returned; the tenant ſhall have a writ of *deceit* againſt him who recovered, and againſt the ſheriff for his falſe return; and by that writ the tenant ſhall be reſtored unto his land again: and the ſheriff ſhall be puniſhed for his falſity. *Ibid.* 97. If a man bring a writ of *deceit* againſt him that recovers in the firſt action, and the ſheriff return him ſummoned, upon which for non-ſummons in that action on finding the ſame the recovery is reverſed; in this caſe the defendant ſhall not have writ of *deceit* to recover the land again, if he were not ſummoned: But he ſhall have his remedy againſt the ſheriff. *Rol. Abr.* 621. And where *debt* was brought, and the defendant pleaded in abatement, and the plea was over-ruled; the attornies on both ſides by *deceit* between them, to the end the plaintiff might recover his debt, entered another judgment when it ſhould have been a *reſpondeas ouſter*; and it was held that the writ of *deceit* would not lie to reverſe the record, but only to recover damages. *Ibid.* 622.

If in a ſuit or action, another perſon ſhall come into court and pretend he is party to the ſuit, and ſo let judgment be had, or ſome other damage done to the party himſelf; or if I have cauſe to have an action, and another brings it in my name, and lets judgment go againſt me by nonſuit, or the like; I may have this writ of *deceit* againſt him. *F. N. B.* 96. *March.* 48.

If any one forge a ſtatute, *&c.* in my name, and ſueth a *capias* thereupon, for which I am arreſted; I ſhall have a writ of *deceit* againſt him that forged it, and againſt him who ſued forth the writ of *capias*, *&c.* *Ibid.* And if a perſon procure another to ſue an action againſt me to trouble me, I ſhall have a writ of *deceit*.

There are many frauds and *deceits* provided againſt by ſtatute, relating to artificers, bakers, brewers, victuallers falſe weights and meaſures, *&c.* which are liable to penalties and puniſhment in proportion to the offence committed. And writ of *deceit* lies in various caſes, for not performing a bargain; or not ſelling good commodities, *&c.* 1 *Inſt.* 357. See *Action on the Caſe*.

A writ of deceit lies to ſet aſide a fine and recovery in C. *B.* of lands in *antient demeſne*. *Wilſ. Rep. Par.* 2. *fo.* 17. *Rex v. Serjeant Mead & al.* See *Black. Com.* 3 *V.* 165-6.

Decennary. A town or tithing conſiſting (originally) of ten families of *freeholders*. Ten tithing compoſed an *hundred*. The inſtitution of *decennaries* (or *frankpledges*) is imputed to *Alfred*. In theſe decennaries the whole neighbourhood or tithing of freemen were mutually pledges for each other's good behaviour. *Black. Com.* 1 *V.* 114. 4 *V.* 249.

Decem Tales, Is when a full *jury* doth not appear at a trial at bar; then a writ goes to the ſheriff *apponere decem tales*, *&c.* whereby a ſuppy is made of jurymen to proceed in the trial.

Decies tantum, Is a writ that lies againſt a *juror*, who hath taken money of either party for giving his verdict; ſo called, becauſe it is to recover ten times as much as he took: And every perſon that will may bring this writ and recover the ſame, one half whereof ſhall be to the proſecutor, and the other to the King. This writ alſo lies againſt *embraceors* that procure ſuch an inqueſt; who ſhall be further puniſhed by impriſonment for a year *Reg. Orig.* 188. *F. N. B.* 171. *Stat.* 38 *Ed.* 3. *cap.* 13. But *decies tantum* doth not lie againſt the embraceor, if he embrace and take no money; for he ought to take money, and alſo embrace. Yet it lies againſt the *jurors*, although they do not give a verdict. if they take money; and ſo it is ſaid, if they give a true verdict, *decies tantum* lies, if they take money. *Dyer* 95. *New Nat. Br.* 380.

Decimation, (*Decimatio*) The puniſhing every *tenth ſoldier* by lot, was termed *decimatio legionis*: It likewiſe ſignifies tithing, or paying a tenth part. There was a *decimation* during the time of the *Uſurper* 1655.

Deciners, **Decenniers**, or **Doziners**, (*Decennarii*) Derived from the Fr. *Dizeine*, i. e. *Decas*, *Ten*, ſignify, in our ancient law, ſuch as were wont to have the overſight of the *Friburghs*, or views of *frank-pledge*, for the maintenance of the King's peace; and the limits or compaſs of their juriſdiction was called *Decenna*, becauſe it commonly conſiſted of ten houſholds; as every perſon bound for himſelf and his neighbours to keep the peace, was ſtiled *Decennier*. *Bract. lib.* 3. *Tract.* 2. *cap.* 15.

Theſe ſeemed to have large authority in the time of the *Saxons*, taking knowledge of cauſes within their circuits, and redreſſing wrongs by way of judgment, and compelling men thereunto, as appears in the laws of King *Edward the Confeſſor*, publiſhed by *Lambard*, *Numb.* 32. But of late times *decennier* is not uſed for the chief man of a *Dizein*, or *Dozein*; but he that is ſworn to the King's peace, and by oath of loyalty to the Prince, is ſettled in the ſociety of a *dozein*.

A *dozein* ſeemed to extend ſo far as a leet extendeth; becauſe in leets the oath of loyalty is adminiſtred by the ſteward, and taken by all ſuch as are twelve years old, and upwards, dwelling within the precinct of the leet, where they are ſworn. *F. N. B.* 161. There are now no other *dozeins* but leets; and there is a great diverſity between ancient and modern times, in this point of law and government, 2 *Inſt.* 73. See *Black. Com.* 4 *V.* 249.

Declaration, (*Declaratio*, *Narratio*) Is a ſhewing in writing the cauſe of complaint of the plaintiff in an action againſt the defendant, wherein the party is ſuppoſed to have received ſome wrong. And this ought to be plain and certain, becauſe it impeacheth the defendant, and compels him to anſwer thereunto; it muſt ſet forth the plaintiff's and defendant's names, the nature and cauſe of the action, the manner thereof, *&c.* and the damage received. 1 *Inſt.* 17.

A count or *declaration* ought to contain *demonſtration*, *declaration*, and *concluſion*: In demonſtration, are included three things; *Quis queritur*, *contra quem*, *& pro qua cauſa*; in *declarations*, there ought to be compriſed, *Quomodo inter partes actio accrevit*, *quando & qua die*, *anno & loco*, *& cui dabitur*: And in the concluſion, ſhould be averred and offered to prove the ſuit and damage, *&c.* ſuſtained. *Terms de Ley.* See *Co. Lit.* 303. *a.* *&c.*

A *declaration* is an expoſition of the writ, with the addition of time, circumſtances, *&c.* and muſt be true and clear, for the court is not to take things in it by implication: but it is not neceſſary to ſet forth matters of fact, as in a bill in Chancery, becauſe they are to be tried by a jury. *Wood's Inſt.* 582.

The law requires four things in *declarations* and pleadings, *viz.* 1. Truth. 2. Certainty. 3. Order. 4. Congruity. In perſonal actions, the day, year, and place ought to be expreſſed in the *declaration*; but not in real actions: And if in a treſpaſs the plaintiff declares, that it was committed ſuch day, *&c.* and continued *diverſis diebus & vicibus*, without ſhewing the days of the continuance of it, this is good: For that is to be proved in evidence, for the increaſe of damages. *Jenk. Cent.* 124. But it muſt be ſuch a treſpaſs as may be continued: And the form of laying the continuance in different treſpaſſes, muſt be attended to, according to the nature of the cauſe of action.

In action of debt, upon a bond, the plaintiff in his *declaration* muſt alledge a place where the bond was made, becauſe the jury ſhould come from that place; and if this be omitted, the *declaration* is ill. *Dyer* 15, 39. 1 *Nelſ. Abr.* 619. In action of covenant, no other covenant need be mentioned in the *declaration*, than the covenant where the breach is aſſigned: And if a defendant pleads *non eſt factum* to a deed, he allows a covenant therein to be broken, as laid in the *declaration*, and makes the *declaration* good, unleſs really bad in ſubſtance, tho' the breach be too generally aſſigned. 2 *Cro.* 369. But a defendant ſeldom relies on the plea of *non eſt factum* only, unleſs the deed is not in reality his, but, by leave of the court, pleads alſo ſome other plea, or pleas.

In ſlander there ſhould be no more inducement than is neceſſary: The like is to be obſerved in actions upon general ſtatutes, concluding *contra formam ſtatuti*, *&c.* But in *declarations* for words, the words ſpoken are to be laid expreſly and poſitively; not with an *hæc verba vel conſimilia*, nor with a *quorum tenor ſequitur*, *&c. Cro. Eliz.* 645, 857. 5 *Mod.* 72. And where the plaintiff declares on, and recites a ſtatute, he muſt recite it truly, and it is erroneous to miſrecite it; though as to the ſubſtance of the *declaration*, the plaintiff might have omitted to recite it all. 1 *Nelſ.* 616.

In action on the caſe upon *aſſumpſit*, the plaintiff is to declare upon the whole promiſe made, and not on a part of it; or on trial he will be nonſuited. 1 *Danv. Abr.* 266, *&c.* It is good to lay large and ſufficient damages in *declarations*: And damages ſhall not be given for that which is not contained in the *declaration*, and only for what is materially alledged. 10 *Rep.* 115. 1 *Lill. Abr.* 381. If one declare upon an obligation, with an *hic in curia prolat'*, he muſt, on *oyer* pray'd of it, ſhew the obligation. And a *plaintiff* declaring as executor or adminiſtrator, ought to ſet forth the probate of the will, and letters of adminiſtration granted, with a *profert in curia*; or the *declaration* will be bad. 2 *Lil. Abr.* 412.

If a *declaration* is bad, and the defendant demurs, the plaintiff may, on application to a judge, or by motion in court, (but the moſt uſual method is by ſummons before a judge) obtain leave to amend on paying the coſts of the demurrer, *&c.* But if the defendant do not take advantage of it, but pleads in bar, and the plaintiff proceeds to iſſue thereon, if the right is found *for* the *defendant*, the plaintiff is eſtopped by the verdict from bringing a new action: And ſo it is if he had demurred to the plea in bar. 1 *Mod.* 20, 207. Where a *declaration* is defective, it is ſometimes aided by the ſtatutes of *jeoſails*, *&c.* but they help only matters of form, not matters of ſubſtance; for uncertainty in a *declaration*, which is matter of *ſubſtance*, is not aided by ſtatute after verdict, as in caſe of treſpaſs for taking fiſh, where their number or nature are not ſet forth. 5 *Rep.* 35.

The plaintiff hath two terms to file his *declaration* againſt the defendant, that term being reckoned one wherein the writ was returnable: And if no *declaration* comes in before the riſing of the court, the laſt day of the ſecond term, the defendant may ſign a *non proſ.* whereupon he ſhall have coſts. As to to *B. R.* the plaintiff hath now two terms: and more time in taking a rule.

The plaintiff's attorney is to file his warrant the term wherein he declares. *Stat.* 4 *Ann. c.* 16. If one be in cuſtody of the marſhal of the court, any plaintiff may file a *declaration* againſt him, and he is obliged to plead thereto; it is the ſame when he is out upon bail, any other may declare againſt him: For when a man is in cuſtody of the law, he is bound to anſwer every one's ſuit; and on *hab. corp.* a ſtranger to the writ by which the priſoner is arreſted, may take notice of the priſoner when he is turned over to the marſhal, though at the ſuit of another, and declare againſt him, without taking out proceſs. 1 *Lil. Abr.* 413.

By ſtatute, when a defendant is taken or charged in cuſtody, upon any writ out of the courts at *Weſtminſter*, or impriſoned for want of ſureties for appearance, the plaintiff muſt declare againſt him before the end of the next term, and cauſe a copy to be delivered to the priſoner or gaoler; to which *declaration* the priſoner is to plead, or the plaintiff ſhall have judgment. 4 & 5 *W. & M. cap.* 21. But if the *declaration* be not entered, or left in the office, before the end of the next term; and *affidavit* is made thereof, and filed, before the end of twenty days after, *&c.* the priſoner, on entering his appearance, ſhall be diſcharged by *ſuperſedeas*.

If a perſon is in cuſtody of the marſhal, *&c.* and the plaintiff would charge him either with an action or execution, (if in term-time) he muſt file a bill againſt him, and deliver a *declaration* to the turn-key, *&c.* and he ſhall lie in cuſtody two terms, *&c.* but if in vacation, the plaintiff is to go to the marſhal's book in the office, and make an entry *quod defenden. remaneat in cuſtodia ad ſectam* A. B. *&c.* 1 *Salk.* 213. And in *declarations* againſt priſoners by virtue of any proceſs out of *B. R.* it ſhall be alledged in cuſtody of what ſheriff, bailiff, *&c.* ſuch priſoner is at the time of the *declaration* delivered: which allegation ſhall be as effectual as if the priſoner was in cuſtoſty of the marſhal. 4 & 5 *W. & M. c.* 21. 8 & 9 *W.* 3. *c.* 21.

On filing *declarations*, copies thereof are ſerved on the defendants or their attornies, *&c.* And by an order of all the judges, *anno* 12 *W.* 3. the plaintiff's attorney is not obliged to deliver the defendant's attorney the original *declaration*; but inſtead of it, is to deliver a true copy of the *declaration*; upon delivery or tender whereof, the defendant's attorney ſhall pay for ſuch copy after the rate of 4*d. per* ſheet, *&c.* and if any perſon refuſe to pay for the copy tendered, the ſaid copy is to be left in the office, with the clerk that keeps the files of *declarations*, and thereupon the plaintiff's attorney giving rule to plead, may, for want of a plea, ſign judgment; and before any plea ſhall be received, the defendant's attorney is to pay for the copy of the *declaration*. 1 *Lil.* 417.

And by a late order, in every cauſe, where ſpecial or common bail is filed, and notice given to the plaintiff, a copy of the *declaration* ſhall be delivered to the attorney for the defendant, who ſhall pay for it according to the uſual rate; but if the defendant's attorney, or his clerk in his abſence, refuſes to pay for ſuch copy; or if it happens the habitation of the attorney for the defendant, be unknown to the attorney for the plaintiff; then it ſhall be lawful to leave the copy with the officer of the court appointed for filing *declarations*, which ſhall be good, giving notice, *&c. Ord. Cur Trin.* 2 *Geo.* 2.

On the firſt day of the following term after delivery of the *declaration*, the paper of rules is to be made up, writing on the top the attorney's name and the term, and under that the names of the plaintiff and defendant, as *A. B. againſt C. D. &c.* and the paper of rules muſt be carried to the ſecondary, who will give one peremptory rule to plead, *&c.* A plaintiff's attorney, may amend his *declaration* in *B. R.* in matter of form, after the general iſſue pleaded, before entry thereof, without paying coſts, or giving imparlance: But if he amend in ſubſtance, he is to pay coſts, or give imparlance: And if he amend in ſubſtance, after a ſpecial plea pleaded, though he would give imparlance, he muſt pay coſts. 1 *Lil. Abr.* 409.

A miſtake in a *declaration*, the plaintiff may amend in *C. B.* on notice before the eſſoin day, and the defendant ſhall have no advantage of it: Alſo before demurrer, or iſſue joined, the plaintiff may amend, paying 13*s.* 4*d.* coſts; and force the defendant to plead preſently, or give him a further imparlance without paying coſts: But after demurrer, or iſſue joined, and when the pleadings are entered on the roll, the plaintiff cannot amend his *declaration*, but is to enter a diſcontinuance and proceed *de novo*. *Practiſ. Attorn. Edit.* 1. *p.* 147. But the courts will often give leave to amend, on motion for that purpoſe, plaintiff paying ſuch coſts as ſhall be taxed by the proper officers.

On a *latitat* in *B. R.* you may declare againſt the defendant in as many actions as you think fit; but you muſt have one original, for every action in *C. B.* The *declaration* is grounded upon the writ in the Common Pleas, and bill of *Middleſex* in the King's Bench: And in *C. B.* it is uſual to declare in actions on *Quare clauſum fregit*, as is practiſed on a *latitat* in *B. R.* 1 *Vent.* 259. One may not regularly declare in *B. R.* againſt a perſon that is not *in cuſtodia Mareſchalli*, or hath not filed bail; unleſs he be a privileged perſon. 21 *Car. B. R.* if a *declaration* begins *Queritur de Placito Tranſg. pro eo quod, &c.* it may be a *declaration* in caſe, or, it will ſerve for either treſpaſs or caſe. *Cro. Car.* 325.

The plaintiff's attorney is not obliged to ſet his hand to his *declaration*; for the defendants attorney muſt receive it without, if he knows him to be the attorney in the cauſe.

By ſtatute, no man ſhall be prejudiced by the ancient forms; ſo that the matter of the action be fully ſhewn in the *declaration, &c.* which ſhall be good, though the terms are not perfectly proper. 35 *Ed.* 3. *c.* 15. Vide 27. *El. c.* 5. 16 & 17 *Car.* 2. *c.* 8. & 4 *Ann. c.* 16.

Decree. The judgment of a court of equity on any bill preferred, is ſo called.

A decree in Chancery is of the *like nature with a judgment* at Common law. *Chan. Rep.* 234. 14 *Car.* 2. *Nanny* v. *Martin.*

By the laws of *England* a decree (notwithſtanding any contempts thereof) ſhall *not bind the goods* or moveables, but only charge the perſon. *Chan, Rep.* 193. 12 *Car.* 2. *Howard* v. *Suffolk.*

A *defendant lay in the Fleet for breach* of a decree, the *plaintiff* neverthеleſs *prefers a bill to diſcover an eſtate*; defendant demurred becauſe a double execution; yet overruled. *Toth.* 137, 138. cites *Hill.* 1630. *Audley* v. *Harris.*

A *ſequeſtration* may be granted in the Exchequer, as it has always been practiſed in Chancery *where a decree is for a perſonal duty*, otherwiſe the juriſdiction of the court of equity would be to little purpoſe, if it had not authority ſufficient to ſee its decrees executed; *per* three Barons; but the Lord Chief Baron doubted, becauſe the Lord Chief Baron *Hale* could never be prevailed upon to grant it, nor the Lord *Montague*, to whoſe learning, he ſaid, he muſt ſubſcribe; but by the opinion of the other three it was granted. 2 *Freem Rep.* 99. *pl.* 109. *Trin.* 1687. *in the Exchequer, Gaaver* v. *Fountaine.* See 7 *Vin. Abr.* 394, 402.

Where there is a remedy at law for one thing in a bill, which is complicated with other matters which are proper in equity, in ſuch caſe equity will determine the whole matter; *per* Lord Chancellor. 2 *Freem. Rep.* 58. *pl.* 64. *Trin.* 1680.

Where there is but *one witneſs againſt the defendant's anſwer.* the plaintiff can have no decree. *Vern. R.* 161. *pl.* 151. *Paſch.* 1683. *Alam* v. *Jourdon.*

Where no ordinary proceſs upon the firſt decree will ſerve for the execution thereof, there muſt be a new bill to pray execution of the firſt decree by a ſecond decree. 2 *Chan. Rep.* 127, 128. 29 *Car.* 2. *Lawrence* v. *Berney.*

Verbal *agreement*, though *ſubſequent* to the decree, yet ſhall not *ſtay the execution* of it, but the remedy muſt be by original bill. 2 *Chan. Caſes* 8. *Mich.* 31 *Car.* 2. *Waklin* v. *Walthall.*

Whenever a decree is *entered by conſent*, the merits after ſhall never after be enquired into, unleſs there be an objection, that the word *conſent* be ſtruck out of the order. *MS. Tab. February* 1701. *Norcot* v. *Norcot.*

On a *new bill to carry a decree into execution*, the court may vary and *alter what is thought proper*; but on a rehearing, no farther than the petition extends; but if the petition be againſt the decree in general, though particular reaſons are given, the whole is open; but otherwiſe it is, if the petition be only againſt one or two particulars. *Sel. Caſes in Chan. in Lord* King's *time*, 13, 14. *Paſch.* 11 *Geo.* 1. *Colcheſter* v. *Colcheſter.*

The rule of court is, that *on appeal the whole cauſe* is open; but on a rehearing, only ſo much as is petitioned againſt; if all do not petition, it is open only to the petitioners. *Sel. Caſes in Chan. in Lord* King's *time*, 24 *Trin.* 11 *Geo.* 1. *Hayward* v. *Colley.*

Decree may be *altered* upon proper application *the ſame term* it is pronounced, without a rehearing. *MS. Tab. May* 1725. *Vaughan* v. *Blake.* No *original bill* can be to *vacate a decree ſigned* and inrolled. *G. Equ. R.* 185. *Hill.* 12 *Geo. Floyd* v. *Manſell.* *Matters, proper to be excepted to upon the maſter's* report, ſhall never be objected to a decree after the report confirmed. *MS. Tab. April* 28, 1726. *Parker* v. *Stanley.* All appeals from the *Rolls* are to be made to the Lord Chancellor, and *decrees* made *at the Rolls muſt be* ſigned or *approved of by the Chancellor to make them decrees of the court of Chancery.* MS. Tab. March 13, 1727. *Morſe* v. *Dubois.*

A decree *gained by fraud*, may be *ſet aſide by petition*, as well as a judgment at law by motion; *a fortiori may* ſuch decree be ſet aſide *by bill.* 3 *Wms's Rep.* 111. *Paſch.* 1731. *Seldon* v. *Forteſcue Aland.* If a decree be obtained and *inrolled*, ſo that the cauſe cannot be reheard, then *there is no remedy but by bill of review, which muſt be on error appearing on the face of the decree, or on matters ſubſequent* thereto, as a releaſe, or a receipt diſcovered ſince. 3 *Wms's Rep.* 371. *Trin.* 1735. *Taylor* v. *Sharp.* See *Black. Com.* 3 *V.* 451.

Decretals, (*Decretales*) Are a volume or books of the *Canon Law*, ſo called, containing the *decrees* of ſundry *Popes*; or, a digeſt of the canons of all the councils that pertained to one matter under one head. See *Canon Law.*

Decuriare, Signifies to bring into order. *Mon. Angl. tom.* 1. *p.* 243.

Dedbana, *Ded bane*, Sax. An actual homicide, or manſlaughter. *Leg. H.* 1. *c.* 85.

Dedi, Is a warranty in law; as if it be ſaid in a *deed* or conveyance, That *A. B.* hath *Given, &c.* to *C. D.* it is a warranty to him and his heirs. *Co. Lit.* 304. Alſo *dedi* imports a power of giving any thing. *Hob.* 12.

Dedication-Day, (*Feſtum Dedicationis*) The feaſt of *dedication of churches*, or rather the feaſt-*day* of the ſaint and patron of a church; which was celebrated not only by the inhabitants of the place, but by thoſe of all the neighbouring villages, who uſually came thither; and ſuch aſſemblies were allowed as lawful: It was uſual for the people to feaſt and drink on thoſe days; and in many parts of *England*, they ſtill meet every year in villages for this purpoſe, which are days called *Feaſts* or *Wakes.*

Dedimus Poteſtatem, Is a writ or commiſſion given to one or more private perſons, for the ſpeeding ſome act appertaining to a judge, or ſome court: And it is granted moſt commonly upon ſuggeſtion, that the party who is to do ſomething before a judge, or in court, is ſo weak that he cannot travel; as where a perſon lives in the country, to take an anſwer in *Chancery*; to examine witneſſes in a cauſe depending in that court; to levy a fine in the *Common Pleas, &c.*

Dedimus Poteſtatem de Attornato faciendo. As the words of writs do command the defendant to appear, *&c.* anciently the judges would not ſuffer the parties to make attornies in any action or ſuit, without the King's writ of *Dedimus Poteſtatem*, to receive their attornies: But now by ſtatutes, the plaintiff or defendant may make attornies in ſuits without ſuch writs. *New Nat. Br.* 55, 56. See the *Table* to the *4to Edit.* of the *Stat.* tit. *Attornies.*

Deed, (*Factum*) Is an inſtrument in parchment, or paper, but chiefly in parchment, comprehending a contract or bargain between party and party; or an agreement of the parties thereto, for the matters therein contained: And it conſiſts of three principal points, *writing, ſealing*, and *delivery*; writing, to expreſs the contents; ſealing, to teſtify the conſent of the parties; and delivery, to make it binding and perfect. *Terms de Ley.*

Some have enumerated ten things as neceſſarily incident to a deed. (1) Writing. (2) In parchment (*vellum*) or paper. (3) A perſon able to contract, (4) By a ſufficient name. (5) A perſon able to be contracted with, (6) By a ſufficient name. (7) A thing to be contracted for. (8) Apt words required by law. (9) Sealing. And (10) Delivery. *Co. Lit.* 35. *b.*

The word *ſcriptum* or writing doth not import a *deed*; for a contract may be in writing, and not by *deed*, and if ſo, it is but a parol agreement: But a *deed* may be effectual, although it does not mention, in the beginning, by or to whom it is made. 1 Ld. *Raym.* 28.

As to the writing of a deed: All the matter and form thereof muſt be written *before* the ſealing and delivery of it; for if a man ſeals and delivers an empty piece of parchment or paper, although he therewithal gives commandment that an obligation or other matter ſhall be written in it, which is done accordingly, yet this will not make it a good deed. *Co. Lit.* 171. *Perk. S.* 118, 119. See *Moor* 28. *Hotley* 136,7.

A deed may be written in any hand, as in text, court or Roman hand; or in any language, as in *Latin* or *French*, and is as good as a deed written in *Engliſh* and in a ſecretary hand. 2 *Co.* 3.

If there be any alteration, raſure, or interlining made in any part of the deed before the delivery of it, this will not hurt the deed.

But in ſuch caſes it is policy to make a memorandum of it upon the back of the deed, and to give the witneſſes notice of it, (this is now uſually done in the atteſtation of the deed thus: *Sealed and delivered, the word———being firſt interlined, &c.)* For otherwiſe, if it be in any place material, as in the name of the grantor, grantee, in the limiting of the eſtate, or the like, and it cannot be proved to be done before the ſealing and delivery of it, eſpecially if it be a deed poll, it is very ſuſpicious. *Co. Lit.* 37, 225. *Perk. S.* 125, 126, 127, 128, 155.

It may be written either in a piece of looſe paper or parchment, or in a paper or parchment ſewed in a book. *Bro. Oblig.* 67. *Co. Lit.* 137, 139. But the paper or parchment muſt in moſt caſes be ſtamped.

As to the parties contracting.

It is to be obſerved, That ſome perſons are diſabled by Common law, and ſome by ſtatute; ſome are abſolute, and ſome are *ſecundum quid* only; as in caſe of infants, feme coverts, ideots, perſons *non compos mentis*, aliens, tenants in tail, eccleſiaſtical perſons, and others, ſome of which may not make any deeds or eſtates by them at all; others but ſo and ſo limited and qualified. *Stat.* 32 *Hen.* 8. *cap.* 28.

Diſabilities to make deeds, *&c.* are chiefly amongſt perſons of non-ſane memory, infants, aliens, women who have huſbands, men who have wives, *&c.* perſons born deaf and dumb, perſons attaint of treaſon or felony, or, in a *præmunire*, clerk convict, tenant in tail, eccleſiaſtical perſons, as biſhops, parſons, and the like, with reſpect to lands, *&c.* they hold as ſuch, joint-tenants, tenants in common, coparceners, diſſeiſors, diſſeiſſees, *&c.*

And this in ſome of them is in part, and temporal only, but in others of them, it is abſolute, univerſal, and perpetual.

He who has but an eſtate-tail in land, can only make a leaſe of it for his own life by deed, or ſuch a leaſe as is within the *Stat.* 32 *Hen.* 8. *c.* 28.

Eccleſiaſtical perſons cannot make a leaſe of their eccleſiaſtical lands for longer than their own lives, or ſuch a leaſe as is warrantable by the ſtatute of 13 *Eliz. cap.* 10. and 1 *Jac.* 1. *cap.* 3. and others.

And he who has only an eſtate for his own or another's life, or a leaſe for years of land, may give, grant, or charge it at his pleaſure for ſo long as his eſtate laſts; and it will be good to all purpoſes, and againſt all perſons for that time.

And a man who has an eſtate in land to him and his wife, and his heirs, may make what eſtate he will of it, and this will be good againſt all but his wife, and that for her life only. 7 *Co.* 12. *Co. Lit.* 42. *Perk. ſ.* 182.

As to the naming *and* deſcription *of the parties and perſons in deeds:*

The names of the parties to deeds ſerve only to diſtinguiſh perſons, and to make the perſon intended certain; and therefore it is ſafe to deſcribe the perſon intended by his true and proper names of baptiſm and ſurname; and if it be a corporation, by the true name whereby it was made; yet miſtakes in this, unleſs they be very groſs, will not hurt, *nihil facit error nominis cum de corpore conſtat.* Bulſt. 21, 22. 2 Bulſt. 302, 303. Co. Lit. 3. Perk. ſ. 36.

But if the name of baptiſm or ſurname be miſtaken, as *John* for *Thomas, &c.* this is dangerous. *Moor* 407, 897. And ſee 2 *Bulſt.* 70. *Perk. ſ.* 39.

It is alſo prudent to add the addition of each party, as to the place of *reſidence*, with his or her *degree, profeſſion*, or *myſtery*.

There are many deſcriptions of grantors and grantees; as (1) Proper names of baptiſm and ſurnames, and the names of corporations, or bodies politic or corporate. (2) Names of dignities, office, and the like. And theſe (of both ſorts) will admit a deſcription made good by reputation. And ſo land will paſs to one, by the name of a *ſon*, who is a *baſtard*; ſo to one by the name of a *wife*, who is *not a wife*, 27 *Ed.* 3. 85. *Bulſt.* 3. if they be reputed or known by that name. *Hob.* 32.

There muſt be ſuch a perſon *in eſſe* at the time of the deed made as is named, and he muſt be able to give, and capable to receive that which is given or granted by the deed. *Plowd.* 345. *Co. Lit.* 2, 3. *Perk.* 43, 52.

And therefore if an annuity be granted to the right heirs of *J. S.* he being then living, this is void; for there is none ſuch, nor can be whilſt he lives. *Perk. ſ.* 52.

So *primogenit. proli* of *A.* and *B.* and they have no iſſue yet born. *Cro. Car.* 22.

If a man gets another name by common eſteem than his right name, and he is known by his other name, his deed made by this other name may be good. 6 *Co.* 36. *Co. Lit.* 3. *Perk. ſ.* 41.

The miſtake is leſs dangerous where any other part of the deed, or ſome other addition, ſhall make the perſon intended certain. 6 *Co.* 36. *Co. Lit.* 3. *Perk. ſ.* 40.

With reſpect to the capacity *of the perſon to be contracted with.*

All perſons male or female, eccleſiaſtical or temporal, and all bodies natural or politic, are capable to take by grant, or to be contracted with, unleſs diſabled by their being *non compos mentis, &c.* as before, as to the diſabilities to grant, *&c.*

The King, for the greatneſs of his perſon, is diſabled to take by deed *in pais*; and therefore if a feoffment be made to him there, and livery of ſeiſin be made upon it, this will be void; but *he is to take by matter of record*, which is of a higher nature than a deed. *Fitz. Fait and Feoffment* 21.

Leaſes made to him by colleges, deans and chapters, or any other, having a ſpiritual or eccleſiaſtical living, againſt the ſtatute 13 *Eliz. c.* 10. are reſtrained by the ſame act, as well as leaſes made to common perſons. 5 *Co.* 14.

If a leaſe is made to huſband and wife for their lives, the remainder to the heirs of the ſurvivor; this is a good remainder notwithſtanding the uncertainty. *Godb. Caſe*, 167.

If a leaſe be made to the huſband, *habendum* to the wife, the *habendum* to her is void, for ſhe is a ſtranger to the premiſſes of the deed. 3 *Leon.* 32, 33, 34.

Concerning the name *of the grantee:*

It is to be remarked, That grantees, *&c.* muſt not only be perſons in being, and capable to take by grant, *&c.* by the name in the deed mentioned, but they muſt alſo be ſufficiently named and deſcribed one way or other, and he himſelf, and not a ſtranger, muſt take by the deed; and ſome that cannot grant or give, yet, may take or receive. And a grant made to two, three, or twenty ſuch perſons, is good. *Co. Lit.* 2, 3. *Perk. ſ.* 43.

If a grant be in all other reſpects well made, except the omiſſion of the name of the grantee, if he does not expreſs who ſhall take by it, it is void.

There are divers ſorts of names and nominations of perſons, or bodies politic or corporate, that may take, whereof there are divers ſorts; as firſt, the proper names or ſurnames, wherein notwithſtanding there may be ambiguity of a gift or grant to my ſon *John*, (having two of that name,) perhaps, it may be made good by an averment, which *John* is meant.

There are alſo other names or deſcriptions, as by ſome dignity, office, or the like; as the Earl of *Hertford*, Lord Treaſurer, and the like: And this will admit of a deſcription made good by reputation, though not by truth. 27 *Ed.* 3. 85. *Bulſt.* 3. And ſee *Ante.*

But the ſafe way in the caſes of common perſons is, to name the parties grantor or grantee, *&c.* by their names of baptiſm and ſurname, *&c.* *Co. Lit.* 3.

For where the grant intends to deſcribe the perſon of the grantee by his proper name, and omits or miſtakes his Chriſtian name or ſurname; commonly the deed is void, unleſs there be ſome ſpecial matter to help it.

And yet if the grant does not intend to deſcribe the grantee by his known name, but by ſome other matter, there it may be good, by a deſcription of the perſon, without either name of baptiſm or ſurname. *Co. Lit.* 3.

A biſhop by the name of biſhop of *London*, may take without any other name. *Co. Lit.* 3. *Bulſt.* 21.

As to the thing *to be contracted for:*

All *corporeal* and *immoveable things*, ſuch as are ſaid to *lie in livery*, as *honours*, *iſles*, *villages*, *manors*, *meſſuages*, *cottages*, *lands*, *meadows*, *paſtures*, *woods*, *moors*, *marſhes*, *furzes*, *heaths*, *mines*, *quarries*, and the like; and ſome *incorporeal things* that are incident and appendant to them, are grantable from any man to another man in fee-ſimple, fee-tail, for life or years at firſt, and tranſmiſſible and aſſignable afterwards by the grantee thereof *in infinitum* at pleaſure. *Co. Lit.* 20.

A grant may be of a moiety, third, fourth, or fifth, or other certain part of a manor, or of land, by the name of a third, fourth, fifth, or other certain part, and good. *Co. Lit.* 190.

So of a third or fourth part of tithes, and the like. *Dyer* 84.

And all *incorporeal things*, ſuch as are ſaid to *lie in grant*, as *rents* and *ſervices*; and of theſe not only ſuch as are reſerved upon any eſtate made of land, but ſuch as are granted out of land, ſeigniories, commons, vicarages, advowſons in groſs, eſtovers, dignities, ways, waters, fiſhings, franchiſes, ferries, leets, waifs, eſtrays, and ſome offices. All theſe and the like things are grantable by one to another in fee-ſimple, fee-tail, for life or for years at firſt, and *de novo*, but they are grantable and aſſignable over *in infinitum*. But theſe things may not be granted otherwiſe than by deed. *Co. Lit.* 144. *Fitz. Grant*, 145. *Perk. ſ.* 87, 91, 103. *Bro. Grant*, 3. 3 *H.* 6. 20. 9 *H.* 6. 12.

And if a man has a rent reſerved on a particular eſtate, he may grant over parcel of it.

And of whatſoever a fine may be levied, a grant by deed of the ſame thing may be made.

A grant of an acre of land covered with water, is good. *Co. Lit.* 4.

Rents and ſervices reſerved upon any eſtate, and rents granted out of land (it is ſaid) are grantable over *in infinitum*; but one may not grant rent out of a rent, nor may one grant over a rent which he has till he has ſeiſin of it, *Perk. ſ.* 88, 89. *Bro. Grant*, 171.

With regard to the words *requiſite in a deed:*

They depend upon the eſtate intended to be conveyed. If a man would purchaſe *lands* or tenements in *fee-ſimple*, it behoves him to have theſe words in his purchaſe, *To have and to hold to him and to his heirs*; for theſe words, *his heirs*, *(only)* make the eſtate of inheritance, in all feoffments and grants: But this is to be underſtood of natural bodies: For if lands be given to a ſole body politic or corporate, (as to a biſhop, parſon, vicar, maſter of an hoſpital, *&c.*) there, to give him an eſtate of inheritance in his politic or corporate capacity, he muſt uſe theſe words, *To have and to hold to him and his ſucceſſors.* Co. Lit. 8, *&c.*

If an eſtate-*tail* is intended to be created, the words muſt be, *To have and to hold to him and to the heirs of his body.* See title *Fee.*

The neceſſity of the word *heirs* or *ſucceſſors*, as the caſe requires, is therefore abſolutely neceſſary in conveyances of eſtates of inheritance; for if a man purchaſe lands by theſe words, *To have and to hold to him for ever*, he has but an eſtate for term of life. See *Co. Lit.* 8. *b.* *&c.*

As to ſealing *and* delivery:

A *deed ſealed and delivered*, it is ſaid, may be good without ſigning; for the ſeal is the eſſential part of the *deed*: But it is uſual to have *deeds* ſigned; and there muſt be witneſſes to the ſealing and delivery, who are to indorſe or under-write their names thereon. 1 *Inſt.* 7. 10 *Rep.* 93. The *ſigning* is of great uſe, for the ſubſcribing witneſſes to the *deed* may be dead, when proving their death, and the hand-writing of the party executing the *deed*, will be ſufficient to eſtabliſh the ſame. If a writing is not ſealed, it cannot be a *deed*. 3 *Inſt.* 169. 5 *Rep.* 23. See farther, 2 *Rep.* 3. 2 *Rol. Abr.* 28. 12 *Rep* 90. *Hob.* 96. If another perſon ſeal my *deed*, and I take it after ſealed, and deliver it as my *deed*; it is held to be good. *Perk. ſect.* 130. See *Co. Lit.* 171.

If two make a *deed*, and one of them ſeals it at one time, and the other at another time; this is as good as if they ſealed it together. *Lane* 32

If I have ſealed my *deed*, and after I deliver it to him to whom it is made, or to ſome other by his appointment, and ſay nothing, this is a good delivery.

So if I take the *deed* in my hand, and uſe theſe, or the like words, *here take him*; or, *this will ſerve*; or, *I deliver this as my deed*; or, *I deliver him you*; theſe are deliveries.

So if I make a *deed* of land to another, and being upon the land, I deliver the *deed* to him in the name of ſeiſin of the land; this is a good delivery.

So if the *deed* be ſealed, or lying in a window, or on a table, and I uſe theſe, or the like words, *There he is*, take it as my *deed*: This is a good delivery, and perfects the *deed*; for, as a *deed* may be delivered by words without acts, ſo may it alſo be delivered by acts without words. 9 *Co.* 137. *Dyer* 167, 192. *Co. Lit.* 36, 49. 35 *Aſſ. pl.* 6. *Contra*, if the party to whom made takes it without any act done purporting to be a delivery. But where parties have come for the purpoſe and done every thing but delivery, it has been adjudged a good delivery. *Cro. Eliz.* 7. 1 *Leon.* 140.

Regularly there may not be two deliveries of a *deed*, for where the firſt doth take effect, the ſecond is void: *Unleſs* it be where the *deed* is delivered to a ſtranger as an *eſcrow*; *or*, when a *deed*, good at firſt, becomes void afterwards; *or*, a feme covert ſeals a *deed*, and after being ſole delivers it again, *&c.* *Perk. ſect.* 154. *Co. Lit.* 48. 5 *Rep* 119.

The delivery of any *deed* may be alledged at any time after the date; but not before. *Dyer* 315. A *deed* may be good without all the orderly and formal parts; but without *delivery* by the party himſelf, or his attorney lawfully authoriſed, to the party to whom made, or ſome other to his uſe, it is no *deed*: And the delivery may be either abſolute or on condition. 1 *Inſt.* 35. 2 *Rep.* 5.

Of *deeds* there are two ſorts, *deeds indented*, and *deeds poll*; which names principally ariſe from the form of them, the one being cut in and out at top, dentwiſe, and the other plain: that is, ſhaved cloſe, from whence it takes the name of *deed poll*. See *Black. Com.* 2 *V.* 296.

A *deed poll* is ſaid to be a *deed* teſtifying that only one of the parties to the agreement hath put his ſeal to the ſame, where ſuch party is the principle or only perſon, whoſe conſent or act is neceſſary to the *deed:* And it is therefore a plain *deed*, without indenting, and is uſed when the vendor, for example, only ſeals, and there is no need of the vendee's ſealing a counterpart, becauſe the nature of the contract is ſuch, as it requires no covenant from the vendee, *&c.* *Co. Lit.* 55.

The ſeveral parts of deeds by indenture, are belonging to the feoffor, grantor, or leſſor, who have one; the feoffee, grantee, or leſſee, who have another; and ſome other perſons, as truſtees, a third, *&c.* and the deed-poll which is ſingle, and of but one part, is delivered to the feoffee, or grantee, *&c.*

All the parts of a deed *indented*, in judgment of law, make but one intire deed; but every part is of as great force as all the parts together, and they are eſteemed the mutual acts of either party, who may be bound by either part of the ſame, and the words of the indenture are the words of either party, *&c.* But a deed-poll is the ſole deed of him that makes it, and the words thereof ſhall be ſaid to be his words, and bind him only. *Plowd.* 134, 421. *Lit. ſect.* 370.

There are other diviſions of deeds; ſome are *abſolute*, and ſome *conditional*; ſome *inrolled*, and others not inrolled; ſome concerning the *realty*, ſome the perſonalty, *&c.* and ſome have in them matter of *gift* or *grant*; and others matter of *diſcharge*.

There are ſeveral kinds of deeds, by which lands paſs from one man to another; as *of bargain and ſale, feoffment, leaſe and releaſe, indentures to lead the uſes of fines and recoveries, ſettlements, leaſes, aſſignments, exchanges, mortgages, &c.* And deeds have ſeveral formal parts, *viz. The premiſſes*, habendum, reddendum, *condition, covenants, warranty, date, ſealing*, &c. The premiſſes ſet forth the proper names of the parties, with their additions of place and quality; and comprehend the certainty of the lands and tenements to be conveyed, with the conſideration of the deed, as money, natural love, *&c.* the premiſſes alſo contain the *exceptions*, if there be any, out of the land granted; as of timber, mines, *&c.* and in many deeds there may be an occaſion of a *recital* of former deeds in the premiſſes, particularly in aſſignments of leaſes, mortgages, *&c.*

The *habendum* names the certainty of the eſtate granted, for what time the grantee is to have it, and to what uſe: and it ſometimes qualifies the eſtate, ſo that the general implication of it, which by conſtruction of law paſſes in the premiſſes, by the *habendum* may be controlled; but not if the eſtate is expreſſed in the premiſſes. Likewiſe an *habendum* may explain the premiſſes, to prevent wrong; and ſometimes the premiſſes are thereby enlarged. A freehold cannot be granted by deed with *habendum* at a day to come: and a deed or leaſe, *habendum* from henceforth, includes the day on which it was dated: but *habendum a die datus* excludes it.

The *reddendum* is that clauſe in the deed which reſerveth ſome new thing to the grantor; as rent, ſuit, ſervice, *&c.* and is uſually made by the words *yielding, paying, doing, &c.* A leſſor cannot reſerve to any but himſelf, his heirs and executors, *&c.* nor can he reſerve to himſelf parcel of the annual profits, ſuch as the herbage of the land; for that would be repugnant to the grant, it being a part thereof.

Conditions and *covenants* in deeds are for the holding or not holding of the eſtate granted, on performance of ſome act: and a condition relating to a real eſtate, is a quality annexed by him that hath the eſtate, intereſt or right in the ſame, whereby the eſtate granted may be defeated, enlarged, or created, upon an uncertain event. Conditions are expreſſed by theſe words, *viz.* upon *Condition, Provided, So that, &c.* and *Provided* always, and it is *covenanted*, is a condition, by force of the *proviſo*, and a covenant, by virtue of the other words; though ſometimes a proviſo ſhall amount to a *covenant*, and ſometimes be taken for a *limitation, exception, reſervation, explanation, &c.*

The *warranty* in deeds is to ſecure the eſtate to the grantee and his heirs, *&c.* and is a *covenant real*, annexed to the land granted, by which the grantor and his heirs are bound to warrant the ſame to the grantee and his heirs, and that they ſhall quietly hold and enjoy it; or upon voucher, *&c.* the grantor ſhall yield other lands, to the value of what ſhall be evicted. Where a feoffor grants away all his eſtate in the land, and is not bound to warrant the title, but the feoffee is to defend it at his peril; the feoffee ſhall have all the deeds, as incidents to the land, although not granted in expreſs words: but where the feoffer warrants the land, it is otherwiſe: the feoffor ſhall have them to defend the title; and the feoffee muſt truſt to his warranty, and have only ſuch deeds as concern the poſſeſſion, *&c.*

In witneſs whereof, &c. aſcertains the *date* of the deed; and is as well part of it, as what is written before. 1 *Inſt.* 6, 47, 201, 365. *Plowd.* 152. *Wood's Inſt.* 224, 225, *&c.* 1 *Nelſ. Abr.* 624, *&c.* Deeds of bargain and ſale are to be *inrolled*, by *Stat.* 27 *Hen.* 8. *c.* 16. A copy of a bargain and ſale inrolled ſhall be as ſufficient as the original deed, by *Stat.* 10 *Ann. c.* 18. *ſect.* 3. But eſtates in fee are now generally granted and conveyed by indentures of *leaſe* and *releaſe*. And all deeds are to be *regiſtered* in the counties of *York* and *Middleſex*. *Stat.* 2 & 3 *Ann. c.* 4. 5 *Ann. c.* 18. 6 *Ann. c.* 35. 7 *Ann. c.* 20. 8 *Geo.* 2. *c.* 6. 25 *Geo.* 2. *c.* 4. And it is much to be wiſhed that regiſters were univerſally eſtabliſhed throughout the kingdom.

In deeds, the *conſideration* is a principal thing to give them effect: and the foundation of deeds ought always to be honeſt. That a deed was executed upon a corrupt agreement, *dehors* the deed, may be averred in pleading. See the caſe of *Collins* and *Blantern*, a new and very peculiar caſe. *Wilſ. Rep. par.* 2. *fo.* 341, *&c.* The plea was ſettled both by Mr. Serjeant *Hewit*, (now Lord *Lyfford*, Chancellor of *Ireland*) and Mr. Serjeant *Glyn*.

Falſe *Latin*, or falſe *Engliſh*, will not make a deed void: but *raſure* or *interlineation* in a material part, will render the ſame void; unleſs ſome *memorandum* be made thereof on the back of the deed, teſtifying its being done before ſealing. 1 *Rol. Rep.* 40. If words are blotted out in a deed, by a grantee or leſſee himſelf, although it be not in a place material, it will make the deed void. *Dyer* 261. This muſt mean *after* execution.

It has been adjudged, where an eſtate cannot have its eſſence without a deed, there, if the deed is raſed in any material part, after the delivery, it makes the eſtate void: but if the eſtate may have eſſence without a deed, then, notwithſtanding it is created by deed, and that deed is raſed, it ſhall not deſtroy the eſtate, but the deed. 1 *Nelſ. Abr.* 625.

When a choſe in action is created by deed, the deſtruction of ſuch deed is the deſtruction of the duty itſelf; as in caſe of a bond, bill, *&c.* though it is not ſo, where an eſtate or intereſt is created by a deed. 3 *Salk.* 120.

If a deed be ſuppreſſed, on proof made that it came to the party's hands, and of its contents, the perſon injured, will have the ſame benefit to hold the eſtate, as if the deed could be produced. 2 *Vern. Rep.* 280. A perſon committed for burning a deed, ſee 2 *Vern.* 561. *Abr. Caſ. Eq.* 169. An indorſement on a deed, at the time of the ſealing and delivery, is a part of the ſame: but if an indorſement be after the delivery, it is a new deed. *Mod. Caſ.* 237.

Deeds, if *fraudulently* made; when got by *corrupt agreement*, as on uſurious contract; and when made by *force* or *dureſs, &c.* are void: ſo they are for uncertainty, and by reaſon of infancy, coverture, or other diſability in the makers, *&c.* 2 *Rol. Abr.* 28. 1 *Inſt.* 253. 11 *Rep.* 27.

A deed may be good in part, and void in part; or good againſt one perſon, and void as to another: if all the parts of a deed made by law ſtand together, no one part ſhall make the whole void. and if a deed by any *conſtruction* of law be conſtrued to have *legal operation*, the law will not make it utterly void, though it may not operate according to the purport of the deed: alſo the law will tranſpoſe and marſhal clauſes in deeds, to come at their true meaning; but not to confound them. Where the words of a deed may have a double intendment, one ſtanding with law, and the other contrary to it; the intendment that ſtandeth with law ſhall be taken. 1 *Lil. Abr.* 421. 1 *Inſt.* 42, 217. 1 *Shep. Abr.* 540.

There are four grounds for the *expoſition of deeds.* 1. That they may be beneficial to the taker. 2. That where the words may be employed to ſome intent, they ſhall never be void. 3. That the words be conſtrued according to the intention of the parties, and not otherwiſe; and the intent of the parties ſhall take effect, if it may poſſibly ſtand with law. 4. That they are to be conſonant to the rules of the law. And deeds ſhall have a reaſonable expoſition, without injury againſt the grantor, to the greateſt advantage of the grantee. They are to be expounded upon the whole, and if the ſecond part contradicts the firſt, ſuch ſecond part ſhall be void; but if the latter part expounds or explains the former, which it may do, both of them ſhall ſtand. *Plowd.* 160. *Raym.* 142. 6 *Rep.* 36. 1 *Inſt.* 313. 1 *Rol. Rep.* 375.

The firſt *deed* of a perſon, and laſt *will*, ſtand in force. In deeds indented, all parties are eſtopped, or concluded, to ſay any thing againſt what is contained in the deed. 1 *Inſt.* 45. And where a deed is by indenture between parties, none can have an action upon that deed, but he who is a party to it; but where it is a deed-poll, one may covenant with another who is not a party to it, to do certain acts, for the non-performance whereof he may bring an action. 2 *Lev.* 74.

Where a man juſtifies title under a deed, he is to produce the deed: if a deed is alledged in pleading, it muſt be ſhewed to the court, that the court may judge of the validity of it, and whether there are ſufficient words to make a good contract; and when it is ſhewn to the court, the deed ſhall remain in court all the term, in the hands of the *cuſtos brevium*; but at the end of the term, it ſhall be delivered to the party. If the deed is denied, it muſt remain in court till the plea is determined. 10 *Rep.* 88. *Wood* 235. A deed ſet forth with a *profert hic in curia*, remains in court in judgment of law all that term; and any perſon may, during that term, have benefit by it, though he hath it not ready to ſhew: the adverſe party may take any advantage by the deed that it will afford him. 5 *Rep.* 74. 1 *Nelſ.* 625.

But now the deed is not actually brought into court, but generally remains in the hands of the party's attorney, who gives oyer and copy of it to the attorney of the other party, if demanded.

Deeds ſealed and delivered cannot be pleaded, *&c.* if not *ſtamped* according to law. 5 *&* 6 *W. & M. cap.* 21. The *indenting* is now conſidered as only matter of form, and many deeds are called indentures, beginning with the words, *This indenture,* though not actually indented. Beſides, there are articles of various kinds which do not begin with theſe words, and yet are called deeds or articles of agreement, *&c.* and that is good in law. A deed-poll commonly begins thus: *To all people to whom theſe preſents ſhall come, &c.* Or, *Know all Men by theſe preſents, &c.* See *Accompliſhed Conveyancer.* Vol. I. Edit. 2.

Deeds, *ſtealing* of. At Common law, bonds, bills, and notes, which concern mere *choſes in action,* were held not to be ſuch goods whereof *larceny* might be committed: but by *Stat.* 2 *Geo.* 2. *c.* 25. they are put upon the ſame footing, with reſpect to *larcenies,* as the money they were meant to ſecure. *Blak. Com.* 4 *V.* 234.

Deemſters, (from the Sax. *dema,* a judge or umpire) Are a kind of judges in the *Iſle of man,* who, without proceſs, or any charge to the parties decide all controverſies in that iſland; and they are choſen from among themſelves. *Cam. Brit.*

Deer-feld, A park or *deer-fold*; Sax. *deer, fera,* and *fald, ſtabulum.* Cowel.

Deer-hayes, Are engines, or great nets made of cords to catch deer; and no perſon not having a park, *&c.* ſhall keep any of theſe nets, under the penalty of 40 *s.* a month. *Stat.* 19 *H.* 7. *cap.* 11.

Deer-ſtealers. There are ſeveral laws, for the puniſhment of deer-ſtealers; as by 3 *Jac.* 1. *c.* 13. None ſhall kill or chaſe any deer, in any park or incloſed ground, on pain of ſuffering three months impriſonment, and to pay treble damages; and perſons not having 40 *l. per ann.* in lands, or worth 200 *l.* in goods, *&c.* are not to uſe any gun, bow, dog, *&c.* to kill deer; and their guns, *&c.* may be taken from them. By the 13 *Car.* 2 *cap.* 10. It is ordained, That whoever ſhall courſe, kill, hunt, or take away any red, or fallow deer, from any parks, *&c*, ſhall be liable to a penalty of 20 *l.*

The *Stat.* 3 *&* 4 *W. & M. c.* 10. inflicts a penalty of 20 *l.* for unlawful hunting and courſing of any deer; and 30 *l.* for taking, wounding, or killing; to be levied by diſtres; which is to be divided into three parts; one whereof to go to the informer, another to the poor, and the other to the owner of the deer; and if no diſtreſs can be had, the offenders ſhall be impriſoned a year, and ſet on the pillory, *&c.*

Pulling down pales or walls of parks, *&c.* where deer are incloſed, by this act is puniſhed with three months impriſonment: and the offences are determinable by juſtices of peace of the county where committed. Alſo by 5 *Geo.* 1. *c.* 15. *&* 28. Perſons guilty of deer-ſtealing may be indicted before a judge of goal delivery, and in that caſe be tranſported to the plantations for ſeven years: and perſons otherwiſe convicted before they are diſcharged, are to enter into a bond of 50 *l.* Penalty, to the perſon injured for future good behaviour; keepers of parks, killing deer without conſent of the owners, incur a forfeiture of 50 *l.* and others pulling down walls and fences of parks, are liable to the penalties inflicted by 3 *&* 4 *W. & M. c.* 10. for killing of deer.

Thus ſtood our laws till the great inſolence of the *Waltham Blacks* made a further proviſion neceſſary, when by *Stat.* 9 *Geo.* 1. *c.* 22. it was enacted, That if any perſons armed with ſwords, fire-arms, or other weapons, and having their faces *blacked*, or being otherwiſe diſguiſed, ſhall appear in any foreſt, park, *&c.* and unlawfully hunt or kill any deer; rob any warren, *&c.* or ſhall ſet fire to any houſe, or ſhoot at any perſon in a dwelling-houſe, or other place; or ſend any letter without a name ſubſcribed, or with a fictitious name, demanding money of any perſon, *&c.* they ſhall be guilty of felony without benefit of clergy: and 50 *l.* reward is given for the apprehenſion of the offenders. This ſtatute is continued for five years, by 12 *Geo.* 1. *cap.* 30. and made perpetual by 31 *Geo.* 2. *c.* 42.

Perſons convicted a ſecond time of hunting, or taking away deer in unincloſed foreſts, *&c.* or coming armed with an intent to hunt or take them, who ſhall beat or wound any keeper, *&c.* ſhall be tranſported for ſeven years. 10 *Geo.* 2. *c.* 32. Before the *charta de foreſta,* 9 *H.* 3. to hunt the King's deer, in any foreſt or park was felony; but that charter ordained, that none ſhould loſe either life or member for killing the King's deer. 2 *Rol. Rep.* 120. The hunting in any foreſt, *&c.* with viſors or painted faces in the day-time, or in the night with or without ſuch viſors, if the party conceal the ſame, it is felony by *Stat.* 1 *H.* 7. *c.* 7. So that we may obſerve there is ſome agreement between our antient laws and modern ſtatutes. A perſon was convicted on the ſtatute of deer-ſtealing, and it appearing by the conviction, that the deer were not in a park incloſed, *&c.* upon motion in *B. R.* the conviction was quaſhed. *Mich.* 9 *W.* 3. *Mod. Juſt.* 161. A conviction of deer-ſtealing may be removed by *certiorari* into *B. R* but the party doing it is to give bond in the penalty of 60 *l.* to the juſtice of peace before whom convicted, to proſecute ſuch *certiorari*, and pay the forfeiture due by the conviction, or render his perſon in a month after the conviction confirmed, *&c.* 5 *Geo.* 1. *c.* 15. *c.* 28. See *Game.*

De eſſendo quietum de Telonio, Is a writ that lies for thoſe who are by privilege free from the payment of *toll*; on their being moleſted therein. *F. N. B.* 226.

De expenſis militum, A writ commanding the ſheriff to levy the expences of a *knight of the ſhire* for attendance in *parliament*, being 4 *s. per diem* by ſtatute: and there is a like writ *de expenſis civium & burgenſium,* to levy 2 *s. per diem,* for the expences of every *citizen* and *burgeſs* of *parliament.* Stat. 23 Hen. 6. cap. 11. 4 Inſt. 46.

De facto, Signifies a thing actually done; that is done indeed. A King *de facto* is one that is in actual poſſeſſion of a crown, and hath no lawful right to the ſame; in which ſenſe it is oppoſed to a King *de jure,* who hath right to a crown, but is out of poſſeſſion. 3 *Inſt.* 7.

Defamation, *(defamatio)* Is when a perſon ſpeaks ſcandalous words of another, or of a magiſtrate, *&c.*

whereby they are injured in their reputation; for which the party offending ſhall be puniſhed according to the nature and quality of his offence; ſometimes by action on the caſe at Common law, ſometimes by ſtatute, and ſometimes by the eccleſiaſtical laws.

Defamation is alſo puniſhable by the ſpiritual courts; in which courts it ought to have three incidents, *viz. Firſt*, It is to concern matters ſpiritual, and determinable in the eccleſiaſtical courts; as for calling a man heretick, ſchiſmatick, adulterer, fornicator, &c. *Secondly*, That it be a matter ſpiritual only; for if the *defamation* concern any thing determinable at the Common law, the eccleſiaſtical judges ſhall not have conuſance thereof. And *Thirdly*, Although ſuch *defamation* be merely ſpiritual, yet he that is defamed cannot ſue for damages in the eccleſiaſtical courts; but the ſuit ought to be only for puniſhment of the fault, by way of penance. *Terms de Ley*. See *Action on the Caſe for words*, alſo *Prohibition*.

Default, (Fr. *defaut*) Is commonly taken for *non-appearance* in court, at a day aſſigned; though it extends to any omiſſion of that which we ought to do. *Bract. lib.* 5. *tract.* 3. *Co. Lit.* 259. If a plaintiff makes *default* in appearance in a trial at law, he will be nonſuited; and where a defendant makes *default*, judgment ſhall be had againſt him by *default*. In action of debt upon bond, if the defendant pleads a releaſe, and iſſue is thereupon joined, if at the trial the defendant makes *default*, the plaintiff may pray judgment by *default*; becauſe by the plea the duty is confeſſed, and therefore no inqueſt need be taken by *default*: In fact the jury find for the plaintiff on the iſſue joined. If the defendant plead *Non eſt factum*, by that plea the duty is denied, and therefore the plaintiff muſt prove the bond, whereupon he will be intitled to a verdict for the penalty, with coſts of ſuit. In treſpaſs, if the defendant plead a releaſe, and then make *default*, the plaintiff cannot pray judgment by *default*; but an inqueſt is to be taken becauſe damages are uncertain. 1 *Salk*. 216. The plaintiff proves his caſe the ſame as if Not guilty had been pleaded, and the jury then give ſuch damages as they think proper.

Tenant in tail, tenant in dower, by the curteſy, or for life, loſing their lands by *default*, in a *præcipe quod reddat* brought againſt them; they are to have remedy by the writ *quod ei deforciat*, &c. Stat. Weſtm. 2. c. 4. And in a *quod ei deforciat*, where the tenant joined iſſue upon the mere right, and the jury appearing, the defendant made *default*; it was adjudged, that in ſuch caſe final judgment ſhall be given: but if the tenant had made *default*, it would be otherwiſe, for then a *petit cape* muſt iſſue againſt him, becauſe it may ſo happen that he may ſave his *default*. 1 Nelſ. Abr. 627. By *default* of a defendant, he is ſaid to be generally out of court to all purpoſes, but only that judgment may be given againſt him: and no judgment can be afterwards given for the defendant. *Ibid*. 628.

When two are to recover a perſonal thing, the *default* of one is the default of the other: *contra*, where they are to diſcharge themſelves of a perſonalty; where the *default* of the one is not the *default* of the other. 6 *Rep*. 25. 1 *Lill. Abr*. 425. In an action againſt two, if the proceſs be determined againſt one, and the other appears; he ſhall be put to anſwer, notwithſtanding the default of his companion. 2 *Danv. Abr*. 480. Where the baron is to have a corporal puniſhment for a *default*, there the *default* of the wife ſhall not be the *default* of the huſband: but otherwiſe it is where the huſband is not to have any corporal puniſhment by the *default*. *Ibid*. 472, 473.

If a defendant imparl to another day in the ſame term, and make *default* at the day, this is a departure in deſpite of the court: and when the defendant after appearance, and being preſent in court, upon demand makes departure, it is in deſpite of the court, and the entry is, *Et præd. tenens, licet ſolemniter exactus, non revenit, ſed in contemptum curiæ receſſit*, & defaltam *fecit*, &c. Co. Lit. 139.

Suffering judgment to go by *default*, is an admiſſion of the contract declared on. *Stra*. 612. After the inqueſt is taken by *default*, the defendant can make no ſuggeſtion on the roll. *Str*. 46. *Default*, and ſaver of *default*, made a large title in the old books of law. See 52 *H*. 3. *c*. 9, 13, 18, & 24. 3 *Ed*. 1. *c*. 1. & 42. & 12 *Ed*. 1.

Default in Criminal Caſes. An offender indicted appears at the *capias*, and pleads to iſſue, and is let to bail to attend his trial, and then makes *default*; here the inqueſt in caſe of felony ſhall never be taken by *default*, but a *capias ad audiendam juratam* ſhall iſſue, and if the party is not taken, an *exigent*; and if he appear on that writ, and then make *default*, an *exigi facias de novo* may be granted: but where upon the *capias* or *exigent* the ſheriff returns *cepi corpus*, and at the day hath not his body, the ſheriff ſhall be puniſhed, but no new *exigent* awarded, becauſe in cuſtody of record. 2 *Hale's Hiſt. P. C.* 202.

Default of Jurors. If *jurors* make *default* in their appearance for trying of cauſes, they ſhall loſe and forfeit *iſſues*, unleſs they have any reaſonable excuſe proved by witneſſes, in which caſe the juſtices may diſcharge the iſſue for *default*. Stat 35 H. 8. c. 6.

Defeaſance, (from the Fr. *defaire*, to defeat) Signifies a condition relating to a deed, which being performed, the deed is *defeated*, and rendered void, as if it never had been made. The difference between a common *condition* and a *defeaſance* is, that the condition is annexed to, or inſerted in, the deed; and a *defeaſance* is a deed by itſelf, concluded and agreed on between the parties, and having relation to another deed. The *defeaſance* may generally (as in the caſe of a bond, &c.) be indorſed on the back of the deed.

To make a good *defeaſance* it muſt be, 1. By deed, (unleſs indorſed) for there cannot be a *defeaſance* of a deed without deed; and a writing under hand doth not imply it to be a deed. 2. It muſt recite the deed it relates to, or at leaſt the moſt material part thereof, (unleſs it be on the back, as mentioned before.) 3. It is to be made between the ſame perſons that were parties to the firſt deed. 4. It muſt be made at the time, or after the firſt deed, and not before. 5. It ought to be made of a thing *defeaſible*. 1 *Inſt*. 236. 3 *Lev*. 234.

Inheritances executed by livery, ſuch as eſtates in fee, or for life, cannot be ſubject to *defeaſance* afterwards, but at the time of making the feoffment, &c. only: but executory inheritances, ſuch as leaſes for years, rents, annuities, conditions, covenants, &c. may be defeated by *defeaſance* made after the things granted. And it is the ſame of obligations, recogniſances, ſtatutes, judgments, &c. which are moſt commonly the ſubject of *defeaſance*, and uſually made after the deed whereto they have relation. *Plowd.* 137. 1 *Rep*. 113.

If a man acknowledge a ſtatute to another, and enters into a *defeaſance*, that if his lands in ſuch a county ſhould be extended, the ſtatute ſhould be void; the *defeaſance* will be good and not repugnant, becauſe it is by another deed: but the condition of a bond not to ſue the obligation is void for repugnancy, being in the ſame deed. *Moor* 1035. Although the condition of an obligation, where it is repugnant to it, be void; it is otherwiſe in caſe of a *defeaſance*, made after the bond, for this ſhall be good notwithſtanding: as where the obligee afterwards grants by deed to the obligor, that he will not ſue thereon at all; or not till ſuch a time, or that it ſhall be diſcharged, &c. 20 *H*. 7. 24. *Fitz. Bar*. 71.

Where a *proviſo* goes by way of *defeaſance* of a *covenant*, it muſt be *pleaded* on the other ſide, otherwiſe, where by way of *explanation*, or *reſtriction* of the covenant; *per Holt* Ch. J. 2 *Salk*. 574. *pl*. 2. *Hill*. 10 *Will*. 3. *B. R. Clayton* v. *Kinaſton*.

If *A.* be bound in bond to *B.* in 20*l.* and he makes a *defeaſance* to *C.* that if he pay him the like ſum, the obligation made by *A.* ſhall be void; this is no good *defeaſance*, becauſe it is not made between the ſame parties: though if a ſtatute be entered into, to huſband and wife, and the huſband alone make a *defeaſance*, it may be good. 14 *H*. 8. 101. 2 *Shep. Abr*. 488.

A ſtatute, &c. may be *defeaſanced* on condition of performing a will, and paying legacies to other perſons. 1 *Cro*. 837. If a *defeaſance* of a ſtatute be made, and after another *defeaſance* is made by the *ſame parties*, the firſt *defeaſance* becomes void thereby; and the ſecond only is in force, as in a will. 2 *Danv. Abr*. 481. Where a ſtatute is acknowledged to two perſons, and one of them makes a *defeaſance*, it is ſaid to be a good diſcharge. *Ibid.* 480. If execution be ſued out before the time in a *defeaſance* is paſt, it ſhall be ſet aſide. 1 *Lil.* 426.

In a *defeaſance* of a *deed of lands*, the perſon to whom made *covenants* that on payment of a certain ſum, on ſuch a day, he will transfer and reconvey the eſtate back again: and that the maker ſhall enjoy till default, *&c.* If the *defeaſance* be of a judgment, he covenants that on payment of the money, he will enter ſatisfaction on the record: if of a *ſtatute* or *bond*, than on payment it ſhall be void, *&c.* *Law of Securities* 145, 146, 148, *&c.* Vide *Mortgage.*

Defence, In a legal ſignification, is applicable to a plea, and is that which the defendant ought to make immediately, after the count or declaration, *viz.* That he defends all the *wrong*, *force*, and *damages*, where and when he ought, *&c.* And by defending the force and wrong, he excuſes himſelf of the wrong ſurmiſed againſt him, and makes himſelf party to the plea; and by defending the damage, he affirms the plaintiff able to be anſwered unto; ſo that if he will ſhew any diſability in the plaintiff, then he ought to omit the *defence* of the damage, and demand judgment if the party ſhall be anſwered unto: for by the reſidue of the *defence*, the defendant admits the power of the court to hear and determine their pleas. *Terms de Ley.*

A *defence* is ſometime a full *defence*, and that is where the plea begins with theſe words, *Venit et* defendit *vim et injuriam quando, &c.* and this is uſual in perſonal actions: but there is another *defence* in real actions, where the plea begins *Venit et dicit, &c.*

After the defendant has made a full *defence* in *treſpaſs*, by adding the words *quando, &c.* to the *venit et defendit vim et injuriam*, he *cannot plead in diſability, that the plaintiff is an alien born, &c.* but *he ought to omit the quando*, becauſe by that word the defendant hath admitted that the plaintiff hath capacity to ſue. *Carth* 230. *Paſch.* 4 *W. & M. in B. R. Jentreer* v. *Jenkins.* See 7 *Vin. Abr.* tit. *Defence.* It ſignifies when, where, and in what manner the court ſhall direct.

In every *præcipe*, where land is demanded, the *defence* muſt be *venit et* defendit *jus ſuum, etc.* As in a *writ of intruſion*, *writ of formedon, etc.* 1 Nelſ. Abr. 629. A defendant cannot plead any plea, before he hath made a *defence*; though this muſt not be intended abſolutely, for in a *ſcire facias*, a *defence* is never made. 3 *Lev.* 182. We give the following from *Blackſtone*, 3 *V.* 296.

When the plaintiff hath ſtated his caſe in the declaration, it is incumbent on the defendant within a reaſonable time to make his *defence* and to put in a *plea*, or elſe the plaintiff will at once recover judgment by *default*, or *nihil dicit* of the defendant.

Defence, in its true legal ſenſe, ſignifies not a juſtification, protection, or guard, which is now its popular ſignification; but merely on *oppoſing* or *denial* (from the French verb *defender*) of the truth or validity of the complaint. It is the *conteſtatio litis* of the civilians; a general aſſertion that the plaintiff hath no ground of action, which aſſertion is afterwards extended and maintained in his plea. For it would be ridiculous to ſuppoſe that the defendant comes and *defends* (or in the vulgar acceptation, juſtifies) the force and injury, in one line, and pleads that he is *not guilty* of the treſpaſs complained of, in the next. And therefore in actions of dower, where the demandant does not count of any injury done, but merely demands her endowment, [*Raſtal. entr.* 234.] and in aſſiſes of land, where alſo there is no injury alledged, but merely a queſtion of right ſtated for the determination of the recognitors or jury, the tenant makes no ſuch defence. [*Booth of real actions*, 118.] In writs of entry, [*Black Com.* 2 *V. Append. No.* 5. *ſect.* 2.] where no injury is ſtated in the count, but merely the right of the demandant and the defective title of the tenant, the tenant comes and and defends or denies *his* right, *jus ſuum*, that is (as I underſtand it, though with a ſmall grammatical inaccuracy) the right of the demandant, the only one expreſsly mentioned in the pleadings; or elſe denies his own right to be ſuch, as is ſuggeſted by the count of the demandant. And in writs of right [*Black. Com.* 3 *V. No.* 1. *ſect.* 5] the tenant always comes and defends the right of the demandant and his ſeiſin, *jus prædicti S. et ſeiſinam ipſius*, [Co. Entr. 182.] or elſe the ſeiſin of his anceſtor, upon which he counts, as the caſe may be) and the demandant may reply, that the tenant unjuſtly defends his, the demandants right, and the ſeiſin on which he counts. [*Nov. Narr.* 230. *edit.* 1534.] All which is extremely clear, if we underſtand by *defence* on *oppoſition* or *denial*, but it is otherwiſe inexplicably difficult. [The true reaſon of this, ſays *Booth* (on real actions, 94, 112.) I could never yet find.]

The courts were formerly very nice and curious with reſpect to the nature of the defence, ſo that if no defence was made though a ſufficient plea was pleaded, the plaintiff ſhould recover judgment; [*Co. Lit.* 127.] and therefore the book entitled *Novæ Narrationes* or *the Newtalys*, [*edit.* 1534.] at the end of almoſt every count, *narratio*, or tale, ſubjoins ſuch defence as is proper for the defendant to make. For a general defence or denial was not prudent in every ſituation, ſince thereby the propriety of the writ, the competency of the plaintiff, and the cognizance of the court, were allowed. By defending the force and injury the defendant waved all pleas of miſnomer; [*Theol. Dig. l.* 14. *c.* 1. *pag.* 357.] by defending the damages, all exceptions to the perſon of the plaintiff; and by defending either one or the other *when and where* it ſhould behove him, he acknowledged the juriſdiction of the court. [*En la defence ſont iij choſes on tendantz: per tant quil defende tort et force, home doyt entendre quil ſe excuſe detort a luy ſurmys per conte, et fait ſe partie al ple; et per tant quil defende les damages, il affirme le partie able deſtre reſpondu; et per tant quil defende ou et quant il devera, il accepte la poiar decourte de conuſtre on trier courple.* (*Mod. te Nend. cur.* 408: *Edit.* 1534) See alſo *Co. Lit.* 127.] But of late years theſe niceties have been very deſervedly diſcountenanced; [*Salk.* 217. *Lord Raym.* 282.] though they ſtill ſeem to be law, if inſiſted on. [*Carth.* 230. *Lord Raym.* 117.]

Defend, (*defendere*) In our ancient laws and ſtatutes ſignifies to forbid: and there is a ſtatute intitled, *Statutum de* defenſione *portandi arma, &c.* 7 Ed. 1. In divers parts of *England* we commonly ſay, *God defend*, inſtead of *God forbid.* Blount.

Defendant, (*defendens*) Is the party that ſued in a *perſonal action*; as *tenant* is he that is ſued in *action real.*

Defendemus, Is an ordinary word uſed in grants and donations; and hath this force, that it binds the donor and his heirs to defend the donee, if any one go about to lay any incumbrance on the thing given, other than what is contained in the deed of donation. *Bract. lib.* 2. *c.* 16. See *Warranty.*

Defender of the Faith, (*fidei defenſor*) Is a peculiar title belonging to the *King of England*, as *Catholicus*, to the *King of Spain*; and *Chriſtianiſſimus*, to the *King of France*, *&c.* Theſe titles were given by the *Popes of Rome*; and that of *Defenſor Fidei* was firſt conferred by *Pope Leo* the Tenth, on *King Henry* the Eighth, for writing againſt *Martin Luther*, and the bull for it bears date *quinto Idus Octob.* 1521. Lord *Herbert's Hiſt. Hen.* 8. 105. But the Pope, on King *Henry*'s ſuppreſſing the houſes of religion, at the time of the *reformation*, fooliſhly ſentenced him to be deprived of his title, and depoſed from his crown; though in the 35th year of his reign his title, *&c.* was confirmed by parliament; which hath continued to be uſed by all ſucceeding Kings to this day. *Lex Conſtitutionis*, 47, 48.

Defendere ſe *per Corpus ſuum*, To offer duel or combat as a legal trial and appeal. *Bract. lib.* 3. *cap.* 26.

Defendere unica manu. Words ſignifying to wage law, and a denial of the accuſation upon oath. See *Manus.*

Defenſa, A park or place fenced in for deer, and *defended* as a property for that uſe and ſervice.——*Idem dux facit inſtaurare prædictum parcum de feris* defenſæ *Leiceſtrenſis.* H. Knighton, ſub ann. 1352.

Defenſiva, The Lords or *Earls* of the *Marches*, who were the wardens or *defenders* of their country, had the title of *Defenſiva.* Cowel.

Defenſo, That part of any open field or place that was allotted for corn and hay, and upon which there was no common or feeding, was antienly ſaid to be *in defenſo*: ſo of any meadow ground, that was laid in for hay only.

It was likewiſe the ſame of a wood, where part was incloſed and fenced up, to ſecure the growth of the underwood from the injury of cattle. *Mon Angl. Tom.* 3. *p.* 306.

Defenſum, An incloſure of land, or any fenced ground. *Mon. Angl. tom.* 2. *p.* 114.

Deficiencies. Act for making good the *deficiencies*, and preſerving the publick credit, *&c. Stat.* 1 *Ann. c.* 13.

Deforcement, (*deforciamentum*) Is where any one is caſt out of his lands or poſſeſſions by force: or it is a with-holding lands or tenements by force from the right owner. *Co. Lit.* 331. A *deforceor* is one that overcomes and caſts forth by force and violence, and differs from *diſſeiſor*; firſt, becauſe a man may diſſeiſe another with force; and next, for that a perſon may *deforce* another, who never was in poſſeſſion; as if ſeveral have right to lands, as common heirs, and one entering keeps out the reſt, the law ſaith he *deforceth*, not diſſeiſeth them.

And (according to *Littleton*) he who is enfeoffed by tenant in tail, and put in poſſeſſion, by keeping out the heir of him in reverſion who hath right to the land, the tenant in tail being dead doth *deforce* the heir, though not diſſeiſe him, becauſe he entered during the life of the tenant in tail, when the heir had no preſent right.

Alſo a *deforceor* differs from an *intruder*, by reaſon a man is made an intruder by a wrongful entry only into land void of a poſſeſſor: and a *deforceor* is he that holds out againſt the right heir. *Bract. lib.* 4. *c.* 1. *Britt. c.* 33. *Litt.* 138. *F. N. B.* 118.

As *force* and violence are oppoſite to the peace and juſtice of the kingdom; and it is a diſgrace to the law, that any perſon ſhould preſume to enter forcibly into the poſſeſſion of another, before the law hath decided his title therein; therefore divers ſtatutes have been made for reformation of theſe abuſes, as among others the *Stat.* 5 *R.* 2. *cap.* 7. See *Forcible Entry.* And ſee that title, in the *Index* to the *Statutes.*

Deforceor, *deforciator*, (ſrom the French *forceur, expugnator*) Signifies one that overcometh, and caſteth out by *force. Britton, cap.* 53. *Old Nat. Brev. fol.* 118. *Littleton,* in his chapter of *Diſcontinuance, fol.* 117. *Bract. lib.* 4. *cap.* 1 See more of this in *Pulton de Pace Regis, fol.* 34, 35. And ſee *Deforcement.*

Deforciant, Mentioned in the *Stat.* 23 *El, c.* 3. is the ſame with a *deforceor.* See *Black. Com.* 2 *V.* 350. 3 *V.* 174.

Deforciatio, Is uſed for a diſtreſs, or holding of goods for ſatisfaction of a debt. *Paroch. Antiq.* 293.

Degradation, (*degradatio*) Is an eccleſiaſtical cenſure, whereby a clergyman is diveſted of his holy orders, and there are two ſorts of *degrading*, by the *Canon law*; one *ſummary*, by word only; the other *ſolemn*, by ſtripping the party *degraded* of thoſe ornaments and rights which are the enſigns of his order or degree. *Selden's Titles of Hon.* 787.

Degradation is otherwiſe called *depoſition*; and in former times the *degrading* of a clerk was no more than a diſplacing or ſuſpenſion from his office: but the *Canoniſts* have ſince diſtinguiſhed between a depoſition and a *degradation*; the one being now uſed as a greater puniſhment than the other, becauſe the biſhop takes from the criminal all the badges of his order, and afterwards delivers him to the ſecular judge, where he cannot purge himſelf of the offence whereof he is convicted, *&c.*

There is likewiſe a *degradation* of a *Lord*, or a *Knight*, *&c.* at *Common law*; when they are attainted of treaſon; as *Hill,* 18 *Ed.* 2. *Andrew Harcla, Earl of Carliſle,* who was alſo a Knight, was *degraded*, and when judgment of treaſon was pronounced againſt him, his ſword was broken over his head, and his ſpurs hewn off his heels, *&c.* And there is a *degrading* by *act of parliament*; for by *Stat.* 13 *Car.* 2. *cap.* 16.

William Lord Monſon, Sir *Henry Mildmay*, and others, were *degraded* from all titles of honour, dignities, and preheminences, and none of them to bear or uſe the title of Lord, Knight, Eſquire, or Gentleman, or any coat of arms for ever after. See as to Peers, *Black. Com.* 1 *V.* 403.

Dehors, (*Fr.*) A word uſed in ancient pleading, when a thing is without the land, *&c.* or out of the point in queſtion. Vide *Hors de ſon fee.*

De injuria ſua propria, *abſque tali cauſa,* Are words uſed in replications, in actions of treſpaſs, 1 *Lil. Abr.* 427. When one juſtifies by command or authority derived from another; or if a defendant juſtifies by authority at Common law, as a conſtable by arreſt for breach of the peace; or if he juſtifies by act of parliament, *etc. De injuria ſua propria, etc.* is a good replication. *Cro. Eliz.* 539. 2 *Salk.* 628. See *De ſon Tort Demeſne.*

Dei Judicium. The old *Saxon* trial by *ordeal* was ſo called; becauſe they thought it an *appeal to God*, for the juſtice of a cauſe, and verily believed that the deciſion was according the will and pleaſure of Divine Providence. *Domeſd.*

Deis, The high table of a monaſtery. See *Dagus.*

Delatura, A *Saxon* word, ſignifying an accuſation: and ſometimes it hath been taken for the reward of an informer. *Leges H.* 1. *c.* 46. *Leges Inæ* 20, *apud Brompton.*

Delegates, Are commiſſioners of appeal appointed by the King under the Great Seal; in caſes of appeals from the eccleſiaſtical court, *etc.* by *Stat.* 25 *Hen.* 8. *c.* 19. See *Court of Delegates.*

Delf. (from the Sax. *delfan*, to dig, or delve) Is a quarry or mine, where ſtone or coal, *etc.* are dug. *Stat.* 31 *Eliz. cap.* 7. We ſtill retain the word *delve* for dig, in ſome parts of this kingdom.

Deliverance. When a criminal is brought to trial, and the clerk in court aſks him whether he is *Guilty*, or *Not guilty*, to which he replies Not guilty, and puts himſelf on God and his country, the clerk wiſhes him a *good deliverance.*

Delivery of Deeds, On executing them, to give them perfection, *etc.* See *Deed.*

Demand. (Fr. *demande*, Lat. *poſtulatum*) Signifies a calling upon a man for any thing due. And there are two manner of *demands*, the one in *deed*, the other in *law*: in deed, as in a *precipe quod reddat*, there is an expreſs *demand*: in law, every entry on land, diſtreſs for rent, taking of goods, *etc.* which may be done without words, is a *demand* in law. 8 *Rep.* 153.

Mr. *Nelſon*, in his *Abridgement of the Law, vol.* 1. *pag.* 630. ſays, there are three ſorts of *demands*; one in writing, without ſpeaking, and that is in every *præcipe*; one without writing, being a verbal *demand* of the perſon, who is to do or perform the thing; and another made without either word or writing, which is a *demand* in law, in caſes of entries on lands, *etc.* And an entry on land, and taking a diſtreſs, are a *demand* in law of rhe land and rent; ſo the bringing an action of debt for money due on an obligation is a *demand* in law of the debt. 1 *Lill.* 432. Debts, claims, *etc.* are to be *demanded* and made in time, by the ſtatute of limitations, 21 *Jac,* 1. *c.* 16. and other ſtatutes; or they will be loſt by law.

Where there is a duty, which the law makes payable on *demand*, no *demand* need be made; but if there is no duty till *demand*, in ſuch caſe there muſt be a *demand*, to make the duty. *Trin.* 3 *Ann.* 1 *Lil.* 432. *Cro. Eliz.* 548. And upon a penalty the party need not make a *demand*, as he muſt in the caſe of a *nomine pænæ*; for if a man be bound to pay 20*l.* on ſuch a day, and in default thereof to pay 40*l.* the 40*l.* muſt be paid without *demand.* 1 *Mod.* 89. If a man leaſes land by indenture for years, reſerving a rent payable at certain days, and the leſſee covenants to pay the ſaid rent at the days limited; the leſſor is intitled to his rent, without *demand*, for the leſſee is obliged to pay it at the days, by force of his covenant. 2 *Danv. Abr.* 101.

But if a leſſor makes a leaſe rendering rent, and the leſſee covenant to pay the rent, being lawfully *demanded*, the leſſee is not bound to pay the rent, without a *demand.* Ibid. 102.

A perſon makes a leaſe for life, or years, reſerving a rent upon condition, that if the leſſee doth not pay the rent at the day, that then without any *demand* it ſhall be lawful for the leſſor to re-enter; by this ſpecial agreement of the parties, the leſſor may enter on non-payment of the rent, without any *demand*. *Ibid.* 100. A leaſe for years, with condition to be void, on non-payment of the rent, is not void unleſs the rent be *demanded*, and an intereſt ſhall not be determined, without an actual *demand*. *Hob.* 67, 331. 2 *Mod.* 264. But now by the ſtatutes relative to rents, an ejectment may be maintained without an actual entry. See 4 *Geo.* 2. *c.* 28. *ſect.* 2. & 11 *Geo.* 2. *c.* 19. *ſect.* 16.

A *demand* is to be legal, and made in ſuch manner as the law requires: if it be for rent of a meſſuage and lands, it ought to be made at the meſſuage, at the fore door of the houſe, the moſt notorious place: where lands and woods are let together, the rent is to be *demanded* on the land, as the moſt worthy thing, and on the moſt public part thereof: if wood only be leaſed, the *demand* muſt be made at the gate of the wood, *&c.* 1 *Inſt.* 201. *Poph.* 58. Vide *Dyer* 51. 1 *Leon.* 425. *Cro. Eliz.* 209.

He that would *enter* for a condition broken, which tends to the deſtruction of an eſtate, muſt, 1. *Demand* the rent. 2. Upon the land, if there is no houſe. 3. If there is a houſe. at the fore door; though it is not material whether any perſon be in the houſe or no. 4. If the appointment is at any other place off the land, the *demand* muſt be at that place. 5. The time of the *demand* is to be certain, that the tenant may be there, if he will, to pay the rent: and the laſt time of *demand* of the rent, muſt be ſuch a convenient time before the ſunſetting of the laſt day of payment, as the money may be numbered.

Alſo the leſſor or his ſufficient attorney is to remain upon the land, the laſt day on which the rent due ought to be paid, until it be ſo dark that he cannot ſee to tell the money: and if the money thus *demanded* is not paid, this is a denial in law, though there are no words of denial; upon which a re-entry may be made, *&c.* 1 *Inſt.* 201, 202. 4 *Rep.* 73. A *demand* ought to be in the preſence of witneſſes: and *demands* are releaſed by a releaſe of all *demands*; which diſcharges all freeholds, rights of entry, actions, *&c.* But ſee 4 *Geo.* 2. *c.* 28. *ſect.* 2. before referred to. *N. B.* Leaſes are now generally ſo made, as to render any demand unneceſſary, *i. e.* with a proviſo that if the rent ſhall be in arrear for ſuch a certain ſpace of time, it ſhall be lawful for the leſſor to re-enter, *&c.*

As a releaſe of ſuits is more large than of quarrels or actions; ſo a releaſe of *demands* is more large and beneficial than either of them. By a releaſe of all *demands* all executions, and all freeholds, and inheritances, executory, are releaſed: by a releaſe of *demands* to the diſſeiſor, the right of entry in the land, and all that is contained therein, is releaſed. And he that releaſeth all *demands*, excludes himſelf from all actions, entries, and ſeizures; but a releaſe of all *demands*, is no bar in a writ of error to reverſe an outlawry. *Coke, lib.* 8. *fol.* 153, 154.

Demandant, *(petens)* All civil actions are proſecuted either by *demands* or *plaints*, and the purſuer is called *demandant*, in actions real; and *plaintiff*, in perſonal actions: in a real action, lands, *&c.* are *demanded*. Co. Lit. 127.

Demeine, Demain, Demeſne, *(dominicum, domanium)* Is a *French* word otherwiſe written *domaine*, and ſignifieth *patrimonium domini*. *Demains*, according to common ſpeech, are the lord's chief manor-place, with the lands thereto belonging; which he and his anceſtors have from time to time kept in their own manual occupation, for the maintenance of themſelves and their families: and all the parts of a manor, except what is in the hands of freeholders, are ſaid to be *demains*. Copyhold lands have been accounted *demains*, becauſe they that are the tenants hereof are judged in law to have no other eſtate but at the will of the lord; ſo that it is ſtill reputed to be in a manner in the lord's hands: but this word is oftentimes uſed for a diſtinction between thoſe lands that the lord of the manor hath in his own hands, or in the hands of his leſſee demiſed at a rack rent, and ſuch other land appertaining to the manor, which belongeth to free or copyholders. *Bract. lib.* 4. *tract.* 3. *c.* 9. *Fleta, lib.* 5. *cap.* 5. As *demains* are lands in the lord's hands manually occupied, ſome have thought this word derived from *de manu*; but it is from the Fr. *demaine*, which is uſed for an inheritance, and that comes from *dominium*, becauſe a man has a more abſolute dominion over that which he keeps in his hands, than of that which he lets to his tenants. *Blount.*

Domanium properly ſignifies the King's lands in *France*, appertaining to him in property: and in like manner do we in ſome ſort uſe it here in *England*; for all lands, it is ſaid, are either mediately or immediately from the crown; and when a man in pleading would ſignify his land to be his own, he ſaith, that he is ſeiſed thereof in his *demain*, (or rather *demeſne) as of fee*; whereby is meant, that although his land be to him and his heirs, it depends upon a ſuperior lord, and his held by rent or ſervice, *&c. Lit. lib.* 1. *cap.* 1. From this it hath been obſerved, that lands in the hands of a common perſon cannot be *true demeans*: and certain it is, that lands in the poſſeſſion of a ſubject, are called *demains* in a different ſenſe from the *demain* lands of the crown. For *demains*, or *domains*, in the hands of a ſubject, have their derivation *a domo*, becauſe they are lands in his poſſeſſion for the maintaining of his houſe: but the *domains* of the crown are held of the King, who is abſolute lord, having proper *dominion*; and not by any feudal tenure of a ſuperior lord, as of fee. *Woods Inſt.* 139.

Demain is ſometimes taken in a *ſpecial* ſignification, as oppoſite to frank-fee: for example, Thoſe lands which were in the poſſeſſion of *King Edward the Confeſſor* are called *ancient demains*, and all others *frank-fee*; and the tenants which hold any of thoſe lands are called *tenants in ancient demain*, and the others *tenants in frank-fee*, *&c.* Kitch. 98. See *Ancient Demeſne*. See further *Black. Com.* 2 *V.* 90, 286.

Demiſe, *(dimiſſio)* Is applied to an eſtate either in fee, for term of life, or years, but commonly the latter: it is uſed in writs for any eſtate. 2 *Inſt.* 483. The word *demiſi*, in a leaſe for years, implies a warranty to the leſſee and his aſſignee; and upon this word action of covenant lies againſt the heir of the leſſor, if he ouſt the leſſee: it binds the executors of the leſſor, who has fee-ſimple, or fee-tail; where any leſſee is evicted, and the executor hath aſſets; but not the leſſor for life's executors, without expreſs words, that the leſſee ſhall hold his whole term. *Dyer* 257. *Jenk. Cent.* 35.

The King's death is in law termed the *demiſe of the King*, to his royal ſucceſſor, of his crown and dignity, *&c.*

Demiſe and Redemiſe, The conveyance by *demiſe* and *redemiſe* is where there are mutual *leaſes* made from one to another on each ſide, of the ſame land, or ſomething out of it; and is proper upon the grant of a rent-charge, *&c.*

Demurrer, (in Latin *demorare*, from the Fr. *demeurer)* Is a kind of pauſe or ſtop, put to any action upon point of difficulty, which muſt be determined by the court, before any farther proceedings can be had therein: for in every action the controverſy conſiſts either in *fact* or in *law*; if in *fact*, that is tried by the *jury*; but if in *law*, the *judge*, with his aſſociates, proceed to judgment; and, whatever they conclude ſtands firm without any appeal. *Smith de Repub. Angl. lib.* 2. *c.* 13. But error lies.

This *demurrer* is in our records expreſſed in *Latin* by *moratur in lege*: and when any action is brought, and the defendant ſaith that the plaintiff's declaration is not ſufficient for him to anſwer unto: or when the defendant pleads, and the plaintiff ſays, that it is not a ſufficient plea in law, and the defendant ſays, that it is a good plea; and thereupon both parties ſubmit to the judgment of the court, this is a *moratur in lege*. 1 Lil. Abr. 435.

So that a *demurrer* is an *iſſue* joined upon matter of *law*, to be determined by the *judges*; and is an *abiding in point of law*, and a referring to the judgment of the *court*, whether the declaration or plea of the adverſe party is *ſufficient* in law to be maintained. *Finch, lib.* 4. *cap.* 40. 1 *Inſt.* 71.

A *demurrer* may be to the writ, *(i. e.* the original, where the proceedings are by original) to the count, or declaration, or to any part of the pleadings.

A demurrer is admitting the matter of fact, ſince it *refers the law ariſing on the fact, to the judgment of the court*; and therefore the fact is taken to be true on ſuch *demurrer*, or otherwiſe the court has no foundation on which to make any judgment. *Gilb Hiſt. of C. P.* 55. But a *ſpecial demurrer* admits only facts *well* pleaded.

As a demurrer *at Common law did confeſs all matters formally pleaded*; ſo now by *the ſtatute a* general *demurrer does confeſs all matters pleaded though informally*, according to the forms meant by the *Stat.* 27 *Eliz.* 5. for ſuch forms are now not material, not being expreſſed in demurrer. *Hob.* 233. at the end of *pl.* 295. *Mich.* 12 *Jac.* in the caſe of *Hoard* v. *Backerville.*

Demurrers are *general*, without ſhewing any particular cauſes; or *ſpecial*, where the cauſes of *demurrer* are particularly ſet down: and the judgment of the court is not to be prayed upon an inſufficient declaration or plea, otherwiſe than by a *demurrer*; when the matter comes judicially before the court. If in pleadings, &c. a matter is inſufficiently alledged, that the court cannot give certain judgment upon it, a general *demurrer* will ſuffice; and for want of ſubſtance, a general *demurrer* is good: but for want of form, there muſt be a ſpecial *demurrer*, and the cauſes ſpecially aſſigned. The practice is now, on a ſpecial *demurrer*, to take advantage of any real error, though not expreſſed, in the cauſes aſſigned. *Demurrers* likewiſe, are either actions at law, or in ſuits in equity.

It is allowed a good cauſe of *demurrer* in Chancery, that a bill is brought for *part of a matter only*, which is proper for one intire account, becauſe the plaintiff ſhall not *ſplit cauſes*, and make a multiplicity of ſuits. *Vern.* 29. *pl.* 24. *Hill.* 1681. in caſe of *Purefoy* v. *Purefoy.*

If an *original bill* be brought *for matters part of which are in a former bill and decree, and part new, or by way of ſupplemental bill*; the court will, on a demurrer to ſo much as was contained in the former decree, ſend it to a maſter to ſee what was, and what was not in the firſt bill, and allow the *demurrer* accordingly. *G. Eq. R.* 184. *Hil.* 12. *Geo.* 1. *in Canc'.*

By ſtatute, judges are to proceed to give judgment in actions, according to the right of the cauſe, after *demurrer* joined, without regard to defects of proceedings, except ſuch as are expreſſed with the *demurrer*; but this not to extend to indictments, &c. in criminal proſecutions, &c. *Stat.* 27 *Eliz. cap.* 5. See *ante* as to the modern practice and uſage. By 4 & 5 *Ann. c.* 16. The cauſes of *demurrer* are to be ſpecially ſet down, or the judges ſhall give judgment without regarding any imperfections in writs, declarations, pleadings, &c. if ſufficient matter appear, upon which to give judgment. 1 *Salk.* 220. 1 *Nelſ. Abr.* 634. And ſee *Com. Dig.* 1 *V.* tit. *Amendment.*

After the plaintiff and defendant have joined iſſue which goes to the whole, neither of them can *demur*, without conſent of the other. But there may be a *demurrer* to evidence. Though now it is uſual to take exceptions to evidence at the bar at *Niſi prius, ore tenus*, which is tantamount to a *demurrer*. If doubts ariſe, caſes are made, or points reſerved, and a verdict taken, ſubject to the opinion of the court. See tit. *Demurrer to Evidence.*

If a defendant pleads to part, and *demurs* to part; the *demurrer* ſhould firſt be determined, and the iſſue laſt; becauſe upon the trial of the iſſue, the jury may aſſeſs damages as to both. *Palm.* 517. Where there is a *demurrer* in part, and iſſue is joined upon the other part, and the plaintiff hath judgment on the *demurrer*; here he may enter a *Non proſ.* as to to the iſſue, and proceed to a writ of enquiry upon the *demurrer*: But otherwiſe he cannot have ſuch writ of inquiry. 1 *Salk.* 219.

A *demurrer* is to be ſigned, and argued on both ſides by counſel. After a *demurrer* is joined, the plaintiff having entered it on the roll, delivers the roll to the ſecondary, and makes a motion for a *Conſilium* or day to argue it, which the court grants of courſe, on the ſecondary's reading the record; then the *demurrer* muſt be entered by the plaintiff in the court-book with the ſecondary, who, on his rule ſets down the day appointed for argument, at leaſt four days before the *demurrer* is argued: And paper-books are made and delivered to the judges.

The *demurrant* argues firſt, and the court will hear but two counſel on a day, *viz.* one of a ſide, and if deſired on either ſide, (unleſs the caſe be very plain), the court will hear further arguments the next term. if the major part of the judges of the court cannot determine the matter on the *demurrer*, it is to be ſent into the Exchequer-chamber to be determined by all the judges of *England.* 1 *Inſt.* 71. Demurrers are now frequently put in for delay. In ſuch caſes, the party wiſhing to avoid the delay, makes up four demurrer books, and delivers to the judges, two days before the day when judgment is moved for, and given of courſe without argûment.

When the court gives judgment on *demurrer* in debt for the plaintiff in the action, the judgment is for the plaintiff to recover his debt, coſts and damages; but if it be in action of the caſe, a writ of inquiry of damages muſt be awarded, before the plaintiff can have *final* judgment. If judgment on the *demurrer* is for the defendant in the action, the judgment is, that the plaintiff *Nihil capiat per breve*, or *per billam*, and that the defendant *eat ſine die. Wood's Inſt.* 603.

General *demurrer* being entered, it cannot be afterwards waived, without leave of the court, but a ſpecial *demurrer* generally may, unleſs the plaintiff hath loſt a term, or the aſſizes by the defendant's *demurring*. In *C. P.* if defendant *demurs* to the plaintiff's replication, merely for delay, the plaintiff may ſign judgment by default. But that practice does not yet prevail in *B. R.* But if defendant is under terms to rejoin gratis, &c. and judgment is ſigned, unleſs there are merits, and an affidavit of the ſame, the court will not ſet the judgment aſide. Where *time* is wanting, which will ſometimes, perhaps, ſave a man and his family from ruin, the moſt eligible ſtep an attorney can take, is to conſult a pleader, and have a proper plea drawn, and not to accept time, by judges order, on terms.

The general formal words of a *demurrer* are, *Quod breve vel nar. vel placitum, &c. Materiaque in eodem content. minus ſufficiens in lege exiſt'*, &c. 1 Lil. 435.

Demurrer to Evidence, Is where a queſtion of law doth ariſe thereupon: As if the plaintiff produces in evidence, any records, deeds, writings, &c. upon which a queſtion of law ariſes, and the defendant offers to *demur* upon it; and then the plaintiff muſt join in *demurrer*, or waive his evidence. So if the plaintiff brings witneſſes to prove a fact, and a matter of law ariſeth upon it; if the defendant admits their teſtimony to be true, there alſo the defendant may *demur* in law: And ſo may the plaintiff *demur* upon the defendant's evidence. And in theſe caſes, the counſel for the plaintiff and defendant agree the matter of fact in diſpute; and the jury are diſcharged; and the matter of law is referred to the judges to determine. But where evidence is given for the King, in an information or other ſuit, and the defendant offers to *demur* upon it, the King's counſel are not obliged to join therein; but the court ought to direct the jury to find the ſpecial matter. And, in deed, becauſe juries of late uſually find a doubtful matter ſpecially, *demurrers upon evidence* are now ſeldom uſed. 5 *Rep.* 104. 1 *Inſt.* 72. 2 *Inſt.* 426. If the court doth not agree to a *demurrer*, *to the inſufficiency of evidence* in a civil cauſe; they ought to ſeal a *bill of exceptions*, &c. 9 *Rep.* 13. See *ante* on this ſubject.

Demurrer to Indictments. If a criminal joins iſſue upon a point of law in an indictment or appeal, allowing the fact to be true, as laid therein, this is a *demurrer* in law: And if the indictment or appeal proves good in law, in the opinion of the judges, they proceed to judgment and execution, as if the party had been convicted by confeſſion or verdict. And though by the criminal's demurrer, he refuſeth to put himſelf upon trial by jury, yet he ſhall not, as in other caſes, be put under the *pain fort & dure*; for a demurrer is allowed to be tried by the judges, and not by the inqueſt. And he that is condemned on demurrer is ſaid to be convict; for whoever is adjudged, is convicted by law. 2 *Inſt.* 178. *H. P. C.* 243. *S. P. C.* 150. 1 *Hawk. P. C.* 14. But ſee 2 *Hawkins* 334.

Demy Sangue, Is the half blood: Where a man marries a woman, and hath iſſue by her ſon, and the wife dying he marries another woman, by whom he hath alſo a ſon; now theſe two ſons, though they are called *brothers*, are but *brothers of the half blood*, becauſe they had not both one father and mother: And therefore by law they cannot be heirs to one another; for he that claims as heir to another by deſcent, muſt be of the whole blood to him from whom he claimeth. *Terms de Ley.*

The half blood are intitled under the ſtatutes of *diſtribution* to any equal ſhare of the perſonal eſtate with the whole blood.

Den. The name of places ending in *den*, as *Biddenden*, *&c.* ſignify the ſituation to be in a valley, or near woods; from the Sax. *Den*, i. e. *Vallis*, *Locus*, *Sylveſtris.* Blount.

Den and Strond, Is a liberty for ſhips or veſſels to run or come aſhore: and K *Ed.* 1. by charter granted this privilege to the Barons of the *Cinque Ports.* Placit. temp. Ed. 1.

Dena terræ, A hollow place between two hills; and the word *dena* is uſed for a little portion of woody ground, commonly called a coppice.—*Et una perva* dena *ſylvæ.* Domeſday.

Denarii, A general term for any ſort of *pecunia numerata*, or ready money. *Paroch. Antiq.* 320.

Denarii de Caritate, Cuſtomary oblations made to *Cathedral Churches* about the time of *Pentecoſt*, when the pariſh prieſts and many of their people went in proceſſion to viſit their mother church: This cuſtom was afterwards changed into a ſettled due, and uſually charged upon the pariſh prieſt; though at firſt it was but a gift of *charity*, or preſent, to help to maintain and adorn the biſhop's ſee. *Cartular. Abbat. Glaſton MS. f.* 15.

Denarius, An *Engliſh* penny: it is mentioned in the *Stat. Ed* 1. *De compoſitione menſuraram*, *&c.*

Denarius Dei, God's penny, or *earneſt* money given and received by the parties to contracts, *&c. Cart. Ed.* 1. The earneſt money is called *Denarius Dei*, or *God's penny*, becauſe, in former times, the piece of money ſo given to bind the contract, was given to God, *i. e.* To the church, or the poor.

Denarius S. Petri, An annual payment of one penny from every family to the *Pope*, during the time that the *Roman* Catholic religion prevailed in this kingdom, paid on the feaſt of St. *Peter.* Stat. 25 H. 8. c. 25. See *Peter-Pence.*

Denarius tertius Comitatus. Of the *fines* and other profits of the *county-courts*, originally when thoſe courts had ſuperior juriſdiction before other courts were erected, two parts were reſerved to the King, and a *third part* or *penny* to the *Earl of the county*; who either received it in ſpecie at the aſſiſes and trials, or had an equivalent compoſition for it out of the *Exchequer.* Paroch. Antiq. 418.

Denbera, (From the Sax. *Den*, a vale, and *berg*, a *barrow* or hog) A place for the running and feeding of hogs, wherein they are penned; by ſome called a *Swinecomb.* Cowel.

Denizen, (Fr. *Donaiſon*) Is an alien enfranchiſed, and made a ſubject by the King's letters patent; and is called *donaiſon*, becauſe his legitimation proceeds *ex donatione Regis*, from the King's gift. Such a one is enabled in many reſpects, to do as the King's native ſubjects do, to purchaſe and poſſeſs lands, enjoy any office or dignity; and when he is thus enfranchiſed, he is ſaid to be under the King's protection, or *eſſe ad fidem Regis Angliæ*; before which time he can poſſeſs nothing in *England.* But, notwithſtanding this, it is ſhort of *naturalization*; for a ſtranger naturalized may inherit lands by deſcent, which a *denizen* cannot: and in the charter, whereby a perſon is made a *denizen*, there is commonly contained ſome clauſe that expreſly abridges him of that full benefit which natural ſubjects enjoy. *Bract. lib.* 5. *tract.* 5. *cap.* 25. 2 *Inſt.* 741.

When the King makes a *denizen* by letters patent, he may purchaſe lands, and his iſſue born afterwards may inherit them; but thoſe he had before ſhall not: and, though a *denizen* is enabled to purchaſe, he cannot inherit the lands of his anceſtors but as a purchaſer he may enjoy them; and he may take lands by deviſe. 1 *Inſt.* 8. 5 *Rep.* 52. 11 *Rep.* 67. Aliens made *denizens* are incapable of offices in the government, to be members of parliament, *&c.* by *Stat.* 12 *W.* 3. *cap.* 2. 1 *Geo.* 1. *c.* 4. It is ſo high a prerogative to make aliens ſubjects and *denizens*, that the King cannot grant this power over to any other, *Wood's Inſt.* 22. See *Co. Lit.* 8. *a.* 129. *a.* the ſubject fully treated, and *Black. Com.* 1 *V.* 374. 2 *V.* 249.

Denſhiring of Land, Is the caſting parings of earth, turf, and ſtubble into heaps, which when dried are burnt into aſhes, for a compoſt on poor barren land. This method of improvement is uſed on taking in and incloſing common and waſte ground; and in many parts of *England* is called *burn-beating*, but in *Staffordſhire* and other counties, they term it *denſhiring of land.*

De non Decimando, To be diſcharged of tithes. See *Modus Decimandi*

De non Reſidentia Clerici Regis, Is an ancient writ where a parſon is employed in the King's ſervice, *&c.* to excuſe and diſcharge him of *non-reſidence.* 2 Inſt. 624.

Dentrix, A fiſh with many teeth. *Chart. Hen.* 6. *Monaſt. Ramſey.*

Deodand, (*Deo dandum*) Is a thing given as it were to God, to appeaſe his wrath, where a perſon comes to a violent death by miſchance, not by any reaſonable creature; and is forfeited to the King, or grantee of the crown; and if to the King, his almoner diſpoſes of it by ſale, and the money ariſing thereby, he diſtributes to the poor: Alſo if forfeited to the lord of a liberty, it ought to be thus diſtributed. 3 *Inſt.* 57. 5 *Rep.* 110. 1 *Nelſ.* 636. The original of *deodands* is ſaid to come from the notion of *purgatory*; for when a perſon came to a ſudden and untimely death, without having time to be *ſhrieved* by a prieſt, and to have the extream unction adminiſtred to him, the thing which had been the occaſion of his death, became *deodand*; that is, was given to the church, to be diſtributed in charity, and to pray for the ſoul of ſuch deceaſed perſon out of purgatory. 1 *Lil.* 443.

There are ſeveral examples of forfeitures in caſes of *deodands*; as if a man in driving a cart, falls ſo as the cart-wheel runs over him, and preſſeth him to death; the cart-wheel, cart, and horſes are forfeited to the lord of the liberty: for *omnia quæ movent ad mortem ſunt* deodanda. *Bract. lib.* 3. *tract.* 2. *cap* 5. But it hath been obſerved, that at this day, if a man be killed by the wheel of a cart drawn with horſes, the jury find that, only, *deodand* which was the immediate cauſe of his death, *viz.* the wheel; which is then ſeized by the lord of the manor, and converted to his own uſe. 1 *Nelſ.* 639. For in the preſent enlightened age, juries are not much pleaſed with this obſolete law.

If a man riding over a river, is thrown off his horſe by the violence of the water, and drowned, his horſe is not *deodand*; for this death was cauſed *per curſum aquæ.* 2 Co. 483. Where one under fourteen years of age, falls from a cart, horſe, *&c.* they are not *deodand*; but if a horſe ſtrikes and kills ſuch a perſon, it is *deodand.* 3 *Inſt.* 57. And if a perſon wounded by any accident, as of a cart, horſe, *&c.* die within a year and a day after, what did it, is *deodand*: So that if a horſe ſtrikes a man and afterwards the owner ſells the horſe, and then the party that was ſtriken dies of the ſtroke, the horſe, notwithſtanding the ſale, ſhall be forfeited as *deodand. Plowd.* 260. 5 *Rep.* 110

If one falls out of a veſſel in ſalt water, the veſſel is not *deodand*, as accidents at ſea are frequently happening; but if one falls out of a veſſel in freſh water, it is ſaid to be otherwiſe. *Wood's Inſt.* 212. Things fixed to the freehold; as a bell hanging in a ſteeple, a wheel of a mill, *&c.* unleſs ſevered from the freehold, cannot be *deodands.* 2 *Inſt.* 281. And there is no forfeiture of a *deodand*, till the matter is found of record, by the jury that finds the death; who ought alſo to find and appraiſe the *deodand.* 5 *Rep.* 110. 1 *Inſt.* 144. After the coroner's inquiſition, the ſheriff is anſwerable for the value, where the *deodand* belongs to the King; and he may levy the ſame on the town, *&c.* Wherefore the inqueſt ought to find the value of it. 1 *Hawk.* 67.

Grants of *deodands* how to be inrolled, 3 *&* 4 *W. & M. c.* 22. *ſect.* 1. *Deodands* were likewiſe the goods and chattels of *felo de ſe*, *&c.* 1 Lil. 443. See *Black. Com.* 1 *V.* 300.

De operando pro rata Portionis, Is a writ that lies where a perſon is diſtrained for rent, that ought to be paid by others proportionably with him. *F. N. B.* 234. If a man hold twenty acres of land, by fealty and twenty ſhillings rent; and he aliens one acre to one perſon, and another acre to another, *&c.* the lord ſhall not diſtrain one alienee for the whole rent, but for the rate and value of the land he hath purchaſed, *&c.* And if he be diſtrained for more, he ſhall have this writ. *New Nat. Br.* 586.

Departure, Is a word in our law properly applied to a defendant, who firſt pleading one thing in bar of an action, and being replied unto, in his rejoinder, he quits that and ſhews another matter, contrary to, or not purſuing his firſt plea, which is called a *departure from his plea:* Alſo where a plaintiff in his declaration ſets forth one thing, and after the defendant hath pleaded, the plaintiff in his replication ſhews new matter different from his declaration, this is a *departure*; as in *Coke's Inſtitutes, The defendant demurred, becauſe it was a* departure *from the declaration.* Plowd 7, 8. 2 Inſt. 147. But if a plaintiff in his replication *depart* from his count, and the defendant takes iſſue upon it; if it be found for the plaintiff, the defendant ſhall take no advantage of that *departure:* Though it would have been otherwiſe, if he had demurred upon it. *Raym.* 86. 1 *Lil. Abr.* 444.

If a man plead a general agreement in bar, and in his rejoinder alledge a ſpecial one, this is a *departure* in pleading: And if an action is brought at Common law, and the plaintiff by his replication would maintain it by virtue of a cuſtom, *&c.* it hath been held a *departure.* 1 *Nelſ. Abr.* 638. Where a matter is omitted at firſt, it is a *departure* to plead it afterwards. *Ibid.* If in covenant, the defendant pleads performance; and after rejoins that the plaintiff ouſted him, it is a *departure* from his plea. *Raym.* 22. In debt upon bond for performance of covenants in a leaſe, the defendant pleaded performance; and afterwards in his rejoinder ſet forth that ſo much was paid in money, and ſo much in taxes, *&c.* upon demurrer it was adjudged a *departure* from the plea; becauſe he had pleaded performance, and afterwards ſet forth other matter of excuſe, *&c.* 1 *Salk.* 221.

Debt upon bond for performance of an award, made for payment of money; if the defendant plead performance, and the plaintiff having replied and aſſigned a breach of non-payment, *&c.* the defendant rejoins that he is ready to pay the money at the day, *&c.* this is a *departure* from his plea; for performance is payment of the money, and payment, and ready to pay, are different iſſues. *Sid.* 10. 4 *Leon.* 79. In debt upon bond for non-performance of an award; the defendant pleads that the award was, that he ſhould releaſe all ſuits to the plaintiff, which he had done; the plaintiff replies that ſuch an award was made, but that the award was further, that the defendant ſhould pay to the plaintiff ſuch a ſum, *&c.* the defendant rejoins that true it is, that by the award he was to pay the plaintiff the ſaid ſum, but that the award was alſo, that the plaintiff ſhould releaſe to the defendant all actions, *&c.* which he had not done; on demurrer this was held a *departure* from the plea, being all new matter. 2 *Bulſt.* 39. *Godb.* 155. 1 *Nelſ.* 637.

After *nullum fecerunt arbitrium,* the defendant cannot plead that the award is void, without being a *departure* from the former plea: And if where *nul tiel* award is pleaded; then the award is ſet forth, and a joinder that it was not tendered, it is a *departure.* 1 *Lev.* 133. *Lut.* 385. A *departure* muſt be always from ſomething that is *material*; or it will not be allowed: if in treſpaſs for taking goods, the plaintiff reply, that after the taking, the defendant converted them to his own uſe, this being an abuſe makes a treſpaſs; and the converſion is either trover or treſpaſs at the plaintiff's election, ſo that by his replication he may make it treſpaſs, and be no *departure.* 1 *Salk.* 221, 222. In *circumſtances* of *time, &c.* laid as to promiſes, the plaintiff is not tied to a preciſe day; for if the defendant by his plea, force the plaintiff to vary, it is no *departure* from his declaration. 1 *Nelſ.* 640, 641. And if another *place* be mentioned in the replication, in action of debt; as this is a perſonal thing, it is no *departure,* becauſe he who is indebted to another in one place, is ſo in every place. *Sid.* 228.

If new matter which explains or fortifies the *bar* be *rejoined* by the defendant, it is not a *departure. Wilſ. Rep. Par.* 2. *fo.* 8 *Long* v. *Jackſon.* See farther as to *departure, Id. Par.* 2. *fo.* 97, 98, *&c. Palmer* v. *Stone and another.* And *Co. Lit.* 304. *a.* A *departure* being a denial of what is before admitted, is a ſaying and unſaying, and for that an iſſue cannot be joined upon it, it is bad for the incertainty. 1 *Lil.* 444. See *Black. Com.* 3 *V.* 310.

Departure in Deſpite of the Court, and entry of it. See *Default.*

Departure of Gold and Silver, The *parters* or dividers of thoſe *metals,* from others that are coarſer. *Stat.* 4 *H.* 7.

Depopulatio Agrorum, Deſtroying and ravaging a country, an offence where the benefit of clergy was denied at Common law. 2 *Hal. pl.* 333. *Black Com.* 4 *V.* 366.

Depopulation, *(Depopulatio)* Is a waſting or deſtruction; a deſolation or unpeopling of any place, by fire, ſword, peſtilence, *&c.* 12 *Rep.* 30.

Depopulatores Agrorum, Theſe were great offenders, by the ancient Common law; ſo called, becauſe by proſtrating and ruining of houſes of habitation of the King's people, they, as it were, *depopulated* towns and villages, leaving them without inhabitants. *Stat.* 4 *Hen.* 4. *cap.* 2. 3 *Inſt.* 204.

Depoſition, *(Depoſitio)* Is the teſtimony of a witneſs, otherwiſe called a *deponent,* put down in writing by way of anſwer to interrogatories exhibited for that purpoſe, in *Chancery, &c.* Proof in the High Court of *Chancery* is by *depoſitions* of witneſſes; and the copies of ſuch regularly taken and publiſhed, are read as evidence at the hearing: And *depoſitions* taken in one cauſe, may be uſed at the hearing of another cauſe, when they are between the ſame parties, *&c.* without motion; but in a cauſe between other parties, though touching the ſame matters, this will not be allowed, without ſpecial order of court; neither will *depoſitions* in other courts be permitted to be read, without ſuch order. *Practiſ. Attorn. Edit.* 1. *p.* 233. 234.

After a witneſs is fully examined, the examinations are *read over* to him, and the witneſs is at *liberty to alter,* or amend any thing; after which he *ſigns them,* and then, and not before, the examinations *are* complete, and *good evidence. Wms. Rep.* 415. *Paſch.* 1718. *by the reporter.* The ſame practice prevails in the *Commons,* in *Eccleſiaſtical* cauſes.

Where a witneſs was examined in a cauſe in Chancery, and, *before ſigning his examination died,* the Maſter of the Rolls upon adviſing with a Maſter in Chancery then in court, denied the making uſe of the *depoſitions,* as being not perfect. *Wms. Rep.* 414. *Paſch.* 1718. *Copland* v. *Stanton.*

But where, *after an order for publication, defendant examined* a witneſs, and then perceiving the irregularity (it being after publication) the defendant on the *uſual affidavit* by himſelf, his clerk in court, and ſolicitor, *that they had not, nor would ſee any of the depoſitions, got an order to re-examine* this witneſs; but before re-examination the witneſs died; upon affidavit of this, Ld. Ch. *Parker* ordered that the defendant might make uſe of the *depoſitions,* the re-examination of him being prevented by the act of God. *Wms. Rep.* 415. cites *Mich.* 1720. *Debrox* v. ———.

Depoſitions in the *Chancery* after a cauſe is determined; may be given in evidence in a trial at bar in *B. R.* in a ſuit for the ſame matter, between the ſame parties, if the party that *depoſed* be dead; but not otherwiſe, for if he be living, he muſt appear in perſon in court to be examined, *&c.* 1 *Lil. Abr.* 445. And where witneſſes in a cauſe are going to ſea, or long journies, the court of *B. R.* will give leave to examine them on interrogatories, at a judge's chamber, in the preſence of the attornies on both ſides; which *depoſitions* in ſuch caſe ſhall be admitted to be good evidence. *Ibid.* And we apprehend the court of *Common Pleas* will do the ſame.

Depoſitions of informers, *&c.* taken upon oath before a coroner, upon an inquiſition of death; or before juſtices of peace on a commitment or bailment of felony, may be given in evidence at a trial for the ſame felony, if it be proved on oath that the informer is dead, or unable to travel, or kept away by the procurement of the priſoner; and oath muſt be made that the *depoſitions* are the ſame that were ſworn before the coroner or juſtice, without any alteration. 2 *Hawk. P. C.* 429.

In the caſe of Sir *John Fenwick*, againſt whom a bill of attainder was paſſed, in the 8th of *William* the Third, the Commons reſolved that what one *Goodman* (a witneſs who was gone away, and as ſuppoſed by Sir *John*'s procurement) had ſworn on a former trial, ſhould be read againſt him.——Tho' it was ſtrenuouſly oppoſed in the houſe, by 110 againſt 181. See *Chandler's Debates*, 3 *V.* 45 *& ante & poſt.* In the Houſe of Lords there was a proteſt againſt this proceeding (the bill paſſing in the Lords Houſe, 68 againſt 61.) *Debates in the houſe of Lords*, 1 *V.* 463,4.

Depoſitions taken before a coroner, cannot be given in evidence upon an appeal for the ſame death; becauſe it is a different proſecution from that wherein they were taken: And it has been adjudged, That the evidence given by a witneſs at one trial, could not in the ordinary courſe of juſtice be made uſe of againſt a criminal, on the death of ſuch witneſs, at another trial. 2 *H. P. C.* 430.

It was adjudged in the Earl of *Strafford*'s trial, that where witneſſes could not be produced, by reaſon of ſickneſs, *&c.* their *depoſitions* might be read, for or againſt the priſoner on a trial of High Treaſon; but not where they could be produced in perſon: And that *depoſitions* by a witneſs before a juſtice of peace, might, at the priſoner's deſire, be read at the trial; in order to take off the credit of the witneſſes, by ſhewing a variance between ſuch *depoſitions* and the evidence given in court. *Ibid.*

But let us caution the ſtudent how he takes for law, ſome peculiar determinations, as to evidence in the caſes of Lord *Strafford*, and Sir *John Fenwick*.

Depoſition is uſed in the law in another ſenſe, *viz.* To ſignify the depriving of a perſon of ſome dignity: And *depoſition* is alſo taken for *death*; and *dies depoſitionis*, the day of one's death. *Littleton's Dict.*

Deprivation, (*Deprivatio*) Is a depriving or taking away; as when a biſhop, parſon, vicar, *&c.* is depoſed from his preferment. Of *deprivations* there are two ſorts, *deprivatio a beneficio*, and *ab officio*; the *deprivation a beneficio* is when for ſome great crime, *&c.* a miniſter is wholly *deprived* of his living: And *deprivation ab officio* is where a miniſter is for ever *deprived* of his orders, which is alſo called *depoſition* or *degradation*; and is commonly for ſome heinous offence meriting death, and performed by the biſhop in a ſolemn manner. *Blount.*

Deprivatio a beneficio is an act of the ſpiritual court, grounded upon ſome crime or defect in the perſon *deprived*, by which he is diſcharged from his ſpiritual promotion or benefice, upon ſufficient cauſe proved againſt him. 1 *Nelſ. Abr.* 641.

Deprivation may alſo be by a particular clauſe in ſome act of parliament: the *deprivation* of biſhops, *&c.* is declared lawful by ſtatute 39 *Eliz. c.* 8. And by the King's commiſſion, as he hath the ſupremacy lodged in him, a biſhop may be *deprived:* for ſince a biſhop is veſted with that dignity by commiſſion from the King, it is reaſonable he ſhould be *deprived*, where there is juſt cauſe, by the ſame authority: but the canons direct, that a biſhop ſhall be *deprived* in a ſynod of the province; or, if that cannot be aſſembled, by the archbiſhop; and twelve biſhops at leaſt, not as his aſſiſtants, but as judges. *Young Clergyman's Lawyer* 105.

It has been adjudged, that an archbiſhop may *deprive* a biſhop for ſimony, *&c.* for he hath power over his ſuffragans, who may be puniſhed in the archbiſhop's court for any offence againſt their duty. 1 *Salk. Rep.* 134. The cauſes of *deprivation* are many: if a clerk obtain a preferment in the church, by ſimoniacal contract; if he be an excommunicate, a drunkard, fornicator, adulterer, infidel, ſchiſmatick or heretick; or guilty of murder, manſlaughter, perjury, forgery, *&c.* If a clerk be illiterate and not able to perform the duty of his church; if he is a ſcandalous perſon in his life and converſation; or baſtardy is objected againſt him: if one be a mere layman, and not in holy orders; or under age, *viz.* the age of twenty-three years, be diſobedient and incorrigible to his ordinary; or a nonconformiſt to the canons; if a parſon refuſe to uſe the common prayer, or preach in derogation of it; do not adminiſter the ſacraments, or read the articles of religion, *&c.*

If any parſon, vicar, *&c.* have one benefice with cure of ſouls, and take plurality, without a faculty or diſpenſation: or if he commit waſte in the houſes and lands of the church, called dilapidations; all theſe have been held good cauſes for *deprivation* of prieſts. *Degg's Parſon's Counſellor*, 98, 99, *&c.* 3 *Inſt.* 204. And refuſing to uſe the common prayers of the church, plurality of livings, *&c.* are cauſes of *deprivation ipſo facto*, in which caſe the church ſhall be void, without any ſentence declaratory; and avoidances by act of parliament need no declaratory ſentence: But in other caſes there muſt be a declaratory ſentence. *Dyer* 275.

Where a benefice is only voidable, but not void before ſentence of *deprivation*, the party muſt be cited to appear; there is to be a libel againſt him, and a time aſſigned to anſwer it, and alſo liberty for advocates to plead, and after all a ſolemn ſentence pronounced; Though none of theſe formalties are required, where the living is made *ipſo facto* void. *Can.* 122. If a *deprivation* be for a thing merely of eccleſiaſtical cognizance, no appeal lies; but the party has his remedy by a commiſſion of review, which is granted by the King of mere grace. 26 *H.* 8. *Moor* 781.

Deputy, (*Deputatus*) Is he that exerciſes an office, *&c.* in another man's right; whoſe forfeiture or miſdemeanor, ſhall cauſe him, whoſe *deputy* he is, to loſe his office. The Common law takes notice of *deputies* in many caſes, but it never takes notice of under-deputies; for a *deputy* is generally but a perſon authoriſed, who cannot authoriſe another. 1 *Lill. Abr.* 446. A man cannot make his *deputy* in all caſes; except the grant of the office juſtify him in it, and where it is to one, to execute by *deputy*, *&c.*

And there is great difference between a *deputy* and aſſignee of an office; for an aſſignee hath an intereſt in the office itſelf, and doth all things in his own name; for whom his grantor ſhall not anſwer, unleſs in ſpecial caſes. But a deputy hath not any intereſt in the office, but is only the ſhadow of the officer, in whoſe name he doth all things. And where an officer hath power to make aſſigns, he may implicitly make *deputies*, for *cui licet quod majus eſt, non debet quod minus eſt non licere.* And a ſheriff may make a *deputy*, or under-ſheriff, although he have not ſuch expreſs words in his patent. *Cowel.*

A *deputy cannot make a deputy*; becauſe it implies an aſſignment of his whole power, which he cannot aſſign over; but he may impower another to do a particular act. 1 *Salk.* 96. *Paſch.* 13 *Will.* 3. *B. R. per Holt* Ch. J. in delivering the opinion of the court in the caſe of *Parker* v. *Kett*. *Lit.* 379.

Judges cannot act by *deputy*, but are to hold their courts in perſon; for they may not transfer their power over to others. 2 *Hawk. P. C.* 3. But it has been adjudged, that recorders may hold their courts by *deputy*. 1 *Lev.* 76. 1 *Nelſ.* 643. The office of *Cuſtos Brevium* and Chirographer in *C. B.* cannot be executed by *deputy*. 1 *Nelſ. Abr.* 644. A ſteward of a court may make a *deputy*; and acts of an under-ſteward's *deputy* have been held good in ſome caſes. *Cro. Eliz.* 534.

A ſheriff may make a *deputy*; it is incident to his office, though no expreſs power is given by his patent; and he hath equal power with the High Sheriff. 9 *Rep.* 49. A coroner ought not to execute his office by *deputy*, it being a judicial office of truſt; and judicial offices are annexed to the perſon. 1 *Lil.* 446. If the office of parkerſhip be granted to one, he may grant this to another; becauſe it is an office of truſt and confidence. *Terms de Ley.*

A bailiff of a liberty, may make a *deputy*. *Cro. Jac.* 240. And a conſtable may make a *deputy*, who may execute the warrant directed to the conſtable, *&c.* 2 *Danv.* 482.

When an office deſcends to an infant, ideot, *&c.* ſuch may make a *deputy* of courſe. 9 *Rep.* 47. Where an office is granted to a man and his heirs, he may make an aſſignee of that office; and by conſequence a *deputy.* A *deputy* of an office, hath no intereſt therein, but doth all things in his maſter's name, and his maſter ſhall be anſwerable; but an aſſignee hath an intereſt in the office, and doth all things in his own name, for whom his grantor ſhall not anſwer, unleſs in ſpecial caſes. *Terms de Ley.*

A ſuperior officer muſt anſwer for his *deputy* in civil actions, if he is not ſufficient: but in criminal caſes it is otherwiſe, where *deputies* are to anſwer for themſelves. 2 *Inſt.* 191, 466. *Doct. & Stud. c.* 42.

De quibus ſur Diſſeſin, Is a writ of entry, mentioned in our books treating of writs. *F. N. B.* 191.

Der, (From the Sax. *Deor, Fera*) The names of places beginning with this word, ſignify that formerly wild beaſts herded there together.

Deraign or **Dereyn,** (*Diſtrationare*) Seems to be derived literally from the Fr. *Deſtrayer,* i. e. To confound and diſorder, or to turn out of courſe or diſplace; as *deraignment* or departure out of religion. *Stat.* 31 *H.* 8. *cap.* 6. And *deraignment* and diſcharge of their profeſſion. 33 *H.* 8. *c.* 29. Which is ſpoken of thoſe religious men that forſook their orders or profeſſion; and ſo doth *Kitchen* uſe it, where he ſays the leſſee entered into religion, and afterwards was *derained, p.* 152.

In our *Common Law* this word is uſed diverſly; but generally to *prove* any thing, *viz.* to *deraign* that right, *deraign* the warranty, *&c. Glanv. lib.* 2 *cap.* 6. *F. N. B.* 146. If a man hath an eſtate fee with warranty, and enfeoffs a ſtranger with warranty, and dies; and the feoffee vouches the heir, the heir ſhall *derain* the firſt warranty, *&c. Plowd.* 7. And jointenants and tenants in common ſhall have aid, to the intent to *deraign* the warranty paramount. 31 *H.* 8. *cap.* 1. See *Bracton, lib.* 3. *tract.* 2. *cap.* 28. *Britton* applieth this word to a ſummons that they be challenged as defective, or not lawfully made, *cap.* 21. And *Skene* confounds it with our waging and making of law. See *Lex Deraiſnia.*

Derelict, (*Derelictus*) Is any thing forſaken or left; or wilfully caſt away. *Derelict* lands left by the ſea belong to the King. 2 *Nelſ. Abr.* 903.

If the ſea ſhrink back ſo ſlowly that the gain be by little and little, *i. e.* by ſmall and imperceptible degrees, it is ſaid it ſhall go to the owner of the lands adjoining. *Black. Com.* 2 *V.* 262. So that the former part of the poſition muſt be underſtood to mean, where an iſland in the ſea is formed, or a large quantity of new land appears. See *Black. Com. ib.*

Deſcender, *Writ* of *formedon* in. A writ which lieth, where *a gift in tail* is made, and the *tenant in tail alienes* the lands entailed, or is diſſeiſed of them and dies; the *heir in tail* ſhall have this writ againſt him, who is then the actual tenant of the freehold. *F. N. B.* 211, 212. *Black. Com.* 3 *V.* 192.

Deſcent of lands, tenements, *&c.* See *Diſcent.*

Deſcription, (*deſcriptio*) In deeds and grants there muſt be a *certain deſcription* of the *lands* granted, the *places* where the *lands* lie, and of the *perſons* to whom granted, *&c.* to make them good. But wills are more favoured than grants as to thoſe *deſcriptions*; and a wrong *deſcription* of the perſon will not make a deviſe void, if there be otherwiſe a ſufficient certainty what perſon was intended by the teſtator. 1 *Nelſ. Abr.* 647. If there are *ſeveral deſcriptions* of one perſon in a will, they muſt all agree at the time of the will executed, in name, circumſtances, *&c.* or the deviſe to ſuch is void. *ibid.* And where a firſt *deſcription* of land, *&c.* is falſe, though the ſecond is true, a deed will be void: *contra,* if the firſt be true, and ſecond falſe. See 3 *Rep.* 2, 3, 8, 10, 28, 33, 34, *&c.*

Deſertion. If any one deſerts from the King's armies in time of war, whether by land or ſea, in *England* or in parts beyond the ſeas, is by the ſtanding laws of the land (excluſive of the annual acts of parliament to puniſh mutiny and deſertion) and particularly by *Stat* 18 *Hen.* 6. *c.* 19. & 5 *Eliz. c.* 5. guilty of felony, but not without benefit of clergy. But by *Stat.* 2 & 3 *Ed.* 6. *c.* 2. Clergy is taken away from ſuch deſerters, and the offence is made triable by the juſtices of every ſhire. *Black. Com.* 4 *V.* 101.

De ſon tort Demeſne, Are certain words of form uſed in actions of treſpaſs, *&c.* by way of replication to the defendant's plea: *i. e.* that he did it *de ſon tort demeſne, etc. modo et formam, viz.* That he did it of his own wrong, without any ſuch cauſe, *etc.* in manner and form, *etc.* When the defendant *in jure proprio,* or as a ſervant to another, claims any intereſt in a common, or to a way, *etc. De ſon tort* generally is not good: but if the defendant juſtifies as ſervant, there it may be good, with a traverſe of the commandment, it being material; for the general replication *de ſon tort* is properly when the defendant's plea conſiſts merely of matter of excuſe, and no matter of intereſt. 8 *Rep.* 67. 1 *Lil. Abr.* 428. There ought to be a concluſion to the country, in a replication of *de ſon tort*; becauſe the replication ſhould make an iſſue of it. 3 *Lev.* 65. But there cannot be variety of matter put in iſſue; as matter of record, and matter of fact, *&c.* 3 *Lev.* 65. 2 *Leon.* 108.

Deſpitus, Signifies in our ancient law books, a contemptible perſon. *Fleta, lib* 4. *cap.* 5. *par.* 4.

Deſubito, To weary a perſon with continual barkings, and then to bite; which is provided againſt by old laws. —*Si canis hominem* deſubitet, *aut mordeat tacitus, in prima culpa reddantur ſex ſol.* Leg. Alured. 26.

Detachiare, To ſeize or to take into cuſtody another perſon's goods, *&c.* by *attachment* or other courſe of law. *Cowel.*

Detainer. See *Forcible entry and detainer.*

Determination of Will, The exertion of any act of ownerſhip by the leſſor, puts an end to or determines an eſtate at will. See *Black. Com.* 2 *V.* 146.

Detinet, A word uſed in writs, which is neceſſary in the writ of *detinue, &c.* See *Debet & Detinet.*

Detinue, (*detinendo*) In the Common law is like *actio depoſiti* in the Civil law, and is a writ which lies againſt him, who having goods or chattels delivered to keep, refuſeth to re-deliver them. In this action the thing detained is generally to be recovered, and not damages; but if one cannot recover the thing itſelf, he ſhall recover damages for the thing, and alſo for the *detainer.* Wood's Inſt. 542. *Detinue* lies for any thing certain and valuable, wherein one may have a property or right; as for horſe, cow, ſheep, hens, dogs, jewels, plate, cloth, bags of money, ſacks of corn, *&c.* It muſt be laid ſo certain, that the thing *detained may* be known and recovered; and therefore for money out of a bag, or corn out of a ſack, *&c.* it lies not; for the money or corn cannot in this caſe be known from other money or corn; ſo that the party muſt have an action on the caſe, *&c.* 1 *Inſt.* 226. *F. N. B.* 138. Yet *detinue* may be brought for a piece of gold, of the price of 22*s.* tho' not for 22*s.* in money; for here is a demand of a certain particular piece. 2 *Danv. Abr.* 510.

If a man receiving money from a banker, put part thereof into his bag, and while he is telling the reſt the bag is ſtolen; no action of *detinue, &c.* lies; becauſe by putting up the money, he had appropriated it to his own uſe. *Comb.* 475. A man lends a ſum of money to another, *detinue* lies not for it, but debt: but if *A.* bargains and ſells goods to *B.* upon condition to be void, if *A.* pays *B.* a certain ſum of money at a day; now if *A.* pays the money, he may have *detinue* againſt *B.* for the goods, though they came not to the hands of *B.* by bailment, but by bargain and ſale. *Cro. Eliz.* 867. 2 *Danv* 510.

If a man delivers goods to *A.* to deliver to *B.* *B.* may have *detinue,* for the property is in him: and where he delivers them to *B.* and after grants them to *D.* he ſhall not have *detinue* after the grant, but the grantee ſhall have it. *Yelv.* 241. 1 *Bulſt.* 69. When goods are delivered to one, and he delivers them over to another, action of *detinue* may be had againſt the ſecond perſon, and if he delivers them to one that has a right thereto, yet it is ſaid he is chargeable: alſo if a perſon to whom a thing is delivered dieth, *detinue* lieth againſt his executors, *&c.* or againſt any perſon to whom a thing comes. 2 *Danv. Abr.* 511.

A man may have a general *detinue* againſt another that finds his goods: though if I deliver any thing to *A.* to re-deliver, and he loſes it, if *B.* finds it and delivers it to *C.* who has a right to the ſame, he is not chargeable to me in *detinue*, becauſe he is not privy to my delivery. 7 *H.* 6. 22. 9 *H.* 6. 58. Though *trover* is the common action for goods found, or wrongfully detained, where there was at firſt a legal poſſeſſion.

In actions of *detinue*, the thing muſt be once in the poſſeſſion of the defendant; which poſſeſſion is not to be altered by act of law, as ſeiſure, *&c.* And the nature of the thing muſt continue, without alteration, to intitle this action. *F. N. B.* 138. If I find goods, and before the owner brings his action, I ſell them; or they are recovered out of my hands upon an execution, or outlawry againſt the owner, *&c.* he cannot have *detinue* againſt me. 12 *E.* 4. 8. 27 *H.* 8. 13. or *trover.* But action of *detinue* will lie againſt him that finds goods, if they are waſted by wilful negligence. *Dr. & Stud.* 129.

A man buys cloth or other things of another, on a good and perfect contract; if the ſeller keeps the things bought, *detinue* lieth. *Dyer* 30, 203. Where one takes my goods into his cuſtody to keep them for me, and refuſes to reſtore them; although he have nothing for the keeping of them, this action will lie. 4 *Rep.* 84. 29 *Aſſ. pl.* 28. If I deliver to one a trunk that is locked with things in it, and keep the key myſelf, and ſomething be taken out of it, writ of *detinue* lieth not for this: but if the trunk and all that is in it be taken away, there it lies. 11 *Rep.* 89. 4 *E.* 3.

This action will not lie, where a man delivers goods to me, and I bid him take them again, if he refuſes to do it: or where one takes my goods or cattle by wrong as a treſpaſſer; or by way of diſtreſs for rent or as damage feaſant, *&c.* Nor for a horſe ſick, when it is taken or lent; if he dies of that ſickneſs. *Bro. Detin.* 242. 43 *E.* 3. 21. 21 *E.* 4. And if it be a ring that is delivered to another, and he breaks it, it is doubted whether action of *detinue* may lie; becauſe the thing is altered, and cannot be returned as it was: but action on the caſe lieth. And although, where goods are found, and ſold, *&c. detinue* lies not: yet action upon the caſe of *trover and converſion* may be brought. 12 *E.* 4. 8. 18 *E.* 4. 22.

To bring *detinue*, the plaintiff is to ſet forth the time and thing delivered, to what uſe the ſame was delivered, and the time appointed for the re-delivery thereof, with its value, *&c.* If for a thing bought, he muſt ſhew when he bought it, and what he paid, and the time for delivery: alſo in *trover*, the nature and value of the things are to be ſhewn, the time and place when and where the plaintiff was poſſeſſed of them, and how they came to the defendant's hands, with the converſion, *&c.* *Practiſ. Solic.* Actions of *detinue* are not ſo frequently brought as formerly; for actions of *trover and converſion* are had in their ſtead, where the converſion changes the *detinue* to *action on the caſe*; and thereby the tedious proceedings as to garniſhment, *&c.* are now out of uſe. 10 *Rep.* 57. 1 *Inſt.* 286. See *Trover.*

Detinue of Charters. A man may have detinue for deeds and charters concerning land; but if they concern the freehold, it muſt be in *C. B.* and no other court. Action of detinue lies for charters which make the title of lands; and the heir may have a *detinue of charters*, although he hath not the land: if my father be diſſeiſed, and dieth, I ſhall have detinue for the charters, notwithſtanding I have not the land; but the executors ſhall not have the action for them. *New Nat. Br.* 308. If a man keep my charters from me, concerning the inheritance of my land, and I know the certainty of them, and the land; or if they be in a cheſt locked, *&c.* and I know not their certainty, I may recover them by this writ: ſo where lands are given to me and *J. S.* and my heirs, and he dies, if another gets the deeds; and if tenant in tail give away the deed of entail, and then die, his iſſue may bring a writ of *detinue of charters.* Co Lit 286. 1 Rep. 2. F. N. B. 138. But if the tenant in fee-ſimple do give away his deeds of the land, his heir may not have this action: and in caſe a woman great with child by her deceaſed huſband keeps the charters from his daughter and heir that concern the land, during the time ſhe is with child; this writ will not lie againſt her. 41 *E.* 3. 11.

Detinue was brought for a deed, and the plaintiff had a verdict, that the defendant detained the deed, and the jury gave 20 *l.* damages, but did not find the value of the deed; and then there iſſued out a *diſtringas* to deliver the deed, or the value, and afterwards a writ of inquiry was awarded for the value: whereupon the jury found a different value from what the firſt verdict found; and it was adjudged good. *Raym.* 124. 1 *Nelſ. Abr.* 649. In *detinue of charters*, if the iſſue be upon the detinue, and it is found that the defendant hath burnt the charters, the judgment ſhall not be to recover the charters, which it appears cannot be had; but it is ſaid it ſhall be for the plaintiff to recover the land in damages. 2 *Rol. Abr.* 101. 2 *Danv. Abr.* 511. For detaining of deeds and charters concerning the inheritance of lands, or an indenture of leaſe, the defendant ſhall not wage law; but in a common action of *detinue* he may do it. 1 *Inſt.* 295.

Detinue of Goods in Frank-marriage, Is on a divorce between a man and his wife; after which, the wife ſhall have this writ of detinue for the goods given with her in marriage. *Mich.* 35 *E.* 1. *New Nat. Br.* 308.

Detractare, Signifies a puniſhment to be torn in pieces with horſes——*Apoſtatæ, ſacrilegi, & hujuſmodi,* detractari *debent & comburi.* Fleta, lib. 1. cap. 37. But we know not, now, of any ſuch puniſhment by our laws.

Detunicare, To diſcover or lay open to the world. *Matth. Weſtm.* 1240.

Devadiatus, Is where an offender is without ſureties or pledges. *Si homo in villa delinquit &* devadiatus *fuerit, nil inde habeat præpoſitus regis.* Domeſday.

Devaſtavit, or **Devaſtaverunt bona Teſtatoꝛis,** Is a writ that lies againſt executors or adminiſtrators, for paying debts upon ſimple contract, before debts on bonds and ſpecialties, *&c.* for in this caſe they are liable to action as if they had ſquandered away the goods of the deceaſed, or converted them to their own uſe; and are compellable to pay ſuch debts by ſpecialty out of their own goods, to the value of what they ſo paid illegally. *Dyer* 232. But if an executor pays debts upon ſimple contract, before he hath any notice of bonds, it is no *deveſtavit*; and regularly this notice is by an action commenced againſt him, for the law doth not oblige him to take notice of it himſelf, nor of a judgment againſt his teſtator, becauſe he is not privy to acts done either by or againſt him. 1 *Mod.* 175. 1 *Lev.* 215. *Sed qu.* as to a judgment docketed, if the law doth not preſume that ſufficient notice?

Where an executor, *etc.* payeth legacies before debts, and hath not ſufficient to pay both, it is a *devaſtavit.* Alſo where an executor ſells the teſtator's goods at an undervalue, it is a *devaſtavit*; but this is underſtood where the ſale is fraudulent; for if more money could not be had, it is otherwiſe. *Keilw.* 59. 1 *Nelſ. Abr.* 649. Executors keeping the goods of the deceaſed in their hands, and not paying the teſtator's debts; or ſelling them, and not paying off debts, *&c.* or not obſerving the law which directs them in the management thereof; or doing any thing by negligence or fraud, whereby the eſtate of the deceaſed is miſemployed, are a *devaſtavit*, or waſte; and they ſhall be charged for ſo much *de bonis propriis*, as if for their own debt. 8 *Rep.* 133. But the fraud or negligence of one executor is not chargeable on the reſt, where there are ſeveral executors. 1 *Rol. Abr.* 929.

There are ſome caſes in the old books, in which it hath been held, if an executor waſtes the goods of the teſtator, and afterwards makes his executor, and dies, leaving aſſets, that an action of debt will not lie againſt the executor of the waſting executor, upon a ſuggeſtion of a *devaſtavit* or waſte by the firſt executor; becauſe it is a perſonal wrong which died with him. 3 *Leon.* 241. But in this caſe there is a difference between a lawful executor and an executor *de ſon tort*; for as an executor *de ſon tort* poſſeſſes himſelf of the goods wrongfully, if he afterwards waſtes them, and dies, leaving aſſets, his executor ſhall be charged upon the ſuggeſtion of a *devaſtavit* in his teſtator, becauſe he came wrongfully by the goods, and therefore the wrong ſhall not die with his perſon. 2 *Lev.* 133. And before the ſtatute 30 *Car.* 2. *c.* 7. it has been decreed in equity againſt the executor of a lawful executor, who had waſted the goods, and died, that ſuch executor ſhould be liable to make good to the creditors of the teſtator, ſo much as the firſt executor had waſted, and ſo far as he had aſſets of the ſaid firſt executor. 1 *Chanc. Rep.* 257.

By that ſtatute it is enacted, That if an executor *de ſon tort* waſtes the goods, and dies, his executors ſhall be liable in the ſame manner as their teſtator, would have been if he had been living. And it has been ſince adjudged, that a rightful executor, who waſtes the goods of the teſiator, is in effect an executor *de ſon tort* for abuſing his truſt; and therefore his executor or adminiſtrator may be liable to a *devaſtavit*. 3 *Mod.* 113.

Debt lies againſt an executor in the *debet* and *detinet*, where there is a judgment againſt his teſtator, upon a ſuggeſtion only, that he had waſted the goods; and this is a more expeditious way than the old method of *ſci. fac. inquiry*, which was iſſued to ſhew cauſe why the plaintiff ſhould not have execution againſt the executor *de bonis propriis*, and thereupon the ſheriff returned a *devaſtavit*, *&c.* 1 Lev. 147. 1 Nelſ. 653.

A huſband is to be charged for waſte done by his wife *dum ſola:* but the huſband is not chargeable after the death of a wife executrix, on ſuggeſtion of a *devaſtavit* in a declaration againſt him. *Cro. Car.* 603. *Lutw.* 672. And it has been adjudged, that a feme covert executrix cannot do any waſte during the coverture; though for waſte done by the huſband ſhe ſhall be charged, if ſhe ſurvive him; but then it muſt be on a judgment obtained againſt him, and not on a bare ſuggeſtion of a *devaſtavit*, *&c.* 2 Lev. 145. If an executor or adminiſtrator confeſſes judgment, or ſuffers it to go by default, he thereby admits *aſſets*, and is eſtopped to ſay the contrary in an action on ſuch judgment ſuggeſting a *devaſtavit*. Wilſ. Rep. par. 1. fol. 258. Skelton *v.* Hawling, Executor. See *Debet & Detinet*, and *Executor*.

Devenerunt, A writ heretofore directed to the eſcheator on the death of the heir of the King's tenant under age and in cuſtody, commanding the eſcheator that by the oaths of good and lawful men he inquire what lands and tenements by the death of the tenant *came to the King*. Dyer 360. This writ is now diſuſed; but ſee *Stat.* 14 *Car.* 2. *c.* 11. for preventing frauds and abuſes in his Majeſty's *Cuſtoms*.

Deveſt, *(deveſtere)* Is oppoſite to *inveſt*. As *inveſt* ſignifies to deliver the poſſeſſion of any thing to another; ſo *deveſt* ſignifieth the taking it away. *Feud. lib.* 1. *cap.* 7.

Deviſe, (from the Fr. *deviſer*, to divide or ſort into parcels) Is properly where a man gives away any lands or tenements by will in writing. And he who gives away his lands in this manner, is called the *deviſor*; and he to whom the lands are given, the *deviſee*. A *deviſe* in writing is, in law conſtruction, no deed; but an inſtrument by which lands are conveyed. And antiently where lands were deviſeable, it was by cuſtom only; for at Common law, in favour of heirs, no lands or tenements in fee-ſimple were deviſeable by will; nor could they be tranferred from one to another but by ſolemn livery and ſeiſin; matter of record, or ſufficient deed or writing. 1 *Inſt.* 111. 2 *Inſt.* 386, *&c.* But now it is otherwiſe by *Stat.* 32 *Hen.* 8. *c.* 1. And ſee 34, 35 *H.* 8. *c.* 5. It is ſaid, that words of recommendation and deſire in a will are always held to be a *deviſe*; as where the teſtator gives a legacy to one, willing him to do ſuch a thing, *&c.* *Preced. Canc.* 201, 202.

Deviſe to the firſt and eldeſt ſon not heir at law to his father, is a good deviſe to the *ſecond* ſon. *Rep. Temp. Hardw. per Annaly*, 96. *Marwood ex dim. Fennel & al'* v. *Darrel*.

A general introductory clauſe is a key to explain particular deviſes in the will. *Id.* 143. *Maudy & Maudy*.

Negative words in a will, will not diſinherit the heir, but they are proper to explain other parts of the will. *Id. ib.* See *Will*.

Devoires of Caleis, Were the cuſtoms due to the King, for merchandiſe brought into or carried out of *Calais*, when our ſtaple remained there. 2 *R.* 2. *ſtat.* 1. *c.* 3. *Devoir*, in *French*, ſignifies a duty; *paying their cuſtom and* devoirs *to the King*. Stat. 34 Ed. 1. c. 18.

Dextrarius, Is underſtood to take the *right hand* of another. And the word *dextrarios* has been uſed for light horſes, or horſes for the great ſaddle; from the Fr. *deſtrier*, a horſe for ſervice.——Willielmus *de B. dedit Regi tres* dextrarios, *quinque chacuros, &c. pro habenda ſeiſina Caſtr. de* Groſmunt, *&c. Rot. Chart. in Tur.* London, *Anno* 7 Joh. *n.* 38.

Dextras dare, Shaking of hands in token of friendſhip; or a man's giving up himſelf to the power of another perſon. *Walſingh. p.* 332.

Diarium, Is taken for daily food; or as much as will ſuffice for the day. *Du Cange*.

Diaſperatus, Stain'd with many colours. *Mon. tom.* 3. *pag.* 314.

Dica, A tally for accounts, by number of *taillees*, cuts or notches.——*Et præter hoc debet magiſter mariſchalſiæ habere* dicas *de donis & liberationibus quæ fuerint in Theſauro Regis, &c.* Lib. Rub. Scaccar. fol. 30. And in an ancient record,—*Inſtitutum eſt ut diligenter per* dicam *notetur quantum ex omni genere bladi vel leguminis expendetur in ſemine.*——*Et* dica *illa dividatur in duo, & una pars deſu abitur cuſtodiæ hoſpitalis fratris, &c. altera grangiario.* Statut. Ord. de Semplingham, p. 748.

Dickar, or **Dicker of Leather**, Is a certain quantity, conſiſting of ten hides, by which leather is bought and ſold: there are alſo *dickers* of *iron*, containing ten bars to the *dicker*. This word is thought to come from the *Greek* δεκὰς, which ſignifies ten. *Domeſday*.

Dictores and **Dictum**: The one ſignifies an arbitrator; and the other the arbitrament.———*Protulit* dictum *ſuum et ſententiam pro Rege Angliæ*. Malmſ. p. 348.

Dictum de Kenelworth, An edict or award, between King *Henry* the Third and his Barons and others, who had been in arms againſt him: ſo called, becauſe it was made at *Kenelworth caſtle* in *Warwickſhire*, *anno* 51 *Hen.* 3. It contained a compoſition of thoſe who had forfeited their eſtates in that rebellion, which compoſition was five years rent of the lands and eſtates forfeited.

Diem clauſit extremum, Was a writ iſſued out of the court of *Chancery* to the eſcheator of the county, upon the death of any of the King's tenants *in capite*, to inquire by a jury of what lands he died ſeiſed, and of what value, and who was the next heir to him; and the ſame ought to be granted at the ſuit of the next heir, *&c.* for upon that, when the heir came of age, he was to ſue livery of his lands out of the King's hands. *F. N. B.* 251.

Dies. There are ſeveral ſorts of days, *i. e.* days *natural*, *artificial*, and *legal*; and *Sunday* is not only *dies non juridicus* as to legal proceedings, but alſo as to contracts. 2 *Inſt.* 264. *Sed. qu.* as to *contracts*, if made *bona fide*. See *Day*.

Dies datus, Is a day or time of reſpite given to the defendant in a ſuit by the court. *Broke*.

Dies Marchiæ, Was the day of congreſs or meeting of the *Engliſh* and *Scotch*, appointed annually to be held on the *marches* or borders, to adjuſt all differences between them, and preſerve the articles of peace.———*Convenerunt ad* diem marchiæ *& conventum fuit inter eos pro commodo pacis, &c.* Tho. Walſingham, in Ric. 2. p. 307.

Dieta, A day's journey.——*Omnes rationabilis dieta conſtat ex viginti miliaribus.* Fleta, lib. 4. c. 28. And in this ſenſe it is uſed by *Bracton*, *lib.* 3. *tract.* 2. *c.* 16.

Diet, *(conventus)* An aſſembly; as the *diet* of the *Empire*, of *Ratiſbon*, &c.

The diets of the empire of *Germany* were the ſame with the aſſemblies of *March* and of *May*, held by the Kings of *France*. They met at leaſt once a year. Every freeman had a right to be preſent. They were aſſemblies in which a monarch deliberated with his ſubjects, concerning their common intereſt. But when the princes, dignified eccleſiaſticks, and barons, acquired territorial and independent juriſdiction, the diet became an aſſembly of the ſeparate ſtates, which formed the confederacy of which the Emperor was the head. While the conſtitution of the empire retained its primitive form, attendance on the diet was a duty; and a neglect to attend, puniſhable with loſs of vote, and heavy penalty: but when the members became independent ſtates, the right of ſuffrage was annexed to the territory or dignity, not to the perſon. *Robert. Hiſt. Emp.* Charles V. 1 *V.* 383, *&c.* which ſee.

Among the *Anglo Saxons* here, in *England*, there was from time to time an aſſembly of the whole nation (*i. e.* of all freemen) called *wittena gemot*, ſimilar to the diets of the empire. In this aſſembly was lodged the whole legiſlative power of the community; here was the ſupreme authority, over all perſons, and in all cauſes, eccleſiaſtical as well as civil. *Squire's Anglo Sax. Government*, 165, *&c.*

Dieu & mon Droit, God and my Right, the *motto of* the *royal arms*, intimating, that the King of *England* holds his empire of none but God; firſt given by King *Rich.* 1.

Dieu ſon Act, Are words often uſed in our old law: and it is a maxim in law, That the *act of God* ſhall prejudice no man. Therefore, if a houſe be blown down by tempeſt, thunder or lightening, the leſſee or tenant for life or years, ſhall be excuſed in waſte: likewiſe he hath by the law a ſpecial intereſt to take timber, to build the houſe again for his habitation. 4 *Rep.* 63. 11 *Rep.* 82. So when the condition of a bond conſiſts of two parts in the *disjunctive*, and both are poſſible at the time of the obligation made, and afterwards one of them becomes impoſſible by the act of God, the obligor is not bound to perform the other part. 5 *Rep.* 22. And where a perſon is bound to appear in court, at a certain day, if before the day he dieth, the obligation is ſaved, *&c.* See *Bond.*

Diſfacere, To deſtroy: and *diffactio* is a maiming any one. *Leg. H.* 1. *c.* 64, 92.

Diſforciare, Rectum, To take away, or deny juſtice. *Mat. Pariſ. anno* 1164.

Digeſt, The book of Pandects of the Civil law; which hath its name from its containing *Legalia præcepta excellenter* Digeſta. *Du Cange.*

Dignity, (*dignitas*) Signifies honour and authority; reputation, *&c.* And *dignity* may be divided into ſuperior and inferior: as the titles of Duke, Earl, Baron, *&c.* are the higheſt names of *dignity*; and thoſe of Baronet, Knight, Serjeant at Law, *&c.* the loweſt. Nobility only can give ſo high a name of *dignity*, as to ſupply the want of a ſurname in legal proceedings: and as the omiſſion of a name of *dignity* may be pleaded in abatement of a writ, *&c.* ſo it may be where a peer, who has more than one name of *dignity*, is not named by the Moſt Noble. 2 *Hawk. P. C.* 185, 239. No temporal *dignity* of any foreign nation can give a man a higher title here than that of Eſquire. 2 *Inſt.* 667. See *Addition* and *Diſcent.*

Dignity Eccleſiaſtical, (*dignitas eccleſiaſticalis*) Is defined by the Canoniſts to be *adminiſtratione cum juriſdictione & poteſtate aliqua conjuncta*; of which there are ſeveral examples in *Duarenus, de Sacris Eccleſ. &c. lib.* 2. *c.* 6. *Dignities eccleſiſtaca*: are mentioned in the *Stat.* 26 *H.* 8. *c.* 31 & 32. And of church *dignities*, *Cambden* in his *Britannia, p.* 161. reckons in *England* 544.

Dignitaries, (*dignatarii*) Are thoſe who are advanced to any dignity eccleſiaſtical; as a biſhop, Dean, Archdeacon, Prebendary, *&c.* But there are ſimple Prebendaries, without cure or juriſdiction, which are not *dignitaries.* 3 Inſt. 155.

Dilapidation, (*dilapidatio*) Is where an incumbent on a church living ſuffers the parſonage houſe or outhouſes to fall down, or be in decay for want of neceſſary reparation: or it is the pulling down or deſtroying any of the houſes or buildings, belonging to a ſpiritual living, or deſtroying of the woods, trees, *&c.* appertaining to the ſame; for it is ſaid to extend to the committing or ſuffering any wilful waſte, in or upon the inheritance of the church. *Degg's Pariſ. Counſ.* 89. It is the intereſt of the church in general to preſerve what belongs to it for the benefit of the ſucceſſors; and the old canons, and our own provincial conſtitutions require the clergy ſufficiently to repair the houſes belonging to their benefices; which, if they neglect or refuſe to do, the biſhop may ſequeſter the profits of the benefice for that purpoſe, *&c. Rights Clerg.* 143. And by the Canon law, *dilapidations* are made a debt, which is to be ſatisfied out of the profits of the church; but the Common law prefers debt on contracts, *&c.* before debt for *dilapidations. Hern.* 136.

The proſecution in theſe caſes may be brought either againſt the incumbent himſelf, or againſt his executors or adminiſtrators; and the executor or adminiſtrator of him in whoſe time it was done or ſuffered, muſt make amends to the ſucceſſor: and if you proceed againſt the incumbent, then it is proper in the ſpiritual court: likewiſe you may proceed in that court againſt an executor, or the ſucceſſor may have an action of the caſe or debt at the Common law, in which action he ſhall recover damages in proportion to the *dilapidations.* 1 *Nelſ. Abr.* 656. *Parſ. Counſ.* 97, 98.

By ſtatute, if any *Parſon, &c.* ſhall make a gift of his goods and perſonal eſtate to defraud his ſucceſſor, as to *dilapidations*, ſuch ſucceſſor may have the ſame remedy in the ſpiritual court againſt the perſon to whom ſuch gift is made, as he might have againſt the executors of the deceaſed *parſon.* 13 *Eliz. cap.* 16. And money recovered for *dilapidations*, is to be employed in the reparations of the ſame houſes ſuffered to be in decay, or the party recovering ſhall forfeit double the value of what he receives, to the king, by *Stat.* 14 *Eliz. cap.* 11.

If a parſon ſuffers *dilapidations*, and afterwards takes another benefice, whereby his former benefice becomes void, his ſucceſſor may have an action againſt him, and declare that by the cuſtom of the kingdom he ought to pay him *tantas denariorum ſummas quantæ ſufficient ad reparandum, &c.* 3 *Lev.* 268. In caſe a Parſon comes to a living, the buildings whereof are in decay by *dilapidations*, and his predeceſſor did not leave a ſufficient perſonal eſtate to repair them, ſo that he is without remedy; he is to have the defects ſurveyed by workmen, and atteſted under their hands in the preſence of witneſſes, which may be a means to ſecure him from the incumbrance brought upon him by the fault of his predeceſſor. *Country Parſon's Companion*, 60.

Dilatory Pleas, Are ſuch as are put in merely for *delay*; and there may be a demurrer to a *dilatory plea*, or iſſue may be taken on the *fact*, if falſe. If the plea is *true* in *fact*, and *good* in *law*, and is in *abatement*, the plaintiff muſt enter up judgment of *capetur*, before he commences a new ſuit. If the plea is adjudged ill, on *demurrer*, there muſt be a *reſpondeas ouſter*, and defendant muſt plead another plea. If *iſſue* in *fact*, is taken, and found by the jury, for *plaintiff*, in *caſe, &c.* they aſſeſs the damages. In *debt*, the judgment for plaintiff is final, *&c.* The truth of *dilatory pleas* is to be made out by affidavit of the fact, *&c.* by *Stat.* 4 *Ann. c.* 16. *ſect.* 11. See *Plea.*

Diligiatus, Outlawed, *i. e. de lege ejectus.* Leg. Hen. 1. c. 45.

Dilligrout, Pottage formerly made for the *King's table*, on his *coronation* day: and there was a tenure in ſerjeanty, by which lands were held of the king, by the ſervice of finding this pottage, at that great ſolemnity. 39 *H.* 3.

Dimidietas, Is uſed in our records for a moiety, or one half.——*Sciant quod ego* Matilda *filia* Willielmi le F. *dedi* Waltero *de S.* demidietatem *illius burgagii, &c.* ——*Sine dat.* ex libro Chart. Piiorat. de Leominſter.

Diminiſhing the *coin*, A ſpecies of *treaſon.* See 18 *Eliz. c.* 1. and *Coin.*

Diminution, (*diminutio*) Is where the plaintiff or defendant in a writ of error alledges to the court that part of the record is omitted and remains in the inferior court not certified; whereupon he prays that it may be certified by *certiorari. Co. Ent.* 232, 242. Of courſe *diminution* is to be certified on a writ of error; though if iſſue be joined upon the errors aſſigned, and the matter is entered upon record, which is made a *conſilium*, in this caſe there muſt be a rule of court granted for a *certiorari* to certify *diminution.* 1 *Lil. Abr.* 245. *Diminution* cannot be alledged of a thing which is fully certified; but in ſomething that is wanting, as want of an original, or a warrant of attorney, *&c.* 2 *Lev.* 206. 1 *Nelſ. Abr.* 658. And if on *diminution* alledged, and the plaintiff in error certify one original, *&c.* which is wrong; and the defendant in error certifies another that is true; the true one ſhall ſtand. *Cro. Jac.* 597. *Cro. Car.* 91.

After a writ of error brought, and the defendant hath pleaded *in nullo eſt erratum*, he cannot afterwards alledge *diminution*; becauſe by that plea he affirmeth or alloweth the record to be ſuch as is certified upon the writ of error. *Godb.* 266. But in ſome caſes, *diminution* hath been alledged, after *in nullo eſt erratum* pleaded, *ex gratia curiæ*; though not *ex rigore juris*. Palm. 85. And there is an inſtance, that the court in ſuch a caſe hath awarded a *certiorari*, to inform their conſcience of the truth of the record in *C. B.* where the defendant in error had not joined *in nullo eſt erratum*. 1 Nelſ. 658.

Dimiſſory Letters, *(literæ dimiſſoriæ)* Are ſuch as are uſed where a candidate for holy orders has a title in one dioceſe, and is to be ordained in another: the proper dioceſan ſends his *letters dimiſſory* directed to ſome other ordaining biſhop, giving leave that the bearer may be ordained, and have ſuch a cure within his diſtrict. *Cowel.*

Dioceſe, *(diœceſis)* Signifies the circuit of every biſhop's juriſdiction. For this realm hath two ſorts of diviſions; one into ſhires or counties, in reſpect to the *temporal ſtate*; and another into *dioceſes*, in regard to the *eccleſiaſtical ſtate*, of which we reckon twenty-one in *England*, and four in *Wales*. *Co. Lit.* 94. Alſo the kingdom is ſaid to be divided in its eccleſiaſtical juriſdiction into two *provinces* of *Canterbury* and *York*; each of which provinces is divided into *dioceſes*, and every *dioceſe* into archdeaconries, and archdeaconries into pariſhes, *&c.* *Wood's Inſt.* 2.

The bounds of *dioceſes* are to be determined by witneſſes and records, but more particularly by the adminiſtration of divine offices. To which purpoſe, there are two rules in the Canon law: in one caſe, upon a diſpute between two biſhops upon this head, the direction is, that they proceed in the buſineſs, by ancient books or writings, and alſo by witneſſes, reputation, and other ſufficient proof: in the other caſe, where the queſtion was, by whom a church built upon the confines of two *dioceſes* ſhould be conſecrated, the rule laid down is, that it ſhould be conſecrated by the biſhop of that city, who, before it was founded, baptized the inhabitants, and adminiſtred to them other divine offices. *Gibſ.* 133.

The juriſdiction of the *city* is not included in the name of *dioceſs*, ſo ſaith the Canon law: and accordingly, in citations in general viſitations, directed to the clergy, it is ordered to cite the clergy of the *city and dioceſe*. *Gibſ.* 133.

A biſhop may perform divine offices, and uſe his epiſcopal habit, in the *dioceſe* of another, without leave; but may not perform therein any act of juriſdiction, without permiſſion of the other biſhop. *Gibſ.* 133.

A clergyman dwelling in one *dioceſe*, and beneficed in another, and being guilty of a crime, may, in different reſpects, be puniſhed in both; that is, the biſhop in whoſe *dioceſe* he dwells, may proſecute him; but the ſentence, ſo far as it affects his benefice, muſt be carried into execution by the other biſhop. *Gibſ.* 134.

Diſability, *(diſabilitas)* Is when a man is diſabled, or made incapable to inherit any lands, or take that benefit which otherwiſe he might have done: which may happen four ways; by the act of an anceſtor, or of the party himſelf, by the act of God, or of the law.

1. *Diſability*, by the act of the anceſtor, is where the anceſtor is attainted of treaſon, *&c.* which corrupts the blood of his children, ſo that they may not inherit his eſtate.

2. *Diſability*, by the act of the party, is where a man binds himſelf by obligation, that upon ſurrender of a leaſe, he will grant a new eſtate to the leſſee; and afterwards he grants over the reverſion to another, which puts it out of his power to perform it.

3. *Diſability*, by the act of God, is where a perſon is *non ſanæ memoriæ*, whereby he is incapable to make any grant, *&c.* So that if he paſſeth an eſtate out of him, it may after his death be made void; but it is a maxim in law, *That a man of full age ſhall never be received to diſable his own perſon.*

4. *Diſability*, by the act of the law, is where a man by the ſole act of the law, without any thing done by him, is rendered incapable of the benefit of the law; as an alien born, *&c.* *Terms de Ley.* 4 *Rep.* 123, 124. 5 *Rep.* 21. 8 *Rep.* 43.

There are alſo other *diſabilities*, by the Common law, of *ideocy*, *infancy*, and *coverture*, as to grants, *&c.* And by ſtatute in many caſes: as *papiſts* are diſabled to make any preſentation to a church, *&c.* *Officers* not taking the oaths, are incapable to hold offices: *Foreigners*, though naturalized to bear offices in the government, *&c.* 11 *Rep.* 77. *Stat.* 12 *&* 13 *W.* 3. *c.* 2. 1 *Geo.* 2. *ſtat.* 2. *c.* 4. A perſon ſhall not be admitted to *diſable* himſelf to avoid an office of charge, *&c.* no more than a man ſhall be allowed to ſay that he was an *ideot*, *&c.* to avoid an act done by himſelf. *Carthew's Rep.* 307. And the ſtatutes do not exempt and *diſable* diſſenters from bearing offices; but they muſt ſubmit to a fine, if they do not qualify themſelves. *Hil.* 6 *Wil.* 3. *Skinner* 576, 577. But it hath lately been ſolemnly determined in the Houſe of Lords, in the caſe of the Chamberlain of *London*, and *Evans*, that a diſſenter was not finable for refuſing the office of ſheriff. See *Capacity*.

Diſadvocare, To deny, or not acknowledge a thing: It is mentioned in *Hengham Magna*, *cap.* 4.

Diſagreement, Will make a nullity of a thing, that had eſſence before: And *diſagreement* may be to certain acts, to make them void, *&c.* *Co. Lit.* 380. See *Agreement*.

Diſalt, According to *Littleton*, is to diſable a perſon. *Lit.* tit. *Diſcontinuance*.

Diſboſcatio, A turning wood ground into arable or paſture.

Diſcarcare, (From *Dis* and *Cargo)* Is to unlade a ſhip or veſſel by taking out the cargo or goods.—— *Et prædictus, &c.* Carcare & diſcarcare *fecit ibidem merchandiſas & denariatas quaſcunque.* Placit. Parl. 18 Ed. 1.

Diſceit, A writ or action for fraud and deceit. See *Deceit*.

Diſcent, (Lat. *Deſcenſus*, Fr. *Diſcent)* Is an order or means whereby lands or tenements are derived unto any man from his anceſtors; And is either by *common law*, *cuſtom* or *ſtatute*.

By *common law*, as where one hath land of inheritance in fee-ſimple, and dieth without diſpoſing thereof in his life-time, and the land goes to the eldeſt ſon and heir of courſe, being caſt upon him by law. *Co. Lit.* 13, 237.

Diſcent of fee-ſimple by *cuſtom*, is ſometimes to all the ſons, or to all the brothers, where one brother dieth without iſſue; as in *gavelkind:* Sometimes to the youngeſt ſon, as in *Borough Engliſh*; and ſometimes to the eldeſt daughter, or the youngeſt, *&c.* according to the cuſtoms of particular places. *Co. Lit.* 110, 140, 175. *Lit.* 210. 211.

And *dicent* by *ſtatute* of fee-tail, is, as directed by the manner of the ſettlement or limitation, purſuant to the *Stat. Weſt.* 2. 13 *Ed.* 1. *cap.* 1.

Diſcent at Common law is *lineal*, or *collateral: Lineal* is a *diſcent* downward in a right line, from the grandfather to the father, the father to the ſon, ſon to the grandſon, *&c.* and the lineal heir ſhall firſt inherit. *Collateral*, is a *diſcent* which ſpringeth out of the ſide of the whole blood, as another branch thereof; ſuch as the grandfather's brother, father's brother, and ſo downward. *Co. Lit.* 10, 11. Therefore, if a man purchaſeth lands in fee-ſimple, and dies without iſſue, for default of the right line, he which is next of kin in the collateral line of the whole blood, though never ſo remote, comes in by *diſcent* as heir to him; for there is a next of kin by right of *repreſentation*, and by right of *propinquity* or nearneſs of blood. *Lit.* 2. 1 *Vent.* 415. 3 *Rep.* 40.

To have land in fee-ſimple by *diſcent*, a perſon muſt be heir of the *whole blood*; he is to be the *next*, and *moſt worthy* of blood, to the anceſtor; and he ought to be heir to him that was laſt *actually ſeiſed*. Where lands deſcend to the ſon from the father, and he enters on the lands, and dies ſeiſed thereof, without having any iſſue, this land will deſcend to the heirs of the part of the father, who are of the whole blood; and if there are none ſuch, the land ſhall eſcheat: ſo where lands deſcend on the part of the mother. *Lit. ſect.* 4. *Co. Lit.* 13. And there is a maxim in law, that *where lands deſcend on the part of the father, the heirs of the mother ſhall never inherit; and when lands deſcend on the part of the mother, the heirs of the father ſhall never inherit.* *Co. Lit.* 14. But it has been reſolved, that a *fine* and *render* of lands, claimed by a party, as heir at law *ex parte materna*, will alter the quality of the eſtate; ſo that it ſhall deſcend to the heir *ex parte paterna.* 6 *Rep.* 63. *Carthew* 141.

Alſo if a man ſeiſed of land, as heir of the part of his mother, make a feoffment, and take back an eſtate to him and his heirs; this, as a purchaſe, alters the *diſcent*, and if he die without iſſue, the heir of the part of the father ſhall inherit it. *Co. Lit.* 12. There is a difference between *diſcents* from father and mother to their children, and *diſcents* between brothers and ſiſters; for a ſon or a daughter need be only of the blood of either the father or mother, which hath the inheritance, to inherit them: Though the brothers and ſiſters muſt be of the ſame father and mother, to inherit one another. *Noy* 68.

If a man hath iſſue two ſons by divers venters, the younger brother of the half blood ſhall not have land purchaſed by the elder brother, on his dying without iſſue; but the elder brother's uncle or next couſin ſhall have it. *Co. Lit.* 14. The *elder brother* of the whole blood ſhall have land by *diſcent*, purchaſed by a middle or younger brother, if ſuch die without iſſue; (for as to *diſcents* between brethren, the eldeſt is the moſt worthy of blood to inherit to them as well as to the father). And if there be no brother or ſiſter, the uncle ſhall have it as heir, and not the father: And yet it may afterwards come to the father, as heir to the uncle; likewiſe if the father hath iſſue another ſon or daughter, after the *diſcent* to the uncle, that iſſue may enter upon the uncle, and hold the eſtate. *Lit.* 3. 3 *Rep.* 40.

The next and *moſt worthy of blood* are the *male*, and all deſcendants from him, before the females; and the female on the part of the father, before the male or female of the part of the mother: And the eldeſt brother, and his poſterity, ſhall have lands in fee-ſimple before any younger brother.

Alſo a ſiſter of the whole blood ſhall be preferred, and taken before the younger brother, which is of the half blood; but ſuch a younger brother, though he may not be heir to a brother, for want of the whole blood, yet he may be heir to his father, or his uncle. *Co. Lit.* 14. 3 *Rep.* 41.

All the deſcendants from a perſon, who by our laws might have been heir to another, hold the ſame right as that common root from whom they are derived: ſo that the ſon, or grandchild, whether ſon or daughter of the eldeſt ſon, takes before the youngeſt ſon; and a ſon or grandchild of the eldeſt brother before the youngeſt brother: And ſo it is through all degrees of *diſcents*; by repreſentation, the proximity is transferred from the root to the branches, and gives them the ſame preference, as next and worthieſt of blood. *Hale's Hiſt. L.* 237.

The great grandchild of the elder brother, whether it be a ſon or a daughter, ſhall here be preferred as the heir before the younger brother; for though a female be leſs worthy than the male, yet ſhe ſtands in right of repreſentation of the eldeſt brother, who was more worthy than the younger. *Hale's Hiſt. L.* 237.

As to being heir to him that was laſt *ſeiſed*: If tenant in fee-ſimple hath a ſon and a daughter by one woman or venter, and a ſon by another venter, and dies ſeiſed, and the eldeſt ſon dies without iſſue, before *actual ſeiſin*, the younger brother as *heir to the father* ſhall have the eſtate; but if the elder brother had entered on the lands, the ſiſter would have it as heir to him. *Co. Lit.* 11, 15. *Lit.* 8.

None can inherit any lands as heir, but only the blood of the *firſt purchaſer*; as if the father make a purchaſe, the blood of the mother ſhall not have the eſtate: But if a ſon purchaſes, and there is no heir on the ſide of the father, the land ſhall go to the heirs on the ſide of the mother; for they are of the blood of the ſon of the firſt purchaſer, and he had the blood of both father and mother. *Lit.* 4. *Co. Lit.* 12.

So that there is a difference where the ſon *purchaſeth* lands in fee-ſimple, and where he cometh to them by *diſcent*. Land thus purchaſed may go to the heirs of the father and mother of the purchaſer; unleſs it be once attached in the heir of the part of the father, for then the heirs of the mother cannot have it, becauſe they are not of the blood of him who was laſt ſeiſed. 49 *E.* 3. 12. *Finch.* 119. Where, for want of heirs of a purchaſer, of the part of his father, or when ſuch heir had not entered, the lands *deſcend* to the line of the mother; there the heirs of the mother of her father's ſide, ſhall take in ſucceſſion, before her heirs of the part of her mother. *Hale's Hiſt. L.* 247. *Plowd.* 444. The deſcent of lands is particularly and very judiciouſly treated of by Mr. Juſtice *Blackſtone*, in his *Commentaries*. 2 V. 201, &c.

The law takes no notice of the *diſability* of the father in caſe of *diſcent*, but only of the immediate relation of brothers and ſiſters, as to their eſtates; ſo that the inability of the father doth not hinder the *diſcent* between them: for example, A man had iſſue a ſon and a daughter, and was attainted of treaſon, and died; the ſon purchaſed lands and died without iſſue; and it was adjudged that, notwithſtanding the attainder of the father, the daughter ſhall take by *diſcent* from her brother, becauſe the *diſcent* between them was immediate, and the law doth not regard the diſability of the father. 4 *Leon.* 5. 1 *Nelſ. Abr.* 645.

If there be father and ſon, and the ſon is attainted of treaſon or felony in the father's life-time, and yet outlive his father, the land by *diſcent* ſhall not come to ſuch ſon, nor any of his iſſue; but if he die before the father it will deſcend to his other children. 4 *Rep.* 31, 124. And where a perſon ſeiſed of lands, hath iſſue two daughters, if one of them commits felony, after the father's death, both daughters being alive, a moiety ſhall *deſcend* to one daughter, and the other ſhall eſcheat. *Co. Lit.* 163.

Inheritances may *deſcend* but not aſcend: And in the right line, children inherit their anceſtors without limitation; but the anceſtors may not take from their children, for the father can never come to the lands which his ſon hath purchaſed, by *lineal aſcent*; though he may by *collateral aſcent*, where the ſon's lands come to the uncle, and then to the father. In the collateral line, the uncle inherits the nephew, and the nephew the uncle. *Lit.* 3. 3 *Rep.* 40. *Vaugh.* 244.

Lands and tenements in fee-ſimple *deſcend*, firſt, to the eldeſt ſon as heir, and to his iſſue; the ſons firſt, in order of birth; and for want of ſons, to the daughters equally, who inherit as one heir; if the eldeſt ſon hath no iſſue, then to his next eldeſt brother of the whole blood, and his heirs, and for want of a brother, to his ſiſter or ſiſters of the whole blood, and their iſſue; if there be no brother or ſiſter, to the uncle and his iſſue; and for want of an uncle, to an aunt or aunts, and their iſſue; and if there be none ſuch, then to couſins in the neareſt degree of conſanguinity. *Bacon's Elem.* And *Black. Com.* 2 *V.* 201, *&c.*

And in caſe of lands purchaſed by brethren; after uncles and aunts, the lands ſhall deſcend to the father, and the half blood, and their iſſue, (who comes in after the father, being of the whole blood to him, though not to one another) and for want of uncle, father, and half blood, to the next of kin in the collateral line. *Wood's Inſt.* 218.

In *diſcent* of eſtates-tail, half blood is no hindrance; becauſe the iſſue are in *per formam doni*, and always of the whole blood to the donee. 3 *Rep.* 41. A man hath iſſue an elder ſon, born out of the King's allegiance, and after hath another ſon within the realm; the younger ſon ſhall have lands by *diſcent* from his father in this caſe, and not the elder who had never any inheritable blood in him. *Co. Lit.* 8. which *vide*.

If one die ſeiſed of land, in which another hath right to enter, and it deſcends to his heir; ſuch *diſcent* ſhall take away the other's right of entry, and put him to his action for recovery thereof. *Stat.* 32 *H.* 8. *cap.* 33. *Co. Lit.* 237. But a *diſcent* of ſuch things as lie in grant, as advowſons, rents, commons in groſs, *&c.* puts not him who hath right to his action. *Co. Lit.* 237. 2 *Danv.*

Abr. 561. And a *diſcent* ſhall not take away the entry of an infant; nor of a *feme* covert, where the wrong was done to her during the coverture. 2 *Danv*, 563.

For farther information concerning the rules of *diſcent*, ſee an excellent treatiſe on this ſubject by Dr. *Blackſtone*, entitled, *The Law of Deſcents.* And ſee his *Commentaries*, 1 *V*. 193, 4. 2 *V*. 201, *&c*. And 4 *V*. 406, 414. And a perfect *Table of Deſcents*, by which the courſe of *deſcent* appears at one view. 2 *V*. 240. See *Kindred and Heir*.

Diſcent being created *by law*, and the moſt ancient title, an heir is in by that, before a grant, or deviſe, *&c*. It is a rule in law, that a man cannot raiſe a fee-ſimple to his own right heirs, by the name of heirs, as a *purchaſe*, either by conveyance or deviſe; for if he deviſe lands to one who is heir at law, the deviſe is void, and he ſhall take by *diſcent*. *Dyer* 54, 126. And it is the ſame where the lands will come to the heir, either in a direct or collateral line; or where the heir comes to an eſtate by way of limitation, when the word *heirs* is not a word of *purchaſe*. *Ibid.* A father hath two ſons by ſeveral venters, and deviſes his land to his wife for life, and after her deceaſe to his eldeſt ſon; though the ſon doth not take the eſtate preſently on the death of his father, he ſhall be in by *diſcent*, and not by purchaſe, and the deviſe ſhall be void as to him. *Style* 148. 1 *Nelſ. Abr.* 645. But it is ſaid he may make his election, and take by *deviſe*, if he pleaſes.

A man being ſeiſed of lands which he had by the mother's ſide, deviſed them to his heirs on the part of his mother; and it was adjudged, that the deviſee ſhall take by *diſcent*. 3 *Lev*. 127. And when the heir takes that which his *anceſtor* would have taken if living, he ſhall take it by *diſcent*, and not by purchaſe. 2 *Danv*. 557. But generally, where an eſtate is deviſed to the heir at law, attended with a *charge*, as to pay money debts, *&c*. in ſuch caſe he takes by *purchaſe*, and not by *diſcent*. Though conditions to pay money have been conſtrued only a charge in equity; and that they do not alter the *diſcent* at Common law. 1 *Lut*. 593. 1 *Salk*. 241. A man can have lands no other way than by *diſcent* or *purchaſe*. And *diſcent* is the worthieſt means whereby land can be acquired.

Diſcent of Crown Lands. All the lands whereof the King is ſeiſed *in jure coronæ*, ſhall *ſecundum jus coronæ* attend upon and follow the crown; ſo that to whomſoever the crown deſcends, thoſe lands and poſſeſſions deſcend alſo. And if the heir to the crown be attainted of treaſon; yet ſhall the crown deſcend to him, and without any reverſal the attainder is avoided. *Plowd*. 247. *Co. Lit*. 15. *Sed. qu.* though a doctrine laid down, when *Henry* the Seventh came to the crown? However it is a nice point; but the doctrine will hold good, if the Prince can ſupport himſelf on the throne. He may take the *French* King's *motto*. *Ultima ratio regum*, as *proof demonſtrative*, and *poſitive*.

The dignity of the crown of *England*, for want of heirs male, is diſcendable immediately to the eldeſt daughter, and her poſterity; and ſo it has been declared by act of parliament: And by *Stat*. 25 *H*. 8. *cap*. 22. *Regnum non eſt deviſibile.* The eldeſt ſiſter of a King, as well as the eldeſt daughter, ſhall inherit all his fee-ſimple lands by *diſcent*: And half blood is no impediment to the *diſcent* of lands of the crown. *Co. Lit*. 15, 165. But a daughter of the whole blood ſhall not inherit where there is a ſon of the half blood; as where the King hath iſſue a ſon and a daughter by one venture, and a ſon by another venter, and purchaſes lands, and dies; afterwards the eldeſt ſon enters and dies alſo without iſſue, the daughter ſhall not have theſe lands, or any other fee-ſimple lands of the crown, but they ſhall deſcend to the younger brother. *Plowd*. 245. 34 *H*. 6. A perſon coming to be King by *diſcent* of the part of his mother, makes a purchaſe of land to him and his heirs, and dies without iſſue, this land ſhall deſcend to the heir on the part of the mother; contrary to the caſe of a ſubject, where the heir on the father's ſide ſhall enjoy it. *Ibid*. *Co. Lit*. 16. As the whole kingdom hath an intereſt in the *diſcent of the crown*, The King cannot ſurrender or alien it, *&c*. See *Crown*.

Diſcent of Dignities. A dignity alſo differs from common inheritances, and goes not according to the rules of the Common law; for it deſcends to the half blood, and there is no coparcenerſhip in it, but the eldeſt takes the whole. *Co. Lit*. 27. The dignity of peerage is perſonal, annexed to the blood, and ſo inſeparable that it cannot be transferred to any perſon, or ſurrendered even to the crown; it can move neither forward nor backward, but only downward to poſterity; and nothing but corruption of blood, as if the anceſtor be attainted of treaſon or felony, can hinder the *diſcent* to the right heir. *Lex Conſtitutionis*, *p*. 85.

Diſcharge, On writs and proceſs, *&c*. is where a man confined by ſome legal writ or authority, doth that which by law he is required to do; whereupon he is releaſed or *diſcharged* from the matter for which he was confined. And if one be arreſted by a *latitat* out of *B. R.* and the plaintiff do not file a declaration againſt the defendant in priſon in two terms, he ſhall be *diſcharged* on common bail. 1 *Lil. Abr*. 470. Alſo where a defendant on arreſt is admitted to *bail*, if the bail bring in the principal before the return of the ſecond *ſcire facias* iſſued out againſt them, they ſhall be *diſcharged*. *Mich*. 24 *Car. B. R.* If an *obligee* diſcharges one joint obligor, where ſeveral are jointly bound; it *diſcharges* the others. *March*. 129. And a man may *diſcharge* a *promiſe* made to himſelf, *&c*. *Cro. Jac*. 483. See *Acquittal*, and *vide Habeas Corpus*.

Diſclaimer, (*diſclamium*, from the Fr. *clamer*, with the privative *dis*) Is a plea containing an expreſs denial, or renouncing of a thing; as if a tenant ſue a *replevin*, upon the diſtreſs of the lord, and the lord avows the taking, ſaying the tenant holds of him as of his lord, and that he diſtrained for the rent not paid, or ſervice not performed: now, if the tenant ſay he doth not hold of him, this is called a *diſclaimer*, and the lord proving the tenant to hold of him, on a writ of right brought, the tenant ſhall loſe his land. *Terms de Ley*. And if a writ of *præcipe* be brought againſt two perſons for land, and one of them, the tenant, ſaith that he is not tenant, nor claims any thing in the lands; this is a *diſclaimer* as to him, and the other ſhall have the whole land. *Ibid*. And when a tenant hath *diſclaimed*, upon action brought againſt him, he ſhall not have reſtitution on writ of error, *&c*. againſt his own act; but is barred of his right to the land *diſclaimed*. 8 *Rep*. 62. But a verbal *diſclaimer* ſhall not take place againſt a deed of lands: nor ſhall the *diſclaimer* of a wife during the coverture bar her entry on her lands. 3 *Rep*. 26.

Baron and feme may diſclaim for the wife; though if the huſband hath nothing but in right of his wife, he cannot *diſclaim*. 2 *Danv. Abr*. 569. Such perſon as cannot loſe the thing perpetually in which he *diſclaims*, ſhall not be permitted to *diſclaim*: a biſhop, *&c*. may not *diſclaim*, for he cannot diveſt the right out of the church: Though in a *quo warranto*, at the ſuit of the King, againſt a biſhop or others for franchiſes and liberties, if the biſhop, *&c*. *diſclaims* them, this ſhall bind the ſucceſſors. *Co. Lit*. 102, 103. If a man be vouched becauſe of a reverſion on a leaſe made by himſelf, he cannot *diſclaim*: but an heir may *diſclaim*, being vouched upon a leaſe made by his anceſtor. 2 *Danv*. 569.

A perſon may *diſclaim* in the principal, and not in the incident; as he that is vouched becauſe of a reverſion, cannot *diſclaim* in the reverſion, ſaving the ſeigniory. 40 *Ed*. 3. 27. If the lord *diſclaims* his ſeigniory, in a court of record, it is extinct, and the tenant ſhall hold of the lord next paramount to the lord *diſclaiming*. *Lit. ſect*. 146.

It is ſaid not to be neceſſary, that the *writ of right ſur diſclaimer* ſhould be brought againſt the perſon that *diſclaims*; for if it be only againſt him that is found tenant of the land, though he be a ſtranger, it is not material. 2 *Danv*. 570. By plea of *non-tenure*, nothing is diſowned but the freehold, which may be good where the tenant hath the reverſion in fee, and not the freehold; but when ſuch tenant *diſclaims*, or pleads non-tenure and *diſclaims*, the demandant ſhall have the whole, as the whole is *diſclaimed*. *Ibid*.

Stat. 21 *Jac.* 1. *cap.* 16. *ſ.* 5. In all actions of treſpaſs *quare clauſum fregit*, wherein the defendant ſhall *diſclaim* any title to the land, and the treſpaſs be by negligence or involuntary, the defendant ſhall be admitted to plead a *diſclaimer*, and that the treſpaſs was by *negligence* or *involuntary*, and a *tender* of *ſufficient amends* before the action brought; and if the iſſue be found for the defendant, or the plaintiff be nonſuited, the plaintiff ſhall be barred from the ſaid action, and all ſuits concerning the ſame.

Beſides theſe *diſclaimers* by tenants of lands, there are *diſclaimers* in divers other caſes: for there is a *diſclaimer of blood*, where a perſon denies himſelf to be of the blood or kindred of another in his *plea*. *F. N. B.* 102. And a *diſclaimer of goods*, as well as lands; as if a man *diſclaimeth* goods, on arraignment of felony, when he ſhall loſe them, though he be cleared. *Standf. P. C.* 186. In the *Chancery*, if a defendant by his anſwer renounces the having any intereſt in the thing in queſtion, this is likewiſe a *diſclaimer*. And there is a deed of *diſclaimer* of *executorſhip* of a will, *&c.* where an executor refuſes, and throws up the ſame. See farther *Black. Com.* 2 *V.* 275.

Diſcontinuance, (*diſcontinuatio*, derived from the Fr. *diſcontinuer*, i. e. *ceſſare*) Signifies an interruption or breaking off; and is twofold, *diſcontinuance of poſſeſſion*, and *diſcontinuance of proceſs*: the effect of *diſcontinuance of poſſeſſion* is, that a man may not enter upon his own lands or tenements alienated, whatever his right be to it, of his own authority, but muſt bring his writ, and ſeek to recover poſſeſſion by law. *Co. Lit.* 325. *F. N. B.* 191. Where a tenant in tail, or a man ſeiſed in right of his wife, *&c.* by feoffment, gift in tail, or leaſe for life, by fine or livery, not warranted by the ſtatute 32 *H.* 8. *c.* 28. aliens the eſtate; ſuch alienations are called *diſcontinuances*: whereby the wife after her huſband's death, and the iſſue in tail after the death of tenant in tail, and thoſe in remainder and reverſion are driven to their action, and cannot enter. *Co. Lit.* 325.

But a *diſcontinuance* taketh away an entry only: and to every *diſcontinuance* it is neceſſary there ſhould be a deveſting or diſplacing of the eſtate, and turning the ſame to a right; for if it be not turned to a right, they that have the eſtate cannot be driven to an action. *Co. Lit.* 327. And an eſtate-tail cannot be *diſcontinued*, but where he that makes the *diſcontinuance*, was once ſeiſed by force of the intail, where the eſtate-tail is executed; unleſs by reaſon of a warranty. *Lit. Sect.* 637, 641. Alſo if tenant in tail levies a fine, *&c.* this is no *diſcontinuance*, till the fine is executed; becauſe if he dies before execution, the iſſue may enter. *Co. Lit.* 33. 2 *Danv. Abr.* 572.

A *diſcontinuance* may be five ways, *viz.* by *feoffment*, *fine*, *recovery*, *releaſe* and *confirmation* with warranty. 1 *Rep.* 44. A grant without livery, or a grant in fee without warranty, are no *diſcontinuances*: an exchange will not make a *diſcontinuance*; as if tenant in tail exchanges land with another, that is not any *diſcontinuance*, by reaſon no livery is requiſite thereon. 2 *Danv.* 57. It is the ſame of a bargain and ſale, *&c.* And an alteration of ſuch things as lie in grant, and not in livery, works no *diſcontinuance*; for ſuch grant does no wrong either to the iſſue in tail, or him in reverſion or remainder, becauſe nothing paſſeth but during the life of tenant in tail, which is lawful; and every *diſcontinuance* worketh a wrong. *Co. Lit.* 332.

If tenant in tail of a copyhold eſtate, ſurrenders to another in fee, this makes not any *diſcontinuance*, (except there be a cuſtom for it) but the heir in tail may enter; tho' this hath been a great queſtion. 1 *Leon.* 95. 2 *Danv.* 571. If there be tenant for life, remainder in tail, and remainder in tail, *&c.* And tenant for life, and he in the firſt remainder in tail levy a fine, this is no *diſcontinuance* of either of the remainders. 1 *Rep.* 76. But if there be tenant in tail, remainder in tail, *&c.* and tenant in tail enfeoffs him in reverſion in fee: or where there is tenant for life, remainder in tail, reverſion in fee, and tenant for life enfeoffs the reverſioner; theſe are *diſcontinuances*, becauſe there is a mean or immediate eſtate. 1 *Rep.* 140. *Co. Lit.* 335. 3 *Danv.* 575.

If there be tenant in tail, remainder to his right heirs, and he makes feoffment in fee, this is a *diſcontinuance*; though ſuch tenant that made the feoffment, hath the fee in him. 2 *Danv.* 572. A man is tenant for life, the remainder in tail, remainder in fee, and the tenant for life makes a feoffment to him in remainder in fee; this is ſuch a *diſcontinuance* of the eſtate-tail, as produceth a forfeiture. 3 *Rep.* 59. If a tenant in tail be diſſeiſed, and after releaſe with warranty to the diſſeiſor, it will be a *diſcontinuance*: ſo if he releaſe or confirm to tenant for life. *Lit. Sect.* 135. 1 *Rep.* 44. And if, where there is a tenant for life, and remainder in tail, the tenant for life levirs a fine to his own uſe; and after tenant for life and he in remainder join in a feoffment by letter of attorney, this is a *diſcontinuance* of the eſtate-tail and the fee. *Dyer* 327.

If tenant in tail makes a feoffment in fee upon condition, and the condition is broken, the iſſue may enter notwithſtanding this *diſcontinuance*. *Lit.* 632. Tenant in tail grants all his eſtate to another, though with livery and ſeiſin; and if that other perſon make a feoffment in fee, it will not be a *diſcontinuance* to take away the entry of him in reverſion or remainder. *Lit.* 145. 1 *Rep.* 46. 10 *Rep.* 97. A leaſe is made for life- remainder in tail; and he in remainder in tail diſſeiſes the tenant for life, and makes a feoffment in fee, and dies without iſſue, and then tenant for life dieth; this is no *diſcontinuance* to him in reverſion. *Lit.* 146. 1 *Brown.* 36. And if tenant in tail of a rent, common, advowſon, or the like, grant it in fee, it is not a *diſcontinuance*: nor where ſuch tenant granteth any thing out of land, *&c.* *Lit.* 138. *Finch's Law* 193.

Where a tenant in tail of a manor makes a leaſe for life, not warranted by *Stat.* 32 *Hen.* 8. *c.* 28. of part of the demeſnes, this is a *diſcontinuance* of this parcel; and it is ſaid makes it no parcel of the manor. 2 *Rol. Abr.* 58. By ſtatute, a huſband is reſtrained from alienation, and diſcontinuing of the wife's land. 32 *H.* 8. *cap.* 28. And a wife, tenant in tail with the huſband; or having an eſtate in dower, *&c.* from making any *diſcontinuance* of the lands of the huſband, after his death. 11 *H.* 7. *cap.* 20. Likewiſe eccleſiaſtical perſons, as biſhops, deans, *&c.* from alienating or diſcontinuing their eſtates, 13 *Eliz. cap.* 10. 1 *Jac.* 1. *cap.* 3.

There can be no *diſcontinuance* by tenant in tail of the gift of the crown, 34 & 35 *H.* 8. *c.* 20. Nor by tenant in tail of fee-farm rents, to bar the remainder veſted by the ſtatute, 22 & 23 *Car.* 2. *c.* 24. *ſ.* 6. And ſome *diſcontinuances* at Common law are now made bars as to the iſſue in tail; though ſtill *diſcontinuances* in ſome caſes, to him in remainder, *&c.* ſuch as fines, with proclamations by ſtatute 4 *H.* 7. *cap.* 24. 32 *H.* 8. *cap.* 36. If the huſband levy a fine with proclamations, and dieth, the wife muſt enter, or avoid the eſtate of the conuſee within five years, or ſhe is barred for ever, by the *Stat.* 4 *H.* 7. *c.* 24. For the *Stat.* 32 *Hen.* 8. *cap.* 28. doth help the *diſcontinuance*, but not the bar. *Co. Lit.* 326. Huſband and wife tenant in ſpecial tail, the huſband alone levied a fine to his own uſe, and afterwards he deviſed the land to his wife for life, the remainder over, rendering rent *&c.* The huſband dies, the wife enters and pays the rent, and dies: in this caſe it was adjudged, that the fine had barred the iſſue in tail, but not the wife. *Dyer* 351. The entry of the wife in this caſe was a diſagreement to the eſtate of inheritance, and an agreement to the eſtate for life: but if the wife had not waived the inheritance, the eſtate tail as to the wife had remained. 9 *Rep.* 135.

If lands be given to the huſband and wife, and to the heirs of their two bodies, and the huſband maketh a feoffment in fee, and dieth; the wife is helped by the ſtatute 32 *H.* 8. *c.* 28. and ſo is the iſſue of both their bodies 1 *Inſt.* 326. The huſband is tenant in tail, the remainder to the wife in tail, the huſband makes a feoffment in fee; by this, the huſband, by the Common law, did not only diſcontinue his own eſtate tail, but his wife's remainder: but by ſtatute 32 *Hen.* 8. *c.* 28. after the death of the huſband without iſſue, the wife may enter by the ſaid act. Though if the huſband hath iſſue, and maketh a feoffment

ment in fee of his wife's land, and his wife dieth; the heir of the wife ſhall not enter during the huſband's life, neither by the Common law nor by the ſtatute. *Ibid.*

A *diſcontinuance* may be defeated, where the eſtate that worked it is defeated; as if a huſband make a feoffment of the wife's land upon condition; and after his death, his heir enters on the feoffee for the condition broken; now the *diſcontinuance* is defeated, and a feme may enter upon the heir. *Co. Lit.* 336. The titles of *diſcontinuance* of eſtates and *remitter*, were formerly large titles in our books; but they are abridged by the ſtatute law.

Diſcontinuance of Plea, Is where divers things ſhould be pleaded to, and ſome are omitted; this is a *diſcontinuance.* 1 Nelſ. Abr. 660, 661. If a defendant's plea begin with an anſwer to part, and anſwers no more, it is a *diſcontinuance:* and the plaintiff may take judgment by *nil dicit*, for what is not anſwered: but if the plaintiff plead over, the whole action is diſcontinued. 1 *Salk.* 139. Debt upon bond of 500 *l.* the defendant as to 225 *l.* part of it, pleads payment, *&c.* And upon demurrer to this plea, it was adjudged that there being no anſwer to the reſidue, it is a *diſcontinuance* as to that, for which the plaintiff ought to take judgment by *nil dicit.* 1 *Salk.* 180. Where no anſwer is given to one part, if the plaintiff pleads thereto, he cannot have judgment according to his declaration; for which reaſon it may be a *diſcontinuance* of the whole. 1 *Nelſ.* 660. But this is helped after verdict by 32 *H.* 8. *c.* 30.

Diſcontinuance of Proceſs, Is when the opportunity of proſecution is loſt for that time; or the plaintiff is diſmiſſed the court, *&c.* And every ſuit, whether civil or criminal, and every proceſs therein, ought to be properly continued from day to day, *&c.* from its commencement to its concluſion; and the ſuffering any default or gap herein, is called a *diſcontinuance:* the continuance of the ſuit by improper proceſs, or by giving the party an illegal day, is properly a *miſcontinuance.* 2 *Hawk.* 298.

Where an action is long depending, and continued from one term to another, the *continuances* muſt be all entered, otherwiſe there will be a *diſcontinuance*; whereupon a writ of error may be brought, *&c.* 1 *Nelſ. Abr.* 660. If the plaintiff in a ſuit doth nothing, it is a *diſcontinuance*, and he muſt begin his ſuit again: and where it is too late to amend a declaration, *&c.* or the plaintiff is adviſed to proſecute in another court, he is to diſcontinue his ſuit, and proceed *de novo.* *Com. Law Com. Plac.* 171. But a *diſcontinuance* of an action is not perfect till it is entered on the roll, when it is of record. *Cro. Car.* 236.

The plaintiff cannot diſcontinue his action after a demurrer joined, and entered; or after a verdict, or a writ of inquiry, without leave of the court. *Cro. Jac.* 35. 1 *Lill. Abr.* 473. In actions of debt or covenant, after a demurrer joined, the court will give leave to diſcontinue, if there be an apparent cauſe, as if the plaintiff through his own negligence is in danger of loſing his debt: but if the demurrer be argued, then he ſhall not have leave to diſcontinue; nor where he brings another action for the ſame cauſe, and this is pleaded in abatement of the firſt action. *Sid.* 84.

But where a man hath a juſt cauſe of action, for a matter of any conſequence, and unadviſedly demurs to a plain bar, *&c.* and defendant joins in demurrer, and it is argued, and the court are of opinion the plea is *good* in *law*, tho' it may be *falſe* in *fact*, the court will, even after giving their opinions, but before judgment given, on motion, permit the plaintiff to withdraw his *demurrer*, on payment of coſts, and take iſſue.

Is has been ruled, upon a motion to diſcontinue, that the court may give leave after a ſpecial verdict; which is not compleat and final; but never after a general verdict. 1 *Salk.* 178. 1 *Nelſ.* 663.

An appeal may as well be diſcontinued by the defect of the proceſs or proceeding in it, as it may be by the inſufficiency of the original writ, *&c.* For by ſuch defect, the matter depending is as it were out of court. 1 *Lill.* 473. A *diſcontinuance* or miſcontinuance, at Common law reverſes a judgment given by default; and *diſcontinuance* upon a demurrer is error; but a miſcontinuance after appearance is not ſo. 8 *Rep.* 150. 46 *E.* 3. 30.

Diſcontinuance of proceſs is helped at Common law by appearance: and by *Stat.* 32 *H.* 8. *cap.* 30. All *diſcontinuances*, miſcontinuances and negligences therein, of plaintiff or defendant, are cured after verdict. 2 *Danv.* 352. The death of the King is not a *diſcontinuance* of any ſuit; and no ſuit before juſtices of aſſiſe, or juſtices of peace, *&c.* will be diſcontinued by a new commiſſion. *Stat.* 1 *Ed.* 6. *cap.* 3. See 4 & 5 *W.* & *M.* *c.* 18. 1 *Ann. Stat.* 1. *c.* 8. On the *diſcontinuance* of ſuits, it is uſual to give the defendant coſts. See *Continuance.*

The plaintiff hath been allowed to *diſcontinue* after a ſpecial verdict, and argument thereon, and after the court have delivered their opinion; but it is diſcretionary in the court, and in hard actions they will not allow it. *Rep. Temp. Hardw. per. Annaly*, 200, 201. *Boucher and Lawſon.*

Diſcovert, Is uſed in the law for a woman unmarried or widow, one not within the bonds of matrimony. *Law Fr. Dict.*

Diſcovery, Is the act of revealing or diſcloſing any matter by defendant in his anſwer to a bill filed againſt him in a court of equity.

A man is *not bound* to diſcover what may ſubject him to the penalty of *an act of parliament.* Vern. 109. pl. 98. Mich. 1682. Bird *v.* Hardwick.

But, where ſeveral are *partners in an unlawful* or clandeſtine *trade*, and *one of them brings a bill of diſcovery againſt the other*, it is no good plea that their anſwer may ſubject them to the penalty of an act of parliament; for by their going on in ſuch trade, they ſeemed to have intirely waived that unlawfulneſs as *between themſelves*; ſo the plea was diſallowed, and they were ordered to anſwer. G. *Equ. R.* 186. *Hill.* 12 *Geo.* 1. *Gaſcyone* v. *Sidwell.*

Defendant ſhall not diſcover any thing againſt himſelf to charge himſelf with the *penalty of a bond* of arbitration. *Chan. Rep.* 142. 15 *Car.* 1. *Biſhop* v. *Biſhop.*

The huſband deviſed to his wife an eſtate and intereſt in ſeveral goods and things, to be held and enjoyed by her during her widowhood. On a bill brought againſt her to diſcover, whether *married or not*, in order to prove a *forfeiture* of her eſtate, ſhe demurred, and the bill was diſmiſſed. 2 *Chanc. Rep.* 68. 24 *Car.* 2. *Monnings* v. *Monnings.*

The *difference is between cauſes criminal and civil*; if an *offender* be once *legally convicted of an offence, whereby he ought to forfeit his eſtate*, then it is lawful and proper to prefer a bill to diſcover what eſtate in lands and goods he then had; as in caſe of an *outlawry* or *attainder*, *&c.* for that the effect of ſuch a bill is only to diſcover what is *forfeited* already, and not to diſcover a *cauſe* of *forfeiture.* *Arg. Hard.* 145.

Diſcretion, (*Diſcretio*) When any thing is left to any perſon to be done according to his *diſcretion*, the law intends it muſt be done with ſound *diſcretion*, and according to law: And the court of *B. R.* hath a power to redreſs things that are otherwiſe done, notwithſtanding they are left to the *diſcretion* of thoſe that do them. 1 *Lil. Abr.* 477.

Diſcretion is to diſcern between right and wrong; and therefore whoever hath power to act at *diſcretion*, is bound by the rule of reaſon and law. 2 *Inſt.* 56, 298. And though there be a latitude of diſcretion given to one, yet he is circumſcribed, that what he does be neceſſary and convenient; without which no liberty can defend it. *Hob.* 158. The aſſeſſment of fines on offenders committing affrays, *&c.* And the binding of perſons to the good behaviour, are at the *diſcretion* of our judges and juſtices of peace. 1 *Hawk. P. C.* 132, 138. And in many caſes, for crimes not capital, the judges have a diſcretionary power to inflict corporal puniſhment on the offenders. 2 *Hawk.* 445. Infants, *&c.* under the age of *diſcretion*, are not puniſhable for crimes; and want of *diſcretion* is a good exception againſt a witneſs. *Ibid.* 434. See *Age.*

Disfranchiſe, Is to take away one's freedom or privilege: It is the contrary to *enfranchiſe.* And corporations have power to *disfranchiſe* members, for doing any thing againſt their oaths; but not for contempts, *&c.* 11 *Rep.* 98. See *Corporation.*

Diſheriſon, Is an old word which ſignifies as much as *diſinheriting:* mentioned in the ſtat. 20 *Ed.* 1. and 8 *R.* 2.

Diſheritor, One that *diſinheriteth*, or puts another out of his inheritance. *Stat.* 3 *Ed.* 1. *cap:* 39.

Diſmes, (*Decimæ*) Are *tithes*, or the *tenth* part of all the fruits of the earth, and of beaſts, or labour, due to the clergy. It ſignifieth alſo the *tenths* of all *ſpiritual livings* given to the prince, which is called a *perpetual diſm.* *Stat.* 2 & 3 *Ed.* 3. *cap.* 35. And formerly this word ſignified a *tax* or tribute levied of the *temporalty.* *Hollingſh. in H.* 2. *f.* 111. The laws of the *diſmes* or *tithes*; See *Tithes.*

Diſparagement, In a legal ſenſe was uſed for matching an heir in marriage under his degree, or againſt decency. *Co. Lit.* 107. *Magn. Chart. c.* 6.

Diſpauper. When a perſon by reaſon of his poverty, is admitted to ſue *in forma pauperis*; if afterwards, before the ſuit is ended, the ſame party have any lands or perſonal eſtate fallen to him, or be guilty of any thing whereby he is liable to have this privilege taken from him, then he is put out of the capacity of ſuing *in forma pauperis*, and is ſaid to be *diſpaupered.* See *Forma Pauperis.*

Diſpenſation. By the 25 *Hen.* 8. *cap.*21. The *Archbiſhop of Canterbury* has power of *diſpenſing* in any caſe, wherein *diſpenſations* (not contrary to the law of God) were formerly granted by the ſee of *Rome*; and may grant *Diſpenſations* to the King, as well as to his ſubjects: But ſuch *diſpenſations* ſhall not be granted out of the realm, *&c.* And during the vacancy of the ſee of *Canterbury*, the guardian of the ſpiritualties may grant *diſpenſations.* The Archbiſhop of *Canterbury* grants *diſpenſations*, not only in his own province, but in the province of *York*; and the Archbiſhop of *York*, and other biſhops, diſpenſe as they were wont to do, by the common law and cuſtom of the realm. *Wood's Inſt.* 26. Every biſhop of common right has the power of inſtitution into benefices, and of diſpenſing in common caſes, *&c.* *Ibid.* 505. *Diſpenſations* to hold *pluralities*; ſee *Chaplains.*

Diſpenſations of the King. If a *diſpenſation* by the *Archbiſhop* of *Canterbury*, is to be in extraordinary matters, or in a caſe that is new, the *King* and his Council are to be conſulted: and it ought to be confirmed under the broad ſeal. The *King's* authority to grant *diſpenſations* remains as it did at common law; notwithſtanding the 25 *H.* 8. *c.* 21. *Cro. Eliz.* 542, 601. The *diſpenſation* of the *King, &c.* makes a thing prohibited, lawful to be done by him who hath it: But *malum in ſe* will not admit of a *diſpenſation.* *March Rep.* 213. Where the ſubject hath an immediate intereſt in an act of parliament, the *King* cannot *diſpenſe* with it; but where the *King* is intruſted with the management thereof, and the ſubject intereſted by way of conſequence only, he may. *March* 214, 216. This muſt be where the King is, by the act itſelf, impowered to *diſpenſe* with it. When an offence wrongs none but the *King*; or if the ſuit is only the *King's* for the breach of a penal law, that is not to the damage of a third perſon, the *King* may *diſpenſe:* But in caſe the ſuit is the *King's*, for the benefit of another, he cannot. *Vaugh.* 334, 339, 344. *&c.*

The *diſpenſing* power of the *King* is fully conſidered by Dr. *Blackſtone.* See *Com.* 1 *V.* 142, 185, 342. 4 *V.* 429, 433.

Diſpenſation by non obſtante. Formerly if any ſtatute tended to reſtrain ſome *prerogative* incident to the perſon of the *King*, as the right of pardoning, or of commanding the ſervice of the ſubject for the public weal, *&c.* which were inſeparable from the King; by a *clauſe* of *non obſtante*, he might diſpenſe with it. 2 *Hawk.* 390. But as in the reign of King *James* II. the *diſpenſing* power was carried ſo high as to render the execution of our neceſſary laws in a manner dependent on the pleaſure of the Prince; by *Stat.* 1 *W.* & *M.* *ſeſſ.* 2. *cap.* 2. It is enacted, That no *diſpenſation by non obſtante*, of, or to any ſtatute, or any part thereof, ſhall be allowed; but that the ſame ſhall be held void, and of none effect, except a *diſpenſation* be allowed in ſuch ſtatute. The *diſpenſation* by *non obſtante* was brought into this kingdom by the *Pope*; and firſt uſed by *Hen.* 3. Pryp's Animadver. on 4 Inſt. fol. 129.

Diſperſonare, Is to ſcandaliſe or diſparage. *Blount.*

Diſſignare, To break open a ſeal——*Sepulto patre teſtamentum* diſſignatum *eſt.* Neubrigenſis, lib. 2. c. 7.

Diſſeiſin, (From the Fr. *Diſſeiſin*) Signifies an unlawful diſpoſſeſſing a man of his right. As where a perſon enters into lands or tenements, and his entry is not lawful, and keeps him that hath the eſtate from the poſſeſſion thereof. *Bract. lib.* 4. *c.* 3. And *diſſeiſin* is of two ſorts; either *ſingle diſeiſin*, committed without force of arms; or *diſſeiſin by force*, but this latter is more properly *deforcement.* *Brit. cap.* 42, 43.

By *Magna Charta*, 9 *Hen.* 3. *c.* 29. No man is to be *diſeiſed* or put out of his freehold, but by lawful judgment of his peers, or the law: And by ſtatute, the dying ſeiſed of any *diſſeiſor* of or in any lands, *&c.* having no right therein, ſhall not be a diſcent in law, to take away an entry of a perſon having lawful title of entry; except the *diſſeiſor* hath had peaceable poſſeſſion five years, without entry or claim by the perſon having lawful title. 32 *H.* 8. *c.* 33. But if a *diſſeiſor* having expelled the right owner, hath ſuch peaceable poſſeſſion of the lands five years without claim, and continues in poſſeſſion ſo as to die ſeiſed, and the land deſcends to his heirs, they have a right to the poſſeſſion thereof till the perſon that is owner recovers at law; and the owner ſhall loſe his eſtate for ever, if he do not proſecute his ſuit within the time limited by the ſtatute of limitations. *Bac. Elem.* And if a *diſſeiſee* levy a fine of the land whereof he is *diſſeiſed*, unto a ſtranger, the *diſſeiſor* ſhall keep the land for ever; for the *diſſeiſee* againſt his own fine cannot claim, and the conuſee cannot enter, and the right which the *diſſeiſee* had, being extinct by the fine, the *diſſeiſor* ſhall take advantage of it. 2 *Rep.* 56. But this is to be underſtood, where no uſe is declared of the fine by the *diſſeiſee*; when it ſhall enure to the uſe of the *diſſeiſor, &c.* by *Bridgman*, C. J. 1 *Lev.* 128.

If a feme ſole be ſeiſed of lands in fee, and is *diſſeiſed*, and then taketh huſband; in this caſe, the huſband and wife, as in right of the wife, have right to enter, and yet the dying ſeiſed of the *diſſeiſor*, ſhall take away the entry of the wife, after the death of the huſband. *Co. Lit.* 246. If a perſon *diſſeiſes* me, and, during the *diſſeiſin*, he or his ſervant cut down the timber growing upon the land, and afterwards I re-enter into the land, I ſhall have action of treſpaſs againſt him; for the law, as to the *diſſeiſor* and his ſervants, ſuppoſes the freehold to have been always in me: But if the *diſſeiſor* be *diſſeiſed* by another, or if he makes a feoffment, gift in tail, leaſe for life or years, I ſhall not have an action againſt the ſecond *diſſeiſor*, or againſt thoſe who come in by title: For all the meſne profits ſhall be recovered againſt the *diſſeiſor* himſelf. 11 *Rep.* 52. *Keilw.* 1.

A *diſſeiſor* in aſſiſe, where damages are recovered againſt him, ſhall recover as much as he hath paid in rents chargeable on the lands before the *diſſeiſin.* *Jenk. Cent.* 189. But if the *diſſeiſor* or his feoffee ſows corn on the land, the *diſſeiſee* may take it whether before or after ſeverance. *Dyer* 31, 173. 11 *Rep.* 46. Where a man hath a houſe in fee, *&c.* and locks it, and then departs; if another perſon comes to his houſe, and takes the key of the door, and ſays that he claims the houſe to himſelf in fee, without any entry into the houſe, this is a *diſſeiſin* of the houſe. 2 *Danv. Abr.* 624. If the feoffor enters on the land of the feoffee, and makes a leaſe for years, *&c.* it is a *diſſeiſin*, though the intent of the parties to the feoffment, was, that the feoffee ſhould make a leaſe to the feoffor for life. 2 *Rep.* 59. If leſſee for years is ouſted by his leſſor; this is ſaid to be no *diſſeiſin.* *Cro. Jac.* 678.

A man who enters on another's land, claiming a leaſe for years, who hath not ſuch leaſe, is a *diſſeiſor:* though if a man enters into the houſe of another by his ſufferance, without claiming any thing, it will not be a *diſſeiſin.* 9 *H.* 6. 21, 31. 2 *Danv.* 625. If a perſon enters on lands by virtue of a grant or leaſe, that is void in law; he is a *diſſeiſor.* 2 *Danv.* 630. A leſſee at will, makes a leaſe for years, it is a *diſſeiſin*, at the election of the leſſor at will: But it is the *diſſeiſin* of the leſſee at will, not of the leſſee for years. *Hill.* 7 *Car. B. R.* If a man enters into the land of an infant, though by his aſſent; this is a *diſſeiſin* to the infant, at his election. 11 *Ed.* 3. *Aſſ.* 87. And if a perſon commands another to enter upon lands, and make a *diſſeiſin*, the commander is a *diſſeiſor*, as well as ſuch other; unleſs the command be conditional, when it may be otherwiſe. 22 *Aſſ.* 99. 2 *Danv.* 631.

If a man forces another to ſwear to ſurrender his eſtate to him, and he doth ſo, it will be a *diſſeiſin* of the eſtate: So forcibly hindring a perſon from tilling his land, is a *diſſeiſin* of the land. *Co. Lit.* 161. But if one enter wrongfully into the lands of another, and he accepts rent from ſuch perſon, he ſhall not afterwards be taken for a *diſſeiſor*. *Dyer* 173. Where any perſon is diſturbed from entering on land, it is a *diſſeiſin*: A denial of a rent, when lawfully demanded, is a *diſſeiſin* of the rent. *Co. Lit.* 153. Alſo hindring a diſtreſs for rent, by force; or making reſcous of a *diſtreſs*, are a *diſſeiſin* of the rent. 2 *Danv.* 624, 625. An infant, or feme covert, may be a *diſſeiſor*, but it muſt be by actual entry on lands, &c.

A feme covert ſhall not be a *diſſeiſoreſs*, by the act of the baron: If he *diſſeiſes* another to her uſe, ſhe is not a *diſſeiſoreſs*; nor if the wife agrees to it during the coverture: Yet if after his death, ſhe agrees to it, ſhe is a *diſſeiſoreſs*. *Ibid.* 626, 627. Aſſiſes that lie againſt *Diſſeiſors* are called *writs of diſſeiſin*; and there are ſeveral writs of entry *ſur diſſeiſin*, of which ſome are in the *per*, and others in *le poſt*, &c.

But writs of *aſſiſe* on *diſſeiſins*, are now diſuſed; and the feigned action of ejectment is introduced in their place. It is not amiſs to be acquainted with this learning, but *treſpaſs* and *ejectment* ſupply the place of almoſt every kind of *aſſiſe*. See *Aſſiſe of Novel Diſſeiſin*, and *Entry*.

Diſſeiſor, Is in general he that *diſſeiſeth* or puts another out of his land, without order of law: And a *diſſeiſee* is he that is ſo put out. 4 *H.* 4. As the King in judgment of law can do no wrong, he cannot be a *diſſeiſor*. 1 *E.* 5. 8. A *diſſeiſor* is to be fined and impriſoned; and the *diſſeiſee* reſtored to the land, &c. by *Stat.* 20 *H.* 3. *c.* 3. Where a *diſſeiſor* is *diſſeiſed*, it is called *diſſeiſin* upon *diſſeiſin*.

Diſſenters, Are ſeparatiſts from the church, and the ſervice and worſhip thereof. At the *Revolution* a law was enacted, That the ſtatutes of Q. *Eliz.* and K. *James* I. concerning the diſcipline of the church, ſhould not extend to *Proteſtant diſſenters*: But the perſons diſſenting, are to ſubſcribe the declaration of 30 *Car.* 2. *c.* 1. and take the oaths, or the declaration of fidelity, &c. And they muſt not hold their meetings, till their place of worſhip is certified to the biſhop, &c. or to the juſtices at their quarter-ſeſſions, and regiſtered there; alſo they are not to keep the doors of their meeting-houſes locked, &c. If any perſon diſturbs them in their worſhip, on conviction at the ſeſſions, he ſhall forfeit 20 *l.* *Stat.* 1 *W.* & *M.* *c.* 18. *ſ.* 18. And there are a great many ſtatutes relating to *diſſenters* beſides the toleration act: As the 5 & 6 *Ed.* 6. *c.* 1. 23 *Eliz.* *c.* 1. 3 *Jac.* 1. *c.* 4. 13 *Car.* 2. *c.* 1. 17 *Car.* 2. *c.* 2. and 22 *Car.* 2. *c.* 1. 1 *W.* & *M.* *c.* 18. 10 *Ann.* *c.* 2. 1 *Geo.* 1. *c.* 6, &c. See *Church*, &c.

Diſtillers, Of ſtrong waters and ſpirits, ſetting up any tun, caſk, &c. or uſing any private warehouſe or cellar, without notice given to the officer of exciſe, ſhall forfeit 20 *l.* and 10 *l.* for working ſtills, but at ſuch appointed hours, to be levied by warrant of two juſtices of peace. *Stat.* 3 *W.* & *M.* *c.* 15. 10 & 11 *W.* 3. *c.* 4, 21. If any *diſtiller* ſhall uſe a private pipe for conveyance of diſtilled liquor, he forfeits 100 *l.* And private ſtills to be ſeized, for which a ſearch may be made by officers of exciſe by virtue of a juſtice's warrant. 10 & 11 *W.* 3. *c.* 4. *Diſtillers*, &c. are to make an entry of all warehouſes for keeping brandy, on pain of 20 *l.* and forfeiture of the liquors; and brandy ſhall not be ſold but in warehouſes and places entered, under the penalty of 40 *s.* *per* gallon, by *Stat.* 6 *Geo.* 1. *c.* 20. All mixed or compound waters or ſpirits, commonly called *Geneva*, &c. in the poſſeſſion of *diſtillers*, are liable to a duty of 5 *s.* *per* gallon; and entries to be made of ſtills, *etc.* under penalty of 20 *l.* And none of the ſaid mixed liquors ſhall be expoſed to ſale, but in ſome place that is entered, on pain of forfeiting 40 *s.* a gallon; and if any *diſtiller diſtills*, or ſells any ſpirits, not of full proof, he ſhall pay the like forfeiture: Alſo ſellers or retailers of any compound liquors, in leſs quantities than a gallon, are to take out a licence at the exciſe-office for the ſame, and pay down 20 *l.* and ſelling without ſuch licence, to forfeit 50 *l.* Selling brandy about the ſtreets, in any wheelbarrow or on a ſhed, or other place, incurs a penalty of 10 *l.* leviable by juſtices of peace: But this act ſhall not extend to arrack, rum, citron water, Iriſh uſquebaugh, *etc.* *Stat.* 6 *Geo.* 2. *c.* 17.

The duty on compound waters or ſpirits, and *French* brandy, *etc.* taken off, and duties granted of 1 *s.* and 2 *s.* *per* gallon, to be raiſed in the ſame manner as exciſe upon beer, and ale, *etc.* And diſtillers or other perſons may export ſpirits, drawn from corn of *Great Britain*, on oath, and that duties are paid, and ſhall be allowed a drawback of 4 *l.* 18 *s.* *per* ton, *etc.* Cyder uſed in diſtillation, is exempted from duty; but *diſtillers* uſing it otherwiſe, ſhall forfeit 5 *l.* *Stat.* 6 *Geo.* 2. *cap.* 17. No *diſtillers*, or others, ſhall retail any brandy, rum, arrack, Geneva, *etc.* by any name, in any leſs quantities than two gallons, without taking out a licence, and paying 50 *l.* to the next office of exciſe, *etc.* on pain of forfeiting 100 *l.* and ſhall pay 20 *s.* *per* gallon: And the retailers to make a true entry of all their warehouſes, ſhops, cellars, and the liquors therein, under the penalty of 20 *l.* and 40 *s.* for every gallon concealed, or making any clandeſtine increaſe, *etc.*

Officers for the duties may enter warehouſes, *etc.* and take an account of liquor, and perſons refuſing them entrance ſhall forfeit 50 *l.* None may contract with any workman or ſervant, to pay him his wages, ſo much in money, and the reſt in brandy, *etc.* And hawkers and ſellers of brandy about the ſtreets, *etc.* to forfeit 10 *l.* or be committed for two months. But phyſicians and apothecaries may uſe ſpirituous liquors in medicines for ſick perſons; and *diſtillers* may exerciſe any other trade. 9 *Geo.* 2. *c.* 23. Where any perſons are not able to pay the fines, commiſſioners of exciſe to advance the rewards for information out of money in their hands; and the offenders to be committed to the houſe of correction, and there ſtript naked from the middle and whipped, *etc.* *Stat.* 10. *Geo.* 2. *c.* 17. Occupiers of any houſe or place, where any ſpirituous liquors ſhall be ſold leſs than two gallons, if privy thereto, are to be deemed retailers thereof, and forfeit 100 *l.* And if any perſon to the number of five or more, in a riotous manner aſſemble to reſcue offenders, or to aſſault, beat or wound informers they ſhall be adjudged guilty of felony, and be tranſported. 11 *Geo.* 2. *c.* 26.

By the 16 *Geo.* 2. *c.* 8. Great duties laid on ſpirituous liquors by former ſtatutes, and on licences for retailing the ſame, are repealed, and other duties granted; and no perſons ſhall retail any *diſtilled* ſpirituous liquors, or ſtrong waters, in public or private, without taking out a licence from the commiſſioners of the exciſe, *etc.* and paying 20 *s.* yearly, on pain of forfeiting 10 *l.* or to be committed to the houſe of correction, and there kept to hard labour two months. Theſe licences are not granted to any perſons, but thoſe only that keep taverns, inns, ale-houſes or coffee-houſes; and they muſt be firſt licenſed to ſell ale or ſpirituous liquors by two or more juſtices of peace, to be enabled to retail ſuch liquors: But none ſhall be deemed a retailer, who does not ſell it to be drank in any place belonging to him, or ſend it abroad, in leſs quantities than a pint. *Stat.* 16 *Geo.* 2. *cap.* 8. By the *Stat.* 17 *Geo.* 2. *c.* 17. All penalties by the *Stat.* 16 *Geo.* 2. *c.* 8. and by this act impoſed, may be ſued for, recovered, levied and mitigated by ſuch ways and means as any penalty may be ſued for by any law of exciſe: But the juſtice may, if he think proper, inſtead of levying the penalty, commit the offender to the houſe of correction, to be kept to hard labour for two months, and be whipt before diſcharged.

Licences granted as aforeſaid to any perſon, who ſhall afterwards, during the continuance of his licence, exerciſe the trade of a *diſtiller*, grocer, or chandler, or keep a brandy ſhop for ſale of ſpirituous liquors, ſhall be void, and the offender forfeit 10 *l.* Every perſon, who ſhall retail ſpirituous liquors to be drank in his houſe, &c. or retail or ſend the ſame abroad in leſs quanties than two gallons, without a licence, ſhall be deemed a retailer, and forfeit 10 *l.* for every offence. Where offenders are not able to pay the penalties, but in lieu thereof are ſent to the houſe of correction, the commiſſioners of exciſe, may order a reward to the informer, not exceeding 5 *l.* by the *Stat.* 20 *Geo.* 2. *c.* 39.

Diſtillers within the bills of mortality may have licences on payment of 5 *l.* yearly. *Diſtillers* in partnerſhip to have but one licence. And no *diſtiller* ſhall have a licence, unleſs, inhabiting in the city of *London*, he pay to church and poor rates, for the value of 20 *l.* and in any other parts for the value of 10 *l.* in the pariſh he exerciſes his ſaid trade: And he ſhall not, by virtue of ſuch licence, retail ſpirituous liquors but in his own ſhop, under the penalty of 10 *l.* And if he ſells any ſpirituous liquors to be drank, or ſuffer it to be drank in his ſhop, he ſhall forfeit 10 *l.* All ſuch penalties to be ſued for, &c. as above is mentioned. And every perſon found tipling in a *diſtiller*'s ſhop, ſhall forfeit 20 *s.* And by the *Stat.* 19 *Geo.* 2. *c.* 12. an additional duty is laid on ſpirituous liquors.

By *Stat.* 24 *Geo.* 2. *c.* 40. No *diſtiller* ſhall have a licence to ſell ſpirituous liquors. And no perſon ſhall be licenſed but ſuch as pay to church and poor. By *Stat.* 26 *Geo.* 2. *c.* 13. Commiſſioners, &c. within the limits of the head office of exciſe in *London*, may grant licences for retailing ſpirituous liquors to perſons renting houſes of 12 *l. per annum*, though not rated to the poor's rate. By the *Stat.* 24 *Geo.* 2. *c.* 40. *Diſtillers* ſelling ſpirituous liquors to be unlawfully retailed, or to unlicenſed retailers, ſhall forfeit treble the value of the liquors. And for the laying an additional duty upon ſpirituous liquors, and reſtraining the retailing of ſpirituous liquors; ſee further in the ſaid *Stat.* 24 *Geo.* 2. *c.* 40. and 26 *Geo.* 2. *c.* 13. See alſo *Stat.* 33 *Geo.* 2. *c.* 9. who are to be deemed common *diſtillers*, and for the penalty on malt *diſtillers* making gin.

The making of low wines or ſpirits, from wheat, wheat-flour, or any materials, mixed with wheat, &c. prohibited for a limited time. 11 *Geo.* 3. *c.* 1. *ſect.* 15. 12 *Geo.* 3. *c.* 1. 13 *Geo.* 3. *c.* 3. *ſect.* 16. Theſe ſtatutes are cited as uſeful laws, which may probably be often renewed, to the great benefit of the poor.

Diſtillers, &c. not to have more than five quarters of wheat, or wheat-flour, at one time, in poſſeſſion. 11 *Geo.* 3. *c.* 1. *ſect.* 18. 12 *Geo.* 3. *c.* 1. 13 *Geo.* 3. *c.* 3. *ſect.* 19. and vide *ſect.* 17.

In ſome of theſe ſtatutes there is an exception, as to thoſe *diſtillers*, who are millers, alſo, as to their mills: Are exceptions which we fear has given great opportunities to evade theſe ſalutary laws.

Who are to be deemed common *diſtillers* for ſale. 12 *Geo.* 3. *c.* 46. *ſect.* 9.

Regulations to prevent the fraudulent uſe of ſtills, &c. 12 *Geo.* 3. *c.* 46. *ſect.* 11, &c.

N. B. A *diſtiller*, who is a grower of wheat, is excepted from the above law, with reſpect to wheat in the ſtraw, and for twenty days after threſhing, &c. 13 *Geo.* 3. *c.* 3. *ſect.* 20.

There is a penalty on *malt diſtillers* making *gin*, by 13 *Geo.* 3. *c.* 3. *ſect.* 24.

N. B. On the *Stat.* 16 *Geo.* 2. *c.* 8. there were many debates in the Houſe of Lords, and the Biſhops ſtrongly oppoſed the bill, it being to lay a ſmall duty *per* gallon, on the liquor at the ſtill head, and a licence to coſt but 20 *s.* to be granted only to ſuch as had licence to ſell ale, whereby greater opportunities were given to the poor, to come at pernicious ſpirituous liquors, contrary to the end propoſed by thoſe who favoured the bill. See *Debates in the Houſe of Lords*, 8 *Vol.* from *fo.* 349, to 415, incluſive.

Diſtreſs, *(Diſtrictio)* Signifies moſt commonly any thing which is taken and *diſtrained* for rent behind, or other duty: And by the Common law, *diſtreſſes* for rent were not to be ſold, but only detained for inforcing payment of the rent; but this is altered by ſtatute. A man may take a *diſtreſs* for homage, fealty, or any ſervices; for fines and amercements; and for damage-feaſant, &c. And the effect of it is to compel the party either to *replevy* the *diſtreſs*, and conteſt the taking in an action againſt the diſtrainer; or, which is more uſual, to compound or pay the debt or duty, for which he was diſtrained.

There are likewiſe *diſtreſſes* in actions compulſory to cauſe a man to appear in court: And of theſe there is a *diſtreſs perſonal*, of a man's moveable goods, and profits of lands, &c. for contempt in not appearing after ſummoned; and *diſtreſſes real*, upon immoveable goods. And none ſhall be diſtrained to anſwer for any thing touching their freeholds, but by the King's writ. 52 *Hen.* 3. *c.* 1.

Diſtreſs is alſo divided into *finite* and *infinite*: *Finite*, is that which is limited by law, how often it ſhall be made to bring the party to trial of action, as once, twice, &c. And *infinite*, is without limitation, until the party appears; which is likewiſe applicable to jurors not appearing: Then it hath had a further diviſion into a *grand diſtreſs*, and *ordinary diſtreſs*; the former whereof extends to all the goods and chattels which the party hath within the county. *F. N. B.* 904. *Old Nat. Br.* 43, 113. *Brit.* *c.* 26. *f.* 52.

Herein is to be conſidered:

I. *Who may diſtrain, and for what.*
II. *At what time and in what manner the diſtreſs ſhould be made.*

I. *Who may diſtrain and for what.*

Of common right a perſon may diſtrain for rents, and all manner of ſervices; and for rent reſerved upon a gift in tail, leaſe for life, years, &c. though there be no clauſe of *diſtreſs* in the deed, ſo as the reverſion be in himſelf: But on a feoffment in fee, a *diſtreſs* may not be taken, unleſs expreſly reſerved in the deed. *Co. Lit.* 57, 205. *Doctor and Student*, *cap.* 9. See *Co. Lit.* 204.

A man grants a rent out of the manor of *D.* and further, that if the rent be behind, the grantee ſhall diſtrain for it in the manor of *S.* this is a rent in the manor of *D.* and only a penalty on the other manor. 1 *Shep. Abr.* 567. If a perſon ſeiſed of land in fee, demiſe it to one upon condition to pay his wife 5 *l.* a year rent, and if it be behind and in arrear, that ſhe ſhall diſtrain for it; the wife may take a *diſtreſs* for the rent. *Dyer* 3, 48. There is a lord and tenant by 3 *l.* rent and fealty, the lord dies, and his wife is endowed of the thirds of the ſeigniority; here ſhe may diſtrain for one pound, and the heir for two pounds: So if a rent be divided amongſt parceners, each of them may have a *diſtreſs* for her part; but this may not be till the partition is made. *Bro.* 45.

If one jointenant make a gift in tail, of the land, reſerving a certain rent, and the rent be in arrear; he may not diſtrain the beaſts of the other jointenant. 33 *H.* 6. 35. But if *A.* and *B.* are tenants in common, and *A.* leaſes his moiety to *C.* for years, rendring rent, and *C.* leaſe it to *B.* if the rent is behind, *A.* may take a *diſtreſs* of the cattle of *B.* his fellow tenant in common. 7 *Rep.* 23. *Moor* 558.

To juſtify taking a *diſtreſs*, the party muſt ſee he hath good cauſe to diſtrain; that he have power to take the *diſtreſs*, and from the perſon from whom he takes it; that the thing, for the quality of it, be diſtrainable, and he diſtrain it in due time and place, &c. He who takes a *diſtreſs* for another, ought to have good warrant for doing it; and muſt do it in his name: And a bailiff or ſervant, may diſtrain for his maſter. 1 *Cro.* 748. 2 *Cro.* 436. *Godb.* 110. A *diſtreſs* ought to be made of ſuch things whereof the ſheriff may make replevin, and deliver again in as good plight and condition as they were at the time of the taking. *Co. Lit.* 47.

Diſtreſſes are to be of a thing valuable, whereof ſome body hath a property; things *feræ naturæ*, as dogs, conies, &c. may not be diſtrained. 1 *Rol. Abr.* 664, 666. It is the ſame of cattle of the plough, beaſts of huſbandry, ſheep, or horſes joined to a cart, with a rider upon it. 1 *Vent.* 36. This means a diſtreſs for *rent*, &c. *contra* of diſtreſs *damage feaſant*.

But it has been adjudged, that horſes may be taken from a cart loaded, though it has been a diſputed caſe, whether they could be ſeparated. *Sid.* 422. *Raym.* 18. A horſe with a rider upon his back; or a horſe in an inn, or put into a common; an ax in a man's hand, cutting down wood; or any thing a perſon carries about him; utenſils and inſtruments of a man's trade or profeſſion, or the books of a ſcholar; corn in a mill, or goods in a market to be ſold for the uſe of the public; materials in a weaver's ſhop, for making of cloth; another perſon's garment in the houſe of a taylor, &c. are not diſtrainable; nor is any thing that is fixed to the freehold of a houſe, as a furnace, doors, windows, boards, &c. 1 *Sid.* 422, 440. *Co. Lit.* 47. 2 *Danv. Abr.* 461.

But goods, cattle, not of the plough, &c. ſheaves of corn; corn in the ſtraw, or threſhed; and carts with corn, (but not victuals) hay in a barn, or ricks of hay; money in a bag ſealed, though not out of a bag, &c. may be diſtrained for rent: And ſo may cattle or goods driving to market, if put into a paſture by the way; and beaſts of a ſtranger, in the landlord's ground, being *levant and couchant*, and having well reſted themſelves there. *Co. Lit.* 47. 1 *Lutw.* 214. *Mod.* 385. If a driver of cattle aſks leave of the leſſor to put his cattle into ground for a night, and he gives leave, as well as the leſſee; yet it is ſaid he is not concluded for diſtraining them for rent. 2 *Vent.* 59. 2 *Danv.* 642.

Relief given in equity in theſe caſes. See *Chancery*. 2 *Vern.* 129. But the goods of a carrier are privileged, and cannot be diſtrained for rent, though the waggon wherein loaded, is put into the barn of a houſe, &c. on the road. 1 *Salk.* 249. If the fences of another man's ground be out of repair, and the neighbour's cattle eſcape there, and are *levant and couchant*, without any freſh purſuit after them, they may be diſtrained for rent; for the land is debtor for the rent, and the landlord muſt reſort thither, and is not to inquire whoſe cattle they are which he finds therein. 1 *Rol. Rep.* 124. 1 *Nelſ. Abr.* 667. But if the owner freſhly purſues the cattle, they are not diſtrainable; becauſe they are ſuppoſed to be always in his view and poſſeſſion.

If the owner of the cattle is to maintain the fences, in ſuch caſe, if they eſcape into another's ground, they may be diſtrained before *levant and couchant*, and notwithſtanding freſh purſuit. 1 *Nelſ. Ibid.* And *diſtreſſes* for rent are to be reaſonable, and not exceſſive; and not to be taken in the King's highway, or the common ſtreet; or in the ancient fees of the church. 51 *H.* 3. *ſtat.* 4. 52 *H.* 3. *c.* 15. 9 *Ed.* 2. *ſtat.* 1. *c.* 9. Except in caſe of an amercement in the *leet*. *Vide poſt*.

And where a *diſtreſs* is taken it may be replevied in five days; if the tenant and owner of the goods do not in that time after taken, and *notice* given, and of the cauſe, left at the dwelling houſe, &c. replevy the ſame according to law; then the perſon diſtraining, may, with the under ſheriff of the county, or conſtable of the place, &c. (who are required to be aſſiſting) cauſe the goods to be appraiſed by two ſworn appraiſers, and ſold to ſatisfy the rent, &c. leaving the overplus in the conſtable's hands for the uſe of the owner. *Stat.* 2 *W.* & *M.* *c.* 5.

All *diſtreſſes* for rent muſt be made on the premiſſes, by the Common law: But by ſtatute, if any tenant fraudulently removes goods from off the premiſſes, the landlord may in five days ſeize ſuch goods wheresoever found, as a *diſtreſs* for the rent in arrear; unleſs the goods are ſold for a valuable conſideration before the ſeizure. 8 *Ann.* *c.* 17. By 11 *Geo.* 2. *c.* 19. *thirty* days allowed. And, whereas before that ſtatute, for rent due the laſt day of the term, the leſſor could not diſtrain; becauſe the term ended before the rent was due; (and the leſſee had the whole day to pay it; and it was the ſame, where the leſſee held over his term, for rent incurred during the term. *Co. Lit.* 47. Now by the *ſtat.* 8 *Ann.* *c.* 17. where leaſes are expired, a *diſtreſs* may be taken, provided it be done within ſix months, and during the landlord's title and tenant's poſſeſſion.

Diſtreſſes for ſervices are to be on the land: But for an amercement in a leet, the *diſtreſs* may be taken any where within the hundred, as well out of the land, as on it, wherever the cattle are of him that is amerced; for the amercement charges only the perſon, and not the land; and for this a *diſtreſs* may be taken in the high ſtreet. 2 *Danv. Abr.* 644, 645. The lord cannot diſtrain for amercements in a court-baron, without a preſcription; though he may in the leet: And the goods and cattle of another, may not be taken in *diſtreſs* on my ground, for an amercement, &c. ſet upon me in a court-leet or court-baron. 11 *Rep.* 44. 12 *H.* 7. 13. For ſervices a *diſtreſs* cannot be taken but where the ſervices are certain; or may be reduced to a certainty. *Co. Lit.* 96.

II. *At what time, and in what manner, the diſtreſs ſhould be made.*

A *diſtreſs* for rent cannot be made in the night: Nor may gates, &c be broke open to make a *diſtreſs*; or the landlord enter into the tenant's houſe for that purpoſe, unleſs the doors are open. *Co. Lit.* 142, 161. One may break an inner door of a houſe, &c. to take the *diſtreſs*; if the outer doors be open. *Comb.* 17. *Rep. Temp. Hard. per Annaly, p.* 168. *Browning* v. *Dann and others.* Where a landlord comes to diſtrain cattle, which he ſees on the tenant's ground, if the tenant, or any other, to prevent the *diſtreſs*, drives the cattle off the land, the landlord may make freſh purſuit, and diſtrain them: Though if before the *diſtreſs*, the owner of the cattle tenders his rent, and a *diſtreſs* is taken afterwards, it is wrongful. 2 *Inſt.* 107, 160.

Two *diſtreſſes* cannot be taken for one rent, if there were ſufficient goods when the firſt *diſtreſs* was made; but if there were not then a ſufficient *diſtreſs*, they may. *Cro. Eliz.* 13. *Lutw.* 1536. But by *Stat.* 17 *Car.* 2. *cap.* 1. When the value of cattle diſtrained ſhall be found not to be of the value of the arrears of rent, for which the *diſtreſs* was taken, the perſon diſtraining, his executors, &c. may take further *diſtreſſes*, for ſuch arrears.

A *aiſtreſs* of cattle muſt be brought to the common *pound*, or be kept in an open place; and if they are put into a common pound, the owner is to take notice of it at his peril; but if in any other open place, notice is to be given to the owner, that he may feed them; and then if the cattle die for want of food, the tenant ſhall bear the loſs; and the landlord may diſtrain again for his rent. 5 *Rep.* 90. *Co. Lit.* 47, 96. See *infra*. Where one impounds cattle diſtrained, he cannot juſtify the tying them in the pound: If he ties a beaſt, and it is ſtrangled, he muſt anſwer it in damages. 1 *Salk.* 248. If the perſon diſtraining *damage feaſant* put the *diſtreſs* in a broken pound, and the *diſtreſs* eſcapes, he can have no action for the ſame: it is otherwiſe if from a good pound, without his default, when he may have action for the treſpaſs. *Salk. Ibid.* By ſtatute, none ſhall drive a *diſtreſs* out of the county, on pain to be fined and amerced: and no *diſtreſs* of cattle ſhall be driven out of the hundred where taken to any pound, except to a pound overt in the ſame county, and not above three miles diſtant; nor ſhall any *diſtreſs* be impounded in ſeveral places under the penalty of 5 *l.* and treble damages. 52 *H.* 3. *c.* 4. 1 *P.* & *M.* *cap.* 12.

After a *diſtreſs* is in the pound, it is ſaid to be *in cuſtodia legis*, ſo that the owner of it hath no abſolute property therein; and therefore he cannot ſell or forfeit it, nor may the ſame be taken in execution, &c. but it muſt be as a pledge or means to help the party diſtraining to his debt or duty. *Co. Lit.* 190. *Finch's Ley* 135. Cattle diſtrained may not be uſed, becauſe by law they are only as a pledge; unleſs it be for the owner's benefit, by milking, &c. *Cro. Jac.* 148.

When a *diſtreſs* is taken of houſhold goods, or other dead things, they are to be impounded in a houſe, or other pound covert, &c. And if the *diſtreſs* is damaged, the diſtrainer muſt anſwer it. *Wood's Inſt.* 191. And they are to be removed immediately; except corn or hay, by *Stat.* 2 *W.* & *M.* *ſeſſ.* 1. *cap.* 5. But if a landlord doth not remove goods immediately, but quits them till another day, during which time they are taken away, it is not a reſcous, for want of poſſeſſion. *Mod. Ca.* 215, 1 *Nelſ.* 672. See *Infra, Diſtreſs for Rent.*

Where goods are unlawfully diſtrained, the owner may reſcue them, before they are impounded; but not afterwards. *Co. Lit.* 47. But the ſafeſt way is to replevy, as there are few caſes, in law, where a man is allowed to be his own judge, if any. If lands lie in ſeveral counties, a *diſtreſs* may be made in one county for the whole rent. *Co. Lit.* 154. And if a landlord comes into a houſe, and ſeizes upon ſome goods as a *diſtreſs*, in the name of all the goods in the houſe; this is a good ſeizure of all. 6 *Mod.* 215. If any *diſtreſs* and ſale be made where there is no rent due, the owner of the goods diſtrained ſhall recover double the value of the goods, and full coſts, by 2 *W.* & *M. ſeſſ.* 1. *c.* 5. Alſo by the Common law, if a lord or other perſon ſhall diſtrain ſeveral times for his ſervice or rent, when none is in arrear, the tenant may have an *aſſiſe de ſovent diſtreſs*, &c. F. N. B. 176. See *Recaption, Replevin* and *Reſcous.*

By the *Stat.* 27 *Geo.* 2. *c.* 20. Juſtices in their warrants of *diſtreſs*, are to limit a time for the ſale of their goods; the conſtable making ſuch *diſtreſs* may deduct the reaſonable charges of detaining, keeping, and ſelling ſuch *diſtreſs*, out of the money ariſing by the ſale; and the overplus, if any, after ſuch charges, and alſo the penalty or ſum of money, ſhall be fully paid, ſhall be returned to the owner of the goods diſtrained; and the conſtable, if required, ſhall ſhew the warrant to the party whoſe goods are diſtrained, and ſuffer a copy thereof to be taken.——This act not to alter or repeal the ſtatutes, 7 & 8 *W.* 3. *c.* 34. and 1 *Geo.* 1. *c.* 6. relating to *Diſtreſſes* on *Quakers* for *Tithes* and *Church Rates.* See the ſtatutes 2 *W.* & *M. Seſſ.* 1. *c.* 5. 6 *Ann. c.* 14. 8 *Ann. c.* 14. And 11 *Geo.* 2. *c.* 19.

Diſtreſs for *rent* by 11 *Geo.* 2. *c.* 19. which has much altered our law in this caſe: if any tenant of lands or tenements ſhall fraudulently carry away his goods, to prevent *diſtreſs*, the landlord may, within thirty days after, diſtrain them wherever they ſhall be found, as if they had been on the premiſſes; but no ſuch goods ſhall be diſtrained, if ſold *bona fide* for valuable conſideration before ſeizure, to any perſon not privy to the fraud. Tenants committing ſuch fraud, or others aſſiſting, ſhall forfeit double the value of the goods carried off, to be recovered by action of debt, &c. And where they ſhall not exceed 50*l.* value, the landlord may exhibit a complaint before two juſtices of peace, who are to examine the fact, and enquire into the value of the goods, and thereupon order the offender to pay double value, leviable by *diſtreſs* and ſale; and, for want thereof, commit the offender to the houſe of correction for ſix months. Landlords, or their agents, may, with the aſſiſtance of a conſtable, ſeize any goods fraudulently concealed in any houſe, outhouſe, &c.

And in caſe of a dwelling-houſe, on oath firſt made to ſome juſtice, of reaſon to ſuſpect that ſuch goods are therein, may break open the ſame, and diſtrain them: they may alſo diſtrain for rent and cattle, or ſtock of their tenants, feeding in any common; or corn, graſs, hops, fruits, &c. growing on the land, which they ſhall cut, gather, cure and lay up when ripe, in *any proper place*, giving notice to the tenant within a week where lodged, and diſpoſe thereof towards the ſatisfaction of the rent and charges; the appraiſement to be taken when cut or cured: but, if after a *diſtreſs* ſo taken, before the product be ripe and gathered, the tenant ſhall pay the rent, and charges of the *diſtreſs*, the ſaid *diſtreſs* ſhall ceaſe.

Perſons may ſecure *diſtreſſes* lawfully taken, and ſell them *upon the premiſſes* in like manner as may be done off the ſame, by 2 *W.* & *M. ſeſſ.* 1. *c.* 5. And any perſons may go to and from the premiſſes, to view, appraiſe, buy, or take away the goods of the purchaſer; and if a reſcous be made for the *diſtreſs*, the perſons aggrieved ſhall have the remedy given by the ſaid ſtatute.

Diſtreſſes made for rent juſtly due, ſhall not be unlawful, nor diſtrainers, treſpaſſers *ab initio*, for any irregularity in the diſpoſition thereof; but the parties grieved to have ſatisfaction for *ſpecial damage*, in an *action* on the *caſe*, &c. But no tenant ſhall recover by ſuch action, if *tender of amends* hath been made before the action brought. And in all actions of treſpaſs, or on the caſe relating to the entry, *diſtreſs*, or ſale, made by landlords for rents, the *defendants* may *plead* the *general iſſue*, and if the plaintiffs become non-ſuit, &c. ſhall recover double coſts of ſuit. *Stat.* 11 *Geo.* 2. *c.* 19. See *Leaſe.* Vide the *Statute.*

Diſtreſs of the King. By the Common law no ſubject can diſtrain out of his fee or ſeignory; unleſs cattle are driven to a place out of the fee, to hinder the lord's *diſtreſs*, &c. But the *King* may diſtrain for rent-ſervice, or fee-farm, in all the lands of the tenant whereſoever they be; not only on lands held of himſelf, but of others: where his tenant is in actual poſſeſſion, and the land manured with his own beaſts, &c. 2 *Inſt.* 132. 2 *Danv. Abr.* 643.

Diſtreſs of a Town. If a town be aſſeſſed to a certain ſum, a *diſtreſs* may be taken in any part, ſubject to the whole duty. 2 *Danv.* 643.

Diſtribution of inteſtates eſtates, according to the 22 & 23 *Car.* 2. *c.* 10. may be ſued for as well in the Chancery, as in the Eccleſiaſtical Court: and if the perſons appointed to have it, die before a *diſtribution* made, their ſhares go to their executors, &c. 2 *Chan. Rep.* 374. Where the remainder or ſurplus of an eſtate, not diſpoſed of by will, ſhall go and remain to the next of kin, by the ſtatute of *diſtributions*. *Vide* 2 *Vern.* 361, 676. See *Adminiſtrator*, alſo *Executor* and *Inteſtates*, and 29 *Car.* 2. *c.* 3. 1 *Jac.* 2. *c.* 17. And 14 *Geo.* 2. *c.* 20.

Diſtrictione Scaccarii, A ſtatute ſo called. 51 *H.* 3. *ſtat.* 4.

Diſtrict, (*diſtrictus*) A territory, or place of juriſdiction; the circuit wherein a man may be compelled to appear; alſo the place in which one hath the power of diſtraining: and where we ſay *hors de ſon fee*, out of the fee, it has been uſed for *extra* diſtrictum *ſuum*. Brit. c. 120.

Diſtringas, Is a writ directed to the ſheriff, or other officer commanding him to diſtrain a man for a debt to the King, &c. or for his appearance at a day affixed. There is a great diverſity of this writ; which was ſometimes of old called *conſtringas*. F. N. B. 138. There is alſo a *diſtringas* againſt perſons intitled to privilege of parliament. *Vide* 10 *Geo.* 3, *c.* 50. The iſſues levied may be ſold to pay the plaintiff's coſts. This is an act of great utility, a very valuable acquiſition to the people; and it is ſaid we are principally indebted for it to Lord *Mansfield*, who has frequently recommended to the gentlemen at the bar, who are members of the Houſe of Commons, the procuring of ſtatute laws beneficial to the public.

Diſtringas Juratores, Is a writ directed to the ſheriff, to diſtrain upon a *jury* to appear; and return iſſues on their lands, &c. for non-appearance. Where an iſſue in fact is joined to be tried by a *jury*, which is returned by the ſheriff in a panel upon a *venire facias* for that purpoſe; thereupon there goes forth a writ of *diſtringas jurator'*, to the ſheriff, commanding him to have their bodies in court, &c. at the return of the writ. 1 *Lil. Abr.* 483. And the writ of *diſtringas jur'* ought to be delivered to the ſheriff ſo timely, that he may warn the jury to appear four days before the writ is returnable, if the *jurors* live within forty miles of the place of trial; and eight days if they live farther off. *Ibid.* 484. There may be an *alias*, or *pluries diſtringas jur'* where the *jury* doth not appear.

Dividends of Bankrupts Effects, Aſſignees, within twelve months after commiſſion iſſued, to give twenty-one days notice of a meeting for a dividend, then produce their accounts, and verify them on oath, if required, when the commiſſioners are to direct a dividend. Within eighteen months after the commiſſion, a final dividend is to be made. See *Black. Com.* 2 *V.* 487, 488. and the ſtatutes concerning *Bankrupts.*

Dividend in the Exchequer, Is taken for *one part* of an *indenture*. 10 Ed. 1. c. 11.

Dividend in the Univerſity, Is that part or ſhare which every one of the fellows do juſtly and equally *divide* among themſelves of their annual *ſtipend.*

Dividend in Law Proceedings, A *dividing* of *ſees* and perquiſites between officers ariſing from writs, *&c.* *Practiſ. Solic'.*

Dividend of Merchants, Is where a juſt ſhare of profits in *trade*, is aſſigned to any one.

Dividend in Stocks, A *dividable* proportionate ſhare of the *intereſt* of *ſtocks*, erected on public funds; as the *South-Sea*, *India*, *Bank*, and *African* ſtocks, *&c.* payable to the adventurers half yearly.

Diviſa, Hath various ſignifications: ſometimes it is uſed for a *device*, award or decree: ſometimes for *deviſe* of a portion or parcel of lands, *&c.* by will: and ſometimes it is taken for the bounds or limits of diviſion of a pariſh or farm, *&c.* As *diviſas perambulare*, to walk the bounds of a pariſh; in which ſenſe it has been extended to the diviſion between countries, and given name to towns, as to the *Deviſes*, a town in *Wiltſhire*, ſituate on the confines of the Weſt *Saxon* and *Mercian* kingdoms. *Leg. H.* 2. *cap.* 9. *Leg. Inæ*, *c.* 44. *Leg. H.* 1. *c.* 57. Cowel.

Divil on the Neck. A tormenting engine made of iron, ſtraitening and winching the *neck* of a man with his legs together, in a horrible manner, ſo that the more he ſtirreth in it the ſtraiter it preſſeth him; formerly in uſe among the perſecuting *papiſts*. Foxe's Acts ſub. R. H. 8.

Divorce, *(divortium a divertendo)* Is a ſeparation of two, *de facto* married together, made by law: it is a judgment *ſpiritual*; and therefore, if there be occaſion, it ought to be reverſed in the ſpiritual court. *Co. Lit.* 335. And, beſides ſentence of *divorce*, in the old law, the woman *divorced* was to have of her huſband a writing called a *bill of divorce*, which was to this effect, *viz. I promiſe that hereafter I will lay no claim to thee, &c.*

There are many *divorces*, mentioned in our books; as *cauſa præcontractus*; *cauſa frigiditatis*; *cauſa conſanguinitatis*; *cauſa affinitatis*; *cauſa profeſſionis*, *&c.* But the uſual *divorces* are only of two kinds, *i. e. a menſa & thoro*, from bed and board; and *a vinculo matrimonii*, from the very bond of marriage. A *divorce a menſa & thoro* diſſolveth not the marriage; for the *cauſe* of it is *ſubſequent* to the marriage, and ſuppoſes the marriage to be lawful: this *divorce* may be by reaſon of adultery in either of the parties, for cruelty of the huſband, *&c.* And as it doth not diſſolve the marriage, ſo it doth not debar the woman of her dower; or baſtardize the iſſue, or make void any eſtate for the life of huſband and wife, *&c.* *Co. Lit.* 235. 3 *Inſt.* 89. 7 *Rep.* 43. The woman under ſeparation by this *divorce*, muſt ſue by her next friend; and ſhe may ſue her huſband in her own name for alimony. *Wood's Inſt.* 62.

A *divorce a vinculo matrimonii*, abſolutely diſſolves the marriage, and makes it void from the beginning, the cauſes of it being precedent to the marriage; as *præcontract* with ſome other perſon, conſanguinity or affinity, within the *Levitical* degrees, impotency, impuberty, *&c.* On this *divorce* dower is gone; and if by reaſon of *præcontract*, conſanguinity, or affinity; the children begotten between them are baſtards. *Co. Lit.* 335. 2 *Inſt* 93, 687. But in theſe *divorces*, the wife, it is ſaid, ſhall receive all again that ſhe brought with her, becauſe the nullity of the marriage ariſes through ſome impediment; and the goods of the wife were given for her advancement in marriage, which now ceaſeth: but this is where the goods are not ſpent; and if the huſband give them away during the coverture without any colluſion, it ſhall bind her: if ſhe knows her goods unſpent, ſhe may bring action of detinue for them; and as for money, *&c.* which cannot be known, ſhe muſt ſue in the ſpiritual court. *Dyer.* 62. *Nelſ. Abr.* 675. This *divorce* enables the parties to marry again. But in the other caſes, if either party wants to marry any other perſon, a power for ſo doing muſt be obtained by act of parliament.

Where lands were formerly given to huſband and wife, and the heirs of their bodies in *frank marriage*; if they had been afterwards *divorced*, the wife was to have her whole lands; and by *divorce* an eſtate tale of baron and feme, it is ſaid, may be extinct. *Godb.* 18. After a ſentence of *divorce* is given in the ſpiritual court *cauſa præcontractus*, the iſſue of that marriage ſhall be baſtards, ſo long as the ſentence ſtands unrepealed: and no proof ſhall be admitted at Common law to the conrrary. *Co. Lit.* 235. 1 *Nelſ.* 674. And iſſue of a ſecond marriage in ſuch caſe, may inherit until the ſentence is repealed. 2 *Leon.* 207. Though it is not ſo where the *divorce* is *a menſa & thoro*, for adultery, *&c.* in which caſe the marriage ſtill continues. *Cro. Car.* 462. And if after a *divorce a menſa & thoro*, either of the parties marry again, the other being living, ſuch marriage is a mere nullity; and by ſentence to confirm the firſt contract, ſhe and her firſt huſband become huſband and wife to all intents, without any formal *divorce* from the ſecond. 1 *Leon.* 173. Alſo on this *divorce*, as the marriage continues, marrying again while either party is living, hath been held within the ſtatute, 1 *Jac.* 1. *c.* 11. Felony, for having married a ſecond huſband, or wife, the former being alive; where a woman was *divorced*, and inhibited by the ſtatute not to marry during her huſband's life. *Cro. Car.* 333. 1 *Nelſ.* 674.

A divorce for *adultery* was anciently *a vinculo matrimonii*; and therefore in the beginning of the reign of Queen *Elizabeth*, the opinion of the church of *England* was, that after a divorce for adultery, the parties might marry again; but in *Foliambe*'s caſe, *H.* 44 *El.* in the ſtar-chamber, that opinion was changed; and archbiſhop *Bancroft*, by the advice of divines, held, that adultery was only a cauſe of divorce *a menſa & thoro*. 3 *Salk.* 138.

On a *divorce a vinculo matrimonii*, by reaſon of *præcontract*, *&c.* the parties may marry again: and in *divorces* for adultery, ſeveral acts of parliament have allowed the innocent party to marry again. Sentence of *divorce* muſt be given in the life of the parties, and not afterwards: but it may be repealed in the ſpiritual court, after the death of the parties. *Co. Lit.* 33, 244. 7 *Rep.* 44. 5 *Rep.* 98. Upon the *divorce* of a man and his wife, equity will not aſſiſt the wife in recovering dower, at the huſband's death, but ſhall leave her to the law; neither ought the ſpiritual court to grant her adminiſtration, ſhe not being ſuch a wife as is intitled to it; nor will the Chancery decree her a diſtributive ſhare. *Preced. Canc.* 111, 112. A *divorce* ſhall be tried by the biſhop's certificate; and not by a jury.

Diurnalis, Signifies as much land as can be ploughed in a day, with an ox; in ſome authors, it is written *diuturna*. *Blount.*

Docket, or **Dogget,** Is a brief in writing on a ſmall piece of paper or parchment, containing the effect of a greater writing. 2 & 3 *P. & M. cap.* 6. *Weſt Symbol. par.* 2. *ſect.* 106. And when rolls of *judgments* are brought into *C. B.* they are *docketted*, and entered on the *docket* of that term; ſo that upon any occaſion you may ſoon find out a judgment, by ſearching theſe *dockets*, if you know the attorney's name. Exemplification of *decrees in Chancery* are alſo *docketted*. See *Practiſ. Attorn. edit.* 1. *p.* 155, 166.

Dogs. The law takes notice of a greyhound, maſtiff *dog*, ſpaniel and tumbler; for trover will lie for them. *Cro. Eliz.* 125. *Cro. Jac.* 44. A man hath a property in a maſtiff: and where a maſtiff falls on another dog, the owner of that dog cannot juſtify the killing the maſtiff; unleſs there was no other way to ſave his dog, as that he could not take off the maſtiff, *&c.* 1 *Saund.* 84. 3 *Salk.* 139. The owner of a dog is bound to muzzle him if miſchievous, but not otherwiſe: and if a man doth keep a dog, that uſeth to bite cattle, *&c.* if after notice given to him of it, his dog ſhall do any hurt, the maſter ſhall anſwer for it. *Ibid.* By *Stat.* 10 *Geo.* 3. *c.* 18. Very ſevere penalties are inflicted on dog ſtealers.

Doctrines, *illegal*, *aſſerting*, or *publiſhing*. Several ſtatutes have been made on this ſubject, as to the *parliament*, *crown*, *&c.* See 13 *Car.* 2. *c.* 1. 1 *Eliz. c.* 3. 13 *Eliz. c.* 1. 6 *Ann. c.* 7. And alſo ſee 1 *Hawk. P.C.* 60. as to miſpriſions againſt the King's perſon and government, by ſpeaking or writing againſt them, *&c.* and *Black. Com.* 4 *V.* 123.

Dog-Days, *(dies caniculares)* Are the hotteſt time of the year, by reaſon the ſun is then in *Leo:* they are reckoned ſixty-four in all, *a tertio idus* Julii *uſque in idus* Septembris.

Dog-draw, Is a manifeſt deprehenſion of an offender againſt veniſon in a *foreſt*, when he is found drawing after a ter a deer, by the ſcent of a hound led in his hand: or where a perſon hath wounded a deer, or wild beaſt, by ſhooting at him, or otherwiſe, and is caught with a *dog drawing* after him to receive the ſame. *Manwood, par.* 2. *cap.* 8.

Dogger, A light ſhip or veſſel; as a *Dutch dogger, &c.* Stat. 31 Ed. 3. cap. 1.

Dogger-fiſh, Are *fiſh* brought in thoſe ſhips. *Stat. ibid.*

Dogger-Men, Fiſhermen that belong to *dogger-ſhips.* 25 H. 8. c. 2.

Doitkin, or *doit,* Was a baſe coin of ſmall value, prohibited by the Stat. 3 *H.* 5. *c.* 1. We ſtill retain the phraſe, in common ſaying, when we would undervalue a man, *that he is not worth a* doit.

Do Law, *(facere legem)* Is the ſame with to make law. *Stat.* 23 *H.* 8. *c.* 14.

Dole, (*dola*) A *Saxon* word ſignifying as much as *pars* or *portio* in the *Latin*; and anciently where a meadow was divided into ſeveral ſhares, it was called a *dole meadow.* 4 Jac. 1. cap. 11. See *Dalus.*

Dolefiſh, Seems to be the ſhare of *fiſh,* which the *fiſhermen,* yearly employed in the *North* ſeas, do cuſtomarily receive for their allowance. *Stat.* 35 *H.* 8. *c.* 7.

Dolg-bote, (*Sax.*) A recompence or amends, for a ſcar or wound. *Sax. Dict. LL. Aluredi Reg. cap.* 23.

Dollar, A piece of foreign coin, going for about 4*s.* 6*d. Lex. Mercat.*

Dom-boc, (*Sax.*) Signifies *liber judicialis,* as appears by the laws of K. *Ed.* 1. This, it is conjectured, was a book of *ſtatutes* of the *Engliſh Saxons,* wherein the laws of the ancient *Saxon* Kings were contained. *Leg. Inæ. c.* 29. See *Dome-book.*

Dome, or **Doom,** (from the Sax. *dom*) A judgment, ſentence, or decree. And ſeveral words end in *dom*; as *kingdom, earldom, &c.* from whence they may be applied to a juriſdiction of a lord, or a king. *Mon. Angl. tom.* 1. *fol.* 284. Alſo there is a *dome of a church*; ſuch as St. *Paul's, &c.*

Dome-book, or *liber judicialis,* A book compoſed under the direction of *Alfred,* for the general uſe of the whole kingdom, containing the local cuſtoms of the ſeveral provinces of the kingdom. This book is now loſt. *Black. Com.* 1 *V.* 64, 65. See *id.* 4 *V.* 404. and ſee alſo *Dom-boc.*

Domesday, (*liber judiciarius, vel cenſualis Angliæ*) Is a moſt ancient record, made in the time of *William* I. called the *Conqueror,* and now remaining in the *Exchequer* fair and legible, conſiſting of *two volumes,* a greater and a leſs; the greater containing a *ſurvey* of all the *lands* in *England,* except the counties of *Northumberland, Cumberland, Weſtmorland, Durham,* and part of *Lancaſhire,* which it is ſaid were never ſurveyed, and excepting *Eſſex, Suffolk,* and *Norfolk*; which three laſt are comprehended in the leſſer volume. There is alſo a *third book,* which differs from the others in form more than matter, made by the command of the ſame King. And there is a *fourth book* kept in the Exchequer which is called *Domeſday*; and, though a very large volume, is only an abridgment of the others. Likewiſe a *fifth book* is kept in the *Remembrancer's* office in the Exchequer, which has the name of *Domeſday,* and is the very ſame with the fourth before mentioned. Our anceſtors had many *dome-books.* King *Alfred* had a roll which he called *Domeſday*; and the *Domeſday* book made by *Will.* I. referred to the time of *Edward* the Confeſſor, as that of King *Alfred* did to the time of *Ethelred, Vide ante.* The fourth book of *Domeſday* having many pictures, and gilt letters in the beginning, relating to the time of King *Edward* the Confeſſor, this led him who made notes on *Fitzherbert's Regiſter* into a miſtake in *p.* 14. where he tells us, that *liber* Domeſday *factus fuit tempore regis Edwardi.*

The book of *Domeſday* was begun by five juſtices, aſſigned for that purpoſe in each county, in the year 1081, and finiſhed *anno* 1086. And it is generally known, that the queſtion whether lands are *antient demeſne,* or not, is to be decided by the *Domeſday* of *Will.* I. from whence there is no appeal: and it is a book of that authority, that even the Conqueror himſelf ſubmitted ſome caſes, wherein he was concerned, to be determined by it. The addition of *day* to this *Dome book* was not meant with any alluſion to the *final day of judgment,* as moſt perſons have conceived; but was to ſtrengthen and confirm it, and ſignifieth the judicial deciſive record or book of *dooming* judgment and juſtice. *Hammond's Annot'. Camden* calls this book *Gulielmi Librum Cenſualem,* the *Tax Book* of King *William*; and it was further called *Magna Rolla Winton.* The dean and chapter of *York* have a regiſter ſtiled *Domeſday*; ſo hath the biſhop of *Worceſter*; and there is an ancient roll in *Cheſter caſtle,* called *Domeſday* Roll. *Blount.* The editor (*J. M.*) hath been informed, that two learned gentlemen are tranſcribing *Domeſday* for publication, which will be a very valuable acquiſition to the public.

Domes-men, Judges, or men appointed to doom, and determine ſuits and controverſies: hence *ægdeme, I deem,* or judge. Vide *days-man.*

Domicellus, Is an old obſolete *Latin* word, anciently given as an appellation or addition to the King's natural ſons in *France,* and ſometimes to the eldeſt ſons of noblemen there; from whence we borrowed theſe additions: as ſeveral natural children of *John of Gaunt,* Duke of *Lancaſter,* are ſtiled *domicelli* by the charter of legitimation. 20 *R.* 2. But according to *Thorn,* the *domicelli* were only the better ſort of ſervants in monaſteries.——Domicellus *Abbatis &* Domicelli *& Servientes Monaſterii, p.* 1748, 1990.

Domigerium, Is ſometimes uſed to ſignify danger; but otherwiſe, and perhaps more properly, it is taken for power over another; *ſub* domigerio *alicujus vel manu eſſe.* Bract. lib. 4. tract. 1. cap. 19.

Domina, A title given to honourable women, who anciently in their own right of inheritance held a barony. *Paroch. Antiq.*

Dominica in Ramis Palmarum, *Palm-Sunday.* Anno 23 Ed. 1.

Dominium, Signifies right or regal power. *Paroch. Antiq.* 498.

Dominus. This word prefixed to a man's name, in ancient times uſually denoted him a knight, or a clergyman; and ſometimes a gentleman, not a knight, eſpecially a lord of a manor.

Domo Reparanda, Is a writ that lies for one againſt his neighbour by the fall of whoſe houſe he fears a damage and injury to his own. *Reg. Orig.* 153.

Domus Converſorum, Was an ancient houſe built or appointed by King *Hen.* 3. for ſuch *Jews* as were *converted* to the Chriſtian faith: but King *Ed.* 3. who expelled the Jews from this kingdom, deputed the place for the cuſtody of the rolls and records of the *Chancery.* See *Rolls.*

Domus Dei, The hoſpital of St. *Julian* in *Southampton,* ſo called. *Mon. Ang. tom.* 2. 440.

Donatio Mortis Cauſa, A death-bed diſpoſition of property ſo called, *viz.* when a perſon in his laſt ſickneſs, apprehending his diſſolution near, delivers or cauſes to be delivered to another the poſſeſſion of any perſonal goods, (under which have been included bonds, and bills drawn by the deceaſed upon his banker) to keep in caſe of his deceaſe. This gift, if the donor dies, needs not the aſſent of his executor; yet it ſhall not prevail againſt creditors: and is accompanied with this implied truſt, that, if the donor lives, the property thereof ſhall revert to himſelf, being only given in contemplation of death, or *mortis cauſa.* Prec. Chan. 269. 1 P. Wms. 406, 411. 3 P. Wms. 357. Black. Com. 2 V. 514.

Donative, (*donativum*) Is a benefice merely given and collated by the patron to a man, without either preſentation to, or inſtitution by the ordinary, or induction by his order. *F. N. B.* 35. And *donatives* are ſo termed, becauſe they began only by the foundation and erection of the *donor. Clergym. Law.* 120. The King might of ancient time found a church or chapel, and exempt it from the juriſdiction of the ordinary: ſo he may by his letters patent give licence to a common perſon to found ſuch a church or chapel, and make it *donative,* not preſentable; and that the incumbent or chaplain ſhall be deprived by the founder and his heirs, and not by the biſhop; which ſeems to be the original of *donatives* in *England. Gwin's Readings.*

When the King ſounds a church, &c. *donative*, it is of courſe exempted from the ordinary's juriſdiction, though no particular exemption is mentioned; and the Lord Chancellor ſhall viſit the ſame: and where the King grants a licence to any common perſon to found a church or chapel, it may be *donative*, and exempted from the juriſdiction of the biſhop, ſo as to be viſited by the founder, &c. *Co. Lit.* 134. 2 *Rol. Abr.* 230. The reſignation of a *donative* muſt be to the donor or patron, and not to the ordinary; and *donatives* are not only free from all ordinary juriſdiction, but the patron and incumbent may charge the glebe to bind the ſucceſſor: and if the clerk is diſturbed, the patron may bring *quare impedit*, &c. Alſo the patron of a *donative* may take the profits thereof when it is vacant. *Co. Lit.* 344. *Cro. Jac.* 63.

If the patron of a *donative* will not nominate a clerk, there can be no lapſe: but the biſhop may compel ſuch patron to nominate a clerk by eccleſiaſtical cenſures; for though the church is exempt from the power of the ordinary, the patron is not exempted: and the clerk muſt be qualified like unto other clerks of Churches; no perſon being capable of a *donative*, unleſs he be a prieſt lawfully ordained, &c. *Yelv.* 61. *Stat.* 14 *Car.* 2. *cap.* 4. 1 *Lill.* 488.

There may be a *donative* of the King's gift with cure of ſouls, as the church of the *Tower* of *London* is: and if ſuch *donative* be procured for money, it will be within the ſtatute of ſimony. *Mich* 9 *Car. B. R.* A parochial church may be *donative*, and exempt from the ordinary's juriſdiction. *Godolph.* 262. The church of *St. Mary le Bone* in *Middleſex* is *donative*, and the incumbent being cited into the ſpiritual court, to take a licence from the biſhop to preach, pretending that it was a chapel, and that the parſon was a ſtipendiary; it was ruled in the King's Bench that it was a *donative*; and if the biſhop viſit, the court of *B. R.* will grant a prohibition. 1 *Mod.* 90. 1 *Nelſ. Abr.* 676.

If a patron of a *donative* doth once preſent his clerk to the ordinary, and the clerk is admitted, inſtituted, and inducted, then the *donative* ceaſeth; and it becomes a church preſentative. *Co. Lit.* 344. But when a *donative* is created by letters patent, by which lands are ſettled upon the parſon and his ſucceſſors, and he is to come in by the *donation* of the King, and his ſucceſſors; in this caſe, though there may be a preſentation to the *donative*, and the incumbent come in by inſtitution and induction, yet that will not deſtroy the *donative*. 2 *Salk.* 541. All biſhopricks being of the foundation of the King, they were in ancient time *donative*. 3 *Rep.* 75.

Donis, Statute *de*, The ſtatute of *Weſtm.* 2. *viz.* 13 *Ed.* 1. *c.* 1. called the ſtatute *de donis conditionalibus*. This ſtatute revives, in ſome ſort, the ancient feodal reſtraints which were originally laid on alienations, by enacting, that from thenceforth the will of the donor be obſerved; and that the tenements ſo given, (to a man and the heirs of his body) ſhould at all events go to the iſſue, if there were any; or if none, ſhould revert to the donor. See very judicious obſervations, &c. on this ſtatute, *Black. Com.* 2 *V.* 112. Tenant in *fee tail* is by virtue of this ſtatute. *Lit. ſect.* 3. And he may bar the intail by fine or recovery, conſequently evade the ſtatute.

Donor and **Donee**. *Donor* is he who gives lands or tenements to another in tail, &c. And the perſon to whom given is the *donee*.

Dorture, (*dormitorium*) Is the common room or chamber, where all the *fryers*, or religious of one *convent*, ſlept and lay all night. *Stat.* 25 *H.* 8. *c.* 11.

Doſſale, A word uſed for hangings or tapeſtry.—— *Doſſale ſive Tapeſium.* Mat. Par.

Dote Aſſignanda, Is a writ that lay for a widow, where it was found by office, that the King's tenant was ſeiſed of lands in fee, or fee-tail at the day of his death, and that he held of the King in chief, &c. In which caſe, the widow came into the *Chancery*, and there made oath, that ſhe would not marry without the King's leave; whereupon ſhe had this writ to the eſcheator, to aſſign her *dower*, &c. But it was uſual to make the aſſignment of the dower in the *Chancery*, and to award a writ to the eſcheator, to deliver the lands aſſigned unto her. *Stat.* 15 *Ed.* 4. *cap.* 4. *Reg. Orig.* 297. *F. N. B.* 263. See *Dower*.

Dote unde nihil habet, Is a writ of *dower*, that lies for the widow againſt the tenant who bought land of her huſband in his life-time, whereof he was ſolely ſeiſed in fee-ſimple or fee-tail, and of which ſhe is dowable, *F. N. B.* 147. *quæ.* If it does not lie againſt the heir, or any other perſon ſeiſed of the land? See the law and the form of the writ in *Booth's real* actions 166. &c. See *Dower*.

Dotis Admenſuratione, *Admeaſurement* of *dower*, where the widow holds more than her ſhare, &c. See *Admeaſurement*. See *Dower*.

Double Plea, (*duplex placitum*) Is where a defendant alledgeth for himſelf two ſeveral matters, in bar of the plaintiff's action, when one of them is ſufficient; which ſhall not be admitted: as if a man plead ſeveral things, the one not depending upon the other, the plea is accounted *double*, and will not be allowed; but if they mutually depend on each other, and the party may not have the laſt plea without the firſt, then it ſhall be received. *Kitch.* 223. And where a *double* plea that is wrong, is pleaded; if the plaintiff reply thereto, and take iſſue of one matter; if that be found againſt him, he cannot afterwards move in arreſt of judgment; for by the replication it is allowed to be good. 18 *Ed.* 4. 17.

If a man pleads two or more matters, when he is compelled to ſhew them, it makes not the *plea double*; ſo it is where two diſtinct things are pleaded, which require but one anſwer: and in caſe a man pleads two ſeveral matters or things, and only one is material, the other being ſurpluſage, or but matter of inducement, and needing no anſwer, the plea is not *double*. *Hob.* 197. Where there are ſeveral inducements to a plea, they ſhall not make the *plea double*: and *double pleas* are allowable in aſſiſes of *novel diſſeiſin*, &c. but not in other actions. *Jenk. Cent.* 75.

By *Stat.* 4 *Ann. c.* 16. *ſect.* 4. It ſhall be lawful for any defendant or tenant in any action or ſuit, or for any plaintiff in replevin, in any court of record, with the leave of the ſame court, to plead as many ſeveral matters thereto, as he ſhall think neceſſary for his defence. That is, in ſo many ſeparate and diſtinct pleas, and where there are more pleas than one. By virtue of this ſtatute defendant is ſaid to plead *double*, by leave of the court.

An heir ſhall not have leave to plead *riens per deſcent* with another plea, except he make *affidavit* that he has *riens per deſcent*; nor ſhall an *adminiſtrator* have leave to plead *plene adminiſtravit, and no aſſets*, without an affidavit that he has no aſſets. 10 *Mod.* 334. *Trin.* 2 *Geo. B. R. Carrington* v. *Warren*. *Sed qu.* If this practice of making an affidavit, in theſe caſes, is now in uſe? Yet ſee Notes in *C. B.* 228, 234.

A motion was made for liberty to *rejoin double*, as being within the equity of the act, which allows pleading double. But the court ſaid, that they thought that this would be intirely inconvenient, and out of the reaſon of the act, and therefore refuſed it. 2 *Barnard. Rep.* 6 *Trin.* 5. *Geo.* 2. *Anon*.

After a judge's *order for time to plead*, *pleading an iſſuable plea*, defendant moved to plead double matter, and the queſtion was, whether a rule for that purpoſe ought to be granted or not? The court took time to conſider, and after conferring with the judges of other courts, gave defendant leave to plead double, pleading iſſuable pleas, and taking ſhort notice of trial. *Notes in C. B.* 244. *Mich.* 10 *Geo.* 2. *Leighton* v. *Leighton*.

Defendant had pleaded *non aſſumpſit infra ſex annos*, and moved to add to that plea, *non aſſumpſit generally*, which was denied. After defendant had pleaded a ſingle plea, he cannot have leave to plead double. *Notes in C. B.* 245. *Hill.* 10 *Geo.* 2. *Nevil* v. *Fiſher*.

The court gave defendant leave to plead double, viz. *a diſtreſs for damage feaſant* and *for rent in arrear*. This is not ſtronger than *Not guilty* and *liberum tenementum*, *ſolvit ad diem*, and a *mutual debt*, which have been granted. *Notes in C. B.* 247. *Trin.* 11 & 12 *Geo.* 2. *Baynes* v. *Lutwidge*.

All pleas ought to be ſingle, that the jury may not be troubled and perplexed with two many things at once. *Smith's Rep. Angl. lib.* 2. *c.* 13.

Double Quarrel, (*duplex querela*) Is a complaint made by any clerk, or other, to the archbiſhop of the province, againſt an inferior ordinary, for delaying or refuſing to do juſtice in ſome cauſe eccleſiaſtical; as to give ſentence, inſtitute a clerk, &c. and ſeems to be termed a *double quarrel,* becauſe it is moſt commonly made againſt both the judge, and him at whoſe ſuit juſtice is denied or delayed: the effect whereof is, that the archbiſhop taking notice of the delay, directs his letters under his authentical ſeal to all clerks of his province, commanding them to admoniſh the ordinary within a certain number of days to do the juſtice required, or otherwiſe to appear before him or his official, and there alledge the cauſe of his delay: and to ſignify to the ordinary, that if he neither perform the thing enjoined, nor appear and ſhew cauſe againſt it, he himſelf, in his *court of audience,* will forthwith proceed to do the juſtice that is due. *Cowel.*

Doubles, (*Fr.*) Signify as much as letters patent. *Stat.* 14 *H.* 6. *c.* 6.

Dozen Peers, Were *twelve peers,* aſſigned at the inſtance of the *barons* in the reign of K. *H.* 3. to be privy counſellors to the King, or rather *conſervators* of the *kingdom.*

Dover Caſtle. The conſtable of *Dover caſtle* ſhall not hold plea of any foreign county within the caſtle gates, except it concern the keeping of the caſtle; nor ſhall he diſtrain the inhabitants of the ports, to plead elſewhere or otherwiſe than as they ought, according to the charters, &c. *Stat.* 28 *Ed.* 1. *c.* 7.

Dow, To give or *endow,* from the *Latin* word *do.*

Dowager, (*dotata dotiſſa*) A widow endowed; applied to the widows of Princes, Dukes, Earls, and other great perſonages.

Dowager, (*Queen*) Is the widow of the King, and as ſuch enjoys moſt of the privileges belonging to her as Queen conſort. But it is not high treaſon to conſpire her death, or violate her chaſtity; becauſe the ſucceſſion to the crown is not thereby endangered. But no man can marry her, without ſpecial licence from the King, on pain of forfeiting his lands and goods. 2 *Inſt.* 18. See *Riley's Plac. Parl.* 672. and *Black. Com.* 1 *V.* 224.

Dower, (*dotarium*) Is a portion which a widow hath of the lands of her huſband after his deceaſe, for the ſuſtenance of herſelf, and education of her children. 1 *Inſt.* 30.

Under this head is to be conſidered,

I. *The ſeveral kinds of dower.*
II. *What woman ſhall be endowed, and of what eſtate.*
III. *Of the aſſignment and admeaſurement of dower.*
IV. *What ſhall be deemed a bar of dower.*
V. *Of the proceedings in dower.*

I. *Of the ſeveral kinds of dower.*

There were formerly five kinds of *dower* in this kingdom. 1. *Dower by the Common law,* which is a third part of ſuch lands or tenements whereof the huſband was ſole ſeiſed in fee-ſimple, or fee-tail, during the coverture; and this the widow is to enjoy during her life.

2. *Dower by cuſtom,* which is that part of the huſband's eſtate to which the widow is intitled after the death of her huſband, by the *cuſtom* of any manor or place, ſo long as ſhe lives ſole and chaſte, and this is more than one third part, for in ſome places ſhe ſhall have *half* the land, as by the cuſtom of *gavelkind*; and in divers manors the widow ſhall have the *whole* during her life, which is called her *free-bench:* but as cuſtom may inlarge; ſo it may abridge *dower* to a 4th part. *Co. Lit.* 33.

3. *Dower ad oſtium eccleſiæ,* made by the huſband himſelf immediately after the marriage, who named ſuch particular lands of which his wife ſhould be endowed; and in ancient time it was taken, that a man could not by this *dower,* endow his wife of more than a third part, though of leſs he might: and as the certainty of the land was openly declared by the huſband, the wife after his death might enter into the land of which ſhe was endowed without any other aſſignment. *Co. Lit.* 34. *Lit. ſect.* 39.

4. *Dower ex aſſenſu patris,* which likewiſe was of certain lands named by a ſon who was the huſband, with the conſent of his father, and always put in writing as ſoon as the ſon was married: and if a woman thus endowed, or *ad oſtium eccleſiæ,* after the death of her huſband, entered into the land allotted her in *dower,* and agreed thereto, ſhe was concluded to claim any *dower* by the Common law. *Lit. ſect.* 41.

5. *Dower de la pluis belle,* which was where the wife was endowed with the faireſt part of her huſband's eſtate; but of all theſe writs of *dower,* the two firſt are now only in uſe. 1 *Nelſ. Abr.* 679.

II. *What woman ſhall be endowed, and of what eſtate.*

Dower is much favoured in law, being for the benefit of widows: wherefore the wife of one *non compos mentis,* of an ideot, outlaw, or one attainted of felony, may be endowed: but not of a perſon attainted of treaſon; nor the wife of of an alien, Jew, &c. 1 *Inſt.* 33, 37. *Stat.* 1 *Ed.* 6. *cap.* 12. 5 *Ed.* 6. *c.* 11.

The wife of a man who is baniſhed ſhall have *dower* in his life-time; it is held otherwiſe, if he is profeſſed in religion: and a jointreſs of a baniſhed huſband, ſhall enjoy her jointure, in his life. *Co. Lit.* 133. *Perk.* 5, 307.

If a woman be of the age of nine years, at the death of her huſband, ſhe ſhall be endowed of whatſoever age he is; becauſe after the death of the huſband, the marriage is adjudged lawful. *Co. Lit.* 33.

Where the huſband's eſtate is ſuch, that by no poſſibility iſſue begotten on his wife might inherit as heir to him; there the wife may not be endowed: as if lands are given to a man and the heirs he ſhall beget on his preſent wife, and ſhe dies; and then he takes another wife, ſhe ſhall not have *dower:* but in caſe land be given to the huſband and wife in tail, the remainder in tail to the huſband, and the firſt wife dying without iſſue, he marries another wife; this ſecond wife will be intitled to *dower,* after his death. *Lit. Sect.* 53. 40 *E.* 3. 4. 2 *Shep. Abr.* 63. For here he hath an eſtate in tail. The wife of a *tenant in common,* but not a *jointenant,* ſhall have *dower*; and ſhe ſhall hold her part in common with the tenants in common. *Kitch.* 160.

The wife of a *felo de ſe* ſhall have dower. *Plow.* 261. *a.* 262. *a.* So if the huſband be outlawed in treſpaſs, or any civil action, for this works no corruption of blood, or forfeiture of lands. *Bro.* 82. *Perk.* 388. *Co. Lit.* 31. *a.*

If a woman being a lunatick kill her huſband, or any other, yet ſhe ſhall be endowed, becauſe this cannot be felony in her who was deprived of her underſtanding by the act of God; ſo though ſhe be of ſound mind, and refuſed to bring an appeal of his death, when he is killed by another, yet ſhe ſhall be endowed; for this is only a waver of that privilege the law has given her to be avenged of her huſband's murderer; ſo it ſeems if ſhe refuſes to viſit and aſſiſt her huſband in his ſickneſs, yet ſhe ſhall be endowed, for this is only undutifulneſs, which the law does not puniſh with the loſs of her entire ſubſiſtence. *Perk.* 364, 365.

With reſpect to the eſtate *whereof a woman is dowable.*

By our law, all the goods and chattels of the wife, are the huſband's; and if ſhe be an inheritrix, the huſband holds her land during her life; alſo if he hath iſſue by her, he ſhall hold it for his own life, by the *curteſy of England:* And if he have any land in fee, whereof he is poſſeſſed during the marriage, ſhe is to have a third part thereof for her life, as her *dower*; though ſhe bring nothing to the huſband, and whether ſhe hath iſſue by him or not. *Lit.* 36.

There are three things to intitle *dower, viz. Marriage, ſeiſin,* and *death* of the *huſband:* the *marriage,* muſt be good and lawful; and continue to the huſband's death; and a wife ſhall be endowed of a *ſeiſin in law,* as well as of a *ſeiſin in deed*; as where lands and tenements deſcend to the huſband, before entry, he hath but a ſeiſin in law, and yet the wife ſhall be endowed although it be not reduced to an actual poſſeſſion. *Co. Lit.* 31, 32, &c. And it is not neceſſary that ſeiſin ſhould continue during the coverture; for if the husband aliens the lands, *&c.* the wife ſhall be nevertheleſs endowed. *Ibid.* 32, 35. If lands are exchanged by the husband for other lands, the wife may be endowed of which lands ſhe will, as the husband was ſeiſed of both; though ſhe may not be endowed of the lands given and taken in exchange. *Co. Lit.* 31.

Where the eſtate, which the husband hath during the marriage, is ended, there the wife ſhall loſe her *dower.* *New Nat. Br.* 333. But of an eſtate-tail in lands determined, a woman ſhall be endowed; in like manner as a man may be tenant by the curteſy of her lands. *Co. Lit.* 31. And if a wife be endowed of her third part, and afterwards evicted by an elder title; ſhe ſhall have a new writ of *dower*, and be endowed of the other lands. 2 *Danv. Abr.* 670. Though this is, where it is the immediate eſtate deſcended to the heir; and not when it is the eſtate of an alienee. 9 *Rep.* 17. The wife is *dowable* where lands are recovered againſt the husband by default or covin: and a woman deforced of her *dower* ſhall recover damages, *viz.* the value of her *dower* from her husband's death. 13 *E.* 1. 20 *H.* 3. If the husband doth not die ſeiſed, after demand and refuſal to aſſign *dower* to her, ſhe ſhall have damages from the time of the refuſal. *Jenk. Cent.* 45. She ſhall be endowed of a reverſion, expectant on a term of years; and of a rent reſerved thereon. *Lutw.* 729. If the husband hath only an eſtate for life, *remainder to another in tail*, though the remainder over is to his heirs, the wife ſhall not be endowed. 2 *Danv.* 656. A woman ſhall not be endowed of the goods of her husband; nor of a caſtle, or capital meſſuage: But of all other lands and tenements ſhe may. *Co. Lit.* 35.

A grantee of a rent in fee or tail, dies without heir, his wife ſhall be endowed: But not where the rent ariſes upon a reſervation to the donor and his heirs, on a gift in tail, and the donee dies without iſſue; for this is a collateral limitation. *Plowd.* 156. *F. N. B.* 149. If during the coverture, the huſband doth extinguiſh rents by releaſe, *&c.* yet ſhe ſhall be endowed of them; for as to her dower, in the eye of the law, they have continuance. *Co. Lit.* 32. And where a rent is deſcended to the huſband, but he dies before any day of payment; notwithſtanding the wife ſhall be endowed of it. 1 *H.* 7. 17. If lands are given to the huſband and wife in tail, and after the death of the husband, the wife diſagrees, ſhe may recover her *dower*; for by her waiving her eſtate, her huſband in judgment of law was ſole ſeiſed *ab initio.* 3 *Rep.* 27. If lands are improved, the wife is to have one third according to the improved value. *Co. Lit.* 32. And if the ground delivered her be ſowed, ſhe ſhall have the corn. 2 *Inſt.* 81.

Dower is an inſeparable incident to an eſtate in tail or fee that cannot be taken away by condition: If one ſeiſed in fee of lands make a gift in tail, on condition that the wife ſhall not have *dower*, the condition is void. 6 *Rep.* 41. If tenant in tail die without iſſue, ſo that the land reverts to the donor; or in caſe he covenants to ſtand ſeiſed to uſes, and dies, his wife will be endowed: And a deviſe of land by the husband to his wife by will, is no bar of her *dower*, but a benevolence. 8 *Rep.* 34. *Yelv.* 51. *Bro. Dower.* 69.

It is held, that land deviſed to a man's wife, who is intitled to *dower* of his lands (it not being mentioned in ſatisfaction of her *dower*) ſhall be taken as a voluntry gift, and not any recompence or bar of *dower:* And in this caſe the widow brought a writ and recovered, againſt which the heir could have no relief. *Preced. Canc.* 133. A perſon grants and conveys land to *D.* and his heirs, on condition, to redemiſe the ſame back, *&c.* which afterwards he does, and dies; here *D.'s* widow may nevertheleſs be *endowed.* *Abr. Caſ.* 217. *A.* is tenant in tail of lands, the remainder to *B.* in tail, remainder to *A.* in fee; if *A.* bargains and ſells the land to *C.* and his heirs, the wife of the bargainee ſhall have *dower*, determinable upon the death of the tenant in tail. 10 *Rep.* 96. And if a feoffment be made upon condition to reinfeoff, and the feoffee take a wife, ſhe may have her *dower* till reinfeoffment, or an entry made for not doing it: And ſo it is of other defeaſible eſtates. 2 *Rep.* 59. *Perk. ſect.* 420. If one be diſſeiſed, and after doth marry, if he die before entry, his wife ſhall not have *dower:* And where a perſon recovers land in a real action, and before his entry or execution made he dieth, the wife ſhall not be endowed of this land. 2 *Rep.* 56. *Perk.* 377. In theſe caſes the husband was not actually ſeiſed, *ſed qu.?* for, as before obſerved, where there is a ſeiſin in law, ſhe ſhall be endowed. *Co. Lit.* 31, 32, *&c.* So that theſe caſes depend on the conſtruction of what is, and what is not a *ſeiſin* in *law.* And ſee *Div.* IV. towards the end, and *Perk.* 379, 380.

Of copyhold lands a woman ſhall not be endowed, unleſs there be a ſpecial cuſtom for it; but if there be a cuſtom to be endowed thereof, then ſhe ſhall have the aſſiſtance of ſuch laws as are made for the more ſpeedy recovery of dower in general, being within the ſame miſchief, and therefore ſhall recover damages within the ſtatute of *Merton.* 4 *Co.* 22. *Hob.* 216. 5 *Co.* 116.

Of tithes women were not dowable till 32 *H.* 8. *c.* 7. for before that ſtatute tithes were not a lay fee, but now they are dowable of them. *Style's P. R.* 122. 11 *Co.* 25. *Co. Lit.* 32. *a.* 159. *a.* 1 *Rol. Abr.* 682.

Of an advowſon, be it appendant or in groſs, a woman ſhall be endowed, for this may be divided as to the fruit and profit of it, *viz.* to have the third preſentation. See *Perk.* 343, 344. *F. N. B.* 148, 150. *Co. Lit.* 32. *Cro. Jac.* 621. *Cro. Eliz.* 360. 1 *Rol. Abr.* 683. *Co. Lit.* 379. 3 *Leon.* 155. *Cro. Jac.* 691.

The eſtate, of which the husband muſt be ſeiſed, muſt be an eſtate in fee-ſimple, fee-tail general, or where the husband is ſeiſed as heir of the ſpecial tail, which neceſſarily excludes deſcendible freeholds. 1 *Rol. Abr.* 676. *Plow.* 256. 10 *Co.* 98. See 2 *Danv.* 656.

III. *Of aſſignment and admeaſurement of dower.*

At common law, *dower* is aſſigned by the ſheriff, by the King's writs, or by the heir, *&c.* by agreement among themſelves; And the wife cannot enter otherwiſe into her *dower.* 1 *Bulſt.* 35. By the ancient law of *England*, till *Magna Charta*, a woman was to continue a whole year in her husband's houſe, for the aſſignment of her *dower.* 2 *Inſt.* 17. By that ſtatute, a widow ſhall immediately after her husband's death have her marriage inheritance; and remain in his chief houſe forty days, within which time *dower* is to be aſſigned her of the third part of all his lands, *&c.* 9 *H.* 3. *c.* 7. The aſſignment of the lands is to be for her life; and if lands are aſſigned to a woman for years, in recompenſe of *dower*; this is no bar of *dower*; for it is not ſuch an eſtate therein as ſhe ſhould have. 2 *Danv. Abr.* 668. Alſo where other land is aſſigned to the woman, that is no part of the lands wherein ſhe claims *dower*; that aſſignment will not be good or binding: And there muſt be certainty in what is aſſigned; otherwiſe, though it be by agreement, it may be void. 4 *Rep.* 2. 1 *Inſt.* 34. If a wife accept and enter upon leſs land than the third of the whole, on the ſheriff's aſſignment ſhe is barred to demand more. *Moor* 679. But if where a wife is intitled to *dower* of the lands of her firſt husband; her ſecond husband accepts of this *dower* leſs than her third part, after his death ſhe may refuſe the ſame, and have her full third part. *Fitz. Dower*, 121.

If a wife having right of *dower* in the land, accept of a leaſe for years thereof after the death of her husband, it ſuſpends the *dower*; though not ſuch acceptance of a leaſe before the husband's death, *&c.* for then the wife has only a *title* to have *dower*, and not an *immediate right* of *dower.* *Bro. ca.* 372. *Jenk. Cent.* 15. A widow accepting of *dower* of the heir, againſt common right, ſhall hold it ſubject to the charges of her husband; but otherwiſe it is if ſhe be endowed againſt common right by the ſheriff. 2 *Danv.* 672. By proviſion of law, the wife may take a third part of the husband's lands, and hold them *diſcharged.* *Ibid.* If *dower* be aſſign'd a woman on condition, or with an exception; the condition and exception are void. *Cro. Eliz.* 541. Detaining of charters concerning the ſame land of which the widow demands her *dower*, is a good plea by the heir in delay of her *dower:* But if ſhe delivers up the evidences, ſhe ſhall have judgment; though if ſhe denies the detainer, and it is found againſt her, ſhe loſes her *dower.* *Hob.* 199. 9 *Rep.* 19.

Where there are three manors, one of them may be aſſigned to the wife in *dower* in lieu of *dower* in all three; though it is ſaid that a third part of every manor ought to be aſſigned. *Moor* 12, 47. The ſheriff may aſſign a rent out of the land in lieu of *dower*; and her acceptance of the rent will bar *dower* out of the ſame land, but not of other lands. 2 *And*. 31. *Dyer* 91. 1 *Nelſ. Abr*. 680. When no diviſion can be made of what the wife is *dowable*, *dower* is to be aſſigned in a ſpecial manner; as of the third preſentation to a church, the third toll-diſh of a mill; common certain, a third year; the third part of the profits of an office, fair, market, &c. 1 *Rol. Abr*. 678.

A woman intitled to *dower* cannot enter till it be aſſigned to her, and ſet out either by the heir, tertenant or ſheriff in certainty. 1 *Rol. Abr*, 681. *Dyer* 343. *Plowd*. 529. *Bro*. 16. *Co. Lit*. 34. *b*. 37. *a*. *b*.

None can aſſign *dower* but thoſe who have a freehold, or againſt whom a writ of *dower* lies; therefore a tenant by ſtatute merchant, ſtatute ſtaple, or *elegit*, or leſſee for years cannot aſſign *dower*, for none of theſe have an eſtate large enough to anſwer the plaintiff's demand. *Perk*. 403, 404. *Co. Lit*. 35. *Bro*. 63, 94. 1 *Rol. Abr*. 681. 6 *Co*. 57.

If a woman be *dowable* of land, meadow, paſture, wood, &c. and any of theſe be aſſigned in lieu of *dower* of all the reſt, it is good, though it be againſt common right, which gives her but the third part of each, for the heir's enjoyment of the reſidue ſufficiently accounts for her title to what ſhe has. 1 *Rol. Abr*. 683. *Moor*, *pl*. 47, 66.

If lands whereof a woman hath no right to be endowed, or a rent out of ſuch lands be aſſigned in lieu of her *dower*, this does not bar her demand of *dower*, for ſhe having no manner of title to thoſe lands, cannot without livery and ſeiſin be any more than tenant at will, which is no ſufficient recompence for an eſtate for life, which her dower was to be. *Perk*. 407. *Co. Lit*. 34. 4 *Co*. 1. *Co. Lit*. 169. *Bro*. 3.

As to admeaſurement *of dower*.

If the heir within age aſſign to the wife more land in *dower* than ſhe ought to have, he himſelf ſhall have a writ of *admeaſurement* of dower at full age by the Common law; ſo if too much be aſſigned in dower by the heir within age, or his guardian in chivalry; and the heir dies, his heir ſhall have ſuch writ, to rectify the aſſignment; but the heir, in whoſe time the aſſignment of too much was by the guardian, cannot have ſuch writ till his full age, becauſe till then the intereſt of the guardian continues; and if any wrong be done, it is to the guardian himſelf, and not to the heir; if a diſſeiſor aſſigns too much, the heir of the diſſeiſee ſhall have *admeaſurement* by the Common law. *F. N. B*. 148. *Co. Lit*. 39. *a*. 2 *Inſt*. 367.

If the heir within age, before the guardian enters, aſſigns too much in dower, the guardian ſhall have a writ of *admeaſurement* of dower, by the ſtatute of *W*. 2. *c*. 7. before which ſtatute the guardian had no remedy, becauſe the writ of *admeaſurement* being a real action, lay not for the guardian, who had but a chattel; alſo by the ſame ſtatute it is provided, that if the guardian purſue ſuch writ feintly, or by colluſion with the wife, the heir at full age ſhall have a writ of *admeaſurement*, and may alledge the feint pleading or colluſion generally. 2 *Inſt*. 367.

If the wife after aſſignment of dower *improves* the lands, ſo as thereby they become of greater value than the other two parts, no writ of *admeaſurement* lies; ſo if they be of greater value, by reaſon of mines open at the time of the aſſignment, no writ of *admeaſurement* lies, becauſe the land in quantity was no more than ſhe ought to have; and then it is lawful to work the mines, which were open at the time of ſuch aſſignment. *F. N. B*. 149. 2 *Inſt*. 368. 5 *Co*. 12.

IV. *What ſhall be deemed a bar of dower.*

If a wife levies a fine with her huſband, ſhe bars herſelf of her *dower*: And if a common recovery be had againſt the huſband and wife, of the huſband's lands, it ſhall bar the wife of her *dower*. 2 *Rep*. 74. *Plowd*. 514. Where a woman releaſes her right to him in reverſion, her *dower* may be extinguiſhed. 8 *Rep*. 151. If a wife commits treaſon or felony; or if ſhe elope from her huſband, and live with the adulterer willingly, without being reconciled to the huſband, ſhe ſhall loſe and forfeit her *dower*; but if the huſband be reconciled to her, and ſhe lives with him again, ſhe ſhall be endowed. 2 *Inſt*. 453. *Dyer* 106. And if after elopement of the wife, her huſband and ſhe bemean themſelves as huſband and wife, it is evidence of reconciliation. *Dyer* 196. If a man grants his wife with her goods to another, and the wife by virtue of the grant lives with the grantee during the life of the huſband, this ſhall forfeit her *dower*; for ſhe lived in adultery, notwithſtanding the grant. *Co. Lit*. 135. 2 *Danv*. 662. 2 *Inſt*. 435.

When a jointure is made of lands *after* marriage, the wife may waive it, and demand her *dower*: But it is otherwiſe when made *before* marriage, according to the ſtatute 27 *Hen*. 8. *c*. 10.

If a jointure be made to the wife *during the coverture*, and after the huſband and wife levy a fine thereof; yet this is no bar to her *dower* of any other lands of her huſband's, becauſe the jointure being made *after* the marriage, ſhe had election after the death of the huſband to refuſe it, and claim *dower*, and not before, and then the fine levied of the jointure before her time for election of *dower* was come, can be no bar for electing of *dower* when it is come. 1 *Bulſt*. 173. 1 *Leon*. 285. *Dyer* 358.

If a woman takes a leaſe for life of her huſband's lands after his death, ſhe ſhall have no *dower*, becauſe ſhe cannot demand it againſt herſelf; and if ſhe takes a leaſe for years only, yet ſhe ſhall not ſue to have *dower* during theſe years, becauſe it was her own act to ſuſpend the fruit and effect of her *dower* during that time. *Perk*. 350. *F. N. B*. 149. *Mo. pl*. 403.

If a recovery be had againſt the huſband by colluſion, this ſhall not bar the wife of *dower*; as if the recovery be by confeſſion, or reddition, which are always underſtood to be by colluſion, the huſband always acting and concurring in obtaining of them; but it ſeems to have been a very great doubt, whether a recovery by default ſhould not be a bar: and the better opinion being that ſuch recovery was a bar at Common law; therefore the ſtatute of *W*. 2. *cap*. 4. was made, which ordains that notwithſtanding ſuch recovery by default, &c. pleaded, the tenant ſhall moreover in bar of the *dower* ſhew his right to the tenements recovered; and if it be found that he had no right, then ſhall the demandant recover her *dower*, notwithſtanding ſuch recovery by default againſt her huſband. 2 *Inſt*. 349. *Perk*. 376.

By the ſtatute of *W*. 2. *cap*. 4. it appears, that if the recoverer had right, then the wife is barred; therefore if the heir of the diſſeiſor be in by deſcent, and the diſſeiſee enters upon him, and marries, and the heir of the diſſeiſor recovers by default, or reddition, in a writ of entry, in nature of an aſſiſe, and the huſband dies, his wife ſhall not have *dower*, becauſe he, who recovered, had right to the poſſeſſion by the deſcent; *aliter*, if this diſſeiſin, deſcent, &c. were *after* marriage, becauſe the huſband was ſeiſed before of a rightful eſtate during the coverture, whereof his wife had title of *dower*, which cannot be defeated by the diſſeiſin, deſcent and recovery, which all happened during the coverture. *Perk*. 379, 380.

If the huſband levy a fine with proclamation of his lands, and dies, his wife is bound to make her claim within five years after his death; otherwiſe ſhe ſhall be barred of her *dower*; for though her title of *dower* was not conſummate at the time of the fine levied; yet it being initiate by the marriage and ſeiſin of the huſband, the fine begins to work upon it preſently after the huſband's death; and if ſhe does not claim it within five years after, ſhe ſhall be barred. 2 *Co*. 93. 10 *Co*. 49, 99. 3 *Inſt*. 216. *Hob*. 265. *Mo. pl*. 154, 879. *Dyer* 224. 13 *Co*. 20.

V. *Of the proceedings in dower.*

The wife is, as ſoon as ſhe can after the deceaſe of her huſband, to demand her *dower*, leaſt ſhe loſe the value from the time of his death: And in action of *dower*, the firſt proceſs is *ſummons* to appear: And if the tenant or defendant do not appear, nor caſt an eſſoin, a grand *cape* lies to ſeize the lands, &c. But on the return of the writ of ſummons, the attorney for the tenant or defendant may enter with the filazer that the tenant appears, and prays *view*, &c. Then a writ of view goes out, whereby the ſheriff is to ſhew the tenant the land in queſtion; upon the return of which writ of view, the tenant's attorney takes a declaration, and puts in a plea; the moſt general one is, *ne unques ſeizie*, &c. *viz.* that the huſband was never ſeiſed of any eſtate, whereof the wife can be endowed; and when iſſue is joined, you muſt proceed to trial, as in other actions: Upon trial, the jury are to give damages for the meſne profits from the death of the huſband (if he die ſeiſed) for which, execution ſhall be made out; and then you have a writ to the ſheriff to give poſſeſſion of a third part of the lands. *Pract. Solic. p.* 335, 336. A widow may recover her *dower* with a *ceſſat executio*, in caſe there be any thing objected, precedent to the title of *dower*, &c. till that is determined. 1 *Nelſ.* 684, 687. 1 *Salk.* 291. Judgment in *dower* is to recover a third part of lands and tenements *per Metas & Bundas.* A wife may have her *writ of dower* againſt an heir, an alienee, a diſſeiſor, &c. or againſt any one that has power to aſſign *dower*; if the lord enters on the land for an eſcheat, ſhe may bring it againſt him, but to the King ſhe muſt ſue by petition. 9 *Rep.* 10. *Plowd.* 141. *Dyer* 263. *Co. Lit.* 59. This writ was brought againſt eight perſons feoffees of the husband after marriage, two confeſſed the action, and the other ſix pleaded to the iſſue; here the demandant had judgment to recover the third part of two parts of the land, in eight parts to be divided: And after the iſſue being found for the demandant againſt the ſix, ſhe recovered againſt them the third part of the ſix parts of the ſame land as her *dower*. *Dyer* 187. *Co. Lit.* 32.

At the Common law, before the ſtatute of *W.* 1. *c.* 39. if a woman had accepted any part of her *dower*, though never ſo ſmall, of any one tenant in any one county or town, ſhe had no other remedy for the reſidue, but by a writ of right of *dower*; for if ſhe brought a writ of dower *unde nihil habeat*, it was a good plea in abatement, that ſhe had accepted ſuch a part of ſuch a tenant, in ſuch a town or county; which being a great miſchief to the woman is remedied by that ſtatute, which provides that it ſhall be no plea in abatement, to ſay that ſhe hath received part of her *dower* of any other perſon before the writ purchaſed; and this extends as well to guardian in chivalry as to the tenant of the land, becauſe ſuch guardian is to render her *dower*. 2 *Inſt.* 261.

As to damages in *dower* they are given by the ſtatute of *Merton*, *c.* 1. but that ſtatute extends only to the poſſeſſory action of dower *unde nihil habeat*, and not to the *writ of right* of *dower*, becauſe they are intended to be given for the *detention* of the poſſeſſion; and on *writs* of *right*, where the *right* itſelf is queſtionable, no damages are given, becauſe no wrong done till the right be determined; alſo that ſtatute extends only to lands, whereof the husband died ſeiſed; and therefore judgment for the damages was reverſed, becauſe the jury did not find that the husband died ſeiſed; for otherwiſe ſhe ſhall have no damages; as if the husband aliens and takes back an eſtate for life, the wife ſhall recover *dower*, but no damages; becauſe this dying ſeiſed was only of an eſtate of *freehold*; but if he makes a leaſe for years only, rendring rent, ſhe ſhall recover a third part of the reverſion with a third part of the rent and damages, becauſe there he died ſeized as the ſtatute ſpeaks. *Co Lit.* 32. *Dyer* 284. *pl.* 33. *Yelv.* 112. *Dr. & Stud. lib.* 2. *c.* 13. *ſ.* 166. 2 *Inſt.* 80.

Damages muſt be after demand of *dower*, for the heir is not bound to aſſign this proviſion till demanded, becauſe the law caſts the freehold of the whole upon him, which he cannot divide without the concurrence of the wife; but a demand *in pais* before good teſtimony is ſufficient; and if the heir appear the firſt day on ſummons, and plead that he hath been always ready, and ſtill is, to render her *dower*; ſhe may plead ſuch requeſt; and iſſue may be taken upon it, but the *feoffee of the heir* cannot plead *tout temps priſt*, becauſe he had not the land all the time ſince the death of the anceſtor, and therefore ſhe ſhall recover the meſne profits, and damages againſt him, and if he hath not provided his indemnity and recompence againſt the heir, it is his own folly. *Co. Lit.* 32.

If the heir or feoffee aſſign *dower*, and the wife accepteth thereof, ſhe loſes her damages, becauſe having the *dower*, which is the principal, ſhe cannot ſue for the damages, which are but conſequential or acceſſory. *Co. Lit.* 33. *a.*

Damages are given in *dower* from the death of the huſband and to the return of the writ of enquiry, though the writ of ſeiſin iſſued a year before, but was not executed. *Dobſon* v. *Dobſon and others. Rep. temp. Hardw. per Annaly* 19, &c. Where there are two jointenants in *dower*, and one dies after judgment for damages, and his heir and the other jointenant bring error, the value from the time of the judgment to the affirmance, cannot be recovered againſt the ſurviving plaintiff in error only. *Id. Kent & Kent*, 50. See 2 *Stra.* 271. On a writ of *dower*, damages cannot be awarded by the 16 *Car.* 2. without ſpeeding a writ of enquiry. Same caſe, *Annaly* 51.

As in great eſtates *jointures* of lands are uſually made in lieu and ſatisfaction of *dower*, theſe *actions of dower* are not ſo frequently brought as they were formerly.

Dowl and **Deal**, A *diviſion*: From the Brit. *Dal*, *diviſo*, from the Sax. *dælan*, i. e. *dividere*, and from thence comes the word *dealing*. So the ſtones which are laid to the boundaries of lands, are called *dowle ſtones*, i. e. Such as divide the lands. *Cowel.*

Dowry, *(Dos Mulieris)* Was in ancient time applied to that which the wife brings her husband in marriage; otherwiſe called *maritagium*, or marriage goods: But theſe are termed more properly, goods given in marriage, and the marriage portion. *Co. Lit.* 31. This word is often confounded with *dower*; though it hath a different meaning from it.

Dowry Bill. Among the Jews, the bridegroom at the time of the marriage, gave his wife a *dowry bill.* Blount. Cowel *cites* Moſes *and* Aaron, 235.

Dowſeines, A ſort of *kerſeys* made in *Devonſhire*, in length twelve yards. *Cowel.*

Dozein, A territory or juriſdiction, mentioned in the ſtatute of *View and Frank-pledge.* 18 Ed. 2. See *Deciners.*

Draco Regis, The ſtandard *enſign*, or military colours, borne in war by our ancient Kings, having the figure of a dragon painted on them. —— *Rex Angliæ fixiſſet ſignum ſuum in medio, & tradidiſſet* draconem *ſuum Petro de* P. *ad portandum*, &c. Rog. Hoved. ſub ann. 1191.

Dragium, Drag; A coarſer ſort of bread corn: In *Staffordſhire* they uſe a kind of malt, made of oats mixed with barley which they call *dreg*, or *drag malt*; and in *Eſſex*, &c. they have a grain called *dreg*. Tuſſer's Huſband. p. 32.

Drags, Seem to be floating pieces of timber ſo joined together, that by ſwimming on the water they may bear a burden or load of other things down a river. 6 *H.* 6. *c.* 15.

Drana, A drain or water-courſe; ſometimes written *drecca*. Cartular. Abb. Rad. MS.

Drapery, *(Pannaria)* Is uſed as a head in our old ſtatute-books, extending to the making and manufacturing of all ſorts of woollen cloths. *Stat.* 25 *Ed.* 3. *ſtat.* 4. *c.* 1. 4 *Ed.* 4. *c.* 1. 1 *R.* 3. *c.* 9. 27 *H.* 8, &c. *c.* 13. See *Clothiers.*

Draw-gere Signifies any harneſs belonging to cart-horſes, for drawing a waggon, or other carriage. *Paroch. Antiq. p.* 549.

Draw-latches, Were thieves and robbers: *Lambert* in his *Eiren. lib.* 1. *cap.* 6. calls them *thieves*, *waſters*, and *roberdſmen*; the two laſt words are grown out of uſe. They are mentioned in 5 *E.* 3. *c.* 14. and 7 *R.* 2. *c.* 5.

Dredgermen, Are fiſhers for oyſters, &c. *Stat.* 2. *Geo.* 2. *c.* 19.

Dreit-Dreit, or *Droit,* Are words ſignifying formerly a double right, *viz.* of poſſeſſion, and of property or intereſt. *Bract. lib.* 4. *cap.* 27. *Co. Lit.* 266.

Drenched, An old word, uſed where a perſon was overcome, from the *Germ.*

Drenches, or **Drenges,** *(Drengi)* Are tenants *in capite,* ſays an ancient MS, *Mon. Angl. Tom.* 2. *fol.* 598. And according to *Spelman,* they are ſuch as at the coming of *Wil.* 1. called the *Conqueror,* being put out of their eſtates, were afterwards reſtored thereunto; on their making it appear that they were owners thereof, and neither *in auxilio,* or *conſilio,* againſt him. *Spelm.*

Drengage, *(Drengagium)* The tenure by which the *drenches* or *drenges* held their lands. *Trin.* 21 *Ed.* 3. *Ebor. & Northumberland.* Rot. 191.

Drift of the Foreſt, *(Agitatio animalium in Foreſta)* Is a view or examination of what cattle are in the *foreſt,* that it may be known whether it be ſurcharged or not; and whoſe the beaſts are, and whether they are commonable, *&c.* Theſe *drifts* are made at certain times in the year by the officers of the *foreſt;* when all the cattle of the *foreſt* are *driven* into ſome pound or place incloſed, for the purpoſes afore-mentioned; and to the end it may be diſcovered whether any cattle of ſtrangers be there, which ought not to common. *Manw. par.* 2. *c.* 15. *Stat.* 32 *H.* 8. *c.* 13. 4 *Inſt.* 309.

Drinklean, (in ſome records *Potura Drinklean)* Was a contribution of tenants, in the time of the *Saxons,* towards a *potation,* or ale, provided to entertain the lord, or his ſteward.

Drofdene, Signified with our *Saxon* anceſtors, a grove, or woody place, where cattle were kept; and the keeper of them was called *Drofman.* Domeſday.

Droſland, or **Dryſland,** Another *Saxon* word, ſignifying a tribute or yearly payment made by ſome tenants to the King, or their landlords, for driving their cattle through a manor to fairs or markets. *Cowel.*

Droit, *Right,* Is the higheſt writ of all other real writs whatſoever, and hath the greateſt reſpect, and the moſt aſſured and final judgment; and therefore is called a *writ of right,* and in the old books *droit.* *Co. Lit.* 158. There are divers of theſe writs uſed in our law, ſuch as the following:

Droit de Advowſon. **Droit de Dower.** **Droit de Garde.** **Droit Patent.** **Droit Rationabili parte.** **Droit ſur Diſclaimer.**	All theſe ſeveral *writs of right,* and their various uſes, ſee *Recto,* and *writs,* and the ſeveral titles to which theſe writs belong.

Alſo conſult *Booth* on *real actions.* A very excellent treatiſe, and containing a great fund of uſeful learning.

Dromones, Dromos, Dromunda, Signified at firſt high ſhips of great burden, but afterwards thoſe which we now call men of war. *Walſing. Anno* 1292.——*Tres majores naves ſubſequentur, quas vulgo* dromones *appellant.* ——Mat. Pariſ. ſub ann. 1191.

Drovers, Are thoſe that buy cattle in one place to ſell in another: They are to be married men and houſeholders, and be licenſed by ſtatute 5 *Eliz. c.* 12. And if they drive their cattle on the *Lord's Day,* they ſhall forfeit 20*s.* by 1 *Car.* 1. *c.* 1.

That part of the ſtatute of *Eliz.* directing them to be married and houſholders, is now totally diſregarded.

Druggeria, A place of *drugs,* or *drugſters* ſhop: And *druggiſts* and their wares. Vide *Coffee.*

Drunkenneſs, Is an offence for which a man may be puniſhed in the Eccleſiaſtical court; as well as by juſtices of peace by ſtatute: And by 4 *Jac.* 1. *c.* 5. And 21 *Jac.* 1. *c.* 7. If any perſon ſhall be convicted of *drunkenneſs* by the view of a juſtice, oath of one witneſs, *&c.* he ſhall forfeit five ſhillings for the firſt offence, to be levied by diſtreſs and ſale of his goods; and for want of a diſtreſs ſhall ſit in the ſtocks ſix hours: And for the ſecond offence, he is to be bound with two ſureties in ten pounds each, to be of the good behaviour, or be committed. And he who is guilty of any crime, through his own voluntary *drunkenneſs,* ſhall be puniſhed for it as if he had been ſober. *Co. Lit.* 247. 1 *Hawk. P. C.* 2. It has been held, that *drunkenneſs* is a ſufficient cauſe to remove a magiſtrate: And the proſecution for this offence by the ſtatute of 4 *Jac.* 1. *c.* 5. was to be, and ſtill may be, before juſtices of peace in their ſeſſions, by way of indictment, *&c.*

Equity will not relieve againſt a bond, *&c.* given by a man when drunk, unleſs the drunkenneſs is occaſioned through the management or contrivance of him to whom it is given. *Johnſon* v. *Medlicott, n.* 3. *P. Wil.* 130. See 1 *Inſt.* 247. *Plowd.* 19. & *Black. Com.* 4 *V.* 25, 26.

Dry Exchange, *(Cambium Siccum)* Is a term invented in former times for the diſguiſing and covering of *uſury;* in which ſomething was pretended to paſs on both ſides, whereas in truth nothing paſſed but on one ſide, in which reſpect it was called *dry.* Stat. 3 H. 7. c. 5. See *Cowel.*

Dry Rent, A rent reſerved without clauſe of diſtreſs. See *Rent ſeck.*

Duces tecum, Is a writ commanding a perſon to appear at a certain day in the court of *Chancery,* and to bring with him ſome writings, evidences, or other things which the court would view. *Reg. Orig.* So *ſubpœnas duces tecum,* are often ſued out at Common law, to compel witneſſes, to produce, on trials, at *Niſi prius,* deeds, bonds, bills, notes, books, or memorandums, *&c.* which are in their cuſtody or power, and which relate to the iſſue in queſtion. But if they are in the poſſeſſion or power of the adverſe party or his attorney, it is cuſtomary to give notice to the attorney to produce them, and on proof made in open court, before the judge of *Niſi prius,* of ſuch notice, the court generally compels the attorney, or his client to produce the ſame, if material. If not produced *parol* evidence may be given of their contents.

Duces tecum licet Languidus, A writ directed to the ſheriff, upon a return that he cannot bring his priſoner without danger of death, he being *adeo languidus;* then the court grants a *habeas corpus* in the nature of a *duces tecum licet languidus.* Book. Entr. But this is now out of uſe; and certainly where the perſon's life would be endangered by removal, the law would never permit it to be done.

Ducking-Stool. See *Caſtigatory.*

Dues, *eccleſiaſtical,* non-payment of. Various *dues* to the clergy, are cognizable in the ſpiritual court; which makes decrees for their actual payment. *Offerings, oblations,* and *obventions,* not exceeding the value of 40*s.* may be recovered in a ſummary way, before two juſtices of peace. By 7 & 8 *W.* 3. *c.* 6. *Black. Com.* 3 *V.* 89, 90.

Duel, *(Duellum)* In our ancient law is a fight between perſons in a doubtful caſe for the trial of the truth. *Fleta.* But this kind of *duel* is diſuſed; and what we now call a *duel* is, a fighting between two, upon ſome quarrel precedent: Wherein, if a perſon is killed, both the principal and his ſeconds are guilty of murder, and whether the ſeconds fight or not. *H. P. C.* 47, 51. But this cannot mean as to the principals, where a quarrel ariſes, and they ſuddenly draw and fight, without deliberating. It is ſaid by ſome, that the ſeconds of the perſon killed are equally guilty, by reaſon of the encouragement which they give by joining with him: But this is contradicted by others. 1 *Hawk.* 82. Where two perſons in cool blood meet and fight upon a precedent quarrel, and one of them is killed, the other is guilty of murder; and cannot excuſe himſelf by alledging that he was firſt ſtruck by the deceaſed, or that he had declined to meet him, was prevailed on to do it by his importunity, or that it was not his intent to kill, but only to vindicate his reputation, *&c.* 1 *Hawk. P. C.* 81.

If two perſons quarrel over night, and appoint to fight the next day; or quarrel in the morning, and agree to fight in the afternoon; or ſuch a conſiderable time after, by which it may be preſumed the blood was cooled; and then they meet and fight a *duel,* and one kill the other, it is murder. 3 *Inſt.* 52. *H. P. C.* 48. *Kel.* 56. And whenever it appears, that he who kills another in a *duel,* or fighting on a ſudden quarrel, was maſter of his temper at the time, he is guilty of murder; as if after the quarrel he fall into another diſcourſe, and talk calmly thereon; or alledge that the place where the quarrel happens is not convenient for fighting; or that his ſhoes are too high, if he ſhould fight at preſent, *&c.* *Kel.* 56. 1 *Lev.* 180.

If one *challenge* another, who refuſes to meet him, but tells him that he ſhall go the next day to ſuch a place about buſineſs, and then the challenger meets him on the road, and aſſaults the other; if the other in this caſe kill him, it will be only manſlaughter; for here is no acceptance of the challenge, or agreement to fight: And if the perſon challenged refuſeth to meet the challenger, but tells him that he wears a ſword, and is always ready to defend himſelf; if then the challenger attack him, and is killed by the other, it is neither murder nor manſlaughter, if neceſſary in his own defence. *Kel.* 56.

It is a very high offence to challenge another, either by word or letter, to fight a *duel*; or to be the meſſenger of ſuch a challenge; or even barely to endeavour to provoke another to ſend a challenge, or to fight, or by diſperſing letters for that purpoſe, full of reflection, *&c.* 1 *Sid.* 186. 3 *Inſt.* 158. And perſons convicted of barely ſending a challenge, have been adjudged to pay a fine of 100*l.* to be impriſoned for a month, and make a public acknowledgment of their offence, and to be bound to their good behaviour. 1 *Hawk. P. C.* 135, 138. The court of King's Bench hath often granted informations againſt perſons ſending or giving challenges.

See Lord *Bacon*'s charge touching *duels*, in his works, quarto edit, 2 *V.* 563. And a decree of the Star-chamber againſt *duels*, 2 *V.* 571. See farther as to *duels*, *Black Com.* 4 *V.* 145, 185, 199. and *Robert. Hiſt. Emp. Char.* V. 2 *V.* 303,4.

Duke, (Lat. *Dux*, Fr. *Duc*, *a Ducendo)* Signified among the ancient Romans, *ductorem exercitus*, ſuch as led their armies; ſince which, they were called *duces*, and were governors of provinces, *&c.* In ſome nations, the ſovereigns of the country are called by this name; as the *Duke of Savoy*, *&c.* In *England*, the title of *Duke* is the next dignity to the Prince of *Wales*: And the firſt *Duke* we had in *England* was *Edward* the *Black Prince*, ſo famed in our *Engliſh* hiſtories for heroick actions; who was created *Duke of Cornwall* in the 11th year of King *Ed.* 3. After which, there were more made in ſuch manner as that their titles deſcended to their poſterity; and during the late reigns their number hath been greatly increaſed. They are created with ſolemnity, *per cincturam gladii, cappæ & circuli aurei in capite impoſitionem.* Cambd. Brit. p. 166. See *Black. Com.* 1 *V.* 397, 468.

Dum fuit infra ætatem, Is where an infant maketh a feoffment of his lands; when he cometh of full age, he may have this writ to recover thoſe lands and tenements which were ſo aliened: And within age, he may, enter into the land and take it back again, and by his entry he ſhall be remitted to his anceſtor's right. *New Nat. Br.* 426. If the huſband and wife alien the wife's land, during the nonage of both of them, the wife at her full age after the death of the husband, ſhall have a writ of *dum fuit infra ætatem.* M. 14 E. 3. By this *writ* to the ſheriff, he ſhall command *A.* that he render to *B.* who is of full age, two meſſuages and lands, *&c.* which *B.* demiſed to him, *while he was within age*, as he ſaith; or into which the ſaid *A.* hath not entered, but by *C.* to whom the ſaid *B.* the ſame demiſed; and unleſs, *&c.* *F. N. B.* 477.

Dum non fuit Compos Mentis, Is a writ that lies where a man that is not of ſound memory aliens any lands or tenements, then he ſhall have this writ againſt the alienee. And he ſhall alledge that he was not of *ſane memory*, but being viſited with infirmity, loſt his diſcretion for a time, ſo as not to be capable of making a grant, *&c.* *New Nat. Br.* 449. But ſee *Diſability.* The law ſeldom allows a man to ſtultify himſelf. As to the writ, ſee *F. N. B.* 202.

Dun, *Down*, In which termination it hath varied into *don*, ſignifies a mountain or high open place; ſo that the names of thoſe towns which end in *dun*, or *don*, as *Aſhdon*, *&c.* were either built on hills, or near them in open places. *Domeſday.*

Dunſetts, Thoſe who dwell on hills or mountains.

Dunum and **Duna,** A down or hill: And *dunnarium* is uſed in the ſame ſenſe. *Chart. dat* 29 *Ed.* 3. *Penes Decan. & Cap. Eccl. Cath. Chriſti Oxon.*

Duodena, A jury of twelve men.——*Tunc Juſticiar. convocata ſeorſim alia* duodena. *Walſing.* 256.

Duodena manu. Twelve witneſſes to purge a criminal of an offence. See *Jurare duodecima manu*, and *Black. Com.* 3 *V.* 343.

Duplex Querela, A proceſs eccleſiaſtical; *double quarrel.*

Duplicate, Is uſed for the ſecond letters patent, granted by the Lord Chancellor, in a caſe wherein he had before done the ſame; which were therefore thought void. *Cromp. Juriſd. fol.* 215. But it is more commonly a copy or tranſcript of any deed or writing, account, *&c.* or a ſecond letter, written and ſent to the ſame party and purpoſe as a former, for fear of a miſcarriage of the firſt, or for other reaſons: This word is mentioned in the ſtatute 14 *Car.* 2. *c.* 10.

It is alſo the name of a priſoner's diſcharge, given by the quarter ſeſſions, *&c.* to an *inſolvent debtor*, who takes the benefit of an act, for relief of *inſolvent debtors*, with reſpect to the impriſonment of their perſons.

Duplicity in *pleading.* This muſt be avoided as it begets confuſion. Every plea muſt be ſimple, intire, connected and confined to one ſingle point: It muſt never be entangled with a variety of diſtinct independent anſwers to the ſame matter; which muſt require as many different replies, and introduce a multitude of iſſues upon one and the ſame point. The ſtatute of 4 & 5 *Ann. c.* 16. which gives leave to plead ſeveral pleas by permiſſion of the court, is, for this reaſon of great ſervice, becauſe, a man may plead a variety of matters in *ſingle* pleas, in bar to the action. See *Black. Com.* 311. See alſo *Monteſquieu De L'Eſprit des Loix. Liv.* vi. *ch.* 4.

Durante abſentia, *Adminiſtration.* An adminiſtration granted when the executor is out of the realm, to continue in force until his return.

Durante minore ætate, *Adminiſtration.* An infant cannot act as executor until ſeventeen, during which minority this adminiſtration is granted.

Durden, A thicket of wood in a valley. *Cowel.*

Dureſs, *(Duritia)* Is where one is wrongfully impriſoned or reſtrained of his liberty contrary to law, till he ſeals a bond or other deed to another; or threatened to be killed, wounded, or beaten if he doth not do it: And a bond or deed ſo obtained is void in law. *Broke*, in his Abridgment, joins *dureſs* and *minas*, together, *i. e.* hardſhip and threatenings: If one under a juſt fear of being impriſoned, killed, *&c.* enters into a bond to him that threatens him, it is *dureſs per minas*; and may be pleaded to avoid the bond: But it muſt be a threatening of life or member, or of impriſonment; and not of a battery only; or to take away goods, *&c.* *Co. Lit.* 162, 253. 2 *Inſt.* 483. But it has been adjudged, that if a man makes a deed by *dureſs* done to him by taking of his cattle, though there be no *dureſs* to his perſon, yet this ſhall avoid the deed. 2 *Danv. Abr.* 686. If a perſon threaten another to make a deed to a third perſon, it is by *dureſs*, and void; as if ſuch third perſon had made the threatening. 2 *Inſt.* 482. 3 *Inſt.* 92. 4 *Inſt.* 97. And where a man is impriſoned until he makes a bond at another place; if afterwards he doth it when at large, the bond is by *dureſs*, and void.

But if a perſon be arreſted upon an action at the ſuit of another, and the cauſe of action is not good, if he make a bond to a ſtranger, it is not *dureſs*; though if he make it to the plaintiff, it is, and being ſued upon the bond, he may plead it was made by *dureſs*, and ſo avoid it: Alſo the party ſhall have an action for the falſe impriſonment itſelf. 1 *Rep.* 119. *Perk. Sect.* 16, *Cromp. Jur.* 296. 1 *Lil. Abr.* 494. If the arreſt is under colour of *legal proceſs*, the action muſt be a *ſpecial action on the caſe*, not an action of *treſpaſs vi et armis.*

If one impriſoned make an obligation by *dureſs*, and after he is at large takes a defeaſance upon it; this will eſtop him to ſay it was made *per dureſs.* And where *A.* and *B.* by *dureſs* to *B.* ſeal a bond or deed, it may be good as to *A.* that was never threatened 3 *H.* 6. 16.

Bro. 17. *Mich.* 7 *Jac.* 1. See 43 *E.* 3. 10. 2 *Danv.* 686.

A man ſhall not avoid a deed by a *dureſs* to a ſtranger: For it hath been held that none ſhall avoid his own bond for the impriſonment or danger of any other than of himſelf only. *Cro. Jac.* 187. And yet a ſon ſhall avoid his deed by *dureſs* to the father: And the husband ſhall avoid a deed made by *dureſs* to the wife; though a ſervant ſhall not avoid a deed made by *dureſs* to his maſter, or the maſter the deed ſealed by *dureſs* of his ſervant. 2 *Danv.* 686. If a man is taken by virtue of a proceſs iſſuing out of a court that hath not power to grant it; or in cuſtody on a falſe charge of felony, *&c.* and for his enlargement and diſcharge gives bond, *&c.* this may be avoided, as taken by *dureſs*. *Cro. El.* 646. 4 *Inſt.* 97. *Allen* 92.

A ſtatute merchant may be avoided by *audita querela*, becauſe it was made by *dureſs*, or impriſonment. A will ſhall be avoided by *dureſs* or menace of impriſonment. A feoffment made by *dureſs* is voidable; but not void. But no averment ſhall be taken againſt a deed inrolled, that it was made by *dureſs*. 1 *Roll. Abr.* 862. 2 *Danv.* 685. A marriage had by *dureſs* is voidable: And by ſtatute, obligations, ſtatutes, *&c.* obtained of women by force, to marry the perſons to whom made, or otherwiſe, unleſs for a juſt debt, are declared void. 31 *H.* 6. *c.* 9. If a perſon executes a deed by *dureſs*, he cannot plead *non eſt factum*, becauſe it is his deed; though he may avoid it by ſpecial pleading, and judgment *Si actio, &c.* 5 Rep. 119. Records may not regularly be ſaid to be made by *dureſs*, and therefore ſhall not be avoided by this plea or pretence. 2 *Shep. Abr.* 319.

Durham. The biſhoprick of *Durham* was diſſolved, and the King to have all the lands, *&c.* by ſtat. 7 *Ed.* 6. But this act was afterwards repealed, and the biſhoprick new elected, with all juriſdiction eccleſiaſtical and temporal annexed to the county palatine. The juſtices of the county palatine of *Durham* may levy fines of lands in the county: And writs upon proclamation, *&c.* are to be directed to the biſhop. 5 *Eliz. c.* 27. 31 *Eliz. c.* 2. Alſo writs to elect members of parliament in the county palatine of *Durham* ſhall go to the biſhop or his chancellor, and be returned by the ſheriff, *&c.* Stat. 25 *Car.* 2. *c.* 9.

As to the *county palatine* of *Durham*, ſee *Black. Com.* 1 *V.* 116. As to its courts, ſee *Black. Com.* 3 *V.* 78. and 4 *Inſt.* 206, 213, 218.

Durſley, Signifies *blows* without wounding or bloodſhed, vulgo *dry blows*. Blount.

Duſty Feets, *Duſty Foots*; pedlars or traders who have no ſettled habitation, and they have their name from their feet being covered with *duſt*, by their continual travelling. See *Piepowder Court.*

Dutchy Court of Lancaſter, Is a court of the *Dutchy Chamber of Lancaſter* held at *Weſtminſter* before the Chancellor, for matters concerning the lands and franchiſes of the *dutchy*. And the proceedings in this court are by *Engliſh bill*, as in Chancery. 4 *Inſt.* 204. The original of it was in *Henry the Fourth*'s days, who obtaining the crown of *England* by depoſing *Richard* II. and having the *dutchy of Lancaſter* by diſcent in right of his mother, was ſeiſed thereof as *King*, and not as *Duke*. But at length by authority of parliament he paſſed a charter, whereby the poſſeſſions, liberties, *&c.* of the ſaid *dutchy* were ſevered from the crown, and ſo left to poſterity.

Of this court, *Gwin* (in his preface to his *Readings*) ſays thus: The court of the dutchy of *Lancaſter* grew out of the grant of King *Edward* III. who gave that *dutchy* to his ſon *John of Gaunt*, and endowed it with royal rights and privileges; and for as much as it was afterwards extinct in the perſon of King *Henry* IV. by reaſon of the union thereof with the crown, the ſame King (ſuſpecting himſelf to be more rightfully *Duke of Lancaſter*, than *King of England*) determined to ſave his right in the *dutchy*, whatever ſhould befall the kingdom; and therefore he ſeparated the *dutchy* from the crown, and ſetled it in the natural perſons of himſelf and his heirs, as if he had been no King: In which eſtate it continued during the reigns of *Hen.* 5. and *Hen.* 6. But when *Edw.* 4. recovered the crown, and recontinued the right of the *Houſe of York*, he appropriated that *dutchy* to the crown again, yet ſo that he ſuffered the court and officers to remain as he found them; and in this manner it came together with the crown to *Hen.* 7. who approving the policy of *Hen.* 4. and by whoſe right he obtained the kingdom, made a like ſeparation of the *dutchy*, and ſo left it. It is now only a ſuperior *county palatine*. Vide *Lancaſter*. *Officers* of this *Court*, ſee *Chancellor of the Dutchy of* Lancaſter.

The court of the *dutchy* chamber of *Lancaſter*, (according to *Blackſtone*) is a ſpecial juriſdiction, held before the Chancellor of the *dutchy* or his deputy, concerning all matters of *equity* relating to the lands holden of the King in right of the *dutchy* of *Lancaſter*, which is a thing very diſtinct from the *county palatine*, and comprizes much territory which lies at a vaſt diſtance from it; as particularly a very large diſtrict within the city of *Weſtminiſter*. It ſeems that the courts of Chancery and Exchequer, on the equity ſide have a concurrent juriſdiction with this court. 4 *Inſt.* 206. 1 *Chanc. Rep.* 55. *Toth.* 145. *Hardr.* 171. *Black. Com* 3 *V.* 78.

Duties of *perſons*. *Allegiance* is the *duty* of the *people*, *protection* the *duty* of the *magiſtrate*; yet they are reciprocally the *rights*, as well as *duties* of each other. *Allegiance* is the *right* of the *magiſtrate*, and *protection* the *right* of the *people*. Black. Com. 1 *V.* 123.

Duty. Any thing that is known to be due by law, and thereby recoverable, is a *duty* before it is recovered; becauſe the party intereſted in the ſame hath power to recover it. 1 *Lill.* 495.

Dwelling-houſe. A man may aſſemble people together lawfully (at leaſt if they do not exceed eleven) without danger of raiſing a riot, rout, or unlawful aſſembly, in order to proteſt and defend his houſe; which he is not permitted to do in any other caſe. 1 *Hal. P. C.* 547. *Black. Com.* 4 *V.* 224.

Dwined, ſignifies any thing conſumed; from whence comes the word *dwindle*.

Dyers. No *dyer* may dye any cloth with orchel; or with Brazil, to make a falſe colour in cloth, wool, *&c.* on pain of 20 *s.* *Stat.* 3 & 4 *E.* 6. *c.* 2. *Dyers* are to fix a ſeal of lead to cloths, with the letter M. to ſhew that they are well mathered, *&c.* or forfeit 3 *s.* 4 *d.* and not to uſe logwood in dying, on pain of forfeiting 20 *l.* Stat. 23 *Eliz. c.* 9. Repealed 13 & 14 *Car.* 2. *c.* 11, 26. And penalties are inflicted on *dyers*, who dye any cloths deceitfully, and not being dyed throughout with woad, Indico and mather; alſo marks ſhall be put to the cloths dyed, *&c.* *Dyers* in *London* are ſubject to the inſpection of the *Dyers Company*, who may appoint ſearchers; and out of their limits, juſtices of the peace in ſeſſions to appoint them: Oppoſing the ſearchers, incurs 10 *l.* penalty, by ſtat. 13 *Geo.* 1. *c.* 24.

Dyke-reed, An officer that hath the care and overſight of the *dykes* and *drains* in fenny countries; as of *Dieping fens*, *&c.* mentioned in the ſtat. 16 & 17 *Car.* 2. *c.* 11.

Dyrge or **Dirge,** A mournful ſong over the dead; from the Teutonick *dyrke* laudare, to praiſe and extol, whence it is a laudatory ſong. *Cowel.*

Dyrenum, A ditty or ſong.——*Venire cum toto ac pleno* dyreno, to ſing harveſt home. *Paroch. Antiq.* 320.

E.

Ealhus, (from the Sax. *Eale*, Cerviſia, & *Hus*, Domus) An ale-houſe: In the law of King *Alfred* we often find this word.

Ealhorda, The privilege of aſſiſing and ſelling *ale and beer*. It is mentioned in a charter of King *Hen.* 2. to the abbot of *Glaſtonbury*.

Ealderman, (or *Ealdorman*), Among the *Saxons* was as much as *Earl* with the *Danes*. *Cambd. Brit.* 107. Alſo an *elder*, ſenator, *&c.* *Ealdermen* or *aldermen*, are now thoſe that are aſſociated to the mayor or chief officer in the common council of a city or borough town. *Stat.*

24 *H.* 8. *c.* 13. See *Aldermen*, and *Black. Com.* 1 *V.* 398. and *Squire's Ang. Sax. Gov.* 107, 161, 220, *n.* and 257, *n.* and Lord *Lytt. Hiſt. H.* 2. *V.* 2. 215.

Earl, (Sax. *Eorle*, Lat. *Comes*) This it is ſaid was a great title among the *Saxons*, and is the moſt ancient of the *Engliſh* peerage, there being no title of honour uſed by our preſent nobility that was likewiſe in uſe by the *Saxons*, except this of *Earl*; which was uſually applied to the Firſt in the Royal Line. *Verſtegan* deriveth this word from the Dutch *Ear*, *i. e.* Honour, and *Ethel*, which ſignifies Noble: But whenceſoever it is derived, the title *Earl* was at length given to thoſe who were aſſociates to the King in his council and martial actions; and the method of inveſtiture into that dignity was *per cincturam gladii*, without any formal charter of creation. *Dugdale's Warkwickſh.* 302. *William* the Firſt, called the *Conqueror*, gave this dignity in fee to his nobles, annexing it to this or that county or province; and allotting them for the maintenance of it a certain portion of money ariſing from the prince's profits, for the pleadings and forfeitures of the provinces. *Camd.* And formerly one *Earl* had divers ſhires under his government, and had lieutenants under him in every ſhire, ſuch as are now *ſheriffs*; as appears by divers of our old ſtatutes. *Cowel.*

But about the reign of King *John* and ever ſince, our Kings have made *Earls* of counties, &c. by charter; giving them no authority over the county, nor any part of the profits ariſing out of it; only ſometimes they have had an annual fee out of the Exchequer, &c. An *Earl*, *Comes*, was heretofore correlative with *comitatus*; and anciently there was no *Earl*, but had a ſhire or county for his *earldom*; but of late times the number of *Earls* very much increaſing, ſeveral of them have choſen for their titles ſome eminent part of a county, conſiderable town, village, or their own ſeats, &c. Then, beſides thoſe local *Earls*; there are ſome perſonal and honorary; as *Earl Marſhal* of *England*; and others nominal, who derive their titles from the names of their families. *Lex Conſtitutionis*, *p.* 78. Their place is next to a Marquis, and before a Viſcount: And as in very ancient times, thoſe who were created *Counts* or *Earls*, were of the blood royal; our *Britiſh* monarchs to this day call them in all public writings, Our moſt dear Couſin: They alſo originally did, and ſtill may uſe the ſtyle of *Nos.* See *Countee*; and the references after the word *Ealderman.*

Earneſt. Money paid in part of a larger ſum, or part of the goods delivered, on any contract, &c. which being done, by way of *earneſt*, the property of the goods is abſolutely bound by it: And the *buyer* may recover the goods by action, as well as the *vendor* may the price of them. And by 29 *Car.* 2. *c.* 3. No contract for ſale of goods, to the value of 10*l.* or more, to be valid, unleſs ſuch *earneſt* is made or given. *Black. Com.* 2 *V.* 447, 448.

Eaſement, *Aiſiamentum*, from the Fr. *Aiſe*, (*i. e.* Commoditas) Is defined to be a ſervice or convenience, which one neighbour hath of another, by *charter* or *preſcription*, without profit; as a way through his land, a ſink, or ſuch like. *Kitch.* 105. A perſon may preſcribe to an *eaſement* in the freehold of another, as belonging to ſome ancient houſe, or to land, &c. And a way over the land of another; a gate-way, water-courſe, or waſhing place on another's ground, may be claimed by *preſcription* as *eaſements*. But a multitude of perſons cannot preſcribe; though for an *eaſment* they may plead cuſtom. *Cro. Jac.* 170. 3 *Leon.* 254. 3 *Mod.* 294. To alledge an *eaſement* by *conſuevit* only, is the beſt way: And things of neceſſity ſhall not be extinguiſhed by unity of poſſeſſion; but a way of *eaſe* may be thus extinguiſhed. *Lil. Abr.* 496. See *Preſcription.*

Eaſter, Was the name of a goddeſs which the *Saxons* worſhipped in the month of *April*, and ſo called, becauſe ſhe was the goddeſs of the *Eaſt*. *Blount.* But in our church it is the feaſt of the *Paſſover*, in commemoration of the ſufferings of our Saviour *Chriſt*.

Eaſtintus, (Sax. *Eaſt-Tyne*) Is an eaſterly coaſt or country; alſo the *eaſt ſtreet*, *eaſt* ſide of a river, &c. ———*Si ſit* eſtintus, & *ſi ſit* northtintus *amendet*——— Leg. K. Edw. 1.

Eaſt-India Company, of Merchants, and their privileges, began in the reign of Queen *Elizabeth*, when they obtained divers grants and charters to carry on their trade, 20 *Eliz.* *c.* 9. The company to have the ſole trade to the *Eaſt-Indies*; and others trading there without licence, ſhall forfeit their ſhips and goods, and double value.

Inſurance of ſhips and goods trading to *India* under new foreign commiſſions prohibited, 25 *Geo.* 2. *c.* 26.

Many acts of parliament have been made, and many new regulations, &c. too numerous to inſert, and too particular for a work of this kind: we muſt therefore refer to the ſtatutes, and to the *Merchants Lawyer*, *Vol.* 1, &c.

Eaves-droppers. Perſons that liſten under walls or windows, or the eaves of a houſe, to hearken after diſcourſe, and thereupon to frame ſlanderous and miſchievous tales, are a common nuſance, and preſentable at the court-leet: or are indictable at the ſeſſions, and puniſhable by fine, and finding ſureties for good behaviour. *Kitch. of Courts*, 20. 1 *Hawk. P. C.* 132. *Black. Com.* 4 *V.* 169.

Ebdomadarius, An *ebdomary* or officer appointed *weekly* in cathedral churches, to ſupervize the regular performance of divine ſervice, and preſcribe the particular duties of each perſon attending in the choir, as to reading, ſinging, praying, &c. To which purpoſe the *ebdomary* at the beginning of his week drew in form a bill or writing of the reſpective perſons and their ſeveral offices, called *tabula*; whereupon the perſons there entered were ſtiled *intabulati*: This is manifeſted in the ſtatutes of the *Cathedral Church of St. Paul*, digeſted by Dr. *Ralph Baldock*, Dean *of St. Paul's*, *anno* 1295, MS. penes Joh. Epiſc. Norw.

Eberemorth or **Eberemors,** (*Sax.*) Bare, or downright murder. *Leg. H.* 1. *c.* 12.

Eberemurder, (*Apertum Murdrum*) Was one of thoſe crimes, which by King *Henry* the Firſt's laws, *cap.* 13. *Emendari non poſſunt: hoc ex ſcelerum genere fuit nullo pretio expiabilium*, &c. Spelm.

Eccleſia, (*Lat.*) Is commonly uſed for that place where God is ſerved, which is commonly called a church: But in *law proceedings*, according to *Fitzherbert*, this word intends a parſonage; for ſo he expreſſes it in a queſtion, whether a benefice was eccleſia, *ſive* capella, &c. *F. N. B.* 32. 2 *Inſt.* 363.

Eccleſiæ Sculptura. The image or ſculpture of a church in ancient times, which was often cut out or caſt in plate or other metal, and preſerved as a religious treaſure or relique; and to perpetuate the memory of ſome famous churches. *Mon. Ang. Tom.* 3. *p.* 309.

Eccleſiaſtical, Denotes ſomething belonging to, or ſet apart for the church; as diſtinguiſhed from *civil* or *ſecular*, with regard to the world.

Eccleſiaſtical Corporations, Are where the members that compoſe it are *ſpiritual perſons*. They were erected in the furtherance of religion, and perpetuating the rights of the church. *Black. Com.* 1 *V.* 470.

Eccleſiaſtical Courts, Are various, as the *archdeacon's*, the *conſiſtory*, the court of *arches*, of *peculiars*, the *prerogative*, and the great court of appeal in all eccleſiaſtical cauſes, *viz.* the court of *delegates*, appointed by the King's commiſſion, under his great ſeal, &c. See *Black. Com.* 3 *V.* 61, &c. *Burn's Eccl. Law.* *Wood's Inſtit. of Com. Law*, and *Oughton's Ordo Judiciorum.* Alſo ſee tit. *Courts Eccleſiaſtical.* Alſo *Black. Com.* 3 *V.* 87. 4 *V.* 408, 414, 418.

N. B. Eccleſiaſtical juriſprudence, in the middle ages, was much more perfect in its plan, more juſt, and more equitable than the civil courts: It therefore became ſuch an object of admiration and reſpect, that exemption from civil juriſdiction was courted as a privilege, and conferred as a reward. *Robert. Hiſt. Emp. Charl.* V. 1 *V.* 64, &c.

Eccleſiaſtical Juriſdiction. The doctors of the civil law, although they be laymen, &c. may exerciſe *eccleſiaſtical juriſdiction*, by ſtat. 37 *H.* 8. *c.* 17.

Eccleſiaſtical Laws. See *Canon*, and *Courts Eccleſiaſtical.*

Eccleſiaſtical Perſons or **Eccleſiaſticks,** (*Eccleſiaſtici*) Are churchmen, perſons whoſe functions conſiſt in performing

forming the ſervice, and keeping up the diſcipline of the Church. See *Clergy*.

Edeſtia, From *Ædes*, uſed for buildings.——*Sciant quod ego* Adam de M. *conceſſi* Johanni de B. *pro ſervitio ſuo totam terram cum* edeſtiis, *& omnibus pertin'*, *&c.* Ex Regiſt. Priorat. de Wormley.

Edia, Aid or Help: Thus *Du Freſne* interprets it; but *Cowel* ſays it ſignifies *Eaſe*.

Edict, (*Edictum*) An ordinance or command; a ſtatute. *Lat. Law Dict.*

Eel-fares, Are a fry or brood of eels. *Stat.* 25 *H.* 8.

Efforcialiter, Is uſed for military force.——*Tu ita* efforcialiter *venis cum equis & armis.* Mat. Pariſ. Anno 1213.

Effractores, (*Lat.*) Breakers applied to *burglars*, that break open houſes to ſteal.——*Qui furandi cauſa domus* effringunt, *&c. MS.*

Efters, (*Sax.*) Ways, walks or hedges. *Blount.*

Effuſio Sanguinis, The mulct, fine, or penalty impoſed by the old *Engliſh* laws for the ſhedding of blood; which the King granted to many lords of manors: And this privilege, among others, was granted to the abbot of *Glaſtonbury*. Cartular. Abbat. Glaſton. MS. fol. 87.

Egyptians, (*Egyptiani*) Commonly called *Gypſies*, are by our laws and ſtatutes a counterfeit kind of rogues, who diſguiſing themſelves in ſtrange habits, ſmearing their faces and bodies, and framing to themſelves a canting unknown language, wander up and down; and under pretence of telling fortunes, curing diſeaſes, and ſuch like, abuſe the ignorant common people, by ſtealing and pilfering from them every thing that is not too heavy for their carriage, and with which they may go off undiſcovered. There are ſeveral ſtatutes for ſuppreſſing thoſe impoſtors; as by ſtatute 22 *H.* 8. *c.* 10. *Egyptians* coming into *England*, are to depart the realm in fifteen days, or be impriſoned. And by 1 & 2 *P.* & *M.* *c.* 4. If any perſon ſhall import any *Egyptians* into this kingdom, he ſhall forfeit 40*l.* And if the *Egyptians* remain in *England* above a month, they ſhall be guilty of felony. Alſo conſorting with *Egyptians* is made felony by 5 *Eliz.* *c.* 20. See *Black. Com.* 4 *V.* 165.

Eia, (from the Sax. *Eig*) ſignifies an iſland. *Mat. Pariſ. Anno* 883. See *Ey.*

Ejecta, A woman raviſhed or deflowered; or caſt forth from the virtuous. *Ejectus*, a whoremonger. *Blount.*

Ejectione Cuſtodiæ, (*Ejectment de Garde*) Is a writ which lieth againſt him that caſteth out the *guardian* from any land during the minority of the heir. *Reg. Orig.* 162. *F. N. B.* 139. There are two other writs not unlike this; the one one termed *raviſhment de gard*, and the other *droit de gard*.

Ejectione firmæ, or Ejectment, Is an action that lies for the leſſee for years, who is *ejected* before the expiration of his term, either by the leſſor, or a ſtranger: Alſo *ejectment* may be brought by the leſſor againſt the leſſee, for rent in arrear, or holding over his term, *&c.* *Reg. Orig.* 227. In theſe caſes, *ejectment* is either an actual *ejectment*, as when the leſſee is actually put out of land let unto him; or it is an *ejectment* by implication of law, *viz.* where ſuch an act is done by one which doth amount to an *ejectment*, although he doth not really enter upon the land let, and ouſt the leſſee. 1 *Lill. Abr.* 496. Anciently *writs of entry* and *aſſiſe* were the uſual means of recovery of the poſſeſſion of lands, and lay only againſt freeholders; but *anno* 14 *H.* 7. it was reſolved that an *habere facias poſſeſſionem* would lie to recover the term in *ejectment*, and the land itſelf. *Attorn. Compan.* 170. The action of *ejectione firmæ* was never known to remove a poſſeſſion till the reign of King *Hen.* 8. before which time an action of treſpaſs, *quare clauſum fregit*, *&c.* was made uſe of: Though in action of treſpaſs, damages were only to be recovered: whereas in *ejectione firmæ*, the thing or term itſelf is recovered, as well as damages. 3 *Leon.* 49.

But *ejectment* is now become an action in the place of many *real actions*; as writs of right, *formedons*, *&c.* which are very difficult as well as tedious and chargeable: And this is the common action for trying of titles, and recovering of lands, *&c.* illegally kept from the right owner; though where entry is taken away by diſcents, fines and recoveries, diſſeiſins, *&c.* *Ejectment* cannot be ſupported: ſo that all titles cannot be tried by this action. *Wood's Inſt.* 547, 548. Nor where there is 20 years poſſeſſion againſt the claimant. See the ſtatutes of *Limitations*, viz. *St. Merton*, 20 *H.* 3. *c.* 8. *St. Weſtm.* 1. 3 *Ed.* 1. *c.* 39. 32 *H.* 8. *c.* 2, and 21 *Jac.* 1. *c.* 16.

Herein is to be conſidered,

I. *For what things an ejectment will lie.*
II. *Of the method of proceeding in ejectment.*

I. *For what things an ejectment will lie.*

Ejectment ought to be brought for a thing that is certain; and if it be of a manor, *manerium de* A. *cum pertinentiis*; if of a rectory, *rectorium de* B. *&c.* And ſo many meſſuages, cottages, acres of arable land, meadow, *&c. cum pertin. in paroch. &c.* For land muſt be diſtinguiſhed, how much of one ſort, and how much of another, *&c.* *Cro. Eliz.* 339. 3 *Leon.* 13. *Ejectment* lies of a church, as *de uno domo* vocat. *The pariſh church of*, &c. And a church is a meſſuage, by which name it may be recovered; and the declaration is to be ſerved on the parſon who officiates divine ſervice. 11 *Rep.* 25. 1 *Salk.* 256. It lies not of tithes only; but may be of a rectory, chapel, *&c.* and the tithes thereto belonging. 2 *Danv. Abr.* 752.

It lies *De uno meſſuagio ſive burgagio*; but not *De uno meſſuagio ſive tenemento*, unleſs it have a *vocat'* A. *&c.* to make it good, becauſe of the uncertainty of the word *tenement*. 1 Sid. 295. It will lie for a moiety, or third part, of a manor or meſſuage, *&c.* And for a chamber or room of a houſe well ſet forth. 11 *Rep.* 55, 59. 3 *Leon.* 210. It lieth *de domo*, which hath convenient certainty for the ſheriff to deliver poſſeſſion, *&c.* *Cro. Jac.* 654 It lies of a cottage or curtilage; of a coal mine, *&c.* but not of a common, piſcary, *&c.* *Cro. Jac.* 150. For underwood it lies, though a *præcipe* doth not. 2 *Roll. Rep.* 482, 483. But for *uno clauſo*, or *una pecia terræ*, *&c.* without certainty of the acres, and their nature, it doth not lie. 11 *Rep.* 55. 4 *Mod.* 1. It lieth of a cloſe, containing three acres of paſture, *&c.* Alſo of ſo many acres of land covered with water; though not *de aquæ curſu*. Cro. Jac. 435. 1 Brownl. 242. *Ejectment* lies for a *prebendal* ſtall, after collation to it. *Wilſ. Rep. Par.* 1. *fo.* 14. *The King* and *The Biſhop of* London.

In this action the law requires, that the thing demanded be ſo particularly ſpecified, that the ſheriff may certainly know what to give the poſſeſſion of, if the plaintiff ſhould recover; for the judgment is in order to execution, and the judgment would be vain, if execution could not be had of the thing ſpecifically demanded; but in this action the judges did not confine themſelves to thoſe rules which govern the *præcipe*, but allowed ſome things to be recovered in this action, which could not be demanded in a *præcipe*; becauſe ſince the eſtabliſhment of that real action, many things have been added and improved by art, and acquired new appellations that are perfectly underſtood now by the law, which are not found in the ancient law-books; and as men began to contract by new names which were not known in the old law, ſo it was reaſonable to ſuffer the remedy to follow the nature of ſuch contracts. 2 *New. Abr.* 168.

II. *As to the method of proceeding.*

The method of proceeding in *ejectment*, is made more eaſy than formerly; when a leaſe was to be ſealed and delivered on the premiſſes to the leſſee, *&c.* In ancient times, the *ejector* in law was any perſon that came upon any part of the land, *&c.* mentioned in the leaſe of *ejectment*, though he were there without any intent to diſturb the leſſee of the poſſeſſion, after the ſealing of the *ejectment* leaſe; and ſuch *ejector* was a good *ejector* againſt whom an action of *ejectione firmæ* might be brought to try the title of the land in queſtion: but now the law is altered, for there is no occaſion for a leaſe to be made and ſealed upon the premiſſes to the leſſee, who hath a mind to try the title, *&c.*

As the plaintiff could not proceed to recover his lands againſt the caſual *ejector*, without delivering to the tenant in poſſeſſion a declaration, and making him a proper defendant, Lord Chief Juſtice *Rolls* invented the rule now in uſe; which is, that if the defendant comes in the room of ſuch *ejector*, he ſhould enter into a rule to confeſs leaſe, entry and actual ouſter, and inſiſt on the title only. See *Attorn. Compan.* 170, 173.

The uſual courſe at this time is to draw a declaration, and therein feign a leaſe for three, five, or ſeven years, to a nominal plaintiff, and alſo feign a caſual *ejector* or defendant in the declaration, and then ſerve the ſame, by delivering a copy thereof to the tenant in poſſeſſion, or his wife, (for a delivery to a ſon or ſervant, *&c.* is not good) and give notice in writing at the bottom for him to appear and defend his title; which muſt be read to the tenant, and the perſon ſerving it is to tell him, that if he do not procure ſome attorney to appear for him and defend his title, in default thereof, that he (the defendant) will ſuffer a judgment to be had againſt him, whereby he (the tenant) will be turned out of poſſeſſion: the declaration being thus ſerved, the tenant is to appear the beginning of the next term by his attorney, and conſent to a rule to be made defendant inſtead of the caſual *ejector*, and take upon him the defence; wherein he may confeſs a *leaſe*, *entry*, and *ouſter*, and at the trial ſtand upon the title only: but if the tenant in poſſeſſion doth not appear and enter into the aforementioned rule in time, after the declaration ſerved; then on affidavit made of the ſervice of the declaration, with notice to appear as aforeſaid, the court will order that judgment be entered (at the expiration of a time limited, if the tenant does not in the mean time appear,) againſt the caſual *ejector* by default; and the tenant in poſſeſſion will by an *habere facias poſſeſſionem* upon ſuch judgment be turned out of poſſeſſion.

If at the trial the defendant will not appear and confeſs leaſe, entry and ouſter, it is uſual to call him or his attorney, and then call the plaintiff and nonſuit him: and upon return of the *poſtea*, judgment will be given againſt the caſual *ejector*. 1 Salk. 250. But in this caſe, though the plaintiff be nonſuit, he ſhall not pay any coſts; for the rule for confeſſing leaſe, entry, and ouſter is to be carried to the ſecondary, who taxes coſts upon it to be paid by the defendant; and if the ſame are not paid, the court on affidavit and motion will grant an attachment againſt the defendant; but this is where the defendant appears, and not where it goes wholly againſt him by default.

If the tenant doth appear, having by his attorney filed common bail, and entered into the rule abovementioned, he is made defendant in the declaration, and put into the ſame in the place of the caſual *ejector*; and then the defendant's attorney muſt plead *Not guilty*: and the plaintiff's attorney draws up the iſſue, a copy whereof and of the declaration is to be delivered to the attorney for the defendant; whereupon notice is given of trial: and trial had as in other caſes. But as to the mode of proceeding, ſee, for further inſtructions, the books of practice, now in uſe, as *Richardſon*, *Harriſon*, &c. *Practiſ. Solic.* 328, 329.

The plaintiff is not allowed to amend his declaration in *ejectment* after delivery; he muſt ſtand by it, or deliver a new declaration. But if the tenant appears, as a new declaration is not delivered before plea, but the iſſue made up, plaintiff may perhaps ſafely make his iſſue right. As many demiſes may be laid in a declaration, as ſhall be thought fit; and if the plaintiff recovers upon one, it is ſufficient. 3 *Lev.* 117, 334. No arreſt is to be made in this action, as now uſually proſecuted. But if there is not any tenant in poſſeſſion; as where a houſe or land is empty, and the perſon that was laſt in poſſeſſion is run away, ſo that you cannot find any perſon to deliver the declaration to, then the proceſs muſt be in the old way, by ſealing a leaſe upon the ground; and an original is to be ſued out againſt the perſon who *ejected* the leſſee, *&c.* And herein rules are to be given to *plead*; though there cannot be judgment againſt the caſual *ejector*, without a motion for that purpoſe, after the rules for pleading are out. 1 *Lill.* 498. See 1 *Salk.* 235. But note, by *Stat.* 11 *Geo.* 2. *c.* 19. *ſ.* 16. If premiſes are held at a rack-rent, and one year's rent being in arrear, the tenant deſerts the premiſſes, and there is not any ſufficient diſtreſs, two juſtices of peace may put the landlord in poſſeſſion. Vide 4 *Geo.* 2. *c.* 28. the ſubſtance of which as to the point in queſtion, See *Poſt.*

In *C. B.* the common rule is, that the defendant ſhall forthwith appear, and receive a declaration, and therefore this *ſuperſedes* the neceſſity of an *original* writ; and no advantage can be taken for want thereof, unleſs it be in a writ of *error*; but when error is brought, an original muſt be filed. In the *King's Bench* there needs not be a *latitat*; but the party is to file a bill of *ejectment*, beſide the plea-roll, if a writ of error be brought before the errors are aſſigned; and he muſt file bail before he can proceed, *&c.*

In *ejectment*, where there are divers defendants, and the freeholds are ſeveral, no defendant may defend for more than is in his own poſſeſſion; and the plaintiff may take judgment againſt his *ejector* for what remains. 1 *Vent.* 355. 2 *Keb.* 524, 531.

It is held if there two defendants in *ejectment*, and one of them appears and confeſſes leaſe, entry, and *ouſter*, but the other doth not appear, in that caſe the plaintiff may enter a *non proſ*, or *retraxit* againſt him, and go to trial, and have judgment againſt the other defendant. 1 *Lord Raym.* 717, 718. Alſo if an *ejectment* be brought againſt two perſons, and after iſſue joined, one dies, and a *venire* is awarded as to the two defendants, and a verdict againſt two; here, upon ſuggeſtion of the death of one of them upon the roll, judgment ſhall be given for the plaintiff againſt the other for the whole: for it is ſaid this action is grounded upon torts, which are ſeveral in their nature, and one may be found guilty and the other acquitted. *Ibid.*

Where one brings *ejectment* of land in two pariſhes, and the whole lies in one, he ſhall recover: alſo if a perſon brings *ejectment* of one acre in *B.* and part of it lies in *A.* he ſhall recover for ſuch part as lies in *B.* And if one having title to a part only of lands, bringeth an *ejectment* for the whole, he ſhall recover his part of the lands. *Plowd.* 429. *Cro. Car.* 13.

A plaintiff ſhall recover only according to the right which he hath at the time of bringing his action: and one who hath title to the land in queſtion, may on motion be made a defendant in the action with the tenant in poſſeſſion, to defend his title. 1 *Nelſ. Abr.* 694. 1 *Lill.* 497, *&c.* As the poſſeſſion of the land is primarily in queſtion, and to be recovered, that concerns the tenant; and the title of the land, which is tried collaterally, that is concerning ſome other, who may be admitted to be a defendant with the tenant: but none other is to be admitted a defendant, but he that hath been in poſſeſſion, or receives the rents, *&c.*

When there is a recovery in *ejectment*, againſt the tenant in poſſeſſion, action of treſpaſs may be brought to recover the *meſne* profits of the lands, from the time of the defendant's entry laid in the declaration and the coſts of the *ejectment*: and this action may be brought either by the plaintiff in *ejectment*, or by the leſſor of the plaintiff. In which caſe the plaintiff need not prove a title, but it is ſufficient to produce the judgment in *ejectment* and the writ of poſſeſſion executed, and to prove the value of the profits, and thereupon he ſhall recover from the time of the demiſe laid in the declaration. *Aſtlin* and *Parker*, *Mic.* 32 *Geo.* 2. *per omnes Juſtic.* on a caſe reſerved. Vide *Burrow*, *part* 4. 668. *Black. Com.* 3 *V.* 205. *Ni. Pri.* 83. If judgment in *ejectment* was againſt the tenant in poſſeſſion, *i. e. per* verdict, it does not ſeem neceſſary to prove the writ of poſſeſſion executed: *contra*, if againſt the *caſual ejector*. *Thorp* and *Fry*. *Stra.* 5. *Ni. Pri.* 83.

If the plaintiff can prove his title accrued before the time of the demiſe, and that the defendant hath been longer in poſſeſſion, he ſhall recover antecedent profits; but in ſuch caſe defendant will be at liberty to controvert his title. *Decoſta* and *Atkins*, *per Eyre* Ch. J. *Hil.* 4 *Geo.* 2. *Bath. Ni. Pri.* 83.

The plaintiff in *ejectment* is a mere nominal perſon, and a truſtee for the leſſor; and if he releaſe the action, the court may ſet aſidethe releaſe, and he ſhall be committed for a contempt; ſo likewiſe if he releaſe an action brought in his name for the meſne profits. 1 *Salk.* 260. *Skinn.* 247. But a nominal leſſee is now in general plaintiff, and the leſſor is conſidered as the real party. If a man is made plaintiff in *ejectment* without his knowledge, and the defendant appearing, the plaintiff thereupon becomes nonſuit, after which execution is ſued out againſt him; if it appears by his oath that he was made plaintiff without his knowledge or order, he ſhall be diſcharged. 34 *Car. B. R.* 5 *An.* 1 *Lil.* 500.

If it appears that the leſſor of the plaintiff had not any title at the time of the demiſe, upon which the plaintiff declared, this will be fatal: and the court will not give leave to alter the declaration as to the time of the demiſe, which would make it a new demiſe. *Carth.* 179. See *Cro. Jac.* 311.

As to lands in the leaſe and declaration, *&c.* being different, and not exactly the ſame, or the term different from that in the declaration, *&c.* See *Yelv.* 166. 2 *Lutw.* 963. The declaration muſt aſſign a place where the leaſe was made. See *Moor, ca.* 673, 710. 1 *And.* 283. 9 *Rep.* 78. If there be a verdict and judgment againſt the plaintiff, he may bring another action of treſpaſs and *ejectment* for the land, it being only to recover the poſſeſſion, *&c.* wherein judgment is not final; and it is not like a writ of right, *&c.* where the title alone is tried. *Wood's Inſt.* 547. *Trin.* 23 *Car. B. R.*

By a late ſtatute, in all caſes between landlord and tenant, when half a year's rent ſhall be in arrear, the landlord having lawful right to re-enter for non-payment, may ſerve a declaration in *ejectment* on the tenant, without a formal demand or re-entry; or he may affix ſuch declaration on the door of the demiſed meſſuage, or notorious place of the lands, which ſhall be deemed a legal ſervice: and upon proof that half a year's rent was due before the declaration was ſerved, and no ſufficient diſtreſs on the premiſſes, the leſſor ſhall have judgment and execution; which if the leſſee ſuffer, without paying the arrears and coſts, and without filing a bill in equity to be relieved within ſix months, he ſhall be barred from all relief, other than by writ of error; and the leſſor ſhall hold the premiſſes diſcharged from the leaſe: but if the tenant or leſſee tender to the leſſor, or bring into court, the rent in arrear, together with coſts, all further proceedings ſhall ceaſe; and if the leſſee be relieved in equity, he ſhall enjoy the demiſed premiſſes, according to his leaſe, without obtaining a new one. See *Stat.* 4 *Geo.* 2. *c.* 28. *&* 11 *Geo.* 2. *c.* 19.

Tenants, to whom declarations in *ejectment* are generally delivered for any lands, *&c.* ſhall give their landlords, or their bailiffs notice thereof, under the penalty of three years-rack rent, to be recovered by action of debt, *&c.* And the court where ſuch *ejectment* ſhall be brought, ſhall ſuffer the landlord to make himſelf defendant, by joining with the tenant, unto whom the declaration is delivered, if he appears; but if not, judgment ſhall be ſigned againſt the caſual *ejector*, for want of ſuch appearance: but if the landlord ſhall deſire to appear by himſelf, and conſent to enter into the like rule, that the tenant, if he had appeared, ought to have done; the court may permit him ſo to do, and order a ſtay of execution, till they make a further order therein. 11 *Geo.* 2. *c.* 19.

If by any intendment a judgment in *ejectment* after a verdict can be made good, the court will do it. *Morris* v. *Barry, Wilſ. Rep. par.* 1. *fo.* 1. Where the landlord is made defendant, the plaintiff muſt prove the landlord's tenant in poſſeſſion of the premiſſes in queſtion *Smith* on *Demiſe* of *Taylor* v. *Mann. Id.* 220. Vide 4 *Geo.* 2. *c.* 28. the ſubſta nceof which, as to the point in queſtion, ſee *poſt.*

As to the forms of proceſs, *&c.* in *ejectment*, they are in the common books of practice.

See further the *Law of Ejectments*, by *Gilbert.*

Ejectum, *Ejectus maris, quod e mari ejicitur:* Jet, Jetſom, Wreck, *&c.* See *Wreck.*

Eigne, (Fr. *aiſne*) Eldeſt or firſt born; as baſtard *eigne*, and mulier *puiſne* are words uſed in our law for the elder a baſtard, and the younger lawful born.

Einecia, (from the Fr. *aiſne*, i. e. primogenitus) Signifies elderſhip. Statute of *Ireland*, 14 Hen. 3. See *Eſnecy.*

Eire, or **Eyre,** (Fr. *eire*, viz. iter, as a *grand eire*, that is, *magnis itineribus)* Is the court of juſtices *itinerant*; and *juſtices in eyre* are thoſe whom *Bracton* in many places calls *juſticiarios itinerantes.* Theſe juſtices, in ancient time, were ſent with a general commiſſion into divers counties to hear ſuch cauſes as were termed *pleas of the crown:* and this was done for the eaſe of the people, who muſt elſe have been hurried to the King's Bench, if the cauſe were too high for the county court: it is ſaid they were ſent but once in every ſeven years. *Bract. lib.* 3. *c.* 11. *Horn's Mirror, lib.* 2. The *eyre of the foreſt* is the juſtice-ſeat; which, by an ancient cuſtom was held every three years by the juſtices of the foreſt, *journeying* up and down for that purpoſe. *Bract. lib.* 3. *tract.* 2. *c.* 1. *&* 2. *Brit. c.* 2. *Cromp. Juriſd.* 156. *Manw. par.* 1. *p.* 121.

Election, *(electio)* Is when a man is left to his own free will to take or do one thing or another, which he pleaſes. And if it be given of ſeveral things, he who is the firſt agent, and ought to do the firſt act, ſhall have the *election:* as if a perſon make a leaſe, rendering rent, or a garment, *&c.* the leſſee ſhall have the election, as being the firſt agent, by the payment of the one, or delivery of the other. *Co. Lit.* 144. And if *A.* covenant to pay *B.* a pound of pepper or ſugar, before *Eaſter*; it is at the *election* of *A.* at all times before *Eaſter*, which of them he will pay: but if he pays it not before the ſaid feaſt, then afterwards it is at the election of *B.* to demand and have which he pleaſeth. *Dyer* 18. 5 *Rep.* 59. 11 *Rep.* 51.

If I give to you one of my horſes in my ſtable, there you ſhall have the *election*; for you ſhall be the firſt agent, by taking or ſeizure of one of them. *Co. Lit.* 145. If things granted are annual, and to have continuance, the *election* (where the law gives it him) remains to the grantor, as well after the day as before: but it is otherwiſe when to be performed at once. *Ibid.* When nothing paſſes to the feoffee or grantee before *election* to have the one thing or the other, the *election* ought to be made in the life of the parties; and the heir or executor cannot make the *election:* but where an eſtate or intereſt paſſes immediately to the feoffee, donee, *&c.* there *election* may be made by them, or their heirs or executors. 2 *Rep.* 36, 37. And when one and the ſame thing paſſeth to the donee or grantee, and ſuch donee or grantee hath *election* in what manner he will take it, there the intereſt paſſeth immediately, and the party, his heirs, *&c.* may make *election* when they will. *Co. Lit.* 145. 2 *Danv. Abr.* 761.

Where the *election* creates the intereſt, nothing paſſes till *election*; and if no *election* can be made, no intereſt will ariſe. *Hob.* 174. If the *election* is given to ſeveral perſons, there the firſt *election* made by any of the perſons ſhall ſtand: as if a man leaſes two acres to *A.* for life, remainder of one acre to *B.* and of the other acre to C. Now *B.* or C. may *elect* which of the acres he will have, and the firſt *election* by one binds the other. *Co. Lit.* 145. 2 *Rep.* 36. If a man leaſes two acres for life, the remainder of one in fee to the ſame perſon; and after licences the leſſee to cut trees in one acre, this is an *election* that he ſhall have the fee in the other acre. 2 *Danv.* 762. A *real election* concerning lands is deſcendible; and *election* of a tenant in tail may prejudice his iſſue. He in remainder may make an *election*, after the death of tenant for life; but if the tenant for life do make *election*, the remainder-man is concluded. *Moor, ca.* 247, 832.

A perſon grants a manor, except one cloſe called *N.* and there are two cloſes called by that name, one containing nine acres, and the other but three acres; the grantee ſhall not in this caſe chooſe which of the ſaid cloſes he will have, but the grantor ſhall have *election* which cloſe ſhall paſs. 1 *Leon.* 268. But if one grants an acre of land out of a waſte or common, and doth not ſay in what part, or how to be bounded, the grantee may make his *election* where he will. 1 *Leon.* 30. If a man hath three daughters, and he covenants with another, that he ſhall have one of them to diſpoſe of in marriage;

it is at the covenantor's *election* which of his daughters the covenantee ſhall have, and after requeſt ſhe is to be delivered to him. *Moor* 72. 2 *Danv.* 762. Where there are three coparceners of lands, upon partition the eldeſt ſiſter ſhall have the *election*: though if ſhe herſelf make the partition, ſhe loſeth it, and ſhall take laſt of all. *Co. Lit.* 166.

In conſideration that a perſon had ſold another certain goods, he promiſed to deliver him the value in ſuch pipes of wine as he ſhould chooſe, the plaintiff muſt make his election before he brings his action. *Style* 49. An *election* which of two things ſhall be done, ought not to be made meerly by bringing an action; but before, that the defendant may know which he is to do, and it is ſaid he is not bound to tender either before the plaintiff hath made his choice which will be accepted. 1 *Mod.* 217. 1 *Nelſ. Abr.* 697.

A condition of a bond is, that the obligor ſhall pay 30*l.* or twenty kine, at the obligee's *election*, within ſuch a time; the obligee at his peril is to make his *election* within the time limited. 1 *Leon.* 69. Though in debt upon bond to pay 10*l.* on ſuch a day, or four cows, at the then *election* of the obligee, it was adjudged, that it was not enough for the defendant to plead that he was always ready, *&c.* if the obligee had made his *election*; for he ought to tender both at the day, by reaſon the word *then* relates to the day of payment. *Moor* 246. 1 *Nelſ.* 694, 695.

If a man hath an *election* to do one of two things, and he cannot by any default of a ſtranger, or of himſelf, or the obligee, or by the act of God, do the one; he muſt at his peril do the other. 1 *Lil. Abr.* 506.

Where the law allows a man two actions to recover his right, it is at his *election* to bring which he pleaſeth: and when a man's act may work two ways, both ariſing out of his intereſt, he hath *election* given him to uſe it either way. *Dyer* 20. 2 *Rol. Abr.* 787. Action of treſpaſs upon the caſe, or action of treſpaſs *vi & armis*, may be brought againſt one that reſcues a priſoner, at the *election* of the party damnified by the reſcous. And an action on the caſe, or an aſſiſe lies againſt him that ſurcharges a common, at the *election* of him that is injured thereby. 1 *Lil.* 504, 505. Alſo for a rent-charge out of lands, there may be a writ of annuity or diſtreſs, at the *election* of the grantee: but after the death of the grantor, if the heir be not charged, the *election* to bring annuity ceaſeth. *Dyer* 344.

A man was indicted of felony for entring an houſe and taking away money, and found guilty, and burnt in the hand; after which the perſon who loſt the money brought an action of treſpaſs againſt the other for breaking his houſe, and taking away his money; and it was held that the action would lie; for though it was at his *election* at firſt, either to prefer an indictment or bring an action, yet by the indictment he had made no *election*, becauſe that was not the proſecution of the party, but of the crown. *Style* 347.

If a bargain and ſale be made of lands, which is inrolled, and at the ſame time the bargainor levies a fine thereof to the bargainee, he hath his *election* to take by one or the other. 4 *Rep.* 72. A wife hath her *election* which to take, of a jointure made after marriage, or her dower, on the death of the huſband, and not before. *Dyer* 358. When a leſſor hath *election* to charge the leſſee, or his aſſignee, *for rent*; if he accepts the rent of the aſſignee, he hath determined his *election*. 3 Rep. 24.

If a perſon hath *election* to pay or perform one of two things at a day, and he do neither of them at that day, his *election* is gone: and where a grant is made of two acres of land, the one for life, the other in fee, or in tail, and before any *election* the feoffee make a feoffment of both; in this caſe the *election* will be gone, and the feoffor may enter upon which he will for the forfeiture. 2 *Rep.* 37. If money on a mortgage be to be paid to a man, his heirs, or executors, the mortgagor hath election to pay it to either: and if in a feoffment it be to pay to the feoffee, his heirs or aſſigns, and he enfeoff another, the feoffor may pay the money to the firſt or ſecond feoffee, *&c.* *Co. Lit.* 210.

In ſome caſes, where one hath cauſe of ſuit, he may ſue one perſon or another at his election; for there is an election of perſons, as well as of things. *Dyer* 204, 207. A man by deed binds himſelf and his heirs to pay money, and dies; the obligee may chuſe to ſue the heir, or the executors, although both of them have aſſets. *Popb.* 151. One may have election, when he hath recovered a debt, to have his execution by *elegit*, *fieri facias*, or *cap. ad ſatisfaciendum*; but where he takes an *elegit*, and hath no fruit of it, he may reſort to another writ, though the election be entered on record. *Hob.* 57. *Dyer* 60, 369.

There is no election againſt the King in his grants, *&c.* 1 *Leon.* 30. And an act becoming void, will determine an election. *Hob.* 152. As to election with reſpect to one action or another, ſee *Com. Dig.* 1 *V.* tit. *Action.*

Election of a Clerk of Statutes-Merchant, Is a writ that lies for the choice of a clerk aſſigned to take bonds called *ſtatutes-merchant*; and is granted out of the *Chancery*, upon ſuggeſtion that the clerk formerly aſſigned is gone to dwell at another place, or is under ſome impediment to attend the duty of his office, or hath not lands ſufficient to anſwer his tranſgreſſions, if he ſhould act amiſs, *&c.* *F. F. B.* 164.

Election of Eccleſiaſtical Perſons. There is to be a free election for the *dignities* of the *church*, by 9 *Ed.* 2. *c.* 14. And none ſhall diſturb any perſon from making free election, on pain of great forfeiture. If any perſons that have a voice in elections, take any reward for an election in any church, college, ſchool, *&c.* the election ſhall be void: and if any of ſuch ſocieties reſign their places to others for reward, they incur a forfeiture of double the ſum; and the party giving it, and the party taking it, is incapable of ſuch place. *Stat.* 31 *Eliz.* *c.* 6. *Election* of *Biſhops*. Vide *Biſhops*.

Election of Members of Parliament. See *Parliament*.

Election of a Verderor of the Foreſt, (*electione viridariorum foreſtæ*) Is a writ which lies for the choice of a *verderor*, where any of the verderors of the foreſt are dead, or removed from their offices, *&c.* It is directed to the ſheriff; and, as appears by the ancient writs of this kind, the verderor is to be elected by the freeholders of the county, in the ſame manner as coroners. *New Nat. Br.* 366.

Eleemoſyna, Alms; *dare in puram & perpetuam* eleemoſynam, to give in pure and perpetual alms, or *frankalmoigne*; as lands were commonly given in ancient times to religious uſes. *Cowel.*

Eleemoſynæ, Hath been uſed for the poſſeſſions belonging to the churches. *Blount.*

Eleemoſyna Regis, or *eleemoſyna aratri*, Is a penny which King *Æthelred* ordered to be paid for every *plough* in *England*, towards the ſupport of the *poor*: it is called *Eleemoſyna Regis*, becauſe it was at firſt appointed by the *King*. Leg. Æthelred, cap. 1.

Eleemoſynaria, The place in a religious houſe, where the common *alms* were repoſited, and thence by the almoner diſtributed to the poor.

Eleemoſynarius, The almoner or peculiar officer who received the *eleemoſynary* rents and gifts, and in due method diſtributed them to pious and charitable uſes. There was ſuch a chief officer in all the *religious houſes*: and the greateſt of our Engliſh *biſhops* had anciently their almoners, as now the King hath. *Linwood's Provincial, lib.* 1. *tit.* 12. See *Almoner*.

Eleemoſynary Corporations, Are corporate bodies appointed over hoſpitals, *&c.* conſtituted for the perpetual diſtribution of the free alms, or bounty of the founder of them. *Black. Com.* 1. *V.* 471.

Elegit, (from the words in it, elegit *ſibi liberari*) Is a writ of execution that lies for him who hath recovered debt or damages, or, upon a recognizance in any court againſt one not able in his goods to ſatisfy the ſame; directed to the ſheriff, commanding him to make delivery of a *moiety* of the party's *land*, and *all his goods*, beaſts of the plough excepted. And the creditor ſhall hold the ſaid moiety of the land ſo delivered unto him, until his whole debt and damages are paid and ſatisfied; and during that term he is *tenant* by *elegit*. *Reg. Orig.* 299. *Co. Lit.* 289.

Upon an *elegit*, the ſheriff is to deliver one half of all houſes, lands, meadows and, paſtures, rents, reverſions, and hereditaments wherein the defendant had any ſole eſtate in fee, or for life, into whoſe hands ſoever the ſame do afterwards come; but not of a right only to land, an annuity, copyhold lands, &c. *Dyer* 206. 7 *Rep.* 49. *Plowd.* 224. This writ is given by the ſtatute of *Weſtm.* 2. 13 *Ed.* 1. *c.* 18. And by it, the plaintiff, &c. elects *omnia bona & catalla* of the defendant, *præter bovis & afros de caruca ſua*; and alſo a moiety of all the lands which the defendant had at the time of the judgment recovered: but it ought to be ſued within a year and a day after the judgment. *F. N. B.* 267.

But though by this ſtatute, the lands of the debtor are made liable, as well as his perſonal eſtate; yet if the creditor takes out an *elegit*, and it appears to the ſheriff, that there are goods and chattels ſufficient of the debtor's, to ſatisfy the debt, *he ought not to extend the lands.* 2 *Inſt.* 395. But an *elegit* executed upon goods only, is not a *fieri facias*, for a *fieri facias* is executed by ſale by the ſheriff; but the *elegit* by the appraiſement of the goods by a jury, and delivery to the party. 1 *Sid.* 184. 1 *Lev.* 92. 1 *Keb.* 105, 261, 465, 556, 692.

Upon this writ the ſheriff is to impanel a jury, who are to make inquiry of all the goods and chattels of the debtor, and to appraiſe the ſame, and alſo to inquire as to his lands and tenements; and upon ſuch inquiſition the ſheriff is to deliver all the goods and chattels (except the beaſts of the plough) and a moiety of the lands to the party, and muſt return his writ, in order to record ſuch inquiſition in that court, out of which the *elegit* iſſued: and when the jury have found the ſeiſin and value of the land, the ſheriff, and not the jury, is to ſet out and deliver a moiety thereof to the plaintiff, by metes and bounds. *Cro. Car.* 319.

All writs of execution may be good, though not returned, except in *elegit*; but that *muſt be returned*, becauſe an inquiſition is to be taken upon it, and that the court may judge of the ſufficiency thereof. 4 *Rep.* 65, 74. It has been ruled, that if more than a moiety of the lands is delivered on an *elegit* by the ſheriff, the ſame is void for the whole. *Sid.* 91. 2 *Salk.* 563. And the ſheriff cannot ſell any thing, but what is found in the inquiſition; and thereſore if he ſell a term for years, &c. miſ-recited in the inquiſition, as to the commencement thereof, the ſale is void. 4 *Rep.* 74.

In debt upon bond, the defendant before the trial conveyed his lands to another, &c. but he himſelf took the profits; notwithſtanding this conveyance, a moiety of his lands was extended on an *elegit*. *Dyer* 294. 3 *Rep.* 78. If two perſons have each of them a judgment againſt one debtor, and he who hath the firſt judgment brings an *elegit*, and hath the moiety of the lands delivered to him in execution; and then the other judgment creditor, ſues out another *elegit*, he ſhall have only a *moiety of that moiety*, which was not extended by the firſt judgment. *Cro. Eliz.* 483.

When lands are once taken in execution on an *elegit*, and the writ is returned and filed, the plaintiff ſhall have no other execution. 1 *Lev.* 92. And if the defendant hath lands in more counties than one, and the plaintiff awards an *elegit* to one county, and extends the lands upon the *elegit*, and afterwards files the writ, he cannot, after that, ſue out an *elegit* into the other counties: but he may immediately after entry of the judgment upon the judgment-roll, award as many *elegits*, into as many counties as he thinks fit, and execute all, or any of them, at his pleaſure. 1 *Lil. Abr.* 509. *Cro. Jac.* 246.

A man had lands in execution, upon an *elegit*, and afterwards moved for a new *elegit*, upon proof that the defendant had other lands, not known to the creditor, at the time when the execution was ſued out; and it was adjudged, that if he had accepted of the firſt by the delivery of the ſheriff, he could not afterwards have a new *elegit*; but when the ſheriff returns the writ, he may waive it, and then have a new extent. *Cro. Eliz.* 310. 1 *Nelſ. Abr.* 699. *Sed qu.*

If the defendant dies in priſon, ſo that there is no execution with ſatisfaction, the plaintiff ſhall have an *elegit* afterwards. 5 *Rep.* 86. And if all the lands extended on an *elegit* be evicted by a better title, the plaintiff may take out a new execution. 4 *Rep.* 66. Where one having land by *elegit*, is wholly evicted out of it, he may have a further execution, either againſt the defendant's lands or goods, as he might have had at firſt; ſave only, he muſt bring a *ſcire facias* againſt the defendant, or him that comes in under him; but if the eviction be of part of the land, or for a time only, ſo that the plaintiff may take his full execution by holding it over; there he cannot have any new execution, by the ſtatute 32 *H.* 8. *c.* 5. 2 *Shep. Abr.* 115.

Where an *elegit* is ſued upon a judgment, the levying of goods thereon for part only, is no impediment, but the plaintiff may bring another *elegit pro reſiduo*, and take the lands. 1 *Lev.* 92. On a *nihil* returned upon an *elegit*, there may be brought a *capias ad ſatisfaciendum*, or *fieri facias*. 1 Leon. 176. And an *elegit* may be ſued after a *fieri facias* returned *nulla bona*, or where part is levied by it; and after a *capias ad ſatisfaciendum* returned *non eſt inventus*. Hob. 57.

A perſon in execution was ſuffered to eſcape, and then he died; the land which he had at the time of the judgment may be extended, by *elegit*, upon a *ſcire facias* brought againſt his heir, as tertenant. *Dyer* 271.

A man may have an aſſiſe of the land which he hath in execution by *elegit*, if he be deforced thereof. *Stat. Weſtm.* 2. *c.* 18. And if tenant by *elegit* alien the land in fee, &c. he who hath right ſhall have againſt him and the alienee, an aſſiſe of *novel diſſeiſin*. Ibid. At a trial at bar in *C. B.* the court delivered for law, that where lands are actually extended, and delivered upon an *elegit*, a fine levied on thoſe lands, and non-claim, will bar the intereſt of the tenant by *elegit*. 1 *Mod.* 217.

If tenant by *elegit*, be put out of poſſeſſion before he hath received ſatisfaction for his debt, by the heir at law, &c. he may bring action of treſpaſs, or re-enter and hold over till ſatisfied: but after ſatisfaction received, the defendant may enter on the tenant by *elegit*. 4 *Rep.* 28, 67. Tenants by *elegit*, ſtatutes-merchant, &c. are not puniſhable for waſte by action of waſte; but the party, againſt whom execution is ſued, is to have a writ of *venire facias ad computandum*, &c. and there the waſte ſhall be recovered in the debt: though it is ſaid there is an old writ of waſte in the Regiſter, for him in reverſion againſt tenant by *elegit*, committing waſte on lands which he hath in execution 6 *Rep.* 37. *New Nat. Br.* 130. On tenant by *elegit*'s accounting, if the money recovered by the plaintiff is levied out of the lands, the defendant ſhall recover his land; and if more be received by waſte, &c. he ſhall have damages. *Terms de Ley.* See *Extent, Execution.* See *Black. Com.* 2 *V.* 161. 3 *V.* 418. 4 *V.* 419.

Elf-Arrows, Were *flint-ſtones* ſharpened on each ſide in ſhape of *arrow-heads*, made uſe of in war by the ancient *Britains*; of which ſeveral have been found in *England*, and greater plenty in *Scotland*, where it is ſaid the common people imagine they drop from the clouds.

Eliſors, To impanel juries, &c. See *Eſliſors.*

Elke, A kind of yew to make bows of. *Stat.* 32 *H.* 8. *cap.* 9. Alſo the name of the wild beaſt ſomewhat like a deer.

Eloine, (from the Fr. *eſloiſner)* Signifies to remove or ſend a great way off: in this ſenſe it is uſed by ſtatute; if ſuch as are within age be *eloined*, ſo that they cannot come to ſue perſonally, their next friends ſhall be admitted to ſue for them. 13 *Ed.* 1. *cap.* 15.

Elongata, Is a return of the ſheriff that *cattle* are not to be found, or removed, ſo that he cannot make deliverance, &c. in *replevin*. 2 Lil. Abr. 454, 458.

Elopement, (derived from the Belg. **E**, *viz. matrimonium* & loopen, *currere)* Is where a married woman of her own accord, goes away and departs from her huſband, and lives with an adulterer. A woman thus leaving her huſband is ſaid to *elope*; and in this caſe, her huſband is not obliged to allow her any *alimony* out of his eſtate; nor ſhall he be chargeable for neceſſaries for her, as wearing apparel, diet, lodging, &c. And where the ſame is notorious, whoever gives her credit, doth it at his peril: but on *elopement*, the putting a wife in the *Gazette*, or other news-papers, is no legal notice to perſons in general not to truſt her; though perſonal notice to particular perſons given by the huſband, will be good not to be chargeable to them. 1 *Rol.* 350. 1 *Vent.* 42. I ſhould think publication ſeveral times, in the Gazette, Daily Advertiſer, and other daily papers for ſome time would be a very good caſe, with reſpect to notice, to all perſons, to leave to a jury. By *Stat.* 13 *Ed.* 1. *cap.* 34. If the wife goes away from the huſband, and tarrieth with the adulterer, without returning and being reconciled to her huſband, this continual *elopement* forfeits her dower; according to theſe old verſes:

> *Sponte virum mulier fugiens,* & adultera *facta,*
> *Dote ſua careat, niſi ſponſo ſponte retracta.*

Action lies againſt the adulterer for carrying away another perſon's wife, and *detaining* her; and large damages are uſually given in theſe caſes to the injured huſband.

Ely, A royal franchiſe or county palatine. See *County*, and *Black. Com.* 1 *V.* 118. 3 *V.* 78.

Embargo, A prohibition upon ſhipping, not to go out of any port, on a war breaking out, *&c.*

Emblements, from the Fr. *emblavence de bled, viz.* corn ſprung or put up above ground) Signify properly the profits of ſown land: but the word is ſometimes uſed more largely, for any products that ariſe naturally from the ground, as graſs, fruit, *&c.* In ſome caſes he who ſowed the *corn* ſhall have the *emblements*; and in others not: a leſſee at will ſows the land, he ſhall have the *emblements*; though if the leſſee determines the will himſelf, he ſhall not have them, but the leſſor. 5 *Rep.* 116. If leſſee at will ſows the land with grain, or other thing yielding annual profit, and the leſſor enters before ſeverance; yet the leſſee ſhall have it: but where the leſſee plants young fruit-trees, or other trees, or ſows the land with acorns, *&c.* he ſhall not have theſe: and if ſuch tenant by good huſbandry make the graſs to grow in greater abundance; or ſow the land with hay-ſeed, by which means it is increaſed, if the leſſor enters on the leſſee, the leſſee ſhall not have it, *becauſe graſs is the natural* profit *of the ſoil.* Co. Lit. 55, 56.

Where tenant for life ſows the land, and dies, his executors ſhall have the *emblements*, and not the leſſor or him in reverſion; by reaſon of the uncertainty of the eſtate. *Cro. Eliz.* 463. And if a tenant for life plants hops, and dies before ſeverance, he in reverſion ſhall not have them, but the executors of tenant for life. *Cro. Car.* 515. If tenant for years, (if he ſo long live) ſow the ground, and die before ſeverance; the executor of the leſſee ſhall have the corn: and where leſſee for life leaſes for years, if the leſſee for years ſow the land, and after leſſee for life dies before ſeverance, the executor of leſſee for years ſhall have the *emblements*. 2 *Danv. Abr.* 765.

If tenant for years ſows ground, and before his corn is ſevered, the term which is certain expires; the leſſor or he in reverſion ſhall have the *emblements*; but he muſt firſt enter on the lands. 1 *Lil. Abr.* 511. A leſſee for life or years ſows the land, and after ſurrenders, *&c.* before ſeverance, the leſſor ſhall have the corn. 2 *Danv.* 764. If there be leſſee for years upon condition that if he commit waſte, *&c.* his eſtate ſhall ceaſe; if he ſows the ground with corn, and after doth waſte, the leſſor ſhall have the corn. *Co. Lit.* 55. And where a lord enters on his tenant for a forfeiture, he ſhall have the corn on the ground. 4 *Rep.* 21.

A feme copyholder for her widowhood ſows the land, and before ſeverance takes huſband, ſo that her eſtate is determined, the lord ſhall have the *emblements*. 1 Lil. 511. Though if ſuch a feme copyholder *durante viduitate*, leaſes for one year according to cuſtom, and the leſſee ſows the land, and afterwards the copyholder takes huſband, the leſſee ſhall have the corn. 2 *Danv.* 764. If a huſband holds lands for life, in right of his wife, and ſow the land, and after ſhe dies before ſeverance, he ſhall have the *emblements*. *Dyer* 316. 1 *Nelſ. Abr.* 701. And where the wife hath an eſtate for years, life, or in fee, and the huſband ſows the land, and dieth, his executors ſhall have the corn. 1 *Nelſ.* 702. But if the huſband and wife are jointenants, though the huſband ſow the land with corn, and dies before ripe, the wife and not his executors ſhall have the corn, ſhe being the ſurviving join-jointenant. *Co. Lit.* 199.

When a widow is endowed with lands ſown, ſhe ſhall have the *emblements*, and not the heir. 2 *Inſt.* 81. And a tenant in dower may diſpoſe of corn ſown on the ground; or it may go to her executors, if ſhe die before ſeverance. 2 *Inſt.* 80, 81. And if a parſon ſows his glebe, and dies, his executors ſhall have the corn: likewiſe ſuch parſon may by will diſpoſe thereof. 1 *Rol. Abr.* 655. *Stat.* 28 *H.* 8. *cap.* 11.

If tenant by ſtatute-merchant ſows the land, and before ſeverance a caſual profit happens, by which he is ſatisfied, yet he ſhall have the corn. *Co. Lit.* 55. Lands ſown are delivered in execution upon an extent, the perſon to whom delivered ſhall have the corn on the ground. 2 *Leon.* 54. And judgment was given againſt a perſon, and then he ſowed the land, and brought a writ of error to reverſe the judgment; but it was affirmed; and adjudged that the recoveror ſhall have the corn. 2 *Bulſt.* 213.

If a diſſeiſor ſows the land, and afterwards cuts the corn, but before it is carried away, the diſſeiſee enters; the diſſeiſee ſhall have the corn. *Dyer* 31. 11 *Rep.* 52. A perſon ſeiſed in fee of land dies, having a daughter, and his wife *privement enſient* with a ſon; the daughter enters and ſows the land, and before ſeverance of the corn, the ſon is born; in this caſe the daughter ſhall have the corn, her eſtate being lawful, and defeated by the act of God; and it is for the public good that the land ſhould be ſown. *Co. Lit.* 55.

A man ſeiſed in fee-ſimple ſows land, and then deviſes the land by will, and dies before ſeverance; the deviſee ſhall have the corn; and not the deviſor's executors. *Winch* 52. *Cro. Eliz.* 61. If a perſon deviſes his lands ſown, and ſays nothing of the corn, the corn ſhall go with the land to the deviſee: and when a man ſeiſed of land, in fee or in tail, ſows it, and dies without will, it goes to executor, and not the heir. 10 *Ed.* 4. 1. *b.* 21 *H.* 6. 30. *a.* 37 *H.* 6. 35. *b.* A deviſee for life dies, he in remainder ſhall have the *emblements* with the land. *Hob.* 132.

Tenant in fee ſows the land, and deviſes it to *A.* for life, remainder to *B.* for life, and dies; *A.* dies before ſeverance, *B.* in remainder ſhall have the corn, and not the executor of the firſt tenant for life. *Cro. Eliz.* 61, 464. Where there is a right to *emblements*, ingreſs, egreſs and regreſs are allowed by law, to enter, cut and carry them away, when the eſtate is determined, *&c.* 1 *Inſt.* 56.

Emblers de Gentz, *(Fr.)* A ſtealing from the people: The word occurs in our old rolls of parliament.——— Whereas divers murders, *emblers de gentz*, and robberies are committed, *&c.* *Rot. Parl.* 21 *Ed.* 3. *n.* 62.

Embraceor, (Fr. *embraſour)* Is he that when a matter is in trial between party and party comes to the bar with one of the parties, having received ſome reward ſo to do, and ſpeaks in the caſe; or privately labours the jury, or ſtands in the court to ſurvey and overlook them, whereby they are awed or influenced, or put in fear or doubt of the matter. *Stat.* 19 *H.* 7. *cap.* 13. But lawyers, attornies, *&c.* may ſpeak in the caſe for their clients, and not to be *embraceors*: alſo the plaintiff may labour the jurors to appear in his own cauſe; but a ſtranger muſt not do it: for the bare writing a letter to a perſon, or parol requeſt for a juror to appear, not by the party himſelf, hath been held within the ſtatutes againſt embracery and maintenance. *Co. Lit.* 369. *Hob.* 294. 1 *Saund.* 391. If the party himſelf inſtruct a juror, or promiſe any reward for his appearance, then the party is likewiſe an *embraceor*. And a juror may be guilty of embracery, where he by indirect practices gets himſelf ſworn on the *tales*, to ſerve on one ſide. 1 *Lil.* 513. There are divers ſtatutes relating to this offence and *maintenance*, as 5 *Ed.* 3. *c.* 10. 34 *Ed.* 3. *c.* 8. 32 *H.* 8. *c.* 9, *&c.* An action will lie for maintenance, *&c.* at Common law. 2 *Inſt.* 208. So the party may have an action founded on the ſtatutes, *St. W.* 1. 25. 28 *Ed.* 1. 11. 31 *Ed.* 1. *ſtat.* 3. *Stat.* 1. *R.* 2. 4. 2 *Inſt.* 208, 212, 563.

So an action lies by *qui tam*, &c. upon the *Stat.* 32 *H.* 8. 9. for a penalty of ten pounds againſt him who maintains a ſuit. Vide *Com. Dig.* 4 *V*. 168, &c.

Embracery, Is the act or offence of *embracers*: and to attempt to influence a jury, or any way incline them to be more favourable to the one ſide than the other, by promiſes, threatenings, money, treats, &c. whether the jurors upon whom any ſuch attempt is made, give any verdict or not, or whether the verdict paſs on his ſide or not; this is *embracery*. Co. Litt. 369. Noy's Rep. 102.

Embring Days, (from *embers, cineres*) So called either becauſe our anceſtors, when they *faſted*, ſat in aſhes, or ſtrewed them on their heads, are thoſe which the ancient fathers called *Quatuor Tempora jejunii*, and of great antiquity in the church: they are obſerved on *Wedneſday*, *Friday* and *Saturday* next after *Quadrageſima Sunday*, (or the firſt *Sunday* in *Lent*) after *Whitſunday*, *Holyrood day* in *September*, and St. *Lucy*'s day about the middle of *December*. Theſe days are mentioned by *Britton*, *cap.* 53. and other writers; and particularly in the *Stat.* 2 & 3 *Ed.* 6. *c.* 19. and are kept with great zeal by the *Roman* Catholicks; our almanacks call them the *Ember Weeks*.

Embroidery. By the *Stat.* 22 *G.* 2. *c.* 36. No foreign *embroidery*, or gold or ſilver brocade, ſhall be imported, upon pain of being forfeited and burnt, and penalty of 100*l.* for each piece. No perſon ſhall ſell or expoſe to ſale any foreign *embroidery*, gold or ſilver thread, lace, fringe, brocade, or make up the ſame into any garment, upon pain of having it forfeited and burnt, and penalty of 100*l.* All ſuch *embroidery*, &c. found, may be ſeized and burnt, and the mercer, &c. in whoſe cuſtody it was found, ſhall forfeit 100*l.*

Emendals, (*emenda*) Is an old word ſtill made uſe of in the accounts of the ſociety of the *Inner Temple*; where ſo much in *emendals* at the foot of an account, on the balance thereof, ſignifies ſo much money in the bank or ſtock of the houſes, for reparation of loſſes or other emergent occaſions: *quod in reſtaurationem damni tribuitur.* Spelm.

Emendare, *Emendam ſolvere*, To make *amends* for any crime or treſpaſs committed. *Leg. Edw. Confeſſ. c.* 35. Hence a capital crime, not to be attoned by fine, was ſaid to be *inemendabile*. Leg Canut. p. 2.

Emendatio, Hath been uſed for the power of *amending* and correcting abuſes, according to ſtated rules and meaſures; as *emendatio panni*, the power of looking to the aſſize of cloth, that it be of juſt meaſure; *emendatio panis & cerviſiæ*, the aſſizing of bread and beer, &c. privilege granted to lords of manors, and executed by their officers appointed in the court-leet, &c. *Ad nos ſpectat* emendatio *panni & panis & cerviſiæ, & quicquid regis eſt, excepto murdredo & latrocinio, &c.*——Paroch. Antiq. 196.

Emeralds. Exempt from duties, by 6 *Geo.* 2. *c.* 7.

Empanel a jury, *Ponere in aſſiſis & juratis, &c.* See *Impanel.*

Emperor, (*imperator*). The higheſt ruler of large kingdoms and territories, a title anciently given to renowned and victorious generals of armies, who acquired great power and dominion. And this title is not only given to the *Emperor of Germany*, as *Emperor of the Romans*; but was formerly belonging to the *Kings of England*, as appears by a charter of King *Edgar*, *viz.* *Ego* Edgarus Anglorum Baſileus, *omniumque Regum Inſularum Oceani quæ Britanniam circumjacent*, &c. Imperator & *Dominus*.

Enbrever, (*Fr.*) To write down in ſhort. *Britton*. 56.

Encheſon, A *French* word uſed in our law books and ſtatutes, ſignifying as much as occaſion, or the cauſe or reaſon wherefore any thing is done. *Stat.* 5 *Ed.* 3. *c.* 3.

Endeavour. Where one who has the uſe of his reaſon *endeavours* to commit felony, &c. he ſhall be puniſhed by our laws, but not to that degree as if he had actually committed it: as if a man aſſault another on the highway, in order to a robbery, but takes nothing from him, this is not puniſhed as felony, becauſe the felony was not accompliſhed; though as a miſdemeanor, it is liable to fine and impriſonment. 3 *Inſt.* 68, 69, 161. 11 *Rep.* 98. And in this caſe, the offender ſhall be tranſported, by a late ſtatute, 7 *Geo.* 2. *cap.* 21. Vide *Intendment.*

Endowment, Signifies the beſtowing or aſſuring of *dower* on a woman; but it is ſometimes uſed metaphorically for the ſettling a proviſion upon a perſon, or building of a *church* or chapel; and the ſevering a ſufficient portion of tithes, &c. for a vicar, towards his perpetual maintenance, when the benefice is appropriated. *Stat.* 15 *R.* 2. *c.* 6. 4 *H.* 4. *cap.* 12.

Enemy, (*inimicus*) Is properly an alien or foreigner, who in a public capacity, and in an hoſtile manner, invades any kingdom or country; and whether ſuch perſons come hither by themſelves, or in company with *Engliſh* traitors, they cannot be puniſhed as traitors, but ſhall be dealt with by martial law. *H. P. C.* 10, 15. 1 *Hawk.* 35. But the ſubjects of a foreign prince coming into *England*, and living under the protection of the King, if they take up arms, &c. againſt the government, they may be puniſhed as traitors, not as alien enemies. 1 *Hawk. ibid.* If a priſoner be reſcued by enemies, the gaoler is not guilty of an eſcape; as he would have been if ſubjects had made the reſcue, when he might have a legal remedy againſt them. 2 *Hawk.* 130. Adhering to and ſuccouring the King's enemies. See *Treaſon.*

Enfranchiſe, (Fr. *enfranchir*) To make free, or incorporate a man in any ſociety, &c. It is alſo uſed where one is made a free *denizen*, which is a kind of incorporation in the *commonwealth*.

Enfranchiſement, (*Fr.* from *franchiſe*, i. e. *libertas*) Is when a perſon is incorporated into any ſociety or body politick, and ſignifies the act of incorporating. He that by charter is made a *denizen*, or freeman of *England*, is ſaid to be *enfranchiſed*, and let into the general liberties of the ſubjects of the kingdom: and he who is made a citizen of *London*, or other city, or free burgeſs of any town corporate, as he is made partaker of thoſe liberties that appertain to the corporation, is in the common ſenſe of the word a perſon *enfranchiſed*. And when a man is *enfranchiſed* into the freedom of any city or borough, he hath a freehold in his freedom during life; and may not, for endeavouring any thing only againſt the corporation, loſe and forfeit the ſame. 11 *Rep.* 91. So Villein was *enfranchiſed*, when he was made free by his lord, and rendered capable of the benefits belonging to freemen.

Englecery, or **Engleſchire**, (*Engleceria*) Is an old word ſignifying the being an *Engliſhman*. When *Canutus* the *Dane* came to be King of *England*, he at the requeſt of the nobility ſent back his army into *Denmark*, but kept ſome *Danes* behind to be a guard to his perſon; and he made a law for the preſervation of his *Danes* (who were often privately made away with by the *Engliſh*) that if an *Engliſhman* killed a *Dane*, he ſhould be tried for the murder; or if he eſcaped, the town or hundred where the fact was done, was to be amerced *ſixty-ſix marks* to the King; ſo that after this law, whenever a murder was committed, it was neceſſary to prove the party ſlain to be an *Engliſhman*, that the town might be exempted from the amercement; which proof was called *Englecery*, or *Engleſchire*. And whereas if a perſon were privately ſlain, he was in ancient time accounted *Francigena*, which word comprehended every alien, eſpecially the *Danes*: it was therefore ordained, that where any perſon was murdered, he ſhould be adjudged *Francigena*, unleſs *Englecery* were proved, and that it was made manifeſt he was an *Engliſhman*. The manner of proving the perſon killed to be an *Engliſhman*, was by two witneſſes who knew the father and mother, before the coroner, &c. *Bract. lib.* 3. *tract.* 2. *cap.* 15. *Fleta, lib.* 1. *c.* 30. 7 *Rep.* 16. This *Englecery*, by reaſon of the great abuſes and trouble that afterwards were perceived to grow by it, was utterly taken away by Stat. 14 *Ed.* 3. *ſt.* 1. *c.* 4.

Engliſh. Pleas, records, bonds, and proceedings in courts of juſtice, to be in *Engliſh*. 4 *Geo.* 2. *c.* 26. And ſee 5 *Geo.* 2. *c.* 27. 6 *Geo.* 2. *c.* 14.

Engliſhmen, The names of, to be certified into the *Chancery* who are abroad in *Holland* and *Flanders*, &c. and ſhall pay ſuch impoſitions as *aliens* do. Stat. 14 & 15 *H.* 8. *c.* 4.

Engravers, That ſhall invent, deſign and *engrave* prints, to have the ſole right of printing them for fourteen years, which ſhall be engraved with the names of the proprietors; and others copying, and ſelling ſuch prints, though by varying, *&c.* without their conſent, ſhall forfeit 5 *l.* for every print, and alſo the plates and ſheet, *&c.* *Stat.* 8 *Geo.* 2. *c.* 13.

Enhance, To raiſe the price of goods or merchandize. See *Foreſtaller*.

Enplect, Was anciently uſed for *implead*.——They may *enplect* and be *enplected* in all courts. *Mon. Ang. tom.* 2. *fo.* 412.

Enſient, or **Enſeint**, Is the being with child. *Law Fr. Dict.*

Enſienture, Of any woman condemned for a crime, is no ground to ſtay judgment; but it may be afterwards alledged againſt execution. 2 *Hale's Hiſt. P. C.* 413.

Entail, (Fr. *entaille*, i. e. *inciſus*) Is fee entailed, *viz.* abridged, limited, and tied to certain conditions, at the will of the donor; where lands are given to, or ſettled on others. See *Fee* and *Tail*.

Enterpleader, (Fr. *enterplaider*, Lat. *interplacitare*) Signifies to diſcuſs or try a point incidentally happening as it were between, before the principal cauſe can be determined. And *enterpleader* is allowed, that the defendant may not be charged to two ſeverally, where no default is in him: as if one brings detinue againſt the defendant upon a bailment of goods, and another againſt him upon a trover, there ſhall be *enterpleader*, to aſcertain who hath right to his action. 2 *Danv. Abr.* 779. If two bring ſeveral detinues againſt *A. B.* for the ſame thing, and the defendant acknowledges the action of one of them, without a prayer of *enterpleader*, they ſhall not interplead on the requeſt of the other; for the *interpleader* is given for the ſecurity of the defendant, that he may not be twice charged, and he hath waived that benefit. 18 *Ed.* 3. 22.

If one brings detinue againſt *B.* and counts upon a delivery of goods, *&c.* to re-deliver to him, and another brings detinue againſt him alſo, and counts ſo likewiſe; if there be not any privity of bailment between them, yet they ſhall *interplead*, to avoid the double charge of the defendant; and alſo becauſe the court cannot know to whom to deliver the thing detained, if both ſhould recover. *Br. Enterplead.* 3. And upon ſuch ſeveral detinues, if the defendant ſays that he found it, and traverſes the bailment, they ſhall *enterplead*; for then he is chargeable as well to the one as the other: ſo if he ſays that they delivered jointly, *abſque hoc*, that they delivered it as they have counted: but it is otherwiſe if the defendant doth not traverſe the bailment, becauſe if there was a bailment, he is chargeable only to the bailor, and may plead in bar againſt the others. 2 *Danv.* 782.

Where two bring ſeveral detinues for one thing, and the defendant prays that he may *enterplead*, and delivers the thing to the court, and before the award of the *enterpleader*, one diſcontinues the ſuit, the other ſhall not have judgment; but if he diſcontinues his ſuit after the *enterpleader*, the other may have judgment. 11 *H.* 6. 19.

If a recovery be had upon an *enterpleader*, judgment ſhall be given to recover the thing demanded againſt the defendant; and not againſt the garniſhee, in caſe of garniſhment, *&c.* 2 *Danv.* 783. When two have *enterpleaded* in detinue, he that recovers ſhall recover damage againſt the other. *Br. Damage* 68.

There was formerly *enterpleader* relating to delivery of lands by the King to the right heir, where two perſons out of wardſhip were found heirs, *&c.* 7 *Rep.* 45. *Staund. Prer. cap.* 17. *Bro.* tit. *Enterplead.* And anciently the head *enterpleader* made a great title in the law. There is alſo a bill of *interpleader* in Chancery.

Entiertie, (from the French *entierete*, entireneſs) Is a contradiſtinction in our books to moiety, denoting the whole: and a bond, damages, *&c.* are ſaid to be *entire*, when they cannot be divided or apportioned.

Entire Tenancy, Contrary to *ſeveral tenancy*, and ſignifying a ſole poſſeſſion in one man; whereas the other is a joint or common poſſeſſion in more. *Brook.*

Entry, (*ingreſſus*, Fr. *entree*, i. e. *introitus*) Signifies the taking poſſeſſion of lands or tenements, where a man hath title of *entry*: and it is alſo uſed for a *writ of poſſeſſion*. This *entry* into lands, is where any man enters into or takes poſſeſſion of any lands, *&c.* in his proper perſon; and is an actual *entry* when made by a man's ſelf, or by attorney by warrant from him that hath the right; or it is an *entry in law*, for a *continual claim* is an *entry* implied by law, and has the ſame force with it. *Lit. ſect.* 419. There is a right of *entry*, when the party claiming may for his remedy either enter into the land, or have an action to recover it: and a *title of entry*, where one hath lawful *entry* given him in the lands, which another hath, but has no action to recover till he hath entered. *Plowd.* 558. 10 *Rep.* 48. *Finch's Law* 105.

The *writs of entry* concern the right of property, and are of divers kinds, diſtinguiſhed into four degrees, according to which the writs are varied. The *firſt* degree is a writ of *entry ſur diſſeiſin*, that lieth for the diſſeiſee againſt a diſſeiſor, upon a diſſeiſin done by himſelf; and this is called a writ of *entry* in the nature of an aſſiſe.

Second, a writ of *entry ſur diſſeiſin in le per*, for the heir by diſcent, who is ſaid to be in the *per*, as he comes in by his anceſtor; and ſo it is if a diſſeiſor make a feoffment in fee, gift in tail, *&c.* the feoffee and donee are in the *per* by the diſſeiſor.

Third, A writ of *entry ſur diſſeiſin in le per & cui*, where the feoffee of a diſſeiſor maketh a feoffment over to another, when the diſſeiſee ſhall have this writ of *entry ſur diſſeiſin*, *&c.* of the lands in which ſuch other had no right of *entry*, but by the feoffee of the diſſeiſor, to whom the diſſeiſor demiſed the ſame, who unjuſtly and without judgment diſſeiſed the demandant.

Fourth, A writ of *entry ſur diſſeiſin in le poſt*, which lieth when after a diſſeiſin the land is removed from hand to hand beyond the degrees, in caſe of a more remote ſeiſin, whereunto the other three degrees do not extend. *Co. Lit.* 238.

In theſe four degrees, are comprehended generally all manner of writs of *entry*. And the writ of *entry in le poſt* is ſo called, becauſe the words of the writ are, *Poſt diſſeiſinam quam* B. *injuſte & ſine judicio fecit*, *&c.* Britton obſerves, that the words, *In le per*, *In le per & cui*, and *In le poſt*, ſignify nothing but divers forms of this writ, applied to the caſe whereupon it is brought; and each form taking its name from the words contained in the writ. *F. N. B.* 193. But if any writ of *entry* be conceived out of the right cauſe, ſo that one form is brought for another, it is abatable.

A writ of *entry* in the *per* and *cui*, ſhall be maintained againſt none, but where the tenant is in by purchaſe or diſcent; for if the alienation or diſcent be put out of the degree upon which no writ may be made in the *per* and *cui*, then it ſhall be made in the poſt. *Terms de Ley.*

There are *five* things which put the writ of *entry* out of the *degrees*, viz. *intruſion*; *diſſeiſin* upon *diſſeiſin*; *ſucceſſion* where the diſſeiſor was a perſon of religion, and his ſucceſſor enters; *judgment*, when a perſon hath had judgment to recover againſt the diſſeiſor; and *eſcheat*, on the diſſeiſor's dying without heir, or committing felony, *&c.* on which the lord enters, *&c.* In all theſe caſes, the diſſeiſee or his heir, ſhall not have a writ of entry within the degrees of the *per*, but in the *poſt*; becauſe they are not in by diſcent, or purchaſe. *Terms de Ley.*

Having explained the nature of an entry, it remains to conſider in what caſes an entry is lawful, and by what means it is taken away.

Degrees as to *entries* are of two ſorts, either by *act* in *law*, as in caſe of a diſcent; or by *act* of the *party* by lawful conveyance; and by the Common law, if the lands were conveyed out of the degrees, the demandant was driven to his *writ of right*, in reſpect of ſuch long poſſeſſion, and ſo many alterations in different hands; wherefore by the ſtatute of *Marlbridge*, 52 *Hen.* 3. *cap.* 29. the writ of *entry in le poſt* is given.

But no eſtate *gained by wrong* doth make a degree; ſo that *abatement*, *intruſion*, *&c.* work not a degree; nor doth every change by lawful title, or an eſtate of tenant by the curteſy, by judgment, *&c.* or of any others that come in the *poſt*; though a tenancy in dower by aſſignment of the heir doth work a degree, becauſe ſhe is in by her huſband: but an aſſignment of dower by a diſſeiſor, doth not, by reaſon ſhe is in the *poſt*. *Co, Lit.* 239.

Entry on lands is taken away by diſcent on *diſſeiſins*, or *diſcontinuance*, *&c.* But a diſcent ſhall not take away the entry of leſſee for ſeven years, nor of tenant by *elegit*, *&c.* who have but a chattel, and no freehold; otherwiſe it is of any eſtate for life, or any higher eſtate. *Co. Lit.* 249. Where a diſſeiſor dieth ſeiſed, and the law caſteth the lands upon his heir; this is a diſcent which tolls (or takes away) an entry at Common law: by *ſtatute*, it is only where the diſſeiſor had peaceable poſſeſſion five years; for if he had not poſſeſſion peaceably during that time, the diſcent to his heir ſhall not take away an *entry*. 32 *H.* 8. *c.* 33.

If a diſſeiſor leaſes for years, and dies ſeiſed of the reverſion, the *entry* of the diſſeiſee is taken away, becauſe he died ſeiſed of the fee and freehold: but if he had leaſed for life, *&c.* the *entry* of the diſſeiſee would not be taken away. *Co. Lit.* 239. Where the diſſeiſor of an infant dies ſeiſed, and after the infant comes of age, and the heir of the diſſeiſor dies before *entry*; though he died not ſeiſed of an actual ſeiſin, but a ſeiſin in law; yet his dying ſeiſed takes away the *entry* of the diſſeiſee. *Ibid.* If a diſſeiſor makes a feoffment upon condition, and the feoffee dies ſeiſed, and the feoffor enters upon the heir for the breach of the condition, the diſſeiſee may enter upon him; for by the *entry* of the diſſeiſor, the diſcent is utterly defeated. *Lit. ſect.* 409.

The title of *entry* in a feoffor, *&c.* that hath but a condition, cannot be taken away by any diſcent, becauſe he has no remedy by action to recover the land; ſo that if a diſcent ſhould take away his *entry*, it would bar him of his right for ever: and the condition remains, and cannot be deveſted and put out of poſſeſſion, as the lands, *&c. Co. Lit.* 240. If a man recovers lands, and after a ſtranger to the recovery dies ſeiſed, this ſhall not take away the *entry* of the recoveror; as it was but a title. 2 *Danv. Abr.* 561. But where a perſon recovers againſt another, and enters and ſues execution, and after the recoveree diſſeiſes him, and dies ſeiſed; this diſcent ſhall take away the entry of the recoveror, for the recovery was executed. *Ibid.*

If after recovery againſt tenant for life, he dies, and he in remainder enters before execution, and dies ſeiſed, the *entry* of the recoveror is not taken away. *Co. Lit.* 238. The *entry* of the tenant for life, ſhall be good for him in remainder: and if tenant for life make a feoffment in fee, and a ſtranger enters for the forfeiture in the name of the reverſioner; this will be good to veſt the reverſion in him. *Lit.* 128. 9 *Rep.* 106. If an infant under age, makes a deed of feoffment, and after his full age the feoffee dies ſeiſed; or a leſſee for life aliens the land, and the alienee dies ſeiſed thereof; or a deviſe be of lands upon condition, and the heir of the diſſeiſor enters and dies ſeiſed: in theſe caſes the *entry* is gone, and the parties ſhall be put to their action. *Lit.* 96. 9 *H.* 6. 25.

If there be tenant for life, remainder to the right heir of *J. S.* and the tenant for life is diſſeiſed; a diſcent is caſt; and after *J. S.* dies, and tenant for life alſo dies: by this the *entry* of the heir of *J. S.* is not taken away, for his remainder was *in cuſtodia legis*. 1 Rep. 134. Where an infant has cauſe of *entry*, and the diſcent happens while he is within age, it will not bar him of his *entry*: he that hath the right of *entry*, muſt be of age, within the four ſeas, of ſound memory; and if it be a woman, ſhe muſt be ſole; and if the party be under age, beyond the ſeas, *non compos mentis*, in priſon, or a feme covert, at the time of the diſcent, it ſhall not bar. *Lit.* 147, 402. 21 *H.* 6. 17.

The whole time from a diſſeiſin is conſiderable; as where feme covert is diſſeiſed, and her huſband dieth, and ſhe takes another huſband, and then a diſcent is caſt; or if one *ultra mare* be diſeiſed, and he return into *England*, and then go beyond ſea again, and there is a diſcent; here the diſcent will bar the *entry*, becauſe of the *interim*. 9 H. 7. 24. Dyer 143. 32 H. 8. c. 33.

A woman tenant in tail took huſband, who made a feoffment in fee, and died, and the wife without *entry* made a leaſe for years; and it was held, that the freehold was not reduced by the leaſe, without an *entry* made. 1 *Leon. ca.* [illegible]. The *entry* of a diſſeiſee, when he duly makes it, ſhall avoid all the meſne charges by the diſſeiſor upon the land: but right of *entry* may be loſt divers ways; as by acceptance of rent, by him who hath it, and the like. 1 *Anderſon* 133. *Noy Rep.* 7. If a man is diſſeiſed of land whereunto a common is appendant, the diſſeiſee cannot uſe the common till he enters on the land to which the common is appendant; for if the diſſeiſee might uſe it, ſo might the diſſeiſor, which would be a double charge on the common: yet if a perſon be diſſeiſed of a manor, to which an advowſon is appendant, he may preſent to the advowſon before entry on the manor. *Co. Lit.* 122.

A diſſeiſee enters into the land, and continues therein with the diſſeiſor, and manures it with him, claiming nothing of his firſt eſtate; or if the diſſeiſee enters, and takes the profit, as leſſee, *&c.* of the diſſeiſor, it is ſaid theſe will be an entry that will reduce the firſt eſtate. 2 *Danv.* 790. If the diſſeiſee commands a ſtranger to put in the cattle of ſuch ſtranger in the land to feed there; this is an entry in law on the land. *Co. Lit.* 245

Where entry may be made into land, or any thing, it ſhall not be in the party before *entry*: if entry cannot be made, but only *claim*, then it ſhall be in him by *claim*; and when neither *entry* nor *claim* can be made, it ſhall be in him by *act* of *law*. 1 *Plowd.* 133. In caſe the poſſeſſion of land is in no man, but the freehold in law is in the heir that enters, his general entry into one part reduces all into his actual poſſeſſion: but if an entry is to deveſt an eſtate, a general entry into parcel, is good only for that part. *Co. Lit.* 15. Where an entry is in any parts, it muſt be in the name of all: if I enfeoff a perſon of an acre of ground upon condition, and of another acre on condition, and both conditions are broken; here entry into one in name of both acres is not good to reduce both: but if a man make a feoffment of divers parcels upon condition that is broken, there entry into part in name of all the reſt is ſufficient. *Co. Lit.* 252. 9 *H.* 7. 25.

A man hath right to enter into lands in divers villages in one county, if he enter upon part of it in one village in the name of all in that county; by this he ſhall have poſſeſſion of the whole. *Co. Lit.* 252. *Dyer* 227, 337. If a man diſſeiſe me of one acre at one time, and another acre at another time in the ſame county; my entry into one of them in the name of both is good: though it will not be good, if the diſſeiſin be by two ſeveral perſons, or if the acres lie in ſeveral counties, when there ought to be ſeveral entries and actions. *Co. Lit.* 252.

If he who hath right of entry into a freehold, enters into part of it, it ſhall be adjudged an entry into all poſſeſſed by one tenant; but if there be ſeveral tenants poſſeſſed of the freehold, there muſt be ſeveral entries on the ſeveral tenants. 1 *Lil. Abr.* 515, 516. Special entry into a houſe with which lands are occupied, claiming the whole, is a good entry as to the whole houſe and lands. *Ibid.* If a huſband enters to the uſe of his wife; or a man enters to the uſe of an infant, or any other, where the entry is lawful; this ſettles the poſſeſſion before agreement of the parties: though it is otherwiſe where a perſon enters to the uſe of one whoſe entry is not lawful; for this veſts nothing in him till agreement, and then he ſhall be a diſſeiſor. 2 *Danv.* 787. If two jointenants are diſſeiſed, and the diſſeiſor aliens, and one jointenant enters upon the alienee to the uſe of both; this ſettles the freehold in both of them. *Ibid.* 788. But if one coparcener, *&c.* enters eſpecially claiming the whole land, ſhe gains the part of her companion by abatement; and it ſhall not ſettle any poſſeſſion in the other. *Co. Lit.* 243.

The heir is to enter into lands deſcended to him, to entitle him to the profits. *Co. Lit.* 214. If a younger ſon enters on lands in fee, where the eldeſt ſon dies leaving iſſue; though many diſcents are caſt in his line, yet the heirs of the eldeſt ſon may make an entry on the lands; but if the youngeſt ſon convey away the lands in fee, and the feoffee dies ſeiſed, they may not enter; nor may they enter where the younger ſon diſſeiſes the eldeſt, and dies ſeiſed. *Co. Lit.* 237, 244. *Lit. Sect.* 397.

A tenant in tail hath iſſue two ſons, and the eldeſt dies, leaving his wife *priviment enſient* of a ſon, and the younger brother enters, and then the wife of the eldeſt is delivered of a ſon, he may enter upon the younger brother. 2 *Danv.* 557. An eſtate of freehold will not ceaſe without entry or claim: alſo a remainder of an eſtate of freehold cannot ceaſe without entry, *&c.* no more than eſtate of freehold in poſſeſſion. *Cro. Eliz.* 360. A right of entry preſerves a contingent remainder. 2 *Lev.* 35. And a grantee of a reverſion, may enter for a condition broken. *Plowd.* 176.

A leſſee muſt enter into lands demiſed to him; and tho' the leſſor dies before the leſſee enters, yet he may enter: and if the leſſee dies before entry, his executors or adminiſtrators may enter. The leſſee may aſſign over his term before entry, having *intereſſe termini*; but he may not take a releaſe to enlarge his eſtate; or bring treſpaſs, *&c.* till actual entry. Though if there be words *bargain and ſell* in a leaſe, *&c.* for conſideration of money, the leſſee or bargainee is in poſſeſſion on executing the deed, to make a releaſe, *&c.* *Lit.* 59, 454. *Co. Lit.* 46, 57, 270.

Where a leſſor enters on his leſſee for years, the rent is ſuſpended. 1 *Leon.* 110. But without entry and expulſion, the leſſee is not diſcharged of his rent to the leſſor; unleſs it be where the leſſor is attainted of treaſon, *&c.* that the rent is to be paid to the King, who is in poſſeſſion without entry. *Sid.* 399. 1 *Nelſ. Abr.* 706.

There is no need of entry to avoid an eſtate in caſe of a limitation, becauſe thereby the eſtate is determined without entry or claim; and the law caſts it upon the party to whom it is limited. If *A.* deviſes lands to *B.* and his heirs, and dies, it is in the deviſee immediately; but till entry he cannot bring a poſſeſſory action: and where a poſſeſſion veſts without entry, a reverſion will veſt without claim. 2 *Mod. Rep.* 7, 8. A bare entry on another, without an expulſion, makes only a ſeiſin; ſo that the *law will adjudge him in poſſeſſion who hath the right.* 3 Salk. 135.

If a perſon who hath title of entry, finds an houſe open with nobody in it, and enters into it, and keeps in poſſeſſion; this is no forcible entry; *contra*, if any body is in it. *Common Law Com. Plac'd* 186. Where a perſon is in a houſe with goods, *&c.* the houſe may be entered when the doors are open, to make execution. *Cro. Eliz.* 759. But it muſt be averred that the goods were in the houſe. *Lutw.* 1428, 1434. And a man cannot enter into a houſe, the doors being open, to demand a debt, unleſs he aver that the debtor is within the houſe at the ſame time. *Cro. El.* 6, 8.

Entry may be made on a tenant where rent is in arrear, to take a diſtreſs, *&c.* in order to regain poſſeſſion of lands by entry, *&c.* The manner of entry is thus: If it be a houſe, and the door is open, you go into it, and ſay theſe words.—*I do here enter, and take poſſeſſion of this houſe.* But if the door be ſhut, then ſet your foot on the groundſel, or againſt the door, and ſay the before words: and if it be land, then go upon the land, and ſay, *I here enter and take poſſeſſion of this land, &c.* If another do it for you, he muſt ſay, *I do here enter, &c. to the uſe of* A. B. And it is neceſſary to make it before witneſſes, and that a *memorandum* be made of it. *Lit.* 385. *Co. Lit.* 237, 238. In actions for recovery of lands, *&c.* entry is to be made within twenty years after the title accrued. *Stat.* 21 *Jac.* 1. *cap.* 16. But where a fine of lands is paſſed, the entry is to be in five years. 1 *R.* 3. *c.* 7. 4 *H.* 7. *c.* 24. *Demand* how made of rent, *&c.* to entitle *entry*, ſee *Demand.* By 32 *H.* 8. *c.* 33. No diſcent to the heir of the diſſeiſor ſhall take away the entry of him that hath *title* to the land, unleſs the diſſeiſor had peaceable poſſeſſion five years next after the diſſeiſin. The editor hath retained the doctrine, relative to *entry*, as it may be of uſe, in caſes where more than *twenty years* having elapſed, *ejectment* cannot be maintained, and a *writ of right* muſt be ſued.

But, where an *ejectment* will lie, the confeſſion of leaſe, *entry*, and ouſter is ſufficient in all caſes, except in the caſe of a *fine with proclamations*, in which caſe it is neceſſary to prove an *actual entry*; and the leſſor of the plaintiff directing one to deliver a declaration to the tenant in poſſeſſion will not amount to ſuch an entry. By the *Stat.* 4 *Ann. c.* 16. *ſect.* 16. No *claim* or *entry* ſhall be of force to avoid a fine levied with proclamations, or ſhall be ſufficient within the 21 *Jac.* 1. of limitations, unleſs the action be commenced, within *one year* after making ſuch *entry* or *claim.*——Note, the plaintiff muſt not lay his demiſe *antecedent* to his *entry. Jenkin* v. *Richard C. B. Mich.* 30 *Geo.* 2. *Oates* on the demiſe of *Wigſall*, v. *Bridon*, *Eaſt.* 6. *Geo.* 3. *Buller's Niſi prius*, 2 *Ed.* 103. which *vide.*

See *Black. Com.* 2 *V.* 312. 3 *V.* 176, 177. See alſo *Claim* and *Forcible Entry*, and *Detainer.*

Entry ad Communem Legem, Is the writ of entry which lies where tenant for term of life, or for term of another's life, or by the curteſy, *&c.* aliens and dies, when he in the reverſion ſhall have this writ againſt whomſoever is in poſſeſſion of the land. *New Nat. Br.* 461.

Entry ad terminum qui preteriit, A writ of entry brought againſt a tenant for years, who holdeth over his term, and thereby keeps out the leſſor; and if the huſband and wife leaſe the wife's land for years, and the huſband dieth, and the termor holds over his term, the wife may have a writ of *entry ad terminum qui præteriit, &c.* but ſhe muſt count that ſhe and her huſband leaſed the land, *&c.* Alſo the grantee in reverſion may have this writ againſt the leſſee, or his aſſignee, *&c.* *New Nat. Br.* 447, 448. An ejectment is now the common mode of proceeding; and by 4 *Geo.* 2. *c.* 28. Tenants for term of years, *&c. holding over after demand made*, are ſubject to *double rent.*

Entry in caſu conſimili, Is a writ that lies where tenant for life, or tenant by the curteſy, aliens in fee, *&c.* he in reverſion may have this writ by *Stat. Weſtm.* 2. *cap.* 24. See *Caſu Conſimili.*

Entry in caſu Proviſo, Lies where a tenant in dower aliens in fee, or for term of life, or of another's life; then he in the reverſion ſhall have this writ, provided by the Stat. of *Glouc.* 6 *Ed.* 1. *cap.* 7. By which ſtatute, it is enacted, "that if a woman alien her dower in fee, or for life, the next heir, *&c.* ſhall recover by writ of entry." And the writ may be brought againſt the tenant of the freehold of the land, on ſuch alienation, during the life of the tenant in dower, *&c.* *New Nat. Br.* 456. Theſe writs of entry may be all brought either in the *per*, or in the *cui* or *poſt.*

Entry ſine aſſenſu Capitali, Is a writ of entry that lies where a biſhop, abbot, *&c.* aliens lands or tenements of the church, without the *aſſent* of the *chapter* or convent. *F. N. B.* 195.

Enure, Signifies in the law to take place or be available; and is as much as *effectum*: as for example; a releaſe made to tenant for life, ſhall *enure*, and be of force and effect to him in the reverſion. *Lit.* How many ſeveral ways a releaſe may *enure.* See *Co. Lit.* 193. *b.* 273. *b.*

Eodorbrice, (from the Sax. *eodor*, a hedge, and *brice, ruptura*), Hath been uſed for hedge-breaking: in which ſenſe it is mentioned in the laws of King *Alfred*, *cap.* 45.

Eorle, Sax. for *earl*, *&c.* though made uſe of by the *Danes* for *barons.* See *Earl.*

Epimenia, A word ſignifying expences or gifts. *Blount.*

Epiphany, The day when the ſtar appeared to the Wiſemen at *Chriſt*'s nativity, generally called *Twelfth-Day.*

Epiſcopalia, Synodals, or other cuſtomary payments from the clergy to their *biſhop* or dioceſan; which were formerly collected by the rural deans, and by them tranſmitted to the biſhop.——Epiſcopalia *reddat, vel reddere faciat de eccleſiis decanatus ſui, &c.* Mon. Ang. tom. 3. pag. 61. Theſe cuſtomary payments have been otherwiſe called *onus epiſcopale*; and were remitted by ſpecial privilege to free-churches and chapels of the King's foundation. which were exempt from epiſcopal juriſdiction. *Ken. Gloſſ.*

Epiſcopus Puerorum. It was a cuſtom in former times, that ſome lay perſon about a certain feaſt ſhould plait his hair, and put on the garments of a *biſhop*, and in them exerciſe epiſcopal juriſdiction, and do ſeveral ludicrous actions, for which reaſon he was called *biſhop of the boys*; and this cuſtom obtained here long after ſeveral conſtitutions were made to aboliſh it. *Mon. Ang. tom.* 3. *pag.* 169.

Equality, The law delights [illegible] *equality*; ſo that when a charge is made upon one, and divers ought to bear it, he ſhall have relief againſt the reſt. 2 *Rep.* 25. And where a man leaves a power to his wife to give an eſtate among three daughters, in ſuch proportions, as ſhe ſhall think fit: it has been held ſhe muſt divide it *equally*; un-unleſs good reaſon be given for doing otherwiſe. *Preced. Canc.* 256. See *Contribution.*

In equity it is a *maxim*, that "EQUALITY IS EQUITY." See *Francis's Maxims, fol.* 9, *&c.*

Eques Auratus, *(Lat.)* Is taken for a *knight*; becauſe anciently none but knights were allowed to beautify and guild their armour with *gold*: but this word is rather uſed by the *heralds* than lawyers; for *eques auratus* is not a word in our law for knight, but *miles*, and formerly *Chevalier.* 4 Inſt. 5.

Equity, *(æquitas, quaſi æqualitas)* Is defined to be a correction, or qualification, of the law generally made in that part wherein it faileth, or is too ſevere. And likewiſe ſignifies the extenſion of the words of the law to caſes unexpreſſed, yet having the ſame reaſon; ſo that where one thing is enacted by ſtatute, all other things are enacted that are of the like degree: for example; the ſtatute of *Glouc.* gives action of waſte againſt him that holds lands for life or years; and by the equity thereof, a man ſhall have action of waſte againſt a tenant that holds but for one year, or half-year, which is without the words of the act, but within the meaning of it; and the words that enact the one, by *equity* enact the other. *Terms de Ley.*

So that *equity* is of two kinds; the one doth abridge and take from the letter of the law; and the other inlarge and add thereto. *Æquitas eſt perfecta quædam ratio, quæ jus ſcriptum interpretatur & emendat.* *Co. Lit.* 24. And ſtatutes may be conſtrued according to *equity*; eſpecially where they give *remedy for wrong*, or are for *expedition of juſtice, &c.* *Co. Lit.* 24, 54, 76. 2 *Inſt.* 106, 107. *&c.* *Equity* ſeems to be the interpoſing *law of reaſon*, exerciſed by the *Lord Chancellor* in extraordinary matters, to do *equal juſtice*, and by ſupplying the defects of the law, gives remedy in all caſes. See *Chancery.*

As previous to the publication of the learned commentaries, by *Blackſtone*, there was not any work extant, that could give a ſtranger a tolerable idea of the courts of *equity* ſubſiſting in England, as diſtinguiſhed from the courts of law, and as that author's obſervations are far ſuperior, to any we have met on the ſubject, we ſhall give a full extract, for the uſe of thoſe, who are not poſſeſſed of that excellent work.

EQUITY, ſays that learned author, "in it's true and genuine meaning, is the ſoul and ſpirit of all law: *poſitive* law is conſtrued, and *rational* law is made by it. In this, equity is ſynonymous to juſtice; in that, to the true ſenſe and ſound interpretation of the rule. But the very terms of a court of *equity* and a court of *law*, as contraſted to each other, are apt to confound and miſlead us: as if the one judged without equity, and the other was not bound by any law. Whereas every definition or illuſtration to be met with, which now draws a line between the two juriſdictions, by ſetting law and equity in oppoſition to each other, will be found either totally erroneous, or erroneous to a certain degree.

1. 'Thus, in the firſt place it is ſaid, *(a)* [illegible] it is the buſineſs of a court of equity in England to [illegible] the rigour of the common law. But no ſuch power is contended for. Hard was the caſe of bond-creditors, whoſe debtor deviſed away his real eſtate; rigorous and unjuſt the rule, which put the deviſee in a better condition than the heir: *(b)* yet a court of equity had no power to interpoſe. Hard is the common law ſtill ſubſiſting, that land deviſed, or deſcending to the heir, ſhall not be liable to ſimple contract debts of the anceſtor or deviſor, *(c)* although the money was laid out in purchaſing the very land; and that the father ſhall never immediately ſucceed as heir to the real eſtate of the ſon: *(d)* but a court of equity can give no relief; though in both theſe inſtances the artificial reaſon of the law, ariſing from feodal principles, has long ago intirely ceaſed. The like may be obſerved of the deſcent of lands to a remote relation of the whole blood, or even [illegible] eſcheat to the lord in preference to the owner's half-brother, *(e)* and of the total ſtop to all juſtice, by cauſing the *parol* to *demur*, *(f)* whenever an infant is ſued as heir or is party to a real action. In all ſuch caſes of poſitive law, the courts of equity, as as well as the courts of law, muſt ſay with Ulpian, *(g)* '*hoc quidem perquam durum eſt, ſed ita lex ſcripta eſt.*'

2. 'It is ſaid, *(h)* that a court of equity determines according to the ſpirit of the rule, and not according to the ſtrictneſs of the letter. But ſo alſo does a court of law. Both for inſtance, are equally bound, and equally profeſs, to interpret ſtatutes according to the true intent of the legiſlator. In general laws all caſes cannot be foreſeen; or, if foreſeen, cannot be expreſſed: ſome will ariſe that will fall within the meaning, though not within the words of the legiſlator, and others, which may fall within the letter, may be contrary to his meaning, though not expreſly excepted. Theſe caſes, thus out of the letter, are often ſaid to be within the equity, of an act of parliament; and ſo caſes within the letter are frequently out of the equity. Here by *equity* we mean nothing but the ſound interpretation of the law; though the words of the law itſelf may be too general, too ſpecial or otherwiſe inaccurate or defective. Theſe then are the caſes which, as Grotius *(i)* ſays, '*lex non exacte definit, ſed arbitrio boni viri permittit*;' in order to find out the true ſenſe and meaning of the law-giver, from every other topic of conſtruction. But there is not a ſingle rule of interpreting laws, whether equitably or ſtrictly, that is not equally uſed by the judges in the courts both of law and equity: the conſtruction muſt in both be the ſame: or, if they differ, it is only as one court of law may alſo happen to differ from another. Each endeavours to fix and adopt the true ſenſe of the law in queſtion; neither can enlarge, diminiſh, or alter, that ſenſe in a ſingle tittle.

3. 'AGAIN, it has been ſaid, *(k)* that *fraud, accident,* and *truſt* are the proper and peculiar objects of a court of equity. But every kind of *fraud* is equally cognizable, and equally adverted to, in a court of law: and ſome frauds are only cognizable there, as frauds in obtaining a deviſe of lands, which are always ſent out of the equity courts to be there determined. Many *accidents* are alſo ſupplied in a court of law; as, loſs of deeds, miſtakes in receipts or accounts, wrong payments, deaths which make it impoſſible to perform a condition literally, and a multitude of other contingencies: and many cannot be relieved even in a court of equity; as if by accident a recovery is ill ſuffered, a deviſe ill executed, a contingent remainder deſtroyed, or a power of leaſing omitted in a family ſettlement. A technical *truſt*, indeed, created by the limitation of a ſecond uſe, was forced into the courts of equity, in the manner formerly mentioned: *(l)* and this ſpecies of truſts, extended by inference and conſtruction, have ever ſince remained as a kind of *peculium* in thoſe courts. But there are other truſts, which are cognizable in a court of law: as depoſits, and all manner of bailments; and eſpecially that implied contract, ſo highly beneficial and uſeful of having undertaken to account for money received to another's uſe, *(m)* which is the ground of an action on the caſe almoſt as univerſally remedial as a bill in equity.'

(a) Lord Kaym's princ. of equit. 44.
(b) See Black. Com. vol. II. ch. 23. p. 378.
(c) *Ibid.* ch. 15. p. 243, 244. ch. 23. p. 377.
(d) *Ibid.* ch. 14. p. 208.
(e) *Ibid.* p. 227.
(f) See Black. Com. vol. III. p. 300.
(g) *Ff.* 40. 9. 12.
(h) Lord Kaym's princ. of equit. 177.
(i) *De equitate,* ſect. 3.
(k) 1 Rol. Abr. 374. 4 Inſt. 84. 10 Mod. 1.
(l) Black. Com. vol. II. ch. 20.
(m) See Black. Com. vol. III. p. 162.

4. 'Once more; it has been ſaid that a court of equity is not bound by rules or precedents, but acts from the opinion of the judge, *(n)* founded on the circumſtances of every particular caſe. Whereas the ſyſtem of our courts of equity is a laboured connected ſyſtem, governed by eſtabliſhed rules, and bound down by precedents, from which they do not depart, although the reaſon of ſome of them may perhaps be liable to objection. Thus, the refuſing a wife her dower in a truſt eſtate, *(o)* yet allowing the huſband his curteſy: the holding the penalty of a bond to be merely a ſecurity for the debt and intereſt, yet conſidering it ſometimes as the debt itſelf, ſo that the intereſt ſhall not exceed that penalty: *(p)* the diſtinguiſhing between a mortgage at *five per cent.* with a clauſe of reduction to *four*, if the intereſt be regularly paid, and a mortgage at *four per cent.* with a clauſe of enlargement to *five*, if the payment of the intereſt be deferred: ſo that the former ſhall be deemed a conſcientious, the latter an unrighteous bargain: *(q)* all theſe, and other caſes that might be inſtanced, are plainly rules of poſitive law; ſupported only by the reverence that is ſhewn, and generally very properly ſhewn, to a ſeries of former determinations; that the rule of property may be uniform and ſteady. Nay, ſometimes a precedent is ſo ſtrictly followed, that a particular judgment, founded upon ſpecial circumſtances, *(r)* gives riſe to a general rule.'

'In ſhort, if a court of equity in England did really act, as a very ingenious writer in the other part of the iſland ſuppoſes it (from theory) to do, it would riſe above all law, either common or ſtatute, and be a moſt arbitrary legiſlator in every particular caſe. No wonder he is ſo often miſtaken: Grotius or Puffendorf, or any other of the great maſters of juriſprudence, would have been as little able to diſcover, by their own light, the ſyſtem of a court of equity in England, as the ſyſtem of a court of law. Eſpecially, as the notions beforementioned, of the character, power, and practice of a court of equity, were formerly adopted and propagated (though not with approbation of the thing) by our principal antiquarians and lawyers; Spelman, *(ſ)* Coke, *(t)* Lambard, *(u)* and Selden, *(x)* and even the great Bacon *(y)* himſelf. But this was in the infancy of our courts of equity, before their juriſdiction was ſettled, and where the chancellors themſelves, partly from their ignorance of law (being frequently biſhops or ſtateſmen) partly from ambition and luſt of power (encouraged by the arbitrary principles of the age they lived in) but principally from the narrow and unjuſt deciſions of the courts of law, had arrogated to themſelves ſuch unlimited authority, as hath totally been diſclaimed by their ſucceſſors for now above a century paſt. The decrees of a court of equity were then rather in the nature of awards, formed on the ſudden *prozenatta*, with more probity of intention than knowledge of the ſubject; founded on no ſettled principles, as being never deſigned, and therefore never uſed, for precedents. But the ſyſtems of juriſprudence, in our courts both of law and equity, are now equally artificial ſyſtems, founded in the ſame principles of juſtice and poſitive law; but varied by different uſages in the forms and mode of their proceedings; the one being originally derived (though much reformed and improved) from the feodal cuſtoms, as they prevailed in different ages in the Saxon and Norman judicatures; the other (but with equal improvements) from the imperial and pontificial formularies, introduced by their clerical chancellors.'

'The ſuggeſtion indeed of every bill, to give juriſdiction to the courts of equity, (copied from thoſe early times) is, that the complainant hath no remedy at the Common law. But he, who ſhould from thence conclude, that no caſe is judged of in equity where there might have been relief at law, and at the ſame time caſts his eye on the extent and variety of the caſes in our equity-reports, muſt think the law a dead letter indeed. The rules of property, rules of evidence, and rules of interpretation in both courts are, or ſhould be, exactly the ſame: both ought to adopt the beſt, or muſt ceaſe to be courts of juſtice. Formerly ſome cauſes, which now no longer exiſt, might occaſion a different rule to be followed in one court, from what was afterwards adopted in the other, as founded in the nature and reaſon of the thing: but, the inſtant theſe cauſes ceaſed, the meaſure of ſubſtantial juſtice ought to have been the ſame in both. Thus the penalty of a bond, originally contrived to evade the abſurdity of thoſe monkiſh conſtitutions which prohibited taking intereſt for money, was therefore very pardonably conſidered as the real debt in the courts of law, when the debtor neglected to perform his agreement for the return of the loan with intereſt: for the judges could not, as the law then ſtood, give judgment that the intereſt ſhould be ſpecifically paid. But when afterwards the taking of intereſt became legal, as the neceſſary companion of commerce, *(z)* may after the ſtatute of 37 Hen. VIII. c. 9. had declared the debt or loan itſelf to be 'the juſt and true intereſt' for which the obligation was given, their narrow-minded ſucceſſors ſtill adhered wilfully and technically to the letter of the ancient precedents, and refuſed to conſider the payment of principal, intereſt, and coſts, as a full ſatisfaction of the bond. At the ſame time more liberal men, who ſate in the courts of equity, conſtrued the inſtrument according to it's 'juſt and true intent,' as merely a ſecurity for the loan: in which light it was certainly underſtood by the parties, at leaſt after theſe determinations; and therefore this conſtruction ſhould have been univerſally received. So in mortgages, being only a landed as the other is a perſonal ſecurity for the money lent, the payment of principal, intereſt, and coſts ought at any time, before judgment executed, to have ſaved the forfeiture in a court of law, as well as in a court of equity. And the inconvenience, as well as injuſtice, of putting different conſtructions in different courts upon one and the ſame tranſaction, obliged the parliament at length to interfere, and to direct by the ſtatutes 4 & 5 Ann. c. 16. and 7 Geo. II. c. 20. that, in the caſes of bonds and mortgages, what had long been the practice of the courts of equity ſhould alſo for the future be followed in the courts of law.'

'Again; neither a court of equity nor of law can vary men's wills or agreements, or (in other words) make wills or agreements for them. Both are to underſtand th[illegible]y, and therefore both of them uniformly. One cou[illegible]ght not to extend, nor the other abridge, a lawful proviſion deliberately ſettled by the parties, contrary to its juſt intent. A court of equity, no more than a court of law can relieve againſt a penalty in the nature of ſtated damages; as a rent of 5 *l.* an acre for ploughing up ancient meadow: *(a)* nor againſt a lapſe of time, where the time is material to the contract; as in covenants for renewal of leaſes. Both courts will equitably conſtrue, but neither pretend to controul or change, a lawful ſtipulation or engagement.'

The

(n) This is ſtated by Mr. Seldon (Table-talk. tit. Equity.) with more pleaſantry than truth. '*For law*, we have a meaſure, and know what to truſt to, *equity* is according to the conſcience of him that is chancellor; and, as that is larger or narrower, ſo is equity. It is all one, as if they ſhould make the ſtandard for the meaſure of a chancellors foot. What an uncertain meaſure would this be! One chancellor has a long foot, another a ſhort foot, a third an indifferent foot; it is the ſame with a chancellor's conſcience.'

(o) 2 P. W. 640, See Black. Com. vol. II. p. 337.

(p) 2 Salk. 154.

(q) 2 Vern. 289, 316. 3 Atk. 520.

(r) See the caſe of Foſter and Munt, 1 Vern. 473. with regard to the indiſpoſed *reſiduum* of perſonal eſtates.

(ſ) *Quae in ſummis tribunalibus multi e legum, canone decernant judices, ſolus (ſi res exegerit) cohibet cancellarius ex arbitrio; nec aliter decretis tenetur ſuæ curiæ vel ſui ipſius, quin, elucente nova ratione, recognoſcat quæ voluerit, mutet et deleat prout ſuæ videbitur prudentiæ.* (Gloſſ. 108.)

(t) See Black. Com. vol. III .p. 53, 54.

(u) *Archeion* 71, 72, 73.

(x) *Ubi ſupra.*

(y) *De augm. ſcient.* l. 8. c. 3.

(z) See Black. Com. vol. II. p. 456.

(a) 2 Atk. 239.

‘The rules of deciſion are in both courts equally appoſite to the ſubjects of which they take cognizance. Where the ſubject-matter is ſuch as requires to be determined *ſecundum æquum et bonum*, as generally upon actions on the caſe, the judgments of the courts of law are guided by the moſt liberal equity. In matters of poſitive right, both courts muſt ſubmit to and follow thoſe ancient and invariable maxims ‘ *quæ relicta ſunt et tradicta.(b)* Both follow the law of nations, and collect it from hiſtory and the moſt approved authors of all countries, where the queſtion is the object of that law: as in caſe of the privileges of embaſſadors, *(c)* hoſtages, or ranſom-bills. *(d)* In mercantile tranſactions they follow the marine law, *(e)* and argue from the uſages and authorities received in all maritime countries. Where they exerciſe concurrent juriſdiction, they both follow the law of the proper *forum: (f)* in matters originally of eccleſiaſtical cognizance they both equally adopt the canon or imperial law, according to the nature of the ſubject; (*g*) and, if a queſtion came before either, which was properly the object of a foreign municipal law, they would both receive information what is the rule of the country, (*h*) and would both decide accordingly.’

‘Such then being the parity of law and reaſon which governs both ſpecies of courts, wherein (it may be aſked) does their eſſential difference conſiſt? It prinpally conſiſts in the different modes of adminiſtring juſtice in each; in the mode of proof, the mode of trial, and the mode of relief. Upon theſe, and upon two other accidental grounds of juriſdiction, which were formerly driven into thoſe courts by narrow deciſions of the courts of law, *viz.* the true conſtructions of ſecurities for money lent, and the form and effect of a truſt or ſecond uſe; upon theſe main pillars hath been gradually erected that ſtructure of juriſprudence which prevails in our courts of equity, and is inwardly bottomed upon the ſame ſubſtantial foundations as the legal ſyſtem which hath hitherto been delineated in theſe commentaries; however different they may appear in their outward form, from, the different taſtes of their architects.’ *Black. Com.* 3 *V.* 429. and *Seq.*

As to the mode of *proof*, of *trial*, of *relief*, the conſtruction of *ſecurities*, of *truſt*, &c. ſee *Black. Com.* 3 *V.* 437. & *Seq.* And ſee further, the ſame work, 1 *V.* 61, 91. 3 *V.* 49, 436. And 4 *V.* 435.

Equity of Redemption, on *mortgages*. If where money is due on a mortgage, the mortgagee is deſirous to bar the *equity of redemption*, he may oblige the mortgagor either to pay the money or to be forcloſed of his equity; which is done by proceedings in the court of Chancery. But the Chancery cannot ſhorten the time of payment of the mortgage money, where it is limited by expreſs covenant; though it may lengthen it: and then upon non-payment, the practice is to forecloſe the *equity of aedemption* of the mortgagor. 2 *Vent.* 364.

To forecloſe the *equity*, a *bill in Chancery* is exhibited; to which an anſwer is put in, and a decree being obtained, a Maſter in Chancery is to certify what is due for principal, intereſt and coſts, which is to be paid *at a time prefixed by the decree*, whereupon the premiſſes are to be reconveyed to the mortgagor; or, in default of payment, the mortgagor is ordered to be forecloſed from all *equity of redemption*, and to convey the premiſſes abſolutely to the mortgagee. *Law of Securities, p.* 129, 133.

A fine or non-claim will bar *equity of redemption:* but in a common mortgage, a covenant to reſtrain it ſhall not be regarded in Chancery. 2 *Vent.* 365. If the condition of a mortgage is, that the mortgagor only ſhould redeem during life, or that he and the heirs of his body ſhall do it; yet the general heir ſhall have the *equity of redemption*, for if the principal and intereſt be offered, the land is free. 1 *Vern.* 30, 190. And it is held, though a bond be conditioned, that if the money be not paid at ſuch a time, then for a further ſum the mortgage ſhall have the land abſolutely, as a purchaſeor, &c. in ſuch caſe a man may alſo *redeem.* Ibid. 488.

A perſon who has mortgaged lands to one man, in caſe he mortgages the ſame land with ſome others to another, and this appears to be a contrivance to evade the *ſtatute*, the mortgagee ſhall not take advantage thereof. 2 *Vern. Rep.* 589. See *Barnardiſt.* 101. Where perſons having once mortgaged lands, mortgage the ſame a ſecond time, without diſcovering the firſt mortgage, they forfeit their *equity of redemption*, and the ſecond mortgagee may redeem, &c. And it is the ſame where any perſons borrowing money, enter a judgment, &c. for ſecurity, and afterwards borrow more money, and mortgage lands to the ſecond lender, without giving notice to the judgment, or paying the ſame off in ſix months, &c. by *Stat.* 4 & *W.* & *M. cap.* 16.

Equivalent, Commiſſioners are appointed by ſtatute to examine and ſtate the debts due to *Scotland* on the Union by way of *equivalent*; and proviſion is made for payment of the ſame by a yearly annuity, &c. 1 *Geo.* 1. *c.* 27. 5 *Geo* 1. *c.* 20. Vide *Scotland*.

Equus Coopertus, A horſe equipped with ſaddle and furniture.——*Inveniendo pro quolibet feodo unum* equum coopertum, *vel duos* diſcoopertos, &c. Inq. 16 E. 1.

Eriach. By the *Iriſh* brehon law, in caſe of murder, the brehon or judge compounded between the murderer and the friends of the deceaſed who proſecuted, by cauſing the malefactor to give unto them, or to the child or wife of him that was ſlain, a recompence, which was called an *eriach*. *Spencer's State of Ireland, p.* 1513. *edit.* Hughes. *Black. Com.* 4 *V.* 309.

Ermins, (From the Fr. *ermine*) A fur of great value, much uſed in *robes* of *ſtate*.

Ern, The names of places ending in *Ern*, is ſaid to ſignify a *melancholy ſituation*; from the Sax. *Ern*, i. e. *Locus Secretus*.

Ernes, The looſe ſcattered ears of corn, that are left on the ground, after the binding or cocking of it: It is derived from the old *Teuton. Ernde*, Harveſt; *Ernden*, to cut or mow corn: hence to *ern* is in ſome places to *glean*. Kennet's Gloſſ.

Errant, (*Itinerant*) Is applied to juſtices of the circuit, and bailiffs at large, &c. See *Eyre*.

Erraticum, A waif, or ſtray; an *erring* or wandering beaſt. *Conſtit. Norman. A. D.* 1080.

Error, (Fr. *Erreur*) Signifies ſomething wrong in pleading or proceſs, &c. whereupon a writ is brought for remedy thereof, called a *Writ of Error*, in *Lat. De errore corrigendo*. And a *writ of error* is a writ of which iſſues out of *Chancery*, and lies where any one is grieved by the proceedings and judgment in any court of *record*, having power to hold plea of *debt*, or *treſpaſs* above 40 *s*.

A writ of error is a commiſſion to judges of a ſuperior court, by which they are authoriſed to examine the record, upon which a judgment was given in an inferior court, and on ſuch examination to affirm or reverſe the ſame, according to law. *Jenk. Rep.* 25. 2 *Inſt.* 40. *Yelv.* 202. *Rep. Temp. Hardw. per Annaly* 340. But yet if by the writ of error the plaintiff therein may recover, or be reſtored to any thing, it may be releaſed by the name of an action. *Co. Lit.* 288. *b.* See *Poſt*, Diviſions II. and V. Alſo there is a writ of error to reverſe a fine, &c.

Herein is to be conſidered,

I. *By whom, againſt whom, and at what time, this writ may be brought.*
II. *In what caſes it will lie, and how it is to be brought.*
III. *In what court it is to be brought.*
IV. *How errors are to be aſſigned.*
V. *What defence may be made by a defendant in error.*
VI. *Of the judgment to be given on a writ of error.*

I. *By whom, againſt whom, and at what time, this writ may be brought.*

Any perſon damnified by *error* in record, or that may be ſuppoſed to be injured by it, may bring a writ of

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(b) *De jure naturæ cogitare pernes atque dicere delemus; de jure populi Romani, quæ relicta ſunt et tradicta.* (*Cic. de Leg.* l. 3. *ad calc.*)

(c) See Black. Com. vol. I. p. 253.

(d) Riccard. *v.* Bettenham, Tr. 5 Geo. III. B. R.

(e) See Black. Com. vol. I. p. 75. & Vol. II. p. 459, 461, 467.

(f) See Black Com. vol. II. p. 513.

(g) *Ibid.* 504.

(h) *Ibid.* 463.

error to reverſe it, whether he be party or no; but principal and bail cannot join in a writ of *error*. And where there are ſeveral defendants, if one of them releaſe the *errors*, he may be ſummoned and ſevered, and the others may reverſe the judgment. 6 *Rep*. 26. *Hob*. 72.

No perſon can reverſe a thing for *error*, unleſs the *error* be to his prejudice. 5 *Rep*. 38. One in remainder may have writ of *error* upon judgment given againſt tenant in tail: But he in reverſion or remainder ſhall not have writ of *error*, in the life-time of tenant for life, on judgment given againſt ſuch tenant, becauſe they cannot be parties grieved in his time. 2 *Nelſ. Abr*. 712.

No perſon can bring a writ of *error* to reverſe a judgment who was not party or privy to the record, or who was not injured by the judgment, and therefore to receive advantage by the reverſal thereof. 1 *Rol. Abr*. 747. *Dyer* 90.

So a writ of *error* does not lie againſt any but him, who is party or privy to the firſt judgment, his heirs, executors, or adminiſtrators. 1 *Rol. Abr*. 747. *Dyer* 90.

And therefore, on a judgment for recovery of land, the writ muſt be brought againſt him who was party to the judgment, although he hath nothing in the land, and not againſt the tenant, and on ſuch writ the judgment may be reverſed; but there muſt go a *ſcire facias* againſt all the tertenants. 1 *Rol. Abr*. 749. 1 *Rol. Rep*. 302.

Upon this rule, that none ſhall have a writ of *error* to reverſe a judgment, but he who is privy to, or hath ſome prejudice thereby; it hath been reſolved, that if one hath lands on the part of his mother, and loſeth them by erroneous judgment, and dies, the heir of the part of the mother ſhall have the writ of *error*. 1 *Leon*. 261. 2 *Sid*. 56. See *Owen*. 68. *Godb*. 377.

So the younger ſon, when intitled to the land by the cuſtom of *Borough-Engliſh*, ſhall bring the writ of *error*, and not the heir at Common law; for this remedy deſcends with the land. *Owen* 68. 1 *Leon*. 261. 4 *Leon*. 5.

So if there be an erroneous judgment, tenant in tail female, the iſſue female, and not the ſon, ſhall bring a writ of *error*. *Dyer*. 90. 1 *Leon*. 261. 1 *Rol. Abr*. 747.

So if a man ſettles land to the uſe of himſelf and the heirs of his body, the remainder to his own right heirs, and dies, leaving iſſue only a daughter, who levies a fine, and dies without iſſue, and *J. S.* brings a writ of *error* as couſin and collateral heir of the daughter, yet he ſhall never reverſe the fine; for there could no right deſcend to him from the daughter, becauſe ſhe had but an eſtate tail, which determined by her death without iſſue; and it does not appear, that the remainder in fee was in the daughter as right heir, wherefore *J. S.* ſhall not reverſe the fine, *quia de non apparentibus & non exiſtentibus eadem eſt ratio*, eſpecially in a court of judicature, where the judges can take notice of nothing that does not come judicially before them, and appear in the pleading. *Dyer* 89. *Cro. Eliz*. 469. 3 *Lev*. 36.

If there be ſeveral parties to an erroneous fine, they ſhall all join with the party that is to enjoy the land, though they themſelves can have nothing; and this is ſaid to be neceſſary only by way of conformity. 1 *Rol. Abr*. 747. *Dyer* 89. *Sed qu*. If any refuſe to join, whether they may not be ſummoned and ſevered? See 6 *Rep*. 26. *Hob*. 72. *et infra*.

But if tenant for life, and he in remainder in fee, (being an infant) join in a fine, the infant alone may bring error for the error in reſpect of the perſon of the infant, which is the cauſe of the action for him, and for no other. 1 *Leon*. 317. *Cro. Eliz*. 115.

A writ of *error* may be brought by him that is made party by the law, though he was not originally party to the ſuit, as he who comes in as a vouchee. 1 *Rol. Abr*. 748, 755.

Judgment againſt two, one brought a writ of *error*, and held it ſhould be quaſhed with coſts; that it could not be amended, and that if the other party would not join, the defendant who choſe to bring a writ of *error*, muſt proceed by ſummons and ſeverance. *Ratcliff. and Burton, Rep. Temp. Hardw. per Annaly* 135, 136.

If a man is indicted for felony, and thereupon a *capias* and *exigent* are awarded, but he dies before attainder, his adminiſtrators may have *error* upon this award of the *exigent*, becauſe by the award of the *exigent*, his goods were forfeited; and this is *ad grave damnum, &c.* though the principal judgment can never be given. 11 *Co*. 41. *b*.

Writ of *error* lies in *B. B.* to reverſe a *fine* levied in the *Common Pleas*, and to cancel the ſame if it be erroneous: And if there be not an original; or not proper writs of covenant, or if there be any fraud, *&c.* writ of *error* may be brought to make the fine void. *Co. Lit*. 9.

With reſpect to the time *of bringing this writ.*

It was formerly holden, that a writ of *error* could not be brought before the judgment given; and if it bore *teſte* before, it was no *ſuperſedeas*, for the words of the writ are, *Si judicium redditum ſit, &c.* 1 Rol. Abr. 749. But it ſeems now agreed, that a writ of *error* that bears *teſte* before the judgment is good; and this is the uſual courſe for preventing and ſuperſeding execution; but the judgment muſt be given before the return of the writ. *March* 140. 1 *Vent*. 255. *Moor* 461. 3 *Keb*. 308. 1 *Vent*. 96. *Latch* 133. If the party who has obtained judgment, delays ſigning final judgment, where error is brought with a view to have the writ of error ſpent, without effect, I conceive he may be compelled to do it, on motion, or by judges order.

But a writ of *error*, that bears *teſte* before any plaint entred, is not good. *March* 140.

So where the defendant, upon an indictment of barretry, brought a writ of *error*, bearing *teſte* before the aſſiſe: it was diſallowed, becauſe if ſuch practice ſhould obtain, it would diſappoint all proceedings there. 1 *Vent*. 255. 3 *Keb*. 308.

By the 10 & 11 *W*. 3. *cap*. 14. It is enacted, "That no fine or common recovery, nor any judgment in any real or perſonal action, ſhall be reverſed or avoided for any error or defect therein, unleſs the writ of *error*, or ſuit for the reverſing ſuch fine, recovery or judgment be commenced or brought, and proſecuted with effect, within *twenty years* after ſuch fine levied, or ſuch recovery ſuffered, or judgment ſigned or entred of record." *Note*, in this ſtatute, are the uſual ſavings as to infants, feme coverts, perſons *non compos*, in priſon, or beyond ſea.

A writ of error *cannot be brought* after twenty years. *Street* v. *Hopkinſon, Rep. Temp. Hardw. per Annaly* 345. The ſtatute of limitation muſt be be pleaded to a writ of *error*, as well as to an original action. *Id*. 346.

II. *In what caſes a writ of error will lie, and how it is to be brought.*

Writ of *error* will not lie in the Exchequer chamber on judgment in replevin in *B. R.* nor on judgment in action of *ſcandalum magnatum*. 2 *Nelſ*. 708, 709. But on judgment in replevin in *C. B.* there may be writ of *error* brought in *B. R.* The *Stat*. 27 *Eliz. c*. 8. is only to relieve on the merits of the cauſe, as it ſtood on the firſt judgment. *Vide poſt*, diviſion III.

Error *de recordo quod coram vobis reſidet* lies in the court of *B. R.* for *errors* in fact in the judgment of the ſame court; as nonage of the parties, want of an original, *&c.* which doth not proceed from the *error* of the judges; and this writ is allowed without bail. *Cro. Jac*. 254. And *errors* in fact may be corrected in *C. B.* the ſame term, without this writ, which lies not in the Exchequer chamber. *Ibid*. 620.

If judgment is given in *B. R.* in civil actions, a writ of *error* will not lie in the ſame court, only for *errors* in fact triable by a jury; but upon a judgment in criminal caſes, *error* will lie in *B. R.* whether the *error* be in fact or in law; though it lies alſo in parliament. 3 *Salk*. 147.

Where a judgment in *C. B.* is affirmed upon a writ of *error* in *B. R.* and afterwards a *ſcire facias* is brought on that judgment, and the plaintiff hath judgment thereon; no writ of *error* lieth in the Exchequer chamber, becauſe the record was not in *B. R.* by bill, but by writ of *error*. 1 *Roll. Rep.* 264. 3 *Salk.* 148. See 1 *Salk.* 263.

On judgment given in the court of Kings Bench in *Ireland*, even after *error* brought and determined there, writ of *error* may be ſued in the King's Bench in *England*. 2 *Nelſ.* 730. Writ of *error* cannot be brought on any record which is not a judgment. 1 *Salk.* 145. The want of a bill in *B. R.* is *error* upon a judgment by confeſſion, or default, (but not after a verdict) becauſe the bill is the original proceſs there. *Ibid.* *Sed qu.* If a bill may not be filed, &c. before aſſignment of *error?* I take it for granted, the court will on motion give leave to file a bill, as well after error brought, as after motion in arreſt of judgment.

Error lies for variance between the original writ and declaration; or want of an original: And where proceedings are ſo erroneous, as not to be amended; for faults in verdicts, executions, &c. And when any thing material is omitted in a judgment, writ of *error* lies, and the judgment ſhall be reverſed: So where the ſtiles of inferior courts are wrong or inſufficiently named, &c. their judgments may be reverſed. But where faults are ſmall, they ſometimes paſs as *vitium clerici*. 2 *Nelſ. Abr.* 714, 715, 721, &c. 728.

By the practice of the court of *Common Pleas*, a defendant coming in by *capias utlagatum* the ſame term in which an *exigent* is returnable, may avoid the outlawry without a writ of *error*, by ſhewing that he purchaſed a *ſuperſedeas* out of the ſame court, and delivered it to the ſheriff before the *quinto exactus*, &c. or by ſhewing any other matter apparent on record, which makes the outlawry erroneous, as the want of an original, or the omiſſion of proceſs, or want of form in a writ of proclamation, &c. or a return by a perſon appearing not to be ſheriff, or a variance between the original and *exigent*, or other proceſs, or the want of ſuch addition as is required by the 1 *H.* 5. *c.* 5. 2 *Hawk. P. C.* 458—9. 1 *Rol. Abr.* 742—3. And ſee 5 *Eliz. c.* 23. *ſec.* 13 & 14.

If one be attainted upon an erroneous indictment, he cannot be relieved but by writ of *error*, for the judgment being *quod ſuſpendatur*, &c. which is the judgment of law due for the offence, it muſt be preſumed to have been given, for that he was guilty of the offence; but if judgment of acquittal is given upon ſuch indictment, the King need bring no writ of *error*; but the offender may be newly indicted, for the judgment being *quod eat ſine die*, &c. may be given as well for the inſufficiency of the indictment, as for the party's innocence. 3 *Inſt.* 214.

Alſo any judgment whatſoever, given by perſons who had no good commiſſion to proceed againſt the perſon condemned, may be falſified, by ſhewing the ſpecial matter, without writ of *error*, becauſe it is void; as where a commiſſion authorizes to proceed on an indictment taken before *A. B. C.* and twelve others, and by colour thereof the commiſſioners proceed on an indictment taken before eight perſons only. 3 *Inſt.* 231. *Hawk. P. C.* 459.

If one is attainted of felony, and after, by relation of a general pardon, the felony is pardoned, he ſhall be diſcharged, for he hath no remedy by writ of *error*, to reverſe the attainder. 6 *Co.* 5. *a.*

No writ of *error* will lie of any judgment that is not given in a court of record; nor of a judgment given in an inferior court, as the county-court, &c. *Co. Lit.* 288. *b.* Nor of a decree or ſentence in Chancery proceeding according to equity. 37 *Hen.* 6. *Bro. Error* 95. 1 *Rol. Abr.* 744. But of a judgment given in the limited court of Chancery, called the Petty-bag, which proceeds according to the Common law, and holds plea of *ſcire facias* for repeal of the King's letters patent, &c. a writ of *error* lies in *B. R.* 1 *Rol. Abr.* 744. *Dyer* 315. 4 *Inſt.* 80. *Plow.* 393.

Wherever a new juriſdiction is erected by act of parliament, and the court or judge, that exerciſes this juriſdiction, acts as a court or judge of record, according to the courſe of the Common law, a writ of *error* lies on their judgments; but where they act in a ſummary method, or in a new courſe different from the Common law, there a writ of *error* lies not, but a *certiorari*. 1 *Salk.* 263.

As to the manner *of bringing it.*

Error in the King's Bench is thus proſecuted: The curſitor of the county makes out the writ of *error*, from a *præcipe* or copy of the declaration left with him; which is to be allowed with the clerk of the *errors*, who has a fee of 2*l.* 2*s.* 6*d.* and a certificate of the allowance of the writ muſt be ſerved on the defendant's attorney in *error*; alſo the plaintiff's attorney in the action, is to procure an original to warrant his judgment; and warrants of attorney muſt be filed, and bail put in, where required, &c. And then the proceedings are by *ſcire facias ad audiend. errores* againſt the plaintiff in the action, wherein judgment was obtained; and the writ of *error* being received by the ſheriff to whom directed, he is to give notice to the plaintiff in *error* to ſhew cauſe why execution ſhould not be on the judgment, and make a return to that purpoſe; then a rule is to be given with the clerk of the rules for the plaintiff in *error* to aſſign his errors by ſuch a day, which if he ſhall not do before the rule is out, the plaintiff in the original action may take out execution againſt him.

If the plaintiff in *error* aſſign *errors* in the record, then the defendant muſt plead *In nullo eſt erratum*, and thereupon enter the cauſe with the clerk of the papers, for the *errors* to be argued; and paper books for the counſel and judges, are to be made out, &c. If ſome part of the record be not returned, a *certiorari* muſt be prayed to bring it into court; and if matters of fact are alledged in *error*, as nonage, death of the plaintiff, &c. a proper plea muſt be made thereto, and iſſue thereupon taken and tried as in any other iſſue: But if only matters of law are aſſigned, the *errors* are argued by counſel on both ſides, and the judgment is either reverſed or affirmed: And when judgment is affirmed, the defendant in *error* may proceed againſt the defendant in the action, by taking out execution on the *affirmetur*, or bringing action of debt on the judgment; or he may proſecute the bail by *ſcire facias* upon their recogniſance. 2 *Vol. Mod. Ent. Eng.* 373, 378. But it is ſaid by ſome, that an aſſignment of *errors* in *fact* and in *law*, is bad on demurrer; by others, that the aſſignment of *error* in law may ſtand, and the fact be conſidered as nothing. *Sed qu.* Where there is an *error* in fact, if the writ of *error* ought not to be *coram vobis reſidens*, i. e. in the court where the judgment was given. In this caſe, however, we muſt except the *want of warrants of attorney*, &c. which are *facts*; and it is every day's practice to aſſign ſuch, with *errors* in law; and the uſual courſe is, if defendant in *error* does not pray a *certiorari*, for the plaintiff to pray it.

When a judgment is reverſed or affirmed in the *Exchequer chamber*, the tranſcript of the record thereof will be remitted back to this court, to be entered up at the end of the judgment here: and if ſuch judgment ſhall be affirmed in the Exchequer chamber, yet a writ of *error* may be brought thereupon returnable in parliament. *Practiſ. Solic.* 252, 253.

If you would bring a *writ of error in parliament* to reverſe a judgment in *B. R.* there muſt be a petition to the King for his warrant, which petition has the allowance of the Attorney General, and then the King writes on the top of it *Fiat Juſtitia*; whereupon a writ of *error* is made out by the clerk of the *errors*, (who hath 4*l.* fee, and the King's warrant coſts 5*l.*) And then the Lord Chief Juſtice of this court carries the record, and a tranſcript thereof, up to the Houſe of Lords in full Parliament, and after they are examined there, leaves the tranſcript with the Lords, but brings back the record: And this being done, the attorney for the defendant in *error*, gets ſome Lord to move that the plaintiff in *error* may aſſign his *errors*; but if for the plaintiff, motion is to be made, that upon his aſſigning *errors*, the defendant may appear and make his defence, and counſel be heard on both ſides: then, after the judgment is either affirmed or reverſed, the clerk of the parliament remands the tranſcript of the record into *B. R.* with the affirmation or reverſal thereof, to be entered upon the record of the ſaid court, which court, if affirmed, awards execution, *&c.* *Dyer* 385. *Practiſ. Attorn.*

A writ of *error* in parliament is made returnable immediately; or on a prorogation *ad proximum ad parliamentum*; and it doth not determine by a prorogation. But if a parliament is diſſolved before the *errors* are heard, it is otherwiſe. And on motion, execution hath been granted in *B. R.* on a judgment in ſuch a caſe, the record being never out of the court. *Raym.* 5. 2 *Nelſ. Abr.* 731.

To bring a writ of *error* in the King's Bench here in *England* to reverſe a judgment given the *King's Bench* in *Ireland*, a writ muſt be procured from the curſitor, directed to the Chief Juſtice of the court of *B. R.* in *Ireland*, requiring him to ſummon the plaintiff in the action there, to appear here in this court, to anſwer the *errors*; whereupon a tranſcript of the record is ſent over, (not the record itſelf of the judgment, which remains in *Ireland*) and when the *errors* are argued, if the judgment is reverſed, there muſt go a writ to the Chief Juſtice of *Ireland* to reverſe it; ſo that the judgment is not actually reverſed here, but there. And where the judgment in *Ireland* is affirmed here, there can be no writ of execution granted here; but on affirmance of the judgment a writ goes, reciting all the proceedings, directed to the judges of *B. R.* in *Ireland*, commanding them to iſſue proceſs of execution. *Cro. Car.* 368. 1 *Salk.* 321.

The party bringing the writ of *error* is to cauſe the roll where the judgment is entered, to be marked with the word *error* in the margin, that the other party may have notice on the record that the writ of *error* is brought, and this marking of the roll, on giving notice thereof, is as it were a *ſuperſedeas* in itſelf to hinder execution: Though a *ſuperſedeas* is to be made out, allowed and left with the ſheriff of the county: And the plaintiff's attorney is not obliged to ſearch the record, whether writ of *error* is brought or not; but may make out execution upon the judgment, if no *ſuperſedeas* be taken forth, or he hath no notice of the writ of *error*. *Trin.* 24 *Car. B. R.*

On a writ of *error* of a judgment in the Common Pleas, or other inferior court, in every adverſary ſuit, the record itſelf ſhall be removed, that it may remain as a precedent and evidence of the law in the like caſes. 1 *Rol. Abr.* 753. 5 *Co.* 39.

But in the caſe of a fine the tranſcript only is removed, for fines are only a more ſolemn acknowledgment or contract of the parties, and therefore are no memorials of the law, and need only be affirmed or vacated; if the former, the contract ſtands as it was; if the latter, the juſtices of *B. R.* may ſend for the fine itſelf, and reverſe it, or they may ſend a writ to the treaſurer and chamberlain to take it off the file; beſides, ſhould the record itſelf be removed and affirmed, it could not be ingroſſed for want of a chirographer in *B. R.* 1 *Rol. Abr.* 752. 1 *Bendl.* 51. *Dyer.* 89. *Godb.* 248. 2 *Rol. Rep.* 233. *F. N. B.* 20.

If the judges of the Common Pleas, or other judges upon a writ of *error*, will not certify all the record, the party that ſues the writ of *error* may alledge diminution of the record, and pray a writ to the juſtices that certified the record before, to certify the whole record. *F. N. B.* 25. *a.*

But diminution cannot be alledged upon a writ of *error* brought upon a judgment in any inferior court. 1 *Sid* 40. Yet ſee *infra.*

By ſtatute, he that brings writ of *error*, to reverſe a judgment in a ſuperior court, in all caſes *after a verdict*, or in any *action* of *debt*, upon *bond for payment of money only*, or on a *contract*, muſt put in good ſureties to proſecute his writ of *error* with effect, and pay the debt and damages if judgment be affirmed: But inferior courts, as well upon verdicts as other judgments, by default, *&c.* have their writs of *error* allowed without putting in bail, they being omitted in the ſtatute. 3 *Jac.* 1. *cap.* 8. If bail be not put in, on the writ of *error* brought upon a judgment in the courts at *Weſtminſter*, in thoſe caſes where bail is required, the writ of *error* is no *ſuperſedeas* to the execution; though ſuch writ is in being, until a *nolle proſequi* is entered, or judgment affirmed, *&c.* And it is the ſame where inſufficient bail is given, on rule to put in better bail, or juſtify thoſe put in, which if the plaintiff doth not do, execution is ordered upon the judgment, with a *non obſtante* to the writ of *error*, *&c.* *Mich.* 9 *W.* 3. *B. R.*

A plaintiff in *error* is, in the time appointed by the rule for that purpoſe, to certify the record into *B. R.* or the court will grant a *nolle proſequi* on the writ of *error*. *Mich.* 22 *Car. B. R.* A writ of *error* is a commiſſion, it is not an action. But ſee *ante*, previous to the *Diviſions*. And ſee *Diviſion* V.

The court will not let the plaintiff in *error* quaſh his own writ of *error*; though they may grant leave to diſcontinue it. 5 *Mod.* 67. If a verdict is for a defendant in *error*, and judgment is affirmed, coſts are allowed by *Stat.* 3 *Hen.* 7. *c.* 10. *occaſione dilationis executionis.* And by 4 & 5 *Ann.* *c.* 16. Upon quaſhing writs of *error*, for defect or variance from the record, *&c.* the defendant is to have coſts as if judgment were affirmed. When a writ of *error* is not *in dilatione executionis*, as where it is brought after the execution is executed, the plaintiff ſhall not have damages and coſts. *Cro. Jac.* 636.

When a writ of *error* is brought to reverſe a judgmen in an inferior court, though the record is not certified as it ought, yet execution cannot be ſued; but on certificate of the neglect, *&c.* a writ of *executione judicii* may be iſſued. 1 *Lill. Abr.* 526. Upon a writ of *error*, if the clerk below will certify the record wrong, action on the caſe lies againſt him; and if he make no return, the plaintiff may have the writ *executione judicii* out of Chancery. *Mod. Caſ.* 245.

If erroneous judgment be for the defendant in an inferior court, and it is reverſed in *B. R.* and the merits appear for the plaintiff, he ſhall have judgment; but if the merits be againſt the plaintiff, the defendant ſhall have new judgment, in like manner as in the Exchequer chamber; for the judges are to *reform*, as well as to affirm or reverſe. *Fareſl. Rep.* 2, 3. If a writ of *error* to reverſe a judgment be diſcontinued for want of proſecution; execution cannot be had upon the judgment, until the diſcontinuance is certified from the court where diſcontinued. 1 *Lil.* 518. If a writ of *error* is brought to remove a record of a judgment given in *C. B.* and the plaintiff in *error* leaves the record there, without removing it before the return of the writ; or in caſe there be a longer return-day than is convenient in the writ of *error*, as if it is purchaſed the beginning of *Michaelmas* term, and made returnable in *Hillary* term; the court may award execution, although the writ of *error* be delivered. *Jenk. Cent.* 180. *Dyer* 245.

III. *In what court error is to be brought.*

Erroneous judgments given in the court of *B. R.* were only reformed by the parliament till ſtat. 27 *Eliz. cap.* 8. By that ſtatute, a writ of *error* lies out of the Chancery upon all judgments given in the *King's Bench*, when the ſuit is by bill, (except the King is a party to the ſuit) returnable in the *Exchequer chamber*, before the judges of the Common Pleas, and Barons of the Exchequer, *&c.* who may examine the *errors*, and reverſe or affirm the judgment; other than for *errors*, concerning the juriſdiction of the court, or want of form in writs, pleadings, *&c.* and after the *errors* are examined, and judgment affirmed or reverſed, the record is ſent back to the King's Bench, to proceed and award execution; but if the ſuit is by original writ, or on *qui tam*, *&c.* where the King is party, writ of *error* lies only in parliament. *Stat. Ibid.*

Not only on reverſing or affirming a judgment, the Exchequer chamber is to ſend back the record into *B. R.* but alſo if the plaintiff in the writ of *error* is nonſuit, or if the ſuit is diſcontinued in the court of Exchequer chamber, the record ſhall be ſent back: And the court of Exchequer ſhall give coſts and damages to the plaintiff in the original action for his delay, *&c.* though if the plaintiff in *error* was plaintiff in the original action, there no coſts can be given. 2 *And.* 122. 2 *Nelſ. Abr.* 707.

Where a writ of *error* determines in the Exchequer chamber, by abatement or diſcontinuance, the judgment is not again in *B. R.* till a *remittitur* is entered. 1 *Salk.* 261. The Exchequer chamber doth not award a *ſci. fac. ad audiend. errores*; but notice is given to the parties concerned. 1 *Vent.* 84.

The court of parliament is the ſupreme court, where anciently cauſes of great conſequence, as between the *Magnates Regni*, were heard and determined; hence the *dernier* reſort is to the houſe of lords, to which a writ of *error* lies; and therefore, if a writ of *error* be brought of a judgment in the King's Bench into the Exchequer chamber, and there the judgment is reverſed; yet a writ of *error* lies of ſuch judgment into parliament, and the lords may reverſe ſuch ſecond judgment. *Show. Parl. Caſ.* 24, 110. 1 *Vent.* 334. *Raym.* 330. 2 *Jon.* 99. 2 *Lev.* 232.

So a writ of *error* lies into parliament upon a judgment in *B. R.* either in a cauſe brought there by writ of *error*, or originally commenced there. 1 *Rol. Abr.* 745.

And tho' upon a judgment in the King's Bench, ſince the 27 *Eliz. cap.* 8. the party may elect either to bring a writ of *error* in the Exchequer chamber, or in parliament; yet if the cauſe commenced in the King's Bench by *original writ* there lies no writ of *error* but into parliament; alſo if he elects to bring *error* in the Exchequer chamber, regularly he cannot after bring *error* in parliament upon the firſt judgment. 1 *Saund.* 346. *Carth.* 180. *S. P.* See 2 *Rol. Abr.* 492. 2 *Lev.* 232.

To reverſe a judgment given in the court of *Common Pleas*, the writ of *error* is made returnable in the King's Bench, and *error* is not to be brought in parliament: Though where a writ of *error* is brought in *B. R.* upon a judgment given in *C. B.* and the judgment is reverſed or affirmed in *B. R.* the party grieved may have writ of *error* returnable in parliament. 31 *Eliz. c.* 1. 1 *Lill. Abr.* 519, 521. Erroneous judgment in the *court of Exchequer*, is to be examined by the Lord Chancellor, *&c.* with ſome of the juſtices, and ſuch other ſage perſons as they think fit; and if any *error* be found, they ſhall correct the rolls, and ſend them into the Exchequer, in order to make execution, *&c.* *Stat.* 31 *Ed.* 3. *cap.* 12.

No writ of *error* lies *in Banco* or *Banco Regis*, upon a judgment given within the *five ports*; but by cuſtom ſuch judgment is examinable by bill in nature of a writ of error *coram domino cuſtode ſeu gardiano quinque portuum apud curiam ſuam de Shepway.* 4 Inſt. 224.

If a judgment be given in the court of ſtannaries of the dutchy of *Cornwall*, no writ of *error* lies upon this *in Banco* or *Banco Regis*, becauſe it hath not been uſed; but of this there may be an appeal to the guardian of the ſtannaries, and from him to the Prince; and when there is no Prince, to the King's counſel. 1 *Rol. Abr.* 745. This muſt, I ſhould think, mean the *Privy Council.* See 4 *Inſt.* 230. and 2 *Danv. Abr.* 304.

Upon a judgment given in the *Huſtings* in *London*, a writ of *error* lies at *St. Martin*'s before certain juſtices. 1 *Rol. Abr.* 745. 1 *Lev.* 309. 2 *Saund.* 253. *S. P.* and upon a judgment of the ſaid juſtices, a writ of *error* lies in parliament. See 2 *Leon.* 107.

In *Wales*, at the Great Seſſions there, a writ of *error* lies on *perſonal* actions to the council of the *Marches* of *Wales*; and if they give an erroneous judgment, it is final, for the ſtatute 34 *H.* 8. *c.* 26. ordains this writ to the council there; and ſince that act, no writ of *error* has been granted of ſuch erroneous judgment: Upon *errors* in *real* or *mixed* actions in *Wales*, writ of *error* lieth into the *King's Bench.* *Jenk. Cent.* 71. And ſo in *perſonal* actions now by 1 *W. & M. c* 27.

In ſome caſes a writ of *error* lies in the ſame court wherein the record is.

If upon a judgment in *B. R.* there be *error* in the proceſs, or through the default of the clerks, it ſhall be reverſed in the ſame court by writ of *error* ſued there before the ſame juſtices. *F. N. B.* 21. *Poph.* 181. 1 *Rol. Abr.* 746.

So if one is indicted of treaſon or felony in *B. R.* or being indicted elſewhere, the indictment is removed in *B. R.* and by proceſs of that court he is erroneouſly outlawed, and ſo returned; a writ of *error* may be brought in *B. R.* for the reverſal thereof. 3 *Inſt.* 214.

Alſo if an erroneous judgment in point of law be given in *B. R.* upon an indictment in *London*, a writ of *error* may be brought in the ſame court; for though in civil caſes *error* does not lie in the ſame court, unleſs for a matter of fact; yet in criminal caſes it lies as well for an *error* in law as fact. 1 *Sid.* 208.

But if an erroneous judgment be given, and the *error* lies in the judgment itſelf, and not in the proceſs, a writ of *error* does not lie in *B. R.* of ſuch judgment. 1 *Rol. Abr.* 746.

If a record is removed by writ of *error* out of the Common Pleas into the King's Bench, and the writ of *error* for inſufficiency is quaſhed in the King's Bench, the plaintiff in *error* may have a writ *coram vobis reſiden'*. But ſuch new writ is not a *ſuperſedeas* in itſelf as the firſt writ was, and therefore he muſt move the court for a *ſuperſedeas*, and put in bail thereon. *Carth.* 368.—9.

So if ſuch ſecond writ be quaſhed for inſufficiency, yet the court will grant a new or ſecond writ of error *coram vobis reſiden'*. As alſo a *ſuperſedeas* on putting in bail; for ſuch ſecond writ being void, is as if there had been none before. *Carth.* 369, 370.

IV. *How errors are to be aſſigned.*

The parties, upon the removal of the record by the writ of *error*, have no day in court given to either of them; ſo that if the plaintiff in *error* delay to ſue forth his *ſci. fac. ad audiend. errores*, the defendant hath no way to compel him, but by ſuing out a *ſcire facias quare executionem non*, *&c.* And if thereupon the plaintiff in *error* doth not plead that his *errors* are aſſigned, but ſuffer judgment to paſs upon two *nihils*, no *errors* afterwards aſſigned ſhall prevent execution. *Carthew's Rep.* 41. The *ſci. fac. ad audiend errores* is only uſed in *B. R.* In the Exchequer chamber *notice* is given. It is ſaid the uſual practice is, that the defendant in the writ of *error*, by conſent doth voluntarily take notice of the aſſignment of *errors*, and this conſent is teſtified by his pleading *In nulla eſt errat.* and then there is no occaſion for a *ſcire facias ad audiend. error'*. *Ibid.*

Errors are to be aſſigned in the term, or the writ of *error* will be quaſhed. 1 *Lill. Abr.* 524. When the record is in court by writ of *error*, the plaintiff in *errors* is to aſſign his *errors*; and may have a *ſcire facias* before the record is entered: And the manner of aſſigning *errors*, according to the ancient practice, is to put a bill into court, and ſay in the bill, *in ho: erratum eſt*, *&c.* ſhewing in certain in what things. *F. N. B.* 20. The aſſignment of *error*, *in omnibus erratum* is not good; for the judgment is founded upon the original writ, count, pleading, iſſue, proceſs, trial, and ſo is manifold. *Jenk. Cent.* 84. *Errors* in *law* not aſſigned in the record, may be aſſigned after a *ſcire facias ad audiend. errores*; as the record is in court; but it is not ſo of a warrant of attorney, which is an *error* in *fact*, and not upon record. *Ibid.* 140. 5 *Rep.* 37.

If one in execution brings *error*, he ought to aſſign the *errors* in his proper perſon: And in caſes of outlawry for felony, *errors* ſufficient muſt be certainly alledged in writing, before the writ of *error* is allowed. *Jenk. Cent.* 165, 179. Where a recovery is had, and *error* brought, if the original writ doth not abate by death; but is abateable only, as by entry into the land pending the writ, or coverture, acquiſition of a dignity, a partial array returned, aid denied, *&c.* that ſhould have been pleaded, and were not: Theſe ſhall not be aſſigned for *error*; for they are waived. 9 *Rep.* 47. 21 *H.* 6. 29.

The aſſigning general *errors* is to ſay that the declaration, *&c.* is not ſufficient in law: and that judgment was given for the plaintiff, where it ought to have been for the defendant: And the *errors* of a judgment are now to be aſſigned on the record, to appear with it to the court.

If the plaintiff in *error* aſſigns *errors* in *fact*, and *errors* in *law*, which are not aſſignable together, and the defendant in *error* pleads *in nullo eſt erratum*; this is a confeſſion of the *error* in *fact*, and the judgment muſt be reverſed, for he ſhould have demurred for the *dupli-*

city. Style 69. 1 Lev. 76. Salk. 268. 6 Mod. 113, 206.

Alſo if an *error* in *fact* be well aſſigned, *in nullo eſt erratum* is a confeſſion of it, for the defendant ought to have joined iſſue upon it, ſo as to have it tried by the country. 1 *Sid*. 93. *Raym*. 59. Becauſe, in *nullo eſt erratum* is in the nature of a *demurrer*, which confeſſes the fact, if well pleaded, or well aſſigned.

But if an *error* in *fact*, be ill aſſigned, *in nullo eſt erratum* is no confeſſion of it; as if it be aſſigned, that ſuch a one at the time of the return of the *venire* was not ſheriff, and the record be removed into *B*. *R*. by *certiorari*, there *in nullo eſt erratum* is no confeſſion of that *error*, becauſe the record is not in court, that being no part of the record, for the plea is *in nullo eſt erratum in recordo*. *Cro*. *Jac*. 12, 29, 521. *Raym*. 231. *Cro*. *Car*. 421. 1 *Rol*. *Abr*. 758.

So if the plaintiff in *error* aſſigns an *error* in *fact*, *viz*. that the defendant, who was an infant, did not appear by guardian, but by attorney, and concludes with *hoc paratus eſt verificare*, inſtead of concluding to the country, as he ought to do, though the defendant in *error* pleads *in nullo eſt erratum*; yet it ſhall not amount to a confeſſion, but ſhall be taken only for a *demurrer*. Yelv. 58.

Alſo if an *error* in *fact*, that is not aſſignable, be aſſigned, and *in nullo eſt erratum* be pleaded, it is no confeſſion; as if it be aſſigned, that ſuch a day there was no court of Common Pleas ſitting, becauſe that is againſt the record, and in ſuch caſe *in nullo eſt erratum* is only a *demurrer*; ſo if a man ſays he did not appear, and the record ſays he did, *in nullo eſt erratum* is no confeſſion, but a *demurrer*, becauſe it is againſt the record. *Cro*. *Car*. 12, 29, 52. *Yelv*. 58. *Raym*. 231. 1 *Vent*. 252. 3 *Keb*. 259. 1 *Lev*. 76.

It has been held, that an *error* in *fact* cannot be aſſigned in the Exchequer chamber: Though by ſome authorities, *errors* in *fact* may be aſſigned as *errors* in *law*. 2 *Mod*. 194. 2 *Nelſ*. *Abr*. 708.

By 30 *Car*. 2. *c*. 6. In actions real, perſonal, and mixed, the death of either part between verdict and judgment, ſhall not be alledged for *error*.

It ſeems a general rule, that nothing can be aſſigned for *error* that contradicts the record; for the records of the courts of juſtice being things of the greateſt credit, cannot be queſtioned but by matters of equal notoriety with themſelves; wherefore, though the matter aſſigned for *error* ſhould be proved by witneſſes of the beſt credit, yet the judges would not admit of it. 1 *Rol*. *Abr*. 757.

Hence it is, that in a writ of *error* to reverſe a fine, the plaintiff cannot aſſign, that the *conuſor died before* the *teſte* of the *dedimus*, becauſe that contradicts the record of the conuſance taken by the commiſſioners, which evidently ſhews that the conuſor was then alive, becauſe they took his conuſance after they were armed with the commiſſion, and the *dedimus* iſſued. *Dyer* 89. 1 *Roll*. *Abr*. 757.

V. *What defence may be made by a defendant in error.*

The defendant in *error* may plead a releaſe of all *errors*, or a releaſe of all ſuits, and theſe pleas, if found for him, will for ever bar the plaintiff in *error*. 1 *Rol*. *Abr*. 788.

So where by a writ of *error* the plaintiff ſhall recover, or be reſtored to any *perſonal* thing, as debt, damage, or the like, a releaſe of *all actions perſonal* is a good plea; and when *land* is to to be recovered or reſtored in a writ of error, a releaſe of *actions real* is a good bar; but where by a writ of *error* the plaintiff ſhall *not* be reſtored to *any perſonal* or *real thing*, a releaſe of all actions *real* or *perſonal* is no bar. *Co*. *Lit*. 288. *b*. 8 *Co*. 152. 1 *Rol*. *Abr*. 788. 2 *Rol*. *Abr*. 405.

Alſo if a man loſes in a real action, and he releaſes all his right to the land, and ſo where there is a fine levied, this ſhall bar him of his writ of *error*, for no perſon can bring a writ of *error* to reverſe a judgment that is not intitled to the land, &c. for the courts of law will not turn out the preſent tenant, unleſs the demandant can make out a clear title; *poſſeſſion always carrying with it the preſumption of a good title, till the right owner appears.* 1 Rol. Abr. 747, 788. Dyer 90. a. 3 Leo. 36. Cro. Eliz. 469. 1 Rol. Abr. 789.

If the tenant, pending a *præcipe* againſt him, aliens in fee, and after judgment is given againſt him, and he brings a writ of *error*; this feoffment is not any bar to the writ, becauſe he was privy to the judgment after. 1 *Rol*. *Abr*. 788. *Bridg*. 77. 1 *Rol*. *Rep*. 306.

In a writ of *error* to reverſe a common recovery, it is no good plea, that the plaintiff pending the writ of *error* hath entered into part, for before the poſſeſſion was taken from him, he might have *error* to reverſe the judgment, though not to have reſtitution. 1 *Lev*. 72.

In a *ſci*. *fac*. againſt a tertenant, he may plead a releaſe of *error*, though he be not privy to the judgment. 9 *H*. 6. 48. *Bro*. 9. *S*. *C*.

But the tertenants cannot plead in abatement of the writ of *error*, but only in bar as a releaſe, &c. in maintenance of their title. 1 *Lev*. 72.

After *in nullo eſt erratum* pleaded, the party affirms the record to be perfect, and he is forecloſed to ſay there is *error* in it: Though the court is not reſtrained from examining into it. 1 *Salk*. 270. The judges are not bound to ſearch for *errors* in the record, which were not aſſigned; but may if they will; and if they find *error* they ought to reverſe the judgment. *Jenk*. *Cent*. 159.

VI. *Of the judgment to be given on a writ of error.*

A judgment, *as being an intire thing*, cannot be reverſed in part, and ſtand good as to other part; or be reverſed as to one party, and remain good againſt the reſt: Though if there be *error* in awarding execution, the execution only ſhall be reverſed, and not the judgment. *Hob*. 90. *Carth*. *Rep*. 235. If judgment is entered againſt joint defendants, when one of them is dead, the judgment ſhall be reverſed for *error* as to all of them; for in ſuch caſe the plaintiff ought to make a ſpecial entry of the death of the party, with *Nihil ulterius verſus eum fiat*, and then take judgment only againſt the others. *Ibid*. 149.

The court of Exchequer chamber have not any authority, but to reverſe or affirm the judgment, &c. for they cannot make execution. *Cro*. *Eliz*. 108. But where judgment is given for the defendant, and the plaintiff brings a writ of *error*; if the judgment is reverſed, the court which reverſes the judgment ſhall give judgment for the plaintiff, as the other court ought to have done. *Yelv*. 117, 118. In the Exchequer chamber, after reverſal of a judgment, &c. in *B*. *R*. the court gave judgment, *quod quer*. *recuperet*, &c. but becauſe they wanted power to award a writ of inquiry which was neceſſary, being on a demurrer, therefore it was ſent back into *B*. *R*. for the execution of that writ, and thereupon to give final judgment: But if the judgment is againſt the plaintiff in *B*. *R*. upon a ſpecial verdict, and that judgment is reverſed in the Exchequer chamber, there being no writ of inquiry requiſite, the court of Exchequer chamber doth not only give judgment of reverſal, but a compleat judgment for the plaintiff in the action. *Carth*. 181. If erroneous judgment be had by conſent of parties, it may be reverſed in the Exchequer chamber; *for conſent of parties may not change the law*; but if the conſent is entered upon and made part of the record, it may be good. *Hob*. 5. *Cro*. *Eliz*. 664. The reverſal in the Exchequer chamber, is *res judicata*: No writ of *error* lies upon ſuch judgment, except in parliament; and it is by ſix judges at leaſt, by the ſtatute 17 *Eliz*. *c*. 8. and 31 *Eliz*. *c*. 1.

When judgment is given in *B*. *R*. for the plaintiff in *errors*, there ſhall be only a *judicium revocetur*, &c. entered with coſts: If for the defendant in *errors*, that the plaintiff *nil capiat per breve ſuum de* errore. The Chief Juſtice of *B*. *R*. &c. or the eldeſt judge ought to allow a writ of *error* which is in judgment of law a *ſuperſedeas* until the *errors* are examined, and the judgment affirmed or reverſed. *Cro*. *Jac*. 534. As a plaintiff having erroneous judgment may reverſe it; and new judgment may be given for him: So if a judgment is reverſed, the plaintiff may bring a new action for the ſame cauſe. 1 *Lev.* 310. Where a judgment is pleaded in bar of another action, *&c.* and judgment given on that plea; writ of *error* may be had to reverſe the ſecond judgment. *Cro. Eliz.* 503. *Jenk. Cent.* 259. And debt lies upon a judgment in *B. R.* after a writ of *error* brought; which is only a *ſuperſedeas* to the execution. 1 *Lev.* 153. But the court will ſtay proceedings in ſuch action on giving judgment.

In a writ of *error* upon a judgment in treſpaſs againſt ſeveral, if the judgment be erroneous, becauſe one of the defendants was within age, and appeared by attorney, the judgment ſhall be reverſed *in toto* againſt all. 1 *Rol. Abr.* 776. *Cro. Jac.* 289. *S. C.* and 303. *S. P.* adjudged. *Allen* 74, 75. *S. C.* and *S. P.* adjudged. *Style* 121, 125, 406. *S. P.* adjudged.

By *Stat.* 5 *Geo.* 1. *c.* 13. it is enacted, That all *writs* of *error*, wherein there ſhall be any variance from the original record, or other defect, may be amended by the court, and made agreeable to the record: And where any verdict hath been given, in any action, ſuit, *&c.* in any of his Majeſty's courts at *Weſtminſter*, or other court of record, the judgment thereon ſhall not be ſtayed or reverſed for any defect or fault in form or ſubſtance, in any bill, writ, *&c.* or for variance in any ſuch writs from the declaration and other proceedings: but this is not to extend to any appeal of felony, or proceſs on indictment, informations, and appeals. See *Judgment.*

Erthmiotum, An ancient word for a meeting of the neighbourhood to compromiſe differences among themſelves; which was cuſtomary in former days; it is mentioned in *Leg. Hen.* 1. *c.* 57.

Eſbrancatura, (from the Fr. *eſbrancher*) Cutting off branches or boughs in foreſts, *&c.* *Hoved.* 784.

Eſcaldare, To ſcald: *Eſcaldare porcos*, was one of our ancient *tenures in ſerjeanty*; as appears by the inquiſition of the ſerjeancies and knights fees in the 12th and 13th years of King *John*, within the counties of *Eſſex* and *Hertford*. Lib. Rub. Scaccar' MS. 137.

Eſcambio, (derived from the Span. *cambier* to change) Was a licence granted to make over bill of *exchange* to another beyond the ſea: for by the *Stat.* 5 *R.* 2. *c.* 2. No merchant ought to exchange or return money beyond ſea, without the King's licence. *Reg. Orig.* 194. See *Exchange.*

Eſcape, (*eſcapium*, from the Fr. *eſchapper*, i. e. *effugere* to fly from) Signifies a violent or privy evaſion out of ſome lawful reſtraint; as where a perſon is arreſted or impriſoned, and gets away before delivered by due courſe of law. *Staundf. P. C. cap.* 26, 27.

Eſcapes are either in *civil* or in *criminal* caſes. As to eſcapes in *civil* caſes it is to be conſidered,

I. *Where the party ſhall be ſaid to be* legally committed, *ſo that the ſuffering him to go at large will be adjudged an* eſcape; *and what* degree *of* liberty, *or* going *at* large, *ſhall be deemed an* eſcape, *as alſo what* perſons *are* anſwerable *for an* eſcape.

II. *Of the difference between* voluntary *and* negligent *eſcapes, as alſo between eſcapes on* meſne proceſs *and* execution.

III. *Of the nature of the* action *to be brought for an* eſcape, *and of the manner of laying it.*

IV. *Of the* party's defence *ſued for the* eſcape, *and therein of pleading* freſh ſuit.

I. *Of* legal commitment, *what ſhall be deemed an* eſcape, *and* who *anſwerable.*

It ſeems agreed as a general rule, that wherever a ſheriff or other officer hath a perſon in cuſtody, by virtue of an authority from a court which hath juriſdiction over the matter, that the ſuffering ſuch a perſon to go at large is an eſcape, for he cannot judge of the validity of the proceſs or other proceedings of ſuch court, and therefore cannot take advantage of any errors in them; hence the law allows him, in an action of falſe impriſonment, to plead ſuch authority, which will excuſe him, though it be erroneous; but if the court has no juriſdiction of the matter, then all is void, and conſequently the officer not puniſhable for ſuffering a perſon taken upon ſuch void authority to eſcape. *Moor* 274. *Dyer* 66, 175, 306. *Popb.* 203. 1 *Leon.* 30. 5 *Co.* 64. 8 *Co.* 141. *b.* *Cro. Jac.* 280, 289. 2 *Bulſt.* 64, 237, 256. If a *ca. ſa.* iſſue after a year and a day, without ſuing out a *ſcire facias*, this error will not excuſe the ſheriff in an eſcape. *Cro. Car.* 288. *Salk.* 273. But though a ſheriff may not take advantage of an erroneous proceſs; yet he ſhall of a void proceſs, on which it is no eſcape to let a priſoner go.

If at the petition of *A.* and the reſt of the creditors of *B.* a commiſſion upon the ſtatute againſt bankrupts is iſſued out againſt *B.* and thereupon the commiſſioners ſit and offer interrogatories to *C.* and he refuſes to be examined, and by them is thereupon committed to priſon, and the gaoler ſuffers him to eſcape, as the commiſſioners had ſufficient authority to commit, and *A.* was prejudiced by the eſcape, he may maintain an action againſt the gaoler. 1 *Rol. Rep.* 47. *Moor* 834. *pl.* 1123. *S. C.*

The ſheriff cannot be charged with an eſcape before he had the party in *actual* cuſtody by a legal authority; and therefore if an officer, having a warrant to arreſt a man, ſee him ſhut up in a houſe, and challenge him as his priſoner, but never actually have him in his cuſtody, and the party get free, the officer cannot be charged with an eſcape. *Bro. Eſcape,* 22.

But if *A.* is arreſted, and in the *actual* cuſtody of the ſheriff, and afterwards another writ is delivered to him at the ſuit of *J. S.* upon the delivery of the writ, *A.* by conſtruction of law is immediately in the ſheriff's cuſtody, without an actual arreſt; and if he eſcapes, the plaintiff may declare, that he was arreſted by virtue of the ſecond writ, which is the operation it has by *law*, and not according to the *fact.* 5 *Co.* 89. But where the ſheriff, not having *actually* arreſted a defendant, but accepted the undertaking of an attorney to put in bail, who put in bail, and the ſheriff had returned a *cepi corpus*, held *per* Lord *Mansfield* at *Surry* aſſizes, ſummer 1775, in *Hodgſon* and *Akerman*, Eſq; that the ſheriff was not liable, upon a writ of *non eſt inventus*, on another proceſs, to an action, either for an *eſcape* or a falſe return, or for negligence in not taking the defendant, no actual negligence being proved, and the plaintiff was non-ſuited.

Note, the writ returned *cepi corpus* was a *latitat*, returnable three or four days after the other proceſs, which was an original, but that difference was not, in this caſe, conſidered as material.

If a perſon out upon bail renders himſelf in diſcharge of his bail, and a *reddidit ſe* is entred in the judge's book, and a *committitur* filed in the office, and the priſoner afterwards eſcapes; yet if no notice was given to the marſhal of ſuch render, nor no entry made of the commitment in his book, the priſoner ſhall not be deemed in cuſtody ſo as to charge the marſhal with an eſcape; but it ſeems this matter cannot be inſiſted upon after trial. 1 *Salk.* 272—3. *Vide poſt.*

It hath been held, that entring a *committitur* upon the roll was not ſufficient to charge the marſhal with any eſcape, without proving an actual impriſonment; but that proving the party to be actually in priſon, though there be no entry made in the marſhal's book (without which he pretends he knows not how to take charge of them) is ſufficient. 1 *Sid.* 220. 1 *Keb.* 775.

And now, for the greater ſecurity of creditors, and the better to enable them to prove the actual cuſtody of the priſoner, by *Stat.* 8 *&* 9 *Wil.* 3. *cap.* 27. *ſect.* 9. it is enacted, "That if any one, deſiring to charge any perſon with any action or execution, ſhall deſire to be informed by the marſhal or warden, or their reſpective deputies, or by any other keeper of any other priſon, whether ſuch perſon be a priſoner in his cuſtody, or not, the ſaid marſhal or warden, or ſuch other keeper, ſhall give a true note in writing thereof, to the perſon ſo requeſting the ſame, or to his lawful attorney, upon demand, at his office for that purpoſe, or, in default thereof, ſhall forfeit the ſum of 50*l.* and if ſuch marſhal or warden, or their reſpective deputy, *&c.* exerciſing the ſaid office, or other keeper, *&c.* of any other priſon, ſhall give a note in writing that ſuch perſon is an actual priſoner in his or their cuſtody, every ſuch note ſhall be taken as a ſufficient evidence, that ſuch perſon was at that time a priſoner in actual cuſtody."

A *committitur* upon the roll is good evidence in eſcape, without an entry in the marſhal's book. *Ld. Raym.* 705.

As to the degree *of* liberty *which may be deemed an* eſcape.

Every perſon in priſon by proceſs of law is to be kept *in ſalva & arcta cuſtodia*, in order to compel them the more ſpeedily to pay their debts, and make ſatisfaction to their creditors. *Plowd.* 36. 3 *Co.* 44. 2 *Inſt.* 381. 1 *Rol. Abr.* 806.

Perſons in the *King's Bench* and *Fleet* priſons, are to be actually detained within the ſaid priſons; and if they eſcape, action of debt lies againſt the warden, *&c.* 1 *R.* 2. *c.* 12. But now the marſhal or warden grant the liberty of the rules to ſuch as they think proper, (not criminally charged) on proper ſecurity. Keepers of thoſe priſons ſuffering priſoners either upon contempt or meſne proceſs, or in execution, to be out of the rules (except on rule of court, *&c.*) is an *eſcape*; and perſons conniving at an *eſcape* ſhall forfeit 500 *l.* *&c.* by 8 & 9 *W.* 3. *c.* 27. And by this ſtatute, where any priſoner in execution *eſcapes*, the creditor may have any other new execution againſt him.

By *Stat.* 5 *Ann. c.* 9. If any perſon in cuſtody, for *not performing any decree in Chancery, &c. eſcape*, the party for whom the money is decreed may have the ſame remedy againſt the ſheriff, as if the priſoner had been in cuſtody on *execution*. A priſoner in execution ſhould not be allowed to go out of the gaol; for if he goes out, though he returns again, it is an *eſcape*. 3 *Rep.* 43, 44. 2 *Inſt.* 260, 381. And yet in *London*, by ſpecial cuſtom there, in ſome caſes the priſoner may go abroad with his keeper, and it will be no *eſcape*. *Ibid.* See *Hob.* 202. Where the Juſtice of the court, and plaintiff in the ſuit, agree that the priſoner ſhall be at liberty, and he go out and return at his time; it is no *eſcape*: but this may not be without the ſheriff's conſent. *Dyer* 275.

If a plaintiff by word licenſe the ſheriff to deliver the priſoner, no action will lie for this as an eſcape. 27 *H.* 8. 24.

If there be an *eſcape* by the plaintiff's conſent, when he did not intend it, the law is hard that the debt ſhould be thereby diſcharged; as where one was in execution in *B. R.* and ſome propoſals being made to the plaintiff in behalf of the priſoner, ſeeing there was ſome likelihood of an accommodation, the plaintiff conſented to a meeting in a certain place in *London*, and deſired the priſoner might be there, who came accordingly: this was held to be an *eſcape*, with the plaintiff's conſent, and he could never after be in execution at his ſuit for the ſame matter. 2 *Mod.* 136.

It hath been adjudged no *eſcape* to let a priſoner go where the ſheriff hath the priſoner in cuſtody, if it be before the return of the writ: it is ſufficient if the officer have the party at the return of the writ, *&c.* *Moor* 299. 1 *Salk.* 401. 2 *Nelſ.* 739, 740. Yet it hath been held, that where a *habeas corpus* is granted to bring a perſon into court, if the ſheriff on the way let him go at large in the county or carry him round about a great way, *&c.* it will be an *eſcape*. 1 *Mod.* 116. And an *eſcape* in one place is an *eſcape* in all places; for a priſoner being once *eſcaped*, and at large, it ſhall be intended he is confined to no place. 1 *Lil. Abr.* 537. Committing the *marſhal* of the *marſhalſea* to priſon, where an *eſcape* in law of all the priſoners there. See *Style* 375.

If a woman, warden of the *Fleet* priſon, marries her priſoner, or if a ſheriff, *&c.* marries a woman in execution with him, in either caſe it will be deemed an eſcape in law. *Plowd.* 17.

If a man hath judgment againſt two perſons, and both are taken in execution, if the ſheriff ſuffer one of them to eſcape, he ſhall be anſwerable for the whole debt, though he hath one of them ſtill in cuſtody. 1 *Rol. Abr.* 810. But in an action on *the caſe*, tried before Lord *Manſfield*, in *Surry*, for an eſcape of one, of two defendants, under very favourable circumſtances for the officer, his Lordſhip left it to the jury, whether they would find the whole of plaintiff's debt, in damages, or only half, and found only half, to the great ſatisfaction of every one there except the plaintiff.

By the *Stat.* 8 & 9 *Wil.* 3. *cap.* 27. *ſect.* 8. It is enacted, "That if the marſhal or warden for the time being, or their reſpective deputy or deputies, or other keeper or keepers of any other priſon or priſons, ſhall, after one days notice in writing given for that purpoſe, refuſe to ſhew any priſoner committed in execution to the creditor, at whoſe ſuit ſuch priſoner was committed or charged, or to his attorney, every ſuch refuſal ſhall be adjudged to be an *eſcape* in law."

With reſpect to the perſon anſwerable *for an eſcape*.

In *civil actions* the ſheriff is to anſwer for the eſcape of his bailiff; as the bailiff is for that of his ſervant: and action on the caſe lies againſt the ſheriff for an eſcape upon meſne proceſs, *becauſe the plaintiff is prejudiced in his ſuit by it*. *Cro. Eliz.* 623, 625. 1 *Danv. Abr.* 183. See alſo *Cro. Jac.* 419. *Dyer* 241. See *Ni. Pri.* 59, 60. Where a perſon is in cuſtody on meſne proceſs, and being outlawed after judgment at the ſuit of another, the judgment creditor brings a warrant on a *capias utlagatum*, and delivers it to the ſheriff's officer, who hath him in cuſtody; if the officer afterwards permits the perſon to eſcape, though he refuſe to execute the warrant, the ſheriff is chargeable in action on the caſe. 5 *Rep.* 89.

Where one has the cuſtody of a gaol of freehold or inheritance, and commits it to another perſon, who is inſufficient, the ſuperior is anſwerable for all eſcapes ſuffered by his inferior; but if the inferior be ſufficient, the action ſhould be brought againſt him, and not againſt the ſuperior. See 9 *Co.* 98. 2 *Jon.* 60. 2 *Lev.* 158. 1 *Vent.* 314. 2 *Mod.* 119. 4 *Rep.* 98.

Alſo by the *Stat.* 8 & 9 *W.* 3. *cap.* 27. *ſect.* 11. it is enacted, "that the offices of marſhal of the King's Bench priſon and warden of the *Fleet*, ſhall be executed by the ſeveral perſons to whom the inheritance of the priſons, priſon-houſes, *&c.* of the ſaid priſons, or either of them, ſhall then belong reſpectively, in his or their reſpective proper perſon, *&c.* or by their ſufficient deputies; for which deputies, and for all forſeitures, eſcapes, and other miſdemeanors in their offices by ſuch deputies permitted, *&c.* the ſaid perſon in whom the aforeſaid inheritances reſpectively are, ſhall be anſwerable; and the profits and inheritances of the ſaid offices ſhall be ſequeſtered, *&c.* to make ſatisfaction for ſuch forfeitures, eſcapes, *&c.* reſpectively, as if permitted, *&c.* by the perſons themſelves, in whom the reſpective inheritance of the ſaid priſons ſhall then be."

A priſoner eſcapes out of the *King's Bench*, or *Marſhalſea*, or the *Fleet*; the keeper of the priſon out of which he eſcaped is to be charged with it; but if the eſcape be from either of the *Counters*, the action muſt be brought againſt the ſheriffs of *London*. *Dyer* 278. 3 *Rep.* 52.

Action of eſcape againſt the warden of the *Fleet* for an eſcape upon *meſne proceſs*; the priſoner returns to the *Fleet* the ſame day, and the plaintiff afterwards proceeds to final judgment againſt him, yet the action lies againſt the warden. *Ravenſcroft* v. *Eyles, Eſq.* *Wilſ. Rep. par.* 2. *p.* 294. In an eſcape upon meſne proceſs out of the borough court, brought in *B. R.* againſt the bailiff thereof, the defendant ſhall not take advantage in *B. R.* of any error in the proceſs below. *Id.* *Bull* v. *Steward*, *par.* 1. *fo.* 255.

Action of eſcape will not lie againſt the executor or adminiſtrator of a ſheriff, *&c.* for an eſcape, becauſe it was *perſonal*, and *moritur cum perſona*: but it may be otherwiſe if there be a judgment recovered againſt the ſheriff before he died. *Dyer* 322.

If there are two ſheriffs of the ſame place, and an action of eſcape is brought againſt them both, if one of them dies, yet the writ ſhall not abate; for it being in nature of a treſpaſs, and merely perſonal, the party can only have remedy againſt the ſurvivor. *Cro. Eliz.* 625. But the death ſhould be ſuggeſted. 8 & 9 *W.* 3. *c.* 11. *ſect.* 7. The death of one plaintiff or defendant, where the action will ſurvive *to*, or *againſt* the ſurvivor, ſhall not abate the ſuit. But the death muſt be ſuggeſted on the roll.

An old ſheriff omits turning over a priſoner in execution to the new ſheriff, it is ſaid to be an *eſcape*; ſo where there are two executions againſt a man, and in the indenture of turning over mention is made but of one, &c. 3 *Rep.* 71. *Sed qu.* as to this point?

II. *Of the difference between* negligent *and* voluntary *eſcapes, and alſo between eſcapes on* meſne proceſs *and* execution.

There are two kinds of eſcapes; *voluntary* and *negligent*: *Voluntary*, is when one arreſts another for felony, or other crime, and lets him go by conſent; in which caſe the party that *permits the eſcape* is eſteemed guilty of the crime committed, and muſt anſwer for it: *Negligent eſcape*, is when one is arreſted, and afterwards eſcapes againſt the will of him that arreſted him, or had him in cuſtody; and is not purſued by freſh ſuit, and taken again before the party purſuing hath loſt ſight of him. *Cromp. Juſt.* 36. And for theſe negligent eſcapes, the gaoler, &c. is to be fined. One *negligent* eſcape will not amount to a forfeiture of a gaoler's office, as one *voluntary* one will; but many negligent eſcapes will do it: and the fine for ſuffering a negligent eſcape of a perſon *attainted*, was by the Common law of courſe 100 *l.* and in other caſes at the diſcretion of the court. 3 *Lev.* 288. 2 *Lev.* 81.

If any priſoner eſcapes who was in execution, his creditors may retake him by *cap. ad ſatisfac.* or bring action of debt on the judgment, or a *ſcire facias* againſt him, &c. 1 *Vent.* 269. 3 *Salk.* 160. And ſee 8 & 9 *W.* 3. *c.* 27. If a man eſcapes, with the conſent of the gaoler in a civil caſe, he cannot retake him. 3 *Rep.* 32. This muſt mean on an eſcape warrant, but cannot mean that the plaintiff, if he thinks proper, is barred from ſuing forth a new execution. For tho' the ſheriff is highly culpable, yet the defendant is not, with reſpect to the plaintiff, leſs culpable. The eſcape as to him is tortious. See in confirmation of my opinion. 1 *Vent.* 4.

If the plaintiff permit the priſoner to eſcape, he cannot afterwards retake him; and if the body and goods, &c. of a conuſor are taken in execution upon a ſtatute-merchant, if the conuſee agree that he ſhall go at large, it is a diſcharge of the whole execution, and the conuſor ſhall have his lands again: it is otherwiſe if the ſheriff had permitted him to eſcape, the execution on the lands would not be diſcharged. 2 *Nelſ. Abr.* 737.

A difference is to be obſerved between *permiſſive* and *negligent* eſcapes, *with reſpect to the ſheriff*; for if a ſheriff ſuffer a priſoner voluntarily to go at large, the ſheriff cannot retake him even upon freſh ſuit; and if he does, the priſoner may have an action of treſpaſs againſt him. *Car.* 212.

If the marſhal of the *King's Bench*, or warden of the *Fleet*, or any other who hath the keeping of priſons in fee, ſuffer a voluntary eſcape, it is a forfeiture of the office. 3 *Mod.* 146. *Carter* 212. And there is likewiſe a farther penalty of 500 *l.* added by 8 & 9 *W.* 3. *c.* 27. above-mentioned.

There is this difference between an eſcape on *meſne proceſs* and *execution*; if the ſheriff arreſt a perſon on *meſne proceſs*, and he is reſcued by *J. S.* he may return the reſcue, and ſuch return is good, and no action of eſcape lies againſt him after ſuch return; but the court will iſſue proceſs againſt ſuch reſcuer, or fine him; for in this caſe, though the ſheriff may, yet he is not obliged to raiſe the *poſſe comitatus* 1 Rol. Abr. 807. 1 Jon. 207. 1 Rol. Rep. 388. 3 Lev. 46.

But after judgment on a *capias ad ſatisfaciendum*, the ſheriff *cannot return a reſcue*, for in ſuch caſe the ſheriff is obliged to raiſe the *poſſe comitatus*, if needful, and therefore, if he return a reſcue, an *action of eſcape* lies, or a new *capias*, for the return of an ineffectual execution is as none. 1 *Rol. Abr.* 807. *Cro. Car.* 240, 255. 8 *Co.* 42. See *Ni. Pri.* 59, 60. And 6 *Rep.* 51. *Cro. Eliz.* 868.

III. O*f the nature of the* action *to be brought for an* eſcape, *and the manner of laying it.*

At Common law the plaintiff had no remedy againſt the ſheriff for an eſcape, whether upon meſne proceſs, or in execution, but by ſpecial action upon the caſe. 2 *Inſt.* 382. 1 *Show.* 176. 2 *Saund.* 34. *Hard.* 30.

But now, by an equitable conſtruction of *Weſtm.* 2. *cap.* 11. Action of *debt* is given againſt the ſheriff, and by the 1 *Rich.* 2. *cap.* 12. againſt the warden of the *Fleet* (which extends to all gaolers and keepers of priſons, though infants or feme coverts. 2 *Inſt.* 382.) for eſcapes in *execution*.

The plaintiff, at his election, may maintain either an action *upon the caſe*, or *debt*, for an eſcape in *execution*. *Cro. Jac.* 361, 533, 619. *Cro. Eliz.* 877. *Dyer* 278. *b.* See 1 *Jon.* 144. 1 *Sid.* 364. *S. C.*

If a priſoner in cuſtody upon a *capias utlagatum* is ſuffered to eſcape, the plaintiff may either maintain an action *qui tam* againſt the ſheriff, or bring an action of debt againſt him in his own right. *Cro. Jac.* 361, 533, 619. *Cro. Eliz.* 877.

An action of eſcape is not a local action; and therefore if one eſcape out of the *Marſhalſea*, which is in *Surry*, the action may be laid in *Middleſex*. *Dyer* 278. *b.* See 1 *Jon.* 144. 1 *Sid.* 364. *S. C.*

It is uſual now, on an eſcape on *meſne proceſs*, to declare againſt the ſheriff, &c. in *caſe*, on *execution*, in *debt*.

As to the manner of laying the action.

In this action it is not neceſſary to ſet forth all the formalities required by law in other caſes. *Cro. Eliz.* 877. See 2 *Show.* 424.

Therefore, if upon a judgment obtained by the teſtator, the executor brings a *ſcire facias*, and has judgment, whereupon a *capias ad ſatisfac.* iſſues, and *B.* is arreſted, and ſuffered to eſcape, the plaintiff, in an action againſt the ſheriff for this eſcape, may declare briefly upon the judgment in the *ſcire facias*, without ſhewing the gradual proceedings at length, as is uſually done in an action of debt upon a judgment. *Carth.* 148, 149. 3 *Mod.* 324. *S. C. Cro. Eliz.* 877.

So if a defendant is arreſted on a *ſpecial capias*, founded on an *original* returnable in *B. R.* in action for his eſcape, it is not neceſſary to ſet forth the original.

If the plaintiff declares that he ſued out a writ of execution againſt *J. S.* without ſetting forth any judgment, and that the defendant ſuffered him to eſcape; this is an incurable fault; for by this means he loſt the benefit of pleading *nul tiel record*, which he might do if the plaintiff had ſet forth the judgment. 1 *Saund.* 37—38. 1 *Lev.* 191. and 1 *Sid.* 306. *S. C.*

If *A.* recovers againſt *B.* as executor, and has him in execution, and the ſheriff ſuffers him to eſcape, the action muſt be brought as executor in the *detinet* only, and not in the *debet* and *detinet*. 1 Lutw. 893. Comb. 114. *S. C.*

If the plaintiff declares, that the priſoner was committed, and eſcaped, but does not ſay, *Prout patet per recordum*; yet upon a general demurrer this ſhall be good; for the giſt of the action was the eſcape, and the commitment only inducement. 2 *Salk.* 565. 5 *Mod.* 8. *S. C.* See 3 *Lev.* 393.

If in eſcape the plaintiff declares, that he had *J. S.* and his wife in execution, and that the defendant ſuffered them to eſcape, and the jury find ſpecially, that the huſband only was taken in execution (it being for a debt due from the wife before coverture) and that he eſcaped; this is ſufficient, and the plaintiff ſhall have judgment; for the ſubſtance of the iſſue is found, though not purſuant to the declaration. 1 *Sid.* 5.

So in an action on the caſe for the eſcape of *A.* where the jury found that *A.* was taken by *J. S.* the former ſheriff, and not by the defendant, the preſent ſheriff; but finding that he was legally in his cuſtody, and that he ſuffered him to eſcape, the plaintiff had judgment. *Cro. Jac.* 380.

By the *Stat.* 8 & 9. *W.* 3. *cap.* 27. *ſect.* 12. it is enacted, "That it ſhall be lawful for any perſon, having cauſe of action againſt the warden of the *Fleet* priſon, upon bill filed in the courts of Common Pleas or Exchequer againſt the warden, and a rule being given to plead thereto to be out eight days at moſt after filing ſuch bill, to ſign judgment againſt the warden, unleſs he plead to the bill within three days after ſuch rule is out."

IV. *With regard to the* defence *of the party.*

If the priſon takes fire, by means whereof the priſoners eſcape, this ſhall excuſe the ſheriff, and he may well plead it. 1 *Rol. Abr.* 808.

So if the priſon is broke by the *King's enemies*, this ſhall excuſe the ſheriff, for he can have no remedy over againſt them. 4 *Co.* 84. 1 *Rol. Abr.* 808.

But if the priſon was broke by *rebels* and *traitors*, the King's ſubjects, this ſhall not excuſe him, for he may have his remedy over againſt theſe. *Ibid.*

When a priſoner tortiouſly eſcapes from the cuſtody of the gaoler, he may be retaken; and the ſheriff, *&c.* may purſue a perſon eſcaping into that or any other county; and if he retakes the priſoner on freſh purſuit before action brought, it ſhall excuſe the ſheriff, for there the priſoner ſhall be ſaid to be in execution ſtill. 3 *Rep.* 44. *Cro. Jac.* 657. 1 *Jon.* 144. 1 *Rol. Abr.* 808. And where the ſheriff is to anſwer the debt and damages for ſuch eſcape, he ſhall have his counter-remedy againſt the party eſcaping; and may take him at any time and place, and impriſon him 'till he hath ſatisfied the ſheriff as much as he hath paid to the plaintiff; or he may bring an action upon the caſe againſt the priſoner, and ſo relieve himſelf. 5 *Rep.* 52. *Cro. Eliz.* 393.

It was formerly held that the ſheriff, *&c.* might give freſh purſuit in evidence, and need not have pleaded it. See 1 *Mod.* 116. 1 *Sid.* 13.

But now, by the 8 & 9 *W.* 3. *cap.* 27. *ſect.* 6. it is enacted, "That no retaking on freſh purſuit ſhall be given in evidence, unleſs the ſame be ſpecially pleaded, nor ſhall any ſpecial plea be allowed, unleſs oath be firſt made in writing by the defendant, and filed in the proper office of the reſpective courts, that the priſoner for whoſe eſcape ſuch action is brought, did, *without his conſent, privity or knowledge*, make ſuch eſcape; and if ſuch affidavit ſhall at any time afterwards appear to be falſe, and the defendant ſhall be convicted thereof by due courſe of law, he ſhall forfeit the ſum of 500 *l.*" See *Sheriff.*

We are next to conſider eſcapes in *criminal* caſes, and herein is to be enquired,

I. *What ſhall be deemed an* eſcape, *and where it ſhall be adjudged* voluntary, *and where* negligent.
II. *Where the priſoner may be* retaken *after an* eſcape, *and where the* eſcape *is excuſed by ſuch a* retaking; *or by* killing *the priſoner, if he cannot be retaken.*
III. *How the* officer *ſuffering an* eſcape *is to be* indicted, *and the* eſcape *to be* tried *and* adjudged.
IV. *Of the* puniſhment *of* voluntary *and* negligent eſcapes, *and of perſons* aiding *and* aſſiſting *priſoners to attempt their eſcape.*

I. *What ſhall be deemed an* eſcape, *and where it ſhall be adjudged* voluntary, *and where* negligent.

A man muſt be committed to priſon by lawful *mittimus*, or breach of priſon and eſcaping is not felony. If a party is committed for treaſon, to break priſon and eſcape is but felony; but if a priſoner let out traitors, it will be treaſon. *H. P. C.* 109. 2 *Inſt.* 590. Where one is impriſoned for petit larceny, or killing a man *ſe defendendo*, *&c.* to break priſon and eſcape is not felony; and if a priſon be ſet on fire, not by the privity of the priſoner, he may break priſon for the ſafety of his life. 2 *Inſt.* 590. A gaoler refuſing to receive a perſon arreſted by the conſtable for felony, whereby he is let go, is guilty of an eſcape; but there muſt be an actual arreſt, which arreſt muſt be juſtifiable, to make an eſcape; for if it be for a ſuppoſed crime, where no crime was committed, and the party is neither indicted nor appealed, *&c.* it is no eſcape to ſuffer a perſon to go at large. *Fitz. Coron.* 224. *Bro. Eſca.* 27, 28. If a private perſon arreſt another for ſuſpicion of felony, he is to deliver him to a public officer, who ought to have the cuſtody of him; for if he let him go, it will be an eſcape. 2 *Hawk.* 138. And if no officer will receive him, he is to deliver him to the townſhip where arreſted; or get him bailed.

A. a meer private man, knows *B.* to have committed felony, and thereupon arreſts him, he is lawfully in cuſtody of *A.* until he be diſcharged, by delivering him to a conſtable or common gaol; and therefore if he voluntarily ſuffers ſuch perſon to eſcape, though he were no officer, nor *B.* indicted, it is felony in *A.* But it is otherwiſe if he never takes him nor attempts it, and lets him go. 1 *Hale's Hiſt. P. C.* 594. Juſtices of peace in their ſeſſions are empowered to inquire of eſcapes of perſons arreſted, and impriſoned for felony. *Stat.* 1 *R.* 3. *c.* 3.

As to the ſecond point, viz. *Where ſuch* eſcape *is to be eſteemed* voluntary, *and where* negligent.

There can be no doubt, but that where-ever an officer, who hath the cuſtody of a priſoner, charged with and guilty of a capital offence, doth knowingly give him his liberty, with an intent to ſave him, either from his trial or execution, he is guilty of a voluntary eſcape, and thereby involved in the guilt of the ſame crime of which the priſoner was guilty and ſtood charged with. And it ſeems to be the opinion of Sir *Matthew Hale*, that in ſome caſes an officer may be adjudged guilty of ſuch eſcape, who hath not ſuch intent, but only means to give his priſoner that liberty which by the law he hath no colour of right to give him.

Thus, to bail a perſon not bailable by law is a negligent eſcape. *Plowd.* 476. And it is ſaid that the crime is equal in a juſtice of peace, for taking a felon out of priſon, without bail; or ſuffering him to go at large without commitment, *&c.* where the offender confeſſeth the felony, as it is in the caſe of a gaoler's permitting an eſcape. *Dalt.* 382.

If the gaoler ſo cloſely purſue the priſoner, who flies from him, that he retake him without loſing ſight of him, the law looks on the priſoner ſo far in his power all the time, as not to adjudge ſuch a flight to amount at all to an eſcape; but if the gaoler once loſe ſight of the priſoner, and afterwards retake him, he ſeems in ſtrictneſs to be guilty of an eſcape; and a *fortiori* therefore, if he kill him in the purſuit, he is in like manner guilty, tho' he never loſt ſight of him, and could not otherwiſe take him, not only becauſe the King loſes the benefit he might have had from the attainder of the priſoner, by the forfeiture of his goods, *&c.* but alſo becauſe the public juſtice is not ſo well ſatisfied by the killing him in ſuch an extrajudicial manner. 2 *Hawk.* 130. See *poſt. Div.* 2.

II. *Where the priſoner may be* retaken *after an* eſcape, *and where the* eſcape *is licenſed by ſuch a* retaking, *or by* killing *the priſoner if he cannot be retaken.*

It ſeems to be clearly agreed by all the books, that an officer making a freſh purſuit after a priſoner, who hath eſcaped through his negligence, may retake him at any time after, whether he find him in the ſame or in a different county. And it is ſaid generally in ſome books, that an officer who hath negligently ſuffered a priſoner to eſcape, may retake him where-ever he finds him, without mentioning any freſh purſuit; and indeed, ſince *the liberty gained by the priſoner is wholly owing to his own wrong*, there ſeems to be no reaſon he ſhould take any manner of advantage from it. But where a gaoler hath *voluntarily* ſuffered a priſoner to eſcape, it is ſaid by ſome, that he can no more juſtify the retaking him, than if he had never had him in cuſtody before, becauſe by his own free conſent he hath admitted, that he hath nothing to do with him.

Where-ever a priſoner, by the negligence of his keeper, gets ſo far out of his power that the keeper loſes ſight of him, the keeper is finable at the diſcretion of the court, notwithſtanding he retook him immediately after; for it ſeems agreed, that this is to be adjudged a negligent eſcape, which implies an offence, and conſequently that it muſt be puniſhable. It is true indeed, that in an action againſt a gaoler, for ſuffering one arreſted in a civil action to eſcape, it is a good excuſe for the gaoler, that, before the action brought, he took the priſoner upon *freſh ſuit*, which is well maintained by ſhewing that he purſued him *immediately* after notice of the eſcape, though it were ſome hours after it, and retook him; but it does not from hence follow, that the like excuſe will ſerve for the negligent eſcape of a *criminal*, becauſe this is an offence againſt the public, but the other is only a private damage to the party: neither will it be an hardſhip to the officer, to be expoſed to ſuch puniſhment as the court, in diſcretion, ſhall think fit to impoſe upon him for the negligent eſcape of a criminal, as it would be to be liable to an action of eſcape, for ſuffering a perſon in his cuſtody, in a civil action, to eſcape; for that in the former caſe the court would moderate his fine according to the circumſtances of the whole matter, and would certainly mitigate, if not wholly excuſe it, if he ſhould appear to have taken all reaſonable care: but in the other caſe, if he ſhould be liable to an action, his judgment would not lie in the diſcretion of the court, but he would be bound to pay the whole debt, for which the party was in cuſtody, if the eſcape ſhould be adjudged againſt him. However it is certain, that it will be no advantage to a gaoler to retake his priſoner, after he has been fined for the eſcape, as hath been ſhewn in the precedent ſection; alſo it is clear, that he cannot excuſe himſelf by killing a priſoner in the purſuit, though he could not poſſibly retake him; but muſt, in ſuch caſe, be contented to ſubmit to ſuch fine as his negligence ſhall appear to deſerve. 2 *Hawk. P. C.* 132.

III. *With regard to the* indictment *for an* eſcape, *whether ſuch eſcape be* negligent *or* voluntary.

The indictment muſt expreſsly ſhew, that the party was actually in the defendant's cuſtody for a crime, action, or commitment for it; and that it is not ſufficient to ſay, that he was in the defendant's cuſtody, and charged with ſuch a crime; for that a perſon in cuſtody may be ſo charged, and yet not be in cuſtody by reaſon of ſuch charge: and it ſeems alſo, that every ſuch indictment muſt expreſsly ſhew that the priſoner went at large. Alſo it ſeems neceſſary, to ſhew the time when the offence was committed, for which the party was in cuſtody, not only that it may appear, that it was prior to the eſcape, but alſo that it was ſubſequent to the laſt general pardon. Alſo it ſeems clear, that every indictment for a voluntary eſcape muſt alledge that the defendant *felonice & voluntarie A. B. ad largum ire premiſit*; and muſt alſo ſhew the ſpecies of the crime for which the party was impriſoned; for it is not ſufficient to ſay in general, that he was in cuſtody for felony, *&c.*

The crime of the priſoner eſcaping, for which the gaoler is anſwerable, muſt be ſuch as it was at the time of the eſcape; as where a perſon is committed for dangerouſly wounding another, it is treſpaſs only, and not felony, till the party wounded is dead: and he who ſuffers another to eſcape who was in cuſtody for felony, cannot be arraigned for ſuch eſcape as for felony, until the principal is attainted, but he may be indicted and tried for miſpriſion before the attainder of the principal. And in high treaſon it is ſaid the eſcape is immediately puniſhable, whether the party eſcaping be ever convicted or not. 2 *Haw* 135.

In reſpect to the manner of trying *eſcapes.*

Where perſons, being preſent in a court of record, are committed to priſon by ſuch court, the keeper of the gaol is bound to have them always ready, whenever the court ſhall demand them of him; and if he ſhall fail to produce them at ſuch demand, the court will adjudge him guilty of an eſcape, without any farther inquiry, unleſs he have ſome reaſonable matter to alledge in his excuſe; as that the priſon was ſet on fire, or broke open by enemies, *&c.* for he ſhall be concluded, by the record of the commitment, to deny that the priſoners were in his cuſtody. 2 *Hawk. P. C.* 133.

As to other priſoners who are not ſo committed, but are in the cuſtody of a gaoler, ſheriff, conſtable, or other perſon, by any other means whatſoever, it ſeems agreed, that the perſon who has them in cuſtody is in no caſe puniſhable for their eſcape, except in ſome ſpecial caſes, until it be preſented: for by *Stat. Weſt.* 1. *c.* 3. it is enacted that "Nothing be demanded nor taken, nor levied by the ſheriff, nor by any other, for the eſcape of a thief, or felon, until it it be judged for an eſcape by the juſtices in eyre; and that he who does otherwiſe, ſhall reſtore to him or them that have paid it, as much as he or they have taken or received, and as much alſo unto the King."

It hath been adjudged, that this ſtatute reſtrains not the court of King's Bench from receiving ſuch preſentments, for that its juriſdiction includes in it that of juſtices in eyre, and this court is itſelf the higheſt court of eyre. 2 *Haw. P. C.* 134.

It is farther enacted by *Stat.* 31 *Ed.* 3. *c.* 14. "That the eſcape of thieves and felons, and the chattels of felons, and of fugitives, and alſo eſcapes of clerks convicts, out of their ordinary's priſon, from thenceforth to be judged before any of the King's juſtices, ſhall be levied from time to time, as they ſhall fall, as well of the time paſt as time to come." By which it ſeems to be implied, that other juſtices, as well as thoſe in eyre, may take cogniſance of eſcapes; and it is certain, that juſtices of gaol-delivery may puniſh juſtices of peace for a negligent eſcape, in admitting perſons to bail, who are not bailable. 2 *Hawk. P. C.* 134.

And it is farther enacted, by *Stat.* 1 *Rich.* 3. *cap.* 3. "That juſtices of peace ſhall have authority to inquire, in their ſeſſions, of all manner of eſcapes of every perſon arreſted and impriſoned for felony."

Where-ever an eſcape is finable, the preſentment of it is traverſable; but where the offence is amerciable only, there the preſentment is of itſelf concluſive; ſuch amercements being reckoned among thoſe *minima de quibus non curat lex*; and this diſtinction ſeems to be well warranted by the old books. 2 *Hawk. P. C.* 134.

IV. *Of the* puniſhment *of* voluntary *and* negligent *eſcapes, and of perſons* aiding *and* aſſiſting *in ſuch eſcapes; and firſt, as to the* puniſhment *of* voluntary eſcapes.

Such eſcape amounts to the ſame kind of crime, and is puniſhable in the ſame degree, as the offence of which the party was guilty, and for which he was in cuſtody, whether it be treaſon, felony, or treſpaſs; and whether the perſon eſcaping were actually committed to ſome goal, or under an arreſt only, and not committed; and whether he were attainted, or only accuſed of ſuch crime, and neither indicted nor appealed: and it is ſaid to be no excuſe of ſuch eſcape, that the priſoner had been acquitted on an indictment of death, and only committed till the year and day be paſſed, to give the widow, or heir of the deceaſed, an opportunity of bringing their appeal. 2 *Hawk.* 134.

Alſo ſuch an eſcape, ſuffered by one who wrongfully takes upon him the keeping of a gaol, ſeems to be puniſhable in the ſame manner as if he were never ſo rightfully intitled to ſuch cuſtody, for that the crime is in both caſes of the very ſame ill conſequence to the public; and there ſeems to be no reaſon that a wrongful officer ſhould have greater favour than a rightful, and that for no other reaſon, but becauſe he is a wrongful one. 2 *Hawk. P. C.* 134.

Alſo if the warrant of a commitment do plainly and expreſsly charge the party with treaſon or felony, but in ſome other reſpect be not ſtrictly formal, yet it ſeems, that it may be probably argued, that the gaoler ſuffering an eſcape, is as much puniſhable as if the warrant were perfectly right. 2 *Hawk. P. C.* 134, 135.

None ſhall ſuffer capitally for the crime of another, ſo that a principal gaoler is only finable for a voluntary eſcape ſuffered by his deputy. 2 *Hawk. P. C.* 135.

As to negligent eſcapes.

Whoever *de facto* occupies the office of gaoler is liable to anſwer for ſuch an eſcape; and that it is no way material whether his title to the office be legal or not. 2 *Hawk. P. C.* 135. A ſheriff is as much liable to anſwer for an eſcape ſuffered by his bailiff, as if he had actually ſuffered it himſelf, and the court may charge either the ſheriff or bailiff for ſuch an eſcape; and if a deputy gaoler be not ſufficient to anſwer a negligent eſcape, his principal muſt anſwer for him; but if the gaoler who ſuffers an eſcape, have an eſtate for life, or years in the office, it is not agreed how far he in reverſion is liable to be puniſhed. 2 *Hawk. P. C.* 135, 136.

One *negligent* eſcape will not amount to a forfeiture of the gaoler's office, as one *voluntary* one will; yet if a gaoler ſuffer *many negligent* eſcapes, it is ſaid, that he puts it in the power of the court to ouſt him of his office by its diſcretion. 2 *Hawk. P. C.* 136.

Where-ever a perſon is found guilty, upon an indictment, or preſentment, of a negligent eſcape of a criminal actually in his cuſtody, he ought to be condemned in a certain ſum to be paid to the King, which ſeems moſt properly to be called a fine.

It hath been holden, that a *negligent* eſcape may be pardoned by the King before it happens, but that a *voluntary* one cannot ſo be pardoned. 2 *Hawk. P. C.* 136.

And it ſeems by the Common law, the penalty for ſuffering the negligent eſcape of a perſon attainted, was of courſe 100 *l.* and for ſuffering ſuch eſcape of a perſon indicted, and not attainted, was 5 *l.* but if the perſon eſcaping were neither attainted nor indicted, it ſeems that it was left to the diſcretion of the court to aſſeſs ſuch a reaſonable forfeiture as ſhould ſeem proper; and if the party had twice eſcaped, it ſeems, that the penalties above mentioned were of courſe to be doubled; yet it ſeems, that the forfeiture was to be no greater for ſuffering a priſoner, committed on two ſeveral accuſations, to eſcape, than if he had been committed but on one. 2 *Hawk. P. C.* 136.

As to the manner offences of this kind are puniſhable by ſtatute, it is recited by 5 *Ed.* 3. *ch.* 8. "That perſons indicted of felonies in times paſt, had removed the indictments before the King and there yielded themſelves, and by the marſhals of the King's Bench had been incontinently let to bail, and after had done many evil deeds, *&c.*" And thereupon it is enacted, "That if any ſuch priſoner be found wandering out of priſon, by bail, or without bail, and that he be found at the King's ſuit, or at the ſuit of the party, the marſhal which ſhall be found thereof guilty, ſhall have half a year's impriſonment, and be ranſomed at the King's will; and the juſtices ſhall thereof make inquiry when they ſee time; and as to the marſhals, it ſhall be done within the verge that which reaſon will. And in caſe that the marſhals ſuffer by their aſſent ſuch priſoners to eſcape, they ſhall be at law, as before the time of the ſtatute they had been. And the King intendeth not by this ſtatute to loſe the eſcape, where he ought to have the ſame."

Alſo it is enacted by 19 *H.* 7. *c.* 10. "That every ſheriff have the cuſtody of the King's common gaols, during the time of his office, except all goals whereof any perſon or perſons have the keeping of eſtate of inheritance. And that for every negligent eſcape from any ſheriff, having the keeping of any gaol, or from any conſtable of caſtle, or other, being keeper of any goals where ſuch priſoners accuſtomably have been or ſhall be kept, of perſons indicted of high treaſon being in their keeping, that *no leſs fine* be ſet or made for every ſuch eſcape, than 100 marks, and *more*, by the diſcretion of the juſtices that ſhall aſſeſs ſuch fines: and for every eſcape of perſons eſcaping, being in their keeping for ſuſpection of high treaſon, *no leſs* fine to be ſet nor made than 40*l.* and for every eſcape of perſons indicted of murder, or petit treaſon, 20*l.* *at leaſt*, and *more*, by the diſcretion of the juſtices that ſhall aſſeſs ſuch fines: and for every perſon eſcaping, being in their keeping, indicted of felony, other than murder or treaſon, 10*l.* and for every perſon ſuſpected of felony, other than murder or treaſon, 100 ſhillings, *or more*, by the diſcretion of the juſtices, after the manner and quantity of their demerits; ſaving to every perſon ſuch right and title to any ſuch eſcapes, and fines for the ſame, as to be quit of ſuch eſcapes, or of any other eſcapes, as they had, or ought to have had at the time of making of the ſaid act."

Concerning the puniſhment *of perſons* aiding *and* aſſiſting *priſoners to attempt their eſcape.*

It is enacted, That perſons who any ways aſſiſt a priſoner, committed for *treaſon*, or *felony*, to attempt his eſcape from any gaol, ſhall be adjudged guilty of *felony* and be *tranſported*; and if the priſoner be committed for any other crime; or upon proceſs for 100 *l.* debt, *&c.* the offenders are liable to fine and impriſonment. 16 *Geo.* 2. *c.* 31. And where any perſon *conveys any arms, inſtrument or diſguiſe*, to a priſoner in gaol for *felony*, *&c.* or for his uſe, in order to an eſcape, it is likewiſe *felony* and *tranſportation*. Alſo if one aſſiſt any priſoner to eſcape from any conſtable, or other officer or perſon in whoſe cuſtody he is, by virtue of a warrant of commitment for felony, it is declared to be the like offence. *Ibid.*

Eſcape-Warrant. If any perſon committed or charged in cuſtody in the *King's Bench* or *Fleet priſon*, in execution, or on meſne proceſs, *&c.* go at large; on oath thereof before a judge of the court where the action was brought, an *eſcape-warrant* ſhall be granted, directed to all ſheriffs, *&c.* throughout *England*, to retake the priſoner, and commit him to gaol where taken, there to remain till the debt is ſatisfied: and a perſon may be taken on a *Sunday* upon an *eſcape-warrant*. Stat. 1 Ann. c. 6. And the judges of the reſpective courts may grant warrants, upon oath to be made before perſons commiſſioned by them to take affidavits in the country, (ſuch oath being firſt filed) as they might do upon oath made before themſelves. 5 *Ann. c.* 9.

A ſheriff ought not to receive a perſon taken on *eſcape-warrant*, *&c.* from any but an officer; not from the rabble, *&c.* which is illegal. *Paſch.* 3 *Ann.* 3 *Salk.* 149. A perſon being arreſted and carried to *Newgate* by virtue of an *eſcape-warrant*, moved to be diſcharged, becauſe he ſaid he was abroad by a day-rule when taken; but it appearing by *affidavit*, that he was taken upon the *eſcape-warrant* before the court of *B. R.* ſat that morning, they refuſed to ſet him at liberty. 2 *Ld. Raym.* 927. I believe nothing is more common now, than letting priſoners go out, who have paid for day-rules, and complied with the uſual terms, ſeveral hours before the ſitting of the courts: and was not this done, the very end of the rules might be defeated, as a priſoner could not probably meet with perſons, or tranſact concerns, after ſitting of the courts, as they might early in a morning.

Eſcapio Quietus, Is an eſcape of beaſts in a foreſt; and he that by charter is *quietas de eſcapio*, is delivered from that puniſhment which by the laws of the foreſt lieth upon thoſe whoſe beaſts are found within the land where forbidden. *Cromp. Juriſd.* 196.

Eſcapium, Hath been uſed for what comes by chance or accident. *Cowel.*

Eſceppa, A *ſcepp*, or meaſure of corn. *Mon. Ang. tom.* 1. *p.* 283. See *Sceppa*.

Eſcheat, (*eſchaeta*, from the Fr. *eſcheoir*, i. e. *accidere*) Signifies any lands or tenements that caſually fall to a *lord*, within his *manor*, by way of forfeiture, or by the death of his tenant, leaving no heir general or ſpecial. *Mag. Chart. cap.* 31. *Eſcheat* is alſo uſed ſometimes for the places or circuit, in which the King, or other Lord, hath *eſcheats* of his tenants. *Bract. lib.* 3. *tract.* 2. *cap.* 2. And it is likewiſe applied to a writ, which lies where the tenant having an eſtate in fee-ſimple in any lands or tenements holden of a ſuperior lord, dies without heir; in which caſe the lord brings this writ againſt him that is in poſſeſſion of the lands after the death of his tenant, and ſhall thereby recover the ſame in lieu of his ſervices. *F. N. B.* 144.

In our law *eſcheats* were of two ſorts: 1. *Regal*, Thoſe forfeitures which belong to our kings by the antient rights and prerogative of the crown. 2. *Feodal*, which accrue to every Lord of the fee as well as the King, by reaſon of his ſeigniory. Where a perſon commits treaſon, his *eſtate* ſhall *eſcheat* and be forfeited to the King; and when a tenant in fee-ſimple committeth *felony*, and is attainted, the King ſhall have year, day, and waſte in his lands, (or rather year and day in lieu of waſte) and afterwards it comes to the lord by *eſcheat*. And the lord may compound with the King, and have the eſtate preſently. 3 *Inſt.* 111.

It has been holden, that a ſaving againſt the *corruption of blood* in a ſtatute concerning *felony*, doth by conſequence ſave the land to the heir, ſo as not to *eſcheat*; becauſe the *eſcheat* to the lord for *felony* is only *pro defectu tenentis*, occaſioned by the corruption of blood: but it hath been adjudged, that a ſaving againſt the corruption of blood, in a ſtatute concerning *treaſon*, doth not ſave the land to the heir: for in *treaſon* the land goes to the King by way of *immediate forfeiture*. 3 Inſt. 47. 1 Salk. 85.

Inheritances of things not lying in tenure, as of rents, commons, *&c.* cannot *eſcheat* to the lord, becauſe there is *no tenure:* nor *deſcend*, by reaſon the *blood is corrupted;* though they are forfeited to the *King* by an *attainder* of *treaſon*, and the *profits* of them ſhall be alſo *forfeited* to the *King* on *attainder* of *felony*, during the life of the offender; and after his death it is ſaid the *inheritance ſhall be extinguiſhed.* 2 Hawk. P. C. 449.

A perſon is ſeiſed of lands in fee holden of a lord, his ſon is attainted of *treaſon*, and the father dieth, the land ſhall *eſcheat* to the lord, and not to the King; who cannot have the land, becauſe the ſon who was attainted never had any thing to forfeit; but the King ſhall have the *eſcheat* of all the lands whereof the perſon attainted of *high treaſon* was ſeiſed, of whomſoever they were holden. *Co. Lit.* 13. Huſband and wife, tenants in ſpecial tail; the huſband is attainted of treaſon and executed, leaving iſſue; on the death of the wife the lands ſhall *eſcheat*, becauſe the iſſue in tail ought to make his conveyance by father and mother, and from the father he cannot by reaſon of the attainder. *Dyer* 322. If tenant in fee-ſimple is attainted of treaſon, and executed, upon his death the fee is veſted in the King, without office found; yet he muſt bring a *ſcire facias* againſt the tertenants; lands ſhall never *eſcheat* to a lord of whom they are holden, until office found. 3 *Rep.* 10

Eſcheat ſeldom happens to the lord for want of an heir to an eſtate; but when it doth before the lord enters, the *homage jury* of the lord's court ought to *preſent* it. 2 *Inſt.* 36. Land ſhall *eſcheat* to the lord, where heirs are born *after attainder* of *felony*. 3 Rep. 40. Though if the King pardons a felon *before* conviction, the lord ſhall not have his lands by *eſcheat*; for the lord hath no title *before attainder*. Owen 87. 2 Nelſ. Abr. 744. If on *appeal* of death or other felony, proceſs is awarded againſt the party, and pending the proceſs he conveyeth away the land, and after is outlawed, the conveyance is good to defeat the lord of his *eſcheat:* but if where a perſon is *indicted* of felony, pending the proceſs againſt him, he conveys away his land, and afterwards is outlawed, the conveyance ſhall not prevent the lord of his *eſcheat*. Co. Lit. 13. See *Corruption of Blood.*

Eſcheator, *(eſchaetor)* Was an officer appointed by the *Lord Treaſurer, &c.* in every county, to make inqueſts of titles by *eſcheat;* which inqueſts were to be taken by good and lawful men of the county, impanelled by the ſheriff. *Stat.* 14 *Ed.* 3. *c.* 8. 34 *Ed.* 3. *c.* 13. 8 *H.* 6. *c.* 16. Theſe *eſcheators* found offices after the death of the King's tenants, who held by knight-ſervice, or otherwiſe of the King; and certified their inquiſitions into the Exchequer, and *Fitzherbert* called them officers of record. *F. N. B.* 100. No *eſcheator* could continue in his office above one year: and whereas before the ſtatute of *Weſtm.* 1. *cap.* 24. *Eſcheators*, ſheriffs, *&c.* would ſeize into the King's hands the freehold of the ſubjects, and thereby diſſeiſe them; by this act it is provided that *no ſeizure* can be made of lands or tenement into the King's hands, *before office found.* 2 *Inſt.* 206. And *no lands can be granted before* the King's title is *found by inquiſition*, 18 H. 6. c. 6. The *office of eſcheator* is an ancient office, and was formerly of great uſe to the crown; but having its chief dependance on the *court of wards*, which is taken away by act of parliament, it is now in a manner out of date. 4 *Inſt.* 225. There was anciently an officer called *Eſcheator of the Jews*. Clauſ. 4 Ed. 1. m. 7.

Eſcheccum, A jury or inquiſition. *Matt. Pariſ. Anno* 1240.

Eſchipare, To build or equip.——*Naves bene* eſchipatas *bonis & probis marinellis*. Du Cange. See *Eſkippamentum.*

Eſcrow, Is a deed delivered to a third perſon, to be the deed of the party making it, upon a *future* condition, when ſuch a thing is *performed;* and then it is to be delivered to the party to whom made. It is to be delivered to a ſtranger, mentioning the condition; and has relation to the firſt delivery. 2 *Rol. Abr.* 25, 26. *Co. Lit.* 31. A delivery as an *eſcrow* ſignifies, in fact, as a *ſcrowl* or writing, which is not to take effect as a *deed*, till the condition be performed. *Co. Lit.* 36. *Black. Com.* 2 *V.* 307.

Eſcuage, *(ſcutagium*, from the Fr. *eſcu*, a ſhield) Is a kind of knight ſervice, called *ſervice of the ſhield*, whereby the tenant was bound to follow his lord into the wars at his own charge. Alſo it has been ſometimes taken for that duty or payment, which they who held lands under this tenure, were bound to make to the lord, when they neither went to the wars, nor provided any other in their places; being in lieu of all ſervices. And ſometimes *eſcuage* ſignified a reaſonable aid, demanded and levied by the lord of his tenants who held in knight-ſervice, *&c.* *Stat.* 12 *Car.* 2. *c.* 24. *F. N. B.* 8. See *Chivalry*, and *Black. Com.* 2 *V.* 74. 4 *V.* 415.

Eſcurare, To ſcour or cleanſe.——*Purgare vel* eſcurare *totam aquam foſſatorum, &c.* Charta Tho. Epiſcop. B. W. dat. 29 Oct. 4 Ed. 4.

Eſgliſe, *(Fr.)* A church, in the old books a law head. *L. Fr. Dict.*

Eſingæ, The *Kings of Kent*, ſo called from the firſt King *Ochta*, who was ſurnamed *Eſe:* he was grandfather of King *Ethelbert*.

Eſkectores, (from the Fr. *eſcher*) Robbers or deſtroyers of other men's lands and fortunes.——*Juratores dicunt etiam quod latrones, &* eſketores *de terra de, &c. Intraverunt, &c.* Plac. Parl. 20 Ed. 1.

Eſkipper, *(Fr.)* To ſhip, and *eſkipped* is uſed for ſhipped. *Cromp. Jur. Cur.*

Eſkippamentum, *Skippage*, tackle or ſhip furniture; the ſea port towns were to provide certain ſhips *ſumptibus propriis & duplici* eſkippamento. *Sir Rob. Cott.*

Eſkippeſon, Shipping or paſſage by ſea. Humphrey *Earl of Bucks*, in a deed dated 13 *Feb.* 22 *H.* 6. covenants with Sir *Philip Chetwind*, his lieutenant of the caſtle of *Calais*, to give him allowance for his ſoldiers, *ſkippeſon* and *re-ſkippeſon*, *viz.* paſſage and re-paſſage by ſhip.

Eſnecy, *(æſnecia, dignitas primogeniti)* Is a private prerogative allowed to the eldeſt *coparcener*, where an eſtate is deſcended to daughters for want of heir male, to chooſe firſt after the inheritance is divided. *Fleta, lib*, 5. *c* 10. *Jus æſneciæ* is *jus primogenituræ;* in which ſenſe it may be extended to the eldeſt ſon, and his iſſue, holding firſt: In the ſtatute of *Marlbridge, cap.* 9. it is called, initia *pars hæreditatis*. *Co. Lit.* 166.

Eſperons, Spurs, *eſperons de or*, gilt ſpurs. 7 *Co. Rep.* 13.

Eſpervarius, (Fr. *eſpervier*) A ſparrow hawk. *Chart. Foreſt. cap.* 4.—*Reddit ſolut.* Willielmo T. *ad manerium ſuum de, &c. pro omnibus ſervitiis unum* eſpervarium *ad feſtum, &c* Anno 35 H. 6.

Eſplees, *(expletiæ*, from *expleo)* Are the products which ground or land yield; as the hay of the meadows, the herbage of the paſture, corn of the arable; rent and ſervices, *&c.* And of an advowſon, the taking of tithes in groſs by the parſon; of wood, the ſelling of wood; of an orchard, the fruits growing there; of a mill, the taking of toll, *&c.* Theſe and ſuch like iſſues are termed *eſplees*. And it is obſerved, that in a writ of right of land, advowſon, *&c.* the demandant ought to alledge in his count, that he or his anceſtors took the *eſplees* of the thing in demand; otherwiſe the pleading will not be good. *Terms de Ley.* Sometimes this word hath been applied to the farm, or lands, *&c.* themſelves——*Dominus* E. *habebit omnia* expletias *& proficua de* corona *emergentia*. Plac. Parl. 30. Ed. 1.

Eſpouſals, *(ſponſalia)* Are a contract or mutual promiſe between a man and a woman to marry each other; and where marriages may be conſummated, *eſpouſals* go before them. Marriage or matrimony is ſaid to be an *eſpouſal de præſenti*, and a conjunction of man and woman in a conſtant ſociety. *Wood's Inſt.* 57. See *Matrimony.*

Eſquire, (from the Fr. *Eſcu.* and the Lat. *Scutum*, in Greek σκυτος) which ſignifies an hide of which *Shields* were anciently made and afterwards covered: For here in the time of the *Sxaons*, the ſhields had a covering of leather; ſo that an *eſquire* was originally he who attending a knight in the time of war, did carry his *ſhield*, whence he was called *Eſcuier* in *French*, and *Scutifer* or *Armiger*, (*i. e.* armour-bearer) in *Latin*.

Hotoman ſaith, that thoſe whom the *French* call *Eſquires*, where a military kind of vaſſals, having *jus ſcuti, viz.* liberty to bear a ſhield, and in it the enſigns of their family, in token of their gentility or dignity: But this addition hath not of long time had any relation to the office or employment of the perſon to whom it hath been attributed, as to carrying of arms, *&c.* but been merely a title of dignity, and next in degree to a knight.

Thoſe to whom this title is now of right due, are all the younger ſons of noblemen, and the eldeſt ſons of ſuch younger ſons; the eldeſt ſons of knights, and their eldeſt ſons; the officers of the King's courts and of the King's houſhold; counſellors at law; juſtices of peace, *&c.* But theſe latter, are *eſquires* in reputation; and he who is a juſtice of peace, has this title only during the time he is in commiſſion, and no longer, if he be not otherwiſe qualified to bear it.

A ſheriff of a county being a ſuperior officer retains the title of *Eſquire* during his life; in reſpect of the great truſt he has in the commonwealth. The chief of ſome ancient families are *eſquires* by preſcription; and in late acts of parliament for poll money, many wealthy perſons (commonly reputed to be ſuch) were ranked among the *eſquires* of this kingdom. *Blount.*

Eſquires of the King, Are ſuch who have the title by *creation:* Theſe, when they are created, have put about their necks a collar of *SS*, and a pair of *ſilver ſpurs* is beſtowed on them: And they were wont to bear before the Prince in war, a *ſhield* or lance. There are four *eſquires of the King's body*, to attend on his Majeſty's perſon. *Camb.* 111.

Eſſendi quietum de Tolonio, A writ to be quit of *toll*; and lies for citizens and burgeſſes of any city or town that by charter or preſcription ought to be exempted from *toll*, where the ſame is exacted of them. *Reg. Orig.* 258.

Eſliſors, or **Eliſors**, Are perſons appointed by a court of law, to whom a writ of *venire facias* is directed to impanel a *jury*, on *challenge* to the *ſheriff* and *coroners*; who return the writ in their own names, with a panel of the jurors names. 15 *Ed.* 4. 24. *pl.* 4. *Black. Com.* 3 *V.* 355.

Eſſoin, (*Eſſonium*, Fr. *Eſſoine*) Signifies an excuſe for him that is ſummoned to appear and anſwer to an action, or to perform ſuit to a court baron, *&c*, by reaſon of ſickneſs and infirmity, or other juſt cauſe of abſence. It is a kind of imparlance, or craving of a longer time, that lies in real, perſonal and mixed actions: And the plaintiff as well as the defendant ſhall be *eſſoined*, to ſave his default. *Co. Lit.* 131.

The cauſes that ſerve to *eſſoin*, and the *eſſoins* are divers under theſe heads. 1. *Eſſoin de ultra mare*, whereby the defendant ſhall have forty days. 2. *De terra ſancta*, where defendant ſhall have a year and a day. 3. *De malo veniendi*, which is likewiſe called the *common eſſoin*. 4. *De malo lecti*, wherein the defendant may by writ be viewed by four knights. 5. *De ſervitio Regis. Bract. lib.* 5. *Britton, cap.* 122. *Fleta, lib.* 6. And beſides the common *eſſoin de malo veniend. i. e.* by falling ſick in coming to the court, and other *eſſoins* abovementioned; there were ſeveral other excuſes, to ſave a default in *real* actions; as conſtraint of enemies, the falling among thieves, floods of water, and breaking down of bridges, *&c.* 2 *Co. Inſt.* 125.

After iſſue joined in dower, *quare impedit*, *&c.* one *eſſoin* only ſhall be allowed. *Stat.* 52 *H.* 3. *c.* 13. And in writs of aſſiſe, attaints, *&c.* after the tenant hath appeared, he ſhall not be *eſſoined*; but the inqueſt ſhall be taken by default. 3 *Ed.* 1. *c.* 42.

Eſſoin ultra mare will not be allowed, if the tenant be within the four ſeas; but it ſhall be turned to a default, *c.* 44. There is no *eſſoin* permitted for an appellant. 13 *Ed.* 1. *c.* 28. Nor doth *eſſoin* lie where any judgment is given; or the party is diſtrained by his lands; the ſheriff is commanded to make him appear; after the party is ſeen in court, *&c.* 12 *Ed.* 2. *ſt.* 2.

And *eſſoin de ſervitio Regis* lies not when the party is a woman; in a writ of dower; where the party hath an attorney in his ſuit, *&c.* *Ibid.* The *eſſoin day* in court is regularly the firſt day of the term; but the fourth day after is allowed of favour, 1 *Lill.* 540.

An *eſſoin* is entered thus: A. B. *offers himſelf on the fourth day againſt* C. D. *in a plea or action of*, &c. *and he did not appear, and was ſummoned*, &c. *Therefore let him be attached, that he be here on the day*, &c. *And be it known, that the ſaid* A. *hath the ſame day to appear by his eſſoin*, &c. Raſt. 520.

Eſſoin Day of the Term. The firſt return in every term, is, properly ſpeaking, the firſt day in that term: And thereon the court ſits to take *eſſoigns*, or excuſes for ſuch as do not appear according to the ſummons of the writ: wherefore this is uſually called the *eſſoign day* of the term. But the perſon ſummoned hath three days grace, beyond the return of the writ in which to make his appearance, and if he appears on the *fourth* day incluſive, the *quarto die poſt*, it is ſufficient. *Black. Com.* 3 *V.* 278.

Eſſoin de Malo Villæ, Is when the defendant is in court the firſt day; but gone without pleading, and being afterwards ſurpriſed by *ſickneſs*, *&c.* cannot attend, but ſends two *eſſoigners*, who openly proteſt in court that he is detained by ſickneſs in ſuch a *village*, that he cannot come, *pro lucrari & pro perdere*; and this will be admitted, for it lies on the plaintiff to prove whether the *eſſoign* is true or not.

Eſſoins and Proffers, Words uſed in the ſtatute 38 *H.* 8. *c.* 21. See *Profer*.

Eſtabliſhment of Dower, Is the aſſurance or ſettlement of *dower*, made to the wife by the huſband, on marriage: And *aſſignment of dower*, ſignifies the ſetting it out by the heir afterwards, according to the eſtabliſhment. *Brit. cap.* 102, 103.

Eſtache, (From the Fr. *Eaſtacher*, to faſten) Is uſed for a bridge, or ſtank of ſtone and timber. *Cowel.*

Eſtandard, or *ſtandard*, An enſign for horſemen in war. See *Standard*.

Eſtate, (Fr. *Eſtat.* Lat. *Jus*) Signifies that title or intereſt which a man hath in lands or tenements, *&c.* And *eſtates* are acquired divers ways, *viz.* by *diſcent* from a father to the ſon, *&c.* *Conveyance*, or grant from one man to another; by *gift* or *purchaſe*; *deed* or *will:* And a fee-ſimple is the largeſt *eſtate* that can be in law. 1 *Lil.* 541.

Eſtates are *real*, of lands, *&c.* or *perſonal*, of goods or chattels; otherwiſe diſtinguiſhed into *freeholds*, that deſcend to the heir, and chattels which go to the executors: Some *eſtates* are made by the words of *deeds*, and others made by *law*; as an *eſtate* in *frank marriage* given to a couſin, makes a gift in tail.

Alſo there is an *eſtate* that is *implied*, where tenant in tail bargains and ſells his land to a man and his heirs; by this he hath an *eſtate deſcendible*, and determinable upon the death of the tenant in tail. *Co. Lit.* 10 *Rep.* 97. If I give lands in *Dale* to a certain perſon for life, and after to his *heirs* or *right heirs*, he hath the *fee-ſimple*; and if it be to *heirs males*, he will have an *eſtate-tail*. 1 *Rep.* 66. A man grants to one and his heirs and aſſigns for his life, and a year over; this is an *eſtate* for life only. 39 *E.* 3. 25. *Lit.* 46. If a leaſe be made, and not expreſſed for what number of years, it is an *eſtate* at *will*. 2 *Shep. Abr.* 81.

The word *eſtate* generally in *deeds*, grants, and conveyances, comprehends the whole in which the party hath an intereſt or property, and will paſs the ſame. 3 *Mod.* 46. A perſon in *poſſeſſion* of an *eſtate* mortgaged in *fee*, by will gave it to his two daughters, and their heirs; one of them married, and then died: And it being a queſtion, whether her ſhare ſhould be held *real* or *perſonal eſtate*, and go to the heir, or her huſband adminiſtrator? It was adjudged for the heir; for here the mortgaged lands ſhall deſcend as other lands of inheritance, and be ſubject to the ſame rules. *Preced. Canc.* 266. In ſuch caſe, if the mortgage in *fee* be paid off, the money ſhall be conſidered as land, and belong to heirs, as the *eſtate* in the land would have done. *Ibid.*

Perſonal eſtate was deviſed by a man to his wife for life, and what ſhe left at her death to be divided between his kindred: He died, and the widow married again; this deviſe over was held good in equity, on a bill brought to have an inventory taken of the *eſtate*, and ſecurity given not to imbezil it. But if the ſame were of ſmall value, that the widow could not live thereupon, without ſpending the ſtock, it would be otherwiſe. *Ibid.* 71, 72. One by will gives to his wife, all his goods and furniture at ſuch a place; the goods that are there, at the time of his death ſhall paſs, though they were not there on making of the will; for the perſonal *eſtate* is fluctuating until the teſtator's death. 2 *Vern.* 688. Some hold, that where goods of a houſe or chamber are deviſed, there ought to be a particular *inventory* of them, to make thoſe paſs that were there when the *will* was made. See titles *Fee-Eſtate* and *Tail*.

Eſtoppel, (From the Fr. *Eſtouper*, i. e. *Oppilare, obſtipare)* Is an impediment or bar of an action ariſing from a man's own act: or where he is forbidden by law, to ſpeak againſt his own deed; for by his act or acceptance, he may be *eſtopped* to alledge or ſpeak the truth. *F. N. B.* 142. *Co. Lit.* 352. If a perſon is bound in an obligation by the name of *A. B.* and is afterwards ſued by that name on the obligation; now he ſhall not be received to ſay in abatement, that he is miſnamed but ſhall anſwer according to the obligation, though it be wrong; and foraſmuch as he is the ſame perſon that was bound, he is *eſtopped* and forbidden in law to ſay contrary to his own deed; otherwiſe he might take advantage of his own wrong, which the law will not ſuffer. *Terms de Ley*. If a man enters into a bond, with condition to give to another all the goods which are deviſed to him by the father; in this caſe the obligor is eſtopped to plead that the father made no will, but he may plead that he had not any goods deviſed to him by his father. 1 *Nelſ. Abr.* 751.

In a deed, all the parties are eſtopped to ſay any thing againſt what is contained in it: It eſtops a leſſee to ſay that the leſſor had nothing in the land, *&c.* And parties and privies are bound by *eſtoppel*. *Lit.* 58. *Co. Lit.* 352. 4 *Rep.* 53. None but privies and parties ſhall regularly have advantage by *eſtoppels:* But if a man makes a leaſe of part of a term whereby he is eſtopped; and after aſſign away the term, the aſſignee will be eſtopped alſo. 30 *H.* 6. 2. 4 *Rep.* 56. In *eſtoppels*, both parties muſt be eſtopped; and therefore, where an infant or feme covert makes a leaſe, they are not eſtopped to ſay *that it is not their deed*, becauſe they are not bound by it; and *as to them* it is void. *Cro. Eliz.* 36. And though *eſtoppels* conclude parties to deeds to ſay the truth; yet jurors are not concluded, who are ſworn *ad veritatem de & ſuper præmiſſis dicendam:* For they may find any thing that is out of the record; and are not eſtopped to find truth in a ſpecial verdict. 4 *Rep.* 53. *Lut.* 570.

An *eſtoppel* ſhall bind only the heir, who claims the right of him to whom the *eſtoppel* was. 8 *Rep.* 53. Acceptance of rent from a diſſeiſor by the diſſeiſee, may be an *eſtoppel:* And a widow accepting leſs than her thirds for dower, is an *eſtoppel, &c.* 2 *Danv. Abr.* 130, 671.

Our books mention three kinds of *eſtoppel, viz.* By matter of *record*, by matter in *writing*, and by matter in *pais*. *Co. Lit.* 352. If a feoffment be made to two, and their heirs, and the feoffor afterwards levies a fine to them, and the heirs of one of them; this will be an *eſtoppel* to the other to demand fee-ſimple according to the deed; *for the fine ſhall enure as a releaſe.* 6 Rep. 7, 44. Tenant in tail ſuffers a recovery, that his iſſue may avoid; he himſelf ſhall be eſtopped and concluded by it, and may not demand the land againſt his own recovery. 3 *Rep.* 3.

The taking of a leaſe by indenture of a man's own land, whereof he is ſeiſed in fee, is an *eſtoppel* to claim the fee during the term. *Moor, ca.* 323. *And.* 121. A leaſe is made to one man for eighty years, and then to another by deed indented for the ſame term, this ſecond leaſe may be good by way of *eſtoppel:* And if the firſt determine by ſurrender, forfeiture, *&c.* the ſecond leſſee ſhall have the land. *Co. Rep.* 155. If a leſſor at the time of making the leaſe hath nothing in the land, but after he gets it by purchaſe or diſcent, it is a good leaſe by *eſtoppel.* *Dyer* 256. *Plowd.* 344. *Co. Lit.* 47. A recital in a deed ſhall not eſtop a perſon, unleſs it be of a particular fact, or where it is material, when it may be an *eſtoppel.* *Cro. Eliz.* 362.

The lord, by deed indented, reciting that his tenant holds of him by ſuch ſervices, whereas he doth not, confirms to the tenant, ſaving his ſervices; it is no *eſtoppel* to the tenant. 35 *H.* 6. 33. *Plowd.* 130. If one make a deed by *dureſs*, of impriſonment, and when he is at large makes a defeaſance to it; he is eſtopped to ſay it was *per dureſs*. *Bro. Defeaſ.* 17. Where the condition of a bond is in the *particularity*, as to enfeoff *J. S.* of the manor of *D* .or to pay ſuch a ſum of money as he ſtands bound to pay to *W. S.* or to ſtand to the ſentence of *J. S.* in a matter of tithes in queſtion between them; here the party is eſtopped to deny any of theſe things, which in the condition he did grant: But if a condition be in the *generality*, to enfeoff one of all his lands in *D.* or to be non-ſuit in all actions, *&c.* it is no *eſtoppel.* *Dyer* 196. 18 *Ed.* 4. 54.

If a man in pleading confeſs the thing he is charged with, he cannot afterwards deny it: Though a plaintiff ſhall not be eſtopped to alledge any thing againſt that which before he hath ſaid in his writ, or declaration; and one may not be eſtopped by the record upon which he was non-ſuited. 21 *H.* 7. 24. 2 *Leon.* 3. 17.

An *eſtoppel* ought to be *certain and affirmative*, and a matter alledged that is not traverſable, ſhall not eſtop; one may not be eſtopped by acceptance, before his title accrued; an *eſtoppel* muſt be inſiſted and relied on; and where there is *eſtoppel* againſt *eſtoppel*, it puts the matter at large. *Co. Lit.* 352. *Hob.* 207. *Eſtoppels* are to be pleaded relying on the *eſtoppel*; without demanding judgment *ſi actio, &c.* 4 *Rep.* 53. See *Black. Com.* 2 *V.* 295, 308.

Eſtovers, (Fr. *Eſtover*, from the verb *Eſtoffer)* Signifies to ſupply with neceſſaries; and is generally uſed in the law for allowances of wood made to tenants, comprehending *houſe-bote, hedge-bote,* and *plough-bote,* for repairs, *&c.* And in ſome manors, the tenants pay a certain ſmall annual rent, for *eſtovers* out of the lord's woods. *Weſtm.* 2. *c.* 25. 20 *Car.* 2. *c.* 3. This word hath been taken for ſuſtenance; as *Bracton* uſes it, for that ſuſtenance or allowance, which a man committed for felony is to have out of his lands or goods for himſelf and his family during his impriſonment *Bract. lib.* 3. *tract.* 2. *cap.* 18. And the *Stat.* 6 *Ed.* 1. *cap.* 3. applies it to an allowance in meat, clothes, *&c.* In which ſenſe it has been uſed for a wife's alimony. See *Common of Eſtovers.*

Eſtoveriis habendis, Writ *de.* A writ at Common law, for a woman divorced from her huſband, *a menſa & thoro*, to recover her *alimony*, ſometimes called her *eſtovers.* 1 *Lev.* 6. *Black. Com.* 1 *V.* 441.

Eſtray, *(Extrabura,* from the old Fr. *Eſtrayeur)* Is any beaſt that is not wild, found within a lordſhip, and owned by any man; *pecus quod elapſum a cuſtode campos pererrat, ignoto domino:* In which caſe if it be tried and proclaimed according to law in the two next market-towns on two market-days, and is not claimed by the owner within a year and a day, it belongs to the lord of the liberty. *Brit. cap.* 17. And ſwans may be *eſtray*, as well as beaſts, and are to be proclaimed, *&c.* 1 *Rol. Abr.* 878. If the beaſt ſtray to another lordſhip within the year, after it hath been an *eſtray*, the firſt lord cannot retake it, for, until the year and day be paſt, and proclamation made as aforeſaid, he hath no property; and therefore the poſſeſſion of the ſecond lord is good againſt him. *Wood's Inſt.* 213. *Cro. Eliz.* 716. If the cattle were never proclaimed, the owner may take them at any time: And where a beaſt is proclaimed as the law directs, if the owner claims it in a year and a day, he ſhall have it again; but muſt pay the lord for keeping. 1 *Rol. Abr.* 879. *Finch* 177.

An owner may ſeize an *eſtray*, without telling the marks, or proving the property, (which may be done at the trial, if conteſted) and tendering amends generally is good in this caſe, without ſhewing the particular ſum; becauſe the owner of the *eſtray* is no wrong doer, and knows not how long it has been in the poſſeſſion of the lord, *&c.* which makes it different from treſpaſs, where a certain ſum muſt be tendered. 2 *Salk.* 686. In caſe of an *eſtray* the lord ought to make a demand of what the amends ſhould be for the keeping; and then if the party thinks the demand unreaſonable, he muſt tender ſufficient amends; but if what he tenders is not enough, the lord ſhall take iſſue, and it is to be ſettled by the jury. *Noy* 144. *Trin. 5 Ann.* A beaſt *eſtray* is not to be uſed in any manner, except in caſe of neceſſity; as to milk a cow, or the like, but not to ride an horſe. *Cro. Jac.* 148. 1 *Rol.* 673. *Eſtrays of the Foreſt* are mentioned in the ſtatute of 27 *H.* 8. *cap.* 7. The *King's cattle* cannot be *eſtrays* or forfeited, &c.

Eſtreat, *(Extractum)* Is uſed for the true copy or note of ſome original writing or record, and eſpecially of *fines, amercements,* &c. impoſed on the rolls of a court, to be levied by the bailiff or other officer. *F. N. B.* 57, 76. *Stat. Weſtm.* 2. *c.* 8. Juſtices, commiſſioners, &c. are to deliver their *eſtreats* into the *Exchequer* yearly after *Michaelmas:* And fines to have writs, which ſhall be entered in the *eſtreat,* in order as they are entered in the Chancery Rolls, &c. 51 *H.* 3. *ſtat.* 5. 16 *Ed.* 2. Theſe *eſtreats* relate to fines for crimes and offences, defaults and negligences of parties in ſuits and officers, non-appearance of defendants, and jurors, &c. And all forfeited recognizances are to be firſt *eſtreated* in the Exchequer, by ſheriffs of counties; on which proceſs iſſues to levy the ſame to the uſe of the King. *Stat.* 22 & 23 *Car.* 2. *cap.* 22.

Eſtreats are to be levied on the right perſons: And ſheriff's *eſtreats* muſt be in two parts, indented and ſealed by the ſheriff, and two juſtices of the peace; who are to view them, and one of them is to remain with the ſheriff, and the other with the juſtices. 11 *H.* 7. *c.* 15. The *eſtreats* of fines, at the quarter-ſeſſions, are to be made by the juſtices; and to be double, one whereof is to be delivered to the ſheriff by indenture. 14 *R.* 2. *cap.* 11. Fines, poſt-fines, forfeitures, &c. muſt be *eſtreated* into the Exchequer twice a year, on pain of 50*l.* And officers are to deliver in their returns of *eſtreats* upon oath. 22 & 23 *Car.* 2. *c.* 22. 4 & 5 *W.* & *M.* *c.* 24. It is the courſe of the court of *B. R.* to ſend the *eſtreats* twice a year into the Exchequer, *viz. on the laſt day of the two iſſuable terms*; but in extraordinary caſes there may be a rule to *eſtreat* them ſooner. 1 *Salk.* 45. Amercements are not uſually diſcharged on motion, and there ought to be a *conſtat* of the *eſtreat*; though the court may give leave to the ſheriff to compound them. *Ibid.* 54. 1 *Nelſ. Abr.* 207. See 3 *Ed.* 1. *c.* 45. 13 *Ed.* 1. *c.* 8. 27 *Ed.* 1. *c.* 2. 3 *Geo.* 1. *c.* 15. *ſect.* 12.

Eſtreciatus, Is a word ſignifying *ſtreightened.*—— *Inquirendum eſt de viis Domini Regis* eſtreciatis. *R. Hoveden, p.* 783.

Eſtrepe, (Fr. *Eſtropier)* To make ſpoil in lands to the damage of another, as of the reverſioner, &c.

Eſtrepement, *(Eſtrepamentum)* from the Fr. *Eſtropier, mutilare,* or from the Lat. *Extirpare)* Is where any ſpoil is made by tenant for life, upon any lands or woods, to the prejudice of him in reverſion; and alſo ſignifies to make land barren by continual ploughing. *Stat.* 6 *Ed.* 1. *cap.* 13. It ſeems by the derivation, that *eſtrepement* is the unreaſonable drawing away the heart of the ground, by ploughing and ſowing it continually, without manuring or other good huſbandry, whereby it is impaired: And yet *eſtropier* ſignifying *mutilare,* may no leſs be applied to the cutting down trees, or lopping them further than the law allows.

In ancient records, we often find *veſtum & eſtrepamentum facere:* And this word is uſed for a writ, which lies in two caſes; the one, when a perſon having an action depending, as a *formedon,* writ of right, &c. ſues to prohibit the tenant from making waſte, during the ſuit; the other is for the demandant, who is adjudged to recover ſeiſin of the land in queſtion, before execution ſued by the writ *habere facias poſſeſſionem,* to prevent waſte being made till he gets into poſſeſſion. *Reg. Orig.* 76. *Reg. Judic.* 33. *F. N. B.* 60, 61.

The writ of *eſtrepement* lies properly where the plaintiff in a real action, ſhall not recover damages by his action; and as it were ſupplies damages; for damages and coſts may be recovered for waſte, after the writ of *eſtrepement* is brought. See *Moor* 100. 2 *Inſt.* 328. If tenants commit waſte in houſes aſſigned a feme for dower, on her bringing action of dower, writ of *eſtrepement* lies. 5 *Rep.* 115. See *Cro. Eliz.* 114. *Moor* 622. But pending a *writ of partition between coparceners,* if the tenant commit waſte, this writ will *not* be granted; becauſe there is *equal intereſt between the parties,* and the writ will not lie, but where the intereſt of the tenant is to be diſproved. *Goldſb.* 50. 2 *Nelſ. Abr.* 754.

Writ of *eſtrepement* is directed to the tenant and his ſervants, or to the ſheriff: and if it be directed to the tenant and his ſervants, and they are duly ſerved with it, if they afterwards commit waſte, they may be committed to priſon: But it is ſaid not to be ſo, when directed to the ſheriff, becauſe he may raiſe the *poſſe comitatus* to reſiſt them who make waſte. *Hob.* 85. Though it hath been adjudged, that the ſheriff may likewiſe impriſon offenders, if he be put to it; and that he may make a warrant to others to do it. 5 *Rep.* 115. 2 *Inſt.* 329.

In the Chancery, on filing of a bill, and before anſwer, the court will grant an injunction to ſtay waſte, &c. 1 *Lil.* 547.

Etheling or **Ætheling,** *(Sax.)* Signifies noble, and among the Engliſh *Saxons,* it was the title of the Prince, or the King's eldeſt ſon. *Cambden.* See *Adeling.*

Evaſion, *(Evaſio)* Is a ſubtle endeavouring to ſet aſide truth, or to eſcape the puniſhment of the law; which will not be indured. If a perſon ſays to another that he will not ſtrike him, but will give him a pot of ale to ſtrike firſt; and accordingly he ſtrikes, the returning of it is puniſhable; and if the perſon firſt ſtriking be killed, is murder; *for no man ſhall evade the juſtice of the law, by ſuch a pretence to cover his malice.* 1 H. P. C. 81. No one may plead ignorance of the law to *evade* it, &c.

Evenings, The delivery at *even* or night of a certain portion of graſs or corn, &c. to a cuſtomary tenant, who performs the ſervice of cutting, mowing, or reaping for his lord, given him as a gratuity or encouragement. *Kennet's Gloſſ.*

Eveſdroppers, Are ſuch perſons as ſtand under the *eves* or walls, or windows of a houſe, by night or day, to hearken after news, and carry it to others, and thereby cauſe ſtriſe and contention in the neighbourhood. *Terms de Ley.* They are called evil members of the commonwealth; and by the ſtatute of *Weſtm.* 1. *c.* 33. they may be puniſhed, either in the *court-leet* by way of preſentment, and fine; or in the *quarter-ſeſſions* by indictment, and binding to good behaviour. *Kitch.* 11. See *Eaveſdroppers.*

Eviction, (From *Evinco* to overcome) Is a recovery of land, &c. by law. If land is evicted, before the time of payment of rent on a leaſe, no rent ſhall be paid by the leſſee. 10 *Rep.* 128. Where lands taken on extent are evicted or recovered by better title, the plaintiff ſhall have a new execution. 4 *Rep.* 66. If a widow is evicted of her dower or thirds, ſhe ſhall be endowed in the other lands of the heir. 2 *Danv. Abr.* 670. And if on an exchange of lands, either party is evicted of the lands given in exchange, he may enter on his own lands. 4 *Rep.* 121.

Evidence, *(Evidentia)* Is uſed in the law for ſome *proof,* by teſtimony of men on oath, or by writings or records. It is called *evidence,* becauſe thereby the point in iſſue in a cauſe to be tried, is to be made *evident* to the jury; for *probationes debent eſſe* evidentes & *perſpicuæ.* *Co. Lit.* 283. The *evidence* to a jury ought to be upon the oath of witneſſes; or upon matters of record, or by deeds proved, or other like authentical matter. 1 *Lil. Abr.* 547. And *evidence* containeth teſtimony of witneſſes, and all other proofs to be given and produced to a jury for the finding of any iſſue joined between parties. *Co. Lit.* 283. If the ſubſtance of an iſſue be proved it is ſufficient. *Alcorn* executor *v. Weſtbrook. Wilſ. Rep. par.* 1. *p.* 115.

The ſyſtem of evidence, as now eſtabliſhed in our courts of Common law, is very full, comprehenſive and refined. Far different from, and far ſuperior to any thing known in the middle ages;—as far ſuperior in that as in all other improvements and refinements in ſcience, arts, and manners.

The nature of *evidence,* during the age of ignorance was extremely imperfect, and the people were incapable of making any rational improvement. See this ſubject very judiciouſly treated, in *Robert. Hiſt. Emp. C.* V. 1 *V.* 48, 49, &c. It was the imperfection of human reaſon,

ſon, that cauſed the invention and introduction of the *or-deal*, as an appeal to the Supreme Being. The reader will readily excuſe the inſertion of the following paſſage from that author:

As men are unable to comprehend the manner in which the Almighty carries on the government of the univerſe, by equal, fixed, and general laws, they are apt to imagine that in every caſe which their paſſions or intereſt render important in their own eyes, the Supreme Ruler of all ought viſibly to diſplay his power, in vindicating innocence and puniſhing vice. It requires no inconſiderable degree of ſcience and philoſophy to correct this popular error. 1 *V*. 51.

But to proceed more immediately to our ſubject.

Under this head it is material to conſider the ſeveral kinds of evidence which may be divided into

I. Written evidence: *Wherein of matters of record, as alſo of writings under ſeal, and other writings.*
II. Unwritten evidence: *Wherein—*
1. *Who may be witneſſes.*
2. *Of the number of witneſſes, and of compelling them to appear, as alſo of the manner of their giving evidence.*
3. *Of parol, preſumptive, and hear-ſay evidence.*
4. *Where depoſitions in another court may be given in evidence.*

I. *Of* written evidence: *Wherein of matters of record, as alſo of writings under ſeal, and other writings.*

Evidence by records and writings, Is where acts of parliaments, ſtatutes, judgments, fines and recoveries, proceedings of courts, and deeds, *&c.* are admitted as *evidence*. A general act of parliament may be given in *evidence*; and need not be pleaded; and of theſe the printed ſtatute-book is good *evidence:* But in the caſe of a private act, a copy of it is to be examined by the records of parliament, and it is to be pleaded. *Trials per pais* 177, 232. The ſtatute of limitations muſt be pleaded. Journals and other proceedings in the Houſe of Commons have been held to be no *evidence*. *State Trials, Vol.* 3. 470. Though it is otherwiſe, *Vol.* 3. 800. A hiſtory of *England*, or printed trial, may not be read as *evidence*. 1 *Lil.* 557. *Cambden's Britannia* was not allowed as *evidence:* But it has been held, that an hiſtory may be *evidence* of the general hiſtory of the realm though not of a particular cuſtom, *&c.* *Mich.* 7 *W.* 3. *B. R.* *Skinner's Rep.* 623.

An exemplification of the inrolment of letters patent under the Great Seal, may be pleaded in *evidence*. 3 *Inſt*. 173. Records and inrolments prove themſelves; and a copy of a record or inrolments ſworn to, may be given in *evidence*. *Co. Lit.* 117, 262. A tranſcript of a record in another court, may be given in *evidence* to a jury. 1 *Lil. Abr.* 551. There is a difference between pleading a record, and giving the record in *evidence*; if it be pleaded, it muſt be *ſub pede ſigilli*, or the judges cannot judge thereof: Though where it is given in *evidence*, if it be not under the ſeal, the jury may find the ſame, if they have other good matter of inducement to prove it. *Style's Rep.* 22.

A fine or recovery may be given in *evidence*, without vouching the roll of the recovery; for the part indented is the uſual *evidence* that there is ſuch a fine: But it is ſaid *the fine ought to be ſhewn with the proclamations under ſeal.* 10 Rep. 92. 2 Rol. Abr. 574. A record of an inferior court, hath been rejected in *evidence*, and the party put to prove what was done: And proceedings of county courts, courts barons, *&c.* may be tried by a jury; for it hath been adjudged, that they cannot be proved by the rolls, but by witneſſes. *Lit.* 75. But court-rolls of a court baron, when ſhewn, are good *evidence*; and in many caſes, *copies* of the court-rolls are allowed as *evidence*. *Trials per pais* 178, 228.

Inrolment of a deed is proved on certifying it by an examined atteſted copy; though inrolment of a deed which needs no inrolment, or the eſtate doth not paſs by it, is only *evidence* to ſome purpoſes. 3 *Lev.* 387. An ancient deed proves itſelf, where poſſeſſion has gone accordingly: But later deeds muſt be proved by witneſſes. *Co. Lit.* 6. If all the witneſſes to a deed are dead, continual and quiet poſſeſſion is preſumptive *evidence* of the truth of it; yet it may receive farther credit by compariſon of hands and ſeals. *Wood's Inſt.* 599. When witneſſes to deeds are dead, their hand-writing muſt be proved. 2 *Inſt.* 118. And where there are ſeveral witneſſes to a deed, and they are all dead but one, a *ſubpæna* muſt be taken out againſt the living man, and ſtrict inquiry made after him, and affidavit is to be made that he cannot be found; before the dead men's hands are to be proved. 1 *Lil.* 556.

An old deed proved to have been found among deeds and *evidences* of lands, may be given in *evidence* to a jury; though the executing of it cannot be proved and made out. *Trin.* 9 *W.* 3. *B. R.* 3 *Salk.* 153. A deed may be good *evidence*, though the ſeal is broken off: And where a deed is burnt, *&c.* the judges may allow it to be proved by witneſſes, that there was ſuch a deed, and this be given in *evidence*. 1 *Lev.* 25. But the court will not allow the jury on a trial at bar to carry deeds, writings or books with them out of court, as *evidence* to conſider of, *but ſuch as have been proved:* Though by the aſſent of parties, or by aſſent of the court without the parties, they may be delivered to the jurors. *Cro. Eliz.* 421. All deeds or writings under ſeal, and given in *evidence*, they may have; and nothing which was not given in *evidence*, for the court gives their direction to the jury upon the *evidence* given in court. 1 *Lil.* 313.

It is dangerous to ſuffer any who by law ought to ſhew forth any deed, to prove in *evidence*, that there was ſuch a deed, which they had ſeen or read, *&c.* For there might be imperfections in the deed, or it may be on condition, with limitation, *&c.* 10 *Rep.* 92. A deed tho' ſealed and delivered, if not ſtamped according to act of parliament, cannot be pleaded or given in *evidence* in any court. *Stat.* 5 *&* 6 *W.* *&* *M.* *cap.* 21. A deed cannot be proved by a counterpart of it or copy, if the original is in being, and may be had; though it may be when the original cannot be procured. *Co. Lit.* 225. 10 *Rep.* 92. The counterpart of an ancient deed hath been allowed to be given in *evidence*. *Mod. Caſ.* 225. But it hath been held that the counterpart of a deed, without other circumſtances, is not ſufficient *evidence*; unleſs in a caſe of fine, when a counterpart is good *evidence* of itſelf. 1 *Salk.* 287.

Where a deed was *cancelled* by practice, that being proved, it was allowed to be *evidence* in an action under the deed. *Hetl.* 138. The recital of a deed is no *evidence* without ſhewing the deed; or proving that there was ſuch a deed, and it is loſt. *Co. Lit.* 352. *Vaugh.* 74. Recital of a leaſe, in a deed of releaſe, is good *evidence* that there was ſuch a leaſe againſt the releaſor, and thoſe claiming under him; but not againſt others, except there be proof that there was ſuch a leaſe. 1 *Salk.* 286. A ſettlement ſet forth in a bill in Chancery, and admitted in the anſwer; and where it was proved that the deed was in the poſſeſſion of ſuch a one, *&c.* hath been adjudged a good *evidence* of the deed of ſettlement where not to be found. 5 *Mod:* 384.

The probate of a will, when it concerns perſonal eſtate only, may be given in *evidence:* But where title of lands is claimed under a will, the will muſt be ſhewn, not the probate: Though if the will be proved in the Chancery, copies of the proceedings there will be *evidence*. 2 *Rol. Abr.* 678. *Trials per pais* 234. This I conceive muſt mean where the witneſſes are dead, or are abroad, or cannot be found, after due ſearch made. *See* 1 *Salk.* 286. and *Raym.* 335. A bill in Chancery has been admitted as ſlight *evidence* againſt the complainant: An anſwer in Chancery is *evidence* againſt the defendant himſelf, tho' not againſt others. 1 *Vent.* 66. *Trials per pais* 167. But when a party gives an anſwer in Chancery in *evidence* at a trial, though he inſiſt to read only ſuch a part of it; yet the other ſide may require to have the whole read. 5 *Mod.* 10. As in caſe of a writing permitted to be read to prove one part of an *evidence*, which may be read to prove any other part of the *evidence* given to the jury. Depoſitions of witneſſes in Chancery between the ſame parties, may be given in *evidence* at law, if the witneſſes are dead, and the bill and anſwer proved, *Trials per pais* 167, 207, 234.

Regularly depoſitions in Chancery, of a witneſs, may not be given in *evidence*, if he be alive; unleſs he be in another kingdom, not ſubject to the dominion of our King. *Ibid.* 359. But depoſitions in Chancery, after anſwer, between the ſame parties, may be read as *evidence*, though the witneſſes are not dead, if they cannot be found on ſearch. *Shower* 3. 1 *Salk.* 278. Depoſitions in Chancery *in perpetuam rei memoriam*, are not to be given in *evidence*, ſo long as the parties are living. 1 *Salk.* 286. And it hath been adjudged, that theſe depoſitions to perpetuate teſtimony, on a bill exhibited, ſhall not be admitted as *evidence* at a trial at law, except an anſwer be put in. *Raym.* 335. If depoſitions are taken out of the realm, he who makes them is ſuppoſed there ſtill, and they ſhall be read as *evidence*; but if it appears he is in *England*, they cannot be read, but he muſt come in perſon. 1 *Lil* 555. Things done beyond ſea may be given in *evidence* to a jury; and the teſtimony of a public notary of things done in a foreign country, will be good *evidence*. 6 *Rep.* 47.

Depoſitions in the eccleſiaſtical courts may not be given in *evidence* to a jury at a trial; but a ſentence may in a cauſe of tithes, *&c.* And the ſentence of the ſpiritual court is concluſive *evidence* in cauſes *within their juriſdiction*. 1 *Salk.* 290. 2 *Nelſ. Abr.* 761.

Depoſitions before a coroner are admitted as *evidence*, the witneſſes being dead. 1 *Lev.* 180. Likewiſe they have been admitted where a witneſs hath gone beyond ſea. 2 *Nelſ Abr.* 760. The confeſſion of a priſoner before a magiſtrate, *&c.* may be given in *evidence* againſt him: And the examination of an offender need not to be on oath, but muſt be ſubſcribed by him, if he confeſſes the fact; and then be given in *evidence* upon oath by the juſtice of the peace who took the ſame. The examination of others muſt be on oath, and proved by the juſtice, or his clerk, *&c.* as to their *evidence*, if they are dead, unable to travel, or kept away by the priſoner. *H. P. C.* 19, 162. *Kel.* 18, 55. *Wood's Inſt.* 647.

The examination of an informer before a juſtice, taken on oath, and ſubſcribed, may be given in *evidence* on a trial if he be dead, or not able to travel, *&c.* which is to be made out on oath. 2 *H. P. C.* 429. A verdict againſt one, under whom either the plaintiff or defendant claims, may be given in *evidence* againſt the party ſo claiming; but not if neither claim under it. *Mich.* 1656. *B. R.* In ejectment where the plaintiff hath title to ſeveral lands, and brings action of ejectment againſt ſeveral defendants, if he recovers againſt one, he ſhall not give that verdict in *evidence* againſt the reſt. 3 *Mod.* 141. In a court of common law, a decree in Chancery is no *evidence*: Affidavits are not *evidence*. Letters may be produced as *evidence* againſt a man, in treaſon, *&c.* Similitude of hands, ſworn to, has been allowed as *evidence*: But ſince the attainder of *Algernoon Sidney*, it hath not been admitted in any criminal caſe. 2 *Hawk.* 431. Although a witneſs ſwear to the hand and contents of a letter, if he never ſaw the party write, he ſhall not be allowed as *evidence*. *Mich.* 8 *W.* 3. *Skin.* 673.

Since no witneſſes are preſent when goldſmiths notes are given, ſuch notes are allowed as *evidence* of the receipt of money, or other thing. 1 *Salk.* 283. A ſhop-book is *evidence*; but it may not be given in *evidence* for goods ſold, *&c.* after one year, before the action brought; unleſs there be a bill, *&c.* for the debt; though this extends not to any buying or ſelling, or trading between tradeſmen and tradeſmen. *Stat.* 7 *Jac.* 1. *c.* 12. To make theſe books *evidence*, there ought to be the hand of the perſon to the books that delivered the goods, which muſt be proved. 1 *Salk.* 285. A church-book ſome writers ſay is not to be admitted as *evidence*; tho' others ſay it may. *Cro. Eliz.* 411. It is ſaid copies of public books of corporations, *&c.* ſhall be *evidence*. 1 *Lev.* 25. 1 *Lil.* 551. But as to books of corporations where things are entered not of record, the originals are to be produced as *evidence*.

A pedigree drawn by a herald at arms, will not be admitted for *evidence*, without ſhewing the records or ancient books from whence taken; for the entries in the herald's office are no records, but only circumſtantial *evidence*: But a copy of an inſcription on a grave-ſtone, has been given in *evidence* in ſuch a caſe. 2 *Rol. Abr.* 686, 687. An almanack wherein the father had writ the day of the nativity of his ſon, was allowed an *evidence* to prove the nonage of the ſon. *Raym.* 84.

Matter in law ought not to be given in *evidence* at a trial, but only matters of fact, unleſs it be in caſe of a ſpecial verdict; matter in law is diſputable, and reſerved to be ſpoken to in arreſt of judgment. *Vaugh.* 143, 147. In debt the defendant may give in *evidence*, that he paid money on an obligation before the day, *&c.* 2 *Nelſ. Abr.* 755. And a releaſe may be given in *evidence* on *nil debet*. 5 *Mod.* 18. Though in *indebitatus aſſumpſit* the plaintiff ſhall not give any ſpecialty in *evidence* to prove his debt, as a bond, indenture, *&c.* becauſe he may bring action of debt upon that ſpecialty. *Moor* 340.

Entry and expulſion may be given in *evidence* in debt for rent: Coverture may be given in *evidence* to avoid a deed, *&c.* *Mod. Caſ.* 230. Uſurious contracts, *&c.* may be given in *evidence*. 2 *Nelſ.* 756. Fraud may be given in evidence, *on the general iſſue*: And tampering with witneſſes may be given in evidence againſt a party, *&c.* 5 *Rep.* 60. But many things are to be pleaded; as juſtifications without title, in treſpaſs, *&c.* and cannot be given in evidence upon Not guilty. *Trials per pais* 404. If in treſpaſs, *Not guilty* be pleaded; a licence may not be given in *evidence* to excuſe the treſpaſſor; for it muſt be pleaded. *Kel.* 59. And if the iſſue in detinue is *non detinet*, it ſhall not be given in evidence that the goods were pledged for money, and the money not paid; this is not good without pleading it: But a gift of the goods by the plaintiff may be given in evidence. *Co. Lit.* 283. But in an action of trover, for goods, evidence that they were pledged, for money lent or owing, and the money not being paid, or tendered, is a good bar to the action. *Garnett Adm. & Cox.* before Lord *Mansfield*, at the ſummer aſſize, for *Surry*, 1775: and admitted to be law.

So in an iſſue in waſte, *no waſte done*, the defendant may give in evidence, that it came by lightning, tempeſt, or enemies; but that he *repaired before action brought*, muſt be ſpecially pleaded, *&c.* *Ibid.* 282. If an iſſue be taken on the cutting of twenty oaks, evidence may be for ten; becauſe either is a breach of covenant not to do waſte. 2 *Shep. Abr.* 142. In *ejectione firmæ*, the plaintiff declares for 100 acres of land, and gives evidence only for forty, it will be good for ſo much. *Cro. Eliz.* 13. But if the point in iſſue be the ſealing and delivery of a leaſe, and the witneſſes prove ſealed and delivered, but did not know the leſſor that ſealed it: Or where proof is not made of *livery and ſeiſin*, on iſſue of a leaſe for life: Or if on an iſſue upon a taking by *capias ad ſatisfaciend.* Evidence be of taking by *capias utlagatum*, *&c.* in theſe caſes *the evidence will not be good to maintain the iſſue*. Plowd. 14. Kelw. 55, 59. Hob. 55. Where juſtices of peace, ſued for things done in their offices, may give ſpecial matters in evidence. *Stat.* 21 *Jac.* 1. *c.* 12. Vide *Juſtice*. See *Copy*, *Depoſitions*, &c. And for farther particulars reſpecting written evidence, ſee *Vin. Abr.* tit. *Evidence*, and *Table to Wilſon's Reports*.

II. *As to* unwritten evidence, *we are under this head to conſider*,

1. *Who may be witneſſes*: Wherein it is to be obſerved, That the King cannot be a witneſs under his ſign manual, *&c.* 2 *Rol. Abr.* 686. Though it has been allowed he may, in relation to a promiſe made in behalf of another. *Hob.* 213. A peer produced as an evidence, ought to be ſworn. 3 *Keb.* 631. It is no exception to an evidence, that he is a judge, or a juror, to try the perſon; for a judge may give evidence going off from the Bench. 2 *Hawk. P. C.* 432. And a juror may be an evidence as to his particular knowledge; but then it muſt be on examination in open court, not before his brother juorrs. 1 *Lil.* 552. Members of corporations ſhall be admitted or refuſed to give evidence in actions brought by corporations as their intereſt is ſmall or great; whereby it may be judged whether they will be partial or not. 2 *Lev.* 231, 241. But they will not generally be admitted;

though inhabitants not free of the corporation may be good witneſſes for the corporation, as their intereſt is not concerned; and members may be *diſfranchiſed* on theſe occaſions. *Ibid.* 236.

In actions againſt church-wardens and overſeers of the poor for recovery of money miſpent on the pariſh account, the evidence of the pariſhioners, not receiving alms, ſhall be allowed. *Stat.* 3 *&* 4 *W. & M. cap.* 11. And in informations or indictments for not repairing highways and bridges, the evidence of the inhabitants of the town, corporation, *&c.* Where ſuch highways lie ſhall be admitted. 1 *Ann. cap.* 18. A party intereſted in the ſuit; or a wife for or againſt her huſband, a huſband againſt the wife, (except in caſes of treaſon) may not be witneſſes. 4 *Inſt.* 279.

By *Stat.* 21 *Jac.* 19. *ſect.* 6. "The commiſſioners ſhall have power to examine the *wife* of a *bankrupt* upon oath for the diſcovery of his eſtate, goods and chattels, and ſuch *wife* refuſing to appear, or to anſwer interrogatories, ſhall incur the ſame penalties as are provided againſt other perſons in the like caſes."

Kinſmen, though never ſo near, tenants, ſervants, maſters, attornies for their clients, and all others that are not infamous, and which want not underſtanding, or are not parties in intereſt, may give *evidence* in a cauſe; though the credit of ſervants is left to the jury. 2 *Rol. Abr.* 685. 1 *Vent.* 243. A counſellor, attorney, or ſolicitor, is not to be examined as an *evidence* againſt their clients, becauſe they are obliged to keep their ſecrets; but they may be examined, as to any thing of their own knowledge before retained, not as counſel or attorney, *&c.* 1 *Vent.* 97.

The bail cannot be an *evidence* for his principal. If the plaintiff makes one a defendant in the ſuit, on purpoſe to impeach his teſtimony, under a pretence of his being a party in intereſt, he may nevertheleſs be examined *de bene eſſe*; and if the plaintiff prove no cauſe of action againſt him, his *evidence* ſhall be allowed in the cauſe. 2 *Lil. Abr.* 701. But in civil ſuits, and indictments for treſpaſſes, *&c.* the plaintiff or proſecutor uſually goes through his evidence, and thoſe defendants who are not affected are ſometimes, by direction of the judge, acquitted, and then give evidence for the other defendant or defendants, and ſometimes they have been examined, without the form of an acquittal. If a man makes himſelf a party in intereſt, after a plaintiff or defendant has an intereſt in his *evidence*, he may not by this deprive them of the benefit of his teſtimony. *Skin. Rep.* 586.

One that hath a legacy given him by will, is not a good witneſs to prove the will; but if he releaſe his legacy, he may be a good *evidence*. *Ibid.* 704. It is the ſame of a deed; he that claims any benefit by it, may not be an *evidence* to prove that deed, in regard of his intereſt: And a perſon any ways concerned in the ſame title of land in queſtion, will not be admitted as *evidence*. *Ibid.* 705. But it has been held, that an heir apparent may be a witneſs concerning a title of land; and yet a remainder-man, who hath a preſent intereſt, cannot. 1 *Salk.* 385. If a legatee is permitted to be ſworn and examined, the counſel cannot afterwards except againſt his *evidence*. 1 Ld. *Raym.* 730.

Creditors, *&c.* are made competent witneſſes to wills, by *Stat.* 25 *Geo.* 2. *c.* 6. and witneſſes competent at law, are competent to prove a nuncupative will by *Stat.* 4 *Ann. c.* 16. *ſ.* 14. See thoſe two ſtatutes. The ſon of a legatee, is no witneſs to a will in the ſpiritual court; nevertheleſs it is held, he may be a good *evidence* to prove a nuncupative will, within the intent of the ſtatute of frauds. 1 *L. Ray.* 85.

A grantee who is a bare truſtee, it is ſaid, is a good witneſs to prove the execution of the deed made to himſelf. 1 *P. Wil.* 290. If an action is brought againſt many perſons for taking of goods, one of them concerned may be admitted as an *evidence* againſt the reſt, *Comberb.* 367. See 1 *Mod.* 282. In criminal caſes, as of robbery on the highway, in action againſt the hundred; in rapes of women, or where a woman is married by force, *&c.* a man or a woman may be an *evidence* in their own cauſe. 1 *Vent.* 243. And in private enormous cheats, a perſon may give *evidence* in his own cauſe, where no body elſe can be a witneſs of the circumſtances of the fact, but he that ſuffers. 1 *Salk.* 286. Upon an information on the ſtatute againſt uſury, he that borrows the money, after he hath paid it, may be an *evidence*; but not before. *Raym.* 191.

An alien infidel, may not be an *evidence*; but a *Jew* may, and be ſworn on the *Old Teſtament*. 1 *Inſt.* 6. A quaker ſhall not be permitted to give *evidence* in any criminal cauſe, (unleſs he will take an oath): Though on other occaſions, his ſolemn affirmation ſhall be accepted inſtead of an oath. *Stat.* 7 *&* 8 *W.* 3. *cap.* 34. Perſons *non ſanæ memoriæ*; thoſe that are attainted of conſpiracy, or in a *præmunire* upon the ſtatute 5 *Eliz. c.* 1. *Popiſh* recuſants convict, on the *Stat.* 3 *Jac.* 1. *c.* 5. are diſabled to give *evidence*. So perſons convicted of felony, perjury, *&c.* And if one by judgment hath ſtood on the pillory, or been whipped; for his infamy he ſhall not be admitted to give *evidence*, whilſt the judgment is in force: But the record of conviction muſt be produced, on objecting againſt his teſtimony; and the witneſs ſhall not be aſked any queſtion to accuſe himſelf, though his credit may be impeached by other *evidences*, as to his character in general, ſo as not to make proof of particular crimes, whereof he hath not been convicted. 3 *Inſt.* 108, 219. 3 *Lev.* 426. If after a man hath ſtood in the pillory, *&c.* he be pardoned, he may be an *evidence*: And notwithſtanding judgment of the pillory infers infamy at common law; by the civil and canon law it imports no infamy, unleſs the cauſe for which the perſon was convicted was infamous; and therefore ſuch may be a good witneſs to a will, if not convicted of any infamous act. 3 *Lev.* 426, 427. It has been held, that it is not ſtanding in the pillory, diſables a perſon to give *evidence*; *but ſtanding there upon a judgment for an infamous crime, as forgery*, &c. If for a libel, a man may be witneſs. 5 *Mod.* 74. 3 *Nelſ. Abr.* 557.

A man is convicted of felony, and afterwards pardoned, he may be a good *evidence*. *Raym.* 369. So where burnt in the hand, which is *quaſi* a ſtatute pardon; and it is ſaid it is burning in the hand reſtores the offender to his credit. *Ibid.* 330. A perſon who was condemned to be hanged for burglary, but having a pardon for tranſportation, hath been allowed to be a good *evidence*. 5 *Mod.* 18. One outlawed for treaſon and pardoned, may be an *evidence*. *State Trials, Vol.* 3. 515. Perſons acquitted, or guilty of the ſame crime, (while they remain unconvicted) may be *evidence* againſt their fellows. *Kel.* 17. Though no *evidence* ought to be given of what an accomplice hath ſaid, who is not in the ſame indictment. *State Trials, Vol.* 2. 414. An informer may be a witneſs, though he is to have part of the forfeiture, where no other witneſſes can be had. *Wood's Inſt.* 598. Members of either Houſe of Parliament may be witneſſes on impeachments. *State Trials, Vol.* 2. 632.

2. *As to the number of witneſſes.*

The Common law required no certain number of witneſſes, though they are required by ſtatute in ſome caſes: The teſtimony of one ſingle *evidence* is ſufficient for the King in all cauſes, except for treaſon; where there muſt be two witneſſes to the ſame overt-act, *&c.*

There muſt be one witneſs to one, and another witneſs to another overt-act of the ſame ſpecies of treaſon, or at leaſt one witneſs to an overt-act, and another to a material circumſtance to prove it. 2 *Hawk. P. C.* 428. In all other criminal matters, one *evidence* is ſufficient. 3 *Inſt.* 20. *Mich.* 23 *Car. B. R.* *Stat.* 7 *W.* 3. *cap.* 3.

It is required by the 29 *Car.* 2. *cap.* 3. "That all deviſes of *lands* ſhall be atteſted and ſubſcribed in the preſence of the teſtator, by *three* or four credible witneſſes, or elſe ſhall be void."

With reſpect to the compelling witneſſes to appear.

If a witneſs ſerved with proceſs in a civil cauſe refuſe to appear, being tendered reaſonable charges, and having no lawful excuſe, action on the caſe lies againſt him, whereon damages ſhall be recovered: And a feme covert not appearing, action may be brought againſt the huſband and her. *Stat.* 5 *Eliz. cap.* 9. 1 *Leon.* 112.

If there is a doubt that a witneſs will not attend, the beſt way is to ſerve him with the original *ſubpœna*, keeping a copy, and, if he is at any diſtance from the place of trial, tender reaſonable charges: If he does not appear at the trial, call him three times on his *ſubpœna*, and then, if occaſion requires, the party may bring his action, or move for an attachment.

In a criminal cauſe, if a witneſs refuſe to appear and give *evidence*, being ſerved with proceſs, the court will put off the trial, and grant attachment againſt him; and, as refuſing to give *evidence* is a great contempt, the party may be committed and fined. 1 *Salk.* 278.

Preventing *evidence* to be given againſt a criminal, is puniſhable by fine and impriſonment; and a perſon was fined one thouſand marks in ſuch a caſe. *Hill.* 1663. *B. R.* Perſons diſſuading a witneſs from giving *evidence*, *&c.* And jurors or others diſcloſing *evidence* given, are likewiſe offences puniſhed by fine and impriſonment. 1 *Hawk.* 59.

In regard to the manner of their giving evidence.

Where neceſſity requires, witneſſes may be examined apart in court, till they have given all they have to ſay in evidence; ſo that what one has depoſed, may not induce another to give his evidence to the ſame effect. *Forteſc.* 54.

A witneſs ſhall not be examined where his evidence tends to clear or accuſe himſelf of a crime. *State Trials*, *Vol.* 1. 557. And a witneſs ſhall not be croſs examined till he hath gone through the evidence on the ſide whereon produced. *Ibid. Vol.* 2. 772. The court in criminal caſes, is to examine the witneſſes, and not the priſoner or proſecutors. *Ibid. Vol.* 1. 143. Though in caſe of the court, counſel are frequently admitted to examine the evidence. An evidence ſhall not be permitted to read his evidence, but he he may look on his notes to refreſh his memory. *Ibid. Vol.* 4. 45. An evidence may not recite his evidence to the jury, after gone from the bar, and he hath given his evidence in court; if he doth, the verdict may be ſet aſide. *Cro. Eliz.* 159. One that is to be an evidence at a trial, ought not to be examined before the trial, but by the conſent of both parties, *and a rule of court for that purpoſe.*

No evidence ought to be produced againſt a man in a trial for his life, but what is given in his preſence. *State Trials*, *Vol.* 4. 227. And evidence ſhall not be given againſt the priſoner for any other crime than that for which proſecuted. *Ibid. Vol.* 3. 947. A priſoner may bring evidence to prove that the witneſſes gave a different teſtimony before a juſtice of peace, or at another trial: though he may not call witneſſes to diſprove what his own evidence have ſworn. *Ibid. Vol.* 2. 623, 792. And no objection can be made to the evidence after verdict given. *Vol.* 4. 35. It is juſtifiable to maintain or ſubſiſt an evidence, but not to give him any reward; for this, if proved, will avoid his teſtimony. *Ibid. Vol.* 2. 470.

A witneſs ſhall not be examined to any thing that does not relate to the matter in iſſue. *Ibid. Vol.* 2. 343. And where an iſſue is not perfect, no evidence can be applied, nor can the juſtices proceed to trial. *Brownl.* 42, 47, 435. If evidence doth not warrant and maintain the ſame thing that is in iſſue, the evidence is defective, *and may be demurred upon*; but proving the ſubſtance is ſufficient. *Trials per Pais* 425. Evidence may be given of facts before and after the time they are laid in the indictment. And where a place is laid only for a *venue* in an indictment, or an appeal, (and not made part of the deſcription of the fact) proof of the ſame crime may be made at any other place in the ſame county; and after a crime hath been proved in the county where laid, evidence may be given of other inſtances of the ſame crime, in another county, to ſatisfy the jury. 2 *Hawk. P. C.* 436.

But *where a certain place is made part of the deſcription of the fact againſt the defendant*, the leaſt variation as to ſuch place between the evidence and indictment is fatal. *Ibid.* 435. It hath been alſo adjudged, that where an indictment ſets forth all the ſpecial matter, in reſpect whereof the law implies malice, variance between the indictment and evidence as to the *circumſtances of the fact*, doth not hurt; ſo that the *ſubſtance of the matter* be found by the evidence. 2 *Hawk.* 438. An evidence againſt the King in treaſon, or felony, for the criminal, was not to be examined on oath by the Comman law: but by ſtatute, witneſſes for a priſoner are to be ſworn, as in caſe for the King, and proceſs for their appearance is to be taken out. 3 *Inſt.* 79. *Stat.* 7 *W.* 3. 1 *Ann. ſt.* 2. *c.* 9.

The burthen of proving lies on the plaintiff; and the preſumption ſhall ſtand, until the contrary appear: though that which plainly appeareth, need not be given in evidence. 7 *Rep.* 40. *Co. Lit.* 233. The defendant's counſel is to conclude by way of anſwer to the evidence given to the jury by the plaintiff's: but he who doth begin to maintain the iſſue to be tried, ought to conclude and ſum up the evidence given, which is no more than to put the jury in mind how he hath proved his cauſe. 1 *Lill.* 551. When a witneſs hath been fully examined by the party producing him, and croſs examined by counſel for the adverſe party, the court will ſometimes aſk a queſtion or two of the witneſs, when the jury may put any queſtions they think proper to the judge, for him to put to the witneſs, after which counſel on either ſide cannot aſk a ſingle queſtion of the witneſs, without leave of the court; and in fact, the uſual method is to pray the court, if not improper, to aſk ſuch a queſtion, or to examine to ſuch a fact, *&c.* which may have dropped from the witneſs, after both council had finiſhed their examination of him. If it is proper and neceſſary, the court will do it, otherwiſe not.

3. *Of parol, preſumptive, and hear-ſay evidence.*

It ſeems to have been agreed, as a general rule, (even before the ſtatute of *frauds and perjuries*) that no parol evidence could be admitted to controul what appeared on the face of a deed or will, not only from the danger of perjury, but *from a preſumption, that whatſoever the parties at that time had in contemplation, was reduced into writing.* 5 Co. 68. *a. b.* 8 Co. 155. *a.* Kelw. 49.

But this rule has received a relaxation, eſpecially in the courts of equity, where a diſtinction has been taken between evidence, that may be *offered to a jury*, and to *inform* the *conſcience of the court*; *viz.* that in the *firſt* caſe no ſuch evidence ſhould be admitted; becauſe the jury might be inveigled thereby; but that in the *ſecond* it could do no hurt, becauſe the court were judges of the whole matter, and could diſtinguiſh what weight and ſtreſs ought to be laid on ſuch evidence. 2 *Vern.* 98, 337, 625.

Alſo to aſcertain a fact, parol evidence hath been admitted to explain the intent of the teſtator; as where the teſtator had two ſons both named *John*, and he deviſed lands to his ſon *John*; here parol evidence was admitted, to ſhew which of his ſons he meant; and it being proved, that one of his ſons of that name had been abſent ſeveral years beyond ſea, and that the teſtator apprehended that he was dead, the deviſe was held good, and that the other ſhould take; for without ſuch evidence the will muſt be void. 2 *Vern.* 98, 337, 625.

Parol evidence to prove that a bond was given, in lieu of dower, refuſed. *Finney* v. *Finney*, *in Chanc. Wilſ. Rep. par.* 1. *fo.* 34. *parol* proof admitted that the teſtator intended his wife *executrix* ſhould have the reſidue undiſpoſed of. *Id. Lake* v. *Lake in Chanc. fo.* 313. Debt upon bond with condition for payment of money to *Lydia Dovey*, who is a third perſon, ſhe declares the defendant owes her nothing, and upon proof thereof, a verdict was for the defendant; ſuch declaration was properly given in evidence, for *Lydia Dovey* is to be conſidered as the real plaintiff. *Id. Hanſon* v. *Parker*, *fo* 257.

As to preſumptive proof.

Sometimes violent preſumption will be admitted for evidence without witneſſes; as where a perſon is run thro' the body in a houſe, and one is ſeen to come out of the houſe with a bloody ſword, *&c.* But on this the court ought not to judge haſtily. 1 *Inſt.* 6, 673. And tho' preſumptive and circumſtantial evidence may be ſufficient in felony, is not ſo in treaſon. *State Trials, Vol.* 4. *p.* 307.

Perſons once in being ſhall be intended ſtill living, if the contrary is not proved. 2 *Rol. Rep.* 461. But now by *Stat.* 19 *Car.* 2. *c.* 6. it is enacted, "That if any perſon or perſons, for whoſe life or lives eſtates have been, or ſhall be granted, ſhall remain beyond the ſeas, or elſewhere abſent themſelves in this realm, *by the ſpace of ſeven years together*, and no ſufficient and evident proof made of the life or lives of ſuch perſon or perſons reſpectively, in any action commenced for the recovery of ſuch tenements by the leſſors or reverſioners, in every ſuch caſe the perſon or perſons, upon whoſe life or lives ſuch eſtate depended, ſhall be accounted as naturally dead; and in every action brought for the recovery of the ſaid tenements, by the leſſors or reverſioners, their heirs or aſſigns, the judges, before whom ſuch action ſhall be brought, ſhall direct the jury to give their verdict, as if the perſon ſo remaining beyond the ſeas, or otherwiſe abſenting himſelf, *were dead.*" But the ſtatute contains a proviſo for thoſe who are evicted, and not actually dead, at the time of the eviction, on due proof, *&c.* to re-enter, *&c.*

By the *Stat* 21 *Jac.* 1. *cap.* 27. it is enacted, "That if any woman be delivered of an iſſue, which being born alive ſhould, by the laws of this realm, be a baſtard, and endeavour privately, either by drowning or ſecret burying, or any other way, either by herſelf, or the procuring of others ſo to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; in every ſuch caſe, the mother ſo offending ſhall ſuffer death, as in caſe of murder, unleſs ſhe can prove by one witneſs *at leaſt*, that ſuch child was born dead."

As to hearſay evidence, it ſeems agreed, that what another has been heard to ſay, is no evidence, becauſe the party was not on oath; alſo, becauſe the party, who is affected thereby, had not an opportunity of croſs-examining; but ſuch ſpeeches or diſcourſes may be made uſe of by way of inducement or illuſtration of what is properly evidence. 1 *Mod*, 383. *Skin.* 402.

Alſo what a witneſs hath been heard to ſay at another time, may be given in evidence, in order either to invalidate or confirm the teſtimony he gives in court. 2 *Hawk. P. C.* 431.

So what a perſon accuſed of a crime hath been heard to ſay at another time, may be given in evidence at his trial, for or againſt him. 2 *Hawk. P. C.* 431.

A witneſs by hearſay of a ſtranger ſhall not be allowed, except perhaps to confirm the evidence of a witneſs that ſpoke of his knowledge. *Wood's Inſt.* 644.

But in matters of preſcription, ancient rights, *&c.* the declarations of very old people that are dead, may be given in evidence.

4. *Where depoſitions in another court may be given in evidence.*

If a perſon who gave evidence in a former trial, be dead; upon proof of his death, any perſon who heard him give evidence, may be admitted to give the ſame evidence between the ſame parties; but a copy of the record of the trial when the evidence was given ought to be produced. 3 *Inſt.* 2 *Lill. Abr.* 705.

And evidence given at one trial in criminal caſes, has been held not to be evidence at another's trial. *State Trials, Vol.* 2. 863. Though that was over-ruled in the caſe of Sir *John Fenwick*, on a bill of attainder. See title *Bill of Attainder*, and *Chandler's Debates in the Houſe of Commons*, 3 *V.* 30, *&c.* *Debates in the Houſe of Lords*, 1 *V.* 463, *&c.*

Depoſitions cannot be given in evidence againſt any perſon who was not party to the ſuit; and the reaſon is, becauſe he had not liberty to croſs-examine the witneſſes; and it is againſt natural juſtice that a man ſhould be concluded in a cauſe to which he never was a party. *Hardr.* 22, 472. *Bunb.* 50. *pl.* 84.—91. *pl.* 148.—321. *pl.* 403. 9 *Mod.* 229. *Carth.* 181. *Vern.* 113. *Gilb. Evid.* 62. *Ch. Prec.* 212.

As to evidence in paſſing a *bill of attainaer*, ſee *State Trials, Vol.* 5. 114, 124, 132, 676. But the ſame evidence is requiſite on an impeachment in parliament, as in private courts. *State Trials, Vol.* 5. 119. See the *Index* to the ſixth volume of the *State Trials*, title *Evidence.*

With reſpect to *depoſitions in Chancery*, ſee how far they may be given in evidence under the firſt head touching *Written Evidence.* See further as to Evidence, *New Abr. V.* 2. tit. *Evidence.* *Com. Dig.* 3 *V.* ſame title, and *V.* 5. tit. *Teſtmoigne.* *Gilbert's Law of Evidence*, and *Theory of Evidence.* Alſo *Ni. Pri.* 207, *&c.*

Ewage, (*ewagium*) Is the ſame with *aquage*, from the Fr. *eau*, water; and ſignifies toll paid for water-paſſage. —*Charta Regis* Johannis, *&c. hominibus de* B. *quod ſint quieti de thelonio, ſcutagio, paſſagio, laſtagio, & de wrec & lagan, de* ewagio, *&c.* Hill. 14 Hen. 3. In Theſauro Reg. Scacc. Ebor. Rot. 15.

Ewbrice, (Sax. *ew*, i. e. *conjugium*, and *bryce, fractio*) Adultery or marriage breaking: from this *Saxon* word *ew*, marriage, we derive our preſent Engliſh *woo*, to *woo* a lady.

Ewe, (*euva*) A *German* word ſignifying law; it is mentioned in *Leg. W.* 1.

Exaction, Is defined to be a wrong done by an officer, or one in pretended authority, by taking a reward or fee for that which the law allows not. And the difference between *exaction* and *extortion* is this: *extortion* is where an officer extorts more than his due, when ſomething is due to him; and *exaction* is, when he wreſts a fee or reward, where none is due; for which the offender is to be fined and impriſoned, and render to the party twice as much as the money he ſo takes. *Co. Lit.* 368. 10 *Rep.* 100. *V.* 32 *Geo.* 2. *c.* 28. And ſee *Extortion.*

Exactor Regis, The King's exactor or collector: ſometimes taken for the *ſheriff*: but generally, *quicunque publicas pecunias, tributa, vectigalia & res fiſco debitas* exigit, *proprie nominatur* exactor Regis. *Niger liber Scacc. par.* 1. *cap. ult.*

Examination, (*examinatio*) A ſearching by, or cognizance of a magiſtrate. By *Stat.* 1 *&* 2 *P. & M. c.* 13. *&* 2 *&* 3 *P. & M. c.* 10. Juſtices of peace are to *examine* felons apprehended, and witneſſes, before the felon is committed; and the accuſers muſt be bound over to appear and give evidence at the next aſſiſes, *&c.* to which the *examinations* are to be certified. *Mod. Juſtice* 176, 177. See *Evidence.*

With reſpect to *examinations* touching church benefices, ſee title *Benefice.*

Examiners in the Chancery, (*examinatores*) Are two officers of that court, who examine upon oath, witneſſes produced by either ſide, in *London*, or near it, on ſuch interrogatories as the parties to any ſuit exhibit for that purpoſe: and ſometimes the parties themſelves are, by particular order, likewiſe examined by them. In the country, witneſſes are examined by *commiſſioners*, (uſually attornies not concerned in the cauſe) on the parties joining in commiſſion, *&c.*

Exannual Roll. In the old way of exhibiting *ſheriffs accounts*, the illeviable fines and deſperate debts were tranſcribed into a *roll* under this name; which was yearly read, to ſee what might be gotten. *Hale's Sher. Acco.* 67.

Excambiators, A word uſed anciently for *exchangers* of land: but *Cowel* ſuppoſes them to be ſuch as we now call *brokers*, that deal upon the *Exchange* between merchants.

Exception, (*exceptio*) Is a ſtop or ſtay to an action; and divided into *dilatory* and *peremptory.* Bract. lib. 5. tract. 5. In law proceedings, it is a denial of a matter alledged in bar to the action: and in *Chancery* it is what is alledged againſt the ſufficiency of an anſwer, *&c.* The counſel in a cauſe are to take all their *exceptions* to the record at one time; and before the court hath delivered any opinion thereon. 1 *Lil. Abr.* 559. And on an indictment for treaſon, *&c.* *exception* is to be taken for miſnaming, falſe *Latin*, *&c.* before any evidence is given in court; or the indictment ſhall be good. *Stat.* 7 *W.* 3. *c.* 3.

Where, by a general pardon, any particular crime is excepted; if a perſon be attainted, *&c.* of that offence, he ſhall have no benefit of the pardon. 6 *Rep.* 13. 2 *Nelſ. Abr.* 765. And when a pardon is with an *exception* as to perſons, the party who pleads it ought to ſhew, that he is not any of the parties excepted. 1 *Lev.* 26. A negative expreſſion may be taken to enure to the ſame intent as an *exception*; for an *exception* in its nature is but a denial of what is taken to be good by the other party, either in point of law or pleading. And *exceptio in non exceptis ſirmat regulam.* 1 Lill. 559.

Exception to Evidence, &c. See Bill of *Exceptions.*

Exception in Deeds and Writings, Keeps the things from paſſing thereby, being a ſaving out of the deed, as if the ſame had not been granted: but it is to be a *particular* thing out of a *general* one, as a room out of an houſe, a ground out of a manor, timber out of land, *&c.* And it muſt not be of a thing expreſly granted in a deed: alſo it muſt be of what is *ſeverable* from, and *not inſeparably incident* to, the grant. *Co. Lit.* 47. 1 *Lev.* 287. *Cro. El.* 244.

Where an *exception* goeth to the whole thing granted or demiſed, the *exception* is void. *Cro. El.* 6. A man makes a leaſe of a manor, excepting all courts, *&c.* the *exception* is void as to the courts; for having leaſed the manor, it cannot be ſuch without courts. *Hob.* 108. *Moor* 870. A leaſe was made of all a man's lands in *L.* excepting his manor of *H.* and he had no lands in *L.* but the ſaid manor; it was adjudged that the manor paſſed, and that the *exception* was void. *Hob.* 170. 2 *Nelſ. Abr.* 764. A leaſe of an houſe and ſhops, except the ſhops; though this may extend to other ſhops, it is void as to the ſhops belonging to the houſe demiſed, becauſe it is repugnant to the leaſe. *Dyer* 265.

If an *exception* croſſes the grant, or is repugnant to it, the ſame is void: and if there be a ſaving or *exception* out of an *exception*, it may make a particular thing as if never excepted; as if a leaſe be made of a rectory, excepting the parſonage-houſe, ſaving to the leſſee a chamber; this chamber not being excepted out of the leaſe, ſhall paſs by the leaſe of the rectory. *Hob.* 72. 170. *Cro. El.* 372. *Owen* 20.

By *exception* of trees, the ſoil is not excepted, but only ſufficient nutriment for the trees: for the leſſee ſhall have the paſture growing under them, though the leſſor ſhall have all the benefit of the trees, maſt, fruit, *&c.* and the trees are parcel of the inheritance. 5 *Rep.* 11. 11 *Rep.* 48, 50. But it has been adjudged, that, by an exception of woods, underwood and coppices, the ſoil of the coppices is excepted. *Poph.* 146. *Cro. Jac.* 487. If a leſſee for years aſſign over his term, excepting the trees, *&c.* the exception is not good; becauſe no one can have a ſpecial property in the trees, but the owner of the land. 2 *Nelſ.* 764. Tho' where leſſee for life makes a leaſe for years excepting the wood, *&c.* this may be a good exception, although he hath not any intereſt in it but as leſſee, in regard he is chargeable in waſte, *&c.* and hath not granted his whole term. *Cro. Jac.* 296. 1 *Lill. Abr.* 560. Theſe exceptions are commonly in leaſes for life and years; and muſt be always of a thing *in eſſe.* *Co. Lit.* 47.

Exchange, (*excambium* or *cambium*) Signifies generally as much as *permutatio* with the Civilians; as the *King's exchange*, which is the place appointed by the King for *exchange* of plate or bullion for the King's coin, *&c.* Theſe places have been divers heretofore; but now there is only one, *viz.* the *Mint* in the *Tower.* *Stat. H.* 6. *c.* 4. See 9 *Ed.* 3. *c.* 7. 25 *Ed.* 3. *c.* 12. 5 & 6 *Ed.* 6. *c.* 19.

There is a *Royal Exchange of Merchants* in *London*, and exchange among merchants is a commerce of money, or a bartering or exchanging of the money of one city or country for that of another: money in this ſenſe, is either real or imaginary; real, any real ſpecies current in any country at a certain price, at which it paſſes by the authority of the ſtate, and of its own intrinſic value: and by imaginary money, is underſtood all the *denominations* made uſe of to expreſs any ſum of money, which is not the juſt value of any real ſpecies. *Lex Mercatoria*, or *Merch. Comp.* 98.

The methods of exchange for money uſed in *England* ought to be *par pro pari*, according to value for value: and our exchange is grounded on the weight and fineneſs of our own money, and the weight and fineneſs of that of other countries, according to their ſeveral ſtandards, proportionable in their valuation; which being truly and juſtly made, reduces the price of the exchange of money of any nation or country to a certainty. But this courſe of exchange is of late abuſed, and money is become a merchandiſe, that riſes and falls in its price in regard to the plenty and ſcarcity of it. *Ibid.* At *London*, all exchanges are made upon the pound ſterling of 20 *s.* In the Low Countries, *France* and *Germany*, upon the *French* crown; *Spain* and *Italy*, &c. upon the ducat; and at *Florence*, *Venice*, and other places in the *Streights*, by the dollar and florin. See *Bill of Exchange*, and *Lex Mercatoria.*

Exchanges of Goods and Merchandiſe, Were the original and natural way of commerce, precedent to buying; *for there was no buying till money was invented*; though in exchanging, both parties are as buyers and ſellers, and both equally warrant. 3 *Salk.* 157.

Exchange of Lands, Is a mutual grant of equal intereſt in lands or tenements, the one in exchange for the other: and is uſed peculiarly in our Common law for that compenſation which the *warrantor* muſt make to the *warrantee*, value for value, if the land warranted be recovered from the warrantee. *Bract. lib.* 2. *cap.* 16. *Accomp. Conv.* 1 *Vol.* 170. Alſo there is a tacit condition of re-entry in this deed, on the lands given in exchange, in caſe of eviction; and on the warranty to vouch and recover over in value, *&c.* For if either of the parties is evicted, even of a part, the exchange is defeated. 4 *Rep.* 121. *Cro. Eliz.* 903.

An exchange may be made of lands in fee-ſimple, fee-tail for life, *&c.* The eſtates granted are to be equal, as fee-ſimple for fee-ſimple, *&c.* tho' the lands need not be of equal value, or of the like nature: for a rent in fee iſſuing out of land, may be exchanged for land in fee; *Lit.* 63, 64. *Co. Lit.* 50, 51. If an exchange be made between tenant for life, and tenant in tail after poſſibility of iſſue extinct, the exchange is good; becauſe their eſtates are equal. 11 *Rep.* 80. *Moor* 665.

An exchange made between tenant in tail, and another, of unequal intereſt, may be good during his life; but his iſſue, when of full age, ſhall avoid it. And exchanges made by infants; by perſons *non ſanæ memoriæ*; a huſband of the wife's lands, *&c.* are not void, but voidable only, by the infant at his full age, the heir of the perſon *non ſanæ memoriæ*, and the feme after the death of the huſband, who may waive the poſſeſſion and diſagree to them. *Perk. Sect.* 277, 281.

Jointenants and tenants in common, after they have made partition, may exchange their *lands:* and by this deed, freeholds paſs without livery and ſeiſin; but the word *exchange* is to be uſed, and there muſt be execution of the exchange, by *entry* on the lands in the life of the parties, or the exchange will be void. *Co. Lit.* 50. 1 *Mod.* 91.

Sometimes lands intended to paſs by exchange, not having the qualities and incidents of exchanged lands, may paſs by way of gift or grant: as if two perſons are ſeiſed of two acres of land, and one of them by deed gives his acre to the other, and the other his acre to him, and each of them gives livery of ſeiſin upon his acre given in exchange; here the acres will paſs from one to the other, but not in a way of exchange, becauſe there was no word of exchange in the deed. *Lit. Sect.* 62. *Perk.* 253.

A man grants to another lands in fee-ſimple, for lands in tail by way of exchange; or land in tail, for lands for life, *&c.* theſe deeds will not take effect *as exchanges.* *Fitz. Exchange* 15, 64. *Co. Lit.* 64. If tenant in tail give his land in exchange, for other land of the ſame eſtate-tail, the iſſue in tail may make it good if he will, or avoid the exchange. 1 *Rep.* 96. A feoffment is made to *A.* and *B.* and the heirs of *A.* and they exchange the land for other lands; this will be good, and they ſhall hold the lands in the ſame nature that the land given in exchange was held. *Perk. Sect.* 277.

If a lord releaſe to the tenant his ſervices in tail, in exchange of land given to the lord in exchange in tail alſo, it is ill: but if leſſee for life of one acre, give another acre to his leſſor in tail, in exchange for a releaſe from him of that acre, *habendum* in tail in like manner, it is a good exchange. *Ibid.* 219, 276, 283. In caſe two perſons make an exchange of land, and limit no eſtate; each ſhall have an eſtate for life, *by implication*: but if an expreſs eſtate be limited to one for life, and none to the other, it will be void. 19 *H.* 6. 27. And to make a good exchange, both the things muſt be in *eſſe* at the time of the exchange. *Co. Lit.* 50. 3 *Ed.* 4. 10.

But an exchange may be made to take effect in *futuro*, as well as preſently; for if it be, that after the feaſt of *Eaſter* A. B. ſhall have ſuch lands in *D.* in exchange for his lands in *S.* this is good. *Perk. Sect.* 265.

By a ſpecial kind of agreement, an exchange may be of unequal eſtates. *Moor, c.* 209. The condition and warranty in exchanges run to the *parties in privity*; not to an *aſſignee, &c.* And if after two have exchanged lands, one of them releaſes to the other the warranty in law; it will not deſtroy the exchange. 4 *Rep.* 122. 1 *Rol. Abr.* 815. The parties themſelves, and all privies and ſtrangers for the moſt part, may take advantage of exchanges void by any defect or accident: *contra*, if they are voidable, *&c.* 1 *Rep.* 105. *Dyer* 285. See *Exchanges* of Lands, *Accomp. Conveyancer, Vol.* 1. *p.* 358.

Exchange of Church Livings. Exchanges are now ſeldom uſed, except that parſons ſometimes exchange their *churches*, and reſign them into the biſhop's hands: and this is not a perfect exchange till the parties are inducted; for if either dies before they both are inducted, the exchange is void. *Wood's Inſt.* 284.

By the 31 *El. c.* 6. *ſ.* 8. If any incumbent of any benefice with cure of ſouls, ſhall corruptly reſign or exchange the ſame; or corruptly take for or in any reſpect of the reſigning or exchanging the ſame, directly or indirectly, any penſion, ſum of money, or other benefit whatſoever; as well the giver as the taker, ſhall loſe double the value of the ſum; half to the Queen, and half to him that ſhall ſue for the ſame.

If two parſons by one inſtrument agree to exchange their benefices, and in order thereto reſign them into the hands of the ordinary, ſuch exchange being executed on both parts, is good; and each may enjoy the other's living: but the patrons muſt preſent them again to each living; and if they refuſe to do it, or the ordinary will not admit them reſpectively, then the exchange is not executed; and in ſuch caſe either clerk may return to his former living, even though one of them ſhould be admitted, inſtituted and inducted to the benefice of the other; which is expreſſed in the exchange itſelf, and the *proteſtation* uſually added to it. *Rights Clerg.* 2 *Co. Rep.* 74. *Rol. Abr.* 814.

Exchangeors, Are thoſe that return money by *bills of exchange*. See *Excambiators.* 5 R. 2. c. 2.

Exchequer, (*ſcaccarium*, from the Fr. *eſchequier*, i. e. *abacus, tabula luſoria*, or from the Germ. *ſchatz*, viz. *theſaurus*) Is an *ancient court of record*, wherein all cauſes touching the revenue and rights of the crown are heard and determined; and here the revenues of the crown are received. *Cambden* in his *Britan. p.* 113. ſaith, This court took its name *a tabula ad quam aſſidebant*, the cloth which covered it being party coloured, or *chequered*: we had it from the *Normans*, as appears by the *Grand Cuſtumary, cap.* 56. where it is deſcribed to be an aſſembly of high juſticiers, to whom it appertained to amend that which the inferior juſticiers had miſdone, and unadviſedly judged, and to do right to all as from the Prince's mouth.

Some perſons think there was an Exchequer under the *Anglo-Saxon* Kings; but our beſt hiſtorians are of opinion, that it was erected by King *William* the Firſt, called *The Conqueror*, its model being taken from the tranſmarine *Exchequer*, eſtabliſhed in *Normandy* long before that time. *Madox's Hiſt. Excheq.*

In the reign of *Hen.* the Firſt, there was an Exchequer, which has continued ever ſince: and the judges of the court were at that time ſtiled *Barones Scaccarii*, and adminiſtred juſtice to the ſubjects. In ancient times the Barons of the Exchequer dealt in affairs relating to the ſtate, or public ſervice of the crown and realm: and were greatly concerned in the preſervation of the prerogative, as well as the revenue of the crown; for at the Exchequer it was the care of the Treaſurer and Barons to ſee that the rights of the crown were no ways invaded. *Lex Conſtitutionis* 198.

For the authority and dignity of the court of Exchequer, anciently it was held in the King's palace; and the acts thereof were not to be examined or controlled in any other of the King's ordinary courts of juſtice: the Exchequer was the great repoſitory of records, wherein the records of the other courts at *Weſtminſter, &c.* were brought to be laid up in the Treaſury there. And writs of the Chancery were ſometimes made forth at the Exchequer; writs of ſummons to aſſemble parliaments, *&c.* *Ibid.*

The Exchequer has been commonly held at *Weſtminſter*, the uſual place of the King's reſidence; but it hath been ſometimes holden at other places, as the King pleaſed; as at *Wincheſter, &c.* And in the Exchequer there are reckoned ſeven courts, *viz.* the court of *Pleas*; the court of *Accounts*; the court of *Receipts*; the court of the *Exchequer Chamber* (being the aſſembly of all the judges of *England* for difficult matters in law); the court of *Exchequer* Chamber for *Errors* in the court of *Exchequer*; for *Errors* in the *King's Bench*; and the court of *Equity* in the *Exchequer* chamber. 4 *Inſt.* 119.

But, according to the uſual diviſion for the diſpatch of all common buſineſs, the Exchequer is divided into two parts; one whereof is converſant eſpecially in the judicial hearing and deciding of cauſes pertaining to the Prince's coffers, anciently called *Scaccarium Computorum*; the other is the *Receipt of the Exchequer*, which is properly employed in the receiving and payment of money. And it has been obſerved, that about the time of the Conqueſt there was very little money in ſpecie in the realm; for then the tenants or knights fees anſwered their lords by military ſervices: and till the reign of King *Hen.* 1. the rents or farms due to the King were generally rendered in proviſions and neceſſaries for his houſhold; but in that reign the ſame were changed into money; and afterwards, in ſucceeding times, the crown revenue was changed or paid into the Exchequer chiefly in gold and ſilver. *Lex Conſtitutionis, p.* 208.

By ſtatute, all ſheriffs, bailiffs, *&c.* are to account in the Exchequer before the Treaſurer and Barons: and annual rolls are to be made of the profits of counties, *&c.* Alſo inquiſitors ſhall be appointed in every county, of debts due to the King. 51 *H.* 3. *ſtat.* 5. 10 *Ed.* 1. *Stat. Rutl.* And all fines of counties for the whole year are to be ſent into the Exchequer. *Stat. de Vicecom.* 14 *Ed.* 2. Perſons impeached in the Exchequer, may plead in their own diſcharge; and there ſhall be writs for diſcharging perſons, *&c.* 5 *R.* 2. *c.* 9, 14. Any perſon to whom money is due from the Exchequer, having an order regiſtred for payment, may aſſign the ſame by indorſement. 19 *Car.* 2. *c.* 12. And the officers of the Receipt may receive and take for their fees 1*d.* in the pound for ſums iſſued out, *&c.* 5 *&* 6 *W. & M. cap.* 20.

Officers of the Exchequer are without delay to receive money brought thither: and the money in the Receipt is to be kept in cheſts under three different locks and keys, kept by three ſeveral officers, *&c.* 8 *&* 9 *W.* 3. *c.* 28. The Tellers of the Exchequer were allowed 15,144*l.* to make good the deficiency in their offices by the reduction of guineas. *Stat.* 10 *Geo.* 1. *c.* 5. See 2 *Geo.* 2. *c.* 16.

In the lower part of the Exchequer, called the *Receipt*, the debtors of the King, and their debtors, the King's tenants, and the officers and miniſters of the court, *&c.* are privileged to ſue and implead one another, or any ſtranger, and to be ſued in the like actions as are proſecuted in the *King's Bench* and *Common Pleas*.

The *judicial part of the Exchequer* is a court both of law and equity; the court of common law is held in the office of *Pleas*, after the courſe of the Common law, *coram Baronibus*; and here the plaintiff ought to be a tenant or debtor to the King, or ſome way accountant to him; but this is now become a meer fiction, and the court is open to all. But the *form* is ſtill preſerved.

The leading proceſs is either a writ of *ſubpæna*, or *quo minus*. The court of Equity is holden in the Exchequer chamber *coram Theſaurario, Cancellario & Baronibus*, but uſually before the Barons only; the Lord Chief Baron being the chief Judge to hear and determine all cauſes in law or equity; the proceedings are by *Engliſh bill* and anſwer, agreeable to the practice of the High Court of Chancery; but the plaintiff muſt likewiſe ſet forth that he is debtor to the King, though it is not material whether he be ſo or not, it being, as above obſerved, only matter of form.

In this court the clergy uſually exhibit bills for recovery of their tithes, *&c.* And here the Attorney General brings bills for any matters concerning the King; and any perſon grieved in any cauſe proſecuted againſt him on behalf of the King, may bring his bill againſt the Attorney General to be relieved in equity, in which caſe the plaintiff muſt attend the King's Attorney with a copy of the bill, and procure him to anſwer the ſame; and Mr. Attorney may call any that are intereſted in the cauſe, or any officer or others, to inſtruct him in the making of his anſwer, ſo as the King be not prejudiced thereby, and his anſwer is to be put in without oath. 4 *Inſt.* 109, 112, 118.

The practice and proceedings generally in uſe at the *Exchequer Bar*, where anciently there was very much buſineſs and very various, are chiefly relating to debtors, farmers, receivers, accountants, *&c.* for debts and duties due to the crown: and all penal puniſhments, intruſions, forfeitures, upon popular actions, *&c.* are matters cogniſable by this court. *Practiſ. Attorn. edit.* 1. *p.* 292, 293.

The Exchequer is now ſaid to be the laſt of the four courts at *Weſtminſter*; governed by the Chancellor of the Exchequer, the *Lord Chief Baron*, and three other *Barons*, who are the ſovereign auditors of *England*, and the judges of the court. There alſo fits in this court a *Puiſne Baron*, who adminiſters the oath of all high-ſheriffs, under-ſheriffs, bailiffs, auditors, receivers, collectors, controllers, ſurveyors, and ſearchers of all the cuſtoms in *England*.

The *Chancellor* or *Under Treaſurer* hath the cuſtody of the ſeal of this court. The King's *Attorney General* is made privy to all manner of pleas that are not ordinary and of courſe, which riſe upon the proceſs of the court; and he puts into court in his own name, informations of concealments of cuſtoms, ſeizures, *&c.* And alſo for intruſions, waſtes and incroachments upon any of the King's lands; or upon penal ſtatutes, forfeitures, *&c.*

The *Remembrancers* keep the records of the court betwixt the King and his ſubjects, and enter the rules and orders there made: one is called the King's Remembrancer, and the other the Lord Treaſurer's Remembrancer: The *Remembrancer for the King* hath all manner of informations upon penal ſtatutes uſed in his office only; and he calls to account, in open court, all the great Accountants of the Crown, Collectors of Cuſtoms, *&c.* he makes out writs of privilege, enters judgments of pleas; and all matters upon *Engliſh bill* are remaining in his office.

The *Remembrancer for the Lord Treaſurer* makes out all the eſtreats; he ſets down in his book the debts of all ſheriffs, and takes their foreign accounts; and iſſues out writs and proceſs in many caſes, *&c.* And theſe Remembrancers have ſeveral *attornies* to do buſineſs under them; who by ſtatute are not to iſſue out of the Remembrancer's office, any writs upon ſuppoſition, but upon juſt grounds, *&c.* 1 *Jac.* 1. *c.* 26.

There are two *Chamberlains* that keep the keys of the Treaſury, where the records lie, with the book of Domeſday, *&c.* They may ſit in court if they pleaſe, but not intermeddle with any thing; unleſs it be relating to the Sheriffs, in the pricking whereof they have a vote. And beſides the Chamberlains, there is a *Clerk of the Pipe*, in whoſe cuſtody are conveyed out of the King's and Treaſurer's Remembrancer, *&c.* as water through a pipe, all accounts and debts due to the King.

The *Controller of the Pipe*; who is ſaid to be the Chancellor of the Exchequer. The *Clerk of the Eſtreats*, who receives the eſtreats from the Remembrancer's office, and writeth them out to be ſerved for the King, *&c.* The *Foreign Oppoſer*, who oppoſes or makes a charge on all ſheriffs, *&c.* of their green wax, *i. e.* fines, iſſues, amerciaments, recogniſance, *&c.* certified in eſtreats annexed to the writ, under the ſeal in green wax, and delivereth the ſame to the Clerk of the Eſtreats to be put in proceſs. The *Auditors*, that take the accounts of the King's Receivers, Collectors, *&c.* and perfect them. The four *Tellers*, whoſe buſineſs to receive and pay all money is well known. The *Clerk of the Pells*, from his parchment rolls, called *Pellis Receptorum*. The Clerk of the *Nihils*, who makes a roll of ſuch ſums as the ſheriff upon proceſs returns *Nihil*, *&c.* The *Clerk of the Pleas*, in whoſe office all officers and privileged perſons are to ſue and be ſued; and here are divers *Under Clerks* employed in ſuits commenced or depending in this court. There is a *Clerk of the Summons*; *Under Chamberlains* of the *Exchequer*; *Secondaries* in the offices of the *Remembrancers*; *Secondaries* of the *Pipe*; the *Uſher* of the *Exchequer*, *Marſhal*, &c. For the ſtatutes relating to the Exchequer, ſee the *Table* to the 4to edition of the *Statutes at Large*, title *Exchequer*.

Exchequer Bills. By *Stat.* 5 *Ann. c.* 13. The Lord Treaſurer may cauſe *Exchequer Bills* to be made of any ſums not exceeding 1,500,000 *l.* for the uſe of the war; and the duties upon houſes were made chargeable with 4 *l.* 10 *s. per cent. per annum* to the *Bank* for circulating them. The *Bank* not paying the bills, actions to be brought againſt the Company, and the money and damages recovered: and if any Exchequer bills be loſt, upon affidavit of it before a Baron of the Exchequer, and certificate from ſuch Baron, and ſecurity given to pay the ſame if found, duplicates are to be made out: alſo when bills are defaced, new ones ſhall be delivered. *Ibid.* The King, or his officers in the Exchequer, by former ſtatutes, might borrow money upon the credit of bills, payable on demand, with intereſt after the rate of 3*d. per diem* for every 100*l.* bill. 7 & 8 *W.* 3. *cap.* 31. And by 8 & 9 *W.* 3. *c.* 20. An intereſt of 5*d.* a day was allowed for every 100*l.* But 12 *W.* 3. *c.* 1. lowered the intereſt on theſe bills to 4*d.* a day *per cent.* And by 12 *Ann. cap.* 11. it is ſunk to 2*d.* a day. Forging Exchequer bills, or the indorſements thereon, is felony. See *Felony*.

Exciſe, (from the Belg. *acciiſe* tributum) Is a duty or impoſition laid upon beer, ale, and other liquors which had its beginning in the reign of King *Charles* the Second. 12 *Car.* 2. *c.* 23. One principal office of exciſe to be erected in *London*, *&c.* and the commiſſioners and ſub-commiſſioners appointed to levy this duty, may, under their hands and ſeals, appoint ſo many gaugers as ſhall be needful; who are to enter the houſes of brewers, innkeepers, *&c.* to gauge all the coppers, fats, and veſſels in the ſame, and make returns to the commiſſioners of exciſe, *&c.* under whoſe office and limits they live: and upon refuſal, may forbid the parties to ſell any beer, under 5 *l.* forfeiture, *&c.* by this act. And by ſubſequent ſtatutes, additional duties have been granted on low wines, ſpirits, or brandy drawn from corn: alſo a duty of exciſe is laid upon malt, and upon ſweets, *&c.* which is annually continued.

An officer of the exciſe in the day-time, or in the night with a conſtable, may enter into a houſe or brewhouſe, and ſtay there during the time of brewing, *&c.* Brewers erecting or altering any back, cooler, copper, *&c.* or keeping any private ſtore-houſes; and malſters keeping any private veſſels for ſteeping of barley, without giving notice to the officers of the exciſe; in either caſe, forfeit 50*l.* and bribing a gauger incurs the penalty of 10*l.* 15 *Car.* 2. *c.* 11. 2 *W.* & *M.* 4 *W.* & *M.* 7 & 8 *W.* 3. 8 & 9 *W.* 3. *c.* 19.

See 1 *Geo.* 3. whereby the exciſe on beer and ale, *&c.* is granted to King *George* the Third for life.

Officers of exciſe may go on board ſhips, and ſearch for rum, arrack, and other exciſable liquors, as officers of the cuſtoms may do, and ſeize commodities forfeited, *&c.* *Stat.* 11 *Geo.* 1. *c.* 30. And three of the commiſſioners of exciſe have power to determine all complaints and informations concerning the exciſe duties; as well as juſtices of peace at their ſeſſions, *&c.* *Stat.* 1 *Geo.* 2. *c.* 21. Vide 9 *Geo.* 2. *c.* 35. See *Stat.* 10 *Geo.* 2. *c.* 17. 24 *Geo.* 2. *c.* 40. and 26 *Geo.* 2. *c.* 32. See farther *Table* to the 4to edition of the *Statutes at Large*: and alſo an account of the method of charging the duties of exciſe,

cise, *&c.* and of the names and buſineſs of ſome of the officers employed therein, at the end of *Gilb. Exch.* edit. 1758. *p.* 293.

Excluſa, Excluſagium, A ſluice for the carrying off water; and the payment to the lord for the benefit of ſuch a ſluice. *Et duo molendina in eodem manerio cum aquis* excluſagiis, *&c.* Mon. Ang. tom. 1. p. 398, 587.

Excommengement, Is in *Law French* the ſame with *excommunication* in *Engliſh*. Stat. 23 *Hen.* 8. *c.* 3.

Excommunication, (*excommunicatio*) An eccleſiaſtical cenſure, by which a perſon is excluded from the communion of the church, and from the company of the faithful. It hath been thus defined: excommunicatio *eſt nihil aliud quam cenſura a canone vel judice eccleſiaſtico prolata & inflicta privans legitima communione ſacramentorum & quandoq; hominum.*

And it is divided into *majorem* and *minorem*; *minor eſt, per quam quis a ſacramentorum participatione conſcientia vel ſententia arcetur: major eſt, quæ non ſolum a ſacramentorum, verum etiam fidelium communione excludit, & ab omni actu legitimo ſeparat & dividit.* Venatorius de Sent. Excom'. The form of an excommunication was of old: *Auctoritate Dei Patris omnipotentis & Filii & Spiritus Sancti, & Beatæ Dei Genetricis Mariæ, omniumque Sanctorum,* excommunicamus, *anathematizamus, et a limitibus Sanctæ Matris Eccleſiæ ſequeſtramus, &c.* Leg. *Wil.* 1.

The ſentence of excommunication was inſtituted originally for preſerving the purity of the church; but eccleſiaſtics did not ſcruple to convert it into *an engine for promoting their own power,* and *inflicted it on the moſt frivolous occaſions.* Robertſ. Hiſt. Emp. *Charles* V. 2 V. 109, &c.

Herein is to be conſidered,

I. *In what caſes and by whom perſons may be excommunicated.*

II. *Of the diſabilities the excommunicated are under.*

III. *Of the proceedings in excommunications, and how the excommunicated are abſolved.*

I. *In what caſes and by whom perſons may be excommunicated.*

This excommunication is generally for contempt in not appearing, or not obeying a decree, *&c.* And in other reſpects the cauſes of it are many; as for matters of hereſy, refuſing to receive the ſacrament, or to come to church; incontinency, adultery, ſimony, *&c.* A man may not be excommunicated for matter of defamation, *&c.*

In ſome caſes perſons incur excommunication *ipſo facto* by act of parliament; but they are to be firſt convicted of the offence by law, and the conviction is tranſmitted to the ordinary. *Dyer* 275. 1 *Ventr.* 146.

By *Ed.* 6. *c.* 4. "If any perſon ſhall ſmite, or lay violent hands upon any other, either in any church or churchyard, that then *ipſo facto* every perſon ſo offending ſhall be deemed excommunicate, and be excluded from the fellowſhip and company of *Chriſt*'s congregation."

And it is further enacted by the ſaid ſtatute, "That if any perſon ſhall maliciouſly ſtrike any perſon with any weapon, in any church or churchyard, or ſhall draw any weapon in any church or churchyard, to the intent to ſtrike another with the ſame weapon, that then every perſon ſo offending ſhall ſtand *ipſo facto* excommunicated as aforeſaid."

By the *Stat.* 3 *Jac.* 1. *cap.* 5. *ſect.* 11. & 12. it is enacted, "That every popiſh recuſant convict ſhall ſtand to all intents and purpoſes diſabled, as a perſon lawfully excommunicated."

None but the biſhop is to certify excommunication, unleſs the biſhop be beyond ſea, or *in remotis*; or except the certificate be by one that hath ordinary juriſdiction, *&c.* And if the ordinary excommunicates a perſon for any thing where he hath not cogniſance of the cauſe; the party may bring an action againſt him, or the ordinary it is ſaid may be indicted. *Co. Lit.* 134. 2 *Inſt.* 527. *Wood's Inſt.* 508.

Anno 38 *H.* 3. *Boniface* archbiſhop of *Canterbury,* and the other biſhops, with burning tapers in their hands, in *Weſtminſter-Hall* before the King, and the other eſtates of the realm, denounced a curſe and excommunication againſt the breakers of the liberty of the church: and by *Stat.* 9 *E.* 3. Biſhops may excommunicate not only all perturbers of the peace of the church, but alſo felons, and other offenders, *&c.* And by the eccleſiaſtical laws, excommunicated perſons are not permitted to have Chriſtian burial.

II. *Of the diſabilities the excommunicated are under.*

An offender excommunicated is diſabled to do any judicial act, as to ſue any action at law, be a witneſs, *&c.* though he may be ſued: but every excommunication doth not diſable one; for if a mayor and commonalty bring an action, an excommunication of the mayor ſhall not diſable them, becauſe they ſue and anſwer by attorney: and if a biſhop is defendant, an excommunication by that biſhop ſhall not diſable the plaintiff: and an excommunication againſt an appellant, while the appeal is depending, is void. *Co. Lit.* 134. 4 *Inſt.* 340. *Wood* 508.

Excommunication is a good plea to an executor or adminiſtrator, though they ſue in *auter droit,* for an excommunicate perſon is excluded from the body of the church, and incapable to lay out the goods of the deceaſed to pious uſes: alſo it is one of the effects of excommunication, that he cannot be a procurator or attorney for any other perſon, and therefore cannot repreſent the deceaſed. 43 *E.* 3. 13. *Co. Lit.* 134.

Excommunication is no plea in a *qui tam,* becauſe it is for example; and the ſtatute having given the informer an ability to ſue, and *not excepted excommunicated perſons from the liberty of informing,* he is enabled to ſue by the ſtatute, notwithſtanding the cenſures of the church. 12 *Co.* 61.

When excommunication is pleaded in the plaintiff, he ſhall not reply, that he has appealed from the ſentence, for the ſentence is in force until it is repealed; and whilſt it is in force, he cannot appear in any of the courts of juſtice, but he may reply, *he is abſolved*; for then his diſability is taken away. *Bro. Excommunication* 3. 3 *Bulſt.* 72. 20 *H.* 6. 25. *Placita. Gen.* 10, 72.

III. *Of the proceedings in excommunications, and how the excommunicated are abſolved.*

Excommunication is publiſhed in the church, and if the offender do not ſubmit in forty days, then the biſhop is to certify the excommunication into the temporal courts, ſetting forth ſpecially the cauſe of excommunication, that the judges may ſee whether the eccleſiaſtical court hath cogniſance of the matter; and thereupon the party may be taken and impriſoned by virtue of the writ *ſignificavit* or *capias excommunicatum,* and is to remain in priſon till he ſubmits and is abſolved; when the biſhop likewiſe certifying the ſame, another writ iſſues to the ſheriff to diſcharge him. 2 *Inſt.* 189. 8 *Rep.* 68. 2 *Nelſ. Abr.* 768.

The biſhop's certificate, if he die before the return of the writ, ſhall not be received, for his ſucceſſor ſhall certify; the *ſignificavit* muſt mention that the party lived within the dioceſe where he was excommunicated, and by what biſhop; if it be pleaded, the time when is to be ſhewn; and excommunication muſt be declared in the eccleſiaſtical court before they proceed, *&c.* 8 *Rep.* 68. *Cro. Jac.* 82. *Moor, ca.* 667. *Latch* 174. *Hetley* 86.

It hath been adjudged, that the ſpiritual court hath not power to meddle with the body of any perſons whatſoever, or to ſend proceſs to take them; for if a perſon is excommunicate for contempt, *&c.* they ought to certify it into the Chancery, whence it is ſent into *B. R.* and thence iſſues proceſs. *Cro. Eliz.* 741. See the next article, *Excommunicato Capiendo.*

As to the method by which perſons excommunicated may be abſolved.

If a perſon be unjuſtly excommunicated for a matter of which the ſpiritual court hath not conuzance, and he is taken on a writ of *excommunicato capiendo,* the party grieved ſhall have a writ out of Chancery to the ſheriff, to deliver him out of priſon. 2 *Inſt.* 623. 12 *Co.* 76. *F. N. B.* 141.

So if the ſpiritual court proceeds *inverſo ordine*, as if they refuſe a copy of the libel, *&c.* a prohibition ſhall go, with a clauſe to abſolve and deliver the party injured. 1 *Sid.* 232.

Alſo if a man be excommunicated, and offers to obey and perform the ſentence, and the biſhop refuſeth to accept it, and to *aſſoil* him, he ſhall have a writ to the biſhop, requiring him, upon performance of the ſentence, to *aſſoil* him; and the reaſon thereof is, for that by the excommunication the party is diſabled to ſue any action, or to have any remedy for any wrong done unto him, ſo long as he ſhall remain excommunicate; and alſo the party grieved may have his action upon his caſe againſt the biſhop, in like manner as he may when the biſhop doth excommunicate him for a matter which belongeth not to the eccleſiaſtical conuſance; alſo the biſhop, in thoſe caſes, may be indicted at the ſuit of the King. 2 *Inſt.* 623.

But if the excommunication be for a juſt cauſe, the party muſt make preſent ſatisfaction before he can be abſolved, or he muſt put in caution, that he will hereafter perform that which the biſhop ſhall reaſonably and according to law enjoin him; which caution, in the Civil law, is of three ſorts. 1. *Fidejuſſoria*, as when a man bindeth himſelf with ſureties to perform ſomewhat. 2. *Pignoratio*, or *realis cautio*, as when a man engageth goods or mortgageth lands for the performance. 3. *Juratoria*, when the party who is to perform any thing, taketh a corporal oath to do it; which laſt is now the moſt frequent method.

This method of taking caution was held to be againſt law. 1 *Bulſt.* 122.—— But was afterwards on great debate held to be good; and that the biſhop having a diſcretionary power herein, it was as much in his option to take caution by obligation as by either of the two other methods. 2 *Lev.* 36. *Raym.* 225.

If after a perſon is excommunicated, there comes a general act of pardon, which pardons all contempts, *&c.* it ſeems that this offence is taken away without any formal abſolution. See *Cro. Car.* 199. *Cro. Jac.* 212. 8 *Co.* 68. 1 *Jon.* 227. 2 *Lev.* 36. *Gibſ. Cod.* 1110.

Excommunicato Capiendo, Is a writ directed to the ſheriff for apprehending him who ſtands obſtinately excommunicated *forty days*; for the contempt of ſuch a perſon not ſeeking abſolution, being certified or ſignified into the Chancery; this writ iſſues for the impriſoning him without bail or mainpriſe until he conforms. *F. N. B.* 62. By the *Stat.* 5 *Eliz. c.* 23. Writs *de excommunicato capiendo* ſhall iſſue out of the court of Chancery in term-time, and be returnable in *B. R. &c.* They ſhall be brought ſealed into the *King's Bench*, and there opened and delivered of record to the ſheriff, and there muſt be twenty days between the *teſte* and the return: and if the ſheriff return a *non eſt inventus* on the writ, a *capias* with proclamation is to be granted for the party to yield his body to gaol under the penalty of 10 *l.* And if he do not appear on the firſt *capias* and proclamation, a ſecond is to go forth, and he is to forfeit 20 *l. &c.*

But, by this ſtatute, if in the *excommunicato capiendo*, the party excommunicated hath not a ſufficient addition, as to his place of dwelling, *&c.* according to 1 *H.* 5. *c.* 6. Or if in the *ſignificavit* it is contained, that the excommunication proceeds upon a cauſe of contempt or ſome original matter of *hereſy*; for refuſing to have a child *baptized*, to receive the *ſacrament*, to come to *divine ſervice*, or for *error* in matters of *religion* and doctrine, for *incontinency*, *uſury*, *ſimony*, *perjury* in the eccleſiaſtical courts, or *idolatry*; he ſhall not incur the penalties in this act, for his contempt in not rendering himſelf priſoner upon the *capias*, *&c.* So that the ſtatute doth not require the *capias* with proclamations, and the penalties in other caſes, beſides the ten caſes mentioned. 2 *Inſt.* 661.

And it has been adjudged, where a perſon has been excommunicated, and none of thoſe cauſes were contained in the *ſignificavit*, that the perſon excommunicate ſhould be diſcharged of the penalties; but not of the excommunication. 3 *Mod.* 89. It has alſo been held, that for any of the cauſes expreſſed in the ſtatute there ought to go a *capias* with a penalty, and be an addition to the writ: in other caſes it is not neceſſary; and if then the *capias* be with a penalty, the court will not diſcharge the party, but the penalty only: but for want of addition, in caſes where that is required, the party ſhall be diſcharged upon motion. 1 *Salk.* 294, 295. See a very full *Comment* on the *Stat.* 25 *Eliz. c.* 23. for the due execution of this writ, and the *mode of proceeding* which *the party who is taken* ought to purſue, in *Britiſh Liberties*, *fo.* 224, *&c.*

Excommunicato Deliberando, Is a writ to the ſheriff for delivery of an excommunicate perſon out of priſon, upon certificate from the ordinary of his conformity to the eccleſiaſtical juriſdiction. *F. N. B.* 63. *Reg. Orig.* 67. And where a man is unduly excommunicated, he may be delivered in ſome caſes by an *habeas corpus*; and ſometimes by pleading, as well as by an *excommunicato deliberando*: alſo ſometimes by prohibition, *&c.* And on a general pardon, the party may have a writ to the biſhop to abſolve him. 12 *Rep.* 76. *Latch* 205. *Godb.* 272. If a plaintiff in an action be excommunicate, and after he gets letters of *abſolution*; on ſhewing them in court, he may have a re-ſummons, *&c.* upon his original. 1 *Inſt.* 133.

Excommunicato Recipiendo, Is a writ whereby perſons excommunicated being for their obſtinacy committed to priſon, and unlawfully delivered, before they have given *caution* to obey the authority of the church, are commanded to be ſought after and impriſoned again. *Reg. Orig.* 67.

Execution, *(executio)* Signifies the laſt performance of an act, as of a judgment, *&c.* And is the obtaining of poſſeſſion of any thing recovered by judgment of law. 1 *Inſt.* 289. Sir *Edw. Coke*, in his Reports, makes two ſorts of executions; one *final*, another with a *quouſque*, tending to an end: an execution *final* is that which makes money of the defendant's goods, or extends his lands, and delivers them to the plaintiff, which he accepts in ſatisfaction, and is the end of the ſuit, and all that the King's writ requires to be done; the other writ with a *quouſque*, though it tendeth to an end, is not final: as in caſe of a *capias ad ſatisfaciendum*, which is not a final execution, but the body of the party is to be taken, to the intent the plaintiff be ſatisfied his debt, *&c.* and the impriſonment of the defendant not being abſolute, but *until* he do ſatisfy the ſame. 6 *Rep.* 87.

Under this head it is material to conſider,

I. *Of the nature and ſeveral kinds of executions, and what things were liable thereto at Common law, &c.*

II. *Of the judgments on which the ſeveral executions may be taken out, and where the party ſhall be concluded by the election of one of them, &c.*

III. *By whom, againſt whom, and at what time executions may be ſued, and by whom they ſhall be executed, and how they are to be releaſed and diſcharged.*

IV. *To what time executions ſhall relate, ſo as to avoid alienation, and of the King's prerogative in reſpect of executions.*

V. *Of the party's remedy againſt irregular executions, and of the offence of obſtructing execution.*

I. *Of the nature and ſeveral kinds of executions, and what things were liable thereto at Common law, &c.*

The writs of execution at Common law were only a *fi. fa.* on the goods and chattels; and a *levari facias* to levy the debt or damages upon the land and chattels: afterwards a *ca. ad ſatisfac.* was given by *Stat.* 25 *Ed.* 3. *c.* 17. And an *elegit* by *Stat. Weſtm.* 2. *c.* 18. which makes the body liable, and the future profits of lands, *&c.* 1 *Inſt.* 154. 2 *Inſt.* 394.

The reaſon why by the Common law, where a ſubject had execution for debt or damages, he could not have the body of the defendant, or his lands in execution, (unleſs it were in ſpecial caſes) was, that the defendant's body might be at liberty, not only to follow his own affairs and buſineſs, but alſo to ſerve his King and country; and taking away the poſſeſſion of his lands would hinder the following of his huſbandry and tillage. 2 *Inſt.* 394.

Though neither the body nor lands of the debtor on a judgment could be taken in execution at Common law, but only his goods; yet in action of debt againſt an heir, upon the bond of his anceſtor, his land which he had by diſcent was ſubject to be taken in execution. 3 *Rep.* 11. In action of debt againſt the heir upon his anceſtor's bond, there was judgment by *nil dicit:* and it was held that the plaintiff ſhould have execution againſt the heir, of any of his own lands or goods. *Dyer* 89, 149. Judgment was had againſt the heir by *nil dicit*, and a *ſcire facias* being brought againſt him to have execution, he pleaded *riens per diſcent*; it was adjudged that this plea was too late after the judgment by *nil dicit*, and the execution ſhall be on his own lands. *Dyer* 344.

But there is a difference between a *ſcire facias* and an *action of debt* brought againſt an heir upon a bond of his anceſtor, in which the heir is named. *Poph.* 193. On a judgment for the debt of an anceſtor, where the heir hath made over lands deſcended to him, execution may be taken againſt ſuch heir to the value of the land, *&c.* for the debt of his anceſtor, as if his own debt. *Stat.* 3 *&* 4 *W. & M. c.* 14.

If a perſon have judgment given againſt him for debt or damages, or be bound in a recognizance and dieth, and his heir be within age, no execution ſhall be ſued of the lands during the minority; and againſt an heir within age, no execution ſhall be ſued upon a ſtatute merchant or ſtaple, *&c.* 1 *Inſt.* 290. There is an execution on body, lands and goods, upon a ſtatute merchant, ſtaple and recognizances. 1 *Inſt.* 289. 2 *Inſt.* 678.

In *perſonal actions*, execution is either by *capias ad ſatisfaciend.* or *fieri facias* againſt the body or goods; or *elegit* againſt the lands, *&c.* In *real* and *mixed* actions the writs of execution are *habere facias ſeiſinam*, to put the party in poſſeſſion of his freehold recovered by judgment of law; and *habere facias poſſeſſionem*, to put him in poſſeſſion of his term, *&c.* And after judgment, iſſues proceſs of execution; for it begins where the action ends. No execution for damages recovered in a real action, ſhall be had by *capias ad ſatisfaciendum:* but where a man hath judgment to recover lands and damages, he may have execution of both together. 8 *Rep.* 141.

Whatever may be *aſſigned* or *granted* may be taken on an execution. *Francis* and *Naſh Rep.* temp. *Hardw. per Annaly.* 53. Nothing can be taken in execution that cannot be *ſold*, as deeds, writings, *&c.* *Id.* *Banknotes, &c.* cannot be taken in execution as they remain, in ſome meaſure, *choſes in action.* Ib.

II. *Of the judgments on which the ſeveral executions may be taken out, and where the party ſhall be concluded by the election of one of them,* &c.

When a judgment is ſigned, execution may be taken out immediately upon it, and need not be delayed till it is entered, it being a perfect judgment of the court before entered. *Co. Lit.* 505. And if the judges of the court of *B. R.* ſee one againſt whom there is a judgment of that court walk in *Weſtminſter* hall, they may ſend an officer to take him up, if the plaintiff deſire it, without a writ of execution. *Farreſt. Rep.* 52. If execution be not ſued *within a year and a day* after judgment, where there is no fault in the defendant, as if writ of error be not brought, *&c.* there muſt be a *ſcire facias* to revive the judgment, which in that time may be had without moving the court; but if it be of longer ſtanding, the court is to be moved for it. 1 *Inſt.* 290. 2 *Inſt.* 771. But if the defendant be *outlawed* after judgment, (as he may where he cannot be taken in execution, or hath no lands or goods to pay the debt, *&c.* when the ſuit is commenced by original) the plaintiff need not renew the judgment by *ſcire facias* to obtain execution after a year. 1 *Inſt.* 290.

It hath been adjudged, that by the Common law, if a man was outlawed after judgment in debt, the plaintiff was at the end of his ſuit, and he could have no other proceſs after that perſonally; but was put to his new original, *&c.* 2 *Nelſ. Abr.* 772. If the plaintiff does not proceed upon the *ſcire facias*, he may bring an action upon the judgment: and after judgment againſt the defendant, in action where ſpecial bail hath been given, the plaintiff may have execution againſt the defendant, or proſecute his bail. *Common Law Com. placed* 206. If one be arreſted upon proceſs in *B. R.* and puts in bail; and afterwards the plaintiff recovers, and the defendant renders not himſelf according to law, in ſafe-guard of his bail, the plaintiff may at his election take execution againſt the principal, or his bail after judgment againſt them; but if he takes the bail, he ſhall never afterwards meddle with the principal. *Cro. Jac.* 320.

If one recovers jointly againſt two in debt, the execution muſt be joint againſt them: the court cannot divide an execution, which is intire, and grounded on the judgment. *Mich.* 24 *Car. B. R.* A man and his wife recovered in an action of debt againſt the defendant 100 *l.* and damages; then the wife died, and the huſband prayed to have execution upon this judgment: the court at firſt inclined, that it ſhould not ſurvive to the huſband, but that adminiſtration ought to be committed of it, as a thing in action; but at laſt they agreed that the husband might take out execution, for that by the judgment it became his debt due to him in his own right. *Cro. Car.* 608. 1 *Mod. Rep.* 179, 180.

If judgment be againſt two, on the death of one, the plaintiff ſhall have execution by *ſcire facias* againſt the ſurvivor; and though he pleads, that the other defendant has an heir alive, *&c.* it will not prevent it. *Raym.* 26. And where two perſons recover in debt, and before execution one of them dies; it has been held that execution may be ſued in both their names by the ſurvivor, and it will be no error; which may be done without a *ſcire facias*. Noy 150. An execution may be executed after the death of the defendant; for his executor being privy, is bound as well as the teſtator: and where execution is once begun, it cannot be delayed, unleſs there appears irregularity; an *audita querela* is no *ſuperſedeas* to it, nor ſhall any thing ſtop the ſheriff from ſelling, *&c.* *Cro. Eliz.* 73. *Comberb.* 33, 389.

A man can have but one execution; but it muſt be intended *an execution with ſatisfaction*, and the body of the defendant is no ſatisfaction, only a pledge for the debt. 5 *Rep.* 86. When a perſon dies in execution, it is without ſatisfaction; ſo that the plaintiff may have a *fieri facias* againſt the goods, or *elegit* againſt the lands. It was not ſo at Common law. *Hob.* 57. But it is given by *Stat.* 21 *Jac.* 1. *c.* 24. Where a perſon was taken on a *capias utlagatum*, and died in priſon, the plaintiff having choſen this execution, which is the higheſt in law; it has been held that the defendant dying, the law will adjudge it a ſatisfaction. *Cro. Eliz.* 850.

By ſtatute, if a perſon in execution dies, a new execution ſhall iſſue againſt the lands, *&c.* as if he had never been taken in execution. 21 *Jac.* 1. *c.* 24. If an execution be executed and filed the party can have no other execution upon that judgment; becauſe there can be but one execution with ſatisfaction upon one judgment. 1 *Lill. Abr.* 565. If the execution be not returned and filed, another execution may be had: and if only part of the debt be levied on a *fieri facias*, another writ of execution may be ſued out for the reſidue thereof. *Ibid.*

But if you once charge the body of the defendant in execution on a *capias ad ſatisfaciend.* you may not have any other execution againſt his goods, *&c.* except the defendant make an eſcape, or is privileged, or die in execution. *Practiſ. Solic.* 248. Though if one take out any writs of execution, and they have no effect, he may have other writs on on their failure. *Hob.* 57.

In caſe any priſoner committed in execution ſhall eſcape, any creditor, at whoſe ſuit he ſtands charged, may retake him by a new *capias ad ſatisfaciend.* or ſue forth any other kind of execution, as if the body of ſuch priſoner had never been taken in execution. *Stat.* 8 *&* 9 *W.* 3. *c.* 27. Where two are bound *jointly and ſeverally*, and judgment is had againſt both of them, if one in execution eſcapes, the creditor may take out execution againſt the other: but if he go by licence of the creditor, then the other will be diſcharged. *Cro. Car.* 53. If one in execution be delivered by privilege of parliament, when the privilege ceaſes, the plaintiff may ſue out a new execution againſt him. 1 *Jac.* 1. *c.* 13.

III. *By whom, againſt whom, and at what time executions may be ſued, and by whom they ſhall be executed, and how they are to be releaſed and diſcharged.*

See *ante Diviſion* II.

No perſon is intitled to, or can ſue out execution, who is not privy to the judgment, or intitled to the thing recovered, as heir, executor, or adminiſtrator to him who has judgment. 1 *Rol. Abr*. 889.

If one have judgment to recover lands, and die before execution, his heir ſhall have it; and where tenant in tail recovers and dies before the execution without iſſue, he in remainder may ſue out execution: an heir is to have execution for lands, and the executor or adminiſtrator for damages. *Co. Litt*. 251. *Dyer* 26. The executors of executors may ſue out execution of a judgment; but an adminiſtrator getting judgment in behalf of the inteſtate, and then dying, neither his executor, or adminiſtrator ſhall take out the execution, but the adminiſtrator *de bonis non adminiſtratis* of the firſt inteſtate. 5 *Rep*. 9. And ſee 17 *Car*. 2. *c*. 18.

But if an adminiſtrator, *durante minori ætate* of an executor, recovers in debt, and before execution the executor comes of age, he ſhall have a *ſcire facias* on this judgment; for carrying on the ſuit in right of the executor, made the executor privy thereto. 1 *Rol. Abr*. 888-9.

If a man has judgment for the arrears of rent, and dies, his executor ſhall ſue out execution, and not the heir; for by the recovery it becomes a chattel veſted, to which the executor is intitled. 1 *Rol. Abr*. 880.

If a ſtatute be entered into, to huſband and wife, and the huſband dies, the wife ſhall take out execution. 1 *Rol. Abr*. 889.

So if huſband and wife recover lands and damages, and the huſband dies, the wife ſhall have execution of the damages, and not the executors of the huſband. 1 *Rol. Abr*. 342, 889, 890.

If there be judgment in debt againſt two, and one dies, a *ſcire facias* lies againſt the other alone, reciting the death; and he cannot plead, that the heir of him that is dead has aſſets by deſcent, and demand judgment, if he ought to be charged alone; for at Common law, the charge upon a judgment being perſonal ſurvived, and the ſtatute of *Weſtm*. 2. that gives the *elegit*, does not take away the remedy of the plaintiff at Common law; and therefore the party may take out his execution which way he pleaſes, for the words of the ſtatute are, *ſit in electione*; but if he ſhould, after the allowance of this writ and revival of the judgment, take out an *elegit* to charge the land, the party may have remedy by ſuggeſtion, or elſe by *audita querela*. Raym. 26. 1 Lev. 30. S. C. 1 Keb. 92, 123. S. C.

By the Common law, if judgment be given againſt a man for debt, or damages, and the defendant dies before execution ſued, his heir within age is not liable to execution during his minority; but *the parol muſt demur (i. e.* the plea muſt ſtand ſtill) in ſuch caſe till he comes of age. *Co. Lit*. 290. *a*. 1 *Rol. Abr*. 140.

And this privilege of infancy does not only protect the infant, but all others who are affected by the judgment; as if there be father and two daughters, and judgment be given for debt againſt the father, who dies, one of the daughters being within age, partition being made, the eldeſt ſhall not be charged alone, but ſhall have the benefit of her ſiſter's minority, which puts a ſtop to the execution. *Co. Lit*. 290. *a*.

There can be no execution taken out againſt a member of parliament during privilege of parliament: alſo no *capias* can iſſue againſt a peer; for even in the caſe of a private perſon at Common law, the body was not liable to creditors; and the ſtatute of *Ed*. 3. which ſubjects the body, does not extend to peers, becauſe their perſons are ſacred; as alſo the law ſuppoſes, that perſons thus diſtinguiſhed by the King, have wherewithal otherwiſe to ſatisfy their creditors. 6 *Co*. 52. *Hob*. 61. *Cro. Car*. 205.

If a writ of execution be taken out againſt *a clerk in holy orders*, on a judgment obtained againſt him, or upon a ſtatute ſtaple, or recognizance in nature of it, which he has entred into; and the ſheriff returns, *that he is a clerk*, he ought to extend his lay *fee and chattels*, or return that he hath neither; but if he returns, *quod clericus ſit beneficiatus nullum habens laicum feodum, ſed quod beneficiatus eſt* in ſuch a dioceſe, then a writ of *ſequeſtration* ſhall iſſue to the biſhop to ſequeſter the living. 1 *Rol. Abr*. 891. 2 *Rol. Abr*. 474. 2 *Inſt* 472. *Jenk*. 207.

A *capias ad ſatisfaciendum* may be executed upon a priſoner in priſon for felony; and if he be acquitted of the felony, the ſheriff is to keep him. 1 *Lil. Abr*. 567. But where a perſon is in priſon for criminal matters, he ought not to be charged with a civil action without leave of the court; yet if he be charged, he ſhall not be diſcharged. *Raym*. 58.

Where not allowed, on a pardon, ſee *Farreſt*. 153. A *ca. ſa*. will lie againſt a man who is outlawed for felony, and he may be taken in execution at the ſuit of a common perſon. *Owen* 69. And if he was taken upon a *capias utlagat*. which was at the King's ſuit, he ſhall be in execution at the ſuit of the party, if he will. *Moor* 566. But this is not without prayer of the party: and if after a judgment given, the judges of their own heads, or at the requeſt of any perſon, without prayer of the plaintiff, commit the defendant to priſon; by this he ſhall not be ſaid to be in execution for the plaintiff. *Dyer* 297. If one arreſted be in priſon for debt, and judgment is had againſt him; though it be in arreſt on a *latitat*, or *capias*, he ſhall not be in execution upon the judgment, unleſs the plaintiff prays it of record; or ſues a *capias ad ſatisfaciendum*, and delivers it to the ſheriff. *Dyer* 197, 306. *Jenk. Cent*. 165.

With reſpect to the time of ſuing execution.

At Common law, in *real* actions, where land was recovered, the demandant, after the year, might take out a *ſcire facias* to revive his judgment, becauſe the judgment being particular in the real action, *quoad* the lands with a certain deſcription, the law required, that the execution of that judgment ſhould be entred *upon the roll, that it might be ſeen, whether execution was delivered of the ſame thing of which judgment was given*: a *ſcire facias* iſſued to ſhew cauſe, why execution ſhould not be. 2 *Inſt*. 471. 5 *Co*. 88. *Cro. Eliz*. 416. 6 *Mod*. 288.

But if the plaintiff, after he had obtained judgment in any *perſonal* action, had lain quiet, and had taken no proceſs of execution within the year, he was put to a new original upon his judgment, and no *ſcire facias* was iſſuable at law on the judgment, becauſe there was not a judgment for any *particular thing in the perſonal action*, with which the execution could be compared; therefore after a reaſonable time, which was a year and a day, it was preſumed to be executed, and therefore the law allowed him no *ſcire facias* to ſhew cauſe why there ſhould not be execution; but if the party had ſlipped his time, he was put to his action on the judgment, and the defendant was obliged to ſhew how that debt, of which the judgment was an evidence, was diſcharged. 2 *Inſt*. 469. *Carth*. 30, 31. 1 *Sid*. 351.

To remedy this, and to make the forms of proceeding more uniform in both actions, the ſtatute of *Weſtm*. 2. *cap*. 45. gave the *ſcire facias* to the plaintiff to revive the judgment, where he had omitted to ſue execution within the year after judgment obtained.

A *ſcire facias* lies on a judgment in ejectment, for the words of the act are, *Sive ſervitia ſive conſuetudines ſive alia quæcunque irrotulata*, which comprehend all judgments, and give the like remedy on them by *ſcire facias*, as the demandant had on a judgment in a real action at Common law. 1 *Sid*. 351. 2 *Salk*. 600.

But tho' the general rule be, that the plaintiff cannot take out execution after the year and day without a *ſcire facias*, yet the rule muſt be underſtood with theſe reſtrictions.

That if the defendant brings a writ of error, and thereby hinders the plaintiff from taking his execution within the year, and the plaintiff in error is nonſuit, or the judgment affirmed, the defendant in error may proceed to execution after the year without a *ſcire facias*, becauſe the writ of error was a *ſuperſedeas* to the execution, and the plaintiff muſt acquieſce till he hears the judgment above; beſides, while the cauſe is ſtill *ſub judice*, it is not known, whether the plaintiff ſhall recover, or not, and the year for the execution ought to be accounted from the *final* judgment given. *Cro. Jac*. 364. *Yelv*. 7. 1 *Rol. Abr*. 899. 4 *Leon*. 197. 5 *Co*. 88. *Carth*. 236-7. 6 *Mod*. 288.

So if the plaintiff hath a judgment, with ſtay of execution for a year, he may, after the year, take out his execution without the *ſcire facias*, becauſe the delay is by conſent of parties, and in favour of the defendant; and *the indulgence of the plaintiff ſhall not turn to his prejudice*, nor ought the defendant to be allowed any advantage of it, when it appears to be done for his advantage, and at his inſtance. 6 *Mod.* 288. 1 *Rol. Rep.* 104.

But if the defendant had been tied up by an injunction out of Chancery for a year, yet he cannot take out execution without a *ſcire facias*, becauſe the courts of law do not take notice of Chancery injunctions, as they do of writs of error; beſides, in that caſe it had been no breach of the injunction to have taken out the execution within the year, and continued it down by *vic' non miſit breve*, which cannot be done in the caſe of a writ of error, *becauſe that removes the record out of the court where the judgment* was; and therefore there can be no proceedings below till it be affirmed, and returned to the inferior courts. 1 *Salk.* 322. 6 *Mod.* 288. *S. C.*

In debt, if defendant acknowledge the action for part, and as to the remainder pleads to iſſue, and the plaintiff hath judgment for that he confeſſeth; here he may not have execution till the iſſue is tried for that which he is to recover damages: though if he releaſes the damages, he may have execution preſently for the reſt. *Roll.* 897.

All judgments of *inferior courts* in debt are to be executed in the *peculiar juriſdictions* where given, and cannot be removed to be executed by the *ſuperior courts*. *Cro. Car.* 34. But if a judgment given in another court be affirmed, or reverſed for error in *B. R.* becauſe the proceedings in the court below are entered upon record in the *King's Bench*, the party ſhall have execution in that court: And ſo if a judgment of debt, *&c.* in the *Common Pleas* be affirmed in *B. R.* on a writ of error. 5 *Rep*, 88. Though where the record of a judgment given in *C. B.* is removed into *B. R.* the party cannot take out execution upon it, without a *ſcire facias quare* executionem *habere non debeat*. 1 *Lill. Abr.* 562. And where a writ of error is brought in the *Exchequer Chamber*, to reverſe a judgment in *B. R.* if the judgment is affirmed there, yet that court cannot make out execution upon the judgment affirmed; but the record muſt be tranſmitted back to the court of *King's Bench*, where execution muſt be done. 1 *Lill.* 565.

As an execution is an entire thing, he who begins muſt end it; a new ſheriff may diſtrain an old one to ſell the goods on a *diſtringas nuper vicecom.* and to bring the money into court, or ſell and deliver the money to the new ſheriff; and the authority of the old ſheriff continues by virtue of the firſt writ, ſo that when he hath ſeized, he is compellable to return the writ, and liable to anſwer the value according to the return; likewiſe by the ſeizure the property of the goods, *&c.* is diveſted out of the defendant, and he is diſcharged, whereby no further remedy can be had againſt him. 1 *Salk.* 322. 3 *Salk.* 159.

A ſheriff ſhall have his fees for executions, upon a writ of *capias ad ſatisfaciendum* for the whole debt; upon a *fieri fac.* according to the ſum levied; and on an *elegit* it is held by ſome, that he ſhall have fees according to what is levied, and by others for the whole debt recovered, becauſe the plaintiff may keep the land till he is ſatisfied the intire debt. 1 *Salk.* 333. Where the ſheriff hath a *fieri facias* or *ca. ſa.* againſt a man, and before execution, he pays him the money, execution may not be done afterwards; if it be, treſpaſs or falſe impriſonment lies. 5 *Rep.* 93. 12 *Car. B. R.*

It is laid down as a general rule in our books, that the ſheriff in executing any judicial writ, cannot break open the door of a dwelling-houſe; this privilege, which the law allows to a man's habitation, ariſes from the great regard the law has to every man's ſafety and quiet, and therefore protects them from the inconveniencies which muſt neceſſarily attend an unlimited power in the ſheriff and his officers in this reſpect; hence, every man's houſe is called his caſtle. 5 *Co.* 91, *&c.* 3 *Inſt.* 162. *Moor* 668. *Yelv.* 28. *Cro. Eliz.* 908. *Dalt. Sher.* 350.

Yet in favour of executions, which are the life of the law, and eſpecially in caſes of great neceſſity, or where the ſafety of the King and commonwealth are concerned, this general caſe hath the following exceptions:

1. That whenever the proceſs is at the ſuit of the King, the ſheriff or his officer may, after requeſt to have the door opened, and refuſal, break and enter the houſe to do execution, either on the party's goods, or take his body, as the caſe ſhall be. 5 *Co.* 91. *b.*

2. So in a writ of ſeiſin or *habere facias poſſeſſionem* in ejectment, the ſheriff may juſtify breaking open the door, if denied entrance by the tenant; for the end of the writ being to give the party full and actual poſſeſſion, conſequently the ſheriff muſt have all power neceſſary for this end; beſides, in this caſe the law does not, after the judgment, look upon the houſe as belonging to the tenant, but to him who has recovered. 5 *Co.* 91.

3. Alſo this privilege of a man's houſe relates only to ſuch execution as affects himſelf; and therefore if a *fieri facias* be directed to the ſheriff to levy the goods of *A.* and it happens that *A.*'s goods are in the houſe of *B.* if after requeſt made by the ſheriff to *B.* to deliver theſe goods, he refuſes, the ſheriff may well juſtify the breaking and entring his houſe. 5 *Co.* 93. *a.* 1 *Sid.* 186.

4. It hath been adjudged, that the ſheriff, on a *fieri facias*, may break open the door of a barn, ſtanding at a diſtance from the dwelling-houſe, without requeſting the owner to open the door, in the ſame manner as he may enter a cloſe, *&c.* 1 *Sid.* 186. 1 *Keb.* 698. *S. C.*

5. So on a *fieri facias*, when the ſheriff or his officers are once in the houſe, they may break open any chamber-door or trunks for the compleating execution. 2 *Show.* 87.

6. So if the ſheriff's bailiffs enter the houſe, the door being open, and the owner locks them in, the ſheriff may juſtify breaking open the door, for the ſetting at liberty the bailiffs; for if, in this caſe, he were obliged to ſtay till he could procure a *homine replegiando*, it might be highly inconvenient; alſo it ſeems, that in this caſe, the locking in the bailiffs is ſuch a diſturbance to the execution, that the court will grant an attachment for it. *Palm.* 52. *Cro. Jac. p.* 555. *S. C.* 2 *Roll. Rep.* 132. *S. C.*

7. That if the ſheriff in executing a writ, breaks open a door, where he has no authority for ſo doing by law, yet the execution is good, and the party has no other remedy but an action of treſpaſs againſt the ſheriff. 5 *Co.* 93. *a.*

If the ſheriff refuſes to execute any judicial writ; this is a contempt to the court, for which an attachment will be granted. 1 *Salk.* 323.

So if he executes the writ, and makes a falſe return, the party injured may have *an action on the caſe* againſt him. 1 *Salk.* 323.

As to the manner of releaſing and diſcharging executions.

By a releaſe of *all ſuits*, execution is gone; for no one can have execution without prayer and ſuit, but the King only, in whoſe caſe the judges ought to award execution *ex officio*, without any ſuit: And a releaſe of *all executions* bars the King. By releaſe of *all debts or duties*, the defendant is diſcharged of the *execution*, becauſe the debt or duty on which it is founded is diſcharged: But if the body of a man be taken in *execution*, and the plaintiff releaſe *all actions*, yet he ſhall remain in *execution*. *Co. Lit.* 291. If a judgment is given in action of debt, and the defendant taken in *execution*, the plaintiff releaſeth the *judgment*, the body ſhall be diſcharged of the *execution*: And if the plaintiff after judgment releaſeth *all demands*, the *execution* is diſcharged. *Ibid.* where one is in *execution* at my ſuit, and I bid the ſheriff let him go; this is a good diſcharge and releaſe both to the party and ſheriff. *Poph.* 207.

But if the plaintiff make a releaſe to the defendant *being in execution*, or other act amounting to a diſcharge;

it will not be a diſcharge *ipſo facto*, but by this means he may have the ſame. 5 *Rep*. 86. *Dyer* 152.

Perſons charged in *execution* for any ſum not exceeding 100*l*. in any gaol, who are willing to ſatisfy their creditors as far as they are able, may exhibit a petition to the court whence the proceſs iſſued, with an account of their whole eſtate upon oath, praying to be diſcharged, *&c*. And thereupon the court ſhall order the priſoner to be brought up, and his creditors ſummoned at a certain day, when the court in a ſummary way is to examine into the ſame, *&c*. and order the eſtate and effects of the priſoner to be aſſigned to the creditors by indorſement on the back of the petition; whereupon the priſoner ſhall be *diſcharged out of priſon*; but if creditors are diſſatisfied with the truth of the priſoner's oath, he is to be remanded till another day, and then if his creditors cannot diſcover any effects omitted, he ſhall be releaſed; unleſs the creditors inſiſt on the priſoner's being detained in priſon, and agree by writing to pay him 2*s*. 4*d*. a week, *&c*. *Stat*. 32 *Geo*. 2. *c*. 28. *ſect*. 13.

Priſoners in execution *ut ſupra* in any priſon (except in *London* and *Weſtminſter*) before they petition any of the courts from whence the proceſs iſſued for a rule to be brought up, are to give notice to their creditors in writing, that they deſign to petition, and alſo a true copy of the account or ſchedule of their whole eſtates which they intend to deliver into the court, *&c*. And then, upon ſuch petition, the priſoners ſhall have a rule of court to be brought to the next aſſizes for the county, at an expence not exceeding 12*d*. a mile, to be paid to the officer out of the effects of the priſoners, *&c*. And the creditors muſt be ſummoned to appear at the ſaid aſſiſes by order ſerved on them, or left at their houſes thirty days before; and at the aſſiſes, the judges on examination ſhall determine the matter, and give judgment and relief; a record of which judgment is to be returned and certified to the court whence the proceſs iſſued, on which the priſoners were taken in execution. No perſon charged in execution, ſhall be allowed to exhibit a petition to any court at law to be diſcharged, purſuant to the above acts, unleſs it be done before the end of the next term after he is charged; and thoſe ſtatutes ſhall not relate to any one taken on a *capias* for running cuſtomable goods, *&c*. Vide 32 *Geo*. 2. *c*. 28. *ſect*. 13, 14, 15.

IV. *To what time executions ſhall relate, ſo as to avoid alienation, and of the king's prerogative in reſpect of executions.*

Writs of execution bind the property of *goods* only from the time of the *delivery of the writs* to the ſheriff; who upon receipt thereof indorſes the day of the month when received: But *land* is bound from *the day of the judgment*. Stat. 29 Car. 2. c. 3. Cro. Car. 149. But the judgment *muſt be docketed*, by 4 *&* 5 *W*. *&* *M*. *c*. 20. See *Poſt*. Notwithſtanding this *ſtatute*, if after the writ delivered to the ſheriff, and *before execution is executed*, the defendant becomes *bankrupt*, that will hinder execution. 3 *Salk*. 159. The plaintiff takes out execution by *fieri facias* againſt the defendant; all the goods and chattels that he had at the time of the execution, will be liable to it: And where debt or damages are recovered, the plaintiff ſhall have execution of any land the defendant had *at the time of the judgment*; not of the lands he had the day when the firſt writ was purchaſed. *Rol. Abr*. 892. Sheriffs may deliver in execution all lands whereof others ſhall be ſeiſed in truſt for him againſt whom execution is had, on a judgment, *&c*. 29 Car. 2. c. 3. If there are chattels ſufficient, the ſheriff ought not to take the lands; nor may things fixed to the freehold, goods bought *bona fide*, goods pawned, *&c*. be taken in execution. 8 *Rep*. 143. And if a defendant hides his goods in ſecret places, ſo that the plaintiff cannot take them in execution, it is ſaid no action will lie againſt him. 5 *Rep*. 92, 93.

The ſale of goods for a valuable conſideration, after judgment, and before execution awarded, is good: And if judgment be given againſt a leſſee for years, and afterwards he ſelleth the term before execution, the term aſſigned *bona fide* is not liable; alſo if he aſſign it by fraud, and the aſſignee ſells it to another for a valuable conſideration, it is not liable to execution in the hands of the ſecond aſſignee. *Godb*. 161. 2 *Nelſ. Abr*. 783. If a perſon has a bill of ſale of any goods, in nature of a ſecurity for money, he ſhall be preferred for his debt to one who hath obtained a judgment againſt the debtor before thoſe goods are ſold; for till execution lodged in the ſheriff's hands, a man is owner of his goods, and may diſpoſe of them as he thinks fit, and they are not bound by the judgment. *Preced. Ch*. 286. *Qu*. If the buyer ſhould not be in poſſeſſion? *Vide poſt*.

But where a man generally keeps poſſeſſion of goods after ſale, it will make the ſame void againſt others, by the ſtatute of fraudulent conveyances. And where on an execution, the owner of the goods by agreement was to have the poſſeſſion of them upon certain terms; afterwards another got judgment againſt the ſame perſon, and took thoſe goods in execution: It was adjudged they were liable, and that the firſt execution was by fraud, and void againſt any ſubſequent creditor; becauſe there was no change of the poſſeſſion, and ſo no alteration of property. *Ibid*. 287.

A *fieri facias* being executed fraudulently, a *fieri facias* at the ſuit of another perſon afterwards ſhall ſtand good, and be preferred; and on trial, it is a matter proper to be left to a jury. *Bradley* v. *Wyndham, ſheriff of Hampſhire*. *Wilſ. Rep. Par*. 1. *fo*. 44.

Execution may be made of lands that the defendant hath by purchaſe after the judgment; although he ſell the ſame before execution. *Roll*. 892. Where there is an execution againſt goods or chattels, of a tenant for life, or years, the plaintiff before removal of the goods by the execution is to pay the landlord the rent of the land, *&c*. ſo as there be not above a year due; and if more be due, paying a year's rent, the plaintiff may proceed in his execution, and the ſheriff ſhall levy the rent paid, as well as the execution money. *Stat*. 8 *Ann*. *c*. 17.

For the greater ſecurity of purchaſers, it is enacted by the 4 *&* 5 *W*. *&* *M*. *c*. 20. That the clerk of the eſſoins of the court of *C. B.* the clerk of the doggets of the court of King's Bench, and the maſter of the office of pleas in the court of Exchequer, ſhall make and put into an alphabetical dogget, by the defendant's names, a particular of all judgments by confeſſion, *non ſum informatus*, *nibil dicit*, &c. entred in their ſeveral courts, *&c*. and that no judgment not doggeted, and entred in the books as aforeſaid, ſhall affect any lands or tenements as to purchaſers or mortgagees, or have any preference againſt heirs, executors or adminiſtrators, in their adminiſtration of their anceſtors, teſtators or inteſtate's eſtates."

With reſpect to the King's prerogative.

The King, by his prerogative, may have execution of the body, lands, or goods of his debtor, at his election. *Hob*. 60. 2 *Inſt*. 19. 2 *Rol. Abr*. 472.

And here we muſt obſerve, that the King's execution relates, as to *land*, to the time of *becoming in debt* to the King; for as to debts that were of record, they always bound the lands and tenements; for all lands being held mediately or immediately from the King, when any debt was returned of any perſon, it laid the eſtate as liable to ſuch debt, as if it had been a reſervation on the firſt grant. 8 *Co*. 171. 2 *Rol. Abr*. 156, 157.

And as to debts not of record, they bind the lands from the time they are entered into; but this is by force of the ſtatute 33 *H*. 8. *cap*. 39.

As to the King's execution of *goods*, the ſame relates to the time of the awarding thereof, which is the *teſte* of the writ, as it was in the caſe of a common perſon at law; for though by the 29 *Car*. 2. *cap*. 3. No execution ſhall bind the property of goods, but from the time of the delivery of the writ to the ſheriff; yet as this act does not extend to the King, an *extent* of a *later teſte* ſuperſedes an *execution* of the goods by a *former* writ; becauſe by the King's prerogative at Common law, if there had been an execution at the ſubjects ſuit, and afterwards an extent, the execution was ſuperſeded till the extent was executed, becauſe the publick ought to be preferred to private property. 2 *New Abr*. 363.

If the King's debt be *prior on record*, it binds the lands of the debtor, into whoſe hands ſoever they come, becauſe it is in the nature of an original charge upon the land itſelf, and therefore muſt ſubject every body that claims under it; but if the lands were aliened in whole, or in part, as by granting a jointure before the debt contracted, ſuch alienee claims prior to the charge, and in ſuch caſe the land is not ſubject. See 2 *Roll. Abr.* 156-7. *Moor* 126. 3 *Leon.* 239, 240. 4 *Leon.* 10.

V. *Of the party's remedy againſt irregular executions, and of the offence of obſtructing executions.*

An execution may be ſet aſide as irregular, by *ſuperſedeas*; and the party have reſtitution, *&c.* *Carthew* 460, 461, 468. It hath been reſolved, that a writ of error is a *ſuperſedeas* from the time of the allowance: though if a writ of execution be executed before the writ of error is allowed, it may be returned afterwards. 1 *Salk.* 321. No writ of execution ſhall be ſtayed by any writ of error or *ſuperſedeas, after verdict and judgment*, in any action upon the caſe for payment of money, covenant, detinue, treſpaſs, *&c.* until recognizance be entered into as directed by 3 *Jac.* 1. *cap.* 8. *Stat.* 13 *Car.* 2. *cap.* 2. And judgment was had againſt a perſon at *Briſtol*, and his goods attached there; and the court of *B. R.* being moved to ſtay the execution until a writ of error brought ſhould be determined, they granted a *habeas corpus*, but nothing to ſtay the execution. 1 *Bulſt.* 268.

A defendant cannot plead to any writ of execution, (tho' he may in bar of execution to a *ſcire facias* brought;) but if he hath any matter after judgment to diſcharge him of the execution, he is to have *audita querela*. Co. Lit. 290. Or, move the court for relief, which is now the uſual method.

If huſband and wife are taken in *execution* for the debt of the wife, the wife ſhall be diſcharged; for the huſband being in execution, the wife ſhall not be ſo alſo, and becauſe the wife hath nothing liable to the execution. 1 *Lev.* 51.

The execution of a *liberate* is good without being returned; and where a man is taken upon a *ca. ſa.* the execution is good, though the writ is not returned: And ſo in all caſes where no inqueſt is to be taken, but only lands delivered, or ſeiſin had, *&c.* which are only matters of fact. 4 *Rep.* 67. 5 *Rep.* 89.

With regard to the obſtructing of execution.

There were anciently caſtles, fortreſſes and liberties, where they reſiſted the ſheriff in executing the King's writs, which creating great inconvenience, the ſtatute of *Weſtm.* 2. *cap.* 39. (13 *Ed.* 1.) hindered the ſheriff from returning reſcuers to the King's writ of execution, and directed him to take the *poſſe comitatus.* See the *Stat.* and 2 *New Abr.* 368.

The judges conſtrued the words of the ſtatute to extend only to *executions*, and not to writs on meſne proceſs, that the ſheriff was not obliged to carry the *poſſe comitatus* where the man was bailable, for they did not preſume, that in ſuch caſes the King's writ would be diſobeyed. 2 *New Abr.* 368.

The original of commitment for contempts ſeems to be derived from this ſtatute; for ſince the ſheriff was to commit thoſe who reſiſted the proceſs, the judges who awarded ſuch proceſs muſt have the ſame authority to vindicate it; hence, if any one offers any contempt to his proceſs, either by word or deed, he is ſubject to impriſonment during pleaſure, *viz. from whence they ſhall not be delivered without the King's ſpecial commandment*; ſo that, notwithſtanding the ſtatute of *Magna Charta*, that none be impriſoned *without judgment of their peers, or by the law of the land*, this is one part of the law of the land to commit for contempts, and confirmed by this ſtatute. 2 *New Abr.* 368. See tit. *Debt-Error.*

Execution for the *King's debt*, or *prerogative execution*, is always preferred before any other executions. 7 *Rep.* 20. And if a defendant is taken by *capias ad ſatisfaciendum*, and before the return thereof a *prerogative* writ iſſues from the *Exchequer*, for the debt of the King, teſted a day before he was taken, here he ſhall be held in execution for the King's debt, and that of the ſubject. *Dyer* 197. Lands *intailed* in the hands of the iſſue in tail, when ſubject to the King's extent, and where not, ſee 7 *Rep.* 21. See alſo *King.*

Execution of Criminals, Muſt be according to the judgment, and the King cannot alter a judgment from hanging to beheading, becauſe no execution can be warranted unleſs it be purſuant to the judgment. 3 *Inſt.* 52, 211. *H. P. C.* 272. But there are ancient precedents, wherein men condemned to be hanged for felony, have been beheaded by force of a ſpecial warrant from the King. *Bract.* 104. *Staundf.* 13. And the King may pardon part of the execution in judgment for treaſon, *viz.* all but beheading. The court may command execution to be done without any writ: though ſometimes execution is commanded by writ. 2 *Hawk. P. C.* 463. Judgment belongs to the judge; but the execution muſt be done by the ſheriff, *&c.* And an execution cannot be lawfully made by any but the proper officer; who may do it on the precept of the judge under his ſeal: And if the ſheriff, or other officer, alters the execution, or any other executes the offender, or if he is killed without authority of law, it is felony. 2 *Hawk* *Ibid.*

It is ſaid by *Hale* Chief Juſtice, That there is no warrant for the execution of perſons condemned, but a calendar directing it left with the ſheriff, under the hand of the juſtice that ſits; though anciently there was a precept, or warrant, under their hands and ſeals: And where the priſoner is in cuſtody of the ſheriff, the open pronouncing and entering the judgment *ſuſpendatur*, is a warrant for the execution. 2 *Hale's Hiſt. P. C.* 31, 409. See *ante* tit. *Calendar of Priſoners.*

Subſequent juſtices have no power by the *Stat.* 1 *Ed.* 6. *c.* 7. to award execution of perſons condemned by former judges; but if judgment has not been paſſed on the offenders, the other juſtices may give judgment and award execution, *&c.* 2 *Hawk.* 27. Execution ought to be in the ſame county where the criminal was tried and convicted; except the record of the attainder be removed into *B. R.* which may award execution in the county where it ſits. 3 *Inſt.* 31, 211, 217.

If upon a record removed, an outlawed perſon confeſs himſelf to be the ſame perſon, execution ſhall be had; but if he deny it, and the King's Attorney confeſſes he is not, he ſhall be diſcharged; though if the Attorney-General take iſſue upon it, the ſame ſhall be tried. 2 *Hale's Hiſt. P. C.* 402, 463. If a perſon, when attainted, ſtands mute to a demand why execution ſhall not go againſt him, the ordinary execution (and not penance) ſhall be awarded. 2 *Hawk.* 462. In caſe a man condemned to die, come to life after he is hanged, as the judgment is not executed till he is dead, he ought to be hung up again. *Finch* 389.

If a woman quick with child be condemned either for treaſon, or felony, ſhe may alledge her being with child in order to get the execution reſpited, and thereupon the ſheriff, or marſhal ſhall be commanded to take her into a private room, and to impanel a jury of matrons to try and examine whether ſhe be quick with child or not; and if they find her quick with child, the execution ſhall be reſpited till her delivery. But it is agreed, that a woman cannot demand ſuch reſpite of execution by reaſon of her being quick with child more than once; and that ſhe can neither ſave herſelf by this means from pleading upon her arraignment, nor from having judgment pronounced againſt her upon her conviction. Alſo it is ſaid, both by *Staundford* and *Coke*, that a woman can have no advantage from being found with child, unleſs ſhe be alſo found *quick* with child. 2 *Hawk. P. C.* 462, 463, 464.

The body of a traitor or felon is forfeited to the King by the execution; and he may diſpoſe of it as he pleaſes. The execution of perſons under the age of diſcretion is uſually reſpited, in order to obtain a pardon. 1 *Hawk* 2. By the *Stat.* 25 *Geo.* 2. *c.* 37. Perſons convicted of murder are to be executed the day after ſentence, and their bodies delivered to ſurgeons to be anatomiſed. The judge may ſtay the ſentence, and appoint the body to be hung in chains or anatomiſed, but not buried.

Execution of Statutes. The court of *Star Chamber* erected in the reign of King *Hen.* 7. was ſaid to be for for the *execution of Statutes*, &c. *Stat.* 3 *H.* 7. *c.* 1.

Executione facienda, Is a writ commanding execution of a judgment, and diverſly uſed. *Reg. Orig.*

Executione facienda in Withernamium, A writ that lies for taking his cattle, who hath conveyed the cattle of another out of the county, ſo that the ſheriff cannot replevy them. *Reg. Orig.* 82.

Executione Judicii, Is a writ directed to the judge of an inferior court to do execution upon a judgment therein, or to return ſome reaſonable cauſe wherefore he delays the execution. *F. N. B.* 20. If execution be not done on the firſt writ, an *alias* ſhall iſſue, and a *pluries* with this clauſe, *vel cauſam nobis ſignifices quare*, *&c.* And if upon this writ execution is not done, or ſome reaſonable cauſe returned why it is delayed, the party ſhall have an attachment againſt him who ought to have done the execution, returnable in *B. R.* or *C. B.* *New Nat. Br.* 43.

If the judgment be in a court of record, this writ ſhall be directed to the *juſtices* of the court where the judgment was given, and not unto the *officer* of the court; for if the officer will not execute the writs directed unto him, nor return them as he ought, the judges of the court may amerce him. *Ibid.* One may have a writ *de executione judicii* out of the Chancery to execute a judgment, in an inferior court, although a writ of error be brought to remove the record, and reverſe the judgment; if he that brings the writ of error do not take care to have the record tranſcribed, and the writ of error returned up in due time. 1 *Lil. Abr.* 562.

Executive Power. The ſupreme executive power of theſe kingdoms is veſted by our laws in a ſingle perſon, the King, or Queen, for the time being. *Black. Com.* 1 *V.* 190, *&c.*

The executive power, in this ſtate, hath a right to a *negative*, in *parliament*, *i. e.* to refuſe aſſent to any acts offered, or otherwiſe the other two branches of the legiſlative power would, or might, become *deſpotic.* See *Monteſquieu's La'Eſprit des Lex* Liv. XII. *chap.* 6. *De la Conſtitution d'Angleterre.*

Executor, *(Lat.)* Is one that is appointed by a man's laſt will and teſtament, to have the execution thereof after his deceaſe, and the diſpoſing of all the teſtator's ſubſtance according to the tenor of the will: he is as much as *hæres deſignatus* or *teſtamentarius* in the *Civil law*, as to debts, goods and chattels of his teſtator. *Terms de Ley.*

Herein is to be conſidered,

I. *The different kinds of executors*, &c.
II. *Who may make executors, as alſo who may be appointed executor, and in what manner.*
III. *Of the probate of wills, with the power, intereſt, and duty of executors.*
IV. *Of actions by, and againſt executors, and therein of* devaſtavit.

I. *Of the different kinds of executors*, &c.

Under this head might be conſidered, adminiſtrations during the minority of an infant executor, and adminiſtrations *de bonis non*; but for theſe ſee title *Adminiſtrator.* It will ſuffice in this place to treat of executor *de ſon tort*. An

Executor de ſon tort, or executor of his own wrong, is he that takes upon him the office of an executor by intruſion, not being ſo conſtituted by the teſtator; or, for want thereof, appointed by the ordinary to adminiſter. *Dyer* 166. If an executor of his own wrong takes upon himſelf the office of an executor without a lawful authority, he is chargeable to the rightful executor, and to all the creditors of the teſtator, and likewiſe to the legatees, ſo far as the goods amount unto which he wrongfully poſſeſſed: and ſuch an executor is made by any act of acquiſition, transferring or poſſeſſing himſelf of any of the eſtate or goods of the deceaſed; but not by acts of neceſſity, piety or charity. 2 *Nelſ. Abr.* 793. Where a perſon gets the goods of the inteſtate into his hands, he is chargeable for them as executor *de ſon tort*, until he gives ſatisfaction for them to the true adminiſtrator; or ſatisfies the true debts of the inteſtate *to the value*, *Cro. Eliz.* 88. 5 *Rep.* 31, 32. 8 *Rep.* 135. 9 *Rep.* 39. And ſuch a one cannot retain for his own debt, againſt another creditor. 5 *Rep.* 31. *See Poſt.* And by ſtatute, perſons obtaining any goods or debts of an inteſtate by fraud, or procuring adminiſtration to be granted to a ſtranger, *&c.* are chargeable as executors in their own wrong, to the value of the goods or debts, *&c.* And executors and adminiſtrators of executors in their own wrong, ſhall be liable to pay the debts of the teſtator; in like manner as their teſtator or inteſtate. 43 *Eliz. cap.* 8. 30 *Car.* 2. *cap.* 7.

When there is a rightful executor, and a ſtranger poſſeſſes himſelf of the teſtator's goods, without doing any further act as executor, he is not an executor *de ſon tort*, but a treſpaſſer: but where there is neither an executor or adminiſtrator, it is otherwiſe; for there the creditors have no perſon againſt whom they may bring any action but him who hath poſſeſſed himſelf of the goods. *Dyer* 105. *Rol. Abr.* 918. See 5 *Rep.* 82. An executor of his wrong may be ſued as executor; and he ſhall be ſued for legacies, as well as a rightful executor. *Noy* 13. Tho' an executor *de ſon tort* cannot maintain any ſuit or action becauſe he cannot produce any will to juſtify it: and he will be ſeverely puniſhed for a falſe plea, for in ſuch caſe the execution ſhall be awarded for the whole debt, tho' he meddled with a thing of very ſmall value. *Noy* 69.

Debt was brought againſt an executor of his own wrong, who pleaded that he *never was executor*, nor adminiſtred as ſuch; it was held, not to be material whether he had aſſets or no, but to prove that *he had adminiſtered any thing* was enough; for this would make him chargeable with the debt: but if he had not pleaded falſly, he would have been liable for no more than the value of the goods of the deceaſed. *Style* 120.

An executor of his own wrong poſſeſſes himſelf of goods, and afterwards adminiſtration is granted him, he may by virtue thereof retain goods for his own debt. 5 *Rep.* 30. And where a man took poſſeſſion of an inteſtate's goods wrongfully, and ſold them to another, and then took out adminiſtration, it was adjudged that the ſale was good by relation. *Moor* 126. An executor *de ſon tort* ſhall be allowed in equity, all ſuch payments which a rightful executor ought to have paid. 2 *Chanc. Rep.* 33.

The true and rightful executor is he who is appointed ſuch, by will: And he may do many acts before probate. See *Div.* III. *&c.*

II. *Who may make executors, and who may be appointed an executor, and in what manner.*

A man attainted of felony cannot make executors; becauſe he hath forfeited all that he had: but a perſon outlawed may make executors becauſe they ſue in *auter droit*, *&c.* 1 *Leon.* 326. *Cro. Eliz.* 577. *Co. Lit.* 128. *Cro. Car.* 8, 9. 1 *Rol. Abr.* 914. 1 *Vern.* 184. All perſons capable of making a will, are capable of being executors. *Cro. Car.* 9. And a woman covert may be an executor, and do any lawful act which another executor may do; but ſhe may not damage her huſband thereby, by aſſenting to a legacy before debts are paid, *&c.* 5 *Rep.* 27. A feme covert executrix cannot releaſe a debt of her teſtator's or give away the goods ſhe hath as executrix, without the huſband; but the huſband may do it, and yet the goods which the wife hath as executrix are not diveſted out of her, as her own goods are; nor if ſhe dies, ſhall they go to the huſband, but to her executors, or the next of kin, being admiſtrator of her teſtator. *Offic. Exec. c.* 17. Huſband and wife muſt be named in actions brought for goods which the wife is intitled to as executrix. *Ibid.* A woman may be executrix to her huſband, and the huſband executor to his wife; and by this means he may recover all the debts due to her before marriage, *&c.* *Fitz. Executor* 24, 47, 87. *Quære*, as to the power of a feme covert, to make a will? If ſhe has not that power, ſhe cannot make her huſband executor. But he may take out adminiſtration to her, and that will in every reſpect anſwer his purpoſe.

An infant may be an executor; though he cannot act till he is *ſeventeen* years of age; and till that time adminiſtration *durante minori ætate* is to be granted. 6 *Rep.* 67. 4 *Inſt.* 335. If two are executors, one whereof is under age, he of full age may ſolely prove the will. 1 *Lev.* 181.

A traitor, or felon, baſtard begotten in inceſt, or a notorious uſurer, it is ſaid, may not be executor to another. *Swinb.* 222. A popiſh recuſant convict cannot be an executor. 9 *Rep.* 37. A mayor and commonalty may be executors. 1 *Rol. Abr.* 915. And if the King is made executor, he appoints others to take the execution of the will upon them, and to take account. 5 *Rep.* 29. Where executors are appointed they may accept of, or refuſe the executorſhip; but they may not refuſe after acceptance, nor on the other hand accept after refuſal. 9 *Rep.* 37. *Sed. qu.* as to the latter poſition, unleſs the refuſal is by ſome act regiſtred in the Spiritual Court?

It ſeems agreed, that by our law, an alien, or one born out of the allegiance of our King, may be an executor or adminiſtrator; alſo it hath been adjudged, that ſuch a one ſhall have adminiſtration of leaſes as well as perſonal things, becauſe he hath them *in auter droit*, and not to his own uſe. *Off. of Ex.* 17.

But it has been long doubted, whether an alien enemy ſhould maintain an action as executor, for on the one hand it is ſaid, that by the policy of the law, alien enemies ſhall not be admitted to actions to recover effects, which may be carried out of the kingdom to weaken ourſelves and enrich the enemy, therefore public utility muſt be preferred to private convenience; but on the other hand it is ſaid, that thoſe effects of the teſtator are not forfeited to the King by way of repriſal, becauſe they are not the alien enemy's, for he is to recover them for others; and if he allows ſuch alien enemies to poſſeſs the effects as well as an alien friend, he muſt allow them power to recover, ſince in that there is no difference, and by conſequence he muſt not be diſabled to ſue for them; if it were otherwiſe, it would be a prejudice to the King's ſubjects, who could not recover their debts from the alien executor, by his not being able to get in the aſſets of the teſtator. *Cro. Eliz.* 683. *Moor* 431. *Carter* 49, 191. *Skin.* 370.

But an excommunicated perſon cannot be an executor or adminiſtrator, for by the excommunication he is excluded from the body of the church, and is incapable to lay out the goods of the deceaſed to pious uſes. *Co. Lit.* 134. *Swinb.* 349. *Godolph.* 85.

It is laid down as a general rule, that if a creditor makes his debtor executor, it is an extinguiſhment of the debt, for he cannot ſue himſelf. 1 *Rol. Abr.* 920-1. 5 *Co.* 30. *Offic. of Ex.* 30. *Godolph.* 113. *Sed qu.* If the executors debt is not aſſets, with reſpect to creditors, if the reſidue of the teſtators eſtate is not ſufficient, It is ſo laid down 8 *Rep.* 136. 2 *Rol. Abr.* 920.

But if a perſon dies inteſtate, and the ordinary commits adminiſtration to a debtor, the debt is not thereby extinguiſhed, for he comes into the adminiſtration by the act of law, whereas the other is the act of the party. 5 *Co.* 136. 1 *Salk.* 306. *Offic. of Ex.* 31.

An executor may be appointed either by expreſs words, or words that amount to a direct appointment; as if the teſtator declares by his will, that a certain perſon ſhall have his goods to pay debts, and otherwiſe diſpoſe of, &c. And executors may be made upon condition; for a fixed time; or ſome part of the eſtate. *Wood's Inſt.* 320. A man that can make an executor, may either make one, two, three, or more his executors; and he may appoint one perſon his executor for one year, and another man for another year, &c. If he make a will, and appoint an executor for ſeven years; after that the ordinary may grant adminiſtration of the goods; ſo till the power of executor takes place: and where one makes an executor as to part of his eſtate, he ſhall die inteſtate as to the reſidue. 4 *Shep. Abr.* 66, 67, 68. If there is no executor, there is properly no will; and where there is no will, there can be no executor: but this is underſtood of goods; for where lands in fee are deviſed, this is good, tho' no executor be named: executors having nothing to do with land, which is not teſtamentary but by act of parliament. *Offic. Exec.* 3, 4. *Finch.* 167.

III. *Of the probate of wills, with the power, intereſt, and duty of executors.*

When a will with executors is made, the ordinary may ſend out proceſs againſt the executors to come in and prove it; and if they do not come in, they are to be excommunicated; but if they come in, and refuſe to take upon them the execution of the will, then the ordinary is to commit adminiſtration, and the refuſal muſt be by ſome act regiſtered in the Spiritual Court. *Offic. Exec.* If an executor hath adminiſtered, he cannot refuſe; but the ordinary is to compel him to take upon him the executorſhip. *Offic. Exec.* 58. Executors cannot refuſe for a time, but for ever; but they may have time to adviſe upon it, and the ordinary is to grant letters *ad colligendum*, not adminiſtration. *Cro. Eliz.* 92. See *Dyer* 160.

If there are many executors of a will, and one of them only proves the will, and takes upon him the executorſhip, it is ſufficient for all of them; but the reſt after may join with him, and intermeddle with the teſtator's eſtate: but if they all of them refuſe the executorſhip, none of them will ever afterwards be admitted to prove the will; the ordinary in this caſe grants adminiſtration with the will annexed, and the teſtator is in law adjudged to die inteſtate, and without executor. 9 *Rep.* 37. 1 *Rep.* 113. *Perk.* 485.

If an executor dies before probate, it is the ſame; for ſuch an executor's executor cannot prove the will, becauſe he is not named therein, and no one can prove a will but he who is named executor in it; but if the firſt executor had proved the will, then his executor might have been executor to the firſt teſtator, there requiring no new probate. 1 *Salk.* 299.

An executor of an executor may be executor to the firſt teſtator; but he may take upon him the executorſhip of his own teſtator, and refuſe to intermeddle with the eſtate of the other: and if the firſt executor refuſes, or dies before probate, his executor ſhall not adminiſter to the firſt teſtator: nor can an executor of an adminiſtrator take adminiſtration of the goods of his inteſtate. *Dyer* 372.

A teſtator having thought the executor appointed a proper perſon to be intruſted with his affairs, the ordinary cannot adjudge him diſabled or *incapax*; but a *mandamus* ſhall iſſue from *B. R.* for the ordinary to grant probate of the will, and admit the executor, if he refuſe him: neither can the ordinary inſiſt upon ſecurity from the executor, as the teſtator hath thought him able and qualified. 1 *Salk.* 299.

And altho' an executor becomes bankrupt, yet it is ſaid the ordinary cannot grant adminiſtration to another: but if an executor become *non compos*, the Spiritual Court may commit adminiſtration for this natural diſability. 1 *Salk.* 307. If an executor takes goods of the teſtator's, and convert them to his own uſe; or if he either receive or pay debts of the teſtator, or give bond for payment; make acquittances for them, or demand the teſtator's debts as executor; or give away the goods of the teſtator, &c. theſe are an adminiſtration, ſo that he cannot afterwards refuſe the executorſhip: and it has been held, that if the wife of the teſtator take more apparel than is neceſſary, it is an adminiſtration. *Offic. Exec.* 39.

It is uſual when there is a conteſt about a will, or when the right of adminiſtration comes in queſtion, to enter a caveat in the Spiritual Court, which by their law is ſaid to ſtand in force for three months. *Godolph.* 258. *Goldſb.* 119. 2 *Rol. Rep.* 6. *Cro. Jac.* 463-4.

But it is ſaid, that our law takes no notice of a caveat, and that it is but a meer cautionary act done by a ſtranger, to prevent the ordinary from doing wrong, and that therefore, if adminiſtration be granted pending a caveat, this is valid in our law, tho', by the law in the Spiritual Court, it may be ſuch an irregularity as will be ſufficient to repeal it. 1 *Rol. Rep.* 191. *Cro. Jac.* 463. 2 *Rol. Rep.* 6.

As to their intereſt and power.

All goods and chattels which belonged to the teſtator at the time of his death, in any part of the world, come to the executor as aſſets, and make him chargeable to creditors and legatees; and debts, &c. recovered by the executor, by action after the death of the teſtator, are to be accounted as aſſets, but not before recovered. 6 *Rep.* 47. *Co. Lit.* 374. If an executor never recover, or get in a debt, he ſhall never be charged, provided he hath uſed his utmoſt endeavours to recover it, and cannot do it. 1 *Rep.* 98. And where an executorſhip is controverted in the Spiritual Court by another executor who ſets up another will; an injunction may be granted to the teſtator's debtors not to pay any money till the title to the executorſhip is ſettled. *Chanc. Ca.* 75

The chattels real and perſonal of the teſtator coming to the executor, are leaſes for years, rent due, corn growing and cut, graſs cut and ſevered, *&c.* cattle, money, plate, houſhold goods, *&c.* *Co. Lit.* 118. *Dyer* 130, 537. An executor having a leaſe for years of land in right of the deceaſed, if he purchaſe the fee, whereby the leaſe is extinct; yet this leaſe ſhall continue to be aſſets, as to the creditors and legatees. 1 *Rep.* 87. *Bro. Leaſe* 63. Though a plantation be an eſtate of inheritance, yet being in a foreign country, it is a chattel in the hands of executors to pay debts. 1 *Vent.* 358. The executor is not only intitled to all perſonal goods and chattels of the teſtator, of what nature ſoever they are; but they are alſo accounted to be in his poſſeſſion, though they are not actually ſo; for he may maintain an action againſt any one who detains them from him: he is likewiſe intitled to *things in action*; as right of execution on a judgment, bond, ſtatute, *&c.* Alſo to money awarded on arbitration, where the party dies before the day, *&c.* *Co. Lit.* 209. 2 *Vent.* 249. 1 *Danv. Abr.* 549.

If goods of the teſtator are kept from the executor, he may ſue for them in the Spiritual Court, or at common law; and if one ſeiſed of a meſſuage in fee, *&c.* hath goods in the houſe, and makes a will and executors, and dies, the executors may enter into the houſe, and carry away the goods. *Lit.* 60. An executor may, in convenient time after the teſtator's death, enter into a houſe deſcended to the heir, for removing and carrying away the goods; ſo as the door be open, or the key be in the door. *Offic. Exec.* 8. He may take the goods and chattels to himſelf, or give power to another to ſeize them for him. 9 *Rep.* 38. An executor with his own goods redeems the goods of the teſtator; or pays the teſtator's debts, *&c.* the goods of the teſtator ſhall, for ſo much, be changed into the proper goods of the executor. *Jenk. Cent.* 188.

Executors having their power wholly by the will, may releaſe an action, debt, or duty, or do any thing as executors before probate of the will, ſo as afterwards they prove it; except it be bringing actions for debts, *&c.* but to maintain theſe they muſt ſhew the teſtament proved, and the probate is to be brought into court before the defendant will be bound to plead. *Plowd.* 277. *Co. Lit.* 292. 1 *Rol. Abr.* 917, 926.

Where a man by will deviſes that his lands ſhall be ſold for payment of *debts*, his executors ſhall ſell the land, to whom it belongs to pay the debts. 2 *Leon. c.* 276. And if lands are deviſed to executors to be ſold for payment of the teſtator's debts, thoſe executors that act in the executorſhip, or that will ſell, may do it without the others. *Co. Lit.* 113. By *Stat.* 21 *H.* 8. *c.* 4. Bargains and ſales of lands, *&c.* deviſed to be ſold by executors, ſhall be as good, if made by ſuch of the executors only as take upon them the execution of the will, as if all the executors had joined in the ſale: if lands are thus deviſed to pay debts, a ſurviving executor may ſell them; but if the deviſe be, *that the executor ſhall ſell* the land, and not *of the land to them* to be ſold, here being only an *authority*, not an *intereſt*; if one dies the other cannot ſell. 1 *Lev.* 203.

When lands are deviſed or diſpoſed for paying debts, goods in the hands of an executor ſhall not be liable; though in caſe of an adminiſtrator it is otherwiſe. *Ibid.* Each executor hath the whole of the teſtator's goods and chattels, and each may ſell or aſſign the whole: (but one of them cannot aſſign or releaſe his intereſt to the other, if he doth it will be void.) If one executor grant his part of the teſtator's goods, all paſſeth, and nothing is left in the other, each having the whole, and there are no parts or moieties between executors: yet one executor may demiſe or grant a moiety of the land, for the whole term, and ſo may the other; and this way they may ſettle in friends truſted for them a moiety for each. *Offic. Exec. c.* 9.

As for the *reſiduum* of the teſtator's eſtate, if there is not any reſiduary legatee appointed, it ſeems now to be underſtood that wherever there is ſufficient on the face of a will to imply that the teſtator intended his executor ſhould *not* have the reſidue, the undivided ſurplus of the eſtate ſhall go to the next of kin. Such implication may be by means of a competent legacy, or otherwiſe. *Black. Com.* 2 *V.* 514, 515. See *Gift.* & 3 *Salk.* 82. & 2 *Vern.* 361, 677. See alſo further end of this *Div.* III. and vide *Diſtribution.*

With regard to their duty.

The *duty and office of an executor* is to bury the teſtator in a decent manner, according to his rank and quality, and *with a due regard to the eſtate left after debts* are ſatisfied: for whatever an *executor* lays out extravagantly in funeral charges, if there be not enough to pay debts, he muſt bear it at his own expence. *Wood's Inſt.* 325. The common ſum allowed for a funeral of an inſolvent is 40 *s.* But all reaſonable and neceſſary funeral charges muſt be allowed before debts and legacies. 1 *Rol. Abr.* 926. The *executor* is to make an inventory of all the goods and chattels of the deceaſed, with their value, and of all debts due to the teſtator; and this inventory ought to be made and appraiſed in the preſence of the *executor*, by two or more of the creditors, or two next of kin to the teſtator; or, in their default, by two or more of the neighbours or friends of the deceaſed; and then the *executor* muſt deliver the ſame upon oath to the ordinary. *Doct.* & *Stud. c.* 10. 21 *H.* 8. *c.* 5.

The inventory ſhews the charge of the *executor*, and his account muſt be his diſcharge, for ſo much as he can prove to be laid out in the payments for funeral charges, making the inventory, probate of the will; debts and legacies: this account will diſcharge him of all ſuits in the Spiritual Court; but will not diſcharge him of ſuits at the common law, for there each particular muſt be again proved. *Wood* 328. An *executor* is to paſs his account before the ordinary, for the goods and chattels of the teſtator; but the ordinary may not call *executors* to account *ex officio*. 9 *Rep.* 39.

By ſtatute no *executor* or adminiſtrator ſhall be cited into any eccleſiaſtical court to render an account, otherwiſe than by inventory, unleſs at the inſtance of a creditor, *&c.* 1 *Jac.* 1. *c.* 17. It has been held, an *executor* is bound to account; and the ordinary muſt take the *executor's* account, when he is ſummoned by any creditor, and cannot hold plea of it, becauſe it is made upon oath: but if a legatee comes, he may unravel the account, though if the *executor* will pay him his legacy, then he cannot compel him to exhibit an inventory or to account, he having the end of his ſuit. 2 *Inſt.* 600. *Raym.* 407. *Hill.* 6 *Ann.*

The *executor* is to prove the will before the ordinary in common form, by his own oath, or by witneſſes, if required by thoſe who have a right to queſtion it; and being exhibited in the regiſter's office of the Eccleſiaſtical Court, a copy in parchment is delivered the *executor* under the ordinary's ſeal, which is called the probate. *Perk.* 486. 9 *Rep.* 37. 2 *Inſt.* 488. One may prove a will before the ordinary, which contains goods and lands; though formerly a prohibition was granted as to the lands: and a will of freehold land is to be proved by witneſſes in the Chancery. 1 *Vent.* 207. 6 *Rep.* 23. The proving of the will is neceſſary for goods and chattels, to give the *executor* power to bring actions, and confirm the acts he did as *executor* before: when this is done, the *executor* is to pay all the teſtator's debts before any legacies. For the order of paying them. ſee *Adminiſtrator*, Alſo 1 *Rol. Abr.* 927. *Plowd.* 543. See *Jenk. Cent.* 274.

And if the *executor* pays the debts in any other order, he is liable to the payment of the debts of a higher degree, though out of his own eſtate. *Doct.* & *Stud. c.* 10. An executor is allowed to retain his own debt in preference to others of *equal degree*. Preced. Chan. 179. Noy Max. 104. 3 Leon. cap. 364. If no ſuit is begun againſt the executor, he may pay the whole debt to any one creditor in equal degree, though there be nothing left to pay another any part of his debt. *Wood's Inſt.* An executor pays a debt upon bond before a ſtatute broken, and afterwards the ſtatute is broken, the payment of the debt upon bond is a good plea againſt the ſtatute. *Cro. Jac.* 9. Pending a bill in equity againſt an executor, he may pay any other debt of a higher nature, or of as high a nature, where he has legal aſſets: but where there is a final decree againſt an executor, if he pays a bond, it is a miſpayment; for a decree is in nature of a judgment. 2 *Salk.* 507.

If there be ſeveral debts due on ſeveral bonds from the teſtator, his executor may pay which bond debt he pleaſes, except an action of debt is actually commenced againſt him upon one of thoſe bonds; and in ſuch caſe, if, pending an action, another bond-creditor brings another action againſt him, before judgment, obtained by either of them, he may prefer which he will by *confeſſing a judgment* to one and paying him, which judgment he may plead in bar to the other action. *Vaugh.* 89. See *Sid.* 21. But this judgment confeſſed muſt be before plea. The uſual way is, if there is time, and an executor or adminiſtrator is deſirous of preferring another creditor of equal degree with him who ſues is, inſtantly, before plea to confeſs a judgment, and then plead it, with a *plene admiſtravit ultra.*

If judgment for 100 *l.* is ſuffered, and the plaintiff compounds for 60 *l.* the judgment for the whole ſum ſhall not be allowed to keep off other creditors. 8 *Rep.* 133. Judgments are not to be kept on foot by fraud. *Sid.* 230. 1 *Vent.* 76.

On a *Sci. fac.* againſt an executor, he cannot plead fully adminiſtred, but muſt plead ſpecially that no goods of the teſtator came to his hands, whereby he might diſcharge the debt; for he may have fully adminiſtred, and yet be liable to the debt, where goods of the teſtator's afterwards come to his hands. 1 *Lill.* 568. *Cro. Eliz.* 575. In *Scire facias* againſt executors, upon a judgment againſt their teſtator, they pleaded *Plene Adminiſtravit*, by paying debts upon bonds *ante Notitiam:* It was adjudged no plea, for at their peril they ought to take notice of debts upon record, and firſt pay them; and though the recovery be in another county than that where the teſtator lived: but where an action is brought againſt executors in another county than where they live, and they, not knowing thereof, pay debts upon ſpecialty, it is good. *Cro. Eliz.* 793.

Where day of payment is paſt, the penalty of a bond is the ſum due at law, but where the day of payment is not come the ſum in the condition is the debt, and the executor cannot cover the aſſets any further. The *Bank of England* v. *Morrice Widow. Rep. Temp. Hardw. Per Annaly* 224.

A bill may be exhibited in the Chancery againſt an executor, to diſcover the teſtator's perſonal eſtate; and thereupon he ſhall be decreed to pay debts and legacies. *Abr. Ca. Eq.* 238. If a perſon being executor, and his teſtator greatly indebted, be deſirous to pay the aſſets as far as they will go, and that his payments may not be afterwards queſtioned, he may bring a bill in equity againſt all the teſtator's creditors, in order that they may, if they will, conteſt each other's debts, and diſpute who ought to be preferred in payment. 2 *Vern.* 37.

Where there are only *equitable aſſets*, they muſt be equally paid amongſt all the creditors; for a debt by judgment, and ſimple contract is in conſcience equal. 2 *Peer Williams* 416. As to what are legal, and what equitable aſſets, ſee *Vin. Abr.* title *Payment*. And it is held, that bonds, and other debts, ſhall be paid equally, by executors, where a perſon has deviſed lands to them, to be ſold, for the payment of his debts. 1 *Peer Will.* 430.

A debt deviſed by the teſtator, is not to be paid by the debtor to the legatee, but to the executor, who can give a ſufficient diſcharge for it, and is anſwerable to the legatee if there be ſufficient aſſets. If an executor pays out the aſſets in legacies, and afterwards debts appear, of which he had no notice, which he is obliged to pay; the executor by bill in Chancery may force the legatees to refund. *Chan. Rep.* 136, 149. One legatee paid ſhall refund againſt another, and againſt a creditor of the teſtator, that can charge the executor only in equity: but if an executor pays a debt upon ſimple contract, there ſhall be no refunding to a creditor of a higher nature. 2 *Vent.* 360.

Executors are not bound to pay a legacy, without ſecurity to refund. *Chan. Rep.* 149, 257. And if ſentence be given for a legacy in the Eccleſiaſtical Court, a prohibition lies, unleſs they take ſecurity to refund. 2 *Vent.* 358. If an executor pays legacies, and ſeven years after covenant is broken, for which action is brought againſt the executor; the court inclined that it was a *Devaſtavit*, and that the executor ought to have taken ſecurity for his indemnity upon payment of the legacies. *Allen* 38. Though it has been adjudged, that a covenant is no duty till broken; and therefore ſince it is uncertain, whether it will be broken or not, it ſhall be preſumed it will not; and the legacies being a preſent duty ſhall be paid by the executor, notwithſtanding any covenant not actually broken. *Style* 37. 1 *Nelſ. Abr.* 786. If one binds himſelf and his executors in an obligation, *&c.* to perform a certain thing, and in his will gives divers legacies and dies, leaving goods only ſufficient to pay the obligation when forfeited; this obligation ſhall be no bar to the legacies, becauſe it is uncertain whether the ſame may ever be forfeited; though the executor may therefore make a delivery upon condition, *viz.* to return the legacies if the obligation becomes forfeited, and the penalty be recovered. 1 *Rol. Abr.* 928. 2 *Vent.* 358.

The executor is to pay the legacies, after the debts: But executors cannot in equity pay their own legacies firſt, where there is not enough to pay all of them; but ſhall have an equal proportion with the reſt of the legatees. *Chan. Rep.* 354. An executor has election, where any chattel is given to him, to have and take in one right or the other, *viz.* as executor, or legatee; which is to be made by a ſpecial taking or declaration, *&c.* 10 *Rep.* 47. *Plowd.* 519. *Dyer* 277.

If there be a ſpecific legacy given of any thing, as a horſe, ſilver cup, *&c.* it muſt be delivered before any other legacy, provided there be aſſets. *Offic. Exec.* 317. And if there be enough to pay all the legacies, after the debts are ſatisfied, the legacies ſhall all be paid; but if there is not ſufficient to pay debts or more, the legatees muſt loſe their legacies, or a proportionable part of them. *Plowd.* 526. See 1 *Lill. Abr.* 579. *Wood's Inſt.* 322. 4 *Ann.* in *B. R.*

The ſurplus of the teſtator's perſonal eſtate, has been adjudged to be in truſt for his children, though they had particular legacies. 1 *Vern.* 473. *Abr. Caſ. Eq.* 244. A man by his will gave legacies to relations, near the value of his eſtate, and made a certain perſon executor, to whom he gave a *ſmall* legacy, and deſired him to take the trouble of the executorſhip; after the making of which will, the teſtator lived ten years, and acquired a conſiderable additional eſtate, and then died; on a bill brought by his relations, againſt the executor, to have an account of the perſonal eſtate, and the ſurplus diſtributed amongſt them; here the new acquired eſtate was decreed to go to the legatees, in proportion of each one's legacy. *Preced. Canc.* 12. The ſurpluſage of an eſtate, given to pay debts, *&c.* after debts, legacies and portions paid, hath been ordered by the Court of Chancery to go to the heir. *Chan. Rep.* 189. *Overſeers* of a will have nothing to do with the execution of it, but are only to give advice to the executors; and if they will not do their duty, to complain of them to the ſpiritual court, *&c.*

IV. *Of actions by and againſt executors, and therein of Devaſtavit.*

For the goods of the teſtator, taken from them, or for treſpaſs upon the land, *&c.* *Executors* may *before the will proved* bring action of treſpaſs, detinue, *&c.* And if they ſell cattle, or other goods of the teſtator, before the will is proved, they may have actions for the money payable, before the ſame is proved: and an executor may be ſued for the debts of the teſtator before probate of the will, if he be executor by his own act of adminiſtring, which makes him liable to actions. *Offic. Exec.* 35. It has been ruled, that an executor may commence an action before probate; but he cannot declare upon it, without producing in court the letters teſtamentary: he is not like an adminiſtrator, who hath no right till adminiſtration committed; for his right is the ſame before, as after probate of the will, and the not proving it, is only an impediment to the action. 1 *Salk*. 303.

I ſhould ſuppoſe probate obtained before trial of the action is ſufficient, unleſs oyer of the *letters teſtamentary* is demanded: for it is of the will, not the probate, profert is made, and on the trial, for any matters relative to the *perſonal* eſtate, with which the executors have to do, the probate is the proper proof of the will.

Executors may maintain action of trover for goods converted in the life of the teſtator. *Cro. Eliz.* 377. And by the ſtatute, executors ſhall have a writ of account, and the like action and proceſs, as the teſtator might have had. 13 *Ed.* 1. *c.* 23. The executors may bring actions for treſpaſs done to their teſtator, as for goods and chattels carried away in his life, and ſhall recover their damages in the ſame manner as he ſhould have done. *Stat.* 4 *Ed.* 3. *c.* 7. Alſo *executors of executors* ſhall have actions of debt, account, and of goods taken away of the *firſt teſtator's*; and have execution of ſtatutes, *&c.* and ſhall anſwer to others, ſo far as they recover goods of the *firſt teſtator*, as the *firſt executors*. 25 Ed. 3. c. 5.

The word executor is a word collective, and doth comprehend in it the executor of an executor; for he is accountable for the firſt teſtator's goods, and is as it were his executor for ſuch goods as remain unadminiſtred by the firſt executor. 1 *Lill. Abr.* 568. Formerly, if an executor waſted goods and left an executor, and died leaving aſſets, his executor ſhould not be chargeable, becauſe it was a perſonal tort. 2 *Lev.* 120. But now it is otherwiſe by the ſtatute 30 *Car.* 2. *c.* 7. made perpetual by 4 & 5 *W. & M. c.* 24. And ſee *Com. Dig.* 1 *V.* 276. (*I.* 3.)

The law ſubjects the executors to every perſon's claim and action, which he had againſt the teſtator, except as to a treſpaſs, *vi et armis*, *&c.* committed by the teſtator; for which reaſon the executor is ſaid to be the teſtator's aſſignee, and to repreſent the perſon of the teſtator: but for perſonal wrongs done by the teſtator to the perſon, or goods, *&c.* of another, the *executor* doth not repreſent him; becauſe perſonal actions die with the perſon. *Co. Lit.* 209. 9 *Rep.* 89.

Nothing can be debt in the *executor*, which was not debt in the teſtator. *Cro. Eliz.* 232. A promiſe to pay to an *executor*, when the teſtator is not named, is not good. *Cro. Jac.* 570. But a teſtator may bind his *executors* as to his goods, though he himſelf is not bound. *Ibid.* And an *executor* may recover a duty due to the teſtator, though he be not named. *Dyer* 14. Action lies againſt an *executor* upon a collateral promiſe made and broken by the teſtator. *Cro. Jac.* 663. The teſtator's *Aſſumpſit* to do any collateral thing, as to build an houſe, *&c.* which is not a debt, binds *executors*. Jenk. Cent. 290, 336. *Aſſumpſit* lies upon a contract of the teſtator; and the reaſon is the ſame upon a promiſe, where the teſtator had a valuable conſideration. *Palm.* 329. Though a debt upon a ſimple contract of the teſtator, cannot be recovered of the *executor* by action of debt; yet it may by *Aſſumpſit*. 1 Lev. 200. 9 Rep. 87.

If two perſons are *jointly bound*, and one of them dies, the ſurvivor only ſhall be charged, and not the other's *executor*. Paſch. 16 Car. 2. When there are two *executors*, if one of them dies, action is to be brought againſt the ſurviving *executor*, and not the *executor* of the deceaſed: but in equity the teſtator's goods are liable in whoſeſoever's hands they are. 1 *Leon.* 304. *Chanc. Rep.* 57.

Aſſets ſhall be always intended, till the *executors* alledge the want of them in excuſe. 9 *Rep.* 90, 94. If an obligee makes the obligor *executor*, this is a releaſe in law of the debt; but it ſhall be aſſets in his hands; if there be no aſſets beſide to pay other creditors. 8 *Rep.* 136. 2 *Roll. Abr.* 920. When an obligor is made *executor* by the obligee, by adminiſtring ſome of the goods, he hath accepted the *executorſhip*, and 'tis that which makes the releaſe; becauſe by being *executor* he is the perſon who is to receive the money due on the bond, and he is likewiſe the perſon to pay it; and the rule is, *that where the ſame hand is to receive and pay, that amounts to an extinguiſhment*. 1 Salk. 305.

But a perſon who owed the teſtator 400*l.* was made *executor*, where debts, legacies, and a reſiduary eſtate were deviſed; and though it was inſiſted that the debt was diſcharged by the debtor's being made *executor*, and that there was ſufficient to pay the debts and legacies, yet it was decreed in equity againſt the *executor*, that he ſhould pay the 400*l.* to the reſiduary legatee. 1 *Chanc. Rep.* 292. It has been adjudged, that an obligee making the wife of an obligor *executrix*, had ſuſpended the action on the bond ſo long as the *executorſhip* continued; and that a perſonal action being ſuſpended by the act of the party himſelf, is quite extinguiſhed: this was in a caſe where the teſtator deviſed all his goods to the wife of the obligor, and made her ſole *executrix*. *Moor* 855. *Hutt.* 128. If there be no aſſets, the obligee *executor* may ſue the heir of the obligor teſtator in action of debt upon his bond. 1 *Salk.* 304. 1 *Lil. Abr.* 575.]

If an executor releaſes all actions, ſuits and demands, it extends only to demands in his own right, not ſuch as he hath as executor. *Show* 153. An executor ſhall be charged with rent in the *detinet*, if he hath aſſets; and if he continues the poſſeſſion, he ſhall be charged in the *debet* and *detinet*, in reſpect of the perception of the profits, whether he hath aſſets or not. 1 *Lev.* 127. But an executor is not ſuable in the *debet* and *detinet* for part, and in the *detinet* for the other part; becauſe they require ſeveral judgments, *viz. De bonis propriis* for the *debet* and *detinet*, and *de bonis teſtatoris* for the *detinet*. 3 *Lev.* 74. See title *Debet and Detinet*.

If an executor has a term, and the rent reſerved is *more* than the value of the premiſes, in action brought againſt him for it in the *debet* and *detinet*, he may plead the ſpecial matter, *viz.* That *he hath no aſſets*, and that *the land is of leſs value than the rent*, and demand judgment if he ought not to be charged in the *detinet tantum*: and he cannot waive the leaſe; without renouncing the whole executorſhip. 1 *Salk.* 297. It hath been held, that if an executor alters the property of things from the teſtator to himſelf, by paying a debt to the value; or by paying the rent of a leaſe, and receiving the profits, or part of the profits equal to the rent, the things and profits received are his own. *Dyer* 187, 885. 5 *Rep.* 31.

One executor cannot regularly ſue another at law; but he may have relief in equity: In the eye of the law all are but as one executor; and moſt acts done by, or to any of them, are eſteemed acts done by, or to all of them. 1 *Rol. Abr.* 918. If where one executor is ſued, he plead that there is another executor, *he ought to ſhew that he hath adminiſtred*. 1 *Lev.* 161. And *he only that adminiſters is to be* ſued *in actions againſt executors*; but actions *brought by executors are to be in the name of all them*, though ſome do not take upon them the executorſhip. 1 *Rol.* 924. *Jenk. Cent.* 106, 107. If any executor refuſes to join in an action, with his co-executors, he muſt be *ſummoned and ſevered*.

An executor is not diſabled by outlawry, to ſue for the debts of the teſtator. Special bail is not required of executors, *&c.* in any action brought for the teſtator's debt: and executors, or adminiſtrators are not liable to coſts, *i. e.* Where they ſue in right of the teſtator. *Hut.* 69. *Cro. Eliz.* 503. *Yelv.* 168. *Dal.* 96. *Bend. pl.* 28. 2 *Rol.* 87. *Com. Dig.* 2 *V.* 439.

If an executor brings a writ of error, though the judgment is affirmed, he ſhall not pay any coſts; becauſe as he is executor, it is *in auter droit:* alſo an executor ſhall not put in bail on a writ of error, *cauſa ſupra*. *Mich.* 5 *W. & M.* Executors are excuſed from paying coſts, as being preſumed to have no knowledge of the affairs of the teſtator; but they ſhall pay coſts for not going on to trial, or where the cauſe of action ariſes to the executor himſelf, *&c.* 1 *Salk.* 207. 3 *Salk.* 106. No action ſhall charge an executor to anſwer damages out of his own eſtate, upon any promiſe to another, unleſs there be *ſome writing* thereof *ſigned by the party* to be charged therewith. 29 *Car.* 2. *c.* 3.

On any judgment after verdict, had by or in the name of an executor, or adminiſtrator; an adminiſtrator *de bonis non* may ſue forth a *ſcire facias*, and take execution upon ſuch judgment. *Stat.* 17 *Car.* 2. *c.* 8. If an executor makes himſelf a ſtranger to the will of the teſtator, or pleads *Ne unques* executor or any falſe plea, and it is found againſt him, judgment ſhall be *de bonis propriis:* in other caſes, *de bonis teſtatoris. Cro. Jac.* 447.

If on a *Scire facias* againſt an executor, the ſheriff return a *Devaſtavit*; the plaintiff ſhall have judgment and execution *de bonis propriis* of the defendant: and if *nulla bona* be returned, he may have either a *Capias ad Satisfaciend.* or an *Elegit.* 2 *Nelſ.* 791. *Dyer* 185. But one executor ſhall not be charged with a *Devaſtavit* made by his companion; for the act of one ſhall charge the other no further than the goods of the teſtator in his hands amount to. *Cro. Eliz.* 318.

If an executor does any waſte, or miſemploys the eſtate of the deceaſed, or doth any thing by negligence or fraud, *&c.* it is a *Devaſtavit*, and he ſhall be charged for ſo much out of his own goods. 8 *Rep.* 133. And a *new* executor may have an action againſt a former executor, who waſted the goods of the deceaſed; or the old one may remain chargeable to creditors, *&c. Hob.* 266.

If an executor takes an obligation in his own name, for a debt due by ſimple contract to the teſtator, this ſhall charge him as much as if he had received the money; for the new ſecurity hath extinguiſhed the old right, and is *quaſi* a payment to him. *Off. of Ex.* 158. *Yelv.* 10. 1 *Lev.* 189.

So if the executor ſues a perſon in trover and converſion, in which he has a right to recover; and afterwards he and the defendant come to an agreement, that he ſhall pay the executor ſuch a ſum at a future day, and the party fails, this is a *Devaſtavit*; and he ſhall anſwer *ad valorem.* 2 *Lev.* 189. 2 *Jon.* 88. *S. C.* 1 *Vern.* 474. *S. C.*

It is a *Devaſtavit* to permit intereſt to run in arrear, and then ſuffer judgment for it; and want of aſſets to pay before the incurring of it by the adminiſtrator ſhall not be intended unleſs it be expreſly pleaded. 2 *Lev.* 40. *Hil.* 23 *&* 24 *Car.* 2. *B. R. Seaman* v. *Dee.*

An executor in caſe of a *Devaſtavit* is in nature of a truſtee of an eſtate. *Chanc. Caſes* 304. *Mich.* 29 *Car.* 2. in *Vanacre*'s caſe. See more of *Executors*, under *Adminiſtrators*, *Aſſets*, *Joint Executors*, *Wills*, &c.

Executory, Is where an eſtate in fee created by deed or fine is *to be afterwards executed* by *entry*, *livery*, writ, *&c.* And leaſes for years, rents, annuities, conditions, *&c.* are called inheritances *executory. Wood's Inſt.* 293. *Eſtates executed* are when they paſs preſently to the perſon to whom conveyed, without any after-act. 2 *Inſt.* 513.

Executory Deviſe, Is ſaid to be where a *future intereſt* is deviſed, that *veſts not at the death of the teſtator*, but depends on ſome *contingency* which muſt happen before it can veſt. 1 *Eq. Caſ. Abr.* 186.

Theſe executory deviſes may be,

I. *Of lands of inheritance.*
II. *Of terms for years.*

I. *With reſpect to the former.*

If a *particular eſtate* is limited, and the *inheritance paſſes out of the donor*, this is a *contingent remainder*; but where the *fee* by a *deviſe* is *veſted in any perſon*, and *to be veſted in another upon contingency*, this is an *executory deviſe:* and in all caſes of *executory deviſes*, the eſtates deſcend until the contingencies happen. *Raym.* 28. 1 *Lutw.* 798. Where *a contingent eſtate* limited, *depends upon a freehold*, which is capable of ſupporting a remainder, it *ſhall never be conſtrued an executory deviſe, but a remainder.* And ſo it is, if the eſtate be limited by words *in præſenti*, as when a perſon deviſes his lands to the heirs of *A. B.* who is living, *&c.* Though if the ſame were to the heir of *A.* after his death, it would be as good as an executory deviſe. 2 *Saund.* 380. 4 *Mod.* 255.

One by will deviſes land to his mother for life, and after her death, to his brother in fee; provided, that if his wife, being then *enſient*, be delivered of a ſon, then the lands to remain to him in fee, and dies, and the ſon is born; in this caſe it was held, that the fee of the brother ſhall ceaſe, and veſt in the ſon, by way of *executory deviſe*, on the happening of the *contingency*; and here ſuch fee eſtate enures as a new original deviſe to take effect when the firſt fails. *Dyer* 33, 127. *Cro. Jac.* 592. A *remainder of a fee* may not be limited by the rules of law *after a fee ſimple*; for when a man hath parted with his *whole* eſtate, there cannot remain any thing for him to diſpoſe of: but of late times a diſtinction hath been made between an *abſolute fee-ſimple*, and a *fee-ſimple* which *depends upon a contingency*, or is *conditionally limited*; eſpecially where ſuch a contingency may happen in the courſe of a *few years*, or of *one or two lives*; and where ſuch a *remainder* is *limited by will*, it is called an *executory deviſe.* 2 Nelſ. Abr 797

An eſtate deviſed to a ſon and his heirs, upon condition that if he did not pay the legacies given by the will within ſuch a time, that then the land ſhould remain to the legatees, *&c.* and their heirs: this limitation of *a fee in remainder*, after a *fee limited to the ſon*, being upon the *contingency*, of the ſon's failing in payment of the legacies, was adjudged good by way of *executory deviſe. Cro. Eliz.* 833. And where the father deviſed his lands to his youngeſt ſon and his heirs, and if he died without iſſue, the eldeſt ſon being alive, then to him and his heirs; this was held a good remainder in fee to the eldeſt brother, after the conditional contingent eſtate in fee to the youngeſt, as depending upon the poſſibility that he might be alive when his youngeſt brother died without iſſue; and his dying without iſſue, was a collateral determination of his eſtate, whilſt the other was living. *Godb.* 282. 2 *Nelſ. Abr.* 798.

There can be no *executory deviſe* after an *eſtate-tail generally limited*, becauſe that would tend to *a perpetuity*; and a contingency is too remote where a man muſt expect a fee upon another's dying *without iſſue, generally:* But *dying without iſſue, living another*, may happen in a little time, becauſe it depends upon *one life*; and therefore a deviſe of a fee-ſimple to one, but to remain to another upon ſuch a contingency, is now held good by *executory deviſe.* Cro. Jac. 695. Sometimes croſs remainders in tail by implication, have been pleaded againſt executory deviſes.

II. *As to executory deviſes of terms.*

Formerly where a term of years, (which is but a chattel) was deviſed to one; and that if he died, living another perſon, it ſhould remain to the other perſon, during the reſidue of the term, ſuch a remainder was adjudged void: For a deviſe of a chattel to one for an hour, was a a deviſe of it for ever. *Dyer* 74. But ſince it has been held, that *a remainder of a term to one, after it was limited to another for life*, was good: In a caſe where a teſtator having a term, deviſed that his wife ſhould have the lands for ſo many years of the term as ſhe ſhould live; and that after her death the reſidue thereof ſhould go to his ſon and his aſſigns; and this was the firſt caſe wherein an executory remainder of a term for years was adjudged good. *Dyer* 253, 358.

A perſon poſſeſſed of a term, deviſed it to his wife for eighteen years, and after to his eldeſt ſon for life, after to the ſon's eldeſt iſſue male during life; though he have no ſuch iſſue, at the time of the deviſe, and death of the deviſor, if he has before his own death, he ſhall have it as an *executory deviſe.* 1 Rol. 612. But if one deviſe a term to his wife for life; the remainder to his firſt ſon for life, and if he dies without iſſue, to his ſecond ſon, *&c.* the remainder to the ſecond ſon is void, and no executory deviſe; yet where he dying without iſſue living at a perſon's death, may be confined to one life, it hinders not a remainder over *Abr. Ca. Eq.* 194.

Exetutory deviſes, as to *terms for years*, are not extended beyond *a life or lives*; they ought to ariſe within the compaſs of *one life.* 1 Salk. 229. Where there is an *executory deviſe*, there needs not any *particular eſtate* to ſupport it; and becauſe the perſon who is to take upon contingency, hath not a *preſent* but *future intereſt*, his eſtate *cannot be barred by a common recovery*. 2 Nelſ. Abr. 797, 798. It is held *executory deviſes*, and *limitations* of the *truſt of a term*, are governed alike. 1 *Vern*. 234.

Leſſee for years deviſed *all his term* to his ſon, and his will was, that his wife ſhould have the *occupation and profits of the lands*, during the minority of his ſon, &c. and he made her ſole executrix, and died; ſhe afterwards proved the will, then ſhe ſold the term, and died; adjudged that this ſale was void againſt her ſon, becauſe it ſhall be intended that the deviſe to the wife, ſhall *precede* the deviſe to the ſon, though it followed in words, and then ſhe will not have the whole term, but only ſo much thereof for ſo long time as ſhe ſhould live, before her ſon came of age; and that the remainder was to veſt in him, upon the contingency of his living till he came of full age. *Plow. Com.* 53. *Paramour* verſus *Yardley*. And ſee *Plow. Com.* 519. *Welkden* v. *Elkington*.

The huſband being poſſeſſed of a term for years, deviſed *the leaſe itſelf* to his wife for *her life*, and after her death to *her children unpreferred*; it was inſiſted for the wife, that ſhe had the whole term, the deviſe being of *the leaſe itſelf*, and the lands are not mentioned throughout the will; but adjudged that the wife had only *an eſtate for ſo many years of the leaſe as ſhe ſhould live*, and that ſo much as remained unexpired at her death, was to veſt in the children upon the contingency of their living at that time. 1 *And.* 61. *Amner* verſus *Ladington*. 2 *Leon.* 92. *S. C.* 3 *Leon.* 89. *S. C.* *Gold.* 26. *S. C.*

In theſe caſes, (as ought to be in all) the court hath regarded the intent of the teſtator: and it ſeems ſo to have done, without much regard to the niceties in law. And with reſpect to deviſes, much greater latitude is allowed in the conſtruction of *wills*, than of *deeds*.

What ſhall be conſtrued an *executory deviſe*, and what a *remainder*, ſee *Wealthy on the deviſe of* Manley v. *Boſville*. *Rep. Temp. Hardw. per Annaly*, 258, &c. And ſee a *moſt excellent* and *ſcientific* work on *Contingent Remainders*, by Mr. *Fearne*.

Exemplification of Letters Patent, Is a copy or tranſcript of *letters patent*, made from the inrolment thereof, and ſealed with the Great Seal of *England*, which exemplifications may be ſhewn or pleaded, as the *letters patent* themſelves. But neither an exemplification nor *conſtat* was pleadable at Common law, becauſe there was only the tenor of an inrolment, and the tenor of a record is not pleadable: Though by the ſtatutes 6 *R.* 2. *c.* 4. 3 & 4 *Ed.* 6. *c.* 4. and 13 *Eliz.* *c.* 6. they are pleadable. 5 *Rep.* 53.

By the laſt mentioned ſtatute, exemplifications of the inrolment of grants by letters patent, ſhall be of as good force in pleading for the patentees, &c. as if the patents were produced, One may exemplify a patent under the Great Seal in Chancery; and alſo any record or judgment, in any of the courts at *Weſtminſter*, under the proper ſeal of each court; and ſuch an exemplification may be given in evidence to a jury, &c. 1 *Lill.* 583. *Shep. Abr.* 134. A rule made, or writ filed in any court at *Weſtminſter*, may be exemplified in the court where made, or filed. 1651. *C. B.* But nothing but matter of record ought to be exemplified. 3 *Inſt.* 173. Atteſted copies of records on ſtamped paper, are in general good evidence. The perſon who examines them proving the examination, and that the copy in queſtion is a true copy. And the only true method of examining is by a croſs examination; *i. e.* the perſon examining reading the original, whilſt the copy is read to him, and then the copy, whilſt the original is read to him. The editor ſaw a young gentleman examining a copy from *domeſday*, whilſt the officer read the original, who when deſired to read the original, did not underſtand, nor could he read, one half of the words. Yet under ſuch an examination he had attended at the preceding aſſizes in one of the northern counties, to prove an extract from the ſame book, but luckily was not called on, to expoſe himſelf.

Exemplificatione, Is a writ granted for the exemplification of an original record. *Reg. Orig.* 290.

Exemption, *(Exemptio)* Signifies a privilege to be free from ſervice or appearance; as knights, clergymen, &c. are exempted to appear at the county-court by ſtatute; and Peers from being put upon inqueſts. 6 *Rep.* 23. Perſons ſeventy years of age, apothecaries, &c. are alſo exempted by law from ſerving on juries: And juſtices of peace, attorneys, &c. from pariſh offices: 2 *Inſt.* 247. There is an exemption from tolls, &c. by the King's *Letters Patent*: And a writ of exemption, or of eaſe, to be quit of ſerving on juries, and all public ſervice. *Shep. Epitom.* 1049.

Exercituale, Was anciently uſed for a heriot; being paid only in arms and military accoutrements. Exercituale *Vironis ſive Baronis Regis, qui erit proximus ei, quatuor equi*. Leg. Edw. Conf. 1.

Exeter. By letters patent under the Great Seal, the ſite of the caſtle of *Exon* (part of the dutchy of *Cornwall*) to be granted to ſome perſons appointed by the juſtices in quarter-ſeſſions for the county of *Devon*, for the term of 99 years, to the uſe of the ſaid county and for other public uſes; under the ancient yearly rent of 10 *l. per annum*, payable to the crown. *Stat.* 9 *Ann.* *c.* 19.

Exfrediare, (From the Sax. *Frede*, *Frith*, *Peace*, and *Frithian*) To break the peace, or commit open violence. *Leg. H.* 1. *c.* 13.

Ex gravi Querela, Is a writ that lies for him to whom any lands or tenements in fee are deviſed by will, (within any city, town or borough, wherein lands are deviſeable by cuſtom) and the heir of the deviſor enters, and detains them from him. *Reg. Orig.* 244. *Old Nat. Br.* 87. And if a man deviſes ſuch lands or tenements unto another in tail, with remainder over in fee, if the tenant in tail enter, and is ſeiſed by force of the intail, and afterwards dieth without iſſue; he in remainder ſhall have the writ *ex gravi querela* to execute that deviſe. *New Nat. Br.* 441. Alſo where tenant in tail dies without iſſue of his body, the heir of the donor, or he who hath the reverſion of the land, ſhall have this writ in the nature of a *formedon in the reverter*. Ibid. If a deviſor's heir be ouſted by the deviſee, by entry on the lands; he may not after have this writ, but is to have his remedy by the ordinary courſe of the Common law. *Co. Lit.* 111. If the claimants title accrues within 20 years, the moſt eligible method of proceeding, will be by ejectment.

Exhenium or **Exennium**, A gift or preſent, and more properly a new year's gift——*In expenſis domini Regis & exenniis eidem factis apud*, &c. *lxxv ſol.*——Ex Compot. Dom. de Farend. MS.

Exhibit, *(Exhibitum)* A word mentioned in the ſtatute 14 *Car.* 2. *cap.* 14. And where a deed, or other writing is in a ſuit in Chancery exhibited to be proved by witneſſes, and the examiner or commiſſioners appointed certify on the back of it, that the deed or writing was ſhewed to the witneſs, to prove it at the time of his examination, and by him ſworn to; this is called an *exhibit* in law proceedings. The ſame, under a commiſſion of bankrupt.

Exhibitio, An allowance for meat and drink, ſuch as was cuſtomary among the religious appropriators of churches, who uſually made it to the depending vicar: and the benefactions ſettled for the maintaining of ſcholars in the univerſities, not depending on the foundation, are called *exhibitions*. Paroch. Antiq. 304.

Exigendaries of the Common Pleas, *(Exigendarii de Banco Communi)* Are otherwiſe called *Exigenters*, by *Stat.* 10 *H.* 6. *c.* 4. See *Exigenter*.

Exigent, *(Exigenda)* Is a writ that lies where the defendant in an action perſonal cannot be found, nor any thing of his within the county, whereby to be attached or diſtrained; and is directed to the ſheriff, to proclaim and call him *five county-court days*, one after another, charging him to appear upon pain of outlawry: It is called *exigent*, becauſe it *exacteth* the party, *i. e.* requires his appearance or forth-coming to anſwer the law; and if he come not at the laſt day's proclamation, he is ſaid to be *quinquies exactus*, and is outlawed. *Cromp. Juriſ.* 188.

The ſtatutes requiring proclamations on exigents awarded in civil actions, are 6 *Hen.* 8. *c.* 4. and 31 *Eliz.* *cap.* 3. Exigents are to be awarded againſt receivers of the King's money, who detain the ſame; and againſt conſpirators, rioters, &c. Stat. 18 *Ed.* 3. *c.* 1. And a writ of proclamation ſhall be iſſued to the ſheriff to make three proclamations in the county where the defendant dwells, for him to yield himſelf, *&c.* by the *Stat.* 31 *Eliz. c.* 3.

The writ of exigent alſo lies in an indictment of felony, where the party indicted cannot be found: And upon ſuing out an exigent for a criminal matter before conviction, there ſhall be a writ of proclamation, *&c.* 3 *Inſt.* 31. 4 *&* 5 *W. & M. c.* 22. If a perſon indicted of felony abſent himſelf ſo long that the writ of exigent is awarded, his withdrawing will be deemed a *flight in law*, whereby he will be liable to forfeit his goods; and tho' he renders himſelf upon the exigent, after ſuch withdrawing, and is found Not guilty, it is ſaid the forfeiture ſhall ſtand. 5 *Rep.* 110. 3 *Inſt.* 232. After a *capias* directed to the ſheriff to take and impriſon a perſon, *&c.* if he cannot be taken, an exigent is awarded: And after a judgment in a civil action, the exigent is to go forth after the firſt *capias*; but before judgment there muſt be a *capias, alias* and *pluries.* 4 *Inſt.* 177. If the defendant be in priſon, or beyond ſea, *&c.* he or his executors may reverſe the award of the exigent. See *Outlawry.*

Exigenter, *(Exigendarius)* Is an officer of the court of Common Pleas; of which officers there are four in number: They make all exigents and proclamations, in actions where proceſs of outlawry doth lie; and alſo writs of *ſuperſedeas*, as well as the *prothonotaries*, upon ſuch exigents made out in their offices, 18 *H.* 6. *c.* 9. But the iſſuing writs of *ſuperſedeas* is taken from them by an officer in the ſame court, conſtituted by letters patent by King *James* the Firſt.

Exigi facias, The exigent is ſo called. See *Black. Com.* 3 *V.* 283. and *Exigent.*

Exile, A baniſhment or driving out of a perſon. *Lit. Dict.* And this exile is either by reſtraint, when the government forbids a man, and makes it penal to return; or it is voluntary, where he leaves his country upon diſguſt, but may come back at pleaſure. 2 *Lev.* 191.

Exilium, Signifies, in law conſtruction, a ſpoiling: And by the ſtatute of *Marlbridge* it ſeems to extend to the injury done to tenants, by altering their tenure. ejecting them, *&c.* and this is the ſenſe that *Fleta* determines; who diſtinguiſhes between *vaſtum, deſtructio*, and *exilium*; for he tells us that *vaſtum* and *deſtructio* are almoſt the ſame, and are properly applied to houſes, gardens or woods; but *exilium* is when ſervants are infranchiſed, and afterwards unlawfully turned out of their tenements.—Vaſtum & deſtructio *fere æquipollent, & convertibiliter ſe habent in Domibus, Boſcis, & Gardinis; ſed* exilium *dici poterit, cum ſervi manumittuntur, aut à tenementis ſuis injurioſe ejiciuntur.* Fleta, lib. 1. cap. 11.——*Venditionem vel* exilium *non faciant de Domibus, Boſcis, vel hominibus, &c.* Stat. Marlb. c. 25.

Exitus, Iſſue or off-ſpring: and applied to the iſſues or yearly rents and profits of lands.—*Et ſciat vicecomes, quod redditus, blada in grangia, & omnia mobilia, præter equetaturam, indumenta & utenſilia domorum, continentur ſub nomine* exituum. *Stat Weſtm.* 2. *c.* 45.

Exlegalitus, Is he who is proſecuted as an outlaw. *Leg. Edw. Confeſ. c.* 38.

Ex mero motu, Are words uſed in the King's charters and letters patent, to ſignify that he grants them *of his own will and motion*, without petition or ſuggeſtion of any other: And the intent and effect of theſe words, is to bar all exceptions that might be taken to the charters or letters patent, by alledging that the King in granting them was abuſed by falſe ſuggeſtions. *Kitch.* 352. When the words *ex mero motu* are made uſe of in any charter, they ſhall be taken moſt ſtrongly againſt the King. 1 *Co. Rep.* 451.

Ex Officio, Is ſo called from the power a perſon has by virtue of an office, to do certain acts, without being applied to: As a juſtice of peace may not only grant ſurety of the peace, at the complaint or requeſt of any perſon, but he may demand and take it *ex officio* at diſcretion, *&c.* *Dalt.* 270.

Ex Officio *Informations,* Are informations at the ſuit of the King, filed by the Attorney-General, as by virtue of his office, without applying to the court wherein filed, for leave, or giving the defendant any opportunity of ſhewing cauſe why it ſhould not be filed. Add to this, the ſubject hereby loſes the benefit intended by *Magna Charta, i. e.* of one jury, out of two, in criminal charges.

How long this mode of proceeding will be admitted, in this free country, *time* muſt diſcover.

Exoneratione ſectæ, Was a writ that lay for the King's ward, to be free from all ſuit to the county-court, hundred court, leet, *&c.* during wardſhip. *F. N. B.* 158.

Exoneratione ſectæ ad Curiam Baron'. A writ of the ſame nature, ſued by the guardian of the King's ward, and directed to the ſheriff or ſtewards of the court, that they do not diſtrain him, *&c.* for not doing ſuit of court. *New Nat. Br.* 352. And if the ſheriff diſtrain tenants in ancient demeſne to come to the ſheriff's torn or leet, they may have a writ commanding the ſheriff to ſurceaſe, *&c.* *Ibid.* 359. Likewiſe if a man have lands in divers places in the county, and he is conſtrained to come to the leet where he is not dwelling, when he reſides within the precinct of any other leet, *&c.* then he ſhall have this writ to the ſheriff to diſcharge him from coming to any other court-leet than in the hundred where he dwelleth. *Ibid.* 357.

By the Common law, parſons ſhall not be diſtrained to come to court leets, for the lands belonging to their churches; and if they be, they may have the writ *exoneratione ſectæ, &c.* F. N. B. 394. So ſhall a woman holding land in dower, if ſhe is diſtrained to do ſuit of court for ſuch land; when the heir has lands ſufficient in the ſame county. *Ibid.*

Ex parte, Of the one part; as a commiſſion in Chancery *ex parte*, is that which is taken out and executed by one ſide or party only, on the other party's neglecting or refuſing to join: When both plaintiff and defendant proceed, it is a joint commiſſion.

Ex parte talis, Is a writ that lies for a *bailiff* or *receiver*, who having auditors aſſigned to take his account, cannot obtain of them reaſonable allowance, but is caſt into priſon: And the courſe in this caſe is to ſue this writ out of the Chancery, directed to the ſheriff to take four mainpernors to bring his body before the Barons of the *Exchequer* at a certain day, and to warn the lord to appear at the ſame time. *F. N. B.* 129.

Expectant, Having relation to or depending upon; and this word is uſed in the law with *fee*, as *fee-expectant.*

Expectancy, *Eſtates in*; Are of two ſorts; one created by act of the *parties*, called a *remainder*; the other by act of *law*, called a *reverſion.* Black. Com. 2 V. 163, 4, *&c.*

Expeditate, *(Expeditare)* In the laws of the *foreſt*, ſignifies to cut out the ball of the dog's fore-feet, for the preſervation of the King's game: But the ball of the foot of a maſtiff is not to be taken out, but the three claws of the fore-foot on the right ſide are to be cut off by the ſkin. *Cromp. Juriſd.* 152. *Manwood, cap.* 16. This relates to every man's dog who lives near the foreſt; and was formerly done once in every three years: And if any perſon keeps a great dog not expeditated, he forfeits to the King 3 *s.* 4 *d.* 4 *Inſt.* 308.

Expeditatæ Arbores, Trees rooted up or cut down to the roots.—*Inquiratur de arboribus* expeditatis *in foreſta.* Fleta, lib. 2. c. 41.

Expenditors, Are the perſons appointed by commiſſioners of *ſewers* to pay, diſburſe or expend the money collected by the tax for the repairs of ſewers, *&c.* when paid into their hands by the collectors, on the reparations, amendments and reformations ordered by the commiſſioners, for which they are to render accounts when thereunto required. *Laws of ſewers* 87, 88. Theſe officers are mentioned in the ſtatute 37 *H.* 8. *c.* 11. and other ſtatutes: The ſteward who ſuperviſes the repair of the banks and water-courſes in *Romney-Marſh*, is called the *Expenditor.*

Expenſæ Litis. Coſts of ſuit allowed a plaintiff or defendant recovering in his action. See *Coſts.*

Expenſis militum non levandis, &c. Is an ancient writ to prohibit the ſheriff from levying any allowance for knights of the ſhire, upon thoſe that hold lands in ancient demeſne. *Reg. Orig.* 261. For there is a writ *de expenſis militum levandis*, for levying expences for knights of the parliament, *&c.* Reg. Orig. 191.

Explees, The rents or profits of an eſtate, *&c.* Vide *Eſplees.*

Explorator, A ſcout; alſo a huntſman or chaſer.—*In memoriam* Henrici Croft *equitis aurati*, exploratoris *in* Hibernia *generalis, qui obiit anno* 1609.

Exportation, Is the ſhipping or carrying out the native commodities of *England* for other countries; mentioned in the ſtatutes relating to the *cuſtoms.* See *Importation.*

Expoſition of Deeds, It ſhall be favourable, according to the apparent intent; and be reaſonable and equal, *&c.* Co. Lit. 313. *See* Deed.

Courts will go great lengths in the conſtruction of *words* to ſupport the party's right, eſpecially after verdict. *Rep. temp Hardw. per Annaly* 21.

Ex poſt facto, Is a term uſed in the law, ſignifying ſomething done after another thing that was committed before. And an act done, or eſtate granted, may be made good by matter *ex poſt facto,* that was not ſo at firſt, by election, *&c* As ſometimes a thing well done at firſt, may afterwards become ill. 5 *Rep.* 22. 8 *Rep.* 146.

Extend, *(Extendere)* Is to value the lands or tenements of one bound by a ſtatute, who hath forfeited his bond, at ſuch an indifferent rate, as by the yearly rent the creditor may in time be paid his debt. *F. N. B.*

Extendi facias, A writ of extent, whereby the value of lands is commanded to be made and levied, *&c.* Reg. Orig.

Extent, *(Extenta)* Signifies a writ or commiſſion to the ſheriff for the valuing of lands or tenements; and ſometimes the act of the ſheriff or other commiſſioner upon this writ. *Bro.* 313. *Stat.* 16 *&* 17 *Car.* 2. *cap.* 5. It hath been held more frequently to be the eſtimate or valuation of lands, which when done to the utmoſt value, is ſaid to be the full extent; whence come our extended rents, or rack-rents. And if one bound to the King by ſpecialty, or to others by ſtatute, recognizance, *&c.* hath forfeited it; ſo that by the yearly rent of the debtor's lands, the creditor is to be paid his debt; upon this the creditor may ſue a writ to the ſheriff out of the Chancery to deliver him the lands and goods to the value of the debt, which is termed a *liberate.* F. N. B. 131. This is after the extent directed to the ſheriff to ſeize and value the lands, *&c.* of the debtor, to the utmoſt extent. 4 *Rep.* 67. Lands and goods are to be appraiſed and extended by the inqueſt of twelve men, and then delivered to the creditor, in order to the ſatisfaction of his debt: Every extent ought to be by inquiſition and verdict, by the *Stat. Weſtm.* 2. And the ſheriff cannot execute the writ without an inquiſition. *Cro. Jac.* 569.

The body of the cogniſor, and all lands and tenements that were his at the time of the ſtatute, *&c.* entered into, or afterwards, into whoſe hands ſoever they come, are liable to the extent. 2 *Inſt.* 396. But *copyhold* lands are chargeable only during the life of the cogniſor; and may not be extended by *elegit,* ſo as to admit a ſtranger to have intereſt in the lands held by copy, without the admittance of the lord. Lands in ancient demeſne, annuities, rents, *&c.* are extendible. 1 *Rol. Abr.* 88. Two parts of an entire rent may be delivered upon an extent by the ſheriff. *Cro. Eliz.* 742. But if the cogniſor of a ſtatute have a rent-charge, and before the extent he purchaſe parcel of the land; the rent is gone, and ſhall not be in execution: 'Tis otherwiſe if he purchaſes after extent of the rent. *Dyer* 206. A reverſion of lands, *&c.* may not be extended; but a plaintiff had judgment for his debt and damages *de reverſione cum acciderit,* and a ſpecial *elegit* to extend the moiety, *&c.* 2 Sid. 86. Dyer 373.

An advowſon in groſs is not extendible on elegit, *&c.* *Stat. Weſtm.* 2. *cap.* 18. An office of truſt cannot be extended, becauſe 'tis not aſſignable; and nothing ſhall be extended, but what may be aſſigned over. *Dyer* 7. Though an office is extendible in equity. *Chanc. Rep.* 39. Goods and chattels, as leaſes for years, cattle, *&c.* in the cogniſor's own hands, and not ſold for valuable conſideration, are ſubject to the extent. As the lands are to be delivered to the party at a reaſonable yearly value, ſo the goods ſhall be delivered in extent at a price that is reaſonable: And on a *ſcire facias ad computand.* the cogniſee is to account according to the *extended* value; not the *real* value of the land. *Hardr.* 136. If the extenders appraiſe and value the lands too high, the cogniſee at the return of the writ may pray that they may take and retain the lands at the rate appraiſed; and then 'tis ſaid he may have execution againſt their lands for the debt; but this may not be on *elegit.* Cro. Jac. 12. It has been adjudged, that at the return of the writ the cogniſee may refuſe the lands, *&c.* extended, if over-valued. *Cro. Car.* 148.

Where lands are extended at under-value, and delivered in execution; the cogniſee hath an intereſt in the land, which cannot be diveſted by finding of ſurpluſage. *Cro. Eliz.* 266. *Cro. Jac.* 85. The cogniſor cannot enter upon the cogniſee, when ſatisfaction is received for the debt, but is put to his *ſcire facias* on an *extent:* Tho' on an *elegit,* the defendant may enter becauſe the land is only awarded, till the debt, which is certain, is ſatisfied; whereas on extent, the land is to be held until the debt, damages and coſts, *&c.* are ſatisfied: And the cogniſee being in by matter of record, ſhall not be put out but by matter of record, *viz.* a *ſcire facias* brought againſt him. 4 *Rep.* 67. *March's Rep.* 207, 208. *Sed qu.* Where is the difference? Is not the tenant by *elegit* in by matter of record?

The cogniſee hath no abſolute property in lands by the extent, till the delivery upon the *liberate;* but notwithſtanding, by the very extent they are *in cuſtodia legis* for his benefit. *Cro. Car.* 106, 148. No actual ſeiſin can be on an extent, and a cogniſee of a ſtatute ſtaple, *&c.* cannot bring ejectment before the *liberate;* nor can the ſheriff upon the *liberate* turn the tertenant out of poſſeſſion, as he may upon a *hab. fac. poſſeſſionem.* 1 Vent. 41. Where there is an extent upon a ſtatute, and a *liberate* thereupon, but not returned, yet it is good; though regularly, when inquiſitions are taken, the writ ought to be returned. 4 *Rep.* 67. 1 *Lill Abr.* 592. The ſheriff may be charged to make a return of his writ, if he put the cogniſee in poſſeſſion of part only; and ſo the cogniſee may have poſſeſſion of the whole. 2 *Nelſ. Abr.* 774. But it is ſaid if a perſon ſuing out an extent, die before the return of a writ, the ſheriff may not proceed in his inquiſition, *&c.* afterwards; for there muſt be a proſecution *de novo.*

After a full and perfect execution had by extent, returned, and of record, there ſhall never be any re-extent upon an eviction: But if the extent be inſufficient in law, there may be a new extent. *Stat.* 32 *Hen.* 8. *cap.* 5. *Co. Lit.* 290. So if lands be extended upon a miſtake, *&c.* and ſee *Dyer* 299. If part of the lands is evicted, the cogniſee is to hold over the reſidue of the land till the debt is ſatisfied. 4 *Rep.* 66. When lands are delivered in extent, it is as if the cogniſee had taken a leaſe thereof for years, until the debt is ſatisfied; and he ſhall never afterwards take out a new execution: The cogniſee having accepted the land upon the *liberate,* the law preſumes the debt to be ſatisfied. 1 *Lutw.* 429. An extent was filed, and though it was diſcovered that lands were omitted, the court would not grant a re-extent. *Sid.* 356. Lands or goods, *&c.* are not to be ſold on an extent; but delivered. *Extent* is alſo a proceſs which iſſues for the King, againſt his debtors, *&c.*

Where a *fieri facias* iſſues, and is delivered to the ſheriff to be executed, the property of the goods is veſted by the *delivery,* and an extent afterwards for the King comes too late, and that on the ſtatute of frauds and perjuries. *Per Holt. Comb.* 123. See *Statute.*

Extinguiſhment, (From *Extinguo)* Signifies a conſolidation: For example; If a man hath a yearly rent out of lands, and afterwards purchaſes the lands whereout it ariſeth, ſo that he hath as good an eſtate in the land as the rent; now both the property and rent are conſolidated or united in one poſſeſſor; and therefore the rent is ſaid to be extinguiſhed. Alſo where a perſon has a leaſe for years, and afterwards buys the property; this is a conſolidation of the property and fruits, and is an extinguiſhment of the leaſe: But if a man have an eſtate in land but for life or years, and hath a higher eſtate as a fee-ſimple in the rent; the rent is not extinguiſhed, but in ſuſpence for a time; for after the term, the rent ſhall revive. *Terms de Ley.*

Extinguiſhment of a rent is a deſtroying of the rent by purchaſe of the land; for no one can have a rent going out of his own land; though a perſon muſt have *as high an eſtate in the land, as in the rent, or the rent will not be extinct.* Co. Lit. 147. If a perſon hath a rent-charge to him and his heirs iſſuing out of lands, and he purchaſeth any part of the land to him and his heirs; as the rent is intire and iſſuing out of every part of the land, the whole rent-charge is extinguiſhed: Though it is not ſo where one hath a *rent-ſervice,* and purchaſeth part of the land out of which it iſſues; *rent-ſervice* being *apportionable* according to the value of the land, ſo that it ſhall only extinguiſh the rent for the land purchaſed. *Lit.* 222. *Co. Lit.* 148. And if the grantee of a rent-charge purchaſes parcel of the lands, and the grantor by his deed granteth that he may diſtrain for the rent in the reſidue of the land, this amounts to a new grant. *Co. Lit.* 147.

If a man be ſeiſed of a rent-charge in fee, and grants it to another and his heirs, and the tenant attorns; the grantor is without remedy for the rent in arrear before his grant; and ſuch arrears become as it were extinct. *Vaugh.* 40. 1 *Lill. Abr.* 594. *A. B.* made a leaſe for years of lands to another, and afterwards granted a rent-charge to *C. D.* who deviſed the ſaid rent to the ſaid *A. B.* till 100*l.* ſhould be levied; then to *B. G.* and died: Adjudged that by the deviſe to *A. B.* the rent was ſuſpended, and that a perſonal thing once ſuſpended by the act of the party is extinguiſhed for ever. *Dyer* 140. *Sed qu.* with reſpect to the intereſt of *B. G.* But if a man in contemplation of marriage gives a woman a bond, to leave her at his death, if ſhe ſurvive him, ſo much, and afterwards marries her, dies, and ſhe ſurvives him, yet though the bond was by the marriage, in ſome ſort, extinguiſhed, yet on his death, the bond is revived.

If tenant for life, makes a leaſe for years, rendring rent, and after the reverſion deſcends to the tenant for life; this is not an extinguiſhment of the term; but it is otherwiſe if he have the reverſion by purchaſe. 1 *Co. Rep.* 96. A jointenant for life purchaſes the land in reverſion, it will extinguiſh the eſtate for life for a moiety, and ſever the jointure. 2 *Rep.* 60. Lands are given to two men, and the heirs of their bodies; though they have an eſtate for life jointly, and ſeveral inheritances, yet the eſtate for life is not extinct: *Contra,* if it be by *ſeveral conveyances;* as where a leaſe is made to two for their lives, and after the leſſor grants the reverſion to them and their heirs, &c. here the life eſtate will be extinguiſhed. *Co. Lit.* 182.

If one after his title begun to be tenant by the curteſy, make a feoffment in fee upon condition, and enter for the condition broken; the eſtate is extinct, ſo that if his wife die, he ſhall not be tenant by the curteſy. 1 *Rep.* 18. Where a man hath an eſtate for his own life, and for another's life at once; the eſtate *pur auter vie* will be extinguiſhed in the eſtate for his own life, which is greater in law than the other. 11 *Rep.* 87. *Dyer* 11. See *Bro.* 409. *Moor* 94. 2 *Nelſ. Abr.* 821.

When the freehold cometh to the term, the eſtate for years is extinct. *Nelſ. Ibid.* 820. Where the remainder of a term is granted over to another, if the party in poſſeſſion purchaſe the fee-ſimple, though by this means his intereſt is extinguiſhed; yet that ſhall not defeat the reverſionary intereſt. 10 *Rep.* 52. 2 *Nelſ.* 820.

A fine, &c. of lands, will extinguiſh a term: and by purchaſe of an eſtate in fee-ſimple, an eſtate-tail in land is extinct. 9 *Rep.* 139. But if a fee-ſimple and fee-tail meet together by *diſcent,* the eſtate tail will not be extinguiſhed. 3 *Rep.* 61. Diſcent of lands to the ſame perſon who has a term, will extinguiſh the term. *Moor* 286.

When a leſſor enters tortiouſly upon the leſſee againſt his conſent, the rent is extinguiſhed. 2 *Lev* 143. But it has been adjudged, that rent is not extinct by the entry of the leſſor, but only ſuſpended; and revives by the leſſee's re-entry. *Dyer* 361. An infant has a rent, and purchaſes the land out of which it is iſſuing; by this the rent will be ſuſpended, but not extinct. *Bro. Extinguiſh.* A man leſſee for years takes a wife, or woman leſſee a huſband, that hath the reverſion after the leaſe; here the term is *not* extinguiſhed. 12 *Rep.* 81.

There are likewiſe extinguiſhments of other kinds, which come next in their order. As

Extinguiſhment of Common. By purchaſing lands wherein a perſon hath common appendant, the common is extinguiſhed. *Cro. Eliz.* 594. A commoner releaſes his common in one acre, it is an extinguiſhment of the whole common. *Show. Rep.* 350. And where a perſon hath common of *vicinage,* if he incloſes any part of the land, all the common is extinct. 1 *Brownl.* 174.

But if one hath common appendant in a great waſte, belonging to his tenant, and the lord improve part of the waſte leaving ſufficient; if he after make a feoffment to the commoner of the land improved, this will be no extinguiſhment. *Dyer* 339. *Hob.* 172. A commoner aliens part of his land, to which the common doth belong; the common is not extinct, but ſhall be divided. 2 *Shep. Abr.* 152. Vide *Common.*

Extinguiſhment of Copyhold. As to the extinguiſhment of copyholds, it is laid down as a general rule, that any act of the copyholder's, which denotes his intention to hold no longer of his lord, and amounts to a determination of his will, is an extinguiſhment of his copyhold. *Hutt.* 81. *Cro. Eliz* 21. 1 *Jon.* 41.

As if a copyholder in fee accepts a leaſe for years of the ſame land from the lord, this determines his copyhold eſtate; or if the lord leaſes the copyhold to another, and the copyholder accepts an aſſignment from the leſſee, his copyhold is extinct. *Moor* 184. 2 *Co.* 16. *b.* *Godb.* 11, 101.

So if a copyholder bargains and ſells his copyhold to the leſſee for years of the manor, his copyhold is thereby extinguiſhed; or if he joins with his lord in a feoffment of the manor, his copyhold is thereby extinct, for theſe are acts which denote his intention to hold no longer by copy. *Hutt.* 65. 1 *Jon.* 41. *S. C.* *Godb.* 11.

So if a copyholder accepts to hold of his lord, by bill under the lord's hand, this determines his copyhold; ſo if he accepts an eſtate for life by parol, if livery, this is an extinguiſhment; otherwiſe not; for without livery nothing but an eſtate at will paſſes, which cannot merge or extinguiſh an eſtate at will. 1 *And.* 199. *Latch.* 213.

If one ſeiſed of a *manor* in right of his wife lets lands by indenture for years; this doth not deſtroy the cuſtom as to the wife; for after the death of her huſband ſhe may demiſe it again by copy. *Cro. Eliz.* 459.

So if a copyhold is in the hands of a ſubject, who after becomes King, the copyhold is extinct, for it is below the Majeſty of a King to perform ſuch ſervile ſervices; yet after his deceaſe the next that hath right ſhall be admitted, and the tenure revived. 2 *Sid.* 82. 4 *Co.* 24. *Cro. Eliz.* 252. See 2 *Leon.* 208. 4 *Co.* 26. *b.* *Cro. Eliz.* 103. And a copyhold eſtate is extinct whenever it becomes not demiſable by copy. *Coke's Copyhold* 62.

Extinguiſhment of Debt. If feme ſole debtee take the debtor to huſband; or there be two *joint* obligors in a bond, and the obligee marries one of them; or in caſe a perſon is bound to a feme ſole and another, and ſhe takes the obligor to huſband; in theſe caſes, the debt will be extinguiſhed. 8 *Rep.* 136. And if a debtor makes the debtee his executor, or him and another executors, and they take the executorſhip upon them; or if the debtee makes his debtor executor, &c. it is an extinguiſhment of the debt, and it ſhall never revive. *Plowd.* 184. 1 *Salk.* 304. But in the latter caſe the debt is aſſets. But where a debtee or debtor executor legally refuſeth; or he and others being made executors they all refuſe, then the debt is revived again. *Plowd.* 185.

It is agreed as a general rule, that a creditor's accepting a higher ſecurity than he had before, is an extinguiſhment of the firſt debt; as if a creditor by ſimple contract accepts an obligation, this extinguiſhes the ſimple contract debt. 1 *Rol. Abr.* 470, 471, 604. 6 *Co.* 44.

So if a man accepts a bond for a legacy, he cannot after ſue for his legacy in the ſpiritual court; for by the deed the legacy is extinct, and it is become a mere debt at Common law. *Yelv.* 38.

So if a bond creditor obtains judgment on the bond, or has judgment acknowledged to him, he cannot afterwards bring an action on the bond; for the debt is drowned in the judgment, which is a ſecurity of a higher nature than the bond. 6 *Co.* 44. *b.*

But theſe caſes muſt be underſtood where the debtor himſelf enters into theſe ſecurities; and therefore if a ſtranger give bond for a ſimple contract due by another, this does not extinguiſh the ſimple contract debt; but if *upon making the contract*, a ſtranger gives bond for it, or, being preſent, promiſes to give bond for it, and after does ſo, the debt by ſimple contract is extinguiſhed, the obligation being made *upon*, or *purſuant to the contract*. 2 Leon. 110.

But the accepting a ſecurity of an inferior nature is by no means an extinguiſhment of the firſt debt; as if a bond be given in ſatisfaction of a judgment. *Cro. Jac.* 579. 2 *Brownl.* 29. *Cro. Jac.* 649, 650.

Alſo the accepting a ſecurity of equal degree is no extinguiſhment of the firſt debt; as where an obligee has a ſecond bond given to him; for one deed cannot determine the duty upon another. *Cro. Eliz.* 304, 716, 727. 1 *Brownl.* 74. *Lit. Rep.* 58. *Cro. Car.* 86.

Though a bond is taken for a ſimple contract debt, yet *if it is after an act of bankruptcy*, the ſimple contract is *not* extinguiſhed. *Stran.* 1042.

By releaſe of part of a debt due on bond, the whole is gone, and the obligation *extinguiſhed*. *Bro. Contract* 80. 1 *And.* 235.

Extinguiſhment of Liberties. As to liberties and franchiſes granted by the King, ſometimes they may be extinguiſhed, and ſometimes they ſhall not. *Moor* 474. When the King grants any privileges, liberties or franchiſes, which were in his own hands, as parcel of the flowers of the crown; ſuch as *bona felonum*, *fugitivorum & utlagatorum*, waifs, ſtrays, deodand, wreck on the ſea, &c. if they come to the crown again, they are drowned and extinct in the crown, and the King is ſeiſed of them *jure coronæ*: but if liberties of fairs, markets or other franchiſes, and juriſdictions, be erected and created by the King, they will not be extinguiſhed, nor their appendances ſevered from the poſſeſſions. 9 *Rep.* 25. A man has liberties by preſcription, if he takes letters patent of them, the preſcription will be gone and extinct; for things of a higher determine thoſe of a lower nature 2 *H.* 7. 5.

Extinguiſhment of Services. The lord purchaſes or accepts parcel of the tenancy, out of which an intire ſervice is to be paid or done; by this the whole ſervice will be extinct: but if the ſervice be *pro bono publico*, then no part of it ſhall be extinguiſhed; and homage and fealty are not ſubject to extinguiſhment, by the lord's purchaſing part of the land. 6 *Rep.* 1, 105. *Co. Lit.* 149. If the lord and another perſon do purchaſe the lands, whereout he is to have ſervices, they are extinct: alſo by ſeverance of the ſervices, a manor may be extinguiſhed. *Co. Lit.* 147. 1 *And.* 257.

Extinguiſhment of Ways. If a man hath a highway as appendant, and after purchaſes the land wherein this way is, the way is extinct. *Terms de Ley.* Though a way of neceſſity to market, or church, or to arable land, &c. is not extinguiſhed by purchaſe of ground, or unity of poſſeſſion. 11 *H.* 7. 25. *Co. Lit.* 155.

Extirpatione, Is a judicial writ, either before or after judgment, that lies againſt a perſon who when a verdict is found againſt him for land, &c. doth maliciouſly overthrow any houſe, or extirpate any trees upon it. *Reg. Jud.* 13, 56.

Extocare, To grub up lands, and reduce them to arable or meadow. *Mon. Ang. tom.* 2. *p.* 71.

Extortion, (*extorſio*, from *extorqueo*, to wreſt away) Is an unlawful taking by an officer, &c. *by colour of his office*, of any money, or valuable thing, from a perſon where none at all is due, or not ſo much is due, or before it is due. *Co. Lit.* 368. 10 *Rep* 102. At the Common law, which was affirmed by the ſtatute of *Weſtm.* 1. *c.* 26. it was extortion for any miniſter of the King, whoſe office did any way concern the adminiſtration and execution of juſtice, or the common good of the ſubject, to take any reward for doing his office, except what he received from the King: though reaſonable fees for the labour and attendance of officers of the courts of juſtice are not reſtrained by ſtatute, which are ſtated and ſettled by the reſpective courts; and it has been thought expedient to allow theſe officers to take certain immediate fees in many caſes. 2 *Inſt.* 209. 3 *Inſt.* 149. 1 *Hawk. P. C.* 170, 171.

The taking of money by *virtue* of an office, implies the act to be lawful; but to take any money by *colour* of an office, implies an ill action: and the taking being for expedition of buſineſs, is judged by colour of the office, and unlawful. 2 *Inſt.* 206. *Co. Lit.* 368.

Yet according to ſome it ſeems that an officer, who takes a reward which is voluntarily given to him, and which has been uſual in certain caſes, for the more diligent or expeditious performance of his duty, cannot be ſaid to be guilty of extortion; for without ſuch a *premium* it would be impoſſible in many caſes to have the laws executed with vigour and ſucceſs. 2 *Inſt.* 210. 3 *Inſt.* 149. *Co. Lit.* 368.

But it has been always held, that a promiſe to pay an officer money for the doing of a thing, which the law will not ſuffer him to take any thing for, is merely void, however freely and voluntarily it may appear to have been made. 1 *Rol. Abr.* 16. 1 *Rol. Rep.* 313. *Noy* 76. 1 *Jon.* 65. *Cro. Eliz.* 654. *Moor* 468. *Cro. Jac.* 103.

There muſt be a poſitive charge in caſes of extortion, and that the perſon charged with it took ſo much *extorſive* or *colore officii*; which words are as eſſential as *proditorie* or *felonice* for treaſon or felony. 2 *Salk.* 680. Extortion by the Common law is ſeverely puniſhed on indictment by fine and impriſonment, and removal of officers from the offices wherein committed. By the *Stat.* 3 *Ed.* 1. *c.* 30. Officers of juſtice, &c. guilty of extortion, are to render treble value; and there are divers ſtatutes for puniſhing extortions of ſheriffs, bailiffs, gaolers, clerks of the aſſiſe, and of the peace, attornies and ſolicitors, &c. 23 *H.* 6. *c.* 7. *c.* 9. 33 *Hen.* 8. *c.* 24. 3 *Jac.* 1. *c.* 7. 10 & 11 *W.* 3. *c.* 23.

The extortion of officers of the cuſtoms, diſtraining merchants for undue charges, &c. See *Stat.* 28 *H.* 6. *c.* 5. Officers may be jointly indicted of extortion, as they may be jointly guilty of the offence. 1 *Salk.* 382.

Againſt attornies for extortion, action may be brought, and the party grieved ſhall have treble damages and coſts; but information will not lie on the *Stat.* 3 *Jac.* 1. *cap.* 7. *Sid.* 434. 2 *Nelſ.* 822.

If an officer by terrifying another in his office, take more than his ordinary fees or duties, he is guilty of extortion which may be compared to unlawful uſury, &c. And *Crompton* ſays, that wrong done by any man is a treſpaſs; but exceſſive wrong is properly extortion. *Cromp. Juſt.* 8. And extortion has been deemed more odious than robbery, becauſe it carries an appearance of truth; and is often accompanied with perjury in officers, &c. by breaking their oaths of office.

The place where the extortion was committed ſhould be ſet down in the declaration. See *Pl. C.* 200. *Stradling* v. *Morgan.*

The ſum certain extorted muſt be particularly ſet forth, and he cannot ſay, that the defendant did extort divers ſums from divers men generally; and ſo it was adjudged in *Reignold*'s caſe; *per Richardſon* Ch. J. *Godb.* 438. *pl.* 583. *Mich.* 4 *Car.* in the Star-Chamber; *Floyd* v. *Cannon.*

Extortion, in a large ſenſe, is taken for any oppreſſion by power or *pretence of right*. 1 Hawk. P. C. 170. See *Exaction.*

Extracta Curiæ, The iſſues or profits of holding a court ariſing from the cuſtomary fees, &c. *Paroch. Antiq.* 572.

Extracts of writings or records, being notes thereof. See *Eſtreats.*

Extrajudicial, Is when judgment is had in a cauſe, not depending in that court where given; or wherein the judge has not juriſdiction.

Extra-parochial, Signifies to be out of any pariſh; and where any thing is privileged and exempt from the duties of a pariſh.

If a place be a reputed pariſh, and have churchwardens and overſeers of the poor, it is within 43 *Eliz. c.* 2. though in truth it be no pariſh; but if it be merely extraparochial, as the juſtices cannot ſend to ſuch a place, ſo they cannot ſend from it; as it is exempt from receiving, ſo it ſhall not have the benefit of removing, for they have not proper perſons to complain; perſons in extraparochial places muſt ſubſiſt on private charity, as all perſons did at Common law before 43 *Eliz. c.* 2. which enacts, That every pariſh ſhall keep their own poor; and that act does not extend to extraparochial places. *Per Holt* Ch. J. 2 *Salk.* 487. *pl.* 48. *Trin.* 12 *W.* 3. *B. R. Inhabitants of the Foreſt of Dean* v. *The Pariſh of Linton.* Sed vide *poſt.*

By virtue of 13 & 14 *Car.* 2. *cap.* 12. *ſect.* 21. The juſtices may exerciſe the powers given by 43 *Eliz. c.* 2. and that act, in all extraparochial places containing more houſes than one, ſo as to come under the denomination of a vill or townſhip. Adjudged by *Parker* Ch. J. and *tot. cur.* 2 *Salk.* 486. *pl.* 44. *in Marg.* cites 11 *Ann. B. R. Stoke-Lane Inhabitants* v. *Dolting.*

The ſtatute of 43 *Eliz. c.* 2. extends to extraparochial places, and ſo do all poor acts, *when ſuch places are within the ſame miſchief as other pariſhes,* and ſhall be ſubject to the controul of the juſtices of peace, and the penalty for not meeting in the church ſhall never be inflicted on the overſeers of the poor, becauſe the inhabitants of ſuch places have no church to meet in. Moſt of the foreſts in *England* are extraparochial, and ſo is *Chriſt.Church* in *Oxford*; but they ought to maintain their own poor. 8 *Mod.* 39. *Paſch.* 7 *Geo. Rufford* pariſh's caſe.

Extravagants, Are certain conſtitutions of *popes,* ſo called, becauſe they are *extra corpus canonicum gratiani, ſive* extra *decretorum libros vagantur.* Du Cange.

Extumæ, Reliques in churches and tombs.—*Cartular. Abbat. Glaſton. MS. f.* 15.

Exuperare, To overcome; and it ſometimes ſignifies to apprehend or take, as, exuperare *vivum vel mortuum.* Leg. Edm. c. 2.

Ey, *Inſula,* an iſland: and where the names of places end in *ey,* it denotes them an iſland. As *Ramſey,* is the iſland of *Rams*; *Sheppy,* the iſland of *Sheep*; *Herſey,* the iſland of *Harts,* &c.

Eyery of hawks. See *Aery.*

Eyre. Vide *Eire,* and *Juſtices in Eyre.*

F

F, Is a letter wherewith *felons, &c.* are branded and marked with an hot iron, on their being admitted to the benefit of clergy. See the *Stat.* 4 *H.* 7. *c.* 13.

Fabrick Lands, Are lands given towards the rebuilding or repairing of cathedral and other churches; for in ancient times, almoſt every perſon gave by his will, more or leſs, to the *fabrick* of the cathedral or pariſh church where he lived; and lands thus given were called *fabrick lands,* being *ad* fabricam *reparandum:* theſe lands are mentioned in the *Stat.* 12 *Car.* 2. *c.* 8.

Facta Armorum, Feats of arms, juſts, tornaments, *&c.*——*Rex Ricardus in Angliam tranſiens ſtatuit* facta armorum, *quæ vulgo torneamenta dicuntur*; *in Anglia exerceri.* Hiſ. Joh. Brompton, in R. 1. p. 1261.

Facto, In fact; as where any thing is actually done, *&c.* See *De facto.*

Factor, Is a *merchant's* agent reſiding beyond the ſeas, or in any remote parts, conſtituted by letter or power of attorney: if the principal give the *factor* a general commiſſion to act for the beſt, he may do for him as he thinks fit; but otherwiſe he may not. Though in commiſſions at this time, it is common to give the *factor* power in expreſs words, to diſpoſe of the merchandize, and deal therein as if it were his own; by which the *factor's* actions will be excuſed, though they occaſion loſs to his principal. *Leg. Mercat.* 151.

A bare commiſſion to a *factor* to ſell and diſpoſe of merchandize, is not a ſufficient power for the factor to entruſt any perſon, or to give a further day of payment than the day of the ſale of the goods; for in this caſe, on the delivery of the one he ought to receive the other: and by the general power of doing as if it were his own, he may not truſt an unreaſonable time, *viz.* beyond one or three months, *&c.* the uſual time allowed for the commodities diſpoſed of; if he doth, he ſhall be anſwerable to his principal out of his own eſtate. 1 *Bulſt.* 103. 7 *Jac.* 1. *B. R.*

If a *factor* buys goods on account of his principal where he is uſed ſo to do, the contract of the *factor* ſhall oblige the principal to a performance of the bargain; and he is the proper perſon to be proſecuted, on non-performance: but if the *factor* enters into a charter-party of affreightment with a maſter of a ſhip, the contract obliges him only; unleſs he lades aboard generally his principal's goods, when both the principal and lading become liable for the freight and not the *factor.* *Goldſb.* 137.

Goods remitted to a *factor* ought to be carefully preſerved; and he is accountable for all lawful goods which ſhall come to his hands; yet if the factor buy goods for his principal, and they receive damage after in his poſſeſſion, through no negligence of his, the principal ſhall bear the loſs; and if a *factor* be robbed, he ſhall be diſcharged in account brought againſt him by his principal. 4 *Rep.* 83. If the *factor* has orders from his principal not to ſell any goods but in ſuch a manner, and he breaks thoſe orders, he is liable to the loſs or damage that ſhall be received thereby: and where any goods are brought or exchanged without orders, it is at the merchant's curteſy whether he will accept of them, or turn them on his *factor's* hands. *Lex Mercat.* 154, 155.

When a *factor* has bought, or ſold goods purſuant to orders, he is immediately to give advice of it to his principal; leſt the former orders ſhould be contradicted before the time of his giving notice, whereby his reputation might poſſibly ſuffer: and where a factor has made a conſiderable profit for his principal, he muſt take due care in the diſpoſition of the ſame; for without commiſſion, or particular orders, he is anſwerable. *Ibid.* A factor ſhall ſuffer for not obſerving orders; and no factor acting for another man's account in merchandize, can juſtify receding from the orders of his principal, though there may be a probability of advantage by it: if he make any compoſition with creditors without orders, he ſhall anſwer it to his principal. *Ibid.*

Factors ought to obſerve the contents of all letters from their principals, or written to them by their order. A merchant is anſwerable in action upon the caſe for the deceits of his factor, in ſelling goods abroad: and as ſomebody muſt be a loſer by ſuch deceit, it is more reaſonable that he who employs, and puts confidence in the deceiver, ſhould loſe, than a ſtranger. 1 *Salk.* 289.

Factors are liable to the ſtatutes concerning bankrupts. 5 *Geo.* 2. *c.* 30. *ſect.* 39. Factor not to buy cattle on his own account. 31 *Geo.* 2. *c.* 40. *ſect.* 11.

It was held by *Lee,* Ch. J. that though a factor has power to ſell, and thereby bind his principal, yet he cannot bind or affect the property of the goods by pledging them as a ſecurity for his own debt, though there is the formality of a bill of parcels and a receipt. *Stran.* 1178. Where goods are ſold by a factor at his own riſque, the vendee is not anſwerable to the owner. *Stran.* 1182.

But where a factor ſells the goods of his principal, on credit, though without mentioning the name of his principal, and the factor becomes bankrupt, before payment, the aſſignees ſhall not receive the money, but the principal, and he may, before payment to the factor, maintain an action againſt the buyer. So determined in ſeveral caſes, before Lord *Mansfield,* at Guildhall, and affirmed by the court, on motion.

It hath been ruled in equity, that if one employs a factor, and entruſts him with the diſpoſal of merchandize, and the factor receives the money, and dies indebted, to debts of a higher nature, and it appears by evidence, that this money was veſted in other goods, and remains unpaid, thoſe goods ſhall be taken as part of the merchant's eſtate, and not the factor's; but if the factor have the money, it ſhall be looked upon as the factor's eſtate, and muſt firſt anſwer the debts of ſuperior creditors, *&c.* for as money has no ear-mark, equity cannot follow that in behalf of him who employed the factor. 1 *Salk.* 160.

If a perſon doth employ a factor to ſell goods, who ſells them on credit, and before the money is paid dies indebted, more than his aſſets will pay; this money ſhall be paid to the principal merchant, and not to the factor's adminiſtrator, but thereout muſt be deducted what was due for commiſſion: for a factor is in nature only of a truſtee for his principal. 2 *Vern.* 638.

Factorage, Is the wages or allowance paid and made to a factor by the merchant. The gain of factorage is certain, however the ſucceſs proves to the merchant; but the commiſſions and allowances vary according to the cuſtoms and diſtance of the country, in the ſeveral places where factors are reſident: in the *Weſt-Indies*, the commiſſion runs at about 8 *per cent.* but in *France* and *Spain*, *&c.* not above 2 *per cent.* and in *Holland* but one and a half *per cent.* Lex Mercat. 155.

Factum, A man's own act, fact, or feat, and particularly uſed in the Civil law, for any thing ſtated and made certain. See *Fait.*

Faculty, (*facultas*) As reſtrained from the original and active ſenſe, to a particular underſtanding in law, is uſed for a privilege granted to a man by favour and indulgence, to do that which by law he ought not to do. And for the granting of theſe, there is an eſpecial court under the *Archbiſhop of Canterbury*, called the *Court of the faculties*; and the chief officer thereof the *Maſter of the Faculties*; who has power by the *Stat.* 25 *H.* 8. *cap.* 21. to grant diſpenſations; as to marry perſons without the banns firſt aſked, (and every dioceſan may make the like grants) to ordain a deacon under age, for a ſon to ſucceed the father in his benefice, one to have two, or more benefices incompatible, *&c.* And in this court are regiſtred the certificates of biſhops and noblemen granted to their chaplains, to qualify them for pluralities and non-reſidence. 4 *Inſt.* 337.

Faſting-Men, In *Mon. Ang. tom.* 1. *pag.* 100. are rendered to ſignify vaſſals: but *Cowel* thinks they rather mean pledges or bondſmen; which, by the cuſtoms of the *Saxons*, were *faſt* bound to anſwer for one another's peaceable behaviour. See *Feſting-men.*

Fag, A knot or excreſcency in cloth; and in this ſenſe it is uſed in the ſtatute 4 *Ed.* 4. *cap.* 1. The *fag-end*, ſignifies that end of a piece of cloth or linen, where the weaver ends his piece, and works up the worſt part of his materials.

Faggot, A badge wore in the times of *popery*, by perſons who had recanted and abjured what the then powers adjudged hereſy: thoſe poor wretches that oppoſed the doctrine of the arbitrary prieſthood, were condemned not only to the penance of carrying a *faggot*, as an emblem of what they had merited, to ſuch an appointed place of ſolemnity; but, for a more durable mark of infamy, they were to have the ſign of a *faggot* embroidered on the ſleeve of their upper garment: and if this badge or *faggot* was at any time left off, it was often alledged as the ſign of *apoſtacy*.

Faida, Malice or deadly feud. *Leg. H.* 1. *c.* 88.

Failure of Record, Is when an action is brought againſt a man, who alledges in his plea matter of record in bar of the action, and avers to prove it by the record; but the plaintiff ſaith, *Nul tiel record, viz.* denies there is any ſuch record: upon which, the defendant hath day given him by the court to bring it in; and if he fails to do it, then he is ſaid to *fail of his record*, and the plaintiff ſhall have judgment to recover. *Terms de Ley.* In debt upon an eſcape, the plaintiff declared, that he had obtained a judgment in an inferior court, upon which the defendant was taken, and the ſheriff ſuffered him to eſcape; the defendant pleaded *Nul tiel record*, and being at iſſue, the record was certified at the day; by which it appeared that there were ſeveral variances in the continuances and proceſs; but becauſe the plaint, count, and judgment certified, agreed with the plaintiff's declaration, it was held that thoſe variances made no failure of record. *Hob.* 179. 2 *Nelſ. Abr.* 823.

In *formedon* for the manor of *Isfield*, the defendant pleaded in bar a common recovery of the ſaid manor againſt the donee in tail, who replied *Nul tiel record*, and the defendant having brought in the record, it appeared that the recovery was of the manor of *Iſſield*; and adjudged, that this being in a common recovery, ſhall be no failure of record for this ſmall variance, but ſhall be amended, being the miſpriſion of the clerk. 5 *Rep.* 46. And where a fine with proclamations was levied, and upon an iſſue of *Nul tiel record*, on which it was brought in at the day, tho' the year of the King was left out in the proclamations made in one term, as it was expreſſed in the proclamations of the other two terms, they were held to be right, and the omiſſion no failure of record. *Dyer* 234. If a judgment, *&c.* be reverſed for error, *Nul tiel record* may be pleaded. 8 *Rep.* 142. And where a tenor only of a record, *&c.* is brought in, it is a failure of record. *Dyer* 187. 2 *Nelſ.* 824.

Faint-Action, (Fr. *feinte*) A *feigned* action; ſuch that although the words of the writ are true, yet for certain cauſes the plaintiff hath no title to recover thereby; but a *falſe action* is properly where the words of the writ are *falſe*. Co. Lit. 361.

Faint-Pleader, Is a fraudulent, falſe or colluſory manner of pleading to the deceit of a third perſon; againſt which, among other things, was made the *Stat.* 3 *Ed.* 1. *cap.* 19.

Fair-Pleader, Or not pleading fairly, *&c.* See *Beaupleader.*

Fair, (Fr. *feire*, Lat. *nundinæ*) A ſolemn or greater ſort of market, granted to any town by privilege, for the more ſpeedy and commodious providing of ſuch things as the ſubject needeth; and the utterance of what commodities we abound in above our own uſes and occaſions: and both our *Engliſh* and the *French* word ſeems to come from *feriæ*, becauſe it is incident to a *fair* that perſons ſhall be privileged from being moleſted or arreſted in it, for any other debt, or contract than what was contracted in the ſame, or at leaſt was promiſed to be paid there. *Stat.* 17 *Ed.* 4. *c.* 2. And 1 *R.* 3. *c.* 6.

Herein is to be conſidered,

I. *The right to a fair, and the manner of holding it.*
II. *The duty, power, and intereſt of the owners of fairs.*
III. *How far a ſale in a fair changes the property of a thing therein ſold.*

I. *Of the right to a fair, and the manner of holding the ſame.*

The firſt inſtitution of fairs and markets ſeems plainly to be for the better regulation of trade and commerce, and that merchants and traders may be furniſhed with ſuch commodities as they want, at a particular mart, without that trouble and loſs of time which muſt neceſſarily attend travelling about from place to place; and therefore as this is a matter of univerſal concern to the commonwealth; ſo it hath always been held, that no perſon can claim a fair or market, unleſs it be by grant from the King, or by preſcription, which ſuppoſes ſuch a grant. 2 *Inſt.* 220. 3 *Mod.* 123.

And therefore, if any perſon ſets up any ſuch fair or market, without the King's authority, a *quo warranto* lies againſt him; and the perſons who frequent ſuch fair, *&c.* may be puniſhed by fine to the King. 3 *Mod.* 127.

Alſo it ſeems, that if the King grants a patent for holding a fair or market, without a writ of *ad quod damnum* executed and returned, that the ſame may be repealed by *ſcire facias*; for though ſuch fairs and markets are a benefit to the commonwealth; yet too great a number of them may become nuſances to the public, as well as a detriment to thoſe who have more ancient grants. 3 *Lev.* 222.

Fairs are generally kept once or twice in the year; and it has been obſerved, that *fairs* were firſt occaſioned by the reſort of people to the feaſt of dedication, and therefore in moſt places the *fairs*, by old cuſtom, are on the ſame day with the wake or feſtival of that ſaint to whom the church was dedicated; and for the ſame reaſon kept in the church-yard, till by authority reſtrained. 2 *Inſt.* 221. *Blount.* The *court of Piepowder* is incident to every *fair*, *&c.* by the *Stat.* 2 *Ed.* 3. *cap.* 15. *Fairs* are not to be kept longer than they ought by the lords thereof, on pain of their being ſeiſed into the King's hands, until ſuch lords have paid a fine for the offence; and proclamation is to be made how long *fairs* are to continue: alſo no merchant ſhall ſell any goods or merchandiſe at a *fair* after the time of the *fair* is ended, under the penalty of forfeiting double the value of the goods ſold, one fourth part thereof to the proſecutor, and the reſt to the King. 5 *Ed.* 3. *c.* 5. Any citizen of *London* may carry his goods or merchandiſe to any *fair* or market in *England* at his pleaſure. See 3 *Hen.* 7. *c.* 9.

It ſeems clearly agreed, that if a perſon hath a right to a fair or market, and another erects a fair or market ſo near his, that it becomes a nuſance to his fair, *&c.* that for this detriment and injury done to him, an action on the caſe lies; for it is implied in the King's grant, that it ſhould be no prejudice to another. 2 *Rol. Abr.* 140.

Alſo, although the new market be held on a different day, yet an action on the caſe lies; for this, by foreſtalling the ancient market, may be a greater injury to the owner, than if held on the ſame day with his. 2 *Saund.* 172. 1 *Mod.* 69.

If a man hath a fair or market, and a ſtranger diſturbs thoſe who are coming to buy or ſell there, by which he loſes his toll, or receives ſome prejudice in the profits ariſing from his fair, *&c.* an action on the caſe lies. 1 *Rol. Abr.* 106. 2 *Vent.* 26, 28. So if upon a ſale in a fair a ſtranger diſturbs the lord in taking the toll, an action upon the caſe lies for this. 1 *Rol. Abr.* 106.

The King is the ſole judge where fairs and markets ought to be kept; and therefore it is ſaid, that if he grants a market to be kept in ſuch a place, which happens not to be convenient for the country, yet the ſubjects can go to no other; and if they do, the owner of the ſoil where they meet is liable to an action at the ſuit of the grantee of the market. 3 *Mod.* 123. But if no place be limited for keeping a fair by the King's grant, the grantees may keep it where they pleaſe, or rather where they can moſt conveniently; and if it be ſo limited, they may keep it in what part of ſuch place they will. 3 *Mod.* 108.

By the 13 *Ed.* 1. *ſt.* 2. *c.* 6. No *fairs* or markets ſhall be kept in church-yards.

At what time *fairs* are to be held, ſee 27 *H.* 6. *c.* 5. & 1 *Car.* 1. *c.* 1. 29 *Car.* 2. *c.* 7. As alſo 11 & 12 *W.* 3. *c.* 21. & 9 *Ann.* *c.* 23.

II. *Of the duty, power, and intereſt of the owners of fairs.*

Owners and governors of fairs are to take care that every thing be ſold according to juſt weight and meaſure, who for that and other purpoſes may appoint a clerk of the *fair* or market, who is to mark and allow all ſuch weights, and for his duty herein can only take his reaſonable and juſt fees. See 4 *Inſt.* 274. *Moor* 523. 1 *Salk.* 327.

Fairs and markets are ſuch franchiſes as may be forfeited, as if the owners of them hold them contrary to their charter, as by continuing them a longer time than the charter admits, by diſuſer, and by extorting fees and duties where none are due, or more than are juſtly due. 2 *Inſt.* 220. *Finch* 164. 3 *Mod.* 108.

As to their *intereſt*, it ariſes chiefly from tolls. *Toll* payable at a fair or market is a reaſonable ſum of money due to the owner of the fair or market, upon ſale of things tollable within the fair or market, or for ſtallage, pickage, or the like. 2 *Inſt.* 222. 2 *Jon.* 207.

But this is not incident to a *fair* or market without ſpecial grant; for where it is not granted, ſuch a fair or market is accounted a *free fair* or market. 2 *Inſt.* 220. *Cro. Eliz.* 559.

Toll is a matter of private benefit to the owner of the *fair* or market, and not incident to them; therefore if the King grants a *fair* or market, and grants no toll, the patentee can have none, and ſuch *fair* or market is counted free. *Cro. Eliz.* 558. 2 *Inſt.* 220. *S. P.* 2 *Lutw.* 1336. *S. P.* reſolved.

Alſo if the King, at the time he grants a *fair* or market, grants a toll, and the ſame is outrageous and exceſſive, the grant of the toll is void, and the ſame becomes free. 2 *Inſt.* 220. 2 *Lutw.* 1336. But the King, after he grants a *fair* or market, may grant that the patentee may have a reaſonable toll; but this muſt be in conſideration of ſome benefit accruing from it to thoſe who trade and merchandiſe in ſuch fair or market. 2 *Inſt.* 221.

No toll ſhall be paid for any thing brought to the fair or market, before the ſame is ſold, unleſs it be by cuſtom time out of mind, and upon ſuch ſale the toll is to be paid by the buyer; and therefore my Lord *Coke* ſays, that a *fair* or market by preſcription is better than one by grant. 2 *Inſt.* 221.

And by *Weſtm.* 1. *cap.* 31. "Touching them that take outrageous toll, contrary to the common cuſtom of the realm in market towns, it is provided, that if any do ſo in the King's town, which is let in fee-farm, the King ſhall ſeize into his own hand the franchiſe of the market; and if it be another's town, and the ſame be done by the lord of the town, the King ſhall do in like manner; and if it be done by a bailiff, or any mean officer, without the commandment of his lord, he ſhall reſtore to the plaintiff as much more, for the outrageous taking, as he had of him, if he carried away his toll, and ſhall have forty day's impriſonment."

But where by cuſtom a toll is due upon the ſale of any goods in a fair or market, and he who ought to pay it refuſes, an action on the caſe lies againſt him. 1 *Rol. Abr.* 103, 104, 106. according to 3 *Lev.* 400. toll is *quaſi* a debt, for which *debt*, or an *aſſumpſit* lies.

Some perſons however are *exempt* from payment of toll, and if the King or any of his progenitors have granted to any to be diſcharged of toll, either generally, or ſpecially; this grant is good to diſcharge him of all tolls to the King's own *fairs* or markets, and of the tolls, which, together with any *fair* or market have been granted after ſuch grant of diſcharge; but cannot diſcharge tolls formerly due to ſubjects either by grant or preſcription. 2 *Inſt.* 221.

Alſo the King himſelf ſhall not pay toll for any of his goods; and if any be taken, it is puniſhable within the ſtatute *Weſtm.* 1. *cap.* 31. 2 *Inſt.* 221. So tenants in ancient demeſne are free and quit from all manner of tolls in fairs and markets, whether ſuch tenants hold in fee, or life, years, or at will. 2 *Inſt.* 221. 4 *Inſt.* 269. 1 *Rol Abr.* 321.

But this privilege does not extend to him who is a merchant, and gets his living by buying and ſelling, but is annexed to the perſon in reſpect of the land, and to thoſe things which grow and are the produce of the land. *F. N. B.* 228. 2 *Leon.* 191. *Cro. Eliz.* 227. 2 *Inſt.* 221. 1 *Rol. Abr.* 321-2.

Owners of *fairs* and markets are to appoint toll-takers or book-keepers, on pain of 40 *s.* and they ſhall enter and give account of horſes ſold, *&c.* 2 & 3 *P.* & *M.* *c.* 7. and 31 *Eliz.* *c.* 12.

III. *How far a ſale in a fair changes the property of a thing therein ſold.* See under title *Market*.

Fait, (*factum*) Is, in law ſignification, a deed or writing, lawfully executed to bind the parties thereto. *Vide Deed.*

Fait enrolle, (*Fr.*) Is a deed of bargain and ſale, *&c.* and forging the inrollment of it is a great miſdemeanor, but not forgery within the *Stat.* 5 *Eliz.* 1 Keb. 568.

Faitours, (*Fr.*) In the ſtatute 7 *R.* 2. *cap.* 5. is uſed for evil doers; and may be interpreted idle livers, from *faitardiſe*, which ſignifies a kind of ſleepy diſeaſe, proceeding from too much ſluggiſhneſs: and in the ſame ſtatute it ſeems to be ſynonimous with vagabonds. *Terms de Ley.*

Falang, A jacket or cloſe coat. *Blount.*

Falcatura, One day's mowing of graſs; a cuſtomary ſervice to the lord by his inferior tenants: *falcata* was the graſs freſh mowed, and laid in *ſwathes*; and *falcator* the ſervile tenant performing the labour. *Kennet's Gloſſ*

Falco, A faulcon.——King *John*, in the 14th year of his reign, granted to *Owen Fitz David*, and others, *omnes accipitres* & falcones *gentiles* & *ſpuarios*, &c.—— Pat. 14 Joh.

Falda, A ſheepfold.——*Et quod oves ſint levantes & cubantes in propria* falda, &c. Rot. Chart. 6 *Hen*. 3. *m*. 6.

Faldage, *(faldagium)* Is a privilege which ſeveral lords antiently reſerved to themſelves, of ſetting up *folds* for ſheep in any fields within their manors, for the better manurance of the ſame; and this was uſually done not only with their own but their tenant's ſheep, which they call *ſecta faldæ*. This *faldage* is termed in ſome places a *fold courſe*; and in old charters *faldſoca*, i. e. *libertas* faldæ, *or* faldagii.

Faldæcurſus, A ſheep walk, or feed for ſheep. 2 *Vent. Rep*. 139.

Faldfey, Fald-Fee, A fee or rent paid by ſome cuſtomary tenants for liberty to fold their ſheep upon their own land.

Faldiſtor, *(Sax.)* The higheſt ſeat of a biſhop, incloſed round with a lettice. *Cowel*.

Faldworth, A perſon of age, that he may be reckoned of ſome decennary. *Du Freſne*.

Faleræ, (Lat. *phaleræ*) The tackle and furniture of a cart or wain. *Mon. Ang. tom*, 2. *f*. 256.

Faleſia, A great rock, bank or hill by the ſea ſide. *Domeſd*.

Fallow-Land, Vide *Warrectum* & *Terra Warrecta*.

Fallum, Is a ſort of land, as appears by the *Monaſticon Anglicanum*.——*De duobus acris* & *viginti* fallis *in*, &c. Mon. tom. 2 425.

Falmotum, or *falkmote*, The ſame with *folkemote*.

Falſe Action, If brought againſt one, whereby he is caſt into priſon, and dies pending the ſuit, the law giveth no remedy in this caſe, becauſe the truth or *falſhood* of the matter cannot appear before it is tried: and if the plaintiff be barred or nonſuited, at Common law, regularly all the puniſhment is amercement. *Jenk. Cent*. 161. See *Faint-Action*. But if one commence a bailable action againſt another and hold him to bail thereon, either without a reaſonable cauſe, or for ſomething conſiderable, more than what is *bona fide* due, an *action upon the caſe* will lie for the vexation and injury.

Falſe Claim, By the foreſt laws, is where a man *claims* more than is his due, and is amerced and puniſhed for the ſame. A perſon had a grant by charter of the tenth of all the veniſon in the foreſt of *Lancaſter*. viz. *In carne tantum ſed non in corio*; and becauſe he made a *falſe claim*, by alledging that he ought to have the tenth of all veniſon within the foreſt, as well in *carne*, as in *corio*, therefore he was *in miſericordia de decima venationis ſuæ in corio non percipiendo*. Manwood, cap. 25. num. 3.

Falſe Form, In proceedings at law, is aided by a verdict; though not where there is want of certainty, &c. 1 *Keb*. 734, 876.

Falſe Impriſonment, *(falſum impriſonamentum)* Is a treſpaſs committed againſt a perſon, by arreſting and impriſoning him without juſt cauſe, contrary to law; or where a man is unlawfully detained without legal proceſs; and it is alſo uſed for a writ which is brought for this treſpaſs. If a perſon be any way unlawfully detained, it is *falſe impriſonment*; and conſiderable damages are recoverable in theſe actions. *Co. Lit*. 124. The law favours liberty, and the freedom of a man from impriſonment, ſo that *falſe impriſonment* is a great offence; and lawful impriſonment is ſo far pitied, that by ſeveral ſtatutes, as well as by the Common law, defaults are ſaved on that account. *Wood's Inſt*. 16.

The King cannot give any power to impriſon, where impriſonment may not be awarded by the Common law. 2 *Brownl*. 18. And if a perſon is impriſoned on any by-law of a corporation, &c. it is *falſe impriſonment*; becauſe a by-law to impriſon is againſt *Magna Charta, quod nullus liber homo impriſonetur*, &c. 5 Rep. 64. It is the ſame of a cuſtom to impriſon perſons; but it is incident to a court of record to impriſon. 2 *Nelſ. Abr*. 827.

If a juſtice of peace, &c. commits a perſon without juſt cauſe, it is *falſe impriſonment*; and a conſtable cannot impriſon a man at his pleaſure, to compel him to do any thing required by law: but is to carry him before a juſtice. *Ibid*. 1 *Leon*. 327. Where any juſtice ſends for a man, and commits him to gaol without any examination, the party may have action of *falſe impriſonment* againſt him; and if a juſtice of peace ſends a general warrant to arreſt a perſon, and ſay not for what; action lies againſt him, but not againſt the officer. *Mich*. 8 *Jac. B. R*.

In *falſe impriſonment* brought againſt an officer of an inferior court, if he juſtify an arreſt by virtue of their warrant, he muſt intitle the court to juriſdiction, or the action lies againſt him. *Marſh. pl*. 195. If erroneous proceſs iſſues out of a court that hath juriſdiction of the matter, and the bailiff or officer executes it, whereby the party is impriſoned, the officer ſhall be excuſed in action of *falſe impriſonment*: but if the court out of which the proceſs iſſues hath no cognizance of the cauſe, it is otherwiſe; for in ſuch caſe the whole proceedings are *coram non judice*, and the officer will not be excuſed. 10 *Rep*. 75.

An officer hath a warrant upon a *capias ad ſatisfaciend*. againſt an earl, or counteſs, &c. who are privileged in their perſons, and he arreſts them: it is ſaid action of *falſe impriſonment* will not lie againſt the officer, becauſe he is not to examine the judicial act of the court, but to obey. 6 *Rep*. 56. 10 *Rep*. 75.

If an arreſt is made by one who is no legal officer, it is *falſe impriſonment*, for which action lies. *Co. Lit*. 69. An action of *falſe impriſonment* lies againſt a bailiff for arreſting a perſon without warrant, though he afterwards receives a warrant: and ſo it is if he arreſt one after the return of the writ is paſt; for it is then without writ. 2 *Inſt* 53. If a ſheriff or any of his bailiffs arreſts a man out of his county, &c. or after the ſheriff is diſcharged of his office; or a perſon arreſts one on a juſtice's warrant after his commiſſion is determined, &c. it will be *falſe impriſonment*. Dyer 41. And if the ſheriff, after he hath arreſted a man lawfully, when a legal diſcharge comes to him, as a *ſuperſedeas*, or the like, do not then diſcharge the party, he may be ſued in this action. 2 *R*. 1. 12. *Fitzh*. 253.

In caſe the plaintiff in a ſuit brings an unlawful warrant to a ſheriff, and ſhews him the defendant, requiring him to make the arreſt; or if he bring a good warrant and direct the ſheriff to a wrong man, &c. for this the action of *falſe impriſonment* will lie againſt both. *Bro. Treſp*. 99, 307. *Faux Impr*. 19. 1 *Brownl*. 211. If a warrant be granted to arreſt, or apprehend a perſon, where there are ſeveral of the name, and the bailiff or other officer arreſts a wrong perſon, he is liable to action of *falſe impriſonment*; and he is to take notice of the right party at his peril. *Dyer* 244. *Moor* 457.

A man arreſted on a *Sunday* may bring his action of *falſe impriſonment*; but one has been refuſed to be releaſed in ſuch a caſe. 5 *Mod*. 95. If a bailiff demand more than his juſt fees, when offered him, and keep a perſon in cuſtody thereupon, it is *falſe impriſonment* and puniſhable: and if a ſheriff, or gaoler, keeps a priſoner in gaol, after his acquittal, for any thing except for fees, it is unlawful impriſonment. 2 *Inſt*. 482. *Wood* 16. If a man falſly impriſons *A. B*. and the gaoler detains him till he pays ſo much money, he ſhall have action of *falſe impriſonment*, and taking ſo much money from him againſt ſuch perſon. *Mod. Caſ*. 179.

Unlawful or *falſe impriſonment* is ſometimes called *dureſs of impriſonment*, where one is wrongfully impriſoned 'till he ſeals a bond, &c. 2 *Inſt*. 482.

An impriſonment will be unlawful, and give this action, altho' the cauſe be good, when he that makes it doth the ſame without any colour of authority; or if he has a colour, yet no good authority, from the court, &c. or where a court or officer hath power, but do not well make it out; or when the authority is well made forth, and not rightly purſued and executed. 4 *Rep*. 64. 8 *Rep*. 67. *Dyer* 242. And all perſons male or female, that have a hand in a wrong impriſonment, ſhall be ſued in action of *falſe impriſonment*; and the party grieved may ſue any one of them for it. *Co. Lit.* 57. *Bro. Treſp.* 113, 256.

A man under arreſt, or in ſtocks, *&c.* is ſaid to be in priſon: And in a common arreſt, where lawful, the officer may make any place his priſon, becauſe the writ commands that *Habeas Corpus ejus coram, &c. apud Weſtm.* which is a general authority. 1 *Salk.* 401.

It is not in every caſe where a man is wrongfully impriſoned, that an action *vi et armis*, for falſe impriſonment will lie, but in ſome caſes, it muſt be an *action on the caſe*, as where a warrant iſſues againſt a man, without legal cauſe, and he is, under colour of that authority, wrongfully impriſoned, as there was colour of authority, the action muſt be *caſe*, and not treſpaſs *vi et armis*, and ſo in ſimilar caſes.

In criminal caſes, where a man is falſly impriſoned, he may bring a *Habeas Corpus*, and upon return of the writ, ſetting forth the cauſe of the commitment, if it appears to be againſt law, he ſhall be diſcharged; or he may be bailed, if it be doubtful, *&c.* 4 *Inſt.* 182. See *Arreſt*, *Impriſonment*.

Falſe Judgment, *(Falſum Judicium)* Is a writ that lieth where *falſe judgment* is given in the county-court, court baron, or other courts *not of record*. *F. N. B.* 17, 18. This writ may be brought on a judgment in a plea, real or perſonal: and for errors in the proceedings of inferior courts; or where they proceed without having juriſdiction, writ of *falſe judgment* lieth: though the plaintiff aſſign errors in a writ of *falſe judgment*, he ſhall not ſay, *In hoc erratum eſt, &c.* but *unde queritur diverſimodo ſibi* falſum judicium *factum fuiſſe judicium in hoc, &c.* Moor 73. 2 Nelſ. Abr. 829. If a writ of *falſe judgment* abate for any fault in the writ, the plaintiff ſhall not have *Scire facias ad audiend. errores*, upon the record certified, becauſe it comes without an original: but if the plaintiff dies, and *falſe judgment* is given in the inferior court, his heir ſhall have a *Sci. fac. ad audiend. error.* againſt him who recovered upon that record which is removed into *C. B.* And where the plaintiff in a writ of *falſe judgment* is nonſuit, it was formerly a queſtion, whether the other party ſhall ſue execution upon this record ſo removed againſt the plaintiff, without ſuing out a *Scire facias*; but it has been adjudged, that he *may* do it. *Hil.* 23 *Hen.* 6. *New Nat. Br.* 39.

When a record is removed into *C. P.* by writ of *falſe judgment*, if the party alledges variance between the record removed, and that on which judgment was given, the trial ſhall be by thoſe who were preſent in court when the record was made up. 2 *Lutw.* 957. *Stat.* 1 *Ed.* 3. *c.* 4. A man ſhall not have a writ of *falſe judgment* but in a court where there are ſuitors; for if there be no ſuitors, there the record cannot be certified by them. *New Nat. Br.* 40. Where *falſe judgment* is given on a writ of *juſticies*, directed to the ſheriff, the party grieved ſhall have a *faux judgment*; although the judgment be for debt, or treſpaſs above the ſum of 40 *s.* *Ibid.*

Where a record of a judgment in the county-court was vicious, and the judgment reverſed in *C. B.* the ſuitors were ordered to be amerced a mark, and the county clerk fined 5 *l.* And if a plaintiff in an inferior court declare for more than 40 *s.* Judgment ſhall be reverſed by writ of *falſe judgment*: but where damages are laid under that ſum, coſts may make it amount to more. 1 *Mod.* 249. 2 *Mod.* 102, 206.

Upon *falſe judgment* before bailiffs, or others who hold plea by preſcription, in every ſum in debt by bill before them, a party ſhall not have a writ of *falſe judgment*; but a writ of error thereupon. *M.* 4 *E.* 4. For defaults of tenants for life, in writs of right, *&c.* *Faux judgment* lies by him in reverſion: and this writ may be brought againſt a ſtranger to the judgment, if he be tenant of the land. A judgment ſhall be intended good till reverſed by writ of *falſe judgment*, &c. See *Accedas ad Curiam*, and *Attaint*.

Falſe Latin. Before the late ſtatute for turning law proceedings into *Engliſh*, if a *Latin* word was ſignificant though not good *Latin*, yet an indictment, declaration, or fine, ſhould not be made void by it: but if the word was not *Latin*, nor allowed by the law, and it were in a material point, it made the whole vicious. 5 *Rep.* 121. 2 *Nelſ.* 830. Vide *Latin.*

Falſe News. Spreading falſe news, to make diſcord between the King and nobility, or concerning any great man of the realm, is puniſhed by common law, with fine and impriſonment, which is confirmed by ſtatutes *Weſtm.* 1. 3 *Ed.* 1. *c.* 34. 2 *Ric.* 2. *ſtat.* 1. *c.* 5. And 12 *Ric.* 2. *c.* 11. See 2 *Inſt.* 226. 3 *Inſt.* 198.

Falſe Oath. See *Perjury.*

Falſe Plea. *In præcipe quod reddat* againſt two, if the one comes and takes the intire tenancy upon him, upon which they are at iſſue, and it is found againſt the tenant, by this he ſhall loſe his moiety; for it is found againſt the tenant for his part, becauſe it is tried *per pais* upon iſſue; *contra*, of plea to the writ by demurrer. Note the difference. *Br. Peremptory*, *pl.* 73. cites 8 *Ed.* 3. 17.

Plaintiff in a ſuit in Chancery againſt an executor, ſhall have the ſame advantage thereof, as if the ſame plea were found falſe by verdict at law; and ſhall have all the ſame conſequences here, as follow on a falſe plea at law to all intents. *Mich.* 26 *Car.* 2. 2 *Chanc. Caſes* 201. *Parker* v. *Dee.* See *Plea.*

Falſe Prophecy. See *Prophecy.*

Falſe Return, On a falſe return by a mayor, *&c.* to a *mandamus*, or by a ſheriff, *&c.* to a writ, a ſpecial action on the caſe will lie. See *Black. Com.* 3 *V.* 111, 163.

Falſe tokens, As where perſons get money or goods into their hands, by forged letters, or other counterfeit means, is puniſhable by impriſonment, *&c.* by *Stat.* 33 *H.* 8 *c.* 1. See *Cheats* and *Counterfeits.*

Falſe Verdict, A writ of *attaint* lieth, to inquire whether a jury of twelve men have given a falſe verdict; that ſo the judgment following thereupon may be reverſed. It is allowed in almoſt every action except in a writ of right. See ſtatutes 1 *Ed.* 3. *c.* 6. 5 *Ed.* 3. *c.* 7. 28 *Ed.* 3. *c.* 8. 34 *Ed.* 3. *c.* 7. 9 *Ric.* 2. *c.* 3. *Black. Com.* 3 *V.* 403. *Quære*, If it would not lie on a verdict, upon an information, as the defendant hath only the benefit of one jury? conſequently, is found guilty only by one jury.

Falſify, Seems to ſignify as much as to prove a thing to be *falſe.* *Perk.* 383.

Falſifying a Record. A perſon that purchaſes land of another, who is afterwards outlawed of felony, *&c.* may *falſify the record*, not only as to the time wherein the felony is ſuppoſed to have been committed, but alſo as to the point of the offence: but where a man is found guilty by verdict, a purchaſer cannot *falſify* as to the offence; though he may for the time, where the party is found guilty generally in the indictment, *&c.* becauſe the time is not material upon evidence. 2 *Hawk. P. C.* 456. And any *judgment* given by perſons who had no good commiſſion to proceed againſt the perſon condemned, may be *falſified* by ſhewing the ſpecial matter, without writ of error. *Ibid.* Alſo where a man is *attainted* of treaſon or felony, if he be afterwards pardoned by parliament, the attainder may be *falſified*, by him or his heir, without plea. *Ibid.*

Falſifying a Recovery. Iſſue in tail may *falſify a recovery* ſuffered by tenants for life, *&c.* And it has been held, that a perſon may *falſify a recovery* had by the iſſue in tail, where an eſtate tail is before bound by a fine. 2 *Nelſ. Abr.* 831. But where there is tenant for life, remainder in tail, and reverſion in fee, tenant for life ſuffers a common recovery, in which he in remainder is vouched, and the uſes declared to him, who had the remainder in tail; adjudged, that by the recovery all remainders and reverſions are barred, and that they could not *falſify* this *recovery.* 10 Rep. 43.

He in reverſion ſuffered a common recovery, and declared the uſes; his heir ſhall not *falſify* it by pleading that his father had nothing at the time of the *recovery*, becauſe he is eſtopped to ſay he is not tenant to the *præcipe.* Godb. 189. An infant brought an aſſiſe in *B. R.* *Pending* which action the tenant brought an aſſiſe againſt the infant in *C. B.* for the ſame land, and had judgment by default, which he pleaded in bar to the aſſiſe brought by the infant; who ſet forth all this matter in his replication, and that the demandant at the time of the ſecond writ brought was tenant of the land, and prayed that he might *falſify* this *recovery*; and it was held that he might, becauſe he could not have writ of error, or attaint. *Godb.* 271. *Cro. Eliz.* 284. It has been determined, that a *recovery* is not ſo firm, but it may be *falſified* in point of *recovery* of the thing itſelf, between the ſame parties. *Ibid.*

Falſifying a Verdict. Where in any real action, there is a verdict againſt tenant in tail, the iſſue can never *falſify* ſuch verdict in the point directly tried; but only in a ſpecial manner, as by ſaying that ſome evidence was omitted, &c. 2 Ld. Raym. 1050.

Falſonarius, A forger.——*Et quod* Falſonarios *Chartam, &c. detegent.* Hoveden 424.

Falſo returno Brevium, Is a writ that lieth againſt the ſheriff who hath execution of proceſs, for *falſe returning* of writs. *Reg. Jud* 43.

Familia, Signifies all the ſervants belonging to a particular maſter; but in another ſenſe it is taken for a portion of land, ſufficient to maintain one *family*: It is ſometimes mentioned by our writers to be a *Hide* of land, which is alſo called a *Manſe*; and ſometimes *Carucata* or a plough-land. *Blount.*

Fanaticks, Are perſons pretending to be inſpired, and being a general name for *Quakers*, *Anabaptiſts*, and all other ſectaries and factious diſſenters from the church of *England.* Stat. 13 Car. 2. cap. 6.

Fanatio, (*Menſis Fanationis*) Is the *fawning* ſeaſon or *fence-months* in *foreſts.* Kennet's Gloſſ.

Farandman, (*Sax.*) A traveller or merchant ſtranger, to whom by the laws of *Scotland* juſtice ought to be done with all expedition, that his buſineſs or journey be not hindered. *Skene, c.* 104.

Fardel of Land, (*Fardelle Terræ*) Is generally accounted the fourth part of a *Yard-Land*; but according to *Noy*, (in his *Compleat Lawyer, p.* 57.) It is an eighth part only, for there he ſays that two *fardels* of land make a *nook*, and four *nooks* a *yard-land.*

Farding-deal, (*Quadrantata terræ*) Is the fourth part of an acre: and beſides *quadrantata terræ*, we read of *obolata*, *denariata*, *ſolidata*, and *librata terræ*, which probably ariſe in proportion of quantity from the *farding-deal*, as an half penny, penny, ſhilling, or pound in money, riſe in value; and then muſt *obolata* be half an acre, *denariata* an acre, *ſolidata* twelve acres, and *librata terræ* twelve ſcore acres of land: but ſome hold *obolata* to be but half a perch, and *denariata* a perch; and I find *viginti libratas terræ vel redditus.* Reg. Orig. 94, 248. whereby it ſeems that *librata terræ* is ſo much as yields 20*s. per annum.* F. N. B. 87. Spelm. Gloſſ.

Fare, (*Sax.*) A voyage or paſſage by water; but more commonly the money paid for ſuch paſſage, in which ſenſe we now uſe it. 3 *P. & M. cap.* 16. So for what we pay an hackney or ſtage coachman for our carriage.

Farinagium, Toll of meal or flour——*Et quod de cætero molendinarius non capiat* Farinagium, *&c.* Ordin. Inſul. de Jerſey 17 Edw. 2.

Farleu, Is money paid by tenants in the weſt of *England* in *lieu* of a *heriot*: and in ſome manors in *Devonſhire*, *farleu* is diſtinguiſhed to be the beſt goods; as *heriot* is the beſt beaſt, payable at the death of a tenant. *Cowel.*

Farlingarii, Are whoremongers and adulterers. *Saxon.*

Farm, or **Ferm,** (Lat. *firma*, from the Sax. *feorum*, i. e. Food, and *feormain* to feed or yield victuals) ſignifies a large meſſuage and land, taken by leaſe under a certain yearly rent, payable by the tenant; and in former days, about the time of *William* the Firſt, called the Conqueror, theſe rents were reſerved to the lords in victuals and other neceſſaries ariſing from the land; but afterwards in the reign of King *Hen.* 1. were altered and converted into money. *Terms de Ley.* A *farm* is moſt properly the chief meſſuage in a village; and it is a collective word, conſiſting of divers things gathered into one, as a meſſuage, land, meadow, paſture, wood, common, &c. *Locare ad firmam* is ſometimes taken for as much as to let or ſet to *farm*; and the reaſon of it may be in reſpect of the firm or ſure hold the tenants thereof have above tenants at will. A *farm* in *Lancaſhire* is called *Ferm-holt*; in the north a *Tack*, and in *Eſſex* a *Wike:* And *ferm* is taken in various ways. *Plowd.* 195.

Farmer, Is he that tenants a *farm*, or is leſſee thereof. *Terms de Ley.* And it is ſaid generally every leſſee for life or years, although it be but of a ſmall houſe and land, is called *Farmer*, as he is that occupieth the *farm*: as this word implies no myſtery, except it be that of huſbandry, huſbandman, is the proper addition of a *farmer.* 2 Hawk. 188. By ſtatute, no parſon or ſpiritual perſon may take *farms* or leaſes of land, on pain of forfeiting 10*l. per* month, &c. 21 *Hen.* 8. *c.* 13. And no perſon whatſoever ſhall take above two *farms* together, and they to be in the ſame pariſh, under the penalty of 3*s.* 4*d.* a week. 25 *H.* 8. *c.* 13. 32 *H.* 8. *c.* 28. *ſ.* 4.

Farthing, Was the fourth part of a *Saxon* penny, as it is now of the *Engliſh* penny.

Farthing of Gold, (*Quaſi* fourth thing) A coin uſed in ancient times, containing in value the *fourth* part of a *Noble.* It is mentioned in the ſtat. 9 *H.* 5. *cap.* 7. where it is ordained, that there ſhall be good and juſt weight of the *Noble*, *Half Noble*, and *Farthing of Gold*, *&c.*

Farthing of Land, Seems to differ from *Farthing-deal*; for it is a large quantity of land: in a ſurvey book of the manor of *Weſt Slapton* in Com. *Devon* is entered thus: *A. B.* holds ſix *farthings* of land at 126*l. per annum.*

Farundel of land, the ſame with *farding-deal.*

Faſſus, (Fr. *Faiſſeau*) A faggot of wood. *Mod. Ang. tom.* 2. *p.* 238.

Faſt-Days, Are *days* of *faſting* and humiliation, appointed to be obſerved by publick authority. There are fixed *days* of *faſting* injoined by our church, at certain times in the year, mentioned in ancient ſtatutes, particularly the 2 & 3 *Ed.* 6. *c.* 19. and 5 *El. c.* 5. And by 12 *Car.* 2. *c.* 14. the 30th of *January* is ordained to be a *day* of *faſting* and repentance, for the murder of King *Charles* I. Other *days* of *faſting* which are not fixed, are occaſionally appointed by the King's *Proclamation.* Tho' abſtinence from eating of fleſh is required on thoſe days, by our laws; it is made penal to affirm that any forbearing of fleſh, is neceſſary to ſalvation. 1 *Hawk. P. C.* 8. See *Embring Days.*

Faſtermans, Among the *Saxons* were pledges. *Leg. Ed. Confeſſ. cap.* 38. Vide *Fæſtingmen.*

Fat, or **Vate,** Is a large wooden veſſel uſed by maltſters and brewers, for meaſuring of malt with expedition, containing eight buſhels or a quarter. *Stat.* 1 *H.* 5. *c.* 10. and 11 *H.* 6. *c.* 8. It is alſo a leaden veſſel or pan, made uſe of by brewers to run their wort into, and by others for the making of ſalt at *Droitwich* in the county of *Worceſter.*

Fatua mulier, A whore. *Cum quadam* fatua muliere *nudus in lecto cum nuda extitit deprehenſus.* Du Freſne.

Fauſetum, A faucet, muſical pipe or flute.——*Organum & decentum* fauſetum *in divino officio omnibus noſtris, &c. interdicimus.*

Fautors, Are favourers or ſupporters of others; abettors of crimes, &c.

Feal, The tenants by knight ſervice did ſwear to their lords to be *feal* and *leal*, i. e. to be *faithful* and *loyal.* Spel. de Parliament 59.

Fealty, (*Fidelitas*) Fr. *Feaulte*, i. e. *Fides*) Signifies an oath taken at the admittance of every tenant, to be true to the lord of whom he holds his land; and he that holds lands by the oath of *fealty*, has it in the freeſt manner; becauſe all perſons that have *fee*, hold *per fidem* and *fiduciam*, that is, by *fealty* at leaſt. *Smith de Repub. Ang. lib.* 3. *c.* 8. This *fealty*, which is uſed in other nations, as well as *England*, at the firſt creation of it bound the tenant to *fidelity*; the breach whereof was the loſs of his fee.

It is uſually mentioned with *homage*, but differs from it; being an obligation permanent, which binds for ever: and theſe differ in the manner of the ſolemnity, for the oath of *homage* is taken by the tenant kneeling; but that of *fealty* is taken ſtanding, and includes the ſix following things, *viz.*

1. *Incolume*, that he do no bodily injury to the lord. 2. *Tutum*, that he do no ſecret damage to him in his houſe, or any thing which is for his defence. 3. *Honeſtum*, that he do him no injury in his reputation. 4. *Utile*, that he do no damage to him in his poſſeſſions. 5. *Facile*, and 6. *Poſſibile*, that he render it eaſy for the lord to do any good, and not make that impoſſible to be done, which was before in his power to do: all which is compriſed in *Leg. Hen.* 1. *c.* 5.

Fealty has likewiſe been divided into *general* and *ſpecial*; *general*, to be performed by every ſubject to his prince; and *ſpecial*, required only of ſuch as in reſpect of their fee, are tied by oaths to their lords. *Grand Cuſtum. Normand. Fealty ſpecial* is with us performed either by freemen, or by villeins. The particulars of the oath of *fealty*, as it is uſed by the *Feudiſts*, is well expreſſed by *Zaſius*, in his *Tractat. de Feudis. Part* 7. *Numb.* 15, 16. which is worthy comparing with the uſual oath taken here in *England*.

By *ſtat.* 17 *Ed.* 2. *ſt.* 2. the form of this oath is appointed, and as now obſerved, it runs as follows, *viz. I* A. B. *will be to you my lord* C. *true and faithful, and bear to you* fealty *and* faith *for the lands and tenements which I hold of you: and I will truly do and perform the cuſtoms and ſervices that I ought to do to you. So help me God.* The oath is adminiſtred by the lord or his ſteward; the tenant holding his right hand upon the book, and repeating after the lord, *&c.* the words of the oath; and then kiſſing the book. *Terms de Ley*

This oath is in ſome manors neglected; but in copyhold manors, where courts are kept, and copyhold eſtates granted, it is generally uſed: leſſees for life or years, ought to do *fealty* to their lords, for the lands they hold; and there can be no tenure without ſome ſervice. *Wood's Inſt.* 183. But a bare tenant at will, ſhall not do *fealty*, becauſe he hath no certain eſtate; and the matter of an oath ought to be certain. *Lit.* 131, 132. *Co. Lit.* 93.

Fealty is incident to all manner of tenures, except *frankalmoign* and tenancy at will. *Ibid.* Fidelitas *eſt fidei, obſequii et ſervitii ligamen quo particulariter vaſſalus domino aſtringitur.* Spelm.

Feaſts, Anniverſary times of *feaſting* and thankſgiving, as *Chriſtmas, Eaſter, Witſuntide, &c.* The *four feaſts* which our laws eſpecially take notice of, are the *feaſts* of the *annunciation of the bleſſed Virgin Mary*, of the *nativity of St. John the Baptiſt*, of *St. Michael the Archangel*, and of *St. Thomas the Apoſtle*; (or in lieu of the laſt, *the birth of our Lord Chriſt,*) on which quarterly days, rent on leaſes is uſually reſerved to be paid. See the ſtatutes 5 & 6 *Ed.* 6. *c.* 3. 3 *Jac.* 1. *c.* 1. 12 *Car.* 2. *c.* 30.

Fee, *(Feodum,* or *Feudum) Fee,* comes of the French *Fief*, i. e. *Prædium beneficiarium, vel res clientelaris*, or from the Sax. *Feh.* viz. *Merces, ſtipendium, quaſi dicitur ſtatus* Beneficiarius; it is ſaid to be that eſtate which we hold by the benefit of another, and for which we do ſervice or pay rent to the chief lord; and is applied to all thoſe lands and tenements which are held by perpetual right, by an acknowledgment of any ſuperiority to a higher lord. The writers on this ſubject, divide all lands wherein a man hath a perpetual eſtate to him and his heirs, into *allodium* and *feudum*.

Allodium they define to be every man's land, *&c.* which he poſſeſſeth merely in his own right, without acknowledgment of ſervice or payment of any rent to another; and this is a property in the higheſt degree: (See *Allodial, Allodium).*

But *feudum* is ſuch land as is held of another, for which ſervice is done or rent is paid, as an acknowledgment thereof. All the land in *England*, except the crown-lands in the King's own hands in right of his crown, are in the nature of *feudum*, or *fee*; for though many have lands by diſcent from their anceſtors, and others have bought land, it cannot come to any either by diſcent or purchaſe, but with the burden that was laid upon him who had *novel fee*, or firſt of all received it from his lord; ſo that there is no perſon hath *directum dominium*, i. e. the very property of *demain* in any land but the King, in right of his crown: and notwithſtanding he that hath *fee*, hath *jus perpetuum et utile dominium*, yet he owes a duty for it, and therefore it is not ſimply his own; and he that can ſay moſt of his eſtate, ſaith thus: *I am ſeiſed of this or that land or tenement, in my demain, as of* fee; *ſeiſitus inde in dominico meo ut de feodo*, which is as much as if he had ſaid, it is my demain or proper land to me and my heirs for ever; but yet I hold it in nature of a benefit of and from another. *Camb. Britan.* 93.

By this doctrine is to be underſtood that every man in ſociety, holds his eſtate, ſubject to the laws of that ſociety, and muſt hold it of the community, as what he poſſeſſes is ſuppoſed to have been taken out of the common ſtock. When he neglects to fulfil the duties of ſociety, he forfeits to the community, the eſtate he hath received. The King is the truſtee for that community. He, as ſuch, is the ſuperior lord: and in that ſenſe every one may be ſaid to hold mediately, or immediately of the King. This is what the editor *(J. M.)* conceives is meant by the doctrine in queſtion.

All that write *de feudis*, hold that *feudatarius* hath not an entire property in his *fee:* and as *fee* cannot be without *fealty*, ſworn to a ſuperior, the lands of the crown are not properly *fee*; for no man may grant that our King or crown oweth *fealty* to any ſuperior on earth.

The word *fee* is ſometimes uſed for the compaſs or circuit of a lordſhip or manor, as we ſay the *lord of the fee*, *&c.* as well as the particular eſtate of the tenant: and alſo for a perpetual *right incorporeal*; as to have the keeping of priſons, *&c.* in *fee*. Bract. Lib. 2. c. 5. Old Nat. Br. 41. And when a rent or annuity is granted to one and his heirs, it is a *fee perſonal*. Co. Lit. 1, 2. *Fee* is commonly divided into *fee abſolute*, otherwiſe called *fee-ſimple*; and *fee conditional*, termed otherwiſe *fee-tail*. See *Tail*.

Fee-ſimple, (feodum ſimplex) Is where a man hath lands or tenements, to hold to him and his heirs for ever: *fee-tail* is an eſtate whereof one is ſeiſed with limitation, to him and the heirs of his body, *&c.* Lit. 14, 16. All eſtates at the common law were *fee ſimple*; and all other eſtates and intereſts are derived out of it, wherefore there muſt be a *fee-ſimple* at laſt in ſome body. *Lit.* 647.

Under this head it may be proper to conſider,

I. *In what things a man may have a fee-ſimple.*
II. *By what means ſuch an eſtate may be acquired.*
III. *By what words it may be created.*

I. *In what things a man may have a fee-ſimple.*

A man may have an eſtate, in fee-ſimple of all lands or tenements or other things real. *Co. Lit.* 1. *b.* Of lordſhips, advowſons, commons, eſtovers, and all hereditaments. *Co. Lit.* 4. *a.* So he may have a fee-ſimple in things mixt; as in franchiſes, liberties, *&c.* Co. L. 2. a.

So if a man grants to another and his heirs all woods, underwoods, timber-trees or others in ſuch a part of a foreſt, ſaving the ſoil; the grantee has a fee to take *in alieno ſolo.* R. 8 Co. 137. b.

So, in things perſonal; as in annuity. *Co. Lit.* 2. *a.* In a dignity granted to him and his heirs. *Co. Lit.* 2. *a.* In a ſwan-mark. 7 *Co.* 17. In a part or ſhare of the *New River* water. *Ca. Parl.* 207.

So, in the patronage of an hoſpital, or other thing created *de novo*, in which there was not a precedent eſtate, a man may have a fee to him and his heirs, qualified in a particular manner: as if a Queen conſort inſtitutes an hoſpital, and reſerves the patronage *ſibi & reginis Angliæ ſuccedentibus.* R. Ca. Ch. 214.

But in eſtates in *eſſe* before ſuch deſultory inheritance it cannot be: as the dutchy of *Cornwal* limited to the prince & *filiis regis Angliæ primogenitis*, ſhall not be good, except when limited by act of parliament. *R.* 8 *Co.* 16.

II. *By what means ſuch an eſtate may be acquired.*

A man may take a fee by deſcent, or by purchaſe.

In what manner a man may take by deſcent, ſee under title *Deſcent*.

With reſpect to *purchaſers* it is to be noted, that ſome are incapable of purchaſing.

An alien cannot purchaſe any lands in *England*. *Vaugh*. 227, 291. 7 *Co*. 16, 17, 18. *Dyer* 2. *pl*. 8. See *Alien*.

All perſons attainted of treaſon or felony are incapable of purchaſing. 2 *New Abridg*. 249. *Co. Lit*. 8. *a*. See *Dig. Feud. lib*. 2. *tit*. 23, 24. *Vigellius* 242, 350. *Spelman's Gloſſ*. 214, 215.

If a man be *attainted of felony*, and after purchaſe land, and dies, the King ſhall have it by his prerogative, and not the lord of the fee; becauſe his perſon being forfeited to the King, he cannot purchaſe but for the King. *Co. Lit*. 2. *b*.

A monſter not having human ſhape cannot purchaſe or inherit, but an hermaphrodite ſhall inherit or purchaſe *ſecundum prævalentiam ſexus incaleſcentis*; one born deaf and dumb may *inherit*; ſo may one born deaf, dumb and blind, becauſe it is for their advantage; but they cannot *contract*, becauſe they cannot underſtand the ſigns of contracting; an infant, an ideot, and a perſon of *non ſane memory* may inherit, becauſe the law, in compaſſion to their natural infirmities, preſumes them capable of property; ſo alſo an infant or a perſon of *non ſane memory* may purchaſe, becauſe it is intended for his benefit, and the freehold is in him till he diſagree thereto, becauſe an agreement is preſumed, it being for their benefit, and becauſe the freehold cannot be in the grantor, contrary to his own act, nor can be in abeyance, for then a ſtranger would not know againſt whom to demand his right; if at full age, or after recovery of his memory they agree thereto, they cannot avoid it; but if they die during minority or lunacy, the heirs may avoid it; for they ſhall not be ſubject to the contracts of perſons who wanted capacity to contract; ſo after his memory recovered, the lunatick or perſon *non compos* die without agreement to the purchaſe, their heirs may avoid it. *Co. Lit*. 2. 8. 2 *Vent*. 303.

A feme covert is capable of purchaſing; for ſuch an act does not make the property of the huſband liable to any diſadvantage, nor does it ſuppoſe a ſeparate will or power of contracting in the wife; but here the will of the wife is ſuppoſed the mind of the huſband, (he not objecting) ſince no man is ſuppoſed not to aſſent to that which is for his benefit; but in this caſe the huſband may diſagree, and it ſhall avoid the purchaſe. *Co. Lit*. 3. *a*.

By the ſtat. 11 & 12 *W*. 3. *c*. 4. *Papiſts* are diſabled from purchaſing lands, &c.

Perſons capable of purchaſing may gain a fee-ſimple by *feoffment*; or by fine, or *common recovery*; which are of the nature of a feoffment upon record; or by *grant*, or by *exchange*, *releaſe*, or *confirmation*, which are in the nature of grant; or by *bargain* and *ſale*; or by *covenant to* ſtand ſeiſed; or by *deviſe*. 3 Com. Dig. 215.

So a man may gain a fee by wrong: as by *diſſeiſin*, *abatement*, or *intruſion*. Id. Ibid.

III. *By what words a fee-ſimple may be created.*

It is the word *heirs* makes the inheritance; and a man cannot have a greater eſtate. *Lit*. 1. To have *fee-ſimple* implies, that it is without limitation to what heirs, but to heirs generally: though it may be limited by act of parliament. 4 *Inſt*. 206. If one give or grant land to *J. S.* and his heirs; and if he die without heirs, that *J. D.* ſhall have it to him and his heirs: by this *J. S.* hath a *fee-ſimple*, and *J. D.* will have no eſtate. *Dyer* 4, 33. This means by parol, with livery and ſeiſin, or by deed, &c. but not by will.

Where land is given or granted by fine, deed, or will, in poſſeſſion, reverſion, or remainder, to another and his heirs; it will be a *fee ſimple*. Plowd. 134. And if land be granted to a man and his heirs, *habendum* to him for life only, and livery of ſeiſin is made; it is a *fee-ſimple* eſtate, becauſe a fee is expreſſed in the *grant*. 2 Rep. 23.

A leaſe is granted to one for a term of years, and after that the leſſee ſhall have the land to him and his heirs by the rent of 10 *l.* a year; if the grantor make *livery* upon it, 'tis a *fee-ſimple*: otherwiſe but for years. *Co. Lit*. 217. Where lands are granted to *A.* for life, remainder to *B.* for life, the remainder to the right heirs of *A.* here *A.* hath a *fee-ſimple*. 20 Hen. 6. 35. *Bro. Eſt*. 34, 35. A gift or grant to a man's wife during life, after to him in tail, and after to his right heirs; he will have a *fee-ſimple* eſtate. 2 *Rep*. 91.

If lands are granted to a man and his ſucceſſors, this creates no *fee-ſimple*: but if ſuch a grant be made to a corporation, it is a *fee-ſimple*; and in caſe of a ſole corporation, as a biſhop, parſon, &c. a *fee-ſimple* is to them and their ſucceſſors. *Co. Lit*. 8. *b*. *Wood* 119. An eſtate *granted* to a perſon, to hold to *him* for ever, or to *him* and *his aſſigns* for ever, is only an eſtate for life; the word *heirs* being wanted to make it *fee-ſimple*: but in *wills*, which are more favoured than grants, the *fee-ſimple* and inheritance may paſs without the word *heirs*. Co. Lit. 19, 9.

And by deed of feoffment a *fee-ſimple* may be created, which would be an eſtate-tail by will; as where lands are given to another, and his heirs male, &c. without the word *body*. Hob. 32. A gift to a man and his children, and their heirs, is a *fee ſimple* to all that are living. *Co. Lit*. 8. *Lit. Rep*. 6.

A feoffment to *B.* & *heredibus*, without ſaying *ſuis*, gives him a fee-ſimple. *Co. Lit*. 8. *b*. So to a ſon *and the heirs of his father*. Semb. Co. Lit. 220. b. So to *B.* & *liberis ſuis* and their heirs; if he has iſſue, it gives them a joint eſtate in fee. *Co. Lit*. 9. *a*. So to *B. heredibus* & *ſucceſſoribus ſuis*, gives a fee. *Co. Lit*. 9. *a*.

So a grant to the King *in perpetuum* gives him a fee, without the words, *his heirs or ſucceſſors*, for he never dies. *Co. Lit*. 9. *b*. So a feoffment to a corporation aggregate *in perpetuum* gives a fee; for it never dies. *Co. Lit*. 9. *b*. 1 *Rol*. 832. *l*. 55.

Or, to a corporation ſole, to be held in *frankalmoigne*. Co. Lit. 9. b. 1 Roll. 833. l. 5. So, if *A.* re-enfeoffs *B. adeo plene* as *B.* enfeoffed him, he has a fee without the word, *heirs*. Co. Lit. 9. b.——This muſt mean where *A.* had an eſtate in fee of the feoffment of *B.* 1 Rol. 833. l. 12. So a grant to the church of *B.* gives a fee, without the word, *heirs* or *ſucceſſors*. 1 Rol. 833. l. 3.

And a limitation to *the right heirs* of *B.* gives a fee, without the words, *and their heirs*. 1 Rol. 833. l. 16. So a fee may be given without the words, *his heirs*, by fine *ſur conuzance de droit come ceo*, &c. Co. Lit. 9. b. Or, by a *common recovery*. Co. Lit. 9. b.

So, a fee paſſes without the words, *his heirs*, where a man gives land with his daughter, &c. in *frankmarriage*. Co. Lit. 9. b. If a parcener, or joint-tenant releaſes to his companion. *Co. Lit*. 9. *b*. If the lord, &c. releaſes to the tertenant; which enures by way of extinguiſhment. Co. Lit. 9. b. If a man releaſes a mere right; as, where a diſſeiſee releaſes to the diſſeiſor all his right. *Co. Lit*. 9. *b*.

So, if a rent be granted upon partition, for owelty (or equality) of partition. *Co. Lit*. 9, 10. So if a peer be ſummoned to parliament by writ, he has a fee in his dignity, without the word, *heirs*. Co. Lit. 9. b. So, by the foreſt law, if the King at a juſtice ſeat, grants to another an *aſſart* in *perpetuum*, without more, he has a fee. *Co. Lit*. 10. *a*. So, by cuſtom, a grant of a copyhold, *ſibi* & *ſuis*, or, *ſibi* & *aſſignatis*, may give the inheritance. 4 *Co*. 29. *b*.

A *fee-ſimple* determinable upon a contingency, is a *fee* to all intents; though not ſo durable as abſolute *fee*. *Vaugh*. 273. But ſee title *Executory Deviſe*.

In pleading eſtates in fee-ſimple, they may be generally alledged, but the commencement of eſtates-tail, and other particular eſtates, muſt regularly be ſhewn. *Co. Lit*. 303. The fee-ſimple eſtate, being the chief and moſt excellent; he who hath it in lands or tenements, may give, grant, or charge the ſame by deed or will at his pleaſure; or he may make waſte or ſpoil upon it: And if he bind himſelf and his heirs to warranty; or for money by obligation, or otherwiſe; and leaving ſuch land to the heir, it ſhall be charged with warranty and debts: Alſo the wife of a man that is ſeiſed of ſuch an eſtate, ſhall be endowed; and the huſband of a woman having this eſtate, be tenant by the curteſy (if he has iſſue born alive by her.) *Co. Lit*. 273. *Dyer* 330. *Perk. Sect*. 236.

Though fee-ſimple is the moſt ample eſtate of inheritance, it is ſubject to many incumbrances; as judgments, ſtatutes, mortgages, fines, jointures, dower, *&c.* And there is a fee-ſimple *conditional*, where the eſtate is defeaſible by not performing the condition; and a *qualified* fee-ſimple, which may be defeated by a limitation, *&c.* This is called a *baſe fee*, upon which no reverſion or remainder can be expectant. *Co. Lit.* 18. 10 *Rep.* 97. See *Diſcent*, *Executory Deviſe*, *Wills*.

Fee Expectant. *(Feudum Expectativum)* See *Expectant*.

Fee-Farm, *(Feudi Firma)* Is when the lord, upon creation of the tenancy, reſerves to himſelf and his heirs, either the rent for which it was before let to farm, or was reaſonably worth, or at leaſt a fourth part of the value; *without homage, fealty or other ſervices*, beyond what are eſpecially compriſed in the feoffment. 2 *Inſt.* 44. By *Fitzherbert*, a third part of the yearly value of the land may be appointed for the rent, where lands are granted in *fee-farm*, &c. *F. N. B.* 110. And Lord *Coke* ſays, *fee-farm* rents may be one half, a third, or fourth part of the value. *Co. Lit.* 143. Though theſe *fee-farm* rents ſeem to be more or leſs according to the conditions or conſideration of the purchaſe of the lands out of which they are iſſuing. It is the nature of *fee-farm*, that if the rent be behind and unpaid for the ſpace of two years, then the feoffor or his heirs may bring an action to recover the lands, *&c.* *Brit. cap.* 66. *num.* 4. See 10 *Ann. c.* 18. *ſec.* 4. 30 *Geo.* 2. *c.* 3. *ſec.* 5.

Fee-Farm Rents of the Crown. The *fee-farm* rents remaining to the Kings of *England* from their *ancient demeſnes*, were many of them alienated from the crown in the reign of King *Charles* II. And by *Stat.* 22 *Car.* 2. *c.* 6. the King was enabled by letters patent to grant *fee-farm* rents due in right of his crown, or in right of his dutchies of *Lancaſter* and *Cornwall*, except quit-rents, *&c.* to truſtees to make ſale thereof, and the truſtees were to convey the ſame by bargain and ſale to purchaſers, *&c.* who may recover the ſame as the King might. But it has been obſerved, that men were ſo very doubtful of the title to alienations of this nature, that while theſe rents were expoſed to ſale for ready money, ſcarce any would deal for them, and they remained unſold; but what made men earneſt to buy them, was the ſtop upon ſome of his Majeſty's other payments, which occaſioned perſons to reſort to this as the moſt eligible in that conjuncture: No tenant in tail of any of the ſaid rents, is enabled to bar the remainder. 22 & 23 *Car.* 2. *cap.* 24. On the taxing of *fee-farm* rents, receivers, *&c.* were to allow to the perſons paying them ſo much in the pound as the land-tax amounts to. *Stat.* 9 & 10 *W.* 3. *c.* 18. See 30 *Geo.* 2. *c.* 3. *ſec.* 27, 28. 7 *Geo.* 2. *c.* 7. *ſec.* 5. 22 & 23 *Car.* 2. *cap.* 24. *ſec.* 8. and 10 *Ann. c.* 18. *ſec.* 4.

Fees, Are certain perquiſites allowed to officers who have to do with the adminiſtration of juſtice, as a recompence for their labour and trouble; and theſe are either aſcertained by acts of parliament, or eſtabliſhed by ancient uſage, which gives them an equal ſanction with an act of parliament. 2 *New Abr.* 463.

Herein may be conſidered,

I. *In what caſes fees are due.*
II. *At what time they may be demanded.*

I. *In what caſes fees are due.*

At Common law no officer, whoſe office related to the *adminiſtration of juſtice*, could take any reward for doing his duty, but what he was to receive from the King. *Co. Lit.* 368. 2 *Inſt.* 176, 208-9.

And this fundamental maxim of the Common law is confirmed by *Weſtm.* 1. *cap.* 26. which enacts, "That no ſheriff, or other King's officer, ſhall take any reward to do his office, but ſhall be paid of that which they take of the King; and that he who ſo doth ſhall yield twice as much, and ſhall be puniſhed at the King's pleaſure."

This ſtatute comprehends eſcheators, coroners, bailiffs, gaolers, the King's clerk of the market, aulneger, and other inferior miniſters and officers of the King, whoſe offices do any way concern the *adminiſtration* or *execution, of juſtice*. 2 Inſt. 209.

And ſo much hath this law been thought to conduce to the honour of the King and welfare of the ſuject, that *all preſcriptions* whatſoever, which have been *contrary to it*, have been holden *void*; as where by preſcription the clerk of the market claimed certain fees for the view and examination of all weights and meaſures, and it was held merely void. 4 *Inſt.* 274. *Moor* 523. 2 *Inſt.* 209. 2 *Rol. Abr.* 226.

But it hath been holden, that the fee of 20 *d.* commonly called the bar fee, which hath been taken time out of mind, by the ſheriff, of every priſoner who is acquitted; and alſo the fee of one penny, which was claimed by the coroner of every *viſne*, when he came before the juſtices in *eyre*, are not within the meaning of the ſtatute, becauſe they are not demanded by the ſheriff or coroner for doing any thing relating to their offices, but claimed as perquiſites of right belonging to any them. 2 *Inſt* 210. *Staun. P. C.* 49.

Alſo it is holden by Lord *Coke*, that within the words of the ſtatute 34 *Ed.* 1. which are, "No tallage or aid ſhall be taken or levied by us or our heirs in our realm, *without the good will and aſſent of* archbiſhops, biſhops, earls, barons, knights, burgeſſes, and other freemen of the land; no new offices can be erected with new fees, or old offices with new fees; for that is a tallage upon the ſubject, which cannot be done without common aſſent by act of parliament. 2 *Inſt.* 533.

Yet it is holden, that an office erected for the public good, though no fee is annexed to it, is a good office; and that the party, for the labour and pains which he takes in executing it, may maintain a *quantum meruit*, if not as a fee, yet as a *competent recompence* for his trouble. *Moor* 808. *Biſhop of Sarum*'s caſe.

All fees allowed *by acts of parliament* become eſtabliſhed fees; and the ſeveral officers intitled to them may maintain *action of debt* for them. 2 *Inſt.* 210. All ſuch fees as have been allowed by the courts of juſtice to their officers, as a recompence for their labour and attendance, are eſtabliſhed fees; and the parties cannot be deprived of them without an act of parliament. *Co. Lit.* 368. *Prec. Chan.* 551.

Where a fee is due by cuſtom, ſuch cuſtom, like all others, muſt be reaſonable; and therefore where a perſon libelled in the ſpiritual court for a burying fee due to him for every one who died in his pariſh, though buried in another; the court held this unreaſonable, and a prohibition was granted. *Hob.* 175. 1 *Rol. Abr.* 557, 559. *S. C.* adjudged.

The plaintiff brought an action on the caſe for fees due to him as Uſher of the Black Rod, and obtained a verdict. *Stran.* 747. *Trin.* 13 *Geo.* 1. No fee ſhall be taken for a report upon a reference from any court. 1 *Jac.* 1. *c.* 10. Certain fees of ſheriffs ſettled. 3 *Geo.* 1. *c.* 15. *ſect.* 16, *&c.* See *Sheriff*. Fees on *niſi prius* records out of the Exchequer to be the ſame as on other records. 23 *Geo.* 2. *c.* 26. *ſect.* 10. Fees of juſtices clerks to be regulated. 26 *Geo.* 2. *c.* 14. 27 *Geo.* 2. *c.* 16. *ſect.* 4. Debt lies for the ſheriff's fees for executing an *elegit*. *Lord Raym.* 1212.

As to the *quantum* of the fees due, it muſt be obſerved in general, that it is extortion for any officer to take more for executing his office, than is allowed by act of parliament, or is the known and ſettled fee in ſuch caſe. 10 *Co.* 102. *a.* *Co. Lit.* 368.

As to the fees of ſheriffs for executions, by 29 *Eliz. cap.* 4. it is enacted, "That it ſhall not be lawful for any ſheriff, *&c.* nor for any of their officers, *&c.* by colour of their office, to take of any perſon, directly or indirectly, for the ſerving and executing of any extent or execution upon the body, lands, goods or chattels of any perſon, more recompence than in this preſent act appointed, *i. e.* twelve-pence of and for every twenty ſhillings where it exceedeth not one hundred pounds; and ſix-pence of and for every twenty ſhillings, over and above the ſaid ſum of 100 *l.* that he or they ſhall ſo levy or extend, and deliver in execution, or take the body in execution for; upon pain, that the perſon offending, ſhall forfeit, to the party grieved, his treble damages; and ſhall forfeit the ſum of 40 *l.* for every time that he, they, or any of them ſhall do the contrary.

II. *As to the time when fees may be demanded.*

It is extortion for any officer to take his fee before it is due; and therefore where an under-ſheriff refuſed to execute a *capias ad ſatisfaciendum* till he had his fees, the court held, that plaintiff might bring an action againſt him for not doing his duty, or might pay him his fees, and then indict him for extortion. *Co. Lit.* 368. 10 *Co.* 102. *a.* 1 *Salk.* 330.

Officer muſt obey a writ, though fees unpaid. *Stran.* 814. Proceſs muſt be obeyed though fees are not tendered. *Stran.* 1262. If an *habeas corpus ad ſubjiciendum* be directed to a gaoler, he muſt bring up the priſoner altho' his fees were not paid him; and he can't excuſe himſelf of the contempt to the court, by alledging that the priſoner did not tender him his fees. 1 *Keb.* 272. *pl.* 57. So as to an *habeas corpus ad faciendum & recipiendum.* *March* 89. 2 *Keb.* 280. 2 *Inſt.* 178. but 1 *Keb.* 566. *cont.*

But if the gaoler brings up the priſoner by virtue of ſuch *habeas corpus,* the court will not turn him over till the gaoler be paid all his fees; nor, according to ſome opinions, till he be paid all that is due to him for the priſoner's diet; for that a gaoler is compellable to find his priſoner ſuſtenance. See 1 *Rol. Rep* 338. *Co. Lit.* 295 9 *Co* 87. *Plowd.* 68. *a.* 2 *Rol. Abr.* 32. 2 *Jon.* 178.

If a perſon pleads his pardon, the judges may inſiſt on the uſual fee of gloves to themſelves and officers, before they allow it. *Fitz. Coron.* 294. *Pulton de Pace* 88. *Keling* 25. 2 *Jon.* 56. 1 *Sid.* 452.

If an erroneous writ be delivered to the ſheriff, and he executes it, he ſhall have his fees, though the writ be erroneous. 1 *Salk.* 332. It ſeems to be laid down in the old books as a diſtinction, that upon an extent of land upon a ſtatute, the ſheriff is to have his fees, ſo much *per* pound according to the ſtatute immediately; but that upon an *elegit* he is not to have them till the *liberate.* *Poph.* 156. *Winch* 51. *S. P.*

A ſolicitor in Chancery may exhibit his bill for his fees for buſineſs done in that court; and ſo he may where the buſineſs is done in another court, if it relates to another demand the plaintiff makes in Chancery. 1 *Vern.* 203. 2 *Chan. Ca.* 153. But it hath been held, that chancellors, regiſters and proctors who are officers of temporal profit, and whoſe fees do not relate to the juriſdiction of the ſpiritual court, cannot ſue for them in the ſpiritual court. See 3 *Leon.* 268. 2 *Rol. Rep.* 59. 1 *Mod.* 167. 2 *Keb.* 615. 3 *Keb.* 303, 441, 516. 4 *Mod.* 254. 5 *Mod.* 242.

Fees of *Attornies* and *Officers,* Are conſiderations allowed them as a recompence for their labour: and in reſpect to officers, they are granted over and above their ſalaries, to excite them to diligence in executing their offices. They differ from *wages* which are paid to ſervants for certain work and labour done in a certain ſpace; whereas *fees* are diſburſed to officers, *&c.* for the tranſacting of buſineſs which occaſionally occurs. If a client, when his buſineſs in court is diſpatched, refuſeth to pay the officer his court fees; the court on motion will grant an attachment againſt him, on which he ſhall be committed until the *fees* are paid. 1 *Lill. Abr.* 598. Eccleſiaſtical courts have not power to eſtabliſh *fees:* But if a perſon bring a *quantum meruit in B. R. &c.* for *fees,* and the jury find for him, then they become eſtabliſhed *fees.* 1 *Salk.* 333.

Action on the caſe lies for an attorney for his *fees,* againſt him that retained him in his cauſe: And attornies are not to be diſmiſſed by their clients, till their *fees* are paid. 1 *Lil.* 142. But attornies are not to demand more than their juſt *fees*; nor to be allowed *fees* to counſel without tickets, *&c.* *Stat.* 3 *Jac.* 1. *c.* 7. An attorney may have action of debt for his *fees,* and alſo of counſel, and coſts of ſuit: As a counſellor is not bound to give counſel till he has his *fee*; it is ſaid he can have no action for it: Though it has been held otherwiſe. *F. N. B.* 121. 1 *Brownl.* 73. 31 *H.* 6. *c.* 9.

There were no *fees* due to ſheriffs for executing their offices, till the *Stat.* 29 *Eliz.* *c.* 4. which allows them *fees* for executing writs of execution, *&c.* By the *Stat.* of *Weſtm.* 2. 13 *Ed.* 1. *c.* 42 & 44, the ancient *fees* of officers of courts of juſtice were ordained: And by ſtatutes, the *fees* of ſheriffs, gaolers, bailiffs, *&c.* are limited. See *Extortion.*

Feigned Action. See *Faint Action.*

Feigned Iſſue. If, in a ſuit in equity, any matter of *fact* is ſtrongly conteſted, the court uſually directs the matter to be tried by a jury; eſpecially ſuch important facts as the validity of a will, or whether *A.* is the heir at law to *B.* or the exiſtence of a *modus decimandi,* or real and immemorial compoſition for tithes. But as a jury cannot be ſummoned to attend a court of equity, the fact is uſually directed to be in the court of King's Bench, or at the aſſiſes, upon a *feigned iſſue.* For this purpoſe, a feigned action is brought, wherein the pretended plaintiff declares that he laid a wager of 5 *l.* with the defendant, that *A.* was heir at law to *B.* then he avers that he is ſo; and brings his action for the 5 *l.* The defendant allows the wager, but avers that *A.* is not the heir to *B.* and thereupon that iſſue is joined, which is directed out of Chancery to be tried: And thus the verdict of the jurors at law determines the fact in the court of equity. *Black. Com.* 3 *V.* 452. If it is a matter of great difficulty and conſequence, the direction may be for a trial at bar, with leave of the court.

Felagus, *(Quaſi fide cum eo ligatus)* A companion, but particularly a friend, who was bound in the *decennary* for the good behaviour of another. In the laws of King *Ina,* it is ſaid, if a murderer could not be found, *&c.* the parents of the perſon ſlain ſhould have ſix marks, and the King forty; if he had no parents, then the lord ſhould have it. *Et ſi dominus non haberet,* felagus *ejus.* LL. Inæ, cap. 15.

Feld, Is a *Saxon* word, ſignifying *field*; and in its compound it ſignifies wild, as *feld* honey, is wild honey, *&c.* Blount.

Fele Homagers, Were faithful ſubjects, from the Sax. *fai,* i. e. *fides.*

Felo de ſe, One that commits felony by laying violent hands upon himſelf, whereby he is the occaſion of his own untimely death. When a perſon with deliberation and direct purpoſe kills himſelf, by hanging, drowning, ſhooting, ſtabbing, *&c.* this is *felo de ſe*; but the perſon that commits this felony, muſt be of the age of diſcretion, and *compos mentis:* And therefore if an infant under fourteen years of age, or a lunatick during his lunacy, or one diſtracted by a diſeaſe, or an ideot, kills himſelf, it is not felony. 3 *Inſt.* 44. *Dalt. ch.* 145. Alſo if a perſon during the time that he is *non compos mentis* giveth himſelf a mortal wound, though he dieth thereof when he recovers his memory; he is not *felo de ſe,* becauſe at the time of the ſtroke he was not *compos mentis.* Dalt. 342, 344. And he who deſires and perſuades another man to kill him, is not a *felo de ſe*; his aſſent being void in law, and the perſon killing him a murderer. *Kelw.* 136. It is *felo de ſe* where a man maliciouſly attempts to kill another, and falls upon his ſword, *&c.* whereby he kills himſelf; but he muſt be the *only* agent. 1 *H. P. C.* 68.

A *felo de ſe* ſhall forfeit all his goods and chattels real and perſonal; but not until it is lawfully found by the oath of twelve men, before the coroner *ſuper viſum corporis,* that he is *felo de ſe.* 3 Inſt. 55. By the return of the inquiſition the goods, *&c.* are veſted in the King: Though it hath been ſaid, that the goods of a *felo de ſe* are forfeited before inquiſition, *viz.* immediately upon committing the fact. 1 *Lev.* 8. But ſee 5 *Rep.* 110. where it is adjudged that they are not forfeited till it is found of record. The lands of inheritance of a *felo de ſe* are not forfeited, by reaſon he was not attainted in his life-time: nor is ſuch a perſon's wife barred of dower, or his blood corrupted. 1 *Hawk.* 68. If a judgment is obtained by a plaintiff in any action, and the plaintiff hangs himſelf, ſo as to become *felo de ſe,* the debt is forfeited to the King. 1 *Saund.* 36. 2 *Nelſ. Abr.* 840. Goods are forfeited to the King by a *felo de ſe,* for the loſs of a ſubject, and breach of the peace. 1 *Plowd.* 261. But theſe forfeitures are oftentimes ſaved, by the coroner's jury finding their verdict lunacy; to which they are inclined on a favourable interpretation, that it is impoſſible for a man in his ſenſes to do a thing ſo contrary to nature; but if this argument be good, ſelf-murder can be no crime, becauſe a madman cannot be guilty of any crime. 1 *Hawk.* 67.

If a perſon *felo de ſe* is ſecretly made away with, that the coroner cannot view the body; preſentment is to be made of it by juſtices of peace, *&c.* to entitle the King to the forfeiture of goods. 5 *Rep.* 110. Where a perſon is found *felo de ſe,* who, on account of lunacy, *&c.* ought not to be ſo; or where one is returned *non compos,* when in truth the party is *felo de ſe, &c.* if there be no fault in the coroner, or incertainty in the inquiſition, a *melius inquirendum* will not be granted; but the inquiſition is traverſable in *B. R.* 3 *Mod.* 238. 2 *Nelſ. Abr.* 840. A pardon of murder, doth not pardon *felo de ſe*; but a pardon of all felonies and forfeitures doth. By cuſtom and practice, the bodies of *felo's de ſe's* are buried in the highway, *&c.*

Felons Goods. The ſtatute *de prærogativa regis,* 17 *Ed.* 2. *c.* 1. grants to the King, among other things, the goods of felons and fugitives. If the King grant to a man and his heirs *felons goods,* the grantee cannot deviſe them, *&c.* on the ſtatute 32 *H.* 8. *c.* 1. becauſe they are not of a yearly value; but where a perſon is ſeiſed of a manor, to which they are appendant, it is otherwiſe, for they will paſs as appurtenant. 3 *Rep.* 32. A perſon committed to priſon on ſuſpicion of felony, having the money taken from him which he had about him before conviction, brought an action of treſpaſs for ſeizing his money, *&c.* on the *Stat.* 1 *R.* 3. *c.* 3. by which it is enacted, that no perſon ſhall take the goods of another, *&c.* *Raym.* 414. 2 *Nelſ.* 839. See *Flight.*

Felony, (*Felonia,* Fr. *Felonnie*) As Sir *Edward Coke* tells us, is derived from the *Latin* word *fel,* or from the old Sax. *fell,* one ſignifying gall, and the other fierce; and his reaſon is, becauſe either of theſe words are ſuitable to the crime, which is always intended to be done with a bitter or fierce mind: But the learned *Spelman* gives a different account of the derivation of this word, that it comes from the *Saxon* word, *feah,* which ſignified a reward or eſtate, and the *German lon,* which in *Engliſh* is price; and this was formerly a crime puniſhed with the price, *viz.* the loſs of eſtate. And before the reign of K. *Hen.* 1. *felonies* were puniſhed with pecuniary fines; for he was the firſt who ordered *felons* to be hanged, about the year 1108.

The judgment againſt a man for *felony* hath been the ſame ſince the reign of that King, *i. e.* That he be hanged by the neck till dead; which is entered *ſuſpendatur per collum, &c.* 4 Inſt. 124. *Felony* was anciently every capital crime perpetrated with an evil intention: All capital offences by the Common law, came generally under the title of *felony*; and could not be expreſſed by any word but *felonice*; which muſt of neceſſity be laid in an indictment of *felony.* *Co. Lit.* 391. It is always accompanied with an evil intention; and therefore ſhall not be imputed to any miſanimadverſion. But the bare intention to commit a *felony* is ſo very criminal, that at the Common law it was puniſhable as *felony,* where it miſſed of its effect through ſome accident; and as our law now is, the party may be ſeverely fined for ſuch an intention. 1 *Hawk. P. C.* 65.

Felony is included in high treaſon. *H. P. C.* 11. We account any offence *felony,* that is in degree next petit treaſon; and at this day *felony* includes petit treaſon, murder, homicide, ſodomy, rape, burning of houſes, burglary, robbery, breach of priſon, (where the priſoner is chargeable with a felony,) reſcous and eſcape, after one is impriſoned or arreſted for *felony,* with other offences particularly enumerated in the tables to the ſtatutes.

It is either by the *Common law,* or by *ſtatute: Felony,* by the *Common law,* is againſt the life of a man; as murder, manſlaughter, *felo de ſe, ſe defendendo,* &c. Againſt a man's goods, ſuch as larceny, and robbery: Againſt his habitation, as burglary, arſon or houſe-burning; and againſt public juſtice, as breach of priſon. 3 *Inſt.* 31. Piracy, robbery, or murder upon the ſea, are felonies puniſhable by the *Civil law*; and likewiſe by ſtatute: And *felonies* by *ſtatute* are very numerous. *Mod. Juſt.* 180.

Felony is diſtinguiſhed from lighter offences, in that the puniſhment of it is death; but not always, for petit larceny is *felony,* and the indictment againſt ſuch an offender muſt run, *felonice cepit,* yet it is not puniſhed by death, though it be loſs of goods: And of *felonies* in general, there are two ſorts; one of which, for the firſt offence is allowed *clergy,* and another that is not; but *clergy* is granted where it is not expreſly taken away by ſtatute. *Staundf. lib.* 1. *Felony* is puniſhed with loſs of life, and of lands, not entailed, goods and chattels; but the ſtatutes make a difference in ſome caſes concerning lands, as the 37 *H.* 8. *c.* 6. And *felony* ordinarily works corruption of blood; unleſs a ſtatute making an offence *felony,* ordains it ſhall be otherwiſe, as ſome ſtatutes do.

The puniſhment of a perſon for *felony,* by our ancient books, is, 1ſt, To loſe his life. 2dly, To loſe his blood, as to his anceſtry, and ſo as to have neither heir nor poſterity. 3dly, To loſe his goods. 4thly, To loſe his lands; and the King ſhall have *annum, diem & vaſtum,* to the intent that his wife and children be caſt out of the houſe, his houſe pulled down, and all that he had for his comfort or delight deſtroyed. 4 *Rep.* 124. A *felony* by ſtatute incidentally implies, that the offender ſhall be ſubject to the like attainder and forfeiture, *&c.* as is incident to a *felon* at Common law. 3 *Inſt.* 47, 59, 90. And when perſons are to undergo judgment of life and member for any crime by ſtatute, it is *felony* thereby, whether the word *felony* be mentioned or not. 1 *Hawk.* 107.

All *felonies* are ſeveral, and cannot be joint; ſo that a pardon of one felon, cannot diſcharge another: but the *felony* of one man may be dependant upon that of another, and the pardon of the one by a neceſſary conſequence enure to the benefit of the other, as in caſes of principal and acceſſary, *&c* 2 *Hawk. P. C.* 380, 387

Private perſons may arreſt felons by their own authority, or by warrant from a juſtice of peace: And every private perſon is bound to aſſiſt an officer to take felons, *&c.* 2 *Hawk.* 75.

But one ought not to be arreſted upon ſuſpicion of *felony,* except there be *probabilis cauſa* ſhewed for the ground of the ſuſpicion. 1 *Lil. Abr.* 603. If a *felony* is not done by a man, but ſome perſon elſe, if another hath probable cauſe to ſuſpect he is the felon, and accordingly doth arreſt him, this is lawful, and may be juſtified: But to make good ſuch juſtification, there muſt be in fact a *felony* committed by ſome perſon, without which there can be no ground of ſuſpicion. 2 *Hale's Hiſt. P. C.* 78. And as to the perſon, there ought to be a *reaſonable* cauſe to ſuſpect him, otherwiſe the arreſt will be illegal.

A private man arreſting one for *felony,* cannot juſtify breaking doors, to take the party ſuſpected; but he doth it at his peril, *viz.* if in truth he be a felon, it is juſtifiable; but if innocent, then it it is not: To prevent a murder or manſlaughter, private perſons may break doors open. 2 *Hale Ibid.* 82. Officers may break open a houſe to take a felon, or any perſon juſtly ſuſpected of *felony*; and if an officer hath a warrant to take a felon, who is killed in reſiſting, it is not *felony* in the officer; but if the officer is killed, it is otherwiſe. *Dalt.* 289.

Perſons indicted of *felony, &c.* where there are ſtrong preſumptions and circumſtances of guilt, are not repleviſable; but for larceny, *&c.* when perſons are committed who are of good reputation, they may be bailed. 2 *Hawk.* 101. The former part of the poſition muſt be, with an exception to the power of the court of *King's Bench.* If one be committed to priſon for one *felony,* the juſtices of gaol delivery may try him for another *felony,* for which he was not committed, by virtue of their commiſſion. 1 *Lil.* 602.

A felon refuſing to plead, and put himſelf upon his trial, ſhall be put to the penance of *paine fort & dure, &c.*

In the higheſt crime, and in the loweſt ſpecies of felony, *viz.* in petit larceny, and in all miſdemeanors, ſtanding mute hath always been equivalent to conviction. But upon appeals or indictments for other felonies, or petit treaſon, the priſoner was not by the ancient law looked upon as convicted, ſo as to receive judgment for the felony, but ſhould, for his obſtinacy, have received the terrible ſentence of *penance*, or *paine fort & dure*. See *Black. Com.* 4 *V*. 325.

If a felon ſtands mute by the act of God, the *felony* is to be inquired of by jury, and whether the priſoner be the ſame perſon, and all other matters in the ſame manner as if the criminal had pleaded. 2 *Hawk*. 327. And it may be inquired of by inqueſt of office, whether he do ſo of malice, or by the act of God. *Ibid.*

Where a married woman commits *felony*, in company with her huſband, it ſhall be preſumed to be done by his command, and ſhe ſhall be excuſed. 3 *Inſt*. 310. If a man's horſe be going into the ground of another, and he takes it *felleo animo*, not as damage-feaſant, it is no finding, but *felony:* But if *A.*'s ſheep ſtray into the flock of *B.* and he drives the ſame along with his flock, or by miſtake ſhears him, this is not a *felony*; though if he knew it to be another perſon's, and marks it with his mark, it is an evidence of *felony*. 1 *Hale's Hiſt. P. C.* 506.

Where one ſteals another's goods, and a third perſon feloniouſly takes them from him; he is a *felon* as to both the others. And when there is a pretence of title to things unlawfully taken, it may be only a trick to colour *felony*; and the ordinary diſcovery of a felonious intent is, if the party doth it ſecretly, or being charged with the goods denies it. *Ibid.* 507, 509. If a perſon to whom goods are delivered on a pretended buying them, runs away with them, it is *felony:* And a gueſt ſtealing plate ſet before him at an inn, *&c.* is *felony*; alſo perſons who have the charge of things, as a ſervant of a chamber, *&c.* may be guilty of *felony:* And the leaſt removing of a thing in attempts of *felony*, is *felony*, though it be not carried off. 3 *Inſt*. 308. *Raym.* 275.

But goods muſt not be of a baſe nature; ſuch as dogs, *&c.* nor *feræ naturæ*, as deer, hares, *&c.* except they be made tame, when it will be *felony* to ſteal them. If any turkeys, geeſe, poultry, fiſh in a trunk, *&c.* are taken away, it is *felony*. 3 *Inſt*. 309, 310. Stealing of tame peacocks, is *felony*; ſo of herons, and young hawks in their neſts: it is otherwiſe of pheaſants, partridges, conies, *&c.* although they be ſo kept that they cannot eſcape; if they be not reclaimed, and known. *Jenk. Cent.* 204. As to cats, dogs, monkeys, and the like; though it be not *felony* to take them, treſpaſs lies for them. *Jenk. ibid.*

Felonies by ſtatute, Are very numerous, and as this work will not admit of a proper enumeration, we muſt refer to the *Table* of the *quarto* edition of the *Statutes*, where they are ſet forth in alphabetical order.

Feme Covert, is a married woman; who is likewiſe ſaid to be *covert baron*. See *Baron* and *Feme*.

Feme ſole, *(Fr.)* A woman alone, that is unmarried; and if ſhe marries, her debts become thoſe of the huſband, *&c.* 1 *Rol. Abr*. 351. *Feme Sole Merchant*. See *Baron* and *Feme*, and *London*.

Fence, Is a hedge, ditch, or other incloſure of land for the better manurance and improvement of the ſame. And where a hedge, and ditch join together, in whoſe ground or ſide the hedge is, to the owner of that land belongs the keeping of the ſame hedge or fence, and the ditch adjoining to it on the other ſide, in repair and ſcoured. *Par. Offic.* 188. An action on the caſe or treſpaſs lies, for not repairing of fences, whereby cattle come into the ground of another, and do damage. 1 *Salk.* 335. Alſo it is preſentable in the Court-Baron, *&c.* Vide *Approvement*. *Stat.* 13 *Ed.* 1. and *Incloſure*.

Fence-Month, *(menſis prohibitionis*, or *menſis vetitus)* Is a month wherein female *deer* in foreſts, *&c.* do *fawn*, and therefore it is unlawful to hunt in *foreſts* during that time; which begins fifteen days before *Midſummer*, and ends fifteen days after it, being in all thirty days. *Manw. part* 2. *cap*. 13. *Stat.* 20 *Car.* 3. *cap*. 3. Some ancient foreſters call this month the *defence-month*, becauſe then the deer are to be defended from being diſturbed, and the interruptions of fear and danger; as there are certain *defence-months* for fiſh, particularly ſalmons, as appears by the *Stat. Weſtm.* 2. *cap*. 47, *&c.* Serjeant *Fleetwood* ſaith, that the *fence-month* hath been always kept with watch and ward, in every bailiwick throughout the whole foreſt, ſince the time of *Canutus*. Fleetwood's Foreſt Laws, p. 5.

Fengeld, *(Sax.)* A tax or impoſition, exacted for the repelling of enemies.——*Pecunia vel tributum ad arcendos hoſtes erogatum.* MS. Antiq.

Fens, *(paludes)* Are low marſhy grounds, or lakes for water; for the draining whereof in this kingdom ſeveral ſtatutes have been enacted. The ſtatutes 4 *Jac.* 1. *c*. 8. & 13. make proviſion for draining and ſecuring from inundation the drowned grounds and marſhes of *Leſneſs* and *Fants* in *Kent*; and the fens and low grounds in the *iſle of Ely*. The 15 *Car.* 2. *cap*. 17. appoints *William, Earl of Bedford*, and other adventurers, a corporation, for the draining of *Bedford Level* in *Bedfordſhire*, conſiſting of a governor, bailiffs, and conſervators, *&c.* who have power to lay and levy taxes within the great level of the *fens*; and alſo to erect works within the ſame, for carrying the water to the ſea, making ſatisfaction to the owners of lands for injury received; and throwing down any of the ſaid works, incurs treble damages, *&c.*

By 16 & 17 *Car.* 2. *c*. 11. *Deeping fens*, &c. in *Lincolnſhire*, are to be drained from water; and *Edward, Earl of Mancheſter*, and ſeveral others are declared undertakers thereof, on certain truſts, with power to erect banks, bridges, drains, locks, ſluices, *&c.* for recovery of the ſaid *fens*; and aſſeſſees of lands held by the adventurers under the truſtees, may hold aſſemblies for making of by-laws, for the management of the works of draining; they may charge the owner of the lands by an acre tax, *&c.* and, on default of payment, ſell the defaulters lands, *&c.*

The 11 *Geo.* 2. *c*. 34. ordains that commiſſioners ſhall be appointed to put this act in execution, for effectually draining and preſerving of the *fens* in the iſle of *Ely* in *Cambridgeſhire*; who are authoriſed to make drains, dams, *&c.* and proper works thereon: and the ſaid commiſſioners may charge proprietors with a proportionable acre tax, *viz.* for *Waterden Fen*, at the rate of 5 *s*. and *Redmoor*, *Cawdle Fen*, and the *Holts*, at 2 *s*. an acre by the year, for four years; and afterwards at an yearly rate, not exceeding 1 *s*. 6 *d*. *per* acre; they may likewiſe borrow money for maintaining and effecting the works, by aſſigning over the duties: perſons obſtructing the draining to forfeit 100 *l*. and if any perſon ſhall burn any of the engines erected, he ſhall be impriſoned three years; and being convicted again of the like offence, to be guilty of felony. And for raiſing money, for draining and future preſervation of *Deeping fens*, a rate of 20 *s*. an acre is to be paid, by all the taxable land owners, according to agreement of the proprietors; levied by diſtreſs of goods, or ſale of defaulters lands; which may be alſo mortgaged to raiſe the money, *&c.* by 11 *Geo.* 2. *c*. 39.

By the *Stat.* 21 *Geo.* 2. *c*. 18. Commiſſioners are appointed for draining and preſerving certain *fen lands* in the ſeveral pariſhes of *Maney*, *Upwell*, *Welney*, *Downham*, *Witcham*, and in a certain extraparochial place in *Byal Fen*, within the iſle of *Ely*, and county of *Cambridge*, who may make an aſſeſſment of 1 *s*. 6 *d*. *per* acre yearly, on which they may borrow money, with like powers, authorities and directions as in *Stat.* 11 *Geo.* 2. *cap*. 34. See *Stat.* 22 *Geo.* 2. *c*. 11, 16, 19. as to *fen lands* in the pariſhes of *Sutton*, *Mepal*, *Witcham*, *Chatteris*, *Doddington*, *Somerſham*, *Upwell Outwel*, *Demer*, *Welney*, *Whittleſey* and *Padley* with *Fenton* in *Ely*, *Cambridge* and *Huntingdon*, with many others, which ſee in the *Table* to the 4to edition of *Statutes at Large*.

Feod or **Feud**, Is defined to be a right which a vaſſal hath in lands, or ſome immoveable thing of his lord's, to uſe the ſame, and take the profits thereof hereditarily; rendring unto the lord ſuch *feodal* duties and ſervices as belong to military tenure, *&c.* and the property of the ſoil always remaining to the lord. *Spelm. of Tenures*, *cap*. 1.

Feodal, *(feodalis, vel feudalis)* Of or belonging to the *fee.* Stat. 12 Car. 2. cap. 24.

Feodality, Fealty paid to the lord by his *feodal* tenant. *Fecit* feodalitatem *ſuam, prout decet dicto domino.* Cartular. Rading. MS.

Feodary, or **Feudary,** *(feudatarius)* An officer of the *court of wards,* appointed by the maſter of that court, by virtue of the ſtatutes 32 *Hen.* 8. *cap.* 26. whoſe buſineſs it was to be preſent with the *eſcheator* in every county at the finding of offices of lands, and to give in evidence for the King as well concerning the value as the tenure; and his office was alſo to ſurvey the lands of the ward, after the office found, and to rate it. He did likewiſe aſſign the King's widows their dowers; and receive all the rents of wards lands within his circuit, which he anſwered to the receiver of the court. This office ſeems to be wholly taken away by Statute 12 *Car.* 2. *cap.* 24.

Feodatary, Was the tenant who held his eſtate by *feodal* ſervice; and grantees, to whom lands in *feud* or *fee* were granted by a ſuperior lord, were ſometimes called *homagers*; and in ſome writings are termed *vaſſals, feuds,* and *feodataries.* See *Feuds.*

Feodum. See **Feud.**

Feodum Militis, A knight's *fee: feodum laicum,* a lay *fee,* or land held in fee of a lay lord. *Kennet's Gloſſ.* See *Feuds.*

Feoffment, *(feoffamentum,* from the *Gothick* word *feudum,* and ſignifies *donationem feudi)* Is a gift or grant of any manors, meſſuages, lands or tenements, to another in fee, to him and his heirs for ever, by the delivery of ſeiſin and poſſeſſion of the thing given or granted; and in every feoffment, the giver or grantor is called the *feoffor,* and he that receives by virtue thereof, is the *feoffee.* *Littleton* ſays, the proper difference between a *feoffor* and a *donor,* is, that the one gives in *fee-ſimple,* the other in *fee-tail.* *Litt. lib.* 1. *cap.* 6. *Accomp. Conv.* 1 *Vol.* 71. The deed of feoffment is our moſt antient conveyance of lands; and in records we often find fees given to knights under the phraſes of *de veteri feoffamento,* and *de novo feoffamento*; the firſt whereof were ſuch lands as were given or granted by King *Henry* I. And the others, ſuch as were granted after the death of the ſaid King, ſince the beginning of the reign of *Henry* II. At Common law the uſual conveyance was by feoffment, to which livery and ſeiſin was neceſſary, the poſſeſſion being thereby given to the *feoffee*; but if livery and ſeiſin could not be made, by reaſon there was a tenant in poſſeſſion, the reverſion was granted, and the particular tenant attorned. *Co. Lit,* 9. 49. And a feoffment is ſaid, in ſome reſpects, to excel the conveyance by fine and recovery; it clearing all diſſeiſins, abatements, intruſions, and other wrongful eſtates, which no other conveyance doth: and for that it is ſo ſolemnly and publicly made, it has been of all other conveyances the moſt obſerved. *Weſt. Symb.* 235. *Plowd.* 554.

This head will be beſt illuſtrated by conſidering,

I. *Of what things a feoffment may be made.*
II. *Who may make a feoffment, and how it is to be made.*
III. *Of the different kinds of livery, with their effects and operations.*

I. *Of what things a feoffment may be made.*

A feoffment may be of a meſſuage, land, meadow, paſture, or other corporal thing; and of a moiety, third, or fourth part of it; that lies in livery.

So a feoffment may be made of lands, in which a man has no fixed eſtate; as, if he has twelve acres to be annually aſſigned in ſuch a meadow; and livery in any acre, which he has at the time of the feoffment, is ſufficient. *Co. Lit.* 4. *a.* 48. *b.* 2 *Rol.* 10. *l.* 40 *ad* 50.

So, if a feoffment be of fifty acres towards the north in ſuch a moor, which contains 100 acres, livery in any of them is ſufficient. 2 *Rol.* 11. *l.* 5. *Dy.* 372. *b.*

So, if two manors be divided *alternis vicibus* between parceners, either may make a feoffment of her manor; and the deed ought to comprehend both, and ſhe ſhall make livery in one *ſecundum formam chartæ* this year, and in the other the next year. *Co. L.* 48. *b.*

But a feoffment cannot be made of a thing of which livery cannot be given; as, of *incorporeal* inheritances; *rent, advowſon, common, &c.* 2 Rol. 1. l. 20. Though it be an advowſon, *&c.* in groſs. *Cont.* 11 *H.* 6. 4. *Acc.* 2 *Rol.* 1. *l.* 21.

So a feoffment of lands, which are uncertain till a future act, is void; for livery does not operate *in futuro*: as, if *A.* agrees by indenture to convey 20 *l.* *per annum* in land to ſuch an uſe, and 20 *s.* *per annum* to ſuch an uſe, and makes a feoffment of all his lands to the uſes in the indenture; it will be void for all but that where livery was made, it not being aſcertained which ſhall be to one uſe, and which to the other. *R.* 1. *Rol.* 187.

In a deed of feoffment, there muſt be a good feoffor, that is, one able to grant the thing conveyed by the deed; a feoffee capable to take it; and a thing grantable, and granted in the manner the law requireth. *Co. Lit.* 42, 49, 190.

II. *Who may make a feoffment, and how it is to be made.*

If a perſon *non compos* makes a feoffment, and gives livery himſelf, this is allowed on all hands to be good to bind himſelf, ſo that he can by no proceſs or plea avoid the feoffment, and reſtore himſelf to the poſſeſſion; the ſame law of an ideot; and the reaſon is, becauſe the inveſtiture being made before the *pares curiæ,* their ſolemn atteſtation could not be defeated by the perſon himſelf, becauſe it is preſumed they are competent judges of the ability of the feoffor to make ſuch feoffment. 2 *Rol. Abr.* 2. *Co. Lit.* 247. 4 *Co.* 125. *a.* *Show. Parl. Caſes* 153. and ſee tit. *Ideots and Lunaticks,* and *poſt.*

But if an infant makes a feoffment, and makes a livery himſelf, this ſhall not bind him, but he himſelf may avoid it by writ of *dum fuit infra ætatem*; yet the feoffment of the infant is not void in itſelf, as well becauſe he is allowed to contract for his benefit, as that there ought to be ſome act of notoriety to reſtore the poſſeſſion to him equal to that which transferred it from him. 4 *Co.* 125. 2 *Rol. Abr.* 2. 8 *Co.* 42, 43. *Whittingham*'s caſe.

But if an infant makes a feoffment, and a letter of attorney to make livery, that is void; ſo if a perſon *non compos* makes a ſurrender or releaſe, this is void in law; ſo if he makes a letter of attorney to give livery; but the heir at law after the death of the perſon of *non ſane* memory, or ideot, may avoid his feoffment; and ſo may the King upon an office found of his lunacy during his life. 8 *Co.* 45. *Co. Lit.* 247. *a.* 4 *Co.* 125. *a.* 2 *Rol. Abr.* 2. *Show. Par. Caſes.* 153.

There muſt be livery of ſeiſin in all feoffments, and gifts, *&c,* where a corporal inheritance or freehold doth paſs; and without livery, the deed is no feoffment, gift or demiſe. *Lit.* 59. 8 *Rep.* 82. But a freehold may paſs without livery by the ſtatute 27 *H.* 8. *c.* 10. By force of which ſtatute, a feoffment to the uſe of the feoffor, feoffee, *&c.* ſupplies the place of livery and ſeiſin. *Wood's Inſt.* 239.

But a feoffment may not be of ſuch things whereof livery and ſeiſin may not be made; for no deed of feoffment is good to paſs an eſtate without livery of ſeiſin; and if either of the parties die before livery, the feoffment is void. *Plowd* 214, 219. Though where a feme feoffor made a feoffment of lands with livery in view, and then married the feoffee before the livery was executed by actual entry; it was adjudged the livery might be executed after marriage, the feoffee having not only an authority to enter, but an intereſt paſſed by the livery in view, and the woman did all on her part to be done, 1 *Vent.* 186.

A man may either give or receive livery by letter of attorney; for ſince a contract is no more than the conſent of a man's mind to a thing, where that conſent or concurrence appears, it were unreaſonable to oblige each perſon to be preſent at the execution of the contract, ſince it may as well be performed by any other perſon delegated for that purpoſe by the parties to the contract. *Co. Lit.* 52. 2 *Rol. Abr.* 8.

But ſuch delegation or authority, to give or receive livery, muſt be by deed, that it may appear to the court, that the attorney had a commiſſion, to repreſent the parties

ties that are to give or take the livery, and whether the authority was purſued. *Co. Lit.* 48. *b.* 52. *a.* 2 *Rol. Palfreman* and *Grobie.*

If a man be diſſeiſed, and makes a deed of feoffment, and a letter of attorney to enter and take poſſeſſion of the land, and afterwards to make livery, according to the form of the charter, it will be good a feoffment, though he was out of poſſeſſion at the time of the deed made: for the feoffment takes effect by the livery, and not by the deed. *Co. Lit.* 48, 52

A feoffment being a Common law conveyance, and executed by livery, makes a tranſmutation of eſtate; but a conveyance on the ſtatute of uſes, as a covenant to ſtand ſeiſed, *&c.* makes only a tranſmutation of poſſeſſion, and not of eſtate. 2 *Lev.* 77. 1 *Vent.* 378. A feoffment to the uſe of *A.* for life, the remainder to *B.* If *A.* refuſes to take the eſtate, *B.* ſhall take preſently, becauſe the whole eſtate is out of the feoffor by livery; but if it had been by covenant to ſtand ſeiſed, he ſhould not have taken till after the death of *A.* but it would reſt in the covenantor, who ſhall have the uſe in the mean time. 2 *Lev.* 77. 1 *Leon. Ca.* 279. Before the *Stat. Weſtm.* 3. If a man had made feoffment in fee, without declaring any uſe, it ſhould have been to the uſe of the feoffee; though now by that ſtatute, where no conſideration or declaration of uſe is expreſſed, it ſhall go to the feoffor himſelf. 2 *Leon.* 15, 16. If I convey lands by feoffment, which I have on the part of the mother, to *J. S.* and his heirs, without conſideration; the uſe will be void, and the land ſhall return again to me and my heirs on the part of the mother; yet if I declare the uſe to me and my heirs, or upon ſuch feoffment reſerve a rent in like manner, it ſhall go to my heirs at the Common law, it being a new thing divided from the land. *Hob.* 31. *Co. Lit.* 13, 231. 1 *Rep.* 100. *Dyer* 134. Where a man makes a feoffment, without any conſideration; by that the eſtate and poſſeſſion paſſes, but not the uſe, which ſhall deſcend to his heir. 1 *Leon.* 182.

A feoffment in fee is made to the uſe of ſuch perſons, and for ſuch eſtates, as the feoffor ſhall appoint by his will, or to the uſe of the laſt will; by operation of law the uſe veſts in the feoffor, and he is ſeiſed of a qualified fee, *viz.* until he makes his will, and declares the uſes; and after the will is made, it is only directory, for nothing paſſes by it but all by the feoffment. 6 *Rep.* 18. *Moor* 567. A feoffment in fee, upon condition, *&c.* was inrolled, but no livery made; and it was adjudged no good feoffment, but the inrollment ſhall conclude the perſon to ſay that it was not his deed. *Poph.* 6. 2 *Nelſ. Abr.* 844. If a bargain and ſale of lands be not inrolled, and the bargainor deliver livery and ſeiſin of the lands *ſecundum formam chartæ*, *&c.* it has been held a good feoffment. 2 *And.* 68.

A feoffment in fee made upon condition not to alien, the condition is void; becauſe it is repugnant to the eſtate; but if livery is had, the feoffment will be good againſt the feoffor: and a bond with condition that the feoffee ſhall not alien, is ſaid to be good. *Co. Lit.* 206. *Cro. Jac.* 596. If a man makes a feoffment of lands on condition, that the feoffee ſhall give the lands to the feoffor, and his wife in ſpecial tail, remainder to the heirs of the feoffor; and he dies before ſuch gift is made, the feoffee ought to make it as near the intent of the condition as may be, *viz.* to the wife without impeachment of waſte, remainder to the heirs of the body of her huſband, on her body begotten, and remainder to the huſband's right heirs. In caſe the feoffor and his wife both die, the feoffee then ſhould make the eſtate to the iſſue, and heirs of the body of his father and mother begotten, remainder to the right heirs of the huſband or father. *Co. Lit.* 219, 220.

Tenant in tail makes a feoffment in fee; the inheritance of the tail is not given to the feoffee by the feoffment, nor is he thereby tenant in tail; for none ſhall be tenant in tail but he only who is comprehended in the gift made by the donor. But it gives away all the immediate eſtate the feoffor had. *Plowd.* 562. *Hob.* 335. If leſſee for life, and the reverſioner in fee, make a feoffment in fee by deed, each gives his eſtate; the leſſee his by livery, and the fee from him in remainder. 6 *Rep.* 15 *Lill. Abr.* 609. A feoffment was made *habendum* to the feoffee and his heirs, after the death of the feoffor, and livery was made; yet it was held to be a void feoffment, for an eſtate of freehold in lands cannot begin at a day to come: but where a leſſor made a leaſe for lives, and granted the reverſion to another for life, whoſe eſtate for life was to begin after the death of the ſurvivor of the other leſſees for life, this was adjudged a good eſtate in reverſion for life. *Hob.* 171. 1 *Nelſ. Abr.* 846.

If the huſband alone make a feoffment of his wife's land, or of both their lands, his wife being on the land and diſagreeing to it; this will be good againſt all perſons but the wife: alſo ſo it is, if one jointenant make a deed of feoffment of the whole land his companion being then upon it: or if a man diſſeiſe me of my lands, and then enfeoff another thereof, whilſt I am upon the land, *&c.* *Perk. Sect.* 219, 220.

Every gift of feoffment of lands made by fraud or maintenance, ſhall be void; and the diſſeiſee, notwithſtanding ſuch alienation, ſhall recover againſt the firſt diſſeiſor his land and double damages; provided he commence his ſuit in a year after the diſſeiſin, and that the feoffor be pernor of the profits. *Stat.* 1 *R.* 2. *c.* 9. See 11 *H.* 6. *c.* 3.

III. *Of the different kinds of livery, with their effects and operations.*

Livery may be by *deed*, and *within view*, or in *law*.

The livery in *deed*, is the *actual tradition* of the land, and is made either by the delivery of a branch of a tree, or a turf of the land, or ſome other thing, in the name of all the lands and tenements contained in the deed; and it may be made by words only, without the delivery of any thing; as if the feoffor being upon the land, or at the door of the houſe, ſays to the feoffee, *I am content that you ſhould enjoy this land according to the deed*, or *Enter into this houſe* or *land, and enjoy it according to the deed*; this is a good livery to paſs the freehold, becauſe, in all theſe caſes, the charter of feoffment makes the limitation of the eſtate, and then the words ſpoken by the feoffor on the land, are a ſufficient *indicium* to the people preſent, to determine in whom the freehold reſides during the extent of the limitation; beſides, the words, being relative to the charter of feoffment, plainly denote an intention to enfeoff. *Co. Lit.* 48. *a.* 9 *Co.* 137. *b.* *Thorowgood*'s caſe. 6 *Co.* 26. *Sharp*'s caſe. 2 *Rol. Abr.* 7. And ſee *Cro. Jac.* 80 which ſeems *cont'*

But if a man without any charter, being in his houſe, ſays, *I here demiſe you this houſe, as long as I live, paying* 20*l. per annum*, this paſſes no freehold, but only an eſtate at will, becauſe the word *demiſe* denotes only the extent of the limitation of the eſtate intended to be conveyed; but bare words of limitation, without ſome acts or words to diſcover the intention of the feoffor to deliver over the poſſeſſion, are not ſufficient to convey the freehold; for if a charter of feoffment be made to a man and his heirs, this, without ſome other act, or word to give the poſſeſſion, only paſſes an eſtate at will, becauſe the act of delivery is requiſite to the perfection of the charter; but beſides the charter of feoffment, there muſt be ſome act or words to deliver over the poſſeſſion, before the feoffee can enjoy it purſuant to the charter. 6 *Co.* 26. 2 *Rol. Abr.* 7. *Co. Lit.* 48. *Cro. Eliz.* 482. 9 *Co.* 138. *Moor, pl.* 632.

The livery *within view*, or the livery in *law*, is when the feoffor is not actually on the land, or in the houſe, but being in ſight of it ſays to the feoffee, *I give you yonder houſe*, or *land, go and enter into the ſame, and take poſſeſſion of it accordingly*; this ſort of livery ſeems to be made at firſt only at the court barons, which were antiently held *ſub dio*, (that is, in the open air) in ſome open part of the manor, from whence a general ſurvey or view might have been taken of the whole manor, and the *pares curiæ* eaſily diſtinguiſhed that part which was then to be transferred. *Pollex.* 47.

But this ſort of livery is not perfect to carry the freehold, till an *actual entry* made by the feoffee, becauſe the poſſeſſion is not actually delivered to him, but only a licence or power given him by the feoffor to take poſſeſſion of it; and therefore, if either the feoffor or feoffee die before livery, and entry made by the feoffee, the livery within the view becomes ineffectual and void; for if the feoffor dies before entry, the feoffee can't afterwards enter, becauſe then the land immediately deſcends upon his heir, and conſequently no perſon can take poſſeſſion of his land without an authority delegated from him who is the proprietor; nor can the heir of the feoffee enter, becauſe he is not the perſon to whom the feoffor intended to convey his land, nor had he an authority from the feoffor to take poſſeſſion; beſides, if the heir of the feoffee were admitted to take poſſeſſion after his father's death, he would come in as a purchaſer, whereas he was mentioned in the feoffment to take as the repreſentative of his anceſtor, which he cannot do ſince the eſtate never veſted in his anceſtor. *Co. Lit.* 48. *b.* 2 *Rol. Abr.* 3, 7. 1 *Vent.* 186. *Moor* 85. *Pollex.* 48.

The livery *within view* may be made of lands in another county than where the lands lie, becauſe the tranſlation of the feud was often made at the court-baron, in the preſence of *pares curiæ*; and theſe courts being held *ſub dio*, the *pares* could have a diſtinct view of every part of the manor; and therefore were proper to atteſt this ſort of inveſtiture, though the lands were in a different county, for notwithſtanding that, they might have been part of the ſame manor, for which the court was held. *Co. Lit.* 48. *b.*

This ceremony was firſt inſtituted, that the *pares* of the county might, upon any diſpute relating to the freehold, determine in whom it was lodged, and from thence be the better enabled to determine in whom the right was. Hence therefore it is, that if a man makes a feoffment, or leaſe for life, to commence *in futuro*, and makes livery immediately, the livery is void, and only an eſtate at will paſſes to the feoffee; for the deſign of the inſtitution would fail, if ſuch livery were effectual to paſs the freehold; for it would be no evidence, or notoriety of the change of the freehold, if after the livery made, the freehold ſtill remained in the feoffor; the uſe of the inveſtiture would rather create than prevent the uncertainty of the freehold, and in many caſes would put men to fruitleſs trouble and expence in purſuit of their right; for by that means, after a man had brought his *præcipe* againſt a perſon, whom he ſuppoſed to be tenant to the freehold, and had proceeded in it a conſiderable time, the writ might abate by the freehold's veſting in another, by virtue of a livery made before the purchaſe of the writ. Another reaſon why ſuch future intereſts cannot be allowed to paſs by any act of livery was, becauſe no man would be ſafe in his purchaſe, if the operation of livery might create an eſtate, to commence many years after the livery was made; and though they have allowed a future intereſt, to commence by way of leaſe, yet that had no ſuch ill effect in making purchaſes uncertain, becauſe anciently they were under the power of the freeholder, who by recovery might deſtroy them; and now, unleſs ſuch leaſes are made upon good conſiderations, they are fraudulent againſt a purchaſer; and it is not to be preſumed that leaſes at great diſtances ſhould be purchaſed for value. *Cro. Eliz.* 451. 2 *Vent.* 204. *Co. Lit.* 217. 5 *Co.* 94. *b.*

Hence, by the way, we may account why a freehold in reverſion or remainder cannot be granted *in futuro*, though there no livery is neceſſary to paſs it; as where *A.* is tenant for life, remainder to *B.* in fee; *A.* makes a leaſe for years to *C.* and afterwards grants the land to *D. habend'* from *Mich.* next enſuing, for life; this grant to *D.* was adjudged void, though *C.* attorned to it after *Michaelmas*, becauſe ſuch future grants create an uncertainty of the freehold, and the tenant of the freehold being the perſon who is to anſwer the ſtranger's *præcipe*, and was anſwerable to the lord for the ſervices, it were unreaſonable to permit him by any act of his own, to prevent or delay the proſecution of their right. *Cro. Eliz.* 451. 2 *Vent.* 204. *Co. Lit.* 217. 5 *Co.* 94. *b.* 2 *Co.* 55. *Buckler*'s caſe. 2 *And.* 29. *Moor* 423. *Cro. Eliz.* 450, 585. *Hob.* 170, 171. 5 *Co.* 94. 1 *Rol. Rep.* 261. See *Livery of Seiſin.*

A deed of feoffment is to be made by the words have *granted, bargained, enfeoffed, &c.* The way of pleading a feoffment is thus, *viz.* That *A. B.* was ſeiſed in fee of the place where, *&c.* and being ſo ſeiſed, *feoffavit quendam* C. D. *inter alia per nomina omnium, &c. habend. & tenend. dict' tenementa, &c. præfat'* C. D. *& hæredibus ſuis in perpetuum ad ſolum opus & uſum, &c.* 3 Salk. 165.

Feræ Naturæ, In our law ſignifies beaſts and birds that are wild, in oppoſition to the tame; ſuch as hares, foxes, wild geeſe, and the like, wherein no man may claim a property. Unleſs under particular circumſtances, as where they are confined, or made tame, *&c.* See *Property.*

Ferdfare, (from the Sax. *fyrd* and *fare* iter) *Significat quietantiam eundi in exercitum.* Fleta, lib. 1. c. 47.

Ferdwit (Sax. *ferd* exercitus, & *wite* pœna) Was uſed for being quit of manſlaughter, committed in the army. *Fleta, lib.* 1. It is rather a fine impoſed on perſons for not going forth in a military expedition; to which duty all perſons, who held land, were in neceſſity obliged: and a neglect or omiſſion of this common ſervice to the public, was puniſhed with a pecuniary mulct called the *ferdwite.* Cowel.

Ferial Days, *(dies feriales, feriæ)* According to the *Latin* dictionary are holy-days; but in the *Stat.* 27 *H.* 6. *c.* 5. *Ferial* days are taken for working days; all the days of the week, except *Sunday*; the week days as diſtinguiſhed from *Sunday*, the profane from the ſacred, were called *dies feriales*, by a charter dat. 28 *Mart.* 1448.—— Ex Cartular. Eccl. Elyenſis. MS.

Ferlingata terræ, A quarter or fourth part of a yard-land.——*Decem acre faciunt* ferlingatam, 4 ferlingatæ *faciunt* virgatam, *&* 4 *virgatæ faciunt* hidam, *&c.* In antient records there is mention of *ferlingus* and *ferdlingus terræ.* Mon. Ang. tom. 2. f. 8. See *Fardel of Land.*

Ferm, *(firma)* A houſe and land let by leaſe, *&c.* Vide *Farm.*

Fermary, (from the Sax. *feorme,* victus) Is an hoſpital; and we read of friers of the *firmary.*

Fermiſona, The winter ſeaſon of killing deer; as *tempus pinguedinis* is the ſummer ſeaſon. *Quod idem hugo & hæredes ſui de cætero quolibet anno poſſunt capere in prædicto parco de, &c. unam damam in* fermiſona *inter feſtum ſancti* Martini *& Purif. beatæ* Mariæ, *et unam damam in* pinguedine *inter feſtum, &c. Fin. Concor. in Cur. Dom. Regis apud* Litchfield *coram* Roger de Turkilby, *&c. inter* Hugonem de Acouer *Quer. &* Will. de Aldethley *Deforc.* Penes Will. Dugdale, Mil'.

Fernigo, A piece of waſte ground where *fern* grows. *Cartular. Abbat. Glaſton. MS.*

Ferramentum, *ferramenta,* The iron tools or inſtruments of a mill.——*Et reparare* ferramenta *ad tres carucas, i. e.* the iron work of three ploughs. *Lib. Nig. Heref.*

Ferrandus, An iron collar, particularly applied to horſes, which we at this time call an *iron gray.*

Ferry, A liberty by preſcription of the King's grant, to have a boat for paſſage upon a river, for carriage of horſes and men for reaſonable toll: it is uſually to croſs a large river. *Terms de Ley.* A *ferry* is no more than a common highway; and no action will lie for one's being diſturbed in his paſſage, unleſs he alledge ſome particular damage, *&c.* 3 *Mod. Rep.* 294.

A ferry is in reſpect of the landing-place, and not of the water, the water may be to one, and the ferry to another; as it is of *ferries* on the *Thames*, where the *ferry* in ſome places belongs to the archbiſhop of *Canterbury*, where the mayor of *London* has the intereſt of the water; and in every *ferry*, the land on both ſides of the water ought to belong to the owner of the *ferry*, or otherwiſe he cannot land on the other part. 13 *April* 23 *Eliz. in Scacc. Savil* 11. *Inhabitants of Ipſwich* v. *Brown.* And every *ferry* ought to have expert and able ferrymen, and to have preſent paſſage, and reaſonable payment for the paſſage. And it is requiſite to have one, who has property in the ferry, and not to allow every fiſherman to carry ,and recarry at their pleaſure, for divers inconveniencies; and eſpecially when a place is between the diviſions of two counties, any felon may be conveyed from one county to another, ſecretly, without any notice. *Sav.* 14.

A ferryman if it be on ſalt water, ought to be privileged from being preſſed as a ſoldier, or otherwiſe. *Savil* 11. *&* 14. *ut ſup.*

Owner of a ferry cannot ſuppreſs that, and put up a bridge in its place without licence, and *ad quod damnum*; *per Holt* Ch. J. *Paſch.* 3 *Will. & Mar. Show.* 243, 257. *Pain* v. *Partridge. Cart.* 193. *S. C.* 1 *Salk.* 12. *S C.*

If a ferry be granted at this day, he that accepts ſuch grant is bound to keep a boat for the public good; *per Holt* Ch. J. *Show.* 257. in the caſe of *Pain* v. *Partridge.*

Cuſtom for the inhabitants to be diſcharged of toll, may have a reaſonable beginning by agreement, as that the inhabitants of the town might be at the charge of procuring the grant, and in conſideration thereof, one man to find the boat, and take toll; and the inhabitants to pay none; *per Holt* Ch. J. *Show.* 257. *ut ſup.*

A common ferry was for all paſſengers paying toll, but the inhabitants of *A.* were toll-free. An inhabitant of *A.* may bring an action for taking toll, but not for neglecting to keep up the ferry; becauſe the former is a private right, but the latter a public. 1 *Salk.* 12. *Trin.* 3 *W.* 3. *Pain* v. *Partridge.* But he cannot maintain an action for not paſſing; for ſo, any other ſubject might bring an action, which would be endleſs; but the taking toll was a ſpecial damage, and without ſpecial damage he can only indict, or bring information. *ibid.*

The not keeping up a *Ferry*, has been held to be indictable. See *Bridge.*

Ferſpeken, To ſpeak ſuddenly—*Nemo poteſt placitare, &c. nec cogi debet rectum ejus* ferſpeken *de omnibus cauſis, &c.* Leg. H. 1. c. 61.

Feſta in Cappis, Were ſome grand holy-days, on which the whole *choirs* and *cathedrals* wore *caps.* Vitæ Abbat S. Alban. p. 80, 83.

Feſtingmen, The Sax. *Feſtinman* ſignifies a ſurety or pledge; and to be free of *feſtingmen*, was probably to be free of *frank-pledge*, and not bound for any man's forthcoming, who ſhould tranſgreſs the law. *Mon. Ang. Tom.* 1. *p.* 123.

Feſting-Penny, Earneſt given to ſervants when hired or retained in ſervice, ſo called in ſome *Northern* parts of *England*, from the Sax. *Feſtnian*, to *faſten*, or confirm.

Feſtum, A feaſt; *Feſtum S. Michaelis*, the feaſt of *St. Michael, &c.*

Feſtum Stultorum, The feaſt of fools. See *Caput anni.*

Feud, (*Feida*) Signifies in the *German* tongue *Guerram*, Lat. *Bellum*; and according to *Lambard*, *capitales inimicitias*. and *feud* uſed in *Scotland* is a combination of kindred for revenging the death of any of their blood againſt the killer and all his race; or any other great enemy. *Skene.*

Feudal and **Feudary,** See *Feodal* and *Feodary.*

Feudbote, A recompence for engaging in a *feud*, and the damages conſequent; it having been the cuſtom in ancient times, for all the kindred to engage in their kinſman's quarrel. *Sax. Dict.*

Feuds, (*Feoda*) According to the authorities in *Robertſ. Hiſt. Emp. Cha.* V. 1 *V.* 226. *Feodum* is compounded of *od*, poſſeſſion or eſtate, and *feo* wages, pay; intimating that it was ſtipendiary, *&c.* and granted as a recompence for ſervice, according to *Spelman*. Eſtates in lands were originally at will, and then they were called *Munera*; afterwards they were for life, and then they were termed *beneficia*, and for that reaſon the livings of clergymen are ſo called at this day; and afterwards they were made hereditary, when they were called *feoda*, and in our law *fee-ſimple*. *Rel. Spel.* 9. When *Hugh Caput* uſurped the kingdom of *France*, about the year 947, to ſupport himſelf in ſuch uſurpation, he granted to the nobility and gentry, that whereas till then they enjoyed their honours for life, or at will only, they ſhould from thenceforth hold them to them and their heirs; which was imitated by *William* called *The Conqueror*, upon his acceſſion to the crown of *Enland*, for till his reign *feuds* or *fees* were not hereditary but only for life, or for ſome determinate time. 3 *Salk.* 165. *Feuds* are called by various names, according to their reſpective natures, As

Feudum antiquum, A feud deſcending to a ſon, *&c.* from his anceſtors. *Black. Com.* 2. *V.* 212221.

Feudum apertum, A feud reſulting back again to the lord of the fee, where the blood of the perſon laſt ſeiſed in fee-ſimple, is utterly extinct and gone. *Black. Com.* 2 *V.* 245.

Feudum honorarium, (and *Feudum individuum*) An honorary feud, or title of nobility, not of a diviſible nature, and deſcendible to the eldeſt ſon, in excluſion of all the reſt. *Black. Com.* 2 *V.* 56, 7. 215.

Feudum improprium, An improper or derivative feud; and *feoda impropria* are all ſuch feuds as do not fall within the deſcription of *feoda propria*. *Black Com.* 2 *V.* 58.

Feudum maternum, A feud deſcending to the ſon from the mother. *Black. Com* 2 *V.* 212, 243.

Feudum novum, A feud newly acquired by the ſon, to which in ancient times only the deſcendents from his body could ſucceed, by the known maxim of the early feodal conſtitutions. *Black. Com.* 2 *V.* 212, 221.

Feudum novum, Held *ut antiquum:* deſcendible in the ſame manner as a *feudum novum*. *Black. Com. ib.*

Feudum paternum, A feud deſcendible from father to ſon, *&c.* *Black. Com.* 2 *V.* 243:

Feudum proprium, A *proper* feud, diſtinguiſhed from an *improper*, which are the two grand and general diviſions. *Black. Com.* 2 *V.* 58.

As to the hiſtory of *Feuds*. See *Dalrymple, Monteſquieu, Gilbert, Wright, Crag* and *Robertſ. Hiſt. Emp. Cha.* V. 1 *V.* 13, *&c.*

Fiat, In our law, is a ſhort order or warrant of ſome judge for making out and allowing certain proceſſes, *&c.* If a *certiorari* be taken out in vacation, and teſted of the precedent term, the *fiat* for it muſt be ſigned by a judge of the court, ſome time before the eſſoin-day of the ſubſequent term, otherwiſe it will be irregular: but it is ſaid there is no need for a judge to ſign the writ of *certiorari* itſelf; but only where it is required by ſtatute. 1 *Salk.* 150. 2 *Hawk.* 289.

Fiat Juſtitia. On a petition to the King, for his warrant to bring a writ of *error in parliament*, he writes on the top of the petition *fiat juſtitia*, and then the writ of error is made out, *&c.* And when the King is petitioned to redreſs a wrong, he indorſes upon the petition, *Let right be done the party*. Dyer 385. Stamf. Prærog. Reg. 22.

Fiction of Law, (*Fictio juris*) Is allowed of in ſeveral caſes: but it muſt be framed, according to the rules of law; not what is imaginable in the conceptions of man; and there ought to be equity and poſſibility in every legal *fiction*. There are many of theſe *fictions* in the *civil* law; and by ſome civilians, it is ſaid to be an aſſumption of law upon an untruth, for a truth, in ſomething poſſible to be done, but not done. *Godolphin & Bartol.* The ſeiſin of the conuſee in a fine is but a *fiction in our law*; it being an invented form of conveyance only. 1 *Lil. Abr.* 610. And a common recovery is *fictio juris*, a formal act or device by conſent, where a man is deſirous to cut off an eſtate-tail, remainders, *&c.* 10 *Rep.* 42.

By *fiction of law*, a bond made beyond ſea, may be pleaded to be made in the place where made, *to wit*, in *Iſlington* in the county of *Middleſex*, *&c.* to try the ſame here; without which it cannot be done. *Co. Lit.* 261. And ſo it is in ſome other caſes; but the law ought not to be ſatisfied with *fictions*, where it may be otherwiſe really ſatisfied; and *fictions in law* ſhall not be carried farther than the reaſons which introduce them neceſſarily require. 1 *Lil. Abr.* 610. 2 *Hawk.* 320.

Fidem mentiri, Is when a tenant doth not keep that *fealty* which he hath ſworn to the lord. *Leg. H.* 1. *c.* 53.

Fief, Which we call *fee*, is in other countries the contrary to chattels: in *Germany*, certain diſtricts or territories are called *Fiefs*; where there are *fiefs of the empire.* See *Black. Com.* 2 *V.* 45.

Kings and chieftains, when they ſettled in a conquered country, beſtowed land on their adherents, as a recompence for their ſervice, *etc.* Theſe grants were called *Beneficia*; becauſe they were gratuitous donations, and *honores*, becauſe they were regarded as marks of diſtinction: this is the origin of fiefs. See the hiſtory thereof *Robertſ. Hiſt. Emp. Cha.* V. 1 *V.* 217, 18, *etc.*

Fieri facias, Is a judicial writ, given by the ſtatute of *Weſtm.* 2. 13 *Ed.* 1. that lies where judgment is had for debt, or damages recovered in the King's courts; by which writ the ſheriff is commanded to levy the debt and damages of the goods and chattels of the defendant, *&c.* *Old Nat. Br.* 152.

This writ though mentioned in the ſtatute *W.* 2. 18 is a writ of execution at common law, and is called a *fieri facias,* becauſe the words of the writ directed to the ſheriff are *Quod fieri facias de bonis & catallis, &c.* and from theſe words the writ takes its denomination. *Co. Lit.* 290. *b.*

The property of goods is veſted by the delivery of the *fi. fa.* and an *extent* afterwards for the King *comes too late,* and that on the ſtatute of frauds and perjuries; *per Holt.* *Comb.* 123. *Trin.* 1 *W. & M.* in *B. R. Lechmere* v. *Thoroughgood.*

This writ is to be ſued out within a year and a day after judgment; or the judgment muſt be revived by *ſcire facias:* but if a *fieri facias* ſued in time, be not executed, a ſecond *fieri facias,* or *elegit* may be ſued out; and it is ſaid ſome years after, without a *ſcire facias,* provided continuances are entered from the firſt *fi. fa.* which it is alſo held may be entered after the ſecond *fi. fa.* taken out, unleſs a rule is made that proceedings ſhall ſtay, *&c.* *Sid.* 59. 2 *Nelſ. Abr.* 776. If a man recover debt againſt *A. B.* and levy part of it by *fieri facias,* and this writ is returned; yet he may take the body in execution by *capias* for the reſt of the debt. *Rol. Abr.* 904. The ſheriff on a *fieri facias* is to do his beſt endeavours to levy the money upon the goods and chattels of the defendant; and for that purpoſe to inquire after his goods, *&c.* And the plaintiff may inquire and ſearch if he can find any, and give notice thereof to the ſheriff, who *ex officio* is to take and ſell them if he can, or if not, by a writ of *venditione exponas.* 2 *Shep. Abr.* 111.

There may be a *teſtatum fieri facias* into another county, if the defendant hath not goods enough in the county where the action is laid to ſatisfy the execution; and the *fieri facias* for the ground of the *teſtatum,* may be returned of courſe by the attornies, as originals are. 2 *Salk.* 589. If all the money is not levied on a *fieri facias,* the writ muſt be returned before a ſecond execution can be iſſued; becauſe it is to be grounded on the firſt writ, by reciting that all the money was not levied. 1 *Salk.* 318.

Where the ſheriff ſells goods which he levied by *fieri facias,* and doth not pay the money, action of debt will lie againſt him; for the defendant is diſcharged as to the plaintiff, and the ſheriff is now become his debtor in law; and if the ſheriff die after he hath levied the debt, the like action will lie againſt his executors, as it is a duty when levied. *March. Rep.* 13. *Cro. Car.* 387.

If a ſheriff that hath ſeized goods by *fieri facias* is going out of his office, he muſt deliver them to the new ſheriff, and return his writ executed *pro tanto;* and he ought not to deliver them to the owner, by reaſon the writ of execution is warranted by a record, and therefore the diſcharge thereof muſt appear by record. *Yelv.* 44. Upon a *fieri facias* the ſheriff returned, that he had levied goods *ad valentiam* of the debt; the return being filed, a motion was made that he might bring in the money, which not being done an attachment was granted, and then the ſheriff appeared and prayed to amend the return, for that the goods were damaged by lying, and he could not get buyers; but it was adjudged, that the return ſhall not be altered, *for he might have returned this at firſt by way of excuſe;* and having returned that he had levied goods *ad valentiam,* he ſhall pay the money. *Sid.* 407.

The ſheriff cannot deliver the goods by him taken in execution to the plaintiff, in ſatisfaction of his debt; becauſe his authority is *to ſell* the goods. *Lut.* 589. 1 *Lil. Abr.* 611. And if a ſheriff ſells the goods taken by *fieri facias* at under price, the ſale is good, and the defendant can have no remedy; though where there appears to be covin between the ſheriff and the buyer, the owner ſhall have his action upon the caſe. *Kelw.* 64. 1 *Salk.* 28. On a *fieri facias* the ſheriff has power to take any thing, but wearing cloaths; and if the defendant hath two gowns, *&c.* it is ſaid he may ſell one. If the ſheriff executes a writ of *fieri facias,* he may afterwards return *nulla bona,* if there appear a prerogative writ; or, on better information, that the goods taken were not the defendant's. *Comb.* 356, 452.

By the ſeizure of the goods, the ſheriff hath a property in them; but goods of a ſtranger, *&c.* in the poſſeſſion of the defendant ſhall not be ſeized in execution; *for the ſheriff at his peril muſt take notice whoſe goods they are:* though, if the ſheriff inquires by a jury, where the property is lodged, and it is found that they are the defendant's goods, when they are not, this will indemnify the ſheriff. *Dalt. Sher.* 60. *Wood's Inſt.* 608.

The ſheriff cannot break open the door of an houſe to execute a *fieri facias* upon the goods of the owner or occupier; but a man's houſe ſhall be a protection for his own goods only; and *not for the goods of another.* 5 *Rep.* 91. 2 *Nelſ. Abr.* 775. If the defendant is a beneficed clergyman, and the ſheriff returns *Quod eſt Clericus beneficiatus, &c.* a writ ſhall go to the biſhop of the dioceſe to levy the debt *de bonis Eccleſiaſticis,* who thereupon ſends forth a ſequeſtration of the profits of the clerk's benefice, directed to the churchwardens, *&c.* But this writ of ſequeſtration muſt be renewed every term. 2 *Inſt.* 4, 472, 627.

By virtue of a *fieri facias* a term for years may be ſold, as well as any other goods, and without an inqueſt or jury: alſo corn growing may be ſold. 8 *Rep.* 96. 1 *Rol. Abr.* 892. And if the ſheriff on a *fieri facias, &c.* ſelleth a term for years, and after that the judgment is reverſed; the *term* ſhall *not* be reſtored, but the *money* for which it is ſold. 4 *Rep.* 141.

But where a term is delivered to the plaintiff upon an *elegit,* and then the *elegit* is reverſed, reſtitution ſhall be of the term. *Cro. Jac.* 246. When upon a *fieri facias* the ſheriff ſells a term, reciting it falſly, as to its commencement and ending, *&c.* the ſale is void, becauſe there is no ſuch term, yet if he recites it generally, and being of divers years yet to come, ſells all the intereſt which the defendant had in the land, the ſale will be good. 4 *Rep.* 74.

If an execution is ſued on a *fi. fa.* and the defendant dies before it is executed, it may be ſerved on the defendant's goods in the hands of his executor or adminiſtrator. *Cro. Eliz.* 181. Two *fieri facias's* are delivered the ſame day to the ſheriff againſt the ſame perſon; he is bound to execute that firſt, which was firſt delivered; and if he executes the laſt firſt, he muſt anſwer it to the party who brought the firſt, who may bring an action againſt him; but the execution ſhall ſtand good. 1 *Salk.* 330.

A man had a judgment for debt againſt another, and on a *fi. fa.* the ſheriff took his goods in execution, but the plaintiff ſuffered the goods to remain in the hands of the debtor, and would not let the ſheriff proceed any further: *A. B.* having alſo a judgment againſt this debtor, on a *fieri facias,* ſeized upon the ſame goods, and it was held good, for the former was a fraudulent execution. *Fareſl. Rep.* 37, 38.

On a writ of *fieri facias* againſt one partner, the ſheriff may take the goods of both; yet the vendee ſhall have only a moiety thereof in common with the other. *Comb.* 207. By the common law, goods were bound from the day of the *teſte* of the writ; but by *Stat.* 29 *Car.* 2. *c.* 3. *ſect.* 16. they are bound only from the time of delivery thereof, *&c.* *Ibid.* See *Godb.* 147. See *Execution.*

Difference between a *fieri facias,* and an extent. See *Rep. Temp. Hardw. per Annaly* 103.

Fifteenths, A tribute or impoſition of money, laid generally upon cities, burroughs, *&c.* through the whole realm; ſo called, becauſe it amounts to a *fifteenth part* of that which each city or town hath been anciently valued at, or a *fifteenth* of every man's perſonal eſtate according to a reaſonable valuation. And every town knew what was a *fifteenth part,* which was always the ſame; whereas a ſubſidy raiſed on every particular man's lands or goods, was adjudged uncertain; and in that regard the *fifteenth* ſeems to have been a rate formerly laid upon every town; according to the land, or circuit belonging to it. *Camb. Brit.* 171.

There are certain rates mentioned in *Domeſday,* for levying this tribute yearly; but ſince, though the rate be certain, it is not to be levied but by parliament. By 31 *Ed.* 3. *c.* 13. a *fifteenth* was granted, for pardons, &c. The 7 *Ed.* 6. *c.* 4. granted a ſubſidy and two *fifteenths* by the temporalty, &c. And in the 1, 5, &c. *Eliz.* and 1, 3, and 18 *Jac.* 1. *Fifteenths* and tenths were granted for maintaining the wars, &c.

Fighting and Quarrelling, Is prohibited by ſtatute, in a church, or church-yard, &c. on pain of excommunication, and other corporal puniſhment. *Stat.* 5 & 6 *Ed.* 6. *c.* 4. See *Church*.

Fightwite, (*Sax.*) Signifies a mulct for fighting, or making a quarrel to the diſturbance of the peace.—— *Mulcta ob commiſſam pugnam in perturbationem pacis: in exercitu regis* 120 *ſol. luebatur* Fightwita, i. e. *Foriſfactura pugnæ.* MS. Codex.

Figures. It was moved to quaſh an indictment, becauſe the year of our Lord in the caption was in figures. But *per Hale*, Ch. J. the year of the King is enough. *Mod.* 78. *pl.* 40. *Mich.* 22 *Car.* 2. *Anon. Sid.* 40. *Keb.* 19. *Sti.* 88. 2 *Lev.* 102. 2 *Hawk. P. C.* 255.

Stat. 6 *Geo.* 2. 14. Allows the expreſſing numbers *by figures* in all writs, &c. pleadings, rules, orders and indictments, &c. in courts of juſtice, as have been commonly uſed in the ſaid courts, notwithſtanding any thing in the *Stat.* 4 *Geo.* 2. 26. See **Falſe Latin.**

Filacer or **Filizer,** (*Filizarius,* from the Lat. *Filum*) Is an officer of the court of *Common Pleas,* called by this name, as he files thoſe writs whereon he makes out proceſs. There are fourteen of theſe *filizers* in their ſeveral diviſions and counties, and they make forth all writs and proceſſes upon original writs, iſſuing out of Chancery, as well real, as perſonal and mixed, returnable in that court: and in actions merely perſonal, where the defendants are returned ſummoned, they make out *pones* or attachments; which being returned and executed, if the defendant appears not, they make forth a *diſtringas,* and ſo *ad infinitum,* or until he doth appear: if he be returned *nihil,* then proceſs of *capias* infinite, &c. They enter all appearances and ſpecial bails, upon any proceſs made by them: and make the firſt *ſcire facias* on ſpecial bails, writs of *habeas corpus, diſtringas nuper vicecomitem vel ballivum,* and all *ſuperſedeas's* upon ſpecial bail: in real actions, writs of view, of grand and petit *cape,* of *Withernam,* &c. Alſo writs of *adjournment* of a term, in caſe of public diſturbance, &c.

And until an order of court, 14 *Jac.* 1. they entered declarations, imparlances and pleas, and made out writs of execution, and divers other judicial writs, after appearance: but that order limited their proceedings to all matters before appearance, and the *prothonotaries* to all after. The *filizers* of the *Common Pleas* have been officers of that court before the *Stat.* 10 *H.* 6. *c.* 4. wherein they are mentioned: and in the *King's Bench,* of later times, there have been *filizers,* who make out proceſs upon *original writs* returnable in that court, on actions in general.

File, (*Filacium*) A thread, ſtring or wire, upon which writs, and other exhibits in courts and offices are faſtened or *filed,* for the more ſafe keeping and ready turning to the ſame. A *file* is a record of the court; and the *filing* of proceſs of a court, makes it a record of it. 1 *Lil.* 112. An original writ may be *filed* after judgment given in the cauſe, if ſued forth before; declarations, &c. are to be *filed:* and affidavits muſt be *filed,* ſome before read in court; and ſome preſently when read in court. *Ibid.* 113. Before *filing* a record removed by *certiorari,* the juſtices of *B. R.* may refuſe to receive it, if it appears to be for delay, &c. and remand it back for the expedition of juſtice: but if the *certiorari* be once *filed,* the proceedings below cannot be revived. 2 *Hawk.* 7. 207. An indictment, &c. cannot be amended after *filed.*

Field-Ale or **Filkdale;** A kind of drinking in the *field,* by bailiffs of hundreds; for which they gathered money of the inhabitants of the hundred to which they belonged: but it has been long ſince prohibited. *Bract.* 4 *Inſt.* 307.

Filicetum, Signifies a ferny ground,——*Ubi Filices creſcunt Co. Lit.* 4.

Filiolus, Is properly a little ſon, alſo a godſon.—— Filiolus *quem de ſacro fonte ſuſcepit.* Dugd. Warwickſh. 697.

Filum Aquæ, Is the thread or middle of the ſtream, where a river parts two lordſhips: *Et habeant iſtas buttas uſque ad* Filum Aquæ *prædictæ.* Ex. Reg. Priorat. de Wormley, fol. 3. Mon. Angl. tom. 1. f. 390. *File du Mer,* the high tide of the ſea. *Rot. Parl.* 11 *H.* 4. It is the middle of any river or ſtream which divides counties, townſhips, pariſhes, manors, liberties, &c.

Finders, Are mentioned in ſeveral ancient ſtatutes, and ſeem to be the ſame with thoſe which we now call *ſearchers;* who are imployed for the diſcovery of goods imported, or exported, without paying cuſtom. *Stat.* 18 *Ed.* 3. 14 *R.* 2. *c.* 10. 1 *H.* 4. *c.* 13, &c.

Fine, (*Finis*) Is a *final* agreement or conveyance upon record, for the ſettling and aſſuring of lands and tenements, acknowledged in the King's courts by the cogniſor to be the right of the cogniſee. *Accomp. Convey.* 1 *Vol.* 89.

This word hath divers uſes or ſignifications; but it is moſt commonly, *amicabilis compoſitio &* Finalis *concordia, ex conſenſu & licentia domini regis vel ejus juſticiariorum,* or a covenant made before juſtices, and entered of record for conveyance of lands, tenements, or any thing inheritable, to cut off all controverſies: *Et* Finis *dicitur* Finalis *concordia quia* finem *litibus imponit. Glanv. lib.* 8. *c.* 1. *Bract. lib.* 5.

A *fine* was anciently a determination of a *real controverſy;* but now it is generally a feigned action upon a writ of covenant, &c. and ſuppoſes a controverſy where in reality there is none, to ſecure the title that a man hath in his eſtate againſt all men; or to cut off *intails,* and with more certainty convey the title of lands, &c. either in fee-ſimple, fee-tail, for life, or years; whereupon alſo a rent may be reſerved. *Weſt's Symb. par.* 2.

Originally the *final concord* was inſtituted and allowed, in regard that by the law and ancient courſe of proceedings, no plaintiff could agree *without licence of the court:* and *fines* have been formerly had in perſonal actions; but time hath wrought other uſes of them, *viz.* to cut off intails, and paſs the inheritance of lands, though the ſame be not controverted, to whom the grantor thinks proper; and a *fine* may be levied on a writ of right, &c. in any real action, though not on an original in a perſonal action; and the common writ of covenant on which a *fine* is levied, is not a perſonal, but a *real* action.

A *fine* is called a *Feoffment upon Record,* and is of great antiquity; for we read of *fines* before the Conqueſt. 2 *Inſt.* 511. But it hath been held, that a *fine* is improperly called a feoffment of record; though it hath the effects of a feoffment, where he that levies it is ſeiſed of the freehold at the time of the *fine* levied. 1 *Salk.* 340.

According to *Blackſtone* it may with more accuracy be called *an acknowledgment of a feoffment on record.* Com. 2 V. 348.

Lands bought of divers perſons, by ſeveral purchaſers, may paſs in one *fine,* to ſave charges; but the writ of covenant muſt be brought by the vendees againſt all the vendors, and every vendor warrant againſt him and his heirs.

The nature of a fine being explained it remains to conſider,

I. *Of the ſeveral ſorts and parts of a fine, and how fines operate.*
II. *Of what things a fine may be levied.*
III. *By whom, and to whom it may be levied.*
IV. *Before whom, and in what manner it may be levied,*
V. *Who may be barred by a fine, and who not.*
VI. *How fines may be reverſed.*

I. *Of the ſeveral ſorts and parts of a fine, and how fines operate.*

As to fines there are various kinds; they are either *with proclamations,* or *without:* that *with proclamations,* is termed a fine *according to the* ſtatutes, 1 *R.* 3. *c.* 7. and 4 *H.* 7. *c.* 24. And ſuch a fine, every fine that is pleaded, is intended to be, if it be not ſhewn what fine it is: And theſe fines are the beſt ſort, and moſt uſed: If there be *error in the proclamations,* it ſhall be taken as a good fine at *common law.* 3 *Rep.* 86. A fine may ſtand, though the proclamations according to the ſtatute are irregular; for fines are *matter of record*, and remain in *ſubſtance* and *form* as they were before. *Plowd.* 265.

If tenant in tail levies a fine, and dies before all the proclamations are made, though the right of the eſtate tail deſcends upon the iſſue, immediately on the death of the anceſtor; yet if proclamations are made afterwards, ſuch right ſhall be barred by the fine, by the ſtatutes 4 *H.* 7. *c.* 24. and 32 *H.* 8. *c.* 36. 3 *Rep.* 84.

The fine *without proclamations* is called a *fine at the Common Law*, being levied in ſuch manner as was uſed before the *Stat.* 4 *H.* 7. *c.* 24. and is ſtill of the like force by the *common law*, to diſcontinue the eſtate of the cogniſor, if the fine be executed. A fine alſo *with* or *without proclamations* is either *executed* or *executory*: A fine *executed* is ſuch a fine as of its own force gives preſent poſſeſſion to the cogniſee, without any writ of ſeiſin to enter on the lands, &c. as a fine *ſur cogniſance de droit come ceo*; and in ſome reſpects a fine *ſur Releaſe*, &c. is ſaid to be *executed.* A fine *executory* doth not execute the poſſeſſion in the cogniſee, without entry or action, but requires a writ of ſeiſin; as the fine *ſur conuzance de droit tantum*, &c. unleſs the party be in poſſeſſion of the lands; for, if he be in poſſeſſion at the time of levying the fine, there need not be any ſuch writ, or any execution of the fine; and *then the fine will enure by way of extinguiſhment of right*, not altering the eſtate or poſſeſſion of the cogniſee, however it may better it. *Weſt. Sect.* 20. *Fines* are likewiſe *ſingle* or *double*; *ſingle*, where an eſtate is granted by the cogniſor to the cogniſee, and nothing is thereby rendered back again from the cogniſee to the cogniſor. The *double* fine is that which doth contain a grant or render back again from the cogniſee, of the land itſelf; or of ſome rent, common, or other thing out of it, and by which remainders are limited, &c. *Weſt. Sect.* 21, 30. And a fine is ſometimes called a *double* fine, when the lands lie in ſeveral counties.

But there is a more particular diviſion of fines; for,

Fines are further divided into *four* ſorts, *viz.* 1. A fine *ſur cognizance de droit come ceo, que il ad de ſon done.* 2. A fine *ſur cognizance de droit tantum.* 3. A fine *ſur conceſſit.* And 4. A fine *ſur done grant & render.*

1. The fine *ſur cognizance de droit come ceo*, &c. is a ſingle fine levied with proclamations, according to the *Stat.* 4 *H.* 7. *c.* 24. *And it is the principal and ſureſt kind of fine*, it being ſaid to be executed, becauſe it gives preſent poſſeſſion (at leaſt in law) to the cogniſee, ſo that he needs no writ of *hab. fac. ſeiſinam*, or other means for execution thereof; for it admits the poſſeſſion of the lands of which the fine is levied to paſs by the fine, ſo that the cogniſee may enter, and the eſtate is thereby in him, to ſuch uſes as are declared in the deed to lead the uſes thereof: but if it be not declared by deed to what uſe the fine was levied, ſuch fine ſhall be to the uſe of the cogniſor that levied the ſame. 2 *Inſt.* 513. If the cogniſee of a fine levied of lands, pay money unto the cogniſor at the time of the fine levied, and there is no uſe declared of the fine, the law will conſtrue the fine to the uſe of the cogniſee: and if there be no money paid by the cogniſee, nor any uſe declared, the fine ſhall enure to the cogniſor that levied it. *Paſch.* 23 *Car. B. R.* Where a fine is levied to the uſe of two perſons in tail, &c. in conſideration of marriage, though the deed to lead its uſes doth not mention any marriage had between them, yet it hath been adjudged, *that the eſtate-tail is executed before marriage*; for the fine doth carry the uſes, and they are perfected by the fine, notwithſtanding the conſideration is perfected afterwards; but without a fine, the marriage muſt be had, before any uſe could ariſe. 1 *Leon.* 138.

If a feme covert alone declares the uſes of a fine intended to be levied by huſband and wife of her land, and the huſband alone declares other uſes; it hath been held that both declarations of uſes are void, and the uſe ſhall follow the ownerſhip of the lands: But in another caſe it was determined that the uſes declared by the wife were void; and the uſes declared by the huſband, good only againſt himſelf, during the coverture. 2 *Rep.* 56. If huſband and wife levy a fine of the lands of the wife, and he alone declares the uſes, this ſhall bind the wife, if her diſſent doth not appear; becauſe otherwiſe it ſhall be intended that ſhe did conſent. *Ibid.* 59. Though there be a variance between a deed declaring uſes, and the fine levied; yet, if nothing appears to the contrary, ſuch fine by conſtruction of law ſhall be to the uſes declared in the deed, and which is evidence thereof: and where a fine varies from a former deſcription, it has been held that a new deed made after, will declare the uſes of the fine. 1 Ld. *Raym.* 289, 290. It is not abſolutely neceſſary, to inſert the word *Uſe*, in the declaration of uſes of fines; for any words which ſhew the intent of the parties will be ſufficient. *Ibid.*

A fine *ſur conuzance de droit come ceo*, &c. may not be levied to any perſon but one that is party to the writ of covenant; though a vouchee, after he hath entered into the warranty to the demandant, it is ſaid, may confeſs the action, or levy a fine to the demandant, for he is then ſuppoſed to be tenant of the land, though he is not a party to the writ; and yet a fine levied by the vouchee to a ſtranger, is void. No ſingle fine can be with a remainder over to another perſon not contained in it: But if *A.* levy a fine to *B. Sur conuzance de droit come ceo*, and *B.* by the ſame concord grants back the land again to *A.* for life, remainder to *E.* the wife of *A.* for her life, remainder to *A.* and his heirs; this will be a good fine. *Plowd.* 248, 249.

2. A fine *ſur conuzance de droit tantum*, is alſo a fine *executory*, and much of the nature of a fine *ſur conceſſit*; it is commonly made uſe of *to paſs a reverſion*, and then it is expreſſed by ſuch fine that the particular eſtate is in another, and that the cogniſor willeth that the cogniſee ſhall have the reverſion, or that the land ſhall remain to him after the particular eſtate is ſpent: ſometimes it is uſed by tenant for life, to make a *releaſe* (in nature of a ſurrender) to him in reverſion, but not by the word *Surrender*; for it is ſaid a particular tenant, as for life, &c. cannot *ſurrender* his term to him in reverſion by fine; but he may *grant* and *releaſe* to him by fine. *Plowd.* 268. *Dyer* 216. A fine upon a releaſe, &c. ſhall not be intended to be to any other uſe, but *to him to whom it is levied.* 3 Leon 61.

3. A fine *ſur conceſſit* is where the cogniſor is ſeiſed of the lands contained therein, and the cogniſee hath no freehold in it, but it paſſeth by the fine: this fine is uſed *to grant away eſtate for life, or years*, and it is *executory*, ſo that the cogniſees muſt enter or have a writ of *hab. fac. ſeiſinam* to obtain poſſeſſion; if the parties to whom the eſtate is limited, at the time of levying ſuch fine, be not in poſſeſſion of the thing granted.

4. A fine *ſur done grant & render*, is a *double* fine, being in a manner two fines, i. e. A fine *ſur conuzance de droit come ceo*, &c. and a fine *ſur conceſſit*, both formed into one; whereby the cogniſee, after a releaſe and warranty made to him by the cogniſor of the lands contained therein, doth *grant and render back to the cogniſor* the lands, &c. thereby often limiting remainders to perſons that are ſtrangers, and not named in the writ of covenant.

This fine is partly *executed* and partly *executory*; and, as to the *firſt* part of it, is altogether of the ſame nature with a fine *ſur conuzance de droit come ceo*; but as to the *ſecond* part containing a grant and render back, *it is taken in law to be rather a private conveyance or charter between party and party*, and not as a writ or judgment upon record: and this render is ſometimes of the whole eſtate, and ſometimes of a particular eſtate, with remainder or remainders over; or of the reverſion, and ſometimes with reſervations of rent and clauſe of diſtreſs, and grant thereof over by the ſame fine. 5 *Rep.* 38.

A. B. and *C. D.* levied a fine of lands, and the cogniſee by the ſame fine rendered back the land to *A. B.* in tail, reſerving a rent to himſelf, &c. the rent and reverſion ſhall paſs, though in one fine; and it ſhall enure as ſeveral fines. *Cro. Eliz.* 727.

It is ſaid, a *grant* and *render* of land, cannot be immediately *in primo gradu* to a perſon who is no party to the writ; but mediately, or *in ſecundo gradu* it may. 3 *Rep.* 514. *Bro.* 108. The fine with *grant* and *render*, differs from the fine *ſur conuzance de droit come ceo*, &c.

as that muſt be levied of the land in the original; but the *grant* and *render* may be of another thing than is expreſſed in the original: Though to make a good *grant* and *render*, the land rendered muſt paſs to the *cogniſee* by the fine; for he cannot render what he hath not. 3 *Rep*. 98, 510. *Hughes's Abr*. 936.

A man may not by this fine reſerve to himſelf a leſs eſtate by way of remainder than the fee: and the render of a rent (if any be) muſt be to one of the parties to the fine, and not to a ſtranger. *Dyer* 33, 69. 2 *Rep*. 39. To make a leaſe for years, &c. by fine with a render; the leſſee muſt acknowledge the land to be the right of the leſſor that is ſeiſed thereof, and then ſuch leſſor grants and renders the ſame back again to the leſſee, for a certain number of years, reſerving rent, &c. and this is a good fine: but if the leſſor be tenant in tail, then to bind him, he and the leſſee are to acknowledge the tenements the right of *A. B.* who is to render the ſame fine to *leſſee for years*, the *remainder* to the *leſſor and his heirs*, &c. 44 *Ed*. 3. 45. 2 *Leon*. 206.

A *fine* and *render* is a *conveyance* at Common law, and makes the *cogniſor* on the render back a *new purchaſer*; by which, lands ariſing on the part of the mother, may go to the heirs on the part of the father, &c. 1 *Salk*. 337. 2 *Nelſ. Abr*. 864.

Having ſhewn how each particular ſort of fine operates, it may be material to obſerve, that *a fine may enure to a confirmation of a former eſtate, which was defeazable before.* Vide 1 *Sand*. 261.

So a fine may enure by way of *extinguiſhment*; therefore, if *tenant in tail* makes a leaſe, or other eſtate, to *A.* and afterwards levies a fine to *B.* the leaſe, or other eſtate, ſhall be indefeazable; for his right during ſuch former eſtate was extinct by the fine. *R, Jon*. 60. *Cro. Jac*. 689. Vide *Eſtates*.

As to the parts of a fine.

There are in every fine five parts, *viz.* 1*ſt*. An original writ, uſually a writ of covenant. 2. The *licentia concordandi*, or King's licence, for which the King hath a fine called the *King's Silver*. 3. The concord itſelf, containing the agreement between the parties how the land, &c. ſhall paſs, being the foundation and ſubſtance of the fine; it begins, *Et eſt concordia talis, etc.* 4. The note of the fine, or, abſtract of the original contract. 5. The foot of the fine, which includes all, ſetting forth the day, year and place, and before what juſtices the concord was made, &c.

Of this there are indentures made forth in the office, which is called the ingroſſing of the fine; and it beginneth thus, *Hæc eſt* finalis, *concordia facta in curia Domini Regis apud* Weſtm. *a die Paſchæ in quindecim dies anno, etc.* 2 Inſt. 511, 517. It is ſaid, the concord being the compleat fine, it ſhall be adjudged a fine of that term in which the concord was made, and the writ of covenant returnable. 1 *Salk*. 341. A concord cannot be of any thing but what is contained in the writ of covenant: and the note of the fine remaining with the *Chirographer*, it hath been held, *eſt principale recordum*, 3 Leon. 234.

II. *Of what things a fine may be levied.*

A fine may be levied of any things whereof a *præcipe quod reddat* lies; as of manors, meſſuages, lands, rents, &c. or of any thing, whereof a *præcipe quod faciat* lies, as cuſtoms, ſervices, &c. or whereof a *præcipe quod permittat*, or *præcipe quod teneat* may be brought. 2 *Inſt*. 513.

As fines may be levied of things in poſſeſſion, ſo they may be levied of a remainder, or reverſion, or of a right *in futuro*. 3 Rep. 90.

So now, ſince the *Stat*. 32 *H*. 8. 7. it may be levied of rectories, vicarages, tithes, penſions, oblations, and all eccleſiaſtical inheritances made temporal. Of a chantry. Vide *Weſt. Symb*. 7. So it may be of a ſeigniory. *Ibid.* Of all ſervices; as, homage, fealty, &c. *Weſt. Symb*. 6. *b*. Of acquittal, and of every thing, for which a *præcipe quod faciat* lies. 2 *Inſt*. 513. So it may be levied of common of paſture. Vide *Weſt. Symb*. 6. *b*. Of a corody. *Ibid.* Of an office; as, of the cuſtody of a foreſt. Of a boilary. Of two pools and a fiſhery in the water of *D*. Of an annuity.

Fines may be had of all things *in eſſe tempore finis*, which are inheritable; but not of things uncertain; or of lands held in tail by the King's letters patent; of land reſtrained from ſale by act of parliament, or of lands in right of a man's wife, without the wife, &c. 5 *Rep*. 225. *Weſt. Sect*. 25.

And almoſt any kind of contract may be made and expreſſed by a fine, as by a deed; and therefore it may be ſo made that one of the parties ſhall have the land, and the other rent out of it; and that one ſhall have it for a time, and another for another time; alſo a leaſe for years, or a jointure for a wife, may be made; and a gift in tail, and a remainder over, may be limited and created thereby. 1 *Rep*. 76.

III. *By whom and to whom a fine may be levied.*

The King, and all perſons who may lawfully grant by deed, may levy a fine; but not infants, ideots, lunaticks, &c 7 *Rep*. 32. Civil corporations, as mayor and commonalty, &c. may levy a fine of land belonging to their body; but biſhops, deans and chapters, parſons, &c. are reſtrained from levying of fines to bind their ſucceſſors. All perſons that may be grantees, or that may take by contract, may take by fine; though in caſes of infants, feme coverts, perſons attainted, aliens, &c. who, it is ſaid, may take by fine, before the ingroſſing of the fine, there goes a writ to the juſtices of *C. B. quod permittant finem levari*. Lit. 669. Tenant in fee-ſimple, fee-tail general, or ſpecial, tenant in remainder or reverſion, may levy a fine of their eſtates; ſo may tenant for life, to hold to the cogniſee for life of tenant for life; but a perſon who is tenant, or hath an intereſt only for years, cannot levy a fine of his term to another. 3 *Rep*. 77. 5 *Rep*. 124.

A fine by a man *non compos*, though it ought not to be levied, binds for ever when it is levied. So a fine by a man attainted for treaſon, or felony, binds all but the King. Vide *Weſt. Symb*. 3. *a*. So a fine by an infant, or feme covert without her huſband, binds till it be avoided. Vide *Comyn's Digeſt*, tit. *Baron* and *Feme*. (P. 1). —*Enfant*, (B. 2.)

But a fine cannot be levied by a corporation aggregate; for it cannot act but by attorney, and it cannot make conuſance by attorney. So, if commiſſioners take a fine of an infant, *etc*. the court will grant an attachment againſt them; and upon examination and inſpection, the fine ſhall be vacated. *R. Skin*. 24.

Lands aſſured for dower, or term of life, or in tail, to any woman by means of her huſband, or his anceſtors, cannot be conveyed away from her by fine, *etc.* without her act; but if a woman and her huſband levy a fine of her jointure, ſhe is barred of the ſame; though if the jointure be made after coverture, when the wife hath an election to have her jointure, or dower on the huſband's death, it is ſaid this will be no bar of her dower in the reſidue of the land of the huſband. *Dyer* 358. *Leon*. 185.

No fine of the huſband alone, of the lands of the wife, ſhall hurt her, but that ſhe or her heirs, or ſuch as have right, may avoid it; but if ſhe joins with him, it ſhall bind her and her heirs. Women covert ought to be cautious in levying fines with their huſbands of their own lands, and if a married woman under age levies a fine of her lands, ſhe cannot reverſe it during her huſband's life, nor after his death, if ſhe be of full age when he dies; but if the huſband dies during her minority, ſhe may. *Dyer* 359. *Wood's Inſt*. 243. A married woman ought not to be admitted alone without her huſband to levy a fine; and if ſhe be received, the huſband may avoid the fine by entry; but if he do not, it is good to bar her and her heirs, except ſhe be an infant at the time of the fine levied; the huſband and wife together may diſpoſe of her land, *etc.* 12 *Rep*. 122. If baron and feme levy a fine, the feme within age, ſhe may be brought into court by *habeas corpus*; and if it be found by inſpection, that ſhe is under age, it hath been adjudged, where the baron and feme brought a writ of error, that as to both, *quod* finis *revocetur*. 1 Leon. 116, 117. 3 Salk. 168.

Huſband and wife, tenants in ſpecial tail, the huſband only levies a fine, this bars the iſſue in tail; but it remains in right to the wife as to herſelf, and to all the eſtates and remainders depending upon it, and all the conſequences of benefit to herſelf and others, ſo long as ſhe lives, as if the fine had not been levied. *Hob.* 257, 259.

If a huſband make a feoffment of the wife's land, upon condition, which is broken, and the feoffee levies a fine, and the huſband and wife die having iſſue, and five years paſs; the heir is barred to enter as heir to the father upon the condition, but he ſhall have five years after the death of his father, as heir to his mother. *Plowd.* 367. When the huſband and wife join in a fine of the wife's lands, all the eſtate paſſeth from her, and he is joined only for conformity; ſo that if the fine levied by huſband and wife in ſuch a caſe be reverſed, ſhe ſhall have reſtitution. 2 *Rep.* 77. A huſband and his wife covenanted to levy a fine of the lands of the wife, to the uſe of the heirs of the body of the huſband on the wife, remainder to the huſband in fee; both dying without iſſue; it was held that the heir of the wife had the title, *becauſe the limitation to the heirs of the body of the huſband was merely void, there being no precedent eſtate of freehold for life*, &c. *to ſupport it as a remainder.* 2 Salk. 675. 4 Mod. 253.

If a widow having an eſtate in dower accept of a fine, and by the ſame fine render back the land for 100 years, *etc. this is a forfeiture of her eſtate* within the *Stat.* 11 *H.* 7. 20. by which ſtatute ſhe may not make a greater eſtate than for her own life; if ſhe do, it is a preſent forfeiture. *Cro. Jac.* 689. If tenant for life grants a greater eſtate by fine than for his own life, it is a forfeiture: and if there be *tenant for life*, and *remainder for life*, and the tenant for life levy a fine to him in remainder and his heirs, both their eſtates are forfeited; the tenant for life by levying the fine, and the remainder-man for life by accepting it. 2 *Lev.* 209. Where a fine is levied by tenant for life, for a greater eſtate, the fine may be good; but it is a forfeiture of the eſtate of tenant for life, whereof he in remainder, *etc.* may take preſent advantage and enter: and when a perſon enters for a forfeiture, all eſtates are avoided. *Dyer* 111. Tho' if ſuch a tenant for life levy a fine *ſur grant et releaſe* to the cogniſee for the life of tenant for life; or by a fine grant a rent out of the land for a longer time, the fine is good, and there will be no forfeiture of the eſtate of tenant for life: ſo likewiſe if a fine be levied of lands by tenant for life to a ſtranger, who thereby acknowledges all his right to be in the tenant for life, and releaſes to him and his heirs. 27 *Ed.* 1. 1. 44 *Ed.* 3. 36.

If there be tenant in tail upon condition not to alien, or diſcontinue the lands, *etc.* if he doth, the donor to re-enter, and his iſſue levy a fine of the land; this is a forfeiture of the eſtate. 1 *Leon.* 292. An eſtate being ſettled on huſband and wife for life, remainder to firſt and other ſons in tail, with remainders over; after the birth of their eldeſt ſon, they by releaſe and fine, mortgaged the lands: on a bill exhibited againſt the ſon to redeem, *etc.* he pleaded the marriage ſettlement of his father and mother, whereby they were but tenants for life, and that his fine was a forfeiture of their eſtate; and ſo it was adjudged. *Preced. Canc.* 591. But it is ſaid where a wife by ſettlement has only a truſt for life, if ſhe joins with her huſband in a mortgage in fee and fine of the lands; this truſt is not forfeited, as it would be in caſe of a legal eſtate. 1 *Peere Williams* 147.

As to *femes covert*, the books which ſay, that a fine ſhall not bind a woman under coverture unleſs ſhe be examined, muſt not be underſtood as if it were in her power to reverſe the fine for want of her examination, but they are to be underſtood in this ſenſe, that the judge ought not to receive a fine from a feme covert without examining her, leſt it ſhould not proceed from her own freedom and choice; but if ſuch a fine be once admitted, and recorded without any examination, though the judge has omitted a very neceſſary part of his duty, yet the fine ſhall ſtand, and neither the feme nor her heirs ſhall be admitted to aver that ſhe was not examined; *for that were to leſſen the credit of the judgment of the courts of juſtice, which is the higheſt evidence of the law.* 2 New Abr. 527.

As to fines levied by an *infant*, tho' ſtrictly ſpeaking all contracts made by infants are in their own nature void, *becauſe a contract is an act of the underſtanding, which, during their infancy, they are preſumed to want*; yet civil ſocieties have ſo far ſupplied that defect, and taken care of them, as to allow them to contract for their benefit and advantage, with power to recede from and vacate it when it may prove prejudicial to them; now the method to ſet aſide ſuch a contract muſt be by matter of equal notoriety with the manner in which it was made; and therefore if an infant levies a fine, which is no more than his own agreement recorded as the judgment of the court, he muſt reverſe it by writ of error, and this muſt be brought during his minority, that the court of *B. R.* may by inſpection determine the age of the infant; but the judges by *adjuncto* may in ſuch caſes inform themſelves by witneſſes, church-books, *&c.* 2 *New Abr.* 526. *Co. Lit.* 380. *b.* *Moor* 76. 2 *Rol. Abr.* 15. *Bro.* tit. *Error.* *Bro.* tit. *Fines*, 74, 79. 2 *Inſt.* 482. 2 *Bulſt.* 320. 12 *Co.* 122.

With regard to *ideots* and *lunaticks*, it is neceſſary to diſtinguiſh between their acts done *in pais*, and thoſe ſolemnly acknowledged on record; tho' the law is clear, that in neither caſe are they admitted to diſable themſelves, for the inſecurity that may ariſe in contracts from counterfeit madneſs and folly, but their heirs and executors may avoid ſuch acts *in pais* by pleading the diſability; becauſe, if they can prove it, it muſt be preſumed real, ſince nobody can be thought to counterfeit it, when he can expect no benefit from it himſelf. 4 *Co.* 124. *Co. Lit.* 247. *Bro.* tit. *Fait*, 62. *Cro. Eliz.* 398, 622. *F. N. B.* 202.

But neither the lunatick himſelf, nor his heir, can vacate any act of his done in *a court of record*; and therefore if a perſon *non compos* acknowledges a fine, it ſhall ſtand againſt him and his heirs; for tho' the judge ought not to admit of a fine from a man under that diſability, yet when it is once received, it ſhall never be reverſed, becauſe the record and judgment of the court being the higheſt evidence in the law, preſumes the conuſor, at that time, capable of contracting; and therefore the credit of it is not to be conteſted, nor the record avoided by any averment againſt the truth of it. 4 *Co.* 124. 2 *Inſt.* 483. *Bro.* tit. *Fines*, 75. *Co. Lit.* 247.

IV. *Before whom, and in what manner, a fine may be levied.*

Fines are now levied in the court of *Common Pleas* at *Weſtminſter*, on account of the ſolemnity thereof, ordained by the *Stat.* 18 *Ed.* 1. *ſt.* 4. before which time they were ſometimes levied in the *Exchequer*, in the *County-Courts*, *Courts Baron*, *&c.* They may be acknowledged before the Lord Chief Juſtice of the *Common Pleas*, as well in, as out of court; and two of the juſtices of the ſame court, have power to take them in open court: alſo juſtices of aſſiſe may do it by the general words of their patent or commiſſion; but they do not uſually certify them without a ſpecial writ of *dedimus poteſtatem.* 2 Inſt. 512. *Dyer* 224. The King by patent or commiſſion, with a *non obſtante*, may give power to *A* and *B.* juſtices of aſſiſe in a circuit, when *A.* is not a judge of either of the benches, only a ſerjeant at law, *&c.* to take the cogniſance of all fines *conjunctim et ſeparatim*; and upon ſuch a commiſſion, the cogniſance of a fine taken by *A.* will be good, without any *dedimus poteſtatem* ſued out before, or after it. *Jenk. Cent.* 277.

Fines are alſo taken by commiſſioners in the country, impowered by *dedimus poteſtatem*; the writ of *dedimus* doth ſurmiſe, that the parties who are to acknowledge the fine are not able to travel to *Weſtminſter* for the doing thereof: theſe commiſſions, general and ſpecial, iſſue out of the Chancery. By the *Common law* all fines were levied in court; by the *Stat.* 15 *Ed.* 2. *ſt. de fin.* allows the *dedimus poteſtatem* to commiſſioners, who may be puniſhed for abuſes, and the fines taken before them ſet aſide: and it is ſaid an information may be brought by him in reverſion againſt commiſſioners, who take the caption of a fine, where a married woman, *etc.* is an infant. 3 *Lev.* 36.

In the levying of fines in court, a pleader ſhall ſay *Sir juſtice conge d' accorder, etc.* i. e. he deſires *leave to accord or agree:* and when the ſum for the King's fine is agreed, after proclamation and crying the peace, the pleader ſhall repeat the ſubſtance of the fine, *etc.* *Stat. de Finibus,* 18 *Ed.* 1. *ſt.* 4.

Touching the *form of fines,* it is to be conſidered upon what writ or action the *concord* is to be made: and there muſt firſt paſs a pair of indentures between the cogniſor and cogniſee, whereby the cogniſor covenants to paſs a fine to the cogniſee of ſuch things, by a time limited; and theſe indentures preceding the fine, are ſaid to *lead the uſes* of the fine: but by the *Stat.* 4 *Ann. c.* 16. The uſes of a fine, *etc.* may be declared *after the fine levied,* and be good in law. Upon this the *writ of covenant* is brought by the cogniſee againſt the cogniſor, who then yields to paſs the fine before the judge; and ſo the acknowledgement being recorded, the cogniſor and his heirs are preſently concluded, and all perſons (ſtrangers not excepted) after five years paſt; and if the writ, whereon the fine is grounded, be not a *writ of covenant,* which is uſual, but of *warrantia chartæ,* or a writ of right, or of cuſtoms and ſervices, *etc.* then the writ is to be ſerved upon the party that is to acknowledge the fine; and he appearing doth it accordingly. *Weſt. ſect* 23. *Dyer* 179.

By ſtatute a *final concord* cannot be levied in the King's court, without original writ, *etc.* And when a fine is paſſed, it is to be in the preſence of the parties, who are to be of full age, good memory, *etc.* And if a feme covert be one, ſhe is to be privately examined if ſhe conſent freely; for if ſhe doth not, the fine cannot be levied. *Stat.* 18 *Ed.* 1. *ſt.* 4. A fine after the ingroſſing is to be openly read and proclaimed in the court of *C. B.* and a tranſcript to be ſent to the juſtices of aſſiſe, and another to the juſtices of the peace of the county where the land lieth, to be openly *proclaimed* there; which being certified, concludes all perſons; feme coverts, perſons under age, in priſon, *etc.* excepted; if they lay no claim by way of action or entry in five years: perſons out of the land, or *non ſanæ memoriæ, etc.* have that time after their imperfections are removed. 1 *R.* 3. *c.* 7. 4 *H.* 7. *c.* 24. And by ſubſequent acts, fines after ingroſſing are to be proclaimed in court the ſame term, and the three next terms, formerly four ſeveral days in each term; but of late only once in the term where ingroſſed, and once in each of the ſucceeding terms. 4 *H.* 7. *c.* 24. 31 *Eliz. c.* 2. The day and year of acknowledging a fine, and warrant of attorney for the ſuffering a recovery, are to be certified with the concord: and an office hath been erected for the *inrolment* of writs for fines, *&c.* the fees whereof are limited and appointed; likewiſe the *Chirographer* the firſt day of every term is to fix in the court of *C. B.* a table containing the fines paſſed in the term before in every county, *&c.* by 23 *Eliz. c.* 3.

V. *Who may be barred by a fine, and who not.*

The ſtatutes of 4 *H.* 7. *c.* 24. and 32 *H.* 8. *c.* 36. declare the force of fines how far they bar and take away the entry or action of *parties, privies* and *ſtrangers,* having right: *privies in blood,* as heirs of the cogniſor, are barred preſently by a fine; but *ſtrangers* to the fine, ſuch as are *not parties nor privies,* have five years to enter and claim their rights, *&c.* *Plowd.* 367, 375. *Co. Lit.* 372. See 4 *Ann. c.* 16.

Feme coverts have five years after the death of their huſbands, to avoid the fine of the huſband of the wife's lands; and alſo to claim their dower; and if they do not make their claim in that time by action or entry, they are barred by ſtatute. *Dyer* 72. 2 *Rep.* 93.

An *infant* ſhall have five years after he comes of age, although he was in his mother's womb at the time of the fine levied. *Plowd.* 359. And an infant is allowed time, during his minority, to reverſe his own fine and prevent the bar; and if not reverſed during that time, their fines will be good. *Aſſ. pl.* 53.

Strangers out of the realm at the time of the fine levied, ſhall have five years after their return to prevent the bar; and ſo if they were in *England* when the fine was levied, and within five years are ſent in the King's ſervice by his commandment. *Plowd.* 366. A perſon in *Scotland* or *Ireland* ſhall be ſaid to be *out of* the realm. 4 *H.* 7. *c.* 24.

Madmen, &c. ſhall have five years after the cure of their maladies, and though the infirmity happen after the fine levied, if before the laſt proclamation. *Plowd.* 367. *Dyer.* 3.

And they who have *divers defects* have five years after the laſt infirmity removed; but if the impediments are once wholly gone, and afterwards the party relapſes into the like again, the five years ſhall begin immediately after the firſt removal; and if the party dies, his heir ſhall *not* have a new five years. *Plowd.* 375. *Dyer.* 233.

If a *feme covert* dies during the coverture, being no party to the fine, *&c.* or if an *infant* being party to the fine, and having preſent right, dies in his infancy: if a *perſon beyond ſea* when the fine was levied, never return, *&c.* a *perſon in priſon* dies whilſt therein: or if one *non compos, &c.* dies ſuch, in all theſe caſes, their heirs are not limited to any time. 2 *Inſt.* 519, 520. Five years are given after *a remainder* falls; and five years after the *forfeiture* of tenant for life. *Plowd.* 374.

A *future intereſt* of another perſon, cannot be barred by fine and non-claim, until five years after it happens; as in caſe of a *remainder* or *reverſion.* 2 *Rep.* 93. *Raym.* 151. And where there is no preſent nor future right in land, *etc.* only *a poſſibility* at the time of levying the fine, a perſon may enter and claim when he pleaſes. 10 *Rep.* 49. Alſo when there is only *right* to a rent, *&c.* iſſuing out of lands, and not the land in the fine, the perſons that have it are not barred at all. 5 *Rep.* 124.

No fine bars any eſtate in *poſſeſſion* or *reverſion,* which is *not deveſted,* or *put to a right.* 9 Rep. 106. He that at the time of a fine levied had not any *title* to enter, ſhall not be immediately barred by the fine: but this is in caſe of *an intereſt* not turned to a *right,* where a man is not bound to claim; and not in the caſe of tenant in tail, barring his iſſue. 32 *H.* 8. *c.* 36.

When an eſtate is *put to a right,* and there comes a fine and non-claim, it is a perpetual bar. *Carter* 82, 162. A fine, grant and render was levied, and a *ſcire facias* brought and judgment given, and alſo writ of ſeiſin awarded, but not executed; and afterwards a ſecond fine was levied and executed, and five years paſſed; it was the opinion of the court that the ſecond fine barred the firſt. *March's Rep.* 194. 2 *Nelſ. Abr.* 864.

If a man *attainted of treaſon* or *felony,* levy a *fine* of his land, this, as to the King, and lord of whom the land is held, is *void,* and no bar to their *title of forfeiture:* but as to all others it is a good bar. 2 *Shep. Abr.* 241. One levied a *fine,* and then was *outlawed* for *treaſon* and died; the heir reverſed the outlawry, and it was held the wife ſhould have her dower, if ſhe bring her action within five years. *Moor, c.* 876. A fine is levied by leſſee for life, *&c.* who continues the poſſeſſion, and pays the rent; it ſhall not bind the leſſor, who ſhall have five years claim after the determination of the leſſee's eſtate, *etc.* 3 *Rep.* 77, 78. If one doth levy a fine of my land, while I am in poſſeſſion, this will not hurt me; nor where a ſtranger levies a fine of my lands let to a tenant, if the tenant pays me his rent duly: And if there is tenant in tail, or for life, remainder in tail, *etc.* And the firſt tenant in tail or for life, bargains and ſells the land by deed inrolled, and levies a fine to the bargainee, the remainders are not bound; *for the law adjudges them always in poſſeſſion.* 9 Rep. 106.

Leſſees who pretend title to the inheritance of the lands, cannot by fine bar the inheritance. 3 *Rep.* 77. But if a leaſe is made for years, and the leſſor before entry of the leſſee levies a fine with proclamations, and the leſſee doth not make his claim within five years, the leſſee is barred, and no relief can be had for him; for though the leſſee for years cannot levy a fine, yet he ſhall be barred by a fine levied by the tenant of the land, *etc.* 5 *Rep.* 124. If a perſon hath a remainder depending on an eſtate for years, and the termor is diſſeiſed, and a fine is levied and five years paſs, &c. the termor and reverſioner are barred: becauſe the termor might preſently have entered, and he in remainder had an aſſiſe. *Weſt. Sect.* 183. In caſe a perſon enters upon, and puts out a copyholder, and the diſſeiſor doth levy a fine of the lands, if the copyholder ſuffer five years to paſs after the diſſeiſin and fine, without making any claim, the intereſt of the copyholder and his lord are hereby barred for ever: And if a copyholder makes a feoffment in fee upon good conſideration, and the feoffee levies a fine with proclamations, and five years paſs, the lord is barred; but if a copyholder himſelf levies a fine, and five years do paſs, the lord is not barred, for the copyholder not having a freehold, the fine will be void. *Wood's Inſt.* 247, 248.

A fine of *ceſtui que truſt* ſhall bar and transfer a truſt, as it ſhould an eſtate at law, if it were on a good conſideration. *Chan. Rep.* 49. And fines of *ceſtui que uſe* are as good as if levied of immediate poſſeſſions, &c. 1 *R.* 3. *c.* 2. 2 *Nelſ. Abr.* 860.

Intereſts in eſtates which may be barred by fine, are either *intereſts* by *Common law*, or by *cuſtom*; as copyholds, &c. And if I have a fee-ſimple, and am diſſeiſed, and the diſſeiſor levies a fine with proclamations, and I do not claim within five years after, I and my heirs (allowance being made for impediments) are barred for ever. *Plowd.* 353. 3 *Rep.* 79. If a man purchaſe lands of another in fee, and after finding his title to be bad, and that a ſtranger hath right to the land, levies a fine thereof with intent to bar him; and he ſuffers five years to paſs without claim, &c. he is barred of his right for ever: And in theſe caſes none ſhall be relieved in equity. 3 *Rep. Doct. & Stud.* 83. 155.

A fine with proclamations levied by perſons of lands intailed to them or their anceſtors, &c. is a good bar againſt their heirs, claiming only by ſuch intail. 32 *H.* 8. *c.* 36. Where the anceſtor is barred by the fine, there for the moſt part the heir is barred alſo. 9 *Rep.* 105. Altho' the *iſſue in tail* be within age, out of the realm, *etc.* when a fine is had and the proclamations paſſed; the eſtate tail ſhall be barred. 3 *Rep.* 84. The tenant in tail, to him and the heirs male of his body, hath three ſons, the ſecond levies a *fine* in the life of the father, and the father dies; here the eldeſt is not barred. But if the elder die without iſſue, living the ſecond, it is a bar to the third. *Hob.* 333. *Jenk. Cent.* 96. Tenant in tail diſcontinues; the diſcontinuee levies a fine with proclamations, and five years paſs without claim in the life of tenant in tail: In this caſe the iſſue may have a *formedon*, and ſhall not be barred; for his father could not claim. It is otherwiſe where he is diſſeiſed, and the diſſeiſor levies ſuch fine; there the tenant in tail may claim, *etc.* *Jenk. Cent.* 192.

A tenant for life, and he that is next in remainder in tail join in a fine, it is a good bar to the iſſue in tail for ever, ſo long as that eſtate-tail ſhall continue. 10 *Rep.* 96. But tho' a fine bars the *eſtate-tail* and the *iſſue in tail*, yet it *doth not remainders or reverſions*; tho' *recoveries* bar them all.

And if one makes his title as heir by another, and not by him that levied the fine, he is not barred. Fines with proclamations bar ſtrangers, if they do not purſue their right within five years. 1 *R.* 3. *c.* 7. 4 *H.* 7. *c.* 24. Alſo *he that is privy in blood only, and not in eſtate, is not within the ſtatutes to be barred* by a fine: As if lands are given to a man and the heirs female of his body, and he hath a ſon and a daughter, and the ſon levies a fine, and dies without iſſue, this is no bar to the daughter; for notwithſtanding ſhe be heir to his blood, yet ſhe is not heir to the eſtate, nor need make her conveyance to it by him; but if her father had levied the *fine*, it would have been otherwiſe. *Trin.* 21 *Jac.* See *Cro. Jac.* 689.

A fine, *etc.* cannot deſtroy an *executory* eſtate, which depends upon *contingencies*, as it is uncertain whether there will ever be an eſtate *in being for the fine to work upon*; but a *fine and recovery* will bar an eſtate in *remainder*, as that is an eſtate *veſted*. 1 *Lill. Abr.* 617. Eſtates by ſtatute merchant, ſtatute ſtaple, and *elegit*, may be barred, if a fine is levied, and thoſe that have right ſuffer five years to paſs without claim, *etc.* 5 *Rep.* 124. If a fine be levied of lands in ancient demeſne, it doth not bar by the ſtatute of non-claim. *Lut.* 781.

As *deans, biſhops, parſons, etc.* are prohibited by ſtatutes to levy fines, and may not have a writ of right; they are not barred by five years non-claim, and their non-claim will not prejudice their ſucceſſors. *Plowd.* 238, 375.

By the ancient Common law, he that had right was to make his claim, *etc.* *within a year and a day of the fine levied and the execution thereof*, or he was barred for ever: But this bar is now gone; and if a fine without proclamations according to the Common law be now levied, he that hath right may make his claim or entry, *etc.* at any time to prevent the bar. *Co. Lit.* 254, 262. By ſtatute, a claim or entry to avoid the bar of a fine is to be made in five years: And no claim or entry ſhall avoid any fine with proclamations, unleſs an action be commenced within oue year after ſuch entry, and proſecuted with effect. 1 *R.* 3. *c.* 7. 4 *Ann. c.* 16.

Where a fine may be a bar as to ſome lands, and not as to other lands. See *F. N. B.* 98. A fine was levied, and five years paſſed without bringing a writ of error; and it was held a good bar within the *Stat.* 4 *H.* 7. *c.* 14. *Cro. Jac.* 333. But it has been adjudged that where five years paſs, that ſhall not hinder, where the fine is erroneous. 2 *Nelſ. Abr.* 838.

VI. *How fines may be reverſed.*

Fines may be reverſed for error, ſo as the writ of error be brought in *twenty years, etc.* and not afterwards, by *Stat.* 10 *and* 11 *W.* 3. *c.* 14.

As to erroneous fines, and the manner of reverſing them, it muſt be obſerved in the firſt place, that no perſon can bring a writ of error to reverſe a fine, or any judgment, that is *not intitled to the land, etc.* of which the fine was levied, for the courts of law will not turn out the preſent tenant, unleſs the *demandant* can make out a *clear title, poſſeſſion always carrying with it the preſumption of a good title till the right owner appears*; beſides, where the plaintiff in the writ of error cannot make out a title, he can receive no damage by the fine, which the writ of error always ſuppoſes to be done, tho' it ſhould be erroneous; and therefore it is no leſs than trifling with the courts of juſtice, to ſeek relief when he cannot make it appear that he has received any injury. 1 *Roll. Abr.* 747. *Dyer* 90. 3 *Lev.* 36.

But if there be ſeveral parties to an erroneous fine, they ſhall *all join* with the party that is to *enjoy* the land, tho' they themſelves cannot have any thing. 1 *Roll. Abr.* 747. *Dyer* 89.

Another rule to be obſerved is, that nothing can be aſſigned for error that contradicts the record; for the records of the courts of juſtice, being things of the greateſt credit, cannot be queſtioned but by matters of equal notoriety with themſelves; wherefore, tho' the matter aſſigned for error ſhould be proved by witneſſes of the beſt credit, yet the judges would not admit it. 1 *Rol. Abr.* 757.

Hence it is, that in a writ of error to reverſe a fine, the plaintiff cannot aſſign that the conuſor died before the *teſte* of the *dedimus poteſtatem*, becauſe that contradicts the record of the conuſance taken by the commiſſioners, which evidently ſhews, that the conuſor was then alive, becauſe they took his conuſance after they were armed with the commiſſion and the *dedimus* iſſued. *Dyer* 89. *b.* 1 *Roll. Abr.* 757. *Cro. Eliz.* 469.

But the plaintiff in error may ſay, that *after* the *conuſance* taken, and *before* the *certificate* thereof returned, the *conuſor* died; becauſe this is conſiſtent with the record. 1 *Rol. Abr.* 757.

If a leſſee for years, or a diſſeiſee, or one that hath right only to a reverſion or remainder, levy a fine to a ſtranger that hath nothing in the land, this fine will be void or voidable as to the ſtranger; and he that hath cauſe to except againſt it, may ſhew *that the freehold and ſeiſin was in another at the time of the fine levied*, and that *partes finis nihil habuerunt tempore levationis* finis, and by this avoid the fine, And yet a diſſeiſor, who hath a fee-ſimple by wrong in him, may levy a fine to a ſtranger that hath nothing in the land, like unto one that is rightfully ſeiſed of land in fee, *etc.* and it will be a good fine. *Plowd.* 353. 3 *Rep.* 87. If the *cogniſor* of a fine hath nothing in the land paſſed, at the time of the fine levied, the fine may be avoided: But where the *cogniſor* or *cogniſee* is ſeiſed of an eſtate of freehold, whether by right, or by wrong, the fine will be a good fine in point of eſtate. 41 *E.* 3. *c.* 14. 22 *H.* 6. *c.* 43.

Fines are not reverſible for raſure, interlineation, miſentry, *&c.* or any want of form; but it is otherwiſe if of ſubſtance. 23 *Eliz.* *c.* 3. A fine ſhall not be reverſed for ſmall variance, which will not hurt it; nor is there occaſion for a preciſe form in a tender upon a fine, becauſe it is only an *amicable aſſurance* upon record. 5 *Rep.* 38. If a fine be levied of lands in a wrong pariſh, tho' the pariſh in which they lie be not named, it will be a good fine, and not erroneous, being an amicable aſſurance: And a fine of a cloſe may be levied by a *lieu conus* in a town, without mentioning the town, vill, *&c.* *Godb.* 440. *Cro. Jac.* 574. 2 *Mod.* 47. If there be want of an original, or no writs of covenant for lands in every county; or if there is any notorious error, in the ſuing out a fine, or any fraud or deceit, *&c.* writ of error may be had to make void the fine. *Co. Lit.* 9. *Cro. Eliz.* 469. So if either of the parties dies before finiſhed, *&c.* And if the cogniſor of a fine die before the return of the writ of covenant, (tho' after the caption of the fine) it is ſaid it may be reverſed. 3 *Salk.* 168. *If the King's ſilver is paid, before death of cogniſor, the fine may be finiſhed and good.* See *ſeveral caſes towards the end of this diviſion.*

A writ of error may be brought in *B. R.* to reverſe a fine levied in *C. B.* and the tranſcript only, not the very record of the fine, is removed in theſe caſes: But if the court of *B R.* adjudge it erroneous; then a *certiorari* goes to the chirographer to certify the fine itſelf, and when it comes up it is cancelled. 1 *Salk.* 341. And where on a writ of error in *B R.* to reverſe a fine in *C. B.* the fine was affirmed; a *writ of error coram vobis reſiden.* hath been allowed to lie. *Ibid.* 357. The court of *B. R.* will not reverſe a fine without a *ſci. fac.* returned againſt the tertenant, becauſe the cogniſees are but nominal perſons. *Ibid.* 339. A fine may be ſet aſide, by pleading *that neither of the parties had any thing in the eſtate, at the time of levying the fine,* &c. But thoſe that are *privy to the perſon* that levied the fine, are eſtopped to plead this plea. 3 *Rep.* 88. In pleading a fine or recovery to uſes, the deed need not be ſet forth; but the pleader is to ſay, that the fine, *&c.* was levied *to ſuch uſes,* and produce the deeds in evidence to prove the uſes. 8 *W.* 3. *B. R.*

Fines may be avoided where they are obtained by fraud, covin or diſceit, tho' there be no error in the proceſs; and that may be done either by writ of diſceit or averment, ſetting forth the fraud or covin. *Cro. Eliz.* 471.

Thus if a fine be levied of land in ancient demeſne, the lord ſhall have a writ of diſceit againſt the conuſor and the tenant, and by that avoid the fine. *F. N. B.* 98. *a.* *Moor.* 6..

If a fine be levied to ſecret uſes to deceive a purchaſer, and the conuſee pleads the fine in bar, the purchaſer may aver the fraud in avoidance of the fine, by 27 *Eliz. cap.* 4. and ſuch averment is not contrary to the record, *becauſe it admits the fine, but ſets it aſide for the covin and fraud in obtaining it.* 3 Co. 8. *a.* Plowd. 49. *a.*

So if a fine be levied upon *an uſurious contract,* it may be avoided by *averment,* by 13 *Eliz. cap.* 8. becauſe ſuch fine being levied for ends the law has prohibited, the law will not encourage any evaſion out of the act, nor ſuffer ſuch *uſurious contracts* to be ſupported by the ſolemn acts of the courts of juſtice againſt the intention of the act. 3 *Co.* 80.

A fraudulent obtaining of a fine, or irregularity therein, cannot be relieved againſt in *Chancery*; but muſt be in the court where levied, though the officers may be examined and puniſhed, if they did it *criminaliter.* Preced. Canc. 150. And where one was perſonated on levying a fine, it was not ſet aſide in equity, but a reconveyance ordered of the land. *Ibid.* 151.

If either of the parties cogniſors die after the King's ſilver is entered, the fine ſhall be finiſhed, and be good. *Cro. Eliz.* 469.

A record of a fine may be amended, (if the King's ſilver is paid) where it is the miſpriſion of the clerk. 5 *Rep.* 43. A fine is perfect, when the King's ſilver is paid thereon. 1 *And.* 229.

Tho' one concord will ſerve for lands that lie in divers counties; yet there muſt be ſeveral writs of covenant. 3 *Inſt.* 21. *Dyer* 227. A concord of a fine may have an exception of part of the things mentioned therein: And if more acres are named, than a man hath in the place, or are intended to be paſſed; no more ſhall paſs by the fine than is agreed upon. 1 *Leon.* 81. 3 *Bulſt.* 317, 318. A fine as well as a deed may be covinous, and avoidable for this; where it is ſuffered by fraud to deceive a purchaſer, or creditor, *&c.* 3 *Rep.* 80 16 *H.* 7. *c.* 5

Fines levied before the juſtices in *Wales*; or in the counties Palatine of *Cheſter*, *Durham*, &c. have the ſame effect as fines levied before the juſtices of *C. B.* 34 *&* 35 *H.* 8. *c.* 22. 37 *H.* 8. *c.* 19. 2 *&* 3 *Ed.* 6. *c.* 28. 5 *Eliz.* *c.* 27. &c. See *Recovery.* See alſo *Com. Dig.* 3 *V.* tit. *Fine.* 2 *V.* *New Abr.* 520 to 554. *Black. Com.* 2 *V.* 118, 341, 352-3, *&c.* 3 *V* 156. 4 *V.* 419, 422. and for *Forms*, 2 *V.* *Appendix*, xiv.

Sometimes a ſum of money paid for the income of lands, *&c.* let by leaſe, is called a *fine.* *Fine* alſo ſignifies an amends, or puniſhment for an offence committed; in which caſe a man is ſaid *facere finem de tranſgreſſione cum rege, &c.* See *Poſt, fines for offences.* In all caſes it is a *final* concluſion or end of differences.

Fine adnullando levato Tenemento quod fuit de antiquo Dominico, Is a writ directed to the juſtices of *C. B.* for diſannulling a fine levied of lands in *antient demeſne,* to the prejudice of the lord. *Reg. Orig.* 15.

Fines for Alienations, Were fines paid to the King by his tenant in *chief,* for licence to *alien* their lands according to the *Stat.* 1 *Ed.* 3. *c.* 12. But theſe are taken away by the *Stat.* 12 *Car.* 2. *c.* 24.

Fines for Offences, Fine, in this ſenſe, is amends, pecuniary puniſhment, or recompence for an offence committed againſt the King and his laws, or againſt the lord of a manor: In which caſe a man is ſaid *finem facere de tranſgreſſione cum rege, etc.* Reg. Jud. f. 25. a. *Cowell.*

It ſeems that originally all puniſhments were corporal; but that after the uſe of money, when the profits of the courts aroſe from the money paid out of the Civil cauſes, and the fines and confiſcations in criminal ones, the commutation of puniſhments was allowed of, and the corporal puniſhment which was only *in terrorem,* changed into the pecuniary, whereby they found their own advantage.

This begat the diſtinction between the greater and the leſſer offences; for in the *crimina majora* there was at leaſt a fine to the King, which was levied by a *capiatur*; but upon the leſſer offences there was only an amercement, which was affeered, and for which a *diſtringas,* or action of debt only lay. 2 *New Abr.* 502.

Under this head is to be conſidered,

I. *Who may fine and amerce, and for what.*
II. *How fines,* &c. *may be mitigated and aggravated; as alſo how they may be recovered, and to whom they are payable.*
III. *What perſons are exempt from being fined.*

I. *Who may fine and amerce, and for what.*

Where a ſtatute impoſes a fine at the will and pleaſure of the King, that is intended of his judges, who are to impoſe the fine. 4 *Inſt.* 71. Courts of record only can *fine* and *impriſon* a perſon, *(except as aftermentioned):* And ſuch a court may fine a man for an offence committed in court in their view, or by confeſſion of the party recorded in court. 1 *Lill. Abr.* 621. A man ſhall be fined and impriſoned for all contempts done to any court of record againſt the commandment of the King's writs, *etc.* 9 *Rep.* 60.

If a perſon is arreſted coming to the courts of juſtice to anſwer a writ, the offender doing it ſhall be fined for the contempt: But there has been a difference made where it is done by the plaintiff in the writ, and a ſtranger, who it is ſaid ſhall not be fined. 9 *H.* 6. *c.* 55. 1 *Danv.* 469.

If an officer of the court neglects his duty, and gives not due attendance; a clerk of the peace doth not draw an indictment well in matter of form, or return thereof, upon a *certiorari* to remove the indictment in *B. R.* if a ſheriff, *&c.* make an inſufficient return of a *habeas corpus* iſſuing out of *B. R. &c.* or if juſtices of peace proceed on an indictment after a *certiorari* iſſued to remove the indictment; the court may fine them. 1 *Lil.* 620. When a juror at the bar will not be ſworn, he may be fined. 7 *H.* 6. *c.* 12. And if one of the jury depart without giving his verdict; or any of the jury give their verdict to the court before they are all agreed, they may be fined. 8 *Rep.* 38. 40 *Aſſ.* 10.

Alſo the ſheriff in his torn, and the ſteward of a court-leet, have a diſcretionary power, either to award a fine, or amercement for contempt to the court; as for a ſuitor's refuſing to be ſworn, *&c.* and the ſteward of a court-leet may either amerce or fine an offender, upon a preſentment, *&c.* for an offence not capital, within his juriſdiction. *Keilw.* 66. *Kitchin* 43, 51.

It is ſaid, that ſome courts may impriſon, but not fine, as the conſtables at the petit ſeſſions. 11 *Co.* 44. 1 *Rol. Rep.* 74. 11 *Co.* 43. *b.* Alſo ſome courts cannot fine or impriſon, but amerce, as the county, hundred, *&c.* 11 *Co.* 43. *b.* But ſome courts can neither fine, impriſon, nor amerce; as eccleſiaſtical courts held before the ordinary, archdeacon, *&c.* or their commiſſaries, and ſuch who proceed according to the *Canon,* or *Civil law.* 11 Co. 44. a.

Every *court of record* may enjoin the people to keep ſilence under a pain, and impoſe reaſonable fines, not only on ſuch as ſhall be convicted before them of any crime, on a formal proſecution, but alſo on all ſuch as ſhall be guilty of any contempt in the face of the court; as by giving opprobrious language to the judge, or obſtinately refuſing to do their duty as officers of the court. 11 *H.* 6. 12. *b.* 1 *Rol. Abr.* 219. 8 *Co.* 38. 11 *Co.* 43. *Cro. Eliz.* 581. 1 *Sid.* 145.

If a dead body in priſon, or other place, whereon an inqueſt ought to be taken, be interred, or ſuffered to lie ſo long, that it putrify before the coroner hath viewed it, the gaoler, or townſhip ſhall be amerced. 1 *Keb.* 278. 2 *Hawk. P. C.* 48. If any homicide be committed, or dangerous wound given, whether with or without malice, or even by miſadventure, or ſelf-defence, in any town, or in the lanes or fields thereof, in the day-time, and the offender eſcape, the town ſhall be amerced; and if out of a town, the hundred ſhall be amerced. 3 *Inſt.* 53. 4 *Inſt.* 183. *Cro. Car.* 252. 3 *Leon.* 207. 2 *Inſt.* 315. *Dyer* 210.

Beſides fines impoſed for offences, it ſeems, that regularly there was a fine or amercement in all actions; for if the plaintiff or demandant did not prevail, it was thought reaſonable that he ſhould be puniſhed for his unjuſt vexation; and therefore there was judgment againſt him, *quod ſit in miſericordia pro falſo clamore.* 8 *Co.* 39. *F. N. B.* 75.

Hence when the plaintiff takes out a writ, the ſheriff, before the return of it, was formerly obliged to take pledges of proſecution, which, when fines and amercements were conſiderable, were real and reſponſible perſons, and anſwerable for thoſe amercements; but being now ſo very inconſiderable, that they are never levied, they are only formal pledges entered, *viz. John Doe* and *Richard Roe.* 1 *Saund.* 227. See tit. *Bail.*

In all actions, where the judgment is againſt the defendant, it was to be entered with a *miſericordia,* or a *capiatur*; and herein the difference is, that if it be an action of debt, or founded on a contract, the entry is *ideo in miſericordia,* without aſſeſſing any ſum in certain, which was afterwards affeered by the coroners in the proper county; but if it were in action of treſpaſs, the court ſet the fine, and levied it by a *capiatur.* 8 *Co* 60. 1 *Rol. Abr.* 212, 219. *Cro. Eliz.* 844. *Cro. Jac.* 255. Therefore,

In actions *quare vi et armis,* as treſpaſs, and the like; if judgment paſs againſt the defendant in a court of record, he ſhall be fined. 8 *Rep.* 59. But in actions which have not ſomething of force, or fraud, or deceit to the court; if the defendant comes the firſt day he is called, and tender the thing demanded to the plaintiff, he is not to be fined. 5 *Rep.* 49. 8 *Rep.* 59, 60, 99. 3 *Aſſ.* 9. 22 *Aſſ.* 82. 1 *Danv. Abr.* 471. 1 *Vent.* 116.

All *capiatur fines* are taken away by *Stat.* 4 *&* 5 *W. & M. c.* 12. In treſpaſs, aſſault and battery, *&c.* there can be no *capiatur pro fine* entered ſince this *Stat.* See *Capiatur.*

II. *How fines, &c. may be mitigated and aggravated; as alſo how they may be recovered, and to whom they are payable.*

A fine may be mitigated the ſame term it was ſet, being under the power of the court during that time; but not afterwards. *T. Raym.* 376. And fines aſſeſſed in court by judgment upon an information, cannot be afterwards mitigated. *Cro. Car.* 251. If a fine certain is impoſed by ſtatute on any conviction, the court cannot mitigate it; but if the party comes in before conviction, and ſubmits to the court, they may aſſeſs a leſs fine; for he is not convicted, and perhaps never might. 3 *Salk.* 33. The court of *Exchequer* may mitigate a fine certain, becauſe it is a court of equity, and they have a privy ſeal for it. *Ibid.*

If an exceſſive fine is impoſed at the ſeſſions, it may be mitigated at the King's Bench. 1 *Vent.* 336. A defendant being indicted for an aſſault, confeſſed it, and ſubmitted to a ſmall fine; and it was adjudged, that in ſuch a caſe he may produce affidavits to prove on the proſecutor, that it was *ſon aſſault,* and that in mitigation of the fine; though this cannot be done after he is found Guilty. 1 *Salk.* 55. If a perſon is found Guilty of a miſdemeanor upon indictment, and fined, he cannot move to mitigate the fine, unleſs he appear in perſon; but one abſent may ſubmit to a fine, if the clerk in court will undertake to pay it. 1 *Vent.* 209, 270. 1 *Salk.* 55. 2 *Hawk.* 446.

It is a common practice in the court of *B. R.* to give a defendant leave to ſpeak with the proſecutor, *i. e.* to make ſatisfaction for the coſts of the proſecution, and alſo for damages ſuſtained, that there may be an end of ſuits; the court at the ſame time ſhewing on that account an inclination to ſet a moderate fine on behalf of the King. *Wood's Inſt.* 653. And in caſes where coſts are not given by law, after a proſecutor has accepted coſts from the defendant, he cannot aggravate the fine; becauſe having no right to demand coſts, if he takes them, it ſhall be intended by way of ſatisfaction of the wrong. 2 *H. P. C.* 292.

All fines belong to the King, and the reaſon is, *becauſe the courts of juſtice are ſupported at his charge*; and where-ever the law puts the King to any charge for the ſupport and protection of his people, it provides money for that purpoſe. *Bract.* 129. When a perſon is fined to the King, notwithſtanding the body remains in priſon, it is ſaid the King ſhall be ſatisfied the fine out of the offender's eſtate. 4 *Leon. c.* 393.

As to the method of recovering fines.

By the Common law, the King, or Lord may, at their election, diſtrain, or bring an action of debt for a fine or amercement. *Cro. Eliz.* 581. *Savil* 93. *Raſt. Ent.* 151, 553, 606. 2 *H.* 4. 24. *b.* 10 *H.* 6. 7. *Raym.* 68. But with reſpect to fines, ſet in inferior courts, every avowry, or declaration of this kind ought expreſly to ſhew, that the offence was committed within the juriſdiction of the court, for if it were not, all the proceedings were *coram non judice,* and a court ſhall not be preſumed to have a juriſdiction where it doth not appear to have one. *Hob.* 129. *Raſt. Ent.* 553. *Co. Ent.* 572. Alſo it is adviſable to alledge, that the offence was committed, as well as preſented, and to ſhew the names of the preſentors and the affeerors in ſetting forth a preſentment or affeerment, and alſo to ſhew that proper notice was given of holding the court. But for this, *vide Hawk. P. C.* 59, 60.

Of common right, a diſtreſs is incident to every fine and amercement, in a torn or leet for offences within the juriſdiction thereof; but if the offence were only the neglect of a duty created by cuſtom, and of a private nature, it is clear, that *there muſt be a cuſtom to warrant a diſtreſs*, and perhaps ſuch cuſtom is alſo neceſſary, though the duty be of a public nature. 2 *Hawk. P. C.* 60.

Alſo the ſheriff, or lord mayor may for ſuch fines or amercements diſtrain the goods of the offender, even in the highway, or in land not holden of the lord, unleſs ſuch land be in the poſſeſſion of the crown. 1 *Rol. Abr.* 670. 2 *Inſt.* 104. But ſuch fines and amercements being for a perſonal offence, no ſtranger's beaſts can lawfully be diſtrained for them, though they have been levant and couchant upon the lands of the offender. *Owen.* 146. *Noy* 20.

A joint award of one fine againſt divers perſons is erroneous; it ought to be ſeveral againſt each defendant, for otherwiſe one who hath paid his part might be continued in priſon till the others have paid theirs, which would be in effect to puniſh for the offence of another. 2 *Hawk.* 446. Fines to the King are *eſtreated* into the *Exchequer*. See farther as to fines, *Black. Com.* 3 *V.* 259. 4 *V.* 372.

Fines le Roy, Are all fines to the King; and under this head are included fines for *original writs.* Originals on treſpaſs on the caſe, where the damages are laid above 40*l.* pay a fine, *viz.* from 40*l.* damages to 100 marks, 6*s.* 8*d.* from 100 marks to 100*l.* the fine is 10*s.* From 100*l.* to 200 marks, 13*s.* 4*d.* From 200 to 400 marks, 16*s.* 8*d.* From 400 marks to 200*l.* it is 1*l.* fine; and ſo for every 100 marks more, you pay 6*s.* 8*d.* and every 100*l.* further 10*s.* *Pract. Attorn.* 1 *Edit. p.* 132. And fines are paid for original writs in *debt*; for every writ of 40*l.* debt, 6*s.* 8*d.* and if it be of 100 marks, but 6*s.* 8*d.* and for every 100 marks 6*s.* 8*d.* *&c.* alſo for every writ of *plea of land*, if it be not a writ of right patent, which is for the yearly value of 5 marks, 6*s.* 8*d.* and ſo according to that rate. 19 *H.* 6. 44. 7 *H.* 6. 33. *New Nat. Br.* 212.

Fine non capiendo pro pulchre Placitando, Is a writ to inhibit *officers* of courts to take fines for fair *pleading*. *Reg. Orig.* 179.

Fine capiendo pro Terris, &c. A writ lying where a perſon upon conviction of any offence by jury, hath his *lands and goods* taken into the King's hand, and his body is committed to priſon; to be remitted his impriſonment, and have his lands and goods redelivered him, on obtaining favour for a ſum of money, *&c. Reg. Orig. fol.* 142.

Fine pro Rediſſeiſina capienda, Is a writ that lies for the releaſe of one impriſoned for a *rediſſeiſin*, on payment of a reaſonable fine. *Reg. Orig.* 222.

Fine Force, Is where a perſon is *forced* to do that which he can no ways help; ſo that it ſeems to ſignify an abſolute neceſſity or conſtraint not avoidable. *Old Nat. Br.* 68. *Stat.* 35 *H.* 8. *c.* 12.

Finire, To fine, or pay a fine upon compoſition and making ſatisfaction, *&c.* It is the ſame with *finem facere*, mentioned in *Leg. H.* 1. *c.* 53. And in *Brompton, p.* 1105.—*Quando Rex* Scotiæ *cum domino rege* finivit, *&c.* And in *Hoveden, p.* 783.

Finitio, Death, ſo called; becauſe *vita* finitur *morte.* Blount.

Finors of Gold and Silver, Are thoſe perſons who purify and ſeparate gold and ſilver from coarſer metals, by fire and water. 4 *H.* 7. *c.* 2. They are not to allay it; or ſell the ſame, ſave only to the maſter of the mint, goldſmiths, *&c. Ibid.*

Firdfare and **Firdwite;** See *Ferdfare* and *Ferdwit.* Leg. Canuti, par. 2. c. 22.

Firderinga, A preparation to go into the army. *Leg. H.* 1.

Fire and **Fire-cocks.** Churchwardens in *London* and within the bills of mortality, are to fix *fire-cocks, &c.* at proper diſtances in ſtreets, and keep a large engine and hand-engine for extinguiſhing fire, under the penalty of 10*l.* &c. *Stat.* 6. *Ann. c.* 31 To prevent fires, workmen in the city of *London, &c.* muſt erect party-walls between buildings of brick or ſtone, of a certain thickneſs, *&c.* under penalties. *Stat.* 7 *Ann. c.* 17. 11 *Geo.* 1. *c.* 28. 33 *Geo.* 2. *c.* 30. and 4 *Geo.* 3. *c.* 14. And on the breaking out of any fire, all the conſtables and beadles ſhall repair to the place with their ſtaves, and be aſſiſting in putting out the ſame, and cauſing people to work, *&c.* No action ſhall be had againſt any perſon in whoſe houſe or chamber a fire ſhall begin. 6 *Ann. c.* 31. 10 *Ann. c.* 14.

Firemen exempt from being impreſſed, 6 *Ann. c.* 31. *ſect.* 2. Penalty on ſervants firing houſes by negligence. 6 *Ann. c.* 31. *ſect.* 3. Reſtrictions of boiling turpentine. 7 *Ann. c.* 17. *ſect.* 11. Stock in fire-offices how taxed. 4 *Geo.* 3. *c.* 2. *ſect.* 54. See *Arſon.*

Firebare, (Sax) Signifies a *beacon* or high tower by the ſea-ſide, wherein are continual lights, either to direct ſailors in the night, or to give warning of the approach of an enemy. *Quod ſine dilatione levari & reparari fac. ſigna &* firebares *ſuper montes altiores in quolibet hundredo, ita quod tota patria, per illa ſigna, quotieſcunque neceſſe fuerit, premunire poteſt, &c.* Ordinatio *obſervanda à* Lynne *uſque* Yarmouth. *Temp. Ed.* 2.

Firebote, Fuel for *firing* for neceſſary uſe, allowed by law, to tenants out of the lands, *&c.* granted them. See *Eſtovers.*

Firma, Is taken for victuals or proviſions; alſo rent, *&c.*

Firma Alba, Rent of lands let to farm paid in ſilver, not in proviſion for the lord's houſe. See *Alba Firma.*

Firma Noctis, Was a cuſtom or tribute paid towards the entertainment of the King for one night, according to *Domeſday —Comes meriton* T. R. E. *reddebat* firmam *unius* noctis, *&c. i. e.* proviſion or entertainment for one night, or the value of it. *Temp. Reg. Edw. Confeſſ.*

Firmam Regis, Anciently *pro* villa regia, *ſeu* regis manerio. *Spelm.*

Firmatio, *Firmationis Tempus. Doe* ſeaſon, as oppoſed to *buck* ſeaſon. 31 *H.* 3. *Firmatio* ſignifies alſo a ſupplying with food. *Leg. Inæ, cap.* 34.

Firmura. *Will. de Creſſi* gave to the monks of *Blyth*, a mill, *cum libera* firmura of the dam of it. *Reg. de Blyth.* This has been interpreted liberty to ſcour and repair the mill dam, and carry away the ſoil, *&c.* And Dr. *Thornton* Engliſhes it *Free Firmage.*

Fire-ordeal. See *Ordeal*, and *Black. Com.* 4 *V.* 336.

Fire-works. No perſon whatſoever ſhall make, ſell, *&c.* ſquibbs, rockets, ſerpents, *&c.* or caſes, moulds, *&c.* for making ſuch ſquibbs, and every ſuch offence ſhall be adjudged *a common nuſance.*

Perſons throwing or firing ſquibbs, *&c.* or ſuffering them, *&c.* to be thrown or fired from their houſes incur a penalty of 20*s.* Likewiſe perſons throwing, caſting or firing, or aiding or aſſiſting in the throwing, caſting or firing of any ſquibbs, rockets, ſerpents, or other fireworks, in or into any public ſtreet, houſe, ſhop, river, highway, road or paſſage, incur the like penalty of 20*s.* and on non-payment may be committed to the houſe of correction. *Stat.* 9 & 10 *W.* 3. *c.* 7.

N. B. *This ſtatute doth not take from any perſon* injured, *by throwing of ſquibbs,* &c. *the remedy, at* Common law, *for the party may maintain a* ſpecial action on the caſe, *or* treſpaſs, *&c. for recovery of* full damages.

Firſt-fruits, *(Primitiæ)* Are the profits after avoidance, of every ſpiritual living for the firſt year, according to the valuation thereof in the King's books. Theſe were given in ancient times to the *Pope* throughout all chriſtendom; and were firſt claimed by him in *England* of ſuch foreigners as he beſtowed benefices on here by way of proviſion; afterwards they were demanded of the clerks of all ſpiritual patrons, and at length of all other clerks on their admiſſion to benefices: but upon the throwing off the *Pope's* ſupremacy in the reign of *Hen.* 8. they were tranſlated to, and veſted in, the King, as appears by the *Stat.* 26 *H.* 8. *c.* 3 And for the ordering thereof, there was a court erected, 32 *H.* 8. but diſſolved *Ann.* 1. *Mar.*

Though by 1 *Eliz. c.* 4. theſe profits are reduced again to the crown, yet the court was never reſtored; for all matters formerly handled therein, were transferred to the *Exchequer*, within the ſurvey of which court they now remain.

By *Stat.* 26 *H.* 8. the Lord Chancellor, *&c.* is impowered to examine into the value of *Firſt-fruits*; and clergymen entering on their livings before the ſame are paid or compounded, are to forfeit double value. But the 1 *Eliz. c.* 4. ordains, that if an incumbent on a benefice do not live half a year, or is ouſted before the year expired, his executors are to pay only a fourth part of the *Firſt-fruits*; and if he lives the year, and then dies, or be ouſted in ſix months after, but half of the *Firſt-fruits* ſhall be paid.

And by this ſtatute livings not above 10*l. per Ann. &c.* are diſcharged from payment of theſe duties: as are alſo benefices under and not exceeding 50*l.* a year, by *Stat.* 5 *Ann. c.* 24. The 2 *Ann. c.* 11. ſettles upon a *corporation* the *Firſt-fruits* and tenths of all benefices for the *maintenance of the poor clergy*; which is called the corporation of the *bounty of Q. Anne.* See the act, relating to large waſtes in *Yorkſhire* incloſed, a ſixth part for the benefit of *poor clergymen*, whoſe livings do not exceed 40*l. per ann. Stat.* 12 *Ann. c.* 4. Vide 3 *Geo.* 1. *c.* 10. *Black. Com.* 1 *V.* 284. 2 *V.* 67. 4 *V.* 106.

Fiſh and Fiſhing. No fiſherman ſhall uſe any net or engine, to deſtroy the fry of fiſh: and perſons uſing nets for that purpoſe, or taking ſalmon or trout out of ſeaſon, or any fiſh under certain lengths, are liable to forfeit 20*s.* and juſtices of peace, and lords of leets have power to put the acts in force. See 1 *El. c.* 17. 3 *Jac.* 1. *c.* 12. 30 *Geo.* 2. *c.* 21. *& poſt.* No perſon may faſten nets, *&c.* acroſs rivers to deſtroy fiſh, and diſturb paſſage of veſſels, on pain of 5*l. Stat.* 2 *H.* 6. *c.* 15. None ſhall fiſh in any pond or mote, *&c.* without the owner's licence, on pain of three months impriſonment. 31 *H.* 8. *c.* 2. And no perſon ſhall take any fiſh in any river, without the conſent of the owner, under the penalty of 10*s.* for the uſe of the poor, and treble damage to the party grieved, leviable by diſtreſs of goods; and for want of diſtreſs, the offender is to be committed to the houſe of correction for a month: alſo nets, angles, *&c.* of pochers may be ſeized, by the owners of rivers, or by any perſons by warrant from a juſtice of peace, *&c.* 22 *&* 23 *Car.* 2. *c.* 25. 4 *&* 5 *W. & M. c.* 23.

The *Stat.* 4 *&* 5 *Ann. c.* 21. was made for the increaſe and preſervation of ſalmon in rivers in the counties of *Southampton* and *Wilts*; requiring that no ſalmon be taken between the 1ſt of *Auguſt* and 12th of *November*, or under ſize, *&c.* And by 1 *Geo.* 1. *c.* 18. Salmon taken in the river *Severn*, *Dee*, *Wye*, *Were*, *Ouſe*, &c. are to be 18 inches long at leaſt: or the perſons catching them ſhall forfeit 5*l.* and ſea fiſh ſold muſt be of the lengths following, *viz.* Bret and turbot 16 inches, brill and pearl 14, codlin, baſs and mallet 12, ſole and place 8, flounders 7, whiting 6 inches long, *&c.* on pain of forfeiting 20*s.* to the poor, and the fiſh. *Vide* the ſtatute. Perſons that import any fiſh, contrary to the 1 *Geo.* 1. *c.* 18. for better preventing *freſh* fiſh taken by *foreigners* being imported into this kingdom, *&c.* ſhall forfeit 100*l.* to be recovered in the courts at *Weſtminſter*, one moiety to informers, and the other to the poor; and maſters of ſmacks, hoys, boats, *&c.* in which the fiſh ſhall be imported, or brought on ſhore, forfeit 50*l.* Alſo ſelling the ſame in *England*, is liable to 20*l.* penalty. *Stat.* 9 *Geo. c.* 33.

By the *ſtat.* 22 *Geo.* 2. *c.* 49. contracts for the buying fiſh (except freſh ſalmon, or ſoles brought by land carriage, oyſters, or ſalt, or dryed fiſh) to be ſold by retail before the ſame are brought to market and expoſed to ſale, are declared void; and each party contracting ſhall forfeit 50*l.* And fiſhermen not ſelling their fiſh within eight days after their arrival on the coaſt between *North Yarmouth* and *Dover*, ſhall forfeit the cargo, veſſel and tackle, *&c.* And ſea fiſh under the dimenſions prohibited by the *ſtat.* 1 *Geo.* 1. may be expoſed to ſale, provided they are taken with a hook, and ſo not capable of being preſerved alive.

But ſee *ſtat.* 33 *Geo.* 2. *c.* 27. made to regulate the ſale of fiſh at the firſt hand in the fiſh markets in *London* and *Weſtminſter*; and to prevent ſaleſmen of fiſh buying fiſh to ſell again on their own account; and to allow bret and turbot, brill, and pearl, although under the reſpective dimenſions mentioned in 1 *Geo.* 1. *c.* 18. to be imported and ſold; and to puniſh perſons who ſhall take or ſell any ſpawn, brood, or fry of fiſh, unſizable fiſh, or fiſh out of ſeaſon, or ſmelts under the ſize of five inches.

By this act every maſter of a veſſel is to give a true account of the ſeveral ſorts of fiſh brought alive to the *Nore* in his veſſel, and if after ſuch arrival, he ſhall wilfully deſtroy or throw away any of the ſaid fiſh, not being unwholeſome or unmarketable, *&c.* he is liable to be committed to the houſe of correction, and kept to hard labour for any time not exceeding two months nor leſs than one. And ſee farther 2 *Geo.* 3. *c.* 15. for the better ſupplying the cities of *London* and *Weſtminſter* with fiſh, and to reduce the exorbitant price thereof; and to protect and encourage fiſhermen.

For the penalty inflicted on perſons ſtealing or deſtroying fiſh in fiſh-ponds, or of receiving ſtolen fiſh. See 5 *Geo.* 3. *c.* 14. *ſect.* 1, 2, 3, 4. The offender is to be *tranſported* for *ſeven years.*

There is a new act made for the encouragement of the white herring fiſhery, which *vide* 11 *Geo.* 3. *c.* 31.

And by 8 *Geo.* 3. *c.* 27. ſeveral acts for the encouragement of the whale fiſhery are continued, and further proviſions are made for the benefit of thoſe concerned in the whale fiſhery, and other directions given, *&c.* by 11 *Geo.* 3. *c.* 38.

Fiſh-royal, *Whale* and *Sturgeon*, which the King is intitled to when either thrown on ſhore or caught near the coaſts. *Plowd.* 315. *Black. Com.* 1 *V.* 290.

Fiſhing, Right of, and *property* of fiſh. It has been held, that where the Lord of the manor hath the ſoil on both ſides the river, it is a good evidence that he hath the *right of* fiſhing, and it puts the proof upon him who claims *liberiam piſcariam*; but where a river ebbs and flows, and is an arm of the ſea, there it is *common to all*, and he who claims a privilege to himſelf muſt prove it; for if treſpaſs is brought for fiſhing there, the defendant may juſtify that the place where is *brachium maris, in quo unuſquiſque ſubditus domini regis habet & habere debet* liberam piſcariam:

In the *Severn*, the ſoil belongs to the owners of the land on each ſide; and the ſoil of the river *Thames*, is in the King, *&c.* but the fiſhing is common to all. 1 *Mod.* 105. He who is owner of the ſoil of a private river, hath *ſeparalis piſcaria*; and he that hath *libera piſcaria*, hath a property in the fiſh, and may bring a poſſeſſory action for them; but *communis piſcaria* is like the caſe of all other commons. 2 *Salk.* 637. *Common of piſcary* is a liberty of fiſhing in another man's water. *Black. Com.* 2 *V.* 34. A *free fiſhery*, or excluſive right of fiſhing in a public river, is a royal franchiſe: He that has a *ſeveral fiſhery* muſt be owner of the ſoil. In a *free fiſhery*, a man has property in the fiſh before they are caught: In a *common of piſcary*, not till afterwards. *Black. Com.* 39, 40. which *vide.* As to a *free fiſhery* no new franchiſe can at preſent be granted of it, by the expreſs proviſion of *Magna Charta*, *c.* 16. *Black. Com.* 2 *V.* 417. One that has a cloſe pond in which there are fiſh, may call them *piſces ſuos* in an indictment, *&c.* But he cannot call them as *bona & catalla*, if they be not in trunks. *Mod. Ca.* 183. There needs no privilege to make a fiſh pond; as there doth in caſe of a warren. *Ibid.*

Fiſhermen. There ſhall be a maſter, wardens and aſſiſtants of the *Fiſhermen's Company* in *London*, choſen yearly at the next court of the Lord Mayor and Aldermen after the tenth of *June*, who are conſtituted a court of aſſiſtants: and they ſhall meet once a month at their common hall, to regulate abuſes in fiſhery, regiſter the names, of fiſhermen, and mark their boats, *&c.* See *Stat.* 9 *Ann c.* 26. *Fiſh and fiſhing*, *Herrings*, &c.

Fiſhery. A *Royal Fiſhery* of *England* was eſtabliſhed in the reign of King *Car.* 2. and the members of it incorporated into a company. The crown hath power to direct 20*s.* out of every 100*l. South-Sea* ſtock, to be applied for improving the fiſhery of the kingdom, carried on to *Greenland*, and in other Northen ſeas. *Stat.* 9 *Ann. c.* 21. And for recovery of the *Britiſh* fiſhery, allowances are made on fiſh exported to other countries, *etc. Stat.* 5 *Geo.* 1. *c.* 28. *Fiſhery* in *Scotland* to be improved according to the articles of the union. 13 *Geo.* 1. *c.* 30.

By *Stat.* 22 *Geo.* 2. *c.* 45. The *whale fiſhery* is further incouraged and inlarged. And ſee *ſtatutes* 23 *Geo.* 2. *c.* 24. and 26 *Geo.* 2. *c.* 9. for the encourgement of the *Britiſh White Herring Fiſhery.* And tit. *Fiſh and Fiſhing.*

Fiſhgarth, A dam or wear in a river, made for the taking of fiſh, eſpecially in the rivers of *Ouſe* and *Humber*. 23 H. 8. c. 18.

Flaco, A place covered with ſtanding water. *Mon. Angl. tom.* 1. *p.* 209.

Flecta, A feathered or fledged arrow, a *fleet arrow.* Radulphus *de* F. *tenet, &c. per ſervitium reddendi per Annum viginti* Flectas. *Dom. Reg.* 9 Edw. 1.

Fledwite or Flightwite, (from the Sax *Flyth fuga et* Wite, *Mulcta)* In our ancient law ſignifies a diſcharge from amerciaments, where a perſon having been a *fugitive,* comes to the peace of our Lord the King of his own accord, or with licence. *Raſtal.*

Fleet, (Sax. *Fleot,* i. e. *Flota,* a place of running-water, where the tide or *float* comes up) Is a famous *priſon* in *London,* ſo called from a river or ditch that was formerly there, on the ſide whereof it ſtood. To this priſon men are uſually committed for contempt to the King and his laws, particularly againſt the courts of juſtice; or for debt, when perſons are unable or unwilling to ſatisfy their creditors: there are large rules, and a *warden* belonging to the *Fleet Priſon,* &c. *Stat.* 8 & 9 *W.* 3. *c.* 7. By a late ſtatute, the warden of the *Fleet* was diſabled to hold any office, for his notorious oppreſſions of the priſoners; and the King was impowered to grant the ſaid office to ſuch perſon as he ſhould think fit, *&c.* 2 *Geo.* 2. *c.* 32.

Fleet-Ditch. The Lord Mayor of *London, &c.* may fill up *Fleet-Ditch,* and make the ſoil level with the ſtreets; and the fee is veſted in the Mayor and commonalty. *Stat.* 6 *Geo.* 2. *c.* 22. And now, by virtue of the act for building *Blackfryars Bridge* the ditch is in part arched over, and ſo filled up to the foot of the bridge, that the ground is now level with *Fleet-ſtreet.*

Fleet of Ships, See *Flota Navium,* and *Navy Royal* of *England.*

Flem, *Flema,* (from the Sax. *Flean,* to kill or ſlay) An outlaw; and by virtue of the word *Flemaſlare* were claimed *bona felonum,* as may be collected from a *quo warranto* Temp. Ed. 3.

Flemenefrit, Flemenesfrinthe, Flymenafrynthe, Signifies the receiving or relieving of a fugitive or outlaw. *Leg. Inæ, c.* 29, 47. *LL. H.* 1. *c.* 10, 12.

Flemeswite, (Sax.) *Fleta,* who writes of this word, interprets it *habere catalla fugitivorum.* Lib. 1. c. 47.

Flighers, Maſts for ſhips,—— *Conceſſit etiam eis,* Flighers *ad ſuam propriam navem, colligendas in territorio, &c.* Mon. Angl. tom. 1. p. 799.

Flight, For any crime committed, which implies guilt. See *fugitives.* And *Black. Com.* 4 *V.* 380.

Flood-mark. The mark which the ſea makes on the ſhore, at flowing water and the higheſt tide: it is alſo called *High-water Mark.*

Florence, An ancient piece of *Engliſh* gold coin: every pound weight of old ſtandard gold was to be coined into fifty *Florences,* to be current at ſix ſhillings each; all which made in tale fifteen pounds, or into a proportionate number of *half Florences* or *quarter* pieces, by indenture of the *Mint.* 18 Ed. 3.

Florin, A foreign coin, in *Spain* 4 s. 4 d. *Germany* 3 s. 4 d. and *Holland* 2 s. And in ſome parts of *Germany,* accounts are kept in *Florins.*

Flota navium, A fleet of ſhips.——*Rex, &c. Sciatis quod conſtituimus* Johannem *de* R. *Admirallum noſtrum* Flotæ Navium *ad ore aquæ Thamaſiæ verſus partes occidentales, &c.* Rot. Francia, 6 R. 2. m. 21.

Flotages, Are ſuch things as by accident ſwim on the top of great rivers; the word is ſometimes uſed in the commiſſions of *Water Bailiffs.*

Flotſam, Is where a ſhip is ſunk or caſt away, and the goods are *floating* upon the ſea. 5 *Rep.* 106. *Flotſam, Jetſam* and *Lagan* are mentioned together; *Jetſam* being where any thing is caſt out of the ſhip when in danger, and the ſhip notwithſtanding periſheth; and *Lagan* is when heavy goods are thrown over-board before the wreck of the ſhip, which ſink to the bottom of the ſea. *Lex Mercat.* 149. The King ſhall have *Flotſam, Jetſam* and *Lagan,* when the ſhip is loſt, and the owners of the goods are not known; but not otherwiſe. *F. N. B.* 122. Where the proprietors of the goods may be known, they have a year and a day to claim *Flotſam.* 1 Keb. 657. *Flotſam, Jetſam, &c.* any perſon may have by the King's grant, as well as the Lord Admiral, *&c. Lex Mercat.* 149. See 12 *Ann. ſtat.* 2. *c.* 18. 26 *Geo.* 2. *c.* 19. and title *Wreck.*

Focage, *(Focagium)* The ſame with *Houſe-bote* or *Fire-bote.*

Focal, A right of taking wood for firing: *In eadem Haiâ* 10 *Carratas* Focales *recipiendas annuatim per viſum ſervientis mei.* Mon. Angl. Tom. 1. p. 779.

Foder, (Sax. *Foda,* i. e. *Alimentum)* Any kind of meat for horſes, or other cattle: and among the *Feudiſts* it is uſed for a prerogative of the prince, to be provided with corn and other meat for his horſes, by his ſubjects, in his wars or other expeditions. *Hotom de verb. Feudal.*

Fodertorium, Proviſion or fodder, to be paid, by cuſtom to the King's purveyor. *Cartular. St. Edmund. MS. fol.* 102.

Foenus nauticum. Where money was lent to a merchant to be employed in a beneficial trade, with condition to be repaid, with extraordinary intereſt, in caſe ſuch a voyage was ſafely performed, the agreement was ſometimes called *foenus nauticum,* ſometimes *uſura maritima.* But as this gave an opening for uſurious and gaming contracts, 19 *Geo.* 2. *c.* 37. enacts, that all money lent on bottomry or at *reſpondentia,* on veſſels bound to or from the *Eaſt-Indies,* ſhall be expreſly lent, only upon the ſhip or merchandize; the lender to have the benefit of ſalvage, *&c. Black. Com.* 2 *V.* 459. *Mol. de jur mar.* 361.

Foeſa, (Fr. *Foiſſon)* Graſs, herbage. *Mon. Angl. Tom.* 2. *p.* 506.

Fogage, *(Fogagium)* Fog or rank after-graſs, not eaten in Summer. *LL. Foreſtar. Scot. c.* 16.

Foiterers, By *Blount* are interpreted to be vagabonds. See *Faitours.*

Folc-lands, *(Sax.)* Copyhold lands ſo called in the time of the *Saxons,* as charter lands were called *Boc-lands. Kitch.* 174. *Folkland* was *terra vulgi* or *popularis* the land of the vulgar people, who had no certain eſtate therein, but held the ſame under the rents and ſervices accuſtomed or agreed, at the will only of their Lord the *Thane*; and it was therefore not put in writing, but accounted *prædium ruſticum & ignobile.* Spelm. of Feuds, cap. 5.

Folc-mote or Folkmote, (Sax.) *Folgemot,* i. e. *Conventus populi)* Is compounded of *Folk, populus,* and *mote* or *gemote, convenire*; and ſignified originally, as *Somner* in his *Saxon Dictionary* tells us, a general aſſembly of the people to conſider of, and order matters of the commonwealth: *Omnes proceres regni et milites et liberi homines univerſi totius regni Britanniæ facere debent in pleno* Folcmote *Fidelitatem domino regii, etc. Leg. Edw. Confeſſ. cap.* 35. And Sir *Henry Spelman* ſays, the *folcmote* was a ſort of annual parliament, or convention of the Biſhops, Thanes, aldermen and freemen, upon every *May-day* yearly; where the laymen were ſworn to defend one another, and to the King, and to preſerve the laws of the kingdom, and then conſulted of the common ſafety. But Dr. *Brady* infers from the laws of our *Saxon* Kings, that it was an inferior court, held before the *King's Reeve* or ſteward, every month to do *Folk* right, or compoſe ſmaller differences, from whence there lay appeal to the ſuperior courts. *Brady's Gloſſ. p.* 48. *Squire* ſeems to think the *Folcmote,* not diſtinct from the *ſhiremote,* or common general meeting of the county. See his *Angl. Sax. Gov.* 155. *n.*

Manwood mentions *folkmote* as a court holden in *London,* wherein all the *folk* and people of the city did complain of the Mayor and Aldermen, for miſgovernment within the ſaid city: and this word is ſtill in uſe among the *Londoners*; and denotes *Celebrem ex tota civitate conventum.* Stow's Survey.

According to *Kennet*, the *folkmote* was a common council of all the inhabitants of a city, town or borough, convened often by ſound of bell to the *Mote Hall* or *Houſe*; or it was applied to a larger congreſs of all the freemen within a county, called the *Shire-mote*, where formerly all knights and military tenants did fealty to the King, and elected the annual ſheriff on the firſt of *October*, till this popular election to avoid tumults and riots devolved to the King's nomination. *Anno* 1315. 3 *Ed.* 1.

After which the *City Folkmote* was ſwallowed up in a ſelect committee or *Common Council*; and the *County Folkmote*, in the *Sheriff's Tourn* and *Aſſiſes*. The word *Folkmote* was alſo uſed for any kind of popular or public meeting; as of all the tenants at the *Court-Leet* or *Court-Baron*, in which ſignification it was of a leſs extent. *Paroch. Antiq.* 120.

Foldage and **Fold-courſe**, A liberty to fold ſheep, &c. *Faldage* and *Faldfee*.

Folgarii, Menial ſervants; *Eos qui aliis deſerviunt. Bract. lib.* 3. *tract.* 2. *c.* 10. Houſe-keepers by the *Saxons* were called *Husfaſtene*; and their ſervants or followers, *Folgheres* or *Folgeres*. LL. Hen. 1. c. 9.

Fool, A natural, one ſo from the time of his birth. See *Ideot*.

Foot of a Fine. See *Fine*.

Footgeld, (From the *Sax*. Fot, *Pes et* Geldan, *ſolvere*) Is as much as *pedis redemptio*, and ſignifies an amercement for not cutting out and *expeditating* the balls of great dogs feet in the *foreſt*: to be quit of *footgeld* is a privilege to keep dogs within the foreſt unlawed, without puniſhment. *Manwood, par.* 1. *p.* 86.

Forage, (Fr. *Fourage*) Hay and ſtraw for horſes, particularly for the uſe of horſe in an army.——*Et le dit* J. *trovera herbe et feyn et* Forage *pour un Hackney*, &c. MS. Penes Wal. Blount, Bar'.

Foragium, Straw when the corn is thraſhed out. *Cowel*.

Forbalk, *(Forbalka)* Lying forward or next the highway. *Petr. Bleſenſis Contin. Hiſt. Croyland, p.* 116.

Forbarre, Is to bar or deprive one of a thing for ever. 9 *R.* 2. *c.* 2. and 6 *H.* 6. *c.* 4.

Forbatudus, Is when the aggreſſor in combat is ſlain. ——*Et ſic eſt veritas ſine ullo concludio et in ſua culpa ſecundum legem* Forbatudum *fecit*, &c.

Forbiſher of Armour, (Forbator) *Si quis forbator arma alicujus ſuſceperit, ad purgandum*, &c. LL. Aluredi, MS. c. 22.

Force, *(Vis)* Is moſt commonly applied *in pejorem partem*, the evil part, and ſignifies any unlawful violence. It is defined by *Weſt* to be an offence, by which violence is uſed to things or perſons; and he divides it into *ſimple* and *compound*; *ſimple force*, is that which is ſo committed that it hath no other crime accompanying it; as if one by *force* do only enter into another man's poſſeſſion, without doing any other unlawful act: mixed or *compound force*, is when ſome other violence is committed with ſuch a fact, which of itſelf alone is criminal; as where any one by *force* enters into another man's houſe, and kills a man, or raviſhes a woman, &c. And he makes ſeveral other diviſions of this head. *Weſt. Symbol. pa.* 2. *ſect.* 65. Lord Coke ſays, there is alſo a *force implied* in law; as every treſpaſs, reſcous, or diſſeiſin, implieth it; and an *actual force*, with weapons, number of perſons, &c. where threatning is uſed to the terror of another. *Co. Lit.* 257. By law any perſon may enter a tavern; and a landlord may enter his tenant's houſe to view repairs, &c. But if he that enters a tavern, commits any *force* or violence: or he that enters to view repairs, breaketh the houſe, &c. it ſhall be intended that they entered for that purpoſe. 8 *Rep.* 146. All *force* is againſt the law; and it it is lawful to repel *force* by *force*: there is a maxim in our law, *Quod alias bonum et juſtum eſt, ſi per vim vel fraudem petatur, malum et injuſtum eſt.* 3 Rep. 78.

Forcible Entry and Detainer. The *firſt* is a violent *actual entry* into houſes or lands: and *forcible detainer* is a *with-holding by violence*, and *with ſtrong hand*, of the poſſeſſion of land, &c. whereby he who hath right of entry is barred or hindred. At common law, any one who had a right of entry into lands, &c. might regain poſſeſſion thereof by force; but this liberty being much abuſed, to the breach of the public peace, it was found neceſſary that it ſhould be reſtrained by ſtatute: at this day, he who is wrongfully diſpoſſeſſed of goods, may juſtify the retaking them by force. *Lamb.* 135. *Cromp.* 70. *Keilw.* 92. But ſee 3 *Salk.* 187.

By ſtatutes, none ſhall enter into any lands or tenements, but where entry is given by law, and in a peaceable manner, though they have title of entry, on pain of impriſonment, &c. And when a *forcible entry* is committed, juſtices of peace are impowered to view the place, and inquire of the force by a jury ſommoned by the ſheriff of the county; and cauſe the tenements to be ſeized and reſtored, and impriſon the offenders till they pay a fine. 5 *R.* 2. *ſtat.* 1. *c.* 8. 15 *R.* 2. *c.* 2. 8 *H.* 6. *c.* 9. *ſ.* 2.

If a juſtice of peace come to view a force in a houſe, and they refuſe to let him in; this of itſelf will make a *forcible detainer* in all caſes; but it muſt be upon complaint made. The juſtices of peace are not to inquire into the title of either party; and there ſhall be no reſtitution upon an indictment of *forcible entry* or detainer, where the defendant hath been in quiet poſſeſſion for three years together without interruption, next before the day of the indictment found, and his eſtate in the land not ended; which may be alledged in ſtay of reſtitution, and reſtitution is to be ſtayed till that be tried, if the other will traverſe the ſame, &c. *Dalt.* 312. *Stat.* 31 *Eliz. c.* 11.

Indictment for *forcible entry* muſt be laid of *liberum tenementum*, &c. to have reſtitution by the ſtatute 15 *R.* 2. *c.* 2. 8 *H.* 6. *c.* 9, &c. Though by 21 *Jac.* 1. *c.* 15. Juſtices of peace may give like reſtitution of poſſeſſion to tenants for years, tenant by *elegit*, ſtatute ſtaple, &c. and copyholders, as to freeholders.

Before this ſtatute it was neceſſary to be laid of *liberum tenementum*, as mentioned above; and ſince that ſtatute it ought to ſay, what eſtate he has: for perhaps he is only tenant at will. *Semb.* 1 *Salk.* 260. *R.* 1 *Sid.* 102. See farther as to what ſhall be a good indictment, *Com. Dig.* 3 *V.* 369. *(D.* 4.)

It remains to conſider,

I. *What ſhall be deemed a forcible entry and detainer under the foregoing ſtatutes.*

II. *What remedy is provided in ſuch caſes.*

I. *What ſhall be deemed a forcible entry and detainer under the foregoing ſtatutes.*

When one or more perſons armed with unuſual weapons, violently enter into the houſe or land of another; or where they do not enter violently: if they forcibly put another out of his poſſeſſion; or if one enters another's houſe, without his conſent, although the door be open, &c. Theſe are forcible entries puniſhable by law. *Co. Lit.* 257. So when a tenant keeps poſſeſſion of the land at the end of his term againſt the landlord, it is a forcible detainer. *Cro. Jac.* 199. And if a leſſee takes a new leaſe of another perſon, whom he conceives to have better title, and at the end of the term keeps poſſeſſion againſt his own landlord, this is a forcible detainer. *Ibid.* Alſo perſons continuing in poſſeſſion of a defeazible eſtate, after the title is defeated, are puniſhable for forcible entry; *for continuing in poſſeſſion afterwards, amounts in law to a new entry. Co. Lit.* 256, 257. And an infant, or feme-covert may be guilty of forcible entry within the ſtatutes in reſpect of violence committed by them in perſon; but not for what is done by others at their command, their commands being void. *Co. Lit.* 357.

If a man have two houſes next adjoining, the one by a defeaſible title, and the other by a good title; and he uſes force in that he hath by the good title to keep perſons out of the other houſe, this is a forcible detainer. 2 *Shep. Abr.* 203. A man enters into the houſe of another by the windows, and then threatneth the party, and he for fear doth leave the houſe, it is a forcible entry: ſo if one enter a houſe when no perſon is therein, with armed men, &c. *Moor Caſ.* 185. If a perſon after peaceable entry, ſhall make uſe of arms to defend his poſſeſſion, *&c.* it will be forcible detainer: a man put another out of his houſe by force, if he then puts in one of his ſervants in a peaceable manner, who keeps out the party, *&c.* it will be a forcible entry, but not a detainer; but if himſelf remaineth there with force, this makes a *forcible detainer.* 2 Shep. 203. If I hear that perſons will come to my houſe to beat me, *&c.* and I take in force to defend myſelf, it is no *forcible detainer*: tho' where they are coming to take poſſeſſiion only, it is otherwiſe. *Ibid. This muſt mean, where they have a right to take poſſeſſion, by law.*

This offence may be committed of a rent, as well as of a houſe or land; as where one comes to diſtrain, and the tenant threatens to kill him, or *forcibly* makes reſiſtance, *&c. Ibid.* 201. But no man can be guilty of *forcible entry*, for entring with violence into lands or houſes in his own ſole poſſeſſion at the time of entry; as by breaking open doors, *&c.* of his houſe, detained from him by one who has the bare cuſtody of it: but jointenants, or tenants in common, may be guilty of *forcible entry*, and holding out their companions. 1 *Hawk. P. C.* 147. A perſon is not guilty of a *forcible* detainer, by barely refuſing to go out of a houſe, and continuing therein in deſpight of another. *Ibid.* 146. And no words alone can make a *forcible entry*, although violent and threatning, without force uſed by the party. 1 *Lill. Abr.* 514. 1 *Hawk.* 145.

II. *What remedy is provided in ſuch caſes.*

The remedy may be,

1. *By action.*

An action lies upon *Stat.* 15 *R.* 2. 2. againſt him who makes a *forcible entry*. So, upon *Stat.* 8 *H.* 6. 9. againſt him who makes a *forcible entry*, or *detainer*.

2. *By juſtices of peace upon view.*

By *Stat.* 15 *R.* 2. 2. A juſtice of peace may go to the place, *&c.* and if he find any hold *forcibly*, ſhall commit, *&c.* till, convicted by record of the juſtice, they make fine and ranſom. And therefore, any juſtice of the peace, upon view of the *force*, may make a record of it, and commit the offender. *Dalt. c.* 44. And this, without a writ directed to him to execute the ſtatutes. And, upon any information, without a complaint of the party. So every juſtice may take the ſheriff, and *poſſe comitatus*, to reſtrain; or he may break open a houſe to remove the *force*. Ibid. The record made by a juſtice upon view, ſhall be a conviction, and is not traverſable. Vide 8. *Co.* 121. *Dalt. c.* 44. And ought to be certified to *B. R.* or the next aſſiſes, or quarter-ſeſſions. And the party convicted ſhall be there fined. But the juſtice himſelf cannot fine. *Ibid.* Vide *Sal.* 353. And if a defect appears, in the conviction, to *B. R.* it ſhall be quaſhed. 1 *Sid.* 156.

The juſtices, on *forcible detainer*, may puniſh the force upon view, and fine and impriſon the offenders; but cannot meddle with the poſſeſſion. *Sid.* 156. Yet ſee *poſt*. And it hath been held, that in *forcible entry* and detainer, the jury are to find *all* or *none*; and not the detainer, without the *forcible entry*. 1 Vent. 25.

3. By *inquiſition*, according to 8 *H.* 6. *c.* 9. or by *indictment*.

An indictment may be for a *forcible entry*, or detainer, before juſtices of peace of the county where the land lies, at the quarter-ſeſſions. But an indictment for a *forcible detainer*, ought to ſhew, *that the entry was peaceable.* R. Cro. Jac. 151.

Indictments for *forcible entry* muſt ſet forth, that the entry was *manu forti*, to diſtinguiſh this offence from other treſpaſſes *vi et armis*; and there are many niceties to be obſerved in drawing the indictment, otherwiſe it will be quaſhed. *Cro. Jac.* 461. *Dalt.* 298. There muſt be certainty in this indictment; and no repugnancy, which is an incurable fault. An indictment of *forcible entry* was quaſhed, for that it did not ſet forth the eſtate of the party: ſo where the *defendant* hath *not* been in *poſſeſſion peaceably three years* before the indictment, without ſaying *before the indictment found*, &c. And force ſhall not be intended when the judgment is generally laid, for it muſt be always expreſſed. 2 *Nelſ. Abr.* 867, 869.

Indictment of *forcible entry* lies, not only for lands, but for tithes; alſo for rents: but not againſt a lord entering a common with force, for which the commoner may not indict him, becauſe it is his own land. *Cro. Car.* 201, 486.

In many caſes *reſtitution* may be made. By 8 *H.* 6. *c.* 9. A juſtice of peace, if on inquiry, *&c.* a *forcible entry* or detainer is found, ſhall put the party in poſſeſſion of the lands ſo entred or holden; and the juſtice ſhall make reſtitution, (after inquiſition found) to the party ouſted, by himſelf, or by his precept to the ſheriff. *T. Ray.* 85. *Carth.* 496. So *reſtitution* ſhall be made upon an indictment at the quarter-ſeſſions. *H. P. C.* 140.

An indictment of *forcible entry* may be removed from before juſtices of peace into the court of *B. R. coram rege*, which court may award reſtitution. 11 *Rep.* 65. And the juſtices before whom ſuch indictment was found, may, after traverſe tendered, certify or deliver the indictment into the *King's Bench*, and refer the proceeding thereupon to the juſtices of that court.

So juſtices of goal-delivery, upon an indictment before them. So re-reſtitution ſhall be, after an ill reſtitution awarded. *Sav.* 68. *Cro. Jac.* 151. So reſtitution ſhall be to a diſſeiſor ouſted by the force of the diſſeiſee. To a leſſee, tho' the leſſor, who was diſſeiſed, thereby oppoſes it. To a copyholder tho' his lord oppoſes it. Vide *Dalt. c.* 132. *Cont, before the St.* 21. *Jac.* 15. *Dy.* 142, *a. in marg.*

A copyholder cannot be *diſſeiſed*, becauſe he hath no freehold in his eſtate; but he may be *expelled.* And a copyhold tenant may be reſtored, where he is wrongfully expelled; but if the indictment be only of diſſeiſin, as he may not be diſſeiſed, there can be no reſtitution but at the prayer of him who hath the freehold. *Yelv.* 81. *Cro. Jac,* 41. Poſſeſſion of the termor is the poſſeſſion of him in reverſion: and when a leſſee for years is put out of poſſeſſion by force, reſtitution muſt be to him in reverſion, and not to the leſſee; and then his leſſee may re-enter. 1 *Leon.* 327. A termor may ſay that he was expelled, and his landlord in reverſion diſſeiſed; or rather that the tenant of the freehold is diſſeiſed, and he the leſſee for years expelled. 4 *Mod.* 248. 2 *Nelſ. Abr.* 869. If a diſſeiſee within three years makes a lawful claim, this is an interruption of the poſſeſſion of the diſſeiſor. *H. P. C,* 139. Though it has been adjudged, that it is not the *title* of the poſſeſſor, but the *poſſeſſion* for three years, which is material. *Sid.* 149. Since the *Stat.* 5 *R.* 2. *ſt.* 1. *c.* 8. if *W. R.* is ſeiſed of lands, and *L. R.* having good right to enter, doth accordingly enter *manu forti*, he may be indicted notwithſtanding his right, *&c.* 3 *Salk.* 170. For a *forcible* detainer only it is ſaid there is no reſtitution; the plaintiff never having been in poſſeſſion. 1 *Vent.* 23. *Sid* 97, 99.

No *reſtitution* ſhall be awarded to an *advowſon*, *common*, *rent*, &c. for it ſhall only be to *land*. Dalt. c. 44. Nor, where he, who uſed force has the poſſeſſion by *operation of law*: as if a diſſeiſee enters, and afterwards, by force, ouſts his diſſeiſor, the poſſeſſion ſhall not be reſtored; for it was re-veſted in the diſſeiſee by his entry. *Dalt. c.* 132. Nor, if a leſſor enters by force, upon the leſſee, for a forfeiture; nor to any other than him who was ouſted by *force*, as to his heir. *Sal.* 587. Or any abator, after the death of the anceſtor. *Dalt. c.* 132. Nor if the party tenders a traverſe to the inquiſition. 1 *Sid.* 287. Upon a *certiorari* delivered to remove an indictment, it ſhall be ſtayed. *H. P. C.* 141. Or, if the indictment appears inſufficient. *H. P. C.* 140. And in ſuch caſe *reſtitution* granted may be ſtayed before execution. *H. P. C.* 140. So *reſtitution* ſhall not be, *after* a *conviction* by a *juſtice* upon his *view*. 1 Vent. 308. Nor by *juſtices* of *aſſiſe*, *gaol-delivery*, or *juſtices* of *peace*; if the indictment was not found before them. *H. P. C.* 140. *Dalt. c.* 44, 131. So *reſtitution* ſhall not be, unleſs *immediately*; not four or five years afterwards. *R. Carth.* 496. Nor by *Stat.* 31 *El.* 11. If by plea it appears, that the party had *poſſeſſion* for *three years* before the inquiſition found. *T. Ray.* 85. *Sal.* 260. Tho' the plea does not ſhew, how he was poſſeſſed. *T. Ray.* 85. 1 *Sid.* 149.

A record of juſtices of peace of *forcible entry*, is not traverſable; but the entry and force, *&c.* may be traverſed in writing, and the juſtices may ſummon a jury for trial of the traverſe. 1 *Salk.* 353. The finding of the force being in nature of a preſentment by the jury, is traverſable; and if the juſtices of peace refuſe the traverſe, and grant reſtitution, on removing the indictment into *B. R.* there the traverſe may be tried; and on a verdict found for the party, *&c.* a *re-reſtitution* ſhall be granted. *Sid.* 287. 2 *Salk.* 588. If *no force* is found at a trial thereof before juſtices, *reſtitution* is not to be granted; nor ſhall it be had till the force is tried; nor ought the juſtices to make it in the abſence of the defendant, without calling him to anſwer. 1 *Hawk. P. C.* 154.

No other juſtices of peace but thoſe before whom the indictment was found, may either at ſeſſions, or out of it, award reſtitution; the ſame juſtices may do it in perſon, or make a precept to the ſheriff to do it, who may raiſe the power of the county to aſſiſt him in executing the ſame. 1 *Hawk.* 152. And the ſame juſtices of peace may alſo ſuperſede the reſtitution, before it is executed; on inſufficiency found in the indictment, *&c.* But no other juſtices, except of the court of *B. R.* A *certiorari* from *B. R.* is a *ſuperſedeas* to the reſtitution; and the juſtices of *B. R.* may ſet aſide the reſtitution after executed, if it be againſt law, or irregularly obtained, *&c.* 1 *Salk.* 154. If juſtices of peace exceed their authority, an information may be brought againſt them. A conviction for *forcible entry*, before a fine is ſet, may be quaſhed on motion; but after a fine is ſet, it may not; the defendant muſt bring writ of error. 2 *Salk.* 450.

If a plaintiff proceeds not criminally by indictment for *forcible entry*, but commences a civil action on the caſe, (which he may do on the ſtatute of 8 *Hen.* 6. *c.* 9.) the defendant is to plead *Not guilty*, or *may plead any ſpecial matter, and traverſe the force*; and the plaintiff in his replication muſt anſwer the ſpecial matter, and not the traverſe; and if it be found againſt the defendant, he is convicted of the force of courſe; whereupon the plaintiff ſhall recover treble damages and coſts. 3 *Salk.* 169.

A reverſioner cannot bring action of *forcible entry*, becauſe he cannot be expelled, though he may be diſſeiſed. *Dyer.* 141. And the words in the writ to maintain the action are, that the defendant *expulit & diſſeiſivit*, *&c.* yet it is ſaid that every diſſeiſin implies an expulſion in *forcible entry.* *Cro. Jac.* 31. And if in treſpaſs or aſſiſe upon the ſtatute of *forcible entry* 8 *H.* 6. *c.* 9. the defendant is condemned by *non ſum informatus*; he ſhall pay treble damages and treble coſts: adjudged, and affirmed in error. For the words of the ſtatute give them where the recovery is by verdict, or otherwiſe in due manner. *Jenk. Cent.* 197. Though *forcible entry* is puniſhable either by indictment or action; the action is ſeldom brought, but the indictment often. See *Black. Com.* 3 *V.* 179. 4 *V.* 147. But in many caſes it may be much more for the benefit of the party to bring the action.

Forcible Marriage, Of a woman of eſtate, is felony; for by the *Stat.* 3 *H.* 7. *c.* 2. it is enacted, "That if any "perſons ſhall take away any *woman* having *lands* or *goods*, "or that is *heir apparent to her anceſtor*, by *force*, and "*againſt her will*, and *marry* or *defile* her, the takers, pro-"curers, abettors, and receivers of the woman taken away "againſt her will, and knowing the ſame, ſhall be deemed "principal felons:" but as to procurers and acceſſaries, they are to be before the offence committed, to be excluded the benefit of clergy, by 39 *Eliz. c.* 9. The indictment on the *Stat.* 3 *H.* 7. *c.* 2. is expreſly to ſet forth, that the woman taken away had *lands* or *goods*, or was *heir apparent*, and alſo that ſhe was *married* or *defiled*, becauſe no other caſe is within the ſtatute; and it ought to alledge *that the taking was for lucre*; it is no excuſe that the woman at firſt was taken away with her conſent; for if ſhe afterwards refuſe to continue with the offender, and be forced againſt her will, ſhe may from that time properly be ſaid to be taken againſt her will; and it is not material whether a woman ſo taken away, be at laſt *married* or *defiled* with *her own conſent* or *not*, if ſhe were *under the force at the time*; the offender being in both caſes equally within the words of the act. 3 *Inſt.* 61. 1 *H. P. C.* 109, 110, 119.

Thoſe perſons who after the fact receive the offender, are but acceſſaries after the offence, according to the rules of the Common law; and thoſe that are only privy to the damage, but not parties to the *forcible* taking away, are *not* within the act. [illegible] *H. P. C.* 119. A man may be indicted for taking away a woman by force in another county; for the continuing of the force in any county amounts to a *forcible* taking there. *Ibid.* Taking away any woman child, under the age of ſixteen years and unmarried, out of the cuſtody and without the conſent of the father or guardian, *&c.* the offender ſhall ſuffer fine and impriſonment; and if the woman agrees to any contract of matrimony with ſuch perſon, ſhe ſhall forfeit her eſtate during her life, to the next of kin to whom the inheritance ſhould deſcend, *&c.* *Stat.* 4 *&* 5 *P. & M. c.* 8. See 3 *Mod. Rep.* 84, 169.

This is a *force againſt the parents:* and an information will lie for ſeducing a young man or woman from their parents, againſt their conſents, in order to marry them, *&c.* *Cro. Car.* 557. *Raym.* 473. See *Marriage*, and *Black. Com.* 4 *V.* 208.

Ford, *(forda)* A ſhallow place in a river. *Mon. Ang. tom.* 1. *p.* 657.

Fordol, (from the Sax. *fore*, before, and *dæle*, a part or portion) Signifies a butt or head-land, ſhooting upon other bounds.

Forecheapum, *Præemption*, from the Sax. *fore*, *ante*, and *ceapean*, i. e. *Nundinari*, *emere.*——*Et non licebat iis aliquod* forecheapum *facere burghmannis, & dare theolonium ſuum.* Chron Brompton. col. 897, 898. and LL. Æthelredi, c. 23.

Foreclosed, Shut out or excluded, as the barring the equity of redemption on mortgages, *&c.* 2 *Inſt.* 298. See *Black. Com.* 2 *V.* 159.

Foregoers. The King's purveyors were ſo called from their *going before* to provide for his houſhold. 36 *Ed.* 3. 5.

Foreign, (Fr. *foraign*, Lat. *forinſecus*, *extraneus*) Strange or outlandiſh, of another country; and in our law, is uſed adjectively being joined with divers ſubſtantives in ſeveral ſenſes. *Kitch.* 126.

Foreign Attachment, Is an attachment of *foreigners goods*, found within a *liberty* or *city*, for the ſatisfaction of ſome citizen to whom the foreigner is indebted; or of money in the hands of another perſon, due to him againſt whom an action of debt is brought, *&c.* *Sed qu.* if now, any diſtinction is made, as to the goods or money attached being the property of a foreigner, or a citizen? For we apprehend the cuſtom now is to attach the property of the latter, as well as of the former. See *Attachment.*

Foreign Court. At *Lemſter* (anciently called *Leominſter)* there is the borough and the *foreign court*; which laſt is within the juriſdiction of the manor, but not within the liberty of the bailiff of the borough: ſo there is a *foreign court* of the honour of *Glouceſter*. Clauſ. 8 Ed. 2. *Foreign bought and ſold* is a cuſtom within the city of *London*, which being found prejudicial to the ſellers of cattle in *Smithfield*, it was enacted 22 *&* 23 *Car.* 2. *c.* 19. that as well ſtrangers, as freemen, may buy and ſell any cattle there. See 25 *Car.* 2. *c.* 24. 1 *Jac.* 2. *c.* 17.

Foreign Kingdom, Is a kingdom under the dominion of a *foreign* prince; ſo that *Ireland*, or any other place, ſubject to the crown of *England*, cannot with us be called *foreign*; though to ſome purpoſes they are diſtinct from the realm of *England*. If two of the King's ſubjects fight in a *foreign kingdom*, and one of them is killed, it cannot be tried here by the Common law; but it may be tried and determined by the *Conſtable and Marſhal*, according to the *Civil law*; or the fact may be examined by the Privy Council, and tried by commiſſioners appointed by the King in any county of *England*, by ſtatute. 33 *H.* 8. 3 *Inſt.* 48. One *Hutchinſon* killed Mr. *Colſon* abroad in *Portugal*, for which he was tried there and acquitted, the exemplification of which acquittal he produced under the Great Seal of that kingdom; and the King being willing he ſhould be tried here referred it to the judges, who all agreed, that the party being already acquitted by the laws of *Portugal*, could not be tried again for the ſame fact here. 3 *Keb.* 785.

If a ſtranger of *Holland*, or any *foreign kingdom*, buys goods at *London*, and gives a note under his hand for payment, and then goes away privately into *Holland*; the ſeller may have a certificate from [illegible] Lord Mayor, on proof of ſale and delivery of the [illegible]: upon which the people of *Holland* will execute a legal proceſs on the party. 4 *Inſt*. 38. Alſo at the inſtance of an ambaſſador or conſul, ſuch a perſon of *England*, or any criminal againſt the laws here, may be ſent from a *foreign kingdom* hither. Where a bond is given, or contract made in a *foreign kingdom*, it may be tried in the *King's Bench*, and laid to be done in any place in *England*. Hob. 11. 2 *Bulſt*. 322. And an agreement made in *France*, on two *French* perſons marrying, touching the wife's fortune, has been decreed here to be executed, according to the laws of *England*; and that the huſband ſurviving ſhould have the whole; but relief was firſt given for a certain ſum, and the reſt to be governed by the cuſtom of *Paris*. Preced. Chanc. 207, 208.

Foreign Oppoſer, or *appoſer*. See *Exchequer*.

Foreign Plantations. See *Plantations*.

Foreign Plea, Is a plea in objection to a judge, where he is refuſed as incompetent to try the matter in queſtion, becauſe it ariſes out of his juriſdiction. *Kitch*. 75. *Stat*. 4 *Hen*. 8. *c*. 2. And if a plea of iſſuable matter is alledged in a different county from that wherein the party is indicted or appealed, by the Common law, ſuch pleas can only be tried by juries returned from the counties wherein they are alledged. 2 *Hawk*. *P*. *C*. 404. But by the *Stat*. 33 *H*. 8. *c*. 14. All *foreign pleas* triable by the country, upon an indictment for petit treaſon, murder or felony, ſhall be forthwith tried without delay, before the ſame juſtices before whom the party ſhall be arraigned, and by the jurors of the ſame county where he is arraigned, notwithſtanding the matter of the pleas are alledged to be in any other county or counties: though as this ſtatute extends not to treaſon, nor appeals, it is ſaid a *foreign* iſſue therein muſt ſtill be tried by the jury of the county wherein alledged. 3 *Inſt*. 17. *H*. *P*. *C*. 255. In a *foreign plea* in a civil action the defendant ought to plead to that place where the plaintiff alledges the matter to be done in his declaration; and the defendant may plead a *foreign plea* where the matter is tranſitory, or not tranſitory; but in the laſt caſe he muſt ſwear to it. *Sid*. 234. 2 *Nelſ*. 871. When a *foreign plea* is pleaded, the court generally makes the defendant put it upon oath, that it is true; or will enter up judgment for want of a plea. See 5 *Mod*. 335. *Foreign anſwer* is ſuch an anſwer as is not triable in the county where made; and *foreign matter* is that matter which is done in another county, &c.

Foreign Service, Is that whereby a meſne lord holds of another, without the compaſs of his own fee: or that which the tenant performs either to his own lord, or to the lord paramount out of the fee. *Kitch*. 299. Of theſe ſervices, *Bracton* ſays thus: *Item ſunt quædam ſervitia, quæ dicuntur* forinſeca, *quamvis ſunt in charta de feoffamento expreſſa & nominata*; *& que ideo dici poſſunt* forinſeca, *quia pertinent dominum regem, & non ad dominum capitalem, &c. Quandoque enim nominantur* forinſeca, *large ſumpto vocabulo, quoad ſervitium domini regis quandoque ſcutagium, quandoque ſervitium domini regis, & ideo* forinſecum *dici poteſt, quia fit & capitur* foris, *ſive extra ſervitium quod fit domino capitali.* Bract. lib. 2. c. 16. And *foreign ſervice* ſeems to be *knight ſervice*, or *eſcuage* uncertain, *Perkins* 650.—*Salvo* Forniſeco Servitio. *Mon. Ang. tom*. 2. *p*. 637.

Foreigners, Though made denizens or naturalized here are diſabled to bear offices in the government, to be of the privy council, members of parliament, &c. by the acts of ſettlement of the crown. 12 *W*. 3. *c*. 2. 1 *Geo*. 1. *c*. 4.

Forejudger, *(forejudicatio)* A judgment whereby a perſon is deprived or put by the thing in queſtion. *Bract*. *lib*. 4. To be *forejudged* the court, is when an *officer* or *attorney* of any court is expelled the ſame for ſome offence; or for not appearing to an action, on a bill filed againſt him, &c. And in the latter caſe, he is not to be admitted to practiſe in the court, till he appears. 2 *Hen*. 4. *c*. 8. If an attorney *privileged* in *C*. *B*. is ſued, after a bill filed againſt him, the plaintiff's attorney delivers it to one of the criers of the court, who calls the attorney defendant by his name, and ſolemnly proclaims aloud, that if he does not appear to ſuch a bill, he will be *forejudged*: and when the crier hath ſo called ſuch an attorney, the bill is delivered to the ſecondary, who gives a rule for him to appear, or he will ſtand *forejudged*: after which this bill is to be carried to the prothonotary's office, and there filed and entered; and if the attorney appears not in four days, then the bill is entered upon a roll of that term, and carried to the clerk of the warrants and inrolments; and he thereupon ſtrikes ſuch attorney out of the roll of attornies, when he ſtands unprivileged, and may be arreſted as any other perſon, &c. *Practiſ. Solic*. 322. *Attorn. Compan*. 182, 183.

But an attorney *forejudged*, may be reſtored, on clearing himſelf from his contumacy in not appearing when he was called, and on making ſatisfaction to the plaintiff; and then a judge will make an order to the clerk of the warrants, to replace him in the proper roll of attornies: and there are inſtances of reſtoring attornies *forejudged*, upon payment of a ſmall fine. *Ibid*. *Raſtal* 96.

Form *of a* forejudger *of an attorney.*

BE it remembered, *that on the day of*, &c. *this ſame term*, A. B. *came here into this court by*, &c. *his attorney, and exhibited to the juſtices of our Sovereign Lord the King, his bill againſt* C. D. *Gent. one of the attornies of the* Common Bench *of our ſaid Sovereign Lord the King, perſonally preſent here in court; the tenor of which bill follows in theſe words, that is to ſay, To the juſtices of our Sovereign Lord the King, ſſ.* A. B. *by*, &c. *his attorney, complains of* C. D. *one of the attornies*, &c, *for that whereas*, &c. (ſetting forth the whole bill) *The pledges for the proſecution are* John Doe *and* Richard Roe: *whereupon the ſaid* C. D. *being ſolemnly called, came not; therefore he is* forejudged *from exerciſing his office of attorney of this court, for his contumacy*, &c.

Foreſchoke, *(derelictum)* Is of the ſame meaning with *forſaken* in modern language; in one of our ſtatutes, it is ſpecially uſed in lands or tenements ſeiſed by a lord, for want of ſervices performed by the tenant, and quietly held by ſuch lord *beyond a year and a day*; now the tenant, who ſeeing his land taken into the hands of the lord, and poſſeſſed ſo long, and not purſuing the courſe appointed by law to recover it, doth in preſumption of law diſavow or *forſake* all the right he hath to the ſame; and then ſuch lands ſhall be called *foreſchoke*. Stat. 10 Ed. 2. c. 1.

Foreſt, *(foreſta, ſaltus)* Signifies a great or vaſt wood; *locus ſylveſtris & ſaltuoſus*. Our law writers define it thus, Foreſta *eſt locus ubi feræ inhabitant vel includuntur*; others ſay it is called *Foreſta, quaſi ferarum ſtatio, vel tuta manſio ferarum*. *Manwood*, in his *Foreſt Laws*, gives this particular definition of it: A *foreſt* is a certain territory or circuit of woody grounds and paſtures, known in its bounds and privilege, *for the peaceable being and abiding of wild beaſts, and fowls of* foreſt, *chaſe and warren, to be under the King's protection for his princely delight*; repleniſhed with beaſts of venary or chaſe, and great coverts of *vert* for ſuccour of the ſaid beaſts; for preſervation whereof there are particular laws, privileges and officers belonging thereunto. *Manw. part* 2. *c*. 1.

Foreſts are of that antiquity in *England*, that (except the *New Foreſt* in *Hampſhire*, erected by *William* called *The Conqueror*, and *Hampton Court*, erected by King *Hen*. 8. ſee 31 *H*. 8. *c*. 5.) it is ſaid there is no record or hiſtory doth make any certain mention of their erections and beginnings; though they are mentioned by ſeveral writers; and in divers of our laws and ſtatutes. 4 *Inſt*. 319. Our ancient hiſtorians tell us, that *New Foreſt* was raiſed by the deſtruction of twenty-two pariſh churches, and many villages, chapels and manors, for the ſpace of thirty miles together; which was attended with divers judgments on the poſterity of King *Will*. 1. who erected it; for *William Rufus* was there ſhot with an arrow, and before him *Richard*, the brother of *Hen*. 1. was there killed; and *Henry*, nephew to *Robert*, the eldeſt ſon of the Conqueror, did hang by the hair of the head in the boughs of the *foreſt* like unto *Abſalom*. Blount.

Beſides the *New Foreſt*, there are ſixty-eight other *foreſts* in *England*; thirteen chaſes, and more than ſeven hundred parks: the four principal *foreſts* are *New Foreſt* on the Sea, *Shirewood Foreſt* on the *Trent*, *Dean Foreſt* on the *Severn*, and *Windſor Foreſt* on the *Thames*. The way of making a *foreſt* is thus: Certain commiſſioners are appointed under the Great Seal of *England*, who view the ground intended for a *foreſt*, and fence it round with metes and bounds; which being returned into the Chancery, the King cauſes it to be proclaimed throughout the county where the land lieth, that it is a *foreſt*, and to be governed by the laws of the *foreſt*, and prohibits all perſons from hunting there without his leave; and then he appointeth officers fit for the preſervation of the vert and veniſon, and ſo it becomes a *foreſt* on record. *Manw. c.* 2. Though the King may erect a *foreſt* on his own ground and waſtes; he may not do it in the ground of other perſons, *without their conſent*; and agreements with them for that purpoſe ought to be confirmed by parliament. 4 *Inſt*. 300.

Proof of a *foreſt* appears by matter of record; as by the *eyres* of the juſtices of the *foreſts*, and other courts, and officers of *foreſts*, *&c.* and not by the name in grants. 12 *Rep*. 22. As parks are incloſed with wall, pale, *etc.* ſo *foreſts*, and chaſes are incloſed *by metes and bounds*; ſuch as rivers, highways, hills, *viz.* which are an incloſure in law; and without which there cannot be a *foreſt*. 4 *Inſt*. 317. And in the eye of the law, *the boundaries of a* foreſt *go round about it as it were a brick wall, directly in a right line the one from the other, and they are known either by matter of record, or preſcription.* Ibid. Bounds of *foreſt* may be aſcertained by commiſſion from the Lord Chancellor; and commiſſioners, ſheriffs, officers of *foreſts*, &c. are impowered to make inqueſts thereof. *Stat.* 16 *and* 17 *Car.* 1. *c.* 16. Alſo the boundaries of *foreſts* are reckoned *a part* of the *foreſt*; for if any perſon kill or hunt any of the King's deer in any highway, river, or other incluſive boundary of a *foreſt*, he is as great an offender as if he had killed or hunted deer within the *foreſt* itſelf. 4 *Inſt*. 318.

By the grant of a *foreſt*, the game of the *foreſt* do paſs; and beaſts of the *foreſt* are the hart, hind, buck, doe, boar, wolf, fox, hare, *etc.* The ſeaſons for hunting whereof are as follow, *viz.* that of the hart and buck begins at the feaſt of St. *John Baptiſt*, and ends at *Holy-rood day*; of the hind and doe, begins at *Holy-rood*, and continues till *Candlemas*; of the boar, from *Chriſtmas* to *Candlemas*; of the fox, begins at *Chriſtmas*, and continues till *Lady-day*; of the hare, at *Michaelmas*, and laſts till *Candlemas*. *Dyer* 169. 4 *Inſt*. 316.

Not only game, *&c.* are incident to a *foreſt*, but alſo a *foreſt* hath divers ſpecial properties. 1. A *foreſt* truly and ſtrictly taken, cannot be in the hands of any but the King; for none but the King hath power to grant commiſſion to any one to be a *juſtice in eyre of the foreſt*: but if the King grants a *foreſt* to a ſubject, and granteth further that upon requeſt made in Chancery, he and his heirs ſhall have juſtices of the *foreſt*, then the ſubject hath a *foreſt* in law. 4 *Inſt*. 314. *Cro. Jac.* 155. The *ſecond* property of a *foreſt* is the courts; as the *juſtice-ſeat*, the *ſwainmote*, and court of *attachment*. The *third* property is the officers belonging to it; as firſt, the *juſtices* of the *foreſt*, the *warden* or warder, the *verderors*, *foreſters*, *agiſters*, *regarders*, *keepers*, *bailiffs*, *beadles*, &c.

Though as to the courts, the moſt eſpecial court of a *foreſt* is the *ſwainmote*, which is no leſs incident to it than a court of *piepowder* to a fair: and, if this fail, there is nothing remaining of the *foreſt*, but it is turned into the nature of a *chaſe*. *Manw. c.* 21. *Crompt. Jur.* 146.

There is but one *Chief Juſtice* of the *foreſts* on this ſide *Trent*, and he is named *Juſticiarius Itinerans Foreſtarum*, &c. *citra Trentam*; and there is another, *Capitali Juſticiarius*; and he is *Juſticiarius Itinerans omnium Foreſtarum ultra Trentam*, *&c.* who is a perſon of greater dignity, than knowledge in the laws of the *foreſt*; and therefore when *juſtice ſeats* are held, there are aſſociated to him ſuch as the King ſhall appoint, who, together with him determine *omnia placita foreſtæ*, *&c.* 4 Inſt. 315.

A *juſtice in eyre* cannot grant licence to ſell any timber; unleſs it be *ſedente curia*, or after a writ of *ad quod dammum*: and it hath been reſolved by all the judges, that though *juſtices in eyre*, and the King's officers within his *foreſts*, have charge of veniſon, and of vert or green hue, for the maintenance of the King's game, and all manner of trees for covert, browſe and pannage; yet when timber of the *foreſt* is ſold, it muſt be cut and taken by power under the *Great Seal*, or the *Exchequer Seal* by view of the *Foreſters*, that it may not be had in places inconvenient for the game: and the juſtice in eyre, or any of the King's officers in the *foreſt*, cannot ſell or diſpoſe of any wood within the *foreſt* without commiſſion; ſo that the Exchequer and the officers of the *foreſt* have *diviſum imperium, the one for the profit of the King, the other for his pleaſure.* 3d Vol. Read. on Stat. p. 304, 305.

Alſo no officer of the *foreſt* can claim windfalls, or dotard trees, for their perquiſites, becauſe they were once parcel of the King's inheritance; but they ought to be ſold by commiſſion, *for the King's beſt benefit*. Ibid. If any officers cut down wood, not neceſſary for browſe, *&c.* they forfeit their offices. 9 *Rep*. 50. The lord of a *foreſt* may by his officers enter into any man's wood within the regard of the *foreſt*, and cut down browſewood for the deer in winter. 2 *Par. Game Law*, *p.* 46.

A preſcription for a perſon to take and cut down timber trees in a *foreſt*, without view of the *foreſter*, it is ſaid may be good: but of this *quære*, without allowance of a former *eyre*, &c. If a man hath a wood in a *foreſt*, and hath no ſuch preſcription, the law will allow him to fell it, ſo as he doth not prejudice the game, but leave ſufficient vert; but it ought to be by writ of *ad quod damnum*, *&c.* 4 *Inſt*. *Cro. Jac.* 155. And every perſon in his own wood in a *foreſt* may take *houſe-bote* and *hay-bote*, by view of the *foreſter*; and ſo may freeholders by preſcription, copyholders by cuſtom, *&c.* 1 *Ed.* 3. *c.* 2. The wood taken by view of the *foreſter*, ought to be preſented at the next *court of attachment*, that it was by view, and may appear of record.

Fences, *&c.* in *foreſts* and chaſes, muſt be with low hedges, and they may be deſtroyed, though of forty years continuance, if they were not before. *Cro. Jac.* 156. He whoſe wood is in danger of being ſpoiled, for want of repairing fences by another, ought to requeſt the party to make good the hedges; and if he refuſe, then he muſt do it himſelf, *and have action on the caſe againſt the other that ſhould have done it.* 1 Jones 277.

A perſon may have action at Common law for a treſpaſs in a *foreſt*, as to wood, *&c.* to recover his right. *Sid.* 296.

The *court of the juſtice in eyre* may proceed upon the preſentments or verdicts in the *ſwainmote*, *&c.* And preſentments and convictions of the court of *attachment* and *ſwainmote*, muſt be delivered to the Lord Chief Juſtice in Eyre, at the next court of juſtice-ſeat, *&c.* where judgment is to be given; and the plea of the *foreſt* runs thus: *Præſentatio per foreſtarios, & convictio per viridarios, &c.* The court of *attachment* or woodmote in *foreſts*, is kept every forty days; at which the *foreſters* being in the attachment *de viridi et venatione*, and the preſentments thereof, and the verderors to receive the ſame, and inroll them; but this court can only inquire, not convict. 4 *Inſt*. 289. The court of *ſwainmote* is holden before the verderors as judges, by the ſteward of the ſwainmote, thrice in the year: the freeholders within the *foreſt* are to appear at this court, to make inqueſts and juries; and this court may inquire *de ſuperoneratione foreſtariorum et aliorum miniſtrorum* foreſtæ, *et de eorum oppreſſionibus populo noſtro illatis*: it may inquire of offences, and convict alſo, but not give judgment, which muſt be at the juſtice-ſeat. *Ibid.*

The court of the *Chief Juſtice in Eyre*, or *Juſtice-Seat*, is a court of record, and hath authority to hear and determine all treſpaſſes, pleas, and cauſes of the *foreſt*, *&c.* within the *foreſt*, as well concerning vert and veniſon, as other cauſes whatſoever; and this court cannot be kept oftener than *every third year*. As before other Juſtices in Eyre, it muſt be ſummoned forty days at leaſt before the ſitting thereof; and one writ of ſummons is to be directed to the ſheriff of the county, and another writ *cuſtodi* foreſtæ, *Domini Regis vel ejus locum tenenti*, &c. Which writ of ſummons conſiſts of two parts: *Firſt*, to ſummon all the officers of the *fore*[illegible] and that they bring with them all records, &c. *Secon*[illegible]ll perſons who claim any liberties or franchiſes within the *foreſt*, and to ſhew how they claim the ſame: if there be erroneous judgment at the juſtice-ſeat, the record may be removed by writ of error into *B. R.* 4 Inſt. 291.

The *Court of Regard*, or Survey of Dogs, is holden likewiſe every third year, for expeditation, or lawing of dogs, by cutting off to the ſkin three claws of the fore feet, to prevent their running at or killing of deer. By ſtatute, three courts of *ſwainmote* are to be held for *foreſts* in the year; one fifteen days before *Michaelmas*, another about *Martinmas*, and the third fifteen days before *Midſummer*: and preſentments of treſpaſſes of green hue, and hunting in *foreſts*, muſt be made at the next *ſwainmote* by *foreſters*, &c. Alſo no officer of the *foreſt* ſhall ſurcharge the *foreſt*, on pain of impriſonment by the juſtices of the *foreſt*. *Charta de* Foreſta, 9 *H.* 3. *c.* 1. *Ordinatio de* Foreſta, 34 *Ed.* 1. *Juſtices of foreſts*, &c. may make deputies. 32 *H.* 8. *c.* 35.

The *Chief Warden* of the *foreſt* is a great officer, next to the juſtices of the *foreſt*, to bail and diſcharge offenders; but he is no judicial officer; and the conſtable of the caſtle where a *foreſt* is, by the *foreſt* law is Chief Warden of the *foreſt*, as of *Windſor Caſtle*, *etc.*

A *Verderor* is a judicial officer of the *foreſt*, and choſen in full county, by the King's writ: his office is to obſerve and keep the aſſiſes or laws of the *foreſts*, and view, receive, and inroll the attachments and preſentments of all treſpaſſes of the *foreſt*, of vert and veniſon, and to do equal right and juſtice to the people: the Verderors are the chief judges of the *ſwainmote* court; although the Chief Warden, or his deputy, uſually ſits there. 4 *Inſt.* 292.

The *Regarder* is to make regard of the *foreſt*, and to view and inquire of offences, concealments, defaults of *foreſters*, *etc.* Before any juſtice-ſeat is holden, the *Regarders* of the *foreſt* muſt make their regard, and go thro' and view the whole *foreſt*, *etc.* They are miniſterial officers, conſtituted by letters patent of the King, or choſen by writ to the ſheriff. 4 *Inſt.* 291.

A *Foreſter* is in legal underſtanding a ſworn officer miniſterial of the *foreſt*, and is to watch over the vert and veniſon, and to make attachments and true preſentments of all manner of treſpaſſes done within the *foreſt*: a *Foreſter* is alſo taken for a *Woodward*: this officer is made by letters patent, and it is ſaid the office may be granted in fee, or for life. 4 *Inſt.* 293. Every *Foreſter*, when he is called at a court of juſtice-ſeat, ought upon his knees to deliver his horn to the Chief Juſtice in Eyre; ſo every Woodward ought to preſent his hatchet to my Lord.

A *Riding Foreſter* is to lead the King in his hunting. 1 *Jones* 277. The officer of *Foreſter*, *etc.* though it be a fee-ſimple, cannot be granted or aſſigned over without the King's licence. 4 *Inſt.* 316. If a *foreſter* by patent for life, is made juſtice of the ſame foreſt *pro hac vice*, *the foreſterſhip* is become void; for theſe offices are incompatible, as the *foreſter* is under the correction of the juſtice, and he cannot judge himſelf. 4 *Inſt.* 313.

An *Agiſter*'s office is to attend upon the King's woods and lands in a *foreſt*, receive and take in cattle, *etc.* by agiſtment, that is to depaſture within the foreſt, or to feed upon the pannage, *etc.* And this officer is conſtituted by letters patent. 4 *Inſt.* 293. Perſons inhabiting in the foreſt may have common of herbage for beaſts commonable within the foreſt; but by the foreſt law, ſheep are not commonable there, becauſe they bite ſo cloſe that they deſtroy the vert; and yet it has been held, that *ſheep* may be commonable in foreſts by preſcription. 3 *Bulſt.* 213.

There may be a preſcription for common in a foreſt at all times of the year; though it was formerly the opinion of our judges, that the *fence-month* ſhould be excepted. 3 *Lev.* 127. A foreſt may be *diſafforeſted* and laid open; but right of common ſhall remain. *Poph.* 93. He that hath a grant of the herbage or pannage of a park, foreſt, *etc.* cannot take any herbage or pannage, but of the ſurpluſage over and above a competent and ſufficient paſture and feeding for the game; and if there be no ſurpluſage, he that hath the herbage and pannage cannot put in any beaſts; if he doth, they may be driven out. 3 *Vol. Read. on Stat.* 305. None may gather nuts in the foreſt without warrant.

A *Ranger* of a foreſt is one whoſe buſineſs is to rechaſe the wild beaſts from the *purlieus* into the foreſt, and to preſent offences within the purlieu, and the foreſt, *etc.* And though he is not properly an officer in the foreſt, yet he is a conſiderable officer of, and belonging to it.

The *Beadle* is a foreſt officer, that warns all the courts of the foreſt, and executes proceſs, makes all proclamations, *etc.* 4 *Inſt.* 313.

There are alſo *Keepers* or *Bailiffs* of walks in foreſts and chaſes, who are ſubordinate to the Verderors, *etc.* And theſe officers cannot be ſworn on any inqueſts, or juries out of the foreſt. If any man hunts beaſts within a foreſt, although they are not beaſts of the foreſt, they are puniſhable by the foreſt laws; becauſe all hunting there, without warrant is unlawful. 4 *Inſt.* 314. If a deer be hunted in a foreſt, and afterwards by hunting it is driven out of the foreſt, and the *Foreſter* follows the chaſe, and the owner of the ground where driven kills the deer there; yet the *Foreſter* may enter into the lands and retake the deer: for property in the deer is in this caſe by purſuit. 2 *Leon.* 201. He that hath any manner of licence to hunt in a foreſt, chaſe, park, *etc.* muſt take heed that he do not abuſe his licence, or exceed his authority; for if he do, he ſhall be accounted a treſpaſſer *ab initio*, and be puniſhed for that fact as if he had no licence at all. *Manw.* 280, 288.

Every lord of parliament, ſent for by the King, may, in coming and returning, kill a deer or two in the King's foreſt or chaſe through which he paſſes; but it muſt not be done privily, without the view of the Foreſter, if preſent; or, if abſent, by cauſing one to blow a horn, becauſe otherwiſe he may be a treſpaſſer, and ſeem to ſteal the deer. *Chart. Foreſt. c.* 11. 4 *Inſt.* 308.

Lex Foreſtæ is a private law, and muſt be pleaded. 2 *Leon.* 209. But it hath been obſerved, that the laws of the foreſt are eſtabliſhed by act of parliament, and for the moſt part contained *in Charta de Foreſta*, 9 *H.* 3. *ſtat.* 2. *c.* 2. and 34 *Ed.* 1. *ſtat.* 5. *c.* 1. By the law of the foreſt, receivers of treſpaſſers in hunting or killing of deer, knowing them to be ſuch, or any of the King's veniſon, are principal treſpaſſers; though the treſpaſs was not done to their uſe or benefit, as the Common law requires; by which the ſubſequent agreement amounts to a commandment: but if the receipt be out of the bounds of the foreſt, they cannot be puniſhed by the laws of the foreſt, being not within the foreſt juriſdiction, which is local. 4 *Inſt.* 317.

If a treſpaſs be done in a foreſt, and the treſpaſſer dies, it ſhall be puniſhed after his death in the life-time of the heir, contrary to the Common law. *Hue* and *cry* may be made by the foreſt law for treſpaſs, as to veniſon; though it cannot be purſued but only within the bounds of the foreſt. 4 *Inſt.* 294. And not purſuing hue and cry in the foreſt, a townſhip, *etc.* may be fined and amerced. In every treſpaſs and offence of the foreſt in vert or veniſon, the puniſhment is, to be impriſoned, ranſomed, and bound to the good behaviour of the foreſt, which muſt be executed by a judicial ſentence by the Lord Chief Juſtice in *Eyre* of the foreſt.

If any foreſter find any perſon hunting without warrant, he is to arreſt his body, and carry him to priſon, from whence he ſhall not be delivered without ſpecial warrant from the King, or his juſtices of the foreſt, *etc.* But by 1 *Ed.* 3. *c.* 8. Perſons are bailable if not taken *in the manner*, as with a bow ready to ſhoot, carrying away deer killed, or ſmeered with blood, *etc.* Though if one be not thus taken, he may be attached by his goods. 4 *Inſt.* 289.

The Warden of the foreſt ſhall let ſuch to mainpriſe until the *eyre* of the foreſt; or a writ may be had out of the Chancery to oblige him to do it; and if he refuſe to deliver the party, a writ ſhall go to the ſheriff to attach the warden, &c. who ſhall pay treble damages to the party grieved, and be committed to priſon, *&c. Stat.* 1 *Ed.* 3. *c.* 8. No officer of the foreſt may take or impriſon any perſon without due indictment, or *per main ouvre*, with his hand at the work; nor ſhall conſtrain any to make obligation againſt the aſſiſe of the foreſt, on pain to pay double damages, and to be ranſomed at the King's will. 7 *R.* 2. *c.* 4.

A Foreſter ſhall not be queſtioned for killing a treſpaſſer, who (after the peace cried unto him) will not yield himſelf; ſo as it be not done out of ſome former malice. 21 *Ed.* 1. But if treſpaſſers in a foreſt, *&c.* kill a man who oppoſes them, although they bore no malice to the perſon killed, it is murder; becauſe they were upon an unlawful act, and therefore malice is implied. *Rol. Abr.* 548. And if murder be committed by ſuch treſpaſſers, all are principals. *Kel. Rep.* 87. If a man comes into a foreſt in the night-time, the Foreſter cannot juſtify beating him before he makes reſiſtance; but if he reſiſts, he may juſtify the battery. Perſons may be fined for concealing the killing of deer by others; and ſo for carrying a gun, with an intent to kill the deer; and he that ſteals veniſon in the *foreſt*, and carries it off on horſeback, the horſe ſhall be forfeited, unleſs it be a ſtranger's ignorant of the fact. 2 *Par. Game Law* 34, 35.

Where heath is burnt in a *foreſt*, the offenders may be fined: and if any man cuts down buſhes and thorns, and carries them away in a cart, he is fineable, and the cart and horſes ſhall be ſeized by the *foreſt* laws. *Ibid.* 36, 46. But a man may preſcribe to cut wood, *&c.* And every freeman within the *foreſt* may on his own ground make a mill-dyke, or arable land, without incloſing ſuch arable; but if it be a nuſance to others, it is puniſhable. *Chart. Foreſt. c.* 11. 12 *Rep.* 22. And if any having woods in his own ground, within any *foreſt*, or chaſe, ſhall cut the ſame by the King's licence, *&c.* he may keep them ſeveral and incloſed, for ſeven years after felling. 22 *E.* 4. 7.

By *Charta de Foreſta*, 9 *H.* 3. *ſtat.* 2. *c.* 2. No man ſhall loſe life or member for killing the King's deer in a *foreſt*, *&c.* but ſhall be fined; and if he have nothing to pay the fine, he ſhall be impriſoned a year and a day; and then be delivered, if he can give good ſecurity not to offend for the future; and if not, he ſhall abjure the realm: before this ſtatute, it was felony to hunt the King's deer. 2 *Rol.* 120. To hunt in a *foreſt*, park, *&c.* in the night, diſguiſed, if denied or concealed, upon examination before a juſtice of peace, it is *felony:* but if confeſſed, it is only fineable. 1 *H.* 7. *c.* 7.

By the 9 *Geo.* 1. *c.* 22. If any perſons *armed* and *diſguiſed*, ſhall appear in any *foreſt*, chaſe, *&c.* where deer are kept, and hunt, wound, kill or ſteal any deer; or if any perſons ſhall procure any one to join with them in any ſuch unlawful act; or ſhall reſcue ſuch an offender, *&c.* they ſhall be guilty of felony. And the *Norman* Kings puniſhed thoſe who hunted and killed deer in *foreſts* with great ſeverity, inflicting their puniſhments in various ways; as by hanging, forfeiture of goods, and loſs of limbs, gelding, and putting out of eyes, *&c.* *W.* 1. *H.* 1. *R.* 1. *&c.*

Felony committed within a *foreſt* is inquired of before the judges of the Common law, and not by the juſtices of the *foreſt*.

Penalty on officers of *foreſts* and parks confederating with deer-ſtealers, 5 *Geo.* 1. *c.* 15. *ſect.* 5. Keepers, *&c.* may ſeize inſtruments uſed in unlawful cutting of trees, 4 *Geo.* 3. *c.* 31. See *Drift of the Foreſt, Chaſe and Purlieu.* Yet ſee farther on this ſubject, *Black. Com.* 1 *V.* 289. 2 *V.* 14, 38, 414, 416. 3 *V.* 71, 73. 4 *V.* 408, 413, 414, 425, 430. And as to the Charters of the Foreſt, ſee *id.* 4 *V.* 416, 418. and *Black. Law Tracts, V.* 2.

Foreſtagium, Seems to ſignify ſome duty payable to the King's *Foreſters*, as *chiminage*, or ſuch like: *et ſint quieti de thelonio et paſſagio, et de* foreſtagio, *&c. Chart.* 18 *Ed.* 1.

Foreſtal, (*Foreſtallamentum*, from the Sax. *fore*, i. e. via & *ſtal*) Is to intercept on the highway. *Spelman* ſays, it is *viæ obſtructio, vel itineris interceptio*; with whom agrees *Coke on Lit.* fol 161. And, according to *Fleta*, foreſtalling *ſignificat obſtructionem viæ vel impedimentum tranſitus et fugæ averiorum*, *&c.* lib. 1. c. 24. In our law, *foreſtalling* is the buying or bargaining for any corn, cattle or other merchandiſe, by the way as they come to fairs or markets to be ſold, before they are brought thither; to the intent to ſell the ſame again, at a higher and dearer price.

All endeavours to inhance the common price of any victuals or merchandiſe, and practices which have an apparent tendency thereto, whether by ſpreading falſe rumours, or buying things in a market before the accuſtomed hour, or by buying and ſelling again the ſame thing in the ſame market, *&c.* are highly criminal by the Common law; and all ſuch offences anciently came under the general appellation of *foreſtalling*. 3 *Inſt.* 195, 196. And ſo jealous is the Common law of practices of this nature, which are a general inconvenience and prejudice to the people, and very oppreſſive to the poorer ſort, that it will not ſuffer corn to be ſold in the ſheaf before thraſhed; for by ſuch ſale the market is in effect *foreſtalled*. 3 Inſt. 197. H. P. C. 152. By the Common law, perſons guilty of *foreſtalling*, upon an indictment found, are liable to a fine and impriſonment, anſwerable to the heinouſneſs of their offence. 1 *Hawk.* 235.

By the 5 & 6 *Ed.* 6. *c.* 14. Any buying or contracting for merchandiſe, victuals, or other thing whatſoever in the way, coming by land or water to any fair or market, or to any port, *&c.* to be ſold, or cauſing the ſame to be bought, or diſſuading people by word, letter, meſſuage, or otherwiſe, from bringing ſuch things to market, or perſuading them to inhance the price after they are brought thither, is *foreſtalling*: and the party guilty of any offence of *foreſtalling*, *&c.* upon conviction at the quarter-ſeſſions, by two witneſſes, on bill, information, preſentment, *&c.* ſhall, for the *firſt* offence, *loſe the goods ſo bought*, or the *value* of them, and ſuffer *two months impriſonment*; for the *ſecond* offence, he ſhall forfeit *double the value*, and be *impriſoned ſix months*; and for the *third* offence, he ſhall *loſe all his goods*, be *ſet upon the pillory*, and be *impriſoned at the King's Pleaſure. Stat. ibid.* The forfeitures are to the King's uſe only, if there are no informers; otherwiſe a moiety goes to the King, and a moiety to the informer.

As theſe offences are frequent, throughout the kingdom, but particularly ſo, with reſpect to *corn*, and *cattle*, ſold in the *London* markets, and as there is ſo much encouragement, to any one, who thinks proper to proceed on this moſt uſeful of all laws, and, as carrying this act into execution, would be attended with *the bleſſings of all the poor*, it is matter of aſtoniſhment that it is not more frequently enforced!

No information for any of the ſaid offences againſt the ſaid ſtatute can be good, without ſhewing in certain the *quantity of the thing*, for which the penalty is ſuppoſed to be incurred, not only becauſe otherwiſe the judgment to be given on ſuch an information can never be pleaded in bar of any other, and that it cannot appear that both of them were brought for the ſame thing; but alſo, becauſe it cannot appear to the court what forfeiture the defendant ought to incur, unleſs the extent of the offence be ſpecially ſet forth. 1 *Hawk.* 238. But nothing in the act abovementioned ſhall extend to the buying of any ſuch thing, (otherwiſe than by *foreſtalling*) by any *fiſhmonger*, *butcher*, or *poulterer*, as concerns their trade, who ſhall ſell the ſame again upon *reaſonable* prices by retail, nor to the buying of wine, or other dead victuals, by any *innholder*, or *victualler*, to retail the ſame in his houſe; nor to the buying of any *dried* or *ſalted fiſh* (not *foreſtalled*), and ſold for *reaſonable prices*; nor to the buying of any *corn*, *fiſh*, *butter*, or *cheeſe*, by perſons duly licenſed, and not *foreſtalling*. 5 & 6 Ed. 6. c. 14. ſect. 7.

Neither ſhall it extend to *wines*, *oils*, *ſugars*, *ſpices*, *currants*, nor other *foreign victuals*, *fiſh* and *ſalt* only excepted. 13 *El. c.* 25. *ſect.* 21. And by the 15 *Car.* 2. *c.* 7. When the quarter of wheat (*Wincheſter* meaſure) doth not exceed 48 *s.* rye 32 *s.* barley or malt 28 *s.* buck wheat 28 *s.* oats 13 *s.* 4 *d.* peaſe or beans 32 *s.* any perſon (not *foreſtalling*, nor ſelling the ſame again in the ſame market in three months) may buy ſuch corn, at or under ſuch price, and lay it up, and ſell the ſame again without incurring any penalty. *Sect.* 4.

Alſo it hath been reſolved, that ſuch *victual* only, as is neceſſary for the *food of man*, is within the aforeſaid ſtatute of 5 & 6 *Ed.* 6. *c.* 14. and therefore that *apples* and *cherries*, and ſuch like fruit are not; but that *ſalt* is a victual within the meaning of it. 1 *Hawk.* 237.

By 31 *El. c.* 5. which ordains that informations for offences againſt penal ſtatutes, muſt be laid in the proper county, it is provided, that nevertheleſs an information on the ſaid ſtatute of 5 & 6 *Ed.* 6. *c.* 14. againſt foreſtalling, ingroſſing, or regrating, where the penalty ſhall appear to be 20*l.* or above, may be laid out of the proper county, and in any other county, at the pleaſure of the informer. See *Burn's Juſtice*, 290, &c. and ſee *Ingroſſer* and *Regrator*, and *Black Com.* 4 *V.* 158.

Foreſtaller, Is a perſon guilty in any of the inſtances and particulars deſcribed of foreſtalling. 5 & 6 *Ed.* 6. *c.* 14.

Foretooth, Striking out the foretooth is a *mayhem. Black. Com.* 4 *V.* 206.

Forfang or **Forfeng**, (from the Sax. *Fore, ante &* fangen, *prendere)* Is the taking of proviſion from any one in fairs or markets, before the King's *Purveyors* are ſerved with neceſſaries for his Majeſty.——*Eſt captio obſoniorum, quæ in foris aut nundinis ab aliquo fit, priuſquam Miniſter Regis ea ceperit quæ Regi fuerint neceſſaria.* Antecaptio *vel* præventio——*Et ſint quieti de* Wardwite & Forfeng & Withfang, &c. *Chart. Hen.* 1. *Hoſp. Sancti Barth. Lond. Anno* 1133.

Forfeiture, *(Foriſfactura,* from the Fr. *Forfait)* Signifies the effect or penalty of tranſgreſſing ſome law.

It may be ſaid in the firſt place, that this puniſhment, being a pillar of ſociety, agreeably to the genius of the whole edifice, is erected on the great principle of ſociety itſelf, namely, to make the natural and ſocial affections a controul upon irregular and ſelfiſh paſſions. In the next, that nothing is a puniſhment, which does not affect a right ſtrictly ſo called, to make the innocent ſuffer for the guilty, and to inflict that on the guilty, which in its conſequences, may affect the innocent, are very different and unequal conſiderations. ‘ Every thing, ſays *Puffendorf (L.* 8. *c.* 3. *ſect.* 30.) which cauſes a ſorrow or loſs, is not properly puniſhment. It is a misfortune to be reduced to poverty by a crime, which cauſed the magiſtrate to ſet a large fine upon the father of a family; but not a puniſhment. How many are there, who come into the world without the expectation of a patrimony. How many, who loſe all they have by war, fire, or ſhipwreck.’ Now, ſince the children have no right but from the father, if he holds the property till his death, or through him, there is no injury done, when he is juſtly deprived of that wealth, which was acquired under the protection of ſociety, to be tranſmitted to his poſterity in ſtated rules of deſcent by poſitive inſtitution; and of thoſe honours, which are the rewards of good conduct, the pledges of future faith. Theſe benefits may be conſidered as the gifts of civil government; but life and liberty are the gifts of nature, and ſhould never be taken away becauſe of the parents offence: nor ſhould a ſubject be made incapable of employments, without ſome crime committed by himſelf. Such ſeverities are unwiſe, as well as unequitable. A difference, therefore, muſt be obſerved between the natural rights and common liberties, which are annexed to the perſon of every ſubject, and the peculiar diſtinctions of ſociety, as riches and honours, which are merely contingent; and if hoped for in the courſe of ſucceſſion, depend on the conduct of thoſe anceſtors, from whom we would derive them. And it is not to be ſaid, men are puniſhed, when theſe latter advantages, which themſelves neither acquired nor merited, having, by reaſon of the ‘ civil qualification of their blood,’ (as a great lawyer (Lord Chief Juſtice *Hale)* of our own has expreſſed it) been brought into view by the deſert of one anceſtor, are intercepted by the crimes of another.

If it be thought, that what is here ſaid is built on a miſtake, and that the right of inheriting is conferred by the law of nature, anterior to ſociety; it may ſeem proper to ſhew the contrary with as much clearneſs and brevity, as the matter will admit; the rather, becauſe the greateſt writers on the natural law are extremely perplexed upon it, and have found it difficult to free their reaſonings from ambiguity of words, mutual cavils, and the prejudices ariſing from civil policy. The law of nature is uſed in two ſenſes; either as conſiſting of certain regulations abſolutely neceſſary for ſupporting the purpoſes of nature, and conſtitution of things, previous to all civil compact; or, as made up of thoſe concluſions of natural reaſon, which ſocieties have generally and uniformly thought fit to eſtabliſh into laws by voluntary conſent. The firſt is the only ſtrict and genuine deſcription of the law of nature; and, taking it in that light, it may be ſaid, that the right of inheriting is founded by ſociety on the beſt principles of natural reaſon, but is not a right of nature. To illuſtrate the propoſition particularly, let theſe things be conſidered: 1. That the end of property is ſubſtance, by which end nature has bounded our pretenſions to it, however ſociety may inlarge them. Hence, in a ſtate of nature, we cannot aſſume more than we uſe, nor hold it longer than we live, and are capable of uſing it. And in this no alteration ariſes from circumſtances of improvement. It is enough, that the thing improved becomes more advantageous to ourſelves, and that we pay to nature the acknowledgment of induſtry for the liberal profuſion of her gifts. 2. That the manner of acquiring property, in a ſtate of nature, is by occupancy; an act of the body, not of the mind, which laſt expreſſed in any other way (until civil laws had marked out for words or writing a ſettled operation) would give a title to property too precarious and diſputable. 3. That in the transferring of property, the conſent expreſſed gives a right to the alienee againſt the alienor; and occupancy confirms that right againſt every one elſe. But in the caſe of deſcent, where is the expreſſion of conſent in the alienor? It will be ſaid, That the affection and relation of the deceaſed will create a preſumption of conſent. This is carrying the matter very far, to ſay, that the law of nature, in a ſtate of nature, transfers property by preſumption, in like manner as a civil law in a ſtate of ſociety. Where is the occupancy to compleat the transfer? That title may accrue to ſome other more diligent than the heir, unleſs we will ſuppoſe nature ſo careful as to keep poſſeſſion for him. In a word, it is not more rational to ſay, that tranſmiſſion by deſcent is that act of poſitive and civil law, which prevents the property of the deceaſed from reverting, as it would do in a ſtate of nature, to the common ſtock? But it may be objected, that this manner of arguing ſets the principles of nature at variance with one another: She expects from every man the nouriſhment of his children, till they are able to ſupport themſelves. If he ſhould die before that period, will ſhe not aſſiſt him to compleat his views by transferring his property to them? The anſwer is obvious. Upon the principles here mentioned, nature points out another way. If he foreſees the event of his death probable, he may make [The writers on the law of nature ſpeak of the right of making donations *mortis cauſa* (a thing known in the civil law,) as a right, which might ſubſiſt in a ſtate of nature] conditional gifts and alienations to his friends, whilſt he lives, for the ſupport of his unaſſiſted children. If, through chance or inadvertence, he neglect it, the law of benevolence, that fundamental principle, requires ſuch, as are neareſt in blood and affection to the deceaſed, to take upon themſelves this care: Nay, lays it, in a ſtate of uncorrupt nature, upon the conſciences of thoſe, under whoſe notice the orphans may fall; ſo that nature has not left this compaſſionate caſe unconſidered, unprovided. Yet, ſuppoſe that property deſcends by the natural law; if the children are grown up, and are poſſeſſed of what is ſufficient for their uſe, before the father's death, they ſtand in no need of this ſucceſſion; and by that principle, which confines property to ſubſiſtence, and a capacity of uſing, they are even barred from accepting it. If they are weak and unable to maintain themſelves, though the property deſcend, they cannot occupy; that is, in the language of the law of nature, acquire it, or complete that transfer of it, which the deſcent to tenders them. How then are the children better provided for in this than in the other way, reaſoning upon the matter as in a ſtate of nature.

We may carry it ſtill further, and ſhew, that if the right of inheriting be not conſidered as a right conferred by ſociety, the greateſt abſurdities muſt be charged upon the civil laws of all countries.

1. If the right of inheriting is a natural right, as ariſing from the principle of affection and relation, not poſitive inſtitution, then it cannot be confined to a man's children, but, in failure of iſſue, muſt extend to all his kindred, in their ſeveral degrees. Now that is no law to regulate men, either in a ſtate of nature or ſociety, which does not extend to particular caſes; and nature will not ſuppoſe a right of inheriting, without any rule to go by in the application and conferring of it. That rule can be but one; yet civil laws have purſued a thouſand different ways, contrary to the law of nature, according to this reaſoning. 2. If the right of inheritance came in by the law of nature, we may, for argument ſake, imagine the deſcent carried on through ſeveral generations. In conſequence, preſcription, (either for a certain time, as by the *Roman* or our Statute Law, or for time immemorial, as by the Common law) muſt give a right; otherwiſe antient and obſcure pretences of wrongful poſſeſſion might be ſet up, in order to diveſt the preſent owner, and to diſturb the public tranquility. But then the law of nature would be deſtructive of itſelf: For, is it not contrary to natural principles, that a juſt right ſhall be barred by any length of time, and the accident of not demanding it. Or, omitting that conſideration, can preſcription determine the matter, without civil judicatures to whom it may be pleaded. Has nature decided of the legal preſumption eſtabliſhed in civil laws ariſing from long continuance; or has it declared how many years ſhall limit or bar a right, any more than in what order inheritances ſhall deſcend. If it has, civil laws would do well to follow its proviſions, inſtead of differing from one another and themſelves. Nor let it be ſaid, that diſputes about prior occupancy are expoſed equally to the objection of diſturbing the public tranquility, as diſputes about inheritances; both becauſe thoſe of the firſt kind lying within the ocular obſervation of many, and taking their riſe upon the ſpot to be occupied, muſt be of eaſier and ſimpler determination, depending leſs on legal preſumptions and artificial reaſoning; and becauſe, without the principle of prior occupancy, there could be no ſuch thing in a ſtate of nature, as the acquiſition of property at all. And therefore any diſputes, which might be ſuppoſed to ariſe from it, are to be conſidered as a neceſſary evil, whilſt that ſtate remains. But the right of inheriting is not a manner of acquiring property necſſary for the ſubſiſtence of mankind and to ſupport the purpoſes of nature. 3. Laws have always diſtinguiſhed between *jura ſanguinis* and *jura hæreditaria*; conſidering the one as inſtituted by nature; the other by civil compact. The *Roman* law ſays *Hæres eſt nomen juris, Filius nomen naturæ*; and caſes might be cited out of it, which were affected by this maxim. In the law of *England*, the ſame diſtinction is clearly made. If a man attainted be murdered by a ſtranger, the ſon ſhall not have the appeal, becauſe it is given to the heir: yet, if he is murdered by the ſon, the crime is petty treaſon, becauſe the relation of a ſon remains. If a man is attainted, and have a charter of pardon from the king, ſo as to be capable of being returned upon a jury between his ſon and another, the challenge, on account of conſanguinity, continues, notwithſtanding the corruption of blood is not taken away by the pardon. Now, if the right of inheriting be a right of nature, the name of an heir cannot be ſeparated from that of a ſon, but they muſt ſtand and fall together, becauſe *jura ſanguinis nullo jure civili dirimi poſſunt*. But againſt this reaſoning we have the authority of two ſyſtems of civil law, which are the accumulated wiſdom of many ages, and the nobleſt efforts of hûman reaſon ſince the creation of the world.

The right of inheriting being proved of civil inſtitutions it may naturally occur to one, who turns his thoughts upon this ſubject, that it is an inſtitution contrived only for the benefit of a man's children; and, therefore, ought not to be obſtructed by the demerit of the Father.

But, if without being thought guilty of refinement, we may reſort to the firſt elements of ſociety for the reaſons on which the right of inheriting, or the power of tranſmitting property, ſtands; (for thoſe are convertible terms, the one reſerving to him to whom the property deſcends, and the other, to him from whom it comes;) they ſeem to be two, and neither of them has any relation to the children: One, that when thoſe things in which a man had gained property for his ſubſiſtence, ceaſed to be his in the courſe of nature, the neareſt relation ſhould inherit and take poſſeſſion, leſt the eagerneſs to contend about ſucceeding to them, might turn the ſtate of ſociety into a ſtate of war. And hence the rules of deſcent have been extended in ſo many countries, to take in the remoteſt kindred of the firſt occupant or purchaſer. The other, that, when every individual gave up natural rights, as the protection of ſociety was due to him, for ſubmitting his own revenge to public juſtice, ſo this power of tranſmitting property was conferred upon him as one recompence, for purſuing his private advantage in many reſpects, where nature interferes not, ſubordinately to the good of ſociety; and to make the advantages, ſo acquired, more permanent than in a natural ſtate, by extending the enjoyment to repreſentatives, as it were, beyond the bounds of nature. How juſt therefore is it, that he, who has not only ceaſed to purſue that good, but taken meaſures to deſtroy it, infringing the original contract, ſhould forfeit the protection, and loſe the recompence he gained by it! And if the courſe of deſcent, though in its effect, and perhaps ſecondary view, beneficial to the children, owe its inſtitution to reaſons, which ſolely regard ſociety, why may not reaſons of the ſame public and general utility account for the interruption of it?

In ſupport of the notion here advanced, and the uſe made of it, one may obſerve the difficulties which muſt attend any endeavor to explain the grounds of this great inſtitution, upon the other more obvious and common notion. Now it is a conſequence, that if the main cauſe of providing a courſe of deſcent for property was the benefit of the children, the firſt makers of laws concerning it muſt have had a particular attention to them, not merely as the deſcendants and neareſt relations of their father, but as left in the weak ſtate of infancy and orphanage. But then the manner of this proviſion is in no ſort proportioned to the cauſe of it; for in ſome reſpects, it does too much, and in others too little: too much, as the right of inheriting becomes the mere favour and gratuity of law, to children, who are not in that weak ſtate, at the time of the father's death, and therefore not comprehended within the reaſon and foundation of the right: too little, for if their benefit be the principal cauſe of this eſtabliſhment, then the equal partition of the father's property ſhould take place between all the children; and thoſe civil laws, which transfer the whole inheritance by deſcent to the eldeſt, ought to give proportionable ſhares of it to the reſt, in caſe the father has neglected it. But as a further evidence, that the complete and principal reaſons of this eſtabliſhment muſt not be drawn from this ſubordinate effect and ſecondary purpoſe of it, but from the foundations of ſociety, let it be conſidered, that of itſelf, and unattended by other proviſions in favor of infants, this right of inheriting is equally ineffectual to their ſervice in a ſtate of ſociety, has it has been (*p.* 16. 17.) ſhown to be in a ſtate of nature. And it is ſomewhat extraordinary in reaſoning, to aſſign that as the final cauſe or main end of any inſtitution, which the inſtitution itſelf is apparently not fitted to attain. It is alſo more unneceſſary, becauſe in a ſtate of nature, antecedent to civil policy, it is impoſſible to ſuppoſe any other means of providing for them, than either ſuch as may ariſe from the exerciſe of rights which nature has annexed to themſelves, or ſuch as may be contrived by the tender affection of the parent, or the diſintereſted care of the benevolent. In a ſtate of ſociety, the means are various; infants are not only of private, but of public concern. And ſurely the invention of thoſe great maſters of policy, the ancient lawgivers of moſt countries, failed them unaccountably in this inſtance, if the great cauſe of eſtabliſhing deſcents was the protection and benefit of infants; ſince the ſame end might have been anſwered far better in other ways, without conferring any rights of inheritance at all, or making any alteration in the natural and original condition of property. The ſupreme power of each ſtate might have taken all children out of the hands of their parents, maintained and educated them in a ſtate of equality under the public care; and then, without expoſing them to the danger of that enervate indolence, or vicious activity, too often owing to hereditary wealth, might have drawn them out, according to their age, capacity, and improvements, into the civil or military ſervice, more uſefully and more honourably for themſelves and their country. This plan is ſo obvious, as well as grateful to the imagination, that it has been touched upon by many writers, and is beautifully purſued in theory to its utmoſt extent, by the framers of imaginary commonwealths, *Plato* and Sir *Thomas More*. But the legiſlators of real ſtate ſaw the abſolute neceſſity of eſtabliſhing inheritances for the general order and welfare of ſociety; and at the ſame time knew the plan juſt mentioned (at leaſt as to the full execution of it) to be impracticable, without allowing that community of goods, of which viſionary legiſlators are fond; but which neither the paſſions of men, nor the circumſtances of ſociety could bear.

To theſe arguments it may be added, that the courſe of deſcent is alike obſtructed by one ſort of alienation as another; and if the benefit of the children was the only or chief ſource of legal deſcents, it will follow, that there ought to be no ſuch thing as a power of alienating, in any manner, veſted in the father; a conſequence, which, it will readily be allowed, ſhould be guarded againſt: both as it would deſtroy the mutual and neceſſary dependance of families, and introduce perpetuities ſo dangerous to that circulation of property, which animates all ſocial induſtry. Hence it is that a man's poſterity are not only indebted to the laws of that country which gave them birth, for a capacity of inheriting, but, by the ſame laws, are commonly left in the power of the father, as to their receiving actual benefit from that capacity. In *England*, a tenant in fee-ſimple may charge, waſte, or ſell his eſtate, and convey it away for ever from his heirs, he may deviſe it by will; and, unleſs in caſes of fraud, the law will not interpoſe to make it void. A tenant in tail is maſter of his eſtate, if he purſues the methods of conveyance proper to it. In theſe inſtances it may ſeem very hard, that any man ſhould diſpoſe of his fortune from his poſterity; and yet the law having put them out of the father's power, as to every grant, which they receive from the kindneſs of another, and the honeſt fruits of perſonal merit, it wiſely forbears to break in upon that law of nature, which allows a freedom of alienation; and expects no more from a father, than that he conduct the child thro' the weakneſs of infancy to a condition of ſupporting himſelf by his own labour and attention. Shall it then be in his breaſt to aliene in the forms of law, as intereſt or humour leads him? and ſhall not his attempts to diſſolve ſociety be equitably conſtrued, for reaſons of public uſefulneſs, a virtual intention of exerting his utmoſt power to alienate thoſe benefits, which might have been derived thro' his chanel from the favour of ſociety? Is it fit or reaſonable, that he only ſhould have advantage in the privilege ſo freely indulged to him; and that they, who indulge it, ſhould receive none from that equity, by which it is framed and ſupported?

Indeed the alienation by forfeiture is more extenſive than any other allowed in the law of *England*,, becauſe it is attended with the loſs of honours, which cannot otherwiſe be aliened; and the corruption of blood ſtops the courſe of regular deſcent, as to eſtates, over which the criminal could have no power, becauſe he never enjoyed them.

As to honours they have ſo far been thought alienable in former times, as that a man might reſtore them to that fountain, from which they flowed. But tho' they are not alienable, like moſt inheritances, ſince that would be to debaſe and proſtitute them, yet they ſeem peculiarly the proper object of forfeiture: for, being in a ſtricter ſenſe than other kinds of property, the gift and creation of ſociety, the terms, on which they are given, muſt be intirely ſubject to its power. And is it not natural and politic, that a diſtinction beſtowed only for the praiſe of them, who do well, ſhould be forfeitable on the commiſſion of crimes, for a terror to evil-doers?

As to the corruption of blood, it will be eaſily underſtood, when the meaning and reaſon of it are expreſſed in common language, free from legal terms of art. The propoſition to be explained is no more than this; that if a man is not capable of tranſmitting property acquired by himſelf, to an heir, it ſeems a neceſſary conſequence in reaſon, which is the ground of law, that he ſhall not be capable of receiving from an anceſtor, either to enjoy, or to tranſmit. And the propoſition may be made out by a very ſhort deduction. The methods of acquiring property can only be divided under the two general heads of purchaſe and deſcent: the one referring to him, who takes the property in the firſt inſtance by his own or another man's act; the other to him who takes the property by act and operation of law. 1. Whoever acquires property by purchaſe, muſt do it in one of theſe ways; by prior occupancy, by emption, or by gift. Theſe are the natural ways of acquiring property, and muſt ſubſiſt in a ſtate of nature, anterior to civil ſociety. Here the caſes are infinitely complicated and various, and the rules of evidence will vary, according to the nature and circumſtances of every caſe. And whoever claims, under this title of property, claims in his own perſonal right, without deriving from anceſtors. Therefore the ſon of an attainted perſon is equally favoured in whatever he takes by purchaſe; and in the remedy he purſues for this right; as any other ſubject of the ſtate. 2. Acquiſition by deſcent is not natural, but merely poſitive, (as has been ſhewn,) and founded on the policy of civil laws. Here the caſes cannot be complex, becauſe the rule of evidence is ſingle, and will not admit either of reſtraint, or extention in applying it. For whoever claims, under the title of deſcent as heir ought ſtrictly to deduce his pedigree thro' anceſtors from the firſt purchaſer or acquirer. And that is the reaſonable rule of evidence in deſcent. Yet becauſe ſuch evidence may often be difficult, a more favourable rule has been introduced in *England*, that it ſhould only be neceſſary for a claimant by deſcent to prove himſelf heir to the perſon laſt ſeiſed. This is taken to be ſufficient preſumptive evidence of relation to the firſt purchaſer; the law expects this ſhould be exactly proved, and does not require the evidence to be carried further. The conſequences following from hence, in point of reaſon, are undeniable. 1. That when he who was laſt ſeiſed of the inheritance, has committed treaſon, and the law has ſaid, that he ſhall no longer enjoy it himſelf, nor tranſmit it to an heir, of courſe no ſuch title can be made by any one who claims as heir within that rule of evidence. 2. If the claimant cannot make title where the offender was ſeiſed, becauſe the *vinculum* of deſcent is deſtroyed; neither can he make title where the offender was not ſeiſed, if that offender be an anceſtor, who forms the *vinculum* between the claimant and the anceſtor, who was ſeiſed. What then is the general reaſon of law upon this caſe? The offending anceſtor is by act of law diſabled from inheriting or tranſmitting property to heirs. Shall then the law, which is only to be moved by conſiderations that affect the whole, be moved, in this inſtance, by perſonal compaſſion to his family; and make an effort of itſelf, inconſiſtently with its own ſolemn act, to ſupply that connecting link in the chain of deſcent, which has been ſtruck out of it, for the traitor's infamy, and the public benefit?

After this it may be objected, that "the expectation of inheriting, in which the children are educated, confers a right on the principles of conſcience, which ſpeaks the dictates of the law of nature. It is ever thought a cruelty, that fathers ſhould alienate from their children by waſteful expence or gifts to ſtrangers. The *Roman* law for this reaſon provided *querela teſtamenti in officioſi*; and ſome local cuſtoms in *England* gave the writ *de rationabili parte bonorum*. Why then ſhould ſociety make theſe alienations the conſequence of an act, which has no immediate referrence to alienating;

“ eſpecially when it is the buſineſs of laws to prevent the ill conſequences naturally ariſing from mens actions, inſtead of adding to them by implication and conſtruction.” The objection ſeems founded on good reaſon, and yet muſt give way to better. If we conſider the kind of expectation here ſpoken of, it will be found to ariſe only from the ordinary courſe of families and legal deſcents, and not given in ſuch a manner and with ſuch circumſtances as to confer a right, on any principles of law or conſcience. Whether therefore we take the right of inheriting as conferred by civil ſociety, or for argument ſake by nature, the expectation ariſing from it is the ſame; ſince it muſt be conſidered in the firſt caſe as beſtowed originally on condition, in the ſecond, as qualified by civil inſtitution, like many other rights of nature. And if thoſe who form the expectation will regard that as abſolute, which depends on the performance of expreſs conditions, the inattention muſt be imputed to themſelves and not to the law of their country. To waſte a fortune which would have made an honourable ſupport for a man's family, is deſervedly eſteemed cruel and againſt conſcience. Why is it not prevented by the care of legiſlators? Becauſe no complete proviſion could be made againſt that evil, which would not be attended with more general inconvenience; and the compliance with the contrary duty is derived from the manners and the heart, grounded upon principles, and enforced by ſanctions of an higher order than belong to civil laws. If the greateſt good of every community be the object of laws contrived for it, as unqueſtionably it ought to be, every leſſer intereſt muſt yield; it being only the property of divine government to reconcile all private with public good in the final reſult of its diſpenſations. Hence it is, that though laws prevent conſequences injurious to particulars where they can conſiſtently with ſocial good, yet in matters which concern the exiſtence of the ſociety or government, conſequences injurious to particulars muſt not only be ſuffered to take place, but even ſought for and indulged, if they have a tendency to prevent conſequences injurious to government itſelf. On this reaſon ſtand thoſe ſevere laws which have been made in ſeveral ſtates againſt neutrality in times of common danger. It is agreeable to the policy and original compact of government to blend and involve the intereſt of every member with its own; on which account the fortunes of private men in all countries muſt depend upon public revolutions. Were it in any reſpect the aim of civil laws to make particulars independent of the ſocial good, as it would be a very ſingular ſtrain of policy, ſo it would proceed upon a principle more contrary to the law of nature than thoſe who are fond of that law would deſire to ſee charged upon their doctrine. Beſides, nothing is more natural, on the principles laid down in this eſſay, than the conſtruction which civil laws have put on treaſons againſt government, that when a man endeavours the diſſolution of it, he means to diſclaim all thoſe benefits and rights which it has either made him capable to enjoy, or the inſtrument to convey: Nothing is more neceſſary, than to try whether thoſe attachments which are connected with our paſſions and affections will prevail, when thoſe which are founded only in reaſon and convenience have no power. *Sic legibus comparatum eſt* (ſays *Tully*) *ut filiorum caritas amiciores reddat parentes republicæ.* Thus ſociety, by making the loſs of the rights it confers upon every man, a penalty for the greateſt crime, which can be committed againſt his country, intereſts every relation and dependant in keeping him firm in the general tranquility and welfare; at the ſame time, it gives him an occaſion of reflecting, that when he attempts it, he muſt break thro' every private as well as public tye; which enhances his crime, whilſt it is an aggravation of his puniſhment. Nay more, he may hope to eſcape from the juſtice of his country with his own life, if that alone were to be forfeited; but the diſtreſs of his family will purſue him in his ſecureſt thoughts, and abate the ardour of reſolution. Many inſtances occur in hiſtory and daily experience of men, not aſhamed to commit baſe and ſelfiſh enormities, who have retained a tenderneſs for their poſterity by the ſtrong and generous inſtinct of nature. The ſtory of *Licinius Macer*, who was father to *Calvus* the great orator, is very remarkable, as related by a *Roman* annaliſt. Having gone thro' the office of prætor, and governed a province, he was accuſed, upon returning home, of extortion and abuſes of his power. The very morning of his trial he ſtrangled himſelf, after having ſent word to *Cicero*, who was preparing to plead againſt him, that, being determined to put an end to his life before ſentence (tho' the penalty did not extend to taking it away) the proſecution could not go on, and his fortune would be ſaved to the benefit of his ſon.

Upon the whole then, where is the wrong? It is agreeable to juſtice to beſtow rights upon condition. It is the wiſdom of governments to lay hold on human partialities. *Conſiderations on the law of forfeiture, &c. p.* 11, *&c.*

Forfeitures may be either in *civil* or in *criminal* caſes. With reſpect to the firſt. A man that hath an eſtate for life or years, may *forfeit* it many ways, as well as by *treaſon* or *felony*, and ſuch means as are before mentioned: as by *alienation*; by *claiming* a *greater* eſtate than he hath, or *affirming* the *reverſion* to be in a ſtranger, *&c.* If tenant for life, in dower, by the curteſy, or after poſſibility of iſſue extinct, or leſſee for years, tenant by ſtatute merchant, ſtaple, or *elegit*, of lands or tenements that lie in *livery*, ſhall make any abſolute or conditional feoffment in fee, gift in tail, leaſe for any other life than his own, *&c.* or levy a fine *ſur conuſance de droit come ceo*, &c. or ſuffer a common recovery thereof: or being impleaded in a writ of right brought againſt him, join the *miſe* upon the meer right, or admit the reverſion to be in another; or in a *quid juris clamat*, claim the fee-ſimple; or if leſſee for years being ouſted, bring an aſſiſe *ut de libero tenemento, &c.* By either of theſe things, there will be a *forfeiture* of eſtate. *Plowd.* 15. 1 *Rep.* 15. 8 *Rep.* 144. *Co. Lit.* 251. *Dyer* 152, 324. 1 *Bulſt.* 219.

But where the land granted by tenant for life, or years, is not well conveyed; or the thing doth not lie in *livery*, as a rent, common, or the like; he will not *forfeit* his eſtate: and therefore if a feoffment, gift in tail, or leaſe for another's life, made by the tenant for life, is not good, for want of words in making it, or due execution in the livery and ſeiſin, this ſhall *not* produce a *forfeiture.* 2 *Rep.* 55.

When tenant in tail makes leaſes, not warranted by the ſtatute; a copyholder commits waſte, refuſes to pay his rent, or do ſuit of court; and where an eſtate is granted upon condition, on non-performance thereof, *&c.* they will make a *forfeiture.* 1 *Rep.* 15.

Entry for a *forfeiture* ought to be by him, who is next in reverſion, or remainder after the eſtate forfeited. As, if tenant for life or years commits a *forfeiture*, he who has the *immediate* reverſion, or remainder, ought to enter; tho' he has the fee, or only an eſtate-tail. 1 *Rol.* 857. *l.* 45, 50, 858. *l.* 5.

It ſhall be a diſpenſation of the *forfeiture*, if he in reverſion, or remainder be a party to the eſtate made, and accept it: as, if a huſband, ſeiſed in right of his wife for life, leaſes to him in reverſion for his own life. 1 *Rol.* 856. *l.* 10.

A feoffment by a huſband, or by huſband and wife, of an eſtate for life, of which the huſband is ſeiſed in right of his wife, or jointly with his wife, binds only during coverture. 1 *Rol.* 851. *l.* 45, 50. *Vide Com. Dig.* title *Baron and Feme, (K.—R.)*

Alſo *offices* may be *forfeited* by neglect of duty, *&c.* See *Fine.*

As to *forfeitures in criminal* caſes, it is to be ſeen,

I. *For what crimes ſuch forfeitures are inflicted, and blood corrupted.*
II. *To what time they bear relation.*
III. *When forfeitures may be ſeized.*

I. *For what crimes ſuch forfeitures are inflicted, and blood corrupted.*

Forfeitures are in criminal matters, where a perſon is attainted of *treaſon, felony, &c.* And as all eſtates are ſaid to be derived from the crown; ſo all forfeitures and eſcheats of land belong to the King, unleſs granted away. *Finch.* 132, 164. Alſo where land comes to the crown, as forfeited by *attainder of treaſon,* all meſne tenures of common perſons are extinct; but if the King grant it out, the former tenure ſhall be revived, for which a petition of right lies. 2 *Hale's Hiſt. P. C.* 254. In *treaſon,* all lands of inheritance, whereof the offender was ſeiſed in his own right, were forfeited by the common law; and rights of entry, *&c.* 2 *Hawk. P. C.* 448. And the inheritance of things not lying in tenure, as of rent-charges, commons, *&c.* ſhall be forfeited in *high treaſon:* but no *right of action* whatſoever to lands of inheritance is forfeited, either by the common or ſtatute law. *Ibid.* 449.

All lands, tenements, *&c.* are forfeited in *treaſon* by *ſtat.* 26 *H.* 8. *c.* 13. And the King ſhall be adjudged in poſſeſſion of lands and goods forfeited for *treaſon* on the attainder of the offender, without any office found, ſaving the right of others. 33 *H.* 8. *c.* 20. Lands and hereditaments in *fee-ſimple* and *fee-tail,* are forfeited in *high treaſon:* but lands *in tail* could not be forfeited only for the life of tenant in tail, till the ſtatute 26 *H.* 8. *c.* 13. by which ſtatute, they may be forfeited. Where *tenant for life, &c.* is attainted, the King ſhall have the profits of the lands during the life of ſuch tenant only. 2 *Inſt.* 37.

There ſhall be no forfeiture of lands for *treaſon* of dead perſons, not attainted in their lives. *Stat.* 34 *Ed.* 3. *c.* 12. 3 *Inſt.* 12. Though the chief juſtice of *B. R.* as ſovereign coroner may view the body of a perſon killed in rebellion, and make a record thereof, whereby he ſhall forfeit lands and goods. *Wood's Inſt.* 654. And a man may be attainted by act of parliament.

After the deceaſe of the *Pretender,* no attainder for treaſon in *Scotland* ſhall make any forfeiture, to diſinherit the heir, *&c.* *Stat.* 7 *Ann. c.* 21.

Upon *outlawry* in *treaſon* or *felony,* the offender ſhall forfeit as much as if he had appeared, and judgment had been given againſt him ſo long as the outlawry is in force. 3 *Inſt.* 52, 212.

For *petit treaſon, murder, burglary, robbery,* and all felonies for which the offenders ſhall ſuffer *death,* they ſhall forfeit all their lands in *fee-ſimple, goods* and *chattels.* *Co. Lit.* 391. 1 *Lill. Abr.* 628.

But *Gavelkind* land in *Kent* is not forfeited by committing of *felony;* and by a *felony only, intailed lands* are not forfeit. *S. P. C.* 3. 26.

Land that one hath in truſt; or goods and chattels in right of another, or to another's uſe, *&c.* will not be liable to forfeiture. Tho' leaſes for years, in a man's own, or his wife's right: eſtates in jointenancy, *&c.* and all ſtatutes, bonds, and debts due thereby, and upon contracts, *&c.* ſhall be forfeited. *Co. Lit.* 42, 151. *Staund.* 188.

A married man guilty of *felony,* forfeits his wife's term; and if a wife kill her huſband, the huſband's goods are forfeited. *Jenk. Cent.* 65. In *manſlaughter,* the offender forfeits *goods* and *chattels:* and in *chance-medley* and *ſe defendendo, goods* and *chattels;* but the offenders may have their pardon of courſe. *Co. Lit.* 319.

Thoſe that are hanged by *Martial Law* in time of war, forfeit no lands. *Co. Lit.* 13. And for robbery or piracy, *&c.* on the ſea, if tried in the Court of Admiralty by the *Civil Law,* and not by jury, there is no forfeiture: but if a perſon be attainted before commiſſioners by virtue of the *ſtat.* 28 *Hen.* 8. *c.* 18. there works a forfeiture. 1 *Lil. Abr.*

The King ſhall have goods of felons, and year, day and waſte in their lands, *&c.* which afterwards go to the Lord of the manor of whom held. *Magna Charta, c.* 22. and 17 *Ed.* 2. *c.* 14. And the profits of lands whereof a perſon attainted of felony is ſeiſed of an eſtate of inheritance in right of his wife; or of an eſtate for life only in his own right, are forfeited to the King, and nothing is forfeited to the Lord. 3 *Inſt.* 19. *Fitz. Aſſ.* 166. By the *conviction* of a *felon,* his *goods* and *chattels* are forfeited; but by *attainder,* his *lands* and *tenements.* *Co. Lit.* 291.

Goods of perſons that *fly* for a felony, are forfeited to the Lord of the franchiſe, when the flight is found of record. 2 *Inſt.* 281. A *felo de ſe* forfeits all his goods and chattels. 3 *Inſt.* 55. For *miſpriſion* of treaſon the forfeiture is *goods and chattels,* and profits of lands during life. 3 *Inſt.* 392. In a *præmunire, lands in fee-ſimple* are forfeited, *with goods and chattels.* *Co. Lit.* 129. For *petit larceny* the offender forfeits his goods. *Co. Lit.* 391. And for *ſtanding mute* where perſons are adjudged to penance, in caſes of felony, there is a forfeiture of *goods and chattels;* and ſo for challenging above 35 jurors, *&c.* 3 *Inſt.* 227.

It is clearly agreed, that by an attainder of treaſon or felony, the blood of the offender is ſo far ſtained and corrupted, that the party loſes all the nobility, or gentility he might have had before, and becomes ignoble. *Co. Lit.* 8, 41. 3 *Inſt.* 211. *Staundf. P. C.* 195.

Alſo it is clearly agreed, that he can neither inherit as heir to any anceſtor, nor have an heir. *Co. Lit.* 8. *a* 391. *b.* 392. *Staundf. P. C.* 165. *Bro. Nobility* 21. *Cro.* 66.

If a man be attainted, and after pardoned by charter, the children born before ſuch pardon ſhall not inherit; but if they fail, the children born after ſuch pardon may inherit him; for the pardon makes him capable of new relations as well as of new purchaſes, tho' all the old legal benefits and relations are loſt. *Noy* 170. *Co. Lit.* 8. *a.* 3 *Inſt.* 233.

Before the ſtatute of 1 *E.* 6. *cap.* 12. the wife not only loſt her dower at Common law, but alſo her dower *ad oſtium eccleſiæ,* or *ex aſſenſu patris,* or by ſpecial cuſtom (except that of gavelkind,) by the huſband's attainder of treaſon, or capital felony, whether committed before or after marriage. *Co. Lit.* 31. *b.* 37. *a.* 41. *a.* *F. N. B.* 150. *Perk. ſect.* 308. *Bro.* tit. *Dower* 82. *Plow.* 261.

But the wife forfeited lands given jointly to her huſband and her, whether by way of frank-marriage or otherwiſe, but only for the year, day, and waſte. *Co. Lit.* 37. 3 *Inſt.* 216.

It is enacted by 1 *E.* 6. *cap.* 12. *par.* 17. That albeit any perſon ſhall be attainted of any treaſon or felony whatſoever; yet notwithſtanding every woman, that ſhall fortune to be the wife of the perſon ſo attainted, ſhall be endowable and enabled to demand, have, and enjoy her dower, in like manner and form as tho' her huſband had not been attainted, *&c.* But this is *repealed* as to *treaſon* by 5 *&* 6. *E.* 6. *cap.* 11. *par.* 9.

If the huſband ſeiſed of lands in fee, makes a feoffment, and then commits treaſon, and is attainted of it, the wife ſhall not recover dower againſt the feoffee. *Bendl.* 56. *Dyer* 140. *Co. Lit.* 111. *a.* So if the huſband is attainted of treaſon, and afterwards pardoned, yet the wife ſhall not recover dower; but of lands purchaſed by the huſband after the pardon, the wife ſhall be endowed. 3 *Leon.* 3. *Perk. ſect.* 391.

If a huſband having levied a fine with proclamation, is erroneouſly attainted of treaſon, and the five years paſs after his death, and then the outlawry is reverſed, the fine and nonclaim are no bar till five years are paſſed after the reverſal, becauſe the wife could not ſue for her dower while the attainder ſtood in force, neither could ſhe any way reverſe it. 3 *Inſt.* 216. *Moor* 639. *pl.* 879.

After the making of the ſtatute 1 *E.* 6. *cap.* 12. it ſeems to have been doubted, whether the wife ſhould not loſe her dower in caſe of any new felony made by act of parliament;

liament; therefore where ſeveral offences have been made felony ſince, care has been taken to provide for the wife's dower. 2 *New Abr.* 584. See 12 *Vin. Abr.* tit. *Forfeiture.* And ſee *Attainder,* and 2 *Hawk.* tit. *Treaſon.*

Beſides theſe forfeitures for crimes attended with corruption of blood, *&c.* there are forfeitures in leſſer offences. Drawing a weapon upon a judge, or *ſtriking* another in the *King's Courts,* incurs *forfeiture* of the profits of lands for life, and of goods: and it is the ſame *forfeiture* for reſcuing a priſoner in, or before any of thoſe courts committed by the juſtices. *Cro. Jac.* 367. 3 *Inſt.* 141. If a woman after a *rape,* conſent to the raviſher, ſhe ſhall loſe her dower after the death of her huſband, *&c. Stat.* 6. *R.* 2. *c.* 6. And if any maiden or woman child *above* twelve, and under ſixteen years of age, ſhall agree to be taken away and deflowered, or contract with any man for marriage againſt the will and without the conſent of her father; or, if he be dead, her mother or guardian appointed by her father's will, ſhe ſhall *forfeit* her land of inheritance for her life. 4 & 5 *P.* & *M.* *c.* 8.

Artificers going out of the kingdom and teaching their trades to foreigners, are liable to *forfeit* their lands, *&c.* by *Stat.* 5 *Geo.* 1. *c.* 27. Forfeitures likewiſe are incurred by ſeveral penal ſtatutes.

II. *As to the time to which forfeitures ſhall relate.*

The *forfeiture* in caſe of felony ſhall relate to the time mentioned in the *indictment* when the felony was committed, as to the avoiding of eſtates and charges after; but for the meſne profits of the land, it ſhall relate only to the judgment. *Co. Lit.* 390. But it is otherwiſe, if he be attainted upon an *appeal,* by *verdict* or *confeſſion. Vide infra.* So, if he be attainted by *outlawry* upon an indictment. *Co. Lit.* 390. *b.* 13. *a.* *R.* 30 *H.* 6. 5. *a.* So, if a man be convict in a *Præmunire.* *Dub. Cro. Car.* 173. *Jon.* 217. So, if a man be a fugitive beyond ſea, it relates to the time of his flight. *R. Cro. Jac.* 82. So, if a man be *felo de ſe,* the forfeiture relates to the fact. 1 *Lev.* 8. And is veſted in the King before inquiſition found. *R.* 1 *Lev.* 8. *R. Cro. Jac.* 82. But the forfeiture of *goods and chattels* relates to the time of the *conviction.* *S. P. C.* 192. *a.* *Co. Lit.* 391. So, upon preſentment of the coroner, of a *fugam fecit,* the forfeiture relates to the day of the *preſentment.* *S. P. C.* 192. *a.* So, if it be found by verdict that he fled, to the time of the *verdict.* *S. P. C.* 192. *a.* To the time of the indictment, or acquittal. 5 *Co.* 109. *b.* So the forfeiture, as to the *meſne* profits of lands, relates only to the *conviction.* *Co. Lit.* 390. *b.* So the forfeiture by outlawry upon an *appeal;* for the time of the offence is not mentioned in the count. *Co. Lit.* 390. *b.* 13. *a.*

III. *When forfeitures may be ſeiſed.*

Goods or lands of one arreſted for felony, ſhall not be ſeized before he is convict or attaint of the felony; on pain of *forfeiting* double value. 1 *R.* 3. *c.* 3. Goods of a felon, *&c.* cannot be ſeiſed before *forfeited;* though they may be inventoried, and a charge made thereof before indictment. *Wood's Inſt.* 659. In treaſon or felony, the delinquent may ſell his goods, be they chattels real, or perſonal, *bona fide, before conviction,* for his maintenance in priſon; for the King hath no intereſt in the *forfeiture* till conviction. And where goods of a felon are pawned before he is attainted, the King ſhall not have the *forfeiture* of the goods till the money is paid to him to whom they were pawned. 3 *Inſt.* 17. 2 *Nelſ. Abr.* 874, 875.

After conviction by judgment, or outlawry, for high treaſon, *&c.* a commiſſion goes to perſons named by the King, or the Attorney General, to inquire, what lands and tenements the offender had at the time of the treaſon committed, and the value; and that they ſeiſe them into the King's hands. And the inquiſition taken thereon ſhall be returned to the Court of *Exchequer,* and filed in the office of the King's remembrancer. *Lut.* 997. So after conviction for felony, a *ſcire facias* ſhall go againſt the vill, or any other, who has the goods in his cuſtody. *S. P. C.* 194. But if any one has title to the goods or lands found by inquiſition to be the goods or lands of the offender, he may make his claim, by pleading his title. *Lut.* 998. To which the Attorney general ſhall demur, or reply. *Vide Com. Dig.* tit. *Prærogative,* (D. 83, 84.)

A copyholder ſurrenders to the uſe of his will, the deviſee is convicted of felony and hanged before admittance, the lands are not forfeited to the Lord but deſcend to the heir of the ſurrenderor. *Wilſon par.* 2. *fo.* 13.

Forfeiture differs from *confiſcation,* in that *forfeiture* is more general; whereas *confiſcation* is particularly applied to ſuch as are *forfeit* to the King's *Exchequer,* and *confiſcate* goods aae ſaid to be ſuch as no body doth claim. *Staundf. P. C.* 186.

There is a full *forfeiture, plena forisfactura,* otherwiſe called *plena wita,* which is a *forfeiture* of life and member, and all that man hath. *Leg. H.* 1. *c* 88. And there is mention in ſome ſtatutes, of *forfeiture* at the King's will, of body, lands, and goods, *&c.* 4 *Inſt.* 66. The King's will now means, *according to ancient law, uſage* and *cuſtom.*

See farther as to forfeiture, generally. Black. Com. 1 *V.* 299. 2 *V.* 153, 267. *And as to forfeitures for crimes. Id.* 4 *V.* 370, 374, 416, 417. *Forfeiture of Copyholds. Id.* 2 *V.* 284. *Of goods and chattels. Id.* 2 *V.* 420. 4 *V.* 379. *Of lands. Id.* 2 *V.* 267. 4 *V.* 374.

Forfeiture of Marriage, *(Forisfactura maritagii,)* Was a writ which lay againſt him, who, holding by knights-ſervice, and being under age, and *unmarried,* refuſed her whom the lord offered him without his diſparagement, and married another. *F. N. B. fol.* 141. *Rep. Orig. fol.* 163.

Forfeited Eſtates. There are ſeveral ſtatutes appointing *commiſſioners of forfeited eſtates,* on rebellions in this kingdom and *Ireland:* by 11 & 12 *W.* 3. *c.* 3. all lands and tenements, *&c.* of perſons attainted or convicted of treaſon or rebellion in *Ireland,* were veſted in ſeveral commiſſioners and truſtees for ſale thereof. The 1 *Geo.* 1. *c.* 50. appointed commiſſioners to inquire of *forfeited eſtates* in *England* and *Scotland,* on the rebellion at *Preſton, &c.* And the eſtates of perſons attainted of treaſon were veſted in his Majeſty for public uſes; but afterwards in truſtees, to be ſold for the uſe of the public; and purchaſers to be *Proteſtants.* See 1 *Geo.* 1. *c.* 50. 4 *Geo.* 1. *c.* 8. 5, 7 & 8 *Geo.* 1. 5 *Geo.* 2. *c.* 23.

Forgabel, *(Forgabulum)* A ſmall reſerved rent in money, or quit-rent:——*Ita quod ego Henricus M. vel Hæredes mei nihil juris de tenemento, &c. exceptis vi. denar. de* Forgabulo *annuatim percipiendis ad Paſcha pro omnibus ſervitiis.* Ex Cartular. Abbat. de Rading. MS. f. 88.

Forge, *(Forgia)* A ſmith's *Forge,* to melt and work iron.——*Henricus Rex conceſſiſſe, &c. et unam* Forgiam Ferrariam *ita liberam.* Chart. Hen. 2.

Forgery, (From the Fr. *Forger,* i. e. *accudere, fabricare,* to beat on an anvil, forge or form) Its ſignification in law is, where a perſon fraudulently makes and publiſhes falſe writings, to the prejudice of another man's right; or it ſignifies the writ that lies againſt him who commits ſuch an offence, the penalty whereof is declared in the *Stat.* 5 *Eliz.* *c.* 14.

And *forgery* is either at Common law, or by ſtatute, puniſhable by indictment, information, *&c.* But there can be no *forgery* where none can be prejudiced by it but the perſon doing it. 1 *Salk.* 375.

Forgery by the *Common law* extends to falſe and fraudulent making or altering of a deed or writing, whether it be matter of record, or any other writing, deed, or will. 3 *Inſt.* 169. 1 *Rol. Abr.* 65. Not only where one *makes a falſe deed;* but *where a fraudulent alteration is made of a true deed,* in a material part of it, as by making a leaſe of the manor of *Dale,* and it appears to be a leaſe of the manor of *Sale,* by changing the letter *D.* into an *S.* or by altering a bond, *&c.* for 500*l.* expreſſed in figures, to 5000 *l.* by adding a new cypher, theſe are *forgery:* ſo it is, if a man finding another's name at the bottom of a letter, at a conſiderable diſtance from the other writing, cauſes the letter to be cut off, and a general releaſe to be written above the name, *&c.*

Alſo a writing may be ſaid to be *forged*, where one being directed to draw up a will for a ſick perſon, doth inſert ſome legacies therein falſly of his own head; though there be no *forgery* of the hand or ſeal; for the crime of *forgery* conſiſts as well in endeavouring to give an appearance of truth to a meer falſity, as in counterfeiting a man's hand, *&c.* 1 *Hawk. P. C.* 182, 183. 3 *Inſt.* 170. But a perſon cannot regularly be guilty of *forgery*, by an act of omiſſion; as by omitting a legacy out of a will, which he is directed to draw for another: though it has been held, that if the omiſſion of a bequeſt to one cauſe a material alteration in the limitation of an eſtate to another; as if the deviſor directs a gift for life to one man, and the remainder to another in fee, and the writer omit the eſtate for life, ſo that he in remainder hath a preſent eſtate upon the death of the deviſor, not intended to paſs, this is *forgery*. *Noy* 118. *Moor* 760. Suppoſing it *wilfully* done, and not by a mere miſtake.

If one write a will without any direction, and bring it to the teſtator, who is not of perfect memory, and he ſigns it, this doth not amount to *forgery*. *Ibid.* If a feoffment be made of land, and livery and ſeiſin is not indorſed when the deed is delivered, and afterwards on ſelling the land for a valuable conſideration to another, livery is indorſed upon the firſt deed; this hath been adjudged *forgery* both in the feoffer and feoffee; becauſe it was done to deceive an honeſt purchaſer. *Moor* 665. And when a perſon knowingly falſifies the date of a ſecond conveyance, which he had no power to make, in order to deceive a purchaſer, *&c.* he is ſaid to be guilty of *forgery*. 3 *Inſt.* 169. 1 *Hawk.* 182.

It ſeems to be no way material, whether a *forged* inſtrument be made in ſuch manner, that if it were in truth ſuch as it is counterfeited for, it would be of validity or not. 1 *Sid.* 142. The counterfeiting writings of an inferior nature, as letters and ſuch like, is not properly *forgery*; but the deceit is puniſhable. 1 *Hawk.* 184.

By *ſtat.* 1 *H.* 5. *c.* 3. a *forger* or publiſher of falſe deeds, was to pay damages, fine and ranſom. And by 5 *Eliz. c.* 14. If any perſon alone, or with others, ſhall falſly *forge* or make, or cauſe to be *forged* and made, or aſſent to the *forging* of any deed or writing ſealed, court-roll or will in writing, to the intent that the freehold or inheritance of lands may be defeated or charged; or ſhall pronounce, publiſh, or ſhew forth in evidence any ſuch *forged* writing, as true, knowing of the *forgery*; and ſhall be convicted thereof upon an action founded on this ſtatute, or otherwiſe by bill, *&c.* in the *King's Bench* or *Exchequer*, he ſhall pay double coſts and damages to the party grieved, and be ſet on the pillory, and have both his ears cut off, and his noſtrils ſlit, and ſhall *forfeit* to the King the iſſues and profits of his lands and tenements during life, ſuffer perpetual impriſonment, *&c.* And if any one ſhall *forge* or falſly make any deed or writing, containing a leaſe for years of lands (not copyhold) or an annuity in fee, for life or years, or any obligation, acquittance, releaſe, or other diſcharge of any debt or perſonal demand, or publiſh or give in evidence the ſame knowingly; he ſhall pay to the party injured double coſts and damages, and ſhall be likewiſe ſet on the pillory, and loſe one of his ears, and be impriſoned for a year. And if any perſon ſhall be guilty of a ſecond offence, it ſhall be adjudged *felony*, without benefit of clergy.

Where there is a penalty in an obligation, *&c.* the party grieved by a *forged* releaſe thereof, ſhall recover double the penalty as damages, and not of the debt appearing in the condition. 3 *Inſt.* 172. As to publiſhing a deed, knowing the ſame to be *forged*, it has been reſolved, that if a perſon is informed by another that a deed is *forged*, if he afterwards publiſhes it as true, he is within the danger of the ſtatute. *Ibid.* 171. The King may pardon the corporal puniſhment of *forgery* which tends to common example; but the plaintiff cannot releaſe it: if the plaintiff releaſe or diſcharge the judgment or execution, *&c.* it ſhall only diſcharge the coſts and damages; and the judges ſhall proceed to judgment upon the reſidue of the pains, and award execution upon the ſame. 5 *Rep.* 50. 5 *Eliz. c.* 12.

A perſon convicted of *forgery*, and adjudged to the pillory, *&c.* whereby he becomes infamous, is not allowed to be a witneſs; but it is a good exception to his evidence. *Hawk. P. C.* 432. And one convicted of this crime, may be challenged on a jury, ſo as to be incapable to ſerve as a juror; and it hath been holden, that exceptions to perſons ſound guilty of perjury or *forgery*, as well as felony, *&c.* are not ſalved by a pardon. 2 *Hawk.* 417. The court of *B. R.* will not ordinarily, at the prayer of the dependant, grant a *certiorari* for a removal of an indictment of *forgery*, *&c.* 1 *Sid.* 54.

By a late act, *forging* or counterſeiting any deed, will, bond, bill of exchange, note or acquittance for money, or any indorſement or aſſignment of a bill, *&c.* with intent to defraud any perſon, or publiſhing ſuch falſe deed, *&c.* to be true, knowingly, the offenders ſhall be guilty of felony, and ſuffer death as felons; but not to work corruption of blood, *&c.* *Stat.* 2 *Geo.* 2. *c.* 25. Vide 7 *Geo.* 2. *c.* 22.

As to *forging* of *Exchequer* and *Bank Bills*, *Lottery Tickets*, *Letters of Attorney* to transfer ſtock, *&c.* But for the ſeveral ſpecies of this offence, See title *Forgery* under title *Felonies* in the table to the quarto edition of the *Statutes*, or the octavo *Index*. And *Black. Com.* 4 *V.* 245.

Forinſecus, Outward, or on the outſide. *Kennet's Gloſſ.*

Forinſecum Manerium, The manor as to that part of it which lies without the town, and not included within the liberties of it.——*Summa reddituum aſſiſorum de* Manerio Forinſeco *Banbury*, &c. *Paroch. Antiq.* 351.

Forinſecum Servitium, The payment of extraordinary aid, oppoſed to *intrinſecum ſervitium*, which was the common and ordinary duties, within the Lord's court. *Kennet's Gloſſ.* See *Foreign Service*.

Foriſbannitus, Signifies baniſhed: *Expulſus à Scotia* Foriſbannitus *ab Anglia*, *&c.* Mat. Pariſ. Ann. 1245.

Foriſfamiliari, When a ſon accepts of his father's part of lands, in the life-time of the father, and is contented with it; he is ſaid to be *foriſfamiliari*, and cannot claim any more. *Blount.*

Forland, *(Forlandum)* Lands extending further or lying before the reſt; alſo a *promontory*. Mon. Angl. Tom. 2. fol. 332.

Forler-land, Was land in the biſhoprick of *Hereford* granted or leaſed *dum epiſcopus in epiſcopatu ſteterit*, ſo as the ſucceſſor might have the ſame for his preſent revenue: this cuſtom has been long ſince diſuſed, and the land thus formerly granted is now let by leaſe as other lands, tho' it ſtill retains the name by which it was anciently known. *Butterfield's Surv.* 56.

Form, Is required in law proceedings, otherwiſe the law would be no art; but it ought not to be uſed to enſnare or intrap. *Hob.* 232. Matters of *form* in pleas that go to the action, may be helped on a general demurrer; as when a plea is only in abatement. 2 Ld. *Raym.* 1015. The formal part of the law or method of proceeding, cannot be altered but by parliament: for, if once thoſe outlets were demoliſhed, there would be an inlet to all manner of innovation in the body of the law itſelf. *Black. Com.* 1 *V.* 142.

Forma Pauperis, Is where any perſon has juſt cauſe of ſuit, and is ſo *poor*, that he cannot bear the uſual charges of ſuing at law, or in equity: in this caſe, upon his making oath that he is not worth 5 *l.* except the matter in queſtion, his debts being paid, and bringing a certificate from ſome barriſter, that he hath cauſe of ſuit, the judge admits him to ſue *in forma pauperis*, i. e. without paying any fees to counſellor, attorney or clerk: this had beginning from the *ſtat.* 11 *H.* 7. *c.* 12. by which it is enacted, that poor perſons having cauſe of action or ſuits, ſhall have original writs, counſel and attornies, aſſigned them *gratis*.

On proceeding in *Chancery*, *affidavit* is firſt made that the plaintiff is not worth 5 *l.* in lands, tenements, goods or chattels, his wearing apparel, and the matters of the ſuit excepted; and then a *petition* is drawn up and preſented to the Lord Chancellor or Maſter of the Rolls, praying to be admitted *in forma pauperis*, and to have counſel, &c. aſſigned him, who are neither to take fees, nor make any contract or agreement for recompence, on pain of puniſhment; and no counſellor or attorney aſſigned ſhall refuſe to proceed, without ſhewing good cauſe to the Lord Chancellor, &c. *Pract. Sol.* 24. If it be made appear, that any *pauper* has ſold or contracted for the benefit of his ſuit, while depending in court, ſuch cauſe ſhall be thenceforth wholly diſmiſſed. *Paupers* are not to be admitted to remove cauſes out of inferior courts. 1 *Mod.* 268. If a cauſe goes againſt a *pauper*, or a plaintiff *in forma pauperis* be nonſuit; he ſhall not pay coſts to the defendant, but ſhall ſuffer ſuch puniſhment in his perſon as the court ſhall award. 23 *H.* 8. *c.* 15. 1 *Lil. Abr.* 634. 2 *Sid.* 261. *Paupers* uſing delays, to vex their adverſaries; or being proved to be vexatious perſons, and having many frivolous ſuits depending, will be *diſpaupered* by the court; for the law doth not aſſiſt them to do injury to others. 1 *Lil.* 633. See *Black. Com.* 3 *V.* 400.

Formedon, (*Breve de* forma donationis) Is a writ that lieth for him who hath right to lands or tenements by virtue of any *intail*, growing from the ſtat. of *Weſtm.* 2. *c.* 2. It is a *writ of right* for recovery of land; and is of three kinds, *viz.* in *deſcender*, *remainder* and *reverter*.

Formedon in deſcender lieth where *tenant in tail* enfeoffs a ſtranger, or is diſſeiſed and dieth, the heir ſhall have this writ to recover the land.

Formedon in remainder lies where one gives land in tail, and for default of iſſue the *remainder* to another *in tail*, &c. If the tenant in tail die without iſſue, and a ſtranger abates and enters into the land, he in remainder ſhall have this writ.

Formedon in the reverter lieth where land is intailed to certain perſons and their iſſue, with remainder over for want of iſſue, and on the remainders failing to *revert* to the donor and his heirs; now if tenant in tail dies without leaving any iſſue, and likewiſe he in remainder, then the donor or his heirs to whom the reverſion comes, ſhall have this writ for recovery of the eſtate, in caſe it be aliened, &c. *Reg. Orig.* 238, 242. *F. N. B.* 111.

Formedon in deſcender is the higheſt writ a *tenant in tail* can have: and where tenant in tail aliens, or is diſſeiſed of his eſtate, or if a recovery is had againſt him by default, and he die, his heir ſhall have a *formedon*, it being the only remedy the heir may have for the poſſeſſion of his anceſtor; but if he be ouſted of his own poſſeſſion, as if he be ſeiſed, and put out, he ſhall have his writ of *aſſiſe*.

There is a writ of *formedon in deſcender*, where *partition* of lands held in tail, being made among parceners, &c. and one alieneth her part, her heir ſhall have this writ; and by the death of one ſiſter without iſſue, the partition is made void, and the other ſhall have the whole land as heir in tail. *New Nat. Br.* 476, 477.

Alſo there is a writ of *formedon inſimul tenuit*, that lies for a coparcener againſt a ſtranger upon the poſſeſſion of the anceſtor; which may be brought without naming the other coparcener who hath her part in poſſeſſion. *Ibid.* 481. This writ may be likewiſe had by one heir in *Gavelkind*, &c. of lands intailed; and where the lands are held without partition.

A demandant in a writ of *formedon*, ought to make his deſcent by all who held the eſtate: otherwiſe the writ will abate; and the demandant ſhould always be made couſin and heir, or ſon and heir to him who was laſt ſeiſed of the tail; but the ſureſt way is to make every man named in the writ ſon and heir in the writ; and it is not material whether they were ſeiſed or not, although they are named heir.

In a *formedon in deſcender*, the demandant is to ſet forth his pedigree in the declaration: in *formedon in remainder*, that the tenant in tail is dead without iſſue: but in a *formedon in reverter* the donor, &c. need not ſhew the pedigree of the iſſue, nor who was laſt ſeiſed, becauſe he is ſuppoſed to be a ſtranger to them. 2 *Nelſ. Abr.* 880. Where a fee-ſimple is demanded in a *formedon in reverter*, the taking of the profits ought to be alledged in the donor, and donee: if an eſtate tail is demanded, it muſt be alledged in the donee only. 1 *Lutw.* 96.

There are ſeveral pleas both in bar and in abatement, which the tenant may plead to this action; ſuch as non-tenure, which is a plea in abatement, and by which the tenant ſhews, that he is not tenant of the freehold, or of ſome part thereof, at the time of the writ brought, or at any time ſince; which is called the pleading non-tenure generally. *Booth* 28.

Special non-tenure is where the tenant ſhews what intereſt and eſtate he hath in the land demanded, as that he is tenant for years, in ward, by ſtatute-merchant, *elegit*, or the like; and therefore the plea of ſpecial non-tenure muſt always ſhew who is tenant. *Booth* 29. See 1 *Brownl.* 153.

At Common law, non-tenure of parcel of an intire thing, as a manor, &c. abated the whole writ; but now by the 25 *E.* 3. *cap.* 16. it is enacted, "That by the exception of *non-tenure* of *parcel*, no writ ſhall be abated, but only for *that parcel* whereof the non-tenure was alledged." *Booth* 29. 1 *Mod.* 181.

If the tenant pleads *non-tenure* of the *whole*, he need not ſhew who is tenant: but in a plea of *non-tenure* of *parcel*, he muſt ſhew who is tenant, and this even before the ſtatute; for the Common law would not ſuffer a writ, good in part, to be wholly deſtroyed, except the tenant ſhewed the demandant how he might have a better. 1 *Mod.* 181. The tenant cannot, after a general imparlance, plead non-tenure of part, though he may plead non-tenure of the whole. 3 *Lev.* 55.

The writ of *formedon* is now rarely brought and the trying titles by *ejectione firmæ* ſupplies it's place, in an eaſier manner. See *Booth of real actions*. And *Black. Com.* 3 *V.* 191.

By *Stat.* 21 *Jac.* 1. *c.* 16. Formedons muſt be brought within *twenty years* after the cauſe of action accrued.

Formella, A certain weight of about ſeventy pounds, mentioned in the *Statute of weights and meaſures*. 51 H. 3.

Fornagium, *Furnagium*, (Fr. *Fournage*) Signifies the fee taken by a lord of his tenant, bound to bake in the lord's common oven, or for a permiſſion to uſe their own; this was uſual in the northern parts of *England*. Plac. Parl. 18 Ed. 1.

Fornication, (*Fornicatio*, from the *Fornices* in *Rome*, where lewd women proſtituted themſelves for money) Is whoredom, or the act of incontinency in ſingle perſons; for if either party is married, it is *adultery*. The *Stat.* 1 *H.* 7. *c* 4. mentions this crime; which by an act made *anno* 1650. during the times of *uſurpation*, was puniſhed with three months impriſonment for the firſt offence; and the ſecond offence it is ſaid was made felony. *Scobel's Collect.* The *ſpiritual court* hath cogniſance of this offence: And formerly *courts-leet* had power to inquire of and puniſh *fornication* and *adultery*; in which courts the King had a fine aſſeſſed on the offenders, as appears by the book of *Domeſday*. 2 Inſt. 488. See *Black. Com.* 4 *V.* 64.

Forpriſe, (*Forpriſum*) An exception or reſervation, in which ſenſe it is uſed in the *Stat.* 14 *Ed.* 1. This word is frequently inſerted in leaſes and conveyances, wherein *excepted* and *forpriſed* is an uſual expreſſion. In another ſignification it is taken for any exaction; according to *Thorn. anno* 1285.

Forſes, (*Catatudæ*) Water-falls, ſo called in *Weſtmoreland*. Camb. Britan.

Forſpeaker, An attorney or advocate in a cauſe. *Blount*.

Fortia, Power, dominion or juriſdiction: And we read of *infortiare Placitum*, by judges aſſembled. *Leg. H.* 1. *c.* 29.

Fortiori, *à fortiori* or *multo fortiori*, Is an argument often uſed by *Littleton*, to this purpoſe: If it be *ſo* in a feoffment paſſing a new right, *much more* is it for the reſtitution of an ancient right, &c. *Co. Lit.* 253, 260.

Fortilice and **Fortility**, (*Fortelleſcum*) Signifies a fortified place, bulwark or caſtle; as it is ſaid within the towns and *fortilities* of *Berwick* and *Carliſle*, anno 11 *H.* 7. *c.* 18.

Fortlet, *(Fr.)* A place or fort of ſome ſtrength; or rather a little fort. *Old Nat. Br.* 45.

Forts and Caſtles, The *Stat.* 13 *Car.* 2. *c.* 6. extends to forts and other places of ſtrength within the realm; the ſole prerogative as well of erecting, as manning, and governing of which belongs to the King, in his capacity of general of the kingdom. 2 *Inſt.* 30. *Black. Com.* 1 *V.* 263.

Fortuna, Is that which is called in our law treaſure trove, *i. e. Theſaurum ducente* fortuna *invenire—Inquirendum eſt per* 12 *Jurator, pro Rege, &c. quod fideliter præſentabunt omnes* fortunas, *abjurationes, &c.*

Fortune-tellers. Perſons pretending to tell fortunes, *&c.* are to be puniſhed with a year's impriſonment, and ſtanding four times in the pillory. *Stat.* 9. *Geo.* 2. *c.* 5.

Fortunium, A tournament or fighting with ſpears; or an appeal to *fortune* therein. *Mat. Pariſ. Anno* 1241.

Forty-days-Court. The court of *attachment* or *woodmote,* held before the verderors of the foreſt once in every forty days, to inquire concerning all offenders againſt vert and veniſon. *Black. Com.* 3 *V.* 71. See *Foreſt.*

Foſſa, A ditch full of water; wherein women committing felony were drowned: It has been likewiſe uſed for a grave, in ancient writings. See *Furca.*

Foſſatum, *(Lat.)* Is a ditch, or place fenced round with a ditch or trench; alſo it is taken for the obligations of citizens to repair the city ditches. *Foſſatura* ſignifies the ſame with *foſſatum:* And the work or ſervice done by tenants, *&c.* for repairing and maintenance of ditches is called *foſſatorum operatio*; and the contribution for it *foſſagium.* Kennet's Gloſſ.

Foſſeway, (From *foſſus,* digged) Was anciently one of the four principal highways in *England,* leading through the kingdom, which had its name from its being ſuppoſed to be dug and made paſſable by the *Romans,* and having a *ditch* upon one ſide. *Cowel*

Foſterlean, *(Sax.)* Nuptial gift, which we call a jointure or ſtipend for the maintenance of the wife.—*Poſtea ſciendum eſt cui* foſterlean *pertineat, vadiet hoc brigdunia & Plegient amici ſui.*

Fother or **Fodder,** (From the Teuton. *Fuder)* Is a weight of lead containing eight *pigs,* and every *pig* one and twenty ſtone and a half; ſo that it is about a tun or common cart load: Among the *plumbers* in *London* it is nineteen hundred and a half; and at the mines it is two and twenty hundred weight and a half. *Skene.*

Fovea, A place for burial of the dead. *Statut. Eccl. Paulin. London. MS.* 29.

Foundation, The founding and building of a college or hoſpital is called *foundatio, quaſi foundatio,* or *fundamenti locatio. Co. lib.* 10. The King only can found a *college*; but there may be a college in reputation, founded by others. *Dyer* 267. If it cannot appear by inquiſition, who it was that founded a *church* or *college,* it ſhall be intended it was the King; who has power to *found* a new church, *&c. Moor* 282. The King may *found* and erect an *hoſpital,* and give a name to the houſe, upon the inheritance of another, or licence another perſon to do it upon his own lands; and the words, *fundo, creo, &c.* are not neceſſary in every *foundation,* either of a college or hoſpital made by the King; but it is ſufficient if there be words equivalent: The incorporation of a college or hoſpital is the very *foundation*; but he who endows it with land is the *founder*; and to the erection of an hoſpital nothing more is requiſite but the incorporation and *foundation.* 10 *Rep. Caſe of Sutton's Hoſp.*

Perſons ſeiſed of eſtates in fee-ſimple, may erect and *found hoſpitals* for the poor, by deed inrolled in Chancery, *&c.* which ſhall be incorporated, and ſubject to ſuch viſitors as the *founder* ſhall appoint, *&c. Stat.* 39 *Eliz. c.* 5. Where a corporation is named, it is ſaid the name of the *founder* is parcel of the corporation. 2 *Nelſ.* 886. Though the *foundation* of a thing may alter the law, as to that particular thing; yet it ſhall not work a general prejudice. 1 *Lil. Abr.* 634. By 7 & 8 *W.* 3. *c.* 37. The crown may grant licence to alien in *mortmain.* By 9 *Geo.* 2. *c.* 36. Gifts in *mortmain* by *will,* &c. are reſtrained, but there are exceptions with reſpect to *univerſities* and *royal Colleges.* See *College.* 1 *Black. Com.* 1 *V.* 480.

Founder of Metal, (From the Fr. *Foundre,* to melt or pour) Is he that melts metal, and makes any thing of it by pouring or caſting it into a mould. 17 *R.* 2. *c.* 1. Whence is *bell-founder,* a *fount* of letter, *&c.*

Fourcher, (Fr. *Fourchir)* Signifies a putting off, or delaying of an action; and has been compared to ſtammering, by which the ſpeech is drawn out to a more than ordinary length of time, as by *fourching* a ſuit is prolonged, which might be brought to a determination in a ſhorter ſpace: The device is commonly uſed when an action or ſuit is brought againſt two perſons, who being jointly concerned, are not to anſwer till both parties appear; and is where the appearance or *eſſoin* of one will excuſe the other's default, and they agree between themſelves that one ſhall appear or be eſſoined one day, and for want of the other's appearing, have day over to make his appearance with the other party; and at that day allowed the other party doth appear, but he that appeared before doth not, in hopes to have another day by adjournment of the party who then made his appearance. *Terms de Ley.*

This is called *fourcher*; and in the ſtatute of *Weſt.* 1. *c.* 42. it is termed *fourcher by eſſoin*; where are words to this effect, *viz.* coparceners, jointenants, *&c.* may not *fourch* by *eſſoin,* to eſſoin ſeverally; but ſhall have only one eſſoin, as one ſole tenant. And *anno* 6 *Ed.* 1. *c.* 10. it is uſed in like manner: The defendants ſhall be put to anſwer without *fourching, &c.* 23 *Hen.* 6. *c.* 2. 2 *Inſt.* 250. *Fourcher* in the Latin is written *furcare*; becauſe it is two-fold.

Fraction. The law makes no *fraction* of a day; if any offence be committed, in caſe of murder, *&c.* the year and day ſhall be computed from the beginning of the day on which the wound was given, *&c.* and not from the preciſe minute or hour. 2 *Hawk.* 163. See *Co. Lit.* 255.

As to murder, this relates to the queſtion, whether the party died within a year and a day after the ſtroke, *&c.* But as to an appeal of death, it may be ſued within a year and a day after the completion of the felony, by the death of the party. *Stat. Glouc.* 6 *Ed.* 1. *c.* 9. *Black. Com.* 4 *V.* 311.

An act of record will not admit any diviſion of a day, but is ſaid to be done the firſt inſtant of the day, *Arg.* and judgment accordingly. *Paſch.* 23 *Eliz. Mo.* 137.

In preſumption of law, when a thing is to be done upon one day, all that day is allowed to do it in, for the avoiding of fractions in time, which the law admits not of, but in caſe of neceſſity. *Per Rol.* Ch. J. *Sti.* 119. *Trin.* 24 *Car. B. R.*

Inſurance for *H.*'s life; *H.* died on the laſt day; *per Holt* Ch. J. the law makes no fraction in a day; yet, in this caſe, he dying after the commencement, and before the end of the laſt day, the inſurer is liable, becauſe the inſurance is for a year, and the year is not complete till the day be over; yet, if *A.* be born on the 3d day of *September,* and on the ſecond day of *September,* twenty-one years afterwards, he makes his will, this is a good will, for the law will make no fraction of a day, and by conſequence he was of age. 2 *Salk.* 625. *Trin.* 11 *W.* 3. *B. R.* at *Guildhall, per Holt,* Ch. J. in Sir *Robert Howard*'s caſe.

Fractitium, Is made uſe of for arable land.—*Pratum de Mura & tres Acr. terræ de* fractitio. *Mon. Angl. Tom.* 2. 873.

Fractura navium, Wreck of ſhipping at ſea.

Frampole Fences, Are ſuch *fences* as the tenants in the manor of *Writtle* in *Eſſex,* ſet up againſt the lord's demeſnes; and they are intitled to the wood growing on thoſe *fences,* and as many poles as they can reach from the top of the ditch with the helve of an axe, towards the reparation of their *fences.* It is thought the word *frampole* comes from the Sax. *frempul,* profitable; or that it is a corruption of *francpole,* becauſe the poles are free for the tenants to take: But Chief Juſtice *Brampton,* whilſt he was ſteward of the court of the manor of *Writtle,* acknowledged that he could not find out the reaſon why thoſe *fences* were called *frampole*; ſo that we are at a loſs to know the truth of this name etymologically.

Franchilanus, (Fr. *Franchi*, i. e. free) A freeman—*Sciatis me dediſſe, cum villanis, &* franchilanos, *& cum tenuris eorum, &c. Chart. H.* 4. And we find *Francus homo* uſed for a freeman in *Domeſday*.

Franchiſe, *(Fr.)* Is taken as a privilege or exemption from ordinary juriſdiction; as for a corporation to hold pleas to ſuch a value, *&c.* And ſometimes it is an immunity from tribute, when it is either *perſonal* or *real*, that is belonging to a perſon immediately; or by means of this or that place whereof he is a chief or member. *Cromp. Juriſd.* 141.

There is alſo a *franchiſe royal*; which ſeems to be that where the King's writ runs not 21 *H.* 6. *c.* 4. But *franchiſe* royal is ſaid by ſome authors to be where the King grants to one and his heirs, that they ſhall be quit of toll, *&c. Bract. lib.* 2. *c.* 5.

A *franchiſe* in general is a royal privilege in the hands of a ſubject; and may be veſted in bodies politic or corporate, either aggregate or ſole, or in many perſons that are not corporations, (as in borough towns, *&c.*) or in a ſingle perſon.

Franchiſes are of different kinds; ſuch as the *principality of Wales, Counties Palatine, Counties, Hundreds, Ports* of the ſea, *&c.* Then there is a *franchiſe* or liberty of having a *leet, manor* or *lordſhip*, as well as a liberty to make a *corporation*, and to have cogniſance of pleas; and *baliwicks* of liberties, the liberty of a *foreſt*, chaſe, *&c. Fairs* and *markets, felons goods, goods of fugitives, outlaws. deodands, treaſure trove, waifs, eſtrays, wrecks, &c.* All theſe come under *franchiſes* and liberties. *F. N. B.* 230. 2 *Inſt.* 221.

All *franchiſes* and liberties are derived from the crown, and ſome are held by *charter*; but ſome lie in *preſcription* and *uſage*, without the help of any charter. *Finch.* 164. And *uſage* may uphold *franchiſes*, which may be claimed by *preſcription*, without record either of creation, allowance or confirmation; and wreck of the ſea, waifs, ſtrays, fairs and markets, and the like, are gained by *uſage*, and may become due without any matter of record. 2 *Inſt.* 281. 9 *Rep.* 27. But goods of felons and outlaws, and ſuch like, grow due by *charter*, and cannot be claimed by uſage, *&c. Ibid.*

It hath been adjudged, that grants of *franchiſes*, made before the time of memory, ought to have allowance within the time of memory, in the *King's Bench*, or before the barons of the *Exchequer*, or by ſome confirmation on record; and it is ſaid they are not records pleadable, if they have not the aid of ſome matter of record within time of memory; and ſuch ancient grants, after ſuch allowance, ſhall be conſtrued as the law was when they were made, and not as it hath been ſince altered: But *franchiſes* granted within time of memory are pleadable without any allowance or confirmation; and if they have been allowed or confirmed as aforeſaid, the *franchiſes* may be claimed by force thereof, without ſhewing the charter. 9 *Rep.* 27, 28. 2 *Inſt.* 281, 494.

There have been formerly ſeveral ancient prerogatives derived from the crown; beſides the *franchiſes* aforementioned; as power to pardon felony, make juſtices of aſſiſe, and of the peace, *&c.* Though by the *Stat.* 27 *H.* 8. *c.* 24. they were reſumed and reunited to the crown; and the King cannot grant power to another to make ſtrangers born, denizens here, becauſe ſuch power is by law inſeparably annexed to his perſon. 7 *Rep.* 25.

By ſeveral ancient ſtatutes, the *church* ſhall have all her liberties and *franchiſes* inviolable: And the *Lords ſpiritual* and *temporal* ſhall enjoy their liberties, *&c.* and the King may not deprive them of any of them. 9 *H.* 3. *c.* 1. 14 *Ed.* 3. 2 *H.* 4. *c.* 1.

By the ſtatute of *Magna Charta*, 9 *H.* 3. *c.* 37. The *franchiſes* and liberties of the city of *London*, and all other cities, towns, *&c.* are confirmed. All writs, proceſſes, *&c.* in *franchiſes*, are to be made in the King's name; and ſtewards, bailiffs, and other miniſters of liberties, ſhall attend the juſtices of aſſiſe, and make due execution of proceſs, *&c.* 27 *H.* 8. *c.* 24.

Some *franchiſes*, as *York, Briſtol, &c.* have return of writs, to whom mandates are directed from the courts above, to execute writs and proceſs: And a mayor or bailiff of a town, may have liberty to keep courts, and hold pleas in a certain place, according to the courſe of the Common law; and power to draw cauſes out of the King's courts, by an *excluſive juriſdiction*: But the cauſes here may be removed to the ſuperior courts. *Co. Lit.* 114. 4 *Inſt.* 87, 224.

Sheriffs of counties, within which is any *franchiſe*, the lord whereof is intitled to a return of writs, ſhall, on his requeſt, appoint one or more deputies, to reſide at ſome place near, there to receive all writs in the ſheriff's name, and under his ſeal to iſſue warrants for their due execution; and the Lord Chancellor is to ſettle the charges to be paid any ſuch deputy, *&c.* by 13 *Geo.* 2. *c.* 18.

A *franchiſe* hath no relation to the county wherein it lies; as has been generally held; for it is not neceſſary to ſet forth the county when any thing is ſhewed to be done within a liberty or *franchiſe*. *Trin.* 23 *Car. B. R.*

If a *franchiſe* fails to adminiſter juſtice within the ſame, the *franchiſe* ſhall not be allowed; but on any ſuch failure, the court of *B. R.* may compel the owners of the *franchiſe, &c.* to do juſtice; for this court ought to ſee juſtice equally diſtributed to all perſons. 1 *Lill. Abr.* 635.

Franchiſes may be forfeited and ſeiſed where they are abuſed, for miſ-uſer, or non-uſer; and when there are many points, a miſ-uſer of any one will make a forfeiture of the whole on a *quo warranto* brought. *Kitch.* 65. And where *franchiſes* come to the crown again from whence derived, by forfeiture, *&c.* they are *extinguiſhed*; but in ſome caſes it is ſaid they are not. For contempt of the King's writ, in a county palatine, *&c.* the liberties may be ſeiſed, and the offenders fined; and the temporalities of a biſhop, have been adjudged to be ſeiſed until he ſatisfied the King for ſuch a contempt, on information exhibited, *&c. Cro. Car.* 253. The biſhop of *Durham* pretending he had ſuch a *franchiſe*, that the King's writ was not to come there, and becauſe one brought it thither he impriſoned him; this being proved upon an information brought againſt him, it was adjudged he ſhould pay a fine to the King, and loſe his liberties. 2 *Shep. Abr.* 250.

Wherever the King is party to a ſuit, as in all informations and indictments, the proceſs ought to be executed by the ſheriff, and not the bailiff of any *franchiſe*, whether it have the clauſe *non omittas, &c.* or not; for the King's prerogative ſhall be preferred to any *franchiſe*. 2 *Hawk.* 284. A ſheriff upon a *non omittas*, or on a *capias utlagatum*, or *quo minus*, may enter and make arreſts in a *franchiſe*. 1 *Lill.* 635. An arreſt by the ſheriff within a *franchiſe* on a common writ, is ſaid to be good, tho' the officer be ſubject to an action at the ſuit of the lord of the *franchiſe, &c.* If a perſon claims *franchiſes* which he ought not to have, it is an uſurpation upon the King; and not ſhewing his title, the King ſhall take from him his *franchiſe*. Poph. 180. 1 Bulſt. 54. The King's Bench will not grant an information on private uſurpation of *franchiſes*, but the proper remedy is to apply to the Attorney General; *i. e.* to proceed by *quo warranto*. *Ibbotſon's caſe. Rep. Temp. Hardw. per Annaly* 261. See *Quo Warranto.*

Francigenæ, Was the general appellation of all foreigners. Vide *Englecery*.

Franclaine, Is uſed to denote a freeman or gentleman, in our ancient authors. *Forteſcue.*

Frank, A *French* gold coin, worth about a *French* ſhilling; but in computation was twenty *ſols*, which is a *livre*, and ten pence in our money.

Frankalmoign, *(Libera Eleemoſyna)* Is a tenure by ſpiritual ſervice, where an eccleſiaſtical corporation, ſole or aggregate, holdeth land to them and their ſucceſſors, of ſome lord and his heirs in free and perpetual alms: And *perpetual* ſuppoſes it to be a fee-ſimple; tho' it may paſs without the word *ſucceſſors*. *Litt.* 133. *Co. Lit.* 94. A lay perſon cannot hold in *free* alms: And when a grant is in *frankalmoign*, no mention is to be made of all manner of ſervice; for it is free from any temporal ſervice, and is of the higheſt nature, becauſe it is a tenure by ſpiritual ſervice. *Lit.* 137. None can hold in *frankalmoign* but by preſcription, or by force of ſome grant made before the ſtatutes of *Mortmain*, 7 *Ed.* 1. *c.* 36, and 18 *Ed.* 1. *c.* 1. ſo that the tenure cannot at this day be created, to hold of a founder and his heirs in free alms: But the King is not reſtrained by the ſtatutes; nor a ſubject licenſed or diſpenſed with by the King, to make ſuch a grant, *&c.* *Co. Lit.* 98, 99. And if an eccleſiaſtical perſon holds lands by fealty and certain rent, the lord may at this time confirm his eſtate, to hold him and his ſucceſſors in *frankalmoign*; for the former ſervices are extinct, and nothing is reſerved but that he ſhould hold of him, which he did before; whereby this change and alteration is not within the *Stat.* 18 *Ed.* 1. of *quia emptores terrarum*. *Litt.* 540. *Co. Lit.* 99, 306.

Tenure in *frankalmoign* is incident to the inheritable blood of the donor or founder; except in caſe of the King, who may grant this tenure to hold of him and his ſucceſſors. *Lit.* 135. And the reaſon why a grant in *frankalmoign*, ſince the *Stat.* 18 *Ed.* 1. *quia emptores* is void, except in the caſe of the King, *&c.* is becauſe none can hold land by this tenure, but of the donor; whereas the ſtatute injoins, that it be held of the Chief Lord, by the ſame ſervice by which the feoffor held it; though the King may grant away any eſtate, and reſerve the tenure to himſelf. *Co. Lit.* 99, 223.

If any perſon that holds lands or tenements in *frankalmoign*, make any failure in doing ſuch divine ſervice as they ought, the lord may make complaint of it to the ordinary or viſitor; which is the King, if he be founder; or a ſubject where he was appointed viſitor upon the foundation; and the ordinary, *&c.* may puniſh the negligence, according to the eccleſiaſtical laws. *Litt.* 136. *Co. Lit.* 96. Alſo for neglect in performing divine ſervice in certain, the lord may diſtrain: But *frankalmoign* is ſaid to be held by ſervice uncertain; and where the tenure is tied to certain ſervices, as to read prayers every *Friday*, *&c.* this is not *frankalmoign*, but *tenure by divine ſervice*; it is lands given in alms, but not in free alms. *Britton, c.* 66. The tenure by *frankalmoign* is an ancient tenure, chiefly to be met with in grants to religious houſes, biſhops, deans, colleges, *&c.* and is become out of uſe.

Frank-Chaſe, Is a liberty of *free chaſe*; by which all perſons that have lands within the compaſs thereof, are prohibited to cut down any wood, *&c.* without the view of the foreſter, though it be in their own demeſnes. *Cromp. Juriſ.* 187.

Franked-Letters. See the *Stat.* 4. *Geo.* 3. *c.* 24. Previous to that ſtatute, the annual amount of franked letters gradually increaſed from 23,600*l.* in the year 1715 to 170,700*l.* in the year 1763. *Com. Journ.* 28 *Mar.* 1764. *Black. Com.* 1 *V.* 322.

Frank-Fee, Is where freehold lands are held exempted from all ſervices, but not from homage. In the *regiſter* of writs, we find that is *frank-free*, which a man holds at the Common law, to him and his heirs; and not by ſuch ſervice, as is required in ancient demeſne, according to the cuſtom of the manor: And that the lands in the hand of King *Edward the Confeſſor*, at the making of the book of *Domeſday*, were ancient demeſne, and all the reſt *frank-fee*; wherewith *Fitzherbert* agrees. *Reg. Orig.* 12. *F. N. B.* 161. And the author of the *Terms of the Law* defines a *free-fee* to be a tenure pleadable at the Common law; and not in ancient demeſne. Feudum Francum *eſt, pro quo nullum ſervitium præſtatur domino.* Fachineus, lib. 7. c 39.

Frank-Ferm, Was when lands or tenements were changed in the nature of the fee by feoffment, *&c.* out of knight ſervice, for certain yearly ſervices. *Britton, c.* 66. See *Fee farm.*

Frank Law, *(Libera Lex)* Is applied to the benefit of the free and Common law of the land. You may find what it is by the contrary, from *Crompton* in his *Juſtice of Peace*; where he ſays, he that for any offence loſeth his *frank-law*, falls into theſe miſchiefs, *viz.* He may never be impannelled upon any jury or aſſiſe; or be permitted to give any teſtimony: If he hath any thing to do in the King's courts, he muſt not attend them in perſon, but appoint his attorney therein for him: And his lands ſhall be eſtreated, and his body committed to priſon, *&c.* *Cromp. Juriſd.* 156. *Lib. Aſſiſ.* 59. See *Conſpiracy.*

Frank-Marriage, *(Liberum Maritagium)* Is where a man ſeiſed of land in fee-ſimple, gives it to another with his daughter, ſiſter, *&c.* in marriage; to hold to them and their heirs: And it is a tenure in ſpecial tail, growing from theſe words in the gift, *i. e.* *Sciant, &c. me* A. B. *dediſſe & conceſſiſſe, &c.* T. B. *filio meo &* Annæ *uxori ejus, filiæ, &c. in* liberum maritagium *unum meſſuagium, &c.* *Litt.* 17. *Weſt. Symb. par.* 1. *lib.* 2. *ſect.* 303. The effect of which words is, That they ſhall have the land to them and the heirs of their bodies; and ſhall do no ſervices to the donor, except fealty, until the fourth degree. *Glanvil, lib.* 7. *c.* 18. And *Fleta* gives this reaſon why the heirs do no ſervice until the fourth degree: *Ne donatores vel eorum hæredes per homagii receptionem a reverſione repellantur.* And why in the fourth deſcent and downward, they ſhall do ſervices to the donor; *quia in quarto gradu vehementer præſumitur, quod terra eſt pro defectu hæredum donatorum reverſura.* *Fleta, lib.* 3. *c.* 11. All this appears in *Bracton, lib.* 2. *c.* 7. where it is ſaid, that lands in *frank-marriage* are *quieta et libera ab omni ſeculari ſervitio, etc. uſque ad tertium hæredem, et uſque ad quartum gradum.*

Alſo *Bracton* divides marriage into *liberum maritagium* and *maritagium ſervitio obligatum*; which laſt was where lands were given in marriage, with a reſervation of the ſervices to the donor, which the donee and his heirs were bound to perform for ever; but neither he, or the next two heirs, were obliged to do homage, which was to be done when it came to the fourth degree, and then, and not before, were required to be performed both ſervices and homage. *Bract. lib.* 2. Lands given by one man to another with a wife in *frank-marriage*, amounts by implication to a gift in tail; which in this caſe may be created without the words *heirs* or *body*. *Litt.* 17. *Wood's Inſt.* 120. A gift in *frank-marriage* might be made as well after as before marriage: And ſuch a gift was a fee-ſimple before the ſtatute of *Weſtm.* 2. but ſince, it is uſually a fee-tail: Theſe gifts were common in former times, whereon queſtions in law did ariſe; but are now diſuſed. 2 *Nelſ. Abr.* 888.

Frank-pledge, *(Franci plegium,* from the French *Franc,* i. e. Liber, and *pledge,* fidejuſſor) Signifies a *pledge* or ſurety for the behaviour of *freemen*; it being the ancient cuſtom of this kingdom, borrowed from the *Lombards*, that for the preſervation of the public peace, every freeborn man at the age of fourteen, (religious perſons, clerks, *etc.* excepted) ſhould give ſecurity for his truth towards the King and his ſubjects, or be committed to priſon; whereupon a certain number of neighbours, uſually became bound one for another, to ſee each man of their *pledge* forth-coming at all times, or to anſwer the tranſgreſſion done by any gone away: And whenever any one offended, it was forthwith inquired in what *pledge* he was, and then thoſe of that *pledge* either produced the offender within one and thirty days, or ſatisfied for his offence. This was called *frank-pledge*; and this cuſtom was ſo kept, that the ſheriffs at every *county-court*, did from time to time take the oaths of young perſons as they grew to fourteen years of age, and ſee that they were ſettled in one *decennary* or other; whereby this branch of the ſheriff's authority was called *viſus franci plegii*, or *view of frank-pledge*. At this day no man ordinarily giveth other ſecurity for the keeping of the peace, than his own oath; ſo that none anſwereth for the tranſgreſſion of another, but every perſon for himſelf. 4 *Inſt.* 78. Living under *frank-pledge* has been termed living under *law, etc.* See the ſtatute of *view of frank-pledge*, 18 *Ed.* 2. And *court-leet, decennier, deciner, etc.* and *Black. Com.* 1 *V.* 113. 4 *V.* 249, 270.

Frank-Tenement, A poſſeſſion of *freehold* lands and tenements. See *Freehold.*

Fraſſetum, A corruption of *fraxinetum*, is taken for a wood or woody ground, where *aſhes* grow. *Co. Lit.* 4.

Frateria, A fraternity, brotherhood or ſociety of religious perſons, who were bound to pray for the good health and life, *etc.* of their living brethren, and the ſouls of thoſe that were dead: in the ſtatutes of the cathedral church of St. *Paul* in *London*, collected by *Ralph Baldock.* Dean, 1295, there is one chapter *de frateria beneficiorum eccleſiæ S. Pauli, &c.*

Fraternities, Of places in reſpect to a trade or myſtery. *Vide* Corporation.

Frater nutricius, Uſed in ancient deeds for a baſtard brother. *Malmſb.*

Fratres conjurati, Are ſworn brothers or companions; ſometimes thoſe were ſo called who were ſworn to defend the King againſt his enemies. *Hoveden, p.* 445. *Leg. W:* 1.——*Præcipimus ut omnes liberi homines ſint* fratres conjurati *ad monarchiam noſtram ad regnum noſtrum contra inimicos pro poſſe ſuo defendendum.* Leg. Ed. 1. c. 35.

Fratres pyes, Were certain friars, wearing black and white garments; of whom mention is made by *Walſingham, p.* 124.

Fratriagium, Is a younger brother's inheritance; and whatever the ſons or brothers poſſeſs of the eſtate of the father, they enjoy it *rationi fratriagii,* and are to do homage to the elder brother for it, who is bound to do homage for the whole to the ſuperior lord. *Bract. lib.* 2. *c.* 35.

Fraud, *(Fraus)* Is deceit in grants and conveyances of lands, and bargains and ſales of goods, *&c.* to the damage of another perſon. *N. B.* 98. Under this head may be conſidered,

I. *What acts are fraudulent at Common law, and in equity.*
II. *What acts are fraudulent by ſtatute.*

I. *What acts are fraudulent at Common law, and in equity.*

It may be laid down as a general rule, that without the expreſs proviſion of any act of parliament, all deceitful practices in defrauding or endeavouring to defraud another of his known right, by means of ſome artful device, contrary to the plain rules of common honeſty, are condemned by the Common law, and puniſhable according to the heinouſneſs of the offence. *Co. Lit.* 3. *b. Dyer* 295. Such as cauſing an illiterate perſon to execute a deed to his prejudice, by reading of it over to him in words different from thoſe in which it was written, *&c.* 1 *Sid.* 312, 431.

Alſo it is a rule, that a wrongful manner of executing a thing ſhall avoid a matter that might have been executed lawfully. *Co. Lit.* 35. 41 *Aſſ.* 28. 44 *Aſſ.* 29. 1 *Rol. Abr.* 420, 549. *Co. Lit.* 357. *Poph.* 64, 100.

As to frauds in contracts and dealings, the Common law ſubjects the wrong-doer, in ſeveral inſtances, to an action on the caſe; as a perſon having the poſſeſſion of goods ſells them to another, affirming them to be his own, when in truth they are not, an action on the caſe lies. 1 *Rol. Abr.* 90. *Cro. Jac.* 474. But if *A.* poſſeſſed of term for years, offers to ſell it to *B.* and ſays, that a ſtranger would have given him twenty pounds for this term, by which means *B.* buys it, tho' in truth *A.* was never offered twenty pounds, no action on the caſe lies, tho' *B.* is hereby deceived in the value. 1 *Rol. Abr.* 91, 101. 1 *Sid.* 146. *Yelv.* 20. *S. P.*

Contra, if on a treaty for the purchaſe of a houſe, the defendant affirms the rent to be more than it is, whereby the plaintiff is induced to give more than the houſe is worth. 1 *Salk.* 211. 1 *Lev.* 102. 1 *Sid.* 146. 1 *Keb.* 510, 518, 522. *S. P.* adjudged. And ſee *Kel.* 24, 81. 1 *Show.* 50, 51.

All frauds and deceits, for which there is no remedy by the ordinary courſe of law, are properly cogniſable in equity; and it is admitted, that matters of fraud were one of the chief branches to which the juriſdiction of Chancery was originally confined.. 4 *Inſt.* 84. It would be endleſs to enumerate the ſeveral caſes, wherein relief has been given againſt frauds: but the following inſtances are too material to be omitted.

A. being tenant in tail, remainder to his brother *B.* in tail, *A.* not knowing of the intail, makes a ſettlement on his wife for life for her jointure, without levying a fine, or ſuffering a recovery, which *B.* who knew of the intail ingroſſes, but does not mention any thing of the intail, becauſe, as he confeſſed in his anſwer, if he had ſpoke any thing of it, his brother, by a recovery, might have cut off the remainder, and barred him; and altho' after *A.*'s death, *B.* recovered in ejectment againſt the widow by force of the intail; yet ſhe was relieved in Chancery, and a perpetual injunction granted for this fraud in *B.* in concealing the intail, which if it had been diſcloſed, the ſettlement might have been made good by a recovery.. *Preced. Chanc.* 35. *Raw* v. *Potts.* 2 *Vern.* 239. *S. C.* and affirmed in the Houſe of Lords.

So where a mother being abſolute owner of a term, the ſame being limited to her in tail, is preſent at a treaty for her ſon's marriage, and hears her ſon declare, that the term was to come to him at his mother's death, and is a witneſs to the deed, whereby the reverſion of the term is ſettled on the iſſue of the marriage after the mother's death, and ſhe was compelled in equity to make good the ſettlement. 2 *Vern.* 150.

If *A.* has a prior incumbrance on an eſtate, and is a witneſs to a ſubſequent mortgage, but does not diſcloſe his own incumbrance; this is ſuch a *fraud* in him, for which his incumbrance ſhall be poſtponed. 2 *Vern.* 151. *Clare* and Earl of *Bedford,* cited to have been decreed. And ſee 2 *Vern.* 554, *Ibbotſon* v. *Rhodes.*

So if *A.* having a mortgage on a leaſehold eſtate, lends the mortgage deed to the mortgagor, with an intent to borrow more money; that is ſuch a *fraud* in the mortgagee, for which his mortgage ſhall be poſtponed to the ſubſequent incumbrance. 2 *Vern.* 726. *Peter* and *Ruſſel. Abr. Eq.* 321. *S. C*

If a copyholder, by his will intending to give the greateſt part of his eſtate to his godſon, and the other part to his wife, is perſuaded by the wife to nominate her to the whole, on a promiſe that ſhe would give the godſon the part deſigned for him; it will be decreed againſt the wife on the point of *fraud,* though there was no *memorandum* thereof in writing purſuant to the ſtatute of frauds and perjuries. *Preced. Canc.* 3. *Devoniſh* and *Baines.* And ſee ſimilar caſe as to father, elder ſon, and younger children, *Preced. Chanc.* 4. *Chamberlain's* caſe.

So where the defendant, on a treaty of marriage for his daughter with the plaintiff, ſigned a writing compriſing the terms of the agreement, and afterward deſigning to elude the force thereof, and get looſe from his agreement, ordered his daughter to put on a good humour, and get the plaintiff to deliver up that writing, and then marry him, which ſhe accordingly did, and the defendant ſtood by at the corner of a ſtreet to ſee them go by to be married; and the plaintiff was relieved on the point of fraud. *Abr. Eq.* 20. *Halpeny* and *Mallet.* 2 *Vern.* 373. *S. C.*

If a ſecurity be obtained from a perſon by fraud and practice, upon a pretence of a demand that is fictitious, it will be relieved againſt in equity. 2 *Vern.* 123. And *vide* 2 *Vern.* 632. *Green* v. *Wood.*

There are likewiſe ſeveral inſtances, where a parol agreement intended to be reduced into writing, but prevented by *fraud,* has been decreed in equity, notwithſtanding the ſtatute of frauds and perjuries; as where upon a marriage treaty, inſtructions were given by the huſband to draw a ſettlement, which he privately countermanded, and afterwards drew in the woman by perſuaſions and aſſurances of ſuch ſettlement to marry him; and it was decreed, that he ſhould make good the ſettlement. *Abr. Eq.* 19. and ſee tit. *Agreement.*

So where a parol agreement was concerning the lending of money on a mortgage, and the covenants propoſed were an abſolute deed from the mortgagor, and a deed of defeaſance from the mortgagee, and after the mortgageee had got the deed of conveyance, he refuſed to execute the defeaſance; and it was decreed againſt him on the point of fraud. *Abr. Eq.* 20. See *Action on the Caſe, Deceit.*

II. *As to frauds by ſtatute.*

Fraudulent aſſurances of lands or goods to deceive creditors, ſhall be void; and the creditors ſhall have execution thereof. 50 *E.* 3. *c.* 6. By the *Stat.* 13 *Eliz. c.* 5. All fraudulent conveyances made of lands, goods or chattels,

tels, to ſet aſide or avoid debts, as to creditors, ſhall be void; and by 27 *Eliz. c.* 4. Conveyances and aſſurances of land made to *defraud* purchaſers, as to ſuch purchaſers they are declared void: and perſons juſtifying or putting ſuch grants, *etc.* in uſe as good, and *bona fide* made, ſhall forfeit a year's value of the lands, and the whole value of goods and chattels, and be alſo impriſoned: where lands are conveyed with clauſe of revocation, *etc.* and afterwards ſold for valuable conſideration, the firſt conveyance ſhall be void againſt the purchaſer; but this is not to extend to mortgages made *bona fide*.

If a man ſeiſed of land in fee, make a feoffment of it to divers uſes, with remainders over, *etc.* and with power of *revocation* by writing under hand and ſeal; here if he for good conſideration doth enter into a recogniſance, the land ſhall be charged with the ſame: ſo if *A.* reſerves to himſelf power to revoke by the aſſent of *B.* and then bargains to another. *Bridg.* 22. *Lane* 22. And where one hath made an eſtate with the power of revocation; and after with intent to deceive a purchaſer he makes a feoffment, *etc.* to a ſtranger to *extinguiſh the power*, and then ſells the land for a valuable conſideration; in this caſe both the conveyances ſhall be *fraudulent* as to the purchaſer. 2 *Rep.* 83.

The ſtatute of *frauds*, 29 *Car.* 2. *c.* 3. requires that contracts and agreements, leaſes and deviſes of lands, *etc.* ſhall be put in writing. And deviſes of lands, rents. *etc.* are deemed fraudulent and void, againſt creditors upon bonds, or other ſpecialties. 3 *and* 4 *W. and M. c.* 14. Alſo judgments againſt purchaſers of lands for a valuable conſideration, ſhall be deemed judgments only from the ſigning, *etc.* 29 *Car.* 2. *c.* 3. The *Stat.* 13 *Eliz. c.* 5. makes a fraudulent deed or grant of goods, *etc.* void againſt creditors, but not againſt the party himſelf, his executors or adminiſtrators, for againſt them it remains good: and a conveyance, if made of lands by *fraud*, is not void by the ſtatute againſt all perſons; but only againſt thoſe who afterwards come to the land upon valuable conſideration. *Cro. Eliz.* 445. *Cro. Jac.* 271.

Grants and conveyances are to be on good conſideration, and *bona fide*, or they will be fraudulent; and a grant *bona fide* is made without any truſt, *etc.* A grant upon good conſideration, except it be alſo *bona fide*, is not within the proviſo of the act 13 *Eliz. c.* 5. 3 *Rep.* 81. A valuable conſideration is money, marriage, *etc.* and not natural affection, *etc.* A man made a leaſe for twenty-one years, in truſt for his daughter till marriage; and if ſhe married with his conſent, then to her during the term; this, till marriage, has been held *fraudulent* as to a purchaſer: but after marriage it is good, becauſe marriage is an advancement to the daughter, and taking effect made it upon valuable conſideration, which a marriage is always taken to be, and the huſband was drawn in by this conveyance to marry her. 1 *Sid.* 133.

It has been adjudged, that if a father makes a feoffment to another, for the advancement of daughters, or his younger ſons, or for payment of his debts; and afterwards infeoffs his eldeſt ſon or heir, that is not *fraud* or colluſion within the ſtatute, for he is bound in law to make proviſion for his children: but where there is a grandfather, father, and two ſons, and the grandfather (living the father) conveys his land to either of the ſons, this is out of the *Stat.* 32 *H.* 8. *c.* 1. becauſe it is not a common thing ſo to do, and the father ought to have the immediate care of his children; though if he is dead, then it belongeth to the grandfather. 6 *Rep.* 76. If a man levy a fine to the uſe of himſelf for life, remainder to his ſon in tail, and after ſells the fee-ſimple to another, he as a purchaſer ſhall avoid this conveyance upon the *Stat.* 27 *Eliz. c.* 4. becauſe it was *voluntary*, and therefore *fraudulent*; ſo it had been if he had ſettled the remainder on his wife, unleſs there had been a conſideration on precedent marriage. *Sid.* 133. 3 *Salk.* 174.

But it was ruled by *Hale* Chief Juſtice, that a deed may be voluntary, and not *fraudulent*; as where a father having an extravagant ſon, ſettles his land ſo that he may not ſpend all; this is good, if there is no conſideration of money. 1 *Mod.* 119. Although every voluntary conveyance is *prima facie* deemed *fraudulent* againſt purchaſers, yet ſome circumſtances may alter the caſe: an infant promiſed, on his marriage, to ſettle his eſtate when he came of age, upon himſelf and his iſſue; and this was held a ſufficient conſideration, though an infant by law is not compellable to fulfil ſuch promiſe. 2 *Lev.* 147. A perſon, in conſideration that his ſon is to marry the daughter of *A. B.* covenants to ſtand ſeiſed of lands to the uſe of his ſon for life; and after to other ſons in reverſion or remainder: the uſes thus limited in remainder, ſhall be *fraudulent* as to any purchaſer of the land, tho' the firſt be upon good conſideration. And although the conſideration of marrriage is good; if there be a power to revoke annexed to the deed, it will be void as to purchaſers. *Lane* 22.

If a man after marriage, make a voluntary conveyance of land for a jointure, or maintenance of his wife, and afterwards ſell the land for money, to one that hath no notice of it; in this caſe the conveyance, made to the uſe of the wife, ſhall be ſaid to be *fraudulent*: and yet if a perſon upon a marriage, before the marriage, and in conſideration thereof, or after marriage, in conſideration of a portion given or money paid, convey his land to the uſe of his wife, *etc.* it will not be a *fraudulent* deed. *Cro. Jac.* 158. A feme covert joins with her huſband in the alienation of her jointure, and hath a new deed of ſettlement of other lands dated the ſame day in lieu thereof, without articles or agreement precedent to this ſecond ſettlement; this is not *fraudulent* againſt a purchaſer, though the lands in the new ſettlement are more in value than thoſe in the firſt; for the old ſettlement being deſtroyed, and a new one made on the ſame day, it ſhall be preſumed that there was an agreement for it. 2 *Lev.* 70, 71.

The huſband who married a wife an inheritrix, promiſed, that if ſhe would join with him in a ſale of her land, and let him have the money to pay his debts, that he would leave her 400*l.* at his death; about ſix months after the lands were ſold, he gave bond to a ſtranger to leave his wife the 400*l.* And it was adjudged, that this was not *fraudulent quoad* creditors, but good againſt them. 2 *Lev.* 148. A perſon makes a voluntary conveyance, and then mortgages the ſame land, and the firſt deed is upon a trial found *fraudulent*; then he to whom the deed was made exhibited his bill in *equity* to redeem the mortgage; and it was held, that though the firſt deed was *fraudulent quoad* the mortgage money, yet it was good to paſs the equity of redemption. *Chanc. Rep.* 59.

Where a leaſe is made with a *proviſo* that if the leſſor pays 10*s.* the leaſe ſhall be void; becauſe 10*s.* is not the value of the leaſe and land, but only limited as a power of revocation, it is fraudulent as to a purchaſer. *Cro. Jac.* 455. And if a man makes an aſſignment of his leaſe, and yet keeps poſſeſſion of the lands, the deed of aſſignment will be adjudged *fraudulent*. In *Chancery* it has been decreed, that if a man conveys his land to friends in truſt, to the uſe of his children, *etc.* to *defraud* a purchaſer, the truſt ſhall go in *equity* to the purchaſer; alſo it ſhall be liable for debts, to ſatisfy the ſame. *Tothil.* 43, 44. A huſband aſſigned a term of his wife's, in truſt for his wife; and it was held *fraudulent* againſt purchaſers. *Chan. Rep.* 225.

By the *Common law*, an eſtate made by *fraud*, ſhall be avoided only by him who hath a former right, title, intereſt, debt or demand. 3 *Rep.* 83. If one indebted do really ſell lands, though to avoid payment of debts; if the vendee be not privy to the intent, the ſale to him is good: for as to the vendee, there is no *fraud* in the caſe. *Mich.* 24 *Car. B. R.* A man gives his goods to his ſon, they are nevertheleſs liable as to his creditors; but if he gives them to one of his creditors, without any truſt or covin, it ſhall not be *fraudulent* to make him liable to other creditors. 3 *Salk.* 174.

If a man is indicted, and give away his goods to prevent a forfeiture, the King ſhall have them upon an attainder or conviction; though it is otherwiſe if he ſell them for a good conſideration to one who had no *notice* of the indictment. *Ibid.* If tenant for life commit a forfeiture, and he in the reverſion enters, this ſhall be as a *fraudulent* conveyance with reſpect to creditors. *Vent.* 257. *Fraudulent* gifts, or grants of goods to *defraud* the lord of his heriot, ſhall be void; and the value of the goods forfeited. 13 *Eliz.* 5. Gifts made in ſecret are liable to ſuſpicion of *fraud:* a general gift of all a man's goods may be reaſonably ſuſpected to be *fraudulent*, even tho' there be a true debt owing to the party to whom made. 3 *Rep*. 80, 81. And the ſeveral marks or badges of *fraud*, in a gift or grant of goods are, if it be general, without exception of ſome things of neceſſity; if the donor ſtill poſſeſſes and uſes the goods; if the deed be ſecretly made, if there be a truſt between the parties; or if it be made pending the action. 3 *Rep*. 80, *&c.*

And where a perſon is party to a *fraud*, all that follows by reaſon of that *fraud* ſhall be ſaid to be done by him. *Cro. Jac*. 469. But when *fraud* is not expreſly averred, it ſhall not be preſumed; nor ſhall the court adjudge it to be ſo, till the matter is found by a jury. 10 *Rep*. 56. A poor man was drawn in to ſell an eſtate, at a great under-value; but no *fraud* appearing, though the purchaſe was not a fair bargain, the ſeller could not be relieved in equity, to ſet it aſide. *Preced. Canc*. 206. The Chancery may decree a conveyance to be *fraudulent*, meerly for being voluntary, and without any trial at law; yet it has been inſiſted, that *fraud* or not, was triable only by a jury. *Ibid*. 14, 15.

A will, as well as a deed, ſhall be ſet aſide in Chancery for *fraud* and circumvention. *Ibid*. 123. *Fraudulent* conveyances to multiply votes at *election of knights of the ſhire*, ſhall be taken againſt the perſons making them as free and abſolute; and all ſecurities for redeeming and reſtoring, *&c.* to be void. *Stat*. 10 *Ann. c*. 23. A *preſentation* to a benefice; or *adminiſtration* of goods, obtained by *fraud*, are void; and ſo is ſale of goods by *fraud*, although in open market, *&c.* Where a *fraudulent* deed or conveyance is aſſigned upon a valuable conſideration, the *fraud* is purged thereby. 1 Ld. *Raym*. 88.

Groſs frauds are puniſhable by way of indictment or information; ſuch as playing with falſe dice, cauſing an illiterate perſon to execute a deed to his prejudice, levying a fine in another's name, *&c.* and that for theſe and ſuch like offences the party may be puniſhed not only with fine and impriſonment, but alſo with ſuch farther infamous puniſhment, as the judges in their diſcretion ſhall think proper. *Cro. Jac*. 497. 2 *Rol. Abr*. 78. 2 *Rol. Rep*. 107. 1 *Keb*. 849. 6 *Mod*. 42. 1 *Sid*. 312, 431. *Noy* 99, 103. *Moor* 630. *Cro. Eliz*. 531. 1 *Mod*. 46. 2 *Jon*. 64. 6 *Mod*. 105. 1 *Salk*. 379.

By the 33 *H*. 8. *cap*. 1. it is enacted, "That if any perſon or perſons ſhall falſly and deceitfully obtain or get into his or their hands or poſſeſſion, any money, goods, chattels, jewels, or other things of any other perſon or perſons, by colour and means of any privy falſe token, or counterfeit letter, made in another man's name, to a ſpecial friend or acquaintance, for the obtaining of money, *&c.* from ſuch perſon, and ſhall be thereof convicted; every ſuch offender ſhall ſuffer ſuch puniſhment by impriſonment, ſetting upon the pillory, or otherwiſe, as ſhall be appointed by thoſe before whom he ſhall be ſo convict." And by 30 *Geo*. 2. *c*. 24. (commonly called the ſtatute of *falſe pretences*) the obtaining goods, *&c.* by falſe pretences, may be puniſhed with tranſportation.

Frauds and Perjuries. See the *Stat*. 29 *Car*. 2. *c*. 3. and *Wilſon par*. 1. 118, 227, 305, 313, 320. *par*. 2. 26, 94. See farther as to *civil fraud*, where cognizable, *Black. Com*. 3 *V*. 431, 437, 439. As to *criminal*, id. 4 *V*. 158. And as to the ſtatute of *frauds and perjuries*, *i. e.* 29 *Car*. 2. *c*. 3. *Black. Com*. 3 *V*. 157. 4 *V*. 432. As to *fraudulent deviſes*, id. 2 *V*. 378.

Fraus Legis. If a perſon having no manner of title to a houſe, procure an affidavit of the ſervice of a declaration in ejectment, and thereupon gets judgment; and by virtue of a writ of *hab. fac. poſſeſſionem* turns the owner out of poſſeſſion of the houſe, and ſeizes and converts the goods therein to his own uſe, he may be puniſhed as a felon; becauſe he uſed the proceſs of the law with a felonious purpoſe, *in fraudem legis*. Raym. 276. Sid. 254.

Fraxinetum, A wood of aſh trees. *Domeſday*.

Fredum, Was a compoſition made by a criminal, to be freed from proſecution, of which the third part was paid into the *Exchequer*. This is fully explained in *Robertſon's Hiſt. Emp*. C. V. 1 *V*. 300, *&c.* Formerly compoſitions were paid for crimes in general, particularly for murder. The magiſtrate was to determine the compoſition, and protect the offender againſt the violence of reſentment. For that protection the offender paid a ſum of money, which was called *fredum*. See *Monteſquieu de l'Eſprit des Loix*, *l*. 30. *c*. 20, *&c.* See *Delatura*.

Fredwit, A liberty to hold courts, and take up amerciaments, *&c.* *Cowel*.

Free-Bench, (*francus bancus*, i. e. *ſedes libera*) Is that eſtate in copyhold lands which the wife hath on the death of her huſband for her dower, according to the cuſtom of the manor: but it is ſaid the wife ought to be eſpouſed a virgin; and is to hold the land only ſo long as ſhe lives ſole and continent. *Kitch*. 102. Of this *free-bench* ſeveral manors have ſeveral cuſtoms; and *Fitzhertbert* calls it a *cuſtom*, whereby in certain cities the wife ſhall have the whole lands of the huſband for her dower, *&c.* *F. N. B*. 150. In the manors of *Eaſt* and *Weſt Embourne* in the county of *Berks*, and the manor of *Torre* in *Devonſhire*, and other parts of the *Weſt* of *England*, there is a cuſtom, that when a copyhold tenant dies, his widow ſhall have her *free-bench* in all his cuſtomary lands, *dum ſola & caſta fuerit*; but if ſhe commits incontinency, ſhe forfeits her eſtate: yet nevertheleſs, on her coming into the court of the manor, riding backwards on a *black ram*, with his tail in her hand, and ſaying the words following, the ſteward is bound by the cuſtom to re-admit her to her *free-bench*; the words are theſe,

Here I am,
Riding upon a black ram,
Like a whore as I am:
And for my crincum crancum,
I have loſt my bincum bancum;
And for my tail's game,
Have done this wordly ſhame;
Therefore pray Mr. Steward, *let me have my land again.*
Cowel.

This is a kind of *penance* among jocular tenures and cuſtoms, to purge the offence. See *Black. Com*. 2 *V*. 122.

Free-booter, Signifies a perſon who fights without pay, in hopes of getting ſome *booty*.

Freebord, (*francbordus*) Is ground claimed in ſome places more or leſs, beyond, or without the fence: it is ſaid to contain two foot and a half, in *Mon. Angl. Tom*. 2. *p*. 141.

Free-borough-men, Were ſuch great men as did not engage like the *frank-pledge* men for their *decennier*. See *Friburgh*.

Free-Chapel, (*libera capella*) A chapel ſo called, becauſe it is exempt from the juriſdiction of the dioceſan. Thoſe *chapels* are properly *free chapels* which are of the King's foundation, and by him exempted from the ordinary's viſitation; alſo *chapels* founded within a pariſh for the ſervice of God, by the devotion and liberality of pious men, over and above the mother-church, and endowed with maintenance by the founders, which were *free* for the inhabitants of the pariſh to come to, were therefore called *free-chapels*. Reg. Orig. 40, 41. The *free-chapel* of *St. Martin le Grand* is mentioned in the *Stat*. 3 *Ed*. 4. *c*. 4. as are others likewiſe by ancient ſtatutes: but theſe chapels were given to the King, with the *chantries*, *&c.* 1 *Ed*. 6. *c*. 14.

Freehold, (*liberum tenementum*) Is that land or tenement which a man *holds* in fee-ſimple, fee-tail, or for term of life. *Bract. lib*. 2. *c*. 9. And is deſcribed to be of two ſorts: *freehold in deed*, and *freehold in law*; the firſt being the real poſſeſſion of lands, *&c.* in fee, or for life; the other, the right a perſon hath to ſuch lands or tenements, before his entry or ſeizure. *Freehold* is alſo extended to *offices*, which a man holds either in fee, or during life: and, in the regiſter of writs it is ſaid, that he who holds land upon an execution of a *ſtatute merchant* until he is ſatisfied the debt, *tenet* ut *liberum tenementum ſibi & aſſignatis ſuis*, and the ſame of a tenant by *elegit*; but ſuch tenants are not *freeholders*, only as *freeholders* for their time, till they have received the profits of the land to the value of their debt. *Reg. Judic*. 68, 73. A leaſe for ninety-nine years, &c. determinable upon a life or lives, is not a leaſe for life to make a *freehold*, but a leaſe for years, or chattel determinable upon life or lives; and an eſtate for one thouſand years is not a *freehold*, or of ſo high a nature as an eſtate for life. *Co. Lit.* 6. He that hath an eſtate for the term of his own life, or the life of another, hath a *freehold*, and no other of a leſs eſtate; though they of a greater eſtate have a *freehold*, as tenant in fee, &c. *Lit.* 57.

When a man pleads *liberum tenementum* generally, it ſhall be intended that he hath an eſtate in fee; and not a bare eſtate for life. *Cro. Eliz.* 87. An eſtate of *freehold* cannot by the *Common law* commence *in futuro*; but it muſt take preſently in poſſeſſion, reverſion, or remainder. 5 *Rep.* 94. See *Black. Com.* 2 *V.* 144, 165. A man made a deed of gift to his ſon and his heirs, of lands after his death, and no livery was made; now if there had been *livery*, it had been void, becauſe a *freehold* cannot commence *in futuro*: and it has been held, that it ſhall not enure as a covenant to ſtand ſeiſed, by reaſon of the word *give*; by which was intended a tranſmutation of the eſtate, and not to paſs it by way of uſe. *March Rep.* 50, 51. Whatſoever is part of, or fixed to, the *freehold* goes to the heir; and glaſs windows, wainſcot, &c. affixed to the houſe are parcel of the houſe, and cannot be removed by tenants. 4 *Rep.* 63, 64. But it hath been adjudged, that if things for trade, &c. are fixed to the *freehold* by the leſſee, he may take them down and remove them, ſo as he do it before the end of the term, and he do not thereby injure the *freehold*. 1 Salk. 368.

Any thing fixed to the *freehold* may not be taken in diſtreſs for rent or in execution, &c. It is not felony at *Common law*, only treſpaſs, to ſteal or take any thing annexed to the *freehold*; ſuch as lead on a church, or houſe, corn or graſs growing on the ground, apples on a tree, &c. Though if they are ſevered from the *freehold*, whether by the owner or a thief; if he ſever them at one time, and take them away at another, it is larceny to take them. 12 *Aſſ.* 32. 1 *Hawk.* 93. To ſteal lead on houſes, &c. is made felony, by a late ſtatute. 4 *Geo.* 2. *c.* 32.

The ſtatute of *Magna Charta*, *c.* 29. ordains, "that no perſon ſhall be diſſeiſed of his *freehold*, &c. but by judgment of his peers, or according to the law of the land;" which doth not only relate to common diſſeiſins, but the King may not otherwiſe ſeize into his hands the *freehold* of the ſubject. *Wood's Inſt.* 614. None ſhall diſtrain any freeholders to anſwer for their freeholds, or any thing touching the ſame, without the King's writ. *Stat.* 52 *H.* 3. *c.* 22. Nor ſhall any perſon be compelled to anſwer for his freehold, before any lord of a manor, &c. 15 *R.* 2. *c.* 12. Freehold eſtates, of certain values, are required by ſtatutes to qualify *jurors*; *electors* of knights of the ſhire in parliament, &c. See the reſpective titles.

Freeholders, Are ſuch as hold any freehold eſtate. By the ancient laws of *Scotland*, freeholders were called *milites*; and freehold, in this kingdom, hath been ſometimes taken in oppoſition to *villenage*, it being lands in the hands of the gentry and better ſort of tenants, by certain tenure, who were always freeholders, contrary to what was in the poſſeſſion of the inferior people, held *at the will of the lord*. Lambard.

Freeman, *(liber homo)* Is one diſtinguiſhed from a ſlave, that is born or made free; and theſe have divers privileges beyond others. The diſtinction of a freeman from a vaſſal under the feudal policy *liber homo* was commonly oppoſed to *vaſſus* or *vaſſallus*; the former denoting an *allodial* proprietor; the latter, one who held of a ſuperior.

Theſe *free* men were under an obligation to ſerve the *ſtate*, and this duty was conſidered ſo ſacred, that freemen were prohibited from entering into holy orders, unleſs they had obtained the conſent of the ſovereign. *Robert. Hiſt. Emp.* C. V. 1 *V.* 216. See *London*.

The title of *freeman* is alſo given to any one, admitted to the freedom of a corporate town, or of any other corporate body, conſiſting, among other members, of thoſe called *freemen*.

Freight, (Fr. *fret*) Signifies the money paid for carriage of goods by ſea; or, in a larger ſenſe, it is taken for the cargo, or burthen of the ſhip. Ships are freighted either by the ton, or by the great; and in reſpect of time, the freight is agreed for, at ſo much *per* month, or at a certain ſum for the whole voyage. If a ſhip freighted by the great, happens to be caſt away, the freight is loſt; but if a merchant agrees by the ton, or at ſo much for every piece of commodities, and by any accident the ſhip is caſt away, if part of the goods is ſaved, it is ſaid ſhe ought to be anſwered her freight *pro rata*: and when a ſhip is *inſured* and ſuch a misfortune happens, the inſured commonly transfer thoſe goods over to the aſſurers, towards a ſatisfaction of what they make good. *Lex Mercat. or Merchants Comp n.* 79.

If freight is agreed for the lading and unlading of cattle at ſuch a port, and ſome die before the ſhip arrives there, the whole freight ſhall be paid for the living and the dead; but if the agreement be for *tranſporting* them, freight ſhall be only paid for the living: it is the ſame of ſlaves. *Ibid.* 85. The lading of a ſhip in conſtruction of law, is bound for the freight; the freight being in point of payment preferred before any other debts to which the goods ſo laden are liable, though ſuch debts as to time were precedent to the freight. *Hil.* 27 *Car.* 2. *B. R.* If part of the lading be on ſhip-board, and through ſome misfortune happening to the merchant, he has not his full lading aboard at the time agreed, the maſter ſhall have freight by way of damage, for the time thoſe goods were on board; and is at his liberty to contract with another, leſt he loſe his ſeaſon and voyage: and where a ſhip is not ready to take in, or the merchant not ready to lade his goods aboard, the parties are not only ſo at liberty, but the perſon damnified may bring an action againſt the other and recover his damages ſuſtained. *Leg. Rhod.*

If the freighter of a ſhip ſhall lade on board prohibited goods, or unlawful merchandize, whereby the ſhip is detained, or the voyage impeded; he ſhall anſwer the freight agreed for. *Style* 220. And when goods are laden aboard, and the ſhip hath broke ground, the merchant may not afterwards unlade them; for if he then changes his mind, and reſolves not to venture, but will unlade again, by the marine law the freight becomes due. If a maſter freights out his ſhip, and afterwards ſecretly takes in goods unknown to the firſt laders, by the law marine he forfeits his freight: and if a maſter of a ſhip ſhall put into any other port than what the ſhip was freighted to, he ſhall anſwer damages to the merchant; unleſs he is forced in by ſtorm, enemies, or pirates; and in that caſe he is obliged to ſail to the port agreed at his own expence. *Leg. Oleron.* A ſhip is freighted out and in, there ſhall be no freight due till the voyage is performed; ſo that if the ſhip be caſt away, coming home, the freight outwards, as well as inwards, are both gone. 1 *Brownl.* 21. See *Charter-party*.

French, King *William* I. called *The Conqueror*, being a native of *Normandy* in *France*, cauſed the laws of this realm, in his time, to be written and pleaded in the *French language*. 3 Rep. 17. But by the *Stat.* 37 *Ed.* 3. 15. All pleas that are pleaded in any of the King's courts, ſhall be pleaded in the *Engliſh* tongue; though appeals were ſtill to be arraigned, and the plea of the defendant read in *French* in the ſame manner as anciently. 2 *Hawk. P. C.* 308. Sed vide *Stat.* 4 *Geo.* 2. *c.* 26.

Frenchman, Heretofore a term for every ſtranger or outlandiſhman. *Bract. lib.* 3. *tract.* 2. *c.* 15. See *Francigenæ*.

Frendwite, Comes from the Sax. *freond*, i. e. amicus, & *wite* mulcta, and is a mulct exacted of him who harboured his outlawed friend. *Blount.* But ſee *Fleta*, *lib.* 1. *c.* 7.

Freſca, Freſh water, or rain, and land floods. *Chart. Antiq.* in *Somner of Gavelkind*, *p.* 132.

Freſh Diſſeiſin, (friſca *diſſeiſina*, from the Fr. *fraiz*, i. e. recens & *diſſeiſir*, viz, *poſſeſſione ejicere)* Signifies that *diſſeiſin*, which a man might formerly ſeek to defeat of himſelf, and by his own power, without reſorting to the King, or the law; as where it was not above fifteen days old, or of ſome other ſhort continuance. *Britton*, c. 5. Of this, *Bracton* writes at large, concluding it to be arbitrary. *Lib.* 4. *c.* 5.

Freſh Fine, Is that which was levied within a year paſt: it is mentioned in the ſtatute of *Weſtm.* 2. 13 Ed. 1. c. 45.

Freſh Force, (*friſca fortia*) Is a force newly done in any city, borough, &c. And if a perſon be diſſeiſed of any lands or tenements within ſuch a city, or borough, he who hath a right to the land, by the uſage and cuſtom of the ſaid city, &c. may bring his *aſſiſe*, or *bill of freſh force*, within forty days after the *force* committed; and recover the lands. *F. N. B.* 7. *Old Nat. Br.* 4. This remedy may be alſo had where any man is deforced of any lands, after the death of his anceſtor, to whom he is heir; or after the death of tenant for life, or in tail, in dower, &c. within forty days after the title accrued; and in a bill of *freſh force*, the plaintiff or demandant ſhall make proteſtation to ſue in the nature of what writ he will, as *aſſiſe* of *mortdanceſtor*, of *novel diſſeiſin*, *intruſion*, &c. New Nat. Br. 15. The aſſiſe or bill of *freſh force* is ſued out without any writ from the Chancery; but after the forty days, there is to be a writ out of Chancery, directed to the mayor, &c.

But ejectments are now in uſe for recovering the poſſeſſion of lands, &c.

Freſh Suit, or *Purſuit*, (*Recens inſecutio*) Is ſuch a preſent and earneſt following of an offender, where a robbery is committed, as never ceaſes from the time of the offence done or diſcovered, until he be apprehended. Vide *poſt*. And the benefit of a purſuit of a felon is, that the party purſuing ſhall have his goods reſtored to him; which otherwiſe are forfeited to the King. *Staundf. Pl. Cor. lib.* 3. *cap.* 10. and 12. When an offender is thus apprehended, and indicted, upon which he is convicted, the party robbed ſhall have reſtitution of his goods; and though the party robbed do not apprehend the thief preſently, but that it be ſome time after the robbery, if the party did what in him lay to take the offender; and notwithſtanding in ſuch caſe he happen to be apprehended by ſome other perſon, it ſhall be adjudged *freſh purſuit*. Terms de Ley. It has been anciently holden, that to make a *freſh ſuit*, the party ought to make *hue and cry* with all convenient ſpeed, and to have taken the offender himſelf, &c. But at this day, if the party hath been guilty of no groſs negligence, but hath uſed all reaſonable care in inquiring after, purſuing, and apprehending the felon, he ſhall be allowed to have made ſufficient *freſh ſuit*. 2 Hawk. P. C. 169. Alſo it is ſaid, that the judging of *freſh ſuit* is in the diſcretion of the court, though it ought to be found by the jury; and the juſtices may, if they think fit, award reſtitution without making any inquiſition concerning the ſame. *Ibid.* 169, 171.

Where a gaoler immediately purſues a felon, or other priſoner, eſcaping from priſon, it is *freſh ſuit*, to excuſe the gaoler: and if a lord follow his *diſtreſs* into another's ground, on its being driven off the premiſſes, this is called *freſh ſuit*; ſo where a tenant purſues his cattle, that eſcape or ſtray into another man's lands, &c. *Freſh ſuit* may be either within the *view*, or without; as to which the law makes ſome difference: and it has been ſaid, that *freſh ſuit* may continue for ſeven years. 3 *Rep. S. P. C.*

Fretum Britannicum, Is uſed in our ancient writings for the *Streights* between *Dover* and *Calais*.

Frettum and **Frectum**, The freight of a ſhip, or freight money.—*Acquietari facietis* frettum *navium*, &c. Clauſ. 17 Joh. m. 16.

Friburgh, alias **Frithburgh**, (*frideburgum*, from the Sax. *frid.* i. e. pax, & *borge*, fidejuſſor) Is the ſame with *frank-pledge*; the one being in the time of the *Saxons*, and the other ſince the *Conqueſt*: of theſe *friburghs*, *Bracton* treats, *lib.* 3. *tract.* 2. *c.* 10. And they are particularly deſcribed in the laws of King *Edward*, ſet out by *Lambard*, *fol.* 143. *Fleta* likewiſe writes on this ſubject, *lib.* 1. *cap.* 47. And *Spelman* makes a difference between *friborg* and *frithborg*; ſaying the firſt ſignifies *libera ſecuritas*, and the other *pacis ſecuritas*. Although *friburghs* or *frighburghers* were anciently required as principal pledges or ſureties for their neighbours, for the keeping of the peace; yet as to great perſons, they were a ſufficient aſſurance for themſelves, and their menial ſervants. *Skene*.

Fridſtoll and **Frithſtow**, (Sax. *frid*, pax, & *ſtol*, ſedes) A ſeat, chair, or place of peace. In the charter of immunities granted to the church of St. *Peter* in *York* by *Hen.* 1. and confirmed *anno* 5 *H.* 7. *Fridſtoll* is expounded *cathedra pacis & quietudinis*, &c. And there were many ſuch in *England*; but the moſt famous was at *Beverley*, which had this inſcription: *hæc ſedes lapidea* freedſtoll *dicitur*, i. e. *pacis cathedra*, *ad quam reus fugiendo perveniens, omnimodam habet ſecuritatem.* Camd.

Friendleſs Man, Was the old *Saxon* word for him whom we call an *outlaw*; and it is for this reaſon, becauſe he was, upon his expulſion from the King's protection, denied all help of *friends*, after certain days: *nam foriſfecit amicos.* Bract. lib. 3. tract. 2. c. 12. See *Friendwite*.

Frier, (Lat. *frater*, Fr. *frere*) The name of an order of religious perſons, of which there were four principal branches, *viz.* 1. *Minors*, *Grey Friers*, or *Franciſcans*. 2. *Auguſtines*. 3. *Dominicans*, or *Black Friers*. 4. *White Friers*, or *Carmelites*; of which the reſt deſcend. 4 *H.* 7. *cap.* 17. *Lyndewood de Relig. Domibus*, *c.* 1.

Frier-obſervant, (*frater obſervans*) A branch of the *Franciſcan friers*, who are *minors*, as well the *Obſervants* as the *Conventuals* and *Capuchines*. And they are called *Obſervants*, becauſe they are not combined together in any cloiſter, convent, or corporation, as the Conventuals are; but tie themſelves to *obſerve* the rules of their order more ſtrictly than the *Conventuals*, and upon a ſingularity of zeal ſeparate themſelves from them, living in certain places of their own chuſing. *Zach. de Rep. Eccleſ. de Regular. c.* 12. They are mentioned in the *Stat.* 25 *H.* 8. *c.* 12.

Friling, Freoling, (From the Sax. *Freoh*, Liber & *Ling*, progenies) Signifies a man that is free.

Friperer, (Fr. *Fripier*, i. e. Interpolator) One that ſcours and furbiſhes up old clothes to ſell again; a kind of broker. 1 *Jac.* 1. *c.* 21.

Friſcus, Is taken for uncultivated ground.—*Et de communia paſturæ in* Friſcis *& dominicis ſuis.* Mon. Angl. Tom. 2. p. 56.

Friſt, A term among merchants for ſelling goods upon *credit*.

Frith, (*Sax.*) A wood, from *Frid*, i. e. *Pax*; for the *Engliſh* Saxons held woods to be ſacred, and therefore made them ſanctuaries. Sir *Edward Coke* expounds it a plain between woods, or a lawn. *Co. Lit.* 5. *Cambden* in his *Britan.* uſeth it for an arm of the ſea, or a ſtreight, between two lands, from the word *Fretum*.

Frithbrech, (*Pacis Violatio*) The breaking of the peace. *LL. Æthelred*, *c.* 6. See *Grithbreche*.

Frithgear, (From the Sax *Frith* or *Frid*, Pax, & *Gear*, Annus) The year of jubilee, or of meeting for peace and friendſhip. *Somn.*

Frithgild, Is the ſame which we now call a *Guildhall*; or a company or fraternity.

Frithman, One belonging to ſuch fraternity or company. *Blount*

Frithmote, Is mentioned in the records of the county palatine of *Cheſter*: *Per* Frithmote J. Stanley, *Ar. clamat capere annuatim de villa de* Olton, *quæ eſt infra feodum & manerium de*, &c. 10 *ſol. quos comites ceſtriæ ante confectionem chartæ præd. ſolebant capere.* Pl. in Itin. apud Ceſtriam. 14 Hen. 7.

Frithſoke, Frithſoken, Signifies ſurety of defence; or, according to *Fleta*, *libertas habendi franci plegii*; *ſeu immunitatis locus*.

Frodmortel, rectius **Freomortel**, (From the Sax. *Freo*, free, and *Morthdel*, Homicidium) An immunity for commiting manſlaughter.—*Et concedo eis curiam ſuam de omnibus querelis, Et judicium ſuum pro* Frodmortel, &c. Mon. Ang. Tom. 1. p. 173.

Fruit, (*Stealing of.*) To rob orchards or gardens of fruit growing therein, is made felony, liable to tranſportation for ſeven years by 4 *Geo.* 2. *c.* 32.

Frumgyld, (*Sax.*) Is the firſt payment made to the kindred of a perſon ſlain, towards the recompence of his murder.——*Prima capitis æſtimationis penſio vel ſolutio.* LL. Edmund.

Frumſtol, The chief ſeat or manſion-houſe; which is called by ſome the *Homeſtal.* Leg. Inæ, c. 38.

Fruſca terræ, Waſte and deſart lands. *Mon. tom.* 2. *p.* 327.

Fruſtura, (From the Fr. *Froiſſure*) A breaking down; alſo a ploughing or breaking up: Fruſſura *domorum* is houſe breaking: and Fruſſura *terræ*, new broke land. *Mon. Angl. Tom.* 2. *p.* 394.

Fruſtrum terræ, Is a ſmall piece or parcel of land, *reſiduum quiddam præter acras numeratas vel campum menſuratum.*——Fruſtrum terræ *accipiatur pro ampla portione ſeorſum a campo villæ, manerio jacenti.* Domeſday.

Frutectum, A place where ſhrubs, or tall herbs do grow. *Mon. Angl. Tom.* 3. *p.* 22.

Fuage. In the reign of King *Edward* III. the *Black Prince,* having *Acquitain* granted him, laid an impoſition of *fuage* upon the ſubjects of that dukedom, *i. e.* 12*d.* for every *fire. Rot. Parl.* 25 *Ed.* 3. And it is probable, that the *hearth-money* impoſed *Anno* 16 *Car.* 2. took its original from hence. See *Fumage.*

Fuel. By an antient ſtatute, if any perſon ſhall ſell billet-wood or faggots for *fuel* under the aſſiſe, *&c.* on preſentment thereof upon oath by ſix perſons ſworn by a juſtice of peace, the party may be ſet on the pillory in the next market town, with a faggot, *&c.* bound to ſome part of his body. For the *aſſiſe of fuel, ſtat.* 7 *Ed.* 6. *c.* 7 and 43 *Eliz. c.* 14. None are to buy *fuel* but ſuch as will burn it, or retail it to thoſe who do; on pain to forfeit the treble value; alſo no perſon may alter any mark or *aſſiſe of fuel,* on the like forfeiture. *Stat. Ibid.* See *Billets.*

Fuer, (Fr. *Fuir,* Lat. *Lugere)* Is uſed ſubſtantively, though it be a verb; and is twofold, *fuer in fait,* or *in facto,* when a man doth apparently and corporally *fly;* and *fuer in ley, in lege,* when being called in the county court he appeareth not, which is *flight* in the interpretation of the law. *Staundf. Pl. Cor. lib.* 3. *c.* 22.

Fuga Catallorum, A drove of cattle; *fugatores carrucarum,* waggoners who drive oxen, without beating or goading. *Fleta, lib.* 2. *c.* 78.

Fugacia, Signifies a chaſe, being all one with *chaſea;* and *fugatio,* hunting, or the privilege to hunt. *Blount.*

Fugam fecit, Is where it is found by inquiſition, that a perſon *fled* for felony, *&c.* And if *flight* and felony be found on an indictment for felony, or before the coroner, where a murder is committed, the offender ſhall forfeit all his goods, and the iſſues of his lands, till he is acquitted or pardoned: and it is held, that when one indicted of any capital crime, before juſtices of *Oyer, &c.* is acquitted at his trial, but found to have fled, he ſhall, notwithſtanding his acquittal, forfeit his goods: but not the iſſues of his lands, becauſe by acquittal the land is diſcharged, and conſequently the iſſues. 3 *Inſt.* 218. *Hawk. P. C.* 27. 2 *Hawk. P. C.* 450. The party may in all caſes, except that of the coroner's inqueſt, traverſe the finding of a *fugam fecit;* and the particulars of the goods found to be forfeited, may be always traverſed: alſo whenever the indictment againſt a man is inſufficient, the finding of a *fugam fecit* will not hurt him. 2 *Hawk.* 451. Making default in appearance on indictment, *&c.* whereby *outlawry* is awarded, is a *flight in law.* See *Exigent.*

Fugitives Goods, *(Bona Fugitivorum)* Are the proper goods of him that *flies* upon felony, which after the flight lawfully found on record, do belong to the King or Lord of the manor. 5 *Rep.* 109.

Fugitives over Sea. To depart this realm over the ſea, without the *King's licence,* except it be great men and merchants, and the Kings ſoldiers, incurs forfeiture of goods: and maſters of ſhips, *&c.* carrying ſuch perſons beyond ſea, ſhall forfeit their veſſels; alſo if any ſearcher of any port, negligently ſuffer any perſons to paſs, he ſhall be impriſoned, *&c. Stat.* 9 *Ed.* 3. 10. 5 *R.* 2. *c.* 2.

Fugitio, *Pro* Fuga——*Condonavit omnes felonias &* Fugitiones. *Knighton, Anno* 1537.

Full-age. The ages of male and female are different, for different purpoſes. A male at twelve may take the oath of allegiance; at fourteen may conſent, or diſagree, to marriage, may chooſe his guardian, and, if his diſcretion be actually proved, may make a teſtament of his perſonal eſtate; at ſeventeen may be an *executor;* and at twenty-one is at his own diſpoſal, and may alien his lands, goods and chattels: a female at ſeven may be betrothed or given in marriage; at nine is entitled to dower; at twelve is at years of maturity, and therefore may conſent or diſagree to marriage, and, if proved to have ſufficient diſcretion, may bequeath her perſonal eſtate; at fourteen is at years of legal diſcretion, and may chooſe a guardian; at ſeventeen may be *executrix;* and at twenty-one may diſpoſe of herſelf and her lands. *Black. Com.* 1 *V.* 463.

Fullum Aquæ, A fleam or ſtream of water, ſuch as comes from a mill.

Fumage, (*Fumagium*) Dung for ſoil, or a manuring of land with dung—*Et ſint quieti de* Fumagio *& maremio cariando, &c. Chart. R.* 2. *Pat.* 5 *Ed.* 4. And this word has been ſometimes uſed for *ſmoke-money,* a cuſtomary payment for every houſe that had a chimney. *Domeſday. Black. Com.* 1 *V.* 323.

Fumadoes, Are pilchards garbaged and ſalted, then hung in the *ſmoke,* and preſſed; ſo called in *Spain* and *Italy,* whither they are exported in great abundance. 14 *Car.* 2. *c.* 31.

Funditores, Is uſed for pioneers, *in Pat.* 10 *Ed.* 2. *m.* 1.

Funds, The public funds, of any account, are *three;* the *aggregate* fund, the *general* fund, ſo called from the union, and addition of ſeveral, and the *South-ſea* fund. *Black. Com* 1 *V.* 328, 9. Which *vide,* as well worthy of peruſal. The ſurplus of theſe three funds are carried to the *ſinking fund.*

Funeral Charges. A perſon died in debt, and 600*l.* was laid out in his funeral; decreed the ſame ſhould be a debt, payable out of a truſt eſtate, charged with payment of debts, he being a man of great eſtate and reputation in his country, and buried there; but had he been buried elſewhere, it ſeemed his funeral might have been more private, and the court would not have allowed ſo much. *Trin.* 1691. *Ch. Prec.* 27. *Offley* v. *Offley.*

Where a citizen of *London* deviſed 700*l.* for mourning, the queſtion was, if it ſhould come out of the whole eſtate, or out of the legatory part only; it was inſiſted, that there had been no direction by the will, or if the will had directed, that the expences of the funeral ſhould not exceed ſuch a ſum, there the deduction muſt have been out of the whole eſtate. *Per cur.* Mourning deviſed by the will, muſt come out of the legatory part, and not to leſſen the orphanage and cuſtomary part. *Mich.* 1691. 2 *Vern.* 240. *Deakins* v. *Buckley.*

Executor is not liable to pay for funeral expences, unleſs he contracts for it; *per Holt* Ch. J. 12 *Mod.* 256. *Mich.* 10. *W.* 3. *Anon'.*

Settlements for ſeparate maintenance of the wife ſhall never extend to funeral charges, and though ſhe made a will, (according to a power given her) and an executor, and gave ſeveral legacies, but there was no reſiduum for the executor, the huſband's eſtate in the hands of a deviſee ſubject to the payment of debts, was made liable to the funeral charges of the wife. 9 *Mod.* 31. *Trin.* 9 *Geo.* at the rolls. *Bertie* v. *Lord Cheſterfield*

In ſtrictneſs no funeral expences are allowable againſt a creditor, except for the coffin, ringing the bell, parſon, clerk, and bearers fees; but not for pall or ornaments; *per Holt.* 1 *Salk.* 296. *Trin.* 5 *W. & M. B. R. Shelley*'s caſe. Ten pounds is enough to be allowed for the funeral of one in debt; *per Holt.* Baron *Powell* in his circuit would allow but 11*s.* 6*d.* as all the neceſſary charge. *Comb.* 342. *Trin.* 7 *W. B. R. Anon'. Quære,* If 40*s.* is not now the uſual ſum, in caſe of an inſolvent? See *Salk.* 196. *Godolph. p.* 2. *c.* 26. *ſect.* 2.

Furca and **Foſſa,** *(i. e.* the gallows and the pit) In ancient privileges granted by our Kings, it ſignified a juriſdiction of puniſhing felons; that is, men by *hanging,* and women with *drowning.* And Sir *Edw. Coke* ſays, *foſſa* is taken away, but that *furca* remains. 3 *Inſt.* 58. *Skene* treating of theſe words, ſaith——*Erectio* Furcarum *eſt meri imperii et altæ juſtitiæ, et ſignificat dominium*

aeris, quia ſuſpenſi pendent in aere: Et merum imperium conſiſtit in quatuor, ſicut ſunt quatuor elementa; in aere, ut hii qui ſuſpenduntur; in igne, quando quis comburitur propter maleficium; in aqua, quando quis ponitur in culio & in mare projicitur, ut parricida, vel in amnem immergitur, ut fœminæ furti damnatæ; in terra, cum quis decapitatur et in terram proſternitur. Skene.

Furcare ad Taſſum, To pitch corn with a *fork* in loading a waggon, or in making a rick or mow. *Tenentes debent falcare, ſpargere, vertere, cumulare, cariare in manerium domini, & ad* taſſum furcare *unam acram prati* —Cowel.

Furcam & Flagellum, The meaneſt of all ſervile tenures, when the bondman was at the diſpoſal of his Lord for life and limb.——*Ipſe tenet in* Villenagio *ad* furcam & flagellum *de domino ſuo, &c.* Placit. Term. Mich. 2 Joh. Rot. 7.

Furigeldum, A mulct paid for theft: by the laws of King *Ethelred*, it is allowed, that they ſhall be witneſſes *qui nunquam* furigeldum *reddiderunt, i. e.* who never were accuſed of theft.

Furlong, Is a quantity of ground containing generally forty poles or perches in length, every pole being ſixteen feet and a half; eight of which *furlongs* make a mile: it is otherwiſe the eighth part of an acre of land in quantity. *Stat.* 35 *Ed.* 1. *c.* 6. In the former acceptation, the *Romans* call it *Stadium*; and in the latter *Jugerum.* Alſo the word *Furlong* hath been ſometimes uſed for a piece of land of more or leſs acres.

Furnage, (Furnagium) *Eſt tributum quod domino* Furni *a ſectatoribus penditur ob uſum* Furni; *Et multis enim in locis tenentur vaſſali ad coquendum panes ſuos in* Furno *domini. Eſt etiam lucrum ſeu emolumentum quod piſtori conceditur in piſtionis ſumptus et mercedem, et tunc poteſt piſtor de quolibet quarterio frumenti lucrare* 4 *denar. et furfur, et duos panes ad* Furnagium. *Aſſiſa panis et cerviſiæ,* 51 H. 3. See *Formagium.*

Furnarius, Is uſed for a baker, who keeps an *oven*; and *furniare* ſignifies to bake or put any thing in the oven. *Mat. Pariſ. Anno* 1258.

Furr, *(Furrura,* from the Fr. *Fourer,* i. e. *Pelliculare)* Is the coat or covering of a beaſt. The *ſtat.* 24 *H.* 8. *c.* 13. mentions divers kinds of it, *viz. Sables*; which are a rich *furr,* of colour between black and brown, the ſkin of a beaſt called a *Sable,* of bigneſs between a pole-cat and an ordinary cat, bred in *Ruſſia* and *Tartary. Lucerns,* the ſkin of a beaſt of that name, near the ſize of a wolf, in colour neither red nor brown, but between both, and mingled with black ſpots; which are bred in *Muſcovy*; and is a very rich *furr. Genets,* a beaſt's ſkin ſo called, in bigneſs between a cat and a weezle, nailed like a cat, and of that nature, and of two kinds, black and grey, the black moſt precious which hath black ſpots upon it hardly to be ſeen; this beaſt is the product of *Spain. Foins* are of faſhion like the *ſable,* the top of the *furr* is black, and the ground whitiſh; bred for the moſt part in *France. Marten* is a beaſt very like the *Sable,* the ſkin ſomething coarſer, produced in *England* and *Ireland,* and all countries not too cold; but the beſt are in *Ireland.* Beſides theſe, there are the *Fitch* or *Pole-cat*; the *Calabar,* a little beaſt, in bigneſs near a *Squirrel: Miniver* being the bellies of *Squirrels*; and *Shanks,* or what is called *Budge, &c.* all of them *Furrs* of foreign countries, ſome whereof make a large branch of their inland traffick.

Furſt & Fondong, *(Sax.)* Time to adviſe, or to take counſel.——*De quibuſcunque implacitetur aliquis* Furſt & Fondong *habeat.* Leg. H. 1. c. 46.

Furtum, Theft, or robbery of any kind. *Lit. Dict.*

Fuſtians. No perſons ſhall dreſs *fuſtians* with any other inſtrument than the broad ſheers, under the penalty of 20*s.* And the maſter and wardens of the company of *Cloth-workers* in *London, &c.* have power to ſearch the workmanſhip of ſheermen, as well for *fuſtian,* as cloth. 11 *H.* 7. *c.* 27. 39 *Eliz. c.* 13.

Fuſtick, Wood brought from *Barbadoes, Jamaica, &c.* uſed by dyers, mentioned in the 12 *Car.* 2. *c.* 18.

Fyrderinga, (From the Sax. *Firderung,* i. e. *Expeditionis apparatus)* A going out to war, or a military expedition at the King's command; not going upon which, when ſummoned, was puniſhed by fine at the King's pleaſure. *Leg. H.* 1. *c.* 10. *Blount* calls it an expedition; or a fault or treſpaſs for not going upon the ſame.

Fyrthing or Fyrdung, A military expedition.

G.

GAbble, (*Blatero, Garrio*) To bable and talk idly to no purpoſe, whence comes *gabbler* and *babler.* Plaut.

Gabel, (*Gabella, Gablum, Gablagium*) In French *Gabelle,* i. e. *Vectigal,* hath the ſame ſignification among our ancient writers, as *gabelle* hath in *France:* it is a tax; but hath been variouſly uſed; as for a rent, cuſtom, ſervice, *etc.* And where it was a payment of rent, thoſe who paid it were termed *gablatores. Domeſday. Co. Litt.* 213. It is by ſome authors diſtinguiſhed from *tribute*; Gabella *eſt vectigal quod ſolvitur pro bonis mobilibus; et* Tributum *eſt proprie quod fiſco vel principi ſolvitur pro rebus immobilibus.* When the word *Gabel* was formerly mentioned, without any addition to it, it ſignified the *tax on ſalt,* tho' afterwards it was applied to all other taxes.

Gable-End, (*Gabulum*) The head or extream part of a houſe or building.——*Quæ domus ſita eſt inter* Gabulum *tenementi mei et* Gabulum *tenementi* Laurentii K. *Paroch. Antiq.* 286.

Gabulus Denariorum, Rent paid in money. *Selden on Tithes, p.* 321.

Gafold-gild, (*Sax.*) Is the payment of tribute or cuſtom; it ſometimes denotes uſury.

Gafold-land, or Gaful-land, (*Terra cenſualis*) Land liable to taxes; and rented or let for rent. *Sax. Dict.*

Gage, (Fr. Lat. *Vadium*) Signifies as much as to pawn or pledge. *Glanv. lib.* 10. *c.* 6. And *gage deliverance* is where he that hath taken a diſtreſs being ſued, hath not delivered the cattle, *etc.* that were diſtrained; then he ſhall not only avow the diſtreſs; but *gager deliverance,* i. e. put in ſurety or pledges that he will deliver them. *F. N. B.* 67, 94. This *gage deliverance* is had on ſuing out *replevins,* upon the plaintiff's praying the ſame: and it is ſaid the parties are to be at iſſue, or there is to be a demurrer in law, before *gage deliverance* is allowed; and if a man claim any property in the goods, or the beaſts are dead in the pound. the party ſhall not *gage, etc.* Kitch. 145.

Gager del Ley, In old writings. See *Wage* and *Wager of Law.*

Gainage, *(Gainagium,* i. e. *Plauſtri apparatus,* Fr. *Gaignage,* viz. *Lucrum)* The *gain* or profit of tilled or planted land, raiſed by cultivating it; and the draught, plough, and furniture for carrying on the work of tillage, by the baſer kind of *ſoke-men* or *villeins. Gainage* was only applied to arable land, when they that had it in occupation, had nothing thereof but the profit raiſed by it from their own labour, towards their ſuſtenance, nor any other title but at the Lord's will: and *gainer* is uſed for a *ſoke-man,* that hath ſuch land in occupation. *Bract. lib.* 1. *c.* 9. *Old Nat. Br.* 117. The word *gain* is mentioned by *Weſt. Symb. par.* 2. *ſect.* 3. Where he ſays land in demeſne, but not in *gain, etc.* And in the *ſtat.* 51 *H.* 3. there are theſe words; "no man ſhall be diſtrained by his beaſts, that *gain* the land." By the ſtatute of *Magna Charta, c.* 14. *Gainage* is meant no more than the plough-tackle, or implements of huſbandry, without any reſpect to *gain* or profit; where it is ſaid of the knight and freeholder, he ſhall be amerced *ſalvo contenemento ſuo*; the merchant or trader, *ſalvo merchandiſa ſua*; and the villeins or countrymen, *ſalvo gainagio ſuo. etc.* In which caſes it was, that the merchant and huſbandman ſhould not be hindered, to the detriment of the public, or be undone by arbitrary fines; and the villein had his *wainage,* to the end that the plow might not ſtand ſtill; for which reaſon the huſbandmen at this day are allowed a like privilege by law, that their beaſts of the plough are not in many caſes liable to diſtreſs. See *Wainage.*

Gainery, (Fr. *Gaignerie*) Tillage, or the profit ariſing from it, or of the beaſts imployed therein. *Stat. Weſt.* 1. *c.* 6 *and* 17.

Galea, A galley, or ſwift ſailing ſhip. *Hoved. p.* 682, 692.

Galleti, According to *Somner* were *viri Galeati*; but *Knighton* ſays they were *Welchmen.*——*In quorum prima acie fuit dominus* Galfridus, *cum multis* Galletis, *etc.* Knight.

Galligaskins, Wide hoſe or breeches, having their name from their uſe by the *Gaſcoigns.*

Gallihalpence, A kind of coin, which with *ſuſkins* and *doitkins,* were forbidden by the *ſtat.* 3 *H.* 5. 1. It is ſaid they were brought into this kingdom by the *Genoeſe* merchants, who trading hither in *galleys,* lived commonly in a lane near *Tower-ſtreet,* and were called *Galley-men,* landing their goods at *Galley-Key,* and trading with their own ſmall ſilver coin termed *Galley Halfpence.* Stow's Survey of London 137.

Gallimawfry, Signifies a meal of coarſe victuals, given to *Galley Slaves.*

Gallivolatium, (From *Gallus,* a cock) A cock ſhoot of cock-glade.

Galoches, (Fr.) Signify a kind of ſhoe, worn by the *Gauls* in dirty weather; mentioned in the *ſtat.* 14 *and* 15 *H.* 8. *c.* 9.

Gamba, Gamberia, Gambria, (Fr. *Jambiere*) Military boots or defence for the legs.

Gambeyson, (*Gambezonum*) A horſeman's coat uſed in war, which covered the legs: or rather a quilted coat, *cento, veſtimentum ex coactili lana confectum,* to put under the armour, to make it ſit eaſy. *Fleta, lib.* 1. *c.* 24.

Game, (*Aucupia,* from *Auceps, Aucupis,* i. e. *Avium captio*) Birds or prey got by fowling and hunting: and deſtroying the *game* is an offence by ſtatute The Common law allows the hunting of foxes, and other ravenous beaſts of prey, in the ground of another perſon; tho' a man may not dig and break the ground to unearth them, without licence; if he doth, the owner of the ground may maintain an action of treſpaſs for it. 2 *Roll.* 538. *Cro. Jac.* 321. An action was brought againſt a perſon for entering another man's warren: the defendant pleaded that there was a pheaſant on his land, and his hawk purſued it into the plaintiff's ground; it was reſolved that this doth not amount to a ſufficient juſtification, for in this caſe he can only follow his hawk, and not take the *game. Popb.* 162. Tho' it is ſaid to be otherwiſe where the ſoil of the plaintiff is not a warren. 2 *Rol. Abr.* 567. If a man in hunting ſtarts a hare upon his own ground, and follows and kills it on the ground of another, yet ſtill the hare is his own, becauſe of the freſh ſuit; but if a man ſtarts a hare upon another perſon's ground, and hunts and kills it there, he is ſubject to an action, though it is ſeldom brought, being frivolous. *Cro. Car.* 553.

By the Common law, a property in thoſe living creatures, which by reaſon of their ſwiftneſs or fierceneſs were not naturally under the power of man, was gained by the mere caption or ſeizure of them; but as by this toleration perſons of quality and diſtinction were deprived of their recreations and amuſements, it was thought neceſſary to make laws for preſerving the *game* from idle and indigent people, who by their loſs of time and pains in ſuch purſuits were much impoveriſhed. 2 *New Abr.* 615.

Upon this ſubject we ſhall make ſome extracts from a very judicious and learned author, *viz. Blackſtone.* The *qualifications* for killing *game,* as they are uſually called, or more properly the *exemptions* from the penalties inflicted by the ſtatute law, are, 1. The having a freehold eſtate of 100 *l. per Annum*; there being fifty times the property required to enable a man to kill a partridge, as to vote for a knight of the ſhire: 2. A leaſehold for ninety-nine years of 150 *l. per Annum:* 3. Being the ſon and heir apparent of an eſquire, (a very looſe and vague deſcription) or perſon of ſuperior degree: 4. Being the owner or keeper of a foreſt, park, chaſe, or warren. For unqualified perſons tranſgreſſing theſe laws, by killing *game,* keeping engines for that purpoſe, or even having *game* in their cuſtody, or for perſons (however qualified) that kill *game* or have it in poſſeſſion, at unſeaſonable times of the year, there are various penalties aſſigned, corporal and pecuniary, by different ſtatutes; on any of which, but only on one at a time, the juſtices may convict in a ſummary way, or proſecutions may be carried on at the aſſizes. By *ſtat.* 28 *Geo.* 2. *c.* 12. No perſon, however qualified to *kill,* may make merchandize of this valuable privilege, by *ſelling,* or expoſing to ſale, any *game,* on pain of like forfeiture as if he had no qualification. *Com.* 4 *V.* 175.

The ſame author (*id.* 408, 409) treating of the alterations in our laws, and mentioning franchiſes granted of chaſe and free warren, as well to preſerve the breed of animals, as to indulge the ſubject; adds——From a ſimilar principle to which, tho' the foreſt laws are now mitigated, and by degrees grown intirely obſolete, yet from this root has ſprung a *baſtard ſlip,* known by the name of the *Game Law,* now arrived to, and wantoning in, its higheſt vigour: both founded upon the ſame unreaſonable notion of permanent property in wild creatures; and both productive of the *ſame tyranny to the Commons:* but with this difference; that the foreſt laws eſtabliſhed only one mighty hunter throughout the land, *the game laws have raiſed a little* Nimrod *in every manor.* And in one reſpect the antient law was much leſs unreaſonable than the modern; for the King's grantee of a chaſe or free-warren might kill *game* in every part of his franchiſe; but now, though a freeholder of leſs than 100 *l.* a year is *forbidden to kill partridge upon his own eſtate,* yet nobody elſe (not even the Lord of the manor, unleſs he hath a grant of free-warren) can do it without *committing a treſpaſs,* and *ſubjecting himſelf to an action.*

The ſeveral ſtatutes concerning the game.

No perſon ſhall take pheaſants or partridges with engines in another man's ground, without licence, on pain of 10 *l. ſtat.* 11 *H.* 7. *c.* 13. If any perſon ſhall take or kill any pheaſants or partridges, with any net in the night-time, they ſhall forfeit 20 *s.* for every pheaſant, and 10 *s.* for every partridge taken; and hunting with ſpaniels in ſtanding corn, incurs a forfeiture of 40 *s.* 23 *Eliz. c.* 10. Thoſe who kill any pheaſant, partridge, duck, heron, hare, or other *game,* are liable to a forfeiture of 20 *s.* for every fowl and hare; and ſelling, or buying to ſell again, any hare, pheaſant, *&c.* the forfeiture is 10 *s.* for each hare, *&c.* 1 *Jac.* 1. *c.* 17. Alſo pheaſants or partridges are not to be taken between the firſt of *July* and the laſt of *Auguſt,* on pain of imprisonment for a month, unleſs the offenders pay 20 *s.* for every pheaſant, *&c.* killed: and conſtables, having a juſtice of peace's warrant, may ſearch for *game* and nets, in the poſſeſſion of perſons not qualified by law to kill *game,* or to keep ſuch nets. 7 *Jac.* 1. *c.* 11. Conſtables, by warrant of a juſtice of peace, are to ſearch houſes of ſuſpected perſons for *game:* and if any *game* be found upon them, and they do not give a good account how they came by the ſame, they ſhall forfeit for every hare, pheaſant, or partridge, not under 5 *s.* nor exceeding 20 *s.* And inferior tradeſmen, hunting, *&c.* are ſubject to the penalties of the act, and may likewiſe be ſued for treſpaſs: if officers of the army or ſoldiers kill *game* without leave, they forfeit 5 *l.* an officer, and 10 *s.* a ſoldier. 4 *&* 5 *W. & M. c.* 23. higlers, chapmen, carriers, inn-keepers, victuallers, *&c.* having in their cuſtody, hare, pheaſant, partridge, heath-game, *&c.* (except ſent by ſome perſon qualified to kill *game*) ſhall forfeit for every hare and fowl 5 *l.* to be levied by diſtreſs and ſale of their goods, being proved by one witneſs, before a juſtice; and for want of diſtreſs ſhall be committed to the houſe of correction for three months: one moiety of the forfeiture to the informer, and the other to the poor. And ſelling *game,* or offering the ſame to ſale, incurs the like penalty; wherein hare, and other *game* found in a ſhop, *&c.* is adjudged an expoſing to ſale: killing hares in the night is liable to the ſame penalties: and if any perſons ſhall drive wild fowls with nets, between the firſt day of *July* and the firſt of *September,* they ſhall forfeit 5 *s.* for every fowl. 5 *Ann. c.* 14. 9 *Ann. c.* 25. And penalties for killing and deſtroying *game,* are recoverable not only before juſtices of peace by the ſeveral ſtatutes;

but alſo by action of debt, bill, plaint or information, in any of his Majeſty's courts at *Weſtminſter*; and the plaintiff, if he recovers, ſhall likewiſe have double coſts. 8 *G.* 1. *c.* 19. If any perſon ſhall keep a gun not qualified, he ſhall forfeit 10 *l.* And perſons being qualified may take guns from thoſe that are not, and break them. 22 & 23 *Car.* 2. *c.* 25. 33 *H.* 8. *c.* 6.

One juſtice of peace, upon examination and proof of the offence, may commit the offender till he hath paid the forſeiture of 10 *l.* And perſons not qualified by law, keeping dogs, nets, or other engines to kill *game*, being convicted thereof before a juſtice of peace, ſhall forfeit 5 *l.* or be ſent to the houſe of correction for three months; and the dogs, *game*, *&c.* ſhall be taken from them, by the *ſtat.* 5 *Ann.*

No *certiorari* ſhall be allowed to remove any conviction or other proceeding on the *ſtat.* 5 *Ann.* *&c.* into any court at *Weſtminſter*, unleſs the party convicted become bound to the party proſecuting with ſufficient ſureties, in the ſum of 50 *l.* to pay the proſecutor his coſts and charges, *&c.* after the conviction confirmed, or a *procedendo* granted. *Ibid.* On a *certiorari* to remove a conviction before a juſtice, *&c.* for carrying a gun, not being qualified; it appeared upon the return to be taken before a certain juſtice of peace, without adding *necnon ad diverſas felonias & tranſgreſſiones audiend. aſſign'*, *&c.* and it was ruled that this was a good exception upon a *certiorari* to remove an indictment taken at the ſeſſions; but not upon a conviction of this nature, becauſe the court can take notice that the ſtatutes give the juſtices authority in theſe caſes. 1 *Vent.* 33. *Sid.* 419.

A perſon was convicted before a juſtice of peace upon the ſtatute, for keeping a gun, not having 100 *l.* *per Ann.* and the conviction being removed into *B. R.* was quaſhed, for not ſaying *when* the defendant had not 100 *l.* a year; for it might be he had ſuch eſtate at the time when he kept the gun, tho' not at the conviction, and the offence and time ought to be certainly alledged. 3 *Mod.* 280. The defendant not having 100 *l.* *per Ann.* did uſe a gun in *February*, and was brought before a juſtice of peace in *March* following, and then by him convicted; and it was held, that as by the ſtatute no time was limited when the offender ſhould be carried before a juſtice to be examined, it therefore ought to be *Inſtanter*; which not being done, the conviction was quaſhed. If a perſon hunt upon the ground of another, ſuch other perſon cannot juſtify killing of his dogs, as appears by 2 *Roll. Abr.* 567. But it was otherwiſe adjudged *Mich.* 33 *Car.* 2. in *C. B. Cro. Jac.* 44. and ſee 3 *Lev.* 28. See *ſtat.* 9 *Geo.* 1. *c.* 22. See likewiſe 24 *Geo.* 2. *c.* 34. for the better preſervation of the *game* in *Scotland*. By the *ſtat.* 26 *Geo.* 2. *c.* 2. All ſuits and actions brought by virtue of *ſtat.* 8 *Geo.* 1. *c.* 19. for the recovery of any pecuniary penalty, or ſum of money, for offences committed againſt any law for the better preſervation of the *game*, ſhall be brought before the end of the ſecond term after the offence committed.

By 28 *Geo.* 2. *c.* 12. perſons ſelling, or expoſing to ſale, any *game*, are liable to the penalties inflicted by 5 *Ann.* *c.* 14. on higlers, *&c.* offering *game* to ſale: and *game* found in the houſe or poſſeſſion of a poulterer, ſaleſman, fiſhmonger, cook, or paſtrycook, is deemed expoſing thereof to ſale.

By 2 *Geo.* 3. *c.* 19. After the 1 *June* 1762, no perſon may take, kill, buy or ſell, or have in his cuſtody, any partridge, between 12 *February* and 1 *September*, or pheaſant, between 1 *February* and 1 *October*, or heath fowl, between 1 *January* and 20 *Auguſt*, or grouſe, between 1 *December* and 25 *July*, in any year; pheaſants taken in their proper ſeaſon and kept in mews, or breeding places, excepted: and perſons offending in any of the caſes aforeſaid, forfeit 5 *l.* *per* bird, to the proſecutor, to be recovered with full coſts, in any of the courts at *Weſtminſter*. By this act, likewiſe the whole of the pecuniary penalties under the 8 *Geo.* 1. *c.* 19. may be ſued for, and recovered to the ſole uſe of the proſecutor with double coſts; and no part thereof to go to the uſe of the poor of the pariſh.

By 5 *Geo.* 3. *c.* 14. After the 1 *June* 1765, perſous convicted, within ſix months after the offence, of ſtealing or deſtroying fiſh in fiſh-ponds, *&c.* or aiding or aſſiſting therein; or knowingly receiving or buying ſuch fiſh; are to be tranſported for ſeven years. Any offender making a diſcovery of, and convicting his accomplices, is intitled to pardon. Perſons convicted of taking or deſtroying, *&c.* Fiſh in rivers or other waters, forfeit to the owner of the fiſhery 5 *l.* On complaint of the offence, juſtice to iſſue his warrant for apprehending the offender; and the penalty to be paid down upon conviction; otherwiſe the offender to be committed to the houſe of correction for ſix months; or an action may be brought for the penalty in any of the courts at *Weſtminſter*, within ſix months after the offence. None liable to forfeit for taking fiſh in any river, *&c.* wherein they have a right.

Perſons convicted of entring warrens, in the night-time, and taking or killing conies there, or aiding or aſſiſting therein, may be puniſhed by tranſportation, or by whipping, fine or impriſonment. Perſons convicted on this act, not liable to be convicted under any former act. This act does not extend to the deſtroying conies in the day-time, on the ſea and river banks in the county of *Lincoln*, *&c.* No ſatisfaction to be made for damages occaſioned by entry, unleſs they exceed 1 *s.*

It may not be improper to mention an act made in the preſent reign, and not yet repealed, *viz.* 10 *Geo.* 3. *c.* 19. for preſervation of the *game*, which ſhews the importance of the object. It is thereby enacted, that if *any* perſon kill any hare, *&c.* between ſun-ſetting and ſun-riſing, or uſe any gun, *&c.* for deſtroying *game*, ſhall for the *firſt* offence be *impriſoned* for any time not exceeding *ſix*, nor leſs than *three* months. If guilty of a *ſecond* offence, after conviction of a firſt, to be *impriſoned* for any time not exceeding *twelve* months, nor leſs than *ſix*, and ſhall alſo within three days from the time of his commitment either for the *firſt*, or for any other offence, be once *publicly whipped*.

Offenders on a *Sunday* uſing a gun or engine for deſtroying *game* to forfeit on conviction *twenty pounds*. For want of diſtreſs the offendet to be committed for any time not exceeding *ſix*, nor leſs than *three* calendar months.

Perſons thinking themſelves aggrieved may appeal to the quarter ſeſſions, and the *determinations of the* juſtices *there to be final*. See farther *Burn's Juſtice*, title **Game.**

Game-keepers, Are thoſe who have the care of keeping and preſerving of the *game*, being appointed thereto by Lords of manors, *etc.* Lords of manors, or other royalties, not under the degree of an eſquire, may, by writing under hand and ſeal, authoriſe one or more *game-keepers*; who may ſeize guns, dogs, nets, and other engines, made uſe of to kill the *game* by ſuch perſons as are prohibited, for the uſe of the Lord of the manor, or otherwiſe deſtroy them. *22 and* 23 *Car.* 2. *c.* 25.

Any Lord or Lady of a manor or lordſhip, may impower his or her *game-keeper* within their reſpective royalties, to kill hare, pheaſant, partridges, *etc.* But if the *game-keeper*, under colour of the ſaid power, ſhall kill, and afterwards ſell or diſpoſe thereof to any perſon whatſoever, without the conſent of the Lord or Lady of ſuch manor, upon conviction thereof, he ſhall be committed to the houſe of correction for three months, there to be kept to hard labour. 5 *Ann.* *c.* 14.

By the *ſtat.* 9 *Ann.* *c.* 25. no Lord or Lady of a manor ſhall make, conſtitute or appoint, above one perſon to be *game-keeper* within any one manor; with power to kill *game*; the name of which *game-keeper* ſo appointed, is to be entered with the clerk of the peace of the county wherein the manor lies: and if any other *game-keeper* ſhall preſume to kill any hare, pheaſant, partridge, *&c.* Or if any *game-keeper* ſhall ſell any hare, pheaſant, *&c.* he ſhall for every offence incur ſuch forfeitures as are inflicted by the act 5 *Ann.* *c.* 14.

And by 3 *Geo.* 1. *c.* 11. no Lord of a manor is to make or appoint any perſon to be a *game-keeper*, with power to take and kill hare, pheaſant, partridge, or other *game*, unleſs ſuch perſon be qualified by law ſo to do, or be truly and properly a ſervant to the ſaid Lord, or immediately employed to take and kill *game* for the ſole uſe or benefit of the ſaid Lord: and any perſon not qualified, or not employed as aforeſaid, who, under pretence of any qualification from any Lord of a manor, ſhall take or kill any hare, &c. or keep or uſe any dogs to kill and deſtroy the *game*, ſhall for every ſuch offence incur ſuch forfeitures, pains, and penalties, as are inflicted by the acts 5 *Ann. c* 14. 9 *Ann. c.* 25. By this laſt ſtatute, no *game-keeper* can qualify any perſon to kill *game*, or to keep guns, dogs, &c.

Where *game-keepers* ought to have a juſtice of peace's warrant, to take away guns from unqualified perſons, ſee *Comberb.* 305.

Appointment of a *game-keeper* by a Lord of a manor.

TO all people *to whom theſe preſents ſhall come, I* T. *Lord* A. *Lord of the manor of* B. *in the county of*, &c. *have (by virtue of ſeveral acts of parliament lately made for the preſervation of the game) nominated, authoriſed and appointed, and by theſe preſents do nominate, authoriſe and appoint* E. D. *of*, &c. *to be my* game-keeper *of and within my manor*, &c. *in the county of*, &c. *aforeſaid, with full power and authority, according to the direction of the ſtatutes in that caſe made, to kill game for my uſe; and to take and ſeize all ſuch guns, greyhounds, ſetting dogs, and other dogs, ferrets, trammels, hays, or other nets, ſnares or engines, for the taking, killing or deſtroying of hares, pheaſants, partridges, or other game, as within the ſaid manor of*, &c. *and the precincts thereof, ſhall be kept or uſed by any perſon or perſons not legally qualified to do the ſame: and farther to act and do all and every thing and things which belong to the office of a* game-keeper, *purſuant to the direction of the ſaid acts of parliament, during my will and pleaſure; for which this ſhall be his ſufficient warrant.* Given *under my hand and ſeal*, &c.

Gaming, or Games unlawful, (*Ludos vanos*) The playing at tables, dice, cards, &c. King *Ed.* 3. in the 39th year of his reign, injoined the exerciſe of ſhooting and of artillery, and forbad the caſting of the bar, the hand and foot balls, cock-fighting, & *alios ludos vanos*; but no effect did follow from it, till they were ſome of them forbidden by act of parliament. 11 *Rep.* 87. *Anno* 28 *Hen.* 8. Proclamation was made againſt all unlawful games, and commiſſions awarded into all the counties of *England*, for the execution thereof; ſo that in all places, tables, dice, cards and bowls, were taken and burnt. *Stow's Annals* 527. And by the ſtatute 33 *H.* 8. *c.* 9. Juſtices of peace, and head officers in corporations, are impowered to enter houſes ſuſpected of unlawful games; and to arreſt and impriſon the *gameſters*, till they give ſecurity not to play for the future: alſo the perſons keeping unlawful *gaming* houſes, may be committed by a juſtice, until they find ſureties not to keep ſuch houſes; who ſhall forfeit 40*s.* and the gameſters 6*s.* 8*d.* a time: and if the King licenſe the keeping of gaming-houſes, it is againſt law, and void.

No artificer, apprentice, labourer, or ſervant, ſhall play at tables, tennis, dice, cards, bowls, &c. out of *Chriſtmas* time, on pain of 20*s.* for every offence; and at *Chriſtmas*, they are to play in their maſter's houſe, or preſence: but any nobleman, or gentleman, having 100 *l. per Annum* eſtate, may licenſe his ſervants or family to play within the precincts of his houſe, or garden, at cards, dice, tables, or other games, as well among themſelves, as others repairing thither. *Stat. Ibid.* This act is to be proclaimed once a quarter, in every market-town, by the reſpective mayors, &c. and at every aſſiſes and ſeſſions. A perſon was convicted of keeping a cock-pit; and the court reſolved it to be an unlawful game, within the *ſtat.* 33 *Hen.* 8. *c.* 9. and fined him 40*s.* a day. *Keb.* 510. But to play at dice, &c. is not unlawful in itſelf, though prohibited by ſtatutes to certain perſons, and to be uſed in certain places. 2 *Ventr.* 175.

If any perſon, of what degree ſoever, ſhall by fraud, deceit, or unlawful device, in playing at cards, dice, tables, bowls, cock-fighting, horſe-races, foot-races, or other games or paſtimes, or bearing a ſhare in the ſtakes, betting, &c. win any money or valuable thing, he ſhall forfeit treble the value, one moiety to the crown, and the other to the party grieved, proſecution being in ſix months; in default whereof, the laſt mentioned moiety is to go to ſuch other perſon as will proſecute within one year, &c. 16 *Car.* 2. *cap.* 7. See the *ſtat.*

By the ſtatute of 9 *Ann. cap.* 14. all *notes, bills, bonds judgments, mortgages*, or *other ſecurities*, given for money won by playing at cards, dice, tables, tennis, bowls, or other games; or by betting on the ſides of ſuch as play at any of thoſe games, or for repayment of any money knowingly lent for ſuch *gaming* or betting, ſhall be void: And where lands are granted by ſuch mortgages or ſecurities, they ſhall go to the next perſon, who ought to have the ſame as if the grantor were actually dead, and the grants had been made to the perſon ſo intitled after the death of the perſon ſo incumbering the ſame. If any perſon playing at cards, dice, or other game, or betting, ſhall *loſe the value of* 10*l. at one time*, to *one or more perſons*, and *ſhall pay the money*, he may *recover the money loſt by action of debt*, within three months afterwards; and if the loſer do not ſue, *any other perſon may* do it, and recover the ſame, and *treble the value with coſts*, one moiety to the proſecutor, and the other to the poor: And the perſon proſecuted ſhall anſwer upon oath, on preferring a bill to diſcover what ſums he hath won.

Perſons by *fraud* or *ill practice*, in *playing* at cards, dice, or by bearing a ſhare in the ſtakes, *etc.* or by *betting, winning any ſum above* 10*l.* ſhall *forfeit five times the value* of the thing won, and *ſuffer ſuch infamy and corporal puniſhment*, as in caſes of *wilful perjury*, being convicted thereof on indictment or information; and the penalty ſhall be recovered by action, by ſuch perſon as will ſue for the ſame. And if any one ſhall *aſſault* and *beat*, or *challenge* to fight any other perſon, on account of money won by *gaming*, upon conviction thereof, he ſhall *forfeit all his goods*, and *ſuffer impriſonment for two years. Stat.* 9 *Ann. c.* 14.

Alſo by this ſtatute, any two or more juſtices of peace, may cauſe ſuch perſons to be brought before them as they ſuſpect to have no viſible eſtates, &c. to maintain them; and if they do not make it appear that the principal part of their expences is got by other means than *gaming*, the juſtices ſhall require ſecurities for their good behaviour for a twelvemonth; and in default of ſuch ſecurity, commit them to priſon until they find it: And playing or betting during the time, to the value of 20*s.* ſhall be deemed a breach of good behaviour, and a forfeiture of their recogniſances. *Ibid.*

Where it ſhall be proved before any juſtice of peace, that any perſon hath uſed unlawful *games* contrary to the *Statute* 33 *Hen.* 8. *c.* 9. the juſtice may commit ſuch offender to priſon, till he enter into a recogniſance that he ſhall not from thenceforth, at any time to come, play at any unlawful game. *Statute* 2 *Geo.* 2. *cap.* 28. For better preventing exceſſive and deceitful *gaming*; the ace of hearts, faron, baſſet, and hazard, are declared to be lotteries by cards or dice; and perſons ſetting up theſe *games* are liable to the penalty of 200*l.* And every perſon who ſhall be an adventurer, or play or ſtake therein, forfeits 50*l.* Likewiſe the ſale of any houſe, plate, &c. in the way of lottery by cards, &c. is adjudged void, and the things to be forfeited to any perſon that will ſue for the ſame. 12 *Geo.* 2. *cap.* 28. The *game* of paſſage, and all other *games* with one or more dice, or any thing in that nature, having figures or numbers thereon, (backgammon and *games* now played with thoſe tables only excepted) ſhall be deemed *games* or lotteries by dice, within the 12 *Geo.* 2. *c.* 28. And ſuch as keep any office or table for the ſaid *game*, &c. or play thereat, are ſubject to the penalties in that act. 13 *Geo.* 2. *cap.* 19.

By the *Stat.* 18 *Geo.* 2. *cap.* 34. Playing at, or keeping any houſe or place for playing at the *game* of roulet, otherwiſe roly-poly, or any other *game* with cards or dice already prohibited, incurs the penalties in *Statute* 12 *Geo.* 2. *cap.* 28. Perſons loſing 10*l.* and paying the ſame, may ſue the winner, and recover the ſame with coſts: And on a bill in equity the court may decree the ſame to be paid. The perſons who have juriſdiction to determine informations on the ſtatutes againſt *gaming*, may ſummon witneſſes, who, on refuſing to appear and give evidence, ſhall forfeit 50 *l.* No privilege of parliament ſhall be allowed on proſecution for keeping a *gaming*-houſe.

Perſons *loſing* 10 *l.* at *one* time, or 20 *l. in twenty-four hours,* may be *indicted and fined five times the value.* See the 25 *Geo.* 2. *c.* 36. concerning the manner of proſecuting perſons for keeping *gaming-houſes, &c.* See 1 *Salk.* 344-5. 5 *Mod.* 13. *Mod. Caſ.* 128.

Common *gaming-houſes* are a common nuſance in the eye of the law; not only becauſe they are great temptations to idleneſs, but as they draw together great numbers of diſorderly perſons to the diſturbance of the neighbourhood. 1 *Hawk. P. C.* 198.

Noy had a writ on the *Stat.* 33 *Hen.* 8. *c.* 9. to remove bowling-alleys, *&c.* which were pulled down, as common nuſances. 3 *Keb.* 465.

Cricket, adjudged a game within the 9th of *Ann. c.* 14. *Wilſon, par.* 1. 220. So as to a *foot-race,* but it muſt appear that a perſon was playing at ſuch a game, or elſe a wager laid on his ſide, is not a betting within the ſtatute. *Ibid. par.* 2. 36. A *horſe-race* is a *game* within the *Stat. Ib.* 309.

Gang-days. (*Dies Luſtrationis*) And *gang-weeks* are mentioned in the laws of King *Athelſtan.* See *Rogation Week.*

Gaol, (*Gaola,* Fr. *Geole,* i. e. *Caveola,* a cage for birds) Is uſed metaphorically for a priſon. It is a ſtrong place or houſe for keeping of debtors, *&c.* and wherein a man is reſtrained of his liberty to anſwer an offence done againſt the laws: And every county hath two *gaols,* one for debtors, which may be any houſe where the ſheriff pleaſes; the other for the peace and matters of the crown, which is the *county gaol. Mod. Juſt.* 230.

Under this head we may conſider according to the diviſion in the *New Abr.*

I. *By what authority gaols may be erected, and at whoſe charge they are to be repaired.*

II. *To what place, and at whoſe charge, offenders are to be committed, and how they are to be maintained.*

III. *Of the offence of breaking gaol.*

I. *By what authority gaols may be erected, and at whoſe charge they are to be repaired.*

Gaols are of ſuch univerſal concern to the public, that none can be erected by any leſs authority than an act of parliament. 2 *Inſt.* 705. All priſons and *gaols* belong to the King, although the ſubject may have the cuſtody or keeping of them. 2 *Inſt.* 100. It is ſaid, that none can claim a priſon as a franchiſe, unleſs they have alſo a gaol-delivery; and that therefore the Dean and Chapter of *Weſtminſter,* though they have the cuſtody of the *Gatehouſe* priſon, yet as they have no gaol-delivery, they muſt ſend a kalendar of the priſoners to *Newgate.* 1 *Salk.* 343. *Fareſl.* 31. *per.* Holt Ch. J.

By the 14 *Ed.* 3. *cap.* 10. it is enacted, That the ſheriffs ſhall have the cuſtody of the *gaols* as before, and ſhall put in under-keepers for whom they will anſwer. This ſtatute is confirmed by 19 *H.* 7. *cap.* 10.

Although divers lords of liberties have the cuſtody of priſons, and ſome in fee, yet the priſon itſelf is the King's *pro bono publico,* and therefore it is to be repaired at the common charge. 2 *Inſt.* 589. If a *gaol* be out of repair, inſufficient, *&c.* the juſtices of peace in the quarter-ſeſſions may agree with workmen for rebuilding or repairing it; and, by warrant under their hands and ſeals, order the ſum agreed upon to be levied upon the ſeveral hundreds and diviſions in the county, by a proportionate rate. 11 & 12 *W.* 3. *cap.* 19. See 12 *Geo.* 2. *c.* 19.

II. *To what place, and at whoſe charge offenders are to be committed, and how they are to be maintained.*

Juſtices of peace may not commit felons, and other criminals to the *counters* in *London,* or other priſons but the common *gaols,* for legally they cannot impriſon any where but in the common *gaol. Co. Lit.* 9, 119. But the houſe of correction, and the *counters* of the *ſheriffs of London,* are the common priſons for offenders for the breach of the peace, *&c.*

By the 5 *H.* 4. *cap.* 10. it is enacted, "That none ſhall be impriſoned by any juſtice of the peace, but only in the common gaol, ſaving to lords and others, who have *gaols,* their franchiſe in this caſe".—This ſtatute is only declaratory of the Common law. 2 *Inſt.* 43.

But the court of King's Bench may commit to any priſon in the kingdom which they ſhall think moſt proper, and the offender ſo committed or condemned to impriſonment cannot be removed or bailed by any other court. *Moor* 666. *pl.* 913. 1 *Sid.* 145.

But by 31 *Car.* 2. *c.* 2. *ſect.* 12. No ſubject ſhall be ſent to foreign priſons.

And as priſoners ought to be committed at firſt to the proper priſon, ſo ought they not to be removed from thence, except in ſome ſpecial caſes.

To which purpoſe, by the ſaid ſtat. 31 *Car.* 2. *c.* 2. *ſect.* 9. it is enacted, "That if any ſubject of this realm ſhall be committed to any priſon, or in cuſtody of any officer, for any criminal or ſuppoſed criminal matter, he ſhall not be removed into the cuſtody of any other, unleſs it be by a *habeas corpus,* or other legal writ; or where the priſoner is delivered to the conſtable, *&c.* to be carried to ſome common gaol; or where any perſon is ſent by order of any judge of aſſiſe, or juſtice of the peace, to any common work-houſe, or houſe of correction; or where the priſoner is removed from one priſon to another within the ſame county, in order to a trial or diſcharge by due courſe of law; or in caſe of ſudden fire or infection, or other neceſſity; upon pain that he who makes out, ſigns, or counterſigns, or obeys, or executes ſuch warrant, ſhall forfeit to the party grieved *one hundred pounds* for the *firſt* offence, *two hundred pounds* for the *ſecond, &c.*" See 19 *Car.* 2. *cap.* 4. for impowering juſtices of the peace to remove priſoners in caſe of infection.

By 11 & 12 *Wil.* 3. *c.* 10. All murderers and felons ſhall be impriſoned in the common *gaol,* and the ſheriffs ſhall have the keeping of the *gaol.*

As to the charge of conveying priſoners.

Offenders committed to priſon, are to bear the charges of their conveying to *gaol;* or, on refuſal, their goods ſhall be ſold for that purpoſe, by virtue of a juſtice of peace's warrant; and if they have no goods, a tax is to be made by *conſtables, &c.* on the inhabitants of the pariſh where the offenders were apprehended. 3 *Jac.* 1. *cap.* 10. And by 27 *Geo.* 2. *c.* 3. The expence of conveying poor offenders to *gaol,* or the houſe of correction, ſhall be paid by the treaſurer of the county, except in *Middleſex.*

For the relief of priſoners in *gaols,* juſtices of peace in ſeſſions have power to tax every pariſh in the county, not exceeding 8 *d. per* week, leviable by conſtables, and diſtributed by collectors, *&c.* 14 *Eliz. cap.* 5.

Alſo by 19 *Car.* 2. *c.* 4. Further proviſions are made for the relief of poor priſoners, and ſetting them to work. And by 22 & 23 *Car.* 2. *c.* 20. It is enacted, "That "all ſheriffs, gaolers, *&c.* ſhall permit their priſoners to "ſend for neceſſary food where they pleaſe; nor demand "any greater fee for their commitment or diſcharge than "what is allowable." Alſo it is thereby directed, that an inquiry be made into all charities given for the benefit of poor priſoners. Laſtly, by 2 *Geo.* 2. *c.* 22. Chief juſtices, *&c.* are to examine into gifts for priſoners: And tables of ſuch gifts are to be hung up in the *gaols,* and regiſtered by the clerks of the peace.

III. *As to breaking of priſon.*

This offence, by the Common law, was no leſs than felony; and this whether the party were committed in a criminal, or civil caſe, or whether he were actually within the walls of the priſon, or only in the ſtocks, or in the cuſtody of any perſon who had lawfully arreſted him, or whether he were in the King's priſon, or one belonging to a lord, or franchiſe. 2 *Inſt.* 589. *Staundf. P. C.* 31. *Cro. Car.* 210.

But now, by the ſtatute 1 *Ed.* 2. *ſtat.* 2. "None from henceforth that breaketh priſon ſhall have judgment of life, or member, for breaking of priſon only, except the cauſe for which he was taken and impriſoned did require ſuch judgment, if he had been convict thereupon according to the law and cuſtom of the realm; albeit in times paſt it hath been uſed otherwiſe."

Any place whatſoever, wherein a perſon under a lawful arreſt for a ſuppoſed capital offence is reſtrained from his liberty, whether in the ſtocks or ſtreet, or in the common gaol, or the houſe of a conſtable, or private perſon, or the priſon of the ordinary, is a priſon within the ſtatute. 2 *Inſt*. 589. *Dyer*. 99. *pl*. 60. *Crom*. 38. *Cro. Car*. 210. *Hale's P. C.* 107.

That there muſt be an actual breaking, for the words *felonice fregit priſonam*, which are neceſſary in every indictment for this offence, cannot be ſatisfied without ſome actual force or violence; and therefore if the priſoner, without the uſe of any violent means, go out of the priſon doors, which he finds open by the negligence or conſent of the gaoler, or if he eſcape through a breach made by others without his privity, he is guilty of a *miſdemeanor* only, and not of felony. 2 *Inſt*. 589. *Hale's P. C.* 108. *Staundſ. P. C.* 31.

Nor will the breaking of priſon, which is neceſſitated by any accident, happening without any default of the priſoner, as where the priſon is fired by lightning, or otherwiſe, without his privity, and breaks out to ſave his life, come within the ſtatute. *Plowd*. 136. 2 *Inſt*. 590. *Hale's P. C.* 108. Nor is it felony to break a priſon, unleſs the priſoner eſcape. *Keilw*. 87. *a*.

If the impriſonment be for any offence made capital by a ſubſequent ſtatute, the breach of priſon is as much within the act of 1 *Ed*. 2. *Stat*. 2. as if the offence had always been felony; but if the offence, for which a man is committed, were but a treſpaſs at the time when he breaks the priſon, and afterwards become felony by a ſubſequent matter; as where one committed for having dangerouſly wounded a man, who afterwards dies, breaks the priſon before he dies, the fiction of law, (which to many purpoſes makes the offence a felony *ab initio)* ſhall not be carried ſo far as to make the priſon-breach alſo a felony, which, at the time when it was committed, was but a miſdemeanor. *Hale's P. C.* 108. 2 *Inſt*. 591. *Plowd*. 258.

Alſo it ſeems the better opinion, that if the offence, for which the party was committed, be in truth but a treſpaſs, the calling it felony in the *mittimus*, will not make the breaking of the gaol amount to felony; and that on the other ſide, if the offence were in truth a capital one, the calling it a treſpaſs in the *mittimus* will not bring it within the ſtatute; for the cauſe of impriſonment is what the ſtatute regards, and that is the offence, which can neither be leſſened, nor increaſed by a miſtake in the *mittimus*. But for this, ſee 2 *Hawk. P. C.* 126-7.

The offence of breaking priſon is but felony, whatſoever the crime were for which the party was committed, unleſs his intent were to favour the eſcape of others who were committed for treaſon, for that will make him a principal in the treaſon. 2 *Hawk. P. C.* 127.

He that breaks priſon may be proceeded againſt for ſuch crime before he be convicted of the crime for which he is committed, becauſe the breach of priſon is a diſtinct independent offence; but the ſheriff's return of a breach of priſon is not a ſufficient ground to arraign a man without an indictment. 2 *Hawk. P. C.* 127-8.

It is not ſufficient to indict a man generally, for having feloniouſly broken priſon; but the *caſe muſt be ſet forth ſpecially*, that it may appear he was lawfully in priſon, and for a capital offence. *Hale's P. C.* 109. 2 *Inſt*. 591. See *Priſon*, *Marſhalſea*.

Gaoler, Is the maſter of a priſon; one that hath the cuſtody of the place where priſoners are kept. Sheriffs muſt make ſuch *gaolers* for which they will anſwer: But if there is a default in the *gaoler*, action lies againſt him for an eſcape, &c. 2 *Inſt* 592. In common caſes, the *ſheriff*, or *gaoler*, is chargeable at the diſcretion of the party; though the *ſheriff* is moſt uſually charged. *Wood's Inſt*. 76. He who hath the cuſtody of the gaol wrongfully, or of right, ſhall be charged with the eſcape of priſoners; and if he that hath the actual poſſeſſion be not ſufficient, *reſpondeat ſuperior*. *Ibid*. A *gaoler* kills an unruly priſoner, it is no felony; but if it be by hard uſage, it is felony and murder. 3 *Inſt*. 52. And if a *gaoler* barbarouſly miſuſe priſoners, he may be fined and diſcharged. *Raym*. 216.

By the 14 *Ed*. 3. *cap*. 10. "If any keeper of a priſon or under-keeper, by too great dureſs of impriſonment, and by pain, make any priſoner that he hath in his ward to become an appellor againſt his will, he is guilty of felony."

By the 4 *Ed*. 3. *c*. 10. It is enacted, that the ſheriffs and *gaolers* ſhall receive, and ſafely keep in priſon, from henceforth ſuch thieves and felons, by the delivery of the conſtables and townſhips, without taking any thing for the receipt; and *the juſtices to deliver the gaol, ſhall have power to hear their complaints, that will complain againſt the ſheriffs and* gaolers *in ſuch caſe*, and moreover to *puniſh* the ſheriffs and *gaolers*, if they be found guilty. By the 23 *H*. 6. *cap*. 10. a *gaoler* upon commitment may take 4*d*.

By the 3 *H*. 7. *c*. 3. The ſheriff and every other perſon, having authority or power of keeping of *gaol*, or of priſoners for felony, ſhall certify the names of all priſoners in his cuſtody to the juſtices of *gaol*-delivery. And by *Stat*. 22 & 23 *Car*. 2. *c*. 20. It is enacted, That the rates of fees, and government of priſons be ſigned by the Lord, Chief Juſtices, &c. and hung up in every *gaol*, fairly written.

And farther, that felons and priſoners for debt, ſhall not be lodged together. No fees ſhall be taken by *gaolers* of priſoners, but ſuch as are allowed by law, and the judges, &c. are to ſettle the ſame; alſo the judges may determine petitions againſt extortions of *gaolers*, bailiffs, &c. *Stat*. 2 *Geo*. 2. *cap*. 22. See 28 *Geo*. 2. *c*. 13. And 30 *Geo*. 2. *c*. 18.

If any perſon aſſault a *gaoler*, for keeping a priſoner in ſafe cuſtody, he may be fined and impriſoned. 1 *Hawk*. 58, 59. Where a gaol is broken by thieves, the *gaoler* is anſwerable; not if it be broken by enemies. 3 *Inſt*. 52.

It ſeems clearly agreed, that a gaoler by ſuffering voluntary eſcapes, by abuſing his priſoners, by extorting unreaſonable fees from them, or by detaining them in *gaol*, after they have been legally diſcharged, and paid their juſt fees, forfeits his office; for that in the grant of every office it is implied, that the grantee execute it faithfully and diligently. *Co. Lit*. 233. 9 *Co*. 5. 3 *Mod*. 143.

By 8 & 9 *W*. 3. *c*. 27. The marſhal and warden taking any reward to connive at priſoners eſcape, forfeits 500*l*. and his ſaid office, and be for ever after incapable of executing any ſuch office.

It hath been reſolved, that a forfeiture by a gaoler who hath but a particular intereſt, as of him who hath cuſtody of a gaol for life, or years, does not affect him in remainder, or reverſion, who hath the inheritance, but that upon ſuch forfeiture his title ſhall accrue, and not go to the King. *Popb*. 119. 2 *Lev*. 71. *Raym*. 216. 3 *Lev*. 288.

But by the 8 & 9. *W*. 3. *c*. 27. It is enacted, That the office of marſhal of the King's Bench, and warden of the Fleet, ſhall be executed by thoſe who have the inheritance of the ſaid priſons, or their deputies, &c.

By the 3 *Geo*. 1. *cap*. 15. None ſhall purchaſe the office of *gaoler*, or any other office pertaining to the high ſheriff, under pain of 500*l*. And a *gaoler* in *fact*, is as much puniſhable for a miſdemeanor in his office, as if he were a *a rightful gaoler*. 2 *Hawk*. 134.

Gaol-delivery. The adminiſtration of juſtice being originally in the crown, in former times our Kings in perſon rode through the realm once in ſeven years, to judge of and determine crimes and offences; afterwards *juſtices in eyre* were appointed; and ſince *juſtices of aſſiſe* and *gaol-delivery*, &c. A commiſſion of a *gaol-delivery* is a patent in nature of a letter from the King to certain perſons, appointing them his juſtices, or two, or three, of them, and authoriſing them to deliver his *gaol*, at ſuch a place, of the priſoners in it; for which purpoſe, it commands them to meet at ſuch a place, at the time they themſelves ſhall appoint; and informs them, that for the ſame purpoſe the King hath commanded his ſheriff of the ſame county to bring all the priſoners of the *gaol*, and their attachments before them, at the day appointed. *Cromp. Juriſd.* 125. 4 *Inſt.* 168.

Juſtices of *gaol-delivery* are impowered by the Common law to proceed upon indictments of felony, treſpaſs, *&c.* and to order execution or reprieve: And they have power to diſcharge ſuch priſoners, as upon their trials ſhall be acquitted; alſo all ſuch againſt whom, upon proclamation made, no evidence appears to indict them; which juſtices of *oyer and terminer*, &c. may not do. 2 *Hawk.* 24, 25. But theſe juſtices *have nothing to do with any perſon not in cuſtody of the priſon*, except in ſome ſpecial caſes; as if ſome of the accomplices to a felony be in ſuch priſon, and ſome of them out of it, the juſtices may receive an appeal againſt thoſe who are out of the priſon, as well as thoſe who are in it; which appeal, after the trial of ſuch priſoners, ſhall be removed into *B. R.* and proceſs iſſue from thence againſt the reſt. *Fitz. Coron.* 77. *S. P. C.* 64. Such juſtices have no more to do with one let to mainpriſe, than if he were at large; for ſuch perſon cannot be ſaid to be a priſoner, ſince it is not in the power of his ſureties to detain him in their cuſtody: And where any perſon is bailed, there he is in the cuſtody of his ſureties, and they may detain him where they pleaſe. 2 *H. P. C.* 25. Though *per Holt* Ch. J. If a perſon be let to bail, yet he is in law in priſon, and his bail are his keepers; and therefore the juſtices of *gaol-delivery* may take an indictment againſt him, as well as if he was actually in gaol. And they may take indictments not only of felony, but alſo of high treaſon, if the offenders are in priſon, and try and give judgment upon them, like unto commiſſioners of *oyer and terminer*; though it has been formerly held otherwiſe. 2 *Hale's Hiſt. P. C.* 35. Juſtices of *gaol-delivery* may puniſh thoſe who unduly bail priſoners; as being guilty of a negligent eſcape. *S. P. C.* 77. 25 *Ed.* 3. 39. They are alſo to puniſh ſheriffs and gaolers, refuſing to take felons into their cuſtody from conſtables, *&c.* 4 *Ed.* 3. 10. and have authority to puniſh many particular offences by ſtatute.

The granting a new commiſſion of *gaol-delivery*, or of the peace, in a town corporate, ſhall not avoid the former commiſſion, 2 & 3 *Ph. & Mar. c.* 18. Juſtices of *gaol-delivery* may act in their counties. 12 *Geo.* 2. *c.* 27.

Garb, (*Garba*, from the Fr. *Garbe*, alias *Gerbe*, i. e. *faſcis)* Signifies a bundle or ſheaf of corn. *Chart. Foreſt. cap.* 7. And in ſome places it is taken for an handful, *viz.* Garba *aceris fit ex triginta peciis.* Fleta, lib. 2. cap. 12. *Garba ſagittarum* is a ſheaf of arrows containing twenty-four. *Skene.*

Garble, Is to ſever the droſs and duſt from ſpice, drugs, *&c.* *Garbling* is the purifying and cleanſing the good from the bad; and may come from the Italian *Garbo*, i. e. Finery or neatneſs; and thence probably we ſay, when we ſee a man in a neat habit, that he is in a handſome *Garb.* Cowel.

Garbler of Spices, An officer of antiquity in the city of *London*, who may enter into any ſhop, warehouſe, *&c.* to view and ſearch drugs and ſpices, and *garble* and make clean the ſame, or ſee that it be done. 21 *Jac.* 1. *c.* 19. And all drugs, *&c.* are to be cleanſed and garbled before ſold, on pain of forfeiture, or the value. *Stat. Ibid.* But ſee *Stat.* 6 *Ann. cap.* 16.

Garcio, (Fr. *Garcon)* A groom or ſervant. *Pla. Cor.* 21 *Ed.* 1. *Garcio ſtolæ*, groom of the ſtole to the King: And in the *Iriſh* language, (according to *Toland) garſon* is an appellative for any menial ſervant. *Kennet's Gloſſ.*

Garciones, Are thoſe ſervants who follow the camp. ——— *Habeat* garcionem *ſuo ſervitio ſemper attendentem. Ingulph.* 886. And the word *garciones* hath been applied to the baggage of an army; ſo called *a* garcionibus *ſive militum famulis.* Walſing. 242. *See* Dict. de Trevoux.

Gard, **Gardian**, &c. See *Guard* and *Guardian.*

Gardebrache, (Fr. *Gardebrace)* An armour or vambrace for the arm. *Chart. K. Hen.* 5.

Gardens. Robbing of gardens of fruit growing therein, puniſhable criminally by whipping, ſmall fines, impriſonment, and ſatisfaction to the party wronged, according to the nature of the offence. See 43 *Eliz. c.* 7. 15 *Car.* 2. *c.* 2. 23 *Geo.* 2. *c.* 26. 31 *Geo.* 2. *c.* 35. and 6 *Geo.* 3. *c.* 36, 48.

Garderobe, *(Garderoba)* A cloſet or ſmall apartment, for hanging up clothes, being the ſame with *wardrobe.* See 2 *Inſt.* 255.

Gardia, Is a word uſed by the *feudiſts* for *cuſtodia.* Lib. Feud. 1.

Gare, A coarſe wool, full of ſtaring hairs, ſuch as grow about the ſhanks of ſheep. 31 *Ed.* 3. *cap.* 8.

Garlanda, A chaplet, coronet, or garland. *Mat. Pariſ.*

Garnestura, Victuals, arms, and other implements of war, neceſſary for the defence of a town or caſtle. *Mat. Pariſ. Ann.* 1250.

Garnish, To *garniſh* the heir, ſignifies in law to warn the heir. *Stat.* 27 *Eliz. cap.* 3.

Garnishment, (Fr. *Garnement*, from *Garnir*, i. e. *inſtruere)* In a legal ſenſe intends a warning given to one for his appearance, for the better furniſhing of the cauſe and court. For example; one is ſued for the *detinue* of certain writings delivered; and the defendant alledging that they were delivered to him by the plaintiff, and another perſon, upon condition, prays that the other perſon may be warned to plead with the plaintiff, whether the condition be performed or not; in this petition he is ſaid to pray *garniſhment*; which may be interpreted either a warning of that other, or a furniſhing the court with all parties to the action, whereby it may thoroughly determine the cauſe; and until he appears and joins, the defendant is as it were out of the court. *Cromp. Juriſ.* 211. *F. N. B.* 106. A writ of *ſcire facias* is to go forth againſt the other perſon to appear and plead with the plaintiff; and when he comes and thus pleads, it is called *enterpleader*: If the *garniſhee* be returned *ſcire feci*, and make default, judgment will be had to recover the writings, and for their delivery, againſt the defendant; and if the *garniſhee* appears and pleads, if the plaintiff recovers, he ſhall have damages. *Raſt.* 213. 1 *Brownl.* 147.

Garniſhment is generally uſed for a warning; as *garniſher le court* is to warn the court; and *reaſonable garniſhment*, is where a perſon hath reaſonable warning. *Kitch.* 6. In the *Stat.* 27 *Eliz. cap.* 3. we read, upon a *garniſhment* or two *nihils* returned, *&c.* And further, ſome contracts are naked, *ſans garnement*, and ſome furniſhed, *&c.*

Garnishee, Is a third perſon or party in whoſe hands money is *attached* within the liberties of the city of *London*, by proceſs out of the ſheriff's court; ſo called, becauſe he hath had *garniſhment* or warning, not to pay the money to the defendant, but to appear and anſwer to the plaintiff creditor's ſuit. Vide *Attachment.*

Garnisture, A furniſhing or providing. *Pat.* 17 *Ed.* 3. Vide *Garneſtura.*

Garsummune, *Gerſuma*, or *Gerſoma*, A fine or amerciament. *Domeſday, Spelm. Gloſſ.*

Garter. *(Garterium*, Fr. *Jartier*, i. e. *Periſcelis, Faſcia poplitaria)* Signifies in divers ſtatutes, and elſewhere, a ſpecial *garter*, being the enſign of a noble order of knights, inſtituted by King *Ed.* 3. *anno dom.* 1344. called *Knights of the Garter*: It is alſo taken for the principal *King at arms*, among our *Engliſh heralds*, attending upon the Knights thereof; created by King *Hen.* 5. and mentioned in the *Stat.* 14 *Car.* 2. *cap.* 33.

The firſt dignity after that of nobility, is that of a Knight of the Order of Saint *George*, or of the Garter. Indeed many ſovereign Princes have been proud of the order, and conſidered themſelves as highly honoured by our Sovereign's conferring it on them.

Garth, A little backſide or cloſe in the *North* of *England*; being an ancient *Britiſh* word, as *gardd* in that language is *garden*, and pronounced and writ *garth*; alſo a *dam* or wear, *&c.*

Garthman. As there are *fiſhgarths* or wears for catching of fiſh, ſo there are *garthmen*; for by ſtatute it is ordained, that no fiſher nor *garthman* ſhall uſe any nets or engines to deſtroy the fry of fiſh, *&c.* 17 *R.* 2. *cap.* 9. And this word is ſuppoſed to be derived from the Scottiſh *gart*, which ſignifieth inforced, or compelled; and fiſh are forced by the wear to paſs in at a loop where they are taken.

Gaſtaldus, A governor of the country, whoſe office was only temporary, and who had juriſdiction over the common people. *Blount.*

Gate, At the end of the names of places, ſignifies a way or path, from the Sax. *geat*, i. e. *porta*, The cuſtody of the *gates* of the city of *London*, is granted to the Lord Mayor, *&c.* by *Chart*. King *Hen.* 4.

Gabel, (Sax. *gafel*) Tribute, toll, cuſtom or yearly revenue; of which we had in old time ſeveral kinds. See *Gabel.*

Gavelet, *(gaveletum)* Is an ancient and ſpecial kind of *ceſſavit* uſed in *Kent*, where the cuſtom of *gavelkind* continues, whereby a tenant, if he with-holds his rents and ſervices due to the lord, ſhall forfeit his land: it was intended where no diſtreſs could be found on the premiſſes, ſo that the lord might ſeize the land itſelf in the nature of a diſtreſs, and keep it a year and a day; within which time, if the tenant came and paid his rent, he was admitted to his tenement to hold it as before; but if not, the lord might enter and enjoy the ſame. 10 *H.* 3. 10 *Ed.* 2. The lord was to ſeek by the award of his court, from three weeks to three weeks, to find ſome diſtreſs upon the land or tenement, until the fourth court; and if in that time he could find none, at the fourth court it was awarded that the tenement ſhould be ſeiſed as a diſtreſs, and kept in the lord's hands a year and a day without manuring; and if the tenant did not in that time redeem it, by paying the rent and making amends to the lord, the lord having pronounced his proceſs by witneſſes at the next *county court*, was awarded by his court to enter and manure the tenement as his own: and if the tenant would afterwards have it again, he was to make agreement with the lord. *Fitz. Ceſſ.* 60. *Terms de Ley.*

Gaveletum is as much as to ſay to ceaſe, or to *let* to pay the rent; and *conſuetudo de gavelet* was not a rent or ſervice, but a rent or ſervice with-held, denied or detained, cauſing the forfeiture of the tenement.

Gavelet in London, *(breve de gaveleto in* London, *pro redditu ibidem, quia tenementa fuerunt indiſtringibilia)* Is a writ uſed in the *buſtings* of *London*; and the *ſtatute of gavelet*, 10 *Ed.* 2. gives this writ to lords of rents in the city of *London*, as well as in *Kent*: here the parties, tenant and demandant, appear by *ſcire facias*, to ſhew cauſe why the one ſhould not have his tenement again on payment of his rent, or the other recover the lands, on default thereof. *Practic. Solic.* 419.

Gavelgeld, Is applied to the payment of tribute or toll. *Mon. Ang. tom.* 3.

Gavelkind, Is ſaid by *Lambard* to be compounded of three *Saxon* words, *gyfe, eal, kyn, omnibus cognatione proximis data. Verſtegan* calls it *gavelkind, quaſi give all kind*, that is to each child his part: and *Taylor*, in his hiſtory of *gavelkind*, derives it from the Britiſh *gavel*, i. e. a hold or tenure, and *cenned, generatio aut familia*; and ſo *gavel cenedh* might ſignify *tenura generationis*. But, whatever is the etymology, it ſignifies a tenure or cuſtom, annexed and belonging to lands in *Kent*, whereby the lands of the father are equally divided at his death among all his ſons; or the land of the brother among all the brethren, if he have no iſſue of his own. *Lit.* 210. In the time of our *Saxon* anceſtors, the inheritance of lands did not deſcend to the eldeſt ſon as now, but to all alike; from whence came the cuſtom of *gavelkind*: and the reaſon why this cuſtom was retained in *Kent*, is, according to ſome, becauſe the *Kentiſh* men were not conquered by the *Normans* in the time of *William* I. For *Stigand*, then *Archbiſhop of Canterbury*, who commanded the forces in the country, ordered every man to march with boughs in their hands, and meeting *William*, they acquainted him with their reſolution of ſtanding or falling in defence of the laws of their country, and he imagining himſelf to be encompaſſed in a wood, granted that they and their poſterity ſhould enjoy their rights, liberties and laws; ſome of which, particularly this of *gavelkind*, continues to this day. *Blount.*

All the lands in *England*, were of the nature of *gavelkind* before the Conqueſt, and deſcended to all the iſſue equally; but after the Conqueſt (as it is called) when *knight-ſervice* was introduced, the deſcent was reſtrained to the eldeſt ſon for the preſervation of the tenure. *Lamb.* 167. 3 *Salk.* 129. In the reign of *Hen.* 6. there were not above thirty or forty perſons in all *Kent* that held by any other tenure than this of *gavelkind*; which was afterwards altered upon the petition of divers *Kentiſh* gentlemen, in much of the land of that county, ſo as to be deſcendible to the eldeſt ſon, according to the courſe of the Common law, by the *Stat.* 31 *H.* 8. *cap.* 3. Though the cuſtom to deviſe *gavelkind* land, and the other qualities and cuſtoms remain. *Co. Lit.* 140. By the *Stat.* 34 *&* 35 *Hen.* 8. *cap.* 26. *ſect.* 128. All *gavelkind* lands in *Wales* were made deſcendible to the heir, according to the Common law; whereby it appears, that the tenure of *gavelkind* was likewiſe in that principality.

By the cuſtomary tenure called *gavelkind*, which is an ancient *ſocage* tenure, the lands are dividable between the heirs male who ſhall inherit as ſiſters do at Common law; and when one brother dies without iſſue, all the other brothers are to inherit. *Co. Lit.* 140. But a father having *gavelkind* lands, had three ſons, one of whom died in the life-time of his father, leaving iſſue a daughter; and it was held that the daughter ſhall inherit the part of her father *jure repræſentationis*, and yet ſhe is not within the words of the cuſtom of dividing the land between the heirs male, for ſhe is the daughter of a male, and heir by repreſentation. 1 *Salk.* 243. The heir at the age of fifteen years, it is ſaid, may give and ſell his lands in *gavelkind*, and ſhall inherit. *Co. Lit.* 111. The cuſtom of *gavelkind* is not altered, though a fine be levied of the lands at Common law; becauſe it is a cuſtom that runs with the land. 6 *Ed.* 6.

Land in *gavelkind* was deviſed to the huſband and wife for life, remainder to the next heir male of their bodies, *&c.* They had three ſons, and it was adjudged that the eldeſt ſon ſhould not have the whole. *Dyer* 133. A donee in tail, of *gavelkind* lands, had iſſue four ſons; and it was held, that all ſhould inherit: but if a leaſe for life is made of *gavelkind*, remainder to the right heirs of *A. B.* who hath iſſue four ſons, in this caſe the eldeſt ſon ſhall inherit the remainder, becauſe, in caſe of purchaſe, there can be but one right heir. 1 *Rep.* 103. If *gavelkind* lands come to the crown, and are regranted to hold *in capite, &c.* the land ſhall deſcend to all the heirs male as *gavelkind*. 4 & 5 Mar. 2. Nelſ. Abr. 895.

A wife ſhall be endowed of *gavelkind* land, of a moiety of the land whereof her huſband died ſeiſed, during her widowhood. *Co. Lit.* 111. And it has been adjudged, that the widow cannot have election to demand her thirds or dower at Common law, ſo as to avoid the cuſtom, by which ſhe ſhall loſe her dower, if ſhe marry a ſecond huſband. *Moor* 260. But ſee 1 *Leon.* 62.

The huſband ſhall be tenant by the curteſy of half the *gavelkind* lands of the wife, during the time he continues unmarried, without having any iſſue by his wife; but if he marry, he ſhall forfeit his tenancy by the curteſy. *Co. Lit.* 111. If the huſband had iſſue by his wife, and ſhe die, he ſhall be tenant by the curteſy of the whole land; and though he marry, he ſhall not forfeit his tenancy. *Mich.* 21 *Car. B. R.* 1 *Lil. Abr.* 649.

It was formerly ſuppoſed that although a father was attainted of *treaſon* or felony, the heir of *gavelkind* land ſhould inherit, for the cuſtom, as ſaid, was, the father to the bough and the ſon to the plough. *Doct. & Stud. c.* 10. But, it is now held, that, in matters of *treaſon*, which ſtrike at the foundations of policy and government, even *gavelkind* lands are forfeitable, and *always were. Conſiderations on the law of Forfeitures, &c.* 52.

A rent in fee granted out of *gavelkind* lands, ſhall deſcend in *gavelkind* to all the heirs male, as the lands would have done; it being of the ſame nature with the land itſelf. 2 *Lev.* 138. 1 *Mod.* 97.

All lands in *Kent* ſhall be taken to be *gavelkind*, except thoſe which are *diſgavelled* by particular ſtatutes. 1 *Mod.* 98. It is a doubt now, if any one eſtate in the county of *Kent*, can be proved to be diſgavelled. Vide 31 *H.* 8. *c.* 3. If lands are alledged to be in *Kent*, it ſhall be intended that they are *gavelkind*; if the contrary doth not appear. 2 *Sid.* 153. By *Hale* Ch. J. *gavelkind law*, is the law of *Kent*, and is never pleaded, but preſumed: and it has been held, that the ſuperior courts may take notice of *gavelkind* generally without pleading: tho' not of the ſpecial cuſtom of *deviſing* it, *&c.* which ought to be pleaded ſpecially. Vide 1 *Mod.* 98. *Cro. Car.* 465. *Lutw.* 136, 754.

Gavelman, Is a tenant liable to tribute.——*Villani de &c. qui vocantur* gavelmanni. *Somner of Gavelkind, pag.* 33. And hence *gavelkind* has been thought to be land in its nature taxable. *Blount.*

Gavelmed, The duty or work of mowing graſs, or cutting of meadow land, required by the lord from his cuſtomary tenants, *conſuetudo falcandi quæ vocatur* gavelmed. *Somn.*

Gavelceſter, (Sax.) *Sextarius Vectigalis,* Is a certain meaſure of rent-ale: and among the articles to be charged on the ſtewards and bailiffs of the manors belonging to the *church* of *Canterbury* in *Kent,* according to which they were to be accountable, this of old was one; *de* gavelceſter *cujuſlibet bracini braciati infra libertatem maneriorum, viz. unam lagenam & dimidiam cerviſiæ.* This duty elſewhere occurs under the name of *tolſeſter*; in lieu whereof the *Abbot of Abingdon* was wont of cuſtom to receive the penny mentioned by *Selden* in his Diſſertation annexed to *Fleta, cap.* 8. Nor doth it differ from what is called *oakgavel* in the Gloſſary at the end of *Hen.* 1. Laws. *Sax. Dict.*

Gavel-werk, *(Sax.)* Was either *manu opera,* by the hands and perſon of the tenant, or *carropera,* by his carts or carriages. *Philips of Purvey.*

Gaugetum, A *gauge* or *gauging,* done by the gauger; and the true *Engliſh gauge* is mentioned. *Rot. Parl.* 35 *Ed.* 1.

Gauger, *(gaugeator,* Fr. *ganchir,* i. e. *in gyrum torquere)* Signifies an officer appointed by the King, to examine all tuns, pipes, hogſheads, barrels and tercians of wine, oil, honey, *&c.* and to give them a mark of allowance, as containing lawful meaſure, before they are ſold in any place: and becauſe his mark is a circle made with an iron inſtrument for that purpoſe, it ſeems to have its name from thence. Of this officer and his office, we have many ſtatutes; as by 27 *Ed.* 3. *cap.* 8. all wines, *&c.* imported, are to be gauged by the King's *gaugers,* or their deputies. By 31 *Ed.* 3. *c.* 5. Selling wine, before gauged, incurs forfeiture of the value And by 23 *Hen.* 6. *cap.* 16. the *gauge-penny* is to be paid *gaugers,* on gauging wines. The 31 *Eliz. c.* 8. ordains, that beer, *&c.* imported, ſhall be gauged by the Maſter and Wardens of the Cooper's Company. See 12 *Car.* 2. *c.* 4.

Veſſels brought from beyond ſea, and uſed for utterance of ale and beer, ſhall be gauged, 31 *Eliz. c.* 8. The wardens of the coopers, ſhall attend to gauge veſſels upon requeſt, 23 *Hen.* 8. *c.* 4. 31 *Eliz. c.* 8. *ſ.* 3. Gaugers may take ſamples not exceeding half a pint, 32 *Geo.* 2. *c.* 29. Vide *Exciſe.*

Geaſpecia. In a charter of the privileges of *Newcaſtle upon Tyne,* renewed *anno* 30 *Eliz.* we find *ſturgiones, porpecias,* i. e. (*porpoiſes*) *delphinos,* geaſpecias, (viz. *grampois, &c.*

Geburſcip, (*geburſcipa*) Neighbourhood or adjoining diſtrict. *Leg. Edw. Confeſſ. cap.* 1.

Geburus, A country inhabitant of the ſame *gebureſhip,* or village; from the Sax. *gebure,* a carl, ploughman, or farmer. *Cowel.*

Geld, (*geldum*) *Mulcta compenſatio delicti & pretium rei.* Hence, in our antient laws, *wergeld* was uſed for the value or price of a man ſlain; and *orfgeld* of a beaſt: likewiſe money or tribute; for it is ſaid, *Et ſint quieti de* geldis, *danegeldis, horngeldis, blodwita, &c.* Chart. Rich. 2. Priorat. de H. in Devon. Pat. 5 E. 4. *Angeld* is the ſingle value of a thing, *twigeld,* double value, *&c.*

Geldable, *(geldabilis)* That is liable to pay tax or tribute. *Cambden,* dividing *Suffolk* into three parts, calls the firſt *geldable,* becauſe ſubject to taxes; from which the other two parts were exempt, as being *eccleſiæ donatæ.* The word is mentioned in the *Stat.* 27 *Hen.* 8. *cap.* 26. But in an old *MS.* it is expounded to be that land, or lordſhip, which is *ſub diſtrictione curiæ vicecom.* 2 Inſt. 701. ——*Jur. dicunt quod prior de* Semprinham *tenet tres carucatas terræ in* S. *& non ſunt* geldabiles. *Ex Rot. Hundr. in Turr. Lond. Ann.* 3 *Ed.* 1.

Gemote, (Sax. i. e. *conventus*) An aſſembly. *Omnis homo pacem habeat eundo ad* gemotum *& rediens de* gemoto; *niſi probatus fur fuerit,* Leg. Edw. Conf. cap. 35. See *Alderman, Ealdorman, Folc-mote, Mote, Wittena-gemote.*

Geneath, *Villanus,* as *Regis Geneath,* is the King's Villain. *LL. Inæ, MS. cap.* 19.

General Iſſue, Is a plea to the fact of *Not Guilty,* in criminal caſes, in order to trial, by the country, or by peers, *&c. H. P. C.* 254. In civil ſuits, there are various pleas, which are general iſſues, according to the ſpecies of the action, as in *treſpaſs, Not Guilty,* in caſe on *promiſes, non aſſumpſit,* &c.

Generatio. When an old abbey, or religious houſe, had ſpread itſelf into many colonies, or depending cells, that iſſue or offſpring of the mother monaſtery was called *generatio, quaſi proles & ſuboles matricis domus.* Annal. Waverl. 1232.

Generale. The ſingle commons, or ordinary proviſion of the religious, were termed *generale,* as their general allowance, diſtinguiſhed from their *pietantiæ,* or pittances; which on extraordinary occaſions were thrown in as over commons. In the obſervances of the *Cluniac monks,* they are deſcribed thus: Generale *appellamus quod ſingulis in ſingulis datur ſcutellis: pietantia quod in una ſcutella duobus.* They are alſo deſcribed amongſt other cuſtoms. *Cartular. Glaſton. MS. fol.* 10.

Generals of Orders, Chiefs of the ſeveral orders of *monks, friers,* and other religious ſocieties.

Geneva, A famous ſtrong water or ſpirit. Vide *Diſtillers.*

Gentleman, (*generoſus*) Is compounded of two languages, from the Fr. *gentil,* i. e. *honeſtus, vel honeſto loco natus,* and the Sax. *mon,* a man; as if you would ſay a man well born. The *Italians* call thoſe *gentil homini* whom we ſtyle *gentleman*; the *French* likewiſe diſtingniſh ſuch by the name of *gentilhomme:* and the *Spaniards* keep up to the meaning of the word, calling him *hidalgo* or *hijo d'alga,* who is the ſon of a man of account; ſo that gentlemen are ſuch whom their blood or race doth make known.

Under the denomination of gentlemen, are compriſed all above yeomen; whereby noblemen are truly called gentlemen. *Smith de Rep. Angl. lib.* 1. *cap.* 20, 21. A gentleman is generally defined to be one, who, without any title, bears a *coat of arms,* or whoſe anceſtors have been freemen; and by the coat that a gentleman giveth, he is known to be, or not to be, deſcended from thoſe of his name, that lived many hundred years ſince.

Cicero, in his *Topicks,* ſpeaks thus on the ſubject; *gentiles ſunt, qui inter ſe eodem ſunt nomine ab ingenuis oriundi, quorum majorum nemo ſervitutem ſurvivit, qui capite non ſunt diminuti.* There is ſaid to be a gentleman by office, and in reputation, as well as thoſe that are born ſuch. 2 *Inſt.* 668. And we read that *J. Kingſton* was made a gentleman by King *R.* 2. *Pat.* 13 *R.* 2. *par.* 1. *Gentilis homo* for a gentleman, was adjudged a good *addition. Hill.* 27 *Ed.* 3. But the addition of eſquire, or gentleman, was rare before 1 *Hen.* 5. tho' that of knight is very antient. 2 *Inſt.* 595, 667.

Gentlewoman, *(generoſa)* Is a good addition for the eſtate and degree of a woman, as *generoſus* is for that of a man; and if a gentlewoman be named *ſpinſter* in any original writ, appeal, *&c.* it hath been held that ſhe may abate and quaſh the ſame. 2 *Inſt.* 668. *Sed qu.* If *ſpinſter* is not a good addition, for an *unmarried* woman, ſuppoſed to be a *virgin,* as *ſingle woman* is, for one who being *unmarried* hath had a *baſtard?*

Gentility, (*gentilitas*) Is loſt by attainder of treaſon, or felony, by which perſons become baſe and ignoble, *&c.*

Genu, Is a generation.——*Succeſſit* Ethelbaldo *Offa quinto* Genu. *Malmſb. lib.* 1. *c.* 4.

Genus, (Lat.) The general ſtock, extraction, *&c.* as the word office in law is the *genus,* or general; but the ſheriff, *&c.* is the *ſpecies* of it, or particular. 2 *Lill. Abr.* 528.

Genus, among metaphyſicians and logicians, denotes a number of beings, which agree in certain general properties, common to them all; ſo that a *genus* is, in fact, only an *abſtract* idea, expreſſed by ſome general name or term; or rather a general name or term, to ſignify what is called an *abſtract* idea.

George Noble, A piece of gold, current ſix ſhillings and eight-pence, in the reign of King *Hen.* 8. *Lownds's Eſſ. upon Coins, p.* 41.

Georgia, In *America*, its colony eſtabliſhed, 6 *Geo.* 2. *c.* 25. *ſec.* 7. The ſum of twenty-ſix thouſand pounds is granted by the land-tax act, towards ſettling the new colony of *Georgia* in *America. Statute* 8 *Geo.* 2. *cap.* 23. And thirty thouſand pounds further, by 9 *Geo.* 2. *c.* 34. and 10 *Geo.* 2. *cap.* 17.

Gerſuma, Mentioned in *Mon. Ang. tom.* 2. *p.* 973. See *Garſummune.*

Geſtu & Fama, An antient writ where a perſon's good behaviour was impeached, now out of uſe. *Lamb. Eiren. lib.* 4. *cap.* 14.. See *Good Abearing.*

Gewineda, (*Sax.*) Was uſed for the public convention of the people, to decide a cauſe: *et pax quam aldermanus Regis in quinque burgorum* gewineda *dabit emendatur* 12 *libris.* LL. Æthelred. cap. 1.

Gewitneſſa, The giving of evidence. *Leg. Ethel. cap.* 1. *apud Brompton.*

Gift, (*donum*) Is a conveyance, which paſſeth either lands or goods. And a gift is of a larger extent than a grant, being applied to things moveable and immoveable; yet as to things immoveable, when ſtrictly taken, it is applicable only to lands and tenements given in tail; but gifts and grants are ſaid to be alike in nature and often confounded. *Wood's Inſt.* 260. A gift may be by deed, in word, or in *law:* all goods and chattels perſonal may be given without deed, except in ſome ſpecial caſes; and a free gift is good without a conſideration. *Perk.* 57. But a general gift of all one's goods, without any exception, though by deed, is liable to ſuſpicion as fraudulent, to deceive creditors; for by giving all a man's goods, there ſeems to be a ſecret truſt and confidence implied, that the donee ſhall deal favourably with the donor, in reſpect to his circumſtances. 3 *Rep.* 80. Therefore whenever any gift ſhall be made, in ſatisfaction of a debt, it is good to make it in a public manner before neighbours, that the goods and chattels be appraiſed to the full value, and the *gift* expreſly made in ſatisfaction of the debt; and that on the gift, the donee take poſſeſſion of them, *&c. Hob.* 230.

If a man intending to give a jewel to another, ſay to him, *Here I give you my ring with the ruby in it, &c.* and with his own hand delivers it to the party, this will be a good gift; notwithſtanding the ring bear any other jewel, being delivered by the party himſelf, to the perſon to whom given. *Bac. Max.* 87. And if a perſon give a horſe to another, being preſent, and bid him take the horſe, though he call the man by a wrong name, it will be a good gift; but it would be otherwiſe if the horſe were delivered for the uſe of another perſon, being abſent: there a miſtake of the name would alter the caſe. *Ibid.* A gift muſt be certain; therefore to give or grant another his horſes or cows, that may be ſpared, will be void; though if one give to *A. B.* his horſe, or his cow, he may take which he will. *Bro. Done* 90.

By the *Stat.* 29 *Car.* 2. *cap.* 3. "No leaſes, eſtates or intereſts either of freehold, or terms of years, or any uncertain intereſt, not being copyhold or cuſtomary intereſt, of, in, to or out of, any meſſuages, manors, lands, tenements or hereditaments, ſhall at any time be aſſigned, granted or ſurrendered, unleſs it be by deed or note in writing, ſigned by the party ſo aſſigning, granting or ſurrendering the ſame, or their agents thereunto lawfully authorized by writing, or by act and operation of law."

As to *gifts in law* when a man is married to a woman, all her goods and chattels by gift in law become the huſband's; but then he is liable for her debts: ſo if a man is made executor, the law gives him all the goods and chattels of the teſtator, ſubject to his debts. 1 *Inſt.* 351. With reſpect to an executor, it is a point of great conſequence: therefore ſee, what the learned *Blackſtone* ſays on the ſubject.

In his Commentaries, 2 *V.* 514. he thus lays down the doctrine as to executors, "When all the debts and particular legacies are diſcharged, the ſurplus or *reſiduum* muſt be paid to the reſiduary legatee, if any be appointed by the will; and, if there be none, it was long a ſettled notion that it devolved to the executor's own uſe, by virtue of his executorſhip. *Perkins* 525. But, whatever ground there might have been formerly for this opinion, it ſeems now to be underſtood [*Prec. Chanc.* 323. 1 *P. Wms.* 7. 544. 2 *P. Wms.* 338. 3 *P. Wms.* 43. 194. *Stra.* 559.] with this reſtriction; that, altho' where the executor has no legacy at all the *reſiduum* ſhall in general be his own, yet where-ever there is ſufficient on the face of a will, (by means of a competent legacy or otherwiſe) to imply that the teſtator intended his executor ſhould *not* have the reſidue, the undeviſed ſurplus of the eſtate ſhall go to the next of kin, the executor then ſtanding upon exactly the ſame footing as an adminiſtrator: concerning whom indeed there formerly was much debate, [*Godolph. p.* 2. *c.* 32] whether or no he could be compelled to make any diſtribution of the inteſtate's eſtate." But that queſtion is now at an end, by virtue of the ſtatute of diſtribution. 22 & 23 *Car.* 2. *c.* 10.

If a perſon make a ſuit of clothes for another, and put it upon him to uſe and wear, this will be a gift or grant in law of the apparel made. *Co. Lit.* 351. This muſt mean if there was not any employment, and if the taylor, therefore, meant to give the cloaths: But I ſhould ſuppoſe, as the preſumption, without any proof, would be ſtrongly in favor of the maker that he was employed, if he ſued for the value, the wearer would be required to give ſome proof of a gift.

A man by deed did *give* and *grant, bargain* and *ſell, alien, enfeoff* and *confirm* to his daughter certain lands: but no conſideration of money was mentioned, nor was the deed inrolled; there was likewiſe no conſideration of natural affection expreſſed, (other than what was implied in naming the grantee his daughter) and there was no livery indorſed, or any found to have been made; nor was the daughter in poſſeſſion at the time of the deed made: and in *B. R.* it was adjudged by the court that the deed was good, and carried the eſtate to the daughter by way of covenant to ſtand ſeiſed, *etc.* 1 *Mod. Rep.* 157.

The words *give* and *grant*, in deeds of gift, *etc.* of things which lie in grant, will amount unto a grant, a feoffment, a gift, releaſe, confirmation or ſurrender, at the election of the party, and may be pleaded as a gift, or grant, releaſe, *etc.* at his election. *Co. Lit.* 301. And words ſhall be marſhalled ſo in gifts and grants, that where they cannot take effect according to the letter, the law will make ſuch conſtruction as that the gift by poſſibility may take effect: *benigne ſunt interpretationes chartarum propter ſimplicitatem laicorum, ut res, etc. Co. Lit.* 183. If a perſon gives or grants land, and does not ſay in what pariſh or county it lies; yet if there be any other thing to deſcribe it, as lately belonging to ſuch a perſon, *etc.* or other circumſtantial matter, it may be averred where the land lieth, and ſo the gift be good. *Bro. Grant* 53. 9 *Rep.* 47. All corporeal and immoveable things that lie in livery, ſuch as manors, meſſuages, cottages, lands, woods, and the like, may be given and granted in fee, for life, or years at firſt; and be aſſignable over after, from man to man *in infinitum.* 1 Roll. Abr. 44. And where a man gives and grants wood to another on his lands, or 20*s.* for it to be received out of the ſame lands, *etc.* here the wood paſſes by the gift preſently, with power to chooſe to have the money. *Rol. Abr.* 47. A deed of gift of lands or goods may be made upon condition; and on a gift or ſale of goods, the delivery of 6 *d.* or a ſpoon, *etc.* is a good *ſeiſin* of the whole. *Wood's Inſt.* 234. See *Fraud,*

Giſta Aquæ, The ſtream of water to a mill.—*Molendinum et vivarium cum* giſta aquæ. *Mon. Angl. tom.* 3.

Gigmills, A kind of fulling mills for fulling and burling of woollen cloth, prohibited *anno* 5 *and* 6 *Ed.* 6. *c.* 22.

Gild, A fraternity, or company, *etc.* See *Guild.*

Gilda Mercatoria, A mercantile meeting or aſſembly. If the King grants to a ſet of men to have *gildam mercatoriam*, this is alone ſufficient to incorporate and eſtabliſh them for ever. 10 *Rep.* 30. 1 *Rol. Abr.* 513. *Black. Com.* 1 *V.* 473.

Gilding Metals. The gilding any metal but ſilver, and church ornaments; or ſilvering any thing except the apparel of peers, *etc.* and metal for knight's ſpurs, is liable to forfeiture of ten times the value, and a year's impriſonment, by ſtatute 8 *H.* 5. *cap.* 3. a law now out of uſe. None ſhall gild rings or other things made of copper or latten, on pain to forfeit 5 *l.* to the King, and damages to the party deceived. 5 *Hen.* 4. *c.* 13. For gilding ſilver wares, no perſon may take above 4 *s.* 8 *d.* for a pound of troy weight, under penalties. *Statute* 2 *H.* 5. *cap.* 4.

Giſarms, or **Guiſarmes,** An halbert or hand-ax, from the Lat. *bis arma,* becauſe it wounds on both ſides. *Skene*——*Eſt armorum genus longo manubrio et porrecta cuſpide.* Spelm. It is mentioned in the ſtatute 13 *Ed.* 1. *c.* 6.

Giſt of Action, From the Fr. *giſt,* is the cauſe for which the action lieth; the ground and foundation thereof, without which it is not maintainable. 5 *Mod. Rep.* 305.

Gladiolum, A little ſword, or dagger; alſo a kind of ſedge. *Matt. Paris.* 1206.

Gladius. *Jus gladii,* is mentioned in our *Latin* authors, and the *Norman* laws; and it ſignifies a ſupreme juriſdiction. *Camd.* And it is ſaid that from hence, at the creation of an earl, he is *gladio ſuccinctus*; to ſignify that he had a juriſdiction over the county of which he was made earl. See *Pleas of the Sword.*

Glaive, (*Fr.*) A ſword, lance, or horſeman's ſtaff. *Gleyre* was one of the weapons allowed the contending parties in a trial by *combat.* Orig. Juriſd. 79.

Glaſs. There were certain duties granted on all glaſs-ware, *etc.* by *Stat.* 6 & 7 *W.* 3. And theſe duties were continued for ever by a ſubſequent act. But they are ſince taken off. See *Stat* 10 *and* 11 *W.* 3. *cap.* 18. By the *Stat.* 19 *Geo.* 2. *cap.* 12. A further duty is laid upon glaſs of 8 *d. per* pound, upon all crown, plate, and flint glaſs imported; 2 *d. per* pound on green glaſs imported, and 2 *s. per* dozen on flaſks and bottles imported; and on all materials or metal uſed in making crown, plate or flint glaſs 9 *s.* 4 *d. per* hogſhead; and for making common bottles, or green glaſs 2 *s.* 4 *d. per* hogſhead.

Glaſs-men, Are reckoned amongſt wandering rogues and *vagrants,* by the old ſtatutes. 39 *Eliz. c.* 17. and 1 *Jac.* 1. *c.* 7.

Gladea, An hand dart. *Blount.*

Gleaning. It hath been ſaid, that by the Common law and cuſtom of *England,* the poor are allowed to enter and glean upon another's ground, after the harveſt, without being guilty of treſpaſs; (*Gilb. Ev.* 253. *Trials per Pais c.* 15. *p.* 438.) which humane proviſion ſeems borrowed from the *Moſaical* law. (*Levit. c.* 19. *v.* 9. & *c.* 23. *v.* 22. *Deut. c.* 24. *v.* 19, &c.) *Black. Com.* 3 *V.* 212, 213.

Glebe, (*gleba*) Is church-land; *Dos vel terra ad eccleſiam pertinens.* *Lyndewood* ſays, Gleba *eſt terra in qua conſiſtit dos eccleſiæ; generaliter tamen ſumitur pro ſolo vel pro terra culta:* we moſt commonly take it for the land belonging to a pariſh church, beſides the tithes. If any parſon, vicar, &c. hath cauſed any of his glebe-lands to be manured and ſown at his own coſts, with any corn or grain, the incumbents may deviſe all the profits and corn growing upon the ſaid glebe by will. *Statute* 28 *Hen.* 8. *cap.* 11. And if a parſon ſows his glebe and dies, the executors ſhall have the corn ſown by the teſtator. But if the glebe be in the hands of a tenant, and the parſon dies after ſeverance of the corn, and before his rent due; it is ſaid, neither the parſon's executors, or the ſucceſſor, can claim the rent, but the tenant may retain it, and alſo the crop, unleſs there be a ſpecial covenant for the payment to the parſon's executors proportionably, *etc.* *Wood's Inſt.* 163. *Sed qu.* If this caſe would not come within the equity of 11 *Geo.* 2. *c.* 19. *ſ.* 15. which gives right of action to the repreſentative of *tenant for life,* for any portion of rent in arrear at the time of his death?

Exchange of glebe land, will not bind the ſucceſſor. *Noy* 5. *Thurter's* caſe.

Prohibition was moved for to a parſon for digging new coal-mines in his glebe, and alſo for felling trees; for it is waſte and prohibited by the ſtatute *de non proſternend' arbores, etc.* The court held it lay not for the mines; for then no mines in glebe could ever be opened. *Lev.* 107. *Trin.* 15 *Car.* 2. *B. R.* Earl of *Rutland's* caſe.

By *Stat.* 28 *Hen.* 8. *c.* 11. Every ſucceſſor on a month's warning, after induction, ſhall have the manſion-houſe, and the glebe belonging thereto, not ſown at the time of the predeceſſor's death. He that is inſtituted may enter into the glebe-land before induction, and has right to have it againſt any ſtranger; *per Coke* Ch. J. *Roll. R.* 192.

There is a writ grounded on the *Stat. articuli cleri, cap.* 6. Where a parſon is diſtrained in his glebe-lands by ſheriffs, or other officers; againſt whom attachment ſhall iſſue. *New Nat. Br.* 386, 387. See *Vicar.*

Glebariæ, Turfs dug out of the ground.—*In Sylvis, Campis, Semitis, Moris,* Glebariis, &c.

Gliſcyma, An old *Saxon* word for a fraternity. *Leg. Athelſtan, cap* 12.

Glomerells, Commiſſaries appointed to determine differences between ſcholars of a *ſchool* or *univerſity,* and the townſmen of the place: in the edict of the biſhop of *Ely, anno* 1276. there is mention of the *Maſter of the Glomerells.*

Glove-Silver, Money cuſtomarily given to ſervants to buy them gloves, as an encouragement for their labours. ——*Inter antiquas conſuetudines abbatiæ de Sancto Edmundo, capiunt etiam quidam ex prædict. Servientibus* glove-ſilver *in feſto Sancti Petri quorum hæc ſunt nomina, clericus cellerarii 2 denar. armiger cellerarii* 11 *den. grangiarius* 11 *den. vaccarius* 1 *den.*——Ex Cartular. S. Edmund. MS. 323. *Glove-money* has been alſo applied to extraordinary rewards given to officers of courts, &c. It is now given on the circuits, by the barriſters, to the judges crier.

Glyn, A valley, according to the book of *Domeſday.*

Go. This word is ſometimes uſed in a ſpecial ſignification, as to *go* without day, is to be diſmiſſed the court; ſo in old phraſe, to *go* to God. *Broke Kitch.* 190.

Goats, No man may common goats within the foreſt without eſpecial warrant. *Nota,* That *Capriolus non eſt beſtia venationis foreſtæ.* Manwood's Foreſt Laws, cap. 25. numb. 3.

Goat's hair, To what duties liable, 4 *W.* & *M. c.* 5.

God-bote, (*Sax.*) An eccleſiaſtical or church fine, paid for crimes and offences committed againſt God.

God-gild, That which is offered to God, or his ſervice. *Sax.*

God and Religion, *Offences againſt.* *Apoſtacy* is an offence againſt God and religion. It was formerly the object only of the Eccleſiaſtical courts, which corrected the offender *pro ſalute animæ.* But now, by *Stat.* 9 & 10 *W.* 3. *c.* 32. If any perſon educated in, or having made profeſſion of, the Chriſtian religion, ſhall by writing, printing, teaching, or *adviſed* ſpeaking, deny the Chriſtian religion to be true, or the Holy Scriptures to be of divine authority, he ſhall upon the firſt offence be rendered incapable to hold any office or place of truſt; and for the ſecond, be rendered incapable of bringing any action, being guardian, executor, legatee, or purchaſer of lands, and ſhall ſuffer three years impriſonment without bail. To give room however for repentance, if within four months after the firſt conviction, the delinquent will in open court publickly renounce his error, he is diſcharged for that once, from all diſabilities.

Hereſy is another offence. See *Stat.* 1 *Eliz. c.* 1. The offender ſubject only to eccleſiaſtical cenſure, by 29 *Car.* 2. *c.* 9. See *Black. Com.* 4 *V.* 42 *to* 65. as to *Reviling of the ordinances, Nonconformity, Blaſphemy, Swearing and Curſing, Witchcraft, Religious Impoſtors, Simony, Sabbath-breaking, Drunkenneſs and Lewdneſs,* and thoſe ſeveral titles.

Golda, A mine, according to *Blount.* *Conceſſionem quam idem* Thomas *fecit de terris ſuis et terris tenentium ſuorum à* goldis *mundandis per ſe et ſuos ſecundum conſuetudinem,* &c. Mon. Ang. tom. 2. pag. 610.

Gold and **Silver Lace** and *Thread.* Perſons that ſell orrice lace, mixed with other metal or materials than *gold*, *ſilver*, ſilk and vellum, ſhall forfeit 2 *s.* 6 *d.* for every ounce: and there ſhall be allowed at leaſt ſix ounces of *gold* and *ſilver* prepared and reduced into plate, to cover four ounces of ſilk, except large twiſt, frize, &c. And laying the ſame on greater proportions of the ſilk, or in any other manner than directed, incurs the like forfeiture of 2 *s.* 6 *d.* the ounce. Copper, and lace inferior to *ſilver*, is to be ſpun upon thread, yarn or incle, and not on ſilk; but this does not extend to *Tinſel* apparel, uſed in theatres. No gold or ſilver lace, thread, fringe or wire, &c. may be imported, on pain of being forfeited and burnt, and 100 *l.* penalty. *Statute* 15 *Geo.* 2. *c.* 20.

Importation and making up of gold and ſilver lace, embroidery, brocade, &c. prohibited, 22 *Geo.* 2. *c.* 36. See *Wire-Drawers*, *Embroidery*.

Goldſmiths. *Gold* and *ſilver* manufactures are to be aſſayed by the warden of the *Goldſmiths* company in *London*, and marked; and gold is to be of a certain touch. 28 *Ed.* 1. *cap.* 20. *Goldſmiths* muſt have their own marks on plate, after the ſurveyors have made their aſſay; and falſe metal ſhall be ſeized and forfeited to the King. 37 *E.* 3. 7. Work of ſilver made by *Goldſmiths*, &c. is to be as fine as *Sterling*, except the ſolder neceſſary; and marking other work, incurs a forfeiture of double value. 2 *H.* 6. *c.* 14.

Goldſmiths, ſhall not take above 1 *s.* the ounce of gold, beſide the faſhion, more than the buyer may be allowed for it at the King's exchange: and if the work of any *goldſmith* be marked and allowed by the maſter and wardens of the myſtery, and afterwards found faulty; the wardens and corporation ſhall forfeit the value of the thing ſo ſold or exchanged. 18 *Eliz.* *c.* 5.

Molten ſilver is not to be tranſported by *goldſmiths* before it is marked at *Goldſmiths Hall*, and a certificate made thereof on oath; and officers of the cuſtoms may ſeize ſilver ſhipped otherwiſe. 6 & 7 *W.* 3. *c.* 17. The cities of *York*, *Exeter*, *Briſtol*, *Cheſter*, *Norwich*, and town of *Newcaſtle*, are appointed places for aſſaying and marking wrought plate of *goldſmiths*, &c. 12 *W.* 3. 4. 1 *Ann.* *c.* 9.

A duty is granted on ſilver plate of 6 *d. per* ounce; and *goldſmiths* are to make entries thereof with the weight, on pain of 100 *l.* &c. And *goldſmiths* muſt work their plate according to the old *ſtandard*; which is to be touched, aſſayed and marked before expoſed to ſale. *Stat.* 6 *Geo.* 1. *c.* 11.

Gold plate made by *goldſmiths* ſhall contain 22 carrats of fine gold: and ſilver plate 11 ounces and two pennyweight of ſilver, in every pound troy, or they forfeit 10 *l.* And no *goldſmith* ſhall ſell any ſuch plate, until marked with the firſt letters of the maker's chriſtian and ſurname, the marks of the city of *London*, being the leopard's head, lion paſſant, &c. and thoſe made uſe of by the aſſayers at *York*, *Exeter*, &c. All perſons making plate, are to enter their marks, names and places of abode in the aſſay-office; they are likewiſe to ſend with the plate required to be marked, a particular account thereof, in order to be entered, &c. or forfeit 5 *l.*

The *Aſſayers* determine what ſolder is neceſſary about plate, and judge of the workmanſhip, and for good cauſe may refuſe to aſſay it; and if any parcel be diſcovered of a coarſer allay than the ſtandard, it may be broke and defaced; alſo the fees for aſſaying and marking are particularly limited, &c. 12 *Geo.* 2. *c.* 26.

Goldwit, or **Goldwich,** Perhaps a golden mulct; in the records of the *Tower*, there is mention of *conſuetudo vocata* Goldwith *vel* Goldwich.

Goliardus, Is a jeſter or buffoon, mentioned in *Matt. Pariſ.* 1229.

Good Abearing, (*Bonus Geſtus*) Signifies an exact *carriage* or *behaviour* of a ſubject towards the King and the people; whereunto ſome perſons upon their miſbehaviour are bound; and he that is bound to this, is ſaid to be more ſtrictly bound than to the *peace*; becauſe where the peace is not broken, the ſurety *de bono geſtu* may be forfeited by the number of a man's company, or by their weapons. *Lamb Eiren. lib.* 2. *c.* 2. 34 *Ed.* 3. *c.* 1.

Good Behaviour, Surety for the *good behaviour* is ſurety for the *peace*, and differs very little from *good abearing*. A juſtice of peace may demand it *ex officio*, according to his diſcretion, when he ſees cauſe; or at the requeſt of any other under the King's protection: his warrant alſo is to be iſſued when he is commanded to do it by writ of *ſupplicavit* out of *Chancery* or *B. R.*

But a juſtice of peace may not bind any perſon to his *good behaviour*, upon a general accuſation made againſt the party. *Paſch.* 23 *Car.* *B. R.* He that demands ſecurity for the peace, muſt make *oath* before the juſtice, of blows given, or that he ſtands in fear of his life, or ſome bodily hurt; or that he fears the party will burn his houſe, &c. and *that he doth not demand the peace of him for any malice or revenge, but for his own ſafety*; whereupon the juſtice grants his warrant to bring the party before him, and then ſecurity is to be given by recogniſance for the *good behaviour*; or on default thereof, the party ſhall be committed to gaol. *Co. Lit.* 293. 4 *Inſt.* 180.

It may be granted againſt any perſons whatſoever, under the degree of nobility, againſt whom complaint is to be made in the Court of Chancery, or in *B. R.* and they may be bound there to keep the peace. *Dalt* 267, 268. The warrant of the juſtice to keep the peace, is to be granted againſt infants, and feme-coverts, who ought to find ſecurity by their friends, and not be bound themſelves; it may be had againſt the huſband, at the requeſt of the wife, and againſt the wife, at the requeſt of the huſband; againſt a lunatick, that hath ſometimes lucid intervals; (but not a *non compos*, or againſt, or for one attainted of felony, &c.) againſt any perſon affronting a judge, juſtice of the peace, &c. and in a word againſt all perſons that are ſuſpected to break the peace, or that do break it by affrays, aſſaults, battery, wounding, fighting, quarrelling, threatning to beat another, or to burn his houſe, rioters, &c. and in all caſes, where there may be danger in future. *Dalt.* 263, 264. 4 *Inſt.* 180. Alſo one may be bound to his *good behaviour* for a ſcandalous way of living, for keeping bawdy-houſes, or haunting them, gaming-houſes, &c. and ſo may common drunkards, whoremongers, and common whores, night-walkers, and thoſe that live idly, cheats, libellers, *etc.* *Dalt.* 292, 293. A woman who is a common ſcold may be bound to *good behaviour*.

Surety for *good behaviour* may be required of ſcandalous, turbulent, ſuſpicious perſons, as of forcible entries, or obſcene writers, or recuſants, but not in reſpect of bare words; unleſs they tend to a breach of the peace, or ſcandal of the government. *Hawk. Pl. C.* *c.* 61. 9. See *Pl.* 1, 2, 3. 4.

The *ſtatute* 34 *Ed.* 3. *c.* 1. relates only to miſbehaviours againſt the publick peace, ſo that it ought not to be demanded for private defamation of another, but for words only, which tend to the breach of the peace, or terrifying others, or unto ſedition, *etc.* 4 *Inſt.* 181. 1 *Lill. Abr.* 650, 651.

Sureties of *good behaviour* may be required of perſons convicted of diſturbing divine ſervice, 1 *M. ſt.* 2. *c.* 3. *ſect.* 6. Or offending againſt game laws, 5 *El.* *c.* 21. *ſect.* 2, 3. 22 *and* 23 *Car.* 2. *c.* 25. *ſect.* 4. Or entertaining outlawed felons, 43 *Eliz.* *c.* 13. *ſect.* 5. Or perſons infected with the plague going abroad, tho' no ſore on them, 1 *Jac.* 1. *c.* 31. *ſect.* 7. Or unlawfully hunting in parks, 3 *Jac.* 1. *c.* 13. *ſect.* 2. Or convicted a ſecond time of drunkenneſs, 4 *Jac.* 1. *c.* 5. *ſect.* 3. 21 *Jac.* 1. *c.* 7. *ſect.* 3. Or refuſing to take the oaths of ſupremacy and allegiance, 1 *W. and M. ſt.* 1. *c.* 8. *ſect.* 9. Or of felons after pardon, 5 *W. and M.* *c.* 13. *ſect.* 2. Of perſons unlawfully gaming, 9 *Ann.* *c.* 14. *ſect.* 6. Or committing diſorders in dock-yards, 1 *Geo.* 1. *c.* 25. *ſect.* 2. Or deſtroying timber, 1 *Geo.* 1. *c.* 48. *ſect.* 3. Or forcing through turnpikes, 8 *Geo.* 2. *c.* 20. *ſect.* 11. Or pretending to witchcraft. 9 *Geo.* 2. *c.* 5. *ſect.* 4. Or aſſiſting in running goods, 9 *Geo.* 2. *c.* 35. *ſect.* 19.

When ſecurity for the peace is given to the King by recogniſance in the penal ſum, if the peace is afterwards broken by any act of the party, or by his procuring another to break it, *etc.* it is a forfeiture of the recogniſance, which being brought to the next ſeſſions of the peace by the juſtice, the juſtices in ſeſſions are to certify the recogniſance, with the cauſe of forfeiture, into *B. R.* or the *Exchequer*, *&c.* from whence proceſs ſhall go out againſt the offender. *Dalt.* 277, 296.

A recognizance for good behaviour ſhall not only be forfeited for ſuch actual breaches of the peace, for which a recognizance for the peace may be forfeited; but alſo for ſome others, for which ſuch a recognizance cannot be forfeited, as for going armed with great numbers to the terror of the people, or ſpeaking words tending to ſedition. And alſo for all ſuch actual miſbehaviour, which is intended to be prevented by ſuch a recognizance, but not for barely giving cauſe of ſuſpicion of what perhaps may never actually happen. *Hawk. P. C. c.* 62. *pl.* 6.

It is ſaid ſuch a recognizance may not be diſcharged by releaſe of the party himſelf; becauſe the cogniſor is bound to the King, and to keep the peace in general; though by the death of the King, or of the principal cogniſor, (not of the ſureties) it is diſcharged of courſe. *Rol. Rep.* 199.

Note; The King cannot diſcharge recognizance taken for ſurety of the peace before it is broken, but after it is broken he may. *Hil.* 1 & 2 *W.* & *M. C. B.* 2 *Vent.* 131. cites 11 *H.* 7. 12. and in *Marg. Co. Lit.* 238. *Vaugh.* 334.

Juſtices of peace, under colour of their authority, uſe to require the *good behaviour* of every one at their pleaſure; and if they refuſed, then to commit them to priſon: But if they have not good cauſe to require ſureties for *good behaviour*, and the party refuſing to give it is committed to priſon, falſe impriſonment lies; for the ſtatute which gives the juſtice that authority, is principally againſt vagabonds. 1 *Lil.* 651. See *Black. Com.* 4 *V.* 248, 253.

Good Conſideration. A *good* conſideration is ſuch as that of blood, or of natural love and affection, when a man grants an eſtate to a near relation; being founded in motives of generoſity, prudence and natural duty: a *valuable* conſideration is ſuch as money, marriage or the like, which the law eſteems an equivalent given for the grant; (3 *Rep.* 83.) and is therefore founded in motives of juſtice. Deeds made upon *good* conſideration only, are conſidered as merely voluntary, and are frequently ſet aſide in favour of creditors, and *bona fide* purchaſers. *Black. Com.* 2 *V.* 297.

Goods and Chattels, (*Bona & catalla*). Perſonal, *&c.* See *Chattels*.

Goole, (Fr. *Goulet*) A breach in a ſea bank or wall; or a paſſage worn by the flux and reflux of the ſea. 16 & 17 *Car.* 2. *c.* 11.

Gorce, (From the Fr. *Gort.*) A wear: by *ſtat.* 25 *Ed.* 3. *c.* 4. it is ordained, that all *Gorces*, mills, wears, *&c.* levied and ſet up, whereby the King's ſhips and boats are diſturbed and cannot paſs in any river, ſhall be utterly pulled down, without being renewed. Sir *Edward Coke* derives this word from *Gurges*, a deep pit of water, and calls it a *Gors*, or *Gulf*; but this ſeems to be a miſtake, for in *Domeſday* it is called *Gourt* and *Gort*, the *French* word for a wear. *Co. Lit.* 5.

Gore, A narrow ſlip of ground. *Paroch. Antiq.* 393.

Gote, (Sax. *Geotan*, i. e. *Fundere*) A ditch, ſluice or gutter, mentioned in the 23 *H.* 8. *c.* 5.

Government. According to the great *Monteſquieu* (as well as moſt other writers) there are three kinds of government; 1. The *Republican*, 2. The *Monarchal*, 3. The *Deſpotic*. The firſt is that where the *people* in a body, or only a part of the people have the ſovereign power: The ſecond, where *one* alone governs, but *by fixed* and *eſtabliſhed laws*. But in the *deſpotic*, *one* alone, *without law*, *and without rule*, directs every thing by his own will and caprice. *L'Eſprit des Loix*, *Liv.* 2. *c.* 1. *fo.* 10. *Quarto Edition* 1767. On the ſubject of *government*, ſee that excellent author, alſo *Locke* on the ſame ſubject, 2 *V.* 139, *&c. Quarto Edition* 1768. *Sidney* on *government*, *Sir Thomas Smith's de Repub. Angl.* and *Acherly's Britannic Conſtitution*.

As to the *Gothic* government, its origin and faults, *&c.* See *Monteſq. L'Eſprit des Loix*, *Liv.* 11. *c.* 8. *fo.* 223. *Quarto Edition*.

With reſpect to the feudal policy, how it limited government, ſee *Robertſon's Hiſt. Emp. Cha.* V. 1 *V.* 16, *&c.* *&c.*

In the firſt year of King *William* and Queen *Mary*, an act was made for impowering his Majeſty to apprehend and detain ſuch perſons as he ſhould find juſt cauſe to ſuſpect were conſpiring againſt the *government*: by virtue of which, thoſe who were ſuſpected of treaſonable practices, were taken up and impriſoned, without bail or mainpriſe, for ſix months, *&c. Stat.* 1 *W.* & *M. c.* 2. A like act of parliament, to continue a ſhort time, paſſed in the reign of Queen *Anne*, 6 *Ann. c.* 15. And his Majeſty, King *George* the firſt, was impowered by ſtatute, to ſecure and detain ſuſpected perſons, in the time of the late *rebellion*; and all actions, ſuits and proſecutions, by reaſon of any thing done to ſuppreſs the ſame, and for the ſervice of the government, were made void. *Stat.* 1 *Geo.* 1. *c.* 8, 39. and others. Suſpending the *habeas corpus* act. See *Habeas Corpus*. Preaching againſt the government. Vide *Indictment*.

Monteſquieu, ſpeaking of *liberty*, and alluding to the *Engliſh*, ſays, I muſt own, that the practice of *the freeſt nation that ever exiſted*, induces me to think that there are caſes in which a veil ſhould be drawn for a moment over liberty, as it was cuſtomary to veil the ſtatues of the Gods. *L'Eſprit des Loix*, *Liv.* 12. *c.* 19. 1 *V.* 273. *Quarto Edition* 1767.

Governors of the Cheſt at Chatham, are officers appointed to take care of, and relieve the *poor* and maimed *ſeamen* belonging to the Royal *Navy*.

Grace. Acts of parliament for a general and free *pardon*, are called *Acts of Grace*. 7 Geo. 1. cap. 29. *&c.*

Graduates, (*Graduati*) Are ſcholars who have taken *degrees* in an univerſity. 1 *Hen.* 6. *c.* 3.

Graffer, (Fr. *Greffier*, i. e. *Scriba*) A notary or ſcrivener, uſed in the *ſtat.* 5 *H.* 8. *c.* 1.

Graffio, Grafio, A landgrave, or earl—*Nec princeps, nec* Graffio, *hanc lenitatem mutare audeat.* Mon. Angl. Tom. 1. p. 100.

Graffium, A writing-book, regiſter, or cartulary of deeds and evidences. *Annal. Eccl. Menevenſis apud Angl. Sacr. par.* 1. *p.* 653.

Grail, (*Gradale*, or *Graduale*) A *gradual* or book, containing ſome of the offices of the *Roman* church——Gradale, *ſic dictum, a gradalibus in tali libro contentis.* Lyndewood. *Provincial. Ang. lib.* 3. It is ſometimes taken for a *maſs-book*, or part of it, inſtituted by *Pope Celeſtine*, *Anno* 430. See *Stat.* 37 *H.* 6. *c.* 32.

Grain, Is the twenty-fourth part of a penny weight. *Merch. Dict.* Alſo *grain* ſignifies any corn ſown on ground; and there is what is ſo called in the top of the ear, leſs than corn. *Lit. Aleyn's Rep.* 80.

Grand Aſſiſe, A writ in a real action to determine the right of property in lands. See *Magna Aſſiſa*.

Grand Cape, Is a writ on plea of land, where the tenant makes default in appearance at the day given, for the King to take the land into his hands, *&c. Reg. Jud.* 1. Vide *Cape Magnum*.

Grand Days, Are thoſe days in the *Terms* which are ſolemnly kept in the *Inns of Court* and Chancery, i. e. *Candlemas Day* in *Hilary* term, *Aſcenſion Day* in *Eaſter* term, *St. John the Baptiſt Day* in *Trinity* term, and *All Saints Day* in *Michaelmas* term; which days are *Dies non Juridici*, or no days in court.

Grand Diſtreſs, Is a writ ſo called, not for the quantity of it, for it is very ſhort, but for its quality; for the extent thereof is very great, being to all the goods and chattels of the party diſtrained within the county: it lies in two caſes, either when the tenant or defendant is attached, and appears not, but makes default; or where the tenant hath once appeared, and after makes default, then this writ is had by the *Common Law* in lieu of a *Petit Cape*. Stat. Weſt. 1. cap. 44. 52 H. 3. cap. 9.

Grand Jury, Is the jury that find bills of indictment before juſtices of peace, and gaol delivery, or of *Oyer* and *Terminer*, *&c.* They ought only to hear witneſſes for the King; and to find a bill on probable evidence; becauſe it is but an accuſation, and the party is to be put upon his trial afterwards. But if the bill be againſt *A.* for murder, and the *grand jury*, on the evidence before them, be ſatiſfied it was *ſe defendendo*, *&c.* and ſo return it ſpecially; the court may remand them to conſider better thereof, or hear the evidence at the bar, and accordingly direct the *grand jury.* 2 *Hale's Hiſt. P. C.* 157, 158. But ſee 2 *Hawk.* 210. Where a *grand jury* refuſes to preſent things, within their charge, *&c.* a new *grand inqueſt* may be impanelled, to inquire of the concealment of the former; on whoſe defaults preſented, they ſhall be amerced. *Ibid.* 155. A *grand juror* diſcloſing to any one indicted, the evidence that appeared againſt him, is guilty of a high miſpriſion, and liable to be fined and impriſoned. 1 *Hawk. P. C.* 59. *Black. Com.* 4 *V.* 126, 299. Vide *Indictment* and *Jury.*

Grand Serjeanty, An ancient tenure, by military ſervice. See *Chivalry.*

Grange, (*Grangia*) A houſe or farm where corn is laid up in barns, *granaries*, *&c.* and provided with ſtables for horſes, ſtalls for oxen, and other things neceſſary for huſbandry. This definition is agreeable to *Spelman*'s. According to Mr. *Warton*, *Grange* is ſtrictly and properly the farm of a monaſtery, where the religious repoſited their corn. *Grangia, Lat.* from *Granum.* But, in *Lincolnſhire*, and other northern counties, they call every lone houſe, or farm, which ſtands ſolitary, a *grange.* Cited by *Johnſon* and *Stevens*, in their *Shakeſpear*, *appendix*, notes on *Othello.*

Dr. *Johnſon* in dictionary derives the word from *grange*, french, and defines it, a farm: generally, a farm with a houſe, at a diſtance from neighbours.

Grangearius, Is the perſon who has the care of ſuch a place, for corn and huſbandry: and there was anciently a *granger*, or *grange*-keeper belonging to religious houſes, who was to look after their *granges*, or farms in their own hands. *Fleta, lib.* 2. *cap.* 8. *Cartular. St. Edmund, MS.* 323.

Grant, (*Conceſſio*) Signifies, in the Common law, a conveyance in writing of incorporeal things not lying in livery and which cannot paſs by word only; as of reverſions, advowſons in groſs, tithes, rents, ſervices, common in groſs, *&c.* It has alſo been taken generally, for every gift and *grant* of any thing whatſoever. *Co. Lit.* 172. 3 *Rep.* 63. And *grants* are made by ſuch perſons as cannot give but by deed: he that granteth is termed the grantor, he to whom the *grant* is made is the grantee: *Weſt. Symb.* See 234.

Under this head may be conſidered,

I. *What things and intereſts may be granted, by what deſcription, and how grants ſhall be conſtrued.*

II. *Who may make grants, and who may take by grant.*

I. *What things and intereſts may be granted, by what deſcription, and how grants ſhall be conſtrued.*

A man cannot *grant* that which he hath not, or more than he hath: though he may covenant to purchaſe an eſtate, and levy a fine to uſes, which will be good. *Bac. Max.* 58. A perſon may *grant* a reverſion, as well as a poſſeſſion; but the law will not allow *grants* of titles only, or imperfect intereſts, or of ſuch intereſts as are merely future. *Ibid.* A bare poſſibility of an intereſt, which is uncertain; a right of entry, or thing in action, cauſe of ſuit, *&c.* may not be granted over to a ſtranger. *Perk. Sect.* 65. 2 *Inſt.* 214. 4 *Rep.* 66.

It was formerly held, that by a *grant* of all a man's goods and chattels, bonds would paſs; now it is held the contrary, that the words *Goods and Chattels* do not extends to bonds, deeds or ſpecialties, being things in action, unleſs in ſpecial caſes. 8 *Rep.* 33. *Co. Lit.* 152. See 2 *Geo.* 2. *cap.* 25. In *grants* there muſt be a foundation of intereſt, or they will not be binding: If a perſon *grants* a rent-charge out of lands, when he hath nothing in the land, the grant will be void. *Perk.* 15. Though it is ſaid, if a man *grant* an annual rent out of land, wherein he hath no kind of intereſt, yet it may be good to charge the perſon of the *grantor.* *Owen Rep.* 3. A man may *grant* an annuity for him, and his heirs, to commence after his death, and it ſhall charge the heir. *Bac. Max.* 58. And after the *grant* of an annuity, *&c.* is determined, debt lies for the arrears; and the perſon of the tertenant will be charged. 7 *Rep.* 39. If a common perſon *grants* a rent, or other thing that lies in *grant*, without limitation of any eſtate, by the delivery of the deed, a freehold paſſes: but if the *King* make ſuch a *grant* of a rent, *&c.* it is void for uncertainty. *Danv. Rep.* 45. *a.*

A *grant* to a man, with a blank for his chriſtian name, is void, except to an officer known by his office, when it muſt be averred: and it is the ſame where the *grantee's* chriſtian name is miſtaken. *Cro. Eliz.* 328. Sed *qu.* may it not be made good by averment?

Grants may be void by incertainty, impoſſibility, being againſt law, on a wrong title, to defraud creditors, *&c.* *Co. Lit.* 183. Such things as lie in *grant*, may not be granted or held without deed: and if any thing not grantable, is granted with other things, the *grant* will be void for all. 2 *Shep. Abr.* 269, 271, 273. Truſts and confidences are perſonal things, and may not be granted over to others in moſt caſes; as offices of truſt, and the like: but all kinds of chattels real and perſonal, are grantable. *Perk. Sect.* 99. *Plowd.* 141, 379.

If one *grant* any thing that lies in livery, or *grant*, and that is *in eſſe* at the time of the *grant*, in fee, or for life, and the eſtate is to begin at a day to come; this for the moſt part will be void: but a leaſe or *grant* for years, may be good *in futuro*; and may be to one for term of years, or years determinable on lives, and after to another, to begin at the end of that eſtate. 5 *Rep.* 1. *Dyer* 58. Where a man hath a reverſion after an eſtate for life of land, and he *grants* a rent out of it; the *grant* is good, and will faſten upon the land after the eſtate of the tenant for life is ended: and if a perſon *grant* rents, *&c.* and a ſtranger take them at that time; in this caſe the *grant* will be good, for one may not be out of poſſeſſion of theſe things but at his pleaſure. *Perk.* 92, 98. If a man *grants* that to one, that he hath granted before to another, for the like term, *&c.* the ſecond *grant* will be void. *Dyer* 23. *Perk. Sect.* 102. *Grants* are uſually made by theſe words, *viz. Have Given*, *Granted* and *Confirmed*, *&c.* And words in *Grants* ſhall be conſtrued according to a reaſonable ſenſe, and not be ſtrained to what is unlikely. *Hob.* 304. Alſo it hath been adjudged, that *grants* ſhall be expounded according to the ſubſtance of the deed, not the ſtrict grammatical ſenſe; and agreeable to the intention of the parties. *Co. Lit.* 146, 313.

To every good *grant* the following things are requiſite: 1. That there be a perſon able to *grant.* 2. A perſon capable of the thing *granted.* 3. That there be a thing *grantable.* 4. That it be *granted* in ſuch manner as the law requires. 5. That there be an agreement to, and acceptance of the thing granted, by him to whom made. And 6. There ought to be an attornment where needful. *Co. Lit.* 73. But *grants* and conveyances are good without attornment of tenants, notice being given them of the *grants*, by *ſtat.* 4 *Ann. c.* 16. *ſect.* 9. *Grants* are taken moſt ſtrongly againſt the *grantor* in favour of the *grantee:* the *grantee* himſelf is to take by the *grant* immediately, and not a ſtranger, or any *in futuro*; and if a *grant* be made to a man and his heirs, he may aſſign at his pleaſure, though the word *Aſſigns* be not expreſſed. *Lit.* 1. *Saund.* 322. The uſe of any thing being *granted*, all is *granted* neceſſary to enjoy ſuch uſe: and in the *grant* of a thing, what is requiſite for the obtaining thereof is included. *Co. Lit.* 56. So that if timber trees are *granted*, the *grantee* may come upon the *grantor's* ground to cut and carry them away. 2 *Inſt.* 309. *Plowd.* 15.

Where the principal thing is *granted*, the *incident* ſhall paſs; but the *principal* will not paſs by the *grant* of the *incident.* *Co. Lit.* 152. A lord of a manor cannot *grant* the ſame, and reſerve the Court Baron, it being inſeparably incident. *Ibid.* 313. A *grant* of a manor, without the word *cum pertinentiis*, will paſs all things belonging to the manor: the *grant* of a farm will alſo paſs all lands belonging to it; but a *grant* of a meſſuage paſſes only the houſe, outhouſes and gardens. *Owen's Rep.* 51. *Tot. il. maner de A.* may be taken in the ſingular, or plural number; and daſhes and abreviations in *grants* ſhall be ſo taken that the *grant* be not void. 9 *Rep.* 48. When lands are *granted* by deed, the houſes which ſtand thereon will paſs; houſes and mills paſs by the *grant* of all lands, becauſe that is the moſt durable thing on which they are built. 4 *Rep.* 86. 2 *And.* 123. By *grant* of all the lands, the woods will paſs: and if a man *grant* all his trees in a certain place, this paſſeth the ſoil; though an exception of wood extends to the trees only, not the ſoil. 1 *Rol. Rep.* 33. *Dyer* 19. 5 *Rep.* 11.

Trees in boxes will not paſs by the *grant* of the land, *&c.* as they are ſeparate from the freehold. *Mod. Caſes* 170. A man *grants* all his wood that ſhall grow in time to come; it is a void *grant*, not being *in eſſe*. 3 *Leon.* 37. A *grant de veſtura terræ* paſſeth not the freehold; therefore the *grantee* hath no authority to dig in it by virtue of ſuch a *grant*. *Ow.* 37. By the *grant* of lands in the poſſeſſion of another, it is good if ſuch other be in poſſeſſion, let the poſſeſſion be by right, or wrong. 1 *Rol. Rep.* 23. If a *grant* is general, and the lands *granted* reſtrained to a certain Vill, the *grantee* ſhall have no lands out of the Vill. 2 *Rep.* 33. It has been held, that where a *grant* is made of lands and tenements in *D.* copyhold lands will not paſs; for they cannot paſs otherwiſe than by ſurrender. *Owen* 37.

Where lands are certainly deſcribed in a grant, with a recital as *granted* to *A. B. &c.* though they were not thus *granted*, it has been adjudged, that the *grant* was good. 10 *Rep.* 110. If a firſt deſcription of lands in a *grant* is falſe, notwithſtanding the ſecond be true, nothing will paſs by it; though if the firſt be true, and the ſecond falſe, the *grant* may be good, 3 *Rep.* 10. The word *grant*, where it is placed among other words of demiſe, *&c.* ſhall not enure to paſs a property in the thing demiſed; but the *grantee* ſhall have it by way of demiſe. *Dyer* 56.

Of *grants* ſome charge the *grantor* with ſomething he was not charged with before; others diſcharge the *grantee* of ſomething wherewith he was before charged, or chargeable. If a man *grant* to me a rent-charge; and after I *grant* to him, that he ſhall not be ſued for this rent; this is good to bar me of bringing an action, tho' I may ſtill diſtrain for the rent: And if one *grants* to his leſſee for life or years, that he ſhall not be impeached for waſte; it will be a good diſcharge, and may be pleaded. 7 *H.* 6. 43. *Bro. Grant* 175. *Keilw.* 88. See 1 *Rep.* 147. 10 *Rep.* 48. and tit. *Condition.*

II. *Who may make grants, and who may take by grant.*

Any natural perſon, or corporate body, (not prohibited by law, as infants, feme coverts, monks, *&c.*) may make a *grant* of lands, and be a *grantor*; and an infant, or woman covert, may be a *grantee*. *Perk.* 3, 4, 43, *&c.* Though the infant at his full age may diſagree to the *grant*, and the huſband diſagree to the *grant* to his wife. *Ibid.*

But herein the law diſtinguiſhes between ſuch *grants* as are *void*, and only *voidable*; the firſt of which are all ſuch gifts, grants or deeds, made by an infant, which do not take effect by delivery of his hand; as if an infant give a horſe, and no delivery of the horſe with his hand, and the donee take the horſe by force of the gift, the infant ſhall have an action of treſpaſs, for the *grant* was merely void. *Perk. ſect.* 12, 19. But if an infant enters into an obligation, makes a feoffment, levies a fine, or ſuffers a recovery, theſe are not void, only voidable. *Ibid.* 13.

A grant by a feme covert is void, for no act of her's can transfer that intereſt which the inter-marriage has veſted in the huſband. See 2 *New Abr.* 648. *Perk. ſect.* 6. See *Infant* and *Baron* and *Feme.*

Grants made by perſons *non ſanæ memoriæ*, are good againſt themſelves; but they are voidable by their heirs, *&c.* A man that is born dumb, or dumb and deaf, if he have underſtanding, by making ſigns, he may grant his land to another; not one who is born deaf, dumb, and blind alſo. *Co. Lit.* 2. A perſon attainted of treaſon, or felony, may make a deed of gift, or grant, and be good againſt all perſons, except the King, and the lord of whom the lands are held; and for relief in priſon, they may be good againſt them likewiſe. *Co. Lit.* 2. *Perk. ſect.* 26, 31. See *Capacity.*

The grants of perſons under dureſs are *void*, that is, if they were made under an apprehenſion of ſome bodily hurt, or if the grantor were impriſoned without cauſe, and the grantee refuſed to releaſe or diſcharge him, unleſs he made ſuch grant. 2 *Inſt.* 483. See *Dureſs.*

But menacing to burn houſes, or ſpoil or carry away the party's goods, are not ſufficient to avoid the grant; for if he ſhould ſuffer what he is threatened, he may ſue and recover damages in proportion to the injury done him. 4 *Inſt.* 485. *Perk. Sect.* 18.

If there be father and ſon of the ſame name, and the father grants an annuity by his name, without any addition, it ſhall be intended the grant of the father; and if the ſon being of the ſame name with his father grant an annuity without any addition; yet the grant is good, for he cannot deny his deed. *Perk. ſect.* 37.

There are but few (if any) perſons excluded from being grantees, therefore a man attainted of felony, murder, or treaſon, may be a grantee; ſo of the King's villein, an alien, one outlawed in a perſonal action, or a baſtard, may be grantees. *Perk. ſect.* 48. A baſtard who is known to be the ſon of ſuch a one, may purchaſe, or be a grantee by ſuch reputed name; for all ſurnames were originally acquired by reputation. *Co. Lit.* 3. 2 *Rol. Abr.* 43, 4.

A feme covert may be a *grantee*, therefore if a rent-charge be granted to a feme covert, and the deed is delivered to her without the privity of her huſband, and the huſband dies before any diſagreement made by him, and before any day of payment, the grant is good, and ſhall not be avoided, by ſaying, that the huſband did not agree, *&c.* but the diſagreement of the huſband ought to be ſhewn. *Perk. ſect.* 43.

Although aggregate corporations are inviſible, and exiſt only in ſuppoſition of law, yet they are capable of taking by grant, for the benefit of the members of the corporation. *Co. Lit.* 9. 1 *Saund.* 344.

Grants of the King. The King's *grant* is good for himſelf and ſucceſſors, tho' his ſucceſſors are not named. *Yelv.* 13. Before the ſtatute *de prærogativa Regis*, dowers, advowſons, and other things, have paſſed by the general *grant of the King*; but by that ſtatute they are to be *granted* in expreſs words. 1 *Rep.* 50. The King may not *grant* away an eſtate tail in the crown, *&c.* And the law takes care to preſerve the inheritance of the King for the benefit of the ſucceſſor. 2 *And.* 154. *Style* 263. See *Jenk. Cent.* 307. A *grant* may not be made by the King which tends to a monopoly, againſt the intereſt and liberty of the ſubject: Nor can the King make a *grant non obſtante* any ſtatute made, or to be made; if he doth, any ſubſequent ſtatute prohibiting what is *granted*, will be a revocation of the *grant*. 11 *Rep.* 87. *Dyer* 52. Where the King is reſtrained by the Common law to make a *grant*, if he makes a *grant non obſtante* the Common law, it will not make the *grant* good: but when he may lawfully make a *grant*, and the law requires he ſhould be fully appriſed of what he *grants*, and not be deceived, a *non obſtante* ſupplies it, and makes the *grant* good: If the words are not ſufficient to paſs the thing granted, a *non obſtante* will not help. 4 *Rep.* 35. *Nelſ. Abr.* 904.

If a *grant* is made by the King, and a former *grant* is in being of the ſame thing, if it be not recited, the *grant* will be void: And reciting a void *grant*, when there is another good, may make the King's *grant* void. *Dyer* 77. *Cro. Car.* 143. But there may be a *non obſtante* to a former *grant*. If the King is deceived in his *grant*, as where it contains more than was intended to be *granted*; or if there be any deceit in the conſideration, *&c.* ſuch *grant of the King* is void. 5 *Rep.* 94. *Moor* 293. And the King's *grants* may be void, by reaſon of incertainty; as if debts and duties are granted, without ſaying in particular what duties, *&c.* 12 *Rep.* 46. But where there is a particular certainty preceding, they ſhall not be deſtroyed by any incertainty or miſtake which follows. And there is a diſtinction where a miſtake of title is prejudicial to the King, and when it is in ſome deſcription of the thing which is ſupplemental only, and not material or iſſuable. 1 *Mod.* 195. The King *grants* the manor of *D.* which he has by the attainder of a certain perſon, *&c.* and in fact the King hath it not ſo; this *grant* is void. 10 *Rep.* 109.

If the King *grants* a meſſuage of the value of 5 *l.* a year to *A. B.* and it be of the yearly value of 10 *l.* the value being in the ſame ſentence with the *grant*, will make it void: Though if it be mentioned in another ſentence it may be good. *Jenk. Cent.* 261. The *grant* of the King to a corporation, that they ſhall not be impleaded for lands, nor for any cauſe ariſing there, elſewhere than before themſelves, *&c.* This doth not bind the King where he is party: And the King by his *grant* cannot exclude himſelf from proſecuting pleas of the crown; for it concerns the public government. *Keilw.* 88. *Dyer* 376. *Jenk. Cent.* 190.

The King's grantee ſhall not forfeit for non-payment of rent, where the rent has been anſwered before proceſs iſſued. 21 *Jac.* 1. *c.* 25. Grants of felons goods how to be inrolled. 4 & 5 *W.* & *M. c.* 22. *ſect.* 1. The crown reſtrained from granting lands, except for thirty-one years, *&c.* 1 *Ann. ſtat.* 1. *c.* 7. *ſect.* 5. Forfeited eſtates excepted. 1 *Ann. ſtat.* 1. *c.* 7. *ſect.* 8.

The King cannot grant a thing *intruſted to him in reſpect of his ſovereignty:* As, the lapſe of a church, before, or after it becomes void. 2 *Rol.* 187. *l.* 32, 35. Nor purveyance, butlerage, priſage, *&c.* 2 *Rol.* 187. *l.* 35. Nor, the power to make a diſpenſation of a ſtatute. 7 *Co.* 36. *b.* So he cannot grant the lands, or goods, of a recuſant convict, before the commiſſion returned. 2 *Rol.* 184. *l.* 20. Nor, the lands or goods of one attainted of treaſon, before his attainder. *Dyer* 108. *a.* Vide *poſt.*

So the King cannot grant the proſecution, or execution of any penal ſtatute to another; for it is intruſted with him as the head of the public-weal. *R.* 7 *Co.* 37. *a.* Nor, the penalty or benefit of a penal ſtatute, before it be recovered. 7 *Co.* 36. *b.* 37. *a.* Nor, any fine or forfeiture of a particular perſon, before he be convicted. *Declared by the Stat.* 1 *W.* & *M.* 2. that ſuch grant or promiſe is illegal and void.

Grantz, Is uſed for *grandees*, in the Par. Roll 6 *Ed.* 3. *m.* 5, 6.——*Et les ditz Countz, Barons, & autre* Grantz. *&c.*

Graſs-hearth, The *graſing* or turning up the earth with a plough; whence the cuſtomary ſervice for the inferior tenants of the manor of *Amerſden* in *Oxfordſhire*, to bring their ploughs and do one day's work for their lord, was called *graſs-hearth* or *graſs-hurt:* And we ſtill ſay the ſkin is *graſed* or ſlightly hurt, and a bullet *graſes* on any place, when it gently turns up the ſurface of what it ſtrikes upon. *Paroch. Antiq.* 496, 497.

Grava, A little wood or grove:——*Unam Carucetum terræ cum* gravis *& paſturis eidem pertinen.* Mon. Ang. Tom. 2. p. 198. Co. Lit. 4.

Gravare & Gravatio, An accuſation or impeachment. *Leg. Etheld. cap.* 19.

Grave. The names of places ending with *grave* come from the Sax. *graf*, a wood, thicket, den or cave.

Gravers, Of ſeals and ſtones ſhall give to every one their weight of ſilver and gold, on pain of impriſonment. *Stat.* 7 *Ed.* 3. *cap* 7.

Grazier, *(Pecuarius)* A breeder or keeper of cattle, mentioned in the *Stat.* 25 *Hen.* 8. See *Cattle.*

Great Men, Are ſometimes underſtood of the Temporal Lords in the higher houſe of Parliament, as by *Stat.* 43 *Ed.* 3. *cap.* 2. and ſometimes of the members of the Houſe of Commons, as by 2 *R.* 2.

Great Seal of England. See *Keeper of the Great Seal*, and *Treaſon.*

Gree, (Fr *Gre, i. e.* Good liking or allowance) In our law ſignifies *ſatisfaction*; as to make *gree* to the parties, is to *agree* with, and ſatisfy them for an offence done. And where it is ſaid in our ſtatutes, that judgment ſhall be put in ſuſpence till *gree* is made to the King of his debt; it is taken for *ſatisfaction.* 1 R. 2. cap. 15. 25 Ed. 3. cap. 19.

Green Cloth, Of the *King's Houſhold,* ſo termed from the *green* cloth on the table, is a court of juſtice compoſed of the *Lord Steward,* Treaſure of the Houſhold, Comptroller, and other officers; to which is committed the government and overſight of the King's court, and the keeping of the peace within the verge, *&c.* See *Counting-houſe.*

Greenhew or Green-hue, Is all one with *vert* in foreſts, *&c.* *Manwood, par.* 2. *cap.* 6. *num.* 5.

Greenland Company. A joint ſtock of 40,000 *l.* was by ſtatute to be raiſed by ſubſcribers, who were incorporated: And the company to uſe the trade of catching whales, *&c.* into and from *Greenland*, and the *Greenland* ſeas; they may make by-laws for government, and of perſons employed in their ſhips, *&c.* *Stat.* 4 & 5 *W.* 3. *cap.* 17. But any perſons who will adventure to *Greenland* for whale-fiſhing, ſhall have all privileges granted to the *Greenland* Company, by 1 *Ann. cap.* 16. Any ſubjects may import whale-fins, oil, *&c.* of fiſh caught in the *Greenland* ſeas, without paying any cuſtoms, *&c.* *Stat.* 10 *Geo.* 1. *cap.* 16. And ſhips employed in the *Greenland* fiſhery are to be of ſuch burden, provided with boats, ſo many men, fiſhing-lines, harping irons, *&c.* and be licenſed to proceed; and on their return ſhall be paid 20 *s. per* tun bounty for whale fins, *&c.* imported. 6 *Geo.* 2. *cap.* 33. A further bounty, or allowance of 10 *s.* a tun is granted to this company, to be paid by the commiſſioners of the cuſtoms, during war; and the ſeamen ſhall not be impreſſed from that ſervice, by 13 *Geo.* 2. *cap.* 28.

A ſecond bounty of 20 *s. per* tun given. 22 *Geo.* 2. *c.* 45. 28 *Geo.* 2. *c.* 20. No larger bounty than 400 tuns. 28 *Geo.* 2. *c.* 20. *ſect.* 6. Every ſhip employed in the fiſhery to have one apprentice for every fifty tuns burden. 28 *Geo.* 2. *c.* 20. *ſect.* 5. Bounty may be inſured. 28 *Geo.* 2. *c.* 20. *ſect.* 12.

Green-Silver. There is an ancient cuſtom within the manor of *Writtel*, in the county of *Eſſex*, that every tenant whoſe fore-door opens to *Greenbury*, ſhall pay a halfpenny yearly to the lord, by the name of *green ſilver.* The term *ſilver*, here, muſt mean *rent.*

Green-Wax. Is where eſtreats are delivered to the ſheriffs out of the *Exchequer*, under the ſeal of that court, made in *green wax*, to be levied in the ſeveral counties: this word is mentioned in the *Stat.* 43 *Ed.* 3 *cap.* 9. and 7 *H.* 4. *cap.* 3.

Greenwich Hoſpital. A duty is laid on all foreign-built ſhips for the relief of decayed ſeamen in *Greenwich Hoſpital, &c.* by *Stat.* 1 *Jac.* 2. *cap.* 18. And every ſeaman ſhall allow out of his wages 6 *d.* a month, for the better ſupport of the ſaid hoſpital: for which duty receivers are appointed, who may depute officers of the cuſtoms, *&c.* to collect the ſame, and examine on oath maſters of ſhips, *&c.* 8 & 9 *W.* 3. *c.* 23, *&c.* 10 *Ann.* 2 *Geo.* 2. *cap.* 7.

Proviſions for ſecuring the payment of the 6 *d. per* month from privateers. 18 *Geo.* 2. *c.* 31. Regulations for ſecuring prize-money belonging to the hoſpital. 20 *Geo.* 2. *c.* 24. Penalties on penſioners or ſervants pawning cloths or imbeziling ſtores. 20 *Geo.* 2. *c.* 24. *ſect.* 16, 17.

The governors empowered to grant out penſions to decrepit ſeamen. 3 *Geo.* 3. *c.* 16. See *Navy* and *Mariner.*

Greve, (Sax. *Gereſa)* A word of power and authority, ſignifying as much as *comes* or *vicecomes*; and hence comes our *ſhrieve, portreve,* &c. which by the *Saxons* were written *ſeiregereſa, portgereſa. Lambert* in his expoſition of *Saxon* words, *verbo* præfectus, makes it the ſame with *reve.* See *Hoveden Part. poſter. Annal. fol.* 346.

Grils, A kind of ſmall fiſh. *Stat.* 22 *Ed.* 4.

Grith, Is a *Saxon* word, ſignifying peace. *Terms de Ley.*

Grithbreche, (Sax. *Grythbryce,* i. e. *Pacis fractio)* Breach of the peace.—*In cauſis Regiis* Grithbreche 100 *Sol emendabit.* Leg. Hen. 1. cap. 36.

Grithſtole, (Sax. *Sedes Pacis)* A place of ſanctuary. See *Fridſtol.*

Grocers, Were formerly thoſe who ingroſſed merchandiſe. *Stat.* 37 *Ed.* 3. *c.* 5. It is now a particular and well known *trade*; and the cuſtom duties for *grocery* wares and drugs, are particularly aſcertained, by the ſtatute 2 *W.* & *M. Seſſ.* 2. *c.* 4.

Raiſins imported to pay but five pounds, and currants fifty ſhillings for every hundred pounds value. 4 *and* 5 *W. and M. c.* 5. 100. Currants imported in *Engliſh* or *Venetian* ſhipping, how exempt from paying of the ſubſidy granted by 3 *and* 4 *Ann. c.* 5. *ſect.* 1. 4 *Ann. c.* 6. *ſect.* 3. 8 *Ann. c.* 13. *ſect.* 21. Every hundred weight of raiſins imported pays five ſhillings. 8 *Ann. c.* 7. *ſect.* 6. Importers of raiſins what time to have for payment of duties, and what allowance for prompt payment. 8 *Ann. c.* 7. *ſect.* 12. Landing raiſins without entry, or unſhipping with a deſign to land them before payment of duties, what to forfeit. 8 *Ann. c.* 7. *ſect.* 14, 17. Duties in what caſes to be repaid on exportation. 8 *Ann. c.* 7. *ſect.* 15. And how to be levied. 8 *Ann. c.* 7. *ſect.* 16. Vide *Aromatarius*.

Gronna, A deep pit, or bituminous place, where turfs are dug to burn. *Hoved.* 438. *Mon. Ang. Tom.* 1. *p.* 243.

Groom, Is the name of a ſervant in ſome inferior place. 33 *Hen.* 8. *cap.* 10. and is generally applied to ſervants in ſtables: But it hath a ſpecial ſignification, extending to *Groom of the Chamber*; *Groom of the Stole*, &c. which laſt is a great officer of the King's houſhold, whoſe precinct is properly the King's Bed-Chamber, where the Lord Chamberlain hath nothing to do; and *ſtole* ſignifies a robe of honour. *Lex Conſtitutionis*, *p.* 182. Vide *Garcio*.

Groom-Porter, An officer or ſuperintendant over the royal *gaming-tables*; and in *Latin* is writ *Aulæ Regiæ janitor Primarius*.

Groſs, *(Groſſus) In groſs*, abſolute, intire, not depending on another; as anciently a *villein in groſs* was ſuch a ſervile perſon as was not appendant or annexed to the lord or manor, and to go along with the tenure as appurtenant to it; but was like the other perſonal goods and chattels of his lord, at his lord's pleaſure and diſpoſal: ſo alſo *advowſon in groſs* differs from *advowſon appendant*, being diſtinct from the manor. *Co. Lit.* 120. See *Black. Com.* 2 *V.* 22.

Groſſe bois, (Fr. *Gros bois*, i. e. great wood) Signifies ſuch wood as by the Common law or cuſtom is reputed timber. 2 *Inſt.* 642.

Groſs, (common in, or *Common at large*,) is ſuch as is neither appendant nor appurtenant, to land, but is annexed to a man's perſon; being granted to him and his heirs by deed: or it may be claimed by preſcriptive right, as by parſon of a church, or the like corporation ſole. This is a ſeparate inheritance, entirely diſtinct from any landed property. *Black. Com.* 2 *V.* 34.

Groſs-weight, The whole weight of goods or merchandiſe, duſt and droſs mixed with them, and of the cheſt, bag, *etc.* out of which *tare* and *tret* are allowed. *Merchant's Dict.*

Grot, (Fr.) A den, cave, or hollow place in the ground; alſo a ſhady woody place, with ſprings of water. *L. Fr. Dict.*

Groundage, A cuſtom or tribute paid for the ſtanding of a ſhip in a port.

Grouſe, Are the red and black *heath-game*, for preſerving of which, no heath, furze or fern ſhall be burnt on any heaths, moors or other waſtes, between the 2d of *February* and 24th of *June*, by *Stat.* 4 *and* 5 *W. and M. c.* 23.

Growme. An engine to ſtretch woollen cloth after it is woven; mentioned 43 *Ed.* 3. *c.* 10.

Growth-halfpenny, Is a rate ſo called and paid in ſome places for the *tithe* of every fat beaſt, ox, or other unfruitful cattle. *Clayton's Rep.* 92.

Gruarii, (From the Fr. *Gruyer*) Signifies the principal officers of the foreſt in general.

Guard, (Fr. *Garde*, Lat. *Cuſtodia*) A cuſtody or care of defence. And ſometimes it is uſed for thoſe that attend upon the ſafety of the Prince, called the *life-guard*, *&c.* ſometimes ſuch as have the education and *guardianſhip* of *infants*; ſometimes for a *writ* touching *wardſhip*, as *droit de gard*, *ejectione de gard*, and *raviſhment de gard*. F. N. B. 139.

Guardian, (Fr. *Gardein*, Lat. *Cuſtos Guardianus*) Signifies him who hath the charge or cuſtody of any perſon or thing; but commonly he who hath the cuſtody and education of ſuch perſons as are not of ſufficient diſcretion to guide themſelves and their own affairs, as children and ideots, (uſually the former) being as largely extended in the Common law as *tutor* and *curator* among the civilians. *Blount.*

Under this head we may conſider,

I. *The ſeveral kind of guardians, and how they are appointed.*

II. *Who may be guardian, and of the guardian's intereſt in the body and lands of the ward, and what he may lawfully do, ſo as to bind the infant.*

III. *Of the infant's remedy againſt the guardian, and of obliging him to account*, &c.

I. *Of the ſeveral kinds of guardians, and how they are appointed.*

A *guardian* is either *legitimus*, *teſtamentarius*, *datus*, or *cuſtumarius:* he that is a legitimate or lawful *guardian* is ſo *jure communi*, or *jure naturali*; the firſt as *guardian* in *chivalry*, in fact, or in right; the other *de jure naturali*, as father or mother: A *teſtamentary guardian* was by the Common law; for the body of the minor was to remain with him who was appointed, till the age of fourteen; and as for his goods it might be longer, or as long as the teſtator appointed; but as to this matter there are ſeveral ſtatutes: *Guardianus datus* was by the father in his life-time, or by the Lord Chancellor after the death of the father; and where there is a *guardianſhip* by the Common law, the Lord Chancellor can order and intermeddle; but where by ſtatute, he cannot remove either the child, or the *guardian: Guardianſhip* by *cuſtom*, is of orphans by the cuſtom of *London*, and other cities and boroughs; and in copyhold manors, by the cuſtom it may belong the lord of the manor to be guardian himſelf, or to appoint one. 3 *Salk. Rep.* 176, 177.

The *guardianſhips* by the *Common law*, are *guardians* in *chivalry*; (taken away by ſtatute) *guardians by nature*, ſuch as the father or mother; *guardians in ſocage*, who are the next of blood, to whom the inheritance cannot deſcend, if the father does not order it otherwiſe; and *guardian* becauſe of *nurture*, when the father by will appoints one to be *guardian* of his child. *Co. Lit.* 18. 2 *Inſt.* 305. 3 *Rep.* 37.

The 4 *&* 5 *W. & M. cap.* 8. provides under ſevere penalties, ſuch as fine and impriſonment for years, "That nobody ſhall take away any maid or woman child unmarried, being within the age of ſixteen years, out of or from the poſſeſſion, cuſtody or governance, and againſt the will of the father of ſuch maid or woman child, or of ſuch perſon or perſons to whom the father of ſuch maid or woman child by his laſt will and teſtament, or by any other act in his life-time, hath or ſhall appoint, aſſign, bequeath, give or grant, the order, keeping, education and governance of ſuch maid or woman child."

Guardianſhip by ſtatute, is by the 12 *Car.* 2. *cap.* 24. by which it is enacted, "That a father by deed in his life-time, or by will, may diſpoſe of the cuſtody of his child under twenty-one years of age, and not married at the time of his death, and whether then born, or *in ventre ſa mere*, during the minority, to any perſons, not Popiſh recuſants; who may maintain action of treſpaſs, *&c.* againſt unlawful takers away of ſuch children, and take into cuſtody their lands, *&c.*" And by this ſtatute the father may appoint a *guardian* to his heir, for any time till he is twenty-one years old; and ſuch *guardian* ſhall have the like remedy for his ward, as the *guardian* in ſocage had at Common law. 2 *Nelſ. Abr.* 911. But if the father appoint no *guardian* to his child, the ordinary or ſpiritual court may appoint one for the perſonal eſtate until the age of fourteen: And as to his lands, there ſhall be a *guardian* in ſocage, *&c.* as heretofore. 2 *Lev.* 262.

Guardianſhip is a thing cogniſable by the temporal courts, where a deviſe is made of it, which courts are to judge whether the deviſe be purſuant to the ſtatute. 1 *Vent.* 207. A copyhold tenant is not within the *Statute* 12 *Car.* 2. *c.* 24. to diſpoſe of the cuſtody of his children; for it belongs to the lord or others, according to the cuſtom of the manor: but the lord of a manor hath no power by the Common law, without ſome *particular cuſtom*, to grant the *guardianſhip* of an infant copyholder. 3 *Lev.* 595. *Lutw.* 1190. A father or mother, without aſſignment, are *guardians* of women, children, *&c.* *Stat.* 4 *&* 5 *P.* *&* *M. cap.* 8. A female infant may be brought into court, and aſked whether ſhe be willing to ſtay with her *guardian*.

The huſband of a woman under age cannot diſavow a *guardian* made by the court for his wife. 1 *Vent.* 185. An infant, it is ſaid, cannot revoke the authority of the *guardian*: but the court may diſcharge one *guardian*, and aſſign another at their diſcretion; and the juſtices of *Niſi prius, &c.* may aſſign a new *guardian*. *Palm.* 252. *Style* 456. *Noy* 49. 1 *Danv. Abr.* 604. The court will aſſign a *guardian* to an infant to ſue, or defend actions, if the infant comes into court and deſires it: or a judge at his chambers, at the deſire of the infant, may aſſign a perſon named by him to be his *guardian*; but this laſt is no record until entered and filed by the clerk of the rules: 1 *Lil.* 656. 2 *Leon.* 238.

II. *Who may be guardian, and of the guardian's intereſt in the body and lands of the ward, and what he may lawfully do, ſo as to bind the infant.*

Where land deſcends of the part of the father, there the next of kin on the part of the mother ſhall have the guardianſhip; and ſo on the other ſide, and *not ſuch a kinſman as may have any benefit by his death.* *Cro. Eliz.* 825. *Moor, caſ.* 872. The eldeſt ſon of the half blood ſhall be guardian in ſocage, to a ſon by a ſecond venter; and the guardianſhip in *ſocage* continues till the minor attains the age of fourteen years, and then he may chuſe his guardian before a judge, at his chambers, or in court, or in the Chancery: alſo after the minor is come to the age of fourteen, he may ſue his guardian in ſocage to account as bailiff, *&c.* *Cro. Jac.* 219. Though a father is guardian by nature, yet a man may be guardian to an infant againſt his father, for prevention of waſte; which is a forfeiture of guardianſhip. *Hard.* 96.

If a woman hath iſſue a ſon by a former huſband, and marries a ſecond huſband, ſeiſed of ſocage lands, by whom ſhe has iſſue another ſon, and the huſband and wife die, leaving the ſecond ſon under fourteen, his brother of the half blood ſhall be guardian in ſocage, as next of kin, to whom the inheritance cannot deſcend. *Cro. Eliz.* 825. 2 *And.* 171. *Moor* 635. 2 *Jon.* 17.

An infant, ideot, lunatick, *non compos*, one blind and dumb, deaf and dumb, or leper removed, cannot be guardian in ſocage. *Co. Lit* 88 *b*.

It is clearly agreed, That the King, as *pater patriæ*, is univerſal guardian of all *infants*, *ideots* and *lunaticks*, who cannot take care of themſelves; and as this caſe cannot be exerciſed otherwiſe than by appointing them proper curators or commitees; it ſeems alſo agreed, that the King may, as he has done, *delegate the authority to his Chancellor*; therefore at this day, the *court of Chancery* is the only proper court, which hath juriſdiction in *appointing* and *removing guardians*, and in *preventing them* and *others* from *abuſing* their *perſons* or *eſtates*. 2 *Inſt* 14. 4 *Co.* 126. *Beverley*'s caſe, and in *Staundf. Præ.* 37.

And as the court of Chancery is now inveſted with this authority, hence in every day's practice we find that court determining, as to the right of guardian ſhip, who is the next of kin, and who the moſt proper guardian; as alſo orders are made by that court on petition, or motion, for the proviſion of infants during any diſpute herein; as likewiſe guardians removed or compelled to give ſecurity; they and others puniſhed for abuſes committed on infants, and effectual care taken to prevent any abuſes intended them in their perſons or eſtates; all ſuch wrongs and injuries being reckoned a contempt of that court, it hath, by an eſtabliſhed juriſdiction, the protection of all perſons under natural diſabilities. 2 *Mod* 177.

Guardian in ſocage ſhall make no waſte, nor ſale of the inheritance, but keep it ſafely for the heir: and where there hath been ſome doubt of the ſufficiency of a *guardian* in ſocage, the Chancery hath obliged him to give ſecurity. 2 *Mod* 177. Alſo a guardian may be ordered to enter into ſecurity by recogniſance, not to ſuffer a female infant to marry whilſt in his cuſtody; and to permit other relations to viſit her, *&c.* 2 *Lev.* 128. And the court of Chancery will make ſuch *guardian* give ſecurity not to marry the infant without the court is firſt acquainted with it. 2 *Chan. Rep.* 237.

Before the act of 12 *Car.* 2. *c.* 24. Tenant in ſocage might have diſpoſed of his land, in truſt for the benefit of the heir; but it is ſaid he could not deviſe or diſpoſe of the guardianſhip or cuſtody of the heir from the next of kin to whom the land could not deſcend, becauſe the law gave the guardianſhip to ſuch next of kin. *Keilw.* 186. But now tenant in ſocage may nominate whom he pleaſes to have the cuſtody of the heir, and the land ſhall follow the guardianſhip, as an incident given by law to attend the cuſtody; and ſuch ſpecial *guardian* cannot aſſign the cuſtody by any act, the truſt being perſonal; nor ſhall it go to the executor or adminiſtrator of the *guardian*, but determines by his death. *Vaugh.* 180. *Dyer.* 189.

As the law hath inveſted *guardians* not with a bare *authority* only, but alſo with an *intereſt* till the *guardianſhip* ceaſes; ſo it hath provided ſeveral remedies for *guardians* againſt thoſe who violate that intereſt: at Common law there were remedies both droitural and poſſeſſory, to recover the *guardianſhip*. 2 Inſt. 90. 9 Co. 72.

A *guardianſhip* of a minor is an intereſt in the body and lands, *&c.* of one within age. *Guardians* to infants, appointed by the court to ſue, may acknowledge ſatiſfaction upon the record, for a debt recovered at law for the infant. *Trin.* 23 *Car. B. R.* A *guardian* in ſocage may keep courts, in the infant's manors, in his own name grant copies, *&c.* He is *dominus pro tempore*, and hath an intereſt in the lands. *Cro. Jac.* 91. Such *guardian* may let the land for years, and avow in his own name and right; and his leſſee for years may maintain ejectment: but he cannot preſent to an advowſon, for which he may not lawfully account; and the infant muſt preſent of whatſoever age. *Cro. Jac.* 98, 99. Though it is ſaid, if the infant be within the age of diſcretion, his *guardian* may preſent. 8 *E.* 2. 10. A *guardian* for nurture of the minor appointed by will, hath power to make leaſes at will only. *Cro. Eliz.* 678, 734. *Guardians* are to take the profits of the minor's lands, *&c.* to the uſe of the minor, and account for the ſame: they ought to ſell all moveables in a reaſonable time, and turn them into land or money, except the minor is near of age, and may want ſuch goods himſelf: and they ſhall pay intereſt for money in their hands, which might have been put out at intereſt; in which caſe it ſhall be preſumed the *guardians* made uſe of it themſelves. 3 *Salk.* 177.

III. *Of the infant's remedy againſt the guardian, and of obliging him to account*, &c.

At Common law, both a *prohibition* of waſte, and an *action* of *waſte*, lay againſt a guardian in chivalry and a guardian in ſocage, for a *voluntary*, but not for *permiſſive waſte*, or *waſte* done by a *ſtranger*. 2 *Inſt.* 305. By the Common law, guardians in ſocage are accountable to the infant, either when he comes to the age of fourteen years, or at any time after, as he thinks fit. *Co. Lit.* 87. But the guardian, on his account, ſhall have allowance of all reaſonable expences; and if he is robbed of the rents and profits of the land *without his default or negligence*, he ſhall be diſcharged thereof upon his account; for he is in the nature of a bailiff or ſervant to the infant, and undertakes no otherwiſe than for his diligence and fidelity. *Co. Lit.* 89. *a.*

If a guardian takes a bond for the arrears of rent, he thereby makes it his own debt, and ſhall be charged with it. 2 *Chan. Rep.* 97. *Wall* and *Buckley*. If a man during a perſon's infancy receives the profits of an infant's eſtate, and continues to do ſo for ſeveral years after the infant comes of age, before any entry is made on him; yet he ſhall account for the profits throughout, and not during the infancy only. *Abr. Eq.* 280. *Yallop* and *Halworthy*. A receiver to the *guardian* of an infant, who has had his account allowed him by the *guardian*, ſhall not be obliged to account over again to the infant when he comes of age. *Preced. Chan.* 535.

A *guardian* ſhall anſwer for what is loſt by his *fraud*, *negligence* or *omiſſion*; but *not* for any *caſual events*, as where the thing had been well but for ſuch an accident. *Litt.* 123. On accounting of guardians, they ſhall have allowance of coſts and expences; and if they are robbed, *&c.* without any default or negligence, they ſhall be diſcharged thereof. *Co. Lit.* 89. In *guardianſhips* of great eſtates, the *guardians* generally paſs their accounts yearly in the Chancery, for their better juſtification when the minor calls them to a general account at his full age. By ſtatute, *guardians* are to retain the lands till the heir comes of age, and then reſtore the ſame as fully ſtocked, *&c.* as received. 9 *H.* 3. *cap.* 3. They ſhall ſuſtain the land without deſtruction of any thing. 3 *Ed.* 1. *cap.* 21. And perſons, who as guardians hold over, without the conſent of the perſon next intitled, ſhall be adjudged treſpaſſers, and be accountable for profits, *&c.* *Stat.* 6 *Ann. cap.* 18. Action of account may be brought againſt the executors or adminiſtrators of a guardian, *&c.* *Stat.* 4 *Ann.* *c.* 16.

An *election of a guardian* by a minor.

KNOW all men *by theſe preſents, That I* A. B. *ſon and heir of,* &c. *deceaſed, being now about the age of eighteen years,* have *elected and choſen, and by theſe preſents do elect and chuſe* C. D. *of,* &c. *to be guardian of my perſon and eſtate, until I ſhall attain the age of twenty-one years, and I do hereby promiſe to be ruled and governed by him in all things touching my welfare; and I do authoriſe and impower the ſaid* C. D. *to enter upon and take poſſeſſion of all and every my meſſuages, lands, tenements, hereditaments and premiſſes whatſoever, ſituate, lying and being in,* &c. *in the county of,* &c. *or elſewhere, whereunto I have or may have any right or title, and to let and ſet the ſame, and receive and take the rents, iſſues and profits thereof, for my uſe and benefit, during the term aforeſaid; giving and hereby granting unto the ſaid* C. D. *my full power in the ſaid premiſſes; and whatſoever he ſhall lawfully do or cauſe to be done in the premiſſes, by virtue hereof, I do hereby promiſe to ratify and confirm.* In witneſs, *&c.*

Guardian de l'eſtemary, Is the *guardian* or warden of the *Stannaries*, or mines in the county of *Cornwall*, &c. 17 *Car.* 1. *cap.* 15.

Guardians de l'Eglis, Churchwardens, who are officers choſen in every pariſh to have the care and cuſtody of the church goods; and they may have an action for ſuch goods, and have divers powers for the benefit of the church. *Stat.* 43 *Eliz.* *cap.* 2.

Guardians of the Peace, Are thoſe that have the keeping of the peace; *wardens* or *conſervators* thereof. *Lamb. Eiren. lib.* 1. *cap.* 3.

Guardian of the Cinque Ports, Is a magiſtrate that hath the juriſdiction of the ports or havens, which are commonly called the *Cinque Ports*, who has there all the authority and juriſdiction the Admiral of *England* has in places not exempt: and *Camden* believes this *Warden of the Cinque Ports* was firſt erected among us in imitation of the *Roman* policy, to ſtrengthen the ſea-coaſts againſt enemies, *&c.* *Camb. Br.* 238.

Guardian of the Spiritualties The perſon to whom the *ſpiritual juriſdiction* of any dioceſe is committed, during the *vacancy* of the ſee, is called by this name. 25 *H.* 8. *cap.* 21. The *archbiſhop* is *guardian of the ſpiritualties* on the vacancy of any *ſee* within his province; but when the *archiepiſcopal ſee* is vacant, the dean and chapter of the archbiſhop's dioceſe are *guardians of the ſpiritualties, viz.* the ſpiritual juriſdiction of his province and dioceſe is committed to them. 2 *Rol. Abr.* 223. The *guardian of the ſpiritualties* it is ſaid may be either *guardian in law, jure magiſtratus*, as the archbiſhop is of any dioceſe in his province; or *guardian by delegation*, being he whom the *archbiſhop* or *vicar general* doth for the time appoint. 13 *Eliz.* *cap.* 12. And the *guardian of the ſpiritualties* hath all manner of eccleſiaſtical juriſdiction of the courts, power of granting licences and diſpenſations, probate of wills, *&c.* during the vacancy, and of admitting and inſtituting clerks preſented; but ſuch guardians cannot, as ſuch, conſecrate or ordain, or preſent to any benefices. *Wood's Inſt.* 25, 27.

Gueſt, (Sax *Geſt*. Fr. *Giſt*, a ſtage of reſt in a journey) A lodger or ſtranger in an *inn*, *&c.* A gueſt who hath a piece of plate ſet before him in an inn, may be guilty of felony, in fraudulently taking away the ſame. 1 *Hawk. P.C.* 90. And a gueſt having taken off the ſheets from his bed, with intent to ſteal them, carried them into another room, and was apprehended before he could get away; this was adjudged larceny. *Ibid.* 92. Lodgers ſtealing furniture from lodgings are guilty of felony by 3 & 4 *W.* & *M.* *c.* 9. *ſect.* 5.

Action lies againſt an innkeeper, refuſing a gueſt lodging, *&c.* See *Inn.*

Guidage, *(Guidagium)* Is an old legal word, ſignifying that which is given for ſafe conduct through a ſtrange land, or unknown country. *Eſt* guidagium *quod datur alicui, ut tuto conducatur per terram alterius.* Conſuetud. Burgund. p. 119. 2 Inſt. 526.

Guild, (from the Sax. *Guildan*, to pay) Signifies a fraternity or company, becauſe every one was *gildare*, i. e. to pay ſomething toward the charge and ſupport of the company. The original of theſe guilds and fraternities is ſaid to be from the old *Saxon* law, by which neighbours entered into an aſſociation and became bound for each other, to bring forth him who committed any crime, or make ſatisfaction to the party injured, for which purpoſe they raiſed a ſum of money among themſelves, and put into a common ſtock, whereout a *pecuniary* compenſation was made according to the quality of the offence committed. From hence came our fraternities and guilds; and they were in uſe in this kingdom long before any formal licences were granted for them: though at this day they are a company combined together, with orders and laws made by themſelves, by the prince's licence.

Camd. Guildam Mercatoriam, or the *Merchant's Guild*, is a liberty or privilege granted to merchants, whereby they are enabled to hold certain pleas of land, *&c.* within their own precinct. 37 *Ed.* 3. 15 *R.* 2. And *Guildhalls* are the halls of thoſe ſocieties, where they meet and make laws, *&c.* for their better government. King *Ed.* 3. in the 14th year of his reign, granted licence to the men of *Coventry* to erect a *Merchant's Guild*, and alſo a fraternity of brethren and ſiſters, with a maſter or warden, and that they might make chantries, beſtow alms, do other works of piety, and conſtitute ordinances touching the ſame, *&c.* And King *Hen.* 4. in the 4th year of his reign, gave licence to found a *Guild* of the *Holy-Croſs* at *Stratford upon Avon.* Antiq. Warwickſh. 119, 522. *Guild*, or *Gild*, is alſo uſed for a tribute, or tax, an amercement, *&c.* 27 *Ed.* 3. 11 *H.* 6. 15 *Car.* 2. See *Gilda Mercatoria.*

Guild-hall, Or the chief hall of the city of *London*, for the Meeting of the Lord Mayor and Commonalty of the city, making laws and ordinances, holding of courts, *&c.*—Gildarum *nomine continentur non ſolum minores fraternitates, ſed ipſæ etiam civitatum communitates.* Spelm. It alſo ſignifies the chief hall of other cities and corporate towns. The new erected *Seſſions-hall* in *King-Street, Weſtminſter*, is called the *Guild-hall.*

Guildhelda Teutonicorum. The fraternity of *Eaſterling* merchants in *London*, called the *Still-yard.* 22 Hen. 8. cap. 8.

Guild-Rents, Are rents payable to the crown, by any guild or fraternity; or ſuch rents as formerly belonged to *religious Guilds*, and came to the crown at the general diſſolution of monaſteries, being ordered to be ſold by the *Stat.* 22 *Car.* 2. *cap.* 6.

Guilder, Foreign coin: the *German* guilder is 3 *s.* 8 *d.* and the golden one in ſome parts of *Germany* 4 *s.* 9 *d.* In *Portugal* it paſſes for 5 *s.* but the *Poland* and *Holland gelder* is but 2 *s.* In *Holland*, merchants keep their accounts in *guilders*, *&c.*

Gule of Auguſt, *(Gula Auguſti,* alias *Goule de Auguſt)* Is the day of *St. Peter ad Vincula*, which is celebrated on the 1*ſt of Auguſt*, and called the *Gule of Auguſt*, from the Lat. *Gula* a throat, for this reaſon, (as pretended) that one *Quirinus*, a tribune, having a daughter that had a diſeaſe in her *throat*, went to Pope *Alexander*, (the ſixth from St. *Peter*,) and deſired of him to ſee the chains that St. *Peter* was chained with under *Nero*, which requeſt being granted, ſhe the ſaid daughter kiſſing the chains, was cured of her diſeaſe; whereupon the Pope inſtituted this feaſt in honour of St. *Peter*; and, as before, this day was termed only the *calends of Auguſt*, it was on this occaſion called indifferently either St. *Peter's day ad Vincula*, from what wrought the miracle, or the *Gule of Auguſt*, from that part of the virgin whereon it was wrought. *Durand's Rationale Divinorum, lib.* 7. *cap.* 19. It is mentioned *F. N. B.* 62. *Plowd.* 316. *Stat. Weſtm.* 2. *cap.* 30. 27 *Ed.* 3.

Guns. None may ſhoot in, or keep in his houſe any *gun*, hand-gun, *&c.* who hath not lands to the value of 100 *l.* a year, on pain of 10 *l.* Nor ſhall any perſon ſhoot in ſuch *guns*, under the length of one yard, or three quarters of a yard, under the like penalty: if any do ſo, one that hath 100 *l. per ann.* land, may ſeize the *guns* unlawfully kept and uſed; but then he *muſt break them within twenty days*, or ſhall forfeit 40 *s.* In foreſts, parks and chaſes, thoſe who have power from the King to take away *guns*, may retain the ſame. *Stat.* 33 *H.* 8. *c.* 6.

Gunpowder. It is lawful for all perſons, as well ſtrangers as natural-born ſubjects, to import any quantities of *gunpowder* or ſalt-petre, brimſtone, and other materials for the making thereof, and to make and ſell *gunpowder*, *&c. Stat.* 16 *Car.* 1. *cap.* 21. But no perſon ſhall keep more than 600 *lb.* weight of *gunpowder*, in any places in the cities of *London* and *Weſtminſter*, or the ſuburbs, *&c.* And perſons keeping more, not removing it on order of juſtices of peace, ſhall forfeit 20 *s.* for every hundred weight: *gunpowder* is to be carried in covered carriages, the barrels cloſe jointed, or in caſes, bags of leather, *&c.* 5 *Geo.* 1. *c.* 27

By a ſubſequent act, it is unlawful for any perſon to keep in *London*, &c. above 200 *lb.* weight of gunpowder at one time, beyond the ſpace of twenty-four hours, which incurs a forfeiture of the powder, or the value: and two juſtices may cauſe ſearches to be made, and the ſame to be ſeized and removed, *&c.* Perſons obſtructing the ſearch, incur the penalty of 5 *l.* Alſo none ſhall uſe iron or ſteel hammers, where gunpowder is, on pain of 20 *s.* 11 *Geo.* 1. *cap.* 23. Perſons who are no dealers therein are not to keep above 50 *lb.* of gunpowder in *London* and *Weſtminſter*, or if they deal in it, not more than two hundred weight longer than twenty-four hours, though under different roofs; or on the *Thames*, except in ſhips paſſing or detained, on pain of forfeiting all ſuch gunpowder, *&c.*

A juſtice of peace may iſſue his warrant to ſearch for dangerous quantities of powder, and break open any place, if there be occaſion, to ſeize the ſame; which may be removed out of the limits aforeſaid, and kept till determined in one of the courts, whether it be forfeited, *&c.* And if any perſons permit others to have gunpowder in places not belonging to the owners, they ſhall forfeit 1 *s.* for every pound. *Stat.* 15 *Geo* 2. *cap.* 32.

No gunpowder ſhall be put on board ſhips, above *Blackwall* in the river *Thames*, under 5 *l.* penalty for every 50 *lb.* weight, *&c.* by 5 *Geo.* 2. *cap.* 20. By the *Stat.* 22 *Geo.* 2. *cap.* 38. No perſon ſhall keep gunpowder for more than twenty-four hours, at one time, in greater quantities than 400 weight, in any houſe, *&c.* in or within 100 yards of any city, the ſuburbs thereof, or any market town; or within two miles of any of the King's palaces, or one mile of any of his magazines for powder, or more than 300 weight, in any other place whatſoever.

Upon information two juſtices may grant ſearch warrants, and if more found, it ſhall be forfeited; no greater quantity ſhall be carried at one time than 2500 weight in any land-carriage, and 5000 weight in any open veſſel; carriages to be covered, and barrels cloſely hooped. Any perſon employed in any ſtorehouſe where gunpowder is kept, or in conveying gunpowder from one place to another, wilfully committing any act whereby the gunpowder ſhall be in danger of taking fire, ſhall forfeit 5 *s.* for every 100 weight in ſuch ſtorehouſe; and in default of payment be committed for not exceeding ſix months. No penalty ſhall be incurred for keeping above three hundred weight of gunpowder, in any warehouſe already built for that purpoſe, unleſs the ſame be deemed dangerous.

To obtain an excluſive patent for the ſole making or importation of gunpowder or arms, or to hinder others from importing them, is a *premunire* by 16 *Car.* 1. *c.* 21. 1 *Jac.* 2. *c.* 8. Gunpowder, *&c.* ſhipped after prohibition, forfeited, 29 *Geo.* 2. *c.* 16. *ſec.* 2. Allowance on exportation of gunpowder continued to 29th of *September* 1771, 4 *Geo.* 3. *c.* 11.

Gurgites, Is uſed as a *Latin* word for *weares*: *tres* gurgites *in aqua de Monew attachiantur per homines de groſſomonte.* Black Book Hereford, f. 20. See *Gorce.*

Guti and **Gotti**, Engl. *Goths*, called ſometimes *Jutæ*, and by the Romans *Getæ*, is derived from the old word *Jet*, which ſignifies a *Giant*: they were one of thoſe three nations or people who left *Germany*, and came to inhabit this iſland. *Leg. Edw. Confeſſ. cap.* 35.

Guttera, A gutter or ſpout to convey the water from the leads and roofs of houſes: and there are *gutter tiles*, eſpecially to be laid in ſuch *gutters*, *&c.* mentioned in the *Stat.* 17. *Ed.* 4.

Gwabr-merched, Is a *Britiſh* word, which ſignifies a payment or fine, made to the lords of ſome manors, upon the marriage of their tenants daughters; or otherwiſe on their committing incontinency. See *Marchett.*

Gwalſtow, (*Sax*) A place of execution: *omnia* gwallſtowa, i. e. *occidendorum loca, totaliter regis ſunt in ſoca ſua.* Leg. Hen. 1. cap. 11.

Gylput, The name of a court held every three weeks, in the liberty or hundred of *Pathbew* in the county of *Warwick.* Inquiſic. ad quod Damn. 13 Ed. 3.

Gyltwite, A compenſation or amends for treſpaſs, *&c. Mulcta pro tranſgreſſione.* LL. Edgar. Regis, Anno 964.

Gypſies. Formerly there were foreign perſons, calling themſelves *Egyptians*, or *Gypſies*, a ſtrange kind of commonwealth among themſelves of wandering impoſtors and jugglers. It is ſaid that when Sultan *Selim* conquered *Egypt* in the year 1517, ſeveral of the natives refuſed to ſubmit to the *Turkiſh* yoke, and diſperſed in ſmall parties all over the world, where their ſuppoſed ſkill in the black art gave them an univerſal reception, in that age of ſuperſtition and credulity. There are various laws againſt perſons pretending to be gypſies, and wandering about, *&c.* See 22 *H.* 8. *c.* 10. 1 *&* 2 *P. & M. c.* 4. 5 *El. c.* 20. And ſee *Black. Com.* 4 *V.* 165, 6, 7.

Gyrovagi, Wandering *monks*, who pretending great piety left their own cloiſters, and viſited others. *Matt. Paris. p.* 490.

H.

Habeas Corpora, Is a writ for the bringing up a jury, or ſo many of them as refuſe to appear upon the *venire facias*, for the trial of any cauſe brought to iſſue. *Old Nat. Br.* 157. And the *habeas corpora juratorum* in the court of *C. B.* ſerves for the ſame purpoſe as the *diſtringas jurator* in *B. R.* It commands the ſheriff to have the jurors before the judges at ſuch a day, to paſs on the trial of certain parties, in ſuch a cauſe, *&c. Practiſ. Solic.* 308, 309.

Habeas Corpus, The great writ of *Engliſh liberty*, lies where one is indicted for any crime or treſpaſs before juſtices of peace, or in a court of any franchiſe, and being impriſoned for the ſame, hath offered ſufficient bail, but it is refuſed where bailable; he may then have this writ out of the *King's Bench* to remove himſelf thither, and anſwer the cauſe there. *F. N. B.* 250. *Vide infra.* This writ is alſo uſed to bring the body of a perſon into court, who is committed to any gaol, either in criminal or civil cauſes; and a *habeas corpus* will remove a perſon and cauſe from one court and priſon to another. See the *Stat.* 31 *Car.* 2. *c.* 2. There are ſeveral kinds of this writ.

1. The *habeas corpus ad ſubjiciendum* is that which iſſues in criminal caſes, and is deemed a prerogative writ, which the King may iſſue to any place, as he has a right to be informed of the ſtate and condition of the priſoner, and for what reaſons he is confined. It is alſo, in regard

to the ſubject, deemed his *writ of right*; that is, ſuch an one as he is intitled to *ex debito juſtitiæ*, and is in nature of a writ of error to examine the legality of the commitment; therefore commands the day, the caption, and cauſe of detention to be returned. 2 *Inſt.* 55. 4 *Inſt.* 182. *Cro. Jac.* 543. 2 *Rol. Abr.* 69.

2. The *habeas corpus ad faciendum & recipiendum* iſſues only in *civil* caſes, and lies where a perſon is ſued, and in gaol, in ſome inferior juriſdiction, and is willing to have the cauſe determined in ſome ſuperior court, which hath juriſdiction over the matter; in this caſe the body is to be removed by *habeas corpus*, but the proceedings by *certiorari*. 3 Bac. Abr. 2.

3. There is likewiſe a writ of *habeas corpus ad reſpondendum*, where a perſon is confined in gaol for a cauſe of action accruing within ſome inferior court; and a third perſon hath alſo a cauſe of action againſt him; in which caſe he may have this writ in order to charge him in ſuch ſuperior court; for inferior courts being tied down to cauſes ariſing within their own juriſdiction, the party would be without remedy, unleſs allowed to ſue him in another court; but it ſeems, that regularly a perſon confined in *B. R.* cannot be removed to the *C. B.* by this writ, nor *vice verſa*; for in theſe caſes there can be no defect of juſtice, as theſe courts have conuſance as well of local, as tranſitory actions. *Dyer* 197. *a.* 249. *pl.* 84, 296, 307. 1 *Mod.* 235. *Style Pract. Regiſt.* 330.

4. There are alſo, beſides theſe, other writs of *habeas corpus* as a *habeas corpus ad deliberandum & recipiendum*, which lies to remove a perſon to the proper place or county, where he committed ſome criminal offence. 3 *New Abr.* 2, 3.

5. There is alſo a writ of *habeas corpus ad ſatisfaciendum* after a judgment; and on this writ the attorney for the plaintiff muſt endorſe the number roll of the judgment on the back of the writ. *Style Regiſt.* 331.

6. *Habeas corpus* upon a *cepi*, where the party is taken in execution in the court below.—So upon an attachment out of Chancery, and a *cepi corpus* returned by the ſheriff, the next ſtep is a *habeas corpus*; for the ſheriff having executed the command of the writ of attachment by taking the body, he cannot carry him out of the county without the King's writ.

7. There is alſo a writ of *habeas corpus ad teſtificand'*, which is to remove a perſon in confinement, in order to give his teſtimony in ſome court of juſtice; for which vide *Style* 119, 126, 230. 3 *Keb.* 51. *Comb.* 17, 48. Of theſe ſeveral writs the moſt uſual in practice are—

The *habeas corpus ad ſubjiciendum*:—and

The *habeas corpus ad faciendum & recipiendum*.

With reſpect to the firſt it is to be conſidered,

1. *By whom, and in what caſes, it is grantable.*
2. *What ſhall be a proper return of ſuch writ.*
3. *Of bailing, diſcharging, or remanding the priſoner.*

1. *By whom, and in what caſes, an* habeas corpus *is grantable.*

The writ of *habeas corpus* was originally ordained by the *Common law* of the land, as a remedy for ſuch as were unjuſtly impriſoned, to procure their liberty; and it is a miſtaken notion that this writ is of a modern date, and introduced with the reign of King *Charles* II. But before the *Stat.* 31 *Car.* 2. *c.* 2. it is true it was difficult to be obtained, becauſe the judges, who had authority to iſſue it, pretended to have power either to grant or deny it; and the ſheriffs and gaolers, to whom the writ was directed, frequently put poor priſoners to the charges of a ſecond, and third *habeas corpus*, before they would yield obedience to the firſt; which being grievous to the people, the *Stat.* 31 *Car.* 2. *c.* 2. was enacted to prevent abuſes of this nature, and further our laws for the benefit of the liberty of the ſubject. *Laws of Liberty*, *pag.* 44, 45.

By the *Stat.* 31 *Car.* 2. *c.* 2. A perſon in priſon may have an *habeas corpus* from any judge, on complaint made and view of the copy of the warrant of commitment, (unleſs he be committed for treaſon or felony, eſpecially expreſſed in the warrant, or other offences or matters not bailable) which *habeas corpus* ſhall be returnable immediately; and upon certificate of the cauſe of commitment, the priſoner ſhall be diſcharged on bail to appear in the court of *B. R.* the next term, or at the next aſſiſes, &c. where the offence is cogniſable: and perſons committed for treaſon or felony, (eſpecially expreſſed in the warrant) on prayer in open court, the firſt week of the term, or day of ſeſſions, &c. are to be brought to trial; and if not indicted the next term, or ſeſſions after commitment, upon motion the laſt day of the term, &c. they ſhall be let out upon bail; except it appears upon oath, that the King's witneſſes are not ready; and if on prayer they are not indicted or tried the ſecond term after commitment, they ſhall be diſcharged. No perſons who ſhall be delivered upon an *habeas corpus*, ſhall be committed again for the ſame offence, other than by legal order and proceſs of ſuch court where they ſhall be bound to appear, or other court having juriſdiction of the cauſe; on pain of 500 *l.*

And if any perſon be in priſon, or in any officer's cuſtody, for any criminal matter, he ſhall not be removed by him into the cuſtody of any other officer but by *habeas corpus*, upon pain of incurring the penalty of 100 *l.* for the firſt offence, and 200 *l.* for the ſecond offence, and being diſabled toexecute h is office.

No perſon ſhall be ſent priſoner to *Ireland*, *Scotland*, or any place beyond the ſeas in the King's dominions; which will be falſe impriſonment, on which the priſoner may recover treble coſts, and not leſs than 500 *l.* damages, &c. and the party committing, or detaining him, alſo ſhall incur the penalty of a *præmunire*.

Judges denying a *habeas corpus* ſhall forfeit 500 *l.* And the officer refuſing to obey it, or to deliver a true copy of the commitment warrant, is liable to a forfeiture of 100 *l.* for the firſt offence, &c. *Stat ibid.* This is the ſubſtance of the *habeas corpus act*; which hath been ſuſpended ſeveral times in late reigns, on rebellions, &c.

It is clear, that both by the Common law, as alſo by the ſtatute, the Courts of Chancery and King's Bench have juriſdiction of awarding this writ of *habeas corpus*, and that without any privilege in the perſon for whom it is awarded; but it ſeems, that by the Common law the court of King's Bench could only have awarded it in term-time, but that the Chancery might have done it as well out of, as in term, becauſe that court is always open. 2 *Inſt.* 55. 4 *Inſt.* 290. 2 *And.* 297. 2 *Jon.* 13, 14, 17. Any of the courts at *Weſtminſter* may award it. See *Vaugh.* 155.

If the *habeas corpus* iſſues out of Chancery, and on the return thereof the Lord Chancellor finds that the party was illegally reſtrained of his liberty, he may diſcharge him, or if he finds it doubtful, he may bail him; but then it muſt be to appear in the court of King's Bench, for the Chancellor hath no power in criminal cauſes; or the chancellor may commit the party to the *Fleet*, and in term-time may *propriis manibus* deliver the record into the King's Bench, together with the body; and thereupon the court of King's bench may proceed to bail, diſcharge, or commit the priſoner. 2 *Hal. Hiſt. P.C.* 147. 2 *Hawk. P.C* 114-15.

We apprehend every ſubject impriſoned, is intitled to his *habeas corpus*, that the cauſe of his impriſonment may be inquired into, whether he is, or is not, intitled to be bailed. See the caſe of Mr. *Wilkes*, in *Wilſ. Rep. par.* 2. 154.

If a party be impriſoned againſt law, though he is intitled to a *habeas corpus*, yet he may have an action of falſe impriſonment, in which he ſhall recover damages in proportion to the injury done him. *Fitz. Corpus cum Cauſa* 2. 9 *H.* 6. 44. *a.* 2 *Inſt.* 55. 10 *H.* 7. 17. 5 *Co* 64. 11 *Co.* 98, 99.

If a huſband confine his wife, ſhe may have an *habeas corpus*; but the judges, on the return of it, cannot remove the wife from her huſband. 2 *Lev* 128.

If a perſon be in cuſtody, and alſo indicted for ſome offence in the inferior court, there muſt, beſides the *habeas corpus* to remove the body, be a *certiorari* to remove the record; for as the *certiorari* alone removes not the body, ſo the *habeas corpus* alone removes not the record itſelf, but only the priſoner with the cauſe of his commitment;

ment; therefore, although upon the *habeas corpus*, and the return thereof, the court can judge of the ſufficiency or inſufficiency of the return and commitment, and bail or diſcharge, or remand the priſoner, as the caſe appears upon the return, yet they cannot upon the bare return of the *habeas corpus* give any judgment, without the record itſelf be removed by *certiorari*: but the ſame ſtands in the ſame force it did, though the return ſhould be adjudged inſufficient, and the party diſcharged thereupon of his impriſonment; and the court below may iſſue new proceſs upon the indictment. 2 *Hal. Hiſt. P. C.* 210, 211. 1 *Salk.* 352. *Comb.* 2.

If the Chief Juſtice of the King's Bench, commit one to the marſhal by his warrant, he ought not to be brought to the bar by rule, but by *habeas corpus.* 1 Salk. 349.

Alſo by the *habeas corpus* act (31 *Car.* 2. *cap.* 2. *par.* 11.) it is enacted, and declared, "That an *habeas corpus*, according to the intent and true meaning of the act, may be directed and run into, any county palatine, the cinque ports, or other privileged places within the kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, and the iſles of *Jerſey* or *Guernſey*; any law, &c."

2. *What ſhall be a proper return of an* habeas corpus.

In extrajudicial commitments, the warrant of a commitment ought to be returned *in hac verba* on a *habeas corpus*: but when a man is committed by a court of record, it is in the nature of an execution for a contempt, and in ſuch caſe the warrant is never returned. 5 *Mod.* 156. The cauſe of impriſonment muſt be particularly ſet forth in the return of the *habeas corpus*, or it will not be good; for by this the court may judge of it, and with a *paratum habeo*, that they may either diſcharge, bail, or remand the priſoner. 2 *Nelſ. Abr.* 915. *Cro. Jac.* 543. If a commitment is without cauſe, or no cauſe is ſhewn, a priſoner may be delivered by *habeas corpus.* 1 *Salk.* 348.

It has been adjudged, that on a commitment by the houſe of commons, of perſons for contempt and breach of privilege, no court can deliver on a *habeas corpus*: but *Holt* Ch. J. was of a contrary opinion. 2 *Salk.* 404, 503. A writ of error may be allowed by the King in ſuch a caſe, &c. and it is not to be denied *ex debito juſtitiæ*; though it has been a doubt, whether any writ of error lay upon a judgment given on a *habeas corpus*. *Ibid.* A man may not be delivered from the commitment of a court of *Oyer* and *Terminer*, by *habeas corpus*, without writ of error: and where there appears to be good cauſe, and a defect only in the form of the commitment, he ought not to be diſcharged. 1 *Salk.* 348.

By the 31 *Car.* 2. *cap.* 2. *ſect.* 2. it is enacted, "That if any officer, &c. ſhall neglect, or refuſe to make returns, as by the act is directed or to bring the body of the priſoner, according to the command of the writ, or ſhall not, within within ſix hours after demand, deliver a true copy of the commitment, &c. he ſhall forfeit for the firſt offence 100*l.* for the ſecond offence 200*l.* and be made incapble to hold his office."

If any one, notwithſtanding the ſtatute, ſhould be wicked enough not to return an *habeas corpus*, you may ſue out an *alias*, if that is not returned ſue out a *pluries*, and on that not being returned, move the court for an *attachment*. *F. N. B.* 68. 11 *H.* 4. 86. 1 *Mod.* 195. 2 *Lev.* 128, 9. 5 *Mod.* 21. Perhaps the court would grant an *attachment*, for not obeying the firſt writ.

For a falſe return there is regularly no other remedy againſt the officer, than an action on the caſe at the ſuit of the party grieved, and an information or indictment at the ſuit of the King. 6 *Mod.* 90. 1 *Salk* 349. But no action lies until the return be filed. 1 *Salk.* 352.

As upon the return of the writ the court is to judge, whether the cauſe of the commitment and detainer be according to law, or againſt it; ſo the officer or party in whoſe cuſtody the priſoner is, muſt, according to the command of the writ, certify on the return thereof, the day, cauſe of caption and detainer. *Vaugh.* 137.

It ſeems to be agreed, that no one can in any caſe controvert the truth of the return to a *habeas corpus*, or plead or ſuggeſt any matter repugnant to it; yet it hath been holden, that a man may confeſs and avoid ſuch a return by admitting the truth of the matters contained in it, and ſuggeſting others not repugnant, which take off the effect of them. *Cro. Eliz.* 821. 5 *Co.* 71. *b.* 2 *Hawk. P. C.* 113.

It ſeems, that, before the return filed, any defect in form, or the want of an averment of a matter of fact, may be amended; but this muſt be at the peril of the officer, in the ſame manner as if the return were originally what it is after the amendment. 1 *Mod.* 102, 103.

But after the return is filed, it becomes a record of the court, and cannot be amended. 1 *Mod.* 102, 103.

3. *Of bailing, diſcharging, or remanding the priſoner, brought up by* habeas corpus.

Upon the return of the *habeas corpus* the priſoner is regularly to be diſcharged, bailed or remanded; but if it be doubtful which the court ought to do, it is ſaid that the priſoner may be bailed to appear *de die in diem* till the matter is determined. 5 *Mod.* 22. *Style* 16.

By the petition of right, (or 17 *Car.* 1. *cap.* 10.) the court muſt within three days after the return of the *habeas corpus*, either diſcharge, bail or remand the priſoner. But it ſeems that a commitment by the court of King's Bench to the Marſhalſea, is a remanding, being an impriſonment within the ſtatute. 5 *Mod.* 22. 3 *New Abr.* 14.

Alſo it hath been ruled, that the court of King's Bench may, after the return of the *habeas corpus* is filed, remand the priſoner to the ſame gaol from whence he came, and order him to be brought up from time to time, till they ſhall have determined whether it is proper to bail, diſcharge, or remand him abſolutely. 1 *Vent.* 330.

And tho' in doubtful caſes the court is to bail, or diſcharge the party on the return of the *habeas corpus*; yet if a perſon be convicted, and the conviction on the return of the *habeas corpus* appears only defective in point of form, it is at the election of the court either to diſcharge the party, or oblige him to bring his writ of error. 1 *Salk.* 348. 5 *Mod.* 19, 20.

If a perſon be committed by the admiralty in execution, he is not removeable by *habeas corpus* into *B. R.* to anſwer an action brought againſt him there; but it might be otherwiſe if an action had been before depending. 1 *Salk.* 351. Where there is an action in *B. R.* precedent to the King's ſuit, on which the party is out on bail, *habeas corpus* may be brought by the bail, &c. and the priſoner turned over; tho' this was greatly oppoſed in favour of the King's execution. *Ibid.* 353.

It remains now to treat of the *habeas corpus ad faciendum & recipiendum*, the nature of which hath been already explained, and it is further to be obſerved, That—No writ of *habeas corpus*, or other writ to remove a cauſe out of an inferior court, ſhall be allowed, except delivered to the judge of the court, before the jury to try the cauſe have appeared, and before any of them are ſworn. 43 *Eliz. cap.* 5. And writs to remove ſuits commenced in an inferior court of record; ſhall not be obeyed, unleſs delivered to the ſteward of the court before iſſue or demurrer joined, &c. And a ſuit ſhall never be removed again, after a *procedendo* allowed. 21 *Jac.* 1. *c.* 23. Nor ſhall any ſuit be removed where the thing in demand doth not exceed 5*l.* or where the freehold, inheritance, title of land, &c. are concerned. And judges are to proceed in ſuits in inferior courts laid not to exceed the ſum of 5*l.* although there may be actions againſt the defendant, wherein the plaintiff's demands may exceed that ſum, by *Stat.* 12 *Geo.* 1. *c.* 29.

If the ſteward of an inferior court proceeds after an *habeas corpus* delivered and allowed, the proceedings are void; and the court of *B. R.* will award a *ſuperſedeas*; and grant an attachment againſt the ſteward for the contempt. *Cro. Car.* 79, 296. A *habeas corpus* ſuſpends the power of the court below, ſo that if they proceed, it is void, and *coram non judice.* And on a *habeas corpus,* if the record be filed, no *procedendo* can go to the court below; but where a record below is not filed, or not returned, it may be granted. 1 *Salk.* 352.

A *habeas corpus cum cauſa* removes the body of the party for whom granted, and all the cauſes depending againſt him; and if upon the return thereof the officer doth not return all the cauſes, *&c.* it is an eſcape in him. 2 *Lil. Abr.* 2. A judge will not grant a *habeas corpus* in the vacation, for a priſoner to follow his ſuits; but the court may grant a ſpecial *habeas corpus* for a priſoner to be at his trial in the vacation-time. *Ibid.* 3. And the court may grant a *habeas corpus* to bring a priſoner, not in priſon on execution, out of priſon, to be a witneſs at a trial; though it is at the peril of the party ſuing out the writ, that the priſoner do not eſcape. *Style* 119. *Trin.* 1640. But no perſon ought to take out a *habeas corpus* for any one in priſon, without his conſent; except it be to turn him over to *B. R.* or charge him with an action in court. 2 *Lil.* A man brought into *B. R.* by *habeas corpus,* ſhall not be removed thence till he has anſwered there; he ſhall be detained until then, and after he may be removed. 1 *Salk.* 350.

A perſon is in cuſtody upon a criminal, and alſo on a civil matter, if he would move himſelf by *habeas corpus,* there ought to be but one *habeas corpus* of the crown ſide or plea ſide, and both cauſes are to be returned. *Mod. Caſ.* 133. If there be judgment againſt a defendant in the court of *B. R.* and another in *C. B.* on which he is in execution in the *Fleet,* he may have an *habeas corpus* to remove himſelf into *B. R.* where he ſhall be in cuſtody of the marſhal for both debts. *Dyer* 132.

Where an action is founded on the cuſtom of *London,* for a thing actionable there, and not elſewhere; if it be removed by *habeas corpus,* a *procedendo* ſhall be granted: but the declaration itſelf ought to be returned upon the *habeas corpus,* and then the court will ſee what was the cauſe, *&c.* For the ſpecial matter and all the proceedings are to be in the return in this caſe; as well as in an action on a by-law, to take notice thereof. *Carth.* 75, 76. Before a *habeas corpus* is returned and filed, it may be amended; but not afterwards. 2 *Lil. Abr.* 2.

A *feme covert* was arreſted in *London,* as a *ſole trader,* and diſcharged, by a judge of *B. R.* on *habeas corpus,* bail being put in to appear in *B. R.* The next term, on motion, the court granted a *procedendo,* affidavit of plaintiff's cauſe of action, *&c.* being made, for plaintiff could only proceed in *London.* Here, of courſe, there was not any declaration. *Vide* an excellent caſe, on the cuſtom of *London,* in this reſpect; *Lavie and another aſſignees of Jane Cox a bankrupt,* v. *Phillips and others aſſignees of John Cox a bankrupt.* 3 *Bur.* 1776. wherein the reaſon of the *procedendo* being granted, is fully diſcuſſed and determined.

A *habeas corpus* is grantable, without motion, to remove a perſon upon an arreſt; but not where committed for a crime. 1 *Lev.* 1. In ſuing out theſe writs in *B. R.* to remove a cauſe, *&c.* they are firſt to be carried to the other court to be allowed; and ſome few days after the delivery, the return muſt be called for, and ſpecial bail put in at a judge's chamber; which being done, within four days in term, and ſix days in the vacation, the cauſe is removed to the ſuperior court. *Practic. Solic.* 262. And if the defendant be actually a priſoner, he ſhall not be delivered from priſon till the bail on the *habeas corpus* be accepted, or juſtified. *Ibid.*

If a defendant arreſted cannot find bail, and would be removed to the *King's Bench* or *Fleet* priſon, a *habeas corpus* is to be ſued out; and they ſhall make out a return, and ſend an officer with the defendant to a judge's chamber, and there a *committitur* is made, whereupon the judge's tipſtaff takes the priſoner into cuſtody, and charges him in priſon; and he may agree with the marſhal or warden, for the liberty of the rules, *&c.* *Practiſ. Attorn. Edit.* 1. *p.* 124. When the defendant is in cuſtody of a bailiff, or in any other priſon, and would be turned over to the *King's Bench,* the practice is the ſame: the *habeas corpus* directed to the ſheriff of *London* and *Middleſex* is to be delivered, and he, after ſearch in his office for what writs he hath againſt the defendant will make return of them, and then the bailiff or keeper of the other priſon, who hath the defendant in cuſtody, is to carry him to a judge's chamber, where he will be turned over, *ut ſupra.* Ibid.

Habendum. In every *deed* or conveyance there are two principal parts, the *premiſſes,* and the *habendum*; the office of the firſt is to expreſs the name of the grantor and grantee, and the thing granted: and the *habendum* is to limit the eſtate, by which the general implication in the premiſſes may be qualified: as in a leaſe or grant to two perſons, if the *habendum* be to one for life, and the remainder to the other for life, this alters the general implication of the jointenancy, which would paſs by the premiſſes, if the *habendum* were not. 2 *Rep.* 55. And where things which lie in grant are conveyed to take effect, barely on delivery of the deed of grant without other ceremony; in ſuch caſe, if the *habendum* be for a leſs eſtate than in the premiſſes, or be repugnant to it, the *habendum* is void: but when a ceremony is requiſite to the perfection of an eſtate granted, and not a bare delivery only of the deed; and to the eſtate limited by the *habendum,* nothing is required to perfect it; there, tho' the *habendum* is of a leſs eſtate than the premiſſes, the *habendum* ſhall ſtand good, and qualify the eſtate granted in the premiſſes. 2 *Rep.* 23. 2 *Nelſ.* 920.

An *habendum* may not only qualify what is granted in the premiſſes; but it may alſo enlarge what is thus granted, or explain the premiſſes: though the *habendum* ſhall never introduce one who is a ſtranger to the premiſſes. 1 *Jones* 4. 3 *Leon.* 60. If a bargain and ſale be made without expreſſing to whom; although it were *habendum* to *A. B.* who is a party to the deed, it is not good; becauſe the *habendum* is only to limit an eſtate, and not to give any thing. *Cro. Eliz.* 585. 903, 2 *Lil.* 8. If one thing be granted in the premiſſes of a deed, *habendum* with another thing, which is not appendant, *&c.* this other thing ſhall not paſs. *Hob.* 161, 172. None can take by any deed, who is not named in the premiſſes: but though an eſtate limited by the *habendum* to a man that is no party, is void by way of eſtate; it may be good in remainder. *Hob.* 313. *Godb.* 51. It is ſaid, that an *habendum* from the day of the date, with reſpect to a freehold is void, becauſe *in futuro.* *Denn* on the demiſe of *Warren* v. *Fearnſide, Wilſ. Rep. par.* 1. *fo.* 176. See *Deed.*

Habentia, Signifies riches: In ſome ancient charters, *habentes homines* is taken for rich men; and we read, *Nec Rex ſuum paſtum requirat, vel* habentes homines *quos nos dicimus* feaſting men. *Mon. Angl. Tom.* 1. *p.* 100.

Haberdaſhers. If any perſons work *hats* with foreign wool, and not having ſerved an apprenticeſhip to the trade, *&c.* they ſhall forfeit the goods and 5 *l.* And no perſon may dye any *caps* with bark, *&c.* but only with copperas and gall, or woad and madder. *Stat.* 8 *Eliz. cap.* 7. None ſhall make *hats* or *felts,* that hath not ſerved ſeven years in *felt-making*; nor retain any but journeymen who have lawſully ſerved; or have above two apprentices at once, and thoſe not for leſs than ſeven years time, *&c.* on pain of 5 *l.* a month: but *hatmakers* may employ their own children in the trade. 1 *Jac.* 1. *cap.* 17. And the maſters and wardens of *Haberdaſhers* in *London,* calling to them one of the company of *Cappers,* and another of the *Hatmakers,* and mayors, *&c.* of towns and corporations, may ſearch all *hatters,* and puniſh them that offend, by fines. *Stat. ibid.* To prevent the exportation of *hats* out of the plantations abroad, which may be ſeized, and offenders are liable to 500 *l.* penalty; and for regulating the trade of *hat-making* there, *&c.* See *ſtat.* 5 *Geo.* 2. *c.* 22.

Habere facias Poſſeſſionem, Is a judicial writ that lies where one hath recovered a term for years in action of *ejectione firmæ,* to put him into *poſſeſſion.* *F. N. B.* 167. And one may have a new writ, if a former be not well executed. *Mich.* 21 *Car.* 1. *B. R.* A ſheriff delivered poſſeſſion in the morning, by virtue of an *habere facias poſſeſſionem,* and ſome time in the ſame day, after he was gone, the defendant turned the plaintiff out of poſſeſſion; it was held, that if he had been turned out immediately, or whilſt the ſheriff or his officers were there, an attachment might be granted againſt the defendant; for this had been a diſturbance in contempt of the execution; but it being ſeveral hours after the plaintiff was in poſſeſſion, the court doubted, but agreed to grant a new *habere facias*, &c. 1 *Salk*. 321. 2 *Nelſ. Abr*. 779.

If the ſheriff delivers poſſeſſion of more than is contained in the writ of *habere facias poſſeſſionem*, an action on the caſe will lie againſt him, or an aſſiſe for the lands. *Style* 238. The ſheriff cannot return upon this writ, that another is tenant of the land by right, but muſt execute the writ, for that will not come in iſſue between the demandant and him. 6 *Rep*. 52. See *Ejectment*.

Habere facias Seiſinam, Is a writ directed to the ſheriff, to give *ſeiſin* of a freehold eſtate recovered in the King's courts, by *ejectione firmæ*, or other action. *Old Nat. Br*. 154. The ſheriff may raiſe the *poſſe comitatus* in his aſſiſtance, to execute theſe writs: and where a houſe is recovered in a real action, or by ejectment, the ſheriff may break open the doors to deliver poſſeſſion and ſeiſin thereof; but he ought to ſignify the cauſe of his coming, and requeſt that the doors may be opened. 5 *Rep*. 91. This writ alſo iſſues ſometimes out of the records of a fine, to give the cogniſee ſeiſin of the land whereof the fine is levied. *Weſt. Symb. par*. 2. And there is a writ called *Habere facias ſeiſinam, ubi Rex habuit annum, diem & vaſtum*; for the delivery of lands to the Lord of the fee, after the King hath had the year, day, and waſte in the lands of a perſon convict of felony. *Reg. Orig*. 156.

Habere facias Viſum, A writ that lies in divers caſes in real actions, as in *formedon*, &c. where a *view* is required to be taken of the lands in controverſy. *Reg. Jud*. 26, 28, &c. *F. N. B.*

Habergeon, (From the Germ. *Hals*, *Collum*, & *Bergen*, *tegere*) An helmet which covered the head and ſhoulders. *Blount*.

Haberjects, (*Haubergetæ*) A ſort of cloths of a mixed colour, mentioned in *Magna Charta*, *cap*. 26.

Habiliments of War, Armour, utenſils, or proviſions for the maintaining of war. 3 *Eliz. cap*. 4.

Hable, (*Fr.*) Signifies a ſea-port town; this word is uſed in 27 *H*. 6. *cap*. 3.

Hachia, A hack, pick, or inſtrument for digging. *Placit*. 2 *Ed*. 3.

Hackney Coaches and Chairs. They are under the direction of certain commiſſioners appointed by act of parliament. See 13 & 14 *Car*. 2. *c*. 2. 5 *W*. & *M*. *c*. 22. 9 *Ann*. *c*. 23. 10 *Ann*. *c*. 19. *ſ*. 158. 12 *Geo*. 1. *c*. 15. 33 *Geo*. 2. *c*. 25.

Hadbote, (*Sax.*) A recompence or amends for violence offered to perſons in holy orders. *Sax. Dict.*

Hade of Land, (*Hada terræ*) Is a ſmall quantity of land, thus expreſſed:——*Surſum reddidit in manus domini duas acras terræ continentes decem ſeliones & duas* Hadas, *Anglic*. ten *ridges*, and two *hades*, *jacent. inter terr*. &c. Rot. Cur. Maner. de Orleton, *Anno* 16 *Jac*.

Haderunga, Reſpect or diſtinction of perſons; from the Sax. *Had*, *Perſona*, and *Arung*, honoured and admired. *Leg. Ethelred.*

Hadgonel, (*Sax.*) Seems to be a tax or mulct.——*Item quando aliquis delegabit terram burgagii, &c. quieta* Hadgonel & *maxime celerario*. Mon. Ang. par. 1. fol. 302.

Hærede abducto, Is a writ that anciently lay for the Lord, who having by right the wardſhip of his tenant under age, could not come by his body, the ſame being carried away by another perſon. *Old Nat. Br*. 93.

Hærede deliberando alii, qui habet Cuſtodiam terræ, A writ directed to the ſheriff to require one that had the body of him who was ward to another, to deliver him to the perſon whoſe ward he was, by reaſon of his land. *Reg. Orig*. 161.

Hærede Rapto, Alſo a writ; ſee *Raviſhment of Guard*. Reg. Orig. 163.

Hæredipeta, The next heir to lands.——*Et nullus* Hæredipeta *ſuo propinquo vel extraneo periculoſa ſane cuſtodia committatur*. Leg. H. 1. cap. 70.

Hæretico comburendo, Is a writ that lay againſt an *Heretick*, who having been convicted of *hereſy* by the biſhop, and abjured it, afterwards fell into the ſame again, or ſome other, and was thereupon delivered over to the ſecular power. *F. N. B*. 69. By this writ, grantable out of Chancery, upon a certificate of ſuch conviction, *Hereticks* were burnt; and ſo were likewiſe witches, ſorcerers, &c. But the writ *De Hæretico comburendo* lies not at this day. 12 *Rep*. 93. *Stat*. 29 *Car*. 2. *c*. 9.

Hafne, Is a *Daniſh* word for haven or port; and *Hafne Courts* are granted *inter alia*, by letters patent of *Rich*. duke of *Glouc*. admiral of *England*. 14 Aug. Anno 5. Edw. 4.

Haga, (Sax. *Manſio*) A houſe in a city or borough. *Domeſday*. An ancient *anonymous* author, expounds *haga* to be a houſe and ſhop, *domus cum ſhopa*: and in a book which belonged to the *Abby of St. Auſtin* in *Canterbury*, mention is made of *hagan monachis*, &c. See *Co. Lit*. 56.

Hagia, A hedge, (Sax. *Hæg*, melted into *hay*, whence *haia*) Mon. Angl. Tom. 2. p. 273.

Haia, Alſo an hedge: ſometimes taken for a park, &c. encloſed. *Bract. lib*. 2. *c*. 40. And *haiement* is uſed for a hedge-fence. *Rot. inq*. 36 *Ed*. 3.

Hail-ſhot. The *ſtat*. 3 *Ed*. 6. againſt ſhooting of *hail-ſhot*, or more pellets than one, by any perſon under the degree of a Lord, &c. is repealed. *Stat*. 6 & 7 *W*. 3. *c*. 13.

Hair-powder, Not to be mixed with lime, alabaſter, &c. under penalties, by *ſtat*. 4 *Geo*. 2. *c*. 14. Vide *Starch-powder*.

Hake, A ſort of fiſh dried and ſalted; hence the proverb obtains in *Kent*, *As dry as a Hake*. Paroch. Antiq. 575. Spelm.

Haketon, A military coat of defence. *Walſ. in Ed*. 3.

Half-blood, Is no impediment to *deſcents* of *fee-ſimple* lands of the *crown*, or to *dignities*, or in deſcent of *eſtates-tail*: but in other caſes it is an impediment. Adminiſtration is grantable to the *half-blood* of the deceaſed, as well as to the whole blood; and *half-blood* ſhall come in for a ſhare of an inteſtate's eſtate, equally with the whole blood, they being next of kin, in equal degree. *Style* 74. 1 *Vent*. 307. 22 *Car*. 2. *c*. 10. See *Demy Sangue*, and *Inteſtates*.

Halfendeal, Signifies the moiety, or one half of a thing; as *fardingdeal* is a quarter, or fourth part of an acre of land, &c.

Half-mark, (*Dimidia Markæ*) Is a noble, or ſix ſhillings and eight pence in money. If a *writ of right* is brought, and the ſeiſin of the plaintiff, or his anceſtor, be alledged, the ſeiſin is not traverſable by the defendant, but he muſt render the *half-mark* for the inquiry of the ſeiſin; which is as much as to ſay, that though the defendant ſhall not be admitted to deny, that the plaintiff or his anceſtors were ſeiſed of the land in queſtion, and to prove his denial; yet he may be allowed to tender *half a mark* in money, to have an inquiry made, whether the plaintiff, &c. were ſo ſeiſed, or not. *F. N. B*. 5. *Old Nat. Br*. 26. But in a writ of advowſon brought by the King, the defendant may be permitted to traverſe the ſeiſin, by licence, obtained from the King's ſerjeant; ſo that the defendant ſhall not be obliged to proffer the *half-mark*, &c. F. N. B. 31.

Half-Seal, Is what is uſed in the *Chancery*, for ſealing of commiſſions to *delegates*, upon any appeal to the court of delegates, either in eccleſiaſtical or marine cauſes. *Stat*. 8 *Eliz*. *c*. 5.

Half-Tongue. See *Medietas Linguæ*, as to pleas and trials of *foreigners*.

Halke, (From the Sax. *Heale*, i. e. *Angulus*) An hole; ſeeking in every *halke*, &c.

Hall, (Lat. *Halla*, Sax. *Heall*) Was anciently taken for a manſion-houſe or habitation, being mentioned as ſuch in *Domeſday*, and other records; and this word is retained in many counties of *England*, eſpecially in the county palatine of *Cheſter*, where almoſt every gentleman of quality's ſeat is called a *Hall*.

Hall, or Common Hall. There is a *Common Hall* for electing a mayor, ſheriffs, and other officers of the city of *London*, aſſembled at *Guild-hall* by the Lord Mayor. *Ord*. 7 *W*. 3.

Hallage, Is toll paid for goods or merchandize vended in a *hall*; and particularly applied to a fee or toll due for cloth, brought for ſale to *Blackwell-Hall* in *London*; Lords of fairs or markets, are entitled to this fee. 6 *Rep.* 62.

Hallamas, The day of *All Hallows* or *All-Saints*, viz. *November* 1. and one of the croſs quarters of the year, was computed in ancient writings from *Hallamas* to *Candlemas*. Cowel.

Hallamſhire, Is a part of the county of *York*, in which the town of *Sheffield* ſtands. 21 *Jac.* 1. *c.* 23.

Hallmote or **Halimote,** (Sax. *Heall*, i. e. Aula, & *Gemote*, Conventus) Was that court among the *Saxons*, which we now call a court baron; and the etymology is from the meeting of the tenants of one *hall* or manor. The name is ſtill kept up in ſeveral places in *Herefordſhire*; and in the records of *Hereford*, this court is entered as follows, *viz.* Hereford Palatium, *ad* Halimot *ibidem tent.* 11 *Die Octob. Anno Regni Regis Hen.* 6. *&c.* It hath been ſometimes taken for a convention of citizens in their public *hall*, where they held their courts, which was alſo called *Folkmote* and *Halmote*: But the word *Halimote* is rather the lord's court held within the manor, in which the differences between the tenants were determined.——*Omnis cauſa terminetur vel hundredo, vel comitatu, vel* halmote *ſocam habentium, vel dominorum curia.* Leg. Hen. 1. cap. 10.

Halymote, Is properly an *holy* or eccleſiaſtical court; but there is a court in *London*, formerly held on the *Sunday* next before St. *Thomas*'s day, called the *halymote* or *holy-court*, (*Curia Sanctimotus*) for regulating the *bakers* of the city, *&c.*

Halywercfolk, *Holyworkfolk*, or people who enjoyed lands by the ſervice of repairing or defending a church or ſepulchre; for which pious labours they were exempt from all feodal and military ſervices. It did ſignify ſuch of the province of *Durham* in particular, as held their lands to defend the corpſe of St. *Cuthbert*; and who claimed the privilege not to be forced to go out of the biſhoprick, either by the King or Biſhop. *Hiſt. Dunelm. apud Wartoni Ang. Sax. par.* 1. *p.* 749.

Ham, Is a *Saxon* word, uſed for a place of dwelling; a village or town: hence the termination of ſome of our towns, as *Nottingham*, *Buckingham*, *&c.* Alſo a home cloſe, or little narrow meadow is call *ham*.

Hambling, or **Hameling of Dogs,** Is the ancient term uſed by foreſters for *expeditating*. Manwood.

Hameſecken. Burglary or nocturnal houſe-breaking, was by our antient law called *hameſecken*, as it is in *Scotland* to this day. *Black. Com.* 4 *V.* 223.

Hamlet, and **Hamel** or **Hampſel,** (From the Sax. *Ham*, i. e. *Domus*, and Germ. *Let*, Membrum) Signify a little village, or part of a village or pariſh; of which three words, *hamlet* is now only uſed; though *Kitchen* mentions the other two, *hamel* and *hampſel*. By *Spelman* there is a difference between *villam integram*, *villam dimidiam*, and *hamletam*; and *Stow* expounds it to be the ſeat of a freeholder. Several country towns have *hamlets*, as there may be ſeveral *hamlets* in a pariſh; and ſome particular places may be out of a town or *hamlet*, though not out of the county. *Wood.* 3.

Hamfare, Breach of the peace in a houſe. *Brompton in Legibus H.* 1. *c.* 80.

Hamſoken, (Sax. *Hamſocen*) Is the liberty or privilege of a man's own houſe; alſo a franchiſe granted to lords of manors, whereby they hold pleas, and take cogniſance of the breach and violation of that immunity. And likewiſe *ſignificat quietantiam miſericordiæ intrationis in alienam domum vi & injuſte.* Fleta, lib. 1. cap. 47. In *Scotland* violations of this kind are equally puniſhable with raviſhing a woman. *Skene* And our old records expreſs *burglary* under the word *hamſocne*.

Hanaper Office. One of the offices ſo called, belonging to the Court of Chancery. Writs relating to the buſineſs of the ſubject and their returns, were, according to the ſimplicity of ancient times, originally kept in an hamper, *in hanaperio*; and the others, relating to ſuch matters wherein the crown is immediately, or mediately concerned, were preſerved in a little ſack or bag, *in parva baga*; and thence hath ariſen the diſtinction, of the *Hanaper Office*, and *petty* bag office, which both belong to the Common law Court in Chancery. *Black. Com.* 3 *V.* 49. and vide *Gilb, Chanc. p.* 10.

Handborow, A ſurety or manual pledge, *i. e.* an inferior undertaker; for *headborow* is the ſuperior or chief. *Spelm.*

Hand-habend, A thief caught in the very ſact, having the goods ſtolen in his hand. *Leg. Hen.* 1. *cap.* 59. *Fleta, lib.* 1. *cap.* 38.

Hand in and out, Is the name of an unlawful *game*, now diſuſed, and prohibited by ſtatute 17 *Ed.* 4. *c.* 2.

Handful, In meaſuring, is four inches by the ſtandard. *Anno* 33 *H.* 8. *c* 5.

Handgrith, (From the Sax. *Hond*, manus, and *Grith*, *Pax*) Peace or protection given by the King, with his own hand.——*Hæc mittunt hominem in miſericordia Regis, infractio ſeu violatio pacis quam per* manum *ſuam dabet alicui.* Leg. Hen. 1.

Hand-gun, An engine to deſtroy game. *Stat.* 33 *Hen.* 8. See *Guns*.

Handy-warp, A kind of cloth. *Stat.* 4 *&* 5 *Ph. & M. c.* 5.

Hanig, A term for cuſtomary labour to be done and performed. *Mon. Ang. Tom.* 2. *p.* 264.

Hankwit alias **Hangwite,** (From the Sax. *Hangan*, i. e. ſuſpendere, & *wite* mulcta) Is a liberty granted to a perſon, whereby he is quit of a felon or thief hanged without judgment; or eſcaped out of cuſtody. *Raſtal.* We read it interpreted to be quit *de laron pendu ſans ſerjeants le Roy*, i. e. without legal trial: And elſewhere, *mulcta pro latrone præter juris exigentiam ſuſpenſo vel elapſo.* And it may ſignify a liberty, whereby a lord challenges the forfeiture for him who hangs himſelf within the lord's fee. *Domeſday.*

Hanper or **Hanaper,** (*Haniperium*) The *Hanaper* of the *Chancery*; it ſeems to be the ſame as *fiſcus* originally in the *Latin*. 10 R. 2. c. 1.

Hanſe, (An old *Gothick* word) Signifies a ſociety of *merchants*, for the good uſage and ſafe paſſage of merchandiſe from one kingdom to another. The *hanſe* or *mercatorum ſocietas*, was and in part yet is endowed with many large privileges by Princes within their territories; and had four principal ſeats or *ſtaples*, where the *Almain*, or *German* and *Dutch* merchants, being the founders of this ſociety, had an eſpecial houſe: one of which was here in *London*, called the *Steel-Yard*. Ortelius's Index ad Theatr. verbo *Aſiatici*.

Hans Towns, In *Germany*, *&c.* ſo named, either becauſe they lay near the ſea, or from the Gothick *Anſi*, which is taken for thoſe who were the richeſt of the people; and from thence it is inferred, that theſe towns were the chiefeſt for trade or riches: or it may come from the German *Hanſa*, i. e. *Societas*; a company of merchants excelling others in trade. There were at firſt *ſeven* towns diſtinguiſhed by this name; afterwards they were *ſeventy* in number.

We ſhall give an abſtract of Dr. *Robertſon's* account, which is much more perfect. Towards the middle of the thirteenth century, the nations around the *Baltick* were extremely barbarous, and infeſted that ſea with their piracies: this obliged the cities of *Lubeck* and *Hamburgh*, ſoon after they began to open ſome trade with theſe people, to enter into a league of mutual defence. They derived ſuch advantages from this union, that other towns acceded to their confederacy, and in a ſhort time *eighty* of the moſt conſiderable cities ſcattered through thoſe vaſt countries which ſtretch from the bottom of the *Baltick*, to *Cologne* on the *Rhine*, joined in the famous *Hanſeatic league*, which became ſo formidable, that its alliance was courted, and its enmity dreaded by the greateſt monarchs. The members of this powerful aſſociation formed the firſt ſyſtematic plan of commerce, known in the middle ages, and conducted it by common laws enacted in their general aſſemblies. *Hiſt. Emp. Char.* V. 1 *V.* 79, 80. See *Id. fo.* 336.

Hantelode, An arreſt, from the Germ. *Hant*, an hand, and *load*, i. e. laid; *manus immiſſio*: As arreſts are made by laying hold on the debtor, *&c.*

Hap, (Fr. *Happer*, i. e. *Rapere*, to catch) Is of the ſame ſignification with us as in the *French*; as to *hap* the rent, is where partition being made between two parceners, and more land allowed to one than the other, ſhe that has moſt of the land charges it to the other, and ſhe *haps* the rent, whereon aſſiſe is brought, *&c.* This word is uſed by *Littleton*, where a perſon *happeth* the poſſeſſion of a deed poll. *Litt. ſ.* 8.

Haque, A little hand-gun, prohibited to be uſed by ſtatute 33 *H.* 8. *c.* 6. and 2 & 3 *Ed.* 6. *cap.* 14. There is the *half-haque* or *demy-haque*, within thoſe acts.

Haquebut, A bigger ſort of hand-gun than the *haque*, from the Teuton. *haeck buyſe*; it is otherwiſe called an *horquebuſs*, vulgarly a *hagbut*. 2 & 3 Ed. 6. c. 14. *and* 4 & 5 P. & M. c. 2.

Haratium, (From the Fr. *Haras*) A race of horſes and mares, kept for breed; in ſome parts of *England* termed a *ſtud of mares*, *&c.* Spelm. Gloſſ.

Harbinger, An officer of the King's houſe, *&c.*

Harbours and **Havens.** There are many acts of parliament for repairing and improving the *harbours* and *havens* of this kingdom; ſuch as the 23 *Hen.* 8. *cap.* 7. and 28 *H.* 8. relating to the *havens* and ports of *Plymouth*, *Portſmouth*, *Falmouth*, *&c.* in *Devonſhire* and *Cornwall*; and none ſhall labour in tin works, near rivers of thoſe *havens*, but ſhall prevent the fall of ſtones and gravel therein. Caſting and unlading ballaſt, rubbiſh, *&c.* in any *harbour*, *haven*, or road, incurs the penalty of 5 *l.* by *ſtat.* 34 *Hen.* 8. *cap.* 9. The 27 of *Eliz. cap.* 1. was made for repairing *Orford haven* in *Suffolk*; and 13 & 14 *Car.* 2. and 4 *Geo.* 1. *c.* 13, *&c.* for the reparation of *Dover harbour*, *&c.* And duties are granted by theſe ſtatutes, towards effecting thereof. *Vide* the Statutes. By the *Stat.* 19 *Geo.* 2. *c.* 22. If any maſter of a ſhip ſhall caſt out of any ſhip, riding in any haven, *&c.* any ballaſt, *&c.* but only on land, where the tide never flows or runs, he may be fined by the juſtices, not more than 5 *l.* nor leſs than 50 *s.* As ſoon as any ſhip ſhall be ſunk, ſtranded, or run on ſhore in any *harbour*, *&c.* or be brought or drove in, or be there in a ruinous condition, and there ſuffered to remain, and the owner ſhall begin to carry away the rigging; on ſummons of the owner, or commander, a juſtice may ſeize the ſhip, *&c.* and by ſale thereof raiſe money to clear the *harbour*. *Stat.* 20 *Geo.* 2. *c.* 14. was made for opening *Southwold haven* in *Suffolk*. *Stat.* 20 *Geo.* 2. *c.* 18. was made for improving *Sunderland harbour* in *Durham*. See *Stat.* 27 *Geo.* 2. *c.* 8. for improving and inlarging the harbour of *Leith*.

Hardwic, Mentioned in *Domeſday*, and by *Spelman*. See *Herdlwick*.

Hares, The penalty of taking and killing them, by ſtatute 1 *Jac.* 1, *&c.* Vide *Game*.

Harlots. If any vintner, alehouſe-keeper, *&c.* in *London*, ſhall permit any *harlots*, or common women of their bodies, to come into their houſes to eat, or drink, or otherwiſe to be converſant or abide there; they ſhall be liable to impriſonment, and alſo the women and *harlots*. Artic. Wardmote 23.

Harneſs, (Fr. *Harniſch*) Signifies all warlike inſtruments. *Hoved. p.* 725. *Matt. Paris.* The tackle or furniture of a ſhip, was alſo called *harneſs* or *harneſium*. Pl. Parl. 22 Ed. 1.

Haro, **Harron**, An *outcry* after felons and malefactors; and the original of this *clameur de haro* comes from the *Normans*. Cuſtum. de Normand. Vol. 1. p. 104.

Harping-Irons, Are iron inſtruments for the ſtriking and taking of *Whales*: And thoſe that ſtrike the fiſh with them are called *Harpiniers*, or *Harpooners*. Merch. Dict.

Harriers, (*Harecti canes*) Small hounds, for hunting the *hare*: Anciently ſeveral perſons held lands of the King, by the tenure and ſervice of keeping a pack of *beagles* and *harriers*. Cart. 12 Ed. 1.

Hart, Is a ſtag, or male deer of the foreſt five years old compleat; and if the King or Queen do hunt any ſuch, and he eſcape alive, then he is called an *Hart Royal*: And where by the hunting he is chaſed out of the foreſt, proclamation is uſually made in the adjacent places, that in regard of the diverſion the beaſt hath afforded the King or Queen, none ſhall hurt or hinder him from returning to the foreſt; and then he is called a *Hart Royal proclaimed*. Manwood's Foreſt Laws, par. 2. cap. 4.

Harveſt Workmen, May be licenſed by juſtices of peace to go into other counties to work, *&c.* *Stat.* 13 & 14 *Car.* 2. *c.* 12.

Haſta Porci, A ſhield of brawn——Johannes de Muſgrave *tenet terras in* B. *de domino rege per ſervitium deferendi domino regi unam* haſtam porci, *&c.* Paroch. Antiq. 450.

Hatches, Are certain dams made of clay and earth, to prevent the water iſſuing from the works and tin waſhes in *Cornwall*, from running into the freſh rivers: And the tenants of ſeveral manors there, are bound to do certain days work *ad le hatches*, or *hacches*. *Stat.* 27 *Hen.* 8. *c.* 23. And from a *hatch*, gate, or door, ſome houſes ſituate on the highway, near a common gate, are called *Hatches*.

Hats and Caps. A title in the ſtatute law. See Stat. 8 *Eliz. c.* 7. *Haberdaſhers.*

Haur, (From the Fr. *Hair*) Is uſed for hatred. *Leg. W.* 1. *c.* 16.

Hauthoner, (*Homo Loricatus*) A man armed with a coat of mail.——*Et faciendo ſervitium de* Hauthoner, *quantum pertinet ad villam*, *&c.* Charta Galfridi de Dutton, temp. H. 3.

Haw, A ſmall parcel of land ſo called in *Kent*; as a *Hemphaw* or *Beanhaw*, lying near the houſe, and incloſed for thoſe uſes. *Sax. Dict.* But Sir *Edward Coke*, in an antient plea concerning *Feverſham* in *Kent*, ſays *Hawes* are houſes. *Co. Lit.* 5. See *Haga*.

Hawgh or **Howgh**, Signifies a green plot in a valley, as they uſed it in the *North* of *England*. Camb.

Hawberk alias **Hawbert**, (Fr. i. e. *Lorica*) He who holds lands in *France* by finding a coat or ſhirt of mail, and to be ready with it when he ſhall be called, is ſaid to have hauberticum *feudum*, *Fief de* Haubert: And *Hawberk*, with our anceſtors, had the ſame ſignification, and ſo it ſeems to be uſed in the *ſtat.* 13 *Ed.* 1. *cap.* 6.

Hawks. The ſtealing of an *hawk*, or concealing it, after proclamation made by the ſheriff, is felony with clergy: But this extends only to long-winged *hawks*, of the kind of *falcons*; and not to *goſs-hawks*, or *ſparrow-hawks*. 34 *Ed.* 3. 37 *Ed.* 3. *cap.* 19. 3 *Inſt.* 97. None ſhall kill, or ſcare away, any *hawks* from the coverts where they uſe to breed, on pain of 10 *l.* to be recovered before juſtices of the peace, and divided between the King and proſecutor. *Stat.* 11 *Hen.* 7. *cap.* 17. A *hawk* taken up, muſt be delivered to the ſheriff, if taken up by a mean perſon to be proclaimed in the towns of the county, *&c.* An action of trover and converſion lies for an *hawk reclaimed*, and which may be known by her vervels, bells, *&c.* *Hawking* for game, ſee *Game*.

Hawkers. Thoſe deceitful fellows who went from place to place, buying and ſelling braſs, pewter, and other goods and merchandize, which ought to be uttered in open market, were of old ſo called; and the appellation ſeems to grow from their uncertain wandering, like perſons that with *hawks* ſeek their game where they can find it. They are mentioned Stat. 25 *Hen.* 8. *cap.* 6. and 33 *Hen.* 8. *cap.* 4.

Hawkers and *pedlars*, *&c.* going from town to town, or houſe to houſe, are now to pay a fine or duty to the King. If they travel with an horſe, aſs, *&c.* the ſame is 8 *l.* and if on foot, 4 *l.* and be licenſed by commiſſioners appointed for that purpoſe, or be liable to certain penalties; and any perſon may ſeize a *hawker*, *etc.* till he produce his licence: travelling without licence, ſhall forfeit 12 *l.* and refuſing to ſhew their licences 5 *l.* There is alſo a forfeiture for lending a licence to hire; and it ſhall be void. 8 *and* 9 *W.* 3. *cap.* 25.

But traders in the linen and woollen manufactures, ſending their goods to markets and fairs, and ſelling them by wholeſale; makers of goods, ſelling thoſe of their own making; and makers and ſellers of *Engliſh* bone-lace, going from houſe to houſe, *etc.* are excepted out of the acts, and not to be taken as *hawkers*. 3 *and* 4 *Ann. c.* 4.

If *hawkers* and pedlars, offer any tea, *etc.* to ſale, tho' they have permits, the ſame may be ſeiſed as forfeited, *&c.*

&c. by the late act againſt running uncuſtomed goods. 9 *Geo.* 2 *c.* 35.

We now alſo call thoſe perſons *hawkers*, who go up and down the ſtreets of *London*, crying *news papers*, *pamphlets*, *&c.* and ſelling them by retail, and the women and others who ſell them by wholeſale from the preſs, are called *mercuries*. See 16 *Geo.* 2. *c.* 26.

Hay, *Haya*, Fr. *Haye*, A hedge or incloſure; alſo a net to take game. See *Haia*.

Hay-bote, Is a liberty to take thorns and other wood, to make and repair hedges, gates, fences, *etc.* either by tenant for life or years: it is alſo ſaid to be wood, for the making of rakes and forks, with which men in *Summer* make *hay*. See *Co. Litt.* 41. *Black. Com.* 2 *V.* 35.

Hay-market. Carts of *hay*, which ſtand to be ſold in the *Hay-Market*, are to pay 3 *d. per* load towards the paving and amending the ſtreet; and ſhall not ſtand loaden with *hay* after three o'clock in the afternoon, *etc.* on pain of forfeiting 5 *s.* *Hay* ſold in *London*, *etc.* between the firſt of *June* and the laſt of *Auguſt*, being new *hay* is to weigh 60 pounds a truſs; and old *hay* the reſt of the year 56 pounds, under the penalty of 1 *s.* 6 *d.* for every truſs offered to ſale, *&c.* *Stat.* 2 *W.* & *M.* *ſt.* 2. *c.* 8. *ſect.* 16, 17. 8 & 9 *W.* 3. *c.* 17. *ſect.* 1. See *Stat.* 31 *Geo.* 2. *c.* 40.

Hayward, (from the Fr. *Haye*, i. e. ſepes, & *Garde*, Cuſtodia) Is one who keeps a common herd of cattle of a town; and the reaſon of his being called *Hayward* may be, becauſe one part of his office is to ſee that they neither break nor crop the hedges of incloſed grounds, or for that he keeps the graſs from hurt and deſtruction. He is an officer appointed in the *Lord's Court*: And is to look to the fields, and impound cattle that do treſpaſs therein; to inſpect that no pound breaches be made, and if any be, to preſent them at the leet, *&c.* *Kitch.* 46. There may be a cuſtom in a manor, to have a ſurveyor of the fields or *hayward*, and for him to diſtrain cattle damage-feaſant. See *Agillarius*.

Hazard, Is an unlawful game at dice; and thoſe who play at it are called *hazardors*: And we read, Hazardor *communis ludens ad falſos talos adjudicatur, quod per ſex dies in diverſis locis ponatur ſuper colliſtrigium.* Int. Plac. Trin. 2 Hen. 4. Suſſex. 10.

Headborow, or **Headborough**, (from the Sax. *Head*, caput, & *Borge*, fidejuſſor) Signifies him who is *head* of the *frank-pledge* in *boroughs*; and who had a principal government within his own pledge; as he was called *headborow*, ſo he was alſo ſtiled *borowhead*, *borſholder*, *thirdborough*, *tithingman*, *&c.* according to the uſage and diverſity of ſpeech in ſeveral places. *Lamb.* Theſe *headborows* were the chief of the ten pledges; the other nine being denominated *handborows*, or inferior pledges: *Headborows* are now a kind of *conſtables*.

Headland, Is the upper part of ground left for the turning of the plough; whence the *headway*. Paroch. Antiq. 587.

Head-pence, Was an exaction of a certain ſum heretofore collected by the ſheriff of *Northumberland* of the inhabitants of that county, without any account therefore to be made to the King; which was aboliſhed by Stat. 23 *H.* 6. *c.* 7.

Head-Silver, Paid to lords of leets, See *Common Fine*.

Healfang or **Halsfang**, Is compounded of two *Saxon* words *Hals*, i. e. *Collum*, and *Fang*, capere, and ſignifies that puniſhment, *qua alicui collum ſtringatur*, (*colleſtrigium*). Sometimes it is taken for a pecuniary mulct, to commute for ſtanding in the *pillory*; payable to the King or Chief Lord. *Leg. H.* 1. *cap.* 11

Health, (*Injuries to*) Injuries affecting a man's *health*, are where by any unwholeſome practices of another a man ſuſtains any apparent damage in his vigour or conſtitution. As by ſelling him bad proviſions or wine; (1 *Rol. Abr.* 90.) by the exerciſe of a noiſome trade, which infects the air in his neighbourhood; (9 *Rep.* 57. *Hutt.* 135.) or by the neglect, or unſkilful management, of his phyſician, ſurgeon or apothecary. For it hath been ſolemnly reſolved, that *mala praxis* is a great miſdemeanor and offence at Common law, whether it be for curioſity and experiment, or by neglect; becauſe it breaks the truſt which the party had placed in his phyſician, and tends to his deſtruction. Ld. *Raym.* 214. Theſe are wrongs or injuries unaccompanied by force, for which there is a remedy in damages, by ſpecial action of *treſpaſs on the caſe*. Black. Com. 3 V. 122.

As to offences againſt the public *health* of the nation, there are various proviſions, as with reſpect to the *plague*. Stat. 1 Jac. 1. c. 31. 26 Geo. 2. c. 6. 29 Geo. 2. c. 8. As to *unwholſome proviſions*. 51 Hen. 3. ſtat. 6. Ord. Propiſtor. c. 7. 12 Car. c. 25. ſect. 11.

Hearth-money, A tax formerly levied, but now aboliſhed. Vide *Chimney-Money*.

Hebber-men, Fiſhermen, or pochers below *London Bridge*, who fiſh for whitings, ſmelts, *&c.* commonly at *ebbing* water; mentioned in one of the articles of the *Thames* jury, at the court of the conſervator of the river *Thames*, printed *anno* 1632. And theſe perſons are puniſhable by ſtatute 4 *H.* 7. *c.* 15.

Hebbing-wears, Are wears or engines made or laid at *ebbing water*. 23 H. 8. c. 5.

Hebdomas, (Lat.) A week. See *Week*.

Hebdomadius, The week's man, canon or prebendary in the cathedral church, who hath the care of the choir, and the officers belonging to it, for his own week. *Reg. Epiſc. Hereford. MS.* See *Ebdomary*.

Heck, Is the name of an engine to take fiſh in the river *Ouſe*. 23 H. 8. c. 18.

Heccagium, Is ſuppoſed to be rent paid to the lord of the fee for liberty to uſe the engines called *Hecks*.

Heda, A ſmall haven, wharf, or landing place. *Domeſd.* See *Hith*.

Hedagium, Toll or cuſtomary duties paid at the *hith* or wharf, for the landing goods, *&c.* from which exemption was granted by the King to ſome particular perſons and ſocieties. *Cartular. Abbat. de Radinges, MS. f.* 7.

Hedge-bote, Is neceſſary ſtuff to make *hedges*, which the leſſee for years, *&c.* may of common right take in his ground leaſed. See *Hay-bote*.

Hedge-breakers. By the ſtatute 43 *Eliz. cap.* 7. *Hedge-breakers*, *&c.* ſhall pay ſuch damages as a juſtice of peace ſhall think fit; and if not able to pay the damages, ſhall be committed to the conſtable to be whipped. And conſtables, and others, may apprehend perſons ſuſpected of *hedge-ſtealing*, and carry them before a juſtice; where not giving a good account how they came by wood, *&c.* they are not only to make ſuch recompence as the juſtice of peace ſhall adjudge, but pay a ſum not exceeding 10 *s.* for the uſe of the poor, or be ſent to the houſe of correction for a month, by 15 *Car.* 2. *c.* 2. Perſons convicted of buying ſtolen *wood*, ſhall forfeit treble value to him from whom taken. *Ibid.*

Heir, (*Hæres, ab Hæreditate*) Is he *ex juſtis nuptiis procreatus*, who ſucceeds by deſcent to the lands, tenements and hereditaments, being an eſtate of inheritance. The eſtate muſt *be fee*, becauſe nothing paſſeth *jure hæreditatis* but *fee*; and by the *Common law* a man cannot be *heir* to goods and chattels: But the *civilians* call him *hæredem, qui ex teſtamento ſuccedit in univerſum jus teſtatoris.*

Under this head may be conſidered,

I. *The ſeveral kinds of heirs.*

II. *Who may be heirs, what perſons are excluded from being heirs, and where the word* heirs *is neceſſary to create an inheritance.*

III. *Where the* heir *ſhall take advantage of the conditions, covenants,* &c. *of his* anceſtor, *what ſhall go to him,* &c. *and where the* heir *ſhall be liable to the debts and contracts of the* anceſtor.

I. *The ſeveral kinds of heirs.*

Some writers have made a diſtinction of hæres *ſanguinis*, & *hæreditatis*; a man may be *hæres ſanguinis* to a father or anceſtor, and yet upon diſpleaſure, be defeated of his inheritance: And there is an *ultimus hæres*, being he to whom lands come by *eſcheat*, for want of lawful *heir*, *&c.* The lord of whom the lands are held, or the King. *Bract. lib.* 7. *cap.* 17. But the moſt uſual diviſion is, that of *heir apparent, heir general, heir ſpecial, heir by cuſtom,* and *heir by deviſe,* called *hæres factus.*

Heir apparent, Is one during the life-time of his anceſtor; till the anceſtor's death he is only *heir apparent,* or at *law. Co. Lit.* 8. Bonds and bargains with ſuch an *heir,* to have double or treble the money lent, after his father's death, *&c.* are ſet aſide in equity; but it is by paying what was lent *bona fide,* with intereſt, if the obligor applies for relief: though in caſe the obligee ſues, he ſhall not recover what was really lent; for that would be to aſſiſt fraud. 1 *Vern.* 141, 359. Where *young heirs* enter into any bond, *Chancery* relieves againſt it, without evidence of actual impoſition; becauſe there is a ſuppoſed diſtreſs, and preſumption of a liableneſs to be impoſed on. *Barnardiſt.* 481.

Heir general. The heir general or heir at Common law is he who after his father or anceſtor's death hath a right to, and is introduced into, all his lands, tenements and hereditaments. But he muſt be of the whole blood, not a baſtard, alien, *&c.*

None but the heir general, according to the courſe of the Common law, can be heir to a warranty, or ſue an appeal of the death of his anceſtor. *Co. Lit.* 14. *a. Cro. Jac.* 217, 218.

If a condition be annexed to Borough Engliſh or Gavel-kind lands, and the condition is broken, the heir at Common law ſhall enter; for the condition is a thing of new creation, and collateral to the land: But when the eldeſt ſon enters, the heir or heirs by cuſtom, ſhall enjoy the land; for by breach of the condition they are reſtored to their ancient eſtates. *Cro. Eliz.* 204. *Plow.* 28. *Co. Lit.* 11, 12.

Special heir, Is the iſſue in tail claiming *per formam doni,* and as the ſtatute *de donis* preſerves the eſtate to him, his anceſtor cannot grant or alien, nor make any rightful eſtate of freehold to another, but for term of his own life. *Lit. ſect.* 613.

Heir by cuſtom. A cuſtom in particular places varying the rules of deſcent at Common law is good; ſuch as the cuſtom of Gavel-kind, by which all the ſons ſhall inherit, and make but one heir to their anceſtor; but the general cuſtom of Gavel-kind lands extends to ſons only, but a ſpecial cuſtom, that if one brother dies without iſſue, all his brothers may inherit, is good. *Co. Litt.* 140.

Heir by deviſe, or *hære factus,* is only a deviſee of lands, being made ſo by the *will* of the teſtator, and has no other right or intereſt than the *will* gives him. 3 *Co.* 42. *a.*

It has been held in Chancery, that ſuch an heir ſhall have the aid of the perſonal eſtate in diſcharging the debts of the teſtator. 1 *Vern.* 36, 7.

But this muſt be underſtood of an *hæres factus* of the whole eſtate, who ſhall have the benefit of the perſonal eſtate, but a deviſee of particular lands ſhall not. *Preced. Chanc.* 3.

Likewiſe there is a *lineal heir,* as the ſon of a perſon and a *collateral heir,* as brother, *&c.* Yet a man can have no right *heir,* to take lands during his life. *Dyer* 99.

II. *Who may be heir, what perſons are excluded from being heirs, and where the word* heirs *is neceſſary to create an inheritance.*

The eldeſt ſon, after the death of his father, is at common law his *heir, &c.* And if there be grandfather, father, and ſon, and the father die before the grandfather, and after the grandfather dies ſeiſed; the land ſhall go to the ſon or daughter of the father, and not to any other children of the grandfather. *Bro.* 303. And this *heir* is called *hæres jure repræſentationis,* becauſe he doth repreſent his father's perſon: but if, in this caſe, the father die without any child; his next eldeſt brother ſhall have the land as *heir,* or, for want of a brother, it deſcends to the ſiſters of the father. *Ibid.* A man having iſſue only a daughter, dies, leaving his wife with child of a ſon, which is afterwards born; here the ſon after his birth is *heir* to the land, but till then the daughter is to have it. 9 *H.* 6. 23. *Perk.* 521.

There are ſome perſons who may not be heirs; as a baſtard born out of lawful wedlock; an alien, born out of the King's allegiance, tho' in wedlock; a man attainted of treaſon or felony, whoſe blood is corrupted; theſe laſt may not be *heirs propter delictum;* and an alien cannot be *heir, propter defectum ſubjectionis;* nor may one made *denizen* by letters patent; tho' it is *otherwiſe* of a perſon *naturalized* by act of parliament. *Co. Lit.* 8. 2 *Danv. Abr.* 552. A baſtard by continuance, may be *heir* againſt a ſtranger; and an hermaphrodite may be *heir,* and take according to that ſex which is moſt prevalent; but a monſter, who hath not human ſhape cannot be *heir,* although a perſon deformed may. *Co. Lit.* 7. 2 *Danv.* 553. *Ideots* and *lunaticks, perſons excommunicate, attainted* in *premunire, outlaws* in *debt, &c.* may be *heirs. Ibid.*

The word *heir* is not a good deſcription of a perſon in the life-time of the anceſtor; and an eldeſt ſon ſhall not take by the name of *heir* in the life-time of his father. 2 *Leon.* 70. A man cannot raiſe a fee-ſimple eſtate to his right *heirs,* by the name of *heirs,* as a *purchaſe,* by conveyance or otherwiſe; but in ſuch caſe the *heir* ſhall be in by deſcent: *Fortior & potentior eſt diſpoſitio legis quam hominis. Hob.* 30. 2 *Lill. Abr.* 11.

By the law of *England,* no perſon can take to himſelf an inheritance in fee-ſimple by *deed,* without the word *heirs; but he may by deviſe:* tho' in caſes where the word *heir* is wanting, it has been adjudged that if there were *other words equivalent,* and the intereſt in the thing granted paſſeth by the conſideration only, without any further ceremony in the law an eſtate in fee may paſs. 2 *Nelſ. Abr.* 928. In a *deviſe* by *will,* or *exchange, &c.* the word *heirs* is *not* neceſſary: but eſtates of inheritance which are otherwiſe conveyed, require it. *Jenk. Cent.* 196.

The word *heir* is *nomen collectivum,* and extends unto all heirs: And under *heirs,* the *heirs* of *heirs* are comprehended *in infinitum;* if lands are given to a man and his *heirs,* all his *heirs* are ſo totally in him, that he may give his lands to whom he will. *Trin.* 23 *Jac.* 1. *Noy* 56.

The *heir* is favoured by the *Common law;* and the anceſtor could not give away his lands by will from his *heir* at law, without the conſent of the *heir,* till the ſtatute 32 *H.* 8. *c.* 1. 2 *Lill.* 11. *Hill.* 23 *Car. B. R.* Dubious words in a will ſhall be conſtrued for the benefit of the heir; and not to diſinherit him: And the heir at law is preferred in *Chancery* in a doubtful caſe. *Noy* 185. *Chanc. Rep.* 7. Where lands were deviſed to the *heirs* of *J. S.* then living; it was held, that his eldeſt ſon ſhould have them, though in ſtrictneſs he was not *heir* during his father's life, but *heir apparent:* But this was by reaſon of the words *then living,* which make it a deſcription of the perſon. *Preced. Chanc.* 57.

III. *Where the* heir *ſhall take advantage of the conditions, covenants,* &c. *of his* anceſtor, *what ſhall go to him,* &c. *and where the* heir *ſhall be liable to the debts and contracts of the* anceſtor.

Conditions and covenants *real,* or ſuch as are annexed to eſtates, ſhall deſcend to the heir, and he alone ſhall take advantage of them. 43 *Ed.* 3. *c.* 4. 1 *And.* 55.

And this is not only where there are expreſs words, but alſo where there are none; for the law by implication reſerves the condition to the heir of the feoffor, *&c.* for being prejudiced by the diſpoſition, it is but reaſonable that he ſhould take the ſame advantage that his anceſtor whom he repreſents might. 1 *Rol. Abr.* 407, 472.

If a man ſeiſed of lands in right of his wife, makes a feoffment in fee upon condition, and dies, and after the condition is broken, the heir of the huſband ſhall enter; for though no right deſcended to him, yet the title of entry by force of the condition which was created upon the feoffment, and reſerved to the feoffor and his heirs, deſcended. 8 *Co.* 43. *Co. Lit.* 202. *a.* 336. *b.*

The heir ſhall take advantage of a *nomine pœnæ,* for being incident to the rent, it ſhall deſcend to the heir, being a ſecurity or penalty to engage the payment of the rent; therefore whoever has a right to the rent, ought in reaſon to have the penalty, which is to oblige the tenant to pay it. *Co. Lit.* 162. *b.*

If a man leaſes for years, and the leſſee covenants with the leſſor, his executors and adminiſtrators, to repair and leave it in good repair at the end of the term, and the leſſor dies, *&c.* his heir may have an action upon this covenant, for this is a covenant which runs with the land, and ſhall go to the heir, though he is not named; and it appears that it was intended to continue after the death of the leſſor, inaſmuch as his executors, *&c.* are named. 3 *Lev.* 92. *Lougher* ver. *Williams.* *Skin.* 305. *S. C.* cited.

If *A.* enfeoff *B.* upon condition, that if the *heir* of *A.* pays to *B.* *&c.* 20*s.* then he and his *heirs* may re-enter; this is a good condition, of which the *heir* of *A.* may take advantage, and yet *A.* himſelf never can. *Co. Lit.* 214. *b.*

Not only land, but rent not due at the death of the anceſtor leſſor, ſhall go to the *heir*; ſo corn ſown by a tenant for years, where his term expires before the corn is ripe; every thing faſtened to the freehold, timber-trees, deeds belonging to the inheritance; deer, conies, pigeons, fiſh, *&c.* 2 *Nelſ. Abr.* 927. An *heir* ſhall enforce the adminiſtrator to pay debts with perſonal eſtate, to preſerve the inheritance. *Chanc. Rep.* 280, 293. If an executor hath aſſets, he is compellable in equity to redeem a mortgage, for the benefit of the *heir*; and it is the ſame where the *heir* is charged in debt. *Hard.* 511. For the perſonal eſtate received the benefit. When the *heir* is ſued for the debt of his anceſtor, and pays it, he ſhall be reimburſed by the executor of the obligor, who hath perſonal aſſets. 1 *Chanc. Rep.* 74. But in action of debt brought upon a bond againſt an *heir*, it is no good plea for the *heir* to ſay, that the executors have aſſets in their hands. *Dyer* 204. For a creditor may ſue either *heir* or executor, and *heirs* and executors are both chargeable upon ſpecialties. If an *heir* hath aſſets, and the executor alſo, it is at the election of the obligee to have action of debt againſt the one, or the other; but he ſhall not charge them doubly. 2 *Plowd.* 433. If an *heir* hath made over lands fallen to him by deſcent, execution ſhall be had againſt him to the value of the land, *&c.* if it be not ſold *bona fide* before the action brought, in which caſe there is a ſaving by the *Statute* 3 & 4 *W. & M. cap.* 14. And whether the *heir* hath lands by deſcent ſhall be tried and enquired of, with the value, by a jury, to make the *heir* anſwerable. 5 *Mod.* 122.

Where bound, &c.

As the heir at law is the proper and only perſon, who can take advantage of conditions, *&c.* annexed to the real eſtate; ſo he ſhall be bound by all ſuch conditions, *&c.* which run with the land, whether ſuch conditions were annexed to the eſtate by the original feoffor, grantor, or immediate anceſtor. 1 *Rol. Abr.* 421.

If a gift be made in tail on condition, that the donee ſhould not diſcontinue, and the donee hath iſſue two daughters, and one of them diſcontinues, the donor ſhall enter and evict them both, becauſe it was the original condition annexed to the whole eſtate, that no part of it ſhould be diſcontinued. *Co. Lit.* 165.

But note, that neither tenant in tail, nor his iſſue can be reſtrained from aliening by *fine* and *recovery*, though they may be reſtrained from aliening by feoffment, or other *tortious act*, which amounts to a *diſcontinuance*.

So where one deviſed lands to *A.* and the heirs male of his body, provided, that if he does attempt to alien, that then immediately his eſtate ſhall ceaſe, and *B.* ſhall enter, and *A.* makes a feoffment in fee, and thereupon *B.* enters; and it was adjudged againſt *B.* and that the condition was void, becauſe *non conſtat* what ſhall be adjudged an attempt, and how it ſhall be tried. 1 *Vent.* 321. 3 *Keb.* 787. *Piers* and *Winn.*

Alſo where a *condition* is annexed to the eſtate given to the heir, and which goes in abridgment and reſtraint thereof, the ſame ſhall in ſome caſes be conſtrued a *limitation*; for if it were a *condition*, nobody could take advantage of it but the *heir.* *Dyer* 316. 10 *Co.* 41. 1 *Vent.* 199.

As if a copyholder in *Borough Engliſh* ſurrenders to the uſe of his will, and after deviſes to his wife for life, remainder to his eldeſt ſon, paying 40*s.* to each of his brothers and ſiſters ,within two years after the death of his wife, *&c.* this is a *limitation*, and not a *condition*; for if it ſhould be a *condition*, it would *extinguiſh in the heir*, and there would be no remedy for the money. *Cro. Eliz.* 204. *Wellok* and *Hammond* 3. *Co.* 20. *b.* 2 *Leon.* 114. *S. C.* *Vide* farther as to the doctrine of the *heir* being bound, *&c.* *Vaugh.* 271. 2 *Mod.* 26. *S. C.* *Cro. Eliz.* 833, 919. *Moor* 644. *pl.* 891. *Noy* 51.

But wherever the anceſtor makes a conveyance or diſpoſition on condition, which goes in reſtraint and abridgment of the eſtate of the heir, he muſt have notice of it; for having a good title by deſcent, he is not obliged to take notice of ſuch condition at his peril, as others muſt do. 8 *Co. France*'s caſe.

If the perſon of the anceſtor be bound in reſpect of his land, which deſcends to the heir, he ſhall be charged: as, if by a ſubſidy to be aſſeſſed upon every one having 20*s.* *per annum*, *A.* be charged and die; his heir ſhall pay it, for it runs with the land. *R. Mo.* 17.

Heir is *nomen collectivum*; and therefore, if a condition be, *that if his heir does not pay ſuch a rent-charge, the eſtate ſhall go to B.* if the *heir* of the *heir* does not pay, the condition is broken. *R. Cro. Jac.* 145.

It has been held, that the *heir* is never chargeable without an expreſs *lien* and aſſets; and even then, no longer than he hath aſſets, for he is not obliged to keep them till he is charged: But if he hath aſſets, he ought to plead truly, and confeſs them; otherwiſe judgment ſhall be given againſt him *de terris propriis*, for it is then his debt. *Jones* 88. 3 *Salk.* 179. When a man recovers againſt an *heir*, by default or verdict, on pleading *riens per deſcent*, a ſpecial judgment *de terris deſcenſis*, may be entered againſt the *heir*, and the plaintiff, (praying it) ſhall have all the lands by deſcent in execution: though if the judgment be general againſt the *heir*, without praying ſuch ſpecial judgment he can only have a moiety of the lands by *elegit.* *Plowd.* 439. 2 *Leon.* 16. Here the plaintiff may ſurmiſe, that the *heir* hath ſuch land by deſcent, and pray to have execution of all his land. *Dyer* 149. *Rol.* 72. The judgment and execution ſhall be general, unleſs the heir acknowledge the action, and ſhews that he hath ſo much by deſcent; but if he will not ſhew what he hath by deſcent, he loſes the benefit of the law. *Mich.* 1 *W. & M. B. R.* *Cro. Eliz.* 692.

If the *heir*, in caſe where the anceſtor hath bound himſelf and his *heirs*, have never ſo much land come to him by gift in tail, or conveyance of the father, and *not by deſcent*, he is *not* chargeable at all: and ſo it is for any eſtate but what is in *fee-ſimple*; as where lands are granted to *J. S.* and his *heirs* during the life of another, *&c.* the *heir* ſhall not be charged for this, no more than for the land entailed. 10 *Rep.* 98. *No lands can be charged but fee-ſimple*; therefore, in a ſuit againſt the *heir*, the judgment is only for the land *deſcended*, and not for other lands, *&c.* but where it is by his own fault, as by a falſe plea, or the like. *Co. Lit.* 102, 376.

A man binds himſelf and his *heirs* in an obligation, and hath lands and *heirs* on the part of the father, and the part of the mother; the *heirs* and lands of both, and not of one alone, muſt be charged in debt: and the plaintiff ſhall have ſeveral actions; and execution ſhall ſtay, till it may be had againſt both of them. 2 *Rep.* 25. *Hob.* 25. Alſo if one bind himſelf and his *heirs*, and leave land at *Common law*, and lands in *gavelkind*; the obligee muſt ſue all the *heirs.* Hob. 25. An *heir* ſued on a ſpecialty, ſhall have his age; and if one of the *heirs* be within age, the parol ſhall be ſtayed for all. *Moor*, *cap.* 203.

A collateral *heir* is chargeable for the debt of his anceſtor; but the declaration muſt be ſpecial, and he is to be charged as collateral *heir*, not as immediate *heir*; and if a ſon happens between, who dies, he muſt be ſaid uncle and *heir* of the ſon, who was heir of the debtor, *&c.* *Cro. Car.* 151. And a child born, though he lives but an hour, has the fee of lands veſted in him as *heir.* Hetl. 134. In a writ a man need not ſhew how he is *heir*; but he muſt in a declaration, *&c.* though it is only for form to ſet forth *how* a perſon is *heir*, becauſe it is not traverſable; and *heir*, or no *heir*, is iſſuable. *Moor* 885. If an *heir* ought to confeſs the debt on action brought againſt him, and the debt be not denied, it muſt be admitted. 1 *Lutw.* 442.

Debt againſt the *heir*, upon the bond of his anceſtor, is to be brought in the *debet* and *detinet*, becauſe the *heir* himſelf is bound; and not in the *detinet* only, though that is cured by verdict. *Sid.* 342. 1 *Lev.* 224. An *heir* is not bound by the bond of the anceſtor, unleſs he is expreſly bound: and if in a bond a man bind his *heirs*, but not himſelf, the bond is void. 2 *Saund.* 136. *Cro. Jac.* 570. Alſo a man ſhall never bind his *heir* to warranty, where he himſelf was not bound: if he make a feoffment in fee, and bind his *heirs* only to warranty, the feoffment is void, for the *heir* ſhall be bound to warranty in ſuch caſes only, where the anceſtor was bound, without which it cannot deſcend upon him. *Co. Lit.* 386. And warranties and eſtoppels ſhall deſcend upon the *heir* general, and not upon any ſpecial *heir*, *&c.* So that if a man convey land with warranty againſt him and his *heirs*, his *heir* on the mother's part ſhall not be vouched by this, ſo long as there is an *heir* on the father's part, *&c.* *Hob.* 24.

A grant of an annuity, muſt be for a man and his *heirs*, to bind the *heir*, although there be aſſets; and when he is named, the *heir* ſhall not be bound except there be aſſets. *Co. Lit.* 144. Where a perſon covenants with another to perform any act, if his *heir* be not named, he is not bound by it: but in covenants of others, that concern the inheritance, the *heir* ſhall have the benefit of them, though not named. 5 *Rep.* 8. 1 *Rol. Abr.* 520. An *heir* may enter for a condition broken, when the condition is annexed to lands, and take advantage of it; becauſe if there had been no condition, the land would have deſcended to him. And an *heir* may perform a condition, to ſave the land. 2 *Nelſ. Abr.* 929.

The *heir* ſhall not have money due on mortgages in fee, if he be not particularly named, but the executor; and if the day be paſt, although the *heir* be named, the executor ſhall have it. *Co. Lit.* 210. 2 *Ventr.* 348.

As to ſuing *and being* ſued.

It is clear, that the *heir* may bring any real action *droitural*, in right of his anceſtor, but cannot regularly bring any perſonal action, becauſe he has nothing to do with the aſſets, or perſonal contracts of his anceſtor. *Co. Lit.* 164. If an erroneous judgment be given againſt the anceſtor, by which he loſeth the lands, the heir may bring a writ of error. 1 *Rol. Abr.* 747. *Dyer* 90. *Godb.* 337. And if one hath lands on the part of his mother, and loſeth by erroneous judgment, and dies, the heir of the part of the mother ſhall have the writ of error. 1 *Leon.* 261. 2 *Sid.* 56. So the younger ſon, when intitled to the land by the cuſtom of Borough Engliſh, ſhall bring the writ of error, and not the heir at Common law, for this remedy deſcends with the land. *Owen* 68. 1 *Leon.* 261. 4 *Leon.* 5. adjudged; and ſee *Bridgm.* 71. So if there be an erroneous judgment againſt tenant in tail female, the iſſue female, and not the ſon, ſhall bring a writ of error. *Dyer* 90. 1 *Leon.* 261. 1 *Rol. Abr.* 747. See farther *Dyer* 89. *Cro. Eliz.* 469. 3 *Lev.* 36. And *vide error* (who ſhall bring it)

If *J. S.* binds himſelf and his heirs, in a bond, and thereupon judgment is obtained againſt *J. S.* and *J. S.* makes his will, and his heir at law executor, and dies, leaving lands which deſcended to his heir, yet he ſhall not have a writ of error as heir, for he is not privy to the judgment; and when an extent is made upon him, it is as tertenant, but after the lands are taken in execution, he may have a writ of error. *Style* 38, 39. *per Roll.* Becauſe he is prejudiced by the judgment, and by the reverſal will receive benefit.

The heir at law may, in right of his anceſtor, maintain an action of debt for rent reſerved on a leaſe, made by his anceſtor, (accrued after the death of the anceſtor) for the rent is part of the lands, and incident to the reverſion; but for arrears of rent incurred in the life-time of the anceſtor, neither the heir, nor the executor, could by the Common law maintain an action; for as to the heir, they were conſidered as part of the perſonal eſtate, and as to the executor, he could not repreſent his teſtator as to any contracts relating to the freehold and inheritance. 11 *H.* 6. 15. 19 *H.* 6. 41 *Co. Lit.* 162. *a.* But now, by the 32 *H.* 8. *cap.* 37. an executor may maintain an action of debt for ſuch arrears; for which ſee tit. *Debt.*

If a nobleman, knight, eſquire, *&c.* be buried in a church, and have his coat of arms, and pennons with his arms, and ſuch other enſigns of honour as belong to his degree, ſet up in the church, or if a grave-ſtone or tomb be laid or made, *&c.* for a monument of him; in this caſe, albeit the freehold of the church be in the parſon, and that theſe be annexed to the freehold, yet cannot the parſon, or any, take them, or deface them, but he is ſubject to the heir, and his heirs, in the honour and memory of whoſe anceſtor they were ſet up. *Co. Lit.* 18. *b.* For this, ſee 1 *Rol. Abr.* 625. *Noy* 104. *Godbolt* 200. *Cro. Jac.* 367. 2 *Bulſt.* 151.

Where the anceſtor binds himſelf, and his heirs, in an obligation, the obligee may ſue the heir, or executor, or the adminiſtrator of the executor, at his election, and may have execution of the land deſcended to the heir; for the Common law having allowed the action of debt againſt the heir, he could have no benefit by the action, unleſs he were permitted to have execution of the lands which deſcended to the heir. *Plowd.* 441. 3 *Co.* 12. *a.* *Cro. Jac.* 450. 1 *And.* 7.

But the body of the *heir* is protected, for it would be moſt unreaſonable to ſubject the *heir* to the payment of his anceſtor's debts, any farther than to the value of the aſſets deſcended. *Dyer* 81. *pl.* 62, 207. *pl.* 15. *Moor pl.* 203. *Co. Lit.* 103, 290.

Alſo the heir muſt be expreſly named, otherwiſe he is not chargeable, and the reaſon why the heir is not chargeable in this caſe, as the executor in caſe of a bond entred into by the teſtator, without being named, is this; by the Common law only the goods and chattels of the debtor, and the annual profits of the land as they aroſe, and not the land itſelf, were liable to execution for debt or damages, becauſe theſe being the ſecurity the creditor depended upon, they were liable in the hands of his repreſentative or executor, as well as in the hands of the debtor himſelf; hence it was, that the executor was bound by the debt of the teſtator, ſo far as he had chattels or aſſets, though he was not named in the contract; but the land was not liable to execution, becauſe it was preſerved from the perſonal contracts and engagements of the tenant, that he might be the better able to anſwer the feudal duties to the lord, which were the life and ſupport of government; therefore the land not being originally liable to the demand in the hands of the obligor, muſt be much leſs liable in the hands of the *heir*, who was not comprehended in the contract. 2 *Inſt.* 19. *Plowd.* 440. *Hob.* 60.

But if *A.* had granted, for him and his *heirs*, to *B.* and his *heirs*, ſuch a rent out of his lands; in this caſe, the *heirs* being comprehended in the contract, are bound to make good the grant, ſo far as they have aſſets by deſcent from the grantor; and this was allowed at Common law, becauſe the grantee of the rent had the land originally in view for his ſecurity; and by the grant itſelf having it in his power to diſtrain the land for the rent, it was equal to the *heir*, whether the land anſwer the rent by diſtreſs, or by an execution upon a judgment in a writ of annuity. 1 *Rol. Abr.* 226. *Popham* 87. *Hob.* 58. *Dyer* 344. *b.* *Co. Lit.* 144. *b.*

If the anceſtor bind himſelf in a ſtatute, recognizance *&c.* the *heir* is liable, not only as tertenant, but alſo as *heir*, otherwiſe he could not have his age; and cannot oblige a purchaſer, whether for valuable conſideration, or without, to contribute, but one *heir* may oblige another to contribute; as if a man ſeiſed of two acres, the one deſcendible, according to the courſe of the Common law, the other in Borough Engliſh, acknowledge a ſtatute, *&c.* the *heir* at common law ſhall oblige the Borough Engliſh heir to contribute: ſo one coparcener ſhall oblige the other to contribute; or if the conuzor had lands, ſome deſcendible to the *heirs* of the father, and ſome deſcendible on the *heirs* of the mother, the *heir* on the part of the father ſhall compel the *heir* on the part of the mother to contribute; *& ſic vice verſa.* 3 Co. 12. Sir *William Herbert*'s caſe.

By the Common law, if the *heir* before an action brought againſt him had aliened the aſſets, the obligee was without any remedy; but if he only aliened, pending the writ, the lands, which he had by deſcent at the time of the original purchaſed, had been liable. *Co. Lit.* 102.

In conſequence of this doctrine, that the lien ſhall have relation to the time of the original purchaſed, it hath been adjudged, that if there had been two creditors to *J. S.* whoſe heir is bound, *viz. A.* and *B.* and *A.* files an original in *C. B.* and hath judgment thereon, *Trin. Term.* 2 *Jac.* 2. by default, and thereupon a *general elegit* iſſues againſt all the lands of the heir, and a moiety thereof is delivered to *A B.* on a bill filed in *B. R.* 1 & 2 *Jac.* 2. has a *ſpecial judgment* againſt the aſſets confeſſed by the heir, *Trin. Term,* 3 *Jac.* 2. though *B.*'s judgment be ſubſequent to *A.*'s, yet it appearing that his bill or original was filed before *A.*'s, the judgment ſhall have relation thereto, therefore he muſt be firſt ſatisfied. *Carth.* 245.

So it ſeems in the above caſe, that tho' *A.*'s judgment had been on an original actually filed before *B.*'s, that *B.* muſt have been preferred, becauſe his judgment was general *againſt the heir*, and the execution a *general* and *common execution* by *elegit*, and *not* againſt the *aſſets only* by way of extent; therefore ſuch a *general judgment* will not operate by way of relation to the original, but binds only, as in common caſes, from the time of the judgment given. *Carth.* 246. *Per Cur'.*

But now, in relief of creditors againſt the alienation of lands deſcended, *&c.* by the 3 & 4 *W. & M. cap.* 14. it is enacted, "That in all caſes, where any heir at law ſhall be liable to pay the debt of his anceſtor, in regard of any lands, tenements or hereditaments deſcending to him, and ſhall ſell, alien, or make over the ſame, before any action brought or proceſs ſued out againſt him, that ſuch heir at law ſhall be anſwerable for ſuch debt or debts, in an action or actions of debt to the value of the ſaid land ſo by him ſold, aliened, or made over; in which caſes all creditors ſhall be preferred, as in actions againſt executors and adminiſtrators, and ſuch execution ſhall be taken out upon any judgment or judgments ſo obtained againſt ſuch heir to the value of the ſaid land, as if the ſame were his own proper debt or debts; ſaving that the lands, tenements and hereditaments *bona fide* aliened before the action brought, ſhall not be liable to ſuch execution."

But it is by the act provided, That where any action of debt upon any ſpecialty is brought againſt any heir, he may plead *riens per diſcent* at the time of the original writ brought, or the bill filed againſt him. And the plaintiff in ſuch action may reply, that he had lands, tenements or hereditaments from his anceſtor *before the original writ brought*, or *the bill filed:* and if, upon iſſue joined thereupon, it be found for the plaintiff, the jury ſhall inquire of the value of the lands, tenements or hereditaments ſo deſcended, and thereupon judgment ſhall be given, and execution ſhall be awarded as aforeſaid: but if judgment be given againſt ſuch *heir*, by confeſſion of the action without confeſſing the aſſets deſcended, or upon demurrer, or *nihil dicit*, it ſhall be for the debt and damages, without any writ to inquire of the lands, tenements or hereditaments ſo deſcended.

It is not improper to obſerve, that, before this act, if the anceſtor had deviſed away the lands, a creditor by ſpecialty had no remedy either againſt the heir, or deviſee. *Abr. Eq.* 149.

But now, to provide againſt that miſchief, it is by the ſame ſtatute enacted, "That all wills and teſtaments, limitations, diſpoſitions, or appointments, of or concerning any manors, meſſuages, lands, tenements or hereditaments, or of any rent, profit, term, or charge out of the ſame, whereof any perſon or perſons at the time of his, her, or their deceaſe ſhall be ſeiſed in fee-ſimple, poſſeſſion, reverſion or remainder, or have power to diſpoſe of the ſame by his, her, or their laſt wills or teſtaments, ſhall be deemed and taken (only as againſt ſuch creditor or creditors as aforeſaid, his, her, and their *heirs*, ſucceſſors, executors, adminiſtrators and aſſigns, and every of them,) to be fraudulent, and clearly, abſolutely, and utterly void, fruſtrate, and of none effect; (any pretence, colour, feigned or preſumed conſideration, or any other matter or thing to the contrary notwithſtanding.)"

And that ſuch creditors may be enabled to recover their debts, it is further enacted, "That, in the caſes before mentioned, every ſuch creditor may maintain an action of debt upon ſuch bonds and ſpecialties, againſt the *heirs* at law of ſuch obligors, and ſuch deviſees *jointly*, by virtue of this act; and ſuch deviſees ſhall be liable and chargeable for a falſe plea, in the ſame manner as any *heir* ſhould have been for falſe plea, or for not confeſſing the lands or tenements to him deſcended."

It is, however, by this act further provided, That where there is any limitation or appointment, deviſe or diſpoſition of any lands, *&c.* for the raiſing or payment of any real or juſt debt, or any portion or ſum of money, for any child, other than the heir at law, according to, or in purſuance of, any *marriage contract*, or *agreement in writing bona fide* made, before ſuch marriage, the ſame ſhall be in full force, and the lands, *&c.* ſhall be holden and enjoyed by ſuch perſons, and their heirs, executors, adminiſtrators and aſſigns, for whom the ſaid limitation, *&c.* was made, and by their truſtees, and their heirs, executors, adminiſtrators and aſſigns, for ſuch eſtate or intereſt, as ſhall be ſo limited, *&c.* until ſuch debt or debts, portion or portions ſhall be raiſed, paid and ſatisfied."

And it is further enacted, "That all and every deviſee and deviſees, made liable by that act, ſhall be liable and chargeable in the ſame manner as the heir at law, by force of the act, notwithſtanding the lands, tenements, and hereditaments to him or them deviſed, ſhall be aliened before the action brought."

In the conſtruction of this ſtatute it hath been holden, that though a man is prevented thereby from defeating his creditors by will, that yet any ſettlement or diſpoſition he ſhall make in his life-time of his lands, whether voluntary or not, will be good againſt bond creditors; for that was not provided againſt by the ſtatute, which only took care to ſecure ſuch creditors from any impoſition, which might be ſuppoſed in a man's laſt ſickneſs; but if he gave away his eſtate in his life-time, this prevented the deſcent of ſo much to the heir, conſequently took away their remedy againſt him, who was only liable in reſpect of the lands deſcended; and as a bond is no lien whatſoever on lands in the hands of the obligor, much leſs can it be ſo, when they are given away to a ſtranger. *Abr. Eq.* 149.

As to the manner of *pleading* and *replying* under this ſtatute, *vide* the caſe of *Redſhaw* and *Heſther*, *Carth.* 35. and 5 *Mod.* 122. *S. C.*

It ſeems that neither before, nor ſince, this ſtatute, the *executor* or *adminiſtrator* of the *heir* are liable; for the *perſon* of the *heir* is not chargeable, but with reſpect to the land; and if, before the ſtatute, the *heir* had aliened before action brought, he ſhould not be charged for the profits he received; which is evident from the plea of *riens per diſcent* the day of the writ purchaſed; much leſs could his executor, nor can he yet, unleſs ſome ſtatute make him ſo: for in executor is but in nature of a truſtee for the perſonalty, and not at all privy to the inheritance. *Trin.* 32 *Car.* 2. in *C. B.* adjudged. 3 *New Abr.* 28.

If there be judgment in debt againſt two, and one dies, a *ſcire facias* lies againſt the other alone, reciting the death, and he cannot plead that the *heir* of him who is dead has aſſets by deſcent, and demand judgment if he ought to be charged alone: for, at *Common law*, the charge upon a judgment being *perſonal* ſurvived, and the ſtatute of *Weſtm.* 2. that gives the *elegit*, does not take away the remedy of the plaintiff at *Common law*, therefore the party may take out his execution which way he pleaſes; for the words of the ſtatute are *ſit in electione:* but if he ſhould, after the allowance of the writ, and revival of the judgment, take out an *elegit* to charge the land, the party may have remedy by ſuggeſtion, or elſe by *audita querela*. 1 Lev. 30. Raym. 26. 1 Keb. 92. S. C.

As to a *ſequeſtration*, and to ſhew that a *decree* ſhall have the ſame authority to bind the perſonal aſſets, as a judgment at law, and therefore ſhall go *pari paſſu* to be paid off and diſcharged, *Vide* 1 *Vern.* 143. 3 *Lev.* 355. 2 *Vern.* 37, 88-9.

With reſpect to *aſſets*, &c.

Where the anceſtor binds himſelf and his heirs, all his lands of freehold, and which deſcend in *fee-ſimple*, are aſſets by deſcent, and ſhall be liable, as far as they extend, to anſwer the anceſtor's obligations. See *Bro.* tit. *Aſſets*. *Fit.* tit. *Aſſets.* 1 *Rol. Abr* 269. tit. *Aſſets.* A reverſion after a leaſe for years made by the anceſtor is preſent aſſets, ſo that the heir cannot plead *riens per diſcent* in delay of execution of the rent and reverſion, tho' the plaintiff cannot have benefit of the reverſion till the leaſe be determined. 1 *Salk.* 354-5. *Fareſt.* 42. 2 *Mod.* 50—51. *Hern's Plead.* 320.

So a *reverſion expectant* upon the determination of an *eſtate* for *life* is *quaſi aſſets*, and ought to be pleaded ſpecially by the heir, and the plaintiff in ſuch caſe may take judgment of it *cum acciderit*. Carth. 129. per Holt. But a *reverſion in fee* expectant upon *an eſtate tail* is *not* aſſets, becauſe it lies in the will of the tenant in tail to dock and bar it at his pleaſure. 6 *Co.* 58. 1 *Rol. Abr.* 269.

If *A.* hath iſſue *B.* and *C.* and conveys lands to the uſe of himſelf for life, the remainder to *B.* in tail male, the remainder to his own right heirs, and *A.* dies, and the reverſion deſcends to *B.* his ſon, and *B.* dies ſeiſed, and the reverſion deſcends to his ſon, who dies without iſſue, ſo that the tail is ſpent, and *C.* enters, theſe lands ſhall be aſſets to anſwer the debt of his father. *Carth.* 127. 3 *Lev.* 286. 3 *Mod.* 223. *S C.*

The lands (as hath been obſerved) muſt *deſcend* to the heir; and therefore it was formerly held, that if he took by *purchaſe*, as if the teſtator deviſed them to him, paying ſo much, or if he deviſed lands to one of the two, and his heirs at law jointly, that thoſe lands were not aſſets; but if he deviſed one part to *A.* another to *B.* and another to his heir at law, this third part was aſſets. *Cro. Eliz.* 431. 2 *Mod* 286.

By the ſtatute of frauds and perjuries (29 *Car.* 2. *c.* 3.) it is enacted, That if lands come to the heir by reaſon of a ſpecial occupancy, they ſhall be chargeable in his hands as aſſets by deſcent, as in caſes of lands in fee-ſimple, and in caſe there be no ſpecial occupant thereof, it ſhall go to the executors or adminiſtrators of the party that had the eſtate thereof by virtue of the grant, and ſhall be aſſets in their hands. Alſo by the ſaid ſtatute, *par.* 10 & 11. where lands are ſettled in truſt, and deſcend in fee to the heir of *ceſtuy que truſt*, the ſame ſhall be aſſets in the ſame manner as lands in poſſeſſion, but he ſhall not, by reaſon of any plea or other matter, be chargeable to pay the condemnation out of his own eſtate. *Vid.* 2 *Vern* 248.

An equity of redemption of an inheritance is aſſets, for the heir having a right in equity, that ought in equity to be liable to ſatisfy a bond debt. 4 *Chanc. Caſ.* 148. Tenant in tail ſuffers a recovery to let in a mortgage of 500 years, then limits the land to the old uſes, and makes his will, and deviſes all his lands for the payment of his debts; the redemption was limited to him, his heirs and aſſigns; and the court thought that the equity of redemption of this mortgage, ſhould be aſſets to ſatisfy creditors, or a ſubſequent grantee of an annuity. *Preced. Chanc.* 39. *Foſſet* and *Auſtin.* A *right* without any eſtate in poſſeſſion, reverſion or remainder, is not aſſets till it be recovered and reduced into poſſeſſion. 6 *Co* 58. *For more learning on this ſubject, ſee* 14 *Vin. Abr.* and 2 *New Abr.* tit. *Heir,*

General obſervations.

Heirs includes aſſigns in grants, &c. If a woman keeps lands from the *heir*, on pretence of being big with child by the *heir*'s anceſtor, her deceaſed huſband, the writ *ventre inſpiciendo* is to be granted to ſearch her, &c. that the *heir* be not defrauded. *F. N. B.* 227. The next *heir* male is to bring appeal for the death of his anceſtor, &c. And *heirs* may have divers writs, as writ of *Mortdanceſter*, *Entre ad communem legem*, *In caſu proviſo*, and *conſimili caſu*, *quod permittat*, &c. The *heir* may bring an ejectment of copyhold lands *before* admittance. *Wilſ. Rep. par.* 2. *fo.* 14.

Whoever claims as *heir* by deſcent, muſt make himſelf *heir* to the perſon laſt actually ſeiſed, and in poſſeſſion of the inheritance. *Ibid.* 45.

There cannot be *poſſeſſio fratris* of a reverſion or remainder. *Ibid.* 47.

Whoever takes as *heir male* by *purchaſe*, muſt be both *heir* and *male*. *Ib par.* 1. *fo.* 20.

Heir apparent. The perſon intitled to ſucceed another as heir, if he ſurvives ſuch other being then living. See *Heir.*

Heireſs, Is a *female heir* to a man, having an eſtate of inheritance in lands; and where there are ſeveral joint *heirs*, they are called *Co-heirs* or *Co-heireſſes*. Stealing an *heireſs*, and marrying her againſt her will, where felony. See *Forcible Marriage.* And *Black. Com.* 4 *V.* 208.

Heir-loome, (From the Sax. *Heier*, i. e. *Hæres*, & *Leome*, Membrum) Comprehends divers implements of houſhold, ſuch as the firſt beſt bed and other things, which by the cuſtom of ſome countries have belonged to a houſe for certain deſcents, and are never inventoried after the deceaſe of the owner as chattels, nor do they go to the executor, but accrue to the *heir* with the houſe itſelf by *cuſtom*, and not by the Common law: theſe are *not deviſable by teſtament*; for the law prefers the *cuſtom* before a *deviſe*, which takes not effect till after the death of the teſtator, and then they are veſted in the *heir* by the *cuſtom. Co. Lit* 18, 185. But ſale in a man's life-time might make it otherwiſe. The ancient jewels of the *crown are heir-looms*, and ſhall deſcend to the next ſucceſſor; and are not deviſable by will. *Ibid* 185. And *heir-looms* in general are ſaid to extend to all large houſhold implements; of which *Spelman* ſays thus: *Omne utenſile robuſtius quod ab ædibus non facile revellitur, ideoque ex more quorundam locorum ad hæredem tranſit, tanquam membrum hæreditatis.* And Sir *Edw. Coke* ſays, *Conſuetudo hundredi de* Stretford *in com.* Oxon *eſt, quod* Hæredes *tenementorum poſt mortem anteceſſorum ſuorum habebunt*, &c. *principalium*, Anglice *an* Heir-loom, *viz. de quodam genere catallorum, utenſilium*, &c. *Optimum plauſtrum, optimam carucam, optimum ciphum*, &c. Co. Lit. 18.

It is ſaid, that the word by time hath obtained a more general ſignification than at firſt it did bear, comprehending all implements of houſhold, as tables, preſſes, cupboards, bedſteads, wainſcot, and ſuch like: which, by the cuſtom of ſome countries, have belonged to a houſe during certain deſcents, as before mentioned.

Per Holt Ch. J. *goods in groſs* cannot be an heir-loom, but they muſt be things fixed to the freehold, as old benches, tables, &c. *Paſch.* 13 *W.* 3. *B. R.* 12 *Mod.* 519, 520.

Alſo on this ſubject, *vide* 12 *Co.* 104, 105. *Corven's* caſe.

The following is a ſpecification *of what* goods *and* chattels *go to* the heir.

Goods and chattels annexed to the freehold go to the heir, and not to the executor, or adminiſtrator: as, the glaſs in a window; the doors and locks of an houſe. *Off. Ex'* 86. 21 *H.* 7. 26. *b.* 4 *Co.* 63. *b.* So, the pales, poſts, and rails for an incloſure. 12 *H.* 7. 26. *b.* So, furnaces, coppers, &c. fixed to the freehold. *R.* 21 *H.* 7. 26. *b.* *R.* 20 *H.* 7. 13. *b.* unleſs they are ſevered in the life-time of the teſtator. *Semb.* 1 *Sal.* 368. *Vide Com. Dig.* tit. *Execution*, (C. 4.) tit. *Waſt*, (D. 2.) So, wainſcot fixed to an houſe. 4 *Co.* 64. *a.* So, pictures, glaſſes, &c. fixed inſtead of wainſcot. 2 *Vern.* 508. So, millſtones, &c. fixed to a mill. So a term for years to attend the inheritance does not go to the executor, but to the heir. *R.* 2 *Ca. Ch.* 156, 160. So deer in a park, conies in a warren, and doves in a dove-houſe, go with the inheritance to the heir. So, fiſh in a pond, or piſcary. *Co. Lit.* 8. *a.* *R. Owen* 20. 1 *Rol* 916. *l.* 45, 50. So, apples, and other fruits growing at the death of the anceſtor *Off. Ex'* 84. So, roots, &c. within the ſoil. *Ib* 89. So a coat-armour, pennons, tombſtone, and monuments in a church, in honour of the anceſtor. *Co. Lit.* 18. *b.* So, charters, deeds, and other evidences of lands, with the cheſts in which they are preſerved. *Vide Com. Dig.* tit. *Charters. Co. L.* 18. *b.* An antient horn where the tenure of the land is by cornage. 1 *Ver.* 273.

What goods go to the wife as *paraphernalia*, *vide* tit. *Paraphernalia.* Alſo ſee *Black. Com.* 2 *V.* 427.

Hegira, The Mahometan *Æra*, or computation of time, beginning from the flight of *Mahomet* from *Rome*, 16 July, Anno 622.

Helſing, A braſs coin among the *Saxons*, equivalent to our halfpenny.

Helm, Thatch or ſtraw. *Cowell.* Sometimes called *Haulm.*

Heim, is alſo a *Saxon* word, ſignifying a *covering* for the *head* in *war*. Alſo, that part of a *coat* of *arms*, which bears the *creſt*.—The *ſteerage*, or *rudder* in a ſhip, or other veſſel.

Helowe-wall, The *bell-wall* or end wall, that covers and defends the reſt of the building. From Saxon *belan*, to cover or heal; whence a thatcher, ſlater or tiler, who covers the roof of a houſe, is in the weſtern parts called a *bellier*.——*Inſolutis eidem Dominæ pro quodam* helowe-wall *unius domus apud Carthyngton annuatim* 11 *den.* Paroch. Antiq. p. 573. *See* Kennet's Gloſſary.

Hemp and Flax. None may water *hemp* or *flax* in any river, running water, ſtream, brook, or common pond, where beaſts are uſed to be watered, but only in their ſeveral ponds, *&c.* for that purpoſe, on pain of 20 *s.* *Stat.* 33 *H.* 8. *c.* 17. Perſons coming from abroad, uſing the trade of *hemp* or *flax* dreſſing, and of making thread, weaving cloth made of *hemp* or *flax*, or making tapeſtry hangings, twine or nets for fiſhery, cordage, *&c.* after three years, ſhall have the privileges of natural born ſubjects. *Stat.* 15 *Car.* 2. *c.* 15.

Duties on hempſeed, and yarn of flax or hemp imported, 2 *W.* & *M. ſeſſ.* 2. *c.* 24. *ſect.* 31, 32. 4 *W.* & *M. c.* 5. *ſect.* 2. The tithe of hemp and flax aſcertained, 3 *W.* & *M. c.* 3. 11 & 12 *W.* 3. *c.* 16. Flax or hemp may be imported from *Ireland* duty free, 7 & 8 *W.* 3. *c.* 30. 1 *Ann. ſt.* 2. *c.* 8. Penalty on workman imbezilling it. 1 *Ann. ſt.* 2. *c.* 18. Bounty on the importation of hemp from the plantations, 3 & 4 *Ann. c.* 10. Hemp, water rotted, *&c.* from the plantations, free from duties, 8 *Geo.* 1. *c.* 12. Undreſſed flax may be imported duty free, 4 *Geo.* 2. *c.* 27. Medium of the duties on rough flax, *&c.* for 7 years, to be an annual charge on the aggregate fund, 4 *Geo.* 2. *c.* 27 *ſect.* 6. No drawback on the re-exportation of unwrought hemp to the plantations, 4 *Geo.* 2. *c.* 27. *ſect.* 7. Againſt frauds in manufactures of hemp, flax, *&c.* 22 *Geo.* 2. *c.* 27. Bounty on the importation of hemp and rough flax from *America*, 4 *Geo.* 3. *c.* 26.

Henchman, (*Qui equo inititur bellicoſo*, from the German *hengſt*, a war-horſe) With us it ſignifies one who runs on foot, attending upon a perſon of honour or worſhip. *Stat.* 3 *Ed.* 4. *cap.* 5. 24 *Hen.* 8. *cap.* 14. It is written *henxman*, *An.* 6 *Hen.* 8. *cap.* 1.

Henedpenny, A cuſtomary payment of money inſtead of hens at *Chriſtmas*: from the Saxons *hen, gallina* and *penning, denarius. Sint quieti de chevagio & henedpeny, & buckſtall & triſtris, &c.* Monaſt. 2 tom. 827. In a charter of *Edw.* 3. confirming many privileges to the priory of *Pulton*, 25 *Ed.* 3.——*Quieti ſint de——fengeldis, hornegeldis, & penygeldis, & thenedirypeny, hundrediſpeny, & de meſkennyng, & de chevagio, & henedpeny, & buceſtall, & triſtris.*——Mon, Ang. tom. 2. pag. 327. a. *Du Freſne* thinks it may be *henpeny, gallinagium*, or a compoſition for eggs. But poſſibly it is miſprinted *henedpeny* for *heved-peny*, or *head-peny*. *Cowell, edit.* 1727.

Heneward, A duty to the King in *Cambridgeſhire*. Domeſday.

Henghen, (Saxon *hongen*) A priſon, gaol or houſe of correction. *Si quis amicis deſtitutus, vel alienigena, ad tantum laborem veniat, ut amicum non habeat, in prima accuſatione ponatur in* hengen, *& ibi ſuſtineat donec ad Dei judicium vadat.* LL. Hen. 1. cap. 65.

Hengwite, *Significat quietantiam miſericordiæ de latrone ſuſpenſo abſque conſideratione*, Fleta, lib. 1. cap. 47. See *Hankwit.*

Heordfeſte, The ſame with *hurfeſtane*, i. e. the maſter of a family: From the Saxon *hearphfæſt*, *i. e.* fixed to the houſe or hearth: *Non ſic aliqua liberorum rectitudine dignus, ſit* heordfeſte, *ſit folgarius, ſit in hundredo & in plegio conſtitutus.* Leges Canuti, cap. 40. See *Hurdereferſt.*

Heordpenny, *Olim* Romerſcot & *poſtea* Peterpence: from the Saxon *hearth, focus*, and *pening, denarius.* See *Peter-pence* and *Romeſcot.*——*Omnis* heorpeni *reddat ad feſtum S. Petri, & qui non perſolveret ad terminum illum deferat eum Romæ.* Leges Edgari Regis, cap. 5. apud Bromptonum.

Heptarchy, *Saxon.* The kingdom of *England* was formerly, under the *Saxons*, divided into an heptarchy, conſiſting of *ſeven* independent kingdoms, peopled and governed by different clans and colonies. See *Black. Com.* 4 *V.* 403.

Herald, Heralt, or **Herold,** (Ital. *heraldo*, Fr. *herault*, quaſi *herus* altus) Signifies an officer at arms. *Vergeſtan* thinks it may be derived from two *Dutch* words, *viz.* Here, *exercitus et* Healt, *pugil magnanimus*; as if he ſhould be called the *Champion of the Army*: and the *Romans* called *Heralds, feciales. Polydore, lib.* 19. deſcribes them thus: *Habent inſuper apparitores miniſtros, quos* Heraldos *dicunt, quorum præfectus* Armorum Rex *vocitatur*; *hii belli et pacis* Nuncii; *Ducibus, Comitibuſque a Rege factis inſignia aptant, ac eorum funera curant.* The function of theſe officers, as now exerciſed with us, is to denounce war, proclaim peace, and to be employed by the King in martial meſſages: they are examiners and judges of gentlemens *coat of arms*, and conſervers of *genealogies*; and they marſhal the ſolemnities at the coronations, and funerals of princes, and other great men.

The three chief *heralds*, are called *Kings at Arms*; of which *Garter* is the principal, inſtituted by King *Henry* 5. whoſe office is to attend the *Knights of the Garter* at their ſolemnities, and to marſhal the funerals of the nobility: and King *Edw* 4. granted the office of *King of Heralds* to one *Garter, cum feudis et proficuis ab antiquo, etc.* The next is *Clarencieux* or *Clarentius*, ordained by *Edward* 4. who attaining the dukedom of *Clarence* by the death of *George* his brother, (whom he beheaded for aſpiring to the crown,) made the *herald* who belonged to that dukedom, a King at arms, and called him *Clarencieux*; his proper office is to marſhal and diſpoſe the funerals of all the leſſer nobility, knights and eſquires, thro' the realm, on the *South* ſide of the *Trent*. The third is *Norroy*, quaſi *North Roy*, whoſe office and buſineſs is the ſame on the *North* ſide of *Trent*, as *Clarentius* on the ſouth, which is intimated by his name, ſignifying the *Northern King*, or *King at Arms* of the *North* parts. Theſe three officers are diſtinguiſhed as follows, *viz.* Garter *Rex Armorum Anglicorum indefinite*; Clarencuieux, *Rex Armorum partium Auſtralium*: Norroy, *Rex Armorum partium Borealium.*

Beſides the *Kings at Arms*, there are ſix *inferior heralds*, according to their original, as they were created to attend Dukes and great Lords, in martial expeditions, i. e. *York, Lancaſter, Cheſter, Windſor, Richmond* and *Somerſet*; the four former inſtituted by King *Edward* 3. and the two latter by *Edward* 4. and *Henry* 8. To theſe, upon the coming of King *George* to the crown, on account of his *Hanoverian* dominions, a new *Herald* was made, called *Hanover Herald*; and another ſtiled *Glouceſter*, King at Arms. *Anno* 11 *Geo.* 1. And laſtly, to the ſuperior and inferior *Heralds*, are added four others, called *Marſhals* or *Purſuivants at Arms*, who commonly ſucceed in the places of ſuch *Heralds* as die, or are preferred; and they are *blue-mantle, rouge-croſs, rouge-dragon*, and *portcullis*; all equipped with proper enſigns, badges and diſtinctions.

The ancient *Heralds* have been made a corporation or college under the *Earl Marſhal* of *England*, with certain privileges by the Kings of this realm: *Conceſſerunt, etc.* Heraldi Armorum, *et omnes alii* Heraldi, *proſecutores ſive* Purſuivandi *armorum, qui pro tempore fuerint, imperpetuum, ſint unum corpus corporatum, in re, facto, et nomine*; *habeantque ſucceſſionem perpetuam, nec non quoddam ſigillum commune, &c. Dat. &c.* Spelm. Gloſſ. Herald's *Court of*

Honour. See *Honor-Courts*. Vide *Black. Com.* 3 *V.* 104, 105.

For the ceremony of making the King of Arms, ſee *Dethick*'s caſe. *Ley's Reports* 248.

Herbage, (*Herbagium*) Is the green paſture and fruit of the earth, provided by nature for the bite or food of cattle: it is alſo uſed for a liberty that a perſon hath to feed his cattle in the ground of another perſon; or in the foreſt, *&c.* *Cromp. Juriſd.* 197.

He that hath herbage of a foreſt by patent may have treſpaſs for the graſs, but not for trees or the fruit of them; and he may take beaſts damage-feaſant, and have *quare clauſum fregit*, and by ſuch grant may incloſe the foreſt. *D.* 285. *b. pl.* 40. Grantee of herbage may incloſe, and may have action of treſpaſs *quare clauſum fregit. Arg. Trin.* 21 *Jac. B. R.* 2 *Roll. R.* 356 cites *D.* 285. But tho' he that hath herbage may incloſe, yet he that hath reaſonable herbage cannot. *Ibid.*

Grantee of herbage of a park cannot diſpark it. *Arg. Godb.* 419. A leaſe was made of a manor with all gardens, orchards, yards, *&c.* and with all the profits of a wood, excepting to leſſor forty acres, to take at his pleaſure; *per Dyer*, The wood is not comprized within the leaſe, but the leſſee ſhall only have the profits, as pannage, herbage, *etc.* 21 *Eliz. in C. B.* 4 *Leon.* 8.

Herbagium anterius, The firſt crop of graſs or hay, in oppoſition to after-math and ſecond cutting. ——*Dicunt quod eſt communis via, et ſua communis paſtura, quum fænum et anterius* herbagium *amoveantur.* Parochial, Antiq. pag. 459.

Herbery, or **Herbury**, An inn. *Cowell.*

Herbenger, or **Harbinger**, (from the French *herberger*, that is, *hoſpitio accipere*,) Signifieth an officer in the King's houſe, who goes before and allots the noblemen, and thoſe of the houſhold their lodgings. *Kitchin, fol.* 176. uſed it for an innkeeper.

Herbergagium, Lodgings to receive gueſts in the way of hoſpitality. *Cowell.*

Herbergatus, Spent in an inn. *Cowell.*

Herbigare, To harbour, to entertain, from *heribergum, heriberga*, Saxon *hære berg*, a houſe of entertainment. ——*Ballivi præceperunt civibus ſufficientiam domorum ad* herbigandum *et ad hoſpitandum populum—in anno Jubilæo apud Canturiam* 1420. Somner's Antiq. p. 248. Hence our *herbinger* or *harbinger*, who provides harbour or houſe-room, *etc.*

Herce, An harrow, Lat. *hercia*. *Fleta, lib.* 2. *cap.* 77. *Carucas et* hercias *reparare*, and in *Domeſday, per Gale, fol.* 760. *Habet Rex, &c. unum jugum de ora & unum jugum de* herce.

Hercia, the ſame with *herce*; it ſignifies alſo a candleſtick ſet up in churches, made in the form of an harrow, in which many candles were placed. *Die ſepulturæ & die menſis, & pro corpore ficto*, i. e. *Cenotaphium, cum* hercia, i. e. *Candelabro in* herciæ *modum confecto*, which was filled with candles, and placed *ad caput cenotaphii.*

Herciare, (from the French *hercer*, to harrow) *Arabant et* herciabant *ad curiam Domini, i. e.* they did plough and harrow at the manor of the Lord. 4 *Inſt. fol.* 270.

Herdewich, or **Herdewic**, (*Herdewycha*,) A grange or place for cattle and huſbandry. *Et unum* herdewycham *apud Hethcotum in Peco, &c.* Mon. Angl. 3 part.

Herdwerch, **Heordwerch**, Herdſman's work, or cuſtomary labours done by the ſhepherds, herdſmen, and other inferior tenants at the will of their lord. *Cowell, edit.* 1727. *Regiſt. Eccleſ. Chriſti Cant. MS.*

Herebannum, (Sax. *Here, exercitus, &* Ban *edictum, mulcta*) A mulct, for not going armed into the field, when called forth. *Spelm.* Under the feudal policy, every *free* man, was under an obligation to ſerve the ſtate. If, upon being ſummoned into the field, any freeman refuſed to obey, a full *herebannum*, i. e. A fine of ſixty crowns, was to be exacted from him, according to the law of the Franks. This fine was levied with ſuch rigor, that if any perſon was inſolvent, he was reduced to ſervitude, and continued in that ſtate until ſuch time as his labour ſhould amount to the value of the *herebannum*. The Emperor *Lotharius* rendered the penalty more ſevere, by confiſcating the goods of the perſon refuſing, and baniſhing him. *Robertſon's Hiſt. Emp. Char.* V. 1 *V.* 216, 217.

Herebote, (From the Sax. *Here*, and *Bode* a meſſenger) The King's edict commanding his ſubjects into the field from the Saxon *hære, exercitus*, and *bode*, a meſſenger. *Cowell.*

Hereditaments, (*Hæreditamenta*) Signify all ſuch immoveable things, whether corporeal or incorporeal, which a man may have to him and his heirs by way of inheritance; and which, if they are not otherwiſe deviſed, deſcend to him that is next heir, and fall not to the executor as chattels do. 32 *Hen.* 8. *cap.* 2. It is a word of very great extent, comprehending whatever may be inherited or come to the *heir*; be it real, perſonal or mixed, and tho' it is not holden, or lieth not in tenure. *Co. Lit.* 6. 16. And by the grant of *hereditaments* in conveyances, manors, houſes, and lands of all ſorts, rent, ſervices, advowſons, *&c.* paſs. *Ibid.* *Hæreditamentum eſt omne quod jure hæreditario ad hæredem tranſeat.* Coke.

Hæreditamenta *corporea* (according to judge *Doderidge*) are revenues local, and of annual value. *Hiſt. of Wales, fol.* 90.

A condition is without queſtion an hereditament. 3 *Rep.* 2. *b Trin.* 25 *Eliz.* in the Marquiſs of *Wincheſter*'s caſe, Writ of error is an hereditament, but by the Common law cannot be forfeited or eſcheat. 3 *Rep.* 2. *S. C.*

Uſes were hereditaments; for this ſhall be *poſſeſſio fratris*; but condition or uſe were not forfeitable at Common law. 3 *Rep.* 2. *b.* in the Marquiſs of *Wincheſter*'s caſe. See farther 2 *Black. Com.* 17.

Hereditary right. According to *Blackſtone*, the grand fundamental maxim upon which the *jus coronæ*, or right of ſucceſſion to the throne of theſe kingdoms, depends; he takes to be this, "That the crown is, by Common "law, and conſtitutional cuſtom, hereditary; and this "in a manner peculiar to itſelf: but that the right of "inheritance may from time to time be changed or "limited by act of parliament; under which limitations "the crown ſtill continues hereditary." See the *Commentaries.* 1 *V.* 191, *&c.*

Hereditary revenue, The King how ſeiſed of the hereditary exciſe and poſt office. 12 *Car.* 2. *c.* 24. 1 *Jac.* 2. *c.* 12. How reſtrained from aliening the revenue of the poſt office, 9 *Ann. c.* 10. *ſect.* 43.

Herefare, (Saxon) *Profectio militaris et expeditio.* See *Subſidy.* A military expedition, a going to warfare.

Hereford. For incloſing of commons in *Herefordſhire*, 4 *Jac.* 1. *c.* 11.

Heregeld, (Saxon) *Pecunia ſeu tributum aliendo exercitui collatum.* A tribute or tax levied for the maintenance of an army. See *Subſidy.*

Herellus, A ſort of little fiſh, perhaps minows, or rather gudgeons. *Cowell, edit.* 1727.

Heremitorium, A ſolitary place of retirement for *hermits*——*Radulphus* heremita *locum* heremitorum *de M. ædificavit.* Mon. Angl. Tom. 3. p. 18.

Herenach, An archdeacon. *Cowell, edit.* 1727.

Heremones, or **Hereteams**, One who follows an army of rebels. *Lamb. Leges Inæ, cap.* 15. *In exercitu prædatorum, &c.* from *here, exercitus*, and *team, ſequela.*

Hereſſita, or **Hereſſa**, or **Hereſſiz**, Denotes a hired ſoldier, that departs without licence, derived from the Saxon *here, exercitus*, and *ſliten*, to depart, according to *Co.* 4 *Inſt. f.* 128.

Hereſy, (*Hæreſis*,) Among Proteſtants, is ſaid to be a falſe opinion repugnant to ſome point of doctrine clearly revealed in ſcripture, and either abſolutely eſſential to the Chriſtian faith, or at leaſt of moſt high importance. 1 *Hawk. P. C.* 3.

Anciently, under the general name of hereſy there have been comprehended three ſorts of crimes; 1. Apoſtacy, when a Chriſtian apoſtatizes to Paganiſm. 2. Witchcraft, 3. Formal hereſy, which ſeems to be an apoſtacy from the eſtabliſhed religion; for which, and the ſeveral ways of determining, puniſhing, and the difference between the Civil and Imperial laws, Popiſh canons, and the laws of

England concerning hereſy, ſee a large account in 1 *Hal. Hiſt. P. C.* 383 *to* 410.

It ſeems difficult preciſely to determine what error ſhall amount to hereſy, and what not; but the ſtatute 1 *Eliz. cap.* 1. which erected the high commiſſion court, having reſtrained it to ſuch as are either determined by ſcripture, or by one of the four firſt general councils, or by ſome other council, by expreſs words of ſcripture, or by parliament, with the aſſent of the convocation; theſe rules are at preſent generally thought the beſt directions concerning this matter. 1 *Hawk. P. C.* 3, 4.

By the Common law with us, the convocation of the clergy or provincial ſynod, might and frequently did proceed to the ſentencing of hereticks, and, when convicted, left them to the ſecular power, whereupon the writ of *hæretico comburendo* might iſſue. *Bro.* tit. *Hereſy.* 2 *Rol. Abr.* 226.

It is alſo agreed, that every biſhop may convict perſons of *hereſy* within his own dioceſe, and proceed by church cenſures againſt thoſe who ſhall be convicted; but it is ſaid, that no ſpiritual judge, who is not a biſhop, hath this power; and it hath been queſtioned, whether a conviction before the ordinary were a ſufficient foundation whereon to ground the writ *de hæretico comburendo*, as it is agreed that a conviction before the convocation was. *F. N. B.* 269. 12 *Co.* 56, 57. 3 *Inſt.* 40. *Gibſ. Codex* 401. 1 *Hawk. P. C.* 4. *State Trials, Vol.* 2. 275.

It ſeems agreed, that regularly the temporal courts have no conuſance of *hereſy*, either to determine what it is, or to puniſh the heretick as ſuch, but only as a diſturber of the public peace; that therefore, if a man be proceeded againſt as an heretick in the ſpiritual court, *pro ſalute animæ*, and think himſelf aggrieved, his proper remedy is to bring his appeal to a higher eccleſiaſtical court, and not to move for a prohibition, from a temporal one. 27 *H.* 8. 14. *b.* 5 *Co.* 58. *Hob.* 236.

Yet a temporal judge may incidentally take knowledge whether a tenet be heretical or not; as where one was committed by force of 2 *H.* 4. *cap.* 5, for ſaying, that he was not bound by the law of God to pay tithes to the curate; another for ſaying, that tho' he was excommunicated before men, yet he was not ſo before God; the temporal courts on an *habeas corpus* in the firſt caſe, and an action of falſe impriſonment in the other, adjudged neither of the points to be *hereſy* within that ſtatute, for the King's courts will examine all things which are ordained by ſtatute. 3 *Inſt.* 42. 1 *Rol. Rep.* 110. 2 *Bulſt.* 300.

Alſo in *quare impedit*, if the biſhop plead that he refuſed the clerk for hereſy, it ſeems that he muſt ſet forth the particular point, that it may appear to be heretical to the court wherein the action is brought. 5 *Co.* 58. 1 *And.* 191. 3 *Leon.* 199. 3 *Lev.* 314.

By the Common law, one convicted of hereſy, and refuſing to abjure it, or falling into it again after he abjured it, might be burnt by force of the writ *de hæretico comburendo*, which iſſued out of Chancery upon a certificate of ſuch conviction; but he forfeited neither lands nor goods, becauſe the proceedings againſt him were only *pro ſalute animæ*. *F. N. B.* 269. 3 *Inſt.* 43. *Doctor and Student, lib.* 2. *cap.* 29. 1 *Hawk. P. C.* 4. 5.

But at this day the ſaid writ *de hæretico comburendo* is aboliſhed by 29 *Car.* 2. *cap.* 9. and all old ſtatutes, that gave a power to arreſt or impriſon perſons for hereſy, or introduced any forfeiture on that account, are repealed; yet, by the Common law, an obſtinate heretick being excommunicate is ſtill liable to be impriſoned by force of the writ *de excommunicato capiendo*, till he make ſatisfaction to the church. 12 *Co.* 44. 1 *Hawk. P. C.* 5.

By the 9 & 10 *W.* 3. *cap.* 32. If any perſon, having been educated in or made profeſſion of the Chriſtian religion within this realm, ſhall be convicted of denying any of the Perſons in the Holy Trinity, &c. or of denying the truth of the Chriſtian religion, &c. he ſhall for the firſt offence be adjudged incapable of any office; for the ſecond diſabled to ſue any action, or to be a guardian, executor or adminiſtrator, or to take by any legacy or deed of gift, or to bear any office civil or military, or benefice eccleſiaſtical, for ever, and ſhall alſo ſuffer impriſonment for three years, without bail or mainpriſe. Vide *on this ſubject*, 14 Vin. Abr. *and* 3 New Abr. *tit.* Hereſy. See tit. *Hæretico comburendo*, and *Black. Com.* 4. *V.* 44.

Heretable Juriſdictions, in *Scotland*. The feodal grievance of theſe juriſdictions is removed by *Stat.* 20 *Geo.* 2. *c.* 43. Vide *Dalrymple of Feuds*, 292. and ſee the *Stat.* 20 *Geo.* 2. *c.* 50. and *Black. Com.* 2 *V.* 77.

Heretick, *(Hæreticus)* Is one that adheres to and is convicted of hereſy, or that maintains any opinions or principles contrary to the Chriſtian religion: And a perſon is not an *heretick* by doing a thing condemned or forbidden by the goſpel; but by an obſtinate adherence to an opinion, oppoſite to ſome article of the *Chriſtian faith.* See *Hæretico comburendo.*

Heretico comburendo. See *Hæretico comburendo.*

Heretoche, (From the Sax. *Here, exercitus,* and *togen, ducere*) The general of an army; a leader or commander of military forces. *LL. Ed. Conf. c.* 35. *Ducange* ſays, the *heretochii* were the barons of the realm——*Interſunt epiſcopi, comites, vicecomites,* heretochii, &c. Leg. H. 1. Du Freſne *See* Black. Com. 1 *V.* 397, 408. 4 *V.* 406.

Heretochias, A leader or commander of military forces, See at large the name and office in the laws of *Edward the Confeſſor, cap.* 35. *De Heretochiis.*

Herefum, A court or yard for drawing up the guards or military retinue, which uſually attended our prelates and nobility.——*Thomas Langley Epiſcopus Dunelmenſis apud manerium de Houldon conſtruxit totas portas occidentales opere cæmentario, per quas tranſierint ad* heretum *vel pomarium.* Hiſt. Dunelm. apud Whartoni Angl. Sax. pars 1. pag. 776.

Hergripa, Pulling by the hair; from the Sax. *hær, capillus,* and *grypan, capere: Si quis aliquem per capillos arripiat, tantum emendat quantum de uno colpo faceret,* id eſt, *quinque denarios de* heregripa, Leg. H. 1. cap. 94.

Herigalds, A ſort of garment ſo called. *Cowell.*

Heriot, *(Heriotum)* Is in the Sax. *heregeat bellicus apparatus,* derived from *here, exercitus,* an army, and *geat, fuſus, effuſus, quaſi fuerit quid in exercitum erogatum:* and ſignified originally a tribute given to the lord of a manor for his better preparation for war. By the laws of *Canutus,* at the death of the great men of this realm, ſo many horſes and arms, were to be paid as they were in their reſpective liſe-times obliged to keep for the King's ſervice. *Spelm.* Sir *Edw. Coke* makes *heriot,* or *heregat,* (from *herus* lord) the lord's beaſt: And it is now taken with us for the beſt beaſt, whether it be horſe, ox, or cow, that the tenant dies poſſeſſed of, due and payable to the lord of the manor; and in ſome manors, the beſt goods, piece of plate, &c. *Kitch.* 133. According to *Blackſtone, heriots* are agreed to be a *Daniſh cuſtom.* Com. 2 V. 97. *and ſee* ib. 422. *See poſt.*

We muſt obſerve, that there is

Heriot Service,
and
Heriot Cuſtom.

Heriot-ſervice is payable on the death of *tenant in fee-ſimple*; and *heriot-cuſtom* upon the death of *tenant for life:* when a tenant holds by ſervice to pay a *heriot* at the time of his death, which ſervice is expreſſed, and eſpecially reſerved in the deed of feoffment, this is *heriot-ſervice*; and where *heriots* have been cuſtomarily paid time out of mind, after the death of tenant for life, this is *heriot cuſtom.* *Co. Lit.* 185.

Heriots for cuſtom are commonly paid for *copyhold* eſtates: if an heriot is reſerved upon a leaſe, it is heriot-ſervice, and incident to the reverſion. *Lutw.* 1366, 1367 For a heriot goes with the reverſion, as well as rent; and the grantee of the reverſion ſhall have it. 2 *Saund.* 166.

Although an heriot reſerved upon a leaſe is called an heriot-ſervice; yet it is not like the caſe where a man holds land by the *ſervice of paying an heriot,* &c. becauſe where a heriot is reſerved on leaſe, the proper remedy is either a *diſtreſs,* or *action of covenant* grounded on the contract, for *the leſſor cannot ſeize,* as the lord of a manor may do, the beaſt of his tenant who holds of him by heriot-ſervice. *Keilw.* 82, 84. See *Poſt.*

There may be a covenant in leaſes for lives, *&c.* to render the beſt beaſt, or ſo much money for an *heriot*, at the election of the leſſor; in which caſe the leſſor muſt give notice which he will accept, before action may be brought for it, or a diſtreſs taken, *&c.* 2 *Lill. Abr.* 19.

For *heriot-ſervice*, the lord may *diſtrain* any beaſt belonging to the tenant *on the land:* Alſo it has been held, that the lord may diſtrain any man's beaſts which are upon the land, and retain them until an heriot is ſatisfied. *Co. Lit.* 185. *Litt. Rep.* 33. *Cro. Car.* 260. And if the tenant deviſeth away all his goods, *&c.* yet the lord ſhall have his heriot on the death of the tenant. *Stat.* 13 *Eliz. cap.* 5.

For *heriot cuſtom*, the lord is to *ſeize*, not diſtrain; and he may ſeize the beſt beaſt, *&c.* though out of the manor, or in the King's highway, becauſe he claims it as *his proper goods*, by the death of the tenant, which he may *ſeize* in *any place* where he finds it. *Kitch.* 267. 2 *Inſt.* 132. 2 *Nelſ. Abr.* 931. See *Black. Com.* 3 *V.* 15. *Plowd.* 96. *Keilw.* 84. 1 *Salk.* 356. *Bro. tit. Heriot*, 2, 3. *Keilw.* 82. And *vide poſt*, the end of this title.

Where a woman marries and dies, the lord ſhall have no heriot-cuſtom, becauſe a feme covert can have no goods to pay as a heriot. 2 *Leon.* 239. And when a heriot is to be paid by a certain life of his own goods, an aſſignee is not liable to pay the *heriot*; his goods not being the goods of ſuch life. *Cro. Car.* 313. 2 *Nelſ.* 932. If the lord purchaſe part of the tenancy, heriot-ſervice is extinguiſhed; but it is not ſo of heriot-cuſtom. 8 *Rep.* 105.

There is this difference between *heriot* and *relief*; *heriot* has been generally a *perſonal*, and *relief* always a *predial* ſervice.

It appears not only from *Spelman*'s conjectures, but likewiſe from the laws themſelves of King *Canutus*, that the *Danes* were the firſt inventors of heriots, and that it was a political inſtitution of theirs, whereby the *Daniſh* tenants were to hold by military ſervice, and their arms and horſes at their deaths to revert to the public; and by that means putting the whole ſtrength and defence of the kingdom into their hands, committing only the affairs of agriculture, and the improvement of the nation to the *Engliſh*, though they thereby enjoyed greater freedom and immunities in their tenures than the *Daniſh* tenants. *Spelm.* 287.

As to the ſeveral kinds of heriots, ſome are due by *cuſtom*, ſome by *tenure*, and ſome by *reſervation* on deeds executed within time of memory; thoſe due by *cuſtom*, are the moſt frequent, and aroſe by the contract or agreement of the lord and tenant, in conſideration of ſome benefit or advantage accruing to the tenant, and for which an heriot, as the beſt beaſt, beſt piece of houſhold furniture, *&c.* became due, and belonged to the lord either on the death or alienation of the tenant, and which the lord may ſeize either within the manor or without at his election. *Dyer* 199. *b.* *Bro.* title *Heriot* 2, 3.

It hath been ſolemnly adjudged, that for an *heriot-ſervice*, or for a *heriot* reſerved by way of *tenure*, the lord may either ſeize or diſtrain; for when the tenant agrees that the lord ſhall on his death have the beſt beaſt, *&c.* the lord hath his election which beaſt he will take, and by ſeizing thereof reduces that to his poſſeſſion, wherein he had a property at the death of the tenant, without the concurring act of any other perſon; and it is not like the caſe where the leſſor reſerves 20 *s.* or a robe, for there the leſſee has his election which he will pay, and being to do the firſt act the lord cannot ſeize, but muſt diſtrain. *Plow.* 96. adjudged. *Cro. Eliz.* 589.

So it hath been ruled, that for a *heriot cuſtom* or *ſervice* the lord may *ſeize* as well *in* the manor as *out*; but if he *diſtrain*, it muſt be *in* the manor. 1 *Salk.* 356 *per cur.* 1 *Show.* 81. *S. P.* 3 *Mod.* 231. *S. P. arguendo.*

But it is ſaid, that this liberty muſt be underſtood to be annexed to ancient tenures, on which the lords had many privileges, and not to be extended to thoſe which are created within time of memory, upon particular reſervations. Vide 1 *Show.* 81. 3 *Mod.* 231. Alſo *vide* 14 *Vin. Abr.* and 3 *New Abr.* tit. *Heriot.*

Heriſchild, Military ſervice, or knight's fee: from the Sax. *here*, an army, and *ſcyld*, *ſcutum*. *Cowell, edit.* 1727.

Heriſhit, Laying down of arms: from the Sax. *here*, *exercitus*, and *ſlitan*, *ſciſſura*. *Id.*

Heriſcindium, A diviſion of houſhold goods; *non toties fieri placet* hereſcindia *mecum, i. e.* I am not pleaſed ſo often to divide my goods. *Id.*

Heriſtall, A caſtle; from the Sax. *here*, an army, and *ſtall*, *ſtatio.* *Id.*

Hermaphrodite, *(Hermaphroditus)* A perſon that is both man and woman. *Lit. Dict.* And as *hermaphrodites* partake of both ſexes; they may give or grant lands, or inherit as heirs to any, and ſhall take according to the prevailing ſex. *Co. Lit.* 2, 7.

Hermer, Among the *Saxons* was a great lord; from the Sax. *hera*, i. e. *major*, and *mære*, *dominus*.

Herminus, *(mus ponticus,)* A mouſe, of whoſe ſkins we have *ermine*.

Hermitage, *(Hermitagium,)* The habitation of a hermit, a ſolitary place. *Vulgariter autem locus iſte a laicis* heremitagium *nuncupatur, propter ſolitudinem*; *non quod* heremita *aliquis aliquo tempore ibidem ſolebat converſari.* Mon. Angl. 2 par. fol. 339. b.

Hermitorium, The chapel or place of prayer, belonging to an *hermitage*. *Cowell.*

Herneſeus, Herons. *Cowell.*

Herneſium, Anciently uſed for the tackle or furniture of a ſhip. *Cepit etiam in prædicta navi* herneſia *ad navem illam ſpectantia.* Pl. Parl. 22 Ed. 1.

It is alſo called *hernaſium*, from the Teuton. *harnas*, Engliſh *harneſs*, and ſignified any ſort of furniture of a houſe, implements of trade, or rigging of a ſhip. *Cowell.*

Heroudes, The ſame with heralds: *Et aſſiſtebant eis quatuor duces, &c. bene ad æſtimationem* heroudes, *&c.* Knighton, p. 2571.

Herrings. It is unlawful to buy or ſell *herrings* at ſea, before the fiſhermen come into the haven, and the cable of the ſhip be drawn to the land. 31 *Ed.* 3. *Stat.* 2. No *herrings* ſhall be ſold in any veſſel, but where the barrel contains 32 gallons, and half barrel and firkin accordingly; and they muſt be well packed, of one time's packing and ſalting, and be as good in the midddle as at the ends, on pain of forfeiting 3 *s.* 4 *d.* a barrel, *&c.* by ſtat. 22 *Ed.* 4. *cap.* 2. The veſſels for *herrings* are to be marked with the quantity, and place where packed; and packers are to be appointed and ſworn in all fiſhing ports, *&c.* under the penalty of 100 *l.* Stat. 15 *Car.* 2. *cap.* 16.

Allowance on the exportation of herrings, *&c.* 5 & 6 *W.* & *M.* *c.* 7. *ſect.* 10. 9 & 10 *W.* 3. *c.* 44. *ſect* 15, 16, 17. 5 *Geo.* 1. *c.* 18. Of white herrings from *Scotland.* 5 *Ann. c.* 8. *art.* 8. Oath of exporter that herrings were cured with ſalt that paid duty, *etc.* 5 *Ann. c.* 29. *ſect.* 6 altered by 6 *Ann. c.* 12. *ſect.* 3. Duty on red herrings for home conſumption. 8 *Geo.* 1. *c.* 4. On white herrings 8 *Geo.* 1. *c.* 16. Duties reduced, and taken off where only home-made ſalt is uſed, 3 *Geo* 2. *c* 20 *ſect.* 14 *and* 15. 26 *Geo* 2. *c.* 3. Duties on red and white herrings revived, 5 *Geo.* 2. *c.* 6. *ſect.* 3. Eſtabliſhment of the *Britiſh* white herring fiſhery, 23 *Geo.* 2. *c.* 24. 26 *Geo.* 2. *c.* 9. 28 *Geo.* 2. *c.* 14. Officers of the cuſtoms to view the veſſels at their return, 23 *Geo.* 2. *c.* 24. *ſect.* 15. Duties to *Greenwich* hoſpital to be paid before bounty is received, 28 *Geo.* 2. *c.* 14. *ſect.* 10. 30 *Geo.* 2. *c.* 30. *ſect.* 10. Staves of herring-barrels in *Scotland* to be half an inch thick, 29 *Geo.* 2. *c.* 23. *ſect* 4. Not to extend to the white herring fiſhery, 3 *Geo.* 2. *c.* 30. *ſect.* 6. One ſhilling per barrel payable in *Scotland* on herrings for home conſumption, 29 *Geo.* 2. *c.* 23. *ſect.* 6. Further bounty on veſſels employed in the white herring fiſhery, 30 *Geo.* 2. *c.* 30. Such nets may be uſed in the herring fiſhery as are beſt adapted to it, 30 *Geo.* 2. *c.* 20. *ſect.* 2. Penalty on obſtructing thoſe employed in the herring fiſhery, in the free uſe of ports, ſhores, *&c.* 30 *Geo.* 2. *c.* 30 *ſect* 7.

Herring Silver. Seems to be a compoſition in money, for the cuſtom of paying ſuch a number of *herrings*, for the proviſion of a religious houſe, *&c. Placit. Term. Stæ. Trin.* 18 *Ed.* 1.

Heſta, An eaſement——*Uſque ad quandam* heſiam *ante meſſuagium, &c.* Chart. Antiq.

Heſta or **Heſtha**, (a corruption of the Latin *becta)* A little loaf of bread. *Domeſday. Cowell, edit.* 1727. See *Ruſca.*

Heſtcorn. King *Athelſtane* in his return from the *North*, after a victory, went to *Beverley*, where he gave to God, *&c. Quaſdam avenas, vulgariter dictas* heſtcorne, *percipiendas de dominiis & eccleſiis in illis partibus, quas, &c.* Mon. Ang. Tom. 2. p. 367.

Heſtha, A capon or young cockerill.——*Quando Rex ibi veniebat, reddebat ei unaquæque carucata* 200 heſthas. *Domeſday.*

Heudelborth, (from the Sax. *healf*, i. e. *dimidium, &* borgh, *debitor vel fidejuſſor)* A ſurety for debt, *quia qùi fidejubet, debitorem ſe quodammodò conſtituit.* Du Freſne.

Hexam and **Hexamſhire**, Anciently *haguſtald*, was a county of itſelf, and likewiſe a biſhoprick, endowed with great privileges: but by the *Stat.* 14 *Eliz. c.* 13. is is enacted, that *Hexam* and *Hexamſhire*, ſhall be within and accounted part of the county of *Northumberland.* 4 Inſt. 22.

Heybote. See *Haybote.*

Heyloed, Seems to ſignify a cuſtomary load or burden laid upon the inferior tenants for mending or repairing the *heys* or hedges. *Cowell.*

Heymectus, A net for catching conies; a *hay-net.* Placit. Temp. Ed. 3. Cowell.

Hidage, *(bidagium)* Was an extraordinary tax, payable to the King for every *hide* of land. *Bracton* writes of it thus: *Sunt etiam quædam communes præſtationes, quæ ſervitia non dicuntur, nec de conſuetudine veniunt, niſi cum neceſſitas intervenerit, vel cum Rex venerit; ſicut ſunt* Hidagia, Coragia & Carvagia, *ex conſenſu communi totius regni introducta, &c. Bract. lib.* 2. *cap.* 6. This taxation was levied not only in money, but proviſion of armour, *&c.* And when the *Danes* landed at *Sandwich*, in the year 994. King *Ethelred* taxed all his lands by *hides*, ſo that every 310 hides found one ſhip furniſhed; and every 8 hides found one jack and one ſaddle, to arm for the defence of the Kingdom, *&c.* Sometimes the word *hidage* was uſed for the being quit of that tax; which was alſo called *hidegild*, and interpreted from the *Saxon*, a price or ranſom paid to ſave one's ſkin or hide from beating. *Sax. Dict.* See *Danegeld*, and *Black. Com.* 1 *V.* 310.

Hides. See *Leather* and *Skins*,

Hide and **Gain**, Did anciently ſignify arable land. *Coke Lit.* 85. *b.* For of old, to *gain* the land was as much as to till it. See *Gainage.*

Hidelands, (Sax. *Hydelander.) Terræ ad hydam ſeu tectum pertinentes.*

Hide of Land, (Sax. *hyde-lands*, from *hyden, tegere.) Tanta fundi portio quanta unico per annum coli poterat aratro; vel quæ familiæ uni ſuſtentandæ ſufficeret.* A plough-land. In an old manuſcript it is ſaid to be 120 acres. *Bede* calls it *Familiam*, and ſays it is as much as will maintain a family. others call it *Manſum, Manentem, Caſatam, Carucatam, Sullingam, &c. Crompton*, in his *Juriſdict. fo.* 222, ſays, a *hide of land* contains one hundred acres, and eight hides make a knight's fee. *Hida autem Angilce vocatur terra unius aratri culturæ ſufficiens per annum.* Henry Hunting. Hiſt. lib. 6. fol. 206. b. But Sir *Edw. Coke* holds, that a knight's fee, a *hide* or plough-land, a yard-land, or an oxgang of land, do not contain any certain number of acres. On *Lit. fol.* 69. The diſtribution of *England* by *hides of land* is very ancient; for there is mention of them in the laws of King *Ina, cap.* 14. *Henricus* 1. *maritandæ filiæ ſuæ gratia imperatori, cepit ab unaquaque* hida *Angliæ tres ſol.* Spelman. And ſee *Camb. Brit. fol.* 158.

Hidel, Signifies a place of protection or ſanctuary. *Stat.* 1 *Hen.* 7. *c.* 6. *Cowell, edit.* 1727.

Hidgild, *(in LL. Canuti R.) Exponitur pretium redemptionis aut manumiſſionis ſervi.* From the Sax. *hide, i. e.* the ſkin; and *geld, pretium, i. e.* the price by which he redeemeth his ſkin, *i. e.* redeemed it from being whipped. *Si liber feſtis diebus operetur, perdat libertatem; ſi ſervus, corium perdat, vel* hidgildum; *i. e.* let him be whipped; which was the puniſhment for ſervants; *vel bidgildum, i. e.* Let him pay for his ſkin; by which payment he is to be excuſed from whipping. *Cowell.* See *Hudegeld.*

Hierloom. See *Heirloom.*

High treaſon. See *Treaſon.*

Highway, *(Via Regia)* Is a paſſage for the King's people, for which reaſon it is called the *King's Highway.*

Under this head we ſhall treat,

I. *Of the various ſorts of highways,* &c.
II. *Of the right to, the claiming, and changing of ways.*
III. *Of repairs.*
IV. *Of the aſſeſſment for that purpoſe, and of day work.*
V. *Of nuſances, of various ſorts.*
VI. *Of proſecuting perſons, guilty of offences, relative to the highways, and of the general doctrine as to indictments,* &c.
VII. *Of turnpike roads.*

I. *Of the various ſorts of highways,* &c.

It ſeems, that anciently there were but four highways in *England*, which were free and common to all the King's ſubjects, and through which they might paſs without any toll, unleſs there was a particular conſideration for it; all others, which we have at this day, are ſuppoſed to have been made through the grounds of private perſons, on a writ of *ad quod damnum, &c.* which being an injury to the owner of the ſoil, it is ſaid that they may preſcribe for toll without any ſpecial conſideration. 3 *New Abr.* 54. 1 *Mod.* 231. 2 *Mod.* 143.

There are (ſays Lord *Coke)* three kinds of ways: 1. A foot-way, called in Latin *iter.* 2. A pack and prime way, which is both a horſe and foot-way, called in Latin *actus.* 3. A cart-way, called in Latin *via* or *aditus*, which contains the other two and alſo a cart-way; and is called *via regia*, if it be common to all men; and *communis ſtrata*, if it belong only to ſome town or private perſon. *Co. Lit.* 56. *a.*

But, notwithſtanding theſe diſtinctions, it ſeems, that any of the ſaid ways which is common to all the King's ſubjects, whether it lead directly to a market-town or only from town to town, may properly be called a highway; that any ſuch cart-way may be called the King's highway; that a river common to all men may alſo be called a highway; and that nuſances in any of the ſaid ways are puniſhable by indictment; otherwiſe they would not be puniſhed at all: for they are not actionable unleſs they cauſe a *ſpecial damage* to ſome *particular perſon*; becauſe, if ſuch action would lie, a multiplicity of ſuits would enſue. But it ſeems, that a way to a pariſh-church, or to the common fields of a town, or to a village, which terminate there, may be called a private way, becauſe it belongs not to all the King's ſubjects, but only to the particular inhabitants of ſuch pariſh, houſe or village, each of which, as it ſeems, may have an action for a nuſance therein. *Palm.* 389. *Cro. Eliz.* 63, 664. 1 *Vent.* 189, 208. 3 *Keb.* 28. *Co. Lit.* 56. 6 *Mod.* 255. 1 *Hawk. P. C.* 201.

If paſſengers have uſed time out of mind, when the roads are bad, to go by outlets on the land adjoining to a highway in an open field, ſuch outlets are parcel of the highway; and therefore if they are ſown with corn, and the tract foundrous, the King's ſubjects may go upon the corn. 1 *Rol. Abr.* 390. *Cro. Car.* 366. *S. C.*

Though every highway is ſaid to be the King's, yet this muſt be underſtood ſo as that in every highway the King and his ſubjects may paſs and repaſs at their pleaſure. But the freehold, and all the profits, as trees, *&c.* belong to the lord of the ſoil, or to the owner of the lands on both ſides of the way. Alſo the lord or owner of the ſoil ſhall have an action of treſpaſs for digging the ground. But the lord of a rape, within which there are ten hundreds, may preſcribe to have all the trees growing within an highway within this rape, tho' the manor or ſoil adjoining belongs to another; for uſage to take the trees is a good mark of ownerſhip. 1 *Rol. Abr.* 392. 1 *Brownl.* 42. *Keilw.* 141.

II. *Of the right to, claiming, and changing of highways, &c.*

A man may have a way either by preſcription or grant, by reſervation, by implication, or by owelty of partition, and ſhall not in a *cur claudend.* be obliged to ſhew which way he claims it; but it will be ſufficient for him to alledge *debet & ſolet, &c.* but in a bar or replication he muſt ſhew his title preciſely. 1 *Vent.* 274. 2 *Lev.* 148. 3 *Keb.* 528, 531. *St. John* v. *Moody.* But he who preſcribes for a way, muſt ſhew in certain whether it is a foot, horſe, or cart way. *Yel.* 163. adjudged upon demurrer.

But it ſeems, that if a man hath a way for carriages from *D.* to *Blackacre* over my cloſe, and after he purchaſes land adjoining to *Blackacre,* he cannot uſe the ſaid way with carriages to the land adjoining, for then it may be very prejudicial to my cloſe; but it ſeems, if I will help myſelf, I muſt ſhew the ſpecial matter, and that he uſed it for the land adjoining. 1 *Rol. Abr.* 391.

A way muſt not be claimed as appendant or appurtenant to a houſe, becauſe it is only an eaſement, and no intereſt. *Yelv.* 159. But it may be *quaſi* appendant thereto, and as as ſuch paſs by grant thereof, *Cro. Jac.* 190.

A man may preſcribe for a way from his houſe thro' a certain cloſe, *&c.* to church, though he himſelf has lands next adjoining to his ſaid houſe, through which of neceſſity he muſt firſt paſs; for the general preſcription ſhall be applied only to the lands of others. *Palm.* 387, 388. 2 *Rol. Rep.* 397.

An ancient highway cannot be changed without an inquiſition found on a writ of *ad quod damnum,* that ſuch change will be no prejudice to the public; and it is ſaid, that if one change a highway without ſuch authority, he may ſtop the new way whenever he pleaſe; neither can the King's ſubjects, in an action brought againſt them for going over ſuch new way, juſtify generally as in a common highway, but *ought to ſhew ſpecially, by way of excuſe, how the old way was obſtructed, and a new one ſet out*; neither are the inhabitants bound to keep watch in ſuch new way, or repair it, or to make amends for a robbery committed in it. *Cro. Car.* 266. *Vaugh.* 341. *Yelv.* 141. 1 *Hawk. P. C.* 201-2.

But it hath been holden, that if a water, which hath been an ancient highway, by degrees changes its courſe, and goes over different ground from that whereon it uſed to run, yet the highway continues in the new channel in the ſame manner as in the old. 22 *Aſſ.* 93. 1 *Rol. Abr.* 390.

III. *Of repairs.*

By *Common law,* alſo by reaſon of *incloſure, tenure,* or *preſcription.* And, by *Statute law.*

Of *Common right,* the general charge of repairing highways lies on the occupiers of lanos in the pariſh wherein they lie; but is ſaid, that the tenants of the lands adjoining are bound to ſcour their ditches. 1 *Rol. Abr.* 39. *March* 26. 1 *Vent.* 90, 183. 8 *Hen.* 7. 5.

Alſo if a pariſh is part in one county, and part in another, and the highways in one county are out of repair, the whole pariſh ſhall contribute to the repair; but there may be an agreement between the inhabitants, that the one ſhall repair one parr, and the other the other; and ſuch agreement is good between themſelves, and for breach, the one may have action upon the caſe againſt the other; but in an indictment they ſhall take no advantage of theſe agreements, for as to the King they are equally liable. 1 *Mod.* 112. 1 *Vent.* 256. 3 *Keb.* 301. Alſo *vide* 1 *Vent.* 256. 1 *Mod.* 112. 3 *Keb.* 301.

A highway lying within a pariſh, the whole pariſh is of common right bound to repair it; except it appears that it ought to be repaired by ſome particular perſon either *ratione tenuræ,* or by preſcription. 1 *Vent.* 183. *Style* 163.

But though the pariſh be obliged of common right to repair the highways in it, yet it is certain, that particular perſons may be bound to repair the highway, by reaſon of incloſure or preſcription; as where the owner of lands not incloſed, next adjoining to the highway, incloſes his lands on both ſides of it; in which caſe he is bound to make a perfect good way, and ſhall not be excuſed by making it as good as it was before the incloſure, if it were then any way defective, becauſe by the incloſure he takes from the people the liberty of going over the lands adjoining to the common track. 1 *Rol. Abr.* 390. *Cro. Car.* 366. 1 *Sid.* 464.

Alſo it is ſaid, that if one incloſe land on one ſide, which hath anciently been incloſed on the other ſide, he ought to repair all the way; but that if there be no ſuch ancient incloſure on the other ſide, he ought to repair but half the way. 1 *Sid.* 464.

Therefore, if there be an old hedge time out of mind belonging to *A.* on the one ſide of the way, and *B.* having land lying on the other ſide, makes a new hedge, there *B.* ſhall be charged with the whole repair. 1 *Sid.* 464. 2 *Keb.* 665. 2 *Saund.* 157. But if *A.* makes a hedge on the one ſide of the way, and *B.* on the other, they ſhall be chargeable by moieties. 1 *Sid.* 464. 2 *Keb.* 665. But it ſeems clear, that wherever a perſon makes himſelf liable to repair a highway by reaſon of incloſure, that by throwing of it open again, he thereby frees himſelf from the burthen of any future reparation. 2 *Saund.* 160.

Particulars perſons may be bound to repair a highway by preſcription; and it is ſaid, that a corporation aggregate may be charged by a general preſcription, that it ought and hath uſed to do it, without ſhewing any conſideration in reſpect whereof they had uſed to do it, becauſe ſuch a corporation never dies, neither is it any plea, that they have done it out of charity; but it is ſaid, that ſuch a general preſcription is not ſufficient to charge a private perſon, becauſe no man is bound to do a thing which his anceſtors have done, unleſs it be for ſome ſpecial reaſon; as having lands deſcended to him holden by ſuch ſervice, *&c.* but it ſeems, that an indictment charging a tenant of lands in fee with having uſed of right to repair ſuch a way *ratione tenuræ terræ ſuæ,* without adding that his anceſtors, or thoſe whoſe eſtate he hath, have ſo done, is ſufficient, for it is implied. 27 *Aſſ.* 8. 27 *Ed.* 4. 38. *Bro. Preſcription* 49, 70. *Keilw.* 52. *a. Latch.* 206. 1 *Hawk. P. C.* 202-3.

And it ſeems certain in all thoſe caſes, whether a private perſon be bound to repair a highway by incloſure or preſcription, that the pariſh cannot take advantage of it on the general iſſue, but muſt *plead it ſpecially*; that therefore, if to an indictment againſt the pariſh, for not repairing a highway, they plead Not guilty, this ſhall be intended only that the ways *are in repair,* but does not go to the *right* of reparation. 1 *Mod.* 112. 3 *Keb.* 301. 1 *Vent.* 256.

At Common law it is ſaid, that all the country ought to make good the reparations of a highway, where no particular perſons are bound to do it; by reaſon the whole country have their eaſe and paſſage by the ſaid way. *Co. Rep.* 13. By the ancient Common law, villages are to repair their highways, and may be puniſhed for their decay; and if any do injure, or ſtraighten the highway, he is puniſhable in the King's Bench, or before juſtices of the peace in the Court Leet, *&c.* 27 *Aſſ.* 63. *Cromp. Juriſd.* 76.

By Statute law various proviſions are made, *viz.* the 7th of *Geo.* 3. *c.* 42. *ſect.* 1. (made to reduce into *one* act *all the laws* relative to the *highways*) directs, that annual liſts be made in *September,* of a certain number of perſons qualified to ſerve as ſurveyors of the highways, to be returned to the juſtices, at their ſpecial ſeſſions in *October,* who are to nominate ſuch a number to be ſurveyors, as they ſhall judge neceſſary, who are to hold the office for one year. On refuſal they forfeit 5 *l.* and others to be nominated.

The ſurveyor is to take a view of the highways at proper times, in reſpect of nuſances, *&c.* and give notice to the parties concerned to remove the ſame, who, if they do not, ſurveyor to employ his men to do it, the defaulters forfeiting according to direction of the act.

The ſurveyor is to make new ditches, drains, *&c.* where the old are inſufficient, and keep the ſame ſcoured, *&c.* with proper trunks, tunnels, platts, bridges or arches over the ſame, making ſatisfaction to the owners of lands, *&c.* where any damage is done. The ſurveyor is alſo to make cart-ways leading to market towns twenty feet wide at leaſt, and the horſe cauſeways three feet, and to keep the ſame in repair.

Two or more juſtices of peace, upon view, may order narrow roads to be widened to a ſufficient breadth, in which caſes the ſurveyor is to agree with the owner of the ſoil as to recompence; in default of ſuch agreement, the ſame to be aſſeſſed by a jury.

The ſurveyor is to make report of ſuch defective highways, bridges, *&c.* as ought to be repaired by particular perſons, to the juſtices, or two, or more, and notice to be given to the occupier. If not repaired in due time, the juſtices are to preſent the highways, ſo out of repair, together with the perſon or perſons, bodies politic or corporate, liable to repair, at the next general quarter ſeſſions.

The act alſo impowers juſtices of aſſiſe, and juſtices of peace, to make preſentments to the aſſiſes, or ſeſſions, of defective highways, cauſeways or bridges, or of any other defaults or offences againſt the act, and to aſſeſs ſuch fines as they ſhall think fit, ſaving to the perſons affected their lawful traverſe to ſuch preſentments.

The juſtices at their ſpecial ſeſſions may order thoſe roads to be firſt repaired that moſt want it. If the ſurveyors neglect their duty, two juſtices may hear complaint, and make ſuch order as they think fit.

The juſtices are to order proper direction poſts to be ſet up where ſeveral highways meet, and at the approaches to ſuch parts as are ſubject to deep or dangerous floods, and where neceſſary for guiding travellers in the beſt and ſafeſt tract; ſurveyor ſubject to a penalty for neglect of duty in this particular.

The ſurveyor is impowered to take materials for repair of the highways, from any neighbouring quarries, commons, waſtes, grounds, rivers, or brooks. And where ſufficient cannot be had from ſuch places, then from private grounds, making ſuch ſatisfaction to the owners, as ſhall be agreed upon, or otherwiſe as the juſtices ſhall direct.

By *ſect.* 22. of the act, particular directions are given for *filling up, and ſtopping of holes made in digging for materials,* under certain penalties on the ſurveyor.

By *ſect.* 32. The ſurveyor is to collect and pay over to the juſtices all rates, forfeitures, penalties and compoſitions.

IV. *Of the aſſeſſment for repairs, and of day work.*

By 7 *Geo.* 3. *c.* 42. *ſect.* 12. Where there is not ſufficient money in the hands of the ſurveyors, to pay owners of ſoil for damage done, in widening of roads, two juſtices, or quarter ſeſſions, may order an aſſeſſment, upon every *occupier* of lands and tenements, in the reſpective pariſhes, *&c.* where the highways lie; if aſſeſſment not paid in ten days after demand, it may be levied by diſtreſs and ſale of the goods of the perſons aſſeſſed: provided that no ſuch aſſeſſment be made in any one year to exceed the rate of 6*d.* in the pound of the yearly value of the lands, *&c.* aſſeſſed.

By *ſect.* 21. The expences incurred by the ſurveyors, in doing various things, directed by the ſtatute, are to be reimburſed by a rate on the inhabitants, according to the rules preſcribed in the 43d of *Eliz.* intituled, "An act "for the Relief of the Poor."

By *ſect.* 23. Statute work in general is regulated. Every perſon keeping a team, draught, or plough, ſhall ſix days in the year furniſh a wain, cart or carriage, and other neceſſaries, and two able men with each. Thoſe occupying of lands, *&c.* of 50*l.* yearly value, the like. So for every 50*l. per annum* reſpectively, and one labourer for every 10*l.* over ſuch 50*l.* and leſs than 100*l.* *&c.* of the yearly value of 10*l.* and not of 50*l.* Not keeping a team, *&c.* one labourer, for every 10*l.* Under 10*l.* and not keeping a team, to go in perſon, or find a labourer. Power is alſo given to change carriages for men, where thought needful by the ſurveyor; or a certain ſum to be paid in lieu. Men ſent, to furniſh their own tools.

The ſurveyors are to give due notice to perſons liable to ſtatute work.

By *ſect.* 25. Perſons liable to perform ſtatute work may *compound* at ſuch rates as the juſtices ſhall appoint, not exceeding 6*s.* nor leſs than 3*s.* for each day; and other particular ſpecifications.

Sect. 26. Regulates the duty of the ſurveyor in giving notice of time and place of admitting perſons to compound, and regulates the changes, in the occupation of lands, *&c.* or new inhabitants.

By *ſect.* 27. it is provided, that perſons occupying lands, *&c.* not above 50*l. per annum* are not obliged to find or compound for more than one carriage; and a team or plough kept part of the year in one pariſh, and part in another, the duty to be performed where the perſon uſually reſides.

Sect. 28. Where compoſition made, a proportion is to be paid to the turnpike ſurveyor, if part of ſuch duty is to be performed on the turnpike roads.

If the juſtices at ſeſſions are ſatisfied that money raiſed by preceding means, *&c.* is not ſufficient, then, by *ſect.* 29. they are to make an aſſeſſment upon every occupier, to be levied by diſtreſs and ſale.

But, by *ſect.* 30. it is provided it do not exceed 6*d.* in the pound in any one year.

All fines and forfeitures for not repairing the highways, or not appearing to indictments, are to be applied in repair of the highways.

V. *Of nuſances,* viz. *by ſtopping highways, and other nuſances at Common law.—Of hedges,* &c. *near the highways.—Of drawing carriages with a greater number of cattle than allowed.—Of leaving empty carriages in the road,* &c.

It is clearly agreed to bea nuſance to dig a ditch, or make a hedge a-croſs the highway, or to a erect a new gate, or to lay logs of timber in it, or generally to do any other act which will render it leſs commodious. *Kitchin* 34. 1 *Hawk. P. C.* 212. Alſo it is a nuſance for an heir, (and for which he may be indicted,) to continue an incroachment, or other nuſance to a highway begun by his anceſtor, becauſe ſuch continuance thereof amounts, in the judgment of law, to a new nuſance. 1 *Hawk. P. C.* 214. Alſo it is agreed, that it is no excuſe for him who lays logs in the highway, that he laid them only here and there, ſo that the people might have a paſſage through them by windings and turnings. 2 *Rol. Abr.* 137. 1 *Hawk. P. C.* 212.

It is a nuſance to ſuffer the highway to be incommoded by reaſon of the foulneſs, *&c.* of the adjoining ditches, or by boughs of trees hanging over it, *&c* And it is ſaid, that the owner of land next adjoining to the highway, ought of common right to ſcour his ditches; but that the owner of land next adjoining to ſuch land, is not bound by the Common law ſo to do without a ſpecial preſcription; alſo it is ſaid, that the owner of trees hanging over an highway, to the annoyance of travellers, is bound by the Common law to lop them; and it is clear that any other perſon may lop them, ſo far as to avoid the nuſance. 8 *H.* 7. 5. *a. Kitch.* 34. *Dalt. cap.* 26. 1 *Hawk. P. C.* 212, 213.

But it is no nuſance for an inhabitant of a town to unlade billets, *&c.* in the ſtreet before his houſe, by reaſon of the neceſſity of the caſe, unleſs he ſuffer them to continue there an unreaſonable time. 2 *Rol. Abr.* 137.

Any one may juſtify pulling down, or otherwiſe deſtroying a common nuſance, as a new gate or houſe erected in a highway; and it hath been of late holden, that there is no need, in pleading ſuch juſtification, to ſhew that as little damage was done as might be. 2 *Rol. Abr.* 144. *Cro. Car.* 184. 1 *Jon.* 221. 2 *Salk.* 458.

Though all nuſances are puniſhable by indictment with fine and impriſonment, it is ſaid, that one convicted of a nuſance to the highway, may be commanded by the judgment to remove it at his own coſts, *&c.* 2 *Rol. Abr.* 84. 1 *Hawk. P. C.* 200.

A gate erected in a highway is a common nuſance, becauſe it interrupts the people in that free and open paſſage, which they before enjoyed and were lawfully intitled to; but where ſuch a gate has continued *time out of mind*, it ſhall be intended that it was ſet up at firſt by conſent, on a compoſition with the owner of the land on the laying out the road, in which caſe the people had never any right to a freer paſſage than what they ſtill enjoy. 1 *Hawk.* 199.

By the *Stat.* 7 *Geo.* 3. *c.* 42. which we have before mentioned, viz. *ſect.* 3. No tree or buſh is to be allowed to grow, or ſtand within fifteen feet of the center of the highway, on forfeiture of 10*s.* by the owner. By *ſect* 4. The poſſeſſors of land next adjoining to the highway are to keep their hedges, ditches, drains, water-courſes, trunks, tunnels, plats and bridges, in proper order. And ſo as to occupiers of adjoining grounds, through which the water hath uſed to paſs from the highway, on forfeiture of 10*s.*

By *ſect.* 5. No ſtone or other matter is to be laid in the highway, or ſoil of ditches, to the obſtruction or prejudice thereof, on forfeiture of 10*s.*

By *ſect.* 6. Where any thing, (not tolerated by the act) ſhall be laid within fifteen feet of the center, the owner of the adjacent lands may remove and diſpoſe of the ſame to his own uſe.

Sect. 7. If the highway is wilfully obſtructed by carriages, or implements of huſbandry, the perſon offending ſhall forfeit 10*s.*

By *ſect.* 38. No waggon, the fellies of whoſe wheels are leſs than nine inches, ſhall be drawn with more than ſix horſes; nor car, leſs than nine inches, to be drawn with more than four; waggons of nine inches, with no more than eight horſes; cart of nine, with no more than five, on forfeiture of all horſes above the number, with the accoutrements, to the perſon ſeizing.

Sect. 39. Waggons ſhod with narrow tire, or ſet with roſe-headed nails, not to be drawn by more than three horſes, on forfeiture of the ſupernumerary.

Sect. 40. Excepts carriages drawing one ſtone or block of marble, or piece of metal or timber, ammunition or artillery for his Majeſty's ſervice.

By *ſect.* 42. Owners of carriages to have the owner's real name and place of abode painted on ſome conſpicuous part, in large letters, on penalty of 20*s.*

By *ſect.* 43. The driver of any cart or dray, riding thereon in any ſtreet or highway, without having ſome perſon on foot or on horſeback to guide the ſame (except carriages drawn by one horſe, or two horſes abreaſt, and conducted by ſome perſon holding the reins), and the driver of any carriage, who by negligence or miſbehaviour, ſhall damage or obſtruct perſons, or carriages, in paſſing, or who ſhall not make way for loaded carriages, forfeits, if not the owner, any ſum not exceeding 10*s.* if the owner, any ſum not exceeding 20*s.* or may be committed to the houſe of correction for any time not exceeding one month.

So far as to the act, on this ſubject, *yet it is proper to inform the reader, that this* ſtatute *does not reſtrain the ſubject, who receives any injury by a* driver, *&c. of any carriage, from ſuing the* owner *thereof at* Common law, *or from* puniſhing *the* driver *for wilful offence, by* indictment, *as the nature of the caſe may require. But then the party proſecuting muſt waive the benefit of proceeding, under this* ſtatute, *in the* ſummary way *thereby preſcribed.*

VI. *Of proſecuting perſons guilty of offences relative to the highways.*

A variety of puniſhments, with various modes of proceeding, have been inflicted and directed by ſeveral ſtatutes, but the ſeventh of *Geo.* 3. *c.* 42. having reduced the laws in general into one code, it is unneceſſary to take any farther notice of the preceding ſtatutes.—As to the doctrine of indictments on this ſubject, it may be of uſe to refer the reader to 1 *Hawk. P. C.* 218, 219, 220. and *Stra.* 849, 900.

We now proceed to the ſubſtance of 7 *Geo.* 3. *c.* 42. on this ſubject.

By *ſect.* 34. The pulling up, removing, or deſtroying, *&c.* the poſts, blocks, banks, *&c.* ſet up for ſecurity of horſe and foot cauſeways, or the parapets or battlements of bridges, mile-ſtones, or direction-poſts, incurs a penalty not exceeding 5*l.* nor leſs than 5*s.* on conviction by a juſtice of peace, or a commitment to the houſe of correction, to be whipped, and kept to hard labour, for any time not exceeding one month, nor leſs than ſeven days.

By *ſect.* 35. The ſurveyor, on neglect of duty in inſtances not otherwiſe provided for by the act, forfeits a ſum not exceeding 5*l.* nor leſs than 10*s.*

By *ſect.* 36. Juſtices of the peace are impowered to put in execution every part of the act.

By *ſect.* 46. Perſons forcibly oppoſing the execution of the act, or obſtructing the making a ſeizure or diſtreſs, or reſcuing cattle or other goods, and conſtables not duly executing the warrant or precept of any juſtice, forfeit a ſum not exceeding 10*l.* nor leſs than 40*s.* and, on nonpayment, may be committed for three months.

By *ſect.* 47. All penalties and forfeitures, and all coſts and charges, where not otherwiſe directed, are to be levied by diſtreſs and ſale, by warrant of a juſtice; one half to the uſe of the informer, the other to the roads; and for want of diſtreſs, the party to be committed.

By *ſect.* 48. Penalties or forfeitures may be ſued for, by the proſecutor or informer, either as before directed, or by *action of debt*, where the penalty is a pecuniary one, (declaring in a very general manner, as directed by the act), or by *action of trover*, where the penalty or forfeiture is an horſe, or other goods, and recovering, ſhall have double coſts.

[*It may not be improper to obſerve, that there are very good opinions, againſt the* general method *of* declaring *in* debt, *directed by the act, and that a declaration, thus framed, could not be ſupported, on* demurrer; *for, the act creating a* variety of offences, *where the* forfeiture *is* a pecuniary one, *the defendant cannot be prepared to defend the charge, not knowing what may be given in evidence on the trial,* i. e. *what kind of offence may then be alledged againſt him. but ſuch declaration being directed by an act of parliament, it is a very doubtful point.*]

By *ſect.* 49. No conviction is to be had but upon confeſſion of the party, or oath of a witneſs. And inhabitants deemed competent witneſſes.

By *ſect.* 51. Diſtreſs for money is not to be deemed unlawful, for default of *form*, in the proceedings; nor the party making it, to be deemed a treſpaſſer, *ab initio*, on account of any ſubſequent irregularity.

By *ſect.* 52. The plaintiff in any action for *irregularity*, *&c.* not to recover where *tender* of amends hath been made, before the action brought. And by this ſection the defendant is allowed to *pay money into court* before *iſſue joined*.

By *ſect.* 53. Perſons aggrieved, where there is not any other method of relief appointed, or injured by the incloſing any common highway, may appeal to the general quarter-ſeſſions; which court is to proceed in a ſummary way, award proper coſts, and the determination to be final.

The general doctrine as to indictments, *&c. upon this ſubject,* Mr. Serjeant Hawkins *has laid down the following rules:*

Firſt, That it is ſafe in every ſuch indictment to ſhew both the *place from which*, and alſo the *place to which*, the way ſuppoſed to be out of repair doth *lead*, yet exceptions, for want of ſuch certainty, have ſometimes been diſallowed; however it ſeems certain, That there is no neceſſity to ſhew that a highway leads to a market town, becauſe every highway leads from town to town. 1 *Hawk. P. C.* 219.

2dly, That it is neceſſary in every ſuch indictment expreſly to ſhew *in what place* the nuſance complained of was done; for which cauſe an indictment for ſtopping a way at *D.* leading from *D.* to *C.* is not good; for it is impoſſible that a way leading from *D.* ſhould be in *D.* and no other place is alledged. 1 *Hawk. P. C.* 219.

3dly, That every ſuch indictment ought alſo certainly to ſhew *to what part* of the highway the nuſance *did extend*, as by ſhewing how many feet in length, and how many feet in breadth it contained, or otherwiſe the defendant will neither know of the certainty of the charge, againſt which he is to make his defence, neither will the court be able from the record to judge of the greatneſs of the offence, in order to aſſeſs a fine anſwerable thereunto; and upon this ground it hath been adjudged, that an indictment for ſtopping a certain part of the Kings highway at *K.* is bad, for the incertainty thereof. Alſo it hath been reſolved, that the place wherein ſuch a nuſance is alledged, is not ſufficiently aſcertained in ſuch an indictment, by ſhewing that it contained ſo many feet in length, and ſo many in breadth, *by eſtimation.* 1 *Hawk.* 219, 220.

4thly, That every ſuch indictment muſt ſhew, that *the way* wherein a nuſance is alledged, is *a common highway*; for which cauſe it hath been reſolved, That an indictment for a nuſance to a horſeway, without adding that it was a highway, is bad; and upon the ſame ground it ſeemeth alſo, That an indictment for a nuſance to a common footway to the church of *D.* for all the pariſhioners of *D.* is not good; yet it ſeems, that if thoſe laſt words, *viz. for all the pariſhioners of* D. had been omitted, ſuch an indictment might be maintained. 1 *Hawk.* 220.

5thly, That it is not ſafe in an indictment againſt a common perſon for not repairing a highway, which he ought to have done in reſpect of the *tenure* of certain lands, barely to ſay that he was bound to repair it *ratione tenuræ terræ*, without adding *ſuæ*. Alſo it is ſaid, that in an indictment againſt a biſhop, &c. for not repairing a highway, in reſpect to certain lands, it ought to be ſhewn in what capacity he ought to repair it, becauſe otherwiſe it cannot be known in what capacity the proceſs is to be awarded againſt him. 1 *Hawk.* 220.

6thly, That in every ſuch indictment the *fact* alledged againſt the defendant muſt be expreſſed in ſuch *proper terms*, that it may clearly appear to the court to have been a nuſance; and for this cauſe it hath been reſolved, That a preſentment for diverting a highway is not good, becauſe a highway cannot be diverted, but muſt always continue in the ſame place where it was, howſoever it be obſtructed, and a new way made in another place. 1 *Hawk. P. C.* 220.

But it hath been reſolved, That an indictment againſt a man for ſtopping a highway in his own land, is good, without laying the offence done *vi & armis.* Alſo it is ſaid, That a preſentment that a highway in ſuch a place is decayed by the default of the inhabitants of ſuch a town, is good, without naming any perſon in certainty. But it hath been adjudged, that an indictment againſt particular perſons muſt ſpecially charge them every one; for which cauſe it hath been reſolved, that an indictment againſt ſeveral for not repairing their ſtreets, that they, & *eorum uterque*, did not repair them, is not good. 1 *Hawk. P. C.* 220.

Upon an indictment for not repairing a highway, if the defendant produce a certificate before trial, that the way is repaired, he ſhall be admitted to a fine: but after verdict, the certificate is too late, for then he muſt have a *conſtat* to the ſheriff, who ought to return that the way is repaired, becauſe the verdict, which is a record, muſt be anſwered by a record. *Raym* 215. And where the defendants, indicted for not repairing a common foot-way, confeſſed the indictment, and ſubmitted to a fine; it was held, that the matter was not ended by their being fined, but that writs of *diſtringas* ſhall be awarded *in infinitum*, till the court of *B. R.* is certified that the way is repaired, as it was when it was at beſt; but the defendants are not bound to put it in better repair than it has been time out of mind. 1 *Salk.* 358. If a defendant hath made a highway as good as it is capable of being made, it was ſaid, in an extraordinary caſe, this ſhall not diſcharge him, on an information againſt him; though it may be a mitigation of his fine. 3 *Salk.* 183. Alſo it is no excuſe for the inhabitants of a pariſh indicted at Common law, for not repairing the highways, that they have done the work required by ſtatute; for the ſtatutes are made in aid of the Common law: and when the ſtatute work is not ſufficient, rates and aſſeſſments are to be made. *Dalt. c.* 26.

It is ſaid, that if the right or title to repair ſuch ways come in queſtion, upon ſuggeſtion and affidavit made thereof, a *certiorari* may be had to remove the indictment into *B. R.*

A perſon may be indicted for not repairing a houſe ſtanding upon a highway which is ruinous, and like to fall down, to the danger of travellers, whatever be his tenure, which in ſuch caſe is not material. 1 *Salk.* 357.

If there be a common foot-way through a cloſe by preſcription, and the owner of the cloſe ploughs up the way, and ſows it, and lays thorns at the ſide of it, paſſengers may go over another foot-way in the ſame cloſe, without being treſpaſſers. *Yelv.* 142. And if a *highway* is not ſufficient, any paſſenger may break down the incloſure of it, and go over the land, and juſtify it till a ſufficient way is made. 3 *Salk.* 182.

Erecting a gate croſs a *highway*, tho' not locked, but opening and ſhutting at pleaſure, is eſteemed a nuſance; for it is not ſo free and eaſy a paſſage, as if there had been no gate: and the uſual way of redreſſing nuſances of this kind, is by indictment; but every perſon may remove the nuſance, by cutting or throwing it down, if there be occaſion ſo to do; and it hath been held, that tho' there are many gates croſs *high ways*, they muſt be *anciently* ſet up, and it ſhall be intended by licence from the King upon the writ *ad quod damnum.* *Cro. Car.* 184.

VII. *Of turnpike roads.*

The ſtatute of 7 *Geo.* 3. *c.* 40. hath reduced the general laws in being on this ſubject into one.—As the act is very long, and, in many particulars, conformable to that for the highways, we ſhall only give ſome general heads, and for further information refer to the ſtatute itſelf.

Sect. 1. Impowers truſtees to erect weighing engines, and ſpecifies the toll to be taken.

Sect. 2. Grants privileges to waggons, &c. rolling a ſurface of 16 inches.

Sect. 3. The previous regulations not to extend to carriages employed only in huſbandry.

Sect. 5. No compoſition for narrow wheels.

Sect. 6. Inflicts a penalty on perſons fraudulently unloading goods, before coming to a gate or weighing engine.

Sect. 7. Regulates the conſtruction of wheels within 20 miles of *London*.

Sect. 8. Broad four-wheel carriages may travel with eight horſes, two wheels with five. But no more. Narrow four wheels, with four horſes. Two wheels, three horſes. Forfeiture 20*s.* and ſupernumerary horſes.

Sect. 9. Penalty of 5*l.* on fraudulently taking off any horſe, or altering the diſtance of the wheels before coming to any gate.

Sect. 10. Driver travelling with more horſes than he paſſed thro' any gate with, guilty of a fraud.

Sect. 11. Where neceſſary, truſtees may allow broad wheeled waggons to be drawn up hills by 10 horſes, narrow by 6.

Sect. 12. Particular exemptions, drawing thro' deep ſnow or ice.

Sect. 13. Narrow wheeled waggons not to be drawn by horſes in pairs.

Sect. 14. Turning carriages out of turnpike roads to avoid tolls, incurs a forfeiture of one of the horſes.

Sect. 16. The driver of a waggon with wheels not duly conſtructed, or drawn by more horſes than authorized, may be apprehended, &c. and forfeits 5*l.*

Sect. 17. Drag-irons to be flat at the ſole, and of the breadth of the fellies.

Sect. 18. Owner's name and place of abode to be painted on the tilt, and if no tilt on the moſt conſpicuous part of waggons, &c. And the words *Common Stage Waggon* or *Cart*, as the caſe may be. Default in the former caſe, 5*l.* in the latter 40*s.*

As to toll, it is not neceſſary here to notice them, but refer to the act.

Sect. 23. Contains the exemption of certain carriages.

Sect. 27. Where two or more turnpike roads under ſeveral acts, within ſame pariſh, &c. and the ſtatute duty exceeds three days, the juſtices are to apportion the ſame.

Sect. 29. Inflicts a penalty of 40*s.* on perſons making ditches, *&c.* on any turnpike road not incloſed on both ſides within 30 feet of the centre, or turning their plough or harrow within 15.

Sect. 30. Direction-poſts to be ſet up, and mile-ſtones.

Sect. 31, Inflicts a penalty, on perſons pulling up poſts, deſtroying banks, mile-ſtones, *&c.*

Sect. 32. The ſame as to toll-gates, *&c.* and makes reſcuing offenders, felony, without benefit of clergy.

Sect. 33. Inhabitants of hundreds, where offences committed, to make full ſatisfaction.

Sect. 38. Fraudulent and colourable proſecutions and ſeiſures ſet up to favour offenders to be enquired into and ſet aſide.

Sect. 41. Truſtees abuſing or exceeding their power, in various inſtances ſpecified, the general quarter ſeſſions, may determine any complaint thereof in a ſummary way.

Sect. 47. Conſtables, ſurveyors, *&c.* neglecting their duty to forfeit 10 *l.*

Sect. 48. Seiſures, *&c.* (unleſs by warrant) to be delivered to the conſtable, till *proof* of the offence. If not made in ſix days, to be returned to the owner, and ſeizer to pay expences of keeping; but, on conviction, to be delivered to the party. If the party does not duly proſecute ſuch ſeizure, to forfeit 40*s.*

Sect. 49. All convictions to be on confeſſion, or oath of one witneſs. Inhabitants competent witneſſes.

Sect. 50. Inflicts a penalty on perſons oppoſing the execution of the act, in certain inſtances there ſpecified.

Sect. 51. Penalties, *&c.* not otherwiſe directed, to be levied by diſtreſs and ſale.

Sect. 53. Proſecutors or informers at liberty to ſue either as the reſpective turnpike acts direct, or in courts of record, by *action of debt*, or *trover*, to have full coſts, on recovering.—But the action to be brought in one calendar month after the offence committed, of which ten days previous notice to be given.

Sect. 54. Diſtreſs for money not deemed unlawful, *&c.* for default of form in the proceedings, nor the party making it a treſpaſſer, *ab initio*, for any *ſubſequent* irregularity.

Sect. 55. Plaintiff in action for irregularity, not to recover where *tender* made before action.—And defendant may *pay money into court*, before *iſſue joined.*

Sect. 56. Perſons aggrieved may in general appeal to the general quarter ſeſſions.—The determination there final, and not removable by *certiorari.*

[Vide under *Div.* VI. an exception, where a *right* is in queſtion.]

Sect. 60. Any action to be brought for any thing done in purſuance of the act, to be commenced in *three calendar months.* Defendant may plead the general iſſue, and, if judgment for him, is intitled to *treble coſts.*

Highwaymen. A reward of 40 *l.* is given for the apprehending and taking of a *highwayman*, to be paid within a month after conviction, by the ſheriff of the county, *&c.* *Stat.* 4 *&* 5 *W.* *&* *M.* *c.* 8. Vide *Robbery.*

Higler, A name frequently mentioned in our ſtatutes, for a perſon who carries from door to door, and ſells by retail, ſmall articles of proviſions, *&c.* they are laid under various reſtraints by the ſtatute laws. See *Game, Holidays.*

Hiis teſtibus, Words anciently added in deeds, after the *In cujus rei teſtimonium*; which *witneſſes* were firſt called, then the deed read, and their names entered down: but this clauſe of *hiis teſtibus* in the deeds of ſubjects has been diſuſed ſince the reign of King *Hen.* 8. Co. Lit. 6.

Hindeni Homines, (From the Sax. *Hindene*, i. e. *Societas*) A ſociety of men: and in the time of the *Saxons*, all men were ranked into three *claſſes*, and valued, as to ſatisfaction for injuries, *&c.* according to the claſs they were in; the *higheſt* claſs were valued at twelve hundred ſhillings, and were called *Twelfhindmen*: the *middle* claſs valued at ſix hundred ſhillings, and called *Sexhindmen*; and the *loweſt*, at ten pounds, or two hundred ſhillings, called *Twyhindmen*: their wives were termed *Hinda's.* Brompt. Leg. Alfred. cap. 12, 30, 31.

Hine, *(Sax.)* A ſervant, or one of the family; but is properly a term for a ſervant in huſbandry, and he that overſees the reſt is called the *Maſter-hine.* Stat. 12 R. 2. c. 4.

Hinefare, (Sax. *Hine*, a ſervant, and *fare*, a going or paſſage) Signifies the loſs or departure of a ſervant from his maſter.——*Si quis occidit hominem Regis & facit* Heinfarum, *dat Regi* 20s. *&c.* Domeſday.

Hinegeld, *Significat quietantiam tranſgreſſionis illatæ in ſervum tranſgredientem.* MS. Arch. Trevor, Ar.

Hirciſcunda, Is the diviſion of an inheritance among *heirs.* Sax.

Hird, *Domeſtica vel intrinſeca familia.* Inter Pla. Trin. 12 Edw. 2. Ebor. 48. MS.

Hireman, A ſubject, from the Sax. *Hiran.* i. e. *Obedire*, to obey; or it may be one who ſerves in the King's hall, to guard him; from *hird*, *aula*, and *man*, *homo.* Du Freſne. *Cowell.*

Hiring. A contract by which a qualified property may be transferred to the *hirer.* Hiring is always for a price, ſtipend, or recompence. By this contract the poſſeſſion and a tranſient property is transferred for a particular time or uſe, on condition and agreement to reſtore the goods, *&c.* ſo hired, as ſoon as the time is expired or uſe performed; together with the price or ſtipend, either expreſsly agreed on by the parties, or left to be implied by law according to the value of the ſervice. *Black. Com.* 2 *V.* 454.

Hirſt or **Hurſt,** A little wood. *Domeſday.*

Hithe. See *Hythe.*

Hlafordſocna, The Lord's protection; from the Sax. *Halford*, *dominus*, and *ſocn*, *libertas.* *Nec dominus homini libero* hlafordſocnam *prohibeat.* Leg. Adelſtan, cap. 5.

Hlaſocner, The benefit of the law; from the Sax. *lega*, *lex*, and *ſocn*, *libertas.*

Hloth, An unlawful company, from ſeven to thirty-five. *Qui de* hloth *fuerit accuſatus, abneget per centum viginti hidas, vel ſit emendet*; that is, he who is accuſed for being at an unlawful rout, let him purge himſelf *tot ſacramentatibus quot is qui* 120 *hidas æſtimatur*; or, let him clear himſelf by a mulct, which is called *hlothbota.* Cowell.

Hlothbote, A mulct ſet on him who is in a riot. From the Sax. *hloth*, *turma*, and *bote*, *compenſatio.*

Hoaſt-men, An antient gild, or fraternity at *Newcaſtle upon Tyne*, who dealt in ſea-coal; they are mentioned ſtat. 21 *Jac.* 1. *cap.* 3.

Hoblers or **Hobilers,** *(Hobellarii)* Were light horſemen; or certain tenants bound by their tenure to maintain a little light horſe, for giving notice of any invaſion made by enemies, or ſuch like peril towards the ſea ſide; of which mention is made in the ſtat. 18 *Ed.* 3. *c.* 7. 25 *Ed.* 3. *c.* 8. *Camd. Britan.* 272. They were to be *Ad omnem motum agiles, &c.* And we read, *Duravit vocabulum uſque ad ætatem H.* 8. *Gentzdarmes* and *Hobelours.* Spelm. See *Prin's Animad.* *on* 4 *Inſt.* *f.* 307. *Hobeleris*, Rot. Parl. 21 Ed. 3. Sometimes the word ſignifies thoſe who uſed bows and arrows, *viz.* *Pro warda maris tempore guerræ, pro* hoberariis *ſagitariis inveniendis, &c.* Thorn. Anno 1364. So in the *Monaſtic.* *pro munitione et apparatibus hominum ad arma* hobelariorum *ſagittariorum.* Cowell.

Hoccus ſaltis, It ſeems to be a *hoke*, hole or leſſer pit of ſalt.——In which *habuit Rex Edwardus domus* xi. *et in* v. *plateis habebat Rex E. ſuam partem.* *In Tepewick puteo* liv. *ſalinæ et* ii. hocci *reddunt* vi. *ſol.* *&* viii. *denar.* *In alio puteo Helperis* xvii. *ſalinæ.* *In tertio puteo* Midelmic xii. *ſalinæ &* ii. *partes* de i. hocco *reddebant* vi. *ſolidos* & viii. *denarios.*——Ex Libro Domeſday, Worceſterſhire.

Hockettor, or **Hocqueteur,** Is an old *French* word for a knight of the poſt, a decayed man, a baſket carrier. 3 *Par. Inſt. f.* 175. *Que nul enquerelant neu reſpoignant ne ſoit ſurpris neu cheſon per* hockettours, *parent que la verite ne ſoit enſue.* Stat. Ragman. *Cowell.*

Hock-Tueſday-Money, Was a duty given to the landlord, that his tenants and bond-men might ſolemnize that *day* on which the *Engliſh* maſtered the *Danes*, being the ſecond *Tueſday* after *Eaſter* week. *Cowell.*

Hoga, Hogium, Hoch, A mountain or hill, from the Germ. *Hoogh, altus*; or from the Sax. *Hou*——————*Edwinus invenit quendam* Hogam, *&c. et ibi ædificavit quandam villam quam vocavit* Stanhogium, *poſtea* Stanhow. *Du Cange.*

Hogaſter, (*Hogaſtrum*) A little hog; it alſo ſignifies a young ſheep: *tertium ovile pro* Hogaſtris *annatis et juvenibus.* Fleta lib. 2. c. 79. See *Hoggacius.*

Hogenhine, (*Sax.*) Is he that comes gueſt-wiſe to an *inn* or *houſe*, and lies there the third night, after which he is accounted of that family. *Bract. lib.* 3. See *Third Night Awn hind.*

Hoggacius, Hoggaſter, A ſheep of the ſecond year. ——*Agni primo computo poſtquam nati ſunt* agni *vocantur ſecundo anno* hoggaſtri. *Et conjunguntur multones cum multonibus, et hurtardi cum hurtardis, et femellæ cum ovibus.* Regula computi domus de Farendon. MS.——*Centum oves paſcantur, ſcilicet, multones cum multonibus, matrices cum matricibus,* hogacii *cum* hoggaciis. Cartular. Abbat. Glaſton. MS. fo. 48. a. And indeed in many, eſpecially the northern parts of *England*, ſheep after they loſe the name of lambs, are called *hogs*, as in *Kent, tags.* Cowell.

Hogſhead, A veſſel of wine, or oil, *&c.* containing in meaſure 63 gallons, half a pipe, and the fourth part of a ton. 1 *R.* 3. *c.* 13.

Hoggus, Hogietus, A *hog* or ſwine, beyond the growth of a pig.——*Porcelli primo compoto poſtquam nati ſunt vocantur. ſecundo compoto* hoggi *vocantur.* Regula Compoti Domus de Farendon. MS.——*Solvent eodem die pro porco ſuperannuavo unum denarium, et pro* hogietto *dimidii anni unum obolum.* Cartular. Radingeſ. MS. fol. 221. a.

Hogs, The keeping of hogs in any city or market town is indictable as a public nuſance. *Salk.* 460. *Black. Com.* 4 *V.* 167. Indeed we conceive the keeping hogs in any neighbourhood (if they ſtink much, ſo as to be troubleſome) is indictable. See as to hogs and hogs fleſh, tit. *Cattle, Swine.*

Hokeday, Called otherwiſe *Hock Tueſday*, (*dies martis, quam quindenam* Paſchæ *vocant*) Was a day ſo remarkable in ancient times, that rents were reſerved payable thereon: and in the accounts of *Magdalene College* in *Oxford*, there is a yearly allowance *pro mulieribus* hockantibus, in ſome manors of theirs in *Hampſhire*, where the men *hock* the women on *Monday*, *& contra* on *Tueſday*; the meaning of it is, that on that day the women in merriment ſtop the ways with ropes, and pull paſſengers to them, deſiring ſomething to be laid out in pious uſes. See *Hock-Tueſday-Money.*

Holbourn, St. *Andrew's* pariſh, *Holbourn* how to be aſſeſſed, 30 *Geo.* 2. *c.* 3. *ſect.* 72.

Holdes, Bailiffs of a town or city, from the Sax. *hold, i. e. ſummus præpoſitus.* Others are of opinion that it ſignifies a general; for *hold* in *Saxon* doth alſo ſignify *ſummus imperator. Comitis Weregildum, i. e. Æſtimatio capitis, eſt* 15 *millia thrympſa,* holdis *& ſummi præpoſiti quatuor millia thrympſa.* Leges Alured. de Weregildis.

Holding over a term, *&c.* Lands were deviſed to *A.* till 800*l.* raiſed. Reſolved, that if the heir at law, or he in reverſion or remainder, in caſe of leaſe or limitation of a life, enters upon *A* or on him, to whom the lands are deviſed or limited, and expels him, it is in the election of him ſo expelled, either to bring his action and recover the meſne profits which ſhall be accounted parcel of the ſum, or he may re-enter and hold over till he ſhall levy the entire ſum, not accounting the time of his expulſion. But otherwiſe, if the expulſion was by a ſtranger. 4 *Rep.* 82. *Mich.* 41 *&* 42 *Eliz. Corbet's* caſe.

The expreſſion hath alſo another ſenſe, *i. e.* Where a term is expired, and premiſſes are held by the tenant or perſon in poſſeſſion, afterwards, againſt the will of the landlord, or perſon claiming the eſtate and poſſeſſion. By ſtat. 4 *Geo.* 2. *c.* 28. In caſe any tenant for years, *&c.* or other perſon claiming under or by colluſion with ſuch tenant, ſhall *wilfully hold over* after the determination of ſuch term, and *demand made in writing* for recovering poſſeſſion of the premiſſes, ſhall pay, for the time he continues, at the rate of double the yearly value. See *Rent.*

Holm, (Sax. *hulmus, inſula amnica*) An iſle or fenny ground, according to *Bede*; or a river iſland. And where any place is called by that name, or this ſyllable is joined with any other in the names of places, it ſignifies a place ſurrounded with water; as the *Flatholmes* and *Stepholmes* in the *Severn* near *Briſtol*: but if the ſituation of the place is not near the water; it may then ſignify a hilly place; *Holm* in *Saxon* being alſo a hill or cliff, ——*Cum duobus* Holmis *in campis de* Wedone. *Mon. Angl. Tom.* 2. *pag.* 262.

Holt, (*Sax.*) A wood: wherefore the names of towns beginning or ending with *holt*, as *buckholt*, *&c.* denote that formerly there was great plenty of wood at thoſe places.

Holy-days and faſting-days. Vide the Statutes, *Weſt.* 1. 3 *Ed.* 1. *c.* 51.—28 *Ed.* 3. *c.* 14.—2 *&* 3 *Ed.* 6. *c.* 19.—5 *&* 6 *Ed.* 6. *c.* 3.—

Fairs and markets not to be kept on *Sundays* and principal feſtivals, except four *Sundays* in Autumn, 27 *H.* 6. *c.* 5. Shoemakers in *London* not to ſell or fit on their goods on *Sundays, &c.* 4 *Ed.* 4. *c.* 7. 1 *Jac.* 1. *c.* 22. *ſ.* 29. Penalty on not reſorting to church on *Sundays* and holy-days, 1 *Eliz. c.* 2. *ſect.* 14. The fifth of *November* to be kept as a day of thankſgiving, 3 *Jac.* 1. *c.* 1. The puniſhment of uſing ſports on the *Sunday*, 1 *Car.* 1. *c.* 1. Carriers, drovers, butchers or higlers, not to travel or expoſe meat on the *Sunday*, 3 *Car.* 1. *c.* 2. 29 *Car.* 2. *c.* 7. The 29th of *May* to be an anniverſary thankſgiving, 12 *Car.* 2. *c.* 14. The 30th of *January* to be kept as an anniverſary day of humiliation, 12 *Car.* 2. *c.* 30 *ſect.* 1. The 2d of *September* to be annually kept as a faſt in *London*, 19 *Car.* 2. *c.* 3. *ſ.* 28. No wares to be expoſed to ſale on the *Sunday*, 29 *Car.* 2. *c.* 7. Except victuals in inns, *&c.* or milk, *ibid. ſect.* 3. or mackarel, 10 *&* 11 *W.* 3. *c.* 24. *ſect.* 14 Coachmen or chairmen may ply on the Lord's day, notwithſtanding the 29 *Car.* 2. *c.* 7. 9 *Ann. c.* 23. *ſect.* 20. Perſons not to travel in boats, *&c.* on the *Sunday*, 29 *Car.* 2. *c.* 7. *ſect.* 2 *unleſs with a licence.*

Holyhead, Rock ſalt may be uſed in its ſalt-works, 6 *Ann. c.* 12. *ſect.* 2.

Homage, (*Homagium*) Is a *French* word derived from *homo*, becauſe, when the tenant does his ſervice to the Lord, he ſays, *I become your man. Co. Lit.* 64. In the original grants of lands and tenements by way of *fee*, the Lord did not only oblige his tenants to certain ſervices; but alſo took a ſubmiſſion with promiſe and oath, to be true to him as their lord and benefactor; and this ſubmiſſion, which is the moſt honourable, being from a freehold tenant, is called *homage.* 17 *E.* 2. *ſt.* 2. The Lord of the fee for which *homage* is due, takes *homage* of every tenant, as he comes to the land or fee: but women perform not *homage* but by their huſbands, as *homage* eſpecially relates to ſervice in war; and a corporation cannot do *homage*, which is perſonal, and they cannot appear but by attorney: alſo a biſhop or religious man, may not do homage, only fealty; but the archbiſhop of *Canterbury* does *homage* on his knees to our Kings at their coronation; and it is ſaid the biſhop of the *Iſle of Man* did *homage* to the Earl of *Derby*; though *Fulbec* reconciles this, when he ſays that a religious man may do *homage*, but may not ſay to his Lord, *Ego devenio homo veſter*, I become your man, becauſe he has profeſſed himſelf to be *God's man*, but he may ſay, *I do unto you homage, and to you ſhall be faithful and loyal.* Britton, cap. 68.

There is *homage* by
ligeance.
Homage by reaſon of
tenure—
And, *homage anceſtrel*.

Homage by *ligeance* is inherent and inſeparable to every ſubject. *Homage* by *tenure* is a ſervice made by tenants to their Lords according to their ſtatute; and *homage anceſtrel*, is where a man and his anceſtors have time out of mind held their land of the Lord by *homage*, and ſuch ſervice draws to it warranty from the Lord, and acquittal of all other ſervices to other Lords, &c. *Bract. lib.* 3. *F. N. B.* 269. *Lit. Sect.* 85. But, according to Sir *Edw. Coke*, there muſt be a double preſcription for *homage anceſtrel*, both in the blood of the Lord, and of the tenant; ſo that the ſame tenant, and his anceſtors, whoſe heir he is, is to hold the ſame land of the ſame Lord and his anceſtors, whoſe heir the Lord is, time out of memory, by *homage*, &c. and therefore there is but little land holden by *homage anceſtrel*. *Co. Lit.* 100. *b.* Tho' in the manor of *Whitney* in *Herefordſhire*, there was one *Weſt* who held lands by this tenure.

Homage tenure is incident to a freehold, and none ſhall do or receive *homage*, but ſuch as have eſtates in fee-ſimple, or fee-tail, in their own right or right of another. *Kitch.* 131. Seiſin of *homage* is ſeiſin of fealty, and inferior ſervices, &c. And the Lord only ſhall take *homage*, and not the ſteward, whoſe power extends but to fealty. 4 *Rep.* 8. When a tenant makes his *homage* to the Lord, he is to be ungirt, and his head uncovered, and his Lord ſhall ſit, and he ſhall kneel, and hold his hands together between his Lord's hands, and ſay; *I become your man from this day forward, for life, for member, and for worldly honour, and unto you ſhall be true and faithful, and bear you faith for the lands that I hold of you, (ſaving the faith that I owe to our Sovereign Lord the King:)* And the Lord ſo ſitting ſhall kiſs the tenant, &c. 17 *Ed.* 3 *Lit. Sect.* 85. See *Black. Com.* 1 *V.* 367, 379. 2 *V.* 53, 91, 300. 4 *V.* 414.

Homage Jury, Is a jury in a *Court-Baron*, conſiſting of tenants that do *homage* to the Lord of the fee; and theſe by the *Feodiſts* are called *pares curiæ*: they enquire and make preſentment of defaults and deaths of tenants, admittances, and ſurrenders, in the Lord's court, &c. *Kitch.*

Homager, Is one that does or is bound to do *homage* to another.

Homagio reſpectuando, Was a writ to the eſcheator, commanding him to deliver ſeiſin of lands to the heir of the King's tenant, notwithſtanding his *homage* not done. *F. N. B.* 269. And the heir at full age was to do *homage to the King*, or agree with him for reſpiting the ſame. *New Nat. Br.* 563.

Homagium reddere, To renounce *homage*, when the vaſſal made a ſolemn declaration of diſowning and defying his lord. For which, there was a ſet form and method preſcribed by the feudatory laws.——*Item* reddere *poterit Domino ſuo* homagium *ſuum, ſimul cum tenemento, propter capitales inimicitias, ut liberias proſequatur apellum ſuum, & ſic diſſolvitur* homagium. *Bracton, lib.* 2. *cap.* 35. *ſect.* 35. This is the meaning of that paſſage in *Richardus Huſtoldneſis de Bello Standard, p.* 321. *Itaque Robertus reddito* homagio *quod ei fecerat——ad ſuos ſocios reverſus eſt.* And of *Mat. Paris. ſub anno* 1188, *tunc Rex Anglorum Regi Francorum fecit* homagium, *quia in principio hujus guerræ* homagium *ſuum reddiderat Regi Franciæ.* Cowell. edit. 1727.

Homeſoken, Homſoken, or Hamſoken, and Hamſoca, (from the Sax. *ham*, i. e. *domus, habitatio*, and *ſocne, libertas, immunitas*) Is by *Bracton, lib.* 3. *tract.* 2. *c.* 23. thus defined: Homeſoken *dicitur invaſio domus contra pacem Domini Regis, vel inſultus factus in domo extra pacem Domini.* It appears by *Raſtal*, that in ancient times ſome men had an immunity to do this. *Si quis hamſocan violaverit, jure Anglorum Regi emendet* 5 *libr.* LL. Canuti, cap. 39. Hamſoken *eſt quod prior tenebit placita in curia ſua de his qui ingrediuntur domum vel curiam alicujus ad litigandum, vel furandum, vel quicquid aſportandum, vel aliquod aliud faciendum, contra voluntatem illius qui debet domum vel curiam.* Ex. Reg. Priora. de Cokesford. See *Hamſoken*.

Homeſoken, Is alſo the privilege or freedom which every man hath in his houſe; and he who invades that freedom is properly ſaid *facere homeſoken.* This we take to be what we now call *burglary*, which is a crime of a very heinous nature, becauſe it is not only a breach of the King's peace, but a breach of that liberty which a man hath in his houſe, which (as we commonly ſay) ſhould be his caſtle, and therefore ought not to be invaded. *Bracton, lib.* 3. *tract.* 2. *cap.* 23, Du Cange.

It is alſo taken for an impunity to thoſe who commit this crime, *viz.* Homeſoken, *hoc eſt, quietus eſſe de amerciamentis pro ingreſſu hoſpitii violenter & ſine licentia, & contra pacem Regis, & quod teneatis placita de hujuſmodi tranſgreſſione in curia veſtra.* W. Thorn. p. 2030.

Homeſtall, Is taken for a manſion-houſe. *Vide* Frumſtol.

Homicide, (*Homicidium*,) Is the killing of a man, and is divided into *voluntary* and *caſual*: Homicide *voluntary* is that which is deliberate, and committed of a ſet purpoſe to kill; *caſual* is done by *chance*, without any intention to kill. *Homicide voluntary* is either with precedent malice, or without. The former is murder, and is a felonious killing through malice prepenſed of any perſon living in this realm, under the King's protection. *Weſt par.* 2. *Symbol.* tit. *Indictments, ſect.* 37, &c. *uſque* 51. where you may ſee divers ſubdiviſions of this matter. See alſo *Glanvil, lib.* 14. *cap.* 3. *Bract. lib.* 3. *tract.* 2. *cap.* 4. 15 & 17. *Britton, cap.* 5, 6, 7. *Co. Litt.* 3. *c.* 8.

Offences againſt the life of a man come under the general name of homicide, which in our laws ſignifies the killing of a man, by a man. 1 *Hawk. P. C.* 66. *Bracton, lib.* 3. *c.* 4.

Homicide, properly ſo called, is either againſt a man's own life, (called *ſelf-murder*, or *felo de ſe*,) or the life of another. Homicide againſt the life of another either amounts to felony, or does not. That which amounts not to felony, is either *juſtifiable*, and cauſes no forfeiture at all, or *excuſable*, and cauſes the forfeiture of the party's goods. 1 *Hawk. P. C.* 67, 69.

Under this head we ſhall treat,

1. *Of ſelf murder, or felo de ſe.*
2. *Of juſtifiable homicide.*
3. *Of excuſable homicide.*
4. *Of manſlaughter.*
5. *Of murder.*

1. *Of ſelf-murder, or felo de ſe.*

In this, as well as all other felonies, the offender muſt be of the age of diſcretion, and *compos mentis*; and therefore, an infant killing himſelf under the age of diſcretion, or a lunatick during his lunacy, cannot be a *felo de ſe.* 1 *Hawk.* 67. *Crom.* 30. *a. b.* 31. *a.* *H. P. C.* 28. *Dal. cap.* 92. 3 *Inſt.* 54.

Our laws have always had ſuch an abhorrence of this crime, that not only he who kills himſelf with a deliberate and direct purpoſe of ſo doing, but alſo in ſome caſes he who maliciouſly attempts to kill another, and in purſuance of ſuch an attempt unwillingly kills himſelf, ſhall be adjudged in the eye of the law a *felo de ſe*; for wherever death is cauſed by any act done with a murderous intent, it makes the offender a murderer; 1 *Hawk. P. C.* 68. cites *Dal. cap.* 92. 44 *E.* 3. 44. 44 *Aſſ.* 55. *Bro. Cor.* 12, 14. *Dalt. cap.* 92.

Alſo vide *S. P. C.* 16. *H. P. C.* 28, 29. *Pult.* 119. *b.* *Crom* 28.

He who kills another upon his deſire or command, is in the judgment of the law as much a murderer, as if he had done it merely of his own head, and the perſon killed is not looked upon as a *felo de ſe*, inaſmuch as his aſſent was merely void, being againſt the law of God and man. 1 *Hawk. P. C.* 68. cites *Keilw.* 136. *Moor* 754.

As to what ſuch an offender, *viz.* a *felo de ſe*, ſhall forfeit, it ſeems clear, that he ſhall forfeit all chattels real or perſonal which he hath in his own right, and alſo all chattels real whereof he is poſſeſſed either jointly with his wife, or in her right; and alſo all bonds and other perſonal things in action, belonging ſolely to himſelf; and alſo all perſonal things in action, and, as ſome ſay, entire chattels in poſſeſſion to which he was intitled jointly with another, on any account except that of merchandize: But it is ſaid, that he ſhall forfeit a moiety only of ſuch joint chattels as may be ſevered, and nothing at all of what he was poſſeſſed of as executor or adminiſtrator. 1 *Hawk. P. C.* 68. cites many authorities.

However the blood of a *felo de ſe* is not corrupted, nor his lands of inheritance forfeited, nor his wife barred of her dower. 1 *Hawk. P. C.* 68. *Plowd. Com.* 261. *b.* 262. *a.*

Not any part of the perſonal eſtate is veſted in the King, before the ſelf-murder is found by ſome inquiſition; and conſequently the forfeiture thereof is ſaved by a pardon of the offence before ſuch finding. 1 *Hawk. P. C.* 68. 5 *Co.* 110. *b.* 3 *Inſt.* 54. 1 *Saund.* 362. 1 *Sid.* 150, 162. But if there be no ſuch pardon, the whole is forfeited immediately after ſuch inquiſition, from the time ſuch mortal wound was given, and all intermediate alienations are avoided. 1 *Hawk. P. C.* 68. *Plowd. Com.* 260. *H. P. C.* 29. 5 *Co.* 110. And ſuch inquiſitions ought to be by the coroner *ſuper viſum corporis*, if the body can be found, and an inquiſition ſo taken, as ſome ſay, cannot be traverſed. 1 *Hawk. P. C.* 68. *H. P. C.* 29. 3 *Inſt.* 55.

But if the body cannot be found, ſo that the coroner, who has authority only *ſuper viſum corporis*, cannot proceed, the inquiry may be by juſtices of peace, (who by their commiſſion have a general power to inquire of all felonies,) or in the King's Bench, if the felony were committed in the county where that court ſits; and ſuch inquiſitions are traverſable by the executor, *&c.* 1 *Hawk. P. C.* 69. 3 *Inſt.* 55. *H. P. C.* 29. 2 *Lev.* 141.

Alſo all inquiſitions of this offence being in the nature of indictments, ought particularly and certainly to ſet forth the circumſtances of the fact; and in the concluſion add, that the party in ſuch manner murdered himſelf. 1 *Hawk.* 69. 3 *Lev.* 140. 3 *Mod.* 100. 2 *Lev.* 152. Yet if it be full in ſubſtance, the coroner may be ſerved with a rule to amend a defect in form, 1 *Hawk.* 69. 1 *Sid.* 225, 259. 3 *Mod.* 101. 1 *Keb.* 907.

By the rubrick in the Common Prayer, before the burial office, (confirmed by ſtat. 13 & 14 *Car.* 2. *c.* 4.) perſons who have laid violent hands upon themſelves, ſhall not have that office uſed at their interment.

2. *Of juſtifiable homicidle.*

1. It muſt be owing to ſome unavoidable neceſſity, to which the perſon who kills another muſt be reduced, without any manner of fault in himſelf. 1 *Hawk.* 69.

2. there muſt be no malice coloured under pretence of neceſſity, for wherever a perſon who kills another, acts in truth upon malice, and takes occaſion from the appearance of neceſſity to execute his revenge, he is guilty of murder. 1 *Hawk. P. C.* 69. 2 *Rol. Rep.* 120, 121. *Kelynge* 28. *H. P. C.* 38. *Bract. lib.* 3. *cap.* 4.

3. No one can plead a fact amounting to homicide *ſe defendendo*, or by miſadventure, but in ſuch a caſe the defendant muſt plead Not guilty, and give the ſpecial matter in evidence: And it is alſo agreed, that where a ſpecial fact, amounting to juſtifiable homicide, is found by the jury, the party is to be diſmiſſed, without being obliged to purchaſe any pardon, *&c.* 1 *Hawk.* 69.

Juſtifiable homicide is either of a *public* or *private* nature. That of a *public* nature is ſuch as is occaſioned by the due execution or advancement of public juſtice. That of a *private* nature is ſuch as happens in the juſt defence of a man's perſon, houſe, or goods. 1 *Hawk. P. C.* 70.

As to *juſtifiable homicide* in the due execution of public juſtice, the following rules muſt be obſerved:

1. The judgment, by virtue whereof any perſon is put to death, muſt be given by one who has juriſdiction in the cauſe; for otherwiſe both judge and officer may be guilty of felony. 1 *Hawk. P. C.* 70. *Dalt. cap.* 98. 10 *Co.* 76. 22 *Ed.* 4. 33. *a.* *H. P. C.* 35.

2. The judgment muſt be executed by the lawful officer. Indeed it was formerly held, that any one might as lawfully kill a perſon attainted of treaſon or felony, as a wolf or other wild beaſt; and anciently a perſon condemned in appeal of death, was delivered to the relations of the deceaſed in order to be executed by them. 1 *Hawk.* 70. 1 *Inſt.* 128. *b.* 2 *Aſſ. pl.* 3. *S. P. C.* 13. *a.* 11 *H.* 4. 12. *a.* *Plowd. Com.* 306. *b.* 3 *Inſt.* 131.

But at this day, as it ſeems agreed, if the judge, who gives the ſentence of death, and *a fortiori*, if any private perſon execute the ſame, or if the proper officer himſelf do it without a lawful command, they are guilty of felony. 1 *Hawk.* 70. 27. *Aſſ.* 41. *Bro. Appeal.* 69.

3. The execution muſt be purſuant to, and warranted by the judgment, otherwiſe it is without authority; and conſequently, if a ſheriff behead a man where it is no part of the ſentence to cut off the head, he is guilty of felony. 1 *Hawk.* 70. 35 *H.* 6. 57. *b.* *Bro. Appeal*, 5. *S. P. C.* 13. *H. P. C.* 36, 272.

Juſtifiable homicide in the due *advancement of public juſtice*, relates either to *criminal* or *civil* cauſes. As to the firſt, it may be juſtified in ſeveral caſes; as if a perſon having actually committed felony will not ſuffer himſelf to be arreſted, but ſtand on his own defence, or fly, ſo that he cannot poſſibly be apprehended alive by thoſe who purſue, whether private perſons or public officers, with or without a warrant from a magiſtrate, he may be lawfully ſlain by them. 1 *Hawk. P. C.* 70. 22 *Aſſ.* 55. *Bro. Cor.* 87, 89. *S. P. C.* 13. 3 *Inſt.* 221. *Dalt. cap.* 98. *H. P. C.* 36. *Crom.* 30.

If treſpaſſers in a foreſt, chaſe, park or warren, or any incloſed ground wherein deer are kept, will not render themſelves to the keepers, upon hue and cry made to ſtand to the King's peace, and fly from, or defend themſelves againſt them, they may be ſlain by force of the ſtatute *de malefactoribus in parcis*, and 4 *Wil. & Mar. cap.* 10. 1 *Hawk.* 71. *S. P. C.* 13. *b.* *Crom.* 30. *b.* *Dyer.* 326. *pl.* 3.

Homicide in the *advancement of juſtice* in *civil* cauſes may alſo be juſtified in ſome caſes: As where a ſheriff, *&c.* attempting to make a lawful arreſt in a *civil* action, or to retake one who has been arreſted and made his eſcape, is reſiſted by the party, and unavoidably kills him in the affray. 1 *Hawk. P. C.* 71. 1 *Rol. Rep.* 189. *H. P. C.* 37. 3 *Inſt.* 56. *Crom.* 24. *a.* *Dalt. cap.* 98. And in ſuch caſe the officer is not bound to give back, but may ſtand his ground and attack the party. 1 *Hawk. P. C.* 71. *H. P. C.* 31.

But no private perſon of his own authority can arreſt a man for a *civil* matter, as he may for felony, *&c.* 1 *Hawk.* 71. *Crom.* 30. *b.* Neither can the ſheriff himſelf lawfully kill thoſe who *barely fly from* the execution of any civil proceſs. 1 *Hawk.* 71. *H. P. C.* 37.

As to *juſtifiable homicide* of a *private* nature, in the juſt defence of a man's perſon, houſe or goods, it may happen either by the killing of a *wrong-doer*, or an *innocent* perſon in the making of ſuch defence. And firſt, the killing of a wrong-doer in the making of ſuch defence, may be juſtified in many caſes; as where a man kills one who aſſaults him in the highway to rob or murder him; or the owner of a houſe, or any of his ſervants, or lodgers, *&c.* kill one who attempts to burn it, or to commit therein murder, robbery, or other felony; or a woman kills one who attempts to raviſh her; or a ſervant coming ſuddenly and finding his maſter robbed and ſlain, falls upon the murderer immediately and kills him; for he does it in the height of his ſurpriſe, and under juſt apprehenſions of the like attempt upon himſelf; but in other circumſtances, he could not have juſtified the killing of ſuch an one, but ought to have apprehended him, *&c.* 1 *Hawk. P. C.* 71, 72. 24 *H.* 8. *cap.* 5. *Dalt. cap.* 98.

Neither ſhall a man in any caſe juſtify the killing another by a pretence of neceſſity, unleſs he were himſelf wholly without fault in bringing that neceſſity upon himſelf; for if a man, *in defence of an injury done by himſelf*, kill any perſon whatſoever, he is guilty of manſlaughter at leaſt; as where divers rioters wrongfully withhold a houſe by force, and kill thoſe who attack it from without, and endeavour to burn it. 1 *Hawk.* 72. *Crom.* 27. *b.* *H. P. C.* 56.

Neither can a man juſtify the killing another in defence of his houſe or goods, or even of his perſon, from *a bare* *private treſpaſs*; and therefore he that kills another, who, claiming a title to his houſe, attempts to enter it by force and ſhoots at it, (ſee *poſt Div.* 5. and *qu.* as to ſhooting ?) or that breaks open his windows in order to arreſt him, or that perſiſts in breaking his hedges after he is forbidden, is guilty of manſlaughter; and he who in his own defence kills another that aſſaults him in his houſe in the day-time, and plainly appears to intend to beat him only, he is guilty of homicide *ſe defendendo*, for which he forfeits his goods, but is pardoned of courſe; yet it ſeems, that a private perſon, and, *a fortiori*, an officer of juſtice, who happens unavoidably to kill another endeavouring to defend himſelf from or ſuppreſs dangerous rioters, may juſtify the fact, inaſmuch as he only does his duty in aid of public juſtice. 1 *Hawk.* 72. *H. P. C.* 40, 57. *Cro. Car.* 538. *Dalt. cap.* 98.

According to the opinion of Mr. Serjeant *Hawkins* (which we conceive is law) A perſon who without provocation is aſſaulted by another in any place whatſoever, in ſuch a manner as plainly ſhews an intent to murder him, as by diſcharging a piſtol, or puſhing at him with a drawn ſword, *&c.* may juſtify killing ſuch an aſſailant, as much as if he had attempted to rob him. 1 *Hawk.* 72. *N. Bendlo* 47. 1 *And.* 41. *Crom.* 27. *b.* 28. *b.* *Dalt. cap.* 98. *S. P. C.* 15. *a.* 3 *Inſt.* 57. *Bacon* 33. For other caſes, vide 1 *Hawk.* 73. *Cro. Car.* 338. *March* 5.

3 *Of excuſable homicide.*

Excuſable homicide is either *per infortunium*, or *ſe defendendo*. Homicide *per infortunium*, or by miſadventure, is where a man in doing a lawful act, without any intent of hurt, unfortunately chances to kill another; as, where a labourer being at work with a hatchet, the head thereof flies off, and kills one who ſtands by. 1 *Hawk. P. C.* 73. 6 *Ed.* 4. 7. *b.* *Bro. Coro.* 59, 148.

Where a third perſon whips a horſe on which a man is riding, whereupon he ſprings out, and runs over a child, and kills him; in which caſe the rider is guilty of homicide *per infortunium*, and he who gave the blow, of manſlaughter. 1 *Hawk.* 73. *H. P. C.* 58. 59.

Where a workman, having firſt given loud and timely warning to all perſons to ſtand clear, flings down a piece of timber from a private houſe ſtanding out of the road, and thereby kills one who happens to be underneath: But if any perſon fling down ſuch a piece of timber idly in play, or even a workman fling it down in the ſtreets of a town, where the danger is apparent in reſpect of the number of people continually paſſing by, he is guilty of manſlaughter. 1 *Hawk.* 73. *Kelynge* 40. *Bract. lib.* 3. *c.* 4. *Dalt. cap.* 96. *H. P. C.* 31. *Bro. Coro.* 229.

Where workmen throw ſtones, rubbiſh, or other things, from an houſe, in the ordinary courſe of their buſineſs, by which a perſon underneath happens to be killed; if they look out and give timely warning to thoſe below, it will be homicide by miſadventure; if without ſuch caution, it will amount to manſlaughter at leaſt; it was a lawful act, but done in an improper manner. It is ſaid by ſome, that if this be done in the ſtreets of *London*, or other populous towns, it will be manſlaughther notwithſtanding the caution abovementioned.

But this will admit of ſome limitation; if it be done early in the morning, when few or no people are ſtirring, and the ordinary caution is uſed, it ſeemeth that the party is excuſable. But when the ſtreets are full, that will not ſuffice; for in the hurry and noiſe of a crowded ſtreet, few people hear the warning, or ſufficiently attend to it. *Foſter's Crown Law* 262, 263.

Where a ſchoolmaſter in correcting his ſcholar, or a father his ſon, or a maſter his ſervant, or an officer, in whipping a criminal condemned to ſuch puniſhment, happens to occaſion his death; yet if ſuch perſons in their correction be ſo barbarous as to exceed all bounds of moderation, and thereby cauſe the party's death, they are guilty of manſlaughter at the leaſt; and if they make uſe of an inſtrument improper for correction, and apparently indangering the party's life, as an iron bar, or ſword, *&c.* or kick him to the ground, and then ſtamp on his belly and kill him, they are guilty of murder. 1 *Hawk.* 73, 74. *Bract. lib.* 1. *cap.* 4. *H. P. C.* 31. *Crom.* 28. *b.* *Dalt. cap.* 96. *Keilw.* 136. *Kelynge* 65. See 5 *Mod.* 287, 288, *&c.*

Where one lawfully uſing an innocent diverſion, as ſhooting at butts, or at a bird, *&c.* by the glancing of an arrow, or ſuch-like accident, kills another. 1 *Hawk.* 74. *Keilw.* 108. *Bro. Cor.* 148. See *Kelynge* 41.

Where a perſon happens to kill another in playing a match of foot-ball, wreſtling, or ſuch like ſports which are attended with no apparent danger of life, and intended only for the trial, exerciſe and improvement of the ſtrength, courage and activity of the parties. 1 *Hawk.* 74. *Keilw.* 108, 136. *Crom.* 29. *a.* 11 *H.* 7. 23. *a.*

Where one kills another in fighting at barriers or tilting by the King's command, which by the better opinion ſecures him from being guilty of felony by reaſon of any ſuch unfortunate accident. 1 *Hawk. P. C.* 74. 11 *H.* 7. 23. *a.* 3 *Inſt.* 160. *Keilw.* 108, 136.

But if a perſon kill another by ſhooting at a deer, *&c.* in a third perſon's park, in the doing whereof he is a treſpaſſer; or by ſhooting of a gun, or throwing ſtones in a city or highway, or other place where men uſually reſort, by throwing ſtones at another wantonly in play, which is a dangerous ſport, and has not the leaſt appearance of any good intent; or by doing any other ſuch idle action as cannot but indanger the bodily hurt of ſome one or other; or by tilting or playing at hand-ſword without the King's command; or by parrying with naked ſwords, covered with buttons at the points, or with ſwords in the ſcabbards, or ſuch like raſh ſports, which cannot be uſed without the manifeſt hazard of life, he is guilty of manſlaughter. 1 *Hawk.* 74. *H. P. C.* 31, 32, 58. *Con. Hob.* 134.

And if a man happen to kill another in the execution of a malicious and deliberate purpoſe to do him a perſonal hurt, by wounding or beating him; or in the wilful commiſſion of any unlawful act, which neceſſarily tends to raiſe tumults and quarrels, and conſequently cannot but be attended with the danger of perſonal hurt to ſome one or other; as by committing a riot, robbing a park, *&c.* he ſhall be adjudged guilty of murder. 1 *Hawk. P. C.* 74. *H. P. C.* 52, 57. *Kelynge* 117.

And *a fortiori*, he ſhall come under the ſame conſtruction, who, in the purſuance of a deliberate intention to commit a felony, chances to kill a man, as by ſhooting at tame fowl with an intent to ſteal them, *&c.* for ſuch perſons are by no means favoured, and they muſt at their peril take care of the conſequence of their actions; and it is a general rule, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Hawk. P. C.* 74. 3 *Inſt.* 56. *Kelynge* 117. *H. P. C.* 52.

If any one ſhoot at any wild fowl upon a tree, and the arrow killeth any reaſonable creature afar off, without any evil intent in him, this is by miſadventure; for it was not unlawful to ſhoot at the wild fowl: But if he had ſhot at a cock or a hen, or any tame fowl of another man's, and the arrow by miſchance had killed a man; if his intention was to ſteal the poultry (which muſt be collected from circumſtances) it will be murder by reaſon of that felonious intent; but if it was done wantonly, and without that intention, it will be barely manſlaughter. *Foſt.* 258, 9.

The rule before laid down ſuppoſeth, that the act from which death enſued, was *malum in ſe*. For if it was barely *malum prohibitum*, as ſhooting at game by a perſon not qualified by ſtatute-law to keep or uſe a gun for that purpoſe; the caſe of a perſon offending, will fall under the ſame rule as that of a qualified man. For the ſtatutes prohibiting the deſtruction of the game under certain penalties, will not, in a queſtion of this kind, enhance the accident beyond its intrinſick moment. *Foſt.* 259.

Neither ſhall he be adjudged guilty of a leſs crime who kills another, in doing ſuch a wilful act as ſhews him to be as dangerous as a wild beaſt, and an enemy to mankind in general; as by going deliberately with a horſe uſed to ſtrike, or diſcharging a gun among a multitude of people, or throwing a great ſtone or a piece of timber from a houſe into a ſtreet, through which he knows that many are paſſing; and it is no excuſe that he intended no harm to any one in particular, or that he meant to do it only for ſport, or to frighten the people, &c. 1 *Hawk. P. C.* 74. *H. P. C.* 32, 44. 3 *Inſt.* 57. *Dalt. cap.* 93, 97. 11 *H.* 7. 23. *a. Bro. Coro.* 229.

Homicide, *ſe defendendo*, or by ſelf-defence, ſeems to be where one who has no other poſſible means of preſerving his life from one who combats with him on a ſudden quarrel, or of defending his perſon from one who attempts to beat him, (eſpecially if ſuch attempt be made upon him in his own houſe) kills the perſon by whom he is reduced to ſuch an inevitable neceſſity. 1 *Hawk. P. C.* 74, 75. *H. P. C.* 40. *S. P. C.* 15.

And not only he who on an aſſault retreats to a wall, or ſome ſuch ſtreight, beyond which he can go no further before he kills the other, is adjudged by the law to act upon unavoidable neceſſity: But alſo he who being aſſaulted in ſuch a manner, and in ſuch a place, that he cannot go back without manifeſtly indangering his life, kills the other without retreating at all. 1 *Hawk.* 75. *Bro. Coro.* 125. 43 *Aſſ.* 31. 3 *Inſt.* 56. *H. P. C.* 41.

And notwithſtanding a perſon, who retreats from an aſſault to the wall, give the other divers wounds in his retreat, yet if he give him no mortal one till he get thither, aud then kill him, he is guilty of homicide *ſe defendendo* only. 1 *Hawk.* 75. *H. P. C.* 41. *Crom.* 28. *S. P. C.* 15. *a.*

And an officer who kills one that reſiſts him in the execution of his office, and even a private perſon that kills one who feloniouſly aſſaults him in the highway, may juſtify the fact without ever giving back at all. 1 *Hawk. P. C.* 75. *H. P. C.* 41. 3 *Inſt.* 56. *Crom.* 28. *a.*

According to ſome good opinions, even he who gives another the firſt blow on a ſudden quarrel, if he afterwards do what he can to avoid killing him, is not guilty of felony; yet ſuch a perſon ſeems to be too much favoured by this opinion, inaſmuch as the neceſſity to which he is at laſt reduced, was at the firſt owing to his own fault. And it is now agreed, that if a man ſtrike another upon *malice prepenſe*, and then fly to the wall, and there kill him in his own defence, he is guilty of murder. 1 *Hawk. P. C.* 75. *S. P. C.* 15. *a. Crom.* 28. *a. Dalt. cap.* 98. *Kelynge* 58. *H. P. C.* 42.

It ſeems clear, that neither of theſe homicides (except as aforeſaid) are felonies, becauſe they are not accompanied with a felonious intent, which is neceſſary in every felony. 1 *Hawk.* 75. 3 *Inſt.* 56. 2 *Inſt.* 149.

And from hence it ſeems plainly to follow, that they were never puniſhable with loſs of life: And the ſame alſo farther appears from the writ *De odio & atia*, by virtue whereof, if any perſon committed for killing another, were found guilty of either of theſe homicides, and no other crime, he might be bailed; and indeed it ſeems to be againſt natural juſtice to condemn a man to death, for what is owing rather to his misfortune than his fault. 1 *Hawk.* 75.

It is true indeed, that ſome of our beſt authors have argued from the ſtatute of *Marlbridge, Ch.* 26. which enacts, that *murdrum de cætero non adjudicetur, ubi infortunium tantummodo adjudicatum eſt, &c.* That before this ſtatute homicides by miſadventure, or *ſe defendendo*, were adjudged murder, and conſequently puniſhed by death. 1 *Hawk.* 75. 2 *Inſt.* 56. *S. P. C.* 16.

But to this it may be anſwered, that murder in thoſe days ſignified only the private killing of a man, by one who was neither ſeen nor heard by any witneſs, for which the offender, if found, was to be tried by ordeal, and if he could not be found, the town in which the fact was done, was to be amerced ſixty-ſix marks, unleſs it could be proved that the perſon killed was an *Engliſhman*: otherwiſe it was preſumed he was a *Dane* or *Norman*, who in thoſe days were often privately made away with by the *Engliſh*. And it being a doubt whether homicide by miſadventure, &c. were to be eſteemed murder in this ſenſe, it ſeems to have been the chief intent of the makers of this ſtatute to ſettle this queſtion. 1 *Hawk.* 75. *Bract.* 134. *b.* 135. *a. Kelynge* 121.

However it is certain, that notwithſtanding neither of theſe offences be felonies, yet a perſon guilty of them is not bailable by *juſtices of peace*, but muſt be committed till the next coming of the juſtices of eyre or gaol-delivery. 1 *Hawk.* 76. *H. P. C.* 98, 99. 2 *Inſt.* 315. *Dalt. cap.* 98. But they may be brought up by *habeas corpus*, before any of the twelve judges, and bailed.

Indeed, anciently a perſon committed for the death of a man, might ſue out the writ *De odio & atia*, which by *Magna Charta* 16. is grantable without fee; and if thereon, by an inqueſt taken by the ſheriff, he were found to have done the fact by miſadventure, or *ſe defendendo*, he might be mainpriſed by twelve men, upon the writ *De ponendo in ballium*. But ſuch writs and enquiries were taken away by the ſtatute of *Glouceſter*, 9. and 28 *Ed.* 3. 9. and though perhaps they were again revived by 42 *Ed.* 3. 1. which makes all ſtatutes contrary to *Magna Charta* void; yet at this day they ſeem to be obſolete, and, indeed, uſeleſs, inaſmuch as the party may probably be ſooner delivered in the uſual courſe, by the coming of the juſtices of gaol-delivery. 1 *Hawk.* 76. *S. P. C.* 77. *g.* 2 *Inſt.* 43, 315. 9 *Co.* 56. *Co. Bail and Mainfrize, c.* 10.

It is alſo agreed, that no one can excuſe the killing another, by ſetting forth in a ſpecial plea, that he did it by miſadventure, or *ſe defendendo*, but that he muſt plead Not guilty, and give the ſpecial matter in evidence. And that wherever a perſon is found guilty of ſuch homicide, either by a ſpecial indictment for the ſame, or by a verdict ſetting forth the circumſtances of the caſe on a general indictment of murder or homicide, he ſhall be diſcharged out of priſon upon bail, and forfeit his goods: But, that upon removing the record by *certiorari* into Chancery, he ſhall have his pardon of courſe, without ſtaying for any warrant from the King to that purpoſe. 1 *Hawk.* 76. 4 *H.* 7. 2. *a. Keilw.* 53. *a.* 108. *b.* 2 *Inſt.* 316. *S. P. C.* 15. *b.* 16. *b. Dalt. cap.* 96, 98. *F. N. B.* 246. *C. H.*

4. *Of manſlaughter.*

Homicide againſt the life of another, amounting to *felony*, is either *with* or *without* malice; that which is without malice is called manſlaughter, or ſometimes chancemedley, by which we underſtand ſuch killing as happens either on a ſudden quarrel, or in the commiſſion of an unlawful act, without any deliberate intention of doing any miſchief at all. 1 *Hawk.* 76. 3 *Inſt.* 55, 57. *Dalt. cap.* 94. *H. P. C.* 56, 57.

And from hence it follows, that there can be no acceſſaries to this offence before the fact, becauſe it muſt be done without premeditation. 1 *Hawk. P. C.* 76. *H. P. C.* 217. See diviſion *Murder*.

There is a particular kind of manſlaughter proper to be conſidered here, from which the benefit of clergy is taken away, by 1 *Jac.* 1. *c.* 8. "Where any perſon ſhall ſtab or thruſt any perſon or perſons that hath not then any weapon drawn, or that hath not then firſt ſtricken, the party which ſhall ſo ſtab or thruſt, ſo as the perſon or perſons ſo ſtabbed or thruſted, ſhall thereof die within the ſpace of ſix months then next following, although it cannot be proved that the ſame was done of malice forethought."

It is generally holden, that this ſtatute is but declarative of the Common law, and in the conſtruction thereof, the following points have been reſolved. 1 *Hawk.* 77. 1 *Bulſt.* 87. *Kelynge* 55.

1. That wherever a perſon who happens to kill another, was ſtruck by him in the quarrel before he gave the mortal wound, he is out of the ſtatute, though he himſelf gave the firſt blow. 1 *Hawk.* 77. 1 *Jon.* 240. See 3 *Lev.* 266.

2. That he who actually gives the ſtroke, and not any of thoſe who may be ſaid to do it by conſtruction of law, as being preſent, and aiding and abetting the fact, are within the ſtatute; from whence it follows, That if it cannot be proved by whom the ſtroke was given, none can be found guilty within the ſtatute. 1 *Hawk.* 77. *H. P. C.* 58. *Aleyn* 44.

3. That the killing of a man with a hammer, or ſuch like inſtrument, which cannot come properly under the words *thruſt* or *ſtab*, is not a killing within the ſtatute; but it ſeems that the diſcharging a piſtol, or throwing a pot, or other dangerous weapon at the party, is within the equity of the words, *having a weapon drawn*; for penal ſtatutes are conſtrued ſtrictly againſt the ſubject, and favourably and equitably for him. 1 *Hawk.* 77. 1 *Jones* 432. 3 *Lev.* 266.

4. That there is no need to lay the concluſion of the indictment *contra formam ſtatuti*, becauſe the ſtatute makes no new offence, but only takes away the privilege of clergy from an old one, and leaves it to the judgment of the common law; from whence it follows, that a perſon indicted on the ſtatute, may be found guilty of manſlaughter generally. Alſo from the ſame ground it hath been reſolved, That if an indictment lay, and a verdict alſo find, a fact to be *contra formam ſtatuti*, which cannot poſſibly be ſo, as if *A.* and *B.* aided and abetted *C. contra formam ſtatuti*, yet neither ſuch indictment nor verdict are void, but *A.* and *B.* ſhall be dealt with in the ſame manner as they ſhould have been, if theſe words *contra formam ſtatuti* had been wholly omitted, becauſe the ſubſtance of the indictment being found, they may be rejected as ſenſeleſs and ſurplus: And, *a fortiori*, therefore it is certain, that they ſhall do no hurt to an indictment or verdict containing a fact which may be within the ſtatute. 1 *Hawk.* 77. *H. P. C.* 58, 266. *Allen* 47. *Cro. Jac.* 283.

5. That, as theſe words, *contra formam ſtatuti*, do not vitiate an indictment which would be good without them; ſo alſo, they will not ſupply a defect in a vitious one, which does not ſpecially purſue the ſtatute. 1 *Hawk.* 77. *H. P. C.* 58.

5. *Of murder.*

Homicide againſt the life of another, amounting to *felony* with malice, is either *murder* or *petit treaſon*. And firſt of *murder*, which anciently ſignified only the private killing of a man, for which, by force of a law introduced by King *Canutus* for the preſervation of his *Danes*, the town or hundred where the fact was done, was to be amerced to the King, unleſs they could prove that the perſon ſlain were an *Engliſhman*, (which proof was called *Engleſchire*) or could procure the offender, *&c.* And in thoſe days, the open wilful killing of a man through anger or malice, *&c.* was not called *murder*, but *voluntary homicide*. 1 Hawk. 78. Bract. 134. b. 135. a. Kelynge 121, &c. Bract. 121. a.

But the law concerning *Engleſchire* having been aboliſhed by 14 *Ed.* 3. 4. the killing of an *Engliſhman* or foreigner through malice prepenſe, whether committed openly or ſecretly, was by degrees called *murder*; and 13 *Rich.* 2. 1. which reſtrains the King's pardon in certain caſes, does in the preamble, under the general name of *murder*, include all ſuch *homicide* as ſhall not be pardoned without ſpecial words; and in the body of the act expreſſes the ſame by *murder*, or killing by *await*, *aſſault*, or *malice prepenſed*. And doubtleſs the makers of 25 *H.* 8. *cap.* 1. which excluded all *wilful murder* of *malice prepenſe* from the benefit of clergy, intended to include open, as well as private, *homicide* within the word *murder*. 1 Hawk. 78. S. P. C. 18. b. 19. a.

By *murder*, therefore, at this day we underſtand, the wilful killing of any ſubject whatſoever, through *malice forethought*, whether the perſon ſlain be an *Engliſhman* or foreigner. 1 *Hawk.* 78.

Not only he who by a wound or blow, or by poiſoning, ſtrangling or famiſhing, *&c.* directly cauſes another's death, but alſo in many caſes, he who by wilfully and deliberately doing a thing which apparently endangers another's life, and thereby occaſions his death, ſhall be adjudged to kill him. 1 *Hawk.* 78. 3 *Inſt.* 48. *H. P. C* 53. *Palm.* 548. Vide examples in 1 *Hawk.* 78, 79. *Crom.* 24. *b.* *Pult.* 122. *a. b.* *Dalt. cap.* 93.

And in ſome caſes a man ſhall be ſaid, in the judgment of the law, to kill one who is in truth actually killed by another, or by himſelf; as where one by dureſs of impriſonment compels a man to accuſe an innocent perſon, who, on his evidence, is condemned and executed; or where one incites a madman to kill himſelf or another; or where one lays poiſon with an intent to kill one man, which was afterwards accidently taken by another who dies thereof. 1 *Hawk. P. C.* 79. *S. P. C.* 36. 3 *Inſt.* 91. *Dalt. cap.* 93. 1 *Hawk. cap.* 1. *ſect.* 7. *Plowd. Com.* 474.

Alſo he who wilfully neglects to prevent a miſchief, which he may and ought to provide againſt, is, as ſome have ſaid, in judgment of the law, the actual cauſe of the damage which enſues; and therefore if a man have an ox or horſe, which he knows to be miſchievous, by being uſed to gore or ſtrike at thoſe who came near them, and do not tie them up, but leave them to their liberty, and they afterwards kill a man, according to ſome opinions, the owner may be indicted, as having himſelf killed him; and this is agreeable to the Moſaical law. However, as it is agreed by all, ſuch a perſon is guilty of a very groſs miſdemeanor. 1 *Hawk.* 79. *Fitz. Corone* 311. *S. P. C.* 17. *a.* *Crom.* 24. *b.* *Dalt. cap.* 93. *Pult.* 122. *b.* *H. P. C.* 53. *Exodus, c.* 2. *v.* 29.

Alſo it is agreed, That no perſon ſhall be adjudged by any act whatever to kill another, who doth not die thereof within a *year and a day* after; in the computation whereof, the whole day on which the hurt was done ſhall be reckoned the firſt. 1 *Hawk. P. C.* 79. *H. P. C.* 55. *Pult.* 123. *a.* *Dalt. cap.* 93. *S. P. C.* 21. *d.*

But if a perſon hurt by another die thereof within a *year and a day*, it is no excuſe for the other, that he might have recovered, if he had not neglected to take care of himſelf. 1 *Hawk.* 79. 3 *Inſt.* 53. *Kelynge* 26. 1 *Keb.* 17.

As to the place where ſuch killing is within the conuſance of the law, it ſeems that the killing of one who is both wounded and dies out of the realm, or wounded out of the realm and dies here, cannot be determined at Common law, becauſe it cannot be tried by a jury of the neighbourhood where the fact was done. But it is agreed, that the death of one who is both wounded and dies beyond ſea, and it is ſaid by ſome, that the death of him who dies here of a wound given there, may be heard and determined before the conſtable and marſhal, according to the Civil law, if the King pleaſe to appoint a conſtable. And it ſeemeth alſo to be clear, that ſuch a fact being examined by the privy council, may by force of 33 *H.* 8. *cap.* 23. be tried (in relation to the principal offenders, but not as to the acceſſaries) before commiſſioners appointed by the King, in any county of *England*. 1 *Hawk.* 79. 3 *Inſt.* 48. 2 *Inſt.* 51. *Co. Lit.* 75. *S. P. C.* 65. *a.* *Bro. Appeal* 153. *Cro. Car.* 247. 1 *And.* 195. A commiſſion was iſſued, againſt captain *Rocke* for killing Mr. *Ferguſon*, at the cape of *Good Hope*.

A murder at ſea was anciently cogniſable only by the Civil law, but now by force of 27 *H.* 8. 4. and 28 *H.* 8. 15. it may be tried and determined before the King's Commiſſioners in any county of *England*, according to the courſe of the Common law; yet the death of one who is at land of a wound received at ſea, is neither determinable at Common law, nor by force of either of theſe ſtatutes: but it ſeems, that it may be tried by the conſtable and marſhal, or before the commiſſioners appointed in purſuance of the aforeſaid ſtatute of 33 *H.* 8. 23. 1 *Hawk.* 79. 3 *Inſt.* 48, 49. 1 *Leon.* 270. *H. P. C.* 54. 3 *Inſt.* 48. But now ſee 2 *Geo.* 2. *c.* 21. *poſt.*

And it is ſaid by ſome, that the death of one who died in one county, of a wound given in another, is not indictable at all at Common law, becauſe the offence was not complete in either county, and the jury could enquire only of what happened in their own county. But it hath been holden by others, That if the corps were carried into the county where the ſtroke was given, the whole might be enquired of by a jury of the ſame county. And it is agreed, that an appeal might be brought in either county, and the fact tried by a jury returned jointly from each. And at this day, by force of 2 & 3 *Ed.* 6. 24. the whole is triable by a jury of the county wherein the death ſhall happen, on an indictment found, or appeal brought, in the ſame county. 1 *Hawk.* 79, 80. 3 *Inſt.* 48, 49. *Bro. Coro.* 140, 141, 143. *Indictm.* 3. *S. P. C.* 90. *c.*

6 *H.* 7. 10. *a.* *Finch Law.* 411. *S. P. C.* 182. *Bro. Appeal* 3. 80, 83, 85, 149.

Alſo by force of 26 *H.* 8. *cap.* 6. a murder in *Wales* may be enquired of in an adjoining *Engliſh* county, but appeals muſt ſtill be brought in the proper county. 1 *Hawk.* 80. *Cro. Car.* 247. 1 *Jon.* 255. 1 *Lev.* 118. *Latch* 12, 118.

It is agreed, That the malicious killing of any perſon, whatſoever nation or religion he be of, or of whatſoever crime attainted, is murder. 1 *Hawk.* 80. 3 *Inſt.* 50.

And it was anciently holden, That the cauſing of an abortion by giving a potion to, or ſtriking a woman big with child, was murder: but, at this day, it is ſaid to be a great miſpriſion only, and not murder unleſs the child be born alive, and die thereof, in which caſe it ſeems clearly to be murder, notwithſtanding ſome opinions to the contrary. And in this reſpect alſo, the Common law ſeems to be agreeable to the Moſaical, which is as to the purpoſe thus expreſſed; "If men ſtrive and hurt a woman with child, ſo that her fruit depart from her, and yet no miſchief follow, he ſhall be ſurely puniſhed, according as the woman's huſband will lay upon him, and he ſhall pay as the judges determine; and if any miſchief follow, then thoſe ſhall give life for life." 1 *Hawk.* 80. *Bract.* 121. *S. P. C.* 21. *Bro. Coro.* 91. *H. P. C.* 53. 3 *Inſt.* 5. 3 *Aſſ.* 2. *Bro. Coro.* 68. *Dalt. cap.* 93. *Exodus, cap.* 21. *v.* 22, 23.

It ſeems alſo agreed, that where one counſels a woman to kill her child when it ſhall be born, who afterwards kills it in purſuance of ſuch advice, he is an acceſſary to the murder. 1 *Hawk.* 80. *Dyer* 186. 3 *Inſt.* 51.

As to what killing ſhall be adjudged of *malice prepenſe* or *murder*; it is to be obſerved, that any former deſign of doing miſchief may be called malice; and therefore that not ſuch killing only as proceeds from premeditated hatred or revenge againſt the perſon killed, but alſo in many other caſes, ſuch as is accompanied with thoſe circumſtances that ſhew the heart to be perverſly wicked, is adjudged to be of malice *prepenſe* or *aforethought*, and conſequently murder. 1 *Hawk.* 80. *Kelynge* 127. *Stran.* 766.

And according to this notion, it is thought proper to conſider, 1. Such murder as is occaſioned through any *expreſs purpoſe* to do *ſome perſonal injury* to him who is ſlain in particular; which ſeems to be moſt properly called *expreſs* malice. 2dly, Such as happens in the *execution of an unlawful action*, principally intended for ſome other purpoſe, and not to do a perſonal injury to him in particular who is ſlain, in which caſe the malice ſeems to be moſt properly ſaid to be *implied.* 1 *Hawk.* 80. *Kelynge* 129, 130.

As to *murder* in the *firſt ſenſe*, ſuch acts as ſhew a direct and deliberate intent to kill another, as poiſoning, ſtabbing, and ſuch like, are ſo clearly murder, that there are not any queſtions relating thereto worth explaining: but the caſes which have borne diſpute, have generally happened in the following inſtances. 1ſt, In duelling. 2dly, In killing another without any provocation, or but upon a ſlight one. 3dly, In killing one whom the perſon killing pretended to hurt in a leſs degree. 1 *Hawk.* 80.

As to the firſt inſtance of this kind, it ſeems agreed, that wherever two perſons in cool blood meet and fight on a precedent quarrel, and one of them is killed, the other is guilty of murder, and cannot help himſelf by alledging that he was firſt ſtruck by the deceaſed; or that he had often declined to meet him, and was prevailed upon to do it by his importunity; or that it was his only intent to vindicate his reputation, or that he meant not to kill, but only to diſarm his adverſary: For ſince he deliberately engaged in an act in defiance of the laws, he muſt at his peril abide the conſequences thereof. 1 *Hawk.* 80, 81. 1 *Bulſt.* 86, 87. 2 *Bulſt.* 147. *Crom.* 22. *b.* 1 *Rol. Rep.* 360. 3 *Bulſt.* 171. *H. P. C.* 48.

From hence it clearly follows, that if two perſons quarrel over night, and appoint to fight the next day; or quarrel in the morning, and agree to fight in the afternoon, or ſuch a conſiderable time after, by which, in common intendment, it muſt be preſumed that the blood was cooled, and then they meet and fight, and one kill the other, he is guilty of murder. 1 *Hawk.* 81. 3 *Inſt.* 51. *H. P. C.* 48. *Kelynge* 56. 1 *Lev.* 180.

And wherever it appears from the whole circumſtances of the caſe, that he who kills another on a ſudden quarrel was maſter of his temper at the time, he is guilty of murder; as if after the quarrel he fall into other diſcourſe, and talk calmly theren; or perhaps if he has ſo much conſideration as to ſay, that the place wherein the quarrel happens, is not convenient for fighting; or that if he ſhould fight at preſent, he ſhould have the diſadvantage by reaſon of the height of his ſhoes, &c. 1 *Hawk.* 81. *Kelynge* 56. 1 *Sid.* 177. 1 *Lev.* 180.

If *A.* on a quarrel with *B.* tell him that he will not ſtrike him, but that he will give *B.* a pot of ale to ſtrike him, and thereupon *B.* ſtrike, and *A.* kill him, he is guilty of murder; for he ſhall not elude the juſtice of the law by ſuch pretence to cover his malice. 1 *Hawk.* 81. *H. P. C.* 48.

In like manner, if *B.* challenge *A.* and *A.* refuſe to meet him; but, in order to evade the law, tells *B.* that he ſhall go the next day to ſuch a town about his buſineſs, and accordingly *B.* meet him the next day in the road to the ſame town, and aſſault him, whereupon they fight, and *A.* kills *B.* he is, in the opinion of *Hawkins*, guilty of murder, unleſs it appear by the whole circumſtances that he gave *B.* ſuch information accidentally, and not with a deſign to give him an opportunity of fighting. 1 *Hawk.* 81. *Crom.* 22. *b.* *H. P. C.* 48.

And at this day it ſeems to be ſettled, That if a man aſſault another with *malice prepenſe*, and after be driven by him to the wall, and kill him there in his own defence, he is guilty of murder in reſpect of his firſt intent. 1 *Hawk.* 81. *Crom.* 22. *b.* *Dalt. cap.* 93. *H. P. C.* 47. *Kelynge* 58. *Mawgridge*'s caſe.

And it hath been adjudged, that even upon a ſudden quarrel, if a man be ſo far provoked by any bare words or geſtures of another, as to make a puſh at him with a ſword, or to ſtrike at him with any other ſuch weapon as manifeſtly indangers his life, before the other's ſword is drawn, and thereupon a fight enſue, and he who made ſuch aſſault kill the other, he is guilty of murder; becauſe that by aſſaulting the other in ſuch an outrageous manner, without giving him an opportunity to defend himſelf, he ſhewed that he intended not to fight with him, but to kill him, which violent revenge is no more excuſed by ſuch a ſlight provocation, than if there had been none at all. 1 *Hawk.* 81. *Crom.* 23. *a. b.* *Dalt. cap.* 93. *Kelynge* 61. *Mawgridge*'s caſe.

But it is ſaid, that if he who draws upon another in a ſudden quarrel, make no paſs at him till his ſword is drawn, and then fight with him, he is guilty of manſlaughter only, becauſe that by neglecting the opportunity of killing the other, he was on his guard, and in a condition to defend himſelf, with like hazard to both, he ſhewed that his intent was not ſo much to *kill*, as to *combat* with the other, in compliance with thoſe common notions of honour, which prevailing over reaſon, during the time that a man is under the tranſports of a ſudden paſſion, ſo far mitigate his offence in fighting, that it ſhall not be adjudged to be of *malice prepenſe*. 1 *Hawk.* 81, 82. *Kelyng* 55, 61, 131. 2 *Rol. Rep.* 461.

And if two happen to fall out upon a ſudden, and preſently agree to fight, and each of them fetch a weapon, and go into the field, and there one kill the other, he is guilty of manſlaughter only, becauſe he did it in the heat of blood. 1 *Hawk.* 82. *H. P. C.* 48. 3 *Inſt.* 51.

And ſuch an indulgence is ſhewn to the frailties of human nature, that where two perſons, who have formerly fought on malice, are afterwards to all appearance reconciled, and fight again on a freſh quarrel, it ſhall not be preſumed that they were moved by the old grudge, unleſs it appear by the whole circumſtances of the fact. 1 *Hawk.* 82. *Crom.* 23. *a.* *Dalt. cap.* 93. *H. P. C.* 49. 1 *Rol. Rep.* 360.

But the law ſo far abhors all duelling in cold blood, that not only the principal who actually kills the other, but alſo his ſeconds are guilty of murder, whether they fought or not; and ſome have gone ſo far as to hold, that the ſeconds of the perſon killed are alſo equally guilty, in reſpect of that countenance which they give to their principals in the execution of their purpoſe, by accompanying them therein, and being ready to bear a part with them: but perhaps the contrary opinion is the more plauſible; for it ſeems too ſevere a conſtruction to make a man by ſuch reaſoning the murderer of his friend, to whom he was ſo far from intending any miſchief, that he was ready to hazard his own life in his quarrel. 1 *Hawk.* 82. *H. P. C.* 51. *Dalt. cap.* 93.

As to the *ſecond* inſtance of this kind, *viz.* ſuch murder as happens in killing another without any provocation, or but upon a ſlight one; it is to be obſerved, that wherever it appears that a man killed another, it ſhall be intended *prima facie* that he did it maliciouſly, unleſs he can make out the contrary, by ſhewing that he did it on a ſudden provocation, *&c.* 1 *Hawk.* 82. *Kelynge* 27.

Alſo it ſeems to be agreed, that no breach of a man's word or promiſe, no treſpaſs either to lands or goods, no affront by bare words or geſtures, however falſe or malicious it may be, and aggravated with the moſt provoking circumſtances, will excuſe him from being guilty of murder, who is ſo far tranſported thereby, as immediately to attack the perſon who offends him, in ſuch a manner as manifeſtly endangers his life, without giving him time to put himſelf upon his guard, if he kills him in purſuance of ſuch aſſault, whether the perſon ſlain did at all fight in his defence or not: for ſo baſe and cruel a revenge cannot have too ſevere a conſtruction. 1 *Hawk.* 82. *Kelynge* 131, 135. 2 *Rol. Rep.* 460, 461. *Dalt. cap.* 93. *Cro. Eliz.* 779. *Noy* 171. 1 *Sid.* 277. 1 *Levinz.* 180. *Hob.* 121. *con.* 1 *Jon.* 432. *a.*

But if a perſon ſo provoked had beaten the other only in ſuch a manner, that it might plainly appear that he meant not to kill, but only chaſtiſe him; or if he had reſtrained himſelf till the other had put himſelf on his guard, and then in fighting with him had killed him, he had been guilty of manſlaughter only. 1 *Hawk.* 82. *Kelynge* 55, 61, 131.

And of the like offence ſhall he be adjudged guilty, who ſeeing two perſons fighting together on a private quarrel, whether ſudden or malicious, takes part with one of them, and kills the other. 1 *Hawk.* 82. *Kelynge* 61, 136. *Cro. Jac.* 296. 12 *Co.* 87.

Neither can he be thought guilty of a greater crime, who finding a man in bed with his wife, or being actually ſtruck by him, or pulled by the noſe, or fillipped upon the forehead, immediately kills him; or who happens to kill another in a contention for the wall; or in the defence of his perſon from an unlawful arreſt; or in the defence of his houſe from thoſe who, claiming a title to it, attempt forcibly to enter it, and *to that purpoſe ſhoot at it, &c.* or in the defence of his poſſeſſion of a room in a public houſe, from thoſe who attempt to turn him out of it, and thereupon draw their ſwords upon him; in which caſe the killing the aſſailant hath been holden by ſome to be juſtifiable; but it is certain, that it can amount to no more than manſlaughter. 1 *Hawk.* 82, 83. *H. P. C.* 57. 3 *Inſt.* 55. *Kelynge* 51, 137. *Crom.* 27. *a.*

Nor was he judged criminal in a higher degree, who ſeeing his ſon's noſe bloody, and being told by him, that he had been beaten by ſuch a boy, ran three quarters of a mile, and having found the boy, beat him with a ſmall cudgel, whereof he afterwards died. 1 *Hawk.* 83. *H. P. C.* 48. *Cro. Jac.* 296. 12 *Co.* 87.

As to the *third* inſtance of the kind, *viz.* ſuch murder as happens in killing one whom the perſon killing intended to hurt in a leſs degree; as to which it is to be obſerved, that wherever a perſon in cool blood by way of revenge, unlawfully and deliberately beats another in ſuch a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone ſo far. 1 *Hawk.* 83. *Kelyn.* 119. *Mawgridge*'s caſe. *H. P. C.* 49, 50, 51, 52.

Alſo it ſeems, that he who upon a ſudden provocation executeth his revenge in ſuch a cruel manner, as ſhews a cool and deliberate intent to do miſchief, is guilty of murder, if death enſue; as where the keeper of a park finding a boy ſtealing wood, tied him to a horſe's tail, and beat him, whereupon the horſe ran away with and killed him. 1 *Hawk.* 83. *Cro. Car.* 131. 1 *Jon.* 198. *Palm.* 545. *H. P. C.* 49.

As to the caſes where ſuch killing ſhall be adjudged murder, which happen in *the execution of an unlawful action*, principally intended for ſome other purpoſe, and not to do a perſonal injury to him in particular who happens to be ſlain, they are as follow. And *firſt*, Such killing as happens in the execution of an *unlawful* action, whereof the principal intention was to commit another felony; it ſeems agreed, that wherever a man happens to kill another in the execution of a deliberate purpoſe to commit any *felony*, he is guilty of murder; as where a perſon ſhooting at tame fowl, with an intent to ſteal them, accidentally kills a man; or where one ſets upon a man to rob him, and kills him in making reſiſtance; or where a perſon ſhooting at, or fighting with one man with a deſign to murder him, miſſes him, and kills another. 1 *Hawk* 83. *Kelynge* 117. *H. P. C.* 46. 50. *Dalt. cap.* 93. *Moore* 87.

And not only in ſuch caſes, where the very act of a perſon having ſuch a felonious intent, is the immediate cauſe of a third perſon's death, but alſo where it any way occaſionally cauſes ſuch a misfortune, it makes him guilty of murder; and ſuch was the caſe of the huſband, who gave a poiſoned apple to his wife, who eat not enough of it to kill her, but innocently, and againſt the huſband's will and perſuaſion, gave part of it to a child who died thereof; ſuch alſo was the caſe of the wife who mixed *ratſbane* in a potion ſent by an apothecary to her huſband, which did not kill him, but afterwards killed the apothecary, who to vindicate his reputation taſted it himſelf, having firſt ſtirred it about. Neither is it material in this caſe, that the ſtirring of the potion might make the operation of the poiſon more forcible than otherwiſe it would have been; for inaſmuch as ſuch a murderous intention, which of itſelf perhaps in ſtrictneſs might juſtly be made puniſhable with death, proves now in the event the cauſe of the King's loſing a ſubject, it ſhall be as ſeverely puniſhed as if it had had the intended effect, the miſſing whereof is not owing to any want of malice, but of power. 1 *Hawk.* 84. *Plow. Com* | 474. 9 *Co.* 91.

But if one happened to be poiſoned by *ratſbane* laid in order to deſtroy vermine, the perſon by whom he is ſo killed, is guilty of homicide *per infortunium* only, becauſe his intentions were wholly innocent. *Ibid.*

Alſo if a third perſon accidentally happen to be killed by one engaged in a combat with another upon a ſudden quarrel, it ſeems that he who kills him is guilty of manſlaughter only; but it hath been adjudged, that if a juſtice of peace, conſtable or watchman, or even a private perſon be killed in the endeavouring to part thoſe whom he ſees fighting, the perſon by whom he is killed, is guilty of murder; and that he cannot excuſe himſelf by alledging that what he did was in a ſudden affray in the heat of blood, and through the violence of paſſion; for he who carries his reſentment ſo high as not only to execute his revenge againſt thoſe who have affronted him, but even againſt ſuch as have no otherwiſe offended him but by doing their duty, and endeavouring to reſtrain him from breaking through his, ſhews ſuch an obſtinate contempt of the law, that he is no more to be favoured than if he had acted in cool blood. 1 *Hawk.* 84. *H. P. C.* 45, 50. 3 *Inſt.* 52. *Dalt. cap.* 93. *Savil* 67. *Kelynge* 66. 22 *Aſſ.* 71. 4 *Co.* 40. *b.* 9 *Co.* 68. *Crom.* 25. *a. b.*

Yet it hath been reſolved, that if the third perſon ſlain in ſuch a ſudden affray, do not give notice for what purpoſe he comes, by commanding the parties in the King's name to keep the peace, or otherwiſe manifeſtly ſhewing his intention to be not to take part in the quarrel, but to appeaſe it, he who kills him is guilty of manſlaughter only, for he might ſuſpect that he came to ſide with his adverſary. 1 *Hawk.* 84. *Kelynge* 66.

As to the *ſecond* inſtance of this kind, *viz.* ſuch killing as happens in the execution of an *unlawful* action, where the principal deſign is to commit a *bare breach of the peace*, not intended againſt the perſon of him who happens to be ſlain; it ſeems clear, that where divers perſons reſolving generally to reſiſt all oppoſers in the commiſſion of any ſuch breach of the peace, and to execute it in ſuch a manner as naturally tends to raiſe tumults and affrays, as by committing a violent diſſeiſin with great numbers of people, hunting in a park, *&c.* and in ſo doing happen to kill a man, they are all guilty of murder; for they muſt at their peril abide the event of their actions, who wilfully engage in ſuch bold diſturbances of the public qeace, in open oppoſition to and defiance of the juſtice of the nation. 1 *Hawk.* 84. *Savil* 67. *Moore* 86. *Palm.* 35. *Crom.* 24. *b.* 25. *a.* *H. P. C.* 47. 5 *Mod.* 285. *Dyer* 128. *pl.* 60. *S. P. C.* 17. *b.*

Yet where divers rioters, having forcible poſſeſſion of a houſe afterwards killed the perſon whom they had ejected, as he was endeavouring in the night forcibly to regain the poſſeſſion, and *to fire the houſe*, they were adjudged guilty of manſlaughter only, notwithſtanding they did the fact in maintenance of a deliberate injury, perhaps for this reaſon, *becauſe the perſon ſlain was ſo much in fault himſelf*. 1 Hawk. 85. Crom. 28. b. H. P. C. 56.

But if in ſuch, or any other quarrel, whether it were ſudden or premeditated, a juſtice of peace, conſtable or watchman, or even a private perſon, be ſlain in endeavouring to keep the peace, and ſuppreſs the affray, he who kills him is guilty of murder; for notwithſtanding it was not his primary intention to commit a felony, yet inaſmuch as he perſiſts in a leſs offence with ſo much obſtinacy as to go on in it to the hazard of the lives of thoſe who no otherwiſe offend him, but by doing their duty in maintenance of the law, which therefore affords them its more immediate protection, he ſeems to be in this reſpect equally criminal, as if his intention had been to commit a felony. 1 *Hawk.* 85. *H. P. C.* 45. *Dalt. cap.* 93. 3 *Inſt.* 52. *Kelyn.* 66. 22 *Aſſ.* 71. 4 *Co.* 40. *b.* 9 *Co.* 68. *Crom.* 25. See *ſupra.*

As to the *third* inſtance of this kind, *viz.* ſuch killing, as happens in the execution of an *unlawful* action, the principal motive whereof was *to aſſiſt a third perſon*; it ſeems clear, that if a maſter maliciouſly intending to kill another take his ſervants with him, without acquainting them with his purpoſe, and meet his adverſary and fight with him, and the ſervants ſeeing their maſter engaged take part with him, and kill the other, they are guilty of manſlaughter only, but the maſter of murder. *Pl. Com.* 100, 101. *a.* *Crom.* 23. *Dalt. cap.* 93. *H. P. C.* 51, 52.

And therefore it follows *à fortiori*, that if a man's ſervant or friend, or even a ſtranger, coming ſuddenly, ſee him fighting with another and ſide with him, and kill the other; or ſeeing his ſword broken ſend him another, wherewith he kills the other, he is guilty of manſlaughter only. 1 *Hawk.* 85. *Crom.* 26. *b.* *H. P. C.* 57. *Dalt. cap.* 94. 1 *Roll. Rep.* 407, 408. 3 *Bulſt.* 206. *H. P. C.* 52.

Yet in this very caſe, if the perſon killed were a bailiff, or other officer of juſtice, reſiſted by the maſter, *&c.* in due execution of his duty, ſuch friend or ſervant, *&c.* are guilty of murder, whether they knew the perſon ſlain were an officer or not. 1 *Hawk.* 85. *Kelynge* 67, 86, 87.

But perhaps it may be objected, that in this laſt caſe there ſeems to be no more malice than in the former; and ſuch third perſon being wholly ignorant that the party killed was an officer, ſeems to be no more in fault than if he had been a private perſon. 1 *Hawk.* 85.

To this it may be anſwered, that all fighting is highly unlawful, and that he who on a ſudden ſeeing perſons engaged in it, is ſo far from endeavouring to part them, as every good ſubject ought, that he takes part with one ſide, and fights in the quarrel, without knowing the cauſe of it, ſhews a high contempt of the laws, and a readineſs to break through them on a ſmall occaſion, and muſt at his peril take heed what he does; and conſequently might perhaps in ſtrict juſtice be adjudged in the foregoing caſes to act with *malice*, which *doth not always ſignify a particular ill-will againſt the perſon killed*, as appears by many of the above-mentioned caſes; and tho' ſuch perſon be favoured in reſpect of the ſuddenneſs of the occaſion where both the quarrel and the perſons are private, yet he muſt not expect ſuch indulgence, where the fight, in which he ſo raſhly engages, was begun in oppoſition to the juſtice of the nation, and a perſon happens to be killed thereby who engaged in maintenance thereof, and on that account is under its more particular care; and it may be juſtly challenged, that his oppoſers be made examples to deter others from joining in ſuch unwarrantable quarrels. 1 *Hawk.* 85, 86. 1 *Sid.* 160. *Noy* 50. *Plow. Com.* 100.

But if a man ſeeing another arreſted and reſtrained from his liberty, under colour of a preſs-warrent or civil proceſs, *&c.* by thoſe who in truth have no ſuch authority, happen to kill ſuch treſpaſſers in reſcuing the perſon oppreſſed, he ſhall be adjudged guilty of manſlaughter only, notwithſtanding the injured perſon ſubmitted to them, and endeavoured not to reſcue himſelf, and the perſon who reſcued him, did not know that he was illegally arreſted; for ſince in the event it appears, that the perſons ſlain were treſpaſſers, covering their violence with a ſhew of juſtice, he who kills them is indulged by the law, which in theſe caſes judges by *the event*, which thoſe who engage in ſuch unlawful actions muſt abide at their peril. 1 *Hawk.* 86. *Kelynge* 66, 137. *Crom.* 27. *a.* *Dent's* caſe.

As to the *fourth* inſtance of this kind, *viz.* ſuch killing as happens in the execution of an *unlawful* action, whereof *the direct deſign was to eſcape from an arreſt*, it ſeems to be agreed that whoever kills a ſheriff, or any of his officers, in the lawful execution of a civil proceſs, as on arreſting a perſon upon a *capias*, *&c.* is guilty of murder. 1 *Hawk.* 86. *Dalt. cap.* 93. *H. P. C.* 45. *Crom.* 24. *a.*

Neither is it any excuſe to ſuch a perſon, that the proceſs was erroneous, (for it is not void by being ſo,) or that the arreſt was in the night, or that the officer did not tell him for what cauſe he arreſted him, and out of what court, (which is not neceſſary when prevented by the party's reſiſtance); or that the the officer did not ſhew his warrant, which he is not bound to do at all, if he be a bailiff commonly known, nor without a demand, if he be a ſpecial one. 9 *Co.* 66, 68. *Cro. Jac.* 280, 486. 6 *Co.* 68. *b.* 69. *a.*

Yet the killing of an officer in ſome caſes will be manſlaughter only; as, where the warrant by which he acts gives him no authority to arreſt the party; as where a bailiff arreſts *J. S.* a baronet, who never was knighted, by force of a warrant to arreſt *J. S.* knight. 1 *Hawk.* 86. *Cro. Car.* 372. 1 *Jon.* 346. 12 *Co.* 49.

Where a good warrant is executed in an unlawful manner; as if a bailiff be killed in breaking open a door or window to arreſt a man; or perhaps if he arreſt one on a *Sunday* ſince 29 *Car.* 2. *cap.* 7. by which all ſuch arreſts are made unlawful. *H. P. C.* 46.

As to the fifth inſtance of this kind, *viz.* ſuch killing as happens in the execution of an *unlawful* action, whereof *the principal purpoſe was to uſurp an illegal authority*; it ſeems clear, that if perſons take upon them to put others to death, either by virtue of a new commiſſion wholly unknown to our laws, or by virtue of an unknown juriſdiction, which clearly extends not to caſes of this nature; as if the court of Common Pleas cauſe a man to be executed for treaſon or felony; or the Court Martial, in time of peace, put a man to death by the martial law, both the judges and officers are guilty of murder. 1 *Haw.* 86. *H. P. C.* 46.

But where perſons act by virtue of a commiſſion, which, if it were ſtrictly regular, would undoubtedly give them full authority, but happens to be defective only in ſome point of *form*, it ſeems that they are no way criminal.

As to the *ſixth* inſtance of this kind, *viz.* ſuch killing as happens in the execution of an *unlawful* action, where *no miſchief was intended at all*, it is ſaid, that if a perſon happen to occaſion the death of another, in doing any idle, wanton action, which cannot but be attended with the manifeſt danger of ſome other; as by riding with a horſe known to be uſed to kick among a multitude of people, by which he means no more than to divert himſelf by putting them into a fright, he is guilty of murder. 1 *Hawk*. 87.

Alſo it has been anciently holden, that if a perſon not duly authorized to be a phyſician or ſurgeon, undertake a cure, and the patient die under his hand, he is guilty of felony; but in as much as the books wherein this opinion is holden. were written before the ſtatute of 23 *H*. 8, c. 1. which firſt excluded ſuch felonious killing, as may be called *wilful murder of malice prepenſe*, from the benefit of clergy, it may be well queſtioned, whether ſuch killing ſhall be ſaid to be of malice prepenſe, within the intent of that ſtatute; however, it is certainly highly raſh and preſumptuous for unſkilful perſons to undertake matters of this nature; and indeed the law cannot be well too ſevere in this caſe, in order to deter ignorant people from endeavouring to get a livelihood by ſuch practice, which cannot be followed without the manifeſt hazard of the lives of thoſe who have to do with them: but ſurely the charitable endeavours of thoſe gentlemen who ſtudy to qualify themſelves to give advice of this kind, in order to aſſiſt their poor neighbours, can by no means deſerve ſo ſevere a conſtruction from their happening to fall into ſome miſtakes in their preſcriptions, from which the moſt learned and experienced cannot always be ſecure. 1 *Haw*. 87. *S. P. C*. 16. *b*. *Pult*. 32. *b*. *Crom*. 27. 43 *Ed*. 3. 33. *b*. *Fitz*. *Coron*. 163. See *Dalt*. *cap*. 93.

The principal in murder is ouſted of clergy in all caſes, and the acceſſary *before* is alſo ouſted of clergy in all caſes, but the acceſſary *after* is in no caſe ouſted of clergy. 2 *Hale's H*. 344.

By ſtat. 1 *Ed*. 6. *c*. 12. *ſect*. 13. All wilful killing by poiſoning of any perſon, ſhall be adjudged wilful murder of malice prepenſed.

Stat. 21 *Jac*. 1. *cap*. 27. *ſect*. 2. If any woman be delivered of an iſſue, which being born alive ſhould be a baſtard, and ſhe endeavours privately, either by drowning, or ſecret burying thereof, or any other way, ſo to conceal the death thereof, as that it may not come to light whether it were born alive or not; the ſaid mother ſhall ſuffer death as in caſe of murder, except ſuch mother can make proof by one witneſs that the child was born dead.

Continued indefinitely by 3 *Car*. 1. *cap*. 4. and 16 *Car*. 1. *cap*. 4.

Stat. 2 *Geo*. 2. *cap*. 21. Where any perſon ſhall be feloniouſly ſtricken or poiſoned upon the ſea, or at any place out of *England*, and ſhall die of the ſame in *England*; or where any perſon ſhall be feloniouſly ſtricken or poiſoned within *England*, and ſhall die of ſuch ſtroke or poiſoning upon the ſea, or out of *England*, an indictment thereof found by jurors of the county in *England*, in which ſuch *death*, *ſtroke* or *poiſoning* ſhall happen, whether it be found before any coroner upon view of ſuch dead body, or before juſtices of peace, or other juſtices who ſhall have authority to inquire of murders, ſhall be as effectual, as well againſt the principals as the acceſſories, as if ſuch ſtroke or poiſoning and death, and the offence of ſuch acceſſories, had happened in the ſame county: and every ſuch offender ſhall have the like defences (except challenges for the hundred) as if ſuch ſtroke or poiſoning and death, and the like offence of ſuch acceſſories, had happened in the ſame county where ſuch indictment ſhall be found.

By ſtat. 25 *Geo*. 2. *cap*. 37. *ſect*. 1. All perſons found guilty of wilful murder, ſhall be executed according to law, on the day next but one after ſentence paſſed, unleſs the ſame happen to be *Sunday*, and in that caſe on the *Monday* following.

And by the ſame ſtatute a variety of other proviſions are made relative to perſons convicted of murder, unneceſſary here to particularize; therefore we refer to the act.

At a meeting of the judges to conſider of this act, there was ſome doubt whether *hanging in chains* might ever be made *part of the ſentence*; but on debate it was agreed by nine judges, that in all caſes within the act, the *judgment* for *diſſecting and anatomizing only* ſhould be *part of the ſentence*: and if it ſhould be thought adviſeable, the judge might *afterwards* direct the *hanging in chains* by *ſpecial order* to the ſheriff, purſuant to the power given by the act. *Foſter's Crown Law* 107.

Hominatio. *Domeſday*, tit. *Northampton Sockmanni de Riſden,——Idcirco epiſcopus clamat* Hominationem *eorum*. It ſignifies the muſtering of men; alſo the doing of homage. *Cowell, edit*. 1727.

Homine capto in Withernamium, Is a writ to take him that hath taken any bondman or woman, and led him out of the country, ſo that he or ſhe cannot be *replevied* according to law. *Reg. Orig. fol*. 79. See *Withernam*.

Homine Eligendo ad cuſtodiendam peciam ſigilli pro mercatoribus editi, Is a writ directed to a corporation, for the choice of a new perſon to keep one part of the ſeal appointed for *ſtatutes merchant*, when a former is dead, according to the ſtatute of *Acton Burnel*. Reg. Orig. 178

Homine replegiando, Is a writ to bail a man out of priſon: in what caſes it lies, ſee *F. N. B. fol*. 6. *Reg. Orig. fol*. 77.

It may not be improper to obſerve, that it lies where a perſon is in priſon, not by ſpecial commandment of the King, or his judges, or for any crime or cauſe irrepleviſable, directed to the ſheriff to cauſe him to be *replevied*: and if the ſheriff return on a *homine replegiando*, that the defendant hath *eſloined* the plaintiff's body, ſo that the cannot deliver him; then the plaintiff ſhall have a *capias in withernam* to take deſendant's body, and keep it *quouſque*, &c. And if the ſheriff return *non eſt inventus* on that writ againſt the body, the plaintiff ſhall have a *capias* againſt the defendant's goods, &c. *F. N. B*. 66. *New Nat. Br*. 151, 152. Where one man takes away ſecretly, or keeps in his cuſtody another man againſt his will, upon oath made thereof, and a petition to the Lord Chancellor, he will grant a writ of *replegiari facias*, with an *alias* and *pluries*, upon which the ſheriff returns an *elongatus*, and thereupon iſſues out a *capias in withernam*: and when the party is taken, the ſheriff cannot take bail for him; but the court where the writ is returnable may, if they think fit, grant a *habeas corpus* to the ſheriff to bring him into court and bail him, or remand him. 2 *Lill*. 23.

In a *homine replegiando* it hath been adjudged, that it doth not differ from a common *replevin*, on which the ſheriff muſt return a *deliberari feci*, or an excuſe why he doth not: that where he cannot make deliverance, if he return an *elongatus*, the defendant is not concluded by that return to plead *non cepit*; and after the return of an *elongatus*, and a *capias in withernam*, if the defendant pleads this plea, he ſhall be bailed, for the *withernam* is no execution: and after a defendant is bailed upon the *capias in withernam*, there may be a new *withernam* againſt him. 2 *Salk*. 381. And it was held, that in a *homine replegiando* after an *elongatus* returned, if the defendant comes in *gratis*, and calls for a declaration, and pleads *non cepit*, he ſhall not be obliged to give bail; but if he come in upon the return of the *capias*, he muſt give bail, and ſhall not be admitted to it till he call for a declaration, and plead *non cepit*. Ibid.

The ſheriff returned an *elongavit* in a *homine replegiando*, and then a *capias in withernam* went forth; afterwards the defendant, having entered an appearance, moved for a *ſuperſedeas* to the *withernam*, and offered to plead *non cepit*; which was oppoſed, unleſs he would give bail to deliver the perſon, in caſe the iſſue was found againſt him: though it was ruled, that if any property had been pleaded in the party, then the defendant ought to give bail to deliver him; but he ſays he hath not the perſon, and therefore *non cepit* is a proper plea, and he ſhall put in bail to appear *de die in diem*. 4 Mod. 183. In this caſe the defendant ſhall not be compelled to *gage deliverance*; and a *ſuperſedeas* was granted to the *withernam*. 5 W. & M.

A *homine replegiando* cannot be brought either by the wife herſelf, or by her *prochein amy* againſt her huſband; and the nature and proceedings in the writ ſhew it to be ſo. *Paſch*. 1718. *Ch. Prec*. 492.

This writ is now ſeldom uſed to deliver a perſon out of cuſtody, by having the cauſe enquired into, and bail accepted,

cepted, if bailable, or the perſon diſcharged, without bail, if unlawfully impriſoned, it is uſual to ſue an *habeas corpus*, out of one of the courts of *Weſtminſter*, returnable in court, in term time, or before one of the judges in vacation.

Homines, Were a ſort of *feudatory* tenants, who claimed a privilege of having their cauſes and perſons tried only in the court of their lord; and when *Gerard de Canvil. anno* 5 *R.* 1. was charged with treaſon and other miſdemeanors, he pleaded that he was *Homo Comitis Johannis, &c.* and would ſtand to the law and juſtice of his court. *Paroch. Antiq.* 152.

Homiplagium, Is uſed in the laws of *Hen.* 1. *cap.* 80. for the maiming a man. *Si quis in domo vel curia Regis fecerit homicidium vel* homiplagium.

Homo. This *Latin* word includes both man and woman, in a large or general underſtanding. 2 *Inſt.* 45.

Homſtale, A home-ſtall, or manſion-houſe. As in a charter granted about the 5 *Ed.* 1. *Cowell.*

Hond-habend, (from the Sax. *hond*, hand, and *habens*, having) Signifies a circumſtance of manifeſt theft, when one is apprehended with the *mainor* or *mainover*, *i. e.* the thing ſtolen in his hand. *Bracton, lib.* 3. *tract.* 2. *cap.* 8, 32 & 35. who alſo uſes *hand-berend* in the ſame ſenſe, *ſc. Latro manifeſtus.* See *Hand-habend.* So in *Fleta, lib.* 1. *c.* 38. *Furtum manifeſtum eſt ubi aliquis latro deprehenſus ſeiſitus de aliquo latrocinio* hand-habbind, & backberinde, & *inſecutus fuerit per aliquem cujus res illa fuerit, quæ dicitur ſacborgh, & tunc licet inſecutori rem ſuam petere criminaliter ut furatam.*

It alſo ſignifies the right which the lord hath of determining this offence in his court.

Honey. All veſſels of honey are to be marked with the name of the owner, and be of ſuch a content, under penalties; and if any *honey* ſold, be corrupted with any deceitful mixture, the ſeller ſhall forfeit the *honey*, &c. *Stat.* 23 *Eliz. c.* 8.

Honour, Is, beſides the general ſignification, uſed eſpecially for the more noble ſort of *ſeigniories*, on which other inferior lordſhips or manors depend, by performance of ſome cuſtoms or ſervices to thoſe who are lords of them; (though anciently *honour* and *baronia* ſignified the ſame thing.) *Uti manerium plurimis gaudet (interdum feodis, ſed plerumque) tenementis, conſuetudinibus, ſerviciis, &c. Ita* honor *plurima complectitur maneria, plurima feodo militaria, plurima regalia, &c. dictus etiam olim eſt* beneficium *ſeu feodum regale, tentuſque ſemper a rege in capite.* Spelm. The manner of creating theſe *honours* by act of parliament, may in part be collected out of the ſtatute of 33 *Hen.* 8. *c.* 37, 38.

An honour ought to conſiſt of lands, liberties, and franchiſes. 1 *Bul.* 197. 2 *Rol.* 72. *l.* 48. And it is the moſt noble ſeigniory. *Co. Lit.* 108. *a.* So one or more manors may be parcel of an honour. 2 *Rol.* 72. *l.* 45. So a foreſt may be appendant to it. 2 *Rol.* 73. *l.* 3.

An *honour* originally ſhall be created by the King. *Co. Lit.* 108. *a.* Every *honour* muſt be holden of the King. *R.* 1 *Bul.* 195. And if it be aſſigned, or granted over to another, it ſhall not be holden of a ſubject. For it may be granted by the King to a ſubject. A man may claim an *honour* by grant, or by preſcription. But the King at this day cannot make an *honour* by grant, without an act of parliament. *R.* 1 *Bul.* 195, 196. *Co. Lit.* 108. *a.*

There are within the realm 80 *honours*, viz. the *honour of Aquila, Arundel, Abergavenny, Boloine, Berkhamſtead, Beaulieu, Barnard's Caſtle, Bullingbroke, Barſtable, Bononia, Brecknock, Brember, Bedford, Clare, Crovecure, Clun, Chriſtchurch, Cockermouth, Cormayls, Candicut, Cariſbrook, Clifford-Caſtle, Cheſter, Carmarthen,* and *Cardigan, Dudley,* and *Dover-Caſtle, Eyre,* and *Egremond.*

The *honour* of *Eaſt* and *Weſt Greenwich, Gloceſter, Grentmeſnil, Gower, Haganet, Huntindon, Heveningham, Hawenden-Caſtle, Hertford,* and *Halton, Lancaſter, Lincoln, Leiceſter, Lovetot, Hinckley,* and *Kington,* and *Falkingham.*

The *honour* of *Montgomery, Mowbray, Middleham,* and *Maidſtone, Nottingham, Newelhn, Oakhampton,* and *Oxford.*

The *honour* of *Plimpton, Peverel, Pickering, Raleigh, Richard's Caſtle, Skipton, Stafford, Strigal, Tickhil, Tremanton, Totneſs, Theony, Tamworth.*

The *honour* of *Wigmore, Wallingford, Windſor, Wormgay, Whirwelton, Werk, Whitchurch,* and *Warwick, Webley,* and *Tutbury.*

By the ſtatute of 31 *Hen.* 8. *c.* 5. *Hampton Court* is made an *honour.*

So, by the *Stat.* 33 *H.* 8. 37, 38. *Ampthill,* and *Grafton.* And by the *Stat.* 37 *H.* 8. 18. *Weſtminſter, Kingſton on Hull, St. Oſyth,* and *Donnington-caſtle.*

The King granted to a ſubject a great manor, called *an honour,* and paſſed it by the name of *an honour*; and well. *Jenk.* 277. *pl.* 99.

It is illegal to purchaſe *honour* (as a dukedom) for money. *Vern.* 5. *Paſch.* 1681. *E. of Kingſton* v. *Lady Eliz. Pierepoint.*

At this day the Earl of *Arundel* only hath his Earldom by preſcription, the beginning of which not within the memory of any one; ſo that his Earldom is the moſt ancient in the realm. 1 *Bulſ.* 196.

Honour-Courts, Are courts held within ſuch *honours*, mentioned in the *Stat.* 33 *Hen.* 8. *cap.* 37. And there is a *court of honour* of the *Earl Marſhal of England*, &c. which determines diſputes concerning precedency and points of *honour.* 2 Hawk. P. C. 11. This court of *honour*, which is alſo exerciſed to do juſtice to *heralds*, is a court by preſcription, and has a priſon belonging to it, called the *White-Lyon* in *Southwark.* 2 Nelſ. 935. *See* Black. Com. 3 Vol. 104.

Honourary (or Honorary) Feuds, Are titles of nobility, deſcendible to the eldeſt ſon in excluſion of all the reſt. *Black. Com.* 2 *V.* 56, 215.

Honourary Services, Are thoſe that are incident to the tenure of *grand ſergeanty*, and commonly annexed to ſome *honour.* Stat. 12 Car. 2. 29.

Hontfongenethef. *Cum omnibus aliis libertatibus tantummodo* hontfongenethef *mihi retento.* Charta Wil. Comitis Mateſialſci.. *In Mon. Angl.* 1 *par. fo.* 724.

This ſhould have been written *hondfangenethef*, and ſignifies a *thief*, taken with *hondhabend*, *i. e.* having the thing ſtolen in his hand. *Cowell.*

Hopcon, Signifies a valley in *Domeſday Book*; ſo do *hope, hawgh* and *howgh.* Cowell, edit. 1727.

Hops and hop-binds, Penalty on importing or uſing corrupt hops, 1 *Jac.* 1. *c.* 18. Hops imported, what duties to pay, 2 *W.* & *M. ſeſſ.* 2. *c.* 4. *ſect.* 10. 9 *Ann. cap.* 12. No bitter to be uſed in brewing but hops, 9 *Ann. c.* 12. *ſect.* 24. Foreign hops not to be imported in *Ireland.* 9 *Ann. c.* 12. 1 *Geo.* 1. *c.* 12. *ſect.* 6. The drawback on hops exported to *Ireland* taken off, 6 *Geo.* 1. *c.* 11. *ſect.* 40. Planters to give notice of the time of bagging, 6 *Geo.* 2. *c.* 21. *ſect.* 25. No hops to be imported into *Ireland* from other parts but *Great Britain,* 5 *Geo.* 2. *c.* 9. Landing foreign hops before duty paid, hops to be burnt, and ſhip forfeited, 7 *Geo.* 2. *c.* 19. Penalty on ſophiſticating hops, 7 *Geo.* 2. *c.* 19. *ſect.* 2. Damages to be made good, as by 9 *Geo.* 1. *c.* 22. Cutting hop-binds, 10 *Geo.* 2. *c.* 32. *ſect.* 4. By *Stat.* 6 *Geo.* 2. *c.* 37. *ſect.* 6. Unlawfully and maliciouſly cutting hop-binds is made felony without benefit of clergy.

Hora Auroræ, The morning bell, or what we now call the *four o'clock bell*, was anciently called *hora auroræ*; as our eight o'clock bell, or the bell in the evening, was called *ignitegium* or *coverfeu.* Cowell.

Hordera, (from the Sax. *Hord, Theſaurus*) A treaſurer: and hence we have the word *Hord* or *Hoard*, as uſed for treaſuring or laying up a thing. *Leg. Adelſtan. cap.* 2.

Horderium, A hoard, a treaſury, or repoſitory. As in the laws of King *Canute, c.* 104. *Sed ſuum* horderium, *quod dicere poſſumus diſpenſam, & ciſtam ſuam, & trage, id eſt ſcrinium ſuum, debet ipſa cuſtodire.* Cowell.

Hordeum palmale. *Hæc indentura teſtatur, quod Rob. Beaufitz dedit—unam virgatam terræ in Gillingham, redd. inde quolibet anno ad feſtum S. Mich. quatuor Buſſellos* ordei palmalis *firmæ juxta melius precium per duos denarios in quarterio, &c.* Dat 43 Ed. 4. *penes Alington Paynter arm.* Doubtleſs this is meant of beer-barley, which in

Norfolk is called ſprat-barley, and battledore-barley; and in the marches of *Wales cymridge*, it being broader in the ear, and more like a *hand* than the common barley, which in old deeds is called *hordeum quadrageſimale*. Cowell.

Hornebeame pollengers, Are trees ſo called, that have been uſually lopped, and are about twenty years growth, and therefore not tithable. *Plowden, fol.* 407. *Soby*'s caſe.

Hornegeld, Is a compound from the *Saxon* word *horn*, *cornu*, and *geld*, *ſolutio*, ſignifying a tax within a foreſt, to be paid for horned beaſts. *Cromp. Juriſd.* 197. And to be free thereof is a privilege granted by the King unto ſuch as he thinketh good. *Idem ibid. & Raſtall in* his *Expoſition of Words, Quietum eſſe de omni collectione in foreſta de beſtiis cornutis aſſeſſ.* 4 Inſt. fol. 369. *Et ſint quieti de omnibus geldis, & danegeldis, & walgeldis, & ſenegeldis, &* horngeldis, *&c. Diploma H.* 3. *canonicis & monialibus de Semplingham.* Cowell, edit. 1727.

Horn with horn, or **Horn under horn,** The promiſcuous feeding of bulls and cows, or all *horned* beaſts, that are allowed to run together upon the ſame common. As in the conſtitution of *Robert*, Biſhop of *Durham*, 1276. *Similiter de decimis quæ de vaccis proveniunt ſtatuendum duximus, quod ubicunque fuerit receptaculum earum, licet in vicinis parochiis* horn with horn, *ſecundum Anglicam linguam, paſcua quærant, ille remaneat tota decima, ubi fuerit domicilium & remanentia.* Spelman. To which may be added, that the commoning of cattle *horn with horn*, was properly when the inhabitants of ſeveral pariſhes let their common herds run upon the ſame open ſpacious common, that lay within the bounds of ſeveral pariſhes, and therefore, that there might be no diſpute upon the right of tithes, the biſhop ordains, that the cows ſhould pay all profit to the miniſter of the pariſh where the owner lived, *&c. Cowell.*

Hornagium, Is ſuppoſed to be the ſame with *horngeld.*

Horners, No ſtranger was to buy any *Engliſh* horns gathered or growing in *London*, or within twenty-four miles thereof, by the *Stat.* 4 *Ed.* 4. *c.* 8. And none may ſell *Engliſh horns* unwrought to any ſtranger, or ſend them beyond ſea, on pain of forfeiting double value: the wardens of *horners* in *London* may ſearch all wares, *&c.* 7 *Jac.* 1. *cap.* 14.

Hors de ſon Fee, Fr. *i. e.* out of his fee) Is an exception to avoid an action brought for rent or ſervices, *&c.* iſſuing out of land, by him that pretends to be the lord; for if the defendant can prove that the land is *without the compaſs* of his *fee*, the action falls. *Broke.* In an *avowry*, a ſtranger may plead generally *hors de ſon fee*; and ſo may tenant for years: and ſuch ſtranger to the *avowry*, being made a party, is at liberty to plead any matter in abatement of it. 9 *Rep.* 30. 2 *Mod.* 104. A tenant in fee-ſimple ought either to diſclaim, or plead *hors de ſon fee.* 1 Danv. Abr. 655. *Vide* 9 Rep. Bucknal's caſe, 22 Hen. 6. 2, 3. Keilw. 73, 14. Aſſ. pl. 13. Co. Lit. 1. b. 2 Mod. 103, 104. Trin. 28 Car. 2. C. B. Sherrard *v.* Smith. *See* 14 Vin. Abr. *tit.* Hors de ſon fee.

Horſe-bread, Inn-keepers ſhall not make horſe-bread. 13 *Ric.* 2. *ſtat.* 1. *c.* 8. 4 *Hen.* 4. *c.* 25. 21 *Jac.* 1. *c.* 22. Permitted to bake horſe-bread. 32 *Hen.* 8. *c.* 41.

Horſes, Were not to be conveyed out of the realm without the King's licence, *&c.* on pain of forfeiture, by an ancient ſtatute. 11 *H.* 7. *c.* 13. Perſons having lands of inheritance in parks, *&c.* are to keep two mares apt to bear foals thirteen hands high, for the increaſe of the breed of *horſes*, on pain of 40 *s.* for every month they are wanting; and not ſuffer them to be leaped by ſtoned *horſes* under fourteen hands, on a certain penalty. 27 *Hen.* 8. *c.* 6. And for the preſervation of a ſtrong breed of *horſes*, ſtone-horſes above two years old are to be fifteen hands high, or they ſhall not be put into foreſts or commons, where mares are kept, upon pain of forfeiture; and ſcabbed or infected *horſes* ſhall not be put into common fields, under the penalty of 10 *s.* leviable by the Lord of the leet. 32 *H.* 8. *c.* 13.

Stealing of any horſe, gelding, or mare, is felony without benefit of clergy; but acceſſaries to this offence are not excluded clergy. 1 *Ed.* 6. *c.* 12. 2 & 3 *Ed.* 6. *c.* 23. And if any *horſe* that is ſtolen be not ſold according to the ſtatute 2 & 3 *P. & M. c.* 7. the owner may take the *horſe* again wherever he finds him, or have action of *detinue, &c.* To prevent *horſes* being ſtolen and ſold in private places, the 2 & 3 *P. & M.* provides, that owners of fairs and markets ſhall appoint toll-takers or book-keepers, who are to enter the names of buyers and ſellers of *horſes, &c.* And to alter the property, the *horſes* muſt be rid or ſtand in the open fair one hour; and all the parties to the contract muſt be preſent with the *horſe*. And by 31 *Eliz. cap.* 12. ſellers of *horſes* are to procure vouchers of the ſale to them; and the names of the buyer, ſeller and voucher, and price of the *horſe* are to be entered in the toll taker's book, and a note thereof delivered to the buyer: and if any perſon ſhall ſell a *horſe* without being known to the book-keeper, or bringing a voucher; or if any one ſhall vouch without knowing the ſeller: or the book-keeper ſhall make an entry without knowing either, in either of theſe caſes the ſale is void, and a forfeiture is incurred of 5 *l.*

A *horſe* ſtolen, though ſold according to the direction of the act, may be redeemed and taken by the owner within ſix months, repaying the buyer what he ſhall ſwear he gave for the ſame. *Stat. Ibid.*

Horſes in hackney coaches to be fourteen hands, 9 *Ann. c.* 23. *ſect.* 4.

Horſes hired, Action of treſpaſs on the caſe lies for abuſing a *horſe* hired, by immoderate riding, *&c.* And a difference has been made in our law between *hiring* a *horſe*, and *borrowing* one to go a journey; for in the *firſt* caſe the party may ſet his *ſervant, &c.* upon the horſe, but not in the *ſecond.* 1 Mod. 210.

Horſes for the King's Service. None ſhall take the *horſe* of any perſon to ſerve the King without the owner's conſent, or ſufficient warrant, on pain of impriſonment, *&c. Stat.* 20 *R.* 2. *c.* 5.

Horſe-Races, For ſmall ſums, having encouraged idleneſs, and impoveriſhed the meaner ſort people; it is ordained, that no perſon ſhall run any *horſe* at a *race*, unleſs it be his own, nor enter more than one *horſe* for the ſame plate, upon pain of forfeiting the *horſes*; and no plate is to be run for under 50 *l.* on the penalty of 500*l.* Alſo every *horſe-race* muſt be begun and ended in the ſame day, *&c. Stat.* 13 *Geo.* 2. *cap.* 19. *Stat.* 18 *Geo.* 2. *c.* 34.

Horſes at *races* to be entered by the owners, 13 *Geo.* 2. *c.* 19. *Horſe*-racing with *horſes* carrying ſmall weights, prohibited. *Ib. Horſes* may run for the value of 50*l.* with any weight and at any place, 18 *Geo.* 2. *c.* 34. *ſect.* 11.

Horſtilers, (Fr. *Hoſteliers)* Is uſed for inn-keepers: and in ſome old books the word *hoſtlers* is taken in the ſame ſenſe. 31 *Ed.* 3. *c.* 2. The executors of *horſtelers* are not chargeable, for their faults. 1 *Keb.* 682.

Hoſpes generalis, A great chamberlain.——*Volumus, quantum ad* hoſpitia *pertinet, omnes indifferenter noſtro* hoſpiti generali *obediant, &c.* Du Cange.

Hoſpitality. The reader will not be diſpleaſed with the following extract from the learned Dr. *Robertſon*, on this ſubject.

Speaking of the middle ages, he ſays, "Among people whoſe manners are ſimple, and who are ſeldom "viſited by ſtrangers, *hoſpitality* is a *virtue* of the *firſt* "*rank.* This *duty* of *hoſpitality* was ſo neceſſary in that "ſtate of ſociety which took place during the middle "ages, that it was not conſidered as one of thoſe virtues "which men may practice or not, according to the temper of their minds, and the generoſity of their hearts. "*Hoſpitality* was enforced by ſtatutes, and thoſe who "neglected the *duty* were liable to puniſhment." The "laws of the *Slavi* ordained that the moveables of an inhoſpitable perſon ſhould be confiſcated and his houſe "burnt. They were even ſo ſolicitious for the entertainment of ſtrangers, that they permitted the landlord to "ſteal for the ſupport of his gueſt." *Hiſt. Emp. Char.* V. 1 *V.* 326.

Hoſpitallers, (*Hoſpitalarii*) Were the knights of a religious order, ſo called, becauſe they built an *hoſpital* at *Jeruſalem,* wherein pilgrims were received. To theſe Pope *Clement* the fifth transferred the templars, which order, by a council held at *Vienne* in *France*, he ſuppreſſed, for their many and great offences. The inſtitution of their order was firſt allowed by Pope *Gelaſus* the Second, *anno* 1118. and confirmed here by parliament, and had many privileges granted them, as immunities from payment of tithes, *&c.* Their privileges are reſerved to them by *Magna Charta, cap.* 37. and the right of the King's ſubjects vindicated from the uſurpation of their juriſdiction, by the ſtatute of *Weſtm.* 2. *cap.* 43. Their chief abode is now in *Malta*, an iſland given them by the Emperor *Charles* the Fifth, after they were driven from *Rhodes* by *Solyman* the Magnificent, Emperor of the *Turks*; and for that they are now called *Knights of Malta.* They are mentioned 13 *Ed.* 1. *cap.* 43. and 9 *Hen.* 3. *c.* 37. *Tho. Walſingham* in Hiſt. *Ed.* 2. and *Stow's Annals, ibid.* All the lands and goods of theſe knights here in *England* were given to the King, by 32 *Hen.* 8. *c.* 34. See *Mon. Angl.* 2 *par. fol.* 489.

Hoſpitals, are *aggregate*, in which the maſter, or warden and his brethren have the eſtate of inheritance; or *ſole*, in which the maſter, *&c.* only has the eſtate in him, and the brethren, or ſiſters, having college, and common ſeal in them, muſt conſent, or the maſter alone has the eſtate not having college, or common ſeal. *Co. Lit.* 342. *a.*

So hoſpitals are *eligible*, *donative*, or *preſentative.* Ibid.

The maſter of the hoſpital, who has college, and common ſeal, may have a writ of right; for the right, and inheritance is in him. If he has no college, or common ſeal, he may have a *juris utrum.* Co. Lit. 341. b. 342. a.

Any perſon ſeiſed of an eſtate in fee-ſimple may by deed inrolled in *Chancery* erect and found an *hoſpital* for the ſuſtenance and relief of the poor, to continue for ever; and place ſuch heads, *&c.* therein as he ſhall think fit: and ſuch *hoſpital* ſhall be incorporated, and ſubject to ſuch viſitors, *&c.* as the founder ſhall nominate; alſo ſuch corporations have power to take and purchaſe lands not exceeding 200 *l. per Annum*, ſo as the ſame be not holden of the King, *&c.* and to make leaſes for twenty-one years, reſerving the accuſtomed yearly rent: but no *hoſpital* is to be erected unleſs upon the foundation it be endowed with lands or hereditaments of the clear yearly value of 10 *l. per Annum.* Stat. 39 Eliz. cap. 5.

It has been adjudged upon this ſtatute, that if lands given to an *hoſpital* be at the time of the foundation or endowment of the yearly value of 200*l.* or under, and afterwards they become of greater value by good huſbandry, accidents, *&c.* they ſhall continue good to be enjoyed by the *hoſpital*, although they be above the yearly value of 200*l.* And goods and chattels (real or perſonal) may be taken of what value ſoever. 2 *Inſt.* 722. And if one give his land then worth 10 *l.* a year to maintain poor, *&c.* and the land after comes to be worth 100*l.* a year, it muſt all of it be employed to increaſe their maintenance, and none of it may be converted to private uſe. 8 *Rep.* 130.

If a deviſe be to the poor people maintained in the *hoſpital* of St. *Laurence* in *Reading*, *&c.* (where the mayor and burgeſſes capable to take in mortmain, do govern the *hoſpital*) albeit the poor, not being a corporation, are not capable by that name to take; yet the deviſe is good, and commiſſioners appointed to enquire into lands given to *hoſpitals*, *&c.* may order him that hath the land to aſſure it to the mayor and burgeſſes for the maintenance of the *hoſpital.* 43 *Eliz. c.* 4.

A gift muſt be to the poor, and not to the aged or impotent of ſuch a pariſh, without expreſſing their poverty; for poverty is the principal circumſtance to bring the gift within the ſtatute of 43 *Eliz. c.* 4. Although at Common law a corporation may be of an *hoſpital*, that is *in poteſtate* of certain perſons to be governors of the *hoſpital* and not of the perſons placed therein: the ſafeſt way upon the act 39 *Eliz. c.* 5. is firſt to prepare the *hoſpital*, and to place the poor therein, and to incorporate the perſons therein placed; and after the incorporation to convey the lands, tenements, *&c.* to the ſaid corporation, by bargain and ſale, or otherwiſe, between the founder of the one part, and the maſter and brethren, *&c.* of the other part, in conſideration of 5 *s.* in hand paid by the maſter of the ſaid *hoſpital*, *&c.* 2 *Inſt.* 724, 725. And the founder cannot erect an *hoſpital* for years, lives or any other limited time, but it muſt be for ever, according to the *ſtat.* 39 *Eliz. c.* 5. which ſtatute for erecting of *hoſpitals* is made perpetual by 21 *Jac.* 1. *c.* 1. See 10 *Rep.* 17, 34.

By 39 *Eliz. c.* 6. and 43 *Eliz. c.* 4. *Commiſſions* may be awarded to certain perſons to enquire of lands or goods given to *hoſpitals*; and the *Lord Chancellor* is empowered to iſſue commiſſions to commiſſioners for enquiring by a jury, of all grants, abuſes, breaches of truſt, *&c.* of lands given to charitable uſes, who may make orders and decrees concerning the ſame, and the due application thereof; and the commiſſioners are to decree, that recompence be made for fraud and breaches of truſt, *&c.* ſo as their orders and decrees be certified into the *Chancery*; and the Lord Chancellor ſhall take order for the execution of the ſaid judgments and decrees, and after certificate may examine into, annul, or alter them agreeable to equity, on juſt complaint: but this does not extend to lands given to any college or hall in the univerſities, *&c.* nor to any *hoſpital* over which ſpecial governors are appointed by the founders; and it ſhall not be prejudicial to the juriſdiction of the biſhop or ordinary, as to his power of inquiry into and reforming abuſes of *hoſpitals*, by virtue of the *ſtat.* 2 *Hen.* 5. *c.* 1, *&c.*

Theſe commiſſioners may order houſes to be repaired, by thoſe who receive the rents; ſee that the lands be let at the utmoſt rent; and on any tenant's committing waſte, by cutting down and ſale of timber, they may decree ſatisfaction, and that the leaſe ſhall be void. *Hil.* 11 *Car.* Where money is kept back, and not paid, or paid where it ſhould not, they have power to order the payment of it to the right uſe: and if money is detained in the hands of executors, *&c.* any great length of time, they may decree the money to be paid with damages for detaining it. *Duke Read.* 123. See 4 *Rep.* 104.

The *hoſpital* of St. *Croſs* near *Wincheſter*, and ſeveral other large *hoſpitals*, were anciently founded by *particular ſtatutes*, or acts of parliament. And King *Charles* the Firſt granted to the mayor and commonalty of *London* the keeping of *Bethlem Hoſpital*, and the manors and lands belonging to it. *Chart. K. Char.* 1. Alſo there is now an *hoſpital* in London for *foundling children*, under the care of governors and guardians, who may purchaſe lands or tenements to the value of 4000 *l.* a year: and they are to receive as many ſuch *children*, as they think fit, which may be brought to the *hoſpital* and ſhall there be bred up and employed, or placed apprentice to any trade, or the ſea ſervice, the males till the age of twenty-four, and the females till twenty-one. They may likewiſe be let out or hired, *&c.* 13 *Geo.* 2. *cap.* 29. See 29 *Geo.* 2. *c.* 29. *ſect.* 13. 30 *Geo.* 2. *c.* 26. *ſect.* 14. as to the *Foundling Hoſpital*, and 30 *Geo.* 2. *c.* 3. *ſect.* 22. to 27. how far *hoſpitals* are ſubject to the land-tax. See index to the *Statutes, tit. Hoſpitals.* See alſo the ſame *tit. Mortmain.* Several ſtatutes to prevent alienations in *Mortmain.* By 7 *&* 8 *W.* 3. *c.* 37. The Crown may grant licence to aliene in *mortmain* But, by 9 *Geo.* 2. *c* 36. Gifts in *mortmain* by will, *&c.* are reſtrained. See farther *Black. Com.* 1 *V.* 471, 474.

Hoſpitium, Is the ſame with procuration, or viſitation-money. *Et nomine ſuæ legationis cum exceſſivo numero* hoſpitia *a cunctis per Angliam exegit monaſteriis; minores vero domus, quæ pondus* hoſpitii *ferre non poterint, certa ſumma, id eſt, octo vel quinque mercarum,* hoſpitia *redemerunt.* Neubrigenſis, lib. 4. c. 14. Brompton, fol. 1193.

Hoſtagium, Is the ſame with *hoſpitium.*

Hoſtelagium, A right to have lodging and entertainment; reſerved by Lords in the houſes of their tenants. *Cartular. Radinges, MS.* 157.

Hoſteler, (*Hoſtellarius*) from the French *hoſteler*, i. e. *hoſpes*) Signifieth with us thoſe that otherwiſe are called inn-keepers.

inn-keepers. *Stat.* 31 *Ed.* 3. *ſtat.* 2. *c.* 2. See *Horſtilers.*

Hoſtlers, Inn-keepers. 9 *Ed.* 3. *ſtat.* 2. *c.* 2.

Hoſtrium, A hoe, being an inſtrument well known: *Et quieti de aratro* & hoſterio, & *ſegibus ſecandis,* & *homagio faciendo, de averiis* & *de panagio,* & *omnibus aliis conſuetudinibus,* &*c.* Chart. Hammon. Maſſy.

Hoſtiæ, Hoaſt bread, or conſecrated wafers in the *Holy Euchariſt:* and from this word *hoſtia,* Mr. *Somner* derives the Sax. *huſel,* uſed for the Lord's ſupper, and *huſlian* to adminiſter the ſacrament; which were kept long in our old *Engliſh,* under *houſel,* and to *houſal.* Paroch. Antiq. 270.

Shakeſpeare uſes the term *unhouſeled,* &c. in *Hamlet,* meaning that his father gave up the ghoſt, without having the holy bread, or ſacrament, adminiſtered to him.

Hoſtilarius, An *hoſpitaller.*

Hoſtilaria, Hoſpitularia, A place or room in religious houſes, allotted to the uſe of receiving gueſts and ſtrangers, for the care of which there was a peculiar officer appointed, called *Hoſtillarius,* and *Hoſpitalarius.*—*Nos Willielmus Prior Elyen.* & *ejuſd. loci conventus ad rogatum——Henrici Sexti Regis conceſſimus Johanni Norys armigero officium botillarii in* hoſtillaria *noſtra Elienſi*——Ex Cartular. Eccl. Elyen. MS. fol. 34.

Hoſtricus, (*Auſtercus,* from the Lat. *aſtur,* a goſhawk) The manor of *Broughton com. Oxon,* in the reign of *Edw.* 2. was held by *John Mauduit—in capite per ſerjeantiam, mutandi unum* hoſtricum *Domino Regis, vel illum* hoſtricum *portandi ad curiam Domini Regis.* Paroch. Antiquities, pag. 569.

Hotchpot, (*In partem poſitio*) Is a word brought from the Fr. *hotchepot,* uſed for a confuſed mingling of divers things together, and among the *Dutch* it ſignifies fleſh cut into pieces, and ſodden with herbs or roots; but by a *metaphor* it is a *blending or mixing of lands given in marriage, with other lands in fee falling by deſcent:* as if a man ſeiſed of thirty acres of land in fee, hath iſſue only two daughters, and he gives with one of them ten acres in marriage to the man that marries her; and dies ſeiſed of the other twenty acres: now ſhe that is thus married, to gain her ſhare of the reſt of the land, muſt put her part given in marriage in *hotchpot, i. e.* ſhe muſt refuſe to take the ſole profits thereof, and cauſe her land to be mingled with the other; ſo that an equal diviſion may be made of the whole between her and her ſiſter, as if none had been given to her; and thus for her ten acres ſhe ſhall have fifteen, otherwiſe her ſiſter will have the twenty acres of which her father died ſeiſed. *Lit.* 55. *Co. Lit. lib.* 3. *cap.* 12.

This ſeems to be a right of waiving a proviſion, made for a child in a man's life-time, at his death, though as it depends upon *frank-marriage,* and gifts of lands therein, it now ſeldom happens.

But there is a bringing of *money* into *hotchpot,* upon the clauſes and within the intent of the act of parliament for diſtribution of inteſtates eſtates, 22 & 23 *Car.* 2. *c.* 10. *ſtat.* 2. Where a certain ſum is to be raiſed, and paid to a daughter for her portion, by a marriage ſettlement; this has been decreed to be an advancement by the father in his life-time, within the meaning of the *ſtatute,* though future and contingent; and if the daughter would have any further ſhare of her father's perſonal eſtate, ſhe muſt bring this *money* into *hotchpot;* and ſhall not have both the one and the other. *Abr. Caſ. Eq.* 253. See 2 *Vern.* 638.

By the cuſtom of *London,* there is likewiſe a term of *hotchpot,* where the children of a *freeman* are to have an equal ſhare of one third part of his perſonal eſtate, after his death. *Preced. Canc.* 3.

There is alſo in the Civil law *collatio bonorum* anſwerable to this, whereby if a child advanced by the father, do after his father's deceaſe challenge a child's part with the reſt he muſt caſt in all that he had formerly received, and then take out an equal ſhare with the others. *Cowell.* See farther *Britton, c.* 72. *Lit. ſect.* 267, 268. *Black. Com.* 2 *V.* 190, 517.

Hovel, (*Mandra*) Is a place wherein huſbandmen ſet their ploughs and carts out of the rain or ſun. *Law Lat. Dict.*

Hounſlow-Heath, A large *heath* containing 4293 acres of ground, and extending into ſeveral pariſhes; ſo much thereof in the King's inheritance, and fit for paſture, meadow, or other ſeveral grounds, ſhall be of the nature of *copyhold lands;* or the ſteward of the manor may let it for twenty-one years, &*c.* and the leſſees may improve the ſame. *Stat.* 37 *H.* 8. *c.* 2.

Hour, (*Hora*) Is a certain ſpace of time of ſixty minutes, twenty-four of which make the natural day. It is not material at what *hour* of the day one is born. *Co. Lit.* 135. Vide *Fraction.*

Houſage, Is a kind of ſee paid for *houſing* goods by a carrier, or at a wharf or key, &*c.* *Shep. Epit.* 1725.

Houſe, (*Domus*) A place of dwelling or habitation; alſo a family or houſhold. Every man has a right to air and light, in his own *houſe;* and therefore if any thing of infectious ſmell be laid near the *houſe* of another, or his lights be ſtopped up and darkened by buildings, &*c.* they are nuſances puniſhable by our laws. 3 *Inſt.* 231. 1 *Danv. Abr.* 173. But for a proſpect, which is only matter of delight, no action will lie for its being ſtopped. 9 *Rep.* 58. See *Black. Com.* 2 *V.* 402, 3. 3 *V.* 216, 217.

The dwelling *houſe* of every man, is as his caſtle; therefore if thieves come to a man's *houſe* to rob or kill him, and the owner or his ſervant kill the thieves in defending him and his *houſe,* that is not felony, nor ſhall he forfeit any thing. 2 *Inſt.* 316. A man ought to uſe his own *houſe,* ſo as not to damnify his neighbour: and one may compel another to repair his *houſe,* in ſeveral caſes, by the writ *de domo reparanda.* 1 *Salk. Rep.* 360. Doors of a *houſe* may *not* be broke open on arreſts, unleſs it be for treaſon, or felony, &*c.* *H. P. C.* 137. *Plowd.* 5. 5 *Rep.* 91. Riotouſly pulling down a *houſe* is felony excluded clergy. *Stat.* 1 *Geo.* 1. *c.* 6. Stealing lead, or iron bars, or rails fixed to *houſes,* &c. is felony puniſhable by tranſportation, by 4 *Geo. cap.* 32. *Houſe* burning, ſee *Arſon.*

Several things have been reſolved on the ſubject, as to the protection a man's houſe affords him, as,

1. That every man's houſe is as his caſtle, as well to defend him againſt injuries as for his repoſe.

2. Upon recovery in any real action or ejectment, the ſheriff may break the houſe and deliver ſeiſin, &*c.* to the plaintiff, the writ being *habere facias ſeiſinam* or *poſſeſſionem;* and after judgment it is not the houſe of the defendant in right and judgment of law.

3. In all caſes, where the King is party, the ſheriff (if no door be open) may break the party's houſe to take him, or to execute other proceſs of the King, if he cannot otherwiſe enter; but he ought firſt to ſignify the cauſe of his coming, and requeſt the door to be opened; and this appears by the ſtatute *Weſtm.* 1. 17. which is only in affirmance of the Common law; and without default in the owner, the law will not ſuffer a houſe to be broken.

4. In all caſes, when the door is open, the ſheriff may enter and make execution at the ſuit of any ſubject, either of body or goods; but otherwiſe where the door is ſhut, there he cannot break it to execute proceſs at the ſuit of a ſubject.

5. Though a houſe is a caſtle for the owner himſelf and his family and his own goods, &*c.* yet it is no protection for a ſtranger flying thither, or the goods of ſuch an one, to prevent lawful execution; and therefore in ſuch caſe, after requeſt to enter, and denial, the ſheriff may break the houſe. 5 *Rep.* 91. *a.* to 93. *a.* *Mich.* 2 *Jac. B. R. Semaine's* caſe, alias *Semaine* v. *Greſham.*

Commiſſioners of bankruptcy cannot break open a houſe to ſearch for the bankrupt's goods, unleſs it be in the houſe of the bankrupt. 2 *Show.* 247. *Mich.* 34 *Car.* 2. *B. R. Anon'.*

Hundred liable to damages by the burning of houſes, 9 *G.* 1. *c.* 22. *ſect.* 7. A new duty on houſes and windows granted, 20 *Geo.* 2. *c.* 3. & 42. Additional duty on houſes, &*c.* 31 *Geo.* 2. *c.* 22. *ſect.* 31. 2 *Geo.* 3. *c.* 8.

Houſebold and Haybold, Seem to ſignify *houſeboot* and *hedgeboot*, in *Mon. Ang.* 2. *par. fol.* 633. *Cowell, edit.* 1727.

Houſebote, A compound of *houſe* and *bote, i. e. compenſatio*, ſignifies *eſtovers*, or an allowance of neceſſary timber out of the Lord's wood, for the repairing and ſupport of a *houſe* or tenement. And this belongs of common right to any leſſee for years or for life: but if he take more than is needful, he may be puniſhed by an action of waſte. *Houſebote*, ſays *Co.* on *Lit. fol.* 41. is twofold, *viz. Eſtoveriam ædificandi & ardendi.* Cowell.

Houſe-breaking, or **Houſe-robbing,** Is the *robbing* of a man in ſome part of his *houſe*, or his booth or tent, in any fair or market, or the owner or his wife, children or ſervants being within the ſame; for this is felony by 23 *Hen.* 8. *cap.* 1. and 3 *Ed.* 6. *cap.* 9. And ſince it is made felony, though none be within the *houſe*, booth or ſtall, by 39 *El.* 15. See *Burglary*, *Robbery*.

Houſe-burning. See *Arſon*, *Burning*.

Houſe of Correction. Juſtices of peace in their quarter-ſeſſions, are to make orders for erecting *houſes of correction*, and the maintenance and government of the ſame; and for the puniſhment of offenders committed thither. 39 *Eliz. cap.* 4. In every county of *England* there ſhall be a *houſe of correction* built at the charge of the county, with conveniencies for the ſetting of people to work, or every juſtice of peace ſhall forfeit 5 *l.* and the juſtices in ſeſſions are to appoint governors or maſters of ſuch *houſes of correction*, and their ſalaries, *&c.* which are to be paid quarterly by the treaſurer out of the county ſtock: Theſe governors are to ſet the perſons ſent on work, and moderately correct them, by whipping, *&c.* and to yield a true account every quarter-ſeſſions of perſons committed to their cuſtody; and if they ſuffer any to eſcape, or neglect their duty, the juſtices may fine them. 7 *Jac.* 1. *c.* 4. and 14 *Geo.* 2. *c.* 33.

The *houſe of correction* is chiefly for the puniſhing of idle and diſorderly perſons; parents of baſtard children, beggars, ſervants running away; treſpaſſers, rogues, vagabonds, *&c.* Poor perſons refuſing to work are to be there whipped, and ſet to work and labour: and any perſon who lives extravagantly, having no viſible eſtate to ſupport himſelf, may be ſent to the *houſe of correction*, and ſet at work there, and may be continued there until he gives the juſtices ſatisfaction in reſpect to his living; but not be whipped. 2 *Bulſt.* 351. *Sid.* 281. A perſon ought to be convicted of vagrancy, *&c.* before he is ordered to be whipped. *Ibid.*

Bridewell is a priſon for correction in *London*, and one may be ſent thither. *Style* 57. By the 14 *Geo.* 2. *c.* 33. and 17 *Geo.* 2. *c.* 5. upon preſentment of the grand jury, the juſtices at ſeſſions may build, or purchaſe land for building, or enlarge, buy or hire fit *houſes of correction*. And the juſtices are to take care that the *houſes of correction* be provided with proper materials for relieving, employing and correcting perſons ſent to the ſame: And two juſtices ſhall viſit the ſame twice or oftner in a year, and examine into the eſtate and management thereof, and report the ſame at the ſeſſions. The governor or maſter of a *houſe of correction* miſbehaving himſelf, may be fined or turned out, at the diſcretion of the juſtices. Offenders liable to be ſent to the *houſe of correction*, where the time and manner of their puniſhment is not expreſsly limited by law, may be committed until the next ſeſſions, or until diſcharged by due courſe of law. See *County Rates*.

Houſholder, *(Pater-familias)* Is the occupier of a houſe, a houſe-keeper or maſter of a family.

Hredige, Readily, or quickly. *Item diximus de illis latronibus, qui in* hredige *nequeunt culpabiles inveniri, i. e.* Could not readily be convicted. *Leg. Adelſtan. c.* 16. From the Sax. *herdinge, i. e, brevi*, in a ſhort time. *Cowell.*

Hudegeld, *Significat quietantiam tranſgreſſionis illatæ in ſervum tranſgredientem* Fleta, lib. 1. c. 47. ſect. 20. It may be thought in that place of *Fleta* to be miſprinted for *hinegeld*, which ſee, *& quære.* Where a villain or ſervant had committed any treſpaſs, for which he deſerved whipping or corporal puniſhment, when he bought off his penalty with money, the price of exemption from ſuch chaſtiſement was called *hudegeld*, or *hidegeld*; ſome fancy money given to ſave his hide. *Cowell.* See *Fleta, ubi ſupra.*

Hue and cry, *Huteſium & clamor*, Is derived from two *French* words *huer* and *crier*, both ſignifying to ſhout or *cry* aloud. *Manwood in his Foreſt Law, cap.* 19. *num.* 11. ſaith, that *hue* in Latin, *eſt vox dolentis*, as ſignifying the complaint of the party, and *cry* is the purſuit of the felon upon the highway upon that complaint; for if the party robbed, or any in the company of one robbed or murdered, come to the conſtable of the next town, and deſire him to raiſe the *hue* and *cry*, that is, make the complaint known, and follow the purſuit after the offender, deſcribing the party, and ſhewing as near as he can which way he went; the conſtable ought forthwith to call upon the pariſh for aid in ſeeking the felon, and if he be not found there, then to give the next conſtable notice, and the next, until the offender be apprehended, or at leaſt until he be thus purſued unto the ſea ſide. Of this *Bracton, lib.* 3. *tract.* 2. *cap.* 5. *Smith de Rep. Anglor. lib.* 2. *cap.* 20. and the ſtat. 13 *Edw.* 1. of *Wincheſter. cap.* 3. 28 *Ed.* 3. 11. 27 *Eliz.* 13.

The *Normans* had ſuch purſuit with a *cry* after offenders, which they called *Clamour de baro*, whereof you may read in the *Grand Cuſtomary, cap.* 54. And it may probably be derived from *harrior, flagitare.* *Hue* is uſed alone in the ſtat. 4 *Ed.* 1. *ſt.* 2. In the ancient records this is called *Huteſium & clamor.* See *Coke's* 2 *Inſt. fol.* 172.

But the *clamor de baro* was not a purſuit after offenders, but a challenge of any thing to be his own after this manner, *viz.* He who demanded the thing did with a loud voice, before many witneſſes, affirm it to be his proper goods, and demanded reſtitution. This the *Scots* call *huteſium*; and *Skene de verb. Huteſium*, ſaith, it is reduced from the French *oyer, i. e. audire*, (or rather *oyez*,) being a *cry* uſed before a proclamation; the manner of their *hue and cry* he thus deſcribeth; If a robbery be done, a horn is blown, and an *out-cry* made, after which, if the party flee away, and doth not yield himſelf to the King's bailiff, he may lawfully be ſlain, and hanged upon the next gallows.

Of this *hue and cry*, ſee *Cromp. Juſt. of Peace, fol.* 160. and in *Rot. Clauſ.* 30 *H.* 3. *m.* 5. we find a command to the King's treaſurer, to take the city of *London* into the King's hands, becauſe the citizens did not, *ſecundum legem & conſuetudinem Regni*, raiſe the *hue and cry* for the death of *Guido de Aretto* and others who were ſlain. *Cowell.* See *Vociferatia.*

Hue and cry, is alſo defined the purſuit of an offender from town to town till he be taken, which all that are preſent when a felony is committed, or a dangerous wound given, are by the Common law, as well as by the ſtatute, bound to raiſe againſt the offenders who eſcape, on pain of fine and impriſonment. 3 *Inſt.* 116, 117. 2 *Inſt.* 172. *Dalt. Juſtice, cap.* 28, 109. *Fitz. Coron.* 395. *Cro. Eliz*, 654.

The raiſing of *hue and cry* is enjoined by the Common law, which may be called a raiſing of it at the ſuit of the King, as well as by ſeveral acts of parliament, which may be called a raiſing of it at the ſuit of a private perſon, inaſmuch as thoſe ſtatutes make the hundred anſwerable to the party robbed, if they neglect to purſue the *hue and cry*, and apprehend the robbers. 3 *New Abr.* 61.

As to *hue and cry* at Common law, it ſeems to be clearly agreed, that a private perſon who hath been robbed, or who knows that a felony hath been committed, is not only authorized to levy *hue and cry*, but is alſo bound to do it under pain of fine and impriſonment. 2 *Inſt.* 172. 3 *Inſt.* 116. 1 *Hal. Hiſt. P. C.* 464.

From hence it follows, that although it is a good courſe, as Lord *Hale* ſays, to have a precept or warrant from a juſtice of peace for raiſing *hue and cry*, yet it is neither of abſolute neceſſity, nor ſometimes convenient, for the felons may eſcape before the juſtice can be found; alſo *hue and cry* was part of the law before the ſtate of 1 *Ed.* 3. *cap.* 16. which firſt inſtituted juſtices of the peace. 2 *Hal. H. P. C.* 99.

It is incumbent upon conſtables to purſue *hue and cry* when called upon, and they are ſeverely puniſhable if they neglect it: and it prevents many inconveniencies if they be there; for it gives a greater authority to their purſuit, and enables the purſuants, in his aſſiſtance, to plead the general iſſue upon the ſtatutes 7 *Jac.* 1. *cap.* 5. 21 *Jac.* 1. *cap.* 12. without being driven to ſpecial pleading: therefore, to prevent inconveniencies which may happen by unrulineſs, it is moſt adviſable that the conſtable be called: yet upon a robbery, or other felony committed, *hue and cry* may be raiſed by the country in the abſence of the conſtable; and in this there is no inconveniency, for if *hue and cry* be raiſed without cauſe, they that raiſe it are puniſhable by fine and impriſonment. 2 *Hal. Hiſt. P. C.* 99, 100.

The regular method of levying *hue and cry*, is for the party to go to the conſtable of the next town, and declare the fact, and deſcribe the offender, and the way he is gone; whereupon the conſtable ought immediately, whether it be night or day, to raiſe his own town, and make ſearch for the offender; and upon the not finding him, to ſend the like notice, with the utmoſt expedition to the conſtables of all the neighbouring towns, who ought in like manner to ſearch for the offender, and alſo to give notice to their neighbouring conſtables, and they to the next, till the offender be found. 3 *Inſt.* 116. *Dalt. Juſtice. cap.* 28. *Cromp.* 178. 2 *Hawk. P. C.* 75.

The conſtable is not only to make ſearch in his own vill, but alſo to raiſe all the neighbouring vills, who are all to purſue the *hue and cry* with horſemen as well as footmen until the offender be taken. 2 *Hal. Hiſt. P. C.* 101. In caſe of *hue and cry* once raiſed and levied upon ſuppoſal of a felony committed, tho' in truth there was no felony committed; yet thoſe who purſue *hue and cry* may arreſt, and proceed as if a felony had been really commited. 2 *Hal Hiſt. P. C.* 101. 5 *H.* 5. *a.* 21 *H.* 7 28. *a. per Rede.* 2 *Ed.* 4. 8 & 9. 29 *Ed.* 3. 39. 2 *Inſt.* 173. 2 *Hal Hiſt. P, C.* 102.

If *hue and cry* be raiſed againſt a perſon certain for felony, tho' poſſibly he is innocent, yet the conſtables, and thoſe that follow the *hue and cry*, may arreſt and impriſon him in the common gaol, or carry him to a juſtice of the peace. 2 *Hal. Hiſt. P. C.* 102.

If the perſon purſued by *hue and cry* be in a houſe and the doors are ſhut, and refuſed to be opened upon demand of the conſtable, and notice given of his buſineſs, he may break open the doors; and this he may do in any caſe where he may arreſt, tho' it be only a ſuſpicion of felony, for it is for the King and Commonwealth, and therefore a virtual *non omittas* is in the caſe; and the ſame law is upon a dangerous wound given, and a *hue and cry* levied upon the offender. 7 *Ed.* 3. 16. *b.* 2 *Hal. Hiſt. P. C.* 102.

It ſeems in this caſe, that if he cannot be otherwiſe taken, he may be killed, and the neceſſity excuſeth the conſtable. 1 *Hal. Hiſt. P. C.* 102.

Upon *hue and cry* levied againſt any perſon, or where any *hue and cry* comes to a conſtable, whether the perſon be certain or uncertain, the conſtable may ſearch in ſuſpected places within his vill, for the apprehending of the felons. *Dalt. cap.* 28. 2 *Ed.* 4. 8. *b. Cromp. de Pace* 178. 2 *Hal Hiſt. P. C* 103.

But though he may ſearch ſuſpected places or houſes, yet his entry muſt be *per oſtia apert'*, for he cannot break open doors barely to ſearch, unleſs the perſon againſt whom the *hue and cry* is levied be there, and then it is true he may; therefore, in caſe of ſuch a ſearch, the breaking open the door is at his peril, *viz.* juſtifiable if he be there; but it muſt be always remembered, that in caſe of breaking open a door, there muſt be firſt a notice given to them *within* of his buſineſs, and a demand of entrance, and a refuſal, before doors can be broken. 2 *Hal Hiſt. P. C.* 103.

If the *hue and cry* be not againſt a perſon certain, but by deſcription of his ſtatue, perſon, clothes, horſe, &c. the *hue and cry* doth juſtify the conſtable, or other perſon, following it, in apprehending the perſon ſo deſcribed, whether innocent or guilty, for that is his warrant; it is a kind of proceſs that the law allows, (not uſual in other caſes) *viz.* to arreſt a perſon by deſcription. *Ibid.*

But if the *hue and cry* be upon a robbery, burglary, manſlaughter or other felony committed, but the perſon that did the fact is neither known nor deſcribed by perſon, clothes or the like; yet ſuch a *hue and cry* is good as hath been ſaid, and muſt be purſued, tho' no perſon certain be named or deſcribed. *Ibid.*

And therefore in this caſe, all that can be done is, for thoſe who purſue the *hue and cry*, to take ſuch perſons as they have probable cauſe to ſuſpect; as for inſtance, Such perſons as are vagrants, that cannot give an account where they live, whence they are, or ſuch ſuſpicious perſons as come late into their inn or lodgings, and give no reaſonable account where they had been, and the like. 2 *Ed.* 4. 8. *b.* 2 *Hal. Hiſt. P. C.* 103.

There can be no doubt but that both by the Common law, as alſo by the ſeveral ſtatutes which injoin the levying of *hue and cry*, they who neglect to levy one, (whether officers of juſtice or others) or who neglect to purſue it when rightly levied, are puniſhable by indictment, and may be fined and impriſoned for ſuch neglect. 2 *Hal. Hiſt. P. C.* 104.

By the ſtat. 8 *Geo.* 2. 16. Every conſtable to whom notice is given or left at his houſe of a robbery, &c. and every conſtable of the hundred, or conſtable, &c. in any town, pariſh, &c. within the hundred, on notice from the party robbed or otherwiſe, ſhall with all expedition make *hue and cry* after the felon, &c. on pain of 5 *l.* for neglect, a moiety to the King, a moiety to him that ſues in ſix months, to be recovered with full coſts.

If there be judgment againſt the hundred, it may be levied againſt the inhabitants of the ſame hundred by *fieri facias.* So it may be levied upon any one, who has lands in his poſſeſſion within the hundred, tho' he has no houſe nor lodging there; for he is an inhabitant. *R.* 2 *Saund.* 423. Upon a leſſee, or purchaſer after the robbery committed. *R. Noy* 155. So it may be levied upon one or two of the inhabitants. But if a man come to inhabit in an hundred after a robbery done, he ſhall not be charged. *R. Hutt.* 125. *Cont. per Barckley, Mar. pl.* 28. So, if the whole debt be levied upon one or two of the hundred, by the *ſtat.* 27 *El.* 13. on complaint to two juſtices of peace of the county *(quorum unus)* in or near the hundred, they may aſſeſs rateably all the towns, &c. within the ſame hundred, or in the liberties within the ſame, for the relief of him againſt whom the plaintiff took execution; and the conſtable of each town, &c. may rateably aſſeſs the ſaid ſum on every inhabitant, and if he refuſe to pay, levy it by diſtreſs and ſale, &c.

And by the *ſame ſtatute*, The hundred, where default of freſh ſuit on *hue and cry* was made, ſhall anſwer half the damages recovered againſt the hundred in which the robbery was committed, to be recovered by action of debt, &c. at the ſuit of the clerk of the peace.

By the ſtat. 8 *Geo.* 2 16. After judgment againſt the hundred, no proceſs ſhall be ſerved on the high conſtable or any inhabitant, but the ſheriff on receipt of the writ of execution ſhall ſhew it *gratis* to two juſtices of the peace in or near the hundred, who ſhall ſpeedily cauſe an aſſeſſment to be levied purſuant to the *ſtat.* 27 *El.* 13. and alſo for the neceſſary expences of the high conſtable above the coſts and damages recovered, of which, on notice from the two juſtices, he ſhall give an account and proof on oath to their ſatisfaction, having firſt cauſed his attorney's bill to be taxed.

The ſheriff ſhall pay the money levied to the parties without fee, and indorſe the day of receiving the writ of execution, and not to be called upon for a return till ſixty days after. And *v.* 22 *Geo.* 2. *c.* 46.

And the like aſſeſſment ſhall be in caſe the plaintiff be nonſuit, diſcontinue, or have a verdict or judgment on demurrer againſt him, if by inſolvency of the plaintiff or his ſureties, he cannot be reimburſed on the bond of 100*l.* penalty; and the money levied ſhall be paid to the juſtices for the high conſtable in ten days after it is levied.

And the juſtices may limit a time not exceeding thirty days for levying ſuch aſſeſſment; and the officer appointed ed refuſing or neglecting to levy and pay the money, *&c.* in ſuch time forfeits double the ſum.

See the ſtatutes 27 *Eliz. c.* 13. 8 *Geo.* 2. *c.* 16. And 22 *Geo.* 2. *c.* 24. Alſo *vide* 30 *Geo.* 2. *c.* 3. *ſ.* 116. No receiver general of the land-tax, or his agents, can ſue the hundred for a robbery, unleſs the perſons carrying the money be three in company.

And ſee the law under this title of *hue and cry*, well and largely treated of in the *New Abr.* 3 *V.* 61, *&c.*

The general doctrine as to actions is as follows. Where a robbery is done on the highway, in the day-time, of any day except *Sunday*, the hundred where committed is anſwerable for it: but notice is to be given of it, with convenient ſpeed, to ſome of the inhabitants of the next village, to the intent that they may make *hue and cry* for the apprehending of the robbers, or no action will lie againſt the hundred: and if any of the robbers are taken within forty days, and convicted, the hundred ſhall be excuſed.

By a late ſtatute, no proceſs is to be ſerved againſt the hundred, *&c.* for a robbery committed, but on the high conſtable, who ſhall give notice of it in one of the principal market-towns, *&c.* and then enter an appearance, and defend the action, *v.* 8 *Geo.* 2. *c.* 16. By the *ſtat.* 22 *Geo.* 2. *c.* 24. No perſon ſhall recover on any of the ſtatutes of *hue and cry*, above 200 *l.* unleſs the perſon or perſons ſo robbed ſhall at the time of ſuch robbery be together in company, and be in number two at the leaſt, to atteſt the truth of his or their being ſo robbed. If he that is robbed, after *hue and cry*, makes no further purſuit after the robbers, action lies againſt the hundred. 4 *Leon.* 180. The party robbed is not bound to purſue the robbers himſelf, or to lend his horſe for that purpoſe; but ſtill has his remedy againſt the hundred, if they are not taken: tho' if any of them are taken, either within forty days after the robbery, or before the plaintiff recovers, the hundred is diſcharged. *Sid.* 11. It has been held, that an action lies againſt the hundred for a robbery in the day-time, although not in the King's highway, but in a private way. *Hill.* 1 *Ann.* 1 *Mod.* 221. But not for a robbery in the morning, before it is light; and yet where it is before ſun-riſing, or after ſun-ſet, if it be ſo light that a man's face may be known, it well lies. 7 *Rep.* 6. *Cro. Jac.* 106. If a party be robbed in the night time, when perſons are at reſt, the hundred is not chargeable. 3 *Leon.* 350. Where robbers forced a coach out of the way, in the day-time, and afterwards robbed it in the night, this was held a robbery in the day, and that action lay againſt the hundred. 1 *Sid.* 263. When a man is robbed on a *Sunday*, on which day perſons are ſuppoſed to be at church, and none ought to travel, the hundred is not liable. 27 *Eliz. c.* 13. But where a robbery is done on a *Sunday*, tho' the hundred is not chargeable, *hue and cry* ſhall be made by *ſtat.* 29 *Car.* 2. *c.* 7. And if a perſon be robbed going to church in a country town or village, on a *Sunday*, which is a religious duty required by law, it has been lately held an action lies againſt the hundred; but not if one be robbed on that day in other travelling for pleaſure, *&c.* which is prohibited by ſtatute. 6 *Geo.* 1. *C. B.* per *King*, chief juſtice.

And it was formerly ruled by three judges on the ſtatute of *Winton*, where a man was robbed on a *Sunday*, in time of divine ſervice, and made *hue and cry*, that the hundred ſhould be charged; for many perſons are neceſſitated to travel on this day; as phyſicians, *&c.* 2 *Cro.* 496. 2 *Rol.* 59. *Godb.* 280. See 2 *Nelſ. Abr.* 937, 938. If a perſon be robbed in a houſe, where he is preſumed to be at ſafety by his own care, the hundred is not chargeable: A robbery muſt be an open robbery, that the country may take notice of it, to make the hundred anſwerable. 7 *Rep.* 6.

A man is ſet upon and aſſaulted by robbers in one hundred, and carried into a wood, *&c.* in another hundred, near the highway, and there robbed, the action ſhall be brought againſt the hundred where the robbery was done, as particularly expreſſed in the ſtatute, and not the hundred where the man was taken or aſſaulted; becauſe the aſſault is not the efficient cauſe of the robbery, as a ſtroke is in caſe of murder. *Hill.* 1 *Ann. B. R.* 2 *Salk.* 614.

But where goods are taken from a man in one hundred, and opened in another, where they are firſt taken or ſeized, they are ſtolen and the robbery is committed. 2 *Lill. Abr.* 27. If a ſervant is robbed of his maſter's money, he may ſue the hundred on the ſtatute of *Winton* of *hue and cry*; or the maſter may bring the action, and the man making oath of the robbery, and that he knew none of the robbers, is ſufficient without the oath of the maſter. *Goldſ.* 24. *Cro. Car.* 26, 37, 336. Where a ſervant is robbed, he muſt be examined and ſworn; but if the maſter be preſent, it is a robbery of him. *Show.* 241. 1 *Leon.* 323. If a quaker be robbed, or a man's ſervant being a quaker, and either refuſe to take an oath of the robbery, and that he did not know any of the robbers, the hundred is not anſwerable; for the ſtatute of 27 *Eliz. c.* 13. was made to prevent combination between perſons robbed and the robbers. 2 *Salk.* 613.

But the maſter's oath where the ſervant is a quaker, or otherwiſe, and being robbed in his preſence, will maintain the action in his own name. *Carth.* 146. And a plaintiff had judgment on his oath, though his ſervant that was robbed with him knew one of the robbers. When a carrier is robbed of another man's goods, he or the owner may ſue the hundred; but the carrier is to give notice, and make oath, *&c.* though the owner of the goods brings the action. 2 *Saund.* 380.

If an action againſt the hundred be diſcontinued, on a new action brought, there muſt be a new oath taken within forty days before the laſt action brought. *Sid* 139. In action upon the ſtatute of *hue and cry*, the declaration is good, though the plaintiff doth not ſay, that the juſtice of peace who took the oath lived *prope locum* where the robbery was committed, *Mich.* 6 *W.* 3. And oath was made before a juſtice of peace of the county where the robbery was done, in a place of another neighbouring county; and it was held good. *Cro. Car.* 211.

If a juſtice of peace refuſe to examine a perſon robbed, and to take his oath, action on the ſtatute lies againſt the juſtice. 1 *Leon.* 323. It is ſafe to ſay the plaintiff gave notice at ſuch a place, near the place where the robbery was done; and though that place where notice is given be in another hundred or county, yet it is good enough; for a ſtranger may not know the confines of the hundred or county. *Cro. Car.* 41, 379. 3 *Salk.* 184.

If there be a miſtake of the pariſh in the declaration where the robbery was, if it be laid in the right hundred, it is well enough. 2 *Leon.* 212. And though the party puts more in his declaration than he can prove, for ſo much as he can prove it ſhall be good. *Cro. Jac.* 348.

Upon a trial in theſe caſes, the party muſt file his original, and be ſure to have a true copy thereof, and witneſſes to prove it; and he muſt alſo have the affidavit or oath, and a witneſs to prove the taking it. 2 *Lill. Abr.* 25.

In theſe actions, poor perſons in a hundred, and ſervants, are good witneſſes for the hundred; but not thoſe houſholders who are worth any thing. 1 *Mod.* 73. And as proof cannot be otherwiſe for the plaintiff, he is allowed to be a witneſs in his own cauſe.

For further ſatisfaction when the action lies againſt the hundred, and when not. *Vide Com. Dig.* 3 *V.* 481, *&c.* Alſo ſee 3 *V.* 160. 4 *V.* 244, 290.

As to the proceeding, declaration, plea, *&c.* in an action upon the ſtat. of *Winton*, vide *Com. Dig.* 5 *V.* 197.

Huiſſier, An uſher of a court, or in the King's palace, *&c.* See *Uſher*.

Huiſſerium, or *Uſſers*, Are ſhips to tranſport horſes; derived, as ſome will have it, from the Fr. *huis*, *i. e.* a door, becauſe, when the horſes are put on ſhipboard, the doors or hatches are ſhut upon them, to keep out the water. *Brompton Anno* 1190.

Hulka, Is a hulk or ſmall veſſel. *Walſingham*, *p.* 394.

Hull, A reſtraint of exactions taken there, 27 *Hen.* 8. *c.* 3. Their duties on ſalt fiſh and herrings reſtored, 33 *Hen.* 8. *c.* 33. 5 *Eliz. c.* 5. *ſect.* 3. The cuſtomer of *Hull* to have a deputy reſident at *York*, 1 *El. c.* 11. *ſ.* 8. For erecting workhouſes and maintaining the poor at *Hull*, 15 *Geo.* 1. *c.* 10. 28 *Geo.* 2. *c.* 27. See *Fiſh*.

Hullus, A hill.——*Habendum & tenendum dictam paſturam in* hullis *& holmis, i. e.* in hills and dales. *Mon. Angl. tom.* 2. *p.* 292.

Humagium, A moiſt place. *In eccleſiis, in decimis, in* humagiis, *in terris, in pratis.* Mon. Angl. 1 par. f. 628. a.

Humber, (river) in *Yorkſhire*, fiſh-garths and piles, &c. to be removed. 23 *Hen.* 8. *c.* 18.

Hundred, *(hundredum centuria)* Is a part of a ſhire ſo called, either becauſe of old each *hundred* found 100 fidejuſſors of the King's peace, or a hundred able men for his wars. But more probably it is ſo called, becauſe it was compoſed of an hundred families. It is true, *Brompton* tells us, that an hundred contains *centum villas*; and *Giraldus Cambrenſis* writes, that the *Iſle of Man* hath 343 *villas*. But in theſe places the word *villa* muſt be taken for a country family; for it cannot mean a village, becauſe there are not above 40 villages in that iſland. So where Mr. *Lambard* tells us, that an hundred is ſo called, *à numero centum hominum*, it muſt be underſtood of an hundred men, who are heads or chiefs of ſo many families.

Theſe were firſt ordained by King *Alfred*, the 29th King of the *Weſt Saxons: Aluredus Rex*, (ſays *Lambard*, *verbo* Centuria,) *ubi cum* Guthruno Daw *fœdus inierat, prudentiſſimum illud olim a Jethrone Moiſi datum ſecutus conſilium, Angliam primus in ſatrapias*, centurias, *& decurias, partitus eſt. Satrapiam*, ſhyre, *a* ſcyrian, *(quod partiri ſignificat,) nominavit* centuriam, hundred, *& decuriam*, toothing *ſive* tienmantale, i. e. *Decemvirale collegium appellavit; atque iiſdem nominibus vel hodie vocantur, &c.* This dividing counties into hundreds, for better government, King *Alfred* brought from *Germany*: For there *centa*, or *centena*, is a juriſdiction over an hundred towns. See *Black. Com.* 1 *V.* 115, &c.

This is the original of hundreds, which ſtill retain the name, but the juriſdiction is devolved to the county-court, ſome few excepted, which have been by privilege annexed to the crown, or granted to ſome great ſubject, and ſo remain ſtill in the nature of a franchiſe. This has been ever ſince the *Stat.* 14 *Ed.* 3. *ſt.* 1. *cap.* 9. whereby theſe hundred-courts, formerly farmed out by the ſheriff to other men, were all, or the moſt part, reduced to the county-court, and ſo remain at preſent.

But now, by hundred-courts, we underſtand ſeveral franchiſes, wherein the ſheriff has nothing to do by his ordinary authority, except they of the hundred refuſe to do their office. See *Weſt. part* 1. *Symbol, lib.* 2. *ſect.* 228. *Ad* hundredum *poſt Paſcha, & ad proximum* hundredum *poſt feſtum St. Mich.* Mon. Angl. 2 par. f. 293. a.

An hundred is to have juriſdiction or power to adminiſter juſtice in 100 vills, or of 100 men, or of 100 pariſhes. *Br. Court Baron, pl.* 8. cites 8 *H.* 7. 3. *per Rede.*

Every ward in *London* is an hundred in a county, and every pariſh in *London* is a vill in an hundred. 9 *Rep.* 66. *b.*

Hundreds were either parcel of the counties, and there the ſheriffs did conſtitute bailiffs, (*viz.* thoſe hundreds which were anciently parcel of the farm of the ſheriffs, that the ſtatute 2 *Ed.* 3. *cap.* 12. ſpeaks of); or elſe they were ſuch as were granted out, which the lord of the hundred ſometimes held at farm, and ſometimes in fee, called hundreds in fee, liberties of hundreds, franchiſes of hundreds. *Per Hale* Ch. B. *Vent.* 405. *Hill.* 22 & 23 *Car.* 2. in the caſe of *Atkins* v. *Clare.*

In the time of King *Alfred* the kingdom was in groſs, and then divided into counties and hundreds, and all perſons then came within one hundred or other; and then the King's relations had the government of them, and therefore they were called *Conſanguinei*; and ſo are the Earls, Lord-lieutenants, &c. at this day; but when the office became troubleſome, there were ordained *Vicecomites*, which name remains to this day, and the others continue to be called *Conſanguinei*, but have no power in the county, having only the honorary name of Earls or *Comites* of ſuch or ſuch a county, &c. For the better government of theſe counties, the *Vicecomites* had two courts; but out of thoſe the King granted petty leets and courts-baron; but the tourn of the ſheriff had yet a ſuperintendant power, they being derived out of the ſheriff's tourn; as in *Dyer* 13.

The King afterwards granted away ſome hundreds in fee-ſimple, and ſome franchiſes, and the laſt excluded the King utterly, but the hundreds granted in fee were no wholly exempt. On this aroſe ſome confuſion, and the parliament hereon took notice, that the execution of juſtice was by this much interrupted, and therefore came the ſtatute of *Linc.* 9 *Ed.* 2. *ſt.* 2. That ſheriffs ſhould be ſufficient perſons, and have lands in the county, and ſo be able to anſwer both the King and country, and that bailiffs and farmers of hundreds ſhould be ſufficient men. And at this time hundreds were grantable for years.

Then came the ſtatute of 2 *Ed.* 3. *cap.* 4 & 5. That ſheriffs ſhould continue but for one year. But this took not away the whole inconvenience; for the crown ſtill granted away bailiwicks and hundreds, for lives, at rents at ſuch exceſſive dear rates, that made them endeavour to make up their money by unlawful means; and therefore came the ſtatute of 2 *Ed.* 3. *cap.* 12. and 14 *Ed.* 3. *cap.* 9. By the firſt it was enacted, That all hundreds and wapentakes granted by the King ſhall be annexed to the county, and not ſevered. And by the other ſtatute, that all ſhould be annexed, and the ſheriff ſhould have power to put in bailiffs, for which he will anſwer, and no more ſhould be granted for the future; and one reaſon of this was, becauſe the King granted away hundreds, and abated not the ſheriff's farm. *Arg.* 2 *Show.* 98, 99. *Paſch.* 32 *Car.* 2. *B. R.*

Hundreds are liable to penalty on exportation of wool, 7 & 8 *Will.* 3. *c.* 28. *ſ.* 8. Liable to damages ſuſtained by pulling down buildings, 1 *Geo.* 1. *c.* 5. *ſect.* 6. By killing cattle, cutting down trees, burning houſes, &c. 9 *Geo.* 1. *c.* 22. *ſect.* 7. 29 *Geo.* 2. *c.* 36. *ſ.* 9. By deſtroying turnpikes, or works on navigable rivers, 8 *Geo.* 2. *c.* 20. *ſect.* 6. By cutting hopbinds, 10 *Geo.* 2. *c.* 32. *ſect.* 4. By deſtroying corn to prevent exportation, 11 *Geo.* 2. *c.* 22. *ſect*, 5. By wounding officers of the cuſtoms, 19 *Geo.* 2. *c.* 34. *ſect.* 6. Or by deſtroying woods, &c. 29 *Geo.* 2. *c.* 36. *ſ.* 9.

Inhabitants within the hundred may be witneſſes for the hundred, 8 *Geo.* 2. *c.* 16.

The word *hundredum* is ſometimes taken for an immunity or privilege, whereby a man is quit of money or cuſtoms due to the hundreds. *Cowel.* See *Turn.* Hundred chargeable for robberies, vide *Hue and Cry.*

Hundred-Court, Is only a larger court-baron, being held for all the inhabitants of a particular hundred inſtead of a manor. The free ſuitors are here the judges, and the ſteward the regiſter, as in the caſe of a court-baron. It is *not a court of record*, and it reſembles a court-baron in all points, except that in point of territory it is of a greater juriſdiction.

According to *Blackſtone*, its inſtitution was probably co-eval with that of hundreds themſelves, introduced, though not invented, by *Alfred*, being derived from the polity of the ancient *Germans.* See *Black. Com. V.* 1. *Introd. ſ.* 4. and 3 *V.* 34. 4 *V.* 408.

Hundredors, *(hundredarii)* Are perſons ſerving on *juries*, or fit to be impanelled thereon for trials, dwelling within the hundred where the land in queſtion lies. *Stat.* 35 *H.* 8. *c.* 6. And default of *hundredors* was a challenge or exception to panels of ſheriffs, by our law, till the *Stat.* 4 & 5 *Ann. cap.* 16. ordained, that to prevent delays by reaſon of challenges to panels of jurors for default of *hundredors*, &c. Writs of *venire facias* for trial of any action in the courts at *Weſtminſter*, ſhall be awarded of the *body* of the proper *county* where the iſſue is triable.

Hundredor alſo ſignifies him that hath the juriſdiction of the *hundred*, and is in ſome places applied to the *bailiff* of an *hundred.* 13 Ed. 1. c. 38. 9 Ed. 2. 2 Ed. 3. Horn's Mirror, lib. 1.

Hundred-lagh, (from the Sax. *laga*, lex) Is in *Saxon* the *hundred* court. *Manwood, par.* 1. *pag.* 1.

Hundred-penny, Was collected by the ſheriff or lord of the *hundred, in oneris ſui ſubſidium.* Camd. 223.——*Eſt autem pecunia quam ſubſidii cauſa vicecomes olim exigebat ex ſingulis decuriis ſui comitatus, quas* tithingas *Saxones appellabant; ſic ex* hundredis, hundred penny, &c. *Spelm. Gloſſ.*

Gloſſ. *Pence* of the *hundred* is mentioned in *Domeſday*. And it is elſewhere called, *hundredfeh.* Chart. K. Joh. Egidio Epiſc. Heref.

Hundred-Setena, Signifies dwellers or inhabitants of a *hundred.* Charta Edgar. Reg. Mon. Ang. tom. 1. p. 16.

Hunger. According to the preſent doctrine, *hunger* will not juſtify ſtealing food, to relieve a preſent neceſſity. 1 *Hal. P. C.* 54. *Black. Com.* 4 *V.* 31. And the doctrine ſeems juſt, as (on conviction) a judge may reſpite, and a merciful King pardon. The ancient doctrine, (that it would juſtify) if now in force, might open a door to many villanies. And, in this commercial ſtate, thoſe who can labour need not fear ſtarving. Thoſe that cannot, and who are *poor*, the laws have made a proviſion for.

Hunting, of game and prey, ſee *Game* and *Deer-Stealers.*

The 4 & 5 *W.* & *M. c.* 23. gives full coſts againſt an inferior tradeſman, apprentice, or other diſſolute perſon convicted of a treſpaſs in hawking, *hunting*, fiſhing or fowling in another's land. Upon this ſtatute it hath been adjudged, that if a perſon be an inferior tradeſman, as a clothier for inſtance, it matters not what qualification he may have in point of eſtate; but, if he be guilty of ſuch treſpaſs, he ſhall be liable to pay full coſts. *L. Ray.* 149. *Black. Com.* 3 *V.* 215.

Notwithſtanding all the game laws, and the various qualifications for hunting pointed out by ſtatutes, which imply a power for perſons ſo qualified to *hunt*, according to *Blackſtone*, "No man but he who has a *chaſe*, or *free-*" *warren*, by *grant from the crown*, or *preſcription*, " which ſuppoſes one, *can juſtify hunting or ſporting* upon " *another man's ſoil*, nor indeed, in thorough ſtrictneſs of " Common law, either hunting or ſporting at all." 2 *V.* 416. *Perſons ſo hunting are liable to* actions of treſpaſs, *by the poſſeſſors of the land.* 2 *V.* 418. and to the ſame purport, 4 *V.* 174.

By 1 *Hen.* 7. *c.* 7. *Unlawful hunting*, in any legal foreſt, park or warren, not being the King's property, *by night*, or with *painted faces* declared to be *felony*. And by 9 *Geo.* 1. *c.* 22. Appearing armed with faces *blacked*, or diſguiſed, to *hunt*, wound, kill, or ſteal deer, to rob a warren, or ſteal fiſh, is *felony*, without benefit of clergy. See *Black. Com.* 4 *V.* 144.

Hurdle, A ſledge or hurdle uſed to draw traitors to execution. *Black. Com.* 4 *V.* 92, 370.

Hurderferſt, A domeſtick or one of the family, from the Sax *hyred*, *familia*, and *fæeſt*, *firmus*. *Bis in anno conveniunt in* hundredum *ſuum quicunque liberi tam* hurdereferſt *quam ſolgarii ad dignoſcend. ſi decaniæ plenæ ſint.* Leg. H. 1. c. 8.

Hurrers. The cappers and hat-makers of *London* were formerly one company of the *haberdaſhers*, called by this name. *Stow's Surv. Lond.* 312.

Hurſt, Hyrſt, Herſt, Are derived from the Sax. *hyrſt*, *i. e.* a wood or grove of trees. There are many places in *Kent*, *Suſſex*, and *Hampſhire*, which begin and end with this ſyllable; and the reaſon may be, becauſe the great wood called *Andreſwald* extended through thoſe counties. *Cowell.*

Hurſt-Caſtle, Is ſo called, becauſe ſituated near the woods. So *Hurſlega* is a woody place; and probably from thence is derived *Hurſley*, now *Hurley*, in a village in *Berkſhire.* Cowell.

Hurtardus, Hurtus, A ram or wether, a male ſheep. *Agni primo compoto poſtquam nati ſunt* agni *vocantur, ſecundo anno* hogaſtri, & *conjunguntur multones cum multonibus*, & hurtardi *cum* hurtardis, & *fæmellæ cum ovibus.* Regulæ Compoti Domus de Farendon. MS.——*De multonibus* 381. *de* hurtis & *muricis* 207. *de hogris* 121. & *de agnis* 100. Mon. Angl. tom. 2. pag. 666.

Hus and Hant, Words uſed in ancient pleadings.—Henricus P. *captus per querimoniam mercatorum Flandriæ* & *impriſonatus, offert Domino Regi* hus & hant *in plegio ad ſtandum recto,* & *ad reſpondendum prædictis mercatoribus* & *omnibus alliis, qui verſus eum loqui voluerint: et diverſi veniunt qui manucapiunt quod dictus* Hen. P. *per* hus & hant *veniet ad ſummonitionem Regis vel Concilii ſui in Curia Regis apud* Shepway, & *quod ſtabit ibi recto,* &*c.* *Placit. coram Concilio Dom. Reg. Anno* 27 H. 3. Rot. 9. See *commune Plegium, ſicut* Johannes Doe & Richardus Roe. 4 *Inſt.* 72.

Husband and Wife, Are made ſo by marriage, and being thus joined, are accounted but one perſon in law. *Lit.* 168. See *Baron* and *Feme.*

Husbandry and Husbandman. There having been great decay of *huſbandry* and hoſpitality, it was enacted that one half of the houſes decayed ſhould be erected, and forty acres of arable land laid to them, by the perſon, his heir, executor, &*c.* who ſuffered the decay: and they are to keep the houſes and lands in repair, by *Stat.* 39 *Eliz. c.* 1.

The decaying of houſes of huſbandry prohibited, 4 *H.* 7. *c.* 19. 6 *H.* 8. *c.* 5. 7 *H.* 8. *c.* 1. 27 *H.* 8. *c.* 22. 2 & 3 *Ph.* & *Ma. c.* 1, 2. 39 *El. c.* 1. Wood not to be turned to tillage or paſture. 35 *H.* 8. *c.* 17. *ſect.* 3. Land to be re-converted to tillage, 5 & 6 *Ed.* 6. *c.* 5. 5 *El. c.* 2. Who may be compelled to ſerve in huſbandry, 5 *El. c.* 4. *ſect.* 7. How huſbandmen ſhall take apprentices, 5 *El. c.* 4. *ſ.* 25. The ſtatute of 5 *El. c.* 2. concerning the keeping a quantity of land in tillage, repealed, 35 *El. c.* 7. *ſect.* 20. Arable land not to be converted to paſture, 39 *El. c.* 2. But not to extend to *Northumberland*, 43 El. c. 9. ſ. 32.

Husbreece, (from the Sax. *hus*, a houſe and *brice*, a breaking) Was that offence formerly which we now call *burglary.* Blount.

Huscarle, A menial ſervant: it ſignifies properly a ſtout man, or a domeſtic: alſo the *domeſtical* gatherers of the *Danes* tributes were anciently called *huſcarles.* The word is often found in *Domeſday*, where it is ſaid the town of *Dorcheſter* paid to the uſe of *huſcarles* or *houſecarles*, one mark of ſilver. *Domeſday.*

Huscans, (Fr. *hauſeau*) A ſort of boot, or buſkin made of coarſe cloth, and worn over the ſtockings, mentioned in the *Stat.* 4 *Ed.* 4. *c.* 7.

Husfaſtne, (Sax. *hus*, i. e. domus & *fæeſt*, fixus) Is he that holdeth houſe and land.——*Et in Franco plegio eſſe debent omnes qui terram* & *domum tenent qui dicuntur* husfaſtne, &*c.* *Bract. lib.* 3. *tract.* 2. *cap.* 10. See *Heordfeſte.*

Husgable, (*huſgablum*) Houſe-rent, or ſome tax or tribute laid upon houſes. *Mon. Angl. tom.* 3. *p.* 254.

Huſſeling-People, Communicants, from the Sax. *huſſel*, which ſignifies the holy ſacrament: and in a petition from the borough of *Leominſter* to King *Edward* the Sixth, the petitioners ſet forth that in their town there were to the number of 2000 *huſſeling people.*

Huſtings, (*huſtingum*, from the Sax. *huſtinge*, i. e. *concilium*, or *curia*) Is a court held before the *Lord Mayor* and Aldermen of *London*, and is the principal and ſupreme court of the city: and of the great antiquity of this court, we find this honourable mention in the laws of King *Edward the Confeſſor: Debet etiam in* London, *quæ eſt caput Regni* & *Legum, ſemper Curia Domini Regis ſingulis ſeptimanis die lunæ* huſtingis *ſedere* & *teneri; fundata enim erat olim* & *ædificata ad inſtar,* & *ad modum* & *in memoriam veteris Magnæ* Trojæ, & *uſque in hodiernum diem leges* & *jura* & *dignitates,* & *libertates regiaſque conſuetudines antiquæ magnæ* Trojæ, *in ſe continet: et conſuetudines ſuas una ſemper inviolabilitate conſervat,* &*c.* Other cities and towns have alſo had a court of the ſame name; as *Wincheſter*, *York*, *Lincoln*, &*c.* Fleta, lib. 2. c. 55. 4 Inſt. 247. Stat. 10 Ed. 2. c. 1. See *Court of huſtings*, and *Black. Com.* 3 *V.* 80.

Huteſium, A hue and cry.——*Abbas* & *conventus uſi ſunt hiis libertatibus, ſcil, viſum franci legii,* huteſium *clamatum,* & *effuſionem ſanguinis.* Cartular. Abbat. Glaſton. MS. fol. 87.

Hutilan. *Terras quietas ab omni* hutilan & *omni alia exactione.* Mon. Angl. tom. 1. p. 586.

Hybernagium, The ſeaſon for ſowing winter corn, between *Michaelmas* and *Chriſtmas*; as *Tremagium* is the ſeaſon for ſowing the ſummer corn in the ſpring of the year: Theſe words were taken ſometimes for the different ſeaſons; other times for the different lands on which the ſeveral kinds of grain were ſowed; and ſometimes for the different corn; as *hybernagium* was applied to wheat and rye, which we ſtill call *winter-corn*; and *tremagium* to barley, oats, &c. which we term *ſummer-corn:* this word is likewiſe written *ibernagium* and *thornagium*. Fleta, lib. 2. cap. 73. ſect. 18.

Hyde of Land, and **Hydegild.** See *Hide* and *Hidage*.

Hypotheca, In the Civil law, was where the poſſeſſion of the thing pledged remained with the *debtor*. Inſt. l. 4. c. 6. ſ. 7. Black. Com. 2 V. 159.

To **Hypothecate,** A ſhip, (from the Lat. *hypotheca*, a pledge) Is to pawn the ſame for neceſſaries; and a maſter may hypothecate either ſhip or goods for relief when in diſtreſs at ſea; for he repreſents the traders as well as owners: and in whoſe hands ſoever a ſhip or goods hypothecated come, they are liable. 1 *Salk*. 34. 2 *Lil. Abr*. 195.

By the Common law, (by which property is to be tried) the maſter of the ſhip could not impawn the ſhip; for he has no property either general or ſpecial; nor is ſuch power given to him by the conſtituting him maſter; but the defendant's counſel ſaid, that by the Civil law the maſter may in caſe of neceſſity, and when he has no other means to provide neceſſaries for her. And *Hobart* J. held clearly, that the admiralty law is, that if the ſhip be in danger at ſea, or want neceſſaries, ſo as the voyage may be defeated, the maſter, in ſuch caſe of neceſſity, may impawn for money, &c. to relieve ſuch extremities by imploying the money ſo; for he is truſted with the ſhip and voyage, and ſo may reaſonably be thought to to have the power implicitly given him, rather than ſee the whole loſt. *Hob*. 11, 12. *Bridgman*'s caſe.

A. being in a ſhip on the ſea, *B*. who was in it, and was reputed an agent and factor, borrows 100 *l*. of *A*. upon bottomage (that is, when the money is paid on the keel of the ſhip, and the ſhip obliged to payment of it, and if it be paid not at the time, &c. that he who lends the money ſhall have the ſhip); and it was allowed to be a good and neceſſary cuſtom by all; and it was agreed, that if the maſter, factor, purſer, or he that is reputed owner of the ſhip, borrows money in ſuch a manner for the neceſſaries of a ſhip, *that* binds the owner of the ſhip, although the money be not ſo imployed, and the owner has his remedy againſt him whom he put in truſt. And it is not a good allegation to have a prohibition, to ſay that the property was not in him that took ſuch bottomage. *Noy* 95. *Scarborow* v. *Lyrius*.

It is ſaid the maſter may hypothecate, though the agreement be made and the money lent *at land*. Benzen *v*. Jeffries. 1 L. Ray. 152. *See* Black. Com. 2 V. 159.

Hyth, A port or little haven to lade or unlade wares at, as *Queen-hyth, Lamb-hyth*, &c. New Book of Entries, fol. 3.——*De tota medietate* hythæ *ſuæ in*, &c. *cum libero introitu & exitu*, &c. Mon. Angl. 2 par. fol. 142. Alſo a wharf, &c. See *Hith*.

J.

Jacens *hæreditas dicitur, antequam adita ſit:* An eſtate in abeyance. *Dig*.

Jack, A kind of defenſive coat-armour worn by horſemen in war, not made of ſolid iron, but of many plates faſtened together; which ſome perſons by tenure were bound to find upon any invaſion. *Walſingham*. It was called *lorica*, becauſe at firſt it was made with leather. *Cowell*.

Jactitation of Marriage, Is one of the firſt and principal matrimonial cauſes; as, when one of the parties *boaſts* or gives out that he or ſhe is married to the other, whereby a common reputation of their marriage may enſue. On this ground the party injured may libel the other in the Spiritual Court; and, unleſs the defendant undertakes and makes out a proof of the actual marriage, he or ſhe is enjoined perpetual ſilence upon that head: which is the only remedy the Eccleſiaſtical Court can give for this injury. *Black. Com*. 3 *V*. 93.

But if two perſons are not married, and the one ſays with reſpect to the other, that he or ſhe is her or his huſband or wife, or any thing implying a marriage, whereby the other loſes his or her marriage with a third perſon, or is otherwiſe actually damnified, we conceive an action will lie for the ſpecial damage; as in other caſes of words, not actionable in themſelves, but rendered actionable, by the damage which enſues.

Jactivus, *(Lat.)* Signifies he that loſeth by default: *placitum ſuum neglexerit, &* jactivus *exinde remanſit*. Formul. Solen. 159.

Jamaica, An *American* iſland taken from the *Spaniards*, in the year 1655, mentioned in the *Stat*. 15 *Car*. 2. *c*. 5. See *Plantations*.

Jamaica-wood, (mentioned 15 *Car*. 2. *cap*. 5.) Is a kind of ſpeckled *wood*, of which are made cabinets, called there *granadillo*. The tree (as they ſay) is low and ſmall, ſeldom bigger than a man's leg.

Jambeaux, Leg-armour, from *jambe*, tibia. *Blount*.

Jampnum, Furze or gorſe, and gorſy ground; a word uſed in *fines* of lands, &c. and which ſeems to be taken from the Fr. *jaune, i. e.* yellow, becauſe the bloſſoms of furze or gorze are of that colour. *Cro. Car*. 179.

Jannum, or **Jaun,** Heath, whins, or furze. *Placita*. 23 *H*. 3. No man can cut down furze, or whins in the *foreſt* without licence. *Manwood, cap*. 25. *num*. 3.

Jacques, Small money, according to *Staundford's P. C. c*. 30.

Jar, (Span. *Jarro, i. e.* an earthen pot) With us it is taken for an earthen pot or veſſel of oil, containing twenty gallons.

Jarrock, (mentioned in ſtat. 1 *R*. 3. *c*. 8.) Is a kind of cork, or other ingredient, which this ſtatute prohibits dyers to uſe in dying cloth.

Jaun, (Fr. *Jaune, i. e.* yellow colour.) *Præterea concedit abbati & conv. & hominibus eorum de Stanhal de ſe & de hæredibus ſuis colligere* jaun & feugere & *breue &* geneſtam *per terram ſuam ſine impedimento*, &c. Charta Will. de Bay, ſineat. Doubtleſs here *jaun* is uſed for furze or gorſe, which we now in law *Latin* call *jampnum*, and anciently *jaunum*; as, *Decimas illius* jauni *in Dunbeved Pl. Aſſiſ*. 22 *H*. 3. Cowell.

Ibernagium, *hibernagium, ybernagium*, Seaſon for ſowing winter-corn. *Et arabit unam acram, ſeminabit cum ſemine domini, eandem herciabit, videlicet, dimidiam acram ad* ibernagium *et dimidiam ad tremagium, et curiabit de fæno domini*. Cartular. Abbat. Glaſton. MS. fol. 91. a.

Iceni, The people of *Suffolk, Norfolk, Cambridgeſhire*, and *Huntingdonſhire*. Law Lat. Dict.

Ich Dien, (From the *German)* Is the motto belonging to the arms of the *Prince of Wales*, ſignifying *I ſerve:* It was formerly the motto of *John*, King of *Bohemia*, ſlain in the battle of *Creſſy*, by *Edward* the *Black Prince*; and taken up by him to ſhew his ſubjection to his father King *Edward* 3.

Icona, *(Iconia)* A figure or repreſentation of a thing. *Mat. Pariſ*. 146. *Hoveden* 670.

Ictus orbus, A maim, bruiſe, or ſwelling; any hurt without cutting the ſkin and ſhedding of blood, which was called *Plaga:* It is mentioned in *Bracton, lib*. 2. *tract*. 2. *cap*. 5 & 24. And in the laws of *Hen*. 1. *c*. 34.

Identitate nominis, Is a writ that lies for him who is taken and arreſted in any perſonal action, and committed to priſon for another man of the ſame name; in ſuch caſe he may have this writ directed to the ſheriff, which is in nature of a commiſſion to inquire, whether he be the ſame perſon againſt whom the action was brought; and if not, then to diſcharge him. *Reg. Orig*. 194. *F. N. B*. 267. If it is term time, the court will diſcharge him on motion. Perhaps, in vacation, on making a clear caſe out, a judge would do it on ſummons. And few men would obſtinately perſiſt in detaining a wrong perſon, as they would be liable to heavy damages, for detention, after *due notice* of the miſtake. With reſpect to the writ of *identitate nominis*, it is obſolete.

It is ſaid this writ lies for wrongfully ſeizing lands or goods of a perſon outlawed, for want of a good declaration of his ſurname; and officers ſhall take ſecurity, to anſwer the value of what is ſeized, if the party cannot diſcharge it, on pain of double damages. *Stat*. 37 *Ed*. 3. *c*. 2. And this writ ſhall be maintainable by executors, &c. by *Stat*.

9 *H*. 6.

9 *H.* 6. *c.* 4. Vide *Com. Dig.* 3 *V.* 486. 14 *Vin. Abr.* tit. *Identitate Nominis.*

Where one perſon is by miſtake arreſted for another, the perſon ſo arreſted, may maintain an action for falſe impriſonment, againſt the officer to recover damages, though he ſues this writ, for immediate relief, from the impriſonment.

Identity of Perſon. Where a perſon convicted of, or outlawed for a criminal offence, being aſked what he hath to alledge why execution ſhould not be awarded againſt him, if he pleads diverſity of perſon, a jury ſhall be impanelled to try this *collateral iſſue, viz.* the *identity of the perſon* This trial is *inſtanter*, and no time allowed the priſoner for defence or producing of witneſſes, unleſs he will make oath, that he is not the perſon attainted: neither ſhall any peremptory challenge of the jury be allowed the priſoner. See 1 *Sid.* 72. *Foſt.* 42, 46. 1 *Lev.* 61. *Black. Com.* 4 *V.* 389.

Ideots and Lunaticks.

Here we ſhall conſider,

I. *What perſons are eſteemed ſuch, ſo as to come within the protection of the law.*
II. *How they are to be found ſuch.*
III. *Who hath an intereſt in, and juriſdiction over them, of appointing proper* curators *and* committees, *and their* power *and* duty.
IV. *How far their want of underſtanding ſhall or ſhall not be ſaid to be prejudicial to them in* civil *reſpects.*
V. *How far the want of underſtanding will excuſe in* criminal *caſes.*
VI. *How far their acts are* good, void, *or* voidable.
VII. *How they are to* ſue *and* defend.

I. *What perſons are eſteemed ideots and lunaticks, ſo as to come within the protection of the law.*

Ideot is a Greek word properly ſignifying a private man, who has no public office. Among the *Latins* it is take for *illiteratus, imperitus,* and in our law for *non compos mentis*, or a natural fool. The words of the ſtatute 17 *Ed.* 2. *c.* 9. are *Rex habebit cuſtodiam terrarum fatuorum naturalium,* whereby it appears he muſt be a natural fool, that is, a fool *a nativitate:* for if he was once wiſe, or become a fool by chance or misfortune, the king ſhall not have the cuſtody of him. *Staundf. Prærog. cap.* 9. *F. N. B.* 232. If one have underſtanding to meaſure a yard of cloth, number twenty, rightly name the days of the week, *or to beget a child,* he ſhall not be counted an *ideot* or natural fool, by the laws of the realm. See 4 *Rep. Beverley*'s caſe. *Cowell.*

The more general deſcription of a perſon, who, from his want of reaſon and underſtanding, comes within the protection of the law, is that of *non compos mentis.* Co. Lit. 246. 4 Co. 124. Skin. 177.

There are (ſays my Lord *Coke)* four kinds of men who may be ſaid to be *non compos:* 1. An ideot who is *non compos* from his nativity. 2. One made ſuch by ſickneſs. 3. Lunatick, *qui aliquando gaudet lucidis intervallis,* who is *non compos* only for the time that he wants underſtanding. 4. One that is drunk; which laſt is ſo far from coming within the *protection* of the law, that his drunkenneſs is an aggravation of whatever he does amiſs. *Co. Lit.* 247. 4 *Co.* 124. See 1 *Hale Hiſt. P. C.* 30 to 37. and *Peer Williams,* 3 *V.* 130. and tit. *Drunkenneſs.*

1. An ideot is a fool or madman from his nativity, and one who never has any lucid intervals; therefore the King has the protection of him and his eſtate, during his life without rendering any account; becauſe it cannot be preſumed that he will be ever capable of taking care of himſelf or his affairs: And ſuch a one is deſcribed a perſon that cannot number twenty, tell the days of the week, does not know his father or mother, his own age, *&c.* But theſe are mentioned as inſtances only; for ideot, or not, being a queſtion of fact, muſt be tried by jury or inſpection. *Dyer* 25. *Moor* 4. *pl.* 11. *Bro. Ideots. F. N. B.* 233.

But though an ideot muſt be ſo *a nativitate*, yet, if by inquiſition it be found, that *A.* is an ideot not having any lucid intervals *per ſpatium octo annorum,* this is a ſufficient finding; for the inquiſition having found the party an ideot, the adding *ſpatium octo annorum* is ſurpluſage, and ſhall be rejected. 3 *Mod.* 43, 44. 2 *Show.* 171. *Skin.* 5, 177. *S. C. Prodgers* and *Lady Frazier.*

2. One made ſuch by ſickneſs, which my Lord *Hale* calls *Dementia accidentalis vel adventitia*, and which he again diſtinguiſhes into a total and a partial inſanity, from its being more or leſs violent, is ſuch a madneſs as excuſeth in criminal caſes; and though the party alſo in every thing elſe be intitled to the ſame protection with an ideot; and tho' his diſorder ſeems permanent and fixed, yet as he had once reaſon and underſtanding, and as the law ſees no impoſſibility but what he may be reſtored to them again, it makes the King only a truſtee for the benefit of ſuch a one, without giving him any profit or intereſt in his eſtate. 1 *Hale's Hiſt. P. C.* 30.

3. A lunatick; this is alſo *Dementia accidentalis vel adventitia,* and takes its name from the great influence which the moon has in all diſorders of the brain; and though ſuch a one hath intervals of reaſon, yet during his phrenzy he is intitled to the ſame indulgence as to his acts, and ſtands in the ſame degree with one whoſe diſſorder is fixed and permanent. 4 *Co.* 125. *Co. Lit.* 247. 1 *Hale's Hiſt. P. C.* 31.

4. One made mad by drunkenneſs, which is called *Dementia effectata*; and tho', as has been ſaid, ſuch a perſon be not intitled to the protection of the law, yet if a perſon by the unſkilfulneſs of his phyſician, or by the contrivance of his enemies, eat or drink ſuch a thing as cauſeth phrenzy, this puts him in the ſame condition with any other phrenzy, and equally excuſeth him; alſo if by one or more ſuch practices an habitual or fixed phrenzy be cauſed, tho' this madneſs was contracted by the vice and will of the party, yet this habitual and fixed phrenzy thereby cauſed puts the man in the ſame condition, as if the ſame was contracted involuntarily at firſt. *Plowd.* 19. *a. Crom. Juſtice* 29. *a. Co. Lit.* 247. 1 *Hale's Hiſt. P. C.* 32.

But though this ſubject of madneſs may be ſpun out to a greater length, and branched into ſeveral kinds and degrees, yet it appears that the prevailing diſtinction herein in law is between *ideocy* and *lunacy*; the firſt *a fatuity a nativitate, vel dementia naturalis,* which excuſeth the party as to his acts, and intitles the King to the receipt of the rents and profits of his eſtate during his life, without being obliged to render any account for the ſame; the other accidental or adventitious madneſs, which, whether permanent and fixed, or with lucid intervals, goes under the general name of lunacy, and equally excuſeth with *ideocy*, as to acts done during the phrenzy; but herein they differ, that in the latter caſe the King, as has been ſaid, is only a truſtee for the lunatick, and accountable to him, if he happens to be reſtored to his underſtanding, or to his repreſentatives if it happen otherwiſe. 3 *New Abr.* 80. 4 *Co.* 125. *a.*

II. *How ideots and lunaticks are to be found ſuch.*

Every perſon of the age of diſcretion is in law preſumed to be of ſound mind and memory, unleſs the contrary appear; and this rule holds as well in civil as criminal caſes. 1 *Hale's Hiſt. P. C.* 33.

The trial of *ideocy, madneſs* or *lunacy* in *civil* caſes, and in order to the commitment or cuſtody of the perſon and his eſtate, which belongs to the King, as mentioned above, is by writ or commiſſion to the ſheriff or eſcheator, or particular commiſſioners both by their own inſpection and by inquiſition to inquire, and return their inquiſition into the Chancery; and thereupon a grant or *commitment* of the party and his eſtate enſues: And in caſe the party or his friends find themſelves injured by the finding him a *lunatick* or *ideot*, a ſpecial writ may iſſue to bring the party before the Chancellor, or before the King, to be inſpected; and if, on examination, it appear the party is no ideot, the whole commiſſion and office ſhall be diſcharged without any traverſe or *monſtrans de droit.* 4 *Co.* 126. 9 *Co.* 31. *a.* And for this writ of *idiota inquirendo,* ſee *Fitz. N. B.* 232, 3.

Alſo the party found an *ideot* or *lunatick* may traverſe the inquiſition, as may any other perſon having a title to the land, and therefore it is ſaid, that by the ſtatute 18

Hen. 6. *c.* 6. there ought to be a month's time between the return of the inquiſition and the grant of the cuſtody and lands, in order for the parties to come in and tender ſuch traverſe. *Skin.* 178.

If by inquiſition a perſon be found a *lunatick*, and the cuſtody granted to *J. S.* and the party thus found bring a *ſcire facias* to ſet aſide the inquiſition, the committee of the lunatick cannot plead nor join iſſue in ſuch *ſcire facias*; for he can have no intereſt in the eſtate of the lunatick, being only in the nature of a bailiff to the King, and therefore his duty is to inform the King's Attorney General of the nature of the affair, who is the proper perſon to conteſt the matter in behalf of the King. 2 *Sid.* 124. *Suſan Thorn* v. *Cowards.*

III. *Who hath an intereſt in, and juriſdiction over them, of appointing proper* curators *and* committees, *and their* power *and* duty.

It ſeems to be agreed at this day, that the King as *parens patriæ* hath the protection of all his ſubjects, and that in a more peculiar manner he is to take care of all thoſe who, by reaſon of their imbecillity and want of underſtanding, are incapable of taking care of themſelves; this, in ſome books, is called a prerogative in the crown, and in others a *regium munus*, or duty which the King owes to his ſubjects in return to their ſubjection and allegiance to him. *Staund. Prærog. cap.* 9. *fol.* 33. 2 *Inſt.* 14. 4 *Co.* 126. *a. Dyer* 25.

Lord *Coke*, in 4 *Co. Beverley*'s caſe, ſays, that this prerogative was by the Common law, and that the ſtatute *de prærogativa Regis*, 17 *Ed.* 1. *c.* 9. is only declarative thereof. 2 *Inſt.* 14. 4 *Co.* 126.

But however that may be, now, by the ſtatute *de prærogativa Regis*, or 17 *Ed.* 2. *cap.* 9. it is enacted, that the King ſhall have the cuſtody of the lands of *natural fools*, taking the profits of them, without waſte or deſtruction, and ſhall find them their neceſſaries, of whoſe fees ſoever the lands be holden; and after the death of ſuch *ideots*, he ſhall render it to the right heirs, ſo that ſuch *ideots* ſhall not alien, nor their heirs be diſinherited.

And by *cap.* 10. of the ſaid ſtatute, "The King ſhall provide when any (that before time hath had his wit and memory) happen to fail of his wit, and there are many *per lucida intervalla*, that their lands and tenements ſhall be ſafely kept without waſte and deſtruction, and that they and their houſhold ſhould live and be maintained competently with the profits of the ſame, and the reſidue, beſides their ſuſtentation, ſhall be kept to their uſe, to be delivered unto them when they come to right mind; ſo that ſuch lands and tenements ſhall in no wiſe be aliened, and the King ſhall take nothing to his own uſe; and if the party die in ſuch eſtate, then the reſidue ſhall be diſtributed for his ſoul, by the advice of the ordinary."

This diſtinction, eſtabliſhed by this ſtatute, between the King's intereſt in the lands of an *ideot* and *lunatick*, is laid down and admitted in all the books which ſpeak of this matter; and on this foundation it hath been reſolved, that the King may grant the cuſtody of an *ideot* and his lands to a perſon, his heirs and executors, and that he had the ſame intereſt ſuch a one as he had in his *ward* by the Common law. *Bro. Ideot*, 4, 5. *Dyer* 25. *Moor* 4. *pl.* 12. 1 *And.* 23. 4 *Co.* 127. *Co. Lit.* 247.

But though a *lunatick* is by commiſſion to be under the care of the public, and ſuch *committee* is to be appointed for him by the Lord Chancellor, whoſe acts are ſubject to the controul and correction of the court of Chancery; yet ſuch a one, whether ſo appointed, or whether he of his own head take upon him the care and management of the eſtate of a *lunatick*, is but in nature of a bailiff or truſtee for him, and accountable to him, his executors or adminiſtrators. 4 *Co.* 127. 2 *Chan. Ca.* 239.

And as the *committees* of a *lunatick* have no intereſt, but an eſtate during pleaſure, it has been ruled, that they cannot make leaſes, nor any ways incumber the *lunatick's* eſtate, without a ſpecial order from the court of Chancery, where the profits are not ſufficient to maintain the *lunatick.* 1 Vern. 262. Foſter *v.* Merchant.

Alſo where a *lunatick*, before he became ſuch, made a mortgage of good part of his eſtate for 50*l.* and the committee transferred this mortgage, and took up 3 or 400*l.* more upon it; and it was held by my Lord Keeper, that the mortgage ſhould ſtand but a ſecurity for the 50*l.* only. 1 *Vern.* 262, 263.

And, though the King, as has been ſaid, has the ſole direction and management of *ideots*, &c. yet a private perſon may confine a friend who is *mad*, and bind and beat him, &c. in ſuch a manner as is proper in ſuch circumſtances. 2 *Rol. Abr.* 546.

And alſo by the 12 *Ann. cap.* 23. reciting, that whereas there are ſometimes in pariſhes, towns and places, perſons of little or no eſtate, who, by lunacy, or otherwiſe, are *furiouſly mad*, and dangerous to be permitted to go abroad, and by the laws in being the juſtices of peace and officers have not authority to reſtrain and confine them, it is enacted, "That it ſhall and may be lawful for any two juſtices of the peace, where ſuch *lunatick* or *mad perſon* ſhall be found, by warrant under their hands and ſeals, directed to the conſtables, church-wardens and overſeers of the poor of ſuch pariſh, town or place, or ſome of them, to cauſe ſuch perſon to be apprehended and kept ſafely locked up in ſuch place within the county where ſuch pariſh or town ſhall lie, as ſuch juſtices ſhall, under their hands and ſeals, direct and appoint; and (if ſuch juſtices find it neceſſary) to be there chained, if the laſt legal ſettlement of ſuch perſon ſhall be in any pariſh, town or place within ſuch county; and if ſuch ſettlement ſhall not be there, then ſuch perſon ſhall be ſent to the place of his or her laſt legal ſettlement, as vagrants by this act are directed to be ſent, (whipping excepted) and ſhall be kept ſafely locked up or chained, as aforeſaid; and the charges of keeping and maintaining ſuch perſon, during ſuch reſtraint, (which ſhall be for and during ſuch time only as ſuch lunacy or madneſs ſhall continue) ſhall be ſatisfied and paid by order of two or more juſtices of the peace for the county, town or place where ſuch ſettlement ſhall lie, out of the eſtate of ſuch perſon, if ſuch perſon hath an eſtate to pay and ſatisfy the ſame, over and above what ſhall be ſufficient to maintain his wife and children if he hath any; and if he hath not ſuch an eſtate, then the charges of the keeping and maintaining ſuch perſon, during ſuch reſtraint, ſhall be ſatisfied and paid by ſuch ways and means as the poor of ſuch pariſh, town or place, are by the laws in being to be provided for."

"Provided, that this act, or any thing contained therein, ſhall not extend, or be conſtrued to extend, to reſtrain or abridge the prerogative of the Queen, or the power or authority of the Lord Chancellor, Lord Keeper, or Commiſſioners of the Great Seal for the time being, or of the Chancellor, or Vice-Chancellor of the County Palatine of *Lancaſter* for the time being, or of the Chamberlain, or Vice-Chamberlain of the County Palatine of *Cheſter* for the time being, touching or concerning the premiſſes."

IV. *How far their want of underſtanding ſhall or ſhall not be ſaid to be prejudicial to them in* civil *reſpects.*

An *ideot*, or perſon *non compos*, may inherit, becauſe the law, in compaſſion of their natural infirmities, preſumes them capable of property. *Co. Lit.* 2, 8.

Alſo an *ideot*, or perſon of *non ſane memory*, may purchaſe, becauſe it is intended for their benefit; and if after recovery of their memory they agree thereto, they cannot avoid it; but if they die during their *lunacy*, their heirs may avoid it, for they ſhall not be ſubject to the contracts of perſons who want capacity to contract; ſo if after their memory recovered, the *lunatick*, or perſon *non compos*, die without agreement to the purchaſe, their heirs may avoid it. *Co. Lit.* 2. 2 *Vent.* 203.

If an *ideot* or *lunatick* marry, and die, his wife ſhall be endowed; for this works no forfeiture at all, and the King has only the cuſtody of the inheritance in one caſe, and the power of providing for him and his family in the other; but in both caſes the freehold and inheritance is in the *ideot* or *lunatick*; and therefore if lands deſcend to an *ideot* or *lunatick* after marriage, and the King, on office found, takes thoſe lands into his cuſtody, or grants them over to another, as *comittee*, in the uſual manner; yet this ſeems no reaſon why the huſband ſhould not be *tenant* by the *curteſy*, or the *wiſe endowed*, ſince their title does not begin to any purpoſe till the death of the huſband or wife, when the King's title is *at an end*. *Co. Lit.* 31. *a.* 4 *Co.* 124, 125. Yet ſee *Plow.* 263. *b.* 1 *Vern.* 10.

A *lunatick* ſhall be *tenant* by the *curteſy*, and ſhall have dower; ſo tho' a woman, being a *lunatick*, kill her huſband, or any other, yet ſhe ſhall be endowed, becauſe this cannot be *felony* in her, who was deprived of her underſtanding by the act of God. *Perk.* 365.

If a perſon *non compos* be diſſeiſſed, and a deſcent caſt, this, it is ſaid, takes away his entry, but not the entry of the heir; for regularly the *non compos* in this caſe cannot alledge the diſability in himſelf, becauſe he cannot be ſuppoſed conſcious of it, nor is he allowed ever, at any time, to alledge it, for when he is once *non compos*, there is no certain time when he can be adjudged to recover that diſability, unleſs where he is legally *committed*, and then the acts during his *lunacy* will be ſet aſide and diſcharged, and afterwards the *commiſſion* ſuperſeded; for in no other way can the *non compos* be legally reſtored to his right, and to his capacity of acting. *Lit. Sect.* 405. *Co. Lit.* 247.

A perſon *non compos*, being lord of a copyhold manor, may make grants of copyhold eſtates, for ſuch eſtates do not take their perfection from any power or intereſt in the lord, but from the cuſtom of the manor, by which they have been demiſed and demiſeable time out of mind. 4 *Co.* 23. *b.* *Co. Copyholder*, 79, 107.

Ideots and *lunaticks* are, both by the Civil law and likewiſe by the Common law, incapable of being executors or adminiſtrators; for theſe diſabilities render them not only incapable of executing the truſt repoſed in them, but alſo by their *inſanity*, and want of underſtanding, they are incapable of determining whether they will take upon them the execution of the truſt or not. *Godolph. Orph. Leg.* 86.

Therefore it hath been agreed, that if an executor become *non compos*, that the ſpiritual court may (on account of this natural diſability) commit adminiſtration to another. 1 *Salk.* 36.

An *ideot* or perſon *non compos*, being robbed, ſhall be bound by a ſale of his goods in a market overt. 2 *Inſt.* 713. Vide laſt clauſe, in *Div.* V.

V. *How far the want of underſtanding will excuſe in* criminal *caſes.*

It is laid down as a general rule, that *ideots* and *lunaticks*, being by reaſon of their natural diſabilities incapable of judging between good and evil, are puniſhable by no *criminal* proſecution whatſoever. 1 *Hawk. P. C.* 2.

And therefore a perſon who loſes his memory by ſickneſs, infirmity, or accident, and kills himſelf, is no *felo de ſe*. 3 *Inſt.* 54.

So if a man give himſelf a mortal ſtroke while he is *non compos*, and recovers his underſtanding, and then dies, he is not *felo de ſe*; for tho' the death compleat the homicide, the act muſt be that which makes the offence. 1 *Hale Hiſt. P. C.* 412.

But it is not every melancholy or hypochondriacal diſtemper that denominates a man *non compos*, for there are few who commit this offence, but are under ſuch infirmities; but it muſt be ſuch an alienation of mind that renders them to be madmen, or frantick, or deſtitute of the uſe of reaſon. *ibid.*

And as a perſon *non compos* cannot be a *felo de ſe* by killing himſelf; ſo neither can he be guilty of *homicide* in killing another, nor of *petit treaſon*; alſo if one who is committed for a capital offence become *non compos* before conviction, he ſhall not be arraigned; and if after conviction, he ſhall not be executed. *Ibid.* 30. 1 *Hawk. P. C.* 2.

It ſeems to have been anciently holden, (in reſpect of that high regard which the law has for the ſafety of the King's perſon,) that a *madman* might be puniſhed as a traitor for killing, or offering to kill the King; but this is now contradicted by better and later opinions. *Fitz. Coron.* 351. *Regiſt.* 309. 4 *Co.* 124. *b.* 1 *Roll. Rep.* 324.

The great difficulty in theſe caſes is, to determine where a perſon ſhall be ſaid to be ſo far deprived of his ſenſe and memory, as not to have any of his actions imputed to him; or where, notwithſtanding ſome defects of this kind, he ſtill appears to have ſo much reaſon and underſtanding as will make him accountable for his actions, which Lord *Hale* diſtinguiſhes between, and calls by the name of *Total* and *partial Inſanity*; and tho' it be difficult to define the indiviſible line that divides *perfect* and *partial inſanity*, yet, ſays he, it muſt reſt upon circumſtances, duly to be weighed and conſidered both by the judge and jury, leſt on the one ſide there be a kind of inhumanity towards the defects of human nature, or on the other ſide too great an indulgence given to great crimes; and the beſt meaſure he can think of is this: Such a perſon, as, labouring under melancholy diſtempers, hath yet *ordinarily* as great underſtanding as a *child of fourteen years* commonly hath, is ſuch a perſon as may be guilty of treaſon or felony. 1 *Hale Hiſt. P. C.* 30.

It hath been already obſerved, that he who is guilty of any crime whatſoever thro' his voluntary *drunkenneſs*, ſhall be puniſhed for it as much as if he had been ſober. *Vide ſupra.*

Alſo he who incites a madman to do a murder, or other crime, is a principal offender, and as much puniſhable as if he had done it himſelf. *Keilw.* 53. *Dalt. cap.* 95. 1 *Hawk. P. C.* 2.

And here we muſt obſerve a difference the law makes between civil ſuits that are terminated *in compenſationem damni illatæ*, and criminal ſuits or proſecutions, that are *ad pænam & in vindictam criminis commiſſi*; and therefore it is clearly agreed, that if one who wants diſcretion commits a treſpaſs againſt the perſon or poſſeſſion of another, he ſhall be compelled in a *civil* action to give ſatisfaction for the damage. 2 *Roll. Abr.* 547. *Hob.* 134. *Co. Lit.* 247. 1 *Hawk. P. C.* 2. 1 *Hal. Hiſt.* 15, 16, 38.

As to *ideocy*, *lunacy* or *madneſs*, which excuſes in *capital* caſes, it is not neceſſary that it was found by inquiſition that the party was a *madman*, *ideot*, or *lunatick*, previous to the commitment of the fact; for if he was *actually mad* at the time of the fact committed, this ſhall excuſe; and this regularly is to be tried by an inqueſt of office to be returned by the ſheriff of the county wherein the court ſits for the trial of the offence; and if it be found that he was *actually mad*, he ſhall be diſcharged without any other trial; but if they find that the party only feigns himſelf mad, and he refuſes to anſwer or plead, he ſhall be dealt with as one who ſtands mute. 26 *Aſſ. pl.* 27. *Bro. Cor.* 101. 1 *And.* 107, 154. *Sav.* 50, 57. 1 *Hawk. P. C.* 2. 1 *Hal. Hiſt. P. C.* 35.

Alſo in caſe a man in a *frenzy* happen by ſome overſight, or by means of the gaoler, to plead to his indictment, and is put upon his trial, and it appears to the court upon his trial that he is *mad*, the judge in diſcretion may diſcharge the jury of him, and remit him to gaol to be tried after the recovery of his underſtanding, eſpecially in caſe any doubt appear upon the evidence touching the guilt of the fact, and this *in favorem vitæ*; and if there be no colour of evidence to prove him guilty, or if there be a pregnant evidence to prove his *inſanity* at the time of the fact committed, then, upon the ſame favour of life and liberty, it is fit it ſhould be proceeded in the trial, in order to his acquittal and enlargement. 1 *Hal. Hiſt. P. C.* 33, 36.

So if a perſon during his *inſanity* commits a *capital* offence, and recovers his underſtanding, and being indicted and arraigned for the ſame, pleads Not guilty, he ought to be acquitted; for, by reaſon of his *incapacity*, he cannot act *felleo animo*. 1 Hal. Hiſt. P. C. 36.

VI. *How far their acts are* good, void, *or* voidable.

We muſt firſt diſtinguiſh between acts done by *ideots* and lunaticks *in pais*, and in a court of record; that as to thoſe ſolemnly acknowledged in a court of record, as fines and recoveries, and the uſes declared on them, they are good, and can neither be avoided by themſelves nor their repreſentatives; for it is to be preſumed, that had they been under theſe diſabilities, the judges would not have admitted them to make theſe acknowledgments. 4 *Co.* 124. 2 *And.* 145. *Co. Lit.* 247.

Therefore if a perſon *non compos* acknowledges a *fine*, it ſhall ſtand againſt him and his heirs, for tho' the judges ought not to admit of a fine from a madman under that diſability, yet when it is once received, it ſhall never be reverſed, becauſe the record and judgment of the court being the higheſt evidence that can be, the law preſumes the conuzor at that time capable of contracting; and therefore the credit of it is not to be conteſted, nor the record avoided by any averment againſt the truth of it, tho' an office find him an ideot *a nativitate*. 4 *Co.* 124. 2 *Inſt.* 483. *Bro.* tit. *Fines* 75. *Co. Lit.* 247. 2 *And.* 193. 4 *Co.* 124.

As to acts done by them *in pais*, they are diſtinguiſhed into *void* and *voidable*, tho' as to themſelves, they are regularly unavoidable, becauſe no man is allowed to diſable himſelf, for the inſecurity that may ariſe in contracts from conterfeited madneſs and folly; beſides, if the excuſe were real, it would be repugnant that the party ſhould know or remember what he did; but their heirs and executors may avoid ſuch acts *in pais*, by pleading the diſability; becauſe, if they can prove it, it muſt be preſumed real, ſince nobody can be thought to counterfeit it, when he can expect no benefit from it himſelf. 4 *Co.* 124-5. *Beverley*'s caſe. *Bro.* tit. *Fait* 62. *F. N. B.* 202. *Cro. Eliz.* 398.

If an *ideot* or *lunatick* enter into *recognizance*, or *acknowledge* a *ſtatute*, neither they themſelves, nor their heirs nor executors can avoid them; for theſe are ſecurities of a higher nature than ſpecialties and obligations, which yet they themſelves cannot avoid, and being *matters of record*, and equivalent to *judgments* of the ſuperior courts, neither they themſelves, their heirs nor executors, can avoid them. 4 *Co.* 124. *a.* 10 *Co.* 42. *b.* 2 *Inſt.* 483. *Bro. Fait Inrol.* 14.

If *parceners* of *non-ſane memory* make *partition*, unleſs it be equal, it ſhall only bind the parties themſelves, but not their iſſue: And the reaſon it binds the parties themſelves is the ſame that all other contracts bind them, *viz.* becauſe no man is admitted to ſtultify himſelf: And the reaſon their iſſue may avoid ſuch partition is the ſame likewiſe for which they may avoid all other contracts made by ſuch anceſtors during their *inſanity*, *viz.* becauſe they may be admitted to ſhew the incapacity of their anceſtors, and ſo avoid all acts done by them during that time. *Co. Lit.* 166. *a.*

Altho', as hath been obſerved, according to the ſtrict rules of law no perſon is allowed to ſtultify himſelf, yet it ſeems that, even at law, the *contracts* of *ideots* and *lunaticks*, after office found, and the party legally committed, are void, and it muſt be at the peril of him who deals with ſuch a one; and that if afterwards the commiſſion of lunacy be superſeded or diſcharged, the *non compos* ſhall be reſtored to his legal right: But this, it ſeems, muſt be at the ſuit and application of his *committee*. 4 *Co.* 125.

Alſo there are frequent inſtances in *equity*, where not only *ideots* and *lunaticks*, who come within the protection of the law, but alſo perſons of *weak underſtandings* have been relieved, when they appeared to have been *impoſed* upon in their dealings and unreaſonable purchaſes, and ſecurities obtained from them ſet aſide in their favour. But for this ſee 1 *Chan. Ca.* 113, 153. 1 *Vern.* 155. 2 *Vern.* 189, 414, 678. and ſee tit. *Agreements*, alſo *vide Abr. Eq.* 279 *Ridler* v. *Ridler*.

Ideots and *lunaticks*, during their lunacy, are incapable of making any *will* or *teſtament*; as are alſo perſons grown *childiſh* by reaſon of extreme old age; ſo one actually drunk, if he be ſo drunk as to have loſt the uſe of his reaſon: But tho' a perſon who wants underſtanding cannot make a *will*, yet the rule herein is not to be taken from his not being able to meaſure an ell of cloth, tell twenty, or the like; but whether he has ſenſe enough to diſpoſe of his eſtate with underſtanding. *Swinb.* 71. *Godolph. Orph. Leg.* 25.

But every perſon making a will is preſumed to be of ſound underſtanding, until the contrary be proved; ſo that the *onus probandi* lies on the other ſide: If the teſtator uſed to have fits and lucid intervals, and it cannot appear whether the will be made in the lucid intervals, if there be no argument of folly in the will; nay, tho' the teſtator had no lucid intervals, even if it can be proved that he was mad at the time of making the will, if the will be a ſenſible, orderly will, it ſhall ſtand; (*ſed qu.* if written by any other perſon, and conteſted) but the leaſt word of folly in ſuch a will, overthrows it: on the other hand, if one be a *very ideot* and make a good ſenſible will, yet the will ſhall not ſtand good. *Swinb.* 72. *Godolph.* 25. *Dyer* 203. 8 *Co.* 147.

If a perſon of ſound memory makes his will, and afterwards becomes *non compos*, this is no revocation of the will; yet a bill will not lie in the life-time of the *non compos*, to eſtabliſh the teſtimony of the witneſs *in perpetuam rei memoriam* to ſuch a will. *Godolph.* 26. 4 *Co.* 126. 1 *Vern.* 105.

By the ſtat. 4 *Geo.* 2. *cap.* 10. it is enacted, "That it ſhall be lawful for any perſon being *ideot*, *lunatick* or *non compos mentis*, or for the committee of ſuch perſon in his, her, or their name, by direction of the Lord Chancellor, Lord Keeper, or Commiſſioners of the Great Seal, ſignified by an order made upon hearing all parties concerned, on the petition of the perſon for whom ſuch perſon being *ideot*, *lunatick* or *non compos mentis*, ſhall be ſeiſed or poſſeſſed in *truſt*, or of the *mortgagor*, or of the perſon intitled to the monies ſecured by or upon any lands, &c. whereof any ſuch perſon being *ideot*, *lunatick* or *non compos mentis*, is or are, or ſhall be, ſeiſed or poſſeſſed by way of mortgage, or of the perſon intitled to the redemption, to *convey and aſſure* any ſuch lands, tenements or hereditaments in ſuch manner as the Lord Chancellor, &c. ſhall by ſuch order direct, to any other perſon, ſuch conveyance to be good and effectual in law."

They are by this act impowered and compelled, by ſuch order, to make ſuch conveyance or aſſurance as aforeſaid, in like manner as truſtees or mortgagees of ſane memory are compellable to convey, ſurrender or aſſign their truſt-eſtate or mortgages.

VII. *How they are to* ſue *and* defend.

When an *ideot* doth ſue or defend he ſhall not appear by guardian, prochein amy, or attorney, but he muſt be ever in proper perſon. *Co. Lit.* 135. *b.* *F. N. B.* 27. The ſtatute of *Weſtm.* 2. *cap.* 15. extends not to an *ideot*. 2 *Inſt.* 390.

But otherwiſe of him who becomes *non compos mentis*; for he ſhall appear by guardian, if within age, or by attorney if of full age. 4 *Co.* 124. *b.* *Palm.* 520. & *vid.* 2 *Saund.* 335.

If a treſpaſs be committed in the lands of a lunatick who is legally committed, the *committee* cannot bring an action of treſpaſs; but this muſt be brought in the name of the lunatick. 2 *Sid.* 125.

If a *lunatick* be ſued, he muſt have a committee aſſigned to him to defend the ſuit. 1 *Vern.* 106.

For more learning on this ſubject, ſee 3 New Abr. *tit.* Ideots *and* Lunaticks. See *Lunaticks*.

Ideota inquirendo vel examinando, Is a writ to examine whether a perſon be an *ideot*. The King having the protection of his ſubjects, and the government of their lands who are naturally defective in their underſtanding; for this purpoſe the writ *de ideota inquirendo*, &c. is iſſued, directed to the ſheriff to call before him the party ſuſpected of *ideocy*, and to examine him and inquire by a jury of twelve men, who are to be on their oaths, whether the party is an *ideot*, or not, *viz.* If he be of ſufficient underſtanding and diſcretion to manage his eſtate, or not ſo; and if from his birth he hath been a perfect *ideot*, by reaſon whereof the cuſtody of his lands and tenements ought to belong to the King; or if by any misfortune he hath fallen into ſuch infirmity, &c. and by what, &c. and of his age, and lands, and who holds them, &c. and when the inquiſition is taken, the ſheriff is to certify it into the *Chancery*: And the party may be afterwards examined by the Lord Chancellor, &c. F. N. B. 232. Reg. Orig. 267. 9 Rep. 31.

Ides, *(Idus)* With the ancient *Romans*, were eight days in every month, ſo called: being the eight days immediately after the *Nones*. In the months of *March*, *May*, *July* and *October*, theſe eight days begin at the eighth day of the month, and continue to the fifteenth day: In other months they begin at the ſixth day, and laſt to the thirteenth. But it is obſervable, that only the laſt day is called *Ides*, the firſt of theſe days is the *eighth Ides*, the ſecond day the *ſeventh*, the third the *ſixth*, *i. e.* the eighth, ſeventh, or ſixth day before the *Ides*; and ſo it is of the reſt of the days; wherefore when we ſpeak of the Ides of any month in general, it is to be taken for the fifteenth or thirteenth of the month mentioned. See *Calends*.

Idleneſs. Idle and diſorderly perſons liable to be impriſoned in the houſe of correction for one month, *per* 17 *Geo.* 2. *c.* 5. which *vide*, and *Black. Com*, 4 *V*. 169, 170.

Idoneum ſe facere, idoneare ſe, To purge himſelf by oath of a crime of which he is accuſed. *Leg. Hen.* 1. *cap.* 15. where the word *idoneus* is taken for *innocens*, But he is ſaid in our law to be *idoneus homo*, who hath theſe three things, *honeſty*, *knowledge*, and *ability*; and if an officer, &c. be not *idoneus* he may be diſcharged. 8 *Rep*. 41. See *Preſentation.*

Idumanus fluvius, *Black-Water* in *Eſſex*.

Jejunum, *(Purgatio per jejunium.)* It is mentioned *in Leg. Canuti, cap.* 7. *apud Brompton,* viz. *Cum ſociis ſe purget vel* jejunum *ineat, ſi opus eſt, & applicetur ad cornſned, & fiat voluntas Dei.*

Jeman, Sometimes uſed for *yeomen*. Cowell.

Jeofaile, Is compounded of the Fr. *J'ay faillè*, i. e. *Ego lapſus ſum*, and ſignifies an overſight in pleading or other law proceedings. It is when the parties to any ſuit have gone ſo far that they have joined iſſue, which ſhall be tried, or is tried by a jury or inqueſt, and this pleading or iſſue is ſo badly pleaded or joined, that it will be error if they proceed; then ſome of the parties may by their counſel ſhew it to the court, as well after verdict given and before judgment, as before the jury are charged; the ſhewing of which defects by the counſel was often, when the jury came into court to try the iſſue, by ſaying, *This inqueſt ye ought not to take*; and if after verdict, by ſaying, *To judgment you ought not to go*, &c. Therefore, for avoiding the frequent delays in ſuits by ſuch ſuggeſtions, ſeveral ſtatutes have been made. *Terms de Ley.*

In an *aſſumpſit*, the defendant pleads Not guilty, and thereupon iſſue is joined, and found for the plaintiff; he ſhall have judgment, tho' it is an improper iſſue in this action; for as there is a deceit alledged, Not guilty is an anſwer thereto, and it is but *an iſſue miſjoined*, which is aided by ſtatute. *Cro. Eliz.* 407. If in *debt* upon a *ſingle bill*, the defendant pleads *payment*, *without an acquittance*, and iſſue is joined and found for the plaintiff; tho' the payment without acquittance is no plea to a ſingle bill, he ſhall have judgment, becauſe the iſſue was joined upon an affirmative and a negative, and a verdict for the plaintiff. *Mich.* 37 & 38 *Eliz.* 5 *Rep.* 43.

Of the ſtatutes of jeofails.

An ill plea and iſſue may be aided by the ſtatute of *jeofails*, after a verdict: and if an iſſue joined be uncertain and confuſed, a verdict will help it. *Cro. Car.* 316. *Hob.* 113. The ſtatutes likewiſe help when there is no original; and where there is no bill upon the file, it is aided after verdict by ſtatute: but when there is an original, which is ill, that is not aided. *Cro. Jac.* 185, 480. *Cro. Car*, 282. The ſtatute of *jeofails*, 16 & 17 *Car.* 2. helps a miſ-trial in a proper county; but not where the county is miſtaken. 1 *Mod.* 24.

And theſe are the *ſtatutes of jeofails*, which help errors and defects by miſ-pleading in records, proceſs, miſpriſions of clerks, &c. By 32 *H.* 8. *c.* 30. it is enacted, "That if the jury have once paſſed upon the iſſue, though afterwards there be found a *jeofaile* in the proceedings, yet judgment ſhall be given according to the verdict." The 18 *Eliz. c.* 14. ordains, that after verdict given in any court of record, there ſhall be no ſtay of judgment, or reverſal for want of form in a writ, count, plaint, &c. or for want of any writ original or judicial; or by reaſon of inſufficient returns of ſheriffs, &c. But this is not to extend to *appeals* of *felony*, *indictments*, &c. By the 21 *Jac.* 1. *c.* 13. "if a verdict ſhall be given in any court of record, the judgment ſhall not be ſtayed or reverſed for *variance* in *form* between the original writ or bill and the declaration, &c. or for want of averment of the party's being living, ſo as the perſon is proved to be in life; or for that the *venire facias* is in part miſ-awarded; for miſ-nomer of jurors, if proved to be the perſons returned; want of returns of writs, ſo as a panel of jurors be returned and annexed to the writs; or for that the return officer's name is not ſet to the return, if proof can be made that the writ was returned by ſuch officer, &c."

The ſtat. 16 & 17 *Car.* 2. *c.* 8. enacts, that judgment ſhall not be ſtayed or reverſed after verdict in the courts of record at *Weſtminſter*, &c. for *default in form*; or for that there are not pledges to proſecute upon the return of the original writ, or becauſe the name of the ſheriff is not returned upon it; for default of alledging the bringing into court of any bond, bill or deed, or of alledging or bringing in letters teſtamentary, or of adminiſtration; or for the omiſſion of *vi & armis*, or *contra pacem*; miſtaking the Chriſtian name or ſurname of either party, or the ſum of money, day, month or year, &c. in any declaration or pleading, being rightly named in any record, &c. preceding; nor for want of the averment of *hoc paratus eſt verificare*, or for not alledging *prout patet per recordum*; for that there is no right *venire*, if the cauſe was tried by a jury of the proper county or place; nor any judgment after verdict, by confeſſion, *cognovit actionem*, &c. ſhall be reverſed for want of *miſericordia* or *capiatur*, or by reaſon that either of them are entered, the one for the other, &c. But all ſuch defects, *not being againſt the right of the matter of the ſuit*, or *whereby the iſſue or trial are altered*, ſhall be *amended* by the judges: though not in ſuits of *appeal* of *felony*, *indictments*, *informations* on *penal ſtatutes*, which are excepted out of the act. The 22 & 23 *Car.* 2. *c.* 4. made this act perpetual.

By 4 *Ann. c.* 16. all the ſtatutes of *jeofails* ſhall extend to judgments entered by confeſſion, *nil dicit*, or *non ſum informatus* in any court of record; and no ſuch judgment ſhall be reverſed, nor any judgment or writ of inquiry of damages thereon ſhall be ſtayed for any defect which would have been aided by thoſe ſtatutes, if a verdict had been given; ſo as there be an original writ filed, &c. The 5 *Geo.* 1. *c.* 13. ordains, that, after verdict given, judgment ſhall not be ſtayed or reverſed for defect in form or ſubſtance, in any bill or writ, or for variance therein, from the declaration or any other proceedings.

See *Error* And *Black. Com.* 3 *V*. 406. 4 *V*. 369, 432. Note, An action for a falſe return of a member of parliament on the ſtat. 7 & 8 *W*. 3. for double damages is *remedial*, tho' founded on a law that is penal, ſo within the ſtatutes of *jeofails*. *Wilſ. Rep. par.* 1. *fol.* 125. See many caſes where a *bad original* is conſidered as none, and aided by the ſtatutes of *jeofails*; ſo a *bad plaint* in an inferior court is aided after verdict, and conſidered as none, if it varies from the declaration. *Annaly* 367.

Jerſy and Guernſey, Iſlands, laws relating to. Vide *Iſle*. And *Black. Com.* 1 *V*. 106.

Jeſſe, A large braſs *candleſtick*, with many *ſconces*, hanging down in the middle of a church or choir; which invention was firſt called *jeſſe*, from the ſimilitude of the branches of thoſe of the *Arbor Jeſſe*. This uſeful ornament of churches was firſt brought over into this kingdom by *Hugh de Flory*, Abbot of St. *Auſtin*'s in *Canterbury*, about the year 1100. *Chron. Will. Thorn.* 1796.

Jetſam, Jetzon, and **Jotſon;** (from the French *jetter, ejicire*,) Is any thing thrown out of a ſhip, being in the danger of wreck, and by the waves driven to the ſhore. See *Flotſam*, and 5 *Co. Rep.* 103. And *Black. Com.* 1 *V*. 292. 3 *V*. 106.

Jeſuits, The ſociety of *Jeſuits* was inſtituted by *Ignatio Loyola*, a *Biſcayan* gentleman.—The moſt political and beſt regulated of all the monaſtic orders, and from which mankind have derived more advantages, and received greater hurt, than from any other of theſe religious fraternities. *Robertſ. Hiſt. Emp. Char.* V. 2 *V.* 134, 135, *&c.*

Perſons born in the King's dominions and *ordained* by the pretended juriſdiction of *Rome*, remaining in *England*, or coming from beyond ſea into this kingdom, and not ſubmitting to ſome biſhop or juſtice of peace within three days, and taking the oaths, are guilty of *high treaſon*; and receivers, aiders and harbourers of them, are guilty of felony. *Stat.* 27 *Eliz. c.* 2. Perſons knowing prieſts, *Jeſuits*, &c. and not diſcovering them to a juſtice of peace, ſhall be fined and impriſoned. 22 *Car.* 2. And ſee 27 *El. c.* 2.

Jews, *(Judæi)* In former times the *Jews* and all their goods were at the diſpoſal of the chief lord where they lived; who had an abſolute property in them; and they might not remove to another lord without his leave: and we read that King *Henry* 3. ſold the *Jews* for a certain term of years to *Earl Richard* his brother. They were diſtinguiſhed from the *Chriſtians* in their lives, and at their deaths; for they wore a badge on their outward garments, in the ſhape of a table, and were fined if they went abroad without ſuch badges, and they were never buried within the walls of any city, but without the ſame, and anciently not permitted to burial in the country. *Matt. Paris.* 521, 606, *&c.* They are nearly under the ſame circumſtances now, in ſome foreign countries, particularly in *Venice*, where they have a particular quarter aſſigned them for habitation, are locked up at an early hour, and ſubject to many other hardſhips.

There were particular judges and laws by which their cauſes and contracts were decided here, and there was a court of juſtice aſſigned for the *Jews.* 4 *Inſt.* 254. A *Jew* may be witneſs by our laws, being ſworn on the Old Teſtament. But by our ancient books, *Jews*, Hereticks, *&c.* are adjudged out of the ſtatutes allowing benefit of clergy. 2 *Hawk. P. C.* 338. But this doctrine we apprehend is now exploded.

The 53 *Hen.* 3. is called *proviſiones de judaiſmo*; and by the ſtatute 18 *Ed.* 1. the King had a fifteenth granted him *pro expulſione Judæorum.* In the 16th year of *Edw.* 1. all the *Jews* in *England* were impriſoned; but they redeemed themſelves for a vaſt ſum of money: notwithſtanding which, *anno* 19. of that King, he baniſhed them all. *Stow's Surv. Lond. b.* 3. *p.* 54. And they remained in baniſhment 364 years; till *Oliver Cromwell* reſtored them to their trade and worſhip here.

See ſtat. 1 *Ann. c.* 30. concerning *Jewiſh* parents refuſing maintenance to a proteſtant child; and 10 *Geo.* 1. *c.* 4. by which *Jews* may take the oaths to the government, *&c.* *Stat. anno* 26 *Geo.* 2. *c.* 26. an act was made to permit perſons profeſſing the *Jewiſh* religion, to be naturalized by parliament; but the very next year, the legiſlature thought proper to repeal it. 27 *Geo.* 2. *c.* 1.

Alterations of the abjuration oath in favour of *Jews*, to be naturalized in *America*, 13 *Geo.* 2. *c.* 7. *ſect.* 3.

A plaintiff had leave given him by the court to alter the *Viſne* from *London* to *Middleſex*, becauſe all the ſittings in *London* were on a *Saturday*, and his witneſs was a *Jew*, and would not appear that day. 2 *Mod.* 271. *Mich.* 29 *Car.* 2. *C. B.* in the caſe of *Barker* v. *Warren.*

A *Jew* brought an action, and the defendant pleaded that the plaintiff is a *Jew*, and that all *Jews* are perpetual enemies *regis & religionis*; judgment *ſi actio.* But *per cur.* A *Jew* may recover as well as a villain, and the plea is but in diſability ſo long as the King ſhall prohibit them to trade; and judgment for the plaintiff. *L. P. R.* 4. cites *Mich.* 36 *Car.* 2. *B. R.*

A *Jew* was ordered to ſwear his anſwer upon the *Pentateuch*, and that the plaintiff's clerk ſhould be preſent to ſee him ſworn. *Mich.* 1684. *Vern. R.* 263. *Anon'.*

The *Jews* are here by an implied licence, but on a proclamation of baniſhment, it is like a determination of letters of ſafe conduct to an alien enemy, that was here by virtue of ſuch letters before, *&c.* *Arg.* 2 *Show.* 371. in the caſe of the *Eaſt-India Company* v. *Sands.*

Vide *Judaiſm*, and *Wm's Rep.* 524. *Hill.* 1718. *Vincent* v. *Farnandez.* And *Black. Com.* 1 *V.* 375. 449. 4 *V.* 365.

Jewels. All diamonds and other *jewels* may be imported or exported without paying any cuſtom duty, *&c.* But not to make void duties granted the *Eaſt-India* company, for *jewels* brought from places in their limits. *Stat.* 6 *Geo.* 2. *c.* 7. See *Jocalia.*

Ifungia, The fineſt white bread, formerly called cocked bread. *Cowell.*

Ignis Judicium. Purgation by fire, or the old judicial fiery trial. *Id.* See *Ordeal.*

Ignoramus, (*i. e.* We are ignorant) Is uſed by the *grand jury* impanelled on the inquiſition of criminal cauſes, when they reject the evidence as too weak or defective to make good the preſentment againſt a perſon ſo as to put him on the trial, in which caſe they write this word on the *bill of indictment*; the effect whereof is, that all farther inquiry and proceedings againſt that party, for that fault wherewith he is charged, is thereby ſtopped, and he is delivered without further anſwer. 3 *Inſt.* 30. *i. e.* for that time. For, if better evidence can be procured, (or partiality in the jury is ſuſpected) a new bill of indictment may be preferred, at another ſeſſions, *&c.*

Ignorance, *(Ignorantia)* Which is want of knowledge of the law, ſhall not excuſe any man from the penalty of it. Every perſon is bound at his peril to take notice what the law of the realm is; and *ignorance* of it, though it be invincible, where a man affirms that he hath done all that in him lies to know the law, will not excuſe him. *Doct. & Stud.* 1. 46.

And an infant of the age of diſcretion ſhall be puniſhed for crimes, though he be *ignorant* of the law; but infants of tender age, have *ignorance by nature* to excuſe them; ſo perſons *non compos* have *ignorance* by the hand of God. *Stud. Comp.* 83. 84.

Though *ignorance* of the *law* excuſeth not, *ignorance* of the *fact* doth: as if a perſon buy a horſe or other thing in open market, of one that had no property therein, and not knowing but he had right; in that caſe he hath good title, and the ignorance ſhall excuſe him. *Doct. & Stud.* 309. But if the party bought the horſe out of the market; or knew the ſeller had no right, the buying in open market, would not have excuſed. *Ibid.* 5 *Rep.* 83. Alſo where a man is to enter into land, or ſeize goods, *&c.* he muſt ſee that what he does be rightly done, or his *ignorance* ſhall be no excuſe. *Wood's Inſt.* 608. See *Black. Com.* 4 *V.* 27.

Ikenild-Street, Is one of the four famous ways that the *Romans* made in *England*, called *Stratum Icenorum*, becauſe it took beginning *ab Icenis.* which were the people that inhabited *Norfolk*, *Suffolk* and *Cambridgeſhire.* Camb. Brit. f. 343. Leg. Edw. Conf. c. 12. See *Watling-Street.*

Ilet, By contraction *ight*, ſignifies a little iſland; *Blount.*

Illeviable, A debt or duty that cannot, or ought not to be levied; as *nihil* ſet upon a debt is a mark for *illeviable*,

Illiterate. If an *illiterate* man be to ſeal a deed, he is not bound to do it, if none be preſent to read it, if required; and reading a deed falſe, will make it void. 2 *Rep.* 3. 11. See *poſt.* A man may plead *non eſt factum* to a deed read falſe; as where a releaſe of an annuity was read to an illiterate perſon, as a releaſe of the arrears only, *&c.* agreed to be releaſed. *Moor* 148. If there is a time limited for a perſon to ſeal a writing, in ſuch caſe *illiteracy* ſhall be no excuſe, becauſe he might provide a ſkilful man to inſtruct him; but when he is obliged to ſeal it upon requeſt, *&c.* there he ſhall have convenient time to be inſtructed. 2 *Nelſ. Abr.* 946.

If a man for great age cannot ſee to read, and ſeals an obligation upon falſe reading, he ſhall avoid it. 11 *Rep.* 28. Reſolved, though he was lettered; for now he has all his intelligence by hearing. Alſo *vide* 9 *H.* 6. 59. *b.* 10 *H.* 6. 6. 10. 2 *Rep.* 9. *Skin.* 159. 47 *E.* 3. 3. *b.* 17. 44 *Ed.* 3. 23. 44 *Aſſ.* 30. 3 *Ed.* 3. 31. *b.* 32. *a.* 11 *Rep* 27. *b.* *Piggot's* caſe.

Illuminare, To *illuminate*, to draw in gold and colours the initial letters, and the occaſional pictures in manuſcript books—— *Ita ipſe epiſcopus libros ſcribere, illuminare, & ligare non faſtidiret.* Brompton, *ſub anno* 1076.

1676. Thoſe perſons who particularly practiſed this art, were called *illuminatores*, whence our *limners*.

Images, How to be defaced, 3 & 4 *Ed.* 6. *c.* 10.

Imagining (or *compaſſing*, &c.) **the King's Death**, is high treaſon, 25 *Ed.* 3. *c.* 2. A *Queen regnant* is within the words of the act. 1 *Hal. P. C.* 101. The terms *compaſſing*, *imagining*, are ſynonimous. And there muſt be ſufficient proof of an *Overt* act to convict. *Black. Com.* 4 *V.* 76, 77, 78, 79, *&c.*

Imbargo, (*Span.* in Lat. *Navium detentio*) Is a ſtop, ſtay, or arreſt upon ſhips or merchandiſe, by public authority. *Stat.* 18 *Car.* 2. *c.* 5. This arreſt of ſhipping is commonly of the ſhips of foreigners in time of *war* and difference with ſtates to whom they are belonging: but by an ancient ſtatute, foreign merchants in this kingdom are to have forty days notice to ſell their effects and depart, on any difference with a foreign nation. 27 *Ed.* 3. *c.* 17. The King may grant *imbargoes* on ſhips, or employ the ſhips of his ſubjects, in time of danger, for the ſervice and defence of the nation; but a warrant to ſtay a ſingle ſhip, on a private account, is no legal *imbargo.* *Moor* 892. *Carth.* 297. Prohibiting commerce in the time of war; or of plague, peſtilence, *&c.* is a kind of *imbargo on ſhipping.*

Imbaſing of *money*, (from *adultero* to corrupt or mingle) Signifies to mix ſpecies with an *allay* below the ſtandard of ſterling; which the King by his prerogative may do, and yet keep it up to the ſame value as before: *Inhanſing* of it, is when it is raiſed to a higher rate, by proclamation. 1 *Hale's Hiſt. P. C.* 192.

Imbezle, To ſteal, pilfer, or purloin; or where a perſon entruſted with goods, waſtes and diminiſhes them. The word *imbezle* is mentioned in ſeveral ſtatutes, particularly relating to workers of wool, *&c.* as the ſtat. 7 *Jac.* 1. *c.* 7. and 1 *Ann. ſtat.* 2. *c.* 18. By the former of which, *imbezilers* of wool, yarn, or other materials for making of cloth, are to make ſatisfaction, or be whipped and put in the ſtocks; and by the latter they are to forfeit double damages, and be committed to the houſe of correction till paid, *&c.* By a late ſtatute, perſons that *imbezil* or illegally diſpoſe of any woollen, linen, fuſtian, cotton, or iron materials; or gloves, leather, ſhoes, *&c.* they are intruſted to work up, ſhall forfeit double the value, or be ſent to the houſe of correction, and there whipped, and kept to hard labour fourteen days; and for a ſecond offence, forfeit four times the value, *&c.* And buyers and receivers are liable to the ſame penalties. *Stat.* 13 *Geo.* 2. *c.* 8.

If any ſervant *imbezils*, purloins, or makes away his maſter's goods, to 40 *s.* value, it is made felony without benefit of clergy, by 12 *Ann.* *c.* 7.

Imbezzling the King's armour or *ſtores* is felony, by 31 *El.* *c.* 4. As to *naval* ſtores the benefit of clergy is taken away by 22 *Car.* 2. *c.* 5. Other inferior imbezzlements and miſdemeanors, that fall under this denomination, are puniſhed by ſtatute, 1 *Geo.* 1. *c.* 25. with fine and impriſonment.

Imbezzling the public money. If by high officers, the uſual method is by impeachment in parliament —At Common law the offender is ſubject to a diſcretionary fine and impriſonment. *Black. Com.* 4 *V.* 121, 122.

Imbezzling or vacating records, is a *felonious offence* againſt *public juſtice.* See 8 *Hen.* 6. *c.* 12. *Black. Com.* 4 *V.* 128.

Imbracery. See *Embracery.*

Imbrocus. A brook, a gut, a water-paſſage. *Somner of Ports and Forts*, *p.* 43.

Imbroidery. See *Embroidery.*

Immunities. King *Hen.* 3. by charter granted to the citizens of *London*, a general *immunity* from all tolls, *&c.* except cuſtoms and priſage of wine. *Cit. lib.* 94. Vide *Prærogative*, *London.*

Impalare, Is to put in a pound, by the laws of *Hen.* 1. *c.* 9.

Impanel, (*Impanellare Juratis*) Signifies the writing and entering into a parchment ſchedule by the ſheriff, the names of a jury ſummoned to appear for the performance of ſuch public ſervice as juries are employed in. *Impanulare* was ſometimes a privilege granted that a perſon ſhould not be *impanelled* or returned upon a jury.—— *Non ponatur nec* impanuletur *in aliquibus juratis*, *&c.* Paroch. Antiq. 657. See *Panel*, and *Kennet's Gloſſary.*

Imparlance, (*Interlocutio, vel licentia interloquendi*) Is derived from the Fr. *parler*, to ſpeak, and in the *Common law* is taken for a petition in court of a day to conſider, or adviſe what anſwer the defendant ſhall make to the action of the plaintiff; being a continuance of the cauſe till another day, or a larger time given by the court.

Imparlance is either
General
or
Special.

A *general imparlance* is ſet down and entered in general terms, without any ſpecial clauſe, thus; *and now at this day to wit, on* Thurſday *next after the* Octave *of* St. Hillary, *in the ſame time, until which day the aforeſaid* C. D. *the defendant had licence to* imparle *to the bill aforeſaid, and then to anſwer*, &c.

Special imparlance, is where the party deſires a farther day to anſwer, adding alſo theſe words; *Saving all advantages, as well to the juriſdiction of the court, as to the writ and declaration*, &c. *Kitch.* 200. This *imparlance* is had on the declaration of the plaintiff; and ſpecial *imparlance* is of uſe where the defendant is to plead ſome matters which cannot be pleaded after a general *imparlance.* 5 Rep. 75.

Imparlance is generally to the next term; and if the plaintiff amend his declaration after delivered or filed, the defendant may *imparl* to the next term, if the plaintiff do not pay coſts; but if he pay coſts, which are accepted, the defendant cannot *imparl.* 2 *Lil. Abr.* 35. Alſo if the plaintiff declares againſt the defendant, but doth not proceed in three terms after; the defendant may *imparl* to the next term. *Ibid.*

Cauſes of imparlance, &c.

The not delivering a declaration in time is ſometimes the cauſe of *imparlance* of courſe: and where the defendant's caſe requires a ſpecial plea, and the matter which is to be pleaded is difficult; the court will, upon motion, grant the defendant an *imparlance*, and longer time to put in his plea, than otherwiſe by the rules of the court he ought to have: if the plaintiff keeps any deed, or other thing from the defendant, whereby he is to make his defence, *imparlance* may be granted till the plaintiff delivers it to him, or brings it into court, and a convenient time after to plead. *Hil.* 22 *Car.* 1 *B. R.*

In criminal proceedings.

An *imparlance* being prayed on a defendant's appearing to anſwer an information, it was ſaid *imparlance* was formerly from *day* to *day*, but now from one *term to another*, on the crown ſide; and it was ruled that the defendant ſhould have the ſame time to *imparl* that the proceſs would have taken up, if he had ſtood out till the attachment or *capias*; for when he comes in upon that, he muſt plead *inſtanter.* 1 *Salk.* 367. *Mod. Caſes* 243. And if proceſs had been continued, he might have been brought in the ſame term upon an attachment; and then there could be no *imparlance*, but he ought to plead *inſtanter.* 2 Nelſ. Abr. 947.

Where imparlances are not allowed.

There are many caſes wherein *imparlances* are not allowed; no *imparlance* is granted in an *homine replegiando*; or in an aſſiſe, unleſs on good cauſe ſhewn: nor ſhall there be an *imparlance* in an action of ſpecial *clauſum fregit*; though it is allowed in general actions of treſpaſs. *Hil.* 9 *W.* 3. 3 *Salk.* 186. Where an attorney, or other privileged perſon of the court, ſues another, the defendant cannot *imparl*, but muſt plead preſently: if the plaintiff ſues out a ſpecial original, wherein the cauſe of action is expreſſed, and the defendant is taken on a ſpecial *capias*, he ſhall not have an *imparlance*, but ſhall plead as ſoon as the rules are out. 2 *Lil.* 35, 36.

Of pleadings afterwards.

As to pleadings on *imparlances*; a plea to the juriſdiction, may not be pleaded after general *imparlance*. Raym. 34. After *imparlance*, the defendant cannot plead in *abatement*; if he doth, and the plaintiff tenders an iſſue, whereupon the defendant demurs, and the plaintiff joins in demurrer, ſuch plea is not peremptory; becauſe the plaintiff ought not to have joined in demurrer, but to have moved the court, that the defendant might be compelled to plead in chief. *Allen* 65. Though a defendant may not plead in abatement after a general *imparlance*; yet, if it appear by the record that the plaintiff hath brought his action before he had any cauſe, the court *ex officio* will abate the writ. 2 *Lev.* 197.

What may not be done after imparlance, and where the want of it is error, &c.

The defendant cannot have *oyer* of a deed in a common caſe, after *imparlance*: and a tender after *imparlance*, is naught. 2 *Lev.* 190. *Lutw.* 238. If it appears upon the record, that an *imparlance* was due, and denied, it is error; but then ſuch error muſt appear on the record. 3 *Salk.* 168. It has been held, that if the defendant doth not appear on a *dies datus*, the plaintiff ſhall not have judgement by default, as he may on *imparlance*, becauſe the *dies datus* is not ſo ſtrong againſt him as an *imparlance*; and therefore the plaintiff muſt take proceſs againſt the defendant for not appearing at the time. *Moor* 79. 2 *Nelſ.* 947.

Modern practice as to imparlances, &c.

By late *orders* of court, where a defendant is arreſted by proceſs out of *B. R.* in which the cauſe of action is ſpecially expreſſed; or a copy of proceſs is delivered, and the plaintiff hath declared; the defendant ſhall not have liberty of *imparlance*, without leave firſt granted, but ſhall plead within the time allowed a defendant proſecuted by original writ. *Ord. Hil.* 2 *Geo.* 2. And upon all proceſſes, returnable the firſt or ſecond return of any term, the declaration ſhall be delivered with notice to plead in eight days after delivery, where the defendant lives above twenty miles from *London*, &c. without any *imparlance*; and, on default of pleading, the plaintiff may ſign judgment. *Ord. Cur. Trin.* 5 & 6 *Geo.* 2. Vide *New Abr.* tit. *Pleading*, and 14 *Vin. Abr.* tit. *Imparlance*. Where time is really wanting to plead, the method of obtaining it is by a judges order, on ſummons, but then the defendant is uſually tied down to terms, ſuch as pleading iſſuably, rejoining gratis, (*i. e.* without rule to rejoin) and taking ſhort notice of trial. This is, as to cauſes in *London* or *Middleſex*. In country cauſes time is uſually obtained without terms, if the aſſizes are at a ſufficient diſtance, ſo that the plaintiff can make up his record, and give notice of trial in due time.

Imparſonee, A parſon *imparſonee*, *perſona imparſonata*, is he that is inducted, and in poſſeſſion of a benefice, *Dyer*, *fol.* 40. *num.* 72. ſays a dean and chapter are parſons *imparſonees* of a benefice appropriate unto them. *Cowell.*

Impeachment, (from the Lat. *impetere*) Is the accuſation and proſecution of a perſon for treaſon, or other crimes and miſdemeanors. Any member of the Houſe of Commons may not only impeach any one of their own body, but alſo any Lord of parliament, &c. And thereupon *articles* are exhibited on behalf of the Commons, and managers appointed to make good their charge and accuſation; which being done in the proper judicature, ſentence is paſſed, &c. And it is obſerved, that the ſame evidence is required in an *impeachment* in parliament, as in the ordinary courts of juſtice: but not in bills of attainder. See index to *State Trial*, *Vol.* 6. tit. *Evidence*.

An impeachment before the Lords by the Commons of *Great Britain*, in parliament, is a proſecution of the known and eſtabliſhed law, and hath been frequently put in practice; being a preſentment to the moſt high and ſupreme court of criminal juriſdiction, by the moſt ſolemn grand inqueſt of the whole kingdom. (1 *Hal. P. C.* 150.) A commoner cannot however be impeached before the Lords for any capital offence, but only for high miſdemeanors: (*Rot. Parl.* 4 *Ed.* 3. *n.* 2 & 6. 2 *Brad. Hiſt.* 190. *Selden Judic. in Parl. ch.* 1.

A Peer may be impeached for any crime. The articles of impeachment are a kind of bills of indictment, found by the Houſe of Commons, and afterwards tried by the Lords; who are in caſes of miſdemeanors conſidered not only as their own peers, but as the peers of the whole nation. This is a cuſtom derived to us from the conſtitution of the ancient *Germans*; who in their great councils ſometimes tried capital accuſations relating to the public: "*Licet apud concilium accuſare quoque et diſ-* "*crimen capitis intendare.*" *Tacit de mor. Germ.* 12,

See on this ſubject. *Black. Com.* 4 *V.* 256, 257, 258. And *Monteſquieu's L'Eſprit des Loix. l.* 11. *c.* 6. *vol.* 1. of the *quarto edition*, 208, 210. particularly *fol.* 217, 218.

No pardon under the Great Seal, can be pleaded to an *impeachment* by the Commons in parliament. *Stat.* 12 & 13 *W.* 3. *c.* 2.

Impeachment of Waſte, (*Impetitio vaſti*, from the Fr. *empeſchement*, i. e. *impedimentum*) Signifies a reſtraint from committing of waſte upon lands or tenements; or a demand of recompence for waſte done by a tenant who hath but a particular eſtate in the land granted: but he that hath a leaſe to hold *without impeachment of waſte*, hath by that ſuch an intereſt given him in the land, &c. that he may make waſte without being *impeached* for it; that is, without being queſtioned, or any demand of recompence for the *waſte* done. 11 *Rep.* 82. *b.* Bills in equity are often filed, as a preventive remedy, to obtain *injunctions* to ſtay *waſte*, which are readily granted where proper caſes are made out, for courts of equity to ground their injunctions on. See *Waſte*.

Impechiare, (French *empecher*, Latin *impetere*) To impeach, to accuſe and proſecute, for felony, or treaſon, —*Et promiſit Regi Navarræ quod nunquam eum* impechiaret *pro morte dicti* Caroli *de* Hiſpania. *Hen. de Knighton ſub anno* 1256. *Spelman* and *Somner* tell us, that it is derived from the Lat. *impetere*, which is to accuſe, or *in jus vocare*, from whence *impetitio* ſignifies *an accuſation*, viz. *ſine impetitione vaſti*, is without impeaching or accuſing him of waſte. See *Impeachment*.

Impediatus, *Expeditatus*, *impediati canes*, Dogs *lawed* and diſabled from doing miſchief in the foreſts, and purlieus of them.——*Omnes canes infra foreſtam ſolebant eſſe* impediati *aut amputati ſiniſtro ortello*. Cowell. See *Expeditate*.

Impediens, A defendant, or deforciant. *Cowell.*

Impediments in Law. Perſons under *impediments* are thoſe within age, under coverture, *non compos mentis*, in priſon, beyond ſea, &c. who, by a ſaving in our laws, have time to claim, and proſecute their rights, after the *impediments* removed, in caſe of *fines* levied, &c. 1 *R.* 3. *c.* 7. 4 *H.* 7. *c.* 24. See *ſtat. Limitations*, 21 Jac. 1. c. 16. And 4 Ann. c. 16. ſ. 19.

Imperiale, A ſort of very fine cloth. *Cowell.*

Impeſcatus, Impeached, or accuſed. *Pat.* 18. *Edw.* 1.

Impetitio, Accuſation or impeachment: As, *ſine* impetitione *vaſti*, or, *ſine impedimento vaſti*, i. e. without impeachment of waſte, the party ſhall not be queſtioned or accuſed for any waſte. *Cowell.*

Impetration, (*Impetratio*) Signifies an obtaining any thing by requeſt and prayer: And in our ſtatutes it is a pre-obtaining of church benefices in *England* from the court of *Rome*, which belonged to the gift and diſpoſition of the King, and other lay patrons of this realm; the penalty whereof was the ſame with *proviſors*. 25 Ed. 3. 38 Ed. 4. c. 1.

Impierment, Is uſed for impairing or prejudicing; as to the *impierment* and diminution of their good names, &c. 23 *Hen.* 8. *c.* 9.

Implead, To ſue or proſecute by courſe of law; from the Fr. *Plaider*.

Implements, (from the Lat. *impleo*, to fill up) Things neceſſary in any trade or myſtery, without which the work cannot be performed; alſo the furniture of an houſe, as all houſhold goods, *implements*, *&c.* And *implements of houſhold* are tables, preſſes, cupboards, bedſteads, wainſcot, and the like: In this ſenſe, we find this word often in gifts and conveyances of moveables. *Terms de Ley.*

Implication, Is where the law doth *imply* ſomething that is not declared between parties in their deeds and agreement: And when our law giveth any thing to a man, it giveth *implicitly*, whatſoever is neceſſary for the enjoying the ſame.

Of omiſſions helped by implication, &c.

The want of words in ſome caſes may be helped by *implication*; and ſo one word or thing, or one eſtate given, ſhall be implied by another: There is an *implication* in wills and deviſes of lands, whereby eſtates are gained; as if a huſband deviſes the goods in his houſe to his wife, and that after her deceaſe his ſon ſhall have them, and his houſe; though the houſe be not deviſed to the wife by expreſs words, yet it has been held, that ſhe hath an eſtate for life in it by *implication*, becauſe no other perſon could then have it, the ſon and heir being excluded, who was to have nothing till after her deceaſe. 1 *Ventr.* 223.

But where it may be reaſonably intended, that the deviſor meant as well the one as the other, in ſuch caſe *his intention ſhall never be conſtrued in prejudice to the heir at law*: For inſtance; A man deviſed part of his lands to his wife for life, and that the ſame and all the reſt of his lands ſhould remain to his youngeſt ſon, and the heirs of his body, after the death of the wife; here was no expreſs deviſe of the reſt of the lands to his wife, and ſhe ſhall not have them by *implication*, becauſe the eldeſt ſon and heir at law was not excluded, who ſhall have them during the life of the wife, till the deviſe to the youngeſt ſon takes effect, for they ſhall deſcend to the heir in the mean time. *Moor* 123. Though *Croke*, (who reports the ſame caſe) ſays, it was adjudged the wife ſhould have the whole. *Cro. Eliz.* 15.

Of eſtates raiſed by implication.

Eſtates for life, and eſtates-tail, may be raiſed by *implication* in wills; a teſtator had *three* ſons, the eldeſt ſon dying, leaving his wife with child, to whom the father deviſed an annuity *in ventre ſa mere*, and if his middle ſon died before he had any iſſue of his body, remainder over, *&c.* And it was reſolved, that ſuch ſon had an eſtate-tail by *implication*. *Moor* 127. It is ſaid a fee-ſimple eſtate ſhall not ariſe by *implication* in a will; tho' there is a perpetual charge impoſed by the deviſor, on the deviſee, *&c.* *Bridgm.* 103. Alſo it hath been adjudged, that where a particular eſtate is deviſed by will expreſly, a contrary intent ſhall not be *implied* by any ſubſequent clauſe. And *implication* is either *neceſſary* or *poſſible*, and wherever an eſtate is raiſed by that means in a will, it muſt be by a *neceſſary implication*; for the deviſee muſt *neceſſarily* have the thing deviſed, and no other perſon can have it. 1 *Salk.* 236. 2 *Nelſ. Abr.* 494.

No *implication* ſhall be allowed againſt an *expreſs eſtate*, limited by *expreſs words*, to drown the ſame. *Salk.* 266. There are *conditions* and *covenants*, *implied* by law, in deed and grants: And *implication* will ſometimes help law proceedings, and ſupply defects. See *Intendment* and *Uſe*. And *Black. Com.* 2 *V.* 381.

Rules, &c. *concerning implication.*

It is a general rule, that where an eſtate is to be raiſed by implication, *it muſt be a neceſſary and inevitable implication*, and ſuch as that the words can have no other conſtruction whatſoever. *Arg. Caſes in Chan.* in Lord *Talbot*'s time, in 9 *Mich.* 1733. in the caſe of Lord *Glenorchy* v. *Boſville*.

An implication cannot be intended by deed, unleſs there are *apt* words, but otherwiſe in a will. *Brownl.* 153. *Mich.* 15 *Jac. Nevil* v. *Nevil.*

An implied intent muſt not, without clear expreſſion, alter the equitable general law. *Arg. Hil.* 28 & 29 *Car.* 2. 1 *Chan. Caſes* 297. in the caſe of *Ford Lord Grey* v. *Lady Grey & al'.*

An eſtate by implication was never thought of in a deed, nor in a will but in caſe of neceſſity. 4 *Mod.* 156. *Mich.* 4 *W. & M. B. R. Davis* v. *Speed.*

No implication ſhall be allowed againſt an expreſs eſtate *limited by expreſs words*. 1 Salk. 226. Hil. 5 W. & M. B. R. Goodright *v.* Corniſh.

An expreſs eſtate for life cannot be enlarged by implication, but by expreſs words it may; *per Wright* K. and 2 Ch. J. and 1 J. *Mich.* 1703. 2 *Vern.* 449. *Bumfield* v. *Popham.* See *Tail*, *Will.*

Importation, (*Importatio*) Is where goods and merchandize are brought into this kingdom from other nations. 12 *Car. c.* 4.

Impoſſibility. A thing which is *impoſſible* in law, is all one with a thing *impoſſible* in nature: And if any thing in a bond or deed is *impoſſible* to be done, ſuch deed, *&c.* is void. 21 *Car.* 1. *B. R.* Yet where the condition of a bond becomes *impoſſible* by the act of God, in ſuch caſe, it is held the obligor ought to do all in his power towards a performance: As when a man is bound to enfeoff the obligee and his heirs, and the obligee dies, the obligor muſt enfeoff his heir. 2 *Co. Rep.* 74. See *Black. Com.* 2 *V.* 156.

Impoſt, (from the Lat. *impono*) Signifieth the tax received by the Prince, for ſuch merchandiſe as are *brought into any haven* within his dominions from foreign nations. 31 *Eliz.* 5. It may in ſome ſort be diſtinguiſhed from *cuſtom*, becauſe *cuſtom* is rather that profit the prince maketh of wares *ſhipped* out; yet they are frequently confounded. *Cowell.*

Impoſtors, (*Religious*) Thoſe who falſely pretend an extraordinary commiſſion from heaven; or terrify and abuſe the people with falſe denunciations of judgments. They are puniſhable by the Temporal courts with fine, impriſonment, and infamous corporal puniſhment. 1 *Hawk. P. C.* 7.

Impotency, Is a canonical diſability to avoid marriage in the Spiritual Court. The marriage is not void *ab initio*, but voidable only by ſentence of ſeparation, but to be actually made during the life of the parties. See *Black. Com.* 1 *V.* 434, 435.

Impotentiæ, property *ratione*. A qualified property may ſubſiſt with relation to animals *feræ naturæ*, *ratione impotentiæ*, on account of their own inability. As when hawks, herons, or other birds build in my trees, or conies or other creatures make their neſts or burrows in my land, and have young ones there; I have a qualified property in thoſe young ones, till ſuch time as they can fly or run away, and then my property expires, *Carta de foreſt.* (9 *Hen.* 3. *c.* 13.) but, till then, it is in ſome caſes treſpaſs, and in others felony, for a ſtranger to take them away. 7 *Rep.* 17. *Lamb. Eiren.* 274. *Black. Com.* 2 *V.* 394.

Impreſſing Seamen. As this is a ſubject of great conſequence, and the power much diſputed, we ſhall give the ſentiments of an eminent author thereon, without a comment.

The power of impreſſing men for the ſea ſervice by the King's commiſſion, has been a matter of ſome diſpute, and ſubmitted to with great reluctance; though it hath *very clearly* and learnedly been ſhewn by Sir *Michael Foſter*, (*Rep.* 154. *Broadfoot's* caſe) that the practice of impreſſing, and granting powers to the Admiralty for that purpoſe, is of very ancient date, and hath been *uniformly continued* by a regular ſeries of precedents to the preſent time: Whence he concludes it to be part of the Common law. The difficulty ariſes from hence, that no ſtatute has expreſly declared this power to be in the crown, though *many* of them very ſtrongly imply it. The ſtat. 2 *Ric.* 2. *c.* 4. ſpeaks of mariners being arreſted and retained for the King's ſervice, as of a thing well known, and practiſed without diſpute; and provides a remedy againſt their running away. By a later ſtatute, (2 & 3 *Ph. & M. c.* 16.) if any waterman, who uſes the river *Thames*, ſhall hide himſelf during the execution of any commiſſion of preſſing for the King's ſervice, he is liable to heavy penalties. By another, (5 *Eliz. c.* 5.) no fiſherman ſhall be taken by the Queen's commiſſion to ſerve as a mariner; but the commiſſion ſhall be firſt brought to two juſtices of the peace, inhabiting near the ſea-coaſt where the mariners are to be taken, to the intent, that the juſtices may chuſe out, and return ſuch a number of able bodied men, as in the commiſſion are contained, to ſerve her Majeſty. And, by others, (7 & 8 *W.* 3. *c.* 21. 2 *Ann. c.* 6. 4 & 5 *Ann. c.* 19. 13 *Geo.* 2. *c.* 17, *&c.*) eſpecial protections are allowed to ſeamen in particular circumſtances, to prevent them from being impreſſed. All which do moſt evidently *imply* a power of impreſſing to reſide ſomewhere; and, if any where, it muſt from the ſpirit of our conſtitution, as well as from the frequent mention of the King's commiſſion, reſide in the crown alone. *Black. Com.* 1 *V.* 418, 419.

The ſame author obſerves, that this method of impreſſing is *only* defenſible from *public neceſſity*, to which all private conſiderations muſt give way. 1 *V.* 419. For further ſatisfaction on this important ſubject, we refer the reader to *Comberbach's Rep.* 245, and to *Foſt. Rep.* 154, *&c.* Where the ſubject is very *fully* and *learnedly* treated.

Impreſt-Money, (from the prepoſition *In*, and Fr. *preſt, paratus*) Is money paid on inliſting ſoldiers.

Impretiabilis, Signifies invaluable, in which ſenſe it is often mentioned in *Mat. Pariſ.*

Imprimery, *(Fr.)* A print, or impreſſion; and the art of printing, alſo a printing-houſe, are called *imprimary*. Stat. 14 Car. 2. c. 33.

Impriſii, Are thoſe who ſide with, or take the part of another, either in his defence, or otherwiſe.——*Omnes homines* & Impriſii *Domini* Ludovici, *&c.* Mat. Weſtm. —*Nos erimus* Impriſii *Regis*, *&c.* Mat. Pariſ. 127.

Impriſonment, *(impriſonamentum)* Is the reſtraint of a man's liberty under the cuſtody of another; and extends not only to a gaol, but to a houſe, ſtocks, or where a man is held in the ſtreet, *&c.* for in all theſe caſes the party ſo reſtrained is ſaid to be a priſoner, ſo long as he hath not his liberty freely to go about his buſineſs, as at other times. *Co. Lit.* 253.

None ſhall be impriſoned *but by the lawful judgment of his peers*, or *by the law of the land*. M. C. 9 H. 3. c. 2. 25 Ed. 3. ſtat. 5. c. 4. Impriſonment according to law, or the cuſtom of *England*; or by proceſs, and courſe of law. 2 *Inſt.* 46, 50, 282. And no perſon is to be impriſoned, but as the law directs, either by command and order of a court of record, or by lawful warrant, or the King's writ; by which one may be lawfully detained to anſwer the law. 2 *Inſt.* 46. 3 *Inſt.* 209.

At Common law, a man could not be impriſoned in any caſe, unleſs he were guilty of ſome force or violence; for which his body was ſubject to impriſonment, as one of the higheſt executions of the law: but impriſonment is inflicted by ſtatute in many caſes. 3 *Rep.* 11. Tho' (ſee *Magna Chart.* 9 *H.* 3. *c.* 29.) whenever the Common law, or any ſtatute, gives power to impriſon, there it is lawful and juſtifiable; but he who doth it in purſuance of a ſtatute, muſt be ſure exactly to follow the ſtatute in the order and manner of doing thereof. *Dyer* 204. 13 *E.* 1.

A juſtice of peace may cauſe offenders to be impriſoned, and may himſelf require any man to give ſecurity of the peace or good behaviour, *where he hath cauſe*, and if he refuſe may impriſon him. *Bro. Treſ.* 177. If a warrant of commitment be for impriſoning a man until further order, *&c.* it has been held ill; for it ſhould be till the party is delivered by due courſe of law. 1 *Rol. Rep.* 337. It is the ſame when a perſon is impriſoned on a warrant, without ſhewing any cauſe for which he is committed: and where a perſon was committed to priſon by warrant from a Secretary of State, without aſſigning any cauſe, *&c.* it was adjudged, that he ought to be diſcharged for that reaſon; but then another warrant was returned of the ſame Secretary, in which the firſt warrant was recited, and that, upon farther examination, he commanded the gaoler to detain him ſafely, for ſuſpicion of high treaſon; and it was ſaid this was no cauſe to detain him, becauſe this ſecond warrant referred to the firſt, which was no warrant at all; beſides, there was no ſpecial cauſe of ſuſpicion alledged, nor for what ſpecies of treaſon. *Palm.* 558. 1 *Rol. Rep.* 219.

In the caſe of *John Wilkes*, Eſq. it was reſolved, that a member of parliament is intitled to the privilege of being free from arrects in all caſes, except *treaſon, felony, and* ACTUAL BREACH *of the peace*; therefore ought to be diſcharged from impriſonment without bail. *Vid. Wilſ. par.* 2. 159. And ſee the opinion of the court of Common Pleas, with reſpect to impriſonment, under general warrants from the Secretary of State. *Ibid. from fol.* 151 *to* 160. And *from fol.* 275 *to* 292.

In all actions, *quare vi & armis*, if judgment be given againſt the defendant, he ſhall be fined and impriſoned, becauſe to every fine, impriſonment is incident: and therefore, where the defendant is fined for a contempt to any court of record, he may be impriſoned till the fine is paid. 8 *Rep.* 60. But with reſpect to impriſoning for the fine, in actions of *treſpaſs*, the *capiatur pro fine* is taken away, and other proviſions in lieu thereof made, (*viz.* by plaintiff paying it, and being allowed in coſts.) *per* 5 *W.* & *M. c.* 12.

See further as to *impriſonment*, *Black. Com.* 1 *V.* 134, 136, 137. 3 *V.* 127. 4 *V.* 116, 218, 370, 429. In what caſes perſons impriſoned may be delivered on bail; or by *habeas* corpus, *&c.* ſee *Bail* and *Habeas Corpus*.

Impropriation, Is properly ſo called when a benefice eccleſiaſtical is in the hands of a *layman*; and *appropriation*, when in the hands of a *biſhop*, *college*, or *religious houſe*, though ſometimes they are confounded. There are computed to be in *England* 3845 *impropriations*; and on the diſſolution of monaſteries they were granted to lay perſons by the King's patents, *&c.* 31 *H.* 8. *c.* 13. *Vide* Appropriation, *and* Black. Com. 1 V. 386.

Improvement. See *Approvement.*

Impruiare, To improve land.

Impruiamentum, The improvement of lands. *Cartular. Abbat. Glaſton. MS. pag.* 50. Or rather the *improvement* itſelf.

In auter droit, In another's right; as where executors or adminiſtrators ſue for a debt or duty, *&c.* of the teſtator or inteſtate.

Inblaura, Profit or product of ground. *Cowell.*

Inborh and Outborh, Saxon. See *Cambden's Britan. in Ottadinis*, where he ſays, ſpeaking of *Edelingham*, the barony of *Patrick* Earl of *Dunbare*, which alſo was *Inborow* and *Outborow* between *England* and *Scotland*, as we read in the books of *Inquiſitions*, that is, (as he believes) he was to allow, and to obſerve in this part the ingreſs and egreſs of thoſe who travelled to and fro between both realms; for *Engliſhmen* in ancient time called in their language an *entry* and *forecourt* or gate-houſe, inborow. *Cowell.*

Incaſtellare, To reduce a thing to ſerve inſtead of a caſtle; and it is often applied to churches.—*Qui poſt mortem patris eccleſiam* incaſtellatam *retinebat*. Gervaſ. Dorob. anno 1144.

In caſu conſimili. See *Caſu conſimili.*

In caſu proviſo. Caſu proviſo.

Incauſtum, or **Encauſtum,** Ink. *Quæ propter* encauſti & *chartæ vitium aboleri incipiebat*. Fleta, lib. 2. c. 27. par. 5.

Incendiaries. Burning of houſes maliciouſly, to extort ſums of money from thoſe whom the malefactors ſhould ſpare, was made treaſon the firſt year of King *H.* 6. 1 *Hale's Hiſt. P. C.* 270. The like offences of firing houſes and ſending letters demanding money of perſons, *&c.* is felony, by *Stat.* 9 *Geo.* 1. *c.* 22. Vide *Arſon* and *Waltham Blacks*.

Inception. The ſame perſon is patron and incumbent, and he deviſes the next avoidance; it was objected, that by his death the church is void, and then the preſentation is a *choſe en action*, and not grantable, and the deviſe takes not effect till after the death of deviſor, and therefore void; but held a good deviſe, becauſe it has inception in his life. *Rol. Rep.* 214. 13 *Jac. B. R.* in caſe of *Harris* v. *Auſtin.* 3 *Bulſt.* 42. *S. P.*

Leaſe to *A.* for life, remainder to the right heir of *A.* this is a good remainder to veſt upon the death of *A.* for the inception in his life. *Rol. Rep.* 215. cites 7 *H.* 4.

Inſtitution gives inception to a lay fee, ſo that if a caveat be entered after to prevent induction, a prohibition ſhall be granted. 2 *Rol.* 294. *Prohibition* (M) *pl.* 14.

Incertainty, Is that which oppoſeth *certainty,* where a thing is ſo ambiguouſly ſet down, that one cannot tell how to underſtand it: and this is ſaid to be the mother of contention. The queſtions of *incertainty* ariſe ſometimes on matter of record; as writs, counts, pleas, verdicts, *&c.* and ſometimes on deeds or writings, or upon contracts, *&c.* 5 *Rep.* 121. *Plowd.* 25.

In law proceedings, *incertainty* will make them void; for all proceedings at law are to be certain and affirmative, that the defendant may be at a certainty as to what he ſhould anſwer, *&c.* *Plowd.* 84. If the count and verdict in an appeal be incertain, there can be no judgment given thereon; and it is the ſame on an indictment. 3 *Mod.* 121.

Incertainty in deeds renders them void; but ſometimes a term for years granted by leaſe, may be made certain by reference to a certainty; and *incertainty* may be reduced to certainty; by matter *ex poſt facto,* implication, *&c.* *Plowd.* 6. 273. 6 *Rep.* 20. If there are two men of one name, and a deviſe of lands, *&c.* is to one of that name, without any diſtinction, it will be void for incertainty; tho' perhaps an averment may make it good. 2 *Bulſt.* 180. Incertainty in declarations of uſes of fines of lands, *&c.* is rejected in law; for otherwiſe there would be no certain inheritances. 9 *Rep.*

Inceſt. In the year 1650, when the ruling powers found it for their intereſt to put on the ſemblance of a very extraordinary ſtrictneſs and purity of morals, inceſt and wilful adultery were made capital crimes. But at the reſtoration, when men, from an abhorrence of the hypocriſy of the late times, fell into a contrary extreme, of licentiouſneſs, it was not thought proper to renew a law of ſuch unfaſhionable rigour. And theſe offences have been ever ſince left to the feeble coercion of the Spiritual Court, according to the rules of the Canon law. *Black. Com.* 4 *V.* 64. See *Lewdneſs.*

Inchantment. There were formerly two ſevere ſtatutes againſt this *imaginary* offence, *viz.* 33 *Hen.* 8. *c.* 8. & 1 *Jac.* 1. *c.* 12. But now, in wiſer times, a ſtatute hath been made, *viz.* (9 *Geo.* 2. *c.* 5.) on more rational grounds, *viz.* that no proſecution ſhall, for the future, be carried on againſt any perſon for *conjuration, witchcraft, ſorcery,* or *inchantment.* But, the miſdemeanor of perſons pretending to uſe witchcraft, tell fortunes, or diſcover ſtolen goods by ſkill in the occult ſciences, is ſtill deſervedly puniſhed with a year's impriſonment, and ſtanding four times in the pillory.

Louis the Fourteenth of *France,* thought proper, by an edict, to reſtrain the tribunals of juſtice from receiving informations of witchcraft. *Voltaire Siecl. Louis* XIV. *Mod. Univerſ. Hiſt.* XXV. 215.

Inchanter, *(incantator)* Is he who by *charms* conjures the devil; *qui carminibus vel cantiunculis* dæmonem *adjurat:* and they were antiently called *carmina,* by reaſon in thoſe days their *charms* were in *verſe.* 3 Inſt. 44.

Inchantreſs, *(incantatrix)* A woman who uſes charms and incantations. See *Conjuration.*

Inchartare, Signifies to give, or grant any thing by an inſtrument in writing: *conceſſit ipſi comiti terram ipſam &* inchartavit, *ut poſſeſſio ſua, &c.* Matt. Pariſ. anno 1252.

Inch of Candle, Is the manner of ſelling goods by merchants; which is done thus: Firſt, Notice is to be given upon the *Exchange,* or other public place, of the time of ſale; and, in the mean time, the goods to be ſold are divided into lots, printed papers of which, and the conditions of ſale, are alſo forthwith publiſhed; and when the goods are expoſed to ſale, a ſmall piece of wax-candle, about an inch long, is burning, and the laſt bidder when the candle goes out, is intitled to the lot or parcel ſo expoſed. If any difference happens in adjuſting to whom a lot belongs, where ſeveral bid together, the lot is to be put up again; and the laſt bidder is bound to ſtand to the bargain, and take the lot, whether good or bad. In theſe caſes, the goods are ſet up at ſuch a price; and none ſhall bid leſs than a certain ſum, more than another hath before, *&c.* *Merch. Dict.*

Incident, *(incidens)* Is a thing neceſſarily depending upon, appertaining to, or following another that is more worthy or principal. A court-baron is inſeparably incident to a manor; and a court of piepowder to a fair: theſe are ſo inherent to their principals, that by the grant of one the other is granted; and they cannot be extinct by releaſe, or ſaved by exception, but in ſpecial caſes. *Kitch.* 36. *Co. Lit.* 151.

Rent is incident to a reverſion; timber trees are incident to the freehold, and alſo deeds and charters, and a way to lands; fealty is incident to tenures; diſtreſs to rent and amercements, *&c.* *Co. Lit.* 151. Tenant for life or years, hath incident to his eſtate, eſtovers of wood. *Co. Lit.* 41. And there are certain incidents to eſtates-tail; as to be diſpuniſhable of waſte, to ſuffer a recovery, *&c.* *Co. Lit.* 224. 10 *Rep.* 38, 39. Incidents are needful to the *bene eſſe* of that to which they are incident; and the law is tender of them. *Hob.* 39, 40.

If a man, either by grant or preſcription, has a right to a wreck thrown on another's land, of conſequence he has a right to a way over the ſame land to take it; and the very poſſeſſion of the wreck is in him before ſeiſure. 6 *Mod.* 149. *Paſch.* 3 *Ann. B. R. Anon.* See 14 *Vin. Abr.* tit. *Incidents.*

Inclaudare, Is mentioned in the *Monaſticon,* 2 *tom. p.* 598. and ſignifies to fetter a horſe, *viz. Et ſi* inclaudet *palefridum Regis dabit ei palefridum* 4 *marcarum, &c.*

Inclauſa, A home-cloſe, or incloſure near the houſe. —*Dicunt per ſacramentum ſuum, quod capitale meſſuagium valet per annum cum tota* inclauſa, 11 *ſol.* Paroch Antiquit. pag. 31.

Incle, To what duties liable, 4 *Will. & M. c.* 5. *ſ.* 2. 7 *Ann. c.* 7. *ſ.* 24. 12 *Ann. ſt.* 2. *c.* 21.

Incloſures. Throwing down incloſures is an offence puniſhable by our antient laws and ſtatutes. 13 *Ed.* 1. *c.* 46. But if the lord of a manor incloſe part of the waſte or common, and doth not leave ſufficient for the commoners, they may break down ſuch incloſure, or have writ of aſſiſe. 3 & 4 *Ed.* 6. *c.* 3. Large waſtes or commons in the *Weſt-Riding* of the county of *York,* with the conſent of the lords of manors, *&c.* may be incloſed, a ſixth part whereof ſhall be for the benefit of poor clergymen, whoſe livings are under 40 *l.* a year, to be ſettled in truſtees, who may grant leaſes for twenty-one years, *&c.* *Stat.* 12 *Ann. c.* 4.

Deſtroying them in the night, to be made good by the neighbouring towns, 13 *Ed.* 1. *ſt.* 1. *c.* 46. 3 & 4 *Ed.* 6. *c.* 3. 6 *Geo.* 1. *c.* 16. Throwing down incloſures in the night, to be puniſhed with treble damages, 3 & 4 *Ed.* 6. *c.* 3. *ſ.* 4. 22 & 23 *Car.* 2. *c.* 7. Perſons obtaining incloſures or waſtes diſabled, 9 & 10 *W.* 3. *c.* 36. *ſ.* 10. Taking away gates, pales, poſts, ſtiles or hedge wood, or deſtroying them, how puniſhed, *&c.* 43 *Eliz. c.* 7. 15 *Car.* 2 *c.* 2 3 *W. & M. c.* 10. *ſ.* 9. 5 *Geo.* 1. *c.* 15. *ſ.* 6. 6 *Geo.* 1. *c.* 16. See *Approvement, Waſtes.*

Incompatible, *(incompatibilitas beneficiorum)* Is when benefices cannot ſtand one with another, if they be with cure, and of ſuch a value in the King's books. *Whitlock's Read p.* 4.

Incontinency, *(incontinentia)* Where perſons are *vitious,* and have no command of themſelves, is a crime that may be committed in ſeveral caſes, and there are divers degrees thereof; as in caſe of *bigamy,* or having more wives than one; *rapes* of women; *ſodomy,* or buggery; getting *baſtards, &c.* all which are puniſhable by ſtatute. See 25 *H.* 8. *c.* 6. 5 *El.* 17. 18 *El. c.* 7. 1 *Jac.* 1. *c.* 11. *Incontinency of prieſts* is puniſhable by the ordinary, by impriſonment, *&c.* 1 *Hen.* 7. *cap.* 4. See *Lewdneſs.*

Incopolitus, Is made uſe of for a proctor, or vicar, *Leg. Hen.* 1.

Incorporation, (power of.) The King's conſent is abſolutely neceſſary to the erection of any corporation, either implied or expreſly given. The King's implied conſent is to be found in corporations which exiſt by force of the *Common law,* to which our former Kings are ſuppoſed to have given their concurrence; Common law being nothing elſe but cuſtom, ariſing from the univerſal agreement of the whole community. The King's conſent is alſo preſumed as to all corporations by *preſcription*, ſuch as the city of *London*, and many others, which have exiſted time out of memory; and therefore are looked upon in law to be well created. The methods by which the King's conſent is expreſly given, are either by act of parliament or by charter. But the immediate creative act is uſually performed by the King alone, in virtue of his royal prerogative, *i. e.* by charter. See 2 *Inſt.* 330. 10 *Rep.* 29, 30. 1 *Rol. Abr.* 512, 513. 8 *Rep.* 114. *Black Com.* 1 *V.* 472, 3.

Incorporeal Hereditaments. An incorporeal hereditament is a right iſſuing out of a thing corporate, (whether real or perſonal) or concerning, or annexed to, or exerciſable within the ſame. *Co. Lit.* 19, 20. It is not the thing corporate itſelf, but ſomething collateral thereto, as a *rent* iſſuing out of *lands*, &c. or an *office* belonging to *jewel*, &c. Or, according to the *logicians*, corporeal hereditaments are the *ſubſtance*, which may be always ſeen, always handled: incorporeal hereditaments are but a ſort of *accidents*, which inhere in and are ſupported by that ſubſtance; and may belong or not belong to it, without any viſible alteration therein. Their exiſtence is meerly in idea and abſtracted contemplation: tho' their effects and profits may be frequently objects of our bodily ſenſes. N. B. The profits produced and the thing or hereditament which produces them. are very different. *Black. Com* 2 *V.* 20.

Incrementum, Increaſe or improvement; to which was oppoſed *decrementum* or abatement ——*Reddendo antiquam firmam & de* incremento *xi s.* Paroch Antiq. 164. And we read *dedi* A. B. *quoddam* incrementum *terræ meæ apud*, &c. where it is meant a parcel of ground incloſed out of a common, or improved.

Incroachment (Fr. *accrochment*, i. e. a graſping of a thing) Signifies an unlawful gaining upon the right or poſſeſſion of another man. As where a man ſets his hedge or wall too far into the ground of his neighbour, that lies next to him, he is ſaid to make incroachment upon him: and a rent is ſaid to be incroached, when the lord by diſtreſs or otherwiſe compels his tenant to pay more than he owes; and ſo of ſervices, &c. 9 *Rep.* 33. And ſometimes this word is applied to power; for the *Spencers*, father and ſon, it is ſaid incroached unto them *royal power* and authority, *anno* 1 *Ed.* 3. And the Admirals and their deputies did incroach to themſelves divers juriſdictions, &c. 15 *R.* 2. *c.* 3.

Incumbent, (from the Lat, *incumbo*, to mind diligently) Is a clerk who is reſident on his benefice with cure; and is ſo called, becauſe he does or ought to bend all his ſtudy to the diſcharge of the cure of the church to which he belongs. *Co. Lit.* 119. Where an incumbent is put out without due proceſs, he ſhall be at large to ſue for his remedy at what time he pleaſeth, &c. *Stat.* 4 *Hen.* 4. *cap.* 22. See *Black. Com.* 1 *V.* 392. and tit. *Church.*

Incumbrance. See *Mortgage, Purchaſe*, and 14 *Vin. Abr.* tit *Incumbrance.*

Incurramentum, The incurring or being ſubject to a penalty, fine or amercement: ſo *incurri alieni* is to be liable to another's legal cenſure or puniſhment.—*Statutum eſt quod ejuſmodi tenentes capitalibus Dominis vel Regi* incurrantur. *Weſtm. c.* 37.

Indebitatus Aſſumpſit, Is uſed in declarations and law proceedings, where one is *indebted* unto another in any certain ſum; and the law creates it: it is alſo an *action* thereupon. And it has been held, that action upon an *indebitatus aſſumpſit* lies in no caſe, but where debt will lie for the ſame thing. 1 *Salk.* 23. See *Aſſumpſit.*

Indecimable, (*indecimabilis*) That is not *tithable*, or by law ought not to pay tithe. 2 *Inſt.* 490.

Indefeiſible, or Indefeaſible, Is what cannot be defeated or made void: as a good and *indefeaſible eſtate*, &c.

Indefeaſible Right to the Throne. The doctrine of *hereditary right* does by no means imply an *indefeaſible* right to the throne. It is unqueſtionably in the breaſt of the ſupreme legiſlative authority of this kingdom, the King and both Houſes of Parliament, to defeat this hereditary right; and, by particular entails, limitations and proviſions, to exclude the immediate heir, and veſt the inheritance in any one elſe. This is ſtrictly conſonant to our laws and conſtitution; as may be gathered from the expreſſion ſo frequently uſed in our Statute Book, of "The King's Majeſty, his heirs, and ſucceſſors." In which we may obſerve, that as the word, "heirs," neceſſarily implies an inheritance or hereditary right, generally ſubſiſting in the royal perſon; ſo the word "ſucceſſors," diſtinctly taken, muſt imply that this inheritance may ſometimes be broken through; or, that there may be a ſucceſſor, without being the heir of the King. *Black. Com.* 1 *V.* 195. It is a doctrine founded in reaſon and the nature of things, which doth not requre a comment.

Indefenſus, A word ſignifying one that is impleaded, and refuſeth to make anſwer: *Et prædictus* J. *nihil ſciſcit dicere contra ſectam dict.* Richardi, *nec voluit ponere ſe in inquiſitionem aliquam; conſideratum eſt quod tanquam* indefenſus *ſit in miſericordia*, &c. Mich. 50 H. 3. Rot. 4.

Indemnity. On the *appropriation* of a church to any college, &c. when the archdeacon loſes for ever his induction money, the recompence he receives yearly out of the church ſo appropriate, as 12 *d.* or 2 *s.* more or leſs, as a penſion agreed at the time of the appropriating, is called *indemnity.* MS. in Bibl. Cotton. p. 84. There is an indemnity from penalties, of perſons who have neglected to read the morning and evening prayers, according to the Book of Common Prayer, and to ſubſcribe the declaration, &c. See *Stat.* 9 *Geo.* 2. *c.* 6. and other indemnities by various acts.

Indenture, (*indentura*) Is a writing containing ſome contract, agreement or conveyance between two or more perſons, being indented in the top anſwerable to another part, which hath the ſame contents. *Co. Lit.* 229, A deed of bargain and ſale of freehold lands, &c. muſt be by indenture, inrolled, &c. *Stat.* 27 *Hen.* 8. *c.* 16. Words in indentures, though of one party only, are binding to both parties. *Cro. Eliz.* 202, 657, But the indenting is now conſidered as of no conſequence. It is a general name given to a variety of deeds, beginning with the words, *This indenture*, &c. See *Deed.*

India Company. See *Eaſt India Company.*

India Goods. A duty upon *India* linens and ſilks exported, 1 *Jac.* 2. *c.* 5. All *India* goods to be ſold by inch of candle, 9 & 10 *W.* 3. *c.* 44. *ſ.* 69. A duty of 5 *per cent.* upon *India* goods, 9 & 10 *W.* 3. *c.* 44. *ſ.* 76. Additional duties on wrought ſilk, &c. 9 & 10 *W.* 3. *c.* 44. *ſ.* 80. 11 & 12 *W.* 3. *c.* 3. Made perpetual, 7 *Ann. c.* 7. and part of the aggregate fund, 3 *Geo.* 1. *c.* 8. Drawback on exportation, 11 & 12 *W.* 3. *c.* 3. *ſ.* 5. Several *India* goods prohibited to be worn, or to be imported in any other port than *London*, 11 & 12 *W.* 3. *c.* 10. 10 *G.* 1. *c.* 11. Wrought ſilks, &c. to be warehouſed till exported. 11 & 12 *W.* 3. *c.* 10. *ſ.* 2. Proof to lie on owner, 11 & 12 *W.* 3. *c.* 10. *ſ.* 4. No duties but the half ſubſidy, 11 & 12 *W.* 3. *c.* 10. *ſ.* 10. The terms muſlins and painted callicoes explained, 12 & 13 *W.* 3. *c.* 11. *ſ.* 14. Duties on japanned and lacquered goods to be paid *ad valorem*, 12 & 13 *W.* 3. *c.* 11. *ſ.* 15. Unrated *India* goods to pay cuſtom as ſold at the ſale, 2 & 3 *Ann. c.* 9. *ſ.* 6. Security to be given for importing the goods to *Great Britain*, and paying the duties, 6 *Ann. c.* 3. Bonds for exporting *India* goods to be delivered up, if no proſecution within three years, 8 *Ann. c.* 13. *ſ.* 24. *India* goods to be carried to *Ireland* only from *England*, 5 *Geo.* 1. *c.* 11. *ſ.* 12. Printed ſilks, callicoes, &c. not marked forfeited, 5 *Geo.* 1. *c.* 11. *ſ.* 15. *India* goods carried to *Ireland, Jerſy, Guernſey, Alderney, Sark*, or *Mann*, or the plantations, not ſhipped in *Great Britain*, forfeiture of ſhip and goods, 7 *Geo.* 1. *c.* 21. *ſ.* 9. The time of ſale, for unrated *India* goods, enlarged to three years, 7 *Geo.* 1. *c.* 21. *ſ.* 11. The 11 & 12 *W.* 3. *c.* 10. ſhall not extend to any goods made up in furniture before the 25th of *December* 1722, 10 *Geo.* 1. *c.* 11. Foreign goods may be taken out of warehouſes and refreſhed, 15 *Geo.* 2. *c.* 31. *ſ.* 8. Unrated *Eaſt-India* goods to pay ſubſidy of 5 *per cent.* 21 *Geo.* 2. *cap.* 2. *ſect.* 2.

Indicavit, Is a writ or prohibition that lies for a *patron* of a *church*, whoſe clerk is ſued in the Spiritual Court by another clerk for *tithes*, which amount to a fourth part of tbe profits of the advowſon; then the ſuit belongs to the King's courts, by the *Stat. Weſtm.* 2. *c.* 5. And the patron of the defendant, being like to be prejudiced in his church and advowſon, if the plaintiff recovers in the Spiritual Court, hath this means to remove it to the King's court. *Reg. Orig.* 35. *Old. Nat. Br.* 31.

This writ may be alſo purchaſed by the parſon ſued; and is directed as well unto the judge of the court, as unto the party plaintiff, that they do not proceed, *&c.* But it is not to be had before the defendant is libelled againſt in the Spiritual Court, the copy of which ought to be produced in Chancery, before the *indicavit* is granted: and this writ muſt be brought before judgment given in the Spiritual Court; for after judgment there, the *indicavit* is void. *New Nat. B. R.* 66, 101. The writ *indicavit* doth not lie of a leſs part of the tithes, *&c.* than a fourth part of the church; if they are not ſo much, this being ſurmiſed by the other party, a *conſultation* ſhall be had. *Ibid.* The patron of the clerk, who is prohibited by the *indicavit*, may have his writ of *right* of the *advowſon of diſmes*, *&c.* See *Black. Com.* 3 *V.* 91.

Remedy for the patron diſturbed by it, 13 *Ed.* 1. *ſt.* 1. *c.* 5. *ſ.* 4. The Eccleſiaſtical Court may hold plea of tithes not amounting to the fourth of the church, *Stat. Circumſp. Agatis*, 13 *Ed.* 1. *ſt.* 4. It ſhall not be granted till the matter is conteſted in the Spiritual Court, 34 *Ed.* 1. *ſt.* 1.

Indico and Indigo, Reſtraints on exporting it from the plantations before it hath been in *England*, 12 *Car.* 2. *c.* 18. *ſ.* 18. 15 *Car.* 2. *c.* 7. *ſ.* 9. To what duties liable, 4 *W. & M. c.* 5. *ſ.* 2. Indico may be imported, 7 *Geo.* 2. *c.* 18.

For the encouraging the making of indico in the *Britiſh* plantations in *America*, by the *Stat.* 21 *Geo.* 2, *c.* 30. a præmium of 6 *d. per* pound is allowed on the importation of ſuch indico.

Indicted, (*Indictatus*) When any one is accuſed by bill preferred to jurors at the King's ſuit, for ſome offence, either criminal or penal, he is ſaid to be indicted thereof. *Cowell.*

Indictio, The ſame with indictment. *Nonnunquam enim fiunt accuſationes de foreſta, &* indictiones *vulgariter ſic appellatæ.* Du Freſne.

Indiction, (*indictio, ab indicendo*) Was the ſpace of fifteen years, by which computation charters and public writings were dated at *Rome*; likewiſe anciently in *England*, which we find not only in the charters of King *Edgar*, but of King *Hen.* 3. And by this account of time, which began at the diſmiſſion of the *Nicene* Council, every year ſtill increaſed one till it came to *fifteen*; and then returned again, making *firſt*, *ſecond indiction*, *&c. dat. apud* Chippenham, 18 *die* Aprilis, indictione nona, *anno Dom* 1266.

Indictment, (*indictamentum*, from the Fr. *enditer*, i. e. *deferre nomen alicujus indicare*) Is a bill or declaration of complaint drawn up in form of law, exhibited for ſome offence criminal or penal, and preferred to a grand jury; upon whoſe oath it is found to be true, before a judge or others, having power to puniſh or certify the offence. *Terms de Ley.* *Lambard* ſays, An indictment is an accuſation, at the ſuit of the King, by the oaths of twelve men of the ſame county wherein the offence was committed, returned to inquire of all offences in general in the county, determinable by the court into which they are returned, and their finding a bill brought beſore them to be true: but when ſuch accuſation is found by a grand jury, without any bill brought before them, and aſterwards reduced to a formed *indictment*, it is called a preſentment; and when it is found by jurors returned to inquire of that particular offence only, which is indicted, it is properly called an inquiſition. *Lamb. lib.* 4. *cap.* 5.

By *Pulton*, an *indictment* is an inquiſition taken and made *by twelve men*, at the *leaſt*, thereunto ſworn, whereby they find and preſent, that ſuch a *perſon*, of ſuch a *place*, in ſuch a *county*, and of ſuch a *degree*, hath committed ſuch a *treaſon*, *felony*, *treſpaſs*, or other offence, againſt the peace of the King, his crown and dignity, *Pult* 169. An *indictment*, by Lord Chief Juſtice *Hale*, is only a plain, brief, and certain narrative of an offence, committed by any perſon, and of thoſe neceſſary circumſtances, that concur, to aſcertain the fact and its nature; there is great ſtrictneſs required in *indictments*, where life is in queſtion; therefore very nice exceptions are allowed. 2 *Hale's Hiſt. P. C.* 168, 169.

Why called a bill of indictment.

A bill of *indictment* is ſaid to be an accuſation for this reaſon; becauſe the jury that enquire of the offence, doth not receive it, until the party that offers the bill, appearing, ſubſcribes his name, and offers his oath for the truth of it. *Standf. P. C. lib.* 2. *cap.* 23.

But if any one prefer an indictment to the grand jury for any criminal offence, without probable cauſe, and the bill is not found, or the party is acquitted, action lies for a malicious proſecution.

Of the preferring and finding of the bill, and of the grand jury, *&c.*

Although a bill of *indictment* may be preferred to a grand jury upon oath, they are not bound to find the bill, if they find cauſe to the contrary; and tho' a bill of *indictment* be brought unto them without oath made, they may find the bill if they ſee cauſe, but it is not uſual to prefer a bill unto them before oath be firſt made in court, that the evidence they are to give unto the grand inqueſt to prove the bill is true. *Paſch* 23 *Car. B. R.* 2 *Lill. Abr.* 44. The grand jury are to find *the whole* in a bill, or reject it, and not find ſpecially for part, *&c.* 2 *Hawk. P. C.* 210. According to the Common law, every *indictment* muſt be found by twelve men at the leaſt, *every one of whom ought to be of the ſame county*, and returned by the ſheriff, or other proper officer, without the nomination of any other, and to be *freemen*, not under any attainder of felony, nor outlaws, *&c.*

Any one under proſecution for a crime, before he is indicted, may except againſt or challenge any of the perſons returned on the grand jury; as being outlawed, returned at the inſtance of the proſecutor, or not returned by the proper officer, *etc.* 2 *Hawk.* 215. By ſtatute, no *indictment* ſhall be made but by inqueſt of lawful men returned by ſheriffs, *etc.* 11 *H.* 4. *cap.* 2. And if a perſon not returned by the ſheriff on a grand jury, procures his name to be read among thoſe of others who were actually returned, whereupon he is ſworn of the jury; he may be indicted for it and fined, and the *indictmnnt* found by ſuch a jury ſhall be void. *Stat* 11 *Hen.* 4. *c.* 9. 12 *Rep.* 98. 3 *Inſt.* 33.

Of the power of ſheriffs, juſtices of the peace, &c.

Sheriffs had formerly power to take *indictments*; which they did by roll indented, one part whereof remained with the *indictors*. 13 *Ed.* 1. and 1 *Ed.* 3. Juſtices of peace have no power relating to *indictments* for crimes, but what is given them by act of parliament: And it is ſaid juſtices of peace in ſeſſions cannot, on an *indictment*, try and determine the offence in one and the ſame ſeſſions in which the offenders are indicted. *Hill.* 11 *Car. Cro. Car.* 430, 448. And indictments before juſtices of peace, *&c.* may be removed into the court of *B. R.* by *certiorari*. But an indictment removed by *certiorari* into *B. R.* may be ſent back again into the county or place whence removed, if there be cauſe to do it.

Of appeals, &c.

Before the ſtatute 3 *H.* 7. *c.* 1. it was the common practice not to try any man upon an indictment of murder, before the year and day were paſſed, to bring an appeal, leſt that ſuit ſhould be prevented: And appeals are to be generally preferred to indictments. 3 *H.* 7. 2 *Hawk.* 214. As an appeal is ever the ſuit of the party; ſo an indictment is always at the ſuit of the King. *Co. Lit.* 126. And till the ſtatute 1 *Ed.* 6. *c.* 7. if a man had been indicted and convicted of felony, *&c.* and the King had died before judgment, no judgment could be given, becauſe it was at the ſuit of the King; and the authority of the judges who ſhould give the judgment was determined by his death: but by that ſtatute judgment may be given in the time of another King. 7 *Rep.* 29.

An indictment is not at the ſuit of the party, nor is he intereſted.

An indictment is the King's ſuit; for which reaſon the party who proſecutes, is a good witneſs to prove it: And no damages can be given to the party grieved upon an indictment, or other criminal proſecution, *unleſs particularly grounded on ſome ſtatute*; but the court of *B. R.* by the King's Privy Seal may give to the proſecutor a third part of the fine aſſeſſed for any offence; and the fine to the King may be mitigated, in regard to the defendant's making ſatisfaction to a proſecutor for coſts of proſecution, and damages ſuſtained by the injury received. 2 *Hawk.* 210.

Of proceeding by indictment.

No man may be put upon his trial for a capital offence, except on an appeal or indictment, or ſomething equivalent thereto. *H. P. C.* 210. And all indictments ought to be brought for offences committed againſt the Common law, or againſt ſome ſtatute; and not for every ſlight miſdemeanor. *Trin.* 23 *Car. B. R.* 2 *Lill.* 44. Where a ſtatute appoints a penalty to be recovered by bill, plaint or information, it cannot be by indictment, but as directed to be recovered: An indictment will not lie where another remedy is provided by ſtatute. *Cro. Jac.* 643. 3 *Salk.* 187. Unleſs the ſtatute directs it by indictment.

Where an indictment will lie, and for what offence, &c. *and where not.*

Indictments are for the benefit of the Commonwealth, and the public good; and to be preferred for *criminal* not *civil* matters: they may be of high treaſon, petit treaſon, felony, treſpaſs, and in all ſorts of pleas of the crown; but not of injuries of a *private* nature, which do not concern the King, and the public. *Co. Lit.* 126, 303. 4 *Rep.* 44. An indictment lies againſt one for aſſaulting and ſtopping another on the highway, being a breach of the peace. *Hill.* 22 *Car.* It lies for cheating a perſon at play, with falſe dice, or any other cheating: but it is not indictable for one man to make a fool of another, in the caſe of cheats getting money, *&c.* tho' action may be brought. 2 *Lill* 44. 1 *Salk.* 479. Except in the caſes ſpecified in the act of 30 *Geo.* 2. *c.* 24. commonly called the ſtatute of *Falſe Pretences.*

Indictment will not lie for a private nuſance, wherein action on the caſe only lies; and where a perſon is indicted for treſpaſs, which is not indictable at law, but for which action ſhould be had; or if a man be indicted for ſcandalous words, as calling another rogue, *&c.* ſuch *indictments* are not good; *for private injuries are to be redreſſed by private actions.* 2 Lill. Abr. 42. But where a perſon is beaten, he may proceed for this treſpaſs by *indictment*, or information, as well as action. *Paſch.* 24 *Car. B. R.* With reſpect to information for an aſſault, it is a very uncommon mode of proceeding. It cannot, in the caſe of a ſubject, be *filed* without leave of the court, and the court would ſcarce grant leave, unleſs in a *very extraordinary* caſe.

Where, in an action on the caſe, a defendant juſtifies for words, as calling the plaintiff *thief*, *&c.* if on the trial it be found for the defendant, *indictment* may be brought forthwith to try the plaintiff for the felony. *Mich.* 22 *Car. B. R.* 2 *Lill.* 44. By *Holt* Chief Juſtice: If a civil action of trover be brought for goods taken, after recovery the party may be *indicted* for treſpaſs or felony, for the ſame taking: But if the firſt proſecution had been criminal, as an *indictment* for treſpaſs, *&c.* and the crime appears to be felony; there you cannot have verdict or judgment on the *indictment* for treſpaſs till the felony is tried, it being the inferior offence. *Med. Caſ.* 77.

It is ſaid that trover lies not for goods ſtolen, until the offender is convicted, *&c.* on *indictment* of felony. 1 *Hale's Hiſt. P. C.* 546. A parſon may be indicted for preaching againſt the government of the church, the civil and eccleſiaſtical government being ſo incorporated together, that one cannot ſubſiſt without the other; and both center in the King; wherefore to ſpeak againſt the church, is within the ſtatute 13 *Car.* 2. *Sid.* 69. 2 *Nelſ. Abr.* 959. And a parſon was indicted for pronouncing abſolution to perſons condemned for treaſon, at the place of execution, without ſhewing any repentance. 5 *Mod.* 363. Alſo a parſon hath been indicted, and fined, *&c.* for drinking healths to the memory of traitors. 3 *Mod. Rep.* 52.

Of the certainty *required in indictments.*

Indictments ought to be more certain than common pleadings in law, becauſe they are more penal, and to be anſwered with more preciſion. *Hill.* 23 *Car. B. R.* They muſt be preciſe and certain in every point, and charge ſome offence in particular, and not a perſon as an offender in general, or ſet down goods, *&c.* ſtolen, without expreſſing what goods; and it ought to be laid poſitively, not by way of recital, *&c.* or be ſupplied by implication. *Cro. Jac.* 19. 2 *Hawk. P. C.* 225, 226.

Indictments muſt ſet forth the Chriſtian name, ſurname, and addition of the place of reſidence of the offender; the certainty of the time when the offence was done, as the day, year, *&c.* and the town or place where; the nature of the offence, whether treaſon, felony, *&c.* and the value of the thing by which it is committed, *&c.* And in *indictment* of murder, the length and depth of the wound is to be expreſſed: the value of things ſtolen is to be ſpecified, *that it may appear whether grand or petit larceny*; and of the thing that does the felony (as in caſe of murder) which is forfeited to the King; and the dimenſions of a wound muſt be expreſſed, *that it may be judged whether mortal.* 1 Hen. cap. 5. 2 Inſt. 318. H. P. C. 264. *Weſt's Symb. Sect.* 70.

In treaſon, according to our old books. the *indictment* muſt ſay *proditorie*, and conclude *contra ligeantiæ ſuæ debitum*; in murder, it is to ſay *murdravit*; and if the killing was by ſhooting, or with the hand, *&c.* it muſt ſay *percuſſit*; in burglary, *burglariter*, or *burgalariter*; in rape, *rapuit*; in felony, *felonice*; in larceny, *felonice cepit*; maihem, *mayhemavit*, *&c.* And in all theſe caſes, and in treſpaſſes, the *indictment* ought to be *vi et armis*, and conclude *contra pacem*, which are words to ſhew an offence generally: and if the offence is created by ſtatute, it muſt conclude *contra formam ſtatuti*, *&c.* 4 *Rep.* 39, 48. 5 *Rep.* 121. *H. P. C.* 206. Theſe words the law hath appropriated for the deſcription of offences, and none other will ſupply them. [Now law proceedings are in *Engliſh*, ſimilar words in that tongue, muſt be uſed.]

Of faults *in indictments, what ſhall be fatal, and what not.*

The omiſſion of *vi & armis & contra pacem*, is helped by ſtatute 4 & 5 *Ann. c.* 16. Falſe *Latin*, in the former courſe of proceedings, did not hurt an *indictment*, if by any intendment it could be made good; but if any word was not *Latin*, or allowed by law as a word of art; or if it had been inſenſible in a material point, the indictment was inſufficient. 5 *Rep.* 121. 2 *Cro.* 108. 3 *Cro.* 465. An indictment ſhould not be ſet aſide for a falſe concord between the ſubſtantive and adjective, *&c.* the expreſſions being ſignificant to make the ſenſe appear. 5 *Co. Rep.* 121.

But an indictment againſt two or more, laying the fact in the ſingular number, as if againſt one, hath been held inſufficient for the incertainty. 2 *Hawk.* 238. A miſnomer of the defendant's ſurname, will not abate the indictment, as it will in caſe of the name of baptiſm; and if there be a miſtake in ſpelling, if it ſounds like the true name, it is good. 1 *Hen.* 5. A perſon may be indicted for felony againſt an unknown perſon; and when the name of one killed is unknown, or goods are ſtolen from a perſon that cannot be known, it is ſufficient to ſay in the indictment that *one unknown was killed by the perſon indicted*, or that *he ſtole the goods of one unknown*. Wood's Inſt. 624. But though an indictment may be good for ſtealing the goods *cujuſdam ignoti*, of a perſon unknown, yet a property muſt be proved in ſome body at the trial; otherwiſe it ſhall be preſumed to be in the priſoner by his pleading Not guilty. *Mod. Caſ. in L. & E.* 249. Where a perſon injured is known, his name ought to be put into the indictment. 2 *Hawk.* 232.

Of the day *or* time.

If an indictment be generally of offences at ſeveral times, without laying any one of them on a certain day; as if it be laid between ſuch a day and ſuch a day, it hath been adjudged, that the indictment is void: But a miſtake in not laying an offence on the very ſame day, on which it is afterwards proved upon the trial, is not material upon evidence. 2 *Hawk.* 236. And it is ſaid, the crown is not bound to ſet forth the very day, when treaſon, *&c.* was committed: Evidence may be given of a treaſonable conſpiracy, *&c.* at any time before or after the time alledged in the indictment; where it is laid on ſuch a day and divers other days as well before as after, becauſe the time is only a circumſtance, and of form ſome day muſt be alledged; but it is not material. 1 *Salk.* 188.

Of the venue *or* place.

If no town or place be named where the fact was done, the *indictment* ſhall be void; tho' a miſtake of the place in laying the offence, is of no ſignification on the evidence, if the fact is proved at ſome other place in the ſame county. *H. P. C.* 264. 1 *Hen.* 5. *cap.* 5. *Indictments* for facts committed, ought to be laid in the county where done; and the town or pariſh in which committed to be ſet forth, *&c.* And if, upon Not guilty pleaded, to an *indictment*, it ſhall appear that the offence was done in a *county* different from *that* in which the *indictment* was found, the defendant ſhall be acquitted. *H. P. C.* 203. *Kel.* 15.

At Common law, if a man had died in one county, of a wound received in another, he could not regularly be indicted in either county, the offence not being compleat in either; and no jury could inquire of what happened out of the limits of their own county: but by the ſtatute 3 *Ed.* 6. *cap.* 24. *the offence is to be indicted and tried by jurors of the county where the death happens.* 2 Hawk. 220. It has been held, if a perſon ſteals goods in one county, and carries them into another, he may be indicted in the other county: And if a perſon ſteals my goods from another, who had ſtolen them before, he may be indicted as having ſtolen them from me, becauſe, in judgment of law, the poſſeſſion as well as property always continued in me. 2 *Hawk.* 90. If there be an acceſſary in one county, to a felony committed in another, the acceſſary may be indicted and tried in the ſame county wherein he was acceſſary. *Stat.* 2 & 3 *Ed* 6. *c.* 24.

Of joint *and* ſeveral *offences*, &c.

Huſband and wife may commit a treſpaſs, felony, *&c.* and be indicted together; ſo for keeping a bawdy-houſe, tho' the houſe be the huſband's. *Hob.* 65. 1 *Salk.* 382. Tho' as to felony, it is ſaid the wife cannot be guilty of it, in company with her huſband, the law preſuming her to be under his coercion.

If an offence wholly ariſes from any joint act that is criminal of ſeveral defendants, they may be all charged in one *indictment*, jointly and ſeverally, or jointly only; and ſome of the defendants may be convicted, and others acquitted; for the law looks on the charge as ſeveral againſt each, though the words of it purport a joint charge againſt all: In other caſes, the offences of ſeveral perſons muſt be laid ſeveral, *becauſe the offence of one cannot be the offence of another*; *and every man ought to anſwer ſeverally for his own crime.* 2 Hawk. 240. A perſon cannot be indicted barely of ſuſpicion of felony; but of the crime itſelf: And three offences may be joined in an *indictment*, and the party convicted of one offence, though he is found Not guilty of the others. 1 *Hale's Hiſt. P. C.* 561, 610. On penal ſtatutes. ſeveral things ſhall not be joined in the *indictment*, *&c.* except it be in reſpect of ſome one thing, to which all of them have relation. 2 *Hawk.* 241.

Of indictments upon ſtatutes, purſuing, and reciting of the ſame, &c.

When an indictment is drawn upon a ſtatute, it ought to purſue the words of it, if a private act; but it is otherwiſe on a general ſtatute: It is beſt not to recite a public ſtatute; *the recital is not neceſſary*, for the judges are bound *ex officio* to take notice of all public ſtatutes, and miſrecitals are fatal; ſo that it is the ſureſt way only to conclude generally *Contra formam ſtatuti*, *&c.* 4 *Rep.* 48. Though there be no neceſſity to recite a public ſtatute in an *indictment*, yet if the proſecutor take upon him to do it, and *materially* vary from the *ſubſtantial part* of the purview of the ſtatute, and conclude *Contra formam ſtatut. prædict.* he vitiates the *indictment*. *Plowd.* 79, 83. *Cro. Eliz.* 236. But many miſ-recitals may be ſaved by a general concluſion *Contra formam ſtatuti*, without adding *prædict'*, *&c.* And miſtakes may be helped by the conſtant courſe of precedents upon ſuch ſtatutes. 2 *Hawk.* 247.

An *indictment* is to bring the fact making an offence, within all the material words of the ſtatute, or the words, *Contra formam ſtatuti*, will not make it good. *Ibid.* 249. If a word of *ſubſtance* be omitted in the *indictment*, the whole *indictment* is bad; but it is otherwiſe where a word of *form* is omitted, or there is an omiſſion of a ſynonymous word, where the ſenſe is the ſame, *&c.* *Ibid.* 246. Judgment ſhall not be given by ſtatute, upon an *indictment* which doth not include *Contra formam ſtatuti*: And judgment by ſtatute ſhall never be given on an *indictment* at Common law, as every *indictment* which doth not thus conclude ſhall be taken to be. *Ibid.* But where perſons are indicted on the ſtatute of *ſtabbing*, and the evidence is not ſufficient to bring them within the ſtatute; they may be found guilty of *general manſlaughter* at Common law, and the words *Contra formam ſtatut.* be rejected as uſeleſs: In other caſes the ſame has been alſo adjudged; though formerly it was held, that an *indictment* grounded on a ſtatute, which would not maintain it, could not in any caſe be maintained as an *indictment* at Common law. *Ibid.*

Of amendments, *&c.*

Indictments may be amended the ſame term wherein brought into court, and not after: But criminal proſecutions are not within the benefit of the *ſtatutes of amendments*; ſo that no amendment can be made to an *indictment*, *&c.* but ſuch only as is allowed by the Common law. 2 *Lil.* 45. 2 *Hawk.* 244. The body of a bill of *indictment* removed into *B. R.* may not be amended, except from *London* where a tenor only of the record is removed; though the caption of an *indictment* from any place may, on motion, be amended by the clerk of the aſſiſes, *&c.* ſo as to make it agree with the original record. *Ibid.* And *captions* of *indictments* ought to ſet forth the court in which, and the jurors by whom, and alſo the time and place at which, the *indictment* was found; and that the jurors were of the county, city, *&c.* Alſo they muſt ſhew that the *indictment* was taken before ſuch a court as had juriſdiction over the offence indicted. 2 *Hawk.* 253. While the jury who found a bill of *indictment* is before the court, it may be amended by their conſent in matter of form, the name, or addition of the party, *&c.* *Kel.* 37. Clerks of the aſſiſe and of the peace, *&c.* drawing defective bills of *indictment*, ſhall draw new bills without fee, and take but 2 *s.* for drawing any *indictment* againſt a felon, *&c.* on pain of forfeiting 5 *l.* *Stat.* 10 & 11 *W.* 3. *cap.* 23.

If one material part of an *indictment* is repugnant to or inconſiſtent with another, the whole is void; but, where the ſenſe is plain, the court will diſpenſe with a *ſmall* impropriety in the expreſſion. *Ibid.* 228, 229.

And many objections to *indictments*, are over-ruled. 5 *Rep.* 120. Where an *indictment* is void for inſufficiency; or if the trial is in a wrong county; another *indictment* may be drawn for the ſame offence, whereby the inſufficiency may be cured; and the *indictment* may be laid in another county, (it is ſaid) though judgment be given. See 4 *Rep.* 45. *a.* *Sed qu.* If the judgment ſhould not be reverſed for error, before the party be arraigned, upon a ſecond indictment? By the Common law, the court may quaſh any *indictment* for inſufficiency, as will make the judgment thereon erroneous: But the court may refuſe to quaſh an *indictment* preferred for the public good, tho' it be not a good *indictment*, and put the party to traverſe, or plead to it. *Mich.* 22 *Car. B. R.* Alſo the court will grant time for the King's counſel to maintain an *indictment*, if they deſire it.

Judges are not bound *ex debito juſtitiæ* to quaſh an *indictment*; but may oblige the defendant either to plead or demur to it; and where *indictments* are not good, the parties indicted may avoid them by pleading. 2 *Lil.* 42. 2 *Hawk.* 258. The court doth not uſually quaſh *indictments* for forgery, perjury, and nuſances, notwithſtanding the *indictments* are faulty; and it is againſt the courſe of the court to quaſh an *indictment* for extortion. 2 *Lil.* 41. 5 *Mod.* 31.

If an *indictment* be good in part, though the other part of it is bad, the court will not quaſh it; for if an offence ſufficient to maintain the *indictment* be well laid, it is good enough, although other facts are ill laid. *Latch.* 173. *Poph.* 208. 1 *Salk.* 384. One that is convicted upon an erroneous *indictment*, cannot after the conviction move to have the *indictment* quaſhed; but muſt bring his writ of error to reverſe the judgment given againſt him upon the *indictment*. *Mich.* 22 *Car. B. R.* An *indictment* is quaſhed for the inſufficiencyof it; or becauſe no good judgment can be given upon it: But if judgment be given upon an erroneous *indictment*, it is good againſt the party till reverſed by writ of error. 2 *Lil.* 43.

If the party indicted is outlawed upon the *indictment*, the court will not quaſh the *indictment*, though erroneous; but will force the party outlawed to bring his writ of error to reverſe the outlawry. *Mich.* 24 *Car. B. R.*

The *Stat.* 7 *W.* 3. *cap.* 3. ordains, That no *indictment* for treaſon, *&c.* or any proceſs thereon, ſhall be quaſhed, on motion of the priſoner, or his counſel, for miſ-writing, falſe *Latin*, *&c.* unleſs exception be made before evidence given in court; nor ſhall any ſuch defects, *&c.* after conviction, be cauſed to arreſt judgment; though any judgment given upon ſuch *indictment* may be reverſed on a writ of error, *&c.*

By the ſtatute of *Hen.* 5. *indictments* ſhall abate for omiſſions, by the exception of the party; and if no advantage be taken by exception, but he appears and pleads, he loſes the benefit of the law. 2 *Inſt.* 670.

Counts in an *indictment*, cannot be ſtruck out; (but may in an information:) for the court cannot ſtrike out that, which the grand jury have found. Vide *Rep. Temp. Hardw. per Annaly* 203.

Of pleading, and of proceſs againſt a perſon indicted.

A perſon indicted of felony, *&c.* may plead generally miſnomer, or wrongful addition; a formal acquittal or conviction; a pardon, or other ſpecial plea; or the general iſſue; or may plead any plea in abatement of the *indictment*, *&c.* 2 *Hawk.* 259. One indicted for felony may have counſel aſſigned him to ſpeak for him in matter of *law only.* 2 *Hil.* 44. And all perſons indicted for high treaſon, ſhall have a copy of the *indictment* before trial, to adviſe with counſel, *&c.* And ſuch *indictments* are to be found in three years after the offence committed, except it be againſt the King's perſon. 7 & 8 *W.* 3. *c.* 3. which is extended to trials on impeachments by 20 *Geo.* 2. *c.* 30. Perſons indicted of treaſon muſt be by the oaths of two witneſſes; but in other caſes one witneſs is enough.

After a perſon is indicted for felony, the ſheriff is commanded to attach his body by a *capias*; and on return of a *non eſt inventus*, a ſecond *capias* ſhall be granted, and the ſheriff is to ſeize the offender's chattels, *&c.* And if on that writ a *non eſt inventus* is returned, an *exigent* ſhall be awarded, and the chattels be forfeited, *&c.* 25 *Ed.* 3. *ſtat.* 5. *c.* 2.

Of not ſurrendring.

If an innocent perſon be indicted of felony, and will not ſuffer himſelf to be arreſted by the officer who has a warrant for it, he may be killed by the officer, if he cannot otherwiſe be taken; for there is a charge againſt him upon record, to which at his peril he is bound to anſwer. *Fitz. Coron.* 179, 261.

Of being twice indicted.

A perſon may be indicted twice at the ſame time, where he hath committed two felonies, and if he hath his clergy for one, he may be hanged for the other. And if there is an indictment and inquiſition againſt one for the ſame offence, one found by the coroner's inqueſt, and another by the grand jury, he may be tried on both at the ſame time: But if he be tried and acquitted upon the one it may be pleaded in bar on trial for the other. "*Kel.* 30, 108. 1 *Salk.* 382.

Of trial in another county.

An *indictment* being found in the proper county, may (in ſome caſes) be heard and determined in any other county, by ſpecial commiſſion. 3 *Inſt.* 27.

In general, all offences muſt be enquired into, as well as tried, in the county where the fact is committed. *Black. Com.* 4 *V.* 301.

In the two laſt rebellions, *acts* paſſed impowering the crown to try the traitors in any county.

Of appearance after conviction.

When a perſon is convicted upon an *indictment* for treſpaſs or miſdemeanor, he is to appear in court, on judgment pronounced; and the court having ſet a fine upon him, will commit him in execution, *&c.* 2 *Lil. Abr.* 41. *Forms of Indictments*, ſee *Murder*, *Felony*, *Burglary*, &c. For *Indictments* for *Perjury*, ſee *Stat.* 23 *Geo.* 2. *c.* 11.

See the doctrine of indictments treated at large, in a very learned and maſterly manner. 2 *Hawk. P. C.* 210. *&c.*

In trifling miſdemeanors, aſſaults, *&c.* the court will on motion, (the clerk in court engaging to pay any fine, ſet,) diſpenſe with the *perſonal appearance* of a defendant.

Indictor, Is he that indicteth another man for any offence; and *indictee* is the party that is indicted. 1 *Ed.* 3. *cap.* 11. 21 *Jac.* 1. *c.* 8.

Indiſtanter, A word ſignifying without delay. *Mat. Weſtm. Anno* 1244.

Indiviſum, Is uſed for that which two perſons hold in common without partition; as where it is ſaid he holds *pro indiviſo &c.* Kitch. 241.

Indolis, A ſtudious young man, or a youth. *Ego Edgar* indolis *Clito conſenſi.* Mon. Angl. 3 tom. p. 120.

Indomit, Is law *French* for boiſterous and ungovernable. *Law Fr. Dict.*

Indorſement, *(Indorſamentum)* Signifies any thing written on the back ſide of a deed; and receipts for conſideration money, and the ſealing and delivery, *&c.* on the back of deeds, are called *Indorſements*. *Weſt. Symb. par.* 2. *ſect.* 157. On ſealing of a bond any thing may be *indorſed* or ſubſcribed upon the back thereof, as part of the condition, and the *indorſement* and that ſhall ſtand together. *Moor* 679. There is alſo an *indorſement* of *bills* or *notes*, of what part thereof is paid, and when, *&c.* And in another ſenſe it is a writing a man's name only on the backſide of *bills of exchange*, *&c.* which paſſing from one man to another, all the *indorſers* are anſwerable as well as the drawer. 3 & 4 *Ann. c.* 9. 'See *Black. Com.* 2 *V.* 468-9. Forging of notes, acceptances, indorſements,

ments, *&c.* felony without clergy. 2 *Geo.* 2. *c.* 25. 7 *Geo.* 2. *c.* 22.

Indowment, Of a church, *&c.* See *Endowment.*

Inducement, Is what is alledged as a motive or incitement to a thing; and in law is uſed ſpecially in ſeveral caſes, *viz.* there is *inducement* to actions, to a traverſe in pleadings, a fact or offence committed, *&c.* *Inducements* to actions need not have ſo much certainty as in other caſes: A general *indebitatus* is not ſufficient, where it is the ground of the action; but where it is but the *inducement* to the action, as in conſideration of forbearing a debt till ſuch a day, (for that the parties are agreed upon the debt) this being but a collateral promiſe, is good without ſhewing how due. *Cro. Jac.* 548. 2 *Mod.* 70.

A man ought to induce his traverſe when he denies the title of another, becauſe he ſhould not deny it till he ſhew ſome colourable title in himſelf; for if the title traverſed be ſound naught, and no colour of right appears for him who traverſed, there can be no judgment given: but an *inducement* cannot be traverſed, becauſe that would be a traverſe after a traverſe, and quitting a man's own pretence of title, and falling upon another. *Cro.* 265, 266. 3 *Salk.* 357. An *inducement* to a traverſe muſt be ſuch matter as is good and juſtifiable in *law.* *Cro. Eliz.* 829. There is an *inducement* to a juſtification, when what is alledged againſt it is not the ſubſtance of the plea, *&c.* *Cro. Jac.* 138. *Moor* 847. 2 *Nelſ. Abr.* 986.

Induction, (*Inductio,* i. e. a leading into) Is the giving a parſon poſſeſſion of his church: And after the Biſhop hath granted inſtitution, he iſſues out his mandate to the Archdeacon to induct the clerk, who thereupon either does it perſonally, or uſually commiſſions ſome neighbouring clergyman for that purpoſe; which is compared to livery and ſeiſin, as it is a putting the miniſter in actual poſſeſſion of the church, and of the glebe lands, which are the temporalities of it. This *induction* is done in the following manner: One of the clergymen commiſſioned takes the parſon to be inducted by the hand, lays it on the key of the church, and pronounces theſe words: *By virtue of this commiſſion, I induct you into the real and actual poſſeſſion of the rectory of, &c. with all its appurtenances.* Then he opens the church door, and puts the parſon into poſſeſſion thereof, who commonly tolls a bell, *&c.* and thereby ſhews and gives notice to the people that he hath taken corporal poſſeſſion of the ſaid church: If the key of the church door cannot be had, the clerk to be inducted may lay his hand on the ring of the door, the latch of the church-gate, on the church-wall, *&c.* and either of theſe are ſufficient: Alſo *induction* may be made by delivery of a clod, or turf of the glebe, *&c.* *Countr. Parſ. Compan.* 21, 22. Ordinarily the Biſhop is to direct his mandate to the Archdeacon, as being the perſon who ought to induct or give poſſeſſion unto the clerks inſtituted to any churches within his Archdeaconry: But it is ſaid, the Biſhop may direct his mandate to any other clergyman to make *induction.* 38 *Ed.* 3. *cap.* 3. And by preſcription, others as well as Archdeacons may make *inductions.* Parſ. Counſel. 8.

An *induction* made by the patron of the church, is void; but Biſhops and Archdeacons may induct a clerk to the benefices of which they are patrons, by *preſcription, &c.* 11 *H.* 4. 7. The Dean and Chapter of Cathedral Churches are to induct prebends; though it hath been held, if the Biſhop doth induct a prebend, it may be good *at the Common law.* 11 *Hen.* 4. 7. 11 *Hen.* 6. In ſome places a prebend ſhall be in poſſeſſion, without any *induction*; as at *Weſtminſter,* where the King makes collation by his letters patent. If the King grants one of his free chapels, the grantee ſhall be put in poſſeſſion by the ſheriff of the county, and not by the biſhop.

But no *induction* is neceſſary to a *donative,* where the patron by donation in writing puts the clerk into poſſeſſion, without preſentation, *&c.* 11 *Hen.* 4. 7. If the authority of the perſon who made the mandate for *induction,* determines by death or removal, before the clerk is inducted, the *induction* afterwards will be void; as where, before it is executed, a new biſhop is conſecrated, *&c.* But if the archbiſhop, during the vacancy of a ſee, as guardian of the ſpiritualities, iſſue a mandate to induct a clerk to a church, it is good though not executed before there is a new biſhop. 2 *Lev.* 299. 1 *Ventr.* 309.

Induction is *a temporal act*; and if the archdeacon refuſe to induct a parſon, or to grant a commiſſion to others to do it, action on the caſe lies againſt him, on which damages ſhall be recovered; he may likewiſe be compelled, by ſentence in the eccleſiaſtical court, to induct the clerk, and ſhall anſwer the contempt. 12 *Rep.* 128.

It is *induction* makes the parſon compleat incumbent, and fixes the freehold in him; and a church is full by *induction,* which cannot be avoided but by *quare impedit* at Common law. 4 *Rep.* 79. *Plowd.* 529. *Hob.* 15. A biſhop ſued in the court of audience, to repeal an inſtitution, after *induction* had, and a *prohibition* was granted; *becauſe an inſtitution is not examinable in the Spiritual Court after* induction, but then a *quare impedit* lies. *Moor* 860. It is *not* the *admiſſion* and *inſtitution,* but *induction* to a *ſecond benefice,* which makes the *firſt void,* in caſe of *pluralities,* &c. *Moor* 12. See *Black. Com.* 1 *V.* 391. 2 *V.* 312. 4 *V.* 106.

Indulgences. According to the doctrine of the Romiſh church, all the good works of the Saints, over and above thoſe which were neceſſary towards their own juſtification, together with the infinite merits of Jeſus Chriſt, are depoſited in one inexhauſtible treaſury. The keys of this were committed to St. Peter, and to his ſucceſſors the Popes, who may open it at pleaſure, and by transferring a portion of this ſuperabnndant merit to any particular perſon, *for a ſum of money,* may convey to him either the pardon of his own ſins, or a releaſe for any one in whom he is intereſted, from the pains of purgatory. Such indulgences were firſt invented in the eleventh century by Urban II. *Robertſon's Hiſt. Emp. Char.* V. 2 *V.* 79, *&c.* which *vide.* Alſo ſee the *ſtat.* 25 *H.* 8. *c.* 21. *ſect.* 27. And ſee the *ſtatutes* againſt *Papiſts, &c.* A *collection* of which may be ſeen in *Britiſh Liberties.*

In eſſe, Is any thing *in being*; and the learned make this diſtinction between things *in eſſe* and *in poſſe*; as, a thing that is not, but may be, they ſay is *in poſſe,* or *in potentia*; but what is apparent and viſible, they alledge is *in eſſe, viz.* that it has a real being, whereas the other is caſual, and but a poſſibility. A child, before he is born, is a thing *in poſſe*; after he is born, he is ſaid to be *in eſſe,* or actual being. The words *in eſſe* are mentioned in the ſtatute 21 *Jac.* 1. *cap.* 2. And where there muſt be perſons *in eſſe,* to take by grants, *&c.* See *Grants* and *wills.*

Inewardus, (*Inwardus*) A guard, a watchman, one ſet to keep watch and ward.—*In Limunare Leſt in Breſennei habet Rex conſuetudinem ſcil.* 11 *caretas, &* 11 *ſticas Anguillarum pro uno* inewardo, *& de uno ingo de Northbynge xii denarios aut unum* inewardum *& de Dena xviii denarios, & de Garra unum* inewardum. Lib. Domeſday Chenth. *Quando Rex venatui inſtabat de unuquaq; domo per conſuetudinem ibat unus homo ad ſtabilitionem in ſilva. Alii homines non habentes integras maſuras inveniebant* inewardos, *ad aulam quando radierant in civitate.*—Lib. Domeſday. Herefordſhire.

Infaliſtatus. This word occurs only in *Ralph de Hengham, Summa parva, cap.* 3. *Vir commiſit feloniam ob quam fuit ſuſpenſus, utlagatus, vel alio modo morti damnatus, vel demembratus, vel apud Dovere* infaliſtatus, *vel apud Southampton ſubmerſus, vel apud Winton demembratus, vel decapitatus, ut apud Northampton; vel in mari ſuperundatus, ſicut in aliis partibus portuum.*—Mr. *Selden,* in his notes on that author, ſays, "It appears that ſeveral cuſtoms of places made in thoſe days capital puniſhments ſeveral. But what is *infaliſtatus?* In regard of its being a cuſtom uſed in a port-town, I ſuppoſe it was made out of the *French* word *falize,* which is *fine ſand by the water ſide,* or *a bank of the ſea.* In this ſand or bank it ſeems their execution at *Dover* was." The elaborate *Du Freſne* condemns this derivation and this ſenſe of the word, but yet gives no better. Therefore, (till we have more authority) we may conclude that *infaliſtatus* did imply ſome capital puniſhment inflicted on the ſands or ſea-ſhore: perhaps *infaliſtatio* was expoſing the malefactor to be laid bound upon the ſands, till the next full tide carried him away.

of which cuſtom, there is ſome dark tradition. The penalty took name from the Norman *faleſe*, *faleſia*, which ſignified not only the ſands, but rather the rocks and cliffs adjoining or impending on the ſea-ſhore. *Cowell.* See the like uſe of *feleſia* in *Mon. Angl. tom.* 2. *p.* 165. *b*

Infamy, Which extends to forgery, perjury, groſs cheats, *&c.* diſables a man to be a witneſs, or juror; but a pardon of crimes reſtores a perſon's credit to make him a good evidence. 2 *Hawk. P. C.* 432, 433. Judgment of the pillory makes *infamy* by the Common law: but, by the Civil and Canon law, if the cauſe for which the perſon was convicted was not infamous, it infers no *infamy*. 3 Lev. 426.

Infangthef, Infangenetheof, (From the Saxon *Fang* or *Fangen*, i. e. *capere*, and *Theof, Fur)* Signifies a privilege or liberty granted unto lords of certain manors, to judge any thief taken *within* their fee. *Bract. lib.* 3. *c.* 35. In ſome ancient charters, it appears that the thief ſhould be taken in the lordſhip, and with the goods ſtolen, otherwiſe the lord had not juriſdiction to try him in his court; tho' by the laws of King *Edward the Confeſſor*, he was not reſtrained to his own people or tenants, but might try any man who was thus taken in his manor: 'tis true afterwards, the word *infangthef* ſignified *Latro captus in terra alicujus ſeiſitus de aliquo Latrocinio de ſuis propriis hominibus.* 1 & 2 *P.* & *M. c.* 15. The franchiſes of *infangthef* and *outfangthef*, to be heard and determined in court-barons, are antiquated, and long ſince gone. 2 *Inſt.* 31. The word is ſometimes preceeded by an *H.*

Infant, *(Infans)* In our law is a perſon under twenty-one years of age, whoſe acts are in many caſes either *void*, or *voidable*. *Co. Lit. lib.* 1. *cap.* 21. and *lib.* 2. *cap.* 28. An *infant* of eight years of age or above, may commit *homicide*, and be hanged for it, *viz* if it may appear by hiding the perſon, by excuſing, or by any other act, that he had knowledge of good and evil, and of the danger of the offence, for here *malitia ſupplebit ætatem.* 1 *Hal. Hiſt.* 27. Yet *Co. Lit. ſect.* 405. ſaith, That an *infant* ſhall not be puniſhed till the age of fourteen, which, ſays he, is the age of diſcretion. *Cowell.* But in fact, whether an infant under the age of fourteen, ſhall or ſhall not be anſwerable for criminal acts, depends on the degree of judgment he poſſeſſeth. See the *End of Div.* I.

We ſhall conſider this ſubject under the following diviſions:

I. *The ſeveral ages diſtinguiſhed by law for various purpoſes.*

II. *Who are minors, and how far the law regards infants* in ventre ſa mere.

III. *Of the* trial *of infancy.*

IV. *Of what* offices *and* truſts *an infant is capable.*

V. *What things he is capable of doing for his own advantage, and of his acts as* good, void, *or* voidable, *&c.*

I. *The ſeveral ages diſtinguiſhed by law for various purpoſes.*

From the obſervations made on the daily actions of *infants*, as to their arriving at diſcretion, the laws and cuſtoms of every country, have fixed upon particular periods, on which they are preſumed capable of acting, with reaſon and diſcretion; in our law the full age of man or woman is twenty-one years. 3 *New Abr.* 118.

Therefore, if one under the age of twenty-one years makes his will, and thereby deviſes his lands, and after attains the age of twenty-one years, and dies, without making a new publication thereof, *this deviſe is void. Dyer* 143. *Raym.* 84. 1 *Sid.* 162.

But tho' a perſon under the age of twenty-one, cannot diſpoſe of his lands, yet it is ſaid, that one under that age may (purſuant to the ſtatute of 12 *Car.* 2. *cap.* 24.) diſpoſe of the cuſtody of his *infant* child, and that ſuch diſpoſition draws after it the land, *&c.* as incident to the cuſtody. *Vaugh.* 178.

Alſo it ſeems agreed, that an *infant male* at *fourteen*, and *female* at *twelve*, may diſpoſe of their perſonal eſtate at thoſe ages: For herein the Common law has appointed no time, being a matter cognizable in the Spiritual Court, which herein proceeds according to the Civil law, by which law *infants* at thoſe ages are preſumed to have ſufficient diſcretion to make ſuch diſpoſition; therefore their teſtaments in theſe caſes are not to be ſet aſide, or controlled in Chancery, or the temporal courts. 2 *Mod.* 315. 2 *Jones* 210. *Comb.* 50. 1 *Vern.* 469. *Preced. Chan.* 316.

The age of conſent to a marriage in an *infant male* is *fourteen*, and in a *female twelve*; but they may marry before, and if they agree thereto when they attain theſe ages, the marriage is good; but they cannot diſagree before then; and if one of them be above the age of conſent, and the other under ſuch age, the party ſo above the age may as well diſagree as the other; for both muſt be bound, or neither. *Co. Lit.* 33, 78, 79. 2 *Inſt.* 434. 3 *Inſt.* 88, 89. 6 *Co.* 22. 7 *Co.* 43. 1 *Rol. Abr.* 340, 341.

But though the party above age, may as well diſagree as the other, yet it is ſaid that the party cannot do it *before* the other arrives at the proper age: Alſo it is ſaid to have been adjudged, that if a man marries a woman that is within the age of *twelve* years, and after the woman at *eleven* years of age diſagrees to the marriage, and after the huſband takes another wife, and hath iſſue by her, that this is a baſtard; *for the firſt marriage continues notwithſtanding the diſagreement of the woman*; for ſhe cannot diſagree within the age of *twelve* years, and ſo her diſagreement is void. *Co. Lit.* 79. 1 *Rol. Abr.* 341.

If a man marries a woman who is *within* the age of *twelve* years, and after the feme covert *within* the age of conſent diſagrees to the marriage, and *after* the age of *twelve* years marries another, the firſt marriage is abſolutely diſſolved, ſo that *he may take another wife*; for tho' the diſagreement within the age of conſent was not ſufficient, yet her taking another huſband after the age of conſent *affirms the diſagreement*, and ſo the marriage avoided *ab initio*. 1 Rol. Abr. 341.

Vide the caſe of Mr. *Fitzgerrard*, Lord *Decius*, and Mr. *Villers*, 3 *New Abr.* 119, 120. *Vide* alſo, 1 *Inſt.* 33. 1 *Rol. Abr.* 340. *Dyer* 369. *Moor* 575. 1 *Rol. Abr.* 341. 1 *Inſt.* 79. 7 *Co. Keen's caſe.* 6 *Co. Ambroſia George's caſe.* 7 *H.* 6. 11. 6 *Co.* 22.

As the age of *fourteen*, is the age of conſent to a marriage in an *infant male*; ſo by law he hath ſeveral other ages aſſigned him, for ſeveral purpoſes, *viz.* at the age of *twelve*, to take the *oath* of *allegiance* in the tourn or leet; at *fourteen*, to be *out* of *ward* of guardian in ſocage, to *chuſe* a *guardian*, and this is alſo accounted his age of diſcretion; *fifteen* to have had *aid pur fair Fitz Chevalier.* Co. Lit. 98. b. Hob. 225.

The authority of a guardian in ſocage, ceaſes at the age of fourteen, at which age the *infant* may call his guardian to an account, and may chuſe a new guardian. *Lit. ſect.* 103. *Co. Lit.* 75. 2 *Inſt.* 135.

One *within* the age of *twenty-one* years may do *homage*, but not fealty; becauſe, in doing of fealty he ought to be ſworn, which an *infant* cannot be. *Co. Lit.* 65. *b.* 2 *Inſt.* 11.

An *infant* at the age of *ſeventeen*, may be a *procurator* or *executor*; and in this both the Civil and Common law agree. 5 *Co.* 29. *b.* *Off. Ex.* 307. 1 *Hal. Hiſt. P. C.* 17.

Infancy is a good cauſe of refuſal of a clerk; alſo by the ſtatutes 13 *Eliz. cap.* 12. and 13 & 14 *Car.* 2. none is to be admitted a deacon, unleſs he be twenty-three *at leaſt*, nor a prieſt, unleſs he be twenty-four. *Comp. Incomb.* 142, 214. *Gibſ. Cod.* 168. 3 *Mod.* 67.

By the cuſtom of *gavel-kind*, an *infant* at the age of *fifteen*, is reckoned *at full age to ſell his lands*; and this ſeems to have been taken from the Civil law, which reckons *fourteen* the *ætas pubertatis*; for they reckoned that though the *infant* had ended his years of *gnardianſhip* at *fourteen*, yet he might not have completed his account with his guardian till the age of *fifteen*, and that was eſteemed to be the age when he was completely out of guardianſhip; therefore at this age he was allowed to ſell the lands deſcended to him: But in this the cuſtoms of *England*

land differ from the *Civil law*; for the *Civil law* does not allow of his diſpoſitions till the age of twenty-five; therefore this muſt have been allowed by the old *Saxon* law, becauſe they thought that much time was loſt, if the *infant* could only uſe his own eſtate without being able to diſpoſe of it in a way of traffick, or in marriage, till twenty-five; therefore they allowed the *infant* to ſell, (but under great limitations and reſtrictions,) that he might not be defrauded; and by this means they thought there was ſufficient proviſion made for the neceſſity of commerce. *Lamb.* 624, 625. and ſee *Gavelkind*.

Alſo by *cuſtom* in ſome places, an *infant* ſeiſed of lands in ſocage, may, at the age of *fifteen years*, make a *leaſe for years*, which ſhall bind him after he comes of age; for the *cuſtom* makes *fifteen* his full age to that purpoſe. *Co. Lit.* 45. *b*.

Alſo by the *cuſtom* of *London*, an *infant* unmarried, and above the age of fourteen, tho' under twenty-one, may *bind himſelf apprentice* to a freeman of *London* by indenture, with proper covenants; which *covenants*, by the cuſtom of *London*, ſhall be as binding as if he were of full age. *Moor.* 134. 2 *Bulſ.* 192. 2 *Rol. Rep.* 305. *Palm.* 361. 1 *Mod.* 271.

As to capital offences, in which the law is the ſame with regard to the *male and female ſex*, the age of *fourteen* is the common ſtandard, at which both males and females are, by our law, *obnoxious to capital puniſhments*; for this being the *ætas pubertatis*, or age of diſcretion, the law preſumes them at thoſe years to be *doli capaces*, and capable of diſcerning between good and evil; therefore ſubjects them to capital puniſhments as much as if they were of full age. *F. N. B.* 202. *Co. Lit.* 247. *b. Dalt. cap.* 95. *and* 104. 1 *Hal. Hiſt. P. C.* 25. 1 *Hawk. P C.* 2. Sed vide *Poſt* this *Diviſion*.

But tho' the age of fourteen, be the *ætas pubertatis*, before which our laws do not preſume the party to be *doli capax*, and therefore that a party indicted for a capital offence committed before theſe years is to be found Not guilty, yet this general rule hath the following temperaments.

1. That if the party be above twelve, tho' under 14, and appears to be *doli capax, and could diſcern between good and evil at the time of the offence committed*, he may be convicted, and undergo judgment and execution of death, tho' he hath not attained the age of fourteen; but herein, according to the nature of the offence and circumſtances of the caſe, the judge may, or may not, in diſcretion reprieve him, before or after judgment, in order to obtain the King's pardon. 1 *Hal. Hiſt. P. C.* 26.

2. If an infant be above *ſeven*, and under *twelve* years, and commit a capital offence, *prima facie* he is to be judged Not guilty, and to be found ſo; becauſe he is ſuppoſed not of diſcretion to judge between good and evil: Yet if it appear, by *ſtrong and pregnant evidence and circumſtances*, that he had diſcretion to judge between good and evil, judgment of death may be given againſt him; for *malitia ſupplet ætatem*; but herein the circumſtances muſt be inquired of by the jury, and the infant is not to be convict upon his confeſſion: Alſo herein, my Lord *Hale* ſays, that it is prudent after conviction to reſpite judgment or at leaſt execution; but that if he be convicted the judge cannot diſcharge, but only reprieve him from judgment, and leave him in cuſtody till the King's pleaſure be known. 1 *Hal. Hiſt. P. C.* 27. See *Poſt* this *Div*.

3. If an infant within age be *infra annos infantiæ*, viz. ſeven years old, he cannot be guilty of felony, whatever circumſtances proving diſcretion may appear; for *ex præſumptione juris* he cannot have diſcretion, and no averment ſhall be received againſt that preſumption. 1 *Hal. Hiſt. P. C.* 27, 28. *Plow.* 19.

Vide the caſe of *William York* a boy of *ten* years of age, convicted of murder at the Summer aſſizes for *Bury*, in 1748. before *Willes* Ch. J. *Foſter's Crown Law, fol.* 70, *&c.* In this caſe, it appeared from all the circumſtances, that the party was *doli capax*, and the evidence of the fact, being his own *repeated confeſſions*, &c. he was very juſtly convicted.

II. *Who are minors, and how far the law regards infants* in ventre ſa mere.

The privilege of infancy does not extend to the King; for the political rules of government have thought it neceſſary, that he who is to govern the whole kingdom, ſhould never be conſidered as a minor, incapable of governing himſelf and his affairs. *Co. Lit.* 43. *Dyer* 209. *b*.

Therefore if the King within age, make any leaſe or grant, he is bound preſently, and cannot avoid them, either during his minority, or when he comes of full age. *Plow.* 213. *a.* 5 *Co.* 27. 7 *Co.* 12. So, if the King aliens land which he had by deſcent from his mother, he ſhall not defeat it, by reaſon that he was within age at the time of the alienation; for his body politic, which is annexed to his body natural, takes away the imbecility of the natural body, and draws it, and all the effects thereof, to itſelf; *quia magis dignum trahit ad ſe minus dignum*, *v. Plowd.* 213, 14.

So if the King conſent to an act of parliament during his minority, yet he cannot after avoid this act; becauſe the King, *as King*, cannot be a minor; for as King he is a body politic. *Co. Litt.* 43. 1 *Roll. Abr.* 728.

Alſo the acts of a mayor and commonalty, ſhall not be avoided, by reaſon of the nonage of the mayor. *Cro. Car.* 557. 5 *Co.* 27.

Altho' a Duke, Earl, or the like, be but a minor, or not above ten years of age, in the cuſtody and in the family of another nobleman, who may and doth retain chaplains, yet he may qualify chaplains to hold two benefices with cure, as if he was of full age. 4 *Co.* 119. *Comp. Incumb.* 22.

An infant in gavelkind ſhall have his age, and all other privileges of the infant at Common low; becauſe tho' he hath the privilege of alienation at fifteen, yet that doth not take from him any privilege he had before at Common law. 1 *Rol. Abr.* 144.

A baſtard being impleaded ſhall have his age: *for the dilatory plea muſt be determined before the pleas in chief can come on*; ſo that the plea of infancy will ſtay the ſuit, before it can be inquired, whether he is or is not a baſtard. *Co. Litt.* 244. *b*.

An infant *in ventre ſa mere*, or in the mother's womb, is ſuppoſed in law, to be born for many purpoſes. It is capable of having a legacy, or, a ſurrender of a copyhold eſtate made to it. (See *Poſt* this diviſion.) It may have a guardian aſſigned to it; and it is enabled to have an eſtate limited to its uſe, and to take afterwards by ſuch limitation, as if it were then actually born; and in this point the Civil law agrees with ours, *v. Black. Com.* 1 *V.* 130.

A child *in ventre ſa mere*, may be appointed executor; alſo if there are two or more at a birth, they ſhall be joint executors, or joint legatees of the thing bequeathed; *for the Civil law, for the benefit of the infant, reputes a child in his mother's womb in the ſame condition as if it were born.* Godolph. Orph. Leg. 102.

If there be baſtard *eigne* and *mulier puiſne*, and the baſtard enters, and dies ſeiſed, his iſſue ſhall inherit the lands, and exclude the *mulier* for ever; but in this caſe if the baſtard had died leaving iſſue *in ventre ſa mere*, and the *mulier* had entered, and then a ſon is born, yet he cannot enter upon the *mulier*: Herein our law differs from the Civil law; for our law requires an immediate deſcent, which cannot be before the perſon is *in eſſe*; alſo by our law the freehold cannot be in abeyance. *Co. Lit.* 244.

A deviſe of lands to an infant *in ventre ſa mere* is good, and the freehold ſhall not be in abeyance, but ſhall deſcend to the heir at law in the mean time. Tho' formerly it was doubted. *vide*, 11 *Hen.* 6. 13. *Bro. Deviſe* 32. *Moor* 177, 637. 2 *Bulſ.* 273. *Cro. Eliz.* 423. 1 *Lev.* 135. 1 *Sid.* 153. *Raym.* 163. 1 *Keb.* 85. 1 *Salk.* 231. 2 *Mod.* 9.

However all the books agree, that a deviſe to an infant *when he ſhall be born*, or *when God ſhall give him birth*, is good, *as an executory deviſe*, and that the freehold ſhall deſcend to the heir at law in the mean time. 1

Sid. 153. 1 *Lev.* 135. *Raym.* 163. *S. C. Snow* and *Cutler*. It may be deviſed to *truſtees*.

So it is clear, that if land be deviſed for life, the remainder to a poſthumous child, that this is a good contingent remainder; becauſe there is a perſon in being to take the particular eſtate; and if the contingent remainder veſts during the continuance of the particular eſtate, or *eo inſtante* that it determines, it is ſufficient. *Moor* 637. *Church* and *Wiat*. 3 *Lev.* 408. 4 *Mod.* 359. 1 *Salk.* 227. *Carth.* 309. *Reeve* and *Long*; and ſee 10 & 11 *W.* 3. *cap.* 16. and *Remainders*.

Alſo it ſeems agreed, that a man may ſurrender copyhold lands immediately to the uſe of an infant *in ventre ſa mere*; for a ſurrender is a thing executory, and nothing veſts before admittance; and therefore if there be a perſon to take at the time of the admittance, it is ſufficient, and not like a grant at Common law, which putting the eſtate out of the grantor muſt be void, if there be no-body to take. 1 *Roll. Rep.* 109, 138. 2 *Bulſt.* 273. *Co. Copyb.* 9. and ſee *Moor* 637.

If an uſurpation be had on one *in ventre ſa mere*; at the next turn after his birth, he ſhall be relieved on the ſtatute of *Weſtm.* 2. *cap.* 5. *Hob.* 240.

III. *Of the* trial *of infancy*.

Infancy is to be tried by inſpection of the court, or by jury: And herein it is laid down as a rule in ſome books, *that whereſoever it is alledged upon the pleading, that the party was and yet is under age, there it ſhall be tried by inſpection; but where the infant is of full age at the time of the plea, there it ſhall be tried per pais.* 1 Lev. 142. 1 Sid. 321. 1 Keb. 796. Cro. Jac. 59, 581.

But as to judicial acts, or acts done by an infant in a court of record, and which he is allowed to avoid, the trial thereof muſt be by inſpection; therefore if an infant levies a fine, he muſt reverſe it by writ of error; and this muſt be brought during his minority, that the court may by inſpection determine the age of the infant; but the judges. as by *adjuncta*, may in ſuch caſes inform themſelves by witneſſes, church books, &c. *Co. Lit.* 380. *Moor* 76. 2 *Rol. Abr.* 15. 2 *Inſt.* 483. 2 *Bulſ.* 320. 12 *Co.* 122.

If an infant brings a writ of error to reverſe a fine for his non-age, and, after inſpection and proof of infancy by witneſſes, dies before the fine is reverſed, his heir may reverſe it; becauſe the court having recorded the non-age of the conuſor, ought to vacate his contract when he appeared to be under a diſability at the time he entered into it. *Co. Lit.* 380. *Moor* 884. *Keckwick's* caſe.

An infant acknowledged a fine, and the conuzees omitting to have the fine ingroſſed till he came of age, in order to prevent the infant from bringing a writ of error; yet the court upon view of the conuzance produced by the infant, and upon his prayer to be inſpected and his age examined, *recorded his non-age, to give him the benefit of his writ of error*, which he muſt otherwiſe loſe, his non-age determining before the next term. *Moor* 189. & *vide Cro. Jac.* 230, 1.

So if an infant ſuffer a common recovery by appearing in perſon, this muſt be reverſed during his minority by inſpection of judges.

But is is ſaid, that if an infant ſuffers a recovery, in which he appears by attorney, he may reverſe it after his full age, as it may be diſcovered whether he was within age when the recovery was ſuffered; becauſe it may be tried *per pais* whether the warrrant of attorney was made by him when he was an infant. 1 *Sid.* 321. 1 *Lev.* 142

It is ſaid, that in all caſes where the party pleads that he was within age at *B.* and alledges a place, that there the trial may be well enough where it is alledged; where no place is alledged, there in perſonal actions where the writ is brought, and in real actions where the right of the land depends upon infancy, there the trial is to be where the land lies, and if not, where the action is brought. *Skin.* 10, 11. *Cro. Eliz.* 818. *S. P.*

IV. *Of what* offices *and* truſts *an infant is capable.*

As to what offices and truſts an infant is capable; he ſeems capable of ſuch offices as do not concern the adminiſtration of juſtice, but only require ſkill and diligence; and there it ſeems he may either exerciſe them himſelf when of the age of diſcretion, or they may be exerciſed by deputy; ſuch as the offices of park-keeper, foreſter, gaoler, &c. *Plow.* 379, 381. 9 *Co.* 48, 97. See *Offices*.

But it is ſaid, that an infant is not capable of the ſtewardſhip of a manor, or of the ſtewardſhip of the courts of a biſhop; becauſe by intendment of law he hath not ſufficient knowledge, experience and judgment to uſe the office, and alſo becauſe he cannot make a deputy. *Co. Lit.* 3. *b.* 1 *Rol. Abr.* 731. 2 *Rol. Abr.* 153. *March* 41. 43. *Cro. Eliz.* 636. *Cro. Car.* 556.

An infant cannot be an attorney, bailiff, factor or receiver. *F. N. B.* 118. 1 *Rol. Abr.* 117. *Co. Lit.* 172. *Cro. Eliz.* 637. An *infant* cannot exerciſe an office in a corporation. *Rep Temp. Hard. per Annaly*, 8, 9.

If an infant, being maſter of a ſhip at *St. Chriſtopher's* beyond ſea, by contract with another, undertakes to carry certain goods from *St. Chriſtopher's* to *England*, and there to deliver them; but does not afterwards deliver them according to agreement, but waſtes and conſumes them, he may be ſued for the goods in the court of Admiralty, though he be an infant; for this ſuit is but in nature of a detinue, or trover and converſion at the Common law. 1 *Rol. Abr.* 530. *Furnes* and *Smith*, and a prohibition denied to the court of Admiralty.

If an infant keeps a common inn, an action on the caſe upon the cuſtom of inns will not lie againſt him. 1 *Rol. Abr.* 2. *Carth.* 161. cited.

So if an infant draws a bill of exchange, yet he ſhall not be liable on the cuſtom of merchants, but he may plead infancy in the ſame manner that he may to any other contract of his. *Carth.* 160. *Williams* v. *Harriſon*. Adjudged on demurrer. Or, he may give it in evidence on the general iſſue, but the faireſt way is to plead it. An infant cannot be a juror. *Hob.* 325.

An infant or one under the age of twenty-one years, cannot be elected a member of the Houſe of Commons; nor can any Lord of parliament ſit there until he be of the full age of twenty-one years. 2 *Inſt.* 47.

V. *What things an infant is capable of doing for his own advantage, and of his acts as* good, void, *or* voidable.

An infant is capable of inheriting, for the law preſumes him capable of property; alſo an infant may purchaſe, becauſe it is intended for his benefit, and the freehold is in him till he diſagree thereto, becauſe an agreement is preſumed, it being for his benefit, and becauſe the freehold cannot be in the grantor contrary to his own act, nor can be in abeyance, for then a ſtranger would not know againſt whom to demand his right; and if at his full age the infant agrees to the purchaſe, he cannot afterwards avoid it; but if he dies during his minority, his heirs may avoid it; for they ſhall not be bound by the contracts of a perſon who wanted capacity to contract. *Co. Lit.* 2, 8. 2 *Inſt.* 203.

If an infant take a leaſe for years rendering rent; if he enter upon the land he ſhall be charged with an action during his minority, becauſe the purchaſe is intended for his benefit; but he may waive the term, and not enter, and if more rent be reſerved upon the leaſe than the land is worth, he may avoid it. 2 *Bulſt.* 69. If an infant make a leaſe for years with remainder over, rendring rent, and, at full age, accepts the rent of the tenant for years, this ſhall be an aſſent to him in remainder, ſo that he ſhall not ouſt him after. *Plowd.* 546.

If an infant be lord of a manor, he may grant copyholds notwithſtanding his non-age; for theſe eſtates do not take their perfection from the intereſt or ability of the lord to grant, but from the cuſtom of the manor, by which they have been demiſed, and are demiſable time out of mind. 4 *Co.* 23. *b.* *Co. Copyholder* 79, 107. *Noy* 41. 8 *Co.* 65.

An infant may preſent to a church; and here it is ſaid, that this muſt be done by himſelf, of whatſoever age he be, and cannot be done by his guardian, for the guardian can make no advantage thereof, conſequently has nothing therein whereby he can give an account, therefore the infant himſelf ſhall preſent. *Co. Lit.* 17. *b.* 89. *a.* 29 *Ed.* 3. 5. 3 *Inſt.* 156.

An infant leſſor in ejectment, muſt give ſecurity for coſts; becauſe the infant himſelf is not liable. *Wilſ. Rep. par.* 1. *p.* 130.

Contracts for neceſſaries.

Here we muſt obſerve, that (ſtrictly ſpeaking) all contracts made by infants, are either void or voidable, becauſe a contract is the act of the underſtanding, which during their ſtate of infancy they are preſumed to want; yet civil ſocieties have ſo far ſupplied that defect, and taken care of them, *as to allow them to contract for their benefit and advantage*, with power, in moſt caſes, *to recede from and vacate it, when it may prove prejudicial to them*; but in this contract for neceſſaries they are abſolutely bound, and this likewiſe is in benignity to infants, for if they were not allowed to bind themſelves for neceſſaries nobody would truſt them, in which caſe they would be in worſe circumſtances. than perſons of full age. 10 *H.* 6. 14. 18 *Ed.* 4. 2. 1 *Rol. Abr.* 729

Therefore it is clearly agreed, that an infant may bind himſelf to pay for his neceſſary meat, drink, apparel, phyſick, and ſuch other neceſſaries, and likewiſe for his good teaching and inſtruction, whereby he may profit himſelf afterwards. *Co. Lit.* 172. *a.* *&c.* This binding muſt mean by *parol*, in fact, for *neceſſaries*, if there is not an actual promiſe the law implies a promiſe, but the infant will not be bound by any bond, note, or bill, which he gives, tho' for neceſſaries, therefore a tradeſman's beſt ſecurity, will be the actual or implied promiſe. *Vide poſt*, next head. With reſpect to *ſchooling, &c.* it muſt be in caſes, where the credit was given, *bonâ fide*, to the infant. Vide *infra*.

As to neceſſaries, &c.

It muſt appear that the things were actually *neceſſary*, and *of reaſonable prices*, and *ſuitable to the infant's degree and eſtate*, which regularly muſt be left to the jury; but if the jury find that the things were neceſſaries, and of reaſonable price, it ſhall be preſumed they had evidence for what they thus find; and they need not find particularly what the neceſſaries were, nor of what price each thing was; alſo if the plaintiff declares for other things, as well as neceſſaries, or alledges too high a price for thoſe things that are neceſſary, the jury may conſider of thoſe things that were really neceſſaries, and of their intrinſick value, and proportion their damages accordingly. *Cro. Jac.* 360. 2 *Rol. Rep.* 144. *Poph.* 151. *Palm.* 361. *Goulſ.* 168. *Godb.* 219. 1 *Leon.* 114.

If an infant promiſes another, that if he will find him meat, drink and waſhing, and pay for his ſchooling, that he will pay 7 *l.* yearly; an action upon the caſe lies upon this promiſe; *for learning is as neceſſary as other things*, and though it is not mentioned what learning this was, yet *it ſhall be intended what was fit for him*, till it be ſhewn to the contrary on the other part; and though he to whom the promiſe was made does not inſtruct him, but pays another for it, the promiſe of re-payment thereof is good; if it appears that the learning, meat, drink and waſhing, could not be afforded for a leſs ſum than 7 *l.* 1 *Rol. Abr.* 729. *Palm.* 528. 1 *Jon.* 182. *S. C. Pickering* v. *Guning*, adjudged on motion in arreſt of judgment.

Aſſumpſit, for labour and medicines in curing the defendant of a diſtemper, *&c.* who pleaded *infra ætatem viginti & unius annorum*; the plaintiff replied, it was for neceſſaries generally; and upon a demurrer to this replication it was objected, that the plaintiff had not aſſigned in certain how, or in what manner, the medicines were neceſſary: but it was adjudged, that the replication in this general form was good. *Carth.* 110. *Huggins* and *Wiſemen.*

If an infant be a mercer, and hath a ſhop in a town, and *there buys and ſells*, and contracts to pay a certain ſum to *J. S.* for ware ſold to him by *J. S.* to re-ſell, yet he is not chargeable upon this contract, for this trading is not immediately neceſſary *ad victum & veſtitum*; and if this were allowed, infants might be infinitely prejudiced, and buy and ſell, and live by the loſs. 1 *Rol. Abr.* 729. *Cro. Jac.* 494. 2 *Rol. Rep.* 45. *S. C.* adjudged between *Hill* and *Whittingham.*

And as the contract of an infant for wares, for the neceſſary carrying on his trade, whereby he ſubſiſts, ſhall not bind him; *ſo neither ſhall he be liable for money which he borrows to lay out for neceſſaries*; therefore the lender muſt, at his peril, lay it out for him, or, ſee that it is laid out in neceſſaries. 5 *Mod.* 368. 1 *Salk.* 386-7.

As in debt upon a ſingle bill, the defendant pleaded that he was within age; the plaintiff replied, that it was for neceſſaries, *viz.* 10 *l.* for cloaths, and 15 *l.* money lent *pro & erga* his neceſſary ſupport at the univerſity; the defendant rejoined, *that the money was lent him to ſpend at pleaſure*; *abſque hoc*, that it was lent him for neceſſaries; and iſſue hereupon was found for the plaintiff, who had judgment in *C. B.* but was reverſed in *B. R.* on a writ of error for the iſſue only being, whether this money was lent the infant for neceſſaries, not whether it was laid out in neceſſaries, it cannot bind the infant which ever way it is found; *for it might have been borrowed for neceſſaries, and laid out in a tavern*; and the law will not intruſt the infant *with application and laying of it out.* 1 *Salk.* 386. *Earl* v. *Peale.* See *Contra* as to a ſingle bill given for neceſſaries. 1 *Lev.* 86. 1 *Keb.* 382, 416, 423 *S. C.* *Co. Lit.* 172. *S. P.* *Sed qu?*

So if one *lends money* to an infant, who actually lays it out in neceſſaries, yet this will not bind the infant, nor ſubject him to an action; *for it is upon the lending that the contract muſt ariſe*, and after that time there could be no contract raiſed to bind the infant, becauſe after that he might waſte the money and the infant's applying it afterwards for neceſſaries, will not by matter *ex poſt facto*, intitle the plaintiff to an action. 1 *Salk.* 279.

Altho' an infant ſhall be liable for his neceſſaries, yet if he enters into an obligation with a penalty for payment thereof, this ſhall not bind him; *for the entering into a penalty can be of no abvantage to the infant.* Cro. El. 920. Moor 679. pl 929. Co. Lit. 172. 1 Roll. Abr. 729. Sed. vide infra.

It is alſo ſaid, that an infant cannot either by parol contract, or a deed, bind himſelf, even for neceſſaries, *in a ſum certain*, and that ſhould an infant promiſe to give an unreaſonable price for neceſſaries, that would not bind him; and that therefore it may be ſaid that the contract of an infant for neceſſaries, *quatenus* a contract, does not bind him any more than his bond would; but only ſince an infant muſt live as well as a man, the law gives a *reaſonable price* to thoſe who furniſh him with neceſſaries. *Caſes in Law and Equity* 85.

As to an infant binding himſelf in an *aſſumpſit* for payment of neceſſaries, ſee 1 *Rol. Abr.* 729. *Noy* 85. *Latch* 157, and ſee *Bulſ.* 188. 1 *Roll. Rep.* 382.

Alſo it ſeems clear, that if an infant becomes indebted for neceſſaries, and the party takes a bond from the infant, that this ſhall not drown the ſimple contract, becauſe the bond has no force. *Cro Eliz.* 920.

But it is agreed, that an *inſimul computaſſet* will not lie againſt an infant, tho' it be for neceſſaries: *for he not having diſcretion, is not to be liable to falſe accounts.* Co. Lit. 172. Lamb. 169. Noy 87.

If an infant comes to a ſtranger, who inſtructs him in learning, and boards him, there is *an implied contract in law*, that the party ſhould be paid as much as his board and ſchooling are worth; but if the infant at the time of his going thither was under the age of diſcretion, or if he were placed there upon a ſpecial agreement with ſome of the child's friends, the party that boards him has no remedy againſt the infant, but muſt reſort to them with whom he agreed for the infant's board, *&c.* *Allen* 94. *Duncomb* and *Tickeridge.*

Judicial acts, or acts done in a court of record.

As to judicial acts, and acts done by an infant in a court of record, they regularly bind the infant and his repreſentatives, with the following ſavings and exceptions; as if an infant levies a fine, though the judges ought not to admit the acknowledgment of one under that diſability; yet having once recorded his agreement as the judgment of the court, it ſhall for ever bind him and his repreſentatives, unleſs he reverſes it by writ of error, *which muſt be brought by him during his minority,* that the court by inſpection may determine his age. *Co. Lit.* 380. *Moor* 76. 2 *Rol. Abr.* 15. 2 *Inſt.* 483. 2 *Bulſ.* 320. 12 *Co.* 122. *Yelv.* 115. 3 *Mod.* 229.

So if an infant levies a fine, he is enabled by law to declare the uſes thereof, and if he reverſeth not the fine during his nonage, the declaration of uſes will ſtand good for ever, for though *that* be a matter *in pais,* and all ſuch acts an infant may avoid at any time after his full age, if he do not conſent; yet being made in purſuance of the fine levied, which fine muſt ſtand good for ever, (unleſs reverſed in the manner as has been mentioned,) ſo will the declaration of uſes too. 2 *Co.* 58. *a.* 10 *Co.* 42. *Moor* 22. *Dalſ.* 47. 2 *Leon.* 159. *Goulſ.* 13. 1 *Jones* 390. *Winch.* 103.

If there be tenant for life, the remainder to an infant in fee, and they two join in a fine, the infant may bring a writ of error, and reverſe the fine as to himſelf; but it ſhall ſtand good as to the tenant for life; for the diſability of the infant ſhall not render the contract of the tenant for life, who was of full age, ineffectual. 1 *Leon.* 115, 317. 2 *Sid.* 55. 2 *Jones* 182.

If an infant brings a writ of error to reverſe a fine for his nonage, and his nonage, after inſpection, is recorded by the court, but before the fine reverſed he levies another fine to another, the ſecond fine ſhall hinder him from reverſing the firſt; becauſe the ſecond having entirely barred him of any right to the land, muſt alſo deprive him of all remedies which would reſtore him to the land. 1 *Rol. Abr.* 788. See *Moor* 74.

As to *recoveries* ſuffered by infants, when theſe were improved into a common way of conveyance, it was thought reaſonable that thoſe whom the law had judged incapable to act for their own intereſt, ſhould not be bound by the judgment given in recoveries, though it was the ſolemn act of the court; for where the defendant gives way to the judgment, it is as much his voluntary act and conveyance, as if he had transferred the land by livery, or any other act *in pais;* therefore if an infant ſuffers a recovery, he may reverſe it, as he may a fine, *by writ of error, during his minority:* And this was formerly taken to be law, as well where the infant appeared by guardian, as by his attorney, or in perſon: But now the diſtinction turns upon this point, that if an infant ſuffers a recovery in perſon, it is erroneous, and he may reverſe it by writ of error; but even in this caſe the writ of error muſt be brought during his minority, that his infancy may be tried by the inſpection of the court; *for at his full age it becomes obligatory and unavoidable:* but in caſes of neceſſity the court has admitted the infant to appear by guardian, and to ſuffer a recovery, or come in as a vouchee; but this, too, is ſeldom allowed by the court, unleſs upon emergencies, when it tends to the improvement of the infant's affairs, or when lands of equal value have been ſettled on him, and when he has had the King's Privy Seal for that purpoſe; and thoſe recoveries have been allowed and ſupported by the judges, and the infant could not ſet them aſide; beſides, if ſuch recoveries be to the prejudice of the infant, he has his remedy for it againſt his guardian, and may reimburſe himſelf out of his pocket to whom the law had committed the care of him. 1 *Rol. Abr.* 731, 742. *Co. Lit.* 381. *b.* 2 *Rol. Abr.* 395. 10 *Co.* 43. *a.* *Cro. El.* 471. *Hob.* 196-7. *Cro. Car.* 307. 2 *Bulſ.* 235. 1 *Sid.* 321-2. 1 *Lev.* 142. 2 *Saund.* 94. 1 *Vern.* 461. 2 *Salk.* 567.

Partition by writ *De partione facienda* binds infants, becauſe by judgment in a court of juſtice, to which no partiality can be imputed. *Co. Lit.* 171. *b.*

If an infant acknowledge a recognizance or ſtatute, it is *only voidable;* and the infant at his peril muſt avoid them by *audita querela,* as he muſt a fine or recovery by writ of error *during his minority;* for ſuch conveyances or other acts of record become obligatory and unavoidable, if they be not ſet aſide before the infant comes of age; the reaſon is, *becauſe theſe contracts being entered into under the inſpection of the judge, (who is ſuppoſed to do right) the infant cannot againſt them aver his diſability, but muſt reverſe them by a judgment of a Superior Court, who, by inſpection, has the ſame means to determine whether the inferior juriſdiction has done right, that firſt received the contract.* Moor pl. 206. 2 Inſt. 483, 673. Co. Lit. 380. Keilw. 10. Reg. 149. 10 Co. 43. a.

If an infant bargain and ſell his land by deed indented and inrolled, yet he may plead non-age; for notwithſtanding the ſtatute 27 *Hen.* 8. *cap.* 16. makes the inrolment in a court of record neceſſary to complete the conveyance; yet the bargainee claims by the *deed* as at *Common law,* which was, and therefore is, ſtill defeaſible by non-age. 2 *Inſt.* 673.

Acts in pais.

Infants are regularly allowed to reſcind and break through all contracts *in pais* made during minority, except only for *ſchooling and neceſſaries,* be they never ſo much to their advantage; and the reaſon hereof is, the indulgence the law has thought fit to give infants, who are ſuppoſed to want judgment and diſcretion in their contracts and tranſactions with others, and the care it takes of them in preventing their being impoſed upon, or over-reached by perſons of more years and experience. 39 *Ed.* 3. 20. *b.* 1 *Rol. Abr.* 729. *Co. Lit.* 172, 381.

And for the better ſecurity and protection of infants herein, the law has made ſome of their contracts abſolutely void; *i. e. all ſuch in which there is no apparent benefit, or ſemblance of benefit, to the infant;* but as to thoſe from which the infant may receive benefit, and which were entered into with more ſolemnity, they are only voidable; that is, the law allows them when they come of age, and are capable of conſidering over again what they have done, *either to ratify and affirm ſuch contracts, or to break through and avoid them.* Cro. Car. 502. 1 Jones 405. 3 Mod. 310.

Hence an infant may purchaſe, becauſe it is intended for his benefit, and at his full age he may either agree, or diſagree to the ſame. *Co. Lit.* 2, 8. 2 *Vern.* 203.

Alſo the feoffment of an infant is not void, but only voidable, not only becauſe he is allowed to contract for his benefit, but becauſe that there ought to be ſome act of notoriety to reſtore the poſſeſſion to him, equal to that which transferred it from him. *Co. Lit.* 380. *Dyer* 104. 2 *Rol. Abr.* 572. 4 *Co.* 125. *a.*

Therefore if an infant make a feoffment and livery in perſon, he ſhall have no aſſiſe, *&c.* but muſt avoid it by *entry;* for it is to be preſumed in favour of ſuch ſolemnity, that the aſſembly of the *pais* then preſent would have prevented it, if they had perceived his non-age, and therefore the feoffment ſhall continue till defeated by *entry,* which is *an act of equal notoriety.* 8 Co. 42. Bro. *tit.* Diſſeiſin. 63.

But if the infant had made a letter of attorney to deliver ſeiſin, he might have an aſſiſe, *&c.* becauſe the letter of attorney (like all other acts or agreements made by an infant to his prejudice) muſt be void; therefore whoever claims under it, or by virtue of its authority,

rity, muſt be a wrong-doer. 2 *Rol. Abr.* 2. *Noy* 130. *Palm.* 237.

Alſo as to the acts of infants being *void*, or *voidable*, there is a diverſity between an *actual delivery* of the thing contracted for, and a *bare agreement* to deliver it only; that the *firſt* is *voidable*, but *the laſt abſolutely void*; as if an infant deliver a horſe, or a ſum of money, with his own hands, this is only voidable, and to be recovered back in an action of account. *Perk. ſect.* 12, 19. 1 *Rol. Abr.* 730. 2 *Rol. Rep.* 408. *Latch.* 10. *Rol.* 736. 3 *Rep.* 13. *Hob.* 96.

But if an infant agrees to give a horſe, and does not deliver the horſe with his hand, and the donee take the horſe by force of the gift, the infant ſhall have an action of treſpaſs; for the grant was merely void. *Perk ſect.* 12, 19. 1 *Mod.* 137.

In treſpaſs *quare vi & armis inſultum fecit, & totum crinem capitis ipſius Annæ abſcindit*, the defendant as to all the treſpaſs *præter tonſuram crinis* pleads Not guilty, and as to that, pleads that the plaintiff was of the age of ſixteen years, and for a certain ſum of money *licentiavit* the defendant *duas uncias crinis dictæ Annæ detondere & abſcindere*; and upon demurrer to this plea the court held, *that the contract was abſolutely void*, and conſequently the tonſure unlawful, and gave judgment accordingly for the plaintiff. *Mich.* 26 *Car.* 2. *Anna Sechroghan per Guardianum* v. *Stuartſon.* 3 Keb. 369. S. C.

And as an infant is not bound by his contract to deliver a thing; ſo if one deliver goods to an infant upon a contract, *&c. knowing him to be an infant*, he ſhall not be chargeable in trover and converſion, or any other action for them; for the infant is not capable of any contract, but for neceſſaries; *therefore ſuch delivery is a gift to the infant:* But if an infant without any contract wilfully takes away the goods of another, trover lies againſt him; alſo it is ſaid, that if he take the goods *under pretence that he is of full age*, trover lies; *becauſe it is a wilful and fraudulent treſpaſs.* 1 Sid. 129. 1 Lev. 169. 1 Keb. 905, 913.

Alſo it ſeems, that if an infant, being above the age of diſcretion, be *guilty of any fraud* in affirming himſelf to be of full age, or if, by *combination* with his guardian, *&c.* he make any contract or agreement *with an intent afterwards to elude it*, by reaſon of his privilege of infancy, that a *court of equity* will decree it good againſt him according to the circumſtances of the *fraud*; but in what caſes in particular a court of equity will thus exert itſelf is not eaſy to determine. *Vide* 1 *Vern.* 132. 2 *Vern.* 224-5.

Alſo, notwithſtanding the diſability of an infant to contract, by the 7 *Ann. cap.* 19. it is enacted, "That it ſhall be lawful for any perſon under the age of twenty years, *by the direction of the High court of Chancery, or the court of Exchequer, ſignified by an order made upon hearing all parties concerned*, to convey and aſſure any lands, *&c. mortgaged* in ſuch manner as ſhall by order be directed to any other perſon; and ſuch conveyance ſhall be good and effectual in law."

And, "That every ſuch infant being only *truſtee* or *mortgagee* as aforeſaid, ſhall be compellable, by ſuch order, to make ſuch conveyance."

How an infant is to bind himſelf by a contract to ſerve in the plantations. See 4 *Geo.* 1. *c.* 11. *ſect.* 5.

All gifts, grants, *&c.* of an *infant*, which do not take effect *by delivery of his hand* are *void*; and if made *to take effect by delivery of his own hand*, are *voidable* by himſelf, and his heirs, and thoſe which ſhall have his eſtate. And *privies in blood* (as the heir general or ſpecial) may avoid a conveyance made by their anceſtor during his infancy. But *privies in eſtate*, ſuch as the donor of an eſtate tail where the tenant in tail dies without iſſue; or *privies in law*, as the lord by eſcheat where there is no heir, ſhall not avoid a conveyance made by an *infant*.

If a man within age, ſeiſed *in right of his wife*, makes a feoffment and dies, his heir cannot enter and avoid it, *becauſe no right deſcends to him*; for the baron, if he had lived, could have entered only *in right of his wife.* And no perſon ſhall take advantage of the infancy of his anceſtor, *but he who hath a right deſcending to him from that anceſtor*; though the heir may take the benefit of a *condition*, notwithſtanding no right deſcended to him from his anceſtor. 8 *Rep.* 42, 3, 4. and ſee 3 *Rep.* 35.

If huſband and wife are both within age, and they by indenture join in a feoffment, and the huſband dies, the wife may enter and avoid the deed, or have a *dum fuit infra ætatem.* 1 *Inſt.* 337. Though if there be two jointenants within age, and one of them makes a feoffment in fee of the moiety during his infancy, and dies, the ſurvivor cannot enter; but the heir of the feoffor may enter into the moiety, *&c.* 8 *Rep.* 43. If an *infant* exchanges lands with another, and the other enters, the *infant* may have aſſiſe, 18 *Ed.* 4. 2. And where an *infant* leaſes for years, he may affirm the leaſe, or bring treſpaſs againſt the leſſee for the occupation. 18 *Ed.* 4. *Bro. Treſpaſs* 338. A leaſe made by an *infant* reſerving rent is *voidable*; but if there be no rendering rent, it is *abſolutely void.* *Latch* 199. If an *infant* make a leaſe paying rent, and after his coming of age he accepts the rent, the voidable leaſe is made good; and an *infant*'s leaſe in ejectment is good. 2 *Lil. Abr.* 55. 3 *Salk.* 196. An *infant* cannot ſurrender a future intereſt, by taking a new leaſe; his ſurrender by deed and by acceptance of a ſecond leaſe, are void, except there be an increaſe of the term; or a decreaſe of the rent; *for where no benefit comes to him, his acts are merely void.* Cro. Car. 502. If an *infant* ſurrenders a leaſe for years to him in reverſion, this is void, and cannot be made good by any agreement at full age. *Rol. Abr.* 728. But as he may ſurrender *de novo*, of what uſe is the doctrine, ſuppoſing it law?

An *infant* confeſſed judgment in an action of debt brought againſt him; and it was held, *audita querela* did not lie upon this judgment, though it would on a ſtatute or recogniſance; but the party ought to bring a writ of error in the Exchequer Chamber, by virtue of the ſtatute 27 *Eliz.* *Moor* 460. See 3 *Salk.* 196. 1 *Inſt.* 233, 380. *Moor* 189. Where an *infant* may levy a fine, he may declare the uſes of it alſo by deed: and the *infant*'s declaration of uſes ſhall be good and binding to the *infant* and his heirs, ſo long as the fine continues unreverſed *Hob.* 224. 2 *Leon.* 193. 2 *Rep.* 58. 10 *Rep.* 42. It was formerly held that an *infant* appearing by guardian, could not ſuffer a common recovery. 10 *Rep.* 42. Though it hath ſince been allowed in many caſes, and by all the Judges, that an *infant may ſuffer a common recovery by guardian*, and he ſhall not avoid it; for by intendment he ſhall have recompence in value; and if it is not for the good of the *infant*, he may have recompence over againſt his guardian. 2 *Danv. Abr.* 772.

A common recovery may be had againſt an *infant*, being examined *ſole & ſecrete*; and he may ſuffer a recovery by guardian in open court. *Hob.* 169. 2 *Bulſt.* 255. 2 *Neiſ. Abr.* 994. and ſee *Sid.* 321. 2 *Nelſ.* 995.

If an *infant* appears by attorney, and not by guardian, it is error; for which a judgment may be reverſed. 2 *Nelſ.* 998. But if an *infant* appearing *per guardianum* comes of age pending the ſuit, he may then plead *per attornatum.* Moor 665. An *infant* is to ſue by *prochien amy*, or guardian; but always defend by guardian. 1 *Inſt.* 135.

N. B. When the defendant is an *infant*, the plaintiff ought to apply to him, to name his guardian; and if he doth not do it, the court will compel him. *Wilſ. Rep. par.* 2. *p.* 50.

He is not to appear by attorney in his own right; but if he be joint executor with others of age, they may make an attorney for him: reſolved where three executors brought an action by attorney, one being within age. 2 *Saund.* 212. Though it was adjudged, that an *infant* may neither ſue, nor be ſued, as executor, by attorney; for the *infant*'s diſability is adherent to his perſon, and he has no power to make an attorney in any caſe, who would not be anſwerable to him. *Fitzgib.* 1, 2. *Mich.* 1 *Geo.* 2. And it hath been held, if an action be brought againſt three ſeveral defendants, and one of them is an *infant*, they may not all appear by attorney; but he within age muſt appear by guardian, or it will be error to reverſe the judgment. *Style* 400. 1 *Lev.* 294.

If baron and feme, where the feme is an *infant*, appear by attorney, it is error. 5 *Mod.* 209. When the defendant in an action is an *infant* the plaintiff ſhall have ſix years to bring his action in, after the defendant comes of age: and if the plaintiff be an *infant*, he hath ſix years likewiſe after his age, to ſue by the ſtatute of limitations. *Lutw.* 243. And *infants* are not bound by nonclaim, *&c.* on fines levied by others, within five years, by the *Stat.* 13 *Ed.* 1. Nonclaim ſhall not bind an *infant*, nor any negligence, *&c.* be imputed to him; except in ſome particular caſes, *viz.* in caſe of a fine where the time begins in the life of the anceſtor; or of an appeal of death of his anceſtor, where he brings not his appeal within a year and a day, *&c.* 1 *Inſt.* 246, 380. *Wood's Inſt.* 13. Laches ſhall prejudice an *infant*, if he preſents not to a church in ſix months. *Lit.* 402. All acts of neceſſity bind *infants*; as preſentations to benefices, admittances and grants of copyhold eſtates, and aſſenting to legacies, *&c.* 3 *Salk.* 190. *Conditions* annexed to lands, whether the eſtate come by grant or diſcent, bind *infants*: and where the eſtate of an *infant* is upon condition to be performed by the *infant*, if the *condition* is broken during the minority, the land is loſt for ever. 1 *Inſt.* 233, 380. Though a ſtatute is not extendible againſt an *infant*, yet *Chancery* will give relief againſt *infants.* 1 *Lev.* 198.

An *infant* is much favoured by the law; therefore it gives him many privileges above others: if an *infant* make default in a real action, he ſhall not loſe his land as another man ſhall do; one who is an *infant* ſhall not be amerced, nor find pledges like one of full age; and if he be bail, he may be diſcharged by *audita querela*, *&c.* 1 Inſt. 272. 8 Rep. 61. On his default at the *grand cape*, the *infant* by writ of error may reverſe the judgment given againſt himſelf; unleſs it be in caſe of a judgment in dower. *Dyer* 104. *Jenk. Cent.* 47, 319. But an *infant* may be diſſeiſed of his lands. and a *warranty* that deſcendeth upon an *infant*, may bar him of his *entry*; ſo a *remitter* upon him; *contra* of a *deſcent*: and if an *infant* hath franchiſes or liberties, and do abuſe, or diſſuſe them, he ſhall forfeit them as a man of full age may. 1 *Inſt.* 3, 133. 1 *And.* 311. *Bro.* 48.

A promiſe of a perſon when at full age, for conſideration during infancy, ſhall be binding, and *aſſumpſit* lieth. 2 *Lev.* 144. 2 *Leon* 215. A perſon gave a note, a few days after he was of age, for things had during his infancy; on extraordinary circumſtances, equity ſet it aſide: tho' it is true, if an *infant* takes up goods, or borrows money, and, after he comes to age, gives his note or promiſe for the money, that is good at law: but to prevent the ruin of infants, it may be convenient to give relief. *Barnardiſt.* 4, 6. If an infant delivers money with his own hand, it is *voidable*, and to be recovered by action of account. The infant ſells goods to another; he may make the ſale void, or have debt, *&c.* for the money. *Hob.* 77. 18 *Ed.* 4. 2.

If a treſpaſs be done to an *infant*, and he ſubmits to an award, it is ſaid the award ſhall not be binding to him. 2 *Danv.* 770. An *infant* is not bound by his conſent not to bring a writ of error; for though the judgment binds him, yet it binds but as a judgment reverſable. *Rep. Temp. Hardw. per Annaly*, 104. Agreements, *&c.* made by an *infant*, although he be within a day of his full age, ſhall not bind him. *Plowd.* 364. but *vide* the next *tit.* Where an *infant* enters into bond, pretending to be of full age, though he may avoid it by pleading his infancy, yet he may be indicted for a cheat. *Wood's Inſt.* 585. See *Age*, and *Heir apparent*.

Infants when of Age. An *infant* has been adjudged of *age* the day before his birth day, for the law will not make a fraction of a day; therefore where a perſon was born the *third* of *September*, and the *ſecond* of *September* 21 years after, he made his will, it was held good; and that he was then of age to deviſe his lands. 1 *Ld Raym.* 480. And it is ſaid ſuch will ſhall take effect, tho' the deviſor dies by ſix at night of that day. 2 *Raym.* 1096.

Infancy of Corporations. The King cannot be an infant by our law. 1 *Inſt.* 43. And he ſhall never avoid his grants, *&c.* in reſpect of infancy; for he cannot be a minor, being as King a body politick. 2 *Danv. Abr.* 767. The acts of a Mayor and Commonalty ſhall not be avoided by reaſon of infancy of the Mayor. *Cro. Car.* 557.

Infections, By caſting garbage and dung into ditches, *&c.* how puniſhed. See *Stat.* 12 *R.* 2. *c.* 13.

Infeodation of tithes, The granting of tithes to mere laymen. See *Black. Com.* 2 *V.* 27.

Inferior Courts. The courts of judicature of this kingdom are divided into a general diviſion of *ſuperior* and *inferior*. The courts at *Weſtminſter* are the ſuperior, and in general have (eſpecially the courts of King's Bench and Common Pleas) ſuperintendence over the inferior.

Lords or their bailiffs not to arreſt on foreign pleas, on pain of double damages. *Stat. Weſtm* .1. 3 *Ed.* 1. *c.* 35.

In courts of piepowder the plaintiff ſhall ſwear, *that the cauſe of action accrued within the time and juriſdiction of the fair.* 17 Ed. 4. c. 2. 1 Ric. 3. c. 6. The *conſideration* of *aſſumpſit* muſt be laid within the juriſdiction of an inferior court, but the *promiſe* need not. *Ld. Raym.* 211. In a *ſcire facias* on a judgment of an inferior court, removed by *certiorari*, the plaintiff muſt pray execution within the limits, otherwiſe on a writ of error. *Ib.* 216. Juſtification by proceſs of an inferiour court, is not avoided by replication that the cauſe of action aroſe out of the juriſdiction. *Ib.* 230.

No prohibition to an inferior court for proceeding in a cauſe ariſing out of their juriſdiction, till that matter has been pleaded. *Ib.* 346. An inferior court refuſes to give coſts of a nonſuit; the remedy is by writ *de executione judicii*, and not by *mandamus*. Ib. 348.

Miſdemeanors in inferior courts are puniſhable in *B. R.* *Ib.* 556. Attachment againſt a ſteward for ſitting judge in his own cauſe, or for miſdemeaning himſelf between parties. *Ib.* 766. The ſeveral ſorts of inferior juriſdiction, conuſance of pleas, and exempt juriſdiction. *Ib.* 836, 837. The judgment of an inferior court muſt be entered, *per eandem curiam*. Ib. 895. A *habeas corpus* does not remove the cauſe, as a *recordari* or *certiorari* do, and the plaintiff may vary in his declaration, but then he diſcharges the bail. *Ib.* 1102.

Judgment of an inferior court reverſed for want of the averment, that the cauſe was within the juriſdiction. *Ib.* 1310. A court held before the under-ſteward *ſecundum conſuetudinem*, *&c* without ſetting forth the cuſtom, and well. *Ib.* 1543. Inferior courts cannot grant a new trial. *Stran.* 113, 392. Inferior courts have been allowed juriſdiction in caſes ſimilar to thoſe where they have juriſdiction. *Ib.* 256. May ſet aſide proceedings for irregularity or ſurpriſe. *Ib.* 392. May ſet aſide a verdict for irregularity. *Ib.* 499. The King's Bench cannot reverſe a fine ſet by an inferior court. *Ib.* 786. The King's Bench cannot ſet a fine on a conviction by juſtices of the peace. *Ib* 794.

Infidels, *(infideles)* Heathens; who may not be witneſſes by the laws of this kingdom, becauſe they believe neither the Old or New Teſtament to be the word of God, on one of which oaths muſt be taken. 1 *Inſt.* 6. 2 *Hawk. P. C.* 434. But in ſome caſes they are allowed in civil ſuits being ſworn according to their own law. See the caſe of a witneſs who was of the *Gentou* religion, being admitted an evidence in equity. *Mich.* 1744. *Omychund* v. *Barker*. 1 *Atk.* 21, &c.

Infinity of Actions. The lord of the ſoil may have a ſpecial action againſt him who ſhall dig ſoil in the King's *highway*: but one ſubject may not have his action againſt another for common nuſanſes; for if he might, then every man would have it, and ſo the *actions* would be *infinite*, &c. 2 *Co. Inſt.* 56. 9 *Rep.* 113.

Infirmary, *(infirmarius)* In monaſteries there was an apartment allotted for *infirm* or ſick perſons; and he who had the care of the *infirmary* was called *infirmarius*. Mat. Paris, anno 1252.

There are now, to the honour of the nation, many hoſpitals, for the relief of diſeaſed perſons, in various parts of the kingdom, called *Infirmaries*.

In forma Pauperis, Suing actions in. See *Forma Pauperis*.

Information for the King, *(informatio pro Rege)*. We ſhall treat of this ſubject under the following heads, *viz.*

I. *Of informations generally, and the antiquity of the practice.*
II. *In what caſes an information will lie.*
III. *Of filing an information.*
IV. *How it is to be laid; the proceedings, and proviſions by ſtatute law, &c.*

I. *Of informations generally, and the antiquity of the practice.*

An *information* is, in many reſpects, the ſame as what, for a common perſon, we call a declaration. It ought to be certain, that the party may perfectly know what he is to anſwer to, and the court what they are to give judgment on. Vide *Plowd.* 329.

It is not always exhibited directly by the King or his attorney, but ſometimes by another, *qui ſequitur tam pro Domino Rege quam pro ſeipſo*, upon the breach of ſome penal law or ſtatute, wherein a penalty is given to the party that will ſue for the ſame, and may be either by action of debt or *information.* Cowell.

An *information* may be defined, an accuſation or complaint exhibited againſt a perſon for ſome criminal offence, either immediately againſt the King, or againſt a private perſon, which from its enormity or dangerous tendency, the public good requires ſhould be reſtrained and puniſhed, and differs principally from an indictment in this, that an indictment is an accuſation found by the oath of twelve men, whereas an *information* is only the allegation of the officer who exhibits it. 3 *New Abr.* 164.

Informations are either at the ſuit of the *King*, or at the ſuit of the *King* and *party*, which is called an *information qui tam*, becauſe the *informer* proſecutes *tam pro Domino Rege quam pro ſeipſo*; but theſe *informations* will not lie on any ſtatute, which prohibits a thing, as being an immediate offence againſt the public good in general, under a certain penalty, unleſs the whole or part of ſuch penalty be expreſly given to him who will ſue for it, becauſe otherwiſe it goes to the King, and nothing can be demanded by the party. 2 *Hawk. P. C.* 265.

The King ſhall put no one to anſwer for a wrong done principally to another, without indictment or preſentment; though of common right, *informations*, or actions in the nature thereof, may be brought for offences againſt ſtatutes, whether mentioned or not in ſuch ſtatutes, where other methods of proceeding are not particularly appointed. *Ibid.* 260. And wherever a matter concerns the public government, and no particular perſon is entitled to an action, there an *information* will lie. 1 *Salk.* 374. Vide 5 *Geo.* 1. *c.* 4. *Wood's Inſt.* 630.

This difference between *informations* and indictments has made ſome men conceive, that this kind of proceeding was utterly unlawful, as being not only contrary to the original frame and nature of our laws, but alſo contrary to *Magna Charta*, and ſeveral other ſtatutes, which require that no man ſhall be put to anſwer, *&c.* but upon indictment or preſentment. 3 *New Abr.* 165. See Sir *Francis Winnington*'s argument, 5 *Mod.* 456. and 1 *Show.* 106, *&c.*

But though, as my Lord *Hale* obſerves, in all criminal caſes the moſt regular and ſafe way, and moſt conſonant to the ſtatute of *Magna Charta*, *&c.* is by preſentment or indictment of twelve ſworn men, yet he admits that for crimes inferior to capital ones, the proceedings may be by *information*; and this, from the long and frequent practice is now ſaid to be eſtabliſhed as part of the law of the land; therefore, at this day the following kinds of *informations* may be exhibited, wherever the nature of the offence deſerves ſuch a proceeding. 2 *Hal. Hiſt. P. C. c.* 8.

1ſt, For an offence principally, and more immediately againſt the King, an *information* may be exhibited in the name of the Attorney-General, and ſuch *information* may be filed without any application or leave of the court, and the party ſhall be obliged to anſwer the ſame; alſo the ſtatute. 4 & 5 *W.* 3. *c.* 18. (which requires a recognizance for payment of coſts from perſons exhibiting and proſecuting *informations*) does not extend to *informations* filed by the King's Attorney-General, and it is ſaid, that the court will not quaſh ſuch *information* on motion, but will oblige the party to demur or plead thereto. 2 *Hawk. P. C.* 260. and ſee *Carth.* 465-6. that no ſuch *information* can be brought on a penal ſtatute. 1 *Salk.* 372.

2dly, On application, and leave of the court, grounded on motion and affidavit of ſome miſdemeanor, which, if true, doth from its evil tendency merit ſuch proſecution, the court allows of the filing of an *information* in the name of the Maſter of the Crown-office; and of ſuch kind of *informations* there are numberleſs precedents in the Crown-office. 2 *Hawk. P. C.* 261. 2 *Hal. Hiſt. P. C. c.* 20. But *B. R.* (generally ſpeaking) will not grant an *information*, where there is a civil ſuit depending, except the offence appears very clearly. Vide *Rep. Temp. Hardw. per Annaly*, 241.

3dly, Where, by many penal ſtatutes the proſecution upon them is by the acts themſelves limited to be by bill, plaint, *information* or indictment, there, without doubt, the proſecution may be by *information* as well as by any other of theſe methods; alſo of common right ſuch an *information*, or an action in the nature thereof, may be brought for offences againſt ſtatutes, whether they be mentioned by ſuch ſtatutes or not, unleſs other methods of proceeding be particularly appointed, by which all others are impliedly excluded. But for this ſee *Actions qui tam*, or *Actions on penal Statutes.*

4thly, *Informations* in nature of a *quo warranto* may be, and frequently are exhibited, with leave of the court, for uſurping privileges, franchiſes, *&c.* which in ſome reſpect is a civil ſuit, as it is uſed as a proper means to try a right, though it puniſhes the miſdemeanor, ſuch as the uſurpation, *&c.* Yet the court of *B. R.* will not grant an *information*, on private uſurpation of franchiſes, but the proper remedy is to apply to the Attorney-General. Vide *Rep. Temp. Hardw. per Annaly*, 261.

II. *In what caſes an information will lie.*

Here we ſhall lay down what hath been collected by Serjeant *Hawkins*, and is, as he ſays, every day's practice, agreeable to numberleſs precedents, *viz.* either in the name of the *King's Attorney General*, or of the *Maſter of the Crown-office*, to exhibit *informations* for batteries, cheats, ſeducing a young man or woman from their parents, in order to marry them againſt their conſent, or for any other wicked purpoſe, ſpiriting away a child to the plantations, reſcuing perſons from legal arreſts, perjuries, and ſubornations thereof, forgeries, conſpiracies, (whether to accuſe an innocent perſon, or to impoveriſh a certain ſet of lawful traders, *&c.* or to procure a verdict to be unlawfully given, by cauſing perſons bribed for that purpoſe to be ſworn on a *tales*), and other ſuch like crimes, done principally to a private perſon, as well as for offences done principally to the King; as for libels, ſeditious words, riots, falſe news, extortions, nuſances, (as in not repairing highways, or obſtructing them, or ſtopping a common river, *&c.*) contempts, as in departing from the parliament without the King's licence, diſobeying his writs, uttering money without his authority, eſcaping from legal impriſonment on a proſecution for contempt, neglecting to keep watch and ward, abuſing the King's commiſſion to the oppreſſion of the ſubject, making a return to a *mandamus* of matters known to be falſe, and in general any other offences againſt the public good, or *againſt the firſt and obvious principles of juſtice and common honeſty.* 3 New Abr. 166. 2 Hawk. P. C. 260. and ſeveral authorities there cited. Words reflecting on the public government are puniſhable at the ſuit of the King by *information.* Carth. 14, 15. The King. *v.* Darby.

An *information* was exhibited by the Attorney General for conſpiring to deſtroy the King's revenue of the exciſe; that the defendant's and others *ignot', &c. illicite, factioſe, & ſeditioſe, conſultaverunt & conſpiraverunt ad deſtruend' & depauperand' fermarios exciſæ prædict', &c.* and many other facts were laid in the *information* tending to deſtroying the exciſemen, depauperating them, deſtroying the King's revenue of exciſe, pulling down the exciſe-houſe, raiſing a tumult amongſt the poor people. *&c.* But the jury that were to try the iſſue were unwilling to find this matter, though expreſly proved, fearing it might be conſtrued no leſs than treaſon, and ſo would only find that ſuch and ſuch of the defendants *illicite, factioſe, & ſeditioſe ſe aſſemblaverunt, & illicite, factioſe & ſeditioſe conſultaverunt, & conſpiraverunt ad depauperand' firmarios Dom' Regis exciſæ prædict', prout prædict' attornat' gen' Dom' Regis, &c. & quoad totam aliam materiam in informatione contentiam*, find them Not guilty, and find *J. S.* Not guilty of the whole. It was moved in arreſt of judgment, that here is no offence found. The court unanimouſly concurred, that judgment ought to be given for the King, though as to the offence found there was ſome variety of opinion: *Twiſden* held, that *vi et armis* was not neceſſary, and that they were found guilty of an unlawful aſſembly, and in that the Ld. Ch. Juſt. *Hyde* concurred; as alſo that the intention of defrauding and depriving the King of his ſaid rent is implicitly found within the *modo et forma prout, &c.* for ſo ſhall the *machinantes, &c.* be applied. *Twiſden* and *Keeling* concurred, that for a conſpiracy alone, without any proſecution, information lay; and they all agreed, that the King's revenue being concerned did highly aggravate the offence; 26 *Aſſ.* 44. was cited to prove, that whatever concerns the King's revenue is public; and for this reaſon (2 *H.* 4. 7. *pl* 26.) it is determined, that a monk by being *farmer* is made capable to ſue. The Lord Ch. Juſt. cited old *Magna Charta*, where there is an article, to enquire of ſuch as ſeek to diminiſh the King's revenue of wards and marriages, which (ſays the Ch. Juſt.) ſhews it is a public treaſure. So judgment was given for the King. 1 *Lev.* 125. 1 *Sid.* 174. 1 *Keb.* 650, 665, 675, 682. *Hil.* 15 & 16 *Car.* 2. *in B. R. Rex* v. *Starling*, and other brewers in *London*.

A coroner having ſworn the jury to inquire of the death of one ſuppoſed a *felo de ſe*, and finding the evidence very ſtrong, took off ſome of the inqueſt; and tho' it was ſaid, that this coroner was a weak ſilly man, yet *Holt* ſaid there was no reaſon why an information ſhould not be againſt him. 12 *Mod.* 493. *Paſch.* 13 *W.* 3. *The King* v. *Stukely*.

An information was granted againſt one for counterfeiting one pretending himſelf to be bewitched by a poor woman who was thereupon indicted for witchcraft, and acquitted, and the whole diſcovered to be a cheat. 12 *Mod.* 556. *Mich.* 13 *W.* 3. *B. R. Hathaway*'s caſe.

Information againſt an attorney for examining perſons on oath, upon an arbitration, without putting the ſame in writing. So, againſt a juſtice of peace, for committing a man, for not paying one ſhilling as a fee, for diſcharging his warrant. *Wilſ. Rep. par.* 1. *fo.* 7.

So, for the following libellous words in a letter, *viz.* "I am ſure you will not be perſuaded from doing juſtice, "by any little arts of your town-clerk, whoſe conſummate malice and wickedneſs againſt me and my "family, will make him do any thing, be it ever ſo "vile." *Ib.* 22.

So, againſt an overſeer of the poor, for procuring a ſoldier, to marry a poor woman, chargeable to the pariſh. *Ib.* 41.

So, againſt one for practiſing as an attorney, while he was under-ſheriff. *Ib.* 93.

So, for exerciſing the office of Maſter, of the Cooper's Company. *Rep. Temp. Hardw. per Annaly*, 106.

So, againſt a juſtice of peace, for convicting a perſon unheard, and ſending him to the houſe of correction. *Ib.* 124.

So, againſt judges of an inferior court, for miſbehaviour. *Ib.* 135.

So, to try the truth of the return of a *mandamus*. *Ib.* 184.

An *information* was filed againſt a gaoler for ſuffering one taken upon an *excom. capiend.* to go at large. 12 *Mod.* 434. *Mich.* 12 *W.* 3. *Anon'.* An *information* was filed againſt certain perſons for that they, as enemies, &c. to the government, hired a boat during a war with *France*, in order to go thither, intending to aid and aſſiſt the King's enemies, though they did not actually go thither, but only intended it. *Skin.* 637. *Paſch.* 8 *W.* 3. *B. R. The King* v. *Cooper* and *al'.*

Upon a motion, leave was given to file an *information* againſt a juſtice of peace for ſending the proſecutor to the houſe of correction, without ſufficient cauſe. 8 *Mod.* 45. *Paſch.* 7 *Geo. The King* v. *Okey*. *Information* was filed againſt one for building of locks in the river *Thames* to the obſtruction of navigation. 12 *Mod.* 615. *Hil.* 13 *W.* 3. *The King* v. *Clark*.

Information for a ſcandalous narrative licenſed by the defendant, Speaker of the houſe of Commons, being *Dangerfield's* Narrative, reflecting on a nobleman, (the E. of *Peterborough*); the defendant pleaded, that he did it by order of the Houſe of Commons, and demanded judgment if this court will take conuſance of it. The Attorney General demurred, and afterwards the defendant pleaded the common plea, *quod non vult contendere cum Domino Rege*, and was fined 10,000 *l.* *Comb.* 18. *Paſch.* 2 *Jac.* 2. *B. R. The King* v. *Williams*.

Leave was given to file an *information* againſt the defendant, by whom the plaintiff's wife was inveigled away, and who procured merchants and tradeſmen to ſell goods to her, in order to ſaddle the huſband with the debt, he agreeing with the ſellers to deliver the goods back again. 12 *Mod.* 454. *Paſch.* 13 *W.* 3. *Pocock* v. *Thornicroft*.

Leave was moved for to file an *information* againſt the defendant for theſe words ſpoken of a juſtice of peace, *viz. He is an old rogue for ſending his warrant for me.* *Holt* Ch. J. ſaid, that he deſerved to be bound to his good behaviour, though it be not proper for that juſtice to do it, but rather to get one of his brothers to do it for him; and leave was denied; the court deſiring them to go by way of indictment if they would. 12 *Mod.* 514. *Paſch.* 13 *W.* 3. *The King* v. *Lee*.

The court was moved for an *information* againſt a churchwarden, for refuſing to collect money on a brief for fire, according to the act, 4 *Ann. c.* 14. and the caſe of *informations* granted for not burying in woollen was cited. *Sed per curiam*; That is of a public nature, and wherein the revenue is concerned: and beſides, in this caſe there is a penalty given, and a method for obtaining it. So no rule was made. *Stran.* 1130. *Eaſt.* 13 *Geo.* 2. *Rex* v. *Ford*.

The court was moved for an *information* againſt one *Groſvenor*, for refuſing to ſerve the office of one of the ſheriffs of *London*.—It appearing that he was a proteſtant Diſſenter, the court ſaid, it was a doubtful queſtion, and a matter of very great conſequence; and they would not interpoſe to have that matter tried in a criminal way, when the city had another, and *that* a civil way of obliging perſons to ſerve that office. Vide *Wilſ. Rep. par.* 1. 18.

N. B. The doctrine is now ſettled, in the caſe of the Chamberlain of *London* and *Allen Evans*, Eſq. on error, in the Houſe of Lords, upon the opinion of the judges, eleven to one, that a *diſſenter* is not liable to ſerve.

An *information* may be brought for offences and miſdemeanors by the Common law; as for batteries, conſpiracies, ſeducing perſons, nuſances, contempts, libelling, ſeditious words, abuſing the King's commiſſion to the oppreſſion of the ſubject, &c. And in many caſes by ſtatute, wherein the offender is liable to a fine, or other penalty. *Finch* 340. *Show.* 109. For words ſpoken of a deceaſed King, which advance pernicious doctrine and evil tenets, and have an influence on the preſent government, &c. an *information* lies, on which the offender may be fined, and alſo corporally puniſhed. 2 *Ld. Raym.* 879. If the marſhal of *B. R.* miſdemeans himſelf in his office, he who is prejudiced by it may prefer an *information* againſt him in that court, where he ſhall be fined and ordered to make ſatisfaction. *Hil.* 23 *Car. B. R.*

If a perſon exhibits his *information* only for vexation, the defendant may bring *information* againſt the *informer*, upon the *Stat.* 18 *Eliz. c.* 5. 2 *Bulſt.* 18.

III. *Of filing an information.*

It ſeems to be an eſtabliſhed practice, not to admit the filing of an *information*, (except thoſe exhibited in the name of his Majeſty's Attorney General) without *firſt* making a rule on the perſons complained of, *to ſhew cauſe to the contrary*; which rule is never granted but upon motion made in open court, and grounded upon affidavit of ſome miſdemeanor, which, if true, doth either for its enormity or dangerous tendency, or other ſuch like circumſtances, ſeem proper for the moſt public proſecution; and if the perſon, on whom ſuch rule is made, having been perſonally ſerved with it, do not, at the day given him for that purpoſe, give the court good ſatisfaction by affidavit, that there is no reaſonable cauſe for the proſecution, the court generally grants the *information*; and ſometimes, upon ſpecial circumſtances, will grant it againſt thoſe who cannot be perſonally ſerved with ſuch rule; as if they purpoſely abſent themſelves, *&c.* 2 *Hawk. P. C.* 262. But *qu.* if in ſuch caſe the proſecutor ſhould not, on affidavit of the fact of abſence, move the court for a rule that leaving the ſame at the laſt place of abode ſhould be deemed good ſervice?

But if he ſhew good cauſe to the contrary, as that he has been indicted for the ſame cauſe, and acquitted, or that the intent is to try a civil right, which has not been yet determined, or that the complaint is trifling, or vexatious, *&c.* or where the motion is for an *information* in the nature of a *quo warranto,* if he can ſhew that his right hath been already determined on a *mandamus,* or that it hath been acquieſced in many years, or that it depends upon the right of his voters, *which hath not been tried.* or that it doth not concern the public, but is wholly of a private nature, the court will not grant the *information* without ſome *particular* circumſtances, the judgment whereof lies in diſcretion. *Ibid.*

IV. *How it is to be laid, the proceedings, and proviſions by Statute law,* &c.

Regularly, the ſame certainty that is required in an indictment, is required in an *information*; but it has been held not to be neceſſary, to repeat the words *dat cur' hic intelligi & informari* in the beginning of every diſtinct clauſe, if the want of them may be ſupplied by a natural, and eaſy conſtruction. See tit. *Indictment.* 1 *Salk.* 375. *Raym.* 34. 2 *Hawk. P. C.* 261.

In an *information* againſt *Roberts* the ferryman over the river *Mercy,* which parts *Angleſey* from *Carnarvonſhire* in *Wales,* it was laid generally, *viz.* That this was an antient ferry time out of mind, and that 1 *d.* was the uſual rate for the paſſage of a man and horſe, 7 *d.* for 20 cattle, 2 *d.* for 20 ſheep, *&c.* that *Roberts* being the common ferryman, between the 7th *Septembris Anno* 2. and the day of exhibiting this *information, injuſte, oppreſſive, & deceptive cepit & extorſit de diverſis ligeis & ſubditis Domini Regis ignotis* to the Attorney General, paſſing that way, *diverſas denariorum ſummas exceden' antiquam ratam & pretium pro paſſagio & tranſportatione ſuis & averiorum ſuorum videlicet, pro paſſagio & tranſportatione cujuſlibet perſonæ cum equo ſuo* 2 *d. & pro quibuſlibet* 20 *catallis* 2 *s. & ſic ſecund' ratam prædict' pro majori vel minori numero averiorum, &c.* The defendant was found guilty, and it was moved in arreſt of judgment, *that the information was too general and uncertain, becauſe it did not alledge that any particular perſon, or any certain number of cattle, were ferried over within the time laid in the information*; neither did it mention any particular perſon from whom the extorted rates were taken, which it ought to do, *that the ſingle offence might certainly appear to the court*; after great deliberation, the whole court was of that opinion; and *per Holt* Chief Juſtice, in every ſuch *information* a ſingle offence ought to be laid and aſcertained, becauſe *every extortion from every particular perſon is a ſeparate and diſtinct offence*; therefore they ought not to be accumulated under a general charge, as in this caſe, becauſe each offence requires a ſeparate and diſtinct puniſhment according to the quantity of the offence; and it is not poſſible for the court to proportion the fine or other puniſhment, unleſs it is ſingly and certainly laid. *Carth.* 226. *The King.* v. *Roberts.*

An *information* upon a penal ſtatute muſt be ſued in one of the ſuperior courts, and cannot be brought in any inferior court, becauſe the King's Attorney cannot be there to acknowledge or deny, as he can in a ſuperior court. *Cro. Jac,* 538. All *informations* on penal ſtatutes, brought by an *informer,* where a ſum certain is given to the proſecutor, muſt be brought in the proper county where the offence was committed; and *within a year after the ſame t* but a party grieved, who is not a common *informer,* is not obliged to bring his *information* in the proper county, but may *inform* in what county he pleaſes. *Stat.* 31 *Eliz. c.* 3. *Cro. Eliz.* 645. And the King may exhibit an *information* in two, or three years, and be good; tho' it will be bad in an *informer.* Cro. Jac. 366.

Where an *information* is given by ſtatute, to be proſecuted at the aſſizes, *&c* the *informer,* on filing his *information,* muſt make oath before a judge, that the offence laid in the *information* was not committed in any other county than that mentioned in the *information*; and that he believes the offence was committed within a year *next before* the filing of the *information.* 21 Jac. 1. c. 4. And when an *information* is ordered to be filed, upon an affidavit made, the court will not ſuffer the proſecutor to put any more or other matter into the *information* than what only is in his affidavit. *Mich.* 9 *W.* 3. *B. R.*

It has been reſolved, that the *Stat.* 21 *Jac.* 1. *c.* 4. reſtrains the juriſdiction of *B. R.* in actions of debt by common *informers,* and that they cannot bring debt upon the ſtatute in that court, unleſs the cauſe of action ariſe in the county where the King's Bench ſits; but muſt in other caſes proſecute by *information* before juſtices of aſſiſe, *&c.* as the ſtatute directs. 1 *Salk.* 373. *Sed qu.* as to this doctrine, as the juriſdiction of the King's Bench extends over the greateſt part of the kingdom in all caſes where an action may be brought?

Offences created ſince the ſtatute 21 *Jac.* 1. *cap.* 4. are not within that ſtatute, to be proſecuted in the county where the fact was done; ſo that *informations* on ſubſequent penal ſtatutes are not reſtrained thereby. *Ibid.*

By the *Stat.* 18 *Eliz. cap.* 5. *Informers* are to exhibit their ſuits in proper perſon, by way of *information,* or original action; they are not to compound with the defendant without the conſent of the court, on pain of 10 *l.* penalty, pillory, *&c.* And if they diſcontinue, or are nonſuit, the court ſhall immediately aſſign coſts to the defendant: but this ſtatute, and the 21 *Jac.* 1. *c.* 4. do not extend to *informations* of officers, nor on the ſtatutes of maintenance, champerty, concerning concealments of cuſtoms, *&c.* and it extendeth not to parties grieved, and thoſe to whom any forfeiture is given in certain. *Ibid.*

An *informer* upon a popular ſtatute ſhall never have coſts, if not given by ſtatute; but the *party grieved* in action on the ſtatute ſhall, where a certain penalty is given. 2 *Hawk.* 273. *Informations* by the Attorney General remain as they were at Common law, notwithſtanding the ſtatute 4 & 5 *W. & M. c.* 18. And when the Attorney General exhibits an *information,* he does it *ex officio*; but when the Clerk of the Crown does it, it is generally by order of court. 5 *Mod.* 464. Where a penalty is divided by ſtatute between the King and the *informer,* if the King prefers his *information* before the *informer,* he ſhall have the whole penalty; but if the *informer* prefers his *information* firſt, the King cannot hinder him from his proportion. 2 *Lill. Abr.* 60 If an *informer* dies, the Attorney General may proceed in the *information* for the King: nonſuit of an *informer,* is no bar againſt the King; and if the King's Attorney enter a *nolle proſequi,* it is not any bar *quoad* the *informer.* Cro. El. 583. 1 Leon. 119. If two *informations* are had on the ſame day, they mutually abate one another; becauſe there is no priority to attach the right of the ſuit in one *informer,* more than in the other. *Hob.* 138.

If an *information* contain ſeveral offences againſt a ſtatute, and be well laid as to ſome of them, but defective as to the reſt, the *informer* may have judgment for ſuch as are well laid. *Ibid.* 266. After a plea pleaded to an *information* for any crime, the defendant by favour of the court may appear by attorney; alſo the court may diſpenſe with the perſonal appearance before plea pleaded, except in ſuch caſes where a perſonal appearance is required by ſome ſtatute: and it is the ſame of indictments for crimes under the degree of capital. *Ibid.* 273.

If a defendant plead *nil debet* to an *information qui tam, &c.* it is ſafeſt to ſay he owes nothing to the *informer,* nor the King, which is an anſwer to the whole. On breach of a ſtatute alledged from a matter *in pais*, the defendant may plead *that he owes nothing*, or *Not guilty*, *&c.* And if there be more than one defendant, they ought to plead ſeverally, and not jointly, *Not guilty*: but if it be alledged from a matter of record, the record not being triable by the country, but by itſelf, ſuch plea is not good. 2 *Hawk*. 276. *Bro. Iſſues* 23.

A replication to an *information* on a ſpecial plea in the courts at *Weſtminſter*, is to be made by the Attorney General, and before Juſtices of Aſſiſe, by the Clerk of the Aſſiſe: tho' the replication to a general iſſue in an *information qui tam* in the courts at *Weſtminſter*, may be made in the name of the Attorney General only; and in actions *qui tam*, moſt of the precedents are, that the replication is to be made by the plaintiff. 2 *Hawk*. 277.

A demurrer may be to an *information qui tam*, without the Attorney General. *Ibid*. *Informations* are not quaſhed for inſufficiency, like indictments; but the defendant *muſt demur* to them. *Paſ*. 1650. 2 *Lill*. 59. Fines aſſeſſed in court by judgment on an *information*, cannot afterwards be qualified or mitigated. *Cro. Car.* 251. The *Stat*. 9 *Ann*. *c*. 20. makes the proceedings upon *informations* in the nature of a *quo warranto* more ſpeedy and effectual. *Vide* the *Statute*, *&c.*

By the 4 *&* 5 *W*. *&* *M*. *cap*. 18. The Clerk of the Crown in the court of King's Bench ſhall not, without expreſs order to be given by the court in open court, exhibit, receive, or file any *information* for any of the cauſes ſtated, or iſſue out any proceſs thereupon, before he ſhall have taken or ſhall have delivered to him a recognizance from the perſon or perſons procuring ſuch *information* to be exhibited, with the place of his, her, or their abode, title or profeſſion, to be entered, to the perſon or perſons againſt whom ſuch information is exhibited, in the penalty of twenty pounds, that he, ſhe, or they will effectually proſecute, *&c.* and if the proſecutor of ſuch *information* ſhall not, at his own coſts, within one year after iſſue joined therein, procure the ſame to be tried, or if upon ſuch trial a verdict paſs for the defendant, or in caſe the *informer* procure a *nolle proſequi* to be entered, then, in any of the ſaid caſes, the court of King's Bench is authoriſed to award the defendant coſts, unleſs the judge, before whom ſuch *information* ſhall be tried, ſhall at the trial *in open court certify upon record*, that there was *reaſonable cauſe* for exhibiting ſuch *information*; and in caſe the *informer* ſhall not, within three months after the coſts taxed, and demand made thereof, pay to the defendant the coſts, then the defendant ſhall have the benefit of the recognizance.

" Provided, That nothing in that act ſhall extend or be conſtrued to extend to any other information than ſuch as ſhall be exhibited in the name of their *Majeſties coroner*, or *attorney*, in the court of *King's Bench* for the time being, commonly called the *Maſter of the Crown-office*.

In the conſtruction hereof it hath been holden,

1. That if proceſs be iſſued on ſuch information before ſuch recognizance is given as the ſtatute directs, the ſame may be ſet aſide and diſcharged on motion. 2 *Hawk*. *P. C*. 263.

2. That this ſtatute extends to all informations, except thoſe exhibited in the name of his Majeſty's Attorney General, ſo that an information in nature of a *quo warranto*, tho' a proper remedy to try a right, in reſpect of which it may not in ſtrictneſs come within the words *treſpaſſes*, *&c.* yet being alſo intended to puniſh a miſdemeanor, and alſo as the proceedings therein may be as vexatious as in any other, the ſame is within the purview of the ſtatute, which, being a remedial law, ſhall receive as large a conſtruction as the words will bear. *Carth*. 503. *The King* v. *The Town of Hertford*. 1 *Salk*. 376. *S. C*. adjudged.

3. That no coſts can be had on this ſtatute on an acquittal by a trial at bar, not only becauſe the clauſe that gives coſts, unleſs the judge certify a reaſonable cauſe, ſeems only to have a view to trials at *niſi prius*, but alſo becauſe a cauſe, which is of ſuch conſequence as to be thought proper for a trial at bar, cannot well be thought within the purview of the ſtatute, which was chiefly deſigned againſt *trifling and vexatious proſecutions*. 2 Hawk. P. C. 263.

4. That if there be ſeveral defendants, and ſome of them acquitted, and others convicted, none of them can have coſts. 1 *Salk*. 194.

5. That wherever a defendant's caſe is ſuch as authorizes the court to award him coſts, he has a right to them *ex debito juſtitiæ*; for it ſeems a general rule, that *where judges are impowered by ſtatute to do a matter of juſtice, they ought to do it of courſe*. 2 Chan. Caſes 191. 2 Hawk. P. C. 263.

As to informations in the nature of a *quo warranto*, againſt perſons uſurping offices. See the *Stat*. 9 *Ann*. *c*. 20.

An information was moved for againſt a clergyman for perjury at his admiſſion to a living, upon an affidavit that the preſentation was ſimoniacal. But the court refuſed to grant it, till he had been convicted of the ſimony. *Stran*. 70.

Defendant came up on a *habeas corpus* from the *Savoy*, to which it was returned, that for ſeveral years laſt paſt the *African* Company have been a body corporate, and retained the defendant in their ſervice, and ſent him to the *Savoy* to be provided with neceſſaries, till he ſhould imbark for *Africa*, *&* *hæc eſt cauſa*, *&c.* The court diſcharged the defendant for the inſufficiency of the return, and ordered an *information* againſt the Colonel who liſted the men, and the keepers of the *Savoy*. *Stran*. 404. See 14 *Vin*. *Abr*. tit. *Information*; and for *informations* on penal ſtatutes, ſee *Action*. Vide 3 *New Abr*. 164. *&c.*

Informatus non ſum or more properly, *non ſum informatus*, Is a formal anſwer made of courſe by an attorney who is authoriſed by his client to let judgment paſs in that form againſt him. It is commonly uſed in warrants of attorney, given for the expreſs purpoſe of confeſſing judgment.

Informer, (*informator*) Is a perſon who informs againſt, or proſecutes in any of the King's courts, thoſe who offend againſt any law, or penal ſtatute;——no man may be an *informer* who is diſabled by any miſdemeanor. *Stat*. 31 *Eliz*. *c*. 5.

Infortiatum, Is one part of the digeſts of the *Civil law*; according to *Benedict*, Abbot of the monaſtery of *Peterborough*, in the reign of K. *Hen*. 3.

Infugare, Signifies to put to flight. *Leg*. *Canuti*. *c*. 32.

Infula, Was antiently the garment of a prieſt, like that which we now call a caſſock; ſometimes it is taken for a coif.

Inge. This ſyllable, in the names of places, denotes meadow or paſture; and in the North, meadows are called the *inges* from the Sax. *ing*, i. e. *pratum*.

Ingenium, Is an inſtrument uſed in war, *arte & ingenio confectum*; from whence it is ſaid we derive the word *engine*.

Ingenuitas, Uſed for liberty given to a ſervant by mauumiſſion. *Leg*. *H*. 1. *c*. 89.

Ingenuitas Regni, *Ingenui*, *liberi & legales homines*; freeholders, and the commonalty of the kingdom; ſometimes this title was given to the barons and lords of the King's council. *Eadmer*. *Hiſt*. *Nov*. *fol*. 70.

Ingreſs, Egreſs, and Regreſs, Words in leaſes of land, to ſignify a free entry into, going forth of, and returning from ſome part of the lands let; as to get in a crop of corn, *&c.* after the term expired.

Ingreſſu, Is a *writ of entry*, whereby a man ſeeks entry into lands or tenements; and lies in many caſes, having many different forms: this writ is alſo called *præcipe quod reddat*, becauſe theſe are formal words inſerted in all writs of entry. See *Entry*.

Ingreſſus. The relief which the heir at full age paid to the head lord, for *entering* upon the fee, or lands fallen by the death or forfeiture of the tenant, *&c.* was ſometimes called *ingreſſus*. Blount.

Ingroſſator magni rotuli. See *Clerk of the Pipe*.

In groſs. Advowſon *in groſs*, Villain *in groſs*, *&c.* ſee *Advowſon*, *Groſs*, *Villain*.

Ingroſſer, (*ingroſſator*) Is one who buys and ſells any thing by wholeſale; and whoever ſhall get into his hands by buying, contract or promiſe, (other than by demiſe, grant or leaſe of lands,) any corn growing, or other corn or grain; butter, cheeſe, fiſh, or other dead victuals whatſoever, within the realm of *England, to the intent to ſell the ſame again,* ſhall be reputed an unlawful *ingroſſer*, by *Stat.* 5 & 6 *Ed.* 6. *c.* 14. Such victual only as is neceſſary for the food of man, is within the purview of the ſtatute; therefore apples and fruits are not within the meaning of it. It has been holden that hops are not within the ſtatute. 3 *Inſt.* 195. *H. P. C.* 152. *Cro. Car.* 231.

The buying of corn to make ſtarch of it, and then to ſell it, is not within the intent of the ſtatute; becauſe it is not bought, to be ſold again, in the ſame nature it was bought, but to be firſt altered by a trade or art; by the like reaſon, the buying corn to make meal, and then to ſell it, is ſaid not to be within the act; and buying of barley, with intent to make it into malt, and after that to ſell it, had no need of the exception made for it in the ſtatute. 1 *Hawk. P. C.* 237. *Sed qu.* If buying large quantities of corn, to grind into meal, and keeping the corn unground, to enhance the price, tho' it is afterwards ground into flour, keeping the flour, to enhance the price, is not within the ſpirit of the law? Or, if not within the ſtatute, whether it is not an *offence*, indictable at Common law, it being highly prejudicial to the public? Foreign corn and victuals, except fiſh and ſalt, are exempted, and not within the penalty of the ſtatute 13 *Eliz. cap.* 25 And licenſed badgers are excepted; as are likewiſe fiſhmongers, butchers, poulterers, *&c.* buying any thing in their own faculties, otherwiſe than by foreſtalling and ſelling the ſame again at reaſonable prices by retail. 1 *Hawk.* 240.

Any merchant, whether a ſubject or foreigner, bringing victuals, or other merchandiſe into this kingdom, may ſell the ſame in groſs; but he who buys them of him cannot do ſo, becauſe by ſuch means the price will be enhanced, for the more hands any merchandiſe paſſeth thro' the dearer it muſt grow, as every one will make a profit: and if this were allowable, a rich man might *ingroſs* into his hands a whole commodity, and then ſell it at what price he ſhould think fit; which is of ſuch bad conſequence, that the bare *ingroſſing* of a whole commodity, with intent to ſell it at an unreaſonable price, is an offence indictable at Common law, whether any part thereof be ſold by the *ingroſſer*, or not. 3 *Inſt.* 196. *Cro. Car.* 231, 232.

The puniſhment of this offence by ſtatute, is forfeiture of the goods for the firſt offence, and two months impriſonment; double value and ſix months impriſonment for the ſecond offence; and loſs of all goods, and impriſonment at the King's pleaſure, *&c.* for the third offence. And any informer is intitled to *half the forfeiture*. See *Foreſtaller*.

Ingroſſer of Deeds, Is a clerk who writes records or inſtruments of law, in ſkins of parchment.

Ingroſſing of a Fine. The making of the indentures by the *Chirographer*, for delivery of them to the party to whom the fine is levied. *F. N. B.* 147.

Inhabitant, Is a dweller or houſholder in any place; as *inhabitants* in a vill, are the houſholders in the vill. 2 *Inſt.* 702.

The word (*inhabitants*) includes tenants in fee-ſimple, tenant for life, years, by *elegit*, *&c.* tenant at will, and he who has no intereſt but only his habitation and dwelling. 6 *Rep.* 60. *a. Hill.* 4 *Jac. C. B. Gateward*'s caſe. He who hath a houſe in his hands in a town, may be ſaid to be an *inhabitant*. Tirrel. *J.* Carth. 119. Mich. 18 Car. 2. C. B. *Inhabitants* have not capacity to take an inheritance, as in 15 *Ed.* 4. to have common. 12 *Rep.* 120. *Paſch.* 12 *Jac.* in *Dugannon*'s caſe. See *Gateward*' caſe, 5 *Co.* 60.

Inheritance, (*hæreditas*) is a perpetuity in lands or tenements, to a man and his heirs; and the word *inheritance* is not only intended where a man hath lands or tenements by diſcent of *heritage*; but alſo every fee-ſimple, or fee-tail, which a perſon hath by purchaſe, may be ſaid to be an *inheritance*, becauſe his heirs may *inherit* it. *Lit. ſect.* 9. And one may have inheritance by creation; as in caſe of the King's grant of peerage, by letters patent, *&c.*

Inheritances are
Corporeal,
or
Incorporeal.

Corporeal inheritances relate to houſes, lands, *&c.* which may be touched or handled; and *incorporeal inheritances* are *rights* iſſuing out of, annexed to, or exerciſed with, corporeal *inheritances*, as advowſons, tithes, annuities, offices, commons, franchiſes, privileges, ſervices, *&c.* 1 *Inſt.* 9. 49.

There is alſo *ſeveral inheritance*, which is where two, or more, hold lands ſeverally; if two men have lands given to them and the heirs of their two bodies, theſe have a joint eſtate during their lives; but their heirs have *ſeveral inheritances*. Kitch. 155. Without blood none can inherit; therefore he who hath the whole and entire blood, ſhall have an inheritance before him who hath but part of the blood of his anceſtor. 3 *Rep.* 41. The law of inheritance prefers the firſt child before all others; the male before the female; and of males the firſt born, *&c.* And as to inheritances, if a man purchaſes land in fee, and dies without iſſue, thoſe of the blood of the father's ſide ſhall inherit, if there be any; and for want of ſuch, the land ſhall go to the heirs of the mother's ſide: But if it come to the ſon by deſcent from the father the heirs of the mother ſhall not inherit it. *Plowd.* 132. *Lit.* 4. 12. Goods and chattels cannot be turned into an inheritance. 3 *Inſt.* 19, 126. See *Deſcent* and *Fee Eſtate*. And *Black. Com.* 2 *V.* 11, *&c.*

Inhibition, (*inhibitio*) Is a writ to forbid a judge from further proceeding in a cauſe depending before him, being in nature of a prohibition. 9 *Ed.* 2. *c.* 1. 24 *Hen.* 8. *c.* 12. 15 *Car.* 2. *c.* 9. *F. N. B.* 39. An inhibition is moſt commonly iſſued out of a higher *Court Chriſtian*, to an inferior, upon an appeal: Inhibitions are likewiſe on the viſitations of archbiſhops and biſhops, *&c.* This inhibition is either *hominis* or *juris*; it is *Ne viſitationem facias, vel aliquam juriſdictionem eccleſiaſticam vel contentionem voluntariam habeas:* Thus when the archbiſhop viſits, he inhibits the biſhop; and when a biſhop viſits, he inhibits the archdeacon; this is to prevent confuſion, and continues till the laſt pariſh is viſited. Now after ſuch inhibition by an archbiſhop, if a lapſe happens, the biſhop cannot inſtitute, becauſe his power is ſuſpended; but the archbiſhop is to do it, *&c.* 2 *Inſt.* 601. *Paſch.* 13 *Car. B. R.* 3 *Salk.* 201.

Inhoc, or **Inhoke,** (from *In*, within, and *hoke* a corner or nook) Signifies any corner or part of a common field ploughed up and ſowed with oats, *&c.* and ſometimes fenced in with a dry hedge, in that year wherein the reſt of the ſame field lies fallow and common. It is called in the North of *England* an *intock*, and in *Oxfordſhire* a *hitchin*; and no ſuch *inhoke* is now made without the joint conſent of all the commoners, who in moſt places have their ſhare by lot in the benefit of it, except in ſome manors, where the lord has a ſpecial privilege of ſo doing. *Kennet's Paroch. Antiq.* 297, *&c.* and his *Gloſſary*.

Initiate, *Tenant* by the *curteſy*. As ſoon as a child is born, the father begins to have a permanent intereſt in the land: and the child could not be in ward of the lord of the fee, during the life of his father: Who by the birth, became one of the *pares curtis*, and was called, "Tenant by the curteſy *initiate*." And this eſtate being once veſted in him by birth of the child, is not liable to be determined by the ſubſequent death or coming of age of the infant. *Black. Com.* 2 *V.* 127.

Injunction, (*injunctio*) Is a kind of prohibition granted in divers caſes; it is generally grounded upon an interlocutory order or decree out of the court of *Chancery* or *Exchequer*, on the equity ſide, to ſtay proceedings in courts at law; and ſometimes it is iſſued to the Spiritual courts, *Weſt. Symb. ſect.* 25. It is likewiſe ſometimes uſed to give poſſeſſion to a plaintiff; for want of the defendant's appearance, and may be granted by the *Chancery*, or *Exchequer*, to quiet poſſeſſion of lands;

alſo where a privileged perſon of the *Chancery* is ſued elſewhere; and to ſtay waſte, *&c. injunction* lies. If a defendant, by his anſwer in *Chancery*, ſwears a certain ſum of money is due to him, the court will often not grant an injunction, unleſs the money be brought into court.

Of obtaining an injunction.

An injunction is obtained by order, either upon matter confeſſed, or appearing of record, or by deed, writing, or other evidence ſhewn in court, from whence there is a probability that the party ought to be diſcharged in equity; ſometimes it is granted before anſwer, when it is uſually only until anſwer, and further order, *&c.*

Of diſſolving an injunction.

A delay of proceedings for a conſiderable time, is good cauſe for ſetting aſide and diſſolving an injunction to ſtay proceedings at law; but an injunction may be revived on cauſe ſhewn, and ſometimes the court will revive it, tho' diſſolved, where the plaintiff's caſe is hard, or equity is evidently on his ſide. *Pract. Sol.* 124, 125.

Of ſhewing cauſe why an injunction ſhould iſſue.

If an injunction be for ſtaying of waſte, there muſt be affidavit made of waſte committed in houſes, lands, *&c.* belonging to the complainant: And if it be to ſtay ſuits in other courts, it is granted on ſuggeſting ſome matter, by reaſon of which the complainant is not able to make his defence in the other court, as for want of witneſſes, *&c.* or, for that he is proſecuted at law, for what in equity, he ought not to pay; or that the other court acts erroneouſly, denies him ſome juſt advantage, and that, if the rigour of the law takes place, it is againſt equity and good conſcience, *&c. Ibid.*

Conſequence of proceeding at law after injunction granted.

If an attorney proceeds at law, after he is ſerved with an injunction to ſtay proceedings, on affidavit made thereof, interrogatories are to be exhibited againſt him, to which he muſt anſwer on oath; and if it appears that he was duly ſerved with the injunction, and hath proceeded afterwards contrary thereto, the court of *Chancery* will commit the attorney to the *Fleet* for the contempt. 2 *Lill. Abr.* 64. But if an injunction be granted by the court of *Chancery* in a criminal matter, the court of *B. R.* may break it, and protect any that proceed in contempt of it. *Mich. Ann. Mod. Caſ.* 16.

Of the proceeding to judgment with leave and of the form of an injunction.

If a cauſe at law be at iſſue, the injunction may give leave to go to trial, and ſtay execution, *&c.* The writ of injunction is directed to the party proceeding, *ac omnibus & ſingulis Conſiliar. Attorn. Solicitat' ſuis quibuſcunque, &c.* and concludes, *injungen' præcipimus quod ab omni ulteriori proſecutione quacunque ad communem legem de. pro vel concernen. aliquib. materiis in querimon. content. &c. deſiſtatis & quilibet veſtrum deſiſtat, ſubpœn. &c.*

Vide more on this ſubject. 3 *New Abr.* 172, *&c.* And 14 *Vin. Abr.* tit. *Injunction.*

Injury, (*Injuria*) Is a wrong or damage to a man's perſon or goods. The law puniſheth injuries; and ſo abhors them, that it grants writs of anticipation for their prevention, in caſes of combinations and confederacy, *Stud. Comp.* 93. But the law will ſuffer a private injury rather than a public evil; and the act of God, or of the law, doth injury to none. 4 *Rep.* 124. *Co. Rep.* 148.

Inlagare, To reſtore to the benefit of the law —— *Edgarus puer veniens ad eum a Scotia, & Rex eum inlagavit & omnes homines ſuos.* Annal. Waverl. ſub anno 1074.

Inlagation, (*Inlagatio,* from the Sax. *In lagiam,* i. e. *Inlagare*) Signifies a reſtitution of one outlawed to the protection of the law, and benefit of a ſubject. *Bract. lib.* 3. *tract.* 2. *c.* 14. *Leg. Canut. par.* 1. *c.* 2.

Inlagh, (Inlagatus, *vel homo ſub lege*) Is he who is of ſome *frank-pledge,* and not outlawed. It ſeems to be the contrary to *Utlagh.* Bract. tract. 2. lib. 3. c. 11.

Inland, Is ſaid to be *terra dominicalis, pars manerii dominica, terra* interior *vel incluſa*; for that which was let to tenants was called *Outland.* In an ancient will there are theſe words; To *Wulſee* I give the *inland* or demeans, and to *Elſey* the *utlands* or tenancy. *Teſtam. Britherico.* This word was in great uſe among the *Saxons,* and often occurs in *Domeſday.*

Inland bills. See *Bills of Exchange.*

Inland Trade, A trade wholly managed at *home,* in one country. *Merc. Dict.* It is properly uſed in contradiſtinction to *commerce,* and ſo is the word *trade,* tho' the words *trade* and *commerce* are frequently confounded, eſpecially with reſpect to the former being uſed for the latter.

We conceive this the proper definition, and that the foreign is with propriety called *Commerce,* at leaſt that which we carry on with other ſtates.

Inlantal, Inlantale, Demeſne or inland, to which was oppoſed *delantal,* land tenanted or *outlawed.* Cowell.

Inleaſed, From the French *enlaſs,* intangled or inſnared; the word we may read in the Champion's oath. *Co. Inſt.* 2 *par. fol* 247.

Inlegiare. When a delinquent has ſatisfied the law, and is again *rectus in curia,* he is ſaid *ſe* inlegiare. *Sunt alia quædam placita Chriſtianitatis in quibus Rex partem habet hoc modo. Si Rex patiatur ut qui in eccleſia fecerit homicidium, ad emendationem venit, primo epiſcopo & Regi pretium nativitatis ſuæ reddat, & ita ſe* inlegiet, *deinde componat de pace eccleſiæ.* 5 *lib. &c.* Leg. Hen. 1. cap. 11.

Inmates, Are thoſe perſons who are admitted to dwell with, and in the houſe of another, and not able to maintain themſelves. *Kitch.* 45. Theſe inmates are generally idle perſons harboured in *cottages*; wherein it hath been common for ſeveral families to *inhabit,* by which the poor of pariſhes have been increaſed; but ſuffering it is an offence by ſtatute, liable to a forfeiture of 10*s.* a month, inquirable of in the court leet, *&c.* Stat. 31 *Eliz. c.* 7. If one have a houſe wherein he dwells, and lets part of it, ſo that there are ſeveral doors into the ſtreet; it is as two houſes, and the under-tenant ſhall not be accounted an *inmate*: But it is otherwiſe if there be but one outer door for both families. 2 *Co. Inſt.* 378. A man keeps his daughter that is married, and her huſband, *&c.* by covenant, and they have ſome rooms in his houſe, they are not *inmates*; tho' if they live in one cottage, and part the houſe between them, and diet themſelves ſeverally, they will be *inmates* within the ſtatute. *Kitch.* 45. If a perſon take another to table with him; or let certain rooms to one to dwell in, if he be of ability, and not poor, he is no *inmate. Ibid.*

Who ſhall be conſtrued *houſe-keepers,* and who *inmates.* v. *Rep. Temp. Hardw. per Annaly,* 307. See *Cottage.*

Innamum for **Namium,** A pledge. Innama *non capiantur niſi per communem aſſenſum.* Du Cange.

Innaturalitas, Unnatural uſage.——*Et ibidem imperator coram omni populo congregato oſtendet & notificavit omnibus innaturalitatem & inobedientiam ac improbitatem, quam Rex Franciæ ei fecerat, & ibidem Regem Franciæ diffidabat, &c* Hen. de Knyghton, in Edw. 3. p. 2572.

Innings, Lands recovered from the ſea in *Romney Marſh,* by draining: Ancient records mention the innings of Archbiſhop *Becket, Boniface,* and others; and at this day there is *Elderton's Innings,* &c. Where they are rendered profitable and termed *Gainage* lands. *Vide* Law of Sewers 31.

Innonia, (From the Sax. *innan,* i. e. *intus*) An incloſure. *Spelm. Gloſſ.*

Innoteſcimus. This word and *videmus* are all one; it ſignifies *letters patent,* ſo called, which are always of a charter of feoffment, or ſome other inſtrument, not of record, concluding *innoteſcimus per præſentes, &c.*

Innovations, Are thought dangerous by our laws; and the ancient judges of the law have ever ſuppreſſed them, leſt the certainty of the Common law ſhould be diſturbed. *Co. Lit.* 379. In the reign of King *Ed.* 3. the judges ſaid, *we will not change the law, which always hath been uſed*; and in the time of King *Hen.* 4. they declared *it would be better that it ſhould be turned to a default, than that the law ſhould be changed, or any* INNOVATION *made.* Ibid. 303.

Many modern determinations have done honour to the judges of the preſent age, and though by ſome they may, for want of due conſideration, be thought *innovations*, they certainly are not, but are only a more liberal conſtruction of our Common law, which will give relief, if properly conſtrued, in moſt caſes.

Innoxiare, To purge one of a fault, and make him innocent. *Leg. Ethelred, c.* 10.

Inns and Innkeepers. Common *inns* are inſtituted for paſſengers; for the proper Latin word is *diverſorium*, becauſe he who lodgeth there is *quaſi divertens ſe a via*; therefore if a neighbour who is not a traveller, as a friend at the requeſt of the *inn-keeper* lodge them, and his goods are ſtolen, he ſhall not have an action, for the words of the writ are, *Hoſpitandos homines per partes, ubi hujuſmodi* hoſpitia *exiſtunt tranſeuntes & in eiſdem* hoſpitantes. *Co.* 8 *Rep. Cayle*'s caſe. Neither ſhall the inn-keeper anſwer for any thing that is out of his inn, but only for things as are *infra hoſpitium*; the words are *Eorum bona & catalla infra* hoſpitia *illa exiſtentia.* Cowell.

Inns were inſtituted for lodging and relief for travellers; and at Common law any man might erect and keep an inn, or alehouſe, to receive travellers, but now they are to be licenſed and regulated by ſtatute, by juſtices of peace, who are to take recognizances for keeping good orders, *&c.* 5 *&* 6 *Ed.* 6. *c.* 25.

Conduct of inn-keepers, and where inns ſhould not be ſet up.

If the keeper of an inn harbours thieves, or perſons of ſcandalous reputation, or ſuffers frequent diſorders in his houſe; or ſets up a new inn, in a place where there is no manner of need of one, to the hindrance of other ancient and well governed inns, or keep it in a ſituation wholly unfit for ſuch a purpoſe, he may by the Common law be indicted and fined. *H. P. C.* 146. *Dalt.* 33, 34.

Selling of proviſions, &c.

Inn-keepers not ſelling their hay, oats, beans, *&c.* and all kinds of victuals for man and beaſt, at reaſonable prices, having reſpect to the price ſold in the markets adjoining, without taking any thing for litter, they ſhall be *fined* for the *firſt* offence, and for the *ſecond* be *impriſoned for a month*; and for the *third* ſtand on the *pillory*, *&c.* Stat. 21 *Jac.* 1. *c.* 21. Rates and prices may be ſet on all the commodities ſold by inn-keepers: and if they extort any unreaſonable rates, they may be indicted. 2 *Cro.* 609. *Carthew* 150.

Inn-keeper bound to receive gueſts, &c.

If one who keeps a common *inn*, refuſe to receive a traveller as gueſt into his houſe, or to find him victuals, or lodging, *upon his tendering a reaſonable price for the ſame*; the *inn-keeper* is liable to render damages, in an action at the ſuit of the party grieved, and may alſo be indicted and fined at the ſuit of the King: It is ſaid, he may be compelled by the conſtable of the town, to receive, and entertain ſuch a perſon as his gueſt; and that it is not material whether he have any ſign before his door or not, if he make it his common buſineſs to entertain travellers. 1 *Hawk. P. C.* 225.

Innkeeper's remedy againſt his gueſts.

Action on the caſe on an *implied aſſumpſit* will lie againſt the gueſts for things had, where the *inn-keepor* is obliged by law to furniſh him with meat, drink, *&c.* And when a gueſt calls for any thing at an *inn* the *innkeeper* may juſtify detaining a horſe, or other thing, till he is paid his juſt reckoning. *Dyer* 30. By the cuſtom of the realm, if a man lies in an *inn* one night, the *inn-keeper* may detain his horſe until he is paid for the expences; but if he gives the party credit for that time, and lets him depart without payment, he hath waived the benefit of the cuſtom, and muſt rely on his other agreement. *Trin.* 9 *Geo.* 1. *Mod. Caſ. in L. & E.* 172. *i. e.* As to that time, having now given credit to the *perſon*. A perſon brings his horſe to an *inn*, and leaves him in the ſtable there; the *inn-keeper* may keep him till the owner pay for the keeping: And if he eat out as much as he is worth, the maſter of the *inn*, after a reaſonable appraiſement, may ſell the horſe and pay himſelf. *Yelv.* 66. But if one bring ſeveral horſes to an *inn*. and afterwards takes them all away, *but one*; the *inn-keeper* may not ſell this horſe for payment of the debt for the others, but every horſe is to be ſold to ſatisfy what is due for his own meat. 1 *Bulſt.* 207, 217.

If an inn-keeper receives a ſtage coach, and from time to time ſuffers the coach and horſes to depart without payment, he gives credit to the *owners*, and cannot afterwards detain the coach and horſes for what was formerly due.

Remedy for the gueſt againſt the inn-keeper, and where he ſhall or ſhall not be liable.

If any theft be committed on a gueſt that lodgeth in an *inn*, by the ſervants of the *inn*, or by any other perſons, (not the gueſt's ſervant or companion) the *inn-keeper* is anſwerable in action on the caſe: But if the gueſt be not a traveller, but one of the ſame town, the maſter of the *inn* is not chargeable for his ſervant's theft; and if a man is robbed in a private tavern, the maſter is not chargeable. 8 *Rep* 32, 33. In this action, the *inn-keeper* ſhall not anſwer for any thing that is out of his *inn*, but only for ſuch things as are *infra hoſpitium*, the words of the writ being *eorum bona & catalla infra* hoſpitia *illa exiſtentia*, *&c.* But if the *inn-keeper* put the gueſt's horſe to graſs, without orders, and the horſe is ſtolen, he ſhall make it good. 8 *Rep.* 34. The *inn-keeper* ſhall not be charged, unleſs there ſhall be ſome default in him or his ſervant; for, if he that comes with the gueſt, or who deſires to lodge with him, ſteal his goods, the hoſt is not chargeable: Though if an *inn keeper* appoint one to lie with another, he ſhall anſwer for him. 2 *Shep. Abr.* 334. Although the gueſt deliver not his goods to the *inn-keeper* to keep, *&c.* if they be ſtolen, he ſhall be charged: Not where the hoſtler requires his gueſt to put them in ſuch a chamber under lock and key; if he ſuffers them to be in an outward court, *&c. Ibid.*

Of tipling, &c.

Any perſon found tipling in an *inn*, is adjudged within the ſtatutes againſt drunkenneſs. 21 *Jac.* 1. *c.* 7. 1 *Car.* 1. *c.* 14. And *inn-keepers* or alehouſe-keepers, permitting tipling in their houſes, are liable to the penalty of 10*s.* *&c.* by ſtatute 1 *Jac.* 1. *c.* 9. 1 *Car.* 1. *c.* 14. See *Action on the Caſe* and *Gueſt.* Alſo 3 *New Abr.* and 14 *Vin. Abr.* tit. *Inns and Inn-keepers.*

Inns of Court, (*Hoſpitia Curiæ*) Are ſo called, becauſe the *ſtudents* therein, do not only ſtudy the law to enable them to practice in the *Courts in Weſtminſter*, but alſo purſue ſuch other ſtudies, as may render them better qualified to ſerve the King in his court. *Forteſcue, c.* 49. Of theſe (ſays Sir *Edward Coke*) there are four well known, *viz.* The *Inner Temple, Middle Temple, Lincoln's Inn*, and *Gray's Inn*; which, with the two *Serjeant's Inns*, and eight *Inns of Chancery*, viz. *Clifford's Inn, Symond's Inn, Clement's Inn, Lyon's Inn, Furnival's Inn, Staple's Inn, Bernard's Inn*, and *Thavie's Inn*, (to which is ſince added *New Inn*) make the moſt famous univerſity for profeſſion of the law, or of any one human ſcience in the world.

Our *Inns of Court*, or ſocieties of the law, which are famed for their production of learned men, are governed by maſters, principals, benchers, ſtewards, and other proper officers; and the chief of them have chapels for divine ſervice, and all of them public halls for exerciſes, readings and arguments, which the ſtudents are obliged to perform and attend for a competent number of years, before admitted to ſpeak at the bar, &c. Theſe ſocieties or colleges, nevertheleſs, are no corporation, nor have any judicial power over their members, but have certain orders among themſelves, which, by conſent, have the force of laws; for light offences, perſons are only excommoned, or put out of Commons; for greater, they loſe their chambers, and are expelled; and when expelled out of one ſociety, ſhall never be received by any of the others. All the leſſer *Inns* of *Chancery*, are moſtly inhabited by attornies, ſolicitors, and clerks, and belong to ſome or other of the principal *Inns of Court*, who have been uſed to ſend yearly ſome of their barriſters to read to them. *Forteſcue.*

Innuendo, (from *innuo*, to nod or beckon with the head to one) Is a word uſed in declarations, and law pleadings, to aſcertain a perſon or thing which was named before; as to ſay he (innuendo the plaintiff) did ſo and ſo, when there was mention before of another perſon. 4 *Rep.* 17. An innuendo is in effect no more than a *prædict', and cannot make that certain, which was uncertain before*; and the law will not allow words to be *enlarged* by an innuendo, ſo as to ſupport an action on the caſe for ſpeaking of them. *Hob.* 2, 6, 45. 5 *Mod.* 345. An innuendo may not *enlarge* the ſenſe of words, nor make ſupply, or alter the caſe where the words are defective. *Hut. Rep.* 44. In ſlander, both the perſon and ſcandalous words ought to be certain, and not want an innuendo to make them out: If a plaintiff declares that the defendant ſaid theſe words, *Thou art a thief, and ſtoleſt a mare*, &c. (innuendo the plaintiff) without an averment that the words were ſpoken *eidem querenti*, this is not good; becauſe it doth not certainly appear of whom they were ſpoken, and the innuendo doth not help it. *Paſch.* 11 *Car. B. R.* 1 *Danv. Abr.* 158. The uſual method of declaring is, if the words were ſpoken to the plaintiff, the defendant ſaid the words *to*, of, and concerning the plaintiff. If ſaid to a third perſon, the word *to*, is omitted. A man ſhall not be puniſhed for perjury, by the help of an innuendo. 5 *Mod.* 344. And an innuendo will not make an action for a libel good; if the matter precedent imports not ſcandal, &c. to the damage of the party. *Mich.* 5 *Ann.* Where action lies without any innuendo, an innuendo ſhall be repugnant and void. 1 *Danv.* 158.

Inoperatio, Is one of the legal excuſes to exempt a man from appearing in court: *Cauſæ quæ ad excuſationem ſufficiunt, &c. hoc eſt, vel infirmitatis, vel domini neceſſitatis, vel contramandationis, vel regis implacitationis, vel* inoperationis *cauſa, viz.* on the days in which all pleadings are to ceaſe, or *in diebus non juridicis.* Leg. H. 1. c. 61.

Inordinatus, Was anciently taken for one who died inteſtate; it is mentioned in *Mat. Weſtm.* 1246.

Inpeny and Outpeny, Money paid by the cuſtom of ſome manors, on the alienation of tenants, &c.——Inpeny and Outpeny *conſuetudo talis eſt in villa de Eaſt* Radham, *de omnibus terris quæ infra burgagium tenentur,* viz. *Quod ipſe, qui vendiderit vel dederit dictam tenuram alicui dabit pro exitu ſuo de eadem tenurâ unum denarium, & ſimile pro ingreſſu alterius. & ſi prædicti denarii à retio fuerint, ballivus domini diſtringet pro eiſdem denariis in eadem tenura.* Regiſt. Prior. de Cokesford, p. 25.

Inpriſſi, Adherents or accomplices.——*Sciatis quod recepimus in gratiam noſtram Gilbertum Mareſchallam, & omnes qui fuerunt* impriſii *Richardi Mareſchalli.*——*Clauſ.* 18 *H.* 3. *in Brady Hiſt. Engl. Append. p.* 180.

Inqueſt, *(inquiſitio)* Is an inquiſition of jurors, in cauſes civil and criminal, on proof made of the fact on either ſide, when it is referred to their trial, being impanelled by the ſheriff for that purpoſe; and as they bring in their verdict, judgment paſſeth. *Staundf. P. C. lib.* 3. *c.* 12.

There is an inqueſt of office, as well on an *iſſue* or the *miſe* of the party, &c. as in caſes of appeals of robbery, the freſh ſuit to entitle reſtitution of goods, is to be enquired of by inqueſt of office, which inqueſt is chiefly for the ſatisfaction of the conſcience of the judges. 2 *Hawk. P. C.* 169.

Whether a criminal be a lunatick, or not, ſhall be tried by an inqueſt of office, returned by the ſheriff of the county; and if it be found by the jury that he only feigns himſelf lunatick, and he refuſes to plead, he ſhall be dealt with as one ſtanding mute. *H. P. C.* 226. 1 *And.* 107. Where a perſon ſtands mute without making any anſwer, the court may take an inqueſt of office, by the oath of any twelve perſons preſent, if he do ſo out of *malice*, &c. This ſignifies from a perverſe or obſtinate diſpoſition. But after the iſſue is joined, when the jury are in court, if there be any need for ſuch inquiry, it ſhall be made by them, and not by an inqueſt of office. 2 *Hawk. P. C.* 327. If a perſon attainted of felony eſcape, and being retaken, denies he is the ſame man, inqueſt is to be made of it by a jury before he is executed. *Ibid.* 463. See *Burrow's* Reports, 1 V. 18, 19. *Inquiſition* on an *untimely death*, may be taken by juſtices of *gaol-delivery, oyer and terminer*, or of the peace; if *omitted by the coroner*. But it muſt be done *publicly* and *openly*, otherwiſe it ſhall be quaſhed. By *Magna Charta*, nothing is to be taken for inqueſt of life or member. 9 *H.* 3. *c.* 26.

Inquirendo. An authority given in general to ſome perſon, or perſons, to enquire into ſomething for the King's advantage. *Reg.* 72.

Inquiſition. A manner of proceeding by way of ſearch or examination, and uſed in the King's behalf in temporal cauſes and proceſs, in which ſenſe it is confounded with office. *Staundf. Prærog.* 51. This inquiſition is upon an outlawry found: in caſes of treaſon and felony committed; upon a *felo de ſe*, &c. to entitle the King to forfeitures of lands and goods: And there is no ſuch nicety required in an inquiſition as in pleading; becauſe an inquiſition is only to inform the court how proceſs ſhall iſſue for the King, whoſe title accrues by the attainder, and not by the inquiſition; yet, in the caſes of the King and a common perſon, inquiſitions have been held void for incertainty. *Lane* 39. 2 *Nelſ. Abr.* 1008.

It is ſaid, there are two ſorts of inquiſitions, one *to inform the King*, the other *to veſt an intereſt in him*; the one need not be certain, but the other muſt; and where an inquiſition finds ſome parts well, and nothing as to others, it may be helped by *melius inquirendum.* 2 Salk. 469.

There is alſo a judicial writ *Ad inquirendum*, to inquire by a jury into any thing touching a cauſe depending in court; and inquiſition is had upon extents of land, writs of *elegit*, where judgment is had by default, and damages and coſts are recovered, &c. *Finch* 484. 2 *Lil. Abr.* 65.

Inquiſition, *Ex officio mero*, Is one way of proceeding in *Eccleſiaſtical Courts.* Wood's Inſt. 596. And formerly the oath *ex officio* was a ſort of inquiſition.

Inquiſitors, *(inquiſitores)* Are ſheriffs, coroners *ſuper viſum corporis*, or the like, who have power to inquire in certain caſes; and by the ſtatute of *Weſtm.* 1. Inquirors or inquiſitors are included under the name of *Miniſtri.* 2 Inſt. 211.

Inrollment, *(Irrotulatio)* Is the regiſtring or entring in the rolls of the *Chancery, King's Bench, Common Pleas* or *Exchequer*, or by the clerk of the peace in the records of the quarter-ſeſſions, of any lawful act; as a ſtatute or recognizance acknowledged, a deed of bargain and ſale of lands, &c.

An inrollment of a deed, may be either by the Common law, or according to the ſtatute: And inrollment of deeds ought to be made in parchment, and recorded in court, for perpetuity's ſake. *Trin.* 23 *Car. Paſch.* 24 *Car.* 1. *B. R.* But the inrolling a deed doth not make it *a record*, though it thereby becomes *a deed recorded*; for there is a difference between *matter of record*, and *a thing recorded* to be kept in memory; a *record* being the entry in parchment of *judicial matters* controverted in a court of record, and whereof the court takes notice; whereas an *inrollment* of a deed is *a private act of the parties concerned*, of which the court takes no cogniſance at the time of doing it, although the court permits it. *Mich.* 21 *Car.* 1. 2 *Lil. Abr.* 69.

Every deed, before it is inrolled, is to be acknowledged to be the deed of the party before a maſter of the Court of *Chancery*, or a judge of the court, wherein inrolled; which is the officer's warrant for inrolling of the ſame: And the inrollment of a deed, if it be acknowledged by the grantor, will be good proof of the deed itſelf upon a trial. *Ibid.* A deed may be inrolled without the examination of the party himſelf; for it is ſufficient if oath is made of the execution. If two are parties, and the deed is acknowledged by one, the other is bound by it: And if a man lives in *New York*, *&c.* and would paſs land in *England*, a nominal perſon may be joined with him in the deed who may acknowledge it here, and it will be binding. 1 *Salk.* 389.

If the party dies before it is inrolled, it may be inrolled afterwards: And inrollments of deeds operate by virtue of the ſtatute of inrollments; but if livery and ſeiſin, *&c.* be had before the inrolling, it prevents the operation of the inrollment, and the party ſhall be in by that, as the more worthy ceremony to paſs eſtates. 1 *Leon.* 5. 2 *Nelſ. Abr.* 1010. Although *inrollment*, or *matter of record*, ſhall not be tried *per pais*, yet the *time* when the inrolment of a deed was made, *ſhall.* 2 Lil. 68. *See* Bargain and Sale.

Inrollment, Is ordained in divers caſes by *Statute*; Of bargains and ſales by 27 *H.* 8. *c.* 16. Deeds in corporations, *&c.* 34 *&* 35 *H.* 8. *c.* 22. Of writings in the counties of *Lancaſter* and *Cheſter*, *&c.* 5 *Eliz.* *c.* 26. Grants from the crown of felons goods, *&c.* 4 *&* 5 *W.* *& M.* *c.* 22. Of deeds and wills made of lands of Papiſts. 3 *Geo.* 1. *c.* 18.

Inſcriptiones, Were written inſtruments by which any thing was granted; as *inſcriptiones monaſterii*, *&c.* Blount.

Inſectator, A proſecutor or adverſary at law. *Paroeb. Antiq.* 388.

Inſervire, To reduce perſons to ſervitude:—*Si ingenuus ancillam uxorem ceperit, & ſi ipſa poſtea fuerit* inſervita. *Du Cange.*

Inſetena, *(Sax.)* An inditch. Inſetenis, *& Watergangiis*, *&c.* Ordin. Romn. Mariſ. p. 72.

Inſidiae, The ſame with *Vigiliæ* or *Excubiæ*. Fleta, lib. 2. cap. 4. par. 3. Inſidias *autem nocturnas non tenetur facere, ſed ſingulis noctibus in crepuſculo* inſidias *aſſidebit*, *&c.*

Inſidiatores Viarum, Are way-layers; which words are not to be put in indictments, appeals, *&c.* by *ſtatute H.* 4. *c.* 2. And before this ſtatute, clergy might be denied felons charged generally as *inſidiatores viarum*, *&c.* See 23 *Car.* 2. *c.* 1.

Inſignia, Enſigns or arms. See *Arms* and *Gentility*.

Inſilium, Evil advice or counſel.——*Multaque Regis* inſilia *adverſus Anglos dederunt*. Sim Dunelm. Ann. 1003. *Inſiliarius* is an evil counſellor: *Filius regis cum ſuis conſiliariis*, *&* inſiliariis, *&c.*

Inſimul computaſſet, Is a writ or action of account, which lies not for things certain but only for things uncertain. *Bro. Acco.* 81. Alſo, in *aſſumpſit*, a count is often added to the declaration, called an *Inſimul computaſſet*, *i. e.* Setting forth an account ſtated, wherein defendant was found indebted to the plaintiff in ſo much, as a *Conſideration* for the defendant's promiſe to pay the ſum found in arrear.

Inſimul tenuit, Is one ſpecies of the writ of *formedon*, brought againſt a ſtranger by a coparcener on the poſſeſſion of the anceſtor, *&c.* See *Formedon*.

Inſinuation, *(inſinuatio)* Is a creeping into a man's mind or favour covertly; mentioned in the *ſtat.* 21 *Hen.* 8. *cap.* 5. *Inſinuation of a will* is, among the *Civilians*, the firſt production of it; or leaving it in the hands of the regiſter, in order to its probate.

Inſolvent. Till of late the Chancery would not put out an inſolvent truſtee; for that he was intruſted by the donor; *per Eyres* J. *Comb.* 185. *Mich.* 3 *W. & M. B. R.* in caſe of *Hill* v. *Mills*. An inſolvent perſon made executor cannot be put out by the ordinary; for he is intruſted by the teſtator. *Comb.* 185. in caſe of *Hill* v. *Mills*. *Carth.* 457. *King* v. *Raynes*. But Chancery granted an injunction againſt him, not to intermeddle with the aſſets, any further than to ſatisfy the legacy given to himſelf; for in equity he is but a truſtee for the other legatees (infants), and where a truſtee is inſolvent, the court of Chancery will compel him to give ſecurity before he ſhall enter upon the truſt. *Carth.* 458. *Mich.* 10 *W.* 3. *B. R.*

Inſolvent Debtors, Unable to pay their debts, *&c.* See *Debtors*. They have been relieved by 1 *Ann. ſt.* 1. *c.* 25. 2 *&* 3 *Ann.* *c.* 16. 6 *Geo.* 1. *c.* 22. 11 *Geo* 1. *c.* 21. 2 *Geo.* 2. *c.* 20, 22. 21 *Geo.* 2. *c.* 31. 28 *Geo.* 2. *c.* 13. 29 *Geo.* 2. *c.* 18. 1 *Geo.* 3. *c.* 17. 5 *Geo.* 3. *c.* 41, *&c.*

The effects of inſolvent debtors after diſcharge to be veſted in the clerk of the peace who is to aſſign them to creditors. 9 *Geo.* 3. *c.* 26. *ſect.* 11. Landlord to be ſatisfied two years rent before an aſſignment of goods diſtrainable. *Id. ſect.* 16. Perjury of the priſoner is death without clergy. *Id. ſect.* 26. Debts for the crown, or of 1000*l.* to one perſon not diſcharged by the inſolvent act. *Id. ſect.* 40. Eſtates tale which debtors may bar, to be deemed eſtates in fee. *Id. ſect.* 42. Perſons who took the benefit of the act 5 *Geo.* 3. *c.* 41. excluded. 9 *Geo.* 3. *c.* 26. *ſect.* 53. Inſolvent debtors relieved by 12 *Geo.* 3. *c.* 23.

Inſpection. See *Age*, *Infancy*, *Trial*.

Trial by *inſpection*, or *examination*, is, when for the greater expedition of a cauſe, in ſome point or iſſue being either the principal queſtion, or ariſing collaterally out of it, *but being evidently the object of ſenſe*, the judges of the court, upon the teſtimony of their own ſenſes, ſhall decide the point in diſpute. See *Black. Com.* 3 *V.* 331, 332.

Inſpeximus, Is a word uſed in *letters patent* giving name to them, being the ſame with *exemplification*, and called *inſpeximus*, becauſe it begins *Rex omnibus*, *&c.* Inſpeximus *irrotulamentum quarund.* *Literar.* *Patent'*, *&c.*

Inſtallment, A ſettlement, eſtabliſhing, or ſure placing in; as inſtallment into dignities, *&c.* 20 *Car.* 2. *c.* 2.

In eccleſiaſtical promotions, where the freehold paſſes to the perſon promoted, corporal poſſeſſion is required, to veſt the property completely in the new proprietor, who, according to the diſtinction of the Canoniſts, acquires the *Jus ad rem*, or inchoate and imperfect right, by *nomination* and *inſtitution*; but not the *jus in re*, or complete and full right, unleſs by corporal poſſeſſion. Therefore in *Dignities* poſſeſſion is given by *Inſtallment*; in *Rectories* and *Vicarages* by *Induction*, without which no *Temporal* rights accrue to the miniſter, though every Eccleſiaſtical power is veſted in him by *Inſtitution*. See *Black. Com.* 2 *V.* 312.

Inſtallments, ſignify *times* appointed for payment of different portions of a ſum of money, which, by agreement of the parties, inſtead of being payable in the groſs, at one time, is to be paid in parts, at certain ſtated times, ſuch as are frequently ſpecified in conditions to bonds, *&c.* or defeaſances, or warrants of attorney to confeſs judgments.

Inſtant, (Lat. *inſtans, inſtanter)* Is defined by the *Logicians* to be, *Unum indiviſibile in tempore, quod non eſt tempus, nec pars temporis, ad quod tamen partes temporis copulantur*; and though it cannot be actually divided, yet in intendment of law it may, and be applied to ſeveral purpoſes: He who lays violent hands upon himſelf commits no felony till he is dead, and when dead he is not in being ſo as to be termed a felon; but he is ſo adjudged in law *eo inſtante*, at the very inſtant of this fact done. And there are many other like caſes where the inſtant time that is not diviſible in nature, in the conſideration of the mind is divided. *Plowd.* *Hales* v. *Petit. fol.* 258. *b.* And vide *Co. Lit.* 185. *b.* And *Vin. Abr.* tit. *Inſtant*, *A. pl.* 2.

An inſtant is not to be conſidered in law, as in logick, as a point of time, and no parcel of time; but in our law, things which are to be done in an inſtant, have in conſideration of law a priority of time in them. Vide *Co. Lit.* and *Plowd.* as cited before. And in ſeveral caſes, a difference is allowed in our law in an inſtant, as *per mortem & poſt mortem*, *&c.* Arg. *Show.* 415. in caſe of *The King* v. *Dr. Birch and the Biſhop of London*.

Inſtanter, *(Lat.)* Inſtantly or preſently. *Law Lat. Dict.*

A trial *inſtanter* where a priſoner between *Attainder* and *Execution,* pleads that he is *not the ſame* that was attainted. In ſuch caſe a jury is to be impanelled to try this *Collateral* iſſue, *viz.* the identity of his perſon, and in ſuch collateral iſſue, the trial ſhall be *inſtanter.* See *Black. Com.* 4 *V.* 389. *Append.* v. 1 *Sid.* 72. *Foſt.* 42, 46. 1 *Lev.* 61. *Staundf. P. C.* 163. *Co. Lit.* 157. *Hal. Sum.* 259. And ſee *Burr.* 3 *V.* 1809 to 1812. the caſe of *Rex* v. *Rogers* and others, in which an iſſue on the *identity of the perſon* was joined, and the ſeveral *points* following were determined. *Firſt,* It is to be tried *inſtanter,* unleſs the court (upon circumſtances) give time. *2dly,* The award of the execution is to be by the *ſecond* judge, if the ſentence before pronounced was for felony. *3dly,* The defendant is not intitled to a copy of the record. *4thly,* The court will not name the day of execution; but leave it to the ſheriff.

Inſtaurum, Is uſed in ancient deeds for a ſtock of cattle; and we read of *ſtaurum* and *inſtauramentum,* properly young beaſts, *ſtore* or breed. *Mon. Angl. Tom.* 1. *pag.* 548. *Inſtaurum* was commonly taken for the whole ſtock upon a farm, as *cattle, waggons, ploughs,* and all other *implements of huſbandry.* Fleta, lib. 2. cap. 72. And *inſtaurum eccleſia* is applied to the books, veſtments, and all other utenſils belonging to a church. *Synod. Exet. Ann.* 1287.

Inſtirpare, To plant or eſtabliſh——*Non ſecurum eſt gentem externam & turbidam* inſtirpare. *Brompt.* 935.

Inſtitution, *(Inſtitutio)* Is when the biſhop ſays to a clerk, who is preſented to a church living, Inſtituo *te rectorem talis eccleſiæ, cum cura animarum, & accipe curam tuam & meam:* Or it is a faculty made by the ordinary, whereby a parſon is approved to be inducted to a rectory or parſonage. If the biſhop upon examination finds the clerk preſented capable of the benefice, he admits and inſtitutes him; and inſtitution may be granted either by the biſhop under his Epiſcopal ſeal; or it may be done by the biſhop's vicar general, chancellor or commiſſary; and if granted by the vicar general, or any other ſubſtitute; their acts are taken to be the acts of the biſhop: Alſo the inſtrument or letters teſtimonial of inſtitution may be granted by the biſhop, though he is not in his dioceſe; to which ſome witneſſes ſhould ſubſcribe their names. 1 *Inſt.* 344. *Clergym. Law.* 109. The biſhop by inſtitution transſers the cure of ſouls to the clerk; and if he refuſeth to grant inſtitution, the party may have his remedy in the *Court of Audience* of the archbiſhop, by *duplex querela, &c.* for inſtitution is properly cognizable in the Eccleſiaſtical court: Where inſtitution is granted, and ſuſpected to be void for want of title in the patron, *&c.* a ſuperinſtitution hath been ſometimes granted to another, to try the title of the preſent incumbent by ejectment. 2 *Rol. Abr.* 220. 4 *Rep.* 79.

Taking a reward for inſtitution incurs a forfeiture of double value of one year's profit of the benefice, and makes the living void. *Stat.* 31 *Eliz. c.* 6. On inſtitution the clerk hath a right to enter on the parſonage houſe and glebe, and take the tithes; but he cannot grant, let, or do any act to charge them, till he is inducted into the living: He is complete parſon as to the ſpiritualty, by inſtitution; but not as to the temporalty, *&c.* By the inſtitution he is only admitted *ad officium, to pray and preach;* and is not intitled *ad beneficium,* until formal induction. *Plowd.* 528. Vide *Inſtallment.* The church is full by inſtitution againſt all common perſons, ſo that if another perſon be afterwards inducted, it is void, and he hath but a mere poſſeſſion; but a church is not full againſt the King *till induction.* 2 Inſt. 358. 1 Rol. Rep. 151. When a biſhop hath given inſtitution to a clerk, he iſſues his mandate for induction; and if the archbiſhop ſhould inhibit the archdeacon to induct the clerk thus inſtituted, he may do it notwithſtanding. The firſt beginning of inſtitutions to benefices, was in a national ſynod held at *Weſtminſter, Anno* 1124. For patrons did originally fill all churches by collation and livery; till this power was taken from them by canons. *Selden's Hiſt. of Tithes, cap.* 6 & 9. *pag.* 375. See *Induction.* And *Black. Com.* 1 *V.* 390. 2 *V.* 23. 4 *V.* 106.

Inſuper, Is uſed by auditors in their accounts in the *Exchequer;* as when ſo much is charged upon a perſon as due on his account, they ſay ſo much remains *inſuper* to ſuch an accountant. 21 *Jac.* 1. *c.* 2.

Inſurance or Aſſurance, Signifies a ſecurity given, in conſideration of a ſum of money paid in hand of ſo much *per cent.* to an *aſſurer* or *inſurer,* to indemnify the *inſured* from ſuch loſſes as ſhall be ſpecified in the policy, or inſtrument of aſſurance, ſubſcribed by the inſurer or inſurers for that purpoſe. *Dict. Tr. and Com.* 135. *Savary's Dict.* tit. *Aſſurance et Police d'Aſſurance.*

We ſhall here conſider,

I. *The origin of inſurance, and the nature and effect of policies,* &c.
II. *Baratry and deviation.*
III. *Warranty to depart with convoy.*

I. *The origin of inſurance, and the nature and effect of policies,* &c.

It is conceived by *Suetonius,* that *Claudius Cæſar* was the firſt who brought in this cuſtom of aſſurance; by which the danger and adventure of voyages is divided, repaired and borne by many perſons, who, for a certain ſum, by the *Spaniards* called *premio,* aſſure ſhips or goods, or both, or a proportion, according to the policy. *Molloy, b.* 2. *c.* 7. *ſect.* 1. *Malyne's Lex Mercatoria, ed.* 1686. *p.* 104.

Mr. *Savary,* in his *Dictionaire de Commerce,* tit. *Aſſurance,* thinks this cuſtom was firſt introduced by the Jews in the year 1182, but whoever was the firſt contriver, or original inventer of this uſual branch of buſineſs, it has been many ages practiſed in this kingdom, and is ſuppoſed to have been introduced here by ſome *Italians* from *Lombardy,* who at the ſame time came to ſettle at *Antwerp,* and among us: And this being prior to the building of the *Royal Exchange,* they uſed to meet in a place where *Lombard Street* now is, at a houſe they had called the Pawn Houſe or *Lombard,* for tranſacting buſineſs; and as they were then the ſole negociators in inſurance, the policies made by others in after-times had a clauſe inſerted, that thoſe latter ones ſhould have as much force and effect, as thoſe formerly made in *Lombard Street.* Lex Mercatoria Rediviva 261.

Aſſurances are of various ſorts, ſome being to places certain, others general. Thoſe that are made to places certain, are commonly upon goods laden, or to be laden abroad outward, and until the ſame adventure ſhall be landed at ſuch a port; or upon goods laden, or to be laden homeward in ſuch a ſhip, till the adventure ſhall likewiſe be landed; or elſe upon goods out and in, with liberty to touch at all ports mentioned in the policy.

So, likewiſe on ſhips that go trading voyages, as round to *Cadiz;* and that it ſhall be lawful, after the ſhip's delivery there, to take in at the ſame port another cargo, and with that proceed to the *Weſt-Indies* or other ports, and back again to *Cadiz,* and from thence to *London;* this policy being general and dangerous, ſeldom procures ſubſcriptions, or at leaſt very chargeable ones.

As goods and merchandize are commonly inſured, ſo likewiſe are the ſhip's tackle and furniture; but in regard there ſeldom happens a voyage but ſomewhat is miſſing or loſt, the *premium* commonly runs higher than for merchandize.

Aſſurances may be made on goods ſent by land, ſo likewiſe on hoys and the like, and may be made on the heads of men; as if a man is going for the *Streights,* and perhaps is in ſome fear that he may be taken by the *Moor* or *Turkiſh* pirates, and ſo made a ſlave, for the redemption of whom a ranſom muſt be paid, he may advance a *premium* accordingly upon a policy of aſſurance; and if there be a caption, the aſſurer muſt anſwer the ranſom that is ſecured to be paid on the policy. *Molloy, b.* 2. *c.* 7. *ſect.* 4. cites *Mich.* 29 *Car.* 2. *B. R. Liſle* v. *Sedgwick.*

The policies are now ſo large, that almoſt all thoſe curious queſtions that former ages, and the Civilians according to the law marine, nay and the Common lawyers too, have controverted, are now out of date. Scarce any misfortune that can happen, or proviſion to be made, but the ſame is provided for in the policies that are now uſed; for they inſure againſt heaven and earth, ſtreſs of weather, ſtorms, enemies, pirates, rovers, *&c.* or whatſoever detriment ſhall happen or come to the thing inſured, *&c. Molloy, b.* 2. *c.* 7. *ſ.* 7. When a ſhip hath been long miſſing, and no advice can be had where ſhe is, the *premium* in time of war will run very high; ſometimes 30 or 40 *per cent.* or more, but when theſe words are inſerted in the *inſurance, loſt or not loſt*; in ſuch caſe, if it happens at the time the ſubſcription is made, that the ſhip is caſt away, the *inſurers* muſt anſwer: But if the party that cauſed the *inſurance* to be made, ſaw the ſhip wrecked, or had certain intelligence of it, ſuch ſubſcription will not be obligatory; ſo likewiſe if the *inſured* have a rotten ſhip, ſhall *inſure* upon the ſame more than ſhe is worth, and afterwards going out of the port ſhe is ſunk or wrecked, this will be adjudged fraudulent, and not oblige *inſurers* to anſwer. *Mich.* 26 *Car.* 2. *B. R.*

And wilfully caſting away, or making holes in the bottom of a ſhip, *&c.* with deſign to prejudice any *inſurers*, merchants, *&c.* is made felony by *ſtat.* 1 *Ann. ſt.* 2. *c.* 9. 4 *Geo.* 1. *c.* 12. and 11 *Geo.* 1. *c.* 29.

Subſcriptions for *inſurances* are generally for certain ſums; as 100*l.* or 500*l.* *&c.* at the *premium* current; and if a man inſures goods to the value of 5000*l.* and he hath but 2000*l.* remitted, now he having *inſured* a real adventure, if a loſs happens, by the law marine, all the *inſurers* are compellable to anſwer *pro rata*: Tho' this is more by the cuſtom of merchants than by law; and by ſome opinions, only the firſt ſubſcribers, who underwrit ſo much as the real adventure amounted to, are to be made liable, and the reſt to have their *premiums* deducted, and be diſcharged. *Grot. Introd. Jur. Holl,* 212. But we conceive the latter poſition is not, now, law in this kingdom.

If a merchant freights out wool, *&c.* which occaſions a forfeiture of ſhip and lading; or if he lades contraband goods knowingly, and afterwards *inſures* the ſame, and they are ſeized by the King's officers; the *inſurers* are not liable to bear the loſs: But if goods *inſured* are not contraband at the time of the lading and *inſurance*, and after become ſuch, if they are then ſeized, the *inſurers* are anſwerable. 12 *Car.* 2. 32.

A ſhip is inſured for a voyage, or cruiſe of three months and is taken by the enemy within that time, but before ſhe is carried *infra præſidia hoſtis* is re-taken by an *Engliſhman*, and is now a living ſhip, this is a total loſs. *v. Wilſ. Rep. par.* 1. *fol.* 191.

If a ſhip be inſured from the port of *London* to any foreign place, and before the ſhip breaks ground ſhe happens to take fire, and is conſumed, the *inſurers* are not obliged to anſwer, unleſs the words of the *inſurance* are *At and from the port of London*; for the adventure did not commence till the ſhip was gone from thence: Tho' if the ſhip had broken ground, and afterwards been driven by ſtorm back to the port of *London*, and there had taken fire, the *inſurers* muſt anſwer. *Rot. Scaccar.* 15 *Car.* 2. Goods are ſtolen and imbezilled on ſhip-board, *the maſter*, and not the *inſurers* are liable. This muſt be underſtood where there is not any proviſion in the policy for ſuch an act. When *inſurers* are to anſwer, and it happens that ſome part only of the effects *inſured* are loſt, as in the caſe of ejection in a ſtorm, or other ſuch accidents; then the *inſurers* make an *average* of it, and each man pays ſo much *per cent,* in proportion to the ſum for which he ſubſcribed. When advice is received of the loſs of the ſhip or goods, application is to be made to the *inſurers*, and the vouchers to be produced; with which if they are ſatisfied, they will pay the money; but if they have reaſonable ground to ſcruple it, the *inſured* muſt wait a convenient time, till the *inſurers* can obtain a more ſatisfactory advice; or if nothing can be heard of the ſhip in any reaſonable time, the *inſurers* are obliged to pay the money: Tho' if the ſhip afterwards arrive in ſafety, the money is to be returned them by the *inſured.* Mer. Compan. 91, 96, 97.

A merchant having *inſured* the greateſt part of the adventure of a ſhip, if advice is received of a loſs, but with hope of recovery, whereby ſuch merchant would have the aſſiſtance of the *inſurers*; he has a privilege to make a renunciation of the lading to the *inſurers*, and to come in himſelf in the nature of an *inſurer*, for ſo much as ſhall appear he hath born the adventure of, beyond his part of the value *inſured*. *N. B.* The party *inſured*, muſt have property in the thing *inſured*, at the time of *inſurance* and loſs. *v. Wilſ. Rep. par.* 1. *fol.* 10.

The 6 *Geo.* 1. *c.* 18. empowers his Majeſty to grant two charters for *inſurance* of ſhips and merchandiſe, *&c.* and to *incorporate the adventurers*, in conſideration of a large ſum of money advanced; and all other *corporations* for *inſurance*, and their policies, are declared void. But many individuals may ſubſcribe policies as inſurers, and be bound to pay, if a loſs happens.

By 11 *Geo.* 1. *c.* 30. Policies of *inſurance* ſhall be made out and ſtamped in *three days* after ſhips are *inſured*, on pain of 100*l.* and promiſſory notes for inſurance ſhall be void, and nothing recovered thereon. Where any perſon undertakes the *inſuring* of *wool* to be tranſported, or agrees to pay money for ſuch *inſurance*, he is liable to forfeit 500*l.* but one may be diſcharged of this penalty, and have likewiſe the whole forfeiture, on diſcovering, and convicting the other guilty party, in ſix months. *Stat.* 12 *Geo.* 2. *c.* 21.

By the *ſtat.* 25 *Geo.* 2. *c.* 26. no *inſurance* ſhall be made on money to be lent on bottomree, or *Reſpondentia* Bonds on foreign ſhips or goods bound to or from the *Eaſt-Indies*, on penalty of forfeiting treble the ſum inſured or lent. This prohibition not to extend to the ſhips or goods of the ſubjects of ſuch ſovereigns who traded there before the 7th of *October* 1748.

By the ſtat. 19 *Geo.* 2. *c.* 37. No *aſſurance* ſhall be made by any perſon *on any ſhip* belonging to his Majeſty or his ſubjects, (except privateers, and by the owners of them) or *on any goods* laden on board ſuch ſhip, *intereſt or no intereſt*, or without further proof of intereſt than the policy, or by way of gaming or wagering, or without benefit of ſalvage to the *aſſurer*. And every ſuch *aſſurance* ſhall be void. *Re-aſſurance* ſhall not be made except the *aſſurer* becomes inſolvent, and then but to the value before *aſſured*, and to be expreſſed in the policy to be *re-aſſurance*. The plaintiff in any action upon a policy of *aſſurance*, ſhall, *within fifteen days after requeſt*, declare what ſums he hath *aſſured* in the whole, or borrowed at *Reſpondentia* or bottomree for the voyage.

Any perſon ſued on a policy of *aſſurance* may bring the money into court, and if the plaintiff ſhall refuſe to accept it, and the jury ſhall not aſſeſs more damages than the money brought into court, the plaintiff ſhall pay coſts. See *Bottomree.*

II. *Of Baratry and deviation.*

Baratry is when the maſter of a ſhip, or the mariners, cheat the owners or inſurers, whether by running away with the ſhip, ſinking her, deſerting her, or imbezilling the cargo. *Dict. Tr. and Com.* 214.

Baratry of the mariners is a diſeaſe ſo epidemical on ſhipboard, that it is very rare for a maſter to prevent it. However the law does in ſuch caſes impute offences and faults committed by them to the negligence of the maſter; and, were it otherwiſe, the merchant would be in a very dangerous condition. The reaſons why he ought to be reſponſible are, that the mariners are of his own chuſing, and under his government, and know no other ſuperior on ſhipboard but himſelf; and if they are faulty, he may correct and puniſh them, and juſtify the ſame by law: and, if the fact is apparently proved againſt them, may reimburſe himſelf out of their wages. *Molloy, b.* 1. *c.* 3. *ſ.* 13. cites *Roll. Abr.* 533. *Paſch.* 11 *Jac. in B. R. Horn* v. *Smith.*

Therefore, in all caſes whereſoever the merchant loads aboard any goods or merchandize, if they be loſt, imbeziled, or any other way damnified, he muſt be reſponſible for them; for the very lading them aboard makes him liable, and that as well by the Common law as the law marine. *Molloy, b.* 1. *c.* 3. *ſ.* 14. cites 1 *Vern.* 190, 238. 1 *Mod.* 85. 2 *Lev.* 69.

Nay, if his mariners go with the ſhip-boat to the quay or wharf to fetch goods on ſhipboard, if once they have taken charge of them, the maſter becomes immediately reſponſible, if they ſteal, loſe, damnify, or imbezil them. *Molloy, b.* 1. *c.* 3. *ſ.* 15.

Where a ſhip was inſured againſt the baratry of the maſter, *&c.* in an action brought thereupon, the jury found that the ſhip was loſt by the fraud and negligence of the maſter: The court held, that if the maſter run away with the ſhip, or imbezil the goods, the merchant may have an action againſt him; for it is reaſonable that merchants who hazard their ſtocks in foreign traffick, ſhould ſecure themſelves in what manner they think proper, againſt baratry of the maſter and all other frauds; and this muſt be intended fraud in the maſter; not a bare neglect: and they all agreed that *fraud* is baratry, tho' not named in the covenant; but *negligence* might not. 1 *Mod.* 230, 231.

Baratry imports fraud (*Du Freſne Gloſſar.* verbo *Barataria fraus, dolus,*) and he who commits a fraud may properly be ſaid to be guilty of a neglect of his duty. Baratry of a maſter is not to be confined to the maſter's running away with the ſhip; and the general words of the policy ought to be conſtrued to extend to loſſes of the like nature as thoſe mentioned before. Loſſes ariſing from the fraud of the maſter, are of the ſame nature as if he had run away with the ſhip, ſuppoſing baratry to be confined to that which is not, becauſe it imports any fraud. *Ld. Raym.* 1349. *Knight* v. *Cambridge. Stran.* 581. S. C. *Vide* the caſe of *Stamma* v. *Brown.* 2 *Stra.* 1173. where the *deviation* of the *maſter*, being for the benefit of his *owners*, and not for his *own*, was conſtrued not to be *baratry*, in an action on a policy brought by a perſon who had put goods on board to be carried to *Marſeilles.*

An intention to deviate is not ſufficient to diſcharge the underwriter. *Foſter* v. *Wilmor.* 2 *Stra.* 1249.

The excuſe of neceſſity is always allowed. *Elton* v. *Brogden.* 2 *Stra.* 1264.

A voyage ought to be performed according to *uſage:* 2 *Salk.* 445.

If after a policy of *inſurance* a damage happens, and afterwards in the ſame voyage a *deviation*, yet the aſſured ſhall recover for what happened *before the deviation*; for the policy is diſcharged from the time of the *deviation* only. *Vid. Shower* 129. *Kemp* and *Andrews.* 2 *Salk.* 444.

In the French *Encyclopédie* it is called *Baratterie, malverſation, tromperie*, derived from *Barat*, an old French word out of uſe, which formerly ſignified, *tromperie, fourbe, menſonge.* (tom. 2. ſo. 68.) i. e. *cheating, fraud, deceit.*

III. *Of warranty to depart with convoy.*

Where the captain does every thing in his power, it is a departing with convoy; and theſe agreements are never confined to preciſe words; as in the caſe of departing with convoy from *London*, where the place of rendezvous is *Spithead*; a loſs in going thither is within the policy. So that the plaintiff recovered. *Stran.* 1250. 19 *Geo.* 2. *Victorin* v. *Cleeve.* See *infra.*

A ſhip is to be conſidered as under *inſurance* to a place of general rendezvous, according to the interpretation of the words warranted to depart with convoy. *Salk.* 443, 445. And if the parties mean to vary the *inſurance* from what is commonly underſtood, they ſhould particularize her departure with convoy from the place ſpecified. *Stran.* 1265. 2 *Geo.* 2. *Gordon* v. *Morely*, and *Cambel* v. *Bordieu.*

Action on a policy of *inſurance*; the defendant pleaded *non aſſumpſit*, and the jury found the policy, by which the inſurers undertook againſt the perils of the ſea, pirates, enemies, *&c.* from *London* to *Venice*, warranted to depart with convoy. *Et per cur.* The words warranted to depart with convoy, *mean only that he will leave the port, and ſail with the convoy without any wilful default in the maſter*; therefore, if, by default of the maſter, the ſhip is ſeparated and taken, the inſurers are not liable; but if there be no default, the maſter having done all that could be done, and the ſhip is taken, they are liable: ſo if the ſhip be loſt by ſtreſs of weather; for they inſure againſt theſe by their own agreement. 2 *Salk.* 443. *Hill.* 2 *W.* & *M. in B. R. Jefferies* v. *Legandra, S. C.* 3 *Lev.* 320. 4 *Mod.* 58. 1 *Show.* 320. *Carth.* 216. *Holt's Rep.* 465.

Action on a policy of *inſurance* by the defendant at *London*, inſuring a ſhip from thence to the *Eaſt-Indies*, warranted to depart with convoy; and ſhews that the ſhip went from *London* to the *Downs*, and from thence with convoy, and was loſt. After a frivolous plea and demurrer, the caſe ſtood upon the declaration; to which it was objected, that there was a departure without convoy. *Et per cur.* The clauſe warranted to depart with convoy, muſt be conſtrued according to the uſage among merchants, *i. e.* from ſuch place, where convoys are to be had, as the *Downs, &c. Holt* Chief Juſtice *contra*; We take notice of the laws of merchants that are general, not of thoſe that are particular uſages. It is no part of the law of merchants to take convoy in the *Downs.* 2 *Salk.* 443. *Mich.* 4 *W.* & *M. in B. R. Lethulier*'s caſe.

The words *warranted to depart with convoy* have been reſolved to import, by the uſage of merchants, a continuance with that convoy as long as may be. *Luc. Rep.* 287.

For another caſe, on the explanation of the words, but ſimilar to thoſe already ſtated, vide *Lex Mercat. Rediviv.* 277. *Gordon and Murray* v. *Morley.* Sittings after *Michaelmas* term at *Guildhall*, 1746.

See a Collection of Caſes in *Cunningham's Law of Bills of Exchange. Law of Inſurances, &c.* and ſee *Black. Com.* 2 *V.* 460. 3 *V.* 74. 4 *V.* 434.

Intakers, Were a kind of thieves in the *northern* parts of *England*, ſo called, becauſe they did *take in* and receive ſuch booties as their confederates the *outpartners* brought to them from the borders of *Scotland*; they are mentioned 9 *H.* 5. *cap.* 7.

Intaſſare. See *Taſſum.*

Intendment of Law, (*intellectus legis*) The underſtanding, intention and true meaning of law. *Co. Litt.* 78. ſays, the judges ought to judge according to the common *intendment of law.*

Intendment ſhall ſometimes ſupply that which is not fully expreſſed or apparent, and when a thing is doubtful in ſome caſes, *intendment* may make it out; alſo many things ſhall be intended after verdict, in a cauſe, to make a good judgment: but *intendment* cannot ſupply the want of certainty in a charge in an indictment for any crime, *&c.* 5 *Rep.* 121. 2 *Hawk. P. C.* 227, 441.

Sometimes a thing is neceſſarily *intended* by what precedes or follows it; and where an indifferent conſtruction may have two *intendments*, the rule is to *take it moſt ſtrongly againſt the plaintiff.* Show 162. Tho' if a plaintiff declares, that the defendant is bound to him by obligation, it ſhall be *intended* that the obligation was ſealed and delivered: if one is bound in a bond, and in the *ſolvend.* of the bond it is not expreſſed unto whom the money ſhall be paid, or if ſaid to the obligor; the law will *intend* it is to be paid to the obligee: and where no time is limited for payment of the money, it ſhall be *intended* to be preſently paid. 2 *Lill. Abr.* 71. *Paſch.* 24 *Car. B. R.*

The *intent* of parties in deeds, contracts, *&c.* is much regarded by the law: tho' it ſhall not take place againſt the direct rules of law: the law doth not in conveyances of eſtates admit them regularly to paſs by *intendment* and implication; in *deviſes* of lands they are allowed, with due reſtrictions. *Vaugh.* 261, 262. Where ſeiſin of an inheritance is once alledged, it ſhall be intended to continue till the contrary is ſhewn. *Jones* 181. A court pleaded generally to be held *ſecund. conſuetud.* ſhall be intended held according to the Common law. *Com. Law Com. Plac.* 276. *Goldſb.* 111. See *Implication.*

By intendment of law every parſon, or rector of a church, is ſuppoſed to be reſident in his benefice, unleſs the contrary be proved. *Co. Lit.* 78. *b.*

One part of a manor by common intendment ſhall not be of another nature than the reſt. *Co. Lit.* 78. *b.*

Of common intendment a will ſhall not be ſuppoſed to be made by colluſion. *Co. Lit.* 78. *b.* The law preſumes that every one will act for his beſt advantage; therefore credits the party in whatever is to his own prejudice. *Fin. Law* 10. *Max.* 53. Uſury ſhall not be intended, unleſs expreſsly found by the jury. Arg. *Bridgm.* 112. *Mich.* 15 *Jac.* cites 10 *Rep.* 59. *Chancellor of Oxford*'s caſe. Covin ſhall not be intended or preſumed in law, unleſs expreſsly averred. Arg. *Bridgm.* 112. cites the caſe of *Tyrer* v. *Littleton.* When one word may have a *double intendment*, one *according to the law*, and another *againſt the law*, that intendment ſhall be taken which is *according to law*; and this by a reaſonable intendment. 3 *Bulſ.* 306. *Mich.* 1. *Car. B. R. Yelv.* 50. *Game* v. *Harvey.*

Intendment of Crimes. In antient times felonious attempts, intending the death of another, were adjudged felony; *for the will was taken for the fact.* Bract. 1. E. 3. But at this day the law does not generally puniſh intendments to do ill, if the intent be not executed, except in caſe of *treaſon*, where intention proved by circumſtances ſhall be puniſhed as if put in execution. 3 *Inſt.* 108. And if a perſon enter a houſe in the night, with intent to commit burglary, it is felony: and by ſtatute, maliciouſly cutting off or diſabling any limb or member, with an intent to diſfigure, *&c.* is felony. 23 *Car.* 2. *c.* 1. and vide *Plowd.* 474. Where aſſault and intent to commit robbery on the highway, is made felony and tranſportation, ſee 7 *Geo.* 2. *c.* 21. Intention of force and violence makes riots criminal. 3 *Inſt.* 9 Alſo where men do evil, and ſay they intend none; or if the intention be only to beat, and they kill a perſon, they are to be puniſhed for the crime done. *Plowd.* 345. And if a man entering a tavern, *&c.* commit a treſpaſs, the law will judge that he intended it. 8 *Rep.* 147. Vide *Murder.*

Intent or **Intention.** The words of deeds ſhall be conſtrued according to the intent of the parties, and not otherwiſe. The intent ſhall be deſtroyed where it does not agree with the law. *Pl. C.* 160. *b.* 162. b. *Throgmorton* v. *Tracy.*

In every agreement the intent is the chief thing that is to be conſidered; and if by the act of God, or other means not ariſing from the party himſelf, the agreement cannot be performed according to the words, yet the party ſhall perform it as near the intent as he may. Arg. *Pl. C.* 290. *Trin.* 7 *Eliz.* in caſe of *Chapan* v. *Dalton.*

Common uſage and reputation frequently govern the matter, and direct the intention of the parties; as upon ſale of a barrel of beer the barrel is not ſold, but upon ſale of a hogſhead of wine it is otherwiſe. *Savil* 124. *Mich.* 32 *&* 33 *Eliz.* in caſe of *Matthew* al. *Biſhop* v. *Harcourt. Hard.* 3. Arg. *Trin.* 1655. *in ſcacc.* The intention of a man is not always to be purſued in equity; as if a man ſettles a *term* in truſt for one and his *heirs*, yet it ſhall go to the executor; *per Lord North. Paſch.* 1683. 1 *Vern.* 164. in caſe of *D. of Norfolk* v. *Howard.*

All deeds are but in nature of contracts, and the intent of the parties reduced into writing, and the intention is to be chiefly regarded. In an act of parliament the intention appearing in the preamble ſhall controul the letter of the law; and from the regard which the law itſelf gives to the intention of the party, it is, that where there is fine by render, there ſhall be no dower; and ſo a rent or recognizance ſhall not be extinguiſhed by levying a fine to the party. *Per Maſter of the Rolls. Paſch.* 1688. *Vern.* 58. See 14 *Vin. Abr.* tit. *Intent.*

Intenſione, Is a writ that lies againſt him who enters into lands after the death of *tenant in dower* or *for life*, *&c.* and holds out him *in reverſion* or *remainder. F. N. B.* 203.

Inter Canem & Lupum, Words formerly uſed in appeals to ſignify the crime being done in the twilight. *M. filia N. de* Okele *appellat J. C. pro raptu & pace regis fracta die Martis prox. &c.* Inter canem & lupum, *i. e. in crepuſculo, ſcilicet, Anglice* twilight, *i. e. inter diem et noctem, etc.* Inter Placita de Trin. 7 Ed. 1. Rot. 12. Glouc.——*In placit, de domo combuſta malitioſe, hora veſpertina, ſc.* Inter canem & lupum *venerunt malefactores, etc. Plac. Cor. apud Novum Caſtrum.* 24 Ed. 6. Rot. 6. This in *Herefordſhire*, they call the *mock ſhadow*, corruptly the *mock-ſhade*, and in the north, *day-light's gate*; others betwixt *hawk aud buzzard.* Cowell.

Intercommoning, Is where the commons of two manors lie together, and the inhabitants of both have time out of mind depaſtured their cattle promiſcuouſly in each. *Cowell.*

Interdiction, (*interdictio* and *interdictum*) Has the ſame ſignification in the Common, as it hath in the Canon law, which thus defines it: *interdictio eſt cenſura eccleſiaſtica prohibens adminiſtrationem divinorum.* And ſo it is uſed 22 *Hen.* 8. *cap.* 12. *and* 25 *ejuſdem, cap.* 23. *Eodem anno relaxatum eſt* interdictum *Oxoniæ, quod authoritate Domini Joh. Epiſcopi Linc. propter clericidium et ſacrilegia anno proximo præterito fuit illatum.* Walſ. Hiſt. Anno 1357. So that an *interdict* is, a general excommunication of a whole country or province: it is mentioned in ſome of our hiſtorians, *viz. Knighton* tells us, *anno* 1208. that the Pope excommunicated King *John*, and all his adherents, *Et totam terram Anglicanam ſuppoſuit interdicto,* which began the firſt *Sunday* after *Eaſter*, and continued ſix years and one month; during all which time nothing was done in the churches beſides baptiſm and confeſſions of dying people.

The form of an *interdict*, as ſet down by *Du Cange*, is as follows, *viz.*

IN the name of Chriſt, *We the biſhop, in behalf of the Father, Son, and Holy Ghoſt, and of St.* Peter, *the chief of the apoſtles, and in our own behalf, do excommunicate and* interdict *this church, and all the chapels thereunto belonging, that no man from henceforth may have leave to ſing maſs, or to hear it, or in any wiſe to adminiſter any divine office, nor to receive God's tithes without our leave; and whoſoever ſhall preſume to ſing or hear maſs, or perform any divine office, or to receive any tithes contrary to this* interdict, *on the part of God the Father Almighty, and of the Son, and of the Holy Ghoſt, and on the behalf of St.* Peter, *and all the ſaints, let him be accurſed and ſeparated from all Chriſtian ſociety, and from entering into Holy Mother Church, where there is forgiveneſs of ſins; and let him be* Anathema, Maranatha, *for ever, with the devils in* hell. Fiat, fiat, fiat. *Amen.*

This ſevere church cenſure hath been of long time diſuſed.

Interdictum, In the Civil law, was a prohibition or injunction of the prætor, or an order for the poſſeſſion of a thing in diſpute, made by the magiſtrate *per interdictum repetere poſſeſſionem ſuam.* Cic. pro Cæcin. 3. If a bill be filed in either of our courts of equity to quiet the poſſeſſion of lands, to ſtay waſte, or to ſtop proceedings at law, an *injunction* is prayed in the nature of the *interdictum* of the Civil law, commanding the defendant to ceaſe.

Interdicted of Water and Fire, Were anciently thoſe perſons who ſuffered baniſhment for ſome crime; by which judgment, order was given that no man ſhould receive them into his houſe, but deny them fire and water, the two neceſſary elements of life, which amounted as it were to a civil death; and this was called *legitimum exilium*, ſays *Livy.*

Intereſt, (*intereſſe*) Is commonly taken for a chattel real, as a leaſe for years, *etc.* and more particularly for a *future* term; in which caſe it is ſaid in pleading, that one is poſſeſſed *de intereſſe termini.* Therefore an eſtate in lands is better than a right or intereſt in them: tho' in legal underſtanding an intereſt extends to eſtates, rights and titles, that a man hath in, or out of lands, *etc.* ſo as by grant of his whole intereſt in ſuch land, a reverſion therein as well as poſſeſſion in fee-ſimple ſhall paſs. *Co. Lit.* 345.

A mortgage is an intereſt in land, and on non-payment, the eſtate is abſolute in law, and his intereſt is good in equity to intitle him to receive and enjoy the profits till redemption or ſatisfaction, and, on a foreclosure,

cloſure, he hath the abſolute eſtate both in law and equity. 9 *Mod.* 196. See *Black. Com.* 2 *V.* 134.

Intereſt of Money, As diſtinguiſhed from the principal, what lawful, *&c.* See *Uſury*, and *Black. Com.* 2 *V.* 455.

Where an eſtate is deviſed for payment of debts, Chancery will not allow intereſt for book debts. 3 *Ch. Rep.* 94. *Dolman* v. *Pritman.* Where lands are charged with payment of a ſum in groſs, they are alſo chargeable in equity with payment of intereſt for ſuch ſum. *Hill.* 29 *Car.* 2. *Fin. R.* 286. *Shipton* v. *Tyrrel.* Intereſt is recovered by way of damages, where damages are recovered *ratione detentionis debiti*; but not where damages only are recovered, for intereſt is not recovered *occaſione damnorum*; *per Powell* J. 2 *Salk.* 623. *Hill.* 10 *W.* 3. *B. R. Sweatland* v. *Squire.* No intereſt to be allowed for coſts, *MS. Tab.* cites 6 *Feb.* 1719. *Butler* v. *Burk.* *For more learning on this ſubject, ſee* 14 Vin. Abr. *tit.* Intereſt.

Intereſt on Bankrupts Debts. The uſual rule is, that all intereſt on debts carrying intereſt ſhall ceaſe, from the time of iſſuing the commiſſion, yet, in caſe of a ſurplus left after payment of every debt, ſuch intereſt ſhall again revive, and be chargeable on the bankrupt, or his repreſentatives. *Atk.* 244. *Black. Com.* 2 *V.* 488.

Intereſt on Legacies. In caſe of a veſted legacy, due immediately, and charged on land, on money in the funds, which yield an immediate profit, intereſt ſhall be payable thereon from the teſtator's death; but if charged only on the perſonal eſtate, which cannot be immediately got in, it ſhall carry intereſt only from the end of the year after the death of the teſtator. 2 *P. Wms.* 26, 27. *Black Com.* 2 *V.* 513, 514.

Intereſt, or no *Intereſt*, in policies of inſurance, ſee 19 *Geo.* 2. *c.* 37. and tit. *Inſurance*, and *Black. Com.* 2 *V.* 461.

Intereſted Witneſs. Intereſted witneſſes may be examined upon a *voir dire*, if ſuſpected to be ſecretly concerned in the event, or their intereſt may be proved in court. *Black. Com.* 3 *V.* 370.

Interlineation in a *deed*. A deed may be avoided by matter *ex poſt facto*, as by raſure, *interlining*, or other alteration in any material part; unleſs a memorandum be made thereof at the time of the execution and atteſtation. 11 *Rep.* 27. *Black. Com.* 2 *V.* 308.

Interlocutory Decree in *Chancery*. In a ſuit in equity, if any matter of fact is ſtrongly controverted, the fact is uſually directed to be tried in the court of King's Bench, or at the aſſizes, upon a feigned iſſue. If a queſtion of mere law ariſes in the courſe of a cauſe, it is the practice of the court of Chancery to refer it to the opinion of the judges of the court of King's Bench, upon a caſe ſtated for that purpoſe. In ſuch caſes *interlocutory decrees*, or orders are made. See *Black. Com.* 3 *V.* 452, 453.

Interlocutory Judgment. Interlocutory judgments are ſuch as are given in the middle of a cauſe, upon ſome plea, proceeding on default, which is only intermediate, and does not finally determine or complete the ſuit. As judgment for the plaintiff in abatement, of *reſpondeat ouſter*, i. e. that defendant ſhall anſwer over, or farther, plead in chief, or put in a more ſubſtantial plea.

But the *interlocutory judgments*, moſt uſually ſpoken of, are thoſe incompleat judgments, whereby the *right* of the plaintiff is indeed eſtabliſhed, but the *quantum* of damages ſuſtained by him is not aſcertained, which is the province of a jury. In ſuch caſe a writ of inquiry iſſues to the ſheriff, who ſummons a jury, enquires of the damages, and returns to the court the inquiſition ſo taken, whereupon the plaintiff's attorney taxes coſts, and ſigns *final judgment*. See *Black. Com.* 3 *V.* 396, 397.

Interlocutory Order, (*ordo interlocutorius*) Is that which decides not the cauſe, but only ſome incidental matter, which happens between the beginning and end of it; as where an order is made in Chancery, for the plaintiff to have an *injunction*, *&c.* till the hearing of the cauſe: this, or any ſuch order, not being *final*, is *interlocutory.*—Ordo interlocutorius *non definit controverſiam, ſed aliquid obiter, ad cauſam pertinens, decernit.* Lanc. Inſt. Juris Canon. lib. 3.

Interlopers, Perſons who intercept the trade of a company of merchants. *Merc. Dict.*

Interpleader in Actions, ſee *Enterpleader.*

Interregnum. There can't be any *interregnum*, in this country, by the policy of the conſtitution, for the right of ſovereignty is fully veſted in the ſucceſſor by the very deſcent of the crown. See *Black. Com.* 1 *V.* 196, 249.

Interrogatories, Are particular queſtions demanded of witneſſes brought in to be examined in a cauſe, eſpecially in the court of *Chancery*. And theſe *interrogatories* muſt be exhibited by the parties in ſuit on each ſide; which are either direct for the party that produces them, or *counter* on behalf of the adverſe party; and generally both plaintiff and defendant may exhibit direct, and counter, or croſs *interrogatories*.

They are to be pertinent, and only to the points neceſſary, and either drawn or peruſed by counſel, and be ſigned by them: if they are leading, *viz.* ſuch as theſe, *Did you not do or ſee ſuch a thing*, *&c.* the depoſitions on them will be ſuppreſſed; for they ſhould be drawn, *Did you ſee, or did you not ſee*, *&c.* without leaning to either ſide; and not only where they point more to one ſide of the queſtion than the other; but if they are too particular, they will likewiſe be ſuppreſſed: The commiſſioners, *&c.* who examine witneſſes on *interrogatories*, muſt examine to one *interrogatory* only at a time; they are to hold the witneſſes to every point *interrogated*; and take what comes from them on their examination, without aſking any idle queſtions, or putting down any impertinent anſwers not relating to the *interrogatories*, *&c.* Practiſ. Attorn. firſt Edit. 225. See *Depoſitions.*

At Common law, witneſſes going abroad, are ſometimes examined, by conſent, upon interrogatories *de bene eſſe*. See *Black. Com.* 3 *V.* 383. The mode of trial, in equity, is by interrogatories, adminiſtered, in writing to the witneſſes. *Black. Com.* 3 *V.* 438. 4 *V.* 449.

An attachment ſometimes iſſues againſt a perſon ſuppoſed guilty of ſome contempt to the court whence the proceſs goes forth, to bring him in; and when there, he is to ſtand committed, or put in bail to anſwer *interrogatories* upon *oath*. Whether this proceeding is legal and conſtitutional or not, it is not for the editor to determine. But, as a contempt can ſcarce be committed without a witneſs, it ſhould ſeem more rational to indict the party, and give him the benefit of a legal trial, by his peers. If it is in a court where the practice is to grant a rule to ſhew cauſe why an attachment ſhould not iſſue for a contempt, *&c.* if there appears to the court a ſufficient ground to make the rule abſolute, a ſubſequent examination on interrogatories ſeems needleſs. It is, perhaps, only giving the party an opportunity of committing perjury to exculpate himſelf, when he comes to reconſider his ſituation and the conſequences that may enſue, if the report of the officer ſhould be ultimately againſt him.

If a contempt is committed in the face of the court, and a commitment enſues, an examination upon interrogatories muſt, to moſt men, appear totally unneceſſary.

Inteſtates, (*Inteſtati*). There are two kinds of *inteſtates*; one who makes no will; another who makes a will, and nominates executors, but they refuſe; in which caſe he dies an *inteſtate*, and the ordinary commits adminiſtration. 2 *Par. Inſt. fol.* 397. In former times, he who died *inteſtate*, was accounted damned, becauſe (as *Mat. Par.* tells us) he was obliged by the canons, to leave at leaſt a tenth part of his goods to pious uſes, for the redemption of his ſoul, therefore, whoever neglected ſo to do, took no care of his own ſalvation. They made no difference between a *ſuicide* and an *inteſtate*; for as, in one caſe, the goods were forfeited to the King, ſo in the other they were forfeited to the chief lord. But becauſe it was accounted a very wicked thing to die without making any diſtribution of his goods to pious uſes, and ſuch caſes often happen by ſudden deaths, therefore by ſubſequent conſtitutions, the biſhops had power to make ſuch diſtribution as the *inteſtate* himſelf was bound to do; and this was called *Eleemoſyna rationabilis*. Thus in *Mat. Paris, anno* 1190. we read, *Si quis ſubitanea morte vel quolibet caſu præoccupatus fuiſſet ut de rebus ſuis diſponere non poſſet, diſtributio bonorum ejus eccleſiaſtica fiebat authoritate:* And it was by this means that the ſpiritual courts came firſt to have juriſdiction in teſtamentary caſes. *Cowell. i. e.* by uſurpation.

By the ſtatute *Weſtm.* 2. Goods of *inteſtates* were to be committed to the Ordinary, to anſwer the debts of the deceaſed, *&c.* And the 22 & 23 *Car.* 2. *cap.* 10. appoints a diſtribution of *inteſtates* eſtates, after the debts and funeral expences are paid, among the wife and children of the deceaſed; or, for want of ſuch, the next of kin, *&c.* And the act of parliament doth immediately, upon the death of the *inteſtate*, veſt an intereſt in the perſons intitled; ſo that if any one dies before the diſtribution, though within the year, his ſhare ſhall go to his executors or adminiſtrators; and not to the ſurvivors and next of kin to the *inteſtate*. 1 Lil. Abr. 487.

A huſband ſhall not be compelled to diſtribute his wife's eſtate. 29 *Car.* 2. *c.* 3. *ſ.* 25.

The brothers and ſiſters of the *inteſtate* ſhall have equal ſhares with the mother. 1 *Jac.* 2. *c.* 17. *ſ.* 7.

Shares claimed by the adminiſtrator by cuſtom ſhall be diſtributed. *Ibid. ſ.* 8.

Diſtribution ſhall be made of eſtates *pur autre vie*, whereof there is not any ſpecial occupant, and which are undeviſed. 14 *Geo.* 2. *c.* 20. *ſ.* 9.

If *A.* by will appoints that the executors of *J. S.* ſhall be his executors, and he dies, living *J. S.* there till the death of *J. S.* this is a dying inteſtate of *A.* for in the mean time *A.* has no executor. *Per Dyer & Walſh, P. C.* 281. *b.*

So if *A.* makes *J. S.* (to be) his executor a year after his death; for within the year he dies inteſtate, and therefore for this the ordinary has power to commit adminiſtration, and it ſhall never be diſproved; by *Dyer* and *Walſh, P. C.* 281. *b.* And if executor proves the teſtament, and dies inteſtate, there, from the death of ſuch executor by dying inteſtate, the firſt teſtator dyeth inteſtate, and for that reaſon the ordinary may grant adminiſtration. *Per Dyer* and *Weſton, ibid.* 281. *b.* 282. *a.*

Where the ſtrictneſs of the Civil law is obſerved, there a man cannot die partly teſtate and partly inteſtate; tho' here in *England*, where that ceremonial ſtrictneſs is not obſerved, but all immunities enjoyed, being not obliged to any other obſervance in making teſtaments than what is *jure gentium*, a man may ſeveral ways die partly teſtate and partly inteſtate. 1 *Godolph. Orph. Leg. cap.* 19. *ſect.* 4.

Error was aſſigned that one pleaded *(cum teſtamento annexo qui obiit inteſtatus)* which is abſurd and repugnant; *per cur.* It is well; for though one make a will, yet if he make no executor, he is inteſtate. *Comb.* 20. See *Adminiſtrators.*

Inteſtates Eſtates, Are the goods and chattels of perſons dying *inteſtate.* 2 Lil. Abr. 73.

Intol & Uttol, Toll or cuſtom paid for things imported and exported, or brought in, and ſold out. *Cowell.*

Intrare Mariſcum, Signifies to drain any low ground, and by dikes, walls, *&c.* take *in* and reduce it to herbage or paſture; whence comes the word *innings.* Wil. Thorn.

Intruſion, *(Intruſio)* Is when the anceſtor dies ſeiſed of any eſtate of inheritance, *expectant* upon an eſtate for life, and then tenant for life dies, between whoſe death and entry of the heir, a ſtranger *intrudes.* Co. Lit. 227. ——Intruſio *eſt ubi quis, cui nullum jus competit in re nec ſcintilla juris, poſſeſſionem vacuam ingreditur, &c.* Bract. lib. 4. cap. 2. By which *intruſion* ſignifieth an unlawful entry into lands or tenements void of a poſſeſſor, by him who hath no right to the ſame: And the difference between an *intruder* and an *abator* is this, that an abator entereth into lands void by the death of a tenant in fee; and an *intruder* enters into land void by the death of tenant for life, or years. *F. N. B.* 203. And there is a writ of *intruſion*, which lies where the tenant for life, *&c.* dies; but if a man doth *intrude* after the death of ſuch a tenant, he in reverſion in tail ſhall not have this writ, but is put to his *formedon:* For it lieth only for him who hath *the reverſion in fee-ſimple, &c.* after the death of tenant for life, or in dower, *&c.* *New Nat. Br.* 509.

Alſo one having ſuch a fee-eſtate in remainder, ſhall have writ of *intruſion*; and the aſſignee of the remainder may bring it, as well as an heir, *&c.* *Ib.* Ejectments are now chiefly in uſe.

As he who enters and keeps the right heir from the poſſeſſion of his anceſtor is an *intruder* puniſhable by Common law; ſo he who enters on the King's land and takes the profits, is an *intruder* againſt the King. *Co. Lit.* 277. For this *intruſion* information may be brought; but before office found, he who occupies the land ſhall not be ſaid to be an *intruder*, for *intruſion* cannot be but where the King is actually poſſeſſed, which is not before office; though the King is intitled to the meſne profits after the tenant's eſtate ended. *Moor* 295.

By *Stat.* 21 *Jac.* 1. *cap.* 14. the defendants may plead the general iſſue in informations of *intruſion*, brought on behalf of the King, and retain their poſſeſſion till trial; where the King hath been out of poſſeſſion, and not received the profits for twenty years: And no *ſcire facias* ſhall iſſue, whereupon the ſubject ſhall be forced to ſpecial pleading, *&c.* See *Black. Com.* 3 *V.* 169, 183, 261.

Intruſion de Gard, Was a writ that lay where the infant within age entered into his lands, and held out his Lord. *Old Nat. Br.* 90.

Intruſione, Is the writ brought againſt an *intruder*; by him that hath fee-ſimple, *&c.* *New Nat. Br.* 453.

Invadiare, To engage or mortgage lands; and *invadiations* were mortgages of land.——*Confirmamus eis omnes donationes, venditiones, et* invadiationes, *etc.* Mon. Angl. Tom. 1. p. 478.

Invadiationes, *Mortgages* or *Pledges.* Ibid.

Invadiatus, Is when one has been accuſed of ſome crime, which being not fully proved, he is put *ſub debita fidejuſſione.*

Invaſiones, In the inquiſition of ſerjeancies and knights fees; *anno* 12 and 13 of King *John*, there are ſome titles called *Invaſiones*; *et* invaſiones *ſuper regem.*

Inventiones, Is uſed in antient charters for treaſure-trove, money or goods *found* by any perſon, and not challenged by the owner; which, by the Common law is due to the King, who grants the privilege or benefit, to ſome particular ſubjects.——*Quod habeant* inventiones *ſuas in Mare et in Terra.* Chart. K. *Ed.* 1. to the *Barons* of the *Cinque Ports.*——Placit. temp. Edw. 1. & Edw. 2. MS. f. 89.

Inventory, *(Inventorium)* Is a liſt or ſchedule containing a true deſcription of all the goods and chattels of a perſon deceaſed at the time of his death, with their value appraiſed by indifferent perſons; which every executor or adminiſtrator ought to exhibit to the biſhop or ordinary at ſuch time as he ſhall appoint. *Weſt. Symb. lib.* 2. *pag.* 696. By 21 *H.* 8. *c.* 5. Executors and adminiſtrators are required to make and deliver in upon oath to the ordinary, *inventories* indented, of which one part ſhall remain with the ordinary, and the other part with the executor or adminiſtrator: And the intention of this ſtatute was for the benefit of the creditors and legatees, that the executor or adminiſtrator might not conceal any part of the perſonal eſtate from them: Tho' as to the valuation it is not concluſive, but the real value found by a jury; if they are under valued, the creditors may take them as appraiſed; and if over-valued, it ſhall not be prejudicial to the executor. 2 *Nelſ. Abr.* 1015.

But though generally all the perſonal eſtate of the deceaſed, of what nature or quality ſoever, ought to be put into the *inventory*; yet goods given away in the life-time of the deceaſed, and actually in the poſſeſſion of the party to whom given, and the goods to which a huſband is intitled as adminiſtrator to his wife, are not to be included. 3 *Bulſt.* 355. Notwithſtanding the law requires that the *inventory* be exhibited within *three months* after the death of the perſon, if it is done afterwards, it is good, for the ordinary may diſpenſe with the time, and even in ſome caſes, whether it ſhall be exhibited, or not; as where creditors are paid, and the will performed, *etc.* *Raym.* 470. Theſe *inventories* proceed from the *Civil law*; and as, by the old *Roman* law, the *heir* was obliged to anſwer all the teſtator's debts, *Juſtinian* ordained, that *inventories* ſhould be made of the ſubſtance of the deceaſed, and he ſhould be no further charged. *Juſtin. Inſt.* In common parlance, *&c.* The term *inventory* is applied on other and more frequent occaſions, as on the ſale of goods by agreement between parties accounts of the goods ſold (ſuppoſing them paſſing with the poſſeſſion of an houſe, *&c.*) are called inventories. So the accounts taken by ſheriffs, of goods levied and ſold under executions, are called inventories, *&c.* See *Executor* and *Black. Com.* 2 *V.* 510.

In ventre ſa mere, *(Fr.)* In the mother's belly, relating to which there is a writ mentioned in the *regiſter of writs*, and in 12 *Car.* 2. *cap.* 24. Infant *in ventre ſa mere*, is where a woman is with child at the time of her huſband's death; which child, if he had been born, would have been heir to the land of the huſband: And this is ſometimes privily, and ſometimes open and viſible. 1 *Shep. Abr.* 142. And the law hath conſideration of ſuch a child, on account of the apparent expectation of his birth: For a deviſe to an infant *in ventre ſa mere*, ſhall be good by way of future executory deviſe. *Raym.* 164. He may be vouched in his mother's belly; and action lies for detainment of charters from him as heir, *&c.* *Hob.* 222. *Dyer* 186. And in all caſes, where a daughter or female comes into land by *diſcent*; there the ſon born after, ſhall ouſt her and have the land. 3 *Rep.* 61. *Plowd.* 375. But if the daughter and female heir cometh to land in nature of a *purchaſer*; as on a will of lands given to *J. S.* and his heirs, and he hath a daughter when the deviſor dies, his wife being then with child of a ſon; in this caſe the daughter ſhall enjoy the land, and not the after-born ſon. 3 *Rep.* 61. 5 *Ed.* 4. 6. 9 *H.* 7. 24. Vide *Infant*.

Poſthumous children are enabled to take a contingent remainder, which hath no truſt eſtate to preſerve it, by 10 & 11 *W.* 3. *c.* 16.

Inveritare, To verify or make proof of a thing. *Leg. Inæ, c.* 16.

Inverneſs, A duty of exciſe granted to the town of. 5 *Geo.* 1. *c.* 17. 11 *Geo.* 2. *c.* 16.

Inveſt and Inveſtiture, (from the Fr. *inveſtir*) Signifies to give poſſeſſion: ſome define it thus, inveſtitura *eſt alicujus in ſuum jus introductio*; a giving livery of ſeiſin or poſſeſſion. The cuſtoms and ceremonies of inveſtiture or giving poſſeſſion, were long practiſed with great variety: at firſt inveſtitures were made by a form of words; afterwards by ſuch things as had moſt reſemblance to what was to be transferred; as lands paſſed by the delivery of a turf, &c. which was done by the grantor to the perſon to whom the lands were granted: but in after ages, the things by which inveſtitures were made were not ſo exactly obſerved. *Ingulph. p.* 901. In the church, it was the cuſtom of old for Princes to promote ſuch as they liked to eccleſiaſtical benefices, and declare their choice and promotion by delivery, to the perſons choſen, of a paſtoral ſtaff and ring; the one a ſymbolical repreſentation of their ſpiritual marriage with the church; and the other of their paſtoral care and charge, which was termed inveſtiture; after which they were conſecrated by eccleſiaſtical perſons. *Hoveden* tells us, that King *Richard*, being taken by the Emperor, gave this kingdom to him, *et* inveſtivit *eum inde per pileum ſuum*; and that the Emperor immediately afterwards returned the gift; *et* inveſtivit *eum per duplicem crucem de auro.* Hoved. 724. It is ſcarce neceſſary to obſerve, unleſs for the information of an unperienced reader, that it was not in the power of *Richard*, or of any other King of this realm to give the Kingdom to the Emperor, or to any other perſon. The act was void, as was the ſhameful reſignation, made by *Stephen*, to the *Pope*. *Walſingham* ſays, that *John* Duke of *Lancaſter* was inveſted Duke of *Aquitane, per Virgam et Pileum, p.* 343. See *Black. Com.* 2 *V.* 23, 53, 209, 211.

Invitatoria & Venitarium, Thoſe hymns and pſalms that were ſung in the church to invite the people to prayer: They are mentioned in the *ſtatute of St. Paul's* MS.

Invoice. A particular account of merchandiſe, with its value, cuſtom and charges, &c. ſent by a merchant to his factor or correſpondent in another country. *Stat.* 12 *Car.* 2. *c.* 34.

Involuntary Manſlaughter, Differs from *homicide excuſable* by *miſadventure*, in this; that *miſadventure* always happens in conſequence of ſome *lawful act*, but *this ſpecies* of *manſlaughter* in conſequence of an *unlawful act*. Yet, in general, when an *involuntary killing* happens in conſequence of an *unlawful act*, it will be either *murder* or *manſlaughter, according to the nature of the act which occaſioned it.* Vide *Black. Com.* 4 *V.* 192, 193.

Inure, Signifies to take effect, as the pardon *inureth. Staund. Prær. fol.* 40. See *Enure*.

Jobber, Is uſed for one who buys or ſells cattle for others. And there are *ſtock-jobbers*, who buy and ſell ſtocks for other perſons, *&c.*

Jocalia, (Fr. *joyaux*) Jewels; derived from the Lat. *jocus, joculus,* and *jocula,* which comprehend every thing that delighteth; but, in a ſpecial and more reſtrained ſenſe, it ſignifies thoſe things which are ornaments to women, and which in *France* they call *their own*; as diamonds, ear-rings, bracelets, *&c.* But in this kingdom a wife ſhall *not* be intitled to jewels, diamonds, *&c.* on the death of her huſband, *unleſs they are ſuitable to her quality, and the huſband leaves aſſets to pay debts, &c.* 1 Rol. Abr. 911.

Jocari, To contend with pikes. *Craſtino die quidam milites Anglici ſtrenue nimis et viriliter* jocabantur. *Mat. Paris, anno* 1252.

Jocarius, A jeſter. In a deed of *Richard,* abbot of *Bernay*, to *Henry Lovet, ſine dat.* among the witneſſes to it was *Willielmo tunc* jocario *Domini Abbatis.* But in *Domeſday* it is ſaid *Berdic* was *Joculator Regis*, the King's jeſter.

Jocelet, (Sax.) *Prædiolum, agri culendi portiuncula.* A little farm or manor; in ſome parts of *Kent* a *yoklet*, as requiring but a ſmall yoke of oxen to till it. *Sax. Dict.*

Jocus partitus. It is ſo called when two propoſals are made, and a man hath liberty to chooſe which he will. *Nec poteſt tranſigere, nec paciſci, nec* jocum partitum *facere, nec aliud.* Bracton, lib. 4. tract. 1. cap. 32. par. 2. *Etiam ſi apparentibus partibus queruletur et reſpondeatur, ſive loquela per non tenuram vel per quemcunque Biperti* jocum *cavilletur, etc.* Hengham Magn. cap. 4.

Joinder in Action, Is the coupling or joining of two in a ſuit or action againſt another. *F. N. B. fol.* 118, 201, 221. In all *perſonal things*, where two are chargeable to two, the one may ſatisfy it, and accept of ſatisfaction, and bind his companion; and yet one cannot have an action without his companion, nor both only againſt one. 2 *Leon.* 77. In *joint perſonal actions* againſt two defendants, if they plead ſeverally, and the plaintiff is nonſuit by one before he hath judgment againſt the other, he is barred (in that ſuit) againſt both. *Hob.* 180. A perſon, in conſideration of a ſum of money paid to him by *A.* and *B.* promiſes to procure their cattle diſtrained to be delivered; if they are not delivered, one joint action lies by the parties; for the conſideration cannot be divided. *Style* 156, 203. 1 *Danv. Abr.* 5. And where two joint owners of a ſum of money are robbed upon the highway, they are to join in one action againſt the hundred. *Latch* 127. *Dyer* 307. It is otherwiſe if they have ſeveral properties. *Ibid.*

Where the ſuit will ſurvive to the wife, ſhe muſt join in the action. *Wilſ. par.* 1. *p.* 224. and ſee *ibid. par.* 2. *fol.* 423.

Upon a joint grievance all parties may join; as the inhabitants of a hundred, *&c.* And where an action againſt owners of a ſhip, in caſe of goods damaged, *&c.* *quaſi ex contractu*, it muſt be brought againſt all of them. 3 *Lev.* 258. 3 *Mod.* 321. 2 *Salk.* 440. Though one partner acts in trade, where there are many partners, actions are to be brought againſt all the partners jointly for his acts. 1 *Salk.* 292. If two men are partners, and one of them ſells goods in partnerſhip, action for the money muſt be brought in both their names. *Godb.* 244. But where there are two partners in merchandiſe, and one of them appoints a factor, they may have ſeveral writs of account againſt him, or they may join. *Moor* 188. And if one of the merchants dies, the ſurvivor is to bring the action. 2 *Salk.* 444. If one man calls two other men thieves, they ſhall not join in an action againſt him; and one joint action will not lie for, or againſt ſeveral perſons for ſpeaking the ſame words. 1 *Danv.* 5. *Palm* 313. *For the wrong done to one is no wrong to the other*; *and the words of the one are not the words of the other.*

So, in aſſault and battery. On a joint treſpaſs the plaintiff may declare ſeverally; but it remains joint till ſevered by the declaration. 2 *Salk.* 454. A man cannot declare in an action againſt one defendant for an aſſault and battery, and againſt another for taking away his goods; becauſe the treſpaſſes are of ſeveral natures. But where they are done by two perſons jointly at one time, they may be both guilty of the whole. *Style* 153. 10 *Rep.* 66. If two men procure another to be indicted falſly of barretry, he may have action againſt them both jointly; and it is the ſame if two conſpire to maintain a ſuit, though one only gives money, *etc.* *Latch* 262.

Tenants in common cannot join in an action of waſte againſt their *leſſee*; but it is otherwiſe in the caſe of *coparceners* or *jointenants*. Moor 34.

Joinder of Counties. There can be no joinder of counties for the finding of an indictment: though in appeal of death, where a wound was given in one county, and the party died in another, the jury were to be returned jointly from each county, before the ſtatute 2 & 3 *Ed.* 6. *c.* 24. But by that ſtatute the law is altered; for now the whole may be tried either on indictment or appeal, in the county wherein the *death* is. 2 *Hawk. P. C.* 323, 403. Where ſeveral perſons are arraigned upon the ſame indictment or appeal, and ſeverally plead Not guilty, the proſecutor may either take out *joint venire*'s or ſeveral. *H. P. C.* 256. But after a *joint venire*, ſeveral ones cannot be taken out.

Joinder in Demurrer. An iſſue offered upon matter of *law* is called *demurrer*. It confeſſes the fact to be true as ſtated by the oppoſite party, but denies, that by the law ariſing upon thoſe facts, any injury is done to the plaintiff, or, that it is ſuch an injury for which, though the plaintiff may maintain an action, yet he has miſtaken the form of his action, or has not ſtated in his declaration a ſufficient ground to maintain his action, &c. or, if the plaintiff demurs then he denies that the defendant has made out a legitimate excuſe; according to the party who firſt demurs. The form of the demurrer is by averring the pleading inſufficient in law, to anſwer the end propoſed by it. The oppoſite party avers it to be ſufficient, which is called a *joinder in demurrer*, and then the parties are at iſſue in point of law. See *Black. Com.* 3 *V.* 314, 315.

Joindure in Battel, The form, on a writ of right, may be ſeen in *Black. Com. Append. to* 3 *V.* iv.

Joindure of Iſſue. Of an iſſue in *fact*, is when a party denies the fact pleaded by his antagoniſt who has tendered the iſſue thus, "And this he prays may be in-"quired of by the country," or "And of this he puts "himſelf upon the country," the party denying the fact, may immediately ſubjoin, "And the ſaid *A. B.* doth the like." Which done, the iſſue is ſaid to be joined. Vide *Black. Com.* 3 *V.* 315. 4 *V.* 334. See *Joinder in Demurrer.*

Joint Actions. In perſonal actions, ſeveral wrongs may be joined in one writ; but actions founded upon a *tort*, and on a *contract*, cannot be joined, for they require different pleas and different proceſs. 1 *Keb.* 847. 1 *Vent.* 366. So where there is a *tort* by the *Common law*, and a *tort* by *ſtatute*, they may *not* be joined; though where *ſeveral torts* are by the *Common law*, they *may* be joined, *if perſonal.* 3 Salk. 203.

Trover and *aſſumpſit* may not be joined; but in an action againſt a common carrier, the plaintiff may declare in *caſe* upon the cuſtom of the realm, and alſo upon *trover* and *converſion*, for *Not guilty* anſwers to both. 1 *Danv Abr.* 4. Debt upon an *amerciament*, and upon a *mutuatus*, may be joined in one declaration. *Wilſ. par.* 1. 248. So, caſe for a *misfeaſance* and negligence may be joined with account in *trover*; in the ſame declaration. *Ib. par.* 2. 319. Two counts may be joined in the ſame declaration, where there is *the ſame judgment* in both. *Ib.* 321. And any actions may be joined, where the plea of Not guilty goes to all. 8 *Rep.* 47. Ejectment and battery cannot be joined; but after verdict, where ſeveral damages were found, the plaintiff was allowed to releaſe thoſe for the battery, and had judgment for the ejectment. 1 *Danv.* 3. If this is law, it ſhews that cauſes of action cannot in every inſtance be joined, where the ſame plea will go to the whole. The doctrine in *Danvers* ſeems to be law, for ſuppoſing *ejectment, aſſault and battery, &c.* joined in one action, and a general verdict on Not guilty for the plaintiff. A new execution on ſuch a judgment muſt be framed. Indeed the joining two ſuch actions, ſeems rather abſurd. Although perſons may join in the *perſonalty*, they ſhall always ſever in actions concerning the realty; and *waſte* being a mixed action favouring of the *realty*, that being more worthy draws over the *perſonalty* with it, in any action brought. 2 *Mod. Rep.* 62. A perſon cannot as adminiſtrator, &c. join an action for the right of another, with any action in his own right; *becauſe the coſts will be entire, and it cannot be diſtinguiſhed how much he is to have as adminiſtrator, and how much for himſelf.* 1 Salk. 10. See this ſubject well treated, or rather a variety of caſes, well ſelected and digeſted, in *Com. Dig.* 1 *V.* tit. *Action.*

N. B. Every thing, that comes within the compaſs of the writ, may be comprehended within the declaration; but the declaration cannot in any manner be extended beyond the writ. *Vide* alſo as to this ſubject, *Gilb. H. C. P.* 4, 5, 6, 7, 8, 9.

Joint and ſeveral. An *intereſt* cannot be granted jointly and ſeverally; as if a man grants *proximam advocationem*, or makes a leaſe for years, to two jointly and ſeverally, thoſe words (ſeverally) are void, and they are jointenants. 5 *Rep.* 19. *Mich.* 29 & 30 *Eliz. Slingsby*'s caſe.

A *power* or *authority* may be joint and ſeveral. 5 *Rep.* 19. *Slingſby*'s caſe. *Joint words* of parties ſhall, by conſtruction of law, be taken reſpectively and ſeverally. 5 *Rep.* 7. *b.*

When it appears by the count, that the ſeveral covenantees have, or are to have, ſeveral *intereſts* or *eſtates*, there when the covenant is made with the covenantees, & *cum quolibet eorum*, theſe words make the covenant ſeveral, in reſpect of their *ſeveral intereſts.* 5 Rep. 19. And ſee *Jenk.* 262, 263. *pl.* 63.

Grant of the next avoidance to two & *cuilibet eorum*, to preſent *A.* to the ſaid church, is good; for the contention is avoided by reſtraining both to preſent *A.* *Jenk.* 263. *pl.* 63. See 14 *Vin. Abr.* 48, 469.

Joint Executors, Are accounted in law but as one perſon, and acts done by any of them ſhall be taken to be the acts of every one of them; for they all repreſent the teſtator. 2 *Nelſ. Abr.* 1026. If two joint executors have a leaſe for years, one of them may ſell the term without the other's joining, *becauſe both are poſſeſſed of it as one perſon in right of the teſtator*; and this is the reaſon why one of them cannot aſſign the term to the other; and for which cauſe one joint executor cannot compel his companion to account. *Cro. Eliz.* 347. *Sid.* 33. If one joint executor gives an acquittance or releaſe, the other is bound by it; for as they are but one executor to the teſtator, each hath an authority over the whole eſtate. 2 *Brownl.* 183. *Keilw.* 23. But if a releaſe is procured of one joint executor by fraud, for a leſs ſum than due; relief may be had in equity: and joint executors ſhall not be charged by the acts of their companions, any further than they are *actually poſſeſſed of* the goods of the teſtator. *Moor* 620. Cro. *Eliz.* 318. 2 *Leon.* 209. Here muſt be an exception as to *creditors*. If joint executors, by agreement among themſelves, agree, that each ſhall intermeddle with ſuch a part of the teſtator's eſtate; in this caſe each of them ſhall be chargeable for the whole by the agreement as to receipts, &c. *Hard.* 314.

Alſo it has been decreed in *Chancery*, that if two or more executors join in a receipt, and one of them only receives the money, each of them is liable for the whole, as to creditors at law; but as to legatees, and thoſe who claim diſtribution, who have no remedy but in equity, the receipt of one executor ſhall not charge the other. 1 *Salk.* 318. Two *joint executors* cannot plead diſtinct pleas, *becauſe their teſtator, if living, who was but one perſon, on action brought againſt him, could have but one plea.* Raym 123. It is held, where there are two *joint executors*, and one has poſſeſſed himſelf of a moiety of the goods, and then dies, in that caſe the ſurvivor ſhall have all. 2 *P. Williams* 352. See *Executors.*

Joint Fines. If a whole vill is to be fined, a *joint fine* may be laid, and it will be good for the neceſſity of it; but in other caſes, fines for offences are to be ſeverally impoſed on each particular offender, and not jointly upon all of them. 1 *Rol. Rep.* 33. 11 *Rep.* 42. *Dyer* 211.

Joint Indictments, May be ſometimes had: if offences of ſeveral perſons ariſe from a *joint* criminal act, without any regard to any particular perſonal default or defect of either of the defendants; as the *joint* keeping of a gaming-houſe; or unlawful hunting and carrying away deer; or for maintenance, extortion, *&c.* an *indictment* or information may charge the defendants jointly. 1 *Ventr.* 302. 2 *Hawk. P. C.* 240. When there are more defendants than one in an information, they may not exhibit a *joint plea* of *Not guilty*; but are to plead ſeverally, *that neither they nor any of them are guilty*, *&c.* 21 H. 6. 20. 2 Rol. Abr. 707.

Joint Lives. A bond was made to a woman *dum ſola*, to pay her ſo much yearly as long as ſhe and the obligor ſhould *live together*, *&c.* Afterwards the woman married, and debt being brought on this bond by huſband and wife, the defendant pleaded, that he and the plaintiff's wife did not live together; but it was adjudged, that the money ſhould be paid during their *joint lives*, ſo long as they were living at the ſame time, *&c.* 1 *Lutw.* 555. And where a perſon in conſideration of receiving profits of the wife's lands on marriage, during their *joint lives*, was to pay a ſum of money yearly, in truſt for the wife, though it was not ſaid every year during, *&c.* It was held, that the payment ſhall be intended to continue *every year* alſo during their *joint lives.* 1 Lutw. 459. Leaſe for years to huſband and wife, if they, or any iſſue of their bodies ſhould ſo long live, has been adjudged ſo long as either the huſband, wife, or any of their iſſue ſhould live; and not *only* ſo long as the huſband and wife, *&c.* ſhould *jointly live.* Moor 339. The word *or* may be taken disjunctively or diſtributively for either; when the word *and*, which requires a joining and coupling, ſhall not.

Jointenants, *(ſimul tenentes* or *qui conjunctim tenent)* Are thoſe who come to, and hold lands or tenements jointly *by one title*; and theſe *jointenants* muſt *jointly plead*, and be *jointly ſued* and impleaded, which property is common to them and coparceners; but *jointenants* have a ſole and peculiar quality of ſurvivorſhip, which coparceners have not; for if there be two or three *jointenants*, and one has iſſue and dies, the ſurvivors, or ſurvivor, ſhall have the whole. *Lit.* 277, 280. 1 *Inſt.* 180.

They are called *jointenants*, not only becauſe lands are conveyed to them jointly, by one and the ſame title; *but for that they take by purchaſe only*; whereas *an eſtate in coparcenary is always by deſcent.* Ibid. Where a man is ſeiſed of lands and tenements, and makes a feoffment to two or more, and their heirs; or makes a leaſe to them for life; or where two, or more, have a joint eſtate in poſſeſſion, in a chattel real or perſonal; or a joint eſtate in a debt, duty, covenant, contract, *&c.* it is a *jointenancy*; and the part of him who dieth, goeth not to his heir or executor; but the whole to the ſurvivors or ſurvivor.

But an *exception* is to be made as to *joint merchants*, for their ſtock or debts which they have in partnerſhip; for the ſhare of the perſon dying goes to the executor or adminiſtrator by the law merchant, and not to the ſurvivor. *Ibid.*

If a father makes a deed of bargain and ſale of lands to his ſon, to hold to him and his heirs, *&c.* to the uſe of the father and ſon, and their heirs and aſſigns for ever, they are *jointenants.* 2 Cro. 83. And if the father deviſes lands to his eldeſt and other ſons, they are *jointenants* and not tenants in common. *Goldſ.* 28. *Poph.* 52. Unleſs expreſſed in the will that they ſhall take as *tenants in common*, and *not* as *jointenants.*

But I conceive if a man has two daughters only, and deviſes them an eſtate in fee, without any condition annexed, they may reject the deviſe and take as *heirs*, in which caſe they will not be jointenants.

A man deviſed lands to his wife for life, and after her death to his three daughters, and the heirs males of their bodies, *&c.* The wife and the two eldeſt daughters died; and it was held that the ſurviving daughter ſhould have the whole for life, the three ſiſters being *jointenants* for life, and ſeveral tenants in tail of the inheritance. *Lee* 47. A deviſe to two *jointly and ſeverally*, is a *jointenancy.* Poph. 52. If lands are deviſed to two equally, and their heirs, they are *jointenants*; but if it had been to two, equally to be divided between them, it generally makes a *tenancy in common.* 2 *And.* 17. But by *Holt* Ch. Juſtice, the words *equally to be divided*, do not make a tenancy in common in a *deed*, but a *jointenancy*; tho' they might in a *will.* 1 Salk. 390. "*Equally to be divided*" in a *deed* of *uſes* makes a *tenancy* in *common.* Wilſ. par. 1. 261.

It is ſaid a *term for years* of *goods* deviſed to two *equally*, makes a *tenancy in common*, and not *jointenancy*; but *land* deviſed to two *equally*, makes a *jointenancy.* 3 *Cro.* 697. 3 *Salk.* 205. A deviſe to two equally to be divided, *habendum* to them and the heirs of the ſurvivor, is a *jointenancy.* *Style* 211, 434. Lands are given by will to two perſons, and the ſurvivor of them, and their heirs, *equally to be divided between them ſhare and ſhare alike*; it is held that the firſt part of the deviſe makes them *jointenants* for life, and the latter words import a *tenancy in common*, ſo as they are *tenants in common* of the *inheritance.* 2 Peere Williams 280, 282.

What words in a will make a tenancy in common, and yet there ſhall be a ſurvivorſhip, if any of the deviſees die under age, ſee *Wilſ. par.* 1. 165. One by will gives the reſidue of his perſonal eſtate to three perſons, it is a *jointenancy*, and the ſurvivor takes the whole; and where a ſurplus of ſuch eſtate is deviſed to *A.* and *B.* after the debts and legacies are paid, on one's dying, it will ſurvive. 2 *Peere Williams* 347.

Two or more purchaſe land, and advance the money in equal parts, and take a conveyance to them and their heirs; this makes a jointenancy with the chance of ſurvivorſhip: But where the proportions of money are not equal, they are *in nature of partners*; and though the legal eſtate ſurvives, the ſurvivor ſhall be *as a truſtee* for the others, in reſpect of the ſums paid by each. *Abr. Caſ. Eq.* 291. So, if where two having purchaſed *jointly*, afterwards one lays out a conſiderable ſum on improvements, *&c.* and dies, in *equity* it ſhall be a lien on the lands, and a truſt for the repreſentative of him who advanced it. *Ibid.*

A rent of 10*l.* a year is granted to *A.* and *B.* to hold to one until he marry, and to the other till he is preſented to ſuch a church; it was holden they were *jointenants*, and that if either of them die before marriage or preſentment, the rent ſhall ſurvive. *Co. Lit.* 180. if *lands* are given to *two men*, and *the heirs of their bodies*, the *remainder* to *them* and *their heirs*; they ſhall be *jointenants for life*, *tenants in common* of the *eſtate tail*, and *jointenants* of the *fee-ſimple.* *Ibid.* 183. But where a *remainder* is limited to the *right heirs of two perſons*, in this caſe they ſhall take *ſeverally*, though the words be joint. 5 *Rep.* 8. Land is granted to a man, and ſuch woman as ſhall be his wife; here is no jointenancy, but the man will have the whole: Though if one make a feoffment in fee to the uſe of himſelf, and of ſuch wife as he ſhall after marry, *for their lives*; when he takes a wife, they are *jointenants.* Co. Lit. 188. 1 Rep. 101.

One perſon is in by the Common law, and another by limitation of uſe, yet they may be jointenants by virtue of a deed of grant, *&c.* *Jenk. Cent.* 330. Lands given in the premiſſes of a deed to three, to hold to one for life, remainder to another for life, remainder to the third for life, they are *not* jointenants, but ſhall take *ſucceſſively.* Dyer 160.

There may be a jointenancy, tho' there is not equal benefit of ſurvivorſhip on both ſides. 1 *Inſt.* 181. When a fee-ſimple eſtate is limited by a new conveyance, there one may have the fee, and another an eſtate for life; but when two perſons are tenants for life firſt, and one of them gets the fee-ſimple, there the jointure is ſevered. 2 *Rep* 6. If a reverſion deſcend upon one jointenant, the jointure is ſevered, and by operation of law they are then tenants in common. 1 *Bulſt.* 113. And a diverſity has been taken, that *where the reverſion comes to the freehold*, the *jointure is deſtroyed*; but *when the freehold comes to him in reverſion*, and *to another*, it is *otherwiſe*. Cro. Eliz. 470, 743.

Two infants are jointenants, and one of them makes a feoffment of his moiety: this will be a ſeverance of the jointenancy. *Bro. Jointen.* 13. A jointenant in fee grants *a leaſe for life*, and then dies; it ſevers the jointure: Tho' if the tenant for life die before either of the jointenants, then it is *in ſtatu quo prius*. Co Litt. 193. If there be two jointenants in fee, and one makes *a leaſe for life* to a ſtranger, the freehold and reverſion is *ſevered* from the jointure: But in caſe one ſuch jointenant leaſes *for years*, the jointure of the inheritance is not ſevered; and the other jointenant ſhall have the reverſion by ſurvivorſhip. *Lut.* 729, 1173. See *poſt.* Two jointenants are of a leaſe for twenty-one years, and one lets his part but for three years, the jointure is ſevered, ſo that ſurvivorſhip ſhall not take place. 1 *Inſt.* 188, 192. In caſe three perſons are jointly intereſted in a term, and one of them mortgages his third part; by this it has been held, the jointenancy was ſevered. 1 *Salk.* 158. But where one jointenant of lands, in order to ſever the jointenancy, and provide for his wife, makes a deed of gift of his moiety to her; this being made to the wife, and ſo void in law, cannot be made good. *Preced. Canc.* 124.

If two jointenants be *of a term*, and one *commits felony*, or is *outlawed*, *&c.* the jointure will be ſevered; for the King ſhall have *the moiety* by the forfeiture: And if the jointenancy is of *perſonal things*, *all* will be forfeited. *Plowd.* 410.

Where there are ſeveral jointenants in fee-tail, and ſome of them *ſuffer a common recovery* of the whole, the eſtate of the others is turned to *a right*; and contingent remainders may be deſtroyed, and a new eſtate gained thereby. *Sid.* 241. And if one jointenant *levies a fine*, it ſevers the jointenancy; but it doth not amount to an actual turning out of his companion. 1 *Salk.* 286. A jointenant in fee makes a *leaſe for years*, of the land, to begin preſently, or *in futuro*, and dies, it is a ſeverance of the jointenancy, and cannot be avoided by the ſurvivor; *becauſe immediately, by force of the leaſe, the leſſee hath a right in the ſame land, of all that to the leſſor belongs.* Lit. 286. See *ante*, and *poſt*. And it has been held, that where a jointenant in fee or for life, makes a leaſe for years to commence after his death, it is good againſt the ſurvivor. 2 *Cro.* 91. 2 *Nelſ. Abr.* 1037. But it has been alſo adjudged not good. *Moor* 776. *Noy* 157. See 2 *Vern.* 323.

If there are two jointenants for life, it is ſaid each of them hath an eſtate for life, and for the life of his companion; and for that reaſon, if one of them make a leaſe, it ſhall continue not only during the life of the leſſor, but after his death during the life of his companion, as long as the original eſtate out of which it was derived: Tho' it hath been reſolved, that ſuch a jointenant hath only an eſtate for his own life, and a poſſibility of ſurviving his companion to be entitled to his part; therefore if he grants over his eſtate, that poſſibility is gone; and if he dies, the eſtate of the grantee ſhall revert to him in reverſion. 1 *Roll.* 441. *Jones* 55. 3 *Salk.* 204, 205.

If one jointenant grants a rent-charge, *&c.* out of his part, and dies, the ſurvivor ſhall have the whole land diſcharged: For he hath the land by ſurvivorſhip, and not by diſcent from his companion. *Litt.* 286. 1 *Co. Inſt.* 184. And if one jointenant in fee, makes a leaſe for years, reſerving a rent, and dieth; the ſurvivor ſhall have the reverſion, but not the rent, becauſe he claims by title paramount. *Co. Lit.* 18.

Jointenants, as to the poſſeſſion of lands in jointure, are ſeiſed *by intireties of the whole*, and *of every part equally*, (and the poſſeſſion of any jointenant is the poſſeſſion of both) but as to the *right* of the land, they are ſeiſed *only of moieties*, therefore if one grant the whole, a moiety only paſſeth. 1 *Bulſt.* 3. *Cro. Eliz.* 809. If there be two jointenants, and each make a ſeveral leaſe of the *whole*, their ſeveral moieties only ſhall paſs by each leaſe. *Wilſ. par.* 1. *fol.* 1. Jointenants cannot ſingly diſpoſe of more than the part that belongs to them; where they join in a feoffment, in judgment of law each of them gives but his reſpective part; ſo it is of a gift in tail, leaſe for life, *&c.* And for a condition broken, they ſhall only enter on a moiety of the lands. 1 *Inſt.* 186.

Every jointenant hath a right, as to his own ſhare, to ſeveral purpoſes, as to give, leaſe, forfeit, *&c.* But a deviſe of land, whereof the deviſor is jointly ſeiſed, is void; the will not taking effect till after death, and the title of the ſurvivor cometh by the death. 1 *Inſt.* 186. *Litt.* 287. One jointenant may *leaſe* to his companion: But one jointenant cannot make a *feoffment*, or *grant* to another jointenant, tho' he may *releaſe*. 1 *Vent.* 78. *Raym* 187. By whatever means a jointenant comes to the eſtate of his companion, by conveyance, *&c.* from him, it may *enure* by way of *releaſe*. 2 *Cro.* 649.

Action of treſpaſs or trover may not be brought by one jointenant againſt his companion, *becauſe the poſſeſſion of one is the poſſeſſion of the other.* 1 Salk. 290. Before the ſtatute 4 *Ann. c.* 16. one jointenant had no remedy againſt his companion, to recover damages for what he had received more than his ſhare; and a jointenant might prejudice his companion in the perſonalty, by reaſon of the privity and truſt between them, tho' not in the realty; but that ſtatute gives *action of account* to one jointenant or tenant in common, his executors or adminiſtrators, againſt the other, as bailiff or receiver, his executors, *&c.* One jointenant may diſtrain for rent alone; and he may avow in his own right, and as bailiff to the others, but *he cannot avow ſolely*; and he may not bring debt alone. 5 *Mod.* 73, 150.

If a jointenant in fee-ſimple, is indebted to the King, and dieth; the lands cannot be extended in the hands of the ſurvivor; who claimeth not from his companion, but from the feoffor, *&c.* 1 *Inſt.* 185. Where there are two jointenants, and one is indebted to the King, and dieth, the other ſhall hold the land diſcharged of the debt: But if huſband and wife have a term jointly, and the huſband is indebted to the King, and dieth, in ſuch caſe the term ſhall be ſubject to the debt, becauſe the huſband might have diſpoſed of the whole eſtate. *Plowd.* 321.

Judgment in action of debt, is had againſt one jointenant for life, who before execution releaſes to his companion; adjudged that the moiety is ſtill liable to the judgment during the life of the releaſor; but if he had died before execution, the ſurvivor ſhould have had the land diſcharged of the debt and judgment. 6 *Rep.* 78. Huſband and wife were jointenants, and action was brought againſt the huſband alone, who made default, thereupon the wife prayed to be received; but it was not allowed, *becauſe ſhe was not a party to the writ*; but he in reverſion may be received, and plead jointenancy in abatement of the writ. *Moor* 242.

If a feme ſole and *A. B.* purchaſe *a term for years* jointly, and afterwards intermarry, the jointenancy continues. *Dyer.* 318. 2 *Nelſ. Abr.* 1035. *Sed qu.* if the huſband may not diſpoſe of the whole as the wife's intereſt is only a *chattel?* See the next caſe. And where there are two women, jointenants of a leaſe for years, and one taketh huſband, and dies, the term ſhall ſurvive; if the huſband hath not aliened her part, and ſevered the jointure: But it is otherwiſe in caſe of goods, veſted in the huſband by marriage. 1 *Inſt.* 185. Jointenants ſometimes enter into covenants not to take advantage of each other by ſurvivorſhip. *Wood's Inſt.* 148.

When there are two jointenants, and one aliens his part, the alienee and the other jointenant are *tenants in common*; for they claim by *ſeveral titles*. *Lit.* 292, 319, 321. And jointenants and tenants in common of inheritance, by ſtatute, are to make partition, as coparceners;

ners; alſo jointenants and tenants in common for life or years, may be compelled to do the ſame by writ of partition, *&c.* 31 *H.* 8. *c.* 1. 32 *H.* 8. *c.* 32. 8 & 9 *W.* 3. *c.* 31.

The *King* cannot be jointenant with any perſon, *becauſe none can be equal with him.* 1 Inſt. 1. Finch. 83. And *Black. Com.* 2 *V.* 409. And a corporation cannot be *jointly* ſeiſed of any eſtate with another. 2 *Lev.* 12.

The eſſential difference between *joint-tenants* and *tenants in common* is, that *joint-tenants* have the lands by *one joint title*, and in *one right*, and *tenants in common* by *ſeveral titles*, or by *one title* and by *ſeveral rights*; this is the reaſon, ſays lord *Coke*, that *joint-tenants* have *one joint freehold*, and *tenants in common* have *ſeveral freeholds*, tho' this property is common to them both, *viz.* that *their occupation is individed, and neither of them knoweth his part in ſeveral.* Co Lit. 189. a.

If there be two joint-tenants, and one releaſeth to the other, this paſſeth a fee *without* the word *heirs*, becauſe it refers to the whole fee, which they jointly took, and are poſſeſſed of, by force of the firſt conveyance; but tenants in common cannot releaſe to each other; *for a releaſe ſuppoſeth the party to have the thing in demand*; but *tenants in common* have *ſeveral diſtinct freeholds*, which they cannot transfer, otherwiſe than as perſons who are ſole ſeiſed. *Co. Lit.* 9. 200. *b.*

Tenants in common cannot make *a joint leaſe* of the *whole*, for their eſtates are *ſeveral* and *diſtinct*, and there is *no privity* between them, and for that reaſon, one tenant in common may enfeoff another. *Wilſ. par.* 2. 232.

Vide this ſubject fully and very learnedly treated of in 3 *New Abr.* 187, *&c.* And ſee farther as to *joint-tenancy*, in *lands*. *Black. Com.* 2 *V.* 180. and as to *joint-tenancy* in things *perſonal*. *Ib.* 2 *V.* 399.

Jointures of Lands. A jointure is a ſettlement of lands and tenements made to a woman in conſideration of marriage; or it is a covenant, whereby the huſband, or ſome friend of his, aſſureth to the wife, lands or tenements, for term of her life: It is ſo called, either becauſe it is granted *ratione juncturæ in matrimonio*, or for that land in frank-marriage was given jointly to huſband and wife, and after to the heirs of their bodies, whereby the huſband and wife were made as it were jointenants during the coverture. 3 *Rep.* 27. By ſome a jointure is defined to be *a bargain and contract of livelihood, adjoined to the contract of marriage; being a competent proviſion of freehold lands or tenements, &c. for the wife, to take effect after the death of the huſband, if ſhe herſelf is not the cauſe of the determination or forfeiture of it.* 1 Inſt. 36. 4 Rep. 2, 3.

According to *Co. Lit.* 36. *b.* The maxims of the Common law, that no right could be barred before it accrued; and that a right or title to a freehold could not be barred by acceptance of a collateral ſatisfaction, and thoſe reaſons allowing the wife to claim her dower, *and alſo the benefit of ſuch ſettlement as was made on her*, which being contrary to juſtice. By 27 *H.* 8. *c.* 10. *ſ.* 6. Reciting, ‘ That whereas divers perſons had purchaſed, or ‘ had eſtates made and conveyed of and in, divers lands, ‘ *&c.* unto them and their wives, and to the heirs of the ‘ huſband, or to the huſband and wife, and to the heirs ‘ of their bodies, or to the huſband and wife for term of ‘ their lives, or for term of life of the wife." 'Tis enacted, ‘ That in ſuch caſe, or where any ſuch eſtate or ‘ purchaſe of any lands, *&c.* hath been or hereafter ſhall ‘ be made to any huſband and to his wife in manner and ‘ form above expreſſed, or to any other perſon or perſons, and to their heirs and aſſigns, to the uſe and ‘ behoof of the ſaid huſband and wife, or to the uſe of ‘ the wife, as is before rehearſed, for the jointure of ‘ the wife; that then, in every ſuch caſe, every woman ‘ married having ſuch jointure made, or hereafter to be ‘ made, ſhall not claim nor have title to any dower of the ‘ reſidue of the lands, tenements or hereditaments, that at ‘ any time were her ſaid huſband's, by whom ſhe hath any ‘ ſuch jointure; nor ſhall demand nor claim her dower of ‘ and againſt them that have the lands and inheritances of ‘ her ſaid huſband; but if ſhe have no ſuch jointure, then ‘ ſhe ſhall be admitted and enabled to purſue, have, and ‘ demand her dower, by writ of dower, after the due courſe ‘ and order of the Common law of this realm; this act or ‘ any law or proviſion made to the contrary thereof not- ‘ withſtanding.'

Sect. 7. Provided, ‘ That if any ſuch woman be law- ‘ fully expulſed or evicted from her ſaid jointure, or from ‘ any part thereof, without any fraud or covin, by law- ‘ ful entry, action; or by diſcontinuance of her huſband, ‘ then every ſuch woman ſhall be endowed of as much of ‘ the reſidue of her huſband's tenements or hereditaments ‘ whereof ſhe was before dowable, as the ſame lands and ‘ tenements ſo evicted and expulſed ſhall amount or ex- ‘ tend unto.'

Sect. 9. Provided alſo, ‘ That if any wife have, or ‘ hereafter ſhall have, any manors, lands, tenements or ‘ hereditaments unto her given or aſſured *after marriage* ‘ for term of her life or otherwiſe, in jointure, except ‘ the ſame aſſurance be to her made by act of parliament, ‘ and the ſaid wife after that fortune to overlive her ‘ huſband in whoſe time the ſaid jointure was made or ‘ aſſured unto her; that then the ſame wife ſo over- ‘ living ſhall and may at her liberty at the death of her ‘ ſaid huſband refuſe to have and take the lands and ‘ tenements ſo to her given, appointed, or aſſured dur- ‘ ing the coverture, for term of her life or otherwiſe, ‘ in jointure, except the ſame aſſurance be to her made ‘ by act of parliament as is aforeſaid, and thereupon to ‘ have, aſk, demand, and take her dower by writ of ‘ dower or otherwiſe, according to the Common law, of ‘ and in all ſuch lands, tenements and hereditaments, ‘ as her huſband was and ſtood ſeiſed of any eſtate of ‘ inheritance at any time during the coverture; any ‘ thing, *&c.*'

To make a good jointure within this ſtatute, the ſix following things are to be regarded:

1. *The eſtate muſt take effect immediately upon the death of the huſband.* Vide 4 *Co.* 3. *Hutton* 51. *Hob.* 151. *Winch* 33. 1 *Sid.* 3, 4. *Per Bridgman.* *Co. Lit.* 133. *Moor* 851. 3 *Bulſt.* 188. 1 *Rol. Rep.* 400. 2 *Vern.* 104.

2. *The eſtate muſt be for term of the wife's life, or a greater eſtate.* Vide *Co. Lit.* 36. *a. b.* 4. *Co.* 2. *b.* 3. *a.*

3. *The eſtate muſt be made to herſelf and not to others in truſt for her.* This rule, my Lord *Coke* ſays, is ſo neceſſary to be obſerved, that tho' the wife ſhould aſſent to a jointure made in truſt for her, yet it would not be good; for the ſtatute only bars the dower when by it the poſſeſſion (which was formerly an uſe) is executed in her. *Co. Lit.* 36. *b.*

But as the intention of the ſtatute was to ſecure the wife a competent proviſion, and alſo to exclude her from claiming dower, and likewiſe her ſettlement, it ſeems that a proviſion or ſettlement on the wife, tho' by way of truſt, if in other reſpects it anſwers the intention of the ſtatute, will be enforced in a court of equity.

4. *The eſtate muſt be in ſatisfaction of her whole dower.* The reaſon hereof is, that if it be in ſatisfaction of part only, *it is uncertain for what part*, therefore void in the whole. *Co. Lit.* 36. *b.*

If an eſtate be made to the wife, in ſatisfaction of part of her dower before marriage, and after marriage, other lands are conveyed to her, ſhe ſhall have dower of all the lands of her husband, notwithſtanding the ſettlement is in ſatisfaction of part. 4 *Co.* 5.

5. *The eſtate muſt be* expreſſed to be *in ſatisfaction of her dower; and how far a collateral recompence ſhall be a bar of dower or jointure.* Lord *Coke* ſays, that it muſt be expreſſed, or averred to be, in ſatisfaction of her dower; but *quære*, for this does not ſeem requiſite, either within the words or intention of the ſtatute. *Co. Lit.* 36. *b.* Vide *Owen* 3. 4 *Co.* 4. *Moor pl.* 103. *Cro. Eliz* 128. *Goſling* v. *Warburton.* *Dyer* 220. 2 *Vent.* 340. 1 *Chan. Caſes* 181. *Pheaſant*'s caſe.

It hath been often ruled in Chancery, that if lands, money, goods, *&c.* are deviſed to a woman, without ſaying *in lieu or ſatisfaction of dower, &c.* the wife ſhall have both; *becauſe a deviſe is to be conſidered as a bounty*, and implies a conſideration in itſelf, but if it be ſaid in lieu or recompence of dower, there the wife cannot have both, but may waive which ſhe pleaſes. 2 *Chan. Caſes* 24. 2 *Vern*. 365. *Preced. Chan*. 133. Alſo vide *Bro. Dow*. 69. 4 *Rep*. 4. *Dyer* 220. 2 *Vent*. 365. *Lawrence* v. *Lawrence*. *Abr. Eq*. 218-9. *S. C.* and *vide* 1 *Vern*. 463. And *Jordan* v. *Savage*. 3 *New Abr*. 226.

6. *The eſtate muſt not be made during the coverture.* This the very words of the act of parliament require, therefore if a jointure be made to a woman during coverture in ſatisfaction of dower, *ſhe may waive it after her huſband's death*; but if ſhe *enters* and *agrees* thereto, ſhe is concluded; for tho' a woman is not bound by any act when ſhe is not at her own diſpoſal, yet if ſhe agrees to it when ſhe is at liberty, it is her own act, and ſhe cannot avoid it. 4 *Co*. 3. Alſo vide *Co. Lit*. 29. *b*. 36. *b*. 348. *a*. 357. 1 *Bulſ*. 163. *Moor* 717. *pl*. 1002. *Perk*. 352—3. 3 *Co*. 27. 3 *Leon*. 272. *Cro. Jac*. 490. *Dyer* 351. *Hob*. 72. 2 *Rol. Abr*. 422.

All other ſettlements in lieu of jointure, not made according to the ſtatute, are jointures at Common law, and no bars to claim of dower: And a jointure was no bar of dower before this ſtatute; as *a right or title to a freehold cannot be barrred by acceptance of a collateral ſatisfaction*. Co. Lit. 36. A father made a ſettlement to the uſe of himſelf for life, and afterwards to the uſe of his ſon and his wife, for their lives, for the jointure of the wife; this was adjudged no jointure to bar the wife of her dower, becauſe it might not commence immediately after the death of the husband, who might die in the life-time of the father. 2 *Cro*. 489. So, if a feoffment be made to the uſe of the husband for life, remainder to another for years, remainder to the wife for life for her jointure. *Ibid*. But a feoffment in fee, upon condition that the feoffee ſhall make another feoffment to the uſe of the ſon of the feoffor, and to his ſon's wife in tail, remainder to the right heirs of the feoffor, which feoffment is made accordingly; this is a good jointure within the ſtatute, and bar to the dower of the wife. *Moor* 28.

An eſtate ſettled in jointure, coming from the anceſtors of the wife, and not of the purchaſe of the husband or his anceſtors, is not within the ſtatute 11 *H*. 7. *c*. 20. as to diſcontinuances, alienations, *&c*. Where a father of the intended wife, in conſideration of marriage, *&c*. covenanted to aſſure lands to the husband and wife, his (the covenantor's) daughter, and the heirs of her body, *&c*. this was held no jointure, within the meaning of the ſtatute 11 *H*. 7. *c*. 20. *being an advancement of the woman by her own father*. 2 Cro. 264. 2 Lill. Abr. 80. And an eſtate in fee-ſimple conveyed to a woman for her jointure, was not any jointure within the ſtatute; which *never extended to lands granted to women in fee*: But an eſtate in fee, conveyed to a woman for her jointure, and in ſatisfaction of her dower, is a jointure within the ſtatute 27 *H*. 8. *c*. 10. 4 *Rep*. 3.

Yet an eſtate for life is the uſual jointure: And an eſtate for life upon condition, may bar the wife *if ſhe accepts it*; as a jointure to a woman on condition to perform the husband's will, was judged good, where the wife entered and agreed to the eſtate. 3 *Rep*. 1, 2, *&c*. If no inheritance is reſerved to the husband and his heirs, but the eſtate is limited to the wife for life, or in tail, the remainder to a ſtranger; it is *not* a jointure within the ſtat. 11 *H*. 7. *c*. 20. tho' made by the husband or his anceſtor. *Cro. Eliz*. 2. A husband covenanted to ſtand ſeiſed of lands, to the uſe of himſelf and his heirs, till the marriage ſhould take effect; and afterwards to himſelf, his wife, and their heirs; and it was adjudged a good jointure within the ſtatute 27 *H*. 8. *c*. 10. *Dyer* 248. A deviſe to a wife for life, or in tail, for her jointure, is good within this ſtatute: But a deviſe to a wife generally, *without expreſſing what eſtate*, is *not* good; *becauſe it cannot be averred to be for her jointure*. 3 Rep. 1. Though where an aſſurance was made to a woman, and it was not expreſſed to be made for her jointure; it was held it might be averred to be made for that purpoſe, *which is not traverſable*. Owen. 33.

A man makes his wife a jointure after marriage; and afterwards by will deviſes, that ſhe ſhall have a third part of all his lands, with her jointure; here the wife will have the third part of all *as a legacy*, and if ſhe waives her jointure, ſhe may have a third part of the reſidue for dower. *Dyer* 62. If a maſter, in conſideration of ſervice done by his ſervant, grants lands to the ſervant and a woman he intends to marry, and the heirs of their bodies, creating an eſtate-tail; this is not a jointure; not being a gift of the husband, or any of his anceſtors, but of his maſter, and in conſideration of ſervice, which will not make the husband ſuch a purchaſer as the law requires. *Moor* 683. But as to conſiderations, if an eſtate is ſettled in jointure upon a woman, in conſideration of money paid, and alſo of a marriage to be had; the marriage ſhall be looked upon to be the conſideration. *Cro. Jac*. 474. A husband, tenant in tail, remainder to his wife for life, makes a feoffment in fee to the uſe of himſelf and wife for life, for her jointure; it is no bar to the wife's dower, becauſe it may be avoided by a *remitter* to her firſt eſtate for life. *Moor* 872. If lands are conveyed to a woman before marriage, in part of her jointure only, and after marriage, other lands are granted in full; it is ſaid ſhe may waive and refuſe the lands conveyed to her after coverture, and retain her firſt jointure lands and dower alſo. 3 *Rep*. 1, 5. 2 *Nelſ. Abr*. 1039.

Where a jointure is made of lands (according to the direction of the ſtatute of 27 *H*. 8. 10.) before coverture, and after the husband and wife alien them by fine, ſhe ſhall not have dower in any other lands of her husband; but it is otherwiſe where the jointure is made after marriage, when the wife's eſtate is waivable, and her election of chooſing comes not till the death of the husband. 1 *Inſt*. 36. A man levies a fine of his land, and it is granted back again to him and his wife for her jointure, and to the heirs of the husband; then he and his wife levy a fine to another uſe, the wife, if ſhe ſurvive her husband, will have dower notwithſtanding the fine. 1 *And*. 350. If the husband make a leaſe of lands to his friends, for any number of years, in truſt for his wife and children, that ſhe ſhall have 100*l*. a year out of it, or in any ſuch manner; by this ſhe may have the proviſion, which is no jointure, and likewiſe her dower. By *Bridgman* Ch. J. An eſtate is made to husband in tail, with remainder to the wife for life, and remainder to others; this is not ſuch a jointure, as with her acceptance within the ſtatute will hinder her from dower; and tho' the husband die without iſſue, it will not help it, but the wife ſhall be endowed in his other land: But if the eſtate were made to the husband and wife for their lives, it would be otherwiſe. 13 *Jac*. 1. *B. R.* 2 *Shep. Abr*. 74.

After the death of the husband, the wife may enter into her jointure, and is not driven to a real action, as ſhe is to recover dower by the Common law; and upon a lawful eviction of her jointure, ſhe ſhall be endowed according to the rate of her husband's land, whereof ſhe was dowable at Common law. *Co. Lit*. 37. *Stat*. 27 *H*. 8. *c*. 10. If ſhe be evicted of part of her jointure, ſhe ſhall have dower *pro tanto*. A wife's jointure ſhall not be forfeited by the treaſon of the husband: But feme-coverts committing treaſon or felony, may forfeit their jointures; and being convict of recuſancy, they ſhall forfeit *two parts in three* of their jointures and dower, by ſtatute 3 *Jac*. 1. *c*. 4. If a woman conceals her jointure, and brings dower and recovers it, and then ſets up her jointure, ſhe is barred of her jointure; and by bringing writ of dower for her thirds, the wife waives the benefit of entry into lands, ſo as to hold them in jointure. *Cro. Eliz*. 128, 137. 3 *Rep*. 5. By *ſtat*. 3 *Jac*. 1. *c*. 5. *ſect*. 13. See *Marriage*.

Jointreſs or Jointureſs, Is ſhe who hath an eſtate ſettled on her by the husband, to hold during her life, if ſhe ſurvive him. 17 *H*. 8. *c*. 10. 1 *Inſt*. 46. When eſtates ſettled on a wife are a jointure, if the jointreſs makes any alienation of them by fine, feoffment, *&c*. with another husband, it is a forfeitutre of the ſame; but if they are not a jointure by law, it is otherwiſe. 2 *Nelſ*. 1040. A jointreſs within the ſtatute may make a leaſe for forty years, *&c*. if ſhe ſo long live; and alſo for life, and be no forfeiture. tho' ſhe levies a fine *ſur cogniſance de droit*, *&c*. *Cro. Jac*. 688. 3 *Rep*. 50. 1 *Lill*. 81. In other caſes, if ſhe levies a fine, it is a forfeiture; and if a jointreſs within the ſtatute 11 *H*. 7. *c*. 20. ſuffer a recovery covinouſly to bar the heir, the heir may enter preſently, *&c.* 2 *Leon.* 206. 1 *Plowd.* 42.

With reſpect to the acts of a jointreſs or thoſe of her husband defeating her of her jointure, and how far equity will relieve her, vide *Co. Lit.* 36. *Dyer.* 358. 2 *Inſt.* 673. *Hob.* 225. 1 *Chan. Caſ.* 119, 120. 2 *Chan. Caſ.* 162. 2 *Vent.* 343. 1 *Vern,* 427, 479. *Abr. Eq.* 18, 221, 222. 2 *Vern.* 701. And 14 *Vin. Abr.* tit. *Jointreſs* and *Jointure.*

Jour, (Fr.) A day, uſed in heads of our old law; *touts jours* for ever. *Law Fr. Dict.*

Journal, Is a day-book or diary of tranſaction, uſed in many caſes: As by merchants and other tradeſmen in their accounts; by mariners in obſervations at ſea, *&c.*

Journals of Parliament, Are not records, but *remembrances,* and have been of no long continuance. *Hob. Rep.* 109.

Journchoppers, Were regrators of *yarn,* which formerly perhaps was called *journ,* They are mentioned in the *ſtat.* 8 *H.* 6. *c.* 5.

Journeyman, (from the Fr. *journée, i. e.* A day, or day's work) Was properly one who wrought with another by the day; tho' it is extended by ſtatute to thoſe alſo who covenant to work with others in their trades or occupation by the year. 5 *Eliz. c.* 4.

Journeys Accounts, *(dietæ computatæ)* Is a term in law thus underſtood: if a writ abates by the death of the plaintiff or defendant, or for falſe *Latin,* want of form, *&c.* the plaintiff ſhall have a new writ by journeys accounts, *i. e. within as little time as he poſſibly can after the abatement of the firſt writ*; and this ſecond writ ſhall be a continuance of the cauſe, as if the firſt writ had not abated. *Terms de Ley.* When the new writ is purchaſed, which muſt be *recenter,* the plaintiff is to recite in an entry upon the roll, that the former writ was abated, and ſhew for what: *Super quo per dietas computat. recenter talit quoddam aliud breve, &c.* 6 *Rep.* 10. This writ is to be brought preſently; and fifteen days is held a convenient time for the purchaſe of the new writ. 2 *Lill. Abr.* 83. 1 *Lut.* 297. Judicial writs ſhall never be had by journeys accounts; *becauſe they never abate for form.* The abatement of the writ muſt be without the default of the plaintiff, or a ſecond writ may not be purchaſed by journeys accounts: If a writ abates for the plaintiff's default, in his miſtaking the name of the vill, *&c.* he ſhall not have a writ of journeys accounts; but where it abates by default of the clerk, for any variance or want of form, in ſuch caſe he may have it. 6 *Rep.* 10. And when an outlawry is diſcharged or reverſed, the plaintiff may have writ of journeys accounts; for there is no default in him. *Cro. Jac.* 590. The writ muſt be brought for the ſame thing, and in the ſame court, as the firſt writ.

This learning is now of little uſe, it being cuſtomary to enter a judgment that the writ be *quaſhed,* and then to ſue forth another.

And by *Stat.* 8 & 9 *W.* 3. *c.* 11. *ſect.* 7. The death of one plaintiff or defendant where there is another ſurviving, not to abate the ſuit. The death to be ſuggeſted on the roll.

And by *ſect.* 6. death of the party after interlocutory judgment ſhall not abate the ſuit.

Ipſo facto, Is where the ſame perſon obtains two or more preferments in the church with cure, not qualified by diſpenſation, *&c.* the firſt living is void *ipſo facto, viz. without any declaratory ſentence,* and the patron may preſent to it. *Dyer* 275. And there is not only deprivation of a clergyman *ipſo facto*; but for crimes in ſtriking perſons in a church or church-yard, the offenders are to be excommunicated *ipſo facto.* Stat. 5 & 6 Ed. 6. c. 4. An eſtate or leaſe may be *ipſo facto* void by condition, *&c.* 1 *Inſt* 45, 215.

Ipſwich, The bailiffs and port-men, *&c.* of *Ipſwich,* may tax every houſe in reaſonable ſums to be yearly paid, towards finding a miniſter within every pariſh, and for the reparation of the churches; Alſo the ſtreets *there* ſhall be paved, by the landlords of houſes or tenements, under certain penalties. *Stat.* 13 *Eliz. c.* 24.

Ire ad largum, To go at large, to eſcape, or be ſet at liberty. *Blount.*

Ireland, Is a diſtinct kingdom from *England,* but ſubordinate to it in government; and by *Poyning's Law* (enacted in *Ireland, Anno* 10 *Hen.* 7.) all the ſtatutes of *England,* till that time were declared in force in *Ireland:*

And *by ſpecial words,* our ſtatutes STILL MAY BIND THE PEOPLE of *Ireland,* NOTWITHSTANDING THEY HAVE PARLIAMENTS OF THEIR OWN, who make laws and ſtatutes, being affirmed here by the King and Council. 1 *Inſt.* 141. 2 *Inſt.* 2. 3 *Inſt.* 18.

It would be the moſt amazing of all political paradoxes, if the SUPREME POWER of the STATE, which reſides in the KING, LORDS, and COMMONS, IN PARLIAMENT ASSEMBLED, could not make laws to bind every part of the BRITISH EMPIRE! Whether, in ſome caſes, it is PRUDENT to exert that power, is a queſtion of a very different kind from the former. Of the PROPRIETY, moderate and impartial men will ſuppoſe the KING and the GREAT COUNCIL OF THE NATION, the beſt judges.

In the proceedings of the *Iriſh* parliament; firſt the lieutenant and council certify to the King the cauſes and conſiderations of all ſuch acts, as ſeem good to them to be paſſed in parliament; and licence, under the Great Seal of *England,* is obtained to ſummon and hold a parliament in *Ireland:* If the acts are affirmed, or altered or changed here, they are tranſcribed and returned into *Ireland* under the Great Seal: and all that paſſes ought to be inrolled here in the *Chancery.* 12 *Rep.* 111, 112. See *Infra.*

Treaſon committed in *Ireland,* by an *Iriſh* peer, is not triable in *England,* becauſe he is entitled to a trial by his peers, which cannot be in *England,* but *Ireland. Dyer* 360. But the Houſe of Lords of *England,* have power to reverſe or affirm the decrees of the court of *Chancery, &c.* of *Ireland:* And the *King's Bench* here may reverſe a judgment given in *B. R.* in *Ireland,* by directing a writ of error to the Chief Juſtice there, to ſummon the party to appear here, *&c.*

B. R. in *England* cannot iſſue a writ to the ſheriffs of *Ireland,* but in error may direct the court of *B. R.* or *C. B.* in *Ireland* to iſſue ſuch writ. *Annally,* 50, 51.

By ſtatute 17 *Ed.* 1. *c.* 1. No pardon for the death of a perſon, or for felony, ſhall be granted by the juſtices of *Ireland,* but at the King's command, and under his ſeals.

By 34 *Ed.* 3. *c.* 18. all kinds of merchandiſes may be exported and imported from and to *Ireland,* by aliens as well as deniſens: But wool, and woollen manufactures, *&c.* are prohibited to be exported from thence into foreign parts by a modern ſtatute. And by the 32 *Car.* 2. *c.* 2. cattle, butter, cheeſe, *&c.* are not to be imported from *Ireland* into this kingdom, on pain of forfeiture to the poor. Yet ſometimes temporary acts are paſſed, permitting the importation from *Ireland,* of various kinds of proviſions, *i. e.* as particular occaſions require.

The ſtatute 1 *W. & M. c.* 9. enacted and declared, "*That the pretended parliament aſſembled at* Dublin, *was* "*an unlawful aſſembly; and that all acts done by them are* "*void.*" All cities, boroughs, *&c.* were reſtored by this ſtatute to their privileges, and the proceedings againſt them vacated; and all Proteſtants reſtored to their poſſeſſions, *&c.* By 3 *W. & M. c.* 2. members of parliament, officers in the government, eccleſiaſtical perſons, lawyers, *&c.* in *Ireland,* are to take the oaths, or be liable to forfeitures.

Acts of parliament made in *England* ſince the act of 10 *H.* 7. do not bind them in *Ireland*; but all acts made in *England* before 10 *H.* 7. do bind them in *Ireland* by the ſaid act made in *Ireland.* 10 *H.* 7. *cap.* 22. 12 *Rep.* 111. This means where *Ireland* is not expreſſed in thoſe acts.

Lord *Coke* in 2 *Inſt.* 2. ſays, that by this law [but there cites it as made 11 *H.* 7.] *Magna Charta* extends to *Ireland.* 4 *Inſt.* 351. recites the ſtatute more fully, and ſays that acts of parliament made in *England* ſince that time, wherein *Ireland* is not particularly named or generally included, extend not thereunto; for tho' it be governed by the ſame law, yet it is a diſtinct realm or kingdom, and hath parliaments there. S. P. Arg. *Cart.* 180, 198. cites *And.* 262. *Orork*'s caſe. 2 *Vent.* 4 & 5 7 *Rep.* 23. in *Calvin*'s caſe. *Jenk.* 164. *pl.* 14.

In acts of parliament *Ireland* ſhall not be bound *without expreſs words*, though the nature and reaſon of the act extends to *Ireland*. *Skin.* 519. *Trin.* 6 *W.* & *M.* *B. R.* in caſe of *Phillips* v. *Bury*.

Though *Ireland* has its own parliaments, yet it is not abſolute, & *ſui juris*; for, if it were, *England* has no power over it, and it would be as free after conqueſt and ſubjection by *England* as before. And that it is a conquered kingdom is not doubted, but admitted in *Calvin*'s caſe ſeveral times, &c. *Vaugh.* 292. *Hil.* 21 & 22 *Car.* 2. *C. B. per Vaughan* Ch. J. in caſe of *Craw* v. *Ramſey*. And *ibid.* 300. ſays, It is a dominion belonging to the crown of *England*. And *ibid.* 301.

That its having a parliament is *gratia regis*, ſubject to the parliament of *England*, it is to be conſidered as a provincial government, ſubordinate to, but *not part of*, the realm of *England*. *Mich.* 11 *Geo.* 2. in caſe of *Otway* v. *Ramſey*. And by ſtat. 6 *Geo.* 1. *cap.* 5. *ſect.* 1.

The kingdom of *Ireland* ought to be ſubordinate to and dependant upon the imperial crown of *Great Britain*, as being inſeparably united thereunto. And the King, with the conſent of the lords and commons of *Great Britain* in parliament, hath power to make laws to bind the people of *Ireland*.

Lands in *Ireland* are not bound by a ſtatute in *England*, but their perſons are. *Cart.* 186. Arg. *Paſch.* 19 *Car.* 2. *C. B.* cites 7 *Rep.* 22. *Calvin's* caſe, and *Mod.* 796.

Ireland is beyond ſea as to the ſtatute of limitations. Arg. *Hil.* 2 *W.* & *M.* *Show.* 197. ſays it was ruled ſo.

Bond executed in *England* for a debt in *Ireland* ſhall carry but *Engliſh* intereſt. *Mich.* 1700. 2 *Vern.* 395. *Lord Ranelagh* v. *Sir John Champante*.

As to *error* vide *Vent.* 53, 59, 357. 12 *Mod.* 225. *Bro. Juriſdiction, pl.* 109. *Cro. Jac.* 534.

A man may be ſent over to *Ireland* to be tried for a crime there committed, notwithſtanding the clauſe in the *habeas corpus* act. *Gibb.* 111. *Mich.* 3 *Geo.* 1. *B. R.* *The King* v. *Kimberly*.

Juſtices of peace in *England* may commit a perſon offending againſt the *Iriſh* law, in order to his being ſent over. *Stran.* 848.

Judges in *England* are proper expoſitors of the *Iriſh* laws. *Vern.* 422. *Mich.* 1686. *Earl of Kildare* v. *Sir Maurice Euſtace*.

Linen, hemp and flax, may be imported from *Ireland* free. 7 & 8 *W.* 3. *c.* 39. 8 & 9 *W.* 3. *c.* 20. *ſect.* 10. Iron may be imported from *Ireland* free. 8 & 9 *W.* 3. *c.* 20. *ſect.* 10. For ſale of the eſtates of *Iriſh* rebels, ſee *Stat.* 11 & 12 *W.* 3. *c.* 2. 1 *Ann.* *Stat.* 1. *c.* 11, 32. 1 *Ann.* *Stat.* 2. *c.* 21. 2 & 3 *Ann.* *c.* 10. 4 *Ann.* *c.* 24. 6 *Ann.* *c.* 4.

Augmentations of ſmall vicarages in *Ireland*. 1 *Stat.* 1. *c.* 31. Papiſts are diſqualified from purchaſing the forfeited eſtates in *Ireland*. 1 *Ann.* *Stat.* 1. *c.* 32. *Iriſh* linen may be exported to the plantations. 3 & 4 *Ann.* *c.* 8. Forfeited impropriations in *Ireland* applied to the building of churches, &c. 5 *Ann.* *c.* 25. The ſtatute 1 *Ann.* *c.* 32. ordains, that perſons educated in the Popiſh religion in *Ireland*, of eighteen years of age, ſhall take the oaths, or be diſabled to take lands by diſcent, deviſe, &c. Proteſtant families being *Palatines*, ſettled in *Ireland*, are declared naturalized on their taking the oaths to the government. 1 *Geo.* 1. *c.* 29.

By 6 *Geo.* 1. *cap.* 5. the juriſdiction of the *Houſe of Lords in Ireland* to reverſe judgments or decrees given in the courts of that kingdom, was wholly taken away. See *Stat.* 4 *Geo.* 2. *c.* 15.

Foreign hops not to be imported into *Ireland*. 5 *Geo.* 2. *c.* 9. No ſugar, &c. of the *Britiſh* plantations to be imported into *Ireland*, unleſs ſhipped in *Great Britain*. 6 *Geo.* 2. *c.* 13. *ſect.* 4. *Iriſh* manufactures of hemp and flax, may be imported free. 16 *Geo.* 2. *c.* 26. *ſect.* 6. Foreign glaſs not to be imported into *Ireland*. 19 *Geo.* 2. *c.* 12. *ſect.* 19. Glaſs not to be exported from *Ireland*. *Ibid* *ſect.* 21.

Certificate of goods landed in *Ireland* to be ſigned by the collector, &c. 5 *Geo.* 1. *c.* 11. *ſect.* 5. 27 *Geo.* 2. *c.* 18. *ſect.* 4. *India* goods not to be imported into *Ireland* from foreign parts, 5 *Geo.* 1. *c.* 11. *ſect.* 12.

The dependency of *Ireland* aſſerted, 6 *Geo.* 1. *c.* 5.

Ships of fifty tons hovering on the coaſt of *Ireland* to give bond for proceeding on their voyage, 6 *Geo.* 1. *c.* 21. *ſect.* 62. 12 *Geo.* 2. *c.* 22. *ſect.* 1. Commiſſioners of exciſe in *Ireland* to determine offences in ſhipping wool, &c. 6 *Geo.* 1. *c.* 21. *ſect.* 64. In running *India* goods: 12 *Geo.* 2. *c.* 32. *ſect.* 3.

Foreign hops not to be imported into *Ireland*. 5 *Geo.* 2. *c.* 9. Ships to be ſtationed to hinder the exportation of *Iriſh* woollen manufactures, 5 *Geo.* 2 *c.* 21. No ſugar, &c. of the *Britiſh* plantations to be imported into *Ireland*, unleſs ſhipped in *Great Britain*, 6 *Geo.* 2. *c.* 13. *ſect.* 14. Duties on woollen or bay yarn from *Ireland* taken off, 12 *Geo.* 2. *c.* 21. *Iriſh* manufactures of hemp and flax, may be imported free, 16 *Geo.* 2. *c.* 26. *ſect.* 6. Importation of dirty butter from *Ireland*, commonly called greaſe-butter, permitted, 3 *Geo.* 3. *c.* 20. Importation of tallow, hog's lard, &c. permitted, 4 *Geo.* 3. *c.* 6.

See farther as to *Ireland*, its ancient form of government, and the alterations made therein, &c. *Black.* *Com.* 1 *V.* 99, &c.

Iriſhmen, Coming to live in *England*, by an ancient ſtatute, were to give ſecurity for their good behaviour. 2 *Hen.* 6. *c.* 8.

Iron, Made in this kingdom, or brought into *England* and ſold, ſhall not be exported, on pain of forfeiting the value; and juſtices aſſigned by the King, have power to inquire of ſuch as ſell *iron* at too dear a price, and puniſh them. 28 *Ed.* 3. *c.* 5. None ſhall convert to coal or other fuel, for the making of *iron* metal, any trees of ſuch a ſize; or within a certain compaſs of *London*, under penalties by ſtatute: Nor ſhall any new *iron* mills be ſet up in *Suſſex*, *Surry* or *Kent*. 1 *Eliz.* *c.* 15. 23 *Eliz.* *c.* 5. & 27 *Eliz.* *c.* 19. *Engliſh iron* may be exported, by *Stat.* 5 & 6 *W.* & *M.* *c.* 17. See *Stat.* 23 *Geo.* 2. *c.* 29. for encouraging the importation of pig and bar iron from *America*.

Bar iron from the plantations may be imported to *London*, 23 *Geo.* 2. *c.* 29. or to any port, 30 *Geo.* 2. *c.* 16.

Iron works charged with the land-tax, 4 *Geo.* 3. *c.* 2. *ſect.* 4.

By 4 *Geo.* 2. *c.* 32. to ſteal or ſever, *with intent to ſteal* any lead or *iron*, fixed to a houſe, or in any court or garden, thereunto belonging, is made felony, liable to tranſportation for ſeven years.

Irons, *to ſecure priſoners*. According to *Blackſtone*, in his *Com.* 4 *V.* 297. Impriſonment (before trial) is only for ſafe cuſtody, and not for puniſhment: therefore, in the dubious interval between the commitment and trial, a priſoner ought to be uſed with the utmoſt humanity; and neither be loaded with needleſs fetters, or ſubjected to other hardſhips than ſuch as are abſolutely requiſite for the purpoſe of confinement only: though what are ſo requiſite, muſt too often be left to the diſcretion of the gaolers; who are frequently a merciletſ race of men, and by being converſant in ſcenes of miſery, ſteeled againſt any tender ſenſation.

Yet the law will not juſtify them in fettering a priſoner, unleſs he is unruly, or has attempted an eſcape: (2 *Inſt* 381. 3 *Inſt.* 34.) this being the humane language of our ancient lawgivers: "*Cuſtodes pœnam ſibi commiſſorum non augeant, nec eos torqueant; ſed omni ſævitia remota, pietateque adhibita, judicia debite exequantur.*" Fleta, lib. 1. c. 26.

The ſame learned author, in the ſame *Vol. fo.* 317, ſaith, The priſoner is to be called to the bar by his name; and it is laid down in our ancient books, that, though under an indictment of the higheſt nature, he muſt be brought to the bar without *irons*, or any manner of ſhackles or bonds; unleſs there be evident danger of an eſcape, and then he may be ſecured with *irons*. (*Bract. lib.* 3. *de coron.* *c.* 18. *ſect.* 3. *Mir.* *c.* 5. *ſect.* 1, 54. *Fleta, lib.* 1. *c.* 31. *ſect.* 1. *Brit.* *c.* 5. *Staundf.* *P. C.* 78. 3 *Inſt.* 34. *Kel.* 10. 2 *Hal.* *P. C.* 219. 2 *Hawk.* *P. C.* 308.) But yet in *Layer*'s caſe, (*anno* 1722.) a difference was taken between the time of arraignment, and the time of trial; and accordingly the priſoner ſtood at the bar in chains during the time of his *arraignment.* State Trials, 1 V. 230.

Iron wire. See *Wire.*

Irony. In *libels,* makes them as properly libels as what is expreſſed in direct terms. *Hob.* 215. 1 *Hawk.* 193. 194.

Irregularity, *(Irregularitas)* Signifies diſorder, or going out of rule: And in the *Canon Law,* it is uſed for an impediment to the taking *Holy Orders*; as where a man is baſe born, notoriouſly defamed of any crime, maimed, or much deformed in body, *&c.*

Irreplebiable or **Irreplebiſable,** That neither may nor ought to be replevied or delivered on ſureties. 13 *Ed.* 1. *c.* 2. It is againſt the nature of a diſtreſs for rent, to be *irreplevisable.* 1 Inſt. 145.

Iſeland, Compoſition fiſh to be taken as uſual of ſubjects travelling into *Iſeland,* 5 *El. c.* 5. *ſect.* 5. Fiſhing veſſels not to proceed on their voyage to *Weſtmony* and *Iſeland,* till the 10th of *March* yearly. 15 *Car.* 2. *c.* 16.

Iſinglaſs, A kind of fiſh glue, brought from *Iſeland,* uſed by ſome perſons in the adulterating of wine; but for that prohibited by *Stat.* 12 *Car.* 2. *cap.* 25.

Iſle, *(Inſula)* Is land incloſed in, and environed with the ſea or freſh water. There are ſeveral iſlands belonging to *England*; as the iſles of *Jerſey* and *Guernſey, Iſle of Man, &c.* The iſles of *Jerſey* and *Guernſey* are not bound by our acts of parliament, except they are *ſpecially* named; nor do our original writs run into thoſe iſlands: But the King's Commiſſion under the Great Seal runs there, to redreſs any injuries; yet the commiſſioners muſt judge according to the laws and cuſtoms of thoſe *Iſles*: And for controverſies ariſing in law, among the King's ſubjects in the *Iſles* of *Jerſey* and *Guernſey, &c.* the King and his Privy Council are the proper judges, without appeal. 4 *Inſt.* 286, 287. *Wood's Inſt.* 2. 458. Inhabitants of thoſe *Iſles* of *Jerſey* and *Guernſey, &c.* may import into *Great Britain,* goods of their own growth and manufacture, cuſtom free. *Stat.* 3 *Geo.* 1. *c.* 4.

The *Iſle of Man* was a diſtinct territory from *England,* and out of the power of our *Chancery,* or of original writs which iſſue from thence; it has been granted by letters patent under the Great Seal to divers ſubjects, and their heirs, and hath peculiar laws and cuſtoms: And in the caſe of the *Earl of Derby,* it was adjudged, that no man had any inheritance in this *Iſle,* but the Earl and the Biſhop; and that they are governed by laws of their own, ſo that no ſtatute made in *England* did bind there without expreſs words, in the ſame manner as in *Ireland.* 1 *Inſt.* 9. 4 *Inſt.* 284. 7 *Rep.* 21. 2 *And.* 115. *French* wines not exceeding 100 tons in one year, may be imported by ſtrangers. 5 *Eliz. c.* 5. *ſect.* 46. Liberty given to import cattle and corn into *England.* 15 *Car.* 2. *c.* 7. *ſect.* 21. No drawback to be allowed for foreign goods exported to the *Iſle of Man.* 12 *Geo.* 1. *c.* 28. *ſect.* 21. No goods but of the product of the iſland to be imported from the *Iſle of Man.* 12 *Geo.* 1. *c.* 28. *ſect.* 22. The penſion of 100*l.* a year granted by *Car.* 2. to the poor clergy of the *Iſle of Man* not chargeable with taxes. *Stat.* 30 *Geo.* 2. *c.* 3. *ſect.* 96.

No wine, brandy, tobacco, *Eaſt-India* goods, *&c.* ſhall be brought from the *Iſle of Man* into *Great Britain* or *Ireland,* on pain of forfeiture, *&c.* 12 *Geo.* 1. *c.* 28.

By ſtatute, the commiſſioners of the treaſury are impowered to treat with the *Earl of Derby* for the purchaſe of all right to the ſaid *Iſland,* for the uſe of his Majeſty.

The purchaſe was completed in the year 1765, and confirmed by ſtatute 5 *Geo.* 3. *c.* 26 & 39. whereby the whole *Iſland* and all its dependencies, (formerly granted) except the landed property of the *Athol* family, their manerial rights and emoluments, and the patronage of the biſhoprick and other eccleſiaſtical benefices, are unalienably veſted in the crown, and ſubjected to the regulations of the *Britiſh* exciſe and cuſtoms.

See farther as to the *Iſles* of *Jerſey, Guernſey,* and *Man, Black. Com.* 1 *V.* 105, 106, *&c.*

As to iſlands ariſing in rivers, to whom it belongs, ſee *Black. Com.* 2 *V.* 261.

An *Iſland* in the ſea, that has no owner, by the law of nations, belongs to him that firſt finds it. *Juſtin. Inſt. lib.* 2. *Vide* Plantations.

Iſle of Ely. See *Ely.*

Iſle of Man. See *Man.*

Iſle of Wight. See *Wight.*

Iſlet, A ſmall iſland. See *Ilet.*

Iſſuable terms. *Hilary* and *Trinity* terms are uſually called iſſuable terms, from the making up of the iſſues therein. Though for cauſes tried in *Middleſex* and *London,* many iſſues are made up in *Eaſter* and *Michaelmas* terms.

Iſſue, *(Exitus,* from the Fr. *Iſſuer,* i. e. *Emanare)* Hath divers ſignifications in law; ſometimes it is taken for the *children* begotten between a man and his wife, ſometimes for profits growing from amerciaments and fines; ſometimes for the *profits* of lands and tenements: But it generally ſignifies the *point of matter, iſſuing* out of the allegations and pleas of the plaintiff and defendant in a cauſe, to be tried by a jury of twelve men. 1 *Inſt.* 126. 11 *Rep.* 10.

The *iſſues* concerning cauſes are of two kinds:

Upon matter of fact,
and
Matter of law.

An iſſue in *fact* is where the plaintiff and defendant have agreed upon a point to be tried by a *jury*; and *iſſue* in *law* is where there is a *demurrer* to a declaration, plea, *&c.* and a joinder in demurrer, which is an *iſſue at law* to be determined by the judges. 1 *Inſt.* 71, 72.

As to iſſues of *fact, viz.* whether the fact is true or falſe, which are triable by the jury, they are either

General
or
Special.

General, when it is left to the jury to try whether the defendant hath done any ſuch thing as the plaintiff lays to his charge; as when he pleads *Not guilty* to a treſpaſs, *&c.*

Special, is when ſome ſpecial matter, or material point alledged by the defendant in his defence, is to be tried; as in aſſault and battery, where the defendant pleads that the plaintiff ſtruck firſt, *&c.* 1 *Inſt.* 126. And when ſpecial matter is alledged by the defendant, both parties join thereupon, and ſo go to a trial by the jury, if it be *quæſtio facti*; or to a demurrer, if it be *quæſtio juris.*

There is alſo a general *iſſue,* wherein the defendant may give the ſpecial matter in evidence, for excuſe or juſtification, by virtue of ſeveral ſtatutes, made for avoiding prolixity of pleading; and upon the general *iſſue* in ſuch caſes, the defendant may give any thing in evidence, which proves the plaintiff hath no cauſe of action. 1 *Inſt.* 283. Matter amounting to the general *iſſue,* and ſpecial matter of juſtification, have been joined in one intire plea, and held good. 3 *Lev.* 41. And where there is an *iſſue* upon Not guilty, and there are other *iſſues* upon juſtifications, the trial of the general *iſſue* of Not guilty, is but matter of form, and the ſubſtance is upon the ſpecial matter. *Cro. Jac.* 599. But the general *iſſue* is pleaded, to put the plaintiff on proof of the *fact.*

In real actions, cauſes grown to *iſſue* are tried by a jury of twelve men of the county where the cauſe of action ariſes; and in criminal caſes, *iſſues* ought to be tried in the county where the offence was committed; but this hath admitted of ſome alteration by ſtatute. 3 *Inſt.* 80, 135. 2 *Rep.* 93.

The place ought not to be made part of the iſſue, in a tranſitory action; it is not material, as it is in real and mixed actions. *Trin.* 24 *Car. B. R.* If the place is material, and make a part of the iſſue, there the jury cannot find the fact in another place, becauſe, by the ſpecial pleading, the point in iſſue is reſtrained to a certain place; but upon the general iſſue pleaded, the jury may find all local things in another county, and *where the ſubſtance of the iſſue is found, it is good,* and the finding more may be ſurpluſage. 6 *Rep.* 46. If an iſſue is of two matters in two counties, trial may be in one county, by the ſtatute 21 *Jac.* 1. *c.* 4. for that ſtatute extends to caſes where the matter in iſſue ariſes in *two counties,* and the trial is by one only, as well as where the matter in iſſue ariſes in *two places in one county,* and the trial is by one. 2 *Lev.* 121. 2 *Nelſ. Abr.* 1050. Every iſſue is to be joined in ſuch a court that hath power to try it, otherwiſe the iſſue is not well joined; for if the cauſe cannot be tried, the iſſue is fruitleſs, and if it be tried, the trial is *coram non judice.* 21 Car. B. R. 2 Lil. Abr. 84.

Where an iſſue is not joined, there cannot be a good trial, nor ought judgment to be given. 2 *Nelſ. Abr.* 1042. All iſſues are to be certain and ſingle, and joined upon the moſt material thing in the cauſe; *that all the matter in queſtion between the parties may be tried.* 23 Car. B. R. 2 Lil. 85. An *immaterial iſſue* joined, which will not bring the matter in queſtion to be tried, is not helped after verdict by the ſtatute of *jeofails*; but there muſt be a *repleader*: But an *informal iſſue* is helped. 18 *Car.* 2. *B. R.*

For the difference between an *immaterial* and *informal* iſſue, ſee *Annaly* 341. The ſtatute 32 *H.* 8. *c.* 30. helps *misjoining* of *iſſues.*

A *repleader* may be awarded after verdict, for the badneſs and incertainty of the iſſue: And a judgment may be reverſed in error, being on an *immaterial iſſue.* 2 *Lutw.* 1608. 2 *Lev.* 194. On a joint treſpaſs by many perſons, there muſt be only one iſſue in each plea joined: And if ſeveral offences are alledged againſt the defendant, he ought to take all but one by *proteſtation,* and offer an iſſue upon that one, and no more. *Moor* 80. But in action for damages, according to the loſs which the plaintiff hath ſuſtained, every part ought to be put in iſſue. 1 *Saund.* 269. In action upon the caſe for ſervice done for a time certain, the defendant ought to put in iſſue all the time alledged in the declaration. *Lutw.* 1268. And upon a general iſſue in waſte, the plaintiff muſt ſhew his title. *Ibid.* 1547. Though when any ſpecial point is in iſſue, the plaintiff is not obliged to ſet forth any other matter. *Cro. Eliz.* 320. If there are ſeveral things in a declaration, upon which an iſſue may be joined, and it is joined on any of them, *it is good*; and an affirmative and an *implied* negative will make a good iſſue. *Style* 151, 210.

There muſt be in every iſſue an affirmation on the one part, as that the defendant owes ſuch a debt, *&c.* and a denial on the other part, as that he oweth not the debt, *&c.* And though the matter contradicts, yet there muſt be a negative and affirmative of it, to make a right iſſue. 1 *Ventr.* 213.

An *iſſue* may be of two affirmatives. *Wilſ. par.* 1. 6. Alſo a negative ſhould be as full as the affirmative, or it is no negative to make an iſſue; as if a defendant pleads a grant of four acres, and two acres only are denied, *&c.* 1 *Rol. Rep.* 86. It has been held, that iſſue ought not to be joined on a traverſe only, without anſwering in the affirmative, *&c.* 2 *And.* 6, 102. But where the matter, which is the *gift* or cauſe of the action is found, it has been adjudged good after verdict, though there was no negative and affirmative to make the iſſue; as where in debt upon bond the defendant pleads payment, and concludes to the country, without giving the plaintiff opportunity to deny the payment, if the jury in ſuch caſe find the money paid, it is good after verdict. *Sid.* 341.

Where there are two iſſues joined, one good and the other bad, if entire damages are given upon the trial on both iſſues, it will be error; but if ſeveral damages are found, the plaintiff may releaſe the damages on the bad iſſue, and have judgment for the reſt. 2 *Lil. Abr.* 87, 88. And it is ſaid judgment may be entered as to one part of the iſſue; and a *nolle proſequi* to another part of the ſame iſſue, where it may be divided. *Paſch.* 23 *Car. B. R.* Where two iſſues are joined, and a verdict only on one of them, it is a miſ-trial, and the judgment may be arreſted, and a *venire facias de novo* awarded, if error brought, the judgment muſt be arreſted. *Annaly* 246.

There may be a plea to iſſue to part, and a demurrer to part; which have no dependence on each other. 1 *Saund.* 338. Where the declaration of the plaintiff is good, and the plea of the defendant is ill; if the plaintiff in his replication tender an iſſue upon ſuch ill plea, and a trial is had, and it is found for the plaintiff, he ſhall have judgment. *Cro. Car.* 18. And generally, when a plea is bad, that the plaintiff might have demurred upon it, and he doth not, but takes iſſue, and it is found for the defendant; this is aided by the ſtatute of *jeofails,* and the defendant ſhall have judgment: So likewiſe where the replication is bad, and iſſue is taken upon it, and found for the plaintiff, he ſhall have judgment. *Cro. Eliz.* 455. *Cro. Jac.* 312. But there are many caſes where, if the plea or replication is bad in *ſubſtance,* it is not aided by the ſtatute of *jeofails.* See *Com. Dig. V.* 1. tit. *Amendment.*

If *iſſue* be taken on a dilatory plea, *&c.* and found againſt the defendant, final and peremptory judgment ſhall be given; but it is otherwiſe on a demurrer. *Raym.* 118. In ſuch caſe there muſt be a *reſpondeat ouſter.* A good iſſue is offered to the defendant, he ought not to plead over; and if he plead over, the plaintiff ſhall have judgment. 1 *Saund.* 318, 338. If he does not join iſſue, but demurs, it is the ſame.

The plaintiff's attorney is to be paid by the defendant's attorney for entering the plea; and for paper books, in ſpecial pleadings, *&c.* 2 *Lil.* 87, 88.

When iſſue is joined between the parties, it cannot be afterwards waived, if it be a good iſſue, without conſent of both parties: But where defendant pleads the general iſſue, and it is not entered, he may, within fonr days of the term, waive that iſſue, and plead ſpecially; and when the defendant pleads in abatement, he may at any time after waive his plea of ſpecial matter, and plead the general iſſue, unleſs there be a rule made for him to plead as he will ſtand by it. 12 *W.* 3. *B. R.* 3 *Salk.* 211.

If the plaintiff will not try the iſſue after joined, in ſuch time as he ought by the courſe of the court, the defendant may give him a rule to enter it; which if he does not he ſhall be nonſuit, *&c.* 2 *Lil.* 84. If the tender of the iſſue comes on the part of the plaintiff, the form of it is; *And this he prays may be inquired by the record*; or *by the country*; and when on the part of the defendant, *And of this he puts himſelf upon the country*; and *The plaintiff doth the like,* &c.

There are many acts of parliament, that enable the defendant to plead the *general iſſue*—Too numerous, to ſet forth in a *dictionary.*—We therefore refer the reader to the table to the ſtatutes, tit. *General Iſſue,* &c.

Iſſues on Sheriffs, Are for neglects and defaults, by amercement and fine to the King, levied out of the iſſues and profits of their lands; and double or treble iſſues may be laid on a ſheriff for not returning writs, *&c.* But they may be taken off before eſtreated into the *Exchequer,* by rule of court, on good reaſon ſhewn. 2 *Lil. Abr.* 89. Iſſues ſhall be levied on *jurors,* for non-appearance; tho' on reaſonable excuſe proved by two witneſſes, the juſtices may diſcharge the iſſues. *Stat.* 35 *Hen.* 8. *cap.* 6. See 1 *Keb.* 475.

Itinerant, *(Itinerans)* Travelling or taking a journey: And thoſe were anciently called *Juſtices Itinerant,* who were ſent with commiſſion into divers counties to hear cauſes.

The King's courts were formerly itinerant, being kept in the King's palace, and removing with his houſhold. The Common Pleas is now fixed by *Magna Charta*; but though the court of King's Bench is conſtantly held in *Weſtminſter-Hall,* yet there is nothing but cuſtom to fix it there, as it is ſuppoſed to be before the King, and if actually ſo, muſt be *itinerant.*

Itinerary, *(Itinerarium)* A commentary concerning things falling out in journies. *Law Lat. Dict.*

Jubilee, (*Annus Jubilæus*) The moſt ſolemn time of Feſtival at *Rome*, when the Pope gives his bleſſing and remiſſion of ſins. It was firſt inſtituted by *Boniface* the 8th, in the year 1300, who granted a plenary indulgence and remiſſion of ſins to all who ſhould viſit the churches of St. *Peter* and St. *Paul* at *Rome* in that year, and ſtay there fifteen days; and this he ordered to be obſerved once in every hundred years; which Pope *Clement* the 6th reduced to fifty years, *anno* 1350, and to be held upon the day of circumciſion of our Saviour: And *Urban* the 4th, in the year 1389, ordained it to be kept every thirty-three years, that being the age of our Saviour: After which, Pope *Sixtus* the 6th, reduced it to twenty-five years. In imitation of the grand *jubilee* of *Rome*, the Monks of *Chriſt-Church* in *Canterbury*, every fiftieth year invited a great concourſe of people to come thither, and viſit the tomb of *Thomas Becket*. And King *Edw*. 3. in the fiftieth year of his age, which was 1362, cauſed his birth-day to be obſerved at court, in the name of a *Jubilee*; giving pardons, privileges, and other civil indulgences.

Jubilæus, Signified afterwards a man one hundred years old, and likewiſe a poſſeſſion or preſcription for fifty years. *Si ager non invenietur in ſcriptione inquiratur de ſenioribus, &c. Et ſi ſub certo* jubilæo *manſit, ſine vituperatione maneat in æternum*. Du Freſne.

Judaiſm, (*Judaiſmus*) The cuſtoms, religion, or rites of the *Jews*: Alſo the income heretofore accruing from the *Jews* to the King: And the word *Judaiſm* was formerly uſed for a mortgage; and ſometimes taken for uſury. *Ex Magno Rot. Pipæ, de anno* 9 *Ed*. 2.

Judaiſmus is alſo taken for the manſion or dwelling-place of the *Jews* in any town; as *Wigorniam cepit et intravit, et* Judaiſmum *evertit*. Riſhangor, p. 668. And it ſometimes ſignifies uſury: as, *Empta fuit grangia, &c. domus obligata in magnis debitis in* Judaiſmo. *Mon*. 1 *tom. p*. 834.

Judge, (*Judex*) Is a chief magiſtrate in the law, to try civil and criminal cauſes, and puniſh offences. He is appointed with a certain juriſdiction; and our King hath the nomination and appointment of *judges*. 2 *Inſt*. 56. A *judge* at his creation takes an *oath, That he will ſerve the King, and indifferently adminiſter juſtice to all men, without reſpect of perſons, take no bribe, give no council where he is a party, nor deny right to any, tho' the King by his letters, or by expreſs words, command the contrary*, &c. and he is anſwerable in body, land and goods. 18 *Ed*. 3. *c*. 1.

Judex eſt lex loquens, and ought to judge by law, and not by examples: by *Glanvil* a *judge* is called *juſtitia in abſtracto*, becauſe *he ſhould be as is were juſtice itſelf*. Co. Lit. 71. 7 Rep. 4. And all the commiſſions of judges are bounded with this limitation, *Facturi quod ad juſtitiam pertinet ſecundum legem & conſuetudinem Angliæ*.

There are ancient precedents of judges, who were fined when they tranſgreſſed the laws, though commanded by warrants from the King; and it is ſaid, that Earl *Typteſt*, who was a Chancellor, was beheaded, for acting upon the King's warrant againſt law. *Burnet's Rich*. 2. *pag*. 38.

The judges are to give judgment according to law, and what is alledged and proved: And they have a private knowledge, and a judicial knowledge, though they cannot judge of their own private knowledge, but may uſe their diſcretion; but where a judge has a judicial knowledge, he may and ought to give judgment according to it. *Plowd*. 82.

King *Henry* 4. demanded of *Judge Gaſcoigne*, if he ſaw one in his preſence kill *A. B.* and another perſon, who was not culpable, ſhould be indicted of this, and found Guilty before him, what he would do in this caſe; to which he anſwered, *That he ought to reſpite the judgment againſt him, and relate the matter to the King, in order to procure him a pardon; for there he cannot acquit him, and give judgment according to his private knowledge*. Ibid.

And the ſame King *Henry*, when his eldeſt ſon the Prince, was by the Lord Chief Juſtice committed to priſon, for a great miſdemeanor, thanked God that he had a ſon of that obedience, and a judge of that courage and impartiality. *Stow*.

The King in all caſes doth *judge* by his *judges*; who ought to be of counſel with priſoners: And if they are doubtful or miſtaken in matter of law, a ſtander-by may be allowed to inform the court, as *amicus curiæ*. 2 *Inſt*. 178. Our judges are to execute their offices in proper perſon, and cannot act by deputy, or transfer their power to others; as the judges of eccleſiaſtical courts may. 1 *Rol. Abr*. 382. *Bro. Judges*, 11. Yet where there are divers judges of a court of record, the act of any one of them is effectual; eſpecially if their commiſſions do not expreſly require more. 2 *Hawk*. 3. Though what a majority rules when preſent, is the act of the court. If on a demurrer or ſpecial verdict, the judges are divided in opinion, two againſt two, the cauſe muſt be adjourned into the *Exchequer Chamber*. 3 *Mod*. 156. And a rule is to be made for this purpoſe, and the record certified, *&c*. 5 *Mod*. 335. In fines levied all the judges of *C. B.* ought to be particularly named: But writs of *certiorari* to remove records out of that court, *&c*. are directed to the Chief Juſtice, without naming his companions. 1 *H*. 7. 27. *Jenk. Cent*. 167.

When a record is before the judges, they ought *ex officio* to try it: And they are to take notice of ſtatutes, and of the terms, *&c*. *Ibid*. 215, 298. No judge is compellable to deliver his opinion before-hand, in relation to any queſtion which may after come judicially before him. 3 *Inſt*. 29. Judges of the Common law, have no ordinary juriſdiction to examine witneſſes at their chambers; though by conſent of parties, and rule of court, they may on interrogatories; and ſome things done by judges at their chambers, in order to proceedings in court, are accounted as done by the court.

A judge ſhall not be generally excepted againſt, or challenged; or have any action brought againſt him, for what he does as judge. 1 *Inſt*. 294. 2 *Inſt*. 422. And to kill a judge of either bench, or of aſſiſe, *&c. in his place adminiſtring juſtice*, is treaſon: Alſo drawing a weapon only upon a judge, *in any of the courts of juſtice*, the offender ſhall loſe his right hand, forfeit his lands and goods, and ſuffer perpetual impriſonment. 25 *Ed*. 3. *c*. 2. 2 *Inſt*. 549. Judges are not in any way puniſhable for a mere error of judgment: And no action will lie againſt a judge for an erroneous judgment; or for a wrongful imſonment, *&c*. 2 *Hawk*. 4. 1 *Mod*. 184.

The judges of courts of record are freed from all proſecutions whatſoever, except in parliament, where they may be puniſhed, for any thing done by them in ſuch courts as judges; this is to ſupport their dignity and authority, and draw veneration to their perſons, and ſubmiſſion to their judgments: But if a judge will ſo far forget the dignity and honour of his poſt, as to turn ſolicitor in a cauſe which he is to judge, and privately and extrajudicially tamper with witneſſes, or labour jurors, he may be dealt with according to the ſame capacity to which he ſo baſely degrades himſelf. 12 *Rep*. 24. *Vaugh*. 138. *S. P. C.* 173.

Bribery in judges is puniſhable by loſs of office, fine and impriſonment; and by the Common law, bribery of judges in relation to a cauſe depending before them, has been puniſhed as treaſon. 1 *Leon*. 295. *Cro. Jac*. 65. 1 *Hawk*. 170. A judge ignorantly condemns a man to death for felony, when it is not felony; for this offence, the judge ſhall be fined and impriſoned, and loſe his office. *Jenk Cent*. 162. If a judge who hath no juriſdiction of the cauſe, give judgment of death and award execution, which is executed, ſuch judge is guilty of felony; and alſo the officer who executes the ſentence. *H. P. C.* 35. 10 *Rep*. 76. And if juſtices of peace, on indictment of treſpaſs, arraign a man of felony, and *judge* him to death, and he is executed, it is felony in them. *H. P. C.* 35. *Dalt. cap*. 98. A judge ought not to judge in his own cauſe, or in pleas where he is party. 8 *Rep*. 118.

If a fine be levied to a juſtice of Bank, he cannot take the conuſance; for he cannot be his own judge. 8 *H*. 6. 21. *Br. Patents, pl*. 15. cites S. C. *per Martin*. If a fine be levied *by* or to a juſtice in Bank, his name ſhall not be in the fine. 11 *H*. 6. 49. *b*.

So if a juſtice of Bank be ſued in Bank, he cannot record it; it ſhall be recorded by the other juſtices. So if a juſtice of Bank ſues there, he cannot record it, but it ſhall be recorded by the other juſtices. *Ibid.* If the chief juſtice of Bank be to ſue a writ there, the writ ſhall not be in his name, but in the name of the ſecondary. 8 *H.* 6. 19. *b.*

None may judge in his own cauſe. *Ibid.* See *Herodii Directa, lib.* 2. *fol.* 1440.———Arg. *Bridgm.* 11, 12. *for it is a manifeſt contradiction that a man can be agent and patient in the ſame thing*, and what Lord *Coke* ſays in Dr. *Bonham*'s caſe is far from any extravagancy; for it is a very reaſonable and true ſaying, that if an act of parliament ſhould ordain, that the ſame perſon ſhould be party and judge, or, which is the ſame thing, judge in his own cauſe, it would be a void act of parliament; *per Holt* Ch. J. 12 *Mod.* 687.

This is a ground in the feudal law alſo, as appears in the prelections of *Weſenbech. cap.* 17. *fol.* 401.

Judgment given by a judge, who is party in the ſuit with another, and ſo entered of record, is error, altho' ſeveral other judges ſit there, and give judgment for the judge who is party. *Jenk.* 90. *pl.* 74.

Where a judge has an intereſt, neither he nor his deputy can determine a cauſe, or ſit in court; and if he does, a prohibition lies. *Mich.* 20 *Car.* 2. *Hard.* 503. *Brooks* v. *Earl of Rivers.*

A juſtice cannot raſe a record, nor embezzle it, nor file an indictment which is not found, nor give judgment of death where the law does not give it; if he does, it is miſpriſion, he ſhall loſe his office, and make fine for miſpriſion; but it is not felony. *Br. Judges, pl.* 33. cites 2 *R.* 3. 9.

Where judges are limited to the ſubject matter of their juriſdiction, and they exceed the limits of their juriſdiction, action lies againſt them; *per Powell* J. 2 *Lutw.* 1565. *Mich.* 4 *W.* & *M.* cites *Hard.* 480. *Terry* v. *Huntington.*

A Judge is not anſwerable to the King, or the party, for miſtakes or errors of his judgment, in a matter of which he has juriſdiction. 1 *Salk.* 397. All miſdemeanors of judicial officers are a contempt of the court of *B. R.* 1 *Salk.* 201.

Among the laws of King *Edgar* is this, *viz. Judex, qui injuſtum judicium judicabit alicui, det Regi CXX's, niſi jurare audeat, quod rectius judicare neſcivit. Decem ſcriptores Anglicani* 872. *l.* 3. The ſame among the laws of *Canute. Ibid.* 924. *l.* 2. adds, that *Et dignitatem ſuæ legalitatis ſemper amittat, ſi non eam redimat erga Regem, ſicut ei permittetur. In Denelaga Labſtithes reus ſit; ſi non juret, quod melius neſcivit.* Chronicon Johannis Bromton. *See* 14 Vin. Abr. *tit.* Judges. See 33 *H.* 8. *c.* 24. & 12 *Geo.* 2. *c.* 27. *Black. Com.* 1 *V.* 267. 3 *V.* 25. 4 *V.* 84, 125, 126, 349, 433.

By 1 *Geo.* 3. *c.* 23. Judges are continued in the enjoyment of their offices, *during their good behaviour*, notwithſtanding any demiſe of the crown; but they may be removed by the crown, upon the addreſs of both Houſes of Parliament.

For the judges oath, ſee *St.* 18 *E.* 3. *ſtat.* 4. The duty of the judges, ſee in *Stat.* 20 *Ed.* 3. *c.* 1. 8 *R.* 2. *c.* 3. 9 *R.* 2. *c.* 1. Of the immunity of judges from proſecutions, ſee *Stat.* 31 *Ed.* 3. *ſtat.* 4. *c.* 17.

Judger. In *Cheſhire*, to be *judger* of a town, is to ſerve on the jury there. *Leiceſter's Hiſt. Antiq.* 302.

Judgment, *(judicium, quaſi juris dictum)* Is the determination or ſentence of the judges upon the ſuit, &c. and the ancient words of *judgments* are, *conſideratum eſt per curiam*, &c. becauſe *judgment* is ever given by the court upon due conſideration had of the record and matter before them. 1 *Inſt.* 39. Of *judgments*, ſome are final, and ſome not, &c. And a *judgment* may be given not only upon trial of the iſſue; but by *default, nihil dicit, confeſſion*, or on *demurrer*; and *outlawry* is a *judgment* in itſelf, 1 *Inſt.* 167. 2 *Inſt.* 236. *Finch.* 457. There is likewiſe *judgment* for *departing in deſpight of the court*, without leave, in common recoveries, &c. And after an iſſue joined in a cauſe to be tried by the plaintiff and defendant, the plaintiff may, (if he will,) without going to trial of any verdict, accept of a *judgment* from the defendant, which *judgment* muſt be by *relicta verificatione cognovit actionem*; but on this *judgment* error may be brought without putting in bail, which it may not on *judgment* after verdict. 2 *Lill. Abr.* 104.

Judgment is ſometimes had with a *ceſſat executio*; and if the defendant gives a *judgment*, with ſtay of execution, till a certain day, the plaintiff may notwithſtanding ſue forth a *capias* or a *fieri facias* into the county where the action is laid, returnable before the day, to enable him at that day to take a *teſtatum* againſt the defendant; tho' he ſhall not in that caſe ſue out a *capias* to warrant a *ſcire facias* againſt the bail. *Paſch.* 22 *Car.* 2. *Sed qu.* If a capias is ſued out, whether the end for which it iſſued, is ever enquired into? If debt be brought againſt an executor upon the bond of the teſtator, and he pleads *plene adminiſtravit*, this is a confeſſion of the debt; and the plaintiff may have judgment with a *ceſſat executio* till the defendant hath aſſets. 4 *Rep.* 2 *Nelſ. Abr.* 1052.

If the plaintiff or defendant die after interlocutory *judgment*, the action ſhall not abate. *Stat.* 8 & 9 *W.* 3. *c.* 11. *Judgment* upon a demurrer to a declaration, &c. is no bar to any other action; *becauſe it is not on the merits*, and the plaintiff may afterwards make his declaration right, and then proceed. 2 *Lill.* 113. But other *judgments* may be pleaded in bar to any other action for the ſame cauſe; and *judgment* in an inferior court, may be alledged in bar to an action in a ſuperior court. 2 *Lev.* 93. A *judgment* on *nil dicit*, in caſe, treſpaſs, or covenant, &c. is not perfect, until writ of enquiry of damages taken out and executed upon it, of which notice is to be given the defendant, and the time of execution, &c. But in debt, it is a perfect *judgment* as ſoon as ſigned, &c. and there needs no writ of enquiry. 2 *Lill.* 105.

Judgment final ought not to be given upon default in real actions; but a *grand cape* upon default before appearance and a *petit cape* on default after appearance. 1 *Lev.* 105.

If in debt, part is found for the plaintiff, and the defendant acquitted of the reſidue, the *judgment* muſt be *quod quer. in miſericordia* for that part whereof the defendant is acquitted. *Cro. Eliz.* 699. But the ſtatute 4 & 5 *W.* & *M. c.* 12. takes away the *capiatur* in treſpaſs, aſſault, falſe impriſonment, &c. and there is in lieu thereof 6 *s.* 8 *d.* paid to the ſecondary for the fine before he ſigns *judgment.*

All *judgments* given in any court of record, muſt be duly entered: the plaintiff's attorney, four days after the *poſtea* is brought into court, if the rule for *judgment* is out, may enter *judgment* for his client by the courſe of the court. 2 *Lill. Abr.* 95. But on a rule for judgment, *Sunday* is not one of the four days; tho' the rule is given the laſt day of the term. After a rule to ſign *judgment*, there ought to be four days *excluſive* of the day on which the rule was made, before the *judgment* is ſigned, that the party may have a reaſonable time to bring writ of error: in *C. B.* they never give rules for ſigning *judgment*, but ſtay till the *quarto die poſt*, which makes but four days incluſive. *Mod. Caſ.* 241. A plaintiff got his *judgment* ſigned on the very day, but it was not executed till after the ſixth day, ſo that the defendant had time enough to bring a writ of error, or move any thing in arreſt of *judgment*: but the court of *B. R.* held the ſigning of the *judgment* to be irregular, it being before the day allowed by the rules of the court; and tho' execution was taken out afterwards, *judgment* was ſet aſide. 5 *Mod.* 205.

If a *diſtringas* is returnable within term, and the cauſe, is tried two or three days only before the end of the term, the *judgment* ſhall be entered that very term, tho' there be not four days to move in arreſt of *judgment.* 1 *Salk.* 77. But a four day rule muſt be given, and the party cannot ſign judgment, 'till four days *excluſive* are elapſed, and if *Sunday* intervenes, that is not to be reckoned one of the *four* days. But if verdict be given after term, no *judgment* can be given on it till the next term following; for the *judgment* is the act of the court, and the court ſits not but in term. *Mich.* 22 *Car. B. R.*

If verdict paſs for the plaintiff, and he will not enter his *judgment*; the defendant by motion of court may oblige him to it. 2 *Lill. Abr.* 97. The defendant may enforce the plaintiff to enter his *judgment* to the end he may plead it to another action. *Latch.* 216. 1 *Danv.* 722.

Palm. 281. So if the defendant wants to bring a writ of error.

Judgments are not only to be ſigned by the proper officer, but entered of record; before which they are not *judgments:* and in a *judgment* given to recover a ſum of money, the ſum muſt be entered in words at length; and not in figures, which may be eaſily altered; and a *judgment* was reverſed, *becauſe the time when given was in figures, and the ſum recovered expreſſed in figures, &c.* But the court may amend their *judgments* of the ſame term, becauſe the term is but as one day in law; tho' they may not do it in another term. 2 *Lill.* 103. 3 *Lev.* 430. If a *judgment* be unduly obtained, the court will *vacate* the *judgment*, and reſtore the party damnified; if not, puniſh the offender: but it is againſt the courſe of the court to vacate a *judgment* the laſt day of the term. *Paſch.* 1656.

By ſtatute, if the *plaintiff* die before *judgment*, it ſhall not hinder the *judgment* being entered, provided it be done within two terms after verdict. 17 *Car.* 2. *cap.* 8. A *judgment* entered in *C. B.* ſhall relate to the *eſſoin* day of the term, and be a *judgment* from that time: but a *judgment* in *B. R.* ſhall relate only to the firſt day of the term. *Cro. Car.* 102. If a rule be given for the defendant to plead at a certain day, and he do not plead accordingly, the plaintiff may enter *judgment* againſt him, without moving the court; tho' in real actions, and criminal cauſes, on indictments, *&c.* there muſt be a motion in court, for a peremptory rule. 2 *Lill.* 116. Yet a plaintiff, after he hath ſigned judgment againſt the defendant, may waive it if he will, and accept of a plea from the defendant. *Trin.* 23 *Car. B. R.*

If a *judgment* be obtained, but the plaintiff doth not take out *execution* within a year and a day, the *judgment* muſt be revived by *ſcire facias.* If any thing be entered in a *judgment*, which is not mentioned in the plaintiff's declaration, the *judgment* is not good. 2 *Lill.* 104. And where it appears upon the record, that the plaintiff hath no cauſe of action, he ſhall never have *judgment.* 8 Rep. 120. In ſuch caſe the court may give *judgment* for the defendant. 1 *Plowd.* 66. Altho' it appear to the court that the defendant's title is not good, if the plaintiff in his declaration hath not ſet forth a good title for himſelf, the court ſhall never give him *judgment.* 2 Lill. 98. Tho' the plaintiff deſtroys the defendant's title, if he gives him another title by pleading, *&c.* the defendant ſhall have *judgment*; for the court are to judge upon the whole record. 8 *Rep.* 90. But if action of treſpaſs is brought for treſpaſs done in lands belonging to ſuch a houſe, and it appears at the trial that the plaintiff had no title to the houſe, the court cannot give *judgment* to turn him out of poſſeſſion, becauſe *that* was not judicially before them. 3 *Salk.* 213.

In debt on ſpecialty, *the whole and exact ſum* muſt be demanded; or the *judgment* upon it will not be good. 3 *Mod.* 41. If more be in the *judgment* than the plaintiff demands, it is erroneous; tho' this may be helped by a *remiſit dampna* for part. 2 *Lill.* 27. If in caſe, treſpaſs, *&c.* a verdict is given for more damages than laid in the plaintiff's declaration, and he does not remit the ſurplus damages, but takes judgment for the whole, it is an incurable error, and cannot be amended.

If iſſue is found againſt one party in a ſuit, and not againſt the other, *judgment* may be for the plaintiff to recover againſt him where the matter is found; and a *nil capiat per billam* be entered againſt the plaintiff as to the other. 1 *Saund.* 216. And when ſeveral damages are recovered againſt ſeveral defendants, the plaintiff may enter a *nolle proſequi* as to one of the defendants, *&c.* and have *judgment* againſt one only for the damages againſt him. 3 *Mod.* 101. If one entire *judgment* is given againſt two ſeveral perſons, and one of them is an infant, appearing by attorney, the whole *judgment* is void; (which being entire cannot be divided) except the infant be joint executor with the other party. 2 *Lill.* 100. When a *judgment* is entire, it cannot be divided, to make one part of it good, and another part thereof erroneous; but if it be not an entire *judgmene*, it may. *Ibid.* On action where damages are to be recovered, if the declaration be good in part, and inſufficient in part, and the defendant demurs upon the entire declaration; the plaintiff ſhall have *judgment* for that which is well laid, and be barred for the reſt. This muſt mean where there are ſeveral counts in the declaration. 2 *Saund.* 379. And if in action of debt upon three bonds, it appears that one of them is not forfeited, *&c.* the plaintiff ſhall have *judgment* for the other two. 1 *Saund.* 286.

Where a *judgment* is partly by the Common law, and partly by ſtatute, the *judgment* at Common law may remain and be compleat, without the other. 1 *Salk.* 24.

Where there are two diſtinct *judgments*, one at *Common law*, and the other by *ſtatute*, one may be affirmed, and the other reverſed on a writ of error. *Annaly* 50.

Every *judgment* ought to be compleat and formal: one *judgment* cannot determine another *judgment*, and the judges will not give a *judgment* againſt law, although the plaintiff and defendant do agree to it. 1 *Salk.* 213. *Cro. Eliz.* 817. *Trin.* 23 *Car. B. R.* In actions perſonal, *judgment* given againſt the plaintiff upon any plea to *bar* him, is peremptory. *Jenk. Cent.* 52. If the defendant doth not deny the debt, or other matter in ſuit, but endeavours to elude the action by inſufficient pleading: in this caſe, if it be found for the plaintiff, he ſhall have judgment; but not *vice verſa*, if for the defendant, becauſe the matter of the ſuit is not fully and ſufficiently denied, but in ſome meaſure confeſſed by the inſufficient plea. *Ibid.* 70.

Judgment may not be given for the plaintiff upon an inſufficient bar, if the replication be ſo, and ſhew no title; but a judgment ſhall not be ſet aſide for miſpleading a point collateral to the iſſue. *Hob.* 8, 128. In debt upon an obligation, the defendant pleaded that he delivered it on a condition to be performed by the plaintiff, which he had not done, and therefore it was not his deed; the jury found for the defendant, that the condition was not performed, yet the plaintiff had judgment; for the defendant's plea confeſſes it to be his deed, and the verdict does not diſprove it, and the *iſſue* is *deed or no deed, &c.* Jenk. Cent. 102. Here the plaintiff hath his judgment upon the defendant's *confeſſion*, not upon the *verdict. Ibid.*

A judgment contrary to the verdict found in the cauſe is generally void; for it is to be warranted by the verdict. *Mich.* 22 *Car. B. R.* There may be caſes where judgment may be given for one of the parties contrary to the verdict; as where the defendant pleads ſuch a plea as in effect acknowledges the demand, there, tho' there ſhould be a verdict for the defendant, judgment ſhall be for the plaintiff, or the judge of *Niſi prius* may refuſe to try it. *Annaly* 250. If a verdict is imperfect, judgment cannot be given upon it; and for the incertainty of the verdict, judgment may be void. 2 *Lill.* 111. *Raym.* 220. Action of debt lies upon a good judgment, as well after writ of error brought as before. *Raym.* 100. 2 *Mod.* 127. But if error is brought, and depending, the court will, on motion, ſtay proceedings in the new action, or rather prevent plaintiff from taking out execution, defendant confeſſing judgment in the laſt ſuit. In actions of debt on bonds, a rule may be made to ſtay proceedings on payment of principal, intereſt and coſts. *Mod. Ca.* 60. This may be done by virtue of 4 *Ann. c.* 16. *ſect.* 13. If a judgment is recovered *jointly* againſt three defendants, the plaintiff cannot bring action of debt upon that judgment againſt one alone. 2 *Leon.* 220. A plaintiff ſhall not have a new action of debt on the ſame bond, *&c.* after judgment had on it, as long as the judgment is in force. 6 *Rep.* 2. 2 *Nelſ. Abr.* 1056. An erroneous judgment in *Chancery* is reverſible in *B. R.* *Dyer* 315. And if the Houſe of Lords reverſe a judgment of *B. R.* the Lords are to enter the new judgment, and not the court of *B. R.* who by the firſt judgment had executed their authority. *Trin.* 6 *Ann. B. R.* 1 *Salk.* 403.

Judgments are to continue, till they ſhall be attaint by error. *Stat.* 4 *H.* 4. *cap.* 23. And after verdict given in any court of record, there ſhall be no ſtay of judgment for want of form in a writ, count, *&c*, or miſtaking the name of either party, ſum of money, day, month, year, *&c.* rightly named in any writ or record preceding, *&c.* 18 *Eliz. cap.* 14. 16 & 17 *Car.* 2. *c.* 8.

A ſmall miſtake in the title of a declaration is not a reaſon to ſet aſide the judgment, and the roll may be right. *Wilſ. par.* 1. 104.

A regular judgment in a crown cauſe cannot be ſet aſide on payment of coſts. *Ib.* 163.

Where there is a judgment and no ſurpriſe, it ſhall not be ſet aſide on an affidavit of a matter relative to the merits which might have been pleaded. *Annaly* 157. But the court frequently ſets aſide regular judgments, on payment of coſts, where there are real merits, and thoſe merits ſworn to, the defendant by the rule, being bound not to delay the plaintiff.

Where the condition of a bond was, that the money was not to be paid till a future day, and the conuſee by virtue of a warrant of attorney entered judgment, and took out execution before the day, the court would not ſet the judgment aſide, but did the execution. *Ibid.* 270.

The *Stat.* 8 *W.* 3. *c.* 11. orders judgment for coſts, upon demurrers, and on ſuing writs of error, where the former judgment is affirmed, *&c.* And the ſtatutes of jeofails extend to judgments upon *nihil dicit*, confeſſion, *& non ſum informatus*, *&c.* 4 Ann. c. 16. *See* Error, Jeofail, *and* Iſſue.

Judgments acknowledged for Debts. The courſe for one to acknowledge a judgment for debt, is for him that doth acknowledge it to give a warrant of attorney to ſome attorney of that court where the judgment is to be acknowledged, to appear for him, to file common bail, and receive a declaration, and then plead *non ſum informatus*, *&c.* or to let it paſs by *nihil dicit:* whereupon judgment is entered for want of a plea. 2 *Lill.* 105. If one gives a warrant of attorney to confeſs judgment, and dies before it is confeſſed, this is a countermand of the warrant. 1 *Ventr.* 310. Tho' the courts have, on motion, allowed judgment to be entered up.—Where they may be entered after the party's death, ſee *Annaly* 158.—But the rule does not hold in adverſary ſuits. *Ibid.* 183. If a feme ſole gives warrant of attorney to confeſs judgment, and marries before it is entered, the warrant is abſolutely countermanded; and judgment ſhall not be entered againſt husband and wife. 1 *Salk.* 399.

A man under arreſt gives warrant of attorney to confeſs a judgment; if no attorney for the defendant is then preſent, the court, on a ſuppoſition that the judgment was obtained by force or fear, will ſet aſide the ſame. 1 *Salk.* 402. It has been adjudged, that if one under arreſt gives a warrant to confeſs judgment, if an attorney be not by, it is ill: and ſo it is if one be ſeemingly diſcharged, with deſign that he ſhould give a warrant of attorney to confeſs a judgment: but if one arreſted by proceſs of an inferior court, gives a warrant for confeſſing judgment in that court, *B. R.* will not ſet it aſide, tho' an attorney be not preſent. *Mich.* 2 *Ann. Mod. Caſ.* 85. By rule of *B. R. Eaſter* 15 *Car.* 2. No bailiff is to take from any priſoner in his cuſtody, a warrant to acknowledge judgment unleſs in the preſence of an attorney. And where one has been in priſon ſome time, and he confeſſes judgment to his creditor voluntarily, that judgment ſhall ſtand, altho' there be no attorney. *Farreſley's Rep.* 115. A judgment confeſſed upon terms, being in effect conditional, the court will ſee the terms performed: but where a judgment is acknowledged abſolutely, and a ſubſequent agreement is made, this does not affect the judgment, and the court will take no notice of it. *Ibid.* 400. *Sed qu.* if they would not ſtay or ſet aſide execution if iſſued *ſooner* than, or *contrary to*, an *agreement* of the parties, tho' made ſubſequent to the judgment? If a warrant be to enter judgment as of ſuch a term, or any time after; the attorney may enter it *at any time during life:* but without thoſe words the judgment muſt be entered the term expreſſed in the warrant: and if no term be mentioned, it may be intended the next term. 1 *Mod.* 1. Or it has been held it may be entered within a year after the date of it: and if judgment upon a warrant of attorney be not entered within the year, it cannot be done without leave of the court, on motion and affidavit made of the party's being living, and the debt not ſatisfied. 2 *Lill. Abr.* 118. 2 *Show.* 253. It is dangerous to take a judgment acknowledged in the vacation, as of the preceding term; and if any ſuch judgment be taken, the warrant of attorney to confeſs the ſame muſt bear date before, or in the term whereof it is confeſſed: but the ſafeſt way is to make it a judgment of the ſubſequent term. 2 *Lill.* 103.

By *Holt* Chief Juſtice, If one will enter a judgment as of a precedent term, he muſt actually enter it before the *eſſoin* day of the ſucceeding term: and if judgment be ſigned in *Hilary* term and in the ſubſequent vacation the defendant ſells lands, if before the *Eſſoin* of *Eaſter* term, the plaintiff enters his judgment, it ſhall affect the lands in the hands of the purchaſer; (but ſee *poſt*,) and if one enters judgment ſo in vacation, when the party is dead, the judgment ſhall be good by relation, if he was living in the precedent term. 1 *Salk.* 401. *Law of Securities* 74. On complaints for delay of entering judgments, the ſame ſhall be examined into by commiſſioners and ordered to be entered, *&c.* by the *Stat.* 14 *Ed.* 3. *Stat.* 1. *c.* 5. and by 29 *Car.* 2. *c.* 3.

Judgments, as againſt purchaſers, ſhall only relate to the day of ſigning. 29 *Car.* 2. *c.* 3. *ſect.* 15. If any perſon having acknowledged or ſuffered a judgment as a ſecurity for money, afterwards on borrowing other money of another, mortgage his lands, *&c.* without giving notice of ſuch judgment, unleſs he pay it off in ſix months, he ſhall forfeit his equity of redemption, *&c.* 4 *W. & M. c.* 16. The particular times of entering judgments of debt, by confeſſion, *non ſum informatus*, *&c.* and docketting them after every term, by the clerks of courts, *&c.* is directed under the penalty of 100 *l.* by *Stat.* 4 *&* 5 *W. & M. cap.* 20. And no judgment ſhall affect purchaſers of lands and mortgagees till docketted; nor have any preference againſt heirs, executors, *&c.* in the adminiſtration of eſtates. *Ibid.* Upon ſigning judgment 6 *s.* 8 *d.* is to be paid the proper officer, in ſatisfaction of the *capiatur* fine, *&c.* 5 *&* 6 *W. & M. c.* 12. To ſearch for judgments a fee is paid of 4 *d.* a term.

On judgments, a releaſe of errors is uſually entered into at the time of the warrant of attorney given, or judgment had. And in caſe of ſeveral judgments, if two are given in one term, and the laſt is firſt executed, that creditor hath the beſt title. *Latch.* 53. When a judgment is ſatisfied, it is to be acknowledged on record by attorney, *&c.* Acknowledging a judgment in the name of another, who is not privy or conſenting to the ſame, is felony. *Stat.* 21 *Jac.* 1. *cap.* 26.

Judgment in criminal Caſes. No man can be attainted of treaſon or felony, but on judgment by expreſs ſentence, or by outlawry, or abjuration. 2 *Hawk.* 447. And a perſon ſhall not have two judgments for one offence; for in outlawry, which is a judgment, execution ſhall be awarded againſt the offender, but no ſentence pronounced. *Finch.* 389, 467. But one convicted of a ſcandalous libel, had judgment to pay a fine, and to go to all the courts in *Weſtminſter-Hall* with a paper in his hat ſignifying his crime; and on his behaving impudently, his puniſhment was encreaſed. 1 *Salk* 401. No judgment or puniſhment can be inflicted unknown to our laws; but only by act of parliament. *Daliſ.* 20. And the law makes no diſtinction, in fixed and ſtated judgments, between a peer and a commoner; or between a common and ordinary caſe and one extraordinary. 2 *Hawk.* 443.

Judgment cannot be given for a corporal puniſhment, in the abſence of the party. 1 *Salk.* 400. Tho' perſons may have judgment to be fined in their abſence, having a clerk in court to undertake for the fine. 1 *Salk.* 56.

Judgment in high treaſon is for the offender to be drawn, hanged, his entrails taken out and burnt, his head cut off, and body quartered, *&c.* In petit treaſon, to be drawn to the place of execution and hanged: and a woman in all caſes of high and petit treaſon, to be drawn and burnt. A man or woman for felony, is to be hanged by the neck *till dead.* Miſpriſion of treaſon is liable to impriſonment for life.

In *præmunire*, the party offending is to be out of the King's protection, and his body to remain in priſon during the King's pleaſure, *&c.* And for miſpriſion of felony, fine and impriſonment is inflicted. 2 *Hawk.* 443, 444. For crimes and miſdemeanors of an infamous nature; perjury or forgery at Common law, groſs cheats, conſpiracy, keeping bawdy-houſes, *&c.* the judgments are *diſcretionory in the court*, by fine, pillory, whipping, *&c.* 2 *Hawk.* 445.

See *Execution in Criminal Caſes.* As to the ſeveral kinds of judgments, vide 1 *Hawk. P. C.* 57, 177, 184, 193, 196. 2 *Hawk. P. C.* 380, 442, 3, 4, 5. 3 *Inſt.* 210, 11, 12, 13, 14, 16, 18, 19. 20, 222, 4. 1 *Hal. P. C.* 375.

Judgment arreſted, In civil and criminal caſes. See *Arreſt of Judgment.*

Judgment or Trial by the Holy Croſs, Was a trial in eccleſiaſtical caſes, anciently in uſe among the *Saxons. Creſſ. Church Hiſt.* 960.

Judicatores terrarum, Are perſons in the county palatine of *Cheſter*, who on a writ of error out of Chancery, are to conſider of the judgment given there, and reform it; and if they do not, and it be found erroneous, they forfeit 100*l.* to the King by the cuſtom. *Dyer* 348. *Jenk. Cent.* 71.

Judices fiſcales; So *Polydore Virgil* calls *Empſon* and *Dudley*, who were employed by *Hen.* 7. for taking the benefit of penal ſtatutes, and were put to death by *Hen.* 8. See Lord *Herb. H.* 8. *fol.* 5, 6.

Judicial deciſions, opinions or determinations, as far as they refer to the laws of this kingdom, are for the matter of them of three kinds.

1ſt, They are either ſuch as have their reaſons *ſingly* in the laws and cuſtoms of this kingdom; as who ſhall ſucceed as heir to the anceſtor; what is the ceremony requiſite for paſſing a freehold? what eſtate, and how much the wife ſhall have for her dower? And many ſuch matters, wherein the ancient and *expreſſed laws* of the kingdom give an *expreſs deciſion*, and the judge ſeems only the inſtrument to pronounce it; and in thoſe things the law or cuſtom of the realm is the only rule to judge by, and in reference to thoſe matters, the deciſions of courts are the conſervatories and evidences of thoſe laws.

Or 2dly, They are ſuch deciſions, as by way of deduction and illation upon thoſe laws are formed or deduced; as for the purpoſe, Whether of an eſtate thus or thus limited the wife ſhall be endowed? Whether, if thus or thus limited, the heir may be barred? And an infinite number of the like complicated queſtions. And herein the rule of deciſion is; firſt, the *Common law* and *cuſtom* of the realm, which is the great *ſubſtratum* that is to be maintained; then authorities of deciſions of former times in the ſame or the like caſes; and then the reaſon of the thing itſelf.

3dly, Or they are ſuch as ſeem to have no other guide but *the common reaſon of the thing*, unleſs the ſame point has been formerly decided, as in the expoſition of the intention of clauſes in deeds, wills, covenants, *&c.* where *the very ſenſe of the words*, and *their poſitions* and *relations*, *give a rational account of the meaning of the parties*, and in ſuch caſes the judge does much better herein, than what a bare grave grammarian or logician, or other prudent man could; for in many caſes there have been former reſolutions, either *in point*, or agreeing *in reaſon* or *analogy* with the caſe in queſtion; or perhaps the clauſe to be expounded is mingled with ſome term or clauſes that require the knowledge of the law to help out with the conſtruction or expoſition; both which often happen in the ſame caſe; therefore it requires the knowledge of the law to render and expound ſuch clauſes and ſentences; and doubtleſs a good common lawyer is the beſt expoſitor of ſuch clauſe, *&c. Hale's Hiſt. Com. Law* 68, 69. cites *Plowden* 122 to 130, 140, *&c.*

An *extra-judicial* opinion, given in or out of court, is no more than the *prolatum* or ſaying of him who gives it, nor can be taken for his *opinion*, unleſs every thing ſpoken at pleaſure muſt paſs as the ſpeaker's *opinion. Vaugh.* 382.

So an *opinion* given in court, if not neceſſary to the judgment given of record, but that it might have been as well given, if no ſuch or a contrary opinion had been broached, is no *judicial opinion*, nor more than a *gratis dictum.* But an *opinion*, though erroneous, concluding to the judgment, is a *judicial opinion*, becauſe delivered under the ſanction of the judges oath upon deliberation, which aſſures that it is or was, when delivered, the *opinion* of the deliverer. *Ibid.*

Judicial Power. By the long and uniform uſage of many ages, our Kings have delegated their whole judicial power to the judges of their ſeveral courts; which are the grand depoſitory of the fundamental laws of the kingdom, and have gained a *known* and *ſtated* juriſdiction, regulated by certain and eſtabliſhed rules, which the crown itſelf cannot alter but by act of parliament. *Black. Com.* 1 *V.* 267. cites 2 *Hawk. P. C.* 2.

As to the great propriety and indeed conſequence of ſeparating the *judicial*, from the *legiſlative* and *executive power* of the ſtate, ſee *Mounteſquieu L'Eſprit des Loix, Liv. XI. c.* 6. *fo.* 208, *&c.* 1*ſt Vol.* 4*to edition.*

Judicial Writs. The *capias*, and all other ſubſequent to the original writ, not iſſuing out of Chancery, but from the court into which the original was returnable, and being grounded on what has paſſed in that court in conſequence of the ſheriff's return, are called *judicial*, not *original* writs; they iſſue under the private ſeal of that court, and not under the Great Seal of *England*; and are *teſted*, not in the King's name, but in that of the Chief Juſtice only. *Black. Com.* 3 *V.* 282.

Judicium Dei, The judgment of God; ſo our anceſtors called thoſe now prohibited trials of *ordeal*, and its ſeveral kinds, *Si ſe ſuper defendere non poſſit* judicio Dei, *ſcilicet, aqua vel ferro, fieret de eo juſtitia.* Leges Edw. Conf. c. 16.

See *Spelman's Gloſſary* on this word, and Dr. *Brady* in his *Gloſſary*, at the end of his *Introduct. to Eng.* See *Suthdore*, and *Black. Com.* 4 *V.* 336.

Judicium parium, A trial by *a man's equals*, i. e. *peers* by *peers*, *commoners* by *commoners.* The moſt glorious privilege that a ſubject can enjoy. It is a protection for the *lower order* of people, againſt the *violence* of the *great*, and even the *paſſion* or *caprice* of the *ſovereign* himſelf. It is impoſſible ſufficiently to praiſe this inſtitution. The defence of *Bingley*, againſt anſwering *interrogatories* in the court of *King's Bench*, as tending to accuſe himſelf, may furniſh the reader with ſome pleaſing reflections on the ſubject. That defence (as drawn up by the Editor J. M. *tho' not for the purpoſe of publication*) may be ſeen in No. 75. of the *North Briton*, with a motto prefixed, againſt the opinion of the writer. *Vide* alſo *Jury.*

Jug, A watery place, according to *Domeſday.*

Jugulator, A cut-throat, or murderer——*Statutum eſt præterea ut nullus occultus* jugulator, *quales murderers appellant Angli, de cætero chartam de regia gratia obtineret.* Thom. Walſingham, p. 343.

Jugum terrae, A yoke of land, in *Domeſday*, contains half a plow-land, *viz. Odo tenet de epiſcopo unum* jugum terræ, *& eſt dimid. carucatæ.* So alſo 1 *Inſt. fo.* 5. *a.* So in *Domeſday*, *Unum* jugum *de ora, & unum* jugum *de berce*; *i. e.* The rent of a yoke of land, and another yoke of land to plough. *Gale* 760.

Juncare, To ſtrew ruſhes, as was of old the cuſtom of accommodating the parochial church, and the very bedchamber of princes.——*Terræ in Aileſbury tenentur per ſervitium inveniendi domino Regi cum venerit apud Aileſbury in æſtate ſtramen ad lectum ſuum & præter hoc herbam ad* juncandam *cameram ſuam.*—Pat. 14 Ed. 1.

Juncaria, or **Joncaria,** (from *juncus*, the *Latin* word for a ruſh;) Is a ſoil or place where ruſhes grow. *Co. Litt. fo.* 5. *Cum piſcariis, turbariis,* juncariis, *& communibus paſturis ad meſſuagium prædictum pertin'.* Pat. 6 Ed. 3. p. 1. m. 25.

Junctum juncta, A meaſure of ſalt. 2 *Mon. Ang. p.* 99.

Jura regalia. See *Regalia.*

Jurats, *(jurati)* Are in nature of aldermen, for the government of many corporations. As *Romney Marſh* is incorporate of one bailiff, twenty-four *jurats*, and the commonalty thereof, by Chart 1 *Ed.* 4. And we read of the mayor and *jurats* of *Maidſtone, Rye, Winchelſea,* &c. Alſo *Jerſey* hath a bailiff and twelve *jurats*, or ſworn aſſiſtants, to govern that iſland. The name is taken from the *French*; for in *France*, among others, there are *major & jurati, &c.*

They are mentioned in the *Stat.* 2 & 3 *Ed.* 6. *c.* 30. And ſee 13 *Ed.* 1. *cap.* 26.

Jure divino *right to the throne*, A doctrine long ſince exploded,—and now univerſally denied. See *Black. Com.* 1 *V.* 191.

Jure divino *right to tithes.* As to this *Blackſtone* ſaith, in his *Com.* 2 *V.* 25.

"I will not put the title of the clergy to tithes upon "any divine right; though ſuch a right certainly com-"menced, and I believe as certainly ceaſed, with the "Jewiſh Theocracy. Yet an honourable and competent "maintenance for the miniſters of the goſpel is, un-"doubtedly, *jure divino*; whatever the particular mode "of that maintenance may be," &c. &c.

Juridical Days, *(dies juridici)* Days in court, on which the law was adminiſtered. See *Day.*

Juriſdiction, *(juriſdictio)* Is an authority or power, which a man hath to do juſtice in cauſes of complaint brought before him: of which there are two kinds; the one, which a perſon hath by reaſon of his *fee*, and by virtue thereof doth right in all plaints, concerning the lands *within his fee*; the other is a juriſdiction given by the prince to a bailiff, as divided by the *Normans*; and by him whom they called a bailiff, we may underſtand all who have commiſſion from the King to give judgment in any cauſe. *Cuſtum. Normand. cap.* 2.

The courts and judges at *Weſtminſter* have juriſdiction all over *England*; and are not reſtrained to any county or place: but all other courts are confined to their particular juriſdictions; which if they exceed, whatever they do is erroneous. 2 *Lil. Abr.* 120.

There are three ſorts of inferior juriſdictions; the *firſt* whereof is *tenera placita*, which is the loweſt, and the party may either ſue there, or in the King's courts: the *ſecond* is *conuſance of pleas*; and by this a right is veſted in the lord of the franchiſe *to hold pleas*; and he is the only perſon that can take advantage of it, by claiming his franchiſe: the *third* ſort is an *exempt juriſdiction*; as where the King grants to ſome city, that the inhabitants ſhall be ſued within their city, and not elſewhere; tho' there is no juriſdiction, which can withſtand a *certiorari* to the ſuperior courts. 3 *Salk.* 79, 80.

A court ſhall not be preſumed to have a juriſdiction, where it doth not appear to have one. 2 *Hawk.* 59. If an action is brought in a corporate town, and the plaint ſheweth not that the matter ariſes *infra juriſdictionem* of the court, it will be wrong, though the town be in the margin; but the county ſerves in the margin for the ſuperiour courts. *Jenk. Cent.* 322. The declaration in a baſe court muſt alledge, that the goods were ſold and delivered *within the juriſdiction thereof*, as well as that the defendant *promiſed* within it. *Wilſ. par.* 2. 16.

After a verdict for the plaintiff in *C. B.* for leſs than 40*s.* the defendant may enter a ſuggeſtion on the roll that he reſided in *Middleſex*, which if true, the *C. B.* hath no juriſdiction, by the late *ſtatute*, touching the county court of *Middleſex.* Ib. 68. See *Stat.* 22 *Geo.* 2. *c.* 33.

Where commiſſioners or inferior juriſdictions, whoſe powers are limited, aſſume a juriſdiction they have not, the law gives an action againſt them. 2 *Wilſ.* 382.

As to the juriſdiction of the King's Bench in the principality of *Wales*, ſee *ib. par.* 1. 193.

Although a caſe be debated and have judgment in the Spiritual courts, yet the King's courts may afterwards diſcuſs the ſame matter. *Artic. Cleri, Stat.* 9 *Ed.* 2. *c.* 6.

In ſome cauſes, the *Spiritual* and *Temporal* courts have a *concurrent juriſdiction.* See *Black. Com.* 3 *V.* 111. 4 *V.* 418, 419.

Juris utrum, Is a writ which lies for the parſon of a church, whoſe predeceſſor hath alienated the lands and tenements thereof. *F. N. B.* 48. And the writ *juris utrum* ſhall be granted to try whether *free alms* belong to a church, where they are transferred, &c. By *Stat.* 18 *Ed.* 1. *c.* 24. If a man intrude into lands and tenements, after the death of a parſon, the ſucceſſor ſhall have this writ: ſo if a parſon be diſſeiſed of lands, parcel of his rectory, and dieth, his ſucceſſor ſhall have a *juris utrum*. New Nat. Br. 109. But if a parſon receive rent of the tenant of the land, which is aliened by his predeceſſor, he ſhall not himſelf have a writ of *juris utrum*; but his ſucceſſor ſhall have it. *Ibid.* 111. A vicar ſhall have a *juris utrum* againſt a parſon for the glebe of his vicarage, which is part of the ſame church: And the plaintiff ought to be named parſon or vicar, or ſuch name in right of which he bringeth his action. *Ibid.* See *ſtat. Weſtm.* 2. 13 *Ed.* 1. *c.* 24. and 14 *Ed.* 3. *Stat.* 1. *c.* 17. See *Black. Com.* 3 *V.* 252.

Jurnale, The *journal* or diary of accounts in a religious houſe.——*Ut patet per* jurnale *hoc anno*——*ut patet per prædictum* jurnale. *Paroch. Antiq. p.* 571. From the French *jour*, a day; whence *journey* was at firſt properly but *one day's travel.* And our plowmen now uſe the word in a ſtrict and original ſenſe; for they call one day's travel, or work at plough, a *journey* or *journe.* Hence a *journeyman* is one who works by the day, &c. *Cowell.*

Jurnedum, A journey or one day's travelling.——*Cowell.*

Juror, *(jurator)* Is one of thoſe perſons who are ſworn on a *jury*; and the law requires the returning of able and ſufficient *jurors.* 16 & 17 Car. 2. c. 3. See alſo the ſtatutes 7 & 8 *W.* 3. *c.* 32. 3 *Geo.* 2. *c.* 25. 4 *Geo.* 2. *c.* 7. 24 *Geo.* 2. *c.* 18. 29 *Geo.* 2. *c.* 19. And as to awarding the *venire* out of the body of the county, ſee 4 *Ann. c.* 16. *ſect.* 6.

Jury, *(jurata,* from the Lat. *jurare,* to ſwear) Signifies a certain number of men ſworn to inquire of and try the matter of fact, and declare the truth *upon ſuch evidence* as ſhall be delivered them in a cauſe: And they are ſworn judges upon evidence *in matter of fact.*

The privilege of trial by *jury*, is of great antiquity in this kingdom; ſome writers will have it that *juries* were in uſe among the *Britains*; but it is more probable that this trial was introduced by the *Saxons*: Yet ſome ſay that we had our trials by *jury* from the *Greeks*; (the firſt trial by a *jury* of twelve, being in *Greece.*) By the laws of King *Ethelred*, it is apparent that *juries* were in uſe many years before the Conqueſt; and they are, as it were, *incorporated with our conſtitution, being the moſt valuable part of it*; for without them no man's life can be impeached, (unleſs by parliament) and no one's liberty or property ought to be taken from him. And theſe *juries* are not only uſed in the circuits of the judges, but in other courts and matters: As if a coroner inquire how a perſon killed came by his death, he doth it by *jury*; and the juſtices of peace in their quarter-ſeſſions, the ſheriff in his County-Court, the ſteward of a Court-Leet or Court-Baron, &c. if they inquire of any offence, or decide any cauſe between party and party, they do it in like manner: And at the general aſſiſes there are uſually many *juries*, becauſe there are many cauſes, civil and criminal, to be tried; whereof one is called the *Grand Jury*, and the reſt *Petit Juries*, of which it is ſaid there ſhould be one for every hundred. *Lamb. Eiren. pag.* 384

Anciently the *jury* as well in Common Pleas, as Pleas of the Crown, were *twelve knights*, according to *Glanvill* and *Bracton*: And to make a jury in a writ of right, called the Grand Aſſiſe, there muſt be ſixteen, *viz. four knights, and twelve others.* *Finch* 412. The *grand jury* generally conſiſts of twenty-four men of greater quality than the other, choſen indifferently out of the whole county by the ſheriff; and the *petit jury* conſiſteth of twelve men, of *equal condition with the party indicted*, impanelled in criminal caſes, called the *Jury of Life and Death*: The grand *jury* find the bills of indictment againſt criminals, and the *petit jury* convict them by verdict, in the giving whereof *all the twelve muſt agree*; and according to their verdict the judgment paſſeth. 3 *Inſt.* 30, 31, 221.

By the Common law *jurymen* are to be returned in all caſes for trial of general iſſues, from the county where the fact was done. *S. P. C.* 154. And *jurymen* are to be freemen, indifferent, and not outlawed or infamous; aliens, men attainted of any crime, ought not to ſerve on *juries*; and infants, perſons ſeventy years old, clergymen, apothecaries, &c. are exempted by law from ſerving upon *juries.* 2 *Inſt.* 447. 3 *Inſt.* 221. Barons of the realm, and all above them, are not to ſerve in any ordinary *jury*; and others may have this privilege by writ, or the King's grant, *&c.* 6 *Rep.* 53. 1 *Brownl.* 30. But ſuch as have charters of exemption, ſhall be ſworn on great aſſiſes, and in attaints, *&c.* when their oath is requiſite. 52 *H.* 3. *c.* 14.

By ſtatute, *jurors* impanelled are to be *the next neighbours, moſt ſufficient and* leaſt *ſuſpicious*; or the officer ſhall forfeit double damages. 28 *Ed.* 1. *c.* 9. Their qualification by 13 *Ed.* 1. was 40*s.* *per Annum* eſtate; which was increaſed to 4*l.* *per Annum* by 27 *Eliz.* *c.* 6. and is made 10*l.* *per Annum* freehold or copyhold within the ſame county, by 4 & 5 *W.* & *M.* *c.* 24. But all cities, boroughs, and corporate towns, are excepted out of this laſt act: And trials of felons in corporations may be by freemen worth 40*l.* in goods, by the 23 *Hen.* 8. *c.* 13. Panels of *juries* returned to inquire for the King, may be reformed by the judges of gaol-delivery, *&c.* 3 *Hen.* 8. *c.* 12.

Jurymen not appearing ſhall forfeit iſſues, if they have no reaſonable excuſe for their defaults, *viz.* 5*s.* on the firſt writ, upon the ſecond 10*s.* and the third writ 13*s.* 4*d.* 35 *Hen.* 8. *c.* 6. Though no *jury* is to appear at *Weſtminſter* for a trial, when the offence was committed *thirty* miles off; except the Attorney General require it. 18 *Eliz.* *c.* 5. Conſtables of pariſhes, *&c.* at *Michaelmas* quarter-ſeſſions yearly, are to return to the juſtices of peace, liſts of the names and places of abode of perſons qualified to ſerve on *juries*, between the ages of twenty-one and ſeventy, *atteſted upon oath*, on pain of forfeiting 5*l.* And the juſtices of peace ſhall order the clerk of the peace to deliver a duplicate of thoſe liſts to the ſheriff, *&c.* And ſheriffs are to impanel no other perſons, under the penalty of 20*l.* *&c.* 7 & 8 *W.* 3. *c.* 32. 3 *Ann.* *c.* 18.

No ſheriff, bailiff, *&c.* ſhall return any perſon to ſerve on a *jury*, *unleſs he hath been duly ſummoned ſix days, before the day of appearance*; nor ſhall take any money, or other reward to excuſe the appearance of any *juryman*, on pain of forfeiting 10*l.* 4 & 5 *W.* & *M.* *c.* 24.

If a trial is for any thing which concerns the ſheriff or under-ſheriff, the coroner is to return the *jury*. And the proceſs to bring in the *jury* in *B. R.* is a *diſtringas jurat'*, and in *C. B.* *venire fac' & habeas corpora jurator'*: Upon the *venire*, the ſheriff, *&c.* returns the *jury* in a panel (or little piece of parchment) annexed to the writ, and then goes the writ of *habeas corpora* to bring in the *jury*; and where, after iſſue joined, a ſuit is continued on the roll, the proceſs is to be continued from time to time againſt the *jurors*. Br. Diſcontin.

If the ſheriff return twelve *jurors* only according to the writ, where he ought to have returned twenty-four according to the uſage, for ſpeeding the trial in caſe of challenge, death, or ſickneſs, *&c.* he ſhall be amerced. *Jenk. Cent.* 172.

Liſts of *jurors* qualified according to the acts (4 & 5 *W.* & *M.* *c.* 24. 7 & 8 *W.* 3. *c.* 32. and 3 & 4 *Ann.* *c.* 18.) are now to be made from the rates of each pariſh, and fixed on the doors of churches, *&c.* *twenty days before the feaſt of St. Michael*, that public notice may be given of perſons qualified omitted, or of perſons inſerted who are not ſo, *&c.* and the liſts being ſet right by the juſtices of peace in quarter-ſeſſions, duplicates are to be delivered to the ſheriffs of counties, by the clerks of the peace; the names contained in which ſhall be entered alphabetically by the ſheriffs in a book, with their additions, and places of abode, *&c.* If any ſheriff ſhall return other perſons to ſerve on *juries*; or the clerk of the aſſize record any appearance, when the party did not appear, they ſhall be fined by the judges, not above 10*l.* nor leſs than 40*s.* The like penalty for taking money to excuſe perſons from ſerving; and the ſheriffs may be fined 5*l.* for returning *jurors*, who have ſerved two years before, *&c.*

Sheriffs on the return of writs of *venire facias*, are to annex a panel of the names of a competent number of *jurors* named in the liſts, not *leſs* than *forty-eight* in any county, nor *more* than *ſeventy-two*, (without direction of the judges) who ſhall be ſummoned to ſerve at the aſſiſes, *&c.* and the names of the perſons impanelled ſhall be written in ſeveral diſtinct pieces of paper, of equal ſize, and be delivered by the under-ſheriff to the judge's marſhal, who is to cauſe them to be rolled up all in the ſame manner, and put together in a box; and when any cauſe ſhall be brought on, ſome indifferent perſon is to draw out twelve of the ſaid papers of names, who, not being challenged, ſhall be the *jury* to try the cauſe; but if any perſons are challenged and ſet aſide, or ſhall not appear, then a further number to be drawn till there is a full *jury*, *&c.*

Where a cauſe comes on, before the *jury* in any other cauſe have given their verdict, the court ſhall order twelve of the reſidue of the papers to be drawn, *&c.* And *jurors* making default in appearance, ſhall be fined, not exceeding 5*l.* nor under 40*s.* *Stat.* 3 *Geo.* 2. *c.* 25. Perſons having eſtates for five hundred years, or ninety-nine years, or other term determinable on lives, *&c.* of the yearly value of 20*l.* are declared qualified to ſerve on *juries*, and to be inſerted in the freeholders book, *&c.* And ſheriffs of any county, or city, ſhall not impanel perſons on any *jury* for the trial of capital offences, that would not be qualified in civil cauſes: In *London* *jurors* to be *houſe-keepers*, having *lands* or *goods* worth 100*l.* who may be examined on oath, *&c.* *Ibid.* Leaſeholders on leaſes where the rent is 50*l.* a year are liable to ſerve upon *juries* in the county of *Middleſex*; but no perſon ſhall be returned as a *juror*, who hath ſerved two terms before in that county, by *ſtat.* 4 *Geo.* 2. *c.* 7. *Vide* the *Statutes.*

Either the plaintiff or defendant may uſe their endeavours for any *juryman* to appear; but one who is not a party to the ſuit, may not: And an attorney was thrown over the bar, becauſe he had given the names of ſeveral perſons in writing to the ſheriff, whom he would have returned on the *jury*, and the names of others whom he would not have returned. *Moor* 882. If a *juryman* appear, and refuſe to be ſworn, or refuſe to give any verdict, if he endeavours to impoſe upon the court, or is guilty of any miſbehaviour after departure from the bar, he may be fined, and attachment iſſue againſt him. 2 *Hawk. P. C.* 145, 146.

After a *juror* is ſworn he may not go from the bar *until the evidence is given*, for any cauſe whatſoever, *without leave of the court*; and *with leave* he muſt have a *keeper* with him. 2 *Lil.* 123, 127. A witneſs may not be called by the *jury* to recite the ſame evidence he gave in court, when they are gone from the bar. *Cro. Eliz.* 189. Nor may a party give a brief or notes of the cauſe to the *jury* to conſider of; if he doth, he and the *jurors* may be fined. *Moor* 815. The *jurymen* are not to meddle with any matters which are not in iſſue; *but they may find a thing of their own knowledge, which is not given in evidence.* 3 Leon. 121. When the evidence is given, the *jury* are to be kept together till they bring in their verdict, without ſpeech with any, and without meat or drink, fire or candle, otherwiſe than with leave of the court, by conſent of the parties; and the court may give them leave to eat or drink at the bar, but not out of court. 1 *Inſt.* 227.

If *jurymen* after ſworn, either before or after they are agreed of their verdict, eat and drink, the verdict may be good; but they are fineable: And if it be at the charge of either party, the verdict is void. *Daliſ.* 10. *Cro. Jac.* 21. If they agree to caſt lots for their verdict, or to bring in Guilty or Not guilty, as the court ſhall ſeem inclined, they may be fined. 2 *Lev.* 205. *Cro. Eliz.* 779. But a *jury* have been permitted to recall their verdict; as where one was indicted of felony, the *jury* found him Not guilty, but immediately before they went from the bar, they ſaid they were miſtaken, and found him guilty, which laſt was recorded for their verdict. *Plowd.* 211.

Juries are fineable, if they are unlawfully dealt with to give their verdict; but they are not fineable for giving their verdict contrary to the evidence, or againſt the direction of the court; for the law ſuppoſes *the jury may have ſome other evidence than what is given in court*, and they may not only find things of their own knowledge, but they go according to their conſciences. *Vaugh.* 153. 3 *Leon.* 147.

Attaint may lie againſt a *jury* in a civil cauſe, for going contrary to evidence, in caſe of any corruption. *Vaugh.* 144. And *jurors* are ſubject to no proſecution for giving their verdicts, except by way of attaint for a falſe verdict; in which caſe being found guilty, they are puniſhable by loſs of lands and goods, their houſes to be raſed, and their bodies caſt into priſon, and the party is to be reſtored to all that he loſt by the verdict; but this puniſhment is altered by the *ſtat.* 23 *Hen.* 8. *c.* 3. 2 *Hawk.* 147.

For a falſe verdict, in that point which is merely out of the iſſue, the *jury* may not be ſued. *Hob.* 53, 114, 227. If a *jury* find matter *not in iſſue* or pertinent, it will be void: So, if it be againſt law and ſenſe, *&c.*

They are to adjudge upon the evidence given; but the *jurors* may not contradict what is agreed in pleading between the parties; if they do, it ſhall be rejected; and where the *jury* finds the fact, but conclude upon it contrary to law, the court may reject the concluſion. 1 *And.* 41. 10 *Rep.* 56. *Co. Lit.* 22. *Hob.* 222. The *jury* may find a thing done in another county, upon a general iſſue; and foreign matters done out of the realm, *&c.* *Moor c.* 238. *Godb.* 33. Jurors having once given their verdict, although it be imperfect, ſhall not be ſworn again in the ſame iſſue unleſs it be in aſſiſe. 2 *Cro.* 210. If a *juryman* is guilty of bribery, he is diſabled to be of any aſſiſe or *jury*, and to he impriſoned and ranſomed at the King's will. 5 *Ed.* 3. *c.* 10. *Jurymen* accuſed of bribery, are to be tried preſently by a *jury* then taken. 34 *Ed.* 3. *c.* 8. And if a juror takes any thing of either party to give his verdict, he ſhall pay ten times as much as taken; or ſuffer a year's impriſonment. 38 *Ed.* 3. *c.* 12.

If a *jury* take upon them the knowledge of the law, and give a general verdict, it is good; but in caſes of difficulty, it is beſt and ſafeſt to find the ſpecial matter, and leave it to the judges to determine *what is the law upon the fact.* 1 Inſt. 30. A *jury* ſworn and charged in caſe of life and member, cannot be diſcharged till they give a verdict: In civil caſes, it is otherwiſe; as where nonſuits are had, *&c.* And ſometimes when the evidence had been heard, the parties doubting of the verdict, do conſent that a juror ſhall be withdrawn or diſcharged. 1 *Inſt.* 154, 227.

Special Jury, Is where either party is of opinion, that the perſons who uſually attend on common juries may not be of ſufficient knowledge and experience to determine the point in queſtion, and would prefer men who in all probability have had a more liberal education and who poſſeſs more extenſive knowledge, *&c.* then the court upon motion orders the ſheriff to attend the *Secondary* or *prothonatory*, with his book of freeholders of the county, and he, in the preſence of the attornies on both ſides, is to ſtrike a *jury:* And when a cauſe of conſequence is to be tried at the *bar*, the court, on motion and affidavit made, will make a rule for the ſecondary or prothonatory to name forty-eight freeholders; and each party is to ſtrike out twelve, one at a time, the plaintiff or his attorney beginning firſt, and out of the remainder the jury for the trial are to be taken; and this is called a *Special Jury.* Trin. 23 Car. B. R. 2 Lil. 123.

How *ſpecial juries* are to be ſtruck, ſee *Annaly*, 158.

The nomination of a *ſpecial jury*, is to be in the preſence of the attornies on each ſide; but if either of them refuſe to come, then the ſecondary, *&c.* may proceed *ex parte*, and he ſhall ſtrike twelve for the attorney who makes default. *Trin.* 8 *W.* 3. *B. R.*

It has been alſo adjudged, that if a rule is made for a *ſpecial jury*, and it is not expreſſed that the maſter of the office or ſecondary ſhall ſtrike forty-eight freeholders, and that each of the parties ſhall ſtrike out twelve; in ſuch caſe the maſter may ſtrike the twenty-four, and neither of the parties ſtrike out any. 1 *Salk.* 405. This is never done in a capital cauſe. *T. Jones* 222. A *ſpecial jury* may be granted to try a cauſe at bar, without the conſent of parties. *Paſch.* 10 *Geo.* 1. A rule may be made for a good *jury*, and that a ſpecial verdict may be found, *&c.* *Mod. Caſ. in Law and Eq.* 221.

By the late act, in trials of iſſues or indictments, *&c.* and in all actions whatſoever, on the motion of any proſecutor, plaintiff or defendant, *&c.* the courts at *Weſtminſter* may order a *ſpecial jury* to be ſtruck in ſuch manner as upon trials at bar: And when any *ſpecial jury* ſhall be ordered by rule of the ſaid courts in any cauſe ariſing in any city, *&c.* the jury is to be taken out of liſts or books of perſons qualified, which ſhall be produced and brought by ſheriffs, *&c.* before the proper officer, as the freeholders book is for ſtriking *juries* in cauſes ariſing in counties. *Stat.* 3 *Geo.* 2. *c.* 25.

The juſtices of aſſiſe for the counties palatine of *Cheſter*, *Lancaſter*, *&c.* upon motion in behalf of the King, or any proſecutor, or defendant, in an indictment, information, or any ſuit, may appoint a jury to be ſtruck for trial of iſſues in like manner as *ſpecial juries* in the courts of law at *Weſtminſter.* 6 Geo. 2. c. 37. And by this ſtatute, the 3 & 4 *Geo.* 2. are made perpetual.

Perſons ſummoned on *juries* in courts of record in cities, corporations, and franchiſes, and not attending, may be fined. 29 *Geo.* 2. *c.* 19. Touching the affairs of *merchants*, where two merchants are plaintiff and defendant, a *jury* of merchants may be returned to try the iſſue between them. The court was moved that a *jury* of merchants might be returned to try an iſſue between two merchants, and it was granted; *becauſe is was conceived they might have better knowledge of the matters in difference than others who were not of that profeſſion.* Hil. 21 Car. B. R. When an *alien* is plaintiff or defendant in a cauſe, the *jury* ought to be *half foreigners* and half *Engliſh*; but it is not neceſſary that the foreigners be all of the ſame country. 2 *Lil.* 125. And if the trial is by all *Engliſh* jurors, it is not error; where the party ſlips his time, and does not pray trial by an equal number of aliens, *&c.* See *Challenge*, *Verdict.*

Trial by jury, Was anciently called *Duodecim virale judicium.*

By 24 *Geo.* 2. *c.* 18 *ſect.* 1. The party applying for *ſpecial jury*, to pay the fees of ſtriking the ſame and all expences thereby occaſioned and not to be allowed it in coſts, unleſs the judge certifies that it was a cauſe proper to be tried by a *ſpecial jury.* *Vide* the *Stat.*

As to finding jurors for not appearing, vide 29 *Geo.* 2. *c.* 19.

Vide for the learning at large on the ſubject of *juries*, 3 *New Abr.* 230. See *Judicium parium.*

Jurrock, Is ſaid to be a kind of cork, mentioned in the ſtatute. 1 *R.* 3. *c.* 8.

Jus, Signifies law or right, authority and rule. *Lit. Dict.*

Jus accreſcendi, Is the right of ſurvivorſhip between jointenants. *Lit.* 280. 1 *Inſt.* 180. *Black. Com.* 2 *V.* 184.

Jus ad rem. An inchoate and imperfect right, ſuch as a parſon promoted to a living acquires by nomination and inſtitution. *Black. Com.* 2 *V.* 312.

Jus Anglorum. The laws and cuſtoms of the *Weſt Saxons*, in the time of the *Heptarchy*, by which the people were for a long time governed, and which were preferred before all others, were termed *Jus Anglorum.*

Jus Coronæ, The right of the *Crown*; and it is part of the law of *England*, though it differs in many things from the general law relating to the ſubject. 1 *Inſt.* 15. The King may purchaſe lands to him and his heirs, but he is ſeiſed thereof in *jure coronæ*; and all the lands and poſſeſſions whereof the King is thus ſeiſed, ſhall follow the crown in *diſcents*, *&c.*

Jus Curialitatis Angliae. See *Curteſy of England.*

Jus duplicatum, Is where a man hath the poſſeſſion as well as property of any thing. *Bract. lib.* 4. *tract.* 4. *c.* 4. *Black. Com.* 2 *V.* 189.

Jus Gentium, Is the law by which kingdoms and ſocieties in general are governed. *Selden.*

Jus Habendi & Retinendi, Right to have and retain the profits, tithes, and offerings, *&c.* of a rectory or parſonage. *Hugh's Parſons Law* 188.

Jus Hæreditatis, The right or law of inheritance.

Jus in re, Complete and full right. Such as a parſon acquires, on promotion to a living, who, after nomination and inſtitution hath corporal poſſeſſion delivered to him, for till ſuch delivery of corporal poſſeſſion he had only *jus in rem*. Black. Com. 2 V. 312.

Jus Patronatus, Is a commiſſion granted by the biſhop to ſome perſons to inquire who is the rightful *patron* of a *church*. If two patrons preſent their clerks, the biſhop ſhall determine who ſhall be admitted by *right of patronage*, *&c.* on commiſſion of inquiry of ſix clergymen, and ſix laymen, living near to the church; who are to inquire on articles as a jury, Whether the church is void? Who preſented laſt? Who is the rightful patron? *&c.* But if coparceners ſeverally preſent their clerks, the biſhop is not obliged to award a *jus patronatus*, becauſe they preſent under one title; and are not in like caſe where two patrons preſent under ſeveral titles. 5 *Rep.* 102. 1 *Inſt.* 116.

The awarding a *jus patronatus* is not of neceſſity, but at the pleaſure of the ordinary, for his better information who hath the right of patronage, for if he will at his peril take notice of the right, he may admit the clerk of either of the patrons, without a *jus patronatus*. 1 Leon. 168. A biſhop may award a *jus patronatus* with a ſolemn premonition to all perſons, *quorum intereſt*, *&c.* where he knows not who is the patron, to give notice of an avoidance by deprivation, *&c.* *Hob.* 318. This inquiry by *jus patronatus* is to excuſe the ordinary from being a diſturber. *Jus patronatus* is not within the ſtatute of limitations, 1 *M. Seſſ.* 2. *c.* 5. In whoſe name, and under what *teſte* a *jus patronatus* is to iſſue. See *ſtat.* 1 *Ed.* 6. *c.* 2. *ſect.* 3. And *Black. Com.* 3 *V.* 246.

Jus Poſſeſſionis, A right of ſeiſin or poſſeſſion; and a parſon hath a right to the poſſeſſion of the church and glebe, for *he hath the freehold*; and is to receive the profits to his own uſe. *Parſ. Law* 188.

Jus Preſentationis, The right of the patron of preſenting his clerk unto the ordinary to be admitted, inſtituted and inducted into a church. *Ibid.*

Jus Recuperandi, Intrandi, &c. A right of recovering and entering lands, *&c.*

All theſe *rights* following the relation of their objects, are the effects of the *Civil law*. Co. Lit. 266.

Juſta, A certain meaſure of liquor, *quaſi* juſta *menſura*; being as much as was ſufficient to drink at once. *Mon. Ang. Tom.* 1. *pag.* 149.

Juſts, (Fr. *jouſta*, i. e. *decurſus*) Were exerciſes between martial men and perſons of honour, with ſpears on horſeback; and different from *tournaments* which were military contentions, and conſiſted of many men in troops; whereas *jouſts* were uſually between two men ſingly. They are mentioned in the ſtatute 24 *Hen.* 8. *c.* 13. and are now diſuſed. See *Tournament*.

Juſtice, *(juſtitia)* Is a conſtant, righteous inclination to give every one his due; or the act of doing what is right and juſt. *Chamb. Johnſon, Locke, Inſtit'.* The delaying *juſtice* is an obſtruction to and kind of denial thereof; but this is underſtood of unneceſſary and unjuſt delay, for ſometimes it is convenient for the better finding out the truth, and preparation of parties, that they may not be ſurpriſed.

Juſtice and right ſhall not be ſold, denied or delayed. *Mag. Chart.* 9 *Hen.* 3. *c.* 29. Right ſhall be done to all without reſpect. *Stat. Weſt.* 1. 3 *Ed.* 1. *c.* 1. *Juſtice* ſhall not be delayed for any command under the Great Seal, *&c.* 2 *Ed.* 3. *c.* 8. 14 *Ed.* 3. *ſtat.* 1. *c.* 14. 11 *R.* 2. *c.* 10. See *Black. Com.* 1 *V.* 141, 266. 3 *V.* 109. 4 *V.* 128, 179.

Juſtice, *(juſticiarius)* Signifies an officer deputed by the King to adminiſter juſtice, and *do right by way of judgment*; and is called juſtice, becauſe in ancient time the Latin word for him was *juſtitia*, and for that he hath his authority by deputation, and not *jure magiſtratus*. Glanvil, lib. 2. c. 6.

In the *King's Bench* and *Common Pleas*, there are Chief Juſtices; the former of which, is called *Capitalis Juſticiarius Banci Regii, vel ad placita coram rege tenenda*, hath the title of Lord whilſt he enjoys his office, and is ſtiled *Capitalis Juſticiarius*, becauſe he is chief of the reſt; and for this reaſon he hath uſually the title of Lord Chief Juſtice of *England*. This juſtice was anciently created by letters patent under the Great Seal; but is now made by writ in this ſhort form: *Rex, &c.* Roberto Raymond *Mil ſalutem, ſciatis quod conſtituimus vos* juſticiarium noſtrum capitalem *ad placita coram nobis tenenda, quamdiu vos bene geſſeritis, &c. Teſte, &c.*

The ancient dignity of this ſupreme magiſtrate was very great; he had the prerogative to be vicegerent of the kingdom, when any of our Kings went beyond ſea, being choſen to this office out of the greateſt of the nobility; and had the power alone, which afterwards was diſtributed to three other great magiſtrates, that is, he had the power of the Chief juſtice of the *Common Pleas*, of the Chief Baron of the *Exchequer*, and the Maſter of the *Court of Wards*; and *he commonly ſat in the King's Palace*, and there executed that authority which was formerly performed *per comitem palatii*, in determining differences which happened between the barons and other great perſons of the kingdom, as well as cauſes criminal and civil between other men: But King *Richard* I. firſt diminiſhed his power, by appointing two other juſtices; to each whereof he aſſigned a diſtinct juriſdiction, *viz.* to one the *North* parts of *England*, to the other the *South*; and in the reign of King *Edward* I. they were reduced to one court, with a further abridgment of their authority, both as to the dignity of their perſons, and extent of their juriſdiction; for no more were choſen out of the nobility as anciently, but out of the commons, who were men of integrity, and ſkilful in the laws of the land; whence it is ſaid the ſtudy of the law dates its beginning. *Origines Judiciales.*

In the time of King *John*, and other of our ancient Kings, it often occurs in charters of privilege, *Quod non ponatur reſpondere, niſi coram nobis, vel* capitali juſticia *noſtra:* And this high officer hath at this time a very extenſive power and juriſdiction in pleas of the crown; and is particularly intruſted not only with the prerogative of the King, but the liberty of the ſubject. The Chief Juſtice of the *Common Pleas* hath alſo the title of Lord whilſt he is in office, and is called *dominus juſticiarius communium placitorum, vel dominus juſticiarius de banco*; who, with his aſſiſtants, did originally, and doth yet, hear and determine *Common Pleas*, in civil cauſes, as diſtinguiſhed from the King's pleas, or pleas of the crown. *Bract. lib.* 3. The chief Juſtices are inſtalled or placed on the bench by the Lord *Chancellor*; and the other juſtices by the Lord *Chancellor* and the Lord Chief Juſtices. Beſides the Lords Chief Juſtices and the other juſtices of the courts at *Weſtminſter*, there are many other juſtices commiſſioned by the King to execute the laws; as juſtices of aſſiſe, of the *Foreſt*, of *Niſi prius*, *Oyer* and *Terminer*, *&c.* all of them treated of under their *heads*; and *Juſtices of Peace*, *&c.*

Juſtice of the Foreſt, *(Juſticiarius foreſtæ)* Is alſo a Lord by his office, and hears and determines all offences within the foreſt, committed againſt vert or veniſon: Of theſe there are two, whereof one hath juriſdiction over all *foreſts* on this ſide *Trent*, the other of all beyond it. The chief point of their juriſdiction conſiſteth upon the articles of the King's charter, called *Charta de foreſta*, made *Anno* 9 *Hen.* 3. concerning which ſee *Cambd. Brit. p.* 214. See *Protoforeſtarius*. The court where this juſtice ſits and determines, is called *The juſtice-ſeat of the foreſt*, held once every three years. *Manwood's Foreſt Laws, cap.* 24. He is alſo called *Juſtice in eyre of the foreſt*; and is the only *juſtice* that may appoint a deputy by the ſtatute of 33 *Hen.* 8. *c.* 35.

Juſtice of the hundred, *(Juſticiarius Hundredi) Erat ipſe* hundredi Dominus, *qui et centurio et centenarius,* hundredique *aldermannus appellatus eſt. Præerat omnibus,* hundredi *friborgis, cognovitque de cauſis majuſculis, quæ in eiſdem finiri non potuerunt.* Spelm.

Juſtiſements, from *juſtitia*, All things belonging to *juſtice* Co. on *Weſtm.* 1. *fol.* 225. Alſo the effects or execution of *juſtice* or of juriſdiction.

Juſtices of Aſſiſe, *(Juſticiarii ad capiendas aſſiſas)* Are ſuch as were wont by ſpecial commiſſion to be ſent (as occaſion was offered) into this or that county, to take aſſiſes for the eaſe of the ſubjects; for, as theſe actions paſs always by jury, many men could not, without damage and charge, be brought to *London*, therefore juſtices for this purpoſe, by commiſſion particularly authorized, were ſent to them. For it ſeems, that the juſtices of the *Common Pleas* had no power to take aſſiſes till the ſtat. of 8 *R.* 2. *c.* 2. by which they were enabled to it, and to deliver gaols. And the juſtices of the *King's Bench* have by that ſtatute ſuch power affirmed unto them, as they had one hundred years before.

Theſe commiſſions *Ad capiendas aſſiſas*, have of late years been ſettled and executed only in *Lent*, and the *long vacation*, (called now the *Lent* and *Summer* aſſiſes) when the juſtices, and other learned lawyers, may be at leiſure to attend thoſe controverſies; whereupon it alſo falls out, that the matters that were wont to be heard by more general commiſſions of *juſtices in eyre*, are heard all at one time with theſe aſſiſes, which was not ſo of old, as appears by *Bracton, lib.* 3. *cap.* 7. *num.* 2. *Habeat etiam* juſticiarios *itinerantes de comitatu in comitatum, quandoque ad omnia placita; quandoque ad quædam ſpecialia, ſicut* aſſiſas, *&c. & ad gaolas deliberandas; quandoque ad unam vel duas; non plures.* And by this means the juſtices of both benches being worthily accounted the fitteſt of all others, and their aſſiſtants, were employed in theſe affairs. But no juſtice of either bench, or any other, may be juſtice of aſſiſe in his own county, *Anno* 8 *R.* 2. *c.* 2. and 33 *Hen.* 8. *c.* 24. Tho' they are not reſtrained from and frequently ſit on the crown ſide indeed, otherwiſe the buſineſs of the circuits, could not well be tranſacted. And thoſe who now are called juſtices of aſſiſe, and twice every year go the circuit by two and two through all *England*, diſpatch their ſeveral buſineſſes by ſeveral commiſſions. *Cromp. Jur. fol.* 210. For they have one commiſſion to take aſſiſes, another to deliver gaols, another of *oyer* and *terminer*, *&c.* That juſtices of aſſiſe and juſtices in eyre did anciently differ, appeareth by 27 *Ed.* 3. *cap.* 5. And that juſtices of aſſiſe and juſtices of gaol-delivery were different, is evident by 4 *Ed.* 3. *c.* 3. The oath taken by the juſtices of aſſiſe is all one with that taken by the juſtices of the *King's Bench*. Old Abridgement of Statutes, tit. *Sacramentum Juſticiariorum.* Cowell.

Juſtices of both benches, Shall decide pleas commenced before other matters be arraigned, *St. Weſtm.* 1. 3 *Ed.* 1. *c.* 46.

Juſtices in eyre, (*Juſticiarii itinerantes*) Are ſo termed of the old *French* word *erre*, as (*a grand erre, i. e. magnis itineribus,*) proverbially ſpoken. Theſe in ancient time, were ſent with commiſſion into divers countries to hear ſuch cauſes eſpecially, as were termed *pleas of the crown*. And this was done for the eaſe of the people, who muſt elſe have been hurried to the King's Bench, if the caſe were too high for the county-court: They differed from the *juſtices of oyer and terminer*, becauſe they (as we ſaid before) were ſent upon one or few ſpecial cauſes, and to one place; whereas the *juſtices in eyre* were ſent thro' the provinces and counties of the land, with more indefinite and general commiſſion, as appeareth by *Bracton, lib* 3. *c.* 11, 12, 13. and *Britton, cap.* 2.

And again, becauſe the juſtices of oyer and terminer were ſent uncertainly upon any uproar, or other occaſion in the country; but theſe in *eyre* (as Mr. *Gwin* ſets down in the *Preface to his Reading,*) were ſent but once in every ſeven years; with whom agrees *Horne* in his *Mirror of Juſtices, l.* 2. *c. Queux poient eſtre actours, &c. & l.* 2. *cap. Des peches criminals. &c. al ſuit del Roy, &c.* And *lib.* 3. *cap. De juſtices in eyre:* Where he alſo declares what belongs to their office. But according to *Orig. Juridiciales*, they went oftner. Theſe were inſtituted by King *Henry* the Second, as *Camb.* in his *Brit.* witneſſeth, *pag.* 104. and *Hoveden par. poſt. ſuor. Annal. fol.* 113. hath of them theſe words, *Juſticiarii itinerantes, conſtituti per* Henricum *ſecundum, qui diviſit Regnum ſuum in ſex partes, per quarum ſingulas tres* juſticiarios *itinerantes conſtituit, &c.* In ſome reſpect they reſembled our *juſtices of aſſiſe* at preſent, though their authority and manner of proceeding much differ. *Co. Litt. fol.* 293. *Cowell.*

Juſtices of Gaol-Delivery, (*Juſticiarii ad gaolas deliberandas,*) Are thoſe who are ſent with commiſſion, to hear and determine all cauſes appertaining to ſuch, who for any offence are caſt into gaol: part of their authority is to puniſh ſuch as let to mainprize thoſe priſoners who are not bailable by law, nor by the ſtatute *De Finibus, cap.* 3. *F. N. B. fol.* 151. Theſe ſeem in ancient time to have been ſent into the country upon ſeveral occaſions; but afterwards *juſtices of aſſiſe* were likewiſe authorized to the like purpoſes. *Anno* 4 *Ed.* 3. *c.* 3. Their oath is all one with others of the King's *juſtices* of either bench. *Old Abridgment of the Statutes*, tit. *Sacramentum Juſticiariorum. Cowell.*

Juſtices of aſſiſe, if laymen, ſhall deliver the gaols. 27 *Ed.* 1. *ſt.* 1. *c.* 3.

The juſtices of peace ſhall deliver over their indictments to the juſtices of gaol-delivery. 4 *Ed.* 3. *c.* 2.

Shall be ſworn like the other judges. 2 *Ed.* 3. *c.* 3.

Juſtices of the Jews, (*Juſticiarii ad cuſtodiam Judæorum aſſignati,*) King *Richard* 1. after his return out of the Holy Land, *anno* 1194. appointed particular juſtices, laws, and orders, for preventing the frauds, and regulating the contracts and uſury of the *Jews*. *Hoveden, parte poſt, pag.* 745. *Clauſ.* 3 *Ed.* 1. *m.* 19.

Juſtices of labourers, Were juſtices heretofore appointed to redreſs the frowardneſs of *labouring men*, who would either be idle, or have unreaſonable wages. See 21 *Ed* 3. *c.* 1. 25 *Ed.* 3. *c.* 8. and 31 *Ed.* 1. *c.* 6.

Juſtices of Niſi prius, Are all one at this time with *juſtices of aſſiſe*, for it is a common adjournment of a cauſe in the Common Pleas, to put it off to ſuch a day, *Niſi prius Juſticiarii venerint ad eas partes ad capiendas aſſiſas*; and upon this clauſe of adjournment they are called *Juſtices of Niſi prius*, as well as juſtices of aſſiſe. Their commiſſion you may ſee in *Cromp. Juriſ. fol.* 204. yet with this difference between them, that *Juſtices of aſſiſe* have power to give judgment in a cauſe, but *Juſtices of Niſi prius* only to take the verdict. But in the nature of both their functions, this ſeems to be the greateſt difference, that *Juſtices of Niſi prius* have to deal in cauſes perſonal as well as real; whereas *Juſtices of aſſiſe*, in ſtrict acceptation, meddle only with the poſſeſſory writs called *Aſſiſe*. Cowell.

Juſtices of oyer and terminer, (*Juſticiarii ad audiendum & terminandum,*) Were juſtices deputed upon ſome ſpecial or extraordinary occaſions. *Fitzherbert* in his *Nat. Brev.* ſaith, That the commiſſion *d'oyer and terminer* is directed to certain perſons upon any great riot, inſurrections, heinous miſdemeanors, or treſpaſſes committed. And becauſe the occaſion of granting this commiſſion ſhould be maturely weighed, it is provided by the ſtatute made 2 *Ed.* 3. *c.* 2. That no ſuch commiſſion ought to be granted, but that they ſhall be diſpatched before the juſtices of the one bench or other, or *juſtices errant*, except for horrible treſpaſſes, and that by the ſpecial favour of the King. The form of this commiſſion, ſee *F. N. B. f.* 110.

Juſtices of the pavilion, (*Juſticiarii pavilionis,*) Are certain judges of a *pie-powder court*, of a moſt tranſcendent juriſdiction, held under the biſhop of *Wincheſter* at a fair on *St. Giles's Hill.* near that city, by virtue of letters patent granted by *Richard* 2. and *Edward* 4. *Epiſcopus* Wynton. *& ſucceſſores ſuos, a tempore quo, &c.* Juſticiarios *ſuos, qui vocantur* Juſticiarii pavilionis, *cognitiones placitorum & aliorum negotiorum eadem feria durante, necnon claves portarum & cuſtodiam prædictæ civitatis noſtræ* Wynton, *pro certo tempore feriæ illius, & nonnullas alias libertates, immunitates & conſuetudines habuiſſe, &c.* See the patent at large in *Prynne's Animad.* on 4 *Inſt. fol.* 191.

Juſtices of the Peace, (*Juſticiarii ad Pacem*) Are thoſe who are appointed by the King's commiſſion to keep the peace of the county where they dwell; and are rather *commiſſioners of the peace*, of whom ſome of the greater quality are of the *quorum*, becauſe buſineſs of importance may not be diſpatched without the preſence of them, or one of them. *Juſtices of peace*, (*Polidore Virgil* tells us,) had their beginning in the reign of *William* 1ſt, called the Conqueror; but Sir *Edward Coke* was of opinion, that in the ſixth year of K. *Ed.* 1. *Prima fuit inſtitutio juſticiariorum pro pace conſervanda.* Mr. *Prynne* affirms, that in the reign of King *Hen.* 3. after the agreement made between that King and his barons, guardians *ad pacem conſervandam* were conſtituted; And Sir *Henry Spelman* differs from both theſe, being of opinion that they were not made until the beginning of the reign of King *Ed.* 3. when they were thought neceſſary for ſuppreſſing commotions, which might happen upon dethroning of K. *Ed.* 2.

It is certain the general commiſſion of the peace, by ſtatute, began 1 *Ed.* 3. Tho' before that time there were particular commiſſions of peace to certain men, in certain places; tho' not throughout *England.* 2 *Nelſ. Ab.* 1063. Heretofore there were *conſervators of the peace* at the Common law, elected by the county, upon a writ directed to the ſheriff: But the election of conſervators is transferred by ſtatutes from the people to the King; and at length juſtices of peace were and ſtill are created conſervators of the peace by commiſſion or letters patent under the Great Seal: The power of conſtituting them is only in the King; tho' they are generally made at the diſcretion of the Lord Chancellor or Lord Keeper, by the King's leave; and the King may appoint in every county in *England* and *Wales* as many as he ſhall think fit. 1 *Inſt.* 174, 175. At firſt the number of *juſtices* was not above three or four in a county. 18 *Ed.* 3. Afterwards the number was limited to ſix in every county; whereof two were to be of the beſt quality, (ſuch as we now call of the *quorum*) two men of the law, and two others. And after there was to be one lord, and three or four of the moſt worthy of the county, with ſome learned in the law. 34 *Ed.* 3. By the ſtatute 14 *R.* 2. eight juſtices of peace were to be aſſigned in every county: And the number of *juſtices* has greatly increaſed ſince their firſt inſtitution; Mr. *Lambard* above one hundred years ago complaining of their exceſſive number; and after him the learned *Spelman* takes notice that there were above threeſcore in each county: they are now without limitation; and their prodigious increaſe, with the unſuitable appointment many times made of perſons for this truſt, hath rendred the office contemptible in the eye of our beſt gentry, for whom it was originally intended; it hath therefore been propoſed, that in each county there ſhould be eight honorary juſtices conſtituted of men of quality, who ſhould not be obliged to an attendance any farther than their zeal for juſtice, and love for their country ſhall incline them; and the like number of acting juſtices, gentlemen capable of buſineſs, who ſhould conſtantly attend, and be intitled to a reward for their pains, and upon any neglect be ſubject to penalties. *Lamb. Juſt.*

Juſtices of peace were formerly to be allowed 4 *s.* a day during their attendance at the quarter ſeſſions, to be paid by the ſheriffs of counties. 12 *R.* 3. 2 *H.* 5. 18 *H.* 6. Attornies, *&c.* are incapable to be in the commiſſion of the peace whilſt they practice, but not when they have left off buſineſs. 5 *Geo.* 2. *cap.* 18. By the ſtatute 18 *Geo.* 2. *c.* 20. No perſon ſhall be capable of being a juſtice of peace, or acting as ſuch, who ſhall not have, in law or equity, *for his own uſe in poſſeſſion,* a freehold, copyhold, or cuſtomary eſtate for life, or ſome greater eſtate, or for years determinable upon a life or lives, or 21 years, in lands, *&c.* of the clear yearly value of 100 *l.* over and above all incumbrances, rents and charges; or intitled to the immediate reverſion or remainder in lands, *&c.* of 300 *l. per ann.* and who ſhall not take the oath in this act mentioned, under the penalty of 100 *l.* to be recovered by action of debt, and the proof of the qualification to lie on the defendant; and if he inſiſts on any lands not mentioned in the oath, he is to give notice of them; and lands not mentioned in the oath or notice are not to be allowed.

This act not to extend to cities or towns, *&c.* the board of green cloth, or the two univerſities. Juſtices of peace are to hold their ſeſſions four times a year, *i. e.* the firſt week after *Michaelmas,* the *Epiphany, Eaſter,* and St. *Thomas* called *Becket,* being the 7th of *July.* 36 *Ed.* 3. *c.* 12. 12 *R.* 2. *c.* 10. They are juſtices of record, for none but juſtices of record can take a recogniſance of the peace: And their power ariſes from their commiſſion, or from ſtatutes by virtue of theſe words in their commiſſion, viz. *Sciatis quod aſſignavimus vos conjunctim & diviſim & quemlibet veſtrum juſticiarios noſtros ad pacem noſtram in comitatu noſtro S. conſervandum, &c.* Every juſtice of peace hath a ſeparate power, and may do all acts concerning his office apart and by himſelf; and even may commit a fellow juſtice upon treaſon, felony, or breach of the peace: And this is the ancient power which conſervators of the peace had at Common law. But it has been held, that one juſtice of the peace cannot commit another juſtice, for breach of the peace; though the juſtices in ſeſſions may do it. *Lamb. Juſt.* 385. *Jenk. Cent.* 174. By virtue of another *aſſignavimus,* or clauſe in the commiſſion, two or more juſtices of the peace (one of the *quorum*) have a joint power to inquire by jury of all offices mentioned in the commiſſion; to take indictments, and grant proceſs thereupon; and to hear and try offences; which are matters to be tranſacted at the quarter-ſeſſions. And by the ſtatutes they may act in many caſes where their commiſſion doth not reach; the ſtatutes themſelves being a ſufficient commiſſion. *Lamb. lib.* 4. *Wood's Inſt.* 79, 80.

The ſtatutes 4 *H.* 7. *c.* 12. 33 *H.* 8. *c.* 10. and 37 *H.* 8. *c.* 7. give them a further general power than is expreſſed either in their commiſſion, or in any particular ſtatute. The particular ſtatutes are to be executed as they direct; wherein if no expreſs power is given to any one juſtice, he can admoniſh only, and if not obeyed, may make preſentment of the offence upon the ſtatute, and with his fellow juſtices hear and determine it in ſeſſions; or he may bind the offender to the peace, or the good behaviour: ſome ſtatutes empower one juſtice of peace alone to act; ſome require two, three, four juſtices, *&c.* And where a ſpecial authority is given to juſtices of peace, it muſt be *exactly* purſued; or the acts of the juſtices will not be good. 2 *Salk.* 475.

A juſtice of peace's oath for the execution of his office, is as follows: 'You ſhall ſwear, That in the office of a 'juſtice of peace in and for the county of, *&c.* in all 'and every the articles in his Majeſty's commiſſion en'joined and to you directed, you will do equal right to 'the rich and poor, according to your knowledge, and 'the laws and ſtatutes of this realm; you ſhall not be 'counſel to any perſon, in any quarrel depending before 'you; you ſhall hold your ſeſſions according to the di'rection of the ſtatutes in that caſe made; and you ſhall 'cauſe to be entered the iſſues, fines, and amerciaments 'that ſhall happen to be made, and all forfeitures, with'out any concealment, and ſend an account of them to 'the King's *Exchequer*; you ſhall not ſpare any one for 'gift or other cauſe, nor take any thing for doing the bu'ſineſs of your office, but the fees and allowances accuſ'tomed and fixed by acts of parliament, *&c.* And in 'all things you ſhall well and truly do and execute the of'fice of a juſtice of peace.' Dalt. Juſt.

If a juſtice of peace does not obſerve the form of proceeding directed by ſtatute, it is *coram non judice,* and void; but if he acts according to the direction of the ſtatutes, neither the juſtices in ſeſſions nor *B. R.* can reverſe what he has done. *Jones* 170.

The power of juſtices is *miniſterial* when they are commanded to do any thing by a ſuperior authority, as by the court of *B. R. &c.* In all other caſes they act as *judges:* but they muſt proceed according to their commiſſion, *&c.* And a juſtice is to exerciſe his authority *only within the county where he is appointed by his commiſſion;* not in any city which is a county of itſelf or town corporate, having their proper juſtices, *&c.* tho' in other towns and liberties he may. *Dalt.*

When a juſtice of peace acts to compel another to perform any thing required by law, as where he impriſons or commands any one to be impriſoned, *&c.* he cannot act out of the juriſdiction of his county; but he may take informations any where to prove offences in the county where committed, and he principally reſides, or take a recogniſance to proſecute. *Cro. Car.* 213. And by a late ſtatute, juſtices of any county, dwelling in a city that is in itſelf a county within the county at large, may grant warrants, take informations, make orders, *&c.* at their own dwelling houſes, tho' out of the county, *&c.* 9 *Geo.* 1. *c.* 7.

Alſo juſtices of peace may do all things relating to the laws for relief of the poor, the paſſing and puniſhing vagrants, the repairs of the highways, or concerning parochial taxes or rates, altho' ſuch juſtices are rated to the taxes, within any place where they execute their office:

but no juſtice ſhall act in determining any appeal to the quarter-ſeſſions, from any order that relates to the pariſh where he is ſo charged. Statute 16 *Geo.* 2. *cap.* 18. On appeals to juſtices of peace in the ſeſſions, they are to cauſe defects in form in orders, *&c.* to be rectified *without charge*, and then determine the matters according to the merits of the caſe; and their proceedings ſhall not be removed into *B. R.* without entering into recogniſance of 50*l.* to proſecute with effect, and pay coſts if affirmed, *&c.* by ſtatute 5 *Geo.* 2. *c.* 19.

No *certiorari* ſhall iſſue to remove any order, made by juſtices of peace of any county, *&c.* or at the quarter-ſeſſions, unleſs it be applied for *within ſix months*, and proved on oath that *ſix days notice in writing* was given to the juſtices, by whom the order was made, that they or the parties concerned may ſhew cauſe againſt it. 13 *Geo.* 2. *c.* 18.

A man may be a juſtice of peace in one part of *Yorkſhire*, and yet not be juſtice of peace in every part of the county; this county being divided into ſeparate ridings. *Hill.* 22 *Car. B. R.*

Juſtices of peace have power by their commiſſion to hear and determine felonies and treſpaſſes, *&c.* 13 *Ed.* 3. *c.* 2. But this is by a ſpecial clauſe in their commiſſion; otherwiſe they cannot do it. *H. P. C.* 165. And if a commiſſion of *oyer* and *terminer* iſſues to hear and determine felonies, that determines the commiſſions of juſtices of peace as to felonies, tho' not as to the peace, *&c.* The ſtat. 1 *&* 2 *P.* *&* *M. c.* 13. directs juſtices of peace to take examinations in caſes of felony and murder, and to certify them to the juſtices of gaol-delivery, *&c.* ſince which they forbear to try great felonies. *H. P. C.* 166.

Juſtices of peace may take an information againſt perſons committing treaſon; iſſue warrants for their apprehenſion, and commit them to priſon, *&c.* They commit all felons in order to trial; and bind over the proſecutors to the aſſiſes: And if they do not certify examinations and informations to the next gaol-delivery; or do not bind over proſecutors, *&c.* they ſhall be fined. *Dalt. c.* 11. For petit larceny, and ſmall felonies, the juſtices in their quarter ſeſſions may try offenders; other felonies being of courſe tried at the aſſiſes: And in caſe of *felonies*, and *pleas upon penal ſtatutes*, they cannot hold cogniſance without an expreſs power given them by the ſtatutes.

Juſtices of peace in their ſeſſions cannot try a cauſe the ſame ſeſſions, without conſent of parties, *etc.* *for the party ought to have convenient time*, or it will be error. *Cro. Car.* 317. *Sid.* 334. Nor can the ſeſſions of juſtices refer a matter which ought to be tried, to be determined by another ſeſſion; yet they may refer a thing to another to examine, and make report to them for their determination. 2 *Salk.* 477. The ſeſſions is all as one day, and the juſtices may alter their judgments at any time while it continues. *Ibid.* 494.

It is incident to the office of a juſtice of peace to commit offenders; And a juſtice may commit a perſon that doth a felony in his own view, without warrant; but if it be on the information of another, he muſt make a warrant under hand and ſeal for that purpoſe. If a juſtice iſſues a warrant to arreſt a felon, and the accuſation be falſe, the juſtice is excuſed, where a felony is committed: if there be no accuſation, action will lie againſt the juſtice. 1 *Leon.* 187. A juſtice makes a warrant to apprehend a felon, tho' he is not indicted, he who executes the warrant ſhall not be puniſhed. 13 *Rep.* 76. *Cro. Jac.* 432. If complaint and oath be made before a juſtice of peace, by one, of goods ſtolen, and that he ſuſpects they are in ſuch a houſe, and ſhews the cauſe of his ſuſpicion; the juſtice may grant a warrant to the conſtable, *etc.* to ſearch in the place ſuſpected, and ſeize the goods and perſon in whoſe cuſtody they are found, and bring them before him, or ſome other juſtice, to give an account how he came by them; and farther to abide ſuch order, as to law ſhall appertain. 2 *Hale's Hiſt. P. C.* 114. The ſearch on theſe warrants ought to be in the day-time, and doors may be broke open by conſtables to take the goods; which are to be depoſited in the hands of the ſheriff, *etc.* till the party robbed hath proſecuted the offender, to have reſtitution. *Ibid.* 150, 151.

A juſtice of peace may make a warrant to bring a perſon before himſelf only, and it will be good; tho' it is uſual to make warrants to bring the offenders before him or any other juſtice of the county, *&c.* And if a juſtice directs his warrant to a private perſon, he may execute it. 5 *Rep.* 60. 1 *Salk.* 347. If a juſtice grants his warrant beyond his authority, the officer muſt obey; but if it be where the juſtice has no authority, the officer is puniſhable if he executes it. Juſtices of peace may make and perſuade an agreement in petty quarrels and breaches of the peace, where the King is not intitled to a fine: tho' they may not compound offences, or take money for making agreements. *Noy* 103. Juſtices may not intermeddle with property; if they do, action lies againſt them and the officers who execute their orders. 3 *Salk.* 217.

A juſtice of peace hath a diſcretionary power of binding to the good behaviour; and may require a recognizance with a great penalty of one for his keeping of the peace, where the party bound is a dangerous perſon, and likely to break the peace, and do much miſchief. *Paſch.* 1652 2 *Lill. Abr.* 131. And where a perſon is to be bound to the good behaviour, for default of ſureties he may be committed to gaol. But a man giving ſecurity for keeping the peace in *B. R.* or the *Chancery*, may have a *ſuperſedeas* to the juſtices in the country not to take ſecurity; and ſo where a perſon hears of a warrant out againſt him, and gives ſurety of the peace to any other juſtice, *etc.*

If one make an aſſault upon a juſtice of peace, he may apprehend the offender, and ſend him to gaol till he finds ſureties for the peace; and a juſtice may record a forcible entry upon his own poſſeſſion: In other caſes he cannot judge in his own cauſe. *Wood's Inſt.* 81. Where a man abuſeth a juſtice by words, before his face or behind his back, *in relation to his office*, he may be bound to his good behaviour; and if a juſtice of peace be abuſed *in the execution of his office*, the offender may be alſo indicted and fined. *Cromp.* 149. 4 *Rep.* 16. To ſay of a juſtice of peace *he doth not underſtand law, etc.* is indictable: And contempts againſt juſtices are puniſhable by indictment and fine at the ſeſſions. 3 *Mod.* 139. 1 *Sid.* 144. But abuſing a juſtice *out* of his office, by words that do not relate to his office, ſeems to ſtand only as in the caſe of other perſons.

Juſtices ſhall not be regularly puniſhed for any thing done by them in ſeſſions as judges; and if a juſtice of peace be ſued for any thing done in his office, *he may plead the general iſſue, and give the ſpecial matter in evidence*; and if a verdict goes for him or the plaintiff be nonſuit, he ſhall have double coſts. *Stat.* 21 *Jac.* 1. *c.* 12. Tho' if a juſtice of peace is guilty of any miſdemeanor in his office, information lies againſt him in *B. R.* where he ſhall be puniſhed by fine and impriſonment. *Sid.* 192. If a perſon be never ſummoned by *juſtices of peace*, to be heard and make his defence, before the juſtices make any order againſt him, it is a miſbehaviour for which an information will lie againſt them: but it has been held, that it is not abſolutely neceſſary to ſet it out in the order. *Trin.* 11 *Geo.* 1.

The court of *B. R.* will grant an information againſt a juſtice of peace on motion for ſending a ſervant to the Houſe of Correction without ſufficient cauſe; if the juſtice do ſhew not good cauſe, *etc.* *Mod. Caſ. in L. and E.* 45, 46. And for contempt of laws, *etc.* Attachment may be had againſt *juſtices of peace* in *B. R.* on motion of the Attorney General, *etc.* A *juſtice of peace* fined a thouſand marks, for corrupt practices, ſee 1 *Keb.* 727. If a new commiſſion is made and granted for *juſtices of peace*, out of which ſome of the juſtices in the old commiſſion are omitted, yet what acts they do as juſtices are lawful till the next ſeſſions, at which the new commiſſion is publiſhed, and when the new commiſſion is publiſhed, they are to take notice of it, and not act further. *Moor* 187. By granting a new commiſſion, diſcharge under the Great Seal, acceſſion of another office, and by the death of the King, the power and offices of juſtices of peace determine. 4 *Inſt.* 165. But till then they are empowered to act in a great many *particular caſes* by ſtatute.

By *Stat.* 24 *Geo.* 2. *c.* 44. No writ ſhall be ſued out againſt any *juſtice of peace*, for any thing done by him in the execution of his office, until *a notice in writing* ſhall be delivered to him *one month before the ſuing out the ſame*, containing the cauſe of action, *&c. within which month he may tender amends*, and if the tender be found ſufficient, he ſhall have a verdict. No ſuch plaintiff ſhall recover againſt the *juſtice*, unleſs ſuch notice ſhall be proved at the trial.

If the juſtice ſhall neglect to make ſuch tender, or ſhall make an inſufficient tender, he may, before iſſue joined, pay into court ſuch ſum as he ſhall think fit. Where an action is againſt a juſtice and conſtable, if there be a verdict againſt the juſtice, and the conſtable be acquitted, the plaintiff ſhall recover ſuch coſts againſt the juſtice, as to include the coſts the plaintiff ſhall be obliged to pay to the conſtable. If plaintiff in any ſuch action ſhall recover againſt a juſtice, and the judge ſhall certify that the injury was wilfully and maliciouſly done, the plaintiff ſhall recover double coſts.

No action ſhall be brought againſt a juſtice for any thing done in the execution of his office, unleſs commenced within ſix months after the act committed.

By *Stat*. 26 *Geo*. 2. *c*. 27. No act, order, adjudication, warrant, indenture of apprenticeſhip, or other inſtrument made, done or executed by two or more juſtices, which doth not expreſs that one or more of them is or are of the *quorum*, ſhall be impeached, ſet aſide, or vacated for that defect only. By the ſtatute 24 *Geo*. 2. *c*. 55.

Where a juſtice ſhall grant a warrant againſt a perſon reſiding out of his juriſdiction, a juſtice of the county, *&c*. where ſuch perſon ſhall reſide, ſhall indorſe his name on the warrant, which ſhall be a ſufficient authority to the perſon to whom the warrant was originally directed to execute the warrant, and carry the perſon before the *juſtice* who indorſed the warrant, or any other *juſtice* of the ſame county, who, if the offence be bailable, ſhall take bail for the perſon's appearing at the next ſeſſions for the county, *&c*. where the offence was committed, and deliver the recogniſance and all proceedings to the conſtable, *&c*. who apprehended the party, to be by him delivered to the clerk of the peace of the county, *&c*. where the fact was committed; if the fact be not bailable, or the party ſhall not give bail, the conſtable may carry the party before a *juſtice* of the county where the fact was committed.

No action lies againſt the *juſtice*, who indorſes ſuch warrant, but only againſt the *juſtice* who granted it, if cauſe. By the *Stat*. 27 *Geo*. 2. *c*. 20. In all caſes of a warrant of diſtreſs for levying any penalty inflicted, or money directed to be paid, the *juſtice* or *juſtices* granting ſuch warrant, may therein order the goods diſtrained to be ſold within a certain time limitted in the warrant, to be not leſs than four days, nor more than eight days, unleſs the penalty or money, with the reaſonable charges of taking and keeping ſuch diſtreſs be ſooner paid. The officer may deduct the reaſonable charges of taking, keeping and ſelling the diſtreſs; and if required ſhall ſhew the party his warrant, and permit him to take a copy of it. This not to extend to *Stat*. 7 & 8 *W*. 3. *c*. 34. nor 1 *Geo*. 1. *c*. 6. relating to tithes. See *Statutes* 26 *Geo*. 2. *c*. 14. and 27 *Geo*. 2. *c*. 16. for ſettling fees to be taken by *juſtices* clerks. See 1 *Geo*. 3. *c*. 13. for amending an act made 18 *Geo*. 2. concerning the qualification of *juſtices of peace*, &c.

[The Editor would have been much fuller under this head, but for two reaſons; firſt, the laws are ſo voluminous that the nature of this work would not admit ſufficient to be farther uſeful;—the ſecond, that Dr. *Burn* hath ſo fully collected and ſo well digeſted all the laws relative to the office and duty of a *juſtice of peace*, that every one who is deſirous of being acquainted with this part of the law is, or ought to be, poſſeſſed of that very valuable work, which renders it wholly unneceſſary, here, to enlarge on the ſubject.]

Juſtices of Peace within Liberties, *(juſticiarii ad pacem infra libertates)* Are ſuch in cities, and other corporate towns, as the others are of the county; and their authority is all one within the ſeveral territories and precincts, having beſides the aſſiſe of ale and beer, wood, victuals, *&c*. 27 *H*. 8. *c*. 5. But if the King grant to a corporation, that the mayor and recorder, *&c*. ſhall be *juſtices of peace* within the city; if there be no words of excluſion, *juſtices* of the county have concurrent juriſdiction with them; and the King, notwithſtanding his charter, may grant a commiſſion of the peace ſpecially in that city or county. 2 *Hale's Hiſt*. *P*. *C*. 47. Alſo where the *juſtices* of any corporate town, deny doing right; *juſtices of the peace* of the county may inquire into it, as hath been lately adjudged. *Mod*. *Caſ*. 164. The *juſtices of peace* in cities, or towns corporate, may commit perſons apprehended within their liberties to the houſe of correction of the county, *&c*. which perſons ſhall be liable to the like correction and puniſhment, as if committed there by any *juſtice* of the ſame county. *Stat*. 15 *Geo*. 2. *c*. 24. *Juſtices* of cities and corporations, are not within the qualification act. 5 *Geo*. 2. *c*. 18. See *Mayors*.

Juſtices of Trail-baſton, Were *juſtices* appointed by King *Ed*. 1. during his abſence in the *Scotch* and *French* wars. They were ſo ſtiled, ſays *Hollingſhead*, of *trailing* or drawing the ſtaff of *juſtice*; or for their ſummary proceeding, according to Sir *Edward Coke*, who tells us, they were in a manner *juſtices in eyre*; and it is ſaid, they had a *baſton*, or ſtaff delivered to them as the badge of their office, ſo that whoever was brought before them was *traile ad baſton, traditus ad baculum*: whereupon they had the name of *juſtices de trail-baſton*, or *juſticiarii ad trahendum offendentes ad baculum vel* baſton. Their office was to make inquiſition through the kingdom on all officers and others, touching extortion, bribery, and ſuch like grievances; of intruders into other mens lands, barretors, robbers and breakers of the peace, and divers other offenders; by means of which inquiſitions, ſome were puniſhed with death, many by ranſom, and the reſt flying the realm, the land was quieted, and the King gained great riches towards the ſupport of his wars. *Mat*. *Weſtm*. *Anno* 1305. A commiſſion of *trail baſton* was granted to *Roger de Grey*. and others his aſſociates, in the reign of King *Ed*. 3. *Spelm*. *Gloſſ*.

Juſtice Seat, Is the higheſt court that is held in a foreſt, and is always held before the Lord *Chief Juſtice in Eyre* of the foreſt, upon warning forty days before; and there fines are ſet for offences, and judgments given, *&c*. *Manwood's Foreſt Law*, *cap*. 24. The fine and amercement of the *juſtices in eyre*, for falſe judgment, or other treſpaſs, ſhall be aſſeſſed by the ſaid juſtices upon the oaths of knights, and other honeſt men, and be eſtreated into the Exchequer. *Stat*. 3 *Ed*. 1. *c*. 18. And *juſtices in eyre* ſhall appoint a time for delivering in all writs by the ſheriff, *&c*. 13 *Ed*. 1. *c*. 10. See *Black*. *Com*. 3 *V*. 72.

Juſticiar, or Juſticier, (Fr. *juſticier*,) A *juſtice*, or *juſticier*. The Lord *Bermingham*, *juſticier* of *Ireland*. Baker's Cron. Angl. fol. 118.

The whole juriſdiction which is now diſtributed among the ſeveral courts of *Weſtminſter-Hall*, ſeems in the firſt reigns after the conqueſt to have been lodged in one court, commonly called the King's court, where juſtice is ſaid to have been adminiſtred ſometimes by the King himſelf in perſon, and ſometimes by the high juſticier, who was an officer of very great authority, and uſed in the King's abſence beyond ſea to govern the realm as vice-roy. 2 *Hawk*. *P*. *C*. 6.

The firſt juſticiaries after the conqueſt were *Odo* biſhop of *Baieux* in *Normandy*, half brother by the mother to the conqueror, and *William Fitz-Oſborn*, who was vice-roy, and had the ſame power in the north that *Odo* had in the ſouth, and was the chief in the conqueror's army. *Brady's Preface to the Norman Hiſtory* 151. (B). *Dugd*. *Chron*. *Series* 1.

The next juſticiaries were *William* Earl of *Warren* in *Normany*, a great commander in the battle againſt *Harold*, and *Richard de Benefacta*, *alias Richard de Tonebridge*, ſon to *Gilbert* Earl of *Brion* in *Normandy*, and were conſtituted in 1073. *Brady's Preface*, *&c*. 151. (B.) *Dugd*. *Chron*. *Series* 1.

In a great plea between *Lanfrank* and the ſaid *Odo*, *Goisfrid* biſhop of *Conſtance*, in *Normandy*, was juſticiary. *Brady's Preface*, *&c*. 151. (C). *Dugd*. *Chron*. *Series* 1.

In the beginning of *William Rufus*, *Odo* was again juſticiary. *William de Carileſo* biſhop of *Durham*, a *Norman*, ſucceded *Odo*, and then followed *Ranulph Flambard* in 1099. Afterwards in the reign of *H.* 1. in 1100. *Hugo de Bocland*, a *Norman*, was juſticiary, and after him his ſon *Richard Baſſet*; then *Roger* biſhop of *Saliſbury*, was juſticiary and chancellor. The next, in the time of King *Stephen*, was *Henry* duke of *Normandy*, afterwards King *Henry* II. And in *Henry* the Second's time was *Robert de Bello Monte* earl of *Leiceſter* in 1168, but *Alboric de Vere* earl of *Guiſnes*, is ſaid to have been juſticiary before him; and after earl of *Leiceſter*, *Richard de Lucie* was made juſticiary; after him in 1180. *Ranelagh de Glanvil*, that famous lawyer, was made juſticiary; after him, *Hugo de Putaceo*, commonly called *Puſur*, *Putac*, or *Pudſey*, nephew to King *Stephen* by his ſiſter, was made juſticiary in the north parts beyond *Trent*; and *William de Longo-Campo*, or *Long-Champ*, biſhop of *Ely*, was at the ſame time by *Richard* the Firſt made juſticiary on the ſouth parts of this ſide *Trent*. Then, after the deprivation of *William* biſhop of *Ely*, *Walter* archbiſhop of *Roven* in *Normandy*, was made juſticiary of all *England*. *Brady's Preface, &c.* 151. (D) (E) (F) 152. (A) (B) (C). See *Dugd. Chron. Series*, 1, 2, 3, 4, 5.

William Long-Champ biſhop of *Ely*, chief juſticiar and lord chancellor to *Ric.* 1. *Speed.* 473. *Fitz Peter*, chief juſticiar in the firſt of *John.* Ib. 487. *Hubert de Burgh* earl of *Kent*, chief juſticiar. 1 *H.* 3. *Ib.* 513. And after him, *Stephen Segrave.* Ib. 521. The chief juſticiar was the miniſter of regal command in the abſence of the King. *Ib.* 513.

Towards the latter end of the *Norman* period, the power of the grand juſticiar was broken, ſo that the *Aula Regis*, which before was one great court where the juſticiar preſided, was divided into four diſtinct courts, *viz.* Chancery, Exchequer, King's Bench, and Common Pleas, *Gilb. Hiſt. View of the Court of Exchequer* 7. cites *Madd.* 2, 4. it determined about the 45 *H.* 3. *Brady's Preface, &c.* 154. *b.*

The chancellor was the firſt in order on the left hand of the juſticiary, and as he was a great perſon in court, ſo he was in the Exchequer; for no great thing paſſed but with his conſent and advice; nothing could be ſealed without his allowance and privity. But the juſticiary ſurmounted him and all others in authority, and he alone was endowed with and exerciſed all the power which afterwards was executed by the four chief judges, *viz.* the Ch. Juſt. of *B. R.* the Ch. Juſt. of *C. B.* the Ch. B. of the Exchequer, and the Maſter of the court of Wards. *Brady's Preface to the Roman Hiſtory* 153. (B) As long as the power of the juſticiar continued, the *Aula Regis* was one court, and only diſtinguiſhed by the ſeveral officers; for all the officers were united under the juſticiar, and he was the governor and ſuperintendant of the courts. *Gilb. Hiſt. View of the Exchequer* 10.

Juſticiatus, Judicature, prerogative. *Cowell.*

Juſticies, Is a writ directed to the ſheriff ih ſome ſpecial caſes, by virtue of which he may hold plea of debt in his county court for a large ſum; whereas otherwiſe by his ordinary power he is limited to ſums under 40*s.* *F. N. B.* 117. *Kitch.* 74. It is called *juſticies*, becauſe it is a commiſſion to the ſheriff to do a man juſtice and right, beginning with the word *juſticies, &c.* *Bract. lib.* 4. makes mention of a *juſticies* to the ſheriff of *London*, in a caſe of dower; and it lies in account, annuity, cuſtoms and ſervices, *&c.* *New Nat. Br.* In debt, the writ runs thus: *The King, to the ſheriff of* S. *greeting: We command you, that you* juſtice A. B. *that juſtly and without delay he render to* C. D. *five pounds, which to him he oweth, as it is ſaid, and as reaſonably he can ſhew, that he ought to render him, that no more clamour thereof we may hear, for default of juſtice,* &c.

Juſtifiable Homicide. See *Homicide*, *murder*, and *Black. Com.* 4 *V.* 178

Juſtification, *(juſtificatio)* Is a maintaining or ſhewing good reaſon in court why one did ſuch a thing which he is called to anſwer. *Broke.* And pleas in *juſtification* are to ſet forth ſome ſpecial matter whereby the party *juſtifies* what he hath done, concerning lands or goods; as that he did it by authority: and this may be by the law, or from another perſon; wherein, to make it right, there muſt be good authority, which is to be exactly purſued. *Shep. Epit.* 1041. *Juſtification* may be in treſpaſs, and under writs, proceſſes, *&c.* But a perſon cannot *juſtify* a treſpaſs, unleſs he confeſſeth it; for he ought to plead the ſpecial matter, and confeſs and *juſtify* what he hath done. 3 *Salk.* 218. Where a defendant *juſtifies* in treſpaſs on his poſſeſſion, by virtue of any eſtate, he muſt ſhew his title; but when the matter is collateral to the title to the land, it is otherwiſe. 2 *Mod.* 70. *Sed qu.* If he ſhould not give *colour?* or probably ſuch plea may amount to the *general iſſue.* If a ſheriff, or other officer, *juſtifies* by virtue of any returnable writ, he is to ſhew that the writ was returned; though he need not if the writs are not returnable writs. 1 *Salk.* 409. And it muſt be ſhewn from what courts the writs iſſued. *Ibid.* 517. *Juſtification* may be by the command of an officer, to aid him, *&c.* 2 *Nelſ. Abr.* 1067.

When the action concerns a *tranſitory* thing, if the defendant *juſtify* the taking or doing in one place; it is a *juſtification* in all places: if the action concern a *local* thing, a *juſtification* in one place is not a *juſtification* in another place; for in the *former caſe* the place is not material, but the *mere doing* or *taking* of the thing is the *ſubſtance*; and in the *latter*, the place is material, as the defendant may be able to juſtify as to one place, and not in another. *Paſch.* 24 *Car. B. R.* 2 *Lil. Abr.* 134. If the matter of *juſtification* is local, there the defendant ought to ſhew the cauſe ſpecially, and traverſe the place; but not where it is tranſitory. *Cro. Eliz.* 667. If one have corn upon the lands of another, and he take it, and the owner of the ground ſues him, he muſt *juſtify*, and not plead the *general iſſue.* 5 Rep. 85. in actions for entering a cloſe, and taking corn; the defendants may *juſtify* they did it as ſervants to the parſon; and that the corn was tithe, ſevered from the nine parts, *&c.* 2 *Keb.* 44. A man may plead in *juſtification*, that land is his freehold, on making an entry thereon, *&c.* That one entered a houſe to apprehend a felon; or by warrant to levy a forfeiture; to take a diſtreſs, *&c.* And in aſſault that he did it in his own defence, *&c.* *Lib. Ent.* Words ſpoken may be juſtified, becauſe ſpoken in a legal way: for words the defendant may juſtify in an *action*; but not in an *indictment*, *&c.* 1 Danv. 162. 3 Salk. 226. A *juſtification* (in other words) is a ſpecial plea in bar; as in actions of aſſault and battery, *ſon aſſault de meſne*, *viz.* that the plaintiff firſt, with force and arms, aſſaulted the defendant, and he defended himſelf, and therefore, if any damage happened to plaintiff, it was owing to the aſſault he made on defendant, and in his neceſſary defence; in other actions of treſpaſs, that the defendant did the thing complained of in right of ſome office which warranted him ſo to do; or in an action of ſlander, that the plaintiff was guilty of ſuch or ſuch a crime, and therefore he, the defendant, ſpoke the words. See *Black. Com.* 3 *V.* 306. *Com. Dig.* 5 *V.* 69, 319, *&c.* There is a *juſtifiable homicide*, *&c.* and *juſtifiable aſſault.* See *Aſſault.*

Juſtificators, *(juſtificatores)* Are a kind of *compurgators*, or thoſe that by oath juſtify the innocence, or oaths of others; as in the caſe of waging of law: and we read in *Spelman*, who leaves this word without explication——*Wil. Rex Angliæ H. Camerario et* juſtificatoribus *ſuis, omnibus ſuis fidelibus Norf. Salutem: inquirite per comitatum quis juſtius hujuſmodi foriſfacturam haberet tempore patris mei, ſive Abbas Rameſiæ, &c.*

Juſtifying Bail. If a man is arreſted and puts in bail, the defendant's attorney may except againſt the bail, as being, in his opinion, inſufficient. In ſuch caſe, the bail (or other bail in their place) muſt juſtify themſelves in court, or before a commiſſioner (for taking bail) in the country, by ſwearing themſelves houſe-keepers, and each of them to be worth double the ſum for which they are bail, after payment of all their debts. See the *Books of Practice*, and *Black. Com* 3 *V.* 291.

Juſtitia, Was anciently uſed for a judge, and ſometimes for a ſtatute, law, or ordinance. *Richardus Dei Gratia, Sciatis, nos, de communi proborum virorum conſilio, feciſſe has* juſtitias *ſubſcriptas.* Hoveden, p. 666.

Juſtitia, Is often taken for juriſdiction, or the office of a judge. *Leg. Edw. Conf. cap.* 26. Juſtitia *cognoſcentis latronis, ſua eſt de homino ſuo.*

Juſtitia, He who is now called *juſtitiarius* was formerly called *juſtitia, i. e.* a judge. *Leg. Hen.* 1. *cap.* 42. *A Rege vel* juſtitia *ejus, vel a communi utrorumque domino ſubmoneatur.*

Juſtitias facere, Is to hold plea of any thing. Mr. *Selden*, in his *Notes* upon *Eadmerus*, (mentioning that plea which was held at *Pinnenden* between archbiſhop *Lanfrank* and *Odo* biſhop of *Bayeux)* tells us, *Huic placito interfuerunt Goisfredus epiſcopus Conſtantienſis, qui in loco regis fuit, et* juſtitiam *illam tenuit, Lanfrancus epiſcopus qui ut dictum eſt placitavit et totum dirationavit, &c.*

Juſtitium, A ceaſing from the proſecution of law, and exerciſing juſtice in places judicial. *Cowell.*

K.

KAIA, A key or wharf: *Area in littore onerandarum atque exonerandarum navium cauſa, e compactis tabulis trabibuſque (clavium inſtar) firmata.* Spelm.

Kaiagium. *Portorium quod* kaiæ *nomine exigit telonarius:* The toll-money paid for loading or unloading goods at a key or wharf. *Pat.* 20 *Ed.* 3. See *Key.*

Kalendæ, Rural chapters or conventions of the rural deans and parochial clergy, ſo called becauſe formerly held on the *kalends*, or firſt day of every month. *Paroch. Antiq.* 640.

Kalendar Month, Conſiſts of thirty or thirty-one days, (except *February*, which hath but eight and twenty, and in a leap-year nine and twenty) according to the *Kalendar*; twelve of which months make a year. *Stat.* 16 *Car.* 2. *c.* 7. 24 *Geo.* 2. *c.* 23. 25 *Geo.* 2. *c.* 30.

Kalends, The beginning of a month, *&c.* See *Calends.*

Kantref. According to the deſcription of Mr. *Humphrey Lloyd*, out of the laws and ordinances of *Howeldda*, a *kantreff* had its denomination from one hundred towns, and ſignifies as much, under which were contained ſo many commots, which the *Welſh* call *cwmmwd*, and ſignifies *provincia* or *regio*, and conſiſteth of twelve manors or circuits, and two townſhips. We find the word mentioned in *Mon. Ang.* 1 *part, fol.* 319. thus—*Le primier Conquereur de trois* kantref *de la terre de* Brecknoch, *eſtoit* Bernard *de* Neſmarch Norman. See *Cantred.*

Karite, Carite, The religious called their beſt conventual drink, or their ſtrong beer, by this name; becauſe after meals they uſed to drink their *pocula caritatis*, or *ad caritatem, i. e.* their grace cups, in this beſt liquor. *Cowell.*

Karle, *(Sax.)* Is a man, and with any addition a ſervant or clown; as the *Saxons* called a domeſtick ſervant, a *buskarle:* from whence comes the modern word *churl.* Domeſd.

Karrata fœni, A cart-load of hay. *Mon. Ang. tom.* 1. *p.* 548. See *Carecta.*

Kay. See *Key.*

Kebbars, (or *Cullers)* The refuſe of ſheep drawn out of a flock, *oves rejiculæ.* Cooper's Theſaur.

Keelage, *(killagium)* A privilege to demand money for the bottom of ſhips reſting in a port or harbour. *Rot. Parl.* 21 *Ed.* 1.

Keelmen, Are mentioned among mariners, ſeamen, *&c.* in the *Stat.* 7 *&* 8 *W.* 3. *c.* 21. See *Keyles.*

Keels, To carry coals, *&c.*

Keep. A ſtrong tower or hold in the middle of any caſtle or fortification, wherein the beſieged make their laſt efforts of defence, was formerly in *England* called a *keep:* and the inner pile within the caſtle of *Dover*, erected by K. *Hen.* 2. about the year 1153. was termed the *King's keep:* ſo at *Windſor, &c.* It ſeems to be ſomething of the nature of that which is called abroad a *Citadel.*

Keeper of the Foreſt, *(Cuſtos Foreſtæ)* Or chief *warden* of the foreſt, hath the principal government over all officers within the foreſt; and warns them to appear at the court of *juſtice ſeat*, on a general ſummons from the Lord Chief juſtice in *Eyre. Manwood, Part.* 1. *p.* 156.

Keeper of the Great Seal, *(Cuſtos magni ſigilli)* Is a Lord by his office, ſtiled *Lord Keeper of the Great Seal of England*, and is of the King's Privy Council: Through his hands paſs all charters, commiſſions and grants of the King, under the *Great Seal*; without which ſeal many of thoſe grants and commiſſions are of no force in law, for the King is by interpretation of law a corporation, and paſſeth nothing but by the *Great Seal*, which is as the public faith of the kingdom, in the high eſteem and reputation juſtly attributed thereto.

The *Great Seal* conſiſts of two impreſſions, one being the very ſeal itſelf with the effigies of the King ſtamped on it; the other has an impreſſion of the King's arms in the figure of a target, for matters of a ſmaller moment, as certificates, *&c.* that are uſually pleaded *ſub pede ſigilli.* And anciently, when the King travelled into *France* or other foreign kingdoms, there were two *Great Seals*; one went with the King, and another was left with the *Cuſtos Regni*, or the Chancellor, *&c.*

If the *Great Seal* be altered; the ſame is notified in the Court of *Chancery*, and public proclamations made thereof by the ſheriffs, *&c.* 1 *Hale's Hiſt. P. C.* 171, 174.

The *Lord Keeper* of the *Great Seal*, by ſtatute 5 *Eliz. c.* 18. hath the ſame place, authority, pre-eminence, juriſdiction and execution of laws, as the *Lord Chancellor of England* hath, and he is conſtituted *per traditionem magni ſigilli, &c.* and by taking his oath. 4 *Inſt.* 87. See *Lamb. Archeion.* 65. 1 *Rol. Abr.* 385.

The Lord Chancellor, or Lord Keeper, is ſuperior, in point of precedency, to every temporal lord. *Stat.* 31 *Hen* 8. *c.* 10. See *Black. Com.* 3 *V.* 71.

Keeper of the Privy Seal, *(Cuſtos privati ſigilli)* Is that officer through whoſe hands all charters, pardons, *&c.* paſs, ſigned by the King, before they come to the Great Seal; and ſome things which do not paſs that ſeal at all: he is alſo of the Privy Council, but was anciently called only *Clerk of the Privy Seal*; after which he was named *Guardian del Privy Seal*; and laſtly, *Lord Privy Seal*, and made one of the great officers of the kingdom. 12 *R.* 2. *c.* 11. *Rot. Parl.* 11 *H.* 4. *Stat.* 34 *H.* 8. *c.* 4.

The *Lord Privy Seal* is to put the ſeal to no grant without good warrant; nor with warrant, if it be againſt law, or inconvenient, but that he firſt acquaint the King therewith. 4 *Inſt.* 55. The fees of the clerks under the *Lord Privy Seal*, for warrants, *&c.* Vide *Stat.* 27 *H.* 8. *c.* 11. See *Privy Seal.*

Keeper of the Touch, 12 *Hen.* 6. 14. Seems to be that officer in the King's *Mint*, at this day called the *Maſter of the Aſſay.* See *Mint.*

Keepers of the Liberties of England, By authority of parliament. Vide *Cuſtodes Libertates.*

Kendal, An ancient barony, written *Concangium.* MS.

Kennets, A ſort of coarſe *Welſh Cloth*, mentioned in the *Stat.* 33 *Hen.* 8. *c.* 3.

Kerhere, Signifies a cuſtom to have a cart-way; or a commutation for the cuſtomary duty for *carriage* of the lord's goods. *Cowell.*

Kernallare domum, (From Lat. *Crena*, a notch) To build a houſe formerly with a wall or tower, *kernelled* with crannies or notches, for the better convenience of ſhooting arrows, and making other defence. *Du Freſne* derives this word from *quarnellus*, or *quadranellus*, a fourſquare hole or notch; *ubicunque patent* quarnelli *ſive feneſtræ:* And this form of walls and battlements for military uſes might poſſibly have its name from *quadrellus* a four-ſquare dart. It was a common favour granted by our Kings in ancient times, after caſtles were demoliſhed for prevention of rebellion, to give their chief ſubjects leave to fortify their manſion-houſes with *kernelled* walls.—*Licentiam dedimus Johanni de H. Quod ipſe manſum ſuum de B. in Com. &c. Muro de petra & calce firmare &* kernellare *poſſit. Dat.* 12 *Sept.* 1312. Paroch. Antiq. 533.

Kernallatus, Fortified or embatteled, according to the old faſhion; and the Duke of *Lancaſter* claimed to him and his heirs, *Caſtrum ſuum de Halton* Kernellatum, 31 *Ed.* 3. *Pl. de quo Warrant. apud Ceſtriam.* And we read *Caſtrum duplici muro* Kernellatum, &c. *Surv. Dutch. Cornw.*

Kernes, Idle perſons, vagabonds. *Ordin. Hibern.* 31 *Ed.* 3. *m.* 11, 12.

Kevere, A cover or veſſel uſed in a dairy houſe for milk or whey. *Paroch. Antiq. pag.* 386.

Key, (*Kaia & caya,* Sax. *Leg.* Teut. *Kay*) A wharf to land or ſhip goods or wares at. The verb *caiare,* in old writers, ſignifies (according to *Scaliger*) to keep in, or reſtrain; and ſo is the earth or ground where *keys* are made, with planks and poſts. *Cowell.*

The lawful keys and wharfs for lading or landing of goods belonging to the port of *London,* are *Cheſter's-Key, Brewer's-Key, Galley-Key, Wool-Dock, Cuſtom-houſe-Key, Bear-Key, Porter's-Key, Sab's-Key, Wiggan's-Key, Young's Key, Ralph's-Key, Dice-Key, Smart's-Key, Somers's-Key, Hammond's-Key, Lyon's-Key, Botolph-Wharf, Grant's-Key, Cock's-Key,* and *Freſh-Wharf*; beſides *Billingſgate,* for landing of fiſh and fruit; and *Bridgehouſe* in *Southwark* for corn and other proviſion, &c. but for no other goods or merchandiſe. Deal boards, maſts and timber, may be landed at any place between *Limehouſe* and *Weſtminſter*; the owner firſt paying or compounding for the cuſtoms, and declaring at what place he will land them. *Lex Mercat,* 132, 133. *Stat.* 13 & 14 *Car.* 2. *c.* 11. *ſect.* 14. *Rot. Scac.* 19 *Car.* 2. It is ſometimes ſpelt *quay.* It is ſo ſpelt by *Johnſon* in his *folio* dictionary from the *Fr. quai.*

Keyage, (*Kaiagium*) The money or toll paid for loading or unloading wares at a *key* or wharf. *Rot. Par.* 1. *Edw.* 3. *m.* 10. and 20 *Edw.* 3. *m.* 1.

Keyles, or **Keels,** (*Ciuli* or *Ciules*) A kind of long-boats of great antiquity, mentioned in ſtat. 23 *Hen.* 8. *c.* 18. *Longæ naves quibus Brittaniam primo ingreſſi ſunt Saxones.* Spelm.

Keying, Five fells, or pelts, or ſheep-ſkins with their wool on them *Cowell.*

Keyus, Keys, A guardian, warden, or keeper.—— *Nolo etiam quod aliquis ſeneſchallus, conſtabularius, ballivus,* keys, *ſive foreſtarius, ſerviens, vel venator——per terras eorum venientes, ab ibſis nec ab hominibus ſuis paſcantur.* Mon. Ang. tom. 2. p. 71. In the *Iſle of Man,* the twenty-four chief commoners, who are, as it were, conſervators of the liberties of the people, are called *Keys* of the iſland.

Kichell, A cake: It was an old cuſtom for godfathers and godmothers, every time their god-children aſked them bleſſing, to give them a cake; which was called a *God's Kichell.* Cowell.

Kidder, Signifies one that badges, or carries corn, dead victual, or other merchandize, up and down to ſell. *Stat.* 5 *Eliz.* *c.* 12. They are alſo called *kiddiers.* 13 El. cap. 25.

Kiddle, Kidel, or **Kedel,** (*Kidellus*) A dam, or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of wheels or other engines to catch fiſh. 2 *Inſt. fol.* 38. *Anguſtias, machinas ſive ingenia in fluminibus poſita ad ſalmones alioſque piſces intercipiendos.* Fiſhermen corruptly call them *kettles.* The word is ancient, for in *Magna Charta, cap.* 24. we read thus, *Omnes* kidelli *deponantur de cætero penitus per Thameſiam & Medeweyam & per totam Angliam, niſi per coſteram maris.* And in a charter made by King *John,* power was granted to the city of *London, De* kidellis *amovendis per Thameſiam & Medeweyam.* 1 Hen. 4. cap. 12. it was accorded, *inter alia,* That a ſurvey ſhould be made of the wears, mills, ſtanks, ſtakes, and *kidels,* in the great rivers of *England. Inq. capt. apud Derb.* 15 *Nov.* 1 *Eliz. poſt mortem* Tho. Fyndern, &c. *Et fuit ſeiſitus de uno* kidello *vocat.* a were, *ac de libera piſcaria in Potlok.* Eſc. Bundello 3. They are now called *kettles,* or *kettle nets,* and are much uſed on the ſea-coaſts of *Kent* and *Wales.* Cowell.

Kidnapping, Is the ſtealing and conveying away of a man, woman or child; and is an offence at Common law, puniſhable by fine, pillory, &c. *Raym.* 474. Alſo if a maſter of a ſhip, &c. ſhall, during his being abroad, force any man aſhore, and willingly leave him behind, he ſhall ſuffer three months impriſonment. 11 & 12 *W.* 3. *c.* 7. But the party thus injured may maintain an action againſt the party offending, for damages ſuſtained on occaſion of ſuch treatment, and is not bound to proceed on the ſtatute.

According to *Blackſtone,* this is unqueſtionably a very heinous crime, as it robs the King of his ſubjects, baniſhes a man from his country, and may in its conſequences, be productive of the moſt cruel and diſagreeable hardſhips; and therefore the Common law of *England* has puniſhed it with fine, impriſonment and pillory. *Raym.* 474. 2 *Show.* 221. *Skin.* 47. *Comb.* 10. See alſo the 11 & 12 *W.* 3. *c.* 7. and *Black. Com.* 4 *V.* 219.

Kilderkin, A veſſel of ale, &c. containing the eighth part of an hogſhead.

Kilketh, Was an ancient ſervile payment made by tenants in huſbandry.——Kilketh *pro qualibet hundreda* 2 *denar. MS.* v. *Cowell.*

Killagium, Keelage. *Cowell.*

Killythſtallion, Is where lords of manors were bound by cuſtom to provide a *ſtallion* for the uſe of their tenants mares. *Spelman's Gloſſ.*

Kilth. *Ac omnes annuales redditus de quadam conſuetudine in, &c. vocat'.* kilth. *Pat.* 7 *Eliz.*

Kindred, Are a certain body of perſons of kin or related to each other. There are *three degrees* of kindred in our law; one *in the right line deſcending,* another in *the right line aſcending,* and the *third in the collateral line.*

The right line deſcending, wherein the kindred of the *male* line are called *Agnati,* and of the *female* line *Cognati,* is from the father to the ſon, and ſo on to his children in the male and female line; and if no ſon, then to the daughter, and to her children in the male and female line; if neither ſon nor daughter, or any of their children, to the nephew and his children, and if none of them, to the niece and her children; if neither nephew nor niece, nor any of their children, then to the grandſon or grand daughter of the nephew; and if neither of them, to the grandſon or grandaughter of the niece; and if none of them, then to the great grandſon or great grandaughter of the nephew and of the niece, &c. *et ſic ad infinitum.*

The *right line aſcending* is directly upwards; as from the ſon to the father or mother; and if neither father nor mother, to the grandfather or grandmother; if no grandfather or grandmother, to the great grandfather or great grandmother; if neither great grandfather or great grandmother, to the father of the great grandfather, or the mother of the great grandmother; and if neither of them, then to the great grandfather's grandfather, or the great grandmother's grandmother; and if none of them, to the great grandfather's great grandfather, or great grandmother's great grandmother, *et ſic in infinitum.*

The *collateral line* is either *deſcending* by the *brother* and his children *downwards,* or by the *uncle upwards*: It is between brothers and ſiſters, and to uncles and aunts, and the reſt of the *kindred,* upwards and downwards, a-croſs and amongſt themſelves. 2 *Nelſ. Abr.* 1077, 1078.

If there are no kindred in the right deſcending line, the inheritance of lands goes to the collateral line; but it never aſcends in the right line upwards, if there are any kindred of the collateral line, though it may aſcend in that line: And there is this difference between the right line deſcending and the collateral line; that the right of repreſentation of kindred in the right deſcending line reaches beyond the great grandchildren of the ſame parents; but in the collateral line, it doth not reach beyond brothers and ſiſters children; for after them there is no repreſentation among collaterals.

In the right aſcending line the father or mother are always in the firſt degree of kindred; and by the Civil law, if the ſon died without iſſue, his father or mother ſucceeded, and after them his brother or ſiſter, uncle, aunt, &c. But in caſe of purchaſe by the ſon, if he died without iſſue, his father or mother could not inherit, but his brothers and ſiſters, &c. by which it appears, that the father cannot ſucceed the ſon immediately, though he is the next of kin. If a man purchaſe lands and dies without iſſue, it ſhall never go to the half blood in the collateral line; though it is otherwiſe in caſe of a deſcent from a common anceſtor.

The children of the brothers and ſiſters of the half blood, ſhall exclude all other *collateral aſcendants*, as uncles and aunts, and all remoter kindred of the whole blood in the collateral line. *Ibid.*

There are ſeveral rules to know the degrees of kindred; in the aſcending line, take the ſon and add the father, and it is one degree aſcending, then add the grandfather, and it is a ſecond degree, a perſon added to a perſon in the line of conſanguinity making a degree; and if there are many perſons, take away one, and you have the number of degrees; as if there are four perſons, it is the third degree, if five, the fourth, *&c.* ſo that the father, ſon, and grandchild, in the deſcending line, though three perſons make but two degrees: to know in what degree of kindred the ſons of two brothers ſtand, begin from the grandfather and deſcend to one brother, the father of one of the ſons, which is one degree, then deſcend to his ſon the anceſtor's grandſon, which is a ſecond degree; and then deſcend again from the grandfather to the other brother, father of the other of the ſons, which is one degree, and deſcend to his ſon, *&c.* and it is a ſecond degree; thus reckoning the perſon from whom the computation is made, it appears there are two degrees, and that the ſons of two brothers are diſtant from each other two degrees: For in what degree either of them is diſtant from the common ſtock, the perſon from whom the computation is made, they are diſtant between themſelves in the ſame degree; and in every line the perſon muſt be reckoned from whom the computation is made. If the kindred are not equally diſtant from the common ſtock; then in what degree the moſt remote is diſtant, in the ſame degree they are diſtant between themſelves, and ſo the kin the moſt remote maketh the degree; by which rule, I, and the grandchild of my uncle, are diſtant in the third degree, ſuch grandchild being diſtant three degrees from my grandfather, the neareſt common ſtock. *Wood's Inſt.* 48, 49. The *Common law* agrees in its computation with the *Civil* and *Canon law*, as to the *right line*; and only with the *Canon law* as to the *collateral line.* Ibid. *See* Black. Com. 2 V. 205. Well worthy the readers attention.

King, *(Rex,* from Lat. *Rego* to rule, in Sax. *Cyning* or *Coning)* Is a monarch or potentate, who rules ſingly and ſovereignly over a people; or he that has the higheſt power and rule in the land. The *King* is the head of the commonwealth; and the learned *Bracton* tells us, *Rex eſt vicarius & miniſter Dei in terra, omnes quidem ſub eo, & ipſe ſub nullo niſi tantum ſub Deo.* Bract. lib. 1. c. 8.

But our *King*, on his coronation, takes an *oath* to the following purport, *viz.* To govern the people of this kingdom, according to the ſtatutes in parliament agreed on, and the laws and cuſtoms of the ſame; to his power to cauſe law and juſtice in *mercy* to be executed in all his judgments; to maintain to the utmoſt in his power the laws of God, the true profeſſion of the goſpel and the proteſtant reformed religion eſtabliſhed by law; and preſerve to the biſhops and clergy their rights and privileges, as by law are appertaining to them: this is the obligatory oath of our Kings, as regulated to be taken by 1 *W. & M. c.* 6. And the coronation oaths, in former times, were undoubtedly a contract between the King and the people in this nation.

The nature of the government of our King, ſays *Forteſcue*, is not only *regal*, but *political:* If it were merely the former, *regal*, he would have power to make what alterations he pleaſed in our law, and impoſe taxes and other hardſhips upon the ſubject, whether they would or no; but his government being *political*, he cannot change the laws of the realm, without the people conſent thereto, nor burthen them againſt their wills. *Forteſcue's Laud. Leg. Angl.* 17.

It is alſo ſaid by the ſame writer, that the King is appointed to *protect his ſubjects* in their lives, properties and laws; for which end and purpoſe he has the delegation of power from the people: likewiſe our King is ſuch by the fundamental law of our land; by which law the meaneſt ſubject enjoys the liberty of his perſon, and property in his eſtate; and it is every man's concern to defend theſe, as well as the King in his lawful rights. *Forteſcue.*

A late author taking notice of the breaches made in the conſtitution of this kingdom in ſeveral reigns, and the neceſſity of their being redreſſed, affirms that it is the original power and conſtitution of the ſtates of the kingdom to re-inſtitute the regal eſtate, as well where Kings act arbitrarily and break through the conſtitution, as where there is no immediate heir to ſucceed the King, ſo that the throne becomes actually vacant; and without this he takes it there is no perfect conſtitution. *Britan. Conſtitut.*

In King *John's Magna Charta* of liberties, there was a clauſe making it lawful for the barons of the realm to chooſe twenty-five barons to ſee the charter obſerved by the King: with power, on any juſtice or other miniſter of the King's failing to do right, and acting contrary thereto, for four of the ſaid barons to addreſs the King, and pray that the ſame might be remedied; and if the ſame were not amended in forty days, upon the report of the four barons to the reſt of the twenty-five, thoſe twenty-five barons, with the commonalty of the whole land, were at liberty to diſtreſs the King, take his caſtles, lands, *&c.* until the evils complained of ſhould be remedied, according to their judgment; ſaving the perſon of the King, queen, and their children: And when the evils were redreſſed, the people were to obey the King as before. King *John's Magna Chart. cap.* 73. But this clauſe, and ſome others in favour of liberty, are omitted out of King *Henry* IIId's *Magna Charta*; though in a ſtatute made at *Oxford*, *anno* 42 *Hen.* 3. to reform miſgovernment, it was enacted, that twenty-four great men ſhould be named, twelve by the King, and twelve by the parliament, to appoint juſtices, chancellors, and other officers, to ſee *Magna Charta* obſerved.

The editor has ſuffered this clauſe to ſtand, being part of the original text, fearing, if he expunged it, he might be ſuppoſed an enemy to the liberty of the ſubject; but, though no one wiſhes more for the perpetual preſervation of every liberty and every bleſſing the people enjoy, under our free conſtitution, he cannot help declaring, that he conceives ſuch a power veſted in any ſubjects whatſoever, is repugnant, in the higheſt degree, to the fundamental principles of the conſtitution. It is veſting a power in the ſubject, ſuperior to the executive power of the ſtate, which is, by the very nature, and in the eſſence, of our conſtitution, veſted in the King. The King is a political entity, acting through the medium of his miniſters, or great officers of ſtate, without whoſe concurrence no regal act can be done, and they are ever reſponſible to the people. Thoſe are the proper guards or checks the conſtitution hath placed, on the acts of the crown, whereas the power granted to the twenty-five barons, was a power to commit high treaſon, under colour of law, whenever they thought proper, for they were the ſole judges, whether it was or was not proper to diſtreſs the King and take his caſtles, *&c.* in fact, to take out of his hands all power, and conſequently authority. I may conclude with this plain queſtion, Could theſe men be called ſubjects, or did they owe any allegiance to the King?

The *barons wars* mentioned in our ancient hiſtories, ſeem to have proceeded in ſome meaſure from a like power granted to them as by the charter of King *John*; and probably the parliament's wars from their examples. Sir *Edward Coke* tells us, that if there be a King regnant, in poſſeſſion of the crown, although he be but *Rex de facto*, and not *de jure*, yet he is *Seignior le Roy*; and another that hath right, if he be out of poſſeſſion, he is not within the meaning of the ſtat. 11 *H.* 7. *c.* 1. for the ſubjects to ſerve and defend him in his wars, *&c.* And a pardon, *&c.* granted by a King *de jure*, that is not likewiſe *de facto*, is void. 3 *Inſt.* 7. A King that uſurps the crown, grants licences of alienation or eſcheats, it will be good againſt the *rightful King*; ſo of pardons, and any thing that doth not concern the King's ancient patrimony, or the government of the people: Judicial acts in the time of ſuch a one, bind the right King and all who ſubmitted to his judicature. The crown was toſſed between the two families of *York* and *Lancaſter* many years; and yet the acts of *royalty* done in the reign of the ſeveral competitors, were confirmed by the parliament: And theſe reſolutions were made, becauſe the common people cannot judge of the King's title, and to avoid anarchy and confuſion. *Jenk. Cent.* 130, 131.

Every King for the time being, has a right to the people's allegiance, who it is ſaid are bound by the ſtatute 11 *H.* 7. *c.* 1. to defend him in his wars againſt every power whatſoever, and ſhall incur no pains or forfeiture thereby. 1 *Hawk. P. C.* 36. And a King out of poſſeſſion, we are bound by the duty of our allegiance to reſiſt. *Ibid* But in the caſe of King *Charles* the Second, who was kept out of the exerciſe of the *kingly* office by traitors and rebels, it was adjudged that he was King both *de facto* and *de jure*; and all the acts which were done to the keeping him out, were high treaſon. *Kel. Rep.* 15.

There may be ſome Kings *de facto*, to whom it may be dangerous to do any ſervice, *viz.* Such as ſhall depoſe a rightful King: And according to the *Lord Chief Juſtice Hale*, if the right heir of the crown be in actual exerciſe of the ſovereignty in one part of the kingdom, and an uſurper in the exerciſe of it in another, the law adjudgeth him in the poſſeſſion of the crown that hath the true right; and the other is not a *King de facto*, but a diſturber, and no King: this was the caſe between King *Ed.* 4. and *Hen.* 6. And the like was held as to Queen *Mary*, who openly laid claim to the crown, and was proclaimed Queen; at the ſame time the Lady *Jane* was proclaimed Queen at *London* on the nomination of King *Ed.* 6. ſo that both being *de facto* in poſſeſſion of the crown, the law adjudged the poſſeſſion in *Mary*, who had the right of the ſame. *State Trials* 932.

It is high treaſon to conſpire againſt the King, Queen, &c. And a perſon may be guilty of treaſon againſt a King, tho' he be not in poſſeſſion of the crown. The dignity of the *King of England* is imperial; and our Kings have placed on their heads an imperial crown: King *Edgar* wrote himſelf *imperator & dominus, &c.* But no King of *England* uſed any ſeal of arms till the reign of *Rich.* 1. before that time, the ſeal was the King ſitting in a chair of ſtate on one ſide of the ſeal, and on horſeback on the other ſide; but this King ſealed with a ſeal of two lions, and King *John* was the firſt that bare three lions; and afterwards *Ed.* 3. quartered the arms of *France*, which has been continued down to this time. Alſo King *Henry* 8. was the firſt to whom Majeſty was attributed; before which our Kings were called *Highneſs, &c.* *Lex Conſtitut.* 47, 48.

The eldeſt ſon of the King of *England* is Prince of *Wales*, Duke of *Cornwall, &c.* and the younger ſons are born Dukes and Earls of what places the King pleaſes. K. *Hen.* 2. took his ſon into a kind of ſubordinate regality with him, ſo that there were *Rex Pater* and *Rex Filius*; but he did not diveſt himſelf of his ſovereignty, but reſerved to himſelf the homage of his ſubjects. And notwithſtanding this King, by conſent of parliament, created his ſon *John* King of *Ireland*; and King *Rich.* 2. made *Robert de Vere* Duke of *Ireland*; and *Ed.* 3. made his eldeſt ſon Lord of *Ireland*, with royal dominion; yet it has been held, that the King cannot regularly make a King within his own *kingdom*. 4 *Inſt.* 357, 360. *Hen. de Beauchamp*, Earl of *Warwick*, was by King *Henry* 6. crowned *King of Wight Iſland*; but it was reſolved, that this could not be done without conſent of parliament, and even then our greateſt men have been of opinion, that the King could not by law create a King in his own kingdom, becauſe there cannot be two Kings of the ſame place: And afterwards the ſame King *Henry* made the ſame Earl of *Warwick Primus Comes totius Angliæ*. A King cannot reſign or diſmiſs himſelf of his office of King, without conſent of parliament; nor could *Hen.* 2. without ſuch conſent, divide the ſovereignty: there is a ſacred band between the King and his kingdom, that cannot be diſſolved without the free and mutual conſent of both in parliament; and though in foreign kingdoms there have been inſtances of voluntary ceſſions and reſignations, which poſſibly may be warranted by their ſeveral conſtitutions, yet, by the laws of *England*, the King cannot reſign his ſovereignty without his parliament. *Sir Matt. Hale's Hiſt. Coronæ.* But yet let it be remembered, it was adjudged by parliament that *James* the Second had *abdicated* the throne.

If a King hath a kingdom by title of deſcent, where the laws have taken good effect and rooting; or if a King conquers a Chriſtian kingdom, after the people have laws given them for the government of the country, to which they ſubmit, no ſucceeding King can alter the ſame without the parliament. 7 *Rep.* 17. It is nevertheleſs held that conquered countries may be governed by what laws the King thinks fit, and that the laws of *England* do not take place in ſuch countries, until declared ſo by the conqueror, or his ſucceſſors; here in caſe of infidels their laws do not ceaſe, but only ſuch as are againſt the law of God; and where the laws are rejected or ſilent, they ſhall be governed according to the rule of natural equity. 2 *Salk. Rep.* 411, 412, 666.

Our Kings have diſtributed their whole power of judicature to the courts of juſtice; which courts by immemorial uſage have gained a known and ſtated juriſdiction, that no King can alter without an act of parliament. 2 *Hawk P. C.* 2. But as it has been reſolved, that the ſucceſſor of every King begins his reign on the very day that the former King died; therefore all patents of judges, ſheriffs, juſtices of peace, &c. determine by the death of the King. Commiſſions, &c. are not to ceaſe for ſix months after the death of the King. 7 & 8 *W.* 3. *c.* 27. *ſect.* 21. 1 *Ann. ſt.* 1. *c.* 8. 4 *Ann. c.* 8. 6 *Ann. c.* 7. *ſect.* 8. And TO THE GLORY OF HIS PRESENT MAJESTY, by 1 *Geo.* 3. *c.* 23. JUDGES ARE TO CONTINUE DURING GOOD BEHAVIOUR, notwithſtanding the demiſe of the crown.

The Kings of *England* not having the whole legiſlative power, if the King and clergy make a canon, tho' it binds the clergy *in re eccleſiaſtica*, it does not bind laymen; for they are not repreſented in the convocation, but in parliament: In the primitive church, the laity were preſent at all ſynods; and when the empire became Chriſtian, no canon was made without the Emperor's conſent, and indeed the Emperor's conſent included that of the people, he having in himſelf the whole legiſlative power; but the Kings of this kingdom have it not. 2 *Salk. Rep.* 412, 673. Religion, juſtice, and truth, are the ſupporters of the crowns of Kings. See *Crown.* See *Black. Com.* 1 *V.* 190, 246. 3 *V.* 254, 4 *V.* 32, 76, 82, &c.

By 5 *Geo.* 3. *c.* 27. proviſion is made for the adminiſtration of government, in caſe the crown ſhould deſcend to any of the children of his Majeſty, being under the age of 18 years; and for the care and guardianſhip of their perſon. See *King's Prerogative.*

King of Heralds, *Rex Heraldorum*, Is a principal officer at arms, that hath the pre-eminence of the ſociety. See *Herald* and *Garter*. Among the *Romans* he was called *pater patratus*.

King of the Minſtrels, at *Tutbury in com. Staff.* His power and privilege appears by a charter of *Rich.* II. confirmed by *Hen.* VI. in the 21ſt year of his reign. *Cowell.*

King's Bench, (*Bancus Regius.*) from the *Saxon banca*, a *bench* or *form*.

We ſhall here treat of,

I. *The court itſelf, generally.*
II. *Of its criminal juriſdiction.*
III. *Of its civil juriſdiction,* &c.
IV. *How far its preſence ſuſpends the power of other courts,* &c.
V. *Of the officers of the court.*

I. *Of the court of* King's Bench.

The court of King's Bench is the court or judgment-ſeat, where the King of *England* was ſometimes uſed to ſit in his own perſon; and therefore it was moveable with the court of King's houſhold, and called *Curia Domini Regis* and *Aula Regia*, as *Gwin* reports in the *Preface to his reading*; and that therein, and in the court of Exchequer, which were the only courts of the King till the time of *Henry* the Third, were diſcuſed all matters of juſtice, as well civil as criminal.

After the diviſion of the courts, and the eſtabliſhment of the court of Common Pleas, for the expreſs purpoſe of determining civil ſuits, the court of King's Bench was accuſtomed in ancient times to be eſpecially exerciſed in all criminal matters and pleas of the crown, leaving the judging of private contracts and civil actions to the Common Pleas and other courts. *Glanvil, lib.* 1. *cap.* 2, 3, 4. and *lib.* 10. *cap.* 18. *Smith de Rep. Ang. lib.* 2. *c.* 11. 4 *Inſt. fol.* 70.

This court hath a preſident who is Lord Chief Juſtice of *England*, with three juſtices aſſiſtants; formerly, according to *Forteſcue, cap.* 51. four or five, and officers thereto belonging, the clerk of the crown, a prothonotary, and other inferior miniſters and attornies.

Toward the the latter end of the *Norman* period, the *Aula Regis*, which was before one great court where the *juſticiar* preſided, was divided into four diſtinct courts, *i. e.* the court of *Chancery*, *King's Bench*, *Common Pleas* and *Exchequer*. Madox, c. 19. Bract. lib. 3. c. 7. fol. 105.

The court of *King's Bench* retained the greater ſimilitude with the ancient *Curia* or *Aula Regis*, and was always ambulatory, and removed with the King where-ever he went: Hence the original writs returnable into this court are *Coram nobis ubicunque fuerimus in Anglia*; and all records there are ſtiled *Coram Rege*, as it is ſtill ſuppoſed to have always the King himſelf in perſon ſitting in it; from whence it obtained the name of the court of King's Bench, and hath always retained a ſupreme original juriſdiction in all criminal matters; for in theſe the proceſs both iſſued from, and was returnable into, this court; but in treſpaſs it might be made returnable into either the King's Bench or Common Pleas, becauſe the plea was criminal as well as civil. 2 *Inſt.* 24. 4 *Inſt.* 70. *Co. Lit.* 71. *Dyer* 187. *Cromp. of Courts* 78. 1 *Rol. Abr.* 94. By *Stat.* 28 *Ed.* 1. *c.* 5. this court is to follow the King. King *Hen.* 3. ſat in perſon with the juſtices *in Banco Regis* ſeveral times, being ſeated on a high bench, and the judges in a lower one at his feet: And the King's Bench was originally the only court in *Weſtminſter-Hall*; out of which the courts of Common Pleas and Exchequer ſeem to have been derived. 2 *Hawk. P. C.* 6.

This court hath ſupreme authority, the King being ſtill preſumed by law to ſit there as judge of the court, tho' he doth judge by his judges; and the proceedings are ſuppoſed to be *Coram nobis*, that is before the King himſelf, for which reaſon all writs in this court are made ſo returnable, and not *Coram juſticiariis noſtris*, as is the form in the Common Pleas. 4 *Inſt.* 73.

II. *Of the criminal juriſdiction of the court of* King's Bench.

This court is termed the *Cuſtos morum* of all the realm, and by the plenitude of its power, where-ever it meets with an offence contrary to the firſt principles of juſtice, and of dangerous conſequence if not reſtrained, adapts a proper puniſhment to it. 1 *Sid.* 168. 2 *Hawk. P. C.* 6.

The juſtices of *B. R.* are the ſovereign juſtices of oyer and terminer, goal-delivery, and of eyre, and coroners of the land; and their juriſdiction is general all over *England:* By their preſence the power of all other juſtices in the county, during the time of this court's ſitting in it, is ſuſpended; for *in præſentia majoris ceſſat poteſtas minoris*; but ſuch juſtices may proceed by virtue of a ſpecial commiſſion, *&c. H. P. C.* 156. 4 *Inſt.* 73. 2 *Hawk. P. C.* 32. It is theſe juſtices who have a ſovereign juriſdiction over all matters of a criminal and public nature, judicially brought before them, to give remedy either by the Commom law or by ſtatute: And their power is original and ordinary: when the King hath appointed them, they have their juriſdiction from the law. 1 *Hawk.* 152. 4 *Inſt.* 74.

It has a particular juriſdiction, not only over all capital offences, but alſo over all other miſdemeanors of a public nature, tending either to a breach of the peace, or to oppreſſion or faction, or any manner of miſgovernment; and it is not material whether ſuch offences being manifeſtly againſt the public good, directly injure any particular perſon or not. 4 *Inſt.* 71. 11 *Co.* 98. 2 *Hawk. P. C.* 6.

And for the better reſtraining ſuch offences, it has a diſcretionary power of inflicting exemplary puniſhment on offenders, either by fine, impriſonment or other infamous puniſhment, as the nature of the crime, conſidered in all its circumſtances, ſhall require; and it may make uſe of any priſon which ſhall ſeem moſt proper; and it is ſaid, that no other court can remove or bail perſons condemned to impriſonment by this court. 2 *Hawk. P. C.* 7.

Alſo it hath ſo ſovereign a juriſdiction in all criminal matters, that an act of parliament appointing that all crimes of a certain denomination ſhall be tried before certain judges, doth not exclude the juriſdiction of this court, without expreſs negative words; and therefore it hath been reſolved, that 33 *H.* 8. *cap.* 12. which enacts, That all treaſons, *&c.* within the King's houſe, ſhall be determined before the Lord Steward of the King's houſe, *&c.* doth not reſtrain this court from proceeding againſt ſuch offences. 2 *Inſt.* 549. 2 *Jones* 53. 2 *Hawk. P. C.* 7.

But where a ſtatute creates a new offence which was not taken notice of by the Common law, and erects a new juriſdiction for the puniſhment of it, and preſcribes a certain method of proceeding, it ſeems queſtionable how far this court has an implied juriſdiction in ſuch a caſe. 1 *Sid.* 296. 2 *Hawk. P. C.* 7.

This court, by the plenitude of its power, may as well proceed on indictments removed by *certiorari*, out of inferior courts, as on thoſe originally commenced here, whether the court below be determined, or ſtill *in eſſe*, and whether the proceedings be grounded on the Common law, or on a ſtatute making a new law concerning an old offence. *Dalſ.* 25. 44 *Ed.* 3. 31. *b. Cromp. Juriſ.* 131.

But the court of King's Bench will not give judgment on a conviction in the inferior court, where the proceedings are removed by *certiorari*, but will allow the party to waive the iſſue below, and to plead *de novo*, and to go to trial upon an iſſue joined in *B. R. Carth.* 6. adjudged in the caſe of one *Baker*, who was convicted at *Kingſtone upon Hull*, for ſpeaking ſeditious words.

Nor can a record, removed into the King's Bench from an inferior court regularly be remanded after the term in which it came in; yet if the court perceives any practice in endeavouring to remove ſuch record, or that it is intended for delay, they may in diſcretion refuſe to receive it, and remand it back before it is filed. 2 *Hawk. P. C.* 7. and ſeveral authorities there cited.

Alſo by the conſtruction of the ſtatutes, which give a trial by *niſi prius*, the King's Bench may grant ſuch a trial in caſes of treaſon or felony, as well as in common caſes, becauſe for ſuch trial, not the record, but only a tranſcript is ſent down. 4 *Inſt.* 74. *Raym.* 364.

And by the 6 *Hen.* 8. *cap.* 6. it is enacted, "That the King's Bench have full authority, by diſcretion, to remand as well the bodies of all felons removed thither, as their indictments, into the counties where the felonies were done; and to command the juſtices of goal-delivery, juſtices of the peace, and all other juſtices, to proceed thereon after the courſe of the Common law, as the ſaid juſtices might have done, if the ſaid indictments and priſoners had not been brought into the ſaid King's Bench." This act extends not to high treaſon. *Raym.* 367.

The judges of this court are the ſovereign juſtices of oyer and terminer, gaol-delivery, conſervators of the peace, *&c.* as alſo the ſovereign coroners; and therefore, where the ſheriff and coroners may receive appeals by bill, *a fortiori* they may; alſo this court may admit perſons to bail in all caſes according to their diſcretion. 4 *Inſt.* 73. 9 *Co.* 118. *b.* 4 *Inſt.* 74. *Vaugh.* 157.

In the county where the King's Bench ſits, there is every term a grand inqueſt, who are to preſent all criminal matters ariſing within that county, and then the ſame court proceeds upon indictments ſo taken; or if in vacation,

tion, there be any indictment of felony before the juſtices of peace, oyer and terminer or gaol-delivery there ſitting, it may be removed by *certiorari* into *B. R.* and there they proceed *de die in diem, &c.* 2 *Hale's Hiſt. P. C.* 3.

It may award execution, againſt perſons attainted in parliament, or any other court; when the record of their attainder or a tranſcript is removed, and their perſons brought thither by *habeas corpus.* Cro. Car. 176. Cro. Jac. 495. Pardons of perſons condemned by former juſtices of gaol-delivery, ought to be allowed in *B. R.* the record and priſoner being removed thither by *certiorari* and *habeas corpus.* 2 Hawk. 27.

III. *Of the civil juriſdiction of the court of* King's Bench, *&c.*

On the firſt diviſion of the courts, it was intended to confine the juriſdiction of the court of King's Bench to matters merely criminal, and accordingly ſoon afterwards it was enacted by *Magna Charta, cap.* 11. That Common Pleas ſhould not follow the King's court, (*i. e. B. R.*) but be held in a certain place: Hence it is that this court cannot determine a mere real action. 17 *Ed.* 3. 50. 1 *Rol. Abr.* 536, 537.

But notwithſtanding Common Pleas cannot be immediately holden *Banco Regis,* yet where there is a defect in the court, where by law they be holden originally, they may be holden in *B. R.* as if a record come out of the Common Pleas by writ of error, there they may hold plea to the end; ſo where the plea in a writ of right is removed out of the county by a *pone* in *B. R.* on a writ of *meſne replevin, &c.* 2 Inſt. 23. 4 Inſt. 72, 113. and ſee *Saund.* 256. *Show. P. C.* 57.

So any action *vi & armis,* where the King is to have fine, as ejectment, treſpaſs, forcible entry, *&c.* being of a mixed nature, may be commenced in *B. R.* 2 Inſt. 23.

Alſo any officer or miniſter of the court, entitled to the privilege thereof may be there ſued by bill in debt, covenant or other perſonal action; for the act takes not away the privilege of the court. 2 *Inſt.* 23. 4 *Inſt.* 71. 2 *Bulſt.* 123.

From hence aroſe the notion, that if a man was taken up as a treſpaſſer in the King's Bench, and there in cuſtody, they might declare againſt him in debt, covenant or account; for this likewiſe was a caſe of privilege, ſince the Common Pleas could not procure the priſoners of the King's Bench to appear in their court; and therefore it was an exception out of *Magna Charta.* 4 Inſt. 71. Cro. Car. 330.

By the ſtatute of *Glouceſter, cap.* 8. None ſhall have writs of treſpaſs before juſtices, unleſs he ſwear by his faith that the goods taken away were worth forty ſhillings.

This oath is now diſuſed, yet if the damages laid in the declaration (in caſes cognizable in inferior courts) do not amount to 40 *s.* the court will not hold plea of the matter. If laid to the amount of 40*s.* and there is not any ſett off, and plaintiff recovers under 40*s* defendant may ſuggeſt it on the roll, and plaintiff ſhall not have more coſts than damages.

The court of King's Bench now holds plea in all actions in general, ſuppoſing the party to be in cuſtody of the marſhall, except real actions, ſuffering of recoveries, and levying of fines, *&c.* but *vide* infra.

To this court it regularly belongs to examine errors of all judges and juſtices in their judgments and proceedings; the court of Exchequer excepted. *F. N. N.* 20, 21. It hath been held, that a writ of error lies in *B. R.* of an attainder before the Lord High Steward. 1 *Sid.* 208. And upon judgment given in the Chancery, (*i. e.* in the petty bag ſide) as well as other courts, writ of error in many caſes will lie returnable in the court of King's Bench. But on proceedings in *B. R.* by *original writ,* error lies not, but to the parliament. The court of *B. R.* being the higheſt court of Common law, hath power to reform inferior courts, reverſe erroneous judgments given therein, and puniſh the magiſtrates and officers for corruption, *&c.* 2 *Hawk.* 8.

The court of King's Bench, as it is the higheſt court of Common law, hath not only power to reverſe erroneous judgments for ſuch errors as appear the defect of the underſtanding; but alſo to puniſh all inferior magiſtrates and all officers of juſtice, for wilful and corrupt abuſes of their authority againſt the obvious principles of natural juſtice; the inſtances of which are ſo numerous, and ſo various in their kinds, that it ſeems needleſs to attempt to inſert them. 2 *Hawk. P. C.* 8. *Vaugh.* 157. 1 *Salk.* 201.

This court grants *habeas corpus's* to relieve perſons wrongfully impriſoned; and may bail any perſon whatſoever: A perſon *illegally* committed to priſon by the King and council, or either houſe of parliament, (as it is ſaid) may be bailed in *B. R.* and in ſome caſes on legal commitments; alſo perſons committed by the Lord Chancellor, *&c.* 2 *Hawk.* 110, 111. Writs of *Mandamus* are granted by this court, to reſtore officers in corporations, colleges, *&c.* unjuſtly turned out; and freemen wrongfully diſfranchiſed: Alſo *quo warranto's* againſt perſons or corporations, uſurping franchiſes and liberties againſt the King; and on miſuſer of privileges to ſeize the liberties, *&c.* and in *B. R.* the King's letters patent may be repealed by *Scire facias, &c.*

This court in ancient times was (as before obſerved) ordinarily exerciſed in all criminal matters, and pleas of the crown; leaving private contracts and civil actions to the Common Pleas, and other courts. 4 *Inſt.* 70. It is now divided into a Crown-ſide and a Plea-ſide; the one determining criminal, and the other civil cauſes: The Crown-ſide determines all criminal matters, (wherein the King is plaintiff) as treaſons, felonies, murders, rapes, robberies, riots, breaches of the peace, and all cauſes proſecuted by way of indictment, information, *&c.* And into the court of *B. R.* Indictments from all inferior courts and orders of ſeſſions, *&c.* may be removed by *certiorari;* and inquiſitions of murder are certified of courſe into this court, as it is the ſupreme court of criminal juriſdiction: Hence alſo iſſue attachments, for diſobeying rules or orders, *&c.* 4 *Inſt.* 71, 72. On the Plea-ſide it holds plea of all perſonal actions proſecuted by bill or writ, as actions of debt, detinue, covenant, account, actions upon the caſe, and all other perſonal actions, ejectment, treſpaſs, waſte, *&c.* againſt any perſon in the cuſtody of the marſhal of the court, as every one ſued here is *ſuppoſed* to be; and in all perſonal actions for or againſt any officer, miniſter or clerk of the court, who in reſpect of their neceſſary attendance have the privilege of the court. *Ibid.*

It has been held, that action upon the ſtatute of *Wincheſter,* of robbery, does not lie by original in the court of *B. R.* becauſe it is a common plea; but it has been adjudged otherwiſe, and allowed on bill. 2 *Danv. Abr.* 279, 282.

An appeal in *B. R.* muſt be arraigned on the Plea-ſide: except it come in by *certiorari,* when it is ſaid it ought to be arraigned on the Crown-ſide. 2 *Hawk.* 308. Where the court of *B. R.* proceeds on an offence committed in the ſame county wherein it ſits, the proceſs may be made returnable immediately; but when it proceeds on an offence removed by *certiorari* from another county, there muſt be fifteen days between the teſte and return of every proceſs, *&c.* 9 *Rep.* 118. 1 *Inſt.* 134. 1 *Sid.* 72.

IV. *How far the preſence of the court of* King's Bench *ſuſpends the power of other courts,* &c.

This court being the ſupreme court of oyer and terminer, gaol-delivery and eyre, its preſence ſuſpends the power, and avoids the proceedings of all other courts of the ſame nature in the county wherein it ſits, during its ſitting there, eſpecially if the juſtices of ſuch courts have notice of its ſitting. *H. P. C.* 156. 9 *Co.* 118. 27 *Aſſ. pl.* 1. 2 *Inſt.* 27. 2 *Hawk. P. C.* 8. or without notice, *per* 4 *Inſt.* 73.

But if an indictment in a foreign county be removed before commiſſioners of oyer and terminer into the county where the King's Bench ſits, they may proceed; for the King's Bench not having the indictment before them cannot proceed for this offence. 4 *Inſt.* 73.

But if an indictment is found in the vacation-time in the ſame county in which the King's Bench ſits, and in term-time the King's Bench is adjourned, there may be a ſpecial commiſſion to hear it. *Ibid.*

The firſt proceſs in civil ſuits in this court is a bill either real or feigned, and ſo called, becauſe its foundation was the bill of complaint in court, touching a ſuppoſed treſpaſs, for which according to another ſuppoſition the defendant has been taken up, and is in the cuſtody of the marſhal; on this is founded the *latitat*, which ſuppoſes that the defendant had eſcaped, and therefore iſſues in the King's name, to apprehend the party wherever he may be found; for the King has an univerſal juriſdiction over all his ſubjects, and conſequently may call any of them that fled from the juſtice of his own court. But now defendant is only ſerved with a copy of the proceſs, unleſs affidavit is made of a debt, &c. and for 10*l.* at leaſt, *an acetiam* introduced into the writ, and the ſum ſworn to indorſed thereon.

All proceſs on writs of appeal, and all proceſs on indictments removed hither by *certiorari* from a foreign county, ought to be returnable *coram nobis ubicunque fuerimus*. 2 Hawk. P. C. 8, 9.

V. *Of the officers of the court of* King's Bench.

The *officers of the King's Bench* are, on the Crown-ſide, the *Clerk of the Crown*, and the *Secondary* of the Crown: And on the Plea-ſide there are many clerks and officers; as a *Chief Clerk* or *Prothonotary*, and his *Secondary* and deputy, the *Cuſtos Brevium*, a *Clerk of the Papers*, the *Clerk of the Declarations*, *Signer* and *Sealer* of bills, the *Clerk of the Rules*, *Clerk of the Errors*, the *Clerk of the Bails*, *Filizers*, the *Marſhal* of the court, and the *Cryer*. The *prothonotary* is the maſter of the *King's Bench* office. The *ſecondary* conſtantly attends the ſitting of the court, to receive matters referred to him by the judges, to be examined and reported to the court; he ſigns all judgments, and taxes coſts, &c. And he alſo informs the court in point of practice. Their *deputy* has the cuſtody of the ſtamp, for ſigning all writs, &c. and keeps remembrances of all records; writs returned are filed in his office, and common bails, &c. The *Cuſtos Brevium* files originals and other writs whereon proceedings are had to outlawry; examines and ſeals all records of *Niſi prius* for trials at the aſſiſes, and has ſeveral clerks under him for making up records throughout *England*. The *Clerk of the Papers* makes up the paper-books of all ſpecial pleadings and demurrers, which the plaintiff's attorney commonly ſpeaks for, and afterwards gives a rule for the defendant's attorney to bring to him again to be entered, &c. The *Clerk of the Declarations* files all declarations, and continues them on the back from the term of declaring till iſſue is joined. The *ſigner and ſealer* of bills keeps a book of entry of the names of the plaintiffs and the defendants in all ſuch writs and proceſſes; and the defendants enter their appearances with him. The *Clerk of the Rules* takes notice of all rules and orders made in court, and afterwards draws them up and enters them in a book at large; and with him alſo are given all rules of courſe on a *cepi corpus*, *habeas corpus*, writs of inquiry, &c. and files all affidavits uſed in court, and makes copies of them. The *Clerk of the Errors* allows all writs of error, and makes *Superſedeas's* thereupon into any county, and tranſcribes and certifies records. The *Clerk of the Bails* and *Poſteas* files the bail-pieces, and marks the *Poſteas*, &c. The *Filizers* of counties make the meſne proceſs after the original, in ſuing to the outlawry; and have the benefit of all proceſs and entries, thereupon. The *Marſhal*, by himſelf or deputy always attends the court, to receive into his cuſtody ſuch priſoners as ſhall be committed. The *Cryer* makes proclamations of ſummoning and adjourning the court, calls nonſuits, and ſwears jurymen, witneſſes, &c.

See more of *King's Bench* under *Court*, &c. *Lord Chief Juſtice*; vide *Juſtice*.

Kingeld, Eſcuage, or royal aid. As in a charter of King *Henry* II. to the abbot and monks of *Mireval*. *Volo & firmiter præcipio, ut ſint quieti per totam terram meam de theloneo & de ſciris & de hundredis, & de Wapentachiis, & de Kingeld, & de Denegeld, & de Murdre.* Mon. Angl. tom. 1. p. 830.

King's Houſhold. In the reign of King *Edward* III. 16,000*l.* *per annum* and no more, was appointed for the *King's houſhold*: And *Anno* 29 *H.* 6. the charge of the *houſhold* was reduced to 12,000*l.* a year. But in Qneen *Elizabeth's* reign, the profits of the kingdom being very much advanced, 40,000*l.* *per annum* was allowed for her *houſhold*. And on the reſtoration of King *Charles* 2. the parliament, for the honour of the King and kingdom, ſettled on his Majeſty 200,000*l.* *per annum*. In the reigns of King *William* 3. and Queen *Anne* 700,000*l.* a year was allotted for the ſupport of the *houſhold*, and ordinary charge of the civil liſt. And his Majeſty King *George* 1. had the like ſum of 700,000*l.* *per annum* ſettled upon him by parliament, ariſing out of the duties of exciſe, wine-licences, poſt-office, &c. Alſo to his late Majeſty King *George* 2. The duty of exciſe on ale, beer, &c. was granted with a further ſubſidy of tonnage, and the yearly ſum of 100,000*l.* out of the aggregate fund, for ſupport of the *houſhold* and dignity of the crown; ſo as to make the revenue 800,000*l.* *per annum*, and deficiencies to be made good by parliament. See the ſtatutes 13 & 14 *W.* 3. 1 *Ann. c.* 7. 1 *Geo* 1. 1 *Geo.* 2. *c.* 1. Alſo to his preſent Majeſty King *George* 3. is granted the ſum of 800,000*l.* for ſupport of the *houſhold* and the honour and dignity of the crown. See 1 *Geo.* 3. *c.* 1. and 17 *Geo.* 3. *c.* 21. by which an addition of 100,000*l.* *per annum* is granted to his Majeſty for the like purpoſe, chargeable upon the *aggregate fund*.

King's Palace. The limits of the *King's Palace* at *Weſtminſter*, extend from *Charing-Croſs* to *Weſtminſter-Hall*, and ſhall have ſuch privileges as the ancient palaces. *Stat.* 28 *H.* 8. If any perſon ſhall ſtrike another in the *King's Palace*, he ſhall have his right-hand cut off, be impriſoned during life, and alſo be fined, 32 *H.* 8. *c.* 12.

King's Prerogative. The ſtatute of the *King's prerogative* 17 *Ed.* 2. contains not the *King's* whole *prerogative*, but only ſo much thereof as concerns the profits of his coffers, for his *prerogative* extends much further; and the *King* hath divers rights of Majeſty peculiar to himſelf, which the learned in the law term *ſacra ſacrorum*, ſacred and inſeparable, and which are many and various. *Staundf. Prærog. Reg. Plowd.* 314. Sir *Henry Spelman* calls the *King's prerogative*, Lex Regiæ Dignitatis; and a great many *prerogatives* ariſe to the *King* from the reaſon of the *Common law*; which allows that to be law almoſt in every caſe for the *King*, which is not ſo for the ſubject: But the *King's prerogative* does *not extend* to *any thing injurious to his ſubjects*; as, if lands had been given to the King and to the heirs of his body, he could not before iſſue had, have aliened in fee, but only to have barred *his* iſſue as a common perſon might have done; but not to have barred the reverſion, for that would have been a wrong in the caſe of a ſubject, and the King's prerogative cannot alter his caſe nor make it greater, than the donor gave unto him: And it is a maxim in our law, that "*the King can do no wrong.*" Finch 85. 1 Inſt. 19.

The *King's prerogative* is incident to his crown, and as ancient as that itſelf; and hath in it a preſcription, and is not only the law of the *Exchequer*, but the law of the land: This *prerogative* of the *King* is of a very large extent; it reacheth to all perſons eccleſiaſtical and civil: as he is *perſona mixta*, ſo is his power and *prerogotive.* 7 Rep. 14. It is the *King's Royal Prerogative* to make war and peace: And as head of the ſtate he calls, continues, prorogues and diſſolves parliaments; and all ſtatutes are to have his royal aſſent, which he may refuſe to give to a bill; though his denial is not an expreſs negative, but that he will adviſe upon it. 1 *Inſt.* 110, 165.

His proclamation in calling or diſſolving parliaments, declaring war and peace, &c. has the effect of a law; but he cannot by proclamation introduce new laws, yet *he may inforce old ones* diſcontinued. 3 *Inſt.* 162. 2 *Inſt.* 743. It was anciently held, but it is not ſo now, that the King might ſuſpend or alter any particular law that was hurtful to the public: but he may diſpenſe with a penal ſtatute wherein his ſubjects have not any intereſt.

4 *Inſt.* 7. *Rep.* 36. But by *ſtat.* 1 *W.* & *M. Seſſ.* 2. *c.* 2. it is declared and enacted, "that no diſpenſation by *non obſtante* of or to any ſtatute or any part thereof be allowed, but that the ſame ſhall be held void and of none effect, except a diſpenſation be allowed in ſuch a ſtatute." Acts of parliament do not bind the King, if he be not ſpecially named; unleſs they concern the commonwealth, ſuppreſs wrong or fraud, *&c.* in which caſes they do; but he may take the benefit of any ſtatute, though not named. 5 *Rep.* 14. 7 *Rep.* 32. 11 *Rep.* 71. And a *prerogative* given generally to one King, or any thing to be done to one, goes of courſe to others. *Raym.* 212. He determines rewards and puniſhments; moderates laws, and pardons offenders: But the King cannot pardon murder, where *appeal* is brought by the ſubject. 2 *Inſt.* 216. Becauſe it is the *action* of the *party* proſecuting, and not the *proſecution* of the *crown.* Pardons of felony, *&c.* ſhall be granted only where the King may lawfully do it, acccording to his coronation oath. 14 *Ed.* 3. *ſtat.* 1. *c.* 15. The King may lay imbargo's on ſhipping; but then it muſt be *pro bono publico,* and not for the private advantage of any particular traders. 1 *Salk.* 32. And tho' the King hath an intereſt in every ſubject, and a right to his ſervice; he cannot diſcharge the right of a ſubject, or hinder him of a remedy the law gives him. *Holt* Ch. J. 1 *Salk.* 19. 168.

It is held that the King is *Cuſtos totius Regni Angliæ:* And he may, if he ſee cauſe, open or ſhut the ſea-ports, and forbid the paſſage of his ſubjects over ſea without licence, *&c.* 12 *Rep.* 34. He may not diſpoſe of the ports to any ſubject; but ſhall appoint officers for the cuſtody thereof, under him. 11 *Rep.* 86. It is his *prerogative* alone to diſpoſe and govern the militia of the nation: to make dukes, earls, barons, knights of the garter, *&c.* He names, creates, makes and removes the great officers of the government. 1 *Inſt.* 165. All writs, proceſſes, commiſſions, *&c.* are in the King's name; and he may make courts, which ſhall proceed according to the Common law. *Jenk. Cent.* 285. He may create univerſities, colleges, counties, boroughs, fairs, markets, *&c.* No foreſt, chaſe or park, can be made, or caſtle built, without the King's leave. 4 *Inſt.* 294. The King may incorporate a whole city, pariſh, *&c.* or part of it, and grant and annex to ſuch corporations divers franchiſes: Though they may not, under colour thereof, ſet up a monopoly. *Godb.* 253. *Noy* 182. And he may incorporate a town, and enable them to chuſe burgeſſes of parliament, but this part of the *prerogative* of increaſing the number of parliament men, ſeems to be given up, by the late Kings. *Hob.* 14.

As ſupreme head of the church, our King hath power to call a national or provincial council; and by his royal aſſent the canons made in convocation have the force of laws: And to him the laſt appeal is made. *Danv.* 73. 4 *Inſt.* 325. He hath the ſupreme right of patronage all over *England*; and is the founder and patron of all biſhopricks, *&c.* ſo that none can be made biſhop but by his nomination: He not only founds churches, but licenſes others to found them, exempt from the ordinary's juriſdiction; and he hath the tithes of foreſts and places extraparochial, which he may grant by letters patent: Alſo the King ſhall pay no tithes; though his leſſee ſhall pay them. *Wood's Inſt.* 18. 1 *Cro.* 511. The King hath power to make an alien free born, and to grant letters of ſafe conduct to foreign parts: He can put a value upon the coin, which is made by his authority; and make foreign coin current by proclamation: And to make money, the law gives the King all mines of gold and ſilver. *Plowd.* 314.

He is the general guardian of ideots and lunaticks; and ſhall have the lands of felons, *&c.* convict; alſo the goods of felons and fugitives; goods and chattels of pirates; wreck of the ſea, *&c. Stat.* 17 *Ed.* 2. *cap.* 1. 9 *H.* 3. 4 *Inſt.* 136. The King is lord paramount of all the lands in *England*; and all eſtates for want of heirs, or by forfeiture, eſcheat to him: All lands are ſaid to be holden of the King; as *by conſtruction of law* they are originally derived from the crown. 1 *Inſt.* 1. But this muſt be conſidered as in truſt for the benefit of the ſtate.

Lands in the King's poſſeſſion, are free from tenure; and the King may not be jointenant with any. *Finch* 83. The grant of the King is taken moſt ſtrongly againſt a ſtranger, and favourably for him: And he may avoid his own grants for deceit, *&c. Plowd.* 243. The King may grant a thing in action, which another cannot; and reſerve a rent to a ſtranger, *&c.* He cannot grant or take any land (not caſt upon him by deſcent) but by matter of record: And the King may not grant an annuity to charge his perſon, which is not chargeable like the perſon of a ſubject; though he may grant it out of the revenues of exciſe, *&c.* 4 *Rep.* 54. 2 *Inſt.* 186. 1 *Salk.* 58.

Where the title of the King and of a common perſon concur, his title ſhall be preferred. 1 *Inſt.* 30. No diſtreſs can be made upon the King's poſſeſſion; but he may diſtrain out of his fee in other lands, *&c.* and may take diſtreſſes in the highway. 2 *Inſt.* 131. An heir ſhall pay the King's debt, though he is not named in the bond: And the King's debt ſhall be ſatisfied before that of a ſubject, for which there is a *prerogative* writ. 1 *Inſt.* 130, 386. By the ſtat. 25 *Ed.* 3. *c.* 19. a common perſon may ſue the King's debtor, notwithſtanding he hath a protection, and recover judgment againſt him; but he cannot have execution unleſs he give ſecurity to pay the King's debt: If he take out execution before, and levy the money, the ſame may be ſeiſed to ſatisfy the debt of the King. *Godb.* 290. 2 *Nelſ. Abr.* 1081, 1082. If a debtor has not a writ of protection, he may be in execution for a debt at the ſuit of the ſubject. See *poſt.* The King hath the command of all forts, and places of ſtrength, *&c.* and authority in making and caſting of ordnance. 21 *Jac.* 1. *c.* 3.

The King is the fountain of honour, and has the ſole power of conferring dignities and honourable titles. It hath been adjudged, that although the King hath a *prerogative* by the Common law, to have his debt firſt ſatisfied, that muſt be when it is in equal degree with the debt of his ſubject; and by the *ſtat.* 33 *Hen.* 8. *c.* 39. the King's debt ſhall be preferred, ſo as there is no judgment, *&c. Cro. Car.* 283. *Hardr.* 23. Goods and chattels may go in ſucceſſion to the King; though they may not to any other ſole corporation. 1 *Inſt.* 90. In whoſoever hands the goods of the King come, their lands are chargeable, and may be ſeized for the ſame: And the King is not bound by ſale of his goods in open market. 2 *Inſt.* 713. No preſcription of time runs againſt the King; he is not within the ſtatute of limitation of actions. 11 *Rep.* 74.

By *Stat.* 21 *Jac.* 1. *c.* 2. No title is to be impeached by the crown, unleſs the King's title appeared within ſixty years, before the holding the parliament. And this ſtatute is amended by 9 *Geo.* 3. *c.* 16. which diſables the crown to ſue or implead any perſon for any manors, lands, hereditaments, *&c.* where the right hath not or ſhall not firſt accrue and grow within ſixty years, next before the commencing ſuch ſuit, *&c.* Vide the ſtatute, which is altered with reſpect to the *Savoy,* by 11 *Geo.* 3. *c.* 4.

Action lies not againſt the King; but a petition inſtead of it, to him in the Chancery: And it is lawful for any ſubject to petition the King for redreſs, where he finds himſelf grieved by any ſentence or judgment. 2 *Inſt.* 187. *Hob.* 220. There are no coſts againſt the King; no entry will bar him; and no judgment is ever final againſt him, but with a *Salvo jure Regis.* Lit. 178. Finch. 460.

The King's title is not to be tried without warrant from the King, or aſſent of the Attorney General. 2 *Inſt.* 424. The King may have ſuch proceſs in his ſuit, as no other perſon but himſelf can have in any caſe. 1 *Rep.* 18. *Finch.* 476. He may plead ſeveral matters, without being double, and the parties ſhall anſwer them all. *Bro. Doubl. pl.* 57. And in his pleading, he need not plead an act of parliament, as a ſubject is bound to do. 4 *Rep.* 75.

The King may ſue in what court he pleaſes, and cannot be nonſuit, as he is ſuppoſed to be preſent in all his courts: he is not bound to join in demurrer on evidence; and the court may direct the jury to find the matter ſpecially. *Finch* 82. 5 *Rep.* 104. The King's only teſtimony of any thing done in his preſence, is of as high a nature and credit as any record; whence it is, that in all original writs or precepts ſent out for the diſpatch of juſtice, he uſeth no other witneſſes than himſelf, as *teſte meipſo, &c.* The King cannot be a minor; and in him the law will ſee no defect, negligence or folly. 1 *Inſt.* 41, 57.

There are ſome other *prerogatives* belonging to our Kings; but the judges at *Weſtminſter* ought to judge of matters of *prerogative* relating to the King, as they do matters concerning other perſons. *Noy* 181. *Plowd.* 136.

The King may not by petition, bill, *&c.* diſpoſe of any man's lands or goods: Nor ſhall he take that he hath right to, which is in the poſſeſſion of another, but by due courſe of law. *Winch.* 9. He may not command a man to priſon, againſt the writs and proceſs of law. 12 *Rep.* 66.

The law is the rule of the King's *prerogative*; which ought to be grounded upon antiquity, or otherwiſe it may be an incroachment on the liberty of the ſubject. *Rex eſt anima Legi & Lex eſt anima Regi.* 2 Inſt. 262.

See *Debt to the King, Grants of the King*, &c. See farther on this ſubject, *Black. Com.* 1 *V.* 237. And *Com. Dig.* 4 *V.* tit. *Prærogative.*

King's Silver, Is the money which is paid to the King in the court of Common Pleas, for a licence granted to any man to levy a *fine* of lands, tenements or hereditaments to another perſon: And this muſt be compounded according to the value of the land, in the alienation office, before the fine will paſs. 2 *Inſt.* 511. 6 *Rep.* 39, 43.

King's ſwanherd, *(Magiſter deductus cignorum).* Pat. 16 R. 2. pars 1. m. 38. *Rodulphum Scot*, cuſtodem cignorum noſtrorum, *ſive per alium quemcunque qui pro tempore cuſtos cignorum noſtrorum prædictorum fuerit.* No fowl can be a ſtray but a *ſwan.* 4 Inſt. ſol. 280.

Kintal, Is a certain weight of merchandiſe, moſt commonly of one hundred pounds, or ſomething under or over, according to the ſeveral uſes of divers nations. *Plowden, fol.* 3. mentions 2000 *kintals* of woad in the caſe of *Reniger* and *Fogaſſa. Item duodecim denarios de quolibet ceræ quintallo.* Chart. 31 Edw. 1. m. 4. See *Quintal.*

Kintlidge, A term uſed among merchants and ſeafaring perſons, for a ſhip's ballaſt. *Merch. Dict.*

Kipe, (from the *Saxon, Cypa)* Is a baſket or engine made of oſiers, broad at one end, and narrower by degrees, uſed in *Oxfordſhire* and other parts of *England* for the taking of fiſh; and fiſhing with thoſe engines is called *Kipping.*

To the curious reader, it may not be improper to obſerve, that this manner of fiſhing with baſkets of the ſame kind and ſhape, is practiſed by the barbarous inhabitants of *Ceylon* in the *Eaſt-Indies*, as appears in the relation and figure of it given by Mr. *Knox* in his travels, *pag.* 28.

Kipper-time. No ſalmon ſhall be taken between *Graveſend* and *Henley upon Thames* in *kipper-time, viz.* between the *Invention of the Croſs* (3 *May)* and the *Epiphany.* Rot. Parl. 50 Edw. 3. Cowell.

Kirby's Queſt, Is an ancient record remaining with the remembrancer of the Exchequer; ſo called from its being the *inqueſt of John de Kirby*, treaſurer to King *Edw.* 1.

Kirk-mote, A ſynod; and ſometimes it has been taken for a meeting in the church or veſtry. *Blount.*

Knave, An old *Saxon* word, which had at firſt a ſenſe of ſimplicity and innocence, for it ſignified a boy; *Sax. cnapa*, whence a *knave child*, i. e. a boy diſtinguiſhed from a girl in ſeveral old writers; afterwards it was taken for a ſervant boy, and at length for any ſervant man: Alſo it was applied to a miniſter or officer, that bore the weapon or ſhield of his ſuperior, as *ſcild knapa*, whom the *Latins* called *armiger*, and the *French eſcuyer.* 14 Ed. 3. c. 3. And it was ſometimes of old made uſe of as a titular addition; as *Johannes* C. filius *Willielmi* C. de *Derby*, knave, *&c.* 22 *Hen.* 7. 36. The word is now perverted to the hardeſt meaning, *viz.* A falſe and deceitful fellow. *A knave-child between them two they gate.*—Gower, Poem, fol. 52, 106. And *Wickliff* in his old tranſlation, *Exod.* 1. *xvi. If it be a knave-child*, i. e. a ſon or male child. In the viſion of *Piers Plowman.* Cokes and her *knaves* cryden hotes pyes, hote, *i. e.* Cooks and their boys, or ſcullions. *Cowell.*

Knight, (Sax. *cnyt*, Lat. *miles*, and *eques auratus*, from the gilt ſpurs he uſually wore, and thence called anciently *Knights of the ſpur*: The *Italians* term them *Cavalieri*, the French *Chevaliers*, the Germans *Ruyters*, the Spaniards *Cavallaro's &c.)* In its original properly ſignified a ſervant; but there is now but one inſtance where it is taken in that ſenſe, and that is *knight* of a ſhire, who properly ſerves in parliament for ſuch a county; but in all other inſtances it ſignifies one who bears arms, who, for his virtue and martial proweſs, is by the King, or one having his authority, exalted above the rank of gentleman to a higher degree of dignity. The manner of making them, *Camden* in his *Britan.* thus ſhortly expreſſeth: *Noſtriſs vero temporibus, qui equeſtrem dignitatem ſuſcipit, flexis genibus leviter in humero percutitur, princeps his verbis Gallice affatur*; Sus vel ſois Chevalier au nom de Dieu, i. e. *Surge aut ſis eques in nomine Dei.* This is meant of *knights bachelors*, which is the loweſt, but moſt ancient degree of *knighthood* with us. The privilege belonging to a *knight*, ſee in *Fern's Glory of Generoſity, p.* 116.

Of *knights* there are two ſorts; one *ſpiritual*, ſo called by divines in regard of their ſpiritual warfare, the other *temporal.* *Caſſaneus de Gloria Mundi, par.* 9. *conſiderat.* 2. See *Selden's Titles of Honour, fol.* 770.

Chief Juſtice *Popham* affirmed, he had ſeen a commiſſion granted to a biſhop, to *knight* all the perſons in his dioceſe. *Godbolt's Reports, fol.* 398.

Of the ſeveral orders, both of *ſpiritual* and *temporal knights*, ſee Mr. *Aſhmole's Inſt. of the Knights of the Garter.*

He who ſerved the King in any civil or military office or dignity, was formerly called *miles*: It is often mentioned in the old charters of the *Anglo-Saxons*, which are ſubſcribed by ſeveral of the nobility, *viz.* after biſhops, dukes and earls, *per A. B. militem*, where *miles* ſignifies ſome officer of the courts, as *miniſter* was an officer to men of quality. Thus we read in *Ingulphus, De dono F. quondam Militis Kenulſi Regis, fol.* 860.

Afterwards the word was reſtrained to him who ſerved only upon ſome military expedition, or rather to him who by reaſon of his tenure was bound to ſerve in the wars, and in this ſenſe the word *miles* was taken *pro vaſſallo.* Thus in the laws of *William the Conqueror*: *Manibus ei ſeſe dedit, cuncta ſua ab eo miles a Domino recepit.* And he who by his office or tenure was bound to perform any military ſervice, was furniſhed by the chief lord with arms, and ſo *adoptabatur in militem*, which the *French* call *adouber*, and we do *dub* ſuch a perſon a *knight.* But before they went into the ſervice, it was uſual to go into a bath and waſh themſelves, and afterwards they were girt with a girdle; which cuſtom of bathing was conſtantly obſerved, eſpecially at the inauguration of our Kings, when thoſe *knights* were made, who for that reaſon were called *Knights of the Bath.* Cowell. See *Black. Com.* 2 *V.* 69. 4 *V.* 432.

Knights Bachelors, The moſt ancient, though the loweſt order of knighthood amongſt us; for we have an inſtance of King *Alfred's* conferring this order on his ſon *Athelſtan.* *Wil. Malmſ. lib.* 2. *Black. Com.* 1 *V.* 404. See *Knights of the Chamber.*

Knights Baneret, *(milites vexillarii)* Are made only in the time of *war*, and is a high honour: and though *knighthood* is commonly given for ſome perſonal merit, which therefore dies with the perſon; yet *John Coupland*, for his valiant ſervice performed againſt the *Scots*, had the honour of *Baneret* conferred on him and his heirs for ever, by patent. 29 *Ed.* 3. See *Baneret.* See *Black. Com.* 1 *V.* 404.

Knights of the Bath, *(Milites Balnei)* Have their name from their *bathing* the night before their creation. See *Knight.* This order of *knights* was introduced by

King *Hen.* 4. and revived by King *George the Firſt* in the year 1725; who erected the ſame into a regular military order for ever, by the name and title of *The Order of the Bath*, to conſiſt of thirty-ſeven *knights*, beſides the Sovereign. See the antiquity and ceremony of their creation in *Dugdale's Antiquities of Warwickſhire, fol.* 531, 532. They have each three honorary Eſquires; and they now wear a red ribbon a-croſs their ſhoulders; have a prelate of the order, who is the biſhop of *Rocheſter* ſeveral heralds, and other officers, &c. See *Black. Com.* 1 *V.* 404.

Knights of the Chamber, (*Milites Cameræ*) Seem to be ſuch *Knights Bachelors* as are made in time of peace, becauſe *knighted* in the King's chamber, and not in the field: they are mentioned in *Rot. Parl.* 28 *Ed.* 3. 2 *Inſt.* 666. See *Black. Com.* 1 *V.* 404. They are alſo mentioned in 2 *Inſt.* 666. and in *Rot. Pat.* 29 *Ed.* 3. *par.* 1. *m.* 29.

Knights Court, Is a court-baron, or honour-court, held twice a year under the biſhop of *Hereford*, at his palace there; wherein thoſe who are lords of manors, and their tenants, holding by *knight's ſervice* of the honour of that biſhoprick, are ſuitors; which court is mentioned in *Butterfield's Surv. fol.* 244. If the ſuitor appear not at it, he pays 2 *s. ſuit-ſilver* for reſpite of homage. *Cowell.*

Knighten-gyld, Was a *gyld* in *London*, conſiſting of nineteen *knights*, which King *Edgar* founded, giving them a portion of void ground lying without the walls of the city, now called *Portſoken-ward.* Stow's Annals, p. 151. This in *Mon. Angl. par.* 2. *fol.* 82. *a.* is written *cnittene-geld.*

Knight's-fee, (*Feodum militare*) Is ſo much inheritance, as is ſufficient yearly to maintain a *knight* with convenient revenue; which in *Henry the Third*'s days was 15 *l. Cam. Britan. pag.* 111. But Sir *Thomas Smith* (in his *Repub. Angl. lib.* 1. *cap.* 18.) rates it at 40 *l.* and by the ſtatute for *knights*, 1 Ed. 2. cap. 1. ſuch as had 20 *l. per annum* in fee, or for life, might be compelled to be knights; which ſtatute is repealed by 17 *Car.* 1. *cap.* 20. *Stow* in his *Annals, p.* 285. ſays, there were found in *England*, at the time of the Conqueror, 60,211 *knights-fees*, according to others 60,215; whereof the religious houſes, before their ſuppreſſion, were poſſeſſed of 28,015. *Oct. carucatæ terræ faciunt* feodum unius militis. *Mon. Angl.* 2 *pag. fol.* 825. *a.* Of this you may read more in *Selden's Titles of Honour, fol.* 691. and *Bracton, lib.* 5. *tract.* 1. *cap.* 2. See Coke *on Lit. fol.* 69. *a.* A *knight's fee* contained twelve plow-lands. 2 *Inſt. fol.* 596. or 680 acres. *Virgata terra continet* 24 *acras*, 4 *virgatæ terræ* make an hide, and five hides make a *knight's fee*, whoſe relief is five pounds. *Cowell.* See *Black. Com.* 1 *V.* 405, 409. 2 *V.* 62.

Knight of the Garter, (*equites garterii*, or *periſcelidis*) Are an order of *knights*, founded by King *Ed.* 3. who after he had obtained many notable victories, for furniſhing this honourable order, made choice in his own realm, and all *Europe*, of twenty-five the moſt excellent and renowned perſons for virtue and honour, and ordained himſelf and his ſucceſſors Kings of *England*, to be the ſovereign thereof, and the reſt to be fellows and brethren, beſtowing this dignity on them, and giving them a blue *garter*, decked with gold, pearl, and precious ſtones, and a buckle of gold, to wear daily upon the left leg only, a kirtle, crown, cloak, chaperon, a collar, and other magnificent apparel, both of ſtuff and faſhion; exquiſite and heroical to wear at high feaſts, as to ſo high and princely an order was meet. *Smith's Repub. Ang. lib.* 1. *cap.* 20. And, according to *Camden* and others, this order was inſtituted upon *King Edward the Third*'s having great ſucceſs in a battle, wherein the King's garter was uſed for a token.

But *Polydore Virgil* gives it another original, and ſays, that the King in the height of his glory, the Kings of *France* and *Scotland* being both priſoners in the *Tower of London* at one time, firſt erected this order, *anno* 1350, (ſee *infra*) from the *Counteſs of Saliſbury*'s dropping her garter, in a dance before his Majeſty, which the King taking up, and ſeeing ſome of his nobles ſmile, he ſaid, *Honi ſoit qui mal y penſe*, interpreted, *evil* (*or ſhame*) *be to him that evil thinketh*, which has ever ſince been the motto of the garter, declaring ſuch veneration ſhould be done to that ſilken tie, that the beſt of them ſhould be proud of enjoying their honours that way.

Camden in his *Britannia* ſaith, that this order of knights received great ornament from King *Ed.* 4. And King *Charles* I. as an addition to the ſplendor, ordered all the knights companions to wear on their upper garment, the croſs incircled with the garter and motto. The honourable ſociety of this order is intitled to St. *George*; and they are a college or corporation, having a Great Seal, &c.

The ſite of the college is the royal caſtle of *Windſor*, with the chapel of St. *George*, and the chapter-houſe in the caſtle, for their ſolemnity on St. *George's day*, and at their feaſts and inſtallations.

Beſides the King their Sovereign, and twenty-five companions, *Knights of the Garter*, they have a dean and canons, &c. and twenty-ſix poor knights, that have no other ſubſiſtence but the allowance of this houſe, which is given them in reſpect of their daily prayer to the honour of God and St. *George*; and theſe are vulgarly called *Poor Knights of Windſor.*

There are alſo certain officers belonging to the order; as *Prelate of the Garter*, which office is inherent to the *Biſhop of Wincheſter*, for the time being; the *Chancellor of the Garter*, who is the *Biſhop of Sarum*; *Regiſter*, always *Dean of Windſor*; the Principal *King at Arms*, called *Garter*, to manage and marſhal their ſolemnities, and the *Uſher* of the *Garter*, being likewiſe *Uſher* of the *Black Rod*.

A *Knight of the Garter* wears daily abroad, a blue garter decked with gold, pearl, and precious ſtones on the left leg; and in all places of aſſembly, upon his coat on the left ſide of his breaſt, a ſtar of ſilver embroidery; and the picture of St. *George*, enamelled upon gold and beſet with diamonds, at the end of a blue ribbon that croſſes the body from the left ſhoulder; and when dreſſed in his robes, a mantle collar of *S S.* &c.

According to *Blackſtone*, 1 *V.* 404. *Knights of the Garter*, or Knights of the order of *St. George*, were firſt inſtituted by *Ed.* 3. *A. D.* 1344. *Seld. Tit. of Honour*, 2, 5, 41.

Knighthood. Formerly when the heir came of full age, provided he held a knights fee, he was to receive the order of knighthood, and was compellable to take it upon him, or elſe to pay a fine to the King. See *Black. Com.* 2 *V.* 69.

Note, The perſons thus compellable were the King's tenants in *capite*, and that in conſequence of the feodal tenures. This being conſidered in the reign of *Charles* I. as a great grievance, the *Stat.* 16 *Car.* 1. *c.* 20. was paſſed, whereby it is enacted, "that none ſhall be *compelled* to take knighthood." See *Black. Com.* 4 *V.* 430.

Knights of the Order of St. John of Jeruſalem, (*Milites Sancti Johannis Hieroſolymitam*) Were an order of knighthood, that began about the year of our Lord 1120, *Honorius* being Pope. They had their denomination from *John* the charitable patriarch of *Alexandria*, though vowed to *St. John the Baptiſt* their patron; *Fern's Glory of Generoſity, pag.* 127. They had their primary abode in *Jeruſalem*, and then in the iſle of *Rhodes* until they were expelled thence by the *Turks*, *anno* 1523. Since which time, their chief ſeat is in the *Iſle of Malta*, where they have done great exploits againſt the infidels, but eſpecially in the year 1595. They live after the order of friers, under the rule of St. *Auguſtine*, of whom mention is made in the ſtatute 25 *Hen.* 8. *cap.* 2. and 26 *Hen.* 8. *cap.* 2. They had in *England* one general prior that had the government of the whole order within *England* and *Scotland*, *Reg. Orig. fol.* 20. and was the firſt prior in *England*, and ſat in the houſe of Lords. But towards the end of *Henry* the *Eighth*'s days they in *England* and *Ireland*, being found to adhere to the Pope too much againſt the King, were ſuppreſſed, and their lands and goods given to the King, by the 32 *Hen.* 8. 24. For occaſion and propagation of this order more eſpecially deſcribed, ſee in the treatiſe, intitled *The Book of Honour and Arms, lib.* 5. *c.* 18. written by Mr. *Richard Jones.*

Knights of Malta. Theſe knights took their name and original from the time of their expulſion from *Rhodes*, *anno* 1523. The iſland of *Malta* was then given them by the Emperor *Charles* V. where they now reſide, and are therefore called *Knights of Malta*. *See the preceding article.*

Knight Marſhal, *(Mareſchallus Hoſpitii Regis)* Is an officer of the King's houſe, having juriſdiction and cognizance of tranſgreſſions within the King's houſe, and verge of it; as alſo of contracts made within the ſame houſe, whereto one of the houſe is a party. *Reg. of Writs, fol.* 185. *a.* and 191. *b.* and *Spelman's Gloſſ.* in voce *Mareſchallus.*

Knights of Rhodes. The *Knights of St. John of Jeruſalem*, after they removed to *Rhode* iſland. 32 *H.* 8. *c.* 24. See *Knights of the Order of St. John of Jeruſalem.*

Knights Service, *(Servitium Militare)* Was a tenure whereby ſeveral lands in this kingdom were held of the King; which drew after it homage, and ſervice in war, eſcuage, wardſhip, marriage, *&c.* The *Knight's Service in capite*, or in chief, was ſervice, by which the tenant was bound to ſerve the King in his wars: and if he held of a common perſon, then he was to go with his lord in the wars. But it is taken away by *Stat.* 12 *Car.* 2. *cap.* 24. See *Chivalry*, and *Black. Com.* 2 *V.* 62.

Knights of the Shire, *(Milites Comitatus)* Otherwiſe called knights of parliament, are two knights or gentlemen of worth, choſen on the King's writ, *in pleno comitatu*, by the freeholders of every county that can diſpend 40*s.* a year; and theſe, when every man that had a knight's fee was cuſtomarily conſtrained to be a knight, were obliged to be *milites gladio cincti*, for ſo runs the writ at this day; but now *notabiles armigeri* may be choſen. *Stat.* 1 *Hen.* 5. *c.* 1. 10 *H.* 6. *c.* 2. 23 *H.* 6. *c.* 6. Their expences were to be borne by the county, during their ſitting in parliament, by the 35 *H.* 8. *c.* 11. And as to their qualifications, they are to have 600*l.* *per annum* freehold eſtate, *&c.* Vide 9 *Ann. c.* 5. and *Parliament*, and *Black. Com.* 1 *V.* 172.

Knights Templars, *(Milites Templarii)* Were a religious order of knights, inſtituted in the year of our Lord 1119, and ſo called, becauſe they dwelt in part of the buildings belonging to the *Temple* at *Jeruſalem*, and not far from the ſepulchre of our Saviour. They entertained Chriſtian ſtrangers and pilgrims, and in their armour led them through the *Holy Land*, to view the ſacred monuments of Chriſtianity, without danger from infidels. This order was far ſpread in Chriſtendom, particularly here in *England*, where it flouriſhed in the time of King *Hen.* 2. And had in every nation a particular governor or maſter, but at length, ſome of them at *Jeruſalem* falling away to the *Saracens* from Chriſtianity, the whole order was ſuppreſſed by *Clemens quintus*, *anno* 1307. And their ſubſtance given partly to the *Knights of St. John of Jeruſalem*, and partly to other religious. *Caſſan. de Gloria Mundi, par.* 9. Theſe knights at firſt wore a white garment; and afterwards, in the pontificate of *Pope Eugenius*, it was ordained, that they ſhould wear a red croſs: in ancient records they were alſo called *Fratres Militiæ Templi Solomonis.* Mon. Angl. tom. 2. p. 554.

Knights of the Thiſtle, The honourable the *Scotch* knighthood, the knights whereof wear a green ribbon over their ſhoulders, and are otherwiſe honourably diſtinguiſhed.

Knopa, A knob, nob, boſſe, or knot.—*Textus ſuper Evangeleis cum uno claſpi habens ex uno latere quinq*; knopas *argenteas*, *&c.* Mon. Angl. tom. 3. p. 365.

Known-men. The *Lollards* in *England*, called hereticks, for oppoſing the church of *Rome* before the reformation, went commonly under the name of *known-men*, and *juſt faſt-men*; which title was firſt given them in the dioceſe of *Lincoln*, by *Biſhop Smith*, *anno* 1500.

Kyddiers, Mentioned in *Stat.* 13 *Eliz. cap.* 35. See *Kidder.*

Kylyw, Signifies ſome liquid thing; and in the *North* it is uſed for a kind of liquid victuals. It is mentioned as an exaction of foreſters, *&c.* *Mon. Angl. tom.* 1. *p.* 722.

Kyſte, *(Sax.)* A coffin or cheſt for burial of the dead. *Ex Reg. Epiſc. Lincoln. MS.*

Kyth, Is uſed for kin or kindred. *Cognatus.*

L.

LAAS, *(laqueus, à lax,* i. e. *Fraus)* A net, gin, or ſnare. *Lit. Dict.*

Label, *(appendix lemniſcus)* Is a narrow ſlip of paper or parchment, affixed to a deed, writing or writ, hanging at or out of the ſame; and an appending ſeal is called a *label.*

Labina, Signifies watery land; *in qua facile* labitur. ——*Jamque diverſi ligei noctanter tranſeuntes in aquis &* labinis *periclitantur.* Mon. Angl. tom. 2. pag. 372.

Laborariis, Is an ancient writ againſt perſons refuſing to ſerve and do *labour*, who have no means of living; or againſt ſuch as, having ſerved in the winter, refuſe to ſerve in the ſummer. *Reg. Orig.* 189.

Labour, Is the foundation of property. Bodily *labour*, beſtowed upon any ſubject which before lay in common to all men, is univerſally allowed to give the faireſt and moſt reaſonable title to an excluſive property therein. *Black. Com.* 2 *V.* 5.

Labourers, Conſpiring together concerning their work or wages, ſhall forfeit 10*l.* for the firſt offence, 20*l.* for the ſecond, *&c.* And if not paid, be ſet on the pillory. *Stat.* 2 & 3 *Ed.* 6. *c.* 15. Juſtices of peace and ſtewards of leets *&c.* have power to hear and determine complaints relating to non-payment of labourers wages. 4 *Ed.* 4. 1. And labourers taking work by the great, and leaving the ſame unfiniſhed, unleſs for nonpayment of wages, or where they are employed in the King's ſervice, &. are to ſuffer one month's impriſonment, and forfeit 5*l.* The wages of labourers are to be yearly aſſeſſed for every county by the ſheriff, and juſtices of peace in the *Eaſter ſeſſions*, and in corporations by the head officers, under penalties. 5 *Eliz. cap.* 4. And the ſheriff is to cauſe the rates and aſſeſſments of wages to be proclaimed. 1 *Jac.* 1. *c.* 6.

All perſons fit for labour, ſhall be compelled to ſerve by the day in the time of hay or corn harveſt; and labourers in the harveſt-time may go to other counties, having teſtimonials. From the middle of *March* to the middle of *September*, labourers are to work from five o'clock in the morning till ſeven or eight at night, being allowed two hours for breakfaſt and dinner, and half an hour for ſleeping the three hot months; and all the reſt of the year from twilight to twilight, except an hour and a half for breakfaſt and dinner, on pain of forfeiting 1*d.* for every hour abſent. See 5 *Eliz. c.* 4. If any labourer ſhall make an aſſault upon his maſter, he ſhall ſuffer and be puniſhed as a ſervant making ſuch aſſault. *Ibid.*

By the *Stat.* 12 *Geo.* 1. *c.* 34. 22 *Geo.* 2. *c.* 27. All contracts of journeymen employed in any woollen, linen, ſilk, leather, or iron, *&c.* manufactures for raiſing wages, leſſening the hours of work, *&c.* are illegal, and the offenders ſhall be ſent to the Houſe of Correction for three months. The wages, *&c.* of journeymen taylors are by 8 *G.* 3. *c.* 17. to be regulated and ſettled at the quarter ſeſſions in *London.* For other matters reſpecting this branch of *labourers*, *vide* the laſt mentioned ſtatute.

Juſtices of peace may hear and determine diſputes concerning the wages of ſervants and labourers, not exceeding 10*l.* 20 *Geo.* 2. *c.* 19. Extended to the tinners in the Stannaries, by 27 *Geo.* 2. *c.* 6. Juſtices may puniſh ſervants on complaint of the maſters, 20 *Geo.* 2. *c.* 19. *ſ.* 2. The 20 *Geo.* 2. *c.* 19. ſhall extend to all ſervants employed in huſbandry, though hired for leſs than a year, 31 *Geo.* 2. *c.* 11. *ſ.* 3. See *Black. Com.* 1 *V.* 406, 426.

Lace, Foreign bone-lace not to be imported, 13 & 14 *Car.* 2. *c.* 13. May be exported free to *Scotland*, *Ireland*, or the *Plantations*, 11 & 12 *W.* 3. *c.* 3. *ſ.* 15. Prohibition of importing bone-lace repealed, 5 *Ann. c.* 17. Manufactures excuſed from the duty upon hawkers and pedlars, 4 *Geo.* 1. *c.* 6.

For other matters, ſee *Manufactures.*

Lacerta, A word ſignifying a fathom. *Domeſday.*

Laches, (from the Fr. *laſcher*, i. e, *laxare*, or *laſcht*, ignavus) In our law ſignifies ſlackneſs or negligence; as it appears in *Littleton*, where *laches of entry* is a neglect in the heir to enter. And probably it may be an old *Engliſh* word; for when we ſay there is *laches* of entry; it is all one as if it were ſaid, there is a *lack* of entry; and in this ſignification it is uſed. *Lit.* 136. No *laches* ſhall be adjudged in *the heir within age*; and regularly *laches* ſhall not bar either *infants* or *feme coverts*, for not entry or claim, to avoid deſcents; but *laches* ſhall be accounted in them, for *non-performance of a condition* annexed to the ſtate of the land. *Co. Lit.* 146. See *Black. Com.* 1 *V.* 247. as to *Laches* generally. And as to the *Laches* of an *Infant*, 1 *V.* 465.

Lacta, A defect in the weight of money; whence is derived the word *lack*. Du Freſne.

Lada, Hath divers ſignifications; 1ſt, From the Sax. *lathian*, to convene or aſſemble, it is taken for a *lath*, or court of juſtice. 2dly, It is uſed for purgation by trial, from *ladian:* and hence the *lada ſimplex*, and *lada triplex* or *lada plena*, among the *Saxons*, mentioned in the laws of King *Ethelred* and *K. Hen.* 1. 3dly, *Lada* is applied to a *lade* or courſe of water; *Camden* uſes *water-lade*, or water-courſe: And *Spelman* ſays, that *lada* is a canal to carry water from wet grounds; ſometimes *lada* ſignifies a broad way. *Spelm. Gloſſ. Mon. Angl. tom.* 1. *p.* 854.

Lade, Lode, *i. e.* The mouth of a river; from the Sax. *ladian*, *purgare*, becauſe the water is there clearer; from hence *Cricklade*, *Lechlade*, *&c.*

Ladies. For the order of trial of ducheſſes, counteſſes, and baroneſſes, for treaſon, when indicted thereof, ſee *Stat.* 2 *Hen.* 4. *c.* 14.

Laedorium, Reproach. *Facetiam in ſermone plurimam obſervant dum vel ſales vel* laedoria *nunc levi lingua nunc mordaci. Girald. in deſcrip.* Camb. cap. 14.

Læſæ Majeſtatis, crimen. The crime of *high treaſon*. So denominated by *Glanvil*, *l.* 1. *c.* 2. High treaſon is alſo in Latin *altaproditio*.

Læſione fidei, Suits *pro*. The clergy, ſo early as the reign of King *Stephen*, attempted to turn their eccleſiaſtical courts into courts of equity, by entertaining ſuits *pro læſione fidei*, as a ſpiritual offence againſt conſcience, in caſe of non-payment of debts, or any breach of civil contracts. See Ld. *Lyttelt. H.* 2. *b.* 3. *p.* 361. *note.* But they were checked by the conſtitutions of *Clarendon*, 10 *Hen.* 2. *c.* 15. See *Black. Com.* 3 *V.* 52.

Lafordſwick, (Sax. *hlaford*, i. e. *dominus*, and *ſwic*, proditio, infidelitas erga dominum) A betraying one's lord or maſter. This word is found in King *Canutus*'s laws, *c.* 61. And in the laws of King *Hen.* 1. *Quædam placita emendari (viz. quædam crimina expiari) non poſſunt*, huſbrech, opentheſe, eberemorth, & lafordſwick. *Leg.* 1. *c.* 13.

Laga, (*lex*) The law, *lagam Regis* Edwardi *vobis reddo, cum illis emendationibus, quibus pater meus eam emendavit*, ſays *Magna Charta*. Hence we deduce *Saxon-lage Mercen-lage*, *Dane-lage*, *&c.*

Lagan, Is goods ſunk in the ſea, from the Sax. *liggan cubare:* when mariners in danger of ſhipwreck caſt goods out of the ſhip, and becauſe they know they are heavy and ſink, faſten a buoy or cork to them, that they may find and have them again; if the ſhip be loſt, theſe goods are called *lagan*, and ſo long as they continue upon the ſea, belong to the Lord Admiral; but if they are caſt away upon the land, they are then a wreck. and belong to the lord intitled to the ſame. 5 *Co. Rep.* 106. At firſt *lagan* was that right which the chief lord of the fee had to take goods caſt on ſhore by the violence of the ſea, *&c. Bract. lib.* 3. *cap.* 2. See 26 *Geo.* 2. *c.* 19.

Lagedayum, *Laghday*, A law-day, or time of open court. *Cowell, edit.* 1727.

Lageman. (*legamannus*) *Homo habens legem*, or *homo legalis ſeu legitimus*; ſuch as we call now *good men of the jury*. The word is frequently uſed in *Domeſday*, and the laws of *Edward the Confeſſor*, *cap.* 38. thus: *Poſtea inquiſiſſet juſtitia per* legamannos, *& per meliores homines de burgo*, *&c.* Sir *Edw. Coke* ſays, A *lageman* was he who had *ſocam & ſacam ſuper homines ſuos*, *i. e.* that had a juriſdiction over their perſons and eſtates; of which opinion were *Somner* and *Lambard*, and that it ſignified the *Thanes*, called afterwards *Barons*, who ſat as judges to determine rights in courts of juſtice. *In ſenatus conſult. de Monticolis Walliæ*, *cap.* 3. it is ſaid, Let twelve *laghmen*, which *Lambard* renders *men of law*, *viz.* ſix *Engliſh*, and ſix *Welch*, do right and juſtice, *&c. Blount.*

Lagen, (*lagena*) *Fleta*, *lib.* 2. *cap.* 8, 9. In antient times it was a meaſure of ſix *ſextarii*. Hence perhaps our *flagon*. *Donatio inſuper de ſex* laganis *olei annuatim.* Charta 2 Ed. 3. m. 25. n. 82. The lieutenant of the *Tower* has the privilege to take *unam* lagenam *vini*, *ante malum & retro*, of all wine ſhips that come up to the *Thames*. Sir *Peter Leyceſter*, in his *Antiquities of Cheſhire*, interprets *lagena vini*, a bottle of wine.

Laghday, or *Lahday*, A time of open court. See *Lagedayum*, *Law-day*.

Laghſlite, Lagſlite, Lahſlite. (Sax. *lag*, leg, & *ſlite*, ruptio) A breaking or tranſgreſſing of the law; and ſometimes the puniſhment inflicted for ſo doing. *Leg. H.* 1. *c.* 13.

Lagon. See *Lagan*, and *Co. lib.* 5. *fol.* 106.

Laia, A broad way in a wood; the ſame with *lada*. Mon. Ang. tom. 1. pag. 483. See *Lada*.

Lairwite, Lecherwite, and **Legergeldum**, (from the Sax. *legan*, i. e. concumbere, & *wite*, mulcta) *Pœna vel mulcta offendentium in adulterio & fornicatione*; and the privilege of puniſhing adultery and fornication did anciently belong to the lords of ſome manors, in reference to their tenants. *Fleta*, *lib.* 1. *c.* 47. 4 *Inſt.* 206.

Lammas-Day, Is the *firſt* of *Auguſt*, ſo called *quaſi Lamb-mas*; on which day the tenants that held land of the cathedral church of *York*, (which is dedicated to St. *Peter ad Vincula*) were bound by their tenure to bring a live lamb into the church at high maſs. It is otherwiſe ſaid to come from the Sax. *hlaffmæſſe*, viz. *loaf maſs*, as on that day the *Engliſh* made an offering of bread made with new wheat. 23 *Hen.* 8. *c.* 4.

Lamp-black, To what duties liable, 4 *Will. & Ma. c.* 5. *ſ.* 2.

Lamprays. See *Fiſh*.

Lamps. None but *Britiſh* oil to be uſed for lamps in private houſes, under penalty of 40*s.* 8 *Ann. c.* 9. Shares in the lights how taxable. 30 *Geo.* 2. *c.* 3. By the Stat. 17 *Geo.* 2. *c.* 29. Such convenient number of lamps as the Mayor, Alderman and Commonalty of the city of *London* ſhall think proper, ſhall be erected in ſuch places as to them ſhall ſeem meet; and they are to make rates not exceeding 6 *d.* in the pound, nor above 50 *s.* a year on any one perſon. The Alderman of each ward, with the conſent of his deputy and Common Council-men, or the major part of them, may contract for the lamps, *&c.* Wilfully breaking or extinguiſhing any lamp incurs the penalty of 40 *s.* for the firſt, 50*s.* for the ſecond, and 3 *l.* for the third offence. See the new acts for lighting, *&c.* the ſtreets of *London* and *Weſtminſter*.

Lancaſter, Was erected into a county palatine, *anno* 50 *Ed.* 3. and granted by the King to his ſon *John* for life, that he ſhould have *jura regalia*, and a King-like power to pardon treaſons, outlawries, *&c.* and make juſtices of peace and juſtices of aſſiſe within the ſaid county, and all proceſſes and indictments to be in his name; but theſe royalties are abridged by the Stat. 27 *H.* 8. *c.* 24. There is a ſeal for the *county palatine*, and another for the *dutchy*, *i. e.* ſuch lands as lie out of the county palatine, and yet are part of the *dutchy:* for ſuch there are, and the Dukes of *Lancaſter* hold them, but not as *counties palatine*, for they had not *jura regalia* over thoſe lands. 2 *Lutw.* 1236. 3 *Salk.* 110, 111. The ſtatute 37 *H.* 8. *c.* 16. annexes lands to the dutchy of *Lancaſter*, for the enlargement of it. Fines levied before the juſtices of aſſiſe of *Lancaſter*, of lands in the county palatine, ſhall be of equal force with thoſe acknowledged before the juſtices in the Common Pleas. 37 *H.* 8. *c.* 19. And proceſs againſt an outlawed perſon in the county palatine of *Lancaſter*, is to be directed to the Chancellor of the dutchy, who ſhall thereupon iſſue like writs to the ſheriff, *&c.* 5 & 6 *Ed.* 6. 26. The ſtatute 17 *Car.* 2. concerning cauſes of replevin ſhall be of force in the court of *Common Pleas* for the county palatine of *Lancaſter*. 19 *Car.* 2. 5. By the ſtat. 17 *Geo.* 2. *c.* 7. The Chancellor or Vice-chancellor may by commiſſion impower perſons to take affidavits in any cauſe, *&c.* depending in the Chancery or Courts of Seſſions, in any plea whatſoever, civil or criminal. A quay to be made at *Lancaſter*, Stat. 23 Geo. 2. c. 12. *See* Black. Com. 1 V. 116. *And as to its courts*, 3 V. 78.

Lanceti, Theſe were *agricolæ quidam, ſed ignotæ ſpeciei.* Spelm.

Land, *(terra)* Signifies generally not only arable ground, meadow, paſture, woods, moors, waters, *&c.* but alſo meſſuages and houſes; for in conveying the land, the buildings paſs with it. *Cq. Lit.* 4. 19. In a more reſtrained ſenſe it is arable ground: and the land of every man is ſaid in the law to be incloſed from that of others, though it lie in the open field; ſo that for any treſpaſs therein, he ſhall have the writ *quare clauſum fregit,* &c. *Doct. & Stud.* 8. In a grant land may extend to meadow, or paſture, *&c.* But in writs and pleadings, it ſignifies arable only. 1 *Vent.* 260.

Co. on Lit. lib. 1. *cap.* 2. *ſect.* 14. ſays, *Terra eſt nomen generaliſſimum & comprehendit omnes ſpecies terræ,* but properly *terra dicitur a terendo, quia vomere teritur*; and anciently it was written with a ſingle *r,* and in that ſenſe includes whatever may be plowed. The earth hath in law a great extent upwards, for *cujus eſt ſolum ejus eſt uſque ad cœlum.* Co. 9 Rep. *Alured*'s caſe. *See* Black. Com. 2 V. 7, 16, 17.

Where land ſhall be taken as money, or money as land, ſee 14 *Vin. Abr.* tit. *Land.*

Landa, A lawn or open field without wood. *Cowell.*

Landboc, (From the Sax. *Land and Boc,* Liber) Was a *charter* or deed whereby *land* was held. *Sic Anglo-Saxones chartas & inſtrumenta nuncuparunt, prædiorum ceſſiones, jura & firmitates continentia.* Spelm. Gloſſ.

Landcheap, (Sax. *Land-ceap,* from *Ceapan,* to buy and ſell) An ancient cuſtomary fine, paid at every alienation of land lying within ſome manor, or liberty of a borough, as at *Malden* in *Eſſex,* there is to this day a cuſtom called by the ſame name, that for certain houſes and lands ſold within that place, thirteen pence in every mark of the purchaſe-money ſhall be paid to the town; and this cuſtom of *land-cheap,* they claim *(inter alia)* by a grant from the *Biſhop of London,* made *anno* 5 *H.* 4.

Landea, A ditch in *marſhy* lands to carry water into the ſea.——*Vera judicia & awarda faciat de Vallis,* Landeis, *& Watergangiis.* Du Cange.

Landefricus, *(Lanfricus)* The lord of the ſoil, or the landlord: from the Sax. *land, and, terra,* and *rica, rector. Et omnis emat ſibi lagam* 12 *oris dimidium* Landefrico, *dimidium Wapentake.* Leg. Ethelred. cap. 6.

Landegandman, Was one of the inferior tenants of a manor. *Cuſtumariorum genus ſeu inferiorum tenentium manerii,* ſays the learned *Spelman,* who adds,——*Occurrit vox in cuſtumar. de Hecham.*

Land-gable, Is a tax or rent iſſuing out of *land,* according to *Domeſday. Cenſus prædialis vel tributum quod a prædiis colligitur,* that is, ſays *Spelman,* a penny for every houſe; the *Welſh* uſe *pridgavel* for *landgavel.*

This *landgavel* or *landgable* in the regiſter of *Domeſday,* was a quit-rent for the ſite of a houſe, or the land whereon it ſtood, the ſame with what we now call ground-rent.—*Tochi filius Outi habuit in civitate* XXX *manſiones præter ſuam hallam & duas eccleſias & dimidiam*————*& ſupr. manſiones habuit locationem, & præter hoc de unaquaq; unum denarium, id eſt,* landgable, *Domeſday, Lincoln.*

Landimers, *Agrimenſores,* Meaſurers of land, ſo called of old; Landimera *autem eſt terræ limes vel meta:* from the Sax. *Gemæra,* i. e. *Terminus*; and hence we ſay *Meers.*

Landirecta. In the *Saxon* times the duties which were laid upon all that held land, were termed *Trinoda neceſſitas, viz.* Expedition, *burghbote* and *brigbote*; which duties the *Saxons* did not call *ſervitia:* becauſe they were not feodal, ariſing from the condition of the owners, but *landirecta,* rights that charged the very land, whoever did poſſeſs it. *Spelm of Feuds.*

Landlord, Is he of whom lands or tenements are holden; and a *landlord* may diſtrain on the lands of common right, for rent, ſervices, *&c. Co. Lit.* 57, 205. In *London* if a tenant commit felony, *&c.* whereby his goods and chattels become forfeit; the *landlord* ſhall be paid his rent for two years, before all other debts except to the King, out of the goods found in the houſe. *Priv. Lond.* 75.

Land-man, *Terricola,* The *terre-tenant.*

Land-tax. The ancient method of taxation was by *eſcuage,* which was on lands held by *knight-ſervice*; and by *tallage* on the *cities* and *boroughs,* and it was made in this manner: When the King wanted money for his wars, thoſe tenants that did not attend him in perſon, paid him an *aid,* and the *aid* was aſſeſſed before the juſtices itinerant. It was generally a *gift* of all the inhabitants as a body corporate; if they did not *give* according to the wants of the Crown, the *juſticiar* enquired into their behaviour, and if there were any forfeitures of their charters, *quo warranto's* came out, to ſeize their liberties into the King's hands. But *Ed.* 1. found this way of taxing by *eſcuage* and *tallage* to be very incomplete; becauſe wars were drawn out into great length and expence; and therefore he formed into diſtinct bodies, the tenants *in capite* that held great baronies, and theſe were called the *barones majores,* (the now peers of parliament;) and the repreſentatives of the *barones minores* and of ſeveral corporations, *viz.* the citizens and burgeſſes, of whom he made one body; which now compoſes the Houſe of Commons. *Gilb. Treat. of the Excheq.* 192.

King *Edward* the Firſt granted the people *Magna Charta,* which they had long contended for, and alſo the charter of the foreſts; and for *Magna Charta* they granted the King a fifteenth, by the name of *Quindecimam partem omnium bonorum*; ſo that inſtead of particular aſſeſſments in cities and boroughs, there was one univerſal aſſeſſment of the fifteenth of all their ſubſtance: this fifteenth ſeems to have been at firſt made out of the eccleſiaſtical tenth; for the Popes claimed the tenths of all benefices; it was therefore eaſy to know, by the Pope's collections of his tenths, what was the value of every eccleſiaſtical benefice, for the Pope's tenth was reckoned at 2 *s. per* pound, and therefore the fifteenth muſt be 1 *s* 4 *d.* The benefice conſiſted of the glebe and the tenth part of the townſhip; therefore by the value of the benefice deducting the glebe, they knew the true value of the townſhip, and how to ſet a fifteenth upon it: ſo that the fifteenth of the townſhips were certain ſums, ſet by the King's taxors and collectors *under the act of parliament*; and commiſſions were granted to the taxors and collectors of them under the Great Seal; but in collecting of the fifteenths the ſums only appeared in the books below. And the collectors of every townſhip, either returned their collection into the Exchequer, or elſe there were head collectors for the whole county, who returned it thither; there were likewiſe commiſſioners appointed, to ſuperviſe ſuch taxation and collections: But about the time of *Edward* III. there were *certain eſtabliſhed ſums* ſet upon *every townſhip*; and ſo as the King's wants increaſed, they gave one, two, or three fifteenths. *Gilb. Treat. of the Excheq.* 193, 194.

We find in the times of *Henry* the Eighth, Queen *Elizabeth,* and King *James* the Firſt, that they raiſed both *ſubſidies* and *fifteenths*; this was, becauſe the value of things increaſed, and therefore the old fifteenths were not according to the then true value of townſhips. And therefore they contrived that the *ſubſidy* ſhould be raiſed by *a pound-rate* upon *lands,* and likewiſe a *pound-rate* upon *goods*; and we find in the ſubſidy 4 *Car.* (which is ſaid to be the greateſt ſubſidy that ever was given, and which paſſed upon the petition of rights) there was 4 *s.* in the pound laid upon land, and 2 *s.* 8 *d.* upon goods; now 4 *s.* upon land amounts to three fifteenths, and 2 *s.* 8 *d.* which was upon goods to two fifteenths; but in this they had no regard to the old rates made in the tax-book of the ſeveral townſhips, otherwiſe than to diſcover the value of the lands; but a method is chalked out by the act of parliament to appoint commiſſioners, aſſeſſors, and collectors, in order to rate and get in the ſaid ſubſidy. *Ibid.*

This was found very inconvenient, becauſe the commiſſioners uſed to be favourable to their own country, therefore it was found neceſſary to revive ſo far the ancient method, as to appoint *a certain ſum*; and in the time of the civil war, the long parliament would not ſettle any perſons to appoint commiſſioners, but the appointment of commiſſioners was made in the act itſelf: And in this new manner of taxing, they appointed the ſum to be levied on each particular county, in the act itſelf; as well as the commiſſioners names, and where to levy it; And the ſix aſſociated counties, viz. *London*, *Middleſex*, *Kent*, *Suſſex*, *Surry*, and *Hertford*, being not ſpoiled and pillaged in the civil wars, and more hearty to the parliament intereſt, were taxed higher than any other counties in *England*. *Gilb. Treat. of the Excheq.* 194, 195, 196.

After the revolution, to ſupport King *William* in his wars with *France*, it was neceſſary to come into a land-tax; and from 1684 to 1693, the tax was made by a pound-rate, like the former ſubſidies; but when the people found that the war was like to hold, about 1693, the tax was mightily leſſened, every body being willing to eaſe his neighbour; and then they came to lay a rate upon every county, and the aſſociating counties, being very zealous for the government in the revolution, and having taxed themſelves higher than their neighbours in 1693, it was argued that thoſe counties were better able to bear the tax, and therefore in 1693, they laid the diſproportioned ſums that are now the ſtandard of the land-tax: let us now compare the ſubſidy law, 4 *Car.* 1. with the preſent land-tax, and conſider the manner of gathering them. *Ibid.*

In the old time, according to the way of making war then uſed, the tenants *per baroniam*, and by knight-ſervice as is herein before mentioned, were obliged to be in the camp 40 days, at their own expence, and the eſcuage was levied upon the defaulters; but when the art of war improved, and armies were brought into the field that continued a long time, they made their taxation by way of ſubſidy; which was ſo much in the pound upon the perſonal and real eſtate; as the ſubſidy of the fourth of King *Charles* was 2*s.* 8*d.* *per* pound on the perſonal, and 4*s.* *per* pound on the real eſtate; and where there were different times of taxation and collecting, they were called ſo many different ſubſidies; and the ſpiritualty gave their tax in convocation, and the temporalty in parliament; but the convocation-tax always paſſed both houſes of parliament, ſince it could not bind as a law till it had the conſent of the legiſlature. Their tax was made according to the rate in the King's books, and ſince a tenth was paid yearly to the crown, they only taxed the other nine parts as they ſtood in thoſe books.

The temporalty and ſpiritualty were taxed in the ſame manner as to their perſonal eſtate, but as to their real eſtate, what was given in convocation excuſed their tax *quoad* their ſpiritualties. The commiſſioners for executing the act, were appointed by the Lord Chancellor, Lord Treaſurer, or other great officers of the Crown, or any two of them, the Lord Chancellor being one. *Gilb. Treat. of the Excheq.* 197, 198.

The preſent land-tax, tho' it follows the plan of the ſubſidies, *viz.* in taxing ſo much on the perſonal, and ſo much on the real eſtate, yet it differs in two material circumſtances, *viz.* that there is a ſum impoſed *on each particular county*, and that the commiſſioners are named in the act itſelf; this came in, in the time of the civil war, in this manner; they had firſt taxed according to the pound-rate, but when the zeal of the people fell off, they found it neceſſary to ſet a ſum upon each particular county; and ſo they taxed them according to the higheſt ſum that had been levied in ſuch county, and obliged them to make it up; and they being then in oppoſition to the crown, they named the commiſſioners in the act itſelf; and this way of taxing was afterwards followed at the reſtoration, becauſe they found it for the eaſe of the crown to name particular ſums in the act of parliament, and then they named commiſſioners alſo, who were to aſſeſs and rate each particular inhabitant. *Ibid.*

The commiſſioners by the ſubſidy, were duly to execute that act; but by the land-tax they were directed in a particular manner how they ſhould do it: that is to ſay, by making the diſtribution of the particular ſum upon each particular hundred, lathe and wapentake; but by both laws, they were to ſubdivide themſelves, and the reſpective commiſſioners were not to act out of their diſtrict. The commiſſioners by the land-tax acts, are to give a note to the receiver general, of the names of the acting commiſſioners, and ſums in each diviſion. We do not find this clauſe in the old ſubſidy law, becauſe it was not neceſſary, where there was not a particular ſum impoſed on each county. *Ibid.*

The commiſſioners, both in the ſubſidy and land tax, were to iſſue their precepts to the conſtables and other inhabitants, and to appoint aſſeſſors; and by both laws, the commiſſioners are to give them in charge, to make a juſt aſſeſſment, and to return ſuch aſſeſſments to the commiſſioners; who by the land-tax were to return the names of collectors. And by both laws, the perſons aggrieved might appeal from the aſſeſſors to the commiſſioners; and alſo ſtock upon land is excuſed from paying as perſonal eſtate. *Gilb. Treat. of the Excheq.* 199, 200.

By the ſubſidy law, the commiſſioners appointed collectors; but by the land-tax, the aſſeſſors brought in the names of the collectors; becauſe the place was anſwerable for the ſums ſo aſſeſſed, until they were paid in to the receiver general; and therefore it was neceſſary that the aſſeſſors ſhould appoint collectors: but by the ſubſidy law, there was no particular ſum locally fixed; and therefore the collectors were appointed by the commiſſioners, who acted in behalf of the crown; and the collectors names were returned in, by both laws, to the receiver general or high collectors; and this diſpoſition was that the receiver might know in whoſe hands the money was. In the ſubſidy, the commiſſioners appointed the high collectors in each ſhire and diviſion, to whom the ſub-collectors were accountable, and the high collectors were accountants to the Exchequer; and one duplicate of the aſſeſſments was given to the high collector, and the other returned into the Exchequer, to be a charge upon the high collectors receipt: But according to the frame of the land-tax, the receiver is now appointed by the Lord Treaſurer; and by this law, a duplicate of each particular diviſion is to be given to the receiver general, and another to be returned into the Exchequer; the duplicate returned to the receiver, is to charge the collectors, and that returned into the Exchequer, to charge the receiver general. *Ibid.* 200, 201.

The high collectors by the ſubſidy law, gave ſecurity to the commiſſioners by recognizance, to anſwer the money by them received; but now the receiver general, by the conſtitution of the treaſury gives ſecurity to the crown. In the ſubſidy law and land-tax, the under-collector was to diſtrain the parties refuſing to pay the ſum aſſeſſed: And by the ſubſidy law, the under-collectors paid in the money collected to the high collector, who was an accountant at the Exchequer; but by the land-tax, the collectors are to pay in the money to the receiver, and he is the accountant at the Exchequer. If the collectors did not pay in the money they had collected to the receivers, the commiſſioners were to impriſon them, and ſeize their effects; but if the proportion was not anſwered, the place itſelf was anſwerable, by a re-aſſeſſment of the commiſſioners. By both laws, the collectors had precepts and aſſeſſments delivered: and, under ſuch precepts, had authority to diſtrain the lands and goods of the perſons ſo aſſeſſed, by virtue of the act. By both laws the parties were to be taxed for goods, in the place where they dwelt. By both laws the diſtreſs was to be ſold, and the overplus paid to the owner; by the *ſubſidy* law, in *eight* days; by the *land-tax*, in *four* days: And for neglect or refuſal to pay, and failure of diſtreſs, the party to be impriſoned. By the ſubſidy law, all the commiſſioners joined in one certificate; but now the commiſſioners in each diviſion return their eſtates, which are a charge upon the receiver general; but in the land-tax, if a non-payment in any place be certified by the receiver under his hand, Exchequer proceſs is to iſſue againſt the acting commiſſioners. By the land-tax, if land doubly taxed comes into *proteſtant* hands, and they get a certificate from the commiſſioners, and prove the truth of the certificate before the barons, by two credible witneſſes, the Court of Exchequer is impowered to diſcharge ſuch ſum from the pariſh or townſhip in which the lands lie, and that diſcharge is carried to the Houſe of Commons, in order to be diſcharged out of the general ſum the next year. *Ibid.* 203, 204. See *Subſidy*, *Tax*. *Black. Com:* 1 *V.* 308. 4 *V.* 416.

Land-tenant, Is he that poſſeſſes land let, or hath it in his manual occupation. 14 *Ed.* 3. *Stat.* 1. *cap.* 3. See *Tertenant.*

Langemanni, Are lords of manors, as interpreted by Sir *Ed. Coke.* 1 *Inſt.* 5. They are mentioned in *Domeſday.*

Langeolum, An under garment made of wool, formerly worn by the monks, which reached down to their knees; ſo called becauſe *lanea ſit.* Mon. Angl. Tom. 1, pag. 419.

Lanis de creſcentia Walliæ traducendis abſque Cuſtuma, &c. An ancient writ that lies to the cuſtomer of a port, to permit one to paſs wool without paying cuſtom, he having paid it before in *Wales.* Reg Orig. 279.

Lanterium, The *lantern, cupolo,* or top of a ſteeple. *Cowell, edit.* 1727.——*Walterus Skyrlaw Epiſcopus Dunelmenſis (obiit* 1405*) magnam partem campanilis, vulgo* lanterii, *miniſterii Eboracenſis conſtruxit, in medio cujus operis arma ſua poſuit.* Angl. Sacr. p. 1. pag. 775.

Lano niger, A ſort of baſe coin, formerly current in this kingdom. *Memorand. in Scaccario.* Mich. 22 Ed. 1.

Lapis Calaminaris, To what duties liable on exportation. 4 *W.* & *M. c.* 5. 8 & 9 *Will.* 3. *c.* 20.

Lapis Marmorius, A marble ſtone about twelve foot long and three foot broad, placed at the upper end of *Weſtminſter-hall,* where was likewiſe a marble chair erected on the middle thereof, in which our Kings anciently ſat at their coronation dinner, and at other times the Lord Chancellor.——*Qui quidam* Henricus de Cliff, *(Clericus Rotulorum) in Magna Aula* Weſtm. *apud* Lapidem Marmorium *in præſentia Domini Cancellarii, præſtitit Sacramentum,* &*c. Clauſ. Ed.* 2. *m.* 1. *Dorſo.* Over this marble table are now erected the courts of *Chancery* and *King's Bench.* Orig. Juridical. 37.

Lapis pacis, The ſame with *Oſculum pacis.* Du Freſne.

Lapſe, *(Lapſus)* Is a ſlip or omiſſion of a patron to preſent to a church, within ſix months after it becomes void; in which caſe we ſay, that benefice is in *lapſe* or *lapſed.* 13 *Eliz. c.* 12. And *lapſe* is defined to be a title given to the ordinary to collate to a benefice, on the patron's negligence in preſenting within ſix months; and alſo to be a devolution of a right of preſenting from the patron to the biſhop; from the biſhop to the archbiſhop; and from the archbiſhop to the King. *Wood's Inſt.* 158. If after an avoidance, the patron doth not preſent in ſix months, the ordinary hath the next ſix months to collate to the benefice; and if he doth not collate in ſix months, then the metropolitan hath further ſix months; and if he doth not collate within his ſix months, it then devolves to the crown. 2 *Rol. Abr.* 360. *Hob.* 30. 4 *Rep.* 17. And the computation of the ſix months is by the *kalendar* months, *excluſive* of the *day* in which the church becomes void. 6 *Rep* 62. Where a patron preſents his clerk before the biſhop hath collated, the preſentation is good notwithſtanding the ſix months are paſt, and ſhall bar the biſhop, who cannot take any advantage of the *lapſe:* And ſo if the patron makes his preſentation before the archbiſhop hath collated, though twelve months are paſt: But if the biſhop collates after twelve months, this bars not the archbiſhop. 2 *Rol. Abr.* 369. 2 *Inſt.* 273. If a biſhop doth not collate to benefices of his own gift the *lapſe* at the end of ſix months to the archbiſhop; and if the archbiſhop neglects to collate within ſix months, to a benefice of his gift, the King ſhall have it by *lapſe. Dr.* & *Stud. cap.* 36. And if a church continues void ſeveral years by *lapſe,* the ſucceſſor of the King may preſent. *Cro. Car.* 258. But if the King hath a title to preſent by *lapſe,* and he ſuffers the *patron* to preſent, and the preſentee dies, or reſigns before the King hath preſented, if the preſentation is real and not by covin, he hath loſt his preſentation, for *lapſe* is but for the firſt and next turn; and by the death of the incumbent, a new title is given to the patron; though it hath been adjudged that the King in ſuch caſe may preſent at any time as long as that preſentee is incumbent. 2 *Cro.* 216. 7 *Rep. Moor* 244. When the patronage of the church is litigious, and one party doth recover againſt the other in a *quare impedit,* if the biſhop be not named in the writ, and ſix months paſs while the ſuit is depending, *lapſe* ſhall incur to the biſhop: if the biſhop be named in the writ, then neither the biſhop, archbiſhop, or King, can take the benefice by *lapſe;* and yet it is ſaid, if the patron within the ſix months brings a *quare impedit* againſt the biſhop, and then the ſix months paſs without any preſentation by the patron, *lapſe* ſhall incur to the biſhop. 2 *Rol. Abr.* 365. 6 *Rep.* 52. 1 *Inſt* 344. *Hob.* 270

Though where the biſhop is a diſturber, or the church remains void above ſix months by his fault, there ſhall be no *lapſe.* 1 *Inſt.* 344. A clerk preſented being refuſed by the biſhop for any ſufficient cauſe, as illiterature, ill life, &*c.* he is to give the patron notice of it, that another may be preſented in due time, otherwiſe the biſhop ſhall not collate by *lapſe;* becauſe he ſhall not take advantage of *his own wrong,* in not giving notice to the patron as he ought to do by law. *Dyer* 292. And if an avoidance is by *reſignation,* which muſt neceſſarily be to the biſhop by the *act* of the *incumbent;* or by *deprivation,* which is the *act* of the *law, lapſe* ſhall not incur to the biſhop, till ſix months after notice given by him to the patron: When the church becomes void by the death of the incumbent, &*c.* the patron muſt preſent in ſix months without notice from the biſhop, or ſhall loſe his preſentation by *lapſe. Dyer.* 293, 327. 1 *Inſt.* 135. 4 *Rep.* 75.

In the caſes of deprivation and reſignation, where the patron is to have notice before the church can *lapſe,* the patron is not bound to take notice from any body but the biſhop himſelf, or other ordinary, which muſt be perſonally given to the party, if he live in the ſame county; and ſuch notice muſt expreſs in certain the cauſe of deprivation, &*c.* If the patron live in a foreign county, then the notice may be publiſhed in the pariſh church, and affixed on the church door. *Cro. Eliz.* 119. *Dyer* 328.

In ſuch caſes where there ought to be notice, if none is given by the biſhop or archbiſhop in a year and a half, whereby *lapſe* would come to the King if it had been given; here the *lapſe* ariſes not to the King, where no title aroſe to the inferior ordinary: *Dyer* 340. And it has been adjudged, that *lapſe* is *not an intereſt,* like the patronage, but an office of truſt repoſed by law in the ordinary; and the end of it is, to provide the church a rector, in default of the patron: And *it cannot be granted over;* for the grant of the next *lapſe* of ſuch a church, either before it falls or after, is void. *F. N. B.* 34. Alſo if *lapſe* incurs, and then the ordinary dies, the King ſhall preſent, and not the ordinary's executors, becauſe it is rather an adminiſtration, than an intereſt. 25 *Ed.* 3. 4 *Mallor. Q. Imped.* 118. A *lapſe* may incur againſt an infant or feme covert, if they do not preſent within ſix months. 1 *Inſt.* 246. But there is no *lapſe* againſt the King, who may take his own time, and plenarty ſhall be no bar againſt the King's title, becauſe *Nullum tempus occurrit Regi.* 2 *Inſt.* 273. *Dyer* 351. By preſentation and inſtitution, a *lapſe* is prevented; though the clerk is never inducted: And a donative cannot *lapſe,* either to the ordinary or the King. 2 *Inſt.* 273. See *Black. Com.* 2 *V.* 276. 4 *V.* 106.

Lapſed-Legacy. Is where the legatee dies before the teſtator. Vide *Black. Com.* 2 *V.* 513.

Larceny, (Fr. *Larrecin,* Lat. *Latrocinium*) Is a theft or felony of another's goods, in his abſence; and in reſpect of the thing ſtolen, it is either

Great
or
Small.

Grand larceny is a felonious taking and carrying away the perſonal goods of another, above the value of 12*d.* not from the perſon, or by night, in the houſe of the owner.

Petit larceny is when the goods ſtolen do not exceed the value of 12 *d.* It agrees with grand *larceny* in all things except only the value of the goods; ſo that whereever any offence would be grand *larceny,* if the thing ſtolen was above 12 *d.* value; it is is petit *larceny,* if it be but of that value, or under. *H. P. C.* 60, 69.

If two perſons ſteal goods to the value of 13 *d.* it is grand *larceny* in both; and if one at different times ſteals divers parcels of goods from the ſame perſon, which together exceed the value of 12*d.* they may be put together in one indictment, and the offender found guilty of grand *larceny*; but this is very ſeldom done: On the contrary, the jury ſometimes, where it is an offender's firſt offence, *&c.* find it ſpecially, as they may, that the goods are but of 10*d.* value; whereby it will be only petit *larceny*, though the offender is indicted for ſtealing things of the value of 30 or 40*s.* *H. P. C.* 70. *Pult.* 125. 3 *Inſt.* 109. *Hetl. Rep.* 66.

Grand *larceny* is a felony puniſhed with death; petit *larceny* only with whipping, or other corporal puniſhment, *&c.* But the offenders may have the benefit of tranſportation by ſtatute.

There is not only *ſimple larceny*, by taking away the goods of another, but a *mixed* or complicated *larceny*, which has a further degree of guilt in it, and is either a taking from the *perſon*, or from the *houſe*; as in caſe of robbery, burglary, *&c.* Alſo there is a *private larceny* from a man's perſon, without his knowledge; or an *open larceny* with his knowledge; private, by picking the pocket, *&c.* openly, where a thief takes off my hat, or periwig, from my head, and runs away with it: And as to private *larceny* from the perſon above 12*d.* it is excluded clergy, if laid in the indictment as done *clam & ſecrete, &c.* according to the words of the *Stat.* 8 *Eliz. c.* 4. but otherwiſe it is not. Open *larceny* with knowledge, by the Common law is within the benefit of clergy. *H. P. C.* 75. *Dalt. cap* 110. 3 *Inſt.* 68. *Dyer* 224.

Of all moveable goods, the property whereof is in any perſon, felony, or *larceny* may be committed; as money, houſehold-ſtuff, hay, corn and trees ſevered from the ground, *&c.* But the goods ſtolen muſt be merely *perſonal*, to make it *larceny*; for if it be of any thing in the *realty*, or *fixed* to the *freehold*; as corn, or fruit growing, not ſevered, lead on a church, *&c.* it is not *larceny.* 3 *Inſt.* 109. 8 *Rep.* 33. *Dalt.* 372. Taking lead from a freehold is made felony by *Stat.* 4 *Geo.* 2. *c.* 32. And ſtealing black-lead in a mine is made felony, by 25 *Geo.* 2. *c.* 10.

Of paper and parchment, on which conveyances are written concerning lands, or obligations, *&c. larceny* cannot be committed. *Wood's Inſt.* 366. But ſee *Stat.* 2 *Geo.* 2. *c.* 15. as to ſtealing of bonds and notes; and the 4 *Geo.* 2. *c.* 32. againſt ſtealing and taking away lead, or iron bars from houſes, *&c.* Where a perſon finds the goods of another that are loſt, and converts them to his own uſe, it is no *larceny.* *H. P. C.* 61. To take away goods the owner of which is unknown, ſometimes is no *larceny*; ſuch as treaſure-trove, wrecks, waifs, ſtrays, before ſeizure by the perſon who hath a right to the ſame; though in other caſes, a man may be guilty of *larceny* in taking away goods, the owner whereof is not known. *Dalt.* 370. 3 *Inſt.* 208. *H. P. C.* 67. By 26 *Geo.* 2. *c.* 19. In ſome extraordinary caſes, the law will rather feign a property, where in ſtrictneſs there is none, than ſuffer an offender to eſcape juſtice. 1 *Hawk. P. C.* 94.

A man may commit *larceny* by taking away his own goods in the hands of another; as where the owner delivers goods to a carrier, and afterwards ſecretly ſteals them from him with an intent to charge him for them, *&c.* becauſe the carrier had a ſpecial property, and the poſſeſſion for a time. 3 *Inſt.* 110. *Dalt.* 373. *Pult.* 126.

To make the crime of *larceny*, there muſt be a felonious taking; or an intent of ſtealing the thing, when it comes firſt to the hands of the offender, at the very time of the receiving. 3 *Inſt.* 107. *Dalt.* 367. And if one intending to ſteal goods, gets poſſeſſion of them by ejectment, replevin, or other proceſs at law unduly obtained, by falſe oath, *&c.* it is a felonious taking. 3 *Inſt.* 64. *Kel. Rep.* 43, 44. If a man hath poſſeſſion of goods once lawfully, though he afterwards carry them away with an ill intention, it is no *larceny*: where a taylor imbezils cloth delivered to him, to make a ſuit of clothes, *&c.* it is not felony. *H. P. C.* 61. 5 *Rep.* 31. And if I lend a perſon my horſe to go to a certain place, and he goes there, and then rides away with him, it is not *larceny*; but remedy is to be had by action for the damage: tho' if one comes on pretence to buy a horſe, and the owner gives the ſtranger leave to ride him, if he rides away with the horſe, it is felony; for here an intention is implied. *Wood's Inſt.* 364, 365. In the above caſes, there is a lawful poſſeſſion by delivery, to extenuate the offence: but perſons having the poſſeſſion of goods by delivery, may in ſome inſtances be guilty of felony, by taking away part thereof; as if a carrier open a pack, and take out part of the goods; a miller who has corn to grind, takes out part of the ſame, with an intent to ſteal it, *&c.* in which caſes, the poſſeſſion of part, diſtinct from the whole, was gained by wrong, and not delivered by the owner, *&c.* *H. P. C.* 62. *S. P. C.* 25. 1 *Hawk. P. C.* 90. If a lodger hath the poſſeſſion of goods and furniture in a houſe, by the conſent and delivery of the owner, the taking away, imbezilling or purloining thereof, with an intent to ſteal them, is felony and *larceny.* *Stat.* 3 & 4 *W. & M. cap.* 9. And by ſtatute, if a ſervant being of the age of eighteen years, and not an apprentice, goes away with goods of his maſter or miſtreſs delivered him to keep; or being in his ſervice imbezils them, or converts them to his own uſe, with intention to ſteal them, it is felony, if the goods are of the value of 40*s.* or above. 21 *H.* 8. *c.* 7. *Vide* alſo, 27 *H.* 8. *c.* 17. 28 *H.* 8. *c.* 2. 1 *Ed.* 6. *c.* 12. *ſect.* 18. 5 *El. c.* 10.

Alſo if one ſervant delivers the goods to another ſervant, this is a delivery by the maſter; yet if the maſter or another ſervant delivers a bond, or cattle to ſell, and the ſervant goes away with the bond, and receives the money thereon due, or receives the money for the cattle ſold, and goes away with the ſame, this is no felony or *larceny* within the ſtatute. *Dalt.* 388. *H. P. C.* 62. 3 *Inſt.* 105. So if a ſervant receives his maſter's rents; for the maſter did not deliver the money to the ſervant, and it muſt be of things delivered to keep: And if goods delivered to the ſervant to keep, are under 40*s.* value, and he goes away with them, this is only a breach of truſt, by reaſon of the delivery; but if the goods were not delivered to him, is is felony and *larceny* to go away with or imbezil them, though under the value of 40*s.* *&c.* *Dalt.* 369. See 12 *Ann. c.* 7.

A perſon that hath the bare charge of goods, and not the poſſeſſion; as a butler that hath the charge of plate, a ſhepherd of ſheep, a ſervant who hath the charge of a chamber by delivery of the key to him, *&c.* may be guilty of *larceny.* 3 *Inſt.* 108. If the goods of a dead perſon are ſtolen, it is felony and *larceny*: But where ſervants in a houſe imbezil them after their maſter's deceaſe, this ſeems not to be felony, becauſe the things were in ſome meaſure in their cuſtody; though, if they appear not on proclamation, they ſhall be attainted of felony, by ſtatute 33 *H.* 6. 3. 1. 1 *Hale's Hiſt. P. C.* 515.

A man puts a child of ſeven years old to take goods and bring them to him, and he carries them away; the child is not guilty by reaſon of his infancy, yet it is *larceny* in the other. *Ibid.* 514. If a man reduced to extreme neceſſity (not owing to his own unthriftineſs) ſteals victuals merely to ſatisfy his preſent hunger, and keep him from ſtarving, by our ancient books, this is neither felony nor larceny. 1 *Hawk. P. C.* 93. *Sed. qu* if it is not now otherwiſe held, and that with great propriety, as it would open a door to innumerable evil conſequences? An acquittal of *larceny* in one county, may be pleaded in bar of a ſubſequent proſecution for the ſame ſtealing in another county: And an averment that the offences in both indictments are the ſame, may be made out by witneſſes, or inqueſt of office, without putting it to trial by jury; though that of later years hath been the uſual method. 2 *Hawk. P. C.* 370. But it is no plea in *appeal* of *larceny*, that the defendant hath been found Not guilty in action of treſpaſs brought againſt him by the ſame plaintiff for the ſame goods, for *larceny* and treſpaſs are entirely different; and a bar in an action of an inferior nature, will not bar another of a ſuperior. 2 *Hawk. P. C.* 371. If a perſon be indicted for felony or *larceny* generally, and upon the evidence it appears that the fact is but a bare treſpaſs, he cannot be found guilty, and have judgment on the treſpaſs, but ought to be indicted anew; tho' it may be otherwiſe where the jury finds a ſpecial verdict, or when the fact is ſpecially laid, *&c.* In treſpaſs where the taking is felonious, no verdict ought to be given, unleſs the defendant hath before been tried for the felony. 2 *Hawk*. 440. All felony includes treſpaſs, ſo that if the party be guilty of no treſpaſs in taking the goods, he cannot be guilty of felony or *lacreny* in carrying them away; and in every indictment of *laeceny*, there muſt be the words *felonice cepit & aſportavit*, *&c.* H. P. C. 61. 1 Hawk. 89.

By the 2 *Geo*. 2. *cap*. 25. it is enacted, “That if any perſon or perſons ſhall ſteal, or take by robbery, any Exchequer orders or tallies, or other orders, intitling any other perſon or perſons to any annuity or ſhare in any parliamentary fund, or any Exchequer bills, Bank notes, *South-Sea* bonds, *Eaſt-India* bonds, dividend warrants of the Bank, *South-Sea* company, *Eaſt-India* company, or any other company, ſociety, or corporation, bills of exchange, navy bills or debentures, goldſmiths notes for payment of any money, or other bonds or warrants, bills or promiſſory notes for the payment of any money, being the property of any other perſon or perſons, or of any corporation; notwithſtanding any of the ſaid particulars are termed in law a *choſe in action*, it ſhall be deemed and conſtrued to be *felony* of the ſame nature and in the ſame degree, and with or without the benefit of the clergy in the ſame manner, as it would have been, if the offender had ſtolen or taken by robbery any other goods of like value with the money due on, or ſecured by, ſuch orders, *&c.*

The 4 *Geo*. 1. *c*. 11. and 6 *Geo*. 1. *c*. 23. impower the judges on conviction for *grand* or *petit larceny* (except the caſe of buying or receiving of ſtolen goods knowing them to be ſuch) to *tranſport* the offenders. See *Clergy*, *Felony*.

See *Black*. *Com*. 4 *V*. 229, 230, 232, 240, 241. 310.

Lardarium, The *larder*, or place where the lard and meat were kept.——*Tenentes de Pidington cariabunt ſalem domini de foro ubi emptus fuerit ad* lardarium *domini*. Paroch. Antiq. pag. 496.

Larderarius Regis, The King's *larderer*, or clerk of the kitchen. *Cowell*.

Larding Money. In the manor of *Bradford* in the county of *Wilts*, the tenants pay to their lord a ſmall yearly rent by this name; which is ſaid to be for liberty to feed their hogs with the maſt of the lord's woods, the fat of a hog being called *lard*: Or it may be a commutation for ſome cuſtomary ſervice of carrying ſalt or meat to the lord's *larder*. This was called *lardarium* in old charters; *& decimam* lardarii *de baga*. Mon. Ang. tom. 1. p. 321.

Larons, *(Fr.)* Thieves; mentioned in the ſtatute for view of frank-pledge. 18 *Ed*. 2.

Laſſatinus, Often occurs in *Walſingham*, and ſignifies an aſſaſſin or murderer. *Anno* 1271.

Laſt, (Sax. *hlæſtan*, i. e. *onus*, Fr. *leſt*) Denotes a burden in general, and particularly a certain weight or meaſure of fiſh, corn, wool, leather, pitch, *&c.* As a *laſt* of white herrings, is twelve barrels, of red herrings, twenty cades or thouſand, and of pilchards, ten thouſand; of corn, ten quarters, and in ſome parts of *England* twenty-one quarters; of wool, twelve ſacks; of leather twenty dickers, or ten ſcore; of hides or ſkins, twelve dozen; of pitch, tar, or aſhes, fourteen barrels; of gunpowder, twenty-four firkins, weighing a hundred pound each, *&c.* *Stat*. 32 *Hen*. 8. *cap*. 14. 1 *Jac*. 1. *cap*. 33. 15 *Car*. 1. *cap*. 7.

Laſt, In the marſhes of *Kent*, is a court held by the twenty-four *jurats*, and ſummoned by the bailiffs; wherein orders are made to lay and levy taxes, impoſe penalties, *&c.* for the preſervation of the ſaid marſhes. *Hiſt. of Imbanking and Draining*, *f*. 54.

Laſtage, *(laſtagium)* A cuſtom exacted in ſome fairs and markets, to carry things bought where one will, by the interpretation of *Raſtal*: But it is taken for the ballaſt or lading of a ſhip, by the *ſtat*. 21 *R*. 2. *cap*. 18.——*Omnes homines* London *ſint quieti & liberi*, *&c. de Theolonio*, *& Paſſagio*, *&* Laſtagio, *& ab omnibus aliis Conſuetudinibus*. *Diploma* Hen. 1. *de Libertatibus* London. And *Laſtage*, ſays another author, is properly that cuſtom which paid for wares ſold by the *laſt*; as herrings, pitch, *&c.*

Laſtage and balaſtage, Regulated in the river *Thames*, 6 *Geo*. 2. *c*. 29.

Laſt heir, *(Ultimus hæres)* Is he to whom land comes by eſcheat for want of lawful *heirs*, that is, the Lord of whom they held in ſome caſes, but in others the King. *Quippe Rex omnium hæredum ultimus eſt, uti oceanus omnium fluviorum receptaculum*. Bract. lib. 7. cap. 17. See *Heir*.

Latera, Sides-men, companions, aſſiſtants. *Cowell*.

Laterare, To lie ſide ways in oppoſition to laying end-ways; uſed in the deſcription of lands. *Chart. dat. ann*. 1317.

Lathe, Leth, *(læſtum, Leda*, Sax. *læthe)* Is a great part of a county, containing three or four hundreds, or wapentakes; as it is uſed in *Kent* and *Suſſex*. Leg. Ed. Confeſſ. c. 35.——*Et ſint quieti de ſectis Comitatuum*, Leth, *Hundred*. *& auxiliis vice comitum*. Pat. 1 H. 4. par. 8. m. 8. See *Lada*. And *Black*. *Com*. 1 *V*. 116.

Lathreve, Leidgreve or **Trithingreve**, Was an officer under the *Saxon* government, who had authority over a third part of the county; and whoſe territory was therefore called *Trithing*, otherwiſe a *Leid* or *Leithen*, in which manner the county of *Kent* is ſtill divided; and the *Rapes* in *Suſſex* ſeem to anſwer the ſame. As to the juriſdiction of this officer, thoſe matters that could not be determined in the hundred court, were thence brought to the *Trithing*, where all the principal men of three or more hundreds being aſſembled by the *Lathreve* or *Trithingreve* did debate and decide it; or if they could not, then the *Lathreve* ſent it up to the county court, to be there finally determined.——*Suoque olim ſubaudiens magiſtratui quem* Ledgrevium *appellabant* Spelm. Ant. Government of England.

Latimer, Is uſed by Sir *Edward Coke* for an interpreter, 2 *Inſt*. 515. It ſeems that the word is miſtaken, and ſhould be *latiner*, becauſe heretofore he that underſtood *Latin*, which in the time of the *Romans* was the prevailing language, might be a good interpreter. *Camden* agrees, that it ſignifies a *Frenchman* or interpreter, and ſays the word is uſed in an old inquiſition. *Britan. fol*. 598. and may be derived or corrupted from the Fr. *latinier*, *q. d. latiner*. Cowell.

Latin. There are three ſorts of *Latin*. 1. *Good Latin*, allowed by grammarians and lawyers. 2. *Falſe* or incongruous *Latin*, which in times paſt would abate original writs; though not make void any judicial writ, declaration or plea, *&c.* And 3. Words of *Art*, known only to the ſages of the law, and not to grammarians, called *Lawyers Latin*. 1 Lil. Abr. 146, 147. *Stat*. 36 *Ed*. 3. Formerly the uſe of a word not *Latin* at all, or ſo in the ſenſe in which uſed, might in many caſes be helped by an *Anglice*; though where there was a proper *Latin* word for the thing intended to be expreſſed, nothing could help an improper one. 2 *Hawk P. C*. 232. And when there was no *Latin* for a thing, words made which had ſome countenance of *Latin*, were allowed good, as *Velvetum*, *Anglice* velvet, *&c.* 10 *Rep*. 133. See *Indictment*, and *Proceſs*.

Latinarius, An interpreter of *Latin*, or *latiner*, from the Fr. *latinier*. 2 Co. Inſt. 515. See *Latimer*.

Latitat, Is a writ whereby all men are originally called to anſwer in perſonal actions in the King's Bench, having its name upon a ſuppoſition that the defendant doth *lurk and lie hid*, and cannot be found in the county of *Middleſex* to be taken by *bill*, but is gone into ſome other county, to the ſheriff of which this writ is directed, to apprehend him there. *F. N. B*. 78. *Terms de Ley*.

The original of it is this: In ancient time, while the King's Bench was moveable, when any man was ſued, a writ was ſent forth to the ſheriff of the county where the court was reſident, called a bill of *Middleſex*, to take him; and if the ſheriff returned *Non eſt inventus*, then a ſecond writ was ſued out, that had theſe words, *Cum teſtatum eſt quod* Latitat, *&c.* and thereby the ſheriff was commanded to attach the party in any other place, where he might be found: And when the tribunal of the King's

Bench came to be ſettled at *Weſtminſter*, the ſame courſe was obſerved for a long time; but afterwards, by the contrivance of clerks, it was deviſed to put both theſe writs into one, and ſo attach the defendant upon a fiction that he was not in the county of *Middleſex*, but lurking elſewhere; and that therefore he was to be apprehended by the ſheriff of the county where he was ſuſpected to be, and lie hid.

It is called a *teſtatum* writ, iſſuing out of *B. R.* grounded upon a bill of *Middleſex*, ſuppoſed to be ſued out before, and returned *Non eſt inventus:* And a *latitat* out of the King's Bench is in nature of the original writ *Clauſum fregit*, on which the practice is in the Common Pleas. 2 *Lil. Abr.* 147. A *latitat* cannot iſſue into the county of *Middleſex*, except the court remove out of *Middleſex* into another county, for in the county where the court of *B. R.* is, the proceſs muſt be by bill, and out of the county by *latitat*. Ibid. If the writ of *latitat* is iſſued during the vacation, it muſt be as of the laſt day of the term preceeding: A note is to be made of it on paper for the officer, and the *latitat* being filled up, is to be carried with the note to the King's Bench Office, and there the writ is ſigned; from whence it is carried to the Seal-Office, where it is ſealed, if bailable; affidavit of the debt muſt be made, an *acetiam* introduced into the body of the writ, the ſum ſworn to indorſed on the back, previous to the ſigning and ſealing of the writ, after which, a warrant is to be procured from the ſheriff of the county to execute the writ.

Latro, *(latrocinium)* He who had the ſole juriſdiction *de latrone* in a particular place: It is mentioned in *Leg. Wil.* 1. See *Infangthef*.

Latta, A lath. *Cowell.*

Lavatorium, A *laundry*, or place to waſh in, applied to ſuch a place in the porch or entrance of cathedral churches, where the prieſt and other officiating members were obliged to waſh their hands before they proceeded to divine ſervice: And in the ſtatutes of St. *Paul's* church in *London*, it was ordained, *ut ſacriſta* lavatorium *in veſtibulo per ſervientes frequenter mundari faciat.* Liber Statut. Eccl. Paul. London. MS. f. 59.

Laverbread. In the county of *Glamorgan* and ſome other parts of *Wales*, they make a ſort of food of a ſea plant, which ſeems to be the oyſter green, or ſea liverwort; and this they call *Laverbread*.

Lavina, for *Lubina*, Watry land, *in qua quis facile* labitur. It is mentioned in *Monaſt. Angl.* 2 *tom. pag.* 372. *In aquis*, labinis, *&* *mariſcis ſæpiſſime periclitantur.*

Laudare, To adviſe or perſuade. *Leg. Edw. Confeſſ. cap.* 39.——*Rex Angliæ aſſignabat ei in terra ſua ad* laudem *&* *concilium Regis* Franciæ, *&c.* Hoveden, p. 729. *Laudare* ſignifies alſo to arbitrate; and *laudator*, an arbitrator. *Knight, p.* 2526.

Laudum, An arbitrament, or award. *Walſingham, p.* 60.

Launcegays, A kind of offenſive weapons now diſuſed, and prohibited by the *ſtat.* 7 *R.* 2. *c.* 13.

Laund or **Lawnd,** *(landa)* An open field, without wood. *Blount.*

Laurels, pieces of gold coined in the year 1619, with the King's head *laureated*, which gave them the name of *laurels*; the twenty-ſhilling pieces whereof were marked with XX. The ten-ſhillings X. and the five-ſhilling piece with V. *Camd. Annal. Jac.* 1. *MS.*

Law, (In Sax. *lag*, Lat. *lex*, from *lego* or *legendo*, chooſing, or rather *à ligando*, binding) Is the rule and bond of men's actions: Or it is a rule for the well governing of civil ſociety, to give to every man that which doth belong to him. According to *Bracton*, *Lex eſt ſanctio juſta, jubens honeſta et probibens contraria:* And the ſchoolman ſays, *Lex humana eſt quoddam dictamen rationis, quo diriguntur humani actus.* The *law* is *rectum*, as it diſcovers that which is crooked or wrong; and theſe three qualities are incident to the *law*, *viz.* It muſt be *juſta, jubens honeſta, probibens contraria:* And *juſta* requires five properties; *poſſibilis, neceſſaria, conveniens, manifeſta, nullo privata commodo.* 2 Inſt. 56, 587.

Laws are *arbitrary* or *poſitive*, and *natural*; the laſt of which are eſſentially juſt and good, and bind every where and in all places where they are obſerved: Arbitrary *laws* are either concerning ſuch matter as is in itſelf morally indifferent, in which caſe both the *law* and the matter, and ſubject of it is likewiſe indifferent, or concerning the natural *law* itſelf, and the regulating thereof; and all arbitrary laws are founded in convenience, and depend upon the authority of the legiſlative power which appoints and makes them, and are for maintaining public order: Thoſe which are natural *laws*, are from God; but thoſe which are arbitrary, are properly human and poſitive inſtitutions. *Selden on Forteſcue, cap.* 17.

The learned *Selden* tells us, that the *laws* of any country began, when there firſt began to be a ſtate in the land: And that we may conſider the world as one univerſal ſociety, and then that law by which nations were governed, is called *jus gentium*; if we conſider the world as made up of particular nations, the law which regulates the public order and right of them, is termed *jus publicum*; and that *law* which determines the private rights of men, is called *jus civile*. Ibid. See *Monteſquieu* on this ſubject.

No law can oblige a people without their conſent; this conſent is either *verbis* or *factis*, i. e. it is expreſſed by writing or implied by deeds and actions; and where a *law* is grounded on an implied aſſent, *rebus & factis*, it is either *Common law*, or *cuſtom*; if it is univerſal, it is *Common law*; and if particular to this or that place, then it is *cuſtom*. 3 Salk. 112.

The *law* in this land hath been variable; the *Roman laws* were in uſe anciently in *Britain*, when the *Romans* had ſeveral colonies here, each of which was governed by the *Roman laws:* Afterwards we had the *laws* called *merchenlage*, *Weſt Saxonlage* and *Danelage*; all reduced into a body, and made one by King *Edw. Confeſſ.* *Magna Charta, cap.* 1. *&* 14. *Camd. Britan* 94.

At preſent the *laws* of *England* are divided into three parts: 1. The *Common law* which is the moſt ancient and general *law* of the realm, and common to the whole kingdom, being appropriate thereto, and having no dependance upon any foreign *law* whatſoever.

2. *Statutes* or acts of parliament, made and paſſed by the King, lords, and commons in parliament; being a reſerve for the government to provide againſt new miſchiefs ariſing through the corruption of the times: And by this the Common *law* is amended where defective, for the ſuppreſſion of public evils; though where the Common *law* and Statute *law* concur or interfere, the Common *law* ſhall be preferred.

3. *Particular cuſtoms*; but they muſt be *particular*, for a general cuſtom is part of the Common *law* of the land. *Co. Lit.* 15, 115.

There is another diviſion of our laws; more large and particular: as into the prerogative or *crown law*; the law and cuſtom of *parliament*; the *common law*; the *ſtatute law*; reaſonable *cuſtoms*; the *law of arms*, war and chivalry; *eccleſiaſtical* or *canon laws*; *civil law*, in certain courts and caſes; *foreſt law*; the *law* of *marque* and *repriſal*, the *law* of *merchants*; the *law* and privilege of the *Stannaries*, *&c.* But this large diviſion may be reduced to the common diviſion; and all is founded on the law of nature and reaſon, and the revealed law of God, as all other laws ought to be. 1 *Inſt.* 11. The law of nature is that which God at man's creation infuſed into him, for his preſervation and direction; and this is *lex æterna*, and may not be changed: and no laws ſhall be made or kept, that are expreſly againſt the law of God, written in his Scripture; as to forbid what he commandeth, *&c.* 2 *Shep. Abr.* 356.

As to the *law of nature*, it is generally the law of all places, perſons and times, without alteration; and has the ſame force all the world over: but it is limitable, as circumſtances require; and *limited law of nature*, is the law now uſed in every ſtate.

All laws derive their force *a lege naturæ*; and thoſe which do not, are accounted as no laws. *Forteſcue.* No law will make a conſtruction to do wrong; and there are ſome things which the law favours, and ſome it diſlikes; it favoureth thoſe things that come from the order of nature. 1 *Inſt.* 183, 197. Alſo our law hath much more reſpect to life, liberty, freehold, inheritance, matters of record, and of ſubſtance; than to chattels, things in the perſonalty, matters not of record, or circumſtances. *Ibid.* 137. 4 *Rep.* 124. The uſe of the law is to ſecure the property of what we enjoy; and the objects of it concern perſons, their eſtates, crimes and miſdemeanors, courts of juſtice, *&c.*

Law, in its moſt general and comprehenſive ſenſe, as defined by Mr. Juſtice *Blackſtone*, in his Commentaries, 1 *V.* 38. is "a rule of action; and is applied indiſcriminately to all kinds of action, whether animate or inanimate, rational or irrational." And it is that "rule of action, which is preſcribed by ſome ſuperior, and which the inferior is bound to obey."

See *Common Law*, and *Black. Com.* 1 *V.* 38, *&c.*

Law hath alſo a *ſpecial* ſignification, wherein it is taken for that which is lawful with us, and not elſewhere; as tenant by the *Curteſy of England*, is called tenant by the *law of England.*

Law of Arms, *(lex armorum)* Is that law which gives precepts how to proclaim war, make and obſerve leagues and treaties, to aſſault and encounter an enemy, and puniſh offenders in the camp, *&c.* The law and judgment of arms are neceſſary between two ſtrange princes of equal power, who have no other method of determining their controverſies, becauſe they have no ſuperior or ordinary judge, but are ſupreme and public perſons; and by the law of arms, Kings obtain their rights, rebels are reduced to obedience, and peace is eſtabliſhed: but when the law of arms and war do rule, the civil laws are of little or no force. *Treat. Laws* 57.

It is a kind of law among all nations, that in caſe of a ſolemn war, the prince that conquers gains a right of dominion, as well as property over the things and perſons he has ſubdued; and it is for this reaſon, becauſe both parties have appealed to the higheſt tribunal that can be, *viz.* the trial by *arms and war*; wherein the Great judge and Sovereign of the world, in a more eſpecial manner, ſeems to decide the controverſy. *Hale's Hiſt. L.* 73, 74.

Common things concerning arms and war, are under the cogniſance of the conſtable and *Marſhal of England.* 13 *R.* 2.

Law-Books. All books written in the law are either *hiſtorical*, as the *Year-Books*; *explanatory*, ſuch as *Standford*'s Treatiſe of the Royal Prerogative; *miſcellaneous*, as the Abridgments of the Law; *monological*, being on one certain ſubject, ſuch as *Lambard's* Juſtice of Peace, *&c.* *Fullbeck's Paralell, cap.* 3. And our books of Reports have ſuch great weight with the judges, that many of them are as highly valued as the *Reſponſa Prudentum* among the *Romans*, which were *authoritative.* Wood's Inſt. 10. *Authors of Law-Books.* Vide *Common Law.*

Law-Day, *(lagedayum)* Called alſo *view of frankpledge*, or *court-leet*, was any day of open court; and commonly uſed for the courts of a county or hundred. *Et quietæ ſint de ſectis comitatum & hundredorum noſtrorum de viſu franci plegii &* lawdayorum, *&c.* *Chart.* 39 *Hen.* 3.

Lawing of Dogs, Is the cutting off ſeveral claws of the fore-feet of dogs in the *foreſt.* Chart. Foreſt. c. 6. See *Expeditate*, and *Black. Com.* 3 *V.* 72.

Lawleſs-Court, Is a court held on *Kingſhill* at *Rochford* in *Eſſex*, on *Wedneſday* morning next after *Michaelmas* day yearly, at cock-crowing; at which court, they whiſper, and have no candle, nor any pen and ink, but a coal: and he that owes ſuit or ſervice there, and appears not, forfeits double his rent: this court is mentioned by *Camden*, who ſays, that this ſervile attendance was impoſed on the tenants, for conſpiring at the like unſeaſonable time to raiſe a commotion. *Camd. Britan* 441. It belongs to the honour of *Raleigh*, and is called lawleſs, becauſe held at an unlawful hour; or *quia dicta ſine lege.* The title of it is in rhime, and in the court-roll runs thus:

Kingſhill in Rochford. } ſſ.

Curia de Domino Rege,
Dicta ſine lege,
Tenta eſt ibidem
Per ejuſdem conſuetudinem,
Ante ortum ſolis
Luceat niſi polus,
Seneſcallus ſolus
Nil ſcribit niſi colis
Toties voluerit
Gallus ut cantaverit,
Per cujus ſoli ſonitus
Curia eſt ſummonita:
Clamat clam pro rege
In curia ſine lege,
Et niſi cito venerint
Citius pœnituerint,
Et niſi clam accedant
Curia non attendat,
Qui venerit cum lumine
Errat in regimine
Et dum ſunt ſine lumine,
Capti ſunt in crimine,
Curia ſine cura.
Jurati de injuria.

Tenta ibidem die Mercurii (ante diem) proximi poſt feſtum Sancti Michaelis *anno regni regis, &c.*

Lawleſs Man, *(exlex)* is an outlaw. *Pro exlege tenebitur, cum principi non obediat nec legi, et tunc utlagabitur ſicut ille qui eſt extra legem, ſicut* lawleſs man. *Bract. lib.* 3. *c.* 11.

Law of Marque, (from the Germ. *march*, i. e. *limes*) Is where they that are driven to it, do take the ſhipping and goods of that people of whom they have received wrong, and cannot get ordinary juſtice in another territory, when they can take them within their own bounds and precincts. *Stat.* 27 *Ed.* 3. *c.* 17.

Law Merchant, *(lex mercatoria)* Is a ſpecial law differing from the common law of *England*, proper to merchants, and part of the law of the realm. And the *charta mercatoria*, 31 *Ed.* 1. grants this perpetual privilege to merchants, coming into this kingdom: *quod omnes balivi, miniſtri feriarum, civitatum, burgorum et villarum mercatoriarum mercatoribus antedictus comparentibus coram eis celerem juſtitiam faciant de die in diem ſine delatione; ſecundum* legem mercatoriam, *de univerſis et ſingulis qua per eandem legem poterunt terminari.* *Sce* 13 Ed. 1. *and* 27 Ed. 3. c. 8. Co. Lit. 182. *See* Cuſtom of Merchants.

Law Proceedings, Of all kinds, as writs, proceſſes, pleadings, *&c.* are to be in the *Engliſh* language from the 25th of *March* 1733, by 4 *Geo.* 2. *c.* 26. 5 *Geo.* 2. *c.* 27. Except known abbreviations and technical terms, 6 *Geo.* 2. *c.* 14. Vide *Proceſs.*

Law Spiritual, *(lex ſpiritualis)* Is the Eccleſiaſtical law, allowed by our laws where it is not againſt the Common law, nor the ſtatutes and cuſtoms of the kingdom: and regularly, according to ſuch Eccleſiaſtical or Spiritual laws, the Biſhops and other Eccleſiaſtical judges proceed in cauſes within their cogniſance. *Co. Lit.* 344. It was alſo called *Law Chriſtian*; and, in oppoſition to it, the Common law was often called *Lex Terrena, &c.*

Law of the Staple, (mentioned in *Stat.* 27 *Ed.* 2. *ſtat.* 2. *cap.* 22.) Is the ſame with law merchant. See 4 *Inſt.* 237, 238. and *Staple.*

Lawns. See *Cambricks.*

Lawyer, *(legiſta, legiſperitus, juriſconſultus)* By the *Saxons* called *labman*, is a counſellor, or one learned in the law. And lawyers, ſuch as counſellors, attornies *&c.* are within the act 3 *Jac.* 1. *c.* 7. againſt extortion; but it has been held only to extend to officers. 2 *Keb.* 548.

Lay-Corporations, Are of two ſorts, *civil* and *eleemoſynary*. The *civil* are ſuch as are erected for a variety of *temporal* purpoſes. The *eleemoſynary* ſort are ſuch as are conſtituted for the perpetual diſtribution of the *free alms*, or *bounty*, of the founder of them to ſuch perſons as he hath directed See *Black. Com.* 1 *V.* 470, 471.

Lay inveſtiture of Biſhops. Election was, in very early times, the uſual mode of elevation to the epiſcopal chair throughout all Chriſtendom; and this was promiſcuouſly performed by the laity as well as the clergy: till at length, it becoming tumultuous, the emperors and other ſovereigns of the reſpective kingdoms of Europe took the appointment in ſome degree into their own hands; by reſerving to themſelves the right of confirming theſe elections, and of granting inveſtiture of the temporalties, which now began almoſt univerſally to be annexed to this ſpiritual dignity; without which confirmation and inveſtiture, the elected biſhops could neither be conſecrated nor receive any ſecular profits. This right was acknowledged in the Emperor *Charlemagne*, *A D.* 773, by Pope *Hadrian* I. and the council of *Lateran*, and univerſally exerciſed by other chriſtian princes: but the policy of the court of *Rome* at the ſame time began by degrees to exclude the laity from any ſhare in theſe elections, to confine them wholly to the clergy, which at length was completely effected; the mere form of election appearing to the people to be a thing of little conſequence, while the crown was in poſſeſſion of an abſolute negative, which was almoſt equivalent to a direct right of nomination. Hence the right of appointing to biſhopricks is ſaid to have been in the crown of *England* (as well as other kingdoms in *Europe*) even in the *Saxon* times; becauſe the rights of confirmation and inveſtiture were in effect (tho' not in form) a right of complete donation. But when, by length of time, the cuſtom of making elections by the clergy only was fully eſtabliſhed, the Popes began to except to the uſual method of granting thoſe inveſtitures, which was *per annulum et baculum*, by the prince's delivering to the prelate a ring, and paſtoral ſtaff or croſier; pretending, that this was an enchroachment on the church's authority, and an attempt by theſe ſymbols to confer a ſpiritual juriſdiction: and Pope *Gregory* VII. towards the cloſe of the eleventh century, publiſhed a bull of excommunication againſt all princes who ſhould dare to confer inveſtitures, and all prelates who ſhould venture to receive them. This was a bold ſtep towards effecting the plan then adopted by the *Roman* ſee, of rendering the clergy entirely independent of the civil authority: and long and eager were the conteſts occaſioned by this papal claim. But at length, when the Emperor *Henry* V. agreed to remove all ſuſpicion of encroachment on the ſpiritual character, by conferring inveſtitures for the future *per ſceptrum*, and not *per annulum et baculum*; and when the Kings of *England* and *France* conſented alſo to alter the form in their kingdoms, and receive only homage from the biſhops for their temporalties, inſtead of inveſting them by the ring and croſier; the court of *Rome* found it prudent to ſuſpend for a while it's other pretenſions.

This conceſſion was obtained from King *Henry* the firſt in *England*, by means of that obſtinate and arrogant prelate, archbiſhop *Anſlem*: but King *John* (about a century afterwards) in order to obtain the protection of the Pope againſt his diſcontented barons, was alſo prevailed upon to give up by a charter, to all the monaſteries and cathedrals in the kingdom, the free right of electing their prelates, whether abbots or biſhops: reſerving only to the crown the cuſtody of the temporalties during the vacancy; the form of granting a licence to elect, (which is the original of our *congé d'eſlire*) on refuſal whereof the electors might proceed without it; and the right of approbation afterwards, which was not to be denied without a reaſonable and lawful cauſe. This grant was expreſly recognized and confirmed in King *John's magna charta*, and was again eſtabliſhed by ſtatute 25 *Ed.* 3. *ſt.* 6. *ſect.* 3.

But by ſtat. 25 *H.* 8. *c.* 20. the ancient right of nomination was, in effect, reſtored to the crown. See *Black. Com.* 1 *V.* 378, *&c.* the ſeveral authorities there cited, and the ſtatute of *Hen.* 8.

Lay-Fee, *(feodum laicum)* Lands held in fee of a lay-lord, by the common ſervices to which military tenure was ſubject; as diſtinguiſhed from the *eccleſiaſtical* holding in *frankalmoign*, diſcharged from thoſe burdens. *Kennet's Gloſſ.*

Layman, Is one that is not of the clergy; and the *Latin* word *laicus* ſignifies as much as *populus*, that which is common to the people, or belongs to the laity. *Lit. Dict.*

Layſtall, (*Sax.*) A place to lay dung or ſoil in. *Stat.* 22 *&* 23 *Car.* 2. *c.* 17. *ſect.* 11.

Lazarets. Places where quarentine is to be performed, by perſons coming from infected countries. Eſcaping from them felony, without benefit of clergy. See 1 *Jac.* 1. *c.* 31. 26 *Geo.* 2. *c.* 6. 29 *Geo.* 2. *c.* 8.

Lazzi. The *Saxons* divided the people of the land into three ranks: the firſt they called *edhilingi*, which were ſuch as are now nobility: the ſecond were termed *frilingi*, from *friling*, ſignifying that he was born a freeman, or of parents not ſubject to any ſervitude, which are the preſent gentry: and the third and laſt were called *lazzi*, as born to labour, and being of a more ſervile ſtate than our ſervants, becauſe they could not depart from their ſervice without the leave of the lord; but were fixed to the land where born, and in the nature of ſlaves: hence the word *lazzi*, or *lazy*, ſignifies thoſe of a ſervile condition. *Nithardus de Saxonibus. lib.* 24.

Lea of Yarn, A quantity of yarn, ſo called; and at *Kidderminſter* it is to contain 200 threads on a reel four yards about. 22 *&* 23 *Car.* 2. *c.* 8.

Lead, Stealing of lead affixed to a houſe, *&c.* tranſportation for ſeven years. 4 *Geo.* 2. *c.* 32. See *Felony, Larceny.*

League, Is an agreement between princes, *&c.* Alſo a meaſure of way by ſea, or an extent of land containing three miles in moſt countries abroad. Breakers of leagues and truces, how puniſhed for offences done upon the ſeas. See *Stat.* 2 *H.* 5 *c.* 6. and 4 *H.* 5. *c.* 7. 20 *H.* 6. *c.* 11. 29 *H.* 6. *c.* 2. 14 *H.* 6. *c.* 8. 31 *H.* 6. *c.* 4. 14 *Ed.* 4. *c.* 4.

Leat, or **Leche,** (from the Sax. *leccian*, to let out water) In the biſhoprick of *Durham* is uſed for a gutter; ſo in *Yorkſhire* any ſlough or watery hole upon the road, is called by this name: and hence the water-tub to put aſhes in to make a lee for waſhing of cloaths, is in ſome parts of *England* termed a *leche*. Cowell.

Leakage, Is an allowance of twelve *per cent.* to merchants importing wine, out of the cuſtoms; and of two barrels in twenty-two of ale to brewers, *&c.* out of the duty of exciſe. *Merch. Dict.*

Leap, A net, engine or wheel, made of twigs, to catch fiſh in. 4 *&* 5 *W.* *&* *M.* *c* 23. See *Lepa.*

Leap-Year, Every fourth year, having one day more than other years. The day increaſing in the leap year, and the day before, ſhall be accounted for one day. 21 *Hen.* 3. Vide *Biſſextile.*

Leaſe, (from *locatio*, letting, or rather *dimiſſio*, from the Fr. *laiſſer*, i. e. *dimittere* to depart with) Is a demiſe or letting of lands, tenements or hereditaments to another for term of life, years, or at will, for a rent reſerved. *Co. Lit.* 43. Leaſes are either in writing, or by word of mouth, when they are called leaſes parol; and it is ſaid not to be material whether any rent is reſerved upon a leaſe for life, or years, except in the caſe of leaſes by tenant in tail, *&c.* according to the ſtatute 32 *H.* 8. *c.* 28.

A leaſe for life requires livery of ſeiſin; and generally, to the making of a good leaſe, ſeveral things neceſſarily concur; there muſt be a leſſor, not reſtrained from making a leaſe; a leſſee not diſabled to receive; a thing demiſed which is demiſable, and a ſufficient deſcription of the thing demiſed, *&c.* If it be for years, it muſt have a certain commencement and determination, it is to have all the uſual ceremonies, as ſealing, delivery, *&c.* and there muſt be an acceptance of the thing demiſed. *Lit.* 56. 1 *Inſt.* 46. *Plowd.* 273, 523.

A demiſe having no certain commencement is void: for every contract ſufficient to make a leaſe, ought to have certainty in commencement, in the continuance, and in the end. *Vaugh.* 85. 6 *Rep.* 35. A leaſe at will is at the will of the leſſor or leſſee; or regularly at the will of both parties. 1 *Inſt.* 55.

All eſtates, intereſts of freehold, or terms for years in lands, *&c.* not put in writing, and ſigned by the parties, ſhall have no greater effect than as eſtates at will; unleſs it be of leaſes not exceeding three years from the making, wherein the rent reſerved ſhall be two thirds of the value of the thing demiſed. *Stat.* 29 *Car.* 2. *cap.* 3. Leaſes exceeding three years muſt be made in writing, and if the ſubſtance of a leaſe be put in writing, and ſigned by the parties, though it be not ſealed, it ſhall have the effect of a leaſe for years, *&c.* *Wood's Inſt.* 266. Articles with covenants to let and make a leaſe of lands, for a certain term, at ſo much rent, hath been adjudged a leaſe. *Cro. Eliz.* 486. In a covenant with the words *have, poſſeſs* and *occupy* lands, in conſideration of a yearly rent, without the word *demiſe*; it was held a good leaſe: and a licence to occupy, take the profits, *&c.* which paſſeth an intereſt amounts to a leaſe. 3 *Bulſt.* 204. 3 *Salk.* 223. An agreement of the parties, that the leſſee ſhall enjoy the lands, will make a leaſe; but if the agreement hath a reference to the leaſe to be made, and implies an intent not to be perfected till then; it is not a perfect leaſe until made afterwards. *Bridge* 13. 2 *Shep. Abr.* 374. If a man, on promiſe of a leaſe to be made to him, lays out money on the premiſſes, he ſhall oblige the leſſor afterwards to make the leaſe; the agreement being executed on the leſſee's part: where no ſuch expence hath been, a bare promiſe of the leaſe for a term of years, tho' the leſſee have poſſeſſion, ſhall not be good without ſome writing. *Preced. Can.* 561. A perſon ſeiſed of an eſtate in fee-ſimple, in his own right, of any lands or tenements, may make a leaſe of it for what lives or years he will; and he that is ſeiſed of an eſtate tail in lands, may make a leaſe of it for his own life, but no longer; except it be by fine or recovery, or leaſe warranted by the Stat. 32 *H.* 8. *c.* 28. And if tenant in tail, or for life, make a leaſe generally, it ſhall be conſtrued for his own life. 1 *Inſt.* 42.

He that is ſeiſed of an eſtate for life, may make a leaſe for his life according as he is ſeiſed; alſo he may make a leaſe for years of the eſtate, and it ſhall be good as long as the eſtate for life doth laſt: one poſſeſſed of lands for years, may make a leaſe of all the years, except one day, or any ſhort part of the term; it is to be granted for a leſs term than the maker hath in the lands; for if *all* the eſtate is granted, it is *an aſſignment:* and if leſſee for years makes a leaſe for life, the leſſee may enjoy it for the leſſor's life, if the term of years laſts ſo long; but if he gives livery and ſeiſin upon it, this is a forfeiture of the eſtate for years. *Wood's Inſt.* 267. Jointenants, tenants in common, and coparceners, may make leaſes for life, years, or at will, of their own parts, and ſhall bind their companions: and in ſome caſes, perſons who are not ſeiſed of lands in fee, *&c.* may make leaſes for life or years, by ſpecial power enabling them to do it, when the authority muſt be exactly purſued. *Ibid.* But there is a difference, where there is a general power to make leaſes, and a particular power. 8 *Rep.* 69.

A leaſe for *life* cannot be made to commence *in futuro*, by the Common law; becauſe livery cannot be made to a future eſtate: though where a leaſe is made for life, *habendum* at a day to come, and after the day, the leſſor makes livery, there it ſhall be good; and a leaſe in reverſion may be made for life, which commences at a day that is future. 5 *Rep.* 94. *Hob.* 314. 1 *Inſt.* 5. A leaſe for *years* may begin from a day paſt, or to come, at *Michaelmas* laſt, *Chriſtmas* next, three or four years after, or after the death of the leſſor, *&c.* Tho' a term cannot commence upon a contingency, which depends on another contingency. 1 *Inſt.* 5. 1 *Rep.* 156. If one make a leaſe for years; after the death of *A. B.* if he die within ten years; this is a good leaſe, in caſe he dies within that time, otherwiſe not. *Plowd.* 70. And where a man has a leaſe of lands for eighty years, and he grants it to another to hold for thirty years, to begin after his death; it will be good for the whole thirty years, provided there be ſo many of the eighty to come at the time of the death of the leſſor. *Bro. Grant*, 54. 1 *Rep.* 155. A leaſe made from the leſſor's death, until *anno Domini* 1780 is good: and if a leaſe be during the minority of *J. S.* or until he ſhall come to the age of twenty-one years; theſe are good leaſes; and if he dies before his full age, the leaſe is ended. *Hob.* 174. A perſon grants a rent of 20*l.* a year, till an hundred pounds be paid, it is a leaſe of the rent for five years. *Co. Lit.* 42. If a man makes a leaſe of land to another, until he ſhall levy out of the profits one hundred pounds, or he is paid that ſum, *&c.* This will be a leaſe for life, determinable on the payment of the hundred pounds, if livery and ſeiſin be made: but if there is no livery, it will not be good for years, but void for incertainty. 21 *Aſſiſ.* 18. *Plowd.* 27. 6 *Rep.* 35.

A leaſe for years to ſuch perſon as *A. B.* ſhall name, is not good: though it may be for ſo many years, as he ſhall name; not as ſhall be named by his executors, *&c.* for it muſt be in the life-time of the parties. *Hob.* 173. *Moor, caſ.* 911. And if a man makes a leaſe to another for ſo many years as a third perſon ſhall name, when the years are named by ſuch perſon, it is good for ſo many years. 1 *Inſt.* 45. So if a perſon lets his lands for as many years as he hath in the manor of *D.* and he hath then a term for ten years, this is a good leaſe for ten years; and in the like caſes, by referring to a certainty, it may be made good and certain. *Ibid.* A leaſe may be made for life or years, of any thing that lies in livery or grant; but leaſes for years ought to be made of ſuch lands, *&c.* whereunto the leſſor may come to diſtrain; not of incorporeal inheritances. 1 *Inſt.* 47. And they may be for the term of one thouſand years, or any number of years, months or weeks; or be from week to week, *&c.* for one, two or three years, and be good for thoſe years: and a tenant for half a year, or a quarter of a year, is tenant for years. 1 *Inſt.* 6. If one makes a *leaſe* for a year, and ſo from year to year, it is a *leaſe* for two years; and afterwards it is but an eſtate at will. 1 *Mod.* 4. 1 *Lutw.* 213. And if from three years to three years, it is a good *leaſe* for ſix years: alſo if a man make a *leaſe* for years, without ſaying for how many, it may be good for two years, to anſwer the plural number. *Wood's Inſt.* 265.

A leſſee hath a term for a year by parol, and ſo from year to year, ſo long as both parties pleaſe; if the leſſee enters on a ſecond year, he is bound for that year, and ſo on: and if there is a *leaſe* by deed for a year, and ſo from year to year as long as both parties agree, this is binding but for one year, though if the leſſee enters upon the ſecond year, he is for that year bound: if it is for a year, and ſo from year to year, ſo long as both parties agree till ſix years expire; this is a *leaſe* for ſix years, but determinable every year at the will of either party: but if it is for a year, and ſo from year to year till ſix years determine, this is a certain *leaſe* for ſix years; adjudged by *Holt* Chief Juſtice. *Mod. Ca.* 215. If *A.* make a *leaſe* of land to *B.* for ten years; and it is agreed between them, that he ſhall pay fifty pounds at the end of the ſaid term, and if he do ſo, and pay fifty pounds at the end of every ten years; then the ſaid *B.* ſhall have a perpetual demiſe and grant of the lands, from ten years to ten years continually following, *extra memoriam hominum*, *&c.* Though this be a good *leaſe* for the firſt ten years, as for all the reſt, it is incertain and void: By covenant a further *leaſe* may be made for the like term of years. *Plowd.* 192. 2 *Shep. Abr.* 376.

A parſon makes a *leaſe* of his glebe for ſo many years as he ſhall be parſon, this cannot be made certain; but if he makes a *leaſe* for three years, and ſo from three years to three years, ſo long as he ſhall be parſon, it is a good *leaſe* for ſix years, if he continue parſon ſo long. 6 *Rep.* 35. 3 *Cro.* 511. And if one make a *leaſe* for twenty-one years, if the leſſee ſhall ſo long live; this a good *leaſe* for years, and a certainty in an uncertainty. 1 *Inſt.* 46. A *leaſe* made to a man for ſeven years, if *D.* ſhall live ſo long, who is dead when the *leaſe* is made; by this the leſſee hath an abſolute *leaſe* for ſeven years. 9 *Rep.* 63. *Leaſe* for life is granted, and ſays that if the leſſee within one year do not pay 20*s.* then he ſhall have but a *leaſe* for two years; here, if he pays not the money, he ſhall have only the two years, although livery of ſeiſin be had thereon. 1 *Inſt.* 218. If a leaſe be made to *A. B.* during his own life, and the lives of *C.* and *D.* it is one entire eſtate of freehold, and ſhall continue during the three lives, and the life of the ſurvivor of them; and tho' the leſſee can have it no longer than his own life, yet his aſſignee ſhall have the benefit of it ſo long as the other two are living. 5 *Rep.* 13. *Moor* 32. Where one grants land by *leaſe* to *A. B.* and *C. D.* to hold to them during their lives, although the words *and the longeſt liver of them* be omitted, they ſhall hold it during the life of the longeſt liver. 5 *Rep.* 9. A *leaſe* is made to a perſon for ſixty years, if *A. B.* and *C. D.* ſo long live; and afterwards *A. B.* dies, by his death the leaſe is determined. Though if the *leaſe* be made to one for the lives of *A. B.* and *C. D.* the freehold doth not determine by the death of one of them; and if in the other caſe of a term, the words *or either of them* be inſerted in the *leaſe*, it will be good for both their lives. 13 *Rep.* 66.

A *leaſe* was made to a man for ninety-nine years, if he ſhould ſo long live; and if he died within the term, the ſon to have it for the reſidue of the term: this was adjudged void as to the ſon, becauſe there can be no limitation of the reſidue of a term which is determined. *Cro. Eliz.* 216. But if the words of the *leaſe* be, To hold during the reſidue of the ninety-nine years, and not during the reſt of the term, in this caſe it may be good to the ſon alſo. 1 *Rep.* 153. *Dyer* 253. A *leaſe* was made for twenty-one years, if the leſſee lived ſo long, and in the ſervice of the leſſor; the leſſor died within the term, and yet it was held that the *leaſe* continued, for it was by the act of God that the leſſee could ſerve no longer. *Cro. Eliz.* 643.

If a *leaſe* be to a man, and to her whom he ſhall take to wife, it is void; becauſe there ought to be ſuch perſons at the time of the commencement of the *leaſe* which might take. 4 *Leon.* 158. When a leaſe in reverſion is granted as ſuch after another *leaſe*, and that *leaſe* is void by raſure, &c. the reverſionary *leaſe*, expectant upon the *leaſe* for years that is void, is void alſo. *Cro. Car.* 289. But where a man recites a *leaſe*, when in truth there is no *leaſe*; or a *leaſe* which is void, and miſrecites the ſame in a point material, and grants a further *leaſe* to commence after the determination thereof; in ſuch caſe the new *leaſe* ſhall begin from the time of delivery. *Dyer* 93. 6 *Rep.* 36. *Vaugh.* 73, 80, &c. A *leaſe* that has an impoſſible date for its commencement, is ſaid to be void; and an uncertain limitation makes the *leaſe* void, becauſe, it being part of the agreement, the court cannot determine what the contract was. 1 *Mod.* 180. Though it hath been adjudged, where a *leaſe* bears a date which is impoſſible, the term ſhall begin from the delivery, as if there was no date. 1 *Inſt.* 40. If a *leaſe* be to hold from the day of the date, the day itſelf is excluded; otherwiſe the day of delivery is incluſive. 5 *Rep.* 2.

A man makes a *leaſe* for years to one, and afterwards makes a *leaſe* for years to another of the ſame land; the ſecond *leaſe* is not void; but ſhall be good for ſo many years thereof, as ſhall come after the firſt *leaſe* ended. *Noy's Max.* 67. And if one make a *leaſe* for years, and afterwards the leſſor enters upon the lands let, before the term is expired, and makes a *leaſe* of theſe lands to another; this ſecond *leaſe* is a good *leaſe* until the leſſee doth re-enter; and then the firſt *leaſe* is revived, and he is in thereby. 2 *Lill. Abr.* 152. It hath been held, that a *leaſe* may be void as to one, and ſtand good to another: and *leaſes* voidable, or void for the preſent, may after become good again. 1 *Inſt.* 46. 3 *Rep.* 51 If a *leaſe* be made to two, to hold to them and two others, it is voidable as to the two other perſons; and when the two firſt die, the *leaſe* is at an end. 2 *Leon.* 1. A *leaſe* which is only void able, and not abſolutely void, muſt be made void by the leſſor by re-entry; but if a *leaſe* be void abſolutely, there needs no re-entry: And as a voidable *leaſe* is made void by re-entry, and putting out the leſſee; ſo it is affirmed by accepting and receiving the rent which acknowledges the leſſee to be tenant. 21 *Car. B. R.* 2 *Lil.* 149. If a leſſor accepts of rent of an aſſignee of a *leaſe*, having knowledge of the aſſignment, he may not afterwards charge the leſſee with the rent in action of debt. 3 *Rep.* 23. And where a leſſee for years accepts of a leſs term from the leſſor, even by word, it is ſaid this is a ſurrender of the term which he had by deed. *Style* 448.

When a term for years in *leaſe*, and a fee-ſimple, meet in one perſon, the *leaſe* is drowned in the inheritance; yet in ſome caſes it may have continuance, to make good charges and payments, &c. *Popb.* 39. 2 *Nelſ. Abr.* 1100. If a *leaſe* for years is made to a man and his heirs it ſhall go to his executors. 1 *Inſt.* 46, 388. And a *leaſe* for years, notwithſtanding it be a very long *leaſe*, cannot be intailed; but may be aſſigned in truſt, to ſeveral uſes. 2 *Lill. Abr.* 150. This means by *deed*, for by *will* it may paſs by way of entail. If ſuch a *leaſe* comes to be limited in tail, the law allows not a preſent remainder to be limited thereupon. *Ibid.* Leſſee for years, tho' for never ſo great a term, has only a chattel; but tenant for life hath a freehold. 1 *Inſt.* 6. A *leaſe* is ſealed by the leſſor, and the leſſee hath not ſealed the counterpart, action of covenant may be brought upon the *leaſe* againſt the leſſor: but where the *leaſe* is ſealed by the leſſee, and not the leſſor, nothing operates. *Yelv.* 18. *Owen* 100.

A man out of poſſeſſion, cannot make a *leaſe* of lands, without entering and ſealing the leaſe upon the land. *Daliſ.* 81. The leſſee is to enter on the premiſſes let; and ſuch leſſee for years is not in poſſeſſion, ſo as to bring treſpaſs, &c. until actual entry; but he may grant over his term before entry, 1 *Inſt.* 46 2 *Lil.* 160. A leſſee of a future intereſt never enters by virtue of his term, but enters before, and continues after the commencement of the term; and then the leſſor ouſts him, the leſſee may aſſign over his term off the land. 1 *Lev.* 47. But a *leaſe* to begin at *Michaelmas*, if the leſſee enters before *Michaelmas*, and continues the poſſeſſion immediately, is a diſſeiſin. *Ibid.* 46. If a *leaſe* be made of a cloſe of land, by a certain name, in the pariſh of *A.* in the county of *B.* whereas the cloſe is in another county, the ſaid pariſh extending into both counties; ſuch a leaſe is good to paſs ſuch land: though where a houſe is leaſed without a name, and the pariſh is miſtaken; it hath been held otherwiſe. *Dyer* 276, 292.

Land and mines are *leaſed* to a tenant; this only extends to the open mines, and the leſſee ſhall not have any others, if there are ſuch: And if land and timber are demiſed, the leſſee is not empowered to ſell it. 2 *Lev.* 184. 2 *Mod.* 193. A man makes a leaſe of lands for life, or years, the leſſee hath but a ſpecial intereſt in the timber-trees, as annexed to the land, to have the maſt and ſhadow for his cattle; and when they are ſevered from the lands, or blown down with wind, the leſſor ſhall have them as parcel of his inheritance. 4 *Rep.* 62. 11 *Rep.* 81. If an houſe falls down by tempeſt, &c. the leſſee hath an intereſt to take the timber, to re-edify it for his habitation. 4 *Rep.* 63. And every leſſee for years, &c. may take of timber neceſſary plough-bote, houſe-bote, fire-bote, &c. without doing waſte. 1 *Inſt.* 41. And tenants ſuffering houſes to be uncovered, or in decay; taking away wainſcot, &c. fixed to the freehold, unleſs put up by the leſſee, and taken down before the term is expired; cutting down timber-trees to ſell; permitting young trees to be deſtroyed by cattle, &c. ploughing up ground that time out of mind hath not been ploughed; not keeping banks in repair, &c. are guilty of waſte. 1 *Inſt.* 52. *Dyer* 37. 1 *Salk.* 368.

Leſſees are bound to repair their tenements, except it be mentioned in the leaſe to the contrary. Though a leſſee for years is not obliged to repair the houſe let to him which is burnt by accident; if there be not a ſpecial covenant in the *leaſe*, that he ſhall leave the houſe in good repair at the end of the term: yet if the houſe be burnt by negligence, the leſſee ſhall repair it, altho' there be no ſuch covenant. *Paſch.* 24 *Car. B. R.* A leſſee at will is not bound to ſuſtain or repair, as tenant for years, is: if the houſe of ſuch a tenant is burnt down by negligence, action lies not againſt the tenant; but action lies for voluntary waſte, in pulling down houſes, or cutting wood, &c. 5 *Rep.* 13.

By ſtat. 6 & 10 *Ann. c.* 14. No action ſhall be brought againſt any perſon, in whoſe houſe, any fire ſhall *accidentally* begin, or any recompence be made by ſuch perſon for damages, ſo as not to extend to, or make void, any agreement between landlord and tenant; and negligent firing of houſes is liable to penalties.

A leſſor who hath fee, cannot reſerve rent to any other but himſelf, his heirs, *&c.* And if he reſerves a rent to his executors, the rent ſhall be to the heir, as incident to the reverſion of the land. 1 *Inſt.* 47. The leſſor may take a diſtreſs on the tenements let for the rent; or may have action of debt for the arrears, *&c.* Alſo land *leaſed* ſhall be ſubject to thoſe lawful remedies which the leſſor provides for the recovery of his rent, poſſeſſion, *&c.* into whoſe hands ſoever the land comes. *Cro. Jac.* 300. And as to the leſſee, if leſſee for years loſes his *leaſe*, if it can be proved that there was ſuch a term let to him by *leaſe*, and that is not determined, he ſhall not loſe his term; ſo it is of any other eſtate in lands, if the deed that created it be loſt, for the eſtate in the land is derived from the party that made it, and not from the deed otherwiſe than inſtrumentally and declarative of the mind and intent of the party, *&c.* 2 *Lill. Abr.* 152. If a perſon be in poſſeſſion of the lands of another, and hath uſually paid rent for them; the proof of a quarter or half year's rent paid, will be good evidence of a *leaſe* at will, tho' it cannot be expreſly proved that the lands were demiſed at will to him in poſſeſſion; it ſhall be preſumed the rent was received by the owner of the land upon ſome private contract. *Ibid.* 151.

Lands are *leaſed* at will, the leſſee cannot determine his will before or after the day of payment of the rent, but it muſt be done on that very day; and the law will not allow the leſſee to do it to the prejudice of the leſſor, as to the rent; nor that the leſſor ſhall determine his will to the prejudice of the leſſee, after the land is ſown with corn, *&c.* *Sid.* 339. *Lev.* 109. For where leſſee at will ſows the land, if he does not himſelf determine the will, he ſhall have the corn: And where tenant for life ſows the corn, and dies, his executors ſhall have it; but it is not ſo of tenant for years, where the term ends before the corn is ripe, *&c.* 5 *Rep.* 116. The leſſor and leſſee, where the eſtate is at will, may determine the will when they pleaſe; but if the leſſor doth it *within* a quarter, he ſhall loſe that quarter's rent; and if the leſſee doth it, he muſt pay a quarter's rent. 2 *Salk.* 413. By words ſpoken on the ground by the leſſor in the abſence of the leſſee, the will is not determined; but the leſſee is to have notice. 1 *Inſt.* 55. If a man makes a *leaſe* at will, and dies, the will is determined; and if the tenant continues in poſſeſſion, he is tenant at ſufferance. *Ibid.* 57. But where a leſſor makes an eſtate at will to two or three perſons, and one of them dies; it has been adjudged this doth not determine the eſtate at will. 5 *Rep.* 10. Tenant at will grants over his eſtate to another, it determines his will. 1 *Inſt.* 57. No tenant ſhall take *leaſes* of above two farms, in any town, village, *&c.* nor hold two unleſs he dwell in the pariſh, under penalties and forfeitures, by *Stat.* 25 *H.* 8. *c.* 13. See 21 *H.* 8. *cap.* 13. Statutes, to which there is not any regard now paid.

There is a late *ſtatute* for the more effectual preventing frauds committed by tenants; and for the more eaſy recovery of rents, and renewal of *leaſes*; by which *chief leaſes* of lands may be renewed on ſurrender, without the ſurrendering of the under *leaſes*, &c. 4 *Geo.* 2. *c.* 28. And how *leaſes* of lands, *&c.* left uncultivated, may become void, for non-payment of rent, on view of two juſtices of peace, *&c.* by the late act 11 *Geo.* 2. *cap.* 19. See the purport of theſe ſtatutes, under *Rent.*

Leaſes by Statute. There are three kinds of perſons, who may make leaſes for life or years by ſtatute, that could not do ſo heretofore, *viz.* *Tenants in tail, huſband* and *wife* of the *wife's* land, and perſons *ſeiſed of lands in right of the church.* By the *Stat.* 32 *H.* 8. *c.* 28. *Tenants in tail* are enabled to make *leaſes* on the following conditions, *i. e.* They are to be made by deed indented; to begin from the time of making, or ſome ſhort time after, as *Michaelmas* next, *&c.* If there be an old leaſe in being, it muſt be abſolutely ſurrendered, or expire within a year after the making of the new; they muſt not exceed three lives or twenty-one years, from the making, or be for both, but may be for leſs terms; they are to be of lands manurable or corporeal, out of which a rent may be legally iſſuing; and of ſuch lands or tenements which have been moſt commonly let to farm by the ſpace of twenty years; the accuſtomed yearly rent, paid within twenty years is to be reſerved; and they are not to be made without impeachment of waſte, *&c.* It has been held on this ſtatute, that where a new thing is demiſed with lands accuſtomably let, though there be great increaſe of rent, the *leaſe* is void: but more rent than the accuſtomed rent may be reſerved. 5 *Rep.* 5. 6 *Rep.* 37. And the *leaſes* according to the ſtatute bind the iſſue in tail; but not thoſe in reverſion or remainder: for if tenant in tail makes a *leaſe* warranted by the ſtatute, and dies without iſſue, the *leaſe* as to him in reverſion or remainder is void; tho' by a common recovery, *leaſes* may be made to bind him in remainder, *&c.* *Wood's Inſt.* 267.

A guardian during the minority of an infant tenant in tail, who was but one year old, made a *leaſe* for twenty years; and it was adjudged not good by the *Stat.* 32 *H.* 8. *c.* 28. to bind the iſſue in tail; and it is the ſame in the caſe of tenant in dower, tenant by the curteſy, or huſband ſeiſed in right of his wife, becauſe they have no inheritance. *Dyer* 271.

The ſtatute impowers a huſband to make *leaſes* of land in tail, held in his wife's right, ſo as in ſuch *leaſes* the conditions aforementioned are obſerved, and the wife be made a party to and ſeal the *leaſes*; and the rent is to be reſerved to the huſband and wife, and her heirs, *&c.* If a *leaſe* of the wife's land is not warranted by the ſtatute, it is a good *leaſe* againſt the huſband, though not againſt the wife: the huſband and wife cannot bind him in reverſion or remainder, 1 *Inſt.* 362.

Biſhops, Spiritual Perſons, &c. ſeiſed in fee in right of their churches, may make leaſes of their ſpiritual livings for three lives, or one and twenty years, having all the qualities required by the ſtatute, in caſe of *leaſes* made by tenants in tail. 32 *H.* 8. *c.* 28. And *leaſes* otherwiſe made are to be void; but not againſt the biſhops, *&c.* making them only againſt their ſucceſſors. 3 *Rep.* 59.

A biſhop, *&c.* may make *leaſes* of lands for twenty one years, or three lives, according to the ſtatute, without confirmation of dean and chapter; and at Common law might make them for any longer time, without limitation, with confirmation of dean and chapter; but this is reſtrained by the ſtatutes 1 *Eliz.* *c.* 19. and 13 *Eliz.* *c.* 10. Such confirmation will now make good concurrent *leaſes* for twenty-one years, *&c.* upon *leaſes* for years; though a biſhop cannot make a concurrent *leaſe* for life or lives. *Wood's Inſt.* 273. If a biſhop have two chapters, as there may be two or more to one biſhoprick; both chapters muſt confirm *leaſes* made by the biſhop. 1 *Inſt.* 131. A *leaſe* by a biſhop made to begin preſently for twenty-one years, when there is an old *leaſe* in being, is good, notwithſtanding the ſtatute of 1 *Eliz.* *c.* 19. *Moor, caſ.* 241. But if ſuch *leaſe* is to commence at a day to come, it will be void. 1 *Leon.* 44. *Leaſe* for three lives of a biſhop of tithes, is void againſt the ſucceſſor; although the uſual rent be duly reſerved. *Moor, caſ.* 1078. 2 *Cro.* 173.

Leaſes of a dean and chapter are good, without confirmation of the biſhop. *Dyer* 273. 2 *Nelſ. Abr.* 1096. Where there is a chapter, and no dean, they may make grants, *&c.* and are within the ſtatute, 1 *Mod.* 204. And a prebendary is ſeiſed in right of the church within the equity of the ſtatute 32 *H.* 8. *c.* 28. 4 *Leon.* 51. A prebendary's *leaſe* confirmed by the archbiſhop, who is his patron, is good without confirmation of dean and chapter. 3 *Bulſtr.* 290. But where a prebendary made a *leaſe* for years of part of his prebend, and this was confirmed by dean and chapter; becauſe it was not confirmed likewiſe by the biſhop, who was patron and ordinary of the prebend, the *leaſe* was adjudged void. *Dyer* 60. If a prebendary hath rectories in two ſeveral dioceſes belonging to his prebend, and his *leaſe* of them is confirmed by the biſhop, dean and chapter of the dioceſe of which he is prebendary, it is good, though not confirmed by the other. *Sid.* 75.

A chancellor of a cathedral church may make a *leaſe*, and it is ſaid it will be good againſt the ſucceſſor, though not confirmed, *&c.* *Ibid.* 158. If a parſon or vicar makes a *leaſe* for life or years, of lands uſually letten, reſerving the cuſtomary rent, &c. it muſt be confirmed by patron and ordinary, for they are out of the ſtatute 32 *H.* 8. *c.* 28. And if the parſon and ordinary make a *leaſe* for years of the glebe to the patron; and afterwards the patron aſſigns this *leaſe* to another, ſuch aſſignment is good, and is a confirmation of that *leaſe* to the aſſignee. 5 *Rep.* 15. Ancient covenants in former *leaſes* may be good to bind the ſucceſſor, ſo as to diſcharge the leſſee from payment of penſions, tenths, &c. but of any new matter they ſhall not. 1 *Vent.* 223.

By the *Stat.* 13 *Eliz. c.* 20. the *leaſe* of a parſon is not good for any longer time than the parſon's reſidence upon his living, without abſence fourſcore days in any year; and an incumbent offending contrary to this act, ſhall loſe a year's profit of the benefice, &c. 4 *Rep.* A *leaſe* for years of a ſpiritual perſon, will be void by his death, if it is not according to the ſtatutes; and a *leaſe* for life is voidable by entry, &c. of the ſucceſſor: And ſo in like caſes, *leaſes* not warranted by ſtatute, are void or voidable on the deaths of their makers: Acceptance of rent on a void *leaſe* ſhall not bind the ſucceſſor. 2 *Cro.* 173.

On college leaſes, a third part of the rent is to be reſerved in corn, &c. 18 *Eliz. c.* 6. By 14 *Eliz. c.* 11. it is ordained, that the 13 *Eliz. c.* 10. ſhall not extend to *leaſes* of the maſters and fellows of colleges, &c. of houſes in corporation towns, which may be made for forty years, &c. But the 18 *Eliz. c.* 11. makes void *leaſes* of maſters and fellows of colleges, deans and chapters, maſters of hoſpitals, &c. where another *leaſe* for years is in being, and not to be expired or ſurrendered within three years; and *leaſes* of ſuch perſons are to be made for twenty-one years or three lives, reſerving the accuſtomed rents, &c. Biſhops are out of this ſtatute.

If a biſhop be not biſhop *de jure*, *leaſes* made by him to charge the biſhoprick, are void; though all judicial acts by him are good. 2 *Cro.* 353. And where a biſhop makes a *leaſe*, which may tend to the diminution of the revenues of the biſhoprick, &c. which ſhould maintain the ſucceſſor; there the deprivation or tranſlation of the biſhop, is all one with his death. 1 *Inſt.* 329. Alſo all aſſurances and demiſes of biſhops lands to the King, ſhall be void. 1 *Jac.* 1. *c.* 3.

Perſons for whoſe lives eſtates are held by leaſe, &c. remaining beyond ſea, or being abſent ſeven years; if no proof be made of their being alive, ſhall be accounted dead. 19 *Car.* 2. *c.* 6.

If the *aſſignee* of a term of years aſſigns it over to a poor inſolvent perſon, on purpoſe to get rid of it, he ſhall not be liable to rent afterwards incurred, for the privity of eſtate is deſtroyed by the legal aſſignment to the inſolvent perſon, and it was the folly of the landlord to diſcharge the original leſſee. 2 *Strange* 1221.

Leaſes of the King. *Leaſes* made by the King, of part of the dutchy of *Cornwall*, are to be for three lives, or thirty-one years, and not be made diſpuniſhable of waſte, whereon the ancient rent is to be reſerved; and eſtates in reverſion, with thoſe in poſſeſſion, are not to exceed three lives, &c. 13 *Car.* 2. *c.* 4. All *leaſes* and grants made by letters patent, or indentures under the Great Seal of *England*, or ſeal of the court of *Exchequer*, or by copy of court-roll, according to the cuſtom of the manors of the dutchy of *Cornwall*, not exceeding one, two or three lives, or ſome term determinable thereon, &c. are confirmed; and covenants, conditions, &c. in *leaſes* for lives or years, ſhall be good in law, as if the King were ſeiſed in fee-ſimple. *Stat.* 1 *Jac.* 2. *c.* 9. See 5 & 6 *W.* & *M. c.* 18. 12 *Ann. c.* 22. And *leaſes* from the crown of lands in *England* and *Wales*, and under the ſeals of the dutchy of *Lancaſter*, &c. for one, two or three lives, or terms not exceeding fifty years, are allowed time for inrollment, &c. by 10 *Ann. c.* 18. *Leaſes* made by the Prince of *Wales* of lands, &c. in the dutchy of *Cornwall*, for three lives or thirty-one years, on which is reſerved the moſt uſual rent paid for the greateſt part of twenty years before, ſhall be good againſt the King, the Prince, and their heirs, &c. and the conditions of ſuch leaſes be as effectual, as if the Prince had been ſeiſed of an abſolute eſtate in fee-ſimple in the lands. *Stat.* 10 *Geo.* 2. *c.* 29.

A *freehold leaſe for three lives*, differs from a *chattel leaſe* only in this, *viz.* That the *habendum* is to the leſſee, his heirs and aſſigns, for and during the natural lives of him the ſaid *C. D. E.* his wife, and *T. D.* his ſon, and during the life natural of every and either of them longeſt living. And in every *covenant*, the leſſee covenants for himſelf, his heirs and aſſigns; and the covenants are the ſame as in a chattel leaſe; with the addition of a *letter of attorney* at the end, to deliver poſſeſſion and ſeiſin, as in a deed of feoffment.

See more concerning *leaſes*, *New Abr. V.* 3. tit. *Leaſes*, and 10 *Vin. Abr.* 299, 368, 396, 419.

Leaſe and Releaſe, Is a conveyance of right or intereſt in lands or tenements, to another that hath the poſſeſſion thereof. *Accomp. Conv.* 1 *V.* 129. Though the deed of feoffment was the uſual conveyance at Common law; yet ſince the ſtatute of 27 *H.* 8. *c.* 10. of uſes, the conveyance by *leaſe and releaſe* has taken place of it, and is become a very common aſſurance to paſs lands and tenements; for it amounts to a feoffment, the uſe drawing after it the poſſeſſion without actual entry, &c. and ſupplying the place of livery and ſeiſin, required in that deed: In the making it, a leaſe or bargain and ſale for a year, or ſuch like term, is firſt prepared aad executed; to the intent that by virtue thereof the leſſee may be in actual poſſeſſion of the lands intended to be conveyed by the releaſe, and thereby and by force of the ſtatute 27 *H.* 8. *c.* 10. for transferring of uſes into poſſeſſion, be enabled to take and accept a grant of the reverſion and inheritance of the ſaid lands, &c. to the uſe of himſelf and his heirs for ever: upon which the releaſe is accordingly made, reciting the leaſe, and declaring the uſ*es*: And in theſe caſes, a pepper-corn rent in the leaſe for a year is a ſufficient reſervation to raiſe an uſe, to make the leſſee capable of a releaſe. 2 *Ven.* 35. 2 *Mod.* 262.

When an eſtate is conveyed by *leaſe and releaſe*, in the leaſe for a year there muſt be the words, *bargain and ſell* for money, and five ſhillings or any other ſum, though never paid, is a good conſideration, whereupon the bargainee for a year is immediately in poſſeſſion on the executing of the deed, without actual entry: if only the words *demiſe, grant and to farm let* are uſed, in that caſe the leſſee cannot accept of a releaſe of the inheritance until he hath actually entered and is in poſſeſſion. 2 *Lil. Abr.* 435. But where *Littleton* ſays that if a *leaſe* is made for years and the leſſor releaſes to the leſſee before entry; ſuch releaſe is void, becauſe the leſſee had only a right, and not the poſſeſſion; and ſuch releaſe ſhall not enure to enlarge the eſtate, without the poſſeſſion: though this is true at *Common law*, it is not ſo now upon the *ſtatute of uſes*. 2 Mod. 250, 251. And if a man make a leaſe for life, remainder for life, and the firſt leſſee dieth; on which the leſſor releaſes to him in remainder, before entry; this is a good releaſe to enlarge the eſtate, he having an eſtate in law capable of enlargement by releaſe, before entry had. 1 *Inſt.* 270.

No perſon can make a bargain and ſale, who hath not poſſeſſion of the lands: but it is not neceſſary to reſerve a rent therein; becauſe the conſideration of money raiſes the uſe. If a leaſe be *without any ſuch conſideration*, the leſſee hath not any eſtate till entry, nor hath the leſſor any reverſion; and therefore a releaſe will not operate, &c. 1 *Inſt.* 270, 278. *Cro. Jac.* 169. 1 *Mod.* 263. On leaſe at will, a releaſe ſhall be good by reaſon of the privity between the parties: but if a man be only tenant at ſufferance, the releaſe will not enure to him; and as to the perſon who hath the reverſion it is void, for ſuch tenant hath not any poſſeſſion, there being no eſtate in him. *Lit. Sect.* 461, 462. *Cro. Eliz.* 21. *Dyer* 251. It is neceſſary in all caſes where a releaſe of lands is made, that the eſtate be turned to a right; as in a diſſeiſin, &c. where there are two rights, a right of poſſeſſion in the diſſeiſor, and a right to the eſtate in the diſſeiſee; now when the diſſeiſee hath releaſed to the diſſeiſor, here the diſſeiſor hath both the rights in him, *viz.* The right to the eſtate, and alſo to the poſſeſſion: or elſe it is requiſite that there be privity of eſtate between the tenant in poſſeſſion and the releſſor; for a releaſe will not operate without privity. 2 *Lil.* 435. A releaſe made by one that at the time of the making thereof had no right, is void; and a releaſe made to one that at the time of making thereof hath nothing in the lands, is alſo void, becauſe he ought to have a freehold, or a poſſeſſion or privity. *Noy's Max.* 74.

He that makes a releaſe muſt have an eſtate in himſelf, out of which the eſtate may be derived to the releſſee; the releſſee is to have an eſtate in poſſeſſion in deed or in law, in the land whereof the releaſe is made, as a foundation for the releaſe; there muſt be privity of eſtate between the releſſor and releſſee; and be ſufficient words in law not only to make the releaſe, but alſo to create and raiſe a new eſtate, or the releaſe will not be good. 1 *Inſt.* 22. A releaſe to a man and his heirs will paſs a fee-ſimple; and if made to a man, and the heirs of his body, by this the releſſee hath an eſtate-tail: But a releaſe of a man's right in fee-ſimple, is not ſufficient to paſs a fee-ſimple. 1 *Inſt.* 273. And if a perſon releaſe to another all his right which he hath in the land, without uſing any more words, as *To hold to him and his heirs, &c.* the releſſee hath only an eſtate for life. *Dyer* 263. A releaſe made to a tenant in tail, or for life, of right to land, ſhall extend to him in remainder or reverſion. 1 *Inſt.* 267. By releaſe of all a man's right unto lands, all actions, entries, titles of dower, rents, *&c.* are diſcharged; though it bars not a right that ſhall deſcend afterwards: And a releaſe of all right in ſuch land will not diſcharge a judgment not executed; becauſe ſuch judgment doth not veſt any right; but only makes the land liable to execution. 8 *Rep.* 151. 3 *Salk.* 298.

It is ſaid a releaſe of all one's title to lands, is a releaſe of all one's right. *Lit.* 509. 1 *Inſt.* 292. By a releaſe of all entries, or right of entry, a man hath into lands, without more words, the releſſor is barred of all right or power of entry into thoſe lands; and yet if a man have a double remedy, *viz.* a right of entry, and an action to recover, and then releaſe all entries, by this he is not barred and excluded his action; nor doth a releaſe of actions bar the right of entry. *Plowd.* 484. 1 *Inſt.* 345. A releaſe made by deed-poll, of right to lands, *&c.* needs no other execution than ſealing and delivery; and will operate without conſideration: But it is convenient to put a valuable conſideration therein; leſt it ſhould be judged fraudulent by ſtatute. *Lit. Sect.* 445. *Lil. Convey.* 230, 248. *Cro. Jac.* 270.

A releaſe that doth not enure by way of paſſing away an eſtate, or extinguiſhment, may be made upon condition or with a defeaſance, ſo as the condition, *&c.* be contained in the releaſe, or delivered at the ſame time with it; And there may be a recital, covenants, warranty, *&c.* inſerted in this releaſe; though it is ſaid the deed is good, without any ſuch additions. *Accom. Convey.* Vol. 1.

In a *leaſe and releaſe* to make a tenant to the *præcipe* to ſuffer a recovery, where the releaſe is made to *A. B.* and his heirs, (*viz.* the tenant to the *præcipe*) it muſt be alſo ſaid *to the uſe of him the ſaid* A. B. *and his heirs and aſſigns for ever*; for the releſſee muſt be abſolute tenant of the freehold. 2 *Vent.* 312. *Lil. Conveyance* 251. And a releaſe made on truſt, muſt be to *A. B.* his heirs and aſſigns, to *the only uſe and behoof of the releſſee his heirs and aſſigns for ever*; in truſt for *C. D.* who is to be a party to the deed, and the purchaſe-money to be paid by the *ceſtui que truſt*: If the words *to the uſe, &c.* are not inſerted in the releaſe, the eſtate doth not execute by the ſtatute of uſes, and the truſt is void. *Lil. Ibid.* 233, 251. A *leaſe and releaſe* make but one conveyance, being in the nature of one deed. 1 *Mod.* 252.

It may not be improper here to obſerve, that in a court of equity, either *ſuppreſſio veri*, or *ſuggeſtio falſi*, is a good reaſon to ſet aſide any *releaſe* or *conveyance*. 1 Wilſ. Rep. 239, 240, 727.

Leat, A *mill-leat*, corruptly *milleat*. A trench to convey water to or from a mill, mentioned in *Stat.* 7 *Jac.* 1. *cap.* 19. but moſt peculiarly to *Devonſhire*, where in conveyances the word does frequently occur. *Cowell.*

Leather. There are ſeveral ſtatutes relating to *leather*; as the 27 *H.* 8. *c.* 14. directs packers to be appointed for *leather* to be tranſported; but the 18 *Eliz. c.* 9. prohibits the ſhipping of *leather*, on penalty of forfeiture, *&c.* Though by 20 *Car. c.* 5. tranſportation of *leather* is allowed to *Scotland*, *Ireland*, or any foreign country, paying a cuſtom or duty; which ſtatute is continued by divers ſubſequent acts. No perſon ſhall ingroſs *leather* to ſell again, under the penalty of forfeiture: none but tanners are to buy any rough hides of *leather*, or calve-ſkins in the hair, on pain of forfeiture; and no perſon ſhall foreſtal hides, under the penalty of 6*s.* 8*d.* a hide. *Leather* not ſufficiently tanned, is to be forfeited. In *London*, the Lord Mayor and Aldermen are to appoint and ſwear ſearchers of *leather*, out of the company of *ſhoemakers*, &c. and alſo triers of ſufficient *leather*; and the ſame is to be done by mayors, *&c.* in other towns and corporations; and ſearchers allowing inſufficient *leather*, incur a forfeiture of 40*s.* *Shoemakers* making ſhoes of inſufficient *leather*, are liable to 3*s.* 4*d.* penalty. 1 *Jac.* 1. *c.* 22.

Red tanned *leather* is to be brought into open *leather* markets, and ſearched and ſealed before expoſed to ſale, or ſhall be forfeited; and contracts for ſale otherwiſe to be void. 13 & 14 *Car.* 2. *c.* 7. Hides of *leather* are adjudged the ware and manufacture of the *currier*, and ſubject to ſearch, *&c.* All perſons dealing in *leather*, may buy tanned *leather* ſearched in open market; and any perſon may buy or ſell *leather* hides or ſkins by weight. 1 *W. & M. c.* 33. Duties are granted on *leather*, and entries to be made of tan-yards, under the penalty of 50*l.* and tanners and *leather-dreſſers* uſing any private tanyards, or concealing ſkins, *&c.* ſhall forfeit 20*l.* leviable by juſtices of peace, by diſtreſs, *&c.* 9 *Ann. c.* 11. See 5 *Geo.* 1. *c.* 2. and 9 *Geo.* 1. *c.* 27. *Artificers* may freely buy their *leather*, and cut it and ſell it in ſmall pieces. 12 *Geo.* 2. *c.* 25. Penalty on *curriers* neglecting to curry leather. *Ibid.* For the increaſe of the drawback upon *leather* exported, ſee *Stat.* 12 *Ann. ſtat.* 2. *c.* 9. Vide *Tanners.*

Leccator, A debauched perſon, *lecher*, or whoremaſter.——*Sciant, quod ego Johannes Conſtabularius Ceſtriæ dedi Hagoni de Dutton et Hæredibus ſuis Magiſtratum omnium* Leccatorum *et Meretricum in, &c. Salvo Jure meo mihi et hæredibus meis* Ann. 1220.

Lecherwite, A fine on adulterers and fornicators. See *Lairwite.*

Lectiſternium, A bed; ſometimes all that belongs to a bed. *Flor. Worc. pag.* 631.

Lectrinum, Is taken for a pulpit. *Mon. Ang. tom.* 3. *p.* 243.

Lecturer, (*Prælector*) A reader of *lectures*; and in *London*, and other cities, there are *lecturers* who are aſſiſtants to the *rectors* of churches in preaching, *&c.* Theſe *lecturers* are choſen by the veſtry, or chief inhabitants of the pariſh, and are uſually the afternoon preachers: The law requires, that they ſhould have the conſent of thoſe by whom they are employed, and likewiſe the approbation and admiſſion of the ordinary; and they are, at the time of their admiſſion, to ſubſcribe to the thirty-nine articles of religion, *&c.* required by the *ſtat.* 13 & 14 *Car.* 2. *c.* 4. They are to be licenſed by the biſhop, as other miniſters, and a man cannot be a *lecturer* without a licence from the biſhop or archbiſhop; but the power of a biſhop, *&c.* is only as to the qualification and fitneſs of the perſon, and not as to the right of the *lectureſhip*; for if a biſhop determine in favour of a *lecturer*, a *prohibition* may be granted to try the right. *Mich.* 12 *W.* 3. *B. R.* If *lecturers* preach in the week days, they muſt read the Common Prayer for the day when they firſt preach, and declare their aſſent to that book; they are likewiſe to do the ſame the firſt *lecture* day in every month, ſo long as they continue *lecturers*, or they ſhall be diſabled to preach till they conform to the ſame: And if they preach before ſuch conformity, they may be committed to priſon for three months, by warrant of two *juſtices of peace*, granted on the certificate of the ordinary. 13 & 14 *Car.* 2. *c.* 4. *Rights Clerg.* 338.

Where *lectures* are to be preached or read in any cathedral or collegiate church, if the *lecturer* openly, at the time aforeſaid, declare his aſſent to all things in the book of Common Prayer, it ſhall be ſufficient; and univerſity ſermons or *lectures* are excepted out of the act concerning *lectures*. There are *lectures* founded by the donations of pious perſons, the *lecturers* whereof are appointed by the founders; without any interpoſition or conſent of rectors of churches, *&c.* though with the leave and approbation of the biſhop; ſuch as that of lady *Moier* at St. *Paul's*, &c. But ſuch is not intitled to the pulpit without the conſent of the rector, or vicar, in whom the freehold of the church is. *Caſes B. R.* 420, 433.

Lecturers of *Divinity*, *Law*, *Phyſick*, &c. in the univerſities of *Oxford* and *Cambridge*. Vide *Regius Profeſſor*.

Lecturnium, *(lectorium)* The deſk or reading place in churches. *Stat. Eccl. Paul. Lond. MS.* 44.

Ledgrave, The chief man of the *Lathe* or *Lethe*. See *Latbreve*.

Ledo, *(Ledona)* The riſing water or increaſe of the ſea.—*Ledo ſex Horas inundationis et totidem receſſus habet, &c.*

Leet, *Leta*, *viſus Franci plegii*, Is otherwiſe called *a law-day*. *Smith de Rep. Ang. lib.* 2. *cap.* 18. and ſeems to have grown from the Saxon *leo*, which (as appears by the laws of King *Edward*, publiſhed by *Lambard*, *num.* 34.) was a court of juriſdiction above the wapentake or hundred. According to others, it is ſaid to be *Leta*, From the Sax. *Lite*, i. e. *Parvus*, *quaſi* a little court; or from the *German*, *Laet*, a country judge.

Many lords, together with their courts-baron, have likewiſe leets adjoined, and thereby enquire of ſuch tranſgreſſions as are ſubject to the enquiry and correction of this court. See *Kitchin*, and *Britton*. *cap.* 28. But this court, in whoſe manor ſoever it be kept, is accounted the King's court, becauſe the authority thereof originally belongs to the crown. *Kitchin*, *fol.* 6. *Dyer*, *fol.* 64. ſaith, that this *leet* was firſt derived from the ſheriff's torn. And it enquireth of all offences under high treaſon, committed againſt the crown and dignity of the King, though it cannot puniſh many, but muſt certify them to the juſtices of aſſiſe, by the ſtatute of 1 *Ed.* 3. *cap. ult.* but what things are only inquirable, and what puniſhable, ſee *Kitchin* in the charge of a *court-leet*, from *fol.* 8. to *fol.* 20. See alſo the ſtatute 8 *Ed.* 2. and 4 *Inſt.* 261. *Hæc eſt curia preſca illa*, (ſaith *Spelman*) *quæ inter Saxones ad Friburgos, decanias tenementales pertinebat.* The juriſdiction of bailiffs within the dutchy of *Normandy*, in the compaſs of their provinces, ſeems to be the ſame, or very like our *leet*, *cap.* 4. of the *Grand Cuſtumary*. *Leet* comes from the Sax. *Læt*, i. e. *cenſura*, *arbitrium*; or from *Lætan*, *cenſere*, *æſtimare*. *Quod in hac olim curia de damnis æſtimabatur inter vicinos emergentibus, ut patet in* LL. Edw. Conf. cap. 10. *See Sir* William Dugdale's Warwickſhire, fol. 2.

A court-leet is a court of record, having the ſame juriſdiction within ſome particular precinct, which the ſheriff's torn hath in the county. *Finch* 246. 2 *Hawk. P. C.* 72.

The ſtatute 18 *Ed.* 2. which ſhews of what things the ſheriff's torn and court-leet ſhall have conuſance, does not confine their juriſdiction to thoſe particulars enumerated in the ſtatute. 4 *Inſt.* 261. *Cromp. Jur.* 213. See *Court-Leet*. And *Black. Com.* 4 *V.* 270, 404, 417.

Leets or **Leits,** Meetings appointed for the nomination or elections of officers; often mentioned in archbiſhop *Spotſwood*'s Hiſtory of the Church of *Scotland*.

Lega & Lacta. Anciently the allay of money was ſo called *Debita nummi temperies, quam veteres* legam & lactam *appellabant*. Spelm.

Legabilis, Signifies what is not entailed as hereditary; but may be bequeathed by legacy, in a laſt will and teſtament. *Articula propoſit. in parliamento coram Rege, Anno* 1234.

Legacy, *(legatum)* Is a perpetual thing given by a man's laſt will and teſtament; and he to whom ſuch *legacy* is given, is called a *legatee*; and there is a *reſiduary legatee*.

Of legatees, time of payment, and lapſed legacies.

It ſeems neceſſary, that the legatee ſhould be born at the time of making the will; and it has been adjudged, where legacies were given to a man's children, that thoſe who were born afterwards ſhould have no ſhare thereof. 1 *Bulſt.* 153. But it has been otherwiſe decreed in Chancery. 1 *Ch. Rep.* 301. A man deviſed 200*l.* apiece to the two children of *A. B.* at the end of ten years after the death of the teſtator; afterwards the children died within the ten years; and it was held a *lapſed* legacy: for there is a difference where a *deviſe* is to take effect at a future time; and where the *payment* is to be made at a future time; and whenever the time is annexed to the legacy itſelf, and not to the *payment* of it, if the legatee dies before the time happens, it is a lapſed legacy. 2 *Salk.* 415. A beqeuſt of money to one at the age of twenty-one, or day of marriage, without ſaying to be paid at that time, and the legatee dies before the term; this is a lapſed legacy: And ſo it is if the deviſe had been to her when ſhe ſhall marry; or when a ſon ſhall come of age, and they die fore. *Godb.* 182. 2 *Vent.* 342.

But a deviſe of a ſum of money, to be paid at the day of marriage, or age of twenty-one years; if the legatee die before either of theſe happen, the legatee's adminiſtrator ſhall have it, becauſe the legatee had a *preſent intereſt*, though the *time of payment* was not yet come; and it is a charge on the perſonal eſtate which was in being at the teſtator's death; and if it were diſcharged by this accident, then it would be for the benefit of the executor, which was never intended by the teſtator. 2 *Vent.* 366. 2 *Lev.* 207. A father bequeathed goods to his ſon, when he ſhould be of the age of twenty-one years, and if he die before that time, then his daughter ſhould have them; afterwards the father died, and then the ſon died before he was of age; adjudged, that the daughter ſhall have the goods given in legacy immediately, and not ſtay till her brother would have been of age, if he had lived. 1 *And.* 33. And where a legacy was deviſed to an infant, to be paid when he ſhall come of age, and he died before that time; it was ruled that his adminiſtrator ſhould have it preſently, and not ſtay until the infant ſhould have been of age, if he had lived. 1 *Leon.* 278. In a caſe of this nature, it has been decreed in equity, that although the adminiſtrator ſhould have the legacy, yet he muſt wait for it till ſuch time as the child would have come to twenty-one. 2 *Vern.* 199.

Of legacies deviſed out of real eſtates, &c.

Where a legacy is to ariſe out of the real eſtate, it ſhall not go to the repreſentative of the legatee; but ſink in the inheritance: And yet where 1000 *l.* was given by a perſon out of lands, to his daughter, and intereſt to be computed from his death, *&c.* here, though the legatee died before the time appointed for paying the ſame, it was held the legacy ſhould be raiſed notwithſtanding; and the Lord Chancellor ſaid, that this legacy was a veſted one. 2 *Vern. Rep.* 617. *Barnardiſt.* 328, 330. A perſon by will, *&c.* gives a portion or legacy to a child, payable at twenty-one years of age, out of a real and perſonal eſtate, and the child dies before the legacy becomes payable; in that caſe, ſo much thereof as the perſonal eſtate will pay, ſhall go to the child's executors and adminiſtrators: But ſo far as the legacy is charged upon the land, it is ſaid it ſhall ſink. 2 *Peere Williams* 613. Alſo if a legacy be given to one, to be paid out of ſuch a fund, and the ſame fails; it has been reſolved, that it ought to be paid out of the perſonal eſtate, and the failing of the manner appointed for payment ſhall not defeat the legacy. 1 *Peere Williams* 779. One by will diſpoſes of his eſtate in legacies, and afterwards by parol, or word of mouth, gives a bill for a certain ſum, to be delivered over to another, if he the teſtator ſhould die of that ſickneſs; this is adjudged good, but it being in the nature of a legacy, may he deemed fraudulent againſt creditors. *Ibid.* 405, 406.

Of payment of legacies, &c.

If a legacy when due be paid to the father of an infant, it is no good payment; and the executor may be obliged in equity to pay it over again: And where any legacy is bequeathed to a feme covert, paying it to her alone, is not ſufficient, without her huſband. 1 *Vern.* 261. As an executor is not obliged to pay a legacy, without ſecurity given him by the legatee to refund, if there are debts, becauſe the legacy is not due till the debts are paid, and a man muſt be juſt before he is charitable; ſo in ſome caſes, the executor may be compelled to give ſecurity to the legatee for the payment of his legacy; as where a teſtator bequeathed 1000*l.* to a perſon, to be paid at the age of twenty-one, and made an executor, and died; afterwards the legatee exhibited a bill in equity againſt the executor, ſetting forth that he had waſted the eſtate, and praying that he might give ſecurity to pay the legacy when it ſhould become due; and it was ordered accordingly. 1 *Ch. Rep.* 136, 257.

Of intereſt on legacies.

If a legacy is deviſed, and *no certain time of payment*, and the legatee is an *infant*, he ſhall have *intereſt for the legacy* from the expiration of one year after the teſtator's death; for ſo long the executor ſhall have, that he may ſee whether there are any debts, and no laches ſhall be imputed to the infant: But if the legatee be *of full age*, he ſhall have no intereſt but from *the time of the demand* of his legacy. Where a legacy is payable at *a day certain*, it muſt be paid with intereſt from that day. 2 *Salk.* 415. 2 *Nelſ. Abr.* 1114. A perſon gives a legacy *charged upon land*, which *yields rents and profits*, and there is *no day of payment* mentioned, the legacy ſhall carry intereſt *from the teſtator's death*, becauſe the land yields profit from that time: Though were it charged on the *perſonal eſtate*, and the will mentions no time for paying it, there the legacy bears intereſt only from the end of a year, after the death of the teſtator; which is ſaid to be the ſettled difference. 2 *Peere Williams* 26. It has been decreed in *equity*, that although a legacy be deviſed to be paid at a certain time, it carries intereſt only from ſuch time as it is demanded: It is otherwiſe of a debt; and in ſuch caſe non-payment at the day, has been held no breach, without demand and refuſal. *Preced. Chanc.* 161. See *Abr. Caſ. Eq.* 286. One having a legacy given him, payable within a year, knew nothing of it till a great while afterwards, when the executor publiſhed it in the *Gazette*; here Chancery would allow no intereſt, but the bare legacy. *Preced. Chanc.* 11. The aſſent or agreement of the executor is firſt to be obtained before any legacy can be taken; until then the legatee may not meddle with the legacy, becauſe the executor is to pay debts before legacies, &c. *Wood's Inſt.* 329. And this is the reaſon why no property can be transferred to the legatee, without the executor's aſſent: If the executor refuſes to aſſent to a legacy, he may be obliged to it by a court of equity, or the ſpiritual court. *March, Rep.* 19.

Of ſuing for legacies.

Legacies being gratuities, and no duties, action will not lie at Common law for the recovery of a legacy; but remedy is to be had in the Chancery or ſpiritual court. *Allen* 38. The cognizance of a legacy properly belongs to the ſpiritual courts, for ſuch bequeſts were not good by the Common law; but this is to be underſtood, where a legacy is deviſed generally: If it is payable *out of the land*, or *out of the profits of the land*, an *action on the caſe* lies at Common law; but the uſual remedy is in Chancery. *Sid.* 44. 3 *Salk.* 223. By *Holt* Ch. Juſt. A legatee may maintain an action of debt at Common law againſt the *owner of land*, out of which the legacy is to be paid; and ſince the ſtatute of wills gives him a right, by conſequence he ſhall have an action at law to recover it. 2 *Salk.* 415. And ſometimes the Common law takes notice of a legacy, not directly, but in a collateral way; as where the executor promiſed to pay the money, if the legatee would forbear to ſue for the legacy, this was adjudged a good conſideration to ground an action; but that it would not lie for a *legacy in ſpecie*, which would be to deveſt the ſpiritual court of what properly belonged to their juriſdiction, by turning ſuits which might be brought there into actions on the caſe. *Raym.* 23. If ſecurity is given by bond to pay a legacy, in ſuch caſe an action at law is the proper remedy; by giving the bond, the legacy is as it were extinct, and becomes a debt at Common law, and the legatee can never afterwards ſue for it in the ſpiritual court. *Yelv.* 39. For the recovery of a debt or ſuch like thing in action, given by way of legacy, it is beſt to make the legatee executor as to that debt, &c. or he muſt have a letter of attorney to ſue in the executor's name. *Wood's Inſt.* 330.

Of deviſes to creditors, and who capable of being legatees.

Where a teſtator gives his debtee a legacy greater than his debt, it ſhall be taken in ſatisfaction of it: Though where the legacy is leſs, it ſhall not be deemed as any part thereof; but as a legacy is a gift, ſometimes the legatee has been decreed both. 1 *Salk.* 155. 2 *Salk.* 508. If a greater legacy is given by a codicil, to the ſame perſon that was legatee in the will, it ſhall not be a ſatisfaction, unleſs ſo expreſſed. 1 *Peere Williams* 424. The name of a legatee being very falſly ſpelt, it was referred to a maſter in Chancery, to examine who was the perſon intended. *Ibid.* 425. Some perſons are incapable of taking by legacy, by ſeveral ſtatutes; as the 13 *W.* 3. *c.* 6. relating to officers, lawyers, &c. not taking the oaths; and 5 *Geo.* 1. *c.* 27. concerning artificers going abroad, &c. A ſum bequeathed out of a debt muſt be paid, though the debt is recovered by the teſtator; otherwiſe of a bequeſt of the debt itſelf. 2 *Strange* 824. One cannot ſue in the ſpiritual court for a *donatio mortis cauſa*. 2 Strange 777. See *Executor* and *Wills*. *New Abr.* 3 *V.* tit. *Legacies*. And *Black. Com.* 2 *V.* 512. 3 *V.* 98.

Legalis homo, Is uſed for him who ſtands *rectus in curia*, not outlawed, excommunicated, or infamous; and in this ſenſe are the words *probi & legales homines*: Hence alſo *legality* is taken for the condition of ſuch a man. *Leg. Ed. Conf. c.* 18.

Legalis Moneta Angliæ, Lawful money of *England*, is gold or ſilver money coined here by the King's authority, &c. 1 *Inſt.* 207. See *Coin*.

Legatary, (*Legatarius*) He or ſhe to whom any thing is bequeathed; a *legatee*. Sir *Henry Spelman* ſays, it is ſometimes uſed *pro legato vel nuncio*.

Legate, (*Legatus*) An ambaſſador or *Pope's Nuncio*. And there are two ſorts of *legates*, a *legate a latere*, and *legatus natus*; the difference between whom is thus: *legatus a latere* was uſually one of the Pope's family veſted with the greateſt authority in all eccleſiaſtical affairs over the whole kingdom where he was ſent; and, during the time of his *legation*, he might determine even thoſe appeals which had been made from thence to *Rome*: *Legatus natus* had a more limited juriſdiction, but was exempted from the authority of the *legate a latere*; and he could exerciſe his juriſdiction in his own province. The Popes of *Rome* had formerly in *England* the archbiſhops of *Canterbury* their *legatus natus*; and, upon extraordinary occaſions, ſent over *legatus a latere*.

Legatee, Is the perſon to whom a legacy is bequeathed by a laſt will.

Legatory, (mentioned in ſtat. 27 *Eliz. cap.* 16.) The ſame with *legatary*.

Legatum, In the eccleſiaſtick ſenſe, was a legacy given to the church or accuſtomed mortuary. *Cowell.*

Legem facere, To make law, or oath: *Legem habere*, to be capable of giving evidence upon oath; *Minor non habet* legem. *Selden's Notes on Heng.* 133.

Legergild, (*Legergildum*) See *Lecherwite* and *Lairwite*.

Legioſus, Litigious, and ſo ſubjected to a courſe of law. *Cowell.*

Legitimation, (*Legitimatio*) A making lawful or *legitimate*; and naturalization, &c. makes a foreigner a lawful ſubject of the ſtate.

Leipa, A departure from ſervice.——*Si quis à Domino ſuo ſine licentia diſcedat, ut* leipa *emendetur, & redire cogatur.* Leg. Hen. 1. cap. 43.

Leirwit, *(Mulcta adulteriorum. Fleta, lib.* 1. *cap.* 7.*)* Is uſed for a liberty, whereby a lord challengeth the penalty of one that lieth unlawfully with his bond-woman. *Cowell.*

Lemon juice. See *Lime.*

Lent, (From the Germ. *Lentz.* i. e. *Ver,* the ſpring faſt) Is a time for faſting for forty days, next before *Eaſter*; mentioned in the ſtat. 2 & 3 *Ed.* 6 *c.* 19. And firſt commanded to be obſerved in *England* by *Ercombert,* ſeventh King of *Kent,* before the year 800. *Baker's Chron.* 7. No meat was formerly to be eaten in *Lent,* or on *Wedneſdays* or other fiſh days, but by licence, under certain penalties. 27 *Eliz. cap.* 7. And butchers were not to kill fleſh in the *Lent,* unleſs for victualling ſhips, *&c.* See *Quadrageſima.*

Lep and Lace, *(Leppe & Laſſe)* Is a cuſtom in the manor of *Writtel* in *Com. Eſſex,* that every cart which goes over *Greenbury* within that manor, (except it be the cart of a nobleman) ſhall pay 4 *d.* to the lord. This *Greenbury* is conceived to have been anciently a market-place; on which account this privilege was granted. *Blount.*

Lepa, A meaſure which contained the third part of two buſhels: Whence we derive a *ſeed-leap.* Du Cange.

Leporarius, A greyhound for the hare. *Concedo eis duos* leporarios, *&c. ad* leporem *capiendum in foreſta noſtra de* Eſſexia. *Mon. Ang. tom.* 2. *fol.* 283.

Leporium, Is a place where hares are kept together. *Mon. Ang. tom.* 2. *fol.* 1035.

Leproſo amovendo, An ancient writ that lies to remove a *leper* or *lazer,* who thruſts himſelf into the company of his neighbours in any pariſh, either in the church, or at other public meetings, to their annoyance. *Reg. Orig.* 237. The writ lieth againſt thoſe *lepers* that appear outwardly to be ſuch, by ſores on their bodies, ſmell, *&c.* and not againſt others: And if a man be a *leper,* and keep within his houſe, ſo as not to converſe with his neighbours; he ſhall not be removed. *New Nat. Br.* 521.

Le Roy le veut, Words by which the *Royal Aſſent* is ſignified by the clerk of the parliament to public bills; and to a private bill the King's anſwer is, *Soi ſait comme il eſt deſire.*

Le Roy ſe Aviſera, And by theſe words to a bill, preſented to the King by his houſes of parliament, are underſtood his denial of that bill. By this means the indecency of a poſitive refuſal to give the *Royal Aſſent* to a bill paſſed by the Lords and Commons is avoided.

Leſchewes, Trees fallen by chance, or windfalls. *Broke's Abr.* 341.

Leſſa, A leaſh of greyhounds, now reſtrained to the number of three, but formerly more. *Spelm.*

Leſpegend, (Sax. *Leſ pegen*) *Baro minor. hominibus quos Angli* Leſpegend *nuncupant, Dani vero* young men *vocant, &c.* Conſtitut. Canut. de Foreſta, Art. 2.

Leſſa, A legacy; and from this word alſo *leaſe* is derived. *Mon. Angl. tom.* 1. *pag.* 562.

Leſſor and Leſſee, The parties to a leaſe. See *Leaſe,*

Leſtage, Mentioned in ſome writers, is the ſame as *laſtage.*

Leſtagefry, Leſtage-free, or exempt from the duty of paying ballaſt money. *Cowell.*

Leswes, or Lelves, Is a word uſed in *Domeſday,* to ſignify paſtures, as is ſtill uſed in many places of *England,* and often inſerted in deeds and conveyances. *Cowell.*

Letare Jeruſalem, Was uſed for the cuſtomary oblations made on *Midlent Sunday,* when the proper hymn was *Lætare Jeruſalem, &c.* by the inhabitants within a dioceſe to the mother cathedral church; and theſe voluntary offerings on that day, were by degrees ſettled into an annual compoſition or pecuniary payment, charged on the parochial prieſt, who was preſumed to receive them from the people of his congregation, and obliged to return them to the cathedral church; and this among other burdens was at length thrown on the oppreſſed vicars, as appears by the ordination of the vicarage of *Erdele,* in the archdeaconry of *Huntingdon, anno* 1290, where it is provided, *Qui quidem vicarius ſolvet ſynodalia,* Lætare Jeruſalem, *&c.* From the aucient cuſtom of proceſſions at that time, began the practice, which is ſtill retained in many parts of *England,* of *Mothering,* or going to viſit parents on *Midlent Sunday.* See *Quadrageſimalia,*

Letters, Where it is felony to ſend *letters* without a name, or in a fictitious one. See *ſtat.* 9 *Geo.* 1. *c.* 22. Extorting money, *&c.* by threatening *letters,* to be puniſhed by fine and impriſonment, or by pillory, whipping, or tranſportation. 30 *Geo.* 2. *cap.* 24. See 4 *Black. Com.* 144.

Letter Miſſive for electing of a Biſhop. A letter from the King to the dean and chapter containing the name of the perſon whom he would have them elect. *Black. Com.* 1 *V.* 379.

Letter Miſſive in Chancery. If a peer is a defendant in the court of Chancery, the Lord Chancellor ſends a *letter miſſive* to him to requeſt his appearance, together with a copy of the bill; if he neglects to appear, then he may be ſerved with a *ſubpœna*; if he continues ſtill in contempt a ſequeſtration iſſues out immediately againſt his lands and goods, without any of the meſne proceſs of attachments, *&c.* which are directed only againſt the perſon, therefore cannot affect a lord of parliament. The ſame proceſs iſſues againſt a member of the houſe of commons, except that the Lord Chancellor doth not ſend him any *letter miſſive. Black. Com.* 3 *V.* 445.

Letters of Abſolution, *(Litera abſolutoriæ)* Or abſolvatory letters, were ſuch in former times, when an abbot releaſed any of his brethren *ab omni ſubjectione & obedientia, &c.* And made them capable of entering into ſome other order of religion. *Mon Faverſhamenſi. p.* 7.

Letter of Attorney, *(Litera Attornati)* Is a writing, authoriſing an *attorney* to do any lawful act in the ſtead of another: As to give ſeiſin of lands; receive debts, or ſue a third perſon, *&c.* And *letters of attorney* are either general or ſpecial. *Weſt. Symb. par.* 1. *Stat.* 7 *R.* 2. *c.* 13. The nature of this inſtrument is to give the attorney the full power and authority of the maker, to accompliſh the act intended to be performed: And ſometimes theſe writings are *revokable,* and ſometimes not ſo: but when they are revocable, it is uſually a bare authority only; and they are *irrevocable* when debts, *&c.* are aſſigned to another, in which caſe the word *irrevocable* is inſerted.

In caſes of *letters of attorney* the authority muſt be ſtrictly purſued: If it be to deliver livery and ſeiſin of lands between certain hours, and the attorney doth it before or after; or in a capital meſſuage, and he does it in another part of the land, *&c.* the act of the attorney to execute the eſtate ſhall be void. *Plowd.* 475. But notwithſtanding the ancient opinions for purſuing authorities with great ſtrictneſs and exactneſs, yet in caſe of livery and ſeiſin they have been always favourably expounded of later times, unleſs where it hath appeared, that the anthority was not purſued at all; as if a *letter of attorney* be made to three, two cannot execute it becauſe they are not the parties delegated, and they do not agree with the authority. 2 *Mod. Rep.* 79. Where the attorney does leſs than the authority mentions, it is void: It is ſaid if he doth more, it may be good for ſo much as he had power to do and void for the reſt; yet both theſe rules have divers exceptions and limitations. *vide* 1 *Inſt.* 258. There were two attornies made jointly and ſeverally, to deliver ſeiſin of lands, *&c.* and one of them delivered ſeiſin of part of the land, and after another attorney being tenant thereof for years, gave livery of the other part of the land: This was held good, though made at ſeveral times. 1 *And.* 247. And if a man make a deed of feoffment of lands in divers counties, with ſuch a *letter of attorney,* the livery muſt be at ſeveral times; otherwiſe it cannot be made. *Ibid.* See 1 *Leon.* 192, 260.

If a mayor and commonalty make a feoffment of lands, and execute a *letter of attorney* to deliver ſeiſin; the livery and ſeiſin, after the death of the mayor, will be good, by reaſon the corporation dieth not. 1 *Inſt.* 52. In other caſes, by the death of the party giving it, the power given by *letter of attorney* generally determines. A perſon made a *letter of attorney* to a creditor to receive all his wages and pay due from a ſhip, and afterwards died at ſea; this authority was adjudged to be ſo determined; that all the reſt of the creditors ſhould have a ſhare in his adminiſtration. *Preced. Chanc.* 125. 2 *Vern.* 391. Sailors generally make the *attorney*, *executor*, alſo.

Letters Claus, (*Literæ Clauſæ*) *Cloſe letters*, oppoſed to *letters patent*; being commonly ſealed up with the King's Signet or Privy Seal; whereas the *letters patent* are left open and ſealed with the broad ſeal.

Letter of Credit, Is where a merchant or correſpondent writes a *letter* to another, requeſting him to credit the bearer with a certain ſum of money. *Merch. Dict.*

Letters of Exchange, (*Literæ Cambii*) *Reg. Orig.* 194. See *Bills of Exchange*.

Letter of Licence, Is an inſtrument or writing made by creditors to a man that hath failed in his trade, allowing him longer time for the payment of his debts, and protecting him from arreſts in going about his affairs. Theſe *letters of licence* give leave to the party to whom granted to reſort freely to his creditors, or any others, and to compound debts, *&c.* And the creditors ſeverally covenant, that if the debtor ſhall receive any moleſtation or hinderance from any of them, he ſhall be acquitted and diſcharged of his debt againſt ſuch creditor, *&c.*

Letters of Marque, Are extraordinary repriſals for reparation to merchants taken and deſpoiled by ſtrangers at ſea, grantable by the ſecretaries of ſtate, with the approbation of the King and Council; and uſually in time of war, *&c.* *Lex. Mercat.* 173. If a *letter of Marque* wilfully and knowingly take a ſhip, and goods belonging to another nation, not of that ſtate againſt whom the commiſſion is awarded, but of ſome other in amity, this amounts to a downright piracy. *Rol. Abr.* 430. See *Repriſal.*

Letters Patent, (*Literæ patentes*) Sometimes called *letters overt*, are writings of the King ſealed with the Great Seal of *England*, whereby a perſon is enabled to do or enjoy that which otherwiſe he could not; and ſo called, becauſe they are *open* with the ſeal affixed, and ready to be ſhewn for confirmation of the authority thereby given. 19 *H.* 7. *cap.* 7. And we read of *letters patent* to make denizens, *&c.* 32 *Hen.* 6. *c.* 16. 19 *Hen.* 3. *c.* 18. *Letters patent* may be granted by common perſons, but in ſuch caſe they are properly called *patentees*; yet for diſtinction, the King's *letters patent* have been called *letters patent royal*, Anno 2 H. 6. c. 10 *Letters patent* conclude with *teſte me ipſo*, *&c.* 2 Inſt. 78. See *Patents*. And *Black Com.* 2 *V.* 346.

Letters of ſafe conduct. See *Safe conduct.*

Levant and Couchant, Is a law term for cattle that have been ſo long in the ground of another, that they have *lain down* and are *riſen again* to feed; in ancient records *levantes et cubantes*. When the cattle of a ſtranger are come into another man's ground, and have been there a good ſpace of time, (ſuppoſed to be a day and a night) they are ſaid to be *levant and couchant*. *Terms de Ley.* 2 *Lil. Abr.* 167. Beaſts of a ſtranger on the lord's ground may be diſtrained for rent, though they have not been *levant and couchant*; but it is otherwiſe if the tenant of the land is in fault in not keeping up his mounds, by reaſon whereof the beaſts eſcape upon the land. *Wood's Inſt.* 190. See *Diſtreſs*. And *Black. Com.* 3 *V.* 9. 239.

Levanum, (From the Lat *Levare,* to make lighter) Is leavened bread.

Levare foenum, To make hay, or properly to caſt it into wind-rows, in order *ad taſſandum*, to cock it up. ——*Homines de* Hedingdon *venient cum furcis ſuis ad dictum* fœnum levandum & taſſandum. *Paroch. Antiq. pag* 320 Hence *una levatio foeni* was one day's hay-making, a ſervice paid the lord by inferior tenants.——*Alicia quæ fuit uxor* Richardi le Grey——*faciet unam ſarculaturam & unam* Wedbedripam, & levationem fœni. ch. p. 402.

Levari facias, A writ directed to the ſheriff for levying a ſum of money upon a man's lands and tenements, goods and chattels, who has forfeited his recognizance. *Reg. Orig.* 298. This writ is given by the Common law, before the ſtatute *Weſtm.* 2. *cap.* 18. gave the writ of *elegit*; and a *levare facias* commands the debt to be levied *de exitibus & proficuis terræ*, *&c* And cattle of a ſtranger on the land have been held iſſues of the land, which is debtor. 1 *Salk.* 395.

On a judgment in an inferior court, and a *levari facias*, whereupon a warrant was made to levy the debt *de terris et catallis*, it was adjudged that the precept ought to be to levy the money *de terris bonis et catallis*, *&c.* 2 Lutw. 1410. A *levari facias* in debt lies againſt a parſon, directed to the biſhop, *etc.* to levy the money on his ſpiritual goods. 13 *H.* 4. 17. When a year and a day is paſt, after the day of payment by the recogniſance, there ſhould be anciently a *writ of debt*; but now a *ſcire facias*, *etc.* See *Black. Com.* 3 *V.* 417.

There is a *levari facias damna diſſeiſitoribus*, for the levying of damages, wherein the diſſeiſor has formerly been condemned to the diſſeiſee. *Reg. Orig.* 214. Alſo *levare facias reſiduum debiti*, to levy the remainder of a debt upon lands and tenements, or chattels of the debtor, where part has been ſatisfied before. *Reg. Orig.* 299. And a *levari facias quando vicecomes returnavit quod non habuit emptores*, commanding the ſheriff to ſell the goods of the debtor, which he has taken, and returned that he could not ſell. *Reg. Orig.* 300.

Leuca, Is a meaſure of land, conſiſting of 1500 paces. *Ingulphus* tells us, it is 2000 paces, *pag.* 910. In the *Monaſtic.* 1 *tom. p.* 313. it is 480 perches.

Leucata, Is a ſpace of ground, as much as a mile contains. *De boſco, etc. continente unam* leucatam *in latitudine et dimidium in longitudine.* Monaſt. 1 tom. p 768. And ſo it ſeems to be uſed in a charter of *William* the Conqueror to *Battle Abbey*. Cowell.

Levellus, A *level*, even or upon the *level.* Cowell.

Levitical degrees, The fartheſt between uncle and niece See *Black. Com.* 1 *V.* 435. *Gilb. Rep.* 158.

Levy, (*Levare*) Is uſed in the law for to collect, or exact; as to levy money, *etc.* And ſometimes to erect, or caſt up; as to levy a ditch, *etc.* And to *levy* a fine of land, is the uſual term: In ancient time, the word *rere* a fine, was made uſe of. 17 *H.* 6.

Levying Money without Conſent of Parliament. No ſubject of *England* can be conſtrained to pay any aids or taxes, even for the defence of the realm or the ſupport of government, but ſuch as are impoſed by his own conſent, or that of his repreſentatives in parliament. See the *Statutes.* 25 *Ed.* 1. *c.* 5 & 6. 34 *Ed.* 1. *ſtat.* 4. *c.* 1. 14 *Ed.* 3. *ſtat.* 2. *c.* 1. The petition of right, 3 *Car.* 1. 1 *W.* & *M.* *ſtat.* 2. *c.* 2.

Levying War againſt the King. This is high treaſon. It may be done by taking arms, not only to dethrone the King, but under pretence to reform religion, or the laws, or to remove evil counſellors, or other grievances whether real or pretended. *Black. Com.* 4 *V.* 81. cites 1 *Hawk. P. C.* 37. But *Blackſtone* on the ſame ſubject in the very next page ſays,

"In caſes of national oppreſſion the nation has VERY "JUSTLY RISEN as one man, to vindicate the ORIGI-"NAL CONTRACT ſubſiſting between the King and his "people."

Lewdneſs, Is puniſhable by our law by fine, impriſonment, *&c.* And *Mich.* 15 *Car.* 2. a perſon was indicted for open *lewdneſs* in ſhewing his naked body in a balcony, and other miſdemeanors, and was fined 2000 marks, impriſoned for a week. and bound to the good behaviour for three years. 1 *Sid.* 168. In times paſt when any man granted a leaſe of his houſe; it was uſual to inſert an expreſs covenant, that the tenant ſhould not entertain any *lewd* women, *&c.* See *Bawdy-houſe*. And *Black. Com.* 4 *V.* 64.

Lex, A law for the government of mankind in ſociety. *Lit. Dict.* It is often taken for *judicium Dei.* It is the ſame as *lada* amongſt the *Saxons*, which is either a canonical or vulgar purgation. In *Leg. H.* 1. *cap.* 62. *Ab adventu Domini uſque ad octavas Epiphaniæ non eſt tempus leges faciendi.*

Lex amiſſa, or *legem amittere*, *viz.* One who is an infamous, perjured or outlawed perſon. In *Bracton*, *lib.* 4. *cap.* 19. *par.* 2. *Non eſt ulterius dignus lege.*

Lex apoſtata, or Legem apoſtatare, Is to do a thing contrary to law. It is mentioned in *Leg. H.* 1.

cap. 12. *Qui* legem apoſtatabit *weræ ſuæ ſit reus prima vice.*

Lex Brehonia, The *Brehon* or *Iriſh* law, overthrown by K. *John.*

Lex Bretoiſe, Was the law of the ancient *Britains*, or *Marches of Wales.* Lex Marchiarum.

Lex Deraiſnia. Deraiſnia *eſt* Lex *quædam in* Normannia *conſtituta, per quam in ſimplicibus querelis inſecutus factum, quod a parte adverſa ei objicitur, ſe non feciſſe declarat.* And it is the proof of a thing, which one denies to be done by him, where another affirms it; defeating the aſſertion of his adverſary, and ſhewing it to be againſt reaſon or probability: This was uſed among the *Old Romans* as well as the *Normans.* Grand Cuſtumar. c. 126.

Lex Judicialis, Is properly *purgatio per judicium ferri*; ſometimes called *judicium.* Leg. H. 1.

Lex Sacramentalis, i. e. *purgatio per ſacramentum.* Leg. H. 1. c. 9.

Lex Talionis. Is *juris poſitivi*; and the *taliones* among the *Jews,* were converted into pecuniary eſtimates, ſo that the price of an eye, *&c.* loſt was allowed to the perſon injured. 1 *Hale's Hiſt. P. C.* 12. *Black. Com.* 4 *V.* 12.

Lex terræ, The law and cuſtom of the land, diſtinguiſhed by this name from *lege civili,* as Mr. *Seldon* tells us *in Diſſertatione ad Fletam, cap.* 9. *par.* 3.

Lex Wallenſica, The *Britiſh* law, or law of *Wales.* Statut. Wall.

Ley or **Leys,** The *French* word for law. We alſo term paſture by a name frequent in ſeveral countries, *leys,* and ſo it is uſed in *Domeſday.*

Ley, *Lee, lay,* Whether in the beginning or end of names of places, ſignify an open field, or large paſtures. From the Saxon, *leag, campus, paſcuum*; as *Blechingley, &c.* Cowell.

Ley-gager (mentioned in ſtat. 1 *Ca.* 1. *cap.* 3.) Wager of law. See *Wager of Law.*

Libel, (*Libellus*) Signifies literally a little book; but by uſe, it is the original declaration of any action in the *Civil law.* 1 Hen. 5. cap. 3. 2 Ed. 6. cap. 13. It ſignifieth alſo a ſcandalous report of any man ſpread abroad, or otherwiſe unlawfully publiſhed, and then called *famoſus libellus,* an infamous *libel.*

And this is either
in ſcriptis
aut
ſine ſcriptis.

In ſcriptis is when any writing is compoſed or publiſhed to another's diſgrace, *&c.*

And *ſine ſcriptis,* where the perſon is painted in a ſhameful manner, with a fool's coat, aſſes ears, *&c.* or a gallows, or other ignominious ſign is fixed at his door. 3 *Inſt.* 174.

Sentiments of the antients.

Seneca calls defamatory *libels, contumelioſi libelli,* and *Bracton, carmina famoſa*; contumelious *libels,* and infamous rhimes, which flow from malice; and the *Romans* would not permit their lives and fame to be ſubject to the injury and ſcandal of poets; for they made an ordinance, that whoſoever ſhould preſume to compoſe any ſuch verſes, were to be puniſhed with death. *Treat. of Laws* 75.

But in a free ſtate, like that of *Great Britain* ſuch a law does not, cannot, exiſt.—The moment our legiſlators ſhould be corrupt enough, to give exiſtence to ſuch a law, that moment, liberty would be no more.

Definition of a libel, &c. and againſt whom libels are publiſhed.

It is obſerved in our law, that a *libel* is the greateſt degree of ſcandal, and does not die like words which may be forgot, an action for which is confined to the perſon; but the cauſe of action for ſcandal in a libel ſurvives. 5 *Rep.* 125. A libel in a ſtrict ſenſe is a malicious aſperſion of another, expreſſed in printing or writing; and tending either to blacken the memory of one who is dead, or the reputation of one that is alive, and to expoſe him to public hatred, ridicule, or contempt: But, in a larger ſignification, it may be applied to any defamation whatſoever. *Ibid.* 121. All *libels* are made againſt private men, or magiſtrates, and public perſons; and thoſe againſt magiſtrates deſerve the greateſt puniſhment: If a *libel* be made againſt a private man, it may excite the perſon *libelled,* or his friends, to revenge and break the peace; and if againſt a magiſtrate, it is not only a breach of the peace, but a ſcandal to government, and ſtirs up ſedition. *Ibid.* It hath been held, that writing a *ſeditious libel* is not a breach of the peace; and that a member of parliament writing ſuch a *libel,* is intitled to his privilege from being arreſted for the ſame. *Wilſ. par.* 2. 159. Tho' a private perſon or magiſtrate be dead at the time of making the *libel,* yet it is puniſhable; as it tends to a breach of the peace. *Hob.* 215.

The charge being true, not (in law) *a juſtification of a libel, if the party is proſecuted criminally.*

With regard to this conſideration, it is far from being a juſtification of a *libel,* that the contents thereof are true, or that the perſon upon whom made had a bad reputation; ſince the greater appearance there is of truth in any malicious invective, ſo much the more provoking it is. 5 *Rep.* 125. *Moor.* 627. It is not material whether the matter be true or falſe, if the proſecution be by information or indictment; but *in action on the caſe,* one may juſtify that *the matter is true.* 5 *Rep.* 125. *Hob.* 253.

Such is the law. How far it is conſonant to reaſon, we will not attempt to ſay.—The end propoſed, is, to avoid diſturbance, *&c.* and preſerve the peace.

What the law requires from a ſubject, knowing of a libel &c.

When any man finds a *libel,* if it be againſt a private perſon, he ought to burn it, or deliver it to a magiſtrate; and where it concerns a magiſtrate, he ſhould deliver it preſently to a magiſtrate. *Ibid.* If a *libel* be found in a houſe, the maſter cannot be puniſhed for framing, printing and publiſhing it; but it is ſaid he may be indicted for having it, and not delivering it to a magiſtrate. 1 *Vent.* 31.

Of puniſhment for printing and publiſhing, &c. *of libels.*

If a printer print a *libel* againſt a private perſon, he may be indicted and puniſhed for it; and ſo may he who prints a *libel* againſt a magiſtrate, and much more one who does it againſt the King and ſtate: Nor can a perſon in ſuch a caſe excuſe himſelf by ſaying they were dying ſpeeches, or the words of dying men; for a man may at his death juſtify his villainy; and he who publiſhes it is puniſhable: And it is no excuſe for the printing or publiſhing a *libel,* to ſay that he did it in the way of trade, or to maintain his family. *State Trials,* 1 *Vol.* 982, 986.

Alſo if bookſellers, *&c.* publiſh or ſell *libels,* though they know not the contents of them, they are puniſhable, It has been reſolved, that where perſons write, print, or ſell, any pamphlets, ſcandalizing the public, or any private perſons, ſuch *libellous* books may be ſeized, and the perſons puniſhed by law; and all perſons expoſing any books to ſale, reflecting on the government, may be puniſhed: Alſo writers of news, (though not ſcandalous, ſeditious, or reflecting on the government, if they write *falſe news,*) are indictable. *State Trials,* 2 *Vol.* 477.

One was indicted for a *libel* in ſcandalizing the King's witneſſes, and reflecting on the juſtice of the nation, and had judgment of the pillory and fine. *Ibid.* 3 *Vol.* 50. A perſon for *libelling* the *Lord Chancellor Bacon,* affirming that he had done injuſtice, and other ſcandalous matter, was ſentenced to pay 1000 *l.* fine, to ride on a horſe with his face to the tail from the *Fleet* to *Weſtminſter,* with his fault written on his head, to acknowledge his offence in all the courts at *Weſtminſter,* ſtand in the pillory, and that one of his ears ſhould be cut off at *Weſtminſter,* and the other in *Cheapſide,* and to ſuffer impriſonment during life.

Poph. 135. One who exhibited a *libel* againſt a *Lord Chief Juſtice*, directed to the King, calling the Chief Juſtice, *traitor, perjured judge, &c.* had judment to ſtand in the pillory, was fined 1000 marks, and bound to good behaviour during life. *Cro. Car.* 125.

The liberty of the preſs is one of the greateſt privileges ſubjects can enjoy in a free ſtate. It is hoped the people of this country will never be deprived of that ineſtimable privilege: But it is with great regret the editor muſt acknowledge, that the public prints of late years have teemed with the moſt ſcandalous libels, many of them reflecting on the beſt and moſt reſpectable perſonages in the ſtate; and he does moſt ſincerely wiſh every one whoſe character is impeached by ſuch infamous publications, would proſecute the publiſhers, unleſs the authors are given up, with the utmoſt ſeverity of the law. It would be the moſt likely means of preſerving the liberty of the preſs: Whereas the ſhameful publications alluded to, may probably tempt thoſe in power to abridge the privilege.

Of petitions to the throne, parliament, &c.

The *petition* of the *Seven Biſhops* in the reign of King *James* 2. againſt the King's declaration, ſetting forth that it was founded on a diſpenſing power, which had been declared illegal in parliament, *&c.* was called a ſeditious libel againſt the King; and they refuſing to give recogniſances to appear in *B. R.* were committed to the *Tower*; but being after tried at bar, were acquitted. 3 *Mod.* 212. The printing of a petition to a committee of parliament, (which would be a libel againſt the party complained of, were it made for any other purpoſe) and delivering copies thereof to the members of the committee, is not the publication of a libel, being juſtified by the order and courſe of proceedings in parliament. 1 *Haw. P. C.* 196.

Of libellous matter in legal proceedings.

Scandalous matter in legal proceedings by bill, petition, *&c.* in a court of juſtice amounts not to a libel, if the court hath juriſdiction of the cauſe. *Dyer* 285. 4 *Rep.* 14. But he who delivers a paper full of reflections on any perſon, in nature of a petition to a committee, to any other perſons *except the members of parliament who have to do with it*, may be puniſhed as the publiſher of a libel. 1 *Hawk.* 196. And by the better opinion, a perſon cannot juſtify the printing any papers which import a crime in another, to inſtruct counſel, *&c.* but it will be a libel. *Ibid.* 414.

Of ſending letters, &c. to the parties charged with any ſcandalous matter.

Sending an abuſive letter to one, without publiſhing it to others, is no libel; but if it be ſent to a third perſon, or any ways diſperſed, it is *a publication* of the libel: And tho' ſending a ſcandalous letter to the party himſelf is not a libel, nor can any action be brought upon it, becauſe it is *no publication*; yet it is an high offence. 12 *Rep.* 34 1 *Lev.* 139. 2 *Brownl.* 157. It is an offence againſt the King's peace, puniſhable by indictment; and if copies of it are afterwards diſperſed, it aggravates the crime, or rather makes it a new crime, for which the party may have an action. *Poph.* 35. *Hob.* 62. Writing a letter to a man, and abuſing him for his public charities, *&c.* is a libellous act, puniſhable by indictment. *Hob.* 215.

Of private libels and obſcenity.

A private libel, for a private matter, as a letter ſcandalizing a perſon courting a woman, is indictable, and fineable to the King. *Sid.* 270. No writing is eſteemed a libel, unleſs it reflect upon ſome particular perſon; and a writing full of obſcene ribaldry, is not puniſhable by any proſecution at Common law; but the author may be bound to the good behaviour, as a perſon of evil fame. 1 *Hawk.* 195.

What is, and what is not a libel.

Where a writing inveighs againſt mankind in general, or againſt a particular order of men, this is no libel; it muſt *deſcend to particulars and individuals* to make it a libel. *Trin.* 11 *W.* 3. *B. R.* But a general reflection on the government is a libel, tho' no particular perſon is reflected on: And the writing againſt *a known law* is held to be criminal. *State Trials*, 4 *V.* 672. 903. According to *Holt* C. J. ſcandalous matter is not neceſſary to make a libel; it is enough if the defendant induces *an ill opinion* to be had of the plaintiff, *&c.* And if a man ſpeak ſcandalous words, *unleſs they are put in writing*, he is not guilty of a libel; for *the nature of a libel conſiſteth in putting the infamous matter into writing.* 2 Salk. 417. 3 Salk. 226. A defamatory writing, expreſſing only one or two letters of a man's name, if it be in ſuch a manner, that from what goes before and follows after, it muſt be underſtood by the natural conſtruction of the whole, to ſignify and point at ſuch a particular perſon, is as properly a libel as if the whole name were expreſſed at large. *Trin.* 12 *Ann.* 1 *Hawk.* 194.

Of the wording of a libel.

Printing or writing may be libellous, tho' the ſcandal is not directly charged, but *obliquely* and *ironically*; and where a writing pretends to recommend to one the characters of ſeveral great men for his imitation, inſtead of taking notice of what they are generally famous for, pitches on ſuch qualities only which their enemies charge them with the want of; as by propoſing ſuch a one to be imitated for his learning, who is known to be a good ſoldier, but an illiterate man, *&c.* this will amount to a libel. *Ibid.*

Of the author, contriver and publiſher.

In the making of libels, if one man dictates, and another writes a libel, both are guilty; for the writing after another *ſhews his approbation* of what is contained in the libel; and the firſt reducing a libel into writing may be ſaid to be the making it, but not the compoſing: if one repeats, another writes, and a third approves what is written, they are all makers of the libel; becauſe *all perſons who concur to an unlawful act are guilty.* 5 Mod 167. The *making* a libel is the genus; and *compoſing* and *contriving* is one ſpecies; *writing*, a ſecond ſpecies; and *procuring* to be *written*, a third; and one may be found guilty of writing only, *&c.* 2 *Salk.* 419, *&c.* But obſerve, a mere writing, without a publication, was not in queſtion in *Salkeld.* It is conceived that for the mere writing of a libel, not publiſhed, no action can be maintained, nor proſecution legally ſupported.

If one writes a copy of a libel, and does not deliver it to others, the writing is no publication: but it has been adjudged, that the copying a libel, without authority, is writing a libel, and he that thus writes it, is a *contriver*; and that he who hath a written copy of a known libel, if it is found upon him, this ſhall be evidence of the publication; but if ſuch libel be not publicly known, then the mere having a copy is not a publication. 2 *Salk.* 417. 2 *Nelſ. Abr.* 1122. Writing a copy of a libel is writing of a libel, as it has the ſame pernicious conſequence; and if the law were otherwiſe, men might write copies, and print them with impunity. 2 *Salk.* 419. And when a libel appears under a man's own hand-writing, and no author is known, he is taken in the manner, and it turns the proof upon him; and if he cannot produce the compoſer, it is hard to find that he is not the very man. *Ibid.* If one reads a libel, or hears it read, and laughs at it, it is not a publiſhing; for before he reads or hears it read, he cannot know it to be a libel: tho' if he afterwards reads or repeats it, or any part thereof, in the hearing of others, it is a publication of it: yet if part of it be repeated in mirth without any malicious purpoſe of defamation, it is ſaid to be no offence. 9 *Rep.* 59. *Moor* 862. Every one convicted of publiſhing a libel ought to be eſteemed the contriver or procurer: the procurer and writer of a libel have been held to be both contrivers;

trivers; alſo the procuring another to publiſh it, and the publiſher, are both publiſhers: and the contriver, procurer, and publiſher of a libel, are puniſhable by fine, impriſonment, pillory, or other corporal puniſhment, at the diſcretion of the court, according to the heinouſneſs of the crime, *&c.* *Moor* 627. 5 *Rep.* 125. 3 *Inſt.* 174. 3 *Cro.* 17.

Of ſetting forth a libel in law proceedings, according to the tenor.

In informations and law proceedings there are two ways of deſcribing a libel, by the ſenſe, and by the words; the firſt is *cujus tenor ſequitur*, and the ſecond *quæ ſequitur in hæc Anglicana verba, &c.* in which the deſcription is by particular words, and whereof every word is a mark; ſo that *if there is any variance, it is fatal*; in the other deſcription by the ſenſe, it is not material to be very exact in the words, becauſe the matter is deſcribed by the ſenſe of them. 2 *Salk.* 660. One great intention of the law in prohibiting libels againſt perſons, is to reſtrain men from endeavouring to make themſelves their own judges of complaints, and to oblige them to refer the deciſion thereof to the law *&c.* And it is of great conſequence to the ſtate, for preſerving peace, order, and good government.

Yet in a free ſtate, ſuch as this is, by the principles of its conſtitution, it is perhaps impoſſible to draw the line with preciſion. The liberty of the preſs is of the utmoſt importance; yet, though not reſtricted by ſtatute, it ſhould be obſerved that the courts of law are always open to puniſh any abuſe of that invaluable privilege.

The declaration for a libel muſt lay it to be *of and concerning* the plaintiff, otherwiſe there can be no judgment. 2 *Strange* 934. Books againſt Chriſtianity, and obſcene books, are puniſhable as libels. 2 *Strange* 788, 834

For further learning on this ſubject, vide *New Abr.* 3 *V. tit. Libel*, and *Black Com.* 3 *V.* 125. 4 *V.* 150.

Libel, in the *Spiritual Court.* If upon a libel for any eccleſiaſtical matter, the defendant make a ſurmiſe in *B. R.* to have a *prohibition*, and ſuch ſurmiſe be inſufficient, the other party may ſhew it to the court, and the judges will diſcharge it. 1 *Leon.* 10, 128, The libel uſed in eccleſiaſtical proceedings, conſiſts of three parts. 1. The major propoſition, which ſhews a juſt cauſe of the petition. 2. The narration, or minor propoſition. 3. The concluſion, or concluſive petition, which conjoins both propoſitions, *&c.* and the form of it is as follows:

In the name of God, Amen, Before you the Worſhipful *T. F.* Doctor of Laws, Principal Official of the Conſiſtory Court of *York, &c.* The party *C. D.* againſt *A. B.* alledgeth, complaineth, and propoundeth, *&c.* *Imprimis,* he doth propound, that the ſaid *C. D.* was, and is a man very honeſt, juſt and upright, of good fame, life and converſation, aſperſed or defamed with no crime, except what is afterwards mentioned; and is commonly reputed and eſteemed as ſuch, *&c.* *Item,* That notwithſtanding the premiſſes, the ſaid *A. B.* out of a malignant ſpirit, in the month of, *&c.* in this preſent year 1771, within the pariſh of, *&c.* maliciouſly, and with an intent of defaming and injuring the ſaid *C. D.* hath defamed and injured him, and ſaid ſome reproachful and defamatory words of and againſt him the ſaid *C. D.* and eſpecially theſe words following, *viz.* That, *&c.* (here ſet forth the words) and the party doth propound and article, as to ſuch time and manner of ſpeaking the words, *&c.* *Wherefore,* proof being made in and upon the premiſſes, the party *C. D.* doth requeſt and petition that the ſaid *A. B.* for ſuch his raſhneſs, may be corrected and puniſhed; and alſo that he may be condemned in charges, made in this cauſe in the behalf of the ſaid *C. D.* *&c.* (or to diſown the ſaid defamatory words, *&c.*) or otherwiſe that right and juſtice may be adminiſtred, *&c.* *Black. Com.* 3 *V.* 100.

Libera, A livery or delivery of ſo much graſs or corn to a cuſtomary tenant, who cuts down or prepares the ſaid graſs or corn, and receives ſome part or ſmall portion of it as a reward or gratuity. *Cowell.*

Libera Batella, Signifies a free boat.——*Per* liberam batellam, *hoc eſt, habere unam Cymbam ad Piſcand. ſubter Pontem Ceſtriæ, &c. & ibidem cum omni genere retium.* Plac. in Itin. apud Ceſtriam, 14 H. 7.

Libera Chaſea habenda, Is a judicial writ granted to a perſon for a *free chaſe* belonging to his manor; after proof made by inquiry of a jury, that the ſame of right belongs to him. *Reg. Orig.* 36.

Liberam Legum. On trial by battel, if either champion proves *recreant*, i. e. yields and pronounces the word *craven*, he is condemned, as a *recreant, amittere liberam legem*, that is, to become infamous and not be accounted *liber et legalis homo*, being ſuppoſed by the event to be proved forſworn, and therefore never to be put upon a jury, or admitted as a witneſs in any cauſe. *Black. Com.* 3 *V.* 340, 341.

Libera Piſcaria, A free fiſhery, which being granted to one, he hath a property in the fiſh, *&c.* 2 *Salk.* 637. See *Fiſhing.*

Liber Taurus, A free bull. *Compertum per jure quod* Will. de H. *fuit ſeiſitus de* libero tauro *habendo in, &c. Ideo conſideratum eſt, quod prædictus* Will. *recuperet damna ſua quæ taxantur per jur. ad iv s. pro imparcatione ejuſdem tauri, &c.* Norf. 16 Ed. 1.

Libera Wara. See *Wara.*

Liberate, Is a writ that lies for the payment of a yearly penſion or ſum of money granted under the Great Seal, and directed to the Treaſurer and Chamberlains of the *Exchequer, &c.* for that purpoſe. In another ſenſe it is a writ to the ſheriff of a county, for the delivery of poſſeſſion of lands and goods extended, or taken upon the forfeiture of a recogniſance. Alſo a writ iſſuing out of the *Chancery* directed to a gaoler for delivery of a priſoner that hath put in bail for his appearance. *F. N. B.* 132. 4 *Inſt.* 116. This writ is moſt commonly uſed for delivery of goods, *&c.* on an *extent*; and by the extent the conuſee of a recognizance hath not any abſolute intereſt in the goods, until the *liberate.* 2 Lil. 169. It has been adjudged, that where an extent is upon a ſtatute merchant, there needs no *liberate*, for the ſheriff may deliver all in execution without it, but where an extent is upon a ſtatute-ſtaple, or a recogniſance, there muſt be a return made of ſuch an extent, and then a *liberate* before there can be a delivery in execution. 3 *Salk.* 159. See *Extent.*

Liberatio, Is taken for money, meat, drink, clothes, *&c.* yearly given and *delivered* by the lord to his domeſtic ſervants. *Blount.*

Libertas Eccleſiaſtica. This is a frequent phraſe in our old writers, to ſignify church liberty, or eccleſiaſtical immunities: the right of *inveſtiture* extorted from our Kings by force of papal power, was at firſt the only thing challenged by the clergy, as their *libertas eccleſiaſtica*: but by degrees, under weak princes and prevailing factions, under the title of *church liberty*, they contended for a freedom of their perſons and poſſeſſions from all ſecular power and juriſdiction, as appears by the canons and decrees of the council held by *Boniface*, Archbiſhop of *Canterbury* at *Merton*, *A. D.* 1258. and at *London*, *A. D.* 1260, *&c.* *Cowell.*

See *Lord Littleton's Hiſt. of Hen.* II. and *Robertſon's Hiſt. of Emp.* C. V.

Libertate probanda, Is an ancient writ that lay for ſuch as being demanded for villeins offered to *prove themſelves free*; directed to the ſheriff that he ſhould take ſecurity of them for the proving of their freedom before the juſtices of aſſiſe, and that in the mean time they ſhould be unmoleſted. *F. N. B.* 77. Villeinage, and the appendixes thereof, *viz.* writs *de nativo habendo, liberate probanda, &c.* were of old great titles in the books of law, but are now antiquated.

Libertatibus Allocandis, A writ lying for a citizen or burgeſs, impleaded contrary to his liberty, *to have his privilege allowed.* Reg. Orig. 262. And if any claim a ſpecial liberty to be impleaded within a city or borough, and not elſewhere, there may be a ſpecial writ *de libertatibus allocandis*, to permit the burgeſſes to uſe their liberties,

ties, &c. Theſe writs are of ſeveral forms, and may be uſed by a corporation, or by any ſingle perſon, as the caſe ſhall happen. *New Nat. Br.* 509, 510. The Barons of the *Cinque Ports*, &c. may ſue forth ſuch writs, if they are delayed to have their liberties allowed them. *Ibid.*

Libertatibus exigendis in Itinere, An ancient writ whereby the King commands the *Juſtices in Eyre* to admit of an attorney for the defence of another man's liberty. *Reg. Orig.* 19.

Liberties or Franchiſes. Theſe are ſynonymous terms, and their definition is, a royal privilege, or branch of the King's prerogative, ſubſiſting in the hands of a ſubject. The kinds of them are various, and almoſt infinite. See *Black. Com.* 2 *V.* 37, &c.

Liberty, *(libertas)* Is a privilege held by grant or preſcription, by which men enjoy ſome benefit beyond the ordinary ſubject. *Bract.* But in a more general ſignification, it is ſaid to be *a power to do as one thinks fit; unleſs reſtrained by the law of the land:* and it is well obſerved, that human nature is ever an advocate for this liberty; it being the gift of God to man in his creation; therefore every thing is deſirous of it, as a ſort of reſtitution to its primitive ſtate. *Forteſcue* 96. It is upon that account the laws of *England* in all caſes favour liberty, and which is accounted very precious, not only in reſpect of the profit which every one obtains by his liberty, but alſo in reſpect of the public. 2 *Lil. Abr.* 169.

According to *Monteſq. Liv.* 26. *c.* 20. Liberty conſiſts principally in not being compelled to do any thing, which the law does not require, *i. e.* becauſe we are governed by civil laws, and therefore we are free, living under thoſe laws. See *Infra*, at the end of this head.

The people of this kingdom are to enjoy their ancient liberties, without impeachment, by *Magna Charta.* No freeman ſhall be impriſoned or condemned *without trial by his peers*, or the law. *Mag. Chart. c.* 19. Likewiſe no perſon is to be arreſted, &c. without proceſs at law: and matters which concern liberty are to be ſpeedily determined, &c.

Magna Charta, 9 *Hen.* 3. *cap.* 29. No freeman ſhall be taken and impriſoned, or diſſeiſed of his freehold, or of his liberties or free cuſtoms, or be outlawed, baniſhed or otherwiſe deſtroyed; nor ſhall the King paſs upon him, *but by the lawful judgment of his peers, or by the law of the land.* The King ſhall ſell to none, or deny or delay to none, right or juſtice. See 25 *Ed.* 3. *ſt.* 5. *cap.* 4. and 42 *Ed.* 3. *cap.* 3.

Stat. *Confirm. Chart.* 25 *Ed.* 1. *cap.* 2. If any judgment be given contrary to the great charters, it ſhall be undone and holden for nought.

Stat. 2 *Ed.* 3. *cap.* 8. It ſhall not be commanded by the Great Seal or the Little Seal, to diſturb or delay common right; and *though ſuch commandments come, the juſtices ſhall not ceaſe to do right.*

Stat. 5 *Ed.* 3. *cap.* 9. No man ſhall be attached by any accuſation, nor forejudged of life or limb, nor ſhall his lands or goods be ſeiſed into the King's hands againſt the great charter and the law of the land.

Stat. 25 *Ed.* 3. *ſt.* 5. *cap.* 4. None ſhall be taken by petition or ſuggeſtion made to the King or his council, unleſs it be by indictment of lawful people of the neighbourhood, or by proceſs made by writ original at the Common law. And none ſhall be put out of his franchiſes or freehold, unleſs he be duly brought to anſwer, and forejudged by courſe of law; and if any thing be done to the contrary, it ſhall be redreſſed and holden for none.

Stat. 42 *Ed.* 3. *cap.* 3. No man ſhall be put to anſwer *without preſentment before juſtices*, or matter of record of *due proceſs*, or *writ original*, according to the *ancient law of the land.* And if any thing be done to the contrary, it ſhall be void in law, and held for error.

Vide the *Petition of Right*, 3 Car. 1. and ſee 16 *Car.* 1. *c.* 10. for the diſſolution of the *Star-Chamber.*

The following we have ſtated pretty fully, as it is an act of great conſequence to the ſubjects of this free ſtate.

Stat. 1 *Wil.* & *Mar. ſt.* 2. *cap.* 2. *ſect.* 1. Whereas e Lords ſpiritual and temporal, and commons aſſembled at *Weſtminſter*, repreſenting all the eſtates of the people of this realm, did upon the 13th of *February* 1688. preſent unto their Majeſties, then Prince and Princeſs of *Orange*, a declaration, containing that,

The ſaid Lords ſpiritual and temporal, and commons, being aſſembled in a full and free repreſentative of this nation, for the vindicating their ancient rights and liberties, declare,

That the pretended power of ſuſpending of laws, or the execution of laws, by regal authority, without conſent of parliament, *is illegal*;

That the pretended power of diſpenſing with laws, or the execution of laws, by regal authority, as it hath been aſſumed and exerciſed of late, is illegal;

That the commiſſion for erecting the late court of commiſſioners for eccleſiaſtical cauſes, and all other commiſſions and courts of like nature, are illegal and pernicious;

That levying money for or to the uſe of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the ſame is or ſhall be granted, *is illegal*;

That it is the right of the ſubjects to petition the King, and all commitments and proſecutions for ſuch petitioning are illegal;

That the raiſing or keeping a ſtanding army within the kingdom in time of peace, unleſs it be with conſent of parliament, is againſt law;

That the ſubjects which are proteſtants may have arms for their defence ſuitable to their conditions, and as allowed by law;

That election of members of parliament ought to be free;

That the freedom of ſpeech, and debates or proceedings in parliament, ought not to be impeached or queſtioned in any court or place out of parliament;

That exceſſive bail ought not to be required, nor exceſſive fines impoſed, nor cruel and unuſual puniſhments inflicted;

That jurors ought to be duly impanelled and returned, and jurors which paſs upon men in trials for high treaſon ought to be freeholders;

That all grants and promiſſes of fines and forfeitures of particular perſons before conviction, are illegal and void;

And for redreſs of all grievances, and for the amending, ſtrengthening and preſerving of the laws, parliaments ought to be held frequently;

And they do claim, demand, and INSIST UPON all and ſingular the premiſſes, as their UNDOUBTED RIGHTS AND LIBERTIES; and that no declarations, judgments, doings, or proceeding, to the prejudice of the people in any of the ſaid premiſſes, ought in any wiſe to be drawn hereafter into conſequence or example;

Sect. 6. All and ſingular the rights and liberties aſſerted and claimed in the ſaid declaration are *the true, ancient and indubitable* RIGHTS *and* LIBERTIES *of the people of this kingdom*; and ſo ſhall be eſteemed, allowed, adjudged, and taken to be; and all the particulars aforeſaid ſhall be firmly holden as they are expreſſed in the ſaid declaration; and all officers ſhall ſerve their Majeſties according to the ſame in all times to come.

Sect. 12. No diſpenſation by *non obſtante* of any ſtatute ſhall be allowed, except a diſpenſation be allowed of in ſuch ſtatute; and except in ſuch caſes as ſhall be ſpecially provided for during this ſeſſion of parliament.

Sect. 13. No charter granted before the 23d of *October*, 1689. ſhall be invalidated by this act, but ſhall remain of the ſame force as if this act had never been made.

Vide the *Stat.* 12 & 13 *Wil.* 3. *cap.* 2. whereby, amongſt other things, it is enacted, That no perſon who has an office or place of profit under the King, or receives a penſion from the crown, ſhall be capable of ſerving as a member of the houſe of commons.

But the former part of this clauſe has been altered by a ſubſequent law, the acceptance of an office, &c. by a member, only *vacating his ſeat*, and he may be re-elected, if the electors think proper.

And this may be conſidered as a reaſonable law, otherwiſe the crown might be deprived of the ſervice of ſome of the moſt able men in the ſtate. If an ill uſe is, or ever ſhould be made of this, we can only ſay it is impoſſible for human laws to be perfect, and guard againſt every evil,

According to *Monteſquieu, Liv.* 11. *c.* 3. "Liberty is "a right to do whatever the laws permit," If a citizen could do what they forbid, he would no longer be poſſeſſed of liberty, becauſe all his fellow citizens would have the ſame power. See *ante*, at the beginning of this head. An *Engliſhman* may add to the preceding idea his *right of legiſlation.* See *Black Com.* 1 *V.* 6, 125.

Liberty to Hold Pleas, Signifies to have a court of one's own; and to hold it before a Mayor, Bailiff, *&c.* See *Franchiſe.*

Liblacum, The manner of bewitching any perſon; alſo a barbarous ſacrifice. *Leg. Athelſtan,* 6.

Librae arſae penſatae & ad numerum: A phraſe which often occurs in the *Domeſday-Regiſter,* and ſome other memorials of that and the next age.—as *Ailesbury* in *Buckinghamſhire,* the King's manor.——*In totis valentiis reddit* lvi *libr. arſas & penſatas, & de thelonio* x *libr.* ad numerum, *i. e.* in the whole value it pays fifty-ſix pounds burnt and weighed; and for toll ten pounds by tale. For they ſometimes took their money *ad numerum* by tale in the current coin upon conſent: but ſometimes they rejected the common coin by tale, and would melt it down to take it by weight when purified from the droſs and too great allay; for which purpoſe they had in thoſe times always a fire ready in the Exchequer to burn the money, and then weigh it. *Cowell.*

Libra penſa, A pound of money in weight; for it was uſual in former days, not only to tell the money, but to weigh it; for ſeveral cities, biſhops, and noblemen had their mints, and coined money, and often very bad, and therefore though the pound conſiſted of twenty ſhillings they weighed it. Thus in *Domeſday* we read, *Reddat nunc* 30 libras *arſus &* penſatas. *Gale's Hiſt. of Brit. fol.* 761.

Library. Where a library is erected in any pariſh, it ſhall be preſerved for the uſes directed by the founder: and incumbents and miniſters of pariſhes, *&c.* are to give ſecurity therefore, and make catalogues of the books, *&c.* None of the books ſhall be alienable, without conſent of the biſhop, and then only where there is a duplicate of ſuch books: if any book ſhall be taken away and detained, a juſtice's warrant may be iſſued to ſearch for and reſtore the ſame: alſo action of trover may be brought in the name of the proper ordinary, *&c.* And biſhops have power to make rules and orders concerning libraries, appoint perſons to view their condition, and inquire of the ſtate of them in their viſitation. Statute 7 *Ann. cap.* 14.

Cotton library ſettled in the family for the uſe of the public. 12 *&* 13 *Wil.* 3. *cap.* 5. Veſted in the crown, 5 *Ann. cap.* 30. Eſtabliſhment of the *Britiſh muſeum,* 26 *Geo.* 2. *c.* 22. 27 *Geo.* 2. *c.* 16. *ſ.* 3.

Libratae terrae, Contains four oxgangs, and every oxgang thirteen acres. *Skene,* verb. *Bovata terræ.* With us, it is ſo much land as is yearly worth twenty ſhillings, for in *Henry* the Third's time, he that had *quindecim libras terræ,* was to receive the order of knighthood. See *Fardingdale.* Some are of opinion, that as money is divided into pounds, ſhillings, pence, half-pence, and farthings, the ſame degrees are to be obſerved in the diviſion of lands; and therefore as *quandrans* ſignifies a farthing, ſo *quandrantata* is the fourth part of an acre, *oblata* is half, and *denariata* is a whole acre, *ſolidata* is twelve acres, and *librata* is twenty times twelve acres, *i. e.* two hundred and forty. *Spelman* is of another opinion, who compares an acre to a mark in money; and as in one there are one hundred and ſixty pence, ſo in the other there are one hundred and ſixty perches, which they divide into *halves* and quarters: ſo that an acre contains three hundred and ſixty *denarios;* but ſome ſay, that *librata terræ* is ſo much ground as is worth yearly twenty ſhillings of current money. *Cowell.*

Licence, *(licentia)* is a power or authority given to a man to do ſome lawful act: and is a perſonal liberty to the party to whom given, which cannot be transferred over; but it may be made to a man, or his aſſigns, *&c.* 12 *H.* 7. 25. There may be a *parol* licence, as well as by *deed* in writing; but if it be not for a certain time, it paſſes no intereſt. 2 *Nelſ. Abr.* 1123. And if there be no time certain in the licence; as if a man licence another to dig clay, *&c.* in his land, but doth not ſay for how long, the licence may be countermanded; though if it be until ſuch a time, he cannot. *Poph.* 151. If a leſſor licences his leſſee (who is reſtrained by covenant from aliening without licence) to alien, and ſuch leſſor dies before he aliens, this is no countermand of the licence: ſo it is if the leſſor grants over his eſtate. *Cro. Jac.* 133. But where a lord of a manor for life granteth a licence to a copyhold tenant to alien, and dieth; the licence is deſtroyed, and the power of alienation ceaſeth. 1 *Inſt.* 52. Copyhold tenants leaſing their copyhold for a longer time than one year, are to have a licence for it; or they incur a forfeiture of their eſtates. 1 *Inſt.* 63. If any licnece is given to a perſon, and he abuſes it, he ſhall be adjudged a treſpaſſer *ab initio.* 8 Rep. 146.

A. grants to *B.* a way over his ground, or licence to go through it to the church, by this none but *B.* himſelf may go in it; but if one give me licence to go over his land with my plough, or to cut down a tree therein, and take it away: by this I may take what help is needful to do the ſame. So if it be to hunt and kill and carry away deer; not if it to be hunt and kill only. 12 *H.* 7. 25. 13 *H.* 7. 8. *Rep.* 146. By licence a man may practiſe phyſic and ſurgery in *London;* and do divers other things. *Stat.* 3 *H.* 8. *c.* 7, *&c.* Vide 15 *Abr.* tit. *Licence.*

Licence to alien in Mortmain. Alienations in *mortmain* to eccleſiaſtical perſons, *&c.* are reſtrained by ſeveral ſtatutes; but the King may grant licences to any perſon or bodies politic, *&c.* to *alien* or hold lands in *mortmain.* 27 Ed. 1. 7 & 8 W. 3. c. 37. See *Mortmain.*

Licence to ariſe, *(licentia ſurgendi)* Is a liberty or ſpace of time given by the court to a tenant to *ariſe* out of his bed, who is eſſoined *de malo lecti,* in a real action: and it is alſo the writ thereupon. *Bracton.* And the law in this caſe is, that the tenant may not ariſe or go out of his chamber, until he hath been viewed by knights thereto appointed, and hath a day aſſigned him to appear; the reaſon whereof is, that it may be known, whether he cauſed himſelf to be eſſoined deceitfully or not; and if the demandant can prove that he was ſeen abroad before the view or licence of the court, he ſhall be taken to be deceitfully eſſoined, and to have made default. *Bracton, lib.* 5. *Fleta, lib.* 6. *cap.* 10.

Licence to found a Church, Granted by the King. See *Church.*

Licence to go to Election of biſhops is by *Congé d'Eſlire* directed to the dean and chapter to elect the perſon named by the King, *&c.* *Reg. Writs* 294. *Stat.* 25 *H.* 8. *c.* 20.

Licence of the King to go beyond ſea may be revoked before the time expires, becauſe it concerns the public good. *Jenk. Cent.* See *Ne exeat Regnum.*

Licence of Marriage. Biſhops have power to grant *licences* for the marrying of perſons; and parſons marrying any perſon without publiſhing the bands of matrimony, or without *licence,* incur a forfeiture of 100*l.* *&c.* by ſtatute 7 *&* 8 *W.* 3. *cap.* 35. See *Marriage.*

Licence to erect a Park, Warren, &c. See *Park* and *Warren.*

Licentia Concordandi, Is that licence for which the *King's Silver* is paid on paſſing a fine, mentioned in the ſtatute 12 *Car.* 2. *c.* 12.

Licentia ſurgendi, Is the writ whereby the tenant eſſoined *de malo lecti,* obtaineth liberty to riſe. See *Licence* to *ariſe.*

Licentia Transfretandi, Is a writ or warrant directed to the keeper of the port of *Dover,* or other ſea-port, comanding them to let ſuch perſons paſs over ſea, who have obtained the King's licence thereunto. *Reg. Orig.* 193.

Lidford Law, Is a *proverbial* ſpeech, intending as much as to hang a man firſt, and judge him afterwards.

Liege, *(Ligeus)* Is uſed for *Liege Lord,* and ſometimes for *Liege Man: Liege Lord* is he that acknowledgeth no ſuperior; and *liege man* is he who oweth allegiance to his *liege lord.* The King's ſubjects are called *liege people,* becauſe they owe and are bound to pay allegiance to him. *Stat.* 8 *H.* 6. *c.* 10. 14 *H.* 8. *c.* 2. But in ancient times, private perſons, as lords of manors, *&c.* had their *lieges.* *Skene* ſaith, that this word is derived from the Ital. *Liga,* a bond or league; others derive it from *Litis,* which is a man wholly at the command of the Lord. *Blount.*

Lieges and **Liege-people,** *(Ligati)* The King's ſubjects, anciently ſo called, becauſe they owe and are bound to pay *allegiance* to him. *Stat.* 8 *Hen.* 6. *cap.* 10. 14 *Hen.* 8. *cap.* 2. and divers other ſtatutes. *Cowell.*

Lien, *(Fr.)* Is a word uſed in the law, of two ſignifications: *perſonal lien,* ſuch as bond, covenant, or contract; and *real lien,* a judgment, ſtatute, recognizance, which oblige and affect the land. *Terms de Ley.*

Lieu, Inſtead or in place of another thing. And when one thing doth come in the place of another, it ſhall be of the ſame nature as that was; as in caſe of an exchange, *&c.* 2 *Shep. Abr.* 359.

Lieu conus, In law proceedings, ſignifies a caſtle, manor, or other notorious place, well known and generally taken notice of by thoſe that dwell about it. 2 *Lil. Abr.* 641. A *venire facias,* for a jury to appear, may be from a *lieu conus:* And a fine or recovery of lands in a *lieu conus,* is good; but it is ſaid in a *ſci. fac.* to have execution of ſuch fine, the vill or pariſh muſt be named. 2 *Cro.* 574. 2 *Mod. Rep.* 48, 49.

Lieutenant, *(locum tenens)* Is the King's deputy, or he that exerciſes the King's or any other's place, and repreſents his perſon; as the *Lieutenant of Ireland.* Stat. 4 H. 4. c. 6. *and* 2 & 3 Ed. 6. c. 2. The *Lieutenant of the Ordnance.* 39 Eliz. cap. 7. And the *Lieutenant of the Tower,* an officer under the *conſtable, &c.* And the word *lieutenant* is uſed for a military officer, next in command to the captain.

Life, Union and co-operation of ſoul with body; enjoyment or poſſeſſion of terreſtrial exiſtence. *Johnſ.*

The life of every man is under the protection of the law. *Wood's Inſt.* 11. A leaſe made to a perſon during life, is determinable by a *civil death;* but if it be to hold during *natural life,* it will be otherwiſe. 2 *Rep.* 48.

Life Eſtates. Where perſons for whoſe lives eſtates are held, ſhall abſent themſelves for ſeven years, they ſhall be preſumed dead. 19 *Car.* 2. *c.* 6. Perſons for whoſe lives eſtates are held, on application to the Lord Chancellor to be produced. 6 *Ann. c.* 18. The tenant holding after the determination of the *life,* deemed a treſpaſſer. *Ibid.* *Poſthumous* children enabled to take in remainder, where the *life eſtate* is determined. 10 & 11 *W.* 3. *c.* 16. Eſtates *pur autre vie* ſhall be deviſable, and aſſets in the hands of the heir or executor. 29 *Car.* 2. *c.* 3.

Stat. 14 *Geo.* 2. *c.* 20. *ſect.* 9. Eſtates *pur autre vie* in caſe there be no ſpecial occupant thereof, of which no deviſe ſhall have been made according to 29 *Car.* 2. *c.* 3. or ſo much thereof as ſhall not have been ſo deviſed, ſhall be diſtributed in the ſame manner as the *perſonal eſtate* of the teſtator or inteſtate.

Life-Rent, A rent which a man receives for term of *life,* or for ſuſtentation of it. *Skene.*

Ligeance, *(ligeantia)* Is the true and faithful obedience of a ſubject to his ſovereign: And is alſo applied to the territory and dominion of the *liege lord;* as children born out of the *ligeance* of the King, *&c.* *Stat.* 25 *Ed.* 3. *Co. Lit.* 129.

Ligeancy, *(ligeantia)* Is ſuch a duty or fealty, as no man may owe or bear to more than one lord; and therefore it is uſed for that duty and allegiance, which every good ſubject oweth to his *liege* lord the King. It has been thus defined, Ligeantia *eſt vinculum arctius inter ſubditum & regem utroſque invicem connectens; hunc ad protectionem & juſtum regimen, illos ad tributa & debitam ſubjectionem.* As there is a mutual connection of dominion and fidelity between lords and tenants, ſo there is a higher and greater connection between the King and ſubject: for the ſubject oweth to the King his faithful obedience, and ought to prefer the ſervice of his Prince and country before the ſafety of his life; and the ſovereign is to protect and defend his ſubjects. *Forteſque.* See *Allegiance.*

Lighter-men, (Mentioned in ſtat. 22 & 23 *Car.* 2. *c.* 12. *Act for cleanſing, &c. the ſtreets of* London) Are thoſe that carry away, by water, dung and rubbiſh in *lighters,* from the city of *London.*

They are now generally employed in the carrying of goods to and from ſhips, *&c.* lying in the river *Thames.*

Light-houſe, A building erected near the ſea ſhore, wherein a fire, or large and ſtrong light, is kept in the night time, for direction to ſhips at ſea. A uſeful *light* to be placed in a *light-houſe* erected on the *Ediſtone,* by the maſter, wardens and aſſiſtants of *Trinity-houſe* of *Debtford-Strond;* and maſters of ſhips paſſing by the ſame, are to pay a certain tonnage duty, *&c.* *Stat.* 4 *Ann. c.* 20. 8 *Ann. c.* 17. The like act concerning the *light-houſe* built by *William Trench,* Eſq. on the iſland or rock called *Skerries,* near *Holyhead* in the county of *Angleſea.* 3 *Geo.* 2. *cap.* 36.

Lights, Stopping *lights* of a houſe is a nuſance; but ſtopping a proſpect is not, being only matter of delight, not of neceſſity: And a perſon may have either an *aſſiſe of nuſance* againſt the perſon erecting any ſuch nuſance, or he may ſtand on his own ground and abate it. 9 *Rep.* 58. 1 *Mod.* 54. For any nuſance erected or being on the ſoil of my neighbour, whereby I ſuſtain damage, I may maintain an action on the caſe. If a man has a vacant piece of ground, and builds thereupon a houſe, with good *lights,* which he ſells or lets to another; and after he builds upon ground contiguous, or lets the ſame to another perſon, who builds thereupon to the nuſance of the *lights* of the firſt houſe, the leſſee of the firſt houſe may have an action on the caſe againſt ſuch builder, *&c.* And though formerly they were to be *lights* of an ancient meſſuage, that is now altered. *Mod. Ca.* 116, 314.

Lights and Lamps, Houſholders in *Middleſex* and *Surrey* within the bills of mortality, at what times to ſet out lamps, 2 *W. & M. ſeſſ.* 2. *c.* 8. *ſect.* 15. None but *Britiſh* oil to be uſed for lamps in dwelling-houſes, under penalty of 40*s.* 8 *Ann. c.* 9. *ſect.* 18.

With reſpect to *London* and *Weſtminſter,* there are variety of new acts, for paving, lighting and cleanſing the ſtreets, *&c.* not neceſſary to enumerate.

The ſtatutes may eaſily be found by referring to the titles *Lights and Lamps,* and *Paving, &c.*

Shares in the lights how taxable. See 10 *Geo.* 3. *c.* 6. *ſect.* 54.

Lignagium, Signifies the right which a man hath to the cutting of fuel in *woods;* and ſometimes it is taken for a tribute or payment due for the ſame.

Lignum Vitæ, An apothecary's drug of great price. *Lignum vitæ* of the product of the *Britiſh* plantations in *America* may be imported free from all cuſtoms and impoſitions. *Stat.* 1 *Geo.* 2. *ſtat.* 2. *c.* 17. *ſect.* 5.

Lignamina, Timber fit for building. *Du Freſne.*

Ligula, A copy or tranſcript of a court-roll or deed mentioned by Sir *John Maynard* in his *Mem. in Scaccar.* 12 *Ed.* 1.

Liguritor, A flatterer. *Liguritores, mendaces, rapaces, Dei gravamen habeant.* Leg. Canut. 29. Mr. *Somner* is of opinion that it ſignifies a glutton, from the Saxon *licera, guloſus.* Cowell.

Limbs. The limbs as well as the life of a man are of ſuch high value, in the eſtimation of the law of *England,* that it pardons even *homicide,* if committed *ſe defendendo,* or in order to preſerve them. *Black. Com.* 1 *V.* 130.

Lime and **Lemon-Juice,** To what duties liable, ſee 4 & 5 *W. & M. c.* 5. *ſect.* 2.

Limitation, *(limitatio)* Is a certain time aſſigned by ſtatute, within which an *action* muſt be brought.

We ſhall here conſider,

I. *Its nature and origin.*
II. *The limitation of actions as divided into,* real, penal, *and* perſonal.
III. *The* time *when the right of action accrued, ſo as to be affected by the ſtatutes, and of the courts bound thereby.*
IV. *The* exceptions *in 21 Jac. 1. c. 16. what will ſave a* bar *thereof; and of the manner of* pleading.

I. *Of the nature and origin, of the limitation of actions.*

The time of limitation is two-fold; firſt, in writs, by divers acts of parliament; ſecondly, to make a title to any inheritance, and that is by the Common law. *Co. Lit.* 114, 115.

It ſeems, that by the Common law there was no ſtated or fixed time to bring actions; for tho' it be ſaid by *Bracton*, that *Omnes actiones in mundo infra certa tempora limitationem habent*; yet my Lord *Coke* ſays, that the limitation of actions was by force of divers acts of parliament; alſo, (ſays he) this general poſition of *Bracton*'s admitted of ſeveral exceptions. *Bract. lib.* 2. *fol.* 228. 2 *Inſt.* 95. *Co. Lit.* 115. 4 *Co.* 10, 11.

But by the ancient law there was a ſtated time for the heir of the tenant to claim after the death of his anceſtor, or elſe he loſt his land, according to the feudal text, *Præterea ſi quis infeudatus major quatuordecim annis ſua incuria, vel negligentia per ann. & diem ſteterit, quod feudi inveſtituram a proprio domino non peterit, tranſacto hoc ſpatio, feudum amittat & ad dominum redeat.* Spelm. Gloſſ. 32.

The fixing upon this period of a year and a day, upon ſeveral other occaſions, ſeems to have been deduced from this ancient rule, and on this occaſion was pitched upon, *becauſe the ſervices appointed ſeem to be annually computed*; therefore the feud was ordered to be taken up *within ſuch time as ſuch annual ſervices became due*, or elſe it was loſt and returned to the lord; and the ſame time that was appointed to the tenant to claim from the lord, was alſo appointed to make his claim upon any diſſeiſor; and if no ſuch claim was made, the diſſeiſor dying ſeiſed, *caſt the right of poſſeſſion upon the heir*; and this was to keep the ſame uniformity in point of time thro' the law, as alſo that the lord might be at a certainty whom he might take for his tenant, and admit upon every deſcent; and ſince the heir of the tenant anciently loſt the whole land, in caſe he did not take it up within time, it was fit the tenant ſhould loſe the right and poſſeſſion, in caſe he did not claim within the ſame time upon the diſſeiſor, that the heir of the diſſeiſor might be in peace, in caſe the perſon that had right did not make his claim upon him, and that from thenceforth the lord might receive him into his feud; and as upon the ancient plan of feudal conſtitution, if the heir did not take up the feud within a year and a day, a deſertion and dereliction was preſumed; ſo alſo if the diſſeiſee did not claim within the ſame time, the right of poſſeſſion was relinquiſhed. *Spelm Gloſſ. annus & dies* 32, 33.

Before the 32 *Hen.* 8. *c.* 2. certain remarkable periods were fixed upon, within which the titles whereon men deſigned to be relieved muſt have accrued; thus in the time of *Hen.* 3. by the ſtatute of *Merton, cap.* 8. at which time the limitation in a writ of right was from the time of King *Henry* 1. by that ſtatute it is reduced to the time of King *Henry* 2. and for aſſiſes of *mort d'anceſtor* they were thereby reduced from the laſt return of King *John* out of *Ireland*, which was 12 *Johannis*; and for aſſiſes of *novel diſſeiſin, a prima transfretatione Regis in Normanniam*, which was 5 *Hen.* 3. and which before that had been *poſt ultimum redditum Henrici* 3. *de Britannia*; and this limitation was alſo afterwards by the ſtatutes *Weſtm.* 1. *cap.* 39. and *Weſtm.* 2. *cap.* 46. reduced to a narrower compaſs, the writ of right being limited to the firſt coronation of *Rich.* 1. But for theſe ancient limitations, ſee *Co. Lit.* 14. *b.* 15. *a.* 2 *Inſt.* 94, 95. 2 *Rol. Abr.* 111. *Hale's Hiſt. of the Law* 122. 2 *Keb.* 45.

II. *Of the limitation of actions, as divided into,* real, penal, *and* perſonal.

1. *In real actions:*

By 32 *H.* 8. *c.* 2. it is enacted, "That no perſon ſhall from thenceforth ſue, have or maintain any *writ of right*, or make any *preſcription, title* or *claim* to or for any manors, lands, tenements, rents, annuities, commons, penſions, portions, corodies, or other hereditaments, of the poſſeſſion of his or their anceſtor or predeceſſor, and declare and alledge any further ſeiſin or poſſeſſion of his anceſtor or predeceſſor, but only of the ſeiſin or poſſeſſion of his anceſtor or predeceſſor, which hath been or now is, or ſhall be ſeiſed of the ſaid manors, lands, tenements, rents, annuities, commons, penſions, portions, corodies, or other hereditaments, *within threeſcore years next before the* teſte *of the ſame writ*, or *next before the ſaid preſcription, title or claim* ſo hereafter to be ſued, commenced, brought, made or had.

And it is further enacted by the ſaid ſtatute, *par.* 2. "That no manner of perſon ſhall ſue, have or maintain any *aſſiſe* of *mort d'anceſtor, coſenage, ayle, writ of entry* upon *diſſeiſin*, done to any of his anceſtors or predeceſſors, or any manors, lands, tenements or other hereditaments, of any further ſeiſin or poſſeſſion of his or their anceſtor or predeceſſor, but only of the ſeiſin or poſſeſſion of his or their anceſtor or predeceſſor, which was or hereafter ſhall be ſeiſed of the ſame manors, lands, tenements or other hereditaments, *within fifty years next before* the *teſte* of the original of the ſame writ hereafter to be brought.

It is further enacted, *par.* 3. "That no perſon ſhall ſue, have or maintain any *action* for any manors, lands, tenements, or other hereditaments, of or upon his or their own ſeiſin or poſſeſſion therein, above *thirty years next before* the *teſte* of the original of the ſame writ hereafter to be brought.

And further, *par.* 4. "That no perſon ſhall hereafter make any *avowry* or *cognizance* for any rent, ſuit or ſervice, and allege any ſeiſin of any rent, ſuit or ſervice, in the ſame avowry or cognizance in the poſſeſſion of any other, whoſe eſtate he ſhall pretend or claim to have, *above fifty years next before the making of the ſaid avowry or cognizance.*

And it is further enacted by the ſaid ſtatute, *par.* 5. "That all *formedons* in *reverter, formedons* in *remainder*, and *ſcire facias* upon *fines* of any manors, lands, tenements, or other hereditaments, at any time hereafter to be ſued, ſhall be ſued and taken *within fifty years next after* the title and cauſe of action fallen, and at no time after the fifty years paſt.

Note; This ſtatute hath the uſual ſaving, for infants, feme coverts, perſons in priſons and beyond ſea.

In the conſtruction of this ſtatute it hath been holden,

That in a *formedon* in reverter or remainder, or on a *ſcire facias*, on a fine of ſuch nature, the demandant need not mention the ſtatute in order to make out his title, but the tenant, if he would take advantage of it, *muſt plead it.* Dyer 315. *b. pl.* 101. So in an avowry for rent. *Moor* 31. *pl.* 102. 1 *Rol. Rep.* 50.

It has been held, that this ſtatute being in reſtraint of the Common law, ought to be conſtrued ſtrictly; that therefore it does not extend to a *formedon in deſcender, ceſſavit* nor *reſcous.* 4 Co. 8. 1 And. 16. Lit. Rep. 342.

To a bill in Chancery, to be relieved touching a rent-charge upon lands by a will, the defendant pleaded the ſtatute of limitations, and that there had been no demand or payment in forty years; and it was held, that this ſtatute concerns only *cuſtomary rents* between landlord and tenant, and not any rent that commences by *grant*, whereof the commencement may be ſhewn. 2 *Vern.* 235. *Collins* v. *Goadall.*

The ſtatute does not extend to the *ſervices* of *eſcuage homage* and *fealty*, for a man may live above the time limited by the act; neither doth it extend to any other *ſervice* which by common poſſibility may not happen or become due within *ſixty years*, as to cover the hall of the lord, or to attend the lord in the war, *&c.* *Co Lit.* 115. *a.* 2 *Inſt.* 95. 4 *Co.* 10. *Bevil*'s caſe. 8 *Co.* 65. 3 *Lev.* 21.

And where the tenure is by homage, fealty and eſcuage uncertain, and by ſuit of court or rent, or any other annual ſervice, the ſeiſin of the ſuit or rent, or any other annual ſervice, is a good ſeiſin of the homage, fealty or eſcuage, or other accidental ſervices, as wardſhip, heriot ſervice, or the like. 2 *Inſt.* 96. 4 *Co.* 8. *b.* *Winch.* 32. *Hutt.* 50. 2 *Rol. Rep.* 392.

By the 1 *Mar. cap.* 5. it is enacted, " That the 32 *Hen.* 8. *c.* 2. ſhall not extend to any *writ* of *right* of *advowſon*, *quare impedit*, or *aſſiſe* of *darrein preſentment*, nor *jus patronatus*, nor to any *writ* of *right* of *ward*, *writ* of *raviſhment of ward* for the wardſhip of the body, or for the wardſhip of any caſtles, honours, manors, lands, tenements or hereditaments holden by knight-ſervice, but that ſuch ſuits may be brought as before the making of the ſaid act.

By the 21 *Jac.* 1. *cap.* 16. for quieting men's eſtates, and avoiding of ſuits, it is enacted, " That all writs of *formedon* in deſcender, *formedon* in remainder, and *formedon* in reverter, at any time hereafter to be ſued or brought of, or for, any manors, lands, tenements or hereditaments, whereunto any perſon or perſons now hath or have any title, or cauſe to have or purſue any ſuch writ, ſhall be ſued and taken *within twenty years next after the end of this preſent ſeſſion of parliament*; and after the ſaid twenty years expired, no perſon or perſons, or any of their heirs, ſhall have or maintain any ſuch writ of or for any of the ſaid manors, lands, tenements or hereditaments; and that all writs of *formedon* in deſcender, *formedon* in remainder, *formedon* in reverter, of any manors, lands, tenements or other hereditaments whatſoever, *at any time hereafter* to be ſued or brought by occaſion or means of any title, or cauſe hereafter happening, ſhall be ſued, and taken within *twenty years* next after the title and cauſe of action firſt deſcended or fallen, and at no time after the ſaid *twenty years*; and that no perſon or perſons that now hath any right, or title of entry, into any manors, lands, tenements or hereditaments, now held from him or them, ſhall thereinto enter, but within *twenty years* next after the end of this preſent ſeſſion of parliament, or within *twenty years* next after any other title of entry accrued; and that no perſon or perſons ſhall at any time hereafter make any *entry* into any lands, tenements or hereditaments, but within *twenty years* next after his or their right or title, which ſhall hereafter firſt deſcend or accrue to the ſame; and in default thereof ſuch perſons ſo not entering, and their heirs, ſhall be utterly excluded and diſabled from ſuch entry after to be made; any former law, *&c.*

Provided, That if any perſon or perſons, that is or ſhall be intitled to ſuch writ or writs, or that hath or ſhall have ſuch right or title of entry, be or ſhall be, at the time of the ſaid right or title firſt deſcended, accrued, come or fallen, within the age of one and twenty years, feme covert, *non compos mentis*, impriſoned, or beyond the ſeas, that then ſuch perſon and perſons, and his and their heir and heirs, ſhall or may, notwithſtanding the ſaid twenty years be expired, bring his action, or make his entry, as he might have done before this act; ſo as ſuch perſon and perſons, or his or their heir and heirs, ſhall *within ten years next after* his and their full age, diſcoverture, coming of ſound mind, enlargement out of priſon, or coming into this realm, or death, take benefit of and ſue forth the ſame, and at no time after the ſaid ten years.

In the conſtruction of this ſtatute it hath been holden,

That the poſſeſſion of one joint-tenant is the poſſeſſion of the other, ſo far as to prevent this ſtatute. 1 *Salk.* 285.

That a claim of entry to prevent the ſtatute of limitations muſt be upon the land, unleſs there be ſome ſpecial reaſon to the contrary. 1 *Salk.* 285.

That if a perſon be barred of his *formedon*, he is not thereby hindered to purſue his right of entry which afterwards accrues to him, no more than a perſon, who has ſeveral remedies, and diſcharges one of them, is excluded thereby from purſuing the others. 1 *Lutw.* 781. *Hunt* v. *Burne.* 1 *Salk.* 339. 2 *Salk.* 422. S. C.

If *A.* has had poſſeſſion of lands for twenty years without interruption, and then *B.* gets poſſeſſion, upon which *A.* is put to his ejectment, though *A.* is plaintiff, yet the poſſeſſion of twenty years ſhall be a good title in him, as if he had ſtill been in poſſeſſion; becauſe a poſſeſſion for twenty years is like a deſcent which tolls entry, and gives a right of poſſeſſion, which is ſufficient to maintain an ejectment. 1 *Salk.* 421. ſaid to have been twice ſo ruled by *Holt*.

That if one tenant in common receives the whole profits for twenty years, or more, yet this does not bar his companion; for the ſtatute of limitations never runs againſt a man, but where he is actually ouſted or diſſeiſed. 1 *Salk.* 423.

It has been ruled, that copyholds are within the ſtatute of limitations, becauſe it is an act made for the preſervation of the public quiet, and no ways tending to the prejudice of the lord or tenant. *Moor* 410.

But eccleſiaſtical perſons are not bound by any of the ſtatutes of limitations, becauſe it would be a ſide-wind to evade the ſtatutes made to prohibit their alienations. *Comp. Incumb.* 429.

2. *In penal actions.*

By the 31 *Eliz. cap.* 5. *par.* 5. it is enacted, " That all actions, ſuits, bills, indictments or informations, which ſhall be brought for any forfeiture upon any ſtatute penal, made or to be made, whereby the forfeiture is or ſhall be limited to the Queen, *&c.* ſhall be brought within *two years after the offence*; and that all actions, ſuits, bills or informations, which ſhall be brought for any forfeiture upon any penal ſtatute, made or to be made, *except the ſtatutes of tillage*, the benefit and ſuit whereof is or ſhall be by the ſaid ſtatute limited to the Queen, her heirs or ſucceſſors, and to any other that ſhall proſecute in that behalf, ſhall be brought by any perſon that may lawfully ſue for the ſame *within one year next after the offence committed*; and in default of ſuch purſuit, that then the ſame ſhall be brought for the Queen's Majeſty, her heirs or ſucceſſors, any time within the two years after that year ended. Where a ſhorter time is limited by any penal ſtatute, the proſecution muſt be that time."

Alſo vide 18 *El. c.* 5. and 21 *Jac.* 1. *c.* 4. the former requiring a *memorandum* of the day of exhibiting an information, the latter an oath from the informer.

In the conſtruction of theſe ſtatutes it hath been holden, that the 21 *Jac.* 1. *cap.* 4. does not extend to any offence created ſince that ſtatute; ſo that proſecutions on ſubſequent penal ſtatutes are not reſtrained thereby, but that ſtatute is to them as it were repealed *pro tanto.* 1 Salk. 372—3. 5 Mod. 425.

That if an offence prohibited by any penal ſtatute be alſo an offence at Common law, the proſecution of it as of an offence at Common law, is no way reſtrained by any of theſe ſtatutes. *Hob.* 270. 4 *Mod.* 144.

That if an information *tam quam* be brought after the year on a penal ſtatute, which gives one moiety to the informer, and the other to the King, it is naught only as to the informer, but good for the King. *Cro. Car.* 331. *Cro. Jac.* 366. and *vide Daliſ.* 60.

That if a ſuit on a penal ſtatute be brought after the limited time, the defendant need not plead the ſtatute, but may take advantage of it on the general iſſue. 1 *Show.* 353.

That the *party grieved* is not within the reſtraint of theſe ſtatutes, but may ſue in the ſame manner as before. *Cro Eliz.* 645. *Noy* 71. 3 *Leon.* 237.

It ſeems doubtful, whether a ſuit by a common informer on a penal ſtatute, which firſt gives an action to the party grieved, and in his default, after a certain time, to any one who will ſue, be within the reſtraint of theſe ſtatutes. 1 *Show.* 353, 354.

It has been held by three judges, that ſuing out a *latitat* within the year was a ſufficient commencement of the ſuit to ſave the limitation of time on a penal ſtatute, becauſe the *latitat* is the original of *B. R.* and may be continued on record as an original. But *Holt* held otherwiſe, for the action being for a penalty given by a ſtatute, the plaintiff might have brought an action of debt by original in *B. R.* becauſe the ſtatute gives the action; and he held, that there was a difference between a civil action, and an action given by ſtatute; for in the firſt caſe, the ſuing out a *latitat* within the time, and continuing it afterwards, will be ſufficient; but in the other caſe, if the party proceeds by bill, he ought to file his bill within time, that it may appear ſo to be upon the record itſelf. *Carth.* 232. *Culliford* v. *Blandford.* 1 *Show. Rep.* 353. S. C. *Sed qu.* If the plaintiff proceeds upon that writ, tho' he does not declare, 'till after the expiration of the year, whether it does not avoid the ſtatute, and whether it is not now every day's practice, as nothing is more common, than to file a bill, long after the writ ſued out. The court of *B. R.* lately permitted a bill to be filed, to amend the roll by in a *qui tam* action, after verdict. *Gardner qui tam* v. *Brown.*

3. *In perſonal actions.*

By the 21 *Jac.* 1. *cap.* 16. it is enacted, That all actions on the caſe for *words* ſhall be commenced and ſued *within two years* NEXT AFTER *the words ſpoken*, and not after.

In the conſtruction of this branch of the ſtatute it hath been holden,

Than an action of *ſcandalum magnatum* is not within the ſtatute. *Lit. Rep.* 342. 3 *Keb.* 645.

That it extends not to actions *for ſlander of title*, for that is not properly ſlander, but a cauſe of damage, and the ſlander intended by the ſtatute is to the *perſon.* *Cro. Car.* 141. *Law* v. *Harwood*, adjudged.

That if the words are of themſelves actionable, without the neceſſity of alledging ſpecial damages, altho' a loſs enſues, yet in this caſe the ſtatute of limitations is a good bar; but if the words at the time of the ſpeaking of them *are not actionable* but a ſubſequent loſs enſues, which intitles the plaintiff to his action, in ſuch caſe the ſtatute is no bar. 1 *Sid.* 95. *Saunders* v. *Edwards.* *Raym.* 61. S. C. and ſee 3 *Mod.* 111. S. C. cited.

That if an action for words be founded upon an indictment, or other matter of record, it is not within the ſtatutes, but ſuch action may be brought at any time. 1 *Sid* 95. But if in caſe, *qu.* if it ſhould not be in ſix years?

By the ſame ſtat. it is enacted, that all actions of *treſpaſs*, of *aſſault*, *battery*, *wounding*, *impriſonment*, or any of them, ſhall be commenced and ſued *within four years* NEXT AFTER the cauſe of ſuch actions or ſuits, and not after.

It ſeems, that if a man brings treſpaſs for beating his ſervant, *per quod ſervitium amiſit*, this is not ſuch an action as is within this branch of the ſtatute, being founded on the *ſpecial damage.* 1 Salk. 206. 5 Mod. 74.

If to an action of aſſault, battery and impriſonment, the defendant pleads, as to the aſſault and impriſonment, the ſtatute of limitations, without anſwering particularly to the battery otherwiſe than by uſing the words *tranſgreſſio prædicta*, it is ſufficient, for theſe words are an anſwer to the whole. 1 *Lev* 31.

By the ſame ſtat. it is enacted, that all actions of treſpaſs *quare clauſum fregit*, all actions of treſpaſs, detinue, action *ſur trover* and replevin for taking away of goods and chattels, all actions of account, other than ſuch accounts as concern the trade of merchandize between merchant and merchant, their factors or ſervants, all actions on the caſe, (other than for ſlander) all actions of debt grounded upon any lending or contract without ſpecialty, all actions of debt for arrearages of rent *within ſix years*, NEXT AFTER *the cauſe of action.*

Proviſion is made for feme-coverts, perſons that are *non compos*, impriſoned, or beyond ſea.

It hath been adjudged, that an action of debt on the 2 & 3 *Ed.* 6. *c.* 13. for not ſetting out tithes, is not within the ſtatute, the action being grounded on an act of parliament, which is the higheſt record. *Cro Car.* 513. *Talory* v. *Jackſon.* 1 *Saund.* 38. 2 *Saund.* 66. 1 *Sid.* 305, 415. 1 *Keb.* 95. 2 *Keb.* 462.

So it hath been adjudged, that an action of debt for rent reſerved on a leaſe by indenture is out of the ſtatute, the leaſe by indenture being equal to a ſpecialty. *Hutt.* 109. *Freeman* v. *Stacy.* 1 *Saund.* 38. cited.

Alſo it hath been adjudged, that an action of debt for an eſcape is not within the ſtatute, not only becauſe it is founded *in maleficio*, and ariſes on *a contract in law*, which is different from thoſe actions of debt on a lending or contract mentioned in the ſtatute, but alſo becauſe it is grounded on the 1 *Rich.* 2. *cap.* 12. which firſt gave an action of debt for an eſcape, there being no remedy for creditors before but by action on the caſe. 1 *Saund.* 37. *Jones* v. *Pope.* 1 *Lev.* 191. S. C. adjudged. 2 *Keb.* 903. S. C. and 1 *Sid.* 305. S. C.

So it hath been adjudged, that this ſtatute cannot be pleaded to an action of debt brought againſt a ſheriff for money by him levied on a *fieri facias*, becauſe the action is founded *in maleficio*, as alſo upon the judgment on which the *fieri facias* iſſued, which is a matter of record. 1 *Mod.* 245. *Cockran* v. *Welby* 212. and 2 *Show. Rep.* 79. S. C.

It hath been adjudged, that an action of debt on an award under the hand and ſeal of the arbitrators, tho' the *ſubmiſſion* was by parol, is not within the ſtatute. 2 *Saund.* 64. *Sid.* 415. 1 *Lev.* 273. 2 *Keb.* 462, 496, 533. S. C.

An action of debt for a fine of a copyholder is not within the ſtatute. 1 *Keb.* 536. 1 *Lev.* 273.

If a man recovers a judgment or ſentence in *France* for money due to him, the debt muſt be conſidered here only as a debt by ſimple contract, and the ſtatute of limitations will run upon it. 2 *Vern.* 540. *per curiam.*

If the plaintiff be in *England* at the time the cauſe of action accrues, the time of limitation begins to run, ſo that if he, or (if he dies abroad) his repreſentative does not ſue within *ſix years*, he is barred by the ſtatute. *Wilſ. par.* 1. 134. See 4 & 5 *Ann. c.* 16.

It ſeems that to an *aſſumpſit* brought by the aſſignees of a bankrupt, for a debt due to the bankrupt, this ſtatute is a good bar; for tho' the aſſignment is by force of an act of parliament, yet the aſſignees ſtand only in the place of the bankrupt, and can have no other right nor remedy than he had. 2 *Lev.* 166. 3 *Keb.* 645. *Comb.* 70.

It ſeems clearly agreed, that tho' the ſtatutes of limitation bind the courts of equity, that yet a *truſt* is not within theſe ſtatutes. *March* 129. 2 *Salk.* 124.

A *charity* is not barred by length of time, nor within the ſtatute of limitations. 2 *Vern.* 399.

So it hath been held, that a *legacy* is not within the ſtatute of limitations. 1 *Vern.* 256.

It ſeems to be the doctrine of courts of equity, that *mortgages* are not within the ſtatute of limitations; yet where a man comes in at an old hand, it hath been ſometimes decreed, that the poſſeſſor ſhould account no further than for the profits made in his own time, to diſcourage the ſtirring in ſuch dormant titles; alſo the courts have allowed length of time to be pleaded in bar, where the mortgaged eſtate hath deſcended *as a fee* without entry or claim from the mortgagor, and where the poſſeſſor would be intangled in a long account; and in theſe caſes the ſtatute of limitations has been mentioned as a proper *direction to go by.* 1 Chan. Ca. 102. See *Mortgage.*

III. *Of the* time *when the right of action accrued, ſo as to be affected by the ſtatutes, and of the courts bound thereby.*

This ſtatute cannot be a bar *unleſs the ſix years are expired, after there hath been complete cauſe of action*; as if a man promiſe to pay 10 *l.* to *J. S.* when he came from *Rome*, or when he marries, and ten years after *J. S.* marries, or comes from *Rome*, the right of action accrues from the happening of the contingency, from which time the ſtatute ſhall be a bar, and not from the time of the promiſe. *Godb.* 437.

So in an action on the caſe wherein the plaintiff declared, that in conſideration that he would forbear to ſue the defendant, for ſome ſheep, killed by the defendant's dog, the defendant promiſed to make him ſatisfaction upon requeſt, and that ſuch a time he requeſted, &c. and it was held, that *the right of action accrued from the requeſt*, not from the time of killing the ſheep; that therefore the defendant could not plead the ſtatute of limitations, the requeſt being within ſix years, tho' the killing the ſheep, and promiſe of ſatisfaction was long before. *Godb.* 437. *Shutford* v. *Boroughs* adjudged. See 1 *Lev.* 48. *Webb* v. *Martin.* 1 *Sid.* 66. 1 *Keb.* 177. S. C. But if ſix years had elapſed after requeſt made, the defendant might have pleaded *Non accrevit infra ſex annos.*

So if a note or bill of exchange is given, payable at a certain time after date, the cauſe of action does not accrue, 'till after the expiration of the time ſpecified, and if an action is brought within ſix years after that time, the ſtatute is not a bar. But if the ſuit is not commenced within ſix years after that time, the defendant may plead that *the cauſe of action did not accrue* within ſix years, but he muſt not plead that he did *not promiſe* within ſix years, *i. e.* if he is the perſon, firſt liable to the payment, becauſe the *promiſe* is made at the time of making the note, &c. It may be otherwiſe in the caſe of an *indorſer*, who is not liable 'till default made by the *drawer* of the note, or *accepter* of the bill, but in his caſe, *Non accrevit infra ſex annos* is a ſafe and good plea.

For ſimilar caſes, vide 2 *Salk.* 422. 1 *Vent.* 191. 3 *Keb.* 613. *Cro. Car.* 245, 6. 333. 1 *Jon.* 252. 3 *Mod.* 110, &c. *Allen* 62. 2 *Salk.* 420. *Comb.* 26.

It is clearly agreed, that the ſtatute of limitations is a good plea in a court of equity. *March* 129. 1 *Salk.* 424.

But it ſeems to be agreed, that the ſtatute of limitations is no plea in the court of Admiralty, or Spiritual court, where they proceed according to their law, and in a matter in which they have conuzance. 6 *Mod.* 25, 26. 2 *Salk.* 424. 3 *Keb.* 366, 392.

Therefore it hath been agreed, that for a ſuit upon a contract *ſuper altum mare*, no prohibition ſhould go upon their refuſal of a plea of the ſtatute of limitations. 6 *Mod.* 26.

So it has been held not to be pleadable to a proceeding in the Spiritual court, *pro violenta manuum injectione in clericum*, becauſe the proceeding is *pro reformatione morum*, not for damages. 2 *Salk.* 424.

It hath been doubted, whether to a ſuit in the Admiralty for mariners wages, this ſtatute is a good plea; becauſe it is ſaid, that this is a matter properly determinable at Common law; and the allowing the Admiralty juriſdiction therein, only a matter of indulgence. 2 *Salk.* 424. 6 *Mod.* 25.

But this is now ſettled by the 4 & 5 *Ann. cap.* 16. by which it is enacted, That all ſuits and actions in the court of Admiralty for ſeamens wages, ſhall be commenced and ſued *within ſix years* next after the cauſe of ſuch ſuits or actions ſhall accrue, and not after.

IV. *The exceptions in* 21 *Jac.* 1. *c.* 16—*What will ſave a bar thereof.—And of the manner of pleading.*

As to this it hath been adjudged, that the laſt proviſo in the ſtatute not only extends to thoſe actions therein enumerated, but alſo to an *aſſumpſit*, tho' not mentioned, and to all other *actions on the caſe* being of equal miſchief, and plainly within the intention of the legiſlature. *Cro. Car.* 245, 333. 2 *Saund* 120. 2 *Mod.* 71. 1 *Sid.* 455.

1. *Exception in relation to infants.*

As to this it hath been holden, that the ſtatute being general, infants had been included, had they not been particularly excepted. 1 *Lev.* 31.

It hath been holden, that if an infant, during his infancy, by his guardian bring an action, the defendant cannot plead the ſtatute of limitations; altho' the cauſe of action accrued ſix years before, and the words of the ſtatute are, that after his coming of age, &c. 2 *Saund.* 121.

It hath been held in Chancery, that if one receives the profits of an infant's eſtate, and ſix years after his coming of age, he brings a bill for an account, the ſtatute of limitations is as much a bar to ſuch a ſuit, as if he had brought an action of account at Common law; for this receipt of the profits of an infant's eſtate is not ſuch a truſt as, being a creature of the court of equity, the ſtatute ſhall be no bar to; for he might have his action of *account* againſt him *at law*, and therefore no neceſſity to come into this court for the account; for the reaſon why bills for an account are brought here, is from the nature of the demand, and that they may have a diſcovery of books, papers, and the party's oath, for the more eaſy taking of the account, which cannot be ſo well done at law; but if the infant lies by for ſix years after he comes of age, as he is barred of his action of account at law, ſo ſhall he be of his remedy in this court. *Abr. Eq.* 304. *Lockey* v. *Lockey.*

2. *Exception in relation to merchants accounts.*

As to this exception, it hath been a matter of much controverſy, whether it extends to all actions and accounts relating to merchants and merchandize, or to actions of account open and current only; the words of the ſtatute being, That all actions of treſpaſs, &c. all actions of account and upon the caſe, other than ſuch actions as concern the trade of merchants; ſo that by the words, *other than ſuch actions*, not being ſaid *actions of account*, it has been inſiſted that all actions concerning merchants are excepted. 1 *Jon.* 401. 2 *Saund.* 124, 125. 1 *Lev.* 287, 298. 2 *Keb.* 622. 1 *Vent.* 90. 1 *Mod.* 270. 2 *Mod.* 312. 2 *Vern.* 456.

But it is now ſettled, that accounts *open and current* only are within the ſtatute; that therefore if an account be ſtated and ſettled between merchant and merchant, and *a ſum certain agreed to be due to one of them*, if in ſuch caſe he to whom the money is due, does not bring his action within the limited time, *he is barred* by the ſtatute. *Vide* the authorities *ſupra.*

So it hath been adjudged, that by the exception in the ſtatute concerning merchants accounts, no other actions are excepted but *actions of account.* Carth. 226.

Alſo it hath been adjudged, that bills of exchange for value received, are not ſuch matters of account as are intended by the exception in the ſtatute of limitations, *Carth.* 226.

An open current account, between tradeſmen or others, is not within the ſtatute, ſuppoſing the laſt article of the debt in the account, was contracted within ſix years, otherwiſe, in ſuch caſe, the ſtatute is a bar.

3. *Exception in relation to perſons beyond ſea.*

It ſeems to have been agreed, that the exception as to perſons being beyond ſea, *extends only where the creditors or plaintiffs are ſo abſent*, and not to debtors or defendants, becauſe the firſt only are mentioned in the ſtatute; and this conſtruction has the rather prevailed, becauſe it was reputed the creditor's folly, that he did not file an original, and outlaw the debtor, which would have prevented the bar of the ſtatute. *Cro. Car.* 245, 333. 1 *Jon.* 252. 1 *Lev.* 143. 3 *Mod.* 311. 2 *Lutw.* 950. 1 *Salk.* 420.

But as the creditors being beyond ſea is ſaved by the 21 *Jac.* 1. *c.* 16. ſo now by the 4 & 5 *Ann. cap.* 16. it is enacted, That if any perſon or perſons, againſt whom there is or ſhall be any cauſe of ſuit or action for ſeamens wages, or againſt whom there ſhall be any cauſe of action of treſpaſs, detinue, action ſur trover or replevin, for taking away goods or chattels, or of action of account, or upon the caſe, or of debt grounded upon any lending or contract without ſpecialty, of debt for arrearages of rent, or aſſault, menace, battery, wounding and impriſonment, or any of them, be, or ſhall be, at the time of any ſuch cauſe of ſuit or action given or accrued, fallen or come beyond the ſeas; that then ſuch perſon or perſons, who is or ſhall be intitled to any ſuch ſuit or action, ſhall be at liberty to bring the ſaid actions againſt ſuch perſon and perſons after their return from beyond the ſeas, *within ſuch times as are limited for the bringing of the ſaid actions by the* 21 Jac. 1. c. 16.

4. *Where an executor or adminiſtrator is to ſue or be ſued.*

A. received money belonging to a perſon who before died inteſtate, and to whom *B.* after ſuch receipt took out adminiſtration, and brought an action againſt *A.* to which he pleaded the ſtatute of limitations, the plaintiff replied, and ſhewed that adminiſtration was committed to him ſuch a year, which was *infra ſex annos*; though ſix years were expired ſince the receipt of the money, yet not being ſo ſince the adminiſtration committed, the action not barred by the ſtatute. 1 *Salk.* 421. *Currey* v. *Stephenſon. Skin.* 555. 4 *Mod.* 376. *Latch.* 335. S. C.

It is ſaid in general, that where one brings an action before the expiration of ſix years, and dies before judgment, the ſix years being then expired, this ſhall not prevent his executor. 2 *Salk.* 424-5.

But if an executor ſues upon a promiſſory note to the teſtator, and dies before judgment, and ſix years from the original cauſe of action are actually expired, and the executor brings a new action in four years after the firſt executor's death, the ſtatute of limitations ſhall be a bar to ſuch action; for though the debt does not become irrecoverable, by an abatement of the action after the ſix years elapſed by the plaintiff's death; yet the executor ſhould make a recent proſecution, to which the clauſe in the ſtatute, that provides a year after the reverſal of a judgment, *&c.* may be a good direction, or ſhew that he came as early as he could, becauſe there was a conteſt about the will, or right of adminiſtration; for the ſtatute was made for the benefit of the defendants, to free them from actions when their witneſſes were dead, or their vouchers loſt. *Trin.* 1 *Geo.* 2. *Wilcox* v. *Huggins.*

If there be no executor againſt whom the plaintiff may bring his action, he ſhall not be prejudiced by the ſtatute of limitations. nor ſhall any laches in ſuch caſe be imputed to him. 2 *Vern.* 695.

5. *Where no juriſdiction to ſue in, or where hindred by ſome authority.*

It ſeems agreed, that there being no courts, or the courts of juſtice being ſhut, is no plea to avoid the bar of the ſtatute of limitations; as where after the civil war an *aſſumpſit* was brought, that the defendant pleaded the ſtatute of limitations; to which the plaintiff replied, that a civil war had broke out, and that the government was uſurped by rebels. which hindered the courſe of juſtice, and by which the courts were ſhut up, and that within ſix years after the war ended he commenced his action; and this replication was held ill, *for the ſtatute being general, muſt work upon all caſes which are not exempted by the exception.* 1 Keb. 157. 1 Lev. 31. Carth. 157. 2 Salk. 420.

It is clearly agreed, that the defendant's being a member of parliament, and intitled to privilege, will not ſave a bar of the ſtatute; becauſe the plaintiff might have filed an original without being guilty of any breach of privilege. 1 *Lev.* 31, 111. *Carth.* 136-7.

It is ſaid, that if a man ſues in chancery, and, pending the ſuit there, the ſtatute of limitations attaches on his demand, and his bill is afterwards diſmiſſed, the matter being properly determinable at Common law; in ſuch caſe the court will preſerve the plaintiff's right, and will not ſuffer the ſtatute to be pleaded in bar to his demand. 1 *Vern.* 73, 74.

If the ſtatute of limitations be pleaded to an action, the plaintiff to ſave his action may reply, that he had commenced the ſuit in an inferior court within the time of limitation, and that it was removed to *Weſtminſter* by *habeas corpus*; and this ſhall be allowed by a favourable conſtruction of the ſtatute of limitations; although in ſtrictneſs the ſuit is commenced in the court above, when it is removed by *habeas corpus.* 1 Sid. 228. 3 Keb. 263. Bevin *v.* Chapman. 1 Lev. 143. *S. C. Alſo vide* 2 *Salk.* 424.

6. *Where the ſuing out a writ will ſave a bar of the ſtatute.*

It is clearly agreed, that the ſuing out an original will ſave a bar of the ſtatute of limitations, and that thereupon the defendant may be outlawed; and that if beyond ſea at the time of the outlawry, though it ſhall be reverſed after his return, yet the plaintiff may bring another original by journies accounts, and thereby take advantage of his firſt writ. *Carth.* 136. 1 *Salk.* 420. 3 *Mod.* 311.

Alſo it is agreed, that the ſuing out a *latitat* is a ſufficient commencement of a ſuit, to ſave the limitation of time, becauſe the *latitat* is the original of *B. R.* and may be continued on record as an original writ. 1 *Sid.* 53, 60. *Carth.* 233. 1 *Salk.* 421.

Alſo it hath been ruled, that to a plea of the ſtatute of limitations the plaintiff may reply, that he ſued out a *latitat*, and continued it down by a *vicecomes non miſit breve*, without concluding *prout patet per recordum*; for the *latitat* roll is only for the private uſe of the court, and no record. 2 *Keb.* 46. *Bottle* v. *Wood.*

The ſame is law, as to a *bill* of *Middleſex.*

But though the ſuing out an original, or *latitat*, will be a ſufficient commencement of a ſuit, yet the plaintiff, in order to make it effectual, *muſt ſhew that he hath continued the writ to the time of the action brought.* Carth. 144. 2 Salk. 420. 1 Lutw. 101, 254. 3 Mod. 33. That the attorney's writing the continuances on the writ in his chambers is ſufficient. 1 *Sid.* 53. 1 *Keb.* 140. Alſo vide *Carth.* 144. 2 *Salk.* 420. S. C. 1 *Salk.* 421. The continuances may be entered up, at any time, before the plaintiff replies. The proceſs ſued and filed, and the continuances thereon, muſt be ſet forth by the plaintiff in his replication.

7. *Where a debt barred by the ſtatute ſhall be ſaid to be revived.*

It is clearly agreed, that if after the ſix years the debtor acknowledges the debt, and *promiſes payment thereof*, that this revives it, and brings it out of the ſtatute; as if a debtor by promiſſory note, or ſimple contract, promiſes within ſix years of the action brought that he will pay the debt; though this was barred by the ſtatute, yet it is revived by the promiſe; for as the note itſelf was at firſt but an evidence of the debt, ſo that being barred the acknowledgment and promiſe is a new evidence of the debt, and being proved, will maintain an *aſſumpſit* for recovery of it. 1 *Salk.* 28, 29. *Carth.* 470. 5 *Mod.* 425, 426. 2 *Show* 126. 2 *Vent.* 151.

Alſo it hath been adjudged, that a conditional promiſe will revive a debt barred by the ſtatute of limitations; as where to an *aſſumpſit* by an executor for goods ſold and delivered by the teſtator, the defendant pleaded the ſtatute, and upon evidence it appeared, that the defendant within ſix years, being applied to by the executor for the debt ſaid, *If you prove that I have the goods, I will pay you*; which being fully proved at the trial, it was held that *this conditional promiſe revived the debt*; and that though made to the executor, after the death of the teſtator, was ſufficient to maintain the iſſue; becauſe the promiſe did not give any new cauſe of action, but only revived the old cauſe, and was of no other uſe, but to prevent the bar by the ſtatute of limitations. *Carth.* 470. *Heylin* v. *Haſtings.* 1 *Salk.* 29. S. C. 5 *Mod.* 425. S. C. cited.

So it hath been held that *a bare acknowledgement* of the debt within ſix years of the action, is ſufficient to revive it, and prevent the ſtatute, though no promiſe was made. *Carth.* 470.

But if an *indebitatus aſſumpſit* for goods ſold, be brought againſt four perſons, who plead the ſtatute of limitations, and it be found that one of them promiſed within ſix years, there can be no judgment againſt him; for the contract being intire, it muſt be found that they all promiſed. 2 *Vent.* 151.

It ſeems to be the doctrine of the courts of equity, that if a man by will or deed ſubject his lands to the payment of his debts, debts barred by the ſtatute of limitations ſhall be paid, for they are debts in equity, aad the duty remains; and the ſtatute hath not extinguiſhed that, though it hath taken away the remedy. 1 *Salk.* 154. 2 *Vern.* 141.

Alſo it hath been ruled in equity, that if a man has a debt due to him by note, or a book debt, and has made no demand of it for ſix years, ſo that he is barred by the ſtatute of limitations; yet if the debtor, or his executor, after the ſix years, puts out *an advertiſement* in the Gazette, or any other news-paper, *that all perſons who have any debts owing to them, may apply to ſuch a place, and that they ſhall be paid*; this (though general, and therefore might be intended of legal ſubſiſting debts only) yet amounts to ſuch an acknowledgment of that debt which was barred, as *will revive the right*, and bring it out of the ſtatute again. *Abr. Eq.* 305. *Andrews* v. *Brown.*

Of pleading.

It ſeems to be admitted, that the ſtatute of limitations muſt be pleaded *poſitively* by him that would take advantage thereof; and that the ſame cannot be given in evidence, eſpecially in an *aſſumpſit*, becauſe the ſtatute ſpeaks of a time paſt, and relates to the time of making the promiſe. 1 *Lev.* 111. 1 *Sid.* 253. and ſee *Cro. Jac.* 115.

But in debt for rent, upon *nil debet* pleaded, the ſtatute of limitations may be given in evidence, for the ſtatute has made it no debt at the time of the plea pleaded, the words being in the preſent tenſe. 1 *Salk.* 278. *Per Holt.* Certainly it is otherwiſe in an aſſumpſit, where the general iſſue, *viz. Non aſſumpſit*, only, is pleaded, the only queſtion is, Did or did not the defendant, ever promiſe?

In replevin the defendant pleaded Not guilty *De capt' prædict' infra ſex annos jam ultimo elapſos*; and though it was urged, that this was the ſame with pleading *non cepit*, and if he did not take, he could not be guilty of the detainer; and if this way of pleading were not allowed, the ſtatute would be entirely evaded as to this action; yet the plea was held ill, *becauſe he ought to have anſwered to the detainer, as well as to the taking*; alſo a thing may be lawfully diſtrained, although unlawfully kept; as by being put into a caſtle, &c. by which means it could not be replevied. 1 *Sid.* 81. *Arundel* v. *Trevil.* 1 *Keb.* 279. S. C. See farther *Raym.* 86. 1 *Lev.* 110. 1 *Keb.* 566. S. C. *Lee* v. *Raynes.* Vide *New Abr.* 3. *V.* tit. *Limitation*

N. B. The King is not within the general acts of *limitation*; nor eccleſiaſtical perſons, for lands belonging to their churches. 11 *Rep.* 74.

Now by 9 *Geo.* 3. *c.* 16. The crown is diſabled to ſue or implead any perſon, for any manors, lands, hereditaments, &c. where the right hath not or ſhall not firſt accrue and grow within ſixty years next before the commencing ſuch ſuit, &c. See *King.*

If a debt be ſet off by way of plea, the ſtatute of *limitations* may be replied to it. 2 *Strange* 1271.

A writ of error to reverſe a common recovery cannot be brought after twenty years, though the right of the plaintiff in error accrued within that time. 2 *Strange* 1257.

Limitation of the Crown. The ſtatutes 1 *W.* & *M. c.* 8. 12 *W.* 3. *c.* 2. and 1 & 2 *Ann. c.* 17. 4 *Ann. c.* 8, &c. are acts for the *limitation of the crown*, and ſettling it on proteſtant heirs in the houſe of *Hanover.* See *Crown.*

Limitation of Eſtate, In a legal ſenſe, imports how long the eſtate ſhall continue, or is rather a qualification of a precedent eſtate. A *limitation* is generally by ſuch words as *durante vita, quamdiu dum*, &c. And if there be not a performance according to the *limitation*, it ſhall determine an eſtate without entry or claim; which a *condition* doth not. 10 *Rep.* 41. 1 *Inſt.* 204. It is taken for the compaſs and time of an eſtate; as where one doth give lands to a man, to hold to him and his heirs male, and to him and the heirs female, &c. here the daughters ſhall not have any thing in it, ſo long as there is a male, for the eſtate to the heirs male is firſt *limited.* Co. Lit. 3, 13.

If a *limitation* of an eſtate be uncertain, the *limitation* is void; and the eſtate ſhall remain as if there had been no ſuch *limitation.* Cro. Eliz. 216. But a thing that is *limited* in a will by plain words, ſhall not be afterwards made uncertain by general words which follow. *Hil.* 23 *Car. B. R.* Where a deviſe is to the eldeſt ſon, upon condition that he pays ſuch legacies; and if he refuſes, the land ſhall remain to the legatees: on his refuſal, the legatees may enter by way of *limitation.* Noy 51. And in all caſes, where after a condition, an *intereſt* is granted to a ſtranger, it is a *limitation.* 1 Leon. 269. Cro. Eliz. 204.

It was held by *Holt* Ch. J. that the ſtatute *de donis*, (13 *Ed.* 1. *c.* 1.) ought not to be taken ſtrictly; but all *limitations* within the meaning of it are to be ſupported: therefore though words of an expreſs condition be not ordinarily conſtrued as a *limitation*; yet when an eſtate is to *remain over* for breach of any condition, which is by the expreſs word thereof, it ſhould be intended a *limitation.* Trin. 4 Ann. Lands may be given and *limited* to one in tail, remainder to another, remainder in fee, &c. Though a *limitation* of an eſtate cannot begin after the determination of *an abſolute eſtate in fee-ſimple*; for that would be to ſuffer perpetuities to be made, which the law abhors. 2 *Lil. Abr.* 173.

Limitations of eſtates againſt law, creating a new form of inheritance will not be ſuffered to take effect. *Jenk. Cent.* 82. See *Black. Com.* 2 *V.* 155.

Limogia, Is a word which we often read in the *Monaſticum*, and it ſignifies enamelled; *opus de* limogia, is enamelled work, *una crux de opere limoceno*, &c. Monaſt. 3 tom. 331.

Linarium, A flax plat, where flax is ſown.—*Et meſſuagium*, &c. *cum* linario, *quod jacet juxta prædict. meſſuagium.* Pat. 22 Hen. 4. par. 1. m. 33.

Lincoln, In attaint of a verdict of the city of *Lincoln*, the jury ſhall be impanelled of the county of *Lincoln*, 13 Ric. 2. ſt. 1. c. 18. 3 Hen. 5. ſt. 2. c. 5.

Lincoln's Inn Fields, To be incloſed by truſtees, who may employ artificers, &c. And yearly rates ſhall be made on all houſes there, not exceeding 2*s.* 6*d.* in the pound: this ſquare and back ſtreets are to be a diſtinct ward, as to the ſcavengers rates and watch; and perſons annoying the fields by filth, to forfeit 20*s.* and aſſembling to uſe ſports, or breaking fences, &c. incurs a forfeiture of 40*s.* levied by a juſtice of peace's warrant. *Stat.* 8 *Geo.* 2. *c.* 26.

Lindesfern, A place often mentioned in our ancient hiſtories; being formerly a biſhop's ſee, now *Holy Iſland.*

Lineal Conſanguinity, Is that which ſubſiſts between perſons, of whom one is deſcended in a direct line from the other.

Lineal Deſcent. The deſcent of eſtates, from anceſtor to heir, *i. e.* from one to another, in a right line. It is peculiar to our laws, that eſtates cannot lineally *aſcend.* See *Black. Com.* 2 *V.* 210.

Lineal Deſcent of the Crown. The crown lineally deſcends, unleſs otherwiſe ſettled by parliament. On failure of lineal deſcendants, it goes to the next collateral relations of the laſt King, provided they are lineally deſcended from the blood royal, unleſs otherwiſe ſettled by parliament. See *Black. Com.* 1 *V.* 194.

Lineal Warranty. Where the heir derives, or may by poſſibility derive his title to land warranted, either from or through the anceſtor who makes the warranty. *Black. Com.* 2 *V.* 301.

Linen, No perſon ſhall put to ſale any piece of doulas *linen*, &c. unleſs the juſt length be expreſſed thereon, on pain to forfeit the ſame. 28 *H.* 8. *c.* 4. Uſing means whereby linen cloth ſhall be made deceitfully, incurs a forfeiture of the *linen*, and a month's impriſonment. *Stat.* 1 *Eliz. c.* 12. Any perſon may ſet up trades of dreſſing hemp or flax, and making thread for linen cloth, &c. 15 *Car.* 2. *c.* 15. And linen of all ſorts made of flax or hemp, of the manufacture of this kingdom may be exported duty free. 3 *Geo.* 1. *c.* 7. Linen made in *Great Britain* and *Ireland* being much improved, to extend it farther, a bounty of one penny for every yard of ſuch linen from 6*d.* to 12*d. per* yard, and a half-penny for each yard, under 6*d.* price, is granted on exporting them; payable out of a duty laid on foreign cambricks, by 15 *Geo.* 2. *c.* 29. Stealing of linen, *&c.* from whitening grounds or drying houſes, to the value of 10*s.* is felony. See *Felony*. *Stat.* 4 *Geo.* 2. *c.* 16. By the *Stat.* 17 *Geo.* 2. *c.* 30.

Affixing on foreign linens any ſtamp put upon *Scotch* or *Iriſh* linens, or affixing a counterfeit ſtamp on *Britiſh* or *Iriſh* linens, incurs a penalty of 5 *l.* By the *Stat.* 18 *Geo.* 2. *c.* 24. for the exportation of foreign linens, under the denomination of *Britiſh* or *Iriſh* linens. The ſtamp maſter is to be ſworn to the true execution of his office; and linens to be ſtampt, muſt be ſworn to be the manufacture of *Scotland* or *Ireland*, and a penalty of 5 *l.* each piece is laid on falſe ſtamps. And by the *Stat.* 18 *Geo.* 2. *c.* 25. An additional bounty is allowed on the exportation of *Britiſh* and *Iriſh* linens of one half-penny *per* yard, for linens of the value of, from 5 *d.* to 12 *d. per* yard, and 1 *d. per* yard for linens of the value of, from 12 *d.* to 1 *s.* 6 *d. per* yard. For duties on linen, ſee *Stat.* 24 *Geo.* 2. *c.* 46. 29 *Geo.* 2. *c.* 15. For encouraging the linen manufactory in *Scotland*. 24 Geo. 2. c. 31. 26 Geo. 2. c. 20. Bounty on *Britiſh* and *Iriſh* linens exported. 29 *Geo.* 2. *c.* 15.

Linlithgow, A duty of two pennies *Scots* upon ale there. 9 *Geo.* 1. *c.* 20. 6 *Geo.* 2. *c.* 18.

Linſeed. All perſons may import linſeed into this kingdom, without paying any cuſtom for it. *Stat.* 3 *Geo.* 1. *c.* 7. *ſ.* 38. How exempt from the payment of the two-third ſubſidies. 7 *Ann.* *c.* 7.

Liquorice, To what duties liable. 2 *W.* & *M.* *ſeſſ.* 2. *c.* 4. *ſect.* 43, 44, 45.

Litera, (from the Fr. *litiere*, or *lictiere*, Lat. *lectum*) Was anciently uſed for ſtraw for a bed, even the King's bed.——Petrus A. *tenuit*, *&c.* *per ſerjeantiam inveniendi unum ſervientem cum hambergello per* 40 *dies*, *et inveniend.* Literam *ad lectum* Regis, *fænum ad palfridum Regis*, *quando jacuerit apud*, *&c.* Term. Hil. 1 Ed. 2. *Litter* is now only in uſe in ſtables among horſes: and *tres carectatas literæ* is three cart-loads of ſtraw or *litter*. Mon. Angl. tom. 2. p. 33.

Literatura, *Ad literaturam ponere*, Signifies to put children out to ſchool; which liberty was anciently denied to thoſe parents who were ſervile tenants, without the conſent of the lord: and this prohibition of educating ſons to learning, was owing to this reaſon; for fear the ſon being bred to letters might enter into orders, and ſo ſtop or divert the ſervices which he might otherwiſe do as heir to his father.——*Quilibet cuſtumarius tenen. non debet filium ſuum ad* literaturam ponere, *neq*; *filiam ſuam maritare*, *ſine licentia a voluntat. dom.* Paroch. Antiq. 401.

Literæ *Ad faciendum attornatum pro ſecta faciend.* Reg. Orig. 192.

Literæ, *Canonici ad exercendam juriſdictionem loco ſuo.* Ibid. 305.

Literæ, *Per quas dominus remittit curiam ſuam Regi.* Ibid. 4.

Literæ, *De requeſtu.* Ibid. 129. *See* theſe in their proper places.

Literæ ſolutoriæ, Were magical characters ſuppoſed to be of ſuch power, that it was impoſſible for any one to bind thoſe perſons who carried theſe about them. *Bede*, *lib.* 4. *c.* 22.

Literary Property, The property that the author, or his aſſignee, hath in the copy of any work.

This copy right is protected by *Stat.* 8 *Ann.* *c.* 19. But it was formerly ſuppoſed to exiſt at Common law. In the caſe of *Millar* and *Taylor* in *B. R. Paſch.* 9 *Geo.* 3. it was determined (upon ſolemn argument and great conſideration) by the opinion of three judges, againſt one, that an excluſive copy right in authors, ſubſiſts by the Common law. A writ of error was brought in the Exchequer Chamber; and the editor *(J. M.)* believes judgment affirmed, but without argument. See *Black. Com.* 2 *V.* 405, 406, 407. It has been otherwiſe determined ſince, in the houſe of lords, and the ſtatute right is now the only right authors and their aſſignees have.

Lith of Pickering, In the county of *York.*, *viz.* the liberty, or a member of *Pickering*, from the Sax. *lid*, i. e. *membrum*.

Litigator, (Lat.) A party pleading, that contends or *litigates* a ſuit at law. *Lit. Dict.*

Litigious. The *litigiouſneſs* of a church, is where ſeveral perſons have, or pretend to, ſeveral titles to the patronage, and preſent ſeveral clerks to the ordinary; it excuſes him from refuſing to admit any of them, till a trial of the right by *jure patronatus*, or otherwiſe. *Jenk. Cent.* 11.

Litmus, To what duties liable. 4 *W.* & *M.* *c.* 5. *ſect.* 2.

Littera, As, *tres carectas* litteræ, three cart loads of ſtraw or litter. *Mon. Angl.* 2 *par. fol.* 33. *b.*

Littleton, Was a famous lawyer in the days of King *Edward* the Fourth, as appeareth by *Staundf. Prær. cap.* 21. *fol.* 72. he wrote a book of great account, called *Littleton's Tenures.*

Liverpoole, For building a church there, and lighting the ſtreets, *&c.* 21 *Geo.* 2. *c.* 24.

Livery, (Fr. *livre*, i. e. *inſigne geſtamen*, or *liverer*, i. e. *tradere)* Hath three ſignifications. In one ſenſe, it is uſed for a ſuit of clothes, cloak, gown, hat, *&c.* which a nobleman or gentleman gives to his ſervants or followers, with cogniſance or without; mentioned in 1 *R.* 2. *c.* 7. and divers other ſtatutes: and formerly great men gave liveries to ſeveral, who were not of their family, to engage them in their quarrels for that year; but afterwards it was ordained, that no man of any condition whatſoever, ſhould give any livery, but to his domeſticks, his officers, or counſel learned in the law. By 1 *R.* 2. it was prohibited on pain of impriſonment; and the 1 *Hen.* 4. *c.* 7. made the offenders liable to ranſom at the King's will, *&c.* which ſtatute was farther confirmed and explained, *anno* 2 & 7 *Hen.* 4. and 8 *Hen.* 6. *c.* 4. and yet this offence was ſo deeply rooted, that *Ed.* 4. was obliged to confirm the former ſtatutes, and further to extend the meaning of them, adding a penalty of 5 *l.* to every one that gives ſuch livery, aud the like on every one retained for maintenance either by writing, oath, or promiſe, for every month. 8 *Ed.* 4. *c.* 2. But moſt of the above ſtatutes are repealed by 3 *Car.* 1. *c.* 4.

Livery in the *ſecond* ſignification, was a delivery of poſſeſſion to thoſe tenants who held of the King *in capite*, or knights ſervice; as the King by his prerogative hath *primer ſeiſin* of all lands and tenements ſo holden of him. *Staundf. Prærog.* 12.

In the *third* ſenſe, livery was the writ which lay for the heir of age, to obtain the poſſeſſion or ſeiſin of his lands at the King's hands. *F. N. B.* 155. By the ſtatute 12 *Car.* 2. *c.* 24. All *wardſhips*, *liveries*, *&c.* are taken away.

Livery of Seiſin, *(liberatio ſeiſinæ)* Is a delivery of poſſeſſion of lands, tenements and hereditaments, unto one that hath a right to the ſame; being a ceremony in the Common law uſed in the conveyance of lands, *&c.* where an eſtate of fee-ſimple, fee-tail, or other freehold paſſeth. *Bract. lib.* 2. *cap.* 18. *Weſt. Symb. par.* 1. *lib.* 2. And it is a teſtimonial of the willing departing of him who makes the *livery*, from the thing whereof the *livery* is made; and of the willing acceptance of the other party receiving the *livery*; firſt invented, that the common people might have knowledge of the paſſing or alteration of eſtates from man to man, and thereby be better able to try in whom the right of poſſeſſion of lands and tenements were, if the ſame ſhould be conteſted, and they ſhould be impanelled on juries, or otherwiſe have to do concerning the ſame. *Weſt. Ibid.* This *livery* may be made of a houſe, lands, or any thing corporeal; but not of incorporeal things. Where a houſe and lands are conveyed, the houſe is the principal, and the lands acceſſory; and there the livery muſt be made, and not upon the land. 2 *Rep.* 31. 4 *Leon.* 374.

Of *livery and ſeiſin* there are two kinds.

A *livery* in *deed*,
and
Livery in *law*.

Livery in deed, is when the feoffor taketh the ring of the door, *&c.* and delivereth the ſame to the feoffee, in the name of ſeiſin. 1 *Inſt.* 48. 6 *Rep.* 26. And *livery* in deed may be either by words and ſome ſolemn act; or by words without any ſolemn act, if the feoffor and feoffee are on the land. *Wood's Inſt.* 237.

Livery in law, is when the feoffor himſelf being in view of the houſe or land, ſaith to the feoffee, after delivery of the deed, *I give to you yonder land*, &c. *to you and your heirs, go into the ſame and take poſſeſſion accordingly:* now if the feoffee enters on the land, during the life-time of the feoffor, it is a good feoffment and *livery*. 1 Inſt. 48, 52. If a deed of feoffment be delivered upon the land, in the name of ſeiſin of all the lands, it will be a good *livery and ſeiſin*; but the bare delivery of a deed upon the land, though it may make the deed, it ſhall not amount to *livery and ſeiſin*, without thoſe words, 1 *Inſt*, 52, 181. If one makes a feoffment to four perſons, and *ſeiſin* is delivered to three of them, in the name of all; the eſtate is veſted in all of them. 3 *Rep.* 26. And if lands lie in divers places in one county, *livery and ſeiſin* in one parcel in one place, in the name of the reſt is ſufficient; though if the lands lie in ſeveral *counties*, it is otherwiſe; for then *livery and ſeiſin* muſt be in every county. *Lit.* 61.

Precautions to be taken.

No perſon ought to be in the houſe, or upon the land, when *livery* is made, but the feoffor and feoffee; all others are to be removed from it: if the leſſor, feoffor, makes *livery and ſeiſin*, the leſſee being upon the land contradicting it, the *livery* is void. *Cro. Eliz.* 321. A leſſor enfeoffed a ſtranger, and came to make *livery and ſeiſin*; the leſſee's wife being in the houſe, the leſſor enters, and by force turns the wife into the backſide, which was part of the land let, and then he makes *livery* in the houſe, in the name of all the lands let, as the woman was remaining all the while upon the land, and contradicting the *livery*, the *livery* was held void: but if ſhe had voluntarily gone out of the houſe, upon part of the land; or the leſſor had turned her into the ſtreet, ſo that ſhe had not been upon any part of the land; it had been good. *Daliſ. Rep.* 94.

Of enfeoffing, or making of feoffments, &c. and the operation of livery and ſeiſin.

If a man agrees with me to make a feoffment upon condition, and after makes a charter of feoffment without any condition, and then makes *livery and ſeiſin, ſecundum formam chartæ*, this is abſolute without any condition; for the *livery* is not made according to the agreement, but according to the charter. 34 *Aſſ.* 1. But if a perſon enfeoffs another, as a ſecurity for the payment of money, and afterwards makes *livery of ſeiſin*, to him and his heirs generally; the eſtate hath been holden to be upon condition, ſince the intent of the parties was not changed, but continued at the time of the *livery*. 1 Inſt 222. And where a charter of feoffment is made, and in the deed there is no condition; but when the feoffor would make a *livery of ſeiſin* to the feoffee, by force of the deed, he, expreſſing the eſtate, makes *livery of ſeiſin*, upon condition, the feoffment is of force as if it had not been made. *Lit. Sect.* 359. 2 *Danv. Abr.* 13.

Of leaſes, &c. and livery.

A man makes a leaſe for years, remainder to another for life, in tail or in fee: here *livery and ſeiſin*, in deed muſt be made to the leſſee for years; without which nothing paſſeth to him in remainder, it being for the benefit of him in remainder, and not the leſſee, who hath only a term: and if the leſſee entereth, before *livery and ſeiſin*, made to him, the *livery* ſhall be void. *Lit.* 60. 1 *Inſt.* 49. *Wood's Inſt.* 238. A leaſe for years is granted to *A. B.* with remainder to his right heirs, whereon *livery* is made; the remainder is void, becauſe there is not any perſon *in eſſe*, who can preſently take by the *livery*; and every *livery* ought to have its operation preſently. 4 *Leon.* 67. There was a leaſe made to a man and his wife, and their daughter; to hold from *Michaelmas* next, and the leſſor made *livery* after *Michaelmas*; this was adjudged good, being made by the leſſor himſelf; but it had been otherwiſe, if it had been to be done by attorney, or if the leſſor had made *livery* before *Michaelmas*. 2 Rol. Rep. 109. Leaſe for twenty years to a man to commence from a time paſt; and after the expiration of the ſaid term, then to him and his wife, and their ſon, for their lives, and the longeſt liver of them, with a letter of attorney to make *livery and ſeiſin*, *&c.* It is a good leaſe for years, with remainder for life, if *livery and ſeiſin* be made by the attorney at the time of executing the leaſe; but if the *livery and ſeiſin* be made by the attorney ſometime afterwards, in ſuch caſe it is ſaid the *livery* is void. *Moor* 14. A man may make a letter of attorney to deliver *ſeiſin* by force of the deed, which may be contained in the ſame deed; and a letter of attorney may be likewiſe made to receive *livery and ſeiſin*. 5 Rep. 91. 1 Inſt. 49, 52.

Of the manner of making livery, &c.

The *manner* of making *livery of ſeiſin* is thus: the parties to the deed, grantor and grantee, or the attornies by them authoriſed, come to the door of the houſe, or ſome part of the land; and there having declared the cauſe of their meeting, in the preſence of witneſſes, they read the deed or the contents thereof; and if by attorney, the power of attorney; and then, if it be a houſe they take the ring, latch or key of the door, (all the people being out of the houſe) or if it be land, a clod of earth, and a twig or bough of one of the trees thereon; and the ſame ring or key, clod, *&c.* with the deed they deliver to the grantee or his attorney, ſaying the uſual words, *viz. I* A. B. *do hereby deliver unto you* C. D. *poſſeſſion and ſeiſin of this meſſuage or tenement*, &c. *To hold to you, your heirs and aſſigns, according to the true intent and meaning of this indenture*, &c. And afterwards, if it be a houſe, the grantee, *&c.* enters firſt alone, and ſhuts the door; and then he opens it, and lets in others. *Accomp. Convey.* 2*d edit. vol.* 1.

Livery *and* ſeiſin *indorſed on the deed.*

MEmorandum, *That on the day*, &c. *full poſſeſſion and ſeiſin was had and taken of the meſſuage or tenement, and premiſſes within granted, by* A. B. *one of the attornies within named, and by him delivered over unto the within named* C. D. To hold to him, his heirs, &c. *according to the contents, and true meaning of the within written indenture, in the preſence of*, &c.

If a *houſe* or *lands* belong to an *office*, by grant of the office by deed, the houſe or land paſſeth without *livery*: and by a fine, which is a feoffment of record; by a leaſe and releaſe; bargain and ſale by deed inrolled; exchange, *&c.* a freehold paſſeth, without *livery*; and ſo in a deed of feoffment to *uſes*, by virtue of the ſtatute of uſes. 1 *Inſt.* 49. So that *livery and ſeiſin* is not ſo commonly uſed as formerly; neither can an eſtate be created now by *livery and ſeiſin* only, without writing. *Stat.* 29 *Car.* 2. *c.* 3. See *Black. Com.* 2 *V.* 311.

Livery and Ouſter le Main, Is where by inqueſt before the *eſcheator*, it was found that nothing was held of the King; then he was immediately commanded by writ, to put from his hands, the lands taken into the King's hands. *Stat.* 29 *Ed.* 1. 28 *Ed.* 3. *c.* 4. Vide *Ouſter le Maine*.

Livery-Men of London. In the companies of *London*, livery-men are choſen out of the freemen, as aſſiſtants to the maſters and wardens, in matters of council, and for better government; and if any one of the company refuſe to take upon him the office, he may be fined, and an action

tion of debt will lie for the ſum. 1 *Mod. Rep.* 10. See *London.*

Livre, Is the denomination of a ſum in foreign coin, in *France, &c.* Accounts are kept by this money in *France, Spain, &c.* Merch. Dict.

Lobbe, A large kind of *North-ſea* fiſh. *Stat.* 31 *Ed.* 3. *ſt.* 3. *c.* 2. And *loich* comprehends *lob,* ling, and cod.

Lobſters May be imported by natives or foreigners, and in any veſſels, notwithſtanding 10 & 11 *W.* 3. *c.* 24. 1 *Geo.* 1. *ſtat.* 2. *c.* 18. No perſon ſhall, with trunks, hoop-nets, *&c.* take any *lobſters* on the ſea-coaſt of *Scotland,* from the 1ſt of *June* to the 1ſt of *September* yearly, on pain of 5 *l.* to be recovered before two juſtices. *Stat.* 9 *Geo.* 2. *c.* 33.

Local, *(localis)* Tied or annexed to a certain place: Real *actions* are *local,* and to be brought in the county where the lands lie: but a perſonal action, as of treſpaſs or battery, *&c.* is tranſitory, not *local*; and it is not material that the action ſhould be tried, or laid in the ſame county where the fact was done; and if the place be ſet down, it is not needful that the defendant ſhould traverſe the place, by ſaying he did not commit the battery in the place mentioned, *&c.* *Kitch.* 230. A thing is *local* that is fixed to the freehold. *Ibid.* 180. See *Action.*

Even in tranſitory actions, if the *venue* is laid in a county, where the cauſe of action did not accrue, the court will on motion make a rule to change the *venue,* affidavit being made that the cauſe of action ariſes in the county of *A.* and not in the connty of *B.* (where the action is laid,) or elſewhere out of the county of *A.* The plaintiff may get this rule diſcharged, undertaking to give material evidence in the county of *B.*

Lockman. In the *iſle of Man,* the *lockman* is an officer to execute the orders of the governor, much like our under-ſheriff. *King's Deſcript. iſle of Man* 26.

Lockſon Rivers. To deſtroy any ſluice or lock on a navigable river, is made felony, to be puniſhed with tranſportation for ſeven years, by 1 *Geo.* 2. *c.* 19. And by 8 *Geo.* 2. *c.* 20. it is made felony without benefit of clergy, and the offender may be tried, as well in an adjacent county, as in that wherein the act is committed.

Loculus, Signifies a coffin.——*Cujus corpus in* loculo *plumbeo tranſlatum eſt.* Sim. Dunelm. c. 6.

Locus in quo, The place *where* any thing is alledged to be done in pleadings, *&c.* 1 *Salk.* 94.

Locus partitus, Is a diviſion made between two towns or counties, to make trial where the land, or place in queſtion lieth. *Flet. lib.* 4. *cap.* 15.

Locutorium. The monks and other religious in *monaſteries,* after they had dined in their common hall, had a withdrawing room, where they met and talked together among themſelves, which room for that ſociable uſe and converſation, they called *locutorium, à loquendo*; as we call ſuch a place in our houſes *parlour,* from the Fr. *parler:* and they had another room which was called *locutorium forinſecum,* where they might talk with *laymen.* Walſing. 257.

Lode-manage, Is the hire of a pilot, for conducting a veſſel from one place to another. *Cowell.* The pilot receives *lodmanage* of the maſter for conducting the ſhip up the river or into port; but the *loadſman,* is he that undertakes to bring a ſhip through the haven, after brought thither by the pilot, to the key or place of diſcharge: and if through his ignorance, negligence, or other fault, the ſhip or merchandiſe receive any damage, action lies againſt him at the Common law. *Roughton, fol.* 27.

Lode-merege, Mentioned in the laws of *Oleron,* is expounded to be the ſkill or art of navigation. *Cowell.*

Lode-ſhip, A kind of fiſhing-veſſel, mentioned in Stat. 31 *Ed.* 3. *c.* 2.

Lodgers and Lodgings. Stealing furniture from lodgings, felony, 3 & 4 *W.* & *M.* *c.* 9. Houſholders, not giving an account of their lodgers, to aſſeſſors of the land-tax, to forfeit 5 *l.* 30 *Geo.* 2. *c.* 3.

Logating, An unlawful game, mentioned 33 *H.* 1. *c.* 9. now diſuſed.

Logia, A little houſe, lodge or cottage. *Mon. Angl. tom.* 1. *p.* 400.

Logwood, *(lignum tinctorium)* Is wood uſed by dyers brought from foreign parts; prohibited by *Stat.* 23 *Eliz. c.* 9. But allowed to be imported by the 14 *Car.* 2. *c.* 11. See *Dyers.*

Loith, or **Loych Fiſh,** A large North ſea-fiſh, mentioned in *ſtat.* 31 *Ed.* 3. *ſt.* 3. *cap.* 2. Vide *Lobbe.*

Lollards, Had their name from one *Walter Lollard,* a *German* at the head of them, who lived about the year 1315. And they were certain *hereticks,* (in the opinion of thoſe times) that abounded here in *England,* in the reigns of King *Edw.* 3. and *Hen.* 5. whereof *Wickliff* was the chief in this nation. *Stow's Annals,* 425. *Spotſwood,* in his *Hiſtory of Scotland,* ſays, The intent of theſe *Lollards* was to ſubvert the Chriſtian faith, the law of God, the church and the realm; and ſo ſaid the Stat. 2 *Hen.* 5. *c.* 7. But that ſtatute was repealed 1 *Ed.* 6. *c.* 12. Several decrees were made by our archbiſhops, againſt thoſe *ſectariſts,* as well as ſtatutes; and the high ſheriff of every county was anciently bound by his oath to ſuppreſs them. 3 *Inſt.* 41.

Lollardy, The doctrine and opinion of the *Lollards.* 1 & 2 P. & M. c. 6.——Rogerus Acton *miles pro proditione* & Lollardia *diſtrahatur* & *ſuſpendatur,* & *ſic ſuſpenſus pendeat ad voluntatem Regis.* Middleſ. Plac. Hill. 1 Hen. 5 Rot. 7. *See* Black. Com. 4 V. 47.

Lombards. The company ſhall be anſwerable for their debts. 25 *Ed.* 3. *ſtat.* 5. *c.* 23.

Lombe (Sir **Thomas,**) How recompenſed for diſcovering the art of making, and working, the three capital *Italian* engines, for making organzine ſilk. 1 *Geo.* 2. *c.* 8.

London, The metropolis of this kingdom, formerly called *Auguſta,* has been built above three thouſand years, and flouriſhed for fifteen hundred years. Its *exchange,* where merchants of all nations meet, is not to be equalled; and for ſtatelineſs of buildings, extent of bounds, learning, arts and ſciences, traffick and trade, this city gives place to none in the world. *Stow.*

It is divided into twenty-ſix *wards,* over each of which there is an alderman; and is governed by a *lord mayor,* who is choſen yearly, and preſented to the King, or in his abſence to his juſtices, or the barons of the *Exchequer* at *Weſtminſter.* Chart. K. *Hen.* 3.

The lord mayor of *London,* for the time being, is *chief juſtice* of gaol delivery; *eſcheator* within the liberties, and *bailiff* of the river *Thames,* &c. He is a high officer in the city, having all courts for diſtribution of juſtice under his juriſdiction. *viz.* The court of *huſtings, ſheriff*'s court, *mayor*'s court, court of *common council,* &c. 2 *Inſt.* 330.

King *Hen.* 4. granted to the mayor and commonalty of *London* the aſſiſe of bread, beer, ale, *&c.* and victuals, and things ſaleable in the city. In *London* every day, except *Sunday,* is a market overt, for the buying and ſelling of goods and merchandiſe. 5 *Rep.* 85. But no perſon, not being a freeman of *London,* ſhall keep any ſhop or other place to put to ſale by retail any goods or wares, or uſe any handicraft trade for hire, gain or ſale within the city, upon pain of forfeiting 5 *l.* 8 *Rep.* 124.

Perſons making ill and unſerviceable goods in *London,* the chief officers of the company may ſeize and carry them to the *Guildhall,* and have the goods tried by a jury; and if found defective, they may break them, *&c.* *Trin.* 34 *Car.* 2. *B. R.* A perſon muſt be a freeman of *London* to be intitled to carry on merchandiſe there. *Chart. Car.* 1.

Where a woman exerciſeth a trade in *London,* wherein *her huſband doth not intermeddle,* by the cuſtom ſhe ſhall have all advantages, and be ſued as a *feme ſole merchant:* but if the huſband meddle with the trade of the wife, or carry on the ſame trade, it is otherwiſe. 1 *Cro.* 63. 3 *Keb.* 902.

There are three ways to be a freeman of *London*; by *ſervitude* of an apprenticeſhip; by *birthright,* as being the ſon of freeman: and by *redemption,* i. e. by order

der of the court of aldermen. *Ibid.* 126. 4 *Mod.* 145.

The cuſtoms of *London* are againſt the Common law, and made good by parliament. 4 *Inſt.* 249. But to ſet forth a cuſtom or uſage in the city of *London*, it muſt be ſaid *antiqua civitas*, or it will not be good. 2 *Leon.* 99.

By *Magna Charta* the city of *London* ſhall have all their ancient uſages, liberties and cuſtoms, which they have uſed to enjoy; and they are confirmed to them by that ſtatute. 9 *Hen.* 3. *c.* 9. and by 2 *W.* &. *M.* *ſeſſ.* 1. *c.* 8.

There is a cuſtom in *London* to puniſh by information in the mayor's court, in the name of the common ſerjeant of the city, aſſaults on aldermen, and affronting language, *&c.* *Farreſt, Rep.* 28, 29. Upon the cuſtom of *London* concerning the payment of wharfage, *&c.* by every freeman to the corporation, the trial ſhall not be by the mouth of the recorder, as cuſtoms generally are, but by the country, and a jury from *Surrey* adjoining. *Moor, cap.* 129. An arreſt may be made in *London* on the plaintiff's entering his plaint in either of the counters, and a ſerjeant of *London* need not ſhew his mace when he arreſts one: and the liberties of the city extend to the ſuburbs and *Temple-Bar.* Jenk. Cent. 291.

The mayor of *London* is to cauſe errors, defaults, and miſpriſions there to be redreſſed, under the penalty of 1000 marks; and the conſtable of the *Tower* ſhall execute proceſs againſt the mayor for default, *&c.* 28 *Ed.* 3. *cap.* 10. Citizens and freemen of *London* may recover debts under 40 *s.* in the court of requeſts at *Guildhall*, commonly called the court of conſcience. 1 *Jac.* 1. *c.* 14. 3 *Jac.* 1. *c.* 15. 14 *Geo.* 2. *c.* 10.

After the fire of *London*, a judicature was erected for determining differences relating to houſes burnt; and ſeveral rules were laid down for rebuilding the city, the ſeveral ſtreets, lanes, *&c.* The lord mayor and aldermen were to ſet out markets: the number of pariſhes and churches was aſcertained, and a duty granted on coals for rebuilding of the churches, *&c.* 19 *Car.* 2. *cap.* 23. and 22 *Car.* 2. *cap.* 11. And the tithes of the pariſhes in *London*, the churches whereof were burnt, were appointed; none leſs than 100 *l. per. ann.* nor above 200 *l. per ann.* to be aſſeſſed and levied quarterly. 22 & 23 *Car.* 2. *cap* 15.

The lord mayor, *&c.* is impowered to appoint perſons to ſet out the manner of paving and pitching the ſtreets of *London*; and alſo of drains and ſewers, and to impoſe a tax upon houſes for maintenance thereof. 22 & 23 *Car.* 2. *c.* 17. Scavengers are to be elected in *London*, and within the *bills of mortality*, in each pariſh, by the conſtable, churchwardens, *&c.* to ſee that the ſtreets be kept clean; and houſekeepers are to ſweep and cleanſe the ſtreets every *Wedneſday* and *Saturday*, under penalties, 2 *W.* & *M.* *ſeſſ.* 2. *c.* 2. Perſons authorized by the lord mayor, aldermen and common council of *London* ſhall have the ſame power in *London* and liberties thereof, as commiſſioners of ſewers have in any other county or place. 7 *Ann. cap.* 9. Commiſſioners are appointed for ſupplying the city of *London* with water from the river *Thames*, *&c.* And caſting filth into water-courſes, incurs 40 *s.* penalty. 8 *Geo.* 1. *c.* 26. But *vide* the late paving acts.

By a late ſtatute, for regulating elections within the city, it is ordained, That elections of aldermen and common council men, are to be by freemen houſholders, paying ſcot and lot, and having houſes of the value of 10 *l.* a year; and none ſhall vote at election of members of parliament, but liverymen that have been twelve months on the livery, and who are not diſcharged from payment of taxes, or thoſe who have received any alms, *&c.* And freemen of *London* may diſpoſe of their perſonal eſtates as they think fit, notwithſtanding the cuſtom of the city; but the act mentions ſuch as ſhould be made free after ſuch a time, and others before unmarried, *&c.* 11 *Geo.* 1. *c.* 18.

By-law to confine brewers to certain hours to carry out their drink, good. 2 *Strange* 1085. Apprentices inrolled before the chamberlain, may be diſcharged by juſtices where they live. 1 *Strange* 663. The child of a freeman, when of age, may, in conſideration of a preſent fortune, bar herſelf of her cuſtomary part. 2 *Strange* 947. An agreement on marriage, that the huſband ſhall take up the freedom of *London*, binds the diſtribution of his effects. 1 *Strange* 455.

In *Trinity* term 35 *Car.* 2. a *quo warranto* iſſued againſt the lord mayor and citizens of *London*; on which judgment was given in *B. R.* that the charter and franchiſe of the ſaid city ſhould be ſeiſed into the King's hands as forfeited; but by 2 *W.* & *M.* *ſeſſ.* 1. *c.* 8. the ſaid judgment was reverſed and made void, and all officers and companies were reſtored, *&c.* See *Cuſtoms of London, and Courts, Lamps, Buildings, Orphan*, &c.

As to the courts of *London*, ſee farther 4 *Inſt.* 247, & *ſeq.* and *Black. Com.* 3 *V.* 80. As to its cuſtoms, *Black. Com.* 1 *V.* 75, 76. 2 *V.* 517, *&c.* As to its franchiſes, *Black. Com.* 3 *V.* 264. 4 *V.* 417.

London Aſſurance. See **Inſurance.**

Longellus, Is a word uſed in *Thorn's Chronicle*, and it ſignifies a coverlet. *Cowell.*

Longitude *of a place*, In geography, is an arch of the equator intercepted between the firſt meridian, and the meridian paſſing through the propoſed place; which is always equal to the angle at the pole, formed by the firſt meridian, and the meridian of the place.

The firſt meridian may be placed at pleaſure, paſſing through any place, as *London, Paris, Teneriffe*, &c. but with us it is generally fixed at *London*; and the degrees of longitude counted from it, will be either eaſt, or weſt, according as they lie on the *eaſt* or *weſt* ſide of that meridian.

In other words, to explain the ſubject in a familiar manner, to thoſe wholly unacquainted with it, as by the latitude we learn the diſtance *north* or *ſouth*, ſo by knowing the longitude, we know the diſtance from any given place, *eaſt* or *weſt*; allowing for the difference of a degree of longitude at the *equator* (or middle of the globe) and at the *artic circle*, &c.

The longitude is, as before deſcribed, in other words, the diſtance of a place, *eaſt* or *weſt*, from that imaginary line drawn from *north* to *ſouth*, thro' a place fixed on for that purpoſe, and called the firſt meridian, *i. e.* the meridian or boundary from whence we reckon, *eaſt* or *weſt*; ſo that by aſcertaining the latitude and longitude of a place, it's ſituation on the natural or artificial globe, with reſpect to all other places, is known.

For the diſcovery of the *longitude* at ſea, the Lord Admiral and ſeveral others are appointed commiſſioners, to receive propoſals, *&c.* and if they are ſatisfied of the probability of ſuch diſcovery, the commiſſioners of the navy have power to make bills for any ſum not exceeding 2000 *l.* to make the experiment; and the firſt diſcoverer of a method for finding the *longitude*, is intitled to a reward of 10,000 *l.* if he determines the ſame to one degree of a circle, 15,000 *l.* if to two thirds of that diſtance, and 20,000 *l.* if to one half of a degree, to be paid by the treaſurer of the navy. 12 *Ann. Seſſ.* 2. *c.* 15. The commiſſioners for diſcovering the *longitude*, may apply part of the 2000 *l.* ordered for experiments, to be laid out in making a ſurvey, and fixing the *longitude* and *latitude* of the chief ports, and headlands, of our coaſts, for rendering the diſcovery at ſea uſeful. See *Stat.* 14 *Geo.* 2. *c.* 39. 26 *Geo.* 9. *c.* 25.

Loquela, An imparlance.——*Petrus de S. debet* 20 *s. pro habenda* loquela *in curia domini Regis contra* Will. *de* F. *Rot. Pipæ* 2 *Johann. Linc.* And *loquela ſine die*, was a reſpite in law to an indefinite time. *Paroch. Antiq.* 210,

Lord, *(Dominus)* Is a word or title of honour, diverſly uſed, being attributed not only to thoſe who are noble by birth or creation, otherwiſe called *Lords of Parliament*, and peers of the realm; but to ſuch, ſo called, by the *curteſy of England*, as all the ſons of a duke, and the eldeſt ſon of an earl; and to perſons honourable by office, as the *Lord Chief Juſtice*, &c. and ſometimes to a private perſon, that hath the *fee* of a *manor*, and conſequently the homage of the tenants within his manor; for by his tenants he is called *Lord.* In this laſt ſignification, it is moſt uſed in our law books; where it is divided into *Lord*

Lord Paramount, and *Lord Meſne*; and *Very Lord*, *&c.* *Old Nat. Br.* 79. See *Nobility*, *Parliament*, *Peers*.

Lord High Admiral. See *Admiral*.

Lord in groſs, *F. N. B. fol.* 3. Is he that is *lord*, having no manor, as the King in reſpect of his Crown, *Ibid. fol.* 5. and *fol.* 8. there is a caſe wherein a private man is *lord in groſs*, *viz.* A man makes a gift in tail of all the land he hath, to hold of him, and dieth; his heir hath but a ſeigniory *in groſs*.

Lord of a manor. See *Copyhold*.

Lord and Vaſſal. In the time of the feodal tenures, the grantor of land was called the proprietor, or *lord*; being the perſon who retained the dominion or ultimate property of the feud or fee: and the grantee, who had only the uſe of poſſeſſion, according to the term of the grant, was ſtiled the feudatory or *vaſſal*, which was only another name, for the tenant or holder of the lands; though, on account of the prejudices we have juſtly conceived againſt the doctrines, which were afterwards grafted on this ſyſtem, we now uſe the word *vaſſal*, opprobriouſly, as ſynonymous to ſlave or bondman. *Black. Com.* 2 *V.* 53.

Lords Marchers. See *Wales*.

Lorimers, (Fr. *Lormiers*, from the Lat. *lorum*) Is one of the companies of *London*, that make bits for *bridles*, ſpurs, and ſuch like ſmall iron ware, mentioned in the ſtat. 1 *R.* 2. *c.* 12.

Loſinga, Signifies a flatterer, or ſycophant. And *Godwin*, writing of the Biſhop of *Norwich* ſays of Biſhop *Herbert*; *Surgit in eccleſiâ monſtrum genitore* loſinga. *Brompt. Chron. pag.* 991.

Lot, A contribution, or duty. See *Scot*.

Lot or **Loth,** Is the thirteenth diſh, of lead in the mines of *Derbyſhire*, which belongs to the King. *Eſcheat. Ann.* 16 *Ed.* 1.

Lotherwite, or **Leyerwit,** Is a liberty or privilege to take amends of him that defileth your bond-woman without licence, *Raſtall's Expoſition of Words*; ſo that it is an amends for lying with a bond-woman. *Cowell.*

Lotteries. In late reigns ſeveral ſtatutes have been made for raiſing money for the uſe of government, by way of *lottery*, and the ſubjecting duties on beer and ale, malt, paper, *&c.* for the repayment thereof: As the 5 & 6 *W.* 3. *c.* 7. to raiſe one million, by 10*l.* tickets, and the fortunate adventurers to have annuities, *&c.* The 10 *Ann. cap.* 19. for raiſing two millions at 6 *per cent.* intereſt. The 1 *Geo.* 1. *c.* 1. to raiſe and complete 1,400,000*l.* The 5 *Geo.* 1. *c.* 4. for raiſing the ſum of 500,000*l.* by 3*l.* tickets; and annuities of 4 *l. per cent.* to the fortunate. The 7 *Geo.* 1. *cap.* 20. for raiſing 700,000 *l.* by *lottery*, tickets at 10 *l.* each And the 8 & 9 *Geo.* 1. to raiſe the like ſum, *&c.* The 12 *Geo.* 1. *c.* 2. to raiſe one million, the higheſt benefit of fortunate adventurers, to be 20,000*l.* and blanks of 10*l.* tickets to have 7 *l.* 10 *s.* attended with annuities at 3 *l. per cent.* And the 4 *Geo.* 2. *cap.* 9. for raiſing 1,200,000 *l.* by way of *lottery* on the ſame conditions, *&c.* Theſe *lotteries* are publicly drawn by commiſſioners appointed; and the annuities, and intereſt for prizes and blanks, are paid till redemption by parliament.

By the 8 *Geo.* 1. *c.* 2. for ſuppreſſion of *private lotteries*, no perſon ſhall ſet up or keep any office of ſales of houſes, lands, plate, goods, *&c.* for improvement of ſmall ſums of money, or expoſe to ſale any houſes or goods by way of *lottery*, lots, tickets or numbers, or publiſh propoſals relating to the ſame, *&c.* on pain of forfeiting 500*l.* And adventurers in ſuch ſales to forfeit double the ſum contributed. Perſons keeping offices, of places for ſuch ſales of houſes, or goods, *&c.* by way of *lottery*, cards or dice, and any game to be determined by the lot or drawing, or by any machine or device of chance; and publiſhing propoſals, or delivering out tickets to that end, ſhall forfeit 200 *l.* being convicted before a juſtice of peace, leviable by diſtreſs, *&c.* And juſtices refuſing to do what is required, are liable to 10 *l.* penalty, by 12 *Geo.* 2. *c.* 28.

No perſons ſhall ſell the chance of any ticket, in a public *lottery*, for leſs than the whole time of drawing; nor any ſhares therein, or receive money on conſideration of repayment, if tickets prove unfortunate, *&c.* on forfeiture of treble the ſum received; to be recovered in the courts at *Weſtminſter*, &c. See 5 *Geo.* 1. *c.* 9. Laws againſt private *lotteries* extended to *Ireland*. 29 *Geo.* 2. *c.* 7. 30 *Geo.* 2. *c.* 5. See 6 *Geo.* 2. *c.* 35. 16 *Geo.* 2. *c.* 13. 12 *Geo.* 2. *c.* 28. 28 *Geo.* 2. *c.* 15. And 29 *Geo.* 2. *c.* 7. See alſo *Gaming*, and *Black. Com.* 4 *V.* 168.

Love. Provoking *unlawful love*, was one *ſpecies* of the crime of witchcraft, puniſhable by ſtatute 1 *Jac.* 1. *cap.* 12.

Lourcurdus, A ram or bell-wether. *Cowell.*

Lurgulary, Is the caſting any corrupt or poiſonous thing in the water, which was *lowrgulary*, and felony; and ſome think it a corruption of *burglary*. Stat. pro Stratis London. Anno 1573.

Lowbellers, Are ſuch perſons as go out in the night-time with a *light* and a *bell*, by the ſight and noiſe whereof birds ſitting upon the ground become ſtupified, and ſo are covered and taken with a net: The word is derived from the Sax. *low*, which ſignified a *flame of fire*. Antiq. Warwick. p. 4.

Lowbote, A recompence for the death of a man, killed in a tumult, or, as we ſay, by the mob. *Cowell.*

Ludi de Rege & Regina, Playing at cards, ſo called, becauſe there are Kings and Queens in the pack. *Cowell.*

Luminare, A lamp or candle, ſet burning on the altar of any church or chapel; for the maintenance whereof lands and rent charges were frequently given to pariſh churches, *&c.* *Kennet's Gloſſ.*

Lunatick, Is defined to be a perſon, who is ſometimes of good and ſound memory and underſtanding, and ſometimes not: *aliquando gaudet lucidis intervallis*; and ſo long as he hath not underſtanding, he is *Non compos mentis*. As a *lunatick*, without memory, underſtands not what he does: in criminal caſes, his acts ſhall not be imputed to him; unleſs he kill or offer to kill the King, when by our old books he might be guilty of treaſon, and puniſhed as a traitor; though this is contradicted by the late opinions. 1 *Inſt.* 247. 3 *Inſt.* 46. *H. P. C.* 10, 43. And it is ſaid, if one who has committed a capital offence, become *lunatick* and *non compos* before conviction, he ſhall not be tried; and if after conviction, that he ſhall not be executed. 1 *Hawk. P. C.* 2. Whilſt a man is *lunatick*, and he doth a criminal act, it is his madneſs, and not his intention, which is the cauſe of the action, and *actus non facit reum, niſi mens ſit rea*; and for that reaſon his puniſhment could not be an example to others. *Plowd.* 19. 1 *Inſt.* 247. But he who incites a madman or *lunatick* to do a murder, or other crime, is a principal offender, and as much puniſhable as if he had done it himſelf. *H. P. C.* 43. *Keyl.* 53.

By the ancient Common law, a dangerous madman may be kept in priſon till he recovers his ſenſes. *Bro Coron.* 101. And by a late ſtatute, (which *vide poſt*) *lunaticks* or madmen wandering may be apprehended by a juſtice's warrant, and locked up and chained if neceſſary; or be ſent to their laſt legal ſettlement; and two juſtices, by order, may charge their eſtates for their maintenance, *&c.* *Stat.* 12 *Ann. Seſſ.* 2. *c.* 23.

A *lunatick* cannot lawfully promiſe or contract for any thing; and the grants of *lunaticks* and infants are parallel. 1 *Inſt.* 247. 3 *Mod.* 301. Every deed made by a *lunatick*, who is *non compos*, is voidable; though a *lunatick*, himſelf, making a purchaſe, if he recovers his memory, he may agree to it, and afterwards his heir cannot diſagree to it: but otherwiſe his deeds may be avoided by his heir; except he levy a fine, or do any other act of record, *&c.* *Lit.* 405, 406. 4 *Rep.* 126. The deed of a *lunatick* ſhall not be avoidable by himſelf; for he ſhall not be allowed to work his own diſability, by making himſelf a madman. 4 *Rep.* 124.

In *equity* a *lunatick* may be relieved againſt his own acts; and where a purchaſe has been obtained of him, at an under-value, or he hath made a ſettlement, *&c.* the deeds, fines, *&c.* in ſuch a caſe, have been ſet aſide, on a bill brought by the *lunatick* and his committee. 2 *Vern* 678. *Abr. Ca. Eq.* 278, 279.

If a *lunatick* ſue an action, it muſt be ſued in his own name; and if an action be brought againſt the *lunatick*, he is to appear by attorney, if of full age, and by a guardian, if under age. 1 *Inſt.* 135.

There are *commiſſions of lunacy*, iſſued out of the *Chancery*, to examine whether the perſon be *lunatick* or not; and to make inqueſts of his lands, *&c.* Though if *lands* are ſeiſed by the King, by virtue of a commiſſion of *lunacy*, and he grants the cuſtody of the *lunatick*, *ſine computo reddendo*; if he afterwards is of ſound memory, he ſhall have an action of account for the profits. *Dyer* 25. The King hath the guardianſhip of the lands of *lunaticks*; but not the ſole intereſt in granting, and the cuſtody of their lands or bodies; as he hath of *ideots*: And the King, or other guardian of a *lunatick*, is accountable to him, his executors, *&c.* 4 *Rep.* 124.

As a *lunatick* may recover his underſtanding, and have diſcretion enough to diſpoſe and govern his lands, the King ſhall not have the cuſtody of him and his lands; for after he has recovered his memory and underſtanding, he is to have his eſtate at his own diſpoſal. *Dyer* 302. 3 *Salk.* 301.

The ſtatute 17 *Ed.* 2 *cap.* 10. ordains, that the King is to provide that the lands of *lunaticks* be ſafely kept, and they and their families maintained by the profits; and the reſidue ſhall be kept for their uſe, and be delivered to them, when they come to their right mind; the King taking nothing to his own uſe, *&c.*

A *lunatick* found by inquiſition, upon a commiſſion of *lunacy*, whoſe perſon and eſtate are committed to particular truſtees, may not marry before he or ſhe be declared of ſound mind, by the Lord Chancellor, *&c.* If any ſuch do, the marriage is void, by 15 *Geo.* 2. *c.* 30. See 4 *Geo.* 2. *c.* 10. and *Ideot.*

By the ſtatute 17 *Geo.* 2. *c.* 5. Two juſtices may by warrant directed to the conſtable, *&c.* cauſe ſuch, as by *lunacy* are ſo far diſordered in their ſenſes, that they may be dangerous to be permitted to go abroad, to be apprehended and kept ſafely locked up or ſent to their laſt legal ſettlement. The charges (being proved on oath) of removal, keeping and curing ſuch perſon, to be paid by order of two juſtices out of the *lunatick*'s real or perſonal eſtate; but if he has none, or not more than ſufficient to maintain his family, then to be paid by the pariſh. *Lunacy* may be given in evidence, on a plea of *non eſt factum.* 2 Strange 1104. See *Black. Com.* 1 *V.* 304, 439. 2 *V.* 291. 3 *V.* 427. 4 *V.* 24. 388.

Lunda, A weight formerly uſed here—Lunda *anguillarum conſtat de* 10 *Sticis.* Fleta, lib. 2. cap. 12.

Lundreſs, A ſterling ſilver-penny, which had its name from being coined only at *London*, and not at the country mints. *Lownd's Eſſay on Coin, p.* 17.

Lupanatrix, A bawd or ſtrumpet: And by the cuſtom of *London*, a conſtable may enter a houſe, and arreſt a common ſtrumpet and carry her to priſon. 3 *Inſt.* 206. —*Rex Majori & Vic.* London, *&c. Intelleximus quod plures Roberiæ & Murdra perpetrantur per receptatores publicas* lupanatrices *in diverſis locis in civitate noſtra prædict'*, *&c.* Clauſ. 4 Ed. 1. p. 1. m. 16.

Lupinum caput gerere, Signified to be outlawed, and have one's head expoſed like a wolf's, with a reward to him that ſhall bring it in. *Plac. Coron.* 4 *Johan. Rot.* 2.

Luplicetum, *(Lat.)* A hop-garden, or place where hops grow. 1 *Inſt.* 4.

Luſhburghs or **Luxenburghs**, were a baſe ſort of foreign coin, made of the likeneſs of *Engliſh* money, and brought into *England* in the reign of King *Ed.* 3. to deceive the King and his people: on account of which, it was made treaſon, for any one wittingly to bring any ſuch money into the realm, knowing it to be falſe. Stat. 25 *Ed.* 3. 3 *Inſt.* 1.

Luſtrings. A company was incorporated for making, dreſſing, and luſtrating alamodes and *luſtrings* in *England*, who were to have the ſole benefit thereof, confirmed by the following ſtat. And no foreign ſilks known by the name of *luſtrings* or alamodes are to be imported, but at the port of *London*, &c. *Stat.* 9 & 10 *W.* 3. *c.* 43. See *Silk.*

Luxury. There were formerly various laws to reſtrain exceſs in apparel, all repealed by ſtat. 1 *Jac.* 1. *c.* 25. But as to exceſs in diet, there ſtill remains one ancient ſtatute unrepealed, *viz.* 10 *Ed.* 3. *ſtat.* 3. which ordains, that no man ſhall be ſerved at dinner, or ſupper, with more than two courſes; except upon ſome great holydays there ſpecified, in which he may be ſerved with three. See *Black. Com.* 4 *V.* 170, 171. *Monteſq. Sp. L. B.* 7. *c.* 2 & 4.

Lyef-yeld, Lef-ſilver, A ſmall fine or pecuniary compoſition, paid by the cuſtomay tenant, to the lord for leave to plow or ſow, *&c.* *Somn. of Gavelkind.*

Lymputta, A lime-pit. *Cowell.*

Lyndewode, Was a doctor both of the Civil and Canon laws, and dean of the arches. He was ambaſſador for *Henry* the Fifth into *Portugal*, *anno* 1422. as appeareth by the *Preface to his Commentary upon the Provincials.* Cowell.

Lynn, An act for regulating worſted-weavers and their apprentices in the town of *Lynn*, &c. See 14 & 15 *H.* 8. *c.* 3. for rebuilding the houſes there. See 26 *Hen.* 8. *c.* 9.

M.

M, Is the letter with which perſons convicted of manſlaughter, are marked on the brawn of the left thumb, 4 *H.* 7. *c.* 13.

Mac, In the *Iriſh* language, ſignifies a ſon, *Filius.* Lit. Dict.

Mace. See *Spices.*

Mace-griefe, or **Mace-greffs**, *(Machecarii)* Are ſuch as willingly buy and ſell ſtolen fleſh, knowing the ſame to be ſtolen, *Britton, cap.* 29. and *Crompton's Juſtice of Peace, fol.* 193. Vide *Leges Inæ, cap.* 20. *De carnem furtivam tenente. De* macegrariis *carnes furtivas ſcientibus, vendentibus & ementibus. Stat.* Walliæ.

Macecaria, Machekuna, *(Macella)* The fleſh-market or ſhambles. *Cowell.*

Machecarius, A butcher. *Cowell. Leg. Ed. Reg. c.* 39.

Machecollare or **Machecoulare**, (from the Fr. *Maſchecoulis)* To make a warlike device, eſpecially over the gate of a caſtle, reſembling a grate, through which ſcalding water, or offenſive things may be thrown on pioneers or aſſailants. 1 *Inſt.* 5. *a.*

Macio, A maſon. *Cowell.*

Mackarel, May be ſold on *Sunday*, 10 & 11 *Wil.* 3. *c.* 24.

Madder, To be imported unmixed. 13 & 14 *Car.* 2. 30. repealed 15 *Car.* 2. *c.* 16. *ſect.* 3. To what duties liable, 2 *W.* & *M. c.* 5. Tithes of madder ſettled, 31 *Geo.* 2. *c.* 12. 5 *Geo.* 3. *c.* 18. Penalty of ſtealing, or deſtroying madder roots. 31 *Geo.* 2. *c.* 35.

Madning-money, Old *Roman* coins, ſometimes found about *Dunſtable*, are ſo called by the country people; they ſeem to retain this name from *Magintum*, uſed by the Emperor *Antoninus*, in his *Itinerary*, for *Dunſtable.* Camden.

Madrigals, Is an old word, ſignifying country ſongs. *Cowell.*

Maeremium, (Derived from the Fr. *Mereſme)* Properly ſignifies any ſort of timber, fit for building; *ſeu quodvis* materiamen. *Clauſ.* 16 *Ed.* 2. *m.* 3.

Magbote or **Mægbote**, (From the Sax. *Mæg*, i. e. *Cognatus* & bote, *compenſatio)* A compenſation for the ſlaying or murder of one's kinſman, in ancient times, when corporal puniſhments for murder, *&c.* were ſometimes commuted into pecuniary fines, if the friends and relations of the party killed were ſo ſatisfied. *Leg. Canuti, c.* 2.

Magick, *(Magia, Necromantia)* Witchcraft and ſorcery. See *Conjuration.*

Magiſter. This title, often found in old writings, ſignified that the perſon to whom attributed had attained ſome degree of eminency *in ſcientia aliqua, præſertim literaria*; and formerly thoſe who are now called *doctors*, were termed *magiſtri.*

Magiſtrate, *(Magiſtratus)* A ruler, and he is ſaid to be *cuſtos utriuſque tabulæ*; the keeper or preſerver of both tables of the law. If any *magiſtrate*, or miniſter of juſtice, is ſlain in the execution of his office, or keeping of the peace; it is murder, for the contempt and diſobedience to the King and the laws. 9 *Co.* See *Black. Com.* 1 *V.* 146, 338. 4 *V.* 140.

Magna Aſſiſa eligenda, Is a writ directed to the ſheriff, to ſummon four lawful knights before the juſtices of *aſſiſe*, there upon their oaths to chooſe twelve knights of the vicinage, *&c.* to paſs upon the *great aſſiſe*, between *A. B.* plaintiff, and *C. D.* defendant, *&c.* *Reg. Orig.* 8.

Magna Charta. The great charter of liberties granted in the ninth year of King *Hen.* 3. It is ſo called, either for the excellency of the laws therein contained, or becauſe there was another charter called the *Charter of the Foreſt* eſtabliſhed with it, which was the leſs of the two; or in regard of the great troubles in obtaining it, and the remarkable ſolemnity in denouncing excommunication and *anathema's* againſt the breakers thereof: *Spelman* calls it, *Auguſtiſſimum Anglicarum Libertatum Diploma. & Sacra Anchora.*

Edward the Confeſſor granted to the church and ſtate ſeveral privileges and liberties by *charter*; and ſome were granted by the charter of King *Hen.* 1. Afterwards *Stephen*, and *Hen.* 2. confirmed the charter of *Hen.* 1. and *Rich.* 1. took an oath at his coronation to obſerve all juſt laws, which was an implicit confirmation of that charter; and King *John* took the like oath: this King likewiſe, after a difference between him and the Pope, and being imbroiled in wars at home and abroad, particularly confirmed the aforementioned charter, with further privileges, but ſoon after broke it, and thereupon the barons took up arms againſt him, and his reign ended in wars. To him ſucceeded *Hen.* 3. who in the 37th year of his reign, after it had been ſeveral times confirmed by him, and as often broken, came to *Weſtminſter-hall*, and in the preſence of the nobility and biſhops, with lighted candles in their hands, *Magna Charta* was read; the King all that while laying his hand on his breaſt, and at laſt ſolemnly ſwearing *faithfully and inviolably to obſerve all things therein contained, as he was a man, a Chriſtian, a Soldier, and a King:* then the biſhops extinguiſhed the candles, and threw them on the ground; and every one ſaid, *Thus let him be extinguiſhed, and ſtink in hell, who violates this charter:* Upon which the bells were ſet on ringing, and all perſons by their rejoicing approved of what was done.

But, notwithſtanding this very ſolemn confirmation of this charter, the very next year King *Henry* invaded the rights of his people, till the barons levied war againſt him; and after various ſucceſs, he confirmed this charter, and the *Charter of the Foreſt*, in the parliament of *Marlbridge*, and in the 52d year of his reign. His ſon, *Edward* 1. confirming theſe charters, in the 25th year of his reign made an explanation of the liberties therein granted to the people; adding ſome which are new, called *Articuli ſuper Chartas:* And *Magna Charta* was not only then confirmed, but more than thirty times ſince. *Co. Lit.* 81.

This excellent ſtatute, or rather body of ſtatute law at that time, ſo beneficial to the ſubject, and of ſuch great equity, is the moſt ancient written law of the land: And it is divided into thirty-eight chapters; the 1ſt of which after the ſolemn preamble of its being made *for the honour of God, the exaltation of holy church, and amendment of the kingdom,* &c. ordains, That the church of *England* ſhall be free, and all eccleſiaſtical perſons enjoy their rights and privileges. The 2d is of the nobility, knights-ſervice, reliefs, *&c.* The 3d concerns heirs, and their being in ward. The 4th directs guardians for heirs within age, who are not to commit waſte. The 5th relates to the cuſtody of lands, *&c.* of heirs, and delivery of them up when the heirs are of age. The 6th is concerning the marriage of heirs. The 7th appoints dower to women, after the death of their huſbands, a third part of the lands, *&c.* The 8th relates to ſheriffs and their bailiffs, and requires that they ſhall not ſeize lands for debts where there are goods *&c.* the ſurety not to be diſtrained, where the principal is ſufficient. The 9th grants to *London*, and all cities and towns, their ancient liberties. The 10th orders, that no diſtreſs ſhall be taken for more rent than is due, *&c.* By the 11th the court of *Common Pleas* is to be held in a certain place. The 12th gives aſſiſes for remedy, on diſſeiſin of lands, *&c.* The 13th relates to aſſiſes of darreign preſentment, brought by eccleſiaſticks. The 14th enacts, that no freeman ſhall be amerced for a ſmall fault, but in proportion to the offence; and by the oaths of lawful men. The 15th, no town ſhall be diſtrained to make bridges, *&c.* but ſuch as of ancient times have been accuſtomed. The 16th is for repairing of ſea-banks and ſewers. The 17th prohibits ſheriffs, coroners, *&c.* from holding pleas of the crown. The 18th enacts, that the King's debtor dying, the King ſhall be firſt paid his debt, *&c.* The 19th directs the manner of levying purveyance for the King's houſe. The 20th concerns caſtleward, where a knight was to be diſtrained for money for keeping his caſtle, on his neglect. The 21ſt forbids ſheriffs, bailiffs, *&c.* to take the horſes or carts of any perſon to make carriage without paying for it. By the 22d the King is to have lands of felons a year and a day, and afterwards the lord of the fee. The 23d requires wears to be put down on rivers. The 24th directs the writ *præcipe in capite*, for lords againſt tenants offering wrong, *&c.* The 25th declares that there ſhall be but one meaſure throughout the land. The 26th, inquiſition of life and member, to be granted freely. The 27th relates to knight's-ſervice, petit-ſerjeanty, and other ancient tenures, (taken away together with wardſhip, *&c.* by 12 *Car.* 2.) The 28th directs, that no man ſhall be put to his law, on the bare ſuggeſtion of another, but by lawful witneſſes. The 29th, no freeman ſhall be diſſeiſed of his freehold, impriſoned and condemned, but by judgment of his peers, or by law. The 30th requires that merchant ſtrangers be civilly treated, *&c.* The 31ſt relates to tenures coming to the King by eſcheat. By the 32d no freeman ſhall ſell land, but ſo that the reſidue may anſwer the ſervices. The 33d, patrons of abbeys, *&c.* ſhall have the cuſtody of them in the time of vacation. The 34th, a woman to have an appeal for the death of her huſband. The 35th directs the keeping of the county-court monthly, and alſo the times of holding the ſheriff's torn, and view of frank-pledge. The 36th makes it unlawful to give lands to religious houſes in *Mortmain*. The 37th relates to *eſcuage*, and ſubſidy, to be taken as uſual. And the 38th ratifies and confirms every article of this great charter of liberties.

By the *ſtat.* 25 *Ed.* 1. it is ordained, that the great charter ſhall be taken as the *Common law*. And all ſtatutes made againſt *Magna Charta*, are declared to be void by 43 *Ed.* 3.

See *Blackſton's Law Tracts, V.* 2. And his *Com.* 1 *V.* 127. 4 *V.* 416, 418.

Magna precaria, A great or general reap-day. And in 21 *R.* 2. the lord of the manor of *Harrow on the Hill, in Com. Middleſex*, had a cuſtom that by ſummons of his bailiff upon a general reap-day, then called *Magna precaria*, the tenants ſhould do a certain number of days work for him; every tenant that had a chimney, being obliged to ſend a man. *Phil. Purvey. p.* 145.

Magnum Centum, The great hundred, or ſixſcore. *Chart.* 20 *H.* 2.

Magnus Portus, The town and port of *Portſmouth*.

Mahomeria, The temple of *Mahomet*; and becauſe the geſtures, noiſe, and ſongs there, were ridiculous to the *Chriſtians*, therefore they called antick dancing, and any thing of ridicule a *Momerie*. Mat. Paris.

Maids. Taking them away unmarried, without conſent of father or mother or their guardians, is puniſhable by *ſtat.* 4 & 5 *P.* & *M. c.* 8.

Maiden Aſſiſes, Is when at any *aſſiſes* no perſon is condemned to die.

Maiden Rents, A noble paid by every tenant in the manor of *Builth, in Com. Radnor*, at their marriage; anciently given to the lord for his omitting the cuſtom of *Marcheta*, whereby he was to have the firſt night's lodging with his tenant's wife; but it was more probably a fine for a licence to marry a daughter.

Maignagium, (Fr. *maignen*, i. e. *faber ærarius*) A braſier's ſhop; though ſome ſay it ſignifies a houſe.—— *Idem hugo tenebat unum* maignagium *in foro ejuſdem villæ, &c.* Lib. Rameſ. ſect. 265.

Maihem or **Mayhem,** (*maihemium*, from the Fr. *mehaigne*, i. e. *membri mutilationem*) Signifies a maim,

wonnd,

wound, or corporal hurt, by which a man loſeth the uſe of any member, that is or might be of any defence to him: As if a man's ſkull be broke, or any bone broken in any other part of the body; a foot, hand, finger, or joint of a foot, or any member be cut off; if by any wound the ſinews be made to ſhrink; or where any one is caſtrated; or if an eye be put out, any fore-tooth broke, *&c.* But the cutting off an ear, or noſe, the breaking of the hinder teeth, and ſuch like, was held no maihem; as they were not a weakening of a perſon's ſtrength, but a disfiguring and deformity of the body. *Glanv. lib.* 4. *cap.* 7. *Bract. lib.* 3. *tract.* 2. *Britton, cap.* 25. *S. P. C. lib.* 1. *cap.* 41.

By ſtatute, if any one on purpoſe, by malice fore-thought, and lying in wait, ſhall cut of the noſe, put out the eye, diſable the tongue, or cut off or diſable any limb or member of any of the King's ſubjects, *with intent to maim or disfigure him*, the perſon offending, his aiders, abettors, *&c.* are guilty of felony, without benefit of clergy; though no attainder of ſuch felony ſhall corrupt the blood, or forfeit the dower of the wife, lands or goods of the offender. *Stat.* 22 *&* 23 *Car.* 2. *cap.* 1.

In theſe caſes of maiming, a voluntary act, the law judgeth of malice: And if a man attack another, of malice fore-thought in order to murder him with a bill, or any ſuch like inſtrument, which cannot but endanger the maiming him, and in ſuch attack happen not to kill, but only to maim him, he may be indicted of felony on this ſtatute; and it ſhall be left to the jury on the evidence, whether there was a deſign to murder by maiming, and conſequently a malicious intent to maim as well as kill, in which caſe the offence is within the ſtatute. 1 *Hawk. P. C.* 112.

All *maihem* by the Common law was felony: And it is ſaid, that anciently a maihem by caſtration was puniſhed with death; and other maihems with the loſs of member for member; but afterwards no maihem was puniſhed in any caſe with the loſs of life or member, but only by fine and impriſonment, and damages to the party. 3 *Inſt.* 62, 118. *S. P. C.* 32. *H. P. C.* 133. For maihem, indictment or an appeal may be had; or, in common caſes, action of treſpaſs, at the plaintiff's election: And maihem ſhall be under the inſpection of the court, to increaſe damages given by the jury, *&c.* if the court thinks fit. *Sid.* 108. Maihem was commonly tried by the judges inſpecting the party; and if they doubted whether it were a maihem or not, they uſed to take the opinion of ſome able ſurgeon on the point, *Homo mahemiatus*, a man maimed or wounded. See *Appeal of Maihem.* See *Black. Com.* 1 *V.* 130. 3 *V.* 121. 4 *V.* 205.

Maii Inductio, An ancient cuſtom for the prieſt and people of country *villages* to go in *proceſſion* to ſome adjoining wood on a *May-day* morning; and return in a kind of triumph, with a may-pole, boughs, flowers, garlands, and other tokens of the ſpring. This *May-game*, or rejoicing at the coming of the *Spring*, was for a long time obſerved, and ſtill is in ſome parts of *England*; but there was thought to be ſo much heathen vanity in it, that it was condemned and prohibited within the dioceſe of *Lincoln*, by biſhop *Groſthead.*——*Faciunt etiam, ut audivimus, clerici ludos quos vocant* inductionem Maii, *& feſtum autumni, &c. quod nullo modo vos latere poſſit: Si veſtra prudentia ſuper hiis diligenter inquireret, &c.*

Mail, *(macula)* A coat of mail, ſo called from the Fr. *maille*, which ſignifies a ſquare figure, or the hole of a net: So *maille de houbergeons* was a coat of mail, becauſe the links or joints in it reſemble the ſquares of a net. Mail is likewiſe uſed for the leather bag wherein letters are carried by the poſt, from *bulga*, a budget.

Maile, Anciently a kind of money; and ſilver halfpence were termed mailes. 9 *Hen.* 5. By indenture in the mint, a pound weight of old ſterling ſilver was to be coined into three hundred and ſixty *Sterlings* or pennies, or ſeven hundred and twenty mailes or half-pennies, or one thouſand four hundred and forty farthings. *Lownd's Eſſ. on Coin* 38.

Maiming. See *Maihem.*

Mainad, A falſe oath, or perjury.——*Si nolit abjurare, emendet ipſum* mainad, i. e. *Perjurium dupliciter.* Leg. Inæ, cap. 34.

Maine-port, *(In manu portatum)* Is a ſmall tribute, commonly of loaves of bread, which in ſome places the pariſhioners pay to the rector of their church, in recompence for certain tithes. *Cowell.*

And this mainport bread was paid to the vicar of *Blyth*, as you may read in the *Antiq. of Nottinghamſhire, p.* 473.

Mainovre, (from the Fr. *main*, i. e. *manus*, and *ouvrer, operari)* Is handy-work; or ſome treſpaſs committed by a man's hand. 7 *R.* 2. *c.* 4. *Brit.* 62.

Mainour, or **Manour,** or **Meinour,** (from the Fr. *manier*, i. e. *manu tractare)* In a legal ſenſe denotes the thing that a thief taketh away, or ſtealeth. As to be taken with the *mainour*, *Pl. Cor. fol.* 179. is to be taken with the thing ſtolen about him: And again, *fol.* 194. it was preſented, that a thief was delivered to the ſheriff or viſcount, together with the *mainour:* And again, *fol.* 186. If a man be indicted, that he feloniouſly ſtole the goods of another, where, in truth, they are his own goods, and the goods be brought into the court as the *mainour*; and it be demanded of him, what he ſaith to the goods, and he diſclaim them; though he be acquitted of the felony, he ſhall loſe the goods: And again, *fol.* 149. If the defendant were taken with the *manour*, and the *manour* be carried to the court, they, in ancient times would arraign him upon the *manour* without any appeal or indictment. *Cowell.* See *Black. Com.* 3 *V.* 71. 4 *V.* 303.

Mainpernable, That may be let to bail; and what perſons are mainpernable appears by the ſtat. *Weſtm.* 1. 3 *Ed.* 1. *c.* 15. See *Bail.*

Mainpernors, *(manucaptores)* Are thoſe perſons to whom a man is delivered out of cuſtody or priſon, on their becoming bound for his appearing, *&c.* which, if he do not do, they ſhall forfeit their recognizances; and they are called *manucaptores*, becauſe they do as it were *manu capere & ducere captivum e cuſtodia vel priſona.*

Mainpriſe, *(manucaptio,* from the Fr. *main*, i. e. *manus &* pris, *captus)* Signifies in our law the taking or receiving of a perſon into friendly cuſtody, who otherwiſe might be committed to priſon, upon ſecurity given that he ſhall be forth-coming, at a time and place aſſigned; as to let one to mainpriſe is to commit him to thoſe that undertake he ſhall appear at the day appointed. *Old Nat. Br.* 42. *F. N. B.* 249.

Manwood makes this difference between *mainpriſe* and *bail:* He that is *mainpriſed* is ſaid to be at large, after the day he is ſet to *mainpriſe*, until the day of his appearance; but where a man is let to *bail*, by any judge, *&c.* until a certain day, there he is always accounted by the law to be in their ward for the time; and they may, if they will, keep him in priſon, ſo that he that is ſo bailed ſhall not be ſaid to be at large, or at his own liberty. *Manwood, p.* 167.

A man under mainpriſe is ſuppoſed to go at large, under no poſſibility of being confined by his ſureties or mainpernors, as in caſe of bail. 4 *Inſt.* 179. Mainpriſe is an undertaking in a certain ſum; bail anſwers the condemnation in civil caſes, and in criminal, body for body. *Sed. qu.* If this, as to body for body, is now law? If it is, it is never put in force.

Mainpriſe may be where one is never arreſted, or in priſon; but no man is bailed, but he that is under arreſt, or in priſon, ſo that mainpriſe is more large than bail. *H. P. C.* 96. *Wood's Inſt.* 582, 618. Upon a *Capias* or exigent awarded againſt a man, he ſhall find mainpriſe for his appearance: and if the defendant make default, his manucaptors are to be amerced, *&c.* And a bill of mainpriſe, acknowledged and put into court, is good though it be not inrolled. *Jenk. Cent.* 129.

There is an ancient *writ of mainpriſe*, whereby thoſe who are bailable, and have been refuſed the benefit of it, may be delivered out of priſon; as where perſons are impriſoned on ſuſpicion of larceny, or indicted of treſpaſs, before juſtices of peace, *&c.* *Reg. Orig.* 269. *F. N. B.* 250.

250. 2 *Hawk. P. C.* 93. See *Manucaptio.* And *Black. Com.* 3 *V.* 128.

Mainſworn, In the *North of England* is taken for as much as forſworn. *Brownl.* 4.

Maintainors, Are thoſe that maintain or ſecond a cauſe depending between others, by diſburſing money, or making friends, for either party, *&c.* not being intereſted in the ſuit, or attornies employed therein. *Stat.* 19 *Hen.* 7. *c.* 14.

Maintenance, *(manutenentia)* Signifies the unlawful upholding of a cauſe or perſon, metaphorically drawn from the ſuccouring a young child that learns to go by one's hand; and in law is taken in the worſt ſenſe. 32 *H.* 8. *c.* 9. Alſo it is uſed for the buying or obtaining of pretended rights to lands. *Stat. Ibid.*

Maintenance is either *ruralis,* in the country; as where one aſſiſts another in his pretenſions to lands, by taking or holding the poſſeſſion of them for him; or where one ſtirs up quarrels or ſuits in the country: Or it is *curialis,* in a court of juſtice; where one officiouſly intermeddles in a ſuit depending in any court, which no way belongs to him, and he hath nothing to do with, by aſſiſting the plaintiff or defendant with money or otherwiſe, in the proſecution or defence of any ſuch ſuit. *Co. Lit.* 368. 2 *Inſt.* 213. 2 *Rol. Abr.* 115. And he, who fears that another will maintain his adverſary, may, by way of prevention, have an original writ grounded on the ſtatutes, prohibiting him ſo to do. 1 *Hawk. P. C.* 225. *Reg. Orig.* 182.

Who are guilty of maintenance.

Not only he who lays out his money to aſſiſt another in his cauſe, but he that by his friendſhip or intereſt ſaves him that expence which he might otherwiſe be put to, is guilty of maintenance. *Bro. Mainten.* 7, 14, 17, *&c.* And if any perſon officiouſly give evidence, or open the evidence without being called upon to do it; ſpeak in the cauſe, as if of counſel with the party; retain an attorney for him, *&c.* or ſhall give any public countenance to another in relation to the ſuit; as where one of great power and intereſt, ſays that he will ſpend twenty pounds on one ſide, *&c.* or ſuch a perſon comes to the bar with one of the parties, and ſtands by him while his cauſe is tried, to intimidate the jury; if a juror ſolicits a judge to give judgment according to the verdict, after which he hath nothing more to do, *&c.* theſe acts are maintenance. 1 *Hawk.* 249, 250. But counſel may ſpeak as *amicus curiæ.* A man cannot be guilty of maintenance, in reſpect of any money given by him to another, before any ſuit is actually commenced, Nor is it ſuch, to give another advice, as to what action is proper to be brought, what method to be taken, or what counſellor, or attorney to be employed; or for one neighbour to go with another to his counſel, ſo as he do not give him any money: And money may be lawfully given to a poor man, out of charity, to carry on his ſuit, and be no maintenance: Attornies may lay out their money for their clients, to be repaid again; but not at their own expence, on condition of no purchaſe no pay, if they carry the cauſe or loſe it. *Fitzh. Mainten.* 18. 3 *Rol. Abr.* 118. 2 *Inſt.* 564.

It is ſaid that if a man of great power, not learned in the law, tells another who aſks his advice, that he hath a good title, it is maintenance. 1 *Hawk.* 250. In caſe any perſon who is no lawyer, and that hath no intereſt in the cauſe, ſhall take upon him to do the part of a lawyer; this will be unlawful maintenance. And after a ſuit is begun, no man may encourage either of the parties, or yield them any aid or help, by money, or the like, but he that hath intereſt therein: But to lend another money to maintain his law-ſuit, is not maintenance. 22 *H.* 6. 6. 19 *E.* 4. 3. 2 *Shep. Abr.* 406. If a perſon hath any intereſt in the thing in diſpute, tho' in contingency only, he may lawfully maintain an action relating to it; as if tenant in tail, or for life, be impleaded, he in reverſion or remainder, *&c.* may maintain the defence of the ſuit, with his own money; and a leſſor may lawfully maintain his leſſee. 2 *Rol. Abr.* 115. A lord may juſtify maintaining a tenant, in defence of his title; and the tenant may maintain his lord: One bound to warrant lands, may lawfully maintain the tenant impleaded; and a man may maintain thoſe who are enfeoffed of lands in truſt for him, concerning thoſe lands, *&c.* An heir apparent, or the huſband of ſuch an heir, may maintain the anceſtor in an action concerning the inheritance of the land whereof he is ſeiſed in fee; a maſter may maintain his ſervant, and aſſiſt him with money, but not in a real action, unleſs he hath ſome of his wages in his hands; and a ſervant by reaſon of relation may maintain his maſter in all things, except laying out his own money in the maſter's ſuit. 1 *Hawk.* 252, 253. 1 *Inſt.* 368.

Of the ſtatute law on this ſubject.

By the ſtatutes, none of the King's officers ſhall maintain pleas, or ſuits, in the King's court, for lands, *&c.* under covenant to have part thereof, or any profit therein. And clerks of juſtices are not to take part in quarrels, or delay right, on pain of treble damages. 3 *Ed.* 1. *c.* 25. No perſons ſhall take upon them to maintain quarrels, to the let and diſturbance of the Common law, by themſelves, or by any other. 1 *Ed.* 3. *c.* 14. and 20 *Ed.* 3. 4. The King's counſellors, officers or ſervants, or any other perſon whatſoever, ſhall not ſuſtain quarrels by maintenance upon grievous pain, impriſonment and ranſom. 1 *R.* 2. *c.* 4. No man may obtain or buy any pretended right or title to any land, unleſs the ſeller hath taken the profits a year, or been in poſſeſſion, on pain of forfeiting the value, *&c.* And none ſhall unlawfully maintain any ſuit concerning lands, or retain any perſon for maintenance, by letters, rewards or promiſes, under the penalty of 10*l.* for every offence, to be divided between the King and the proſecutor. 32 *H.* 8. *cap.* 9.

Of rights and titles within the meaning of the law.

But maintaining ſuits in the Spiritual court, is not within the ſtatutes relating to maintenance. *Cro. Eliz.* 594. Though maintenance in a court baron, is as much within the purview of the ſtat. 1 *R.* 2. as maintenance in a court of record. 1 *Hawk.* 255. A pretended right to copyhold lands ſold, is within the ſtatute of 32 *H.* 8. *c.* 9. 4 *Rep.* 26. If *A.* be owner of land in poſſeſſion, and another who hath no right granteth the land; altho' the grant upon it be void, yet the grantor and grantee are liable to this ſtatute. 1 *Inſt.* 369. So where he that hath a pretended right, and none in truth, ſhall get the poſſeſſion wrongfully, and then ſell the land, *&c.* But a remainder-man in fee, may obtain the pretended title of a ſtranger. 1 *Inſt.* 369. 2 *Inſt.* 76, 77. And a perſon who hath good right and title, at the time of the bargain or leaſe, will not be within the above ſtatute, although neither he nor his anceſtors have been in poſſeſſion thereof, *&c.* for a year before. *Plowd.* 47. *Dyer* 74.

Of other acts.

If a perſon make a leaſe to try a title in ejectment, unleſs it be to a great man; it is out of the ſtatute. 1 *Inſt.* 369. *Dyer* 374. A leſſor having good right to land, but not in poſſeſſion, made a leaſe of it, and did not ſeal it on the land; it was adjudged within the ſtat. 32 *Hen.* 8. *c.* 9. 1 *Leon.* 166.

Of a *choſe* in *action.*

The law will not ſuffer any thing in action, entry, *&c.* to be granted over; this is to prevent titles being granted to men of ſubſtance, to oppreſs the meaner ſort of people. 1 *Inſt.* 214. And where a bond was given for performance of covenants in a leaſe, and after the covenants being broken, the leſſee aſſigned both the leaſe and bond to another, and then the aſſignee put the bond in ſuit; this was held maintenance; ſo it would have been if the leſſee had aſſigned the bond and not the leaſe, and afterwards the covenants were broken, and the bond put in ſuit, *Godb.* 81. 2 *Nelſ. Abr.* 1142.

Of proſecuting offenders.

By the Common law, perſons guilty of maintenance may be proſecuted *by indictment*, and be fined and impriſoned; or *by action, &c.* And a court of record may commit a man for an act of maintenance done in the face of the court. *Hetl.* 79. 1 *Inſt.* 368.

For more learning on this ſubject, ſee 15 Vin. Abr. *tit.* Maintenance.

Majority. The only method of determining the acts of many, is by a majority: The major part of members of parliament enact laws, and the majority of electors chooſe members of parliament; the act of the major part of any corporation, is accounted the act of the corporation; and where the majority is, there, by the law is the whole. *Stat.* 19 *Hen.* 7. *Stud. Compan.* 25.

Maior, A mayor, doth not come from the Lat. *major*, but from an old *Engliſh* word *maier*, i. e. *poteſtas.* Cowell.

Maiſnada, Signifies a family, *quaſi manſionata.*

Maſon de Dieu, A monaſtery, hoſpital, or almshouſe. *Stat.* 2 & 3 *P.* & *M. cap.* 23. 29 *Eliz. c.* 5, *&c.* All hoſpitals, *Maiſons de Dieu*, and abiding places for poor, lame and impotent perſons, erected by the ſtatute 39 *Eliz. c.* 5. or at any time ſince founded, according to the intent of that ſtatute, ſhall be incorporated and have perpetual ſucceſſion, *&c.* 21 *Jac.* 1. *c.* 1.

Maiſura, A houſe or manſion; a farm; from the Fr. *maiſon.*——*Baldwinus Comes Exon. omnibus Baronibus ſuis & hominibus, dedi* Maiſuram *quam ipſe tenet, &c.* MS. Carter. pen. Eliam Aſhmole Armig.

Majus jus, Is a writ or law proceeding in ſome cuſtomary manors, in order to a trial of right of land: And the entry in the old books is thus: *Ad hanc curiam venit* A. B. *in propria perſona ſua et dat Domino, &c. ad vidend. Rotul. Curiæ. Et petit inquirend' utrum ipſe habeat* Majus jus *in uno meſſuagio, &c. Et ſuper hoc homag. dicunt, &c.* Ex libro MS. Epiſcop. Heref. temp. Ed. 3.

Make, *(Facere)* Signifies to perform or execute; as to *make his law*, is to perform that law which he hath formerly bound himſelf to: That is, to clear himſelf of an action commenced againſt him by his oath, and the oaths of his neighbours. *Old Nat. Brev.* 161. *Kitchen*, 192. *Si placitum debiti vel tranſgreſſionis vel aliquod placitum fuerit inter vicinos, et defendentes negaverint et vadierint legem verſus Querentem, ſolebant facere legem cum tertia manu, &c. (Inq. de Conſuetud. Manerii de Sutton Calfeld a tempore Athelſtani Regis.) i. e.* The defendants were to bring three perſons to ſwear with them. Which law ſeemeth to be borrowed from the *Feudiſts*, who call thoſe men that came to ſwear for another in this caſe *ſacramentales.* Of whom *Hotoman* ſaith thus, *In verbis Feudal. ſacramentales a ſacramento, id eſt, juramento dicebantur ii, qui quamvis rei de qua ambigebatur, teſtes non fuiſſent, tamen ex ejus, cujus res agebatur, animi ſententia, in eadem quæ illi verba jurabant, illius videlicet probitate et innocentia confiſi, &c.* The formal words uſed by him that makes his law are commonly theſe, *Hear, O ye juſtices, that I do not owe this ſum of money demanded neither in all nor any part thereof in manner and form declared. So help me God, and the contents of this book.*

To make oath is to take oath.

Make Services and Cuſtoms, Signifies nothing but to perform them. *Old Nat. Br.* 14.

Mala, A *male*, or *port-mail*, A bag to carry letters, *&c. Id. ib.*

Malandrinus, A thief or pirate; mentioned in *Walſingham*, 388.

Malberge, *Mons placiti.* A hill where the people aſſembled at a court, like our aſſiſes; which by the *Scots* and *Iriſh* are called *Parley-hills.* Du Cange.

Malecreditus, Is one of bad credit, who is ſuſpected, and not to be truſted. *Fleta, lib.* 1. *cap.* 38.

Malediction, *(maledictio)* A curſe which was anciently annexed to donations of lands, made to churches and religious houſes.——*Si quis autem (quod non optamus) hanc noſtram donationem infringere temptaverit, perpeſſus ſit gelidis glacierum flatibus et malignorum ſpirituum; terribiles tormentorum cruciatus evaſiſſe non quieſcat, niſi prius in regius pœnitentiæ gemitibus, et pura emendatione emendaverit.* Chart. Reg. Athelſtani Monaſt. de Wiltune, Anno 933.——And we read in a *Charter* of *William de Warren*, Earl of *Surry: Venientibus contra hæc et deſtruentibus ea, occurrat Deus in gladio iræ et furoris et vindictæ et* Maledictionis *æternæ: Servantibus autem hæc et defendentibus ea, occurrat Deus in pace, gratia et miſericordia et ſalute æterna.* Amen, Amen, Amen.

Malefeaſance, (from the Fr. *malfaire, i. e.* to offend) Is a doing of evil, or tranſgreſſing. 2 *Cro.* 266.

Maleſworn, In the North ſignifies as much as *forſworn*, Brownloe's Rep. 4. Hobart's Rep. 8.

Maletent, Is interpreted to be a toll for every ſack of wool, by ſtatute: Nothing from henceforth ſhall be taken for ſacks of wool, by colour of maletent, *&c.* Statute 35 *Ed.* 1.

Malice, Is a formal deſign of doing miſchief to another; it differs from hatred. 2 *Inſt.* 42. In murder, it is malice makes the crime; and if a man having a malicious intent to kill another, in the execution of his malice kill a perſon not intended, the malice ſhall be connected to his perſon, and he ſhall be adjudged a murderer. *Plowd.* 474. The words *Ex malitia præcogitata* are neceſſary to an indictment of murder, *&c.* See *Murder.*

Malice expreſs. See *Black. Com.* 4 *V.* 199. Malice implied, *ib.* 4 *V.* 200. Malice prepenſe, *ib.* 4 *V.* 198, 206.

Malignare, Signifies the ſame as to maim any one. *Qui ordinatum occiderit vel* malignaverit *emendet ei ſicut rectum eſt.* Leg. Hen. 1. cap. 11.

Malignus, i. e. *Diabolus: pro dolor, hunc pepulit propria de ſede* malignus.

Malo grato, The doing a thing unwillingly. *Libertatem eccleſiæ, &c.* malo grato *ſtabilierunt, i. e.* he being unwilling. *Mat. Paris*, 1245.

Malt. Bad *malt* ſhall not be mingled with good, under penalties; *malt* is to be three weeks in making and drying; except in *June, July* and *Auguſt*, and in thoſe months not leſs than ſeventeen days; and half a peck of duſt muſt be taken out of every quarter by ſkreening, *&c.* before it ſhall be offered to ſale, on pain of forfeiting 20*d. per* quarter. *Stat.* 2 & 3 *Ed.* 6. *cap.* 10. Where bad *malt* is made, or bad *malt* ſhall be mixed with good, a conſtable, by the direction of a juſtice of peace, may ſearch for the ſame; and order it to be ſold at a reaſonable price, *&c.* 11 *Jac.* 1. *cap.* 28. A duty of 6*d. per* buſhel was granted on *malt*, by Stat. 8 & 9 *W.* 3. *c.* 21. which by ſubſequent ſtatutes hath been continued yearly ever ſince; maltſters are, once a month, to make an entry at the exciſe office of all *malt* made, under the penalty of 10*l.* and to pay the duty in three months, or forfeit double value: and if any maltſters alter their ſteeping veſſels, without giving notice, or ſhall uſe any private ciſtern, they ſhall forfeit 50*l.* And refuſing exciſe-officers entrance into their houſes, *&c.* forfeit 5*l.* Alſo concealing *malt* from the ſight of the gager, is liable to a penalty of 10*s per* buſhel: and wetting barley any where but in the ciſtern, incurs a forfeiture of 2*s.* 6*d.* a buſhel, *&c.* But juſtices of peace have power to mitigate the penalties and forfeitures. 2 *Ann. c.* 2. 6 *Geo.* 1. *c.* 20. *Malt* made for *exportation* is diſcharged from duty; yet muſt be entered, and kept ſecrete from other *malt*, on pain of 50*l.* and when made ſhall be put into ſtore-houſes with two locks, and not delivered out without preſence of an officer, *&c. Stat.* 12 *Geo.* 1. *c.* 4. If any *malt* be brought from *Scotland* into *England*, it ſhall pay 3*d.* a buſhel more, to make up the *Engliſh* duty, and be entered, and the duty paid before landing, *&c.* or ſhall be forfeited. 13 *Geo.* 1. *c.* 7. An allowance is made for exporting *malt*, on certificates of officers, and ſecurity given not to re-land it; but if landed in any part of *Great Britain*, the ſame to be forfeited, and treble value, *&c.* by 3 *Geo.* 2. *c.* 7. 6 *Geo.* 2. *c.* 1. 9 *Geo.* 2. and 10 *Geo* 2. *c.* 1. Annual ſtatutes are made for laying a duty on malt, mum, cyder and perry. 20 *Geo.* 2. *c.* 5. 21 *Geo.* 2. *c.* 1. 22 *Geo.* 2. *c.* 1, *&c.* By *Stat.* 33 *Geo.* 2. *c.* 7. An additional duty of 3*d. per* buſhel was laid upon malt. See *Braſium.*

Perpetual duties on malt, *&c.* 33 *Geo.* 2. *c.* 7.

Regulation for ſecuring the payment of malt duties, and to prevent mixtures, 3 *Geo.* 3. *c.* 13.

Malt-mulna. A quern or malt mill. The word occurs in *Mat. Paris's Lives of the Abbots of St. Albans, &c.*

Malt-ſhot, *Malt-ſcot*, Some payment for making malt. ——*Solverit de* malt-ſhot *termino circumciſionis Domini* 20 *denarios*. Somner of Gavelkind, p. 27.

Malveilles, (from the Fr. *malvoillance*) Is uſed in our ancient records, for crimes and miſdemeanors, or malicious practices ——*Ces ſont les treaſons, felonies, &* malveilles *faits au noſtre ſeigneur le Roy, & a ſon people per* Roger. de Mortimer, *&c. Record.* 4 *Ed.* 3.

Malveiſa, A warlike engine to batter and beat down walls. *Matt. Paris.*

Malveiſin, (Fr. *mauvais voiſin, malus vicinus*) An ill neighbour.

Malveis Procurors, Are underſtood to be ſuch as uſe to pack juries, by the nomination of either party in a cauſe, or other practice. *Artic. ſuper Chart. cap.* 10.

Malum in ſe, Our law books make a diſtinction between *malum in ſe* and *malum prohibitum*. Vaugh. Rep. 332. All offences at Common law generally are *mala in ſe*; but playing at unlawful games, and frequenting of taverns, *&c.* are only *mala prohibita* to ſome perſons, and at certain times, and not *mala in ſe*. 2 Rol. Abr. 355.

Man, (iſle of,) French wines, not exceeding 100 tons in one year, may be imported by ſtrangers, 5 *El. cap.* 5. *ſect.* 46. Liberty given to import cattle and corn into *England*, 15 *Car.* 2. *c.* 7. *ſ.* 21. No drawback to be allowed for foreign goods exported to the iſle of *Man*, 12 *Geo.* 1. *c.* 28. *ſect.* 21. No goods but the product of the iſland to be imported from *Man*, 12 *Geo.* 1. *c.* 28. *ſect.* 22. The Treaſury may purchaſe the iſle of *Man*, 12 *Geo.* 1. *c.* 28. *ſ.* 25. For carrying into execution a contract made purſuant to 12 *Geo.* 1. between the commiſſioners of the Treaſury and the Duke and Dutcheſs of *Athol*, proprietors of the iſle of *Man*, and their truſtees for the purchaſe of the ſaid iſland, 5 *Geo.* 3. *c.* 26.

Mana, Signified formerly an old woman. *Gerv. of Tilb. cap.* 95.

Managium, (from the Fr. *manage*, a dwelling or inhabiting) Is a manſion houſe or dwelling place.—*Conceſſi capitale* managium *meum cum pertinentiis, &c.* Mon. Angl. tom. 2. p. 82.

Manbote, *(Sax.)* A compenſation or recompence for *homicide*; particularly due to the lord for killing his man or vaſſal. *Spelm. de Conc. Vol.* 1. *pag.* 622. See *Lambard* in his *Explication of Saxon Words*, verbo *æſtimatio*. and *Hoveden, in parte poſter. Annal. ſuor fol.* 344. *& Bote.*

Manca, Was a ſquare piece of gold coin, commonly valued at thirty pence; and *mancuſa* was as much as a mark of ſilver, having its name from *manu-cuſa*, being coined with the hand. *Leg. Canut.* But the *manca* and *mancuſa* were not always of that value; for ſometimes the former was valued at ſix ſhillings, and the latter as uſed by the *Engliſh Saxons* was equal in value to our half crown. Manca *ſex ſolidis æſtimetur.* Leg. H. 1. c. 69. *Thorn.* in his Chronicle tells us, that mancuſa *eſt pondus duorum ſolidorum & ſex denariorum*; and with him agrees *Du Cange*, who ſays that twenty *mancæ* make fifty ſhillings. *Manca* and *mancuſa* are promiſcuouſly uſed in the old books for the ſame money. *Spelm.*

Manch, Is ſixty ſhekels of ſilver, or ſeven pounds and ten ſhillings; and one hundred ſhekels of gold, of ſeventy-five pounds. *Merch. Dict.*

Mancheſter, Its collegiate church, how viſitable, 2 *Geo.* 2. *c.* 29.

Manciple, *(manceps)* A clerk of the kitchen, or caterer; and an officer in the *Inner Temple* was anciently ſo called, who is now the ſteward there, of whom *Chaucer*, our ancient poet, ſometime a ſtudent of that houſe, thus writes:

> *A manciple there was within the Temple,*
> *Of which all catours might taken enſample.*

This officer ſtill remains in colleges, in the univerſities. *Cowell.*

Mandamus, Is a writ iſſuing out of the court of *King's Bench*, ſent by the King to the head of ſome corporation, *&c.* commanding them to admit or reſtore a perſon into his place or office, *&c.* 2 *Inſt.* 40.

It is now an eſtabliſhed remedy, and every day made uſe of, to oblige inferior courts and magiſtrates to do that juſtice, which, without ſuch writ, they are in duty, and by virtue of their offices, obliged to do; and is a writ of right, which the ſuperior court is obliged to iſſue, in the ordinary form, without impoſing any terms on him who demands it. 3 *New Abr.* 528. See *poſt*, at the end of this title.

But tho' it be a writ of right, yet the court ſeldom grants it, without giving the party, to whom it is pray'd, a day to ſhew cauſe why it ſhould not iſſue; alſo ſuch matter muſt be laid before the court, by which it may appear, that the party is intitled to it. 3 *New Abr.* 528.

A *mandamus* lies to reſtore a mayor, alderman, or capital burgeſs of a corporation; a recorder, town-clerk, attorney turned out of an inferior court, ſteward of a court, conſtable, *&c.* 11 *Rep.* 99. *Raym.* 153. 1 *Keb.* 549. 2 *Nelſ. Abr.* 1148, 1149.

By ſome opinions it doth not lie, to reſtore a common council-man. 2 *Cro.* 540. But ſee 1 *Ventr.* 302. A *mandamus* may be had to reſtore a freeman; and alſo to admit one to the freedom of the city, having ſerved an apprenticeſhip. *Sid.* 107. To reſtore a fellow of the college of phyſicians, it lies; though not for a fellow of a college, in the univerſities, if there is a viſitor. 1 *Lev.* 19, 23.

It hath been reſolved, that a *mandamus* ſhall not be granted to reſtore a fellow or member of any college of ſcholars or phyſic, becauſe theſe are private foundations. *Carthew's Rep.* 92. And this writ lieth not for the deputy of an office, *&c.* yet he who hath power to make ſuch deputy, may have it. *Mod. C.* 18. 1 *Lev.* 306. See *poſt.* It lies not, generally, to elect a man into any office; nor for a clerk of a company, which is a private office; or to reſtore a barriſter expelled a ſociety; a proctor, *&c.* 2 *Lev.* 14, 18. 2 *Nelſ.* 1150, 1151. But a *mandamus* may lie to remove perſons as well as reſtore them; by virtue of any particular ſtatute, on breach thereof. 4 *Mod.* 233.

If *juſtices of peace* refuſe to admit one to take the oaths, to qualify himſelf for any place, *&c. mandamus* lies; ſo to a biſhop or archdeacon, to ſwear a churchwarden; to grant a probate of a will; and to admit an executor to prove a will, or an adminiſtrator; to a rector, vicar or churchwarden, to reſtore a ſexton. *Wood's Inſt.* 568. *Mandamus* lieth to admit a man to take the oath of allegiance, *&c.* and ſubſcribe according to the act of toleration, in order to be qualified to be a diſſenting miniſter. *Mod. Caſ.* 310. Alſo a *mandamus* will lie to the biſhop, to grant a licence for a parſon to preach, where it is denied, and he is in orders for it: and this writ lies to reſtore a perſon to univerſity degrees. 2 *Ld. Raym.* 1206, 1334. But after a man is reſtored on a peremptory *mandamus*, he may be diſplaced again, for the ſame matters for which he was before removed, and others. *Ib.* 1283. In the writ of *mandamus*, the words are to admit or reſtore, *vel cauſam ſignificare quare, etc.* And if a corporation have power to disfranchiſe a *freeman*, and they do it accordingly, if a writ is granted to reſtore him, *vel cauſam ſignificare quare*, and they certify a ſufficient but falſe cauſe, the court of *B. R.* cannot reſtore him, but there lies an action for a falſe return; and if then it be found for him, he ſhall have a *peremptory mandamus*, which is uſually granted after the firſt writ; or if he be impriſoned, he may bring action of treſpaſs and falſe impriſonment, *etc.* 11 *Rep.* 99. 5 *Mod.* 254.

Of judgment on the return.

There is to be judgment upon the return of the writ, before any action on the caſe can be brought for a falſe return of a *mandamus*. 2 Lev. 238. And returns upon writs of *mandamus* muſt be certain for the court to judge upon. 11 *Rep.* 99.

By ſtatute, where any writ of *mandamus* ſhall iſſue out of *B. R. &c.* the perſons required by law are to make their return to the firſt *mandamus*; and on the return made thereto, the perſon ſuing out the writ may *plead to, and traverſe all or any of the material facts contained in ſuch return*, to which the perſon making the return ſhall reply, take iſſue, *etc.* And the parties proceed as if action had been brought for a falſe return; and if judgment be given for the plaintiff, he ſhall have damages and coſts, as in action on the caſe, *etc.* 9 *Ann. c.* 20.

A caſe has happened, and others of the like kind may happen, where an action could not be brought, nor the return pleaded to, or traverſed under the ſtatute. In ſuch caſe, it may perhaps be adviſable to *move* the court of *King's Bench*, for an *information*, againſt the perſon or perſons, making a falſe return, or ſuch a return, as will lay the party, who moved for the *mandamus*, under the dilemma mentioned above. *Rex* v. *Pettiward et al. Juſtices of Peace for Surry.* 4 *Burr.* 2452.

All the ſtatutes of *jeofails* ſhall extend to writs of *mandamus*, and proceedings thereon. A perſon having a *mandamus* to be admitted to any office or privilege, ought to ſuggeſt whatever is neceſſary to intitle him to be admitted; and if that be not done, or if it is falſe, it will be good matter to return on the *mandamus*: and on the return of theſe writs, as well as others of this nature, there are uſually great arguments in favour of liberty, *etc.* *Mod. Ca.* 310.

It has been held, that ſeveral perſons cannot have one *Mandamus*; nor can ſeveral join in an Action on the Caſe for a falſe Return. 2 *Salk.* 433.

But there has been an inſtance to the contrary, where the circumſtances of the caſe were ſuch, that required a variety of perſons to join in the application, *viz.* on the late *highway act*, to compel the juſtices to nominate *a ſurveyor* out of the *liſt*, returned by the *inhabitants*. *Rex* v. *Pettiward et al. Juſtices of Peace for Surry.* 4 *Burr.* 2452.

A writ of *mandamus* may not be directed to one perſon, or to a mayor and alderman, *etc.* to command another to do any act; it muſt be directed to thoſe only who are to do the thing required, and obey the writ. 2 *Salk.* 446, 701. This writ is not to be *teſted* before granted by the court; and if the corporation to which the *mandamus* is ſent, be above forty miles from *London*, there ſhall be fifteen days between the *teſte* and the return of the firſt writ of *mandamus*; but if but forty miles, or under, eight days only; and the *alias* and *pluries* may be made returnable *immediatè*: alſo at the return of the *pluries*, if no return be made, and there is affidavit of the ſervice, *attachment* ſhall go forth for the contempt, without hearing counſel to excuſe it. *Ibid.* 434.

A motion was made for an attachment, for not returning an *alias mandamus*; and by *Holt* Ch. Juſt. In caſe of a *mandamus* out of *Chancery*, no *attachment* lies till the *pluries*, for that is in nature of an action to recover damages for the delay; but upon a *mandamus* out of *B. R.* the firſt writ ought to be returned though an attachment is not granted *without a peremptory rule to return the writ*, and then it goes for the contempt, *etc.* *Ibid.* 429.

Some modern caſes *where a* mandamus *will lie, and where not.*

A *mandamus* lies to admit, reſtore, or diſcharge a conſtable; for he is a public officer, and one whoſe office relates to the adminiſtration of juſtice. 2 *Roll. Rep.* 82. 1 *Roll. Abr.* 535. 1 *Salk.* 175.

Mandamus to proceed to election, where a clauſe for holding over. *Stran.* 555.

Mandamus may be granted to go to an election, tho' there is a mayor *de facto*. Stran. 1003.

Granted to go to an election, notwithſtanding a dubious election *de facto*. Stran. 1157.

Granted to elect corporation officers, where there were wrongful officers in poſſeſſion. *Stran.* 1180.

Granted peremptorily on the reverſal of a judgment for the defendant. *Stran.* 697.

Mandamus for a prebend. *Stran.* 1082. To admit a prebendary. *Stran.* 159.

Lies for a chaplain where there is no viſitor. *Stran.* 797.

To an univerſity to reſtore to degrees. *Stran.* 557.

To reſtore a ſchoolmaſter. *Stran.* 58.

For a pariſh clerk, ſexton, ſcavenger. *Stran.* 59.

To ſwear an ale-taſter. *Stran.* 608.

To ſwear a director of the amicable aſſurance. *Stran.* 696.

Mandamus for yeoman of the wood wharf. *Stran.* 832.

Mandamus to admit a deputy regiſter. *Stran.* 893.

A principal may have a *mandamus* to admit his deputy. *Stran.* 895.

To allow conſtables their expences of carriages for the troops. *Stran.* 42, 93.

To reimburſe a ſurveyor of highways. *Stran.* 211.

And this general juriſdiction and ſuperintendency of the King's Bench, over all inferior courts to reſtrain them within their bounds, and to compel them to execute their juriſdiction, whether ſuch juriſdiction ariſes from a modern charter, ſubſiſts by cuſtom, or is created by act of parliament, yet, being *in ſubſidium juſtitiæ*, has of late been exerciſed in variety of inſtances; as a *mandamus* granted to the quarter-ſeſſions, to give judgment for abating a nuſance.

So a *mandamus* was granted, to the court of *Sandwich*, to give judgment in an aſſault and battery. *Mich.* 5 *Geo.* 1.

So a *mandamus* was granted to the ſheriff's court in *London*, to give final judgment upon a writ of inquiry. *Mich.* 7 *Geo.* 1. *Baily* v. *Brown*.

So a *mandamus* was granted to the bailiff of *Andover*, to give judgment in a cauſe there depending; but the court in this caſe required an affidavit of their refuſal, or elſe it ſhould be preſumed that the court would do right. *Trin.* 2 *Geo.* 2.

So a *mandamus* was granted to the corporation of *Liverpool*, to hold an aſſembly for doing the public buſineſs, which was making leaſes. *Mich.* 8 *Geo.* 1.

But though theſe kind of writs are daily awarded to judges of courts, to give judgment, or to proceed in the execution of their authority, yet they are never granted to *aid a juriſdiction*, but only to *enforce the execution of it*; nor are they ever granted where there is another proper remedy.

Mandamus to a judge in nature of a *procedendo*. Stran. 113.

To juſtices of peace, to give judgment in an exciſe caſe. *Stran.* 530.

Granted to commit adminiſtration generally. *Stran.* 552.

To take ſecurity on articles of the peace. *Stran.* 835.

Mandamus to the clerk of a company to deliver books. *Stran.* 879.

To produce the books, at the next aſſembly. *Stran.* 948.

Granted to attend a court-leet. *Stran.* 1207.

No *mandamus* lies for a lecturer. *Stran.* 1192.

Lies not, to ſwear in one, who has had judgment, on an information againſt him, for an uſurpation. *Stran.* 625.

To call a veſtry, for the election of churchwardens, refuſed. *Stran.* 686.

Mandamus lies not, to grant a licence to keep an alehouſe. *Stran.* 881.

Lies not, for an adminiſtrator *durante minori ætate*. *Stran.* 892.

No peremptory *mandamus*, pending error, on action for falſe return. *Stran.* 983.

No *mandamus* lies, to inſert particular perſons in a poor's rate. *Stran.* 1259.

But though the court of King's Bench be intruſted with this juriſdiction of iſſuing out *mandamus's*, yet they are not obliged to do ſo in all caſes wherein it may ſeem proper, but herein may exerciſe a diſcretionary power, as well in refuſing as granting ſuch writ; as where the end of it is merely to try a private right;

where the granting it would be attended with manifeſt hardſhips and difficulties, *etc.* ſo even ſince the ſtatute 11 *Geo.* 1. *c.* 4. for obliging corporations to elect officers, it hath been held that this court hath a diſcretionary power of refuſing a writ for that purpoſe, but may firſt receive information about the election, and, if diſſatisfied about the right, may ſend the parties to try it in an information. *Hill.* 8 *Geo.* 2. *The King* v. *Mayor and Burgeſſes of* Tintagel *in* Cornwal.

For more learning on this ſubject, ſee 3 New Abr. *and* 15 Vin. Abr. *tit.* Mandamus, *and* Black. Com. 3 V. 110, 264. 4 V. 434. *Com. Dig.* tit. *Mandamus,* and 10 *Mod. Table.*

Mandamus, Was alſo a writ that lay after the year and day, where in the mean time the writ, called *diem clauſit extremum,* had not been ſent out to the *eſcheator,* on the death of the King's tenant *in capite, &c.* And was likewiſe a writ or charge to the ſheriff, to take into the hands of the King all the lands and tenements of the King's widow tenant, who againſt her oath married without his conſent. *F. N. B.* 253. *Reg. Orig.* 195. See *F. N. B.* 56. *Dyer* 209. *pl.* 19. 248. *pl.* 81. *Lamb.* 36.

Mandatary, *(mandatarius)* Is he to whom a command or charge is given.

Mandate, (*mandatum*) Is a commandment judicial of the King, or his juſtices, to have any thing done for the diſpatch of juſtice; of which there is great diverſity. *Reg. Judic.* And we read of the Biſhop's *mandate* to the ſheriff, *&c.* Stat. 31 *Eliz. c.* 9. A *mandate* may be iſſued by the *King's Bench* to ſwear a churchwarden, or pariſh clerk, *&c.* when refuſed to be ſworn by the biſhop's miniſter. *March. Rep.* 22, 101.

Mandati Dies, (*Mandie* or *Maunday Thurſday*) The day before *Good Friday,* when is commemorated and practiſed the command of our Saviour, in waſhing the feet of the poor, *&c.* And our Kings of *England,* to ſhew their humility, long executed the ancient cuſtom on that day, of waſhing the feet of poor men, in number equal to the years of their reign, and giving them ſhoes, ſtockings and money.

Mandato panes, Loaves of bread given to the poor upon *Maunday Thurſday.* Chartular. Glaſton. MS. fol. 29.

Manentes, Was anciently uſed for *tenentes* or tenants; *qui in ſolo alieno manent*; and it was not lawful for them or their children, to depart without leave of the lord. *Concil. Synodal. apud Cloverſho. anno* 822.

Mangonare, Signifies to buy in the market. *Leg. Æthelred c.* 24.

Mangonellus, A warlike inſtrument made to caſt ſmall ſtones againſt the walls of a caſtle. *Cowell.*

It differs from a *petrard* as follows, *viz.*

> *Interea groſſos* petraria *mittit ad intus*
> *Aſſidue lapides* mangonellus *que minores.*

Vide Spelm. Gloſs. *voc.* **Manga,** *et voc* **Manganum.**

Manipulus, Was an handkerchief which prieſts always had in their left hands. *Blount.*

Manner, (from the Fr. *manier,* or *mainer,* i. e. *manu tractare,*) To be *taken with the manner,* is where a thief having ſtolen any thing, is taken with the ſame about him, as it were in his *hands*; which is called *flagrante delicto.* *S. P. C.* 179. Such a criminal, as was formerly held, was not bailable by law: but now the court of *B. R.* bails in moſt caſes. Anciently if one guilty of felony or larceny had been freſhly purſued, and taken *with the manner,* and the goods ſo found upon him had been brought into court with him, he might be tried immediately, without any appeal or indictment, and this is ſaid to have been the proper method of proceeding in ſuch *manors* which had the franchiſe of *infangtheſe.* H. P. C. 201. S. P. C. 28. 2 Hawk. P. C. 211. *Sed qu.* if this is at preſent law, or agreeable to *magna charta,* or the principles of our conſtitution, as now fixed?

Manning, (*manopera*) A day's work of a man; and in ancient deeds there was ſometimes reſerved ſo much rent, and ſo many *mannings.*

Mannire, Is where one is cited to appear in court, and ſtand to judgment there: it is different from *bannire*; for though both of them ſignify a citation, one is by the adverſe party, and the other by the judge. *Leg. H.* 1. *c.* 10. *Du Cange.*

Mannopus, *(manopera)* Goods taken in the hands of an apprehended thief. *Cowell.*

Mannus, A horſe, a pad or ſaddle horſe. In the laws of *Alfred,* we find *man-theof,* for a horſe-ſtealer. *Cowell.* See *Mantheof.*

Manor, (*manerium*) Seems to be derived of the Fr. *manoir, habitatio,* or rather from *manendo,* of abiding there, becauſe the lord did uſually reſide there. *Eſt feodum nobile partim vaſſalis* (*quos* tenentes *vocamus*) *ob certa ſervitia conceſſum; partim Domino in uſum familiæ ſuæ, cum juriſdictione in vaſſallos, ob conceſſa prædia reſervatum. Quæ vaſſallis conceduntur, terras dicimus* tenementales, *quæ domino reſervantur* dominicales. *Totum vero feodum* dominium *appellatur, olim* baronia; *unde curia quæ huic præeſt juriſdictioni hodie* curia baronis *nomen retinet.*

Skene de verb. ſignif. ſaith, It is called *manerium quaſi manurium,* becauſe it is laboured by handy-work: it is a noble ſort of fee, granted partly to tenants for certain ſervices to be performed, and partly reſerved to the uſe of the lord's family, with juriſdiction over his tenants for their farms. That which was granted out to tenants, we call *tenementales*; thoſe reſerved to the lord, were *dominicales:* the whole fee was termed a lordſhip, of old a barony; from whence the court, that is always an appendant to the manor, is called *The court baron.*

Touching the original of manors, it ſeems that in the beginning, there was a circuit of ground, granted by the King to ſome baron or man of worth, for him and his heirs to dwell upon, and to exerciſe ſome juriſdiction more or leſs within that compaſs, as he thought good to grant, performing ſuch ſervices, and paying ſuch yearly rent for the ſame, as he by his grant required; and that afterwards this great man parcelled his land to other meaner men, enjoining them ſuch ſervices and rents as he thought good, and ſo as he became tenant to the King, the inferiors became tenants to him. See *Perkin's Reſervations* 670. and *Horne's Mirror of Juſtices, lib.* 1. *cap. de Roy Alfred,* and *Fulbeck, fol.* 18. And according to this our cuſtom, all lands holden in fee throughout *France* are divided into *fieffs* and *arrieri fieffs,* whereof the former are ſuch as are immediately granted by the King; the ſecond, ſuch as the King's *feudatories* do grant to others. *Gregorii Syntagm. lib.* 6. *cap.* 5. *num.* 3.

In theſe days, a manor rather ſignifieth the juriſdiction and royalty incorporeal, than the land or ſite. For a man may have a *manor in groſs,* (as the law termeth it) that is, the right and intereſt of a court-baron, with the perquiſites thereunto belonging, and another, or others have every foot of the land. *Kitchin, fol.* 4. *Broke, hoc titulo per totum.* *Bracton, lib.* 4. *cap.* 31. *num.* 3. divideth *munerium* into *capitale & non capitale.* See *Fee.*

A manor may be compounded of divers things, as of a houſe, arable land, paſture, meadow, wood, rent, advowſon, court-baron, and ſuch like; and this ought to be by long continuance of time beyond the memory of man; for at this day a manor cannot be made, becauſe a court-baron cannot now be made, and a manor cannot be without a court-baron, and ſuitors or freeholders, two at the leaſt; for if all the freeholds, except one, *eſcheat* to the lord, or if he purchaſe all, except one, there his manor is gone *cauſa qua ſupra,* although in common ſpeech it may be ſo called. *Cowell.* Vide *Co. Lit.* 58, 108. *Lit.* 73. 2 *Rol. Abr.* 121.

By a grant of the demeſnes and ſervices, the manor paſſeth: and by grant and render of the demeſnes only, the manor is deſtroyed. becauſe the ſervices and demeſnes are thereby ſevered by the act of the party; though it is otherwiſe, if by act of law, as by partition. 6 *Rep.* 63. There are two coparceners of a manor; the demeſnes are aſſigned to one, and the ſervices to the other, the manor is gone; but if one die without iſſue, and the manor deſcends to her who had the ſervices, the manor is revived again, for the ſeverance was by act in law. 1 *Inſt.* 122. 8 *Rep.* 79. 3 *Salk.* 25, 40.

A new manor may ariſe and revive by operation of law. 1 *Leon.* 204.

It may contain one or more villages or hamlets; or only great part of a village, *&c.* And there are *capital* *manors*, or *honours*, which have other manors under them, the lords whereof perform cuſtoms and ſervices to the ſuperior lords. 2 *Inſt*. 67. 2 *Rol. Abr*. 72. There may be alſo cuſtomary manors, granted by copy of court-roll, and held of other manors. 4 *Rep*. 26. 11 *Rep*. 17. But it cannot be a manor in law, if it wanteth freehold tenants; nor be a cuſtomary manor, without copyhold tenants. 1 *Inſt*. 58. *Lit*. 73. 2 *Rol. Abr*. 121. But it is ſaid, if there be but one freehold tenant, the ſeigniory continues between the lord and that one tenant. 1 *Aud*. 257. 1 *Nelſ. Abr* 524. The cuſtom remains, where tenements are divided from the reſt of the manor, the tenants paying their ſervices; and he who hath the freehold of them, may keep a court of ſurvey, *&c*. *Cro. Eliz*. 103. See *Copyhold*, and 15 *Vin. Abr*. tit. *Manor*, and *Black. Com*. 2 *V*. 90.

Manſe, (*manſa*) An habitation, or farm and land. *Spelm*. See *Manſum*.

Manſer, A baſtard. *Cowell*.

Manſion, (*manſio a manendo*) Among the ancient *Romans*, was a place appointed for the lodging of the prince, or ſoldiers in their journey; and in this ſenſe we read *primam manſionem*, *&c*. It is with us moſt commonly uſed for the lord's chief dwelling houſe within his fee; otherwiſe called the capital meſſuage, or manor place. *Skene*.

Some ſay it is a dwelling of one or more houſes without a neighbour: and manſion-houſe is taken in law for any houſe of dwelling of another; in caſes of committing *burglary*, *&c*. 3 Co. Inſt. 64.

The *Latin* word *manſia*, according to Sir *Edward Coke*, ſeems to be a certain quantity of land: *hida vel manſia*, and *manſa*, are mentioned in ſome old writers and charters. *Fleta*, *lib*. 6. And that which in ancient *Latin* authors was termed *hida*, was afterwards called *manſus*.—Manſio *eſſe poterit conſtructa ex pluribus domibus vel una, quæ erit habitio una & ſola ſine vicino; etiam & ſi alia* manſio *ſit vicinata non erit villa, quia villa eſt ex pluribus* manſionibus *vicinata & collata ex pluribus vicinis*. Bract. lib. 5. p. 1.

Manſlaughter, (*homicidium*, from the Sax. *manſlyte*) Is the unlawful killing a man without any prepenſed malice; as when two perſons meet, and upon ſome falling out, the one kills the other,. It is done in a preſent heat, on a ſudden quarrel, and upon a juſt provocation; and without any deliberate intention of doing miſchief: and it differs from *murder* only, in that it is not done with foregoing malice; and from *chancemedley*, having no preſent intent to kill. *Staundf. P. C. lib*. 1. *cap*. 9. and *Bracton*, *c*. 9. This crime is felony; but for the firſt time admits of clergy: and there can be no acceſſaries to this offence before the fact, becauſe it muſt be done without premeditation. *H. P. C*. 217.

In the laws of *Canutus*, the ſame diſtinction was made between murder and *manſlaughter*, as now; for we find, if a man was killed wilfully and premeditately, then the offender was to be delivered to the kindred of the ſlain, *&c*. But if, on his trial, the fact was proved not to be wilful, then he was reſigned to the biſhop, *&c*. *Leg*. 53.

What it is that conſtitutes manſlaughter, *and the difference between that, and* murder.

Manſlaughter muſt be upon a ſudden quarrel, where the party guilty does not appear to be maſter of his temper, by talking calmly on the quarrel, or afterwards in other diſcourſe whereby the heat of blood may be preſumed to be cooled. *Cromp*. 23. *Kel*. 56. Therefore if two perſons meet together, and, in ſtriving for the wall, one of them kills the other, this is *manſlaughter*: and ſo it is, if upon a ſudden occaſion, they had gone into the fields and fought; and one had killed the other; for all is one continued act of paſſion, on the firſt ſudden occaſion. 3 *Inſt*. 51, 55. *H. P. C*. 48. And if two perſons who have formerly fought on malice are afterwards to all appearance reconciled, and fight again on a freſh quarrel, and one of them is killed, it ſhall not be conſtrued that they were moved on the old grudge, unleſs it appear by the whole circumſtances of the fact. 1 *Hawk. P. C*. 82. If two men fall out on a ſudden and fight, and one breaks his ſword, and a ſtranger ſtanding by lends him another, with which he kills his adverſary, it is *manſlaughter* in both. *H. P. C*. 56. And where a ſtranger to a perſon, a man's ſervant, *&c*. coming ſuddenly, ſees him fighting with another, and ſides with him and kills the other; this is only *manſlaughter*: alſo if a man's friend is aſſaulted, and he in vindication of his friend, on a ſudden takes up a miſchievous inſtrument, and kills the enemy of his friend, this is *mdnſlaughter*: ſo where a perſon in reſcuing another, injuriouſly reſtrained of his liberty, by *pretended* preſs-maſters, *&c* kills any of them. *H. P. C*. 57. *Plowd*. 101. *Kel*. 46, 136.

Of officers, &c.

But if the perſon killed were a bailiff, or other officer of juſtice, reſiſted by any one in the due execution of his duty, it would be murder. *Keilw*. 67, 86. If a maſter go with malice to kill a perſon, and his ſervants being with him know nothing thereof, and then they join in the aſſault and murder, it is but *manſlaughter* in the ſervants: though if the maſter have malice, and he tells his ſervants of it, and that his intention is to kill the party, and they go with their maſter; if they kill him, it is murder in both maſter and ſervants. *Dyer* 26. 9 *Rep*. 66. *Plowd*. 100.

There were two men in an inner chamber, quarrelling, and together by the ears; a brother of one of them ſtanding at the door, that could not get in, cried to his brother to make him ſure, and preſently after he gave the other a mortal wound; this was held *manſlaughter* in him that ſtood at the door. *Trin*. 1 *Jac*. 1. *Shep. Abr*. 493. Several perſons having forcible poſſeſſion of a houſe, afterwards killed the perſon whom they had ejected, as he was endeavouring in the night forcibly to regain the poſſeſſion, and to fire the houſe; and they were adjudged only guilty of *manſlaughter*, notwithſtanding they did the fact in maintenance of a deliberate injury, *becauſe the party ſlain was ſo much in fault himſelf*: yet if in ſuch, or any other quarrel, whether it were ſudden or premeditated, a juſtice of peace, conſtable, or even a private perſon, be killed in endeavouring to keep the peace, he who kills him is guilty of murder. 1 *Hawk*. 85.

Of provocation, &c.

It hath been adjudged, that upon a killing on a ſudden quarrel, if a man be ſo far provoked by another, by words or geſtures, as to make a puſh at him with a ſword, or ſtrike at him with any other ſuch weapon as manifeſtly endangers his life, before the other's ſword is drawn, and thereupon a fight enſues, and he who made ſuch aſſault kill the other, it is murder; for by aſſaulting the other in ſuch a manner, without giving him an opportunity to defend himſelf, ſhewed that he intended to kill him: but in caſe he who draws upon another in a ſudden quarrel, make no paſs at him till his ſword is drawn, and then fighting with him kill him, he is guilty of *manſlaughter* only; becauſe by giving the other time to be on his guard, he ſhews his intent is not ſo much to kill, as to combat with the other, according to the common notions of honour. *Kel*. 61, 131. 1 *Hawk. P. C*. 81, 82.

And as to provocations, no treſpaſs, breach of a man's word, or affront by words, *&c*. will be thought a juſt provocation to excuſe the killing of another. *Ibid*. 130. Though if upon ill words, as giving the lie, or calling another a ſon of a whore, both parties ſuddenly fight, and one kills the other, this is *manſlaughter*: and if one upon angry words aſſaults another, by pulling him by the noſe, and he that is aſſaulted draws his ſword and immediately kills the other, this is but *manſlaughter*; for an indignity was offered to the ſlayer, from whence he might reaſonably apprehend that there might be ſome further deſign upon him. *Ibid*. 55, 60, 135.

If a man is taken in adultery with another perſon's wife, and the huſband draws his ſword and preſently kills the adulterer; this is a juſt provocation, and makes it *manſlaughter*. 1 Vent. 158. Raym. 212.

Puniſhment of manſlaughter, as murder, in particular caſes, by ſtatute.

There is *manſlaughter* puniſhable as murder, by ſtatute: By the 1 *Jac.* 1. *c.* 8. If any perſon ſhall *ſtab* another, not having then a weapon drawn, or not ſtricken firſt, ſo that he dies within ſix months, although it were not of malice afore-thought, it is felony without benefit of clergy: But this doth not extend to perſons ſtabbing others *ſe defendendo*, or by misfortune, *&c.* with no intent to commit *manſlaughter*; and the ſtatute relates to the party only, that actually gave the ſtroke, or ſtabbed the other, and not to thoſe that were aiding or abetting. *H. P. C.* 58. A blow given, or weapon drawn at any time during the quarrel, before the thruſt or ſtab given, is within the ſtatute; and drawing out a piſtol, and levelling it at the party killing, or throwing a pot, bottle, *&c.* at him, are within the equity of the words, having a weapon drawn. 5 *Lev.* 255, 256. So if the *party killed* have a cudgel in his hand; clergy ſhall be allowed. *Godb.* 154.

And he that is ouſted of clergy by this ſtatute muſt be ſpecially indicted upon it; though even then, the jury may find *manſlaugher* generally: for the ſtatute makes no new offence, but only takes away the benefit of the clergy, which was allowed at Common law. *H. P. C.* 58, 266.

The ſtatute is but a declaration of the Common law; and made to prevent the compaſſion of juries, who oftentimes were perſuaded to believe, that to be a provocation to extenuate the crime of murder, which in law was not. *Kel.* 55. Upon the ſtatute 1 *Jac.* 1. *c.* 8. of *Stabbing*, it has been uſual to prefer two indictments, one of *murder*, another *upon this ſtatute*, and put the priſoner to plead to both; then to charge the jury, firſt, with the indictment for *murder*, and if they find it not to be that crime, to inquire on the *other bill*, becauſe if convicted of either, the offender is excluded his clergy. 1 *Hale's Hiſt. P. C.* 468.

Of accidents happening, from two perſons playing together.

Two maſters of defence play at hand-ſword, and one wounds the other, of which he dies, it is only *manſlaughter*; and it is ſaid not to be felony where they play by the King's command, for that they play by conſent to try their manhood, and may be the better able to do the King ſervice upon occaſion. 3 *Inſt.* 56, 160. *Dalt.* 352. *Hob.* 134. When two perſons play at foils, and one kills the other, it is *manſlaughter*. H. P. C. 32, 57. Though if one kill another at wreſtling, or ſhooting with bow and arrow at buts, *&c.* this will not be *manſlaughter* in the offender. *Keilw.* 168. Theſe laſt caſes are without an ill intent.

Of inconſiderate acts, without evil intention, from which the death of any one enſues. Et e contra,

If one ſhoots off a gun in a highway, or throws a ſtone over a wall, in a place where people often meet, and a perſon is killed; or at another in play, and kill him; if done without any evil intention, it is *manſlaughter*. 3 Inſt. 57. But if an unlawful act be done with an ill intent, and the act is deliberate, if death happens, it is murder. *H. P. C.* 32, 44. 3 *Inſt.* 56. *Kel.* 112.

A perſon ſhoots at the tame fowl of another, which is an unlawful act, and kills a ſtander-by, it is murder: if he be ſhooting at a hare, wild fowl, and not qualified to keep a gun, or to kill game, it is *manſlaughter*: And where he is qualified to keep a gun, it is only chancemedley. 3 *Inſt.* 59. Though in caſes of this nature, it ought to be conſidered how far the unlawful act doth tend *immediately*, or by *neceſſary conſequence*, to the *injury* of another. *H. P. C.* 31. *Kel.* 117.

A man drives his cart careleſly, and it goes over a child in the ſtreet; if he ſee the child, and yet drive upon him, it is murder; but if he ſaw not the child, it is *manſlaughter*. And if a child runs croſs the way, and the cart runs over him, before it is poſſible to make a ſtop, it is *per infortunium*. 1 Hale's Hiſt. P. C. 476. See *Chancemedley* and *Murder*.

Manſtealing or **Kidnapping**. The forcible abduction or ſtealing away of man, woman, or child, from their own country, and ſelling them into another, was capital, by the *Jewiſh* law. *Exod.* xxi. 16. So by the Civil law it was puniſhed with death. *Ff.* 48. 15. 1. The Common law of *England* hath puniſhed it with fine, impriſonment, and pillory. *Raym.* 474. 2 *Show.* 221. *Skin.* 47. *Comb.* 10. and *vide Stat.* 11 & 12 *W.* 3. *c.* 7. and *Black. Com.* 4 *V.* 219.

Manſum Capitale, The manor-houſe or *menſe*, or court of the lord. *Kennet's Antiq.* 150.

Manſura and **Maſura**, Are uſed in *Domeſday* and other ancient records, for *Manſiones vel habitacula villicorum.* Cowell.

Manſus, Anciently a farm. *Selden's Hiſt. of Tithes, pag.* 62.

Manſus Presbyteri, The *manſe* or houſe of reſidence of the pariſh-prieſt; being the parſonage or vicarage-houſe. *Paroch. Antiq.* 431.

Manthcof, (From the Lat. *Mannus*, a nag, and Sax. *Theoff*, i. e. Thief) Signified, anciently, an horſe-ſtealer. *Leg. Alfred.* See *Mannus.*

Mantile, Is a long robe; from the Fr. word *manteau*, mentioned in the *Stat.* 24 *H.* 8. *c.* 13.

Manualia Beneficia, Were the daily diſtributions of meat and drink to the canons and other members of *Cathedral churches*, for their preſent ſubſiſtence.——*Conſuetudinem, &c. qua canonici et alii beneficiati ſeu clerici cathedralium, et aliarum collegiatarum eccleſiarum, diſtributiones quæ* manualia beneficia *nuncupantur, &c.* Lib. Statutor. Eccleſ. Sancti Pauli London. MS.

Manualis Obedientia, Is uſed for ſworn obedience, or ſubmiſſion upon oath. Henricus de Teiſdale *Rector Eccleſiæ de G. fecit pro illa Domino* Johanni *Archiepiſcopo* Ebor. Manualem Obedientiam *apud* Ebor. 11 *Kal. Maii* 1295. Ex Regiſtr. Ebor.

Manucaptio, A writ that lies for a man taken on ſuſpicion of felony, *&c.* who cannot be admitted to bail by the ſheriff, or others having power to let to *mainpriſe*. F. N. B. 249.

Manual, *(Manualis)* Signifies what is employed or uſed by the *hand*, and whereof a preſent profit may be made: As ſuch a thing in the *manual* occupation of one, is where it is actually uſed or employed by him. *Staundf. Prerog.* 54.

Manufacture, A commodity produced by the work of the *hand*; as cloth, *&c.* *Merch. Dict.* All perſons may work in *manufactures* of hemp, or flax, or tapeſtry. 15 *Car.* 2. *c.* 15. Proviſions againſt frauds in the *manufactures* of woollen, linen, and iron. 1 *Ann. Stat.* 2. *c.* 18. 13 *Geo.* 2. *c.* 8. Workmen in the woollen *manufactures* to be paid in money only. 10 *Ann. c.* 16. Penalties on *manufacturers* in leather imbezilling their work. 13 *Geo.* 2. *c.* 8. *Manufacturers* in leather ſhall be paid their wages in money. *Ibid.* Regulations of the *manufacturers* in woollen, linen, iron, leather, *&c.* and for the payment of their wages. 22 *Geo.* 2. *c.* 27.

Penalty on ſeducing *manufacturers* out of the kingdom, and on exporting utenſils of the ſilk and woollen *manufactures*. Stat. 23 Geo. 2. *c.* 13. By the *Stat.* 22 *Geo.* 2. *c.* 27.

Any perſon employed in working up any woollen, linen, ſilk, leather or iron *manufacture*, who ſhall *purloin, imbezil, ſecrete, ſell, pawn, exchange*, or *unlawfully diſpoſe of* any of the materials, ſhall be committed to the houſe of correction for fourteen days, and whipped; and for a ſecond offence to be committed for not leſs than three weeks, and whipped. The receiver to forfeit 20*l.* or be whipped; and for a ſecond offence 40*l.* or be whipped. See *Labourers*. See *Black. Com.* 4 *V.* 160.

Manumiſſion, *(Manumiſſio)* Is the freeing a villein or ſlave out of bondage; which was formerly done ſeveral ways: Some were *manumitted* by delivery to the ſheriff, and proclamation in the county, *&c.* others by charter; one way of *manumiſſion* was for the lord to take the bondman by the head, and ſay, *I will that this man be free,* and then ſhoving him forward out of his *hands.* And there was a *manumiſſion* implied; when the lord made an obligation for payment of money to the bondman, or ſued him where he might enter without ſuit, *&c.* The form of *manumitting* a perſon in the time of *Wil.* 1. called *The Conqueror,* is thus ſet down.—*Si quis velit ſervum ſuum liberum facere, tradat eum vicecomiti per* manum *dextram, in pleno comitatu, et quietum illum clamare debet a jugo ſervitutis ſuæ per* manumiſſionem, *et oſtendat ei liberas portas et vias', et tradat illi libera arma, ſcilicet lanceam et gladium, et deinde liber homo efficitur.* Lamb. Archia. 126.

Manu opera, Stolen goods taken upon a thief, apprehended in the fact. See *Mannopus.*

Manuopera, Cattle or any implements uſed to work in huſbandry. *Mon. Angl. tom.* 1. *pag.* 977. *Fleta.*

Manupaſtus. Signifies a domeſtic; *Sæpe obvenit in forenſi dialecto, pro famulo et ſerviente domeſtico.* Spelm. He ſhall be culpable as of a thing done by one of his family, or by his own hand——*Erat culpabilis tanquam de* manupaſto. *Leg. Hen.* 1. *cap.* 66.

Manupes, A foot of full and legal meaſure. *Cowell.*

Manure, *(colo, melioro)* To till, plough, or *manure* land. *Lit. Dict.*

Manus, Was anciently uſed for an *oath,* and for him that took it as a compurgator. And it often occurs in old records; *Tertia, quarta, &c.* manu *jurare*; that is, *the party was to bring ſo many, to ſwear with him, that they believed what he vouched was true:* And we read of a woman accuſed of adultery; *Mulieri hoc neganti purgatio* ſexta manu *extitit indicta,* i. e. ſhe was to vindicate her reputation upon the teſtimony of ſix compurgators. *Reg. Eccl. Chriſt. Cant.* If a perſon ſwore alone, it was *propria* manu *et unica.* The uſe of this word came probably from its being required at a perſon's *hands,* to juſtify himſelf; or from laying the *hand* upon the New Teſtament, on taking the *oath.*

Manus mediae & infimae homines, Men of a mean condition, of the loweſt degree. *Et plures* mediæ manus *quos ex juſtis et rationabilibus cauſis Rex pater exhæredaverat.* Radulphus de Diceto *ſub anno* 1112.——Inferioris & infimæ manus *homo. Idem ſub annis* 1138, 1185.

Manutenentia, Is a writ uſed in caſe of maintenance. *Reg. Orig. fol.* 182 & 189. See *Maintenance.*

Manworth, The price or value of a man's life, or head; for of old every man was rated at a certain price, according to his quality, which price was paid to the lord in ſatisfaction for killing him. *Cowell.*

Maps and Prints. See *Books.* And 8 *Geo.* 2. *c.* 13.

Mara, A *mere,* lake, or great pond, that cannot be drawn dry. *Mon. Angl. tom.* 1. *p.* 666.————*Caſtrum et manerium de* Bolynbroke, *cum ſoke,* mara *et mariſco.* Paroch. Antiq. 418.

Marca, A certain quantity of money. See *Mark.*

Marcatu, The rent of a *mark* by the year, anciently reſerved in leaſes, *&c. Et unum* marcatum *redditus de, &c.* Mon. Angl. tom. 1. p. 341.

March, Earldom of, grants of its lands are to be under the Great Seal. 4 *Hen.* 7. *c.* 14.

Marchers or **Lords Marchers,** Were thoſe noblemen that lived on the *Marches* of *Wales* or *Scotland*; who in times paſt (according to *Camden)* had their laws, and *poteſtatem vitæ, &c.* like petty Kings; which are aboliſhed by the *ſtat.* 27 *H.* 8. *c.* 26. and 1 *Ed.* 6. *c.* 10. In old records the lords *Marchers* of *Wales* were ſtyled *Marchianes de Marchia Walliæ.* See 1 & 2 *P.* & *M. c.* 15.

Marches, *(marchia,* from the Germ. *march,* i. e. *limes,* or from the Fr. *marque,* viz. *Signum,* being the notorious diſtinction between two countries, or territories) Are the limits between *England* and *Wales,* or between us and *Scotland*; which laſt are divided into *Weſt* and *Middle Marches.* 4 Hen. 5. c. 7. 22 Ed. 4. c. 8. 24 Hen. 8. c. 9. And there was formerly a court called the *Court of the Marches of Wales,* where pleas of debt or damages, not above the value of fifty pounds, were tried and determined; and if the council of the *Marches* held plea for debts above that ſum, *&c.* a *prohibition* might be awarded. *Hil.* 14 *Car.* 1. *Cro. Car.* 384.

Marchet. *(marchetum) Conſuetudo pecuniaria, in mancipiorum filiabus maritandis.* Bract. lib. 2. cap. 8. This cuſtom, with ſome variation, is obſerved in ſome parts of *England* and *Wales,* as alſo in *Scotland* and the iſle of *Guernſey:* And in the manor of *Dinevor,* in the county of *Caermarthen,* every tenant at the marriage of his daughter pays ten ſhillings to the lord, which in the *Britiſh* language is called *Gwabr Merched,* i. e. a maid's fee. The cuſtom for the lord to lie the *firſt night* with the bride of his tenant was very common in *Scotland,* and the *North of England:* But it was abrogated by *Malcolm* the Third, at the inſtance of his Queen; and inſtead thereof a mark was paid to the lord by the bridegroom; from whence it is denominated *mercheta mulieris.* See *Black. Com.* 2 *V.* 83. and tit. *Maiden Rents.*

Marchiare, To adjoin to, or border upon. *Cowell.*

Marculus, A hammer, a mallet. *Id.*

Marden, alias *Mawarden* in *Herefordſhire,* its meadow and paſture how provided for. 3 *Jac.* 1. *c.* 11.

Mares. See *Horſes.*

Mareſhal. See *Marſhal.*

Maretum, (Fr. *maret,* a fen or marſh) Signifies marſhy ground, overflowed by the ſea or great rivers. *Co. Lit.* 5.

Marinarius, A mariner or ſeaman: And *marinariorum capitaneus* was the Admiral or warden of the ports; which offices were commonly united in the ſame perſon; the word Admiral not coming into uſe, till the latter end of the reign of King *Ed.* 1. before which time the King's letters ran thus:————*Rex capitaneo* marinariorum *et eiſdem* marinariis ſalutem. *Paroch. Antiq.* 322.

Who are accountable for loſſes.

The mariners of a ſhip are accountable to the maſter; the maſter to the owners; and the owners to the merchant, for all damages by negligence, or otherwiſe. *Lex Mercat.* or *Merch. Compan.* 66. It has been held, that if goods are ſtolen from a maſter of a ſhip, whilſt his ſhip is in the river of *Thames,* he is chargeable; though not when he is gone out of the realm, for a robbery committed at ſea: But it is otherwiſe adjudged, where it was proved there was no negligence in the maſter. *Mich.* 22 *Car.* 2. 1 *Mod. Rep.* 85.

What ſubjects a mariner, to the loſs of his wages.

If a mariner be hired, and he deſerts the ſervice before the voyage is ended, by the law marine, and by the Common law, he ſhall loſe his wages: And if a ſhip is loſt by tempeſt, *&c.* the mariners loſe their wages, as well as the owners their freight; and *this is to oblige them to uſe their utmoſt endeavours to preſerve the ſhip.* Leg. Oleron. 1 Sid. 179.

Proviſion for a wounded mariner.

Where a mariner is wounded in the ſervice of a ſhip, he is to be provided for, at the charge of the ſhip; and if his illneſs is very violent, he ſhall be left aſhore with neceſſary accommodations, and the ſhip is not to ſtay for him; if he recovers, he is intitled to his full wages, deducting what the maſter expended for him. *Leg. Ol. c.* 7.

Of the recovery of mariners wages, and other matters, relative thereto.

The Common law hath juriſdiction for mariners wages; and in the Admiralty they may all join. 1 *Vent.* 146. Perſonating mariners and receiving their wages; and forging letters of attorney, *&c.* or falſly taking out letters of adminiſtration, for the receipt of ſeamens wages, incurs

curs a forfeiture of 200*l.* *&c.* *Stat.* 9 & 10 *W.* 3. *c.* 41.

A late act hath ordained, That no maſter of a ſhip ſhall retain any ſeaman or mariner, without a contract in writing for his wages, on pain of forfeiting 5*l.* And if a mariner refuſe to proceed afterwards on the voyage, he ſhall forfeit his wages; and on complaint to a juſtice of peace, he may commit the offender to the houſe of correction, to be kept to hard labour, not exceeding thirty days, *&c.* Alſo mariners abſenting from ſhips, incur a forfeiture of two days pay, for every day's abſence, to the uſe of *Greenwich* hoſpital; and leaving the ſame before diſcharged in writing, forfeit one month's wages: But this ſhall not debar any mariner, belonging to a *merchant ſhip*, from entering into the King's ſervice, *&c.* On the arrival of any ſhip, the maſter is to pay his men their wages in thirty days, or at the time of their diſcharge (deducting the penalties impoſed) on pain of 20*s.* *Stat.* 2 *Geo.* 2. *c.* 36.

No perſons ſhall pay to any mariner or common ſeaman, for a certain time, by any ways or means whatſoever, nor may any ſuch mariner take more wages, than after the rate of 35*s.* a month, on pain of forfeiting treble the value of the ſum agreed; but this extends not to ſeamen hired in voyages, from any parts beyond the ſeas, to other parts there, or to *Great Britain*, by 14 *Geo.* 2. *c.* 38.

Proviſions for ſhipwrecked ſeamen, &c.

Maſters of *Britiſh* and *Iriſh* ſhips, trading to the chief ports of *Spain*, are to pay a certain tonnage duty, to perſons there on the freight of goods and merchandiſe; as a contribution for relief of ſeamen ſhipwrecked; and other diſtreſſed ſubjects, *&c.* 9 *Geo.* 2. *c.* 25.

A like duty to be paid by all maſters of veſſels, *&c.* going from any part of his majeſty's dominions to *Leghorn*, for relieving mariners that are ſhipwrecked, and taken in war, by *ſtat.* 10 *Geo.* 2. *c.* 24.

Of exemption from preſſing, and relief of ſeamen's widows and children, &c.

Mariners ſerving in merchant ſhips, exempted from being preſſed into the King's ſervice, for two years from their firſt going to ſea, and apprentices three years, *&c.* By the *ſtat.* 20 *Geo.* 2. *c.* 38. for the relief and ſupport of maimed and diſabled ſeamen, and the widows and children of ſuch as ſhall be killed, ſlain or drowned in the merchants ſervice, reciting that there is no penſion for ſeamen diſabled, *&c.* in the merchants ſervice, and that they are willing to allow ſixpence *per* month out of their wages for the relief of ſuch as ſhall be diſabled, *&c.* and the widows and children of ſuch as ſhall be killed, *&c.* a corporation is erected, by the name of *the preſident and governors for the relief and ſupport of ſick, maimed and diſabled ſeamen, and of the widows and children of ſuch as ſhall be killed, ſlain, or drowned in the merchants ſervice.* This corporation may purchaſe lands for building an hoſpital, and are to provide for diſabled ſeamen therein, and to allow penſions to ſuch as they ſhall think proper, their widows and children. Seamen, who have not ſerved five years in the merchants ſervice, and contributed ſixpence *per* month, not to have any benefit of this act. Seamen in the merchants ſervice to pay ſixpence *per* month, and the maſter of the ſhip to retain the ſame, out of their pay, and pay it over to the receiver of the corporation. Mariners in the *Eaſt-India* company's ſervice, are exempted from the duty, and excluded the benefit of this act. See 13 *Geo.* 2. *c.* 17. And ſee *Navy.*

Mariners, Wandering up and down, and who ſhall not ſettle themſelves to work, or have not a teſtimonial under the hand of a juſtice, ſhewing where they landed, and whither to go, *&c.* Or having ſuch teſtimonial, if they exceed the time limited more than fourteen days, not being ſick in their paſſage home, *&c.* it is felony by the ſtatute 39 *Eliz.* *c.* 17. But if they cannot work for want thereof, the two next juſtices upon their complaint ſhall make order that they may be provided of work; or otherwiſe may tax the whole hundred, till relief ſhall be had. *Stat. ibid.* And every pariſh may be charged for relieving mariners, as for maimed ſoldiers; and they ſhall be relieved by the treaſurer of the county, *&c.* 43 *Eliz.* *c.* 3. See *Black. Com.* 4 *V.* 165.

Marine Forces, While on ſhore regulated and ſubjected to Martial law, and to be furniſhed with quarters, *&c.* 28 *Geo.* 2. *c.* 11. 29 *Geo.* 2. *c.* 6. 30 *Geo.* 2. *c.* 11.

Mariſcus, is a word uſed in *Domeſday-Book*, and ſignifies *palus*, or *locus paludoſus*, a marſhy or fenny ground.

Maritagio amiſſo per defaltam, Is a writ for the tenant in *frank-marriage*, to recover lands, *&c.* whereof he is deforced by another. *Reg. fol.* 171.

Maritagium, That portion which is given with a daughter in marriage. See *Glanvil: In alio modo accipitur dos ſecundum leges Romanas, ſecundum quas proprie appellatur dos, id quod cum muliere datur viro, quod vulgariter dicitur* maritagium. *Lib.* 2. *c.* 18.

Maritagium, or marriage, ſtrictly taken, is that right which the lord of the fee had, to marry the daughters of his vaſſals after their death: Others tell us, it was that profit which might accrue to the lord, by the marriage of one under age, who held his lands of him by knight's ſervice. This ſeems plain by the ſtatute of *Merton*, *c.* 7. Maritagium *ejus qui infra ætatem eſt, de vero jure pertinet ad dominum feodi.*

Maritagium habere, To have the free diſpoſal of an heireſs in marriage, a favour granted by the Kings of *England*, while they had the cuſtody of all wards or heirs in minority. *Cowell.*

Maritime, *(maritimus)* Signifies *ſea* affairs: any thing belonging to the ſea.

Maritima Angliæ, The profit and emolument ariſing to the King from the ſea, which anciently was collected by ſheriffs; but it was afterwards granted to the lord Admiral.——Richardus de Lucy *dicitur habere* maritimam Angliæ. *Pat.* 8 *H.* 3. *m.* 4.

Mark, *(marca*, Sax. *mearc.)* Of ſilver, is now *thirteen ſhillings and fourpence:* Tho' in the reigh of *Hen.* 1. it was only ſix ſhillings and a penny in weight; and ſome were coined, and ſome only cut in ſmall pieces; but thoſe that were coined, were worth ſomething more than the others. In former times, money was paid, and things valued oftentimes by the mark; *Aſſignavimus Regin. pro dote ſua mille* marcas *argenti annuatim*, 13*s.* 4*d.* *computatis pro* marca. *Patm.* 3 *Joh.* *m.* 17. We read of a mark of gold of eight ounces, of 6*l.* in ſilver; or as others write 6*l.* 13*s.* 4*d.* *Stow's Annal.* 32. *Rot. Mag. Pipæ, Ann.* 1 *Hen.* 2.

Mark to Goods, Is what aſcertains the property or goodneſs thereof, *&c.* And if one man ſhall uſe the mark of another, to the intent to do him damage, action upon the caſe lieth. 2 *Cro.* 471. (but he muſt be injured, to enable him to ſupport an action.) A penalty is inflicted in this caſe, by 23 *Eliz.* *c.* 8.

Market, *(mercatus*, from *mercando*, buying and ſelling Is the liberty by grant or preſcription, whereby a town is enabled to *ſet up and open ſhops*, *&c.* at a certain place therein, for buying and ſelling, and better proviſion of ſuch victuals as the ſubject wanteth: it is leſs than a fair; and uſually kept once or twice a week. *Bract. lib.* 2. *cap.* 24. 1 *Inſt.* 220. And, according to *Bracton*, one market ought to be diſtant from another *Sex leucas (vel milliar) et dimidiam, et tertiam partem dimidiæ:* If one hath a market by charter or preſcription, and another obtains a market near it, to the nuſance of the former; the owner of the former may avoid it. 1 *Inſt.* 406. Alſo where a man has a fair or market, and one erects another to his prejudice, an action will lie: And ſo it is ſaid of a ferry. 2 *Rol.* 140. 1 *Mod.* 69.

The fair or market is taken for the place where kept: And formerly it was cuſtomary for fairs and markets to be kept on *Sundays*; but by ſtatute 27 *H.* 6. *c.* 5. no fair or market to be kept upon any *Sunday*, or upon the feaſts of the *Aſcenſion*, *Corpus Chriſti*, *Good Friday*, *All Saints*, *&c.* except for neceſſary victuals, and in time of harveſt: And they ought not to be held in church-yards, by 13 *Ed.* 1. *c.* 6. All fairs are markets: And there may be a market without an owner; though where there is an owner a butcher cannot preſcribe to ſell meat in his own houſe upon a market day; for the market muſt be in an open place, where the owner may have the benefit of it. 4 *Inſt.* 272. No market ſhall be held out of the city of *London* within ſeven miles: Though all butchers, victuallers, *&c.* may hire ſtalls and ſtandings in the markets there, and ſell meat and proviſions, on four days in a week, *&c.* *Cit. lib.* 101.

In the country, things ſold in the markets are to be in the uſual place appointed for the ſale: But *in London every ſhop is a market overt, for ſuch goods as are put there to be ſold, by the trade of the owner*; though if the ſale be in a ware houſe, and not publicly in the ſhop, the property is not altered. 5 *Rep.* 83. *Moor* 300.

Sale upon a *Sunday*, though in a fair or market, will not alter the property of the thing ſold. This means as to goods ſtolen, and not the property of the perſon ſelling, and which he hath not any legal authority to ſell. See *Infra.*

Perſons that dwell in the country, may not ſell wares by retail in a market town, but in open fairs: But countrymen may ſell goods in groſs there. *Stat.* 1 & 2 *P.* & *M. c.* 7.

All contracts for any thing vendible in markets, *&c.* ſhall be binding, and ſales alter the property, if made according to the following rules, *viz.* 1. The ſale is to be in *a place that is open*, ſo that any one that paſſeth by may ſee it, and be in a proper place for ſuch goods. 2. It muſt be an actual ſale, for a valuable conſideration. 3. The buyer, is not to know, that the ſeller hath a wrongful poſſeſſion of the goods ſold. 4. The ſale muſt not be fraudulent, betwixt two, to bar a third perſon of his right. 5. There is to be a ſale, and a contract, by perſons able to contract. 6. The contract muſt be originally, and wholly in the market overt. 7. Toll ought to be paid, where required by ſtatute, *&c.* 8. The ſale is not to be in the night, but *between ſun and ſun*; (though if the ſale be made in the night it may bind the parties.) A ſale thus made ſhall bind the parties, and thoſe that are ſtrangers, who have a right. 5 *Rep.* 83.

But it ſhall not bind the King, for any of his goods ſold in market overt; though regularly it bindeth infants, feme coverts, men beyond ſea, and in priſon, perſons *Non compos*, *&c.* 2 Inſt. 713. And yet if a ſale be made by an infant, or feme covert, where they appear, or are known to be ſuch, (except by a woman covert for ſuch things as ſhe uſually trades for, by her huſband's conſent) it bindeth not. 5 *Rep.* 83.

Sale of goods ſtolen in *London* to brokers, *&c.* alters not the property. 1 *Jac.* 1. *c.* 21. And the ſtatutes which ordain, that toll-takers ſhall be appointed in markets and fairs, to enter in their books the names of the buyers, ſellers, vouchers, and prices of horſes ſold, and deliver a note thereof to the buyer, *&c.* ſecure the property of ſtolen horſes to the owner, although ſold in a fair or market, if he repays what was *bona fide* paid for the horſe. 2 & 3 *P.* & *M. c.* 7. and 31 *Eliz. c.* 12.

Every one that hath a market, ſhall have toll for things ſold, which is to be paid by the buyer, and by ancient cuſtom may be paid for ſtanding of things in the market, though nothing be ſold; but not otherwiſe: *A piepowder court is incident as well to a market as a fair*; and proprietors of markets ought to have a pillory, and tumbrel, *&c.* to puniſh offenders. 1 *Inſt.* 281. 2 *Inſt.* 221. 4 *Inſt.* 272. Keeping a fair or market, otherwiſe than it is granted, as by keeping them upon two days, when only one is granted; or on any other day than appointed; extorting toll or fees where none are due, *&c.* are cauſes of forfeiture. *Finch* 164. And if a perſon erects ſtalls in a market, and does not leave room for the people to ſtand and ſell their wares, ſo that they are thereby forced to hire ſuch ſtalls, the taking money for the uſe of them, in that caſe, is extortion. 1 *Ld. Raym.* 149.

Market-Towns, Penalty on perſons living in the country, and ſelling by retail in market-towns. 1 & 2 *P.* & *M. c.* 7.

Marketzeld, or **Marketgeld**, Signifies toll of the market; the word *Zeld* denoting a payment——*Et valent per ann. le* ſtreteward *et le* marketzeld. *xviii's in omni terra pertinen. ad honorem de* Haulton. *Ex Cod. MS. in Bibl. Cotton.*

Mark-penny, Was a penny anciently paid at the town of *Maldon*, by thoſe who had gutters laid or made out of their houſes into the ſtreets. *Hil.* 15 *Ed.* 1.

Marlborough, The honour of *Woodſtock* granted to the Duke of *Marlborough* in reward of the victory at *Blenheim*, *&c.* 3 & 4 *Ann. c.* 6. The honours ſettled upon his poſterity, 5 *Ann. c.* 3. An annuity from the poſt-office ſettled on the Duke of *Marlborough*, 5 Ann. c. 4. For paying the arrears due for building *Blenheim-houſe*, 1 *Geo.* 1. *ſt.* 1. *c.* 12. *ſect.* 34.

Marle, (*marla*, from the Sax. *margel*, i. e. *medulla*) Otherwiſe called *Malin*, is a kind of earth or mineral; which in divers counties of this kingdom is uſed to fertilize land. 17 *Ed.* 4. *cap.* 4.

Marleberg, Statutes made there, 52 *Hen.* 3.

Marlerium, or **Marletum**, A marle pit.——*Sciant quod habeant libertatem in* marleriis, *&c.* *Et quod capiant* marlam *ad terram ſuam* marland. *Chart. Roger de la Zouch.*

Marque, (from the Saxon *mearc*, *ſignum*) We uſe the word in the ſame ſenſe to this day, when we ſay, Give ſuch a thing a *mark* or ſign; but in our ancient ſtatutes it ſignifies as much as *repriſals*, as in ſtat. 4 *H.* 5. *cap.* 7. where *marque* and *repriſals* are uſed as *ſynonyma*; and letters of *marque* are found, in the ſame ſignification, in the ſame chapter. *Cowell.*

The law of marque in what caſes to be uſed, 27 *Ed.* 3. *ſt.* 2. *c.* 17. Letters of requeſt and letters of marque ſhall be granted by the Chancellor to thoſe that are grieved againſt truce. 4 *Hen.* 5. *c.* 7. Goods taken on board enemies ſhips, to be lawful prize, though belonging to foreigners in amity, 14 *Hen.* 6. *c.* 7. See *Repriſal.* See *Black. Com.* 1 *V.* 258.

Marqueſs, or **Marquis**, (*Marchio*) Is now a title of honour before an *Earl*, and next to a *Duke*: And by the opinion of *Hotoman*, the name is derived from the German *March*, ſignifying originally *Cuſtos Limitis*, or *Comes et præfectus limitis.* In the reign of King *Rich.* 2. came up firſt the title of *Marquis*, which was a governor of the marches; for before that time, thoſe that governed the marches were called commonly *Lords Marches*, and not *Marqueſſes*, as judge *Doderidge* has obſerved in his law of *Nobility* and *Peerage.* Selden's Mare clauſ. lib. 2. c. 19. A *Marquis* is created by patent; and anciently *by cincture of ſword, mantle of ſtate, &c.*

Marriage, (*maritagium*) Is a civil and religious contract, whereby a man is joined and united to a woman, for the ends of procreation; and ſignifies not only the lawful joining of a man and wife, but alſo the intereſt of beſtowing a *ward* or widow in *marriage*, in our ancient law. *Mag. Chart. c.* 6.

Maritagium is likewiſe applied to land given in *marriage*; and that portion which the huſband receives with his wife. *Bract. lib.* 2. *cap.* 34. *Glanv. lib.* 7. *c.* 1. In this ſenſe there are divers writs, *De maritagio*, *&c.* Reg. 171.

There is further a term called *Duty of Marriage*, ſignifying an obligation on women to *marry*; who formerly held lands, charged with perſonal ſervices, in order to render them by their huſbands. *Cowell.*

Marriage is generally the conjunction of man and woman, in a conſtant ſociety, and agreement of living together; until the contract is diſſolved by death or breach of faith, or ſome notorious miſbehaviour, deſtructive of the end for which it was intended. It is one of the rights of human nature; and was inſtituted in a ſtate of innocence, for preſervation thereof: And nothing more is requiſite to a compleat *marriage*, by the laws of *England*, than *a full, free, and mutual conſent between parties*, not diſabled to enter into that ſtate, by their near relation to each other, infancy, precontract, or impotency. Precontract, will not render void a marriage, in other reſpects legally ſolemnized, by *Stat.* 26 *Geo.* 2. *c.* 33.

As to the ſolemnization of *marriage*, this is regulated by the laws and cuſtoms of the nation where we reſide; and every ſtate allows ſuch privileges to the parties as it deems expedient, and denies legal advantages to thoſe who refuſe to ſolemnize their *marriage*, in the manner the ſtate requires; but they cannot diſſolve a *marriage* celebrated in another manner, *marriage* being of divine inſtitution, to which only a full and free conſent of the parties is neceſſary. Before the time of *Pope Innocent* III. there was no ſolemnization of *marriage* in the church; but the man came to the houſe where the woman inhabited, and led her home to his own houſe, which was all the ceremony then uſed. See 1 *Roll. Abr.* 359. 1 *Sid.* 64.

Marriages by *Romiſh Prieſts*, whoſe orders are acknowledged by the church of *England*, are deemed to have the effects of a legal *Marriage* in ſome inſtances; but *marriages* ought to be ſolemnized *according to the rites of the church of England*, to intitle to the privileges attending legal *marriage*, as dower, thirds, &c. And by the ſtatute, popiſh recuſants convict, *married* otherwiſe than according to the orders of the church of *England*, by a miniſter lawfully authoriſed, and in ſome open church, &c. ſhall be diſabled, the man to be tenant by the curteſy, and the woman to claim her dower, jointure, or widow's eſtate, &c. 3 *Jac.* 1. *c.* 5,

Marriage at Common law, is either in right, or in poſſeſſion; and marriage *de facto*, or in reputation, as among *Quakers*, &c. is allowed to be ſufficient to give title to a perſonal eſtate. 1 *Leon.* 53. *Wood's Inſt.* 59. But in the caſe of a *Diſſenter*, *married* to a woman by a miniſter of the congregation, who was not in orders; it was held that when a huſband demands a right to himſelf as huſband, by the Eccleſiaſtical law, *he ought to prove himſelf a huſband by that law, to intitle him to it*: And notwithſtanding the wife, and the children of this *marriage*, may intitle themſelves to a temporal right by ſuch *marriage*; yet the huſband ſhall not, by the reputation of the *marriage*, unleſs he hath a ſubſtantial right: And this *marriage* is not a mere nullity, becauſe by the law of nature the contract is binding; for tho' the poſitive law of man ordains *marriage* to be made by a prieſt, that law only makes this *marriage* irregular, and not expreſly void. 1 *Salk.* 119. But this is, in ſome caſes, altered by the marriage act, *viz.* 26 *Geo.* 2. *c.* 33. The ſubſtance of which ſee *infra*. *Marriages* contracted between lawful perſons, being ſolemnized in the face of the church, and conſummated, were declared valid, notwithſtanding any pre-contract, not conſummated, by *Stat.* 32 *H.* 8. *c.* 38. But this was repealed by 2 & 3 *Ed.* 6. *c.* 23. All *marriages* ſolemnized by juſtices of peace during *Oliver*'s uſurpation, were ordained to be good and valid, as if ſolemnized according to the rites and ceremonies of the church. *Stat.* 12 *Car.* 2. *c.* 33.

The *marriages* that are made in an ordinary courſe, are to be by aſking in the church, and other ceremonies appointed by the book of common prayer. 23 *Ed.* 6. *c.* 21. By the ordinances of the church, when perſons are to be *married*, the *banns* of matrimony ſhall be publiſhed in the church where they dwell three ſeveral *Sundays* or holydays, in the time of divine ſervice; and if, at the day appointed for their *marriage*, any man do alledge any impediment; as pre-contract, conſanguinity, or affinity, parents not conſenting, where under age, &c. why they ſhould not be *married*, (*and become bound with ſufficient ſureties to prove his allegation*,) then the ſolemnization muſt be deferred until the truth is tried. *Rubrick*. And no miniſter ſhall celebrate matrimony between any perſons without a faculty or *licence*, except the banns of *marriage* have been firſt publiſhed as directed, according to the book of *Common Prayer*, on pain of ſuſpenſion *per triennium*; nor ſhall any miniſter, under the like penalty, join any perſons in *marriage*, who are ſo licenſed, at any unſeaſonable times, or in any private place, &c. *Canon* 62. Alſo on the granting of licences, bond is to be taken, that there is no impediments of pre-contract, conſanguinity, &c. Nor any ſuit or controverſy depending in any Eccleſiaſtical court, touching any contract of *marriage* of either of the parties, with any other; that neither of them are of better eſtate, than is ſuggeſted; and that the *marriage* be openly ſolemnized in the pariſh church where one of the parties dwelleth, or the church mentioned in the licence, *between the hours of eight and twelve in the morning*: Oath is to be likewiſe made before one of the Doctors of the Commons, that the man and woman live at ſuch a place, are willing to *marry*, and as to there being no impediment, &c. Licences to the contrary ſhall be void; and the parties *marrying* are ſubject to puniſhment as for clandeſtine *marriages*. Can. 102.

But notwithſtanding the canons aforementioned, *marriages*, eſpecially of perſons of quality, are frequently in their own houſes, out of canonical hours, in the evening, and often ſolemnized by others in other churches, than where one of the parties lives, and out of time of divine ſervice, &c.

Parſons, vicars or curates, *marrying* any perſons, or employing other miniſters to do it, without publiſhing the banns of matrimony according to law, or without a licence for the *marriage* firſt had and obtained, ſhall forfeit 100*l.* the perſon ſo *married* 10*l.* and pariſh clerks, &c. aſſiſting, knowing it to be ſo, 5*l.* Stat. 7 & 8 *W.* 3. *c.* 35. And by a ſubſequent act, the preceding ſtatute is confirmed; and extends to privileged places; ſo that if a parſon offending be a priſoner in any place, on conviction he ſhall be removed to the county gaol, there to remain in execution charged with the ſaid penalty of 100 *l.* &c. 10 *Ann.* *c.* 19. Before theſe ſtatutes, an information was exhibited againſt certain perſons for combination in procuring a clandeſtine *marriage* in the night, without banns or licence, between a maid-ſervant and a young gentleman who was heir to an eſtate, the perſon being in liquor; and they were fined 100 marks, and ordered to be committed till paid; but it doth not appear that the *marriage* could be made void. *Cro. Car.* 557.

Marriages are prohibited in *Lent*, and on faſting days, *becauſe the mirth attending them is not ſuitable to the humiliation and devotion of thoſe times*; yet perſons may *marry* with licences in *Lent*, altho' the banns of *marriage* may not then be publiſhed. And formerly, in *popiſh* times, prieſts were reſtrained from *marriage*, and their iſſue accound baſtards, &c. But, on the Reformation, laws were made declaring that the *marriage* of prieſts ſhould be lawful, and their children legitimate; tho' the preambles to thoſe ſtatutes ſet forth, that it would be better for prieſts to live chaſte, and ſeparate from the company of women, that they might with the more fervency attend the miniſtry of the goſpel. 2 & 3, and 5 & 6 *Ed.* 6.

All perſons of the age of conſent to *marry*, (*viz.* a man of fourteen and a woman at twelve) who are not prohibited by the *Levitical degrees*, or otherwiſe by God's law, may lawfully *marry*; i. e. ſubject to the regulations of 26 *Geo.* 2. *c.* 33. but *marriages* made within the degrees, are inceſtuous and unlawful. 1 *Inſt.* 24. 2 *Inſt.* 684. *Marriage* is forbidden to thoſe who are of kindred *lineally*; alſo between ſuch as are kin in the tranſverſe or collateral line, *until the fourth degree be paſt*. So in reſpect of affinity, which ariſes betwixt thoſe that are *married* and the kindred of one of them, as between the huſband and the relations of the wife; but this prohibits *marriage* only to the perſons contracted, &c. for the couſins of conſanguinity to my wife, are of affinity to me only, and not to my brothers, or children by a former wife. 2 *Shep. Abr.* 414. The ſon of a father by another wife, and daughter of a mother by another huſband, couſin germans, &c. may *marry* with each other: a man may not *marry* his brother's wife, or wife's ſiſter; an uncle his niece, an aunt her nephew, &c. But if a man take his ſiſter to wife, they are baron and feme, and the iſſue are not baſtards, till a divorce. *Levit.* *c.* 18, 20. 2 *Inſt.* 683. 1 *Rol. Abr.* 340, 357. 5 *Mod.* 448.

A libel was exhibited againſt a perſon for *marrying* his wife's ſiſter; the defendant ſuggeſted for a prohibition, that his wife was dead, and he had a ſon by her, to whom an eſtate was deſcended as heir to his mother; yet the eccleſiaſtical court proceeded to annul the *marriage*, and to baſtardiſe the iſſue: but a prohibition was granted *quoad* the annulling the *marriage*, and baſtardiſing the iſſue, and giving leave to proceed to puniſh the inceſt. 2 *Salk.* 548. 4 *Mod.* 182. A perſon may not *marry* his ſiſter's daughter: and a ſiſter's baſtard daughter is ſaid to be within the *Levitical* law of affinity; it being morally as unlawful to *marry* a baſtard as one born in wedlock, and 'tis ſo in nature; and if a baſtard doth not fall under the prohibition *ad proximum ſanguinis non accedas*, a mother may *marry* her baſtard ſon. 5 *Mod.* 168. 2 *Ne'ſ. Abr.* 1161.

There are perſons within the reaſon of the prohibition of *marriage*, tho' not mentioned, and muſt be prohibited; as the father from *marrying* his daughter, the grandſon from *marrying* the grandmother, *&c.* 2 *Nelſ. ibid. Vaugh.* 321.

The temporal courts by the Stat. 28 *H.* 8. *c.* 7. are to determine what *marriages* are within or without the *Levitical* degrees; and prohibit the ſpiritual courts if they impeach any perſons, for *marrying* within theſe degrees, *Vaugh.* 206. 2 *Ventr.* 9. And it is ſaid, were it not for that ſtatute, we ſhould be under no obligation to obſerve the *Levitical* degrees. *Ibid.* When there is a perpetual impotency; fear or impriſonment, ſo that there can be no conſent; or where perſons are pre-contracted; a man or a woman have a wife or huſband living, *&c.* in ſuch caſes the *marriages* are to be adjudged void, as prohibited by God's law. 1 *Inſt.* 235. 2 *Inſt.* 687.

The *marriage* of a lunatic, or one not of ſound mind, is alſo now void. 15 *Geo.* 2. *c.* 30. And altho' matrimonial cauſes have been for a long time determinable in the eccleſiaſtical courts, they were not ſo from the beginning, for as well cauſes of matrimony as teſtamentary, were civil cauſes, and appertained to the juriſdiction of the civil magiſtrate, until Kings allowed the clergy cogniſance of them. *Davis's Rep.* 51. If perſons *married* are *infra annos nubiles*, the eccleſiaſtical judges are to judge as well of the aſſent, whether ſufficient, *&c.* as of the firſt contract; and where they have cogniſance, the Common law judges ought to give credit to their ſentences, as they do to our judgments. 7 *Rep* 23.

Loyalty or lawfulneſs of *marrage* is always to be tried by the biſhop's certificate; or inquiſition taken before him, on examination of witneſſes. *&c.* *Dyer* 303. If the *right* of *marriage* come naturally in queſtion, as in *dower*, *&c.* the *lawfulneſs* of *marriage* is to be tried by the biſhop's certificate; but in *perſonal* action, where the *right* of *marriage* is not in queſtion, it is triable by a jury at Common law. 1 *Lev.* 41. Whether a woman is *married*, or ſhe is the wife of ſuch a perſon, is triable by a jury: and in perſonal actions it is right to lay the matter upon the *fact* of the *marriage*, to make it iſſuable and triable by a jury, and not upon the *right* of the *marriage*, as in real actions and appeals. 1 *Inſt.* 112. 3 *Salk.* 64. If the *marriage* of the huſband is in queſtion, *marriage* in *right* ought to be, and that ſhall be tried by *certificate.* 1 *Leon.* 53. But if on covenant to do ſuch a thing to another upon the *marriage* of a man's daughter, the party alledges that he did *marry* her, *&c.* this ſhall be tried *per pais*; for the *marriage* is only in iſſue, and not whether he was lawfully eſpouſed. *Cro. Car.* 102.

Conditions againſt marrying generally, are void in law: and if a condition is annexed to a legacy; as where money is given to a woman, on condition that ſhe *marries* with conſent of ſuch a perſon, *&c.* ſuch a condition *is void* by the Eccleſiaſtical law, *becauſe the marriage ought to be free without coercion*; yet it is ſaid it is not ſo at the Common law. 2 *Nelſ. Abr.* 1162. *Poph.* 58, 59. 2 *Lill.* 192:

If perſons are *married* before the age of conſent, they may at that age diſagree and *marry* again, without any divorce: tho' if they once give conſent when at age, they cannot afterwards diſagree; and when they are *married* before, there needs not a new *marriage*, if they agree at that age. 1 *Inſt.* 33. 2 *Inſt.* 182. A man at the age of conſent, and the woman not; or the woman of age, and the man not; he or ſhe may diſagree to the *marriage* at the other's coming of age to conſent, as well as the other, for there is a mutual power of diſagreement. 3 *Inſt.* 88. 6 *Rep.* 22. 1 *Danv. Abr.* 699. A *woman* cannot diſagree within her age of *twelve* years, till which the *marriage* continues; and before her *diſagreement* is void. 1 *Danv.* 699. Tho' if a man *marries* a woman under that age, and afterwards ſhe within her age of conſent, diſagrees to the *marriage*, and at her age of *twelve* years *marries* another; now the firſt *marriage* is abſolutely diſſolved, ſo that he may take another wife; for altho' the diſagreement within the age of conſent, was not ſufficient, yet her taking another huſband at the age of conſent, and cohabiting with him affirms the diſagreement, and ſo the firſt *marriage* is avoided. *Moor* 575, 764. If after diſagreement of the parties, at the age of conſent they agree to the *marriage*, and live together as man and wife, the *marriage* hath continuance, notwithſtanding the former diſagreement; but if the *diſagreement* had been *before the ordinary*, they could not afterwards agree again to make it a good *marriage.* 1 Danv. Abr. 699.

If either party be under *ſeven* years of age, contracts of *marriage* are abſolutely void; but *marriages* of Princes made by the ſtate in their behalf, at any age, are held good; tho' many of thoſe contracts have been broken through. *Swinb. Matrimon. Contr.*

All the ancient common law doctrine relative to *contracts* of marriage, whether *per verba preſenti*, or *de futuro*, is now rendered uſeleſs, by the following ſtatute; tho' actions at law may be maintained to recover *damages*, for the breach of marriage promiſes.

Of the new ſtatute relative to marriage.

By the Stat. 26 *Geo.* 2. *c.* 33. All *marriages* are to be either in purſuance of banns publiſhed, of a licence, or of a ſpecial licence. A *marriage* in purſuance of banns muſt be ſolemnized in one of the churches or chapels, where the banns were publiſhed. A *marriage* in purſuance of a licence (except a ſpecial licence) muſt be ſolemnized in ſuch church or chapel in which the licence ſhall be granted; all *marriages* ſolemnized in any other place than a church or ſuch chapel, unleſs by ſpecial licence, or without publication of banns or a licence of *marriage* from a perſon having authority to grant the ſame, ſhall be void; and all *marriages* ſolemnized by *licence*, where either of the parties not being a widower or widow, ſhall be under the age of twenty-one years, which ſhall be had without the conſent of father, guardian, *&c.* ſhall be void. No parſon, vicar, *&c.* ſhall be obliged to publiſh banns of matrimony, unleſs the perſons to be *married* ſhall ſeven days before the time required for the firſt publication, deliver to him *a notice in writing of their true names, and of the houſe or houſes of their reſpective abode, within ſuch pariſh*, &c. and of the time they have dwelt in ſuch houſe or houſes. All banns ſhall be publiſhed upon three Sundays next preceding the *marriage* in the pariſh church, *&c.* where the perſons to be *married* ſhall dwell. If they dwell in divers pariſhes, then in the pariſh church, *&c.* where each of them ſhall dwell; if in an extraparochial place, then in the pariſh church, *&c.* adjoining.

After ſolemnization of any *marriage* under a publication of banns, it *ſhall not be neceſſary* in ſupport of ſuch *marriage*, to give *any proof of the actual dwelling* of the parties in the reſpective pariſhes, *&c.* wherein the banns of *marriage* were publiſhed, nor ſhall any evidence be received to the contrary, in any ſuit touching the validity of ſuch *marriage.*

By this clauſe trips to *Scotland*, *&c.* are rendered unneceſſary, where the parties can prevail on the clergyman to publiſh banns, without delivery of the *notice* mentioned in the preceding clauſe, or in fact, where the clergyman does not give himſelf the trouble of enquiring into the *truth* of the *notice.*

No licence of *marriage* ſhall be granted by any archbiſhop, biſhop, *&c.* to ſolemnize any *marriage* in any other church, *&c.* than in the pariſh church, *&c.* within which, the uſual place of abode of one of the parties ſhall have been, for four weeks immediately before the granting ſuch licence. If both or either of the parties ſhall dwell in an extraparochial place, then in ſome pariſh church adjoining: nothing herein contained ſhall extend to prevent the archbiſhop of *Canterbury* from granting ſpecial licences.

Where any *marriage* is by licence, it ſhall not be neceſſary to give any proof, that the uſual place of abode of one of the parties, for four weeks as aforeſaid, was in the pariſh, *&c.* where the *marriage* was ſolemnized; nor ſhall any evidence be received to the contrary, in any ſuit touching the validity of ſuch *marriage.* All *marriages* by licence, where either of the parties, not being a widower, or widow, ſhell be under the age of twenty-one years, which ſhall be had without the conſent of his or her father if living, or if dead, of his or her guardian, and if no guardian, of his or her mother if living and unmarried; and if no mother living and unmarried, then of the guardian appointed by the court of Chancery, ſhall be void. (If guardian or mother be *non compos mentis*, beyond ſea, or refuſes to conſent, and the Lord Chancellor ſhall declare it to be a proper *marriage*, that ſhall be as effectual as if the guardian or mother had conſented.)

All marriages ſhall be ſolemnized in the preſence of two or more witneſſes beſides the miniſter. No miniſter, &c. ſolemnizing *marriage* between perſons, both or one of whom ſhall be under the age of twenty-one years, after banns publiſhed, ſhall be puniſhable by eccleſiaſtical cenſure for ſolemnizing ſuch *marriage*, without conſent of parents or guardians, whoſe conſent is required by law, unleſs ſuch parſon, &c. ſhall have notice of ſuch diſſent. And in caſe ſuch parent or guardian ſhall openly declare in the church, &c. at the time of ſuch publication, his diſſent to ſuch *marriage*, ſuch publication of banns ſhall be void.

If any perſon ſhall ſolemnize matrimony in any other place than a church, &c. where banns have been uſually publiſhed, unleſs by ſpecial licence, or ſhall ſolemnize matrimony without publication of banns, unleſs licence of *marriage* be firſt had and obtained, from ſome perſon having authority to grant the ſame, every ſuch perſon knowingly ſo offending, ſhall be tranſported for fourteen years. The proſecution to be within three years.

No ſuit ſhall be in any eccleſiaſtical court to compel a celebration of *marriage*, by reaſon of any *contract* whether *per verba de preſenti*, or *de futuro*. This act not to extend to *Jews*, *Quakers*, or *Scotland*, nor to the *marriages* of any of the Royal Family.

Of the effect of marriage, by operation of law.

By *marriage* with a woman, the huſband is intitled to all her eſtate *real* and perſonal; and the effects of *marriage* are, that *the huſband and wife are accounted one perſon, and he hath power over her perſon as well as eſtate, &c.* 1 Inſt. 357.

As to the *real* eſtate the intereſt of the huſband is only for her life, unleſs he has iſſue by her born alive that might inherit, and then he will be tenant by the curteſy, for his own life, if he ſurvive her.

The *marriage* of two perſons doth knit them ſo faſt together, that *the huſband cannot give any thing to his wife by deed*, during the coverture; but by will and deviſe he may. 2 *Ann.* 11. But notwithſtanding *marriage*, in ſome caſes the huſband and wife are conſidered as divers perſons; and ſo one of them may perform an act to another: as when they do it *in auter droit*, where a feoffment is made to one of them, and letter of attorney to the other to give livery to the feoffee, &c. *Perk. Sect.* 169. And it is the ſame, if the wife have power to ſell land by will; ſhe may ſell the ſame to her huſband; and being an executrix, may pay a legacy to him. 1 *Inſt.* 187. All the goods and chattels perſonal of the wife, are by the *marriage* given to the huſband by law; ſo that he may diſpoſe of, ſell or keep them whilſt he lives, and give them away when he dies: and that whether he ſurvives her, or not. 1 *Inſt.* 299. And all the chattels real, ſhe hath in poſſeſſion in her own right, by the *intermarriage* the man ſhall have, and theſe by act executed in his life-time he may give, grant, *etc.* and in caſe he ſurvives her, he will have them abſolutely. 2 *Shep. Abr.* 419. *Co. Lit.* 46. *b.* 300. *a.* 351. *a.*

But the huſband cannot deviſe a *chattel real*, which he had in right of his wife. *Co. Lit.* 351. *a.* 1 *Rol.* 344. *l.* 15. *Pl. Com.* 418. *b.* *R. Poph.* 5.

If the huſband *does not diſpoſe* of the *chattel real*, of his wife, and ſhe ſurvive him, ſhe ſhall have it. *Co. Lit.* 46. *b.* 351. *a.* 1 *Rol.* 349. *c.* So of *choſe in action*, if it remains in the ſame ſtate at his death.

The wife ſhall have dower in her huſband's lands, after the death of the huſband, *etc.* *Litt.* 35, 36. Alſo as the wife doth partake of the name, ſo of the nature and condition of the huſband by the *marriage*; for if ſhe be an Earl's wife, ſhe is a Counteſs, if a Knight's wife, a Lady; and if he be an alien and made a denizen, the wife is ſo likewiſe. 39 *H.* 6. 45. 4 *H.* 7. 31. *Bro.* 499.

There being divers advantages by *marriage*, to the man and the woman; therefore on promiſe of *marriage*, damages may be recovered, if either party refuſe to *marry*; but *the promiſe muſt be mutual on both ſides, to ground the action.* 1 Salk. 24. And if there be reciprocal promiſes of *marriage*, as the woman's promiſe to the man is a good conſideration to make his obligatory; ſo his promiſe to her is a ſufficient conſideration to make hers binding: and though no time for *marriage* be agreed on, if the plaintiff prove tender and offer to marry defendant, and refuſal by defendant, or if defendant marry another, whereby performance of the promiſe, is, in law, rendered impoſſible, action lies, and damages are recoverable, *Carthew* 467.

If a man and a woman make mutual promiſes of *intermarriage*, and the man gives the woman 100*l.* which ſhe accepts, in ſatisfaction of his promiſe of *marriage*, it is a good diſcharge of the contract. *Mod. Caſ.* 156. By Statute 29 *Car.* 2. *c.* 3. No action ſhall be brought upon any agreement on *conſideration* of *marriage*, *except it be put in writing*, and ſigned by the party to be charged, &c. And where an agreement relating to *marriage* muſt be in writing after a year; and when it need not, *vide Skinn.* 353. Obſerve the words, they are upon any agreement on *conſideration* of *marriage*,—which is eſſentially different from *mutual promiſes* of the *parties*, to *marry* each other. —And which latter, are not within the ſtatute. A promiſe of a father *by letter* to give money in *marriage* with his daughter, is a ſufficient promiſe in writing, within the ſtatute. 2 *Vent.* 361. Where a perſon promiſes to give his daughter wedding clothes on the *marriage*, ſhe ſhall have two ſuits, one for the wedding day, and the other for the time of feaſting afterwards, according to the dignity of the perſon. *Cro Car.* 53.

Contracts and bonds for money to procure *marriage* between others, have been held void in equity; and wherever a parent or guardian inſiſts upon private gain, on the *marriage* of children; covenant or obligation for it, ſhall be ſet aſide in *Chancery* as extorted. 3 *Lev.* 41. 1 *Salk.* 156.

If a man before *marriage* gives bond and judgment to the wife, to leave her worth 1000*l.* at his death, in conſideration of a *marriage* portion, this ſhall be made good out of the huſband's eſtate, and be ſatisfied before any debts; provided a judgment be not obtained againſt him, with her conſent. An intended huſband, in conſideration of a *marriage*, covenanted with the intended wife, that if ſhe would *marry* him, and ſhe ſhould happen to ſurvive him, he would leave her worth 500*l.* The *marriage* took effect, and the wife ſurvived, and he did not leave her worth that money; ſhe *married* a ſecond huſband, and he brought an action of debt againſt the adminiſtrator of the firſt huſband for the 500*l.* To which it was objected, that this *being a perſonal action*, it was ſuſpended by the *marriage*, which was a releaſe in law, and ſo extinct; but the plaintiff had judgment, for the action is not ſuſpended, *becauſe during the coverture, there was no cauſe of action:* Nothing in this caſe is due whilſt the coverture takes place, and the debt ariſes by the death of the huſband. *Palm.* 99. 2 *Sid.* 58.

A bond was given by a man, reciting, he was to *marry* *A. S.* and that if the *marriage* took effect, and he did ſurvive her, then, within three months after her deceaſe, he would pay to the obligee 300*l.* for ſuch uſes as the ſaid *A. S.* by any writing under hand and ſeal, ſubſcribed and publiſhed in the preſence of two witneſſes, ſhould direct and appoint; this *marriage* bond was adjudged good. 3 *Cro.* 376. *Yelv.* 226, 227. A man and a woman intending to *intermarry*, he enters into articles with her before their *marriage*, by which he agreed to ſettle ſuch lands upon her, &c. And in purſuance of thoſe articles ſhe *marries* him; if he dies before any ſettlement made, the widow in equity ſhall have the articles executed, and hold the lands for life, &c. 2 *Ventr.* 243.

In caſe articles are entered into before *marriage*, and afterwards a ſettlement is made different therefrom, the court of *Chancery* will ſet up the articles againſt it; but where both are finiſhed before the *marriage* had, at a time when all parties are at liberty, *ſuch ſettlement will be taken as a new agreement between them:* This is the general rule, unleſs the deed of ſettlement is expreſſly mentioned to be made *in purſuance of the marriage articles*, &c. whereby the intent may ſtill appear to be the ſame. *Talbot's Caſ.* 20. Articles of *marriage* were made for ſettling lands on the huſband and wiſe, and the heirs male and female of the body of the huſband by the wife, *&c.* and a ſettlement was drawn contrary to theſe articles, long after which the huſband ſuffered a recovery, and deviſed the land to others; it was here held to be no bar to the heirs female, who were decreed to have the land. 2 *P. Williams* 349, 355. Yet it is ſaid, where relief is to be given in *Equity* on a ſettlement, it muſt be only to the perſons who claim as *purchaſers*, as the firſt and other ſons; and all remainders after to the husband's heirs of his body, or his right heirs, are voluntary and not to be aided. *Abr. Caſ. Eq.* 385.

Tho' a term to raiſe daughters portions, payable at the age of *eighteen* or day of *marriage* in a *marriage* ſettlement is limited in remainder, to commence after the death of the father generally; or if it be in caſe he *die without iſſue male of his wife*, and ſhe dies firſt without ſuch iſſue, leaving a daughter, *&c.* In equity the term is ſaleable during the life-time of the father, when the daughter is *eighteen* years old, or *married*; becauſe every thing hath happened and is paſt which is contingent, for it is impoſſible there ſhould be iſſue male of the wife when ſhe is dead; and as to the father's death, that is not contingent, but certain, by reaſon *all men muſt die:* But if there is a contingency not yet happened, as if the daughters are to be *unmarried*, or not provided for at the time of the father's death, *&c.* it is otherwiſe. 1 *Salk.* 159.

Upon *marriages*, the ſettlements generally made of the eſtate of the husband, *&c.* are to the husband for life, after his death to the wife for life for her *jointure*, and to their iſſue in remainder, with limitations to truſtees to ſupport contingent uſes, and leaſes, to truſtees for terms of years, to raiſe daughters portions, *&c.* And they are made ſeveral ways, by *leaſe* and *remainder*, *fine* and *recovery*, *covenant to ſtand ſeiſed to uſes*, &c. *Accomp. Conv.* 143.

See the form of a compleat marriage ſettlement, in the *appendix* to *Blackſtone's Analyſis*, with other uſeful forms relative thereto: See the ſame alſo, in the *Appendix* to the ſecond volume of his *Commentaries*.

Theſe ſettlements the law is ever careful to preſerve, eſpecially that part of them which relates to the wife; of which ſhe may not be diveſted, but by her own fine: And if a woman about to *marry*, to prevent her husband's diſpoſal of her land, conveys it to friends in truſt, and they with the husband after *marriage* make ſale of the ſame; The court of *Chancery* will decree the purchaſer to reconvey to her. *Tothil.* 43.

Where a woman on *marriage*, by the man's conſent makes over her eſtate, to be at her own diſpoſal, the product or increaſe thereof, ſhe can alſo diſpoſe of: And if the wife has a ſeparate maintenance ſettled on her by the husband; ſhe may by writing *in the nature of a will*, give away what ſhe ſaves, if ſhe dies before the husband; and ſhall have the ſame herſelf, in caſe ſhe outlives him, and it ſhall not be liable to his debts. *Preced. Canc.* 255, 44. But where a ſettlement is made on the wife, *in conſideration of her whole fortune and equivalent to it*; here the *wife's portion*, tho' it be out on bonds, *&c.* which upon the death of the husband by law ſurvive to the wife, ſhall in equity be ſubject to the husband's bond-debts, after his deceaſe, to eaſe the real eſtate of the heir. *Ibid.* 63. And it has been likewiſe held, that if after the wife's death, debts of her's appear; the husband ſhall be anſwerable for the debts of the wife, *ſo far as he had any money or eſtate of hers.* Ibid. 256.

If a man in mean circumſtances, *marry* a woman of fortune, upon ſuggeſtion and proof of lunacy in the wife by her friends, the court will order her eſtate to be ſo ſettled, that ſhe may not be wrought on by her husband to give it to him from her children, by him or any other husband, *&c.* *Skin.* 110.

N. B. She cannot give it to her husband *by will.* It muſt be by deed, aided by a fine, or common recovery.

Marriage is diſſolved by the natural death of the husband or wife, or by divorce; and where a marriage is diſſolved by the death of the husband, dower, *etc.* ſurvives to the wife, where no ſettlement is made of the husband's lands, *etc.* See *Baron and Feme*, and *Chancery*.

By *ſtatute*, *to ſteal* or *take away* any woman, *having an eſtate in lands or goods*, or that is *heir apparent*, *againſt her will*, and *marry* or *defile* her, is *felony*. 3 Hen. 7. cap. 2. And if any perſons *married*, do *marry* any other perſon, *the former huſband or wife being alive*, it is felony: But where a husband or wife are abroad beyond ſea, *etc.* *ſeven years*, the one *not knowing* the other to be living; or there is a divorce of the husband and wife, *etc.* they are excepted out of the act 1 *Jac.* 1. *c.* 11. A husband being abſent *ſeven years* in *New England* or *Ireland*, this *is beyond the ſeas*, and within the words of the exception of the act, yet in the King's dominions: And if the husband, or wife, be abroad ſeven years, tho' the party *marrying* here hath notice, that he or ſhe is alive, it is no felony; but if the abſent perſon be living in *England*, *Wales*, or *Scotland*, and the other party hath notice, it is felony by the ſtatute. *Hale's Hiſt. P. C.* 693. In the caſe of any ſuch felonious marriage, as is mentioned above, *the firſt and true wife*, is not allowed as a witneſs againſt the husband, but the ſecond wife may be admitted to prove the ſecond *marriage*; *for ſhe is not in law his wife.* Ibid. If the firſt *marriage* were beyond ſea, and the latter in *England*, the party may be indicted for it here: the latter *marriage* making the crime: Tho' if the firſt *marriage* be in *England*, and the latter beyond ſea, the offender cannot be indicted here. 1 *Sid.* 171. *Kel.* 80. If a *married* man pretend himſelf to be a ſingle perſon, and make love to a ſingle woman and *marry* her; for this injury in the loſs of her credit, *etc.* as to the *marriage* of any other man, action lies. *Skinner's Rep.* 119. See *Forcible Marriage*, &c.

Vide (for farther learning on the ſubject,) 3 *New Abr.* tit. *Marriage.*

Marrow, Was a lawyer of great account in *Henry* VIIth's days, whoſe learned readings are extant, but not in print. *Lamb. Eirenarch*, *lib.* 1. *cap.* 10.

Marſhal, *(mareſcallus)* Is a *French* word, ſignifying as much as *Tribunus militum*, with the ancient *Romans*; and *mareſcallus* may alſo come from the German *marſchalk*, i. e. *Equitum magiſter*, which *Hotoman* in his feuds under *verb. Marchalcus* derives from the old word *march*, which ſignifies a horſe; and others make it of the Sax. *mar* i. e. *Equus et* ſcalch, *præfectus.*

In *France* there are *Marſhals of the Camp*, called *Marſhals of France:* There are alſo *Marſhals* of the *nobility* and *diets*, in *Poland*, *etc.*

With us there are ſeveral officers of this name; the chief whereof is the *Earl Marſhal of England*, mentioned in the *ſtat.* 1 *Hen.* 4. *c.* 7. and 13 *R.* 2. *c.* 2. *&c.* whoſe office conſiſts eſpecially *in matter of war and arms*, as well in this kingdom as in other countries; this office is very ancient, having formerly greater power annexed to it than now; it has been long hereditary in the family of the Duke of *Norfolk*. Vide *Lupanus de Magiſtratibus Franciæ*, *lib.* 1. *c. Mariſhallus*, and *Tilius*, *lib.* 2. *c. De Conſtabili Mariſcallo*, *&c.*

The next is the *Marſhal of the King's Houſe*, otherwiſe called *Knight Marſhal*; his authority is exerciſed in the King's palace, in hearing and determining all pleas of the crown, and ſuits between thoſe of the King's houſe and other perſons within the verge, and puniſhing faults committed there, *etc.* 18 *Ed.* 3. *c.* 7. 27 *Ed.* 3. *Stat.* 2. *c.* 6. and 2 *H.* 4. *c.* 13. *Cromp. Juriſd.* 192.

Fleta mentions a *Marſhal of the King's Hall*, to whom it belongs, when the tables are prepared, to call out thoſe of the houſhold and ſtrangers, according to their rank and quality, and properly place them. *Fleta, lib.* 2. *c.* 15.

There are other inferior officers called *Marſhal*, as *Marſhal of the Juſtice in Eyre.* Anno 13 Ed. 1. cap. 19. *Marſhal of the King's Bench*, Stat. 5 Ed. 3. c. 8. who hath the cuſtody of the priſon called the *King's Bench Priſon* in *Southwark*. This officer gives attendance upon the court, and takes into his cuſtody all priſoners committed by the court; *he is fineable for his abſence*; and *non-attendance is a forfeiture of his office.* Hil. 21 & 22 Car. 2. Grants of the King's Bench and Fleet Priſons to be inrolled. 8 & 9 *Wil.* 3. *c.* 27. Office of *Marſhal* and warden of the King's Bench and Fleet, to be executed by thoſe who have the inheritance of thoſe priſons. *Ibid.* Power of appointing the *Marſhal* of the King's Bench, reveſted in the crown. 27 *Geo.* 2. *c.* 17.

There is alſo a *Marſhal of the Exchequer*, to whom that court commits the cuſtody of the King's debtors, for ſecuring the debts; he likewiſe aſſigns ſheriffs, cuſtomers and collectors, their auditors, before whom they ſhall account. *Stat.* 51 *Hen.* 3. 5.

Marſhal of England, Shall not hold plea of matters touching the Common law, 8 *Rich.* 2. *c.* 5. ſhall be reſtrained by *ſuperſedeas* under the privy ſeal, 13 *Rich.* 2. *ſt.* 1. *c.* 2. See *Conſtable.*

Marſhal and Steward of the King's Houſhold and Marſhalſea. Of what things they ſhall hold plea, *Art. ſuper Cartas*, 28 *Ed.* 1. *ſt.* 3. *c.* 3. 8 *R.* 2. *c.* 5.

Marſhalſea, *(Mareſcaltia)* Is the court or ſeat of the *marſhal*; of whom ſee *Cromp. Jur.* 120. It is alſo uſed for the priſon in *Southwark*; the reaſon whereof may be, becauſe the *marſhal* of the King's houſe was wont perhaps to ſit there in judgment, or keep his priſon. See the ſtat. 9 *Rich.* 2. *c.* 5. and 2 *Hen.* 4. *c.* 23. King *Charles* the Firſt erected a court by letters patent under the great ſeal, by the name of *Curia Hoſpitii Domini Regis, &c.* which takes cognizance more at large of all cauſes than the *marſhalſea* could; of which the knight marſhal or his deputy are judges. *Cowell.* See *Court of Marſhalſea, and Marſhal and Steward of the King's Houſhold and Marſhalſea.*

Marſhes and fens, laws concerning them. *Vide* Fens.

Mart, A great fair for buying and ſelling goods, holden every year. 2 *Inſt.* 221.

Martial Law, Is the law of war, that depends upon the juſt but arbitrary power and pleaſure of the King, or his lieutenant; for though the King doth not make any laws but by common conſent in parliament, yet in time of war, by reaſon of the neceſſity of it to guard againſt dangers that often ariſe, he uſeth abſolute power, ſo that his word is a law. *Smith de Repub. Angl. lib.* 2. *c.* 4. But this power is given him by *act of parliament.*

But the *Marſhal Law*, (according to Chief Juſtice *Hale*) is, in reality, not a law, but *ſomething indulged rather than allowed as a law*; and it relates only to members of the army, being never intended to be executed on others, who ought to be ordered and governed by the laws to which they are ſubject, though it be a time of war. *Hale's Hiſt. L.* 39. And the exerciſe of *Martial Law*, whereby any perſon might loſe his life or member, or liberty, may not be permitted in time of peace; when the King's courts are open for all perſons to receive juſtice. *Ibid.* 40. Alien enemies invading the kingdom, &c. ſhall be dealt with and executed by *Martial Law.* H. P. C. 10, 15. Alſo ſoldiers are puniſhed for deſertion, &c. in a court *Martial* by various ſtatutes. See *Law of Arms.*

Martilagium, For *Martyrilogium.* Monaſt. tom. 2. pag. 322.

Martyrology, *(Martyrologium)* A book of *Martyrs* containing the lives, &c. of thoſe men who die for their religion. Alſo a calendar or regiſter kept in religious houſes, wherein are ſet down the names and donations of their benefactors, and the days of their death, that upon every anniverſary they may commemorate and pray for them: Several benefactors have made it a condition of their beneficence, to be inſerted in the *Martyrology.* Paroch. Antiq. 189.

Marybone Waterworks, The ſhares how taxable. 30 *Geo.* 2. *c.* 3.

Maſagium, Anciently uſed for *meſſuagium*, a meſſuage. ——*Et unum maſagium in Villa de* M. *&c.* Pat. 16. R. 2.

Maſks, The penalty of ſelling or keeping viſor *maſks.* 3 Hen. 8. c. 9.

Maſons. To plot confederacies amongſt *maſons*, is declared felony by an old ſtatute; and ſuch as aſſemble thereon ſhall ſuffer impriſonment, and make fine and ranſom. *Stat.* 3 *H.* 6. *c.* 1. This was when the nature and ſecrets of maſonry were known only to few. They are now known to many thouſands, who are members of the ſociety, and diſperſed all over the Chriſtian world.

Many of the principal men of this and other countries, are of the fraternity. And maſons, taken priſoners, by the *French*, in the late war, met with great indulgencies, from their brethren, in foreign parts, though enemies, in a national reſpect, as *maſons*, they were friends.

Maſs. See Papiſt.

Maſſer, A prieſt that ſays maſs. *Blount.*

Maſs-Prieſt. In former times ſecular *prieſts*, to diſtinguiſh them from the regulars, were called *Maſs-Prieſts*, and they were to officiate at the *maſs*, or in the ordinary ſervice of the church: Hence *Meſſe Preoſt* in many of our *Saxon* canons, for the parochial miniſter; who was likewiſe ſometimes called *Meſſe Thegne*, becauſe the dignity of a prieſt in many caſes was thought equal to that of a *Thein* or lay lord. But afterwards the word *Maſs-Prieſt* was reſtrained to ſtipendiaries retained in chantries, or at particular altars, to ſay ſo many *maſſes* for the ſouls of the dead.

Maſt, *(Glans, peſſona)* The acorns and nuts of the *oak*, or other large tree ——*Glandis nomine continentur glans, caſtanea, fagina, ficus et nuces, et alia quæque quæ edi et paſci poterunt præter herbam.* Bract. lib. 4. *Tempus paſſonæ* often occurs for *maſt-time*, or the ſeaſon when *maſt* is ripe; which in *Norfolk* they call *Shacking-time.* ——*Quod habeat decem porcos in* tempore de peſſon *in boſco meo, &c.* Mon. Angl. tom. 2. pag. 113. 231. There is a tree called *Maſt tree*; and a *maſt* or ſale of a ſhip.

Maſter, *(magiſter)* Signifies in general a governor, teacher, &c. And alſo in many caſes an officer. See *Servant.*

Maſter and ſervant. The relation between a maſter and a ſervant, from the ſuperiority and power which it creates on the one hand, and duty, ſubjection, and, as it were, allegiance on the other, is, in many inſtances, applicable to other relations, which are in a ſuperior and ſubordinate degree; ſuch as lord and bailiff, principal and attorney, owners and maſters of ſhips, merchants and factors, and all others having authority to enforce obedience to their orders, from thoſe whoſe duty it is to obey them, and whoſe acts, being conformable to their duty and office, are eſteemed the acts of their principals.

If a man gives money to his ſervant to buy goods, and the ſervant buys upon credit, the maſter is chargeable. This can only mean, where the ſervant hath been uſed to buy on credit, and the maſter hath diſcharged the debts he contracted. But where the maſter never ſent his ſervant to buy on credit, nor ever diſcharged a debt contracted by him, I cannot conceive he is liable to pay a debt contracted by the ſervant, without his privity, when he had given him money to pay.

So, a promiſory note of a ſervant will charge his maſter, *if the money came to the maſter's uſe*, though he was not intruſted to give ſuch note. Ld. *Raym.* 225.

A maſter is indictable for a nuſance done by his ſervant. *Ib.* 264.

So, the owner of a cart is liable for damage done by his ſervant. *Ib.* 739.

Treſpaſs will not lie for taking a *Negro.* Ib. 146. Nor, Trover, *ib.* 147, 1274.

For the difference between a ſervant, and an apprentice, ſee *ib.* 1117. An apprentice muſt be *bound* and *diſcharged* by deed. *Ib.*

This ſubject is well treated in 3 *New Abr.* from *fol.* 344 *to* 369. See alſo tit. *Apprentice, Servants,* and 15 *Vin. Abr.* And a book called *Every Man his own Lawyer.* And *Black. Com.* 1 *V.* 423.

Maſter of the Armory, *(Magiſter Armorum et Armaturæ Regis)* Is an officer who hath the care of his Majeſty's arms and *armory,* mentioned in the *ſtat.* 39 *Eliz. c.* 7.

Maſter of the Ceremonies, *(Magiſter Admiſſionum)* Is one who receives and conducts ambaſſadors and other great perſons to audience of the King, *&c.* This office was inſtituted by King *James* 1. for the more magnificent reception of ambaſſadors and ſtrangers of the greateſt quality.

Maſter of, or, in Chancery, *(Magiſter Cancellariæ)* In the *Chancery* there are *Maſters,* who are *aſſiſtants to* the Lord Chancellor or Lord Keeper, and Maſter of the Rolls: Of theſe there are ſome *ordinary,* and ſome *extraordinary;* the *Maſters* in ordinary are twelve in number, of whom the *Maſter* of the Rolls is chief; and ſome ſit in court every day, during term, and have referred to them interlocutory orders for ſtating accounts, computing damages, and the like; they alſo adminiſter oaths, take affidavits, and acknowledgments of deeds and recogniſances: The extraordinary *Maſters* are appointed to act in the country, in the ſeveral counties of *England,* beyond ten miles diſtance from *London;* by taking affidavits, recogniſances, acknowledgments of deeds, *&c.* for the eaſe of the ſuitors of the court.

By the *ſtat.* 13 *Car.* 2. *ſt.* 1. in the *Appendix,* a public *office* was ordained to be kept near the Rolls, for the *Maſters in Chancery;* in which they, or ſome of them, are conſtantly to attend, for the adminiſtring oaths, caption of deeds, and diſpatch of other buſineſs: And their fees for taking affidavits, acknowledgment of deeds, exemplifications, reports, certificates, *&c.* are aſcertained by that act; and to take more, incurs diſability for ſuch *Maſter* to execute his office, and a forfeiture of 100*l.* *&c.*

To impower the high Court of Chancery, to lay out upon government ſecurities, a ſum of money therein mentioned, out of the common and general caſh in the Bank of *England,* belonging to the ſuitors of the ſaid court; and to apply the intereſt ariſing therefrom, towards augmenting the incomes of the maſters of the ſaid court, 5 *Geo.* 3. *c.* 28.

Maſter of the Court of Wards and Liveries, Was the chief officer of that court, aſſigned by the King; to whoſe cuſtody the ſeal of the court was delivered, *&c.* as appears by the *ſtat.* 33 *H.* 8. *c.* 33. But as this court was aboliſhed by *ſtat.* 12 *Car.* 2. *c.* 24. this office of courſe dropped with it.

Maſter of the Faculties, *(Magiſter facultatum)* Is an office under the *Archbiſhop of Canterbury,* who grants licences and diſpenſations, *&c.*

Maſter of the Horſe, Is he who hath the ordering and government of the King's ſtables; and of all horſes, racers, and breeds of horſes belonging to his Majeſty: He has the charge of all revenues appropriated for defraying the expence of the King's breed of horſes; of the ſtable, letters, ſumpter-horſes, coaches, *&c.* and has power over the equerries and pages, grooms, coachmen, farriers, ſmiths, ſadlers, and all other artificers working for the King's ſtables, to whom he adminiſters an oath to be true and faithful: But the accounts of the ſtables, of liveries, wages, *&c.* are kept by the *avener;* and by him brought to be paſſed and allowed by the court of *Green Cloth.*

The office of *Maſter of the Horſe* is of high account, and always beſtowed upon ſome great nobleman; and this officer only has the privilege of making uſe of any horſes, footmen, or pages belonging to the King's ſtables: At any ſolemn calvalcade he rides next to the King, with a led horſe of ſtate. He is the third great officer of the King's houſhold; being next to the Lord *Steward,* and Lord *Chamberlain;* and is mentioned in the ſtatute 39 *Eliz. c.* 7. and 1 *Ed.* 6. *c.* 5.

Maſter of the Jewel Office, An officer of the King's houſhold, having the charge of all plate uſed for the King or Queen's table, or by any great officer at court; and alſo of all the royal plate remaining in the *Tower of London,* and of chains and *jewels* not fixed to any garment. 39 *Eliz. c.* 7.

Maſter of the Houſhold, *(Magiſter Hoſpitii Regis)* Otherwiſe called *Grand Maſter of the King's Houſhold,* now ſtiled *Lord Steward of the Houſhold,* which title this officer hath born ever ſince *Anno* 32 *H.* 8. But under him there is a principal officer ſtill called *Maſter of the Houſhold,* who ſurveys the accounts, and has great authority.

Maſter of the King's Muſters, Is a martial officer in the King's armies, to ſee that the forces are compleat, well armed and trained; and to prevent frauds, which would otherwiſe waſte the Prince's treaſure, and weaken the forces, *&c.*

Maſter of the Mint, Is an officer who receives the ſilver of the goldſmiths, and pays them for it, and overſees every thing belonging to the *Mint;* he is at this day called *Warden of the Mint.*

Maſter of the Ordnance, A great officer, to whoſe care all the King's ordnance and artillery is committed. 39 *Eliz. c.* 7.

Maſter of the Poſts, Was an officer of the King's court, who had the appointing, placing, and diſplacing of all ſuch through *England,* as provided *poſt-horſes,* for the ſpeedy paſſing of the King's meſſages, letters, pacquets, and other buſineſs; and was to ſee that they kept a certain number of good horſes of their own, and upon occaſion that they provided others for furniſhing of thoſe perſons who had a warrant from him to take and uſe poſt-horſes, either from or to the ſeas, or other places within the realm, he likewiſe paid their wages, ſettled their allowances, *&c.* 2 *Ed.* 6. *c.* 3.

The *ſtat.* 12 *Car.* 2. *c.* 34. for erecting one *General Poſt-Office* in *London,* ordains, that there ſhall be a *Maſter of the Poſt-Office,* appointed by the King, by letters patent, (and of late this office is executed by two jointly) who, and his agents, and the perſons employed by them, have the ſending and carriage of all letters at certain rates; and the poſt-maſter is to continue conſtant poſts, and provide perſons riding poſt with poſt-horſes, under penalties, taking 3*d.* *per* mile for the horſe, and 4*d.* for the guide, every ſtage, *&c.* Vide *Stat.* 9 *Ann. c.* 10. By the *Stat.* 22 *Geo.* 2. *c.* 25. Any perſon may let to hire chaiſes, or furniſh horſes for chaiſes at any ſtage upon any poſt-road notwithſtanding *ſtat.* 9 *Ann. c.* 10. See *Poſt.*

Maſter of the Revels, An officer to regulate the diverſions of dancing and maſking, uſed in the palaces of the King, Inns of court, *&c.* and in the King's court is under the *Lord Chamberlain.*

Maſter of the Rolls, *(Magiſter Rotulorum)* Is an aſſiſtant to the Lord Chancellor in the High court of *Chancery,* and in his abſence heareth cauſes there, and alſo at the chapel of the *Rolls,* and makes orders and decrees. *Crompt. Juriſd.* 41. His title in his patent is, *Clericus parvæ Bagæ, Cuſtos Rotulorum, &c.* And he has the keeping of the *Rolls* of all patents and grants which paſs the Great Seal, and the records of the *Chancery.* He is called *Clerk of the Rolls,* ſtat. 12 R. 2. c. 2. and in *Forteſcue, c.* 24. and no where *Maſter of the Rolls,* until the 11 *H.* 7. *c.* 20. In which reſpect, Sir *Tho. Smith* ſays, he may not unfitly be ſtiled *Cuſtos Archivorum.* *Maſter of the Rolls* enabled to grant leaſes of the houſes belonging to the Rolls. 12 *Car.* 2. *c.* 36. Conſtruction of the power, 20 *Geo.* 2. *c.* 34. His judicial authority confirmed, 3 *Geo.* 2. *c.* 30. In his diſpoſition are the offices of the ſix clerks, and the clerks of the petty bag, examiners of the court, and clerks of the chapel. 14 & 15 *H.* 8. *c.* 1. See *Stat.* 23 *Geo.* 2. *c.* 25. Whereby 1200 *l.* *per Annum* is directed to be paid to the *Maſter of the Rolls.*

Maſter of the Temple. The founder of the order of the *Knights Templers,* and his ſucceſſors, were called *Magni Templi Magiſtri;* and probably from hence he was the ſpiritual guide and director of the *Temple.* The *Maſter of the Temple* here was ſummoned to parliament *Anno* 49 *H.* 3. And the chief miniſter of the *Temple Church* in *London,* is now called *Maſter of the Temple.* Dugd. Warw. 706.

Maſter of the Wardrobe, *(Magiſter Garderobæ)* Is a conſiderable officer at court, who has the charge and cuſtody of all former Kings and Queens ancient robes remaining in the *Tower of London*; and all hangings, bedding, *&c.* for the King's houſes: He hath alſo the charge and delivery out of all velvet or ſcarlet cloth allowed for liveries, *&c.* And of this officer mention is made in the *Stat.* 39 *Eliz. c.* 7. The *Lord Chamberlain* has the over-ſight of the officers of the *wardrobe.*

Maſtinus, A great dog, called a maſtiff.—*Canes et* maſtini *per omnes foreſtas Angliæ occiduntur.* Knyght lib. 2. cap. 15.

Maſts. See *Ships* and *Stores.*

Maſura, An old decayed houſe according to *Domeſd.*

Maſura terræ. *Sunt in eiſdem* maſuris 60 *domus plus quam ante fuerunt.* Domeſday. In Fr. *maſure de terre* is a quantity of ground, containing about four oxgangs; with us it is taken for *domicilium cum fundo, vel profundo cum domicilio competenti.*

Materia, A great beam, or timber proper for building. *Dedi illis* materiam *et ligna ad omnia neceſſaria ſua, et ad domus ſuas ædificand'.* Mon. Angl. tom. 1. pag. 821.

Matricula, A regiſter; as in the ancient church there was *matricula clericorum,* which was a cataloge of the officiating clergy; and *matricula pauperum,* a liſt of the poor to be relieved: Hence to be entred in the regiſter of the univerſities, is to be *matriculated, &c.*

Matrimonial cauſes, Or injuries reſpecting the rights of marriage, are a branch of the eccleſiaſtical juriſdiction. See *Black. Com.* 3 *V.* 92.

Matrimonium, Is ſometimes taken for the inheritance deſcending to a man *ex parte matris*——*Cum omni hæreditate patrimonii et matrimonii ſui, &c.* Blount.

Matrimony. See *Marriage.*

Matrix Eccleſia, The mother church; and is either a cathedral, in reſpect of the parochial churches within the ſame dioceſe; or a parochial church, with reſpect to the chapels depending on it, and to which the people reſort for ſacraments and burials. *Leg. Hen.* 1. *c.* 19.

Matrons, *Jury of.* When a widow feigns herſelf with child, in order to exclude the next heir, and a ſuppoſititious birth is ſuſpected to be intended; then upon the writ *de ventre inſpiciendo,* a jury of women is to be impanelled to try the queſtion, whether with child or not. *Cro. Eliz.* 566. So if a woman is convicted of a capital offence, and being condemned to ſuffer death, pleads in ſtay of execution, that ſhe is pregnant, a jury of matrons is impanelled to enquire into the truth of the allegation; and if they find it true, the convict is reſpited, until after her delivery.

Mats and Coverlets, &c. In the county of *Norfolk,* by what perſons made. See *Stat.* 5 *&* 6 *Ed.* 6. *c.* 24.

Matter in Deed, and Matter of Record, Are often mentioned in law proceedings, and differ thus: The firſt ſeems to be nothing elſe but ſome truth or *matter* of *fact* to be proved by ſome *ſpecialty,* and *not* by any *record*; and the *latter* is that which may be *proved by ſome record:* For example; If a man be ſued to an exigent, during the time he was abroad in the ſervice of the King, *&c.* this is *matter in deed,* and he that will alledge it for himſelf, muſt come before the *ſcire facias* for execution be awarded againſt him; but after that, nothing will ſerve but *matter of record,* that is, ſome error in the proceſs appearing upon the record. There is alſo a difference between *matter of record,* and *matter in deed,* and *nude matter*; the laſt being a naked allegation of a thing done, to be proved only by witneſſes, and not either by *record* or *ſpecialty.* Old Nat. Br. 19. Kitch. 216.

Maugre, (From the Fr. *Mal,* and *gre,* i. e. *Animo iniquo)* Signifies as much as to ſay with an unwilling mind, or in deſpight of another; as where it is ſaid, that the wife ſhall be remitted, *maugre* the huſband, that is, whether the huſband will or not. *Lit. Sect.* 672.

Maum, A ſoft brittle ſtone in ſome parts of *Oxfordſhire*; and in *Northumberland* they uſe the word *maum* for ſoft and mellow. *Plot's Nat. Hiſt. Oxfordſh. p.* 63.

Maund, A kind of great baſket or hamper, containing eight bales, or two fats: It is commonly a quantity of eight bales of unbound books, each bale having one thouſand pounds weight. *Book Rates, pag.* 3.

Maundy Thurſday, The *Thurſday* before *Eaſter.* See *Mandati Dies.*

Maupigyrnum, An old ſort of broth or pottage. *Cowell.*

Maxims in law, Are poſitions and *theſes,* being concluſions of reaſon, and univerſal propoſitions, ſo perfect, that they may not be impugned or diſputed. For *principia probant, non probantur,* therefore *contra negantem principia non eſt diſputandum.* Cowell. Co. Lit. 343.

A maxim is a ſure foundation or ground of art, and a concluſion of reaſon, ſo called *quia* maxima *eſt ejus dignitas et certiſſima authoritas, atque quod* maxime *probetur,* ſo ſure and uncontrolable as that it ought not to be queſtioned: and what is elſewhere called a principle, and is all one with a rule, a common ground, *poſtulatum* or *axiom.* Co. Lit. 10. b. 11. a.

Maxims are the foundations of the law, and concluſions of reaſon; therefore ought not to be impugned, but always to be admitted; but they may by reaſon be conferred and compared the one with the other though they do not vary, or it may be diſcuſſed by reaſon which thing is neareſt the maxim, and the mean between the maxims, and which is not; but the maxims can never be impeached or impugned, but ought always to be obſerved, and held as firm principles and authorities of themſelves. *Pl. C.* 27. *b.*

The alterations of any of the maxims of the Common law are dangerous. 2 *Inſt.* 210.

The laws of all nations are doubtleſs raiſed out of the Civil law, as all governments are ſprung out of the ruins of the *Roman* empire, and it muſt be owned, that the principles of our law are borrowed from the Civil law, therefore grounded upon the ſame reaſon in many things. 12 *Mod.* 482.

Maxims are principles and authorities, and part of the general cuſtoms or Common law of the land; and are of the ſame ſtrength as acts of parliament, when the judges have determined what is a *maxim*; which belongs to the judges. and not a jury. *Terms de Ley. Doct. & Stud. Dial.* 1. *c.* 8. A *maxim* in law is ſaid to be a propoſition of all men confeſſed and granted, without argument or diſcourſe. *Maxims of the Law* are holden for law; and all other caſes that may be applied to them, ſhall be taken for granted. 1 *Inſt.* 11, 67. 4 *Rep.*

The *maxims* in our books, which are many and various, are ſuch as the following, *viz.* It is a *maxim,* That *land ſhall deſcend from the father to the ſon,* &c. It is a *maxim,* That *as no eſtate can be veſted in the King, without matter of record, ſo none can be deveſted out of him but by matter of record*; for things are diſſolved as they are contracted. *Rep.* 1. *Cholmey*'s caſe. Another, that *an obligation, or other matter in writing, cannot be diſcharged by an agreement by word.* And *Argumentum ab authoritate fortiſſimum eſt in lege.* Co. Lit. 141.

It is alſo a *maxim,* That *if a man have iſſue two ſons by divers venters, aud the one of them purchaſe lands in fee, and die without iſſue, the other brother ſhall never be his heir,* &c.

Committere agnum lupo, St. Hibern. 14 H. 3.

Qui cadit a ſyllaba cadit a tota cauſa, the maxim condemned, *Stat. Wal.* 12 *Ed.* 1.

Qui pro alieno facto non eſt puniendus, St. Weſt. 2. 13 Ed. 1. c. 35.

De tranſgreſſione certæ perſonæ facta altera perſona commodum aut emendas ne conſequatur, St. de Vaſt. 20 Ed. 1. ſtat. 2.

That allegiance is due more by reaſon of the crown than of the perſon of the King, condemned, *Exil. Hug. le Deſpenſer,* 15 *Ed.* 2. *ſt.* 2.

Neceſſary alliances among the peers to purſue evil counſellors, not to be puniſhed by rigour of law, *St. ne quis occaſ. pro felon'. &c.* 15 *Ed.* 2. *ſt.* 3.

The King cannot pardon the ſuit of others, ſtatute revoking the pardon, *&c.* 15 *Ed.* 2. *ſt.* 4.

The father to the bough, and the ſon to the plough, in *Kent, Prærog. Reg.* 17 *Ed.* 2. *ſtat.* 1. *c.* 16.

Every man is bound to do to the King, as his Liege Lord, all that pertaineth. 1 *Ed.* 3. *ſt.* 2. *c.* 15.

Franchiſes reſtraining the freedom of ſelling merchandize, are to the common prejudice of the King and his people, 25 *Ed.* 3. *ſt.* 4. *c.* 2.

Laws without great penalty are more often obeyed, 1 *Mar. ſt.* 1. *c.* 1. *ſ.* 1. See *Black. Com* 1 *V.* 68.

Mayhem. See *Maihem*, and *Black. Com.* 1 *V.* 130. 3 *V.* 121. 4 *V.* 205.

Mayor, (*Præfectus urbis*, anciently *meyr*, comes from the Brit. *miret*, i. e. *cuſtodire*, or from the old *Engliſh* word *maier*, viz. *poteſtas*, and not from the Lat. *major*) Is the chief governor or magiſtrate of a city or town; as the *Mayor* of *London*, the *Mayor* of *Southampton*, &c. King *Rich.* 1. *anno* 1189, changed the bailiffs of *London* into a *mayor*; and from that example King *John* made the bailiff of *King's Lynn* a *mayor*, *anno* 1204. Though the famous city of *Norwich* obtained not this title for its chief magiſtrate, till the ſeventh year of King *Hen.* 5. *anno* 1419, ſince which there are few towns of note, but have had a *mayor* appointed for government. *Spelm. Gloſſ.*

Mayors of corporations are juſtices of peace *pro tempore*, and they are mentioned in ſeveral ſtatutes; but no perſon ſhall bear any office of magiſtracy concerning the government of any town, corporation, &c. who hath not received the ſacrament, according to the church of *England*, within one year before his election; and who ſhall not take the oaths of ſupremacy, &c. *Stat.* 13 *Car.* 2. *cap.* 1. The 10 *Ann. cap.* 2. prohibited *mayors* and officers of corporations from going to conventicles, under the penalty of forty pounds, &c. But this is altered by 5 *Geo.* 1. *cap.* 6. *though the gown, mace, or other enſigns of magiſtracy, may not be worn or carried to a conventicle*, on pain of diſability to enjoy any office, &c. If any one intrudes into, and thereupon executes, the office of *mayor*, a *quo warranto* information may be brought againſt him; and he ſhall be ouſted and fined, &c. And no perſon who hath been or ſhall be in an annual office in any corporation for one year, ſhall be choſen into the ſame office the *next* year, and obſtructing the choice of a ſucceſſor incurs the penalty of 100*l.* *Stat.* 9 *Ann. c.* 20.

Alſo if no *mayor* be elected in a corporation, on the day appointed by charter, by the proper officers, the next in place is to hold a court, and elect one the day following, &c. or, in default thereof, the court of *King's Bench* may compel the electors to chooſe one, &c. by writ of *mandamus*, requiring the members who have a right to vote, to aſſemble themſelves on a day prefixed, and proceed to election, or ſhew cauſe to the contrary; and *mayors*, &c. voluntarily abſenting on the day of election, ſhall be impriſoned ſix months, and be diſabled to hold any office in the corporation. 11 *Geo.* 1. *c.* 4.

The authority of *mayors* is contained in the following particulars: The ſtatute 2 *Ed.* 3. *c.* 3. gives power to *mayors* to arreſt perſons carrying offenſive weapons in fairs, markets, &c. to make *affrays*, and the diſturbance of the peace.

By *Stat.* 23 *H.* 8. *c.* 4. *Mayors*, &c. have power to ſet the price of *ale* and *beer*: And they are authoriſed to convict perſons ſelling ale without licence; and alſo to levy penalties on the offender by diſtreſs, &c. 3 *Car.* 1. *c.* 3. And they are to cauſe quart and pint pots for the ſelling of ale, to be examined whether they hold their full meaſure; and to mark them, under the penalty of 5*l.* 11 & 12 *W.* 3. *c.* 15. *Mayors*, bailiffs, and lords of leets, are to regulate the aſſiſe of *bread*, and examine into the goodneſs thereof: and if bakers make unlawful bread, they may give it to the poor, and pillory the offenders, &c. 5 *Hen.* 3. *ſt.* 6. And the 8 *Ann. c.* 18. and 1 *Geo* 1. *c.* 26. direct, that *mayors* and chief magiſtrates of towns, &c. may in the day-time enter into any houſe, ſhop, bakehouſe or warehouſe, of any baker or ſeller of bread, to *ſearch for*, *view*, and *try all* or *any* of the *bread* there found; and if the bread be wanting in goodneſs, deficient in baking, under weight, or not truly marked; or ſhall conſiſt of any other ſort than what is allowed, the ſame *bread* ſhall be ſeiſed and diſtributed to the poor: And the former ſtatute impoſes a penalty of 40*s.* for want of weight, or not being marked as appointed, &c. but this is made 5*s.* for every ounce wanting in weight, and 2*s.* 6*d.* if under an ounce, (complaint being made, and the *bread* weighed before a magiſtrate within twenty-four hours) by the 1 *Geo.* 1. *c.* 26. And bakers ſelling their large *bread* at a higher price than ſet by *mayors*, &c. ſhall forfeit 10*s.* to the informer, to be levied by diſtreſs, &c. See 31 *Geo.* 2. *c.* 29.

Mayors, &c. are empowered to make enquiry into offences committed againſt the *Stat.* 1 *Eliz. c.* 2. which requires that the common prayer be read in *churches*; and that the churchwardens do their duty in preſenting the names of ſuch perſons as abſent themſelves from church on *Sundays*, &c. Head officers of corporations are to appoint and ſwear overſeers or ſearchers to examine into defects of northern *cloth*, &c. and the overſeers ſhall fix a ſeal of lead to cloths, expreſſing the length and breadth; and if they find any faulty, or ſealed with a falſe ſeal, &c. they are to preſent the ſame at the next quarter-ſeſſions. *Mayors*, &c. neglecting their duty, are liable to a penalty of 5*l.* 39 *Eliz. cap.* 20. *Mayors* may determine whether *coin* offered in payment be counterfeited or not; and tender an oath to determine any queſtion relating to it. 9 & 10 *W.* 3. *c.* 21. Chief magiſtrates of ports, where goods are conveyed away, which are liable to *cuſtoms*, before entry made, and the duties agreed, are to grant their warrants for the apprehenſion of the offender, &c. 12 *Car.* 2. *c.* 4.

By 23 *Eliz. c.* 9. *Mayors*, &c. may call before them and examine *dyers*, ſuſpected to uſe logwood in dying; and, if they find cauſe, may bind them over to the quarter-ſeſſions, where, on conviction, they are liable to a forfeiture of 20*l.* But ſee *Stat.* 14 *Car.* 2. *c.* 11. and by the late act 13 *Geo.* 1. *c.* 24. *Mayors* and head officers of corporations, are to puniſh *drunkenneſs*, by impoſing a fine of 5*s.* on view, confeſſion, or proof by one witneſs, or cauſe the offender to be put in the ſtocks for ſix hours, 4 *Jac.* 1. *c.* 5. 21 *Jac.* 1. *c.* 7. And perſons ſitting *tipling* in an alehouſe, inn, &c. are liable to puniſhment by *mayors*, who may levy 3*s.* 4*d.* on ſuch offenders, for every offence, for the uſe of the poor, or cauſe them to be ſet in the ſtocks four hours; and the alehouſe-keepers, &c. ſuffering *tipling* in their houſes, are ſubject to a penalty of 10*s.* *Ibid.*

Head officers and juſtices of peace in corporations, may inquire of *forcible entries*, commit the offenders, and cauſe the tenements to be ſeiſed, &c. within their franchiſes, in like manner as juſtices of peace in the county. 8 *H.* 6. *c:* 9.

Mayors, &c. ſhall enquire into unlawful *gaming*, againſt the *Stat.* 33 *Hen.* 8. *c.* 9. They are to ſearch places ſuſpected to be gaming-houſes, and levy penalties, &c. and they have power to commit perſons playing at unlawful games.

Horſes ſtolen, found in a corporation, may be redeemed by the owner, making proof before the head officer of the corporation of the property, &c. 31 *Eliz. c.* 12.

Mayors and head officers in corporate and market-towns, and lords of liberties and their ſtewards, are to appoint and ſwear two ſkilful perſons yearly, to be ſearchers and ſealers of *leather*; and they are to appoint tryers of inſufficient leather, and of leather wares: Searchers not doing their duty to forfeit 40*s.* and triers 5*l.* 1 *Jac.* 1. *cap.* 22.

Perſons robbing *orchards*, hedge-breakers, &c. are puniſhable by *mayors*; and a perſon on conviction by the oath of one witneſs, ſhall pay to the perſon injured ſuch damage as the *mayor*, &c. ſhall think fit, or be whipped. 43 *Eliz. c.* 7.

Mayors, &c. on receipt of precepts from ſheriffs, (when writs are iſſued for elections) requiring them to chooſe burgeſſes or members of *parliament*, by the citizens, &c. are to proceed to election, and make returns by indenture between them and the electors; and making a falſe return, ſhall forfeit 40*l.* to the King, and the like ſum to the party choſen, not returned, &c. 23 *H.* 6. *c.* 14. See the *Stat.* 2 *Geo.* 2. *c.* 24.

In time of ſickneſs, a tax may be laid on inhabitants of corporations, for relieving ſuch perſons as have the *plague*, by *mayors*, &c. *who are to appoint ſearchers and buriers of the dead:* And if any infected perſons ſhall go abroad with ſores upon them, after an head officer hath commanded them to keep at home, it is felony; and if they have no ſores about them, they are puniſhable as vagrants. 1 *Jac.* 1. *c.* 31. The *Stat.* 43 *Eliz. c.* 2. which directs that the father, grandfather, mother, grandmother, and children, of every poor perſon, ſhall be aſſeſſed towards their relief by juſtices, and which impowers juſtices of peace to order a poor's rate or tax, and overſeers of the *poor*, *&c.* to place forth apprentices, and ſets forth the office of overſeers; gives the like authority to the head officers in corporate towns, as juſtices of peace have in their counties; which ſaid juſtices are not to intermeddle in corporations for the execution of this law.

Mayors, bailiffs, and other head officers of corporate towns, *&c.* are to make proclamation for *rioters* to diſperſe as follows: *Our Sovereign Lord the King charges and commands all perſons aſſembled, immediately to diſperſe themſelves, and peaceably depart to their habitations, upon pain of impriſonment*, &c. And if the rioters, being *twelve in number*, do not diſperſe *within an hour after*, it is felony *without benefit of clergy*, &c. 1 *Geo.* 1. *ſt.* 2. *c.* 5.

Matters relating to *ſervants*, and apprentices, may be determined by *mayors*; who have power to compel perſons to go to ſervice, *&c.* 5 *Eliz. c.* 4. *Mayors* may arreſt *ſoldiers* departing without licence: And they are to be preſent at muſters; quarter and billet ſoldiers, *&c.* 18 *Hen.* 6. *c.* 18. 1 *Geo.* 1. *c.* 47, *&c.* Perſons uſing games on a *Sunday* forfeit 3 *s.* and 4 *d.* to the uſe of the poor; carriers, *&c.* travelling on that day 20 *s.* and perſons doing any worldly labour thereon 5 *s.* all leviable by warrant from *mayors* and head officers of corporations, as well as other juſtices. 1 *Car.* 1. *c.* 1. 3 *Car.* 1. *c.* 2. 29 *Car.* 2. *c.* 7. And by 3 *Car.* 1 *c.* 4. If any perſon ſhall profanely *ſwear* or curſe in the preſence of a *mayor*, *&c.* or be convicted thereof before him, by the oaths of two witneſſes, he ſhall forfeit for every offence 1 *s.* to the uſe of the poor, or be ſet in the ſtocks three hours: but the ſtatute 6 & 7 *W.* 3, confines the forfeiture of 1 *s.* to ſervants, labourers *&c.* other perſons being ordered to pay 2 *s.* and double, treble, *&c.* on repeating the offence.

Vagrants, or other idle and diſorderly perſons, blind, lame, *&c.* or pretending to be ſo, begging in ſtreets, a *mayor* or conſtable may cauſe them to be whipped. 12 *Ann. ſt.* 2. *c.* 23. By former ſtatutes, *mayors* are empowered to make paſſes of vagrants; and juſtices in liberties and corporations are to iſſue warrants to conſtables, *&c.* to make a ſearch for and apprehend vagrants before the quarter-ſeſſions. *Mayor's* are to ſet the rates and prices of coopers *veſſels*; and appoint ſearchers and gaugers of veſſels for fiſh, *&c.* 11 *H.* 7. *c.* 4. 8 *Eliz. c.* 9.

In every city, town, *&c.* there is to be a common balance, and ſealed *weights*, under divers penalties; there is alſo to be a common buſhel ſealed. 8 *Hen.* 6. *c.* 5. 11 *H.* 6. *c.* 8. And *mayors*, *&c.* are to provide a mark for the ſealing of *weights and meaſures*, being allowed 1 *d.* for ſealing every buſhel and hundred weight; and a half-penny for every other meaſure and half-hundred weight, *etc. Mayors* and head officers of corporations, *etc.* ſhall view all *weights and meaſures* once a year, and puniſh offenders uſing falſe weights; and they may break or burn ſuch weights and meaſures, and inflict penalties, *etc.* If they permit perſons to ſell by meaſures not ſealed, they ſhall forfeit 5 *l.* Sealing weights not agreeable to the ſtandard, is liable to the ſame penalty; and refuſing to ſeal weights and meaſures, ſubjects them to a forfeiture of 40 *s.* 7 *H.* 7. See 31 *Geo.* 2. *c.* 17. *ſ.* 9. *Mayors*, *etc.* are to inſpect and order the ſize of faggot, billet, tale *wood*, &c. 43 *Eliz. c.* 14. See *Corporation*, and *Juſtices*.

Mead and **Metheglin**, Pay 11 *d.* exciſe in all by the ſtatutes 12 *Car.* 2. *c.* 23, 24. 22 & 23 *Car.* 2. *c.* 5. 1 *W.* & *M. c.* 3. 5 *W.* & *M. c.* 20. 4 *Ann. c.* 6. 8 *Ann. c.* 7.

Meal, May be exported duty-free. 11 & 12 *W.* 3. *c.* 20. How many ſacks of meal may be carried at one load in *London* and *Weſtminſter*. 6 *Geo.* 1. *c.* 6.

Meal-Rents, Certain rents heretofore paid in *meal* by the tenants of the honour of *Clun*, to make meat for the lord's hounds; they are now payable in money.

Meals. The ſhelves of land, or banks on the ſea coaſts of *Norfolk*, are called the *Meals* and the *Males*. Cowel.

Mean, (*medius*) Signifies the middle between two extremes; and that either in *time* or *dignity*. In *time* it is the *interim* betwixt one act and another; and applied to *mean profits* of lands between a diſſeiſin and recovery, *etc.* As to *dignity*, there is a *lord mean* or *meſne*, that holds of another *lord*; and *mean* tenant, *etc. Meſne* likewiſe ſignifieth a writ, which lies where there is lord *meſne* and tenant; and the tenant is diſtrained by the ſuperior lord; for the rent or ſervice of the *mean*, (or *meſne*,) who ought to acquit him to the other lord, then the tenant ſhall have his *writ of meſne*; and if the mean lord appear not, he ſhall loſe the ſervice of the tenant, and be fore-judged of his ſeigniory, and the tenant ſhall immediately become tenant to the chief lord. Alſo in ſuch caſe, the tenant by writ may recover damages if he be diſtrained; and the *mean* lord be compelled to pay the rent, and do the ſervices. *F. N. B.* 135. 13 *Ed.* 1. *c.* 9. If a man bring a writ of *meſne* where he is not diſtrained, yet it is maintainable, but then he ſhall not have damages; for it is brought only to be acquitted, *etc.* And tenant for life, where the remainder is over in fee, ſhall have this writ againſt the *meſne*. 7 *H.* 4. 12. 15 *H.* 6. *New Nat. Br.* 330 One brought a writ of *meſne* againſt a man, becauſe he did not acquit the plaintiff of a rent-charge demanded, *&c.* when he by his deed bound himſelf and his heirs to warrant and acquit him; and it was held good: And if a man have judgment to recover in this writ, if he be not afterwards acquitted, he may have a *diſtringas ad acquietandum* againſt the *meſne*; and *ſcire facias* againſt the lord. Stat. *Weſtm.* 2. *c.* 9. 14 *Ed.* 3. See *Meſne*.

Form of a Writ of *Meſne*.

GEORGE *the Third*, &c. *To the ſheriff of* S. *Command* A. B. *that juſtly*, &c. *he acquit* C. D. *of the ſervice which* E. F. *exacts from him of his freehold that he holds of the ſaid* A. B *in* W. *whereof the ſaid* A. *who is* meſne *betwixt the ſaid* E. *and* C. *ought to acquit him; and whereupon he complains, that for his default he is diſtrained; and unleſs*, &c.

Meaſe, (*meſſuagium*) A meſſuage or dwelling-houſe. *Kitchin*, 139. and *F. N. B.* 2. Stat. *Hiberniæ*, 14 *H.* 3. and 21 *H* 8. 13. Alſo a meaſure of herrings, containing five hundred; the half of a thouſand is called *meaſe* or *meſe*. Merch. Dict.

Meaſon-due, In French *Maiſon de Dieu, Domus Dei*; a houſe of God, a monaſtery, religious houſe or hoſpital; the word is mentioned 2 & 3 *P.* & *M. cap.* 23. 39 *El.* 5. and 15 *Car.* 2. 7.

Meaſure, (*menſura*) Is a certain quantity or proportion of any thing ſold; and, in many parts of *England*, is one buſhel.

The learned *Blackſtone*, in treating of the King's prerogative, ſays, "the regulation of *weights* and *meaſures*, for the advantage of the public, ought to be univerſally the ſame throughout the kingdom; being the general criterions which reduce all things to the ſame or an equivalent value. But, as weight and meaſure are things in their nature arbitrary and uncertain, it is therefore expedient that they be reduced to ſome fixed rule or ſtandard: which ſtandard it is impoſſible to fix by any written law, or oral proclamation; for no man can, by words only, give another an adequate idea of a foot-rule, or a pound weight. It is therefore neceſſary to have recourſe to ſome viſible, palpable, material ſtandard; by forming a compariſon with which, all *weights* and *meaſures* may be reduced to one uniform ſize; and the prerogative of fixing this ſtandard, our ancient law *veſted in the crown*; as in *Normandy* it belonged to the Duke. (*Gr. Couſtom. c.* 16.) This ſtandard was originally kept at *Wincheſter*: and we find in the laws of King *Edgar*, (*cap.* 8.) near a century before the conqueſt, an injunction that *the one meaſure, which was kept at* Wincheſter, *ſhould be obſerved throughout the realm*. Moſt nations have regulated the ſtandard of *meaſures of length* by compariſon with *the parts of the human body*; as the palm, the hand, the ſpan, the foot, the cubit, the *ulna*, (or arm) the pace, and the fathom. But, as theſe are of different dimenſions in men of different proportions, our ancient hiſtorians (Will. Malmſb. *in vita Hen.* 1. Spelm. *Hen.* 1. *apud* Wilkins 299.) informs us, that a new ſtandard of longitudinal meaſure was aſcertained by King *Henry* the Firſt; who commanded that the *ulna* or ancient ell, which anſwers to *the modern yard*, ſhould be made of the exact length of his own arm. And, one ſtandard of meaſures of length being gained, all others are eaſily derived from thence; thoſe of greater length by multiplying, thoſe of leſs by ſubdividing, that original ſtandard. Thus, by the ſtatute called *compoſitio ulnarum et perticarum*, five yards and a half make a perch: and the yard is ſubdivided into three feet, and each foot into twelve inches; which inches will be each of the length of three grains of *barley*.

Superficial meaſures are derived by ſquaring thoſe of length; and meaſures of capacity by cubing them.—The ſtandard of weights was originally taken from corns of wheat, whence the loweſt denomination of weights we have is ſtill called *a grain*; thirty-two of which are directed by the ſtatute called *compoſitio menſurarum*, to compoſe a penny-weight, whereof twenty make an ounce, twelve ounces a pound, and ſo upwards. And upon theſe principles the firſt ſtandards were made; which, being originally ſo fixed by the crown, their ſubſequent regulations have been generally made by the King in parliament. Thus, under King *Richard* I. in his parliament holden at *Weſtminſter*, *A. D.* 1197, it was ordained that *there ſhould be only one weight and one meaſure throughout the kingdom*, and that the cuſtody of the aſſiſe or ſtandard of weights and meaſures ſhould be committed to certain perſons in every city and borough; (*Hoved. Matth. Paris.*) from whence the ancient office of the King's *aulnager* ſeems to have been derived, whoſe duty it was, for a certain fee, to meaſure all cloths made for ſale, till the office was aboliſhed by the ſtat. 11 & 12 *W.* 3. *c.* 20.

In King *John*'s time this ordinance of King *Richard* was frequently diſpenſed with for money; (*Hoved. A. D.* 1201.) which occaſioned a proviſion to be made for inforcing it, in the great charters of King *John* and his ſon. (9 *Hen.* 3. *c.* 25) Theſe original ſtandards were called *pondus regis*, and *menſura domini regis*; and are directed by a variety of ſubſequent ſtatutes to be kept in the Exchequer, and all weights and meaſures to be conformable thereto. But, as Sir *Edward Coke* obſerves, (2 *Inſt.* 41.) tho' this hath ſo often by authority of parliament been enacted, yet it could never be effected; ſo forcible is cuſtom with the multitude," *Black. Com.* 1 *V.* 274, &c. and ſee the *Preceptor*, *Vol.* 2. *p.* 384, &c.

Magna Charta, *c.* 25. ordains, " that there ſhall be but one *meaſure*, throughout *England*, according to the *ſtandard* in the *Exchequer*:" Which ſtandard, was formerly kept in the King's palace, and in all cities, market-towns and villages, it was kept in the churches. 4 *Inſt.* 273. By 17 *Car.* 1. *c.* 19. there is to be *one weight and meaſure, and one yard according to the King's ſtandard*; and whoever ſhall keep any other weight or *meaſure*, whereby any thing is bought or ſold, ſhall forfeit for every offence 5 *s.* And by 22 *Car* 2. *c.* 8. *Water meaſure*, as to corn or grain, or ſalt, is declared to be within the ſtat. 17 *Car.* 1. *c.* 19. And if any ſell grain, or ſalt, &c. by any other buſhel, or *meaſure*, than what is agreeable to the ſtandard in the *Exchequer*, commonly called *Wincheſter Meaſure*; he ſhall forfeit 40*s.* &c. Notwithſtanding theſe ſtatutes, in many places and counties, there are different *meaſures* of corn and grain; and *the buſhel in one place is larger than in another*; but the lawfulneſs of it is not well to be accounted for, ſince cuſtom or preſcription is not allowed to be good againſt a ſtatute. *Dalt.* 250.

We have three different *meaſures*, *viz.* one for *wine*, one for *ale and beer*, and one for *corn*: in the *meaſure* of *wine*, eight pints make a gallon, eight gallons a firkin, ſixteen gallons a kilderkin, half barrel or rundlet, four firkins a barrel, two barrels a hogſhead, two hogſheads a pipe, and two pipes make a tun. 15 *R.* 2. *cap.* 4. 11 *H.* 7. *c.* 4. 12 *H.* 7. *c.* 5.

In *meaſure* of *corn* eight pounds or pints of wheat make the gallon, two gallons a peck, four pecks a buſhel, four buſhels a ſack, and eight buſhels a quarter, &c.

And in other *meaſure*; three barley corns in length make an inch, twelve inches a foot, three feet a yard, three feet and nine inches an ell, and five yards and a half, which is ſixteen feet and a half, make the perch, pole or rod. 27 *Ed.* 3. *c.* 10.

Selling by falſe *meaſures*, being an offence by the Common law, may be puniſhed by fine, &c. upon an indictment at Common law, as well as by ſtatute. See the *Stat.* 11 *Hen.* 7. *cap.* 4. which inflicts particular fines for offences, pillory, &c.

The reſpective contents of a barrel of beer and ale, 12 *Car.* 2. *c.* 23. *ſect.* 20. *c.* 24. *ſect.* 34. 1 *W.* & *M.* *c.* 24. *ſect.* 5. The buſhel of corn and ſalt aſcertained, 22 *Car.* 2. *c.* 8. 22 & 23 *Car.* 2. *c.* 12. 5 *W.* & *M.* *c.* 7. *ſect.* 18. A meaſure of braſs ſhall be chained in every market, 22 *Car.* 2 *c.* 8. *ſect.* 5. Conſtables to ſearch for unſealed meaſures, 22 *Car.* 2. *c.* 8. *ſect.* 6. Where there is not a clerk of the market, the mayor, &c. ſhall ſeal meaſures, 22 & 23 *Car.* 2. *c.* 12. *ſect.* 4. Collectors of the exciſe to provide quarts and pints of braſs for ale in every market town, 11 & 12 *W.* 3. *c.* 15. *ſect.* 3. Contents of *Wincheſter* meaſure, 1 *Ann.* *ſt.* 2. *c.* 3. *ſect.* 10. Water meaſure of fruit aſcertained; 1 *Ann.* *ſt.* 1. *c.* 15. Wine meaſure, 5 *Ann.* *c.* 27. *ſ.* 17.

Meaſurer, or **Meter** of woollen *cloth*, and of *coals*, &c. Is an officer in the city of *London*; the latter of great account. *Chart. Jac.* 1. See *Alnager*.

Meaſuring Money. The letters patent, whereby ſome perſons exacted for every cloth made, certain money, beſides *alnage*, called *meaſuring money*, revoked. *Rot. Parl.* 11 *Hen.* 4.

Mederia, Is a *mead* houſe, or place where mead or metheglin is made. *Cartular. Abb. Glaſt. MS.* 29.

Medfee, A bribe or reward; and uſed for a compenſation where things exchanged are not of equal value. It is ſaid to come from the word *meed*, which ſignifies *merit*. Vide *Cowel*.

Mediæ & infimæ manus homines, Men of a mean and baſe condition, of the lower ſort. *Blount*.

Medianus, Is a word uſed for middle ſize; *medianus homo*, A man of middle fortune.

Mediators of Queſtions, Were ſix perſons authoriſed by ſtatute, who, upon any queſtion ariſing among *merchants*, relating to unmercatable wool, or undue packing, &c. might before the *mayor* and officers of the *ſtaple* upon their oath certify and ſettle the ſame; to whoſe order and determination therein, the parties concerned were to give entire credence and ſubmit. 27 *Ed.* 3. *ſt.* 2. *c.* 24.

Medietas Linguæ, or, *Medietate Linguæ*, Jury *de*, Signifies a *jury* or inqueſt impanelled, whereof the one half conſiſts of natives, and the other *ſtrangers*; and is uſed in pleas wherein the one party is a ſtranger, the other a denizen: And this manner of trial was firſt given by the *Stat.* 27 *Ed.* 3. *cap.* 8. Before which, this was obtained by the King's grant. *Staundf. P. C. lib.* 3. *cap.* 7. He that will have the advantage of trial *per medietatem linguæ*, muſt pray it; for (it is ſaid) he cannot have the benefit of it by way of challenge. *S. P. C.* 158. 3 *Inſt.* 127. In petit treaſon, murder and felony, *medietas linguæ* is allowed; but for high treaſon, an alien ſhall be tried by the Common law, and not *per medietatem linguæ*. H. P. C. 261. And a grand jury ought not to be *de medietate linguæ*, in any caſe. *Wood's Inſt.* 263. *Ægyptians* are excluded from this trial, 1 & 4 *P.* & *M.* *c.* 4. But we read, That *Soloman de Standford*, a *Jew*, had a cauſe tried before the ſheriff of *Norwich*, by a jury *Sex probos et legales homines, et ſex legales Judæus de Civitate* Norwici, &c. Paſch. 9 Ed. 1. See *Black. Com.* 3 *V.* 360. 4 *V.* 166, 346.

Medio acquietando, Is a judicial writ to diſtrain a lord for the *acquitting* of a *mean* lord from a rent, which he formerly acknowledged in court not to belong to him. *Reg. Judic.* 129. See *Mean*.

Mediterranean, Is that which paſſeth through the *midſt* of the earth; hence the *ſea* which ſtretcheth itſelf from *Weſt* to *Eaſt*, dividing *Europe*, *Aſia*, and *Africa*, is called the *Mediterranean Sea*. The counterfeiting of *Mediterranean* paſſes for ſhips to the coaſt of *Barbary*, &c. or the ſeal of the admiralty office to ſuch paſſes, is felony without benefit of clergy. *Stat.* 4 *Geo.* 2. *c.* 18.

Medleſe, (From the Fr. *Meſler)* Is that which *Bracton* calls *Medletum,* and ſignifies quarrelling or brawling. *Bract. lib.* 3. *tract.* 2. *cap.* 35.

Medleta, A ſudden ſcolding at, and beating one another. *Bract. l.* 3. *c.* 35.

Medſypp, A harveſt-ſupper, or entertainment given to the labourers at harveſt-home. *Placit.* 9 *Ed.* 1. *Cowell.*

Medway river, Pilots thereon how to be licenſed, 5 *Geo.* 2. *c.* 20. It was called *Vaga* by the *Britons*; the *Saxons* added *Med.* See *Vaga.*

Meer, *(merus)* Tho' an adjective, is uſed as a ſubſtantive to ſignify *meer right. Old Nat. Brev.* 2. in theſe words. This writ hath but two iſſues, *viz.* joining the *miſe* upon the *meere,* and that is to put himſelf in the *Great Aſſiſe* of our Sovereign Lord the King, or to join battle. *Cowell.* See *Miſe.*

Meigne, Is the ſame with *maiſnada.* Mon. Ang. Tom. 2. p. 219.

Meiny, (Fr. *Meſnie*) As the King's *meiny,* the King's family, or houſhold ſervants. 1 *R.* 2. *c.* 4.

Melaſſes, To what duties liable, 2 *W.* & *M. ſeſſ.* 2. *c.* 4 *ſect.* 35.

Meldfeoth, (*Sax.*) Was the recompence due and given to him who made diſcovery of any breach of *penal laws,* committed by another perſon; called the promoter or informer's *fee. Leg. Inæ, cap.* 20.

Melius Inquirendum, Is a writ that lieth for a ſecond inquiry, where partial dealing is ſuſpected; and particularly of what lands or tenements a man died ſeiſed, on finding an office for the King. *F. N. B.* 255. It has been held, that where an office is found againſt the King, and a *melius inquirendum* is awarded, and upon that *melius &c.* it is found for the King, if the writ be void for repugnancy, or otherwiſe, a new *melius inquirendum* ſhall be had; But if upon the firſt *melius,* it had been found againſt the King, in ſuch caſe he could not have a new *melius, &c.* for then there would be no end of theſe writs: And if an office be found for the King, the party grieved may traverſe it; and if the traverſe be found againſt him, there is an end of that cauſe; and if for him, it is concluſive. 8 *Rep.* 169. 2 *Nelſ.* 1008. If there is any defect in the points which are found in an inquiſition, there may not be a *melius inquirendum*; but if the inquiſition finds ſome parts well, and nothing is found as to others, that may be ſupplied by *melius inquirend'.* 2 *Salk.* 469. A *melius inquirendum* ſhall be awarded out of *B. R.* where a coroner is guilty of corrupt practices; directed to ſpecial commiſſioners. 1 *Vent.* 181. Vide *Mod.* 82. *Mich.* 22 *Car.* 2. *B. R. Anon'.* See 15 *Vin. Abr.* tit. *Melius inquirendum.*

Members of Parliament, i. e. Members of the Houſe of Commons, the repreſentatives of the people, elected and deputed in the place of the people, to repeal old and uſeleſs laws, make new ones, and grant money, when requiſite, for the ſervice of government.

Memories, Are ſome kind of remembrances or obſequies for the dead, in injunctions to the clergy. 1 *Ed.* 6.

Memory, (*time of.*) Hath been long ago aſcertained by the law to commence from the reign of *Richard* the *Firſt*; and any cuſtom may be deſtroyed by evidence of its non-exiſtence in any part of the long period, from his days to the preſent. See *Black. Com.* 2 *V.* 31.

Menagium, A family: Mentioned in *Trivet's Chronicle, p.* 677. and in *Walſingham, pag.* 66.

Mendleſe, Mentioned in *Crom. Juſtice of Peace,* 193. Is that which *Bracton* calleth *mealetum, lib.* 3. *tract.* 2. *cap.* 35. It ſignifies quarrels, ſcuffling or brawling. *Cowell.*

Menials, (From *mænia,* the walls of a caſtle, houſe or other place) Are houſhold ſervants who live under their lord or maſter's roof; mentioned in the ſtat. 2 *H.* 4. *c.* 21.

Menſa, Comprehends all patrimony, or goods and neceſſaries for livelihood.—*Dominicum eſt proprie terra ad* menſam *aſſignata.*

Menſalia, Such parſonages or ſpiritual livings, as were united to the tables of religious houſes, and called *menſal benefices* among the *Canoniſts*: And in this ſenſe it is taken, where mention is made of appropriations, *ad* menſam ſuam. *Blount.*

Menſura, Is taken for a buſhel of corn, *&c.*

Menſura Regalis, The King's *ſtandard meaſure,* kept in the *Exchequer,* according to which all others are to be made. See Stat. 17 *Car.* 1. and tit. *Meaſure.*

Met, or Mere: Words which begin or end with thoſe ſyllables ſignify fenny places. *Cowell.* See *Mara,* or *Mere,* a lake or great pond.

Mera noctis, Midnight. *Id.*

Mercennarius, A hireling or ſervant. *Cartular. Abbat. Glaſton. p.* 115.

Merchant, (*mercator*) Is one who buys and trades in any thing: And as *merchandiſe* includes all goods and wares expoſed to ſale in fairs or markets; ſo the word *merchant* formerly extended to all ſorts of traders, buyers and ſellers. But every one who buys and ſells is not at this day under the denomination of a *merchant*; only thoſe who traffick in the way of *commerce,* by *importation* or *exportation,* or carry on buſineſs by way of emption, vendition, barter, permutation or exchange, and who make it their living to buy and ſell, by a continued aſſiduity, or frequent negotiation, in the myſtery of merchandiſing, are eſteemed *merchants.* Thoſe who buy goods, to reduce them by their own art or induſtry, into other forms, and then to ſell them, are *artificers,* not *merchants*: Bankers, and ſuch as deal by exchange, are properly called *merchants.* Lex Mercat. 23.

Merchants were always particularly regarded by the Common law; tho' the municipal laws of *England,* or indeed of any one realm, are not ſufficient for the ordering and determining the affairs of traffick, and matters relating to commerce; merchandiſe being ſo univerſal and extenſive that it is impoſſible; therefore of the *Law Merchant* (ſo called from its univerſal concern) all nations take ſpecial knowledge; and the common and ſtatute laws of this kingdom leave the cauſes of *merchants* in many caſes to their own peculiar law. *Ibid.*

The law of *England,* as a commercial country, pays a very particular regard to foreign *merchants* in innumerable inſtances. By *Magna Charta, c.* 30. it is provided, That all merchants (unleſs publicly prohibited beforehand) ſhall have ſafe conduct to depart from, to come into, to tarry in, and to go thro' *England,* for the exerciſe of merchandize, without any unreaſonable impoſts, except in time of war; and, if a war breaks out between us and their country, they ſhall be attached (if in *England*) without harm of body or goods, till the King or his chief juſticiary be informed how our merchants are treated in the land with which we are at war; and, if ours be ſecure in that land, they ſhall be ſecure in ours.

This ſeems to have been a common rule of equity among all the northern nations; for we learn from *Stiernhook,* (*de jure Sueon. l.* 3. *c.* 4.) that it was a maxim among the *Goths* and *Swedes,* "*quam legem exteri nobis poſure, eandem illis ponemus.*" But it is ſomewhat extraordinary, that it ſhould have found a place in *Magna Charta,* a mere interior treaty between the King and his natural-born ſubjects: which occaſions the learned *Monteſquieu* to remark with a degree of admiration, "that the *Engliſh* "have made the protection of *foreign* merchants one of "the articles of their *national* liberty." But indeed it well juſtifies another obſervation which he has made, "that the *Engliſh* know better than any other people "upon earth, how to value at the ſame time theſe "three great advantages, RELIGION, LIBERTY, and "COMMERCE." *Black. Com.* 1 *V.* 260.

In the reign of King *Ed.* 4. a *merchant* ſtranger made ſuit before the King's Privy Council, for ſeveral bales of ſilk *feloniouſly taken from him,* wherein it was moved, that this matter ſhould be determined at Common law; but was anſwered by the Lord Chancellor, that as this ſuit was brought by a *merchant,* he was not bound to ſue according to the law of the land. 13 *Ed.* 4. In former times it was conceived, that thoſe laws that were prohibitory againſt foreign goods, did not bind a *merchant* ſtranger: but it has been a long time ſince ruled otherwiſe; for in the leagues that are now eſtabliſhed between nation and nation, the laws of either kingdom are excepted; ſo that as the *Engliſh* in *France* or any other foreign country in amity are ſubject to the laws of that country where they reſide; ſo muſt the people of *France*, or any other kingdom, be ſubject to the laws of *England* when reſident here. 19 *Hen*. 7.

Engliſh merchants are not reſtrained to depart the kingdom without licence, as all other ſubjects are; they may depart, and live out of the realm, and the King's obedience, and the ſame is no contempt, they being excepted out of the ſtatute 5 *R*. 2. *c*. 2. And by the Common law, they might paſs the ſeas without licence; tho' not to merchandiſe. *Mich*. 12 and 13 *Eliz*. *Dyer* 206.

If any diſturbance or abuſe be offered them, or any other *merchant* in a corporation, and the head officer there do not provide a remedy, the franchiſe ſhall be ſeized; and the diſturber ſhall anſwer double damages and ſuffer one year's impriſonment, *&c*. by *Stat*. 9 *Ed*. 3. *c*. 1. All *merchants* (except enemies) may ſafely come into *England* with their goods and merchandiſe. 14 *Ed*. 3. *Merchant* ſtrangers may come into this realm, and depart at their pleaſure; and they are to be friendly entertained. 5 *R*. 2. *c*. 1. And *merchants* alien ſhall be uſed in this kingdom, as denizens are in others, by the ſtatute 5 *Hen*. 4. *cap*. 7.

If a difference ariſe between the King and any foreign ſtate, alien *merchants* are to have forty days notice, or longer time, to ſell their effects and leave the kingdom. 27 *Ed*. 3. *cap*. 17. All *merchants* may buy merchandiſes of the ſtaple: And any *merchant* may deal in more merchandiſes than one; he may buy, ſell, and tranſport all kinds of merchandiſe. 27 *Ed*. 3. *c*. 3. and 38 *Ed*. 3. *c*. 2.

All the King's ſubjects are to have a free trade to and from *France*, *Spain*, and *Portugal*. 3 *Jac*. 1. *c*. 6. It ſhall be lawful for *merchants* to tranſport iron, armour, piſtols, muſkets, ſaddles, ſwords, bridles, *&c*. *Stat*. 2 *Car*. 2. *c*. 4. *Merchants*, *&c*. corrupting or adulterating wine, or ſelling the ſame adulterated, are liable to penalties, by 1 *W*. *&* *M*. *Seſſ*. 1. *c*. 34. On importation of tobacco, *merchants* have an allowance of 8 *per cent*. *&c*. 12 *Ann*. *cap*. 8. Vide *Cuſtom of Merchants*.

Various reſtraints are laid on merchants, eſpecially to prevent their carrying of gold and ſilver out of the nation, *&c*. by the ſtatute law, *vide* 18 *Ed*. 2. *c*. 21. 4 *H*. 4. *c*. 15. 5 *H*. 4. *c*. 9. 8 *H*. 6. *c*. 24. 3 *H*. 7. *c*. 8. 1 *R*. 3. *c*. 9. 1 *Eliz*. *c*. 11.

If a perſon, who is otherwiſe no *merchant*, being beyond ſea, takes up money and draws a bill upon a merchant, he cannot, in an action brought upon this bill againſt him as the drawer thereof, plead that he was no merchant; for *the very taking up the money and drawing the bill makes him a merchant to this purpoſe*. Comb. 152.

Merchant includes all ſorts of traders as well and as properly as merchant adventurers. *D*. 279. *b*. cites *Spelm*. *Guilda*. A merchant taylor is a common term; *per Holt* Ch. J. 2 *Salk*. 445.

The cuſtom of merchants *is part of the Common law* of this kingdom, of which the judges ought to take notice; and if any doubt ariſe about the cuſtom, they may ſend for merchants to know the cuſtom; *per Hobart* Ch. J. *Winch*. 24.

The *Lex mercatoria* is allowed, for the benefit of trade, to be of the utmoſt validity in all commercial tranſactions: for it is a maxim of law, that "*cuilibet in ſua arte credendum eſt*." Black. Com. 1 *V*. 75. See 3 *New Abr*. tit. *Merchants*.

There are *companies of Merchants* in *London* for carrying on conſiderable joint trades to foreign parts, *viz*. The *merchant adventurers*, the company eſtabliſhed in *England* for the improvement of commerce; which was erected by patent by King *Ed*. 1. *merely for the exportation of wool*, *&c*. before we knew the value of that commodity, and at a time when we were in a great meaſure ſtrangers to trade. The next company was that of the *Barbary merchants*, incorporated in the reign of King *Hen*. 7. A company of *merchants* trading to the north, called the *Muſcovy* or *Ruſſia Company*, was eſtabliſhed by King *E*. 6. and encouraged with additional privileges, by Queen *Mary*, Queen *Elizabeth*, *&c*. The *Barbary merchants* decaying towards the latter end of Queen *Elizabeth*'s reign, out of their ruins aroſe the *Levant* or *Turkey Company*; who firſt trading with *Venice*, and then with *Turkey*, furniſhed *England* that way with the *Eaſt-India* commodities: This company hath very conſiderable factories, at *Conſtantinople*, *Smyrna*, *Aleppo*, *&c*. From the flouriſhing ſtate of the *Levant* or *Turkey Company*, in the reign likewiſe of Queen *Eliz*. ſprung the *Old Eaſt-India Company*, who having fitted out ſhips of force, brought from thence at the beſt hand, the *Indian* commodities, formerly ſold to *England* by diſtant *Europeans*; and they having obtained many charters, and grants from the crown, in their favour, were ſole maſters of that advantageous traffick; until at laſt a new company was incorporated by King *Will*. *Anno* 9 *W*. 3. on their lending government two millions of money; and both theſe companies, after the expiration of a certain term, were by articles united.

In the 21ſt year of Queen *Elizabeth*, the *Eaſtland Company of Merchants* was erected; and in King *Charles* the Second's time, that company was confirmed, with full power to trade in *Norway*, *Sweden*, *Poland*, and other *Eaſtland* countries. The *Royal African Company* had their charter granted them in the 14th year of King *Char*. 2. And by 9 *&* 10 *W*. 3. they are to maintain all forts, *&c*. King *Charles* 2. alſo by commiſſion under the Great Seal of *England*, conſtituted his Royal Highneſs *James* Duke of *York*, (afterwards King *Jam*. 2.) *Edward* Earl of *Clarendon*, and others, to be a council for the *Royal Fiſhery of England*, and declared himſelf to be the protector of it; and in the 29th year of his reign, he incorporated them into a company. King *Will*. 3. in the fourth year of his reign, eſtabliſhed a *Greenland Company*.

By *ſtat*. 9 *Ann*. *c*. 21. to pay the debts of the army, navy, *&c*. amounting to near ten millions, the *South-Sea Company* of *Merchants* was erected; who having advanced that money, the duties upon wines, vinegar, tobacco, *&c*. were appropriated as a fund for payment of the intereſt, after the rate of 6 *l*. *per cent*. *&c*. The company is to have the ſole trade to the *South-Seas*; and others trading thither ſhall forfeit their ſhips and goods, and double value: and the corporation is to continue *for ever*; but the funds are ſubject to redemption by parliament. This company had their capital ſtock very much enlarged in the reign of King *Geo*. 1. And to raiſe money lent, were empowered to make calls or take in ſubſcriptions, *&c*. as they thought fit; and on this foundation, the late *South-Sea* ſcheme was executed: but, to retrieve credit, afterwards part of the ſtock of the *South-Sea* company was ingrafted into the capital ſtock of the *Eaſt-India* company and the *Bank of England*; and after that, half the ſtock was converted into annuities at 4 *l*. *per cent*. Since which a farther reduction thereof hath been made.

This ſhort *hiſtory* of our *Companies of Merchants*, which have ever had many and great privileges, and are at length become of double uſe, *i. e.* to enlarge commerce, and ſupply the neceſſities of the ſtate, in ſome meaſure, ſhews the progreſs and increaſe of our trade, and the wealth of the nation: tho' we muſt nevertheleſs obſerve, that they are a kind of monopolies erected by law; and if the power granted them is abuſed, are of fatal conſequence; for which we need only inſtance the ever memorable year 1720, when the ſub-governor and directors of the *South-Sea* company incurred a forfeiture of their eſtates by ſtatute, and were diſabled to hold any offices, *&c*. for their vile conduct, which tended to the ruin of the public.

Over and above theſe companies, there are the *Dutch Merchants*; thoſe who trade to the *Weſt Indies*; the *Canary Merchants*; *Italian Merchants*, who trade to *Leghorn*, *Venice*, *Sicily*, *&c*. The *French* and *Spaniſh Merchants*, *&c*.

Merchenlage, *(Merciorum Lex)* Was the law of the people here called the *Mercians*. *Cambden* in his *Britannia* ſays, That in the year 1016, this kingdom was divided into three parts; whereof the *Weſt Saxons* had one, governing it by the laws called *Weſt Saxon-lage*, which contained *Kent*, *Suſſex*, *Surry*, *Berks*, *Hampſhire*, *Wilts*, *Somerſet*, *Dorſet*, and *Devon*: The *Danes* had the ſecond, containing *York*, *Derby*, *Nottingham*, *Lieceſter*, *Lincoln*, *Northampton*, *Bedford*, *Bucks*, *Hertford*, *Eſſex*, *Middleſex*, *Norfolk*,

folk, *Suffolk*, *Cambridge* and *Huntington*; which was governed by the laws called *Dane-lage*: And the third part was in the poſſeſſion of the *Mercians*, whoſe law was called *Merchenlage*; and contained *Glouceſter*, *Worceſter*, *Hereford*, *Warwick*, *Oxford*, *Cheſter*, *Salop* and *Stafford*: from which three, King *Wil.* 1. choſe the beſt, and with other laws ordained them to be the laws of the kingdom. *Camd. Brit.* 94. See *Molmution laws*.

Merchet, *(Merchetum)* A fine or compoſition paid by inferior tenants to the lord, for liberty to diſpoſe their daughters in marriage. No baron, or military tenant, could marry his ſole daughter and heir, without ſuch leave purchaſed from the King, *pro maritando filia*. And many of our ſervile tenants could neither ſend their ſons to ſchool, nor give their daughters in marriage, without expreſs licence from the ſuperior lord. See *Kennet's Gloſſary* in *Maritagium*. See *Marchet*.

Mercia, Is uſed in many places in the *Monaſtic*. for amerciament.

Mercimoniatus Angliæ, Was of old time uſed for the impoſt of *England* upon merchandiſe.

Mercuries, Or vendors of printed books or papers. Vide *Hawkers*.

Mercy, The arbitrament of the King or judge, in puniſhing offences, not directly cenſured by the law. 11 *H.* 6. *c.* 2. See *Miſericordia*.

Merger, Is where a leſſer eſtate in lands, *&c.* is drowned in the greater: as if the fee comes to tenant for years, or life, the particular eſtates are *merged* in the fee: but an eſtate-tail cannot be *merged* in an eſtate in fee; for no eſtate in tail can be extinct, by the acceſſion of a greater eſtate to it. 2 *Rep.* 60, 61. If a leſſor, who hath the fee, marries with the leſſee for years; this is no *merger*, *becauſe he hath the inheritance in his own, and the leaſe in right of his wife.* 2 Plowd. 418. And where a man hath a term in his own right, and the inheritance deſcends to his wife, ſo as he hath a freehold in her right, the term is not *merged* or drowned. *Cro. Car.* 275. Vide 15 *Vin. Abr.* tit. *Merger*.

Merſcum, A lake; from the Sax. *mere, lacus. Maneria, molendina*, merſca, *et mariſca*. Ingulph. p. 861.

Merſe-Ware, (Sax. *Incola paludum)* So the inhabitants of *Romney Marſh* in *Kent* were anciently called. *Cowell.*

Mertlage, Seems to be a corruption of, or a *Law-French* word for martyrology. See *Hil.* 9 *Hen.* 7. 14. *b.* for it being aſked what was meant by *mertlage*, the book ſays, *Ceo eſt Kalender univerſal in l'Egliſe de c'eſt realm, lex queux prieſts ſont lies d'obſerve et ne pluis.* A church kalendar or rubric. *Cowell.*

Merton. Statutes made there, 20 *Hen.* 3.

Meſne, *(Medius)* Signifies him who is a lord of a manor, and ſo hath tenants holding of him; yet himſelf holds of a ſuperior lord. *Cowell.* See 15 *Vin. Abr.* tit. *Meſne*.

Forejudger by default given the writ of *meſne*. Proceſs in the writ of *meſne* regulated, and remedies provided for the tenant *peravaile*, *St. Weſt.* 2. 15 *Ed.* 1. *c.* 9. See *Mean*.

Meſnalty, *(medietas)* Signifies the *right* of the *meſne*, as the *meſnalty* is extinct. *Old Nat. Br.* 44.

Meſſarius, (from *meſſis)* The chief ſervant in huſbandry, or harveſt-time, now called a bailiff in ſome places. *Mon. Angl. tom.* 2. *p.* 832. Alſo this word is uſed for a mower or reaper; one that works harveſt-work. *Fleta, lib.* 2. *c.* 75.

Meſſenger, Is a carrier of meſſages, particularly imployed by the *Secretaries of State, &c.* and to theſe commitments may be made of ſtate priſoners; for though regularly no one can juſtify the detaining a perſon in cuſtody out of the common gaol, unleſs there be ſome particular reaſon for it; as if the party be ſo dangerouſly ſick, that it would hazard his life to ſend him thither, *&c.* yet it is the conſtant practice to make commitments to meſſengers; but it is ſaid, it ſhall be intended only in order to carrying the offenders to goal. 1 *Salk.* 347. 2 *Hawk. P. C.* 118. An offender may be committed to a meſſenger, in order to be examined before committed to priſon; and though ſuch commitment to a meſſenger is irregular, it is not void; and a perſon charged with treaſon, eſcaping from the meſſenger is guilty of treaſon, *&c.* *Skin.* 599.

Meſſengers of the Exchequer, Are officers attending that court; they are four in number, and in nature of *purſuivants* to the *Lord Treaſure*.

Meſſe Thane, Signifies a prieſt. The *Saxons* called every man *thane*, who was above the common rank; ſo *meſſe thane* was *he who ſaid maſs*; and *worules thane* was *a ſecular man of quality.* Cowell.

Meſſina, Reaping time, harveſt. *Id. ib.*

Meſſuage, *(Meſſuagium)* Is properly a dwelling-houſe, with ſome adjacent land aſſigned to the uſe thereof. *Weſt. Symb.* tit. *Fines, ſect.* 26. *Bract. lib.* 5. *cap.* 28. and *Plowden*, 169, 170. where it is ſaid, that by the name of a *meſſuage* may paſs alſo a curtilage, a garden and orchard, a dove-houſe, a ſhop, a mill, a cottage, a toft, a chamber, a cellar, *&c.* yet they may be demanded by their ſingle names. *Meſſuagium* in *Scotland*, ſignifies the principal place or dwelling-houſe within a barony, which we call a *manor-houſe. Skene de verbo. ſignif.* verb. *Meſſuagium.* In ſome places it is called the *ſite of a manor.* A *præcipe* lies not *de domo*, but *de meſſuagio.* Co. Lit. cap. 8.

Meſtilo, *Meſline*, or rather *meſcellane*, that is, wheat and rye mingled together.——*Et nonam garbam frumenti*, meſtilonis, *ſiliginis et omnes generis bladi.* Pat. 1 Ed. 3. par. 1. m. 6.

Metal. The exportation of iron, braſs, copper, lattin, bell and other metal, anciently reſtrained. 28 *Ed.* 3. *c.* 5. 33 *Hen.* 8. *c.* 7. 2 & 3 *Ed.* 6. *c.* 37. But permitted by 5 *W. & M. c.* 17. *Metal* prepared for battery, to what duties liable. 4 *W. & M. c.* 5.

Metecorn, A meaſure or portion of corn, given out by the lord to cuſtomary tenants, as a reward and encouragement for their duties of labour. *Stipendia et* metecorn, *accetera debita ſervitia in monaſterio prædicto ſolvantur.* Ryley's Plac. Parl. 391.

Metegavel, (Sax. *cibi gablum. ſeu vectigal)* A tribute or rent paid in victuals; which was a thing uſual in this kingdom, as well with the King's tenants as others, till the reign of King *Hen.* 1.

Meter of coals in *London, &c.* from *metior*, to mete or meaſure a thing. Vide *Meaſurer*.

Metheglin, *(Brit. Meddiglin)* An old *Britiſh* drink made of honey, *&c.* and ſtill continues in repute in *England*; it is mentioned in the Statute 15 *Car.* 2. *cap.* 9.

Metteſhep, Mettenſchep, Was an acknowledgment paid in a certain meaſure of corn; or a fine or penalty impoſed on tenants, for their defaults in not doing their cuſtomary ſervices, of cutting the lord's corn. *Paroch. Antiq.* 495.

Meum & Tuum, Are *Latin* words uſed for the proper guides of *right*; and which, being miſunderſtood, have been the ground of many controverſies.

Meya, A *mey* or mow of corn, as anciently uſed; and in ſome parts of *England* they ſtill ſay *mey* the corn, *i. e.* put it on an heap in the barn.———*Cariabunt Bladum per unum diem cum una carecta, et inveniunt unum hominem ad faciendum* meyas *in grangio.* Blount. Ten. 130.

Micel-gemotes, Micel-ſynods, The great councils in the *Saxon* times of King and noblemen, were called *Wittena-gemotes*, and after *Micel-ſynods* and *Micel-gemotes*, i. e. Great and general aſſemblies. *Cowell.* See *Black. Com.* 1 *V.* 147.

Michel Synoth, Same with *Michel-gemote*, or *Micel-gemote*, which ſee, and alſo *Black. Com.* 1 *V.* 147.

Middleſex. The ſeſſions of the peace how often to be held, 14 *H.* 6. *c.* 4. In actions triable by *Middleſex* jurors, they ſhall be called the fourth day, *&c.* 8 *Ed.* 4. *c.* 3. Inhabitants of *Weſtminſter* exempt from ſerving on juries at the ſeſſions for the peace, 7 & 8 *W.* 3. *c.* 32. *ſect.* 9. Deeds and wills to be regiſtered there. 7 *Ann. c.* 20. No juror to be returned at the *Niſi prius* in *Middleſex*, who hath been returned in two preceding terms or vacations, 4 *Geo.* 2. *c.* 7. *ſect.* 2. Leaſeholders qualified to ſerve as jurors in *Middleſex*, 4 Geo. 2. c. 7. ſect. 3. But one county rate to be made for *Middleſex*, 12 Geo. 2. c. 29. ſect. 15.

Mild-boards. See *Paſte-boards*.

Mildernix, A kind of canvas, of which ſail-cloths of ſhips are made. 1 *Jac. cap.* 14.

Mile, *(Milliure)* In the meaſure of a country, is the diſtance or length of a thouſand paces; otherwiſe deſcribed to contain eight furlongs, every furlong being forty poles, and every pole ſixteen foot and a half. *Stat.* 35 *Eliz. c.* 6.

Miles, The ſtatute mile to contain eight furlongs, every furlong forty poles, and every pole ſixteen feet and an half; 35 *Eliz. c.* 6.

Miles, mentioned in the ſtatutes relative to the refining of ſalt, are to be computed, according to the common eſtimation of the county, or place, where the pit is; and not according to the ſtatute meaſure. 8 *Geo.* 2. *c.* 12.

Miles, A knight. *Mat. Weſt. p.* 118.

Militare, To be knighted, *viz. Rex per Angliam fecit proclamari, &c. ut qui boberent unde militarent adeſſent apud Weſtmonaſterium, &c.* Mat. Weſt. pag. 118

Military Cauſes, Are by ſtatute 13 *R.* 2. *c.* 2. declared to be ſuch as relate to contracts touching deeds of arms and of war, as well out of the realm, as within it, which cannot be determined or diſcuſſed by the Common law; together with other uſages and cuſtoms to the ſame appertaining.

Under the words "other uſages and cuſtoms," are comprehended, 1. Grievances in matters of honour; 2. The diſtinction of degrees and quality; or, matters of coat-armour, precedency, and other diſtinctions of families. *Black. Com.* 3 *V.* 103, *&c.*

Military Courts, The only court of this kind known to, and eſtabliſhed by, the permanent laws of the land, is the court of *chivalry*, formerly held before the lord high conſtable, and earl-marſhal of *England* jointly; but ſince the attainder of *Stafford*, duke of *Buckingham*, under *Hen.* 8. and the conſequent extinguiſhment of the office of lord high conſtable, it hath uſually, with reſpect to civil matters, been held before the earl-marſhal only. As to the juriſdiction of this court, vide tit. *Military Cauſes.* And *Black. Com.* 3 *V.* 68, 103, *&c.*

Military feuds, Vide tit. *Feuds* and its *diviſions.* And alſo *Black. Com.* 2 *V.* 44, 58.

Military Offences. By our annual acts for puniſhing *mutiny* and *deſertion*, if any officer or ſoldier ſhall excite, or join any mutiny, or, knowing of it, ſhall not give notice to the commanding officer: or ſhall deſert or liſt in any other regiment, or ſleep upon his poſt, or leave it before he is relieved, or hold correſpondence with a rebel or enemy, or ſtrike or uſe violence to his ſuperior officer, or ſhall diſobey his lawful commands: ſuch offender ſhall ſuffer ſuch puniſhment as a court martial (eſtabliſhed by the act) ſhall inflict, though it extend to death itſelf.

Excluſive of the before mentioned ſtatutes, *deſertion* from the King's armies in time of war, whether by land or ſea, in *England* or in parts beyond the ſeas, is, by the ſtanding laws of the land, and particularly by *Stat.* 18 *H.* 6. *c.* 19. and 5 *Eliz. c.* 5. made felony, but not without benefit of clergy. But by the *Stat.* 2 & 3 *Ed.* 6. *c.* 2. clergy is taken away from ſuch deſerters, and the offence is made triable by the juſtices of every ſhire. The ſame ſtatutes puniſh other inferior military offences with fines, impriſonment and other penalties. For more on this ſubject, vide *Black. Com.* 1 *V.* 414. 4 *V.* 101, *&c.*

Military power of the Crown, The King is conſidered as the generaliſſimo, or firſt in military command within the Kingdom. And in this capacity, by *Stat.* 13 *Car.* 2. *c.* 6. the power of raiſing and regulating fleets and armies is declared to be in him alone. For more on this ſubject, vide *Black. Com.* 1 *V.* 262, *&c.* and tit. *Prerogative.*

Military State, Includes the whole of the ſoldiery; or, ſuch perſons as are peculiarly appointed among the reſt of the people, for the ſafeguard and defence of the realm. Vide *Black. Com.* 1 *V.* 408, *&c.*

Military Tenures. *Vide* tit. *Military feuds*, and *Black. Com.* 2 *V.* 48, *&c.*

Military Teſtament, As a part of the compenſation for ſoldiers, being by the annual act for puniſhing mutiny and deſertion, put in a worſe condition than any other ſubjects, by *Stat.* 29 *Car.* 2. *c.* 3. And 5 *W.* 3. *c.* 21. *ſect.* 6. Soldiers in actual military ſervice may make nuncupative wills, and diſpoſe of their goods, wages, and other perſonal chattels without thoſe forms, ſolemnities, and expences, which the law requires in other caſes.

Militia, *(Lat.)* The being a ſoldier; and applied to the *trained bands*, under the direction of the lieutenancy. The *Stat.* 13 *Car.* 2. *cap.* 6. is declarative of the King's right to the ſupreme government of the *militia*, and of all forces by ſea and land, *&c.* And by the 13 & 14 *Car.* 2. *c.* 3. The King may iſſue commiſſions of lieutenancy for the ſeveral counties and cities, *&c.* *Vide* the *Stat.* 14 & 15 *Car.* 2. *c.* 4. 9 & 10 *W.* 3. *c.* 12. 10 & 11 *W.* 3. *c.* 12. 30 *Geo.* 2. *c.* 25. 31 *Geo.* 2. *c.* 26.

The militia laws reduced into one act, 2 *Geo.* 3. *c.* 20. Explained and amended, 4 *Geo.* 3. *c.* 17. 5 *Geo.* 3. *c.* 56. 9 *Geo.* 3. *c.* 42. Application of the money granted for the charge of the militia, 2 *Geo.* 3. *c.* 35. 3 *Geo.* 3. *c.* 10. 4 *Geo.* 3. *c.* 30. 5 *Geo.* 3. *c.* 34. 6 *Geo.* 3. *c.* 30. 7 *Geo.* 3. *c.* 17. 8 *Geo* 3. *c.* 20. 9 *Geo.* 3. *c.* 40. 10 *Geo.* 3 *c.* 9. 14 *Geo.* 3 *c.* 18. 15 *Geo.* 3. *c.* 8. 16 *Geo.* 3. *c.* 19. 17 *Geo.* 3. *c.* 10. 18 *Geo.* 3. *c.* 14. May be called out and embodied in caſes of rebellion, 16 *Geo.* 3. *c.* 3.

For more on this ſubject, vide *Stat.* 18 *Geo.* 3. *c.* 59. And *Burn's Juſtice*, tit. *Militia.*

Mill, *(molendinum)* Is a houſe or engine to grind corn, and either a water-mill, wind-mill, horſe-mill, hand-mill, *&c.* And beſides corn and griſt mills, there are paper-mills, fulling or tucking mills, iron-mills, oil-mills, *&c.* 2 *Inſt.* 621. The toll ſhall be taken according to the ſtrength of the water, *ordin. pro piſtor. incerti temp.* Prohibition ſhall not go in ſuit for tithe of a new mill. *Art. cler'.* 9 *Ed.* 2. *ſt.* 1. *c.* 5.

Magiſtrates may ſearch mills for *adulterated* meal, *&c.* 31 *Geo.* 2. *c.* 29. *ſect.* 29. Miller, baker, *&c.* not to act as magiſtrate under this act, 31 *Geo.* 2. *c.* 29. *ſ.* 32. See 15 *Vin. Abr.* tit. *Mill.*

Milleate, (mentioned in *Stat.* 7 *Jac. cap.* 19.) A trench to convey water to or from a mill. *Cowell.*

Millet, *(milium)* A ſmall grain ſo termed from its multitude. *Lit. Dict.*

Mina, A corn meaſure of different quantity, according to the things meaſured by it: and *minage* was a toll or duty paid for ſelling corn by this meaſure. *Cowell.* According to *Littleton*, it is a meaſure of ground, containing one hundred and twenty feet in length, and as many in breadth. Alſo it is taken both for a coin and a weight. *Lit. Dict.*

Minare, To mine or dig mines.——*Minator* a miner. *Record.* 16 *Ed.* 1.

Minator carucae, A ploughman. *Cowell.*

Mineral, Is any thing that grows in mines, and contains metals. *Shep. Epit,*

Mineral Courts, *(curiæ minerales)* Are peculiar courts for regulating the concerns of *lead mines*; as *Stannary Courts* are for tin. See *Berghmote.*

Mine-Adventurers, A company eſtabliſhed by ſtatute, governed by the Duke of *Leeds*, *&c.* Vide 9 *Ann.* *c.* 24.

Mines, *(mineræ)* Quarries or places whereout any thing is dug; they are likewiſe the hidden treaſure dug out of the earth. The King by his prerogative hath all mines of gold and ſilver *to make money*; and where gold and ſilver mines is of the greater value; they are called *Royal mines.* Plowd. But by ſtatute, no mine of copper or tin ſhall be adjudged a *Royal mine*, though ſilver be extracted. 1 *W.* & *M.* *c.* 30. And perſons having mines of copper, tin, lead, *&c.* ſhall enjoy the ſame, although claimed to be royal mines; but the King may have the ore, (except in *Devon* and *Cornwall)* paying to the owners of the mines, within thirty days after it ſhall be raiſed, and before removed, 16*l.* *per* tun for copper ore, waſhed and made merchantable; for lead ore, 9*l.* *per* tun; tin or iron, 40*s.* *&c.* *Stat.* 5 *W.* & *M.* *c.* 6. If a man hath lands where there are ſome mines open and others not, and he lets the land with the mines therein, for life or years, the leſſee may dig in the open mines only, which is ſufficient to ſatisfy the words in the leaſe; and hath no power to dig the mines unopened: but if there be no open mine, and the leaſe is made of the lands, together with all mines therein, *there the leſſee may dig for mines and enjoy the benefit thereof*; otherwiſe thoſe words would be void. 1 *Inſt.* 54. 5 *Rep.* 12. 2 *Lev.* 184. To dig mines is waſte, where leſſees are *not authoriſed* by their leaſes; though a *mine* is not properly ſo called till it is opened; being but a *vein* of iron or coals, *&c.* before. 1 *Inſt.* 54. v. 2 *Mod.* 193.

For relief of the creditors of the company of mine-adventurers. See 9 *Ann. c.* 24. If any perſon maliciouſly ſet on fire any mine, or pit of coal, he ſhall ſuffer death as a felon, by *Stat.* 10 *Geo.* 2. *c.* 32. And damaging ſuch mines, or any coal-works, by conveying water therein, or obſtructing ſewers from draining them, *&c.* ſhall forfeit treble damages. 13 *Geo.* 2. *c.* 21. 24 *Geo.* 2. *c.* 57. Mines how taxable, 30 *Geo.* 2. *c.* 3.

A man opens a mine in his land, and digs till he digs under the ſoil of another; he may follow his mine there; but if the owner digs there alſo he may ſtop his farther progreſs; and ſaid to be the uſe in *Cornwall.* 2 Vent. 342. *per Wilde* J. on a caſe referred to him by Lord *Bridgman*, 22 *Car.* 22.

It was ſaid by the Solicitor General, that there was a great difference between pits and mines; for if a mine be opened, he that may work the mine is not obliged to purſue the vein of ore under ground; but he may ſink pits in purſuit of it which are neceſſary to come at the ore, and as many as he thinks proper; and Lord Chancellor ſaid, it had been ſo reſolved before *Powell* J. on great conſideration, and conſulting and examining the moſt able miners. *Caſes in Equity* in Lord *King*'s time, 79. *Nov.* 10, 1729. *Clavering* v. *Clavering.*

If a man demiſes lands for life or years, in which there is a coal mine open, *the leſſee may dig in it*; for the mine being open, it ſhall be intended, by his demiſing all the land, that his intent is as general as his demiſe; but if the mine was not opened at the time of the demiſe, the leſſee by leaſe of the land is not impowered to make new mines; but in ſuch caſe if he leaſes his land and all mines therein, the leſſee may dig for mines there; reſolved, 5 *Rep.* 12 *Trin.* 41 *Eliz. C. B. Saunder*'s caſe.

A queſtion was, if copyholder of inheritance may dig mines in his land? The court ſeemed to think he might; for that otherwiſe, mines there would never be opened; as in the caſe of a glebe of a parſon. *Sid.* 152. *Trin.* 15 *Car.* 2. *B. R.* in the caſe of *Rutland (Lord)* v. *Gie.*

As to tenant in tail working mines, *vide* 2 *Wms's Rep.* 388. *Clavering* v. *Clavering.*

If a perſon breaks up, or even *attempts* or *threatens* to break up, mines which he ought *not* to do, that is a reaſon for coming into Chancery to have an injunction; *per* Lord Chancellor. *Barn. Chan. Rep.* 497. *Paſch.* 1741. in the caſe of *Gibſon* v. *Smith.*

Entering mines of black lead with intent to ſteal, *felony.* 25 Geo. 2. c. 10.

Mines, In another ſignification, are caves or trenches dug under ground, whereby to undermine the walls of a city or fortification.

Miniments, or **Muniments,** (*munimenta*, from *munio*, to defend) Are the evidences and writings concerning a man's poſſeſſion or inheritance, whereby he is enabled to defend the title of his eſtate; and this word includes all manner of evidences, deeds, charters, *&c.* *Terms de Ley.* *Stat.* 5 *R.* 2. *c.* 8. and 35 *H.* 6. *c.* 37.

Miniſters. If a miniſter is diſturbed in the execution of his office in the church; the puniſhment upon conviction is a fine of 10*l.* And, upon non-payment, three months impriſonment, *&c.* 2 & 3 *Ed.* 5. *c.* 1. And diſturbing a licenſed miniſter incurs a forfeiture of 20*l.* by 1 *W.* & *M.* *c.* 11.

Miniſtri Regis, Extend to judges of the realm; as well as to thoſe who have miniſterial offices in the government. 2 *Inſt.* 208.

Minor, One under age; more properly an heir male or female, before they come to the age of twenty-one years; during which minority they are generally incapable to act for themſelves.

Minores, *Friars Minorites*, of the order of St. *Francis*, that had no prior; they waſhed each other's feet, and increaſed very much in the year 1207. *Mat. Weſt.*

Minſtrel, (*Minſtrellus et meneſtrallus*, from the Fr. *meneſtrier*) A muſician, fidler, or piper,; mentioned 4 *H.* 4. *cap.* 27. *pat.* 24 *April* 9 *Ed.* 4. *Quod mariſcalli et* miniſtrelli *prædicti per ſe forent et eſſe deberunt unum corpus et una communitas perpetua, &c.* Upon a *quo warranto*, 14 H. 7. *Laurentius Dominus de Dutton clamat, quod omnes* minſtrelli *infra civitatem Ceſtriæ et infra Ceſtriam manentes, vel officia ibidem exercentes, debent convenire coram ipſo vel Seneſcallo ſuo apud Ceſtriam, ad feſtum Nativitatis S. Johannis Baptiſtæ annuatim, et dabunt ſibi ad dictum feſtum quatuor* lagenas *vini et unam lanceam; et inſuper quilibet eorum dabit ei quatuor denarios et unum obolum ad dictum feſtum, et habere de qualibet* meretrice *infra comitatum Ceſtriæ, et infra Ceſtriam manente, et officium ſuum exercente, quatuor denarios per annum ad feſtum prædictum, &c.* And where, by the ſtatute of 39 *Eliz. c.* 4. Fidlers are declared to be *rogues*, yet there is a *proviſo* therein, exempting thoſe in *Cheſhire* licenſed by *Dutton* of *Dutton.* The muſicians of *England*, incorporated by King *Charles* II. *anno* 1670. See *Clauſ.* 9 *Ed.* 2. *m.* 26 *Dorſo*, an ordnance *ſuper menſuratione ferculorum et* meneſtrallorum. It was uſual for theſe minſtrels, not only to divert princes, and the nobility, with ſports, but alſo with muſical inſtruments, and with flattering ſongs, in praiſe of them and their anceſtors. The office and power of the King of the minſtrels, is mentioned in the *Monaſtic.* 1 *tom.* 355. *Cowell.* See *Vagrants.* and *Black. Com.* 2 *V.* 96.

Mint, (*officina monetaria, monetarium*) Is the place where the King's money is coined; which is at preſent and long hath been in the *Tower of London*, though it appears by divers ſtatutes, that in ancient times the Mint has alſo been at *Calais*, and other places. 2 *R.* 2. *c.* 16. and 9 *H.* 5. *c.* 5. The Mint-maſter is to keep his allay, and receive ſilver at the true value, *&c.* 2 *H* 6. *c.* 12. And gold and ſilver delivered into the Mint is to be aſſayed, coined, and given out, according to the order and time of bringing in; and perſons ſhall receive the ſame weight of coin, or ſo much as ſhall be finer or coarſer than the ſtandard, *&c.* *Stat.* 18 *Car.* 2. *c.* 5. All ſilver and gold extracted by melting and refining of metals, ſhall be employed for the increaſe of monies, and be ſent to the Mint, where the value is to be paid, 1 *W.* & *M.* *c.* 30. By the *Stat.* 18 *Car.* 2. 3000*l.* a year was granted out of certain duties on wine, beer, *&c.* imported, to defray the expence of the Mint; but this was increaſed by the *Stat.* 4 & 5 *Ann. c.* 22. and much augmented by 1 *Geo.* 1. *c.* 43. by which ſtatute it may be a ſum not exceeding 15,000*l.* *per ann.* for *England* and *Scotland*, *&c.*

The officers belonging to the Mint have not always been alike; they are now the following, *viz.* the *warden*, who is the chief of the reſt, and is by his office to receive the ſilver and bullion of the goldſmiths to be coined, and take care thereof, and he hath the overſeeing of all the other officers. The *maſter worker* receives the ſilver from the warden, and cauſes it to be melted, when he delivers it to the *moniers*, and taketh it from them again after made into money. The *comptroller*, who is to ſee that the money be made to the juſt aſſiſe, and controul the officers if the money be not made as it ought. The *maſter of the aſſay*, who weigheth the ſilver, and examineth whether it be according to the ſtandard. The *auditor* takes account of the ſilver, *&c.* The *ſurveyor of the melting*, who is to ſee the ſilver caſt out, and that it be not altered after the aſſay maſter hath made trial of it, and it is delivered to the melters. The *clerk of the irons*, who ſeeth that the irons be clean and fit for working. The *graver*, whoſe office is to engrave the ſtamps for the money. The *melters*, who melt the bullion, *&c.* The *blanchers* do anneal and cleanſe the money. The *moniers*, who are ſome to ſhear the money, others to forge and beat it broad, ſome to round, and ſome to ſtamp or coin it. The *provoſt* to provide for all the monies, and overſee them, *&c.* Vide *Coin, money.*

Mint, A pretended *place of privilege* in *Southwark*, near the *King's Bench*, put down by ſtatute. If any perſons within the *limits* of the Mint ſhall obſtruct any officer in the ſerving of any writ or proceſs, *&c.* or aſſault any perſon therein, ſo as he receives any bodily hurt, the offenders ſhall be guilty of felony, and tranſported to the plantations, *&c.* *Stat.* 9 *Geo.* 1. *c.* 28. See *Privileged Places.*

Minuere, To let blood; *minutio,* blood-letting. This was a common old practice among the regulars, and the ſecular prieſts or canons, who were the moſt confined and ſedentary men. In the Regiſter of ſtatutes and cuſtoms belonging to the cathedral church of St. *Paul's* in *London,* collected by *Ralph Boldock,* dean, about the year 1300, there is one expreſs chapter *De minutione.* Cowell.

Minute Tithes, *(minutæ* ſive *minores decimæ)* Small tithes, ſuch as *uſually belong to the vicar,* as of wool, lambs, pigs, butter, cheeſe, herbs, ſeeds, eggs, honey, wax, *&c.* See 2 *Inſt.* 649. and *Udal* and *Tindal's* caſe. *Hil.* 22 *Jac.* where the tithe of wood was adjudged *minuta decima.* Cro. Rep. fol. 21. *See* Tithes.

Miracula, A ſuperſtitious ſport or play, practiſed by the popiſh clergy for gain and deceit; prohibited by biſhop *Groſthead* in the dioceſe of *Lincoln.* Cowell.

Mis: This ſyllable added to another word ſignifies ſome fault or defect; as, *miſpriſion, miſdicere,* i. e. to ſcandalize any one; *miſdocere,* i. e. to teach amiſs. *Si preſbyter populum ſuum miſdoceat.* Cowell.

Miſa, A compact or agreement, a form of peace, or compromiſe. *Id. ib.*

Miſadventure, (Fr. *miſadventure,* i. e. *infortunium)* Has an eſpecial ſignification for the killing a man, partly by negligence and partly by chance. *S. P. C. lib.* 1. *c.* 8. And *Britton* diſtinguiſhes between *adventure* and *miſadventure*; the firſt he makes to be *mere chance*; as if a man, being upon or near the water, be taken with ſome ſudden ſickneſs, and ſo fall in and is drowned; or into the fire, and is burnt; *miſadventure* he ſays is, where a perſon comes to his death by ſome *outward violence,* as the fall of a tree, the running of a cart-wheel, ſtroke of a horſe, or ſuch like. *Brit. c.* 7. *Staundford* conſtrues *miſadventure* more largely than *Britton* underſtands it; and ſays, it is where one, *thinking no arm,* careleſly throws a ſtone, wherewith he kills another, *&c.* *Weſt* defines *miſadventure* to be, when a man is ſlain by mere fortune, *againſt the mind of the killer*; and he calls it *homicide by chance mixed,* when the killer's ignorance or negligence is joined with the chance. *Weſt. Symb. ſect.* 48, 49. See *Chancemedley, Homicide,* and *Black. Com.* 4 *V.* 182.

Miſcaſting or **Miſcomputing.** *Aſſumpſit* to pay 12 *l.* Jury found a promiſe to pay 7 *l.* the judgment was reverſed; becauſe *it is not the ſame aſſumpſit.* Dyer 219. b. Marg. pl. 11.

Debt; and declared, that the defendant had bargained with him to give him for the paſturing of every horſe by the night 2 *d.* and for every ox 1 *d.* half-penny, and ſheweth, that he had paſtured 70 horſes and 300 oxen, *Et ideo actio accrevit* to demand, *&c.* and he demanded *more* than upon his own ſhewing it appeared he ſhould have; for the number of the horſes and oxen did not amount to the ſum he had counted; and this was alledged in arreſt of judgment after verdict found for the plaintiff; but judgment was given for the plaintiff notwithſtanding. *Cro. Eliz.* 22. *Mich* 25 *Eliz.* in *C. B. Moor's* caſe, in which it was cited *per Fenner,* as *Anſlow's* caſe. See 15 *Vin. Abr.* 402—405.

Miſcogniſant, Ignorant or not knowing, in the *Stat.* 32 *H.* 8. *c.* 9. againſt champerty, and maintenance, it is ordained that proclamation ſhall be made twice in the year of that act, to the intent no perſon ſhould be ignorant or *miſcogniſant* of the penalties therein contained, *&c.*

Miſcomputing, In covenant for payment of rent, the miſcaſting of the ſum due doth not make it ill; and if more be laid, it ſhall be abated *as ſurplus*: but it is otherwiſe in debt for rent *Dyer* 55.

Miſcontinuance, Signifies the ſame with *diſcontinuance.* Kitch. 231. Though it is generally ſaid to be, where a continuance made by undue proceſs. *Jenk. Cent.* 57.

Miſdemeſnor, or **Miſdemeanor.** This word in the laws of *England,* ſignifies a *crime.*—Every crime is a miſdemeanor, yet the law hath made a diſtinction between crimes of an higher and a lower nature, the latter being denominated *miſdemeanors,* the former *felonies, &c.* For the underſtanding of which diſtinction, we ſhall give the following definition from Mr. Juſtice *Blackſton's* Commentaries, 4 *V.* 5.

A *crime* or *miſdemeanor,* is an act *committed* or *omitted,* in violation of a public law, either forbidding or commanding it. This general definition comprehends both *crimes* and miſdemeanors; which, properly ſpeaking, are mere ſynonimous terms; though in common uſage, the word "crimes," is made to denote ſuch offences as are of a deeper and more attrocious dye; while ſmaller faults, and omiſſions of leſs conſequence, are compriſed under the gentler name of "miſdemeanors" only.

And as he farther obſerves in the ſame page, in making the diſtinction between *public wrongs* and *private,* between *crimes* and *miſdemeanors,* and *civil injuries*: "*Public* "*wrongs,* or *crimes* and *miſdemeanors,* are a breach and "violation of the *public rights* and *duties,* due to the "*whole community,* conſidered as a *community* in its *ſocial* "*aggregate capacity.*"

This term may be conſidered as, and in fact is, a *genus,* which contains under it a great number of *ſpecies,* almoſt as various in their nature as human actions; and which, to enumerate, would be a work of infinite labour: we are inadequate to that labour, nor will the nature and compaſs of this work admit of ſuch an enumeration.—We muſt therefore refer the reader to our ſeveral *codes* of *criminal juriſprudence,* particularly to *Hale's Hiſtory of the Pleas of the Crown,* and *Hawkin's Pleas of the Crown,* for further ſatisfaction, on this very extenſive ſubject. *Vide* tit. *Miſpriſon.*

Miſe, (a *French* word, written in Latin *miſſum,* and ſometimes *miſa)* Is a law term ſignifying expences, and it is ſo commonly uſed in the entries of judgments, in perſonal actions; as when the plaintiff recovers, that *recuperet damna ſua* to ſuch a value, and *pro miſis et cuſtagiis,* for coſts and charges ſo much, *&c.* This word hath alſo another ſignification in the uſe made of it by law; which is where it is taken for *a word of art,* appropriated to a *writ of right,* ſo called *becauſe both parties have put themſelves upon the mere right,* to be tried upon the grand aſſiſe, ſo that what in all other actions is called an *iſſue,* in a writ of writ is termed a *miſe*; but if in the writ of right, a collateral point be tried, there it is called an *iſſue.* To *join the miſe upon the meer right,* is as much as to ſay, to join the *miſe* upon the *clear right,* i. e. to join upon this point, which hath the more right, the tenant or demandant. 1 *Inſt.* 294. 37 *Ed.* 3. *c.* 16. See *Black. Com.* 3 *V. App.* v.

Miſes, Are taken for taxes or tallages, *&c.* An honorary gift or cuſtomary preſent, from the people of *Wales* to every new King and Prince of *Wales,* anciently given in cattle, wine and corn, but now in money, being 5000 *l.* or more, is denominated a *miſe*: ſo was the uſual tribute or fine of 3000 marks, paid by the inhabitants of the *county palatine of Cheſter,* at the change of every owner of the ſaid earldoms for enjoying their liberties. And at *Cheſter* they have a *miſe-book,* wherein every town and village in the county is rated what to pay towards the *miſe.* The 27 *Hen.* 8. *c.* 26. ordains, that "Lords ſhall have all ſuch *miſes* and profits of their lands as they had in times paſt, *&c.*" And miſe is ſometimes corruptly uſed for *meaſe* in Law French *mees,* a meſſuage; as a *miſe place* in ſome manors is ſuch a meſſuage or tenement as anſwers the lord a heriot at the death of its owner. 2 *Inſt.* 528.

Miſelli, Leprous perſons. *Cowell.*

Miſe-money, Was money given by way of contract or compoſition to purchaſe any liberty, *&c.* *Blount. Ten.* 162.

Miſerere, The name and firſt word of one of the *Penitential Pſalms,* and is moſt commonly that which the ordinary gives to ſuch guilty malefactors as are admitted to the benefit of clergy; being therefore called the *Pſalm of Mercy.*

Miſericordia, Is, in law, uſed for an arbitrary or diſcretionary amerciament impoſed for an offence; and where the plaintiff or defendant in any action is amerced, the entry is *ideo in miſericordia, &c.* Bract. lib. 4. tract. 5. cap. 6. Kitch. 78. It is called *miſericordia* becauſe it ought to be but ſmall, and *rather leſs than the offence,* according to *Magna Charta, c.* 14. Sometimes *miſericordia* is to be quit of all manner of amerciaments. *Cromp. Jurdiſd.* 196.

If a man be unreaſonably amerced in a court *not* of record, as in a *court baron, &c.* there is a writ called *moderata miſericordia,* directed to the lord, or his bailiff, commanding them that they take *moderate amerciaments according to the quality of the fault.* Sometimes *miſericordia* is to be quit and diſcharged of all manner of amerciaments that a man may fall into, in the foreſt. See *Cromp. Jur.* 196. See *Amerciament, Fines for Offences, Mercy, and Moderata Miſericordia. He ſhall be in the great* mercy *of the King.* Weſtm. 1. cap. 15.

Miſericordia *in cibis & potu,* Exceedings, or over-commons, or any gratuitous portion of meat and drink given to the religious above their ordinary allowance.—*Hic quoque procuravit*—*ut deteſtabiles ingurgitationes* miſericordiarum *(in quibus præfecto non erat* miſericordia) *prohiberentur.* Mat. Par. Vit. Abb. S. Albani, pag. 71. In ſome convents they had a ſtated allowance of theſe over-commons upon extraordinary days, which were called *miſericordiæ regulares,* as——*In minutionibus vero &* miſericordiis regularibus *duo & duo unam juſtam de cellario tam ad prandium quam ad cœnam.*——Monaſt. Angl. tom. 1. pag. 149. b.

Miſericordia communis, Is when a fine is ſet on the whole county, or hundred. *Mon. Angl.* 1 *tom. pag.* 976. *Ac de murdro ac de* communi miſericordia *quando contigerit, videlicet, comitatus & hundredi coram nobis vel aliquibus juſticiariis noſtris, &c.*

Miſevenire, To ſucceed ill; as, where a man is accuſed of a crime, and fails in his defence or purgation. *Et ſi compellatio ſit & emendando* miſeveniet, *ſit in epiſcopi poteſtat'.* Lex Canut. 78. apúd Brompton.

Misfeaſance, A miſdeed or treſpaſs.———*Jury to inquire of all purpreſtures and* misfeaſance. *Cro. Car.* 498.

Misfeaſor, Is a treſpaſſer. 2 *Inſt.* 200.

Misfortune, or **Chance,** A deficiency of the will, or committing of an unlawful act, by *misfortune* or *chance,* and not by deſign. In ſuch caſe the will obſerves a total neutrality, and does not co-operate with the deed, which therefore wants one main ingredient of a crime. See *Black. Com.* 4 *V.* 26.

Miskenning, (*miſkenninga*) Is derived from *mis,* and San. *cennan,* i. e. *citare.* Leg. H. 1. c. 12. *Iniqua vel iujuſta in jus vocatio; inconſtanter loqui in curia, vel invariare.* It is mentioned among the privileges granted and confirmed to the monaſtery of *Ramſey* by S. *Edward the Confeſſor.* Mon Angl. tom. 1. p. 237. *Et in Civitate London in nullo Placito* miſkennagium. *Chart. H.* 2.

Miskering. *Hoc eſt quietus eſſe pro querelis coram quibuſcunque in tranſumptione probata,* MS. LL. in Bibl. Cotton, fol. 262.

Miſnomer, compounded of the Fr. *mes,* ſignifying *amiſs,* and *nomer,* i. e. *nominare*) Is the uſing one name for another, a miſnaming. *Nomen eſt quaſi rei notamen,* and was invented *to make a diſtinction between perſon and perſon;* and where a perſon is deſcribed, ſo that he may be certainly diſtinguiſhed and known from other perſons, the omiſſion or in ſome caſes the miſtake of the name ſhall not avoid the grant. 11 *Rep.* 20, 21. A grant to a man by a wrong name may be good, *ſi conſtat de perſona,* but the *demonſtratio de perſonæ* muſt appear upon the face of the grant. *Ld. Raym.* 304. Yet a grant to a *Knight* by the name of *Eſquire,* is void. *Ib.* 303. And if the name of a party is miſtaken, the judges ought to mould a ſmall miſtake therein, to make good a contract, *&c.* and ſo as to ſupport the act of the party by the law. *Hob.* 125. But *the Chriſtian name ought always to be perfect;* and the law is not ſo preciſe as to ſurnames, as it is of Chriſtian names. *Poph.* 57. 2 *Lil. Abr.* 199. Miſpriſions of clerks in names are amendable: and *Peter* and *Piers* have been adjudged one and the ſame name. 2 *Cro.* 67, 425. 1 *Leon.* 146. And ſo *Saunder* and *Alexander;* and *Garret* and *Gerald* are but one name: but *Ranulph* and *Randolph; Iſabel* and *Sybil, &c.* are ſeveral names, and muſt be named right. 1 *Rol. Abr.* 135. 1 *And.* 211.

Where a Chriſtian name is quite miſtaken, as *John* for *Thomas, &c.* it may be pleaded, that there was no ſuch man *in rerum natura.* Dyer 349. Or, he may plead his having been chriſtened by the name of *Thomas* and always called and known by that name; and traverſe his being called or known by the name of *John.* If a perſon pleads, that *he never was called by ſuch a name,* it is ill; for this may be true, and yet he might be of that name of baptiſm. 1 *Salk.* 6. One whoſe name is *Edmund* is bound in a bond by the name of *Edward;* tho' he ſubſcribes his true name, that is no part of the bond. 2 *Cro.* 640. *Dyer* 279. If a perſon be bound by the name of *W. R.* he may he ſued by the name of *W. R.* alias dictus *W. B.* his true name; not *W. B.* alias dictus *W. R.* 3 *Salk.* 238. If a perſon be indicted by two chriſtian and ſurnames, it will be quaſhed; for he cannot have two ſuch names. 1 Ld. *Raym.* 562. A lady, wife to a private perſon, ought to be named according to the name of her huſband, or the writ ſhall abate; ſo if the ſon of an Earl, *&c.* be ſued as a Lord, and not as a private perſon by the name of his family. *Dyer* 76. 2 *Salk.* 451.

Miſnomer of corporations may be pleaded in abatement. 1 *Leon.* 159. 5 *Mod.* 327. 2 *Salk.* 451. And if there be any miſtake in the name of a corporation, that is material in their leaſes and grants; they will be void. 2 *Bendl.* 1. *Anderſ.* 196. Judgment againſt a corporation by a wrong name is void. Ld. *Raym.* 119. A defendant may avoid an outlawry, by pleading a *miſnomer* of name of baptiſm or ſurname; or *miſnomer* as to additions of eſtate, of the town, *&c.* 2 *Hawk. P. C.* 460.

Tho' *miſnomer* of a ſurname may not be pleaded on an indictment; in an appeal it may: And any other *miſnomers,* and defective additions, are as fatal in an indictment as an appeal. *Ibid.* 130. A *miſnomer* muſt be pleaded by the party himſelf who is miſnamed. 1 *Lutw.* 35. Plea of *miſnomer* by attorney may be refuſed, but it is no cauſe of demurrer. Ld. *Raym.* 509. If defendant omits to plead a *miſnomer,* he may be taken in execution by the wrong Chriſtian name. 2 *Strange* 1218. What words in a plea of *miſnomer* ſhall be conſidered as a *ſpecial imparlance,* ſee *Wilſ. par.* 1. 261.

If *iſſue* is joined on a plea in abatement for a *miſnomer* in an action upon the caſe on promiſes, and found againſt the defendant, the judgment ſhall be *peremptory,* therefore the jury ought to aſſeſs the damages. *Wilſ. par.* 2. 367.

What foundation will ſupport a name by reputation, ſee Ld. *Raym.* 301, 304,—*Note,* names of perſons *not chriſtened* are ſurnames only. *Ib.* 305. See *Abatement* and *Addition.*

It may not be improper, (for the information of the *ſtudent,*) to obſerve that for the addition or omiſſion of a *letter* or two, not making any *material* alteration in the ſound, it is not proper to plead a *miſnomer.* The courts of law diſcourage, (and that juſtly,) *dilatory pleas,* as much as they can, as tending to *the delay of juſtice.* However, the curious reader, who chooſes to purſue his enquiries on this ſubject, will find it fully treated of by *Comyns,* in the firſt *Vol.* of his *Digeſt,* tit. *Abatement.* Alſo vide 2 *Hawk. P. C.* 230, *&c.* 3 *New Abr.* tit. *Miſnomer* and *Addition.*

Miſpleading. If, in pleading, any thing be omitted, that is eſſential to the action or defence, as if the plaintiff does not merely ſtate his title in a defective manner, but ſets forth a title that is wholly defective in itſelf, or if to an action of debt (*i. e.* on bond, contract, *&c.*) the defendant pleads *Not guilty* inſtead of *nil debet,* theſe cannot be cured by a verdict for the plaintiff, in the firſt caſe, or for the defendant in the ſecond. *Salk.* 365. *Cro. Eliz.* 778. *Black. Com.* 3 *V.* 394, *&c.*

When an iſſue is joined on an immaterial point, or ſuch a point, as, after trial, the court cannot give judgment, the court regularly awards a repleader. See *New Abr.* 4 *V.* 126. And *Comyn's Digeſt,* 5 *V.* 136.

Miſpriſion, (*miſpriſio,* from the Fr. *meſpris,* contemptus) Signifies a neglect or overſight: As for example; *miſpriſion* of *treaſon,* is a negligence in not revealing treaſon where a perſon *knows it* to be committed. *Staundf. P. C. lib.* 1. *c.* 19. If a man knoweth of any *treaſon* or *felony* and conceals the ſame, it is *miſpriſion:* In a larger ſenſe, *miſpriſion* is taken for many great offences, which are neither treaſon nor felony, or capital, but very near them; and every great miſdemeanor, which hath no certain name appointed by the law, is ſometimes called *miſpriſion.* 3 *Inſt.* 36. *H. P. C.* 127. *Wood* 406, 408.

When one knows another hath committed *treaſon*, and doth not reveal it to the King or his Privy Council, or ſome magiſtrate, that the offender may be ſecured and brought to juſtice, it is high treaſon by the ancient Common law; for delay in diſcovering treaſon was deemed an aſſent to it, and conſequently high treaſon: But there muſt now be *an actual aſſent* to ſome *outward act* to make it *treaſon.* *Bracton* 118. *S. P. C.* 37. 3 *Inſt.* 138, 140. And by ſtat. 1 & 2 *P. & M. c.* 10. a bare concealment of any high treaſon, ſhall be only *miſpriſion* of treaſon.

A perſon having notice of a meeting of conſpirators againſt the government, goes into their company and hears their treaſonable conſultation, and conceals it, this is treaſon; ſo where one has been accidentally in ſuch company and heard ſuch diſcourſe, if he meets ſuch company a ſecond time; for in *theſe caſes the concealment is attended with circumſtances which ſhew an approbation thereof.* H P. C. 127. Kel. 17, 21.

And a man who hath knowledge of a treaſon cannot ſecure himſelf by diſcovering generally that there will be a riſing, *without diſcloſing the perſons intending to riſe*; nor can he do it by diſcovering theſe to a private perſon, who is no magiſtrate. *S. P. C. H. P. C.* 127. But where one is told in general, that *there will be a riſing or rebellion*, and doth not know the perſons concerned in it, or the place where, *&c.* this uncertain knowledge may be concealed, and it ſhall not be treaſon or *miſpriſion.* *Kel.* 22. 1 *H. P. C.* 36. If high treaſon is diſcovered to a clergyman in confeſſion, he ought to reveal it; but not in caſe of felony. 2 *Inſt.* 629. This was law, when the *Roman Catholic* religion was profeſſed here as the religion of the land, the ſame may ſtill be law.

Concealers of *Bulls* of abſolution from *Rome* are guilty of *miſpriſion* of treaſon. 13 *Eliz. c.* 2. There is a *miſpriſion* of treaſon in counterfeiting the Great Seal; forging and uttering counterfeit money brought from another kingdom, *&c.* 14 *Eliz. c.* 3. And *miſpriſion* being included in every treaſon or felony, where a man hath committed treaſon or felony, the King may cauſe him to be indicted and arraigned of *miſpriſion* only, if he pleaſe. *S. P. C.* 32. But if a perſon is indicted of *miſpriſion as for treaſon*; tho' he be found guilty, the judges ſhall not give judgment thereon, he not being indicted *of the miſpriſion.* *Jenk. Cent.* 217. Information will not lie for *miſpriſion* of treaſon, *&c.* but indictment, as for capital crimes: And there muſt be *two witneſſes* upon *indictments* as well as trials of *miſpriſion* of treaſon, by the ſtatute 7 *W.* 3. *c.* 3. 2 *Hawk. P. C.* 258, 260. In all caſes of *miſpriſion* of treaſon, the offender ſhall be impriſoned for life; and forfeit all his goods and chattels, and the profits of his lands during life. *H. P. C.* 128. 3 *Inſt.* 36, 218. See *Black. Com.* 4 *V.* 120.

Miſpriſion of Felony, Is not only where a man knows of any felony committed, and concealeth or procures the concealment thereof; but under this title of *miſpriſion*, that of *theftbote* may be reduced; which is where one, knowing of a felony, takes his goods again, or amends for the ſame. 3 *Inſt.* 134, 139. *H. P. C.* 130. Tho' the bare taking goods again which have been ſtolen is no offence, *unleſs ſome favour be ſhewn the thief.* 1 Hawk. P. C. 125 The *ſtat.* 3 *H.* 7. *c.* 1. provides againſt concealments of felonies by ſheriffs, coroners and bailiffs, *&c.* And for *miſpriſion of felony*, the offenders ſhall be puniſhed by fine and impriſonment, and remain in priſon till the fine is paid. See *Black. Com.* 4 *V.* 121.

Miſpriſions at large, Are when perſons contemn the King's prerogative, by refuſing to aſſiſt the King according to law; or by ſpeaking or writing againſt his perſon or government; receiving a penſion from a foreign prince, *without his leave*; refuſing to take the oaths of allegiance and ſupremacy; and contempts againſt the King's palace; or the courts of juſtice, *&c.* *H. P. C.* 3 *Inſt.* 139, 149. See *Black. Com.* 4 *V.* 119.

Miſpriſions of Clerks, Relate to their neglects in writing, or keeping records; and here *miſpriſion* ſignifies *a miſtaking.* 14 Ed. 3. c. 6.

Miſrecital of deeds or conveyances, will ſometimes hurt a deed, and ſometimes not. *Hob.* 18. 19, 129.

If a thing is referred to *time, place* and *number*, and that is *miſtaken*, all is *void.* Arg. Pl. C. 392. b. Trin. 13 Eliz in the caſe of the *Earl of Lieceſter* v. *Heydon.*

Miſrecital in an immaterial point, and where it is only an additional flouriſh in things circumſtantial, ſhall not avoid a grant; as where the huſband has a term in right of his wife, and this term is recited as made to the huſband. *Per Archer J. Cart.* 149. *Mich.* 18 *Car.* 2. *C. B.* in the caſe of *Foot* v. *Berkley.*

A miſrecital in the beginning of a deed, which goes not to the end of a deed, ſhall not hurt, but if it goes to the end of a ſentence, ſo that the deed is limited by it, it is vitious. *Per Archer J. Cart.* 149 in caſe of *Foot* v. *Berkley.* See *Leaſe.*

Miſſa, The *maſs*, at firſt uſed for the diſmiſſion or ſending away of the people: And hence it came to ſignify the whole church ſervice or Common Prayer; but more particularly the communion ſervice, and the office of the ſacrament, after thoſe who did not receive it were diſmiſſed. *Litt. Dict.*

Miſſal, *miſſale*, The maſs-book, containing all things to be daily ſaid in the *maſs.* Lindw. Provincial. lib. 3. cap. 2.

Miſſaticus, A meſſenger. *Cowell.* *Domeſday in Chenth.*

Miſſæ Presbyter, Signifies a prieſt in orders. *Blount.*

Miſſura, Singing the *Nunc Dimittis*, and performing other ceremonies to recommend and diſmiſs a dying perſon. And in the ſtatutes of the church of St. *Paul* in *London*, (collected by *Ralph Baldock*, dean about the year 1295. in the chapter *de Frateria*, of the fraternity or brotherhood, who were obliged to a mutual communication of all religious offices,) it is ordained——*Ut fiat commendatio &* miſſura *& ſepultura omnibus ſociis coadunantibus & aſtantibus.* Liber Stat. Eccleſ. Paulinæ, M. S. fol. 25.

Miſſurium, A diſh for ſerving up meat to a table; whence a *meſſe*, or portion of any diet;—But *Voſſius* tells us it is called *meſs, quia dono Mitti ſoleat a principibus.* Thorn's Chron. pag. 1762.

Miſtake. It was pleaded, that *A.* the huſband of *B.* died the 20th of *February*, 39 *Eliz.* and that afterwards, *viz.* the 21ſt of *November*, 39 *Eliz.* *B.* did marry *C.* ſo that the (afterwards) is ſufficient. Arg. *Bridg.* 45. *Mich.* 13 *Jac.* in the caſe of *Smallman* v. *Agborrow.*

Summons to appear *Tueſday* the 17th of *April*, (where *Friday* was the 17th) before juſtice of peace on a penal ſtatute, *the time being impoſſible, it was as if no ſummons had been.* 1 Salk 181. Trin. 2 Ann. B. R. Queen *v.* Dyer.

The words of a deed were, that “ after the death, *&c.* “ the tenements aforeſaid ſhall *revert*,” inſtead of “ *remain*” to *J. S.* yet it is a good remainder; becauſe, as it ſeems, every one's deed ſhall be taken moſt ſtrongly againſt himſelf. *Br. Faits, pl.* 26. cites 21 *Ed.* 3. 49.

Reſtrain for *diſtrain.*—If a man leaſe land to another, *proviſoe, if the rent be behind, it ſhall be lawful for him to reſtrain; and not being ſufficient, the ground to re-enter into the premiſes, and the ſame to have again in his former eſtate:* This is no good condition, for the words are not, that he ſhall *reſtrain* the goods upon the tenement; nor is it known what is intended by the word *ſufficient, ſcilicet, ſufficient reparation, rent,* &c. and the words the *ground to re-enter into the premiſes*, are inſenſible. *Moody* v. *Garnon.* 1 *Rol. Rep.* 330, 367. 1 *Bulſt.* 153. *Moor* 848. *Cro. Jac.* 390. *S. C.* and ſaid *per Coke* that *reſtrain* was the ſame as *diſtrain* except in the caſe of a *condition.*

But there are miſtakes of other kinds, *i. e.* of manual acts, committed unintentionally, or affecting one perſon, when intending to affect another, *&c.* According to Blackſtone, *ignorance* or miſtake is a defect of the will: As when a man intending to do a lawful act, does that which is unlawful. For here the deed and the will acting ſeparately, there is not that conjunction between them which is neceſſary to form a criminal act. But this muſt be an ignorance or miſtake of fact, and not an error in point of law. See the *Commentaries*, 4 *V*. 27.

Miſterium, for **Miniſterium**. *Mon. Angl.* 3 *tom. pag.* 102.

Miſtrial, A falſe or erroneous trial; where it is in a wrong county, *&c.* 3 *Cro.* 284. And conſent of parties cannot help ſuch a trial, when paſt. *Hob.* 5. See *Trial.*

Miſuſer, Is an abuſe of any liberty or benefit; as he ſhall make fine for his *miſuſer*. *Old. Nat. Br.* 149. By *miſuſer*, a charter of a corporation may be forfeited: So alſo an office, *&c.* See *Black. Com.* 2 *V*. 153.

Mitred Abbots, Were thoſe governors of religious houſes, who obtained from the *Pope* the privilege of wearing the *mitre*, ring, gloves, and croſier of a biſhop. The *mitred Abbots*, ſays *Cowell*, were not the ſame with the *conventual prelates*, who were ſummoned to parliament as ſpiritual lords, tho' it hath been commonly ſo held; for the ſummons to parliament, did not any way depend on their *mitres*, but on their receiving their temporals from the hands of the King. See *Abbot*.

Mitta, (from the Sax. *mitten*, *menſura*) An ancient *Saxon* meaſure; its quantity doth not certainly appear, but it is ſaid to be *a meaſure of ten buſhels*. Domeſday. *Tit.* Wirecſcire. *Mon. Angl. tom.* 2. *p.* 262. And *mitta*, or *mitcha*, beſides being a ſort of meaſure for ſalt and corn, is uſed for the place where the caldrons were put to boil ſalt——*Calderias quoque ad ſal confi:iendum cum propriis ſedibus quæ vulgo* mitchæ *vocantur*. Gale's Hiſt. Brit. 767.

Mittendo manuſcriptum pedis Finis, Was a judicial writ directed to the Treaſurer and Chamberlains of the *Exchequer*, to ſearch for, and tranſmit, the *foot of a fine*, acknowledged before juſtices in *Eyre*, into the *Common Pleas*, &c. Reg. Orig. 14.

Mittimus, A writ for removing and transferring of records from one court to another; as out of the *King's Bench* into the *Exchequer*, and ſometimes by *Certiorari* into the *Chancery*, and from thence into another court: But the Lord Chancellor may deliver ſuch record with his own hand. *Stat.* 5 *R.* 2. *c.* 15. 28 *&* 29 *H.* 8. *Dyer* 29, 32. *Mittimus* is alſo a precept in writing, *under the hand and ſeal* of a juſtice of peace, directed to the gaoler, for the receiving and ſafe keeping of an offender until he is delivered by law. 2 *Inſt.* 590. One muſt be committed by lawful *mittimus*; or breach of priſon will not be felony, *&c.*

Mittre a large, Is generally to ſet or put at liberty. *Law Fr. Dict.* And there is a *mitre le eſtate*, and *de droit*, mentioned by *Littleton*; in caſe of releaſes of lands by jointenants, *&c.* which may ſometimes paſs a fee, without words of inheritance. 1 *Inſt.* 273, 274. As to *mittre le droit*. See *Black. Com.* 2 *V*. 325. And as to *mitter le eſtate*. *Id.* 324.

Mixed Actions, Suits partaking of the nature of *real, and perſonal*, wherein ſome real property is demanded, and alſo perſonal damages for a wrong ſuſtained.

Mixed Larceny, or *compound larceny*, is ſuch as hath all the properties of ſimple larceny, but is accompanied with one, or both, or the aggravations of a taking from one's *houſe or perſon*.

Mixed Tithes, Are thoſe of cheeſe, milk, and young beaſts, *&c.* 2 *Inſt.* 649. See *Tithes*. And *Black. Com.* 2 *V*. 24.

Mixtilio. See *Meſtilo*.

Mixtum. This word is often mentioned by our *Monkiſh* hiſtorians; it ſometimes ſignifies a breakfaſt, but always a certain quantity of bread and wine. *Cowell.*

Mockadoes, Stuffs made in *England*, and other countries; mentioned in the *Stat.* 23 *Eliz. c.* 9.

Moderata miſericordia, A writ (founded on *Magna Charta*) which lies for him who is amerced in a court not of record, for any tranſgreſſion, beyond the quality or quantity of the offence: It is directed to the lord of the court or his bailiff, commandiug them to take a *moderate amerciament* of the parties. If a man be *amerced* in a *Court-Baron*, on preſentment by the jury, where he did not any treſpaſs, he ſhall not have this writ, unleſs the amerciament be exceſſive and outrageous: And if the ſteward of the court, of his own head, will amerce any tenant or other perſon without cauſe, the party ought not to ſue for his writ of *moderata miſericordia*, if he be diſtrained for that amerciament; but he ſhall have action of treſpaſs. *New Nat. Br.* 167. When the amerciament which is ſet on a perſon is affeered by his peers, this writ of *moderata miſericordia* doth not lie; for then it is according to the ſtatute. See *F. N. B.* 76. *4to edit.* 176.

Modiatio, Was a certain duty paid for every tierce of wine. *Mon. Angl. tom.* 2. *p.* 994.

Modius, A meaſure, uſually a buſhel; but various according to the cuſtoms of ſeveral countries.

Modius Terræ vel Agri. This phraſe was much uſed in the ancient charters of the *Britiſh* Kings, and probably ſignified the ſame quantity of ground as with the *Romans, viz.* One hundred foot long, and as many broad.——*Sciendum eſt quod dedit illas pedum quatuor* modiorum, *agri cum omni cenſu ſuo, &c.* Mon. Angl. tom. 3. p. 200.

Modo & forma, Are words of art in law pleadings, *&c.* and particularly uſed in the anſwer of a defendant, whereby he denies to have done the thing laid to his charge, *modo & forma declarata*. Kitch. 232.

Where *modo et forma* are of the *ſubſtance* of the iſſue, and where but words of *form*, this diverſity is to be obſerved; where the iſſue taken goeth to the point of the writ or action, there *modo et forma* are but words of form, as in the caſe of the writ of entry *in caſu proviſo*. But otherwiſe it is, when a *collateral point* in pleading is *traverſed*; as if a feoffment be alledged by two, and this is traverſed *modo et forma*, and it is found the feoffment of one, there *modo et forma* is material. So if a feoffment be pleaded by deed, and it is traverſed *abſque hoc quod feoffavit modo et forma*, upon this collateral iſſue *modo et forma* are ſo eſſential as the jury cannot find a feoffment without deed. *Co. Lit.* 281. *b.* See *Br. Labourers*, *pl.* 46. cites 38 *H.* 6. 22. So in breach of covenant, as for ploughing meadow land, a licence in *writing*, by *ſeveral*, intitled at the time to the reverſion with the appurtenant, (or land-lords *pro tempore*,) may be traverſed *modo et forma*, and a licence by parol, or by one or two, *&c.* and not by all, will not ſupport the iſſue.

Modo et forma do not put the *day* nor *place* in iſſue; but only the *matter* and *ſubſtance* of the plea. *Reg. Plac.* 188. *a.* 5.

Where a traverſe is with a *modo et forma*, *&c.* that will put the *manner*, as well as the *matter* in iſſue, where the *manner* is material, as the *time*, the *fact*, and *other circumſtances*, when they are the *effect* of the iſſue. *Reg. Plac* 189. *c.* 5.

Modus Decimandi, Is when lands, tenements, or ſome certain annual ſum, or other profit, hath been given time out of mind to a parſon and his ſucceſſors, *in full ſatisfaction and diſcharge* of all tithes in kind, in ſuch a place. 2 *Rep.* 47. And ſee 2 *Inſt.* 490. And it may be paid in cities and towns, as in *London*, for houſes in lieu of the tithe of the lands on which the houſes were built: And there may be a *modus decimandi* for perſonal tithes. 2 *Inſt.* 657, 659. A *modus* ought to be for the benefit and advantage of the *parſon*; and *is ſuppoſed* to be of the *full value* of the tithes, *at the time of the original compoſition*; and if it doth not now come up to that value, it ſhall be intended that the tithes are improved, or that money is become of leſs value than it was at the time of the *modus* agreed on. 13 *Rep.* 152. *Hob.* 40.]

But one tithe muſt not be paid in conſideration of another; it is to be ſomething different from the thing that is due. where the tithes are due of common right; and not by cuſtom only; and it muſt be ſomething as certain and durable as the tithe: All which are neceſſary to make a good preſcription. 1 *Roll. Abr.* 650. 1 *Cro.* 276, 446, 475. *Hob.* 40.

A *modus* ariſes either by *compoſition*, *cuſtom* or *preſcription*; a *compoſition* is an agreement entered into by deed, executed under hand and ſeal, that ſuch and ſuch lands ſhall be diſcharged of tithes, paying ſome annual payment, or doing ſomething for the benefit and advantage of the parſon. *&c.* which is a legal exemption from payment of tithes for ever, if made before the *ſtat.* 13 *Eliz. c.* 10.

Cuſtom is what gives a right to a whole county, city, town or pariſh, and muſt be common to all within the limits, where it is averred to be; and *preſcription* is that which gives a right to ſome particular perſon, with reſpect to ſome particular houſe, farm, *&c.* And the Eccleſiaſtical laws allow forty years to make a good cuſtom and preſcription; but, by the Common law, it muſt be beyond the memory of man. 1 *Roll. Abr.* 653. *Count Parſ. Comp.* 159. A Layman, Lord of a manor, may preſcribe *de modo decimandi*, for himſelf and tenants; alſo a private perſon for his own lands, or part thereof, *&c.* Tho' in caſes of preſcription, it is only to be diſcharged of a particular ſort of tithes; for a preſcription *de non decimando* generally, would undo the clergy, therefore it is not good where there is not ſufficient left for their maintenance; as it may be where there is a competent livelihood for the parſon. 2 *Rep.* 47. 1 *Cro.* 784. 1 *Rol. Abr.* 653.

A layman cannot preſcribe by the Common law *de non decimando*; but he may be diſcharged of tithes for lands in his own hands, by grant from parſon, patron and ordinary 2 *Rep.* 44. A pariſh, *&c.* may not preſcribe *de non decimando*, though it may preſcribe *de modo decimandi.* 1 *Rol. Abr.* 653. But tithes due by cuſtom only, are not within the rule againſt preſcription *in non decimando* by laymen; for by the like cuſtom perſons may be diſcharged from the payment of ſuch tithes. *Wood's Inſt.* 179. And ſpiritual perſons and corporations may preſcribe *de non decimando*, to be diſcharged abſolutely of tithes, and pay nothing in lieu thereof; ſo alſo may their tenants. 2 *Rep.* 44. 1 *Roll. Abr.* 653, 654. 1 *Cro.* 512.

A parſon may ſue in the Spiritual court for a *modus decimandi*, or rate tithe; but if the *modus* is denied, or a cuſtom is to be tried, it muſt be tried in the Common law courts: And where a *modus* is pleaded in the Spiritual court to a demand of tithes in kind, a prohibition lies upon ſuppoſition that the Spiritual court will not admit of any plea againſt tithes. 2 *&* 3 *Ed.* 6. *c.* 13. *Wood* 178. Where land is converted to other uſes, as hay ground to tillage, *&c.* or the thing is altered or deſtroyed; as when a fulling-mill is made a corn-mill, or a corn-mill is come to ruin, *&c.* a *modus* made on good conſideration may be diſcharged, and then tithes ſhall be paid in kind. 1 *Danv. Abr.* 607, 608. So by the non-payment of the conſideration; or by payment of tithes in kind, for ſo long time, that the preſcription for a *modus decimandi* cannot be proved: Tho' ſhort interruption it is ſaid ſhall not deſtroy it. 1 *Rol.* 932. *Hob.* 43. A payment of different ſums, is evidence that there is no *modus.* A cuſtom of paying tithe of wool by the pound, and not by the fleece, is no *modus.* 2 *Strange* 783. See *Black. Com.* 2 *V.* 29.

Mohair Yarn. See *Manufactures, Silk.*

Moiety, (*medietas*, Fr. *moitie*, i. e. *coæqua vel media pars*) Is the half of any thing; and to hold by *moieties*, is mentioned in our books, in caſe of jointenants, *&c.* Lit. 125.

Molaſſes. See *Melaſſes.*

Molendinum, A mill of divers kinds. See *Mill.*

Molendum, Signifies corn ſent to a mill, a griſt. *Chart. Abbat. de Rading, MS. fol.* 116.

Molitura, Was commonly taken for the toll or multure paid for grinding corn at a mill, and ſometimes called *molta*, Fr. *moulta, molitura libera*, free grinding or liberty of a mill, without paying toll; a privilege which the lord generally reſerved to his own family——*Salva mihi & hæredibus meis* molitura libera *familiæ noſtræ quieta in dicto molendino.* Paroch Antiq. 236.

Molliter manus impoſuit. Several juſtifications in treſpaſs, *i. e.* actions of aſſault, are called by this name, from the words *gently laid his hands upon him* uſed in the plea; as where the defendant juſtifies *an aſſault* by ſhewing that the plaintiff was unlawfully in the houſe of defendant, making a diſturbance, and being requeſted to ceaſe ſuch diſturbance, and depart, he refuſed and continued therein, making ſuch diſturbance, he, *the defendant, gently laid his hands on the plaintiff*, and removed him out of the houſe. So in various other inſtances, as for ſeparating two perſons, fighting, in order to preſerve the peace, ſo in the legal exerciſe of an office, *&c.* See *Black. Com.* 3 *V.* 121.

Molman, A man ſubject to do ſervice; applied to the ſervants of a monaſtery. *Prior. Lewes. p.* 21. *Spelm. Gloſſ.*

Molmutian, or Molmutin Laws. Were the laws of *Dunvallo Molmutius*, ſixteenth King of the *Britains*, who began his reign above four hundred years before the Birth of our Saviour, and were famous in this land till the time of *William the Conqueror.* This King was the firſt who publiſhed laws in *Britain*; and his laws, (with thoſe of Queen *Mercia*,) were tranſlated by *Gildas* out of the *Britiſh* into the *Latin* tongue. *Uſher's Primord.* 126.

Molneda, Mulneda, A mill-pool or pond. *Paroch. Antiq.* 135.

Molta, The duty or toll paid to the lord by his vaſſals, to grind corn at his mill. *Concedo ſancto Amando* moltam *ſuam &* moltam *ſimiliter omnium civium St. Amandi.* Monaſtic. 2 tom. p. 97.

Monarchy. That form of government, where the ſovereign power is entruſted in the hands of a ſingle perſon.

Monaſteries and *abbeys*, &c. diſſolved by K. *H.* 8. See 27 *H.* 8. *c.* 28. and *Abbot*, and the *Tables to the Statutes*, tit. *Monaſteries.*

Monetagium, Signified a certain tribute paid by tenants to their lord every third year, that he ſhould not change the money which he had coined, formerly when it was lawful for great men to coin money current in their territories; but not of ſilver and gold: It was abrogated by the *Stat.* 1 *Hen.* 1. *c.* 2. The word *monetagium* is likewiſe uſed for a *mintage*, and the right of coining or minting money. *Jus & artificium cudendi monetas.*

Money, (*moneta*) Is that metal, be it gold or ſilver, which receives authority by the prince's impreſs to be current; for as wax is not a ſeal without a print, ſo *metal is not* money *without impreſſion.* Co. Litr. 207. *Money* is ſaid to be the common meaſure of all commerce, thro' the world, and conſiſts principally of three parts; the *material* whereof it is made, being ſilver or gold; the *denomination* or extrinſick value, given by the King, by virtue of his prerogative; and the *King's ſtamp* thereon. 1 *Hale's Hiſt. P. H.* 188.

It belongs to the King only, to put a value, as well as the impreſſion on *money*; which being done, the money is current for ſo much as the King hath limited. 2 *Inſt.* 575. Any piece of *money* coined is of value as it bears a proportion to other current *money*, and that without proclamation; and tho' there is no act of parliament, or order of ſtate for *guineas*, as they are taken; yet being coined at the mint, and having the King's *inſignia* on them, they are lawful *money*, and *current at the value they were coined and uttered at the mint.* 2 Salk. 446. But it has been obſerved, that *guineas* were originally coined for 20*s.* according to the twenty ſhilling pieces of *money*, and that legally, no more ought to be demanded for them: Alſo that in legal proeeedings, they ſhould be mentioned as *pecias auri, vocat. guineas, valoris, &c.* 5 Mod. 7. If an action is brought for damages, the value of *guineas* may be given in evidence to the jury: but if the action be for ſo many *guineas*, the value ought to be ſet forth in the deelaration, to aſcertain the debt. *Carthew.* 255.

Gold and ſilver coin, *&c.* is not to be exported without licence, on pain of forfeiture. *Stat.* 9 *Ed.* 3. *cap.* 1. And *money* of ſilver melted down, is to be forfeited, and double value. 13 *&* 14 *Car.* 2. *c.* 51. But by old ſtatutes, foreign *money* may be melted down; and no *money* ſhall be current but the King's own, *&c.* 27 *Ed.* 3. *cap.* 14. 17 *R.* 2. *c.* 1. See *Coin* and *Exchange*, and *Stat.* 27 *Geo.* 2. *c.* 11. See the *Table to the Statutes*, tit. *Money, Coin,* &c. See *Black. Com.* 1 *V.* 276. 4 *V.* 84, 88.

Money, lending it abroad. The King by proclamation may at any time prohibit all his ſubjects, *not exceeding*

ing one year, to lend or advance *money* to any foreign prince or ſtate, *without licence under the Great or Privy Seal*; and if any perſon *knowingly* offend in the premiſſes, he ſhall forfeit treble the value of the money lent, *&c.* two-thirds to the King, and the other to the informer: but perſons may deal in foreign ſtocks, or be intereſted in any bank abroad, eſtabliſhed before iſſuing his Majeſty's proclamation. *Stat.* 3 *Geo.* 2. *c.* 5.

Money in Court. In law proceedings, *money* demanded is oftentimes brought into court, either by a rule of court, or by pleading a *profert in curiam* of the *money* on a tender; and then, if the *money* is not paid into court, the plea will not be received; for money is not allowed to be paid into court, after plea pleaded. *Wilſ. par.* 1. 157. The *money* muſt be brought into court, upon a plea of tender: And the defendant may at any time, pending an action on bond with a penalty, bring the *money* and coſts into court, and it ſhall be a good ſatisfaction and diſcharge, by *ſtat.* 4 & 5 *Ann. c.* 16. If a defendant pay *money*, or part, into court, and it is ſtruck out of the declaration, though the plaintiff is nonſuit, he ſhall not take the *money out of court*, for by paying into court, the defendant admitted that ſo much was due; but if the defendant brings *money into court*, upon a tender and *uncore priſt*, and the plaintiff takes iſſue upon the tender, and it is found againſt him, then the defendant ſhall have the *money out of court.* 2 Salk. 597.

Money may be brought into court upon an action of debt for rent: in replevin, when the defendant avows for ſo much rent arrear, the plaintiff hath been admitted to bring it into court: And in covenant, *&c.* where a breach is aſſigned for non-payment of rent, the defendant may bring the *money* due into court. *Ibid.* In a *quantum meruit* it hath been denied; tho' it was granted in ſuch caſe, *Paſch.* 5 *Ann.* In trover the defendant cannot bring the goods and coſts into court. *Wilſ. par.* 1. *c.* 23.

If an action for the *meſne profits* after a recovery in ejectment, the defendant ſhall not have leave to pay *money* into court. *Ib. Par.* 2. 115.

Monger, A little ſea veſſel which fiſhermen uſe. *Stat.* 13 *Eliz. c.* 11. And when a word ends with *monger*, as *ironmonger*, &c. it ſignifies merchant, from the Sax. *manger*, i. e. *Mercator*.

Moniers, or **Moneyers,** *Monetarii*, Are miniſters of the Mint, who make and coin the King's *money*. Reg. Orig. 262. *and* 1 Ed. 6. 15. It appears in ancient authors, that the Kings of *England* had Mints in ſeveral counties; and in the *Tract* in the *Exchequer*, written by *Oakham*, we find, that whereas ſheriffs were uſually obliged to pay into the King's Exchequer the King's ſterling *money*, for ſuch debts as they were to anſwer; thoſe of *Cumberland* and *Northumberland* were admitted to pay in any ſort of *money*, ſo it were ſilver: And the reaſon there given is, becauſe thoſe two ſhires *Monetarios de antiqua inſtitutione non habent*; *quod abbas & monachi prædicti habeant unum* monetarium & *unum cuneum apud Rading ad monetam ibidem, tam ad obolos & ſterlingos quam ad ſterlingos prout moris eſt fabricand. & faciend.* Memorand. Scac. de Anno 20 Ed. 3. inter record de Trin. Rot. Of later days the title of *moniers* hath been given to *bankers*, that is, ſuch as make it their trade to deal in *monies* upon returns. *Cowell.*

Monk, (*Monachus*) From the Gr. Μόνος, *ſolus qui ſoli*, i. e. *Separati ab aliorum conſortio vivant*, becauſe the firſt *monks* lived alone in the wilderneſs. They were after divided into three ranks; *Cœnobitarum*, i. e. a ſociety living in common in a monaſtery, *&c.* under the government of a ſingle perſon; and theſe were under certain rules, and afterwards called *Regulars*, *Anachoretæ*, or *Eremitæ*, thoſe *monks* who lived in the wilderneſs on bread and water. And *Sarabitæ*, *monks* living under no rule, that wandered in the world. St. *Jerom* tells us, that of the *Anachoretæ Paulus fuit Auctor*, *Antonius illuſtrator*, *Johannes Baptiſta princeps*.

Monkery, The profeſſion of a *monk*, mentioned in *Whitlock*'s reading upon the *Stat.* 21 *H.* 8. *c.* 13.

Monks Clothes, Made of a certain kind of coarſe cloth. Vide 20 *H.* 6.

Monopoly, (From Μόνος *unus* & πωλέω *vendo*) Is an allowance of the King by his grant, commiſſion or otherwiſe, to any perſon or perſons, for the ſole buying ſelling, making, working, or uſing of any thing, by which other perſons are reſtrained of any freedom or liberty that they had before, or hindered in their lawful trade. 3 *Inſt.* 181. It is defined to be where the power of ſelling any thing is in one man alone; or where one ſhall ingroſs and get into his hands ſuch a merchandiſe, *&c.* as none may ſell or gain by them but himſelf. 11 *Rep.* 86.

And a *monopoly* hath three incidents miſchievous to the public: 1. The raiſing of the price. 2. The commodity will not be ſo good. 3. The impoveriſhing of poor artificers. *Ibid.* All *monopolies* are againſt the ancient and fundamental laws of the realm: A by-law, which makes a *monopoly*, is void; ſo is a preſcription for a ſole trade to any one perſon or perſons, excluſive of all others. *Moor* 591. *Monopolies* by the Common law are void, as being againſt the freedom of trade and diſcouraging labour and induſtry; and putting it in the power of particular perſons to ſet what prices they pleaſe on a commodity. 1 *Hawk. P. C.* 231. Upon this ground it hath been held, that the King's grant to any corporation of the ſole importation of any merchandiſe, is *void.* 2 Rol. Abr. 214. 3 Inſt. 182. The grant of the ſole making, importing and ſelling of playing cards, was adjudged void. 11 *Rep.* 84. *Moor* 671. And the King's grant of the ſole making and writing of bills, pleas, and writs in a court of law, to any particular perſon, hath been reſolved to be void. 1 *Jones* 231. 3 *Mod.* 75.

The King may grant to particular perſons the ſole printing of the holy ſcriptures, and law books. 1 *Hawk.* 231. All matters of this nature ought to be tried by the Common law, and not at the council-table, or any other court of that kind; and the making uſe of or procuring any unlawful *monopoly*, is puniſhable by fine and impriſonment at Common law. 3 *Inſt.* 181, 182.

By ſtatute, all *monopolies*, grants, letters patent, and licences, for the ſole buying, ſelling, and making of goods and manufactures, are declared void, except in ſome particular caſes; and perſons grieved by putting them in uſe, ſhall recover treble damages and double coſts, by action on the ſtatute; and delaying ſuch action, before judgment, by colour of any order, warrant, *&c.* or delaying execution after, incurs a *præmunire:* But this does not extend to any grant or privilege granted by act of parliament; nor to any grant or charter to corporations or cities, *&c.* or to grants to companies or ſocieties of merchants, for enlargement of trade; or to inventors of new manufactures, who have patents for the term of fourteen years; grants or privileges for printing; or making gunpowder, caſting ordnance, *&c.* 21 *Jac.* 1. *c.* 3.

As to inventors of new manufactures, *&c.* it has been adjudged on this ſtatute, that a manufacture muſt be ſubſtantially new, and not barely an additional improvement of any old one to be within the ſtatute; it muſt be ſuch as none other uſed at the granting the letters patent; and an old manufacture in uſe before, cannot be prohibited in any grant of the ſole uſe of any ſuch new invention. 3 *Inſt.* 184. Yet a grant of *monopoly* may be to the firſt inventor, by the *Stat.* 21 *Jac.* 1. *c.* 3. notwithſtanding the ſame thing was practiſed before beyond ſea; becauſe the ſtatute mentions new manufactures *within the realm*, and intended to encourage new devices uſeful here; and it is the ſame thing whether acquired by experience or travel abroad, or by ſtudy at home. 2 *Salk.* 447. It is ſaid, a new invention to do as much work in a day by an engine, as formerly uſed to employ many hands, is contrary to the ſtatute; by reaſon it is inconvenient, in turning ſo many men to idleneſs. 3 *Inſt.* 184. *Sed. qu.* As it tends to leſſen the price of manufactures, and enables to underſell foreigners, both at home and abroad? See *Black. Com.* 4 *V.* 115, 159, 429.

Monſter, One who hath not human ſhape, and yet is born in lawful wedlock: And ſuch may not purchaſe or retain lands; but a perſon may be an heir to his anceſtor's lands, though he be deformed in ſome part of his body. *Co. Lit.* 7.

A monſter ſhewn for money is a miſdemeanor. 2 *Chan. Ca.* 110. *Trin.* 34 *Car.* 2. *Harring* v. *Walrond.* It was a child that had four legs, and four arms and two heads and but one belly, where the two bodies were conjoined; the child died and was embalmed to be kept for ſhew, but was ordered by Lord Chancellor to be buried in a week. *Ibid.*

Monſtrans de Droit, Is a *ſhewing a right*, and ſignifies a writ out of *Chancery* to be reſtored to lands and tenements that are a man's in *right*, though by ſome office found to be in the poſſeſſion of one lately dead; by which office the King would be intitled to the ſaid lands, *&c.* It is given by the *Stat.* 34 *Ed.* 3. *c.* 14. and 36 *Ed.* 3. 13. *Staundf. prærog. c.* 21. 4 *Co. Rep.* 54. Leſſee of an outlaw, cannot maintain treſpaſs, but muſt be relieved by *Monſtrans de droit.* Ld. Raym. 307. See *Traverſe.*

Monſtrans de faits ou records, *Shewing of deeds or records* is thus; upon an action of debt brought upon an obligation, after the plaintiff hath declared, he ought to ſhew his obligation; and ſo it is of *records.* And the difference between *monſtrans de fait* and *oyer de faits*, is this; he that pleads the *deed* or *record*, or declares upon it, ought to ſhew the ſame; and the other againſt whom ſuch *deed* or *record* is pleaded, may demand *oyer* of the ſame. *Cowell.*

Where a man pleads a *deed*, which is the ſubſtance of his plea or declaration, if he doth not plead it with a *profert in curia*, his plea or declaration is bad upon a ſpecial demurrer, *ſhewing it for cauſe:* And if he doth plead it with a *profert in curia*, if the other party demands a ſight of it, he cannot proceed till he hath ſhewn it, and when the defendant hath had a ſight of it, if he demands a copy of the ſame, the plaintiff may not proceed until a copy is delivered unto him. *Stat.* 4. 5 *Ann. c.* 16. 2 *Lil. Abr.* 201, 202. Vide *Profert in Curia.*

Monſtraverunt, Is a writ which lies for tenants in *ancient demeſne,* who hold land by free charter, when they are diſtrained to do unto their lords other ſervices and cuſtoms than they or their anceſtors uſed to do: Alſo it lieth where ſuch tenants are diſtrained for the payment of toll, *&c.* contrary to their liberty, which they do or ſhould enjoy. *F. N. B.* 14. 4 *Inſt.* 269. This writ is directed to the ſheriff, *to charge the lord that he do not diſtrain them for ſuch unuſual ſervices,* &c. And if the lord nevertheleſs diſtrains his tenants, for other ſervices than of right they ought to do, the ſheriff may command the neighbours, who dwell next the manor, or take the power of the county, to reſiſt the lord, *&c.* And the tenants in ſuch caſe may likewiſe ſue an *attachment* againſt their lord, returnable in *C. B.* or *B. R.* to anſwer the contempt and recover damages. *New Nat. Br.* 32.

But the lord ſhall not be put to anſwer the writ of attachment ſued againſt him upon the *monſtraverunt,* before the court is certified by the treaſurer and chamberlains of the *Exchequer,* from the book of *Domeſday, whether the manor be ancient demeſne*; ſo that it is requiſite that the plaintiff in the *monſtraverunt,* do ſue forth a ſpecial writ for the certifying of the ſame. *Ibid.* 35. The writ of *monſtraverunt* may be ſued for many of the tenants, without naming any of them by their proper names, but generally *monſtraverunt nobis homines de, &c.* But in the *attachment* againſt the lord the tenants ought to be named; though one tenant may ſue it in his own name, and the name of the other tenants by general words, *Et homines, &c.* 2 *H.* 6. 26. See *Ne injuſte vexes. Sed qu?* If action of treſpaſs is not preferable.

Monſtrum, Is ſometimes taken for the box in which relics are kept. *Item unum* monſtrum *cum oſſibus St. Petri, &c.* Monaſt. 3 tom. pag. 173. *Monſtrum* is alſo taken for what we call corruptly *muſtering* ſoldiers. *Cowell.*

Month, or **Moneth,** Sax. **Monath,** *(Menſis à menſione, lunæ curſis)* Signifies the time the ſun goes through one ſign of the zodiac, and the moon through all twelve; properly the time from the new moon to its change, or the courſe or period of the moon, whence it is called *month* from the moon. *Lit. Dict.* A *month* is a ſpace of time containing by the week twenty-eight days; by the kalendar ſometimes *thirty,* and ſometimes *thirty-one days:* And *Julius Cæſar* divided the year into twelve *months,* each *month* into four weeks, and each week into ſeven days. The *month* by the *Common law* is but *twenty-eight days*; and in caſe of a condition for rent, the *month* ſhall be computed at *twenty eight days*; ſo in the caſe of inrolment of deeds, and generally in all caſes where a ſtatute ſpeaks of *months:* But where the ſtatute accounteth by the year, half year, or quarter of a year, then it is to be reckoned according to the *kalendar.* 1 Inſt. 135. 6 Rep. 62. Cro. Jac. 167.

A *twelvemonth* in the ſingular number includes *the whole year,* according to the kalendar: But twelve *months,* ſix *months, &c.* in the plural number, ſhall be accounted after *twenty-eight days* to every *month*; except in caſe of preſentations to benefices, to avoid lapſe, *&c.* which ſhall be in ſix kalendar *months.* 6 Rep. 61. Cro. Jac. 141. But if an agreement is to pay fifty ſhillings for the intereſt of one hundred pounds at the end of ſix *months,* it is ſaid the computation muſt be by kalendar *months*; becauſe, if it was by *lunar months,* the intereſt would exceed the rate allowed by the ſtatute. *Wood's Inſt.* 433.

Montroſe, A duty of two-pennies *Scots* upon beer there, 6 *Geo.* 1. *c.* 7. 7 *Geo.* 2. *c.* 5.

Monument, An heir may bring an action againſt one that injures the *monument,* &c. of his anceſtor: and the coffin and ſhroud of a deceaſed perſon belong to the executors or adminiſtrators; but the dead body belongeth to none. 3 *Inſt.* 202, 203. See *Black. Com.* 2 *V.* 428.

Moors, In the *Iſle of Man,* who ſummons the courts for the ſeveral *ſheadings,* are the lords bailiffs, called by that name; and every *moor* has the like office with our bailiff of the hundred. *King's Deſcrip. Iſle of Man.*

Moot, (From the *Sax.* Motian, *placitare,* to treat or handle) Is a term well underſtood in the *Inns of Court,* and ſignifies the exerciſe or arguing of caſes which young barriſters and ſtudents perform at certain times, the better to enable them for the practice and defence of clients cauſes. The place where *moot-caſes* were argued, was anciently called the *Moot-hall:* And in the *Inns of Court* there is a *bailiff of the moot* yearly choſen by the benchers, to appoint the *mootmen* for the *Inns of Chancery*; and keep accounts of the performances of exerciſes, both there and in the houſe. *Orig. Juridicial.* 212.

Moota canum, A pack of dogs. *Cowell.*

Mootmen, Thoſe who argue the reader's caſes, called *moot-caſes,* in the *Inns of Chancery,* in the term-time, and in vacations.

Mora, A *moor,* or barren and unprofitable ground, derived from the Sax. *mor,* ſignifying alſo marſhland. *Mon. Angl. tom.* 2. *pag.* 50. 1 *Inſt.* 5. Alſo a heath. *Item de pannagio, herbagio, &c. et de omnibus exitibus boſcorum,* morarum *&c.* Fleta, lib. 2. cap. 71.

Mora muſſa, A watery or boggy moor; and ſuch in *Lancaſhire* they call *moſſes*; *moroſſa* is uſed in the ſame ſenſe. *Mon. Angl. tom.* 2. *pag.* 306.

Moratur in Lege, Is the ſame with *demoratur,* and ſignifies as much as *he demurs*; becauſe the party goes not forward in pleading, but reſts or abides upon the judgment of the court in a certain point, as to the ſufficiency in law of the declaration or plea of the adverſe party, who deliberate and take time to argue and adviſe thereupon, and then determine it. *Co. Lit.* 71. See *Demurrer.*

Moretum, A ſort of brown cloth, with which caps were formerly made. *Mat. Paris, Anno* 1258.

Morgangina, (from the Sax. *morgen,* the morning, and *giſan,* to give) The gift on the wedding day. *Si ſponſa virum ſuum ſupervixerit, dotem et maritationem ſuam, cartarum inſtrumentis, vel teſtium exhibitionibus ei traditam, perpetualiter habeat et* morganginam *ſuam.* LL. Hen. 1. cap. 70. *i. e.* her dower. In ſome books it is writ *morganegiba.* In *Leg. Canuti apud Brompton,* it is writ *morgagiſa, cap.* 99. In *Leg. H.* 1. *cap.* 11 *&* 70. it is *morgangiva.* It ſignifies literally *donum matutinale*; and it is what we now call *dowry money,* or that gift the huſband preſents to his wife on the wedding-day, from the Saxon *morgen, aurora,* and *givan, dare*; and was uſually the fourth part of his perſonal eſtate; not here, but amongſt the *Lombards.* Du Cange. *Cowell.*

Moriam, Is all one in ſignification with the French *morion*, i. e. *caſſis*, a head piece, and *that* ſeems to be derived from the Italian *morione*. Stat. 4 & 5 P. &. M. cap. 2. now called a pot.

Morina, Murrain; an infectious diſtemper in cattle. *Morina* alſo ſignifies the wool of ſick ſheep, and thoſe dead with the *murrain*. Fleta, lib. 2. c. 79. par. 6.

Morling, or **Mortling,** Signifies that *wool* which is taken from the ſkin of dead ſheep, whether being killed or dying of the rot. 4 *Ed.* 4. *c.* 2 *&* 3. 27 *H.* 6. *c.* 2. 3 *Jac.* 1. *c.* 18. 14 *Car.* 2. *c.* 88. Vide *Shorling*.

Moroſus, See **Mora.** *In viis et ſemitis per vallem quandam* moroſam *et aquoſam*. Monaſt. 1 tom. pag. 648.

Morſellum terræ, A ſmall parcel or bit of land.—*Et unum* morſellum terræ *juxta horreum ſuum*. Charta, 11 H. 3. par. fol. m. 33.

Morſellus terræ, A ſmall parcell of land. *Mat. Paris, pag.* 438. and *Mon. Angl.* 2 *tom. pag.* 82.

Mortarium, A light or taper ſet in churches to burn over the graves or ſhrines of the dead.—*Tenet duas acras terræ, &c. ad inveniendum unum* mortarium *ardentem in eccleſia de* Chepin. Farindon. Conſuetud. Dom. Farendon, MS. fol. 48.

Mort-danceſtor, A writ now ſeldom uſed, mentioned in the ſtatutes 53 *H.* 3. and 6 *Ed.* 1. See *Aſſiſe of Mort-danceſtor*, and *Black. Com.* 3 *V.* 185.

Mortgage, (*Mortgagium*, vel *mortuum vadium*) Is compounded of two *French* words, viz. *mort*, i. e. *mors*, and *gage*, i. e. *pignus*, and ſignifies *a pawn of land or tenement*, or any thing immoveable, laid or bound for money borrowed, to be the creditor's for ever, *if the money be not paid at the day agreed upon*; and the creditor holding land and tenement upon this bargain, is called *tenant in mortgage*. Of this we read in the *Grand Cuſtomary of Normandy, cap.* 113. which ſee. *Glanvill* likewiſe, *lib.* 10. *cap.* 6. defineth it thus; *Mortuum vadium dicitur illud, cujus fructus vel redditus interim percepti in nullo ſe acquietant*. So that it is called a *dead gage*, becauſe whatſoever profit it yieldeth, yet it redeemeth not itſelf by yielding ſuch profit, except the whole ſum borrowed be paid at the day. See *Skene de verb. ſignif.* verbo *mortgage*. He who pledgeth this pawn or gage, is called the *mortgagor*, and he who taketh it *the mortgagee*. Weſt. Symbol. part. 2. tit. *Fines*, ſect. 145. This, if it contain exceſſive uſury, is forbidden by 37 *H.* 8. *cap.* 9. But it is called *mortgage*, becauſe, if the money is not paid at the day, the land *moritur* to the debtor, and is forfeited to the creditor, *Cowell*.

1. *Of the original and ſeveral kinds of mortgages.*
2. *What ſhall be deemed a mortgage, or an eſtate redeemable; and of the diſtinct intereſts of mortgagor and mortgagee.*
3. *Of the equity of redemption and foreclosure; and of the manner of redeeming and foreclosing.*

1. *Of the original and ſeveral kinds of mortgages.*

The notion of mortgaging and redemption ſeems to be of Jewiſh extraction, and from them derived to the Greeks and Romans; the plan of the Moſaick law conſtitutes a juſt and equal *agrarian*, that the lands may continue in the ſame tribes and families, and the people might not be diverted by any exotick acts and inventions from the exerciſe of agriculture, in which innocent employment they were to be continually educated; therefore whoever were compelled by want to ſell, could transfer no eſtate in the lands, farther than to the next general jubilee, which returned once in fifty years; wherefore they computed till the jubilee, that, according to the diſtance from thence, ſuch was the intereſt that could be transferred to the buyer; but the vendor had power *at any time* to redeem, paying the value of the lands to the jubilee; but though he did not redeem it at the year of jubilee, yet the lands came back again free to the vendor and his heirs. *Cumæus* 11, 12.

But our notion of mortgaging and redemption ſeems to have come more immediately from the Civil law, therefore it will be neceſſary herein to conſider the diſtinctions in that law between *pledges* and things *hypothecated*. Juſtin. 592.

The *pignus* or pledge was, when any thing was obliged for money lent, and *the poſſeſſion paſſed to the creditor*.

The *hypotheca* was, when the thing was obliged for money lent, and the poſſeſſion *remained* with the *debtor*. Now, in caſe of goods pignorated, the creditor was obliged to the ſame diligence in keeping them, as he uſed about his own; ſo that if the goods were loſt by the negligence of the creditor, an action lay as for a depoſite; for the property being transferred to the creditor for a particular purpoſe, he was to keep them as his own. See *Bailment*: Alſo ſee the caſe of *Coggs* and *Bernard*, 2 *L. Raym.* 909, *&c.* where the caſe of *bailment*, is very fully and learnedly handled, and its ſeveral ſpecies ſhewn in a very judicious manner.

If the debtor did not redeem the thing pledged, the creditor was to forecloſe the redemption of the debtor; and if the money was not paid, the creditor had his *actio pignoritia*, or *hypothecaria*, which, when he had purſued, and obtained ſentence thereon, he might ſell as his own property; but there was this difference between the *actio pignoritia* and *hypothecaria*; that the *actio pignoritia* was only againſt the *perſon* of the debtor to forecloſe him, becauſe the *pignus* was already in the poſſeſſion of the creditor; but the *actio hypothecaria* was *tam in rem, quam in perſonam*, and was given *ad pignus proſequendum, contra quemcunque poſſeſſorem*; becauſe herein the creditor had not the poſſeſſion of the pledge, but it remained to the debtor; and until ſentence was obtained in theſe actions, the creditor could not obtain the property of the pledge; and if the money was paid before ſentence, the pledge was ſubject to redemption; and where the ſame thing was pledged to ſeveral, thoſe were ſaid to be *potiores in pignore*, to whom the things were firſt hypothecated. *Digeſt. lib.* 20. *tit.* 6. *Corvin.* 269, 270, 271.

If the money was tendered or paid to the creditor, the contract of pignoration was diſſolved, and the debtor might have the pledge back, as a thing lent; which ſeems to have introduced the notion among us of the debtor's right to redemption, and with them the uſucaption, or the right of preſcription, did not extinguiſh the pledge, unleſs a ſtranger had held it for *thirty years*, or the debtor had held it for forty years. *Digeſt. lib.* 20. *tit.* 6.

In the feudal law the rule was, *Feudalia, invito domino, aut agnatis, non recte ſubjiciuntur hypothecæ, quamvis fructus poſſe eſſe receptum eſt*; and the reaſon of this rule was, becauſe the feud was filled with a tenant from the lord's original bounty, on whom he depended for his perſonal ſervice in war and peace; therefore the feudatory could not obtrude a tenant on him without his leave, who might be leſs capable of thoſe ſervices; for which reaſon as the tenant could not originally aliene without licence, ſo he could not mortgage. *Corvin.* 268.

But when a licence of alienation was given about the time of *Hen.* 3. and it became a maxim in law, that *the purity of a fee-ſimple imported a power of diſpoſing of it as the owner pleaſed*; there were two ways of mortgaging lands introduced, which *Littleton* diſtinguiſhes by the names of *vadium vivum* and *vadium mortuum*. 9 H. 3. 32. 18 Ed. 1.

The *vadium vivum* is, where a man borrows 100 *l.* of another, and makes an eſtate of lands to him, until he hath received the ſaid ſum of the iſſues and profits of the lands; and it is called *vadium vivum*; becauſe *neither the money nor the land dieth*; for *the lands are conſtantly paying off the money*, and the lands are not left as a dead pledge, in caſe the money be not paid. This ſeems to be the ancient way of pledging lands; for they held, that *lands could not be hypothecated*; therefore they uſed to ſubject the *uſufructus*, which continued originally during the life of the feudatory; but when there was a free liberty given of alienation, then the feudatory could pledge the *uſufructus* of the land at pleaſure; but becauſe, by this way of pledging, the lender received his money by degrees, and in ſmall parcels, which was very troubleſome; and thoſe that lend money to uſury, are generally willing to receive the whole in a groſs ſum; therefore this way of pledging is now out of uſe. *Co. Lit.* 205. See *Madd. Formal.* 136.

The *vadium mortuum* is ſo called by *Littleton*, becauſe it is doubtful, whether the feoffor will pay the money at the day limited or not; and if he do not pay, then the land, which is but *in pledge upon condition*, for the payment of the money, is taken from him for ever, and ſo dead to him; and if he do pay it, then the pledge is dead to the tenant of the land. *Lit. ſect.* 332. *Co. Lit.* 205. But *vide Diviſion* 3.

Of theſe mortgages there are again two ſorts; 1ſt, Of the *freehold and inheritance*; and 2dly, Of *terms for years.* Maddox 318, 319.

1ſt, Of the *freehold and inheritance*, and here the ancient way was to make a charter of feoffment, on condition that if the feoffor or his heirs paid the ſum to the feoffee or his heirs, he ſhould re-enter and re-poſſeſs; and ſometimes the condition was contained in the charter of feoffment, and ſometimes it was defeazanced by another charter, as may be ſeen in the old forms. *Maddox* 318, 319.

For as a man might annex a condition to his feoffment, for *cujus eſt dare, ejus eſt diſponere*, ſo he might annex a condition by another deed, *bearing date, and executed at the ſame time*; for, being *executed* at the ſame time, it is really but one and the ſame diſpoſition, *quæ incontinenti fiunt ineſſe videntur*; but a *defeaſance* or *condition* annexed after the feoffment executed comes too late; becauſe the livery *coram paribus* atteſting the infeudation, in which there is no condition; the tenant muſt hold the land according to the tenure of the inveſtiture: but rents, annuities or warranties that are things *executory*, may be defeated by defeazances made at the time of their creation, or any time after; becauſe there is not any neceſſity of the notoriety of livery to make an inveſtiture; therefore being created *by deed only*, they may be defeated or deſtroyed *by deed alone.* Co. Lit. 226, 227.

Theſe ſorts of conveyances were ſubject to ſome inconveniencies; as if the money were not paid at the day, ſo that the eſtate became abſolute, the eſtate was thenceforth ſubject to the dower of the feoffee, and all other his real charges and incumbrances; for though if the feoffor performed the condition, then he might re-enter, and re-poſſeſs himſelf in his former eſtate, and conſequently was in above all the charges and incumbrances of the feoffee; yet if he did not literally perform the condition by payment of the money at the day, then the eſtate was *legally* ſubject to the charges and incumbrances of the feoffee, though the money was afterwards paid, and the eſtate reconveyed to the feoffee. *Co. Lit.* 221, 222.

But the courts of equity, as they grew in power have ſet this matter right, and have maintained the right of redemption, not only againſt tenant in dower, and the perſons who come in under the feoffee, but even againſt the tenant by the curteſy, and lord by eſcheat, that are in the *poſt*; becauſe the payment of the money doth, in the conſideration of equity, put the feoffor *in ſtatu quo*, ſince the lands were originally only a pledge for the money lent. *Hard.* 465.

2d, As to mortgages by way of creating *terms*, this was formerly by way of demiſe and re-demiſe. As for example; *A.* borrowed money of *B.* thereupon *A.* would demiſe the lands to *B.* for a term of 500, *&c.* years abſolutely, with common covenants againſt incumbrances, and for farther aſſurance, and then *B.* would the day after re-demiſe to *A.* for 499 years, with condition to be void on non-payment of the money at the day to come; this manner of mortgaging came in after the 21 *H.* 8. for falſifying recoveries, when there was a fixed intereſt ſettled in terms for years; and was eſteemed beſt for the mortgagor, to avoid all manner of pretenſion from the incumbrances and dower of the feoffee in mortgage; and was reputed beſt for the mortgagee, to avoid the wardſhip and feudal duties of the tenure, and was only inconvenient in this; that *if the ſecond deed were loſt, there appeared to be an abſolute term in the mortgagee.* 3 New Abr. 633.

And this is now the common method, *viz.* by a demiſe of the land for a *term*, under a condition *to be void on the payment of the mortgage money and intereſt*; and a covenant is inſerted at the end of ſuch deeds, that till the default ſhall be made in the payment of the money, that the mortgagor ſhall receive the rents, iſſues and profits without account. 3 *New Abr.* 633.

This has been ruled to create a tenancy at will to the mortgagor; but if the mortgagor dies, the tenancy at will is determined till there is a receipt of intereſt from the heir, which ſeems to make him alſo tenant at will to the mortgagee. *Raym.* 147.

3d, But now the *laſt and beſt improvement* of mortgages ſeems to be, that in the mortgage deed of a *term for years*, or in the aſſignment thereof, the mortgagor ſhould covenant for himſelf and his heirs, that if default be made in the payment of the money at the day, that then he and his heirs will, at the coſts of the mortgagee and his heirs, convey the freehold and inheritance of the mortgaged lands to the mortgagee and his heirs, or to ſuch perſon or perſons (to prevent merger of the term) as he or they ſhall direct and appoint; for the reverſion, after a term of years, that reverſion being of little worth, and yet the mortgagee for want thereof continuing but a termor, and ſubject to forfeiture, *&c.* and not capable of the privileges of a freeholder; therefore where the mortgagor cannot redeem the land, it is but reaſonable the mortgagee ſhould have the whole intereſt and inheritance of it, to diſpoſe of as abſolute owner. 3 *New Abr.* 633.

2. *What ſhall be deemed a mortgage, or an eſtate redeemable; and of the diſtinct intereſts of mortgagor and mortgagee.*

Herein we may obſerve in general, that whatever clauſes or covenants there are in a conveyance, though they ſeem to import an abſolute diſpoſition or conditional purchaſe; yet if, upon the whole, it appears to have been the intention of the parties, that ſuch conveyance ſhould only be a mortgage, or paſs an eſtate redeemable, a court of equity will always conſtrue it ſo. 1 *Vern.* 183, 268, 394.

As where the condition of a mortgage is, that the mortgagor ſhould redeem during his life, or that the mortgagor, and the heirs of his body, ſhould redeem, yet equity will admit the general heir of ſuch mortgagor to a redemption; *becauſe this can be no purchaſe, ſince there is a clauſe of redemption*; and when the land was originally only a pledge for money, if the principal and intereſt be offered, the land is free; and it would be very hard, that it ſhould be in the power of the ſcrivener, or griping uſurer, by ſuch impertinent reſtrictions, to elude the juſtice of the court. 1 *Vern.* 33, 190. 2 *Chan. Ca.* 147. S. C. *Howard* v. *Harris.*

But if a man borrows money of his brother, and agrees to make him a mortgage, and that, if he has no iſſue male, his brother ſhould have the land; ſuch an agreement; made out by proof, will be decreed in equity. 1 *Vern.* 193. *per North* Lord Keeper.

A. in conſideration of 1000*l.* made an abſolute conveyance to *B.* of the reverſion of certain lands after two lives, which, at that time, were worth little more; and by another deed, of the ſame date, the lands are made redeemable any time during the life of the grantor only, on payment of 1000*l.* and intereſt; *A.* died not having paid the money; and it was held by Lord K. *Nottingham*, that *his heir might redeem*, notwithſtanding this reſtrictive clauſe, and that it was a rule, *once a mortgage, and always a mortgage*, and that *B.* might have compelled *A.* to redeem in his life-time, or have foreclosed him; but, on a re-hearing, Lord *North* reverſed the decree on the circumſtance of this caſe; for it appeareth by proof, that *A.* had a kindneſs for *B.* and that he married his kinſwoman, which made it in the nature of a marriage ſettlement; he likewiſe held, that *B.* could not have compelled *A.* to redeem during his life, which made it the more ſtrong. 1 *Vern.* 7, 214, 232. *Newcomb.* v. *Bonham.* 2 *Vent.* 364. S. C. where it is ſaid, that Lord *North*'s decree was affirmed in the houſe of Lords.

If *A.* mortgage lands to *B.* worth 15 *l.* *per annum*, for ſecuring 200*l.* and at the ſame time *B.* enters into a bond conditioned, that if the 200 *l.* and intereſt is not paid within a year, then he to pay *A.* his executors or adminiſtrators, the further ſum of 78 *l.* in full for the purchaſe of the premiſſes, *&c.* and *A.* dies within the year, and the money is paid the next day after, the mortgage is forfeited to his adminiſtrator; yet *A.'s* heir may redeem, paying the 200 *l.* and likewiſe the 78 *l.* that was paid to the adminiſtrator. 1 *Vern.* 488. *Willet* ver. *Winnel.*

So where *A.* for 550*l.* made an abſolute aſſignment of a church leaſe for three lives to *B.* and *B.* by writing under his hand agreed, that if *A.* paid 600 *l.* at the end of the year, *B.* would convey; *B.* died, leaving *C.* his ſon and heir; two of the lives died, and the leaſe was twice renewed by *C.* and his father; and tho' it was near twenty years ſince the conveyance was made, yet the Maſter of the Rolls decreed a redemption on payment of 550*l.* and the two fines. 2 *Vern.* 84. *Manlove* v. *Ball.*

A. lends money to *B.* to carry on certain buildings, and takes a mortgage from him to ſecure 1600 *l.* with intereſt; and by another deed executed at the ſame time, takes a covenant from *B.* that he ſhould convey to him, if he thought fit, ground-rents to the value of 1600 *l.* at the rate of 20 years purchaſe; and, on a bill brought to redeem, the Maſter of the Rolls decreed a redemption on payment of principal, intereſt and coſts, without regard to that agreement, but ſet aſide the ſame as unconſcionable; for a man ſhall not have intereſt for his money, and a collateral advantage beſides for the loan of it, or clog the redemption with any bye-agreement. 2 *Vern.* 520. *Jennings* v. *Ward.*

But tho' theſe and ſuch like reſtrictions are relieved againſt, to make them anſwer the primary intention of the parties; yet if *A.* on a mortgage, lends money at 5 *l.* *per cent.* but agrees in the deed, that if the money were paid within three months after it became due, that he would accept of 4 *l.* *per cent.* and the mortgagor neglects to pay the intereſt within the time, equity will not relieve him, but he muſt pay 5 *l.* *per cent.* for tho' the court relieves againſt unreaſonable penalties, yet this is not ſo, for the mortgagee might have refuſed to lend his money under 5 *l.* *per cent.* Preced. Chan. 160. Jory *v.* Cox. 1 P. W. 653.

So if the mortgagee deviſes that the mortgagor ſhould be remitted part of his mortgage money, provided he pays the principal and intereſt within three days after his deceaſe; if the condition be not performed, the remittance is loſt; becauſe being a voluntary bounty, and not *ex debito juſtitiæ*, the party muſt take it as it is limited, for *cujus eſt dare, ejus eſt diſpenere*; and the court cannot relieve in this caſe after the day. 1 *Chan. Ca.* 52.

But where in a mortgage there was a *proviſo*, that if the intereſt was behind ſix months, that then the intereſt ſhould be accounted principal, and carry intereſt; this by Lord *Cowper* was decreed to be *a vain clauſe, and of no uſe*; and he ſaid, that no precedent had ever carried the advance of intereſt ſo far, and that an agreement made at the time of the mortgage, will not be ſufficient to make future intereſt principal; but, to make intereſt principal, it is requiſite that intereſt be firſt grown due, and then an agreement concerning it may make it principal. 2 *Salk.* 499.

The mortgagor before forfeiture, and whilſt it remains uncertain, whether he will perform the condition at the time limited or not, hath the legal eſtate in him; alſo after forfeiture he hath an equity of redemption; ſo that he is ſtill conſidered as owner and proprietor of the eſtate, until the equity of redemption be foreclоſed; therefore may make leaſes or any ſettlement thereof, which will bind his equity of redemption. (But they will not bind the mortgagee.)

It is ſaid, that a tenant in tail of an equity of redemption may deviſe it for payment of debts. 1 *Vern.* 41. *Turner* v. *Gwim.*

If a man mortgages his land, and, (as is uſual,) ſtill continues in poſſeſſion, and levies a fine, and five years paſs, yet the mortgagee is not barred; for tho' the mortgagee be in reality out of poſſeſſion, yet when that is done by conſent of both parties, and the nature of the contract requires it ſhould be ſo while the intereſt is paid, it is againſt the original deſign of the contract, that any act of the mortgagor, (except the payment of the money,) ſhould deprive the mortgagee of his ſecurity, and is no leſs than fraud, which the law will not countenance. 1 *Sid.* 460. 1 *Vent.* 82. *Carth.* 101, 414. 2 *Keb.* 522.

As the mortgagor, being conſidered only as tenant at will to the mortgagee, cannot, by his act, defeat the intereſt of the mortgagee, otherwiſe than by payment of the mortgage money; ſo neither can the mortgagee defeat the mortgagor of his equity of redemption; therefore if a mortgagee in fee ſuffers a recovery, this, even at law, ſhall not bind the mortgagor's right of entry, upon performance of the condition; but if the mortgagor had been a party to the recovery, then his right had been bound, not only on account of the recompence in value, but becauſe he is eſtopped by the recovery to claim the land againſt the recoveree or his heirs, when he was called in before the judgment given to defeat his title, and could not do it. *Palm.* 135. *Cro. Jac.* 593.

So if a mortgagee be diſſeiſed, and the diſſeiſor levies a fine, and five years paſs after the proclamations, tho' the mortgagee is hereby barred, yet if the mortgagor pays or tenders his money, he has five years to proſecute his right, by the ſecond ſaving in the ſtatute 4 *Hen.* 7. *cap.* 24. *becauſe his title did not accrue 'till payment of the money.* Plow. 373. *a.*

And as the mortgagor, 'till the equity of redemption be foreclоſed, is conſidered as owner of the land, it was ruled, where a bill for a redemption was brought againſt a mortgagee in poſſeſſion, and a decree accordingly, that the mortgagee before the account taken, having preſented to a church that became void, ſhould revoke his preſentation, and preſent ſuch a perſon as the mortgagor or his vendee (he having contracted to ſell) ſhould appoint. *Preced. Chanc.* 71. 2 *Vern.* 401.

By the 7 *W. & M. cap.* 25. it is enacted, "That no perſon or perſons ſhall be allowed to have any vote in election of members to ſerve in parliament, for or by reaſon of any truſt eſtate or *mortgage*; unleſs ſuch truſtee or mortgagee be IN ACTUAL POSSESSION, or receipt of the rents and profits of the ſame, but that the mortgagor, or *ceſtui que truſt* in poſſeſſion, ſhall and may vote for the ſame, notwithſtanding ſuch *mortgage* or truſt.

And by the 9 *Ann. cap.* 5. which requires, that knights of the ſhire ſhould have 600*l.* *per ann.* and every other member 300 *l.* *per ann.* it is enacted, "That no perſon ſhall be qualified to ſit in the Houſe of Commons, within the meaning of the act, *by virtue of any mortgage*, whereof the equity of redemption is in any other perſon, unleſs the *mortgagee* ſhall have *been in poſſeſſion* of the mortgaged premiſſes for *ſeven* years before the time of election.

3. *Of the equity of redemption and foreclоſure; and of the manner of redeeming and foreclоſing.*

Altho', after breach of the condition, an abſolute fee-ſimple is veſted at Common law in the mortgagee; yet a right of redemption being ſtill inherent in the land, till the equity of redemption be foreclоſed, the ſame right ſhall deſcend to and *is veſted* in ſuch perſons as have a right to the land, in caſe there had been no mortgage or incumbrance whatſoever; and as an equitable performance as effectually defeats the intereſt of the mortgagee, as the legal performance doth at Common law, the condition ſtill hanging over the eſtate, till the equity is totally foreclоſed; on this foundation it hath been held, that a perſon who comes in under a voluntary conveyance, may redeem a mortgage; and tho' ſuch right of redemption be inherent in the land, yet the party claiming the benefit of it, muſt not only ſet forth ſuch right, but alſo ſhew that he is the perſon intitled to it. *Hard.* 465. 1 *Vern.* 182, 193.

As the heir at law is regularly intitled to the benefit of redemption, he is alſo intitled to the aſſiſtance of the perſonal eſtate of the mortgagor for that purpoſe; according to the doctrine eſtabliſhed in the courts of equity, that *the perſonal eſtate, in the hands of the executor, ſhall be employed in eaſe of the heir, by whatever means the heir becomes indebted as heir*; for the perſonal eſtate having received the benefit by contracting the debt, and the real conſidered only as a pledge for it; according to the common rule, *Qui ſentit commodum ſentiri debet & onus.* Prec. in Chanc. 477.

And on this foundation it hath been frequently held, that if a man mortgage lands, and covenants to pay the money, and dies, the *perſonal eſtate* of the mortgagor ſhall, in favour of the heir, be applied in exoneration of the *mortgage*. 2 Salk. 449.

Alſo it is held by ſome opinions, that this benefit ſhall not only extend to the heir at law, or *hæres natus*, but alſo to an *hæres factus*, from a preſumption, that it is the intention of the teſtator, that he ſhould have all the privileges of the *hæres natus*: and ſome even held, that an ordinary deviſee ſhall have this benefit; but as to this laſt point it hath been held otherwiſe; and that if a man mortgages his land, and deviſes it to *J. S.* or *A.* for life, the remainder in fee, to *B.* that there the charge doth paſs with the eſtate, there appearing no intention of the teſtator, that he ſhould have it diſcharged. 2 *Chan. Ca.* 84. 1 *Vern.* 36. 1 *Chan. Ca.* 271. *Sed qu.* if *B.* is not, as *hæres factus*, to have the benefit of the perſonal eſtate, unleſs it clearly appears by the will, that he ſhould take it, *cum onere?*

So if the mortgagor conveys away the equity of redemption, the purchaſer ſhall not have the benefit of the perſonal eſtate, but muſt take it *cum onere*. 2 *Salk.* 450. 1 *Vern.* 37.

It has likewiſe been held, that the heir of the mortgagor ſhall have the benefit of the perſonal eſtate *to pay off the mortgage*, tho' there be no covenant in the mortgage-deed for the payment thereof; becauſe the mortgage-money is a debt, whether there be any expreſs covenant for the payment of it or not. 2 *Salk.* 449. 1 *Vern.* 436. *Preced. Chan.* 61. 3 *Preced.* 360. Becauſe the perſonal eſtate received the benefit.

But where a *mortgage* in fee was made redeemable at *Mich.* 1702, or any other *Mich.* day following on ſix months notice; and there was no covenant for payment of the mortgage money; it was held by Lord Chancellor *Cowper*, that the mortgagor having deviſed his perſonal eſtate to his wife and daughter, and having during his life paid the intereſt of the *mortgage*, the perſonal eſtate ſhould not be applied in eaſe and exoneration of the real eſtate for the benefit of the heir at law; for, being no covenant for paying of the money, there was no contract at all between them, neither expreſs nor implied; nor would any action lie againſt the mortgagor to ſubject his perſon, to compel him to pay this money; but this was in nature of a conditional purchaſe, ſubject to be defeated on payment by the mortgagor or his heirs, of the ſum ſtipulated between them, at any *Mich.* day, at the election of the mortgagor, or his heirs; for here was *an everlaſting ſubſiſting right of redemption*, deſcendible to the heirs of the mortgagor, which could not be forfeited at law like other mortgages; therefore there could be no equity of redemption, or any occaſion for the aſſiſtance of this court; but the plaintiffs might even at law defeat the conveyance, by performing the terms and conditions of it; which were not limited to any particular time, but might be performed on any *Michaelmas* day, to the end of the world; and ſince there was no covenant or contract, either expreſs or implied, to charge the perſonal eſtate of the mortgagor, he thought there was no reaſon to lay the load of this debt upon that which was given to other perſons. *Preced. Chan.* 423. 2 *Vern.* 701.

By the Stat. 4 *&* 5 *W.* 3. *cap.* 16. it is enacted, That if any perſon ſhall borrow any money, or for any other valuable conſideration for the payment thereof voluntarily *give*, *acknowledge*, *permit* or ſuffer to be entered againſt him or them, a judgment, ſtatute or recognizance, to any perſon a creditor, and if the borrower, or debtor, ſhall afterwards take up or borrow any other ſum of any other perſon, or for other valuable conſideration become indebted to ſuch perſon, and for ſecuring the repayment and diſcharge thereof ſhall mortgage his lands, *&c.* or any part thereof, to the *ſecond* lender, *&c.* or to any other *in truſt for or to the uſe of* ſuch *ſecond* lender, *&c.* and *ſhall not give notice to* the ſaid mortgagee, of the ſaid judgment, *&c. in writing* under his hand, *before the execution of the ſaid mortgage or mortgages*; unleſs ſuch mortgagor or his heirs, upon notice given by the mortgagee, his heirs, *&c.* in writing, *&c.* atteſted by two witneſſes, of any ſuch former judgment, *&c.* ſhall *within ſix months* pay off the ſaid judgment, *&c.* and all intereſt and charges, and procure the ſame to be vacated, *&c.* then the mortgagor or his heirs, *&c.* ſhall have *no benefit* or *remedy* againſt the ſaid mortgagee or his heirs, *&c.* in equity or elſewhere, *for redemption*; but the mortgagee ſhall hold the lands, *&c.* for ſuch eſtate and term as was granted to the mortgagee againſt the mortgagor and all perſons lawfully claiming under him, *freed from equity of redemption*, &c.

And it is further enacted, That if any perſon ſhall mortgage any lands to any perſon, for ſecurity of any money or for other valuable conſiderations; and if the mortgagor ſhall *again mortgage* the ſame lands or any part thereof, to any other perſon for valuable conſiderations, (the former mortgage being in force and not diſcharged,) and ſhall not diſcover to the *ſecond* mortgagee, the former mortgage, in writing under his hand; that then, the mortgagor, his heirs, *&c.* ſhall have *no relief or equity of redemption*, againſt the *ſecond* or after mortgagee, *&c.* but ſuch mortgagee ſhall hold and enjoy ſuch more than once mortgaged lands, for ſuch eſtate as was granted by the mortgagor againſt him, *freed from equity of redemption*, &c. If there be more than one mortgage at the ſame time made, of the ſame lands, the ſeveral late or under mortgages ſhall have power to redeem any former mortgage, *upon payment of the principal debt, intereſt, and coſts of ſuit*, to the proper mortgagee, *&c.*

But not to bar any widow of any mortgagor from her dower and right in or to the lands, who did not legally join with her huſband in ſuch mortgage, or otherwiſe lawfully bar or exclude herſelf from ſuch her dower or right.

It hath been held, that if a man mortgages certain lands to one man, and mortgages thoſe lands with ſome others to another, tho' this ſeems to be a caſe omitted out of the above ſtatute againſt clandeſtine mortgages; yet if it appears to be a contrivance to evade it, as if an acre or two of land were only added, this will not exempt it; alſo a perſon, who will take advantage of the ſtatute, muſt be *an honeſt mortgagee*; therefore, if a man has uſed any fraud or practice in obtaining a ſecond mortgage, he ſhall not have the benefit of the ſtatute. 2 *Vern.* 589, 590.

The methods of redemption and foreclosing being dilatory, expenſive, and inconvenient, not only to the mortgagee but alſo to the mortgagor, the ſame ſeem now remedied by the 7 *Geo.* 2. *cap.* 20. which enacts, That where any action ſhall be brought on any bond for the payment of the money ſecured by ſuch mortgage, or performance of the covenants therein contained; or where any action of ejectment ſhall be brought by any mortgagee, *&c.* for the recovery of the poſſeſſion, and *no ſuit ſhall be then depending* in equity, for foreclosing or redeeming ſuch mortgaged lands; if the perſon *having right to redeem* ſhall appear and become defendant in ſuch action, ſhall, at any time *pending ſuch action*, pay unto ſuch mortgagee, or in caſe of his, her, or their refuſal, *ſhall bring into court*, where ſuch action ſhall be depending, *all the principal money and intereſt due on ſuch mortgage, and alſo all ſuch coſts as have been expended* in any ſuit at law or in equity upon ſuch mortgage, (ſuch money for principal, intereſt and coſts, to be aſcertained and computed by the court where ſuch action is or ſhall be depending,) the monies ſo paid, *&c.* ſhall be deemed and taken to be *in full ſatisfaction and diſcharge of ſuch mortgage*; and the court ſhall diſcharge every ſuch mortgagor or defendant of and from the ſame accordingly; and ſhall, by rule of the ſame court, compel ſuch mortgagee at the coſts of ſuch mortgagor to aſſign, ſurrender or re-convey ſuch mortgaged lands, and deliver up all deeds, *&c.* relating to the title.

And that where any bill or ſuits ſhall be filed, or brought, in equity by any perſon having or claiming any eſtate, right or intereſt in any lands, *&c.* by virtue of any mortgage to compel the defendant or to pay the plaintiff the principal money and intereſt together with any ſum due on any incumbrance or ſpecialty, charged or chargeable on the equity of redemption; and in default of payment to foreclose ſuch defendant's right of equity of redeeming ſuch mortgaged lands, *&c.* upon his admitting the right and title of the plaintiff, ſuch court of equity ſhall, at any time before ſuch ſuit ſhall be brought to hearing, make ſuch order or decree therein, as it might or could have made therein, in caſe the ſame had been regularly brought to hearing; and all parties to ſuch ſuit ſhall be bound by ſuch order or decree, to all intents and purpoſes, as if the ſame had been made at or ſubſequent to the hearing of the cauſe.

This act not to extend to any caſe, where the perſon againſt whom the redemption ſhall be prayed, ſhall (by writing under his hand, or the hand of his attorney, *&c.* to be delivered before the money ſhall be brought into court at law, to the attorney or ſolicitor for the other ſide) inſiſt either that the party praying a redemption has not a right to redeem, or that the premiſſes are chargeable with other or different principal ſums than what appear on the face of the mortgage, or ſhall be admitted on the other ſide; nor to any cauſe where the right of redemption to the mortgaged lands ſhall be controverted or queſtioned, by or between different defendants in the ſame cauſe, nor ſhall be any prejudice to any ſubſequent mortgagee, or ſubſequent incumbrancer.

We have been very full under this head, as it is a title of great uſe.

For more learning on the ſubject, ſee 3 New Abr. *and* 15 Vin. Abr. *tit.* Mortgage.

Mortgagor, Is he who mortgages or pawns the lands; and he to whom the mortgage is made is called the *mortgagee.*

Morth, Murder; Sax. *morth,* death. *Morthlaga,* a murderer or manſlayer. *Morth-lage,* homicide or murder, *&c.*

Mortitibus, Dead of the rot, applied to ſheep and lambs. *Mon.* 2. *tom. p.* 114.

Mortmain, (*manus, mortua,* compounded of two *French* words, *mort i. e. mors, & maine, i. e. manus*) Signifies an alienation of lands and tenements to any guild, corporation or fraternity, and their ſucceſſors, as biſhops, parſons, vicars, *&c.* which may not be done *without the King's licence,* and the lord of the manor, or of the King alone, if it be immediately holden of him. The reaſon of the name may be deduced from hence, becauſe the ſervices, and other profits due, for ſuch lands as eſcheats, *&c.* ſhould not without ſuch licence come into a *dead hand,* or into ſuch a hand as it were dead, and ſo dedicated unto God, or pious uſes, as to be abſtractedly different from other lands, tenements or hereditaments, and is never to revert to the donor, or any temporal or common uſe. *Magna Charta, cap.* 36. and 7 *Ed.* 1. commonly called *The ſtatute of mortmain,* and 18 *Ed.* 3. *cap.* 3. and 15 *Rich.* 2. *cap.* 5.

Polydore Virgil, in the ſeventeenth book of his *Chronicles,* mentions this law, and gives this reaſon of the name, *Et legem hanc manum mortuam vocarunt, quod res ſemel datæ collegiis ſacerdotum, non utique rurſus venderentur velut mortuæ, hoc eſt, uſui aliorum mortalium in perpetuum adeptæ eſſent. Lex diligenter ſervatur, ſic, ut nihil poſſeſſionum ordini ſacerdotali a quoquam detur, niſi regis permiſſu:* but the fore-mentioned ſtatutes are in ſome manner abridged by 39 *Eliz. cap.* 5. by which the gift of lands, *&c.* to hoſpitals is permitted, without obtaining *licences in mortmain.* But ſee *poſt.*

Hottoman, in his Commentaries *De verbis Feudalibus,* verbo *Manus mortua,* hath theſe words; *Manus mortua locatio eſt, quæ uſurpatur de iis, quorum poſſeſſio (ut ita dicam) immortalis eſt, quia nunquam hæredem habere deſinunt: Qua de cauſa res nunquam ad priorem dominum revertitur, nam manus pro poſſeſſione dicitur mortua per antiphraſin pro immortali, &c.* Petrus Belluga in ſpeculo Principum, fol. 76. *Jus amortizationis eſt licentia capiendi ad manum mortuam:* To the ſame effect read *Caſſan. de Conſuet. Burgund. p.* 348, 387, 1183, 1185, 1201, *&c. Skene de verb. Signif.* ſaith, *Dimittere terras ad* manum mortuam *eſt idem atque dimittere ad multitudinem ſive univerſitatem, quæ nunquam moritur, idque per antiphraſin, ſeu a contrario ſenſu,* becauſe commonalties never die. *Cowell.*

William the Conqueror demanding the cauſe why he conquered the realm by one battle, which the *Danes* could not do by many; *Frederick,* abbot of St. *Alban's,* anſwered, that the reaſon was, *becauſe the land, which was the maintenance of martial men, was given and converted to pious imployments, and for the maintenance of holy votaries:* To which the Conqueror ſaid, that if the clergy be ſo ſtrong, that the realm is infeebled of men for war, and ſubject by it to foreign invaſion, he would aid it. Therefore he took away many of the revenues of the abbot, and of others alſo. *Speed.* 418. *b.*

It is proper here to obſerve, that becauſe the Lords had nothing from the alienees; for by alienation in *mortmain* they loſt their eſcheats, and many ſervices which were heretofore due to them, as bodies politic never die, nor can perform perſonal ſervice, commit treaſon or felony, *&c.* this occaſioned the ſtatutes of *mortmain,* by virtue whereof the King, or other Lord of whom the land is holden, may enter into lands ſo aliened. 1 *Inſt.* 2. 2 *Inſt.* 75.

The foundation of all the ſtatutes of *mortmain* was *Magna Charta.* By the 9 *H.* 3. *c.* 36. it is declared, "That it ſhall not be lawful for any to give his lands *to any religious houſe,* and *to take the ſame land again to hold of the ſame houſe, &c.* upon pain that the gift ſhall be void, and the land ſhall accrue to the lord of the fee." This ſtatute is interpreted to extend to lands, which a religious houſe kept in their own hands, tho' they gave them not back again to hold of the ſame houſe. 2 *Inſt.* 75.

But eccleſiaſtical perſons found means to creep out of the ſtatute, by purchaſing lands holden of themſelves, or by making leaſes for a long term of years, *&c.* wherefore by 7 *Ed.* 1. commonly called the *Statute of Mortmain,* or *de Religioſis,* no perſons religious, or others whatſoever, ſhall buy or ſell any lands or tenements, or under the colour of any gift or leaſe, or by reaſon of any other title, receive the ſame, or by any other craft ſhall appropriate lands in any wiſe to come into *mortmain,* on pain of forfeiture; and within a year after the alienation, the lord of the fee may enter; and if he do not, then the next immediate lord, from time to time may enter in half a year; and for default of all the lords entring, the King ſhall have the lands ſo alienated for ever, and may enfeoff others by certain ſervices, *&c.*

As this ſtatute extended only to gifts, alienations, *&c.* made between eccleſiaſticks and others, they found out an evaſion alſo of this ſtatute; for pretending a title to the land, which they meant to gain, they brought *a feigned action* againſt the tenant of the land, and he by conſent and colluſion was to make default, and thereupon they recovered the land, and entered by judgment of law: ſo that the *Stat. Weſtm.* 2. 13 *Ed.* 1. *c.* 32. was thought neceſſary; by which it is to be inquired by the country *whether the demandant had a juſt title to the land;* and if ſo, then he ſhall recover ſeiſin; but if otherwiſe, the lord of the fee ſhall enter, *&c.*

And by 34 *Ed.* 1. Lands ſhall not be alienated in *mortmain,* where there are mean lords, without their conſent declared under hand and ſeal; nor ſhall any thing paſs where the donor reſerves nothing to himſelf.

Notwithſtanding all theſe ſtatutes, eccleſiaſtical perſons (not being able to get lands, by purchaſe, gift, leaſe, or recovery) procured lands to be conveyed by feoffment, or in other manners, to divers perſons and their heirs, *to the uſe of them and their ſucceſſors,* whereby they took the profits. 2 *Inſt.* 75. To bar this, the *Stat.* 15 *R.* 2. *c.* 5. was made, which ſtatute enacts, "That no feoffment, *&c.* of any lands and tenements, advowſons or other poſſeſſions, *to the uſe of any ſpiritual perſons,* or whereof they ſhall take the profits, ſhall be made without licence of the King, and of the Lords, *&c.* upon pain of forfeiture." And by 23 *H.* 8. *c.* 10. againſt ſuperſtitious uſes, forfeitures, fines, recoveries, grants, deviſes, *&c.* of lands, in truſt to the uſe of any pariſh church, or to have perpetual *obits*, or a continual ſervice of a prieſt for ever, or for ſixty years, &c. to the prejudice of the King and other lords, as in caſe of lands alienated in *mortmain*, ſhall be void: tho' this laſt act extends not to corporations, where there is a cuſtom to deviſe lands in *mortmain*; as in *London*, a freeman that pays ſcot and lot, may deviſe all his lands in the city in *mortmain*, without licence. 1 *Rol. Abr.* 556.

And notwithſtanding this, or any of the ſtatutes, any man at this day may give lands, tenements, &c. to any perſons and their heirs, for finding a preacher, maintenance of a ſchool, reparation of churches, relief of the poor, &c. or for any like charitable uſes: tho' it is good policy on every ſuch eſtate *to reſerve a ſmall rent to the feoffor and his heirs*, when the feoffees ſhall be ſeiſed to their own uſe, and not to the uſe of the feoffor; or if a conſideration of a ſmall ſum be expreſſed, the 23 *H.* 8. cannot by any pretence make void the uſe. 1 *Rep.* 24. 11 *Rep.* 70. *Wood's Inſt.* 303. but ſee *poſt.*

By the *Stat.* 39 *Eliz. cap.* 5. The gift of lands, &c. to hoſpitals is permitted without obtaining licences of *mortmain*. Owners of impropriations may annex them to the parſonage or vicarage where they lie, or ſettle them in truſt for the curates, where the parſonage is impropriate, and no vicarage endowed, without licence of *mortmain*: and if the ſettled maintenance of any benefice with cure ſhall not amount to 100*l. per annum*, the incumbent may purchaſe to him and his ſucceſſors, &c. without licence in *mortmain*. 17 *Car.* 2. *c.* 7. By ancient ſtatutes, the King's licence may be had for authorizing of lands, and the writ of *ad quod damnum* is to iſſue out of *Chancery* to inquire concerning the ſame. 27 *Ed.* 1. *ſt.* 2. Prelates, clerks, &c. ſhall not be impeached for purchaſing lands in *mortmain*, on producing the King's charter of licence. 18 *E.* 3. *ſt.* 3. *c.* 3. And it is declared lawful for the King to grant to any perſon, body politic or corporate, their heirs and ſucceſſors, licence to alien in *mortmain*; and purchaſe and hold in *mortmain* in perpetuity, &c. without incurring any forfeiture, by *Stat.* 7 & 8 *W.* 3. *c.* 37.

A grant of an advowſon in fee, or an appropriation of an advowſon, hath been adjudged a *mortmain*; but an appropriation of tithes, which are things meerly ſpiritual, or a grant of an annuity, that chargeth the perſon only, cannot be *mortmain*, to be forfeited. 1 *Inſt.* 2, 304. 2 *Inſt.* 361. 5 *Rep.* 56. 9 *Rep.* 96. A late ſtatute has ordained, that no manors, lands, &c. ſhall be given, granted to, or ſettled on any perſons, bodies politic or corporate, for any eſtate whatſoever, or charged in truſt for charitable uſes, *unleſs done by deed indented, and ſealed at leaſt twelve months before the death of the donor or grantor*, and *inrolled in Chancery within ſix months after executed*, &c. and except the ſame be to *take effect in poſſeſſion immediately*; and *without any power of revocation*, &c. And if otherwiſe made, ſhall be void: but not to extend to purchaſes for a valuable conſideration; nor to the two univerſities, or colleges of *Eaton*, *Wincheſter*, &c. Statute of *Mortmain*, 9 *Geo.* 2. *c.* 36.

As to the ſtatutes of 9 *H.* 3. *cap.* 36. and 7 *Ed.* 1. *vide Coke*'s Commentary thereon. 2 *Inſt.* 74

As to bodies politic purchaſing and not being ſubject to the ſtatutes of *mortmain*, vide 22 *Car.* 2. *c.* 6. *ſ.* 10. And for the King's power to grant licence to aliene or purchaſe in *mortmain*, vide 7 & 8 *W.* 3. *c.* 37. and *vide* 2 & 3 *Ann. c.* 11. 9 *Geo.* 2. *c.* 36.

For more learning on this ſubject, ſee 15 Vin. Abr. *tit.* Mortmain.

Mortuary, (*Mortuarium, mortarium.*) Is a gift left by a man at his death to his pariſh church, for the recompence of his perſonal tithes and offerings not duly paid in his life-time. A *mortuary* is not properly and originally due to eccleſiaſtical incumbents from any, but thoſe only of his own pariſh, to whom he miniſters ſpiritual inſtruction, and hath right to their tithes. But by cuſtom in ſome places of this kingdom, they are paid to the parſons of other pariſhes, as the corps paſſes thro' them.

See the ſtatute 21 *H.* 8. *c.* 6. before which ſtatute *mortuaries* were payable in beaſts; the beſt to the lord for a heriot, the *ſecond* for a *mortuary*. Nor was it only *de meliori averio, ſed de meliori re.*

Mortuarium (ſays *Lindewood*) *ſic dictum eſt quia relinquitur eccleſiæ pro anima defuncti.* Cuſtom did ſo prevail, that *mortuaries* being held as due debts, the payment of them was enjoined as well by the ſtatute *De circumſpecte agatis, in* 13 *Ed.* 1. *ſt.* 4. as by ſeveral conſtitutions, &c.

A *mortuary* was anciently called *Sauleſceat*, which ſignifies *pecunia ſepulchralis*, or *ſymbolum animæ*. After the conqueſt it was called a *cors-preſent*, (becauſe *the beaſt was preſented with the body at the funeral*,) and ſometimes a *principal*; of which ſee a learned diſcourſe in the *Antiquities of Warwickſhire, fol.* 679. and ſee *Selden's Hiſtory of Tithes, pag.* 287.

There is no *mortuary* due by law, but *by cuſtom.* 2 Inſt. 491. See *Spelm. de Council. tom.* 2. 390. This is likewiſe proved out of *Fleta, lib.* 2. *c* 600. *par.* 30. *Item ſi rector petat* mortuarium *ubi dari conſuevit.* See *Nonagium*, *Principal*, and *Pretium ſepulchri.* In the *Iriſh* canons it is called *Pretium ſepulchri*, and *Sedatium*, viz. *Omne corpus ſepultum habet in jure ſuo vaccam & equum & veſtimentum & ornamenta lecti ſui*, &c. Canon. Hibern. lib. 19. c. 6. And in another place, *Rogat principem loci, i. e.* the biſhop, *ut baſilicum ejus foderit*, &c. & *reddat amicus pretium ejus & ſedatium commune.*

The word *mortuarium* was ſometimes uſed in a civil as well as an eccleſiaſtical ſenſe, and was payable to the lord of the fee, as well as to the prieſt of the pariſh.—*Debentur domino* (i. e. *mannerii de* Wrechwyke) *nominibus heriotti* & mortuarii *duæ vaccæ pret.* xii *ſol.* Paroch Antiqu. pag. 470. *Cowell.*

Mr. *Selden* tells us, that the uſage anciently was, bringing the mortuary along with the corps when it came to be buried, and *to offer it to the church as a ſatisfaction for the ſuppoſed negligence and omiſſion the defunct had been guilty of in not paying his perſonal tithes*, and from thence it was called a *corſe preſent.* *Watſ. Comp. Incumb.* 8*vo.* 1053. *cap.* 53. cites *Selden's Hiſt. of Tithes* 287.

Stat. 13 *Ed.* 1. *ſt.* 4. enacts, That a prohibition ſhall not lie for mortuaries, in places where mortuaries uſed to be paid.

By the 21 *H.* 8. *c.* 6. *Mortuaries* are to be paid as follows, *viz.* He who dies poſſeſſed of moveable goods to the value of 40 *l.* or above, (his debts firſt paid) is to pay 10 *s.* He that dieth poſſeſſed of goods of 30*l.* value and under 40*l.* is to pay 6 *s.* 8 *d.* And dying poſſeſſed of goods to the value of 6 *l.* 13 *s.* 4 *d.* and under 30*l.* to pay 3 *s.* 4 *d.* But if the goods are under 6*l.* 3 *s.* 4 *d.* value, no *mortuary* is to be paid; and no *mortuary* is to be paid by any feme-covert or child, *perſons not keeping houſe*, &c.

If one happens to die in a place where he does not reſide, by this ſtatute the *mortuary* ſhall be paid in the place where he had his uſual abode; no perſon ſhall pay *mortuaries* in more places than one, or more than one *mortuary*; and no *mortuary* ſhall be demanded of any but in ſuch places where *mortuaries* are *due by cuſtom*, and have uſed to have been paid: Alſo there is a proviſo in the ſtatute, that in places where *mortuaries* have been of leſs value than as aforeſaid, *no perſon ſhall pay any more than has been accuſtomed.*

If a parſon, vicar, &c. take or demand more than is allowed by the ſtatute for a *mortuary*, he ſhall forfeit all he takes beyond it, and 40 *s.* more to the party grieved, to be recovered by action of debt, &c. Stat. *Ibid.* Since this ſtatute, whereby *mortuaries* are reduced to a certainty, an action of debt will lie upon the ſaid ſtatute in the courts of Common law, for recovery of the ſum due for a *mortuary*, being *by cuſtom* as aforeſaid, altho' before that ſtatute they were recoverable only in the Spiritual court: But as ſuch actions have never been brought, it is ſaid, they are ſtill recoverable in that court only. *Watſ. Clergym. Law* 475. *Count. Parſ. Compan.* 140.

Where by cuſtom a *mortuary* hath not been uſually paid, if a perſon be libelled in the Spiritual court, he ſhall have a *prohibition* by virtue of the ſtatute 21 *H.* 8. *c.* 6. And upon a prohibition the cuſtom may be tried, &c. 2 *Lutw.* 1066. 3 *Mod.* 268. No ſuit in equity lies for a *mortuary.* 2 *Strange* 715. *Mortuaries* in *Wales* taken away, 12 *Ann. ſtat.* 2. *c.* 6. *Mortuaries* in the archdeaconry of *Cheſter* taken away, and a recompence made to the biſhop of *Cheſter*, 28 *Geo.* 2. *c.* 6.

Mortuarium, Hath been ſometimes uſed in a civil as well as eccleſiaſtical ſenſe, being payable to the lord of the fee,—*Debentur domino maner. de* Wrechwyke *nominibus heriotti* & mortuarii *duæ vaccæ pret. xii ſol.* Paroch. Antiq. 470.

Moſaical Law. This law inflicts not a capital puniſhment for bare thefts, agreeable to which is the *Civil law*; but *our law* doth, as in ſtrict juſtice, for the welfare of ſociety, it may. *Exod.* 22. *S. P. C.* 25. 1 *Hawk. P. C.* 89.

Moſs-Troopers, A rebellious ſort of people in the *North* of *England*, that lived by robbery and rapine, not unlike the *Tories* in *Ireland*, the *Buckaneers* in *Jamaica*, or *Banditti* of *Italy*: The counties of *Northumberland* and *Cumberland*, were charged with an yearly ſum, and a command of men to be appointed by juſtices of the peace, to apprehend and ſuppreſs them. *Stat.* 4 *Jac.* 1. *c.* 1. 13 & 14 *Car.* 2. *c.* 22. 30 *Car.* 2. *c.* 2. See 6 *Geo.* 2. *c.* 37.

Mote, (*Mota*, Sax. *gemote*, *curia*, *placitum*, *conventus*) As *Mota de Hereford*, i. e. *Curia vel placita comitatus de Hereford*. In the charter of *Maud* the Empreſs, daughter of King *Henry* the Firſt, we read thus; *Sciatis me feciſſe Milonem de* Glouceſt. *Comitem de* Hereford, & *deaiſſe ei* motam Herefordiæ *cum toto caſtello*, &c. Hence Burgemote, *curia vel conventus burgi*; Swainmote, *curia vel conventus miniſtrorum*, *ſcil. foreſta*, &c. From this alſo we draw our word *mote* and *moot*, to plead. The *Scots* ſay, to *mute*, as the *Mute-hill* at *Scone*, i. e. *Mons placiti de Scona*.

We commonly apply the word *moot* to that arguing of caſes uſed by young ſtudents in the *Inns of Court* and *Chancery*. In the charter of peace between King *Stephen* and Duke *Henry*, afterwards King, it is taken to ſignify a fortreſs, as *Turris de* London, & *mota de* Windſor, the tower of *London*, and fortreſs of *Windſor*. *Mote* alſo ſigfies a ſtanding pool of water to keep fiſh in.

It likewiſe ſignifies a great ditch encompaſſing a caſtle or dwelling-houſe.—*Hæc indentura*, &c. *teſtatur quod prædict' Rogerus tradidit præfato Thomæ tria ſtagna* & *unam* motam piſcariam *exiſten. intra manerium*, &c. *Habend.* &c. *cum tota piſcatione in eiſdem* & *cum incremento piſcium in eiſdem cum libero ingreſſu* & *egreſſu*, &c. Chart. dat. 18 Feb. 11 Ed. 4.

Mote-bell, or *Mot-bell*, the bell ſo called, which was uſed by the *Engliſh Saxons* to call people together to the court. *Leg. Ed. Confeſſ. c.* 35. See *Folcmote*.

Moteer, A cuſtomary ſervice or payment at the *mote* or court of the lord: From which ſome perſons were exempted by charter of privilege. *Rot. Chart.* 5 *Joh. m.* 9.

Mothering, Is a cuſtom of viſiting parents on *Midlent Sunday*. See *Lætare Jeruſalem*.

Motibilis, One that may be removed or diſplaced, or rather a vagrant.——*In carcere detenti, canonici vel alii religioſi*, motibiles, *furioſi*, &c. *convenire non poterunt*, i. e. *in jure convenire non poſſunt*. Fleta, lib. 6. c. 6.

Motion in Court, According to *Blackſtone*, is "an occaſional application to the court by the parties or their counſel, in order to obtain ſome rule or order of court, which becomes neceſſary in the progreſs of a cauſe; and it is uſually grounded upon an *affidavit*, (the perfect tenſe of the verb *affido*) being a voluntary oath before ſome judge or officer of the court, to evince the truth of certain facts upon which the motion thrown is grounded." Vide his *Commentaries*, 3 *V.* 304.

Where any *motion* is made in *Chancery*, that is not of courſe, generally *an affidavit of the facts alledged muſt be read in court*: And if *motions* are founded on the general rules or uſage of the court, and are not of courſe, but granted or denied as the court thinks fit, on hearing counſel on both ſides, notice is to be given in writing to the ſolicitor of the other party, or his clerk in court, expreſſing every thing to be moved for, *which muſt be ſerved two days at leaſt before the day on which the motion is to be made*, whereof affidavit muſt alſo be made. *Practiſ. Solic.* 17.

In *B. R.* one ought not to move the court for a rule for a thing to be done, which by the common rules of practice may be done without moving the court: Nor ſhall the court be moved for doing what is againſt the practice of the court: One ought not to move for ſeveral things in one *motion*; and where a *motion* hath been denied, the ſame matter may not be moved again by another counſel, without acquainting the court thereof, and having their leave for the ſame: But every perſon who makes a ſolemn argument at the bar is allowed by the court a *motion* for his argument. 2 *Lil. Abr.* 209, 210. But counſel cannot move for his argument in a matter of courſe in the paper, in *B. R. Wilſ. par.* 1. 76.

If there be divers rules of court made in a cauſe, and the party intends to move thereon, he muſt produce the rule *laſt made* in the cauſe, and move upon that: But it is neceſſary to have all the rules and copies of the affidavits, to ſatisfy the court how the cauſe hath been proceeded in, and how it ſtands in court; though the laſt rule is the moſt material; and where a *motion* is made to ſet aſide a rule grounded on an affidavit, a copy of the affidavit muſt be produced, that the court may be informed upon what grounds the rule was made, and judge whether there be cauſe ſhewn upon the *motion* ſufficient to ſet aſide the rule. *Paſch.* 13 *Car. B. R. Hil.* 1649.

If any thing be moved to the court upon a record, the record is to be in court, or the court will make no rule upon ſuch *motion*. Hil. 22 Car. B. R. One party ought not to ſurpriſe another by a *motion in court*, but to move in convenient time, that the other party may have time to be heard. *Paſch* 23 *Car.* It is againſt the practice of the court t move for an attachment, or any matters in law, upon the laſt day of the term, *except the caſe is peremptory*.

Monday is a ſpecial day for *motions* in *B. R.* by the ancient courſe; but they are made upon any day, as the buſineſs of the court will permit. 2 *Lil.* 208, 210.

The courts of law generally on motions which are not of courſe, grant rules *to ſhew cauſe* at a future day, why the thing aſked for ſhould not be granted, a copy of which being ſerved on the attorney of the adverſe party, counſel may ſhew cauſe on the day expreſſed in the rule, which if not done, the party on whoſe behalf the rule *niſi* was obtained, may, by counſel on the ſubſequent day, move to make that rule abſolute, which motion being made, counſel on the other ſide may oppoſe it by ſhewing cauſe. See farther as to the practice of *B. R.* relative to motions, 1 *Burr.* 9, 57, 58, 334, 651. 2 *V.* 250, 259, 801.

In the *Chancery*, during term, every *Thurſday* is a day for ſealing, and *motions*; and *Tueſdays* and *Saturdays* are days for *motions*, as are the firſt and laſt days of the term: In vacation, only ſeal days appointed by the Lord Chancellor, are days of *motion*. Practiſ. Solic. 17.

After motion in arreſt of judgment, no motion ſhall be for a new trial, but after motion for a new trial, one may move in arreſt of judgment. 2 *Salk.* 647. *Turbervill* v. *Stamp*.

Each motion muſt be within four days; but where motion is made for a new trial, the court will generally give leave to move in arreſt, after the expiration of the four days, if the motion for the new trial ſhould not be determined within the four days, and a new trial ſhould be denied. It was lately hinted by the court of *B. R.* that the party hath a right to move in arreſt of judgment, after a new trial is refuſed, though more than four days are elapſed; and this ſeems conſonant to reaſon: for till the determination of the motion for a new trial, it would be nugatory to move in arreſt of judgment, as, ſhould a new trial be granted and had, judgment may be for the party moving, and he will have his coſts; whereas, on arreſting judgment, he pays his own coſts.

One ought not to move the court for a thing againſt which they have delivered their opinions. *Trin.* 22 *Car. B. R.* But ought to reſt ſatified with the judgment of the court, and ſubmit thereunto. 2 *L. P. R.* 208. See 15 *Vin. Abr* tit. *Motion*.

Moveables. All ſorts of things moveable are included under the name of things perſonal, or are perſonal eſtate, *i e.* all thoſe things which may attend a man's perſon wherever he goes. See *Black. Com.* 2 *V*. 384.

Moult, Is an old *Engliſh* word for a *mow* of corn, or hay; *mullo fœni*, *&c.* Paroch. Antiq. 401.

Mountebanks. See *Nuſance.*

Mowntee, An alarm or outcry, to mount and make ſome ſpeedy expedition, mentioned in the ſtatutes *Hen.* 5.

Muffulæ, Winter-gloves made of ram-ſkins. *In Leg. H.* 1. *c.* 70. they are called *Muſfluæ*, and ſometimes *Muſſia*.

Mulct, *(Mulcta)* A fine of money ſet upon one, for ſome fault or miſdemeanor; and fines laid on ſhips or goods by a company of trade, to raiſe money for the maintenance of conſuls, *&c.* are called *Mulcts*. Merch. Dict.

Mulier, As uſed in our law, ſeems to be a word corrupted from *melior*, or the Fr. *meliour*; and ſignifies the *lawful iſſue, born in Wedlock*, (though begotten before) preferred before an elder brother born out of matrimony. 9 *Hen.* 6. *c.* 11. *Smith's Repub. Angl. lib.* 3. *c.* 6. But by *Glanvil*, the lawful iſſue are ſaid to be *mulier*, not from *melior*, but becauſe begotten *e muliere*, and not *ex concubina*; for he calls ſuch iſſue *filios mulieratos*, oppoſing them to *baſtards*. Glanv. lib. 7. c. 1. It appears to be thus uſed in *Scotland* alſo; *Skene* ſaying, *mulieratus filius* is *a lawful ſon, begotten of a lawful wife.*

If a man hath a ſon by a woman, *before marriage*, which is a *baſtard* and unlawful, and after he marries the mother of the *baſtard*, and they have another ſon, this ſecond ſon is *mulier* and lawful, and *ſhall be heir to his father*, but the other cannot be heir to any man; and they are diſtinguiſhed in our old books with this addition. *Baſtard eigne*, and *mulier puiſne.* Co. Lit. 170, 243.

Where a man has iſſue by a woman, if he afterwards marries her, the iſſue is *mulier* by the *Civil law*; though not by the laws of *England.* 2 Inſt. 99. 5 Rep. 416. Of ancient time, *mulier* was taken for a wife, as it is commonly uſed for *a woman*, particularly one, not a maid; and ſometimes for a widow; but it has been held, that a virgin is included under the name *mulier* See *Co. Lit.* 170, 243. 2 *Inſt.* 434. See *Baſtard.* And *Black. Com.* 2 *V*. 248.

Mulierty, The being or condition of a *mulier*, or lawful iſſue. *Co. Lit.* 352. *b.*

Mullones fœni, Cocks or ricks of hay. *Paroch. Antiq. p.* 401. Hence in Old Engliſh a *moult*, now a mow of hay or corn. *Cowell.* See *Moult.*

Mulmutin laws. See *Molmution laws.*

Mulneda, A place to build a water-mill. *Mon.* 2 *tom. p.* 284.

Multæ, or **Multura epiſcopi**, Is derived from the Latin word *mulcta*, for that it was a fine given to the King, that the biſhop might have power to make his laſt will and teſtament, and to have the probate of other men's, and the granting adminiſtrations. 2 *Inſt.* 491.

Multiplication of Gold and Silver, Was prohibited and declared to be felony by ſtatute, 5 *Hen.* 4. *c.* 4. Which ſtatute was made on a preſumption that *perſons ſkilful in chymiſtry, could multiply or augment theſe metals, by changing other metals into gold or ſilver*; and the endeavours of ſome perſons in making uſe of extraordinary methods for the producing of gold and ſilver, and finding out the philoſopher's ſtone, were found to be ſo prejudicial to the public, from the laviſh waſte of many valuable materials, and the ruin of many families by ſuch uſeleſs expences, that they occaſioned the ſtatute 5 *Hen.* 4. *c.* 4. But the reſtraint thereby having no other effect, from the unaccountable vanity of thoſe who fancied thoſe attempts practicable, than to ſend them beyond ſea to try their experiments with impunity in other countries, the 5 *Hen.* 4. *c.* 4. was at laſt repealed by 1 *W.* & *M.* *c.* 30. *Dyer* 88. 1 *Hawk. P. C.* 47.

Multitude, *(multitudo)* According to ſome authors muſt be *ten perſons or more:* But Sir *Edw. Coke* ſays, he could never find it reſtrained by the Common law to any certain number. *Co. Lit.* 257.

Multo fortiori, or **A minori ad majus**, Is an argument often uſed by *Littleton*, and is framed thus: If it be ſo in a feoffment paſſing a new right, *much more* it is for the reſtitution of an ancient right, *&c.* *Co. Lit.* 253. and 260 *a.* See *Fortiori.*

Multo, Mutilo, Molto, Muto, Mutto, A mutton or ſheep, or rather a wether, *quia teſticulis mutilati.* Cowell. Brit Cartular. Glaſton. 39.

Multones auri, Pieces of gold money impreſt with an *Agnus Dei*, a ſheep or lamb on the one ſide, and from that figure called *multones*. This coin was more common in *France*, and ſometimes current in *England*, as appears by a patent, 33 *Ed.* 1. cited by the learned *Spelman*, tho' he had not then conſidered the meaning of it.——*Rex tentur Ottoni de Grandiſono in decem millibus* multonum auri. *Cowell.*

Multure, *(molitura* vel *multura)* Signifies the toll that the miller takes for grinding corn. *Cowell.*

Mum, On importation, pays a barrel exciſe 3*s.* by 12 *Car.* 2. *c.* 3. and 3*s.* by 12 *Car.* 2. *c.* 24. and 3*s.* by 4 *W.* & *M.* *c.* 3. and 3*s.* by 5 *W.* & *M.* *c.* 20. *ſect.* 10. and 3*s.* by 4 *Ann.* *c.* 6. *ſect.* 10. and 10*s.* by 12 *Ann.* *ſt.* 1. *c.* 2. *ſect.* 1. and 10*s.* by 30 *Geo.* 2. *c.* 4. *ſect.* 4. Duties how to be levied, 2 *W.* & *M.* *ſeſſ.* 2. *c.* 10. *ſect.* 3. 5 *W.* & *M.* *c.* 20. *ſect.* 11. 4 *Ann.* *c.* 6. *ſect.* 16 30 *Geo.* 2. *c.* 4. *ſect.* 6.

Mum may be exported, and the exciſe how repayable, 1 *W.* & *M.* *ſeſſ.* 1. *c.* 22. *ſect.* 1. Relanding it, what to forfeit, 1 *W.* & *M.* *ſeſſ.* 1. *c.* 22. *ſect.* 2. Exciſe on foreign mum not to be repaid on exportation, 1 *W.* & *M.* *ſeſſ.* 1. *c.* 22. *ſect.* 4.

Mumming, (from the *Tuton. Mummen*, to mimick) Antick diverſions in the *Chriſtmas* holidays, to get *money and good chear.* *Mummers* to be impriſoned, 3 *Hen.* 8. *c.* 9.

Mundbrech, (Is derived from the Sax. *mund*, i. e. munitio, defenſio, & *brice*, fractio) And is mentioned among divers crimes, as *pacis fractio, læſio majeſtatis, &c.* Spelm. Gloſſ. Some would have *mundbrech* to ſignify an infringement of privilege; though of later times it is expounded *Clauſarum fractionem*, a breach of *mounds*, by which name ditches and fences are called in many parts of *England:* And we ſay, when lands are fenced in and hedged, that they are *mounded.*

Munde, Is peace, and *mundebrece* a breach of it. *Leg. H.* 1. *c.* 37.

Mundeburde, *(mundeburdum*, from the Sax. *mund*, i. e. *tutela*, and *bord* or *borh*, i. e. *fidejuſſor. Defenſionis vel patrocinii fidejuſſio & ſtipulatio)* A receiving into favour and protection. *Cowell.*

Mundick. See *Metal.*

Municipal law, According to *Blackſtone* in his *Commentaries*, 1 *V.* 44, *&c.* is, firſt, a *rule:* not a tranſient ſudden order from a ſuperior to or concerning a particular perſon, but ſomething permanent, uniform and univerſal. Therefore a particular act of the legiſlature to confiſcate the goods of *Titius*, or to attaint him of high treaſon, does not enter into the idea of a municipal law: for the operation of this act is ſpent upon *Titius* only, and has no relation to the community in general; it is rather a ſentence than a law. But an act to declare that the crime of which *Titius* is accuſed ſhall be deemed high treaſon; this has permanency, uniformity, and univerſality, and therefore is properly a rule. It is alſo called a *rule*, to diſtinguiſh it from *advice* or *counſel*, which we are at liberty to follow or not, as we ſee proper, and to judge upon the reaſonableneſs or unreaſonableneſs of the thing adviſed: whereas our obedience to the *law* depends not upon *our approbation*, but upon the *maker's will.* Counſel is only matter of perſuaſion, law is matter of injunction; counſel acts only upon the willing, law upon the unwilling alſo.

It is alſo called a *rule*, to diſtinguiſh it from a *compact* or *agreement*; for a compact is a promiſe proceeding *from* us, law is a command directed *to* us. The language of a compact is, "I will, or will not, do this;" that of a law is, "thou ſhalt, or ſhalt not, do it." It is true there is an obligation which a compact carries with it, equal in point of conſcience to that of a law; but then the original of the obligation is different. In compacts, we ourſelves determine and promiſe what ſhall be done, before we are obliged to do it; in law we are obliged to act, without ourſelves determining or promiſing any thing at all. Upon theſe accounts, law is defined to be "a *rule*."

Municipal law is alſo "a rule of civil conduct:" This diſtinguiſhes *municipal law*, from the *natural, or revealed*; the former of which is the rule of *moral* conduct, and the latter not only the rule of moral conduct, but alſo the rule of faith. Theſe regard man as a creature, and point out his duty to God, to himſelf, and to his neighbour, conſidered in the light of an individual. But municipal or civil law regards him alſo as a citizen, and bound to other duties towards his neighbour, than thoſe of mere nature and religion: duties, which he has engaged in by enjoying the benefits of the common union; and which amount to no more than that he do contribute, on his part, to the ſubſiſtence and peace of the ſociety.

It is likewiſe "a rule *preſcribed*;" becauſe, a bare reſolution, confined in the breaſt of the legiſlator, without manifeſting itſelf by ſome external ſign, can never be properly a law. It is requiſite that this reſolution be notified to the people who are to obey it. But the manner in which this notification is to be made, is matter of very great indifference. It may be notified by univerſal tradition and long practice, which ſuppoſes a previous publication, and is the caſe of the Common law of *England*. It may be notified, *viva voce*, by officers appointed for that purpoſe, as is done with regard to proclamations, and ſuch acts of parliament as are appointed to be publicly read in churches and other aſſemblies: It may laſtly be notified by writing, printing, or the like, which is the general courſe taken with all our acts of parliament. Yet, whatever way is made uſe of, it is incumbent on the promulgators to do it in the moſt public and perſpicuous manner; not like *Caligula*, who (according to *Dio Caſſius* wrote his laws in a very ſmall character, and hung them up upon high pillars; the more effectually to enſnare the people. There is ſtill a more unreaſonable method than this, which is called making of laws *ex poſt facto*; when, after an action (indifferent in itſelf) is committed, the legiſlator then for the firſt time declares it to have been a crime, and inflicts a puniſhment upon the perſon who has committed it. Here it is impoſſible that the party could foreſee that an action, innocent when it was done, ſhould be afterwards converted to guilt by a ſubſequent law; he had therefore no cauſe to abſtain from it, and all puniſhments for not abſtaining, muſt of conſequence be cruel and unjuſt. (Such laws, among the *Romans*, were denominated *privilegia*, or private laws, of which *Cicero (de leg.* 3. 19. and in his oration *pro domo,* 17.) thus ſpeaks: *Vetant leges ſacratæ, vetant duodecem tabulæ, leges privatis hominibus irragari; id enim eſt privilegium. Nemo unquam tulit, nihil eſt crudelius, nihil pernicioſius, nihil quod minus hæc civitas ferre poſſit.)* All laws ſhould be therefore made to commence *in futuro*, and be notified before their commencement, which is implied in the term "*preſcribed*." But when this rule is in the uſual manner notified, or preſcribed, it is then the ſubject's buſineſs to be thoroughly acquainted therewith; for, if ignorance of what he might know, were admitted as a legitimate excuſe, the laws would be of no effect, but might always be eluded with impunity.

But farther: municipal law is "a rule of civil conduct preſcribed *by the ſupreme power in a ſtate*." For legiſlature, as was before obſerved, is the greateſt act of ſuperiority that can be exerciſed by one being over another. Wherefore, it is requiſite to the very eſſence of a law, that it be made by the ſupreme power. Sovereignty and legiſlature are indeed convertible terms, one cannot ſubſiſt without the other.

Muniment-houſe, *Munimen:)* In cathedral and collegiate churches, caſtles, colleges, or ſuch, is a houſe or little room of ſtrength purpoſely made for keeping the ſeal, evidences, charters, &c. of ſuch church, college, &c. ſuch evidences being called *muniments*, corruptly *miniments*, from *munio*, to defend; becauſe inheritances and poſſeſſions are *defended* by them. 3 *Inſt.* 170.

Muniments, *(Munimenta) Epiſcopus itaque cum* Munimentorum *inſpectionem habere non potuit.* Mat. Paris, 311. See *Miniments*.

Munimina, Are the grants or charters of Kings to churches; ſo called, becauſe *cum eis muniuntur* againſt all perſons who would deprive them of thoſe privileges. *Blount*.

Munus Eccleſiaſticum, Signifies the conſecrated bread, out of which a little piece is taken for a communicant——*Inſuper & omne ſacrificium quod nos dicimus* Munus Eccleſiaſticum, &c. Mon. Angl. tom. 2. p. 838.

Murage, *(Muragium)* Is a reaſonable toll, to be taken of every cart and horſe coming laden through a city or town, for the building or repairing the public walls thereof, due either by grant or preſcription: It ſeems to be a liberty granted to a town by the King, for the collecting of money towards walling the ſame. 3 *Ed.* 1. *c.* 30. 2 *Inſt.* 222. The ſervice of work and labour done by inhabitants and adjoining tenants in building or repairing the *walls* of a city or caſtle, was called *murorum operatio*; and when this perſonal duty was commuted into money, the tax ſo gathered was called *Murage*. Paroch. Antiq. 114. And, in the city of *Cheſter*, there are two ancient officers called *Murengers*, being two of the principal aldermen, yearly choſen to ſee the *walls* kept in good repair; for the maintenance of which they receive certain tolls and cuſtoms.

Murale, The city wall.——*Reſonabant Colles reſonabant urbis* Muralia. *Huntingd. lib.* 8. *pag.* 392.

Muratio, A town or borough, ſurrounded with walls. *Brompt. Vit. K. Steph.*

Murder, *(Murdrum*, from the Sax *Morth*, whence, (as it is ſaid) comes the barbarous *Latin Mordrum, & Murdrum*; in *French Meurdre*, though the word *Murdrare*, evidently comes from the *Latin Morti dare)* Is a word in uſe long before the reign of King *Canutus*, which ſome would have to ſignify a violent death; and ſometimes the *Saxons* expreſſed it by *morthdæd & morthweorc*, a deadly work: But the Sax. *morth* relates generally to *mors*.

See *Black. Com.* 3 *V.* 321. upon this word *murdrum*, where he juſtly obſerves, that it was neceſſarily framed to expreſs a particular offence, ſince no other word in being was ſufficient to expreſs the *intention* of the criminal, or *quo animo* the act was perpetrated.

Anciently, *murder* ſignified only the private killing of a man, as appears by the laws of King *Hen.* 1. And it was not *murder*, except the party ſlain was an *Engliſhman*, and no foreigner; though by the *ſtat.* 14 *Ed.* 3. *c.* 4. the killing of any *Engliſhman* or foreigner, living under the King's protection, through malice prepenſe, and whether committed openly or ſecretly, is declared to be *murder*, S. P. C. lib. 1. c. 1. And doubtleſs the makers of the ſtatute of 23 *H.* 8. *c.* 1. which excludes all wilful *murder* from the benefit of clergy, intended to include *open*, as well as *private* homicide within the word *murder*. 1 Hawk. P. C. 78.

By *murder* at this day, we underſtand *the wilful and felonious killing of any man whatſoever, upon malice forethought*; ſo as the party wounded or hurt die *within a year and a day after the fact*: And if one dies in that time, through diſorderly living, it ſhall be no excuſe, *the wound will be judged the principal cauſe of his death*; but if one wounded die after that time, the law will preſume he died a natural death. 3 *Inſt.* 53. *H. P. C.* 55. *Kel.* 26. If a man receive a wound that is not mortal; but either for want of help, or by neglect, it turns to a fever, &c. which cauſes the party's death, it is *murder*: So it is, where a man has ſome diſeaſe, which poſſibly would terminate his life in half a year, and another wounds him, that it haſtens his end, &c. But if, by ill applications of the party, or thoſe about him, of unwholeſome medicines, the wounded perſon dies; if this plainly appears, it is not *murder*, by *Hale. Hiſt. P. C.* 428.

Murder may be committed by weapon, poiſon, cruſhing, bruiſing, ſmothering, ſtrangling, ſtarving, &c. And where a perſon having malice to another, ſtrikes or ſhoots at him, but miſſeth him and kills one *not intended*; or if one lays poiſon to kill a perſon, and another takes it, and dies, theſe are *murder:* Alſo if a ſick man be laid in the cold, whereof he dieth, or an infant is laid under leaves or trees, &c. and ſuffered to be deſtroyed by vermin, it is a *killing*. 3 Inſt. 51. 9 Rep. 81. If a perſon ſtir up a dog accuſtomed to bite, *knowing it to be ſuch*, and it kill a perſon; and if a man have an ox, or horſe, which he *knows to be miſchievous*, by being uſed to gore or ſtrike at thoſe who come near them, and do not tie them up, if they kill a man, (according to ſome opinions) the owner may be indicted, as having himſelf feloniouſly killed him. *Pult*. 122. *H. P. C.* 53. 1 *Hawk. P. C.* 79.

Anciently it was holden, that the cauſing an abortion, by giving a potion to, or ſtriking a woman big with child, was *murder:* But it is ſaid now to be a great miſpriſion only, and not *murder*, *unleſs the child be born alive*, and die thereof. 1 *Hawk*. 80. If the death of a baſtard child newly born be concealed, it ſhall be ſuppoſed to be *murdered*; if the mother doth not prove it was born dead. *Stat*. 21 *Jac*. 1. *c*. 27. And if one by dureſs of impriſonment compel a man to accuſe an innocent perſon, who, on his evidence, is condemned and executed; in judgment of law it is killing of the compeller, &c. *S. P. C.* 36. 3 *Inſt*. 91.

All the above caſes ſhew malice; ſo where a priſoner, by dureſs of the gaoler, comes to an untimely end; if one is executed contrary to the direction of the law; or if a perſon kill a man adjudged to death; or one who hath no authority ſhall execute the judgment; if a perſon ſentenced to be whipped, is whipped with that rigour that he dieth of it, &c. But one under the age of diſcretion, or *non compos mentis*, cannot be guilty of *murder*; though if it appears by circumſtances, that the infant did hide the body, &c. *it is felony*. H. P. C. 43. 3 Inſt. 4, 6, 54.

See the caſe of *William York*, at *Bury*, Summer aſſiſes in 1748. *Foſter's Rep*. 70, &c. before referred to in this work under *Infant*.

If an infant under twelve years old, hath an extraordinary wit, that *it may be preſumed he knows what he does*, and he kill another, it may be felony and *murder*; otherwiſe it ſhall not. 3 *H* 7. 13. *Plowd*. 191.

See the caſe of *William York* before referred to. *Foſter* 70, &c. It is *malice makes the crime of murder*, which is either *expreſs* or *implied*; it is *expreſs*, when it may be evidently proved there was formerly ſome ill will, and the killing is with *a ſedate mind*, and formed deſign of doing it: And *implied*, where one kills another ſuddenly, having nothing to defend himſelf; as going over a ſtile, or the like. 3 *Inſt*. 51. *H. P. C.* 47.

Murder occaſioned through an expreſs purpoſe to do ſome perſonal injury to him who is ſlain, is properly ſaid to be of expreſs malice: Such as happens in the execution of an unlawful action, principally intended for ſome other purpoſe, and *not expreſſed in its nature to do a perſonal injury* to him in particular that is killed, is moſt properly malice implied. *Kel*. 129, 130. He who doth a cruel and voluntary act, whereby death enſues, doth it of malice prepenſed in the eſteem of the law: And if a perſon *in cool blood*, maliciouſly and *deliberately* beats another in ſuch a manner, *beyond any apparent intent of chaſtiſement*, that he dieth, it is murder by expreſs malice, although he did not deſign to kill him. *H. P. C.* 49, 50. *Kel*. 64, 127, 135.

But if a perſon on any provocation beat another ſo, that it may plainly appear he meant not to kill, but only to chaſtiſe him; or if he reſtrains himſelf till the other hath put himſelf on his guard, and then in fighting with him killeth him, he will not be guilty of murder, but manſlaughter. 1 *Hawk. P. C.* 82. See *Foſter's Rep*. 262.

When one executes his revenge, upon a ſudden provocation, in ſuch a cruel manner, *with a dangerous weapon*, as ſhews a malicious intention to do miſchief; and death enſues, it is expreſs malice and murder from the nature of the fact. *Kel*. 55, 61, 65, 130. A man chided his ſervant, and upon ſome croſs anſwer given, he having a hot iron in his hand ran it into the ſervant's belly, of which he died, this was adjudged murder. *Kel*. 64.

If a perſon is treſpaſſing upon another, by breaking his hedges, &c. and the owner upon ſight thereof take up a hedge-ſtake, and give him a ſtroke on the head, whereof he dies, this is murder, becauſe *it is a violent act beyond the proportion of the provocation*. H. P. C. And where a boy was upon a tree in a park cutting of wood, and the keeper bid him come down, which he did; and then the keeper ſtruck him ſeveral blows with a cudgel, and afterwards *with a rope tied him to his horſe's tail*, and the horſe ran away with him and killed him; this was held to be murder out of malice, the boy having come down at the keeper's command. *Cro. Car.* 139. *H. P. C.*

A man's ſon was beaten, and complaining of it to his father, the father in anger beat the other boy with a cudgel whereof he died; the law ſhall adjudge it to be upon that ſudden occaſion, and ſtirring of blood, that he made the aſſault, and *not upon malice* unleſs it be found; and if the diſtance of the place where his ſon complained was a mile, it is not material, being all upon one paſſion. *Cro. Jac*. 296. And it is the ſame in caſe of a brother, couſin, ſervant, &c. it is only manſlaughter, not murder. 2 *Lil*. 211.

If two having *malice* fight, and the ſervant of one of them, not knowing of the malice, killeth the other, this is murder in the maſter, and manſlaughter in the ſervant: Though if there be a conſpiracy to kill a man, but *no malice* againſt his ſervant; if the ſervant be ſlain, the malice againſt the maſter ſhall be conſtrued to extend to his ſervant: and the killing the ſervant is murder. *Dyer* 128. 1 *Moor*. If two perſons meet and fight, *in cool blood on a precedent quarrel*, and one is killed: or if a perſon in a ſudden quarrel appears to be *maſter of his temper*, and kills another, it is murder. 1 *Hawk. P. C.* 81. For where two perſons fight, after a former quarrel, it may be preſumed to be out of malice; and when two men fall out in the morning, and meet and fight in the afternoon, if one of them is killed, this is murder; their after-meeting is of malice. *Plowd*. 474.

If a man upon a quarrel with another, tells ſuch other that he will not ſtrike him, but will give him a pot of ale to ſtrike firſt, and thereupon the other ſtrikes him, and he kills the other, he is guilty of murder; this *being only a cover to his malicious intention*. H. P. C. 48. And where a perſon kills another, it ſhall be intended of malice; if he prove not the contrary. *Kel*. 27. A man aſſaults another perſon with malice, although he be afterwards driven by the other to the wall, and kill him there in his own defence, he is guilty of murder, in reſpect of his firſt intent. *H. P. C.* 47. *Kel*. 58, 129. But if the party aſſaulted fly to the wall, and being ſtill purſued, kills the other, it is only *manſlaughter in his own defence*. Bract. 3 Ed. 3. If one reſolves to kill the next man he meets, and doth kill him, it is *murder*; here malice is implied againſt all mankind. *Kel*. 27.

By poiſoning, and where one killeth another without provocation, malice is implied; as where any magiſtrate or miniſter of juſtice is killed in the execution of his office; *a* ſheriff, conſtable or watchman, doing their duty; or any other that comes in aid of the King's officer; and if a watchman be killed in ſtaying of night-walkers, it is ſaid to be *murder*. 3 Inſt. 51. Cro. Jac. 280. Kel. 60, 128. In theſe caſes, it is a very high contempt of the laws, for a perſon to execute his revenge againſt thoſe who have no way offended him but by doing their duty; and he cannot come off by alledging that what he did was in a ſudden affray, &c. 1 *Hawk. P. C.* 84.

And if a baliff is killed in executing a lawful warrant, &c. it is *murder:* Nor is it any excuſe to the perſon, that the proceſs was erroneous; or that the arreſt was in the night; that the officer did not tell him for what cauſe he arreſted him; or that he did not ſhew his warrant, &c. being a bailiff commonly known. 9 *Rep*. 68, 69. *Cro. Jac*. 280, 486. But if a bailiff who is not executing his office is killed, it is not *murder*; for he ought to be duly executing his office, by ſerving the proceſs of the law, wherein he is aſſiſted *cum poteſtate Regis & Legis*. Cro.

Car. 537. 2 Lill. Abr. 212. Therefore where the warrant by which he acts gives him no authority to arreſt the party; as where a bailiff arreſts a wrong perſon, or *J. S.* a baronet, by force of a warrant to arreſt *J. S.* knight; or if a good warrant is executed in an unlawful manner; as if a bailiff be killed in breaking open a door, or window, to arreſt a man; or perhaps if he arreſt one on a *Sunday*; ſince the *ſtat.* 29 *Car.* 2. *c.* 7. by which all ſuch arreſts are made unlawful, and he is ſlain; malice ſhall not be implied to make it *murder*, but ſhall be manſlaughter only. *H. P. C.* 46. *Cro. Car.* 372. 12 *Rep.* 49. 1 *Hawk.* 86. If bailiffs come to a houſe to arreſt a perſon, and the houſe being locked they attempt to break in, whereupon the ſon of the perſon intended to be arreſted, ſhoots and kills one of them, it is not *murder*. *Jones* 429. See *Foſter's Rep.* 135, 138, 270, 308, 312, 318, 321.

A perſon was arreſted, and another not knowing the cauſe of the ſtruggle, but ſeeing ſwords drawn, and to prevent miſchief, came and defended the party arreſted, and in the ſcuffle the bailiff was killed; it was reſolved to be no *murder* in the perſon doing it, but that all that were preſent and aſſiſting, *knowing of the arreſt*, were principal *murderers*. *Kel.* 86. Tho' it has been held in ſuch a caſe, that the perſon offending is guilty of *murder*, whether he knew that the perſon ſlain were an officer or not; for *all fighting is unlawful*, and he who, ſeeing perſons engaged in it, takes part with one ſide, and fights in the quarrel *without knowing the cauſe of it*, eſpecially where the fight is begun in oppoſition to the juſtice of the nation, ſhews a readineſs to break thro' the laws on a ſmall occaſion, and muſt at his peril take heed what he doth. 1 *Sid.* 160. *Noy* 50. 1 *Hawk.* 85.

If one attack another to rob him, and by the reſiſtance of the party kills him, this is *murder*. 3 *Inſt.* 52. *Dalt.* 344. A perſon ſtands by and encourages or commands another to *murder* a man; or if he come with others on purpoſe to kill him, and ſtand by while the other perſons commit the fact: It will be *murder* in them all. *Plowd.* 98. 11 *Rep.* 5. And if two or more perſons come together to do an unlawful act, as to beat a man, rob a park, *&c.* and one of them kills a perſon, this is *murder* in all preſent, aiding or aſſiſting, or that were ready to aid and aſſiſt: All will be ſaid to intend the *murder*. 3 *Inſt.* 56. *Dalt.* 347. *H. P. C.* 31. And ſuch perſons will be judged to be preſent who are in the ſame houſe, tho' in another room, or in the ſame park, altho' half a mile off, *&c.* *H. P. C.* 47. *Kel.* 87, 116, 127.

Several perſons having conſpired to enter the King's park, and to hunt and carry away deer, *with deſign of killing any one that ſhould oppoſe*] *them*; tho' the keeper's ſervant began the aſſault, and required them firſt to ſtand, whereupon they fled, and one of the keeper's men diſcharged a piece at them, and they continued their flight until he laid violent hands upon one of the offenders, and then, and not before, they killed one of the keeper's ſervants, this was held to be *murder*; as they were doing an unlawful act, the law implies malice, and they ought not to have fled, but to have ſurrendered themſelves. *Roll. Rep.* 20.

By *ſtatute murder* ſhall not be adjudged where it is found by miſadventure, *but when it is done with a felonious intent*. 52 H. 3. c. 25. Offenders for *murder* and acceſſaries being indicted, *may be arraigned at any time within the year at the King's ſuit*, and if the principal or acceſſary be acquit, yet the juſtices ſhall not ſuffer them to go at large, but either remand them to priſon, or let them be bailed, *until the year and day be out*, allowed for an appeal. 3 *H.* 7. *c.* 1. All trials for *murder* muſt be *in the county where the fact was committed*, by the Common law. *Cro. Car.* 247. But if a perſon be wounded by a ſtroke given in one county, and he dieth in another county, the indictment may be found in the county *where the party dies*, which ſhall be as well as if the ſtroke had been given in the ſame county. Statute 2 & 3 *Ed.* 6. *c.* 24. The killing muſt be in ſome county; for if the *murder* be done out of the realm, it cannot be determined by the Common law, but muſt be determined by the conſtable and marſhal, *&c.* 3 *Inſt.* 48. *H. P. C.* 54. See the ſtatute 2 *Geo.* 2. *c.* 21. for trial of murders, where either the ſtroke or death happens in *England*.

Murder is to be *expreſly found*, not by intendment, *&c.* And where the matters on the finding of the jury, are no more than weak evidence thereof, the court ought not to give judgment on that, but upon the facts ariſing from it. *Fitzgib.* 187. *Mich.* 4 *Geo.* 2. When one is *murdered* in the day-time, and the *murderer* eſcapes untaken, the townſhip, that ſuffers it, ſhall be amerced. 3 *H* 7. *c.* 1. If one who ſees a *murder* done, does not his beſt endeavours to apprehend the *murderer*: Or if where two are fighting, and others looking on do not endeavour to part them, if one is killed, the lookers on may be indicted and fined. 3 *Inſt.* 53. *Noy* 50. And killing any perſon endeavouring to part others fighting, tho' without any evil intention againſt him, is *murder*.

For the *ſentence* to be paſſed on perſons convicted of *murder*, ſee the end of the next *head*, See *Duelling*, *Homicide*, *Manſlaughter*, *&c.* See alſo *Trial*. See *Foſter's* diſcourſe on murder *per tot. Rep. fol.* 307. And *Black. Com.* 4 *V.* 138, 194, 196, 393.

Where a murder is committed abroad the principal may be ſued in any county in England, by commiſſioners appointed by the King. 33 H. 8. c. 23.

Murder, *or homicide juſtifiable.* There is a killing that is juſtifiable; as if a perſon attempts to commit *murder*, robbery or other felony, a man or any of his ſervants may lawfully kill him. 2 *Inſt.* 316. See ſtatute 24 *H.* 8. *c.* 5. If a perſon in defence of the poſſeſſion of a room in a public houſe kill another who attempts to turn him out of it, killing the aſſailant hath been holden to be juſtifiable. *Kel.* 51. 1 *Hawk.* 83. In the defence of the poſſeſſion of a man's goods, againſt him that would wrongfully take them away, killing cannot be juſtified; *except he be a thief*. Wood's Inſt. 361. If a woman kills a man attempting to raviſh her, it is juſtifiable. *H. P. C.* 39.

Thoſe who are engaged in a riot, or forcible entry, *&c.* ſtanding in oppoſition to a juſtice's command, or lawful warrant: Or if treſpaſſers in a foreſt or park, will not ſurrender, but defend themſelves: If a felon will not ſuffer himſelf to be arreſted, and refuſing to obey any arreſt on lawful warrant, defends himſelf; or if one either with or without a warrant purſues a felon upon hue and cry, and he flies for it: If a priſoner aſſaults thoſe who conduct him to gaol, or his gaoler, in endeavouring to eſcape; or a perſon arreſted, reſiſt the ſheriff, *&c.* the *killing theſe is juſtifiable*; but a ſheriff cannot kill one who flies from the execution of a civil proceſs: And as no private perſon hath this authority, upon an arreſt in a civil matter, as he hath upon an arreſt for felony; ſo neither hath the ſheriff this power in criminal caſes, *but upon a neceſſity*; as when an offender cannot be taken without killing, *&c.* for if he might be taken without killing him, it will be eſteemed *murder*. 3 *Inſt.* 56, 221. *H. P. C.* 37. *Dalt.* 150, 355. *Kel.* 28.

When one in danger of drowning, thruſts another from a plank, whereby he is drowned; this is juſtifiable. *Bac. Max.* 25. And there is a *homicide* or *killing excuſable*, where a man kills another merely in his own defence, called *ſe defendendo*. A perſon *indicted* for *intending to murder* the Maſter of the Rolls, *Term. Mich.* 16 *Car.* 2. and for offering a ſum of money to another perſon to do it, ſaying at the ſame time, that "*if he would not perpetrate the crime, he would do it himſelf*;" upon his conviction, the court declared that this was a heinous offence, and not only indictable, but fineable, and the offender was fined *one thouſand marks*, committed to priſon for three months, and ordered to find ſureties for his good behaviour during life. 1 *Lev.* 146.

Firing a piſtol out of a chaiſe into the ſtreet, and *by accident*, death enſuing, held manſlaughter. *Strange* 481. A defendant arreſted, ſtrikes at the officers, they afterwards kill him, held manſlaughter. *Strange* 499.

By *Stat.* 25 *Geo.* 2. *c.* 37. Perſons found guilty of *wilful murder* ſhall be executed on *the day next but one after ſentence paſſed*, unleſs the ſame happen on a Sunday, and then on the Monday. The body, (if executed in *London* or *Middleſex*,) to be delivered to *the ſurgeons company*

pany to be anatomized, if in any other county, to ſuch ſurgeon as the judge ſhall direct for that purpoſe. The ſentence to be pronounced *in open court immediately after conviction with the time for execution and the marks of infamy hereby directed.*

If there be reaſonable cauſe, the judge may ſtay execution. The judge may order the body of the murderer to be *hung in chains*, but *in no caſe to be buried*, unleſs after diſſection. After conviction the priſoner to be confined *ſeparate* and *apart* from other priſoners, and *no perſon but the gaoler, &c. to have acceſs to the priſoner* without licence from the judge, ſheriff or under-ſheriff. Where the judge ſhall ſee cauſe to reſpite execution, he may relax the ſaid reſtraints. And *after ſentence until execution* the priſoner to be fed with *bread and water*, except on receiving the ſacrament, and in caſe of violent wounds or ſickneſs, *&c.* Vide *Homicide*. Under that head ſome of the caſes cited under murder will be found, but as it is a title of conſequence, the reader may not diſapprove a *repetition*.

Murorum operatio, The ſervice of work and labour done by inhabitants and adjoining tenants in building or repairing the walls of a city or caſtle. From which duty ſome were exempted by ſpecial privilege. So King *Henry* the Second granted to the tenants within the honour of *Wallingford*.——*Ut quieti ſint de operationibus caſtellorum & murorum*. Paroch. Antiq. pag. 114. When this perſonal duty was commuted into money, the tax ſo gathered, was called *murage*. Cowell.

Muſcovy Company of Merchants, eſtabliſhed by King *Ed.* 6. This company trades to *Ruſſia* and the north; and any ſubject of *England*, on requeſt, may be admitted into it, and enjoy all privileges, paying only the ſum of 5*l.* by *Stat.* 10 & 11 *W.* 3. *c* 6. In order to open a trade to *Perſia* thro' *Muſcovy*, a late ſtatute has ordained, that all perſons free of this company may import from any place in *Ruſſia*, raw ſilk or other commodities of *Perſia*, purchaſed by barter with woollen manufactures exported from *England, &c.* 14 *Geo.* 2. *cap.* 36.

Muſicians. The *muſicians of England* were incorporated by King *Charles* 2. *anno* 1670. And of late years all foreign *muſick*, opera's, *&c.* have very much increaſed, through the management of this corporation, and the ſoftneſs and politeneſs of our modern gentry. See *Minſtrels*.

Muſlins. For the duties on, and other matters relating to them, ſee *Stat.* 11 & 12 *W.* 3. *c.* 3. 3 & 4 *Ann. c.* 4. 12 & 13 *W.* 3. *c.* 11. 7 *Geo.* 1. *c.* 21. 10 *Ann. c.* 29. See *Linen*.

Muſſa, (Lat.) A moſs or marſh ground; alſo a place where ſedge grows; a place over-run with moſs. *Cowell*, Mon. 1 tom. pag. 426.

Muſter, (From the Fr. *Mouſtre*) Is to ſhew men, and their arms, that are ſoldiers, and inrol them in a book. *Terms de Ley. Faire* mouſtre *general de tout ſon armie*, is as much as *luſtrare exercitum*; the ſignification being well known to *muſter an army*: And *muſtered of record* is to be inrolled in the number of the King's ſoldiers. *Stat.* 18 *H.* 6. *c.* 19. If any men commanded to *muſter*, by thoſe who have authority, abſent themſelves, or do not bring their beſt arms, they ſhall be impriſoned ten days, or pay a fine of 40 *s.* by 4 & 5 *P. & M.* 3. See *Soldiers*.

Muſter-Maſter general, Mentioned in the 35 *Eliz. c.* 4. See *Maſter of the King's Muſters*.

Muta Canum, (Fr. *Meute de Caiens*) Signifies a kennel of hounds, in ancient records: And the King, at a biſhop's and abbot's deceaſe, had ſix things. 1 *Optimum equum ſive palefridum ipſius epiſcopi, &c.* 2. *Unum chlamydem ſive clocam cum capella.* 3. *Unum ciphum cum coopertorio.* 4. *Unum pelvem cum lavatorio.* 5. *Unum annulum aureum.* 6 *Necnon* mutam canum; *quæ ad dom. regem, ratione prerogativæ ſuæ ſpectant & pertinent.* Hill. 2 Edw. 2. in Stat. poſt Mortem Epiſc. Bath & Willenſ. & Clauſ. 30 Ed. 1. M. 16. Vide *Mortuary*, and *Black. Com.* 2 *V.* 427.

Mutare, To mew up hawks, in the time of their molting or caſting their plumes. In the reign of King *Ed.* 2 the manor of *Broughton in Com. Oxon.* was held ——*Per ſerjeantiam* mutandi *unum hoſtricum domini regis, &c.* Paroch. Antiq. 560. *Mutatus accipiter* is a mewed hawk: And hence the *Mews (Muta Regia)* near *Charing-Croſs, London*, now the King's ſtables, was formerly the falconry or place for the King's hawks.

Mutatorius, Change of apparel. *Mat. Par. Ann.* 1107.

Mutatus accipiter, A mewed hawk. *Cowell*.

Mute, (*Mutus*) One dumb, who cannot or refuſes to ſpeak. And by our law a priſoner may ſtand *mute* two ways:

1. When he ſpeaks not at all, and it ſhall be enquired whether he ſtand *mute* out of *malice*, or by the *act of God*; and if by the *latter*, then the judge ought to enquire whether he be *the ſame perſon*, and of all pleas which he might have pleaded in his defence, if he had not been *mute*.

2. When the priſoner pleads not directly, or *will not* put himſelf upon the inqueſt to be tried; and a perſon *feigning* himſelf *mad*, and refuſing to anſwer, ſhall be taken as one who ſtands *mute*. 2 *Inſt. H. P. C.* 226.

Alſo if a priſoner on his trial peremptorily challenge above the number of jurors allowed by law, this being an implied refuſal of a legal trial, he ſhall be dealt with as one who ſtands *mute*, and according to ſome opinions be hanged. *H. P. C.* 259. *Kel.* 36. 2 *Hawk.* 327. A felon obſtinately ſtanding *mute* is to be put to the penance of *paine forte & dure*: In caſe of high treaſon where the offender ſtands *mute*, he ſhall have judgment and forfeit lands and goods, as if he had been attainted; likewiſe in the caſe of felony and petit treaſon, if a perſon by ſtanding *mute* do not avoid being attainted for ſuch crimes, he ſhall forfeit his lands and goods in the ſame manner as on other attainders: tho' whenever a perſon ſtanding *mute* is adjudged to his penance for felony, and thereby prevents that attainder which otherwiſe he might have incurred, he forfeits his *chattels only*, and not his lands. 2 *Hawk. P. C.* 330, 331.

It is ſaid by Sir *Matth. Hale*, that an appellee of felony ſtanding *mute* ſhall be executed, and not have judgment of penance; but the contrary hath been held by others. *H. P. C.* 226. *S. P. C.* 150. 2 *Inſt.* 178. *Kel.* 37. One who ſtands *mute* ſhall have the benefit of clergy, unleſs it be otherwiſe ſpecially provided by ſome ſtatute. And altho' it be enacted by 3 & 4 *W. & M. c.* 9. That if any perſon ſhall be indicted of any offence, for which by virtue of any former ſtatute, he is excluded from the benefit of his clergy, if he had been thereof convicted by verdict or confeſſion, if he ſtand *mute* he ſhall not be admitted to the ſame; yet appeals, and offences excluded from the benefit of clergy, by ſubſequent ſtatutes, ſeem not within that act: And a ſtatute taking away the benefit of clergy generally from thoſe who are convicted of a crime, doth not take it away from thoſe who ſtand *mute* on an indictment or appeal. 2 *Hawk.* 332. But ſee the ſtatutes 25 *H.* 8. *c.* 3. and 5 & 6 *Ed.* 3. *c.* 10. Whereby it is enacted that thoſe who are indicted of offences for which the benefit of clergy is not to be allowed, ſhall not have their clergy if they ſtand mute, *&c.*

Hawkins ſays, that the manner of inflicting this puniſhment may be beſt found from the books of entries and other law books, all of which generally agree, that *the priſoner ſhall be remanded to the place from whence he came*, and put into ſome *low dark room*, and there *laid on his back without any manner of covering*, except for the privy parts, and that *as many weights be laid upon him as he can bear, and more*, and that he ſhall have no manner of ſuſtenance but *the worſt bread and water*, and that he ſhall *not eat the ſame day in which he drinks*, nor *drink the ſame day on which he eats*, and that he ſhall ſo continue *till he die*. But that it is ſaid that anciently the judgment was not, that he ſhould continue until he ſhould die, but *until he ſhould anſwer*, and that he might ſave himſelf from the penance by putting himſelf upon his trial, which he cannot do at this day after judgment of penance once given. 2 *Hawk. Pl. C.* 330. *cap.* 30. *ſ.* 16.

And there in the margin, the ſerjeant, as to the *remanding him to the place whence he came*, cites H. P. C. 227. *S. P. C.* 150. (E). *Keilw.* 70. *a.* 4 *Ed.* 4. 11.

pl. 18. 14 *Ed.* 4. 8. *pl.* 17. *Abr. Br. Corone* 160. 2 *Inſt.* 178. *Ra. Ent.* 385. *pl.* 17. 8 *Ed.* 4. 1. *pl.* 2.

And as to the words *in ſome low dark room*, he ſays, that this clauſe is omitted in *Keilw.* 70. *a.* 4 *Ed.* 4. 11. *pl.* 18. But is mentioned in all the other books above cited, but with this difference, that 14 *Ed.* 4. 11. *pl.* 17. ſays only he ſhall be put *in a chamber*, without adding that it ſhall be low or dark.

And as to the words *there laid on his back, etc.* he ſays, that in this all the books above cited ſeem to agree. And 14 *Ed.* 4. 8. *pl.* 17. and *S. P. C.* 150. (E), and 2 *Inſt.* 178. add, that he ſhall lie without any litter or other thing under him, and that *one arm ſhall be drawn to one quarter of the room with a cord, and the other to another*, and that his *feet* ſhall be uſed in the ſame manner. But that theſe clauſes are wholly omitted in all the other books above cited, except *H. P. C.* which takes notice of the latter of them only. And *Ra. Ent.* 385. *pl.* 2. adds, that *an hole ſhall be made for the head.* And *Keilw.* 70. *a.* ſays, that *the head ſhall not touch the earth*; but none of the other mention either of theſe clauſes.

And as to the words, *that as many weights ſhall be laid upon him as he can bear, and more, etc.* he ſays, that in this all the books above cited agree.

And as to the word *bread*, he ſays that 14 *Ed.* 4. 8. *pl.* 17. *S. P. C.* 150. (E), and 2 *Inſt.* 178. are, that he ſhall have *three morſels* of barley bread a day. *Keilw.* 70. *a.* that he ſhall have only rye bread, and *Ra. Ent.* 385. *pl.* 2. and 2 *Hen.* 4. 1. *pl.* 2. generally, that he ſhall have the *worſt bread.*

And as to the word *water*, he ſays, that in 14 *Ed.* 4. 8. *pl.* 17. *S. P. C.* 150. (E), 2 *Inſt.* 178. and 8 *Hen.* 4. 1. *pl.* 2. and *Keilw.* 70. *a.* are, that he ſhall have *the water next the priſon*, ſo that it be *not current*; but *Ra. Ent.* 385. *pl.* 5. is general, that he ſhall have *the worſt water.*

And as to the words, *not eat the ſame day in which he drinks, nor drink the ſame day on which he eats, etc.* he ſays, this is omitted in *Keilw.* 70. *a.* and in 8 *Hen.* 4. 1. *pl.* 2.

And as to the words *till he die*, he ſays, this is omitted in none of the books above cited, except 14 *Ed.* 5. [4.] 11. and *H. P. C.* 227. But that neither of theſe books give the whole judgment at large. *Hawk. Pl. C.* 330, 331. *cap.* 3.

By 12 *Geo.* 3. *c.* 20. Every perſon, who being arraigned for felony or piracy, ſhall ſtand *mute*, or not anſwer directly to the offence, ſhall be convicted of the ſame; and the ſame judgment and execution (with all their conſequences in every reſpect) ſhall be thereupon awarded, as if the perſon had been convicted by verdict or confeſſion of the crime. And, as obſerved by *Blackſtone*, ſtanding mute in all caſes, now amounts to a conſtructive confeſſion. *Com.* 4 *V.* 329.

To *adviſe* a priſoner to ſtand *mute*, is an high miſpriſion, a contempt of the King's court, and puniſhable by fine and impriſonment. *Black. Com.* 4 *V.* 126.

For more learning on this ſubject, ſee 15 Vin. Abr. *tit.* Mute, *and ſee* Obſervations on the Statutes, chiefly ancient, *etc. p.* 51—54. and *Black. Com.* 4 *V.* 319.

Mutilation, The depriving a man of any *member, etc.* The law pardons even *homicide*, if committed *ſe defendendo*, in order to preſerve even a *member, etc.* Black. Com. 1 V. 130. It renders void any deed executed thro' fear of *mayhem, ib.*

Among the *defenſive members*, conſidered as ſuch, by the common law, are reckoned not only arms and legs, but a finger, an eye, and a foretooth, and alſo ſome others. *Finch. L.* 204. 1 *Hawk. P. C.* 111. The ſame remedial action of *treſpaſs vi et armis* lies alſo to recover damages for this injury, an injury, which (when wilful) no motive can juſtify but neceſſary ſelf-preſervation. If the ear be cut off, treble damages are given by the *Stat.* 37 *H.* 8. *c.* 6. though this is not mayhem or *mutilation* at common law. And here it may not be improperly obſerved, that excluſive of the *civil* remedy, an indictment may be brought; and frequently both are accordingly proſecuted; the one at the ſuit of the crown for the crime againſt the public; the other at the ſuit of the party injured, to make him a reparation in damages. *vide Black. Com.* 3 *V.* 121, the act called the COVENTRY act, 22, 23 *Car.* 2. *c.* 1. and title *Maihem.*

For ſome offences (tho' ſeldom done) the law puniſhes with *mutilation*, or diſmembring, by cutting off the hand, or ears. *Black. Com.* 4 *V.* 370.

Mutiny. See *Soldiers*, and the *Mutiny Act.*

Mutton and Lamb, Not to be imported, 30 *Car.* 2. *c.* 2.

Mutual Debts, ſee *Debts* and *Debtors.* Mutual debts, tho' of different natures, may be ſet againſt each other, *vide* 2 *Geo.* 2. *c.* 22. 8 *Geo.* 2. *c.* 24. See alſo *Black. Com.* 3 *V.* 305. It may be proper to obſerve, that where part of a debt is *paid*, a ſet-off is not neceſſary, as it may be given in evidence on the general iſſue.

A ſet-off reducing the plaintiff's demand under 40*s.* doth not affect the juriſdiction of *B. R.* *Wilſ. par.* 1. 19.

The ſtatutes for ſetting off one debt againſt another, do not extend to aſſignees of bankrupts. *Ib.* 155.

Mutual Promiſe, Is where one man *promiſes* to pay money to another, and he in conſideration thereof *promiſes* to do a certain act, &c. Such *promiſes* muſt be binding, as well of one ſide as the other; and both made at the ſame time. *Hob.* 88. 1 *Salk.* 21. Where there are *mutual promiſes*, and one of the parties dies, whereby the other party could not charge the executor on the *promiſe* of the teſtator; yet it is here ſaid the *promiſe* by the ſurvivor ſhall continue. *Yelv.* 133. But it is held, that on *mutual promiſes* and *covenants, equal remedies are on both ſides*; tho' the performance need not be preciſely alledged, *etc.* 3 *Salk.* 15, 108. 1 *Lev.* 88. 2 *Mod.* 34.

Mutuatus. If a man oweth another 10 *l.* and hath a note for the ſame, *without ſeal*, action of debt lies upon a *mutuatus*; but in this there may be wager of law, which there may not be in action upon the caſe, on an implied promiſe of payment, &c. *Comp. Attorn.* 6. 111.

Mutuo, In a legal underſtanding, ſignifies to borrow or to lend. 2 *Sand.* 291.

Mutus & Surdus, A perſon *dumb and deaf*, and being tenant of a manor, the lord ſhall have the wardſhip and cuſtody of him. 2 *Cro.* 105. If a man be dumb and deaf, and have underſtanding, he may be grantor or grantee of lands, &c. 1 *Inſt.*

Myſtery, (*Miſterium*, from the Fr. *meiſtier*, i. e. *ars, artificium*) An art, trade, or occupation.

N.

NAB, (*nappa*, Swediſh,) To *nab*, or catch a perſon unexpectedly.——*In ipſo articulo aliquem opprimere.* Litt. Dict.

Nacella, A ſkiff or boat. *Tranſitum per* nacellas & *alia vaſa præparavit.* Mat. Paris.

Nacka, Nakka, A ſmall ſhip, yacht, or tranſport veſſel. *Chartular Abbat. Rading. MS. fol.* 51.

Nam, or **Naam,** (*namium* from the Sax. *niman,* i. e. *capere)* Signifies the taking or diſtraining another man's moveable goods. And *lawful naam*, which is a reaſonable diſtreſs, proportionable to the value of the thing diſtrained for, was anciently called either *vif* or *mort, quick* or *dead*, as it conſiſted of dead or quick chattels; and it is when one takes another man's beaſts *damage-feaſant*, in his ground, or by a perſon's particular fact, by reaſon of ſome contract made; as for default of payment of an annuity, it ſhall be lawful to diſtrain in ſuch or ſuch lands, &c. And there is a *naam unlawful* mentioned in our books. *Horn's Mirror, lib.* 2.——*Nemo* namium *capiat in comitatu vel extra comitatum, priuſquam ter in hundredo ſuo rectum ſibi perquiſierit.* Leg. Canut. c. 18. *Non licebit* namium *ſumere vel vadimonium, nec averia ſua imparchiare.* Spelm. Gloſſ.

Namation, (*namation*) A taking or diſtreining; and in *Scotland* it is uſed for impounding: *Namatus*, diſtrained, *Charta, Hen.* 2. See *Vetitum Namium*, and *Withernam.*

Name, (*nomea*, Fr. *noſme*, or *nom*) By which any perſon is known or called. There is a name of perſons, bodies politic, and places; and of baptiſm and ſurname; alſo *names* of dignity, *&c*. In ſome caſes a *name* by reputation is ſufficient: but it is not ſo of a *thing*, if the matter and ſubſtance be not right. 11 *Rep*. 21. 6 *Rep*. 65. 4 *Rep*. 170. What foundation will ſupport a name by *reputation*. See *Ld. Raym*. 301, 304. Vide *Miſnomer*.

Namium vetitum, Is an unjuſt taking the cattle of another, and driving them to an unlawful place, pretending damage done by them. In which caſe the owner of the cattle may demand ſatisfaction for the injury, which is called *placitum de namio vetito*.

Nappera, (From the *Ital. naperia*, i. e. *linteamina domeſtica*, linen cloth, or houſhold linen. *Stat*. 2 *R*. 2. *c*. 1.

Narr, An abbreviation of *narratio*, uſed to ſignify a *declaration* in a cauſe.

Narrator, *(Lat.)* A pleader or reporter; and formerly *ſerviens narrator* was a ſerjeant at law.——*Et ulterius in curia regis pro aliquo* narrare *non audietur, niſi pro ſemetipſo ſi* narrator *fuerit*. Fleta, lib. 2. cap. 37.

Naſſaborough, Its juſtices, where impowered to determine appeals, 9 *Geo*. 1. *c*. 7.

Naſſe or **Neſſe,** (From the Sax. *Næſe*, i. e. *Promontorium*) The name of the port or haven of *Orford* in *Suffolk*, mentioned in ſtat. 4 *Hen*. 7. *cap*. 21.

Natale, The ſtate and condition of a man.—*Si quis de homicidio accuſetur, & idem ſe purgare velit ſecundum* natale *ſuum*. Leg. Hen. 1. cap. 64.

Nathwyte, Seems to be derived from the Sax. *nath*, i. e. lewdneſs; and ſo to ſignify the ſame with *lairwite*.

National Debt, the money owing by government, for which it pays intereſt, part to our own people, part to foreigners, and which forms our national funds. In *January* 1765, the national debt amounted to upwards of 145,000,000 *l*. and the annual intereſt to about four millions and three quarters.

In order to take a clear and comprehenſive view of the nature of this national debt, it muſt firſt be premiſed, that after the revolution, when our new connections with Europe introduced a new ſyſtem of foreign politics, the expences of the nation, not only in ſettling the new eſtabliſhment, but in maintaining long wars, as principals, on the continent, for the ſecurity of the *Dutch* barrier, reducing the *French* monarchy, ſettling the *Spaniſh* ſucceſſion, ſupporting the houſe of *Auſtria*, maintaining the liberties of the *Germanic body*, and other purpoſes, increaſed to an unuſual degree; inſomuch that it was not thought adviſable to raiſe all the expences of any one year by taxes to be levied within that year, leſt the unaccuſtomed weight of them ſhould create murmurs among the people. It was therefore the policy of the times to anticipate the revenues of their poſterity, by borrowing immenſe ſums for the current ſervice of the ſtate, and to lay no more taxes upon the ſubject than would ſuffice to pay the annual intereſt of the ſums ſo borrowed: by this means converting the principal debt into a new ſpecies of property, transferrable from one man to another at any time and in any quantity. A ſyſtem which ſeems to have had its original in the ſtate of *Florence, A. D.* 1344. which government then owed about 60000 *l*. ſterling: and, being unable to pay it, formed the principal into an aggregate ſum, called metaphorically a *mount* or *bank*, the ſhares whereof were transferrable like our ſtocks, with intereſt at 5 *l. per cent*. the prices varying according to the exigencies of the ſtate. [*pro tempore, pro ſpe, pro commodo, minuitur eorum pretium atque augeſcit*. Aretin. See *Mod. Un. Hiſt*. xxxvi. 116.] This laid the foundation of what is called the national debt: for a few long annuities created in the reign of *Charles* II. will hardly deſerve that name. And the example then ſet has been ſo cloſely followed during the long wars in the reign of Queen *Anne*, and ſince, that the capital of the national debt (funded and unfunded) amounted in *January* 1771 to above 140,000,000 *l*. to pay the intereſt of which, and the charges for management, amounting annually to upwards of four millions and an half, the extraordinary revenues juſt now enumerated (excepting only the land-tax and annual malt-tax) are in the firſt place mortgaged, and made perpetual by parliament. Perpetual, I ſay; but ſtill redeemable by the ſame authority that impoſed them: which, if it at any time can pay off the capital, will aboliſh theſe taxes which are raiſed to diſcharge the intereſt.

By this means the quantity of property in the kingdom is greatly increaſed in idea, compared with former times; yet, if we cooly conſider it, not at all encreaſed in reality. We may boaſt of large fortunes, and quantities of money in the funds. But where does this money exiſt? It exiſts only in name, in paper, in public faith, in parliamentary ſecurity: and that is undoubtedly ſufficient for the creditors of the public to rely on. But then what is the pledge, which the public faith has pawned for the ſecurity of theſe debts? The land, the trade, and the perſonal induſtry of the ſubject; from which the money muſt ariſe that ſupplies the ſeveral taxes. In theſe therefore, and theſe only, the property of the public creditors does really and intrinſically exiſt: and of courſe the land, the trade, and the perſonal induſtry of individuals, are diminiſhed in their true value juſt ſo much as they are pledged to anſwer. If *A*.'s income amounts to 100 *l. per annum*; and he is ſo far indebted to *B*. that he pays him 50 *l. per ann*. for his intereſt; one half of the value of *A*.'s property is transferred to *B* the creditor. The creditor's property exiſts in the demand which he has upon the debtor, and no where elſe: and the debtor is only a truſtee to his creditor for one half of the value of his income. In ſhort, the property of a creditor of the public conſiſts in a certain portion of the national taxes: by how much therefore he is the richer, by ſo much the nation, which pays theſe taxes, is the poorer.

The only advantage, that can reſult to a nation from public debts, is the increaſe of circulation by multiplying the caſh of the kingdom, and creating a new ſpecies of currency, aſſignable at any time and in any quantity; always therefore ready to be employed in any beneficial undertaking, by reaſon of this it's transferrable quality; and yet producing ſome profit even when it lies idle and unemployed. A certain proportion of debt ſeems therefore to be highly uſeful to a trading people; but what that proportion is, it is not for me to determine. Thus much is indiſputably certain, that the preſent magnitude of our national incumbrances very far exceeds all calculations of commercial benefit, and is productive of the greateſt inconveniencies. For, firſt, the enormous taxes, that are raiſed upon the neceſſaries of life for the payment of the intereſt of this debt, are a hurt both to trade and manufactures, by raiſing the price as well of the artificer's ſubſiſtence, as of the raw material, and of courſe, in a much greater proportion, the price of the commodity itſelf. Nay the *very increaſe of paper circulation* itſelf, when *extended beyond what is requiſite* for commerce or foreign exchange, has a natural tendency to increaſe the price of proviſions as well as of all other merchandize. For, as its effect is to *multiply the caſh of the kingdom*, and this to ſuch an extent that much muſt remain unemployed, that caſh (which is the univerſal meaſure of the reſpective values of all other commodities) muſt neceſſarily ſink in its own value, [*Black. Com*. 1 *V*. 276.] and every thing grow comparatively dearer. Secondly, if part of this debt be owing to foreigners, either they draw out of the kingdom annually a conſiderable quantity of ſpecie for the intereſt; or elſe it is made an argument to grant them unreaſonable privileges in order to induce them to reſide here. Thirdly, if the whole be owing to ſubjects only, it is then charging the active and induſtrious ſubject, who pays his ſhare of the taxes, to maintain the indolent and idle creditor who receives them. Laſtly and principally, it weaken the internal ſtrength of a ſtate, by anticipating thoſe reſources which ſhould be reſerved to defend it in caſe of neceſſity. The intereſt we now pay for our debts would be nearly ſufficient to maintain any war that any national motives could require. And if our anceſtors in King *William*'s time had annually paid, ſo long as their exigencies laſted, even a leſs ſum than we now annually raiſe upon their accounts, they would in the time of war have borne no greater burdens, than they have bequeathed to and ſettled upon their poſterity in time of peace; and might have been eaſed the inſtant the exigence was over. *Black. Com*. 1 *V*. 326.

Nativi de Stipite. In the ſurvey of the *dutchy* of *Cornwall*, there is mention of *native de ſtipite*, and *nativi conventionarii*; the firſt were villeins or bondmen, by birth or ſtock; the other by contract or agreement. *LL. Hen.* 1. *cap.* 76. And in *Cornwall* it was a cuſtom, that a freeman marrying *nativam*, if he had two daughters one of them was free, and the other villein. *Bract. lib.* 4. *c.* 21, 22.

Nativity, *(nativitas)* Birth, or the being born in a place. *The caſting the nativity*, or by calculation ſeeking to know how long the *Queen* ſhould live, *&c.* was made felony, by 23 *Eliz. cap.* 2. *Nativitas* was anciently taken for ſervitude, *bondage*, or *villeinage*. Leg. Wil. 1.

Nativo habendo, A writ that lay to the ſheriff for a lord who claimed inheritance in any *villein*, when his villein was run away, for the apprehending and reſtoring him to the lord: and the ſheriff might ſeize the villein, and deliver him unto his lord, if he confeſſed his villeinage; but if he alledged that he was *a freeman*, then the ſheriff ought not to ſeize him, but the lord was to ſue forth a *pone* to remove the plea before the juſtices of *C. B. &c.* And if the villein purchaſed a writ *de libertate probanda* before the lord had taken out the *pone*, it was a *ſuperſedeas* to the lord, that he proceeded not on the writ of *nativo habendo*. Reg. Orig. 7, 8. F. N. B. 77. New Nat. Brev. 171, 172.

This writ *nativo habendo* was in nature of a writ of right, to recover the inheritance in the villein; upon which the lord was to purſue his plaint, and declare thereupon, and the villein to make his defence ſo as the freedom was to be tried. *New Nat. Br.* 171, 173.

Nativus. He who is born a ſervant, and ſo differs from him who ſuffers himſelf to be ſold, of which ſervants there were three ſorts, *bondmen*, *natives*, and *villains*; *bondmen* were thoſe who bound themſelves by covenants to ſerve, and took their name from the word *bond*; *natives* we ſpoke of juſt before; and *villains* were ſuch who belonged to the land, tilled the lord's demeſnes, nor might depart thence without the lord's licence. *Spelman's Gloſſ.* See *Chart. R.* 2. *Qua omnès manumittit a bondagio in com.* Hertf. *Walſingham, pag.* 254. *Cowell.* See *Servi Nativa*, and *Nief.* But now there are not in *England* any ſuch perſons, as the two laſt. And with reſpect to bondmen, though many are now bound by contract for a certain term, yet they are *free*, ſubject only to the performance of their contract, and thoſe, *reaſonable*, according to law.

Natural Affection, *(naturalis affectio)* Is a good conſideration in a deed; and if one, without expreſſing any conſideration, covenant to ſtand ſeiſed to the uſe of his wife, child, or brother, *&c.* Here the naming them to be of kin, implies the conſideration of *natural affection*, whereupon ſuch uſe will ariſe. *Cart.* 138. See *Conſideration.*

Naturalization, *(Naturalizatio)* Is where a perſon who is an *alien*, is made the King's *natural* ſubject *by act of parliament*; whereby one is a ſubject to all intents and purpoſes, as if he were born ſo: for, by *naturalization*, a perſon's iſſue, before the *naturalization*, ſhall inherit. 1 *Inſt.* 8, 129. A ſtranger *naturalized* by act of parliament, may have lands by deſcent, as heir at law, as well as have them by purchaſe: But until *naturalized* or made denizen, a ſtranger is not generally under the King's protection, to have the benefit of the law; alſo no perſon is to be *naturalized*, until he has received the ſacrament, and taken the oaths of allegiance and ſupremacy, *&c.* And ſtrangers, when *naturalized*, are diſabled to be of the Privy Council, to hold offices, *&c.* 7 *Jac.* 1. *cap.* 2. 12 *W.* 3. *cap.* 2. but ſee 1 *G.* 1. *cap.* 4.

By the *ſtat.* 7 *Ann. cap.* 5. it was declared, that all perſons born out of the King's allegiance, taking the oaths, *&c.* ſhould be deemed natural born; though this was repealed, but not to prejudice perſons *naturalized*, or children of natural-born ſubjects, born out of allegiance, by 10 *Ann. c.* 5. And all children born out of the ligeance of the crown, whoſe fathers were, or ſhall be natural ſubjects of *Great Britain*, at the time of their birth, are adjudged to be *natural-born ſubjects of this kingdom*, except children of parents attainted of treaſon, or in the actual ſervice of foreign princes in enmity with *England, &c.* by the 4 *Geo.* 2. *c.* 21.

All foreigners who ſhall live *ſeven years*, or more, in any of our *American* plantations, and not be abſent therefrom above two months at one time, ſhall, *on taking the oaths* be deemed natural ſubjects, as if they had been born here; but not be capable of enjoying any place of truſt, *&c.* 13 *Geo.* 2. *c.* 7.

This, by the *ſtat.* 20 *Geo.* 2. *c.* 44. is extended to proteſtants who ſcruple the taking an oath, upon their making and ſubſcribing the declaration of fidelity, and taking and affirming the effect of the abjuration oath, and making and ſubſcribing the profeſſion of their Chriſtian Belief, appointed by the *ſtat.* 1 *Geo.* 1. *c.* 4, *&c.*

Great numbers of foreigners are every year *naturalized* by private acts of parliament. And *vide* 25 *Ed.* 3. *ſt.* 2. 9 & 10 *W.* 3. *c.* 20. 11 & 12 *W.* 3. *c.* 6. 13 *Geo.* 2. *c.* 3. 22 *Geo.* 2. *c.* 45. and 25 *Geo.* 2. *c.* 39. See *Alien.*

Naturæ *Pudenda*, Privities.——*Penſandum autem eſt per viſum accuſantibus viſum concubitus propenſius advertendum, ut ſcilicet ipſas coeuntium* naturas *viderint commiſceri.* Leg. Hen. 1. c. 83.

Navagium, A duty incumbent on tenants, to carry their lord's goods in a ſhip: *Liberi ſint ab omni cariagio, navagio, &c.* Mon. Angl. tom. 1. pag. 922.

Naval, Signifies any thing belonging to the ſea, or maritime affairs. *Merch. Dict.*

Naval Stores. Perſons ſtealing or imbezilling any of the King's *naval ſtores*, to the value of twenty ſhillings, are guilty of felony, *without benefit of clergy*. 22 Car. 2. cap. 5. And the treaſurer and commiſſioners of the navy are impowered to inquire of *naval ſtores* imbezilled, and appoint perſons to ſearch for them, *&c.* who may go on board ſhips, and ſeize ſuch ſtores; and the commiſſioners, *&c.* may impriſon the offenders, and fine them double value, the ſtores being under the value of twenty ſhillings. 1 *Geo.* 1. *cap.* 25.

None but the contractors with the commiſſioners of the navy, ſhall make any ſtores of war, *naval ſtores, &c. with the marks* commonly uſed to his majeſty's ſtores, upon pain of forfeiting two hundred pounds. And perſons in whoſe cuſtody *ſuch ſtores* ſhall be found concealed, are liable to the ſame penalty. 9 & 10 *W.* 3. *c.* 41.

The *Stat.* 3 *Ann. c.* 10. was made for the encouragement of the importation of *naval ſtores*, from the plantations in *America*, and for preſervation thereof in thoſe countries; inflicting penalties for cutting down pine, or pitch trees, under ſuch and ſuch ſizes, *&c.* To the like purpoſe, and for the making the ſame more effectual, is the *Stat.* 8 *Geo.* 1. *cap.* 12.

Alſo *naval ſtores* are imported here from *Scotland*, under an encouragement by ſtatute; and a *præmium* is given for the importing of *naval ſtores* from *America* and *North Britain*, of one pound *per* ton, for maſts and pitch, *&c.* 2 *Geo.* 2. *cap.* 35. See *Ships, Stores.*

Naufrage, A ſea term for ſhipwreck. *Merch. Dict.*

Navigation, Is the art of ſailing at *ſea*, alſo the manner of trading: And a *navigator* is one who underſtands *navigation*, or imports goods in foreign bottoms. *Ibid.* See *Black. Com.* 1 *V.* 417. 4 *V.* 432.

Navigable Rivers, Divers ſtatutes relating to them. See *Rivers.*

Navis Eccleſiæ, The *nave* or *body of the church*, as diſtinguiſhed from the choir, and wings, or iſle: It is that part of the church where the common people ſit. *Du Dange.*

Navis, Navicula, A ſmall diſh to hold frankincenſe before put into the *thuribulum*, cenſer or ſmoking pot; and ſeems to have its name from the ſhape, reſembling a boat or little ſhip: we have ſeveral of theſe boat-cups in ſilver, *&c.* for various uſes. *Paroch. Antiq.* 598.

Navithalamus, A ſhip or barge that noblemen uſe for pleaſure, with fine chambers and other ſtately ornaments. *Law Lat. Dict.*

Navy, Signifies the fleet or ſhipping of a prince or ſtate; or an armament at ſea. The *navy of Englana*, it has been obſerved, excels all others for three things, *viz.* *beauty*, *ſtrength*, and *ſafety*; for beauty our ſhips of war are ſo many floating palaces; for their ſtrength ſo many moving caſtles; and for ſafety, they are the moſt defenſive walls of the land: and as our naval power gains us authority in the moſt diſtant climates, ſo the ſuperiority of our fleet above other nations, renders the *Britiſh* monarch the arbiter of *Europe*.

The Kings of *England* in ancient times commanded their fleets in perſon; and the renowned King *Arthur* (famous for his warlike atchievements) vindicated the dominion of the ſeas, making ſhips of all nations ſalute our ſhips of war *by lowering the topſail*, and ſtriking the flag, as in like manner they ſhall do to the forts upon land, by which ſubmiſſion they are put in mind that they are come into a territory, wherein they are to own a ſovereign power and juriſdiction, and receive protection from it: and this duty of the flag, which hath been conſtantly paid to our anceſtors, ſerves to imprint reverence in foreigners, and adds new courage to our ſeamen; and reputation abroad, is the principal ſupport of any government at home.

King *Edgar*, ſucceſſor to *Arthur*, ſtiled himſelf *ſovereign of the narrow ſeas*; and having fitted out a fleet of *four hundred ſail of ſhips*, in the year 937, ſailing about *Britain* with his mighty navy, and arriving at *Cheſter*, was there met by eight Kings and Princes of foreign nations, come to do him homage; who, as an acknowledgment of his ſovereignty, rowed this monarch in a boat down the river *Dee*, himſelf ſteering the boat; a marine triumph which is not to be paralleled in the hiſtories of *Europe*.

Canutus, (*Edgar*'s ſucceſſor) laid the ancient tribute called *Danegeld*, for guarding the ſeas, and ſovereignty of them; with the following emblem expreſſed, *viz.* Himſelf ſitting on the ſhore in his royal chair, while the ſea was flowing, ſpeaking, *Tu meæ ditionis es, & terra in qua ſedeo eſt, &c.*

And *Egbert*, *Althred* and *Elthred* kept up the dominion and ſovereignty of their predeceſſors; nor did the ſucceeding princes, of the Norman race, waive this great advantage, but maintained their right to the four adjacent ſeas ſurrounding the *Britiſh* ſhore: the honour of the flag King *John* challenged, not barely as a civility, but a right to be paid *cum debita reverentia*, and the perſons refuſing, he commanded to be taken as enemies: and the ſame was ordained not only to be paid to whole fleets, bearing the royal ſtandard, but to thoſe ſhips of privilege that wear the Prince's enſigns or colours of ſervice; this decree was confirmed and bravely aſſerted by a fleet of five hundred ſail, in a royal voyage to *Ireland*, wherein he made all the veſſels which he met with in his way, in the eight circumfluent ſeas, to pay that duty and acknowledgment, which has been maintained by our Kings to this day, and was never conteſted by any nation, unleſs by thoſe who attempted the conqueſt of the intire empire.

Trade gave occaſion to the bringing mighty fleets to ſea; and on the increaſe of trade, ſhips of war were neceſſary in all countries for the preſervation of it, in the hands of the juſt proprietors.

In ancient times the ſeveral counties of *England* were liable to a particular taxation for building ſhips of war, and fitting out fleets, every one in proportion to their extent and riches; ſo that the largeſt counties were each of them to furniſh a firſt rate man of war, and the others every one to build one in proportion; but this method has been long diſuſed, and the fitting out our navy for many ages has been always thrown into the public charge.

King *Edw.* 3. in his wars with *France*, had a fleet of ſhips before *Calais*, ſo numerous, that they amounted to *ſeven hundred ſail:* but King *Hen.* 6. it is ſaid, was the firſt who began to build a royal navy in *England*; he built a ſhip called the *Great Henry* of one thouſand tuns, the largeſt ſhip that had been *then* ſeen in this kingdom, (though now our firſt rate ſhips of war contain at leaſt *two thouſand tuns*, are mounted with above *one hundred canon*, and carry above *one thouſand men.*) He fitted out a royal fleet, conſtituted a *Navy Office*, &c. And in this King's reign; and the reign of Queen *Elizabeth*, our navy was in a moſt flouriſhing condition, being moſtly commanded by our valiant nobility; and it is remarkable, that there are liſts of the fleets of Queen *Elizabeth*, which make it appear there was but *one* private gentleman a captain, all the reſt being Lords and Knights: ſo high was the eſteem for ſervice at ſea in thoſe days, when our Princes ruled with the moſt conſummate glory: but the opinion of ſerving at ſea in later times having been very much leſſened, it has ſince been declined by the nobility and gentry.

The navy is at this time in a very flouriſhing ſtate; for number of ſhipping, and ſtrength of force of the ſhips, it was never, perhaps, more formidable than now; and when compleat, is divided into three *ſquadrons*, diſtinguiſhed by the different colours of the ſeveral flags, *viz. red*, *white*, and *blue*; the principal commander whereof bears the title of *Admiral*, and each has under him a Vice-Admiral, and a Rear-Admiral, who are likewiſe flag officers. There are belonging to his Majeſty's navy, ſix great yards, *Chatham*, *Deptford*, *Woolwich*, *Portſmouth*, *Sheerneſs*, and *Plymouth*; fitted with ſeveral docks, and furniſhed with ſtore of timber, maſts, anchors, cables, *&c.* And for the management of the royal navy, there are ſeveral officers of truſt and authority, beſides the Commiſſioners of the Admiralty; as the Treaſurer, Controller, Surveyor, Commiſſioners of the Navy, Commiſſioners of the Victualling-Office, *&c.* the principal whereof hold their offices by patent under the Great Seal. By *Stat.* 9 *&* 10 *W.* 3. *c.* 37. the ſum of five hundred and ſeventy thouſand pounds was appropriated for the building of twenty-ſeven ſhips of war, with their guns, rigging, *&c.*

And the 6 *Ann. c.* 13. enacts, That over and above the ſhips for the line of battle, forty-three ſhips of war ſhall be employed as cruiſers and convoys, for the better preſerving ſuch ſhips as ſhall be made uſe of in the trade of *Great Britain*; four of theſe ſhips are to be third-rates, and ſixteen fourth-rates, and the reſt of ſufficient force to guard our commerce: they are to attend in certain ſtations; and the Lords Commiſſioners of the Admiralty may direct the Commiſſioners of the Navy, or ſome one or more perſons reſident at ſuch places as his Majeſty ſhall appoint, to ſuperintend and overſee every thing relating to thoſe cruiſers; alſo the Commiſſioners of the Admiralty have power to order any of the ſaid ſhips to be employed in the line of battle, in caſe of neceſſity.

This ſtatute likewiſe empowers the commiſſioners of the Admiralty, during war, to grant commiſſions to privateers and commanders of ſhips, for the taking and ſeizing ſhips and goods of enemies. For the furniſhing of *mariners* for the *Fleet*; by 7 *&* 8 *W.* 3. *c.* 21. it is enacted, That all ſeamen, watermen, *&c.* above the age of eighteen years, and under fifty, *capable of ſea ſervice*, who ſhall regiſter themſelves voluntarily for the King's ſervice in the *royal navy*, to the number of *thirty thouſand*, ſhall have paid to them the yearly ſum or bounty of forty ſhillings, *beſides their pay for actual ſervice*, and that whether they be in ſervice or not; and none but ſuch mariners, *&c.* as are regiſtred, ſhall be capable of preferment to any commiſſion, or be warrant officers in the navy: and ſuch regiſtred perſons are exempted from ſerving on juries, pariſh offices, *&c.* alſo from ſervice aboard after the age of fifty-five years, unleſs they go voluntarily; and when by age, wounds, or other accidents, they are diſabled for future ſervice at ſea, they ſhall be admitted into *Greenwich hoſpital*, and there be provided for, during life: and the widows of ſuch ſeamen as ſhall be ſlain or drowned, not of ability to provide for themſelves, ſhall be likewiſe admitted into the hoſpital; and their children educated, *&c.* But if any regiſtred ſeaman ſhall withdraw himſelf from the King's ſervice, in his ſhips or navy; or if any ſuch mariner relinquiſh the ſervice, without conſent of the Commiſſioners of the Admiralty, he ſhall for ever loſe the benefit of the act, and be compelled to ſerve in his Majeſty's fleet ſix months without pay. See 9 *Ann. c.* 21. *ſ.* 23. The 7 *&* 8 *W.* 3. *c.* 21. as to regiſtring ſeamen, is repealed by 9 *Ann. c.* 21. *ſ.* 64. By a ſubſequent ſtatute, 4 *Ann. c.* 19. *ſ.* 18. Watermen plying on the *Thames* between *Graveſend* and *Windſor*, on notice given by the Commiſſioners of the Admiralty to the company of watermen, are to appear before the ſaid company, to be ſent to his Majeſty's fleet, or, on refuſal, they ſhall ſuffer one month's impriſonment, and be diſabled working on the *Thames* for two years: The regiſtring ſeamen is the grand nurſery for the fleet; but there are other means of ſupplying mariners for the royal navy, and training up perſons in the ſea ſervice: for the *Stat.* 2 *Ann. c.* 6. provides, That poor boys, *whoſe parents are chargeable to the pariſh*, may by church-warden and overſeers of the poor, with conſent of two juſtices of peace, be placed out apprentices to the ſea ſervice, until the age of twenty-one years, they being thirteen years old, at the time of their placing forth: thoſe at eighteen years of age may be impreſſed for ſervice in the fleet, when the owners or maſters of ſuch of them as ſhall prove qualified, ſhall have able ſeamen's wages; and all maſters and owners of ſhips, from thirty to fifty tuns burden, are required to take one ſuch apprentice, one more for the next fifty tun, and one more for every hundred tun above the firſt hundred, under the penalty of ten pounds. Maſters of apprentices placed out by the pariſh may, with the conſent of two juſtices, turn over ſuch apprentices to maſters of ſhips for the remainder of their terms: lewd and diſorderly ſervants, vagrants, *&c.* are to be taken up and ſent to his majeſty's fleet; and poor priſoners for debt, who were to have the benefit of 4 *&* 5 *Ann.* appearing on their releaſement to be able bodied ſeamen, were to enter themſelves in the ſervice. Thus is the navy recruited with mariners; not to mention particularly the manner of preſſing in cities and populous towns, on extraordinary occaſions.

By a late ſtatute, encouragement is given to ſeamen to enter into his Majeſty's ſervice voluntarily: volunteers entring their names with any commiſſion officer of the fleet, and forthwith proceeding towards their ſhips, on certificate thereof ſhall be intitled to wages from the date of the certificate, and be allowed the uſual conduct money, and alſo be paid an advance of two months wages, *&c.* And if any volunteer is turned over to another ſhip, he ſhall receive, over and above his wages due, the like advance of two months pay, and not ſerve in a lower degree than he did before. Perſons liſted on board ſhips of war, are not to be taken thereout by any proceſs at law, unleſs it be for a criminal matter; or where the debt amounts to 20 *l.* When ſeamen die on board, the commander of the ſhip ſhall, as ſoon as may be, make out tickets for their pay, which ſhall be paid to their executors, *&c.* without tarrying for the ſhip's return: and ſeamens pay ſhall not be bargained and ſold; but tickets may. Governors and conſuls in foreign parts, are to provide for ſhipwrecked mariners at 6 *d. per diem* each, and put them on board the firſt ſhips of war, *&c.* and on ſending bills of diſburſements with vouchers to the Commiſſioners of the Navy, they ſhall be paid. 1 *Geo.* 2. *c.* 12.

Alſo the pay and wages of one man in a hundred, of every ſhip of war, and value of his victuals, ſhall be applied for relieving poor widows of officers of the navy, by the 6 *Geo.* 2. *c.* 25. A late ſtatute has ordained, that able ſeamen who voluntarily enter on board ſhips of war, ſhall receive 5 *l.* beſides their wages, and ordinary ſeamen 3 *l.* And if any ſeaman, under a commiſſion or warrant officer, who enters into the ſervice, be killed or drowned, his widow, on certificate to the commiſſioners of the Navy that ſhe is ſuch, is to have, by way of bounty, *one year's wages*, according to the pay for which he ſerved. 14 *Geo.* 2. *c.* 38.

The Commiſſioners of the Navy, *&c.* have power to examine and puniſh all perſons who make any diſturbance, fighting or quarrelling in the yards, and offices, *&c.* of the navy: and in the 13th year of King *Charles* II. an act paſſed for the regulating the government of the fleet; and alſo an act 22 *Geo.* 2. *c.* 33. which contains the particular excellent articles and orders following.

1. Officers are to cauſe public worſhip, according to the liturgy of the church of *England*, to be ſolemnly performed in their ſhips, and take care that prayers and preaching by the chaplains be performed diligently, and that the Lord's Day be obſerved.

2. Perſons guilty of profane oaths, curſing, drunkenneſs, uncleanneſs, *&c.* to be puniſhed as a court martial ſhall think fit.

3. If any perſon ſhall *give* or *hold intelligence to* or with an enemy *without leave*, he ſhall ſuffer *death*.

4. If any letter or meſſage from an enemy be conveyed to any in the fleet, and he ſhall not in *twelve hours* acquaint his ſuperior officer with it, or if the ſuperior officer, being acquainted therewith, ſhall not reveal it to the commander in chief, the offender ſhall ſuffer *death*, or ſuch puniſhment as a court martial ſhall impoſe.

5. Spies and perſons *endeavouring to corrupt any one in the fleet*, ſhall ſuffer *death*, or ſuch puniſhment as a court martial ſhall impoſe.

6. No perſon ſhall relieve an enemy with money, victuals or ammunition, on like penalty.

7. All papers taken on board a prize ſhall be ſent to the Court of Admiralty, *&c.* on penalty of forfeiting the ſhare of the prize, and ſuch puniſhment as a court martial ſhall impoſe.

8. No perſon ſhall take out of any prize any money or goods, unleſs for better ſecuring the ſame, or for the neceſſary uſe of any of his Majeſty's ſhips, before the prize ſhall be condemned; upon penalty of forfeiting his ſhare, and ſuch puniſhment as ſhall be impoſed by a court martial.

9. No perſon on board a prize ſhall be *ſtripped* of his cloaths, *pillaged*, *beaten*, or *ill treated*, upon pain of ſuch puniſhment as a court martial ſhall impoſe.

10. Every commander, who, upon ſignal or order of fight, or ſight of any ſhip which it may be his duty to engage, or who, upon likelihood of engagement, ſhall *not make neceſſary preparations* for fight, and *encourage the inferior officers and men to fight*, ſhall ſuffer *death*, or ſuch puniſhment as a court martial ſhall deem him to deſerve. And if any perſon ſhall *treacherouſly* or *cowardly* yield or cry for quarter, he ſhall ſuffer *death*.

11. Every perſon who ſhall *not obey the orders* of his ſuperior officer, *in time of action*, to the beſt of his power, ſhall ſuffer *death*, or ſuch puniſhment as a court martial ſhall deem him to deſerve.

12. Every perſon, who, in time of action, ſhall *withdraw* or *keep back*, or *not come into the fight*, or do his utmoſt to take or deſtroy any ſhip which it ſhall be his duty to engage, and to aſſiſt every ſhip of his Majeſty or his allies, which it ſhall be his duty to aſſiſt, ſhall ſuffer *death*.

13. Every perſon, who through cowardice, *&c.* ſhall forbear to purſue the chaſe of any enemy, *&c.* or ſhall not aſſiſt or relieve *a known friend in view*, to the utmoſt of his power, ſhall ſuffer *death*.

14. If any perſon ſhall delay or diſcourage any action or ſervice commanded, upon pretence of arrears of wages, or otherwiſe, he ſhall ſuffer *death*, or ſuch puniſhment as a court martial ſhall deem him to deſerve.

15. Every perſon who ſhall *deſert to the enemy*, or *run away with any ſhip*, *ordnance*, *&c.* to the weakening of the ſervice, or yield up the ſame cowardly or treacherouſly to the enemy, ſhall ſuffer *death*.

16. Every perſon who ſhall *deſert*, or *intice others* ſo to do, ſhall ſuffer *death*, or ſuch puniſhment as a court martial ſhall think fit. If any commanding officer ſhall receive a deſerter, after diſcovering him to be ſuch, and ſhall not with ſpeed give notice to the captain of the ſhip to which he belongs, or if the ſhip is at a conſiderable diſtance, to the Secretary of the Admiralty, or Commander in Chief, he ſhall be caſhiered.

17. Officers and ſeamen of ſhips appointed for convoy of merchant ſhips, or of any other, ſhall diligently attend upon that charge according to their inſtructions; and whoſoever ſhall not faithfully perform their duty, and defend their ſhips in their convoy, or refuſe to fight in their defence, or run away cowardly and ſubmit the ſhips in their convoy to hazard, or exact any reward for convoying any ſhip, or miſuſe the maſter or mariners, ſhall make reparation of damages, as the court of Admiralty ſhall adjudge; and be puniſhed criminally by death, or other puniſhment, as ſhall be adjudged by a court martial.

18. If any officer ſhall receive or permit to be received on board any goods or merchandiſe, other than for the ſole uſe of the ſhip, except gold, ſilver, or jewels, and except goods belonging to any ſhip which may be ſhipwrecked, or in danger thereof, in order to the preſerving them for the owners, and except goods ordered to be received by the Lord High Admiral, *&c.* he ſhall be caſhiered, and rendered incapable of further ſervice.

19. Any perſon making or endeavouring to make any mutinous aſſembly ſhall ſuffer death. Any perſon uttering words of ſedition or mutiny ſhall ſuffer death, or ſuch puniſhment as a court martial ſhall deem him to deſerve. If any officer, mariner, or ſoldier, in or belonging to the fleet, ſhall behave himſelf with contempt to his ſuperior officer, *being in the execution of his office*, he ſhall be puniſhed according to the nature of his offence by the judgment of a court martial.

20. Any perſon concealing any traiterous or mutinous practice or deſign, ſhall ſuffer death, or ſuch puniſhment as a court martial ſhall think fit. Any perſon concealing any traiterous or mutinous words, or any words, practice, or deſign, *tending to the hindrance of the ſervice*, and not forthwith revealing the ſame to the commanding officer, or being preſent at any mutiny or ſedition, ſhall not uſe his utmoſt endeavours to ſuppreſs the ſame, ſhall be puniſhed as a court martial ſhall think he deſerves.

21. Any perſon finding cauſe of complaint of the unwholeſomeneſs of victuals, or upon other juſt ground, he ſhall *quietly* make the ſame known to his ſuperior, who, as far as he is able, ſhall cauſe the ſame to be preſently remedied; and no perſon upon any ſuch or other pretence ſhall attempt to ſtir up any diſturbance, upon pain of ſuch puniſhment as a court martial ſhall think fit to inflict.

22. Any perſon ſtriking any his ſuperior officer, or drawing or offering to draw or lift up any weapon againſt him, *being in the execution of his office*, ſhall ſuffer death. And any perſon preſuming to quarrel with any his ſuperior officer, *being in the execution of his office*, or diſobeying any lawful command of any his ſuperior officer, ſhall ſuffer death, or ſuch other puniſhment as ſhall be inflicted upon him by a court martial.

23. Any perſon quarrelling or fighting with any other perſon in the fleet, or uſing reproachful or provoking ſpeeches or geſtures, ſhall ſuffer ſuch puniſhment as a court martial ſhall impoſe.

24. There ſhall be no waſteful expence or embezilment of any powder, ſhot, *&c.* upon penalty of ſuch puniſhment as by a court martial ſhall be found juſt.

25. Every perſon burning or ſetting fire to any magazine, or ſtore of powder, ſhip, *&c.* or furniture thereunto belonging, not then appertaining to an enemy, ſhall ſuffer death.

26. Care is to be taken that through wilfulneſs or negligence no ſhip be ſtranded, run upon rocks or ſands, or ſplit or hazarded; upon pain of death, or ſuch puniſhment as a court martial ſhall deem the offence to deſerve.

27. No perſon ſhall ſleep upon his watch, or negligently perform his duty, or forſake his ſtation, *upon pain of death*, or ſuch puniſhment as, *&c.*

28. Murder,

29. And buggery or ſodomy, ſhall be puniſhed with death.

30. Robbery ſhall be puniſhed with death, or otherwiſe as a court martial ſhall find meet.

31. Every perſon *knowingly* making or ſigning, or commanding, counſelling, or procuring the making or ſigning, any falſe muſter, ſhall be caſhiered, and rendered incapable of further employment.

32. Provoſt martial refuſing to apprehend or receive any criminal, or ſuffering him to eſcape, ſhall ſuffer ſuch puniſhment as a court martial ſhall deem him to deſerve. And all others ſhall do their endeavours to detect and apprehend all offenders, upon pain of being puniſhed by a court martial.

33. If any flag officer, captain, commander or lieutenant, ſhall behave in a ſcandalous, infamous, cruel, oppreſſive or fraudulent manner, *unbecoming his character*, he ſhall be diſmiſſed.

34. Every perſon in actual ſervice and full pay, guilty of mutiny, deſertion, or diſobedience, in any part of his Majeſty's dominions on ſhore, when in actual ſervice relative to the fleet, ſhall be liable to be tried by a court martial, and ſuffer the like puniſhment as if the offence had been committed at ſea.

35. Every perſon in actual ſervice and full pay, committing upon ſhore, in any place out of his Majeſty's dominions, any crime puniſhable by theſe articles, ſhall be liable to be tried and puniſhed as if the crime had been committed at ſea.

36. All other crimes not capital, not mentioned in this act, ſhall be puniſhed according to the laws and cuſtoms uſed at ſea. No perſon to be impriſoned for longer than two years. Court martial not to try any offence (except the 5th, 34th, and 35th articles) not committed upon the main ſea, or in great rivers beneath the bridges, or in any haven, *&c.* within the juriſdiction of the admiralty, or by perſons in actual ſervice and full pay, except ſuch perſons and offences, as in 5th article; nor to try a land officer or ſoldier on board a tranſport ſhip. The Lord High Admiral, *&c.* may grant commiſſions to any officer commanding in chief any fleet, *&c.* to call courts martial, conſiſting of commanders and captains. And if the commander in chief ſhall die or be removed, the officer next in command may call courts martial. No commander in chief of a fleet, *&c.* of more than five ſhips, ſhall preſide at any court martial in foreign parts, but the officer next in command ſhall preſide. If a commander in chief ſhall detach any part of his fleet, *&c.* he may impower the chief commander of the detachment to hold courts martial during the ſeparate ſervice. If five or more ſhips ſhall meet in foreign parts, the ſenior officer may hold courts martial and preſide thereat. Where it is improper for the officer next to the commander in chief to hold or preſide at a court martial, the third officer in command may be impowered to preſide at or hold a court martial. No court martial ſhall conſiſt of more than *thirteen*, nor leſs than *five*, perſons. Where there ſhall not be leſs than three, and yet not ſo many as five of the degree of a Port Captain or ſuperior rank, the officer who is to preſide may call to his aſſiſtance as many commanders under the degree of a Port Captain, as, together with the Port Captains, ſhall make up the number five, to hold the court martial. After trial begun, no member of a court martial ſhall go on ſhore, until ſentence, except in caſe of ſickneſs, upon pain of being caſhiered. Proceedings ſhall not be delayed, if a ſufficient number remain to compoſe the court, which ſhall ſit from day to day (except *Sunday)* till ſentence be given.

The Judge Advocate, and all officers conſtituting a court martial, *ſhall be upon oath*. Perſons refuſing to give evidence may be impriſoned. Sentence of death within the Narrow Seas (except in caſe of mutiny) ſhall not be put in execution till a report be made to the Lord High Admiral, *&c.* Sentence of death beyond the Narrow Seas, ſhall not be put in execution but by order of the commander in chief of the fleet, *&c.* Sentence of death in any ſquadron, detached from the fleet, ſhall not be put in execution (except in caſe of mutiny) but by order of the commander of the fleet, or Lord High Admiral, *&c.* And ſentence of death paſſed in a court martial, held by the ſenior officer of five or more ſhips met in foreign parts (except in caſe of mutiny) ſhall not be put in execution but by order of the Lord High Admiral, *&c.*

The powers given by the ſaid articles ſhall remain in force with reſpect to crews of ſhips wrecked, loſt, or deſtroyed, until they be diſcharged or removed into another ſhip, or a court martial ſhall be held to inquire of the cauſes of the loſs of the ſhip. And if upon inquiry it ſhall appear, that all or any of the officers and ſeamen did their utmoſt to ſave the ſhip, and behaved obediently to their ſuperior officers, their pay ſhall go on: as alſo ſhall the pay of officers and ſeamen taken by the enemy, having done their beſt to defend the ſhip, and behaved obediently. If any officer ſhall receive any goods on board, contrary to the 18th article, he ſhall further forfeit the value of ſuch goods, or 500*l.* at the election of the informer;

one moiety to the informer, the other to *Greenwich* hoſpital. See *Seamen*, *Ships*.

Navy Bills, Counterfeiting them, &c. puniſhed 1 *Geo.* 1. *ſt.* 2. *c.* 25. *ſect.* 6. Stealing them felony, 2 *Geo.* 2. *c.* 25. *ſect.* 3.

Navy-Office, How rebuilt, 25 *Car.* 2. *c.* 10.

Ne admittas, Is a writ directed to the biſhop for the plaintiff or defendant, where a *quare impedit* or aſſiſe of *darrein preſentment* is depending, when either party fears that the biſhop will admit the other's clerk during the ſuit between them: it ought to be brought within ſix kalendar months after the avoidance, before the biſhop may preſent by lapſe; for it is in vain to ſue out this writ when the title to preſent is devolved unto the biſhop. *Reg. Orig.* 31. *F. N. B.* 37. Writ of *Ne admittas* doth not lie, if the plea be not depending in the King's court by *quare impedit*, or *darrein preſentment*; therefore there is a writ in the regiſter directed to the Chief Juſtice of *C. B.* to certify the King in the *Chancery*, if there be any plea before him and the other judges between the parties, &c. So that the writ ſhould not be granted until that be done: But yet it may be had out of the *Chancery* before the King is certified that ſuch plea of *quare impedit* is depending; and then the party grieved may require the Chief Juſtice to certify, &c. *New Nat. Br.* 83, 84. The writ runs, *prohibemus vobis*, Ne admittas, &c.

Neat, or **Net**, Is the weight of a pure commodity alone, without the caſk, bag, droſs, &c. *Merch. Dict.*

Neceſſity. The law charges no man with default where the act is compulſory, and not voluntary, and where there is not a conſent and election; therefore if there be an impoſſibility for a man to do otherwiſe, or ſo great a perturbation of the judgment and reaſon, as in preſumption of law he cannot overcome, ſuch neceſſity carries a privilege in itſelf. *Bac. Elem.* 25.

Neceſſity is of three ſorts; *neceſſity* of *conſervation* of *life*, *neceſſity* of *obedience*, and *neceſſity* of *the act of God* or of *a ſtranger*.

And firſt of conſervation of life: If a man ſteal viands to ſatisfy his preſent hunger, this is no felony nor larceny. *Ibid.* *Sed qu.* If that is now conſidered as law? It is held to be law, *Britton*, *c.* 10. *Mirr. c.* 4. *ſect.* 16. But according to *Black.* 4 *V.* 31. it ſeems to be an unwarranted doctrine, borrowed from the notions of ſome civilians: at leaſt it is now antiquated, the law of *England* admitting of no ſuch excuſe at preſent. Cites 1 *Hal. P. C.* 54. Tho' on conviction under ſuch circumſtances, clearly proved, a merciful judge might be inclined to pardon the unhappy offender. But if ſuch neceſſity be owing to his unthriftineſs, ſurely it is far from being an excuſe. *Hawk. Pl. C.* 93. *cap.* 33. *ſect.* 20. So if divers be in danger of drowning by the caſting away of ſome boat or barge, and one of them get to ſome plank, or on the boat's ſide to keep himſelf above water, and another, to ſave his life, thruſts him from it, whereby he is drowned, this is neither *ſe defendendo*, nor by miſadventure, but juſtifiable. *Ibid.*—S. P. *Hawk. Pl. C.* 73. *cap.* 28. *ſect.* 26.

So if divers felons be in gaol, and the gaol by caſualty is ſet on fire, whereby the priſoners get forth, this is no eſcape nor breaking of priſon. *Bac. Elem.* 25.

So upon the ſtatute, that every merchant ſetting his merchandiſe on land without ſatisfying the cuſtomer or agreeing for it, (which agreement is conſtrued to be in certainty) ſhall forfeit his merchandiſe, and it is ſo that by tempeſt a great quantity of the merchandiſe is thrown over-board, whereby the merchant agrees with the cuſtomer by eſtimation, which falls out ſhort of the truth, yet the over quantity is not forfeited; where note, that *neceſſity diſpenſes with the direct letter of a ſtatute-law.* Ibid. & 26.

So if a man have right to land, and do not make his entry for terror of force, the law allows him a continual claim, which ſhall be as beneficial unto him as any entry.

The *ſecond neceſſity* is of *obedience*; therefore where baron and feme commit felony, the feme can neither be principal nor acceſſory, becauſe the law intends her to have no will, in regard of the ſubjection and obedience ſhe owes to her huſband.

So one reaſon among others, why ambaſſadors are excuſed of practices againſt the ſtate where they reſide (except it be in point of conſpiracy, which is againſt the law of nations and ſociety) is, becauſe *non conſtat* whether they have it *in mandatis*, and then they are excuſed by *neceſſity* of *obedience*. *Ibid.*

The *third neceſſity* is of *the act of God*, or of *a ſtranger*; as, if I be tenant for years of a houſe, and it be overthrown by tempeſt, or by floods, or invaſion of enemies, or if I have belonging to it ſome cottage which has been infected, whereby I can procure none to inhabit them, nor workmen to repair them, and ſo they fall down; in theſe caſes I am excuſed in waſte; but of this laſt learning, when and how the act of *God* and *ſtrangers* do excuſe, there are other particular rules. *Bac. Elem.* 26, 27.

Yet neceſſity is a privilege only *quoad jura privata*; for in all caſes if the act that ſhould deliver a man out of the neceſſity be againſt the commonwealth, neceſſity is no excuſe; for *privilegium non valet contra rempublicam*; and another ſays, *neceſſitas publica major eſt quam privata*; for death is the laſt point of particular neceſſity, and the law impoſes upon every ſubject, *that he prefer the urgent ſervice of his prince and country, before the ſafety of his life*; as if in danger of tempeſt thoſe who are in the ſhip throw over other men's goods, they are not anſwerable; but if a man be commanded to bring ordnance or munition to relieve any of the King's towns that are diſtreſſed, then he cannot for any danger or tempeſt juſtify throwing them over-board; for there it holds which was ſpoken by the *Roman*, when he alledged the ſame neceſſity of weather to hold him from embarking, *neceſſe eſt ut eam, non ut vivam.* So in the caſe put before of huſband and wife, if they join in commiting treaſon, *the neceſſity of obedience does not excuſe the offence*, as it does in felony; becauſe it is againſt the commonwealth. *Bac. Elem.* 27.

So if a fire happen in a ſtreet, I may juſtify pulling down the wall or houſe of another, to prevent the fire from ſpreading; but if I be aſſailed in my houſe in a city or town, and diſtreſſed, and to ſave my life I ſet fire to my houſe, which ſpreads and takes hold of other houſes adjoining, this is not juſtifiable, but I am ſubject to their action upon the caſe, becauſe I cannot reſcue my life by doing any thing which is againſt the commonwealth; but if it had been but a private treſpaſs, as the going over another's ground, or breaking his incloſure, when I am purſued, for the ſafeguard of my life, it is juſtifiable. *Bac. Elem.* 27, 28.

The common caſe proves this exception; that is, if a *madman* commit felony, he ſhall not loſe his life, becauſe his infirmity came by *the act of God*; but if a *drunken man* commit felony, he ſhall not be excuſed, becauſe *his imperfection came by his own default*; for the reaſon that loſs or deprivation of will, and election by *neceſſity*, and by *infirmity*, is all one, for the lack of *arbitrium ſolutum* is the matter; therefore as *infirmitas culpabilis* excuſes not, no more does *neceſſitas culpabilis.* Bac. Elem. 29. *See* Black. Com. 4 V. 27, 178.

Necklaces and bracelets of glaſs imported, What duties to pay. 4 *W.* & *M.* *c.* 5. *ſ.* 2.

Neckcloths, What ſorts of neckcloths are not chargeable by 10 *Ann. c.* 19. 12 *Ann. ſt.* 2. *c.* 9. *ſect.* 5. and *c.* 19.

Needlework, Importing it prohibited, 13 & 14 *Car.* 2. *c.* 13. May be exported duty free, 11 & 14 *W.* 3. *c.* 3. *ſ.* 15.

Ne exeat Regno, Is a writ to reſtrain a perſon from going out of the kingdom without the King's licence. *F. N. B.* 85. It may be directed to the ſheriff to make the party find ſurety, that he will not depart the realm; and on his refuſal, to commit him to priſon: or it may be directed to the party himſelf; and if he then goes, he may be fined. 2 *Inſt.* 178. And this writ is granted on a ſuit being commenced in *Chancery*, when the plaintiff fears the defendant will fly to ſome other country, and thereby avoid the equity of the court; which hath been ſometimes practiſed: when thus granted, the party muſt give bond to the Maſter of the Rolls in the penalty of 1000*l.* or ſome other large ſum, for yielding obedience to it; or ſatisfy the court by anſwer, affidavit, or otherwiſe, that he hath no deſign of leaving the kingdom, and give ſecurity therefore. *Practiſ. Solic.* 129.

A *Ne exeat Regnum* has been granted to ſtay a defendant from going to *Scotland*; for tho' it is not out of the kingdom, yet it is out of the proceſs of the court, and within the ſame miſchief. 2 *Salk.* 702. 3 *Mod.* 127, 169. 4 *Mod.* 179. If the writ be ſued for the King, the party againſt whom ſued may plead licence by letter patent, *&c.* which ſhall diſcharge him: But where any ſubject goes beyond ſea with the King's licence, and continues longer than his appointed time, it hath been held, he loſes the benefit of a ſubject. 4 *Leon.* 29. And if a perſon beyond ſea refuſes to return to *England* on the King's letters under his Privy Seal, commanding him upon his allegiance to return; being certified into the *Chancery*, a commiſſion may be awarded to ſeize his lands and goods for the contempt: and ſo it is if ſuch perſon's ſervants hinder a meſſenger from delivering his meſſage, on affidavit of it, *&c. Jenk. Cent.* 246. 3 *Nelſ. Abr.* 211.

See *Fugitives.* And *vide* the following books and caſes. *F. N. B* 85. 2 *Chan. Caſes*, 245. *Lane* 29. *Farr.* 9. *Chan. Prec.* 171. *Lloyd* v. *Cardy. Wms's Rep.* 263. *Done's Caſe. Caſes in Chancery in Lord Talbot's time* 196. *Hunter* v. *Maccray P. R. C.* 251, 2. 15 *Vin. Abr.* 537, 539.

Negative, Is a propoſition by which ſomething is denied; alſo a particle of denial, as, *not. An affirmative includes a negative*; for every ſtatute limiting any thing to be done in one form, altho' it be ſpoke in the affirmative, includes a *negative*; as the ſtatute of *Weſtm. cap.* 4. of a *quod ei deforceat* is, that the demandant ſhall vouch *ac ſi tenens eſſet in priori breve* includes a negative, *viz.* and not otherwiſe *Plow.* 206. *b.* 207. *a.* Arg. *Ubi plura*, in caſe of *Stradling* v. *Morgan.*

A *negative* cannot be proved or teſtified by witneſſes, only an affirmative. 2 *Inſt.* 662. Tho' a *negative* is incapable of being proved directly; yet indirectly it is otherwiſe: for in caſe one accuſes *B.* to have been at *York*, and there had committed a certain fact, in proof of which he produces ſeveral witneſſes; here *B.* cannot prove that he was not at *York.* againſt poſitive evidence that he was; but ſhall be allowed to make out the *negative* by collateral teſtimony, that at that very time he was at *Exeter*, &c. in ſuch a houſe, and in ſuch company. *Forteſcue* 37.

Negative may be implied by an affirmative, but not neceſſarily *e contra.* As the ſaying, that a papiſt, unleſs he conforms, ſhall not take by deviſe, does not neceſſarily imply that if he does conform, he ſhall take by deviſe, *&c.* 2 *Wms's Rep.* 9. *Paſch.* 1722. in caſe of *Hill.* v. *Felkin.*

Where a truſt of a term for raiſing portions for daughters directs a particular method for raiſing them, it implies a negative, that they ſhall not be raiſed any other way. 2 *Wms's Rep.* 19. *Paſch.* 1722. in caſe of *Ivy* v. *Gilbert & al'.*

An affirmative oath was made to ground an attachment upon; if the perſon againſt whom the motion is, denies the charge by oath poſitively and fully, the negative oath ſhall be preferred; and this is the only caſe in which it ſhall be ſo. 8 *Mod.* 81. *Trin.* 8 *Geo. The King* v. *Ackworth & al'.*

Negative pregnant, *(negativa pregnans)* Is a *negative*, implying alſo an affirmative: As if a man being impleaded to have done a thing on ſuch a day, or in ſuch a place, denieth that he did it *modo & forma declarata*, which implieth nevertheleſs, that in ſome ſort he did it: or if a man be ſaid to have alienated land in fee, and he ſaith he hath not aliened in fee, that is a *negative pregnant*; for tho' he hath not aliened in fee, yet it may be, he hath made an eſtate in tail. *Dyer* 17 *num.* 95. and *Brook hoc titulo*, and *Kitchen* 232. and *Terms of the Law.*

We read alſo in ſome Civilians of *affirmativa pregnans*, and that is, *quæ habet in ſe incluſivam*, negativam, *& hoc importare videntur dictiones (ſolum & tantum) quæ implicant* negativam. *Pacianus de Probationibus, lib.* 1. *cap.* 31. *num* 16. *fol.* 93.

A *negative pregnant* is a fault in pleading; and there muſt be a ſpecial demurrer to a *negative pregnant* plea, *&c.* for the court will intend every pleading to be good, till the contrary doth appear. *Mich.* 23 *Car.* 1 *B. R.* See 2 *Leon.* 248. Vide *Bro. Iſſue join. pl.* 81. *Heath's Max.* 53. 2 *Lee* 199. *Dighton* v. *Clark. Cro. Jac* 559, 560. *Lea* v. *Luthell.* 15 *Vin. Abr.* tit. *Negative pregnant.*

Neggildare, Signifies to claim kindred. *Leg. H.* 1. *c.* 70. *LL. Inæ, ſects* 7. 8.

Negligence, Is where a perſon *neglects* or *omits to do* a thing which he is by law obliged to. And where one has goods of another to keep till ſuch a time, and hath a certain recompence or reward for the keeping, he ſhall ſtand charged for injury by *negligence*, &c. But *if he hath nothing for keeping them, he is not bound to anſwer.* Doct. & Stud. 269. A man who finds another's goods, if they are after hurt by wilful *negligence*, it is held he is chargeable to the owner; tho' it is otherwiſe when they are loſt by caſualty, as in caſe they are laid in a houſe that is accidentally burnt, or if he deliver them to another to keep, who runs away with them, *&c. Ibid.* It is held if an accountant be robbed, and it is without his default and *negligence*, he ſhall not be anſwerable for the money. 1 *Inſt.* 89. A right may be loſt by *negligence*; as where an action is not brought in the time appointed by the ſtatute of limitations, *&c.* 21 *Jac.* 1. *c.* 16. See 2 *Williams's Rep.* 665. *Cowper* v. *Earl Cowper. Tot.* 76. *Kemp* v. *Palmer. Chanc. Rep.* 10. *Earl of Oxford's Caſe. Chan. Prec.* 583. *Ivey* v. *Gilbert.*

Negro. By the laws of the plantations in general, *Negro* ſervants are ſaleable; and where a *Negro* is ſold here, in action *indebitat. aſſumpſit* for the money, the declaration ought to be, that the defendant was indebted to the plaintiff for the *Negro* ſold here at *London*, but the ſaid *Negro* at the time of ſale was in *Virginia*, and that by the laws and ſtatutes of *Virginia*, *Negroes* are ſaleable as chattels. *Per Holt*, Ch. Juſt. 2 *Salk. Rep.* 666. In action of trover for a *Negro*, and verdict and damages for the plaintiff; it was moved in arreſt of judgment, that trover lay not for a *Negro*, for the owner had not an abſolute property in him: But the court ſeemed to think that in treſpaſs *quare captivum ſuum cepit*, the plaintiff might give in evidence that the party was his *Negro*, and he bought him. *Ibid.* See ſtat. 13 *Geo.* 1. *c.* 9. And 2 *Lev.* 201. *Butts* v. *Penny. Carth.* 396. *Chamberlain* v. *Harvey.* 2 *Salk.* 666. *Smith* v. *Brown and Cowper. Ib.* 667. *Smith* v. *Gould.* And *Black. Com.* 1 *V.* 127, 425. 2 *V.* 402.

Moſt undoubtedly here in *England*, a man cannot have any *property* in his fellow creature. But probably an action may be maintained againſt any one who employs or harbours a *Negro*, after notice, declaring for the loſs of the ſervice of the *ſervant* not the *ſlave.*

Neif, (Fr. *naif*, i. e. *naturalis, nativa*) Was a bondwoman, or ſhe *Villein*, born in one's houſe, mentioned in the ſtat. 9 *R.* 2. *c.* 2. If a bond-woman married a free man, ſhe was thereby made free; and being once free, and diſcharged of bondage, ſhe could not be *neif* after, without ſome ſpecial act done by her, as by divorce, confeſſion in court, *&c.* And a free woman taking a villein to her huſband, was not thereby bond; but their iſſue were villeins as their father was; tho' this is contrary to the Civil law, which ſays, *partus ſequitur ventrem. Terms de Ley.*

Anciently lords of manors ſold, gave or aſſigned their bondmen and *neifs*, as appears by the following deed of gift.——*Sciant quod ego* Radulphus de C. *Miles Dominus de* L. *Dedi Domino* Roberto de D. *Beatricem filium* Will. H. *de* L. *quondam* nativam *meam, cum tota ſequela ſua & omnibus catallis ſuis perquiſitis & perquirendis; Habend' & tenend. prædictam Beatricem cum tota ſequela ſua & omnibus catallis ſuis & omnibus rebus ſuis perquiſitis & perquirendis prædicto Domino* Roberto *vel ſuis aſſignatis, libere, quiete, bene & in pace imperpetuum, &c. In cujus, &c. hiis teſtibus*——Dat. apud L. in die Sancti Laurentii Martyris, Anno 13 Ed. 3. See *Nativi.*

Neiſty. There was an ancient writ called *Writ of Neiſty*, whereby the lord claimed ſuch a woman for his *neif*; now out of uſe.

Neighbour, *(vicinus)* One who dwells near another. See *Vicinage*.

Ne injuſte Vexes, A writ founded on *Magna Charta*, *c.* 10. that lies for a tenant diſtrained by his lord, for more ſervices than he ought to perform; and is a prohibition to the lord *not to diſtrain or vex his tenant:* In a ſpecial uſe, it is where the tenant hath prejudiced himſelf, by doing greater ſervices, or paying more rent, without conſtraint, than he needed; for in this caſe, by reaſon of the lord's ſeiſin, the tenant cannot avoid it by *avowry*, but is driven to his writ for remedy. *Reg. Orig.* 4. *F. N. B.* 10. And if the lord diſtrains to do other ſervices, or to pay other rent than due, after the prohibition delivered unto him, then the tenant ſhall have an attachment againſt the lord, *&c.* and when the lord cometh thereon, the tenant ſhall count againſt him, and put himſelf upon the grand aſſiſe, *&c.* whereupon judgment ſhall be given. *New Nat. Br.* 22. This writ is always *anceſtrel*, where the tenant and his anceſtors have holden of the lord and his anceſtors; and the lord hath incroached any rent, *&c.* A feoffee ſhall not avoid ſeiſin of rent had by incroachment of his feoffor, nor have the writ *Ne injuſte vexes*; alſo a man ſhall not have a writ of *Ne injuſte vexes* againſt the grantee of the ſeigniory. *Mich.* 18 *Ed.* 2. 10 *Ed.* 3. And tenant in tail may not have this writ; but ſhall plead and ſhew the matter, and not be eſtopped by the payment of his anceſtors, *&c.* *Trin.* 20 *Ed.* 3. But *qu.* if every queſtion that can now ariſe, where that writ was formerly in uſe, may not be determined in an action of *Replevin*, or of *Treſpaſs*.

Form of the writ of *Ne injuſte vexes*.

GEORGE the Third, *&c.* *To* A. B. *greeting: We command you, that you do not* vex *or trouble* C. D. *or ſuffer him to be vexed, for his freehold meſſuage*, &c. *which he holds of you, in*, &c. *Nor in any manner exact, or permit to be exacted from him ſervices which therefore he ought not to do, (or rent which he owes not) nor has been accuſtomed*, &c.

Nemine contradicente, Words uſed to ſignify the *unanimous* conſent of the members of either houſe of parliament, to a vote or reſolution.

Ne recipiatur, Againſt the *receiving* and ſetting down a cauſe to be tried. That is, where the cauſe is not entered in due time. See *Trial*.

Ne Vicecomes, *Colore Mandati Regis, quenquam amoveat a poſſeſſione Eccleſiæ minus juſte.* Reg. Orig. 61.

Nevis and St. Chriſtophers, The ſum of 103,003 *l.* 11 *s.* 4 *d.* diſtributed among the proprietors and inhabitants. 9 *Ann. c.* 23. 10 *Ann. c.* 34. 5 *Geo* 1. *c.* 32. 8 *Geo.* 1. *c.* 20. 13 *Geo.* 1. *c.* 3. 1 *Geo.* 2. *ſtat.* 2. *c.* 8.

New Aſſignment. In many actions the plaintiff, who hath alledged in his declaration a general wrong, may in his replication, after *an evaſive plea* by the defendant, reduce that general wrong to a more particular certainty, by aſſigning the injury afreſh with all its ſpecific circumſtances in ſuch manner as clearly to aſcertain and identify it, conſiſtently with his general complaint; which is called a *new* or *novel aſſignment.* *Black. Com.* 3 *V.* 310, 311.

Newcaſtle upon Tine, Keels in the haven to be meaſured and marked. 9 *H.* 5. *c.* 10. 30 *Car.* 2. *ſt.* 1. *c.* 8. 6 & 7 *W.* 3. *c.* 10. No goods ſhall be ſhipped in the harbour but at *Newcaſtle*. The mayor, *&c.* of *Newcaſtle* may pull down wears in the river. 21 *Hen.* 8. *c.* 18. Goldſmiths, ſilverſmiths, and plate-workers incorporated. 1 *Ann. ſtat.* 1. *c.* 9.

Newcaſtle. No perſon ſhall ſhip, load or unload any goods to be ſold, into or from ſhips at any place on the river *Tine*, but at the town of *Newcaſtle*, on pain to forfeit the goods: And none ſhall raiſe any wear in the haven there, between certain places on the ſaid river, *&c.* Stat. 21 *H.* 8. *c.* 18. At *Newcaſtle upon Tine*, if a trial be had between two inhabitants of the place, and the damages not exceeding 40 *s.* the plaintiff is to have no judgment, but defendant ſhall have coſts, by a private act of parliament. 5 *Mod.* 367. See *Coals*.

Newfound-Land. Perſons trading to *Newfound-land*, ſhall have freedom of fiſhing, *&c.* And every fiſhing ſhip that firſt enters any harbour or creek in *Newfoundland*, ſhall be admiral of the ſaid harbour for that ſeaſon, and determine differences between the maſters of fiſhing veſſels, and the inhabitants there, *&c.* *Stat.* 10 & 12 *W.* 3. *c.* 25.

Newgate. By 7 *Geo.* 3. *c.* 37. The mayor, *&c.* of *London*, are required to *pull down* the gaol of *Newgate*, and to remove, diſpoſe of, or deſtroy, the materials; and to build a new gaol, and the money ariſing from the ſale of the materials, to be applied towards the expence of ſuch new gaol.

Priſoners to be detained in any other public priſon within *London* or *Middleſex*, till the new gaol is built.

The new gaol, when built, to be the *County Gaol*, for *London* and *Middleſex*, and the removal of priſoners thereto, not to be an eſcape.

Perſons ſo removed to be deemed to be in the cuſtody of the keeper of *Newgate*.

Yet, the keepers of other priſons to be anſwerable for eſcapes.

Newgate market-place, To be leaſed to the city of *London*, 22 Car. 2. c. 11. ſect. 61.

Newhaven. See *harbours*.

Newport in the *Iſle of Wight*, The poll for knights of the ſhire may be adjourned to it, 7 & 8 *Will.* 3. *c.* 25. *ſ.* 10.

New River. See *River*.

News. Perſons reporting falſe *news* or tales, are puniſhable by ſtatute, 3 *Ed.* 1. *c.* 34. See *Scandalum Magnatum*. See *Black. Com.* 4 *V.* 149.

News Papers. For journals or other *news papers*, a duty of 1 *d*, is to to be paid for every ſheet; and every half-ſheet one half-penny, levied and ſubject to the ſame penalties as by 10 *Ann. c.* 19. *ſ.* 101. Stat. 11 *Geo.* 1. *c.* 8. *ſ.* 14. And by 30 *Geo.* 2. *c.* 12. an half-penny more. And perſons ſelling any *news paper*, not being ſtamped or marked as directed, a juſtice of peace may commit them to the houſe of correction for three months; and a reward of 20 *s.* is to be paid for apprehending any ſuch offender. 16 *Geo.* 1. *c.* 26. See 30 *Geo.* 2. *c.* 10. and 32 *Geo.* 2. *c.* 19.

New ſtile. See *Calendar*.

New Trial. Judgments are often ſuſpended by granting *new trials*. The cauſes of ſuſpending the judgment by granting a new trial, are at preſent wholly *extrinſic*, ariſing from matter foreign to, or *dehors* the record. See *Black. Com.* 3 *V.* 387. See alſo *Burr.* 1 *V.* 393, 395, 398, 2 *V.* 665, 936, 1228.

New-York, Salt how imported from *Europe* thither, 3 *Geo.* 2. *c.* 12.

Nicol,, Anciently uſed for *Lincoln*. *In faſce petitionum in turri* London, 30 *Ed.* 1. 7 *E.* 1. & *ſæpe alibi.* Cowell.

Niderling, Nidering, or **Nithing,** A vile baſe perſon, a ſluggard. *Will. of Malmſb. pag.* 121. *Mat. Par. Ann.* 1088.

Nient compriſe, Is an exception taken to a petition, becauſe the thing deſired is not contained in that deed or proceeding whereon the petition is founded: For example; One deſires of the court wherein a recovery is had of lands, *&c.* to be put in poſſeſſion of a houſe, formerly among the lands adjudged unto him; to which the adverſe party pleads, that this is not to be granted, by reaſon this houſe is not *compriſed* amongſt the lands and houſes for which he had judgment. *New Book Entries*.

Nient dedire, Signifies to ſuffer judgment to be had againſt one, by not denying or oppoſing it, *i. e.* by default. 29 *Car.* 2.

Niger Liber, The *Black Book* or regiſter in the *Exchequer*, is called by this name,

Night, Is when it is ſo dark, that the countenance of a man cannot be diſcerned; and by ſome opinions, *burglary* in the *night* may be committed at any time after ſun-ſet, and before riſing. *H. P. C.* 79. 3 *Inſt.* 63. 1 *Hawk.* 101. See *Noctanter.* And *Black. Com.* 4 *V.* 224.

Nightwalkers, Are ſuch perſons as ſleep by day and *walk* by *night*, being oftentimes pilferers, or diſturbers of the peace. 5 *Ed.* 3. *c.* 14. *Conſtables* are authorized by the Common law to arreſt *night-walkers* and ſuſpicious perſons, *&c.* *Watchmen* may alſo arreſt *night-walkers*, and hold them until the morning: And it is ſaid, that a private perſon may arreſt any ſuſpicious *night-walker*, and detain him till he give a good account of himſelf. 2 *Hawk. P. C.* 61, 80. One may be bound to the good behaviour for being a *night-walker*; and common *night-walkers* and haunters of bawdy-houſes are to be indicted before juſtices of peace, *&c.* 1 *Hawk.* 132. 2 *Hawk.* 40. *Latch.* 173. *Poph.* 280. But it is held not lawful for a conſtable, *&c.* to take up any woman, as a *night-walker*, on bare ſuſpicion only, of being of ill fame; *unleſs ſhe be guilty of a breach of the peace*, or ſome unlawful act, and ought to be found miſdoing. *Holt's MS.* See 2 *Hale's Hiſt P. C.* 89. See *Black. Com.* 4 *V.* 289.

Nihil capiat per Breve, or *per Billam*, Is the judgment given againſt the plaintiff in an action, either in bar of his action, or in abatement of his writ or bill, *&c.* *Co. Lit.* 363.

Nihil, or Nil debet, Is a common plea to an action of *debt*, when the money is paid: But *it is no plea in covenant, or breach aſſigned for non-payment of rent, &c.* 3 Lev. 170. If an action of *debt* be brought againſt a ſheriff or gaoler, for the eſcape of one in execution, the plaintiff muſt declare upon the judgment, and yet *Nil debet per patriam* is a good plea. 1 *Saund.* 38. It is entered thus: *Et præd* A. B. *per, &c. Attorn. ſuum ven & defend. vim & injur. quando, &c. Et dicit quod ipſe* Non debet *præfat.* A. B. *vigint. libr. nec aliqu. denar. ſum. in forma prout præd.* A. B. *ſuperius verſ. eum narravit, &c.*

Nihil, or Nil dicit, Is a failing by the defendant to put in an anſwer to the plaintiff's plea by the day aſſigned; which being omitted, judgment is had againſt him of courſe, as *ſaying nothing*, why it ſhould not.

Nihil, or Nil habuit in Tenementis, A plea to be pleaded in an action of debt *only*, brought by a leſſor againſt leſſee for years, or at will, *without deed.* 2 Lill. Abr. 214. In debt for rent upon an indenture of leaſe, *Nil habuit in tenementis* may not be pleaded; becauſe *it is an eſtoppel*, and a general demurrer will ſerve. 3 *Lev.* 146. But if debt is brought for *rent upon a deed poll*, the defendant may plead this plea: And where a defendant pleaded *Nil habuit in tenmentis tempore dimiſſionis*; the plaintiff replied, *Quod habuit in tenementis, &c.* and verdict and judgment was had for the plaintiff; whereupon writ of error being brought, it was aſſigned for error, that the replication was not good, for *he ought to have ſhewn what eſtate he then had*; and of that opinion was the court; and it had been bad upon demurrer, but being after a verdict, it is good. *Cro. Jac.* 312. If a leſs eſtate is found than the plaintiff pleads in his reply to a *Nil habuit, &c.* ſo as it be ſufficient to intitle the plaintiff to make a leaſe, it is good enough. 10 *W.* 3. *Nil habuit in tenementis* cannot be given in evidence where the plaintiff hath been in poſſeſſion. Ld. *Raym.* 746.

Nihils or Nichils, Are iſſues which the ſheriff that is *appoſed* in the *Exchequer* ſays, are *nothing worth*, and illeviable, for the inſufficiency of the parties from whom due, *Practiſ. Exchеq. pag.* 101. *Accounts of Nihil* ſhall be put out of the *Exchequer.* Stat. 5 *R.* 2. *c.* 13.

Niſi prius, Is a commiſſion to juſtices of *Niſi prius*; ſo called from a judicial writ of *Diſtringas*, whereby the ſheriff is commanded to diſtrain the impanelled jury to appear at *Weſtminſter* before the juſtices at a certain day in the following term, to try ſome cauſe, *Niſi prius Juſtic' Domini Regis ad aſſiſes capiend. venerint, viz.* unleſs the juſtices come before that day to ſuch a place, *&c.* 2 *Inſt.* 424. 4 *Inſt.* 159.

A writ of *Niſi prius* is where an iſſue is joined, then there goes a *venire* to ſummon the jury to appear at a day in court; and upon the return of the *Venire*, with the panel of the jurors names, the record of *Niſi prius* is made up and ſealed, and there goes forth the writ of *Diſtringas* to have the jurors in court, *Niſi prius Juſtic' venerint, &c.* ſuch a day in ſuch a county, to try the iſſue joined between the parties. 2 *Lil.* 215.

A record of *Niſi prius* ought to contain *a tranſcript of the whole iſſue roll.* Ibid. All civil cauſes at iſſue in the courts at *Weſtminſter*, are brought down in the two iſſuable *Vacations* before the day of appearance appointed for the jury *above*, into the county where the action was laid, to be tried there; *viz.* at the aſſizes; and then upon the return of the verdict given by the jury to the court above, the next term, the judges there give judgment for the party for whom the verdict is found: And theſe trials by *Niſi prius* are for the eaſe of the county, the parties, jurors, and witneſſes, by ſaving them the charge and trouble of coming to *Weſtminſter*; but in matters of great weight and difficulty, the judges above, upon motion, will retain cauſes to be tried there; though laid in the country, and then the juries and witneſſes in ſuch cauſes muſt come up to the courts at *Weſtminſter* for *trial at bar:* And the King hath his election to try his ſuits *at the bar*, or in the country, *&c.* *Woods Inſt.* 479.

The ſtatute of *Weſtm.* 2. 13 *Ed.* 1. *c.* 30. having ordained, "that all pleas in either bench, which require only an eaſy examination, ſhall be determined in the country before juſtices of aſſiſe, by virtue of the writ appointed by that ſtatute, commonly called the writ of *Niſi prius*;" it has been held, that an iſſue joined in the *King's Bench* upon an indictment or appeal, whether for treaſon or felony, or a crime of an inferior nature, committed in a different county from that wherein the court ſits, may be tried in the proper county by writ of *Niſi prius:* But as the King is not expreſly named in this ſtatute; and it is a general rule, that *he ſhall not be bound except named*, it is ſaid where the King is party, a *Niſi prius* ought not to be granted, without his ſpecial warrant, or the aſſent of his attorney; though the court may grant it in appeals in the ſame manner as any other actions. 2 *Inſt.* 424. 4 *Inſt.* 160. *Dyer* 46. 2 *Hawk. P. C.* 411.

Juſtices of *Niſi prius* have power to record nonſuits and defaults in the country at the days aſſigned; and are to report them at the bench, *&c.* And are to hear and determine conſpiracy, confederacy, champerty, *&c.* by 4 *Ed.* 3. *c.* 11. 12 *Ed.* 3. *c.* 4. *Niſi prius* ſhall be granted in attaints; but that which cannot be determined before the juſtices upon the *Niſi prius*, ſhall be adjourned to the bench where they are juſtices: And the juſtices before whom inquiſitions, inqueſts, and juries, ſhall be taken by the King's writ of *Niſi prius*, are impowered to give judgment in felony and treaſon, *&c.* and to award execution by force of their judgment. *Stat.* 5 *Ed.* 3. *c.* 11. 14 *Hen.* 6. *c.* 1.

It was held by *Hale*, that the juſtices of *Niſi prius* have not any *original* power of determining felony, without ſpecial commiſſion for that purpoſe; and by virtue of the acts 27 *Ed.* 1. *ſtat.* 1. *c.* 3. and 14 *H.* 6. *c.* 1. they have authority to determine ſuch felonies only, as are ſent down to be tried before them; in which caſe, on removal of the indictments, they may proceed to trial and judgment as if juſtices of gaol-delivery. 2 *Hale's Hiſt. P. C.* 41.

The Chief Juſtice of the *King's Bench*, Chief Juſtice of the *Conmon Pleas*, and Chief Baron of the *Exchequer*, and in their abſence two other of the judges, *&c.* as juſtices of *Niſi prius* for the county of *Middleſex*, ſhall try cauſes upon writs of *Niſi prius* on iſſues joined in *B. R.* and *C. B.* and the *Exchequer*, which were formerly only triable at bar, in the term time, or four days after each term. 18 *Eliz. c.* 12. And the time is enlarged to eight days after the end of any term; alſo any one judge or baron may try iſſues, *&c.* according to the ſtatute 18 *Eliz. c.* 12. in the abſence of the chiefs, and all ſheriffs, officers, parties and witneſſes, are required to give attendance, *&c.* by the 12 *Geo.* 1. *c.* 31. The time is enlarged to fourteen days after the end of any term, by *ſtat.* 24 *Geo.* 2. *c.* 18. The authority of juſtices of *Niſi prius* in the country, is annexed to the juſtices of *aſſiſe:* And the court above will take judicial notice of what is done at *Niſi prius*; being entered on record, 2 *Hawk.* 409.

See *Aſſiſe*. See *Black. Com.* 3 *V.* 57, 59, 353, 354. 4 *V.* 266.

Nivicolini Britones, Is uſed for *Welſhmen*; becauſe in *Carmarthenſhire* and other *Northern* counties of *Wales*, they lived near high mountains covered with ſnow.——*Cum adverſus* Nivicolinos Britones *Regia eſſet expeditio.* Du Cange.

Nobility, *(Nobilitas)* Signifies a *nobleneſs* of birth, generoſity or greatneſs of mind, excellence of virtue: According to *Juvenal*.

——Nobilitas *ſola eſt atque unica virtus.*

A *nobleman* is a perſon, who hath a certain eminency above the reſt; one who is known by the heroical virtues of his life. The *nobility* with us compriſeth all degrees of *dignity* above a baronet; and is derived from the King, who may grant it in fee, or for life, *&c.* See *Peers of the realm.* And *Black. Com.* 1 *V.* 157, 396.

Noble, An ancient kind of *Engliſh* money, in uſe in the reign of *Ed.* 3. And *Knighton* tells us, the *Roſe Noble* was a gold coin current in *England* about the year 1344. At this day there is no peculiar coin of that name; but a *Noble* is *ſix ſhillings and eight pence* value, being a third part of twenty ſhillings. *Merch. Dict.*

Noctanter, Is the name of a writ, iſſuing out of *Chancery*, returnable in the *King's Bench*, given by ſtatute *Weſtm.* 2. 13 *Ed.* 2. *c.* 46. By virtue of which ſtatute, where any one having right to *approve* waſte ground, *&c.* makes and erects a ditch or an hedge, and it is thrown down in the *night* time, and it cannot be known by a verdict of aſſiſe or a jury, by whom; or, if the neighbouring vills will not indict ſuch as are guilty, they ſhall be diſtrained to make again the hedge or ditch at their own coſts, and to anſwer damages. 2 *Inſt.* 476. And the *Noctanter* writ thereupon is directed to the ſheriff of the county, commanding him by the oath *Proborum & legalium hominum com' prædict' inquirer, qui malefactores & pacis Dom. Regis perturbatores apud, &c. Sepes & Foſſata* A. B. *ibidem per ipſum nuper levat'* Noctanter *aut tali tempore quo facta eorum ſciri non credebant proſtraver, ad dampnum præd.* A. B. *& contra pacem Dom. Regis, &c.* And on the return of this writ by the ſheriff, that the ſame is found by inquiſition, and the jury are ignorant who did it; the return being filed in the *Crown-Office*, there goes out a writ of inquiry of damages, and a *diſtringas* to the ſheriff to diſtrain *propinquas villatas ſepes & fenſuras præd' circumadjacentes ſepes, &c. proſtrat. levare ad cuſtos ſuos proprios*, and alſo to reſtore the damages, *&c.*

The circumadjacent vills intended by the ſtatute, are the contiguous vills round the place; and if they are not contiguous, they are not guilty, and may plead ſo: And when other vills near of as great value, by favour or negligence of the ſheriff are not ſummoned, *&c.* they may plead as tenants do, where all are not ſummoned. As to the pleadings to this writ, where more damages are found than there ought to be; the defendants may by proteſtation deny the fact, or confeſs and aver that the damages were but ſmall; and traverſe that the party *ſuſtinuit damna* to the ſum found, or any other ſum beyond what they admit; or may plead Not guilty, and in their defence any matter which will be a bar to the proſecutor, but ſatisfaction. 2 *Lil. Abr.* 217.

Here if the vills repair, damages ought not to be given to the value of the repairs; and if the vills which are liable thereto, have repaired, it ought ſo far to help them in the trial of the *quantum damnificatus*, that the other damages ought only to be conſidered. *Ibid.* The charges of the defence for the ſeveral vills muſt be raiſed by agreement; and if they cannot agree, each vill is to bear their own charges, as in caſe of a ſuit againſt a *hundred*, till execution; and then the ſtatute of 27 *Eliz. c.* 13. hath provided a remedy.

The writ of *Noctanter*, by the better opinion, lies for the proſtration as well of all encloſures as thoſe improved out of Commons; but if it be not in the *night*, this writ will not lie: And there ought to be a convenient time (which the court is to judge of) before the writ is brought, for the country to enquire of, and indict the offenders: which Sir *Edw. Coke* ſays ſhould be *a year and a day.* 2 Inſt. 476. Cro. Car. 440. 1 Keb. 545. And if any one of the offenders be indicted, the defendants muſt plead it, *&c.*

The word *Noctanter* is ſo neceſſary in an indictment of *burglary*, that it hath been adjudged inſufficient without it. *Cro. Eliz.* 483.

Noctes & Noctem de Firma. In the book of *Domeſday* we often meet with *Tot noctes de firma*, or *firma tot noctium*; which is underſtood of *entertainment of meat and drink for ſo many nights:* For in the time of the *Engliſh Saxons*, time was computed not by days, but *nights*; and ſo it continued till the reign of King *Hen.* 1. as appears by his laws, *cap.* 66, 76. And from hence it is ſtill uſual to ſay a *Sevennight*, i. e. *Septem noctus*, for a week; and a *Fortnight* for two weeks, *i. e. quatuordecim noctes.*

Nodfyrs or **Nedfri,** *(Sax.)* The learned *Spelman* ſays is derived from the old Saxon *neod*, obſequium & *fry*, *ignis*, and ſignified fires made in honour of the Heathen Deities. But by others it is ſaid to come from the Saxon *neb*, that is *neceſſary*; and was uſed for the neceſſary fire.

Nolle proſequi, Is uſed in the law, where a plaintiff in any action will proceed no further, and may be before or after verdict; though it is uſually before: And it is then ſtronger againſt the plaintiff than a nonſuit, which is only a default in appearance; but *this is a voluntary acknowledgment, that he hath no cauſe of action.* 2 Lil. 218. A plaintiff comes by his attorney *hic in curia & fatetur ſe ulterius nolle proſequi*; whereupon judgment was given, That the defendant *eat ſine die*, and no amercement upon the plaintiff: This was held erroneous; for the plaintiff ought alſo to be amerced. 8 *Rep.* 58.

Where there are two defendants, and one pleads Not guilty, and the other another plea; if on demurrer there is judgment for the plaintiff againſt one on the demurrer, and a *nolle proſequi* for the other, there it ought to be *eat ſine die*, or it is ill, and the entry of *Quod eat ſine die* is a diſcharge to the defendant. *Cro. Jac.* 439. *Hob.* 180.

In treſpaſs againſt two, one pleaded Not guilty, the other juſtified; and both iſſues being found for the plaintiff, and ſeveral damages and joint coſts aſſeſſed; the plaintiff then entered a *nolle proſequi* againſt one, and took judgment againſt the other for damages found againſt him, and the coſts; upon which it was inſiſted on for error, that the entry of a *nolle proſequi* before judgment as to one, is a releaſe to him, and *quaſi* a releaſe to both: *Per Cur'*, it is not an abſolute releaſe, but as it were an agreement that the plaintiff will not proceed againſt the one; and as to him it is a bar, but he may proceed againſt the other; and where they ſever by pleas, there may be proceedings againſt one, and a *nolle proſequi* againſt the other. *Cro. Car.* 239, 243. 2 *Lil.* 220. It has been held, in treſpaſs againſt three defendants; If a *nolle proſequi* were entered againſt two, before judgment againſt any of them, it had not amounted to a releaſe to them all; only to a waiver of ſuit: And the three defendants cannot join in a writ of error; for thoſe againſt whom the *nolle proſequi* is entered, are not damnified. *Jenk. Cent.* 309.

A *nolle proſequi* does not amount to a *retraxit* or releaſe, where there are more defendants. Ld. *Raym.* 599.

If there are divers iſſues, or an iſſue and demurrer in one cauſe, againſt one perſon, joined between the parties, the plaintiff may enter on the roll a *nolle proſequi*, that he will not proceed on one or more of the iſſues, or demurrer joined; and may notwithſtanding go to trial upon the reſt of the iſſues, or argue the demurrer. *Hil.* 23 *Car. B. R.*

The King may enter a *nolle proſequi* on an information; but it ſhall not ſtop the proceedings of the informer. 1 *Leon.* 119. And if an informer cauſe a *nolle proſequi* to be entered, the defendant ſhall have coſts, *&c.* by *ſtat.* 4 *&* 5 *W. & M. c.* 18. *Keble* mentions a *nolle proſequi* on *retraxit* by attorney. 3 *Keb.* 332. Alſo the King may, by his *Attorney General*, enter a *nolle proſequi* on an indictment.

But the clerk of the Crown cannot enter a *nolle proſequi* on an indictment, without leave of the Attorney General. Ld. *Raym.* 721.

Nomenclator, One who opens the etymologies of names, interpreted *Theſaurarius* by the learned *Spelman.* Cowell.

Nomination, *(nominatio)* Is the power (by virtue of ſome manor or otherwiſe) of appointing a clerk to a patron of a benefice, by him to be preſented to the ordinary. The right of *nomination* a man may have by deed; and in ſuch caſe, if the patron refuſe to preſent the *nominee*, or preſents another, he may bring a *quare impedit*; for he who is to preſent, is only an inſtrument to him who *nominates*; and the perſon who hath the *nomination* is in effect the patron of the church. *Plowd.* 529. *Moor* 47. A *nominator* muſt appoint his clerk within ſix months after avoidance; if he doth not, and the *patron* preſents his clerk before the biſhop hath taken any benefit of the lapſe, he is obliged to admit that clerk: But where one hath the *nomination*, and another the *preſentation*, if the right of preſentation ſhould afterwards come to the King, it is ſaid he who hath the *nomination* will be intitled to the *preſentation* alſo; becauſe the King who ſhould preſent cannot be ſubſervant to the *nominator*, being contrary to his dignity. *Hugh's Parſ. Law* 76, 77. Right of *nomination* may be forfeited to the crown as well as *preſentation*; where the *nominator* corruptly agrees to *nominate* within the ſtatute of *Simony*, *&c.*

Nomina Villarum. *Edw.* 2. ſent his letters to every ſheriff in *England*, requiring an exact account and return into the *Exchequer* of the names of all the *villages*, and poſſeſſors thereof in every county, which being done accordingly, the returns of the ſheriffs all joined together are called *Nomina Villarum*, ſtill remaining in the *Exchequer.* Anno 9 Ed. 2.

Nomine Pœnæ, A penalty incurred for not paying rent, *&c.* at the day appointed by the leaſe or agreement for payment thereof. 2 *Lil* 221. If rent is reſerved, and there is a *nomine pœnæ* on the non-payment of it, and the rent be behind and unpaid, there muſt be an actual demand thereof made, before the grantee of the rent can diſtrain for it; the *nomine pœnæ* being of the ſame nature as the rent, and iſſuing out of the land out of which the rent doth iſſue. *Hob.* 82, 133. And where a rent-charge was granted for years, with a *nomine pœnæ* and clauſe of diſtreſs, if it was not paid on the day; on the rent's being behind, and the term expired, the court was moved that the grantee might diſtrain for the *nomine pœnæ*; but it was held that he could not, becauſe the *nomine pœnæ* depended on the rent and the diſtreſs was gone for that, and by conſequence for the other. 2 *Nelſ. Abr.* 1182. See *ſtat.* 8 *Ann. c.* 17.

When any ſum *nomine pœnæ* is to be forfeited for non-payment of the rent at the time, *&c.* the demand of the rent ought to be *preciſely at the day*, in reſpect of the penalty: And debt will not lie on a *nomine pœnæ*, without a demand. 7 *Rep.* 28. *Cro. Eliz.* 383. *Style* 4. If there is a *nomine pœnæ*, of ſuch a ſum for every day after rent becomes due, it has been a queſtion whether there muſt be a demand for every day's *nomine pœnæ*, or one demand for many days: And by the better opinion it hath been holden, that *for every day there ought to be a demand*; and that one will not be ſufficient for the whole: But where a *nomine pœnæ* of forty ſhillings was limited *quolibet die proximo* the feaſt-day on which the rent ought to be paid, it was adjudged, that there was but one forty ſhillings forfeited, becauſe the word *proximo* muſt relate to the very next day following the rent day; ſo likewiſe when the rent became due and unpaid at the next rent day after that, and ſo on. *Palm.* 207. 2 *Nelſ.* 1182. An aſſignee is chargeable with a *nomine pœnæ* incurred after the aſſignment, but not before. *Moor* 357. 2 *Lil. Abr.* 221. Though forfeiture is mentioned to be *nomine pœnæ*, or not paying of a collateral ſum; it is no *nomine pœnæ*, if it be not of a rent. *Lutw.* 1156.

Non-ability, Is an exception taken againſt the plaintiff in a cauſe, upon ſome juſt ground, why he cannot commence any ſuit in law; as *præmunire*, *outlawry*, *excommunication*, *&c.* F. N. B. 35, 65. Vide *Diſability.*

Nonæ & Decimæ, Payments made to the church by thoſe who were tenants of church farms; where *nonæ* was a rent or duty for things belonging to huſbandry, and *decimæ* were claimed in right of the church. Formerly a ninth part of moveable goods was paid to the clergy on the death of perſons in their pariſh, which was called *nonagium*; and claimed on pretence of being diſtributed to pious uſes. *Blount.*

Non-age, In general underſtanding is all the time of a perſon's being under the age of one and twenty; and in a ſpecial ſenſe, where one is under fourteen, as to marriage, *&c.*

Non Aſſumpſit, A plea in perſonal actions, whereby a man denies any *promiſe* made, *&c.* See *Aſſumpſit.*

Non Aſſumpſit infra ſex Annos. Where a defendant by virtue of the ſtatute of limitations, 21 *Jac.* 1. *c.* 16. pleads that he did not undertake or promiſe within ſix years before the commencement of the action: As a plea of *Non accrevit infra ſex annos* is pleaded by virtue of the ſame ſtatute. This laſt plea is proper where the *cauſe of action* does not accrue, at the time of the promiſe made, as in the caſe of a note, payable at ſome time ſpecified, but ſubſequent to the date.

N. B. The commencement of the action is the actual taking out of the plaintiff's writ. And the computation is to be up to that day, though in vacation, and not to the *teſte* of the writ.

Non-claim, Is an omiſſion or neglect of one that claims not within the time limited by law, as within a year and a day, where *continual claim* ought to be made; or in five years after a *fine* levied, *&c.* By which a man may be barred of his right of entry. *Stat.* 4 *H.* 7. *c.* 24. 32 *H.* 8. *c.* 33. See *Claim.*

Non compos mentis, Is where a perſon is not of ſound mind, memory, and underſtanding. And there are four ſorts of *Non compos mentis.*

1*ſt*, An *ideot*, or *natural fool.*

2*dly*, A *madman*, or one who was of *ſane* memory, but hath loſt his underſtanding by ſickneſs, accident, or misfortune.

3*dly*, A *lunatic*, ſometimes of *ſane* memory, at other times not ſo.

4*thly*. A *drunkard* who deprives himſelf of his memory and underſtanding for a time. But though a drunken perſon is *Non compos mentis*, it ſhall give no privilege or benefit to him, as to acts done, *&c.* And his drunkenneſs ſhall not extenuate, but rather *aggravate* his offence, as well touching his life as his lands or goods. 1 *Inſt.* 264. 4 *Rep.* 125.

A deed of feoffment, grant, *&c.* made by a perſon *Non compos mentis* is voidable; his *heir*, as *privy in blood*, may ſhew the diſability of his anceſtor, and avoid his grants; and his *executors*, *&c.* as *privies in repreſentation* may do the ſame, by ſetting forth the infirmity of the teſtator or inteſtate. 4 *Rep.* 126. Where a perſon of *ſane* memory becomes *Non compos mentis*, and afterwards aliens his lands or goods; if he be found *Non compos*, and that he had aliened, the King may protect him, and take the profits of his lands, *&c.* to maintain him and his family. 4 *Rep.* 127. And he who hath the cuſtody of a man of *Non ſane* memory is accountable as bailiff to the *Non compos*, his executors or adminiſtrators. *Ibid.* A man *Non compos mentis* ſhall not loſe his life for felony or murder, for he cannot be guilty of either. 3 *Rep.* 124. 3 *Inſt.* 5, 54. Though if one who wants diſcretion or underſtanding, does any corporal hurt to, or treſpaſs againſt another; he may be compelled by *action* to *render damages.* 35 H. 6. 1 Inſt. 247. 1 Hawk. P. C. 2. Vide *Ideot*, *Lunatic.*

Non-conformiſts. The ſtatutes 1 *Eliz. c.* 1. and 13 & 14 *Car.* 2. *c.* 4. were made for the uniformity of Common Prayer, and ſervice in the church; and perſons *not conforming* thereto are ſubject to penalties. *Stat.* 10 *Ann. c.* 2. *Non-conformiſts* to be puniſhed by impriſonment, and to ſubmit in three months, or abjure the realm. 35 *Eliz. c.* 1. Keeping a *Non-conformiſt* in the houſe after notice, ſubject to the penalty of ten pounds a month. 35 *Eliz. c.* 1. Penalties on being at conventicles. 16 *Car.* 2. *c.* 4. 22 *Car.* 2. *c.* 1. *Non-conformiſt*

formiſt miniſters prohibited to come within five miles of a corporate town, *&c.* 17 *Car.* 2. *c.* 2. prohibited to teach ſchool. *Ib.* 12 *Ann. ſt.* 2. *c.* 7.

The penal laws not to extend to Proteſtant diſſenters, Proteſtant diſſenting miniſters freed from pariſh-offices, and ſerving upon juries. 1 *W. & M. c.* 18. Penalty on diſturbing their worſhip. *Ib.* Diſſenters permitted to qualify according to the toleration act, pending a proſecution. 10 *Ann. c.* 2. Toleration of the epiſcopal communion in *Scotland.* 10 Ann. c. 7. Penalty on magiſtrates being at conventicles in their habits. 5 *G.* 1. *c.* 4. Epiſcopal meeting houſes in *Scotland,* to be regiſtered. 19 *Geo.* 2. *c.* 38. Penalty on unqualified miniſters officiating in *Scotland.* Ib. Epiſcopal miniſters in *Scotland,* to be ordained by a biſhop of *England* or *Ireland.* Ib. 21 Geo. 2. c. 33. Peers and others preſent at unlawful meeting houſes in *Scotland* diſqualified from voting. 19 *Geo.* 2. *c.* 38. A form of affirmation to be taken inſtead of an oath by the members of the *Unitas fratrum.* 22 Geo. 2. c. 30. Privileges granted to the members of the *Unitas fratrum,* who ſhall ſettle in *America.* Ib.

Non Culpabilis, A plea of Not guilty to any action of *treſpaſs,* or *tort,* or to an *Indictment, &c.* See *Non eſt culpabilis.*

Non damnificatus, Is a plea to an action of debt upon a bond, with condition to ſave the plaintiff harmleſs. 2 *Lil. Abr.* 224. If the condition of a bond be to ſave harmleſs only, *Non damnificatus* generally is a good plea; but if it be to *diſcharge* the plaintiff, *&c. then the manner of the diſcharge is to be ſhewn.* 1 Leon. 72. When one pleads a diſcharge, and that he ſaved another harmleſs, *he ought to ſhew how he did it,* that the court may judge thereof: Though a defendant may plead *Non damnificatus,* without ſhewing it: becauſe *he pleads in the negative,* and then the other party ſhall ſhew damnification. *Cro. Jac.* 363. 2 *Rep.* 3, 4. *March* 121. It has been adjudged, where a condition of a bond is to ſave harmleſs from all ſuits in general, *Non damnificatus* may be pleaded; and if it is in a particular ſuit or thing, there the defendant muſt ſet forth how he hath ſaved harmleſs and diſcharged; but where a ſuit is upon a counter-bond, the plea of *Non damnificatus* is good. 8 *W.* 3. *B. R.* 5 *Mod.* 243.

Non Decimando. A cuſtom or preſcription: *De Non decimando* is to be diſcharged of all tithes, *&c.* See *Modus Decimandi.*

Non Diſtringendo, A writ not to diſtrain, uſed in divers caſes. Table of *Reg. of Writs.*

Nones, *(nonæ)* of every month is, the ſeventh day of *March, May, July,* and *October*; and the fifth day of all the other months. By the *Roman* account the *nones* in the aforementioned months are the ſix days next following the firſt day, or the *calends*; and of others the four days next after the firſt, according to theſe verſes,

> *Sex* Nonas Majus, October, Julius & Mars,
> *Quatuor at reliqui, &c.*

Though the laſt of theſe days is properly called *Nones*; for the others are reckoned backwards as diſtant from them, and accounted the third, fourth, or fifth *nones, &c.* And *nones* had their name from their beginning the *ninth* day before the *ides.* See *Ides.*

Non eſt Culpabilis, Or *Non Cul.* is the general plea to an action of *treſpaſs,* whereby the defendant abſolutely denies the fact charged on him by the plaintiff: Whereas in other ſpecial pleas, the defendant admits the fact to be done, but alledges ſome reaſons why he lawfully might do it. And as the plea of *Non Culp.* is the general anſwer in actions of treſpaſs, being actions criminal, civilly proſecuted; ſo it is likewiſe in all actions criminally followed, either at the ſuit of the King or any other, where the defendant denies the crime for which he is brought to trial. *S. P. C. lib.* 2. *c.* 63.

Non eſt Factum, A plea where an action is brought upon a bond, or any other deed, and the defendant denieth that to be *his deed* whereon he is impleaded. *Broke.* In every caſe where a bond is *void,* the defendant may plead *Non eſt factum*: But when a bond is *voidable* only, he muſt ſhew the ſpecial matter, and conclude judgment *Si actio, &c.* 2 Lil. 226

This plea is good in all caſes where the bond or ſpecialty was not executed.

Or, if it was executed, but was void *ab initio*: As, for default of capacity; if the obligor was a Monk, *feme covert, &c.* he may plead a ſpecial *Non eſt factum.*

It ought to conclude to the country; but if the plaintiff pleads over to the ſpecial matter, it will be well. 1 *Salk.* 274.

A ſpecial *Non eſt factum* puts the proof upon the defendants, which, upon *Non eſt factum* generally, will be upon the plaintiff. *Mod. Caſ.* 218.

If a deed is raſed in a material part, by which it becomes void, the perſon bound by it may plead *Non eſt factum,* and give the matter in evidence, becauſe *it was not his deed at the time of the plea.* 11 Rep. 27.

A bond was dated *November* the 10th, and ſo ſet forth in the plaintiff's declaration; the defendant pleaded *Non eſt factum,* and though it was found that it was not delivered till the eighteenth, the iſſue being upon a *Non eſt factum,* it appeared to be his deed: But it is ſaid the defendant might have helped himſelf by pleading ſpecially. *Cro. Jac.* 126.

The defendant pleads *Quod factum prædict.* was made and delivered *without a date,* and that the plaintiff put a date to it, and ſo *Non eſt factum*; this was held naught upon a demurrer, for the defendant confeſſes the deed, by ſaying *factum prædict.* and afterwards denies it; tho' he might have ſaid generally, *Non eſt factum.* Cro Eliz. 800. Where two are *jointly* bound in a bond, and an action is brought on it againſt one only, he cannot plead *Non eſt factum,* or demur in that caſe; but may have his plea in *abatement* of the writ. 5 *Rep.* 119. None but the party, his heirs, executors, *&c.* can plead *Non eſt factum,* Lutw. 662. For a ſtranger to the deed cannot plead a ſpecial *Non eſt factum*; but muſt ſay *Nothing paſſed by the deed.* 1 Rol. 188. See *Com. Dig.* 5 *V.* 222, 223.

Non eſt Inventus, The ſheriff's return to a writ, when the defendant is *Not to be found* in his *Bailiwick.* And there is a return that the plaintiff *Non invenit plegium,* on original writs. *Shep. Epit.* 1129.

Nonfeaſance. An offence of omiſſion of what ought to be done; as in not coming to church, *&c.* which need not be alledged in any certain place; for generally ſpeaking it is not committed any where: But *nonfeaſance* will not make a man a treſpaſſer, *&c.* 1 *Hawk.* 13. *Hob.* 251. 8 *Rep.* 146.

Non implacitando aliquem de Libero Tenemento ſine Brevi, A writ to prohibit bailiffs, *&c.* from diſtraining or impleading any man touching his freehold, without the King's writ. *Reg. Orig.* 171.

Non intromittendo, quando Breve Præcipe in Capite ſubdole impetratur, Was a writ directed to the juſtices of the *Bench,* or in *Eyre,* commanding them not to give one, who had, under colour of intitling the King to land, *&c.* as holding of him *in capite,* deceitfully obtained the writ called *Præcipe in Capite,* any benefit thereof, but to put him to his writ of right. *Reg. Orig.* 4. This writ having dependance on the court of *Wards,* ſince taken away, is now diſuſed.

Nonjurors, Are perſons who refuſe to take the *oaths* to government, who are liable to certain penalties; and for a third offence to abjure the realm, by 13 & 14 *Car.* 2. *c.* 1. Parſons, vicars, *&c.* are to take the oaths. and give their aſſent to the declaration, 14 *Car.* 2. *c.* 4. or they ſhall not preach, under the penalty of forty pounds, *&c.* *Stat.* 17 *Car.* 2. *c.* 2. Eccleſiaſtical perſons not taking the oaths on the revolution, were rendered incapable to hold their livings: but the King was impowered to grant ſuch of the *nonjuring* clergy as he thought fit, not above twelve, an allowance out of their eccleſiaſtical benefices for their ſubſiſtence, not exceeding a third part. 1 *W. & M. ſeſſ.* 1. *c.* 8. Perſons refuſing the oaths, ſhall incur, forfeit, and ſuffer the penalties inflicted on Popiſh recuſants, and the court of *Exchequer* may iſſue out proceſs againſt their lands, *&c.* 7 & 8 *W.* 3. *c.* 27. See the *ſtat.* 1 *Geo.* 1. *c.* 55. and *Oaths.*

Non Merchandizando viſtualia, Is a writ to juſtices of aſſiſe, to inquire whether the magiſtrates of ſuch a town do ſell victuals in groſs, or by retail; during the time of their being in office, which is contrary to an ancient ſtatute; and to puniſh them if they do. *Reg. Orig.* 184.

Non Moleſtando, A writ that lies for a perſon who is moleſted contrary to the King's protection granted him. *Reg.* of *Writs* 184.

Non obſtante, *(Notwithſtanding)* Is a clauſe frequent in ſtatutes and letters patent, and is a licence from the King to do a thing which at the Common law might be lawfully done; but being reſtrained by act of parliament, cannot be done without ſuch licence, *Vaugh.* 347. *Plowd.* 501.

The doctrine of *non obſtante*'s, which ſets the prerogative above the laws, was effectually demoliſhed by the *bill of rights* at the revolution, and abdicated at *Weſtminſter-hall* when King *James* abdicated the kingdom. *Black. Com.* 1 *V.* 342.

The *ſtat.* 18 *Eliz. c.* 2. confirmed all grants of the Queen by letters patent, of any honours, caſtles, manors, lands, tenements, *&c.* and that they ſhould ſtand and be good in law againſt the Queen, her heirs and ſucceſſors, *Non obſtante* any miſ-naming, miſ-recital, want of certainty, finding offices or inquiſitions, livery of ſeiſin, *&c.* By 14 *Car.* 2. *c.* 11. it was declared, that all grants of penſions, *&c.* and every *Non obſtante* therein contained, ſhould be void. And the 1 *W. & M. c.* 2. makes diſpenſations, *Non obſtante* to ſtatutes, void; unleſs allowed therein. See *Diſpenſations* and *Grants of the King*. And *Black. Com.* 1 *V.* 342. 2 *V.* 273. 4 *V.* 394.

Non omittas, Is a writ directed to the ſheriff, where the bailiff of a *liberty* or *franchiſe* who hath the return of writs refuſes or neglects to ſerve a proceſs, for the ſheriff to enter into the franchiſe and execute the King's proceſs himſelf, or by his officer: Before this writ is granted, the ſheriff ought to return, that he hath ſent to the bailiff, and that he hath not ſerved the writ; but for diſpatch, the uſual practice is to ſend a *Non omittas* with a *capias* or *latitat*. F.N.B. 68, 74. 2 Inſt. 453. If a ſheriff return that he ſent the proceſs to the bailiff of a liberty, who hath given him no anſwer; a *Non omittas* ſhall be awarded to the ſheriff: And if he returns that he ſent the proceſs to ſuch bailiff, who hath returned a *cepi corpus*, or ſuch like matter; and the bailiff bring not in the body, or money, *&c.* at the day, the bailiff ſhall be amerced, and a writ iſſue to the ſheriff to diſtrain the bailiff to bring in the body. 2 *Hawk.* 143.

Writs of *capias utlagatum*, and of *Quo minus* out of the Exchequer, and it is ſaid all writs whatſoever at the King's ſuit, are of the ſame effect as a *Non omittas*; and the ſheriff may by virtue of them enter into a liberty and execute them. 2 *Lil. Abr.* 229. The *Reg. of Writs* mentions three ſorts of this writ, given to prevent liberties being privileged to hinder or delay the general execution of juſtice: and the clauſe of the *non omittas* is, *quod* non omittas, *propter aliquam libertatem* (*viz.* of the liberty to which the ſheriff hath made a *mandavi ballivo, qui nullum dedit reſponſum) quin in eam ingrediaris & capias* A. B. *Si, &c.*

Non plevin, *(non plevina)* Is defined to be *defalta poſt defaltam*; and in *Hengham Magna, cap.* 8. it is ſaid, that the defendant is to replevy his lands ſeized by the King within fifteen days; and if he neglects, then, at the inſtance of the plaintiff at the next court day, he ſhall loſe his ſeiſin, *ſicut per defaltam poſt defaltam:* but by ſtatute it was enacted, that none ſhould loſe his land, becauſe of *non-plevin*, i. e. where the land was not replevied in due time. 9 *Ed.* 3. *c.* 2.

Non ponendis in Aſſiſis & Juratis, Is a writ granted for freeing and diſcharging perſons from ſerving on aſſiſes and juries; and when one hath a charter of exemption, he may ſue the ſheriff for returning him. This writ is founded on the *Stat.* of *Weſtm.* 2. *c.* 38. And the *Stat. Articuli ſuper Chartas, cap.* 9. F. N. B. 165. 2 Inſt. 127, 447.

Non procedendo ad Aſſiſam Rege inconſulto, A writ to ſtop the trial of a cauſe appertaining to one who is in the King's ſervice, *&c.* until the King's pleaſure be farther known. *Reg. Orig* 220.

Non Pros, or **Non Proſequitur.** If a plaintiff in an action, doth not declare againſt the defendant within reaſonable time, a rule may be entered againſt him by the defendant's attorney to declare; and thereupon a *non proſ. &c.* Practiſ. Solic. 222. And a plaintiff may enter a *non proſ.* againſt one defendant, where there are two who ſever in their pleas, before the record of the cauſe is ſent down by a *Niſi prius* to be tried at the aſſiſes: but it is ſaid there cannot be a *non proſ.* on a trial at the aſſiſes. 3 *Salk.* 246. Though in action againſt ſeveral defendants, it has been ruled otherwiſe. 2 *Salk.* 456. *Non pros*'s have been frequent on informations; but never upon indictments, till the reign of *Charles* II. *Ibid.* See *Nolle Proſequi*, and *Nonſuit*.

Non-Reſidence, Is applied to thoſe *ſpiritual perſons* who are not *reſident*, but wilfully abſent themſelves for the ſpace of one month together, or two months at ſeveral times in one year, from their dignities or benefices, which is liable to penalties, by the ſtatute againſt *non reſidence*. 21 H. 8. c. 13. But chaplains to the King, or other great perſons, mentioned in this ſtatute, and the 25 *H.* 8. *c.* 16. may be *non-reſident* on their livings; for they are excuſed from *reſidence* whilſt they attend thoſe who retain them: and biſhops are not puniſhable by ſtatute for *non-reſidency*; but if a biſhop hold a deanery, parſonage, *&c. in commendam* with his biſhopwrick, he is puniſhable by 21 *H.* 8. *c.* 13. for *non-reſidence* on the ſame. Alſo where biſhops are *non-reſident* on their biſhopricks, they are liable to eccleſiaſtical cenſure; and the King may iſſue a mandatory writ for their attendance thereon, and compel them to it by ſeizing their temporalties, a remarkable precedent whereof we have in the caſe of the biſhop of *Hereford*, in the reign of *Hen.* III. 2 *Inſt.* 625. See *Reſidence*.

Non Reſidentia pro Clericis Regis, Is a writ directed to the biſhop, charging him not to moleſt a clerk, employed in the King's ſervice, by reaſon of his *nonreſidence*; in which caſe he is to be diſcharged. *Reg. Orig.* 58.

Non ſane Memory, *(Non ſanæ Memoriæ)* Is uſed in law for an exception to an act, declared to be done by another, whereon the plaintiff in any action grounds his plaint; and the effect of it is, that the party who did that act, was not well in his ſenſes when he did it, or when he made his laſt will and teſtament. *New Book Entries.* And *ſane memory* for the making of a will is not always where the teſtator can anſwer Yes or no, or in ſome things with ſenſe; but *he ought to have judgment to diſcern, and be of perfect memory*, or the will ſhall be void. *Moor, c.* 1051. See *Non compos Mentis*.

Nonſenſe. Where a matter ſet forth is grammatically right, but abſurd in the ſenſe and unintelligible, ſome words cannot be rejected to make ſenſe of the reſt, but muſt be taken as they are; for there is nothing ſo abſurd but what by rejecting may be made ſenſe; but where a matter is nonſenſe by being contradictory and repugnant to ſomewhat precedent, there the precedent matter which is ſenſe ſhall not be defeated by the repugnancy which follows, but that which is contradictory ſhall be rejected; as in ejectment where the declaration is of a demiſe the 2d of *January*, and that the defendant *poſtea, ſcilicet* the 1ſt of *January*, ejected him; here the *ſcilicet* may be rejected as being expreſly contrary to the *poſtea*, and the precedent matter; *per Holt* Ch. J. 1 *Salk.* 324. *Trin.* 2 *Ann. B. R. Wyat* v. *Aland.*——But *per Powell* J. Words unneceſſary might in conſtruction be omitted or rejected, though they are not repugnant or contradictory, but in *cæteris omnibus* agreed with the Ch. J. *Ibid.* See *Miſtake*.

Non ſolvendo pecuniam, ad quam clericus mulctatur pro non reſidentia, Is a writ prohibiting an ordinary to take a pecuniary mulct, impoſed upon a clerk of the King's for non-reſidence. *Reg. of Writs, fol.* 59.

Non-ſuit, *(non eſt proſecutus, &c.)* Is a renunciation of the ſuit by the plaintiff or demandant, moſt commonly, upon the diſcovery of ſome error or defect, when the matter is ſo far proceeded in, as the jury is ready at the bar to deliver their verdict. The Civilians term it *Litis renunciationem.* Cowell.

Where plaintiff is demanded and doth not appear, he is ſaid to be nonſuit; this uſually happens, where upon trial, and when the jury are ready to give their verdict, the plaintiff diſcovers ſome error or defect in the proceedings, or is unable to prove a material point, *&c.* and thereupon the plaintiff may be demanded, (as he muſt be) his default is recorded, and the entry is *in miſericordia quia non proſecutus eſt breve ſuum*; upon which defendant recovers his coſts againſt him; but this ariſing from ſome ſuppoſed neglect or overſight, the plaintiff, except in ſome particular caſes, is not barred from commencing a new action. For the form of the entry, ſee *Cro. Jac.* 213. 2 *Leon.* 177. 4 *Mod.* 86. 2 *Salk.* 456.

Where a plaintiff is nonſuit, if he will again proceed he muſt commence a new action.

1. *Who may be nonſuit; in what action, and at what time there may be a nonſuit.*

2. *How far the nonſuit of one, ſhall be the nonſuit of another; and how far a nonſuit for part of the thing in demand ſhall be a nonſuit for the whole.*

3. *Of the effect of a nonſuit; and of its being a temporary bar.*

1. *Who may be nonſuit; in what actions, and at what time there may be a nonſuit.*

It is agreed, that the King being in ſuppoſition of law always preſent in court, cannot be nonſuit in any information or action wherein he is *ſole* plaintiff; but it is held, that any informer *qui tam*, or plaintiff in a popular action, may be nonſuit, as well in reſpect of the King as of himſelf. *Bro. Nonſuit* 68. *Co. Lit.* 139. *b.* 2 *Roll. Abr.* 131.

If an infant bring an aſſiſe by guardian, altho' the infant diſavow the ſuit in proper perſon, yet no nonſuit ſhall be awarded. 39 *Aſſ. pl.* 1. 2 *Roll. Abr.* 130. S. C.

Where an executor need not name himſelf executor, he ſhall pay coſts upon a nonſuit, and the naming himſelf executor ſhall not exempt him from it. 6 *Mod.* 181.

If an attorney of the Common Pleas ſues an action there, he ſhall not be demanded, becauſe he is ſuppoſed always preſent aiding the court. 2 *H.* 6. 44. *b.* 1 *Roll. Abr.* 581. S. C. *Sed qu.* as to this doctrine? In many caſes it is the intereſt of the plaintiff to be nonſuit, inſtead of having a verdict againſt him, as he may bring a new action, wherein, if properly adviſed, and purſued, he may recover.

A perſon may be nonſuit in a writ of error. 2 *Roll. Abr.* 130. 1 *Sid.* 255. S. P.

A perſon may be nonſuit in a writ of falſe judgment. 20 *H.* 6. 18. *b.* 2 *Roll. Abr.* 130. S. C.

One cannot be nonſuit in an action in which he is not an actor or demandant; and tho' he afterwards becomes an actor, yet not being originally ſo, he cannot be nonſuit as an avowant; ſo of garniſhees who become actors, but were not ſo originally. 22 *Ed.* 4. 10.

So if a perſon outlawed hath a charter of pardon, and ſues a *ſcire facias* againſt the party, tho' hereby he is an actor, yet he cannot be nonſuit. 2 *Roll. Abr.* 130.

So if a man traverſe an office he cannot be nonſuit, altho' he is an actor, for he hath no original pending againſt the King. 2 *Rol. Abr.* 130. *Dyer* 141. *pl.* 47. this is made a *quære*.

But in a petition of right againſt the King the plaintiff may be nonſuit. 11 *H.* 4. 52. 2 *Roll. Abr.* 130.

So in an *audita querela*, to avoid a ſtatute, the plaintiff may be nonſuit, for he is plaintiff in this action. 47 *Ed.* 3. 5. *b.*

If to two *nihils* returned to a *ſcire facias* on a charter of pardon, the plaintiff does not appear, he ſhall be nonſuit; for the ſtatute ordains, that upon his appearing, he ought to count againſt the defendant. 45 *Ed.* 3. 16.

At the Common law, upon every continuance, or day given over before judgment, the plaintiff was demandable, and upon his non-appearance might have been nonſuit. *Co. Lit.* 139. *b.* That if at Common law he did not like the damages given by the jury, he might be nonſuit. 5 *Mod.* 208.

But now by 2 *Hen.* 4. *cap.* 7. it is enacted in the words following: "Whereas, upon verdict found before any juſtice in aſſiſe of *novel diſeiſin, mort d'anceſtor*, or any other action whatſoever, the parties before this time have been adjourned upon difficulty in law, upon the matter ſo found; it is ordained and eſtabliſhed, that if the verdict paſs againſt the plaintiff, the ſame plaintiff ſhall not be nonſuited."

Notwithſtanding this ſtatute, it hath been held, that the plaintiff may be nonſuited after a ſpecial verdict, or after a demurrer and argument thereon. *Co. Lit.* 139. 2 *Jon.* 1. 2 *Roll. Abr.* 131-2. 3 *Leon.* 28. and ſee 2 *Hawk. P. C.* 184.

If there be a judgment to account, and auditors aſſigned, and thereupon a *capias ad computandum*, the plaintiff cannot be nonſuited on the original, becauſe the original is determined by the judgment to account. 2 *Roll. Abr.* 131. See *Co. Lit.* 139. *b.*

Stat. 14 *Geo.* 2. *cap.* 17. Where iſſue is joined in an action at law, and the plaintiff ſhall neglect to bring ſuch iſſue to be tried according to the courſe of the court; it ſhall be lawful for the judges on motion in open court (due notice having been given thereof) to give the *like judgment* for defendant *as in caſes* of nonſuit; *unleſs the judges ſhall on reaſonable terms allow further time for trial of ſuch iſſue*; and if the plaintiff neglect to try ſuch iſſue within the time allowed, then the judges ſhall give judgment as aforeſaid.

All judgments given by virtue of the act, to be of the like effect as *judgments upon nonſuit.* The defendant ſhall upon ſuch judgment be awarded his *coſts*, in any action where he would upon nonſuit be intitled to the ſame. No indictment, information, or cauſe ſhall be tried at *niſi prius* before any judge of aſſiſe or *niſi prius*, or at the ſittings in *London* or *Weſtminſter*, where the defendant reſides above 40 miles from the ſaid cities reſpectively, unleſs notice of trial in writing has been given 10 days before. In caſe any party ſhall have given ſuch notice of trial, and ſhall not afterwards duly countermand the ſame in writing *ſix days before* ſuch intended trial, every ſuch party ſhall be obliged to pay unto the party to whom notice was given, the like coſts as if ſuch notice had not been countermanded. And the defendant may, the next term, move the court for judgment as in caſe of a *nonſuit.*

2. *How far the nonſuit of one ſhall be the nonſuit of another; and how far a nonſuit of part of the thing in demand ſhall be a nonſuit of the whole.*

In real or mixt actions, the nonſuit of one demandant is not the nonſuit of both; but he who makes default ſhall be ſummoned and ſevered; but regularly in perſonal actions, the nonſuit of one is the nonſuit of both. *Co. Lit.* 139. 2 *Inſt.* 563. And *vide* 2 *Roll. Abr.* 132. Several caſes to this purpoſe.

But in perſonal actions brought *by executors*, there ſhall be *ſummons* and *ſeverance*, becauſe the beſt meaſure ſhall be taken for the benefit of the dead; and ſo it is in action of treſpaſs, as executors, for goods taken out of their own poſſeſſion. Like law in account, as executors by the receipt of their own hands. *Co. Lit.* 139. *a.* See *Executors.*

In an *audita querela* concerning the perſonalty, the nonſuit of the one is not the nonſuit of the other; becauſe it goeth by way of diſcharge, and freeing themſelves, therefore the default of the one ſhall not hurt the other. *Co. Lit.* 139. In an *audita querela, ſcire facias, attaint*, the nonſuit of one ſhall not prejudice the other. 6 *Co.* 26.

In a *quid juris clamat*, the nonſuit of the one is the nonſuit of both; becauſe the tenant cannot attorn according to the grant. *Co. Lit.* 139. *a.*

An appeal againſt divers, whether they plead the ſame or ſeveral iſſues, it hath been adjudged, that a nonſuit againſt one, at the trial of any one of the iſſues, is a nonſuit as to all, becauſe a nonſuit operates as a releaſe of the whole. *Cro. Eliz.* 460. *pl.* 6. *Dyer* 120. 2 *Rol. Abr.* 133. 1 *Sid.* 378.

A *latitat* was ſued out againſt four defendants in treſpaſs, the plaintiff was nonſuit for want of a declaration, and the defendant's attorney entered four nonſuits againſt him; and it was held to be irregular, *becauſe the treſpaſs is joint*; and tho' the plaintiff may count ſeverally againſt the defendants, yet it remains joint till ſevered by the count. 2 *Salk.* 455. There is a nonſuit before appearance at the return of the writ, or after appearance at ſome day of continuance. *Co. Lit.* 138. *b.*

It is laid down as a general rule, that *a nonſuit for part is a nonſuit for the whole*; but it hath been held, that if a defendant plead to one part, and thereupon iſſue is joined, and demur to the other, the plaintiff may be nonſuit as to one part, and proceed for the other. 2 *Leon.* 177. *Hob.* 180.

If in *debt* the defendant acknowledges the action as to part, and joins iſſue as to the reſidue, and the plaintiff hath judgment for that which is confeſſed; but there is a *ceſſat executio*, by reaſon of the *damages* to be aſſeſſed by the jury; if the plaintiff be nonſuited in this iſſue, this ſhall be a nonſuit for the *damages* to be given, becauſe that he had judgment. 2 *Rol. Abr.* 134.

If in trover the defendant pleads, that as to ſome of the goods they were fixed to his freehold, as to others that he had them of the gift of the plaintiff, and as to the reſt Not guilty; and as to the firſt, the plaintiff enters *non vult ulterius proſequi*; this amounts only to a *retraxit*, and is no nonſuit, ſo as to bar the plaintiff from proceeding on the other parts of the plea, on the rule, that a nonſuit for part is a nonſuit for the whole. 2 *Leon.* 177. *Sir John Sands* v. *Paſcal Brocas.*

3. *Of the effect of a nonſuit; and of its being a temporary bar.*

A nonſuit, as hath been obſerved, is regularly no peremptory bar; but the plaintiff may, notwithſtanding, commence any new action of the ſame or like nature; but this general rule hath the following exceptions.

1. It is peremptory in a *quare impedit*; and in that action a diſcontinuance is alſo premptory; and the reaſon is, for that the defendant had, by judgment of the court, a writ to the biſhop; and the incumbent, that cometh in by that writ, ſhall never be removed; which is a flat bar to that preſentation.

2. Nonſuit in an appeal of murder, rape, robbery, *&c.* after appearance, is peremptory, and this *in favorem vitæ*; but the nonſuit of the plaintiff in an appeal is not ſuch an acquittal, on which the defendant ſhall recover damages againſt the abettors, by *Weſtm.* 2. *cap.* 12. unleſs, after the nonſuit, he were arraigned at the King's ſuit upon the appeal, and acquitted.

3. So if the plaintiff, in an appeal of mayhem, be nonſuit after appearance, it is peremptory; for the words therein are *felonice mayhemavit.*

4. A nonſuit after appearance is alſo peremptory in a *nativo habendo*, and the nonſuit of one plaintiff in that action nonſuits both *in favorem libertatis*; for in a *libertate probanda* ſuch nonſuit is not premptory, neither is the nonſuit of one plaintiff the nonſuit of both. *Co. Lit.* 139. *a.* *Cro. Eliz.* 881.

5. Such nonſuit is alſo peremptory in an attaint, but a diſcontinuance in an attaint is not; becauſe there is a judgment given upon the nonſuit, but not upon the diſcontinuance. *Co. Lit.* 139. *a.*

For more learning on this ſubject, ſee 15 Vin. Abr. *tit.* Nonſuit; *and ſee* Coſts, Damages, Proceſs.

Non ſum informatus, Is a formal anſwer made of courſe by an attorney, who is *not inſtructed or informed* to ſay any thing material in defence of his client; by which he is deemed to leave it undefended, and ſo judgment paſſeth againſt his client. *New Book of Entries.*

Non-tenure, Is a plea in bar to a real action, by ſaying, that he (the defendant) holdeth not the land mentioned in the plaintiff's count or declaration, or at leaſt ſome part thereof. 25 *E.* 3. *c.* 16. 1 *Mod. Rep.* 250. And our books mention *non-tenure* general and ſpecial: general, where one denies ever to have been tenant of the land in queſtion; and ſpecial is an exception, alledging that he was not tenant the day whereon the writ was purchaſed. *Weſt. Symb. par.* 2. When the tenant or defendant pleads *non-tenure* of the whole, he need not ſay who is tenant; but if he pleads *non-tenure* as to part, he muſt ſet forth who is the tenant. 1 *Mod.* 181. *Non-tenure*]in part, or in the whole, is not pleadable after imparlance. 3 *Lev* 55.

Non-term, (*non terminus*) Is the vacation between *term* and *term*; formerly called the time or days of the King's peace. *Lamb. Arcba.* 126.

Non-uſer, Of offices concerning the publick, is cauſe of forfeiture. 9 *Rep.* 50. And if one have a franchiſe, and do *not uſe* it, he ſhall forfeit the ſame; which likewiſe may be loſt by default, as well as *non-uſer*. *Stat.* 3 *Ed.* 2. *c.* 9. See *Office.*

Nook of Land, (*nocata terræ*) In an old deed of Sir *Walter de Pedwardyn*, twelve acres and a half of land were called a *nook of land*; but the quantity is generally uncertain.——*Illi qui tenuerint dimidiam virgatam terræ, vel* nocatam terræ, *vel cottagium de bondagii tenura.* Dugd. Warwick. pag. 665.

Norroy *Quaſi North Roy*, The *Northern King at Arms*, mentioned in 14 *Car.* 2. *c.* 33. See *Herald.*

Northampton, Satutes made there. 2 *Ed.* 3. for building the town, 27 *Hen.* 8. *c.* 1. 27 *Car.* 2. *c.* 1.

Northleech School, in the county of *Glouceſter*, how founded and incorporated, 4 *Jac.* 1. *c.* 7.

Northumberland and Northern Counties, Proviſions for preventing theft and rapine upon the northern borders, 7 *Jac.* 1. *c.* 1. 13 & 14 *Car.* 2. *c.* 22. 29 & 30 *Car.* 2. *c.* 2. 24 *Geo.* 2. *c.* 57. Benefit of clergy taken from notorious ſpoil-takers in *Northumberland, &c.* or juſtices of aſſiſe, *&c.* may tranſport them not to return, 18 *Car.* 2. *c.* 3. The acts for preventing theft and rapine on the northern borders ſhall be deemed public acts. 6 *Geo.* 2. *c.* 37. *ſect.* 10.

North Wales. See *Wales.*

Norwich. In the city of *Norwich*, or county of *Norfolk*, no perſons ſhall buy any worſted yarn ſpun there, but ſuch as work at it in *Norwich, &c.* on pain to forfeit 40*s.* for every pound. 33 *H.* 8. *c.* 16. The making of *Norwich* ſtuffs is regulated by ſtatute, and penalties and forfeitures for defaults in making them, are leviable by juſtices of peace, *&c.* They are to be ſealed, and perſons having them in their poſſeſſion unſealed, other than the firſt owner, ſhall forfeit for every piece 40*s.* *Stat.* 13 & 14 *Car.* 2. *c.* 55. All manufacturers of ſtuffs, not journeymen, *&c.* may be made freemen of *Norwich*; and perſons uſing trades not being free, ſhall forfeit 10*l.* a month. 9 *Geo.* 1. *c.* 9. The election of officers, *&c.* in the city of *Norwich*, how to be made by ſtatute. See 3 *Geo.* 2. *c.* 8.

Noſe, Slitting or cutting it off, where felony, 22 & 23 *Car.* 2. *c.* 1. Called the *Coventry* act. See the *State Trial, Vol.* 6. *fo.* 212. And ſee *Black. Com.* 4 *V.* 207.

Notary, (*Notarius*) Is a perſon (uſually a ſcrivener) who takes notes, or makes a ſhort draught of contracts, obligations, or other writings and inſtruments. *Stat.* 27 *Ed.* 3. *c.* 1. At this time we call him a *notary public*, who publicly atteſts deeds or writings, to make them authentic in another country; but principally in buſineſs relating to merchants: they make proteſts of foreign bills of exchange, *&c.* And *noting* a bill is the *notary*'s going as witneſs, to take notice of a merchant's refuſal to accept or pay the ſame. *Merc. Dict.*

Note of a Fine, Is a brief of the fine made by the *chirographer*, before it is engroſſed. *Weſt. Symb. par.* 2.

Notes promiſſory, For payment of money. See *Bill of Exchange.* And ſee 5 & 6 *W.* & *M.* *c.* 21. *ſ.* 5. and 3 & 4 *Ann*, *c.* 9. *ſ.* 1. which makes promiſory notes aſſignable.

Not guilty, Is the general iſſue or plea of the defendant in any criminal action; and *Not guilty* is a good iſſue in actions of *treſpaſs*, and upon the *caſe* for deceits or wrongs; but not on a promiſe, *&c.* *Palm.* 393. If one hath cauſe of juſtification in treſpaſs, and pleads *Not guilty*; he cannot give the ſpecial matter in evidence, but muſt confeſs the fact, and plead the ſpecial matter, *&c.* 5 *Rep.* 119. Unleſs in ſome caſes provided for by act of parliament, as in the caſe of juſtices of the peace, peace officers, churchwardens, and overſeers of the poor, &c. *See the reſpective titles, and the Tables to the Statutes.* Vide *Non eſt Culpabilis.*

Notice, Is the making ſomething known, that a man was or might be ignorant of before. And it produces divers effects; for by it the party who gives the ſame, ſhall have ſome benefit which otherwiſe he ſhould not have had: By this means, the party to whom the notice is given, is made ſubject to ſome action or charge, that otherwiſe he had not been liable to; and his eſtate in danger of prejudice. *Co. Lit.* 309.

Notice is required to be given in many caſes by law, to juſtify proceedings where any thing is to done or *demanded, &c.* But none is bound by law to give notice to another perſon of *that* which ſuch other may otherwiſe inform himſelf, except ſuch notice is directed by act of parliament.

If one be bound by an *aſſumpſit* generally to do a thing to another, he to whom the promiſe is made muſt give notice *when* he will have him do it; but if he promiſe that another perſon ſhall do it, there he to whom the thing is to be done is not obliged to give notice to that third perſon when he will have it done, but the party muſt procure it at his peril: for he may not know that other perſon, and there is no privity of contract between thoſe two, as there is betwixt the other two. 2 *Lill. Abr.* 239. And in caſe of a promiſe, it has been adjudged, that *where a penalty is to be recovered, notice is requiſite*; but it is not ſo where damages are to be recovered; in which caſe the party hath ſufficient notice by the action brought. 1 *Bulſt.* 12. If a perſon promiſe to *pay ſo much* to another at his day of marriage; the party at his peril is to take notice of the marriage. *Cro. Car.* 34, 35. And it is a neceſſary intendment, that when after the marriage the plaintiff requeſted payment of the money, that notice was given of the marriage. *Cro. Jac.* 228.

It was held, that if a *collateral thing* is to be done at or after marriage, there notice is to be given of it; tho' when *money is to be paid*, it is a *debt* due to the party by the marriage, and may be recovered without any notice given. 2 *Bulſt* 254. Notice muſt be given to an heir at law of a condition annexed to his eſtate; or he is not bound to take notice of the condition. 1 *Lutw.* 809. 4 *Rep.* 82. 3 *Mod.* 28. Yet it is ſaid, that the heir is bound to take notice of a proviſo in a feoffment; and this difference has been taken, that where notice is required to be given by the original deed or agreement, it is hereditary, and deſcends to the heir; but if it is collateral to the father, it ſhall not bind his heir, without expreſs notice. *Winch.* 108. 2 *Nelſ. Abr.* 1186.

A man who is a ſtranger to a deed, that hath an eſtate by way of remainder, &c. ſhall not forfeit or determine his eſtate by virtue of any proviſo in ſuch deed, unleſs he hath notice of it. 8 *Rep.* 92. The feoffee of land, or bargainee of a reverſion, ſhall not take advantage of a condition, for non-payment of rent reſerved upon a leaſe, on demand made by them, without notice thereof given to the leſſee. 9 *Rep.* 31. If a manor be conveyed or granted away, by deed of bargain and ſale, &c. to another; the preſent lord muſt give notice of it to the copyholder, otherwiſe if he deny to pay his rent, it will be no forfeiture. 5 *Rep.* 13. And copyholders ſhall not forfeit their eſtates for not appearing at the lord's court, if they have no notice of the court, *etc.* 1 *Leon.* 104.

In a covenant to make aſſurance generally, notice muſt be given to the party to know what eſtate he would have made to him. *Style* 61. Where one is bound to another to make ſuch an aſſurance as *A. B.* ſhall adviſe, the obligor is bound to make the aſſurance, without notice that *A. B.* had adviſed it; but if he had been bound to make ſuch aſſurance as the counſel of the obligee ſhould adviſe, notice ought to be given to the obligor, that the counſel of the obligee had adviſed it. 1 *Leon.* 105.

If I am bound to enfeoff ſuch perſons as the obligee ſhould name, he is to give notice of thoſe which he names, or I am not bound to enfeoff them. 2 *Danv. Abr.* 105. And if the condition of an obligation be to account before ſuch auditors as the obligee ſhall aſſign, and the obligee aſſigns auditors; he is to give notice thereof to the obligor, or he will not be bound to account. *Ibid.* Notice is not to be given ſo ſtrictly upon a covenant, as upon a bond; which is on the point of forfeiture. *Cro. Jac.* 391. If the agreement be, that a perſon ſhall pay ſo much as *A. B.* hath paid, the defendant is to inquire of him, and the plaintiff is not bound to give notice: but if the perſon or thing is altogether uncertain, the plaintiff to intitle himſelf to an action, muſt give notice. *Cro. Jac.* 432, 433.

If an act is to be done by a ſtranger, and not by the plaintiff, the cogniſance thereof lies as well in the notice of the defendant as of the plaintiff; therefore the plaintiff need not lay a notice. *Cro. Jac.* 492. *Cro. Car.* 132. If a thing lies in the knowledge of the plaintiff, there ought to be notice given to the defendant. *March* 156. 4 *Mod.* 230. And when one may take notice, and not the other; notice is neceſſary. *Latch.* 15. It has been holden, that a defendant having undertaken to do a thing, undertakes to do all circumſtances incident to the the doing it, and that without notice; but if he had been ignorant of the thing to be done, then notice muſt be given. 2 *Bulſt.* 143.

If one make a leaſe for years, with covenant that if the leſſee, his executors and aſſigns, do not repair within ſix months after notice given, the leaſe to be void; and the leſſee makes a leaſe for part of his term to another, and then the houſe is decayed; in this caſe the notice is to be given to the firſt leſſee in perſon, and not to the undertenant. 2 *Cro.* 9, 10. *Sed qu.* If the perſon cannot be met with, whether notice left at his laſt, or uſual place of abode, is not ſufficient?

A notice may not be pleaded to be given to executors, without averring the death of the teſtator. *Hob.* 93. In all writs of enquiry of damages, as well in real as perſonal actions, notice muſt be given to the other party to the ſuit. *March. Rep.* 82. Want of notice, upon various occaſions, has been often the cauſe of arreſt of judgment in actions, &c.

Notice is to be given of *trials* and motions; of a *robbery* committed, to recover againſt the hundred; of a prior *mortgage*, on making a ſecond; of an *aſſignment* of a *leaſe*, to charge the aſſignee, only on acceptance of rent; in caſes of *diſtreſs* for rent, according to the ſtatute; and of *avoidances* of churches, by reſignation, deprivation, &c. to the patron that he may preſent, &c. A month's notice is alſo to be given to a juſtice of peace, before commencement of an action againſt him for any thing done in the execution of his office. 24 *G.* 2. *c.* 44.

See farther 16 *Vin. Abr.* tit. *Notice.*

Nottingham, (For rebuilding the town of,) 27 *Hen.* 8. *c.* 1.

Novale, Signifies land newly ploughed or converted into tillage, that without memory of man had not been tilled; and ſometimes it is taken for ground which hath been ploughed for two years, and afterwards lies fallow for one year; or that which lies fallow every other year: it is called *novale*, becauſe the earth *novâ culturâ proſcinditur.* Cartular Abbat. de Furneſſe in Com. Lac. in Officio Ducat. Lanc. fol. 41.

Nova Oblata, Mentioned *in Clauſ.* 12 *Ed.* 1. *m.* 7. See *Oblata.*

Novel Aſſignment, (*nova aſſignatio*) Is an aſſignment of time, place, or ſuch like, in action of treſpaſs, otherwiſe than as it was before aſſigned; or where it is more particularly in a declaration than in the writ, &c. *Bro. Treſpaſs*, 122. And if the defendant juſtifies in a place where no *treſpaſs* was done, then the plaintiff is to *aſſign* the cloſe where, to which the defendant is to plead, &c. *Terms de Ley.* Vide *Treſpaſs*, and *New Aſſignment.*

Novel Diſſeiſin, (*nova diſſeiſina.*) See *Aſſiſe of Novel Diſſeiſin.*

Novellæ, Thoſe conſtitutions of the *Civil Law*, which were made, after the publication of the *Theodoſian code*, were called *novellæ*, by the Emperors, who ordained them: but ſome writers call the *Julian* edition only, by that name. *Blount*, and *Black. Com.* 1 *V.* 81.

Noyles. No perſons ſhall put any flocks, *noyles*, thrums, &c. or other deceivable thing, into any broad woollen cloth; by *Stat.* 21 *Jac.* 1. *cap.* 18.

Nuces colligere, To gather hazle nuts, which was formerly one of the works, or ſervices, impoſed by lords upon their inferior tenants. *Paroch. Antiq.* 495.

Nude contract, (*nudum pactum*) is a bare *naked contract*, without a conſideration. If a man bargains or ſells goods, &c. and there is no recompence made or given for the doing thereof; as if one ſay to another, I ſell you all my lands or goods, but nothing is agreed upon what the other ſhall give or pay for the ſame, ſo that there is not a *quid pro quo* of one thing for another; this is a *nude contract*, and void in law, and for the non-performance thereof, no action will lie; *ex* nudo pacto *non oritur actio*. Terms de Ley. The law ſuppoſes error in making theſe contracts; they being as it were of one ſide only.

Nude Matter, Is naked matter, on a bare allegation of a thing done, &c. Vide *Matter*.

Nudum pactum. A conſideration of ſome ſort or other, is ſo abſolutely neceſſary to the forming of a contract, that a *nudum pactum*, or agreement to do or pay any thing on one ſide, without any compenſation on the other, is totally void in law; and a man cannot be compelled to peform it. *See Black. Com.* 2 *V.* 445 and ſee alſo, *nude contract*.

Nul diſſeiſin, *plea of*, Is a plea in real actions, of *no diſſeiſin*, and is one ſpecies of the general iſſue. See *Black. Com.* 2 *V. App.* xviii. 3 *V.* 305.

Nul tiel record, Is the plea of a plaintiff *that there is no ſuch record*, on the defendant's alledging matter of *record*, in bar of the plaintiff's action. See *Failure of Record*. 'Tis ſometimes the plea of a defendant, as in action on a judgment, &c.

Nul tort, *plea of*, A plea in a real action, *i. e.* of *no wrong done*, and is a ſpecies of the general iſſue. *Black. Com.* 3 *V.* 305.

Nullum arbitrium, The uſual plea of the defendant proſecuted on an arbitration bond, for not abiding by an *award*.

Nullity, Is where a thing is *null* and void, or of no force. *Litt. Dict.* And there is a *nullity* of marriage, where perſons marry within the prohibited degrees, &c.

Numerum. *Civitas Cant. Reddit* 24 l. *ad numerum*, i. e. by number or tale, as we call it. *Domeſday*.

Nummata, Signifies the price of any thing, generally by *money*; as *denariata* doth the price of a thing, by computation of *pence*; and *librata* by computation of *pounds*.

Nummata, terrae, Is the ſame with *denariatus terræ*, and thought to contain an acre; *Sciatus me (ſc.* Will. Longeſpee) *dediſſe,* & *conceſſiſſe eccleſiæ* S. Mariæ *de* Walſingham & *canonicis ibidem Deo ſervientibus in perpetuam Eleemoſynam* 40 Nummatas terræ *in* Walſingham, *quæ fuit Archetel* & *Brinig fratris ejus de ſocca Wihotune, libere, quiete* & *honorifice abſque omni ſervitio* & *omni conſuetudine* Spelman.

Nummus, A piece of money or coin among the *Romans*; and it is a penny according to *Matth. Weſtm. ſub. Ann.* 1095.

Nun, (*nunna*) A conſecrated virgin or woman who by vow hath bound herſelf to a ſingle and chaſte life, in ſome place or company of other women, ſeparated from the world, and devoted to the ſervice of God by prayer, faſting, and ſuch like holy exerciſes: it is an *Egyptian* word, as we are told by St. *Hierome*.

Nuncius, A *nuncio*, or meſſenger, ſervant, &c. And the Pope's *nuncio* is *legatus pontificis*.

Nuncupative Will, (*Teſtamentum Nuncupatum*) Is a will by word of mouth; it is a verbal declaration of the teſtator's mind before a ſufficient number of witneſſes; which being reduced into writing either before or after the death of the teſtator, is good to diſpoſe of his perſonal eſtate, but not his lands. 2 *Nelſ. Abr.* 1191. Before the 29 *Car.* 2. *c.* 3 it was neceſſary not only to put a *nuncupative will* in writing, but to prove it likewiſe by witneſſes in the ſpiritual court, and to have it under the ſeal of the ordinary; until which it hath been decreed in equity, that ſuch will was not pleadable againſt an adminiſtrator. 1 *Chanc. Rep.* 122. And that by that ſtatute, no *nuncupative will* ſhall be good, wherein the eſtate bequeathed exceeds 30 l. unleſs proved by *three* witneſſes who were *preſent at the making thereof*, and bid by the teſtator to bear witneſs; nor except it be made in the time of the laſt ſickneſs of the deceaſed, and in his houſe, or where he hath been reſident for ten days before, unleſs ſurprized with ſickneſs from home: and no *evidence* ſhall be received to prove ſuch will, after *ſix months* after ſpeaking of the teſtamentary words; if the ſame or the ſubſtance of it, be not committed to *writing* within *ſix days* after the making. Nor ſhall any probate of ſuch *nuncupative will* paſs the ſeals till *fourteen* days *after the death of the teſtator*; and until proceſs hath iſſued to call in the widow or next of kin to the deceaſed, to conteſt it, if they think fit. 29 *Car.* 2. *c.* 3.

And by the ſame act, no will in writing concerning perſonal eſtate, ſhall be repealed by any words or will by word of mouth, except the ſame be put into writing in the life-time of the teſtator, and read to and approved of by him, and proved to be ſo done by *three* witneſſes, &c. All witneſſes who are allowed to be good witneſſes upon trials at law, ſhall be good witneſſes to prove any *nuncupative will*, by *Stat.* 4 *Ann. c.* 16. *ſ.* 14. See *Black. Com.* 2. *V.* 500.

Nuper obiit, Is a writ that lies for a ſiſter and coheir, deforced by her coparcener of lands or tenements, whereof their father, brother, or any other common anceſtor, died ſeiſed of an eſtate in *fee-ſimple*; for if one ſiſter deforce another of land held in *fee-tail*, her ſiſter and coheir ſhall have a *formedon* againſt her, &c. and not a *nuper obiit*; and where the anceſtor being once ſeiſed, died not ſeiſed of the poſſeſſion, but the reverſion, in ſuch a caſe a writ of *rationabili parte* lies. *Reg. Orig.* 226. *F. N. B.* 197. *Terms de Ley.* If one coparcener be deforced by another, and a ſtranger, ſhe ſhall have a *nuper obiit* againſt her coparcener: and if two coparceners after the death of their anceſtor enter and deforce a third ſiſter, and afterwards they make partition betwixt them, and then one of the two aliens her part to a ſtranger in fee; yet the third ſhall have the writ *nuper obiit* againſt her two ſiſters, notwithſtanding that alienation, and ſhall recover the third part of what the coparcener who did not aliene was ſeiſed, &c. And may ſue an aſſiſe of *mordanceſtor*, or writ of *aiel*, as the caſe is, in the name of the other coparcener, to recover her third part in the hands of the ſtranger. *New Nat. Br.* 437, 438. A *nuper obiit* ought to be brought by that coparcener who is deforced, againſt all the other coparceners; and altho' ſome of them have nothing in the tenancy. *Ibid.* And this writ lieth between ſiſters of the half blood; and likewiſe between coheirs in *gavelkind*, as well as between women parceners, &c. But *qu.* if an ejectment will not anſwer the purpoſe?

Nurture, *Guardian for*. There are guardians to infants, for nurture, which are, of courſe, the father or mother, 'till the infant attains the age of fourteen years; and in default of father or mother, the ordinary uſually aſſigns ſome proper perſon. *Co. Lit.* 88. *Moor* 738. 3 *Rep.* 38. 2 *Jones* 90. 2 *Lev.* 163. *Black. Com.* 1 *V.* 461.

Nuſance, (*nocumentum*, from the Fr. *nuire*, i. e. *nocere*) Particularly ſo called, is where one makes any encroachment on the King's lands, or the highways, common rivers, &c. 2 *Inſt.* 272. If a man doth any thing upon his own ground, to the particular damage of his neighbour, &c. it is accounted a nuſance: and nuſance ſignifies not only a thing done to the annoyance of another, in his lands or tenements; but the aſſiſe or writ lying for the ſame. *F. N. B.* 183.

Nuſances are public and *common*, or *private*. a *common nuſance* is defined to be *an offence againſt the public*, either by doing a thing which tends to the annoying of all the King's ſubjects, and is common againſt all; or by neglecting to do any thing which the common good requires. 2 *Roll. Abr.* 83. And annoyances in highways, as where a gate, hedge, &c. or ditches are made therein; of bridges and public rivers, diſorderly alehouſes, bawdy-houſes, gaming-houſes, ſtages for rope-dancers, mountebanks, &c. brewing-houſes erected in places not convenient; cottages with inmates; common ſcolds, eveſdroppers, &c. are generally *common nuſances*. 2 Inſt. 406. And *indictable* as ſuch. 1 *Hawk. P. C.* 198.

If a man ſtops up the light of another's houſe; or builds ſo near to and hanging over mine, that the rain which falleth from his houſe, falls upon mine; the turning or diverting water, running to a man's houſe, mill, meadow, &c. or ſtopping up a way, leading from houſes to lands; ſuffering the next houſe to decay to the damage of my houſe; and ſetting up or making a houſe of office, lime-pit, dye-houſe, tan-houſe or butcher's ſhop, *&c.* and uſing them ſo near my houſe, that the ſmell annoys me, or is infectious; or if they hurt my lands or trees, or the corruption of the water of lime-pits ſpoils my water or deſtroys fiſh in a river, *&c.* Theſe are in general *private nuſances*. 3 Inſt. 231. 5 Rep 101. 9 Rep. 54. 1 Rol. Abr. 88. 2 Rol. 140. 1 Danv. Abr. 173. For remedy whereof, an *action* lies, at the ſuit of the party injured.

For a common *nuſance*, indictment lies at the ſuit of the King; and the party ſhall be fined and impriſoned, *&c.* No action lieth in this caſe, becauſe if one man might have an action, all men may have alike; and the indictment muſt be *ad commune nocumentum omnium ligeorum*, *&c.* 5 Rep. 73. 1 Inſt. 56. 1 Vent. 208. But tho' action may not be brought for a common *nuſance*, but indictment or preſentment; yet where the inhabitants of a town had by cuſtom a watering place for their cattle which was ſtopped by another, it has been held, that any inhabitant might have an action againſt him, otherwiſe they would be without remedy; becauſe ſuch a nuſance is not common to all the King's ſubjects, and preſentable in the leet, or to be redreſſed by preſentment or indictment in the quarter-ſeſſions. 5 *Rep.* 73. 9 *Rep.* 103.

And if any one perſon hath more particular damage by a common nuſance than another; as if by reaſon of a pit dug in a highway, a man for whoſe life I held lands is drowned; or my ſervant falling into it receives injury, whereby I loſe his ſervice, *&c.* for this ſpecial damage, which is not common to other perſons, action lies. 4 *Rep* 18. 5 *Rep.* 73. *Cro. Car.* 446. *Vaugh.* 341. 4 *Bulſt.* 344.

For private nuſances, action on the caſe lieth, or *aſſiſe of nuſance* by the party grieved; and on action for a private nuſance, if the plaintiff hath a verdict he ſhall recover damages for the injury ſuſtained. 1 *Rol. Abr.* 391. 1 *Vent.* 208.

There is a difference between an *aſſiſe* for a *nuſance*, and an *action on the caſe*; for the firſt is to abate the nuſance, but the laſt is not to abate it, but to *recover damages*: therefore if the nuſance be removed, the plaintiff is intitled to his damages which accrued before; and though it is laid with a *continuando* for a longer time than the plaintiff can prove, he ſhall have damages for what he can prove, before the nuſance was removed. 2 *Mod.* 253.

A man may have an action for a nuſance, or he may abate or demoliſh the ſame; but if he deſtroy the nuſance himſelf, before he bring his action, he may not after have an action for the wrong, nor recover any damages. 9 *Rep.* 55. *F. N. B.* 185. 2 *Rol. Abr.* 745. *Sed qu:* for the party's right of action attached before removal.

It is ſaid both of a common and private nuſance, that they may be abated or removed by thoſe who are prejudiced by them; and they need not ſtay to proſecute for their removal. 2 *Lil. Abr.* 244. *Wood's Inſt.* 443. And it has been adjudged, that every perſon may remove a nuſance; and that the cutting a gate ſet acroſs an highway is lawful. *Cro. Car.* 184, 185. Alſo if a houſe be on the highway, or a houſe hang over the ground of another, they may be pulled down; *but no man can juſtify the doing more damage than is neceſſary, or removing the materials farther than requiſite.* 1 Hawk. 199.

A man builds a houſe ſo near mine that it is a nuſance; I may enter and pull it down; and a man indicted for a riot in ſuch a caſe had only a ſmall fine ſet on him. 2 *Salk.* 459. Where two houſes one whereof is a nuſance to the other, come both into one and the ſame hand, the wrong is purged. See *Hob.* 131. If a ſhip be ſunk in a port or haven, and it is not removed by the owner, he may be indicted for it as a common nuſance, becauſe it is prejudicial to the commonwealth in hindering navigation and trade. 2 *Lil.* 244.

Indictment lies for laying logs, *&c.* in the ſtream of a public navigable river: it is a common nuſance to divert part of a public navigable river *whereby the current is weakened, and made unable to carry veſſels of the ſame burden it could before:* And if a river be ſtopped to the *nuſance* of the country, and none appear bound by preſcription to cleanſe it; thoſe who have the piſcary, and the neighbouring towns that have a common paſſage and eaſement therein, may be compelled to do the ſame. 1 *Hawk. P. C.* 198, 199, 200.

It is a common *nuſance* indictable, to divide a houſe in a town for poor people to inhabit in, by reaſon whereof it will be more dangerous in the time of ſickneſs and infection of the plague. 2 *Rol. Abr.* 139. A common playhouſe, if it draws together ſuch number of coaches and people as incommode and diſturb the neighbourhood, may be a *nuſance*; but theſe places are not naturally *nuſances*, but become ſo by accident. 1 *Rol. Rep.* 109. 1 *Hawk.* 191.

A prohibitory writ was iſſued out of *B. R.* againſt *Betterton* and other actors, for erecting a new play-houſe in *Little Lincoln's Inn Fields*, reciting that it was a *nuſance* to the neighbourhood; and they not obeying the writ, an attachment was granted againſt them; but it was objected that an attachment could not be iſſued, and that the moſt proper method was to proceed by indictment, and then the jury would conſider whether it were a *nuſance* or not; and this was the better opinion. 5 *Mod.* 142. 2 *Nelſ. Abr.* 1192.

One *Hall* having begun to build a booth near *Charing-Croſs* for rope-dancing, which drew together many idle people, was ordered by the Lord Chief Juſtice not to proceed; he proceeded notwithſtanding, affirming that he had the King's warrant and promiſe to bear him harmleſs; but being required to give a recogniſance of three hundred pounds that he would not go on with the building, and he refuſing, he was committed, and a record was made of this *nuſance*, as upon the judge's own view, and a writ iſſued to the ſheriff of *Middleſex* to proſtrate it. 1 *Vent.* 169. 1 *Mod.* 96.

Erecting a dove-cote is not a common *nuſance*; though action of the caſe will lie at the ſuit of the lord of the manor for erecting it without his licence. 1 *Hawk.* 199. It was anciently held, that if a man erected a dove-cote, he was puniſhable at the leet: but it has been ſince adjudged not to be puniſhable in the leet as a common *nuſance*, but that the lord for this particular *nuſance* ſhould have an action on the caſe, or an aſſiſe of *nuſance*; as he may for building an houſe to the *nuſance* of his mill. 5 *Rep.* 104. 3 *Salk.* 248. Neither the King, nor lord of a manor, may licence any man to make or commit a *nuſance*. 1 Rol. Abr. 138.

A brewhouſe erected in ſuch an inconvenient place, wherein the buſineſs cannot be carried on without incommoding the neighbourhood; may be indicted as a common *nuſance*; and ſo in the like caſe may a glaſs-houſe, *&c.* 1 *Hawk.* 199. Where there hath been an ancient brewhouſe time out of mind, although in *Fleet-ſtreet*, *&c.* this is not any *nuſance*, becauſe it ſhall be ſuppoſed to be erected when there were no buildings near: though if a brewhouſe ſhould be now built in any of the high ſtreets of *London*, or trading places, it will be a *nuſance*, and action on the caſe lies for whomſoever receives any damage thereby. 2 *Lil. Abr.* 246. *Palm.* 536.

A plaintiff was poſſeſſed of an houſe wherein he dwelled, and the defendant built a brewhouſe, *&c.* in which he burnt coal ſo near the houſe, that by the ſtink and ſmoak he could not dwell there without danger of his health; and it was adjudged that the action lay, though a brewhouſe is neceſſary, and ſo is burning coal in it. *Hutton* 135. If a perſon melt lead ſo near the cloſe of another, that it injures his graſs there, whereby cattle are loſt; notwithſtanding this is a lawful trade, and for the benefit of the nation, action lies againſt him; for he ought to uſe his trade in waſte places, ſo as no damage may happen to the proprietors of the land adjoining. 2 *Rol. Abr.* 140.

Building a ſmith's forge near a man's houſe, and making a noiſe with hammers, ſo that he could not ſleep, was held a *nuſance*, for which action lies; although the ſmith pleaded that he and his ſervants worked at ſeaſonable times; that he had been a *blackſmith*, and uſed the trade above twenty years in that place, and ſet up his forge in an old room, *&c.* For though a *ſmith* is a neceſſary trade, and ſo is a lime-burner, and a hog-merchant;

yet theſe trades muſt be uſed not to be injurious to the neighbours. 1 *Lutw*. 69.

But if a ſchoolmaſter keeps a ſchool ſo near the ſtudy of a lawyer by profeſſion, that it is a diſturbance to him; this is not a *nuſance* for which action may be brought. *Wood's Inſt*. 538. An inn-keeper brought an action on the caſe againſt a perſon for erecting a tallow furnace, and melting ſtinking tallow ſo near his houſe that it annoyed his gueſts, and his family became unhealthy; and adjudged that the action lay. *Cro. Car*. 367. So where a perſon kept a hogſty near a man's parlour, whereby he loſt the benefit of it. 2 *Rol. Abr*. 140.

Yet it is ſaid to be no *nuſance* to a neighbourhood, for a butcher, or chandler, to ſet up their trades in houſes amongſt them: but it may be by ſuch tradeſmen, laying ſtinking heaps at their doors; in other caſes the neceſſity of the thing ſhall diſpenſe with the noiſomneſs of it. *Paſch*. 5 *Jac*. 1. *B. R*. If a man have a ſpout falling down from his houſe, and another perſon erect any thing above it, that the water cannot fall as it did, but is forced into the houſe of the plaintiff, and rots the timber; it is a *nuſance* actionable. 18 *E*. 3. 2 *Rol. Abr*. 140. And in treſpaſs for a *nuſance*, in cauſing ſtinking water in the defendant's yard to run to the walls of the plaintiff's houſe, and piercing them ſo that it ran into his cellar, *&c.* judgment was given for the plaintiff. *Hard*. 60.

An action lies for hindring the wholeſome air, and alſo for corrupting the air. 9 *Rep*. 58. And none ſhall caſt any garbage, dung, or filth into ditches, waters, or other places, within or near any city or town, on pain of puniſhment by the Lord Chancellor at diſcretion, as a *nuſance*. Stat. 12 R. 2. c. 13. *Sed qu*. if this is not obſolete and illegal?

The continuation of a *nuſance* is, as it were, a new *nuſance*: Where a *nuſance* is erected in the time of the deviſor, and continued afterwards by the deviſee, it is as the new erecting of ſuch a *nuſance*. 2 *Leon*. 129. *Cro. Car*. 231. But a plaintiff may declare both ways, one for *erecting and continuing*, the other for *continuing* only, though the latter method is ſufficient in any caſe.

If one hath freehold land adjoining to the highway, and he incroach part of the way, and lay lands to it; and then dying it comes to his heir, if he continues it, tho' he do nothing elſe, he may be indicted for the continuance of the *nuſance*. Rol. Abr. 137. A man erects a *nuſance*, and then lets it; the continuance by the leſſee has been held a *nuſance*, and that action lies againſt him. *Cro. Jac*. 373. *Moor*, 353. But it is ſaid in another caſe of this nature, that admitting the plaintiff might have an aſſiſe of *nuſance* againſt the builder, the leſſor, he cannot have an action againſt his leſſee, becauſe it would be waſte in him to pull it down; but the plaintiff may abate the *nuſance* ſtanding on his own ground; yet where the thing done is a *nuſante per intervalla*, as a pipe or gutter, action lies againſt the leſſee, becauſe every running is a freſh *nuſance*; and if a man have a way over the ground of another, and ſuch other ſtops that way, and then demiſes the ground, an action lies againſt the leſſee for continuing this *nuſance*. 1 Mod. 54. 3 Salk. 248.

If a perſon aſſigns his leaſe with a *nuſance*, action lies againſt him for continuing it, *becauſe the leaſe was transfered with the original wrong, and his aſſignment confirms the continuance*; beſides he hath a rent as conſideration for the continuance, therefore he ought to anſwer the damages occaſioned by it. 2 *Salk*. 460. 2 *Cro*. 272, 555. If a *nuſance* is levied in an houſe, *&c.* to the prejudice of another, and then the houſe is aliened; action of the caſe lies againſt him that levied it, and alſo againſt the alienee for continuing it, by ſtat. 13 *Ed*. 1. *c*. 24.

If a fair or market be ſet up to the *nuſance* of another, the party grieved may have his writ or action. *F. N. B*. 187. 2 *Saund*. 173. *Lutw*. 69, 91. A *nuſance* in a church-yard, is properly, of eccleſiaſtical cogniſance. *Carthew* 152. If a man ſtraiten a way only, and do not ſtop it up, action of the caſe lieth, not aſſiſe of *nuſance*. 33 *H*. 6. *c*. 26. But for ſtopping ſuch way belonging to a freehold tenement, an aſſiſe will lie; and where one may have aſſiſe of *nuſance* for an injury to his way, there he ſhall not have action of *treſpaſs*. 19 *H*. 6. 29. 2 *Shep. Abr*. 468. This means treſpaſs *vi et armis*, but an action *upon the caſe*, will undoubtedly lie.

When a man hath but a term of years in a houſe or lands, and not a freehold, he ſhall not have an *aſſiſe* of *nuſance*; but action upon the caſe. *New Nat. Br*. 10. Writs of *nuſance*, called *vicontiel*, are to be made at the election of the plaintiff, determinable before the juſtices of either bench, or the juſtices of aſſiſe of the county, being in nature of aſſiſes, *&c*. 6 *R*. 2. *c*. 3.

Making great noiſes in the night; a *nuſance* indictable. 1 *Strange* 704. Keeping gunpowder in great quantities a *nuſance*. 2 *Strange* 1167. See *Highway*.

Tho' in the preceeding head, an aſſiſe of *nuſance* is often mentioned, yet that mode of proceeding is now grown obſolete. The method is, if it is a *nuſance* to many to indict, if any individual ſuſtains a peculiar injury, an action on the caſe lies, to recover an adequate ſatisfaction in damages.

If, after a plaintiff hath recovered a verdict, and damages, for the erecting and continuing or for the continuing of a nuſance, and the defendant does not remove it, actions may be brought *ad infinitum*, for the continuance, unleſs defendant ſubmits to remove the nuſance, but on a ſecond action generally, a jury will give large damages, and on a third, very exemplary damages.

For more learning on this ſubject, ſee 16 Vin. Abr. *tit*. Nuſance.

Nutmegs, (*Nuces muſcatæ*) Is a ſpice well known to all, mentioned among ſpices that are to be garbled. 1 *Jac*. 1. *c*. 19.

Nutrimentum, Nouriſhment, particularly applied to breed of cattle.——*Quilibet cuſtumarius dominæ non debet vendere equum maſculum neque bovem de proprio* nutrimento *ſuo*. Paroch. Antiq. 401.

Nyas (*Nidarius accipiter*) A hawk or bird of prey. *Litt. Dict*.

O.

O, Is an *adverb* of calling; or interjection of ſorrow: And the ſeven *Antiphones*, or alternate hymn of ſeven verſes, *&c.* ſung by the choir in the time of *Advent* was called *O*, from beginning with ſuch exclamation. In the ſtatutes of St. *Paul's* church in *London*, there is one chapter, *De faciendo* O. Liber. Statut. MS. f. 86.

Oath, (Sax. *Eoth*, Lat. *Juramentum*) Is an affirmation or denial of any thing, before one or more perſons who have authority to adminiſter the ſame, for the diſcovery and advancement of truth and right, calling *God* to witneſs, that the teſtimony is true; therefore it is termed *Sacramentum*, a holy band or tie: it is called a *corporal oath* becauſe the witneſs when he ſwears lays his right-hand on the *Holy Evangeliſts*, or *New-Teſtament*. 3 *Inſt*. 165.

There are ſeveral ſorts of *oaths* in our law, *viz. Juramentum promiſſionis*, where *oath* is made either to do, or not to do, ſuch a thing. *Juramentum purgationis*, when a perſon is charged with any matter by bill in *Chancery*, *&c. Juramentum probationis*, where any one is produced as a witneſs, to prove, or diſprove a thing: And *Juramentum triationis*, when any perſons are ſworn to try an iſſue, *&c.* 2 *Nelſ*. 1181.

All *oaths* muſt be lawful, allowed by the Common law, or ſome ſtatute; if they are adminiſtred by perſons in a private capacity, or not duly authorized, they are *coram non judice*, and void; and thoſe adminiſtring them are guilty of a high contempt, for doing it without warrant of law, and puniſhable by fine and impriſonment. 3 *Inſt*. 165. 4 *Inſt*. 278. 2 *Roll. Abr*. 257.

One who was to teſtify on behalf of a felon, or perſon indicted of treaſon, or other capital offence, upon an indictment at the King's ſuit, could not formerly be examined on his *oath* for the priſoner againſt the King; tho' he might be examined without *oath*: but by a late ſtatute, witneſſes on behalf of the priſoner upon indictments are to be ſworn to depoſe the truth in ſuch manner as witneſſes for the King; and if convicted of wilful perjury ſhall ſuffer the puniſhment inflicted for ſuch offences. 1

Ann. c. 9. And the evidence for the defendant in an appeal, whether capital or not, or on indictment or information for a miſdemeanor, was to be on *oath* before this ſtatute. 2 *Hawk. P. C.* 434.

A perſon who is to be a witneſs in a cauſe may have two *oaths* given him, one to ſpeak the truth to ſuch things as the court ſhall aſk him concerning himſelf, or other things which are not evidence in the cauſe; the other to give teſtimony in the cauſe in which he is produced as a witneſs: the former is called the *oath* upon a *voyer dire.* Paſch. 23 Car. B. R.

If *oath* be made againſt *oath* in a cauſe, it is a *non liquet* to the court which *oath* is true; and in ſuch caſe the court will take that *oath* to be true, which is to affirm a verdict, judgment, *&c.* as it tends to the expediting of juſtice. 2 *Lil. Abr.* 247.

A voluntary *oath*, by conſent and agreement of the parties, is lawful as well as a compulſory *oath*; and in ſuch caſe, if it is to do a ſpiritual thing, and the party fail, he is ſuable in the eccleſiaſtical court, *pro lætione fidei*; if to do a temporal thing, and he fail therein; he may be puniſhed in *B. R.* Adjudged on *aſſumſit*, where if the defendant would make *oath* before ſuch a perſon, the plaintiff promiſed, *&c.* *Cro. Car.* 486. 3 *Salk.* 248.

By the Common law, officers of juſtice are bound to take an *oath* for the due execution of juſtice. *Trin.* 22 *Car.* 1. *B. R.* Though if *promiſſory oaths* of officers are broken, they are not puniſhed as perjuries, like unto the breach of *aſſertory oaths*; but their offences ought to be puniſhed with a ſevere fine, *&c.* *Wood's Inſt.* 412. Anciently at the end of a legal *oath*, was added, *So help me God at his holy dome*, i. e. judgment; and our anceſtors did believe, that a man could not be ſo wicked to call God to witneſs any thing which was not true; but that if any one ſhould be perjured, he muſt continually expect that God would be the revenger: And thence probably *purgations* of criminals, by their own *oaths*, and for great offences by the *oaths* of others, were allowed. *Malmſb. lib.* 2. *c.* 6. *Leg. Hen.* 1. *c.* 64.

Oaths *to the government*. By *Magna Charta*, the *oaths* of the King, the biſhops, the King's counſellors, ſheriffs, mayors, bailiffs, *&c.* were appointed, 9 *H.* 3. The *oaths* of the judges of both benches; and of the clerks in *Chancery* and the curſitors, were ordained by 18 *Ed.* 3. *ſt.* 4. and ſee 14 *E.* 3. *ſt.* 1. *c.* 5.

Eccleſiaſtical perſons are required to take the oaths of ſupremacy, *&c.* And clergymen not taking the *oaths*, on their refuſal being certified into *B. R.* *&c.* incur a *præmunire.* 1 Eliz. cap. 1. Officers and eccleſiaſtical perſons, members of parliament, lawyers, *&c.* are to take the *oath* of allegiance, or be liable to penalties and diſabilities. 7 *Jac.* 1. *c.* 6.

Perſons ſhall take the *oaths*, and receive the ſacrament, to qualify them to bear any office of magiſtracy in corpotions. 13 *Car.* 2. *c.* 1.

And officers of the lieutenancy and militia are required to take the *oaths* by 13 *Car.* 2. *c.* 6. All perſons that bear any office, civil or military, or receive any ſalary, *&c.* from the King, are to take the *oaths* of allegiance and ſupremacy; and perſons refuſing are diſabled, *&c.* 25 *Car.* 2. *c.* 2. By the 1 *W.* & *M. Seſſ.* 1. *c.* 6. the coronation *oath* was altered and regulated; and the *oaths* of allegiance and ſupremacy abrogated, and others appointed to be taken and enforced, on pain of diſability, *&c.* by 1 *W.* & *M. c.* 8. and 7 & 8 *W.* 3. *c.* 27.

All that bear offices in the government, peers and members of the Houſe of Commons, eccleſiaſtical perſons, members of colleges, ſchool-maſters, preachers, ſerjeants at law, counſellors, attornies, ſolicitors, advocates, proctors, *&c.* are enjoined to take the *oaths* of allegiance, ſupremacy and abjuration; and perſons neglecting or refuſing, are declared incapable to execute their offices and employments, diſabled to ſue in law or equity, to be guardian, executor, *&c*, or to receive any legacy or deed of gift, to be in any office, *&c.* and to forfeit five hundred pounds.

This extends not to conſtables, and other pariſh officers, nor to bailiffs of manors, *&c.* 13 *W.* 3. *c.* 6.

The *Stat.* 1 *Ann. c.* 22. obliges the receiving the abjuration *oath*, with alterations: And by 4 *Ann. c.* 8. the *oath* of abjuration is ſettled after the death of Queen *Anne*, without iſſue. Alſo the *oath* of abjuration, with further alterations relating to the *Proteſtant Succeſſion*, is required to be taken by the 1 *Geo.* 1. *c.* 13. And by a late ſtatute, all perſons are to take the *oaths* to government, or regiſter their eſtates, on pain of forfeiture, *&c.* 9 *Geo.* 1. *c.* 24.

There are almoſt every other ſeſſions acts made for indemnifying perſons, who have omitted to qualify themſelves for offices and promotions within the time limited by law, and for allowing further time for that purpoſe. See *Papiſts*.

Perſons maintaining an *oath* to be *unlawful*, are puniſhable by fine and impriſonment, *&c.* *Stat.* 13 & 14 *Car.* 2. Two juſtices of peace have power to tender the *oaths* to ſuſpected perſons; and if they refuſe them, it is to be certified to the next quarter-ſeſſions, and from thence into *B. R.* and the offenders ſhall be adjudged Popiſh recuſants convict, and forfeit lands, goods, *&c.* but it hath been held that a perſon cannot be ſaid to refuſe the *oaths* unleſs they are read or offered to be read to him. *Oaths* muſt be taken in the very words expreſſed in the acts, and cannot be qualified; yet uſing the words *in* conſcience, inſtead of *my* conſcience, or *Sea* of *Rome*, inſtead of *See* of *Rome*, is not material. 1 *Bulſt.* 197. See *Black. Com.* 1 *V.* 368. 4 *V.* 115, 116, 123.

Oatmeal. Selling corrupt *oatmeal*, is puniſhable by ſtatute: It ſhall be forfeited for the ſecond offence, *&c.* See 51 *Ed.* 1. *Pult. Kalend. Stat.* 323.

Obedientia, In the *Canon law* is uſed for an office, or the adminiſtration of it: whereupon the word *obedientialis*, in the provincial conſtitutions, is taken for officers under their ſuperiors. *Can. Law*, *cap.* 1. And as ſome of theſe offices conſiſted in the collection of rents or penſions, rents were called *obedientiæ*: *quia colligebantur ab obedientialibus.* But though *obedientia* was a rent as appears by *Hoveden*, in a general acceptation of this word it extended to whatever was enjoined the monks by the abbot; and in a more reſtrained ſenſe to the cells or farms which belonged to the abbey to which the monks were ſent, *vi ejuſdem obedientiæ*, either to look after the farms, or to collect the rents, *&c.*——*Probibemus ne redditus quos* obedientias *vocant ad firmam teneant.* Mat. Paris, Ann. 1213.

Obit, *(Lat.)* Signifies a funeral ſolemnity or office for the dead, moſt commonly performed when the corpſe lies in the church uninterred; Alſo the *anniverſary office.* 2 Cro. 51. Dyer 313. The anniverſary of any perſon's death was called the *obit*; and to obſerve ſuch day with prayers and alms, or other commemoration, was the keeping of the *obit*: In religious houſes they had a regiſter, wherein they entered the *obits* or *obitual* days of their founders or benefactors, which was thence termed the *obituary*. The tenure of *obit* or *chantry lands* is taken away and extinct, by 1 *Ed.* 6. *c.* 14. and 15 *Car.* 2. *c.* 9.

Objurgatrices, Are ſcolds or unquiet women, puniſhed with the *cucking-ſtool.* MS. LL. Lib. Burg. Villæ de Montgomery temp. Hen. 2. See *Caſtigatory*, and *Ducking-Stool.*

Oblata gifts or offerings made to the King by any of his ſubjects, which in the reigns of King *John* and King *Hen.* 3. were ſo carefully heeded, that they were entered into the *Fine Rolls* under the title of *Oblata*; and if not paid, eſteemed a duty, and put in charge to the ſheriff. *Philips of Purveyance.* In the exchequer it ſignifies old debts, brought as it were together from precedent years, and put on the preſent ſheriff's charge. *Pract. Excheq.* 78.

Oblations, *(oblationes)* Are thus defined in the *Canon law: Dicuntur, quæcunque â piis fidelibuſque Chriſtianis offeruntur Deo & Eccleſiæ, ſive res ſolidæ ſive mobiles ſint.* Spelm. de Concil. tom. 1. p. 393. The word is often mentioned in our law books; and formerly there were ſeveral ſorts of *oblations*, viz. *oblationes altaris*, which the prieſt had for ſaying maſs; *oblationes defunctorum*, which were given by the laſt wills and teſtaments of perſons dying to the church; *oblationes mortuorum*, or *funerales*, given at burials; *oblationes pænitentium*, which were given by perſons penitent; and *oblationes pentecoſtales*, *&c.*

The chief or principal feaſts for the *oblations of the altar*, were *All Saints*, *Chriſtmas*, *Candlemas*, and *Eaſter*, which were called O*blationes quatuor principales*; and of the cuſtomary offerings from the pariſhioners to the pariſh-prieſt, ſolemnly laid on the *altar*, the maſs or ſacrament offerings were uſually three-pence at *Chriſtmas*, two-pence at *Eaſter*, and a penny at the two other principal feaſts: Under this title of *oblations* were comprehended all the accuſtomed dues for *ſacramentalia* or chriſtian offices; and alſo the little ſums paid for ſaying maſſes and prayers for the deceaſed. *Kennet's Gloſſ.*

Oblationes funerales were often the beſt horſe of the defunct, delivered at the church gate or grave to the prieſt of the pariſh; to which old cuſtom we owe the original of *mortuaries*, *&c.* And at the burial of the dead, it was uſual for the ſurviving friends to offer liberally at the altar for the pious uſe of the prieſt, and the good eſtate of the ſoul deceaſed, being called the *Soul Seat*: In *North Wales* this uſage ſtill prevails, where at the rails of the communion table in churches, is a tablet conveniently fixed, to receive the money offered at funerals according to the quality of the deceaſed; which has been obſerved to be a providential augmentation to ſome of thoſe poor churches. *Kennet's Gloſſ.* At firſt the church had no other revenues beſide theſe *oblations*, till in the fourth century it was enriched with lands and other poſſeſſions. *Blount.*

Oblations, *&c.* are in the nature of tithes, and may be ſued for in the eccleſiaſtical courts, and it is ſaid are included in the act 7 *&* 8 *W.* 3. *c.* 6. for recovery of ſmall tithes under 40*s.* by the determination of juſtices of peace, *&c.* *Count. Parſ. Compan.* 137, 138.

Obligation, *(obligatio)* Is a bond, containing a penalty, *with a condition* annexed for payment of money, performance of covenants, or the like: it differs from a bill, which is generally *without a penalty* or *condition*, though a bill may be *obligatory*. Co. Lit. 172. And *obligations* may be by matter of record: as ſtatutes and recognizances, to which there are ſometimes added defeaſances, like the condition of an *obligation*: but when the *obligation* is ſimple, or ſingle, without any defeaſance or condition, it is moſt properly called ſo. 2 *Shep. Abr.* 475. Simony or uſury againſt the ſtatutes, is pleadable in avoidance of *obligations*, &c. See *Bond*. See alſo *Stat.* 38 *Ed.* 3. *ſt.* 1. *c.* 4. 4 *Ann. c.* 16. *ſect* 12, 13. 2 *Geo.* 2. *c.* 25. *ſect.* 3. and as to the King 13 *R.* 2. *ſt.* 1. *c.* 14. 33 *H.* 8. *c.* 39. *ſect.* 50, &c. and *Tab. to Stat.* tit. *Debts to and from the King*. See farther as to *Obligations*. 16 *Vin. Abr.* and 3 *New Abr.* tit. *Obligation*; and ſee *Condition*.

Obligor, Is he who enters into an *obligation*, and *obligee* the perſon to whom it is entered into.

Before the coming in of the *Normans*, writings obligatory were made firm with *golden croſſes*, or other ſmall ſigns or marks. But the *Normans* began the making ſuch bills and obligations with a print or ſeal in wax, impreſſed with every one's ſpecial ſignet, atteſted by three or four witneſſes. In former time many houſes and lands thereto paſſed by grant and bargain, without ſcript, charter or deed, only with the landlord's ſword or helmet, with his horn or cup; and many tenements were demiſed with a ſpur or curry-comb, with a bow or with an arrow. *Cowell.* See *Wang*.

Obolata terræ, Is, according to ſome accounts, half an acre of land; but others hold it to be only half a perch. *Spelm. Gloſſ.*

Obventions, *(obventiones)* Are offerings or tithes; and *oblations*, *obventions* and *offerings* are generally the ſame thing, though *obvention* has been eſteemed the moſt comprehenſive. The profits of the churches in *London* were formerly the *oblations* and *obventions*; for which a remedy is given by law: but the tithes and profits ariſing to the *London* clergy are now ſettled and appointed by act of parliament. *Count. Parſ. Compan.* 138. Rents and revenues of ſpiritual livings are called *obventions*. 12 Car. 2. c. 11. ——*Margeria Comitiſſa de Warwick Univerſis Sanctæ Matris Eccleſiæ filiis, &c dedi omnes* obventiones *tam in decimis majoribus & minoribus, quam in aliis rebus de aſſartis de W. & decimam pannagii, &c.* MS. penes Wil. Dugdale, Mil. See *Oblations*.

Occaſio, Is taken for a tribute which the lord impoſed on his vaſſals or tenants; *propter* occaſiones *bellorum vel aliarum neceſſitatum*. Fleta, lib. 1. c. 24.

Occaſionari, Signifies to be charged or loaded with payments, or *occaſional* penalties. *Non propter hoc* occaſionentur *coram domino rege & juſticiariis*. Stat. Ed. 3. Anno 21. So in *Fleta*, *Ita quod ipſi vigilatores non* occaſionentur. *Lib.* 1. *cap.* 24. *par.* 7.

Occaſiones, Are *aſſarts*, whereof *Manwood* ſpeaks at large; the word is derived *ab occando*, i. e. harrowing or breaking clods. See *Spelman's Gloſſary*, verbo *Eſſartum*. *Eſſarta vulgo dicuntur quæ apud Iſidorum* occaſiones *nuncupantur*. Lib. Niger Scac. par. 1. cap. 13.

Occupant, *(occupans)* Is he who firſt gets poſſeſſion of a thing. An iſland in the ſea, precious ſtones on the ſea ſhore, and treaſure diſcovered in a ground that has no particular owner, by the law of nations belong to him who finds them, and gets the firſt *occupation* of them. *Treat. Laws* 342. See *Literary Property*, and *Black. Com.* 2 *V.* 3, 8, 258, 400.

The law of occupancy is founded upon the law of nature, *viz. Quod terra manens vacua occupanti conceditur.* So as, upon the firſt coming of the inhabitants to a new country, he who firſt enters upon ſuch part of it, and manures it, gains the property (as is now uſed in *Cornwall*, *&c.* by the laws of the *Stannaries*, under certain regulations, for which ſee the *Stannary laws*); ſo that it is *the actual poſſeſſion and manurance of the land*, which *was the firſt cauſe of occupancy*, and conſequently is to be gained by actual entry. *Sid.* 347. *Geary* v *Bearcroft*.

Where a man finds a piece of land which no other poſſeſſes or hath title unto, and enters upon the ſame, this gains a property, and a title by *occupancy*: but this manner of gaining property of lands has long ſince been of no uſe in *England*; for lands now poſſeſſed without any title are in the crown, and not in him who firſt enters. *Ibid.* 218. Though an eſtate for another's life, by our ancient laws may be gotten by *occupancy*: As for example; ſuppoſe *A.* had lands granted to him for the life of *B.* and died without making any eſtate of it; in ſuch caſe, whoever *firſt entered* into the land after the death of *A.* got the property for the remainder of the eſtate granted to *A.* for the life of *B.* For to the heir of *A.* it could not go, not being an eſtate of inheritance, but only an eſtate for another man's life; which was not deſcendible to the heir, *unleſs he be ſpecially named in the grant*: And the executors of *A.* could not have it, as it was not an eſtate teſtamentary, that it ſhould go to the executor as goods and chattels; ſo that in truth no man could intitle himſelf unto thoſe lands: therefore the law preferred him who firſt entered and he was called *occupans*, and ſhould hold the land during the life of *B.* paying the rent, and performing the covenants, *&c.* *Bac. Elem.* 1. And not only if tenant *pur terme d'auter vie* died, living *ceſtuy que vie*; but if tenant for his own life granted over his eſtate to another, and the grantee died before him, there ſhould be an *occupant*. Co. Lit. 41, 388. But this doctrine is altered by ſtatute. See *poſt*.

A man cannot be an *occupant* but of a void poſſeſſion; and it is not every poſſeſſion of a perſon entering that can make an *occupancy*, for *it muſt be ſuch as will maintain treſpaſs without farther entry*. Vaugh. 191, 192. Carter 65. 2 Keb. 250. There can be no *occupancy* by any perſon of what another hath a preſent right to poſſeſs: *Occupancy* by law muſt be of things which have natural exiſtence, as of land, *&c.* and not of rents, advowſons, fairs, markets, tithes, *&c.* which lie in grant, and are incorporeal rights and eſtates; and there cannot be an *occupant* of a copyhold eſtate. *Vaugh.* 190. *Mod. ca.* 66. And *occupancy* of land in our law now ſeldom happens; leaſes and grants being generally made to the leſſees or grantees, and their *heirs*, during the life of *ceſtuy que vie*, whereby the lands for the remainder of the term deſcend to the heir, *&c.* *Wood's Inſt.* 216. By ſtatute, any eſtate *pur auter vie* ſhall be deviſeable by will in writing; and if no deviſe thereof be made, but the heir become ſpecial *occupant*, it ſhall be aſſets in his hands by deſcent to pay debts; and if there be no ſpecial *occupant*, it ſhall go to the executors or adminiſtrators of the party who had the eſtate, and be aſſets in their hands.

29 *Car.* 2. *c.* 3. It hath been adjudged, that an heir, executor, *&c.* ſhall be charged on this ſtatute with payment of debts only, not legacies, except deviſed particularly out of the eſtate; and that an eſtate *pur auter vie* belonging to an inteſtate, was not diſtributable, for notwithſtanding the alteration by the ſtatute, it remains a freehold ſtill; and the amendment of the law in this particular, was only deſigned for the relief of creditors; that if it came to the heir by reaſon of a ſpecial occupancy, it ſhould be in his hands aſſets by diſcent, that is, liable to the payment of thoſe debts where the heir is chargeable, and of thoſe only: but if there was no ſpecial occupant, then it ſhould go to the executors or adminiſtrators, *i. e.* they ſhall be in the room of the occupant, and it ſhall be aſſets in their hands, *i. e.* they ſhall be bound to pay the debts of the deceaſed to the value thereof; ſo that it is not ſo much as aſſets to pay legacies, except ſuch as are deviſed particularly thereout, the ſtatute making it aſſets only for this particular intent, to pay creditors: and no debts appearing in this caſe, the adminiſtrator is as it were the occupant, and ſhall not be compelled to make any diſtribution thereof, as he ſhall of goods and chattels, according to 22 & 23 *Car.* 2. *c.* 10. *Mich.* 8 *W.* 3. *B. R.* 2 *Salk.* 464. *Oldham* v. *Pickering.*

The true ground of occupancy is, that anciently all trials of titles were by real actions, therefore *he who had the freehold was one, to whom the law had a ſpecial regard.* The ancient law, for many reſpects, did not allow leaſes for above 40 years, till 21 *Hen.* 8. 15. Beſides, there was reaſon too, that not only he who had right paramount, might know how to try his action, but that the lord might know how to avow for his ſervices (which were conſiderable things formerly); he ought to know who was his tenant, therefore the law provided there ſhould be a perſon on whom he ſhould avow; *per Bridgman* Ch. J. *Cart.* 65. in the caſe of *Geary* v. *Bearcroft.*

The ſubject and object of the occupant are only ſuch things as are capable of occupancy, and not the freehold at all; into which he neither doth, nor can enter; but *the law caſts the freehold immediately upon him who hath made himſelf occupant of the land,* or other real thing whereof he is occupant, that there may be a tenant to the *præcipe*; *per Vaughan* Ch. J. *Hill.* 19 & 20 *Car.* 2. in the caſe of *Holden* v. *Smallbrooke.*

See farther, 27 *Aſſ.* 31. 2 *Rol. Abr.* 151. *Cro. Eliz.* 158. *Lev.* 201. *Geary* v. *Bearcroft.* 6 *Mod.* 63, 68. *Mich.* 2 *Ann. B. R. Smartle* v. *Penhallow.* See 16 *Vin. Abr.* tit. *Occupant*; and ſee *Life-Eſtate.*

Occupation, (*occupatio*) Signifies in our law uſe or tenure; as we ſay, ſuch land is in the tenure or *occupation,* of ſuch a man, that is, in his poſſeſſion or management: Alſo it is uſed for a trade or myſtery. 12 *Car.* 2. *c.* 18, 249. And *occupationes* at large are taken for purpreſtures, intruſions and uſurpations; and particularly for uſurpation upon the King, by the *ſtat. de Bigamis, c.* 4. 2 *Inſt.* 272.

Occupavit, Is a writ that lies for him who is ejected out of his freehold in time of war; as the writ *novel diſſeiſin* lies for one *diſſeiſed* in time of peace. *Ingham.*

Octave, The eighth day after any feaſt, incluſive. See *Utas.*

Odhal right. *Pontoppidan,* in his Hiſtory of *Norway* (*p.* 290.) obſerves, that in the Northern languages ODH ſignifies *proprietas,* and ALL *totum.* Hence he derives the ODHAL *right* in thoſe countries; and hence too, perhaps, is derived the *udal* right in *Finland, &c.* (See *Mac Doual. Inſt. par.* 2.) Now the tranſpoſition of theſe Northern ſyllables, ALLHODH, will give us the true etymology of the *allodium,* or abſolute property of the *Feudiſts*; as, by a ſimilar combination of the latter ſyllable with the word FEE (which ſignifies a conditional reward or ſtipend) FEEHODH or *feodum* will denote ſtipendiary property. *Black. Com.* 2 *V.* 45. *n.*

Odio & Atia, Was a writ anciently called *breve de bono & malo.* directed to the ſheriff to inquire whether a man committed to priſon upon ſuſpicion of murder, were committed on juſt cauſe of ſuſpicion, or only upon *malice* and *ill will:* And if upon the inquiſition it were found that he was Not guilty, then there iſſued another writ to the ſheriff to bail him. *Reg. Orig.* 133. *Bract. lib.* 3. *cap.* 20. *Stat.* 3 *Ed.* 1. *cap.* 11. But now taken away, by *ſtat.* 28 *Ed.* 3. *cap.* 9. *S. P. C.* 77. 2 *Inſt.* 42. 9 *Rep.* 506.

And the party committed, if intitled to be bailed, may have the cauſe of his commitment inquired into, and be diſcharged on bail, by ſuing out an *habeas corpus.* See *Habeas Corpus.* As to the writ *De odio et atia,* See *Black. Com.* 3 *V.* 128.

Oeconomus, Is ſometimes taken for an advocate or defender; as, *ſummus ſecularium* oeconomus & *protector Eccleſiæ.* Matt. Paris. anno 1245.

Oeconomicus, A word uſed for the executor of a laſt will and teſtament, as the perſon who had the *oeconomy* or fiduciary diſpoſal of the goods of the deceaſed. *Hiſt. Dunelm. apud Whartoni Angl. Sacr. par.* 1. *pag.* 784.

Offence, (*delictum*) Is an act *committed againſt* a law, or *omitted* where the law requires it, and puniſhable by it. *Weſtm. Symb.* And all *offences* are *capital,* or *not: capital,* thoſe for which the offender ſhall loſe his life: *not capital,* where an offender may forfeit his lands and goods, be fined or ſuffer corporal puniſhment, or both; but not loſs of life. *H. P. C.* 2, 126, 134. Capital *offences* are comprehended under *high treaſon, petit treaſon,* and *felony: Offences* not capital include the remaining part of the *Pleas of the Crown,* and come under the title of *Miſdemeanors.* An *offence* may be greater or leſs, according to the place wherein it is done. *Finch.* 25. But the *offence* will be in equal degree in them, who are equally tainted with it; and thoſe who act and conſent thereto, are alike offenders. 5 *Rep.* 80. Some *offences* are by the Common law; but moſt by ſtatutes.

Offerings, Are reckoned among perſonal tithes, payable by cuſtom to the parſon or vicar of the pariſh, either occaſionally, as at ſacraments, marriages, chriſtenings, churching of women, burials, *&c.* or at conſtant times, as at *Eaſter, Chriſtmas, &c. Count. Parſ. Compan.* 137. *Stat.* 2 & 3 *Ed.* 6. Stat. 32 *Hen.* 8. *cap* 7. *ſect.* 2. inforces the payment of offerings according to the cuſtom and places where they grow due. Vide *Oblations.*

By ſtat. 2 & 3 *Ed.* 6. *cap.* 13 *ſect.* 10. All perſons who ought to pay offerings, ſhall yearly pay to the parſon, vicar, proprietary, or their deputies, or farmers of the pariſhes where they dwell, at ſuch four offering-days as heretofore within the ſpace of four laſt years paſt hath been accuſtomed, and in default thereof ſhall pay for their ſaid offerings at *Eaſter* following.

The four offering-days are *Chriſtmas, Eaſter, Whitſuntide,* and the feaſt of the dedication of the pariſh-church. *Gibſ.* 739.

Offerings of the King, All *offerings* made at the Holy *Altar* by the King and Queen, are diſtributed amongſt the poor, by the dean of the chapel: There are twelve days in the year, called *Offering Days,* as to theſe *offerings,* viz. *Chriſtmas, Eaſter, Whitſunday, All Saints, New Year's Day, Twelfth Day, Candlemas, Annunciation, Aſcenſion, Trinity Sunday, St. John Baptiſt, and Michaelmas Day:* All which are high feſtivals. *Lex Conſtitution.* 184.

The *offering* commonly made by *James* 1. was a piece of gold, having on one ſide the portrait of the King kneeling before the altar, with four crowns before him; and circumſcribed with this *motto, Quid retribuam Domino pro omnibus quæ tribuit mihi?* And on the other ſide, a lamb lying near a lyon, with this inſcription, *Cor contritum & humiliatum non deſpiciet Deus.* Ibid.

Offertorium, Is uſed for a piece of ſilk, or fine linen, to receive and wrap up the *offerings* or occaſional oblations in the church. *Statut. Eccl. S. Pauli London, MS. fol.* 39.——Offertorium *eſſe Sindonem ſericeam, ſeu linteamen, in quo fidelium* oblationes *reponebantur*——Sometimes this word ſignifies the *offerings* of the faithful; or the place where they are made or kept: Sometimes the ſinging at the time of ſacrament, *&c.*

Office, (*Officium*) Signifies that function by virtue whereof a man hath ſome employment in the affairs of another, as of the King, or of another perſon. *Cowell.*

It is ſaid that the word *officium* principally *implies a duty,* and in the next place the charge of ſuch duty; and that it is a rule, that where one man hath to do with another's affairs againſt his will, and without his leave, that this is an office, and he who is in it, is an officer. *Carth.* 478.

There is a difference between an office and an employment, every office being an employment; but there are employments which do not come under the denomination of offices; ſuch as an agreement to make hay, plough land, herd a flock; &c. which differ widely from that of ſteward of a manor, &c. 2 *Sid.* 142.

By the ancient Common law, officers ought to be honeſt men, legal and ſage, & *qui melius ſciat & poſſit officio illi intendere*; And this, ſays Lord *Coke*, was the policy of prudent antiquity, that officers did ever give grace to the place, and not the place, only to grace the officer. 2 *Inſt* 32, 456.

Officers are diſtinguiſhed into *civil* and *military*, according to the nature of their ſeveral truſts. *Carth.* 479.

Officers are *public*, or *private*; and it is ſaid, that every man is a public officer, who hath any duty concerning the public; and he is not the leſs a public officer, where his authority is confined to narrow limits; becauſe it is the duty of his office, and the nature of that duty, which makes him a public officer, and not the extent of his authority. *Carth.* 479.

Alſo offices are diſtinguiſhed into *ancient* offices, and thoſe which are of a *new* creation; and herein it is obſervable, that conſtant uſage, hath not only ſanctified the firſt eſtabliſhment of ſuch ancient offices, as have exiſted time out of mind, but alſo hath preſcribed and ſettled the manner in which they have and are to continue to exiſt, in what manner to be exerciſed, how to be diſpoſed, &c. 9 *Co.* 97. *Cro. Eliz.* 636. 2 *Roll. Abr.* 182. *Cro. Car.* 513. 1 *Show.* 436.

There is alſo another diſtinction of offices into *judicial*, and *miniſterial*; the *firſt*, relating to the adminiſtration of juſtice, or the actual exerciſe thereof, muſt be executed by perſons of ſufficient capacity, and by *the perſons themſelves* to whom they are granted; and herein alſo ancient uſage and cuſtom muſt govern. 1 *Jon.* 109. *Dav.* 35. 9 *Co.* 97.

It may not be improper, here to conſider,

1. *Who hath a right to create and grant, or aſſign an office; and of one office being incident to another.*
2. *Of the offence of buying and ſelling an office, and what offices are prohibited to be thus diſpoſed of.*
3. *What remedies a perſon having a right to an office muſt purſue, to be let into the enjoyment of it, and how a diſturbance is puniſhable.*
4. *Of the forfeiture of an office; and where for corruption, bribery, extortion, and oppreſſive proceedings, officers are puniſhable.*

1. *Who hath a right to create and grant, or aſſign an office; and of one office being incident to another.*

The King is the univerſal officer and diſpoſer of juſtice within this realm, from whom all others are ſaid to be derived; yet he cannot creat a new office inconſiſtent with our conſtitution, or prejudicial to the ſubject. 12 *Co.* 116. 1 *Rol. Rep.* 206. *Carth.* 478.

There are three things, ſays Lord *Coke*, which have fair pretences, yet are miſchievous; 1ſt, *new courts*; 2d, *new offices*; 3d. *new corporations for trade*; and as to new offices, either in courts or out of them, theſe, cannot be erected without act of parliament; for that under the pretence of common good, they are exerciſed to the intolerable grievance of the ſubject. 2 *Inſt.* 540.

An office granted by letters patent for the ſole making of all bills, informations and letters miſſive in the council of *York*, was held unreaſonable and void. 1 *Jon.* 231, *Mounſon* v. *Lyſter*.

One *Chute* petitioned the King to erect a new office for regiſtring all ſtrangers within the realm, except merchant ſtrangers, and to grant the office to the petitioner with or without a fee; and it was reſolved by all the judges, that the erection of ſuch new offices for the benefit of a private perſon, was againſt all law, of what nature ſoever. 1 *Co.* 116. and ſeveral caſes there cited to this purpoſe.

The King cannot grant to any perſon to hold a court of equity, tho' he may grant *tenere placita*; for the diſpenſation of equity is a ſpecial truſt committed to the King, and not by him to be intruſted with any other, except his Chancellor. *Hob.* 63.

Where-ever one office is incident to another, ſuch incident office is regularly grantable by him who hath the principal office; and on this foundation it hath been held, that the King's grant of the office of county clerk was void, it being inſeparably incident to the office of ſheriff, and could not by any law or contrivance be taken away from him. 4 *Co.* 32. *Mitton*'s caſe.

So the office of chamberlain of the King's Bench priſon is inſeparably incident to the office of marſhal; therefore a grant of the office of marſhal with a reſervation of the office of chamberlain is void. 1 *Salk.* 439. *Per Holt* Ch. J. 1 *Leon.* 320, 321.

So it hath been reſolved, that the office of Exigenter of *London* and other counties in *England*, is incident to the office of Chief Juſtice of *C. B.* that therefore a grant thereof by the King, though in the vacancy of a Chief Juſtice, is null and void. *Dyer* 175. *a. pl.* 25. 1 *And.* 152. and ſee *Show. Par. Ca. Sir Rowland Holt*'s caſe.

Lord *Coke* ſays, that the juſtices of courts did ever appoint their clerks, ſome of which after by preſcription grew to be officers in their courts; and this right which they had of conſtituting their own officers, is further confirmed to them by *Weſtm.* 2. *c.* 30. The reaſons are; 1ſt, For that the law ever appoints thoſe who have the greateſt knowledge and ſkill, to perform that which is to be done. 2dly, The officers and clerks are but to enter, inrol, or effect that which the juſtices adjudge, award or order; the inſufficient doing whereof maketh the proceeding of the juſtices erroneous, than which nothing can be more diſhonourable and grievous to the juſtices, and prejudicial to the party. 2 *Inſt.* 425. 4 *Mod.* 173. cited.

2. *Of the offence of buying and ſelling an office, and what offices are prohibited to be thus diſpoſed of.*

The taking, or giving, of a reward for offices of a *public nature* is ſaid to be bribery; and nothing can be more prejudicial to the good of the public, than to have places of the higheſt concern, (on the due execution whereof, the happineſs of both King and people depends,) diſpoſed of not to thoſe who are moſt able to execute, but to thoſe who are moſt able to pay for them; nor can any thing be a greater diſcouragement to induſtry and virtue, than to ſee thoſe places of truſt and honour, which ought to be the rewards of thoſe who by their induſtry have qualified themſelves for them, conferred on ſuch who have no other recommendation, but that of being higheſt bidders; neither can any thing be a greater temptation to officers to abuſe their power by bribery and extortion, and other acts of injuſtice, than the conſideration of the great expences they were at in gaining their places, and the neceſſity of ſometimes ſtraining a point, to make their bargain anſwer their expectations. 2 *Inſt.* 148. 1 *Hawk. P. C.* 166—8, 9. It is ſaid to be *malum in ſe*, and indictable at Common law. *Noy* 102. *Moor* 781.

For which reaſons among many others, it is expreſsly enacted by 12 *R.* 2. *c.* 2. That the chancellor, treaſurer, keeper of the Privy ſeal, ſteward of the King's houſe, the King's chamberlain, clerk of the rolls of the juſtices of the one bench and of the other, barons of the Exchequer, and all others who ſhall be called to ordain, name, or make juſtices of the peace, ſheriffs, eſcheators, cuſtomers, comptrollers, or any other officer or miniſter of the King, ſhall be firmly ſworn that they ſhall not ordain, name or make any of the above-mentioned officers for any gift or brokage, favour or affection; nor that none who ſueth by himſelf, or by others, privily or openly, to be in any manner of office, ſhall be put in the ſame office, or in any other, but that they make all ſuch officers and miniſters, *of the beſt, and moſt*

moſt lawful men, and ſufficient to their eſtimation and knowledge.

And by the 4 *H*. 4. *c*. 5. it is enacted, That no ſheriff ſhall let his bailiwick to farm to any man for the time he occupieth ſuch office.

But the principal ſtatute relating to this matter is the 5 & 6 *Ed*. 6. *c*. 16.

Whereby it is enacted, That if any perſon bargain or ſell any office, or deputation of any office, or any part of any of them, or receive any money, fee, &c. directly or indirectly, or take any promiſe, &c. to receive any money, &c. directly, or indirectly, for any office, or for the deputation of any office, or any part of any of them; or to the intent that any perſon ſhould have, exerciſe or enjoy any office, or the deputation of any office, or any part of any of them, which ſhall in any wiſe concern the *adminiſtration* or *execution of juſtice*, or the receipt, &c. of any of the King's treaſure, &c. or the keeping of any of the King's towns, &c. being for a place of ſtrength and defence; or which ſhall concern or touch *any clerkſhip* to be occupied *in any manner of court of record* wherein juſtice is to be miniſtred; that then every perſon, that ſhall ſo offend, ſhall not only loſe and forfeit all his and their right, intereſt and eſtate, in or to any of the ſaid office or offices, &c. but alſo perſons who ſhall give or pay any ſum of money, &c. or ſhall make any promiſe, &c. ſhall immediately be adjudged a diſabled perſon in the law to all intents and purpoſes to have, &c. the ſaid office, &c.

“ It is further enacted, That bargains, ſales, promiſes, bonds, agreements, covenants and aſſurances, ſhall be *void* to and againſt him and them, by whom any ſuch bargain, &c. ſhall be made.”

“ Provided always, That this act ſhall not extend to any office, whereof any perſon is ſeiſed of any eſtate of inheritance; nor to any office of parkerſhip, or of the keeping of any park-houſe, manor, garden, chaſe or foreſt, or to any of them.”

“ It is alſo provided, That this act ſhall not be prejudicial to the chief juſtices of the King's Bench or Common Pleas, or the juſtices of aſſiſe; but that they may do in every behalf, concerning any office to be given or granted by them, as they might have done before the making this act.”

In the conſtruction of the laſt mentioned ſtatute, the following opinions have been holden.

1. That the office of chancellor, regiſter and commiſſary in eccleſiaſtical courts, are within the meaning of the ſtatute, inaſmuch as thoſe courts do not only determine matters which are brought before them *pro ſalute animæ*, but alſo have the deciſion of diſputes concerning the lawfulneſs of matrimony, and legitimation of children, which touch the inheritance of the ſubject; and alſo hold plea of legacies and tithes, &c. in which reſpects they are courts of juſtice. *Cro. Jac.* 269. 3 *Inſt*. 148. 12 *Co*. 78. *Salk*. 468. 3 *Lev*. 287. 2 *Vent*. 187, 267.

2. It hath been adjudged, that offices in fee are out of the ſtatute; for if the King be ſeiſed in fee of a bailiwick, and he demiſe the ſame to *A*. who demiſes to *B*. rendring the demiſe to *B*. is not within the ſtatute; for offices in fee being excepted out of the ſtatute, under leaſes, of ſuch offices, are alſo excepted incluſively. 2 *Lev*. 151. *Ellis* v. *Ruddle*.

3. It hath been reſolved, that the place of cofferer is within this ſtatute, and a perſon having once purchaſed this place is for ever diſabled to enjoy the ſame; and that the King is bound by this ſtatute. 3 *Bulſt*. 91. Sir *Arthur Ingram*'s caſe. *Co. Lit*. 234. S. C. and there ſaid, that the King could not diſpenſe with this ſtatute by any *non obſtante*. *Cro. Jac*. 385. S. C. *cited*.

4. It hath been agreed, that the ſale of a bailiwick of a hundred is not within the ſtatute, for ſuch an office doth not concern the adminiſtration of juſtice, nor is it an office of truſt. 4 *Leon*. 33. *Godbolt*'s caſe. 4 *Mod*. 223. S. C. cited.

5. It hath been adjudged, that a ſeat in the ſix clerks office is not within the ſtatute, being a miniſterial office only; and they are but under-clerks, who have ſo much a ſheet for copying, &c. but one judge held it not ſaleable at Common law for the following reaſons; 1ſt, Diſcouragement of merit and induſtry. 2dly, It occaſions extortion and exaction of exceſſive fees. 3dly, From its being a great charge to ſuits, 4thly, It exempts the perſons, who enter, by theſe means, in a great meaſure from the due regulations under which they ought to be; for they are not ſo eaſily removed, as if they were at the will of him who hath the diſpoſal of them. *Paſch*. 26 *Car*. 2. in *C. B. Sparrow* v. *Reynolds*.

6. It has been held, that this ſtatute doth not extend to military officers; and that the 7 *W*. & *M*. which requires, that every commiſſion officer, before his commiſſion is regiſtred, ſhould take the oath there mentioned, that he had not directly or indirectly given any thing for procuring the commiſſion, but the uſual fees, extended only to horſe, foot and dragoons, but not to the marines. *Preced. Chan*. 199.

7. It hath been adjudged, that the ſale of the deputation of the office of provoſt marſhal of *Jamaica*, is not within this ſtatute; becauſe this ſtatute does not extend to the plantations. 4 *Mod*. 222. *Salk*. 411. *Blankard* v. *Galdy*. 2 *Mod*. 45. S. P. undetermined, and there ſaid *arguendo*, that ſo good a law ſhould have as extenſive a conſtruction as poſſible.

8. In a writ on a judgment in *Ireland*, it was held clearly that the office of clerk of the crown, and clerk of the peace, was within the ſtatute; but that this law did not extend to *Ireland*, not being enacted there. *Trin*. 9 *Geo*. 2. in *B. R. Maccarty* v. *Wickford*.

9. It hath been held, that *one who makes a contract* for an *office*, contrary to the purport of this ſtatute, is ſo far, *diſabled* to hold the ſame *that he cannot at any time during life be reſtored to a capacity of holding it by any grant or diſpenſation whatſoever*. Hob. 75. Co. Lit. 234. Cro. Car. 361. Cro. Jac. 386.

10. It is held, that where an office is within the ſtatute, and the ſalary is certain, if the principal make a deputation, reſerving a leſſer ſum out of the ſalary, it is good; ſo if the profits be uncertain ariſing from fees, if the principal make a deputation, reſerving a certain ſum out of the fees and profits of the office, it is good; for in theſe caſes the deputy by his conſtitution is in place of his principal, yet he has no right to his fees, they ſtill continue to be the principal's; ſo that as to him it is only reſerving a part of his own, and giving away the reſt to another; but where the reſervation or agreement is not to pay out of the profits, but to pay generally a certain ſum, it muſt be paid at all events; and a bond for performance of ſuch agreement is void by the ſtatute. *Salk*. 468. 6 *Mod*. 234. *Godolphin* v. *Tudor*. *Comb*. 356. S. P.

11. It hath been held, that this being a public law, the judges *ex officio* are to take notice of it; but yet it ſeems the more regular and ſafe way to plead it; but it hath been reſolved, that a perſon in pleading this ſtatute need not alledge, that the party againſt whom it is pleaded is not within any of the *proviſo's* or exceptions in the ſtatute; but that if he be, it muſt come on his ſide to ſhew it. *Trin*. 9 *Geo*. 2. in *B. R. Maccarty* v. *Wickford*. *Sed qu*. Alſo vide 2 *And*. 55, 107. *Smith* v. *Coteleſhill*. vide *Ld. Raym*. 1245.

3. *What remedies a perſon having a right to an office muſt purſue, to be let into the enjoyment of it, and how a diſturbance is puniſhable.*

It is held clearly, that an aſſiſe lay at Common law for an office, and that therefore tho' the ſtatute of *Weſtm*. 2. *cap*. 25. ſpeaks only of offices in fee, yet an aſſiſe lies for an office in tail, or for life; but this is to be underſtood of offices of profit, for of an office of charge and no profit, an aſſiſe does not lie. 8 *Co*. 47. *a*. *John Webb*'s caſe. 2 *Inſt*. 412. S. P.

But a man ſhall not have an aſſiſe of the whole office, unleſs he be diſſeiſed of the whole; yet if a man be diſſeiſed of parcel of the profits of an office, he may have an aſſiſe for that parcel only. 8 *Co*. 49. *b*. 2 *Inſt*. 412.

In an aſſiſe for an office *newly* erected and conſtituted, the demandant in his plaint muſt ſhew what fee or profit is granted for the exerciſe thereof; for this office cannot have a fee or profit appurtenant to it, as an ancient office may, and for an office without fee or profit no aſſiſe lies. 8 *Co.* 49. *Webb*'s caſe.

But in an aſſiſe for an *ancient* office, the demandant in his plaint need not ſhew what fee or profit is belonging to it, for it ſhall be intended there is ſome fee or profit. 8 *Co.* 49.

In an aſſiſe for an office, the demandant muſt ſhew a *ſeiſin*; but it hath been held, that taking 3 *d.* for a *capias* againſt *B.* is ſufficient ſeiſin of the office of *filizer de banco.* 1 *Rol. Abr.* 270.

Alſo in an aſſiſe for an office, the demandant in his patent muſt ſet forth a *title.* 3 *Mod.* 273. *Savier* v. *Lenthal.*

An aſſiſe lies for the office of regiſter of the admiralty; for though their proceedings are according to the Civil law, yet the *right* of their office is determinable at the Common law; ſo of the maſterſhip of an hoſpital, being a lay fee. 8 *Co.* 47. 2 *Inſt.* 412. 11 *Co.* 99. *b. Dyer* 152.

A man may bring an action on the caſe for the profits of an office, tho' he never had ſeiſin. 1 *Mod.* 122. *per Hale* Ch. J.

An action by a perſon claiming an office againſt the perſon in actual poſſeſſion and receiving the fees is perhaps the moſt eligible method that can be purſued, to try the queſtion of right.

If the King grant the office of comptroller of the cuſtoms to *A.* and *B. durante beneplacito,* and *A.* dies, and afterwards the King grants the ſaid office to *C.* and yet *B.* under pretence of ſurvivorſhip, exerciſes the ſaid office, and receives the profits thereof; *C.* may have an *indebitatus aſſumpſit* for ſo much money had and received to his uſe. 2 *Mod.* 260. adjudged upon a ſpecial verdict between *Arris* v. *Stukely.* Alſo vide 2 *Lev.* 108. *Cragg* v. *Norfolk.* And 1 *Mod.* 122.

4. *Of the forfeiture of an office; and where for corruption, bribery, extortion, and oppreſſive proceedings, officers are puniſhable.*

It is laid down in general, that if an officer acts contrary to the nature and duty of his office, or if he refuſes to act at all, that in theſe caſes the office is forfeited. 11 *Ed.* 4. 1. *b.* 2 *Roll. Abr.* 155.

But herein it will be neceſſary to conſider more minutely, what ſhall be ſaid to be ſuch acts as are contrary to the duty of his office, and how far the ſame (whether they are acts of omiſſion or commiſſion) amount to a forfeiture; wherein it hath been clearly agreed, that a gaoler by ſuffering voluntary eſcapes, by abuſing his priſoners, by extorting unreaſonable fees from them, or by detaining them in gaol after they have been legally diſcharged, and paid their juſt fees, *forfeits his office*; for that in the grant of every office it is implied, that the grantee execute it *faithfully,* and *diligently.* Co. Lit. 233. 9 Co 50. 3 Mod. 143.

But it is held, that one negligent eſcape is not a forfeiture, though a voluntary one is, but that two negligent eſcapes amount to a forfeiture. 39 *Hen.* 6. 33. 2 *Roll. Abr.* 155. 2 *Vern.* 173. and ſee ſtat. 8 & 9 *W.* 3. *cap.* 27. tit. *Gaoler.*

There are, ſays Lord *Coke,* three cauſes of forfeiture or ſeizure of offices by matter in deed. 1ſt, By *Abuſer.* 2dly, *Nonuſer.* 3dly, *Refuſal.*

1ſt, *Abuſer*; as by a marſhal or other gaoler's permitting eſcapes.

2dly, By *nonuſer*; in which there is this difference, when the office concerns the adminiſtration of juſtice or the commonwealth, the officer *ex officio* ought to attend without requeſt, there by *nonuſer* or non-attendance the office is forfeited; but where an officer is not obliged to attend, but upon demand or requeſt made by him whoſe officer he is, there, without ſuch demand or requeſt, there can be no forfeiture; and herein alſo Lord *Coke* in another place takes the following diverſity, *viz.* that *non-uſer* of itſelf, without ſome ſpecial damage, is *no* forfeiture of *private* offices, but that it is otherwiſe of a public one, which concerns the adminiſtration of juſtice.

3dly, As to *refuſal,* he ſays, that in all caſes where an officer is bound upon requeſt, to exerciſe his office, if he does not do it upon requeſt, he forfeits it; as if the ſteward of a manor be requeſted by the lord to hold a court, if he does not do it, it is a forfeiture. 6 *Co.* 50. *Co. Lit.* 233. *b.*

If a gaoler leave his priſon door unlocked, and the priſoners eſcape, it is not only a negligent but a voluntary eſcape. *Cro. Car.* 492. *per cur'.*

If conditions in law, which are annexed to offices, be not obſerved and fulfilled, the office is loſt for ever, for theſe conditions are as ſtrong and binding as expreſs conditions; therefore if the office of foreſter, &c. deſcend to an infant or feme covert, (where by law they may ſo deſcend) and theſe are not exerciſed by ſufficient deputies, they become forfeited. *Co. Lit.* 233. *b.* 8 *Co.* 44. *Cro. Car.* 556. *Hard.* 11.

Inſufficiency is an original incapacity which creates the forfeiture of an office; ſo if a ſuperior puts in a deputy into an office, which may be exerciſed by deputy, who is ignorant and unſkilful, this is a forfeiture of the office. 4 *Mod.* 29. *arguendo.*

If the King grants an office in any of the courts at *Weſtminſter,* the judges may remove an officer for inſufficiency, and they are the proper judges of his abilities. 4 *Mod.* 30. *arguendo.* Where an officer may be removed, but not abridged of his fee. 1 *Roll. Rep.* 82-3.

A philizer of *C. B.* being abſent two years, and having farmed out his office from year to year, without licence of the court, was diſcharged by the Chief Juſtice, *ex aſſenſu ſociorum ſuorum,* by words ſpoken openly in court; and tho' there was no record made of the diſcharge, nor no legal ſummons for him to anſwer to any accuſation, yet the diſcharge was held good. *Dyer* 114. *b. pl.* 64. 1 *Roll. Abr.* 155. S. C.

An officer was turned out, becauſe that he *ſpoliavit quædam recorda contra officii ſui debitum*; and it was objected, 1ſt, That it was not certain enough, becauſe not ſhewn what records: to which the court anſwered, that it would be prolix, and then he having ſpoiled the records, they are not perhaps to be had. 2d objection, That it may be he did it by chance, and not wilfully; to which the court ſaid, that the concluſion *contra officii ſui debitum* includes that. 1 *Keb.* 597. *Pilkington*'s caſe.

But if the King grants an office which concerns truſt and diligence to two, and one is attainted, the entire office is forfeited to the King; for he cannot make one occupy in common with another. *Plow.* 180.

Wherever an officer, who holds his office by patent, commits a forfeiture, he cannot regularly be turned out without a *ſcire facias,* nor can he be ſaid to be compleatly, ouſted or diſcharged without a writ of diſcharge; for his right appearing of record, the ſame muſt be defeated by matter of as high a nature. But for this ſee *Dyer* 155, 198, 211. 9 *Co.* 98. *Co. Lit.* 233. *Cro. Car.* 60, 61. 1 *Sid.* 81, 134. 8 *Co.* 44. *b.* 1 *Roll. Abr.* 580. 3 *Mod.* 335. 3 *Lev.* 288.

All officers are puniſhable for corruption, and oppreſſive proceedings, according to the nature of the offence, either by indictment, attachment, action at the ſuit of the party injured, loſs of their offices, &c. 6 *Mod.* 96.

But beſides the puniſhment by indictment, &c. all courts of record have a diſcretionary power over their officers, and are to ſee that no abuſes are committed by them, which may bring diſgrace on the courts themſelves: The court of King's Bench, by the plenitude of its power, exerciſes a ſuperintendency over all inferior courts, and may grant an attachment againſt the judges of ſuch courts for oppreſſive, unjuſt, or irregular practice, contrary to the obvious rules of natural juſtice. *Dyer* 218. *Palm.* 564. 1 *Salk.* 210.

As to extortion by officers, it is ſo odious, (being more henious, as Lord *Coke* ſays, than robbery, as it is uſually attended with the aggravating ſin of perjury,) that it is puniſhable at Common law by fine and impriſonment, and alſo by removal from the office in the execution whereof it was committed; and is defined to be, the taking of money, by any officer, *by colour of his office*, either *where none is due*, or *not ſo much is due*, or where it is *not yet due*. Co. Lit. 368. b. 2 Inſt. 209. 10 Co. 102. 2 Rol. Abr. 32, 57. Cro. Car. 438, 448. Raym. 315.

But the ſtated and known fees allowed by the courts of juſtice to their reſpective officers, for their labour and trouble, are not reſtrained by the Common law, or by the ſtatute of *Weſtm.* 1. therefore ſuch fees may be legally demanded, without danger of extortion. 21 *Hen.* 7. 17. *Co. Lit.* 368.

Alſo it ſeems, that an officer, who takes a reward voluntarily given him, and which has been uſual in certain caſes, for the more diligent or expeditious performance of his duty, cannot be ſaid to be guilty of extortion; for without ſuch premium it would be impoſſible, in many caſes, to have the law executed with vigour and ſucceſs. 2 *Inſt.* 210. 3 *Inſt.* 149. *Co. Lit.* 368.

But it has been always held, that a promiſe to pay an officer money, for doing a thing which the law will not ſuffer him to take any thing for, is merely void, however voluntarily it may appear to have been made. 1 *Rol. Abr.* 16. 1 *Rol. Rep.* 313. *Noy* 76. 1 *Jon.* 65. *Cro. Eliz.* 654. *Moor* 468. *Cro. Jac.* 103.

As to bribery it is ſaid, in a large ſenſe, to be the receiving, or offering, of any undue reward, by, or to, any perſon, whoſe ordinary profeſſion relates to the adminiſtration of public juſtice, in order to incline him to a thing, againſt the known rules of honeſty; but in ſtrict ſenſe, it ſignifies the taking any thing valuable, by one in a judicial place, for executing his office, or by colour of his office, but of the King only; alſo it ſignifies the taking or giving a reward, for offices of a public nature, which manifeſtly tending to diſcourage men, and to introduce corruption, is highly puniſhable by the Common law. *Forteſcue de Laud. cap.* 51. 3 *Inſt.* 145, 149. *Hob.* 9. *Cro. Jac.* 65.

It is ſaid, that at Common law bribery in a judge, in relation to a cauſe depending before him, was looked upon as an offence of ſo heinous a nature, that it was ſometimes puniſhed as high treaſon, before the ſtatute 25 *Ed.* 3. 3 *Inſt.* 145. 1 *Leon.* 291. *Cro. Jac.* 65. *Ruſhw. Collection, part* 1. *a. fol.* 31.

Alſo it is ſaid, in general, that all *wilful* breaches, of the duty of an office, are forfeitures of it, and puniſhable by fine, *&c.* for ſince every office is inſtituted, not for the ſake of the officer, but for the good of ſome other, nothing can be more juſt, than that he, who either neglects or refuſes to anſwer the end, for which his office was ordained, ſhould give way to others, who are both able and willing to take care of it, and that he ſhould be puniſhed for his neglect or oppreſſive execution: but the particular inſtances wherein a man may be ſaid to act contrary to the duty of his office, though various, are yet ſo generally obvious, that it is needleſs to enumerate them. *Co. Lit.* 233, 234.

See alſo 2 *Inſt.* 43. *Cro. Car.* 491. *The King* v. *Rooks.* 3 *Mod.* 146. S. C. 9 *Co.* 50. *a.* *Cro. Eliz.* 389. 1 *And.* 29. *Poph.* 117. *Moor.* 707. 2 *Mod.* 121. *Cro. Jac.* 17, 18. 11 *Ed.* 4. 1. 20 *Ed.* 4. 56. 39 *Hen.* 6. 32. 22 *Aſſ.* 34. 8 *H.* 4. 18. 2 *H.* 7. 11. 14 *Hen.* 7. 1. 2 *Rol. Abr.* 155. 7 *Co.* 34. *Poph.* 119. 1 *Lev.* 71. *Raym.* 216. 3 *Lev.* 288. 3 *Mod.* 146. *Skin.* 114. 2 *Vern.* 189, 269. *Bridgm.* 27. *Plowd.* 378. Sir *Henry Nevil's* caſe, and 1 *Sid.* 91. *The King* v. *Cover.*

And vide alſo, 1 *Sid.* 94, 152. 1 *Lev.* 75. 1 *Keb.* 349. *Raym.* 94. *Hurſt's* caſe. 5 *Mod.* 431. *Carth.* 438. *The King* v. Dr. *Burnell.* 4 *Inſt.* 200. *Biſhop of Saliſbury's* caſe. *Moor* 808. S. C.

And *Black. Com.* 1 *V.* 272. 2 *V.* 36. 3 *V.* 264.

For more learning on this ſubject, ſee 16 Vin. Abr. *and* 3 New Abr. *tit.* Office and Officers.

And ſee the ſtatutes, 1 *Ann. c.* 2, 8. 6 *Geo.* 1. *c.* 4. 9 *Geo.* 2. *c.* 26. and 16 *Geo.* 2. *c.* 30.

Offices of the Government. The parliament in former times had a right in nominating, placing, and diſplacing the *Great Officers of the Kingdom*, when they corrupted or miſcounſelled the King, of which many inſtances may be given. *Pryn.*

Office found, Is where an inquiſition is made to the King's uſe, of any thing by virtue of his *office* who inquireth, and it is found by the inquiſition. In this ſignification it is uſed in the *ſtat.* 23 *H.* 8. *c.* 20. and *Staundford's Prærog. pag.* 60. where to *traverſe an office*, is to traverſe an inquiſition taken of *office*: And to return an *office*, is to return that which is found by virtue of the *office*. Kitch. 177.

There are two kinds of *offices* iſſuing out of the *Exchequer* by commiſſion, *viz.* an *office* to intitle the King, in the thing enquired of; and an *office* of inſtruction. 6 *Rep.* 52. The *office* of intitling, doth veſt the eſtate and poſſeſſion of the land, *&c.* in the King, who had therein before only a right or title; as where an alien purchaſes lands, a perſon is attaint of ſelony, or the like: And the other *office*, is where land is veſted and ſettled before in the King, but the particular thereof doth not appear upon record. 4 *Rep.* 58. *Plowd.* 484. And the effect of this *office* is, that the King, from the time of finding, ſhall be anſwered the profits without entry, *&c.* 5 *Rep.* 32. 10 *Rep.* 115. If any *office* be wrongfully found: Thoſe who are grieved, may be relieved by a traverſe, or *Monſtrans de Droit*, by pleading or petition: For every *office* is in nature of a declaration, to which any man may plead, and either deny or confeſs, *&c.* *Plowd* 448. *Bro.* 506. Where *offices* are found before the eſcheators, they muſt be delivered by indenture under the hands and ſeals of the jurors. *Dyer* 170. The King by the Common law is not in poſſeſſion of lands, forfeited for treaſon, during the life of the offender, without an *office found*: But the lands whereof a perſon attainted of high treaſon, dies ſeiſed of an eſtate in fee, are actually veſted in the King, without any *office*; becauſe they cannot deſcend, the blood being corrupted, and the freehold ſhall not be in abeyance. 2 *Hawk. P. C.* 448. Vide *ſtat.* 33 *H.* 8. *c.* 20.

There may be an *office*, and *Scire facias*, and ſeizure on ſuch *office*, &c. See *Inquiſition.* And *Black. Com.* 3 *V.* 258, 259.

Office of the Court. It is the *office* of the *Courts* at *Weſtminſter*, to take notice of cuſtoms of *London*, *&c.* and to allow many things, grant new trials, prohibitions, *&c.*

Official, *(officialis)* By the ancient Civil law, ſignifies him who is the miniſter of or attendant upon a magiſtrate. In the Canon law, it is he to whom any *biſhop* generally commits the charge of his ſpiritual juriſdiction; and in this ſenſe there is one in every dioceſe called *Officialis Principalis*, whom the law ſtiles *Chancellor*; and the reſt, if there are more, are by the Canoniſts termed *Officialis foranei*, but by us *Commiſſaries.* In our ſtatutes this word ſignified properly him whom the *Archdeacon* ſubſtitutes for the executing his juriſdiction, as appears by *ſtat.* 32 *Hen.* 8. *c.* 15. The archdeacon hath an *official*, or church lawyer to aſſiſt him, who is judge of the archdeacon's court. *Wood's Inſt.* 30, 505.

Officiariis non faciendis vel amovendis, Is a writ directed to the magiſtrates of a corporation, requiring them not to make ſuch a man an *officer*, or to put one out of the *office* he hath, until inquiry is made of his manners, *&c.* *Reg. Orig.* 126.

Officium curtagii Pannorum, Granted to *William Oſborne.* Anno 2 *Ed.* 2. Extract. Fin. Cancell.

Oil. The lord mayor of *London*, and the maſter and wardens of the Tallow Chandlers company, are to ſearch all *oils* brought to *London*; and if any is deceitfully mixed, they may throw it away, and puniſh the offenders: And head officers in corporations have like power. *Stat.* 3 *H.* 8. *cap.* 14. Duties on hempſeed *oil*, rape *oil*, and other ſeed *oil*, and olive *oil.* 2 *W.* & *M.* *ſeſſ.* 2. *c.* 4. *ſ.* 9, 41.

No lamps to be uſed in private houſes but of fiſh oil, 8 *Ann. c.* 9. *ſect.* 18. See *Gauging*, *Whales.*

Old Jury, *(Vetus Judaiſmus)* The place or ſtreet where the *Jews* lived in *London*, See *Jews.*

Oleron Laws, *(Uliarenſes Leges)* Are the *laws* of King *Rich.* 1. relating to *Maritime affairs*, ſo called, becauſe

cauſe made by him when he was at *Oleron*; which is an iſland lying in the bay of *Acquitain*, at the mouth of the river *Charent*, and now belongs to the *French* King. *Co. Lit.* 260. Theſe *laws* are recorded in the *Black Book* of the admiralty, and are accounted the moſt excellent compoſition of *Sea Laws* in the world. See *Selden's Mare Clauſum*, 222, 254. And *Black. Com.* 1 *V.* 417. 4 *V.* 416.

Olympiad, *(Olympias)* An account of time among the *Greeks*, conſiſting of *four complete years*, having its name from the *Olympick Games*, which were kept every fourth year, in honour of *Jupiter Olympius*, near the city of *Olympia*; when they entered the names of the conquerors on public records: The firſt *Olympiad* began in the year 3938 of the *Julian* period, 505 years after the taking of *Troy*, 776 before the birth of Chriſt, and 24 years before the founding of *Rome*. *Æthelred*, King of the *Engliſh Saxons*, computed his reign by *Olympiads*. Spelm.

Omer, A meaſure made uſe of by the *Jews*, of three pints and a half. *Merch. Dict.*

Omiſſions, Are placed among crimes and offences; and *omiſſion* to hold a court-leet, or not ſwearing officers therein, *&c.* are cauſes of forfeiture. 2 *Hawk. P. C.* 73. *Omiſſions* in law proceedings render them vicious and defective; as want of warrants of attorney entered, *&c.* 1 *Keb.* 204, 222. Vide *Nonfeaſance*.

Oncunne, (Sax. *On cunnen)* Signifies as much as accuſed; *Accuſatus*. Leg. Alfred. c. 29.

Onerando pro rata portionis, Is a writ that lies for a jointenant, or tenant in common, who is diſtrained for more rent than his proportion of the land comes to. *Reg. Orig.* 182.

O. Ni. Is the courſe of the *Exchequer*, that as ſoon as the *ſheriff* enters into and makes up his account for iſſues, amerciaments, and mean profits, to mark upon each head, O *Ni*, which denotes *oneratur, niſi habeat ſufficientem exonerationem*, and preſently he becomes the King's debtor, and a *debet* is ſet upon his head; whereupon the parties *paravaile* become debtors to the ſheriff, and are diſcharged againſt the King, *&c.* 4 *Inſt.* 116.

Onus Epiſcopale, Were cuſtomary payments from the clergy to their dioceſan *biſhop*, of Synodals, Pentecoſtals, *&c.* See *Epiſcopalia*.

Onus importandi, The charge or burden of *importing* merchandiſe, mentioned in the *ſtat.* 13 *Car.* 2.

Onus Probandi, *i. e.* The burden of proving. 14 *Car.* 2. *c.* 11.

Open Law, *(lex Manifeſta)* Is the making of *law*; which bailiffs may not put men to, upon the bare aſſertion, except they have witneſſes to prove the truth of it. *Magn. Chart. c.* 21.

Open Theft, (Sax. *Opentheof)* Is a theſt that is manifeſt. *Leg Hen. c.* 13.

Open-Tide, *i. e.* When corn is carried out of the common fields. *Brit.*

Operarii, Were ſuch tenants who had ſome little portions of land by the duty of performing many bodily labours and ſervile works for their lord, being no other than the *ſervi* and *bondmen*: They are mentioned in ſeveral ancient *ſurveys* of *manors*.

Operatio, One day's work performed by a tenant for his lord. *Paroch. Antiq.* 320.

Oppoſer, An officer belonging to the *Green Wax* in the *Exchequer*. See *Exchequer*.

Oppreſſion, In a private ſenſe, is the trampling upon or bearing down one, on pretence of law, which is unjuſt: But where the law is known and clear, though it be unequitable, the judges muſt determine according to that. *Vaugh.* 37. In another ſignification, it is ſaid by *Forteſcue*, that all the unjuſt methods invented by princes, to extort money from their ſubjects, are ſo many *fountains* of *oppreſſion*, which never dry up; for ſucceeding Kings ſeldom fail to follow the example of their predeceſſors. *Forteſc. Laud. Leg. Angl.*

Oppreſſion of the Crown, how Remedied. The learned *Blackſtone*, treating of the *King*, his dignity, *&c.* and obſerving that no ſuit or action can be brought againſt him, even in civil matters, becauſe no court can have juriſdiction over him, proceeds as follows,

Are then, it may be aſked, the ſubjects of *England* totally deſtitute of remedy, in caſe the crown ſhould invade their rights, either by private injuries, or public oppreſſions? To this we may anſwer, that the law has provided a remedy in both caſes.

And, firſt, as to *private* injuries; if any perſon has, in point of property, a juſt demand upon the King, he muſt *petition him in his court of Chancery*, where his Chancellor will adminiſter right as a matter of *grace*, though not of COMPULSION: And this is entirely conſonant to what is laid down by the writers on natural law. "A ſubject, "(ſays *Puffendorf)* ſo long as he continues a ſubject, "hath no way to *oblige* his prince to give him his due, "when he refuſes it; though no wiſe prince will ever "refuſe to ſtand to a lawful contract. And, if the prince "gives the ſubject leave to enter an action againſt him, "upon ſuch contract, in his own courts, *the action itſelf "proceeds rather upon natural equity, than upon the municipal laws*." For the end of ſuch action is not to *compel* the prince to obſerve the contract, but to PERSUADE him. And, as to perſonal wrongs; it is well obſerved by Mr. *Locke*, "The harm which the ſovereign can do "in his own perſon not being likely to happen often, "nor to extend itſelf far; nor being able by his ſingle "ſtrength to ſubvert the laws, nor oppreſs the body of "the people, (ſhould any prince have ſo much weakneſs "and ill nature as to endeavour to do it)——the inconveniency therefore, of ſome particular miſchiefs, that "may ſometimes happen, when an heady prince comes "to the throne, are well recompenſed by the peace of "the public and ſecurity of the government, in the perſon of the chief magiſtrate being thus ſet out of the "reach of danger."

Next, as to caſes of ordinary public oppreſſion, where the vitals of the conſtitution are not attacked, the law hath alſo aſſigned a remedy. For, as a King cannot miſuſe his power, *without the advice of evil counſellors*, and the aſſiſtance of wicked miniſters, theſe men may be examined and puniſhed. The conſtitution has therefore provided, by means of indictments, and parliamentary impeachments, that NO MAN SHALL DARE TO ASSIST THE CROWN IN CONTRADICTION TO THE LAWS OF THE LAND. But it is at the ſame time a maxim in thoſe laws, that *the King himſelf can do no wrong*; ſince it would be a great weakneſs and abſurdity in any ſyſtem of poſitive law, to define any poſſible wrong, without any poſſible redreſs.

For, as to ſuch public oppreſſions as tend to diſſolve the conſtitution, and ſubvert the fundamentals of government, they are caſes which the law will not, out of decency, ſuppoſe: Being incapable of diſtruſting thoſe, whom it has inveſted with any part of the ſupreme power; ſince ſuch diſtruſt would render the exerciſe of that power precarious and impracticable. For, wherever the law expreſſes its diſtruſt of abuſe of power, it always veſts a ſuperior coercive authority in ſome other hand to correct it; the very notion of which deſtroys the ideas of ſovereignty. If therefore (for example) the two houſes of parliament, or either of them, had avowedly a right to animadvert on the King, or each other, or if the King had a right to animadvert on either of the houſes, that branch of the legiſlature, ſo ſubject to animadverſion, would inſtantly ceaſe to be part of the ſupreme power; the balance of the conſtitution would be over-turned; and that branch or branches, in which this juriſdiction reſided, would be completely ſovereign. The ſuppoſition of *law* therefore is, that *neither the King, nor either houſe of parliament* (collectively taken) *is capable of doing any wrong*; ſince in ſuch caſes the law feels itſelf incapable of furniſhing any adequate remedy. For which reaſon all oppreſſions, which may happen to ſpring from any branch of the ſovereign power, muſt neceſſarily be out of the reach of any *ſtated rule*, or *expreſs legal* proviſion: But, if ever they unfortunately happen, the prudence of the times muſt provide new remedies upon new emergencies.

Indeed, it is found by experience, that whenever the unconſtitutional oppreſſions, even of the ſovereign power, *advance with gigantic ſtrides* and threaten deſolation to a ſtate, MANKIND WILL NOT BE REASONED OUT OF THE FEELINGS OF HUMANITY; nor will ſacrifice their LIBERTY by a ſcrupulous adherence to thoſe political maxims, which were originally eſtabliſhed to preſerve it. Therefore, though the poſitive laws are ſilent, experience will furniſh us with a very remarkable caſe, wherein NATURE AND REASON PREVAILED. When King *James* the Second INVADED *the fundamental conſtitution of the realm*, the convention declared an abdication, whereby the throne was rendered vacant, which induced a new ſettlement of the crown. And ſo far as this precedent leads, and no farther, we may now be allowed to lay down the *law* of redreſs againſt public oppreſſion. If therefore any future prince ſhould endeavour to ſubvert the conſtitution by BREAKING the ORIGINAL CONTRACT between King and people, ſhould violate the fundamental laws, and ſhould withdraw himſelf out of the kingdom; we are now authorized to declare that this *conjunction* of circumſtances would amount to an abdication, and the throne would be thereby vacant. But it is not for us to ſay, that any one, or two, of theſe ingredients would amount to ſuch a ſituation; for there our precedent would fail us. In theſe therefore, or other circumſtances, which a fertile imagination may furniſh, ſince both law and hiſtory are ſilent, it becomes us to be ſilent too; *leaving to future generations, whenever neceſſity and the ſafety of the whole ſhall require it, the* EXERTION *of thoſe* INHERENT (though latent) POWERS OF SOCIETY, *which no climate, no time, no conſtitution, no contract, can ever* DESTROY *or* DIMINISH. *Black. Com.* 1 *V.* 243, 4, 5.

Option, When a new ſuffragan biſhop is conſecrated, the *archbiſhop* of the province by a cuſtomary prerogative claims the collation of the firſt vacant dignity or benefice in that ſee, at his own choice; which is called his *Option.* Cowell.

Optional Writ. A *præcipe* is an *optional* writ, *i. e.* it is in the alternative, commanding the defendant, to do the thing required, or ſhew the reaſon wherefore he hath not done it. There is another ſpecies of original writs called *Peremptory*, or a *Si fecerit te ſecurum*, from the words of the writ, which directs the ſheriff to cauſe the defendant to appear in court, without any option given him, provided the plaintiff gives the ſheriff ſecurity effectually to proſecute his claim. *Black. Com.* 3 *V.* 274.

Ora. This was *Saxon* money or coin, valued at ſixteen pence, and ſometimes according to variation of the ſtandard at twenty pence. It is a word which often occurs in *Domeſday*, and the laws of King *Canutus.*

Orando pro Rege & Regno, An ancient writ. Before the *Reformation*, while there was no ſtanding collect for a ſitting parliament, when the *Houſes of Parliament* were met, they petitioned the King that he would require the biſhops and clergy to pray for the peace and good government of the realm, and for a continuance of the good underſtanding between his Majeſty and the eſtates of the kingdom; and accordingly the writ *De Orando pro Rege & Regno* was iſſued, which was common in the time of King *Edw.* 3. Nicholſ. Engl. Hiſt. par. 3. p. 66.

Orarium, The hem, or border of a garment. *Cowell.*

Orbis, *Anglice*, A *bonney*, a ſwelling or knot in the fleſh, cauſed by a blow. *Bract. lib.* 3. tit. *De Corona, cap.* 23. *num.* 2.

Orchards and gardens, Robbing them, or deſtroying trees in them, how puniſhed, 43 *Eliz. c.* 7. 9 *Geo.* 1. *c.* 22. The hundred anſwerable for the damages. 9 *G.* 1. *c.* 22. *ſect.* 7.

Orchel or **Orchal,** (mentioned in ſtat. *Rich.* 3. *c.* 8. 24 *H.* 8. *c.* 2. and 3 & 4 *Ed.* 6. *c.* 2.) Seems to be a kind of cork, or rather a kind of ſtone like allum, which dyers uſe in their colours. To what duties liable. 4 *W. & M. c.* 5. *ſect.* 2.

Ordeal, or **Ordal,** *(ordalium)* Is a *Saxon* word, compounded of *or*, *magnum*, and *deal*, or *dele*, *judicium*, or as others, from *or*, which in that language is *privative*, and *del*, *part*, that is, *expers criminis*, or Not guilty; but is uſed for a kind of purgation practiſed in ancient times, and in the Canon law called *purgatio vulgaris.* There were of this two ſorts, one by *fire*, another by *water.* Of theſe ſee Mr. *Lambard*, in his *Explication of* Saxon *Words*, verbo *ordalium*: of this you may read likewiſe *Holingshed, fol.* 98. and *Hotoman* eſpecially, *Diſput. de Feud. p.* 41. where, of five kinds of proofs, which he calleth, *Feudales probationes*, he maketh this the fourth, calling it *Explorationem, & hujus furioſæ probationis* 6, *genera fuiſſe animadvertit, viz. per flammam, per aquam, per ferrum candens, per aquam vel gelidam vel ferventem, per fortes & per corpus Domini*, of all which he alledgeth ſeveral examples out of hiſtory, very worthy reading. See *Skene de* verbor. *Significat.* verbo *Machainum.*

This ſeems to have been in uſe in the time of *Henry* the Second, as appeareth by *Glanville, lib.* 14. *cap.* 1, 2. See alſo *Verſtegan, cap.* 3. *pag.* 63, *&c.* See alſo *Hoveden*, 556. This *Ordalian* law was condemned by Pope *Stephen* the Second, and afterwards totally aboliſhed here by parliament, as appears by *Rot. Paten. de Anno* 2 *Hen.* 3. *membr.* 5. Cowell. *Vide* Leg. Edw. Confeſſ. cap. 9.

Anciently, when an offender being arraigned pleaded Not guilty, he might chooſe whether he would put himſelf for trial upon God and the country, by twelve men, as at this day, or upon God only; and then it was called the judgment of God, preſuming that he would deliver the innocent. *Terms de Ley.* 9 *Rep.* 32.

This trial was two ways, one by *water*, and another by *fire*: the *water ordeal* was performed either in hot or cold; in cold water the parties ſuſpected were adjudged innocent, if their bodies were not borne up by the water contrary to the courſe of nature; in hot water, they were to put their bare arms or legs into ſcalding water, which if they brought out without hurt, they were taken to be innocent of the crime.

Thoſe that were tried by the *fire ordeal*, paſſed barefooted and blind-fold over nine hot glowing plow-ſhares; or were to carry burning irons in their hands, uſually of one pound weight, which was called *ſimple ordeal*; or of two pounds, which was *duplex*; or of three pound weight, which was *triplex ordalium*; and accordingly as they eſcaped, they were judged innocent or nocent, acquitted or condemned: this fire *ordeal* was of freemen, and perſons for better condition; and the water *ordeal* for bondmen and ruſtics. *Glanv. lib.* 4. *c.* 1.

And the horrible trial by fire *ordeal*, in the firſt degree, Queen *Emma*, mother of *Edward* the Confeſſor, underwent on a ſuſpicion of her chaſtity: alſo an example of the ſecond kind is mentioned in our books of a company of perſons ſuſpected to be ſtealers of the King's deer, in the reign of King *Wil.* 2. who having carried burning irons without injury, on its being reported to the King, he received it with a remarkable indignation; and replied,

> *Quid eſt id; Deus eſt juſtus Judex: Pereat qui deinceps hoc crediderit.*

The monarch muſt mean, that God, whom his prieſts had taught him to worſhip, or conſider as God; was not the great Author of Nature.

The *Saxons*, beſides the trial by *combat*, commonly uſed their *fire* and *water ordeals.* See *Black. Com.* 4 *V.* 336, 407, 418.

Ordeffe, or **Ordelfe,** *(effoſſio metalli*, derived from the Saxon *ore, metallum* and *delfan effodere)* Is often uſed in charters of privileges, being taken for a liberty, whereby a man claims the *ore* found in his own ground, but properly is the *ore* lying *under* ground: as alſo a *delfe* of coal, is coal lying in veins under ground, before it is dug up. *Cowell.*

Ordels, *Oaths* and *ordels*, Was part of the privileges and immunities granted in old charters, meaning the right of adminiſtring oaths, and adjudging *ordeal* trials, within ſuch a precinct or liberty. *Cowell.*

Orders, Are of ſeveral ſorts, and by divers courts; as of the *Chancery, King's Bench*, &c. *Orders* of the *court of Chancery*, either of courſe or otherwiſe, are obtained on the petition or motion of one of the parties in a cauſe, or of ſome other intereſted in or affected by it; and they are ſometimes made on hearings, ſometimes by conſent of parties. *Pract. Solic.* 26. They are to be pronounced in open court, and drawn up by the *Regiſter* from his notes; and if there be any difficulty in adjuſting the notes, a ſummons is given by the regiſter for the clerk or ſolicitor of the other ſide to attend, whereupon they are ſettled, or the court is applied to, if it cannot be otherwiſe done: before the *orders* are entred and paſſed by the regiſter, the other ſide hath four days allowed to object againſt them, for which purpoſe copies are delivered; and when they are perfected, they are to be ſerved on the parties, or the clerk or ſolicitor employed by them. *Ibid.* If an *order* is of courſe, the ſolicitor uſually draws up the notes or minutes, and gives them to the regiſter's clerk, to draw up the *order* from; and when the *order* is drawn up, it is to be entered by the entring clerk, which muſt be within eight days from the pronouncing; then the regiſter paſſes and ſigns it, after which is the ſervice, &c. For not obeying an *order*, perſonally ſerved, a party may be committed.

Orders of the King's Bench, Are rules made by the court in cauſes there depending; and when they are drawn up and entered by the *clerk of the rules*, they become *orders* of the court. 2 *Lil.* 261. This court doth not take notice of *orders* made in *Chancery*, nor in any other court, ſo as to be bound by them; but will proceed according to their own rules and *orders*. Trin. 23 Car. B. R. And if a cauſe be put in the paper of cauſes, that it may be ſpoke unto in the matter of law, by the *order* of the court; and the attorney in the cauſe doth not attend at the day, the cauſe is to be put out of the paper, and not be put in again that term; except very good cauſe be ſhewn. *Mich.* 22 *Car. B. R.* 2 *Lil.* 261. The *King's Bench* hath power to quaſh any *orders* made at the public or private ſeſſions of the peace; or by any other commiſſioners, if they find good reaſon for it. *Ibid.*

See Sir *George Cooke's Rules and Orders in the Courts of* King's Bench *and* Common Pleas, *and Caſes in Practice*, 2 vols. 8vo. a very excellent work, from which many things in our modern books of practice are taken, though the authors have ſeldom been ſo ingenious as to acknowledge from whence they were taken, or to refer to any authorities, in many of thoſe inſtances.

Orders of Juſtices of Peace. *Juſtices of peace*, who make *orders* muſt be ſaid in ſuch *orders* to be juſtices of the county, for reſiding in the county is not ſufficient; but they need not be of the diviſion: it muſt alſo appear that one of the juſtices was of the *quorum*. 2 Salk. 474, 480. But ſee *poſt*. An order ſigned ſeparately by two *juſtices of peace*, not being preſent together at the doing it, was ruled naught upon the ſtatute 14 *Car.* 2 *c.* 12. See 1 *Ld. Raym.* 55. Alſo where it is ſaid, that two juſtices *doth order* inſtead of *do*, the ſingular number for the plural, it has been adjudged ill. 2 *Raym.* 1198. And if the name of the county be not in the body of *orders*, but only in the margin, they will be quaſhed: tho' ſome orders of removal with the name of the county in the margin, have been held good. *Mich.* 11 *Geo.* 1. *Mod. Ca. in L. and E.* 310. The ſeſſions of the peace, during all their ſeſſions, may alter or revoke their *orders*, and make a new *order* to vacate the former, though it be drawn up; as judgments in *B. R.* may be altered during the ſame term, the ſeſſions as well as the term being in law accounted as one day. *Ibid.* 606. And the quarter-ſeſſions is not bound to ſet forth the reaſon of their *orders* and judgments, no more than other courts. 2 *Salk.* 607. Juſtices of peace at the quarter-ſeſſions may rectify defects of form in *orders*, &c. upon appeals, and then ſhall determine the matters according to the merits of the caſe; and no *orders* ſhall be removed into *B R.* without entering into recognizance of 50*l*, to proſecute with effect, &c. otherwiſe the juſtices to confirm their *order*, by *Stat.* 5 *Geo.* 2. *c.* 19 By the *Stat.* 26 *Geo* 2. *c.* 27. No *order* of juſtices ſhall be ſet aſide for not inſerting that one of them is of the *quorum*. See *Poor.*

Order of ſeſſions muſt *adjudge*, and not ſtate the evidence only. 1 *Wilſ.* 74.

Ordinale, Is a book which contains the manner of performing divine *offices: in quo* ordinatur *modus*, &c.

Ordinance, *(ordinatio)* Is a law, decree, or ſtatute, variouſly uſed. *Lit. Dict.*

Ordinance of the Foreſt, *(ordinatio foreſtæ)* Is a ſtatute made touching matters and cauſes of the *foreſt*, anno 34 Ed. 1.

Ordinance of Parliament, Is ſaid to be the ſame with *act of parliament*; for in the Parliament Rolls acts of parliament are often called *ordinances*, and ordinances *acts*: but originally there ſeems to be this difference between them; that an *ordinance* was but a temporary act, by way of prohibition, which the Commons might alter or amend at their pleaſure; and an act of parliament is a perpetual law not to be altered but by King, Lords and Commons. *Rot. Parl.* 37 *Ed.* 3. *Pryn's Animadver. on* 4 *Inſt.* 13. And Sir *Edward Coke* ſays, that an *ordinance of parliament* is to be diſtinguiſhed from an act; in as much as the latter can be only made by the King and the three eſtates, whereas the former is by one or two of them. *Co. Lit.*

Ordinary, *(ordinarius)* Is a *Civil law* term, for any judge who hath authority to take cogniſance of cauſes in his own right, and not by deputation: by the *Common law* it is taken for him who hath *ordinary* or exempt and immediate juriſdiction in cauſes eccleſiaſtical, *Co. Lit.* 344. *Stat. Weſtm.* 2. 13 *Ed.* 1. *cap.* 19.

This name is applied to a *biſhop* who hath original juriſdiction; and an *archbiſhop* is the *ordinary* of the whole province, to viſit and receive appeals from inferior juriſdictions, &c. 2 *Inſt.* 398. 9 *Rep.* 41. *Wood's Inſt.* 25. The word *ordinary* is alſo uſed for every *commiſſary* or official of the biſhop, or other eccleſiaſtical judge, having judicial power: an *archdeacon* is an *ordinary*; and *ordinaries* may grant adminiſtration of inteſtate's eſtates, &c. *Stat.* 31 *Ed.* 3. *c.* 11. 9 *Rep.* 36. But the biſhop of the dioceſe is the true and only *ordinary* to certify excommunications, lawfulneſs of marriage, and ſuch eccleſiaſtical and ſpiritual acts to the judges of the Common law; for *he is the perſon whom the court is to write to, in ſuch things.* 2 Shep. Abr. 472.

For the *ordinary*'s power, it is declared by many ſtatutes; as relating to viſiting hoſpitals, by 2 *H.* 5. *c.* 1. The certifying of baſtardy, &c. 9 *H.* 6. *c.* 11. Concerning queſtions of tithes, that ſhall come in debate before him. 27 *H.* 8. *c.* 20. Allowance of ſchoolmaſters, &c. 23 *Eliz. c.* 1. 1 *Jac.* 1. *c.* 4. If a man may keep a ſchool without licence of the *ordinary*, ſee Ld. *Raym.* 603. And their authority in general is reſtored, by 13 *Car.* 2. *c.* 12.

The *ordinary*'s power and intereſt in a church, is of admitting, inſtituting and inducting parſons; of ſeeing and taking care that it be provided with a paſtor, by the patron who has the right of preſenting; or in his default, to beſtow the church on ſome proper perſon to ſerve the cure, &c. 1 *Rol. Rep.* 453. Before preſentation to a church, the *ordinary* may ſequeſter the profits; and during the vacation, it is ſaid he may make a leaſe. 1 *Keb.* 370. When the *ordinaries* or their miniſters have committed extortion or oppreſſion, they may be indicted, putting the things in certain, and in what manner, &c. 25 *Ed.* 3. *c.* 9.

Formerly clerks accuſed of crimes were delivered to the *ordinary*, and the bodies of ſuch clerks kept in the *ordinary*'s priſon until tried before him by a jury of twelve clerks; and if condemned, they were liable to no greater puniſhment than degradation, loſs of goods, and the profits of their lands; unleſs they had been guilty of apoſtacy, &c. This was when they had the privilege of being tried only by eccleſiaſtical judges; which was ſo far indulged them, that after they had been once delivered to the *ordinary*, they could not be remanded to any temporal court, until the *Stat.* 8 *Eliz. c.* 4. 2 *Hawk. P. C.* 361.

No ornaments can be ſet up in a church, without conſent of the *ordinary*. 1 Strange 576. See *Co. lib.* 9. *fol.* 36. *Henſloe*'s caſe. And the ſtatute of *Weſtminſter* 2. *cap.* 19. 31 *E.* 3. *c.* 11. and 21 *H.* 8. *cap.* 5. 2 *Inſt. cap.* 19. See *Brooke, Ordinary*, and *Lindewode* in *cap. Exterior.* tit. *de Conſtitutionibus* verbo *Ordinarii.*

Indictment againſt an *ordinary*, *&c.* for extortion, muſt ſet forth the fact, 25 *Ed.* 3. *ſt.* 3. *c.* 9. See *Adminiſtrator*, *Biſhop*, *Clergy*, *Hoſpitals*.

Ordinary of Newgate, Is one who is attendant in *ordinary* upon condemned malefactors in that priſon, to prepare them for death; and he records the behaviour of ſuch perſons.

Ordinatione contra Servientes, A writ that lieth againſt a ſervant, for leaving his maſter contrary to the ſtatute. *Reg. Orig.* 189.

Ordination of Clergy. No man is capable of taking any eccleſiaſtical promotion, or dignity, unleſs he be ordained a prieſt, to qualify him for the ſame. A clerk is to be twenty-three years old, and have *deacon*'s orders, before he can be admitted into any ſhare of the miniſtry: and a prieſt muſt be twenty-four years of age, before he ſhall be admitted into orders to preach, or to adminiſter the ſacraments; but the archbiſhop may diſpenſe with one to be made deacon at what age he pleaſes, tho' he cannot with one who is to be made a prieſt. 13 *Eliz.* *c.* 12.

Deacons and prieſts are to be *ordained* only on the four *Sundays* immediately following the *Ember Weeks*, except on urgent occaſions: and it is to be done in the cathedral or pariſh church where the biſhop reſides, in time of divine ſervice, and in the preſence of the archdeacon, dean, and two prebendaries, or of four other grave divines. And no biſhop ſhall admit any perſon into orders, without a *title* or aſſurance of being provided for; and before any are admitted, the biſhop ſhall examine them in the preſence of the miniſters, who aſſiſt him at the impoſition of hands; on pain, if he admits any not qualified, *&c.* of being ſuſpended by the archbiſhop from making either deacons or prieſts for two years. *Can.* 31, 34.

If any impediment be objected againſt one who is to be made either prieſt or deacon, at the time he is to be *ordained*, the biſhop is bound to ſurceaſe from *ordaining* him, until he ſhall be found clear of that impediment; and it is generally held, that whatever are good cauſes of deprivation, are alſo ſufficient cauſes to deny admiſſion to orders; as incontinency, drunkenneſs, illiterature, perjury, forgery, ſimony, hereſy, outlawry, baſtardy, *&c.* 2 *Inſt.* 631. 5 *Rep.* A perſon to be *ordained* prieſt, muſt bring a teſtimonial of four perſons, known to the biſhop, of his life and doctrine; and be able to give an account of his faith in *Latin:* and a deacon is not to be made a prieſt, unleſs he produce to the biſhop ſuch a teſtimonial of his life, *&c.* and that he hath been found faithful and diligent in executing the office of a deacon.

A biſhop ſhall not make any one deacon and miniſter, on the ſame day; for there muſt be ſome time to try the behaviour of a deacon in his office, before he is admitted to the order of prieſthood, which time is generally a year, but it may be ſhorter, on reaſonable cauſe allowed by the biſhop: prieſts and deacons are not only to ſubſcribe the thirty-nine articles, but take the oath of the King's ſupremacy, *&c* as directed and altered by *Stat.* 1 *W.* *&* *M.* *ſt.* 1 *c.* 1, 8. A prieſt by his ordination receives authority to preach the word, and adminiſter the Holy Sacraments, *&c.* (but he may not preach without licence from the biſhop, archbiſhop, or one of the univerſities.)

None but prieſts are capable of any benefice, or dignity, or of adminiſtring the ſacrament, 13 *&* 14 *Car.* 2. *c.* 4. *ſect* 14.

The *Stat.* 31 *Eliz.* *cap.* 6. puniſhes corrupt *ordination* of prieſts, *&c.* If any perſons ſhall take any reward, or other profit, to make and *ordain* a miniſter, or to licenſe him to preach, they ſhall forfeit 40*l.* and the party ſo *ordained*, *&c.* 10*l.* by this ſtatute.

Ordines, A general chapter, or other ſolemn convention of the religious of ſuch a particular order. *Paroch. Antiq. p.* 576.

Ordines majores & minores, The holy orders of prieſt, deacon and ſubdeacon, any of which did qualify for preſentation and admiſſion to an eccleſiaſtical dignity or cure, were called *ordines majores*; and the inferior orders of chantor, pſalmiſt, oſtiary, reader, exorciſt and acloyte, were call *ordines minores:* for which the perſons ſo ordained had their *prima tonſura* different from the *tonſura clericalis*. Cowell.

Ordinum fugitivi, Signified thoſe of the religious who deſerted their houſes, and throwing off the habits, renounced their particular *order*, in contempt of their oath and other obligations. *Paroch. Antiq.* 388.

Ordnance, Letters patent for making it not within the ſtatute of monopolies, 21 *Jac.* 1. *c.* 3. *ſect.* 10.

Ordo, Is taken for that rule which the *monks* were obliged to obſerve. *In Eadmer. vita S. Enſelmi, cap.* 37.

Ordo Albus, The *White* Friars, or *Auguſtines*; and the *Ciſtercians* alſo wore *White*.

Ordo Niger Were the *Black* Friars. *Sub normâ Benedicti famulantes*; as *Ingulphus* tells us, *p.* 851. The *Cluniacs* likewiſe wore *Black*. Mat. Paris, 321, 514.

Orfgild, or **Cheapgeld**, (from the Saxon *orf*, *pecus*, and *gild*, *ſolutio vel redemptio*,) Is a delivery or reſtitution of *cattle*. But *Lambard* ſays, it is a reſtitution made by the hundred, or county, for any wrong done by one who was in pledge. *Arch. pag.* 125. or, rather a penalty for taking away cattle.

Orford haven, Penalty on ſelling a net with a ſtallboat within the mouth of *Orford haven*, 27 El. c. 21.

Orfraies, *(aurifriſium)* A ſort of *cloth of gold*, frizled or embroidered, formerly made and uſed in *England*, worn by our Kings and nobility; and the cloaths of the King's guards were called *orfraies*, becauſe adorned with ſuch works of gold. Mention is made of theſe *orfraies* in the *Records of the Tower*.

Orgallous, More truly *orguillous*, that is, proud and high-minded, derived from the *French orgueil*, *pride*. 4 Inſt. 89.

Orgeys, (mentioned in ſtat. 32 *E.* 2. *ſt.* 3. *c.* 3.) Is the greateſt ſort of *North-ſea* fiſh, (for the ſtatute ſays they are greater than lob-fiſh) which we now call *organ-ling*, corruptly from *Orkney-ling*, becauſe the beſt are near that iſland. *Cowell*.

Orgild, *(ſine compenſatione)* Without recompence; as where no ſatisfaction was to be made for the death of a man killed, ſo that he was judged lawfully ſlain. *Spelm.*

Oriel college, A prebend of *Rocheſter*, how annexed to its provoſtſhip, 12 *Ann.* *ſt.* 2. *c.* 6. *ſ.* 7.

Original, In the court of King's bench, the uſual original writ iſſued in actions, as actions of treſpaſs upon the caſe, *&c.* So original writs in actions, iſſue out of the chancery, returnable in *B. R.* and when the party proceeds on ſuch writ, and obtains judgment, error does not lie in the exchequer, but in parliament, only. The court of Common Pleas proceeds by original in all actions: but to arreſt and ſue a party to outlawry, it is uſed by both courts. And for originals in treſpaſs on the caſe, there is a fine payable to the crown, where the damages are laid, to forty pounds or upwards in proportion to the damage. *Practiſ. Solic.* 254, 255. The original is the foundation of the *capias*, and all ſubſequent proceſs; the return whereof is generally the *teſte* of the *capias:* tho' the *capias* may be taken out before the original, by leaving the *præcipe* with the filazer, who will make out a *capias* upon it, and afterwards carry it to the curſitor to make an original; and the filazer when it is returned, is to file it with the *cuſtos brevium*. See *Attorney's Pract. in Court of* K. B. *and* C. P.

Originalia. In the treaſurer's remembrancer's office in the *Exchequer*, the tranſcripts, *&c.* ſent thither out of the *Chancery* are called by this name, and diſtinguiſhed from *recorda*; which contain the judgments and pleadings in ſuits tried before the *Barons*.

Orped, Some *orped* knight, *i e.* a knight whoſe clothes ſhone with gold. *Blount.*

Orphan, *(orphanus)* Is a fatherleſs child; and in the city of *London* there is a *court of record* eſtabliſhed for the care and government of *orphans*. 4 Inſt. 248.

The *Lord mayor and Aldermen of London* have the cuſtody of *orphans* under age and unmarried, of freemen that die; and the keeping of their lands and goods: and if they commit the cuſtody of an *orphan* to any man, he ſhall have the writ of *raviſhment of ward*, if the *orphan* be taken away; or the Mayor and Aldermen may impriſon the offender until he produces the infant. 2 *Danv. Abr.* 311. If any one without conſent of the court of Aldermen, marries ſuch an *orphan* under the age of twenty-one years, tho' out of the city, they may fine and impriſon him, until the fine is paid. 1 *Lev.* 32. 1 *Ventr.* 178. Executors and adminiſtrators of freemen dying, are to exhibit true inventories of their eſtates before the Lord Mayor and Aldermen in the court of *orphans*, and muſt give ſecurity to the Chamberlain of *London* and his ſucceſſors by recogniſance for the *orphan*'s part; which if they refuſe to do, they may be committed to priſon until they obey. *Wood's Inſt.* 522. If any *orphan*, who by the cuſtom of *London* is under the government of the Lord Mayor and Aldermen, ſue in the Spiritual court for any legacy, *&c.* a prohibition ſhall be granted; becauſe the Lord Mayor and Aldermen only have juriſdiction of them. 5 *Rep.* 73. But an *orphan* may waive the benefit of ſuing in the *court of orphans*, and file a *bill in equity* for diſcovery of the perſonal eſtate, *&c.*

The Lord Mayor and Commonalty of *London* being anſwerable for the *orphans* money paid into the *chamber of the city*, and by ſome accidents become indebted to the *orphans* and their creditors, in a greater ſum than they could pay; by *Stat.* 5 *&* 6 *W.* *&* *M. cap.* 10. it is enacted, that the lands, markets, fairs, *&c.* belonging to the city of *London*, ſhall be chargeable for raiſing *eight thouſand pounds per ann.* to be appropriated for a perpetual fund for *orphans*; and, towards raiſing ſuch a ſund, the Mayor and Commonalty may aſſeſs two thouſand pounds yearly upon the perſonal eſtates of inhabitants of the city, and levy the ſame by diſtreſs, *&c.* Alſo a duty is granted of four ſhillings *per* ton on wines imported, and on coals; and every apprentice ſhall pay 2*s.* 6*d.* when he is bound; and 5*s.* when he is admitted a freeman; for raiſing the fund: the fund is to be applied for payment of the debts due to *orphans*, by intereſt after the rate of 4*l. per cent.* *&c.* And no perſon ſhall be compelled, by virtue of any cuſtom in the city, to pay into the chamber of *London* any ſum of money or perſonal eſtate belonging to an *orphan* of any freeman for the future. 5 *&* 6 *W.* *&* *M. c.* 10. By the *Stat.* 21 *Geo.* 2. *c.* 29. The duty of 6*d. per* chaldron on coals, given by the *Stat.* 5 *&* 6 *W.* *&* *M. c.* 10. towards the *orphan* debt, is continued for thirty-five years. See *Stat.* 21 *Geo.* 2. *c.* 29. for the further relief of the *orphans* of the city of *London*.

Ortelli, *(Fr.)* Is a foreſt word, and ſignifies the claws of a dog's foot. *Kitch.*

Ortolagium, A garden plot, or *hortilage.* Mon. Angl. tom. 1.

Oryal, (*oriolam*) Is a room, or cloiſter, of a monaſtery, priory, *&c.* whence it is preſumed that *Oriel* or *Oryel College* in *Oxford* took name. *Matt. Paris, in vit. Abb. St. Alban.*

Oſculum Pacis. A cuſtom formerly of the church, that in the celebration of the maſs, after the prieſt had ſpoke theſe words, *viz. Pax Domini vobiſcum*, the people kiſſed each other, was called *oſculum pacis:* afterwards when this cuſtom was abrogated, another was introduced; which was, whilſt the prieſt ſpoke the aforementioned words, a deacon offered the people an image to kiſs, which was commonly called *pacem.* Matt. Paris, anno 1100.

Oſmonds, A kind of iron ore, anciently brought into *England.* *Stat.* 32 *H.* 8. *cap.* 14.

Oſtenſio, Was a tribute paid by merchants for leave to expoſe their goods for ſale in markets. ——*Qui per terras ibant* oſtenſionem *dabant & teloneum.* Leg. Ethelred. cap. 23.

Oſwald's Law, *(Lex Oſwaldi)* The law by which was underſtood the ejecting *married prieſts*, and introducing monks into churches, by *Oſwald* biſhop of *Worceſter*, about the year 964.

Oſwald's Law Hundred, An ancient *hundred* in *Worceſterſhire*, ſo called from biſhop *Oſwald* who obtained it of King *Edgar*, to be given to St. *Mary*'s church in *Worceſter*; it is exempt from the juriſdiction of the ſheriff, and comprehends 300 hides of lands. *Camb. Brit.*

Otho, Was a deacon-cardinal of St. *Nicholas, in carcere Tulliano*, a legate for the people here in *England*, 22 *H.* 3. whoſe conſtitutions we have at this day, *Stow's Annals*, 303.

Othobonus, Was a deacon-cardinal of St. *Adrian*, and the pope's legate here in *England*, 15 *H.* 3 as appeareth by the award made betwixt the ſaid King and his Commons at *Kenilworth.* His conſtitutions we have at this day in uſe.

Ouch, A collar of gold, or ſuch like ornament, worn by women about their necks. *Stat.* 24 *H.* 8. *c.* 13.

Over, (Sax. *ofer*, ripa) In the beginning or ending of the names of places, ſignifies a ſituation near the bank of ſome river; as St. *Maryover* in *Southwark*, *Andover* in *Hampſhire*, *&c.*

Overcyted, (from the Sax. *ofer*, i. e. ſuper, & *cythan*, offendere) Is uſed where a perſon is convicted of any crime; that it is found upon the offender: this word is mentioned in the laws of *Edw. apud Brompton, pag.* 836.

Overherniſſa, Contumacy, or contempt of court. In the *laws* of *Adelſtan, cap.* 25. it is uſed for contumacy: but in a council held at *Wincheſter, anno* 1027, it ſignifies a forfeiture. See *Leg. Æthelred, cap.* 27.

Overſameſſa, Seems to have been an ancient fine before the ſtatute for *hue* and *cry*, laid upon thoſe, who, hearing of a murder or robbery, did not purſue the malefactor. 3 *Inſt.* 116.——*Si quis furi obviaverit, & ſine vociferatione gratis eum dimiſerit, emendet ſecundum* Weram *ipſius furis. vel plena* lada *ſe adlegiet, quod eum eo falſum ne ſcivit: ſi quis audito clamore ſuperſedit, reddat* overſameſſe *Regis aut plene ſe laidiet.* Lib. Rub. cap. 36.

Overſeers of the Poor, Are public officers created by the *Stat.* 43 *Eliz. c.* 2. to provide for the poor of every pariſh; and are ſometimes two, three, or four, according to the extent of pariſhes. *Churchwardens* by this ſtatute are called *overſeers of the poor*, and they join with the *overſeers* in making a poor's rate, *&c.* But the churchwardens having diſtinct buſineſs of their own, uſually leave the care of the poor to the *overſeers* only; tho' anciently they were the ſole *overſeers of the poor.* Dalt. ch. 27. Wood's Inſt 93. See *Poor.*

Overt, *(Fr.)* Is uſed for open; *overture*, an opening, alſo a propoſal. *Law Fr. Dict.*

Overt-Act, *(apertum factum)* An open act which by law muſt be manifeſtly proved. 3 *Inſt.* 12. Some *overt-act* is to be alledged in every indictment for *high treaſon:* ſuch as for treaſon in compaſſing the death of the King, the providing arms to effect it, *&c.* 3 *Inſt.* 6, 12. *H. P. C.* 11. And no evidence ſhall be admitted of any *over-act*, that is not expreſly laid in the indictment, by *Stat.* 7 *W.* 3. *c.* 3. Vide *Treaſon.*

Overt-Word. Is an open plain word, not to be miſtaken. *Stat.* 1 *Mar. Seſſ.* 2, 3.

Ovres, (*Fr.*) Acts, deeds, or works: and *ovrages*, or *ouvrages*, are days works. 8 *Rep.* 131.

Ourlop, The *leirwite* or fine paid to the lord by the inferior tenant, when his daughter was corrupted or debauched.——*Natavi in villa de* Wridthorp——*ſolvit quilibet pro filiabus ſuis maritandis gerſam Domino, &* ourlop *pro filiabus corruptis &* ſtoth *& alia ſervitia & auxilium.* Petr Bleſ. Contin. Hiſt. Croyland, 115.

Ouſted, (from the Fr. *ouſter*, to put out) As *ouſted* of poſſeſſion, is where one is removed or put out of poſſeſſion. 3 *Cro.* 349.

Ouſter le Main, *(amovere manum)* Signifies a livery of land out of the King's hand, or a judgment given for him that ſued a *monſtrans de droit*; and when it appeared upon the matter, that the King had no title to the land he ſeized, judgment was given in the *Chancery* that the *King's hands be amoved*, and thereupon an *amoveas manum* was awarded to the eſcheator, to reſtore the land, it being as much as if the judgment were given that the party ſhould have his land again. *Staundf. Prærog. cap.* 24. 28 *Ed.* 1. *cap.* 19. It was alſo taken for the writ granted upon a petition for this purpoſe. *F. N. B.* 256. And it is written *outer le maine*, in the 25 *Hen.* 8. *cap.* 22. But all wardſhips, liveries, aud *ouſter le mains*, *&c.* are taken away by *Stat.* 12 *Car.* 2. *cap.* 24.

Ouſter le Mer, (*oultre*, i. e. ultra, *& le mer*, mare) Is a cauſe of eſſoin or excuſe, if a man appear not in court on ſummons, for that he was then *beyond the ſeas.*

Outfangthef, (from the Sax. *ut*, i. e. extra, *fang*, captus, & *theof*, fur) *Fur extra captus, quem Dominus, quanquam in alieno fundo comprehenſum, in curiam tamen ſuam revocat, ibique judicat.* Litt. It is a liberty or privilege, as uſed in the ancient Common law, whereby a lord was enabled to call any man dwelling in his manor, and taken for felony in another place out of his fee, to judgment in his own court. *Raſtal.* *Stat.* 1 & 2 *P.* & *M.* c. 15.

Outheſt, Is the ſame with *outhorn*; which is a calling men *out* to the army, by the ſound of an *horn*.

Out-houſes, Are thoſe belonging and adjoining to dwelling-houſes; and taking away any money, goods, &c. from ſuch *out-houſes*, in the day-time, of 5 *s.* value, is felony without benefit of clergy. *Dalt.* c. 99. *Stat.* 32 *Eliz.* c. 15. 3 & 4 *W.* & *M.* c. 9. See *Burglary*.

Outland. The *Saxon Thanes* divided their hereditary lands into *inland*, ſuch as lay neareſt their dwelling, which they kept to their own uſe; and *outland*, which lay beyond the demeans, and was granted out to tenants, at the will of the lord, like copyhold eſtates. This *outland* they ſubdivided into two parts, one part they diſpoſed among thoſe who attended their perſons, called *Theodens*, or leſſer *Thanes*; the other part, they allotted to their huſbandmen, or churls. *Spelm. de Feud. cap.* 5.

Outlaw, Sax. *utlaghe*, Lat. *utlagatus*, One deprived of the benefit of the law, and out of the King's protection. *Fleta, lib.* 1. *cap.* 47. If where a perſon is called into the law, after an original writ, and the writs of *capias, alias* and *pluries*, returned *Non eſt inventus*, and proclamation made for him to appear, &c. he contemptuouſly refuſes to appear, he is then *outlawed*. 1 *Inſt.* 128. A woman cannot be an *outlaw*, becauſe women are not ſworn to the King as men are, to be ever *within* law; therefore they are ſaid to be *waived*, as not regarded but forſaken of the law. *F. N. B.* 160. When a perſon is reſtored to the King's protection, he is *inlawed* again.

Outlawry, (*utlagaria*) Is the loſs of the benefit of a ſubject, that is, of the King's protection and the realm. *Cowell.*

Outlawry is a puniſhment inflicted for a contempt, in refuſing to be amenable to the juſtice of that court which hath authority to call him before them; and as this is a crime of the higheſt nature, being an act of rebellion againſt that ſtate or community of which he is a member, ſo it ſubjects the party to forfeitures and diſabilities; for he loſeth his *liberam legem*, is out of the King's protection, &c. *Co. Lit.* 128. *Doct.* & *Stud. dial.* 2. *cap.* 3. 1 *Roll Abr.* 802.

And as to forfeitures for refuſing to appear, the law diſtinguiſhes between *outlawries* in *capital* caſes, and thoſe of an *inferior* nature; for as to *outlawries* in treaſon and felony, the law interprets the party's abſence *a ſufficient evidence of his guilt*, and without requiring further proof, accounts him *guilty of the fact*, on which enſues corruption of blood, and forfeiture of his eſtate, real and perſonal. *Co. Lit.* 128. 3 *Inſt.* 161.

But *outlawry* in perſonal actions does not occaſion the party to be looked on as guilty of the fact, nor does it occaſion an intire forfeiture of his real eſtate, yet it is very fatal and penal in its conſequences; for hereby he is reſtrained of his liberty, if he can be found, forfeits his goods and chattels, and the profits of his lands, *while the outlawry remains in force.* Plow. 541. 9 H. 6. 20. b. Show. Parl. Ca. 73.

Anciently *outlawry* was looked upon as ſo horrid a crime, that *any one might as lawfully kill a perſon outlawed, as he might a wolf*, or other noxious animal; but the law herein was changed in *Edward* the Third's time, which provides, that a perſon outlawed ſhall be put to death by the ſheriff *only*, having lawful authority for that purpoſe. *Co. Lit.* 128. *b.* See *poſt, div.* 4.

It is now holden that no man is intitled to kill an *outlaw* wantonly or wilfully; but in ſo doing is guilty of murder, (1 *Hal. P. C.* 497.) unleſs it happens in the endeavour to apprehend him. *Bracton, fol.* 125.

Alſo from the heinouſneſs of the offence the ſheriff may, on a *capias utlagatum*, break open the houſe of the perſon outlawed; for it would be unreaſonable, that the protection, allowed in other caſes, ſhould extend to him who is declared a contemner and violator of the laws; therefore the ſeizing him as an outlaw, implies the liberty of entering and ſeizing him wherever he lies hid. 2 *Hale's Hiſt. P. C.* 202. 9 *Co.* 91. 1 *Bulſ.* 146. *Cro. Eliz.* 908. *Moor* 606, 668. *Yelv.* 28. *Cro. Car.* 537. 4 *Leon.* 41. 2 *Jon.* 233.

1. *In what caſes proceſs of outlawry lies; and by what juriſdiction ſuch proceſſes are to iſſue.*
2. *Againſt whom proceſs of outlawry may be awarded; whether it may be awarded againſt a peer, an infant, feme ſole or covert, ſeveral defendants, and principal and acceſſary.*
3. *To what place proceſs of outlawry is to iſſue; of the* quinto exactus, *and proclamations on an outlawry.*
4. *What the party muſt do in order to intitle him to a reverſal; and of the effects and conſequences of a reverſal.*

1. *In what caſes proceſs of outlawry lies; and by what juriſdiction ſuch proceſſes are to iſſue.*

Originally proceſs of *outlawry* only lay in treaſon and felony, and was afterwards extended to treſpaſs of an enormous nature; and herein it is laid down by *Hawkins*, That proceſs of *outlawry* lies in all appeals, and in all indictments of conſpiracy and deceit, or other crimes of a higher nature than treſpaſs *vi & armis*; but it lies not in an action, nor, as ſome ſay, on an indictment on a ſtatute, unleſs it be given by ſuch ſtatute, either expreſly, as in the caſe of præmunire, or impliedly, as in caſes made treaſon or felony by ſtatute, or where a recovery is given by an action in which ſuch proceſs lay before, as in the caſe of forcible entry. *Staundf.* 192. *Bro.* tit. *Outlawry*, 26, 36, 59. *Co. Lit.* 128. *b.* *Dyer* 213, 214. 2 *Hawk. P. C.* 302, 303. and ſeveral authorities there cited.

In an aſſiſe, a *capias pro fine* lies, and upon that proceſs of *outlawry*, if the aſſiſe be found with force, but being a mixt action, as ſavouring of the realty, it is out of the ſtatute of additions, 1 *Hen.* 5. *cap.* 5. which extends only to perſonal actions, appeals and indictments. 2 *Inſt.* 665. 6 *Mod.* 85.

So proceſs of *outlawry* lies in replevin, and is given by the ſtatute 25 *Ed.* 3. *cap.* 17. which gives the *capias* in this manner; when on the *pluries replegiari facias* the ſheriff returns *averia elongata*, then a *capias in withernam* iſſues, and on that's being returned *nulla bona*, a *capias* iſſues, and ſo to *outlawry*; but it does not lie on the original writ of replevin, which is *vicontiel* and determined; therefore as no addition is required in ſuch original writ, ſo neither ought there to be any in the ſecond writ; for where a writ or proceſs is founded on a former, it muſt purſue the former, and cannot vary from it. 6 *Mod.* 84. 1 *Salk.* 5. *Earl of Banbury* v. *Wood.*

By the Common law, in all actions of treſpaſs *quare vi & armis*, and in which there is a fine to the King, a *capias* was the proceſs; and herein proceſs of *outlawry* lay by the Common law. 35 *Hen.* 6. 6. *b.* 22 *Hen.* 6. 13. *Raſt. Ent.* 293. 10 *Co.* 72. 2 *Roll. Abr.* 805.

But in account, debt, detinue, annuity, covenant, and ſuch actions as are grounded upon negligence or laches merely, no *capias* lay at Common law, but only ſummons and diſtreſs infinite, therefore the *capias* and *outlawry* in theſe actions were introduced by acts of parliament. *Co. Lit.* 128. *b.* 3 *Co.* 12. 2 *Bulſt.* 63. 2 *Inſt.* 143. *Cro. Jac.* 222, 261. *Yelv.* 158. *Raym.* 128. 1 *Keb.* 890, 908. 1 *Sid.* 248, 258. Of detinue of charters. *Dyer* 223. *a. dubitatur.*

By the ſtatute of *Marlebridge cap.* 23. the writ of *monſtravit de compto* was given, where before the proceſs in account was ſummons, attachment, and diſtreſs infinite; and by *Weſtm.* 2. *cap.* 11. proceſs of *outlawry* is given in account. 2 *Inſt.* 145, 380. *F. N. B.* 259.

By the 25 *Ed* 3. *cap.* 17. Such proceſs ſhall be made in a writ of debt and detinue of chattels, and taking of beaſts, by writ of *capias*, and by proceſs of *exigent*, by the ſheriff's return, as is uſed in a writ of account. 3 *Co.* 12. 2 *Rol. Rep.* 295. 2 *Bulſt.* 63.

And by the 19 *Hen.* 7. *cap.* 9. it is enacted, That like proceſs be had in actions upon the caſe, as in actions of treſpaſs, or debt.

But it hath been adjudged, that proceſs of *outlawry* lies in no caſe but where a *capias* lies; that therefore where the proceeding is by bill, and not by original, as there can be no *capias*, ſo there can be no proceſs of *outlawry*, as in a bill of privilege by or againſt an attorney. 1 *Leon.* 329. 2 *Roll. Abr.* 76. 1 *Sid.* 159. 1 *Keb.* 577.

It is clear, that the courts at *Weſtminſter* may iſſue proceſs of *outlawry*, and that the court of King's Bench, either upon an indictment originally taken there, or removed thither by *certiorari*, may iſſue proceſs of *capias* and *exigent* into any county of *England*, upon a *non eſt inventus* returned by the ſheriff of the county where he is indicted, and a *teſtatum* that he is in ſome other county. 2 *Hale's Hiſt. P. C.* 198.

Alſo juſtices of oyer and terminer may iſſue a *capias* or *exigent*, and ſo proceed to the *outlawry* of any perſon indicted before them, directed to the ſheriff of the ſame county where they held their ſeſſions at Common law; and by the ſtatute of 5 *Ed.* 3. *cap.* 11. they may iſſue proceſs of *capias* and *exigent* to all the counties of *England*, againſt perſons indicted or outlawed of felony before them. 2 *Hale's Hiſt. P. C.* 31, 199.

But juſtices of gaol delivery regularly cannot iſſue a *capias* or *exigent*; becauſe their commiſſion is to deliver the gaol *de priſonibus in ea exiſtentibus*, ſo that thoſe whom they have to do with, are always intended in cuſtody already. 2 *Hale's Hiſt. P. C.* 199.

Juſtices of the peace may make out proceſs of *outlawry* upon indictments taken before themſelves, or upon indictments taken before the ſheriff, and returned to the juſtices of the peace, by the ſtatute of 1 *Ed.* 4. *cap.* 1 but the power of the ſheriff, to make any proceſs upon indictments, taken before him, is taken away by that ſtatute. 2 *Hale's Hiſt.* 199.

It is made a *quære* by *Hale*, whether a coroner can, by law, make out proceſs of *outlawry*, againſt a man indicted by inquiſition before him. 2 *Hale's Hiſt P. C.* 99.

It hath been held, that though the proceſs in inferior courts be a *capias*, that yet they cannot proceed to outlaw the party. *Yelv.* 158. *Cro. Jac.* 222, 261. *Raym* 128. 1 *Sid.* 248, 259. 1 *Keb.* 890, 908.

The proceſs to the *outlawry*, *viz.* the *capias* and *exigent*, muſt be in the King's name, and under the judicial ſeal of the King, appointed to that court, which iſſues that proceſs, and with the *teſte* of the chief juſtice or chief judge of that court or ſeſſions. 2 *Hale's Hiſt. P. C.* 199.

2. *Againſt whom proceſs of outlawry may be awarded; whether it may be awarded againſt a peer, an infant, feme ſole or covert, ſeveral defendants, and principal and acceſſary.*

If a peer of the realm be indicted, and cannot be found, proceſs of *outlawry* ſhall be awarded againſt him, and he ſhall be outlawed *per judicium coronatorum.* 2 Inſt. 49. 3 Inſt. 31. Staundf. 130 2 Hawk. P. C. 424.

But in civil actions, between party and party, regularly a *capias* or *exigent* lies not againſt a peer, yet in caſe of an indictment for treaſon or felony, or for treſpaſs *vi & armis*, as an aſſault or riot, proceſs of *outlawry* ſhall iſſue againſt a peer, for the ſuit is for the King, and the offence a contempt againſt him; therefore, if a reſcue be returned againſt a peer, or if a peer be convict of a diſſeiſin with force, or denies his deed, and it be found againſt him, a *capias pro fine* and *exigent* ſhall iſſue, for the King is to have a fine; and the ſame reaſon holds upon an indictment of treſpaſs or riot, much more in the caſe of felony. 2 *Hale's Hiſt. P. C.* 199, 200. *Cro. Eliz.* 170, 503. 5 *Co.* 54. 1 *Roll. Abr.* 220.

An infant *above the age of fourteen* may be outlawed, and the *outlawry* is not erroneous; but an infant under the age of fourteen cannot be outlawed; if he be, it is erroneous. 3 *Hen.* 5. *utlag. Fitz.* tit. *Outlawry* 11. 2 *Roll. Abr.* 805. *Dyer* 104. 2 *Hale's Hiſt. P. C.* 207, 208.

But the *outlawry* of ſuch infant is not void, it being of record, but is voidable only by writ of error. *Dyer.* 239. *a.* 2 *Rol. Abr.* 805.

A woman is ſaid to be *waived*, and not outlawed; and the reaſon why the *outlawry* of a woman is legally called *waiviaria mulieris*, is becauſe women are not ſworn in leets or torns; therefore men are called *utlagati*, i. e. *extra legem poſiti*, but women are *waiviatæ*, i. e. *derelictæ*, left out, or not regarded, becauſe they are not ſworn to the law. *Co. Lit* 122. *b. Lit. ſect.* 186.

Therefore where a *capias* and *exigent* were awarded againſt three men and two women, and the return was *utlagati exiſtunt*, where, as to the women, it ought to have been *waiviata exiſtunt*, this was held to be error. *Cro. Jac.* 358. *Middleton*'s caſe. 1 *Rol. Rep.* 407. S. P. 1 *Rol. Abr.* 804. S. P.

If in an action againſt huſband and wife, the huſband is outlawed, and wife waived, and ſhe is taken upon the *capias utlagat'*, though ſhe is to be diſcharged of the impriſonment, (becauſe the plaintiff cannot proceed againſt her alone) yet ſhe ſtill remains waived, and when her huſband is taken he muſt bring her in. For this *vide Dyer* 271. *b. Cro. Jac.* 445 *Cro. Eliz.* 370. *Hut.* 86. 1 *Sid.* 21. Vide *Cro. Car.* 58, 59. *Smith* v. *Aſh & ux' Hut.* 86. S. C.

If two are ſued in a joint action, and neither of them will appear, proceſs of outlawry muſt be taken out againſt both. *Cro. Eliz.* 648. *Beverley* v. *Beverley*.

If an *exigent* be awarded againſt two, and the return *primo exacti fuerunt & non comparuerunt*, without ſaying *nec eorum aliquis comparuit*, it is erroneous. 2 *Rol. Abr.* 802. *Taverner*'s caſe.

As to *outlawry* in *action* of *account*, vide 41 *Ed.* 3. 3. 1 *Rol. Abr.* 127. S. C. 1 *Brownl.* 25. S. P. 41 *Ed.* 3. 13. *b.* 1 *Rol. Abr.* 127. and *vide Moor* 188. 2 *Leon.* 76. Alſo *vide Dyer* 239. *pl.* 203. *Hawtry* v. *Anger. N. Bendl.* 148. *pl.* 205. *Moor* 74. *pl.* 203. 1 *And.* 10. S. C. and 1 *Sid.* 173. 1 *Keb.* 642. S. C. *Guy* v. *Barnard.*

As to awarding outlawry againſt principal and acceſſary by the ſtat. of *Weſtm.* 1. *cap.* 14. it is provided, that none be outlawed upon appeal of commandment, force, aid or receipt, unleſs he who is appealed of the deed be attainted ſo that one like law be uſed therein thro' this realm; nevertheleſs, he that will ſo appeal, ſhall not by reaſon of this intermit, or leave off to commence his appeal at the next county, againſt them, no more than againſt their principals which he appealed of the deed, but their *exigent* ſhall remain, until ſuch as be appealed of the deed, be attainted of outlawry or otherwiſe.

In the conſtruction of this ſtatute, the following particulars are laid down by Serjeant *Hawkins*, as moſt remarkable.

1ſt, That it ſeems agreed, that it extends as well to indictments as to appeals, not only becauſe the word *appeal* in the ſtatute may in a large ſenſe be taken for any accuſation in general; but becauſe *indictments are certainly as much within the reaſon of the ſtatute as appeals*; and the Common law (for the ſettling whereof this ſtatute was made) did not make any diſtinction in this reſpect between appeals and indictments. 2 *Inſt.* 183. 2 *Hawk. P. C.* 306.

2dly, That it ſeems agreed, that wherever ſome of the defendants are expreſsly charged as principals, and others as acceſſaries, before the award of this *exigent*, the outlawry thereon, of thoſe charged as acceſſaries, cannot but be reverſible, becauſe it appears upon record that the *exigent* iſſued, contrary to the direction of the ſtatute; but if ſeveral be outlawed, on a writ of appeal, which chargeth them all alike without any diſtinction, there can be no advantage taken of the appellant's not having purſued the ſtatute, ſince it appears not, but that he might have charged them all as principals. 1 *Hawk. P. C.* 306. 2 *Hale's Hiſt. P. C.* 200.

3dly, That it is ſtrongly holden, that if an appellant take out the *exigent*, at the ſame time, againſt all the defendants, he muſt, when they appear, count againſt them all as principals, and ſhall be concluded from charging any of them as acceſſaries, becauſe he has taken out ſuch proceſs as is erroneous, where all are not principals;

but he makes a doubt, whether this be law at this day, ſince all errors, as the law ſeems now to be holden, are ſalved by appearance. 2 *Hawk. P. C.* 306. and *vide* 2 *Hale's Hiſt. P. C.* 200.

4thly, That it ſeems the better opinion, that where there are more than one principal, the *exigent* ſhall not iſſue, till all of them are arraigned; and herein it is ſaid by *Hale*, that if *A.* and *B.* be indicted as principals in felony, and *C.* as acceſſary to them both, the *exigent* againſt the acceſſary ſhall ſtay till both be attainted by outlawry or plea; for that it is ſaid, if one be acquitted, the acceſſary is diſcharged, becauſe indicted as acceſſary to both, therefore ſhall not be put to anſwer till both be attaint; but hereof he adds a *dubitatur,* becauſe though *C.* be acceſſary to both, he might have been indicted as acceſſary to one, becauſe the felonies are in law ſeveral; but if he be indicted as acceſſary to both, he muſt be proved ſo. 2 *Hawk. P. C.* 306. 2 *Hale's Hiſt. P. C.* 200, 201.

In treaſon all are principals; therefore proceſs of outlawry may go againſt him who *receives*, at the ſame time as againſt him that *did* the fact. 1 *Hale's Hiſt. P. C.* 238.

3. *To what place proceſs of outlawry is to iſſue; of the* quinto exactus, *and proclamations on an outlawry.*

The *exigent* muſt be ſued in the county where the party *really* reſides, for there all actions were originally laid; and becauſe outlawries were at firſt only for treaſon, felony, or very enormous treſpaſſes, the proceſs was to be executed at the *Torn*, which is the ſheriff's criminal court; and this held not only before the ſheriff, but before the coroners, who were ancient conſervators of the peace, being the beſt men in each county, to preſide with the ſheriff in his court, and who pronounced the outlawry in the county court on the party's being *quinto exactus*; therefore anciently there was no occaſion for any proceſs to any other county than that in which the party actually reſided; but this matter being ſince altered, and the learning thereof depending on ſeveral acts of parliament, it will be neceſſary to take notice of the ſtatutes. *Fitz. Exigent* 26. *Dyer* 295.

And firſt, It is enacted by the 6 *Hen.* 6. *cap.* 1. "That before any *exigents* be awarded againſt perſons indicted in the King's Bench, of treaſon or felony, writs of *capias* ſhall be directed to the ſheriff of the county, whereof they be named in the indictments;" *vide* the *Stat.*

And it is further enacted by 8 *H.* 6. *cap.* 10. "That upon every indictment or appeal, before any *exigent* awarded, preſently after the firſt writ of *capias* returned, another writ of *capias* ſhall be awarded, directed to the ſheriff of the county, whereof he who is indicted is or was ſuppoſed to be converſant, by the ſame indictment, by which ſecond writ of *capias*, the ſheriff ſhall be commanded to take him, if he can be found within his bailiwick; and if he cannot, to make proclamation in two counties, before the return of the ſame writ, after which writ ſo ſerved and returned, if he which is ſo indicted or appealed, come not at the day of ſuch writ returned, the exigent ſhall be awarded."

This ſtatute not to extend to indictments, or appeals, taken within the county of *Cheſter*.

It is enacted by 10 *H.* 6. *cap.* 6. "That ſuch ſecond *capias* as is required by 8 *Hen.* 6. *cap.* 10. ſhall be awarded upon indictments or appeals removed into the King's Bench, or elſewhere, by *certiorari* or otherwiſe."

And by the 31 *Eliz cap.* 3. it is enacted, "That in every action perſonal, where any writ of *exigent* ſhall be awarded, one writ of proclamation ſhall be awarded out of the ſame court, and delivered of record to the ſheriff of the county where the defendant, at the time of the *exigent* ſo awarded, ſhall be *dwelling*; which writ of proclamation ſhall contain the effect of the ſame action: And that the ſheriff (as mentioned in the ſtatute, which *vide*) ſhall make three proclamations; and that all outlawries pronounced, and no writs of proclamation awarded and returned, according to the form of this ſtatute, ſhall be utterly void and of none effect."

In the conſtruction of theſe ſtatutes, the following opinions have been holden:

That though the words are expreſs, that any outlawry pronounced, contrary to the directions of the ſtatute ſhall be void; yet it is not to be taken, as if ſuch outlawries were abſolutely void, but only voidable by writ of error. *Cro. Eliz.* 179. 3 *Co.* 59. *Plowd.* 137. *Hob.* 166.

If a defendant be expreſsly named of the ſame county wherein he is indicted, or appealed, and be alſo named under an *alias dictus* of another, it hath been adjudged, that there is no need of any *capias*, with a command for proclamation according to 8 *Hen.* 6. *c.* 10. becauſe that which comes under the *alias dictus* is not traverſable nor material: Alſo if a defendant be named of *B.* and late of *D.* there is no need of any *capias* to the ſheriff of the county wherein *D.* lies; becauſe it appears, that defendant is at preſent converſant at *B.* but if a defendant be named of no certain place at preſent, but only late of *B.* and late of *D.* and late of *E.* &c. being all in different counties from that in which the proſecution is commenced, a *capias* ſhall go to the ſheriff of each county. 2 *Hawk. P. C.* 304-5. 2 *Hale's Hiſt. P. C.* 195-6. Vide *Cro. Jac.* 167. *Leeche*'s caſe. And alſo 2 *Hale's Hiſt. P. C.* 201-2. Where it hath been holden, that in *London*, where the holding of the huſtings is uncertain, no *exigi facias* ſhall iſſue with an *allocato* huſtings, becauſe the court cannot take notice of the ſet times of holding it, as they may of the times of holding the county-courts; but it is now agreed, that if an *exigent* iſſues in *London*, and they begin Huſting *de placito terræ* (as they may) they ſhall proceed along at that Huſtings to the outlawry, without mingling their Huſting *de communibus placitis*; but if an *allocato* Huſting comes, they ſhall proceed without omitting any Huſting. *Palm.* 287. 2 *Leon.* 14. 2 *Hale's Hiſt. P. C.* 202.

4. *What the party muſt do in order to initle him to a reverſal; and the effects and conſequences of a reverſal.*

Regularly in all outlawries, as well perſonal as criminal, the party in order to reverſe the ſame was to *appear in perſon*, and could not appear by attorney. 2 *Leon.* 22.

But now by the 4 & 5 *W.* & *M. cap.* 18. No perſon who ſhall be outlawed in the court of *B. R.* for any cauſe whatſoever, (*treaſon* and *felony* only excepted) ſhall be compelled to appear in perſon in the ſaid court to reverſe ſuch outlawry, but may appear *by attorney* and reverſe the ſame without bail in all caſes, (except where ſpecial bail ſhall be ordered by the ſaid court)

And that if any perſon outlawed in the ſaid court, (other than for *treaſon* or *felony*) ſhall be taken upon any *capias utlagatum* out of the ſaid court, it ſhall be lawful for the ſheriff (in all caſes where ſpecial bail is not required by the ſaid court) to take an attorney's engagement under his hand to appear for the defendant and reverſe the outlawries, and thereupon to diſcharge the defendant; and where ſpecial bail is required, the ſheriff *ſhall* and may take ſecurity of the defendant by bond, with one or more ſufficient ſurety or ſureties, in the penalty of double the ſum for which ſpecial bail is required, and no more, for appearance by attorney at the return of the writ, and to perform ſuch things as ſhall be required by the court; and after ſuch bond taken to diſcharge the defendant.

And if any perſon outlawed, and taken upon a *capias utlagatum*, ſhall not be able within the return of the writ to give ſecurity where ſpecial bail is required, ſecurity may be given after the return, and after the commitment.

It hath been held, that if the party outlawed comes in by *cepi corpus*, he ſhall not be admitted to reverſe the outlawry without appearing in perſon, as in ſuch caſe he was obliged to do at Common law; or putting in bail with the ſheriff for his appearance, upon the return of the *cepi corpus* and for doing what the court ſhall order. 2 *Salk.* 496.

Bail muſt be put in before it can be reverſed. 1 *Wilſ.* 3.

By *Weſtm.* 1. *cap.* 9. it is expreſsly provided, that thoſe who are outlawed, have abjured the realm, *&c.* ſhould be excluded the benefit of replevin; yet it hath been always held, that the court of King's Bench may in their diſcretion, in ſpecial caſes, bail a perſon upon an outlawry of felony, as where he pleads, that he is not of the ſame name, and therefore not the ſame perſon with him that was outlawed, or alledges any other error in the proceedings. 2 *Hawk. P. C.* 98.

By the 31 *Eliz. cap.* 3. *ſect.* 3. it is enacted, "That before any allowance of any writ of error, or reverſing of any outlawry be had by plea, or otherwiſe, through or by want of any proclamation to be had or made according to the form of this ſtatute, the defendant and defendants in the original action ſhall put in bail, not only to appear and anſwer to the plaintiff in the former ſuit in a new action to be commenced by the ſaid plaintiff for the cauſe mentioned in the firſt action, but alſo to ſatisfy the condemnation, if the plaintiff ſhall begin his ſuit before the end of two terms next after the allowing the writ of error, or otherwiſe avoiding of the ſaid outlawry."

A foreigner was outlawed and goods, *&c.* ſeiſed, and the court would not reverſe the outlawry on motion, but put him to his writ of error, whereby the plaintiff got bail. *Carth.* 459. *Matthews* v. *Erbo.*

H. was outlawed, in two actions, one for 10*l.* the other for 40*s.* and on reverſing the outlawry the court took ſpecial bail for the firſt, and an appearance for the other, upon the ſtatute 4 & 5 *W.* & *M. c.* 18. and the recognizance was taken purſuant to 31 *Eliz. c.* 3. 2 *Salk.* 496.

It is clearly agreed, that an *attainder of felony* of a perſon who had any lands ſhall never be reverſed by writ of error, without a *ſcire facias* againſt all the tertenants and lords mediate and immediate; but it is ſettled, that ſuch *ſcire facias* is not neceſſary in the caſe of *high treaſon.* Dyer 34. pl. 20. Cro. Eliz. 235 1 Keb. 141. pl. 11. 1 Sid. 316. 3 Keb. 39. 3 Mod. 42, 47. 4 Mod. 366. 2 Hale's Hiſt. P. C. *S. P.* and ſee *Ld. Raym.* 154.

Alſo it is ſaid, that it is not neceſſary in the caſe of *felony*, when it is ſuggeſted on the roll that the party had no lands, and the attorney general confeſſes it. 2 *Salk.* 495.

It is agreed, that after an outlawry of *treaſon* or *felony* is *reverſed*, the party ſhall be put to plead to the indictment, for that ſtill remains good, and he may be tried at the King's Bench bar; or the record may be remitted into the country, if it were removed into the King's Bench by *certiorari*, with a command to the juſtices below, to proceed by the ſtatute of 6 *Hen.* 6. *cap.* 1. *Cro. Jac.* 646. *Cro. Car.* 365. 3 *Mod.* 42. 6 *Mod.* 115. 2 *Hale's Hiſt. P. C.* 209.

So if a man be outlawed by proceſs in an information, and comes in and reverſes the outlawry, he muſt plead *inſtanter* to the information. 1 *Salk.* 371. *Rex* v. *Hill.* 5 *Mod.* 141. S. P.

The law is the ſame in civil caſes; and therefore if an outlawry in a perſonal action be reverſed, the original remains. *March* 9. Vide the caſe of *Whitwick* v. *Hovenden.* 3 *Lev.* 245.

It hath been adjudged, that if the King grant over the lands of a perſon outlawed for treaſon or felony, and afterwards the outlawry be reverſed, the party may enter on the patentee, and need neither ſue a petition to the King, nor a *ſcire facias* againſt the patentee. 1 *And.* 188. A perſon ſhall, after outlawry reverſed, be reſtored to his law, and to be of ability to ſue. *Co. Lit.* 288. *b.*

If the goods of a perſon outlawed are ſold by the ſheriff upon a *capias utlagatum* and after the outlawry is reverſed by writ of error, he ſhall be reſtored to the goods themſelves; becauſe the ſheriff was not compellable to ſell theſe goods, but only to keep them to the uſe of the King. 5 *Co.* 90. *Hoe*'s caſe. 1 *Rol. Abr.* 778. S. C. cited.

If an advowſon come to the King, by forfeiture upon an outlawry, and, the church becoming void, the King preſents, and then the outlawry is reverſed; yet the King ſhall enjoy that preſentment, becauſe the preſentment there came to the King as the *profit* of the advowſon. *Moor* 269. *Beverley* v. *Cronwall.*

But if the church be void at the time of the outlawry, and the preſentation is thereby forfeited as a *chattel principally* and *diſtinct of itſelf*, there, upon reverſal of the outlawry, the party ſhall be reſtored to the preſentation. *Cro. Eliz.* 170. agreed *per curiam.*

If a termor being outlawed for felony, grants over his term, after the outlawry is reverſed, the grantee may have treſpaſs for the profits taken between the reverſal of the outlawry and the aſſignment; for by the reverſal it is, as if no outlawry had been, and there is no record of it. *Cro. Eliz.* 170. *Ognell*'s caſe, and 13 *Co.* 20, 22.

It is ſaid, that if a man be outlawed in the King's Bench, and the party's goods are ſeiſed into the King's hands, and then the outlawry is reverſed, there can be no reſtitution; the reaſon whereof is, for that the court of King's Bench cannot ſend a writ to the Treaſurer; and the court of Exchequer have no record before them to iſſue out a warrant for reſtitution. 5 *Mod.* 61. Vide 2 *Vern.* 312. *Peyton* v. *Ayliff*; and *vide* 2 *Lev.* 49. the caſe of *Pinfold* v. *Northey.*

For more learning on this ſubject, ſee 3 New Abr. *tit.* Outlawry, *and* 22 Vin. Abr. *tit.* Outlawry, and ſee *Capias Utlagatum* and *Exigent.*

Outparters, (mentioned in ſtat. 9 *H.* 5. *ſt.* 1. *c.* 7.) A kind of thieves in *Riddeſdale*, that ſtole cattle, or other things without that liberty: Some are of opinion, that thoſe which in the fore-named ſtatute are termed *outparters*, are now called *outputers*, being ſuch as ſet matches for the robbing any man or houſe. *Cowell.* See *Intakers.*

Outriders, Are bailiffs errant, employed by the ſheriffs, or their deputies, to *ride* to the fartheſt place of their counties or hundreds, with the more ſpeed to ſummon ſuch as they thought good to their county or hundred courts. 14 *E.* 3. *ſt.* 1. *c.* 9.

Owel, Is a *French* word for equal. *Law Fr. Dict.*

Owelty, Is when there is *Lord*, *Meſne*, and tenant, and the tenant holds of the *Meſne* by the ſame ſervice that the *Meſne* holds over of the lord above him; this is called *Owelty* of ſervices. *F. N. B.* 136. And *Owelty* of ſervices is *equality* of ſervices. *Co. Lit.* 169.

Owlers, Are perſons that carry wool, *&c.* to the *Sea* ſide by *night*, in order to be ſhipped off contrary to law: And this is prohibited by *ſtat.* 7 & 8 *W.* 3. *c.* 23.

Owling. See *Owlers*, *cuſtoms*, *Wool.*

Oxen. See *Cattle.*

Oxfild, Is ſaid to be a reſtitution made by a hundred or county, of any wrong done by one that was within the ſame. *Lamb. Archaion.* 125.

Oxford. No purveyor or badger, *&c.* ſhall bargain for and take away victuals in the markets of *Oxford* or *Cambridge*, or within five miles, without licence from the Chancellor, on pain of forfeiting four times the value, and three months impriſonment. 2 & 3 *P.* & *M. c.* 15. 13 *Eliz. c.* 21. A franchiſe granted to the univerſity of *Oxford*, excepted out of the general confirmation, 9 *Hen.* 4. *c.* 1. 13 *Hen.* 4. *c.* 1. Scholars outlawed for riots to be baniſhed the univerſity. 9 *Hen.* 5. *c.* 8. See *Univerſity.*

Oxgang, (from *Ox*, i. e. *bos*, and *gang*, or gate, *iter)* Is commonly taken for fifteen acres of land, or as much as one *ox* can plough in a year.

Six oxgangs of land, is ſo much as ſix oxen can plough. *Cromp. Juriſd.* 220. But an *oxgang* ſeemeth properly to be ſpoken of ſuch *land* as lieth in *Gaynour.* *Old Nat. Br. fol.* 117. *Skene de verb. ſignif.* verbo *Bovata terræ*, ſaith, That an *oxengate of land* ſhould always contain thirteen acres, and that four *oxengates* extend to a *pound land.* *Spelman* ſays, *Bovatus terræ eſt quantum ſufficit ad iter vel actum unius bovis. Ox enim eſt bos* & gang *vel* gate *iter.* See *Co. Lit.* 69. *Cowell.*

Oyer. This word was anciently uſed for what we now call *aſſiſes.* Anno 13 Ed. 1.

Oyer of a Deed, Is where a man brings an action of debt upon a bond, or other deed, and defendant appears, and prays that he may *hear* the bond, *&c.* wherewith he is charged, which ſhall be allowed him. 2 *Lil. Abr.* 266.

Defendant may crave *oyer* of the writ, or of the bond, or other ſpecialty upon which the action is brought, that is, to hear it read to him; the generality of defendants in the times of ancient ſimplicity being ſuppoſed incapable to read it themſelves: Whereupon the whole is entered *verbatim* upon the record, and the defendant may take advantage of any condition or other part of it, not ſtated in the plaintiff's declaration. *Black. Com.* 3 *V.* 299.

The demand of *oyer* is a kind of plea, and may be counterpleaded: Where there may be *oyer*, the party demanding it is not bound to plead without it, but defendant may plead without it if he will, on taking upon him to remember the bond or deed; tho' if he plead without *oyer*, he cannot after waive his plea, and demand *oyer*. *Mod. Caſ.* 28. 3 *Salk.* 119. In the court of *B. R. oyer* may be prayed after imparlance; but not in *C. B.* 5 *Rep.* 74. See Ld. *Raym.* 970. After imparlance *oyer* cannot be demanded, becauſe imparlance is always to another term: Alſo after a plea in abatement, *oyer* may not be had the ſame term, to plead another dilatory plea. *Mod. Caſ.* 27. 2 *Lil.* 267. *Sed qu.* as to *oyer* after imparlance.

Oyer in *C. B.* muſt be demanded, before time for pleading expires. 2 *Barnes* 265.

Omiſſion of, *per ſcriptum ſuum obligatorium*, cured by *profert* and *oyer*. Ld. *Raym.* 1056.

An imperfect *oyer*, if received, makes no variance. *ib.* 1176.

To demand *oyer* of an obligation, is not only to deſire the plaintiff's attorney to read the ſame; but to have a copy thereof, that the defendant may conſider what to plead to the action. *Hob.* 217. And when on *oyer* of a deed, it is entered, the whole caſe appears to the court as if the deed were in the plea, and the deed is become parcel of the record: Though *oyer* of a deed can *only* be demanded, during the term it is produced in court; and then it may be entered *in hæc verba*, and there may be a demurrer, or iſſue upon it, &c. 5 *Rep.* 76. *Lutw.* 1644. 3 *Salk.* 119.

If a bond is brought into court, *oyer* is grantable only the *firſt* term, for afterwards it is adjudged in the poſſeſſion of the party.—Yet *oyer* of a *recognizance* was granted in a term ſubſequent to the declaration. Ld. *Raym.* 84.

Where *oyer* is prayed, it is always intended that the bond or deed is in court; which is not of another term. *Sid.* 308. A defendant ought to crave *oyer* of the plaintiff's deed, on which he hath declared; and cannot ſet forth another, to plead performance thereof. *Mod. Caſ.* 154. 2 *Nelſ. Abr.* 1225. If there is *miſnomer* in a bond, &c. the defendant is to plead the *miſnomer*, and that he made no ſuch deed, without craving *oyer*; for if he doth, he admits his name to be right. 1 *Salk.* 7.

If defendant will take advantage of a variance between the writ and count, he muſt crave *oyer* of the writ, and ſpread it on the record, *i. e.* ſhew it to the court. *Wilſ. par.* 2. 395.

Executors bringing action of debt, the defendant may demand *oyer* of the teſtament, &c. *oyer* is not to be diſpenſed with though a deed be loſt. Where a deed is in the hands of a third perſon, the court will oblige him to give *oyer* and produce it. 2 *Strange* 1198. And ſee *Wilſ. par.* 1. 16. Where a deed is pleaded, the other party cannot alledge that there is other matter contained in the deed, but muſt ſet it forth on *oyer*. Strange 227. A party who has had *oyer* is not obliged to ſet it forth in pleading. *Strange* 1241. And ſee *Wilſ. par.* 1. 97.

Formerly all demands of *oyer* were in court, as it is now in caſes of appeals: But now, in other caſes, it is demanded and granted between the attornies. Vide *Mod.* 28. *Langvill* v. *Hundred of Thiſtleworth. Salk.* 7. *Linch* v. *Hooke.* 2 *Salk.* 498, 499. *Cooke* v. *Remmington. Poph.* 202. *Chamber*'s caſe. *Keb.* 182. *pl.* 91. *Ruſſel* v. *Lee. Keb.* 513. *pl.* 88. *Puſland* v. *Cooper. Vent.* 37. *Tapſcot* v. *Wooldridge.* 12 *Mod.* 35. *Anon*. 12 *Mod.* 189. *Brag* v. *Digby.* 6 *Mod.* 154, 5. *Foxon* v. *Moſeley.*

Declarations, pleas, replications and other pleadings; and alſo *oyer* of writs, bonds and other deeds, ſhall be demanded by a note in writing. *Rules and orders in C. B.* Mich. 1 Geo. 2. 1727. *Vide* Lil. Pract. Reg. *tit.* Oyer.

Oyer de Record, *(audire recordum)* Is a petition made in court, that the judges, for better proof-ſake, will *hear* or look upon any *record*. And it hath been adjudged, that the craving *oyer* of an original writ is not like the craving *oyer* of a deed; becauſe the deed is always produced by the plaintiff, and it is the act of the party, wherefore he ſhall not be admitted to ſay that it is not his deed: But the filing a writ, and having it read on *oyer* demanded, is the act of the court. 2 *Lutw.* 1641. See *Doct. Plac.* 270-2.

If defendant pleads another action depending for the ſame cauſe, in the ſame court, the plaintiff may pray *oyer* of the record, being in the ſame court; and if there is no *oyer* of the record, the plaintiff may ſign judgment by default. For in all caſes where a deed or record is pleaded, and *oyer* prayed; if *oyer* is not granted, the plea is *as* no plea. Ld. *Raym.* 347. *Keilw.* 95, 96. *Carth.* 453. 3 *Salk.* 119.

A defendant is not intitled to *oyer* of the writ, after judgment of *reſpondeas ouſter*, though in the ſame term. Ld. *Raym.* 970.

Oyer and Terminer, (Fr. *Ouir & Terminer*, La. *Audiendo & Terminando)* Is a commiſſion directed to the judges, and other gentlemen of the county to which it is iſſued by virtue whereof they have power to *hear* and *determine* treaſons, and all manner of felonies and treſpaſſes. *Cromp Juriſd.* 121. 2 *Inſt.* 419. 4 *Inſt.* 152. It is the firſt and largeſt of the five commiſſions, by which our judges of *aſſiſe* ſit in their ſeveral circuits: And is general, for trying all offenders and offences; or ſpecial, to try only particular perſons, or offences: And in our ſtatutes it is often printed *Oyer and Determiner.* 4 Inſt. 162. The uſual commiſſion of *Oyer and Terminer* of juſtices of aſſiſe, is general; and when any ſudden inſurrection, or treſpaſs is committed, which requires ſpeedy reformation, then a ſpecial commiſſion is immediately granted. *Weſtm.* 2. 13 *Ed.* 1. *c.* 29. *F. N. B.* 110. And this commiſſion was formerly iſſued, only where ſome inſurrection was made, or heinous miſdemeanor committed; when the manner and uſage was to grant a commiſſion of *Oyer and Terminer*, to hear and determine it: and the *ſtat.* 2 *Ed.* 3. *c.* 2. requireth that no commiſſion of *Oyer and Terminer* be granted, but before the juſtices of one bench or other or the juſtices *itinerant*, and that for horrible treſpaſſes. *New Nat. Br.* 243.

A man may have a ſpecial commiſſion of *Oyer and Terminer*, to enquire of extortions and oppreſſions of underſheriffs, bailiffs, clerks of the markets, and all other officers, &c. on the complaint and ſuit of any one who will ſue it out: And the King may make a writ of *Aſſociation* unto the juſtices of *Oyer and Terminer*, to admit thoſe into their company whom he hath aſſociated unto them; alſo another writ may be ſent to the judges to proceed, although all the juſtices do not come at the day of the ſeſſions; and this writ is called the writ of *Si non omnes*, &c. Ibid. 245, 247.

As to theſe commiſſions it is ſaid, that if a commiſſion of *Oyer and Terminer*, &c. be awarded to certain perſons to enquire at ſuch a place, they can neither open their commiſſion at another, nor adjourn it thither, or give judgment there; if they do, all their proceedings are, as *coram non judice*: But it is held, that juſtices appointed *pro hac vice*, may adjourn their commiſſion, from one day to another, though there be no words in their commiſſion to ſuch purpoſe; for a general commiſſion authoriſing perſons to do a thing, implicitly allows them convenient time for the doing it. 2 *Hawk. P. C.* 18.

Upon the general commiſſion of *Oyer and Terminer*, there ſhould iſſue a precept to the ſheriff in the name of the commiſſioners, bearing date *fifteen days before their ſeſſions*, that he return twenty-four perſons for a grand jury *ad inquirendum*, &c. on ſuch a day; and the ſheriff is to return his panel annexed to the precept: And by the ſtatute 5 *Ed.* 3. *c.* 11. Juſtices of *Oyer and Terminer* may iſſue proceſs of outlawry in any county of *England*, againſt perſons indicted before them; but all their proceſſes are regularly to be in the names, and under the ſeals of the commiſſioners, *viz.* three of them, one being of the *Quorum*. 2 Hale's Hiſt. P. C. 26, 31.

The ſame juſtices, at the ſame time, may execute the commiſſion of *Oyer and Terminer*, and alſo that of gaol-delivery; and the ſame perſons being authorized by both theſe commiſſions, may proceed by virtue of the one in thoſe caſes, where they have no juriſdiction by the other, and make up their records accordingly. *Ibid.* 20. But juſtices of *Oyer and Terminer* cannot proceed but upon indictments taken before themſelves, unleſs they have a commiſſion of gaol-delivery likewiſe, or a ſpecial commiſſion; for the commiſſion of *Oyer and Terminer* is, *Ad inquirendum, audiendum & terminandum*, To inquire, hear and determine. *Wood's Inſt.* 478. And though juſtices of gaol-delivery, have a more general commiſſion for trying malefactors, than the commiſſioners of *Oyer and Terminer* have; yet ſuch juſtices may not proceed, but on indictments found before other juſtices, as juſtices of peace, *&c.* 2 *Hawk.* 24. On indictments found before the juſtices of *Oyer and Terminer*, they may proceed the ſame day againſt the parties indicted.

There is a *Special Commiſſion of Oyer and Terminer* granted upon urgent occaſions; and the party ſuing it, might thereupon take out a writ to the ſheriff, commanding him to arreſt goods wrongfully taken away, and keep them in ſafe cuſtody, till order made concerning them, by the *juſtices* aſſigned to determine the matter. *Reg. Orig.* 126. *F. N. B.* 112.

O Yes, (from the Fr. *Oyez*, i. e. *Audite*, hear ye) Is uſed to injoin ſilence and attention.

Oyſter-Fiſhery, (In the river *Medway*) Is regulated by ſtatute, and a court to be kept for that purpoſe at *Rocheſter* yearly, whereby a jury of *free dredger men* of the *oyſter-fiſhery*, the ſame is to be inquired into; and they may make rules and orders when *oyſters* ſhall be taken, what quantities in a day, and to preſerve the brood of *oyſters*, *&c.* And may impoſe penalties not exceeding 5 *l.* Alſo water bailiffs ſhall be appointed to examine boats, *&c.* *Stat.* 2 *Geo.* 2. *c.* 19. A duty of 7*d.* *per* buſhel ſtrike meaſure, is laid upon *oyſters* imported from *France*. 10 Geo. 2. cap. 30.

Oz, Or *Oozy* ground, *(Solum uliginoſum)* Moiſt, wet and marſhy land. *Lit. Dict.*

P

Paage, *paagium*, The ſame with *paſſagium*. Mat. Paris 767.

Pacabilis, Payable or paſſable.——*Recipiet duodecim quarteria bonæ &* pacabilis *averiæ, &c.* Ex Regiſ. Grenefeld. Archiep. Ebor. MS.

Pacare, To pay; as *tolnetum* pacare, is to pay toll, *Mon. Angl. tom.* 1. *pag.* 384. Hence *pacatio*, payment, *Mat. Paris.* Sub. Anno 1248.

Pace, *(Paſſus)* A ſtep in going, containing two feet and a half, the diſtance from the heel of the hinder foot to the toe of the fore foot; and there is a *pace* of five foot, which contains two ſteps, a thouſand whereof make a mile; but this is called *Paſſus major*.

Paceatur. Leg. Inæ, cap. 45. *Et recipiet Agenfrida corium ejus, & carnem, &* paceatur *de cætero*, i e. Let him be free, or diſcharged, for the time to come.

Pacification, *(Pacificatio)* A peace making, quieting, or appeaſing; relating to the wars between *England* and *Scotland*, *Anno* 1638, mentioned in the ſtatute 17 *Car.* 1. *c.* 17.

Pack of Wool, Is a horſe load, which conſiſts of ſeventeen ſtone and two pounds, or 240 pounds weight. *Merch. Dict.* *Fleta, lib.* 2. *c.* 12. See *Sarplar.*

Package, A duty ſet and rated in a table taken of goods and merchandizes; and all goods not ſpecified in the table, are to pay for package duties, after the rate of one penny in the pound, according as they are valued in the *Book of Rates.*

Packers, Are perſons appointed to pack up herrings, and ſworn to do it purſuant to the ſtatute, 15 *Car.* 2. *c.* 14.

Packets. Packet veſſels, exporting or importing goods, what to forfeit, 13 & 14 *Car.* 2. *c.* 11. *ſ.* 22.

Packing whites, A kind of cloth ſo called, mentioned 1 *R.* 3. *c.* 8.

Pact, *(Fr.)* A contract or agreement. *Law French Dict.*

Pagus, A word uſed in ancient records, for a county: Ælfred *Rex Anglo-Saxonum natus eſt in Villa Regia quæ dicitur Wantage in illa* paga *quæ nominatur* Berkſh. *&c.*

Pain (or Peine) Fort & Dure, (Lat. *pœna fortis & dura*, Fr. *peine forte & dure)* Signifies a ſpecial puniſhment inflicted on thoſe who, being arraigned of felony, refuſe to put themſelves on the ordinary trial, but ſtubbornly ſtand *mute*; it is vulgarly called *Preſſing to Death*. Stat. Weſtm 1. c. 12.

If a criminal doth not plead directly to the fact, or put himſelf on trial by the country, he ſhall be put to the penance of *pain fort & dure*, in caſes of petit treaſon and felony; and forfeit his goods; and ſome criminals have undergone this puniſhment, to prevent attainder, corruption of blood, and forfeiture of lands; but on ſtanding mute in high treaſon, the higheſt offence, and in petit larceny, the loweſt of all felonies, the offenders ſhall have the like judgment, as if they had been convicted by confeſſion or verdict. 3 *Inſt.* 217. *H. P. C.* 226. *Kel.* 27. Women ſtanding mute in felony, are liable to this puniſhment as well as men. 2 *Inſt.* 177.

For the judgment of *pain fort & dure* by the Common law, and according to the uſual practice, as recorded in our books, ſee tit. *Mute.*

Before judgment paſſes of *pain fort & dure*, the court orders a taſte to be given to the criminal of the *pain* to be endured, if he will not comply; and the court will not proceed to this judgment, before all methods are uſed to perſuade him to plead: This is the conſtant practice of *Newgate* ſeſſions. *Kel.* 27. 28. See *Black. Com.* 4 *V.* 325, *&c.* and tit. *Mute.*

Pains and Penalties. Acts of parliament to attaint particular perſons of treaſon or felony, or to inflict *pains and penalties*, beyond or contrary to the Common law, to ſerve a ſpecial purpoſe, are to all intents and purpoſes new laws, made *pro re nata*, and by no means an execution of ſuch as are already in being. *Black. Com.* 4 *V.* 256.

An act paſſed in the ninth year of King *George* 1. for inflicting *pains and penalties* on the late biſhop of *Rocheſter*, Mr. *Kelly*, and others, for being concerned in *Layer's* conſpiracy; by virtue of which ſtatute, the biſhop was deprived and baniſhed, and diſabled to hold any office, dignity, benefice, *&c.* And the others were impriſoned during life, and to forfeit all their lands and goods; and eſcaping from priſon, or the biſhop returning from baniſhment, to be guilty of felony without benefit of clergy, *&c.* Alſo perſons correſponding with the biſhop, (except licenſed under the ſign manual) were adjudged felons by the ſtatute. They were condemned by parliament for want of ſuch evidence as is ſtrictly required in the Common law courts. 9 *Geo.* 1. *c.* 16, 17.

Painters. The price of painters work is limited by ſtatute, who ſhall not take above 16*d.* a day, for laying any flat colour mingled with oil or ſize, upon timber, ſtone, *&c.* And plaiſterers are forbid uſing the trade of a painter in *London*, or to lay any colour of painting, unleſs they are ſervants to painters, *&c.* on pain of 5 *l.* But they may uſe whiting, blacking, red lead, oker, *&c.* mixt with ſize only. Plaiſterers not to exerciſe the trade of a painter in *London*, without ſerving an apprenticeſhip, 1 *Jac.* 1. *c.* 20.

Pais, A county or region. *Trial per Pais*, which *Spelman* in his *Gloſſary* ſaith, *Non intelligendum eſt de quovis populo, ſed de compagenſibus, hoc eſt eorum qui ex eodem ſunt comitatu, quem majores noſtri pagum dixere & incolas; inde pais, g, in i, vel y, converſo.*

Paiſſey, A duty of exciſe granted to the town, 26 *Geo.* 2. *c.* 96.

Paiſſo, Paſnage, or liberty for hogs, to run in foreſts or woods to feed on maſt. *Mon. Angl. tom.* 1. *p.* 682. See *Paſſune*.

Palaces, The ſteward, treaſurer, and comptroller, may inquire by a jury of the King's ſervants, if any of the ſervants conſpire the death of the King, or of any counceller, &c. 3 *Hen.* 7. *c.* 14 The yeomen of the crown and grooms of the chamber ſhall attend their offices. 4 *Hen.* 7. *c.* 7. The limits of the palace of *Weſtminſter*, 28 *Hen.* 8. *c.* 12. The great maſter of the King's houſe, to have the ſame authority as the lord ſteward, 32 *Hen.* 8. *c.* 39. Repealed, 1 *Mar. ſt.* 3. *c.* 4. The penalty of ſtriking in the King's court. 33 *Hen.* 8. *c.* 12. Inquiries of murders, &c. within the verge, *ib.* Entring into the King's houſe with intent to ſteal, made felony, *ib.*

Palagium, A duty to lords of manors, for exporting and importing veſſels of wine, in any of their ports.——*Quieti de omni telonio, & paſſagio, cobuagio*, pallagio, &c.

Palatine, Counties of, and their privileges. See *County*. And read *Caſſan. de Conſuetud. Burg. p.* 14.

Palatines, How intituled to naturalization, 1 *Geo.* 1. *ſt.* 2. *c.* 29.

Pales. See *Incloſures*.

Palfrey, (*Palfredus, palafredus, palefredus, palifredus,*) Is one of the better ſort of horſes uſed by noblemen or others for ſtate: And ſometimes of old taken for a horſe fit for a woman to ride. *Camden* ſays, that *William Fauconberg* held the manor of *Cukeny*, in the county of *Nottingham* in ſergeanty, by the ſervice of ſhoeing the King's *palfrey*, when the King ſhould come to *Manſfield*. See *Co. on Lit.* 149.

Palicea, A park pale. *Cowell.*

Palingman, (mentioned in ſtat. 22 *Ed.* 4. *c.* 23. and 11 *H.* 7. *c.* 23.) Seems to be a merchant denizen, one born within the *Engliſh pale*. But Dr. *Skinner* judges it to ſignify a fiſhmonger, or merchant of fiſh. *Cowell.*

Palla, A canopy; alſo often uſed for an altar-cloth. *Matt. Paris, ſub. Ann.* 1236. *Chartular. Glaſton. MS. fol.* 12.

Pallio cooperire. It was anciently a cuſtom where children were born out of wedlock, and their parents afterwards intermarried, that thoſe children, together with the father and mother, ſtood under a cloth extended while the marriage was ſolemnizing, which was in the nature of adoption; and by ſuch cuſtom, the children were taken to be legitimate.——*In ſignum legitimationis nati ante matrimonium conſuerunt poni ſub* pallio *ſuper parentes eorum extento in matrimonii ſolemnizatione*. Epiſt. Rob. Groſthead Epiſc. Lincoln. Such children were never legitimate in this country at Common law, tho' the clergy wanted to have a law paſs to render them legitimate.

Pallium, A word often mentioned in our old hiſtorians; *Durandus* tells us that it is a garment made of white wool, after the following manner, *viz* The nuns of St. *Agnes* every year, on the feaſt-day of their ſaint, offer two white lambs on the altar of their church, during the time they ſing *Agnus Dei* in a ſolemn maſs; which lambs are afterwards taken by two of the canons of the *Lateran* church, and by them given to the Pope's ſubdeacons, who put them to paſture till ſhearing time, and then they are ſhorn, and the *pall* is made of their wool, mixed with other white wool: The *pall* being thus made is carried to the *Lateran* church, and there placed on the high altar by the deacons of that church on the bodies of St. *Peter* and St. *Paul*; and after the uſual watching, it is carried away in the night, and delivered to the ſubdeacons, who lay it up ſafe. And becauſe it was taken from the body of St. *Peter*, it ſignifies the plenitude of eccleſiaſtical power; and therefore it was the prerogative of Popes, who pretend to be the immediate ſucceſſors of that ſaint, to inveſt other prelates with it, which at firſt was done no where but at *Rome*, but afterwards at other places. *Durandus's Rationale*.

Palls, The pontifical veſture made of lamb's wool, in breadth not exceeding three fingers, cut round that they may cover the ſhoulders; they have two labels or ſtrings on each ſide, before and behind, and likewiſe four purple croſſes on the right and left, faſtened with pins of gold, whoſe heads are *Sapphire*: Theſe veſtments the Pope gives or ſends to archbiſhops and metropolitans, and upon extraordinary occaſions to other biſhops; who wear them about their necks at the altar, above their other ornaments. The *pall* was firſt given to the biſhop of *Oſtia*, by Pope *Marcus* the Second, *Anno* 336. And the preface to an ancient ſynod here in *England*, wherein *Odo*, archbiſhop of *Canterbury* preſided, begins thus;——*Ego* Odo *humilis & extremus, divina largiente* Clementia, *Almi præſulis &* palli, *honore ditatus*, &c. Selden's Hiſt. Tithes 227. Creſſy's Church Hiſt. 972.

Palmeſtry, A kind of divination, practiſed by looking upon the lines and marks of the *hands* and fingers: being a deceitful art uſed by *Egyptians*, prohibited by the ſtatute of 1 & 2 *P.* & *M. c.* 4. See *Black. Com.* 4 *V.* 165, 6,

Pamphlets, ſee *Table to the Statutes*, tit. *Stamps*. The duties they are to pay are fixed by 10 *Ann. c.* 19. *ſ.* 101. 11 *Geo.* 1. *c.* 8. *ſ.* 14. and 30 *Geo.* 2. *c.* 19. *ſ.* 1.

Pandects, Are the books of the *Civil law*, compiled by *Juſtinian*; mentioned in the hiſtorians of this nation. *Bede, c.* 5. See *Black. Com.* 1 *V.* 17. 81.

Pandoxatrix, An ale wife who both brews and ſells ale or beer; from *pandoxatorium*, a brewhouſe, *Statut. & Conſuetud. Burgi Villæ de Montgom'*. Temp. Hen. 2.

Panel, (*panella, pannellum*) According to Sir *Edward Coke*, denotes a little part; but the learned *Spelman* ſays, that it ſignifies a *ſchedula* vel *pagina*, a ſchedule or page; as a *panel* of parchment, or a *counterpane* of an indenture; But it is uſed more particularly for a ſchedule or roll, containing the names of ſuch *jurors* as the ſheriff returns to paſs upon any trial. *Kitch.* 226. *Reg. Orig.* 223. And the *impannelling a jury* is the entring their names by the ſheriff into a *panel* or little ſchedule of parchment; *in* panello *aſſiſæ*. 8 H. 6. c. 12. *Panels* of juries are to be returned into court, on writs of *Niſi prius*, &c. before inqueſts can be taken upon them, by ſtatute 42 *Ed.* 3. *c.* 11.

And perſons indicted of high treaſon ſhall have a copy of the *panel* of the jurors, who are returned to try them, two days at leaſt before tried. 7 & 8 *W.* 3. *c.* 3. But it is ſaid, that in trials before juſtices of gaol-delivery, the priſoner has no right to a copy of the *panel* before the time of his trial; except only in caſes within that ſtatute. 2 *Hawk. P. C.* 410. See *Black. Com.* 3 *V.* 354. 4 *V.* 299, 344.

Panetia, A pantry, or place to ſet up cold victuals. *Cowell.*

Panis armigerorum, The bread diſtributed to ſervants. *Mon.* 1. *p.* 420.

Panis biſus, Coarſe bread. *Id. ib.*

Panis called *Blackwhytlof*. Bread of a middle ſort, between white and brown, ſuch as in *Kent* is called *Ravel-bread*. In religious houſes it was their coarſer bread, made for ordinary gueſts, and diſtinguiſhed from their *houſhold loaf*, or *panis conventualis*, which was pure manchet, or white-bread. *Cowell.*

Panis militaris, Hard biſket, brown george, camp-bread, coarſe and black. The prior and convent of *Ely* grant to *John Grove*, a corrody or allowance,——*Ad ſuum victum quolibet die unum panem monachalem, i. e.* a white loaf; and to his ſervant *unum panem nigrum* militarem, *i. e.* a little brown loaf or biſket. *Cartular. Elyn. MS. f.* 47.

Pannage or **Pawnage**, (*pannagium*, Fr. *paſnage*) Is that food which the ſwine feed upon in the woods, as maſt of beech, acorns, &c. *Alimentum, quod in ſilvis colligunt pecora, ab arboribus dilapſum*: Alſo it is the money taken by the *Agiſtors* for the food of hogs in the King's foreſt. *Crompt. Juriſd.* 155. *Stat. Weſt.* 2. *c.* 25. *Manwood* ſays *pannage* ſignifies moſt properly the maſt of the woods or hedge rows: And *Linwood* thus defines it; Pannagium *eſt paſtus pecorum in nemoribus & in ſylvis, utpote de glandibus & aliis fructibus arborum ſylveſtrium, quarum fructus aliter non ſolent colligi*. It is mentioned in the ſtatute 20 *Car.* 2. *c.* 3. And in ancient charters this word is variouſly written; as *pannagium, paſnagium, pathnagium, paunagium & peſſona*. See 8 *Rep.* 47.

Pannus, A garment made with ſkins.——*Statutum fuit quod nullos habet* pannos *deciſos & laceratos*, Fleta, lib. 2. c. 14.

Pantiles, To what duties liable, 4 *W. & M. c.* 5.

Paper. Duties upon paper, paſte-board, *&c.* 2 *W. & M. ſeſſ.* 2. *c.* 4. *ſect.* 42. 10 *Ann. c.* 19. *ſect.* 32. 12 *Ann. ſt.* 2. *c.* 9.

Penalty on removing painted paper before ſurveyed, 1 *Geo.* 1. *c.* 36. *ſ.* 17.

Rags may be imported free, 11 *Geo.* 1. *c.* 7. *ſ.* 10.

The drawback on exportation of foreign paper taken away, 10 *Geo*, 2. *c.* 27. *ſ.* 4. See *Books, Cuſtoms.*

Paper-Books, Are the iſſues in law, *&c.* upon ſpecial pleadings, made up by the clerk of the *papers*, who is an officer for that purpoſe. And the clerks of the *papers* of the court of *King's Bench*, in all copies of pleas and *paper books* by them made up, ſhall ſubſcribe to ſuch *paper-books*, the names of the counſel who have ſigned ſuch pleas, as well on the behalf of the plaintiff as defendant; and in all *paper-books* delivered to the judges of the court, the names of the counſellors, who did ſign thoſe pleas, are to be ſubſcribed to the *books*, by the clerks or attornies who deliver the ſame. *Paſch.* 18 *Car.* 2. 2 *Lill. Abr.* 268.

Paper-Office, Is an ancient *office* within the palace of *Whitehall*, wherein all the public *papers*, writings, matters of ſtate and council, letters, intelligences, negotiations of the King's miniſters abroad, and generally all the *papers* and diſpatches that paſs thro' the *offices* of the two principal ſecretaries of ſtate, are lodged and tranſmitted, and there remain diſpoſed in the way of library. Alſo an *office* belonging to the court of *King's Bench* ſo called.

Papiſts, Are thoſe who profeſs the *Popiſh* religion in this kingdom: And ſince the *Reformation* there have been many ſtatutes concerning them. By the 35 *Eliz. c.* 2. *Papiſts* are to repair to their uſual place of reſidence, and not remove above five miles, without licence, *&c.* The 3 *Jac.* 1. *c.* 5. enacts, That no *Papiſts*, or Popiſh recuſant convict, ſhall come to court; practice the Common law, Civil law, phyſick, *&c.* or bear any public office or charge, but ſhall be utterly diſabled to exerciſe the ſame; and liable to a penalty of 100*l.* But offices of inheritance may be executed by deputies taking the oaths, by 1 *W. & M.*

Papiſts, and truſtees for *Papiſts*, are incapable to preſent to any benefice, ſchool, hoſpital, *&c.* or to grant any avoidance of a benefice, and the two univerſities ſhall preſent; the Chancellor, *&c.* of *Oxford*, to preſent to benefices lying in ſuch and ſuch counties; and the univerſity of *Cambridge* to benefices in others, particularly mentioned in the ſtatute; and a bill may be brought in a court of equity to diſcover ſecret truſt, *&c.* 3 *Jac.* 1. *c.* 5. It has been adjudged on that ſtatute, that the perſon is only diſabled to preſent; and that he continues patron to all other purpoſes. *Cawley* 230. That ſuch a perſon by being diſabled to grant an avoidance, is not hindered from granting the advowſon itſelf, in fee, or for life, for good conſideration. 1 *Jon.* 19, 20. (*See infra*). And that if an advowſon or avoidance belonging to a Papiſt come into the King's hands, by reaſon of an outlawry, or conviction of recuſancy, *&c.* the King and not the univerſities, ſhall preſent. 1 *Jon.* 20. *Hob.* 126. But where a preſentment is veſted in the univerſity, at the time when the church becomes void, it ſhall not be deveſted again, by the patron's conforming, *&c.* 10 *Rep.* 57.

Papiſts, and Popiſh recuſants, married not according to the orders of the church of *England*, are diſabled, the huſband to be tenant by the curteſy, and the wife to have dower, *&c.* and incur a forfeiture of 100*l.* Alſo not baptizing their children by a lawful miniſter, is liable to the like penalty: And not being buried according to the Eccleſiaſtical laws, the executor ſhall forfeit 20*l.* *&c.* And Papiſts are incapable to be executors, adminiſtrators, or guardians; diſabled to ſue actions, and as perſons excommunicate till they conform, *&c.* 3 *Jac.* 1. *c.* 5. And it is ſaid that being convicted of Popiſh recuſancy, they may be taken up by the writ *de excom. capiend.* And ſhall not be admitted as competent witneſſes in a cauſe: But this ſeems to be carried beyond the intent of the ſtatute. 2 *Bulſt.* 155, 156. 1 *Hawk. P. C.* 23.

Perſons going beyond ſea to be trained up by Papiſts, ſhall forfeit their goods and chattels, if they do not conform within ſix months after their return: And ſending children abroad to be thus trained up, is liable to a penalty of 100*l.* *Stat.* 3 *Car.* 1. *c.* 2.

The *Lord Mayor* of the city of *London*, and juſtices of peace, *&c.* are to cauſe to be brought before them Papiſts within the ſaid city and ten miles thereof, and tender them the *declaration* 30 *Car.* 2. *c.* 1. *againſt tranſubſtantiation*; and refuſing to ſubſcribe it, they ſhall ſuffer as Popiſh recuſants convict: But ſuch as uſe any trade or manual art; and foreign merchants, ſervants to ambaſſadors, *&c.* are excepted. 1 *W. & M. ſeſſ.* 1. *c.* 9. Papiſts refuſing to appear and ſubſcribe the ſaid declaration, are not to keep in their houſes any arms, weapons, gunpowder, *&c.* And juſtices of peace may order any ſuch to be ſeized: And they may not keep any horſe above the value of 5*l.* which may be alſo ſeized, And perſons concealing arms or horſes, or hindering a ſearch after them, ſhall be committed, and forfeit treble value. 1 *W. & M. c.* 15.

If any perſon refuſe to repeat and ſubſcribe the abovementioned declaration, and ſhall thereupon have his name and place of abode certified and recorded at the general quarter-ſeſſions of the peace, as by the act is appointed, he ſhall be diſabled to make any preſentation, *&c.* And preſenting contrary to this act ſhall forfeit 500*l.* 1 *W. & M. c.* 26. Papiſts who keep ſchools are to ſuffer perpetual impriſonment: And perſons educated in the Popiſh religion, not taking the oaths and ſubſcribing the declaration in the 30 *Car.* 2. *c.* 1. within ſix months after they attain the age of eighteen years, ſhall be diſabled to take or inherit lands, but not their heirs or poſterity; and during their lives or refuſal, the next Proteſtant relation ſhall enjoy, *&c.*

And where the parents of Proteſtant children are Papiſts, the *Lord Chancellor* may take care of the education of ſuch Proteſtant children, and make order for their maintenance ſuitable to the ability of the parent. 11 & 12 *W.* 3. *c.* 4. Every truſtee, *etc.* for Popiſh children is diſabled to preſent to any benefice, *etc.* and preſentations by them ſhall be void; and the Chancellor and ſcholars of the univerſities ſhall preſent, as by the act 3 *Jac.* 1. *c.* 5. And biſhops are required to examine perſons preſented on oath, before inſtitution, whether the perſon preſenting be the real patron, and made the preſentation in his own right, or whether he be not a truſtee for a Papiſt, *etc.* And if the parſon preſented refuſe to be examined, his preſentation ſhall be void. 12 *Ann. ſeſſ.* 2. *c.* 14.

Grants of advowſons, or right of preſentation to churches, *etc.* by any Papiſts, or perſon any ways in truſt for him, to be void; except made for valuable conſideration to ſome *Proteſtant purchaſer*; for the benefit of a *Proteſtant only*; and perſons claiming under ſuch grant, ſhall be deemed as truſtees for a Papiſt, and they and their preſentees be compelled to make diſcovery thereof and the intent, as directed by 12 *Ann. ſt.* 2. *c.* 14. *etc.* 11 *Geo.* 2. *c.* 17. Papiſts are to regiſter their eſtates, as by this ſtatute is directed, on pain of forfeiture; and lands regiſtered muſt be expreſſed in what pariſhes they lie, who are the poſſeſſors thereof, the eſtate therein, and the yearly rent, *etc.* Perſons ſuing in *Chancery* for forfeitures for default of regiſtry, may demand all diſcoveries as if purchaſers; and they may bring ejectment on their own demiſe, and give the act and ſpecial matter in evidence. 1 *Geo.* 1. *c.* 55.

Sales of lands by Papiſts (incurring the diſabilities 11 *and* 12 *W.* 3.) to *Proteſtant purchaſers*, are confirmed notwithſtanding the diſability of perſons joining in the ſale; unleſs before ſuch ſales any perſon who is to take advantage of the diſability, has recovered, or entered his claim, and given notice, *etc.* No lands ſhall paſs from Papiſts, by deed or will, without inrollment: and Papiſts are rendered incapable to purchaſe lands. 3 *Geo.* 1. *c.* 18. Deeds and wills of Papiſts have further time to be inrolled, and not avoidable for want thereof, *etc.* by 6 *Geo.* 2. *c.* 5.

All perſons within *England*, of the age of eighteen years, not having taken the oaths, and who refuſe to take the ſame, ſhall *regiſter their eſtates* as Papiſts; or neglecting ſuch regiſtry, are to forfeit the inheritance of their lands, two thirds to the King, and the other third to the proſecutor. 9 *Geo.* 1. *c.* 24. But by a ſubſequent act, this ſhall not extend to oblige any woman to take the oaths, or to regiſter her eſtate; nor any perſon that hath only an intereſt in lands in reverſion; or to eſtates under 10*l.* a year, *&c.* And only one year's rent and profits of lands is forfeited for default of regiſtring by this ſtatute, recoverable by actions in the courts at *Weſtminſter*, within ſix months after the offence; perſons in priſon, beyond ſea, *non compos*, *&c.* are to have ſix months to take the oaths and regiſter their eſtates, after the removal of their diſabilities; and certificates by the proper officers, ſhall be allowed as evidence of taking the oaths, *&c.* 10 *Geo.* 1. *c.* 4.

By a late ſtatute, the reputed owners of eſtates being Papiſts, *on conforming to the proteſtant religion*, and taking the oaths, the ſame to be recorded, and they and all Proteſtants claiming under them, ſhall poſſeſs the eſtates freed of diſabilities incurred by ſuch owners, *&c.* And any perſon's right, intitled to a reverſion, is ſaved if his ſuit be commenced in twelve months after the determination of the precedent eſtate. But perſons conforming as aforeſaid, and afterwards returning to the Popiſh religion, ſhall be ever after incapable of any benefit by this act 11 *Geo.* 2. *c.* 17.

A Papiſt tenant in tail ſuffers a recovery to the uſe of himſelf in fee, in order to make a marriage ſettlement; this is not a purchaſe within 11 *W.* 3. *c.* 4. *Strange* 267. Acts are made almoſt every other ſeſſions, for allowing further time for the inrolment of deeds and wills made by Papiſts, and for relief of Proteſtant purchaſers. See *Oaths.* Alſo *vide Britiſh Liberties*, where the principal laws, relative to Papiſts, are collected in one view, with *obſervations* thereon.

As to caſes determined on thoſe ſtatutes, vide *Hob.* 73, 74. *Ley* 59. *Thredway's* caſe. And the caſe of *Thornby* v. *Fleetwood*, alias *the Dutcheſs of Hamilton's* caſe, *Hil.* 12 *Ann. C. B.* affirmed in the Houſe of Lords. And ſee 1 *Hawk. P. C.* 32. 10 *Co.* 57. *b.* *Cawley* 230. 1 *Jon.* 19, 20. *Hob.* 126. *Winch.* 7. 11. 3 *New Abr.* 795. *Roper* v. *Radcliffe. ib.* 796. *Lord Derwentwater*'s caſe. *ib.* 797. *Hill* v. *Filkins, ib.* *Carrick* v. *Errington, ib.* 798. *Marwood* v. *Dorel, ib.* 799. *Pelham* v. *Fletcher, ib.* on Lord *Dover*'s will. *ib.* *Mallom* v. *Bringloe, ib.* *Smith* v. *Read.* 4 *Stran.* 267. See *Recuſants, Rome.*

Papiſts taxed. *Papiſts*, or reputed *papiſts*, who refuſe to take the *oaths* 1 *W. and M.* are to pay double to the land tax, *etc.* *Stat.* 8 *W.* 3. *c.* 6. And a tax of 100,000*l.* for the year 1723. was laid on the lands of all *papiſts*, over and above the double *taxes*, towards reimburſing the public charges occaſioned by the late conſpiracies; charged ſo much on every county, *etc.* and leviable by the commiſſioners of the land *tax*, by *Stat.* 9 *Geo.* 1. *c.* 18.

Par, Is a term in *Exchange*, where a man to whom a bill is payable, receives of the acceptor juſt ſo much in value, *etc.* as was paid to the drawer by the remitter. *Merch. Dict.* And in exchange of money, *par* is defined to be a certain number of pieces of the coin of one country, containing in them an *equal* quantity of ſilver to that of another number of pieces of the coin of ſome other country; as where thirty-ſix ſhillings of the money of *Holland*, have juſt as much ſilver, as twenty ſhillings *Engliſh* money; and *bills of exchange* drawn from *England* to *Holland*, at the rate of thirty-ſix ſhillings *Dutch*, for each pound *ſterling*, is according to the *par*. Lock's Conſid. of Money, pag. 18.

Paracium, The tenure that is between parceners, *viz.* that which the youngeſt oweth to the eldeſt. *Domeſday.*

Parage, (*paragium*) Signifies equality of name, blood, or dignity; but more eſpecially of land, in the partition of an inheritance between coheirs: hence comes to *diſparage* and *diſparagement.* Co. Lit. 166.

Paragium, Was commonly taken for the equal condition betwixt two parties, to be contracted in marriage; for the old laws did ſtrictly provide, that young heirs ſhould be diſpoſed in matrimony *cum paragio*, with perſons of equal birth and fortune, *ſine diſparagacione.*

Paramount, (compounded of two *French* words, *par*; *i. e. per* and *monter*, aſcendere) Signifies in our law the higheſt lord of the fee, of lands, tenements, or hereditaments. *F. N. B.* 135. As there may be a lord *meſne*; where lands are held of an inferior lord, who holds them of a ſuperior under certain ſervices; ſo this ſuperior lord is lord *paramount:* and all honours, which have manors under them, have lords *paramount.* Alſo the King is chief lord, or lord *paramount* of all the lands in the kingdom. *Co. Lit.* 1.

Parapharnalia, or **Paraphernalia,** (from the *Greek* Παρὰ, *Præter*, and Φερνὴ *Dos*) Are thoſe goods which a wife challengeth over and above her dower or jointure, after her huſband's death; as *furniture for her chamber*; *wearing apparel, and jewels*, which are not to be put into the inventory of her huſband. A wife, after the death of her huſband, may claim her *paraphernalia* or neceſſary apparel for her body, and cloth given her to make a garment, *etc.* beſides her dower; ſo that the huſband cannot give them away by will: but *ſhe ſhall not have exceſſive apparel, beyond her rank.*

Pearl necklaces, chains of diamonds, gold watches, *etc.* may be included under *paraphernalia*, if they were uſually worn by the wife, and ſuitable to her quality, and the faſhion of the times; and they are aſſets to pay debts and legacies; provided the huſband does not give theſe away by will. 1 *Rol. Abr.* 911. 3 *Cro.* 343. *Kitch.* 369. *Noy's Max.* 168.

It was adjudged in the *Viſcounteſs Bindon*'s caſe, that *paraphernalia* ought to be allowed to a widow, having regard to her quality and degree; and that her huſband being a Viſcount, ſhe ſhall be allowed her jewels to the value of 500 marks, *etc.* 2 *Leon.* 166. A widow retained a chain of diamonds and pearls, againſt the deviſe of her huſband; and two judges held, that ſhe might detain them, becauſe they were convenient for a woman of her quality; but two other judges were of a contrary opinion, that *paraphernalia* ſhould be not only convenient, but *neceſſary*; otherwiſe the widow ſhall not detain them againſt the expreſs deviſe of the huſband: tho' it is ſaid it was adjudged that the widow might detain neceſſary apparel and likewiſe ornaments againſt the deviſe of her huſband; and that he cannot diſpoſe of them by will, though he might have ſold them in his life-time; for immediately upon his death the property is veſted in the widow. *Cro. Car.* 347. 2 *Nelſ. Abr.* 1225.

All the wife's wearing apparel, more than that which is *neceſſary* and *convenient*, is a chattel in the huſband; and after the huſband's death ſhall go to his executors; but what is *neceſſary* for her condition and ſtate, and comes under *paraphernalia*, ſhe ſhall have as her own goods, and may diſpoſe of at her death; or take after the death of her huſband. *Bro.* 9. *Doct. et Stud.* 17. Tho' by our law the wife may not make a will of and deviſe them, without the aſſent of the huſband whilſt he lives; becauſe the property and poſſeſſion is in him. 2 *Shep. Abr.* 423. *Mich.* 27 *Eliz.* Vide *Com. Dig.* 1 *V.* tit. *Baron and Feme*, and *Black. Com.* 2 *V.* 435.

Paraſitus, A word uſed for a domeſtick ſervant. *Blount.*

Paravail, (*per-availe*) Signifies the loweſt tenant o the fee, or he who is immediate tenant to one who holdeth over of another; and he is called tenant *paravail*, becauſe it is preſumed he hath profit and *avail* by the land. *F. N. B.* 135. 2 *Inſt.* 296. 9 *Rep.* *Coney*'s caſe. See *Black. Com.* 2 *V.* 60.

Parcella Terræ, A parcel of land, as uſed in ſome ancient charters.——*Sciant, quod ego* Stephanus W. *dedi, etc.* Roberto de D. *unam* parcellam terræ *cum pertinen. jacen'. etc.* ſine dat.

Parcel-makers, Are two officers in the *Exchequer*, that make the *parcels* of the *eſcheators* accounts; wherein they charge them with every thing they have levied for the King's uſe, within the time of their being in office, and deliver the ſame to the *auditors*, to make up their accounts therewith. *Practice Excheq.* 99.

Parceners, (*quaſi* parcellers, *i. e. rem in* parcellas *dividentes*) Are of two ſorts, *viz parceners*, according to the courſe of the *Common law*; and *parceners* according to *cuſtom*.

Parceners by the *Common law*, are where a man or woman ſeiſed of lands or tenements in fee-ſimple or fee-tail hath no iſſue but daughters, and dieth, and the tenements deſcend to ſuch daughters, who enter into the lands deſcended to them, then they are called *parceners*, and *are but as one heir to their anceſtor*; and they are termed *parceners*, becauſe by the writ *de partitione facienda* the law will conſtrain them to make partition; tho' they may do it by conſent, *etc*. *Litt*. 243. 1 *Inſt*. 164. See *Black*. *Com*. 2 *V*. 187. And if a man ſeiſed of lands in fee-ſimple, or in tail, dieth without any iſſue of his body begotten, and the lands deſcend to the ſiſters, they are *parceners*; and in the ſame manner where he hath no ſiſters, but the lands deſcend to his *aunts*, or *other females* of kin in *equal degree*, they are alſo *parceners*: but where a perſon hath but one daughter, ſhe ſhall not be called *parcener*, but daughter and heir, *etc*. *Lit*. *ſect*. 242.

If a man hath iſſue two daughters, and the eldeſt hath iſſue divers ſons and daughters, and the youngeſt hath iſſue divers daughters; the eldeſt ſon of the eldeſt daughter ſhall not only inherit, but all the daughters of the youngeſt ſhall inherit, and the eldeſt ſon is coparcener with the daughters of the youngeſt ſiſter, and ſhall have one moiety, *viz*. his mother's part; ſo that men deſcending of daughters may be parceners as well as women, and ſhall jointly plead and be impleaded, *etc*. 1 *Inſt*. 164. None are parceners by the Common law, but either *females*, or the *heirs of females*, who come to lands or tenements by *deſcent*. *Lit*. 254.

Parceners by *cuſtom* is, where a perſon ſeiſed in fee-ſimple, or in fee-tail of lands or tenements of the tenure called *gavelkind*, hath iſſue, *divers ſons*, and dies; ſuch lands ſhall deſcend to *all the ſons* as *parceners* by the *cuſtom*, *who ſhall equally inherit and make partition as females do*, and writ of partition lies in this caſe, as between females, *etc*. *Lit*. *ſect*. 265. Women parceners make but one heir, and have but one freehold: but between themſelves they have in judgment of law ſeveral freeholds, to many purpoſes; for one of them may infeoff the other of her part; and the parcenary is not ſevered by the death of any of them; but if one dies, her part ſhall deſcend to her iſſue, &c. 1 *Inſt*. 164, 165. If one parcener make a feoffment in fee of her part, this is a ſeverance of the coparcenary, and ſeveral writs of *præcipe* ſhall lie againſt the other parceners and the feoffee. 1 *Inſt*. 167. Tho' if two coparceners by deed alien both their parts to another in fee, rendering to them two, and their heirs, a rent out of the land, they ſhall have the rent in courſe of parcenary; becauſe their right in the land out of which the rent is reſerved was in parcenary. *Ibid*. 160.

If there be two parceners, and each of them taketh huſband, and have iſſue, and the wives die, the parcenary is divided, and here is a partition in law. *Ibid*. Partition of lands held in tail, by the death of one ſiſter without iſſue is made void, and the other ſiſter as heir in tail will be intitled to the whole land; and may have writ of *formedon* where the other parcener hath aliened. *New Nat*. *Br*. 476. And a writ of *nuper obiit* lies for one parcener deforced by another, &c. *F*. *N*. *B*. 197.

If any parceners or there iſſues be diſſeiſed, they muſt join in an aſſiſe againſt the diſſeiſor; ſo if they have cauſe to bring any action of waſte, &c. 1 *Inſt*. 95, 198. Two parceners are of land, one enters and claims the whole, and is diſſeiſed, ſhe alone may maintain aſſiſe; but if the diſſeiſin be of rent, the other parceners muſt be named, or the writ ſhall abate. *Jenk*. *Cent*. 41, 42.

The *poſſeſſion* of one parcener, &c. of land, without an actual ouſter, gives poſſeſſion to the other of them. *Hob*. 120. *Dyer* 128. One *parcener* may juſtify detaining the deeds concerning the land, againſt another, as they belong to one as well as the other. 2 *Rol*. *Abr*. 31.

Parceners are to make *partition* of the lands deſcended; and eſtates of coparceners at Common law are applicable *only* to inheritances: Partition may be made between *parceners* of inheritances, which are intire and dividable, as of an advowſon, rent charge, or ſuch like; but it is otherwiſe of inheritances which are not intire and indiviſible, as of a piſcary, common without number; or ſuch uncertain profits out of lands; for in ſuch caſe the eldeſt *parcener* ſhall have them, and the others have *contribution* from her out of ſome other inheritance, left by the anceſtor; but if there be no ſuch inheritance, then the eldeſt ſhall have theſe uncertain profits for one time, and the youngeſt for another time. *Dyer* 153.

Parceners cannot make *partition*, ſo as for one to have the land for one time, and another for another, &c. for *each is to have her part abſolutely*: but if an advowſon deſcend to them, they may preſent by turns; and if there be a common, &c. which may not be divided, one may have it for one year, and another for another year, &c. 1 *Inſt*. 164.

An *advowſon* is *an entire thing*, and yet, in effect, the ſame may be divided betwixt *parceners*; for they may preſent by turns: and if there be coparceners of an advowſon appendant to a manor, and they make partition of the manor, without mentioning the advowſon; the ſame is ſtill appendant, and they may preſent by turns. 8 *Rep*. 79. If two parceners be of an advowſon, and they agree to preſent by turns, this is a good partition as to the poſſeſſion; but it is *not a ſeverance* of the eſtate of inheritance. 1 *Rep*. 87. And where there are coparceners of an advowſon, the *eldeſt* hath privilege to preſent *firſt*; not in reſpect of her perſon but *eſtate*: and if one parcener hath a rent granted to her upon a partition made, to make her part equal with the other, *ſhe may diſtrain for the arrears of common right*; and ſo ſhall the grantee of the rent, becauſe it is not annexed to her perſon only, but to her eſtate. 3 *Rep*. 32.

If there are two parceners of a *manor*, and on partition made, each hath demeſnes and ſervices allotted; in this caſe each is ſaid to have a manor. 1 *Leon*. 26. *Davis* 61. A partition may not be made of franchiſes, as goods of felons, waifs, eſtrays, &c. which are caſual. 5 *Rep*. 3.

How partition may be made.

Partition, between parceners, may be made four ways, *viz*

Firſt, When they themſelves divide the lands equally into as many parts, as there are parceners; and each chuſes one ſhare or part, the eldeſt firſt, and ſo one after another, &c.

Secondly, When they agree to chuſe certain friends to make diviſion for them.

Thirdly, Partition by drawing lots, where having divided the lands into as many parts as there are parceners, and written every part in a diſtinct ſcroll, being wrapt up, they each draw one.

And *Fourthly*, Partition by writ *de partitione facienda*, which is by compulſion, where ſome agree to partition, and others do not; and when judgment is given on a writ of partition, it is that *the ſheriff ſhall go to the land, and by the oaths of twelve men make partition between the parties, to hold to them in* SEVERALTY, *without any mention of preference to the eldeſt ſiſter*, &c. Litt. 248. 1 Inſt. 164. But if there be a capital meſſuage on the land to be divided, the ſheriff muſt allot that wholly to the *eldeſt* of the parceners. 1 *Inſt*. 165. The partition made and delivered by the ſheriff and jurors, ought to be returned into court under the ſeal of the ſheriff, and the ſeals of the twelve jurors; for the words of the judicial writ of partition, which commands the ſheriff to make partition, are, *Aſſumpſit tecum duodecim*, &c. *& partitionem inde ſcire facias juſticiariis, etc. ſub ſigillo tuo et ſigillis eorum per quorum ſacramentum partitionem illam feceris, etc.* If partition be made by force of the King's writ, and judgment thereof given, it ſhall be binding to all parties, becauſe it is made by the ſheriff, by the oath of twelve men, by authority of law; and the judgment is, *that the partition ſhall remain firm and ſtable for* EVER. 1 Inſt. 171.

In a writ of partition, the judgment was, *quod partitio fiat*; and before it was executed by the ſheriff, a writ of error was brought; and it was adjudged that a writ of error doth not lie upon this firſt judgment, becauſe this is not like other actions, where error lies before the *habere facias ſeiſinam* is returned, and the judgment is final; but it is not ſo in this caſe, as there muſt be another judgment, *i. e. quod partitio ſtabilis maneat*, which cannot be till the partition is made, and returned by the ſheriff. *Hetley* 36. *Dyer* 67.

Where two perſons hold lands *pro indiviſo*, and one would have his part in ſeveralty, and the other refuſeth to make partition by deed, there the writ *de partione facienda* lies againſt him who refuſes, directed to the ſheriff; and he *muſt be preſent* when the partition is made; and if it is objected before the return of the writ, that he was not preſent, he may be examined by the court; but after the writ is returned and filed, it is too late. *Cro. Eliz.* 9.

A writ of partition was taken forth, and the *ſheriff* made partition, but was *not* upon the land; and on motion that the return might not be filed, but that a new writ might be awarded, becauſe the ſheriff was not on the land, the court ſtaid the filing, and on examining the ſheriff, ordered a new writ. *Cro. Car.* 9, 10.

On writ of partition to the ſheriff to make partition of lands, part of the lands were allotted to one, and the jury would not aſſiſt the ſheriff to make partition of the other part; which appearing on the return of the writ, the court was moved for an attachment againſt the jury, and a new writ to the ſheriff. *Godb.* 265. Partition was brought by tenant in fee of one moiety, againſt tenant for life of the other moiety, on the *Stat.* 32 *H.* 8. *c.* 32. And though it has been reſolved, if partition be made between one who hath an eſtate of inheritance, and another who hath a particular eſtate for life; that the writ ought to be framed upon the ſtatute, and to be made ſpecial, ſetting forth the particular eſtate: yet it was held to be good where the writ was general. *Goldſb.* 84. 2 *Lutw.* 1015.

A partition may be made by ſtatute of any eſtate of freehold, or for term of years, *&c.* of manors, lands, tenements, and hereditaments whereof the partition is demanded; and if after proceſs of *pone* returned upon a *writ of partition*, and affidavit of notice given of the writ to the tenant to the action, and a copy left with the tenant in poſſeſſion *at leaſt forty days* before the return of the ſaid *pone, &c.* there be no appearance entered in *fifteen* days; the demandant having entered his declaration, the court may give judgment by default, and award a writ to make partition, whereby the demandant's part or purpart will be ſet out ſeverally; which writ being executed after *eight days notice*, and returned, and thereupon final judgment entered, ſhall conclude all perſons, *&c.*

But the court may ſuſpend or ſet aſide the judgment, if the party concerned move the court in a year, and ſhew good matter in bar. *Stat.* 8 *&* 9 *W.* 3. *c.* 31. And by this ſtatute, if the high ſheriff, by reaſon of diſtance, *&c. cannot be preſent* at the execution of any judgment in partition, then the under ſheriff *in the preſence of two juſtices of peace of the county*, ſhall proceed to the execution of the writ, by inquiſition, and the high ſheriff is to make the return, *&c. Ibid.* When the partition is made and returned, the perſons who were tenants of the lands, or any part thereof, before divided, ſhall continue tenants of the lands they held, to the reſpective owners, under ſuch conditions and rents as before: and *no plea in abatement ſhall be admitted or received in any ſuit of partition*; *nor ſhall the ſame be abated by the death of any tenant, &c.* Ibid.

In a writ of partition the defendant pleaded, that he formerly brought writ of partition againſt the plaintiff, and had judgment, to have partition: and held a good plea; but it was a queſtion, whether it ſhould be pleaded in bar or abatement, or by way of eſtoppel. *Dyer* 92. No damages can be recovered on a writ of partition, though the writ and declaration conclude *ad damnum.* Hetl. 35. Noy 143. 2 Nelſ. Abr. 1237.

Where *judgment for debt* is had againſt one parcener, the lands, *&c.* of *both* may be taken in execution, and the moiety undivided is to be ſold, and then the vendee will be tenant in common with the other coparcener: if the ſheriff ſeize only a moiety and ſell it, the other parcener will have a right to a moiety of that money. 1 *Salk.* 392. All partitions ought to be according to the quality and true value of the lands, and be equal in value: but if partition be made by parceners of full age, and unmarried, and *ſanæ memoriæ*, it binds them for ever, although the value be unequal, if it be made of lands in fee: and if it be of lands intailed, it ſhall bind the parties themſelves for their lives, but not their iſſue *unleſs it be equal:* if it be unequal, the iſſue of her who hath the leſſer part, may after deceaſe diſagree, and enter and occupy in common with the aunt: alſo if any be covert, it ſhall bind the huſband, but not the wife, or her heirs; or if any be within age, it ſhall not bind the infant, but ſhe may at her full age diſagree, *&c.* 1 *Inſt.* 166, 170. 2 *Lil. Abr.* 283. Though if a wife after coverture, or the infant at her age, accept of the unequal part, they are concluded for ever. 1 *Inſt.* 170. And where there be two coparceners, and one hath ſeven daughters, and dieth; if the other parcener releaſeth to any one of the daughters her whole part, here, although ſhe to whom the releaſe is made, have not an equal part, the releaſe is good. *Ibid.* 193. It hath been adjudged, that notwithſtanding a partition is unequal, *if it be by writ, it cannot be avoided*; but if it be by *deed*, it *may* be avoided by *entry*. 1 Inſt. 171.

If the eſtate of a parcener be in part evicted, that ſhall defeat the whole partition; partition implying a warranty and condition in law to enter upon the whole on eviction, as in caſe of exchange of lands. 1 *Inſt.* 173. 1 *Rep.* 87. And if after partition, one of the parts is recovered from a parcener by lawful title, ſhe ſhall compel the others to make a new partition. *Cro. Eliz.* 902. But as to eviction of parceners, if one ſell her part, and then the part which the other parcener hath, is evicted; in this caſe ſhe who loſeth her part, cannot enter on the alienee, for by alienation the privity is deſtroyed. 1 *Inſt.* 173. Among parceners, a partition upon the land may be good without deed; but not among jointenants, *&c. Dyer* 29, 194.

Form *of a common writ of* partition.

GEORGE the Third, *&c. to the ſheriff of* S. *greeting: If* A. B. *make you ſecure,* &c. *then ſummon* E. B. *that ſhe be before,* &c. *to ſhew wherefore, whereas the ſaid* A. B. *and* E. B. *together and undivided hold the manor of,* &c. *with the appurtenances, twenty meſſuages, one mill, one dove-houſe, twenty gardens, three hundred acres of land, two hundred acres of meadow, a hundred and fifty acres of paſture, one hundred acres of wood, two hundred acres of furze and heath, and twenty ſhillings rent, with the appurtenances of the inheritance which was of* N. B. *father of the ſaid* A. B. *and* E. B. *whoſe heirs they are, in,* &c. *the ſaid* E. B. *doth deny* partition *thereof to be made between them, according to the law and cuſtom of* England, *and unjuſtly will not permit that to be done, as it is ſaid: And have you there the ſummons, and this writ. Witneſs,* &c.

See *Coparceners, Jointenants, Partition.*

Parcenary, Is the holding of lands jointly by *parceners*, when the common inheritance is not divided. *Lit.* 56.

Parchment, A tax of 20*l. per cent.* is laid on *parchment*, paper, *&c.* by ſtat. 8 *&* 9 *W.* 3. *cap.* 7. and ſee 9 *Ann. c.* 11. 10 *Ann. c.* 26. *ſect.* 3.

Parco fracto, Is a writ which lies againſt him who violently breaks a pound, and takes out beaſts from thence, which for ſome treſpaſs done, *&c.* were lawfully impounded. *Reg. Orig.* 166. And if a perſon hath authority to take beaſts out of the pound, if he breaks the pound *before he demands the cattle of the keeper* thereof, and he refuſeth, or interrupts them in the taking of them, *&c.* the writ *parco fracto* lies. *Dr. and Stud.* 112. Damages are recoverable in this writ; and the party may be puniſhed, as for a *pound breach* in the court leet. 1 *Inſt.* 47. *F. N. B.* 100. The word *parcus* was frequently uſed for a pound to confine treſpaſſing or ſtraying cattle; whence *imparcare* to impound, *imparcatio* pounding, and *imparcamentum*, right of pounding, *&c.*

Pardon, *(Pardonatio, venia)* Is the remitting or forgiving of an offence committed againſt the King; and is either *ex gratia Regis*, or by courſe of law. *Staundf. Pl. Cor.* 47. Pardon *ex gratia Regis*, is that which the King affords by virtue of his prerogative. Pardon *by courſe of law*, is that which the law in equity affords for a light offence; as *caſual homicide*, when one killeth a man, having no ſuch meaning. *Weſt. Symbol. par.* 2. tit. *Indictments, ſect.* 46.

1. *By whom a pardon may be granted; in what caſes, and for what offences.*

2. *Where a pardon is grantable of common right; of the validity of a pardon; and by what words treaſons, murder, felony, and other offences may be pardoned.*

1. *By whom a pardon may be granted; in what caſes, and for what offences.*

The power of pardoning offences is inſeparably incident to the Crown; and this high prerogative the King is intruſted with upon a ſpecial confidence, that he will ſpare thoſe only whoſe caſe, could it have been foreſeen, the law itſelf may be preſumed willing to have excepted out of its general rules, which the wiſdom of man cannot poſſibly make ſo perfect, as to ſuit every particular caſe. 1 *Show.* 284. See *Black. Com.* 4 *V.* 389, *&c.*

Anciently the right of pardoning offences, within certain diſtricts, was claimed by lords, who had *jura regalia* by ancient grants from the Crown, or by preſcription. But now, by 27 *H.* 8. *cap.* 24. it is enacted, "That no perſon ſhall have power to pardon any treaſons or felonies, nor any acceſſaries, nor outlawries; but that the King ſhall have the authority thereof, united to the crown of this realm, as of right it appertaineth." *Co. Lit.* 114. 3 *Inſt.* 233.

It is laid down in general, that the King may pardon any offence, ſo far as the public is concerned in it, after it is over, conſequently may prevent a popular action on a ſtatute, by pardoning the offence before the ſuit is commenced; but it ſeems, that he cannot wholly pardon a public nuſance, *while it continues ſuch*, becauſe ſuch pardon would take away the only means of compelling a redreſs; yet it is ſaid, that ſuch a pardon will ſave the party from any fine, to the time of the pardon. *Plowd.* 487. *Keilw.* 134. 12 *Co.* 29, 30. 3 *Inſt.* 237. *Vaugh.* 333.

But it ſeems agreed, that the King can by no *previous* licence, pardon, or diſpenſation, make an offence diſpuniſhable which is *malum in ſe*; as being either againſt the law of nature, or ſo far againſt the public good as to be indictable at Common law; and that a grant of this kind, tending to encourage the doing of evil, which it is the chief end of government to prevent, is againſt the common good, therefore void. *Dav.* 75. 5 *Co.* 35. 12 *Co.* 29. Vide 2 *Hawk. P. C.* 389. 3 *H.* 7. 15. *pl.* 30.

But where a thing *in its own nature lawful*, is made unlawful by parliament, it was formerly taken as a general rule, that *the King might diſpenſe with it*, as to a particular time or place, or perſon, ſo far as the public was concerned in it; unleſs ſuch diſpenſation could not but be attended with an inconvenience, as the introducing a monopoly; or fruſtrating the end for which the law was made; as the licenſing a particular perſon to import foreign cards or wines, *&c.* in which caſe, it was commonly taken to be void; alſo, where a ſtatute gives a particular intereſt, or right of action to the party grieved, it has always been agreed, that no charter from the King, can bar the right of the party grounded on ſuch ſtatute; alſo where a ſtatute is expreſs, that the King's charter againſt the purport of it, though with the clauſe of *non obſtante*, ſhall be void; it ſeems to have been always generally agreed, that regularly no ſuch clauſe could diſpenſe with it. 2 *Hawk. P. C.* 389, 390. and ſeveral anthorities there cited. See the next clauſe.

It ſeems to be agreed, that no diſpenſation of any ſtatute, except the ſtatutes of mortmain, was of any force without a clauſe of *non obſtante*; neither is ſuch clauſe of any effect at this day, for it is declared and enacted by 1 *W. & M. ſeſſ.* 2. *cap.* 2. That no diſpenſation by *non obſtante* of or to any ſtatute, or any part thereof, be allowed; but that the ſame *ſhall be held void*, except a diſpenſation be allowed in ſuch ſtatute; but it is provided, that no charter, grant or pardon, granted before 23d of *October* 1699, ſhall be any ways invalidated by that act, but that the ſame ſhall be and remain of the ſame force, and no other, as if the ſaid act had never been made. 2 *Hawk. P. C.* 391.

The King cannot by any charter bar any right of entry or action, or any legal intereſt, or benefit *before* veſted in the ſubject; therefore it ſeems clear, that he cannot bar any action on a ſtatute by the party grieved, nor even a popular action *commenced before his pardon*, nor a recognizance for the peace before it is forfeited. *Plowd.* 487. 2 *Rol. Abr.* 178. *Cro. Car.* 199. *Keilw.* 134.

Neither can the King pardon an appeal, except only where it is carried on at his ſuit, *after a nonſuit*; therefore if a perſon attainted, on an appeal carried on at the ſuit of the party, get the King's pardon, he muſt ſue a *ſcire facias* againſt the appellant, before the pardon ſhall be allowed. 2 *Hawk. P. C.* 392.

And if the appellant appear on the *ſcire facias*, he may pray execution notwithſtanding the pardon; but if the ſheriff return a *ſcire facias*, or two *nihils*, and the appellant appear not, on demand, or if he return the appellant dead, the appellee ſhall be diſcharged; but ſome have holden, that in this laſt caſe, a *ſcire facias* ſhall go againſt the heirs of the deceaſed. 2 *Hawk. P. C.* 392.

But there is no need of any *ſcire facias* againſt the lord by eſcheat, becauſe the pardon no way tends to reverſe the attainder whereon the title of eſcheat is founded. 2 *Hawk. P. C.* 393. which *vide*.

It hath been ſtrongly holden, that the King may pardon the burning of the hand, on a conviction of manſlaughter on an *appeal*, as *being no part of the judgment at the ſuit of the party*, but collateral and exemplary puniſhment inflicted by the ſtatute, and intended only by way of ſatisfaction to *public juſtice*, like the finding of ſureties by one convicted on the ſtatute, againſt treſpaſs in parks. But for this ſee 2 *Hawk. P. C.* 393.

A pardon will not only diſcharge any ſuit in the ſpiritual court *ex officio*, but alſo any ſuit in ſuch court *ad inſtantiam partis pro reformatione morum*, or *ſalute animæ*, as for defamation, or laying violent hands on a clerk, *&c.* See the following caſes, 5 *Co.* 51. *Latch.* 190. *Cro. Eliz.* 684. *Hob.* 81. *Cro. Jac.* 335. 2 *Hawk. P. C.* 394.

If a perſon be impriſoned on an *excommunicato capiendo* for non-payment of coſts, and the King pardons *all contempts*, it is ſaid, that he ſhall be diſcharged without any *ſcire facias* againſt the party, and that the party muſt begin anew to compel payment of coſts; becauſe the impriſonment was grounded on the contempt, which is wholly pardoned. 1 *Jon.* 227. 2 *Rol. Abr.* 178. *Cro. Jac.* 159. 8 *Co.* 68, 69.

But no pardon will diſcharge a ſuit in the ſpiritual court, any more than in a temporal, for a matter of *intereſt* or *property* in the plaintiff; as for tithes, legacies, matrimonial contracts and ſuch like; alſo it is agreed, that after coſts are taxed in a ſuit, in ſuch court, at the proſecution of the party, whether for a matter of private intereſt, or *pro reformatione morum*, or *pro ſalute animæ*, or for defamation, *&c.* they ſhall not be diſcharged by a ſubſequent pardon. 5 *Co.* 51. *Latch* 190. *Cro. Car.* 46-7.

And with reſpect to coſts, fee 2 *Rol. Abr.* 304. *Noy* 85. *Latch* 155.

By the 12 & 13 *W.* 3. *cap.* 2. "No pardon under the great ſeal ſhall be impleaded to an IMPEACHMENT by the commons in parliament."

2. *When a pardon is grantable of common right; and by what words treaſon, murder, felony, and other offences may be pardoned.*

By the ſtatute of *Glouceſter*, *cap.* 9. it is enacted, "That if it be found by the country, that a perſon tried for the death of a man, *did it in his defence*, or by *miſfortune*, then, by the report of the juſtices to the King, the King *ſhall* take him to his grace, *if* it pleaſe him." 2 *Inſt.* 316.

But it ſeems to be ſettled at this day, agreeable to the ancient Common law, in affirmance whereof this ſtatute was made, that in ſuch a caſe, or where one indicted of homicide *ſe defendendo* confeſſes the indictment, if the party cauſe the record to come into Chancery, the Chancellor will of courſe make him a pardon, without ſpeaking to the King, and that by ſuch pardon the forfeiture of goods may be ſaved; for theſe words, "*If it ſhall pleaſe the King,*" ſhall be taken as *ſpoken only by way of reverence to him*, and *not intended to make ſuch a pardon diſcretionary*. But if the party be found to have fled, it is made a *quære*, if the pardon ſave the forfeiture of the flight, for that is not grounded on the homicide, but on the contempt of law. 2 *Hawk. P. C.* 380, 381.

If an approver convict all the appellees, whether by battle or verdict, the King *ex merito juſtitia* ought to pardon him as to his life, and alſo give him his wages from the time of appeal, to the time of conviction. 3 *Inſt.* 139. 2 *Hawk. P. C.* 209. 2 *Hale's Hiſt. P. C.* 233.

As to perſons intitled to pardons, on diſcovering their fellows, vide 4 & 5 *W. & M. c.* 8. 6 & 7 *W. & M. c.* 17. 10 & 11 *W.* 3. *c.* 23. 5 *Ann. c.* 31, *&c.*

It is laid down as a general rule, that whereever it appears by the recital of the pardon, that the King was *miſinformed*, or *not rightly appriſed*, both of the heinouſneſs of the crime, and alſo how far the party ſtands convicted upon record, *the pardon is void*, upon a preſumption that *it was gained from the King by impoſition*. Yel. 43, 47. Cro. Jac. 18, 34, 548. 2 Rol. Abr. 188. Dyer 352. pl. 26. Raym. 13. 1 Sid. 41. 3 Inſt. 338.

And on this ground it ſeems agreed, that if a man attainted of felony get a Pardon, which doth not mention the attainder, the Pardon will be ineffectual; alſo it hath been holden, that the Pardon of a perſon convicted by verdict of felony is void, unleſs it recite the indictment and conviction; alſo it hath been queſtioned, if the pardon of a perſon barely indicted of felony be good, without mentioning the indictment; but it hath been adjudged, that ſuch a defect is ſaved by the words *ſive indictatus ſive non.* 2 Hawk. P. C. 382-3.

Anciently a *Pardon* of all felonies, included all treaſons as well as felonies; and it ſeems to be taken for granted in many books, that ſuch a general *Pardon* is even at this day pleadable to any felony, except murder and rape, and piracy; and that the only reaſon why it may not alſo be pleaded to murder and rape is, becauſe 13 *Rich.* 2. requires an expreſs mention of them; and that the only reaſon why it is not pleadable to piracy is, becauſe it is a felony by the Civil law. 2 *Hawk. P. C.* 383-4. 1 *Hal. Hiſt. P. C.* 466. 2 *Hal. Hiſt. P. C.* 45. Vide *Stat.* 37 *E.* 3. *c.* 2.

No Pardon of felony ſhall be carried beyond the EXPRESS *purport of it*; therefore if the King, reciting an attainder of robbery, pardon the execution, he thereby neither pardons the felony itſelf, nor any other conſequence of it, beſides the execution. 6 *Co.* 13. 2 *Hawk. P. C.* 384.

Vide *Stat.* 2 *Ed.* 3. *c.* 2. which ſeems to deprive the King of the power of pardoning WILFUL murder. But ſee 13 *Rich.* 2. *c.* 1. and *Hawk. P. C.* 385-6. and the various authorities there cited.

It hath been formerly adjudged, that murder might be pardoned under the general deſcription of a felonious killing, with a clauſe of *non obſtante*; but by 1 *W. & M. ſeſſ.* 2. *cap.* 2. it is declared that no diſpenſation by *non obſtante* of or to any ſtatute ſhall be allowed. 1 *Sid.* 366. 1 *Show.* 283. *Keling* 24. 3 *Mod.* 37.

But *Pardons* of manſlaughter remain as they were at Common law; therefore the *Pardon* of the felonious killing of *J. S.* may be pleaded to an indictment of manſlaughter in killing him; but where ſuch a *Pardon* is pleaded to a coroner's inqueſt of manſlaughter, the court may refuſe to allow it, till the fact be found manſlaughter by a jury directed by a higher court. 2 *Keb.* 363, 415. *Keling* 24. 2 *Jon.* 56.

If a general act expreſsly pardon petit treaſon, and except murders, it cannot be avoided by indicting a perſon guilty of petit treaſon for murder only, omitting the word *proditorie*; for the leſs offence being included in the greater is pardoned, by the *Pardon* of it; therefore ſuch an exception of murder is to be intended of ſuch murder only as is ſpecially ſo called, and doth not amount to petit treaſon. *Dyer* 50. *pl.* 4. 235. *pl.* 19. 6 *Co.* 13.

Neither doth the exception of murder in a general act of *Pardon* of all felonies, extend to *felo de ſe*; for tho' his offence be in ſtrictneſs murder, yet in common ſpeech, according to which ſtatutes are commonly expounded, it is generally underſtood as a diſtinct offence, the word murder ſeeming *prima facie* to import the murder of *another*. 1 Lev. 8, 120. 1 Sid. 150. 1 Keb. 66, 548.

It is ſaid, that a general act of *Pardon* of all felonies, miſdemeanors and other things done before ſuch a day, pardons a homicide *from a wound before the day*, whereof the party died not till after; becauſe the ſtroke being pardoned, the effects of it are conſequently pardoned. *Plowd.* 401. *Cole's* caſe. 1 *Hale's Hiſt. P. C.* 426. *Dyer* 99. *pl.* 65.

It is ſaid that a *Pardon* of all miſpriſions, treſpaſſes, offences and contempts, will pardon a contempt in making a falſe return, and a ſtriking in *Weſtminſter Hall*, and barratry, and even a *præmunire*; alſo it is laid down in general, that *it will pardon any crime not capital*. 1 Lev. 106. 1 Sid. 211. 2 Mod. 52. Vide 2 *Hale's Hiſt. P. C.* 252. *Dyer* 308. *a.*

As to *ſtatutes* concerning *Pardons*, vide *Table to Statutes.*

For more learning on this ſubject, ſee 3 New Abr. *tit.* Pardon.

Pardoners, Were perſons who carried about the *Pope's indulgences*, and ſold them to any who would buy them. *Stat.* 22 *H.* 8.

Parent, *(Parens)* A father or mother; but generally applied to the father: parents have power over their children by the law of nature, and the Divine law; and by thoſe laws they muſt educate, maintain and defend their children. *Wood's Inſt.* 63. The parent or father hath an intereſt in the profits of the childrens labour while they are under age, if they live with and are maintained by him: but the father hath no intereſt in the eſtate of a child, otherwiſe than as his guardian. *Ibid.* The *eldeſt* ſon is *heir* to his father's eſtate at Common law; and if there are no ſons, but daughters, the daughters ſhall be heirs, *&c.* And there being a reciprocal intereſt in each other, parents and children may maintain the ſuits of each other, and juſtify the defence of each other's perſon. 2 *Inſt.* 564. See *Black. Com.* 1 *V.* 437, 452.

Parentela, or De Parentela ſe tollere, To renounce his kindred, which was done in open court before the judge, and in the preſence of twelve men, who made oath, that they believed it was done lawfully, and for a juſt cauſe. We read it in the laws of *H.* 1. *cap.* 88. *Si quis propter faidam vel cauſam aliquam* de parentela *ſe velit tollere, & eam foriſjuraverit, & de ſocietate & hæreditate & tota illius ratione ſe ſeparet, ſi poſtea aliquis a parentibus abjuratis moriatur, vel occidatur, nihil ad eum de hæreditate vel compoſitione pertineat, &c.*

Pariſh, *(parochia)* Did anciently ſignify what we now call the *dioceſe* of a biſhop: But at this day it is the circuit of ground in which the people who belong to one church do inhabit, and the particular charge of a ſecular prieſt. It is derived from the *Saxon* Pꞃeoꞅꞇ-ꞅcyꞃe, *Preoſt-ſcyre*, which ſignifies the precinct of which the prieſt had the care, in *Engliſh* prieſt-ſhire.

How ancient the diviſion of pariſhes is, may at preſent be difficult to aſcertain; for it ſeems to be agreed on all hands, that in the early ages of chriſtianity in this iſland, pariſhes were unknown, or at leaſt ſignified the ſame that a dioceſe does now. There was then no appropriation of eccleſiaſtical dues to any particular church; but every man was at liberty to contribute his tithes to whatever prieſt or church he pleaſed, provided only that he did it to ſome: Or, if he made no ſpecial appointment or appropriation thereof, they were paid into the hands of the biſhop, whoſe duty it was to diſtribute them among the clergy, and for other pious purpoſes, according to his own diſcretion.

Mr. *Camden* (in his *Britania*) ſays, *England* was divided into pariſhes by archbiſhop *Honorius* about the year 630. Sir *Henry Hobart* lays it down that pariſhes were firſt erected by the council of *Lateran*, which was held *Anno Domini* 1179. Each widely differing from the other and both of them perhaps from the truth; which will probably be found in the medium between the two extremes. For Mr. *Selden* has clearly ſhewn, (of tithes. *c.* 9.) that the clergy lived in common without any diviſion of pariſhes, long after the time mentioned by *Camden*. And it appears from the *Saxon* laws that pariſhes were in being long before the date of that council of *Lateran*, to which they are aſcribed by *Hobart*.

We find the diſtinction of pariſhes, nay even of mother churches, ſo early as in the laws of King *Edgar*, about the year 970. Before that time the conſecration of tithes was in general *arbitrary*; that is, every man paid his own (as before obſerved) to what church or pariſh he pleaſed, But this being liable to be attended with either fraud, or at leaſt caprice, in the perſons paying, and with either jealouſies or mean compliances in ſuch as were competitors for receiving them; it was now ordered by the law of King *Edgar*, (*c.* 1.) That "*dentur omnes decimæ primariæ eccleſiæ ad quam parochia pertinet.*" However, if any thane, or great lord, had a church within his own demeſnes, diſtinct from the mother church, in the nature of a private chapel; then, provided ſuch church had a coemitery or conſecrated place of burial belonging to it, he might allot one third of his tithes for the maintenance of the officiating miniſter: But, if it had no coemitery, the thane muſt himſelf have maintained his chaplain by ſome other means; for in ſuch caſe *all* his tithes were ordained to be paid to the *primariæ eccleſiæ* or mother church.

This proves that the kingdom was then univerſally divided into pariſhes; which diviſion happened probably not all at once, but by degrees. For it ſeems pretty clear and certain, that the boundaries of pariſhes were originally aſcertained by thoſe of a manor or manors: Since it very ſeldom happens that a manor extends itſelf over more pariſhes than one, tho' there are often many manors in one pariſh. The lords, as Chriſtianity ſpread itſelf, began to build churches upon their own demeſnes or waſtes, to accommodate their tenants in one or two adjoining lordſhips; and, in order to have divine ſervice regularly performed therein, obliged all their tenants to appropriate their tithes to the maintenance of the one officiating miniſter, inſtead of leaving them at liberty to diſtribute them among the clergy of the dioceſe in general: And this tract of land, the tithes whereof were ſo appropriated, formed a diſtinct pariſh: Which will account well enough for the frequent intermixture of pariſhes one with another. For if a lord had a parcel of land detached from the main of his eſtate, but not ſufficient to form a pariſh of itſelf, it was natural for him to endow his newly erected church with the tithes of thoſe disjointed lands; eſpecially if no church was then built in any lordſhip adjoining to thoſe out-lying parcels. Thus pariſhes were gradually formed, and pariſh churches endowed with the tithes that aroſe within the circuit aſſigned. But ſome lands, either becauſe they were in the hands of irreligious and careleſs owners, or were ſituate in foreſts and deſart places, or for other now unſearchable reaſons, were never united to any pariſh, and therefore continue to this day extraparochial; and their tithes are now by immemorial cuſtom payable to the King inſtead of the biſhop, in truſt and confidence that he will diſtribute them, for the general good of the church. 2 *Inſt.* 647. 2 *Rep.* 44. *Cro. Eliz.* 512. Yet extraparochial waſtes and marſh lands, *when improved and drained*, are by the ſtatute 17 *Geo.* 2. *c.* 37. to be aſſeſſed to all parochial rates in the pariſh *next adjoining*. See *Black. Com.* 1 *V.* 111, 112, 113. And *Wilſ. par.* 2. 182.

Lord *Holt* held, That pariſhes were inſtituted for the eaſe and benefit of the people, not of the parſon; and the reaſon why pariſhioners muſt come to their pariſh church is, becauſe, having charged himſelf with the cure of their ſouls, he might be enabled to take care of that charge. 3 *Salk.* 88, 89. A pariſh may compriſe many vills; but generally it ſhall not be accounted to contain more than one, except the contrary be ſhewn, becauſe moſt pariſhes have but one vill within them. *Hil.* 23 *Car.* 1. *B. R.* And it ſhall not be intended that there is more than one pariſh in a city, if it be not made to appear; for ſome cities have but one pariſh. *Ibid.* Where there are ſeveral vills in a pariſh, they may have peace officers, and overſeers of the poor for every particular vill: And an ancient vill in a pariſh, that time out of mind hath had a church of its own, and churchwardens and parochial rights, being reputed a pariſh, is a pariſh within the *ſtat.* 43 *Eliz. c.* 2. to provide for its own poor, and ſhall not pay to the poor of the pariſh wherein it lies. *Cro. Car.* 92, 384, 396. But to make a vill a reputed pariſh within 43 *Eliz. c.* 2. it muſt have a parochial chapel, chapel-wardens and ſacraments at the time that ſtatute was made. 2 *Salk.* 501. Pariſhes in reputation are within that ſtatute, eſpecially when it has been the conſtant uſage of ſuch pariſhes to chooſe their own overſeers; who may diſtrain for a poor tax, &c. 2 *Rol. Rep.* 160. 2 *Nelſ. Abr.* 1235.

Money given by will to a pariſh, ſhall be to the poor of the pariſh, as adjudged in equity. *Chanc. Rep.* 134. If a highway lie in a pariſh, the pariſh is obliged to repair it, and it is the moſt convenient and equal for the pariſhioners in every pariſh, to repair the ways within it, if they are able. 2 *Lil.* 272. And if any vill, liberty, &c. that uſes to repair their own highways, ſhall after the uſual rate levied and employed, find the ways not ſufficiently repaired; the whole pariſh may be ordered by juſtices of peace in their ſeſſions to contribute to the repairing thereof. *Stat.* 7 & 8 *W.* 3. *c.* 29.

Pariſh Clerk. In every pariſh the parſon, vicar, &c. hath a pariſh clerk under him, who is the loweſt officer of the church. There were formerly clerks in orders, and their buſineſs was at firſt to officiate at the altar, for which they had a competent maintenance by offerings; but now they are laymen, and have certain fees with the parſon, on chriſtnings, marriages, burials, &c. beſides wages for their maintenance. *Count. Parſ. Compan.* 83, 84. They are to be twenty years of age at leaſt, and known to be of honeſt converſation, ſufficient for their reading, ſinging, &c. And their buſineſs conſiſts chiefly in reſponſes to the miniſter, reading leſſons, ſinging pſalms, &c. And in the large pariſhes of *London*, ſome of them have deputies, to diſpatch the buſineſs of their places, which are more gainful than common rectories. *Ibid.* The law looks upon them as officers for life: They are regarded by the Common law, as perſons who have freeholds in their offices; and therefore though they may be puniſhed, yet they cannot be deprived, by eccleſiaſtical cenſures. *Black. Com.* 1 *V.* 395. And they are generally appointed by the miniſter, unleſs there is a cuſtom for the pariſhioners or churchwardens to chuſe them; in which caſe the canon cannot abrogate ſuch cuſtom; and when choſen it is to be ſignified, and they are to be ſworn into their office by the archdeacon. *Cro. Car.* 589. *Can.* 91. And if ſuch cuſtom appears, the court of *B. R.* will grant a *Mandamus* to the archdeacon to ſwear him in, for the eſtabliſhment of the cuſtom turns it into a temporal or civil right. *Black. Com.* 1 *V.* 395. He may make a deputy without licence of the ordinary. *Strange* 942. And cannot ſue in the Spiritual court for fees as being a temporal officer. 2 *Strange* 1108.

Pariſhioner, (*Parochianus*) Is an inhabitant of or belonging to any pariſh, lawfully ſettled therein. Pariſhioners are compellable to put things in decent order; but the judgment of the majority is the only rule for the degrees of that decency; and the court inclined, that a rate for that purpoſe is binding; as for moving the communion-table out of the body of the church into the chancel, or raiſing it higher, &c. *Far.* 70.

Pariſhioners have a right to view pariſh books. 11 *Mod.* 134.

Pariſhioners are a body politic to many purpoſes; as to vote at a veſtry if they pay ſcot and lot; and they have a ſole right to raiſe taxes for their own relief, without the interpoſition of any ſuperior court; may make by-laws to mend the highways, and to make banks to keep out the ſea, and for repairing the church, and making a bridge, *&c.* or any ſuch thing for the public good, and by the 3 *&* 4 *W.* 3. *c.* 11. and 7 *Ann,* to tax and levy poor rates, and to make and maintain fire-engines, and by 9 *Geo.* for purchaſing workhouſes for the poor. Arg. 8 *Mod.* 354.

Pariſh Officers. Divers perſons are exempted from ſerving pariſh offices on account of their profeſſions, *viz.* Phyſicians and ſurgeons, apothecaries, diſſenting teachers, regiſtered ſeamen, and perſons having proſecuted any felon to conviction, *&c.* *Stat.* 32 *H.* 8. *c.* 40. 1 *W.* *&* *M.* *c.* 18. 7 *&* 8 *&* 10 *&* 11 *W.* 3. *c.* 23. 1 *&* 10 *Ann.* *&c.*

Park, (Lat. *parcus,* Fr. *parque,* i. e. *locus incluſus)* Is a large quantity of ground incloſed and privileged for wild beaſts of chaſe, by the King's grant or preſcription. 1 *Inſt.* 233.

Manwood defines a park to be a privileged place for beaſts of venary, and other wild beaſts of the foreſt and chaſe, *tam Sylveſtres, quam Campeſtres;* and differs from a chaſe or warren, in that it muſt be incloſed; for if it lies open it is good cauſe of ſeizure into the King's hands, as a thing forfeited; as a free chaſe is, if it be incloſed; beſides, the owner cannot have an action againſt ſuch as hunt in his park, if it lies open. *Manw. Foreſt Laws. Cromp. Juriſ.* 148. No man can erect a *park,* without licence under the broad ſeal; for the Common law does not encourage matter of pleaſure, which brings no profit to the commonwealth. *Wood's Inſt.* 207. But there may be a park in reputation, erected without lawful warrant; and the owner may bring his action againſt perſons killing his deer. *Ibid.*

To a park three things are required. 1. A grant thereof. 2. Incloſures by pale, wall or hedge. 3. Beaſts of a park, ſuch as the buck, doe, *&c.* And where all the deer are deſtroyed, it ſhall no more be accounted a park; for a park conſiſts of vert, veniſon, and incloſure, and if it is determined in any of them, it is a total *diſparking.* Cro. Car. 59, 60.

The King may by letters patent diſſolve his park. 2 *Lil. Abr.* 273.

Parks as well as chaſes are ſubject to the Common law, and are not to be governed by the foreſt laws. 4 *Inſt.* 314.

Pulling down park walls or pales, the offenders ſhall be liable to the ſame penalty as for killing deer, *&c.* by ſtatute, and the ſtatutes againſt deer-ſtealing, are the 13 *Car.* 2. *c.* 10. 3 *&* 4 *W.* *&* *M.* *c.* 10. 5 *Geo.* 1. *c.* 15. See *Deer-ſtealers.*

Recompence to be made by the townſhip to owners of parks for deſtroying their fences, *&c.* 6 *Geo.* 1. *c.* 16. See *Game,* and 16 *Vin. Abr.* tit. *Park.* And *Black. Com.* 2 *V.* 38, 416.

Park bote, Signifies to be quit of incloſing a park, or any part thereof. 4 *Inſt.* 308.

Parle Hill, The learned *Spelman* gives this deſcription of it; *Collis vallo plerunque munitus, in loco campeſtri, ne inſidiis exponatur, ubi convenire olim ſolebant centuriæ aut viciniæ incolæ ad lites inter ſe tractandas & terminandas:* Scotis *reor* Grith hail, *q. Mons pacificationis, cui aſyli privilegia concedebantur: & in* Hibernia *frequentes vidimus,* the *Parle* and *Parling Hills.* Spelm. Gloſſ.

Parliament, *(Parliamentum,* from the Fr. *Parler,* i. e. *loqui, & ment, mens,* to ſpeak the mind, ſometimes called *Commune Concilium Regni Angliæ, Magnum Concilium, &c.)* Is a grand aſſembly, or convention of the three eſtates of the kingdom, ſummoned to meet the King, to conſult of matters relating to the common wealth; and particularly to enact and repeal laws.

Herein may be conſidered,

1. *The antiquity and original of parliaments.*
2. *The juriſdiction of parliament.*
3. *The ſpeaker.*
4. *The judicial power of parliament.*
5. *The proper province of the Houſe of Commons,* &c.
6. *The privilege of members,* &c.

With reſpect to ELECTIONS, *&c.* See at the end o *Div.* 6.

1. *The antiquity and original of parliaments.*

Some authors ſay, that the ancient *Britains* had no ſuch aſſemblies; but that the *Saxons* had; which may be collected from the laws of King *Ina;* who lived about the year 712. And *William* the firſt, called the Conqueror, having divided this land among his followers, ſo that every one of them ſhould hold their lands of him *in capite,* the chief of theſe were called *Barons,* who thrice every year aſſembled at the King's court, *viz.* at *Chriſtmas, Eaſter,* and *Witſuntide,* among whom the King uſed to come in his royal robes, to conſult about the public affairs of the kingdom. This King called ſeveral parliaments, wherein it appears, that the *freemen* or commons of *England* were alſo there, and had a ſhare in making laws: He by ſettling the court of parliament ſo eſtabliſhed his throne, that neither *Britain, Dane,* nor *Saxon,* could diſturb his tranquility; the making of his laws were by act of parliament, and the accord between *Stephen* and him was made by parliament; though all the times ſince have not kept the ſame form of aſſembling the ſtates. *Doddridge's Antiq. Parliament.*

There was a parliament before there were any barons; and if the commons do not appear, there can be no parliament; for the knights, citizens and burgeſſes, repreſent the whole commons of *England,* but *the peers only are preſent for themſelves,* and none others. *Ibid.* Sir *Edward Coke* affirms, that many parliaments were held before the conqueſt; and produces an inſtance of one held in the reign of *Alfred:* He likewiſe gives us a concluſion of a parliament holden by *Athelſtan,* where mention is made, that all things were enacted in the great ſynod, or council at *Grately,* whereat was archbiſhop *Wolſehelme,* with all the noblemen and wiſemen, whom the King called together. 1 *Inſt.* 110. It is apparent, (ſays Mr. *Pryn)* from all the precedents before the time of the conqueſt, that our priſtine ſynods and councils were nothing elſe but parliaments; that our Kings, nobles, ſenators, aldermen, wiſemen, knights and commons, were preſent and voting in them *as members and judges:* And Sir *Henry Spelman, Camden,* and other writers, prove the commons to be a part of the parliament in the time of the *Saxons,* but not by that name, or elected as conſiſting of knights, citizens and burgeſſes. *Pryn's Sovereign Pow. Parliament.*

As to the original of the preſent houſe of commons, our authors of antiquity vary very much; many are of opinion that the commons began not to be admitted as part of the parliament, upon the footing they are now, until the 49 *H.* 3. becauſe the firſt writ of ſummons of any knights, citizens and burgeſſes, is of no ancienter date than that time. But the great charter in the 17th year of King *John,* (about which time the diſtinction of *Barones Majores* and *Minores* is ſuppoſed to begin) was made *per Regem, Barones &* LIBEROS HOMINES TOTIUS REGNI.

Mr. *Selden* ſays, that the borough of St. *Albans* claimed by preſcription in the parliament, 8 *Ed.* 2. to ſend two burgeſſes to all parliaments, as in the reigns of *Edw.* 1. and his progenitors, which muſt be the time of King *John;* and ſo before the reign of King *Hen.* 3. And in the reign of *Hen.* 5. it was declared and admitted, that the commons of the land were ever a part of the parliament. *Selden's Tit. Hon.* 709. *Polydore Virgil, Hollinſhead, Speed,* and others mention, that the commons were *firſt ſummoned* at a parliament held at *Saliſbury,* 16 Hen. 1. Sir *Walter Raleigh,* in his treatiſe of the *Prerogative of Parliaments,* thinks it was *Anno* 18 *H.* 1. And Dr. **Heylin** finds another beginning for them, *viz.* in the reign of King *Hen.* 2.

Thus much ſor the original of our parliament; which is the higheſt and moſt honourable, and abſolute court of juſtice in *England*; conſiſting of the King, the lords of parliament, and the commons; and again, the lords are divided into ſpiritual, and temporal; and the commons divided into knights of ſhires or counties, citizens out of cities, and burgeſſes from boroughs; the words of the old *Latin* writ to the ſheriff for the election, being *Duos milites gladiis cinctos magis idoneos & diſcretos comitatus tui, & de qualibet civitate comitatus tui duos cives, & de quolibet burgo duos burgenſes, de diſcretioribus & magis ſufficientibus, &c.* Inſt. 109.

2. *The juriſdiction of parliament.*

The juriſdiction of this court is ſo tranſcendent, that it *makes, enlarges, abrogates, repeals,* and *revives* laws and ſtatutes, concerning matters eccleſiaſtical, civil, criminal, martial, maritime, *&c.* And for making of laws and in proceeding by bill, this ſupreme court is not confined either for cauſes, or perſons within any bounds; nor is it tied down to any certain rules or forms of law, in proceedings and determinations: The court of parliament hath power to judge in matters of law; and redreſs grievances that happen, eſpecially ſuch as have no ordinary remedy; to examine into the corruption of magiſtrates, and illegal proceedings of other courts; to redreſs errors, and determine on petitions and appeals, *&c.* and FROM THIS HIGH COURT THERE LIES NO APPEAL. *Ibid.*

Affairs of parliament are to be determined by the parliament; tho' the parliament err, it is not reverſible: And not only what is done in the houſe of commons, but what relates to the commons during the parliament, and ſitting the parliament, is no where elſe to be puniſhed but by themſelves, or a ſucceeding parliament.

Every court of juſtice having laws and cuſtoms for its direction, the high court of parliament hath its own proper laws and cuſtoms, called the *Laws and Cuſtoms of Parliament*; inſomuch that no judge ought to give any opinion of matters done in parliament, becauſe *they are not to be decided by the Common law*: But the parliament, in their judicial capacity, are governed by the Common and Statute laws, as well as the courts in *Weſtminſter Hall.* 4 *Inſt.* 14, 15. *State Trials, Vol.* 2. 735. The lords and commons in their reſpective houſes have power of judicature, and ſo have both houſes together: And in former times both lords and commons ſat together in one houſe of parliament. 4 *Inſt.* 23.

3. *The ſpeaker.*

The lords have one who preſides as ſpeaker in common affairs, uſually the *Lord Chancellor*; and the commons have their ſpeaker, choſen by the houſe, but *to be approved by the King*: The commons anciently had no continual ſpeaker, but after conſultation, their manner of proceedings was to agree upon ſome perſon of great abilities, to deliver their reſolutions: In the reign of *William Rufus*, at a great parliament held at *Rockingham*, a certain knight came forth, and ſtood before the people, and *ſpake in the name and behalf of them all*, who was undoubtedly the ſpeaker of the houſe of commons at that time: But the firſt ſpeaker certainly known was *Peter de Montford*, 44 *H.* 3. when the lords and commons ſat in ſeveral houſes, or at leaſt gave their aſſents ſeverally. *Lex Conſtitution.* 162. Sir *Richard Walgrave*, 5 *R.* 2. was the firſt ſpeaker who made any formal apology for inability, as now practiſed: *Richard Rich*, Eſq; 28 *H.* 8. was the firſt ſpeaker who is recorded to have made requeſt for acceſs to the King. *Thomas Moyle*, Eſq; 34 *H.* 8. is ſaid to be the firſt ſpeaker who petitioned for freedom of ſpeech; and Sir *Thomas Gargrave*, 1 *Eliz.* was the firſt who made the requeſt for privilege from arreſts, *&c.* Sir *John Buſhy*, 17 *R.* 2. was the firſt ſpeaker preſented to the King in full parliament by the commons: And when Sir *Arnold Savage* was ſpeaker, 2 *Hen.* 4. it was the firſt time that the commons were required by the King to chuſe a ſpeaker. *Ibid.* 163, *&c.*

4. *The judicial power of parliament.*

The King cannot take notice of any thing ſaid to be done in the houſe of commons but by the report of the houſe; and every member of the houſe of parliament has *a judicial place*, and cannot be a witneſs. 4 *Inſt.* 15. When *Charles* 1. being in the houſe of commons, and ſitting in the ſpeaker's chair, aſked the then ſpeaker, whether certain members, whom the King named, were preſent? The ſpeaker, from a preſence of mind which aroſe from the genius of that houſe, readily anſwered, That "*he had neither eyes to ſee, nor tongue to ſpeak, but as the houſe was pleaſed to direct him.*" Atkin's Juriſd. and Antiquity of the Houſe of Commons. *Hen.* 8. having commanded Sir *Thomas Gaudy*, (one of the judges of the *King Bench*,) to attend the chief juſtices and know their opinion, whether a man might be attainted of high treaſon by *parliament*, and never called to anſwer; the judges declared it was a dangerous queſtion, and that the high court of *parliament* ought to give examples to inferior courts, for proceeding according to juſtice, and no inferior court could do the like. *Lex Conſtitution.* 161. The houſe of lords is a diſtinct court from the commons, to ſeveral purpoſes, and is the ſovereign court of juſtice, and dernier reſort: They try criminal cauſes on impeachments of the commons; and have an original juriſdiction for the trial of peers upon indictments found by a grand jury: They alſo try cauſes upon appeals from the court of *Chancery*, or upon writs of error to reverſe judgments in *B. R. &c.* And ALL THEIR DECREES ARE AS JUDGMENTS; and judgments given in *parliament* may be executed by the Lord Chancellor. 4 *Inſt.* 21. *Finch* 233. 1 *Lev.* 165. It is ſaid that the judicial power of *Parliament* is in the lords; but that *the houſe of lords hath no juriſdiction over* ORIGINAL CAUSES, *which would deprive the ſubject of the benefit of appeal.* 2 Salk. 510. Alſo the houſe of commons is a diſtinct court to many purpoſes; they examine the right of elections, expel their own members, and commit them to priſon, and ſometimes other perſons, *&c.* And *the book of the clerk of the houſe of commons is a record.* 2 Inſt. 536. 4 Inſt. 23. The commons coming from all parts are the grand inqueſt of the realm; to preſent public grievances and delinquents to the King and lords to be puniſhed by them: And any member of the houſe of commons, has the privilege of impeaching the higheſt lord in the kingdom. *Wood's Inſt.* 455.

5. *The proper province of the houſe of commons,* &c.

As the houſe of lords ſeems to be politically conſtituted for the ſupport of the rights of the crown; ſo the proper province of the houſe of commons, is to ſtand for the preſervation of the people's liberties. The commons, in making and repealing laws, have equal power with the lords; and for laying taxes on the ſubject, the bill is to begin in the houſe of commons, becauſe from thence the greateſt part of the money ariſes, they repreſenting the whole commons of *England*; for which reaſon they will not permit any alteration to be made by the lords in a bill concerning money: And as formerly the laying and levying of new taxes have cauſed rebellions and commotions, this has occaſioned, particularly 9 *E.* 3. when a motion has been made for a ſubſidy of a new kind, that the commons have deſired a conference with thoſe of their ſeveral counties and places, whom they have repreſented, before they have treated of any ſuch matters. 4 *Inſt.* 34.

There are no places of precedency in the houſe of commons as there are in the houſe of lords; only the ſpeaker has a chair or ſeat, fixed towards the upper end, in the middle of the houſe; and the clerk, with his aſſiſtant, ſits near him at the table, juſt below the chair: The members of the houſe of commons never had any robes, as the lords ever had, except the ſpeaker and clerks, who in the houſe wear gowns, as profeſſors of the law do during term time. If a lord be abſent from the houſe, he may make another lord his proxy; tho' a member of the houſe of commons cannot make a proxy, for he himſelf is only a repreſentative or deputy. *Wood's Inſt.* 456. No knight, citizen or burgeſs of the houſe of commons, ſhall depart from the *parliament* without leave of the ſpeaker and commons aſſembled; and the ſame is to be entered in the book of the clerk of the *parliament.* Stat. 6 *Hen.* 8. *c.* 16. And in the 1 & 2 *P.* & *M.* Informations were preferred by the attorney general againſt thirty-nine of the houſe of commons, *for departing without licence,* whereof ſix ſubmitted to fines; but it is uncertain whether any of them were paid.

Calling the houſe is to diſcover what members are abſent, without leave of the houſe, or juſt cauſe; in which caſes fines have been impoſed: On the calling over, ſuch of the members as are preſent, are marked; and the defaulters being called over again the ſame day, or the day after, and not appearing, are ſummoned, or ſent for by the ſerjeant at arms. *Lex Conſtitution* 159.

Forty members are requiſite to make a houſe of commons for diſpatch of buſineſs; and the buſineſs of the houſe is to be kept ſecret among themſelves: In the 23d year of Queen *Elizabeth, Arthur Hall,* Eſq; member of parliament, for publiſhing the conferences of the houſe, and writing a book which contained matters of reproach againſt ſome particular members, derogatory to the general authority, power, and ſtate of the houſe, and prejudicial to the validity of the proceedings, was adjudged by the commons to be committed to the *Tower* for ſix months, fined 500*l.* and expelled the houſe. But the ſpeaker of the houſe of commons, according to the duty of his office, *as ſervant to the houſe,* may publiſh ſuch proceedings as he ſhall be ordered by the commons aſſembled; and he cannot be liable for what he does that way by the command of others, unleſs thoſe other perſons are liable.

If any member of either houſe ſpeak words of offence in a debate, after the debate is over he is called to the bar, where commonly on his knees he receives a reprimand from the ſpeaker; and if the offence be great, he is ſent to the *Tower.* When the bill of attainder of the earl of *Strafford,* was paſſing the houſe of commons, Mr. *Taylor,* a member of that houſe oppoſed it with great violence and indecency, and being heard to explain himſelf, was commanded to withdraw; whereupon it was reſolved he ſhould be expelled the houſe, be made incapable of ever ſerving as a member of *parliament,* and ſhould be committed priſoner to the *Tower,* there to remain during the pleaſure of the houſe: And he was called to the bar, where he kneeled down, and Mr. Speaker pronounced the ſentence accordingly. And Sir *John Elliot, Denzil Hollis,* and another perſon having ſpoken theſe words, *viz. The King's Privy Council, his judges and his counſel learned in the law, have conſpired to trample under their feet the liberties of the ſubject, and of this houſe,* an information was filed againſt them by the Attorney General; and farther, for that the King having ſignified his pleaſure to the houſe of commons for the *adjournment of the parliament,* and the ſpeaker endeavouring to get out of the chair, they *violenter,* &c. detained him in the chair, upon which there was a great tumult in the houſe, to the terror of the commons there aſſembled, and againſt their allegiance, in contempt of the King, his crown and dignity: The defendants pleaded to the juriſdiction of the court; and refuſed to anſwer but in *parliament*; but it was adjudged, that they ought to anſwer, *the charge being for a conſpiracy,* and ſeditious acts to prevent the adjournment of the *parliament,* which may be examined out of it; and not anſwering, judgment was given againſt them, that Sir *John Elliot* ſhould be committed to the *Tower,* and fined 2000*l.* and the other two were fined and impriſoned. *Cro. Car.* 130.

6. *The Privilege of members,* &c.

Members of *parliament* are not only privileged from arreſts, but likewiſe in an extraordinary manner from aſſaults, menaces, &c. Sir *Robert Brandling* made an aſſault upon Mr. *Witherington,* a member of the houſe of commons, in the country before his coming up to *parliament,* and Sir *Robert* was ſent for by the houſe, and committed to the *Tower.* And *Anno* 19 *Jac.* 1. ſome ſpeeches paſſed privately in the houſe between two of the members, and one of them going down the *parliament* ſtairs, ſtruck the other, who catching at a ſword in his man's hand, endeavouring to return the ſtroke; on complaint to the houſe of commons they were both ordered to attend, where he who gave the blow was committed to the *Tower* during the pleaſure of the houſe.

Aſſaulting a member *coming to or attending in parliament,* the offender ſhall pay double damages, and make fine and ranſom, &c. By ſtat. 11 *H.* 6. *c.* 11.

All members of *parliament,* that they may attend the public ſervice of their country, have privilege of *parliament* for themſelves and their menial ſervants, to be free from arreſts, &c. and for their goods to be free from diſtreſſes: And this privilege of *parliament* generally holds in all caſes *except in treaſon, felony, and breach of the peace.* 4 Inſt. 24, 25.

The law and privilege of *parliament* is part of the law of the land; and a member cannot be arreſted, except in caſes of *treaſon, felony, and* ACTUAL *breach of the peace.* Wilſ. par. 2. 159.

There are many remarkable caſes in our books treating of the privileges of *parliament,* relating to arreſts of members of the houſe of commons, and their ſervants, and the manner of their confinement, releaſement, &c. The firſt year of King *Jac.* Sir *Thomas Shirley,* a member of *parliament,* was arreſted four days before the ſitting of the *parliament,* and carried priſoner to the *Fleet;* on which a warrant iſſued to the clerk of the crown for a *habeas corpus* to bring him to the houſe, and the ſerjeant was ſent for in cuſtody, who being brought to the bar, and confeſſing his fault, was excuſed for that time: But on hearing counſel at the bar for Sir *Thomas Shirley,* and the warden of the *Fleet,* and upon producing precedent, *Simpſon* the proſecutor, who cauſed the arreſt to be made, was ordered to be committed to the *Tower;* and afterwards the warden refuſing to execute the writ of *habeas corpus,* and the delivery of Sir *Thomas* being denied, was likewiſe committed to the *Tower;* tho' on his agreeing to deliver up Sir *Thomas,* upon a new warrant for a new writ of *habeas corpus,* and making ſubmiſſion to the houſe, he was diſcharged: This affair taking up ſome time, the houſe entered into ſeveral debates touching their privilege, and how the debt of the party might be ſatisfied, which produced three queſtions; Firſt, *Whether Sir Thomas Shirley ſhould have privilege?* Secondly, *Whether preſently, or to be deferred?* And, Thirdly, *Whether the houſe ſhould petition the King for ſome courſe for ſecuring the debt of the party, according to former precedents, and ſaving harmleſs the warden of the Fleet?* All which queſtions were reſolved; and a bill was brought in to ſecure *Simpſon*'s debt, &c. which alſo occaſioned an act 1 *Jac.* 1. *c.* 13. for relief of plaintiffs in writs of execution, where the defendants in ſuch writs are arreſted, and ſet at liberty by privilege of parliament, by which a freſh proſecution and new execution may be had againſt them when that privilege ceaſes. *Lex Conſtitution.* 141. And 19 *Jac.* 1. one *Johnſon,* a ſervant to Sir *James Whitlock* a member of the houſe of commons, was arreſted by two bailiffs, who being told Sir *James Whitlock* was a *parliament* man, anſwered, that they had known greater men's ſervants than his taken from their maſters in time of *parliament:* And this appearing, the two bailiffs were ſentenced to aſk pardon of the houſe and Sir *James Whitlock,* on their knees; that they ſhould both ride on one horſe bare backed, back to back, from *Weſtminſter* to the *Exchange,* with papers on their breaſts ſignifying their offence; all which was to be executed preſently, *Sedente Curia.* Ibid. Let it be remembered, that it was in the reign of *James* the Firſt.

In action of debt on a bond, conditioned that *B. B.* ſhould render himſelf at ſuch a day and place to an arreſt; defendant pleaded, that by privilege of *parliament,* the members, &c. and their ſervants ought not to be arreſted by the ſpace of forty days before the ſitting of the *parliament,* nor during the ſeſſion, nor forty days afterwards; and that *B. B.* was at that time ſervant to ſuch a member of *parliament,* ſo as he could not render himſelf to be arreſted: Upon demurrer to this plea, it was adjudged ill, becauſe he might have rendered himſelf at the time and place; but then it would be at their peril if he was arreſted. 1 *Brownl.* 81.

The commons in parliament claim privilege for forty days before and after each ſeſſions and prorogation. 2 *Lev.* 72. Tho' 12 *W.* 3. *c.* 3. ordains, That actions may be proſecuted againſt perſons intitled to privilege of parliament, after a diſſolution or prorogation, until a new parliament is called, or the ſame is reaſſembled: and after adjournment for above fourteen days, the reſpective courts may proceed to judgment, *&c.* Proceedings are to be by ſummons and diſtreſs *infinite, &c.* until the parties ſhall enter a common appearance; and the real or perſonal eſtates of the defendants may be ſequeſtered for default of appearance; *but the plaintiff may not arreſt their bodies:* and where any plaintiff ſhall be ſtayed or prevented from proceeding by privilege of Parliament, he ſhall not be barred by any ſtatute of limitation, or nonſuited, diſmiſſed, or his ſuit diſcontinued for want of proſecution; but at the riſing of the Parliament ſhall be at liberty to proceed to judgment and execution. This act is by 10 *Geo.* 3. *c* 50. extended to *Scotland.*

And by 2 *Ann. c.* 8. Actions may be proſecuted againſt officers of the revenue, or in any place of public truſt, for any forfeiture or breach of truſt, *&c.* and ſhall not be ſtayed by colour of privilege; but ſuch officer being a Member of Parliament, is not ſubject to arreſt during time of privilege, but ſummons, attachment, *&c.*

By the 11 *Geo.* 2. *cap.* 24. Any perſon may proſecute a ſuit in any court of record, *&c.* in *Great Britain* or *Ireland*, againſt any Peer, or Member of the Houſe of Commons, or other perſon intitled to privilege, in *the intervals of Parliaments*, or of Seſſions, if above fourteen days; and the ſaid courts, after diſſolutions or prorogations, are to give judgment, and award execution: and no proceedings in law againſt the King's immediate debtor, as ſuch, *&c.* to be delayed under colour of ſuch privilege; only the perſon of a Member of Parliament, *&c.* ſhall not be arreſted or impriſoned.

By *Stat.* 10 *Geo.* 3. *c.* 50. Suits may at any time be proſecuted in courts of record, equity, or admiralty, and courts having cogniſance of cauſes matrimonial, and teſtamentary, againſt peers and members of the houſe of commons, and their ſervants, *&c.*——But the perſons of members of the houſe of commons, are not to be arreſted or impriſoned.——Proceſs by *diſtringas* being found dilatory, the court out of which the writ proceeds, may order the iſſues to be ſold, and the money ariſing thereby, to be applied to pay the coſts to the plaintiff, and the ſurplus to be retained till the appearance of the defendant, *&c.*—When the purpoſe of the writ is anſwered the iſſues are to be returned; or, if ſold, the money remaining is to be repaid.—Obedience to the rule of the court of King's Bench, Common Pleas, or Exchequer may be enforced by diſtreſs infinite.

A defendant who was a Member of Parliament, brought a letter from the Speaker to the court of *King's Bench* to ſtay proceedings; but the court would not allow it, but told him he might bring his writ of privilege. *Latch.* 150. Judgment was had againſt the defendant, and afterwards he was choſen a Member of Parliament, and after his election he was taken in execution, yet he had his privilege; tho' the book tells us *minus juſte.* Moor 57. And where judgment being had againſt a defendant, and he was taken in execution in the morning, and about three hours afterwards was choſen a Member of Parliament; the Houſe agreed, that being arreſted before he was choſen, *&c.* he ſhall not have his privilege. *Moor* 340. 1 *Nelſ. Abr.* 27.

The courts at *Weſtminſter* may judge of the privilege of Parliament, where it is incident to a ſuit the court is poſſeſſed of: and courts may proceed to execution between the ſeſſions of Parliament, notwithſtanding appeals lodged, *&c. State Trials,* 2 *V. pag.* 66, 209.

Of elections, and herein,

1. *Of the elected, and who are eligible, and who are not, and of their qualifications.*
2. *Of the electors, and their qualifications,*
3. *Of the duty of returning officers, and the remedies againſt them.*

1. *Of the elected, and who are eligible, and who not, and of their qualifications.*

The Parliament is called by virtue of the King's writ of ſummons out of Chancery, at leaſt forty days before the Parliament begins: the Commons are elected by the people; and every Member, tho' choſen for one particular place, ſerves for the whole kingdom. As attendance of this nature is for the ſervice of the public, the whole nation has ſuch an intereſt therein that the King cannot grant an exemption to any perſon from being elected as a Knight, Citizen, or Burgeſs in Parliament; and for that elections ought to be free. 29 *Hen.* 6. But an alien cannot be elected, for he is not a liege ſubject; tho' if an alien were naturalized, he was eligible till the *Stat.* 12 *W.* 3 *cap.* 2. A man attainted of treaſon or felony, or outlawed, *&c.* is not eligible; nor ſhall ſuch perſons be ſuffered to ſit in the houſe of Parliament. 4 *Inſt.* 48. A perſon under the age of twenty-one years, may not be elected to ſit in Parliament; neither can any Lord ſit there, until he be of the full age of twenty-one years. *Ibid.* It was formerly held that Mayors and Bailiffs of towns corporate were not eligible; but now they may be elected. And ſo may a ſheriff of a county, for another ſhire. None of the Judges, or Barons of the Exchequer, who have judicial places, can be choſen Knight, Citizen, or Burgeſs of Parliament, as it is now holden, becauſe they are aſſiſtants in the Houſe of Lords: yet *Thorpe,* Baron of the Exchequer, was Speaker of the Houſe of Commons. Perſons who have judicial places in the other courts, Eccleſiaſtical or Civil, are eligible. 4 *Inſt.* 47. Clergymen are not eligible, they being of another body, *viz.* the Convocation. *Ibid.* Any of the profeſſion of the law, and who are in practice, are eligible; but *Anno* 6 *H.* 4. a Parliament was ſummoned by writ, and by colour of a certain ordinance, it was forbidden that any lawyer ſhould be choſen; by reaſon whereof Lord *Coke* obſerves this Parliament was fruitleſs: and the prohibitory clauſe inſerted in the writ was againſt law; for *lawyers are eligible of common right,* and cannot be diſabled by ordinance without act of Parliament.

By 12 *W.* 3. *c.* 2. No perſon who had any office or place of profit under the King, or penſion from the crown, was to ſerve as a member of the Houſe of Commons. And by 6 *Ann c.* 7. No member of Parliament may enjoy any office in the government, and ſit in the houſe at the ſame time by virtue of his former election; for *by acceptance of an office his election is void:* but he may be elected again, on a new writ iſſued out, and ſit in the houſe; and officers in the army or navy, receiving any new commiſſion, need not be re-elected. When perſons are incapable of being elected, the election ſhall be void; and ſitting or voting in the Houſe of Commons they ſhall forfeit 500*l.* And the ſtatute 1 *Geo.* 1. *c.* 56. enacts, That no man having any penſion from the crown, either in his own name or in truſt for him, ſhall be elected a member of Parliament; and penſioners preſuming to ſit and vote, ſhall forfeit 20*l.* for every day, *&c.* The act mentions only a penſion for any term or number of years; and not a penſion during pleaſure, according to the 4 *Ann. c.* 8.

It is now enacted, That no perſon who ſhall be a Commiſſioner of the Treaſury, Chancellor of the Exchequer, Commiſſioner of the Admiralty, Paymaſter of the Army, Secretary of State, *&c.* ſhall be capable of being a member in any Parliament. 15 *Geo.* 2. *c.* 22. But this ſtatute does not exclude the Secretaries of the Treaſury, or thoſe of other offices; or any other perſon having an office for life. *Ibid.*

By ancient ſtatutes, Knights of the Shire are to be reſident in the county, for which they are choſen; ſo Citizens and Burgeſſes elected ſhall be reſident in, and free of the ſame cities and boroughs, the day of the date of the writ of ſummons, and they are to be notable Knights of the ſame county, *&c.* notable Eſquires or Gentlemen: alſo by a late act, no perſon ſhall be qualified to ſerve in Parliament as a Knight of the Shire, who hath not an eſtate of freehold or copyhold for life, or ſome greater eſtate to his own uſe, of 600*l.* a year, above all incumbrances; and a Citizen and Burgeſs 300*l. per annum,* of which oath is to be made at the requeſt of a candidate, or two perſons having a right to vote; and if any perſon be elected and returned not ſo qualified, the return ſhall be void. 9 *Ann. cap.* 5. And none ſhall be qualified by virtue of any mortgage, whereof the equity of redemption is in another; unleſs the mortgagee ſhall have been in poſſeſſion ſeven years before the election.

Though the eldeſt ſon of a Peer, or of any perſon qualified to ſerve as a Knight of the Shire, ſhall not be incapable of being elected. *Stat. ibid.*

Members of Parliament muſt take the oaths to the Government before they ſit and vote in the Houſe; or ſhall be adjudged Popiſh Recuſants, and be diſabled to ſit in Parliament, and liable to certain forfeitures, &c. *Stat.* 5 *Eliz. cap.* 1. 30 *Car.* 2. *c.* 1. And this ſtatute was confirmed and inforced by the 13 & 14 *W.* 3. *c.* 6.

2. *Of the electors and their qualifications.*

The election of Knights of the Shire is to be made by the majority of people dwelling in the counties, having each of them lands or tenements to the yearly value of 40*s.* beſides repriſes; and he who cannot expend 40*s.* *per ann.* ſhall have no vote in the election of Knights for the Parliament. 8 *H.* 6. *c.* 7. And by the 10 *H.* 6. *c.* 2. an elector of Knights of the Shire muſt be reſident, and have 40*s.* *per annum* freehold over and above repriſes in the ſame county. The 7 & 8 *W.* 3. *c.* 25. requires, that every freeholder ſhall take an oath that he is a freeholder of the county, and has freehold lands or hereditaments of the yearly value of 40*s.* lying at ſuch a place, within the ſaid county, and that he hath not before polled at the election; no perſon is to be admitted to vote in any election of a member to ſerve in Parliament, who is under the age of twenty-one, or be intitled to any vote by reaſon of any truſt or mortgage; if the truſtee or mortgagee be not in actual poſſeſſion, and receive the rents and profits of the eſtate: but the mortgagor or *ceſtui que truſt* in poſſeſſion, *ſhall* and *may vote* for the ſame eſtate: and all conveyances of lands, tenements, &c. in order to multiply votes, or ſplit and divide the intereſt in any houſes or lands, among ſeveral perſons, to enable them to vote, ſhall be void and of none effect.

By 10 *Ann. c.* 22. None ſhall have a voice for electing Knights of the Shire in right of any lands, who has not been charged or aſſeſſed to the public taxes, church rates and pariſh duties, in ſuch proportion as other lands and tenements of 40*s. per annum,* lying within the ſame pariſh; and for which he ſhall not have received the rents and profits, or be intitled to have received the ſame to the full value of 40*s.* or more, to his own uſe for *one year, before the election*; except ſuch lands or tenements come by deſcent, deviſe, preſentation to ſome church, or promotion to an office, to which a freehold is annexed; and perſons voting contrary ſhall forfeit 40*l.* This extends not to reſtrain perſons from voting for Knights of the Shire, in reſpect of any tithes, or other incorporeal inheritances, or meſſuages, &c. belonging to offices, by reaſon the ſame have not been uſually aſſeſſed to any public taxes; or in regard to lands not taxed to all taxes, if they have been generally aſſeſſed to ſome one or more of the ſaid rates, &c. by 12 *Ann. c.* 5.

All eſtates and conveyances made to any perſon in a fraudulent manner, on purpoſe to qualify him to vote, ſubject to conditions to defeat or determine ſuch eſtate or re-convey the ſame, ſhall be taken againſt the perſons executing them as free and abſolute; and all bonds, &c. for redemption ſhall be void; alſo perſons voting by colour of ſuch conveyance, incur a forfeiture of 40*l.*

The ſtatutes for preventing fraudulent conveyances to multiply votes on electing Knights of Shires, are made to extend to lands or tenements, for which any perſons ſhall vote for the election of Members to ſerve in Parliament for any city or town, that is a county of itſelf; and if any perſon votes at ſuch election as a freeholder, not having his eſtate a year before, and aſſeſſed as deſcribed in the act 10 *Ann. c.* 22. he is liable to the penalties impoſed on unqualified voters. 13 *Geo.* 2. *c.* 20. Perſons refuſing to take the oaths of abjuration, &c. are made incapable to vote for Members of Parliament. 1 *Geo.* 1. *c.* 13.

By 18 *Geo.* 2. *c.* 18. No perſon ſhall vote for the electing a Knight of the Shire in *England* and *Wales,* in reſpect or right of any meſſuage, &c. which has not been charged or aſſeſſed to the land tax twelve kalendar months next before the election. But not to reſtrain any perſon from voting in right of any rents or chambers in the inns of courts, &c. or any meſſuages or ſeats belonging to any offices, in regard they have not been uſually aſſeſſed to the land tax. No perſon ſhall vote at any ſuch election without having a freehold in the ſame county, of the *clear yearly value* of 40*s.* above all charges, or without having been in the actual poſſeſſion or receipt of the profits above twelve kalendar months, unleſs the ſame come to him within the time aforeſaid, by deſcent, marriage, marriage ſettlement, deviſe or promotion to any benefice or office; or ſhall vote in right of any freehold granted to him fraudulently, or vote more than once at the ſame election, under the penalty of 40*l.* No public tax, rate or aſſeſſment, ſhall be deemed a charge on any freehold.

As to who are, or ought, to be the electors in boroughs, it hath very much exerciſed the *Britiſh* Houſe of Commons: in the 22 *Jac.* 1. it was reſolved, that where there is *no* charter or cuſtom to the contrary, the election in boroughs is to be made by *all the houſholders* and not freeholders *only:* and in a queſtion whether the commons or the capital burgeſſes of a certain borough in *Lincolnſhire,* were the electors of Members of Parliament, *anno* 4 *Car.* 1. it was agreed, that *the election of burgeſſes in all boroughs did of common right belong to the commoners, and that nothing could take it from them but a preſcription and conſtant uſage beyond the memory of man.* It has been holden, that the commonalties of cities and burghs are only the ordinary and lower ſort of citizens, burgeſſes or freemen; and that the right of election of burgeſſes to Parliament in all boroughs, belongs to the commoners, *viz.* the ordinary burgeſſes or freemen; and not the Mayor, Aldermen and Common Council: though the meaning of the words *communitates civitatum & burgorum,* has always ſignified, rightly underſtood, the Mayor, Aldermen and Common Council, where they were to be found; or the Steward or bailiff, and capital Burgeſſes, or the governing parts of cities and towns, by what perſons ſoever they were governed, or titles called.

The moſt extraordinary caſe which has happened in this age, with relation to the determinations of a committee of privileges and elections, was the caſe of *Aſhby* and *White,* concerning the borough of *Aileſbury*; on a queſtion, "Whether an action at law lies for an elector who is "denied his vote?"

In this caſe the debates ended in the following reſolutions, *viz.* That the qualification of electors and of perſons elected, is cognizable only before the Commons in Parliament; and that the examining and determining the qualification or right of any elector, &c. belongs to them, where the acts of Parliament give no particular direction; that whoever ſhall proſecute any action, &c. which ſhall bring the right of electors to the determination of any other juriſdiction than that of the Houſe of Commons, except in caſes ſpecially provided for by ſome ſtatute, ſhall be guilty of a breach of the privilege of the Houſe. Several perſons were committed to *Newgate* by a warrant ſigned by *Robert Harley,* Speaker of the Houſe of Commons, for proſecuting actions at law againſt the conſtables of the borough of *Aileſbury,* who refuſed to take their votes at the election of Members of Parliament, &c. in contempt of the juriſdiction and privileges of the Houſe; and this matter being returned by *habeas corpus* ſeverally, and the ſeveral perſons defendants brought into court, counſel moved that they might be diſcharged, for that the proſecution of a ſuit at law could be no unlawful act, nor a breach of the privilege of the Houſe of Commons: three judges were of opinion, that the Houſe were the proper judges of their own privileges; but *Holt Chief Juſtice* held, That THE AUTHORITY OF THE COMMONS WAS CIRCUMSCRIBED BY LAW; and if they ſhould exceed that authority, then *to ſay they were judges of their own privilege, is to make their privilege to be what they would have them to be*; and that if they ſhould wrongfully impriſon, there could be no redreſs, ſo that the courts at *Weſtminſter* could not execute the laws upon which the liberties of the ſubject ſubſiſt. 2 *Salk.* 503.

And in action on the caſe, by a burgeſs of *Aileſbury,* againſt the conſtables of the ſaid borough, for refuſing to receive the plaintiff's vote in the election of a Member of Parliament; the plaintiff had a verdict, but the judgment was arreſted by the opinion of three judges, *viz.* That the action is not maintainable, becauſe the con-

ſtable

ſtables acted as judges, and the not receiving the plaintiff's vote is *damnum ſine injuria*; for when the matter comes before the Houſe, his vote will be received; that the right of electing Members to ſerve in Parliament, is to be decided in Parliament, and the plaintiff may petition the Houſe for that purpoſe, and after it is determined there, he may then bring his action and not before. *Holt Chief Juſtice contra*, That the plaintiff had a right to vote; a freeholder has a right to vote by reaſon of his freehold; and IT IS A REAL RIGHT, and the value of his freehold was not material till the *Stat.* 8 *H.* 6. which requires it to be 40 *s. per annum*: that as it is *ratione liberi tenementi* in counties; ſo in ancient boroughs, they have a right to vote *ratione burgagii*; and in cities and corporations, it is *ratione francheſiæ*, and a perſonal inheritance, *veſted in the whole corporation, but to be uſed by the* PARTICULAR *Members*; that this is a noble privilege, which *entitles the ſubject to a ſhare in the government and legiſlature*; and that if the plaintiff hath a right, he muſt have a remedy to aſſert that right, for *want of right and want of remedy is the ſame thing*; that refuſing to take the plaintiff's vote is an *injury*, and *every injury imports a damage*; and that where a parliamentary matter comes in incidentally to an action of property in the King's court, it muſt be determined there, and not in Parliament; the Parliament cannot judge of the injury, nor give damages to the plaintiff, and he hath no remedy by way of petition: and, according to this opinion, the judgment of the other three judges was reverſed upon a writ of error brought in the Houſe of Lords. 1 *Salk.* 10. This caſe occaſioned great diſputes between the two Houſes of Parliament; the Lords inſiſting, That if the Commons only could judge of the right of their electors, they would in effect chooſe their electors, *&c.* And the Commons alledging, that if the right of electors might be determined in the courts of law, from whence cauſes are removed by writ of error into the Houſe of Lords, the Lords would become judges of the right of electors to chooſe, and conſequently who were duly elected Members of the Commons Houſe; whereby the Commons would loſe their independency, and be ſubject to the Lords, *&c.* But the Parliament being ſoon after prorogued, the diſpute was dropped. See the caſe of *Aſhby* and *White*, which is excellently reported, as well in 6 *Mod.* 45 *to* 56 *incluſive*, as in *Ld. Raym.* from *fol.* 938 to 958 incluſive. And ſee alſo *Lord Holt's Life*.

The caſe of *Aſhby* and *White* is printed by itſelf in a ſmall volume.

By the Common law of *England*, No Commoner can be ſubjected to laws made without his conſent; and becauſe ſuch conſent cannot be given by every individual, by reaſon of number and confuſion; that power is lodged in their Repreſentatives, elected and choſen by them, *viz.* Knights, Citizens, *&c.* 3 *Salk.* 18. And in ſeveral counties, the Citizens and Burgeſſes were formerly choſen in the county-courts, with the Knights of Shires, and jointly returned, *&c.* For there were commonly four or five Citizens or Burgeſſes ſent from the reſpective cities or boroughs to the county-court; and there choſen, with full power for themſelves and their ſeveral communities, to do and conſent to ſuch things, as by the Common Council of the Kingdom aſſembled in Parliament, ſhould be ordained and enacted.

It is ſaid by ſome writers, that in ancient times the King hath nominated the very perſons to be returned, and did not leave it to the election of the people; for which they give an inſtance in the 45th year of *Ed.* 3. And among the Parliament writs 14 *Eliz.* there appears to be an appointment and return of Burgeſſes, by the Lord of a Town, *&c.* But theſe are ſingle inſtances in their kind; and the writs for elections in the 23d year of King *Ed.* 1. ran in *Engliſh* as follows, *viz.*

Form *of an ancient* writ *for* election of Members of Parliament.

T*O the ſheriff of*, &c. *greeting: Becauſe we deſire to have a conference and treaty with the Earls, Barons and other great men of our kingdom, to provide remedies againſt the dangers our kingdom is in at this time; therefore we have commanded them that they be with us at* Weſtminſter, *on the day*, &c. *next coming, to treat, ordain, and do, ſo as thoſe dangers may be prevented: and we command, and firmly enjoin thee, that, without delay, thou doeſt cauſe to be choſen, and to come to us, at the time and place aforeſaid, two Knights of the County aforeſaid, and of every city two Citizens, and of every borough two Burgeſſes, of the beſt, moſt able, and diſcreet men for buſineſs; ſo as the ſaid Knights may have ſufficient power for themſelves and the community of the County aforeſaid; and the Citizens and Burgeſſes may have the ſame power ſeparately from them, for themſelves and the communities of Cities and Burghs, then to do in the premiſſes what ſhall be ordained by the Common Council of the realm, ſo that the buſineſs aforeſaid may not remain undone; and have there the names of the Knights, Citizens and Burgeſſes, and this Writ. Witneſs the King*, &c.

The *Return of the Writ*, thereon indorſed was thus:

I A. B. *ſheriff, by virtue of this writ have cauſed to be choſen in the county of*, &c. *two Knights, and of every city of the ſame county two Citizens, and of every borough two burgeſſes, of the beſt, moſt able, and diſcreet Knights, Citizens and Burgeſſes of the county, city and burghs aforeſaid, according to the tenor of the writ.*

3. *Of the duty of Returning Officers, and the remedies againſt them.*

By 7 *H.* 4. *cap.* 15. The election of Knights of the Shire is to be made in the following manner:

At the next county-court after delivery of the writ, proclamation is to be made by the ſheriff of the county, of the day and place the Parliament is to aſſemble, and that all as are there preſent ſhall attend at the election of Knights of the Shire; and then, *in full county*, a free and indifferent election ſhall be made: and after ſuch choice the names of the parties choſen, are to be written on an indenture under the ſeals of the electors; which indenture ſo ſealed and tacked to the writ, ſhall be the ſheriff's return thereof. And by the 23 *H.* 6. *c.* 7. it is enacted, That the ſheriff after receipt of the writ ſhall deliver a precept under his ſeal to every Mayor and Bailiff of cities and boroughs within his county, *reciting the writ*, and requiring them to chooſe two Citizens and Burgeſſes to come to the Parliament; and ſuch Mayors and head officers, are to make return of the precept of the ſheriff, by indenture, *&c.* whereupon the ſheriff is enabled to make a good return of the writ: the ſheriff is to make election between the hours of eight and eleven in the forenoon; and if any Knight, Citizen, or Burgeſs, returned by the ſheriff ſhall be *put out*, and the name of another *put in*, divers penalties are incurred; ſheriffs acting contrary to this ſtatute, and not returning a Member *duly elected*, are ſubject to a forfeiture of 100 *l.* recoverable by action of debt; and officers of corporations, making falſe returns, liable to a penalty of 40 *l.* *&c.*

It has been adjudged on this act, That though no election ſhould be made of any Knight of the Shire, but between eight and eleven of the clock in the forenoon; if the election be begun within that time, and cannot be determined in thoſe hours, it may be made after. 4 *Inſt.* 48. And if any electors give their voices before the precept for election is read and publiſhed, it will be of no force; for after the precept is thus read, *&c.* they may alter their voices and make a new election. *Ibid.* 49.

The *Stat.* 7 *&* 8 *W.* 3. *cap.* 7. ordains, If any perſon ſhall return a Member to ſerve in Parliament for any place, contrary to the determination in the Houſe of Commons of the right of election for ſuch a place, the return ſo made ſhall be judged a falſe return; and the party making it may be proſecuted, and double damages, with coſts, recovered againſt him: officers *wilfully* and *falſly* returning more perſons than are required to be choſen by the writ or precept, the like remedy may be had againſt them; and all contracts, promiſes, *&c.* to return any Member of Parliament, are not only declared void, but the makers or givers of the contracts, *&c.* or of any gift or reward to procure a falſe or double return, ſhall forfeit 300 *l.* one third to the King, another to the informer, and the other third to the poor of the place, to be recovered in any Court of Record at *Weſtminſter*, &c.

By 7 *&* 8 *W.* 3. *cap.* 25. When any new Parliament ſhall be called, there ſhall be forty days between the *teſte* and returns of the writs; the Lord Chancellor, *&c.* is to iſſue out writs for election of Members of Parliament, with as much expedition as may be; and the ſeveral writs ſhall be delivered to the proper officers for execution, who are to indorſe the day of the receipt on the back of the writ, and forthwith make out the precepts to each borough, *&c.* which are to be delivered to the officers of every ſuch borough, within three days, and they muſt likewiſe indorſe the day of the receipt, and immediately cauſe public notice to be given of the time and place of election, and proceed to election thereupon in eight days: for electing Knights of the Shire, the ſheriff is to hold his county-court *at the moſt public and uſual place*, and there proceed in the election at the next court, unleſs it fall out to be within ſix days after the receipt of the writ, and then the ſame is to be adjourned, *giving ten days notice* of the election; if the election be not determined on view, but a *poll* is demanded, the ſheriff is to take the ſame, and likewiſe a *ſcrutiny*, and he or his under-ſheriff ſhall appoint and ſwear clerks for that purpoſe, *&c.* The county-court is not to be adjourned to any other place, *without conſent of the candidates*; nor ſhall any unneceſſary adjournments be made, but the poll to proceed; alſo every ſheriff, *&c.* is to deliver a copy of the poll to any perſon deſiring it; and officers for every wilful offence againſt this act, are ſubject to a forfeiture of 500 *l.* And by 6 *Geo.* 2. *cap.* 23. The county-court for electing Knights of the Shire in Parliament, may be adjourned from day to day, until the election is determined; but not to a *Monday*, or *Friday*, &c. only, which will be void.

The 10 *&* 11 *W.* 3. *c.* 7. directs, that the ſheriff or other officer having execution and return of writs of ſummons for *parliament*, ſhall on or before the day of meeting of *parliament*, and with all expedition, (not exceeding fourteen days after election) make returns to the clerk of the crown in *Chancery* to be filed, on pain of forfeiting 500 *l.* And the returning officer, within twenty days after the election, is to deliver over to the clerk of the peace, all the poll books on *oath* made before two juſtices, to be preſerved among the records of the ſeſſions of the peace, *&c.* 10 *Ann. cap.* 23.

In double returns, it has been formerly a general practice in the Houſe of Commons, that neither one nor the other ſhould ſit in the houſe until it be decided; *anno* 1640, two returns were made for *Great Marlow*, and in both indentures one perſon was returned, and he was admitted to ſit, but the others ordered to withdraw until the queſtion was determined: And in the ſame year, it was ordered, That where ſome are returned by the ſheriff or ſuch other officer as by law hath power to return, and others returned by private hands; in ſuch caſe, thoſe returned by the ſheriff or other officer, ſhall ſit until the election is quaſhed by the houſe. *Ordinan.* 1640. If one be duly elected, and the ſheriff, *&c.* return another, the return muſt be reformed and amended; and he who is *duly* elected is to be inſerted, for *the election is the foundation*, and not the return. 4 *Inſt.* 49.

In action on the caſe, the plaintiff declared, that he was duly elected a member of *parliament* for ſuch a borough, and that the defendant returned *two other perſons*; and that he petitioned the Houſe of Commons, and was adjudged to be duly elected, and his name ordered to be inſerted in the Roll, and the name of the other to be razed out: the plaintiff had a verdict; but it was adjudged in arreſt of judgment, that this declaration was not founded on the act 7 *&* 8 *W.* 3. *c.* 7. becauſe *that ſtatute gave an action where there was* NONE BEFORE, therefore the fact muſt be agreeable to it, which not being done, defendant had judgment. 2 *Salk.* 504. The court will not meddle in an action upon a double return, until it is determined in *parliament*, Lutw. 88. And it hath been holden, that for a double return, no action lay before the ſtatute 7 *&* 8 *W.* 3. *cap.* 7. becauſe it is the only method the ſheriff had to ſecure himſelf; and when the right was decided in *parliament*, then *one indenture was taken off the file*, ſo that it is not then a *double* return; neither can the party have an action for a falſe return, for the matter may be determined in the houſe whether true or falſe; and if ſo, there will be an inconvenience in contrary reſolutions, if they ſhould determine one way, and the courts at law another; but after a diſſolution the action may lie for a falſe return, for then the right cannot be determined in *parliament*. 2 Salk. 502.

A *double return* is the ſame as a *falſe return*, as to *action on the caſe*; in both it is grounded on the *falſity*; but there is another reaſon why this action will not lie for a double return, *(viz.)* becauſe *the law doth not take notice of ſuch a return*; it is only allowed by the uſage of *parliament*, and in caſes wherein the proper officer cannot determine who is choſen; therefore when he doubts, he makes a double return, and ſubmits the choice to the determination of the Houſe of Commons; and if that houſe admits ſuch returns, and make determinations on them, it will be hard for the law to ſubject a man to the action only for ſubmitting a fact to be determined by a court, which hath a proper juriſdiction to determine it: And by reaſon of the variety of opinions, that an action in this caſe would lie, and would not; it hath been enacted by 7 *&* 8 *W.* 3. *cap.* 7. That THE LAST DETERMINATION OF THE HOUSE OF COMMONS CONCERNING THE RIGHT OF ELECTION, IS TO BE PURSUED. 2 *Lev.* 114. 1 *Nelſ. Abr.* 30.

A member elected and returned for ſeveral places, is to make his choice for which place he will ſerve; and if he doth not, by the time which the houſe ſhall appoint, the houſe may determine for what place he ſhall continue a member, and writs ſhall go out for the other place.

Candidates are not to make preſents of money to, or treat, *&c.* electors, after the *teſte* of the writ of ſummons, or iſſuing out the writs of election, or after any place of a member becomes vacant; if they do, for THIS BRIBERY they ſhall be incapacitated to ſerve as members. 7 *W.* 3. *c.* 4. And no officers of the exciſe, poſt-office, *&c.* are to make any intereſt for members of *parliament*, on pain of forfeiting 100 *l.* and diſability, *&c.* 5 *&* 6 *W. & M. cap.* 20.

By a late act, an *oath* is to be taken by electors of members of *parliament*, That they have not received or had any money, gift, reward, office, place, or employment, or any promiſe for money, *&c.* to them or their uſe, to give their votes: and if they aſk, take, or contract for any money, or reward, by gift or other device, to give or refuſe their votes; or if any perſons by gift, *&c.* corruptly procure any one to give his vote; they ſhall forfeit 500 *l.* and be *diſabled to vote in* any election, and to hold any office, or franchiſe, *&c.* And officers admitting perſons to vote, without taking the aforeſaid oath, *if demanded*, incur a forfeiture of 100 *l.* Likewiſe an oath is to be adminiſtred to returning officers, that they have not received any money, *&c.* or promiſe for ſuch, for making any returns, *&c.* *Stat.* 2 *Geo.* 2. *c.* 24. Perſons are to be proſecuted *within two years*, after any offence againſt this laſt ſtatute, for preventing bribery and corruption in elections of perſons to ſerve in *parliament*, or ſhall not be liable to any incapacity or forfeiture, *&c.* by the 9 *Geo.* 2. *c.* 38. And when election ſhall be made, the ſecretary at war ſhall iſſue orders *for the removal of all ſoldiers* quartered in any city, town, or borough, where ſuch election ſhall be, one day at leaſt before, to the diſtance of *two* or *more* miles; and not to make a nearer approach, until after the poll taken, is ended, *&c.* But this not to extend to the liberty of *Weſtminſter*, *&c.* in reſpect of his Majeſty's guards; nor to fortified places, *&c.* *Stat.* 8 *Geo.* 2. *cap.* 30.

See 33 *Geo.* 2. *c.* 20. intitled, An act to enforce and render more effectual the laws relating to the qualification of members to ſit in the Houſe of Commons.

To regulate the trials of controverted elections, or returns of members to ſerve in parliament, ſee 10 *Geo.* 3. *c.* 16.

By 10 *Geo*. 3. *c*. 41. The Speaker of the Houſe of Commons, is impowered to iſſue his warrant to make out new writs for the choice of members, *during the receſs of parliament*.

N. B. By 10 *Geo*. 3. *c*. 6. *ſ*. 86. Members of parliament are to be taxed at their manſion-houſes.

Parliaments holden, and proceedings in.

All *parliaments* are to be held without force, 7 *Ed*. 1. Before the *Conqueſt*, *parliaments* were held twice every year: The 4 *Ed*. 3. enacted, That a *parliament* ſhould be holden *once a year*, and oftener if neceſſary; and the 36 *Ed*. 6. requires a *parliament* to be held *every year*. But by the means of Cardinal *Wolſey*, a *parliament* was held but once in fourteen years during the reign of *H*. 8, which was upon a remarkable occaſion, *viz*. to attaint the Duke of *Buckingham*. The *Stat*. 16 *Car*. 2. *cap*. 1. ordains, That the ſitting and holding of *parliaments* ſhall not be diſcontinued above three years. And the 6 *W*. & *M*. *cap*. 2. enacts, That new *parliaments* ſhall be choſen once in *three* years: and no *parliament* continue longer than *three* years. But by 1 *Geo*. 1. *c*. 38. The time of continuance of *parliament* is enlarged to *ſeven* years; to be computed from the day appointed for their meeting, by the writ of ſummons.

The occaſional law, 1 *W*. & *M*. *Seſſ*. 1. *cap*. 1. declared, That the Lords and Commons convened at *Weſtminſter*, were the two houſes of *parliament*, notwithſtanding the want of any writ of ſummons, or other defect of form, &c. Though 12 & 13 *Car*. 2. *c*. 1. made it penal, for any perſon to affirm that the houſes of *parliament* have a legiſlative power without the King. An old ſtatute ordains, That every perſon and commonalty, having ſummons to *parliament*, ſhall come thither, on pain to be amerced, or otherwiſe puniſhed: And if the ſheriff doth not ſummon them, he ſhall likewiſe be amerced, &c. 5 *R*. 2. *c*. 4.

On holding a *parliament*, the King the firſt day ſits in the upper houſe, and by himſelf or the Lord Chancellor, ſhews the reaſon of their meeting; then the Commons are commanded to chooſe their ſpeaker, which done, two or three days afterwards he is preſented to the King, and after ſome ſpeeches is allowed, and ſent down to the Houſe of Commons; when the buſineſs of *parliament* proceeds. 12 *Rep*. 115.

A *parliament* cannot begin on return of the writs, without the King, in perſon, or by repreſentation; and by repreſentation two ways, either by a guardian of *England*, by letters patent under the Great Seal, when the King is *out of* the realm; or by commiſſion, to certain lords in caſe of indiſpoſition, &c. when his Majeſty is at home. 4 *Inſt*. 6, 7. And if any *parliament* is to be holden before a guardian of the realm, there muſt be a ſpecial commiſſion to begin the parliament; but the *teſte* of the writs of ſummons is to be in the guardian's name: And by an ancient law, if the King, being beyond ſea, cauſe a *parliament* to be ſummoned in this kingdom, by writ under the *teſte* of his lieutenant; and after the King returns hither, the *parliament* ſhall proceed without any new ſummons. 8 *H*. 5. *c*. 1.

In the 5th year of *Hen*. 5. a *parliament* was held before *John* Duke of *Bedford*, brother to the King, and guardian of the kingdom. *Anno* 3 *Ed*. 4. a *parliament* was begun in the preſence of the King, and prorogued to a further day; and then *William* Archbiſhop of *York*, the King's Commiſſary by letters patent, held the ſame *parliament*, and made an adjournment, &c. And 28 *Eliz*. the Queen by commiſſion under the Great Seal, (reciting, that for urgent occaſions ſhe could not be preſent in her royal perſon) did authoriſe *John Whitgiſt* Archbiſhop of *Canterbury*, *William* Lord *Burleigh*, Lord Treaſurer of *England*, and *Henry* Earl of *Derby*, Lord Steward, to hold a *parliament*, &c. *Ad faciendum omnia et ſingula*, &c. *necnon ad* parliamentum *adjornand' et prorogand'*, &c. And in the upper part of the page, above the beginning of the commiſſion is written, *Domina Regina repræſentatur per commiſſionarios*, *viz*. &c. Theſe commiſſioners ſat on a *form* before the cloth of ſtate, and after the commiſſion read, the *parliament* proceeded.

A *parliament* may be holden at any place the King ſhall aſſign; but it ought not to be diſſolved as long as any bill remains undiſcuſſed, and proclamation muſt be made in the *parliament*, that if any perſon have any petition, he ſhall come in and be heard, and if no anſwer be given, it is intended the public are ſatisfied. *Lex Conſtitution*. 157.

In former times, by the death of the King during the ſitting of *parliament*, the *parliament* was *ipſo facto* diſſolved: but by the *Stat*. 4 *Ann*. *c*. 8. A *parliament* ſitting or in being, at the demiſe of the King, ſhall continue for ſix months; unleſs prorogued or diſſolved, by ſuch perſon to whom the crown ſhall come. 4 *Ann*. *c*. 8. 6 *Ann*. *c*. 7. All orders of *parliament* determine by prorogation; and one taken by order of the *parliament*, after their prorogation, may be diſcharged on an *habeas corpus*, as well as after a diſſolution; but the diſſolution of a *parliament* doth not alter the ſtate of impeachments brought up by the commons in a preceding parliament. *Raym*. 120. 1 *Lev*. 384. And it hath been reſolved, that caſes of appeals and writs of error, ſhall continue, and are to be proceeded in *ſtatu quo*, &c. as they ſtood at the diſſolution of the laſt *parliament*. Raym. 381.

A prorogation of *parliament* is always by the King, and in this caſe the ſeſſions muſt begin *de novo*; and if a *parliament* is prorogued upon return of the writ of ſummons, it begins at the end of prorogation: An adjournment is by each houſe, and the ſeſſions continues notwithſtanding ſuch adjournment. 1 *Mod*. 242. By a prorogation of *parliament*, there is a ſeſſion; and every ſeveral ſeſſion of *parliament* is in law a ſeveral *parliament*: though if it be only an adjournment, there is no ſeſſion; and when a *parliament* is called and doth ſit, but is diſſolved without any act paſſed, or judgment given, it is no ſeſſion of *parliament*, but a convention. 4 *Inſt*. 27. If a *parliament* is aſſembled, and orders made, and writs of error brought in the Houſe of Peers, and ſeveral bills agreed on, but none ſigned; this is but a convention, and no *parliament*, or ſeſſions of *parliament*: But every ſeſſion, in which the King ſigns a bill, is a *parliament*: and ſo every *parliament* is a ſeſſion. 1 *Rol*. *Rep*. 29. *Hut*. 61. And a ſeſſion doth continue, until it is prorogued or diſſolved.

The *parliament* from the firſt day of ſitting is called the firſt ſeſſion of *parliament*, &c. Raym. 120. And the courts of juſtice *ex officio* are to take notice of the beginning, prorogation, and ending of every *parliament*; alſo of all general ſtatutes; and acts of parliament take effect from the beginning of the *parliament*, unleſs it be otherwiſe ordered by the acts. 1 *Lev*. 296. *Hob*. 111.

On prorogation, ſuch bills as have paſſed, not having received the royal aſſent, muſt fall: for there can be no act of *parliament*, without conſent of the lords and commons, and the royal *fiat* of the King, giving his conſent perſonally, or by commiſſion; and by the *Stat*. 33 *H*. 8. *c*. 21. The King may paſs acts by commiſſion under the Great Seal, ſigned by his hand; and ſuch acts ſhall be of equal force as if the King were preſent in perſon.

Every man in judgment of law is party to an act of *parliament*; after the royal aſſent is given, it is the deed of the prince, and of the whole realm. The determination of the High court of *Parliament*, being preſumed to be the act of every particular ſubject, who is either perſonally preſent, or conſenting by his repreſentative.

Public bills or acts of *parliament*, are commonly drawn by ſuch members of the Houſe of Commons as are moſt inclined to effect the good of the public, particularly in relation to the bill deſigned, taking advice thereupon; and acts for the revival, repeal, or continuance of ſtatutes, *are penned by lawyers*, members of the houſe, appointed for that purpoſe.,

Of the formality in bringing in, and paſſing ſtatutes.

In bringing in and paſſing ſtatutes, the following formalities are obſerved, *viz*.

Any member may move for a bill to be brought in, except it be for impoſing a tax, which is to be done by order

der of the houſe; and being granted, the perſon making the motion, and thoſe who ſecond it, are ordered to prepare and bring in the ſame: When the bill is ready, ſome of the members ordered to prepare it, preſent it; and upon a queſtion being agreed to, it has the firſt reading by the clerk at the table; after this the clerk delivers the bill to the ſpeaker, who, ſtanding up, declares the ſubſtance of it; and if any debate happens, he puts the queſtion, whether the ſame ſhall have a ſecond reading: And ſometimes upon motion appoints a day for it; for public bills, unleſs upon extraordinary occaſions, are ſeldom read more than once a day, the members being allowed convenient time to conſider of them: If nothing be ſaid againſt a bill, the ordinary courſe is to proceed without a queſtion; but if the bill be generally diſliked, a queſtion is ſometimes put, *whether the bill ſhall be rejected?* If it be rejected, it cannot be propoſed any more *that* ſeſſions: When a bill hath been read a ſecond time, any member may move to have the ſame amended; but no member of the houſe is admitted to ſpeak more than once in a debate, *except the bill be read more than once that day*, or the whole houſe is turned into a committee; and after ſometime ſpent in debates, the Speaker collecting the ſenſe of the houſe, reduces the ſame to a queſtion, which he ſubmits to the houſe, and is put to the vote: And a queſtion is to be put, after the bill is ſo read a ſecond time, *whether it ſhall be committed?* which is either to a committee of the whole houſe or a private committee, as the importance of the bill ſhall require; this committee is to report their opinion of the bill, with the amendments, to the houſe, the chairman having cauſed the clerk attending, to read the bill, and read it himſelf, putting every clauſe to the queſtion, *&c.* The chairman makes his report at the ſide bar of the houſe, reading all the alterations made, and then delivers the ſame to the clerk of the *parliament*; who likewiſe reads all the amendments, and the ſpeaker puts the queſtion, *whether they ſhall be read a ſecond time?* And if that be agreed unto, he reads the amendments himſelf, and puts the queſtion, *whether the bill ſo amended ſhall be ingroſſed, and read a third time ſome other day?* And then the ſpeaker takes the bill in his hand, holds it up, and puts the laſt queſtion, *whether the bill ſhall paſs?* If a majority of voices are for it, then the bill paſſes; and it is ſent up to the Houſe of Lords, where, when it is twice read, the queſtion is to be for commitment; or if it be not committed, then it is to be read a third time, and the next queſtion to be for its paſſing; and on the third reading of the bill, any member may ſpeak againſt the whole bill to throw out the ſame, or for amendment of any clauſe; and if it be amended, it is to be ſent back again to the Commons for their concurrence, and being returned, is then paſſed in the Houſe of Lords, and ready for the royal aſſent. If a bill paſs in one houſe, but a demur happens upon it when ſent to the other houſe, in this caſe a conference is demanded; wherein certain deputed members of each houſe meet in the *painted chamber*, and debate the matter; and when they have agreed, the bill paſſed is brought to the King in the Houſe of Lords, where having his royal robes on, he declares the royal aſſent, by the clerk of the *parliament*. *Pract. Solic. in Par.* 397, 398.

As for private bills, leave is to be obtained by *petition*, *&c.* to bring in the ſame; and the ſubſtance thereof is to be ſet forth, until which a bill is not to be offered; and when the petition is read, and leave given to bring in the bill, whereupon it is accordingly brought into the houſe, the perſons concerned and affected by it may be heard by themſelves or counſel at the bar, or before a committee, to whom ſuch bill is referred; (and in caſe of a peer, he ſhall be admitted to come within the bar of the Houſe of Commons, and *ſit covered on a ſtool* whilſt the ſame is debating.) And after counſel is heard on both ſides, and the houſe is ſatisfied with the contents of the bill, it is committed, and paſſed, *&c.*

All bills, motions and petitions, are by order of *parliament* to be entered on the *parliament* rolls, altho' they are denied, and never proceed to the eſtabliſhment of a ſtatute, together with the anſwers. *Lex Conſtitution.* 154.

The Speaker of the Houſe of Commons is not allowed to perſuade or diſſuade in paſſing a bill, only to make a ſhort narrative of it; opening the parts of the bill, ſo that all may underſtand it; if any queſtion be upon the bill, he is to explain, but not enter into argument or diſpute; and he is not to vote, except the houſe is equally divided: When Mr. Speaker deſires to ſpeak, *he ought to be heard without interruption*; and when the Speaker ſtands up, the member ſtanding up is to ſit down: If two ſtand up to ſpeak to a bill, he who would ſpeak againſt the bill, if it be known, is to be firſt heard; otherwiſe he who was firſt up, which is to be determined by the Speaker: No member is to be taken down, unleſs by Mr. Speaker, in ſuch caſes as the houſe do not think fit to admit; and if any perſon ſpeak impertinently, or beſides the queſtion, the Speaker is to interrupt him, and know the pleaſure of the houſe whether he ſhall be further heard: but if he ſpeaks not to the matter, it may be moderated: And whoſoever hiſſes or diſturbs any perſon in his ſpeech, ſhall anſwer it at the bar of the houſe.

In enacting laws, and other proceedings in *parliament*; the Lords give their voices in their houſe, from the puiſne Lord *ſeriatim*, by the word *Content*, or *Not Content*: The manner of voting in the Houſe of Commons, is by *Yea* and *No*; and if it be difficult to determine which are the greater number, the houſe divides, and four tellers are appointed by the Speaker, two of each ſide, to number them, the *Ay's* going out, and the *No's* ſtaying in; and thereof report is made to the houſe. When the members of the houſe go forth, none is to ſtir, until Mr. Speaker riſes from his ſeat; and then all the reſt are to follow after.

See *Peer*, *Privilege*, and 16 *Vin. Abr.* tit. *Parliament*. and ſee alſo *Black. Com.* 1 *V.* 141, 147. 4 *V.* 405, 418, 421.

Parliamentum Diabolicum, Was a *parliament* held at *Coventry*, 38 *H.* 6. wherein *Edward* Earl of *March*, (afterwards King) and many of the chief nobility were attainted, but the acts then made were annulled by the ſucceeding *parliament*. *Holingſh. Cron.*

Parliamentum Indoctorum, A *parliament* 6 *H.* 4. whereunto by ſpecial precept to the ſheriffs in their ſeveral counties, no *lawyer* or perſon ſkilled in the law was to come; therefore it was ſo termed. *Rot. Parl.* 6 *H.* 4. *Black. Com.* 1 *V.* 176.

Parliamentum inſanum, Was a *parliament* aſſembled at *Oxford*, *anno* 41 *H.* 3. ſo ſtiled, from the *madneſs* of their proceedings; and becauſe the Lords came with armed men to it, and contentions grew very high between the King, Lords and Commons, whereby many extraordinary things were done. 4 *Inſt.*

Parliamentum Religioſorum. In moſt *convents*, they had a common room, into which the brethren withdrew for converſation; and the conference there had was termed *Parliamentum*. *Mat. Paris.* The abbot of *Croyland* uſed to call a parliament of his monks, to conſult about the affairs of his monaſtery: And at this day, the ſocieties of the two Temples, or *Inns of Court*, call that aſſembly a *parliament*, wherein they confer upon the common affairs of their ſeveral houſes. *Crompt. Juriſd.* 1.

Parol. *What things may be done by parol or without deed.*

Stat. 29 *Car.* 2. *cap.* 3. enacts, That all leaſes, eſtates, intereſts of freehold, or terms of years, or any uncertain intereſts in or out of lands, *&c.* not put in writing, and ſigned by the parties, or their agents authorized by *writing*, ſhall have no greater effect than as eſtates at will. Except leaſes not exceeding three years, whereof the rent ſhall be *two thirds of the full value*.

No ſuch eſtates or intereſts, not being copyhold or cuſtomary intereſt, ſhall be aſſigned, granted or ſurrendered, unleſs by deed or note in writing ſigned (*ut ſupra*) or by operation of law. No action ſhall be brought, to charge an executor *on a ſpecial promiſe to anſwer damages* out of his own eſtate, Or to charge the defendant upon any promiſe *to anſwer for the debt or miſcarriage of another*, Or upon *an agreement or conſideration of marriage*, Or on any contract ot ſale of lands, *&c.* or any intereſt concerning them, Or on any agreement not to be performed *within a year after the making*, Unleſs ſuch agreement, or ſome note thereof, *be in writing*, ſigned by the party to be charged, or ſome other by him authorized.

All deviſes of lands or tenements ſhall be in writing, and ſigned by the party deviſing, or ſome other in his preſence and by his direction, and *ſubſcribed in his preſence by three or four witneſſes*, or elſe ſhall be void.

No ſuch deviſes in writing ſhall be revocable, otherwiſe than by writing or burning, tearing or cancelling the ſame by the teſtator, or in his preſence, and by his conſent.

All declarations or creations of truſts ſhall be made by ſome writing, ſigned by the party, or by his laſt will in writing, or elſe be void.

Aſſignments of truſt ſhall be in writing, ſigned by the party granting or aſſigning by ſuch laſt will, or elſe ſhall be of no effect.

Truſts reſulting by implication of law, or transferred or extinguiſhed by act of law, ſhall be as if this ſtatute had not been made.

No contract for the ſale of any goods for 10 *l.* or upwards, ſhall be good, except the buyer ACTUALLY *receive part of them*, or *give ſomething in earneſt*, or ſome note thereof in writing be made and ſigned by the parties to be charged, or their agents.

No will in writing of any perſonal eſtate ſhall be repealed by words only, except the ſame be in the life of the teſtator committed to writing, and read to him, and allowed by him, and that be proved by *three* witneſſes.

An uſe will not paſs by parol without deed; but Ch. J. *Pemberton* ſaid, it would be a good truſt or Chancery uſe, if for money. 2 *Show.* 156. *Paſch.* 33 *Car.* 2. *B. R.* in caſe of *Berris* v. *Bowyer.* A parol releaſe is good to diſcharge a debt by ſimple contract. Arg. 2 *Show.* 417.

A promiſe merely executory on both parts; as if I promiſe *B.* 5 *s.* if he goes to *Paul's*, before *B.* goes, I may diſcharge him, and ſo ſhall diſcharge myſelf of payment of the 5 *s.* for no debt was yet due, nor any thing executed on either ſide. 3 *Lev.* 238. An agreement in writing ſince the ſtatute of frauds and perjuries may be diſcharged by parol. *Vern.* 240. A rent aſſigned in lieu of dower may be by parol without deed, though it be a freehold created *de novo:* And though a rent lies in grant; becauſe this is not properly a grant, but an appointment. 12 *Mod.* 201. Leſſee for years ſurrendered to the leſſor by parol reſerving rent; adjudged, this was a good reſervation upon the contract, and that an action of debt would lie for the rent after the firſt day of payment incurred, though the reſervation was by way of contract, and without any deed. 3 *Salk.* 312. *pl.* 7.

If one has a bill of exchange, he may authoriſe another to indorſe his name upon it by parol, and when that is done, it is all one as if he had done it himſelf; *per Holt* Ch. J. at *Niſi prius.* 12 *Mod.* 564.

An inſurance was made from *Archangel* to the *Downs* and from the *Downs* to *Leghorn*, but there was a parol agreement at the ſame time, that the policy ſhould not commence till the ſhip came to ſuch a place, and it was held, that the parol agreement ſhould avoid (or defeat) the writing; cited *per Holt* Ch. J. as adjudged in *Pemberton*'s time. 2 *Salk.* 444, 445.

If a thing is granted by a writing, which is grantable by parol, it may be revoked by parol. *Vide* 10 *Mod.* 74.

Deputation of an office is in it's own nature grantable by parol, and therefore though it ſhould happen to be granted by writing, yet ſince it is in itſelf grantable by parol, it may be revoked by parol. 10 *Mod.* 74. See *Black. Com.* 2 *V.* 297.

Parol arreſt, Any juſtice of peace may, by word of mouth, authoriſe any one to arreſt another who is guilty of a breach of the peace *in his preſence, &c.* Dalt. 117.

Parol demurrer, Is a privilege allowed an infant, who is ſued concerning *lands* which came to him by deſcent; and the court thereupon will give judgment, *quod loquela predicta remaneat quouſque* the infant comes to the age of twenty-one years. And where the age is granted on parol demurrer, the writ doth not abate, but the plea is put *ſine die*, until the infant is of *full age*; and then there ſhall be a re-ſummons. 2 *Lill. Abr.* 280. 2 *Inſt.* 258. *Raſt. Entr.* 363.

The granting a parol demurrer is in favour of an infant, and for his benefit, that he may not be prejudiced in his right for want of well knowing his eſtate, *&c.* And if his anceſtor dies ſeiſed, and the land deſcends to him, and he enters and takes the profits, it would be a prejudice to the infant to loſe the poſſeſſion which he hath; ſo that in ſuch caſe it ſhall ſtay until his age. 6 *Rep.* 3.

In parol demurrer when it may be had, if two are vouched, and there is parol demurrer for the nonage of the one; it ſhall be for the other alſo. 45 *Ed.* 3. 23. But by the ſtatutes of *Weſtm.* 1. 3 *Ed.* 1. *c.* 46. and of *Gloceſter* 6 *Ed.* 1. *c.* 2. in writs of *entry ſur diſſeiſin* in ſome particular caſes, and in actions anceſtrel brought by an infant, the parol ſhall not demur: otherwiſe he might be deforced of his whole property, and even want a maintenance till he came of age. 6 *Rep.* 3, 5. So likewiſe in a writ of dower the heir ſhall not have his age; for it is neceſſary that the widow's claim be immediately determined, elſe ſhe may want a preſent ſubſiſtence. 1 *Rol. Abr.* 137. Nor ſhall an infant patron have it in a *quare impedit*, ſince the law holds it neceſſary and expedient, that the church be immediately filled. *Ibid.* 138. See *Age prier*, and *Black. Com.* 3 *V.* 300.

Parol Evidence, See tit. *Witneſſes*, and *Black. Com.* 3 *V.* 369.

Parol, or *Pleadings*, Are the mutual altercations between the plaintiff and defendant; which at preſent are ſet down and delivered into the proper office in writing, tho' formerly they were uſually put in by their counſel *ore tenus*, or *viva voce*, in court, and then minuted down by the chief clerks, or prothonotaries; whence in our old law *French* the pleadings are frequently denominated the *parol.* *Black. Com.* 3 *V.* 293.

It is ſometimes joined with *leaſe*, as *leaſe parol*, i. e. *leaſe per parol*, a leaſe by word of mouth, to diſtinguiſh it from a leaſe in writing. *Cowell.*

Parricide, *(Patricida,)* Is properly he who kills his father, and may be applied to him who killeth his mother. *Law Lat. Dict.*

By the *Roman* law, *parricide*, or the murder of one's parents or children, was puniſhed in a much ſeverer manner than any other kind of homicide. After being ſcourged, the delinquents were ſewed up in a leather ſack, with a live dog, a cock, a viper, and an ape, and ſo caſt into the ſea. *Solon*, it is true, in his laws, made none againſt *parricide*; apprehending it impoſſible that any one ſhould be guilty of ſo unnatural a barbarity. And the *Perſians*, according to *Herodotus*, entertained the ſame notion, when they adjudged all perſons who killed their reputed parents to be baſtards. And, upon ſome ſuch reaſon as this, muſt we account for the omiſſion of an exemplary puniſhment for this crime in our *Engliſh* laws; which treat it no otherwiſe than as ſimple murder, unleſs the child was alſo the ſervant of his parent. 1 *Hal. P. C.* 380.

For, tho' the breach of *natural relation* is unobſerved, yet the breach of *civil* or *eccleſiaſtical connexions*, when coupled with murder, denominates it a new offence; no leſs than a ſpecies of treaſon, called *parva proditio*, or *petit treaſon:* which, however, is nothing elſe but an aggravated degree of murder; altho' on account of the violation of *private allegiance*, it is ſtigmatized as an inferior ſpecies of treaſon. And thus, in the ancient *Gothic* conſtitution, we find the breach both of *natural* and *civil relations*, ranked in the ſame claſs with crimes againſt the ſtate and ſovereign. *Black. Com.* 4 *V.* 203.

Parſon, *(Perſona)* Signifies the rector of a church becauſe for his time *he repreſents the church*, and in his *perſon* the church may ſue for, and defend her right, *&c.* Or he is called *parſon* as he is bound by virtue of his office, *in propria perſona ſervire Deum. Fleta, lib.* 9. *cap.* 18. 1 *Inſt.* 300. Alſo the word *parſon* in a large ſenſe includes all clergymen having ſpiritual preſentments. And there may be two *parſons* in one church, one of the one moiety, and the other of the other; and a part of the church and town allotted to each; and may be two that make but one *parſon* in a church, preſented by one patron. 1 *Inſt.* 17, 18.

To a *parſon*, theſe things are requiſite; holy orders, preſentation, inſtitution, and induction; and where a perſon is compleat *parſon*, he may ceaſe to be *parſon* of the church, by death, or ceſſion, reſignation, deprivation for ſimony, nonconformity to the canons, for adultery, *&c.* 1 *Inſt.* 120. 4 *Rep.* 75, 76. A *parſon* hath the entire fee of his church; and where it is ſaid he hath not the right of fee ſimple, that is underſtood as to bringing *a writ of right.* Cro. Car. 582. And in the time of the *parſon*, the patron hath nothing to do with the church; but if the *parſon* waſtes the inheritance thereof to his own private uſe, in cutting trees, *&c.* his patron may have a prohibition, ſo that to ſome purpoſes he hath an intereſt in the *parſon*'s time. 11 *H.* 6. 4. 11 *Rep.* 49.

Sir *Edward Coke* was of opinion, That at Common law a *parſon* could not be arreſted; and ſaid, he had ſeen a report grounded on the ſtatutes 50 *Edward* 3. *c.* 5. and 1 *Henry* 2. *c.* 15. which are in affirmance of the Common law, and in maintenance of the liberties of the church; that a *parſon* ought not to be arreſted in going, ſtaying, or returning to celebrate divine ſervice, nor any other perſon who attended him in ſuch ſervice; and that if he was, he might have an action upon thoſe ſtatutes, againſt the perſon making the arreſt. 12 *Rep.* 100. A parſon ought not to appear at the ſheriff's torn, or the court leet, without an abſolute neceſſity, *F. N. B.* 160.

No *parſon* or ſpiritual perſon, ſhall take a farm or leaſe of lands, *&c.* to himſelf, or *any one for his uſe*, on pain of forfeiting 10*l.* a month, one moiety to the King, the other to the informer. Stat. 21 *H.* 8. *cap.* 13. Nor ſhall he buy, *to ſell again*, any merchandiſe, corn, cattle, *&c.* upon forfeiture of treble value: but he may buy horſes, or any other cattle, for his neceſſary uſe in manuring his glebe and church lands. *Ibid.* On information upon this ſtatute for renting a farm, defendant pleaded in bar, that he had not ſufficient glebe for paſturing his cattle, nor corn for his family; but the plaintiff traverſed his having ſpent the product thereof in his family, *&c.* 1 *Lutw.* 134. See *Church, Eccleſiaſtical Courts, &c.* and *Black. Com.* 1 *V.* 384.

Parſon Imparſonee, *(Perſona imperſonata)* Is he who is in poſſeſſion of a church, be it preſentative or impropriate, and *with whom the church is full.*

Perſona, according to the *New Book of Entries*, ſeems to be the patron who has right to give the benefice, by reaſon he had anciently the tithes in reſpect of his liberality in erecting or endowing the church, *Quaſi ſuſtineret perſonam eccleſiæ*; and *perſona imperſonata* is the *parſon* to whom the benefice is given in the patron's right. *Perſona imperſonata* is uſed for the rector of a church preſentative. *Reg. Judic.* 24. A dean and chapter are *parſons imparſonees* of a benefice appropriated to them; and *perſona imperſonata* is one who is inducted and in poſſeſſion of a benefice. *Dyer* 40. 221. So that *perſona* may be termed *imperſonata*, only in regard of the poſſeſſion he hath of the rectory, by the act of another. 1 *Inſt.* 300. In a *quare impedit* the *parſon* is to plead *perſona imperſonata*; but if he doth not ſay *at the time of obtaining the writ*, it will be inferred by the writ that he is. *Cro. Car.* 105. And this is a plea that he is admitted and inſtituted in the church, *&c.* 7 *Rep.* 26. See *Black. Com.* 1 *V.* 391.

Parſonage, *(Perſonatus, perſonagium,)* Is ſometimes taken for a dignitary in a church, and ſometimes for the benefice itſelf. *Cowell.*

Parſonage, or rectory, is a pariſh church, endowed with a houſe, glebe, tithes, *&c.* Or a certain portion of lands, tithes, and offerings, eſtabliſhed by law, for the maintenance of the miniſter who hath the cure of ſouls: And tho' properly a *parſonage* or rectory doth conſiſt of glebe land and tithes; yet it may be a rectory, tho' it have no glebe, but the church and church-yard: Alſo there may be neither glebe nor tithes, but annual payments in lieu thereof. *Parſ. Counc.* 190. The rights to the *parſonage* and church lands are of ſeveral natures; for the parſon hath a right to the *poſſeſſion*; the patron hath the right of *preſentation*; and the ordinary a right of *inveſtiture*, &c. But the rights of the patron and ordinary are only collateral rights: neither of them being capable of poſſeſſing or retaining the church themſelves; tho' no charge can be laid on the church or *parſonage*, but by the conſent and agreement of all of them. *Hugh's Parſ. Law.* 188.

Parſon mortal. The rector of a church inſtituted and inducted, for his own life, was called *Perſona mortalis*: And any collegiate or conventual body, to whom the church was for ever appropriated, were termed *Perſona immortalis.* Cartular. Rading. MS. fol. 182.

Partes finis nihil habuerunt, &c. Is an exception taken againſt a fine levied. 3 *Rep.* 88. *The caſe of Fines.*

Participatio, Is the charity ſo called, by which the poor are made *participes* of other mens goods. We read it in ſeveral places in the *Monaſt.* 2 *tom. pag.* 321.

Parties, Are thoſe who are named in a deed of fine, as parties to it; as thoſe who levy the fine, and to whom the fine is levied: ſo they who make any deed, and they to whom it is made, are called *parties to the deed.* Cowell. See 16 *Vin. Abr.* tit. *Party.* and *Black. Com.* 2 *V.* 298, 355.

Partition, *(Partitio,)* Is dividing land deſcended by the Common law, or cuſtom, among *coheirs or parceners*, where there are two at leaſt. In *Kent*, where the land is of *gavelkind* nature, they call their partition *ſhifting*, from the Saxon *ſhiftan*, to divide. In *Latin* it is called *herciſſere.* Partition alſo may be made by joint-tenants, or tenants in common, by aſſent, deed, or writ. 31 *H.* 8. 1. 32 *H.* 8. 32. See *Joint-tenants, Parceners*, and *Black. Com.* 2 *V.* 189, 323.

Partitione facienda, (Mentioned in ſtat. 31 *H.* 8. *cap.* 1.) Is a writ that lies for thoſe who hold lands or tenements *pro indiviſo*, and would ſever to every one his part, againſt thoſe who refuſe to join in *partition*, as *copartners, tenants in gavelkind, &c. Old Nat. Brev.* 142. *F. N. B.* 61.

Partners, Are where two or more perſons agree to come in ſhare and ſhare alike to any trade or bargain. If there are two partners in trade, and judgment is recovered againſt one of them, his moiety of the goods in partnerſhip only ſhall be taken in execution. *Show.* 174. Partnerſhip, is cogniſable in equity. See *Black. Com.* 3 *V.* 437. and 16 *Vin. Abr.* tit. *Partners.*

Part-owners, Are thoſe who are concerned in ſhip matters, and have joint ſhares therein. And when there are part-owners of a ſhip, the majority may fit her out, without conſent of the reſt; and if they do, ſuch majority run all hazard, and are to partake of the profits. *Show.* 13, 30. Action lies as well againſt the part-owners of a ſhip, for the loſs or ſpoiling of goods delivered to the maſter, as againſt the maſter; for as the maſter of a ſhip is chargeable in reſpect of his wages, ſo are part-owners in reſpect of the freight; but the action againſt the part-owners muſt be brought againſt all of them, or defendants may take advantage of it, by pleading in abatement, *&c. Show.* 30, 105. 3 *Lev.* 259.

Party-walls, See *Buildings, Fire.*

Parviſe, *(parviſa, parviſus, non à* parvus *adject. ſed à gal. le* parvis) *Sed placitantes, tunc, i. e.* poſt meridiem, *ſe divertunt ad* parviſum *& alibi conſulentes cum ſervientibus ad legem & aliis conſiliariis, &c. Forteſcue de Laudibus LL. Angl. cap.* 51. *pag.* 124. And *Selden* (in his notes on *Forteſcue*) defines it to be, an afternoon's exerciſe, or *moot* for the inſtruction of young ſtudents; bearing the ſame name originally with the *Parviſiæ* at *Oxford*, *Seld. Notes pag.* 56. Of which *Chaucer* has mention in one of his prologues:

A Serjeant at Law, that ware and wiſe,
That often had been at the Parviſe.

Paſcha clauſum, The Octaves of *Eaſter* or *Low Sunday*, which *cloſes* that ſolemnity: And *die (tali) poſt* paſcha clauſum, is a date in ſome of our old deeds. The firſt ſtatute of *Weſtminſter, anno* 3 *Ed.* 1. is ſaid to be made the *Monday* after *Eaſter* week; *poſt de la cluſe de paſche, &c.*

Paſcha floridum, Is the *Sunday* before *Eaſter*, called *Palm Sunday*; when the proper hymn or goſpel ſung was *occurrunt turbæ cum* floribus & palmis, *&c.* Cartular. Abbat. Glaſton. MS 75.

Paſchal Rents, Rents or yearly tributes paid by the clergy to the biſhop or archdeacon, at their *Eaſter* viſitations.

Paſcua, A meadow or paſture ground, ſet apart to feed cattle. See *Paſtura*.

Paſcuage, (*paſcuagium*, Fr. *paſcage*) The graſing or paſturing of cattle.——*Et habere viginti porcos quietos de* paſcuagio, *&c. Mon. Angl. Tom.* 2. 23. The ſame with *pannage*.

Paſnage, And *pathnage* in woods, *&c.* See *Pannage*.

Paſſage, (*Paſſagium*) Is properly over *water*, as *way* is over *land*; it relates to the ſea, and great rivers, and is a *French* word ſignifying *tranſitum*. In the ſtat. 4 *Ed.* 3. *c.* 7. it is uſed for the hire a man pays for being tranſported over ſea, or any river: And it is mentioned among *cuſtoms* and duties, as *theolonio*, paſſagio, & *laſtagio*. *Chart. Hen.* 1.

All perſons ſhall have free *paſſage* on the river *Severn*; and if any be diſturbed, he may have his remedy by action. Stat. 9 *H.* 6. *c.* 5. There are other ſtatutes for regulating the *paſſage* of this river, and preventing diſorders therein by the *Welch*, *&c.* 19 *Hen.* 7. *cap.* 18. 26 *Hen.* 8. *cap.* 5.

Alſo *paſſagio* is a *writ* directed to the keepers of the ports to permit a man to *paſs* over ſea, who has the King's leave. *Reg. Orig.* 193. The prices of paſſage at *Dover*, &c. are limited by 4 *Ed.* 3. *c.* 8. None to paſs out of the realm without the King's licence. 5 *R.* 2 *ſt.* 1. *c.* 2. Paſſage from *Kent* to *Calais* reſtrained to *Dover*. 4 *Ed.* 4. *c.* 10.

Paſſagium, A voyage or expedition to the Holy Land, when made by the Kings of *England* in perſon, was called *Paſſagium*, or *Paſſagium regis*. *Cowell.*

Paſſator, Is he who has the intereſt or command of the paſſage of a river, or the lord to whom a duty is paid for paſſage. *Cowell.*

Paſs-port, A compound of two *French* words, *viz.* *paſſer*, *tranſire*, and *port*, *portus*, a haven. It ſignifies a licence, for the ſafe paſſage of any man from one place to another. 2 *E.* 6. *cap.* 2. See *Black. Com.* 1 *V.* 260. 4 *V.* 68.

Paſſagiarius, A ferry-man. We meet with the word in *Thorn's Chronicle, in anno* 1287.

Paſtitium, A paſture field. *Caſtrum Arundel. T. R. E. reddebat a quodam molino* 40s. *&c.* & *de uno* paſtitio 20 s. *Domeſday, per Gale* 761.

Paſtoral ſtaff. The form of it was ſtreight, which ſignified *rectum regimen*. All the top part of it was crooked, and the other part ſharp: The crooked ſignified, that the biſhop preſided over the people; and the ſharp ſignified, to puniſh the ſtubborn. *Cowell.*

Paſture, Is generally any place where cattle may feed; and feeding for cattle is called paſture, wherefore feeding grounds are called common of paſture: But common of paſture is properly *a right of putting beaſts to paſture in another man's ſoil*; and in this there is an intereſt of the lord and of the tenant. *Wood's Inſt.* 196, 197. For in thoſe waſte grounds, which are uſually called *Commons*, the property of the ſoil is generally in the lord of the manor; as in common fields it is in the particular tenants. And common of paſture is either *appendant*, *appurtenant*, becauſe of *vicinage*, or *in groſs*. *Black. Com.* 2 *V.* 32. See *Admeaſurement*.

Paſtura differs from *paſcua*, as appears from what follows, *viz.* paſtura *omne genus paſcendi ſignificat, ſive fiat in partis, ſive in ſtipula, ſive in agris, ſive in campis; ſed* paſcua *eſt locus principaliter deputatus pecoribus paſcendis, utputa in montibus, moris, mariſcis & planis non cultis aratis.* Lindewood. Provin. Angl. lib. 3. c. 1.

Paſtus, Is the ſame with procuration, or the proviſion which tenants are bound to make for their lords at certain times, or as often as they make a progreſs to their lands: This in many places was turned into money. *Hoc modo per ævum liberabo a* paſtu *Regis & principum.* Chart. Walgaſi Regis Merciorum in Mon. Angl. tom. 1. p. 123.

Patentee, One to whom the King grants his letters patent. 7 *Ed.* 6. *c.* 3.

Patents, Are the King's writings, ſealed with the *Great Seal*, having their name from being *open*: And they differ from writs. *Crompt. Juriſd.* 126. The King is to adviſe with his council touching grants and *patents* made of his eſtate, *&c.* And in petitions for lands, annuities or offices, the value is to be expreſſed: alſo a former *patent* is to be mentioned where the petition is for a grant in reverſion, or the *patents* thereupon ſhall be void. 1 *Hen.* 4. *c.* 6. 6 *Hen.* 8. *c.* 15. And *patents* which bear not the date and day of delivery of the King's warrants into *Chancery*, are not good. Statute 18 *Hen.* 6. *c.* 1. Where the King's *patent* creates a new eſtate, of which the law does not take knowledge; the *patents* are void. 8 *Rep.* 1. 5 *Rep.* 93. But *patents* ſhall not be avoided by nice conſtructions: If a *patent* may be taken to two intents; and is good as to one, and not as to the other; it is valid. *Jenk. Cent.* 138. When the King would paſs a freehold, it is neceſſary that the patent be under the *Great Seal*; and it ought to be granted *de adviſamento* of the Chancellor of the *Exchequer* and Lord Treaſurer in the uſual manner. *Fitzgib.* 291. See *Grants of the King*. And *Black. Com.* 2 *V.* 346.

As to patents for *new inventions*, ſee *Black. Com.* 4 *V.* 159. For patents of *peerage*, ib. 1 *V.* 400. For patents of *precedence*, ib. 3 *V.* 28.

Patria, Properly ſignifies the country, but in law it denotes the men of a neighbourhood; ſo when we ſay *inquiratur per patriam*, we mean a jury of the neighbourhood. In like manner, *Aſſiſa vel recognitio per aſſiſam, idem eſt quod recognitio* patriæ. *Cowell.* See *Black. Com.* 3 *V.* 349. 4 *V.* 342.

Patrimony. An hereditary eſtate, or right deſcended from anceſtors. The legal endowment of a church or religious houſe, was called *eccleſiaſtical patrimony*; and the lands and reverſions united to the ſee of *Rome*, are called *St. Peter's Patrimony*. Cowell.

Patrinus, Is uſed for godfather, and *matrina* a godmother, in the laws of King *Hen.* 1.

Patritius, An honour conferred on men of the firſt quality, in the time of the Engliſh *Saxon* Kings.——*Pro ampliori firmitatis teſtamento, principes & ſenatores, judices &* patritios *ſubſcribere fecimus.* Mon Angl. tom. 1. p. 13.

Patron, (*Patronus*) Signifieth in the *Civil law* him who hath manumitted a ſervant; and thereby is accounted his great benefactor, and claims duty of him during life. *Digeſt* tit. *de Jure Patronatus.* In the *Canon* and *Common law*, it is he who hath the diſpoſition of an eccleſiaſtical benefice; and the reaſon is, becauſe the gift of churches and benefices belonged unto ſuch good men as either built or endowed them with great part of their revenues. *Terms de Ley.*

He who has the right of advowſon is called the *Patron* of the church. For, when lords of manors firſt built churches on their own demeſnes, and appointed the tithes of thoſe manors to be paid to the officiating miniſters, which before were given to the clergy in common, (from whence aroſe the diviſion of pariſhes) the lord, who thus built a church, and endowed it with glebe or land, had of common right a power annexed of *nominating* ſuch miniſter as he pleaſed (provided he were canonically qualified) to officiate in that church, of which he was the founder, endower, maintainer, or, in one word, the *patron*. Black. Com. 2 V. 21.

This original of the *jus patronatus* by building and endowing the church appears alſo to have been allowed in the Roman empire. *Nov.* 56. *t.* 12. *c.* 2. *Nov.* 118. *c.* 23.

There are three cauſes of *patronage: Ratione fundationis*, where one ſolely founds a church; *Ratione donationis*, when a man only endows it; and *Ratione fundi*, where a perſon erects a church on his own ground. *Lit.* 137. 2 *Lil. Abr.* 286.

The *patron* is to preſent *within ſix kalendar months* after an avoidance of the church; and where the church becomes void by the *death* of the incumbent, the *patron* at his peril muſt take notice of it, in making preſentation; but if there be an avoidance by *deprivation, &c.* he ſhall have notice, and ſix months after to preſent. 6 *Rep.* 61. 3 *Leon.* 46. If a church becomes litigious by the preſentation of two *patrons* of their clerks, a *jus patronatus* may be awarded by the biſhop to inquire who is rightful *patron*, and he is to admit accordingly. 2 *Rol. Abr.* 384, 385.

The *patron*'s right is the moſt worthy and firſt act and part of a promotion to a benefice, and is granted and pleaded by the name of *libero diſpoſitio eccleſiæ*. Hob. 152. But during the vacancy of a church, the freehold of the glebe is not in the *patron*; for it is in *abeyance*. 8 H. 6. 24. Lit. 144. A *patron* ſhall not have an action for treſpaſs done when the church is vacant: And if a man who hath a right to glebe lands, releaſeth the ſame to the *patron*, that is not good; becauſe the *patron* has not any eſtate in the land. 11 *H.* 6. *c.* 4. If the *patron* grants a rent out of a church, it is void even againſt himſelf. 38 *Ed.* 3. 4. See *Advowſon, Parſon, Preſentation, &c.* And *Black. Com.* 2 *V.* 21. And 3 *V.* 242.

Pavage, *(Pavagium)* Money paid towards paving the ſtreets or highways. *Rex* (Edw. 1.) *conceſſit* pavagium *villæ de Huntingdon per quinquennium.* Pla. Parl. 35. Edw. 1.

Paving, *&c.* See the *Table to the Statutes*.

Pauper, Signifies a poor man according to which we have a term in law, to ſue *in forma pauperis*. See *Forma Pauperis*. Alſo vide the ſtatute 11 *Hen.* 7. *c.* 12.

Before a perſon is admitted to ſue *in forma pauperis*, he muſt have counſel's hand to his petition, certifying the judge to whom the petition is directed, that he conceives the petitioner hath good cauſe of action; he muſt alſo annex an affidavit to his petition, that he is not worth five pounds, all his debts paid, *except wearing apparel, and his right to the matter in queſtion.* Lil. Reg. 633.

None ought to be admitted to ſue *in forma pauperis* in an action on the caſe, for words. *Lil. Reg.* 633. *per Wild.*

A perſon admitted to ſue *in forma pauperis*, can only ſue in that cauſe for which he is admitted, *& ſic toties quoties.* Lil. Reg. 633.

It ſeems that, after the ſtatutes which introduced coſts, neither plaintiffs nor defendants could ſue or defend *in forma pauperis*, for that would be a means of depriving the other party of the coſts given him by ſtatute; and as the 11 *Hen.* 7. *c.* 12. enables perſons only to ſue as paupers; and as the ſtatute 23 *Hen.* 8. *c.* 15. excepts only plaintiffs who are paupers from paying coſts, it ſeems, that defendant cannot be admitted in a civil action to defend as a pauper. But it hath been adjudged, that a perſon may be admitted to defend an indictment *in forma pauperis* for a miſdemeanor, ſuch as a conſpiracy, keeping a diſorderly houſe, *&c.* for in ſuch proceedings there being no coſts, the judges have a diſcretionary power of admitting or refuſing them by the Common law. *Paſch.* 9 *Geo.* 2. *The King* v. *Wright.* See ſtatute 2 *Geo.* 2. *c.* 28. *ſ.* 8.

It is ſaid, that paupers ought not to be admitted to removes cauſes out of inferior courts, but ought to ſatisfy themſelves with the juriſdiction within which their actions properly lie. 1 *Mod.* 368. *per North.*

By the orders of the courts, if the party admitted to ſue *in forma pauperis* give any fee or reward to his counſel or attorney, or make any contract or agreement with them, he ſhall from thenceforth be diſpaupered, and not be afterwards admitted again in that ſuit to proſecute *in forma pauperis.* Ord. Cur' 94.

Alſo if it ſhall be made appear to the court, that any perſon proſecuting *in forma pauperis* hath ſold or contracted for the benefit of the ſuit, or any part thereof, while the ſame depends, ſuch cauſe ſhall be from thenceforth totally diſmiſſed the court. *Ord. Cur'* 95.

It is ſaid, that if a pauper gives notice of trial, and does not proceed, he ſhall be diſpaupered. 1 *Salk.* 506.

In the ſtatute 23 *Hen.* 8. *c.* 15. there is a proviſion, "That whoever ſues *in forma pauperis* ſhall not pay coſts, but ſhall ſuffer ſuch other puniſhment as the court ſhall think fit."

But notwithſtanding this ſtatute, if he be diſpaupered or nonſuited, the uſual practice is to tax the coſts, and for non-payment to order him to be whipped. 2 *Salk.* 506. *Stile* 386.

A. brought a bill *in forma pauperis*, to which the defendant put in a plea and demurrer, which were both over-ruled; and it was inſiſted upon, that he ſhould not have coſts, being at none; but Lord *Somers*, (after long debate and inquiry of all the ancient counſel and clerks, who agreed, that he ſhould have coſts) ordered him his coſts like other ſuitors; for though he is at no, or but ſmall coſts, yet the counſel and clerks do not give their labour to defendant, but to the pauper. *Abr. Eq.* 125. See *Black. Com.* 3 *V.* 400.

Pawn, *(Pignus)* A pledge or gage for payment of money lent: It is ſaid to be derived *à* pugno, *quia res quæ* pignori *dantur*, pugno *vel manu traduntur.* Lit. Dict. The party who *pawns* goods, hath a general property in them; they cannot be forfeited by the party who hath them in *pawn* for any offence of his, nor be taken in execution for his debt; neither may they otherwiſe be put in execution, till the debt for which they are *pawned* is ſatisfied. *Lit. Rep.* 332.

If a man *pawns* goods for money, and afterwards a judgment is had againſt the *pawner* at the ſuit of one of the creditors; the goods in the hands of the *pawnee* ſhall not be taken in execution, until the money is paid to the *pawnee*, becauſe he had a qualified property in them, and the judgment creditor only an intereſt. 3 *Bulſt.* 17. And when a perſon hath jewels in *pawn* for a certain ſum, and he who *pawned* them is attainted, the King ſhall not have the jewels *unleſs he pay the money.* Plowd. 487.

The *pawnee* of goods hath a ſpecial property in them, to detain them for his ſecurity, *&c.* and he may aſſign the *pawn* over to another, ſubject to the ſame conditions: And if the *pawnee* die before redeemed, his executors ſhall have it upon the like terms as he had it.

If goods *pawned* are periſhable, and no day being ſet for payment of the money, they lie in *pawn* till ſpoiled, without any default in him who hath them in keeping; the party who *pawned* them ſhall bear the damage, for it ſhall be adjudged his fault that he did not redeem them ſooner; and he to whom *pawned* may have action of *debt* for his money: Alſo if the goods are taken from him, he may have action of *treſpaſs, &c.* Co. Lit. 89, 208.

Where goods are *pawned* for money borrowed, without a day ſet for redemption, *they are redeemable at any time* during the life of the borrower. They may be redeemed after the death of him to whom *pawned*; but not after the death of him who *pawned* the goods. 2 *Cro.* 245. *Noy* 137. 1 *Bulſt.* 9. But where a day is appointed, and the *pawner* dieth before the day, his executors may redeem the *pawn* at the day, and this ſhall be *aſſets* in their hands. 1 *Bulſt.* 30, 31. If goods are redeemable at a day certain, it muſt be ſtrictly obſerved; and the *pawnee*, in caſe of failure of payment at the day, may ſell them. 1 *Rol. Rep.* 181, 215.

He who borrows money on a *pawn*, is to have the pledge again when he repays it, or he may have action for the detainer; and his tender of the money reveſts the ſpecial property. 2 *Cro.* 244. And it it hath been held, that where a broker or *pawnee* refuſes (upon tender of the money) to redeliver the goods in *pawn*, he may be indicted; becauſe, being ſecretly *pawned*, it may be impoſſible to prove a delivery for want of witneſſes, if *trover* ſhould be brought for them. 3 *Salk.* 268. Adjudged, that if goods are loſt, after the tender of the money, the *pawnee* is liable to make them good to the owner; *for after tender he is a wrongful detainer*, and he who keeps goods wrongfully muſt anſwer for them at all events, his wrongful detainer being the occaſion of the loſs: but if they are loſt before a tender, it is otherwiſe; the *pawnee* is not liable, if his care of keeping them was exact; and the law requires nothing of him, but only that *he ſhould uſe an ordinary care in keeping the goods*, that they may be reſtored on payment of the money for which they were depoſited; and in ſuch caſe if the goods are loſt, the *pawnee* hath ſtill his remedy againſt the *pawner* for the money lent. 2 *Salk.* 522. 3 *Salk.* 268.

If the *pawn* is laid up, and the *pawnee* robbed, he is *not* anſwerable: Though if the *pawnee* uſeth the thing, as a jewel, watch, &c. that will not be the worſe for wearing, which he may do, it is at his peril; and if he is robbed, he is anſwerable to the owner, as *the uſing occaſioned the loſs*, &c. Ibid. If the *pawn* is of ſuch a nature that the keeping is a charge to the *pawnee*, as a cow or a horſe, &c. *he may milk the one, or ride the other*, and *this ſhall go in recompence for his keeping:* Things which will grow the worſe by uſage, as apparel, &c. he may *not* uſe. *Owen* 124.

A perſon borrowed 100*l.* on the *pawn* of jewels, and took a note from the lender acknowledging them to be in his hands, for ſecuring the money; afterwards he borrowed ſeveral other ſums of the ſame perſon, for which he gave his notes, without taking any notice of the jewels. As in this caſe it was natural to think the lender would not have advanced the ſums on note only, but on the credit of the pledge in his hands before; it was decreed in equity, that if the borrrower would have his jewels, he muſt pay all the money due on the notes. *Preced. Chanc.* 419, 421.

A factor cannot *pawn* the goods of his principal, *Strange* 1178. He to whom goods are delivered for ſafe cuſtody cannot *pawn* them. *Strange* 1187. There can be no market-overt for *pawning*. Ibid. Where money is lent on a *pledge*, the borrower is perſonally liable to the payment, unleſs there be an agreement to the contrary. *Strange* 919. See *Cheats*, *Pledging*, and *Pawnbrokers*. And *Black. Com.* 2 *V.* 452.

Pawnage, In woods and foreſts for ſwine. Vide *Pannage.*

Pawnbrokers. By 30 *Geo.* 2. *c.* 24. they are to make entry of goods pawned, pledged or exchanged; and a duplicate thereof, if required, is to be given to the pawner, upon paying for the ſame. Default of making ſuch entry, and giving ſuch duplicate, ſhall forfeit 5 *l.* Where goods pawned are damaged through the neglect of the pawnbroker, the juſtices may award ſatisfaction to be deducted out of the principal and intereſt and allowance for warehouſe room; and in all caſes of ſuch damages happening, it ſhall be ſufficient for the pawner to pay or tender the money upon the balance after ſuch deduction, and upon ſo doing, the juſtices may proceed as if the whole principal, &c. had been paid or tendered. Perſons buying or taking in pledge, linen or apparel intruſted to others to waſh or mend, &c. ſhall forfeit double the ſum and reſtore the goods. Perſons offering goods to ſell, pawn, &c. not giving a good account of themſelves, may be detained, and carried before a juſtice, who may commit the party. The perſons detaining the party and goods are indemnified. Juſtice, upon oath of the owner, to iſſue a warrant to ſearch the ſuſpected perſon's houſe. Upon refuſal of admittance the officer may break open the door. Perſons hindering ſuch ſearch are to forfeit 5 *l.* And on non-payment to be committed to hard labour for a time not exceeding one month, nor leſs than five days. The goods found to be reſtored to the owner. Goods pawned for a ſum not exceeding 10*l.* may be recovered within two years. Juſtice, on complaint of pawnbroker refuſing to deliver goods, to ſummon and examine the parties; and proof being made of tender and payment of the principal, intereſt, and charges; or tender being then alſo made and refuſed; juſtice to make an order for the immediate delivery of the goods; on refuſal, to commit the pawnbroker until ſatisfaction be made. Goods remaining unredeemed for two years, are forfeited, and may be ſold. Entry to be made of ſale of goods pawned for 2 *l.* or upwards. Overplus ariſing from the ſale to be paid on demand to the owner. On refuſal of inſpection on the goods being ſold for more than entered, &c. pawnbroker to forfeit treble the value. Summons and warrants to be iſſued without fee.

Payment of money *before* the day appointed, is in law payment *at* the day; for it cannot, in preſumption of law, be any prejudice to him to whom the payment is made, to have his money before the time; and it appears, by the party's receipt of it, that it is for his own advantage to receive it then, otherwiſe he would not do it: Yet it is ſaid, that defendant muſt not plead, that the plaintiff *accepted* it in *full* ſatisfaction; but that he PAID it in full ſatisfaction. 5 *Rep.* 117. Payment of a leſſer ſum in ſatisfaction of a greater, cannot be a ſatisfaction for the whole, unleſs the payment be *before* the day: Though the gift of an horſe, or robe, &c. in ſatisfaction may be good. *Ibid.* And where damages are uncertain, a leſs thing may be done in ſatisfaction of a greater. 4 *Mod.* 89.

Upon *ſolvit ad diem* pleaded, it is good evidence to prove payment at any time *after* the day, and before action brought; and payment, although after the day, may be pleaded to any action of debt, upon bill, bond or judgment, or *Scire facias* upon a judgment. 2 *Lil. Abr.* 287. *Stat.* 4 & 5 *Ann. c.* 16. But though payment after the day, is good by way of diſcharge, it will not be ſo by way of *ſatisfaction.* 4 Mod. 250. Payment is no plea to debt on covenant, or an obligation, *without acquittance*; but if the obligation have a condition, it is otherwiſe. *Dyer* 25, 160. If a bond, &c. be for payment of money; and *no day is ſet*, damages cannot be recovered till a demand is made. *Bridgm.* 20.

For payment of rent there are ſaid to be four times; 1. A voluntary time, that is not ſatisfactory, and yet good to ſome purpoſe; as where a leſſee pays his rent before the day, this gives ſeiſin of the rent, and enables him to whom paid to bring his aſſiſe for it. 2. A time voluntary and ſatisfactory in ſome caſes; when it is paid the morning of the laſt day, and the leſſor dies before the end of the day, this is a good payment to bind the heir or executor, but not the King. 3. The legal, abſolute and ſatisfactory time, which is a convenient time before the laſt inſtant of the laſt day, and then it muſt be paid. The 4th is ſatisfactory, and not voluntary, but coercive, when forced and recovered by ſuit at law. *Co. Lit.* 200. 10 *Rep.* 127. *Plowd.* 172.

Payment of money ſhall be directed by him who pays it, and not by the receiver, &c. 5 *Rep.* 117. *Cro. Eliz.* 68. If the payer does not apply the payment, the receiver may, but he muſt not apply it to an uncertain demand, as to a debt from a teſtator. *Strange* 1194. In the payment of a teſtator's debts by executors, they are to pay firſt judgments, mortgages, rent due by leaſe, &c. then bonds and bills, &c. 1 *Rol. Abr.* 927. Vide *Bond and Rent.*

A bill drawn on *A.* to pay money for *value received*, is a good diſcharge of a debt, though the bill be not paid, unleſs the creditor return the bill in convenient time. *Per Holt* Ch. J. *Show.* 155.

A. gives *B.* a bill of exchange on *C.* in payment of a former debt; this is not allowable as evidence on *non aſſumpſit*, unleſs paid; for *a bill ſhall never go in diſcharge of a precedent debt, except it be part of the contract that it ſhould be ſo.* 1 Salk. 124.

When a merchant draws a bill upon a correſpondent, who accepts it, *this is payment*; for it makes him debtor to another perſon, who may bring his action. 10 *Mod.* 37.

4 & 5 *Ann. cap.* 16. *ſect.* 12. enacts, That in debt on ſingle bill, debt, or *ſcire facias* on judgment, defendant may plead *payment in bar.* In debt on bond, if de-

fendant before action brought hath paid the principal and intereſt due by the condition, though ſuch payment was not ſtrictly made according to the condition, yet *it may be pleaded in bar*, and ſhall be as effectual as if the money had been paid at the day and place, *according to the condition, and had* been ſo pleaded. Vide *Bond, and Rent*.

Peace, *(Pax)* In the general ſignification is oppoſite to war or ſtrife: But particularly with us it intends a quiet behaviour toward the King and his ſubjects. And if any man is in danger from another, and makes oath of it before a juſtice of *peace*, he ſhall be ſecured by good bond, which is called *binding to the peace*. Lamb. Eiren. lib. 2. cap. 2. 77. Cromp. Juſt. of Peace, 118, 129. And alſo *frank-pledge* and *conſervator of the peace*. Time of *peace* is when the courts of juſtice are open, and the judges and miniſters of the ſame may by law protect men from wrong, and adminiſter juſtice to all. *Co. Lit.* 249.

All authority for keeping the *peace* comes originally from the King, who is the ſupreme magiſtrate for preſervation thereof; though it is ſaid the King cannot take a recognizance of the *peace*, becauſe it is a rule in law that *no one can take any recognizance, who is not either a juſtice of record, or by commiſſion:* Alſo it is certain, that no duke, earl, or baron, *as ſuch*, have any greater power to keep the *peace*, than meer private perſons. *Lamb. lib.* 1. *c.* 3. *Dalt. c.* 1. But the Lord Chancellor, or Lord Keeper of the Great Seal, the Lord High Steward, the Lord Marſhal, and every juſtice of the King's Bench, have, *as incident to their offices*, a general authority to keep the *peace* throughout the realm, and to award proceſs for ſurety of the *peace*, and take recognizances for it. 2 *Hawk. P. C.* 32. And every court of record hath power to keep the *peace* within its own precinct: As have likewiſe ſheriffs, who are intruſted with the cuſtody of the counties, conſequently have by it an implied power of keeping the *peace* within the ſame; and coroners may bind perſons to the *peace* who make an affray in their preſence; but may not grant proceſs of the *peace*, &c. Ibid.

It is ſaid every man is to be a conſtable, to keep the *peace* among others, and juſtices of *peace* are to do the ſame eſpecially; and no man may break it. 3 *Shep. Abr.* 14.

Peace ſhall be kept, and juſtice and right duly adminiſtred to all perſons. *Stat.* 1 *R.* 2. *c.* 2, &c. Breakers of the *peace* to be impriſoned, and to find ſureties, &c. 2 *Ed.* 3. *c.* 6. 34 *Ed.* 3. *c.* 1. Other ſtatutes enforcing the keeping of the peace. 1 *R.* 2. *c.* 2. 1 *H.* 4. *c.* 1. 2 *H.* 4. *c.* 1. 7 *H.* 4. *c.* 1. Recognizances for keeping the *peace* to be certified to the quarter-ſeſſions. 3 *H.* 7. *c.* 1. The *Chancery* and *King's Bench*, reſtrained from granting proceſs of the *peace* or behaviour without motion and affidavit; and to give coſts and damages to perſons wrongfully vexed by ſuch proceſs. 21 *Jac.* 1. *c.* 8. The ſaid courts reſtrained from granting *ſuperſedeas* unleſs the proceſs is granted in the manner required by the ſtatute. *Ibid.* The ſaid courts to puniſh inſufficient ſureties. *Ibid.* Actions againſt *peace-officers* made local. 21 *Jac.* 1. *c.* 12. And the general iſſue pleadable. 7 *Jac.* 1. *c.* 5. 21 *Jac.* 1. *c.* 12. See *Juſtice of peace, and Good Behaviour*.

Peace of God and the Church, *(Pax Dei & Eccleſiæ)* Was anciently uſed for that ceſſation which the King's ſubjects had from trouble and ſuit of law between the terms. *Tempus dicitur cultui divino adhibitum, eaque appellatione omnes dies dominici, feſta & vigiliæ cenſentur.* Spelman. *See* Vacation.

Peace of the King, *(Pax Regis*, mentioned in *Stat.* 6 *R.* 2 *ſtat.* 1. *cap.* 13.) Is that peace and ſecurity both for life and goods, which the King promiſeth to all his ſubjects, or others taken into his protection. And where an outlawry is reverſed, a perſon is reſtored to the King's peace, called *ad pacem redire*. Bract. lib. 3. c. 11. See *Suit of the King's Peace*. This point of policy ſeems to have been borrowed by us from the *Feudiſts*, which in the ſecond book of the *Feuds, cap.* 53. intitled, *De paee tenenda, &c. Hotoman* proveth. Of this *Hoveden* ſetteth down many branches *Par. poſter. ſuorum Annal.* in *H.* 2. *fol.* 144. and 330. There is alſo *peace of the church*, for which ſee *Sanctuary*. There is beſides, the *peace of the King's highway*, which is the immunity that the King's highway hath to be free from annoyance or moleſtation. *The peace of the plough*, whereby the plough and the plough cattle are ſecured from diſtreſſes. *F. N. B.* 90. And *fairs* have been ſaid to have their *peace*; becauſe no man might be troubled in them for any debt contracted elſewhere.

Pecia, A piece or ſmall quantity of ground.—— *Cum duabus* peciis, *& dictæ terræ pertinentibus.* Paroch. Antiq. 240.

Pectorale, A word often met with in old writings. Moſt authors agree that it is the ſame with that garment called *rationale*, which the high prieſt in the old law wore on his ſhoulders, as a ſign of perfection. It is worn alſo by the high prieſt of the new law, as a ſign of the greateſt virtue. *Quæ gratia & ratione perficitur*; for which reaſon it is called *rationale*. It is by ſome taken to be that part of the pall which covers the breaſt of the prieſt, and from thence called *pectorale*. But all agree that it is the richeſt part of that garment, embroidered with gold, and adorned with precious ſtones. *Cowell. Item capa cum* pectorale *optime brendato cum rotundis* pectoralibus *aurifrigiis, &c. humerali vincato de fino auro brendato, & lapidibus inſertis, &c.*

Pectoral, Armour for the breaſt, a breaſt-plate or *petrel*, for a horſe; from the Lat. *pectus:* it is mentioned in the *Stat.* 13 & 14 *Car.* 2. *c.* 3.

Peculiar, (Fr. *peculier*, i. e. private) Is a particular pariſh or church, that hath juriſdiction within itſelf, and power to grant adminiſtration or probate of wills, &c. exempt from the ordinary.

There are *royal peculiars*, and *archbiſhops peculiars:* the King's chapel is a *royal peculiar*, exempted from all ſpiritual juriſdiction, and reſerved to the immediate government of the King; there are alſo ſome *peculiar* eccleſiaſtical juriſdictions belonging to the King, which formerly appertained to monaſteries and religious houſes. *Wood's Inſt.* 504. It is an ancient privilege of the ſee of *Canterbury*, that wherever any manors or advowſons belong to it, they forthwith become exempt from the ordinary, and are reputed *peculiars* of that ſee; not becauſe they are under no ordinary, but becauſe they are not under the ordinary of the dioceſe, &c. For the juriſdiction is annexed to the *Court of Arches*, and the judge thereof may originally cite to theſe *peculiars* of the archbiſhop. *Ibid.*

The *Court of Peculiars* of the archbiſhop of *Canterbury*, hath a particular juriſdiction in the city of *London*, and in other dioceſes, &c. within his province, in all fifty-ſeven *peculiars*. 4 Inſt. 338. Stat. 22 & 23 Car. 2. There are ſome *peculiars* which belong to *Deans* and *Chapters*, or a *Prebendary*, exempted from the archdeacon only; they are derived from the Biſhop, of ancient compoſition, and may be viſited by the biſhop in his primary or triennial viſitation: in the mean time an official of the Dean and Chapter, or Prebendary, is the judge; and from hence the appeal lies to the biſhop of the dioceſe. *Wood* 504. Appeal lieth from other *peculiar* courts to the King in *Chancery*. Stat. 25 H. 8. The Dean and Chapter of St. *Paul*'s have a *peculiar* juriſdiction; and the Dean and Chapter of *Saliſbury* have a large *peculiar* within that dioceſe; ſo have the Dean and Chapter of *Litchfield*, &c. 2 Nelſ. Abr. 1240, 1241.

There is mention in our books of *Peculiars* of *Archdeacons*; but they are not properly *Peculiars*, only ſubordinate juriſdictions; and a *Peculiar* is *prima facie* to be underſtood of him who hath a co-ordinate juriſdiction with the biſhop. *Hob.* 185. *Mod. Ca.* 308. If an Archdeacon hath a *peculiar* authority by *commiſſion*, this ſhall not take away the authority of the Biſhop; but if he hath authority and juriſdiction by *preſcription*, it is ſaid it ſhall. 2 *Rol. Rep.* 357. Where a man dies inteſtate, leaving goods in ſeveral *Peculiars*, it has been held, that the Archbiſhop is to grant adminiſtration. *Sid.* 90. 5 *Mod.* 239. See 16 *Vin. Abr.* tit. *Peculiars*. See *Black. Com.* 3 *V.* 65.

Pecunia, Properly money, but anciently uſed for cattle, and ſome times for other goods as well as money. So we find often in *Domeſday*, *Paſtura ibidem ad* pecuniam *villæ*, that is, paſture-ground for the cattle of the village. And in *Emendat. Willielmi Primi ad Leg. Edw. Conf. Intenti ſimus etiam ut nulla viva* pecunia *vendantur, aut emantur niſi infra civitates, & hoc ante tres fideles teſtes.* And *Leg. Edw. Conf. cap.* 10. *Qui habuerit* 30 *denariatos vivæ* pecuniæ. *Cowell.*

Pecunia ſepulchralis, *(LL. Canuti,* 102.) Was money anciently paid to the prieſt at the opening of the grave for the good of the deceaſed ſoul. This the *Saxons* called *ſaulſcead*, *ſaulſcot*, and *animæ ſymbolum.* Spel. de Concil. T. 1. f. 517.

Pecuniary. All puniſhments of offences were anciently pecuniary, by mulct, &c. See *Fine.*

Pecuniary Cauſes, Cognizable in the Eccleſiaſtical courts, are ſuch as ariſe either from the withholding Eccleſiaſtical dues, or the doing or neglecting ſome act relating to the church, whereby damage accrues to the plaintiff; towards obtaining a ſatisfaction for which he is permitted to inſtitute a ſuit in the Spiritual Court. For the principal of theſe cauſes, ſee *Black. Com.* 2 *V.* 88.

Pecuniary Legacy, Cannot be taken without conſent of the executor: for in him all the chattels are veſted; and it is his buſineſs firſt to ſee whether there is a ſufficient fund left to pay the debts of the teſtator: the rule of equity being, that A MAN MUST BE JUST, BEFORE HE IS PERMITTED TO BE GENEROUS. And in caſe of a deficiency of aſſets, all the general, or *pecuniary* legacies, muſt abate proportionably, in order to pay the debts. *Black. Com.* 2 *V.* 512.

Pedage, *(pedagium)* Signifies money given for the paſſing by foot or horſe through any country. Pedagium *à pede dictum eſt, quod a tranſeuntibus ſolvitur, &c.* Caſſan. de Conſ. Burgun. p. 118. Pedagia *dicuntur quæ dantur a tranſeuntibus in locum conſtitutum a principe, &c. Et capiens* pedagium, *debet dare ſalvum conductum, & territorium ejus tenere ſecurum.* Spelm. This word is likewiſe mentioned by *Mat. Paris, anno* 1256. And *Ed.* 3. granted to Sir *Nele Loring* pedagium *Sancti Macharii, &c.* Rot. Paſch. 22 Ed. 3.

Pedale, A foot cloth, or piece of tapeſtry laid on the ground to tread on for greater ſtate and ceremony. *Ingulph. pag.* 41.

Pedis abſciſſo, Cutting off the foot, was a puniſhment of criminals, inflicted here, inſtead of death; as appears by the laws of *William,* called *The Conqueror,* viz. *Interdicimus ne quis occidatur vel ſuſpendatur pro aliqua culpa, ſed eruantur oculi,* abſcindantur pedes, *vel teſticuli, vel manus.* Leg. Wil. 1. cap. 7. So in *Ingulphus, p.* 856. *Sub pœna perditionis dextri ſui* pedis. *Fleta, lib.* 1. *c.* 38. *Bracton, lib.* 3. *cap.* 32. *Monaſt.* 1 *tom. p.* 166.

Pedones, Foot-ſoldiers. *Simeon of Durham, Anno* 1085.

Pedlars. See *Hawkers.*

Peer, or **Pier,** *(Pera,* Fr. *pierre, ſaxum, quod e ſaxis fieri ſolebat)* Is a fortreſs made againſt the force of the ſea, or great rivers, for the better ſecurity of ſhips that lie at harbour in any haven. So is the peer of *Dover* deſcribed in *Cam. Britan.* 259. 14 *Car.* 2. *cap.* 27. The haven and peer of *Great Yarmouth,* mentioned 22 *Car.* 2. *cap.* 2.

Peerage, A duty or impoſition for maintenance of a ſea peer: Alſo the dignity of the lords or peers of the realm.

Peers, *(Pares)* Signify in law, thoſe who are impanelled in an inqueſt upon a man, for convicting or clearing him of any offence; the reaſon is, becauſe the cuſtom of the realm is, to try every man in ſuch caſe by his peers or equals. *Weſtm.* 1. *cap.* 6. *Mag. Car. c.* 29. And in this ſenſe, is in uſe with other nations: for *pares ſunt convaſſalli quorum ſententia vaſſallus propter feloniam eſt condemnatus.* Bartilayus de Regno, lib. 4. c. 2. *Et* pares *ſunt qui ab eodem domino feudum tenent.* Lib. 1. Feudor. cap. 26. *Cowell.*

And as every one of the nobility being a Lord of Parliament, is a *Peer* or equal to all the other Lords, though of ſeveral degrees; ſo the Commons are Peers to one another, although diſtinguiſhed as Knights, Eſquires, Gentlemen, &c. 2 *Inſt.* 29. 3 *Inſt.* 31. See *Peers of the Realm.*

Peers of Fees. The word *peer* denoted originally one of the ſame rank; afterwards it was uſed for the vaſſals or tenants of the ſame Lord, who were obliged to ſerve and attend him in his courts, being equal in function: theſe were termed *peers of fees,* becauſe holding fees of the lord, or becauſe their buſineſs in court was to ſit and judge under their lord, of diſputes ariſing on fees: but if there were too many in one lordſhip, the lord uſually choſe twelve, who had the title of *peers,* by way of diſtinction, from whence it is ſaid we derive our common juries, and other *peers.* Cowell.

Peers of the Realm, *(Pares Regni, proceres)* Are the Nobility of the Kingdom, and Lords of Parliament; who are divided into Dukes, Marqueſſes, Earls, Viſcounts, and Barons: And the Reaſon why they are called *peers,* is that, notwithſtanding a diſtinction of dignities in our nobility, yet in all public actions they are *equal;* as in their votes of Parliament, and trial of any nobleman. *S. P. C. lib.* 3. And this appellation ſeems to be chiefly borrowed from *France,* from thoſe *twelve peers* that *Charlemaine* inſtituted in that kingdom, (called *pares vel patricii Franciæ)* but we have applied this name to all our Lords of Parliament, and have no ſet number of *peers,* for they are more or leſs at the Kings pleaſure.

All nobility and peerage is granted by the crown; and created either by writ, or letters patent: the calling up a lord by writ is the moſt ancient way, and gives a fee-ſimple in a barony, without words of inheritance, *viz. To him and his heirs;* but *the King may limit the general eſtate of inheritance* to heirs male, or the heirs of the body: and as ſoon as the perſon called ſits in parliament by virtue of this writ, his blood is ennobled, and he is a *peer,* but if he dies before he ſits in parliament, he is not, the bare direction and delivery of the writ having no effect. 1 *Inſt.* 9, 16. But creation by letters patent is good, and makes the *peerage* ſure, altho' he never ſit in parliament, and his heirs ſhall inherit the honour purſuant to the words of the patent: though the perſon created muſt in this caſe have the inheritance limited by *apt words;* as to him and his heirs, or the heirs male of his body, heirs of his body, &c. otherwiſe he ſhall have no inheritance. 1 *Inſt.* 2 *Inſt.* 48.

The King may create either man or woman noble for life only: and *peerage* may be gained for life, by act of law; as if a Duke take a wife, ſhe is a Dutcheſs in law by the intermarrriage; ſo of a Marquiſs, Earl, &c. 1 *Inſt.* 16. 9 *Rep.* 97. Alſo the dignity of an Earl may deſcend to a daughter, if there be no ſon, who ſhall be a Counteſs; and if there are many daughters, it is ſaid, the King ſhall diſpoſe of the dignity to which daughter he pleaſes. 1 *Inſt.* 165. *Wood's Inſt.* 42. It has been reſolved in the Houſe of *Peers,* that if a perſon is ſummoned as a Baron to Parliament by writ, and ſitting die, leaving two or more daughters, who all dying, one of them only leaves iſſue a ſon, ſuch iſſue has a right to demand a ſeat in the Houſe of *Peers.* Skin. 441.

Before the time of King *Ed.* 3. there were but two titles of nobility, *viz.* Earls and Barons: the *Barons were originally by tenure,* afterwards created by writ, and after that by patent; but Earls were *always created by letters patent.* Seld. 536. And *Hen.* 6. created *Edmond of Hadham,* Earl of *Richmond,* by patent, and granted him precedency before all other Earls. *Mary* I. likewiſe granted to *Henry Ratcliff,* Earl of *Suſſex,* a privilege by patent beyond any other nobleman, *viz.* that *he might at any time be covered in her preſence,* like unto the *grandees* of *Spain;* and ſome few others of our nobility have had this honour.

The 31 *H.* 8. *c.* 10. ſettles the precedency of the lords of Parliament, and great officers, &c. After whom, the Dukes, Marquiſſes, Earls, Viſcounts, and Barons, take place *according to their ancienty;* but it is declared, that PRECEDENCE IS IN THE KING'S DISPOSITION. *Thomas de la Warre* was ſummoned to parliament by writ, *anno* 3 *H.* 8. and *William* his ſon, *anno* 3 *Ed.* 6. was diſabled by attainder to claim any dignity during his life, but was afterwards called to parliament by Queen *Elizabeth,*

beth, and ſat there as *puiſne* Lord, and died; then *Thomas*, the ſon of the ſaid *William*, petitioned the Queen in parliament to be reſtored to the place of *Thomas* his grandfather; and all the Judges to whom it was referred, were of opinion that he ſhould, becauſe *his father's diſability was not abſolute by attainder*, but only *perſonal* and *temporary* during his life: and the acceptance of the new dignity by the petitioner ſhall not hurt him, ſo that *when the old and new dignity are in one perſon, the old ſhall be preferred.* 11 Rep. 1.

A dignity of Earl, *&c.* is a title by the Common law; and if a patentee be diſturbed of his dignity; the regular courſe is to petition the King, who indorſes it and ſends it into *Chancery*. Staundf. Prærog. 72. 22 *Edw.* 3. And where nobility is gained by *writ*, or *patent*, without deſcent, it is *triable by record*; but when it is gained by matter of *fact*, as by *marriage*, or where *deſcents* are pleaded, nobility is triable *per pais*. 22 *Aſſiſ.* 24. 3 *Salk.* 243. A perſon petitioned the Lords in Parliament to be tried by his peers; the Lords diſallowed his peerage, and diſmiſſed the petition: and it was held in this caſe, that the defendant's right ſtood upon his letters patent, which could not be cancelled but by *ſcire facias*: and that the parliament could not give judgment in a thing which did not come in a judicial way before that court. 2 *Salk.* 510, 511. 3 *Salk.* 243. Where *peerage* is claimed *ratione Baronii*, as by a *Biſhop*, he muſt plead that he is *unus parium Regni Angliæ*; but if the claim is *ratione nobilitatis*, he need not plead otherwiſe than purſuant to his creation. 4 *Inſt.* 15. 3 *Salk.* 243.

There are now no feudal Baronies; but *there are Barons by ſucceſſion*, and thoſe are the *Biſhops*, who by virtue of ancient Baronies held of the King, (into which the poſſeſſions of their biſhopricks have been converted) are called *by writ* to parliament, and have place in the Houſe of *Peers* as Lords Spiritual: the temporal poſſeſſions of Biſhops are held by their ſervice to attend in parliament when called; and *that is in the nature of a Barony*; and all the Biſhops, it hath been ſaid, made one of the three eſtates in parliament; but this is denied, becauſe they have ſeparately from the other Lords no negative vote, *&c.* And tho' the Biſhops are Lords of Parliament, and called by the King's writ, and have a vote there; they ſhall not be tried by the *Peers*, as *they do not ſit in parliament by reaſon of their nobility, but of their Baronies which they hold in right of the church*: they are not of the degree of nobility; their blood is not ennobled, nor their *Peerage* hereditary; ſo that they are to be tried by the country, *i. e.* by *a common jury*: and when one of the nobility is to be tried by his *Peers* in parliament, the Spiritual Lords muſt withdraw, and make their *proxies*. 1 *Inſt.* 70, 97, 110. 3 *Inſt.* 30. 4 *Inſt.* 1, 2. Some Biſhops have been tried by *Peers of the realm*; but it hath been *when impeached* by the *Houſe of Commons*, as upon ſpecial occaſions many others have been who have not been *Peers*: and the Biſhops may claim all the privileges of the Lords Temporal; ſaving they cannot be tried by their *Peers*, becauſe the Biſhops cannot in like caſes paſs upon the trial of any other *Peers*, they being prohibited by *canon* to be judges of life and death, *&c.*

When a Lord is newly created, he is introduced into the Houſe of *Peers*, by two Lords of the ſame form in their robes, Garter King at Arms going before, and his Lordſhip is to preſent his writ of ſummons, *&c.* to the Lord Chancellor; which being read, he is conducted to his place: and Lords by deſcent, where nobility comes down from the anceſtor, and is enjoyed by right of blood, are introduced with the ſame ceremony, the preſenting of the writ excepted. *Lex Conſtitution.* 79.

A nobleman, whether native or foreigner, who has his nobility from a foreign ſtate, altho' the title of dignity be given him, (as the higheſt and loweſt degrees of nobility are univerſally acknowledged) in all our legal proceedings no notice is taken of his nobility, for he is no *Peer*: and the laws of *England* prohibit all ſubjects to receive any hereditary title of honour or dignity, from any foreign Prince, without conſent of the Sovereign. *Ibid.* 80, 81.

Tho' dignities of *peerage* are granted from the crown; yet *they cannot be ſurrendered to the crown*, except it be, in order to new and greater honours; nor are they transferrable, unleſs they relate to an office: and notwithſtanding there are inſtances of Earldoms being transferred, and wherein one branch of a family ſat in the Houſe of *Peers*, by virtue of a grant from the other branch, particularly in the reigns of *Hen.* 3. and *Ed.* 2. theſe precedents have been diſallowed; and the Duke of *Bedford*, who in the reign of King *Edw.* 4. was degraded for poverty, and want of poſſeſſions to ſupport his title, loſt not his *peerage* by ſurrender, but by the authority of parliament: and as dignities may not be ſurrendered or transferred without authority of parliament; ſo it hath been holden, that honour and *peerage* cannot be extinguiſhed but by act of parliament, the King and kingdom having an intereſt in the *peerage* of every Lord. *Lex Conſtit*, 85, 86, 87.

An Earldom conſiſts in office, for defence of the kingdom; and of rents and poſſeſſions, *&c.* and may be intailed as any other office may, and as it concerns land: but the dignity of *peerage* cannot be transferred by fine, becauſe *it is a quality affixed to the blood*, and ſo merely perſonal, that a fine cannot touch it. 2 *Salk.* 509. 3 *Salk.* 244.

A perſonal honour or dignity may be forfeited, on committing treaſon, *&c.* for it is implied by a condition in law, that *the perſon dignified ſhall be loyal*; and the office of an Earl, *&c.* is *ad conſulendum Regem tempore pacis & defendendum tempore belli*, therefore he forfeits it when he takes counſel or arms againſt the King. 7 *Rep.* 33. 2 *Nelſ. Abr.* 934.

All *peers of the realm* are looked upon as the King's hereditary counſellors, and may be called together by the King to impart their advice in all matters of importance to the realm, either in time of parliament, or, which hath been their principal uſe, when there is no parliament in being. *Co. Lit.* 110.

Inſtances of conventions of the *peers*, to adviſe the King, have been in former times very frequent, tho' now fallen into diſuſe, by reaſon of the more regular meetings of parliament. Many inſtances of this kind of meeting are to be found under our ancient Kings: tho' the former method of convoking them had been ſo long left off, that when *Charles* I. in 1640, iſſued out writs under the Great Seal to call *a great council of all the peers of England* to meet and attend his Majeſty at *York*, previous to the meeting of the long parliament, the Earl of *Clarendon* mentions it as a new invention, not before heard of; that is, as he explains himſelf, ſo old, that it had not been practiſed in ſome hundreds of years. But, tho' there had not ſo long before been an inſtance, nor has there been any ſince, of aſſembling them in ſo ſolemn a manner, yet, in caſes of emergency, our Princes have at ſeveral times thought proper to call for and conſult as many of the nobility as could eaſily be got together; as was particularly the caſe with King *James* the Second, after the landing of the Prince of *Orange*; and with the Prince of *Orange* himſelf, before he called that convention parliament, which afterwards called him to the throne.

Beſides this general meeting, it is uſually looked upon to be the RIGHT of each particular *peer* of the realm, *to demand an audience of the King*, and to lay before him, with decency and reſpect, ſuch matters as he ſhall judge of importance to the public. And therefore, in the reign of *Edward* II. it was made an article of impeachment in parliament againſt the two *Hugh Spencers*, (father and ſon) for which they were baniſhed the kingdom, “that they by their evil covin WOULD NOT SUFFER “THE GREAT MEN OF THE REALM, THE KING'S GOOD “COUNSELLORS, TO SPEAK WITH THE KING, OR TO “COME NEAR HIM; but only in the preſence and “hearing of the ſaid *Hugh* the father and *Hugh* the ſon, “or one of them, and at their will, and according to “ſuch things as pleaſed them.” 4 *Inſt.* 53. See *Black. Com.* 2 *V.* 227, 8, 9.

As to the privileges belonging to the *peerage*, they are very great. At Common law, it was lawful for any *peer* to retain as many chaplains as he would; but by *Stat.* 21 *H.* 8. their number is limited, *viz.* a Duke to have ſix, Marquis or Earl five, Viſcount four, Baron three, *&c.* In many caſes, the proteſtation of honour ſhall be ſufficient for a *peer*; as in trial of *peers*, they proceed upon their honour, not upon oath; and if a *peer* is defendant in a court of equity, he ſhall put in his anſwer upon his honour; (tho' formerly it was to be on oath:) and in action of debt upon account the plaintiff being a *peer*, it ſhall ſuffice to examine his attorney, and not himſelf on oath: but where a *peer* is to anſwer interrogatories, or make an affidavit, or to be examined as a witneſs, he muſt be upon his oath. *Bract. lib.* 5. *c.* 9. 9 *Rep.* 49. 3 *Inſt.* 29. *W. Jones* 152. 2 *Salk.* 512. A *ſubpœna* ſhall not be awarded againſt a *peer* out of the *Chancery*, in a cauſe; but a letter from the Lord Chancellor, or Lord Keeper, in lieu thereof. In any trial where a *peer* is plaintiff or defendant, there muſt be two or more Knights on the jury. 2 *Mod.* 182. Tho' it is ſaid, if a Knight is returned on a jury where a nobleman is concerned, it is not material whether he appear and give his verdict or not. 1 *Mod.* 226. A *peer* may not be impannelled upon any inqueſt, tho' the cauſe hath relation to two *peers*; and if a *peer* be returned on a jury, a ſpecial writ ſhall iſſue for his diſcharge from ſervice. No *peer* can be aſſeſſed towards the militia, but by an aſſeſſment made by ſix or more *peers*; and the Houſes of *peers* ſhall not be ſearched for conventicles, but by warrant under the ſign manual, or in the preſence of the Lord Lieutenant, or one Deputy Lieutenant, and two juſtices of the peace. 13 & 14 *Car.* 2. and 22 *Car.* 2.

A *peer* of the realm being ſent for by the King, in coming and returning may kill a deer or two in a foreſt thro' which he paſſes; being done by the view of the foreſter, or on blowing a horn, if the foreſter be abſent, that he may not ſeem to take the King's veniſon by ſtealth. See *Black. Com.* 1 *V.* 168. and 9 *H.* 3.

The *peers* have a right to be attended, and conſtantly are, by the judges, and ſuch of the Barons of the Exchequer as are of the degree of the coif, or have been made Serjeants at Law; as likewiſe by the Maſters of the court of Chancery; for their advice in point of law, and for the greater dignity of their proceedings. The Secretaries of State, the Attorney and Solicitor General, and the reſt of the King's learned Council being Serjeants, were alſo uſed to attend the Houſe of *Peers*, and have to this day their regular writs of ſummons iſſued out at the beginning of every parliament; but, as many of them have of late years been members of the Houſe of Commons, their attendance is fallen into diſuſe.

Every *peer*, by licence obtained from the King, may make another Lord of Parliament his *proxy*, to vote for him in his abſence.

Each *peer* has alſo a right by leave of the Houſe, when a vote paſſes contrary to his ſentiments, to enter his diſſent on the Journals of the Houſe, with the reaſons for ſuch diſſent; which is uſually ſtiled his *proteſt*.

All bills likewiſe, that may in their conſequences any way affect the rights of the peerage, are by the cuſtom of parliament to have their *firſt riſe* and beginning in the Houſe of Peers, and to ſuffer no changes or amendments in the Houſe of Commons. See *Black. Com.* 1 *V.* 168.

If any perſon ſhall divulge falſe tales of any of the Lords of Parliament by which diſſenſion may happen, or any ſlander ariſe, the offender ſhall be impriſoned, &c. *Stat. Weſtm.* 1. *c.* 34.

A nobleman menacing another perſon, whereby ſuch other perſon fears his life is in danger, no writ of *ſupplicavit* ſhall iſſue, but a *ſubpœna*; and when the Lord appears, inſtead of ſurety, he ſhall *only promiſe* to keep the peace. 35 *H.* 6. No *capias* or outlawry can be ſued out againſt *peers of the realm*, in civil caſes; and no eſſoign lies againſt them. 9 *Rep.* 49.

The perſon of a *peer*, as well out, as in parliament-time, is privileged from all arreſts; unleſs for treaſon, felony, or breach of the peace, &c. *Peers* are not to be arreſted upon meſne proceſs, or on execution for debt or treſpaſs, becauſe they are preſumed not only to attend the King and the public affairs, but the law doth intend that *they have ſufficient lands wherein they may be diſtrained:* but they may be arreſted or apprehended in criminal caſes. 6 *Rep.* 52, 53. And tho' a *peer* may not be arreſted by his body; yet his eſtate may be ſequeſtred for debt, &c. upon a proſecution after a diſſolution and prorogation of parliament, or adjournment for above the ſpace of fourteen days, when he refuſes to appear and anſwer. 12 *W.* 3. See the 11 *Geo.* 2. *c.* 24. And of late years, on non-appearance, &c. the coaches and horſes of ſeveral *peers* of this kingdom, have out of the time of privilege been diſtrained, and cattle ſeized upon their lands, to compel them to appear; but the privilege of a *peer* is ſo great in reſpect of his perſon, that the King may not reſtrain him of his liberty, without order of the Houſe of Lords, except it be in caſes of treaſon, &c. A memorable caſe wherein was that of the Earl of *Arundel* impriſoned by the King in the reign of K. *Charles* I.

Every Lord of Parliament is allowed his clergy in all caſes, where others are excluded by the *Stat.* 1 *Ed.* 6. *c.* 12. except wilful murder; and cannot be denied clergy for any other felony wherein it was grantable at Common law, if it be not ouſted by ſome ſtatute made ſince the firſt of King *Ed.* 6. *S. P. C.* 130. Lord *Morley*, who was tried by his *peers* for murder, and found guilty of manſlaughter, was diſcharged without clergy. *Sid.* 277. 2 *Nelſ. Abr.* 1181.

Peers of the realm are to be tried by their *peers* in parliament. *Magna Charta, c.* 29. and 15 *Ed.* 3. *c.* 2. But noblemen, who are not Lords of parliament, ſhall not be permitted to have this trial. 2 *Inſt.* 50. A *peer* ſhall be tried by his *peers* on indictment for treaſon, murder or felony, tho' in appeal of felony, he ſhall be tried by freeholders: and indictments of *peers* for treaſon or felony, are to be found by freeholders of the county, and then they plead before the Lord High Steward, &c. 1 *Inſt.* 156. 3 *Inſt.* 28.

1. *Of the privilege of peers; and proceedings at law and in equity againſt them.*
2. *In what caſes peers are to be ſworn; and for what degraded.*
3. *Of the trial of peers, and the order and proceſs of trial.*

1. *Of the privilege of peers; and proceedings at law and in equity againſt them.*

Peers are created for two reaſons;

1. *Ad conſulendum.*
2. *Ad defendendum regem.*

For which reaſons the law gives them certain great and high privileges, ſuch as freedom from arreſts, &c. even when no parliament is ſitting; becauſe the law intends, that they are always aſſiſting the King with their counſel for the commonwealth; or keeping the realm in ſafety by their prowеſs and valour. *Black. Com.* 1 *V.* 227.

A bill of *Middleſex* was iſſued out of *B. R.* by an attorney of the court, againſt the Counteſs of *H.* which was diſcharged by *ſuperſedeas* without pleading; becauſe it appeared by the record, that ſhe was a peereſs, and the attorney was committed for ſuing out the proceſs. *Vent.* 298.

Widows of peers are to have the privilege of peers *not to be arreſted*; but as to privilege of parliament, it was determined both ways in 1676. See 2 *Chan. Caſes* 224.

In ejectment a ſpecial verdict was found on a trial at bar, and judgment for defendant, and coſts taxed; and after affidavit of the demand of coſts, a motion was made for an attachment againſt the Dutcheſs, (the Duke being dead) ſhe being oue of the leſſors, for non-payment of coſts; and it was alledged, that if the court did not grant it, the defendant would be remedileſs; for tho' in other caſes a *diſtringas* iſſues againſt peers, yet in this caſe no proceſs can go but an attachment. The court refuſed to grant an attachment againſt the perſon of the Dutcheſs, but *ordered her to ſhew cauſe* why an attachment, as to *her* goods and chattels, ſhould not be iſſued; which rule was afterwards made abſolute. *Rep. of Pract. in C. B.* 7, 8.

A peer, or lord of parliament, cannot be an approver; for it is againſt *Magna Charta* for him to pray a coroner. 3 *Inſt.* 129. *cap.* 56. 2 *Hawk. Pl. C.* 205. *cap.* 24. *ſect.* 3.

If a bill in Chancery be exhibited againſt a peer, the courſe is firſt for the Lord Keeper to write a letter to him; and if he doth not anſwer, then a *ſubpœna*; then an order to ſhew cauſe why a ſequeſtration ſhould not go; and if he ſtill ſtands out, then a ſequeſtration. Becauſe *there can be no proceſs of contempt againſt his perſon.* 2 Vent. 342.

It is ſaid, if a truſtee be made defendant in *Chancery* he ſhall not have privilege, though he be a member of parliament. *Quære. Curſ. Canc.* 499. *cap.* 18.

Diſtringas is the firſt proceſs againſt a peer on an information for an intruſion on the King's lands, or for a converſion of the King's goods. 2 *Hawk. Pl. C.* 284. *cap.* 27. *ſect.* 12. cites *Co. Ent.* 387.

Now by a new act, ſaid to be planned and procured by Lord *Manſfield, viz.* 10 *Geo.* 3. *c.* 50. Suits may be proſecuted againſt peers, and members of the Houſe of Commons and their ſervants, *&c.* DURING TIME OF PRIVILEGE, but the perſons of members of the Houſe of Commons not to be arreſted or impriſoned. Iſſues returned on writs of *diſtringas* may be ſold, and the coſts of applying, *&c.* for and relative to thoſe writs, paid to plaintiff. *Vide* the act.

2. *In what caſes peers are to be ſworn; and for what degraded.*

In the pleas of parliament, 18 *Ed.* 1. between the Earl of *Glouceſter* and Earl of *Hereford*, on long debate whether *John de Haſting*, a baron, ought to be ſworn, becauſe he was a peer of the realm, it was reſolved that *he ought to lay his hand on the book.* The like was reſolved, 10 *Car.* in *B. R.* by the court where the Lord *Dorſet*'s teſtimony was requiſite. See *D.* 314. *b. marg. pl.* 98.

A bill was againſt a peereſs to diſcover deeds, ſhe anſwers on her *honour* and confeſſes deeds. She ſhall produce them only upon her honour, and not on oath. *Ch. Prec.* 92.

Where a peer is to anſwer a bill, his anſwer put in on his honour is ſufficient; but where a peer is to anſwer *interrogatories*, to make an affidavit, or be examined as a witneſs, he *muſt* be on his *oath*; *per Harcourt* Lord Keeper. 2 *Salk.* 513.

George Nevil, Duke of *Bedford* was degraded by act of parliament, 16 *June* 17 *Ed.* 4. reciting that as the ſaid *George* hath not, nor may have any livelihood to ſupport his name, eſtate and dignity, or any name of eſtate; and often when a lord is called to high eſtate, and hath not convenient livelihood to ſupport the dignity, it induceth great poverty, and often cauſeth great extortion, embracery and maintenance. Wherefore the King by advice of his Lords and commons ordaineth, eſtabliſheth and enacteth, That from henceforth the ſame creation and making of the ſaid Duke, and all the names of dignity given to the ſaid *George*, or to *John Nevil* his father, be from henceforth void and of none effect, *&c.*

In which act theſe things are to be obſerved: Firſt, That altho' the Duke had not any poſſeſſions to ſupport his dignity; *yet his dignity cannot be taken from him without an act of parliament.* Secondly, The inconveniencies appear, where a great ſtate and dignity is, and no livelihood to maintain it. Thirdly, It is a good reaſon to take away ſuch dignity by act of parliament, therefore the ſtatute *de abſentees* made at a parliament holden at *Dublin* in *Ireland*, the 10th of *May* 28 *H.* 8. by reaſon of the long abſence of *George* Earl of *Shrewſbury* out of that realm, ſhall be expounded, according to the general words of the writ, to take away ſuch inconvenience. 12 *Rep.* 106, 107. *Earl of Shrewſbury*'s caſe.

3. *Of the trial of peers, and the order and proceſs of trial.*

All the barons of parliament ſhall be tried for treaſon, felony, miſpriſion, or as acceſſary, at the ſuit of the King by *their* peers. By *Magna Charta* 9 *H.* 3. 39. *Non ſuper eum ibimus, &c.* NISI, PER LEGALE JUDICIUM PARIUM SUORUM. 2 *Inſt.* 49. 9 *Co.* 30. *b. Sta.* 152, 153. So all the nobility, who are peers of parliament. So by the Common law, which is now affirmed by the ſtat. 20 *H.* 6. *cap.* 9. All dutcheſſes, counteſſes and baroneſſes, who are noble by deſcent, creation or marriage. 2 *Inſt.* 50. And marchioneſſes and viſcounteſſes, *&c.* tho' not named by the ſtat. 20 *H.* 6. 9. 2 *Inſt.* 50. So the queen conſort, or dowager. 2 *Inſt.* 50. And a peer cannot waive the trial by his peers. *Kel.* 56. in marg. 621. 1 *Tr.* 265. 2 *Ruſh.* 94.

But nobles who are not barons of parliament, ſhall not be tried by the peers of parliament. By the Common law, confirmed by parliament, 4 *Ed.* 3. 2 *Inſt.* 50. 7 *Co.* 15. 16. *Calvin.* 3 *Inſt.* 30. Nor a woman, noble by marriage, who has loſt her dignity by ſubſequent marriage under the degree of nobility. 2 *Inſt.* 50. Nor an archbiſhop or biſhop; for *they are not peers inheritable.* Sheld. J. P. If he be not accuſed in parliament. 4 *Seld.* 3 *vol.* 2. *p.* 1541. 3 *Inſt.* 30 For *they make proxies after plea and withdraw themſelves.* 3 Inſt. 31. So a baron of parliament ſhall not be tried by his peers in an appeal, which is the ſuit of the party. 2 *Inſt.* 49. 9 *Co.* 30. *b. Sta. P. C.* 152. *a.* 10 *Ed.* 4. 6. *b.* 3 *Inſt.* 30.

By ſtat. 7 *W.* 3. *cap.* 3. *ſ.* 11. it is enacted, That upon the trial of any peers or peereſſes, all the peers who have a right to ſit and vote in parliament, ſhall be duly ſummoned twenty days at leaſt *before the trial*, and every peer ſo ſummoned and appearing ſhall vote in the trial, firſt taking the oaths of allegiance and ſupremacy required by 1 *W. &. M. ſ.* 1. *c.* 8. and ſubſcribing and repeating the Teſt enjoined by 30 *Car.* 2. *ſt.* 2. *c.* 1.

Not to extend to impeachments or other proceedings in parliament. Nor to the treaſons of counterfeiting the coin, the Great ſeal, Privy ſeal, Sign manual or Privy ſignet.

By the 6 *Ann. cap.* 23. *ſ.* 12. Peers ſhall be indicted in *Scotland* as in *England.*

If a peer be impleaded by a commoner, yet ſuch cauſe ſhall not be tried by peers, but *by a jury of* the country; for tho' the peers are the proper *pares* to a lord of parliament in capital matters, where the life and nobility of a peer is concerned; yet *in matter of property the trial of fact is not by them*, but by the inhabitants of thoſe counties where the facts ariſe, ſince ſuch peers living thro' the whole kingdom could not be generally cognizant of facts ariſing in ſeveral counties, as the inhabitants themſelves where they are done; but this want of having noblemen for their jury was compenſated as much as poſſible, by returning perſons of the beſt quality; therefore *a knight is neceſſary to be ſummoned in any cauſe where a peer is party.* G. Hiſt. C. B. 78, 79.

It has been adjudged, that if a peer on arraignment before the lords, refuſe to put himſelf on his peers, he ſhall be dealt with as one who ſtands mute; for it is as much the law of the land, that a peer be tried by his peers, as a commoner by commoners; yet if one who has *a title* to peerage, be indicted and arraigned as a commoner, and plead Not guilty, and put himſelf upon his country, it hath been adjudged, that he cannot afterwards ſuggeſt that he is a peer, and pray trial by his peers. 2 *Hawk. Pl. C.* 425.

The order and proceſs of this trial.

On *the trials of peers* in criminal matters, all the *peers* who have a right to ſit and vote in parliament are to be duly ſummoned *twenty days at leaſt before the trial*, to appear and vote at the ſame; every ſuch peer firſt taking the oaths required by the 1 *W. & M. ſſ.* 1. *c.* 8. The *peer* being indicted for the treaſon or felony, before commiſſioners of *oyer and terminer*, or in the *King's Bench*, if the treaſon, *&c.* be committed in the county of *Mid-*

dleſex; then the King by commiſſion under the Great Seal, conſtitutes ſome *peer* (generally the Lord Chancellor) *Lord High Steward*, who is judge in theſe caſes; and the commiſſion commands the *peers of the realm* to be attendant on him, alſo the Lieutenant of the *Tower*, with the priſoner, *&c.* A *certiorari* is awarded out of *Chancery*, to remove the indictment before the Lord High Steward: and another writ iſſues for bringing the priſoner; and the Lord High Steward makes his precepts for that purpoſe, aſſigning a day and place, as in *Weſtminſter-Hall* incloſed with ſcaffolds, *&c.* and for ſummoning the *peers*, which are to be twelve and above *at leaſt* preſent: At the day, the Lord High Steward takes place under a cloth of ſtate; his commiſſion is read by the clerk of the crown, and he has a white rod delivered him by the Uſher, which being returned proclamation is made, and command given for certifying of indictments, *&c.* and the Lieutenant of the *Tower* to return his writ, and bring the priſoner to the bar; after this, the ſerjeant at arms returns his precept with the names of the *peers* ſummoned, and they are called over, and anſwering to their names are recorded, when they take their places: the ceremony thus adjuſted, the High Steward declares to the priſoner at the bar, the cauſe of their aſſembly, aſſures him of juſtice, and *encourages him to anſwer without fear*; then the clerk of the crown reads the indictment, and arraigns the priſoner, and the High Steward gives his charge to the *peers*; this being over, the King's counſel produce their evidence for the King; and *if the priſoner hath* ANY MATTER OF LAW *to plead, he* SHALL *be aſſigned counſel*; but if he pleads Not guilty, and has nothing farther, he ſhall be allowed *no* counſel; for *the court are inſtead of it*; after evidence given for the King, and the priſoner's anſwer heard, the priſoner is withdrawn from the bar, and the Lords who are *triers* go to ſome place to conſider of their evidence: but *the Lords can admit no evidence, but in the hearing of the priſoner*; they cannot have conference with the judges, or demand it, (who attend on the Lord High Steward, and are not to deliver their opinions before hand) but *in the priſoner's hearing*; nor can they ſend for the opinion of the judges, or demand it, but *in open court*: and the Lord Steward cannot collect the evidence, or confer with the Lords, but *in the preſence of the priſoner*; who is at firſt to require juſtice of the Lords, and that no queſtion or conference be had, but in his preſence: *Nothing is done in the abſence of the priſoner, until the Lords come to agree on their verdict*; and then they are to be together as juries until they are agreed, when they come again into court and take their places; and the Lord High Steward, publicly in open court, demands of the Lords, beginning with the *puiſne* Lord, whether the priſoner, calling him by his name, be guilty of the treaſon, *&c.* whereof he is arraigned, who all give in their verdict, and he *being found guilty by a majority of votes more than twelve*, is brought to the bar again, and the Lord Steward acquainting the priſoner with the verdict of his *peers*, paſſes ſentence and judgment accordingly: After which, an *O Yes* is made for diſſolving the commiſſion, and the white rod is broken by the Lord High Steward; whereupon this grand aſſembly breaks up, which is eſteemed the moſt ſolemn and auguſt court of juſtice upon earth. 2 *Hawk. P. C.* 421, 422, *&c.* See *Black. Com.* 4 *V.* 256-7, 342.

The Lord High Steward gives no vote himſelf on a trial by commiſſion; but only on a trial by the Houſe of *Peers*, while the parliament is ſitting: Where a *Peer* is tried by the Houſe of Lords *in full parliament*, the houſe may be adjourned as often as there is occaſion, and the evidence taken by parcels; and it hath been adjudged, that where the trial is by commiſſion, the Lord Steward, after a verdict given, may take time to adviſe upon it, and *his office continues till he gives judgment*. But the triers may not ſeparate upon a trial by commiſſion, after evidence given for the King; and it hath been reſolved, that the *peers* in ſuch caſe muſt continue together, till they agree, to give a verdict. *State Trials, Vol.* 2. 702. *Vol.* 3. 657. 2 *Hawk.* 425.

It is ſaid a writ of error lies in the *King's Bench* of an attainder of a *peer* before the Lord High Steward. 2 *Hawk. P. C.* 462. If a *peer* be attainted of treaſon or felony, he may be brought before the court of *B. R.* and demanded, what he has to ſay why execution ſhould not be awarded againſt him? And if he plead any matter to ſuch demand, his plea ſhall be heard, and execution ordered by the court, upon its being adjudged againſt him. 1 *H.* 7. 22. *pl.* 15. *Bro. Coro.* 129. *Fitz. Coro.* 49. Likewiſe the court of *King's Bench* may allow a pardon pleaded by a *peer* to an indictment in that court. But that court cannot receive his plea of Not guilty, *&c.* but only the Lord Steward on arraignment before the Lords. 2 *Inſt.* 49.

The ſentence againſt a *peer* for treaſon, is the ſame as againſt a common ſubject; tho' *the King forgives all but beheading*, which is a part of the judgment: for other capital crimes, beheading is alſo the general puniſhment of a *peer*; but 33 *H.* 8. the Lord *Dacres* was attainted of murder, and had judgment to be hanged; and *anno* 3 *&* 4 *P. & M.* the Lord *Stourton* being attainted of murder, had judgment againſt him to be hanged, which ſentences were executed.

If execution be not done; the Lord Steward may by precept command it to be done according to the judgment. 3 *Inſt.* 31.

Trial by *peers* is very ancient: In the reign of *Will.* 1. the Earl of *Hereford* for conſpiring to receive the *Danes* into *England*, and depoſe the conqueror, was tried by his *peers*, and found guilty of treaſon, *per judicium parium ſuorum.* 2 *Inſt.* 50. The Duke of *Suffolk*, 28 *H.* 6. being accuſed of high treaſon by the Commons, put himſelf upon the King's grace, and not upon his *peers*, and the King *alone* adjudged him to baniſhment; but he ſent for the Lord Chancellor, and the Lords who were in town, to his palace at *Weſtminſter*, and alſo the Duke, and commanded him to quit the kingdom in their preſence: The Lords nevertheleſs entered a proteſt to ſave the privilege of their *peerage*; and *this was deemed no legal baniſhment*, for the King's judging in that manner was no judgment; he was *extrajudicially* bid to abſent himſelf out of the realm, and in doing it he was taken on the ſea and ſlain. The caſe of the Lord *Cromwell*, in the reign of K. *Hen.* 8. was very extraordinary; this Lord was attainted in parliament, and condemned and executed for high treaſon, *without being allowed to make any defence.* It need only be obſerved that this attainder was by a Parliament under the power and influence of *Henry* the Eighth, a ſcandal and diſgrace to the hiſtory of our country. See *Parliament Hiſt.* 3 *V.* 163. And ſeveral great perſons during this reign were brought to trial before *Lords Commiſſioners. Anno* 32 *Car.* 2. the Lord *Stafford* was tried for treaſon; and after evidence given for the King, and the priſoner had made his objections to the King's evidence, he inſiſted upon ſeveral points of law, *viz.* That *no overt act was alledged in his impeachment*; that they were not competent witneſſes who ſwore againſt him, but that they ſwore for money; and whether a man could be condemned for treaſon by *one witneſs*, there not being two witneſſes to any one point, *&c.* But the points inſiſted upon being over-ruled, he was found Guilty by a majority of twenty-four votes; fifty five againſt, thirty one for him. *St. Tr.* 3 *V.* 211. See his Lordſhip's ſpeech, *Id.* 215. We have only to obſerve that in 1685 the attainder was reverſed by an act of Parliament which expreſsly alledged that he was innocent of the treaſon laid to his charge, and that the teſtimony whereon he was found guilty was falſe. He was executed on *Tower Hill.*

Now by *Stat.* 7 *W.* 3. *c.* 3. No perſon ſhall be indicted, tried, or attainted of High Treaſon, but on the oath of two witneſſes; nor, ſhall one witneſs to one treaſon and another witneſs to another treaſon, be deemed two witneſſes. But this ſtatute is not to extend to any *impeachment* in parliament, nor to counterfeiting the coin, great or privy ſeal, *&c. vide the Stat.* and titles *Baron, Deſcent of Dignities, Lords,* &c.

Peereſs. As we have noblemen, ſo we have noble women, and theſe may be by

Creation, Deſcent, or *Marriage.*

And firſt, *Hen.* 8. made *Anne Bullen*, Marchioneſs of *Pembroke*: *James* 1. created Lady *Compton*, wife to Sir

Tho. Compton, Counteſs of *Buckingham* in the liſe-time of her huſband, without any addition of honour to him; and alſo made Lady *Finch* Viſcounteſs of *Maidſtone*, and afterwards Counteſs of *Winchelſea*, to her and the heirs of her body. *Geo.* 1. made Lady *Sculingburgh*, Ducheſs of *Kendal*. A woman noble by *creation* or deſcent marrying one under the degree of nobility, ſtill remaineth noble; but if ſhe be noble by marriage only, ſhe loſeth her dignity if ſhe afterwards marry a Commoner; though not if the ſecond huſband is noble, and inferior in dignity to the firſt. And by the courteſy of *England*, women noble by marriage *always retain their nobility*. 1 Inſt. 16, 50. 6 *Rep*. 53. But ſee *poſt*. If any *Engliſh* woman takes to huſband a *French* nobleman, ſhe ſhall not bear the title of dignity; and if a *German* woman, *&c.* marry a nobleman of *England*, unleſs ſhe be made denizen, ſhe cannot claim the title of her huſband, no more than her dower, *&c.* *Lex Conſtitution* 80.

If a duke, marquis, earl, *&c.* marries, the wife ſhall be noble for her life And if a woman marries a duke, who dies, and afterwards ſhe marries a baron; yet ſhe continues a ducheſs. *Co. Lit*. 16. *b.* 2 *Inſt*. 50. If a duke, earl, *&c.* who has the dignity in fee, has not a ſon, but ſeveral daughters; the King may confer the dignity on him who marries any of the daughters, *as he pleaſes*. 12 Co. 111. But if a woman, noble by marriage, afterwards takes a huſband *under* the degree of nobility, ſhe ſhall loſe her nobility. *Co. Lit*. 16. *b.* 2 *Inſt*. 50. *Dyer* 79. *b.* *Ow*. 81. Otherwiſe if a woman, noble by deſcent, takes a huſband not noble. *Co. Lit.* 16 *b.* 2 *Inſt*. 50. *per Brook, Ow*. 82. Or if a Queen Dowager takes a huſband, noble or not noble; for *ſhe* by her ſubſequent marriage ſhall not loſe her dignity. 2 *Inſt*. 50. Yet if a woman, noble by deſcent, marries to an inferior degree of nobility, as, if the daughter of a duke marries a baron, ſhe ſhall have precedence only as a baroneſs. *Ow*. 82.

A counteſs or baroneſs may not be arreſted for debt or treſpaſs; for though in reſpect of their ſex, they cannot ſit in parliament, yet they are *peers* of the realm, and ſhall be tried by their *peers*, *&c.* But a *capias* being awarded againſt the *Counteſs of Rutland*, it was held that ſhe might be taken by the ſheriff; becauſe *he ought not to diſpute the authority of the court from whence the writ iſſued, but muſt execute it, for he is bound by oath ſo to do*; and although by the writ itſelf it appeared, that the party was a counteſs, againſt whom a *capias* would not *generally* lie, for that in ſome caſes it may lie, as for a contempt, *&c.* therefore the ſheriff ought not to examine the judicial acts of the court. 6 *Rep*. 52.

By 20 *H*. 6. *cap*. 9. a ducheſs, counteſs, or baroneſs, married or ſole, ſhall be put to anſwer, and judged upon indictments of treaſon and felony, before ſuch judges and *peers* as the *peers of the realm* ſhall be: And it hath been agreed, that a Queen Conſort, and Queen Dowager, whether ſhe continue ſole after the King's death, or take a ſecond huſband, and he be a *peer* or commoner; and alſo all *peereſſes* by birth, whether ſole or married to *peers* or commoners; and all marchioneſſes and viſcounteſſes are intitled to a trial by the *peers*, though not expreſly mentioned in the act. 2 *Inſt*. 50. *Cromp. Jariſd*. 33. 2 *Hawk. P. C.* 423. See *Black. Com.* 1 *V*. 402.

A ducheſs, marchioneſs, counteſs or baroneſs, may retain two chaplains, by 21 *Hen*. 8. *cap*. 13. But it is ſaid that a baroneſs, *&c.* may not retain chaplains during coverture. *Wood's Inſt*. 44. 4 *Rep*. 89. *Sed qu.* if they are peereſſes by deſcent, or by creation, and not by marriage merely? Vide *Chaplain*.

Pene fort & dure, ſee *Paine fort & dure*.

Pela, A peel, pile or fort; and the citadel or caſtle in the *Iſle of Man* was granted to Sir *John Stanley* by this name. *Pat* 7 *H*. 4. *m*. 18.

Peles, Iſſues ariſing from, or out of a thing. *Fitzh. Juſt*. 205.

Pelf and **Pelfre**, *(Pelfra)* In time of war, the *Earl Marſhal* is to have of preys and booties, all the gelded beaſts, except hogs, *&c.* which is called *pelfre*. Old MS. And we read, that Tho. Venables *arm. clamat quod ſi aliquis tenent. ſive reſident. infra dominium ſive manerium de* Kinderton *feloniam fecerit, & corpus ejus per ipſum* Thomam *ſuper factum illud captum, & convict. fuerit, habere* pelfram, *viz. Omnia bona & catalla hujuſmodi ſeiſire, &c.* Plac. in Itin. apud Ceſtr. 14. Hen. 7.

Pellage, The cuſtom or duty paid for ſkins of leather. *Rot. Parl.* 11 *H*. 4.

Pellicia, A pilch, *Tunica vel indumentum* pelliceum; *hinc ſuper pelliceum*, a ſur-pilch, or ſur-plice. *Spelman.*

Pelliparius, *(Pat.* 15 *Ed*. 3. *p*. 2. *m*. 45.) A leatherſeller or ſkinner.

Pellota, (Fr. *Pelote)* The ball of the foot. See 4 *Inſt*. 308.

Pelt-wool, Is the *wool* pulled off the ſkin, or pelt of dead ſheep. 8 *H*. 6. *cap*. 22.

Pen, A word uſed by the *Britains* for a high mountain, and alſo by the ancient *Gauls*; from whence thoſe high hills, which divide *France* from *Italy*, are called the *Appenines*. Camd. Britan.

Penal Laws, Are of three kinds, *viz. Pœna pecuniaria, pœna corporalis*, and *pœna exilii*. Cro. Jac. 415. And *penal* ſtatutes are made on various occaſions, to puniſh and deter offenders; and they ought to be conſtrued ſtrictly, and not extended by equity; but the words may be interpreted beneficially, according to the intent of the legiſlators. 1 *Inſt*. 54, 268. Where a thing is prohibited by ſtatute under a *penalty*, if the *penalty*, or part of it be not given to him who will ſue for the ſame; it goes and belongs to the King. *Raſt. Entr*. 433. 2 *Hawk*. 265. But the King cannot grant to any perſon, any *penalty* or forfeiture, *&c*, due by any ſtatute, before judgment thereupon had. 21 *Jac*. 1. *c*. 3. Though after plea pleaded, juſtices of aſſiſe, *&c.* having power to hear and determine offences done againſt any *penal* ſtatute, may compound the *penalties* with the defendant, by virtue of the King's warrant or Privy Seal.

The courts at *Weſtminſter* (particularly the court of King's Bench) frequently give leave on motion, and an affidavit of circumſtances, *&c.* to compound penal actions. Compounding without ſuch leave, is puniſhable by indictment.

There are *penalties* ordained by ſeveral *penal* acts of parliament to be recovered in any court of record; but this is to be underſtood only of the courts at *Weſtminſter*, and not of the courts of record of inferior corporations. *Jenk. Cent*. 228. The ſpiritual court may hold plea of a thing forbidden by ſtatute upon a *penalty*; but they may not proceed on the *penalty*. 2 Lev. 222. See *Information*, and *Black. Com.* 1 *V*. 88. 4 *V*. 422.

Penalty of Bonds, &c. If a man brings an *action of debt* upon a bond for performance of covenants, the plaintiff ſhall recover the *whole penalty of his bond*; becauſe in debt, *the judgment muſt be according to the demand*, and the demand is to be for the whole *penalty*; but on defendant's bringing a bill in equity, and praying an injunction to the ſuit at Common law, the court of equity uſually grants it till the hearing of the cauſe; and upon hearing cauſe, they will continue the injunction farther, and order a trial at law on a *quantum damnificatus*, for the jury to find what damage the plaintiff received by reaſon of the breach of covenant, *&c.* And they farther order, that after ſuch verdict given at Common law, both parties ſhall reſort back for the decree of that court: ſo that here muſt be ſeveral actions and ſuits at law and equity; whereas a bare *action of covenant*, without ſuing for the *penalty of the bond*, will make an end of the buſineſs in leſs time, and for a much leſs charge. 2 *Lil. Abr*. 288, 289.

By virtue of the *Stat*. 8 & 9 *W*. 3. *c*. 11. *ſ*. 8. In actions on bonds for performance of covenants, the plaintiff may aſſign as many breaches as he pleaſes, and jury may aſſeſs damages. Defendant paying the damages, execution may be ſtayed, but the judgment to remain, to anſwer any further breach, and plaintiff may have *Sci Fac.* againſt the defendant.

A perſon being intitled to the *penalty* by law, a court of equity will not relieve againſt it, *without paying principal, intereſt and coſts*; and where a *penalty* is recovered at law and paid, Chancery may decree the party to refund all, except the principal and intereſt, *&c.* *Chan. Rep*. 437. This court will not generally carry the debt, beyond the *penalty of a bond:* Yet where a plaintiff came to be relieved againſt ſuch *penalty*, though it was decreed, it was on the payment of the principal money, intereſt, and coſts; and notwithſtanding they exceeded the *penalty*, this was affirmed. 1 *Vern*. 350. *Abr. Caſ. Eq*. 92. See 16 *Vin. Abr*. tit. *Penalty*, and *Black. Com*. 3 *V*. 435.

Penance, Is an eccleſiaſtical puniſhment, which affects the body of the penitent; by which *he is obliged to give a public ſatisfaction to the church*, for the ſcandal he hath given by his evil example. So in the primitive times, they were to give teſtimonies of their reformation, before they were re-admitted to partake of the myſteries of the church. In the caſe of inceſt, or incontinency, the ſinner is uſually injoined to do a public penance in the cathedral or pariſh church, or public market, *bare legged and bare headed in a white ſheet*, and to make an open confeſſion of his crime in a preſcribed form of words; which is augmented or moderated according to the quality of the fault, and the diſcretion of the judge.

So in ſmaller faults, a public ſatisfaction or penance, as the judge ſhall decree, is to be made before the miniſter, churchwardens, or ſome of the pariſhioners, *reſpect being had to the quality of the offence*, as in the caſe of defamation. or laying violent hands on a miniſter, or the like. *God. Append*. 18. *Wood's Inſt*. 507. *Penance* may be changed into a ſum of money, to be applied to pious uſes called *commuting*. 3 Inſt. 150. 4 Inſt 336. *See* Prohibition, *and* Black. Com. 4 V. 105, 217, 272, 361.

Penance, At *Common law*, where a perſon ſtands *mute*. See *Paine Fort & Dure*.

Penerarius, An enſign bearer; as *John Parient* was Squire of the Body, and *Penerarius* to King *Rich*. 2.

Penny-weight. As every pound contained twelve ounces, each ounce was formerly divided into twenty parts, called *penny-weights*; and though the *penny-weight* be altered, yet the denomination ſtill continues. Every *penny-weight* is ſub divided into twenty-four grains. *Cowel*.

Penon, (mentioned in ſtat. 11 *Ric. cap*. 1.) Is a ſtandard, banner, or enſign, carried in war. *Cowell*.

Penſa ſalis, *Caſei, &c*. A wey of ſalt, or cheeſe, containing 256 pounds. *Cowell*.

Penſam, *Ad penſam*, The ancient way of paying into the Exchequer as much money for a pound ſterling, as weighed twelve ounces *Troy*. Payment of a pound *de numero*, imported juſt twenty ſhillings; *ad ſcalam* twenty ſhillings and ſix-pence; and *ad penſam*, imported the *full* weight of twelve ounces. See *Lownde's Eſſay on Coin, p*. 4. See *Scalam*.

Penſion, (Fr. *Penſion)* An allowance made to any one without an equivalent. *Johnſ*. And to receive penſion from a foreign prince or ſtate, without leave of our king, has been held to be criminal, becauſe *it may incline a man to prefer the intereſt of ſuch foreign prince to that of his own country*. 1 Hawk. P. C. 58. *See* Black. Com. 4 V. 122, 175. Six-pence in the pound to be deducted out of all ſalaries. 7 *Geo. ſtat*. 1. *cap*. 27. *ſect*. 19. 12 *Geo*. 1. *c*. 2. What penſions are chargeable with the land-tax, and what exempt, 30 *Geo*. 2. *cap*. 3. *ſect*. 3, 94, 95, 96, 97.

Perſons having penſions from the crown are declared incapable of being elected members of parliament, *&c*. by ſtatute 1 *Geo*. 1. *c*. 56. See *Parliament*.

Penſion of Churches, Are certain ſums of money paid to clergymen in lieu of tithes. And ſome *churches* have ſettled on them annuities, *penſions*, &c. payable by other *churches* which *penſions* are due by virtue of ſome decree made by an eccleſiaſtical judge on a controverſy for tithes, by which the tithes have been decreed to be enjoyed by one, and a penſion inſtead thereof to be paid to another; or they have ariſen by virtue of a deed made by conſent of the parſon, patron and ordinary; and if ſuch penſion hath been uſually paid for twenty years, then it may be claimed by preſcription, and be recovered in the ſpiritual court, or a parſon may proſecute his ſuit for a *penſion* by preſcription, either in that court or at Common law, by writ of annuity; but if he takes his remedy at law, he ſhall never afterwards ſue in the ſpiritual court: If the preſcription be denied, that muſt be tried by the Common law. *F. N. B*. 51. *Hardr*. 230. *Ventr*. 120. A ſpiritual perſon may ſue in the ſpiritual court, for a *penſion* originally granted and confirmed by the ordinary; but where it is granted by a *temporal* perſon to a clerk, he cannot; as if one grant an annuity to a parſon, he muſt ſue for it in the temporal courts. *Cro. Eliz*. 675. If a parſon or vicar have a *penſion* out of another church, and it is not paid, they may bring a writ of annuity; becauſe a penſion iſſuing out of a rectory is *the ſame thing as a rent*; for it may be demanded in a writ of entry, and a common recovery may be ſuffered of it. 2 *Nelſ. Abr*. 1243.

Upon a bill in the *Exchequer* for a penſion, iſſuing out of a vicarage, it has been held, that though there is no glebe nor tithes, but only offerings, *&c*. yet the vicar is chargeable; and a ſuit may be brought in this court as well as at Common law, *&c*. for a penſion by preſcription, *Hardr*. 230. A penſion out of an *appropriation* by preſcription is ſuable in the ſpiritual court; and if the duty is traverſed, it may be tried there. 1 *Salk*. 58. A *libel* was had in the ſpiritual court for a penſion, to which the plaintiff made a title by preſcription: and a *prohibition* was prayed, for that *the court had no cogniſance of preſcriptions*; but adjudged, that they having cogniſance of the principal, it ſhall draw the acceſſary. 1 *Vent*. 3. The curate of a chapel of eaſe libelled againſt the vicar of the pariſh for the arrears of a penſion, which he claimed by preſcription; though a prohibition was granted, becauſe the curate is removeable at the will of the parſon, therefore cannot preſcribe; he muſt bring a *quantum meruit*. 2 Salk. 506. The ſtatute 13 *Ed*. 1. *ſt*. 4. appoints a remedy for penſions in the eccleſiaſtical court. And the 34 & 35 *H*. 8. *c*. 19. gives damages to the value and coſts, *&c*. See *Eccleſiaſtical Courts*, and *Black. Com*. 1 *V*. 281. 4 *V*. 40.

Penſions of the Inns of Courts, Are annual payments of each member to the houſes. And alſo that which in the two *Temples* is called a parliament, and in *Lincoln's Inn* a council, in *Gray's Inn* is termed a *penſion*, being uſually an aſſembly of the members to conſult of the affairs of the ſociety.

Penſioner, from *penſion*, one who is *ſupported* by an allowance *at the will* of another; a *dependant*. *Johnſon* cites *Collier*.

A *ſlave* of *ſtate* hired by a ſtipend to *obey* his maſter. *Johnſon* cites *Pope*.

Penſioners, *(Penſionarii)* Are a band of gentlemen ſo called, who attend as a guard on the King's perſon: They were inſtituted *anno* 1539, and have an allowance of fifty pounds a year, to maintain themſelves and two horſes for the King's ſervice. See *Stow's Annals* 973.

Penſion-writ. When a penſion writ is once iſſued, none ſued thereby in any inns of court, ſhall be diſcharged or permitted to come into commons, till all duties be paid. Order in *Gray's Inn*, wherein it ſeems to be a peremptory order againſt ſuch of the ſociety as are in arrear for *penſions* and other duties. *Cowell*.

Pentecoſtals, *(Pentecoſtalia)* Were certain pious oblations made at the feaſt of *Pentecoſt*, by pariſhioners to their prieſt, and ſometimes by inferior churches or pariſhes, to the principal mother church. Which oblations were alſo called *Whitſon farthings*, and were divided into four parts, one to the pariſh-prieſt, a ſecond to the poor, a third for repair of the church, and a fourth to the biſhop. *Stephens of Procurations and Pentecoſtals*. See *Kennet's Gloſſary* in *Pentecoſtalia*.

Peny, (Saxon *Penig)* Was our ancient current ſilver. 2 *Inſt*. 575. The *Saxons* had no other ſort of ſilver coin. It was equal in weight to our three-pence: Five made one ſhilling *Saxon*, and thirty made a mark, which they called *mancuſe*, and weighed as much as three of our half-crowns. The *Engliſh penny* called ſterling, is round, without clipping, and weighs 32 *grana frumenti in medio ſpicæ*; twenty pence make an ounce, and twelve ounces make a pound. *Stat. Ed*. 1. It was made with a croſs in the middle, and broke into half-pence and farthings. *Cowell*. Vide *Mat. Paris* 1279. And ſee *Denarius*.

Perambulation, *(Perambulatio)* Signifies a travelling through, or over: As *perambulation of the foreſt* is the ſurveying or walking about the foreſt, and the utmoſt limits of it; by juſtices, or other officers thereto aſſigned, to ſet down and preſerve the metes and bounds thereof. 17 *Car. c.* 16. 20 *Car.* 2. *c.* 3. 4 *Inſt.* 30.

Perambulation of pariſhes is to be made by the miniſter, church-wardens and pariſhioners, *by going round the ſame once a year,* in or about *Aſcenſion* week: And the pariſhioners may well juſtify going over any man's land in their *perambulation,* according to uſage; and it is ſaid may abate all nuſances in their way. *Cro. Eliz.* 441.

There is alſo a *perambulation of manors*; and a writ *perambulatione facienda,* which lies where any incroachments have been made by a neighbouring lord, *&c.* then, by the aſſent of the lords, the ſheriff ſhall take with him the parties and neighbours, and make a *perambulation,* and ſettle the bounds: Alſo a commiſſion may be granted to other perſons to make *perambulation,* and to certify the ſame in the *Chancery,* or the *Common Pleas, &c.* And this commiſſion is iſſued to make *perambulation* of towns, counties, *&c. New Nat. Br.* 206.

If tenant for life of a lordſhip, and one who is tenant in fee-ſimple of another lordſhip adjoining, ſue forth this writ or commiſſion, and by virtue thereof a *perambulation* is made, the ſame ſhall not bind him in reverſion: Nor ſhall the *perambulation* made with the aſſent of tenant in tail, bind his heir. *Ibid.* And it is ſaid this aſſent of the parties to the *perambulation* ought to be acknowledged and made perſonally in *Chancery,* or by *dedimus poteſtatem*; and being certified, the writ or commiſſion iſſues, *&c.* The writ begins thus: *The King to the ſheriff,* &c. *We command you, that taking with you twelve diſcreet lawful men of your county, in your proper perſon you go to the land of* A. B. *of,* &c. *And the land of* C. D. *of,* &c. *And upon their oaths you cauſe to be made* preambulation *betwixt the lands of the ſaid* A. *in,* &c. *and of the ſaid* C. *in,* &c. *So that it be made by certain metes, or bounds and diviſions,* &c. *And make known to our juſtices at* Weſtminſter, *&c.*

If *perambulation* be refuſed to be made by a lord, the other lord who is grieved thereby ſhall have a writ againſt him, called *de Rationabilibus Diviſis.* See *F. N. B.* 133. *Reg. Orig.* 157. and *Rationabilibus Diviſis.*

Queſtions as to boundaries, limits, *&c.* are now in general determined, by actions of *treſpaſs, ejectment, &c.*

Perca, For *pertica,* a *perch* of land.——*Et unam acram prati per majorem* percam. *Mon. Angl. tom.* 2. *pag.* 87.

Percaptura, Is a place in a river made up with banks, *&c.* for the better preſerving and taking fiſh. *Paroch. Antiq.* 120.

Perch, Is a rod or *pole* of ſixteen feet and a half in length, whereof forty in length and four in breadth, make an acre of ground. *Cromp. Juriſd.* 222. But by the cuſtoms of ſeveral counties, there is a difference in this meaſure: In *Staffordſhire* it is twenty-four feet; and in the foreſt of *Sherwood* twenty five feet, the foot there being eighteen inches long: And in *Herefordſhire,* a *perch* of ditching is twenty one feet; the *perch* of walling ſixteen feet and a half; and a pole of denſhiered ground is twelve feet, *&c. Skene.*

Per cui & poſt, Writs of entry ſo called. See *Entry.*

Per my et per tout. Jointennants are ſaid to be ſeiſed *per my et per tout,* by the *half* or *moiety,* and by *all* that is, they each of them have the entire poſſeſſion, as well of every *parcel* as of the *whole.* They have not, one of them a ſeiſin of one half or moiety, and the other of the other moiety; neither can one be excluſively ſeiſed of one acre, and his companion of another; but each has an *undivided* moiety of the whole, and not the whole of an undivided moiety. *Black. Com.* 2 *V.* 182.

Per quod, Are words made uſe of by a plaintiff in his declaration in the avering of particular damage to have happened, without which his action would not have been maintainable. As in ſlander, to ſay that ſuch a clergyman is a baſtard, he cannot for this bring any action againſt me, unleſs he can ſhew ſome ſpecial loſs by it: in which caſe he may bring his action againſt me, for ſaying he was a baſtard *per quod* he loſt the preſentation to ſuch a living. 4 *Rep.* 17. 1 *Lev.* 248. and ſee *Black. Com.* 3 *V.* 124, *&c.*

Perdings, Signifies the dregs of the people, *viz.* Men of no ſubſtance. *Leg. H.* 1. *c.* 29.

Perdonatio Utlagariæ, Is a pardon for a man who for contempt in not yielding obedience to the proceſs of the King's court is outlawed, and afterwards of his own accord ſurrenders. *Reg. Orig.* 28. *Leg. Ed. Confeſſ. c.* 18, 19.

Peremptory, (*Peremptorius,* from the verb. *perimere,* to cut off,) Joined with a ſubſtantive, as action or exception, ſignifies a final and determinate act, without hope of renewing or altering. So *Fitzherbert* calleth a *peremptory action. Nat. Brev.* 35, 38, 104, 108. and *nonſuit peremptory,* Idem, 5. 11. A *peremptory exception. Bracton, lib.* 4. *cap.* 20. *Smith de Rep. Anglor. lib.* 2. *cap.* 13. calleth that a *peremptory exception,* which makes the ſtate and iſſue in a cauſe. *Cowell.*

If defendant in an action, tender an iſſue in abatement, and the plaintiff demurs, if on arguing the demurrer the iſſue is over-ruled as not good; the court will give defendant a day over to anſwer peremptorily, *viz.* to plead to the merits of the cauſe; the former plea which was overuled, being only in abatement of the writ: But it is otherwiſe where ſuch an iſſue and demurrer is in bar of the action; for there the merits of the cauſe are put on it. *Trin.* 24 *Car.* 1. *B. R.* 2 *Lill. Abr.* 190. A peremptory day is when buſineſs by rule of court is to be ſpoke to at a preciſe day; but if it cannot be ſpoken to then, the court at the prayer of the party concerned. will give a farther day without prejudice to him; and this is called the *putting off a peremptory,* and is moved for by counſel at the riſing of the court, when it is granted of courſe. 2 *Lill. Ibid.*

Peremptory Challenge. In criminal caſes, or at leaſt in capital ones, there is, *in favorem vitæ,* allowed to the priſoner an arbitrary and capricious ſpecies of challenge to a certain number of jurors, without ſhewing any cauſe; which is called a *Peremptory Challenge:* A proviſion full of that tenderneſs and humanity to priſoners, for which the laws of *England* are juſtly famous. See *Black. Com.* 4 *V.* 346, *&c.* 389.

Peremptory Mandamus. If the inferior judge or other perſon to whom a writ of mandamus is directed, returns or ſignifies an inſufficient reaſon, then there iſſues a *peremptory mandamus,* to do the thing abſolutely; to which no other return will be admitted, but a certificate of perfect obedience and due execution of the writ. *Black. Com.* 3 *V.* 111. 265.

Peremptory Writ, A ſpecies of original writs, called a *ſi fecerit te ſecurum,* from the words of the writ; which directs the ſheriff to cauſe the defendant to appear in court, without any option given him, provided the plaintiff gives the ſheriff ſecurity effectually to proſecute his claim. This writ is in uſe where nothing is ſpecifically demanded, but only a ſatisfaction in general: to obtain which and miniſter complete redreſs, the intervention of ſome judicature is neceſſary. *Black. Com.* 3 *V.* 274. and tit. *Optional Writ.*

Perfection of the King, Beſides the attribute of ſovereignty, the law alſo aſcribes to the king, in his political capacity, abſolute perfection. The King can do no wrong. Which ancient and fundamental maxim is not to be underſtood, as if every thing tranſacted by the government was of courſe juſt and lawful, but means only two things. Firſt, that whatever is exceptionable in the conduct of public affairs, is not to be imputed to the King, nor is he anſwerable for it perſonally to his people: for this doctrine would totally deſtroy that conſtitutional independence of the crown, which is neceſſary for the balance of power, in our free and active, and therefore compounded, conſtitution. And ſecondly, it means that the prerogative of the crown extends not to do any injury: it is created for the benefit of the people, and therefore cannot be exerted to their prejudice. *Plowd.* 487. and *vide Black. Com.* 1 *V.* 246.

Perinde valere, Is a term in the *Eccleſiaſtical law,* and ſignifies a diſpenſation granted to a clerk, who being defective in capacity for a benefice, or other eccleſiaſtical function, is *de facto* admitted to it; and it hath the appellation from the words, which make the faculty as effectual to the party diſpenſed with, as if he had been actually capable of the thing, for which he is diſpenſed with at the time of his admiſſion. 25 *H*. 8. *cap*. 21. it is called a *writ*.

Perindinare, To ſtay, remain, or abide in a place. *Patri qui tunc* Londiniis perindinavit *nuntios dirigens*. Matt. Weſtm. anno 1016. Forteſcue, cap. 36.

Periphraſis, Circumlocution; uſe of many words to expreſs the ſenſe of one. *Johnſ.*

No periphraſis, or circumlocution, will ſupply words of art, which the law hath appropriated for the deſcription of offences in indictments: No periphraſis, intendment or concluſion ſhall make good an indictment, which doth not bring the fact within all the material words of a ſtatute: unleſs the ſtatute be recited, &c. *Cro. Eliz.* 535, 749. 2 *Hawk. P. C.* 224, 249.

Perjury and ſubornation. Perjury, (*Perjurium eſt mendacium cum juramento firmatum,*) Is a crime committed, when *a lawful oath* is adminiſtred by any who hath authority, to a perſon in any *judicial proceeding*, who ſwears *abſolutely and falſely*, in a matter *material* to the iſſue, or cauſe in queſtion, by their own act, or by the ſubornation of others. And if a man call me *perjured man*, I may have an action on the caſe, but *it muſt be intended contrary to my oath in a* JUDICIAL PROCEEDING: But for calling me a *forſworn man*, no action lies; becauſe the *forſwearing* may be *extra judicial*. 3 Inſt, 163.

Perjury by the Common law is defined *a wilful falſe oath* by one who, being lawfully required to depoſe the truth in any proceeding *in a court of juſtice*, ſwears abſolutely in a matter of ſome conſequence to the point in queſtion, whether he be believed or not. 2 *Hawk. P. C.* 272.

Subornation of perjury by the Common law is an offence in *procuring a man to take a falſe oath amounting to perjury*, who actually takes ſuch oath; but if the perſon, incited to take ſuch oath, do not actually take it, the perſon by whom he was ſo incited is not guilty of ſubornation; yet he is liable to be puniſhed, not only by fine, but alſo by infamous corporal puniſhment. 1 *Rol. Abr.* 41, 57. *Yelv.* 72. *Cro. Jac.* 158 2 *Keb.* 399. 3 *Mod.* 122. 1 *Hawk. P. C.* 177. See *Black. Com.* 4 *V.* 136, 138, 196.

1. *What is perjury by the Common law, and how reſtrained and puniſhed.*
2. *How reſtrained and puniſhed by ſtatute.*

1. *What is perjury by the Common law, and how reſtained and puniſhed.*

1ſt, It is neceſſary to conſtitute the offence perjury, that the *falſe* oath be taken *wilfully, viz.* with ſome degree of *deliberation*, not merely owing to ſurprize or inadvertency, or a miſtake of the true ſtate of the queſtion. 5 *Mod.* 350.

2dly, The oath muſt be taken either in a judicial proceeding, or in ſome other public proceeding of the like nature, wherein the King's honour or intereſt is concerned; or before commiſſioners appointed by the King to inquire of the forfeitures of his tenants, or of defective titles wanting the ſupply of the King's patents; but it is not material whether the court, in which a falſe oath is taken, be a court of record or not, or whether it be a court of Common law, or a court of equity or Civil law, &c. or whether the oath be taken in face of the court, or out of it, before perſons authorized to examine a matter depending in it; as before the ſheriff on a writ of inquiry, &c. or whether it be in relation to the merits of a cauſe, or in a collateral matter; as where one, who offers himſelf to be bail for another, ſwears that his ſubſtance is greater than it is, &c. but neither *a falſe oath in a mere private matter*, as in making a bargain, *&c. nor the breach of a promiſſory oath*, whether public or private, are puniſhable as perjury. 1 *Hawk. P. C.* 173.

3dly, The oath ought to be taken *before perſons lawfully authorized* to adminiſter it; for if it be taken before perſons *acting merely in a private capacity*, or before perſons *pretending to* a legal authority of adminiſtring ſuch oath, but having no ſuch authority, it is not puniſhable as perjury; yet a falſe oath taken before commiſſioners, whoſe commiſſion at the time is in ſtrictneſs determined by the demiſe of the King, is perjury; if taken before ſuch time as the commiſſioners had notice of ſuch demiſe; for it would be of the utmoſt ill conſequence, in ſuch caſe, to make their proceedings wholly void. 1 *Hawk. P. C.* 173-4.

4thly, The oath ought to be taken by a *a perſon ſworn to depoſe the truth*; therefore *a falſe verdict comes not under the notion of perjury*, becauſe the jurors ſwear not to depoſe the truth, but *only to judge truly of the depoſitions of others*; but a man may be as well perjured by an oath in his own cauſe, as in an anſwer in Chancery, or in an anſwer to interrogatories concerning a contempt, or in an affidavit, &c. as by an oath taken by him as witneſs in another's cauſe. 1 *Hawk. P. C.* 174.

5thly, *It is not material, whether the thing ſworn be true or falſe*, where the perſon who ſwears it in truth *knows nothing* of it. 1 *Hawk. P. C.* 175.

6thly, The oath muſt be taken *abſolutely and directly*; therefore if a man only ſwears *as he thinks*, remembers or believes, he cannot be guilty of perjury. 1 *Hawk. P. C.* 175.

7thly, The thing ſworn ought to be ſome way *material*; for if it be wholly foreign from the purpoſe, or immaterial, and neither pertinent to the matter in queſtion, or tending to aggravate or extenuate the damages, not likely to induce the jury to give credit to the ſubſtantial part of the evidence, *it cannot amount to perjury*, becauſe it is wholly inſignificant; as where a witneſs introduces his evidence, with an impertinent preamble of a ſtory concerning previous facts, *no way relating to what is material*, and is guilty of a falſity as to ſuch facts; but a witneſs may be guilty of perjury *in reſpect to a falſe oath concerning a mere circumſtance*, if ſuch oath have a plain tendency to corroborate the more material part of the evidence; as if in treſpaſs for ſpoiling the plaintiff's cloſe, with defendant's ſheep, a witneſs ſwears that he ſaw ſuch a number of defendant's ſheep in the cloſe, and being aſked how he knew them to be defendant's, ſwears that he knew them by ſuch a mark, which he knew to be the defendant's, where in truth defendant never uſed any ſuch mark. 1 *Hawk. P. C.* 175.

8thly, It is not material whether the falſe oath was credited, or not, or whether the party, in whoſe prejudice it was taken, was in the event damaged by it; for the proſecution is not grounded on the damage to the party, but *on the abuſe of public juſtice*. 1 Hawk. P. C. 177.

2. *How reſtrained and puniſhed by ſtatute.*

By the 5 *Eliz. c.* 9. it is enacted, "That whoever ſhall *unlawfully and corruptly* procure any witneſs, to commit any *wilful and corrupt* perjury, or ſhall *unlawfully or corruptly* procure or ſuborn any witneſs, who ſhall be ſworn to teſtify *in perpetuam rei memoriam*, ſhall for ſuch offence, being thereof lawfully convicted or attainted, forfeit the ſum of 40 *l*. And if ſuch offender ſo convicted or attainted, ſhall not have goods, &c. to the value of 40 *l*. then ſuch perſon ſhall ſuffer impriſonment by the ſpace of one half year, without bail, and ſtand upon the pillory the ſpace of one hour in ſome market town next adjoining to the place where the offence was committed, *in open market there*, or in the market town itſelf where the offence was committed."

And, That no perſon, ſo convicted or attainted, ſhall be received as a witneſs in any court of record, till ſuch judgment ſhall be reverſed, and that on ſuch reverſal the party grieved ſhall recover damages againſt the party who procured the judgment ſo reverſed to be firſt given.

And, That if any perſon ſhall either by the ſubornation, unlawful procurement, ſiniſter perſuaſion, or means of any other, or *by their own act*, conſent or agreement, *wilfully and corruptly* commit wilful perjury, that then every offender being duly convicted ſhall forfeit 20 *l*. and have impriſonment by the ſpace of ſix months, without bail, and the oath of ſuch offender ſhall not from thenceforth

forth be received in any court of record, until ſuch judgment be reverſed, &c. on which reverſal the party grieved ſhall recover damages in the manner before-mentioned.

And, That if ſuch offender ſhall not have goods or chattels to the value of 20*l.* then he ſhall be ſet on the pillory, where he ſhall have both ears nailed.

One moiety of the forfeitures to the King, the other to the perſon grieved, who will ſue for the ſame, &c. and that as well the judge of every court where any ſuit ſhall be, and whereon any ſuch perjury ſhall be committed, as alſo the juſtices of aſſiſe and gaol-delivery, and juſtices of peace at their quarter-ſeſſions, may enquire of, hear and determine offences againſt the act.

The act ſhall no way extend to any ſpiritual or eccleſiaſtical court, but every offender ſhall be puniſhed by ſuch uſual laws as are uſed in the ſaid courts.

The ſtatute ſhall not reſtrain the authority of any judge having abſolute power to puniſh perjury before the making thereof, but every ſuch judge may proceed in the puniſhment of all offences puniſhable before making the ſtatute, as they might have done to all purpoſes, ſo that they ſet not on the offender *leſs* puniſhment than contained in the act.

In the conſtruction of this ſtatute, the following opinions have been holden:

That every indictment, or action, on this ſtatute *muſt exactly purſue the words of it*; therefore if it alledge, that the defendant depoſed ſuch a matter *falſo & deceptive*, or *falſo & corrupte*, or *falſo & voluntarie*, without ſaying, *voluntarie & corrupte*, it is not good, though it concluded, that *ſic voluntarium & corruptum commiſit perjurium contra formam ſtatuti*, &c. Alſo it is neceſſary *expreſsly to ſhew*, that defendant was ſworn; and it is not ſufficient to ſay, that *tacto per ſe ſacro evangelio depoſuit.* Cro. Eliz. 147. Hetl. 12. Savil 43. 2 Leon. 211. 1 Show. 198. Cro. Eliz. 105.

But there is no need to ſhew, whether the party took the falſe oath through the ſubornation of another, or of his own act, though the words of the ſtatute are, "*If perſons by ſubornation, &c. or their own act, &c.* ſhall commit wilful perjury;" for there being no medium between the branches of this diſtinction, they expreſs no more than the law would have implied, therefore operate nothing. 3 *Bulſt.* 147.

It hath been adjudged that a man cannot be guilty of perjury within this ſtatute, in any caſe wherein he may not poſſibly be guilty of ſubornation of perjury within it; for it is reaſonable to give the whole ſtatute the ſame conſtruction; neither can it be well intended, that the makers of the ſtatute meant to extend its purview farther as to perjury, which they ſeem to eſteem the *leſſer* crime, than to ſubornation of perjury, which they ſeem to eſteem the *greater*; therefore ſince the clauſe concerning ſubornation of perjury mentioning only matters depending by writ, bill, plaint, or information, concerning hereditaments, goods, debts, or damages, &c. extends not to perjury on an indictment or criminal information; the clauſe concerning perjury, though penned in more general words, hath been adjudged to come under the like reſtriction: Alſo ſince the clauſe concerning ſubornation of perjury relates only to perjury *by witneſſes*, that concerning perjury ſhall extend only to the like perjury; therefore not to perjury in an anſwer in Chancery; or in ſwearing the peace againſt a man; or in any preſentment by homage in a court baron; or in wager of law, or in ſwearing before commiſſioners of inquiry of the King's title to lands; and by the opinions of ſome, a falſe affidavit againſt a man in a court of juſtice is not within the ſtatute; but if ſuch affidavit be by a third perſon, and relate to a cauſe depending in ſuit before the court, and either of the parties in variance be grieved, in reſpect of ſuch cauſe, by reaſon of the perjury, it may ſtrongly be argued that it is within the purview of the ſtatute, alſo a falſe oath before the ſheriff, on a writ of inquiry, is within the ſtatute. 5 *Co.* 99. *Cro. Jac.* 120. 3 *Inſt.* 164. 2 *Leon.* 201. *Yelv.* 120. *Cro. Eliz.* 148. 2 *Rol. Abr.* 77.

It hath been collected from the clauſe which gives an action to the party grieved, that *no falſe oath is within the ſtatute, which doth not give ſome perſon a juſt cauſe of complaint*; therefore, if the thing ſworn be true, though it be not known by him who ſwears it to be ſo, the oath is not within the ſtatute, becauſe it gives no juſt cauſe of complaint to the other party, who would take advantage of another's want of evidence to prove the truth; from the ſame ground no falſe oath can be within the ſtatute, *unleſs the party againſt whom it was ſworn ſuffered ſome diſadvantage by it*; therefore in every proſecution on the ſtatute, you muſt ſet forth the record wherein you ſuppoſe the perjury to have been committed, and muſt prove at the trial, that there is ſuch a record, either by actually producing it, or an atteſted copy; alſo in the pleadings you muſt not only ſet forth the point wherein the falſe oath was taken, but *muſt alſo ſhew how it conduced to the proof or diſproof of the matter in queſtion*; and if an action on the ſtatute be brought by more than one, you muſt ſhew how the perjury was prejudicial to each of the plaintiffs; but it ſeems that a perjury, which tends only to aggravate or extenuate the damages, is as much within the ſtatute as a perjury which goes directly to the *point* in iſſue; and a perjury, in a cauſe wherein an erroneous judgment is given, is a good ground of proſecution upon the ſtatute till the judgment be reverſed. 1 *Hawk. P. C.* 181.

If perjury be committed, that is within this ſtatute, but concludes not *contra formam ſtatuti*; yet it is a good indictment at Common law, but not to bring him within the corporal puniſhment of the ſtatute. 2 *Hale's Hiſt. P. C.* 191-2.

By 2 *Geo.* 2. *c.* 25. *ſ.* 2. The more effectually to deter perſons from committing wilful and corrupt perjury, or ſubornation of perjury, it is enacted, "That beſides the puniſhment to be inflicted by law for ſo great crimes, it ſhall be lawful for the court or judge before whom any perſon ſhall be convicted of *wilful and corrupt* perjury, or ſubornation of perjury, to order ſuch perſon to be ſent to ſome houſe of correction, for a time not exceeding ſeven years, there to be kept to hard labour during the time; otherwiſe to be tranſported for a term not exceeding ſeven years, as the court ſhall think proper; therefore judgment ſhall be given, that the perſon convicted ſhall be committed or tranſported accordingly, beſides ſuch puniſhment as ſhall be adjudged to be inflicted on ſuch perſon agreeable to the laws in being; and if tranſportation be directed, the ſame ſhall be executed in ſuch manner as is provided by law for tranſportation of felons; and if any perſon ſo committed or tranſported ſhall voluntarily eſcape or break priſon, or return from tranſportation before the expiration of the time, ſuch perſon being lawfully convicted ſhall ſuffer death as a felon, and ſhall be tried for ſuch felony in the county where he ſo eſcaped, or where he ſhall be apprehended."

Stat. 23 *Geo.* 2. *c.* 11. *ſ.* 1. In every information or indictment for perjury, it ſhall be ſufficient to ſet forth *the ſubſtance of the offence charged*, and by what court, or before whom the oath was taken, *(averring ſuch court or perſon to have authority to adminiſter the ſame)* together *with the proper averment to falſify the matter wherein the perjury is aſſigned*, without ſetting forth the bill, anſwer, information, indictment, declaration, or *any part of any record* or proceeding; and without ſetting forth the commiſſion or authority of the court or perſon before whom the perjury was committed.

Sect. 2. In every information or indictment for ſubornation of perjury, it ſhall be ſufficient to ſet forth *the ſubſtance of the offence charged, without ſetting forth the bill, anſwer, information, indictment, declaration, or any part of any record or proceeding*, and without ſetting forth the commiſſion or authority of the court or perſon before whom the perjury was committed, or agreed to be committed.

Sect. 3. It ſhall be lawful for any juſtice (ſitting the court, or within twenty-four hours after) to direct any perſon examined as a witneſs before them, to be proſecuted for perjury, in caſe there appear a reaſonable cauſe; and to aſſign the party injured, or other perſon undertaking ſuch proſecution counſel, who ſhall do their duty without fee. And every proſecution ſo directed ſhall be carried on without payment of any tax, and *without payment of any fees in court, or to any officer of the court.* And the clerk of aſſiſe, or his aſſociate or prothonotary, or other officer of the court attending when ſuch proſecution is directed, ſhall without fee give the party injured, or other perſon undertaking ſuch proſecution, a certificate of the ſame being directed, with the names of the counſel aſſigned him; which certificate ſhall be deemed ſufficient proof of ſuch proſecution having been directed. Provided, that no ſuch direction or certificate ſhall be given in evidence upon any trial againſt any perſon upon a proſecution ſo directed.

Perjury and ſubornation excepted out of the general pardon, 20 *Geo.* 2. *c.* 52. *ſ.* 19, 21.

Permiſſive Waſte. Waſte is either voluntary, which is a crime of commiſſion, as by pulling down a houſe; or it is *permiſſive*, which is a matter of omiſſion only, as by ſuffering it to fall for want of neceſſary reparations. *Black. Com.* 2 *V.* 281.

Permit, (from *permitto*) Is a licence for perſons to paſs with and ſell goods, on having paid the cuſtom duties for the ſame. See *Cuſtoms*.

Permutatione archidiaconatus & eccleſiæ eidem annexae cum eccleſia & præbenda, Is a writ to an ordinary, commanding him to admit a clerk to a benefice, upon exchange made with another. *Reg. Orig.* 307.

Pernancy, (from the Fr. *prendre*) Signifies a taking or receiving; as *tithes in pernancy*, are tithes taken or that may be taken in kind.

Pernor of Profits, Is he who receives the profits of lands, &c. and is all one with *ceſtui que uſe*. Stat. 1 H 7. cap. 1. 1 Rep. 123. The King has the pernancy of the profits of the lands of an outlaw, in perſonal actions; and by ſeizure ſhall hold againſt the alienation of ſuch outlaw, &c. *Raym.* 17. See *Co. Lit.* 589. *b.* and 12 *R.* 2. *c.* 15. and *Black. Com.* 2 *V.* 163.

Perpars, A part of the inheritance.——*Tanquam terram quæ ſibi deſcendit in* perpartem *de hæreditate, &c.* Fleta, lib. 2. c. 54. par. 19.

Perpetuating the Teſtimony of Witneſſes. If witneſſes to a diſputable fact are old and infirm, it is uſual to file a bill to perpetuate the teſtimony of thoſe witneſſes, although no ſuit is depending; for, it may be, a man's antagoniſt only waits for the death of ſome of them to commence his ſuit. See *Black. Com.* 3 *V.* 450.

Perpetuity, As it is a legal term of art, is the limiting an eſtate either of inheritance or for years, *ſo as to render it unalienable longer than for a life or lives* in being at the ſame time, and ſome ſhort or reaſonable time after. 2 *Wms. Rep.* 688.

Perpetuities are abſolute or qualified. And eſtates-tail from the time of the ſtatute *de donis*, till common recoveries were found out, were looked upon as perpetuities. 12 *Mod.* 282.

A perpetuity is, where if all who have intereſt join, yet they cannot bar or paſs the eſtate. But if by concurrence of all having intereſt the eſtate-tail may be barred, it is no perpetuity. *Ch. Caſes* 213.

A perpetuity is a thing *odious in law*, and deſtructive to the commonwealth; it would put a ſtop to the commerce, and prevent the circulation of the property of the kingdom. *Vern.* 164.

Every executory deviſe is a perpetuity as far as it goes, *i. e.* an eſtate unalienable, though all mankind join in the conveyance. 1 *Salk.* 229.

A. ſeized in fee gives his lands after his death without iſſue male to *B.* in tail male, until he or they effectually go about to do any acts to alter or diſcontinue this eſtate-tail, and then to *D.* and the heirs male of his body, with ſeveral remainders over; the diviſor dies without iſſue; *B.* enters; *D.* dies leaving iſſue *E.* *B.* levies a fine; *E.* enters; and the queſtion was, if the entry was good? Reſolved, That *this was a perpetuity and not allowable, being repugnant to law*; for by ſuch a limitation an eſtate-tail cannot be determined and given to another; for by the fine the remainder is diſcontinued and deveſted, ſo as *E.* cannot enter; for it is no limitation to enter but after the effectual going about to do any acts, &c. and it is not effectual till the act done; and when it is done, the remainder is diſcontinued, and then he cannot enter. *Cro. Jac.* 696. See *Vern.* 161.

It is abſolutely againſt the conſtant courſe of Chancery to decree a perpetuity, or give any relief in that caſe. 1 *Chan. Rep.* 144.

Truſtees of a term limited over in tail, remainder in tail, were decreed in Chancery to convey the eſtate over; for otherwiſe there would be a perpetuity. *Sid.* 37.

The father ſettles land on his ſon in tail male, and takes bond from him, that he will not dock the entail; decreed the bond good. Had not the ſon agreed to give the bond, the father might have made him only tenant for life; and though the alienation is not made by the ſon, but by his iſſue, the bill was diſmiſſed with coſts. 2 *Vern.* 233.

An attempt to make a perpetual ſucceſſion of eſtates for life is vain and not practicable. 2 *Vern.* 738.

Perpetuity of the King. The law aſcribes to the King, *in his* POLITICAL CAPACITY, an abſolute immortality. THE KING NEVER DIES. *Henry*, *Edward*, or *George*, may die; but the King ſurvives them all. For immediately upon the deceaſe of the reigning Prince in his *natural* capacity, his Kingſhip or imperial dignity, by act of law, without any *interregnum*, or interval, is veſted at once in his heir; who is, *eo inſtanti*, King to all intents and purpoſes. And ſo tender is the law of ſuppoſing even a poſſibility of his death, that his *natural* diſſolution is generally called his *demiſe*; *dimiſſio regis, vel coronæ*: an expreſſion which ſignifies merely, *a transfer of property*; for, as is obſerved by *Plowden*, (177, 234.) when we ſay the demiſe of the crown, we mean only that in conſequence of the diſunion of the King's body natural, from his body politic, the kingdom is transferred or demiſed to his ſucceſſor; and ſo *the royal dignity remains perpetual*. Thus too, when *Edward* the Fourth, in the tenth year of his reign, was driven from his throne for a few months by the houſe of *Lancaſter*, this temporary transfer of his dignity was denominated his *demiſe*; and all proceſs was held to be diſcontinued, as upon a natural death of the King. *Black. Com.* 1 *V.* 249.

Per quae ſervitia, Is a judicial writ iſſuing from the note of a fine, and lieth for cogniſee of a manor, ſeigniory, chief rent, or other ſervices to compel him who is tenant of the land at the time of the note of the fine levied, to attorn unto him. *Weſt. Symbol. part* 2. tit. *Fines, ſect.* 126. *Old Nat. Brev.* 155. See 16 *Abr.* tit. *Per quæ ſervitia.*

Perquiſite, (*Perquiſitum*) Is any thing got by induſtry, or purchaſed with money, different from that which deſcends from a father or anceſtor; and ſo *Bracton* uſes it, when he ſays, *Perquiſitum facere*, lib. 2. cap. 30. num. 3. and lib. 4. c. 22.

Perquiſites of Courts, Are commonly thoſe profits which ariſe to lords of manors, from their court baron, above the yearly revenue of the land; as fines of copyholds, heriots, amerciaments, &c. *Perk.* 20, 21. *Perquiſites of Offices.* See *Fees.*

Per quod conſortium amiſit, And *per quod* ſervitium *amiſit*, are words neceſſary in declarations for treſpaſs, &c. where a man's wife or ſervant is beaten, or taken from him, by which means he loſes their ſervice, &c. 2 *Lil. Abr.* 595, 596.

Perſon, A man or woman; alſo the ſtate or condition, whereby one man differs from another.

Perſon, Injuries to, are ſuch as relate to life, limb, body, health, or reputation. See *Black. Com.* 3 *V.* 119, &c.

Perſonable, (*perſonabilis*) Signifies as much as enabled to maintain plea in court: as for example the defendant was judged perſonable to maintain this action. *Old Nat. Brev.* 142. and in *Kitchen*, 214. The tenant pleaded, that the wife was an *alien*, born in *Portugal*, and judgment was demanded whether ſhe ſhould be anſwered: the plaintiff ſaith, ſhe was made perſonable by parliament, *i. e.* as the *Civilians* would ſpeak it, *Habere perſonam ſtandi in judicio*. Perſonable is alſo as much as to be of capacity to take any thing granted or given. *Plowd.* 27.

Perſonal, (*perſonalis*) Being joined with the ſubſtantives, things, goods or chattels, as things perſonal, goods perſonal, chattels perſonal; ſignifies *any moveable thing, quick or dead*: ſo it is uſed in *Weſt. Symbol. part.* 2. *ſect.* 58. in theſe words: theft is an unlawful felonious taking away another man's moveable perſonal goods, ſo alſo 61. And *Kitchen*, 139. ſaith, Where perſonal things ſhall be given to a corporation, as a horſe, a cow, ſheep, or other goods, *&c.* And *Staundſ. Pl. Cor. fol.* 25. *Contrectatio rei alienæ*, is to be underſtood of things perſonal; for in things real it is not felony, as the cutting of a tree is not felony. Unleſs in caſes made felony by ſtatute. See *Timber*, *Hedge*, and *Tab. to Stats.* as to thoſe articles. See *Chattels*, and *Black. Com.* 2 *V.* 384, 387.

Perſonal Action, *(actio perſonalis)* Is that which one man may have by reaſon of a contract for money or goods againſt another: it is ſuch an action whereby a debt, goods and chattels are demanded, or damages for them; or damages for a wrong done to a man's perſon. *Terms de Ley.* In the *Civil law*, it is called *actio in perſonam*, and is brought againſt him who is bound by covenant, to grant or to do any thing, *&c.* And in our law, *Actio perſonalis moritur cum perſona.* 1 Inſt. 53.

Action of debt lieth not againſt executors, upon a contract for the eating and drinking of the teſtator; for that action in ſuch caſe dieth with him. 9 *Rep.* 87. But an action upon the caſe on promiſes will lie, againſt the executor or adminiſtrator, on the promiſes of the teſtator, or inteſtate. If a perſon commit a battery or treſpaſs, and he or the perſon beaten, *&c.* die; *the action dieth*, and is gone. *Noy's Max.* 5. An executor cannot bring an appeal for larceny, from the teſtator; for it is a meer perſonal action, veſted in the teſtator, and dies with him as all actions for *torts* do. *H. P. C.* 184. *S. P. C.* 50. And an appeal of death is a perſonal action given to the heir, in reſpect to his immediate relation to the perſon killed; and, like other perſonal actions, ſhall die with the perſon. 2 *Hawk, P. C.* 165. See *Black. Com.* 3 *V.* 117, 302.

Perſonal Security. The right of perſonal ſecurity conſiſts in a perſon's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. *Black. Com.* 1 *V.* 129, *&c.*

Perſonal Tithes, Are tithes paid of ſuch profits as come by the labour of a man's perſon; as by buying and ſelling, gains of merchandiſe, and handicrafts, *&c.* *Black. Com.* 2 *V.* 24.

Perſonalty, *(Perſonalitas)* Is an abſtract of perſonal: the action is in the perſonalty, *i. e.* it is brought againſt the right perſon, or the perſon againſt whom *in law* it lies. *Old Nat. Br.* 92. Or it is to diſtinguiſh actions and things perſonal, from thoſe that are real.

Perſonate, To repreſent by a fictitious or aſſumed character, ſo as to paſs for the perſon repreſented. *Johnſ.*

If one of *my name* levies a fine of *my land* in *my name*, I may well confeſs and avoid this fine, by ſhewing the *ſpecial matter.* But if a ſtranger, who is not of my name, levies a fine of my land *in my name*, I ſhall not be received to aver that I did not levy the fine, but another in my name; for that is merely contrary to the record; and ſo it is of a recognizance, and other matters of record. But when the fraud appears to the court, they may enter a vacat on the roll, and ſo make it no fine, altho' the party cannot avoid it by averment, during the time it remains a record. *Cro. Eliz.* 531.

B. was taken in execution upon a recogniſance of bail, and he made it appear to the court, that *he never acknowledged the recognizance, but was perſonated by another*; and thereupon it was moved, that the bail might be vacated, and he diſcharged, as was done in *Cotton*'s caſe. 2 *Cro.* 256 But the court ſaid ſince 21 *Jac. cap.* 26. by which this offence was made *felony without clergy*, it is not convenient to vacate it until the offender is convicted; and ſo it was done in *Spicer*'s caſe, wherefore it was ordered, that *B.* ſhould bring the money into court, and be let at large to proſecute the offender. *Twiſden* ſaid it muſt be tried in *Middleſex*, tho' the bail was taken at a judge's chambers in *London*, becauſe filed here, and the entry is *venit coram Domino Rege, &c.* ſo it differs from a recognizance acknowledged before Lord *Hobart*, upon 23 *H.* 8. at his chambers, and recorded in *Middleſex*; there the *ſcire facias* may be either in *London* or *Middleſex*. Hob. 195, 196. Ven. 301. Mod. 46. S. P. *Cockerel* who perſonated *Beeſley* was hanged at *Tyburn*, but the rope was immediately cut; and afterwards *Beeſley* on motion had reſtitution of his goods in the hands of the ſheriff. 2 *Jo.* 64.

A commiſſion of rebellion was awarded againſt *A.* whereupon *B.* came before the commiſſioners and affirmed himſelf to be the perſon. The commiſſioners apprehended him by virtue of their commiſſion; but *per Hale* Ch. B. the commiſſioners have no warrant to take him by their commiſſion; *his affirming himſelf to be the perſon will not excuſe them in falſe impriſonment*, as has been held on executing a *capias*. Hard. 323.

As to perſonating others in courts, *&c.* and proprietors of ſtock, ſee *Black. Com.* 4 *V.* 128, 246.

Perſons, Are divided by law into either *natural perſons*, or *artificial*. Natural perſons are ſuch as the God of Nature formed us; artificial are ſuch as are created and deviſed by human laws for the purpoſes of ſociety and government, which are called corporations or bodies politic. See *Black. Com.* 1 *V.* 123, 467.

As to the *rights of perſons*, ſee *ib.* 122, *&c.*

Perticata terræ, The fourth part of an acre. See *Perch.*

Perticulas, Poor ſcholars of the *Iſle of Man.* The King granted to *L. Macguin de inſula de* Man *ſcholari, quandam eleemoſynam vocat.* particulas, *ad ſuſtentationem cujuſdam pauperis ſcholaris de inſula prædicta ad exercend. ſcholas, per progenitores noſtros quondam Reges Angliæ datam & conceſſam.* Pat. Hen. 4.

Pervise, According to *Somner* ſignifies *Palatii atrium vel area illa a fronte Aulæ Weſtm. hodie* the palace yard *vulgo nuncupata.* Somn. Gloſſ. See his *Gloſſ. in* 10 *ſcriptores*, verbo *Triforium.* And ſee *Wood's Hiſt. of Oxford*, 2 *par. fol.* 6. See alſo *Parviſe.*

Peſa, *Penſa*, *Piſa*, A *wey* or *weigh*, or certain weight and meaſure of cheeſe and wool, *&c.* containing two hundred and fifty-ſix pounds. *Cowell.*

Peſage, *(Peſagium)* A cuſtom or duty paid for weighing merchandiſe, or other goods.—Galfridus Plantagenet *Regis* Henrici *filius*, *Dux* Britanniæ *& Comes* Richmundiæ, *Dedi Thronagium &* Peſagium *de Nundinis Sancti* Botulphi, *&c.* *Selden's Tit. Hon.*

Peſarius, A weigher. *Cowell.*

Peſſona, Maſt of oaks, *&c.* or money taken for maſt, or feeding hogs. *Mon. Ang. tom.* 2. *p.* 213. See *Maſt.*

Peſſurable, Peſtarble, or **Peſtarable Wares,** Seem to be ſuch wares or merchandize as peſter, and take up much room in a ſhip. 32 *H.* 8. *c.* 14.

Peter-corn, Is mentioned in ſome of the ancient regiſters of our biſhops, particularly in that of St. *Leonard de Ebor.* which contains a grant thereof by King *Athelſtane*, &c. *Collect. Dodſw. MS.*

Peter-pence, *(Denarii Sancti Petri)* Otherwiſe called in the *Saxon* tongue *Romefeoh*, the fee of *Rome*, or due to *Rome*; alſo *Romeſcot* and *Rome-pennying*, was a tribute given by *Ina*, King of the *Weſt-Saxons*, being in pilgrimage at *Rome*, in the year of our Lord 720. which was a *penny for every houſe.* Lamb. Explication of *Saxon* Words, *Verbo* Nummus. And the like given by *Offa*, King of the *Mercians*, thro' his dominions, in *anno* 794. not as a tribute to the Pope, but in ſuſtentation of the *Engliſh* ſchool or college there; and it was called *Peterpence*, becauſe collected on the day of St. *Peter ad Vincula*, which was a penny for every houſe. *Spelm. de Concil. tom.* 1. *fol* 2, 3. And in St. *Edward's Laws*, *num.* 10, where we may read theſe words, *Omnes qui habent* 30. *denariatus vivæ pecuniæ in domo ſua de ſuo proprio*, *Anglorum lege dabit denarium Sancti* Petri, *& lege Danorum dimidiam marcam; iſte vero debet ſummoniri in ſolennitate apoſtolorum* Petri & Pauli *& collegii ad feſtivitatem quæ dicitur* ad Vincula, *ita ut ultra illum diem non detineatur, &c.* See alſo King *Edgar's Laws*, 78. *c.* 4. which contain a ſharp conſtitution touching this matter. *Stow*, in his *Annals*, *p.* 67. ſaith, that he who had twenty pennyworth of goods of one ſort in his houſe, was to give a penny at *Lammas* yearly. See *Romeſcot.*

It was prohibited by *Edw.* 3. and by 25 *H.* 8. *c.* 21. But it was revived 1 *&* 2 *Ph. & Mar. c.* 8. and was wholly abrogated 1 *Eliz c.* 1. See *Black. Com.* 4 *V.* 106.

Peter ad vincula, Mentioned in the *Stat.* 4 *Ed.* 4. *c.* 1, *&c.* See *Gule of Auguſt.*

Petition, *(Petitio)* A ſupplication made by an inferior to a ſuperior, and eſpecially to one having juriſdiction. *S. P. C. c.* 15. It is uſed for that remedy, which the ſubject hath to help a wrong done by the King, who hath a prerogative not to be ſued by writ: in which ſenſe it is either general, That the King do him right, whereupon follows a general indorſement upon the ſame, *Let right be done the party*; or it is ſpecial, when the concluſion and indorſement are ſpecial, for this or that to be done, *&c.* *Standf. Prærog. c.* 22. See *Black. Com.* 3 *V.* 256.

By ſtatute, the ſoliciting, labouring or procuring the putting the hands or conſent of above twenty perſons to any petition, to the King, or either Houſe of Parliament, for alterations in church or ſtate; unleſs by aſſent of three or more juſtices of peace of the county, or *a majority* of the grand jury, at the aſſiſes or ſeſſions, *&c.* and repairing to the King or Parliament to deliver ſuch petition, with above the number of *ten* perſons, is ſubject to a fine of 100 *l.* and three months impriſonment, being proved by two witneſſes, within ſix months, in the court of *B. R.* or at the aſſiſes, *&c.* 13 *Car.* 2. *ſt.* 1. *c.* 5. And if what is required by this ſtatute be obſerved, care muſt be taken that petitions to the King contain nothing which may be interpreted to reflect on the adminiſtration; for if they do, it may come under the denomination of a libel: and it is remarkable, that the petition of the city of *London*, for the ſitting of a parliament was deemed libellous; becauſe it ſuggeſted that the King's diſſolving a late parliament was an obſtruction of juſtice. *Read.* Stat. Vol. 4, 353. To ſubſcribe a petition to the King, *to frighten him into a change of his meaſures, intimating that, if it be denied, many thouſands of his ſubjects will be diſcontented*, *&c.* is included among the contempts againſt the King's perſon and government, tending to weaken the ſame, and puniſhable by fine and impriſonment. 1 *Hawk. P. C.* 60.

If there ſhould happen any uncommon injury, or infringement of the rights of the ſubject, which the ordinary courſe of law is too defective to reach, there remains a right, appertaining to every individual, namely, the right of petitioning the King or either houſe of parliament for the redreſs of grievances. There are doubtleſs reſtrictions to this right, but, while they promote the ſpirit of peace, they are no check upon that of liberty. Care only muſt be taken, leſt, under the pretence of petitioning, the ſubject be guilty of any riot or tumult; to prevent which the Stat. 13 *Car.* 2. *ſt.* 1. *c.* 5. above mentioned was enacted.

But, under theſe regulations, it is declared by the *Stat.* 1 *W. & M. ſt.* 2. *c.* 2. that the ſubject hath a right to petition; and that all commitments and proſecutions for ſuch petitioning are illegal. See *Black. Com.* 1 *V.* 143. 4 *V.* 147. and tit. *Liberty.*

Petition in Chancery, Is a requeſt in writing, directed to the Lord Chancellor or Maſter of the Rolls, ſhewing ſome matter whereupon the petitioner prays ſomewhat to be granted him. *P. R. C.* 269.

Moſt things which may be moved for of courſe, may be petitioned for.

Sometimes it is upon a collateral matter only, as it has relation to ſome precedent ſuit, or to an officer of the court; as to have a clerk or ſolicitor's bill taxed, or to oblige him to deliver up papers. *P. R. C.* 270.

The Maſter of the Rolls is not to be petitioned for rehearings, but the Chancellor; alſo the Chancellor only is to be petitioned touching pleas, demurrers or exceptions, or touching decrees or ſpecial orders made before the Chancellor. In moſt caſes of petition, the Maſter of the Rolls may be applied to. *P. R. C.* 270. See 16 *Vin. Abr.* 337, 338.

Petition of Right. In the reign of *Charles* I. there was a famous petition of right: that none ſhould be compelled to make or yield any gift, loan, benevolence, tax, and ſuch like charge, without conſent by act of parliament; nor, upon refuſal ſo to do, be called to make anſwer, take any oath not warranted by law, give attendance, or be confined, or otherwiſe moleſted concerning the ſame, *&c.* And that the ſubject ſhould not be burdened by the quartering of ſoldiers or mariners; and all commiſſions for proceeding by martial law, to be annulled, and none of like nature to be iſſued, leſt the ſubject (by colour thereof) be deſtroyed or put to death, contrary to the laws of the land, *&c.* See *Stat.* 3 *Car.* 1. *c.* 1. and *Black. Com.* 1 *V.* 128. 4 *V.* 430.

Petit Cape. See *Cape.*

Petit Larceny. See *Larceny.*

Petit Serjeanty, *Parva ſerjeantia.* To hold by *petit ſerjeanty*, is to hold lands or tenements of the King, yielding him a knife, a buckler, an arrow, a bow without a ſtring, or other like ſervice, *at the will of the firſt feoffor*; and there belongs not ward, marriage or relief. None can hold by grand or petit ſerjeanty, but of the King. But ſee 12 *Car.* 2. *c.* 24. and *Black. Com.* 2 *V.* 81.

Petit Seſſion. In both corporations and counties at large, there is ſometimes kept a ſpecial or petty ſeſſions, by a few juſtices, for diſpatching ſmaller buſineſs in the neighbourhood between the times of the general ſeſſions; as, for licenſing alehouſes, paſſing the accounts of pariſh officers, and the like. *Black. Com.* 4 *V.* 269.

Petit Treaſon, *(Parva Proditio)* In French *petit trahizon*, i. e. *proditio minor*, treaſon of a leſſer kind; for as high treaſon is an offence againſt the ſecurity of the commonwealth, ſo is petit treaſon, tho' not ſo expreſly: petit treaſon is, if a ſervant kills his maſter, a wife her huſband, a ſecular or religious man his prelate. 25 *Ed.* 3. *c.* 2. whereof ſee more in *Staundf. Pl. Cor. lib.* 1. *c.* 1. *Crompton's Juſtice of Peace* 2. tit. *Treaſon*, and *Black. Com.* 4 *V.* 75, 203.

Petra, Is a ſort of weight, we call it a *ſtone*, but differing in many parts of *England*; in ſome places conſiſting of 16, in others of 14, 12 or 8 pounds. *Cowell.*

Petraria, Is ſometimes taken for a quarry of ſtones, and in other places for a great gun called *petrard:* it is often mentioned in old records and hiſtorians in both ſenſes. *Cowell.*

Pews, In a church, may deſcend by immemorial cuſtom, without any eccleſiaſtical concurrence, from the anceſtor to the heir. 3 *Inſt.* 202. 12 *Rep.* 105. *Black. Com,* 2 *V.* 429.

Pharos, (from *Pharus*, a ſmall iſland in the mouth of the *Nile*, wherein ſtood a high watch tower) A watch-tower or ſea-mark: and no man can erect a *Pharos*, light-houſe, beacon, *&c.* without lawful warrant and authority. 3 *Inſt.* 204.

Phyſicians. No perſon within *London*, or ſeven miles thereof, ſhall practiſe as a phyſician or ſurgeon, without licence from the biſhop of *London*, or dean of St. *Paul's*; who are to call to their aſſiſtance four doctors of phyſic, on examination of the perſons, before granted: and in the country, without licence from the biſhop of the dioceſe, on pain of forfeiting 5 *l.* a month. 3 *Hen.* 8. *c.* 11.

By 14 & 15 *H.* 8. *c.* 5. The charter for incorporating the college of phyſicians is confirmed; they have power to chooſe a preſident, and have perpetual ſucceſſion, a common ſeal, ability to purchaſe lands, *&c.* Eight of the chiefs of the college are to be called elects, who from among themſelves ſhall chooſe a preſident yearly: and if any practiſe phyſic in the ſaid city, or within ſeven miles of it, without licence of the college *under their ſeal*, he ſhall forfeit 5 *l.* Alſo perſons practiſing phyſic in other parts of *England*, are to have letters teſtimonial from the preſident and three elects, unleſs they be graduate phyſicians of *Oxford* or *Cambridge*, &c.

The 32 *H.* 8. *c.* 10. ordains, that four phyſicians (called cenſors) ſhall be yearly choſen by the college, to ſearch apothecaries wares, and have an oath given them for that purpoſe by the preſident; apothecaries denying them entrance into their houſes, *&c.* incur a forfeiture of 5 *l.* And phyſicians refuſing to make the ſearch are liable to a penalty of 40 *s.* And every member of the college of phyſicians is authorized to practiſe ſurgery. Popiſh recuſants are diſabled to practiſe phyſic, or to uſe the trade of an apothecary, *&c.* under penalties. 3 *Jac* 1. *c.* 5. The four perſons called cenſors, annually choſen by the preſident and college of phyſicians, calling to their aſſiſtance the wardens of the apothecaries company, or one of them, are empowered to enter into the houſes, ſhops, or warehouſes of apothecaries, *&c.* and examine medicines, and to deſtroy thoſe that are not fit for uſe;

but ſubject to appeal to the college of phyſicians, *&c.* 10 *Geo.* 1. *c.* 20.

In the caſe of Dr. *Bonham*, 7 *Jac.* 1. is ſhewn the power of the college of phyſicians, in puniſhing perſons for practiſing phyſic without licence; they impriſoned the doctor for practiſing without licence; but it was adjudged, that they could not lawfully do it, for in ſuch caſe they had no power by the ſtatute to commit, but they ought to ſue for the penalty of 5 *l. per* month, *qui tam, &c.* But in caſe of male practice, the cenſors have power to commit, for they may in ſuch caſe fine and impriſon by their charter, and they are judges of record, and not liable to an action for what they do by virtue of their judicial power. 8 *Rep.* 107. *Carth.* 494.

Apothecaries taking upon them to adminiſter phyſic, without advice of a doctor, has been adjudged practiſing phyſic within the ſtatutes; the proper buſineſs of an apothecary being *to prepare the preſcriptions of the doctor:* the practice of phyſic was ſaid to conſiſt in judging of the diſeaſe and conſtitution of the patient; and of the proper remedy for the diſtemper; and in directing the application of the remedy. And ſo it was reſolved, though no fee was given the apothecary. 2 *Salk.* 451. But this judgment was afterwards reverſed in the Houſe of Lords. *Mod. Caſ.* 44.

It has been holden, that if a perſon not duly authoriſed to be a phyſician or ſurgeon, undertakes a cure, and the patient dies under his hands, he is guilty of felony; but it is ſaid not to be excluded the benefit of clergy. 1 *Hawk. P.C.* 87.

One who has taken his degree of doctor of phyſic in either of the univerſities, may not practice in *London*, and within ſeven miles of the ſame, without licence from the college of phyſicians; by reaſon of the charter of incorporation, confirmed by 14 & 15 *Hen.* 8. *c.* 5. penned in *very* ſtrong and *negative* words. As to the teſtimonials granted by the univerſities on a perſon's taking the doctor's degree, theſe may have the nature of a recommendation, and give a man a fair reputation, but confer no right; conſequently thoſe ſtatutes which have confirmed the privileges of the univerſities would revive or confirm nothing but the reputation that this teſtimonial might give ſuch graduates. And as to the laſt clauſe of this ſtatute, that "none ſhall practiſe in the country without "licence from the preſident and three elects, unleſs he "be a graduate of one of the univerſities;" all the inference from that would be, that poſſibly two licences may be neceſſary where a perſon is not a graduate. In the caſe of Dr. *Levet*, Lord Ch. J. *Holt* did not think this queſtion worth being found ſpecially. The college of phyſicians, without doubt, are more competent judges of the qualifications of a phyſician than the univerſities; and there may be many reaſons for taking particular care of thoſe who practice phyſic in *London*. 10 Mod. 353, 354.

For more learning on this ſubject, ſee 16 Vin. Abr. *tit.* Phyſicians, *and* Black. Com. 3 V. 122. 4 V. 197.

Philoſopher's Stone. *Henry* VI. granted letters patent to certain perſons, who undertook to find out the philoſopher's ſtone, and to change other metals into gold, *&c.* to be free from the penalty of the *Stat.* 5 *Hen.* 4. made againſt the attempts of *chymiſts* of this nature. *Pat.* 34 *Hen.* 6. 3 *Inſt.* 74. See *Multiplication of Gold and Silver.*

Picards, A ſort of boats of fifteen tuns or upwards, uſed on the river *Severn*, mentioned 34 & 35 *H.* 8. *c.* 3. Alſo a fiſher-boat. 13 *Eliz.* 11.

Piccage, *(piccagium,* from the Fr. *piquer,* i. e. *effodere)* A conſideration, paid for the breaking up ground to ſet up booths, ſtalls or ſtandings, in fairs; payable to the Lord of the ſoil.

Picle, *(pictellum)* A ſmall parcel of land incloſed with a hedge; a little cloſe: this word ſeems to come from the Italian *picciola,* i. e. *parvus*; and in ſome parts of *England* it is called *pightel.*

Pie-powder Court, *(curia pedis pulverizati)* from the French *pied,* i. e. *pes,* and *poudreux,* i. e. *pulverulentus*; Is a court held *(de hora in horam)* in fairs, to adminiſter juſtice to buyers and ſellers, and for redreſs of diſorders committed in them; ſo called from the *duſty feet* of the ſuitors; or, according to Sir *Edward Coke,* (4 Inſt. 272.) becauſe juſtice there is done as ſpeedily as duſt can fall from the foot. Upon the ſame principle that juſtice among the Jews was adminiſtered in the gate of the city, that the proceedings might be the more ſpeedy, as well as public. *Ruth, c.* 4.

But the etymology given us by a learned modern writer is much more ingenious and ſatisfactory; it being derived, according to him, from *pied puldreaux,* a pedlar, in old *French,* and therefore ſignifying the court of ſuch petty chapmen as reſort to fairs or markets. *Barring. Obſerv. on Stat.* 337. *Black. Com.* 3 *V.* 32.

So *Skene de verbor. ſignif.* verbo *Pede-pulveroſus* ſays, the word ſignifies a vagabond; eſpecially a pedlar, who hath no dwelling, therefore muſt have juſtice ſummarily adminiſtered to him, *viz.* within three ebbings and three flowings of the ſea. *Bract. lib.* 5. *tract.* 1. *c.* 6. *num.* 6. calleth it *Juſtitiam pepoudrous.* Of this court, read the ſtat. 17 *Ed.* 3. *c.* 2. 4 *Inſt.* 272. and *Cromp. Jur.* 221. See *Juſtices of the Pavilion.* This, among our old *Saxons,* was called *ceapung-gemot,* i. e. a court for merchandize, or handling matters of buying and ſelling. It is mentioned in *Doctor and Student, c.* 5. which tells us, it is a court incident to fairs and markets, to be held *only* during the time that the fairs are kept. *Cowell.*

The fair of St. *Giles,* held on the hill of that name, near the city of *Wincheſter,* by virtue of letters patent of K. *Edw.* 4. hath a court of *piepowder* of a *tranſcendent juriſdiction*; the judges whereof are called *juſtices of the pavilion,* and have their power from the biſhop of *Wincheſter.* Prin. Animad. on 4 Inſt. 191. *See* Court of Piepowder, Black. Com. 3 V. 32, &c. *and* 7 Vin. Abr. p. 16.

Pies, *Freres pies,* Were a ſort of *monks*; ſo called, becauſe they wore *black* and *white* garments, like *magpyes.* They are mentioned by *Walſingham, p.* 124.

Pictantia, A ſmall portion of meat and drink, diſtributed to the members of ſome collegiate body, or other people, upon a high feſtival, or ſtated anniverſary. *Libr. Statut. Eccl. Paul. Lond. A. D.* 1298.

Pictantiarius, The pittancer or officer in collegiate churches, who was to diſtribute the ſeveral pittances at ſuch times, and in ſuch proportions, as the ſeveral founders or donors had appointed. See *Pittance.*

Pig of Lead. See *Fother.*

Pigeons. Every perſon who ſhall ſhoot at *and kill* a Pigeon, may be committed to the common gaol for three months, by two or more juſtices of the peace, or he ſhall pay 20 *s.* to the Poor of the Pariſh. *Stat.* 1 *Jac.* 1. *c.* 27. By 2 *Geo.* 3. *c.* 29. Any perſon who ſhall wilfully ſhoot at, or deſtroy any houſe-doves or pigeons belonging to other perſons, ſhall forfeit on conviction 20 *s.* to the proſecutor; and if not forthwith paid, the offender may be committed and kept to hard labour for any time not exceeding three months, nor leſs than one month, unleſs the forfeiture be ſooner paid. The owners of dove-cotes or other places built for the preſervation or breeding of pigeons, and thoſe appointed by them, excepted. Offender is liable only to one conviction for ſame offence; and proſecutions are to be commenced and carried on with effect, within two months after the offence; and where perſons ſuffer impriſonment, they are not liable afterwards to pay the penalty. And to ſteal wild Pigeons in a Pigeon-houſe, ſhut up ſo that the owner may take them, is *felony.* 1 Hawk. P. C. 94.

Pigeon-houſe, Is a place for ſafe keeping Pigeons. A lord of a manor may build a Pigeon-houſe or Dove-cote upon his land, parcel of the manor; but a tenant of the manor cannot, without the lord's licence. 3 *Salk.* 248. Formerly none but the lord of the manor, or the parſon, might erect a Pigeon-houſe; though it has been ſince held, than any *freeholder* may build a Pigeon-houſe, on his own ground. 5 *Rep.* 104. *Cro. Eliz.* 548. *Cro. Jac.* 382, 440. A perſon may have a Pigeon-houſe, or Dove-cote, by preſcription. *Game-Law,* 2 *Pa.* 133. See *Nuſance.*

Pila, Is that ſide of *money* which is called *pile,* becauſe it is the ſide on which there was an impreſſion of a church built on *piles*; and he who brings an appeal of robbery againſt another, muſt ſhew the certain quantity, quality, price, weight, *&c.* *valorem & pilum*, where *pilum* ſignifies *figuram monetæ*. Fleta, lib. 1. c. 39.

Pilettus, Was anciently uſed for an arrow, which had a round knob, a little above the head, to hinder it from going far into a mark; from the Lat. *pila*, which ſignifies generally any round thing like a ball.——*Et quod foreſtarii non portabunt ſagittas barbatas, ſed* piletos. *Chart.* 31 H. 3. Perſons might ſhoot without the bounds of a *foreſt* with ſharp or pointed arrows; but within the foreſt, for the preſervation of the deer, they were to ſhoot only with blunts, bolts, or Piles: and *ſagitta pileta* was oppoſed to *ſagitta barbata*; as *blunts* to *ſharps*, in rapiers. *Mat. Paris.*

Pilcus ſupportationis, A cap of maintenance. Pope *Julius* ſent ſuch a cap, with a ſword, to *Hen.* 8. *anno* 1514. *Holling.* 827. but there is mention made of ſuch a cap by *Hovedon*, *p.* 656. at the coronation of *Richard* the Firſt. *Cowell.*

Pillory, (*colliſtrigium*, *collum ſtringens*; *pilloria* from the Fr. *pilleur*, i. e. *depeculator*, or *pelori* derived from the Greek Πύλη, *janua*, a door, becauſe one ſtanding on the pillory, puts his head, as it were, through a door, and Οράω, *video*) Is an engine made of wood to puniſh offenders, by expoſing them to public view, and rendring them infamous. there is a *ſtatute of the pillory*, 51 H. 3. And by ſtatute, it is appointed for bakers, foreſtallers, and thoſe who uſe falſe weights, perjury, forgery, *&c.* 3 *Inſt.* 219 Lords of leets are to have a pillory and tumbrel, or it will be cauſe of forfeiture of the leet; and a vill may be bound by preſcription to provide a pillory, *&c.* 2 *Hawk. P. C.* 73.

Pilot, Is he who hath the government of a ſhip, under the maſter. *Pilots* of ſhips, taking on them to conduct any ſhip from *Dover*, &c. to any place up the river *Thames*, are to be firſt examined aud approved by the maſter and wardens of the ſociety of *Trinity Houſe*, &c, or ſhall forfeit 10*l.* for the firſt offence, 20*l.* for the ſecond, and 40*l.* for every other offence; one moiety to the informer, the other to the maſter and wardens; but any maſter or mate of a ſhip may pilot his own veſſel up the river: and if any ſhip be loſt, through the negligence of any pilot, he ſhall be for ever after diſabled to act as a pilot. 3 *Geo.* 1. *c.* 13. Alſo the *Lord Warden of the Cinque Ports* may make rules for government of pilots, and order a ſufficient number to ply at ſea to conduct ſhips up the *Thames*. 7 Geo. 1. c. 21. No perſon ſhall act as a *pilot* on the *Thames*, &c. (except in collier ſhips) without licence from the maſter and wardens of *Trinity-Houſe* at *Deptford*, on pain of forfeiting 20 *l.* And *pilots* are to be ſubject to the government of that corporation; and pay ancient dues not exceeding 1 *s.* in the pound out of wages, for the uſe of the poor thereof. *Stat.* 5 *Geo.* 2. *c.* 20.

By the laws of *France*, no perſon ſhall be received as a *pilot*, till he has made ſeveral voyages, and paſſed a ſtrict examination; and after that, on his return in long voyages, he is to lodge a copy of his journal in the *Admiralty*: and if a *pilot* occaſion the loſs of a ſhip, he is to pay 100 livres fine, and be for ever deprived of the exerciſe of *pilotage*; and if he doth it deſignedly, be puniſhed with death. *Lex Mercat.* 70, 71.

The *laws of Oleron* ordain, That if any pilot deſignedly miſguide a ſhip, that it may be caſt away, he ſhall be put to a rigorous death, and hung in chains: And if the lord of the place where a ſhip be thus loſt, abet ſuch villains in order to have a ſhare in the wreck, he ſhall be apprehended, and all his goods forfeited for the ſatisfaction of the perſons ſuffering; and his perſon ſhall be faſtened to a ſtake in the midſt of his own manſion, which being fired on the four corners, ſhall be burnt to the ground, and he with it. *Leg. Ol. c.* 25. And if the fault of a pilot be ſo notorious, that the ſhip's crew ſee an apparent wreck, they may lead him to the hatches, and ſtrike off his head; but the Common law denies this haſty execution: An ignorant pilot is ſentenced to paſs thrice under the ſhip's keel, by the laws of *Denmark.* Lex Mercat. 70.

Maſters of ſhips ſhall not oblige pilots to paſs through dangerous places, or to ſteer courſes againſt their wills; but if there be a difference in opinions, the maſter may in ſuch caſe be governed by the advice of the moſt expert mariners. *Ibid.* Before the ſhip arrives at her place or bed, while ſhe is under the charge of the pilot, if ſhe or her goods periſh, or be ſpoiled, the pilot ſhall make good the ſame: But after the ſhip is brought to the harbour, then the *maſter* is to take charge of her, and anſwer all damages, except that of the act of God, *&c.* *Leg. Ol. cap.* 23.

In charterparties of affreightment, the maſter generally covenants to find a pilot, and the merchant to pay him: And in caſe the ſhip ſhall miſcarry through the inſufficiency of the pilot, the merchant may charge either the maſter or the pilot; and if he charges the maſter, ſuch maſter muſt have his remedy againſt the pilot. *Lex Mercat.* 70. See *Lodmanage.* And *Strange* 249. for the conſtruction of the ſtatute relating to the piloting of ſhips. 3 *Geo.* 1. *c.* 13. See alſo 7 *Geo.* 1. *c.* 21. 5 *Geo.* 2. *c.* 20. And 4 *Geo.* 3. *c.* 12.

Pimp-Tenure.——Willielmus Hoppeſhort, *tenet dimidiam vergatum terræ in* Rockhampton *de Domino Rege, per ſervitium cuſtodiendi ſex demiſellas, ſcil. meretricos, ad uſum Domini Regis.* 12 Ed. 1. *viz.* by *Pimp-Tenure.* Blount's Ten. 39.

Pinnas bibere, Or, *Ad pinnas bibere.* The old cuſtom of drinking brought in by the *Danes*, was to fix a pin in the ſide of the waſſal bowl, and to drink exactly to the pin; as now is practiſed in a ſealed glaſs, *&c.* This kind of drunkenneſs was forbid the clergy, in the council at *London*, *Anno* 1102. *Preſbyteri non eant ad potationes, nec ad* pinnas bibant. *Cowell.*

Pipe, (*Pipa*) Is a roll in the Exchequer, otherwiſe called *The Great Roll*, anno 37 E 3. c. 4. *See* Clerk of the Pipe. It is alſo a meaſure of wine, containing two hogſheads, or half a ton, that, is one hundred and twenty-ſix gallons; mentioned in 1 *R.* 3. *c.* 3.

Piquant, A *French* word for ſharp, made uſe of to expreſs malice or rancour againſt any one. *Law Fr. Dict.*

Pirates, (*Piratæ*) Are common ſea rovers, without any fixed place of reſidence, who acknowledge no ſovereign and no law, and ſupport themſelves by pillage and depredations at ſea: But there are inſtances wherein the word *pirata* has been formerly taken for a ſea captain. *Spelm.*

The crime of *piracy*, or robbery and depredation upon the HIGH SEAS, is an offence againſt the univerſal law of ſociety; a pirate being, according to Sir *Edward Coke*, (3 *Inſt.* 113.) *hoſtes humani generis.* As therefore he hath renounced all the benefits of ſociety and government, and has reduced himſelf afreſh to the ſavage ſtate of nature, by declaring war againſt all mankind, all mankind muſt declare war againſt him: So that every community hath a right, by the rule of ſelf-defence, to inflict that puniſhment upon him, which every individual would in a ſtate of nature have been otherwiſe entitled to do for any invaſion of his perſon or perſonal property. *Black. Com.* 4 *V.* 71.

Pirates are enemies to all: They are denied ſuccour by the law of nations; and by the Civil law, a ranſom promiſed to a pirate, if not complied with, creates no wrong; for the law of arms is not communicated to ſuch, neither are they capable of enjoying that privilege, which lawful enemies are intitled to in the caption of another. *Lex Mercat.* 183. If a pirate enters a port or haven, and aſſaults and robs a merchant ſhip at anchor there; this is not piracy, becauſe it is not done upon the *high ſea*; but *it is a robbery at the Common law*, the act being *infra corpus comitatus*: And if the crime be committed either *ſuper altum mare*, or in great rivers within the realm, which are looked upon as common highways, *there* it is piracy. *Moor* 756.

It has been held, that piracy, being an offence by the Civil law only, ſhall not be included in a ſtatute ſpeaking generally of felonies, as to benefit of clergy, *&c.* which ſhall be conſtrued only of thoſe felonies which are ſuch by our law; as thoſe piracies are which are committed in a port or creek, within the body of a county. 2 *Hawk. P. C.* 345.

If a ſhip be riding at anchor *at ſea*, and the mariners part in their ſhip boat, and the reſt on ſhore, ſo that none are left in the ſhip; and a pirate attack her, and commits a robbery, it is piracy. 14 *Ed.* 3. And where a pirate aſſaults a ſhip, and only takes away ſome of the men, in order to ſell them for ſlaves; this is piracy: And if a pirate make an attack on a ſhip, and the maſter for the redemption is compelled to give his oath to pay a certain ſum of money, tho' there be no taking, the ſame is piracy by the Marine law; but, by the Common law, there muſt be *an actual taking*, as in caſe of robbery on the highway. *Lex Mercat.* 185. But the taking by a ſhip at ſea, in great neceſſity, of victuals, cables, ropes, *&c.* out of another ſhip, is no piracy; *if that other ſhip can ſpare them*, and paying or giving ſecurity therefore. *Ibid.* 183.

A pirate takes goods upon the ſea, and ſells them, the property is not altered, no more than if a thief on land had ſtolen and ſold them. 27 *Ed.* 3. *cap.* 13. *Godb.* 193. Yet, by the laws of *England*, if a man commit piracy upon the ſubjects of any other prince, and brings the goods into *England* and ſells them in a *market-overt*, the ſame ſhall be binding, and the owners be concluded. *Hob.* 79.

When goods are taken by a pirate, and afterwards the pirate making an attack upon another ſhip, is conquered and taken by the other, by the law marine the admiral may make reſtitution of the goods to the owners, if they are fellow ſubjects of the captures, or belong to any ſtate in amity with his ſovereign, on paying the coſts and charges, and making the captor an equitable conſideration for his ſervice. *Lex Mercat.* 184. If a pirate at ſea aſſault a ſhip, and in the engagement kills a perſon in the other ſhip, by the Common law, all the perſons on board the pirate ſhip are principals in the murder, altho' none enter the other ſhip; but, by the Marine law, they who give the wound only ſhall be principals, and the reſt acceſſaries, if the parties can be known. *Yelv.* 135. It has been holden, that there cannot be an acceſſary of piracy, but if it happens, that there is an acceſſary upon the ſea, ſuch acceſſary may be puniſhed by the Civil law before the Lord Admiral: And it was made a doubt, whether an acceſſary at land to a felony at ſea, was triable by the admiral, within the purview of 28 *H.* 8. *c.* 15. Though this is ſettled by 11 *&* 12 *W.* 3. *c.* 7. which provides that acceſſaries to piracy, before or after, ſhall be inquired of, tried and adjudged according to the ſaid ſtatute. 2 *Hawk.* 222.

In caſe the ſubjects of a prince in *enmity* with the crown of *England*, enter themſelves ſailors on board an *Engliſh* pirate, and a robbery is committed by them, who are afterwards taken; it is felony in the *Engliſh*, but not in the ſtrangers: But in ancient times it was petit treaſon in the *Engliſh*, and felony in the ſtrangers: And if any *Engliſhman* commits piracy upon the ſubjects of any prince or ſtate in *amity* with *England*, they are within the ſtatute 28 *H.* 8. *c.* 15. If the ſubjects of any nation or kingdom in *amity* with *England*, ſhall commit a piracy on the ſhips or goods of the *Engliſh*, the ſame is felony, and puniſhable by this ſtatute: And piracy committed by the ſubjects of *France*, or any other country in *friendſhip* with us, upon the *Britiſh* ſeas, is properly puniſhable by the crown of *England* only. *Lex Mercat.* 186, 187.

A piracy is attempted on the ocean, if the pirates are over-come, the takers may immediately inflict a puniſhment by hanging them up at the main-yard end; though this is underſtood *where no legal judgment may be obtained*; hence if a ſhip on a voyage to any part of *America*, or the plantations there, on a diſcovery of thoſe parts, is attacked by a pirate, but in the attempt the pirate is overcome; the pirates may be forthwith executed, without any ſolemnity of condemnation, by the Marine law. *Ibid.* 184.

By the ancient Common law, piracy, if committed by a ſubject, was held to be a ſpecies of treaſon, being contrary to his natural allegiance; and by an alien to be felony only: But now, ſince the ſtatute of treaſons, 25 *Ed.* 3. *c.* 2. it is held to be only felony in a ſubject. 3 *Inſt.* 113.

Formerly it was only cognizable by the admiralty courts, which proceed by the rules of the Civil law. But, it being inconſiſtent with the liberties of the nation, that any man's life ſhould be taken away, unleſs by the judgment of his peers, or the Common law of the land, the ſtatute 28 *Hen.* 8. *c.* 15. eſtabliſhed a new juriſdiction for this purpoſe; which proceeds according to the courſe of the Common law. *Black. Com.* 4 *V.* 71.

By ſtat. 28 *Hen.* 8. *c.* 15. all robberies committed by pirates, ſhall be inquired of, heard and determined in any county of *England*, by the King's *commiſſion, as if the offences had been committed on land*; and ſuch commiſſion ſhall be directed to the Lord Admiral, and other perſons, as ſhall be named by the Lord Chancellor, *who ſhall determine ſuch offences after the common courſe of the laws of the kingdom uſed for felonies and robberies, &c.* and award judgment and execution as againſt felons for any felony done on the land; and the offenders ſhall ſuffer death, loſs of lands and goods, as if they had been attainted of ſuch offence committed on land, *&c.*

This ſtatute doth not alter the offence of piracy, but leaves it as it was before, *viz.* Felony only by the Civil law; but giveth a trial according to the Common law, and inflicts death, *&c.* as if the offenders had been convicted of any felony done upon the land. 3 *Inſt.* 112. *H. P. C.* 77. And no attainder for this offence corrupts the blood, the ſtatute mentioning only that the offender ſhall ſuffer death, loſs of lands, *&c.* as if he were attainted of a felony at Common law; but ſays not, that the blood ſhall be corrupted. 3 *Inſt.* 112. Likewiſe the offender is to be tried on the ſtatute, to forfeit his lands, *&c.* which are not forfeited by the Civil law. 1 *Lil. Abr.*

11 *&* 12 *W.* 3. *c.* 7. enacts, That all piracies, committed on the ſea, or in any haven, *&c.* where the admiral hath juriſdiction, may be tried at ſea, or on the land, in any of his Majeſty's iſlands, *&c.* abroad, appointed for that purpoſe, by commiſſion, under the Great Seal, or ſeal of the admiralty, directed to ſuch commiſſioners as the King ſhall think fit; who may commit the offenders, and call a court of admiralty, conſiſting of *ſeven perſons at leaſt*, or, for want of ſeven, any three of the commiſſioners may call others; and the perſons ſo aſſembled may proceed *according to the courſe of the admiralty*, paſs ſentence of death, and order execution, *&c.* And commiſſions for trial of offences within the *Cinque Ports*, ſhall be directed to the warden of the *Cinque Ports*, and the trial to be by the inhabitants of the ports. And if any natural born ſubjects or denizens, ſhall commit piracy againſt any of his Majeſty's ſubjects at ſea under colour of any commiſſion from any foreign prince, they ſhall be adjudged pirates: If any maſter of a ſhip, or ſeamen give up the ſhip to pirates, or combine to yield up, or run away with any ſhip; or any ſeaman lay violent hands on his commander, or endeavour a revolt in the ſhip, he ſhall be adjudged a pirate, and ſuffer accordingly; alſo if any perſon diſcover a combination for running away with a ſhip, he ſhall be intitled to a reward of 10 *l.* for every veſſel of 100 tons, and 15 *l.* if above: And all perſons who ſet forth any pirate, or be aſſiſting to thoſe committing piracy; or that conceal ſuch pirates, or receive any veſſel or goods piratically taken, ſhall be deemed acceſſary to the piracy, and ſuffer as principals. The 8 *Geo.* 1. *c.* 24. makes the *ſtat.* 11 *&* 12 *W.* 3. *c.* 7. perpetual.

And by 8 *Geo.* 1. *c.* 24. Maſters of ſhips trading with pirates, or furniſhing them with ſtores, *&c.* and perſons correſponding with pirates, are declared guilty of piracy; and ſhall be tried according to 28 *Hen.* 8. *c.* 15. and 11 *&* 12 *W.* 3. *c.* 7. and ſuffer death, forfeit lands, *&c.* Ships fitted out with deſign to trade with pirates, and the goods ſhall be forfeited: And maſters of ſhips, and ſeamen of ſhips carrying guns, being attacked by pirates, if they do not defend their ſhips, ſhall forfeit their wages, and be impriſoned ſix months; but ſeamen wounded in defence of ſhips againſt pirates, ſhall be admitted into *Greenwich* hoſpital, *&c.* By 4 *Geo.* 1. *c.* 11. the benefit of clergy is taken from all offences of piracy.

When an *Engliſh* ſhip ſhall have been defended by fight againſt pirates, and any of the officers or ſeamen be killed or wounded, the judge of the admiralty, or mayor or chief officer of any port, aſſiſted by four merchants, may by proceſs levy a ſum not exceeding two *per cent.* of the value of the ſhip and goods defended, to be diſtributed among the officers and ſeamen, or the widows and children of the perſons killed. *Lex Mercat.* 186. Pirates are always excepted in general pardons: And indictment for piracy muſt alledge the fact to be done UPON THE SEA: and have both the words *felonice* and *piratice*, *&c.*

By 18 *Geo.* 2. *c.* 30. All ſubjects, who, during any war, ſhall commit hoſtilities on the ſea againſt any of his Majeſty's ſubjects by colour of any commiſſion from the enemy, or adhere, or give aid to the enemy upon the ſea, may be tried as pirates, in the court of *Admiralty*, on ſhip-board or on land, and being convicted ſhall ſuffer death, *&c.* as other pirates, *&c.* by the *ſtat.* 11 & 12 *W.* 3. *c.* 7. But perſons convicted on this act, ſhall not be tried for the ſame crime as for high treaſon; but if not tried on this act, may be tried for high treaſon on the *ſtat.* 28 *H.* 8. *c.* 15. Vide *Staundſ. P. C* 10. 3 *Inſt.* 112. 2 *Hale's Hiſt. P. C.* 369, 370. 1 *Hawk. P. C.* 98.

In the conſtruction of 28 *H.* 8. *c.* 15. the following opinions have been holden:

That it does not alter the nature of the offence, ſo as to make that, which was before a felony only by the Civil law, now become a felony by the Common law; for *the offence muſt ſtill be alledged as* DONE UPON THE SEA, and is no way cognizable by the Common law, but *only by virtue of this ſtatute*; which, by ordaining that in ſome reſpects it ſhall have the like trial and puniſhments as are uſed for felony at Common law, ſhall not be carried ſo far as to make it alſo agree with it in other particulars which are not mentioned; from hence it follows that this offence remains, *as before*, of a ſpecial nature, and that it ſhall not be included in a general pardon of all felonies. 3 *Inſt.* 112. 2 *Hale's Hiſt. P. C.* 370. *Moor*, 756. *Co. Lit.* 391.

From the ſame ground it follows, that no perſon in reſpect of this ſtatute be conſtrued to be, or puniſhed as acceſſaries to piracy before or after, as they might have been, if it had been made felony by the ſtatute, whereby all thoſe would incidentally have been acceſſaries in the like caſes in which they would have been acceſſaries to a felony at Common law; therefore acceſſaries to piracy, being neither expreſsly named in the ſtatute, nor by conſtruction included, remain as they were before, and were triable by the Civil law, if their offences were committed on the ſea; but on the land, by no law, until 11 & 12 *W.* 3. *c.* 7. for 2 & 3 *Ed.* 6. *c.* 24. which provides againſt acceſſaries in one county to a felony in another, extends not to acceſſaries to an offence committed in no county, but on the ſea; but by 11 & 12 *W.* 3. *c.* 7. they are triable in like manner as the principals are by 28 *Hen.* 8. *c.* 15 3 *Inſt.* 112. 1 *Hawk. P. C.* 99. (Acceſſaries to piracy are made principals, by 8 *Geo.* 1. *c.* 24.)

From the ſame ground it follows, that an attainder for this offence corrupts not the blood, for though the ſtatute ſays, that the offender ſhall ſuffer ſuch pains of death, *&c.* as if he were attainted of a felony at Common law, yet it ſays not, that the blood ſhall be corrupted. 3 *Inſt.* 112. 1 *Hawk P. C.* 99.

Yet it has been reſolved, that an offender ſtanding mute on an arraignment, by force of this ſtatute, ſhall have judgment of *paine fort & dure*; for the words of the ſtatute are, that a commiſſion ſhall be directed, *&c.* to hear and determine ſuch offences after the common courſe of the laws of the land. 3 *Inſt.* 114. *Dyer* 241. *pl.* 49, 308. *pl.* 73.

It hath been holden, that the indictment for this offence muſt alledge the fact to be done *at ſea*, and muſt have the words *felonice* and *piratice*; and that no offence is puniſhable by virtue of this act as piracy, which would not have been felony if done on the land, conſequently taking an enemy's ſhip, by an enemy, is not within the ſtatute. 3 *Inſt.* 112. 1 *Rol. Rep.* 175. 1 *Hawk. P. C.* 100.

It is agreed, that this ſtatute extends not to offences done in creeks or ports within the body of a county, becauſe they are, and always were, cognizable by the Common law. *Moor* 756. 1 *Rol. Rep.* 175. 1 *Hawk. P. C.* 100.

Piracies on the ſea, excepted out of the general pardon, 20 *Geo.* 2. *c.* 52. *ſect.* 13. See 16 *Vin. Abr.* tit. *Pirates.*

Pirates Goods. In the patent to the admiral he has granted him *bona piratar'*: The proper *goods of pirates* only paſs by this grant; and not piratical goods. So it is of a grant *de bonis felonum*, the grantee ſhall not have goods ſtolen, but the true and rightful owner. But the King ſhall have piratical goods, if the owner be not known. 10 *Rep.* 109. *Dyer* 269. *Jenk. Cent.* 325.

Piſcary, (*Piſcaria, vel privilegium piſcandi*) Is a right or liberty of *fiſhing* in the waters of another perſon: And there are three ſorts of *piſcaries*, *Libera piſcaria*; *Separalis piſcaria*; and *Communis piſcaria.*

In reſpect to the firſt, it is to be obſerved, that it is an excluſive right of fiſhing in a public river; is alſo a royal franchiſe; and is conſidered as ſuch in all countries where the feodal polity has prevailed: Though the making ſuch grants, and by that means appropriating what ſeems unnatural to reſtrain, the uſe of running water, was prohibited for the future by King *John*'s great charter; and the rivers that were fenced in his time were directed to be laid open, as well as the foreſts to be diſafforeſted. This opening was extended, by the ſecond and third charters of *Henry* III. to thoſe alſo that were fenced under *Richard* I. ſo that a franchiſe of free fiſhery ought now to be at leaſt as old as the reign of *Henry* II. This differs from,

The ſecond, *Separalis piſcaria*; becauſe he that has a ſeveral fiſhery muſt alſo be the owner of the ſoil, which in a free fiſhery is not requiſite. It differs alſo from

The third, *Communis piſcaria*, a liberty of fiſhing in another man's water, in that the free fiſhery is an excluſive right, the common of piſcary is not ſo: and therefore in a free fiſhery, a man has property in the fiſh before they are caught; in a common of piſcary, not till afterwards. *Black. Com.* 2 *V.* 34, 39. which *vide*, and the ſeveral authorities there cited; alſo *vide* titles, *Fiſhing*, and *Common of Piſcary.*

Piſcenarius, Is uſed in our records for a fiſhmonger. *Pat.* 1 *E.* 3. *part.* 3. *m.* 13.

Pit, Is a hole wherein the *Scots* uſed to drown women thieves; and to ſay condemned to the pit, is as when we ſay condemned to the gallows. *Skene.*

Pit and Gallows. See *Foſſa* and *Furca.*

Pitching-Pence, Money, (commonly a *penny*) paid for pitching, or ſetting down every bag of corn, or pack of goods, in a fair or market.

Pittance, (*Pitancia, modicum*) A little repaſt, or refection of fiſh or fleſh, more than the common allowance. ——Johannes *Dei Gratia*, *&c.* *Conceſſimus*, *&c.* *In uſus pauperum, & ad refectionem monachorum, qui illis diebus officia divina pro defunctis celebrabant, quæ refectio* pitancia *vocat'*, *&c.* Rot. Char. ad Hoſpital. S. Salvator. Sancti Edmundi, &c. An. 1 Reg. Johan. p. 2.

Placard, (Fr. *plaquart*, Dutch *placcaert*) Hath ſeveral ſignifications: In *France*, it is a table, wherein laws, orders, *&c.* are written and hung up; in *Holland*, it is an edict or proclamation; alſo it ſignifies a writing of ſafe conduct; with us it is little uſed, but is mentioned as a licence to uſe certain games, *&c.* in the *ſtat.* 2 & 3 *P. & M. c.* 7. See 33 *H.* 8. *c.* 6.

Place, (*Locus*) Where a fact was committed, is to be alledged in appeals of death, indictments, *&c.* And *place* is conſiderable in pleadings, in ſome caſes: Where the law requires a thing to be ſet down in a *certain place*, the party muſt in his pleadings ſay, it was done there. *Co. Lit.* 282. When one thing comes in the *place* of another, it ſhall be ſaid to be of the *ſame nature*; as in caſe of an exchange, *&c.* *Shep. Epit.* 700. See *Local.*

Placita, Pleas, or pleadings, or debates and trials at law. *Placita* is a word often mentioned in our hiſtories, and law books; at firſt it ſignified the public aſſemblies of all degrees of men where the King preſided, and they uſually conſulted upon the great affairs of the kingdom, and theſe were called *generalia placita*, becauſe *generalitas univerſorum majorum tam clericorum quam laicorum ibidem conveniebat:* This was the cuſtom in *France*, as well as here, as we are told by *Bertinian*, in his *Annals of France*, in the year 767. Some of our hiſtorians, as *Simeon of Durham*, and others, who wrote above 300 years afterwards, tell us, that thoſe aſſemblies were held in the *open fields:* and that the *placita generalia*, and *curia regis*, were what we now call a parliament: It is true, the lords courts were ſo called, *viz. Placita generalia*, but oftner *curiæ generales*, becauſe all their tenants and vaſſals were bound to appear there.

We alſo meet with *placitum nominatum*, *i. e.* the day appointed for a criminal to appear and plead, and make his defence. *Leg. H.* 1. *cap.* 29. 46, 50. *Placitum fractum*, *i. e.* when the day is paſt. *Leg. H.* 1. *cap.* 59. Lord *Coke* tells us, that the word is derived from *placendo, quia bene placitare ſuper omnia placet:* this ſeems to be a very fanciful derivation of the word: it ſeems rather to be derived from the German *plats*, or from the Latin *plateis*, *i. e.* fields or ſtreets where theſe aſſemblies or courts were firſt held. But this word *placita* did ſometimes ſignify penalties, fines, mulcts, or emendations, according to *Gervaſe of Tilbury*, or the *Black Book* in the Exchequer, *lib.* 2. *tit.* 13. Placita *autem dicimus pœnas pecuniarias in quas incidunt delinquentes.* So in the laws of *Hen.* 1. *cap.* 12, 13. Hence the old rule or cuſtom, *Comes habet tertium denarium* placitorum, is to be thus underſtood; the Earl of the county ſhall have the third part of the money due upon mulcts, fines, and amerciaments impoſed in the aſſiſes and county courts. *Cowell.*

Placitare, i. e. *Litigare & cauſas agere*, to plead: And the manner of pleading before the *Conqueſt* was, *Coram aldermanno & proceribus, & coram hundredariis, &c.* MS. in Bibl. Cotton.

Placitator, A pleader: *Ralf Flambard* is recorded to be *totius regni placitator*. Temp. W. 2. See *ſupra*, the laſt clauſe of *placita*.

Plaint, (Fr. *plainte*, Lat. *querela)* Is the exhibiting any action, in writing; and the party making his *plaint* is called the *plaintiff*. Kitch. 231. A *plaint* in an inferior court is the entry of an action, after this manner: A. B. *complains of* C. D. *of a plea of treſpaſs*, &c. *and there are pledges of proſecuting, that is to ſay*, John Doe *and* Richard Roe.

The firſt proceſs in an inferior court is a *plaint*, which is *in the nature of an original writ*, becauſe therein is briefly ſet forth the plaintiff's cauſe of action; and on this *plaint* there may iſſue a *pone*, till the return of a *nihil*, upon which a *capias* will lie againſt the body of the defendant. 2 *Lill. Abr.* 294.

Where a *plaint* is levied in an inferior court, the defendant muſt be firſt diſtrained for non-appearance, by ſomething of *ſmall* value; then, if he doth not appear, a farther diſtreſs is to be taken to a greater value, and ſo on; if all his goods are diſtrained on the firſt diſtreſs, attachment may be iſſued out of *B. R.* againſt the officers, &c. *Ibid.* A plaintiff in an *aſſiſe* may abridge his *plaint* of any part whereupon a bar is pleaded. 21 *Hen.* 8. *c.* 3. See *County Court*. And *Black. Com.* 3 *V.* 273.

Plaint in a *ſuperior court*, is ſaid to be the cauſe for which the plaintiff complains againſt the defendant; and for which he obtains the King's *writ:* For as the King denies his writ to none, if there be cauſe to grant it; ſo he grants not his writ to any, without there be cauſe alledged for it. 2 *Lill.* 294.

Planchia, A plank of wood. *Cowell.*

Plaiſterers, Not to exerciſe the art of a painter in *London*. 1 *Jac.* 1. *c.* 20.

Plantation, *(Plantatio, Colonia)* Is a place where people are ſent to dwell; or a company of people tranſplanted from one place to another, with an allowance of land for their tillage. *Lit. Dict.*

All waſtes, which the natives in any country make no uſe of, nor can receive any damage by their being in the hands of others, may lawfully be poſſeſſed by *planters*. If a nation or people be expelled out of their own land, they may ſeek void places in ſome other country, and there may juſtly plant; and the immediate poſſeſſing ſuch *plantations* creates a right againſt all perſons but he who hath empire there. *Lex Mercat.* 156. And where perſons having arrived in any territories and planted there, if, before they can reap the fruits of their labour, the neceſſities of human life are wanting, by the laws of nature they may force a ſubſiſtence from a neighbour *planter*; becauſe a ſubſiſtence belongs to every man unleſs he has merited to loſe the life he ſeeks to preſerve. *Ibid.*

Our *plantations* abroad are chiefly iſlands in *America*, and the *Leeward Iſlands*, &c. The *plantation Iſlands* being got by conqueſt, or by the King's ſubjects going in ſearch of ſome prize, and planting themſelves there, the King is not reſtrained by the laws of *England* to govern them by any particular laws, but *may govern them by what law he will:* but it has been adjudged, That the laws and cuſtoms by which the people of any iſland or *plantation* were governed before the conqueſt thereof, bind them until new laws are given; for there is a neceſſity that the former ſhall be in force till the new are obtained, and even then ſome of their old cuſtoms may remain, as they do in *Barbadoes*, &c. If an uninhabited country be newly found out by *Engliſh* ſubjects, all the laws of the kingdom of *England* are immediately in force there. 2 *Salk.* 411. 3 *Mod.* 159. 4 *Mod.* 225, 226.

Our *American* plantations were obtained in the laſt century either by conqueſt and driving out the natives (with what natural juſtice we ſhall not at preſent enquire) or by treaties. And therefore (ſays *Blackſtone*) the Common law of *England*, as ſuch, has no allowance or authority there; they being no part of the mother country, but diſtinct (though dependent) dominions. They are ſubject however to the controul of parliament; though not bound by any acts of parliament unleſs particularly named.

With reſpect to their interior polity our colonies are properly of three ſorts. 1. Provincial eſtabliſhments. 2. Proprietary governments. 3. Charter governments. The form of government in moſt of them is borrowed from that of *England*. They have a governor named by the King, (or in ſome proprietary colonies by the proprietor) who is his repreſentative or deputy. They have courts of juſtice of their own, from whoſe deciſions an appeal lies to the King in council here in *England*. Their general aſſemblies, which are their houſe of commons, together with their council of ſtate, being their upper houſe, with the concurrence of the King or his repreſentative the governor, make laws ſuited to their own emergencies. But all laws, &c. in the plantations that are repugnant to any law made, or to be made in this kingdom, are void. See *Com.* 1 *V.* 106.

For the ſeveral ſtatutes relating to the plantations, ſee *Table to the Statutes.*

Plate, Hoy, or ſmall water veſſel; it is mentioned in 13 *Eliz. cap.* 15. Alſo veſſels, &c. of gold and ſilver are called *plate*, as well in law, as in trade. By 29 *G.* 2. *c.* 14 A tax was laid on all perſons poſſeſſed of plate, but that ſtatute has been repealed by 17 *G.* 3. *c.* 39.

By 7 & 8 *W.* 3. *c.* 19. *ſ.* 3. Public houſes were prohibited to uſe plate. After this part of the act had lain dormant many years, a ſet of informers ſuddenly aroſe, and brought a number of actions for the penalties, forfeited by virtue of the act, whereupon many publicans raiſed a ſum of money to pay the expence of a bill to repeal this clauſe, and obtained an act for the repeal, which is the 9 *Geo.* 3. *cap.* 11. See *Table* to the *Statutes* title *Gold.*

Playhouſe, *Playhouſes* were originally inſtituted with a deſign of recommending virtue and expoſing vice and folly; therefore are not in their own nature nuſances: but it hath been holden, that a common *playhouſe* may be a nuſance, if it draw together great numbers of coaches, &c. as prove generally inconvenient to the places adjacent. 5 *Mod.* 142.

If any perſons in *plays*, *&c.* jeſtingly or profanely uſe the name of God, they forfeit 10*l.* 3 *Jac.* 1. *c.* 21. And *players* ſpeaking any thing in derogation of religion, *&c.* are liable to forfeitures and impriſonment. 1 *Eliz.* Alſo acting *plays* or interludes on a *Sunday*, is ſubject to penalties, by 1 *Car.* 1. *cap.* 1.

By 10 *G.* 2. *c.* 28. No perſon ſhall act any new *play* or addition to an old one, *&c.* unleſs a true copy thereof, ſigned by the maſter of the *playhouſe*, be ſent to the Lord Chamberlain *fourteen days before acted*; who may prohibit the repreſenting any ſtage *play:* And perſons acting contrary to ſuch prohibition, forfeit 50*l.* and their licences, *&c.* And no licence is to be given to act *plays*, but in the city and liberties of *Weſtminſter*, or places of his Majeſty's reſidence. By 25 *Geo.* 2. *c.* 36. Houſes and gardens of entertainment, not to be kept without licence. See *Nuſance.*

Plays and Games. See *Nuſance*, *Gaming.* Vide alſo the ſtatutes 1 *Car.* 1. *c.* 1. 16 *Car.* 2. *c.* 7. 9 *Ann.* *c.* 14. 2 *Geo.* 2. *c.* 28. *ſ.* 9. 12 *Geo.* 2. *c.* 28. 13 *Geo.* 2. *c.* 19. 18 *Geo.* 2. *c.* 34. and 30 *Geo.* 2. *c.* 24.

Plea, *(Placitum)* Is that which either party alledges for himſelf in court, in a cauſe there depending to be tried.

Pleading, in a large ſenſe, contains all the matters which come after the declaration, till iſſue is joined; but is commonly taken for the defendant's anſwer to the declaration.

Pleas are divided into *pleas of the crown*, and *common pleas*; *pleas* of the crown are all ſuits in the King's name, for offences committed againſt his crown and dignity, and alſo againſt the peace. Common *pleas* are thoſe that are agitated between common perſons, in civil caſes: And *pleas* may be farther divided into as many branches as action; for they ſignify all one. *S. P. C. cap.* 1. 4 *Inſt.* 10.

A *plea* to the action is that which *goes to the merits* of the cauſe or action; and is *general* to the declaration, or a *ſpecial plea:* A *general plea* in debt or contract, is *He owes nothing:* In debt on bond, *It is not his deed*, or *He paid it at the day*; in action of the caſe upon a promiſe, *He did not promiſe*; in treſpaſs upon the caſe, *Not guilty*; in covenant, *performance of covenants*, *&c.*

A *ſpecial plea* contains the matter at large, concluding to the declaration or action; and ſpecial *pleas* are many, as by *dureſs* and *per minas*, and in *juſtification*, that in aſſault and battery, the plaintiff ſtruck the firſt blow, *&c.* In waſte, on *nul waſte* pleaded, the defendant cannot plead juſtifiable waſte; but he may give in evidence, lightning, enemies, *&c.* to prove it to be no waſte: He is to confeſs the fact, and plead ſpecially in theſe caſes. *Finch* 362, 378. *Co. Lit.* 282, 372.

Special *pleas* in anſwer to the declaration, are *pleas* in *bar*, or in *abatement*; and every *plea* muſt be pleaded either in bar to the action, or in abatement of the writ or bill, upon which the action is framed, or it is but a diſcourſe, and not a *plea.*

Special *pleas* are drawn up in form, ſetting forth the matter pleaded, *&c.* and muſt be ſigned by counſel, (ſome few excepted) or they will not be received: A *foreign plea* is to be ingroſſed in parchment, and ſigned by counſel, and be put in, on the oath of defendant, that the *plea* is true. *Practiſ. Attorn. Edit.* 1. *pag* 80. And when a defendant hath pleaded, the plaintiff anſwers the defendant's *plea*, which is called a *replication*; and the defendant anſwers the replication, by *rejoinder:* which the plaintiff may anſwer by *ſurrejoinder*; and ſometimes, (tho' ſeldom,) pleadings come to *rebutter*; in anſwer to ſurrejoinder; and *ſurrebutter.* *Co. Lit.* 303.

The order of pleading.

In good order of pleading, a perſon ought to plead,

1ſt, *To the juriſdiction of the court.*

2dly, *To the perſon of the plaintiff, and next of the defendant.*

3dly, *To the writ.*

4thly, *To the action of the writ.*

5thly, *To the count or declaration.*

6thly, *To the action itſelf, in bar thereof.*

A *plea* to the *juriſdiction* is called a *foreign plea*, becauſe it alledges that the matter ought to be tried in another court, *&c.*

Pleas to the perſon, have been formerly ſix, *viz.* villenage, outlawry, excommunication, the party an alien, out of protection, and profeſſed in religion; but the laſt is now no *plea.*

The *plea* to the *writ*, *&c.* is for variance between the writ and record, death of parties, miſnomer, joint-tenancy, *&c.* and may be to the writ and bill, or count together.

Pleas to the *count* or *declaration* are variance between the writ and count, ſpecialty or record, incertainty, *&c.* and all theſe are properly *pleas* in abatement.

Plea to the *action of the writ* is where one pleadeth ſuch matter which ſheweth the plaintiff had no cauſe to have the writ brought. And a plea in bar to the *action* itſelf, is when defendant pleadeth a *plea* which is ſufficient to overthrow the action. *Kitch.* 95. *Lit.* 196. *Pleas* in bar, ſuch as a releaſe, the ſtatute of limitations, agreement with ſatisfaction, *&c.* deſtroy the plaintiff's action for ever: but *pleas* in abatement *are temporary and dilatory*, and do not deſtroy the action, *only ſtop the cauſe for a while*, till the defect is removed; as where there is ſome fault in the writ or declaration, miſnomer of the defendant, where the plaintiff is excommunicate, *&c.* A *plea* to the juriſdiction, of miſnomer, or any other *plea* in abatement, cannot be pleaded after a general imparlance; tho' a *plea* in bar may, becauſe that goes to deſtroy the action. 2 *Lutw.* 1174.

Pleas in *bar* may come after a continuance, or general imparlance; but if ſuch plea be firſt pleaded, the defendant ſhall not be admitted afterwards to plead in abatement of the writ, which is allowed to be good by pleading in bar to the action; yet *matter of record may be ſhewn in arreſt of judgment*, and thereby the writ be abated. *Hob.* 280, 281.

Plea in abatement ought not to be received after a general imparlance; but if it be accepted, and the plaintiff doth demur to it, the demurrer is good: After defendant hath pleaded in abatement, and before he pleads directly in bar, he may demur to the declaration, as he may where he is adviſed that the declaration is inſufficient, *&c.* *Pract. Solic.* 235, 236.

It has been reſolved, That where a *plea* is in abatement, if it be of neceſſity that the defendant muſt diſcloſe matter of bar, he ſhall have his election to take it either by way of bar, or abatement. 2 *Mod.* 65. If a defendant can have no advantage by pleading in abatement, or by demurring, he may plead in general. A releaſe or defeaſance; acceptance of other things; tender of amends; concord or accord; arbitrament; *auterfoits* bar by former judgment; the ſtatute of limitation; diſability of plaintiff; privilege of defendant, or other matter: and *ſeveral matters pleadable in abatement, may be pleaded in bar.* Pract. Attorn. 1 Edit. 82. Alſo he may plead another action depending *of the ſame nature*, for the ſame thing, *&c.* and if a perſon miſtaking his firſt action, bring another action without diſcontinuing the firſt, this *plea* may be pleaded. 1 *Salk.* 392. But this is in abatement.

There is likewiſe a *plea puis darrein continuance*, where defendant hath pleaded a *plea*, and before trial there happens ſome new matter, which will avoid the action: It may be pleaded after iſſue joined, *at any time before verdict*; but after verdict, and before day in bank, there is no day to plead it; ſo that the remedy is by *audita querela.* *Cro. Jac.* 646.

A defendant with leave, may plead ſeveral matters; but if any ſuch matter be excepted to, and found inſufficient, coſts ſhall be given; And no dilatory *plea* ſhall be allowed in any court of record, unleſs the truth of it be proved *by affidavit*; or ſome probable matter be ſhewn. 4 & 5 *Ann. cap.* 16.

When a declaration, or bar, are defective in circumſtances of time, place, *etc.* this may be helped by the pleading of the adverſe party to it; but *not if it be inſufficient in matter.* 2 *Ventr.* 222. 1 *Danv. Abr.* 156. If defendant pleads a dilatory and frivolous *plea*, to hinder plaintiff from going to trial; the court, *on motion*, will order defendant to abide by his plea, or plead *inſtanter*, ſuch a *plea* as he will abide by: When a dilatory *plea* in abatement is over-ruled, there ſhall be a *reſpondeas ouſter*, except an iſſue be joined on it. 6 *Mod.* 102. But if a *plea* in bar is *over-ruled*, judgment ſhall be given againſt defendant. *Lutw.* 42.

Where it is doubtful between the parties, whether a *plea* be good or not, it cannot be determined by the court on motion, but there ought to be a demurrer to the *plea*; and on arguing thereof, the court will judge of the *plea*, whether good or bad: And no advantage can be had of double pleading, without *ſpecial* demurrer. 2 *Lill. Abr.* 310. *Lutw.* 422. (This means where *one* plea, is, in itſelf double.) But tho' the court is to judge of pleading, *they will not direct any perſon how to plead*, notwithſtanding the matter be difficult; for *the parties muſt plead at their peril*, and counſel are to adviſe, *&c.*

If plaintiff's attorney will conſent, defendant may waive his *plea* pleaded, without moving the court; and if he will not conſent, it cannot be done without moving the court. *Trin.* 1651. A defendant may waive his ſpecial *plea*, before iſſue joined, and plead the general iſſue. The defendant, before joinder in demurrer, may amend his *plea*; and ſo after joinder in demurrer, *before argued:* And where defendant has demurred, and the plaintiff joined; the court will often allow him to withdraw his demurrer, and plead to the action, if plaintiff hath not been put by a trial. *Practiſ. Solic.* 303.

Defendant had leave to plead *de novo* in four days, within which time he ought to have pleaded in chief; but inſtead of that, he pleaded an outlawry of the plaintiff, *&c.* and thereupon plaintiff ſigned judgment *for want of a good plea*; but on payment of coſts, *&c.* and pleading to iſſue immediately, judgment was ſet aſide. *Mod. Ca. in L. and E.* 289. I do not ſuppoſe a court in *Weſtminſter-hall*, would now ſet aſide ſuch a judgment unleſs defendant had merits, and thoſe merits were ſworn to.

A *plea* may be *amended*, if it be but *in paper*, and not entered, *paying coſts:* If after the defendant hath pleaded, the plaintiff alters his declaration, the defendant may alter his *plea*. 2 *Lill.* 322. The ſtatutes of *jeofails* are extended to proceedings in *Engliſh* (except in criminal caſes). 4 *Geo.* 2. *c.* 26. Falſhood in a *plea*, if not hurtful to plaintiff, nor beneficial to defendant, doth no injury; as it doth where detrimental to plaintiff, *&c.* *Ibid.* 297. Tho' if an attorney pleads a falſe *plea* by deceit, it is againſt his oath, and he may be fined. 1 *Salk.* 515.

Concerning pleas in general.

All *pleas* are to be ſuccinct, without unneceſſary repetitions, and be direct and pertinent to the caſe, not by way of argument or rehearſal; and the *plea* of every man *ſhall be taken moſt ſtrongly againſt himſelf.* 2 Lill. 304. The *plea* muſt *directly* anſwer the charge in the declaration, or it will not be good. 1 *Danv. Abr.* 235. If it doth not anſwer all the matter contained in the declaration, the plaintiff ſhall have judgment, as for want of a *plea*: 1 *Lev.* 16. (*i. e.* to the part not anſwered.)

Defendant pleads that he did not receive 80 *l.* but doth not ſay *or any part thereof*; and the plea was adjudged *ill*, for he might receive 79 *l.* and yet not the whole, *&c.* 2 *Mod.* 146.

In pleading a *tender*, at the putting in of the *plea*, the money is to be *brought into court*, or the plea will not be accepted, but the plaintiff ſhall ſign judgment. 2 *Lill. Abr.* 308. But when judgment in ejectment is ſigned for want of a *plea*, if poſſeſſion be not delivered, a judge *before* the aſſiſes may compel plaintiff to accept a *plea*. 2 *Salk.* 516.

If a thing is ſhewn in pleading, and it is not afterwards traverſed or averred *ſpecially* to the contrary, it will be taken to be *confeſſed:* Tho' the confeſſion of one defendant in his *plea*, ſhall not prejudice another. *Plowd.* 48. *Hob.* 64. A releaſe pleaded to an action of treſpaſs without ſhewing *when* it was made, ſhall be taken *before* the treſpaſs done: And a plea of diſcharge or giving notice, *&c.* muſt ſhew how given. 10 *Rep.* 40. *Plowd.* 128. *Dyer* 41.

Every man muſt plead ſuch *plea* as is proper; but that need not be pleaded on one ſide, which will come properly on the other. *Hob.* 3, 78, 162.

Pleadings which amount to no more than the general iſſue, are not to be allowed, but the general iſſue ſhall be entered; and where defendant pleads the general iſſue, he ought to plead, ſo that the whole matter in queſtion may be tried. 2 *Lill.* 302. 2 *Nelſ. Abr.* 1246. 1 *Salk.* 394.

If defendant is not conſtrained to plead a ſpecial *plea*, he may plead the general iſſue, and give the ſpecial matter in evidence: And in many caſes general pleadings are permitted, to avoid tediousneſs and multiplicity, and the particular ſhall come on the other ſide; as in caſe of a condition to perform covenants; but *where a thing reſts in a man's own notice, he muſt plead it particularly.* Co. Lit. 303. 8 Rep. 133. 2 Danv. Abr. 249. 2 Nelſ. 1249.

If a party pleading *derives an eſtate to another, under which he doth not claim any thing*, there general pleading is ſufficient, becauſe he hath no means to know *another man's title*; but it is otherwiſe where he himſelf claims under it. *Carth.* 209.

General eſtates in fee-ſimple may be generally alledged: Eſtates in tail, and particular eſtates, *muſt* be ſhewn. A plea of conveyance of lands, *&c. inter alia*, where the conveyance contains more than relates to the matter of the *plea*, is good. 1 *Rol. Rep.* 72.

Bonds and deeds are to be pleaded with a *profert hic in curia, &c.* *Ibid.* 1261.

If one comes in by act of law, the *general allegation will ſuffice*; and things ſpiritual, or where the plea conſiſts of matter infinite, may be generally pleaded: All neceſſary circumſtances *implied by law*, need not be expreſſed in the *plea*; but when any ſpecial or ſubſtantial matter is alledged, it ſhall be ſpecially anſwered; ſo matters of record, where they are the foundation of the ſuit, or ſubſtance of the *plea*. 10 *Rep.* 94. *Cro. Car.* 749. *Plowd.* 65.

That which is alledged by way of *inducement* to the ſubſtance of the matter, need not be certainly alledged, as the ſubſtance itſelf. *Plowd.* 81. He who pleads in the *negative*, is not bound to plead ſo *exactly* as he who pleads in the *affirmative:* And that which a man cannot have certain knowledge of, he is not bound certainly to plead. *Plowd.* 33, 80, 126, 129.

Every affirmative in pleading ought to be anſwered with an expreſs negative; and if a perſon be named to be dwelling at *A.* it is no *plea* to ſay, that he is an inhabitant at ſome other place; unleſs it conclude in the negative, and not at *A.* *Co. Lit.* 126. 19 *H.* 6. 1.

It is a rule in pleading, That *when a man pleads ſpecial matter, and concludes generally, he thereby waives the ſpecial matter.* Farreſl. Rep. 53. *Pleas* that are too general are not good. 1 *Lutw.* 239. 2 *Salk.* 521. And every *plea* ought to be *ſingle* and *certain*; and not double, or contain a multitude of diſtinct matters to one and the ſame thing, whereto ſeveral anſwers are required, which will not be allowed; nor where defendant pleads two matters, each being a ſufficient bar to the action, *unleſs one depends on the other*, or defendant cannot come at the one, without ſhewing the other, when it is good. 11 *Rep.* 52. 1 *Vent.* 48, 272. 2 *Nelſ. Abr.* 1254.

Where the matter is indifferent to be well or ill, and the party pleads over, the court will intend it well. *Mod. Caſ.* 136. If there be a repugnancy in pleading, it is error. 2 *And.* 182. *Jenk. Cent.* 21. And *a man ſhall not take advantage of his own wrong, by pleading, &c.* Cro. Jac. 588. A man cannot plead any thing afterwards which he might have pleaded at firſt. *Ibid.* 318. Tho' ſurpluſage ſhall never make the *plea* vicious, but *where it is contrary to the matter before.* Raym. 8.

When a matter is expreſly pleaded by one party in the affirmative, which is expreſly denied by the other party, the next thing is to be an iſſue in order to trial, that they may not plead *in infinitum*. *Raym.* 199.

The law requires in every *plea* two things, *viz. matter ſufficient*; and that it be *expreſs'd according to the form of the law*. Hob. 164. But it is ſaid a man is not bound to one form of pleading, ſo he plead the ſubſtance of the matter. *Plowd.* 435.

The old way of pleading a record was to begin at the original, and not omit any continuance, *&c.* And there is a diverſity where a judgment is ſeveral, and when it is entire; for if forty acres of land are recovered, here a *plea* of recovery of twenty acres is ill; but it ſhould be pleaded of the forty acres, whereof twenty are parcel. *Comber.* 253.

All *pleas* are to be in *Engliſh*, and not in *Latin*: Each *plea* is to have its proper concluſion; and regularly all *pleas* that are affirmative conclude, *And this he is ready to verify*, &c. A *plea* in abatement begins, *That the defendant ought not to anſwer the bill*, &c. and concludes thus: *Whereupon he prays judgment of the bill, or declaration aforeſaid; and that the bill be quaſhed*, &c. In a *plea* in bar, the defendant in the beginning ſays, *That the plaintiff ought not to have or maintain his action againſt him*; and concludes to the action, *viz. He prays judgment if the plaintiff ought to have or maintain his action againſt him*, &c. A *plea* of a record ought to conclude, *And this he is ready to verify by the record*, &c. *Pract. Solic.* 236. 2 *Nelſ.* 1269.

It is ſaid that *the concluſion makes the plea*; for if it begins in *bar*, and concludes in *abatement*, it is a *plea* in *abatement*. Ld. Raym. 337.

The practice of the courts, reſpecting pleading.

The court never orders a defendant to plead peremptorily, *till all the rules are out*: And where the plaintiff amends and gives an imparlance, *there ſhall be new rules* given to plead, but not if there is no imparlance. 2 *Salk.* 517.

If defendant doth not plead on rule to anſwer, before the rule is expired, the plaintiff's attorney may afterwards enter up judgment by *nil dicit*. *Pract. Solic.* 303.

By an order of court, reciting that, by the former practice, defendants had uſually been allowed eight days time to plead; it was ordered, that *four days only ſhould be allowed* ſuch defendants *from the time of giving any rules*. Ord. Trin. 1727. And on proceſs returnable the *firſt* or *ſecond* returns of terms; defendant is to plead in four days, if he lives within twenty miles of *London*, and eight days if farther off; after delivery of the declaration, with notice to plead, *&c.* or on default, plaintiff may ſign judgment. *Ord. Trin.* 5 *Geo.* 1.

In *B. R.* ſpecial *pleas* are left with the clerk of the papers, and the plaintiff's attorney is to take a copy thereof from him, for which he pays 6*d.* *per* ſheet, and puts in his replication; and then he carries the declaration to him, who will make up the paper-book, and write a rule on the ſide: this paper-book is to be delivered to defendant's attorney, and he muſt pay for entering his warrant of attorney, and 10*d.* a folio for his pleading, *etc.* And if defendant doth not receive the paper-book, and return it to the attorney for the plaintiff, on his calling for it to be entered in four days; then a *non proſ.* may be entered for want of a *plea*. See 6 *Mod.* 22.

Pleas in criminal caſes. One indicted of felony, *etc.* ought not to be allowed to plead to the indictment, till he holds up his hand at the bar; which is in nature of an appearance, *etc.* A priſoner on his arraignment may plead the general iſſue, or in abatement, *etc.* or demur to the indictment; and he may plead in bar, *auterfoits acquit*, *auterfoits convict* before judgment, *auterfoits attaint*, *etc. viz.* That he was *heretofore* acquitted, convicted, or attainted of the ſame felony. *H. P. C.* 228. 3 *Inſt.* 213. 214. A criminal may alſo plead a pardon, or benefit of clergy; tho' this laſt is not uſually pleaded until he has otherwiſe pleaded before. Vide *Auterfoits*, *Acquit.* and *Black. Com.* 3 *V.* 40. 4 *V.* 2, 417.

To an indictment for an aſſault *etc.* if the proſecutor ſtruck firſt, the defendant is not, as in civil ſuits, to plead *ſon aſſault demeſne*, but the general iſſue, *Not guilty*, and give the ſpecial matter in evidence.

Plea and Demurrer in equity. See 16 *Vin. Abr.* 361—376. and *Comyn's Digeſt*, 2 *V.* 54, 56, *etc.*

Pleadings, Are all the ſayings of the parties to the ſuit after the count or declaration, to wit, whatever is contained in the bar, replication and rejoinder, and not in the count itſelf; therefore defaults in the matter of the count are not comprized within *miſ-pleading*, or inſufficient *pleading*, nor are remedied by the ſtatute of *jeofails*, 32 *H.* 8. *c.* 30. but only the *miſ-pleading*, or inſufficient *pleading* committed in the bar, replication and rejoinder; but thoſe are now remedied alſo by 18 *Eliz. cap.* 13. *Cowell.*

Pleading in general, ſignifies the allegations of parties to ſuits when they are put into a proper and legal form; and are diſtinguiſhed, in reſpect to the parties who plead them, by the names of *bars*, *replications*, *rejoinders*, *ſurrejoinders*, *rebutters*, *ſurrebutters*, *&c.* and tho' the matter in the declaration or count does not properly come under the name of pleading, yet being often comprehended in the extended ſenſe of the word, it is generally conſidered under this head. 4 *New Abr.* 1.

Pleading, in ſtrictneſs, is no more than *ſetting forth that fact, which in law ſhews the juſtneſs of the demand made by the plaintiff, or the diſcharge and defence made by defendant*; and herein no greater certainty is required than is *ſufficient to bring on a trial without inveigling judge or jury*; and it ſeems, that originally pleadings were ſo formed, and were very plain and conciſe; but in progreſs of time pleaders and judges became too curious in them, ſo that the art of pleading, which in its uſe and deſign was only to render the fact intelligible, and to bring the matter to judgment with convenient certainty, began to degenerate from its primitive ſimplicity and true uſe, and end in nicety and curioſity, which how it hath improved therein in latter times, the length of the pleadings, the many unneceſſary repetitions, and the many miſcarriages of cauſes upon ſmall and trivial objections, ſufficiently teſtify. 4 *New Abr.* 1.

Pleas were anciently *ore tenus*, and afterwards minuted down by the prothonotaries, and entred of record in the *Latin* tongue, that being a dead language, and leaſt ſubject to variation, to remain as monuments and precedents of the law; that the pleading ſhould be in *Latin* is expreſsly enacted by the 36 *Ed.* 3. *c.* 15. which ſtatute was made to aboliſh a law introduced by *William the Conqueror*, which ordained, that the pleadings in the courts of juſtice ſhould be in *French*. 4 New Abr. 1. 10 Co. 132.

But now by 4 *Geo.* 2. *c.* 26. it is enacted, "That all proceedings in courts of juſtice ſhall be in *Engliſh*, and be written in ſuch common hand as acts of parliament are uſually ingroſſed in, the lines and words to be written at leaſt as cloſe as the ſaid acts uſually are, and not abbreviated; and all perſons offending againſt this act forfeit 50*l.* to any perſon who will ſue."

But by 6 *Geo.* 2. *c.* 14. it is provided, "That the above penalty ſhall not be extended to the expreſſing the names of writs, or *technical* words in the ſame language, as hath been uſed, nor to abbreviations uſed in the *Engliſh* language."

In pleading there are ſeveral general rules laid down in our books; as, that *good matter muſt be pleaded in right form, apt time, and due order*, but that which is only inducement or conveyance to the ſubſtance, need not be ſo certainly alledged, as that which is the git of the plea. *Co. Lit.* 303. *Plow.* 65, 81. *Cro. Jac.* 362.

That which is apparent, and appears from a neceſſary implication in the record, need not be averred. Co. Litt. 303. 7 Co. 40.

That every man's plea ſhall be taken moſt ſtrongly againſt himſelf, as *every body is preſumed to make the moſt of his own caſe*. Dyer 16. Co. Litt. 303. Hob. 234. Latch 186.

That *what the parties have agreed in pleading ſhall be admitted*, tho' the jury find otherwiſe. 2 *Mod.* 5.

That when a man will recover a thing from another, it is not enough for him to deſtroy ſuch perſon's title, but *he muſt prove his own a better*, according to the rule, *melior eſt conditio poſſidentis*. Vaugh. 58, 60.

That every man ſhall plead ſuch pleas as are proper, according to the quality of his caſe, eſtate, or intereſt. *Co. Lit.* 285, 303.

That the law requires in every plea, that it be in matter ſufficient, and that it be deduced and expreſſed *according to the forms of law*; and if either be wanting, it is cauſe of demurrer. *Hob.* 164.

That every plea in bar, being a confeſſion and avoidance of the plaintiff's action, *muſt be ſubſtantive and certain*, with an avoidance of plaintiff's demand, which he may traverſe, and thereon go to iſſue, becauſe *the declaration ſtands confeſſed, as far as it is not avoided by defendant*. Dyer 66. Godb. 253. 1 Leon. 78

That if a count, avowry, (which is in nature of a count) replication, *&c.* want *form*, or omit *circumſtance* of time, place, *&c.* they may be made good by the replication, and the replication by the rejoinder, *&c.* 7 *Co.* 25. *a.* 8 *Co.* 120. *b.* *Co. Lit.* 303.

That all pleas muſt be alledged directly, and not by way of rehearſal; nor is it ſufficient, that what ought to be expreſsly pleaded, may be deduced by argument from what is pleaded. *Co. Lit.* 303.

That in matters triable by law, *all things iſſuable ought to be ſpecially alledged in order to have a convenient trial*; but in matters ſpiritual, the law is otherwiſe, becauſe there is no peril in the trial, therefore if certain enough to ground a certificate, it is ſufficient. 3 *Leon.* 300.

That where one is authorized to do a thing by Common law, ſtatute, cuſtom, grant or commiſſion, *he ought to ſhew, that he hath purſued the ſubſtance of it accordingly.* Co. Lit. 303.

That general eſtates in fee-ſimple may be generally alledged; as that *J. S.* was ſeized in fee; but the *commencement of particular eſtates muſt be ſhewn, becauſe they could not originally commence without a conveyance, which muſt be ſhewn*, unleſs they be alledged by way of inducement only. *Co. Lit.* 121. *a.* 303.

For more learning on this ſubject, ſee 4 New Abr. *and* 16 Vin. Abr. *and* Com Dig. *tit.* Pleas and Pleadings, *and* Black. Com. 3 V. 293. 4 V. 420.

Pleas of the Sword, *Placita ad gladium. Ranulph* the third Earl of *Cheſter*, in the ſecond year of *Henry* the Third, granted to his barons of *Cheſhire* an ample charter of liberties, *Exceptis* placitis ad gladium *meum pertinentibus*. Rot. Pat. *in archivis Regis infra caſtellum Ceſtriæ*. 3 E. 4. m. 9. The reaſon was, becauſe *William* the *Conqueror* gave the earldom of *Cheſter* to his kinſman *Hugh*, commonly called *Lupus*, anceſtor to this Earl *Ranulph, Tenera ita libere per gladium, ſicut ipſe Rex* Willielmus *tenuit Angliam per coronam*. And conſonant thereto in all indictments for felony, murder, *&c.* in that county palatine, the form was anciently, *Contra pacem Domini comitis*, gladium *& dignitates ſuas*, or *Contra dignitatem* gladii *Ceſtriæ*. Theſe were the pleas of the dignity of the Earl of *Cheſter*. Sir *Peter Leiceſter's Hiſt. Antiq.* 164. *Cowell.*

Plebania, *Plebanalis eccleſia*, A mother church, which has one or more ſubordinate chapels. *Cowell.*

Plebanus, A rural dean, becauſe the deaneries were commonly affixed to the *plebaniæ*, or chief mother church within ſuch a diſtrict, at firſt commonly of ten pariſhes: but it is inferred from divers authorities, that *plebanus* was not the uſual title of every rural dean; but only of ſuch a pariſh prieſt in a large mother church, exempt from the juriſdiction of the ordinary, who had the authority of a rural dean committed to him by the archbiſhop, to whom the church was immediately ſubject. *Whartoni Angl. Sacr. Pa.* 1. 569. *Reg. Eccl. Chriſt. Cantaur. MS.*

Plebiſcitum, A law or ſtatute made by the joint conſent of the people or commons without the ſenate. *Lit. Dict.* See *Black. Com.* 1 *V.* 80.

Pledge, *(plegius*, may be derived from the Fr. *pleige, fidejuſſor)* As *pleiger aucun*, i. e. *fide jubere pro aliquo*, to be ſurety for a perſon; in the ſame ſignification is *plegius* uſed by *Glanvil, lib.* 10. *ca.* 5. and *plegiatio* for the act of ſuretiſhip in the interpreter of the *Grand Cuſtomary of Normandy, c.* 60. Plegii *dicuntur perſonæ, quæ ſe obligant ad hoc, ad quod qui eos mittit, tenebatur*; and in the ſame book, *c.* 89, 90. *plegiatio* is uſed in the ſame ſenſe with *Glanvil*; ſo *alvi plegii* are uſed for *plegii*. Pupil. Oculi. part. 5. c. 22. Charta de Foreſta. This word *plegius* uſed alſo for *frankpledge* ſometimes, as in the end of *William the Conqueror's laws*, ſet out by *Lambard* in his *Archainom.* 125. in theſe words: *Omnis homo qui voluerit ſe teneri pro libero, ſit in* plegio *ut* plegius *eum habeat ad juſtitiam, ſi quid offenderit, &c.* and theſe are called *capital pledges*. Kitchin 10. *See* 4 Inſt. 180.

When writs were delivered to the ſheriff to be by him returned into *C. B.* he was obliged, before the return, to take pledges of proſecution, which, when the fines and amercements were conſiderable, were real and reſponſible perſons, and anſwerable for thoſe amercements. But they being now ſo inconſiderable, there are only formal pledges entered, *viz. John Doe* and *Richard Roe*. But there is a difference in debt and in treſpaſs; for *in treſpaſs the attachment of the goods is the firſt proceſs*, and becauſe the defendant is thereby hurt, therefore the writ commands the ſheriff to take pledges before he executes the proceſs. But in debt they begin with a ſummons, and ſo the defendant is not hurt in the firſt inſtance, therefore there is no command in the writ to the ſheriff to take pledges, but unleſs he does, there is not a ſufficient authority from the return to warrant further proceſs, unleſs pledges are put in above, as in *B R.* they always do on the bill. The reaſon why pledges were not taken in Chancery, but committed to the ſheriff, was, that he living in the county was ſuppoſed to know who were ſufficient ſecurity, and being to levy the amerciament afterward, they were to take ample ſecurity for them. *Gilb. Hiſt. of C B.* 6, 7.

The plaintiff's pledges that he ſhall proſecute his ſuit may be entered at any time pending the action; and the putting in of pledges is now a meer formal thing; yet if the pledges be not entered, it is error, becauſe the law directs plaintiff to find pledges. *Trin.* 22 *Car. B. R.* In the return of a *venire facias*, the omiſſion of returning the pledges is but matter of form, and not like to where pledges are omitted on an original writ; wherefore it has been adjudged to be helped by the ſtatute of jeofails. 2 *Nelſ. Abr.* 944.

Want of pledges hath been held to be ſubſtance; but it is aided by the ſtatute 4 & 5 *Ann. c.* 16. unleſs particularly ſet forth for cauſe, on a demurrer. 2 *Lil.* 39. 2 *Lil. Abr.* 329. The pledges, *John Doe*, &c. are entred by defendant; on his being ſerved with proceſs, and giving common bail for his appearance, *&c.* See 16 *Vin. Abr.* tit. *Pledge*. And ſee *Prerogative, Div.* 5.

Pledges of Goods for *money*, &c. See *pawns*, and there is a pledge in law; where the law without any ſpecial agreement between parties doth enable a man to keep goods in nature of a diſtreſs, *&c.* 2 *Shep. Abr.* 442. See *Black. Com.* 2 *V.* 452.

Pledgery or **Pleggery,** (Fr. *plegerie*, Lat. *plegiagium)* Suretiſhip, an undertaking or anſwering for. Alſo the appellant ſhall require the conſtable and mareſchal to deliver his pledges, and to diſcharge them of their pledgery; and the conſtable and mareſchal ſhall aſk leave of the King to acquit his pledges, after the appellant is come into his liſts, *&c. Cowell.*

Pledging, Is where goods and chattels are delivered in ſecurity for money lent, and by ſuch pledging the pawnee hath more than the naked poſſeſſion in the nature of a bailment; *for he hath the property and intereſt in the thing itſelf*; and, by the better opinions, ſhall have a reaſonable uſe of it, ſo that it be without damage to the thing pledged. *Doct. and Stud.* 130. 1 *Rol. Abr.* 338, 673 *Owen* 124. 2 *Salk.* 522.

See the caſe of *Coggs* and *Barnard*. 2 *L. Raym.* 909. under title *Bailment*.

If a man pledge goods to *B.* and they are ſtolen, *B.* ſhall not anſwer for them, *becauſe he hath a property in them*; and his cuſtody is but a conſequent of that property; therefore he undertakes to keep them as his own; but a man who undertakes to *ſecure* what is another's, is bound to keep them at all adventures, ſince the right owner might poſſibly defend them with his life; but *where a man is only obliged to keep them as his own, no unavoidable accident is to be imputed to him*. Co. Lit. 89. a. 3 Inſt. 108. 4 Co. 83. Palm. 551. Owen 123.

Yelv. 178. Cro. Jac. 244. 1 Bulſt. 29, 30. 1 Rol. Rep. 181.

But if a man pledge goods, and tenders the money to the pawnee, and he refuſes, this determines the qualified property, therefore if after ſuch tender the goods are ſtolen, *&c.* the bailor ſhall have ſatisfaction in an action of *trover*; for a tender and a refuſal muſt in thoſe caſes amount to a *payment*; becauſe otherwiſe no man could again come to his own, ſince pawns are over the value lent. *Cro. Jac.* 243, *Yelv.* 179. 1 *Bulſt.* 29. *Br. Bailment* 7. 1 *Rol. Rep.* 129. *Co. Lit.* 89

Yet though the borrower tender the money, and recover the goods in an action of *trover*, the pawnbroker may have an action of *debt* for his money; becauſe, though the ſecurity ceaſes, *the duty remains*, inaſmuch as the money lent is not paid back to the party from whence it came. *Cro. Jac.* 243. *Yelv.* 179. 1 *Bulſt.* 29, 31.

So if a man lend periſhable goods as a pledge, and they decay, yet the perſon to whom they are pledged, may have an action of debt for his money, becauſe the duty continues. *Yelv.* 179. *Co. Lit.* 209.

Goods thus taken to pledge, cannot be forfeited by the pawnee for his offence, nor can they be taken in execution, nor attached for his debt; *for the abſolute property is in another*; therefore they are not alienable, nor by conſequence forfeitable; becauſe they cannot be forfeited without loſs and danger to the abſolute owner; and all qualified poſſeſſors do take the property under the reſtriction to preſerve the property of the right owner. *Br. Attachment in Aſſiſe* 20.

If a man pledge goods, and after is attainted of felony, the King ſhall not have the goods without paying the ſum for which they were pledged; for the alteration of the general property doth not alter the ſpecial property in the pawnbroker. 2 *H.* 7. 1. 1 *Bulſt.* 29.

If a man pledge goods, and then is outlawed, he cannot redeem them, becauſe *then* the abſolute property is in the King; but if the outlawry is reverſed, then the perſon is reinſtated in his property as if there had been no outlawry, therefore may redeem them. 1 *Bulſt.* 29.

If the money be not paid at the day, the property is abſolute at law, but ſtill the right owner has his redemption in equity, as in caſe of a mortgage. *Co. Lit.* 205. *Shep.* 106.

See farther 2 *Vern.* 177, 691. 698. *Abr. Ca. in Eq.* 324. 2 *Leon.* 30. *Yelv.* 164. As to eſtates in pledge, ſee *Black. Com.* 2 *V.* 117.

Plegiis Acquietandis, Is a writ that lies for a ſurety, againſt him for whom he is ſurety, if he pay not the money at the day. *F. N. B.* 137. If the party who becomes ſurety be compelled to pay the money, *&c.* he ſhall have his writ againſt the perſon who ought to have paid the ſame: And if a man be ſurety for another, to pay a ſum of money, ſo long as the principal debtor hath any thing, and is ſufficient, his ſureties ſhall not be diſtrained by the ſtatute of *Magna Charta*; if they are diſtrained, they ſhall have a ſpecial writ on the ſtatute to diſcharge them. *Magna Charta.* 9 *H.* 3. *c.* 8. But if the plaintiff ſue the ſureties in *C. B.* where the principal is ſufficient to pay the debt, whether the ſureties may plead that, and aver that the principal debtor is ſufficient to pay it; or whether they ſhall have a writ to the ſheriff not to diſtrain in ſuch a caſe, hath been made a queſtion. *New Nat. Br.* 306. It was adjudged, (*Paſch.* 43 *Ed.* 3.) that the writ *de plegiis acquietandis* lieth without any ſpecialty ſhewed thereof: As it has been held, that a man ſhall have an action of debt againſt him who becometh *pledge* for another upon his promiſe to pay the money, without any writing made of it. *New Nat. Br.* 270, 304. *Sed. qu.* If now, a man may not maintain his action againſt the ſurety, as ſoon as the cauſe of action accrues, without any regard to the circumſtances of the principal?

Plena foriſfactura, A forfeiture of all that one hath, *&c.* See *Forfeiture.*

Plenarty, Is an abſtract of the adjective *plenus*, and is uſed in a Common law in matters of benefices, and where a church is *full* of an incumbent, *plenarty* and vacation are direct contraries. *Staundf. Prærog. cap.* 8. *fol.* 32. *Weſtm.* 2. *cap.* 5. A clerk inducted may plead his patron's title; and being inſtituted by the ſpace of ſix months, his patron may plead *plenarty* againſt all common perſons. *Plowd.* 501. Inſtitution by ſix months, before a writ of *quare impedit* brought, is a good *plenarty* againſt a common perſon; but *plenarty* is no plea againſt the King, *till ſix months after induction.* Co. Lit. 119, 344. *Plenarty* for ſix months is not generally pleadable againſt the King, becauſe he may bring *quare impedit* at any time, and *nullum tempus occurrit regi:* Though if a title devolves to the King by lapſe, and the patron preſents his clerk by uſurpation, who is inſtituted and inducted, and enjoys the benefice for ſix months, this is ſuch a *plenarty* as deprives the King of his preſentation. 2 *Inſt.* 361. And *plenarty* by ſix months after inſtitution is a good plea againſt the Queen Conſort; altho' ſhe claims the benefice of the King's endowment. *Wood's Inſt.* 160. Upon collation of a biſhop by lapſe, *plenarty* is not pleadable; for the collation doth not make a *plenarty*, by reaſon the biſhop would be judge in his own cauſe: *The biſhop muſt certify whether the church is full, or not*; and his collation is interpreted to be no more than to ſupply the cure till the patron doth preſent; and it is for this cauſe a *plenarty* by collation cannot be pleaded againſt the *right* patron: But by collation, *plenarty* may be a bar to any lapſe of the archbiſhop, and to the King, though it is no bar to the right patron. 6 *Rep.* 50. *Co. Lit.* 344. *Cro. Jac.* 207. *Plenarty* or not ſhall *be tried by the biſhop's certificate*, being acquired by inſtitution, which is a ſpiritual act; but in a *quare impedit*, the *plenarty* muſt be tried by a jury. 6 *Rep.* 49.

By the Common law, where a perſon is preſented, inſtituted and inducted to a church, the church is full, though the perſon preſented be a layman; and ſhall not be void, but from the time of the deprivation of the incumbent for his incapacity. *Count. Parſ. Compan.* 99. *Avoidance* is contrary to *plenarty*; as where there is a want of a lawful incumbent, *&c.* See *Advowſon*, *Preſentation.* And *Black. Com* 3 *V.* 243.

Plene adminiſtravit, Is a plea pleaded by an *executor* or *adminiſtrator*, where they have adminiſtred the deceaſed's eſtate faithfully and juſtly before the action brought againſt them.

On *plene adminiſtravit* pleaded by an executor, if it be proved that he hath goods in his hands which were the teſtator's, *he may give in evidence that he hath paid to the value of* HIS OWN *money*, and need not plead it ſpecially; for when executor before the action, hath paid the money for a debt in equal degree with that demanded by plaintiff, he may plead fully adminiſtred *generally*, and give the ſpecial matter in evidence. 2 *Lil. Abr.* 330. And where a teſtator, or inteſtate, was indebted to the executor or adminiſtrator, upon bond, they may plead *plene adminiſtravit*, and *give their own bonds in evidence againſt any other bond*; ſo likewiſe upon an *indebitatus*, having the privilege of paying themſelves firſt. *Ibid. Plene adminiſtravit* is no plea where an executor, *&c.* is ſued in the *debet* and *detinet*, becauſe he is charged for his own occupation. 1 *Mod.* 185. And if *plene adminiſtravit* be pleaded, omitting the words, *And that he hath not any goods or chattels of the teſtator, nor had on the day of exhibiting the bill aforeſaid, or at any time after*, &c. it is bad on a demurrer, and not helped by verdict. *Cro. Jac.* 132. 3 *Lev.* 28. Where the executor, *&c.* is to ſhew ſpecially, how he hath adminiſtred the goods, vide *Aleyn* 48. See *Executors.*

Plight, Is an old *Engliſh* word, ſignifying ſometimes the eſtate with the habit and quality of the land, and extends to rent-charge, and to a poſſibility of dower. *Co. Lit.* 221. *b.*

Plonkets, A kind of coarſe woollen cloth. *Stat.* 1 *R.* 3. *c.* 8.

Plow-alms, (*Eleemoſyna aratrales*) Was anciently 1*d.* paid to the *church* for every *plowland.* Mon. Angl. tom. 1. p. 256.

Plow-bote, A right of tenants to take wood to repair *ploughs*, carts and harrows; and for making rakes, forks, *&c.* See *Black. Com.* 2 *V.* 35.

Plow-land, Is the ſame with a *hide* of land; and a *hide* or *plow-land*, it is ſaid, do not contain any certain quantity of acres: But a *plough-land*, in reſpect of repairing the highway is ſettled at 50*l.* a year, by the ſtatute 7 & 8 *W.* 3. *c.* 29.

Plow-Silver, In former times, was money paid by ſome tenants, in lieu of ſervice to *plough* the lord's lands. *W. Jones Rep.* 280. See *Socage.*

Plurality, (*Pluralitas*) Signifies the *plural* number; moſtly applied to ſuch clergymen who have more benefices than one: And *Selden* mentions *trialities* and *quadrilities,* where one perſon hath three or four livings. *Seld.* tit. *Hon.* 687.

Plurality of livings, is where the ſame perſon claims two or more ſpiritual preferments, with cure of ſouls; in which caſe the firſt is void *ipſo facto,* and the patron may preſent to it, if the clerk be not qualified by diſpenſation, &c. for *the law enjoins reſidence,* and it is impoſſible that the ſame perſon can reſide in two places at the ſame time. *Count. Parſ. Compan.* 94.

By the Canon law, no eccleſiaſtical perſon can hold *two* benefices with cure *ſimul & ſemel,* but that *upon taking the ſecond benefice, the firſt is void:* But the *Pope* by uſurpation did diſpenſe with that law; and at firſt every biſhop had power to grant diſpenſations for *pluralities,* till it was abrogated by a general council, held *anno* 1273, and this conſtitution was received till the ſtatute 21 *H.* 8. *c.* 13. *Moor* 119. 2 *Nelſ. Abr.* 1271.

The *ſtat.* 21 *H.* 8. *c.* 13. ordains, that if any parſon having one benefice with cure, of the yearly value of 8*l.* or above in the King's books, accepts of another's benefice with cure, and is inſtituted and inducted, then *the firſt ſhall be void:* So that there may be a *plurality* within the *ſtatute*; and a *plurality* by the Canon law. 2 *Lutw.* 1306.

The power of granting diſpenſations to hold two benefices with cure, &c. *is veſted in the King* by the aforeſaid ſtatute: And it has been adjudged, that a diſpenſation is not neceſſary for a *plurality,* where the King preſents his chaplain to a ſecond benefice; for ſuch a preſentment imports a diſpenſation, which the King hath power to grant as ſupreme ordinary; but if ſuch a chaplain be preſented to a ſecond benefice by a ſubject, he muſt have a diſpenſation before he is inſtituted to it. 1 *Salk.* 161.

The archbiſhop's diſpenſation, and King's confirmation regularly are neceſſary to hold *pluralities:* And the ſtatute 21 *H.* 8. *c.* 13. ought to be conſtrued *ſtrictly,* becauſes it introduces non-reſidence, and *plurality* of benefices, againſt the Common law. *Jenk. Cent.* 272.

A man by diſpenſation may hold as many benefices, *without cure,* as he can get; and likewiſe ſo many *with cure* as he can get; all of them, or all but the laſt being under the value of 8*l. per annum* in the King's books; if the perſon to be diſpenſed withal, be not incapable thereof. Yet if a diſpenſation is made to hold three benefices with cure, whereof the firſt is of the yearly value of 8*l.* the diſpenſation is void, unleſs it be in caſe of the King's chaplains, &c. who may hold *three* benefices with cure, above the value of 8*l.* a year, where one of them is in the King's gift. *Hob.* 148.

If there be two parſons of one church, and each parſon hath the intire cure of the pariſh, and their benefices be ſeverally of the value of 8*l. per ann.* if one dies and the other ſucceeds, this is a *plurality* within the ſtatute. *Cro. Car.* 456. And though the act mentions inſtituted and inducted, when one is inſtituted into the ſecond church, the diſpenſation to hold two benefices comes too late; though he be afterwards inducted; for *by inſtitution, the church is full of the incumbent.* 4 Rep. 79.

By the ſtatute, if the firſt benefice be of the value of 8*l.* a year, or more, by the acceptance of a ſecond, it is *actually void,* to all intents: But benefices under that value, being not within the ſtatute, are only avoidable by accepting a ſecond, and not void on ſuch *plurality,* without a declaratory ſentence, &c. *Mallor. Q. Imped.* 104. In theſe caſes it hath been held, that the value of livings to make *pluralities* ſhall be determined by the King's books in the firſt-fruits office: Though the court hath been divided, whether the value ſhould be taken as it was in the King's books, or according to the true value of the living. 2 *Lutw.* 1301. 2 *Nelſ.* 1271.

No deanery ſhall be taken by our law, to be a benefice with cure, to need diſpenſation on having another benefice, &c. 21 *H.* 8. *c.* 13. 1 *Leon.* 316. And a parſonage and vicarage make not a *plurality,* but are only one cure; the vicarage being endowed out of the parſonage. *Cro. Jac.* 691.

Parſons may purchaſe a licence or diſpenſation, to take and keep two or more benefices with cure, according to the directions and qualifications in the ſaid ſtatute 21 *H.* 8. *c.* 13. And in ſome caſes, parſons may hold *pluralities,* without being retained as *Chaplains,* &c. purſuant to that ſtatute, *viz.* by birth, as being the ſon or brother of a lord; by univerſity degree, where a man is doctor of divinity, law, &c. or by office or employment, as a biſhop, *ſtat.* 26 *H.* 8. But when a parſon is made a biſhop, his former qualifications to hold *plurality* of livings is void. *Hob.* 158. See *Chaplain.*

Pluries, Is a writ that iſſues in the *third* place, after two former writs have been diſobeyed; for firſt goes out the *original* writ or *capias,* which if it has not effect, then iſſues the *alias*; and if that alſo fails, then the *pluries.* Old Nat. Br. 33. It is uſed in proceedings to outlawry; and in many caſes. See *Black. Com.* 3 *V.* 283. 4 *V.* 314.

As to *pluries habeas corpus,* ſee *ib.* 3 *V.* 135.

Pocket Sheriffs, ſee *Black. Com.* 1 *V.* 342.

Pocket of Wool, Is a quantity of *wool* containing half a ſack. 3 *Inſt.* 96.

Poiſon. The killing a perſon by *poiſoning,* has been held more criminal than any other murder, becauſe of its ſecrecy, which prevents all defence againſt it; whereas moſt *open* murders give the party killed, ſome opportunity of reſiſtance: For this reaſon offenders guilty of *poiſoning* any perſon, were anciently judged to a ſeverer puniſhment than other offenders. See 3 *Nelſ. Abr.* 363.

Richard Cole was attainted of *high treaſon,* for putting *poiſon* into a pot of pottage boiling in the biſhop of *Rocheſter*'s kitchen, by which two perſons were poiſoned; and there was a particular ſtatute made for his puniſhment, *viz.* by the ſtatute 22 *H.* 8. *cap.* 9. it was enacted, That he ſhould be *boiled to death.* Anno 22 H. 8. *Richard Cole*'s caſe.

At this day, to *poiſon* any one wilfully, is murder and felony, if the party die in a year; and the aiders and abettors, &c. ſhall ſuffer death. *Stat.* 1 *Ed.* 6. *c.* 12.

Perſons poiſoned in one county die in another, the indictment found where the death happens, ſhall be good. 2 & 3 *Ed.* 6. *c.* 24.

If a man perſuade another to drink a *poiſonous* liquor, under the notion of a medicine, who afterwards drinks it in his abſence; or if *A.* intending to *poiſon B.* put *poiſon* into a thing, and deliver it to *D.* who knows nothing of the matter, to be by him delivered to *B.* and *D.* innocently delivers it accordingly, in the abſence of *A.* In this caſe the procurer of the felony is as much a principal as if he had preſent when it was done. 2 *Hawk. P. C.* 313. And ſo likewiſe all thoſe ſeem to be, who are preſent when the *poiſon* was infuſed, and *privy* and *conſenting* to the deſign: But perſons who only abet their crime by command, counſel, &c and are abſent when the *poiſon* was infuſed, are acceſſaries only. *Ibid.*

Pole, ſee *Perch.*

Polein, Was a ſhoe, ſharp or picked, and turned up at the toe; firſt came in uſe in the reign of *William Rufus,* and by degrees became of that length, that in *Richard* the Second's time they were tied up to the knees with gold or ſilver chains: They were reſtrained *Anno* 4 *Ed.* 4. but not wholly laid aſide till the reign of *Hen.* 8. *Malmſ. in Vit. Wil.* 2.

Police, Offences againſt, ſee *Black. Com.* 4 *V.* 162, &c.

Policy of Aſſurance, or *Inſurance,* (from the Ital. *Poliza,* i. e. *ſchedula & aſſecuratio*) Is an inſtrument entered into by *inſurers* of ſhips and merchandiſe, &c. to merchants obligatory for the payment of the ſum *inſured,* in caſe of loſs. *Merch. Dict.*

It is a courſe taken by thoſe who adventure goods to ſea, that they, unwilling to hazard the whole, give unto ſome other, called an *Inſurer,* a certain rate or proportionate ſum of ſo much *per cent.* to ſecure the ſafe arrival of the ſhip and goods, *&c.* at the place agreed on; ſo that if the ſhip and merchandiſe miſcarry, the *inſurer* maketh good to the adventurer ſo much as he promiſed to ſecure; but if the ſhip arrive ſafely, he gains that clearly, which the merchant compounded to pay him: And for the more equal dealing between the *inſurer* and *inſured* in this caſe, there was an officer ordained by ſtatute to ſet down in writing the ſum of their agreement, which is ſubſcribed or *under written* by the *inſurer*; and this was called *Policy*, to prevent any difference that might after happen between them. *Stat.* 43 *Eliz. c.* 12. and 14 *Car.* 2. *c.* 23. See *Inſurance.* And *Black. Com.* 2 *V.* 460. 4 *V.* 434. And as to the *Court of Policies* of *inſurance*, erected in purſuance of 43 *Eliz. c.* 12. See *Black. Com.* 3 *V.* 74.

Pollards, or *pollengers*, Are ſuch *trees* as have been uſually cropped, therefore diſtinguiſhed from timber-trees. *Plowd.* 469.

Poll, (deed) A deed made by one party only, is not indented, but *polled* or ſhaved quite even; and is therefore called a *deed-poll*, or a ſingle deed. *Black. Com.* 2 *V.* 296.

Polls, Where one or more jurors are excepted againſt it is called a *challenge* to the *polls*. Co. Lit. 156. *See* Black. Com. 3 V. 361. 4 V. 346.

Polygamy, *(Polygamia)* Is where a man marries two or more wives together, or a woman has two or more huſbands at the *ſame* time; when the body of the firſt wife or huſband may be ſaid to be injured by the ſecond marriage, while either are living. 3 *Inſt.* 88. *Wood's Inſt.* 363.

Such *ſecond* marriage, living the former huſband or wife, is ſimply void, and a mere nullity, by the Eccleſiaſtical law of *England:* And yet the legiſlator has thought it *juſt* to make it felony, by reaſon of its being ſo great a violation of the public œconomy and decency of a well ordered ſtate. For *polygamy* can never be endured under any rational civil eſtabliſhment, whatever ſpecious reaſons may be urged for it by the Eaſtern nations, the fallaciouſneſs of which has been fully proved by many ſenſible writers: But in Northern countries the very nature of the climate ſeems to reclaim againſt ſuch a cuſtom; it never having obtained in this part of the world, even from the time of our *German* anceſtors, who, as *Tacitus* informs us, "*Prope ſoli barbarorum ſingulis uxoribus contenti ſunt.*" It ſubjects the offender by the laws both of ancient and modern *Sweden* with death. And with us in *England* it is enacted by ſtatute 1 *Jac.* 1. *c.* 11. that if any perſon, being married, do afterwards marry again, the former huſband or wife being alive, it is felony; but within the benefit of clergy. The *firſt* wife in this caſe ſhall *not* be admitted as an evidence againſt her huſband, becauſe *ſhe is the true wife*; but the *ſecond* may, for ſhe is indeed *no wife* at all; and ſo *vice verſa*, of a ſecond huſband.

This act makes an exception to five caſes, in which ſuch ſecond marriage, though in the three firſt it is *void*, is yet no felony.

1. Where either party hath been *continually abroad for* SEVEN YEARS, whether the party in *England* hath notice of the other's being living or no.

2. Where either of the parties hath been *abſent from the other* ſeven years, WITHIN this kingdom, and the remaining party hath had no notice of the other's being alive within that time.

3. Where there is a divorce or ſeparation *a menſa et thoro* by ſentence in the Eccleſiaſtical court.

4. Where the *firſt* marriage is declared abſolutely void by any ſuch ſentence, and the parties looſed a *vinculo.* Or,

5. Where either of the parties was under the age of conſent at the time of the firſt marriage; for in ſuch caſe the firſt marriage was voidable by the diſagreement of either party, which this ſecond marriage very clearly amounts to. But, if at the age of conſent the parties had agreed to the marriage, which completes the contract, and is indeed the real marriage; and afterwards one of them ſhould marry again; it is apprehended, that ſuch ſecond marriage would be within the reaſon and penalties of the act. *Black. Com.* 4 *V.* 163, 4.

Pondus, *Poundage*, which duty, with that of *tonnage*, was anciently paid to the King according to the weight and meaſure of merchants goods. *Cowell.*

Pondus Regis, Is the *ſtandard weight* appointed by our ancient Kings. 35 *Ed.* 1. And what we now call *Troy weight*, was this *pondus Regis*, or *Le Roy Weight*, with the ſcales in *equilibrio:* Whereas the *aver de pois* was the fuller weight, with a declining ſcale. *Cowell.* See tit. *Meaſure.*

Pone, Is a writ whereby a cauſe depending in the county, or other inferior court, is removed into the Common Pleas; and ſometimes into the King's Bench: As when a *replevin* is ſued by writ out of Chancery, *&c.* then if the plaintiff or defendant will remove that plea out of the county-court into *C. B.* or *K. B.* it is done by *pone.* F. N. B. 4, 69. 2 Inſt. 339. And the writ *pone* lies to remove actions of debt, and of detinue, writ of right, of nuſance, *&c.* *New Nat. Br.* Alſo *pone* is a writ willing the ſheriff to ſummon the defendant to appear and anſwer the plaintiff's ſuit, on his putting in ſureties to proſecute, *&c.* *Wood's Inſt.* 570. And the writ to the ſheriff to take ſurety of one for his appearing is called *Pone per Vadium.*

A *pone* to remove cauſes, is of this form: *Put at the petition of* A. B. *before our juſtices at* Weſtminſter, *the day*, &c. *The plea which is in your court by our writ, between the ſaid* A. B. *and* C. D. *of*, &c. *and ſummon the ſaid* C. *that he be then there to anſwer the ſaid* A. &c. See *Black. Com.* 3 *V.* 34, 195, 280. *Append.* No. 1. *ſect.* 3. This form is only applicable to the Common Pleas; but if the writ of *pone* be to remove a cauſe into *K. B.* it ſhould be worded thus: "Put at the petition of, *&c.* *before us* whereſoever, *&c.* the plea, *&c.*"

Ponendis in Aſſiſis, A writ granted by the ſtatute of *Weſtm.* 2. *c.* 38. which ſtatute ſhews what perſons ſheriffs ought to impanel upon *aſſiſe* and juries. *Reg. Orig.* 175. *F. N. B.* 165.

Ponendum in Ballium, A writ commanding that a priſoner be *bailed* in caſes bailable. *Reg. Orig.* 133.

Ponendum ſigillum ad Exceptionem, A writ by which juſtices are required to put their ſeals to *exceptions*, exhibited by defendant againſt the plaintiff's evidence, verdict or other proceedings before them, according to the ſtatute *Weſtm.* 2.

Pone per vadium, Is a writ commanding the ſheriff to *take ſurety* of one for his appearance at a day aſſigned. Of this ſee five ſorts in the table of the *Regiſter Judicial*, verbo *Pone per vadium.*

Pontage, *(Pontagium)* Is a contribution towards the maintenance, or re-edifying bridges. *Weſtm.* 2. *c.* 25. It may alſo ſignify *toll* taken to this purpoſe of thoſe who paſs over bridges. *Stat.* 1 *Hen.* 8 *cap.* 9. 22 *Hen.* 8. *cap.* 5. and 39 *Eliz. cap.* 25. *Per* pontagium *clamat eſſe quiet. de operibus* pontium. *Plac. in Itin. apud Ceſtriam.* 14 Hen. 7.

This was accounted one of the three public charges from which no perſon of what degree ſoever was exempted, *viz.* from the charge of an *expedition* to the *wars*, from *building* of *caſtles*, and from *building* and *repairing bridges:* And this was called *Trinoda neceſſitas*; from which, *Ingulphus* tells us, *Nulli poſſunt laxari.* And *Selden* in his *Notes upon Eadmerus* writes, that *Ne quidem epiſcopi, abbates & monachi immunes erant.* And *Mat. Paris, anno* 1244. tells us, that in all the grants of privileges to monaſteries, theſe three things were always excepted *propter publicam regni utilitatem*, that the people might the better reſiſt the enemy. *Cowell.*

Pontibus reparandis, Is a writ directed to the ſheriff, *&c.* requiring him to charge one or more, to repair a bridge, to whom it belongeth. *Reg. Orig.* 153.

Poor, *(Pauper)* A *poor* perſon is ſuch as is a burden to and charge upon a pariſh. The *poor* our law takes notice of, are,

1ſt, *Poor* by *impotency* and defect; as the aged or decrepit, fatherleſs and motherleſs; *poor* under ſickneſs, and perſons who are ideots, lunaticks, lame, blind, *&c.* theſe the overſeers of the *poor* are to provide for.

2dly, *Poor* by *caſualty*; ſuch as houſekeepers decayed or ruined by unavoidable misfortunes; *poor* perſons overcharged with children, labourers who are diſabled, and theſe, having ability, are to be ſet to work, but if not able to work, they are to be relieved with money.

3dly, Poor by *prodigality* and debauchery, alſo called *Thriftleſs Poor*; as idle ſlothful perſons, pilferers, vagabonds, ſtrumpets, *&c.* who are to be ſent to the *houſe of correction*, and be put to hard labour, to maintain themſelves; or work is to be provided for them, that they do not periſh for want; and if they become impotent by ſickneſs, or if their work will not maintain them, there muſt be an allowance by the overſeers of the *poor* for their ſupport. *Dalt. c.* 73. *ſ.* 35.

The law not only regards life and member, and protects every man in the enjoyment of them, but alſo furniſhes him with every thing neceſſary for *their* ſupport. For there is no man ſo indigent or wretched, but he may DEMAND a ſupply *ſufficient* to all the neceſſities of life, from the more opulent part of the community, by means of the ſeveral ſtatutes enacted for relief of the *poor*. A humane proviſion; yet, tho' dictated by the principles of ſociety, diſcountenanced by the *Roman* laws. For the edicts of the Emperor *Conſtantine* commanding the public to maintain the children of thoſe who were unable to provide for them, in order to prevent the murder and expoſure of infants, an inſtitution founded on the ſame principle as our Foundling Hoſpitals, tho' comprized in the *Theodoſian* code, were rejected in *Juſtinian*'s collection. *Black. Com.* 1 *V.* 131.

It is not true, what ſome people imagined, that the Common law of *England* made no proviſion for the *poor*: The Mirror ſhews the contrary; but how it was done does not appear. *Bur.* 450.

None ſhall give alms to a beggar able to work, 23 *Ed.* 3. *c.* 7. *Poor* perſons who are impotent, ſhall abide in the ſame town, or in the next within the hundred that is able to maintain them 12 *Rich.* 2. *c.* 7. Impropriators ſhall be obliged to diſtribute a yearly ſum to the *poor* pariſhioners, 15 *Ric.* 2. *c.* 6. 4 *Hen.* 4. *c.* 12. Proviſion to be made for the impotent *poor*, 19 *H.* 7. *c.* 12. 22 *H.* 8. *c.* 12. 27 *H.* 8. *c.* 25. 1 *Ed.* 6. *c.* 3. 3 & 4 *Ed.* 6. *c.* 16. 5 & 6 *Ed.* 6. *c.* 2. 2 & 3 *P.* & *M.* *c.* 5. 5 *El.* *c.* 3. 14 *El.* *c.* 4. 18 *El.* *c.* 3. 35 *El.* *c.* 7. *ſ.* 25. 39 *El.* *c.* 3.

We ſhall now conſider this ſubject, in a more particular manner, under the following heads, *viz.*

1. *Statutes concerning the poor.*
2. *Of appointing overſeers; their duty; and of compelling them to account.*
3. *Of the poor rate, who, and what ſhall be liable thereto; and of taxing others in aid.*
4. *Of the remedies for recovering rates; and of ſetting aſide rates.*
5. *Of relieving, and ordering maintenance for the poor.*
6. *Of parents and children being obliged to maintain each other.*
7. *Of the ſettlements of poor people.*

1. *Statutes concerning the poor.*

By ſtat. 43 *Eliz. c.* 2. The churchwardens of every pariſh, and four, three, or two ſubſtantial houſholders there, as ſhall be thought meet, to be nominated yearly, ſhall be called *overſeers of the poor* of the ſame pariſh: And ſhall take order from time to time, with conſent of two or more juſtices, for ſetting to work the children of ſuch whoſe parents ſhall not, by the ſaid churchwardens and overſeers, be thought able to maintain their children; and alſo for ſetting to work all perſons, having no means to maintain them, and who uſe no ordinary trade to get their living by: And alſo raiſe weekly, or otherwiſe, a convenient ſtock of flax, *&c.* to ſet the *poor* on work: And alſo competent ſums of money for the neceſſary relief of the *lame, impotent, old, blind,* and ſuch other among them, *being poor*, and *not able to work*, and alſo for the putting out ſuch children apprentices, to be gathered out of the pariſh, according to the ability of the pariſh; and to do all other things, as well for diſpoſing of the ſaid ſtock, or otherwiſe, as to them ſhall ſeem convenient.

Which churchwardens and overſeers ſhall meet together *at the leaſt once every month*, in the church after Divine ſervice, *there* to conſider of ſome good courſe to be taken, and for ſome meet order to be ſet down in the premiſſes.

If the juſtices perceive, that the inhabitants of any pariſh are not able to levy *among themſelves* ſufficient money for the purpoſes aforeſaid, then two juſtices may tax any other, of *other* pariſhes, or out of any pariſh *within* the hundred where the ſaid pariſh is, to pay ſuch money to the churchwardens and overſeers of the *poor* pariſh for the ſaid purpoſes, as the juſtices ſhall think fit, according to the intent of this law. And if the hundred ſhall not be thought able to relieve the ſeveral pariſhes not able to provide for themſelves, then the juſtices at their general quarter-ſeſſions, or the greater number of them, ſhall rate any other, of *other* pariſhes, or out of any pariſh *within* the county for the purpoſes aforeſaid, in their diſcretion.

And it ſhall be lawful, for the churchwardens and overſeers, or any of them, by warrant from any two juſtices of the peace, to levy as well the ſums of money, and all arrears, of every one who ſhall refuſe to contribute according as they ſhall be aſſeſſed, by diſtreſs and ſale of the offender's goods, as the money or ſtock which ſhall be behind on any account to be made, as aforeſaid, rendering to the parties the overplus: And in defect of ſuch diſtreſs, it ſhall be lawful for any two juſtices to commit him or them to the common gaol of the county, there to remain without bail until payment of the ſum, arrears and ſtock.

Churchwardens and overſeers may bind *poor* children apprentices, and may *by leave of the lord of the manor* build houſes on the waſte for the *poor* to inhabit, but not to be afterwards uſed for the habitation of any other, on the pains contained in the 31 *Eliz. c.* 7.

Provided, That if any perſon is grieved with any act done by the churchwardens or other perſons, or by the juſtices; then it ſhall be lawful for the juſtices at their general quarter-ſeſſions, or the greater number of them, to take ſuch order therein, as to them ſhall be thought convenient; the ſame to bind all parties.

The father and grandfather, and the mother and grandmother, and the children of every *poor, old, blind, lame and impotent perſon*, or other poor perſon not able to work, being of ſufficient ability, ſhall at their charges relieve and maintain every ſuch poor perſon in that manner, and according to that rate, as by the juſtices, or the greater number of them, at their general quarter-ſeſſions ſhall be aſſeſſed; on pain that every one of them ſhall forfeit 20 *s.* for every month they ſhall fail therein.

Mayors, *&c.* of corporations being juſtices, have the ſame authority within their limits, as juſtices of the county. And every alderman of *London* ſhall do ſo much, as is appointed to be done by one or two juſtices.

If any pariſh extend into more counties than one, or part lie within the liberties of any city, town or place corporate, and part without, then as well the juſtices of every county, as alſo the head officers of ſuch city, town or place corporate, ſhall intermeddle only in *ſo much* of the pariſh as lieth *within* their liberties, and not any farther. And every of them reſpectively within their ſeveral juriſdictions, to execute the ordinances concerning the nomination of overſeers, the conſent of binding apprentices, the giving warrant to levy taxations unpaid, the taking account of churchwardens and overſeers, and the committing to priſon ſuch as refuſe to account, or deny to pay the arrears due on their accounts; yet the churchwardens and overſeers, or the moſt part of them, of the pariſhes that extend into ſuch ſeveral limits and juriſdiction, ſhall without dividing themſelves duly execute their office within the pariſh, in all things to them belonging, and duly exhibit and make one account before the head officer of the town or place corporate, and one other, before the juſtices of peace, or any two of them.

For not appointing overſeers yearly, every juſtice, *&c* of the diviſion forfeits 5 *l.* The juſtices, or the more part of them, in their general ſeſſions to be holden next after the feaſt of *Eaſter* next, and ſo yearly as often as they ſhall think meet, ſhall rate every pariſh to ſuch a weekly ſum of money as they think convenient, ſo as no pariſh be rated above the ſum of 6 *d.* nor under the ſum of one halfpenny, weekly to be paid, and ſo as the total ſum of ſuch taxation of the pariſhes in every county amount not above the rate of 2 *d.* for every pariſh within the county. Which ſums ſo taxed, ſhall be yearly aſſeſſed by the agreement of the pariſhioners within themſelves, or, in default thereof, by the churchwardens and petty conſtables of the pariſh, or the more part of them, or, in default of their agreement, by order of ſuch juſtice or juſtices as ſhall dwell in the ſame pariſh, or (if none be there dwelling) in the pariſhes next adjoining.

And if any perſon refuſe or neglect to pay any portion of money ſo taxed, it may be levied by diſtreſs and ſale, in default of diſtreſs, ſuch perſon to be committed to priſon, there to abide without bail till he have paid the ſame.

There is a proviſion by the act, (*ſ.* 18.) for the inhabitants of the iſland of ***Foulneſs*** in the county of *Eſſex.*

Stat. 3 *W. & M. c.* 11. *ſect.* 11. There ſhall be kept in every pariſh, a book wherein the names of all perſons who receive collection ſhall be regiſtred, with the day and year when they were firſt admitted to have relief, and the occaſion: and yearly in *Eaſter* week, or as often as ſhall be thought convenient, the pariſhioners ſhall meet, before whom the book ſhall be produced, and all perſons receiving collection to be called over, and the reaſons of their taking relief examined, and a new liſt made of ſuch perſons as they think fit and allow to receive collection; and no other perſon ſhall be allowed to receive collection at the charge of the pariſh, but by authority under the hand of one juſtice reſiding within ſuch pariſh, or (if none be there dwelling) in the parts next adjoining, or by order of the juſtices in ſeſſions, except in caſes of peſtilential diſeaſes, plague or ſmall pox, for ſuch families as ſhall be therewith infected.

Stat. 8 & 9 *W.* 3. *c.* 30 *ſect.* 2. Every perſon who ſhall be on the collection, and receive relief of any place, and the wife and children of any ſuch perſon cohabiting in the ſame houſe, ſuch child only excepted, as ſhall be by the churchwardens and overſeers permitted to live at home, in order to attend an helpleſs parent, ſhall upon the ſhoulder of the ſleeve of the uppermoſt garment, in a viſible manner, wear a large *Roman* P. together with the firſt letter of the name of the pariſh or place, whereof ſuch *poor* perſon is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overſeers ſhall be directed: and if any ſuch *poor* perſon ſhall neglect or refuſe to wear ſuch mark, it ſhall be lawful for one juſtice to puniſh ſuch offender, either by ordering his allowance to be abridged, ſuſpended or withdrawn, or otherwiſe by committing him to the houſe of correction, to be whipt, and kept to hard labour, not exceeding twenty-one days; and if any churchwarden or overſeer ſhall relieve any ſuch *poor* perſon, not wearing ſuch badge, and be thereof convicted on oath of one witneſs before one juſtice, he ſhall forfeit 20 *s.* by diſtreſs, half to the informer, and half to the *poor.*

Stat. 5 *Geo.* 1. *c.* 8. *ſect.* 1. Whereas ſometimes men run away, leaving their wives and children, and ſometimes women run away leaving their children on the charge of the pariſh, altho' ſuch perſons have eſtates which ſhould eaſe the pariſh of their charge; it ſhall be lawful for the churchwardens or overſeers, where any ſuch wife, child or children, ſhall be ſo left, on application to, and by warrant or order of two juſtices, to ſeize ſo much of the goods, and receive ſo much of the annual profits of the lands and tenements of ſuch huſband, father or mother, as ſuch two juſtices ſhall direct, towards the diſcharge of the place where ſuch wife, child or children are left, for bringing up and providing for ſuch wife, child or children; which warrant or order being confirmed at the next quarter-ſeſſions, it ſhall be lawful for the juſtices there, to make an order for the churchwardens or overſeers, to diſpoſe of ſuch goods by ſale or otherwiſe, or ſo much of them, for the purpoſes aforeſaid, as the court ſhall think fit, and to receive the profits, or ſo much of them as ſhall be ordered by the ſaid ſeſſions, of his or her lands and tenements for the purpoſes aforeſaid.

And the churchwardens and overſeers ſhall be accountable to the juſtices at the quarter-ſeſſions for all money they ſhall ſo receive.

9 *Geo.* 1. *c.* 7. *ſ.* 1. enacts, That no juſtice of peace ſhall order relief to any poor perſon dwelling in any Pariſh till oath made of ſome reaſonable cauſe for it; and that he had applied to the Pariſhioners, or to two overſeers of the Poor, and was refuſed, and till ſummons of two overſeers of the Poor to ſhew cauſe.

And any perſon ordered to be relieved ſhall be entred in the Pariſh books, to be relieved ſo long as the cauſe for ſuch relief continues, and no longer. And if any pariſh officer (except upon emergent occaſions) ſhall charge to the Pariſh account any monies given to any perſon not regiſtred, he ſhall forfeit 5 *l.* to be levied by diſtreſs and ſale, by warrant of two juſtices, to be applied to the uſe of the Poor of the Pariſh by direction of ſuch juſtices.

It ſhall be lawful for the churchwardens and overſeers, with conſent of the major part of the pariſhioners, to purchaſe or hire any houſe in the ſame pariſh, townſhip or place, and to contract with any for the lodging, keeping, maintaining, and imploying ſuch Poor as deſire relief, and there to keep, maintain and employ ſuch poor perſons, and take the benefit of their labour. And if any poor perſon refuſe to be lodged, *&c.* in ſuch houſe, he ſhall be put out of the Pariſh book, and ſhall not be intitled to receive relief: and where any pariſh or townſhip ſhall be too ſmall to purchaſe or hire ſuch houſe, it ſhall be lawful for two or more ſuch pariſhes, townſhips or places, with conſent of the major part of the Pariſhioners, and with the approbation of any juſtice of the peace, *&c.* to unite in purchaſing or taking ſuch houſe for lodging, *&c.* the Poor, and there to keep, maintain and employ the Poor, and to take and have the benefit of their labour, for the better relief of the poor there kept, *&c.* And if any Poor in the reſpective Pariſhes, *&c.* ſo uniting ſhall refuſe to be lodged, *&c.* in the houſe ſo hired, *&c.* he ſhall be put out of the collection book, and not intitled to aſk relief: and it ſhall be lawful for the churchwards and overſeers, *&c.* to contract with the churchwardens and overſeers of any other pariſh, *&c.* for the lodging, *&c.* of any *poor* perſon of ſuch other Pariſh, *&c.* as to them ſhall ſeem meet. And if any *poor* perſon of ſuch other pariſh, *&c.* ſhall refuſe to be lodged, *&c.* in ſuch houſe, he ſhall be put out of the collection book, and not be intitled to relief.

Stat. 17 *Geo.* 2. *c.* 3. Perſons authorized to take care of the Poor, ſhall give public notice in the church, of every rate for relief of the Poor, allowed by the juſtices of peace, the next *Sunday* after the ſame ſhall have been ſo allowed; and that no rate ſhall be valid ſo as to collect the ſame, unleſs ſuch notice ſhall have been given.

And that perſons authorized as aforeſaid, ſhall permit every inhabitant to inſpect every ſuch rate, at ſeaſonable times, paying one ſhilling for the ſame, and on demand, forthwith give copies of the ſame, or any part thereof, to any inhabitant, paying at the rate of ſixpence for every twenty-four names, on pain of forfeiting to the party grieved twenty pounds.

By *Stat.* 17 *Geo.* 2. *c.* 37. Where there ſhall be any diſpute or uncertainty in what pariſh or place, lands improved, or drained, lie, and ought to be rated; every occupier of ſuch lands, or houſes built thereon, tenements, tythes ariſing therefrom, mines therein, and ſaleable underwoods therein growing, ſhall be rated to the relief of the Poor, and to all other parochial rates within ſuch pariſh and place which lies ***neareſt*** to ſuch lands, in like manner, and ſubject to the ſame regulations, as other lands within ſuch pariſh and place are by law liable to be rated thereunto; if any difference ariſe touching what pariſh or place ſuch lands ought to be rated in, it ſhall be lawful for the juſtices, at their next general quarter-ſeſſions, to determine the ſame on the appeal of any perſon intereſted, and at ſuch ſeſſions to cauſe ſuch lands, *&c.* to be allotted to, and fairly aſſeſſed in ſuch pariſh or place as they ſee juſt. But not to affect or determine the boundaries of any pariſh or place, to any intent other than for the purpoſe of rating ſuch lands, *&c.* to relief of the *Poor*, and to all other parochial rates within ſuch Pariſh or Place to which they ſhall be ſo allotted.

Vide the *Stat.* 17 *Geo.* 2. *c.* 38. which regulates the mode and time of accounting by churchwardens and overſeers to their ſucceſſors, as alſo the delivery over of the money, goods and chattels in their hands, *&c.*

Alſo ſee *Poſt, Diviſion* 3.

The ſame ſtatute, *ſect.* 4. gives an appeal to the ſeſſions to any party aggrieved by any aſſeſſment, or having any material objection to any perſon being put on, or left out of ſuch rate, or to the ſum charged on any perſon, or ſhall have any material objection to ſuch account, or any part therein, or who ſhall find him, her, or themſelves aggrieved by any thing done.

And by *ſect.* 6. it is enacted, That on all appeals from rates, the juſtices (where they ſhall ſee juſt cauſe to give relief) are required to *amend* the ſame in ſuch manner only, as ſhall be neceſſary for giving relief, without altering ſuch rates, with reſpect to other perſons mentioned in the ſame; but if on an appeal from the whole rate it be found neceſſary to quaſh the ſame; then the juſtices are required to direct the churchwardens and overſeers of the *poor* to make a new equal rate.

And by *ſect.* 7. The goods of any perſon aſſeſſed and refuſing to pay, may be levied by warrant of diſtreſs, not only in the place for which ſuch aſſeſſment was made, but in any other place within the county or precinct; and if ſufficient diſtreſs cannot be found within the county or precinct, on oath made thereof before ſome juſtice of any other county or precinct, (which oath ſhall be certified under the hand of ſuch juſtice on the warrant) ſuch goods may be levied in ſuch other county or precinct by virtue of ſuch other warrant and certificate; and if any perſon be aggrieved by ſuch diſtreſs, it ſhall be lawful for ſuch perſon to appeal to the next general or quarter-ſeſſions of the peace for the county or precinct where ſuch aſſeſſment was made, and the juſtices there are required to finally determine the ſame.

In caſe any perſon refuſe to pay to overſeers, any ſum they ſhall be legally rated or aſſeſſed to, it ſhall be lawful for the ſucceeding overſeers to levy ſuch arrears, and out of the money levied to reimburſe their predeceſſors all ſums of money which they have expended for the uſe of the *poor*, and which are allowed to be due to them in their accounts.

And where any perſon ſhall occupy any houſe, *&c.* from which any other perſon aſſeſſed ſhall be removed, or which at the time of making ſuch rate was unoccupied, then every perſon removing from, and every perſon coming into or occupying the ſame, ſhall be liable to pay to ſuch rate in proportion to the time that ſuch perſon occupied the ſame reſpectively, in the ſame manner, and under the like penalty of diſtreſs, as if ſuch perſon ſo removing had not removed, or ſuch perſon ſo coming in or occupying had been originally rated in ſuch rate; which proportion in caſe of diſpute ſhall be aſcertained by any two or more juſtices.

And it is further enacted, That true copies of all rates for relief of the *poor* be fairly entered in a book, to be provided for that purpoſe, by the churchwardens and overſeers, who ſhall take care that ſuch copies be entred accordingly, within fourteen days after all appeals from ſuch rates are determined, and ſhall atteſt the ſame by putting their names thereto; and every ſuch book ſhall be carefully preſerved by the churchwardens and overſeers, or one of them, in ſome place whereto all perſons aſſeſſed or liable to be aſſeſſed may freely reſort; and ſhall be delivered over from time to time to the ſucceeding churchwardens and overſeers, as ſoon as they enter into their office, and ſhall be produced by them at their general or quarter-ſeſſions, when any appeal is to be determined.

And overſeers of the *poor* within every townſhip or place, where there are no churchwardens, ſhall execute every act, concerning the *poor*, as churchwardens and overſeers of the *poor* may execute by this act, or any former ſtatute concerning the *poor*, and ſhall ſuffer ſuch pains and penalties for neglect, as churchwardens and overſeers are liable to.

2. *Of appointing overſeers; their duty; and of compelling them to account.*

Churchwardens of every pariſh] See the *Stat.* 43 *Eliz. c.* 2. *ſect.* 1. The juſtices of peace, by the general words of this ſtatute, have power to name overſeers in all Pariſhes; and it muſt extend as well to extraparochial places as to all Pariſhes in general, and no ſubſequent words ſhall controul the *general words* in the enacting part; and certainly all the *poor* acts ſhall be conſtrued to extend to ſuch places, as well as to other Pariſhes, when they are within the ſame miſchief, and ſhall be ſubject to the controul of the juſtices of peace. Moſt of the foreſts in *England* are extraparochial, and ſo is *Chriſt-church* in *Oxford*, but they ought to maintain their own *poor*; therefore a peremptory *mandamus* was granted to the juſtices of peace to chooſe overſeers in the town of *Rufford*, being an extraparochial place. 8 *Mod.* 39. But ſuch extraparochial place *muſt* be a townſhip or village. See *Stran.* 1004, 1071, 1143.

Four, three, or two] On motion to quaſh an indictment againſt *B.* for that he, with *four* others, being appointed overſeers of the *poor*, refuſed to take upon him that office, *&c.* It was objected, that the ſtatute directs the nomination but of *four*, *three* or *two*, with the churchwardens. And *per Parker* Ch. J. That is very true, tho' in many places more are appointed than four; for the act ſays *four*, *three*, or *two* ſhall be nominated of the inhabitants, at the diſcretion of the juſtices (*ſcil.*) they may nominate *four*, *three*, or *two*; it is not a limitation of the juſtices power, but it is in the very authoritative part thereof. Where more than four are added, they are not puniſhable by the act, and they can be only added as aſſiſtants. *Per Powell*, the queſtion will be whether the words of the act will be any more than directory, or a limitation of their authority. In moſt of the pariſhes about *London* there are more than four, therefore we need not determine this point; but the indictment was quaſhed for another fault. 16 *Vin. Abr.* 415.

But no greater number than *four* can be appointed. *Burrow* 445, 453.

Subſtantial houſholders there] The appointment of overſeers muſt ſtile them *ſubſtantial houſholders*. Stran. 1261.

It was moved for a *mandamus* to *J. H.* and *J. T.* juſtices of peace in the county of *Dorſet*, *&c.* to nominate two *ſubſtantial houſholders* to be overſeers of the *poor* upon this ſtatute; and there was an affidavit, that at a meeting of the pariſh after *Eaſter*, one *John B.* and *Mary F.* were elected overſeers, and at a meeting of the juſtices they approved of Mr. *B.* and refuſed the woman, as being an unfit perſon to ſerve as overſeer; and the old overſeers refuſing to nominate any other, the juſtices approved *B.* only. *Per Powell*, A woman is not to be an overſeer of the *poor*; and there can be no cuſtom in a Pariſh, to put her in, on account of her being a houſekeeper; becauſe this is an officer created by act of parliament. *Per Parker* Ch. J. The nomination is to be by the juſtices, and it ſeems the overſeers are to continue but one year. The Pariſh here was obſtinate in not having another inſtead of the woman, and the juſtices ſhould have nominated one of the old ones, ſince they were ſo ſtiff; but (becauſe the juſtices had done well in refuſing the woman) he directed that they ſhould apply to the juſtices to have another nominated; and if they refuſed, then to apply to the court for a *mandamus* the next term. 16 *Vin. Abr.* 415.

A citizen of *London* who lived in the country in the ſummer, was choſen overſeer of the *poor*, the court ſeemed to diſcountenance ſuch choice of one who was reſident there only ſome part of the ſummer, and was actually an inhabitant of another Pariſh in *London*. Carth. 161.

Yearly in Eaſter *week, or within one month after* Eaſter. The court ſeemed to think an appointment of overſeers on a *Sunday*, to be a good appointment: for it may be in *Eaſter* week, and this is the firſt day of the week. *Foley* 4.

An appointment of overſeers is good, tho' not made *within* one month after *Eaſter*. Stran. 1123.

And many other counties in England *and* Wales] *See ſtat.* 13 & 14 Car. 2. c. 12. ſect. 21.—In treſpaſs a ſpecial verdict found this ſtatute, and that the Pariſh of *Kenilworth* in the county of *Warwick* (not being any of the counties named in *this* ſtatute) is a large Pariſh, having two townſhips, but it is not found that it is ſo large that parochial diſtribution cannot be made; and the queſtion was, if the county of *Warwick*, not being named in the ſtatute, ſhall be taken within the general words, (and divers other counties;) and *Hopkins* ſerjeant cited a caſe to be adjudged in *C. B.* that *the ſtatute did not extend to other counties than thoſe which are expreſsly named*; and to this *Hale* inclined; but the court would ſee the precedent before they gave judgment; by which *adjornatur*. 2 Lev. 142. But afterwards it was adjudged, that this ſtatute did *not* extend to any other counties, but *only* to thoſe that are named therein. *Ibid. Freem.* 401. *Hale* Ch. J. ſaid, by the words it ſeems to be intended for all counties in *England*, becauſe the words are (or *other* counties;) but ſerjeant *Hopkins* cited the judgment in *C. B.* in caſe of *Wilſon* and *Bonner*, between *Chipping-Campden* and *Broad-Campden* in *Glouceſterſhire*, where the judges held, that this act extended to no counties but thoſe named. *Ibid.* 412. The court gave judgment for the defendant becauſe tho' it was found to be a large Pariſh, yet it was not found to be ſo big that by reaſon of the largeneſs they could not reap the benefit of the act of 43 *Eliz. c.* 2. according to the ſtatute, and for that reaſon the court gave judgment, and ſo did not poſitively rule, that no other counties were within the act but thoſe named; but *Hale* ſtrongly inclined that no other counties were within the act, and ſaid the inconvenience would be very great; for by that means the *poor* boroughs would be charged with *poor*, and the vills where men of good eſtates lived, but perhaps no *poor*, would be at no charge at all. But 2 *Salk.* 486. *pl.* 44. in marg. there is a note, That in the caſe of the inhabitants of *Stokelane* and *Dolting, Hill.* 11 *Ann.* it was adjudged, That by virtue of this act the juſtices may exerciſe the powers given by 43 *Eliz. c.* 2. and this act in all extraparochial places containing more houſes than one, ſo as to come under the denomination of a vill or townſhip. And in the caſe of *Hinam* and *Churcham* Pariſhes in *Glouceſterſhire, Hil.* 1738. *Lee* Ch. J. cited the ſaid caſe of *Stokelane* and *Dolting*, in which he ſaid it was held, that this ſtatute extended *by equity* to all the counties in *England*, and that it was ſo held upon great deliberation. 16 *Vin. Abr.* 421.

Every poor, needy, impotent and lame perſon] This ſtatute relates only to the maintenance of poor and impotent perſons, and not to baſtards, who are provided for by other ſtatutes. 1 *Salk.* 123.

Two or three overſeers of the poor] The court held, that this clauſe plainly extends to towns and villages in extraparochial places as well as within Pariſhes; for the law makers had in view the inconvenience, that ſome towns and villages would have the benefit of 43 *Eliz. c.* 2. This ſtatute is of (towns, &c. in *counties*) and not (in Pariſhes); and towns and villages in extraparochial places are plainly within the words, tho' not directly within the view of the act; and tho' there be not officers appointed in extraparochial places, yet the juſtices ought to do it upon complaint. 16 *Vin. Abr.* 421.

When the Pariſh is not large, and conſiſting of ſeveral townſhips, ſo as the 43 *Eliz. c.* 2. may be of benefit to them, the juſtices ought not to appoint particular overſeers according to this ſtatute. 16 *Vin. Abr.* 421.

As to the duty of the overſeers of the *poor*, ſee *Stat.* 43 *Eliz. c.* 2. *ſect.* 2, 6, 11. and *Stat.* 17 *Geo.* 2. *c.* 38. *ſect.* 1, 11, 13, 14.

Make and yield up to ſuch juſtices of peace a true and perfect account] See Stat. 43 *Eliz. c.* 2. *ſ.* 2.—The juſtices authority in ſtating this account, cannot be delegated to any other. 16 *Vin. Abr.* 415.

Shall pay and deliver over] *Mandamus* to the juſtices, to grant a warrant for levying 30 *l.* 17 *s.* 11 *d.* being the balance of the laſt overſeers account in their hands. They return, that there was ſuch a balance, but that the veſtry had ordered them to return it, and employ an attorney to ſue for charity money, and get it laid out for the benefit of the *poor*; that one *Young* was ſo employed, and the balance exhauſted in fees, and that the overſeers had engaged to pay *Young*; & *ea de cauſa* they had refuſed to grant the warrant: and *per curiam*, There muſt go a peremptory *mandamus*, for the ſtatute 43 *Eliz. c.* 2. ſays, the balance ſhall be paid over to the new overſeers, under a penalty; and it is not in the power of the veſtry to diſpenſe with the ſtatute. *Stran.* 992.

Negligent in their office] If an overſeer does not provide for the *poor*, he is indictable; and if he relieves the *poor* when there is no neceſſity, it is a miſdemeanor. *MS. Caſes. Paſch* 3 *Ann. B. R. Tawney*'s caſe.

For every ſuch default of abſence or negligence twenty ſhillings] This penalty for not meeting in the church ſhall never be inflicted on the overſeers of extraparochial places, becauſe they have no church to meet in. 8 *Mod.* 40.

If any of theſe officers be convicted of any of the penalties in this act; the other muſt levy it. 16 *Vin. Abr.* 415.

To commit every one of the ſaid churchwardens and overſeers] See *Stat.* 43 *Eliz. c.* 2. *ſect.* 4. If accounts be adjuſted, and the overſeers refuſe to pay the balance, they cannot be committed immediately, but a warrant muſt iſſue to diſtrain them, and upon a return thereof there may be a commitment. 16 *Vin. Abr.* 416.

The juſtices cannot commit an overſeer for bringing in an account to which they object, but they ought to hear it, ſtrike out what is amiſs, and balance the account. 16 *Vin. Abr.* 416.

The defendant, being an overſeer, was committed by two juſtices of peace by a warrant, which recited, that he had appeared before them, and being demanded to give a juſt account of all monies he had received and paid, he had only produced an account in groſs of his receipts and payments, and refuſed to give a particular account, or produce his books, &c. and they believing this to be no account according to this ſtatute, and defendant refuſing to give any other, therefore they commit him *to be detained till he ſhall make a true account*. And upon a *habeas corpus* he was diſcharged. *Per tot. cur.* Becauſe the juſtices had no authority to commit in this manner by this ſtatute, for that an account was confeſſed to have been rendered. &c. *Show* 395.

An order made at the ſeſſions relating to accounts of overſeers of the *poor* was moved to be quaſhed, becauſe it did not appear the accounts had been before two juſtices *quorum unus*, and they cannot come *per ſaltum* to the ſeſſions; and *Salk.* 533. was cited. On the other ſide it was ſaid, that it appeared there was an allowance, for the appeal is ſaid to be againſt the diſburſements and allowance thereof, which the court will preſume was regular; and being in general, is not like the caſe in *Salk.* Which was ſaid to be by two juſtices without *quorum unus. Sed per curiam*, It does not follow, that this was an allowance by two juſtices, for the Pariſh might do it; therefore for want of juriſdiction this order muſt be quaſhed. *Stran.* 983. See *Burn* and *Seſſions Caſes*.

3. *Of the poor rate, who, and what ſhall be liable thereto; and of taxing other pariſhes in aid.*

By taxation of every inhabitant] See *Stat.* 43 *Eliz. c.* 2. *ſect.* 1, 3. & 17 *Geo.* 2. *c.* 38. *ſect* 12. Aſſeſſments for the *poor* ought to be made according to the viſible eſtate of the inhabitants there, both real and perſonal, and no inhabitant there is to be taxed to contribute to the relief of the *poor* in regard of any eſtate he hath elſewhere in any other town or place, but only *in regard of the viſible eſtate he hath in the town where he dwells*, not for any other land he hath in any other place or town. 2 *Bulſ.* 354.

Rent is no ſtanding rule for making a *poor* rate; for circumſtances may differ, and there ought to be regard *ad ſtatum & facultates*. Comb. 478.

The ſeſſions, upon ſetting aſide a rate, may make a new one themſelves, or order the churchwardens and overſeers to make a new one, they having it in their diſcretion to make a new rate at ſeſſions, or remand it to the churchwardens, *&c.* to make a new one. 2 *Salk.* 483.

The churchwardens and overſeers may make a rate of themſelves. 2 *Salk.* 531.

H. took part of a houſe in the Pariſh of *D.* on the third of *December*; he was rated as an inhabitant, and was diſtrained for a quarter's rate the *Chriſtmas* following; but the diſtreſs was taken before *Chriſtmas* on a general warrant made for the whole year: and in replevin it was ruled upon evidence by *Holt*, 1ſt, That if two ſeveral houſes are inhabited by ſeveral families, who make and have but one common entrance for both; yet in reſpect of their original *both houſes are rateable ſeverally*; for they were at firſt ſeveral houſes; and if one family goes, one houſe is vacant: but if one tenement be divided by a partition and inhabited by different families, *viz.* the owner in one, and a ſtranger in another, theſe are ſeveral tenements, ſeverally rateable while they are thus ſeverally inhabited, but if the ſtranger and his family go away it becomes one tenement. 2*dly*, That *H.* could not be rated for the whole quarter, for *poor rates are to be aſſeſſed* MONTHLY *by the ſtatute*, and by this means a man cannot move in the middle of a quarter, but he muſt be twice charged. 2 *Salk.* 532.

When goods are rated, it ought to be according to the value of lands, *viz.* goods of the value of 100 *l.* ſhall be rated 5 *l. per annum*, as lands are, and the perſon muſt be charged only in the place where the goods are at the time of the aſſeſſment; for if he has no goods where aſſeſſed, if diſtrained he may have an action of treſpaſs, *&c. Dalt. Juſt.* 233. *cap.* 73.

By the words and meaning of the ſtatute 43 *Eliz.* 2. the *occupiers* of the land are to be aſſeſſed, and *not* the *leſſor* who receives the rents; the *occupier* of the land being by law only to pay the aſſeſſment, unleſs it be ſpecially provided for as to this payment between him and his leſſor. 2 *Bulſt.* 354.

Parſons ought to contribute to the *poor.* 3 Keb. 252.

A *mandamus* was prayed to the mayor of *Chicheſter*, to ſign a tax made on the palace, *&c.* of the biſhop of *Chicheſter*, being within the pariſh of *Subdeanry*, and *per cur.* it was granted; becauſe againſt this there can be no preſcription, and all the prebendaries who live in the ſame cloſe, which is a fourth part of the town, pay it. 3 *Keb.* 573.

A parſon who lets his tithes to the pariſhioners may be taxed upon the *poor* rate; for the letting is but an agreement with the pariſhioners to retain the tithes, and the parſon has a *modus* for his tithes; though it was objected that the pariſhioners were occupiers, and ſo the parſon not taxable. *MS.* caſes *Paſch.* 7 *Ann. The Queen* v. *Bartlet.*

Thoſe ought only to be contributory who were livers there the year before, and none elſe. *Settlements* 48. *pl.* 71.

A. ſeiſed of lands, demiſed the ſame to *B.* reſerving the yearly rent of 10*l.* *A.* covenanted with *B.* that he ſhould quietly enjoy the land, and to indemnify him againſt all charges and taxes whatſoever to be impoſed upon the lands, except tithes. *B.* entered, and was poſſeſſed, and the churchwardens and overſeers of the Pariſh where the land lay, and of which *A.* was an inhabitant, made a poor rate, and *B.* by reaſon of the lands was charged with ſuch a ſum of the rate which he paid, and he brought covenant againſt *A.* and aſſigned the breach, in that *A.* did *not indemnify* againſt the *poor* rate, *&c.* And after argument on both ſides the court unanimouſly agreed that the poor rate was not within the covenant, and therefore gave judgment for defendant. *Gibb.* 297.

The Doctor agreed with ſeveral of the pariſhioners to take ſo much for his tithes, and made a leaſe to *F.* The Doctor was rated for the tithes to the pariſh levies, who appealed; and the matter being found ſpecially, the queſtion was, *who ſhould be ſaid to be the occupier*, the Doctor's leſſee or the inhabitants; and *per cur.* The *leſſee* muſt be ſaid to be the *occupier*, in regard there is no certain time limited for *how long*, but only from year to year; and *per Eyre* J. The letting of them is in nature of a ſale, and the party looked upon as a vendee; no manner of advantage is given to the inhabitants; for they give the full value for their tithes; otherwiſe had it been a contract for years. *Poor's Settlements.* 104. *pl.* 140.

Defendant being aſſeſſed towards the poor rate for his tithes as *vicar*, appealed to the ſeſſions, where he was abſolutely diſcharged. But by the court; As vicar he is chargeable by 43 *Eliz. c.* 2. and the ſeſſions hath only power to moderate, not diſcharge: And the order of ſeſſions was quaſhed. *Stran.* 77.

Where the parſon agrees that the tenant ſhall retain the tithes, yet *the rate for them muſt be upon the parſon.* Stran. 525.

All things which are *real* and *bring in a yearly revenue*, may be rated and taxed to the poor. *Shaw's Pariſh Law* 221.

On a motion to confirm a tax laid by the juſtices of peace on *a toll* of the corporation of *W.* for a rate to the poor, *Hale* Ch. J. ſaid, that he was of opinion that the toll was chargeable, though part of it was to maintain the mayor; and *per cur.* A *mandamus* was granted to the mayor and juſtices to execute the order, *niſi.* 3 Keb. 540.

Note; It hath been reſolved by the court, that *ground rents are liable to pay the poors rate.* Comb. 62.

Hoſpital lands are chargeable to the poor, as well as others; for no man by appropriating his lands to an hoſpital, can exempt them from taxes to which they were ſubject before, and throw a greater burden upon their neighbours. 2 *Salk.* 527.

The queſtion was whether a houſe converted into a conventicle, and uſed for no other purpoſes, was rateable to the poors tax; the court ſaid, they never knew it, and ordered them to ſhew cauſe; and afterwards the order was quaſhed. *Poor's Settlements* 124, *pl.* 109.

A farmer ſhall be taxed for his riches and ſtock, in caſe the ſtock is more than is neceſſary for the carrying on his farming and paying his rent; for then it is like a ſtock in trade; but for ſtock neceſſary to his farming he ſhall not be taxed. So for extraordinary ſtock he ſhall not be charged, if it be not more than is neceſſary; for the act ſays, (every inhabitant, *&c.* and of land) ſo that there may be an inhabitant that is not an occupier of *land*, and he muſt be charged in reſpect of his perſonal eſtate and ability, and ſo it is uſual to tax clothiers, *&c.* *N. B.* Thoſe farmers were never taxed before, nor were the tradeſmen ever before, until within theſe few years, and the order above was for rating the farmers for the corn and hay, which was in their barn and ſtable. *Rex* v. *Inhabitants of Barking. Vin. Abr.* tit. *Poor*, 426. And *Foley's Poor Laws* 30.

A ſhopkeeper ſhall be charged to the poor's rates for the goods, *&c.* in his ſhop. *Juſt. Caſe Law* 233.

On a motion to quaſh a poor's rate made at the quarter-ſeſſions in *Marlborough*, becauſe it was aſſeſſed *for trade*, and the corporation would not aſſeſs the toll of their market, or their own lands, and they would not hear the matter at their ſeſſions. *Per cur.* It will be inconvenient to quaſh poor rates; but you may take a *mandamus* to aſſeſs you according to law, as in the caſe of *The town of Cambridge MS. caſes.* 16 Vin. Abr. 426.

In the caſe of the governor and company for ſmelting lead againſt *Richardſon* and others, it was determined by the court of King's Bench in *Michaelmas* term 3 *Geo.* 3. That a leſſee of *lead* mines, whereon no rent is reſerved other than a certain proportion of the ore to be raiſed, is *not* rateable to the poor under the ſtat. 43 *Eliz. c.* 2.

By 43 *Eliz. c.* 2. *ſect.* 3. If the juſtices do perceive, that the inhabitants of any pariſh are not able to levy among themſelves ſufficient ſums for the purpoſes in the act before mentioned, then the ſaid two juſtices (one of the quorum) ſhall tax, *&c.* any other of other pariſhes, or out of any pariſh within the hundred, to pay ſuch ſums to the churchwardens and overſeers of the ſaid poor pariſh, for the ſaid purpoſes, as the ſaid juſtices ſhall think fit.

If ſeveral inhabitants of *A.* have lands in the pariſh of *B.* and their tenants are ſo poor that they are not able to pay to the relief of the poor of *B.* the landlord's inhabiting in the pariſh of *A.* ſhall be no diſcharge to them, but they ſhall pay for their lands, which they have in the pariſh of *B.* 2 *Bulſtr.* 352.

Sir *James Mountague*, attorney general, moved to quaſh an order of two juſtices, made upon this ſtatute; his exception was, that it does not appear that the pariſhes taxed are within the hundred; for it is only ſaid that they are within the county of the city of *Norwich*; and two juſtices by the act have not power to tax the county but only the hundred, or the pariſhes within the hundred. To which it was anſwered, that if two juſtices cannot relieve in this caſe, there can be no relief given; for it is well known there are no hundreds within cities, and *the city, and the county of the city are the ſame*, and the power given to the juſtices muſt ariſe upon a defect in the hundred, and where there is no hundred there can be no ſuch defect, and the ſeſſions could have made no order in this caſe. But *per Powell*; This is not *caſus omiſſus* out of the ſtatute; and though the two juſtices have no power, here being no hundred, yet the ſeſſions have a juriſdiction, and may tax the county of the city in part or at large, to which the reſt agreed, and quaſhed the order, being made by two juſtices only. 11 *Mod.* 269.

There are two ways by this ſtatute to make one pariſh contributory to the poor of another, *viz.* either the juſtices may tax particular perſons *in aid* to that pariſh which cannot relieve it's own poor; or they may aſſeſs the whole pariſh in a certain ſum, and leave it to the churchwardens and overſeers to levy the ſame on particular perſons. 2 *Salk.* 481. *Shaw's Pariſh Law* 219.

Mandamus to the juſtices to make a rate for ſupport of the poor which was oppoſed, becauſe the pariſh officers ought to make the rate, and the juſtices are only to ſign it; to which it was anſwered, that this motion was grounded on the contributory clauſe in the ſtat. 43 *Eliz. c.* 2. and thereupon a *mandamus* was granted, directed to the juſtices; and as this is a matter of right, they ought to make a return. 2 *Shaw's Pract. Juſt.* 47. *Shaw's Pariſh Law* 219.

An order of ſeſſions was returned upon ſtatute 43 *Eliz. c.* 2. for rating the adjacent pariſhes *&c.* for relief of a poor pariſh. Exception was taken, that by the ſtatute this ought to have been done by the two next juſtices, whereas this order was made at ſeſſions. And by the ſolicitor general, If it be made by all the juſtices, *&c.* then it is by two, and they ſhall be ſuppoſed to be at the general ſeſſions. But *per Wythens*, You have not purſued the ſtatute, and do hereby prevent the appeal. *Adjornatur*; and it was afterwards at another day quaſhed for that reaſon. *Comb.* 25.

A pariſh in *Colcheſter* being ſurcharged with poor, the juſtices made an order that two other pariſhes in *Colcheſter* ſhould pay to the relief of the poor within this pariſh, *viz.* the one 5*s.* and the other 8*s. per* week, and that the overſeers ſhould collect it; and the order being removed by *certiorari*, *Alibone* moved to quaſh it, becauſe not purſuant to the direction of 43 *Eliz. c.* 2. which ſays, *others, of other pariſhes*; ſo that it ought to be aſſeſſed by the juſtices upon particular perſons, and not generally: But the court ſeemed to be of opinion, that it was right; and that the juſtices are only to aſſeſs the *quantum*, and then the rate is to be made by the overſeers of the poor of the pariſh, and ſuch was the opinion of the court. *Skin.* 258.

It was moved to quaſh an order made by two juſtices, that the inhabitants of *L. G.* ſhould pay a yearly ſum to *Whetſtone*, becauſe it was not ſaid *quorum unus*, but the exception was diſallowed. *Comb.* 241.

Upon an order for contribution to the relief of a poor pariſh it was ruled, that *the juſtices may either charge particular perſons or the whole pariſh*, and they to levy it; but here a ſum in groſs was laid for a whole year, which (it was objected) was unreaſonable; for their ability may change; nevertheleſs the order was confirmed. *Comb.* 309.

Holt Ch. J. ſaid, that poſſibly a place extraparochial may be taxed in aid of a pariſh; but a pariſh ſhall not be taxed in aid of that. 2 *Salk.* 486.

In a city where one pariſh is not able to relieve their poor, the next pariſh, being able, is to aid them by a weekly allowance, but when the cauſe ceaſes, ſuch allowance is to ceaſe alſo. *Juſt. Caſe Law* 234.

In caſe a pariſh is not able to maintain its poor, two juſtices may tax any other pariſh *within the hundred* towards their relief, and if the hundred be not of ability to relieve their pariſhes, the juſtices in their ſeſſions may tax any other pariſh or pariſhes *within the county.* 2 Shaw's Pract. Juſt. 42.

An order was made by the juſtices of the borough, for the pariſh of *St. Peter's* to pay to the officers of *St. Mary's* the ſum of 20*s.* weekly, *until the juſtices ſhould ſee fit to order the contrary.* It was objected, 1ſt, That it does not appear that the pariſh of *St. Mary's* is overburthened with poor, but over-ruled; for the order follows the words of the ſtatute. 2dly, It is ſaid, that they are juſtices of the town and borough, and it appears upon the order, that the pariſh of *St. Mary's* is within the borough, but not within the town and borough. But *per cur.* they are juſtices of both. 3dly, The order is, *until we ſhall ſee fit to order the contrary*, where the act never gave the juſtices ſuch an authority, and it is in effect making a perpetual order; for if one of the juſtices die or be removed, no other juſtice can alter it till the ſaid juſtices ſhall ſee fit to alter. And it was quaſhed for the laſt objection. *Poor's Settlements* 121. *pl.* 165.

The pariſh of *H.* and a vill called *S.* time out of mind have been within the rectory of *H.* But there is a church in *S.* which from the time of *Hen.* 6. hath been uſed and reputed as a pariſh, and had all parochial rights, and churchwardens, and *S.* diſtant two miles from *H. Richardſon* Ch. J. held clearly, that this is a pariſh within 43 *Eliz. c.* 2. and that the overſeers, *&c.* might aſſeſs it to the relief of the poor; and the finding that from *Henry* the VIth's time till now it hath been uſed as a pariſh, does not exclude, that it was not uſed ſo before. And this ſtatute being made for relief of the poor, to prevent their wandering, the intent of it was to confine the relief to pariſhes then *in eſſe*, and ſo uſed. Judgment for plaintiff. *Hut.* 93. *Lit. Rep.* 73.

Cro. Car. 92. S. C. adjudged, that this is ſuch a pariſh as is chargeable for relief of *Stoke-Godlingham*, and not for the poor of *Hinkley*; and though by the finding it ſhould not be intended to be a pariſh before *Henry* the VIth's time, yet being found that it was a church *then*, and that there were churchwardens there, it is a pariſh within the ſtatute, although it be but a reputative pariſh; for being in uſe ſo long before, and at the time of the ſtatute, the ſtatute appoints that the churchwardens and three or four overſeers joined with them ſhall, *&c.* Now, no churchwardens of *H.* are churchwardens of *S.* and ſo have nothing to do there; and the churchwardens of *S.* are only to meddle with the church there, and conſequently with the poor of the pariſh.—S. P. As to *Tatteridge* and *Hatfield*, where for ſixty years *then* paſt, and at the time of making the ſtatute, and ever ſince, *T.* was *commonly reputed* a pariſh of itſelf, and the inhabitants there choſe conſtables, churchwardens and overſeers of the poor, and made and levied their own rates to the poor, and repaired their church, without contributing to that of *H.* and though it was alſo found that anciently the vill of *T.* was parcel of the pariſh of *H.* and never ſevered by any legal act, and that the tithes of *T.* have been time out of mind paid to the parſon of *H.* who always uſed to find a curate at *T.* and that there is no parſon at *T.* yet *T.* ſhall be charged by itſelf, and for their own poor *only.* Cro. Car. 394, 395.

Pariſhes in reputation only are within the ſtatute, as other pariſhes are, if the uſage of ſuch pariſh to chooſe overſeers has been conſtant without interruption; but otherwiſe the overſeers and collectors of the mother church are only within the ſtatute. 2 *Rol. Rep.* 160.

There were two vills in one pariſh, which had uſed ſeverally to maintain their own poor, and now there being overſeers made of the whole pariſh, they were rated together. The queſtion was, whether having been uſed time out of mind to pay ſeverally, they might now by the ſtatute of 43 *Eliz. cap.* 2. be rated together? *Per Hale* Ch. J. If there be no chapel within the vill, where the church does not ſtand, it is not ſufficient to make it a reputed pariſh within the ſtatute of 43 *Eliz. c.* 2. *Freem.* 401.

The pariſh of St. *Botolph* without *Algate* lies in two counties, *viz. London* and *Middleſex*, and hath one churchwarden and ſeveral overſeers, and *the pariſh rates are ſeveral.* And in regard it appeared that each part of the pariſh had diſtinct officers, and made diſtinct rates, and had uſed time out of mind to make diſtinct accounts to the juſtices of each county, the court looked upon each diviſion as a ſeveral pariſh, and ordered it accordingly. *Raym.* 476, 477.

Upon a diſpute whether *A.* was a vill in the pariſh of *B.* or a pariſh of itſelf, to prove it a vill the evidence was, that there were but two churchwardens, two overſeers of the poor, and that all parochial rights were done at *B.* and that the inhabitants of *A.* contributed to the repair of the church at *B.* And, to prove that *A* was a pariſh of itſelf, the evidence was, that in the reign of *Edw.* 3. there was a public chapel there, and divine ſervice read in it at the time of making this ſtatute, that they had formerly diſtinct conſtables, and repaired their own highways in 1634, and then the difference between *A.* and *B.* was ſettled by a judge of aſſiſe, that a rate was made in *A.* in 1654. But this was held not ſufficient to make *A.* a pariſh *in reputation* at the time of the ſtatute, without all other parochial rights, and therefore held to be a vill in the pariſh of *B.* 4 *Mod.* 158.

To make *A.* a reputed pariſh within the 43 *Eliz. c.* 2. it muſt have a parochial chapel and chapel-wardens, and ſacraments, at the time the ſtatute was made; and becauſe *A.* had but one chapel warden, whoſe office was to collect the rates taxed upon *A.* and pay them to *B.* they were held part of the pariſh of *B.* and not a reputed pariſh within the 43 *Eliz. c.* 2. and their having a diſtinct overſeer, and maintaining their own poor, was not ſufficient to make them a diſtinct pariſh. 2 *Salk.* 501.

A chapel's having ſacraments *only*, makes it not independent of the pariſh, but it muſt have other badges, as ſepultures, *&c.* 12 *Mod.* 504.

As to queſtions relative to the deſcription of two places, *within the ſame* hundred, ſee *Foley Poor* 31. (or 42 in the third edition) *Reports temp. Qu. Ann.* 269. *Viner*, 416. and *Bur.* 576, 577.

4. *Of the remedies for recovering rates; and of ſetting aſide rates.*

See *ſtat.* 43 *Eliz. c.* 2. *ſect.* 4, 13, 19.

Holt Ch. J. ſaid, that a man could not be diſtrained by virtue of a general warrant made before the rate, but there ought to be *a ſpecial warrant on purpoſe*; and he ſaid that a diſtreſs could not be taken for a quarter's rate before the quarter ended; but the jury ſaid, the cuſtom was otherwiſe. *Holt* anſwered, If he remove into another pariſh in the ſame county, they might diſtrain by warrant from the juſtices as well as in the ſame pariſh; but if he removed out of the county, he agreed the remedy failed. So he gave way to the uſage in *that* point. 2 *Salk.* 532. 6 *Mod.* 214. S. C.

A warrant to diſtrain for a poor's rate ought not to be granted before demand made; for the firſt ought to be only a confirmation of the aſſeſſment for the poor, and afterwards upon refuſal, *&c.* a new warrant is to be made for diſtreſs, *&c.* and *Holt* ſaid, that ſtrictly it was ſo, but the practice having been in the caſe of taxes to grant ſuch a conditional warrant to diſtrain, *communis error facit jus.* Comb. 342.

By 17 *Geo.* 2. *c.* 38. *ſect.* 11. Succeeding overſeers are to levy arrears for the purpoſe of reimburſing their predeceſſors, ſuch money as they may have expended for the uſe of the poor.

The churchwardens and overſeers, by warrant from any two juſtices of the peace, *(quor.* 1.) may levy the tax by diſtreſs and ſale, where any perſon refuſes payment of the ſum aſſeſſed; and if there be no diſtreſs whereby the ſame may be levied, he ſhall be committed to the common gaol, there to remain till payment. 2 *Shaw's Pract Juſt.* 42.

A *mandamus* was moved for, and a rule obtained for an alderman to ſhew cauſe why he refuſed to grant his warrant to diſtrain for a tax for relief of the poor; who ſhewed that the churchwardens had made a tax for the whole year, when they ſhould have made only a quarterly tax, and thereupon a rule was made that he ſhould grant his warrant quarterly. 8 *Mod.* 10.

Working tools in a ſhop may be diſtrained for a poor rate. 2 *Show.* 126. Before this act, neither the juſtices of peace nor conſtables had any power concerning poor. *Sid.* 282.

It was affirmed on error in *B. R.* on this ſtatute, that though the ſtatute expreſſes by name only *ſale and diſtreſs of goods*, yet if the plaintiff voluntarily delivers any goods for what he is aſſeſſed to the poor, and after brings treſpaſs thereof againſt the overſeers, this is within the ſtatute; for theſe words, *ſale and diſtreſs*, are put in the act only for examples; and the ſtatute ſhall be conſtrued largely, becauſe it tends *ad opus charitatis*; and treſpaſs brought after ſuch voluntary delivery is a vexation which the ſtatute extends to ſuppreſs. *Yelv.* 176.

B brought treſpaſs againſt certain perſons who pleaded Not guilty, and at *Niſi prius* the defendants juſtified as overſeers of the poor, and ſhewed this ſpecial matter in evidence by this ſtatute; and after the jury was charged, and returned again, plaintiff was non-ſuited. And now the court was moved to grant a writ of inquiry, for the treble damages which they ought to recover againſt the plaintiff by this ſtatute; and on oyer of the ſtatute, which was, that the damages ſhall be aſſeſſed, *&c.* *Dod.* ſaid, This is to be intended that it ſhall be tried by writ of inquiry of damages in ſuch caſes as it ought to be by law, *viz.* upon diſcontinuance or demurrer; for the words, "*as the caſe requires,*" imply as much; and by the law, when a jury ought to have found a thing, and do not find it, this ſhall not be ſupplied by a writ of inquiry of damages; and this was ſo ruled that ſuch defect ſhall not be ſupplied by writ of inquiry of damages, becauſe then the party ſhall not be ouſted of his attaint. But in the caſe at bar, the writ of inquiry of damages was granted inaſmuch as the plaintiff was nonſuited, ſo that the jury could not aſſeſs the damages; and damages were found accordingly. *Rol. Rep.* 272.

As to ſetting aſide rates, ſee *ſtat.* 43 *Eliz. c.* 2. *ſ.* 6. ——Upon an appeal from a poor rate, the juſtices refuſed to hear the appeal, becauſe it was not made at the next quarter-ſeſſions. But *per cur.* The party grieved may appeal at *any* ſeſſions; the juſtices may not have power to alter the rate at diſcretion, but they ought not to refuſe to hear the appeal. *MS. Caſes, Mich.* 8 *Ann. B. R. The Queen* v. *The inhabitants of St. Giles.*

T. P. and *S.* being overſeers of the poor, got their account allowed by the juſtices. The pariſh appealed againſt it, and the ſeſſions ſet aſide this account, and then directed a re-examination of the matter to the ſame two juſtices. This order being removed, it was objected, that here was a matter delegated by the court, who were finally to determine the matter in queſtion. *Per Parker* Ch. J. The overſeers have *four days* time to paſs their accounts, and they may go before any two juſtices for the doing it; till the time is paſt there is no compulſion uſed, but if this time is ſlipt, the pariſh may go before any two juſtices, and when theſe have entered upon the examination, no other juſtice is afterwards to intermeddle; and when this matter comes to the ſeſſions, they are to take ſuch order therein as to them ſhall ſeem convenient, but need not finally determine. *MS. Caſes, Hill.* 10 *Ann. B. R. Townſend, Parſons* and *Smith*'s caſe (overſeers of *Whitechapel.)*

There are four adjacent towns within the pariſh of *Banbury*, and there is an overſeer within each town, and alſo an overſeer within the borough; they all join in one account, and there is but one rate made for all the pariſh, but the overſeers of each particular town collect and pay the money within ſuch town; one who is tenant of lands in one of theſe towns lives in the borough, and is aſſeſſed by the overſeer of the borough for the lands within the town, and paid to the overſeer of the borough; and the like is done in the other towns; ſo that the overſeer of the borough had a ſurpluſage for the poor within the borough, and the overſeers of the towns wanted money for relief of the poor within the towns, though the poor within the towns were leſs than thoſe within the borough; and upon this the juſtices ordered, that there ſhould be a diſtribution made; and this order with others being removed, it was moved to be quaſhed, but confirmed; and though the ſtatute of 13 & 14 *Car.* 2. *c.* 12. *ſ.* 21. was cited, and this caſe urged to be within that ſtatute, it was not agreed to be within that ſtatute. *Skin.*258

Although a poor's rate be really made at the ſeſſions on an appeal, yet if it does not appear by the order itſelf, as *by recital of the former order, &c.* the latter order ſhall be quaſhed, and the court refuſed to ſupply this defect in the order by affidavits. *Comb.* 133, 134.

The churchwardens and overſeers, and ſome of the inhabitants made a poor's rate, which was confirmed by two juſtices, in which ſeveral were not taxed for their perſonal eſtates, (which was erroneous) but the whole lay on the *real* eſtates of the pariſh; on which ſeveral of the inhabitants appealed to the ſeſſions, and they ordered that the rate ſhould be annulled, and a new one made; accordingly the churchwardens made a new rate both on the real and perſonal eſtates, which rate was confirmed by two juſtices. But in the new rate there was a great inequality, the real eſtates being rated in proportion *ten* times more than the perſonal; for which ſeveral of the inhabitants appealed again to the ſeſſions, where another order was made to diſcharge the rate. And theſe two orders of ſeſſions being removed by *certiorari* into *B. R.* it was moved to quaſh them; becauſe the ſeſſions can only relieve particular perſons grieved by the rate, and cannot ſet aſide the whole rate. *Sed per tot. cur.* The juſtices at ſeſſions on an appeal by particular perſons grieved, may, if they ſee reaſon, ſet aſide the whole rate. The juſtices have a large power, and in both theſe caſes, either on the firſt rate where the perſonal eſtates were not charged, or upon the ſecond where they are unequally charged, it is impoſſible for them to give relief without ſetting aſide the whole rate; which therefore they may legally do, being impowered by the act to take order herein according to their diſcretion; by virtue of which, as they may ſet aſide the whole rate, ſo they may make a new rate themſelves, or order the overſeers, &c. and churchwardens to make a new one, as was done in this caſe; wherefore thoſe two orders were confirmed. 12 *Mod.* 212.

If a poor rate be made for a whole year, it cannot be confirmed in part, but muſt be for the whole year or no part. 8 *Mod.* 10.

If the rate be illegal, the juſtices may refuſe to ſign it, but as to the ſums, or parties aſſeſſed they have nothing to do with it, the remedy is by appeal; and though the aldermen of *Dorcheſter* refuſed to ſign a rate, becauſe of inequality; yet the court granted a *mandamus*, and after a return a peremptory *mandamus*, and then an attachment, in order that the parties grieved might appeal, cited *per cur. MS. Caſes, Mich.* 8 *Geo. B. R.* in caſe of *The King* v. *Beecher*.

A rate that is of itſelf good, may be quaſhed, where it ſays it ſhall be a *ſtanding* rate. *Poor's Settlements* 23. *pl.* 33.

To quaſh a poor's rate the parties aggrieved appealed to the ſeſſions, the ſeſſions made an order to levy the money on account of the rate according to the land tax; it was moved to quaſh it, becauſe perſons who do not pay to the land tax, yet contribute to the poor's rate, as perſons who have a conſiderable ſum of money. Quaſhed, *per cur. Poor's Settlements* 73. *pl.* 96.

5. *Of relieving, and ordering maintenance for the poor.*

See ſtat. 43 Eliz. c. 2. ſect. 1, 13. 3 Wil. & M. c. 11. 8 & 9 Wil. 3. c. 30.

Exception was taken to an order of the juſtices made againſt the pariſh of *Stretton*, becauſe the juſtices ordered them to keep a woman, *being poor*, the cottage wherein ſhe lived, being uncertain whether in this vill or another; but the court refuſed to quaſh it, tho' it was not averred that ſhe was *impotent*, becauſe in theſe caſes the courts uſe a diſcretion. 2 *Keb.* 37.

An order of juſtices for the maintenance of a poor woman was confirmed, though it appeared that ſhe was able of body to work; but *the juſtices of the peace are judges of that*. Vent. 69.

A poor child was left in *Chriſt-Church* hoſpital; upon complaint of the wardens of the hoſpital two juſtices made an order on the overſeers of the poor of the pariſh to receive and maintain the child; but this order was quaſhed, becauſe it was not ſaid that the parents were *unknown*, or *likely to become chargeable to the pariſh:* For though a child of three months old be helpleſs, yet the parents are bound to provide for it. As to the principal matter which was hinted, *viz.* that the hoſpital was bound to provide for poor children *there expoſed.* the court thought there was nothing in that. 2 *Salk.* 485.

An order of juſtices was made for relieving a woman and four poor children, *until further order*, but did not ſet forth ſhe was *indigent*; it was quaſhed for the laſt matter, and bad for the other, which ſhould have been during her *poverty*. 10 Mod. 220.

It was moved to quaſh an order of ſeſſions, which ordered that the overſeers ſhould pay to one *R. D.* 2*s. per* week for his maintenance. It was objected, 1ſt, That it is not ſaid that they had any money in their hands; 2dly, That it is not ſaid that *R. D.* is a pariſhioner *there*. Quaſhed *niſi. Poor's Settlements* 12. *pl.* 17.

Two juſtices made an order for the overſeers of the *poor* to pay 2*s. per* week to *Elizabeth Reddiſh*. It was objected, That it is not ſaid that ſhe is *poor and impotent*; otherwiſe the ſtatute gives them no ſuch power. *Per cur.* The 43 *Eliz. c.* 2. does not give them power, unleſs they are upon the *poor* rate; let them ſhew cauſe. *Poor's Settlements* 21. *pl.* 30.

An order to continue the weekly payment of 2*s.* to *R. G.* and all the arrears, *till they find him a houſe*; quaſhed, becauſe the overſeers have no power to find him a houſe; that muſt be done by the lord of the manor, or by the juſtices. *Shaw's Pariſh Law* 200.

An order of juſtices, requiring the churchwardens to pay a ſcrivener 5*l.* due to him for drawing indentures for ſetting out children to trades, was quaſhed, as being a thing out of their power; but the way had been to order a pariſh rate for levying ſo much a week till a convenient ſum were raiſed; and in that caſe as ſoon as money was raiſed, an action would lie for the ſcrivener againſt the churchwardens. 12 *Mod.* 417.

6. *Of parents and children being obliged to maintain each other.*

See *Stat.* 43 *Eliz. c.* 2. *ſ.* 7. and 5 *Geo.* 1. *c.* 8.

If a man marries a grandmother, and has an eſtate with her in marriage; for this eſtate he ſhall be charged towards the maintenance of the grandchild within the meaning of this ſtatute, but otherwiſe, if he has not any eſtate or advancement by marriage with her. But he ſhall be charged with keeping the grandchild during the life of his wife; and if ſhe dies, he ſhall not be charged after her death. 2 *Bulſt.* 346. But if the grandmother has no means, and ſhe marries with one who has, he ſhall not be charged with keeping the child. 2 *Bulſt* 346. So if the huſband becomes of ability after marriage, the grandmother having no means at the time of the marriage, he ſhall not be bound to provide for the child. *Ibid. Contra per Holt* Ch. J. That if the wife dies he muſt maintain the grand children, though the relation be determined. *Comb.* 321, 405.

[But in the caſe in *Bulſt.* 346. it does not appear that the grandmother was dead, nor is there any reſolution, the juſtices differing in their opinions.]

A ſon-in-law was obliged by an order to maintain his wife's mother, having an eſtate with her at the intermarriage. *Per cur.* He is not within the words of the ſtatute, nor within the meaning of it; the ſtatute extends to thoſe perſons who ought by the law of nature to relieve their parents; and ſome perſons were ſo hard-hearted as to refuſe; therefore this law was made to inforce them to do that which by the law of nature they were obliged to before. *Poor's Settlements*, 91. *pl.* 123.

It was moved to diſcharge an order made againſt a feme covert to keep a grandchild of hers, becauſe a feme covert was not bound by ſuch an order. *Roll* Ch. J. anſwered, That the huſband is to keep his wife's grandchild by the ſtatute; but in regard that the huſband is not charged by the order, but the wife who is covert is only charged; therefore let the order be quaſhed. *Sty.* 283.

An order of ſeſſions was made, That defendant ſhould pay 2 *s.* a week towards the ſupport of his father till the court ſhould order the contrary, which was held good, becauſe it was indefinite, and no ſet time limited, and if an eſtate happened to fall to him they might apply to the juſtices; otherwiſe if a time was limited. 2 *Salk.* 534.

An order that the grandfather ſhould keep the grandchild, the father being living, but unable to do it, and alſo to pay ſo much money for the time paſt, while he was chargeable as well as for the time to come, was allowed good *per cur'*. *MS. Caſes, Mich.* 6 *Ann. B. R. The Queen* v. *Joyce.*

An order of two juſtices to compel *Daviſon* to allow ſo much a week for the maintenance of his wife and family. It was moved to quaſh the order, for that the juſtices have not juriſdiction in this caſe, it being properly *alimony*, and belonging to the ſpiritual court. *Powell* ſaid, that the juſtices have no juriſdiction in this caſe, but this is not alimony. If a man runs away from his family, he may be puniſhed as a rogue and a ſturdy beggar; but whilſt he continues reſident, they cannot charge him in this manner; and quaſhed the order. 11 *Mod.* 268.

An order of juſtices was made, that the father-in-law ſhould maintain his ſon's widow. But it not being ſet forth in the order, that the father was of ſufficient ability, in which caſe *only* the act enables the juſtices, it was quaſhed, 10 *Mod.* 221.

An order of ſeſſions for the father to pay ſo much a week for maintenance of his daughter was quaſhed; becauſe it was not ſet forth that ſhe was *unable to work*, without which the juſtices have *no* juriſdiction. 10 *Mod.* 307.

Juſtices at their quarter-ſeſſions, upon complaint of the overſeers, that *Nicholas Tripping* had left his wife, and that ſhe was become *poor and impotent*, and become *chargeable to the pariſh*, and that *Richard Tripping*, her father-in-law was of ſufficient ability, did (upon its being proved that *Richard* was of ability to relieve her) order him to pay 2 *s.* 6 *d. per* week. The order was quaſhed for want of an adjudication that ſhe was chargeable; and it was held, that an adjudication that the perſon is become chargeable, is as neceſſary in an order of the quarter-ſeſſions, as in an order of two juſtices. *MS. Caſes, Trin.* 4 *Geo. B. R. The King* v. *Tripping.*

Order, reciting, that *Munden* had a good fortune with his wife, and that her mother was *poor*, therefore he is ordered to provide for her. And in maintenance of the order 1 *Bulſt.* and 2 *Bulſt.* 345. *Styles* 283. were cited. *Et per Pratt* Ch. J. On conſideration, we are all of opinion, that the ſon-in-law is not bound, either within the words or intent of the ſtatute, which provides only for *natural* parents. By the law of nature a man was bound to take care of his own father and mother; but there being no temporal obligation to inforce that law of nature, it was found neceſſary to eſtabliſh it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature doth not reach to this caſe in 1 *Bulſt.* it is plain the word *not* was left out only by miſtake, for the ſenſe of the clauſe leads you to read it *not* obliged, and beſides the judges were divided. The caſe indeed in 2 *Bulſt.* is an authority in point as far as it will go, but that is no judicial authority, only a caſe at a judge's chamber. The ſame was alſo ſaid *obiter* in the caſe of *The Queen* v. *Fane, Paſch.* 10 *Ann.* but it never came judicially before the whole court till now. And therefore as it is *res integra*, we are of opinion the order muſt be quaſhed. *Stran.* 190.

If juſtices of peace in ſeſſions, *&c.* make orders for maintenance of perſons who are not impotent, but able to work, or having any thing to live upon; thoſe orders are againſt law. *Dalt.* 166. A father has been ordered to make an allowance to his ſon's wife, while his ſon was beyond ſea: and if the father of children leaves the Pariſh, and there is a grandfather to be found, this grandfather, if he be of ability, is chargeable with keeping the children, and not the Pariſh. 2 *Bulſt.* 2 *Lill.* 333. A father-in-law, or a grandfather-in-law, married to the mother or grandmother of children, of ability to keep them, is within 43 *Eliz. c.* 2. *Style* 283. A perſon was ordered by juſtices in ſeſſions to pay ſo much a week towards the ſupport and maintenance of his father, till that court ſhould order the contrary; and it was held good; and if an eſtate happen to fall to the father, the juſtices might be applied to: otherwiſe if a time was limited. 2 *Salk.* 534.

7. *Of the ſettlements of poor people.*

Settlements of *poor* are gained,

By *inheritance*; as when a child claims a ſettlement in a pariſh, becauſe his father was there ſettled.

By being *born* in a *Pariſh*; and

By *commorancy*

As to the *firſt*, if the *father* has a *legal ſettlement*, the *child* is ſettled where the *father is*: and if the *father* has *no* legal ſettlement, the child regularly gains a ſettlement in the Pariſh where *born.* 2 *Bulſt.* 351. But this ſettlement by *birth* may be defeated ſeveral ways;

1ſt, If the parent is removed by an illegal order; and from the order an appeal is duly made, *pending which* the child is born; in this caſe, on quaſhing the order, the child ſhall be ſent back with the mother.

2. By practice; if a woman near her time is clandeſtinely ſent to another Pariſh, and there delivered.

3. If a woman with child be ſent to the houſe of correction, and is there delivered, the child ſhall not gain a ſettlement by its birth in the Pariſh where the houſe of correction is; but in the Pariſh where the mother dwelt when ſent to the houſe of correction, as the place where ſhe had otherwiſe probably been delivered. 2 *Bulſt.* 358, 381. 1 *Salk.* 121.

If a *travelling woman*, having a ſmall ſucking child, ſhall be apprehended for felony, and be ſent to gaol, and afterwards arraigned and hanged, this child is to be ſent to the place of its birth, there to be ſettled and maintained, if the ſame be known; but otherwiſe it muſt be ſent to the town where the mother was apprehended: and children born in common gaols, their parents being priſoners, are to be maintained at the charge of the county. *Dalt.* 157.

If a man and his family be illegally thruſt out of a Pariſh, and during that time he have a child born; he muſt be returned to the place where he was legally ſettled, and the child with him. and perſons, whoſe intereſt in houſes or lands is determined, cannot be put out of the town where they were legally ſettled, nor can they be ſent to the place of their birth, or laſt habitation, but according as they are able or impotent ſhall be ſet to work, or relieved in the town where ſo ſettled; tho' if they wander and beg, then they may be taken up and ſent to the place of their birth. *Dalt* 58, 166.

Baſtard children gain a ſettlement *by their birth*; but it has been uſual for preventing any charge to the Pariſh, if a ſingle woman with child come into a Pariſh, by a juſtice's warrant to remove her to the place of her laſt *legal* ſettlement: baſtards of vagrants muſt be with the mother while nurſe children until ſeven years of age; and then be ſent to the Pariſh where born. *Ibid.* Till ſeven years of age, children are accounted nurſe children; yet afterwards they muſt have maintenance from the Pariſhes where they themſelves were ſettled.

If a *poor* man ſettled at *A.* marries a *poor* woman who is ſettled at *B.* and has children by a former huſband, the wife ſhall be removed with him to *A.* and the children under ſeven years old ſhall be removed, but only for nurture;

ture; ſo that they ſhall be kept at the charge of the Pariſh from whence they are removed: but the children above ſeven years of age are not removeable. 2 *Salk.* 470, 482.

Generally a wife is to be ſent to, and ſettled with the huſband, tho' he be an inmate or ſervant; as all children are generally to be ſent to, and ſettled with the parents: but if a man hireth a houſe in *A.* and being there with his wife and children, afterwards bind himſelf a ſervant to one in *B.* his wife and children are not to be ſent to *B.* but are to remain ſtill at *A.* where they were once ſettled. *Dalt.* 166. Tho' it hath been adjudged, where a man ſerved and had board wages, and lay out of his maſter's houſe in another Pariſh, he gained a ſettlement in the Pariſh where he lived and ſerved, and not in the Pariſh where he lay. *Mod. Caſ. in L. & E.* 370.

A man and his wife ſettled at one pariſh, came privately into another pariſh, and there a child was born; the father died in the King's ſervice; the queſtion was, *Who ſhould keep the child? Per Holt* Ch. J. The death of the father doth not alter the child's ſettlement; which muſt be ſetled where the father was laſt ſettled as well as the mother. *Comberb* 380.

Settlement gained by *commorancy*, is where a perſon continues in ſome other place than that in which he was before legally ſettled; and ſuch *continuation makes a ſettlement:* formerly, every one who was ſettled as a native, houſholder, apprentice, or ſervant, for *a month*, without a juſt complaint made to remove them, were lawfully ſettled. *Dalt.* But ſince, this month has been enlarged to *forty days*, where a perſon ſhall come into a pariſh, and rent a tenement under 10 *l. per annum*, by the ſtatutes 13 & 14 *Car.* 2. *c.* 12. 3 *W.* & *M. c.* 11. And by ſtatute renting 10*l.* a year; executing a public office in the pariſh on a man's own account; paying a ſhare to the pariſh taxes, as church or *poor* rates, &*c.* Living as a hired ſervant for a year in the pariſh, being unmarried, &*c.* and ſerving or being bound as an apprentice in a pariſh, all make *a legal* ſettlement: ſo that a perſon being ſettled by any ſuch means, and not having acquired a ſettlement elſewhere, if he falls into povery, ſhall be intitled to relief from the pariſh where he laſt gained ſuch ſettlement; and where he is ſettled his family muſt follow him. *Wood's Inſt.* 94.

It has been held, in reſpect to a ſettlement within the ſtatute 13 & 14 *Car.* 2. *c.* 12. That coming into a pariſh publickly, taking a houſe, and being rated to the *poor* on the pariſh book, is ſufficient notice; the ſtatute being made againſt *private and clandeſtine removals*, and not public ones, which the pariſh can take notice of itſelf. *Show.* 12.

A perſon rented a houſe of 3 *l. per annum* in a town, and his landlord paid the taxes; and whilſt he lived in the pariſh, he took his freedom of the corporation, and voted as a freeman at the election of bailiffs, &*c.* And it was adjudged that ſince the explanatory act of 3 *W.* 3. *c.* 11. nothing makes a ſettlement that is not within the words of the ſtatute, which implies a negative to any thing elſe not contained in it; and that, as to his voting, it doth not imply a ſettlement, for it is an act which relates to the corporate body, and not to the pariſh. 2 *Salk.* 534.

A man rents two tenements of 5 *l. per annum* each, he thereby gains a ſettlement; but if he rent a piece of land of 10*l.* a year, and there is no houſe belonging to it, it is otherwiſe. If one rents a houſe of 10*l. per annum* by continuing therein 40 days, he gains a ſettlement within the meaning of 13 & 14 *Car.* 2. *c.* 12. By *Parker* C. J. Renting a water-mill of 10 *l. per annum*, &*c.* makes a ſettlement; for *a mill is a tenement.* 2 Salk. 536.

But no ſettlement can be legal in any pariſh, when the reſidence of the party is uncertain, as coming now and then, and lying in barns, outhouſes, &*c.* or where the party is under diſturbance by officers. A *poor* man appointed to be a pariſh clerk, and executing the office a year, has been adjudged to make a good ſettlement; and it is not material whether he come in by the appointment of the parſon, or by the election of the pariſhioners, for he is in *for life*; and this is executing a public annual office and charge within the meaning of the ſtatute. 2 *Salk.* 536.

A ſervant was hired firſt from *Lady-Day* to *Michaelmas*, and from thence to *Lady-Day* following; and this was reſolved to be *a good ſettlement*, for there was a hiring for *a year:* but it muſt be one *intire hiring*, and one *intire ſervice* (tho' different times are mentioned) for one whole year, that muſt make a ſettlement according to the ſtatute. A ſervant being hired at *A.* for a year, his maſter lives there half a year, and then at *B.* another half year; adjudged the ſervant is ſettled in the laſt place, for *the ſtatute doth not tie the ſervant down to one place.* Tho' if a *poor* man be hired for a year, to ſerve in a boat which plies between one place and another; by this ſervice, he gains *no* ſettlement. *Fitzgib.* 255.

An unmarried perſon, hired as a ſervant for *a year*, married before the year was expired; and it was held, that he could not be removed, and that on performing his ſervice he would gain a ſettlement. 3 *Salk.* 527.

A man hired a maid ſervant for a year; but ſhe falling ſick, her maſter turned her out of his ſervice: The ſervant in her paſſage to the place of her nativity begged for relief, and ſhe was ſent as a vagrant to the pariſh where ſhe was born; whereupon ſhe was ſent back by that pariſh, to the pariſh where ſhe was an hired ſervant; but by order of ſeſſions ſhe was ſettled at the place of her birth: This was removed by *certiorari* into *B. R.* and the court determined the ſettlement to be at the pariſh where ſhe was an hired ſervant, and not where ſhe was born. *Style* 168.

If a ſervant continues in the ſervice of a viſitor in a pariſh, he gains a ſettlement there; and is not removeable, unleſs the pariſh ſhew that he was brought or came thither *on purpoſe* that he might have ſuch ſettlement: and tho' a maſter or miſtreſs are only viſitors, and no lodgers, yet their ſervants may be ſaid to be hired in every pariſh where they ſerve. 8 *Mod.* 50, 51. If an *apprentice* be bound to one who is a lodger only in a pariſh, and hath no ſettlement; reſolved that the apprentice is well ſettled there, altho' the maſter is not, nor doth his ſettlement depend upon his maſter, as that of a wife on her huſband. Where an apprentice continues forty days in the ſervice of his maſter, there it is ſaid he will have a ſettlement: and wherever any perſon ſerves *the laſt forty days* of his apprenticeſhip, that is the place of his laſt legal ſettlement. An *apprentice* bound to a maſter living in one pariſh, and ſerving ſome part of his apprenticeſhip there, was by agreement turned over to another maſter in another pariſh; and this was held a good ſettlement in that pariſh where he laſt ſerved; for it ſhall be intended it was but a continuance of his apprenticeſhip upon that agreement. 8 *Mod.* 169.

A perſon ſerved an apprenticeſhip in a pariſh, where he married and had ſeveral children; his wife dying, he married another woman, who had a term for years in another pariſh, to which place he removed, and reſided there for *a year*; afterwards he returned to the firſt pariſh, was rated to the *poor*, lived there *two years*, and then he died: in a ſhort ſpace after his death, his widow and children were removed by order of two juſtices to the other pariſh where he had lived *a year*, but on appeal to this order at the ſeſſions, the ſeſſions adjudged them to be inhabitants ſettled in the *firſt* pariſh. Where a man lives in a pariſh, and hath lands of his own there, or in right of his wife, this will make a ſettlement; but if he hath land in one pariſh, and lives in another, the land will not make a ſettlement of him in that pariſh where it lies and he doth not live. 2 *Salk.* 524.

If a man be ſettled where he will, he cannot, tho' likely to became chargeable to the pariſh where he goes to reſide in, be removed from thence, if he have any eſtate there. 5 *Mod.* 416. But ſee *Stat.* 9 *Geo.* 1. *c.* 7. A ſettlement not to be gained by a purchaſe under 30*l.*

A man who was not legally ſettled in a pariſh, but had lived there ſome time, procured a certificate, by virtue of which he went into another pariſh; afterwards being *poor*, the pariſh from whence he came took him again; and on enquiry found, that he was never lawfully ſettled with them, but had gained a ſettlement in another place, before they gave this certificate; and thither they removed him by order: the pariſh to which he was removed appealed, becauſe thoſe who had given the certificate, had *owned* *ed him to be an inhabitant ſettled with them*; but the certificate was held only to be an evidence of a ſettlement, and thereupon the firſt order was confirmed. 2 *Salk*. 530. It has been ſince adjudged, that a certificate concludes the pariſh giving it, not only againſt the pariſh to which it is given, but as to all other pariſhes. *Ibid.*

The law unſettles none who are lawfully ſettled, nor permits it to be done. If one had but hired a houſe, the law unſettles not ſuch perſon; and if any by indirect means hinder a *poor* man from hiring a houſe, he may be indicted; alſo it is finable to remove any out of the pariſh who ought not to be put out, and the perſons removed may be ſent back. *Dalt*. 98. And if a pariſh will have a man born in *A*. but ſettled with them, to go and wander and beg in *B*. that he may be ſent to *A*. and he doth ſo, he ſhall be ſent back to the pariſh from whence he came. *Ibid.* But when two juſtices of peace of one county, ſend a poor perſon to a pariſh in another county, two juſtices of the county whither ſuch perſon is ſent, cannot make an order to remove him back again, or to ſend him to any other place; the town to which ſuch perſon was ſent, hath no other remedy than by appeal to the ſeſſions of that county from whence the party was ſent. 2 *Salk*. 488.

A ſettlement by order of ſeſſions on an appeal is good and binding; but if it doth not appear that the cauſe came before the juſtices in ſeſſions *by way of appeal*, it may be quaſhed; for without *that* they have no juriſdiction: if a *poor* family, after order of ſeſſions for their removal on appeal, return to the pariſh from whence they were removed the ſeſſions muſt ſee their order of ſettlement obeyed; tho' if ſuch *poor* family go into another pariſh not concerned in the appeal, two juſtices of peace ought by an origininal order to remove them to the pariſh where they were ſettled by the ſeſſions order. 2 *Salk*. 481, 482, 489.

The ſeſſions having made an original order for removal of a *poor* perſon to a third pariſh, after an order of two juſtices, it was quaſhed upon motion: and adjudged, that the ſeſſions could only confirm, or reverſe the order of ſettlement of the two juſtices; and thereupon a new order might be made by two juſtices for removal to the third pariſh, *&c.* 2 *Salk*. 475. A general order to remove a man and his family is not good; *it muſt be particular*, for ſome of the family may be chargeable, and others not. And where juſtices make ſuch orders of ſettlement, it muſt appear, that the parties are likely to become chargeable; and that the perſon removed is removeable; and contain an adjudication of the laſt legal ſettlement of the party, *&c.* 2 *Salk*. 485, 491. 5 *Mod*. 149, 321. And according to the opinion of *Holt*, the moſt regular way to proceed on the ſtatute 14 *Car*. 2. *c*. 12. in removing a *poor* perſon, is for the juſtices to make a record of the adjudication of the laſt ſettlement, and the complaint of the churchwardens and overſeers, and upon *that* to make a warrant or order under their hands and ſeals to the churchwardens, *&c.* to convey the perſons to the pariſh to which they ought to be ſent, and to deliver in the record at the next ſeſſions, to be kept among the records; and this record may be removed by *certiorari*. 1 Salk. 406. But on a motion in *B. R.* to ſet aſide an order for the ſettling a *poor* perſon in a pariſh, ſent thither by warrant of two juſtices, and confirmed in the ſeſſions, upon an appeal: the court refuſed to enter into the merits of the cauſe; the order of ſeſſions being in this caſe final, unleſs it be made appear that there is error in the form of proceeding. *Ventr*. 310. And it is a ſtanding rule in the court of King's Bench, That if, on an appeal, the order of two juſtices is either affirmed or quaſhed, upon the merits of the caſe, in relation to ſettlements, it ſhall be concluſive between the two pariſhes. *Paſch*. 10 *Ann*.

The order of two juſtices not appealed from, binds the pariſh upon which it is made, till a new ſettlement is gained: an order reverſed is final only between the parties; but an order confirmed, *&c.* is final to all the world. 2 *Salk*. 472, 492.

A *poor* perſon himſelf, as well as the pariſh, may appeal from an order of removal, tho' it has been objected that appeal is only given to the pariſh aggrieved. *Carth*. 223. And where a *poor* perſon is *viſited with ſickneſs*, he *ought not to be removed from the pariſh where he is, farther to endanger his health*; and if two juſtices grant an order to remove him it is a miſdemeanor in the juſtices. *Mod. Caſ. in L. and E*. 326.

On appeals to juſtices in ſeſſions, they are to cauſe defects in form in orders to be rectified *without charge*, and then to proceed, *&c.* 5 *Geo*. 2. *c*. 19. By law, the place that the *poor* were laſt legally ſettled at, is the place that is to provide for them *Trin*. 5 *Ann*. *B. R.*

By the *Stat*. 17 *Geo*. 2. *c*. 5 If a woman wandering and begging, be delivered of a child in a pariſh to which ſhe does not belong, ſhe may be committed to the houſe of correction till the next ſeſſions, where the juſtices may order her to be whipp'd, and detained in the houſe of correction not exceeding ſix months. The churchwardens of the place where ſhe ſhall be delivered to be repaid all charges by the treaſurer of the county, and *the ſettlement of the mother ſhall be deemed the ſettlement of the child tho' it be a baſtard*.

By the *Stat*. 17 *Geo*. 2. *c*. 38. The churchwardens and overſeers of the *poor* ſhall yearly, within fourteen days after other overſeers be nominated, deliver to ſuch ſucceeding overſeers an account of all ſums received, or rated and not received by them, and of all goods in their hands, and monies paid by them, and of all other things concerning their office, which account ſhall be verified by oath. Any perſon aſſeſſed may inſpect ſuch account paying 6*d*. and have copies paying 6*d*. for every 300 words. Perſon not accounting, *&c.* as aforeſaid, may be committed until he do account. If an overſeer dies, removes, or becomes inſolvent before the expiration of his office, two juſtices may appoint another in his room. If any overſeer removes, he ſhall before his removal account as aforeſaid, under the ſame penalty. And if any overſeer dies, his executors ſhall within forty days deliver over all things belonging to his office, and pay what due, previous to other debts. No diſtreſs for money juſtly due for relief of the *poor* ſhall be deemed unlawful, or the party a treſpaſſer, on account of any defect or want of form in the warrant, for apppointment of ſuch overſeer, or in the rate or warrant of diſtreſs; nor ſhall the party be deemed a treſpaſſer *ab initio*, on account of any irregularity afterwards done by the party. And no plaintiff ſhall recover for any ſuch irregularity, if tender of amends be made before the action brought. Succeeding overſeers may levy arrears to reimburſe former overſeers. If any perſon *remove* out of a pariſh, and another *comes to occupy* the houſe, *&c* he left, the *perſon removing* and the *perſon coming in*, ſhall be liable to pay to the rate aſſeſſed, *in proportion to the time he occupied the ſame*.

Fair copies of all rates for the *poor*, ſhall be entered in a book within fourteen days after all appeals determined, and all perſons aſſeſſed ſhall have acceſs to them. See *Vagrants*

For forms of appointments, warrants, *&c.* ſee *Burn's Juſtice*.

For more of poor in general, ſee Apprentice, Baſtard, Removal, Seſſions, Settlement of the Poor *and ſee* Black. Com. V. 359, &c. *and* 4 V. 425. *And ſee alſo* Burn's Juſtice, *and an* 8*vo book, intitled*, Deciſions on the Poor Laws.

Pope, (*Papa*) Was antiently applied to ſome clergymen in the *Greek* church; but by uſage is particularly appropriated in the *Latin* church to the biſhop of *Rome*, who is called the *Pope*; and formerly had great authority here. As to the incroachments of the *ſee of Rome*, it is ſaid to be the general opinion, that Chriſtianity was firſt planted in this iſland by ſome of the *Eaſtern church*; which is very probable from the antient *Britains* obſerving *Eaſter* always on the fourteenth day of the month, according to the cuſtom of the *Eaſt*: But the *Saxons* being converted about the year 600, by perſons ſent from *Rome*, and wholly devoted to the intereſt thereof, it could not be expected that ſuch an opportunity of enlarging the juriſdiction of that ſee, ſhould be wholly neglected; and yet there are few inſtances of the *Papal* power in *England* before the *Norman* conqueſt, tho' four or five perſons were made biſhops by the *Pope* at the firſt converſion, and there was an inſtance or two of appeals to *Rome*, &c. But *Pope Alexander* II. having favoured and ſupported *William* the

Firſt, in his invaſion of this kingdom, made that a handle for enlarging his incroachments; and in this King's reign, began to ſend his legates hither. He ſent here *Ermenfroy*, biſhop of *Sion*, as his legate; and this prelate was the *firſt* who had ever appeared with that character in any of the *Britiſh* iſlands. And afterwards *Paſcal* II. prevailed with *Henry* I. to give up the donation of biſhopricks. In the reign of *Stephen* the pontifical authority was permitted to make farther encroachments: Appeals to the *Pope*, which had been always ſtrictly prohibited, became now common in every eccleſiaſtical controverſy. And in the reign of *Hen*. II. *Pope Alexander* III. exempted all clerks from the ſecular power: Indeed this King at firſt ſtrenuouſly withſtood thoſe innovations; but on the death of *Becket*, who, for having violently oppoſed the King, was ſlain by ſome of his ſervants, the *Pope* got ſuch an advantage over him, that he was never able to execute the conſtitutions of *Clarendon*. And not long after this, by a general excommunication of the King and people, for ſeveral years, becauſe they would not ſuffer an archbiſhop to be impoſed on them, *John* was reduced to ſuch ſtraits, that he ſurrendered his kingdoms to *Pope Innocent* III. to receive them again, and hold them of him under the rent of a thouſand marks: And in the reign of *Hen*. III. partly from the profits of our beſt church benefices, which were generally given to *Italians*, and others reſiding at the court of *Rome*, and partly from the taxes impoſed by the *Pope*, there went yearly out of the kingdom ſeventy thouſand pounds ſterling, a great ſum in thoſe days: The nation, being thus burdened and under neceſſity, was obliged to provide for the prerogative of the prince, and the liberties of the people, by many ſtrict laws. And hence in the reign of *Edw*. I. it was declared in parliament, that the *Pope*'s taking upon him to diſpoſe of *Engliſh* benefices to aliens, was an encroachment not to be endured; and this was followed with the *Stat*. 25 *Ed*. 3. called the ſtatute of *proviſors*, againſt popiſh bulls, and diſturbing any patron to preſent to a benefice, *&c*. The 12, 13 and 6 *R*. 2. the *Stat*. 2 *H*. 4. and 6, 7 & 9 *ejuſdem*; the 3 *H*. 5. 23 & 28 *Hen*. 8 *&c*. And maintaining by writing, preaching, *&c*. the *Pope*'s power here in *England*, is made a *præmunire* upon the firſt conviction; and high treaſon on the ſecond. 5 *Eliz*. *c*. 1. In the conſtruction of which ſtatute, it has been held, that he who *knowing* the contents of a popiſh book, *written beyond ſea*, brings it over, and ſecretly ſells, or conveys it to a friend; or having read the book, or heard of its contents, doth after in diſcourſe allow it to be good, *&c*. is in danger of the ſtatute; but not he who, having heard thereof, buys and reads the ſame. *Selden's Janus Anglor*. *Davis* 90, *&c*. *Dyer* 282. 2 *Inſt*. 580. See *Bull* and *Præmunire*.

Popery. There are ſeveral ſtatutes made againſt perſons perverting or withdrawing others to *popery*, and being perverted to the *Romiſh* religion, which was made treaſon by 23 *Eliz*. *c*. 1. *ſ*. 2. and 3 *Jac*. 1. *c*. 4. *ſ*. 22. But if any one reconciled to the ſee of *Rome* beyond the ſeas, return into the realm, and ſubmit himſelf, *&c*. and take the oaths within ſix days, he is to be excuſed. 3 *Jac*. 1. *c*. 4.

Popiſh Recuſants. See *Recuſants*.

Popular Action, Is an action given in *general*, to any one who will ſue for a penalty on the breach of ſome penal law. *Actions popular*, which may be brought before juſtices of aſſiſe, *&c*. are to be generally proſecuted in the counties where the offences were done. And *popular actions*, where the King only hath the penalty or forfeiture, are to be commenced in *two* years; and where an informer hath a part, in *one* year, *&c*. 31 *Eliz*. *cap*. 5. 21 *Jac*. 1. *cap*. 4. *Black*. *Com*. 2 *V*. 437. 3 *V*. 160. Vide *Information*.

Port, *(Portus)* A harbour or place of ſhelter, where ſhips arrive with their freight, and cuſtoms for goods are taken. The ports in *England* are *London*, *Ipſwich*, *Yarmouth*, *Lynn*, *Boſton*, *Hull*, *Newcaſtle*, *Berwick*, *Carliſle*, *Cheſter*, *Milford*, *Cardiff*, *Glouceſter*, *Briſtol*, *Bridgwater*, *Plymouth*, *Exeter*, *Poole*, *Southampton*, *Chicheſter* and *Sandwich*; all which are declared lawful ports, & *infra corpus comitatus*: To theſe ports there are certain members belonging, and a number of creeks, where commonly officers are placed, by way of prevention of frauds in the cuſtoms; but they are not lawful places of exportation or importation, without particular licence from the port, or member under which they are placed. *Lex Mercat*. 132. See 1 *Eliz*. *c*. 11.

The King has the prerogative of appointing *ports* and *havens*, or ſuch places only, for perſons and merchandize to paſs into and out of the realm, as he in his wiſdom ſees proper. By the feodal law all navigable rivers and havens were computed among the *regalia*, and were ſubject to the ſovereign of the ſtate. And in *England* it hath always been held, that the King is lord of the whole ſhore, and particularly is the guardian of the *ports* and *havens*, which are the inlets and gates of the realm: And therefore, ſo early as the reign of King *John*, we find ſhips ſeized by the King's officers for putting in at a place that was not a *legal* port. *Madox Hiſt*. *Exch*. 530. Theſe *legal* ports were undoubtedly at firſt aſſigned by the crown; ſince to each of them a court of portmote is incident, the juriſdiction of which muſt flow from the royal authority; The *great ports* of the ſea are alſo referred to, as well known and eſtabliſhed, by *Stat*. 4 *Hen*. 4. *c*. 20. which prohibits the landing elſewhere under pain of confiſcation; And 1 *Eliz*. *c*. 11. recites that the franchiſe of lading and diſcharging had been frequently granted by the crown.

But tho' the King had a power of granting the franchiſe of havens and ports, yet he had not the power of reſumption, or of narrowing and confining their limits when once eſtabliſhed; but any perſon had a right to load or diſcharge his merchandize *in any part* of the haven; Whereby the revenue of the cuſtoms was much impaired and diminiſhed, by fraudulent landing in obſcure and private corners. This occaſioned the ſtatutes of 1 *Eliz*. *c*. 11. and 13 & 14 *Car*. 2. *c*. 11. *ſ*. 14. which enable the crown by commiſſion to aſcertain the *limits* of all ports, and to aſſign proper wharfs and quays in each port, for the excluſive landing and loading of merchandize. *Black*. *Com*. 1 *V*. 264.

Porter, In the circuit of juſtices, is an officer who carries a white rod before the juſtices in *eyre*, ſo called *a portando virgam*. Stat. 13 *Ed*. 1. *c*. 41. See *Vergers*. There is alſo a *porter* bearing a *verge* before the juſtices of either bench. *Cowell*. But a *porter*, in the general ſignification, is a carrier of things from place to place, *&c*.

Porter *of the door in the parliament houſe*, Is an officer belonging to that high and honourable court, and enjoys privileges accordingly. *Cromp*. *Juriſ*. 11.

Porterage, A kind of duty paid at the *Cuſtom-houſe* to thoſe who attend the water-ſide, and belong to the *package-office*, and theſe porters have tables ſet up aſcertaining their dues for landing of ſtrangers goods, and for ſhipping out the ſame. *Merch*. *Dict*.

Portgreve, or **Portreeve,** *(Portgrevius*, in Saxon *portſerefe*, that is, *urbis vel portus præfectus)* Signifies with us a magiſtrate in certain *ſea-coaſt towns*; and as *Camden*, in his *Brit*. 325. ſaith, The chief magiſtrate of *London* was ſo called, as appears by a charter of King *William the Conqueror* to the ſame city in theſe words: William King, *greete*, William Biſhop *and* Godfrey Portgreve, *and all the burgers within* London, French *and* Engliſh: *And I grant you, that I will that you be all your law-worth that ye were in* Edwardis *days the King: And I will that each child be his father's eyer, and I nill ſuffer, that any man you any wrongys beed. And God you keep.* Ex libro pervetuſto.

Inſtead of the *portgreve*, *Richard* the firſt ordained two bailiffs, but preſently after him King *John* granted them a mayor for their yearly magiſtrate. And *Camden*, ſpeaking of *Maidſtone* in *Kent*, ſays, *Immunitates plurimas Reginæ Elizabethæ fert acceptas, quæ majorum ſummum magiſtratum inſtituit pro* portgrevio *quem primum habuit*, *&c*. Vide *Black*. *Com*. 4 *V*. 406.

Portion, Is that part of a perſon's eſtate, which is given or left to a child. And if a term of years ſettled to raiſe a daughter's *portion*, is ſo ſhort that the ordinary profits of the land are not ſufficient, the court of *Chancery* may order timber to be felled, *&c*. to make up the money at the time appointed. *Preced*. *Canc*. 27. A ſale of lands has been alſo decreed, for payment of *portions* deviſed at a certain time, out of the rents and profits, where they were not judged ſufficient for raiſing the money; although the land ſubject to the *portions* was given to others in remainder. *Ibid.* 396.

Where a *portion* was deviſed by will to a daughter, to be raiſed out of a real and perſonal eſtate, and paid at her age of twenty-one years, without ſaying *or marriage*; the daughter married, and died under age: It was here ſaid, that the *portion* was then due and payable, *marriage* being the cauſe of daughters *portions*. Ibid. 109. But ſee 267, 268.

A huſband muſt make a ſuitable proviſion for his wife, when he ſues for her *portion* in equity. 2 *Vern.* 494. If any child marry under the age of twenty-one, without conſent of the father or mother; or any man-child be a thief, common whore-hunter, or gameſter; or a woman child commit whoredom, &c. they are barred to demand their *portions*, by the cuſtom of the city of *London*: This is by an act of common council, 5 *Edw.* 6. but it is not obſerved. *Cit. Lib.* 132. See *Children*, and *Vin Abr.* 16 *V.* tit. *Portions*. As to the method of raiſing *portions*, ſee the *Appendix* to 2 *V.* of *Black. Com.* vii.

Portioner, (*Portionarius*) Where a parſonage is ſerved by different miniſters alternately, the miniſters are called *portioners*; becauſe they have but their *portion* or proportion of the tithes or profits of the living: And *portion* is that allowance which a vicar commonly has out of a rectory or impropriation. 27 *H.* 8. *c.* 28.

Portmen. The burgeſſes of *Ipſwich* are ſo called. So alſo are the inhabitants of the *cinque ports*, according to *Camden*. 13 Eliz. c. 24

Portmote, (from *portus* & *gemote, conventus*) Is a court kept in haven towns or ports; and is called the *portmote court*. 43 Eliz. cap. 15.——Curia portmotorium *eſt curia in civitate* Ceſtriæ *coram majore in aula motorum tenenda.* Pl. in Itin. Ibid. 14. Hen. 7. The *portmote*, or *portmannimote*, i. e. *portmen's court*, is ſaid to be held not only in port towns, as generally rendered; but in inland towns, the word *port* in *Saxon* ſignifying the ſame with *city*.

Portſale, Is a public ſale of goods to the higheſt bidder; or of fiſh preſently on its arrival in the *port* or haven. *Stat.* 35 *H.* 8. *c.* 7.

Portſoka, or **Portſokne,** The ſuburbs of a city, or any place within its juriſdiction; from the Saxon *port*, which is *civitas*, and *ſoca, juriſdictio*. *Conceſſit quod nullus de civitate vel* portſoka *ſua captus*, &c. Somner's Gavelkind 135. *Hen.* 3. granted by charter to the city of London——*Quietantiam murdri*, &c. *infra urbem* & *in* Portſokne, *viz.* within the walls of the city, and the liberties without the walls. *Placit. Temp. Ed.* 1.

Portuas, (mentioned in 3 & 4 *Ed.* 6. 10.) Is a reckoned amongſt books prohibited by that ſtatute; it is a breviary. *Cowell.* It is alſo by ſome, called *portuos* or *portboſe*.

Poſitive Proof, Is always required, where from the nature of the caſe it appears it might poſſibly have been had. But, next to *poſitive* proof *circumſtantial* evidence, or the doctrine of *preſumptions* muſt take place: For when the fact itſelf cannot be demonſtratively evinced, that which comes *neareſt* to the proof of the fact, is the proof of ſuch circumſtances which either *neceſſarily*, or *uſually*, attend ſuch facts; and theſe are called *preſumptions*, which are only to be relied on till the contrary be actually proved. *Black. Com.* 3 *V.* 371.

Poſſe, Is an infinitive mood, but uſed ſubſtantively, to ſignify a poſſibility, as we ſay, ſuch a thing is *in poſſe*, that is, ſuch a thing *may poſſibly be*; but of a thing *in being*, we ſay it is *in eſſe*.

Poſſe Comitatus, The *power* of the *county*, according to *Lambard*, contains the aid and attendance of all knights, and other men above the age of fifteen, within the *county*; becauſe all of that age are bound to have harneſs, by the ſtatute of *Wincheſter*: But eccleſiaſtical perſons, and ſuch as labour under any infirmity, are not compellable to attend. Perſons *able to travel* being required to be aſſiſtant in this ſervice; it is uſed where a *riot* is committed, a poſſeſſion is kept on a *forcible entry*, or any force or reſcue made contrary to the commandment of the King's writ, or in oppoſition to the execution of juſtice. *Stat.* 2 *H.* 5. *c.* 8.

But with reſpect to writs that iſſue, in the firſt inſtance to arreſt in civil ſuits, ſuch as a bailable *latitat*, *bill* of *Middleſex* or *capias*, &c. the ſheriff is not bound to take the *poſſe comitatus*, to aſſiſt him in the execution of them. Vide *Eſcape*. Though he may, if he pleaſes, on forcible reſiſtance to the execution of the proceſs. See 2 *Inſt.* 193. 3 *Inſt.* 161. And *vide poſt*.

Sheriffs are to be aſſiſting to juſtices of peace in ſuppreſſing riots, &c. and raiſe the *poſſe comitatus*, by charging any number of men to attend for that purpoſe, who may take with them ſuch weapons as ſhall be neceſſary; and they may juſtify the beating, and even killing ſuch rioters as reſiſt, or refuſe to ſurrender, and perſons refuſing to aſſiſt herein, may be fined and impriſoned. 17 *R.* 2. *cap.* 8. 2 *Hen.* 5. *cap.* 8. 13 *Hen.* 4. *cap.* 7. *Lamb.* 313, 318. *Cromp.* 62. *Dalt. cap.* 46. 2 *Inſt.* 193.

Juſtices of peace, having a *juſt* cauſe to fear a violent reſiſtance, may raiſe the *poſſe* in order to remove a force in making an entry into or detaining lands: And a ſheriff, if need be, may raiſe the power of the county to aſſiſt him in the execution of a precept of reſtitution; therefore if he make a return thereto, that he could not make a reſtitution by reaſon of reſiſtance, he ſhall be amerced. 1 *Hawk. P. C.* 152, 156.

Alſo it is the duty of a ſheriff, or other miniſter of juſtice, having the execution of the King's writs, and being reſiſted in endeavouring to execute the ſame, to raiſe ſuch a power as may effectually enable them to quell ſuch reſiſtance; though it is ſaid not to be lawful for them to raiſe a force for the execution of a civil proceſs, unleſs they find reſiſtance. 2 *Inſt.* 193. 3 *Inſt.* 161.

It is lawful for a peace officer, or a private perſon, to aſſemble a competent number of people, and ſufficient power to ſuppreſs rebels, enemies, rioters: but there muſt be great caution, leſt under a pretence of keeping the peace, they cauſe a greater breach of it; and ſheriffs, &c. are puniſhable for uſing needleſs violence, or alarming the country in theſe caſes, without juſt grounds. 1 *Hawk. P. C.* 156, 161. See *Black. Com.* 1 *V.* 343. 4 *V.* 122.

Poſſeſſio fratris. Where a man hath a ſon and a daughter by one woman or *Venter*, and a ſon by another *Venter*, and dies, if the firſt ſon enters and dies without iſſue, the daughter ſhall have the land *as heir to her brother*, although the ſecond ſon by the ſecond *Venter* is heir to the father: But if the eldeſt ſon dies without iſſue, not having made an actual entry and ſeiſin, the younger brother by the ſecond wife, *as heir to the father*, ſhall enjoy the eſtate; not the ſiſter *Co. Lit.* 11, 15.

Lands are ſettled on a man, and the heirs of his body, and he hath iſſue a ſon and a daughter by one woman, and a ſon by another, and dieth; and then the eldeſt ſon dies, *before* any entry made on the lands either by his own act, or by the poſſeſſion of another, the younger brother ſhall inherit, he claiming *as heir of the body of the father*, and not generally, *as heir to his brother*; yet if the eldeſt brother enter, and by his own act gained the poſſeſſion; or if the lands were leaſed for years, or in the hands of a guardian, there the poſſeſſion of the leſſee or guardian doth veſt the fee in the elder brother, and then on his death the ſiſter ſhall inherit as heir to her brother, for there is *poſſeſſio fratris*. 3 Rep. 42. There can be no *poſſeſſio fratris* of a dignity; in ſuch caſe the younger brother is *hæres natus*: Lord *Grey* being created a baron to him and his heirs, had iſſue a ſon and a daughter by one *Venter*, and a ſon by another; and after his death, the eldeſt being poſſeſſed of the barony, and dying without iſſue, it was adjudged, that the younger brother, and not the ſiſter, ſhould have it. *Cro. Car.* 437. 2 *Nelſ. Abr.* 923.

Poſſeſſion, (*Poſſeſſio, quaſi pedis poſitio*) Is either *actual*, where a perſon *actually enters* into lands or tenements deſcended or conveyed to him; or, *in law*, when lands, &c. are deſcended to a man, and he hath not actually entered into them: Alſo before, or till an office is found of lands eſcheated to the King by attainder, he hath only a *poſſeſſion* in law. *Bract. lib.* 2. *cap.* 17.

Poſſeſſion beyond the memory of man, eſtabliſhes *a right*; but if by the knowledge of man, or proof of record, &c. the contrary is made out, though it exceeds the memory of man, this ſhall be conſtrued within memory. *Co. Lit.* 115. A long *poſſeſſion* the law favours, as an argument of right, although no deed can be ſhewn; rather than an ancient deed, without *poſſeſſion.* Co. Lit. 6. Continued quiet *poſſeſſion* is a violent preſumption of a good title: And where two perſons enter into and claim the ſame land, the *poſſeſſion* will always be adjudged in him who has right, *&c.* 2 *Inſt.* 256, 323.

He who is out of *poſſeſſion,* if he brings his action, *muſt make a good title:* And to recover any thing from another, it is not ſufficient to deſtroy the title of him in *poſſeſſion*; but you muſt prove your own better than his. *Vaugh.* 8, 58, 60. But in action againſt a perſon for digging of coney-boroughs in a common, *&c.* it was held, that the action being grounded on the *poſſeſſion* of the tenement, to which the common belonged, the plaintiff need not ſhew a title; and in this caſe the defendant may be a ſtranger; beſides the title is not traverſable, but ought to be given in evidence upon the trial of the iſſue. 3 *Salk.* 12.

A defendant in treſpaſs, *&c.* for taking cattle damage-feaſant, has been allowed to juſtify the taking on his *poſſeſſion,* without ſhewing his title; *the matter of juſtification being collateral to the title of the land.* 2 Mod. 70. 3 Salk. 220.

In replevin, if defendant had the *poſſeſſion,* it is a good bar againſt the plaintiff if he has *no* title; but there cannot be a return, unleſs he ſhews a property in the goods. *Paſch.* 2 *Ann.*

Action of the caſe lies for ſhooting at and frightning away ducks from a decoy pond, which is in the plaintiff's *poſſeſſion,* without ſhewing that he had any property in them. 3 *Salk.* 9.

A man on a leaſe and releaſe of lands, *&c.* is in poſſeſſion to all intents, except bringing treſpaſs, which cannot be without an entry, *pedis poſitio.* 2 Lil. Abr. 335. And to make poſſeſſion good on *entry,* the former poſſeſſor and his ſervants, *&c.* are to be removed from the land; and if poſſeſſion be loſt by entry of another, it muſt be regained by re-entry, *&c.* *Paſch.* 1650.

A perſon in poſſeſſion may bring an action, for loſs of his ſhade, ſhelter, fruit, when trees are injured; and he in reverſion for ſpoiling the trees. 3 *Lev.* 209. One in defence of his lawful poſſeſſion, may aſſemble his friends to reſiſt thoſe who threaten to make an unlawful entry into a houſe, *&c.* 5 *Rep.* 91. There is an *unity of poſſeſſion,* when by purchaſe the ſeigniory and tenancy, become in one man's poſſeſſion. *Kitch.* 134. See 16 *Vin. Abr.* 454, 460. And *Black. Com.* 2 *V.* 163, 195, 196, 389. 3 *V.* 177, 179, 180, 202, 412. xii.—As to *poſſeſſory action,* ſee *ib.* 2 *V.* 198. 3 *V.* 180.

Poſſibilitas, Is taken for an act *wilfully* done, and *impoſſibilitas* for a thing done againſt our will. *Si autem oculos aſnaſſet reddat weram ejus,* & poſſibilitatis *accuſetur in eo facto,* where *factum* poſſibilitatis is a *wilful* act. *Leg. Alfred. cap.* 38. So in the laws of *Canutus, c.* 66. *Et ſi quis agat* impoſſibiliter, *non eſt omnino ſimile ſi voluntarie faciat.* Leg. Sax. Edw. ſenior. c. 88.

Poſſibility, In our law is defined to be *an uncertain thing,* which may or may not happen. 2 *Lil. Abr.* 336. And it is either *near* or *remote*; as for inſtance: Where an eſtate is limited to one, after the death of another, this is a near poſſibility; but that one man ſhall be married to a woman, and then that ſhe ſhall die, and he be married to another; this is a remote or extraordinary poſſibility: And *the law doth not regard a remote poſſibility,* that is never like to be. 15 *H.* 7. 10. *Hardr.* 417. 2 *Rep.* 50. A poſſibility cannot be granted over; no poſſibility, right or *choſe in action, &c.* may be granted or aſſigned to a *ſtranger.* 4 Rep. 66. 10 Rep. 48. This is at Common law, but by ſtatute and the law merchant, notes and bills of *exchange, &c.* are aſſignable.

A leaſe was made to huſband and wife of a term of years, for their lives, remainder to the executors of the ſurvivor; the huſband granted the term, and it was adjudged, that it ſhould not bind the wife, the huſband having only a *poſſibility* to have it, if he ſurvived his wife, and no intereſt till then. 2 *Nelſ. Abr.* 1274.

If huſband and wife are tenants in *ſpecial* tail, and the huſband only levies a fine of the lands, *&c.* the wife's eſtate is turned into a *poſſibility,* and only reducible by entry, if ſhe ſurvive. *Hob.* 257.

Where a leaſe is made for life, the remainder to the right heirs of *J. S.* this is good; for by *common poſſibility* J. S. may die during the life of tenant for life. 2 *H.* 7. 13. 3 *Shep. Abr.* 36.

A man made a leaſe to his brother for life, and that if he married, and his wife ſhould ſurvive, then *ſhe* ſhould have it for *her* life; the leſſee, before he married, made a feoffment of the lands to another, and afterwards the leſſor levied a fine to him; then the leſſee married, and died, and his wife ſurvived: And it was held, that the remainder to the wife for life was *gone* by this feoffment, and the *poſſibility* of her having it was included in the fine, which was likewiſe barred. *Moor* 554.

A teſtator, poſſeſſed of a leaſe for years, deviſed the *profits* thereof to *W. R.* for life, remainder to another; and afterwards the deviſee for life entered *with the aſſent of the executor,* and then he in remainder for life aſſigned all his intereſt to another, and after the deviſee for life died; it was reſolved, that this aſſignment was void, becauſe whilſt the deviſee for life was living, he in remainder had only a *poſſibility* to have the term, for the deviſee for life had an intereſt in it *ſub modo,* and might have ſurvived the whole term. 4 *Rep.* 64.

The deviſee of the *poſſibility* of a term is void; as where a term is deviſed to *A.* for life, remainder to *B.* and *B.* deviſes this remainder to *C.* and dies; and then *A.* dies; this deviſe to *C.* is void, and the executors of *B.* ſhall have it. 3 *Lev* 427.

A *poſſibility* founded on a *truſt,* differs from a mere *poſſibility*; the firſt may be deviſed, but the other cannot. *Moor* 808. 2 *Nelſ.* 1275. See *Black. Com.* 2 *V.* 290.

Poſt, A ſwift or ſpeedy meſſenger to carry letters, *&c.* And the *Poſt Office* is of the greateſt conſequence to this kingdom, being a country of trade. The firſt law that introduced this very great convenience, was made in the reign of King *Car.* 2.

By the 12 *Car.* 2. *cap.* 35. a general letter or *Poſt Office* was erected, *&c.* and the rates for carriage of letters appointed. See the Table to the Statutes. And 9 *Ann. c.* 10.

A perſon having incloſed *Exchequer* bills in a letter ſent by the *poſt,* which were loſt, the owner brought an action againſt the *poſtmaſter*; and by three judges it was held, that the action did *not* lie, becauſe *the office is for* INTELLIGENCE ONLY; and it is impoſſible the *Poſtmaſter* General, who is to execute this office in ſuch diſtant places, by ſo many ſeveral hands, ſhould be able to ſecure every thing, and for that, *this is not a conveyance for treaſure:* But *Holt* was of a contrary opinion; he conſidered this as a letter loſt *in* the office, not *on* the road, and held that the *Poſtmaſter* General is liable, the whole care being committed to him, and *the law makes the officer anſwerable for himſelf and his deputies*; he has a *reward,* which is the reaſon why innkeepers, carriers, *&c.* are liable for goods loſt; and where a man takes on him a public employment, he is bound to ſerve the public, or action lies againſt him, *&c.* 1 *Salk.* 17.

The conveyance of *poſt* letters extends to every conſiderable market-town, and is ſo expeditious, that every twenty-four hours the *poſt* goes ſixſcore miles.

By 26 *Geo.* 2. *c.* 13. Letters containing incloſed ſeveral patterns of cloth, ſilk, or other goods, not exceeding *one ounce weight,* ſhall be paid for only as for a double letter. See *Maſter of the Poſts.* And *Black. Com.* 1 *V.* 321.

Penny-Poſt, Letters or parcels, not exceeding *ſixteen* ounces weight, or *ten pounds value,* are conveyed daily by the *penny poſt,* to and from all places within the *Bills of Mortality,* and *ten* miles diſtance from the General *Poſt-Office,* for 1*d.* each packet, letter, *&c.* *Stat.* 9 *Ann. c.* 10. And ſeveral general offices are kept at convenient diſtances, to receive *penny-poſt* letters every day, *Sundays* excepted: Alſo letters that come from all parts by the general *poſt,* directed to perſons in any country towns to which the *penny-poſt* goes, are delivered the ſame day they come to *London:* And the anſwers are carried every *Poſt* night to the General *Poſt-Office* in *Lombard-ſtreet,* being left at the receiving houſes.

Penny-poſt men carrying letters out of the cities of *London* and *Weſtminſter*, or borough of *Southwark*, and the ſuburbs thereof, may demand and take 1*d.* at delivery for every letter, above the penny paid on putting the letters into the *Penny-poſt* Office; except letters paſſing by the general *poſt*, &c. *Stat.* 4 *Geo.* 2. *c.* 33.

Poſt, *writ of entry in*. It is given by the ſtatute of *Marlbridge*, 52 *Hen.* 3. *c.* 30. which provides, that when the number of alienations or deſcents exceed the uſual degrees, a new writ ſhall be allowed, without any mention of degrees at all. And accordingly this writ has been framed, which only alledges the injury of the wrong doer, without deducing all the intermediate title from him to the tenant: ſtating it in this manner; that the tenant had no legal entry unleſs *after*, or ſubſequent to, the ouſter or injury done by the original diſpoſſeſſor; "*non habuit ingreſſum niſi* poſt *intruſionem quam Gulielmus in illud fecit*;" and rightly concluding, that if the original title was wrongful, all claims derived from thence muſt participate of the ſame wrong. *Black. Com.* 3 *V.* 182.

Poſt Conqueſtum, Were words inſerted in the King's title, by King *Edw.* 1. and conſtantly uſed in the time of *Edw.* 3. *Clauſ.* 1 *Edw.* 3. *indorſ. m.* 33.

Poſt Diem, Is where a writ is returned *after* the day aſſigned, for which the *cuſtos brevium* hath a fee of 4*d.* whereas he hath nothing if it be returned at the day.

Poſt-Diſſeiſin, Is a writ that lies for him who having recovered lands or tenements by *præcipe quod reddat*, on default or reddition, is *again diſſeiſed* by the former diſſeiſor; then he ſhall have this writ, and recover *double* damages, and the party ſhall be puniſhed by impriſonment, &c. *Stat. Weſtm.* 2. *c.* 26. *Reg. Orig.* 208. *F. N. B.* 190.

The writ of *poſt-diſſeiſin* ought to be brought by the parties who *firſt* recovered, or ſome of them, and of the ſame land which was recovered, or part thereof, and againſt thoſe or ſome of them, againſt whom the recovery was: But if a man recover by a *præcipe quod reddat*, and after is diſſeiſed by him againſt whom he recovered, and the diſſeiſor makes a feoffment, and takes back an eſtate to him and another, a *poſt-diſſeiſin* may be had againſt him *and his jointenant*; and if he who loſeth the land by default, &c. after diſſeiſe him who recovered, and make a feoffment to another perſon, he who recovered ſhall have this writ againſt the diſſeiſor, although he be not tenant of the land; for in a writ of *poſt-diſſeiſin*, the demandant ſhall not have judgment to recover the land; but *the ſheriff ſhall reſtore the plaintiff to his poſſeſſion*, if the diſſeiſin be found, and take the defendant and keep him in priſon. *New Nat. Br.* 423. And the defendant is not to be delivered out of priſon, until he hath paid a fine to the King, and without the King's ſpecial command, upon a *certiorari* to remove the record into *B. R.* whereupon a writ ſhall go to the ſheriff to deliver him. *Ibid.*

Nontenure is *no* plea in a *poſt-diſſeiſin*, for the defendant ought to anſwer the diſſeiſin, &c. See *Black. Com.* 3 *V.* 188. This title is now rather obſolete, ejectments anſwering moſt purpoſes, unleſs twenty years have elapſed before the title accrued.

Poſtea, Is *the return of the judge*, before whom a cauſe was tried, after a verdict, of what was done in the cauſe; and is indorſed on the back of the *Niſi prius* record: It begins, POSTEA *die & loco*, &c. wherefore it is ſo called. 2 *Lil.* 337.

A *poſtea* is a record of the court, truſted with the attorney in the cauſe by the clerk of the aſſiſe; and the attorney ſo intruſted, is to deliver it into the office, that the judgment may be entered by it by the officer of the court. *Trin.* 1651.

It is brought into court *at the day in bank*, and recorded there and delivered back to the attorney, who gives a rule for judgment upon it; and if there be no rule to the contrary, after the rule for judgment is out, the attorney brings his *poſtea* to the ſecondary, who ſigns his judgment, and then he enters all this matter on the iſſue roll. 2 *Lil.* 337.

The court may ſtay the bringing in of the *poſtea*, and entering up the judgment upon a verdict, if they find cauſe to do it, for any undue practice in the proceedings to trial: And if the party for whom the verdict paſſed, will not bring in the *poſtea*, upon notice given by the other party, that he intends to move in arreſt of judgment; the court, on motion, will order judgment to be ſtayed, until four days after the *poſtea* is brought in, allowed to ſpeak in arreſt of judgment. *Mich.* 22 *Car. B. R.*

Although the verdict, be prejudicial to the plaintiff, he ought to bring in the *poſtea*; for *he muſt abide by the trial*.

There is no general rule of court for the clerk of aſſiſe, &c. to bring the *poſtea* into court of *B. R.* by a preciſe time; but if it be not returned in convenient time, the court may be moved at the ſide bar for a rule to bring it in ſpeedily. 2 *Lil.* 337. If the clerk of aſſiſe hath miſtaken in drawing up the *poſtea*, he may amend it by his notes, before it is filed; and the return of a *poſtea* hath been amended by the memory of a judge, who tried the cauſe. *Cro. Car.* 338. See *Black. Com.* 3 *V.* 386. xi. And *poſteas* are amended by the judges minutes, on motion.

Poſteriority, (*Poſterioritas*) Signifies the being or coming *after*, and is a word of compariſon and relation in tenures, the correlative whereof is *priority*: As a man holding lands or tenements of two lords, holds of his ancienter lord by *priority*, and of his latter lord by *poſteriority*. Staundf. Prærog. 10, 11. 2 Inſt. 392. See *Priority*.

Poſt-Fine, Is a duty to the King for a *fine* formerly acknowledged in his court, paid by the cogniſee *after* the fine is fully paſſed, and it is ſo much, and *half* ſo much as was paid to the King for the *præ-fine*, collected by the ſheriff of the county where the land lies of which the fine was levied, to be anſwered by him into the *Exchequer*. Stat. 22 & 23 Car. 2. *See* ſtat. 32 Geo. 2. c. 14. *See* Black. Com. 2 V. 350.

Poſthumous, Is where a child is born after his father's death, &c. And *Poſthumous* children are enabled to take eſtates by remainder in ſettlements, as if born in their father's life-time, though no eſtate be limited to truſtees to preſerve them till they come in *eſſe*. 10 & 11 W. 3. cap. 16. See in *Ventre ſa mere*. And *Black. Com.* 2 *V.* 169.

Poſt-man, *in the Exchequer*. In the court of Exchequer two of the moſt experienced barriſters, called the *Poſt*-man and the *Tub*-man, (from the places in which they ſit) have a precedence in motions. *Black. Com.* 3 *V.* 28.

Poſtnatus, Is a word that ſignifieth the ſecond ſon, or one born afterwards; often mentioned in *Bracton*, *Glanvile*, *Fleta*, and other ancient writers; and as to *poſtnati* and *antenati*, it was ſolemnly adjudged, that thoſe who after the deſcent of the crown of *England* to King *James* 1. were born in *Scotland*, were not aliens here in *England*: But the *antenati*, or thoſe born in *Scotland*, before the deſcent, were aliens here, in reſpect of the time of their birth. *Calvin*'s caſe. Children of perſons attainted of treaſon, born after the King's pardon, may inherit lands; though not thoſe born *before*, &c. *Co. Lit.* 391.

Poſts. See *Highways*, *Incloſures*.

Poſt-Terminum, Is the return of a writ, not only after the return thereof, but after the term; on which the *cuſtos brevium* takes 20*d.* It is alſo uſed for the fee ſo taken.

Poſtulation, (*Poſtulatio*) Signifies a petition. Formerly when a biſhop was tranſlated from one biſhoprick to another, he was not elected to the new ſee; for the Canon law is *electus non poteſt elegi*; and the pretence was, that *he was married to the firſt church*, which marriage could not be diſſolved but by the *Pope*; thereupon he was *petitioned*, and conſenting to the petition, the biſhop was tranſlated, and this was ſaid to be by *poſtulation*: But being an uſurpation, and againſt law, it was reſtrained by 16 *R.* 2. and 9 *H.* 4. *c.* 8. Since which, tranſlations of biſhops have been by *election*, and not by *poſtulation*. 1 Jones 160. 1 Salk. 137.

Poſtulations were made on the unanimous voting any perſon to a dignity or office; of which he was not capable by the ordinary canons or ſtatutes, without ſpecial diſpenſation;

penſation: And by the ancient cuſtoms, an election could be made by a majority of votes; but a *poſtulation* muſt have been *nemine contradicente*.

Pound, *(Parcus)* Is generally any place incloſed, to keep in beaſts; but eſpecially a place of ſtrength to keep cattle which are diſtrained, or put in for any treſpaſs done by them, until they are replevied or redeemed. In this ſignification, it is called *pound overt* and *pound covert*; a *pound overt* is an *open pound*, uſually built on the lord's waſte, and which he provides for the uſe of himſelf and tenants, and is alſo called the lord's or the *common pound*; and a backſide, yard, *&c.* whereto the owner of beaſts impounded may come to give them meat, without offence, is a *pound overt:* A *pound covert* is a *cloſe* place, as the owner of the cattle cannot come to, without giving offence; ſuch as a houſe, *&c. Kitch.* 144. *Terms de Ley. Co. Lit.* 96.

There is a difference between a common *pound*, an open *pound*, and a cloſe *pound*, as to cattle impounded: For where cattle are kept in a common *pound*, no notice is neceſſary to the owner to feed them; but if they are put into any *other* open place, notice is to be given; and if beaſts are impounded in a *pound* cloſe, in part of the diſtrainer's houſe, *&c.* he is to feed them, *at his peril.* Co. Lit. 47.

A common *pound* belongs to a townſhip, lordſhip, or village; and ought to be in every pariſh, kept in repair by them who have uſed to do it time out of mind: The overſight whereof, is to be by the ſteward in the leet, where any default herein is puniſhable. *Dyer* 288. *Noy* 52. See *Diſtreſs.* And *Black. Com.* 3 *V.* 12.

Poundage, Is a ſubſidy to the value of twelve-pence in the pound, granted to the King, of all merchandize exported or imported; and of ſuch ſubſidies, ſee 1 & 2 *Edw.* 6. *cap.* 13. and 1 *Jac. c.* 33. 12 *Car.* 2. *cap.* 4. 14 *Car.* 2. *cap.* 24. And *Black. Com.* 1 *V.* 315. 4 *V.* 430.

Pound-breach. If a diſtreſs be taken and impounded, though without juſt cauſe, the owner cannot break the pound, and take away the diſtreſs; if he doth, the party diſtrained may have his action, and retake the diſtreſs wherever he finds it: And for pound-breaches, *&c.* action of the caſe lies, whereon treble damages may be recovered. *Co. Lit.* 261. 2 *W.* & *M. c.* 5. Alſo pound-breaches may be inquired of in the ſheriff's turn; as they are common grievances, in contempt of the authority of the law. 2 *Hawk. P. C.* 67. See *Black. Com.* 3 *V.* 146.

Pound in Money, (from the Sax. *pund*, i. e. *pondus)* Is twenty ſhillings: In the time of the *Saxons* it conſiſted of 240 pence, as it doth now: and 240 of thoſe pence weighed a *pound*, but 720 ſcarce weigh ſo much at this day. *Lambard* 219.

Pour fair proclaimer, que null inject Fimes on Ordures en Foſſes, ou Rivers, pres Cities, &c. Is an ancient writ directed to the mayor or bailiff of a city or town, requiring them to make proclamation, That none caſt filth into places near ſuch city or town, to the *nuſance* thereof: and if any be caſt there already, to remove the ſame: It is founded on the *ſtat.* 12 *R.* 2. *c.* 13. *F. N. B.* 176. Indictments for nuſances now ſupply the place of this writ.

Pourparty, *(Propars, propartis, propartia)* Is contrary to *pro indiviſo:* For to make *pourparty* is to divide the lands that fall to parceners, which before partition they hold jointly and *pro indiviſo.* Old Nat. Brev. 11.

Pourpreſture, *(Pourpreſtura,* from the Fr. *pourpris. conſeptum,* an incloſure) Is thus defined by *Glanvile, lib.* 9. *cap.* 11. Pourpreſtura *eſt proprie quando aliquid ſuper Dominum Regem injuſte occupatur; ut in Dominicis Regis, vel in viis publicis obſtructis vel in aquis publicis tranſverſis a recto curſu, vel quando aliquis in civitate ſuper Regiam plateam aliquid ædificando occupaverit, & generaliter quoties aliquid ſit ad nocumentum Regii tenementi vel Regiæ viæ vel civitatis.*

Crompton, in his *Juriſd.* 152. defines it thus: *Pourpreſture* is properly when a man taketh unto himſelf, or incroacheth any thing he ought not, whether it be in any juriſdiction, land or franchiſe; and generally when any thing is done to the nuſance of the King's tenants. See *Kitchin,* 10. and *Manwood's Foreſt Laws, cap.* 10.

Skene de verbor. ſignif. verbo *Pourpreſture,* makes *three* ſorts of this offence, *one* againſt the *King,* a *ſecond* againſt the *lord of the fee,* the *third* againſt a *neighbour* by a neighbour. See 2 *Inſt.* 38 & 272. *Et lib. niger in ſcac.* 37 & 38. That againſt the *King* happens by the negligence of the ſheriff or deputy, or by the long continuance of wars, inaſmuch as thoſe who have lands near the crown lands, take or incloſe part of it, and lay it to their own.

Pourpreſture againſt the *lord,* is when the tenant neglects to perform what he is bound to do for the chief lord, or in any wiſe deprives him of his right. *Cowell.*

Pourpreſture againſt a *neighbour* is of the ſame nature: It is mentioned in the *Monaſt.* 1 *tom.* 843. and in *Thorn.* 2623. *Et de* purpreſtura *quam Bercarius abbas purprehendit ſuper prædictum Heliam.*

Pour ſeiſir terres le feme que tient en dower, &c. Was a writ whereby the King ſeiſed the land which the wife of his tenant who held *in capite* deceaſed, had for her dowry, if ſhe married without his leave; was grounded on the ſtatute of the king's prerogative, *cap.* 3. See *F. N. B.* 174. This writ does not now lie. Vide *Stat.* 12 *Car.* 2. *c.* 24.

Pourſuivant, (from the Fr. *pourſuivre,* i. e. *perſequi)* Signifies the King's meſſenger attending him, to be ſent on any occaſion or meſſage; as for the apprending a perſon accuſed or ſuſpected of any offence: Thoſe employed in martial cauſes are called *purſuivants at arms,* 24 H. 8. 13. See *Herald.*

Stow, ſpeaking of *Richard* the Third's death, *page* 784. hath theſe words, *His body was naked to the ſkin, not ſo much as one clout about him, and was truſſed behind a* PURSUIVANT AT ARMS *like a hog, or a calf, &c.*

The reſt are uſed upon other meſſages in time of peace, and eſpecially in matters touching juriſdiction. *Nicholas Upton,* in his book *De Militari Officio, viz. lib.* 1. *c.* 11. mentions the ancient form of making theſe *purſuivants,* and tells us, that they were called *milites linguares,* becauſe their chief honour was *in cuſtodia linguæ,* and he divides them into *curſores equitantes* and *proſecutores.* Cowell.

Pourveyance or Purveyance, Is the providing neceſſaries for the King's houſe.

By 12 *Car.* 2. *c.* 24. it is provided, "That no perſon by colour of buying or making proviſion or *purveyance* ſhall take any thing of any ſubject, without the full and free conſent of the owner, obtained without menace or force," *&c.* See the *Antiquity of Pre-emption and Purveyance,* and 3 *Inſt.* 82.

The profitable prerogative of *purveyance* and *pre-emption,* was a right enjoyed by the crown of buying up proviſions and other neceſſaries, by the intervention of the King's purveyors, for the uſe of his royal houſhold, at an appraiſed valuation, in preference to all others, and even *without conſent of the owner*; and alſo of forcibly impreſſing the carriages and horſes of the ſubject, to do the King's buſineſs on the public roads, in the conveyance of timber, baggage, and the like, however inconvenient to the proprietor, upon paying him a ſettled price.

A prerogative, which prevailed pretty generally throughout Europe, during the ſcarcity of gold and ſilver, and the high valuation of money conſequential thereupon. In thoſe early times the King's houſhold (as well as thoſe of inferior lords) were ſupported by *ſpecific renders of corn, and other victuals,* from the tenants of the reſpective demeſnes; and there was alſo a continual market kept at the palace gate to furniſh viands for the royal uſe. 4 *Inſt.* 273. And this anſwered all purpoſes, in thoſe ages of ſimplicity, ſo long as the King's court continued in any certain place. But when it removed from one part of the kingdom to another, (as was formerly very frequently done) it was found neceſſary to ſend purveyors beforehand, to get together a ſufficient quantity of proviſions and other neceſſaries for the houſhold: And, leſt the unuſual demand ſhould raiſe them to an exorbitant price, the powers before-mentioned were veſted in theſe purveyors; who in proceſs of time greatly abuſed their authority, and became a great oppreſſion to the ſubject, tho' of little advantage to the crown; ready money in open market (when the royal reſidence was more permanent, and ſpecie began to be plenty) being found upon experience to be the beſt proveditor of any. Wherefore by degrees the powers of purveyance have declined, in foreign countries as well as our own; and particularly were aboliſhed in *Sweden* by *Guſtavus Adolphus*, towards the beginning of the laſt century. And, with us in *England*, having fallen into diſuſe during the ſuſpenſion of monarchy, King *Charles* at his reſtoration conſented, by 12 *Car.* 2. *c.* 24. to reſign intirely theſe branches of his revenue and power; And the parliament, *in part* of recompence, ſettled on him, his heirs, and ſucceſſors, for ever, the hereditary exciſe of fifteen pence *per* barrel on all beer and ale ſold in the kingdom, and a proportionable ſum for certain other liquors. *Black. Com.* 1 *V.* 287, 8. and 4 *V.* 116, 417, 432.

Pourveyor or **Purveyor**, (*Proviſor*, derived from the French *pourvoir*, i. e. *providere*) Signifies an officer of the King or Queen, or other great perſonage, who *provideth* corn and other victual for their houſe. See *Magna Charta*, *c.* 22. and 3 *Ed.* 1. *cap.* 7. & 31. & *anno* 28. *ejuſdem. Articuli ſuper chartas* 2. and other ſtatutes. The name of *purveyor* was ſo odious in times paſt, that by *ſtatute* 36 *Edw.* 3. 2. the *heinous* name of purveyor was changed into *buyer*; but the office is reſtrained by *ſtat.* 12 *Car.* 2. *c.* 24.

Pow-dike. To *perverſely* and *maliciouſly* cut down or deſtroy the *pow-dike*, in the fens of *Norfolk* and *Ely*, is felony, by 22 *Hen.* 8. *c.* 11.

Power, Is an authority which one man gives another to act for him; and is ſometimes a reſervation which a perſon makes in a conveyance for himſelf to do ſome acts, as to make leaſes, or the like. 2 *Lill. Abr.* 339.

We ſhall here conſider,

1. *Upon what eſtate, and by what words a power ſhall be raiſed.*
2. *How a power ſhall be expounded.*

1. *Upon what eſtate, and by what words, a power ſhall be raiſed.*

In conveyances to an uſe, a man may direct or model the uſe, as he pleaſes, and the ſtat. 27 *H.* 8. *c.* 10. executes the poſſeſſion to the uſe: Therefore *he may annex powers to eſtates*, which cannot be annexed to them by a conveyance at the Common law. *Co. L.* 237. *a. Mo.* 610. And therefore to the limitation of an uſe for life, he may annex a power to make leaſes for years, or lives, or to make a jointure to a wife. *Mo.* 381. 2 *Lev.* 58. Or to grant annuities, raiſe portions, &c. *Mo.* 381. Or to make a jointure, and alſo a leaſe to commence *after his death* for portions, &c. *Hard.* 413. So he may annex a power of revocation of all uſes limited, and to make a limitation of new uſes, and this will not be repugnant. *Co. L.* 237. *a. Mod.* 610.

So a power may be annexed to an eſtate *by another deed, executed at the ſame time*, tho' it be not in the ſame conveyance by which the eſtate is conveyed. 1 *Vent.* 279. So a man may give a power or authority by *will*, which is a *naked* authority, not annexed to an eſtate: As, if he deviſes to *A.* for life, and afterwards that it ſhall be at his diſpoſal to any of his children then living; he hath but an eſtate for life, with a naked power to diſpoſe, in the manner directed by the will. 1 *Salk.* 24. 3 *Salk.* 276. So he may give a power to a ſtranger, which is a *naked collateral* power, and annexed to an eſtate. Or a power in groſs, which takes effect after his eſtate is determined. *Hard.* 415.

If a power be to *A.* or his aſſigns, to make leaſes, &c. *the power runs with the eſtate* to the aſſignee in deed, or in law. 1 *Vent.* 340. 2 *Jon.* 110. So in all caſes a power coupled with an intereſt may be aſſigned; As, a power to a leſſor, and his aſſigns, to cut down trees. 2 *Mod.* 317. But *a man cannot annex a power of revocation to a feoffment, or grant*, for that will be *void*. Co. Lit. 237. a. Mo. 610. So if a man ſeiſed in fee, covenant to ſtand ſeiſed to the uſe of himſelf for life, with power to make leaſes, remainder to another in fee, the power is *not* well raiſed. *Ca. Ch.* 161. If the conſideration of the covenant does not extend to the power to make leaſes. *Mo.* 145. 1 *Co.* 175. *Ray.* 248. So upon ſuch covenant he cannot reſerve a power to make leaſes, jointures, or for preferment of younger children, &c. *Mo.* 381, 383.

Words which ſhew the intent of the party, are ſufficient to create a power; as if a power be to demiſe or leaſe, tho' the intent is, that he declare the uſes of the firſt ſettlement for life or years: For the leaſe does not take effect by demiſe, but by declaration of the uſes. *Mo.* 611. So, if a man expreſſes the power only by implication, it is well: As, provided, that he ſhall not have power to alien, &c. otherwiſe than to make a jointure, and leaſes for 21 years; it is a good power to make a jointure and leaſes. 1 *Leo.* 148. So, if a deviſe be to *A.* for life, to ſet, let and make eſtates out of it as I might, and afterwards to his daughter in tail; *A.* has power to make leaſes, it being the cuſtom of the country where the land lies, to let for lives or years. 2 *Rol.* 261. *l.* 35.

But *a power, being executory, may be reſtrained or enlarged by a ſubſequent deed*: As, if a power be general, to revoke; by a covenant afterwards, that he will not revoke without the conſent of *B.* the power is reſtrained. *Jon.* 411. So, if the conſideration upon which the power was founded, does not extend to the perſon to whom the leaſe is made, the leaſe ſhall be void: As, if a man covenant, in conſideration of *natural affection*, to ſtand ſeiſed to the uſe of himſelf for life, &c. with power to make leaſes, &c. a leaſe to a *ſtranger* is *void*: For *he is not within the conſideration*. 2 *Rol.* 260. *l.* 30. So, if a power, at its creation, be to make leaſes to a perſon, to whom the conſideration does not extend, it will be void, tho' the leaſe be executed to a perſon within the conſideration. 2 *Rol.* 260. *l.* 35.

2. *How a power ſhall be expounded.*

A power ſhall be expounded ſtrictly; therefore if a man has power to make leaſes generally, this extends to make leaſes *in* poſſeſſion *only*, and not in reverſion. 2 *Roll.* 261. *c.* 5. *Cro. Jac.* 318. *Yel.* 222. *Roy.* 248. 1 *Ld. Raym.* 267. 2 *Salk.* 537. 1 *Lev.* 168. 6 *Co.* 33. *a. Mo.* 199 1 *Leo.* 35. 3 *Leo.* 131. Nor a leaſe to commence *in futuro*. Ray. 248. 1 Leo. 35. Yel. 222. Cro. Jac. 318 Mo. 494. So, if the power be to make leaſes for two or three lives, he cannot make a leaſe to one not *in eſſe*; as, to the ſon of *B.* not born, &c. *Per Wind. Ray.* 163. So, if the power be to make leaſes in *poſſeſſion*, he cannot make a leaſe of land in reverſion, tho' it be to commence *in præſenti*. 1 Sid. 101. Ca. Ch. 18.

So, if part of a leaſe be in reverſion, the whole leaſe ſhall be void. 3 *Salk.* 276. So, if the power be to make leaſes in poſſeſſion, or in reverſion, he cannot make a leaſe in poſſeſſion, and another leaſe of the ſame land in reverſion; but his power to leaſe in reverſion extends only to make leaſes of the land, which was not *then* in poſſeſſion. 1 Ld. Ray. 269. 2 Salk. 537. So a power to make a leaſe of three lives or three years in poſſeſſion, or for two lives or thirty years in reverſion, warrants only a concurrent leaſe for two lives; for *a leaſe for lives cannot commence at a future day*. 1 Ld. Raym. 269. 2 Salk. 537.

But if a *power* be annexed to the eſtate of him in reverſion, to make leaſes *generally*, he may make a leaſe *in præſenti* of the reverſion. 1 *Lev.* 168. Tho' the *power* be to make leaſes in poſſeſſion. *Ca. Ch.* 18. 1 *Lev.* 168. 1 *Sid.* 260, 261. So, if a fine be to the conuſee for 15 years, afterwards to *B.* for life, &c. with power to leaſe for three lives, or twenty-one years in poſſeſſion; he may make a leaſe during the 15 years of land in leaſe at the time of the fine, when ſuch leaſe expires. 2 *Rol.* 260. *l.* 50. *Cro. Jac.* 347. 1 *Rol.* 12. 2 *Rol.* 216. So if huſband and wife leaſe purſuant to the *Stat.* 32 *H.* 8. *c.* 28. And then, by act of parliament, the eſtate is ſettled to the huſband for life, with power to leaſe for three lives or 21 years; he may make leaſes of the reverſion during the firſt leaſe by the huſband and wife. 2 *Rol.* 261. *l.* 15. 1 *Lev.* 36. *Cont. Dyer* 357. *a.* So, if a power be to make leaſes in reverſion for three lives, *&c.* he may leaſe for three lives, when there is another life *in eſſe*, though the *power* does not ſay to make leaſes of the reverſion; for there is no prejudice. 2 *Rol.* 261. *l.* 30. So he may make a leaſe for years determinable upon three lives, to commence after the end of the former leaſe *in eſſe*. 8 Co. 70. *See* 16 Vin. Abr. *tit.* Power.

Power of the Crown. See *Black. Com.* 1 *V.* 250.

Power of the Parent. See *ib.* 452.

Poyning's Law, Is an act of parliament made in *Ireland*, in the reign of *Hen.* VII. ſo called becauſe Sir *Edward Poyning* was Lieutenant there when it was made, whereby all the ſtatutes in *England* were declared of force in *Ireland*; which before that time were not, nor are any ſince that time, but by ſpecial words. 12 *Rep.* 109. See *Black. Com.* 1 *V.* 102—3.

Practice. The law loves plain and fair *practice*, and will not countenance fraud in proceedings, nor ſuffer advantage to be taken thereby. 2 *Lil.* 342. Private clandeſtine proceedings, in ſeveral caſes, are ſaid to be by *practice*.

Præceptories, (*Præceptoriæ*) Were a kind of benefices having their name from being poſſeſſed by the more eminent *Templars*, whom the chief maſter by his authority created and called *Præceptores Templi*: And of theſe *Præceptors* there are recorded ſixteen, as belonging to the Templars in *England*, viz. *Creſſing Temple, Balſhal, Shengay, Newland, Yeveley, Witham, Templebruere, Willington, Rotheley, Ovenington, Temple Combe, Trebigh, Ribſtane, Mount St. John, Temple Nuſum* and *Temple Hurſt*. Mon. Angl. tom. 2. 543. But ſome authors ſay, theſe places were cells only, ſubordinate to their principal manſion the *Temple* in *London*. 32 Hen. 8. c. 24.

Præcipe. Original writs are either *optional* or *peremptory*; or, in the language of our law, they are either a *præcipe*, or a *ſi te fecerit ſecurum*. The *præcipe* is in the alternative, commanding the defendant to do the thing required, or ſhew the reaſon wherefore he hath not done it. The uſe of this writ is where ſomething *certain* is demanded by the plaintiff, which is in the power of defendant himſelf to perform; as, to reſtore the poſſeſſion of land, to pay a certain liquidated debt, to perform a ſpecific covenant, to render an account, and the like: In all which caſes the writ is drawn up in the form of a *præcipe* or *command*, to do thus, or ſhew cauſe to the contrary; giving the defendant his choice, to redreſs the injury or ſtand the ſuit. *Black. Com.* 3 *V.* 274.

Præcipe in capite, Was a writ iſſuing out of the *Chancery*, for a tenant holding of the King *in capite, viz.* in chief as of his crown. *Magn. Chart. cap.* 24. *Reg. Orig.* 4. *Black. Com.* 3 *V.* 195.

Præcipe quod reddat, Is the form of a writ, which extends as well to a *writ of right*, as to other writs of *entry* or *poſſeſſion*, beginning *præcipe* A. *quod reddat* B. *unum meſſuagium, &c.* Old Nat. Br. 13. *See* Black. Com. 2 V. 358. xvii. *As to* Præcipe in Fines, *ſee* ib. 350. xiv. *And as to* Tenant to the Præcipe, *ſee* ib. 3 V. 182.

Præcipitium, Was a puniſhment inflicted on criminals, by caſting them from ſome high place. *Malmſ. lib.* 5. *p.* 155.

Prædict', *Prædictus*, (Lat.) In *Engliſh*, *aforeſaid*, Is a word uſed in pleadings, applied to places, towns, lands, names, parties, *&c.* before mentioned. In a deed or grant, the words *prædict. manerii* are *a deſcription* of the manor before named: And a town, repeated by the name of pariſh *prædict.* ſhall be held *all one*; for *the word* aforeſaid *couples them*. Hob. 6. A difference as to *prædict.* term granted, *&c.* See 10 *Rep.* 65.

Præfectus Villæ, Is the ſame as *præpoſitus villæ*, i. e. the mayor of a town. *Leg. Ed. Confeſ. c.* 28.

Præfine, Is that fine which on ſuing out the writ of covenant on levying *fines*, is paid before the fine is paſſed.

Præmunire, Is taken either for a writ ſo called, or for the offence whereon the writ is granted; the one may be underſtood by the other.

The church of *Rome*, under pretence of her ſupremacy, and the dignity of St. *Peter's* chair, took on her to beſtow moſt of the eccleſiaſtical livings of any worth in *England*, by mandates, before they were void; pretending therein great care to ſee the church provided of a ſucceſſor before it needed, Whence theſe *mandates* or *bulls* were called *gratiæ expectativæ* or *proviſiones*, whereof ſee a learned diſcourſe in *Duarenus de beneficiis, lib.* 3. *cap.* 1.

Theſe proviſions were ſo common, that at laſt *Edward* the Third, not digeſting ſo intolerable an incroachment, made a ſtatute in the twenty-fifth year of his reign, *ſtat.* 5. *cap.* 22. and another *ſtat.* 6. *cap.* 2. and a third *anno* 27. againſt thoſe who drew people out of the realm, to anſwer things belonging to the King's court; and another *anno* 28 *ſtat.* 2. *cap.* 1, 2, 3 *&* 4. whereby he greatly reſtrained this liberty of the pope; who notwithſtanding ſtill adventured to continue the *proviſions*; inſomuch that *Richard* the Second likewiſe made ſeveral ſtatutes againſt them, but moſt expreſsly that of 16 *Ric.* 2. 5. which appoints their puniſhment to be thus, *That they ſhould be* OUT OF THE KING'S PROTECTION, *attached by their bodies, and loſe their lands, tenements, goods and chattels.* After him *Henry* the Fourth, in like manner aggrieved at other abuſes, not fully met with in the former ſtatutes, in the ſecond year of his reign, *c.* 3 *&* 4. adds certain new caſes, and lays on the offenders the *ſame* puniſhment. See alſo 9 *Hen.* 4. *c.* 8. and 3 *Hen.* 5. *c.* 4. and *Smith de Republ. Angl. lib.* 3. *cap.* 9.

Some later ſtatutes inflict this puniſhment upon other offenders.

The word is moſt commonly applied to the puniſhment firſt ordained by the ſtatutes beforementioned, for ſuch as tranſgreſſed them: For where it is ſaid, that any man for an offence committed, ſhall incur a *præmunire*, it is meant that he ſhall incur *the ſame puniſhment* as is inflicted on thoſe who tranſgreſs 16 *Ric.* 2. *c.* 5. commonly called the ſtatute of *præmunire*; which kind of application is not unuſual in our ſtatutes.

As to the etymology of the word, it proceeds from the verb *præmonere*, being barbarouſly turned into *præmunire*, to *forewarn* or bid the offender to take heed; For which a reaſon may be gathered from the words of 27 *Ed.* 3. *c.* 1. and the form of the writ, in *Old Nat. Brev.* 143. *Præmunire facias præfatum præpoſitum, & J. R. procuratorem, &c. quod tunc ſint coram nobis, &c.* which words can be referred to none but parties charged with the offence. *Cowell.* See 3 *Inſt.* 110. and *Black. Com.* 4 *V.* *c.* 8. *p.* 102, 421.

We ſhall here further conſider,

1. *What offences come under the notion of a* præmuniſe.
2. *Of the puniſhment in a* præmunire.
3. *To what* time *the attainder ſhall relate.*
4. *To what* eſtates *the ſtatute of* præmunire *doth not extend, and of the* ſuit, *&c.*
5. *Of the King's power as to pardoning a* præmunire, *&c.*

1. *What offences come under the notion of a* præmunire.

The offences coming under the notion of a *præmunire*, or for which the party incurs a *præmunire*, are reduced by *Hawkins* to the following particulars:

1. Making uſe of papal bulls is made a *præmunire*, by many ſtatutes, to which purpoſe it is enacted by 25 *Ed.* 3. *ſt.* 6. called *the ſtatute of proviſors*, that whoever ſhall by *a papal proviſion* diſturb any patron to preſent to a benefice, *&c.* ſhall be fined and impriſoned till he make full renunciation. And by 25 *Ed.* 3. *ſtat.* 5. *cap.* 22. If any one purchaſe a proviſion of an abbey or priory, he ſhall be *out of the King's protection*; and by 38 *Ed.* 3. *ſt.* 2. *c.* 2. and 12 *Ric.* 2. *cap.* 15, and 13 *Ric.* 2. *ſtat.* 2. *cap.* 2. Whoever ſhall accept a benefice contrary to 25 *Ed.* 3. *ſt.* 6. ſhall be baniſhed; and by 13 *Ric.* 2. *ſtat.* 2. *cap.* 3. Whoever ſhall bring a ſentence of excommunication againſt any perſon for executing the ſtatute of 25 *Ed.* 3. ſhall ſuffer pain of life and member; and by 16 *Ric.* 2. *c.* 5. Whoever ſhall purchaſe or purſue, or cauſe to be purchaſed or purſued, in the court of *Rome* or elſewhere, any tranſlations, proceſſes, ſentences of excommunication, bulls, inſtruments, or other things contrary to the tenure of that

ſtatute, or bring them within this realm, or receive, *&c.* ſhall be out of the King's protection; and their lands and tenements, goods and chattels forfeited to the King, and be attached by their bodies; and by 2 *Hen.* 4. *c.* 3. Whoever ſhall purchaſe from *Rome* a proviſion of exemption from ordinary obedience; and by 2 *Hen.* 4. *cap.* 4. Whoever ſhall put in execution *bulls purchaſed* by thoſe of the order of *Ciſteaux*, to be diſcharged of tithes, ſhall incur the like penalty; they are further reſtrained by 6 *Hen.* 4. *cap.* 1. 7 *Hen.* 4. *cap.* 8. 9 *Hen.* 4. *cap.* 8. and 3 *Hen.* 5. *cap.* 4. by which the ſtatutes abovementioned are inforced and explained; and by 23 *Hen.* 8. *cap.* 2. *ſect.* 22. Whoever ſhall ſue for or execute any licence, diſpenſation or faculty from the ſee of *Rome*; and by 28 *Hen.* 8. *cap.* 16 (by which all bulls, briefs, *&c.* obtained from *Rome* are made void) Whoever ſhall uſe, allege, or plead the ſame in any court, unleſs they were confirmed by this ſtatute, or afterwards by the King, ſhall incur the like penalty. *Vide Reg.* 54. 3 *Inſt.* 127.

By the 13 *Eliz. cap.* 2. Thoſe who purchaſe any bulls, *&c.* from *Rome*, are guilty of *high treaſon*; but thoſe antient ſtatutes continue ſtill in force, and it is in the election of the crown to proceed either upon them, or 13 *El. c.* 2. Alſo the aiders of ſuch offenders, after the offence, to the intent to uphold the ſame uſurped power, incur a *præmunire*. Davis 84.

Secondly, Derogating from the King's Common law courts, is ſaid to have been an high offence at Common law, and is made a *præmunire* by many antient ſtatutes; for by 27 *Ed.* 3. *cap.* 1. of proviſors, If any ſubject draw any out of the realm in plea, whereof the cognizance pertains to the King's court, or of things whereof judgments be given in the King's courts, or ſue in any other court to defeat or impeach the judgments given in the King's courts, he ſhall be warned to appear, *&c.* in proper perſon, at a day, containing the ſpace of two months, at which if he appear not, he and his proctors, *&c.* ſhall be put *out of the King's protection*, his lands and chattels forfeited, his body impriſoned, and ranſomed at the King's will, *&c.* See 16 *R.* 2. *c.* 5.

In the conſtruction of theſe ſtatutes it hath been held, that certain commiſſioners of ſewers, for ſummoning one before them who had got a judgment at law, and impriſoning him till he would releaſe it, were guilty of a *præmunire*. 2 Bulſt. 299. 3 Inſt. 125. Cro. Jac. 336.

Alſo ſuits in the admiralty or eccleſiaſtical courts *within the realm*, for matters which upon the face of the libel itſelf appear to belong only to the cognizance of the temporal courts, are ſaid to be within 16 *Rich.* 2. by force of the words, "or *elſewhere*." 1 *Hawk. P. C.* 51.

And it hath been formerly holden, that even ſuits in a court of equity, to relieve againſt a judgment at law, are within the danger of theſe ſtatutes, eſpecially if they tend to controvert the *very point* determined at law, or to relieve in a matter relievable at law. 4 *New Abr.* 146.

Thirdly, Appeals to *Rome* are made *præmunires* by 24 *Hen.* 8. *cap.* 12. and 25 *Hen.* 8. *cap.* 19. by which it is enacted, That ſuch appeals as formerly were made to *Rome* ſhall be made henceforth to Chancery.

Fourthly, Exerciſing the juriſdiction of a ſuffragan without the appointment of the biſhop of the dioceſe, is made a *præmunire* by 26 *Hen.* 8. *cap.* 14. which ſets forth at large how ſuffragans are to be nominated, *&c.*

Fifthly, By 25 *Hen.* 8. *cap.* 20. If a dean and chapter refuſe to elect one named in the King's letter for a biſhoprick, and to certify ſuch election to the King within twenty days after the licence come to his hands, or if any archbiſhop or biſhop after ſuch election (or nomination by the King in default thereof, *&c.*) refuſe to confirm and conſecrate within twenty days the perſon ſignified to them by the King's letters patent, they incur a *præmunire*.

Sixthly, Maintaining the *pope's power* is made a *præmunire* by 5 *Eliz. cap.* 1.

Seventhly, By 13 *Eliz. cap.* 7. "If any one bring into the realm, *&c.* any ſuperſtitious things, pretended to be hallowed by the biſhop of *Rome*, *&c.* and deliver or offer the ſame to any ſubject to be uſed in any wiſe; or if any one receive the ſame *to ſuch intent*, and not diſcover the offender, *&c.* or if a juſtice of peace, having any offence in that act declared to him, do not within ſixteen days declare it to a privy counſellor, he incurs a *præmunire*."

Eighthly, By 27 *Eliz. c.* 2. "Sending relief to any jeſuit, ſeminary prieſt, or college of prieſts or jeſuits beyond the ſeas, or to one not returning out of ſuch college into *England*, incur a *præmunire*.

Ninthly, Perſons refuſing to take the oaths, incur a *præmunire* by ſeveral ſtatutes, as 1 and 5 *Eliz.* 3. and 7 *Jac.* 1. 1 *W. & M. &c.*

Tenthly, By the 6 *Ann. cap.* 7. If any perſon *maliciouſly* and *directly*, by preaching, teaching, or adviſed ſpeaking, declare, maintain and affirm, that the pretended Prince of *Wales* hath any right or title to the crown of this realm, or that any other perſon hath any right or title to the ſame, otherwiſe than according to 1 *W. & M. cap.* 2. and 2 *W.* 3. *cap.* 2. and the acts then lately made in *England* and *Scotland* mutually for the union of the two kingdoms; or that the Kings or Queens of this realm *with* the authority of parliament are not able to make laws to limit the crown and the deſcent, *&c.* thereof, ſhall incur a *præmunire*.

2. *Of the puniſhment in a* præmunire.

Moſt of the ſtatutes of *præmunire* refer the puniſhment to 16 *Ric.* 2. *c.* 5. which enacts, "That thoſe who offend ſhall be PUT OUT OF THE KING'S PROTECTION, and their lands and tenements, goods and chattels forfeited to the King; and that they be attached by their bodies if they may be found, and brought before the King and his council, to anſwer; or that proceſs be made againſt them by *præmunire facias*, in manner as is ordained in other ſtatutes of proviſors."

The judgment in *præmunire* at the ſuit of the King, againſt the defendant being in priſon, is, *that he ſhall be out of the King's protection*; and that his lands and tenements, goods and chattels ſhall be forfeited to the King; and that his body ſhall remain in priſon at the King's pleaſure; but if the defendant be condemned on his default of not appearing, whether at the ſuit of the King or party, the ſame judgment ſhall be given as to the being out of the King's protection and the forfeiture; but inſtead of the clauſe, that the body ſhall remain in priſon, there ſhall be awarded a *capiatur*. Co. Lit. 129. b. 3 Inſt. 125, 218. 2 Hawk. P. C. 444.

As the 16 *R.* 2. *cap.* 5. expreſsly ſaith, that ſuch offenders *ſhall be put out of the King's protection*; and alſo the ſtatute of 25 *Ed.* 3. *ſtat.* 5. *cap.* 22. had farther added, that any one might do with a purchaſer of the proviſions therein prohibited, as with the King's enemy; and that he who ſhould offend againſt ſuch a one in body, lands or goods, ſhould be excuſed; it was formerly holden, that a perſon attainted in a *præmunire* might *lawfully* be ſlain by any one, *as being the King's enemy*, and out of the protection of the laws; but the later opinions ſeem to have diſapproved of this ſeverity; and it is now expreſsly enacted by 5 *Eliz. cap.* 1. *ſect.* 21, 22. "That it ſhall not be lawful to kill any perſon attainted in a *præmunire*, ſaving ſuch pains of death or other puniſhment, as might without danger of law be done on any perſon that ſhall ſend or bring into the realm, or within the ſame ſhall execute any proceſs, *&c.* from the ſee of *Rome*." Co. Lit. 12. 68. 130. 3 Inſt. 128. Bro. Car. 197. Jenk. 199.

It is clearly agreed, that a perſon attainted in a *præmunire* can bring *no* action; neither is it ſafe for any one, *knowing him to be guilty*, to give him any relief. *Co. Lit.* 130.

A ſtatute, by appointing that an offender ſhall incur the penalty and danger mentioned in 16 *Ric.* 2. *c.* 5. does not confine the proſecution for the offence to the particular proceſs thereby given. 1 *Vent.* 173.

It is holden, that the ſtatute of *præmunire*, which gives a general forfeiture of all the lands and tenements of the offender, extends *not* to lands *in tail*. Co. Lit. 130. See *poſt diviſion* 4.

It hath been adjudged, that a pardon of all miſpriſions, treſpaſſes, offences and contempts, will pardon a *præmunire*. Cro. Jac. 336. 2 Bulſt. 299.

The defendant in a *præmunire* muſt regularly appear in perſon, whether he be a peer or commoner, unleſs he is diſpenſed with by ſome writ or grant for that purpoſe; but in the caſe of Sir *Anthony Mildmay*, he was allowed to plead a pardon to a *præmunire* by attorney; but it has been thought that there was ſome clauſe to this effect in the pardon. 3 *Inſt.* 125. 1 *Roll. Rep.* 190. 2 *Bulſt.* 290. 2 *Hawk. P. C.* 273.

On an indictment of a *præmunire*, a peer of the realm ſhall not be tried by his peers. 12 *Co.* 92.

On an information on 6 *Geo.* 1. *c.* 18. for ſetting up a bubble called the *South Sea*, it was determined that the court was not obliged by that act to give the whole judgment, as in caſe of a *præmunine*, againſt defendant, but only ſuch parts of it as in their diſcretions they ſhould think fit; and accordingly a fine of 5 *l.* was ſet on the party convicted, and judgment that he ſhould remain in priſon during the King's pleaſure. 2 *Ld. Raym.* 361.

3. *To what* time *the attainder ſhall relate.*

A perſon being ſeiſed in fee of lands, was indicted for a *præmunire* upon 13 *Eliz. c.* 2. but before conviction be made an entail of his lands; and it was adjudged, that *the attainder ſhould relate to the time of the offence*, and that was before he entailed the lands, and not the time of the judgment which was afterwards; and the freehold being in him at the time of the attainder, ſhall not be deveſted without an inquiſition under the Great Seal. *Cro. Car.* 123, 172.

4. *To what* eſtates *the ſtatute of* præmunire *doth not extend, and of the* ſuit, *&c.*

It is ſaid the ſtatute of *præmunire* doth not extend to the forfeiture of rents, annuities, fairs, *&c.* or any other hereditaments that are *not within* the word *terræ.* 3 *Inſt.* 126.

This ſuit need not be by original in *B. R.* for if defendant be *in cuſtodia mareſchalli*, the ſuit may be againſt him by bill; and defendants cannot be ſued in any other court when they are *in cuſtodia mareſchal'*. And if a defendant come not at the day, *&c.* or if he appears and pleads, and the iſſue be found againſt him, or he demurs in law, *&c.* judgment ſhall be given, that *he ſhall be out of protection, &c.* 3 Inſt. 124.

Tenant *in tail* is attainted in a *præmunire*, he ſhall forfeit his lands *only during life*; and afterwards the iſſue in tail ſhall inherit. 11 *Rep.* 56.

5. *Of the King's power as to pardoning a* præmunire, *&c.*

The laws making offences to be *præmunire*, it has been obſerved, are ſo *very ſevere*, that they are ſeldom put in execution: And notwithſtanding the ſtatutes, the King may protect and pardon an offender; for this protection is given him *by the law of nature.* 2 Bulſt. 299. A *præmunire* is ſaid to be *a defence of the crown*, and the laws of the land, from the tyranny and oppreſſion of the pope's juriſdiction, *&c.* The *præmunire* clauſe in the bubble act leaves power in the court to moderate the judgment. 1 *Strange* 472. See *Pope.*

Præpoſitus-Eccleſiæ, Is uſed for a church-reve, or church-warden.

Præpoſitus Villæ, Sometimes is uſed for the conſtable of a town, or petit-conſtable. *Cromp. Juriſd.* 205. Yet the ſame author, 194. ſeems to apply it otherwiſe; for there *quatuor homines præpoſiti* are thoſe four men, who muſt appear for every town before the juſtices of the foreſt in their circuit. It is ſometimes uſed for an head or chief officer of the King, in a town, manor or village, or a *reeve.* See *Reeve. Animalia & res inventæ coram ipſo (præpoſito) & ſacerdote ducenda erant.* LL. Edw. Confeſſor. cap. 28. This *præpoſitus villæ*, in our old records does not anſwer to our preſent conſtable, or head-borough of a town; but was no more than the *reeve*, or *bailiff* of the lord of the manor, ſometimes called *ſerviens villæ.*

By the laws of *Henry* the Firſt, the lord anſwered for the town where he was reſident; where he was not, his dapifer, or ſeneſchal, if he were a baron: But if neither of them could be preſent, then *præpoſitus & quatuor de unaquaque villa*, i. e. *the reeve and four of the moſt ſubſtantial inhabitants* were ſummoned. See Dr. *Brady's Gloſſary to Introduction to Engliſh Hiſtory, pag.* 97.

Prayer. See *Service and Sacraments.*

Prayers of the Church. Vide *Common Prayer.*

Preaching. Every beneficed *preacher*, reſiding on his benefice, and having no lawful impediment, ſhall in his own cure, or ſome neighbouring church, *preach* one ſermon *every Sunday* of the year: And if any beneficed perſon be not allowed to be a *preacher*, he ſhall procure ſermons to be *preached* in his cure by licenſed *preachers*; and every *Sunday* whereon there ſhall not be a ſermon, he *or his curate* is to read one of the homilies: No perſon not examined and approved by the biſhop, or not licenſed to *preach*, ſhall expound the Scripture, *&c.* nor ſhall any be permitted to *preach* in any church, but ſuch as appear to be *authorized* thereto, by ſhewing their licence; and church-wardens are to note in a book the names of all ſtrange clergymen who *preach* in their pariſh; to which book every *preacher* is to ſubſcribe his name, the day he *preached*, and the name of the biſhop of whom he had licence to *preach.* Can. 44, 45, 49.

If any perſon licenſed to *preach*, refuſes to conform to the eccleſiaſtical laws, after admonition, the licence of every ſuch *preacher* ſhall be void: And if any parſon *preach* doctrine contrary to the word of God, or the articles of religion, notice is to be given of it to the biſhop by the churchwardens, *&c.* So likewiſe of matters of contention and impugning the doctrine of other *preachers* in the ſame church; in which caſe, the *preacher* is not to be ſuffered to *preach* except he faithfully promiſe to forbear all ſuch matter of contention in the church, until the biſhop hath taken farther order therein. *Can.* 53, 54.

No miniſter ſhall *preach* or adminiſter the ſacrament in any private houſe, *unleſs in times of neceſſity*, as in caſe of ſickneſs, *&c.* on pain of ſuſpenſion for the firſt offence, and excommunication for the ſecond; which laſt puniſhment is alſo inflicted on ſuch miniſters as meet in private houſes, to conſult on any matter tending to impeach the doctrine of the church of *England.* Can. 71, *&c.*

Preamble, (*Procœmium,* from the prepoſition *præ*, before, and *ambulo*, to walk; as to walk before) The beginning of an act is called *the preamble*; which is a key to the intent of the makers of the act, and the miſchiefs which they would remedy by the ſame.

Pre-audience. A cuſtom has of late years prevailed of granting *letters patent of precedence* to ſuch barriſters, as the crown thinks proper to honour with that mark of diſtinction; whereby they are intitled to ſuch rank and *pre-audience* as are aſſigned in their reſpective patents; ſometimes next after the King's Attorney-General, but uſually *next after* his Majeſty's counſel then being. Theſe (as well as the Queen's Attorney and Solicitor-General) rank promiſcuouſly with the King's counſel, and together with them ſit within the bar of the reſpective courts, but receive no ſalaries, and are not ſworn; therefore are at liberty to be retained in cauſes againſt the crown.

Pre-audience in the courts is reckoned of ſo much conſequence, that it may not be amiſs to ſubjoin a ſhort table of the precedence which uſually obtains among the practiſers.

1. The King's *præmier* Serjeant, (ſo conſtituted by *ſpecial* patent.)
2. The King's *ancient* Serjeant, or the eldeſt among the King's Serjeants.
3. The King's Advocate-General.
4. The King's Attorney-General.
5. The King's Solicitor-General.
6. The King's Serjeants.
7. The King's Counſel, with the Queen's Attorney and Solicitor.
8. Serjeants at Law.
9. The Recorder of *London.*
10. Advocates of the Civil law.
11. Barriſters.

In the court of Exchequer two of the moſt experienced barriſters, called the *poſt*-man and the *tub*-man, (from the places in which they ſit) have alſo a precedence in motions *Block. Com.* 3 *V*. 28.

Prebend, *(Præbenda)* Is the portion which every *prebendary* of a cathedral church receives, *in right of his place*, for his maintenance; as *canonica portio* is properly uſed for that ſhare, which every canon receiveth yearly out of the common ſtock of the church. And *præbenda* is a ſeveral benefice riſing from ſome temporal land, or ſome church, appropriated towards the maintenance of a clerk, or member of a collegiate church, and is commonly named of the place whence the profit ariſes.

Præbenda, ſtrictly taken, is that maintenance which daily *præbetur* to another; but now it ſignifies the profits belonging to the church, divided into thoſe portions called *præbenda*, and is *a right of receiving the profits for the duty performed in the church, ſufficient for the ſupport of the parſon in that divine office where he reſides*. Decret. *tit*. De Præbend.

The ſpirituality and temporality make a *prebend*, but the ſpirituality is the higheſt and moſt worthy; and a perſon is not a complete *prebend*, to make any grant, &c. before inſtallation and induction. *Dyer* 221.

Prebends are *ſimple* and *dignitary*.

A *ſimple* prebend hath no more than the revenue for its ſupport; but a

Prebend with dignity hath always *a juriſdiction annexed*, and for this reaſon the *prebendary* is ſtiled a *dignitary*, and *his juriſdiction is gained by preſcription*.

Prebends are ſome of them donative; and ſome are in the gift of laymen, but in ſuch caſe they muſt preſent the *prebendary* to the biſhop, and the dean and chapter inducts him, and *places him in a ſtall* in the cathedral church, and then he is ſaid to have *locum in choro*; at *Weſtminſter*, the King collates by patent, and by virtue thereof the *prebendary* takes poſſeſſion, without inſtitution or induction. 2 *Rol. Abr*. 356.

As a *prebend* is a benefice without cure, &c. a *prebend* and a parochial benefice are not incompatible promotions; for *one man may have both without any avoidance of the firſt*: For though *prebendaries* are ſuch as have *no cure of ſouls*, yet there is *a ſacred charge* incumbent on them in thoſe cathedrals where they are reſident, and they are obliged to preaching by the canons of the church; and it is not lawful for a *prebendary* to poſſeſs two *prebends* in *one* and the *ſame* collegiate church. *Rol. Abr*. 361.

Prebendaries are ſaid to have *an eſtate in fee-ſimple in right of their churches*, as well as biſhops of their biſhopricks, deans of their deaneries, &c.

Corpus præbendæ, is that which is received by a *prebendary* above the profits which are always for his daily maintenance. *Præbenda* and *probenda* were alſo in old deeds uſed for proviſions, provand or provender.—— *Pro equo ſuo unum buſhel avenarum pro* præbenda *capienda*. Coucher Book in Dutchy-Office, tom. 1. fol. 45. Cowell.

Prebendary, *(Prebendarius)* Is he who hath ſuch a *prebend*; ſo called, not *a* præbenda *auxilium & conſilium epiſcopo*, &c. but *from receiving the prebend*: And if a manor be the body of a prebend, and is evicted by title paramount; yet the prebendary is not deſtroyed. 3 *Rep*. 75.

There is a *golden prebendary of Hereford*, otherwiſe termed *prebendarius epiſcopi*, who is one of the the twenty-eight minor prebendaries there, and has *ex officio* the firſt canon's place that falls; he was anciently *confeſſarius* of the cathedral church, and to the biſhop, and had the offerings at the *altar*, whereby, in reſpect of the *gold* commonly given there, he had the name of *golden prebendary*. Blount. *See* Black. Com. 1 V. 383.

Precariae, Are days works, which tenants of ſome manors are bound, *by reaſon of their tenure*, to do for their lord in harveſt; and in divers places are vulgarly called *bind-days* for *biden-days*, which in the Saxon *dies precarias ſonat*: For *biden* is *to pray or intreat*. This cuſtom is plainly ſet forth in the great book of the *Cuſtoms of the Monaſtery of Battel*, tit. *Appelderham, fol*. 60. *Cowell*.

Precedence. Statute for regulating precedence of lords and other great officers in parliament, 31 *Hen*. 8. *c*. 10. As to *patent of precedence*, ſee tit. *Pre-audience*, and *Black. Com*. 3 *V*. 28.

Precedent Conditions. See *Black. Com*. 2 *V*. 154.

Precedents, Are authorities to follow in determinations in courts of juſtice.

Precedents have always been greatly regarded by the ſages of the law: The precedents of the courts are ſaid to be the laws of the courts; and the court will not reverſe a judgment, contrary to many precedents. 4 *Rep*. 93. *Cro. Eliz*. 65. 2 *Lil. Abr*. 344. But new precedents are not conſiderable; precedents without judicial deciſion *on argument* are of no moment; and an extrajudicial opinion given *in* or *out* of court, is no good precedent. *Vaugh*. 169, 382, 399, 429.

It has been held, that there can be no precedent in matters of equity, as *equity is univerſal truth*; but, according to *Lord Keeper Bridgman*, precedents are *neceſſary* in equity *to find out the reaſons thereof for a guide*; and, beſides the authority of thoſe who made them, it is to be ſuppoſed they did it *on great conſideration*, and it would be ſtrange to ſet aſide what has been the courſe for a long ſeries of time. 1 *Mod*. 307. If a man doubt whether a caſe be equitable, or no, in prudence he will determine as the precedents have been; eſpecially if made by men of good authority and learning. *Ibid*.

Precedents muſt be ſhewn by plaintiff for the court to go *againſt* what is generally held. 1 *Keb*. 47. And where *precedents* are alledged contrary to the opinion of the court, *a day may be given to produce them*. Mod. Caſ. 199.

Precedents in ſome caſes may make an act good, which otherwiſe would be void in ſtrictneſs of law: And though the forms of writs ought not to be altered, yet *precedents* and conſtant uſage muſt be obſerved. *Jenk. Cent*. 162, 172.

If there be cauſe to alter an ancient *precedent* of a writ, by reaſon of any new ſtatute, &c. the curſitors are not to keep to the old form, but to alter it as the caſe requires; to prevent abatement of writs, and vexation to the people. *Trin*. 1650.

Lord C. *Talbot* ſaid, He thought it much better to ſtick to the *known general rules*, than to follow any one particular precedent which may be founded on reaſons unknown to us. Such a proceeding would confound all property. And then citing the caſe of Lady *Laneſborough* v. *Fox*, as of *the ſtrongeſt authority* to the caſe in point, his Lordſhip ſaid, that though it had not been in the houſe of Lords, he ſhould have thought himſelf bound to go according to the general and known rules of law. *Caſes in Chan. in Ld. Talbot's time* 26, 27.

It is dangerous to alter old eſtabliſhed forms. Caſes in Chan. in Ld. Talbot's time 196. See 16 *Vin. Abr*. tit. *Precedents*. And vide *Innovation*.

Prece partium, Is when a ſuit is continued by the prayer, aſſent or agreement of both parties. *Stat*. 13. *Ed*. 1. *c*. 27.

Precept, *(Præceptum)* Is diverſly taken in law, as ſometimes for a command in writing, by a juſtice of peace, or other officer, for bringing a perſon or records before him; of which there are many examples in the table of the *Regiſter Judicial*. And in this ſenſe it ſeems to be borrowed from the cuſtoms of *Lombardy*, where *præceptum* ſignifieth *ſcripturam vel inſtrumentum*. Hotom. in verb. *Feudal. & lib*. 3. *Commentar. in libros feudor. in præfatione*. Sometimes it is taken for the provocation, whereby one man incites another to commit a felony, as theft, murder, &c. *Staundf. Pl. Cor*. 105. *Bracton, lib*. 3. *tract*. 2. *cap*. 9. calls it *præceptum* or *mandatum*. Whence we may obſerve three diviſions of offending in murder, *præceptum, fortia, conſilium*; *præceptum* being the inſtigation uſed beforehand; *fortia* the aſſiſtance in the fact, as to help to bind the party murdered or robbed; *conſilium*, advice either before or in the fact. The *Civilians* uſe *mandatum* in this caſe. *Cowell*.

Precept of election to parliament, ſee *Black. Com*. 1 *V*. 177.

Pre-contract, (mentioned in ſtat. 2 & 3 *Ed*. 6. *c*. 23.) Is a contract made *before* another *contract*, but hath relation eſpecially to marriage, ſee *Black. Com.* 1 *V.* 434.

Predial tithes, *(Decimæ prædiales)* Are thoſe which are paid of things ariſing and growing from the *ground only*, as corn, hay, fruit of trees, and ſuch like. 2 *Ed.* 6. 13 See *Inſt.* 649. and *Black. Com.* 2 *V.* 24. See *Tithes*.

Pre-emption, *(Præ-emptio)* Signifies the firſt buying of a thing; and it was a privilege allowed the *King's Purveyor*, to have the choice and firſt buying of proviſions for the King's houſe. 12 *Car.* 2. *c.* 24. See *Pourveyance*.

Pregnancy, (Plea of.) Where a woman is capitally convicted, and *pleads her pregnancy*, though this is no cauſe to ſtay the judgment, yet it is to reſpite the execution till ſhe is delivered. This is a mercy dictated by the law of nature, *in favorem prolis*; and therefore no part of the bloody proceedings, in the reign of Queen *Mary*, hath been more juſtly deteſted than the cruelty, that was exerciſed in the iſland of *Guernſey*, of burning a woman big with child: For when, through the violence of the flames, *the infant ſprang forth at the ſtake*, and was preſerved by the by-ſtanders, after ſome deliberation of the prieſts who aſſiſted at the ſacrifice, *they caſt it again into the fire* AS A YOUNG HERETICK. A barbarity which they never learned from the laws of *ancient Rome*; which directs, with the ſame humanity as our own, “*quod pregnantis mulieris damnatæ pœna differatur*, “*quoad pariat*:” Which doctrine has alſo prevailed in *England*, as early as the firſt memorials of our law will reach.

In caſe this *plea* be made in ſtay of execution, the judge muſt direct a jury of twelve matrons, or diſcreet women, to enquire the fact: and if they bring in their verdict *quick with child* (for barely *with child*, unleſs it be alive in the womb, is not ſufficient) execution ſhall be ſtaid generally till the next ſeſſion; and ſo from ſeſſion to ſeſſion, till either ſhe is delivered, or proves by the courſe of nature not to have been with child at all.

But if ſhe *once* hath had the benefit of this reprieve, *and been delivered*, and afterwards becomes pregnant again, ſhe ſhall not be intitled to the benefit of a farther reſpite for that cauſe. For ſhe may now be executed before the child is quick in the womb; and ſhall not, by her own incontinence, evade the ſentence of juſtice. *Black. Com.* 4 *V.* 387, 8.

Premiſſes, Is that part in the *beginning* of a deed, the office of which is to expreſs the grantor and grantee, and the land, or thing granted or conveyed. 5 *Rep.* 55.

No perſon, not named in the premiſſes, can take any thing by the deed, though he be afterwards named in the *habendum*, becauſe *the premiſſes of the deed makes the gift*; therefore when the lands are given to one in the premiſſes, the *habendum* cannot give any ſhare of them to another, becauſe that would be to retract the gift made, and conſequently to make a deed repugnant in itſelf; thus for inſtance, If a charter of feoffment be made between *A.* of the one part, and *B.* and *D.* of the other part, and *A.* gives lands to *B. habendum* to *B.* and *D.* and their heirs; *D.* takes nothing by the *habendum*, becauſe all the lands were given to *B.* conſequently *D.* cannot hold thoſe lands which are given before to another; but in this caſe, if the *habendum* had been to *B.* and *D.* and their heirs, *to the uſe of* B. *and* D. this had been a good limitation of a uſe, *conſequently the ſtatute of uſes would carry the poſſeſſion to the uſe*, and *B.* and *D.* thereby become joint-tenants. *Co. Lit.* 6. *a.* 9 *Co.* 47. *b. Hob.* 275, 313. 2 *Rol. Abr.* 65. *Cro. Jac.* 564. *Cro. Eliz.* 58. 13 *Co.* 54. *Poph* 126.

If lands be given to *a huſband*, *habendum* to him and his wife, and to the heirs of their two bodies, the wife takes nothing, becauſe *ſhe was not mentioned in the premiſſes*; therefore ſhall take nothing of that which was before given *intirely* to her huſband. 2 *Rol. Abr* 67.

But there are four exceptions to this rule: 1. If lands be given in frank-marriage, the woman who is *the cauſe of the gift* may take by the *habendum*, though ſhe be not named in the premiſſes; as if lands be given to *J. S. habendum maritagium una cum* the woman who is daughter of the donor; this is a good eſtate in frank-marriage to them both; becauſe, the gift being totally on her account, it is neceſſary to the creation of the eſtate in the huſband that the wife ſhould take. *Co. Lit.* 21. *Plowd.* 158. *Cro. Jac.* 454. *Poph.* 126. 2 *Rol. Abr.* 67.

2. In grants of copy of court roll; as If a copyholder ſurrenders to his lord, without limiting any uſe, and then the lord grants it in this manner; *J. S. cepit de domino*, *habendum* to the ſaid *J. S.* and his wife, and the heirs of their bodies begotten, *this is a good eſtate-tail in the wife*; for theſe cuſtomary grants, that are made in purſuance of a former ſurrender, *are conſtrued according to the intention of the parties*, as wills are; beſides, *the cuſtom of the manor is the rule for the expoſition of ſuch ſort of grants*, and in many manors ſuch form is uſual. *Poph.* 125, 126. *Cro. Jac.* 434. 2 *Rol. Abr.* 67. *Cro. Eliz.* 323.

3. A man not named in the premiſſes may take an eſtate *in remainder* by limitation in the *habendum*. 2 Rol. Abr. 68. Hob. 313. Cro. Jac. 564.

4. In wills; for if a man deviſes lands to *J. S. habendum* to him and his wife, this is a good deviſe *to the wife*; becauſe, in conſtruction of wills, the intention of the deviſor is chiefly regarded; and wherever that diſcovers itſelf it ſhall take place, though it be not expreſſed in thoſe legal forms that are required in conveyances executed in a man's life-time. *Plowd.* 158, 414. 2 *Rol. Abr.* 68. See *Black. Com.* 2 *V.* 298.

Premium, *(Præmium)* A reward: Amongſt merchants it is uſed for the money the enſured gives the enſurer for enſuring the ſafe return of any ſhip or merchandize. *Stat.* 19 *Ca.* 2. *c.* 4.

Prender, Is the power or right of taking a thing *before it is offered*; from the French *prendre*, i. e. *accipere*: *it lies in* render, *but not in* prender. *Rep.* 1. Sir *John Peter*'s caſe.

Prender de Baron, Signifieth literally to take an huſband; and it is uſed for an exception to diſable a woman from purſuing an appeal of murder, againſt one who killed her former huſband. *S. P. C. lib.* 3. *c.* 59.

Prepenſed, *(Præpenſus)* Forethought; as *prepenſed* Malice is *Malitia Præcogitata*; which makes killing, murder: and when a man is ſlain on a ſudden quarrel, if there were malice *prepenſed* formerly between the parties, it is murder, or as it is called by the ſtatute *prepenſed Murder*. 12 H. 7. c. 7. 3 Inſt. 51. *See* Murder.

Prerogative, (from *præ*, *ante*, and *rogare*, to aſk or demand) Is a word of *large extent*, including all the rights which by law the King hath, as chief of the Commonwealth, and as intruſted with the execution of the laws. 4 *New Abr.* 149. See *Stamf. Prærog.* *c.* 1. *Co. Lit.* 90.

The nature of our conſtitution is that of a *limited monarchy*, in which the *legiſlative* power is lodged in the *King*, *Lords*, and *Commons*; but the *King* is intruſted with the executive part, and from *him* all juſtice is ſaid to flow; hence he is ſtiled the head of the Commonwealth, ſupreme governor, *parens patriae*, *&c.* but ſtill HE IS TO MAKE THE LAW OF THE LAND THE RULE OF HIS GOVERNMENT; THAT BEING THE MEASURE AS WELL OF HIS POWER, AS OF THE SUBJECTS OBEDIENCE: for as the law aſſerts, maintains and provides for the ſafety of the King's royal perſon, crown and dignity, and all his juſt rights, revenues, powers and prerogatives; ſo it likewiſe declares and aſſerts the rights and liberties of the ſubject. 1 *And.* 153. *Co. Lit.* 19, 75. 4 *Co.* 124. 4 *New Abr.* 149.

Hence it hath been eſtabliſhed as a rule, that *all prerogatives muſt be for the advantage of the people*, otherwiſe they ought not to be allowed by law. *Moor* 672. *Show. P. C.* 75. 4 *New Abr.* 149.

The rights and prerogatives of the crown are in moſt things as ancient as the law itſelf; for though the ſtat. 17 *Ed.* 2. *c.* 1. commonly called the ſtatute *De praerogativa Regis*, ſeems to be introductive of ſomething new, yet for the moſt part *it is but a collection of certain prerogatives that were known law long before*: As that the King's wardſhip of lands held *in capite*, did attract the wardſhip of land held of others; that the grant of a manor did not paſs an advowſon appendant, unleſs named; that the King hath a right to eſcheats, wrecks, royal fiſhes, and many others which were *ancient* prerogatives of the crown. *Bendl.* 117. 2 *Inſt.* 263, 496. 10 *Co.* 64. 4 *New Abr.* 149.

1. *Of the commencement of the King's reign, and his prerogative as univerſal occupant.*
2. *Of the King's prerogative in eſcheats; in ſeas and navigable rivers; in ſwans and fiſh; in beacons and lighthouſes; in wreck; in coins and mines; in derelict goods, and in waifs, ſtrays and treaſure trove.*
3. *Of the King's prerogative over the perſons of his ſubjects, in reſtraining them from going abroad, and commanding them to return home.*
4. *Of the King's prerogative in relation to Civil and Eccleſiaſtical juriſdiction: in creating officers, and making war and peace.*
5. *Of the King's prerogative in relation to his debts.*

1. *Of the commencement of the King's reign, and his prerogative as univerſal occupant.*

On the death or demiſe of the King, his heir is *that moment* inveſted with the regal power, and commences his reign the ſame day his anceſtor dies; whence it is held as a maxim, that *the King never dies.* 7 *Co.* 12. in *Calvin's* caſe. 6 *Co.* 27. 7 *Co.* 30. See *Perpetuity of the King.*

The King is a *political entity:* a corporation, not ſubject to natural death, though the body of this or that perſon, holding and exerciſing the kingly office, is, like all other bodies, ſubject to diſſolution.

N. B. Diſcontinuance of proceſs by demiſe of the King, is remedied by ſtatute.

It may not be improper here to explain another maxim in law, *viz.* "That the King can do no wrong:" The King cannot miſuſe his power without the advice of evil counſellors, and the aſſiſtance of wicked miniſters. Theſe men may be examined and puniſhed. The conſtitution hath provided by means of indictments and parliamentary impeachments, that no man ſhall dare to aſſiſt the crown in contradiction to the laws of the land. But it is at the ſame time a maxim in thoſe laws, that the King himſelf can do no wrong; ſince it would be a great weakneſs and abſurdity in any ſyſtem of poſitive law, to define any poſſible wrong without any poſſible redreſs. *Black. Com.* 1 *V.* 244.

See the author's ſentiments as to the exertion (on particular occaſions) of the inherent (though latent) powers of ſociety, which no climate, no time, no conſtitution, no contract can ever deſtroy, or diminiſh.

N. B. He is treating of the glorious revolution. *Com.* 1 *V.* 245. And ſee tit. *Oppreſſion of the Crown.*

But, to proceed, as to the King's prerogative, &c.

With reſpect to the deſcent of the crown, the rules of deſcent are the ſame with thoſe that govern private inheritances, except only as to the rule of *poſſeſſio fratris;* which does not hold in the deſcent of the crown or its poſſeſſions: Neither is half blood any impediment in ſuch caſe; for *the brother of the half blood ſhall be preferred to the ſiſter, in the enjoyment of the crown,* as the moſt capable of the two, by the advantage and prerogative of his ſex.

Therefore, if the King hath iſſue a ſon and a daughter by one venter, and a ſon by another venter, and purchaſes lands and dies, and the eldeſt ſon enters, and dies without iſſue, the daughter ſhall not inherit thoſe lands, nor any other fee-ſimple lands of the crown, but *the younger brother ſhall have them* together with the crown. *Co. Lit.* 15. *b.*

As the King commences his reign *from the day of the death of his anceſtor,* it hath been held, that compaſſing his death before coronation, or even before proclamation, is compaſſing of the King's death *within* the ſtatute of 25 *Ed.* 3. *ſt.* 5. *c.* 2. he being King preſently, and the proclamation and coronation only honourable ceremonies for the further notification thereof. 3 *Inſt.* 7. 1 *Hale's Hiſt. P. C.* 101.

Every King for the time being in the *actual* poſſeſſion of the crown, is a King within the intention of the abovementioned ſtatute; for there is a neceſſity that the realm ſhould have a King, by whom and in whoſe name, the laws are to be adminiſtered; and the King in poſſeſſion, being the only perſon who either doth or can adminiſter thoſe laws, muſt be the *only* perſon who hath a right to that obedience which is due to him who adminiſters thoſe laws; and ſince by virtue thereof he ſecures to us our lives, liberties and properties, and all other advantages of government, he may juſtly claim return of duty, allegiance and ſubjection. 1 *Hawk. P. C.* 35.

All judicial acts done by *Henry* the Sixth, while he was King, and alſo all pardons of felony and charters of denization granted by him, were *valid;* but a pardon made by *Ed.* 4. before he was *actually* King, was void even after he came to the crown. 1 *Hawk.* 36.

The right heir of the crown, during ſuch time as the uſurper is in plenary poſſeſſion of it, and no poſſeſſion thereof in the heir, is *not* a King within this act; as was the caſe of the houſe of *York,* during the plenary poſſeſſion of the crown in *Hen.* 4. *Hen.* 5. *Hen.* 6. But if the right heir had once the poſſeſſion of the crown, *as King,* though an uſurper had got the poſſeſſion thereof, yet the other continues his ſtile, title and claim thereto, and afterwards re-obtains the full poſſeſſion thereof; a compaſſing the death of the rightful heir, during that interval, is compaſſing of the King's death within this act for he continued a King ſtill, *quaſi* in poſſeſſion of his kingdom; which was the caſe of *Ed.* 4. in that ſmall interval wherein *Hen.* 6. re-obtained the crown; and the caſe of *Ed.* 5. notwithſtanding the uſurpation of his uncle *Rich.* 3. 1 *Hal. Hiſt. P. C.* 104.

King *Car.* 2. was King *de facto* as well as *de jure,* from his father's death; therefore all thoſe who acted againſt and kept him out of poſſeſſion, in obedience to the powers then in being, were traitors. *Keeling* 14, 15. 1 *Keb.* 315. No perſon was in poſſeſſion of any ſovereign power known to our laws. 1 *Hawk. P. C.* 36.

By the 1 *M. ſt.* 3. *c.* 1. *ſ.* 3. "The kingly office of this realm, and all prerogative, royal power, authorities, and juriſdiction thereunto annexed, being inveſted in either male or female, are as abſolutely inveſted in the one as the other."

By 1 *W. & M. ſt.* 2. *c.* 2. *ſ.* 9. "Every perſon who ſhall be reconciled to, or hold communion with, the ſee or church of *Rome;* or ſhall profeſs the popiſh religion; or ſhall marry a papiſt, ſhall be incapable to inherit or enjoy the crown, and in ſuch caſe the people ſhall be abſolved of their allegiance, and the crown ſhall deſcend to ſuch perſons, *being proteſtants,* as ſhould have inherited the ſame, in caſe the perſon ſo reconciled, &c. were dead."

And by *ſect.* 10. "Every King and Queen, who ſhall come to and ſucceed in the crown, ſhall, on the *firſt day* of the meeting of the firſt parliament, next after coming to the crown, ſitting in the throne in the houſe of peers, in the preſence of the lords and commons, or at the coronation, before ſuch perſon as ſhall adminiſter the coronation oath, at the time of taking the oath, (which ſhall firſt happen) make, ſubſcribe and repeat the declaration mentioned in the ſtatute 30 *Car.* 2. *ſtat.* 2. for preſerving the King's perſon and government, by diſabling papiſts from ſitting in either houſe of parliament."

The King, *as King,* cannot be a minor; ſo that grants, leaſes, &c. made by him, though under age, bind preſently, and cannot be avoided by him, either during his minority, or when he comes of age; for the politic rules of government have thought it neceſſary, that he who is to govern the kingdom, ſhould never be conſidered as a minor incapable of governing his own affairs. *Dyer* 209. *pl.* 22. *Plowd.* 209. *Co. Lit.* 43. 5 *Co.* 27. *Raym.* 90.

The King by law is *univerſal occupant,* and all property is preſumed to have been originally in the crown; and that he partitioned it out in large diſtricts to the great men who deſerved well of him in the wars, and were able to adviſe him in time of peace. Hence the King hath the direct dominion; and all lands are holden mediately or immediately from the crown. *Co. Lit.* 1. *Dyer* 154. 1 *Bendl.* 237. *Seld. Mare Clauſ'.*

If the ſea leaves any ſhore by the water ſuddenly falling off, ſuch derelict lands belong to the King; but if a man's lands lying to the ſea are increaſed by inſenſible degrees, they belong to the ſoil adjoining. *Dyer* 326. 2 *Rol. Abr.* 170.

So, if a river, ſo far as there is a flux of the ſea, leaves its channel, it belongs to the King; for the *Engliſh* ſea and channels belong to the King; and, having never diſtributed them out to ſubjects, he hath a property in the ſoil. 2 *Rol. Abr.* 170.

But if a river, in which there is no tide, ſhould leave its bed, it belongs to the owners on both ſides; for they have in that caſe the property of the ſoil; this being no original part or appendix to the ſea, but diſtributed out as other lands. 2 *Rol. Abr.* 170.

If land be drowned, and ſo continue for years; if it be after regained, every owner ſhall have his intereſt again, if it can be known by the boundaries. 8 *Co.* Sir *Francis Barrington*'s caſe.

It is ſaid, that there is a cuſtom in *Lincolnſhire*, That the lords of the manors ſhall have derelict lands; and that as ſuch it is a reaſonable cuſtom; for if the ſea waſh away the lands of the ſubject, he can have no recompence, unleſs he ſhould be intitled to what he regains from the ſea.

2. *Of the King's prerogative in eſcheats; in ſeas and navigable rivers; in ſwans and fiſh; in beacons and light-houſes; in wreck; in coins and mines; in derelict goods, and in waifs, ſtrays and treaſure trove.*

An eſcheat may be either *per defectum ſanguinis*, or *per delictum tenentis*; but it is ſaid, That in caſe of an *attainder of felony*, the eſcheat to the lord is *pro defectu tenentis*; and the not deſcending, the conſequence of the corruption of the blood; but in caſe of *treaſon*, the lands come to the crown *as an immediate forfeiture*, and not as an eſcheat. *Co. Lit.* 13, 92. *Godb.* 211.

If the King's tenant dies without heir, the lands ſhall eſcheat and revert again to the crown; but the lands holden of any other lord ſhall, for want of heirs of the tenant, eſcheat to the lord. 2 *Inſt.* 34. *Kelw.* 104. 2 *Rol. Rep.* 251. 4 *Inſt.* 224.

If lands be held of the King, *as of an honour come to him by a common eſcheat*, as the tenants dying without heir, or committing felony, theſe lands are part of the honour; otherwiſe if forfeited for treaſon, for then they come to the King by reaſon of his perſon and crown; and if he grants them over, *&c.* the patentee ſhall hold of the King in chief. 2 *Inſt.* 64.

It was found by ſpecial verdict, That the prior of *Merton* was ſeiſed of a houſe in *Southwark*, held of the archbiſhop of *Canterbury*, as of his borough of *Southwark*; and 30 *Hen.* ſurrendered it to *Hen.* 8. who granted it and other lands to *J. S.* and his heirs, to hold of him *in libero burgagio*, by fealty, for all ſervices and demands, and not *in capite*; and afterwards Queen *Mary* granted the manor and borough of *Southwark* to the mayor and commonalty of *London*; and the tenant of the meſſuage died without iſſue; and the queſtion was, whether Queen *Eliz.* or the patentees of the borough ſhould have the eſcheat; and adjudged for the Queen; for the firſt patentee of the meſſuage held it of the Queen in ſocage *in capite*, as of a ſeigniory in groſs; and the words *in libero burgagio* are meerly void; for the land out of the borough cannot be held *in libero burgagio*; and there ſhall not be ſeveral tenures, for one tenure was reſerved by the King for all; therefore of neceſſity it ſhall be a tenure in ſocage of the King. *Cro. Eliz.* 120.

The King hath the ſovereign dominion in all ſeas and great rivers, which is plain from *Selden*'s account of the ancient *Saxons* who dealt very ſucceſsfully in all naval affairs; therefore the territories of the *Engliſh* ſeas and rivers always reſided in the King. *Seld. Mar. Cl.* 251, *&c.* 1 *Rol. Abr.* 168, 169. 1 *Co.* 141. 5 *Co.* 106.

And as the King hath a prerogative in the ſeas, ſo hath he likewiſe a right to the fiſhery and to the ſoil; ſo that if a river as far as there is a flux of the ſea leaves its channel, it belongs to the King. *Dyer* 326. 2 *Rol. Abr.* 170.

Hence the Admiralty court, which is a court for all maritime cauſes or matters ariſing on the high ſeas, is deemed the King's court, and its juriſdiction derived from him who protects his ſubjects from pirates, and provides for the ſecurity of trade and navigation. 4 *Inſt.* 142. *Molloy* 66.

From the King's dominion over the ſea it was holden, that the King, as protector and guardian of the ſeas, might before any ſtatute made for commiſſions of ſewers, provide againſt inundations by lands, banks, *&c.* and that he had a prerogative herein as well as in defending his ſubjects from pirates, *&c.* 10 *Co.* 141.

But notwithſtanding the King's prerogative in ſeas and navigable rivers, yet it hath been always held, that a ſubject may fiſh in the ſea; which *being a matter of common right*, and the means of livelihood, and for the good of the commonwealth, cannot be reſtrained by grant or preſcription. 8 *Ed.* 4. 18, 19. *Bro. Cuſtom*, 46. *Fitz. Bar.* 1 *Mod.* 105. 2 *Salk.* 637.

Alſo it is held, that every ſubject of common right may fiſh with lawful nets, *&c.* in a navigable river as well as in the ſea; and the King's grant cannot bar them thereof; but the crown only has a right to royal fiſh, and that the King only may grant. 6 *Mod.* 73. 1 *Salk.* 357. *S. C. & S. P.*

The King, *as a perpetual ſign and acknowledgment of his dominion of the ſeas*, hath ſeveral creatures reſerved to him under the denomination of royal creatures, as ſwans, ſturgeons and whales; all which are natives of ſeas and rivers. 7 *Co.* 16.

It is clearly agreed, that the king *only* has a prerogative in beacons and light-houſes, and that he may erect any ſuch, and in ſuch places as will be moſt convenient for the ſafety and preſervation of ſhips, mariners and navigation; alſo it ſeems to be the better opinion, that this being for the public utility, and one of the prerogatives that he is intruſted with for the ſafety of the whole realm, he may erect ſuch beacon, *&c.* *as well in the ſoil of a ſubject as in that of the crown*; and that he may do this *without the ſubjects conſent*. 4 Inſt. 148. 12 Co. 13. Carter 90. 2 Keb. 114. 3 Inſt. 204.

Alſo it is clear, that the ſubject hath not any power to erect any ſuch beacon, *&c.* without the King's licence and authority for that purpoſe. See the authorities *ſupra* and *Carter* 90.

But by the 8 *Eliz.* it is enacted, "That the maſter, wardens and aſſiſtants of the *Trinity* houſe of *Deptford Strand*, may erect ſuch beacons, marks and ſigns for the ſea, as to them ſhall ſeem meet; whereby dangers may be avoided, and the ſhips better come to their ports; and all beacons, marks and ſigns ſo erected, ſhall be maintained at the charges of the maſter, wardens and aſſiſtants."

By the Common law the King hath an undoubted right to wrecks; and his prerogative herein is founded on the dominion he has over the ſeas; and being ſovereign thereof and protector of ſhips and mariners, he is intitled to the derelict goods of the merchant; which is the more reaſonable, as it is a means of preventing the barbarous cuſtom of deſtroying perſons who in ſhipwrecks approach the ſhore, by removing the temptations to inhumanity. *Gro. Jur. Belli* 117, 132, 141. 2 *Inſt.* 167. *Molloy* 237. *Moor* 224.

The King hath a prerogative in, and is intitled to, all royal mines of gold and ſilver, and treaſures of gold and ſilver *hid in* the earth; and is intruſted with the coinage and making money current; and he alone can bring the treaſure of any conquered country into uſe, by coining them into *his* money; and this prerogative is lodged in the King as he adminiſters juſtice to all; therefore the regulation of that which is the *common ſtandard and meaſure* of commerce is committed to his care. *Dav.* 19. 2 *Rol. Abr.* 166. 1 *Co.* 146. 5 *Co.* 114.

Alſo this prerogative is given to the King as a neceſſary conſequence of the power of war and peace; for there can be no war without the expence and conſumption of treaſure. *Plowd.* 315.

Beſides, if any other perſons had power of mines of gold and ſilver, they might by theſe immenſe treaſures grow too formidable, and wreſt that authority from the King which was depoſited in his hands only. *Plow.* 316.

All derelict goods, and *in which no man hath a property*, belong to the King as well as derelict lands; ſo of extraparochial tithes, tho' things of an eccleſiaſtical nature. *Bro.* tit. *Prærog. pl.* 12. 2 *Vent.* 267, 8. 5 *Co.* 18. 2 *Inſt.* 646.

So if a perſon dies inteſtate, and without kindred, his goods belong to the King; and herein the uſual courſe is ſaid to be for a perſon to procure the King's letters patent, and then the ordinary admits the patentee to adminiſtration. 1 *Salk.* 37.

As to goods waived, theſe belong to the King, and are *in him* without any office; becauſe *the property is not in any body,* therefore by public agreement is put out of the finder, in whom it was by the ſtate of nature, and is veſted in the King, *in recompence for his trouble in the execution of juſtice.* 5 Co. 109.

But at the Common law, the owner purſuing the felon, and the felon waiving the goods, the owner may retake them; alſo upon an appeal of felony, the owner is intitled to a writ of reſtitution; and as a farther encouragement for the proſecution of felons, by the 21 *H.* 8. *c.* 11. it is provided, that if the party comes in as evidence on the indictment, and attaint the felon, he ſhall have a writ of reſtitution awarded by the judge of aſſiſe. 4 *New Abr.* 164.

3. *Of the King's prerogative over the perſons of his ſubjects, in reſtraining them from going abroad, and commanding them to return home.*

All perſons born in any part of the King's dominions and within his protection are his ſubjects, and alſo thoſe born in *Ireland*, *Scotland*, *Wales*, the King's plantations or on the *Engliſh* ſeas; who by their birth owe ſuch an inſeparable allegiance to the King, that they cannot by any act of theirs renounce or transfer their ſubjection to any foreign prince. 7 *Co.* 1, *&c.* *Calvin*'s caſe. *Molloy* 370. *Co. Lit.* 129. *Dyer* 300. See *Aliens.*

All the ſubjects of a foreign prince coming into *England*, and living under the protection of our King, may, in reſpect of that *local* ligeance which they owe him, be guilty of high treaſon, and indicted that they *contra dominum regem* (the words *naturalem dominum ſuum* being omitted) did compaſs *&c.* *contra ligeantiæ ſuæ debitum*; and it is ſaid, that even an ambaſſador committing treaſon againſt the King's life, may be condemned and executed here, and that for other treaſons he ſhall be ſent home. 3 *Inſt.* 4, 5. *Dyer* 145. *Salk.* 630. 1 *Hawk. P. C.* 35. 1 *Hal. Hiſt. P. C.* 59.

But aliens who in an hoſtile manner invade the kingdom, whether their King were at war or peace with ours, and whether they come by themſelves, or in company with *Engliſh* traitors, cannot be puniſhed *as traitors*, but ſhall be dealt with by martial law. 1 *Hawk. P. C.* 35.

If the King makes a new conqueſt of any country, the perſons *there born* are *his* ſubjects; for by ſaving the lives of the people conquered he gains a right and property in ſuch people, and may impoſe on them what laws he pleaſes. *Dyer* 224. *Vaugh.* 281.

But until ſuch laws given *by* the conquering prince, the laws of the conquered country hold place; (unleſs where theſe are contrary to our religion, or enact any thing that is *malum in ſe*, or are ſilent;) for in all ſuch caſes the laws of the conquering country prevail. 2 *P. Will.* 75, 76.

If there be a new and uninhabited country found out by *Engliſh* ſubjects, as the law is the birth-right of every ſubject, ſo wherever they go they carry their laws with them, therefore ſuch new found country is to be governed by the laws of *England*; tho' after ſuch country is inhabited by the *Engliſh*, acts of parliament made in *England*, without naming the foreign plantations, will not bind them. 2 *P. Will.* 75. 2 *Salk.* 411.

By the Common law every ſubject may go out of the kingdom for merchandize or travel, or other cauſe, *as he pleaſes*, without any licence for that purpoſe; this appears from the ſtatute 5 *R.* 2. *cap.* 2. made to reſtrain perſons paſſing out of the realm, but excepts lords, great men and notable merchants; as alſo by the ſtatute 26 *H.* 8. *cap.* 10. which gave power to the King during his life *to reſtrain* perſons from trading to certain countries; which acts had been vain and idle, if the King by his prerogative might have done it. *F. N. B.* 85. *Dyer* 165, 296. 2 *Rol. Rep.* 12. 3 *Mod.* 131. *Stil.* 442.

But notwithſtanding this general liberty allowed by the Common law, it appears plainly that the King by his prerogative, and without any help of an act of parliament, may prohibit his ſubjects from going out of the realm; but this muſt be by ſome *expreſs* prohibition; as by laying on embargoes, which can be only done in time of danger, or by writ of *Ne exeat Regno*, which, from the words *Quamplurima nobis & coronæ noſtræ præjudicialia ibidem proſequi intendis*, appears to be a *ſtate* writ, tho' it is never granted univerſally, but to reſtrain a particular perſon, on oath made that he intends to go out of the realm; indeed *Fitzherbert* ſays, that the King may reſtrain his ſubjects *by proclamation*; and aſſigns as a reaſon for it, that *the King may not know where to find his ſubject, ſo as to direct a writ to him.* 12 Co. 33. 11 Co. 92. Fitz. N. B. 89. 2 Inſt. 54.

As the King may reſtrain any of his ſubjects from going abroad, in like manner he may command them to return home; and diſobeying a privy ſeal for *this purpoſe* is the higheſt contempt.

1ſt, It is a diſobedience to the command of the King *himſelf* directed to the party.

2dly, The command is, that he ſhall return upon his faith and allegiance, which is the ſtrongeſt compulſion that can be uſed.

3dly, The thing required by the King is the principal duty of a ſubject, *viz.* to be at the ſervice of his King and country. *Dyer* 128. *b.* *Lane* 44. *Moor* 109. 3 *Inſt.* 179.

The puniſhment for this offence is, *ſeizing the party's eſtate till he return*; and of this there are many inſtances in our books. And when he does return he ſhall be fined 1 *Hawk. P. C.* 59, 60.

William de Brittain in the 19 of *Ed.* 2. refuſing to return on the King's writ, his goods and chattels, lands and tenements, were ſeiſed into the King's hands; ſo in the caſe of *Edward* of *Woodſtock*, Earl of *Kent*, in the ſame reign. *Dyer* 128. *b.*

So in the caſe of one *Bartue*, who married the Dutcheſs of *Suffolk*, they obtained a licence from Q. *Mary* to go out of the realm, under pretence of recovering debts as executors to the Duke; when in reality it was on account of the religion eſtabliſhed by Queen *Mary*, and living with other fugitives under the protection of the Palſgrave of the *Rhine* in *Germany*, who was an eminent *Calviniſt*, were ſent to by privy ſeal; but the meſſenger, in endeavouring to ſerve them with his letters, being obſtructed and abuſed by their attendants, a certificate was made of this, and their lands and tenements ſeized. *Dyer* 176. *Jenk. Cent.* 220.

So in the caſe of Sir *Francis Engleſield*, who departed the kingdom on a licence obtained for three years; but not returning at the expiration of the three years, a privy ſeal was ſent to him by Queen *Elizabeth*, which he not obeying, and this matter being certified into Chancery by the Queen, under her ſign manual, his lands and tenements were ſeiſed in the fifth year of her reign by virtue of a commiſſion under the Great ſeal. 1 *Leon.* 9. *Moor* 109. 1 *And.* 95. S. C. See alſo 7 *Co.* 18. *Poph.* 18. 4 *Leon.* 135.

So in the caſe of Sir *Robert Dudley*, who, intending to travel, obtained a licence from *James* the Firſt to go to *Venice*; but before his departure he by indenture inrolled for valuable conſideration, as was expreſſed in the deed (but none paid) conveyed the manor of *Killingworth* with other lands to the Earl of *Nottingham* and others in fee, with a *proviſo*, that on tender of an angel of gold all ſhould be void; and with a covenant on the part of the bargainees that they ſhould make all ſuch eſtates as the ſaid Sir *Robert* ſhould appoint; the bargainees were not parties to the deed, nor had they notice of it 'till ſometime after; but afterwards they made a leaſe to Sir *Robert Lee*, to the intent that Lady *Dudley* ſhould take the profits of part of the premiſſes for ten years, if their eſtate continued ſo long unrevoked. The King, hearing that Sir *Robert* had been guilty of ſome bad practices beyond ſea, in the fifth year of his reign ſent his Privy ſeal to him, which he not obeying, the great queſtion in this caſe was, *Whether thoſe lands thus conveyed were forfeited*; and adjudged that they were, the conveyance being fraudulent as to the King. *Lane* 42, *&c.*

In theſe caſes it hath been held, that the King hath only *an intereſt in* the offender's lands, *till he return*; and that his reſtoring them is not a matter of grace but *of right*. Lane 48.

4. *Of the King's prerogative in relation to Civil and Eccleſiaſtical juriſdiction; in creating officers, and making war and peace.*

All juriſdiction exerciſed in theſe kingdoms that are in obedience to our King, is derived from the crown; and the laws, whether of a temporal, eccleſiaſtical or military nature, are called his laws; and it is his prerogative to take care of the due execution of them. Hence all judges derive their authority from the crown, by ſome commiſſion warranted by law; and muſt exerciſe it in a lawful manner, and without any *the leaſt* deviation from the known and ſtated forms. *Fleta, c.* 17. *Co. Lit.* 99. *a.* 144.

So altho' the King is the fountain of juſtice, and intruſted with the whole executive power of the law, yet he hath no power to alter the laws which have been eſtabliſhed, and are the birthright of every ſubject; for *by thoſe very laws he is to govern*; and as they *preſcribe the extent and bounds of his prerogative*, in like manner they *declare and aſcertain the rights and liberties of the people*, therefore *admit of no innovation or change* but by act of parliament. 4 *Inſt.* 164. 2 *Inſt.* 54, 478. 2 *Hal. Hiſt. P. C.* 131, 282. *Vaugh.* 418. 2 *Salk.* 510.

From the inherent right inſeparable from the King to diſtribute juſtice among his ſubjects, it hath been held, that an appeal from the *Iſle of Man* lies to the King in council, without any reſervation in the grant of the *Iſle of Man* of any ſuch right; and tho' there had been excluſive words, yet the grant muſt have been conſtrued to be void on the King's being deceived, rather than the ſubject ſhould be deprived of a right inſeparable to him as a ſubject, of applying to the crown for juſtice. 1 *P. Will.* 329.

The ſupremacy of the crown of *England* in matters eccleſiaſtical, is a moſt unqueſtionable right, which may be proved by records of undoubted authority; and tho' the pope made great incroachments on this right, yet theſe were always complained of as illegal; and thoſe incroachments are now taken off by the 25 *Hen.* 8. *cap.* 19, 20, 21. and 26 *Hen.* 8. *cap.* 1.

So that the King doth not recognize any foreign authority in this kingdom, neither do the laws of the emperor or pope of *Rome*, as ſuch, bind in the kingdom of *England*; but all the ſtrength that either the papal or imperial laws have obtained in this kingdom, is only becauſe they are and have been admitted, either by conſent of parliament, or immemorial uſage and acceptation in ſome particular courts and matters, and not otherwiſe. 1 *Hal. Hiſt. P. C.* 16.

The King is ſaid to have two juriſdictions, one temporal, the other eccleſiaſtical; the latter of which is derived from the Common law, tho' the form of the proceedings, and the coercive power exerciſed in the eccleſiaſtical courts, is after the form of the Canon and Civil law, and this being an indulgence, the judges give credit to their proceedings in matters in which they have a juriſdiction, and believe them conſonant to the law of holy church, altho' againſt the reaſon of the Common law; and if there be a *gravamen* it muſt be redreſſed by appeal. 1 *Show. Rep.* 218. 1 *Rol. Abr.* 530. 4 *Co.* 29. 7 *Co.* 42. 5 *Co.* 7. 2 *Vent.* 43.

The King, as the fountain of juſtice, hath an undoubted prerogative in creating officers, and all officers are ſaid to derive their authority mediately or immediately from him; thoſe who derive their authority from him are called the officers of the crown, and are created by letters patent; ſuch as the great officers of ſtate, judges *&c.* and there needs no ſtronger evidence of a right in the crown herein, than that the King hath created all ſuch officers time immemorial. *Dyer* 176. 2 *Roll. Abr.* 152. 4 *Co.* 32. 2 *Inſt.* 425, 540. 12 *Co.* 116. 1 *Roll. Rep.* 206. *Show. Par. Ca.* 111. 1 *Lev.* 219.

But tho' all ſuch officers derive their authority from the crown, and from whence the King is termed the univerſal officer and diſpoſer of juſtice, yet it hath been held, that he hath not the office in him to execute it himſelf, but is *only to grant or nominate*; nor can the King grant any new powers to ſuch officers, but they muſt execute their offices according to the rules preſcribed by law. *Co. Lit,* 3, 114. 2 *Vent.* 270. 4 *Inſt.* 125. 6 *Co.* 11, 12.

NEITHER CAN THE KING CREATE ANY NEW OFFICE INCONSISTENT WITH OUR CONSTITUTION OR PREJUDICIAL TO THE SUBJECT. 2 *Inſt.* 540. 2 *Sid.* 141. *Moor* 808. 4 *Inſt.* 200.

And on this foundation an office created by letters patents for the ſole making of all bills, informations and letters miſſive in the council of *York*, was unreaſonable and void. 1 *Jon.* 231.

The power of making war or peace is *inter jura ſummi imperii*, and in *England* is lodged *ſingly* in the King; tho' it ever ſucceeds beſt when done by parliamentary advice. 1 *Hal. Hiſt. P. C.* 159. 7 *Co.* 25.

A general war is of two kinds, 1. *Bellum ſolenniter denunciatum.*

2. *Bellum non ſolenniter denunciatum.* The *firſt* is, When war is ſolemnly declared or proclaimed by our King againſt another prince or ſtate, which is the moſt formal ſolemnity of a war now in uſe.

2dly, When a nation ſlips ſuddenly into a war without any ſolemnity, which happens by granting letters of marque, by a foreign prince invading our coaſts, or ſetting on the King's navy at ſea; and hereupon a real, tho' not a ſolemn war may and hath formerly ariſen; therefore to prove a nation to be at enmity with *England*, or to prove a perſon to be an alien enemy, there is no neceſſity of ſhewing any war proclaimed; but it may be averred, and ſo put upon the trial of the country, whether there was a war or not. 1 *Hal. Hiſt. P. C.* 163.

5. *Of the King's prerogative in relation to his debts.*

By 9 *H.* 3. *c.* 8. "The King nor his bailiffs ſhall levy any debts upon lands or rents ſo long as the debtor hath *goods and chattels* to ſatisfy, neither ſhall the *pledges be diſtrained* ſo long as the principal is ſufficient; but if he fail, then ſhall the pledges anſwer the debt; howbeit they ſhall have the debtor's lands and rents until they be ſatisfied, unleſs he can acquit himſelf againſt the pledges."

Goods and chattels] By order of the Common law, the King for his debt had execution of the body, lands and goods of his debtor; *this is an act of grace*, and reſtrains the power the King had before. 2 *Inſt.* 19.

Pledges be diſtrained] This act does not extend, nor was ever taken to extend to ſureties in a bond or recognizance, if they may be ſo called, *being bound themſelves equally with the principal*, as ſureties to perform covenants and agreements are in like manner; but to pledges and manucaptors only, who by expreſs words are not reſponſible, unleſs their principals become inſolvent, and ſo are conditional debtors only. And ſo the act has always been conſtrued, and the words themſelves imply as much, *Hard.* 378.

By *Stat.* 9 *Hen.* 3. *c.* 18. "The King's debtor dying, "the King ſhall be ſerved before the executor."

By this ſtatute, the King by his prerogative ſhall be preferred in ſatisfaction of his debt by the executors before any other. And if the executors have ſufficient to pay the King's debt, the heir nor any purchaſer of his lands ſhall not be charged. 2 *Inſt.* 32.

Stat. Weſtm. 1. 3 *Ed.* 1. *c.* 19. enacts, "That the ſheriff having received *the King's debt*, upon his next account ſhall diſcharge the debtor thereof, in pain to forfeit three times ſo much to the debtor, and to make fine at the King's will. And *the ſheriff and his heirs ſhall anſwer* all monies that they whom he employed receive; and if any other that is anſwerable to the Exchequer by his own hands do ſo, he ſhall render thrice ſo much to the plaintiff,

tiff, and make fine as before. And on payment of the King's debt, the ſheriff ſhall give a talley to the debtor, and the proceſs for levying the ſame ſhall be ſhewed him on demand without fee, on pain to be grievouſly puniſhed."

The King's debt] Under this word *debt* all things due to the King are comprehended, and not only debt in the proper ſenſe, but duties on things due, as rents, fines, iſſues, amercements and other duties to the King received or levied by the ſheriff; for debt in its large ſenſe ſignifies whatever a man doth owe; and *debere dicitur quia deeſt habere; debitori enim deeſt quod habet, cum ſit creditoris, maxime in caſu domini regis.* 2 Inſt. 198.

The ſheriff and his heirs ſhall anſwer] This is to be underſtood, *quoad reſtitutionem*, but not *quoad pœnam*; that is for the *civil* but not for the *criminal* part; for it is a maxim in law, *pœna ex delicto defuncti hæres teneri non debet*; and again *in reſtitutionem non in pœnam hæres ſuccedit.* 2 Inſt. 198.

Stat. 28 *Ed.* 1. *cap.* 12. enacts, "That beaſts of the plough ſhall not be diſtrained for the King's debts *ſo long as others may be found*, on ſuch pain as is elſewhere ordained by ſtatute (*viz.* by the ſtatute *de diſtrictione ſcaccarii*, 51 *H.* 3. *ſt.* 4.) And the great diſtreſſes ſhall not be taken for his debts, nor driven too far; and if the debtor can find convenient ſurety, the diſtreſs ſhall in the mean time be releaſed; and he that does otherwiſe ſhall be grievouſly puniſhed."

This is an act of grace, and on this act there lies a writ directed to the ſheriff, commanding him to receive ſurety according to this act, which if he refuſes, an attachment lies againſt him, or the party offering ſurety according to this act, if it be refuſed, may have an action againſt the ſheriff, *&c.* 2 *Inſt.* 565.

Stat. 25 *Ed.* 3. *ſtat.* 5. *cap.* 19. enables a common perſon to ſue a debtor of his (who is likewiſe a debtor to the King) to judgment, but he cannot proceed to execution, *unleſs the plaintiff gives ſecurity to pay the King's debt firſt*, and then he may take execution for his own and the King's debt too.

For otherwiſe, if without giving ſuch ſecurity, the party takes forth execution upon his judgment, and levies the money, the ſame money may be ſeized upon to ſatisfy the King's debt.

Stat. 33 *H.* 8. *c.* 39. *ſ.* 2. enacts, "That all obligations and ſpecialties concerning the King and his heirs, or made to his or their uſe, ſhall be made to his Highneſs and to his heirs, Kings, in his or their name or names, by theſe words, *domino regi*, and to no other perſon to his uſe, and to be paid to his Highneſs, by theſe words, *ſolvend' eidem domino regi haered' vel executoribus ſuis*, with other words uſed in common obligations, which obligations and ſpecialties ſhall be in the nature of a ſtatute ſtaple."

None other are to be charged, but ſuch as were liable to the bond when it was made. *Sav.* 10.

An obligation for performance of covenants is *within* this act, after the covenants are broken. 7 *Rep.* 20. *b. Hard.* 368, 442.

By *ſect.* 3. of the ſaid act 33 *Hen.* 8. *c.* 39. All ſuch obligations, the debt not being paid, ſhall come, remain, and be to the heirs or executors of the King as he ſhall appoint; and if any perſon take any obligation to the uſe of the King or his heirs, otherwiſe than as aforeſaid, he ſhall ſuffer ſuch impriſonment as ſhall be adjudged by the King or his honourable council.

Sect. 6. Coſts and damages are given to the King.

Sect. 7. Directs debts to be ſued for in proper courts.

Sect. 13. And every of the courts are impowered to ſet ſuch fines, *&c.* on perſons for their defaults, *&c.* as to the courts ſeem expedient. And all trials ſhall be by due examination of witneſſes, writings, proofs or ſuch other way as by the courts ſhall be thought expedient.

Sect. 25. And in all actions in any of the courts for any debt due to the King by reaſon of any attainder, outlawry, forfeiture, gift of the party, or by any other collateral ways or means, it ſhall be ſufficient in law to ſhew and alledge generally, that the party to whom the ſaid debt did belong, ſuch a year and day did give the ſame to the King, or was attainted, outlawed, *&c.* whereby the ſaid debt did accrue to the King; and the ſame ſhall be of the ſame effect, as if the whole matter had been declared at large according to the order of the Common law.

Sect. 26. If any ſuit be commenced, or any proceſs awarded for the King, for the recovery of any debt, then the ſame ſuit and proceſs ſhall be preferred before any perſon. And that the Lord, his heirs and ſucceſſors, ſhall have firſt execution againſt any defendant for his debt, before any perſon: ſo always that the King's ſuit be commenced, or proceſs awarded for the debt, at the ſuit of the King, his heirs or ſucceſſors, before judgment given for the other perſon.

This ſtatute abridges the *prerogative*, and controuls the Common law; and here is a negative implied, tho' the ſtatute ſounds in the affirmative; for it enacts a new thing, and the *ita quod* makes a condition precedent and a limitation: And the words are introductive. *Hard.* 27.

Strange Arg. ſaid That on this act he took it, the ſuit muſt be ſaid to be *then* taken or commenced when the firſt ſtep is made towards the proceeding to execution, and the firſt ſtep to be taken is to procure a *fiat* of a baron, and then it is in fact that the proceſs is awarded. *G. Eq. R.* 222.

Sect. 27. All manors, lands, tenements, poſſeſſions and hereditaments, which be, or that hereafter ſhall be, in the hands, poſſeſſion, occupation, or ſeiſin of any perſon, to whom the manors, *&c.* have heretofore or hereafter ſhall deſcend, revert or remain in fee-ſimple or in fee-tail, general or ſpecial, by, from, or after the death of any anceſtor as heir, or by gift of his anceſtors whoſe heir he is, which anceſtor was, is, or ſhall be indebted to the King or to any perſon to his uſe, by judgment, recognizance, obligation or other ſpecialty, the debt whereof is or ſhall not be paid; then in every ſuch caſe the ſame manors, *&c.* ſhall be chargeable for payment of the debt.

All manors] *A.* ſeiſed of the manor of *F.* in conſideration of a marriage to be had between *B.* his ſon and *M.* daughter of *J. S.* covenanted to levy a fine to the uſe of himſelf and wife for their lives, remainder to the uſe of *B.* and *M.* and the heirs of their bodies with remainders over; afterwards *A.* acknowledged a recognizance to the Queen and died. His wife died; *the manor is extended for the Queen's debt*, by force of the ſtatute. It was argued by *Coke*, that the manor is not chargeable by the ſtatute; but it was made for the King's benefit in two points. 1. To make lands intailed liable for the King's debts, where they were not ſo before, againſt the iſſue. 2. To make bonds taken by the officers of the King to the uſe of the King, as effectual as ſtatutes; that the words *(was or ſhall be indebted)* ſhall not be intended after the gift made; that *(ſhall be)* is to be intended of *future* debts after the ſtatute, whereas at the time of the ſettlement *A.* was not receiver or other officer to the Queen; the words are *(by gift after the debt acknowledged to the Queen)*: that this caſe is not within the ſtatute; for the words are *(of the gift of his anceſtor)* but here *B.* has not the manor of the gift of *A.* but rather by the ſtatute of uſes, and ſo he is in the *poſt*, and not in the *per*, by his anceſtor; for the fine was levied to divers perſons to the uſes aforeſaid, nor was the gift a meer gratuity, but in conſideration that he ſhould marry the daughter of *J. S.* and *the debt accrued not till after the gift.* He admitted that had there been any fraud in the caſe, or any purpoſe in *A.* when he made the conveyance, to become the King's debtor or officer, it would be within the ſtatute, and the gift had been a meer gratuity, *&c.* and afterwards (as *Coke* reported) *B.* and his lands were diſcharged. 2 *Le.* 90, 91.

Shall be indebted] This is intended an *immediate* debt, and not ſuch debts as are due to the ſubject and accrue to the King by any collateral means; for which this ſtatute has a clauſe for the writ and general manner and form of pleading in ſuch caſes, of the part of the King for the recovery of them, that the party ſuch a year and day, *&c.* (which ſee at *ſ.* 25. above.) So that the ſeveral manners of penning theſe two branches manifeſt the intention of the makers of the act to prefer *immediate* debts due to the King by judgment, *&c.* before debts of the ſubject which accrue to the King by aſſignment, attainder, outlawry, *&c.* and the reaſon was, becauſe debts due immediately to the King by judgment, recognizance, obligation, or other ſpecialty, are in their nature more high, and may be better known, and upon ſearch found, than debts due to ſubjects. 7 *Rep.* 2. *a. Jenk.* 226. *pl.* 99. S. P. But for ſuch debts the King is left at Common law. If the King's debtor, officer or accountant has leaſes for years or goods; theſe leaſes and goods are not liable if the debtor ſold them *bona fide:* But if he ſold them by *covin* it is otherwiſe. If land be purchaſed with the King's money, it is liable to ſatisfy the King.

The debt ought to be *immediately* to the King himſelf, or if it be to any *other* than to the King, it ought to be *originally to the uſe of* the King. 7 *Rep.* 22. *a.*

If tenant in tail becomes indebted to the King, unleſs it be by *judgment, recognizance, obligation* or other *ſpecialty,* and dies, the lands in the ſeiſin of the iſſue in tail by force of this act ſhall not be extended by this act for ſuch debt; for the ſtatute extends only to the ſaid four caſes, and all other debts remain at Common law. 7 *Rep.* 21. *b.*

The *iſſue in tail* (the land being in his hands) is alſo liable in either of the ſaid four caſes, but not the *bona fide alienee* of the iſſue; for the words of the ſtatute do not extend to this *alienee;* the Common law did not help the King in theſe caſes; the ſtatute helps the King in the caſe againſt the *iſſue in tail. Jenk.* 226. *pl.* 99. S. P. *Ibid.* 285. *pl.* 19.

The *iſſue in tail* ſhall not be charged by this ſtatute for the penalty on a conviction of recuſancy of the tenant in tail by proclamation, by the ſtatute 29 *Eliz. c.* 6. but otherwiſe it had been if he had been convicted by the 23 *El. c.* 1. 1 *Rol. Rep.* 94.

In every ſuch caſe] By the expreſs purview of this act, the land ſhall be *ſolely extended* as long as it is in the poſſeſſion or ſeiſin of the heir in tail; for this act ſays, *That in every ſuch caſe the land ſhall be charged*, And as the land againſt the iſſue in tail was not extendable before this act, the King has benefit to extend it in the poſſeſſion of the heir in tail, which he could not do before; but *the King cannot extend the lands of the alienee*; for the ſtatute does not extend to this, and the makers of the act have reaſon to favour the purchaſers, farmers, *&c.* of the heir in tail, more than the heir himſelf; for *they are ſtrangers to the debts* of tenant in tail, and they come to the land on good conſideration. 7 *Rep.* 21. *b.*

The ſame manors] If the *goods and chattels* of the King's debtors be ſufficient, and ſo can be made appear to the ſheriff, whereupon he may levy the King's debt, then the ſheriff ought not to extend the *lands* of the debtor or his heir, or of any purchaſer or tenant. 2 *Inſt.* 19.

Sect. 28. The King ſhall not be excluded to demand his debts againſt any of his ſubjects, *as heir* to any perſon indebted to his Highneſs or to his uſe, albeit this word *heir* be not comprized in ſuch recognizance or ſpecialty, or that ſuch perſons ſhall ſay, that they have not any hereditaments to them deſcended, but only ſuch as be intailed or given to them by their anceſtors.

By this clauſe the intent of the makers of the act appears, that the *heir in tail* ſhall be *only* charged with the debt of the King; but lands in fee-ſimple were extendable at the Common law in whatever hands they came, therefore as to them this ſtatute was only *declarativum antiqui juris:* But as to the eſtates in tail, it was *introductivum novi juris* againſt the iſſue in tail. 7 *Rep.* 21. *b.*

One *P.* was indebted to the Queen, and one *W.* was bound to *P.* in 100 *l.* in which obligation *W.* did not mention *his heirs*; *P.* aſſigned the obligation in which *W.* was bound to him, to the Queen, and on this proceſs was made againſt the *heir* of *W.* And it was held by the court, that as *W.* did not oblige himſelf and *his heirs*, that the *heir* by the death of the father was diſcharged: And if the aſſignment had been made in the life-time of the father, and then the father had died, the *heir* ſhould be diſcharged, but the ſon may be charged as *executor* or *adminiſtrator, &c.* Sav. 2.

Sect. 29. Provided, That the King may at his liberty demand his debts of any *executors* or *adminiſtrators* of any perſon indebted, if the executors, *&c.* have aſſets.

J. S. was *obliged* to Sir *Richard Cavendiſh*, Treaſurer of the Chamber to *Henry* VIII. in 100 *l.* who was indebted to the King, on which proceſs was made againſt thoſe who were *tertenants* of *J. S. tempori confectionis ſcripti præd'* made to the ſaid Sir *Richard. Per Manwood* Ch. B. The *tertenants* are not chargeable in this caſe, but the *heirs* and *executors. Per Shute* ſecond Baron, If an obligation be made *to the King*, it ſhall be *of the ſame nature as a ſtatute ſtaple* to all intents, by this ſtatute; but obligations made *to other perſons to the uſe of the King, ſhall be executory againſt the obligor*, his *heirs, executors* or *adminiſtrators*, and not againſt other perſons, but if *J. N.* be bound to *J. S.* and *J. S.* aſſigns this to Sir *Richard Cavendiſh*, and he *over* to the King, no proceſs ſhall be made thereon, to which the court and all the clerks agreed. And it was held, that if *obligor*, after the obligation made, *voluntarily makes feoffment of lands*, ſuch *feoffees* ſhall be charged; otherwiſe it is of *purchaſers* before the obligation made in caſe of the King. *Sav.* 12.

Sect. 30. If the hereditaments be evicted out of the poſſeſſion of ſuch perſons by juſt title without fraud, whoſe hereditaments ſhall be chargeable as is aboveſaid; then ſuch hereditaments ſhall be acquitted of the debts.

B. was indebted to the Queen, for the payment of which debt certain lands, of *B.* at the time of the debt, were purchaſed by one *W.* againſt whom and one *C.* and *D.* the ſaid *B.* exhibited his bill in the Exchequer-chamber, praying, that the equity of the caſe might there be examined. Before any anſwer made *W.* payed the debt, and then demanded judgment if the court would hold further plea, as the cauſe of privilege was determined, which is the debt due to the Queen. And it was held, that on this reaſon the court ought to diſmiſs the cauſe, and ſo it was done. *Sav.* 15.

Sect. 31. If any perſon of whom any ſuch debt ſhall be demanded, ſhew ſufficient matter, in law, reaſon, or good conſcience, why ſuch perſons ought not to be charged with the ſame, and it be ſufficiently proved, the courts have power to allow the proof, and acquit all perſons ſo impleaded.

Sufficient matter in law] This *proviſo* gives benefit not only to him who has matter in good conſcience, but alſo to him who has good and ſufficient cauſe, and matter in law, reaſon (and then comes) good conſcience; and without queſtion the firſt words, *viz. cauſe* and *matter in law*, ſhall extend to all the debts of the King, and proceſs thereupon, as well at Common law as on this act. And the concluſion of the branch does not make againſt it. For the ſenſe thereof was, that he ſhould plead matter in law or good conſcience, and that nothing contained in the act ſhould be an impediment thereto. 7 *Rep.* 19. *b.*

Scire facias iſſued againſt Sir *W. H. as heir*, to M. H. his father, on a recognizance acknowledged to *Edward* VI. by the ſaid *M. H.* the ſheriff returned *ſcire feci*, and on his default judgment was given. And becauſe in truth he never was ſummoned, and had good matter, if he had had notice thereof, to plead in diſcharge of the recognizance acknowledged, all which he ſhewed in certain in a bill in the Exchequer; upon which, on conference had by *Manwood* and the other Barons, with the two Ch. J. he was diſcharged of the recognizance. 7 *Rep.* 20. *a.* As 3 *Rep. Trin.* 37 *Eliz.* Sir *William Herbert*'s caſe.

In law, reaſon or good conſcience] *A.* obtained of the King a privy ſeal, whereby the forfeiture of certain recognizances for appearing at the ſeſſions, amounting in the whole to 800 *l.* was granted her. And it was made a queſtion, Whether the court might compound thoſe forfeitures by virtue of their privy ſeal which was granted *before* the privy ſeal and grant to *A.?* And it was doubted whether the privy ſeal did not take away and revoke the power given to the court in this particular? But it was held clearly, that the court might upon good matter *in equity* diſcharge theſe debts by virtue of this ſtatute. And the caſe in queſtion ſeemed a hard caſe to the court, becauſe the party himſelf was the cauſe why there was no appearance, by beating the party ſo heinouſly the very day before they ought to have appeared, that they were diſabled thereby to appear. *Hard.* 334.

W. put 100 *l.* out at intereſt to defendant, and took bond in the name of one *J.* who became *felo de ſe*, and the plaintiff was relieved againſt the King on this truſt, in equity upon this ſtatute. *Sed quære,* Whether this ſtatute extends to any equity *againſt* the King, otherwiſe than in caſe of pleas by way of diſcharge? But it was likewiſe decreed in this cauſe that the plaintiff ſhould be ſaved harmleſs from all others. *Hard.* 176.

[*And the matter ſo ſhewed be ſufficiently proved*] *Scire facias* iſſued againſt *T.* the father and *T.* the ſon, to ſhew cauſe wherefore they did not pay the King 1000*l.* for the meſne profits of certain lands holden by them from his Majeſty, for which land judgment was given for him in the Exchequer, and the meſne rates were found by inquiſition, which returned that the ſaid meſne profits came to 1000*l.* upon which inquiſition this *ſcire facias* iſſued; whereupon the ſheriff returned that *T.* the father was dead, and *T.* the ſon appeared, and pleaded that he took the profits but *as a ſervant to his father,* and *by his command,* and *rendered an account to his father for the profits,* and alſo the judgment for the lands was given againſt his father and him for default of ſufficient pleading, and not for the *truth* of the fact; and he ſhewed this ſtatute, which he pretended *aided him* for his equity: Whereupon the King demurred. *Tanfield* Ch. B. ſaid, that the matter in equity ought to be ſufficiently proved, and here is nothing but the allegation of the party, and the demurrer for the King; and if the demurrer be in law an admittance of the allegation, and ſo a ſufficient proof within the ſtatute, is to be adviſed on; and for that point the caſe is but this: A *ſcire facias* iſſues to have execution of a recognizance, which, within this act, ought by pretence and allegation of the defendant to be diſcharged for matter in equity, and the defendant pleads his matter in equity, and the King, ſuppoſing this not to be equity within this ſtatute, demurs in law, whether that demurrer be an inſufficient proof of the allegation within the ſtatute or not? *Adjornatur.* *Lane* 51.

Sect. 33. This act ſhall not take away any liberties belonging to the dutchy and county palatine of *Lancaſter.*

Sect. 34. Proceſs and executions for debts in the court of Exchequer ſhall be made in the Exchequer by ſuch officer as hath been uſed, as by this act is limited.

13 *Eliz. cap.* 4. *ſect.* 1. enacts, That all the lands, *&c.* which any accomptant of the Queen, her heirs and ſucceſſors, hath while he remains accountable, ſhall for the payment of the debts of the Queen, her heirs and ſucceſſors, be liable, and put in execution in like manner, as if ſuch accomptant had ſtood bound by writ obligatory (having the effect of the ſtatute-ſtaple) to her Majeſty, her heirs and ſucceſſors, for payment of the ſame.

The Queen by her letters patents, granted *catalla utlegatorum & felonum de ſe,* within ſuch a precinct; one who was indebted to the Queen is *felo de ſe* within the precinct. It was ruled, that notwithſtanding the grant by the letters patents, the Queen ſhall have the goods for ſatisfying her debt. 3 *Le.* 113. *Mo.* 126, 127. S. C. between *The Queen* of the firſt part, the *Biſhop of Sarum* of the ſecond part, and *Oliver Coxhead* of the third part; and there *per Manwood* Ch. B. the patent does not extend to have the goods of *felo de ſe* againſt the Queen for her debt, becauſe it wanted the words *(licet tangat nos;)* but he agreed, that if the lands of the felon be liable to [*ſufficient to anſwer*] all the debt of the Queen, the court may in diſcretion take all the lands in extent, and leave the goods to the patentee. And as to a petition of *Coxhead* praying a diſcharge of the lands, *&c.* by him purchaſed of the *officer debtor* to the Queen, it was anſwered, that the land was ſubject to the Queen's extent for all arrears of receipts by his office received before the conveyance thereof, though the recipt be *after* the conveyance, and that by reaſon of the ſtatute; but as to *another office accepted after the conveyance* of the land, the arrears of that ſhall not charge the land ſo conveyed.

B. L. having purchaſed a long term for years in houſes, afterwards purchaſed the inheritance; afterwards he became receiver of *North Wales,* and having occaſion for 500*l.* aſſigned over the term by way of mortgage to *J. S.* Afterwards on the marriage of *E. L.* his ſon, he ſettled the houſes in *St. Clement's (inter alia)* on himſelf for life, remainder to *E. L.* his ſon, and the heirs of his body. There was iſſue of the marriage a daughter, the wife of *P.* after this *B. L.* mortgages theſe houſes to *N.* for 1800*l.* The King extends theſe houſes for the debt of *B. L.* *N.* gets an aſſignment of the extent, and a privy ſeal for the debt. Reſolved, 1ſt, That, by the ſtatute of *Elizabeth,* the land and the real eſtate of *B. L.* was bound and ſtood liable to anſwer the King's debt, although he was not actually a debtor to the King, nor any extent againſt him in ſeveral years after. 2dly, That where a term is attendant on the inheritance, he ſhall have *a right* to the term; but if it be a term in groſs, and aſſigned before any *actual* extent, the aſſignment will ſtand good, and the term not liable to the King's debt. 2 *Vern.* 389, 390.

Sect. 2, 3. If either of the Queen's officers, on rendering of his account, ſhall be found in arrear, and ſuch arrears ſhall not be paid within ſix months after the account paſt, the Queen, *&c.* may ſell ſo much of his eſtate as will anſwer the debt, and the overplus of the ſale is to be rendered to the accomptant or his heirs, by the officer that receives the purchaſe money, withour further warrant.

Upon this ſtatute many queſtions were moved. 1ſt, If the debtor died, whether the land might be ſold? 2dly, When the account is determined after his death? 3dly, When the accountant, after becoming debtor, and in arrear, makes feoffment, or other eſtate over, or charges or incumbers the land, either to his iſſue, or others of his blood, to prevent the Queen's ſelling, or on other conſideration, whether ſhe may ſell the land, the words of the act being make ſale, *&c.* of ſo much of the lands, *&c.* of every ſuch accountant or debtor ſo found in arrear, *&c.* and that the ſale ſhall be good and available in law againſt the party accountant, and his heirs claiming as heirs. 4thly, If the accountant was ſeiſed of land in tail, whether this land might be ſold to be good againſt the iſſue; for the ouſting of which doubts the ſtatute of 27 *Eliz. cap.* 3. was made, but this gives remedy *only,* that the land ſhall be ſold after the death of the debtor, and when the account is made after his death, therefore to remedy the other miſchiefs, the ſtatute 29 *Eliz. cap.* 7. was made [But the ſame being only a temporary act is expired.] *Mo.* 646, *&c. pl.* 895. *Anon',* [where part of the laſt mentioned act is ſet forth and explained.]

Sect. 5. If ſuch accountant or debtor purchaſe lands in *others* names in truſt for their uſe, that being found by office or inquiſition, thoſe lands alſo ſhall be liable to ſatisfy the debt in ſuch manner as before is expreſſed.

Sect. 6. Lands purchaſed by accountants ſince the beginning of the Queen's reign, either in their own names, or in the names of others in truſt for their uſe, ſhall be alſo liable to be ſold for the diſcharge of their debts as aforeſaid, rendring the overplus to the accountant.

Sect. 9. Provided, That biſhops lands ſhall be only chargeable for ſubſidies or tenths, as they were before making this act, and not otherwiſe.

Sect. 10. Neither ſhall this act extend to charge any accountant whoſe yearly receipt exceeds not 300*l.* otherwiſe than as he was lawfully chargeable before this act.

Sect. 11, 12. Neither ſhall this act extend to ſuch accountants, as by order of their offices, and charge, immediately after their accounts paſt, are to lay out money again; ſuch as are treaſurers of war, garriſons, navy, proviſion of victuals, or for fortifications or buildings, and the maſter of the wardrobe; unleſs the Queen, *&c.* command preſent pay.

Sect. 13. Neither does this act extend to ſheriffs, eſcheators or bailiffs of liberties, concerning whoſe accounts the courſe remains the ſame as before.

Sect. 14. Lands bought of an accountant *bona fide,* and without notice of any fraudulent intent in the accountant ſhall be diſcharged; and if they be bound by office, yet ſhall they on traverſe be diſcharged without livery, *ouſter le main* or other ſuit.

If a man is receiver to the King, and not indebted, but is clear and ſells his land, and ceaſes to be receiver, and afterwards is appointed receiver again, and then a debt is contracted with the King, the former ſale is good. 2 *Mod.* 247.

Sect. 15. The Queen, *&c.* being ſatisfied by ſale of lands, the ſureties ſhall be diſcharged for ſo much, and if any yet remain unpaid, the ſureties ſhall pay the reſidue rateably according to their abilities.

By 27 *Eliz. cap.* 3. *ſect.* 2. The Queen, *&c.* may make ſale of the accountant's lands, *&c.* as well after his death as in his life-time, and as well where the account is made, and the debt *known* within eight years *after* his death, as where the account is made, and the debt known in his life-time.

Sect. 3. Provided, that after the accountant's death, and before the lands be ſold, a *ſcire facias* ſhall be awarded to garniſh the heirs, to ſhew cauſe why lands, *&c.* ſhould not be ſold, *&c.* whereupon, if the heir, upon ſuch garniſhment or two *nihils* returned, do not prove that the executors or adminiſtrators of the accountant have ſufficient, then ten months after ſuch two *nihils* or garniſhment returned, the land, *&c.* ſhall be ſold and diſpoſed according to the ſtatute of 13 *Eliz. cap.* 4.

Sect. 4. Nevertheleſs, the heir's ſale *bona fide* upon good conſideration before the *ſcire facias* awarded, ſhall be good to him who is not conſenting to defraud the Queen, *&c.*

Sect. 5. This ſtatute ſhall extend to all officers of receipts and accounts to her Majeſty, and to no other.

Sect. 6. If the debt grow in the courts of the dutchy of wards, a Privy ſeal ſhall iſſue out againſt the heir to appear at a certain day, to ſhew cauſe, *&c.* when, if he appear not, on affidavit made that it was duly ſerved, an attachment *with proclamation* ſhall iſſue againſt him, to be proclamed in ſome *open* market in the county where he dwelt twenty days (at leaſt) before the return thereof, whereupon, if he appear not, the lands, *&c.* ſhall be ſold and diſpoſed as aforeſaid.

Sect. 7. The heir's land ſhall not be ſold *during his minority*; but at any time within eight years after his full age they ſhall be liable as aforeſaid.

For more learning concerning the King's prerogative, ſee 4 New Abr. *and* 16 & 17 Vin. Abr. *tit.* Prerogative. And ſee alſo *Blackſtone's Commentaries*, 1 & 4 *V.* where this *ſubject* is treated, with great judgment, and ingenuity.

Prerogative court, *(Curia prærogativa Archiepiſcopi Cantuarienſis)* Is the court wherein all wills are proved, and all adminiſtrations taken which belong to the Archbiſhop by his *prerogative*; that is, in caſe where the deceaſed had goods of any conſiderable value out of the dioceſe wherein he died; and that value is ordinarily 5 *l.* except it be otherwiſe by compoſition between the Archbiſhop, and ſome other Biſhop, as in the dioceſe of *London* it is *ten* pounds: And if any contention grow between two or more, touching ſuch will or adminiſtration, the cauſe is properly decided in this court. The Judge whereof is termed *Judex curiæ* Prærogativæ *Cantuarienſis*, the Judge of the *Prerogative court of* Canterbury.

The Archbiſhop of *York* hath alſo the like court, which is termed his *Exchequer*, but inferior to this in power and profit. 4 *Inſt.* 335. As to the *Prerogative of the Archbiſhop of Canterbury or York, Prærogativa Archiepiſcopi Cantuarienſis ſive Eboracenſis)* See the book, intituled, *De Antiquitate Britannicæ Eccleſiæ Cantuarienſis Hiſtoria*, eſpecially the eighth chapter, *pag.* 25. *Cowell.*

Presbyter, A prieſt, elder, or honourable perſon. *Iſidore, lib.* 7.

Presbyterium, A *Preſbytery*; or that part of the church where divine offices are performed, applied to the choir or chancel, becauſe it was the place appropriated to the biſhop, prieſts and other clergy, while the laity were confined to the body of the church. *Mon. Ang. Tom.* 1. *pag.* 243.

Presbyterian, A ſectariſt, or diſſenter from the church. 13 *Car.* 2. See *Black. Com.* 4 *V.* 53.

Preſcription, *(Præſcriptio)* Is a title acquired *by uſe and time*, and allowed by law; as when a man claims any thing, becauſe *he, his anceſtors, or they whoſe eſtate he hath, have had or uſed it all the time, whereof no memory is to the contrary*: Or it is where for continuance of time, *ultra memoriam hominis*, a particular perſon hath a particular right againſt another. *Kitch.* 104. *Co. Lit.* 114. 4 *Rep.* 32.

Preſcriptions are properly perſonal, therefore are always alledged in the perſon of him who preſcribes, *viz. That he, his anceſtors, or all thoſe whoſe eſtate he hath, &c.* or of a body politic or corporation, *they and their predeceſſors, &c.* Alſo a parſon may *preſcribe*, *quod ipſe & prædeceſſores ſui*, and all they whoſe eſtate, *&c.* for there is *a perpetual eſtate*, and *a perpetual ſucceſſion*, and *the ſucceſſor hath the very ſame eſtate which his predeceſſor had*, which continues, though the perſon alters, like the caſe of anceſtor and heir. 3 *Salk.* 279.

There is a difference between *preſcription, cuſtom*, and *uſage*.

Preſcription hath reſpect to a certain perſon, who *by intendment* may have continuance *for ever*; as for inſtance; he and all they *whoſe eſtate he hath* in ſuch a thing, this is a *preſcription*: But

Cuſtom is local, and always applied to a *certain place*, as *time out of mind there has been ſuch a cuſtom in ſuch a place, &c.* And *preſcription* belongeth to one or a few only; but *cuſtom is common to all*:

Uſage differs from both, for it may be either to *perſons* or *places*; as to *inhabitants of a town, to have a way, &c.* 2 Nelſ. Abr. 1277.

A *cuſtom* and *preſcription* are in *the right*; *uſage* is *in poſſeſſion*; and a *preſcription* that is good for the matter and ſubſtance, may be bad by the manner of ſetting it forth; but where that which is claimed *as a cuſtom*, in or for many, will be good, *that* regularly will be ſo when claimed by *preſcription* for one. *Godb.* 54.

Preſcription is to be *time out of mind*; though it is not the length of time, that begets the right of *preſcription*, nothing being done by time, although every thing is done in time, but *it is a preſumption in law, that a poſſeſſion cannot continue ſo long quiet, if it was againſt right, or injurious to another.* 3 Salk. 278.

A *preſcription* cannot be annexed to any thing but *an eſtate in fee*, which *muſt be ſet forth*; but it is *always* applied to *incorporeal* inheritances, one cannot make title to land by *preſcription*; but only to rent, or profit out of land. 2 *Mod.* 318. 4 *Rep.* 31.

A perſon may make title by *preſcription*, to an office, a fair, market, toll, way, water, rent, common, park, warren, franchiſe, court-leet, waifs, eſtrays, *&c.* But nothing may be *preſcribed*, which cannot be raiſed by grant, and a *preſcription* muſt not be laid in an uncertainty; no perſon can *preſcribe* againſt an act of parliament, or againſt the King where he hath a certain eſtate and intereſt, againſt the public good, religion, *&c.* Nor can one *preſcription* be pleaded againſt another, *unleſs the firſt is anſwered or traverſed*; or where one may ſtand with the other. *Lutw.* 381. *Raym.* 232. 2 *Rol. Abr.* 264. 2 *Inſt.* 167. 7 *Rep.* 28. *Cro. Car.* 432. 1 *Bulſt.* 115. 2 *Lil.* 346.

Tenants in fee-ſimple are to preſcribe in their *own* name, and tenants for life or years, *&c.* though they may not *preſcribe* in their own names, yet they may in the name of *him* who hath fee: and where a perſon would have a thing that lies in *grant* by *preſcription*, he muſt *preſcribe* in himſelf and his anceſtors, *whoſe heir he is by* DESCENT; not in himſelf, and thoſe whoſe eſtate, *&c.* (unleſs the *que eſtate* is but *a conveyance* to the thing claimed by *preſcription*;) for he cannot have their eſtate that lies in grant *without deed*, which ought to be ſhewn to the court. *Co. Lit.* 113. *Wood's Inſt.* 297.

A copyholder, *by reaſon of the baſeneſs of his tenure*, cannot lay a *preſcription* in himſelf and his anceſtors; but he may *preſcribe* in the name of the lord of the manor, that the lord and his anceſtors have had common, *&c.* for themſelves and tenants, *&c.* And this ſerves where perſons cannot *preſcribe* in their own name, or of any certain perſon.

Pariſhioners cannot generally *preſcribe*, but *they may alledge a cuſtom*; and inhabitants may *preſcribe* in a matter of *eaſement*, way to a church, burying place, *&c.* 2 *Saund.* 325. 1 *Lev.* 253. *Cro. Eliz.* 441. *Cro. Car.* 419. 2 *Rol.* 290.

To lay a *preſcription* for common, a man muſt ſhew, that he and his anceſtors, or all thoſe whoſe eſtate he hath, have time out of mind had and uſed to have common of paſture in ſuch a place, *being the land of another*, *&c.* And as a *preſcription* is a title or claim of *a real intereſt* or profit in the land of *another perſon*, it muſt be pleaded according to certain rules; and they are not like cuſtoms, or improper *preſcriptions*, that are by way of *diſcharge*, or for *eaſements*, or for matters of *perſonal exemption* or *privilege*. Wood's Inſt. 298, 299.

A *preſcription* may be laid in ſeveral perſons, where it tends only to matters of *eaſement* or *diſcharge*; though not where it goes to matter of *intereſt* or *profit in alieno ſolo*, for that is *a title*, and *the title of one doth not concern the other*; therefore ſeveral men having ſeveral eſtates, cannot join in making a *preſcription*. 1 Mod. 74. 3 Mod. 250.

The word *eaſement* is a genus to ſeveral ſpecies of liberties, which one may have in the ſoil of *another*, without claiming any *intereſt* in the land itſelf; but where the thing was ſet forth in a *preſcription* to catch fiſh in the water of another, *&c.* and no inſtance could be given of a *preſcription* for ſuch a liberty by the word *eaſement*, a rule was made to ſet the *preſcription* right, and to try the merits. 4 *Mod.* 362.

In treſpaſs for breaking the plaintiff's cloſe, the defendant *preſcribed*, that the inhabitants of ſuch a place, time out of mind, *had uſed to dance there*, *at all times of the year*, *for their recreation*, and ſo juſtified; iſſue being taken on this *preſcription*, defendant had a verdict; it was objected againſt it, that a *preſcription* to dance in the freehold of another, and ſpoil his graſs was *ill*, eſpecially as laid in the defendant's plea, *viz. At all times of the year*, and not at *ſeaſonable* times, and for all the inhabitants; who, though they may *preſcribe* in eaſements which are neceſſary, as a way to a church, *&c.* they cannot in eaſements *for pleaſure* ONLY: But adjudged, that the *preſcription* is good, *iſſue being taken on it*, and found for defendant; although *it might have been ill on demurrer*. 1 Lev. 175. 2 Nelſ. 1280.

A *cuſtom* that the farmers of ſuch a farm *have always found ale*, *&c.* to ſuch a value *at perambulations*, was held *naught*; becauſe it is no more than a *preſcription* in occupiers, which is not good in matter *to charge the land*. 2 Lev. 164.

Preſcription by the inhabitants of a pariſh *to dig gravel* in ſuch a pit, the ſoil of *W. R.* it was doubted whether this was good or not, though *it was to repair the highway*; but the inhabitants may *preſcribe* for *a way*, and *by conſequence for* NECESSARY MATERIALS *to repair it*. 2 Lutw. 1346. *Sed. q.* and ſee *Gateward*'s caſe. 6 *Co.* 60. Where preſcription for common for every inhabitant of an ancient meſſuage in a pariſh is held not to be good.

Defendant pleaded, that within ſuch a pariſh, all occupiers of a certain cloſe *habent, & habere conſueverunt*, a way leading over the plaintiff's cloſe, to the defendant's houſe; this was held ill, for it is not like a *preſcription* to a way to the church or market, which are neceſſary, *& pro bono publico*. 2 Ventr. 186.

Where a man *preſcribes* for a way to ſuch a cloſe, he *muſt* ſhew what intereſt he hath in the cloſe: *Aliter* if he *preſcribes* for a way to ſuch a field; becauſe that may be *a common* field by intendment. *Latch.* 160.

Plaintiff declared, that the occupiers of the adjoining field have, *time out of mind*, repaired the fences, which being out of repair, his beaſts eſcaped out of his own ground, and fell into a pit; it is good *without ſhewing any eſtate in the occupiers*; but it had *not* been ſo if *defendant* had *preſcribed*. 1 Ventr. 264.

It ſhould ſeem, that a preſcription by the owner of land, adjoining to a wood, to take underwood there growing to repair the fences belonging to the wood, is not good: For of common right the making of the hedge doth appertain to the owner of the wood: And the preſcription is no more than to take wood in the lands of another to make the hedges of the ſame land in which the wood groweth, which cannot be a good preſcription, for it ſounds only in *charge*, and not to the profit of him who preſcribes. 1 *Leon.* 313.

A man may claim a fold-courſe, and *exclude* the owner of the ſoil by *preſcription*. 1 Saund. 153. But a diverſity has been taken where a *preſcription* takes away the whole intereſt of the owner of the land; and where a *particular* profit is reſtrained: In one caſe it is good, in the other void. 1 *Leon.* 11.

If a perſon *preſcribes* for common *appurtenant* it is ill, unleſs it be for cattle *levant & couchant*, *&c.* And the reaſon is, becauſe by ſuch a *preſcription* the party claims only ſome part of the paſture, and the *quantum* is *aſcertained by the levancy and couchancy*, the reſt being left for the owner of the ſoil; therefore if he who thus *preſcribes*, ſhould put in *more* cattle than are levant and couchant on his tenement, *he is a treſpaſſer*. Noy 145. 2 Saund. 324.

In a *preſcription* to have common, the jury found it to be *paying every year a penny:* Here the *preſcription* is entire, whereof the payment of one penny is parcel; which ought to be entirely alledged in the *preſcription* in the plea, or it will not be good. *Cro. Eliz.* 563, 564. But where the payment is collateral from the *preſcription*, a *preſcription* may be good without alledging it. *Cro. Eliz.* 405.

It was a queſtion, Whether a toll, independent of markets and fairs, might be claimed by *preſcription*, without ſhewing that the ſubject hath ſome benefit; and ſome arguments were brought for it, from an authority in *Dyer* 352. Though by *Holt* this *preſcription* cannot be good, *becauſe there was no recompence for it*; and every *preſcription* to charge the ſubject with *a duty*, muſt import ſome benefit to him who pays it; or elſe ſome reaſon muſt be ſhewn why the duty is claimed. 4 *Mod.* 319.

A *court-leet* is derived out of the *hundred*; and if a man claims a title to the *leet*, he may *preſcribe* that he and his anceſtors, and all thoſe whoſe eſtate he hath in the *hundred*, time out of mind *had a leet*. Co. Lit. 125.

There may be a *preſcription* for *a court* to hold pleas of *all* actions, and for any ſum or damage, and it will be good. *Jenk. Cent.* 327. If a court held by preſcription is granted and confirmed by letters patent; this doth not deſtroy the preſcription, but it is ſaid the court may be held by preſcription as before. 2 *Rol. Abr.* 271.

A grant may *enure as* a *confirmation* of a preſcription; and the preſcription continue *unaltered* by a new charter, *&c.* where the charter is *not contrary* to the preſcription. *Moor* 818, 830. But in ſome caſes it is intended, that a preſcription ſhall begin *by grant*; and as to preſcriptions in general, the law ſuppoſes a *deſcent*, or purchaſe originally. *Cro. Eliz.* 709. *Co. Lit.* 113.

Every preſcription is taken ſtrictly: and a man ought not to preſcribe to that which the law of common right gives. 3 *Leon.* 13. *Noy* 20.

A preſcription muſt have *a lawful* commencement, and peaceable poſſeſſion and time are inſeparably incident to it. *Co. Lit.* 113. Though a title gained by cuſtom or preſcription, will not be loſt by interruption of the poſſeſſion for ten or twenty years; but *it may be loſt by interruption in the right*. Co. Lit. 114. 2 Inſt. 653.

Preſcription at Common law, is time out of memory of man; and by *ſtatute*, where a certain time is limited, as from the reign of *Rich.* 1, *&c.* *Co. Lit.* 115. See the doctrine of *Preſcription* and *Uſage*, well handled, in *Gateward*'s caſe. 6 *Co.* 60. Alſo *vide*. *Black. Com.* 2 *V.* 263. As to *preſcription by corporations*, ſee *ib.* 1 *V.* 472. and as to the *time of preſcription*, ſee *ib.* 2 *V.* 31. *Preſcriptions* for repairing highways, ſee *Highways*.

Preſcriptions againſt Actions and Statutes. The 7 *Hen.* 8. *c.* 3. ordained, That four years being paſt after the offences committed, provided againſt by that ſtatute, no ſuit could be commenced: but this ſtatute was repealed by 31 *Eliz. c.* 5. which enacts, That all actions, *&c.* brought on ſtatutes, the penalty whereof belongs to the King, ſhall be brought within *two* years after the offence done, or ſhall be void. And the ſtatute 23 *Eliz. cap.* 1. enacts, that offences compriſed in that ſtatute, *&c.* are determinable before juſtices of peace and aſſiſe, *within a year and a day* after the offence, *&c.* ſo that whoever offendeth againſt any of theſe ſtatutes and eſcapes unqueſtioned for four years, two, or one year, may be ſaid to preſcribe againſt the actions and puniſhments ordained by thoſe ſtatutes: And there are other ſtatutes which have the like appointments or limitations of time, whence may ariſe the like preſcription and bar. 4 *Rep*. 84. 2 *Inſt*. 652. Common informers ſhall bring their actions within *one year*, and the crown within two years after. 31 *Eliz. cap*. 5. *ſect*. 5. Vide *Action*.

Preſcriptions by the *Eccleſiaſtical Law*, as to tithes, &c. See *Modus Decimandi*.

Preſence. Sometimes the *preſence* of a ſuperior magiſtrate, takes away the power of an inferior. 9 *Rep*. 118. And the *preſence* of one may ſerve for *all* the feoffees or grantees, &c. 3 *Rep*. 26. When preſence of a man, in the place where an offence is done, may make him guilty, *vide Acceſſary*.

Preſentation, *(Preſentatio)* Is properly the act of a patron, *offering his clerk to the biſhop of the dioceſe, to be inſtituted in a church or benefice of his gift*, which is void. 2 *Lil. Abr*. 351.

Anciently *preſentation* was ſaid to be in the biſhop of *common* right, till ſince it has been adjudged to the laity, to encourage them to build and endow churches; and now if the patron neglects to *preſent* to the church, *then* this right returns to the biſhop *by lapſe*, &c. 1 Nelſ. Abr.

An *alien* born cannot *preſent* to a benefice in his *own* right; for if he purchaſe an advowſon, and the church becomes void, the King ſhall *preſent* after office found that the patron is an alien. 2 *Nelſ*. 1290. And by ſtatute no alien ſhall purchaſe a benefice in this realm; nor occupy the ſame, without the King's licence, on pain of a *præmunire*. 7 R. 2. c. 12.

Papiſts are diſabled to *preſent* to benefices, and the univerſities are to *preſent*, &c. But a Popiſh recuſant may grant away his patronage to another, who may make *preſentation*, where there is no fraud. *Stat*. 3 *Jac*. 1. *cap*. 5. *ſect*. 18, 19. 1 *W. & M. c*. 26. 12 *Ann. c*. 14. 1 *Jon*. 19. But by 11 *Geo*. 2. *cap*. 17. *ſect*. 5. *Grants* of *advowſons* by Papiſts are void, unleſs made for a valuable conſideration to a proteſtant purchaſer, and *deviſes* of *advowſons*, by papiſts, are alſo void.

All perſons who have ability to purchaſe or grant, have likewiſe ability to *preſent* to vacant benefices: but a dean and chapter cannot *preſent* the dean; nor may a clergyman who is patron *preſent* himſelf, though he may pray to be admitted by the ordinary, and the admiſſion ſhall be good.

An *infant* may *preſent*, becauſe *guardians have not power to do it in right of the heir*; a guardian in ſocage cannot *preſent* to a church, he being not to meddle with any thing, but for what he may *account*, which he cannot do for a *preſentation*, for he is to take nothing for it: If a *feme covert* hath title to *preſent*, the *preſentation* ought to be in the name of huſband and wife, and not by her alone; or *he* may *preſent* in his *own* name during coverture: *Coparceners* are but as one patron, and ought to agree in the *preſentation* of one perſon; if they cannot agree, the eldeſt ſhall *preſent* firſt alone, and the biſhop is obliged to admit her clerk, and afterwards the others in their order ſhall prefer their clerks; *jointenants* and *tenants in common* muſt regularly join in *preſentation*, and if either *preſent* alone, the biſhop may refuſe his clerk, as he may alſo the clerk *preſented* by the major part of them; but if there are two jointenants of the next avoidance, one may *preſent* the other, and two jointenants may *preſent* a third, but not a ſtranger.

The next *preſentation* was granted to four perſons, & *eorum cuilibet conjunctim & diviſim*, &c. And the church becoming void, one of the grantees alone *preſented* one of the others; and it was adjudged, that this *preſentation* by one was good.

When an aggregate *corporation preſents*, it muſt be *under their common ſeal*, and by the true name of their corporation. The *King* may *preſent* by letters patent under the Great Seal, and by theſe words, *viz. Damus & concedimus*; for this amounts to a warrant for the biſhop to admit the clerk; it is ſaid the King may *preſent* by *word*, or in writing under any ſeal, who cannot do any other legal act but by matter of record; and, in the opinion of ſome, the King may preſent to a church by his letter ſent to the ordinary to inſtitute and induct ſuch a one his clerk to the living; but the moſt ſecure way is to have a *preſentation* under the Great Seal. If a rector is made biſhop, the King ſhall *preſent* to the rectory, unleſs he grant to the biſhop, before he is conſecrated, a diſpenſation to hold it with his biſhoprick; and if an incumbent of a church is made a biſhop, and the King *preſents* or grants that he ſhould hold the church in *commendam*, which is *quaſi* a *preſentation*, a grantee of the next avoidance or *preſentation* hath loſt it, the King having the next *preſentation*. If the King *preſent* to a church by *lapſe*, where he ought to *preſent pleno jure*, and as patron of the church, ſuch a *preſentation* is not good; for the King is deceived in his grant, by miſtaking his title, which may be prejudicial to him; the *preſenting* by lapſe intitling *only* that *preſentation*: The Lord Chancellor *preſents* to the King's benefices under 20*l*. &c. 2 *Rol. Abr*. 354. 3 *Inſt*. 156. *Co. Lit*. 186. 2 *Nelſ. Abr*. 1288, 1290. 2 *Lil*. 351.

The King may repeal a *preſentation*, before his clerk is inducted; and this he may do by granting the *preſentation* to another, which, without any farther ſignification of his mind, is a revocation of the firſt *preſentation*. Dyer 290, 360.

A patron may revoke his *preſentation* before inſtitution, but not afterwards; a *preſentation* being no more than a power given to the ordinary to admit the clerk, and if the patron die before induction, his *preſentation* is determined. But this was in the caſe of the King; for in the caſe of a common perſon, if he die after inſtitution, and before induction; the *preſentation* is not determined by his death. *Latch*. 191. *Dyer* 348.

If two patrons *preſent* their clerks to a church, the biſhop is to determine who ſhall be admitted by a *jus patronatus*, &c. And two patrons pretending a title to *preſent*, one of them *preſented W. R.* but the biſhop refuſed inſtitution; whereupon he ſued in the court of audience of the Archbiſhop, and had an inhibition to that biſhop, and on that ſuit he obtained an inſtitution by the archbiſhop, on which he was inducted; afterwards the biſhop, who was inhibited, granted inſtitution upon the *preſentation* of the other patron, and his clerk was likewiſe inducted; and thereupon *W. R.* who had been inſtituted and inducted before, on a motion procured a prohibition, becauſe by the firſt induction the incumbency was determined: So that *quoad* the incumbence, the prohibition was granted, but not *as to* the contempt of the ordinary after he had been inhibited. *Moor* 499.

The father was incumbent, and after his death the patron *preſented* his ſon, who was refuſed by the biſhop, becauſe by the Canon law *Filius non poteſt ſuccedere patri in eadem eccleſia*, and the patron *preſented* another perſon; then the ſon who was firſt *preſented*, obtained a diſpenſation *non obſtante* the canon; but the ordinary admitted the ſecond *preſentee*, who was alſo inſtituted and inducted; thereupon the ſon ſued him and the biſhop in the Spiritual court, but a prohibition was granted. *Latch* 191.

A clerk may be refuſed by the biſhop, *if the patron is excommunicate*; or if the clerk is not *perſona idonea*, which includes ability of learning, and honeſty in converſation, &c. But in a *quare impedit* brought againſt the biſhop for refuſal of a clerk, *he muſt ſhew the cauſe for his refuſal ſpecially and directly*; and becauſe the clerk is of ill life, or a ſchiſmatic in general, *is not ſufficient*, without ſhewing *what* crimes, or ſort of ſchiſm he has been guilty of: And the temporal court then will judge whether the cauſe be juſt or not; and if the party denies the ſame, the court may write to the metropolitan to examine the matter, and certify; and tho' the matter be of a ſpiritual nature, *it ſhall be tried by a jury*: For whether the cauſe be temporal or ſpiritual, the examination of the biſhop concludes not the clerk; he is judge of the ability, but not the ultimate judge: but in caſe of refuſal for inſufficiency in learning, it hath been adjudged, that the ordinary is not accountable to any temporal judge; and that *in litteratura minus ſufficiens*, &c. is a good plea, without ſetting forth the kind of learning by degrees of it. 5 *Rep.* 58. 2 *Inſt.* 631. 3 *Lev.* 311. *Show.* 88. *Wood's Inſt.* 32, 33. That the *preſentee* hath a benefice already, is *no good* cauſe of refuſal, *&c.* 1 *Rol. Abr.* 355.

If the biſhop refuſes to admit the clerk *preſented,* he muſt give notice of his refuſal, with the cauſe of it forthwith; and on ſuch notice the patron muſt *preſent* another clerk, *within ſix months from the avoidance,* if he thinks the objection againſt his firſt clerk contains ſufficient cauſe of refuſal; but if not, he may bring his *quare impedit* againſt the biſhop. 2 *Rol. Abr.* 364. And where a church becomes void by deprivation by the Canon law, or reſignation, *the patron muſt have notice from the ordinary,* to *preſent* another perſon: But if the church becomes void by the act of God, as death of the incumbent; or by creation, or ceſſion, *&c.* the patron *is bound* to take notice himſelf of the avoidance, and to *preſent, &c.* *Wood's Inſt.* 154.

If a defendant, or any ſtranger, *preſents* a clerk pending a *quare impedit,* and afterwards the plaintiff obtains judgment, he cannot by virtue of that judgment remove him who was thus *preſented*; but he is to bring a *ſcire facias* againſt him to ſhew cauſe *quare executionem non habet*; and then, if it be found that he had no title, he ſhall be amoved.

The way to prevent ſuch a *preſentation,* is to take out a *ne admittas* to the biſhop; and then the writ *quare incumbravit* lies, by virtue whereof the incumbent ſhall be amoved, and put to his *quare impedit,* let his title be what it will; but if a *ne admittas* be not taken out, and another incumbent ſhould come in by good title *pendente lite,* he ſhall hold it. *Sid.* 93. *Cro. Jac.* 93.

A man muſt ſet forth a *preſentation* in himſelf, or thoſe under whom he claims, in a *quare impedit*; and *it ought to be alledged in him who hath the inheritance:* And when ſix months paſs pending the writ, *&c.* by the diſturbance of any one, ſo that the biſhop hath a right to *preſent* by lapſe, damages ſhall be recovered by two years value of the church, if the perſon loſe his *preſentation*; and if he recovers his *preſentation* within the ſix months, damages to half a year's value, *&c.* 2 *Inſt.* 362. *Vaugh.* 7, 57. *Cro. Eliz.* 518. 13 *Ed.* 1. *c.* 5.

Where a perſon gets the fee to his *preſentation,* which is his title, he muſt in his declaration alledge the *preſentation* to be *tempore pacis,* or it may be intended to be *tempore belli,* and *then* it is no title; but where the bare *preſentation* is not his title, but only in purſuance of a former right, in ſuch caſe he may alledge it generally: As for inſtance; where he declares that *A. B.* was ſeiſed of the manor of *D. as of fee,* to which an *advowſon was appendant,* and that being ſo ſeiſed he *preſented W. R.* and afterwards granted the next avoidance to the plaintiff; this is good, for plaintiff ſhews *a precedent right,* and doth not make the *preſentation* itſelf his title. 1 *Mod.* 130. 2 *Mod.* 183. 3 *Salk.* 280.

If a church becomes void in the life-time of a biſhop, he cannot deviſe the next *preſentation*; but if the biſhop, or any incumbent of a church, hath the advowſon *in fee,* and *then* either of them deviſeth, that on the next avoidance his executor, ſhall *preſent*; this is good, tho' they deviſe the inheritance to another. *Dyer* 285.

When a biſhop hath a *preſentation* in right of his biſhoprick, and dies, neither his executor, nor heir, ſhall have the void turn; but *the King,* in whoſe hands are the temporalties, and he hath a right to *preſent* on an avoidance after the ſeizure, on death of the biſhop; tho' where an incumbent was ſeiſed of the advowſon in fee, and died; on a queſtion who ſhould *preſent,* either his heir or executor, the advowſon not deſcending to the heir till after the death of his anceſtor, and immediately upon his death the church was void, therefore that avoidance was veſted in the executor; it was adjudged, that the *heir* ſhall *preſent,* becauſe the deſcent to him, and the avoidance to the executor, *happened at one and the ſame inſtant,* and where two titles concur in an inſtant, the elder title ſhall be preferred. 3 *Lev.* 47.

A grant was made of the next *preſentation* to a church, the grantee died, and then the church became void; and it was held, that the *executor* of the grantee ſhall have the *preſentation* as a chattel. *Glanvil, lib.* 6. *c* 7. 2 *Nelſ. Abr.* 1286. But in a *quare impedit,* defendant pleaded, that the patron granted the next *preſentation* to *B. B.* who died, and made his executor, who *preſented* the defendant; iſſue was taken upon *non conceſſit,* and the jury found, that the patron granted the *preſentation* to *B. B.* during his life, and that he died before the church became void; adjudged that this was not an *abſolute* grant of the next *preſentation,* but *reſtrained during the life of the grantee*; wherefore it ſhall *not* go to the executor, unleſs the church became void in the life-time of the teſtator. *Cro. Car.* 363.

Tenant in tail of an advowſon, and his ſon and heir, joined in a grant of the next *preſentation,* tenant in tail died; this grant was held void as to the ſon and heir, becauſe he had nothing in the advowſon at the time that he joined with his father in the grant. *Hob.* 45.

The right of *preſenting* to the next avoidance, may be deviſed by will to any perſon; and by deed, the next avoidance of a church may be *granted,* where the church is *then* full; alſo whilſt a church is void, the next avoidance that ſhall happen, or the inheritance of the advowſon may be granted away, and by deed or grant, the right of *preſenting* will paſs: but the void turn itſelf is not grantable by any common perſon, tho' it may be granted by the King, and be good; for it is a meer ſpiritual thing *annexed to the perſon of the patron,* and during the time of the vacation it is a thing in right and in action, the fruit and execution of the advowſon, not the advowſon itſelf. *Cro. Jac.* 371. *Clergym. Law* 154.

As a void turn is *not* grantable; ſo if two have a grant made to them of a next avoidance, and *after the church is void,* one releaſe all his right and title which he had in the advowſon and *preſentation* to his companion, who *preſents* to the church, this *preſentation* is void; becauſe *after* the avoidance, the intereſt was attached in both, and both had a power to *preſent,* which could no more be releaſed by one to the other, than it could be granted in that manner, being but *a right,* and *not a chattel* IN POSSESSION. But a releaſe in this caſe may be good, if it be made *before* the church is void; and the party to whom made may *preſent, &c.* 1 *And.* 223. *Cro. Car.* 173. *Moor* 467.

If a *preſentation* itſelf bears date whilſt the church is full of another clerk, it is void: And where two or more have a title to preſent by turn, one of them *preſents,* his clerk is admitted, inſtituted and inducted, and afterwards deprived, he ſhall not *preſent* again, but that *preſentation* ſhall ſerve his turn: tho' where the admiſſion and inſtitution of his clerk is void, there the turn ſhall not be ſerved; as if after induction he neglects to read the thirty-nine articles, *&c.* his inſtitution is void by the *Stat.* 13 *Eliz.* and the patron may *preſent* again. *F. N. B.* 33. 5 *Rep.* 102.

The right of *preſenting* to a church, may paſs from one ſeiſed of the ſame by the patron's acknowledging of a ſtatute, *&c.* which being extended, if the church becomes void, *during the conuſee's eſtate,* the conuſee may preſent. *Owen* 49.

Every church living is to be given and received by preſentation, collation, *&c.* And wherever a writ of *quare impedit,* or right of advowſon will lie for any man on a diſturbance; there he hath a right to the preſentation for that time at leaſt. 1 *Shep. Abr.* 240, 241.

Where the patron of a church hath an eſtate in the manor or other thing to which it is appendant, or has it in groſs for life or years only; if the church becomes void during his eſtate, he may preſent to it: Or he may grant the next avoidance to another for a term; and this will be good, if it happen in the time. But if one be diſſeiſed of his manor, and the diſſeiſor *die ſeiſed,* and after the church become void; in this caſe the diſſeiſee cannot preſent till he hath recontinued the manor, but before the dying ſeiſed he might do it. *Co. Lit.* 120. 8 *Rep.* 145. *Dyer* 29. *Plowd.* 500.

A *preſentation* by a perſon who had not right, at Common law, put the rightful patron out of poſſeſſion, and obliged him to bring the writ of right of advowſon, *&c.* And *preſentment* by uſurpation, and admiſſion upon it, gains the fee to the preſentor, till he be evicted by action. 6 *Rep.* 30. 1 *And.* 300. *Yel.* 91.

One may not make a deputy to preſent for him: And yet a *preſentation* by a proctor is ſaid to be good, as if done by the party himſelf. *F. N. B.* 35. If a man preſent in time of war, the law hath ſuch regard to the original act, *viz.* the *preſentation,* that all which follows thereon is void. 6 *Ed.* 3. 41. 2 *Rep.* 93.

Where a common perſon is patron, he may preſent by parol; as well as by writing to the biſhop. *Co. Lit.* 120. A *preſentation* doth not carry with it the formality of a deed; but it is in the nature of a *letter miſſive,* by which the clerk is offered to the biſhop; and it paſſeth no intereſt, as a grant doth, being no more than a recommendation of a clerk to the ordinary to be admitted. *Young Clergym. Lawyer* 17, 18. But where a plaintiff declared upon a grant of the next *preſentation,* and on *oyer* of the deed it appeared to be only a letter written by the patron to the father of the plaintiff, that he had given his ſon the next *preſentation*; adjudged, that It would not paſs by ſuch letter, without a formal deed. *Owen* 47.

Where the crown has a right to preſent on promoting the incumbent to a biſhoprick, it is not neceſſary to be done during the life of the promotee. 2 *Strange* 841. See *Black. Com.* 1 *V.* 389. 2 *V.* 23. As to *Preſentative Advowſons,* ſee *ib.* 2 *V.* 22.

Form of a *Preſentation to a Benefice.*

Reverendo *in Chriſto Patri & Domino, Domino* B. *Permiſſione Divina Epiſcopo* S. *&c. ejus vel in Abſentia Vicario ſuo in Spiritualibus Generali, aut alii cuicunque in hac parte ſufficientem Authoritatem habenti; Prænobilis* A. B. *Baro de, &c. verus & indubitatus Patronus Rectoriæ Eccleſiæ Parochialis de, &c. Salutem in Domino Sempiternam. Ad Eccleſiam Parochialem de, &c. prædict. veſtræ Dioceſeos modo per mortem naturalem* C. D. *ultimi incumbentis ibidem vacantem, & ad meam* Præſentationem *pleno jure ſpectantem, dilectum mihi in Chriſto* E. F. *Clericum, Artium Magiſtrum, Paternitati veſtræ* Præſento, *humiliter ſupplicans ut præfatum* E. F. *ad dictam Eccleſiam admittere, ipſumq; in Rectoriam ejuſdem Eccleſiæ Inſtitui & Induci facere, cum ſuis juribus & pertinentiis Univerſis, cæteraq; omnia & ſingula peragere & adimplere in hac parte, quæ ad veſtrum munus Epiſcopale pertinere videbuntur, dignemini cum favore. In cujus rei Teſtimonium, his* Præſentibus *ſigillum meum appoſui. Dat' die, &c. Anno Regni, &c. Annoq; Dom.* 1727.

A *Grant* of the next *Preſentation to a Church.*

TO all *to whom theſe* preſents *ſhall come,* A. B. *of, &c. the true and undoubted patron of the rectory or pariſh church of* D. *in the county and dioceſe of,* &c. *ſend greeting.* Know ye, *that the ſaid* A. B. *for divers good cauſes and conſiderations him thereunto moving,* hath *given, granted and confirmed, and by theſe preſents doth, for him and his heirs, give, grant and confirm unto* C. D. *of,* &c. *his executors, adminiſtrators and aſſigns, the firſt and next advowſon,* preſentation, *free diſpoſition and right of patronage, of and to the parſonage, rectory, or pariſh church of* D. *aforeſaid, with all its appurtenances, with full power and authority to and for the ſaid* C. D. *his executors, adminiſtrators and aſſigns, to* preſent *a learned and fit perſon to the ſaid parſonage, rectory, or pariſh church, with all its rights and appurtenances, whenſoever the ſame ſhall firſt and next happen to become void, by the death, reſignation, ceſſion, or deprivation of* E. F. *the preſent incumbent, or otherwiſe however; and to do and perform all and every other act and acts, thing and things whatſoever, in order to the ſame, in as full and ample manner, to all intents and purpoſes, as the ſaid* A. B. *or his heirs might, or hereafter could have done, if this preſent grant had not been made.* In witneſs, *&c.*

Right of *preſentation* may be forfeited in ſeveral caſes: As by *attainder* of the patron, or by *outlawry,* and *then* the King ſhall preſent; and if the outlawry be reverſed, where the advowſon is forfeited by the outlawry, and the church becomes void after, the preſentation is veſted in the crown; but if at the time of the outlawry the church was void, then the preſentation is forfeited *as a chattel,* and on reverſing the ſame, the party ſhall be reſtored to it. By *appropriation* without licence from the crown, right of *preſentation* may be forfeited; tho' the inheritance in this caſe is not forfeited, only the King ſhall have the preſentation in nature of *a diſtreſs,* till the party hath paid a fine for his contempt. By *alienation* in fee of the advowſon, by a grantee for life of the next avoidance, a preſentation is forfeited; and after ſuch alienation the grantor may preſent, but then he *muſt* enter for the forfeiture of the grantee *in the life-time* of the incumbent, to determine his eſtate before the preſentation veſts in him on the incumbent's death. And by *ſimony* it may be likewiſe forfeited and loſt, where any perſon for money, *&c.* preſent to a benefice. *Moor* 269. *Plowd.* 299. 2 *Roll. Abr.* 352. *Stat.* 31 *Eliz. cap.* 6. *ſect.* 5. See *Advowſon, Patron, Simony, &c.*

Preſentee, The clerk preſented to a church by the patron. In our ſtatutes there is mention of the *King's preſentee,* that is, he whom the King preſents to a benefice. 13 *R.* 2. *c.* 1.

Preſentment, Is a mere denunciation of jurors, or ſome officers, *&c.* (without any information) of an offence inquirable in the court whereto it is preſented. *Lamb. Eiren. lib.* 4. *c.* 5. Or preſentment is an information made by the jury in a court, before a judge who hath authority to puniſh an offence: It is that which a grand jury finds and preſents to the court, without any bill or indictment delivered; and it is afterwards reduced into the form of an indictment. 2 *Inſt.* 739.

The preſentment is drawn up in *Engliſh* by the jury, in a ſhort note, for inſtructions to draw the indictment by; and differs from an indictment, in that an indictment is drawn up at large, and brought ingroſſed to the grand jury to find. 2 *Lill. Abr.* 353.

There are preſentments of juſtices of peace in their ſeſſions, of offences againſt ſtatutes, in order to their puniſhment in ſuperior courts; and preſentments taken before commiſſioners of ſewers, *&c.* But a preſentment of commiſſioners of ſewers was quaſhed, becauſe it did not appear in the preſentment by what authority the commiſſioners did ſit who took the preſentment, or that any of them were of the *quorum,* as directed by ſtatute. *Hill.* 1649. Preſentments are made in courts leet and courts baron, before ſtewards: and in the latter of ſurrenders, grants, *&c.* Alſo by conſtables, churchwardens, ſurveyors of the highways, *&c.* of things belonging to their offices. See *Black. Com.* 2 *V.* 369. 4 *V.* 298.

Preſident, *(Præſes)* Is uſed for the King's lieutenant in any province, as *Preſident* of *Wales, &c.*

Preſident of the Council, Relates to the function of the perſon, and is the fourth great officer of ſtate: He is as ancient as the reign of King *John*; and hath ſometimes been called *Principalis Conſiliarius,* and other times *Capitalis Conſiliarius.*

The office of *Preſident of the Council* was ever granted by letters patent under the Great Seal *durante bene placito*; and this officer is to attend on the King, to propoſe buſineſs at the council table, and report to his Majeſty the tranſactions there: Alſo he may aſſociate the Lord Chancellor, Treaſurer and Privy Seal, at naming of ſheriffs; and all other acts limited by any ſtatute, to be done by them. 21 *H.* 8. *c.* 20. See *Black. Com.* 1 *V.* 230.

Preſs, *(Liberty of the)* See *Black. Com.* 4 *V.* 151.

The printers of the public papers, ſhould for ever recollect the motto LIBERTAS SINE LICENTIA, or they, who doubtleſs wiſh well to that principal bulwark of our conſtitution, may, tho' without deſign, ultimately prove its greateſt enemies.

Preſſing, for *ſea*-ſervice. In time of war, the King has power to *impreſs* ſeamen; tho' *he ought not* to impriſon them. *Comber.* 340. But watermen withdrawing themſelves during the time of preſſing, ſhall be liable to impriſonment, *&c.* *Stat.* 2 & 3 *P.* & *M.* *c.* 16.

Where a man receives preſs-money to ſerve the King, and is delivered over to a captain; (not a common preſs-maſter) if he runs away without licence, it is felony, having benefit of clergy, by the 7 *Hen.* 7. *cap.* 1. *Hale's Hiſt. P. C.* 678.

Every perſon who ſerves in any merchant ſhip belonging to the ſubjects of *Great Britain*, being fifty-five years of age, or under eighteen; and alſo every foreigner in ſuch ſhips are privileged from being preſſed into his Majeſty's ſervice; and all others of any age, for the ſpace of two years after their firſt going to ſea; but apprentices are thus exempted three years. *Stat.* 13 *Geo.* 2. *cap.* 17. See *Navy*.

It is not improper to obſerve, that the power of impreſſing men for the ſea ſervice by the King's commiſſion, has been a matter of diſpute, and ſubmitted to with great reluctance, tho' (as obſerved by *Blackſtone* 1 *V.* 418.) it hath been very clearly and learnedly ſhewn, by Sir *Michael Foſter*, that the practice of impreſſing and granting powers to the admiralty, for that purpoſe, is of very antient date, and hath been uniformly continued by a regular ſeries of precedents to the preſent time: whence he concludes it to be part of the Common law. See *Foſter's Reports, fo.* 154. *Broadfoot*'s caſe.

Preſſing to Death. See *Mute*, and *Black. Com.* 4 *V.* 323.

Preſt, Is uſed for a duty in money, to be paid by the ſheriff on his account, in the *Exchequer*, or for money left, or remaining in his hands. 2 & 3 *Ed.* 6. *cap.* 4.

Preſtation-money, (*Præſtatio,* a paying or performing) Is a ſum of money paid by archdeacons yearly to their biſhop *pro exteriore juriſdictione—Et ſint quieti a* præſtatione *muragii*. Chart. H. 7. Burgenſ. Mount-Gomer. *Præſtatio* was alſo anciently uſed for *purveyance*. See *Philip*'s book on that ſubject, *pag.* 222. And ſee *Spiritualties*.

Preſt-money, Is ſo called from the *French* word *preſt*, that is, *promptus expeditus*, for that it binds thoſe who receive it, to be ready at all times appointed, being meant commonly of ſoldiers. 18 *H.* 6. 19. 7 *H.* 7. 1. 3 *H.* 8. 5. and 2 *Ed.* 6. 2.

Preſumption, (*Preſumptio*) Is a ſuppoſition, opinion or belief previouſly formed; and is of three ſorts; 1. *Violent*, which is many times a full proof; as if one be killed in a houſe, and a man is ſeen to come out of the houſe with a bloody ſword, and no other perſon was at that time in the houſe; this, tho' but preſumption, is *as* a proof.

2. *Probable*, which hath but a ſmall effect.

3 *Levis, ſeu temeraria*, which is of no prevalence at all: So in caſe of a charter of feoffment, if all the witneſſes to the deed be dead; the *violent preſumption*, which ſtands for a proof, is continual and quiet poſſeſſion. *Co. on Lit. lib.* 1. *c.* 1. *ſect.* 1.

Præſumptio *ſtat in dubio*, it is doubted of, yet accounted *veritatis comes, quatenus in contrarium nulla eſt probatio, ut regula ſe habet, ſtabitur* præſumptio *donec probetur in contrarium*. Cowell.

If defendant pleads payment to a bond, and it appears that the debt is long ſtanding by the bond, and hath not been demanded, nor intereſt paid for many years, it ſhall be preſumed that the money is paid, tho' the plaintiff hath the bond in his cuſtody: Alſo if a rent be behind and in arrear for twenty years, and the landlord gives a receipt for the *laſt* year that is due, all the reſt is preſumed to be paid, &c. *Co. Lit.* 6, 375. *Wood's Inſt.* 599.

Where many houſes are let by one leaſe, the court will preſume that the leſſee is in poſſeſſion of them all, if he be in poſſeſſion of any one of them, and the contrary doth not appear to the court: So in other caſes, tho' preſumption is what may be doubted of, yet *it ſhall be accounted truth, if the contrary be not proved.* 2 Lill. Abr. 354. But no preſumptions ought to be admitted againſt the preſumptions of law, and wrong ſhall never be preſumed. *Co. Lit.* 232, 273.

If the eldeſt ſon be beyond ſea at the death of the anceſtor, and the youngeſt enters into the land, he is not accounted in law a diſſeiſor; becauſe *the law preſumes, that he preſerves the poſſeſſion for his brother*; but if on his brother's return he keeps him out of poſſeſſion, then the law looks on him as a diſſeiſor. *Lat.* 68.

Where the law intruſts perſons with the execution of a power, the court ought to give credit to them in the execution of that power; tho' if they make a falſe return whereby the party and juſtice are abuſed, they may be puniſhed. 12 *Mod.* 382; See *Black. Com.* 3 *V.* 371.

Preſumptio, Was anciently taken for intruſion, or the unlawful ſeizing of any thing. *Leg. Hen.* 1. *c.* 11.

Preſumptive Evidence of Felony, Should be admitted cautiouſly; for the law holds, that it is better that ten guilty perſons eſcape, than that one innocent ſuffer. And Sir *Matthew Hale* in particular lays down two rules, moſt prudent and neceſſary to be obſerved:

1. Never to convict a man for ſtealing the goods of a perſon unknown, meerly becauſe he will give no account how he came by them, unleſs an *actual* felony be proved of ſuch goods: And

2. Never to convict any perſon of murder or manſlaughter, till at leaſt the body be found dead; on account of two inſtances he mentions, where perſons were executed for the murder of others, who were then alive, but miſſing. 2 *Hal. P. C.* 290.

Preſumptive Heirs, Are ſuch, who, if the anceſtor ſhould die immediately, would in the preſent circumſtance of things be his heirs; but whoſe right of inheritance may be defeated by the contingency of ſome nearer heir being *born*: As a brother, or nephew, whoſe preſumptive ſucceſſion may be deſtroyed by the birth of a child; or a daughter, whoſe preſent hopes may be hereafter cut off by the birth of a ſon. Nay, even if the eſtate hath deſcended, by the death of the owner, to ſuch brother, or nephew, or daughter; in the former caſe the eſtate ſhall be deveſted and taken away by the birth of a poſthumous child; and, in the latter, it ſhall alſo be totally deveſted by the birth of a poſthumous ſon. *Black. Com.* 2 *V.* 208.

Pretended Titles. No one ſhall ſell or purchaſe any *pretended* right or title to land, unleſs the vendor hath received the profits thereof for one whole year before ſuch grant, or hath been in actual poſſeſſion of the land, or of the reverſion or remainder; on pain that both purchaſer and vendor ſhall each forfeit the value of ſuch land to the King and the proſecutor. This offence relates chiefly to the commencement of *civil* ſuits. 32 *Hen.* 8. *c.* 9. *Black. Com.* 4 *V.* 135.

Pretenſed Right (*Jus Prætenſum*) Is where one is in poſſeſſion of land, and another who is out of poſſeſſion claims and ſues for it; here the pretenſed right or title is ſaid to be in him who ſo *claims* and ſues for the ſame. See *Mod. Caſ.* 302.

Pretium Sepulchri, Is applied to thoſe goods which accrue to the church when a corpſe is buried. *Iriſh Can. lib.* 19. *c.* 6.

Price. Things are to be ſold at reaſonable prices: And, juſtices in corporations, &c. may ſet the price of victuals and other things, by ſtatute 23 *Ed.* 3. *c.* 6. 3 *H.* 8. *c.* 8. See *Black. Com.* 2 *V.* 446, 454.

Pride-gavel, (from *prid.* the laſt ſyllable of *lamprid*, and *gavel*, a rent or tribute) In the manor of *Rodeley* in the county of *Glóceſter* is a rent paid to the lord, by certain tenants, in duty and acknowledgment to him for the privilege of fiſhing for *lampreys* or *lamprids* in the river *Severn*. Tayl. Hiſt. Gavelk. 112.

Prieſts, In general ſignification, are any miniſters of a church; but in our law, this word is *particularly* uſed for miniſters of the church of *Rome*. Prieſts ſaying maſs forfeit 200 marks, by *Stat.* 23 *Eliz. c.* 1. And perſons apprehending a *Romiſh* prieſt, ſaying maſs, have 100 *l.* from the ſheriff of the county, to be paid within four months after conviction of the offence, &c. And ſuch *prieſts*, &c. keeping ſchools, are liable to perpetual impriſonment. 11 & 12 *W.* 3. *c.* 4. See *Jeſuits, Papiſts, Recuſants, Rome,* and *Black. Com.* 1 *V.* 388.

Primage, Is a duty at the water-ſide, due to the maſter and mariners of a *ſhip*; to the maſter for the uſe of his cables and ropes, to diſcharge the goods of the merchant; and to the mariners for loading and unloading in any port or haven; it is uſually about 12 *d. per* tun, or ſix-pence *per* pack or bale, according to cuſtom. *Merch. Dict.* See 32 *H.* 8. *c.* 14.

Primer Fine, On ſuing out the writ or *præcipe*, called a writ of covenant, there is due to the King, by ancient prerogative, a *primer fine*, or a noble for every five marks of land ſued for; that is, one tenth of the annual value. *Black. Com.* 2 *V.* 350.

Primicerius, The firſt of any degree of men; ſometimes it ſignifies the nobility. *Primicerios totius Angliæ* were the nobility of *England. Mon.* 1 *tom. p.* 838.

Primier ſeiſin, *(Prima ſeiſina)* The firſt poſſeſſion, or *ſeiſin* was heretofore uſed as a branch of the *King's prerogative*, whereby he had the firſt poſſeſſion, that is, the entire profits for a year of all the lands and tenements, whereof his tenant (who held of him *in capite*) died *ſeiſed* in his demeſne as of fee, his heir being then at full age, until he do homage, or, if under, until he were of age. *Staundf. Prærog. cap.* 3. and *Bracton, lib.* 4. *tract.* 3. *c.* 1. But all the charges ariſing by *primier ſeiſins* are taken away by 12 *Car.* 2. *c.* 24. See *Black. Com.* 2 *V.* 66, 88. 4 *V.* 411.

Primier Sergeant, Is the King's *firſt* Serjeant at Law.

Primo beneficio, The firſt benefice in the King's gift, &c. See *Beneficio.*

Primogeniture, (*Primogenitura*) The title of an elder brother in right of his birth: The reaſon of which *Co.* upon *Lit.* ſays, is, *Qui prior eſt tempore, potior eſt jure*; affirming moreover, *That, in King* Alfred*'s time, knights fees deſcended to the* eldeſt ſon; *becauſe, by the diviſion of ſuch fees between males, the defence of the realm might be weakened.* And *Doderidge* in his treatiſe of *nobility* ſaith, (*pag.* 119.) it was anciently ordained, That all knights fees ſhould come unto the eldeſt ſon by ſucceſſion of heritage, whereby he, ſucceeding his anceſtors in the whole inheritance, might be the better enabled to maintain the wars againſt the King's enemies, or his lords: And that the ſocage ſhould be partible among the male children, to enable them to increaſe into many families, for the better furtherance in, and increaſe of huſbandry. *Cowell.* and *Leg. Alfred Dodd. Treat. Nobil.* 119. See *Black. Com.* 1 *V.* 194. 2 *V.* 214. 4 *V.* 414.

Prince, (*Princeps*) Is ſometimes taken at large for the King himſelf; but more properly for the King's eldeſt ſon, who is called *Prince of Wales.*

It it ſaid by ſome writers, that the King's eldeſt ſon is *Prince of Wales* by nativity; but others ſay, that he is born *Duke of Cornwall*, and afterwards created *Prince of Wales*, tho' from the day of his birth he is ſtiled *Prince of Wales*, a title originally given by *Edward* 1. And all his titles are, *Prince of Wales, Duke of Cornwall*, and *Earl of Cheſter.*

Before *Edw.* 2. who was the firſt *Prince of Wales*, and born at *Carnarvan* in that principality, (his mother being ſent there big with child by *Edward* 1. to appeaſe the tumultuous ſpirit of the *Welch*) the eldeſt ſon of the King was called *Lord Prince*; but *Prince* was a name of dignity long before that time in *England. Staundf. Prærog. cap.* 22. 75. See 27 *H.* 8. *c.* 26. and 28 *H.* 8. 3. And *Stow's Annals, p.* 303. But *Prince* was a name of dignity long before that time in *England*; for in a charter of King *Offa*, after the biſhops had ſubſcribed their names, we read, *Brordanus Patritius, Binnanus* princeps; and afterwards the dukes ſubſcribed their names. And in a charter of King *Edgar* in Mon. Ang. tom. 3. pag. 302. *Ego Edgarus Rex rogatus ab epiſcopo meo Deorivolſe, &* principe *meo Alfredo, &c.* And in *Matt. Paris, pag.* 155. *Ego Halden* princeps *Regis pro viribus aſſenſum præbeo, & ego Turketillus dux concedo.*

As Duke of *Cornwall*, and likewiſe Earl of *Cheſter*, the *Prince of Wales* is to appoint the ſheriffs, and other officers in thoſe counties, by 1 *Geo.* 2. *c.* 5. The *Prince of Wales*, beſides the principality of *Wales*, dutchy of *Cornwall, &c.* has alſo a revenue, ſettled on him by parliament. See the *Table to the Statutes.* See alſo *Black. Com.* 1 *V.* 225. 4 *V.* 81.

Principal, (*Principalium*) Is variouſly uſed in our law; as an heir loom, &c.

The word *principal*, was alſo ſometimes uſed for a *mortuary*, or *corſe-preſent*——*Item lego equum meum vocatum le Bay-Gelding, ut offeratur ante corpus meum in die ſepulturæ meæ, nomine* Principalii. *Ult. volun. Johannis Marclefield.* 9 Hen. 5.

In *Urchenfield*, in the county of *Hereford*, certain *principals*, as the beſt beaſt, the beſt bed, the beſt table, &c. paſs to the eldeſt child, and are not liable to partition. Alſo the chief perſon in ſome of the inns of *Chancery* is called *principal* of the houſe. *Cowell.*

Principal and acceſſary. The *principal* is the perſon who actually commits a crime; and the *acceſſary* he who is aſſiſting in the doing thereof. 2 *Lill. Abr.* 355. And if one wilfully hold a man in his arms, whilſt another kills him, he is a *principal.* 9 *Rep.* 67.

A man is preſent, and moves a perſon to kill another, who doth ſo; by this he is as much a *principal* as he who killeth the perſon: And all thoſe who come in company in any place or aſſembly, where any murder, robbery, or felony is committed, *if they come there for that cauſe*, are *principals*, altho' they do nothing. *Staundf. P. C. cap.* 45. *Fitz. Coron.* 314, 350. *Poult.* 138. But if one happen to be preſent when another is killed, or a felony done, and he came not in company of the felons, nor is of their confederacy; he will not be a *principal* or *acceſſary. Fitz. Coron.* 314, 395.

No man can regularly be a *principal* in felony, *without being preſent*, unleſs it be in caſe of wilful poiſoning, wherein if the perſons intended or any others take the poiſon in the abſence of him who lays it, he is a *principal. Hale's Hiſt. P. C.* 615.

In the higheſt offences, as in treaſons, &c. all are *principals*; ſo in the loweſt, ſuch as riots, forcible entries, and other treſpaſſes, there are no acceſſaries. *Co. Lit.* 71.

By the Common law, if a *principal* be pardoned *before* judgment, or hath his clergy, the acceſſary may not be tried; but if it be *after* attainder the acceſſary ſhall be arraigned: And where the principal dies before attainted, or is acquitted by verdict, &c. the acceſſary ſhall be diſcharged: Alſo if the *principal* appears not, tho' the acceſſary may be put to anſwer, he ſhall not be tried till the *principal* is attainted, &c. 4 *Rep.* 43 *H. P. C.* 47. *Dalt.* 339. But this is altered by ſtat. 1 *Ann. cap.* 9.

Whatever will make a man an acceſſary *before* in felony, will make him a principal in high treaſon and treſpaſs; as battery, riot, forcible entry, and even in forgery and petit larceny. Therefore, wherever a man commands another to commit a treſpaſs, who afterwards commits it in purſuance of ſuch command, he ſeems by neceſſary conſequence to be as guilty of it, as if he had done it himſelf; from whence it follows, that being in judgment of law a principal offender, he may be tried and found guilty, before any trial of the perſon who actually did the fact. 2 *Hawk. P. C.* 310.

It ſeems agreed, that whoever agrees to a treſpaſs on lands or goods, done to his uſe, thereby becomes a principal in it; but that no one can become a principal in treſpaſs on the perſon of a man by any ſuch agreement: alſo it ſeems agreed, that no one ſhall be adjudged a principal in any common treſpaſs, or inferior crime of the like nature, for barely receiving, comforting and concealing the offender, tho' he knew him to have been guilty, and that there is a warrant out againſt him, which by reaſon of ſuch concealment cannot be executed. And if he cannot be puniſhed as a principal, it is certain that he cannot be puniſhed as an acceſſary; becauſe, in ſuch offences, all who are puniſhed as partakers of the guilt of him who did the fact, muſt be puniſhed as principals in it, or not at all. Yet if a man knowing there is a warrant againſt ſuch offender; adviſe him to abſent himſelf, *perhaps* he may be indictable for a contempt of the law in hindering the due courſe of juſtice. 2 *Hawk. P. C.* 311. See *Acceſſary*, and 2 *Hawk. P. C.* 311—326. and *Black. Com.* 4 *V.* 34.

Principal challenge, A ſpecies of the challenge to jurors for ſuſpicion or partiality. And takes place, where the cauſe aſſigned carries with it *prima facie* evident marks of ſuſpicion, either of malice or favor. For the ſeveral cauſes of this challenge. *Vide Black. Com.* 3 *V.* 363.

Principal money, On mortgages, &c. Vide *Scrivener* and *Uſury.*

Printing. See the *Table to the Statutes*, and vide *Libel.*

Prior, Was firſt in dignity next to the *Abbot*, or the chief of a convent, &c. And there was a *Lord Prior* of S

St. *John's of Jeruſalem.* 26 H. 8. cap. 2. *See* Black. Com. 1 V. 155.

Priors aliens, *(priores alieni)* Were certain religious men, born in *France* and *Normandy,* governors of religious houſes erected for foreigners here in *England*; but were ſuppreſſed by *Henry* 5. and afterwards their livings were given to other monaſteries and houſes of learning, and eſpecially towards the erecting of the King's colleges, at *Cambridge* and *Eaton.* 2 Inſt. 584. *See* Stow's Annals, pag. 582. *and* 1 Hen. 5. c. 7.

Priority, *(Prioritas)* Is an antiquity of tenure, in compariſon of another leſs ancient. *Old Nat. Br.* 94. So, to hold by *poſteriority,* is uſed in *Staundf. Prærog. cap.* 2, 11. And *Cromp.* in his *Juriſd. fol.* 117. uſeth this word in the ſame ſignification. The lord of the *priority* ſhall have the cuſtody of the body, *&c.* and *fol.* 120. If the tenant hold by *priority* of one, and by *poſteriority* of another, *&c.* To which effect, ſee alſo *F. N. B.* 142. See *Poſteriority.*

Priority of debts and ſuits. A *prior ſuit* depending may be pleaded in abatement of a *ſubſequent* action or proſecution for the ſame matter.

A *prior mortgage* ought to be firſt paid off; and *debts firſt due* ſhould be firſt ſatisfied; for as the firſt creditor advances his money before his debtor is incumbred, it is but reaſonable he ſhould be paid his debt before the diſcharge of the ſubſequent incumbrances: but debts *firſt* due muſt likewiſe be *firſt* proſecuted; otherwiſe in ſome caſes *priority* will not be allowed. *Comp. Attorn.* 120.

There is no *priority* of time, in *judgments*; for the judgement firſt executed ſhall be firſt paid.

Wherever any ſuit on a penal ſtatute may be ſaid to be actually depending, it may be pleaded in abatement of a ſubſequent proſecution, being EXPRESSLY *averred to be for the ſame offence.* Neither will it be any exception to ſuch a plea, that the offence in the ſubſequent proſecution is laid on a day *different* from that in the former. Neither doth a miſtake in ſuch a plea of the *very* day, whereon the ſuit pleaded as prior was commenced, ſeem to be material on the iſſue of *nul tiel record,* if it appear *in truth* to have been commenced *before* the other, and for the *ſame* matter.

And if two informations be exhibited on the very ſame day, it ſeems that they may mutually abate one another, becauſe *there is no priority to attach the right of the ſuit in one informer, more than in the other.* Alſo it ſeems, that an information or bill the ſame day that they are filed, may be ſo far ſaid to be depending before any proceſs ſued on them, that they may be pleaded in abatement of any other ſuit on the ſame ſtatute. And from the ſame reaſon it ſeems alſo, that a writ of debt may be ſo pleaded in abatement of any other ſuit on the ſame ſtatute. And from the ſame reaſon it ſeems alſo, that a writ of debt may be ſo pleaded *after* it is returned; becauſe then it ſeems to be agreed, that it may be properly ſaid to be depending; and whether it may not alſo be ſo pleaded before it be returned, ſeems queſtionable; becauſe, according to ſome opinions, *a writ may be ſaid to be depending as ſoon as purchaſed.* 2 Hawk. P. C. 275.

Thoſe points of law, where *Hawkins* ſeems to doubt, are now, in general, pretty clearly ſettled, according to what ſeemed to be his opinion. See *Black. Com.* 2 *V.* 511.

Priſage, *(Priſagium)* Is that ſhare which belongs to the King, or Admiral, out of ſuch merchandiſes as are taken at ſea, by way of lawful *priſe,* which is uſually a tenth part.——Priſagium *eſt jus priſas capiendi, &c.* Stat. 31 Eliz. *c.* 5.

And *priſage of wines* is an ancient duty or cuſtom on wines, payable at certain ports, except *London, Southampton, &c.* It is where the King claims out of every ſhip or veſſel laden with wines, *containing twenty tons or more,* two tons of wine, the one before, the other behind the maſt, *at his price,* which is twenty ſhillings for each ton; but this varies according to the cuſtom of places; and at *Boſton* every bark laden with ten tons of wine or above, pays *priſage:* This word is almoſt out of uſe, being now called *butlerage,* becauſe the King's chief butler receives it.

1 *Hen.* 8. *cap.* 5. 4 *Inſt.* 30. *Calthorp's Rep.* 20. See *Black. Com.* 1 *V.* 314.

Priſe, or **Prize,** *(Captio, Præda,* from the Fr. *Prendre)* Signifies a booty taken from an enemy in time of war, *&c.*

If ſhips are laden with contraband goods, both ſhip and goods may be taken as *priſe*; and inſtruments and proviſions of armature for ſea or land, *bound for an enemy* from a neuter nation, *&c.* ſhall be taken as a priſe; ſo money, *&c.* in time of neceſſity. *Lex Mercat.* 178.

Whether a ſhip be priſe or not, ſhall be tried in the *Admiralty,* and no prohibition be granted; And if a ſuit be commenced between the captor of a priſe and a claimant, and a decree is obtained either for or againſt the claimer; on giving ſecurity, ſuch ſentence or decree ſhall be put in execution, notwithſtanding any appeal, *&c.* 1 *Sid.* 320. 2 *Keb.* 158. See *Privateers,* and *Table to the Statutes.*

Priſo, Is uſed for a priſoner taken in war. *Hoveden, pag.* 541.

Priſon, *(Priſona)* Is a place of confinement for the ſafe cuſtody of perſons, in order to their anſwering any action, civil or criminal: And it has been obſerved, that the *Salva cuſtodia* muſt be only *cuſtodia*; for *carcer ad homines cuſtodiendos, non ad puniendos dari debet.* Co. Lit. lib. 3. cap. 7.

Any place where a man is reſtrained of his liberty, is a *priſon:* And when any one is arreſted on proceſs, he is to be committed to *priſon,* or be bound in recogniſance with ſureties, or give bail, according to the nature of the caſe, to appear at a day in court, and anſwer what is alledged againſt him. *Dalt.* 421.

If one is brought before a juſtice of peace for ſuſpicion of felony, where a felony has been committed, the juſtice may ſend him to priſon, or bail him; and if no felony be done, he hath power to diſcharge him. *H. P. C.* 98. But when a perſon is committed to priſon for treaſon, or felony, he cannot regularly be diſcharged from priſon, till indicted, and acquitted, *&c.* Though one taken and committed to priſon in a civil cauſe, may be releaſed by the plaintiff in the ſuit. 3 *Inſt.* 209. *H. P. C.* 94. But ſee *Habeas Corpus, &c.* Vide *Gaol.*

Priſon-breaking, Is not only where a felon is formerly committed to gaol by *mittimus*; but if he be put in the ſtocks, or kept in the conſtable's houſe, *&c.* and he *break priſon,* it is felony. 1 *Hale's Hiſt. P. C.* 610. And if *A.* arreſt *B.* for ſuſpicion, and carry him to the common gaol, and *there* deliver him; if he *breaks priſon,* and be indicted on it, *there muſt be an averment in the indictment, that there was a felony done,* and that *A.* having probable cauſe did ſuſpect *B.* and arreſted and committed him, and that he broke the priſon, *all which muſt be proved on the trial:* But where a felon is taken by *capias,* and committed, and *break priſon,* there needs no ſuch averment, *&c.* becauſe all appears by matter of record. 2 *Inſt.* 590. *Hale's Hiſt. P. C.* 610.

The felony of *breach of priſon* is within clergy, though the offence for which the party was committed be excluded clergy. 1 *Hale's Hiſt. P. C.* 612. See *Eſcape.* And *Black. Com.* 4 *V.* 130.

Priſoner, *(Priſonarius,* Fr. *Priſonnier)* Signifies one confined in *priſon,* on an action, or commandment: And a man may be a priſoner on *matter of record,* or of *fact*; a priſoner on matter of *record,* is he who, being preſent in court, is by the court committed to priſon; and the other is on an arreſt, by the ſheriff, *&c.* *Staundf. P. C.* 34, 35.

A priſoner at the ſuit of the King may not be charged in an action at the ſuit of the ſubject, without leave of the court. 1 *Lev.* 125, 146.

The court of *King's Bench* hath power to ſend for a priſoner out of the *Marſhalſea* court, by rule of court, and need not iſſue an *habeas corpus,* as that priſon belongs to this court; but they cannot ſend for a priſoner out of any other priſon, without writ of *habeas corpus.* Mich. 1650.

Every judge of *B. R.* may remit priſoners, with their indictments, to the places where the offences wherewith they are charged were committed; and a priſoner for debt may be removed from the *Fleet* to the *King's Bench,* and thence to the *Marſhalſea*, on ſomething charged againſt him in the *habeas corpus* or return, or on bringing him into court. *Dyer* 275. 2 *Lil. Abr.* 357.

Priſoners in the *King's Bench* and *Fleet* priſons, on meſne proceſs, *&c.* are to be actually confined within the priſons, or rules of the ſame, till diſcharged; and the profits of the *marſhal's* and *warden's* places are liable to ſequeſtration for payment of debt on judgment, on an eſcape, beſides the common remedy.

Judgment may be ſigned againſt a priſoner, in the *Fleet*, in a perſonal action, entering a declaration, and leaving a copy thereof with the priſoner, *&c.* after a rule to plead, to be out at eight days, *&c.* Priſoners in the *King's Bench* are not to pay above 2 *s.* 6 *d. per* week, chamber-rent, on pain of keepers taking more, to forfeit 20 *l.* *Stat.* 8 & 9 *W.* 3. *cap.* 7. And priſoners going at large, may be taken up on an eſcape warrant. 1 *Ann. cap.* 6. But priſoners may go out of the rules, on a day-rule of court, about their buſineſs, ſo as they do not go into the country, or to plays, diverſions, *&c.* 2 *Lil.* 366.

A perſon in execution in the *King's Bench priſon*, was put in irons by the *marſhal*; and the court ordered the *marſhal* to keep his priſoner according to law: though they ſaid he might juſtify putting him in irons, *if he feared an eſcape*, or if the priſoner was unruly. *Farreſt.* 52. In the ſecond year of *Geo.* 2. Sir *William Rich* being laid in irons in the *Fleet* priſon, had his irons taken off by order of the Houſe of Commons; who thereupon begun an inquiry into the conduct of gaolers to priſoners, *&c.*

Priſoners diſcharged. A variety of acts have been made, on liberal principles, for relief of inſolvent debtors. It is immaterial to ſet them forth, as they in general vary in ſome particulars, and the laſt is too prolix, to inſert at large, and yet too particular, to admit of a proper abridgment. Vide the *Stat.* 9 *Geo.* 3. *c.* 26.

Prit. See *Black. Com.* 4 *V.* 339.

Privateers, Are a kind of private men of war, the perſons concerned wherein adminiſter at their own coſts a part of a war, by fitting out theſe ſhips of force, and providing them with all military ſtores; and they have, inſtead of pay, leave to keep what they take from the enemy, allowing the Admiral his ſhare, *&c.*

Privateers may not attempt any thing againſt the laws of nations; as to aſſault an enemy in a port or haven, under the protection of any prince or republic, whether he be friend, ally, or neuter; for the peace of ſuch places muſt be inviolably kept; therefore by a treaty made by King *William* and the States of *Holland*, before a commiſſion ſhall be granted to any privateer, the commander is to give ſecurity, if the ſhip be not above 150 tons, in 1500 *l.* and if the ſhip exceeds that burden, in 3000 *l.* that they will make ſatisfaction for all damages which they ſhall commit in their courſes at ſea, contrary to the treaties with that ſtate; on pain of forfeiting their commiſſions, and the ſhip is made liable. *Lex Mercat.* or *Merch. Compan.* 177, 178.

Beſides theſe private commiſſions, there are ſpecial commiſſions for privateers, granted to commanders of ſhips, *&c.* who take pay, who are under a marine diſcipline; and if they do not obey their orders, may be puniſhed with death: And the wars in latter ages, have given occaſion to princes to iſſue theſe commiſſions, to annoy the enemies in their commerce, and hinder ſuch ſupplies as might ſtrengthen them, or lengthen out the war; and likewiſe to prevent the ſeparation of ſhips of greater force from their fleets or ſquadrons. *Ibid.*

Ships taken by privateers, were to be divided into five parts; four parts whereof to go to the perſons intereſted in the privateer, and the fifth to his Majeſty: And as a farther encouragement, privateers, *&c.* deſtroying any *French* man of war, or privateer, ſhall receive for every piece of ordnance in the ſhip ſo taken 10 *l.* reward, *&c.* 4 & 5 *W.* & *M. c.* 25.

By a particular ſtatute lately made, the Lord Admiral, or Commiſſioners of the Admiralty, may grant commiſſions to commanders of privateers, for taking ſhips, *&c.* which being adjudged *prize*, and the tenth part paid to the Admiral, *&c.* wholly belong to the owners of the privateers and the captors, in proportions agreed on between themſelves; and the officers and ſeamen of *ſhips of war*, are to have the ſole property of all ſhips they take, to be divided as his Majeſty ſhall order by proclamation: Alſo if any ſhips belonging to the *Engliſh* be taken by the enemy, and afterwards retaken by any of *our* men of war or privateers, they are to be reſtored to the owners, on paying an *eighth* part of the value, *in lieu of ſalvage*, after having been in the enemy's poſſeſſion twenty-four hours; and if above that time, paying further to a moiety, *&c.* And ſhips of war or privateers, taking any ſhip of war or privateer of the enemy, the officers and ſeamen ſhall be paid by the treaſurer of the navy 5 *l.* for every man who was on board ſuch ſhip at the beginning of the engagement. *Stat.* 13 *Geo.* 2. *c.* 4. Prize goods are not exempted from the cuſtoms; and for what particular duties they are liable to. Vide 29 *Geo.* 2. *c.* 34. And 30 *Geo.* 2. *c* 18.

Privation, (*Privatio*) A taking away or withdrawing; moſt commonly applied to a biſhop or rector, when by death, or other act, they are deprived of their preferments; it ſeems to be an abbreviation of the word *deprivation* Co. Lit. 329.

Privement enſient, Is where a woman is *with child* by her huſband; but not *quick* with child. *Wood's Inſt.* 662.

Privies, (From the Fr. *Prive*, i. e. *Familiaris*) Are theſe who are partakers, or have an intereſt in any action or thing, or any relation to another: As every heir in tail is *privy* to recover the land entailed, *&c.* *Old Nat. Br.* 117.

There are five ſeveral kinds of *privies*, viz. *Privies of blood*, ſuch as *the heir* to the anceſtor; *privies in repreſentation*, as executors or adminiſtrators to the deceaſed; *privies in eſtate*, between donor and donee, leſſor and leſſee, *&c.* *Privies* in reſpect of *contract*; and *privies* on account of *eſtate* and *contract* together. 3 *Rep.* 23, 123. 4 *Rep.* 123. *Latch.* 260.

If a fine be levied, the heirs of him who levied it, are termed *privies* If a leſſor grants his reverſion, the grantee and leſſee are *privies* in *eſtate*: And *privies* in *contract* extend only to the perſons of the leſſor and leſſee; and where the leſſee aſſigns all his intereſt, here the leſſor and leſſee remain *privy* in *contract*, but not in eſtate, which is removed by the aſſignment. 3 *Rep.* 23.

Privies in reſpect of *eſtate* and *contract* appears, where the leſſee aſſigns his intereſt, but the contract between the leſſor and leſſee as to action of debt continues, the leſſor not having accepted of the aſſignee. 3 *Lev.* 295. But where there are *privies* in *contract*, and the *privity* is altered by aſſignment of an executor, *&c.* before any rent due, and after the *privity* of *eſtate* by the aſſignment of the executor's aſſignee, nothing remains whereby to maintain any action. *Latch* 260.

There are likewiſe *privies* in *deed*, or in law; where the deed makes the relation; or the law implies it, in caſe of eſcheats to the lord, *&c.* And *only parties* and *privies* ſhall take advantage of conditions of entry on lands, *&c.* *Co. Lit.* 516. See *Black. Com.* 2 *V.* 355. and *Privity* and *Privy*.

Privilege, (*Privilegium*) Is defined by *Cicero* in his oration *pro domo ſua*, to be *lex privata homini irrogata.* It is, ſays another, *Jus ſingulare*, whereby a private man, or a particular corporation is exempted from the rigor of the Common law. It is ſometimes uſed in law for a place which hath ſome ſpecial immunity. *Kitchin*, 118.

Privilege is either *perſonal* or *real*: A *perſonal* privilege is, that which is granted to any perſon, either againſt or beyond the courſe of the Common law: As for example, A member of parliament may not be arreſted, nor any of his ſervants. See *poſt*.

A *privilege real* is that which is granted to a place, as to the *univerſities*, that none of either may be called to *Weſtminſter-Hall*, on any contract made *within their own precincts*, or proſecuted in other courts: And one belonging to the Court of *Chancery* cannot be ſued in any other court, certain caſes excepted; and if he be, he may remove it by *writ of privilege*, grounded on the ſtatute

18 *E.* 3.

18 *E.* 3. *Cowell.* Officers of the court are to be ſued in the petty bag office.

Privilege is an exemption from ſome duty, burthen or attendance, to which certain perſons are intitled, from a ſuppoſition of law, that the ſtations they fill, or the offices they are engaged in, are ſuch as require all their care; that therefore without this indulgence it would be impracticable to execute ſuch offices to that advantage which the public good requires. 4 *New Abr.* 215.

1. *Of privilege in ſuits allowed officers and attendants in the courts of juſtice.*
2. *Of the privilege of peers and members of parliament.*
3. *Of the proceedings in courts by and againſt perſons intitled to privilege of parliament.*

1. *Of privilege in ſuits allowed officers and attendants in the courts of juſtice.*

The officers, miniſters and clerks of the courts in *Weſtminſter-Hall* are allowed particular privileges in reſpect of their neceſſary attendance on thoſe courts; they are regularly to ſue and be ſued in the courts *they reſpectively belong to*, and cannot (except in certain caſes) be impleaded elſewhere; which privilege ariſes from a ſuppoſition of law, that the buſineſs of the court or their clients cauſes would ſuffer by their being drawn into another than that in which their perſonal attendance is required. 2 *Inſt.* 551. 4 *Inſt.* 71. *Vaugh.* 154. *Dyer* 377. *a. pl.* 30.

Anderſon Ch. J. of *C. B.* brought treſpaſs *by bill* for breaking his houſe in the city of *Worceſter*, againſt a citizen of the city; the mayor and commonalty came and ſhewed a charter granted by *Edward* VI. and demanded conuſance of pleas; but it was refuſed, becauſe the privilege of that court, of which the plaintiff was a chief member, is more ancient than the patent; for the juſtices clerks and attornies ought to be there attending their buſineſs, and ſhall not be impleaded or compelled to implead others elſewhere; and this privilege was given the court on the original erection of it. 3 *Leon.* 149.

An attorney, *ſo long as he remains on record*, (and continues in practice) ſhall have his privilege; therefore where it was moved, that *J. S.* ſhould put in ſpecial bail, being an attorney at large, and having diſcontinued his practice, the court ſaid, that attornies *at large* have the ſame privilege with the clerks of the courts, and are to appear *de die in diem*; and they were not ſatisfied that he had diſcontinued his practice. *Bro.* tit. *Attorney* 67. *Tit. Bill* 24. 1 *Vent.* 1.

But where *J. S.* was arreſted in *B. R.* and after the arreſt he procured himſelf to be made an attorney of *C. B.* and prayed his privilege, it was diſallowed, becauſe it accrued *pendente lite*. 2 Rol. Rep. 115.

In debt againſt the warden of the *Fleet*, *by bill of privilege*, he refuſed to appear; the court doubted how they could compel him, as they could not forejudge him the court, he having an *inheritance* in his office; but it being ſurmiſed that he made a leaſe of his office, it was held, that he ſhould not have his privilege, for that the leſſee, and not he, was the officer during the leaſe. 2 *Leon.* 173.

So if the marſhal of *B. R.* grants his place for life; the grantor has no privilege during that time. 1 *Vent.* 65.

A clerk of *B. R.* was ſued in an inferior court for a debt under five pounds, and had a writ of privilege allowed; for the ſtatute 21 *Jac.* 1. *c.* 23. never intended to take away the privilege of attornies. *Palm.* 403.

In the court of Exchequer there are three ſorts of privilege: 1ſt, *As debtor.* 2dly, *As accountant.* 3dly, *As officer.* Hard. 365.

J. S. was ſued in *London*, which he removed into *B. R.* and afterwards prayed his privilege of the court of Exchequer; and on the puiſne Baron's coming into court, and bringing the red book of the Exchequer, which ſhewed that he was an eſcheator, and ſo an accountant to the King, the privilege was allowed. *Noy* 40. *Sed qu.* as to the law, the officer having choſen the court of *B. R.* for determination of his ſuit, and thereby, as I conceive, had ſubmitted to the juriſdiction of *B. R?*

If one holds of the Queen as of her manor, he ſhall not have the privilege of the Exchequer for *that* cauſe; but if the King grants tithes, and thereupon reſerves a rent *nomine decimæ*, and a tenure of him, there he ſhall have privilege. 2 *Leon.* 21.

A *Latitat* being ſued out againſt the *commiſſioners* of the *Treaſury*, the puiſne Baron of the Exchequer came into the court of *B. R.* and brought the red book of the Exchequer, which is deemed *a record* in *that* court; and thereby it appeared, that the Treaſurer had privilege of being ſued only in *that* court; and the patent being produced in court which conſtituted defendants, *&c.* and granted them the office of treaſurer of *England*, their privilege was allowed without putting them to bring a writ of privilege; the court grounding themſelves on the record before them. 2 *Show.* 299.

It hath been held, that the treaſurer of the navy is *eo ipſo* an accountant; and that an accountant's privilege will hold againſt a ſpecial privilege in another court, *as officer of the court* or otherwiſe, though it be not alleged, that ſuch an accountant is entred on his account; for that every acountant may be attached by the court to make up his account, and muſt attend for that purpoſe *de die in diem.* Hard. 316. *See* Moor 753. 2 Inſt. 23, 551. Bro. Privilege 16.

In debt in *B. R.* againſt *J. S.* he pleaded to the juriſdiction, That none of the privy chamber ought to be ſued in any other court, *without the ſpecial licence of the lord chamberlain of the houſhold*, and that he was one of the privy chamber; on demurrer to this plea, the court over-ruled it with great reſentment, and awarded a *Reſpondeas ouſter.* Raym. 34. 1 Keb. 137.

It was agreed, that the privilege of the court of *C. B.* which Serjeants claimed, extended only to inferior courts, not to the courts in *Weſtminſter-Hall*; and that a Serjeant may be ſued in any of theſe, becauſe he is not confined to that court alone, but may practiſe in any other court; but it is otherwiſe as to attornies or philazers, who cannot practiſe in their own name in any other court but ſuch as they reſpectively belong to; and that a Serjeant at law is to be ſued *by original*, not by bill of privilege. 2 *Lev.* 129. 3 *Keb.* 42. *Moor.* 296. S. C.

So in action by bill brought in *C. B.* againſt a ſerjeant at law, he pleaded that *he ought to have been ſued by original, and not by bill*; and on demurrer, the court held, that the caſe of a ſerjeant and prothonotary's clerk were on the ſame footing, neither of them being bound to perſonal attendance, as prothonotaries and attornies were; that therefore he ought to have been ſued *by original*, accordingly gave judgment for defendant. *Trin.* 7 *G.* 2. Serjeant *Girdler*'s caſe.

J. S. being arreſted by a writ out of *C. B.* brought his writ of privilege as clerk of the crown office; but it appearing that he was only a clerk to a clerk of that office, and not *an immediate clerk* of the office, a *ſuperſedeas* to the writ of privilege was granted on motion; the court having agreed, That he had no more privilege than an attorney's clerk. 2 *Show.* 287.

A Serjeant at law, barriſter, attorney, or other privileged perſon, whoſe attendance is neceſſary in *Weſtminſter-Hall*, may lay his action in *Middleſex*, though the cauſe of action accrued in another county; and the court on the *uſual* affidavit will not change the venue. *Stil.* 460. *Moor* 64. 2 *Show.* 242.

But it hath been held, That if a privileged perſon be ſued, and the action brought againſt him in the right county, his privilege will not intitle him to have it tried in *Middleſex.* Carth. 126. 1 Show. 148.

And it was ſaid, that an attorney or officer of the court where he is *defendant* hath no privilege concerning the venue; but where he is *plaintiff* he hath the privilege to lay his action in *Middleſex*, and out of the proper county. Which doctrine has been ſince recogniſed and confirmed in 4 *Bur.* 2027, *&c.*

If an attorney lays his action in *London*, the court will change the venue on the uſual affidavit; for, by not laying it in *Middleſex*, he ſeems regardleſs of his privilege, and is to be conſidered as a perſon *at large.* 2 Vent. 47. Salk. 668.

On a motion to diſcharge a rule which had been obtained for changing the venue, it appeared, That the plaintiff was a barriſter and maſter in Chancery; and the court held that he had privilege, by reaſon of his attendance, to lay his action in *Middleſex*, therefore diſcharged the rule. 2 *Raym.* 1556.

2. *Of the privilege of peers and members of parliament.*

All peers, without diſtinction are intitled to privilege; for they are equally obliged to attend the ſervice of the public, and are always ſuppoſed amenable, and to have ſufficient property to anſwer in ſuits brought againſt them, and on theſe grounds are not to be arreſted or moleſted *in their perſons.* This privilege extended formerly to abbots, as it does to biſhops, members of the convocation, and members of the houſe of commons at this day. 4 *Inſt.* 24. *Stil.* 222, 253. *Dyer* 314. 1 *Mod.* 66. *Bro. Exig.* 3. *Moor* 767. *Scobel's Memorials* 88, 103. *Sir Simon Dew's Journals* 414. *Finch* 355. *Dyer* 60. *a.* in margin. *Noy* 102. *Moor* 78. *Staundf. P. C.* 38.

The privilege of parliament according to the law of parliament is of a very extenſive nature; but all that is here intended to be treated of is only the taking notice of and pointing out ſuch caſes, relative hereto, as are to be found in the books of law; not to determine concerning this privilege as ſettled by the rules and orders of each houſe, of which they themſelves are the ſole judges, though the King's courts *incidently* take notice thereof, and are bound to determine in matters of privilege when ſo directed by act of parliament. Lord *Coke* ſays of this law, *ab omnibus quærenda eſt, a multis ignorata, a paucis cognita.* 4 Inſt. 15. 13 Co. 63. 4 Inſt. 23, 50, 363. Prinne's Animad. on 4 Inſt. 12. Cro. Car. 181, 604. Lord Raym. 1111. *See* 1 Mod. 66.

This privilege, with reſpect to peers, extends only to the peers of *Great Britain*; ſo that a nobleman of any other country, or a lord of *Ireland*, hath not any other privileges in this kingdom than a common perſon; alſo the ſon and heir apparent of a nobleman is not intitled to the privilege of being tried by his peers, which is confined to ſuch perſon as is *a lord of parliament* at the time; but it ſeems that an infant peer is privileged from arreſts, his perſon being held *ſacred.* Co. Lit. 156. 2 Inſt. 48. 3 Inſt. 30.

The peers of *Scotland* had no privilege in this kingdom before the union, but now, by the 23d article of the union, the ſixteen *elected* peers have all the privileges of the peers of parliament of *Great Britain*; alſo all the reſt of the peers of *Scotland* have all the privileges of the peerage of *England*, excepting only that of ſitting and voting in parliament. 9 *Co.* 117. 1 *P. Wil.* 583.

A peereſs *by birth* is intitled to privilege; ſo of a peereſs by marriage, and that as well during coverture as after; but *as a peereſs by marriage*, is ſaid to loſe her dignity by marrying a commoner, *Q.* If after ſuch marriage ſhe is intitled to any privilege. 2 *Inſt.* 50. *Stil.* 222, 234, 252. 2 *Cha. Ca.* 224. *Co. Lit.* 16. 6 *Co.* 53. *Dyer* 79.

It was holden by *Holt*, that where a perſon is called *by writ* to the houſe of Peers, he is no peer *until he ſits* in parliament, the writ giving him no nobility or honour; but that it was *the ſitting* in the houſe of Lords, and aſſociating himſelf with them that ennobled his blood; that therefore, if the King or *he* dies *before* a parliament meets, the writ is determined, and the party remains a commoner; but he held it otherwiſe in *a creation by letters patent*, by which the party is *immediately* noble without any other act or ceremony; and though the parliament never meets, or the King dies, the nobility remains to him and his poſterity, according to the limitations in the patent. 4 *New Abr.* 229.

A member of parliament ſhall have privilege of parliament, not only for his ſervants, but for his horſes, *&c.* or other goods diſtrainable. 4 *Inſt.* 24.

J. S. brought debt againſt *H.* who pleaded that he was tenant and ſervant to Lord *Moon*, and prayed writ of privilege might be allowed him; plaintiff demurred; it was argued, that the matter of the plea was againſt the Common and ſtatute law; but *per Roll* Ch. J. you ought not to argue generally againſt the privilege of parliament; every court hath its privilege; I conceive a writ of privilege belongs to a parliament man, ſo far as to protect his lands and eſtate; and you have admitted his privilege by your demurrer. *Stil.* 139. See *Latch* 150. and the S. C. *Stil.* 167, 223. 1 *Jon.* 155.

The warden of the *Fleet* inſiſted on a writ of privilege, alledging that he was obliged to attend the houſe of Lords; but it appearing that he was ſued on an eſcape, and the court conſidering the great inconvenience that would enſue, and being of opinion that *it was in their diſcretion whether they would grant ſuch writ or no*, on a motion they ſaid he might plead if he would, but they would not award ſuch writ, or, if his privilege was infringed, he might complain to the houſe of Lords. 2 *Vent.* 154.

In debt, the defendant pleads he was a ſervant to a member of parliament, and *ideo capi ſeu arreſtari non debet*; the plaintiff prays judgment, and *quia videtur quod tale privilegium quod magnates, &c. & eorum familiares capi ſeu arreſtari non debent; ſed nullum habetur privilegium quod non debent implacitari, ideo reſpondeat ouſter.* 1 Mod. 146.

Defendant after a general imparlance pleaded, That he was ſervant to a peer, and by *North* Ch. J. it is not receivable, for *it is the privilege of the maſter and not the ſervant*; but the defendant ought to *ſue* his writ of privilege, for perhaps his maſter will not protect him; and if he will not, he is then left to anſwer; like to the caſe of a counſellor, where it is the privilege of the client that he ſhall not be compelled to diſcover the ſecrets of his client; but, if the client be willing, the court will compel the counſel to diſcover what he knows; *North* ſaid, as it was a matter of great conſequence, he would adviſe with the Chancellor and judges, what uſed to be done in ſuch caſes; afterwards it was moved again, and *North* ſaid it was moved in the houſe of Lords, and that they had left it to the judges; therefore the plea was rejected. *Paſch.* 30 *Car.* 2. in *C. B. Lea* v. *Wheatley.*

By an order of the 24th of *January* 1696, in the houſe of Lords, it was reſolved, That no common attorney or ſolicitor, though employed by a peer, ſhould have the privilege of that houſe.

By an order of the 24th of *May* 1724, this privilege was reſtrained to *menial* ſervants, and others *neceſſarily* employed about the eſtates of peers.

By an order of the 22d of *January* 1715, it was reſolved, That every peer ſhould upon his honour certify to the houſe, that the perſons protected were within the privilege of the houſe; and ſhould by letter acquaint the party, arreſting ſuch privileged perſon, with the ſame.

An attorney was taken in execution on a *ca. ſa.* but upon a letter under the hand and ſeal of the Lord *Say and Seal*, the ſheriff diſcharged him *as Steward* to his lordſhip; a rule was obtained at the ſide-bar for the return of the writ; and, on motion to diſcharge this rule, it was urged in behalf of the ſheriff, that this privilege belonged only *to the peer*, not to the party, and was not returnable to the proceſs; that therefore the court ought not to inſiſt upon a return, as the ſheriff could not juſtify the detention of defendant, but under peril of the houſe of peers; but on conſideration of the above-mentioned orders, and on conſidering the nature of this caſe, that the plaintiff was within the ordinary juſtice of the court intitled to a return of his writ; that without ſuch return he might be debarred from any further execution; but principally from the great inconveniency that might ariſe by allowing attornies, who are officers to the courts in which they reſpectively practiſe, and therefore amenable to thoſe courts, this kind of privilege; the court gave the plaintiff liberty to proceed againſt the ſheriff, but gave him time to make his return. 4 *New Abr.* 230.

In all civil cauſes this privilege is regularly to be allowed; ſo that a peer, or member of the houſe of Commons, is not to be arreſted or moleſted in his perſon or eſtate. *Bro. Exigent.*

But privilege of parliament doth not extend to high treaſon, felony, breach of the peace, or ſurety of the peace. 4 *Inſt.* 25.

Therefore in an indictment for treaſon or felony, treſpaſs *vi & armis*, aſſault or riot, proceſs of outlawry ſhall iſſue againſt a peer; for the ſuit is for the King, and the offence is a contempt againſt him; but in civil actions between party and party, regularly a *capias* or *exigent* lies not againſt a lord of parliament. 2 *Hal. Hiſt. P. C.* 199. 2 *Hawk. P. C.* 424.

If a peer of parliament be convicted of a diſſeiſin with force, a *capias pro fine* and *exigent* ſhall iſſue; for the fine is given by ſtatute, in which no perſon is exempted. *Cro. Eliz.* 170. See *Dyer* 314.

So in debt on an obligation againſt the Earl of *Lincoln*, who pleaded *non eſt factum*, which being found againſt him, the judgment was *ideo capiatur*; which on a writ of error brought by him was objected to, in that a *capias* does not lie againſt a peer, *ſed non allocatur*: for by this plea found againſt him, a fine is due to the King, againſt whom none ſhall have any privilege. *Cro. Eliz.* 503.

An information was exhibited in *B. R.* againſt the Earl of *Devonſhire*, for ſtriking *in* the King's palace; which being in time of parliament, he inſiſted on his privilege, and refuſed to plead in chief, but put in his plea of privilege, to which there was a demurrer and the plea over-ruled, and he was fined 30,000 *l.* *Comb.* 49.

Peers are puniſhable by attachment for contempts in many inſtances; as for reſcuing a perſon arreſted by due courſe of law; for proceeding in a cauſe againſt the King's writ of prohibition; for diſcharging other writs, wherein the King's prerogative, or the liberty of the ſubject are nearly concerned; and for other contempts which are of an enormous nature. 2 *Hawk. P. C.* 152.

If a peer be returned on a jury, on his bringing a writ of privilege he may be diſcharged; alſo it ſeems the better opinion, that without ſuch writ he may either challenge himſelf, or be challenged by the party. *Dyer* 314. *Moor* 767. 9 *Co.* 49. *Co. Lit.* 157. 1 *Jon.* 153.

Alſo in the caſe of Sir *Edward Bainton*, who being returned on a jury, the court would not force him to be ſworn againſt his will, he being a parliament man, and the parliament *then* ſitting. *Paſch.* 27 *Car.* 2. in *B. R.*

A day of grace ſhall not be given againſt a lord of parliament; for he is preſumed to be attendant on the ſervice of the public. 9 *Co.* 49. *a.*

So if a peer be made ſteward of a baſe court, or ranger of a foreſt, he may from the dignity of his perſon, and the preſumption that he is engaged in the more weighty affairs of the Commonwealth, exerciſe theſe offices by deputy; tho' there are no words for this purpoſe in his creation. 9 *Co.* 49. *a.*

So if a licence be granted to a peer to hunt in a chaſe or foreſt, he may take ſuch a number of attendants with him as are ſuitable to his dignity. 9 *Co.* 49 *b.*

A peer or lord of parliament cannot be an approver; for it is againſt *Magna Charta* for him to pray a coroner, 3 *Inſt.* 129.

If a peer bring an appeal, defendant ſhall not be admitted to wage battle, by reaſon of the dignity of his perſon. 2 *Hawk. P. C.* 427.

In *Jenkins* the following privileges are laid down as belonging to peers: 1. They are intitled to a letter miſſive. 2. They have *a knight* to try an iſſue which concerns them. 3. They are not to be arreſted for any perſonal action. 4. They are exempted from ſerving on juries. 5. To have no day of grace againſt them. 6. Upon the trial of a peer for treaſon or felony, they try him on their honour *only*, not on oath. 7. When they paſs thro' any of the King's foreſts *to attend the King*, on blowing a horn they may have a buck or doe, as the ſeaſon of the year is. 8. They have power in their houſe to reverſe judgments given in the King's Bench. 9. They have the benefit of clergy, tho' they cannot read, 10. They are not liable to find carriages for the King when he removes from one place to another. *Jenk.* 107.

In the caſe of Colonel *Pit*, the parliament was prorogued the 16th of *April* 1734, diſſolved the 17th, and the new writs bore *teſte* the 18th following, and *Pit*, who was a member of *that* parliament, was arreſted on the 20th; one of the queſtions in this caſe was, Whether the arreſt was *within* the time of privilege? And it was determined that it was, altho' defendant had lived for two years before no farther diſtant from *London* than *Hammerſmith*; but the court did not think it neceſſary, in the determination of this cauſe, to aſcertain the exact time of privilege that members of the houſe of Commons were intitled to after a diſſolution of parliament. *Trin.* 8 *Geo.* 2. in *B. R.* Col. *Pit*'s caſe. See *Stran. Rep.* 985. and *Reports in the time of Lord Hardwicke* 16—27.

3. *Of the proceedings in courts by and againſt perſons intitled to privilege of parliament.*

By 12 & 13 *W.* 3. *cap.* 13. *ſect.* 1. Any perſon may proſecute any ſuit againſt any perſon intitled to privilege of parliament, at any time immediately after the diſſolution or prorogation of parliament *until a new parliament ſhall meet*, or the ſame be re-aſſembled, and immediately after any adjournment of both houſes for above fourteen days until both houſes meet; and the courts may after ſuch diſſolution, prorogation or adjournment, proceed to give judgment, and to make final decrees and ſentences; any privilege of parliament notwithſtanding.

Sect. 2. Provided, That this act ſhall not ſubject the perſon of any perſon, intitled to privilege of parliament, to be arreſted during time of privilege; nevertheleſs if any perſon have cauſe of action againſt any peer, ſuch perſon after diſſolution, prorogation or adjournment, or before any ſeſſions of parliament, may have ſuch proceſs againſt ſuch peer, as he might have had *out* of time of privilege; and if any perſon have cauſe of action againſt any perſon intitled to privilege of parliament, after any diſſolution, prorogation or ſuch adjournment, &c. ſuch perſon may proſecute ſuch perſon intitled to privilege, by ſummons and diſtreſs infinite, or by original bill and ſummons, attachment and diſtreſs infinite, which the courts are impowered to iſſue, until they enter a common appearance, or file common bail; and any perſon having cauſe of ſuit may in the times aforeſaid exhibit any bill or complaint againſt any perſon intitled to privilege, in the Chancery, Exchequer or Dutchy court, and proceed thereon by letter or *ſubpœna* as uſual; and on leaving a copy of the bill with defendant, or at his laſt place of abode, may proceed thereon; and for want of an appearance or anſwer, or for non-performance of any order or decree, may *ſequeſter* the eſtate of the party, as is uſed where the defendant is a peer, but ſhall not arreſt the body of any privileged perſon, during the continuance of privilege of parliament.

Sect. 3. Where any plaintiff by reaſon of privilege of parliament be ſtayed from proſecuting any ſuit commenced, ſuch plaintiff ſhall not be barred by any ſtatute of limitation, or nonſuited, diſmiſſed, or his ſuit diſcontinued for want of proſecution, but ſhall on the riſing of the parliament be at liberty to proceed.

Sect. 4. No ſuit or proceeding againſt the King's original and immediate debtor, for the recovery of any debt originally and immediately due to his Majeſty, or againſt any perſon liable to render an account to his Majeſty for any part of his revenues, or other original or immediate duty, or the execution of any ſuch proceſs, ſhall be impeached or delayed by privilege of parliament; yet ſo that the perſon of ſuch debtor or accountant, being a peer, ſhall not be liable to be arreſted, or being a member of the houſe of Commons, ſhall not, during the continuance of privilege, be arreſted by any ſuch proceeding. See *ſtat.* 2 & 3 *Ann. c.* 18. 11 *Geo.* 2. *c.* 24.

Sect. 5. This act ſhall not give any juriſdiction to any court to hold plea of any real or mixed action in other manner than ſuch court might have done before.

A great improvement hath been made on this law, by the *Stat.* 10. *Geo.* 3. *c.* 50. whereby liberty is given to proceed againſt perſons intitled to privilege during the ſitting of parliament. See the ſtatute, and tit. *Parliament*, and *Peers*.

A peer is to put in his anſwer to a bill in equity on his honour *only*, not on oath; but when he is examined *as a witneſs*, he muſt be ſworn.

Alſo if a peer is by order of court to be examined on interrogatories, or to make an affidavit, the ſame muſt be on oath. *Salk.* 513. & *vid. Preced. Chan.* 92.

Lord *Stourton* brought a bill againſt Sir *Thomas Meers*, to compel him to a ſpecifick performance of articles for purchaſing Lord *Stourton*'s eſtate. Sir *Thomas* in his defence inſiſted, that there were defects in Lord *Stourton*'s title to the eſtate; and it being ordered that Lord *Stourton* ſhould be examined *on interrogatories* touching his title; it was objected, that Lord *Stourton* being a peer ought to anſwer on honour only; but it was ruled by Lord *Harcourt*, that tho' privilege did allow a peer to put in his anſwer on honour only, yet this was reſtrained to *an anſwer*; and as to all affidavits, or where a peer is examined as a witneſs, he *muſt* be on oath; and that this examination on interrogatories, being in a cauſe wherein his Lordſhip was plaintiff, to force the execution of an agreement, as *his Lordſhip would have equity, ſo he ſhould do equity*, and allow the other ſide the benefit of a diſcovery, and that in a legal manner; and accordingly ordered Lord *Stourton* to put in his examination on oath. 1 *P. Will.* 145.

It hath been held, that in an action founded on the 12 & 13 *W.* 3. *c.* 13. defendant ſhould have an imparlance, and that the practice is to file a bill in nature of a ſpecial *capias* againſt defendant, and *then* to ſummon him; and if he appears on ſuch ſummons, plaintiff may declare againſt him, as *in cuſtodia mareſcalli*. Hill. 10 Geo. 1. in B. R. Wadſworth *v.* Handiſide.

Peers are intitled to *a letter miſſive*, which method was introduced on a preſumption that peers would pay obedience to the Chancellor's letter; and is founded on that reſpect which is due to the peerage. *Jenk.* 107.

If the Lord doth not appear on the letter, a *ſubpœna*, on motion, is awarded againſt him; becauſe no ſubſequent proceſs can be awarded but on a contempt to the Great Seal, and the Chancellor's letter is only *ex gratia*.

If on the ſervice of the *ſubpœna*, the peer doth not appear, or if he appears, and does not put in his anſwer, no attachment can be awarded againſt him, becauſe *his perſon cannot be impriſoned*; but the proceedings muſt be by *ſequeſtration*, unleſs cauſe, &c. and this is regularly made out, on affidavit made of the ſervice of the letter and *ſubpœna*, tho' ſometimes it is moved for without, ſince the peer may ſhew want of ſervice at the day aſſigned to ſhew cauſe why the ſequeſtration ſhould not iſſue; and this order for a ſequeſtration is never made *abſolute without an affidavit* of the ſervice of the order to ſhew cauſe, and a certificate of *no* cauſe ſhewn. 2 *Vent.* 342.

A bill being filed againſt a peer or peereſs, the firſt application is for the Chancellor's letter returnable in term time; or it may be *immediate*, if the peer lives in town; but in this caſe there muſt be an affidavit, that the original letter is left with the peer at his houſe, with a copy of the petition as anſwered; and therewith alſo is left an office copy of the bill ſigned by the ſix clerk; for if the bill is not ſigned, the ſervice is irregular. 4 *New Abr.* 238.

This letter is only *a compliment*, and no proceſs to found proceedings on; ſo that the peer may appear or not, as he pleaſes; if he fails, a *ſubpœna* iſſues againſt him, and his time for appearing and anſwering being out, an attachment muſt be *actually* ſealed and entred againſt him, tho' never executed, to ground a ſequeſtration. It is a motion of courſe for a ſequeſtration on an attachment *for want of an anſwer*. 4 New Abr. 238.

The peer *muſt* be *perſonally ſerved* with this order, and he hath eight days to ſhew cauſe after perſonal ſervice of the order; *if no cauſe the order is abſolute*; but if the ſequeſtration is for want of an appearance, and he appears, the plaintiff muſt run the ſame race over again for want of an anſwer, and the peer muſt pray time to anſwer, as ſuitors do. 4 *New Abr.* 238.

The ſame proceeding is againſt a member of the houſe of Commons; there the party proceeds by way of ſequeſtration, only with this difference, that inſtead of a letter, there always a *ſubpœna* is ſued out. *Ib.*

A ſequeſtration was granted, unleſs cauſe, againſt Lord *Clifford* for want of an anſwer; he afterwards put in anſwer, which being reported inſufficient, it was moved for a ſequeſtration abſolutely, *an inſufficient anſwer being as no anſwer*; but the court thought it a hardſhip in the caſe of a peer or member of the Houſe of Commons, that a ſequeſtration, which in ſome reſpects is in nature of an execution, ſhould be the firſt proceſs againſt them; therefore allowed, that in caſe of an anſwer which is reported inſufficient, the plaintiff is to move again *de novo*, for a ſequeſtration *niſi*. 2 *P. Will.* 385.

It was moved for a ſequeſtration *niſi*, for want of an anſwer, againſt a menial ſervant of a peer, as the firſt proceſs for contempt, in the ſame manner as in the caſe of the peer himſelf; and tho' the motion was granted by the Maſter of the Rolls, yet the Regiſter refuſed to draw it up as thinking it againſt the courſe of the court; which being moved again before the Chancellor, his Lordſhip, on reading the *Stat.* 12 & 13 *W.* 3. *c.* 13. likewiſe granted the motion, *it appearing to be both within the meaning and words of the ſtatute*; and if it were not ſo, as it was plain no attachment would lie againſt their perſons, conſequently there would be no remedy againſt them, and they would have a greater privilege than their Lord, if the proceſs againſt ſuch menial ſervant were to be a *ſubpœna*. 1 P. Will. 535.

For more learning on this ſubject, ſee 17 Vin. Abr. *and* 4 New Abr. *tit.* Privilege. *See alſo tit* Parliament, *and* Peers, *and* Black. Com. 1 V. 163, 166, 272. 3 V. 289.

Privileged Places. Formerly one of the greateſt obſtructions to public juſtice, both of the civil and criminal kind, was the multitude of *pretended privileged places* where indigent perſons aſſembled together to ſhelter themſelves from juſtices, (eſpecially in *London* and *Southwark*) under the pretext of their having been antient palaces of the crown, or the like: All of which ſanctuaries for iniquity are now demoliſhed, and the oppoſing of any proceſs therein is made highly penal. *Black. Com.* 4 *V.* 129.

A perſon was arreſted in the *Temple*, and, on motion to ſet it aſide, it was inſiſted for him, that the *Temple* is privileged from arreſts by the King's grant; for which the authority of *Stow's Chronicle* and *Dugdale* were alledged: But by *Holt*, If the King hath made any ſuch grant to that ſociety, *it is void in law*, they having no court of juſtice within themſelves: It is true, the *Temple* is *extraparochial*, and not within any pariſh, nor in the city, ſo as to come within the cuſtoms of the city, but *it is within the county of the city*; and *White Friars* is within the juriſdiction of the city; Yet the court inclined not to countenance arreſts in the *Temple*, eſpecially in *term time*; tho' they would not ſet aſide this arreſt; ſo defendant was held to ſpecial bail.

By 8 & 9 *W.* 3. *c.* 26. for preventing the many ill practices uſed in privileged places to defraud perſons of their debts; the pretended privileges of *White Friars*, the *Savoy*, *Salisbury Court*, *Ram-Alley*, *Mitre Court*, *Fuller's Rents*, *Baldwin's Gardens*, *Montague Cloſe*, the *Minories*, *Mint*, *Clink*, or *Deadman's Place*, are taken away. And the ſheriffs of *London* or their officers are enabled to take the *poſſe comitatus*, and ſuch other power as ſhall be requiſite, and enter ſuch privileged places to make any arreſt on legal proceſs, and in caſe of refuſal to break open doors.

The *Stat.* 9 *Geo.* 1. *c.* 28. enacts, That if any perſon within *Suffolk Place*, or the *Mint*, or the pretended limits thereof, *wilfully* obſtruct perſons executing any writ, &c. or abuſe any perſon executing the ſame, whereby he receive damage or bodily hurt, the perſon offending ſhall be tranſported. And on complaint to three juſtices, &c. by any perſon who ſhall have a debt owing from any one who reſides in the *Mint*, having a legal proceſs taken out for recovery thereof, if the debt be above 50 *l.* on oath thereof the juſtices are impowered to iſſue their warrant to the ſheriff of *Surrey*, to raiſe the *poſſe*, and to enter the pretended privileged place, and arreſt the party, &c.

See the ſeveral ſtatutes of 8 & 9 *W.* 3. *c.* 27. *ſ.* 15. 9 *Geo.* 1. *c.* 28. 11 *Geo.* 1. *c.* 22. to a ſimilar effect.

Privity, (*Privitas*) Private familiarity, friendſhip, inward relation: If there be lord and tenant, and the tenant holds of the lord by certain ſervices, there is a privity between them in reſpect of the tenure. *Cowell.*

There are three ſorts of privities, *viz.* Privity in *eſtate*, in *blood* and in *law*. (See *Poſt Privy.*)

Privies in *blood* are intended of privies in blood *inheritable*, and this is in three manners, *viz.* inheritable as *general heir*, or as *ſpecial* heir, or as *general and ſpecial heir*.

Privies in *eſtate* are as joint tenants, baron and feme, donor and donee, leſſor and leſſee, *&c*

Privies in *law* are, when the law without blood or privity of eſtate caſts the land on one, or makes his entry lawful, as lord by eſcheat, lord who enters for mortmain, lord of villain, *&c.* 8 *Rep.* 42. *b.* *Jo.* 32.

There are three other ſorts of privities, *viz* in reſpect of *eſtate only*, *contract only*, *eſtate and contract together*.

Privity of *eſtate* is, as if the leſſor grants over his reverſion, (or if the reverſion eſcheat.) Now between the grantee (or the lord by eſcheat) and the leſſee, there is privity in *eſtate* only. So between the leſſor and aſſignee of leſſee; for *no contract was made between them*.

Privity of *contract only*, is *perſonal* privity, and extends only *to the perſon of the leſſor*, and *to the perſon of the leſſee*; as in the principal caſe when the leſſee aſſigned over his intereſt, notwithſtanding his aſſignment the privity of the *contract* remained between them, tho' privity of the eſtate be removed by the act of the leſſee himſelf; and the reaſon of this is,

1ſt, Becauſe the leſſee himſelf ſhall not prevent by his own act ſuch remedy, which the leſſor had againſt him by his own contract, but when the leſſor granted over his reverſion, there, againſt his own grant he cannot have remedy, becauſe he has granted the reverſion to the other, to which the rent is incident.

2dly, The leſſee may grant the term to a poor man, who ſhall not be able to manure the land, and who will by indigence, or for malice, permit it to lie freſh, and then the leſſor ſhall be without remedy, either by diſtreſs, or by action of debt, which ſhall be inconvenient, and will concern in effect every man, (becauſe for the moſt part every man is a leſſor, or a leſſee; and for thoſe two reaſons all the caſes of entry by tort, eviction, ſuſpenſion and apportionment of the rent are anſwered; for in ſuch caſes it is either the act of the leſſor himſelf, or the act of a ſtranger, and in none of the caſes, the ſole act of the leſſee himſelf ſhall prevent the leſſor of his remedy, and will introduce ſuch inconvenience as has been ſaid.

Privity of *contract and eſtate together*, is between the leſſor and leſſee himſelf. 3 *Rep.* 23.

Privy, (derived from the French *prive*, *familiaris*) Signifies him who is partaker, or hath an intereſt in any action or thing; as *privies* of blood, (*Old Nat. Brev.* 117.) are thoſe who are linked in conſanguinity. every heir in tail is *privy* to recover the land intailed. *Id. fol.* 147.

If I deliver goods to a man, to be carried to ſuch a place, and he, after he hath brought them thither, ſteal them, it is felony; becauſe the *privity of delivery* is determined as ſoon as they are brought thither. *Staundf. Pl. Cor. lib.* 1. *cap.* 15. 25. *Merchants privy* are oppoſite to *merchant ſtrangers*. 2 Ed. 3. 9 & 14.

The author of the *New Terms of the Law* maketh many ſorts of *privies*, *viz.* privies in *eſtate*, privies *in deed*, privies *in law*, privies *in right*, and privies *in blood*. See *Perkins* 831, 832, 833. and *Co. l.* 3. *fol.* 23. and *lib.* 4. 123, 124. mentions four kinds of *privies*, *viz.* *Privies in blood*, as the heir to his father; *privies in repreſentation*, as executors, or adminiſtrators to the deceaſed; *privies in eſtate*, as he in the reverſion, and he in the remainder, when land is given to one for life, to another in fee, for that their eſtates are created both at one time: The fourth is *privy in tenure*, as the lord by eſcheat, that is, when the land eſcheateth to the lord *for want of heirs*. Cowell.

Privies inheritable, as heir general, ſhall take benefit of the infancy, as if infant tenant in fee-ſimple makes feoffment, and dies, his heir ſhall enter. The ſame law of him who is heir general and ſpecial, and alſo of him that is heir ſpecial, and not general. But privies in eſtate (unleſs in ſome ſpecial caſes) ſhall not take advantage of the infancy of the other. 8 *Rep.* 42. *b.* 43. See *Privies* and *Privity*.

A ſurrender by an ideot of an eſtate for life to deſtroy a contingent remainder is void *ab initio*, therefore any perſon may take advantage of it, as well privy in eſtate as heir at law. But a feoffment in livery made *propriis manibus* of the ideot, not being merely void, makes a difference. *Carth.* 436

Privilegium Clericale, Or in common ſpeech *the benefit of clergy*. See *Black. Com.* 4 *V.* 358, *&c.*

Privilegium Property *propter*. A man may have a qualified property in animals *feræ naturæ*, *propter privilegium*: that is, he may have the privilege of hunting, taking and killing them, in excluſion of other perſons. *Black. Com.* 2 *V.* 394.

Privy Council, (*Conſilium Regis*, *Privatum Conſilium*) Is a moſt honourable aſſembly of the King and *Privy Counſellors* in the King's court or palace, for matters of ſtate. 4 *Inſt.* 53.

The King ſits himſelf in council, and appoints *Privy Counſellors* without patent or grant, by putting them on the liſt, and on their removal ſtriking them out, which *he may do as he pleaſes*: They take an oath *to the King*, juſtly to adviſe him, to keep ſecrecy, *&c.* Their number at the firſt inſtitution was *twelve*; but at this time is without limitation, at the King's will.

Next to the *Lord Preſident of the Council*, the *Lord Privy Seal* ſits in Council, the *Secretaries of State*, and many other Lords and Gentlemen: And in all debates of the Council, the loweſt delivers his opinion firſt, and the King declares his judgment laſt; and thereby the matter of debate is determined. 4 *Inſt.* 55.

It is conſiſtent with ſafety for a *Privy Counſellor* to give the King counſel when demanded; and the beſt counſel is ever given to a Prince, when the queſtion is ſo evenly propounded, as the Counſellor cannot diſcern which way the King himſelf inclines; reſolution ſhould never precede deliberation, nor execution go before reſolution; and when, on debate and deliberation, any matter is well reſolved by the Council, a change of it on ſome private information is neither ſafe nor honourable. 4 *Inſt.*

The *Court of Privy Council* is of great antiquity: The government in *England* was originally by the King and *Privy Council*; tho' at preſent the King and Privy Council only intermeddle *in matters of complaint on ſudden emergencies*; their conſtant buſineſs being to conſult for the public good in affairs of ſtate. 4 *Inſt.* 53.

The Lords and Commons aſſembled in Parliament have often tranſmitted matters of high concern to the King and Privy Council: And acts of the privy Council, whether orders or proclamations, were of great authority: *Hen.* 8. procured an act of parliament to be made, that, with the advice of his Privy Council, he might ſet forth proclamations, which *ſhould have the force of acts of parliament*; but that ſtatute was repealed in the reign of *Ed.* 6. (A very fortunate circumſtance, or otherwiſe the King of *England* might have been the moſt deſpotic ſovereign in *Europe*, at leaſt till he had rouſed the SLEEPING LION!)

Acts of the Privy Council continued of great authority until the reigns of *Charles* the Firſt and Second: And by *theſe* were controverſies ſometimes determined touching lands and rights, as well as the ſuſpenſion of penal laws, *&c.* But this ſeemed to be contrary to the 25 *Ed.* 3. *cap.* 4.

And by 16 *Car.* 1. *cap.* 10. it is declared, that neither the King, nor the Privy Council, have authority by petition, *&c.* to determine or diſpoſe of lands, *&c.* of any ſubject.

The King, with advice of his Council, publiſhes proclamations *binding to the ſubject*; but they are to be conſonant to, and in execution of, the laws of the land.

It is in the power of the Privy Council to inquire into crimes againſt government; they may commit perſons for treaſon, and other offences againſt the ſtate, in order for their trial in other courts; and any of the Privy Council may lawfully do it.

But they take cognizance of no private matters that may be determined in other courts; yet the kingdom of *Ireland* and the *Plantations* are in many reſpects ſubject to the controul, and under the direction, of the Privy Council; and law controverſies among the ſubjects of *Jerſey* and *Guernſey*, &c. are determined by the Privy Council. 3 *Inſt* 182. 4 *Inſt*. 53. *Wood's Inſt*. 458.

By 33 *Hen*. 8. *cap*. 23. Perſons examined by the Privy Council, on treaſons, *&c.* done within or without the realm, may be tried before commiſſioners of *Oyer and Terminer*, appointed by the King in any county of *England*: This ſtatute, as far as it relates to treaſon committed *within* the kingdom, is repealed by 1 & 2 *P*. & *M*. *cap*. 10.

If a perſon be killed beyond ſea, out of the realm, the fact may be examined by the Privy Council, and the offender tried according to the aforeſaid ſtatute.

On the ſtatute of *Hen*. 8. is founded the commiſſion for the trial of Capt. *Roche*, for the murder of Mr. *Ferguſon*, at the *Cape of Good Hope*, 15 Geo. 3.

Conſpiracy by the King's ſervants, againſt the life of a Privy Counſellor, *&c.* is felony. 3 *Hen*. 7. *cap*. 14. And perſons *attempting to kill* or *unlawfully aſſault* any Privy Counſellor, when *in the execution of his office*, are guilty of felony without benefit of clergy, by the 9 *Ann*. *cap*. 16. And anciently if one did ſtrike another in the houſe of a Privy Counſellor, or in his preſence, the party offending was to be fined. 4 *Inſt*. 53.

No perſon born out of the King's dominions, except of *Engliſh* parents, ſhall be of the Privy Council. 12 *W*. 3. *cap*. 2.

There is to be but one Privy Council in *Great Britain*: And the Privy Council is not diſſolved by death of the King; but is to continue for ſix months, *&c.* Unleſs ſooner removed and diſcharged by the ſucceſſor. 6 *Ann*. *c*. 6, 7. *ſect*. 8. *Vide* the *Stat*. 3 *H*. 7. *c*. 14. Alſo 9 *Ann*. *c*. 16. and 1 *Hawk*. *P*. *C*. *c*. 17. *ſect*. 25. *c*. 18. *ſect*. 8. 2 *Hawk*. *P*. *C*. *c*. 16. *ſect*. 4. *c*. 15. *ſect*. 66 to 72. And ſee *Black*. *Com*. 1 *V*. 229, *&c.*

Privy Seal, (*Privatum Sigillum*) Is a ſeal which the King uſeth to ſuch grants or things, as paſs the Great Seal. 2 *Inſt*. 554.

Firſt, they paſs the Privy Signet, then the Privy Seal, and laſtly, the Great Seal of *England*; and the clerks of the Privy Signet office write out ſuch grants, patents, *&c.* as paſs the *Sign Manual*, which, being tranſcribed and ſealed with the ſignet, is a warrant to the Privy Seal, as the Privy Seal is a warrant to the Great Seal. *Wood's Inſt*. 457.

How the King's grants, writings and leaſes, ſhall paſs the Privy Signet, Privy Seal, and Great Seal; and the duties of the clerks of the Privy Signet, and Privy Seal, and what fees ſhall be paid them and many articles concerning paſſing the King's grants, *&c.* are mentioned in the ſtatute 27 *H*. 8. *cap*. 11.

No protection can be granted under the Privy Seal, but under the Great Seal: But a warrant of the King under the Privy Seal to iſſue money out of his coffers, is ſufficient; tho' not under the Privy Signet. 2 *Inſt*. 555. 2 *Rep*. 17. 2 *Rol*. *Abr*. 183. And the Privy Seal is ſometimes uſed in things of leſs conſequence, that never paſs the Great Seal; as to diſcharge a recogniſance, debt, *&c.* But no writ ſhall paſs under the Privy Seal, which toucheth the Common law. 2 *Inſt*. 555. And matters of the Privy Seal are not iſſuable, or returnable in any court, *&c.* 3 *Nelſ*. *Abr*. 211. See *Keeper of the Privy Seal*, and *Black*. *Com*. 2 *V*. 347.

Prizes. See *Privateer*, and *Table to the Statutes*.

Privy Verdict. See *Verdict*, and *Black*. *Com*. 3 *V*. 377.

Pro, Is a prepoſition, ſignifying for, or in reſpect of a thing; as *pro conſilio*, *&c.* And in law, *pro* in the *grant of an annuity pro conſilio*, ſhewing the *cauſe* of the grant, amounts to a *condition*: But in a *feoffment*, or *leaſe* for life, *&c. it is the conſideration*, and doth not amount to a condition; and the reaſon of the difference is, becauſe *the ſtate of the land by the feoffment is* executed, and *the grant of the annuity is* executory. *Plowd*. 412. *Wood's Inſt*. 231.

Probare, In the laws of *Canutus*, was uſed as ſignifying, to claim a thing as a man's own. *Leg*. *Canut*. *c*. 44.

Probate of Teſtaments, (*Probatio Teſtamentorum*) Is the exhibiting and proving wills and teſtaments before the eccleſiaſtical judge, delegated by the biſhop, who is ordinary of the place where the party dies: And if all the deceaſed's goods, chattels and debts owing to him, were in the *ſame* dioceſe, then the biſhop of the dioceſe, *&c.* hath the probate of the teſtament; but if the goods and chattels were diſperſed in divers dioceſes, ſo that there were any thing out of the dioceſe where the party lived, to make what is called *bona notabilia*, then the archbiſhop of *Canterbury*, or *York*, is the ordinary to make probate by his prerogative. *Blount*.

The probate of a will is uſually made in the ſpiritual court, and is done by granting letters teſtamentary to an executor under ſeal of the court, by which the executor is enabled to bring any action, *&c.* And if ſuch letters teſtamentary are granted to the party who exhibits the will, merely on his oath, by ſwearing that he believeth it to be the laſt will of the deceaſed; this is called proving it in *common form*, and ſuch a *probate* may be controverted at any time: But if the executor, beſides his own oath, produces witneſſes to prove it to be the laſt will of the deceaſed, and this *in the preſence of the parties who claim any intereſt*, or in their abſence, if ſummoned and do not appear; this is termed a *probate per teſtes*, which cannot be queſtioned after thirty years. 2 *Nelſ*. *Abr*. 1301.

On an iſſue whether the deceaſed made an executor or no, the *probate* of the will was adjudged good proof. 2 *Lill*. *Abr*. 375. And where the *probate* of a will is produced in evidence at a trial, defendant cannot ſay that the will was forged, or that the teſtator was *non compos mentis*, becauſe it is directly againſt the ſeal of the ordinary, in a matter where he had a proper juriſdiction; but defendant may give in evidence that the ſeal *itſelf* was forged, or that the teſtator had *bona notabilia*, or he may be relieved on appeal. 1 *Lev*. 235. *Raym*. 405. 1 *Strange* 481. The *probate* is evidence only in queſtions relating to the perſonal eſtate.

As the judge of the Spiritual Court *only* can determine the validity of wills for things *perſonal*; therefore the *probate* of ſuch a will is *undeniable evidence to a jury*, and may not be controverted at Common law. 1 *Ld*. *Raym*. 262.

A *probate*, according to *Holt*, is evidence of a will *only* as to chattels: But if a will of lands be loſt, it ſhall be allowed for ſuch a will concerning lands. *Ibid*. 731, 735.

When *probate* is to be granted of a will, wherein a legacy is interlined in a different hand, and ſuppoſed to be forged, the executor has no remedy but in the Spiritual Court; where the will ought to be proved, *with a ſpecial reſervation as to that clauſe*. 1 Peer Will. 388.

Notwithſtanding appeal from a will, a perſon is complete executor by the *probate*; tho' the *probate* may be traverſed, if an executor plaintiff do not conclude with a *profert hic in curia*, or defendant may damand *oyer* of the will. 3 *Bulſt*. 72.

An executor being made by the act of the party deceaſed, the law intitles him to the *probate* of the will; and the *probate* cannot be revoked or altered, which would in effect make a new will; yet *it may be ſuſpended by an appeal*: But if adminiſtration be granted to one, this is by act of the court; and if he afterwards become bankrupt, *&c.* the adminiſtration may be repealed. 1 *Rol*. *Rep*. 226. *Show*. 293. 1 *Salk*. 36. 2 *Nelſ*. *Abr*. 1302.

By 21 *Hen*. 8. *c*. 5. it is ordained, that on *probate* of wills, *&c.* 6 *d*. and *no more* ſhall be taken by the Regiſter, where the goods of the deceaſed do not exceed *five* pounds value; and when the goods are above the value of 5 *l*. and under 40 *l*. the fee to the Judge ſhall be 2 *s*. 6 *d*. and to the Regiſter 1 *s*. and if the goods exceed 40 *l*. in value, the Judge's fee is 2 *s*. 6 *d*. and to the Regiſter 2 *s*. 6 *d*. but *this he may refuſe, and take a penny for every ten lines* of the will, *&c.* And if the officer takes more than his due fees, he ſhall forfeit 10 *l*. to be divided between the King and the party grieved.

But it hath been held on this ſtatute, that a tranſcript of the will muſt be brought to the Regiſter ready ingroſſed, and with wax to be ſealed, ſo that the Regiſter, *&c.* may have nothing to do but to annex the *probate* to it; and then no fee ſhall be taken for ſuch tranſcript. 4 *Inſt*. 336. *Co*. *Ent*. 166.

The power of granting *probates* and adminiſtration of the goods of perſons dying, for wages or work done in the King's docks and yards, ſhall be in the ordinary of the dioceſe *where the perſon dieth*, or in him to whom power is given by ſuch ordinary, excluſive of the prerogative court, *&c.* *Stat.* 4 *&* 5 *Ann. c.* 16. See *Executor*, &c. and *Black. Com.* 2 *V.* 508.

Probator, An accuſer, or approver, or one who undertakes to prove a crime charged upon another.

The word was *ſtrictly* meant of an accomplice in felony, who to ſave himſelf confeſſed the fact, and accuſed any other principal or acceſſary, againſt whom he was bound to make good the charge by duel, or trial by the country, and then was pardoned life and members, but yet to ſuffer tranſportation.——*Cum probator perfecerit quod promiſit, tenetur ei conventio, ſcilicet ut vitam habeat & membra. Sed in regno remanere non debet, etiamſi velit plegios invenire.* Bracton. *Vide* Fleta, lib. 2. cap. 52. ſect. 42, 44.

Procedendo, Is a writ which lieth where an action is removed from an inferior to a ſuperior court, as the *Chancery*, *King's Bench*, or *Common Pleas*, by *habeas corpus*, *certiorari*, or writ of *privilege*; to ſend down the cauſe to the court from whence removed, TO PROCEED on it, it not appearing to the higher court that the ſuggeſtion is ſufficiently proved. *F. N. B.* 153. 5 *Rep.* 63. 21 *Jac.* 1. *cap.* 23.

And if the party who ſues out a *habeas corpus*, or *certiorari*, doth not put in good bail in time, (where good bail is required) then there goes this writ to the inferior court TO PROCEED *non obſtante* the *habeas corpus*, *&c.* 2 Lil. Abr. 376.

If a *certiorari* or *habeas corpus*, to remove a cauſe, be returned before a judge, the judge will give a rule thereon to put in good bail, by ſuch a day, which if defendant, on ſerving his attorney with a copy of the rule, doth not do, then the judge will ſign a warrant for a *procedendo*, to remove the cauſe where the action was firſt laid: Alſo if bail be put in at the time, and do not prove good, the judge will grant a rule *for better bail* to be put in by ſuch a day, or elſe to juſtify the bail already put in; which if defendant doth not do, the judge will then likewiſe grant a warrant for a *procedendo*. 2 Lil. 377.

Where bail put in on removal of a cauſe into *B. R.* is diſallowed by the court, if defendant on a rule for *that* purpoſe, and notice given, refuſe to put in better bail, ſuch as the court ſhall approve of, a *procedendo* may be granted; *for diſallowing the bail makes defendant in the ſame condition as if he had put in no bail, and until the bail is put in and filed, the court is not poſſeſſed of the cauſe ſo as to proceed in it.* Mich. 24 Car. B. R.

After a record returned, and defendant hath *filed bail* in *B. R.* on a cauſe being removed, a *procedendo* ought not to be granted; becauſe by giving and filing bail in this court, *the bail below is diſcharged.* Sid. 313. 2 Nelſ. Abr. 1304. And it hath been held, that by the *Common law*, if a *certiorari* be once filed, the proceedings below can never be revived by any *procedendo*. Hawk. P. C. 294.

When a cauſe by the *cuſtom of London* is actionable, and will not bear an action at the Common law, if on *habeas corpus* or *certiorari*, brought to remove ſuch cauſe into *B. R.* it doth ſo appear to the court; the court will grant a *procedendo* to authoriſe the court of *London* to proceed in the matter; otherwiſe the party who brought the action would be without remedy. 2 *Lil. Abr.* 376. As in caſe of an action againſt a feme covert, ſued as a ſole trader. A feme covert ſole trader in *London* may become bankrupt. 3 *Bur.* 1782, *&c.* where this ſubject is very fully and ably diſcuſſed. This writ of *procedendo* is called a *procedendo in loquela.* See *Black. Com.* 1 *V.* 353.

Procedendo on Aid Prayer. If a man *pray* in *aid* of the King, in a real action, and *aid* be granted; it ſhall be awarded that he ſue to the King in *Chancery*, and the juſtices in the *Common Pleas* ſhall ſtay until the writ of *procedendo de loquela* come to them: And if it appear to the judges by pleading, or ſhewing of the party, that the King hath intereſt *in* the land, or ſhall loſe rent, *&c.* there the court ought to ſtay until they have from the King a *procedendo in loquela:* And then they may proceed in the plea, until they come to give judgment; when the juſtices ought not to proceed to judgment, without a writ for that purpoſe. *New Nat. B. R.* 342. So in a perſonal action, if defendant *pray in aid* of the King, the judges are not to proceed till they receive a *procedendo in loquela.* And though they may then proceed and try the iſſue joined, they ſhall not give judgment until a writ comes to them to proceed to judgment. *Ibid.*

Procedendo ad Judicium, Lies where the judges of any court delay the party, plaintiff or defendant, and will not give judgment in the cauſe, when they ought to do it. *Wood's Inſt.* 570.

If verdict paſs for the plaintiff in *aſſiſe of novel diſſeiſin* before the juſtices of aſſiſe, and before they give judgment, by a new commiſſion, new juſtices are made; the plaintiff in aſſiſe may ſue forth a *certiorari*, directed to the other juſtices to *remove* the record before the new juſtices; and another writ to the new juſtices to *receive* and *inſpect* the record, and then proceed to judgment, *&c.* *New Nat. Brev.* 342, 343.

Where the authority of commiſſioners of *oyer and terminer*, *&c.* is ſuſpended by writ of *ſuperſedeas*; their power may be reſtored by a writ of *procedendo*. Regiſt. 124. 12 Aſſ. 21. H. P. C. 162. *See* Black. Com. 3 V. 109.

Proceſs, (*Proceſſus a procedendo ab initio uſque ad finem*) Is ſo called, becauſe it proceeds or goes out, upon former matter, either original or judicial; and hath two ſignifications: Firſt, it is *largely* taken for *all* the proceedings in any action, real or perſonal, civil or criminal, from the beginning to the end: Secondly, We call that the *proceſs* by which a man is called into any temporal court, becauſe it is the *beginning* or principal part thereof, by which the reſt is directed; or, if taken ſtrictly, *it is the proceeding, after the original,* before judgment. *Britton* 138. *Lamb. lib.* 4. *Crompt.* 133. 8 *Rep.* 157.

Proceſs is *general* or *ſpecial*; and ſpecial *proceſs* is that which is ſpecially appointed for any offence, *&c.* by ſtatute: And there is great diverſity of *proceſs*. F. N. B.

Proceſs to call perſons into court, *&c.* *muſt* be in the name of the King; and if it iſſue from the court of King's Bench, it ought to be under the *teſte* of the Chief Juſtice, or of the ſenior Judge of the court, if there be no Chief Juſtice; and if it iſſueth from any other court, it is to be under the *teſte* of the firſt in commiſſion, *&c.* *Dalt. ch.* 132. *Finch* 436. *Cro. Car.* 393.

No proceſs ſhall regularly iſſue in the King's name and by his writ, to apprehend a felon or other malefactor, unleſs there be an indictment or matter of record in the court, upon which the writ iſſues. 1 *Hale's Hiſt. P. C.* 575.

All legal proceedings commence by original writ, indictment, or information; or in *B. R.* by bill of *Middleſex*, or *latitat*, which is the original proceſs of this court; and is in nature of an original to cauſe appearance. 2 *Lil. Abr.* 377.

There is no need of proceſs on an indictment, *&c.* where defendant is preſent in court; only where he is abſent. 2 *Hawk.* 281.

The proceſs of *capias*, *&c.* on indictment is appointed by the 25 *Ed.* 3. *ſt.* 5. *c.* 14. and 8 *Hen.* 6. *c.* 10. In actions of the caſe, and writs of annuity and covenant, by *Stat.* 19 *Hen.* 7. *c.* 9. 23 *Hen.* 8. *c.* 14. And no writ, proceſs, *&c.* ſhall be diſcontinued by the King's death. 1 *Ann. ſt.* 1. *c.* 8. *ſ.* 4.

If proceſs is awarded out of a court, which hath not juriſdiction of the principal cauſe, it is *coram non judice* and void: And the ſheriff executing it will be a treſpaſſer. 2 *Leon.* 89.

Proceedings in the ſuperior and inferior courts muſt be regularly and formally entered, according to the legal courſe; or they may be reverſed for error.

Anciently all law proceedings, *&c.* were in *French:* Though by ſtatute, ſince made, it was enacted, that it ſhould be pleaded and anſwered in *Engliſh*, and entered and inrolled in *Latin.* 36 Ed. 3. c. 15. 22 Car. 2. c. 3. The old entries of the law proceedings in *French* was required by *William the Conqueror*, it being a language which he himſelf knew; and the uſe of *Latin* is ſaid to be introduced by the clergy, when the biſhop and other ſpiritual perſons were judges, and chief officers of our courts; and this they did, as knowing, whatever alterations there were in national languages, the *Latin* would be generally underſtood, Yet ſome give another reaſon for it, that it was done to keep the people in ignorance, and to have in their own power *only* the interpretation of the laws. *Forteſcue* 100.

By a late ſtatute, all proceedings in the courts of juſtice ſhall be in the *Engliſh* tongue, and be written in a common ingroſſing hand, not *court* hand, in words at length, *&c.* on pain of forfeiting the ſum of 50 *l.* And miſtranſlations, errors in form, and miſtakes of clerkſhip, may be amended before or after judgment: Alſo the ſtatutes of *jeofails* extend to all forms, and proceedings in *Engliſh*, except in criminal caſes. But this ſtatute extendeth not to the court of *Admiralty*, as to certify any proceedings beyond the ſeas, *&c.* which may be in *Latin* as formerly. *Stat.* 4 *Geo.* 2. *c.* 26. And in the court of Receipt of the *Exchequer* in *England*, officers and clerks may carry on their buſineſs in their uſual courſe; alſo writs, proceſs, pleadings, *&c.* may be written expreſſing numbers by figures, and with uſual abbreviations in *Engliſh*; and names of writs, *&c.* to be expreſſed in the ſame language as hath been commonly uſed, by 6 *Geo.* 2. *c.* 6. *c.* 14.

As to *civil proceſs*, ſee *Black. Com.* 3 *V.* 279. xiii.—And as to the *criminal proceſs*, ſee *ib.* 4 *V.* 313.

Obſtructing the execution of *lawful proceſs*, is an offence againſt public juſtice, of a very high and preſumptuous nature; but more particularly ſo, when it is an obſtruction of an *arreſt* upon *criminal proceſs*. And it hath been holden, that the party oppoſing ſuch *arreſt* becomes thereby *particeps criminis*; that is, an acceſſary in felony, and a principal in treaſon. *Black. Com.* 4 *V.* 129.

Proceſſion. In *cathedral* and *conventual churches*, the members had their ſtated *proceſſions*, wherein they walked in their moſt ornamental habits, with muſic, ſinging hymns, and other ſuitable ſolemnity: And in every pariſh, there was a cuſtomary annual *proceſſion* of the pariſh prieſt, the patron of the church, with the chief flag, or holy banner, and the other pariſhioners, *to take a circuit round the limits of the pariſh or manor*, and pray for a bleſſing on the fruits of the earth; to which we owe our preſent cuſtom of *perambulation*, which in moſt places is ſtill called *proceſſioning* and *going in proceſſion*, though we have loſt the order and devotion, as well as pomp and ſuperſtition of it.

Proceſſum Continuando, Is a writ for the *continuance* of *proceſs*, after the death of the Chief Juſtice, or other juſtices in the commiſſion of *oyer and terminer*. Reg. Orig. 128.

Prochein Amy, *(Proximus Amicus)* Is uſed in law for him who is the *next friend*, or next of kin to a child in his nonage, and in that reſpect is allowed to deal for the infant in the management of his affairs; as to be his guardian if he holds lands in ſocage, and in the redreſs of any wrong done him. *Stat. Weſt.* 1. *c.* 48. *Weſt.* 2. *c.* 15. 2 *Inſt.* 261.

Prochein amy is commonly taken for *guardian in ſocage*; but otherwiſe it is he who appears in court for an infant who ſues any action, and aids the infant in purſuit of his action: For to ſue, an infant may not make an attorney, but the court will admit *the next friend* of the infant plaintiff; and *a guardian* for an infant *defendant*.

If no guardian is appointed by the father, *&c.* of an infant, the courſe of *B. R.* hath been uſed to allow one of the officers of the court to be *prochein amy* to the infant to ſue. *Terms de Ley.* 2 *Lil. Abr.* 52.

The courſe is now to appoint ſome friend, that he may anſwer coſts, if the infant fails in his ſuit. And I conceive the court will not ſuffer an infant to proceed in a ſuit till a *prochein amy* is appointed.

It hath been held, that a guardian and *prochein amy* are diſtinct, though either of them may be admitted for the plaintiff being an infant.

Prochein amy was never before the ſtatute *Weſtm.* 1. and was appointed *in caſe of neceſſity*, where an infant was to ſue his guardian, or the guardian would not ſue for him: for which reaſon he may be admitted to ſue by *prochein amy*, when he is to demand or gain any thing. 2 *Nelſ. Abr.* 997.

The plaintiff infant may ſue *per guardianum*, or *per* proximum amicum *ad proſequendum*; and if the admiſſion is to ſue *per guardianum*, when it ſhould be *per proximum amicum*, it will be well enough, there being many precedents both ways: But if he is ſued, it *muſt* be *per guardianum*. Cro. Car. 86, 115. Hut. 92. If an infant be diſturbed by the chief lord, ſo that he cannot bring *aſſiſe*, his *prochein amy* ſhall be admitted. 3 *Ed.* 1. *c.* 48. So where the infant is *eloined*, *&c.* 13 Ed. 1. c. 15. An infant is to defend by guardian, and the court will require one to be appointed to anſwer coſts, and to avoid error, as he cannot defend by attorney. See *Infant*, and *Black. Com.* 1 *V.* 464.

Prochein Avoidance, Is nothing but a power to preſent a miniſter to a church when it ſhall become void: As where one hath preſented a clerk to a church, and then grants the *next avoidance* to another, *&c.* See *Avoidance.*

Proclamation, *(Proclamatio)* Is a notice publicly given of any thing, whereof the King thinks fit to advertiſe his ſubjects, and ſo it is uſed. 7 *Ric.* 2. *cap.* 6.

It is plain that the King by his prerogative may, in certain caſes and SPECIAL OCCASIONS iſſue out *Proclamations for prevention of offences*, to ratify and confirm an ancient law, or, as ſome books expreſs it, *quoad terrorem populi*, to admoniſh them that they keep the laws on pain of his diſpleaſure; and ſuch *Proclamations* being grounded on the laws of the realm are of *great force.* Forteſc. de Laud. cap. 9. 11 Co. 87. 12 Co. 74, 75. Dalſ. 20 pl. 10. 2 Rol. Abr. 209. 3 Inſt. 162.

It is likewiſe clear, that the ſubject is obliged on pain of fine and impriſonment to obey every *Proclamation legally* made; and that though the thing prohibited were an offence before, that yet the *Proclamation* is a circumſtance which highly aggravates it; and on which *alone* the party diſobeying may be puniſhed. 12 *Co.* 74. *Hob.* 251.

It is clearly agreed, that no private perſon can make any *Proclamation* of a public nature, except by cuſtom, as is uſual in ſome cities and boroughs; this being a prerogative act, with which alone the King is intruſted. *Bro, Proclamat. pl.* 1. 12 *Co.* 75. *Crom. Jur.* 41.

But the King cannot by his *Proclamation change* any part of the Common law, ſtatutes or cuſtoms of this realm; nor can he by his *Proclamation create any offence which was not an offence before*; for theſe things cannot be done *without a legiſlative power*, of which in our conſtitution the King is but *a part.* Dalſ. 20. pl. 10. 11 Co. 87. b. 12 Co. 75.

On this foundation it hath been held, that the King's *Proclamation* prohibiting the importation of wines from *France* on pain of forfeiture, *was againſt law, and void*; there being no *war* at that time ſubſiſting between the nations. 2 *Inſt.* 63.

So where an act was made by which foreigners were licenſed to merchandize within *London*; and *H.* 4. by *Proclamation* prohibited the execution of it, and ordered that it ſhould be in ſuſpenſe *uſque ad proximum parliamentum*; and this was held to be againſt law. 12 *Co.* 75.

On a conference between ſome Lords of the Privy Council and the two Chief Juſtices (of which Lord *Coke* was one) and Ch. *B.* and Baron *Altham*, the queſtion was,

1ſt, Whether the King by *Proclamation* might prohibit new buildings in and about *London?*

2dly, If the King might prohibit the making ſtarch of wheat?

And the judges were of opinion, that the ſubject could *not* be reſtrained in theſe particulars by the King's *Proclamation.* 12 Co. 74.

The King by *proclamation* may call or diſſolve parliaments, and declare war or peace; for theſe are prerogative acts with which he is intruſted *as the executive part of the law*; but if there be an *actual* war, it is not neceſſary in pleading to ſhew that ſuch war was proclaimed. 3 *Inſt.*

Inſt. 162. 1 *Hal. Hiſt. P. C.* 163. *Owen* 45. *Raſt. Ent.* 605.

The King by *proclamation* may legitimate foreign coin, and make it current money of this kingdom, according to the value impoſed by ſuch *proclamation*; he may legitimate baſe coin, or mixed *below* the ſtandard of *ſterling*: he may enhance coin to a higher denomination or value; and may decry money that is current in uſe and payment; and in all theſe caſes a *proclamation*, with *a proclamation writ* under the Great ſeal, is neceſſary. *Co. Lit.* 207. *b.* 5 *Co.* 114. *b.* *Dav.* 21. 1 *Hal. Hiſt. P. C.* 192, 197.

The King by *proclamation* may appoint faſts and days of thankſgiving and humiliation; and iſſue *proclamations* for preventing and puniſhing immorality and profaneneſs; and injoin reading the ſame in churches and chapels. *Comp. Incumb.* 354.

A *proclamation muſt* be under the Great ſeal, and if denied is to be tried by the record thereof; but if a man pleads that he was prevented doing a thing by *proclamation*; it ſeems the better opinion, that he need not aver that ſuch *proclamation* was under the Great ſeal; for alleging, that ſuch *proclamation* was made, it ſhall be intended to have been duly made. *Cro. Car.* 180. See 1 *Rol. Rep.* 172. Vide *Cro Car.* 130.

By the *ſtat.* 31 *Hen.* 8. *c.* 8. The King's *proclamation* was to be of the ſame effect as an act of parliament; not to prejudice life, liberty, *&c.* and contemners of it to be adjudged traitors.

But, as very juſtly obſerved by Mr. Juſtice *Blackſtone* in his *Com.* 1 *V.* 271. this was "a ſtatute, calculated to "introduce the moſt deſpotic tyranny, and which muſt "have proved fatal to the liberties of this kingdom, had "it not been luckily repealed in the minority of his ſucceſſor, about five years after," *viz.* by *ſtat.* 1 *Ed.* 6. *c.* 12. See alſo *Black. Com.* 4 *V.* 424.

The King may make a *proclamation* to his ſubjects, *quoad terrorem populi*, and put them in fear of his diſpleaſure; but not on any other certain pain, as forfeiture of their lands or goods, or to undergo the penalty of a fine and impriſonment, *&c.* *Daliſ.* 20. 2 *Lil. Abr.* 381, 382. Yet the King by his proclamation may inhibit his ſubjects that they go not out of the realm, without licence; and if the ſubject act contrary, for this contempt he ſhall be fined to the King. 12 & 13 *Eliz.* *Dyer* 296. Vide *King* and *Privy Council.* And *Black. Com.* 1 *V.* 270. 4 *V.* 424.

Proclamation of Courts, Is uſed particularly in the beginning or calling of a court, and at the diſcharge or adjourning thereof; for the attendance of perſons, and diſpatch of buſineſs: And before a *parliament* is diſſolved, *&c.* Public *proclamation* is to be made, that if any perſon hath any petition, he ſhall come in and be heard. *Lex Conſtitut.* 156.

Proclamation is made in *Courts Baron*, for perſons to come in and claim vacant copyholds, of which the tenants died ſeiſed ſince the laſt courts; and the lord may ſeize a copyhold, if the heir come not in to be admitted on *proclamation*, *&c.* 1 Lev. 63.

Proclamation of Exigents. On awarding an *exigent*, in order to *outlawry*, a writ of *proclamation* iſſues to the ſheriff of the county where the party dwells, to make three *proclamations* for defendant to yield himſelf, or be outlawed. *Stat.* 6 *Hen.* 8. *c.* 4. 31 *Eliz. c.* 3. 4 & 5 *Wil.* & *Mar. c.* 22. *ſ.* 4. See *Black. Com.* 3 *V.* 284. xvi. 3 *V.* 314.

Proclamation of a Fine. When any fine of land is paſſed, *proclamation* is ſolemnly made thereof in the court of *Common Pleas* where levied, after ingroſſing it; and tranſcripts are alſo ſent to the juſtices of *aſſiſe*, and juſtices of the peace of the county in which the lands lie, to be openly *proclaimed* there. 1 *R.* 3. *c.* 7. See *Black. Com.* 2 *V.* 352. xvi.

Proclamation of Nuſances. By ſtatute, *proclamation* is to be made againſt *nuſances*, and for the removal of them, *&c.* 12 *R.* 2. *c.* 13.

Proclamation of Rebellion, Is a writ whereby a man not appearing upon a *ſubpœna*, or an *attachment* in the *Chancery*, is deputed and declared a *rebel*, if he render not himſelf by a day aſſigned. See *Commiſſion of Rebellion*, and *Black. Com.* 3 *V.* 444.

Proclamation of Recuſants. There is a *proclamation of recuſants*, by which they ſhall be convicted, on non-appearance at the aſſiſes. 29 *Eliz. c.* 6. 3 *Jac.* 1. *c.* 4 & 5.

Pro confeſſo, Is where a bill is exhibited in *Chancery*, to which defendant appears, and is afterwards in contempt for not anſwering; when the matter contained in the bill ſhall be taken as if it were *confeſſed* by defendant. *Terms de Ley.*

If a defendant is in cuſtody for contempt in not anſwering, on a *habeas corpus*, which is granted by order of court, to bring him to the bar, the court aſſigns him a day to anſwer; and the day being expired, and no anſwer put in, a ſecond *habeas corpus* is iſſued, and the party being brought into court a further day is aſſigned; by which day, if he anſwer not, the bill on the plaintiff's motion ſhall be taken *pro confeſſo*, unleſs cauſe be ſhewed by a day; and for want of ſuch cauſe ſhewed on motion, the ſubſtance of the bill ſhall be decreed to plaintiff. *Hill.* 1662. Alſo after a fourth inſufficient anſwer, the matter of the bill not ſufficiently anſwered unto by the defendant ſhall be taken *pro confeſſo*, and decreed accordingly.

Stat. 5 *Geo. c.* 25. enacts, That if in any ſuit in equity any defendant, againſt whom proceſs ſhall iſſue, *ſhall not cauſe his appearance to be entered* according to the rules of the court, in caſe ſuch proceſs had been ſerved, and affidavit ſhall be made, that ſuch defendant is beyond the ſeas; or that, on inquiry at his uſual place of abode, he could *not* be found, *ſo as to be ſerved*, and that there is juſt ground to believe that ſuch defendant is gone out of the realm, or abſconds *to avoid being ſerved*; the court may make an order, appointing defendant to appear *at a day therein to be named*, and a copy of ſuch order ſhall, *within* fourteen days, be inſerted in the *London* Gazette, and publiſhed on ſome Lord's day, after divine ſervice, in the pariſh church where defendant made his uſual abode *within thirty days next before his abſenting*; and a copy of ſuch order ſhall be poſted up, *viz.* a copy of ſuch order made in Chancery, Exchequer or Dutchy Chamber, ſhall be poſted up at the *Royal Exchange*; and a copy of every ſuch order made in any of the courts of equity of the *counties Palatine*, or of the great ſeſſions in *Wales*, ſhall be poſted up *in ſome market town within the juriſdiction of the court, neareſt to the place where defendant made his uſual abode*, ſuch place of abode being alſo within the juriſdiction of the court; and if defendant do not appear within ſuch time as the court appoint, then, *on proof made of publication of ſuch order as aforeſaid*, the court may order plaintiff's bill to be taken *pro confeſſo*, and make ſuch decree as ſhall be juſt; and *the court may order plaintiff to be paid his demands out of the eſtate ſequeſtred according to the decree*; ſuch plaintiff giving ſecurity, to abide ſuch order touching the reſtitution of ſuch eſtate, as the court ſhall make on defendant's appearance. But in caſe plaintiff refuſe to give ſecurity, then the court ſhall order the effects ſequeſtred *to remain* under the direction of the court, until the appearance of defendant to defend ſuch ſuit.—Provided, That this act ſhall not affect perſons beyond the ſeas, unleſs affidavit be made of their being in *England* within two years before the *ſubpœna*: Nor extend to courts having a limited juriſdiction, unleſs oath be made of perſonal reſidence in ſuch juriſdiction one year before the *ſubpœna*.

Barnardiſton (401 to 404.) tells us, That it is not ſufficient on this ſtatute to make affidavit, that the party making it was *informed, and believes* that defendants withdrew themſelves in order to avoid being ſerved with the proceſs of the court. But it muſt be likewiſe ſworn *by whom* the deponent received ſuch information.

Defendant appeared, and ſtood out to a ſequeſtration, and afterwards, on getting time, put in an anſwer, which was reported inſufficient in near twenty exceptions, and was ſerved with a *ſubpœna* to make a better anſwer. The defendant put in another anſwer, alike inſufficient. It was inſiſted for defendant, that the practice of taking bills *pro confeſſo* is not of long ſtanding, the ancient way being to put the plaintiff to make proof of the ſubſtance of the bill; and that, in this caſe, taking all the bill *pro confeſſo*, where part had been ſufficiently anſwered, ſeemed very ſtrange. But it was anſwered, that *an inſufficient anſwer is as no anſwer*, therefore the whole to be taken *pro confeſſo*; and the Maſter of the Rolls decreed for plaintiff, But Lord Chancellor *King*, on an appeal, ſaid, He would conſider how matters ſtood at the time of ſuch decree, and that it was ſufficient that there then was an anſwer, and which the plaintiff had admitted to be ſo by ſuing his proceſs for a better; and that ſo defendant confeſſed the whole bill true, when by the Maſter's report, (which was a record of the ſame court) he had anſwered the greateſt part; and when the plaintiff himſelf had taken the firſt anſwer to be an anſwer in part by ſerving the defendant with proceſs to put in a better, was againſt common ſenſe; and reverſed the former decree: 2 *William's Rep*. 556.

If, on demurrer to a bill in equity, defendant obſtinately inſiſts on his demurrer, and refuſes to anſwer, where the court is of opinion, that ſufficient matter is alleged in the bill to oblige him to anſwer, and for the court to proceed upon, the court will decree the matter of the plaintiff's bill; for by the demurrer are confeſſed all matters of fact that are alleged. *Curſ. Canc*. 209.

Proctor, *(Procurator)* Is he who undertakes to manage another man's cauſe, in any court of the *Civil* or *Eccleſiaſtical* law, for his fee: *Qui aliena negotia gerenda ſuſcipit*. A proctor not to practice, if a popiſh recuſant. 3 *Jac*. 1. *c*. 5. Not to act as juſtice of peace. 5 *Geo*. 2. *c*. 18. See *Black. Com*. 3 *V*. 25.

Proctors of the Clergy, *(Procuratores cleri)* Are thoſe who are choſen and appointed to appear for cathedral or other collegiate churches; as alſo for the common clergy of every dioceſe, to ſit in the *Convocation* houſe in the time of parliament.

On every new parliament the King directeth his writ to the archbiſhop of each province, for the ſummoning of all biſhops, deans, archdeacons, &c. to the convocation, and generally of all the clergy of his province, aſſigning them the time and place in the writ; then the archbiſhop of *Canterbury*, on his writ received, according to cuſtom directs his letters to the biſhop of *London*, as his provincial dean, firſt citing him peremptorily, and then willing him to cite in like manner all the biſhops, &c. and generally all the clergy of his province, to the place, and againſt the day prefixed in the writ; but directeth withal, that one *proctor* be ſent for every cathedral or collegiate church, and two *proctors* for the body of the inferior clergy of each dioceſe; and by virtue of theſe letters authentically ſealed, the biſhop of *London* directs his like letters ſeverally to the biſhop of every dioceſe of the province, citing them in like ſort, and willing them not only to appear, but alſo to admoniſh the deans and archdeacons perſonally to appear; and the cathedral and collegiate churches, and the common clergy of the dioceſe, to ſend their *proctors* to the place at the day appointed; and alſo willeth them to certify to the archbiſhop the names of every perſon ſo warned by them, in a ſchedule annexed to their letter certificatory: Then the biſhops proceed accordingly, and the cathedral and collegiate churches, and the body of the clergy make choice of their *proctors*; which being done and certified to the biſhop, he returneth all at the day. *Cowell*.

Proconſules, Were thoſe who were called Juſtices in *eyre*, or *Juſticiarii errantes*, in *England*. Cowell.

Procurations, *(Procurationes)* Are certain ſums of money which pariſh prieſts pay yearly to the biſhop or archdeacon, *ratione viſitationis*; formerly the viſitor demanded a proportion of meat and drink for his refreſhment, when he came abroad to do his duty, and examine the ſtate of the church; afterwards theſe were turned into annual payments of a certain ſum, which is called a procuration, being ſo much given to the viſitor, *ad procurandum cibum & potum*. And complaints were often made of the exceſſive charges of the *procurations*, which were prohibited by ſeveral councils and bulls; and that of *Clement* the Fourth is very particular, wherein mention is made that the *Archdeacon of Richmond*, viſiting the dioceſe, travelled with one hundred and three horſes, twenty-one dogs, and three hawks, to the great oppreſſion of religious houſes, &c.

Theſe are alſo called *Proxies*; and it is ſaid there are three ſorts of *procurations* or *proxies*; *ratione viſitationis, conſuetudinis, & pacti*; and that the firſt is of eccleſiaſtical cogniſance, but the two laſt are triable at law. *Hardr*. 180.

A libel was brought in the Spiritual court for *procurations* by the archdeacon of *York*, ſetting forth, that for ten or twenty years, &c. there had been due and paid to him ſo much yearly by a parſon and his predeceſſors; who ſuggeſted for a prohibition, that a duty had been payable, but *denied the preſcription*, and that the Eccleſiaſtical court cannot try preſcriptions; but it was adjudged, that *procurations* are payable of *common right*, as tithes are, and no action will lie for the ſame at Common law; if he had denied the *quantum*, then a prohibition might go. *Raym*. 360. See *ſtat*. 34 *Hen*. 8. *c*. 19.

Procurator, Is one who hath a charge committed to him by any perſon; in which general ſignification it hath been applied to a vicar or lieutenant, who acts inſtead of another; and we read of *procurator regni*, and *procurator reipublicæ*, which is a public magiſtrate: Alſo *proxies* of lords in parliament are in our law books called *Procuratores*; the biſhops are ſometimes termed *procuratores eccleſiarum*; and the advocates of religious houſes, who were to ſolicit the intereſts, and plead the cauſes, of the ſocieties, were denominated *procuratores monaſterii*; and from this word comes the common word *proctor*. It is likewiſe uſed for him who gathers the fruits of a benefice for another man; and *procuracy* for the writing or inſtrument whereby he is authoriſed. 3 *R*. 2. *c*. 3.

Procuratores eccleſiae parochialis, The churchwardens who were to act as proxies and repreſentatives of the church, for the true honour and intereſt of it. *Paroch. Antiq* 562.

Procuratorium, The *procuratory*, or inſtrument by which any perſon or community did conſtitute or delegate their proctor or proctors, to repreſent them in any judicial court or cauſe.

Prodes homines, Is a title often given in our old books to the Barons of the realm, or other military tenants, who were ſummoned to the King's council, and were no more than *diſereti & fideles homines*, who, according to their prudence and knowledge, were to give their counſel and advice.

Proditorie, A word neceſſary to indictments of treaſon. 2 *Hawk. P. C*. 224.

Profaneneſs, *(Qu. procul à fano)* Is a diſreſpect paid to the name of God, and to things and perſons conſecrated to Him. *Wood's Inſt*. 396.

Profaneneſs is puniſhable by ſtatute; as for reviling the Sacrament of the Lord's ſupper, *profanely* uſing the name of God in plays, &c. *Profaning* the Lord's Day, curſing and ſwearing, &c. 1 *Ed*. 6. *c*. 1. 1 *Eliz*. *c* 1. 3 *Jac*. 1. *c*. 21. 1 *Car*. 1. *c*. 1. 13 *Car*. 2. *c*. 9. 6 & 7 *W*. 3. *c*. 11. See *Black. Com*. 4 *V*. 59.

Profer, *(Profrum*, vel *proferum*, from the Fr. *proferor*, i. e. *producere)* Is the time appointed for the accounts of officers in the Exchequer, which is twice in the year. *Stat*. 51 *H*. 3. *ſt*. 5.

As to the *profers of ſheriffs*, though the certain *debet* of the ſheriff could not be known before the finiſhing of his accounts; yet it ſeems there was anciently an eſtimate made of what his conſtant charge of the *annual* revenue amounted to, according to a *medium*, which was paid into the Exchequer at the return of the writ of ſummons of the *pipe*; and the ſums ſo paid were and are to this day called *profer vicecomitis*; But although theſe *profers* are paid, if on the concluſion of the ſheriff's accounts, and after allowances and diſcharges had by him, it appears that there is a ſurpluſage, or that he is charged with more than he could receive, he hath his *profers* paid or allowed him again. *Hale's Sher. Account*. 52.

There is a writ, *De attornato vicecomitis pro profro faciendo*. Reg. Orig. 139. And we read of *profers* in the ſtatute 32 *H*. 8. *c*. 21. in which place *profer* ſignifies the *offer* and endeavour to proceed in an action. See *Brit*. *c*. 28. and *Fleta*, *lib*. 1. *c*. 38.

Profer the Half-Mark, That is to *offer* or tender the *half-mark*. Vide *Half-Mark*.

Profert in Curia, Is where the plaintiff in an action declares on a deed, or defendant pleads a deed, he muſt do it with a *profert in curia*, to the end that the other party *may at his own charges have a copy of it*, and until then he is not obliged to anſwer it. 2 *Lil. Abr.* 382. And if a man pleads by virtue of an indenture, which is loſt, on affidavit made thereof, the court will compel the plaintiff to ſhew the counterpart, that defendant may plead thereto; or will grant an imparlance. *Cro. Jac.* 429.

When he who is party *or privy in eſtate* or *intereſt*, or who juſtifies in the right of him who is party or privy, pleads a deed; notwithſtanding the party *privy* claims but part of the original eſtate, yet he muſt ſhew the original deed. 10 *Rep.* 92, 93. But where a man is a ſtranger to a deed, and claims nothing in it, *&c.* there he may plead the patent or deed, *without* a *profert in curia.* Ibid.

A man may claim under a deed of uſes, without ſhewing it; becauſe the deed doth not belong to him, (tho' he claims by it) but to the covenantees, and he hath no means to obtain it; and for that it is an eſtate executed by the ſtatute of uſes, ſo as *the party is in by law*, like to tenant in dower, or by ſtatute, *&c.* who may have a rent-charge extended, and need not ſhew the deed. *Cro. Car.* 442. And in things executed, or eſtates determined, there need not be any *profert in curia*. 3 Lev. 204. Alſo an aſſignee of commiſſioners of bankrupts need not ſhew the bond to the bankrupt, becauſe he comes in by act of law, *&c.* *Cro. Car.* 209. *Sed qu.* If declaration not demurrable, if aſſignee does not make a *profert in curia*, of the bond, and if a defendant is compellable to plead, before *oyer* granted, if duly demanded?

No advantage or exceptions ſhall be taken for want of a *profert in curia*; but the court ſhall give judgment according to the *very right* of the cauſe, without regarding any ſuch omiſſion and defect, *except* the ſame be *ſpecially* and *particularly* ſet down, and ſhewn for cauſe of demurrer. 4 & 5 *Ann. c.* 16.

Where a deed is pleaded and ſhewn in court, the deed in judgment of law *remains in court all the term* in which it is ſhewn; and if it be not denied, then at the end of the term it is delivered to the party to whom it belongs: If it be denied, it ſhall ſtill remain in court, for if it be found *Non eſt factum*, it ſhall be annulled. 3 *Rep.* 47, 74, 75. See *Monſtrans de fait*, and Oyer, *&c.* And *Black. Com.* 3 *V.* 22.

Profeſſion, (*Profeſſio*) Was uſed particularly for the entring into any *religious order*, *&c.* As where a monk offered himſelf to God, by a vow of obedience, chaſtity, and poverty, which he promiſed conſtantly to obſerve; and this was called *Sanctæ religionis profeſſio*, and the monk a *religious profeſſed*. This entring into religion, whereby a man is ſhut up from all the common offices of life, is termed a *Civil Death*. See *Black. Com.* 1 *V.* 132, *&c.*

Profits. A deviſe of the *profits* of lands, is a deviſe of the land *itſelf*. Dyer 210.

A huſband deviſeth the *profits* of his lands to his wife, *until his ſon came of age*, this was held to be a deviſe of the lands until that time: Tho' if the lands were deviſed to the ſon, and that his mother ſhould take the *profits*, of it until he came of age, *&c.* this would give the mother only *an authority*, not an intereſt. 2 *Leon.* 221.

By deviſe of *profits*, the lands uſually paſs; unleſs there are other words to ſhew the intention of the teſtator to be otherwiſe. *Moor* 753, 758. 2 *Nelſ. Abr.* 1051.

Profits of Courts. The *profits* ariſing from the King's ordinary courts of juſtice, make a branch of his revenue. And theſe conſiſt not only in fines impoſed upon offenders, forfeitures of recognizances, and amercements levied on defaulters; but alſo in *certain fees* due to the crown in a variety of legal matters, as, for ſetting the Great Seal to charters, original writs, and other forenſic proceedings, and for permitting fines to be levied of lands in order to bar entails, or otherwiſe to inſure titles. As none of theſe can be done without the immediate intervention of the King by himſelf or his officers, the law allows him certain perquiſites and profits, AS A RECOMPENCE FOR THE TROUBLE HE UNDERTAKES FOR THE PUBLIC. Theſe, in proceſs of time, have been almoſt all granted out to private perſons, or elſe appropriated to certain particular uſes: So that, tho' our law proceedings are ſtill loaded with their payment, very little of them is now returned into the King's Exchequer; for a part of whoſe royal maintenance they were originally intended. All future grants of them, however, by the ſtatute 1 *Ann. ſt.* 2. *c.* 7. are to endure for no longer time than the life of the prince who grants them. *Black. Com.* 1 *V.* 289.

Prohibition, (*Prohibitio*) Is a writ to forbid any court, to proceed in any cauſe there depending, on ſuggeſtion that the cognizance thereof belongeth not to the court. *F. N. B.* 39. But it is now moſt uſually taken for that writ which lieth for one who is impleaded in the *court chriſtian*, for a cauſe belonging to the temporal juriſdiction, or the conuſance of the *King's court*, whereby as well the party and his counſel, as the judge himſelf, and the regiſter *are forbidden* to proceed any further in that cauſe. *Cowell.*

As all external juriſdiction, whether eccleſiaſtical or civil, is derived from the crown, and the adminiſtration of juſtice is committed to variety of courts; hence it hath been the care of the crown, that theſe courts keep within the limits and bounds of the ſeveral juriſdictions preſcribed them; for this purpoſe the writ of *prohibition* was framed; which iſſues out of the ſuperior court of Common law to reſtrain inferior courts, whether ſuch courts be temporal, eccleſiaſtical, maritime, military, *&c.* on *a ſuggeſtion* that the cognizance of the matter belongs not to ſuch courts; and in caſe they exceed their juriſdiction, the officer who executes the ſentence, and in ſome caſes the judge who gives it, are puniſhable in ſuch ſuperior courts, ſometimes at the ſuit of the King, ſometimes at the ſuit of the party, ſometimes at the ſuit of both, according to the variety of the caſe. 2 *Inſt.* 601. *F. N. B.* 40. 12 *Co.* 76. 1 *And.* 279. 2 *Jon.* 213. *Skin.* 628.

The reaſon of *prohibitions* in general is, that they preſerve the right of the King's crown, and courts, and the quiet of the ſubject; that it is the wiſdom and policy of the law, to ſuppoſe both beſt preſerved when every thing runs in its right channel, according to the original juriſdiction of every court; as by the ſame reaſon that one might be allowed to incroach, another might; which would produce nothing but confuſion in the adminiſtration of juſtice. *Show. Par. Ca.* 63.

So that *prohibitions* do not import that the eccleſiaſtical or other inferior temporal courts are *alia* than the King's courts, but ſignify that the cauſe is drawn *ad aliud examen* than it ought to be; therefore it is always ſaid in all *prohibitions* (be the court eccleſiaſtical or temporal to which it is awarded) that the cauſe is drawn *ad aliud examen contra coronam & dignitatem Regiam.* 2 Inſt. 602. 1 Roll. Rep. 252. 3 Bulſt. 120. Palm. 297.

1. *What courts may grant a prohibition; and whether the granting it be diſcretionary, or* ex debito juſtitiæ.
2. *Who have a right to, and may demand, and join in a prohibition.*
3. *Of the ſuggeſtion for, and manner of obtaining a prohibition.*
4. *At what time a prohibition is to be, and in what caſes it may be granted, to inferior temporal courts.*
5. *In what caſes prohibitions are to be granted to the ſpiritual courts.*

1. *What courts may grant a prohibition, and whether the granting it be diſcretionary, or* ex debito juſtitiæ.

The ſuperior courts of *Weſtminſter*, having a ſuperintendency over all inferior courts, may in all caſes of innovation, *&c.* award a *prohibition*; in this the power of the court of *B. R.* has never been doubted, being the ſuperior Common law court in the kingdom. *F. N. B.* 53. 4 *Inſt.* 71.

Alſo the court of Chancery may award a *prohibition* which may iſſue as well in vacation as in term time, but ſuch writ is returnable into *B. R.* or *C. B.* Bro. Prohibition, pl. 6. 4 Inſt. 81. 1 Peer. Will. 43.

If one be ſued in a inferior court for a matter *out of the juriſdiction*, defendant may either have a *prohibition* from one of the Common law courts of *Weſtminſter-Hall*; or in regard this may happen in vacation, when only the Chancery is open, he may move *that* court for a *prohibition*; but then it muſt appear *by oath*, that the fact did ariſe *out* of the juriſdiction, and that defendant tendered a foreign plea, which was refuſed; and if a *prohibition* has been granted out of Chancery *improvidè*, and without theſe circumſtances attending it, the court will grant a *ſuperſedeas* thereto. 1 *Peer Will.* 476.

As the juriſdiction of the court of *C. B.* is founded on original writs iſſuing out of Chancery, it hath been doubted, whether this court could, without writ or plea depending, award a *prohibition*; but this point has been determined, *viz.* that this court may *on a ſuggeſtion* grant *prohibitions*, to keep as well temporal as eccleſiaſtical courts within their juriſdictions, and that *without any original writ or plea depending*; the Common law being, in theſe caſes, a *prohibition* of itſelf, and ſtanding inſtead of an original. *Bro. Prohibition, pl.* 6. *Noy* 153. 12 *Co.* 58, 108. *Bro. Conſultation, pl.* 3. 4 *Inſt.* 99. 2 *Brownl.* 17.

Accordingly it hath been adjudged, That a *prohibition* ought to be granted by *C. B.* to the court of delegates, for ſuing there to avoid the inſtitution of a clerk to a church in *Lancaſhire*, after induction, tho' the *quare impedit* for the church could not be brought in *C. B.* but only in the county of *Lancaſter*; becauſe the title of the advowſon was not queſtioned by this *prohibition*, but the intruſion on the Common law, of which this court has ſpecial care. *Moor* 861. 2 *Rol. Abr.* 317. *Hob.* 15.

But as to the courts of *B. R.* and *C. B.* this difference hath been made, That in the firſt of thoſe courts a *prohibition* may be awarded on a *bare* ſurmiſe, *without any ſuggeſtion* ON RECORD; and ſuch writ is only in nature of *a commiſſion prohibitory*, which is diſcontinued by demiſe of the King; but that as to a *prohibition* iſſuing out of *C. B.* the ſuggeſtion *muſt* be *on record*, therefore is conſidered as the ſuit of the party, and in which he may be nonſuited, and is not diſcontinued by demiſe of the King. *Noy* 77. *Palm.* 422. *Latch* 114. Yet, if inſiſted on, a prohibition cannot be moved for in *B. R.* 'till the ſuggeſtion be entred on the roll. 1 *Salk.* 136. *per Holt* Ch. J. And indeed it is the conſtant practice, to enter the ſuggeſtion on the roll, and to leave a copy thereof with the clerk of the papers, previous to the motion.

If the King's farmer, or copyholder of the King's manor, be ſued in the eccleſiaſtical court for tithes, on a ſuggeſtion in the court of Exchequer that he preſcribes to pay a certain *modus* in lieu of tithes, he ſhall have a *prohibition*, and ſuch *modus* ſhall be tried there. *Palm.* 525. *Lane* 39. 1 *Roll. Abr.* 539.

The grand ſeſſions of *North Wales* may ſend a *prohibition*, and write to the ſpiritual courts there. 1 *Sid.* 92. but for this ſee *Cro. Car.* 341. 1 *Jon.* 330. *Vaugh.* 411.

It is laid down, that tho' a ſurmiſe be a matter of fact, and triable by a jury, yet *it is in the diſcretion of the court to deny a prohibition* when it appears to them that the ſurmiſe is *not true*. Hob. 67.

But it hath been held, that awarding a *prohibition* is *a matter diſcretionary*, that is, That from the circumſtances of the caſe, the ſuperior courts are *at liberty* to exerciſe a legal diſcretion therein, but *not an arbitrary one* in refuſing *prohibition*, where in ſuch like caſes they have been granted, or where by law they ought to be granted. *Winch* 78.

It hath been determined in the houſe of Lords, That no writ of error will lie on the refuſal of a *prohibition*; but when a conſultation is awarded, it is with an *ideo conſideratum eſt*, and then a writ of error will lie. 1 Lord *Raym.* 545.

If the maſter of a ſhip ſues in the Admiralty for his wages, and a *prohibition* is moved for, on a ſuggeſtion that the contract was made *on land*, and the court is of opinion that a *prohibition* ought to be granted; in this caſe they will not compel the party to find ſpecial bail to the action in the court above. *Salk.* 33. *Carth.* 518. *Cum.* 74. 1 Lord *Raym.* 576.

If there is judgment againſt a ſimoniſt, who by the aſſent of parties is to continue for a certain time on the benefice, and who the expiration of the time refuſes to remove, but commits waſte, a *prohibition* to ſtay waſte may be had by the patron, incumbent or any other perſon, becauſe that is the King's writ; and any one may pray a *prohibition* for the King, and it is grantable *ex debito juſtitiæ*, and not in the diſcretion of the court. *Comp. Incumb.* 43. 1 *Sid.* 65. *Hob.* 247. Yet *vide contra ſupra.*

2. *Who have a right to, and may demand, and join in a prohibition.*

The King may ſue for a *prohibition*, tho' the plea in the ſpiritual court be between two common perſons, becauſe the ſuit is *in derogation of* his crown and dignity. *F. N. B.* 40.

So if the eccleſiaſtical court hold plea of any matter which belongs not to their juriſdiction, on information thereof to the King's courts, a *prohibition* will iſſue. 2 *Inſt.* 607.

As if a man libels in the ſpiritual court for a matter which does not appertain to that court, but to the Common law, as a matter of frank-tenement; yet he himſelf, againſt his own ſuit, may pray a *prohibition*, and have it. 2 *Roll. Abr.* 312. 1 *Leon.* 130. *Gouldſ.* 149. 12 *Co.* 56.

So where plaintiff in the ſpiritual court brought a *prohibition* to ſtay his own ſuit there, for that he ſuing for tithes *by virtue of a leaſe* made by the vicar of *A.* for three years, defendant claimed to be diſcharged of tithes by a former leaſe and compoſition by deed; and in this caſe it was held, that *the plaintiff himſelf may have a prohibition to ſtay the ſuit*; for the eccleſiaſtical judges are not to meddle with the trial of leaſes or real contracts, tho' they have juriſdiction of the original cauſe (*viz.* the tithes); for *the leaſe is in the realty*, and is not merely accidental; and it makes no difference, that the plaintiff brings *prohibition* to ſtay his own ſuit; for if the temporal court has knowledge by any means, that the ſpiritual court meddles with temporal trials, a *prohibition* ought to be awarded. *Cro. Jac.* 351. 2 *Bulſt.* 283. *Lit. Rep.* 20.

If a vicar ſues a pariſhioner for tithes in the ſpiritual court, and the parſon appropriate appears there *pro intereſſe ſuo*, and prays a *prohibition*, it ſhall be granted. 2 *Rol. Abr.* 312. *Cro. Eliz.* 251. *Kelw.* 110.

If leſſee for years is ſued in the ſpiritual court for tithes *he in reverſion* may have a *prohibition.* Moor 915. Cro. Eliz. 55.

But no man is intitled to a *prohibition unleſs he is in danger of being injured* by ſome ſuit actually depending, therefore on a petition to the archbiſhop, or other eccleſiaſtical judge no *prohibition* lies. *March* 22, 45. A *prohibition qua timet* does not lie. *Allen* 56.

If ſeveral libels are exhibited againſt *A.* and *B.* in a matter in which the court hath *not* conuſance, *A.* and *B.* cannot join in a *prohibition*: ſo if the griefs be ſeveral, as ſome books ſay. *Noy* 131. 1 *Leon.* 286. *Cro. Car.* 129.

But where the vicar of *A.* libelled ſeveral perſons *ſeverally* for tithes, who joined in a prohibition, ſuggeſting a *modus*; and tho' the court held in this caſe, that the *prohibition* was not regularly brought, being in all their names, when there were ſeveral libels; yet inaſmuch as this was on a cuſtom, and matter triable at Common law in which the Eccleſiaſtical court was properly prohibited, tho' not in exact form, they refuſed to award a conſultation, but directed that the parties ſhould put in ſeveral declarations, as if there had been ſeveral *prohibitions*. *Yelv.* 128—9. *Owen* 13 L. P. adjudged.

So if *A.* libels againſt *B.* and *C.* for defamation, and they ſue a *prohibition*, they ſhall join in attachment on it; and it is no objection to ſay, that the defamation was ſeveral. 1 Ld. *Raym.* 127. and ſee 1 Vent 265. *Raym.* 425. *Comb.* 448.

Where two or more are allowed to join in a *prohibition*, and one dies, the writ ſhall *not* abate; becauſe nothing is to be recovered: they are only to be diſcharged. *Owen* 13.

3. *Of the ſuggeſtion for, and manner of obtaining a* prohibition.

Where the matter ſuggeſted for a prohibition appears on *the face* of the libel, an affidavit is *never* inſiſted on; but if it does *not* appear on the face of the libel, or if a prohibition is moved for, for more than appears on the face of the libel, to be out of their juriſdiction, there *ought* to be an affidavit of the truth of the ſuggeſtion. 2 *Salk.* 549. 1 *Peer Will.* 65, 477.

The ſuggeſtion in the temporal courts may be traverſed. 2 *Inſt.* 611. 2 *Co.* 44. *Moor* 525.

On a rule to ſhew cauſe, why a prohibition ſhould not be granted to ſtay a ſuit againſt plaintiff in the court of the archdeacon of *Litchfield*, for not going to church, nor receiving the ſacrament thrice a year, on ſuggeſtion of the ſtatute of *Eliz.* and toleration act, and then qualifying himſelf within the act, and alledging, that he pleaded it below, and they refuſed to receive his plea; cauſe was ſhewn, that this fact was falſe, and that the plaintiff was not a diſſenter, nor had qualified himſelf *ut ſupra*, therefore hoped the court would not ſuffer the rule to ſtand unleſs there was an affidavit of the fact; for by that means any perſon might come and ſuggeſt a falſe fact, and ouſt the ſpiritual court of their juriſdiction, which the court admitted; therefore *for want of ſuch affidavit* the rule was diſcharged. 1 Ld. *Raym.* 1211.

If a plea to an inferior juriſdiction be properly tendred, which they refuſe, tho' this be a good cauſe for a prohibition, yet *an affidavit* MUST *be made of the refuſal.* Skin. 20. Hard. 406. 3 Keb. 217.

A motion was made for a prohibition to the Eccleſiaſtical court of *London*, for calling a woman *whore*, on a ſuggeſtion that the words were actionable there by cuſtom of the place; but the court would not grant a prohibition *without oath made*, that if any ſuch words were ſpoken, it was in *London*, and *not elſewhere.* 4 Mod. 367.

On a libel for calling the plaintiff old thief and old whore; defendant ſuggeſted for a prohibition, that if any ſuch words were ſpoken, they were ſpoken *at the ſame time*; but this ſuggeſtion was held ill, becauſe the words ought to have been *fully* confeſſed. 1 *Vent.* 10.

By 2 & 3 *Ed.* 6. *cap.* 13. it is enacted, "That if any party ſue for any prohibition, that then the ſame party, before any prohibition ſhall be granted, ſhall bring and deliver to the hands of ſome of the judges of the ſame court, where ſuch party demanded prohibition, the *very true copy of the libel* depending in the Eccleſiaſtical court concerning the matter where the party demandeth prohibition, ſubſcribed with the hand of the ſame party, and under the copy of the libel ſhall be written the ſuggeſtion, wherefore the party demandeth the prohibition; and in caſe the ſuggeſtion, by two witneſſes at the leaſt, be *not proved* true in the court where the prohibition ſhall be granted, then the party, that is hindered of his ſuit in the Eccleſiaſtical court by ſuch prohibition, ſhall on his requeſt *without delay have a conſultation* granted in the ſame caſe in the court where the prohibition was granted, and ſhall recover double coſts and damages againſt the party that ſo purſued the prohibition; the coſts and damages to be aſſeſſed by the court where the conſultation ſhall be granted; for which coſts and damages the party to whom they ſhall be awarded may have an action of debt by bill, plaint or information, in any court of record. See 27 *H.* 8. *cap.* 20. and 32 *H.* 8. *c.* 7. to which this act refers.

In the conſtruction of the above-mentioned ſtatute the following opinions have been holden.

That this ſtatute referring to the ſtatutes 27 *H.* 8. *c.* 20. & 32 *H.* 8. *c.* 7. which extend to tithes and offerings *generally*, all ſuch tithes and church duties as are mentioned in thoſe ſtatutes are as much within this act, as if particularly enumerated. 2 *Inſt.* 662. *Comp. Incumb.* 600. *Dyer* 170. *b.*

Therefore it extends to prohibitions to ſuits of ſmall tithes as well as great. *Yelv.* 102. 2 Ld. *Raym.* 1172.

So it hath been adjudged, that the ſuggeſtion of a *modus decimandi* ought to be proved *within ſix months*, being *within* the act. *Noy* 148. *Yelv.* 104. L. P.

So where one, who was ſued for tithe of hay in the ſpiritual court, ſuggeſted for a prohibition, that he was to pay ſo much on an arbitrament; and it was held, that this ſuggeſtion ought to be proved, as well as one made of a *modus decimandi*: ſo on a ſuggeſtion on the ſtatute 31 *H.* 8. *c.* 13. *ſ.* 21. that lands are tithe free, becauſe the clauſe requiring the proof of a ſuggeſtion, is general, and not limited to real compoſition. 1 *Rol. Rep.* 55.

So on a ſuggeſtion, that the ſuit in the ſpiritual court was for tithes of heath and barren ground improved within ſeven years after the improvement, contrary to the ſtatute; in this caſe proof of the ſuggeſtion *within ſix months* was held neceſſary. 1 *Jon.* 231. *Cro. Car.* 208.

But it hath been held, that there needs no proof of the ſuggeſtion where the ſuit is for tithes contrary to common right, or where the contract of the party is ſuggeſted. *Cumb.* 147.

It hath been held, that the ſuggeſtion need not be proved *ſtrictly*, nor *with preciſe certainty* as to *all* its circumſtances; but that if it be proved *in ſubſtance*, or in ſuch a manner as to ſhew that the Eccleſiaſtical court has not juriſdiction, it is ſufficient. *Cro. Eliz.* 736. *Moor* 911.

The ſuggeſtion muſt be proved by honeſt and ſufficient witneſſes, which is required by the *expreſs* words of the ſtatute; therefore the teſtimony of one attainted of felony, excommunicated or convicted of recuſancy, is, as in other caſes, to be rejected. 2 *Bulſt.* 154.

But it hath been held, that perſons, ſuch as pariſhioners, &c. who may not be ſufficient and able witneſſes at a trial *at law*, may notwithſtanding be ſufficient witneſſes to prove the ſuggeſtion; the chief intent of the ſtatute being to prevent vexatious ſuggeſtions; alſo it hath been held, that after the admitting and recording the proof of the ſuggeſtion, nothing is to be objected againſt the perſons of the evidence. *Mich.* 27 *Car.* 2. in *C. B. Sharp* v. *Hobart.*

If a ſuggeſtion conſiſts of two parts, it is ſaid to be ſufficient to produce one witneſs to one, and another to another. 1 *Vent.* 107.

It hath been held, that the ſix months for proof of the ſurmiſe ſhall be accounted *according to the calendar*; for that this being a computation which concerns the church, it is but reaſonable that it ſhould be done according to the computation uſed in the Eccleſiaſtical law. *Hob.* 197. *Lit. Rep.* 19. 2 *Mod.* 58.

It is ſaid, that the time of ſix months given by the ſtatute to prove the ſuggeſtion ought to be intended *ſix months in term time*, and that the vacation ſhould be *no part* of the time; but this hath been ſince adjudged otherwiſe, and that the time ſhall commence from the *teſte* of the writ of prohibition, and not from the time of the rule made for awarding it. *Moor* 573. *Noy* 30. 2 Ld. *Raym.* 1172. 2 *Salk.* 554.

If the ſurmiſe be proved before one of the judges *within the ſix months*, altho' it be not recorded till after the ſix months by the court, it is well enough. *Noy* 30. It muſt be entered in the office. 2 *Show.* 308.

It hath been held, that proof which is not ſufficient, may be ſupplied by better proof *within* the ſix months, but not after. *Lit. Rep.* 155.

The party on failure of proof of the ſuggeſtion, ſhall not only have double coſts and damages, but alſo his coſts and damages in the action he brings for recovery of them. *Bendl.* 143. See ſtat. 8 & 9 *W.* 3. *cap.* 11.

But if the prohibition be grounded partly on a *modus*, which needs *no* proof, and partly on the contract of the parties, which needs no proof, there ought not to be double coſts; for mixing the contract with the manner of tithing privileges the whole. *Brownl.* 99. *Yelv.* 119.

So where, for a variance between the libel and ſuggeſtion, a conſultation was awarded, and double coſts adjudged defendant; this was held to be error by the *very letter* of the ſtatute, which gives double coſts only *for want of proving the ſuggeſtion*, and for no other cauſe. *Yelv*. 79, 80.

So where a prohibition was obtained on a ſuggeſtion which was not proved *within the ſix months*, in which defendant took iſſue with the plaintiff, which was found for plaintiff; and in this caſe it was reſolved, that defendant ſhould not have double coſts for want of the ſuggeſtion's being proved; for the ſtatute is, that *he ſhall have a conſultation and double coſts*; but in this caſe he could not have a conſultation, the matter in iſſue being found againſt him; but ought to have prayed a conſultation on the ſuggeſtion not being proved, and *then* ſhould have had his double coſts. *Latch* 140.

The ſurmiſe or ſuggeſtion may be brought in by attorney, and need not be in proper perſon. 1 *Leon*. 286.

A prohibition is *not* to be granted the *laſt day* of term, but on motion a rule may be obtained to ſtay proceedings *till* the enſuing term. *Latch*. 7. 2 *Rol. Rep*. 456.

4. *At what time a prohibition is to be, and in what caſes it may be granted, to inferior temporal courts.*

In all caſes where it appears on the face of the libel, that the ſpiritual court, *&c.* have *not* a *juriſdiction*, a prohibition may be awarded, and is grantable *as well after as before ſentence*; for the King's ſuperior courts have a ſuperintendency over all inferior juriſdictions, and are to take care that they keep within their due bounds. 2 *Inſt*. 602. 2 *Rol. Abr*. 319. *Noy* 137. 1 *Sid*. 65. *Cro. Eliz*. 571. *Moor* 462, 907. *Skin*. 299. *Carth*. 463. *March* 153. 2 *Rol. Rep*. 24. *Comb*. 356.

But where the court has a *natural* juriſdiction of the thing, but is reſtrained by ſome ſtatute; as by 23 *H*. 8. *c*. 9. for not citing out of the dioceſe, there the party muſt come *before* ſentence; for *after* pleading and admitting the juriſdiction of the court below, it would be hard and inconvenient to grant a prohibition. See the authorities *ſupra*, and *Cro. Car*. 97. 2 *Show*. 145. *Vent*. 61. 6 *Mod*. 252. *Fareſt*. 137. *Godb*. 163, 243. 5 *Mod*. 341. *Hetl*. 19. 12 *Co*. 76. *Salk*. 543.

On a motion for prohibition the caſe was, defendant libelled in the ſpiritual court for tithes of faggots made of loppings of trees; and the ſuggeſtion for a prohibition was, that theſe loppings were cut *from the ſtumps of timber trees above the growth of twenty years*; and it was alledged, that ſentence was given in the ſpiritual court, therefore plaintiff comes here too late to have a prohibition: but *per Holt*, the ſentence will not hinder the having a prohibition in any caſe, but in caſe of prohibitions grounded on 23 *H*. 8. *c*. 9. for citing out of the dioceſe; but becauſe the plaintiff had not pleaded this matter in the ſpiritual court, they denied the prohibition, becauſe *the ſpiritual court has a general juriſdiction of tithes*; and if any ſpecial matter deprives them of their juriſdiction, it *muſt* be pleaded there; and if it had been pleaded there, and iſſue joined on it, and on the trial it had been found not to be *ſilva cædua*, it had been well; but if they had refuſed to admit the plea, a prohibition ſhould have been granted. 2 Ld. *Raym*. 835.

A prohibition doth lie as well to a temporal court as to the ſpiritual, court of admiralty or other court, *whoſe proceedings are different from the Common law*, if ſuch temporal court exceed the bounds of its juriſdiction, or take cognizance of matters not ariſing *within* its juriſdiction. *F. N. B*. 45. 2 *Inſt*. 229, 243, 601. 2 *Rol. Rep*. 379. 1 *Rol. Rep*. 252.

As if treſpaſs *vi & armis* be brought in the county, a prohibition lies to plaintiff. *F. N. B*. 47.

So if one ſueth another in a court baron or other court, which is *not a court of record*, for charters concerning inheritance or freehold, he ſhall have a prohibition. *F. N. B*. 47.

A perſon having obtained judgment in *B. R.* for his debt and damages, brought action for recovery of them againſt the bail in the court of the *Tower* of *London*, in which action the party was taken on a *capias*, and was reſcued, after which plaintiff brought his action *on the caſe* in the court for the reſcue; and all this appearing to the court of *B. R.* they granted a prohibition. 1 *Rol. Rep*. 54.

So where an action of debt was brought in the *Marſhalſea*, on a judgment in *B. R.* and a prohibition was granted. 2 *Salk*. 439.

A ſuit was ſurmiſed to be before the Lord preſident of the marches, *for an office*, between the grantee of the Lord preſident and, a ſtranger, wherein the only queſtion would be, whether the grant of that office belonged to the Lord preſident; and, becauſe in this caſe he would be as it were both judge and party, a prohibition was granted. 1 *Keb*. 648.

If there be one intire contract above 40*s*. and a man ſues for it in a court baron, ſevering it into ſmall ſums under 40*s*. a prohibition ſhall be granted, becauſe this is done to defraud the court of the King. 19 *H*. 6. 54. 2 *Rol. Abr*. 280. *F. N. B*. 46.

An action was brought in the hundred court for 40*s*. in which action plaintiff confeſſed that he was ſatisfied *one ſhilling*, which being done with an intent to give that court juriſdiction, and to defraud the ſuperior courts, a prohibition was granted. *Palm*. 564.

If there be ſeveral contracts between *A*. and *B*. at ſeveral times for divers ſums, each under 40*s*. but amounting in the whole to a ſum ſufficient to intitle the ſuperior court to a juriſdiction, they ſhall be ſued for in ſuch ſuperior, and not in an inferior court, which is not of record. 1 *Vent*. 65.

So in a prohibition to the court of the honour of *Eye*, where the caſe was:—one contracted with another for divers parcels of malt, the money to be paid for each parcel being under 40*s*. he levied divers plaints thereupon in the ſaid court; wherefore the court here granted a prohibition; becauſe tho' there be ſeveral contracts, yet as plaintiff might have joined them all in *one* action, he ought to have ſo done, and ſued here, and not put defendant to unneceſſary vexation, any more than he can ſplit an entire debt into divers, to give the inferior court juriſdiction *in fraudem legis*. 1 Vent 73. 2 Keb. 617. 1 Show. 11.

It is laid down by *Coke*, and admitted in a variety of caſes, that no inferior court can hold plea of any tranſitory action, if not *made within the juriſdiction*, and that the cauſe of action *muſt* be alledged to ariſe *within* ſuch juriſdiction. 2 *Inſt*. 231. 1 *Sand*. 74. 2 *Jon*. 230. 1 *Show*. 10. and ſee tit. *Courts*.

Therefore, in an action on a promiſe in an inferior court, *not only the promiſe, but the conſideration muſt be alledged to ariſe* WITHIN *the inferior juriſdiction*, and muſt be ſo proved on the trial. 1 *Rol. Abr*. 545

But if plaintiff had ſhewn that the money had been lent *infra juriſdictionem curiæ*, or if it had been for goods there ſold, the plaintiff would have had no need to ſay, that the defendant aſſumed to pay *infra juriſdictionem curiæ*; becauſe *the law creates the promiſe on the creation of the debt*, which debt being within the juriſdiction, the promiſe ſhall be *intended* there alſo. Lord *Raym*. 211.

In all caſes where inferior courts aſſume a juriſdiction, or hold plea of a matter not ariſing within their limits, the party hath his remedy, and may ſtay their proceedings by prohibition; but ſuch prohibition can only regularly be obtained by its appearing *on oath made*, that the fact did ariſe *out* of the juriſdiction, and that the defendant tendered *a foreign plea*, which was refuſed. 6 *Mod*. 146. *Carth*. 402. 1 *Salk*. 201. 1 *Peer Will* 476.

In the caſe of *Mendyke* v. *Stint* it was greatly inſiſted upon, that tho' the party neglected to plead to the juriſdiction, yet, the matter ariſing out of the inferior juriſdiction, the ſuperior courts *ought* to grant a prohibition; for otherwiſe the parties, their counſel and attornies, would give a juriſdiction to inferior courts which they were not intitled to by law; but it was otherwiſe adjudged in this caſe; and it ſeems to be now agreed, that *after admitting the juriſdiction, or after imparlance, the party cannot apply for a prohibition*. 2 Mod. 271.

But theſe things were agreed by the court.

1. If any matter appears in the declaration, which ſheweth that the cauſe of action did not ariſe *infra juriſdictionem,* there a *prohibition* may be granted at *any* time.

2. If the ſubject matter in the declaration be *not proper for the judgment* and determination of ſuch court, there alſo a *prohibition* may be granted at any time.

3. If defendant, who intended to plead to the juriſdiction, *is prevented by any artifice,* as by giving a ſhort day, or by the attorney's refuſing to plead it, *&c.* or if his plea be not accepted, or is over-ruled; in all theſe caſes a *prohibition* likewiſe will lie at *any* time. 2 *Mod.* 273.

A motion was made for a *prohibition* to be directed to the ſheriff's court in *Briſtol,* on ſuggeſtion that cauſes of action ariſing out of the juriſdiction of the ſheriff's court ought not to be ſued there; and this motion was made in behalf of defendant in the action, before he had appeared, to ſtay the proceedings of the court, who proceeded to attach his goods in the hands of a garniſhee; and Sir *B. Shower* oppoſed the motion; becauſe defendant could not pray a *prohibition* on ſuggeſtion of a matter which he could not plead; and as here he could not plead this before appearance, ſo he ought not to make ſuch a motion before appearance. And *per Holt,* a man ſhall not plead to the juriſdiction *until he appear*; but if the original cauſe of action aroſe out of the juriſdiction of the court, *the garniſhee may plead it*; and of that opinion was *Hale* Ch. J. but if it was debt on a ſimple contract, it is attachable where the perſon of the debtor is. 1 Ld. *Raym.* 346.

So in the caſe of *Clerk* v. *Andrews,* where *Shower* moved for a *prohibition* to the court of the ſheriffs of *London* to ſtay proceeding, where they attached the debt of the garniſhee, becauſe it aroſe out of the juriſdiction, but it was denied, becauſe the debt was on ſimple contract, *which follows the perſon of the debtor.* Ld. Raym. 347.

5. *In what caſes prohibitions are to be granted to the ſpiritual courts.*

If one ſues another in the ſpiritual court for *a chattel or debt,* defendant ſhall have a *prohibition.* So if he ſues for a *treſpaſs.* F. N. B. 40.

If the ſpiritual courts take on them to try the boundaries of a pariſh, a *prohibition* lies. 2 *Rol. Abr.* 291. 7 *Co.* 44. 1 *Rol. Rep.* 332. *Cro. Eliz.* 228. 3 *Leon.* 829. 3 *Keb.* 286. S. P. becauſe the preſcription is the ground thereof.

If a ſuit be by a parſon for tithes, and defendant plead, that the place *where,* is in another pariſh, a *prohibition* lies; becauſe they meddle with that which is out of their juriſdiction, though the original thing be of their cognizance, and this comes in obliquely. 2 *Rol. Abr.* 282. 1 *Show.* 10. *Noy* 147. S. P.

So if the vicar of a pariſh libels againſt another to avoid his inſtitution to the church of *D.* which he ſuppoſes to be a chapel of eaſe, appertaining to his vicarage, and defendant ſuggeſts, that D. is a pariſh of *itſelf,* and not a chapel of eaſe; a *prohibition* will be granted, for *they ſhall not try the bounds of the pariſh.* 2 Rol. Abr. 291.

So if the queſtion be in the court chriſtian, whether a church be a parochial church, or a chapel of eaſe; a *prohibition* lies. *Ibid.*

But if the bounds of two vills lying in the ſame pariſh come in queſtion in the ſpiritual court, no *prohibition* lies; for ſuch bounds are triable in the eccleſiaſtical court, though thoſe of pariſhes are not. 1 *Lev.* 78.

The eccleſiaſtical courts have cognizance of *a way* to a church, and for not repairing ſuch way the parties may be proceeded againſt in the ſpiritual court. *March.* 45.

So if a parſon is prevented from carrying away his tithe by the ſtopping up the uſual way, he may have his remedy in the eccleſiaſtical court, grounded on the ſtatute 2 *Ed.* 6. *Bulſt.* 67. 1 *Jon.* 230.

But if the queſtion be, whether he is to have one way or another, or whether ſuch a way be a highway or not; this cannot be tried in the ſpiritual court. *March.* 15. 1 *Bulſt.* 67. 2 *Rol. Abr.* 287. S. P. adjudged.

So if the churchwardens of a church ſue for *a way* to the church, which they claim to appertain to all the pariſhioners *by preſcription,* a *prohibition* ſhall be granted; for this right being grounded on the preſcription, is to be tried in the temporal courts. 2 *Rol. Rep.* 41, 287.

If a man be admitted, inſtituted and inducted, and a ſuit is commenced in the eccleſiaſtical court to avoid the inſtitution, *ſuppoſing it not valid*; though the thing be of their cognizance, yet becauſe the induction, which is *temporal,* and gives a lay right, may depend on it, a *prohibition* lies. *Hob.* 15. *Latch* 205. 1 *Bulſt.* 179. *Lit. Rep.* 165. *Poph.* 133. 1 *Rol. Abr.* 282. 1 *Show. Rep.* 10.

If there be a ſuit for tithes in the eccleſiaſtical court, and the tenant pleads, that the party who ſues is not incumbent, but that *J. S.* is; and this plea, becauſe it goes to the right of the incumbency, is rejected, a *prohibition* lies, for by denying the tenant this liberty he might be twice charged for tithes. *Cro. El.* 228. 3 *Leon.* 265.

There are frequent inſtances of *prohibitions* being granted to the eccleſiaſtical courts, to ſtay ſuits for fees by chancellors, regiſters and proctors in thoſe courts, on this foundation, that demands *pro opere & labore* are properly determinable at Common law, *and fees cannot be ſettled by the canon law*; and that the ſpiritual court can only give coſts and expences of ſuit, but that *no action of debt will lie for ſuch coſts at Common law*; and that the profits of an office being temporal, the remedy for them ought to be by *quantum meruit*; or, in caſe it be an office of freehold, by aſſiſe; *the denial of juſt fees being a diſſeiſin*; therefore it ſeems to be now ſettled, that neither a proctor nor regiſter can ſue for fees in the ſpiritual court, but that the proper remedy is, in caſe of a fee certain, by an *indebitatus aſſumpſit,* or, in caſe of an uncertain fee, by *quantum meruit*; and in ſuch ſuits it is *not neceſſary to prove a retainer,* that being implied by law. 2 *Rol Rep.* 59. 3 *Leon.* 268. 1 *Mod.* 176. 2 *Keb.* 615. 3 *Keb.* 303, 441, 516. 1 *Salk.* 333. and 4 *Mod.* 254.

If a legatee takes a bond from the executor for payment of the legacy, and afterwards ſues him in the ſpiritual court for the legacy, a *prohibition* will be granted; for by taking the obligation *the nature of the demand is changed,* and becomes a debt or duty recoverable in the temporal court. *Yelv.* 38. 2 *Vern.* 31. but 2 *Rol. Rep.* 160. S. P. *cont.*

Matters of freehold, and the rights of inheritances, are only determinable in the temporal courts; ſo that if the eccleſiaſtical courts intermeddle with thoſe, a *prohibition* lies. *F. N. B.* 40. 2 *Rol. Abr.* 286. *Lit. Rep.* 164.

As in a feoffment of tithes and lands, where there is no livery, if they adjudge the tithes to paſs, notwithſtanding there is no livery, a *prohibition* will lie. *Cro. Jac.* 270. 1 *Vent.* 41. cited.

So if a man deviſes, that his lands ſhall be ſold for the payment of his debts, and that the overplus ſhall be paid to ſuch perſons in certain ſhares; the legatees in this caſe cannot ſue in the eccleſiaſtical court; for the proviſions intended them ariſe originally out of lands, and their proper remedy in this caſe is in a court of equity. *Dyer* 151, 264. *Hob.* 265. 2 *Rol. Abr.* 284—5. 2 *Show.* 50. *Cro. Car.* 16.

But if a rent be deviſed out of a *farm for years,* the eccleſiaſtical courts may hold plea thereof; for the term for years being only a chattel *is teſtamentary,* conſequently the rent deviſed thereout. 1 *Sid.* 279. 2 *Keb.* 5. 1 *Lev.* 179.

The rights of offices for life in the eccleſiaſtical courts, or courts of Admiralty, are determinable at Common law; as in the queſtion concerning the validity of two patents, by which the office of regiſter to a biſhop was granted; it was held, that this ſhould not be tried in the ſpiritual court, though the ſubject matter be ſpiritual; becauſe the office itſelf being matter of freehold is for that reaſon of temporal cognizance. 2 *Rol. Abr.* 285—6. *Noy* 91. *Latch* 228. *Palm.* 450. *Godb.* 390. *Cro. Car.* 65. 2 *Rol. Rep.* 306. *Raym.* 88. 1 *Lev.* 125. 4 *Mod.* 27. *Comb.* 306.

Treſpaſs on a glebe being *freehold*, cannot be determined in the eccleſiaſtical court. *Bro. Juriſdiction, pl.* 41.

A parſon libelled againſt defendant in the ſpiritual court of *York* for having *cut elms* in the church-yard; and a prohibition was granted, on ſuggeſtion that they grew on his freehold. 1 Ld. *Raym.* 212.

For more learning on this ſubject, ſee 4 New Abr. *and* 17 *&* 18 Vin. Abr. *tit.* Prohibition, *and* Black. Com. 3 V. 112, 113.

A ſuggeſtion for *prohibition* begins, *Be it remembered, that on,* &c. *comes before our Lord the King at* Weſtminſter, C. D. *in his proper perſon, and gives this court here to underſtand and be informed, That whereas* A. B. *&c.* (ſetting forth the complaint and proceeding in the other court, contrary to the laws and cuſtoms of the kingdom) *Wherefore the ſaid* C. *imploring the aid of this honourable court, before the King himſelf, prayeth to be relieved, and that he may have his Majeſty's writ of prohibition, directed to the judge of the ſaid court,* &c. *to prohibit him and them from taking any further cogniſance of the ſaid plea before them, touching or concerning the premiſſes: And it is granted him accordingly,* &c.

The common *form* of a *prohibition* runs thus: *George,* &c. *To* A. B. *&c. Greeting: We* prohibit *you, that you hold not plea in the court,* &c. *of,* &c. *whereof* C. D. *complains, that* E. F. *draws him into plea before you,* &c. And to the party himſelf; *We* prohibit *or forbid you* E. F. *that you follow not the plea in the court of,* &c. *whereof* C. D. *complains, that you draw him into the court,* &c.

Prohibitio de vaſto directa Parti, A judicial writ directed to the tenant, *prohibiting* him from making waſte on the land in controverſy, during the ſuit. *Reg. Judic.* 21.

It hath been adjudged, that a *prohibition* ſhall be granted to any one who commits waſte, either in the houſe or buildings of the incumbent of a ſpiritual living; or who cuts down trees on the glebe, or doth any other waſte. *Moor* 917. 3 *Nelſ. Abr.* 5.

Pro indiviſo, For undivided, is taken in law for a poſſeſſion or occupation of lands or tenements belonging to two or more perſons, whereof *none knows his ſeveral portion*; as coparceners before partition, *Bract. lib.* 5.

Proles, (*Lat.*) In Engliſh *progeny*, are ſuch iſſue as proceed from *a lawful marriage*; though, if the word be uſed at large, it may denote others.

Prolocutor of the Convocation-Houſe, (*Prolocutor domus convocationis*) Is an officer choſen by eccleſiaſtical perſons, publicly aſſembled in convocation by virtue of the King's writ at every parliament: And there are two *Prolocutors*, one of the higher Houſe of Convocation, the other of the lower Houſe; the latter of which is choſen by the lower Houſe, and preſented to the biſhops of the higher Houſe as their *Prolocutor*, that is the perſon by whom the lower Houſe of Convocation intend to deliver their reſolutions to the upper Houſe, and have their own Houſe eſpecially ordered and governed: His office is to cauſe the clerk to call the names of ſuch as are of that Houſe, when he ſees cauſe; to read all things propounded, gather ſuffrages, *&c.*

Promiſe, (*Promiſſio*) Is when, on a valuable conſideration, perſons bind themſelves by words to perform ſuch a thing as is agreed on; upon which action may be brought: And a *promiſe* againſt a *promiſe* made at one and the ſame time, is a ſufficient ground for an action. *Cro. Eliz.* 543, 703, 848.

If *promiſes* are *executory* on *both ſides*, performance need *not* be averred; becauſe it is the *counter promiſe*, and not the performance, which raiſes the conſideration. 4 *Mod.* 189.

Where a *promiſe* is made to do a thing, and there is no breach, the ſame may be diſcharged by parol; but, if it be once broken, it cannot be diſcharged without releaſe in writing, being *then* a debt. 1 *Mod. Rep.* 206. 2 *Mod.* 44.

If a promiſe be to pay a ſum of money, by ſeveral monthly payments, the promiſe being intire, a breach of payment of the firſt month, is a breach of the whole promiſe. 2 *Rol. Rep.* 47. See *Mutual Promiſe, Aſſumpſit,* and *Action on the Caſe,* and *Black. Com.* 3 *V.* 157.

Promiſſory Notes, or notes of hand, Are a plain and direct engagement in writing, to pay a ſum ſpecified at a time therein limited to a perſon therein named, or ſometimes to his order, or often to the bearer at large. They are by *ſtat.* 3 *&* 4 *Ann. c.* 9. made aſſignable and indorſable in like manner as bills of exchange. *Black. Com.* 2 *V.* 467.

Promoters, (*Promotores*) Are thoſe who in popular and penal actions proſecute offenders, in their name and the King's, as *informers* do, having part of the fines or penalties for their reward: They belonged chiefly to the *Exchequer* and *King's Bench*; and Sir *Edward Coke* calls them *turbidum hominum genus.* 3 Inſt. 191.

Promulge a Law, (*Promulgare Legem*) Is to declare, publiſh, and proclaim a law to the people; and ſo *Promulged, Promulgatus,* ſignifies publiſhed or proclaimed. 6 *H.* 6. *c.* 4. See *Black. Com.* 1 *V.* 45.

Pronotary. See *Prothonotary.*

Proof, Is ſhewing the truth of any matter alledged, or the trial or making out of any thing, by a jury, witneſſes, *&c.*

Bracton ſays, there is *Probatio duplex,* viz. *Viva voce,* by witneſſes; and *Probatio mortua,* by deeds, writings, *&c.*

Proof, according to *Lilly,* is either in giving evidence to a jury on a trial, or elſe on interrogatories, or by copies of records, or exemplifications of them. 2 *Lil. Abr.* 393. Though, where a man ſpeaks generally of *Proof,* it ſhall be intended of *Proof* by a jury, which in the ſtrict ſignification is legal *Proof.* 3 Bulſt. 56.

Condition of a bond was to pay money as an apprentice ſhould miſpend, on *Proof* made by the confeſſion of the apprentice or otherwiſe; and it was held, that although generally *Proof* ſhall be intended to be made at a trial by jury, in this caſe it being referred to the confeſſion of the party, it is ſufficient if he confeſs it under his hand. *Cro. Jac.* 381. 3 *Nelſ. Abr.* 15.

It hath been inſiſted, that the law knows no other *Proof* but before a jury in a judicial way, and that which is on record; but if the proof is modified by the agreement of the parties, that it ſhall be in ſuch a manner, or before ſuch a perſon, that modification which allows another manner of *Proof* ſhall be obſerved and prevail againſt the legal conſtruction of the word *Proof.* Sid. 313. 2 Lutw. 436.

In articles the parties bound themſelves in the penalty of 100*l.* *&c.* to be paid on due *Proof* of a breach; *Proof* at a trial *will* maintain the action. *Lutw.* 441. And *Proof* may be in the action, in ſeveral other caſes. *Cro. Jac.* 188, 488. *Proof* by witneſſes, *&c.* See *Evidence,* and *Black. Com.* 3 *V.* 368.

Pro partibus Liberandis, An ancient writ for partition of lands between co-heirs. *Reg. Orig.* 316.

Proper Feuds. See *Black. Com.* 2 *V.* 58.

Property, (*Proprietas*) Is the *higheſt right* a man can have to any thing; being uſed for that right which one hath to lands or tenements, goods or chattels, which no way depend on another man's curteſy. *Stud. Compan.* 159.

Before men entered into ſociety there was not any *property,* but *an univerſal right* inſtead of it; every man might then take to his uſe what he pleaſed, and retain it, if he had ſufficient power: but when men entered into ſociety, and induſtry, arts and ſciences were introduced, *Property* was gained by various means; for the ſecuring whereof, proper laws were ordained.

According to our law, *property* in lands and tenements is acquired either by *entry, deſcent* by law, or *conveyance*; and in goods or chattels, it may be gained many ways, though uſually by *deed of gift,* or *bargain and ſale.* 2 Lil. Abr. 400.

For preſerving *Property* the law hath theſe rules,

1ſt, No man is to deprive another of his *Property,* or diſturb him in enjoying it.

2dly, Every perſon is bound to take due care of his own *Property*, ſo as the neglect thereof may not injure his neighbour.

3dly, All perſons muſt ſo uſe their right, that they do not, in the manner of doing it, damage their neighbour's *Property*.

There are alſo three ſorts of *Properties*, viz. *Property* abſolute; *Property* qualified; and *Property* poſſeſſory; And an abſolute *Proprietor* hath an abſolute power to diſpoſe of his eſtate as he pleaſes, ſubject to the laws of the land. The huſband hath a qualified property in his wife's land, real chattels and debts; but in her chattels perſonal he hath an abſolute property. *Plowd.* 5.

Every owner of goods, &c. hath a general property in them: Though a legatee of goods hath no property in the goods given him by will until *actually delivered* him by the executors, ſo that he hath the poſſeſſion. *Mich.* 23 *Car. B. R.*

And though, by a bare agreement, a bargain and ſale of goods may be ſo far perfected, without delivery or payment of money, that the parties may have an action of the caſe for non-performance, yet no property veſts *until delivery*; therefore it is ſaid if a ſecond buyer gets delivery, he has the better title. 3 *Salk.* 61, 62.

But if one covenant with me, that if I pay him ſo much money ſuch a day, I ſhall have his goods in ſuch a place, and I pay him the money: This is a good ſale, and by it I have the property of the goods. 27 *H.* 8. 16.

Property is of things in *poſſeſſion* or *action*.

In *poſſeſſion*, it is *generally*, when no other can have them from the owner, or with him, without his act or default; or *ſpecially*, when ſome other hath an intereſt with him, or where there is a property alſo in another, as well as in the owner; as by bailment, delivery of things to a carrier, or innkeeper, where goods are pawned or pledged, diſtrained or leaſed, &c. And *property* in *action*, is when one hath an intereſt to ſue at law for the things themſelves, or for damages for them; as for debts, wrongs, &c. and all theſe things, in poſſeſſion, or action, one may have in his own right, or in the right of another, as executor. *Wood's Inſt.* 314.

A perſon hath ſuch a *ſpecial* property in goods delivered him to keep, that he may maintain actions againſt ſtrangers who take them out of his poſſeſſion: So of things delivered to a carrier, and when goods are pawned, &c. *Lil. Abr.* 400, 401.

An executor or adminiſtrator hath the property of the goods of the deceaſed: But a ſervant hath neither a general or ſpecial property in his maſter's goods; therefore to take them from his maſter may be treſpaſs or felony, according to the value and other circumſtances. *Goldſb.* 72.

If a man hires a horſe, he hath a *ſpecial* property in the horſe during the time againſt all men, *even againſt the right owner*; againſt whom he may have an action if he diſturbs him in the poſſeſſion. *Cro. Eliz.* 236. But it hath been adjudged, that if a man deliver goods, &c. to another to keep for a certain time, and then to re-deliver them; if he to whom they were delivered ſell them in open market, *before the day appointed for the re-delivery*, the owner may ſeize them wherever he finds them, becauſe the *general property* was always in him, and not altered by the ſale. *Godb.* 160. 3 *Nelſ. Abr.* 18. And if one delivers a horſe or other cattle, or goods, to another to keep, and he kills the horſe, or ſpoils the goods, treſpaſs lies againſt him; for by the killing or ſpoiling, the *property* is *deſtroyed*. 5 Rep. 13.

If a ſwarm of bees light on a tree, they are not the owners of the tree, *till covered with his hive*; no more than hawks that have made their neſts there, &c. But their young ones will be his *property*, and for them he may have treſpaſs. *Doct. & Stud. c.* 5. *Co. Litt.* 145.

A man's geeſe, &c. fly away out of ſight, wherever they go, he hath ſtill a *property* in them. *Staundf. lib.* 1. *c.* 16. 3 *Shep. Abr.* 111.

Wild beaſts, deer, hares, conies, &c. though they belong to a man on account of his game and pleaſure, none can have an abſolute *real property* in; but if they are incloſed and *made tame*, there may be a qualified and poſſeſſory *property* in them.

One may have *abſolute property* in things of a baſe nature, as maſtiff dogs, hounds, ſpaniels, &c. but not in things *feræ naturæ*, unleſs when dead. *Dalt.* 371. *Finch.* 176. 11 *Rep.* 50. *Raym.* 16. But ſee *ante*.

Property in lands, goods and chattels, may be forfeited or loſt, by treaſon, felony, flight, outlawry; alſo of goods by their becoming deodand, waif, eſtray, &c. *Bac. Elem.* 77, 78.

Property in Highways, &c. He who hath the land which lies on both ſides the highway, hath the *property* of the ſoil of the *highway* in him, notwithſtanding the King hath the privilege for his people to paſs through it at their pleaſure; for the law preſumes that the way was *at firſt* taken out of the lands of the party who owns the lands lying on both ſides the way: And divers lords of manors claim the ſoil *as part* of their waſte. 2 *Lil. Abr.* 400.

If the *ſea* or a *river*, by violent incurſion, carries away the ſoil or ground in ſo great a quantity, that he who had the *property* in the ſoil, can know where his land is, he ſhall have his land; but if his ſoil or land be inſenſibly waſted by the ſea or river, he muſt loſe his *property*, becauſe he cannot prove which is his land. *Paſch.* 1650.

A tenant hath *only* a *ſpecial property* in the *trees* on the lands demiſed, ſo long as they remain *part* of the freehold; for, when they are ſevered, his *property* is gone. 11 *Rep.* 82.

Property altered. A man borrows or finds my goods, or takes them from me; neither of theſe acts will alter the *property*. Bro. Propert. 27.

If one having taken away corn, make it into malt; turn plate into money, or timber into a houſe, &c. the *property* of them is altered. *Dodderidge Law* 132, 133.

And where goods are generally ſold *in a market overt*, *for a valuable conſideration*, and without fraud, it alters the *property* thereof. 5 *Rep.* 83. Except in ſome particular caſes. See *ante*.

To alter or transfer *property*, is lawful; but to violate *property* is never lawful, *property* being a ſacred thing which ought not to be violated. And every man (if he hath not forfeited it) hath a *property*, and a right allowed him, to defend his life, liberty, and eſtate; and if either be violated, the law gives an action to redreſs the injury, and puniſh the wrong. 2 *Lil. Abr.* 400.

Prophecies, (*Prophetiæ*) Is foretelling of things to come, in hidden myſterious ſpeeches; whereby commotions have been often cauſed in the kingdom, and attempts made by thoſe to whom ſuch ſpeeches promiſed good ſucceſs, tho' the words were myſtically framed, and pointed only to the cognizance, arms, or ſome other quality of the parties: But theſe, for diſtinction ſake, are called *falſe or phantaſtical prophecies*. 3 Ed. 6. c. 15.

Falſe *prophecies*, (where perſons pretend extraordinary commiſſions from God) to raiſe jealouſies in the people, or terrify them with impending judgments, &c. are puniſhable at Common law, *as impoſters*: And by 5 *Eliz. c.* 15. None ſhall publiſh or ſet forth any falſe *prophecy*, with *an intent* to raiſe ſedition, on pain of 10 *l.* for the firſt offence, and a year's impriſonment; and for the ſecond offence to forfeit all his goods and chattels, and impriſonment during life: The proſecution to be within ſix months. 3 *Inſt.* 128, 129. and ſee *Black. Com.* 4 *V.* 149.

Proportion, (*Proportio.*) See *De Onerando pro Rata* Portionis.

Proportum, (*Purport*) Intention of meaning. *Cowell.* *Secundum* proportum *dicti cyrographi inter eos confecti.* Carta Rogeri de Quincy, 31 Hen. 3.

Propounders. The 85th chapter of *Coke's* 3d *Inſtitutes* is intitled againſt *monopoliſts*, *propounders*, and *projectors*, where it ſeems to ſignify the ſame as *monopoliſts*. Cowell.

Proprietary, (*Proprietarius*) Is he who hath a property in any thing, *quæ nullus arbitrio eſt obnoxia*; but was heretofore chiefly uſed for him who had the fruits of a benefice to himſelf, his heirs and ſucceſſors, as *abbots and priors* had to them and their ſucceſſors. See *Appropriations*.

Proprietate probanda, Is a writ to the ſheriff to inquire of the property of goods diſtrained, when defendant claimeth property on a *replevin* ſued; for the ſheriff cannot proceed till that matter is decided by writ; and if it is found for plaintiff, then the ſheriff is to make replevin; but if for defendant, he can proceed no further. *F. N B.* 77. *Finch* 316, 450. *Co. Lit.* 145. *b.* See *Black. Com.* 3 *V.* 148.

Pro rata, Is as much as *pro proportione*; as jointenants, *&c.* are to pay *pro rata*, i. e. in proportion to their eſtates. 16 *Car.* 2. *c.* 6.

Prorogue, *(Prorogare)* Signifies to prolong or put off to another day. 6 *Hen.* 8. *c.* 8.

Prorogation of *parliament*, and *adjournment*, were antiently uſed as *ſynonyma's*; but of late there hath been a diſtinction, *a prorogation* making a *ſeſſion*, and an *adjournment* only a *continuance*. Vide *Parliament*, and *Black. Com.* 1 *V.* 186.

Protection, *(Protectio)* Is generally taken for that benefit and ſafety which every ſubject hath by the King's laws; every man who is a loyal ſubſect is in the King's *protection*; and in this ſenſe to be out of the King's *protection*, is to be excluded the benefit of the law. 25 *Ed.* 3. *c.* 22.

In a ſpecial ſignification, a *protection* of the King is an act of grace, by writ iſſued out of Chancery, which lies where a man will paſs over the ſea in the King's ſervice; and by this writ (when allowed in court) he ſhall be quit of all manner of ſuits between him and any other perſon, except aſſiſes of *novel diſſeiſin*, aſſiſe of *darrein preſentment*, attaints, *&c.* until his return. 2 *Lil. Abr.* 398.

This term is thus further explained, *viz. Protection* is an immunity granted by the King to a certain perſon, to be free from ſuits at law for a certain time, and for ſome reaſonable cauſe; and it is a branch of the King's prerogative ſo to do: There are two ſorts of theſe *protections*; one is *cum clauſula volumus*; and of that *protection* there are three particulars; one is called *quia profecturus*, and is for him who is going beyond ſea in the King's ſervice; another is *quia moraturus*, which is for him who is already abroad in the King's ſervice, as an ambaſſador, *&c.* and another is for the King's debtor, that he be not ſued till the King's debt is ſatisfied: The other ſort of *protection* is *cum clauſula nolumus*, *&c.* which is granted to a ſpiritual corporation, that their goods or chattels be *not* taken by the officer of the King, for the King's ſervice; it may likewiſe be granted to a ſpiritual perſon ſingle, or to a temporal perſon. *Reg. Orig.* 23. 3 *Nelſ. Abr.* 20.

On a perſon's going over ſea, *in the ſervice of the King*, writ of *protection* ſhall iſſue, to be quit of ſuits till he return; and then a reſummons may be had againſt him: But one may proceed againſt defendant having ſuch *protection*, until he comes and ſhews his *protection* in court, and hath it allowed; when his plea or ſuit ſhall go *ſine die*; though if after it appears that the party who hath the *protection*, goes not about the buſineſs for which the *protection* was granted, the plaintiff may have a repeal, *&c.* *Terms de Ley.* 2 *Lil. Abr.* 398.

A *protection* is to be made for one year, and may be renewed from year to year; but if it be made for two or three years, the juſtices will not allow it: And if the King grant a *protection* to his debtor, that he be not ſued till his debt is paid; on theſe *protections* none ſhall be delayed; the party is to anſwer and go to judgment, and execution ſhall be ſtayed. *Co. Lit.* 130. 25 *Ed.* 3.

The King granted a *protection* to one of his debtors; and on demurrer it was alledged, that by 25 *Ed.* 3. *c.* 19. *protections* of this kind are expreſly, that none ſhall be delayed on them; but the party ſhall anſwer and proceed to judgment, and execution ſhall ſtay: And the court ordered, that when it came to execution they would adviſe; ſo a *reſpondeas ouſter* was awarded. *Cro. Jac.* 477.

In all *protections* there ought to be *a cauſe ſhewn for granting them:* If obtained pending the ſuit they are bad; and a perſon giving bail to an action on arreſt, it is ſaid may not plead his *protection*; one may not be diſcharged out of priſon to which he is committed in execution, by *protection* to ſerve the King, *&c.* Nor will a *protection* be allowed where a perſon is taken on a *capias utlagatum*, after judgment; for though the *capias utlagatum* is at the King's ſuit in the firſt place, it is in the ſecond degree for the ſubject. *Latch* 197. 1 *Leon.* 185. *Dyer* 162. *Hob.* 115. See *poſt*.

But in action on *aſſumpſit* a *protection* under the Great Seal was brought into court, for that defendant was in the wars in *Flanders*, *&c.* and it was allowed though after an *exigent*. 3 Lev. 332.

Plaintiff in an action cannot caſt a *protection*; for the *protection* is for defendant, and ſhall be always for him, if it be not in ſpecial caſes where plaintiff becomes defendant. *New Nat. Br.* 62. And no *protection* ſhall be allowed againſt the King. *Co. Lit.* 131.

A *protection* to ſave a default, is not good for any place within the kingdom of *England:* And regularly it lies only where the defendant or tenant is demandable; for the *protection* is to excuſe his default, which cannot be made when he is not demanded. *Jenk. Cent.* 66, 94.

There are many kinds of *protections*; but they are rarely uſed, being often ouſted by act of parliament. *Wood's Inſt.* 571. See *Black. Com.* 3 *V.* 389.

When the King grants a *protection*, the writ thereon in ſome caſes as been as follows:

A writ of *Protection* by the *King*.

GEORGE the Third, *&c.* *To all and ſingular ſheriffs,* &c. *and others, who ſhall ſee or hear our preſent letters,* greeting. Know you, *that we have taken into our ſpecial* protection A. B. *and all his ſervants, lands and tenements, goods and chattels in,* &c. *in the county of* S. *and in,* &c. *and alſo all his writings whatſoever: Therefore we command you that you* protect *and defend the ſaid* A. B. *and his ſervants,* &c. *aforeſaid, not doing to him or them, or any of them, or permitting to be done to them, any injury, damage or violence, on pain of grievous forfeiture,* &c. In teſtimony *of which,* &c. *for one year to endure.* In witneſs, *&c.*

Protection of Ambaſſadors. See *Ambaſſadors* and *Privilege*.

Protection of Children, Is a natural duty, rather permitted than enjoined by any municipal laws; nature, in this reſpect, working ſo ſtrongly as to need rather a check than a ſpur. A parent may, by our laws, maintain and uphold his children in their law-ſuits, without being guilty of the crime of maintaining quarrels. A parent may alſo juſtify an aſſault and battery in defence of the perſons of his children: Nay, where a man's ſon was beaten by another boy, and the father went *near a mile* to find him, and *there* revenged the ſon's quarrel by beating the other boy, of which beating he afterwards *unfortunately* died; it was not held to be murder, but manſlaughter merely. *Cro. Jac.* 296. 1 *Hawk. P. C.* 83.

Such indulgence does the law ſhew to the frailty of human nature, and the workings of parental affection! *Black. Com.* 1 *V.* 450.

Protection of Parliament. Peers, and members of parliament, *&c.* by their privilege, may *protect* their *menial ſervants*, and thoſe *actually employed by them in ſervice*; but by a late *order*, this extends not to others, on written *protections*.

One *Cater*, gentleman to the *Earl of Suffolk*, was by order of the Houſe of Lords committed to *Newgate*, on proof of his being guilty of procuring and ſelling written *protections*, from and in the name of that peer, to ſeveral perſons, to the great damage of their creditors, and in breach of the orders of that houſe; and being charged with other crimes, reflecting on the Houſe of Peers, he was ſentenced to pay a fine, and to ſtand in the pillory, *&c.* *Mod. Caſ. in L. & E.* 341. See *Privilege*.

Protection of the Courts at Weſtminſter. The *protection of the court of* B. R. is allowed for any perſon who attends his own buſineſs in this court, or by virtue of any *ſubpœna*; but this is more properly *privilege*.

Protectionibus, The ſtatute of allowing a challenge to be entred againſt a *protection*, *&c.* 33 *Ed.* 1. *ſt.* 1.

Proteſt, (*Proteſtaria*) Hath two applications; one by way of caution, to call witneſſes (as it were) or openly affirm that he doth either not at all, or but conditionally, yield his conſent to any act, or unto the proceeding of a judge in a court, wherein his juriſdiction is doubtful, or to anſwer on his oath further than by law he is bound. See *Plowden* 676. and *Reg. Orig.* 306.

The other is by way of complaint, as to *proteſt* a man's bill. For example, If I give money to a merchant in *France*, taking his bill of exchange to be repaid in *England*, by one whom he aſſigneth; if at my coming I find not myſelf ſatisfied, but either delayed or denied, then I go to the *Exchange*, or open concourſe of merchants, and *proteſt*, that I am not paid; and thereupon, if he hath any goods remaining in any man's hands within the realm, the *law of merchants is*, that I be paid out of them to my full ſatisfaction. *Cowell*. See *Bills of Exchange*, and *Black. Com.* 2 *V*. 468, 9. Proteſts on notes and bills of exchange, are made by Notaries public.

Each peer has a right, *by leave of the houſe*, when a vote paſſes contrary to his ſentiments, to enter his diſſent *on the journals of the houſe*, with the reaſons for ſuch diſſent; which is uſually ſtiled his *proteſt*. Ib. 1 V. 168.

Proteſtation, (*Proteſtatio*) is a defence or ſafeguard to the party who maketh it, from being concluded by the action he is about to do, that iſſue cannot be joined by it. *Plowd.* 276. whereof ſee *Reg. Orig.* 326.

It is a form of pleading when one does not *directly* affirm or deny any thing alledged by another, or which he himſelf alledgeth. *Cowell*. As *proteſtando* that he made no teſtament *pro placito* that he made not the plaintiff his executor; becauſe if he made no teſtament he could make no executor. *Heath's Max.* 26. cites *Pl. C.* 276.

Proteſtation is of two kinds, 1ſt, When a man pleads any thing which he dare not directly affirm, or cannot plead, for fear of making his plea double; as if in conveying to himſelf *by his plea* a title, he ought to plead diverſe deſcents by diverſe perſons, and he dare not affirm that they were all ſeiſed at the time of their death, or altho' he could do it, yet it will be double to plead two deſcents, of both which each one by itſelf may be a good bar, then defendant ought to plead and alledge the matter, introducing the word *proteſtando*; as to ſay (by proteſtation) that ſuch a one died ſeiſed, &c. and *that* the adverſe party cannot traverſe. 2dly, When one is to anſwer two matters, and yet by law he ought to plead but to one, then in the beginning of his plea he may ſay *proteſtando & non cognoſcendo* ſuch part of the matter to be true, (and then making his plea further) *ſed pro placito in hac parte, &c.* and ſo he may take iſſue on the other part of the matter; and then he is not concluded by any of the reſt of the matter which he hath by proteſtation ſo denied. *Reg. Plac.* 70, 71. See 18 *Vin. Abr.* tit. *Proteſtation.*

In other terms, the uſe of a proteſtation in pleading ſeems to be this, *viz.* When one party alledges or pleads ſeveral matters, and the other party can only offer, or take iſſue on one of them, he proteſts againſt the others: in ſuch caſe ſhould the iſſue, on trial, be found againſt the latter party, the record would not be evidence againſt him in another ſuit, as to thoſe matters or points, againſt which he proteſted; which it otherwiſe might be, had he admitted, or not proteſted againſt them.

Proteſtant Children of Papiſts and Jews. The Lord Chancellor, how to make an order on Popiſh and Jewiſh parents refuſing to allow their proteſtant children a maintenance, 11 & 12 *Will.* 3. *c.* 4. *ſect.* 7. 1 *Ann. ſt.* 1. *c.* 30.

Proteſtant Diſſenters, Exempt from penalties. See *Diſſenters, Nonconformiſts.*

Proteſtant Succeſſion. See *King, Prerogative,* &c.

Prothonotary, (*Protonotarius, vel Primus Notarius*) Is a chief officer or clerk of the *Common Pleas* and *King's Bench*; and for the firſt court there are three *Prothonotaries*, and the other hath but one: He of the King's Bench records all civil actions; as the *Clerk of the Crown Office* doth all criminal cauſes in that court: Thoſe of the *Common Pleas*, ſince the order 14 *Jac.* 1. on agreement entered into between the *Prothonotaries* and *Filazers* of that court, enter and inrol all manner of declarations, pleadings, aſſiſes, judgments, and actions: They make out all judicial writs, except writs of *habeas corpus* and *diſtringas jurator'*, (for which there is a particular office erected, called the *habeas corpora office:*) Alſo writs of execution, and of ſeiſin, of privilege for removing cauſes from inferior courts, writs of *procedendo*, *ſcire facias's*, in all caſes, and writs to enquire of damages; and all proceſs upon prohibitions, on writs of *audita querela*, falſe judgment, &c. They likewiſe enter recognizances acknowledged in that court; and all common recoveries; and make exemplifications of records, &c. 5 *H.* 4. *c.* 14.

Prover, *Probator*, mentioned in *Stat.* 28 *Ed.* 1. and 5 *H.* 4. *c.* 2.) See *Approver*, and 3 *Inſt.* 129. A man became an *approver*, and appealed five, and every of them joined battel with him: *Et duellum percuſſum fuit cum omnibus, &* probator *devicit omnes quinque in duello, quorum quatuor ſuſpendebantur, & quintus clamabat eſſe clericum & allocatur, & probator pardonatur.* Mich. 39 E. 3. coram Rege. Rot. 97. Suff.

Province, (*Provincia*) Signifies an *out* country, governed by a deputy or lieutenant. *Lit. Dict.*

It was uſed among the *Romans* for a country, without the limits of *Italy*, gained to their ſubjection by the ſword; whereupon that part of *France* next the *Alps* was ſo called by them, and ſtill retains the name.

But with us a province is moſt uſually taken for the circuit of an archbiſhop's juriſdiction; as the *province of Canterbury*, and that of *York*: Yet it is mentioned in ſome of our ſtatutes, for ſeveral parts of the realm; and ſometimes for a county. 32 *H.* 8. *c.* 23.

Provincial, (*Provincialis*) Of or belonging to a province; alſo a chief governor of a religious order; as of friars, &c. *Stat.* 4 *H.* 4. *c.* 17.

The Americans are called provincials. The term provincial is alſo annexed to the different dialects of country people, living remote from the metropolis, they retaining many terms, derived from our Saxon and other anceſtors, not uſed by polite people, in the metropolis.

Proviſion, (*proviſio*) Is uſed with us as in the Canon law for *providing* a biſhop, or any other perſon, an eccleſiaſtical living, by the Pope, before the incumbent be dead: It is alſo called *gratia expectativa*, or *mandatum de providendo:* The great abuſe whereof may be read not only in *Duarenus de ſacris Eccleſiæ Miniſteriis & Beneficiis, lib.* 3. *cap.* 2. but alſo in many ſtatutes, *viz.* 35 *E.* 3. 22 *ſtat.* 4 & 5. commonly called the ſtatute *De proviſionibus*, & 27 *E.* 3. *c.* 1. & 38 *E.* 3. *ſt.* 2. *c.* 1, 2, 3, 4. & 2 *Ric.* 2. *c.* 7. 3 *Ric.* 2. *c.* 3. 7 *Ric.* 2. 12. 12 *Ric.* 2. *ſt.* 2. *c.* 2, 3, 4. & 3 *H.* 5. *c.* 4. See *Præmunire*, and *Black. Com.* 1 *V.* 60. 4 *V.* 107.

Proviſiones. The acts to reſtrain the exorbitant abuſe of arbitrary power made in the parliament at *Oxford* 1258, were called *proviſiones* by *Riſhanger*, who continued *Mat. Paris, anno* 1260. *Rex autem quia juraverat cum* Edwardo *primogenito ſuo & Baronagio*, proviſiones Oxon*ienſes ſe inviolabiliter ſervaturum, &c.* being to provide againſt the King's abſolute will and pleaſure. See *Matt. Paris ſub annis* 1244 & 1258. *Proviſiones* ſignified alſo *providentiæ*, or proviſions of victual. *Cowell.*

Proviſions, (*ſelling unwholſome*) Is an offence againſt public health. To prevent which the ſtatute 51 *Hen.* 3. *ſt.* 6. and the ordinance for bakers, *c.* 7. prohibit the ſale of corrupted wine, contagious or unwholſome fleſh, or fleſh that is bought of a Jew; under pain of amercement for the firſt offence, pillory for the ſecond, fine and impriſonment for the third, and abjuration of the town for the fourth. And by 12 *Car.* 2. *c.* 25. *ſ.* 11. Any brewing or adulteration of wine is puniſhed with the forfeiture of 100*l.* if done by the wholeſale merchant; and 40*l.* if done by the vintner or retale trader.

It would contribute much to the health of his majeſty's ſubjects, if theſe ſtatutes were enforced, with all the rigor of the law.

Proviſo, Is A CONDITION inſerted in any *deed*, on the performance whereof the validity of the deed depends; and ſometimes it is only a covenant, *ſecundum ſubjectam materiam.* 2 Rep. 70. 2 Lill. Abr. 399.

The word *proviſo* is generally taken for a condition; but it differs from it in ſeveral reſpects; for a condition is uſually created by the grantor or leſſor, but a *proviſo* by the grantee or leſſee; there is likewiſe a difference in placing the *proviſo*, as if, immediately after the *habendum*, the next covenant is that the leſſee ſhall repair, *provided* always that the leſſor ſhall find timber, this is no condition; nor is it a condition, if it comes among other covenants after the *habendum*, and is created by the words of the leſſee; as if the leſſee covenants to ſcour the ditches, *proviſo* that the leſſee carry away the ſoil, *&c.* 3 *Nelſ. Abr.* 21.

It hath been held, that the law hath not appointed any proper place in a deed to inſert a *proviſo*; but that when it doth not depend on any other ſentence, but ſtands originally by itſelf, and when it is created by the words of the grantor, *&c.* and is reſtrictive or compulſory, to inforce the grantee to do ſome act, in ſuch caſe the word *proviſo* makes A CONDITION, though it is intermixed with other covenants, and doth not immediately follow the *habendum.* 2 Rep. 70.

A *proviſo* always *implies a condition*, if there be no words ſubſequent which may change it into a covenant: Alſo it is a rule in *proviſoes*, that where the *proviſo* is, that the leſſee, *&c.* ſhall do, or not do a thing, and no penalty is added to it; this is a condition; or it is void; but if a penalty be annexed, it is otherwiſe. *Cro. Eliz.* 242. 1 *Lev.* 155. And where a *proviſo* is a condition, it ought to do the office of a condition, *i. e.* make the eſtate *conditional*, and *ſhall have reference to the eſtate, and be annexed to it*; but ſhall not make it void without entry, as a limitation will.

A leaſe was made for years, rendering rent at ſuch a day, *proviſo*, if the rent be arrear for one month after, the leaſe to be void; the queſtion was, Whether this was a *condition* or *limitation*; for if it was a condition, then the leaſe is not determined without entry; adjudged, that *it was a limitation*, though the words were conditional, becauſe it appeared by the leaſe itſelf, that *it was the expreſs agreement of the parties that the leaſe ſhall be void on non-payment of the rent*; and it ſhall be void without entry. *Moor* 291. 1 *Nelſ. Abr.* 22, 26.

If an ejectment is brought, the tenant cannot defend without entring into the common rule, whereby he is precluded from ſetting up in bar, the want of an *entry*.

If a *proviſo* be the mutual words of both parties to the deed, it amounts to a *covenant:* And a *proviſo* by way of agreement to pay, is a covenant, and an action well lies upon it. 2 *Rep.* 72.

Plaintiff conveyed an office to defendant, *proviſo* that out of the firſt profits he pay plaintiff 500 *l.* And it was reſolved, that an action of covenant lay on this *proviſo*; for it is not by way of condition or defeaſance, but *in nature of a covenant to pay the money.* 1 Lev. 155. But defendant in conſideration of 400 *l.* granted his lands to plaintiff for ninety-nine years, *proviſo* if he pay ſo much yearly during the life of *S. T. &c.* or 400 *l.* within two years after his death, then the grant to be void, and there was a bond for performance of covenants; in action of debt brought on this bond, it was adjudged, that there being no *expreſs* covenant to pay the money, there could be no breach aſſigned on this *proviſo.* 2 Mod. 36. *Sed qu.* and ſee *ante.*

In articles of agreement to make a leaſe, *proviſo* that the leſſee ſhould pay ſo much rent, *&c.* although there be no ſpecial words of reſervation of rent, the *proviſo* is a good *reſervation.* Cro. Eliz. 486. And *proviſo* with words of grant added to it, *may* make a grant and not a condition. *Moor* 174. See 1 *And.* 19.

When *uſes* are raiſed by covenant, in conſideration of paternal love to children, *&c.* and after, in the ſame indenture, there is a *proviſo* to make leaſes, without any particular conſideration, *it is void*; though ſuch a *proviſo* might be good, if the *uſes* were created by fine, recovery, *&c.* becauſe of the tranſmutation of the eſtate; and for that, in this caſe, *uſes ariſe without conſideration.* 1 Rep. 176. Moor 144. 1 Lev. 30. 2 Lil. Abr. 402.

In a deed, a *proviſo*, that if the ſon diſturb the other uſes, *&c.* that then a term granted to him, and the uſes to the heirs of his body, ſhall be void; this *proviſo* is ſufficient to ceaſe the other uſes, on diſturbance. 8 *Rep.* 90, 91. But a *proviſo* to make an eſtate, limited to one and the heirs male of his body, to ceaſe as if he was naturally dead, on his attempting any act by which the limitation of the land, or any the eſtate in tail, ſhould be undone, barred, *&c.* hath been adjudged not good; becauſe the eſtate-tail is *not* determined by the death of tenant in tail, but by his dying without iſſue male. *Dyer* 351. 1 *Rep.* 83.

A teſtator deviſed lands to one and the heirs male of his body, *proviſo* that if he attempt to alien, then his eſtate to ceaſe, and remain to another; the *proviſo* is void. 1 *Vent.* 521.

A *proviſo* that would take away the whole effect of a grant, as not to receive the profits of lands granted, *&c.* is void; and ſo is a *proviſo* which is repugnant to the expreſs words of the grant: In a will, teſtator made another his executor, provided he did not adminiſter his eſtate, adjudged this *proviſo* is void for repugnancy. *Cro. Eliz.* 107. *Dyer* 3.

And if a *proviſo* is good at firſt, and afterwards it happens that there is no other remedy but that which was reſtrained; the remedy ſhall be had notwithſtanding the reſtraint. *Wood's Inſt.* 231. Where a *proviſo* is parcel of, or abridgeth a covenant, it makes an *exception*; when it is annexed to an exception in a deed, it is an *explanation*; and where added at the end of any covenant, there it extends only to defeat that covenant. 4 *Leon.* 72, 73. *Moor* 105, 471. See *Deed.*

Proviſo, in the moſt common acceptation, is that clauſe in a mortgage, whereby the deed is declared to be void, on payment of principal and intereſt.

Proviſo, (concerning *judicial matters)* is where the plaintiff in an action deſiſts in proſecuting his ſuit, and doth not bring it to trial in convenient time; defendant in ſuch caſe may take out the *venire facias* to the ſheriff, which hath in it theſe words, *proviſo, quod, &c.* To the end, that if plaintiff take out any writ to *that* purpoſe, the ſheriff ſhall ſummon but one jury on them both; and this is called going to *trial by proviſo.* Old Nat. Br. 159.

By the ſtanding rules of the court of *B. R.* if plaintiff will not enter his iſſue, defendant may by rule *compel* him to enter it; and if it is entered, and he will not carry down the cauſe to trial, defendant may carry it down by *proviſo.* 3 Salk. 362. *See* 7 & 8 W. 3. cap. 32.

Proceſs may be taken out by defendant in criminal caſes by *proviſo* in appeals, in the ſame manner as in other actions, on default of the appellant; but not in indictments, nor in actions where the King is ſole party; and it hath been queſtioned, whether there can be any ſuch proceſs in informations *Qui tam.* 2 Hawk. 40, 408.

When indictments are preferred and found, or removed into *B. R.* there to be tried, defendant ſhould make up the record and carry it in for trial: But, the proſecutor, if he ſuſpects defendant will not carry in the record, may make up and carry in the ſame, but the defendant ſhall be tried on that firſt carried in and entered for trial.

Proviſor, is he who ſues to the court of *Rome*, for a *proviſion*, which is called *gratia expectativa* according to *Spelman.* See alſo *Old Nat. Brev.* 243. they were prohibited by proclamation 42 *Hen.* 3. *anno* 1258. *Hill. p.* 259. It is ſometime alſo taken for him who hath the care of *providing* things neceſſary, a *purveyor.* Cowell. See *Proviſion.* As to the ſtatutes againſt *proviſors*, ſee *Black. Com.* 4 *V.* 110.

Proviſor monaſterii, The treaſurer or ſteward of a religious houſe, who had the cuſtody of goods and money, and ſuperviſed all accounts. *Cowell.*

Proviſor victualium, The King's purveyor, who provided for the accomodation of his court, is ſo called in our hiſtorians. *Cowell.*

Provocation, To make killing a perſon manſlaughter, *&c.* See *Murder.*

Provoſt Marſhal, Is an officer of the King's navy, who hath the charge of priſoners taken at *ſea:* And is ſometime uſed for like purpoſe at land. 13 *Car.* 2. *c.* 9.

Proxies, Are perſons appointed inſtead of others, to repreſent them.

Every *peer* of the realm called to *parliament*, hath the privilege of conſtituting a *proxy* to vote for him in his abſence on a lawful occanon; but ſuch *proxies* are to be entered in perſon, and ſometimes *proxies* have been denied by the King; particularly *Anno* 6, 27 & 39 *Edw.* 3. *Sed qu.* If the King can now deny the *proxy* of a peer? A member of the Houſe of Commons cannot conſtitute a *proxy*, becauſe he is himſelf *deputed* by his conſtituents.

Marriage contracts have been often made by *proxy*, *&c.* See *Black. Com* 1 *V.* 168.

Proxies, Alſo are annual payments made by parochial clergy to the biſhop, *&c.* on viſitations. See *Procurations*.

Pryk, Is a kind of ſervice or tenure; and, according to *Blount*, ſignifies an old-faſhioned ſpur, with one point only, which the tenant, holding land by this tenure, was to find for the King—*Per ſervitium inveniendi unum equum unum ſaccum & unum* pryk *in Guerra Walliæ.* 1 *R.* 2.

And in the time of *Hen.* 8. Light horſemen in war were called *prickers*; becauſe they uſed ſuch ſpurs or *pryks*, to make their horſes go with ſpeed.

Puberty, (*Pubertas*) The *ripe* age of fourteen in men and twelve in women, when they are fit for marriage: But as to crimes and puniſhment, it is the age of 14 years, in both the male and female ſex, and not before. 1 *Hale's Hiſt. P. C.* 18. Unleſs the circumſtances of the caſe, ſhew the party to have ſufficient diſcretion, to be chargeable criminally for his actions. See *Broadfoot*'s caſe in *Foſter's Rep. fo.* 154. See *Black. Com.* 4 *V.* 22.

Publication, Is uſed of *depoſitions* of witneſſes in a cauſe in *Chancery*, in order to the hearing, and rules may be given to paſs *publication*; which is a power to ſhew the depoſitions openly, and to give out copies of them, *&c.* There is alſo a *publication* of a *will*, which is a ſolemnity requiſite to the making thereof, by declaring it to be the laſt will of the teſtator, in the preſence of ſuch a number of witneſſes; and a will which hath been made many years, may be *new publiſhed* with additions, and that makes it equivalent to a new will. 3 *Nelſ. Abr.* 27.

The publication of a will to paſs a real eſtate, muſt be in the preſence of and atteſted by three witneſſes at leaſt, by *Stat.* 29 *Car.* 2. *c.* 3. *ſ.* 5.

Publication of libels. Vide *Libels.* And *Black. Com.* 3 *V.* 450.

Public Accounts. Commiſſioners are to enquire of the *accounts* of ſheriffs, cuſtomers, and other the *King's officers*; after paſſed in the *Exchequer*, and if detected of fraud, they ſhall pay treble damages, by ſtat. 6 *H.* 8. *c.* 3. And all the lands, tenements and hereditaments, which any *accountant* hath, ſhall, for the payment of debts to the *crown*, be liable and put in execution in like manner as if he had ſtood bound by writing obligatory, having the effect of a ſtatute ſtaple, *&c.* Stat. 13 *Eliz. c.* 4.

And there have been ſeveral ſtatutes for taking the *public accounts* of the kingdom, and examining and determining the debts due to the army and navy; Alſo corruptions in the management of the *King's treaſure*, &c. impowering commiſſioners for that purpoſe, who were to give an *account* of their proceedings to the King and parliament. Stat. 19 *Car.* 2. *c.* 8. 2 *W.* & *M. ſt.* 2. *c.* 11. 4 *W.* & *M. c.* 11. 5 *W.* & *M. c.* 23. 6 & 7 *W.* 3. *c.* 9. 7 & 8 *W.* 3. *c.* 8. 1 *Ann. ſt.* 1. *c.* 10. 1 *Ann. ſt.* 2. *c.* 19. 9 *Ann. c.* 13. 1 *Ann. ſt.* 2. *c.* 20. 6 *Geo.* 1. *c* 17.

Public Act *of parliament.* A general or *public* act is an univerſal rule, that regards the whole community: And of this the courts of law are bound to take notice judicially and *ex officio*, without the ſtatute being particularly pleaded, or formally ſet forth by the party who claims an advantage under it. *Black. Com.* 1 *V.* 86.

Public Faith, (*Fides publica*) In the reign of *Charles* 1. was a pretence or cheat, to raiſe money of the ſeduced people, upon what was termed the *public faith* of the nation, to make war againſt the King about the year 1642. Stat. 17 *Car.* 1. *c.* 18.

Public worſhip. See *Nonconformiſts, Recuſants, Service and Sacraments.*

Pueritia, ſee *Puberty.*

Puis darrein continuance, Is a plea of new matter, pending an action, *poſt ultimam continuationem.* See *Plea.*

Puiſne (F. *Puiſne*) Younger, puny, born after, junior. See *Mulier.* So the ſeveral judges and barons, not chiefs, are called puiſne judges, puiſne barons.

Pulſator, The plaintiff or actor; and *pulſare* ſignifies to accuſe any one. *Leg. Hen.* 1. *c.* 26.

Puniſhment, (*Pœna*) Is the penalty for tranſgreſſing the law: And as debts are diſcharged to private perſons by payment; ſo obligations to the public, for diſturbing ſociety, are diſcharged when the offender undergoes the *puniſhment* inflicted for his offence.

Kings, and ſuch as have equal power with them, have a right to require *puniſhment* for injuries committed againſt themſelves or their ſubjects, on the violation of national law; tho' the right of inflicting *puniſhments*, to provide for the ſafety of ſociety, was originally (before Commonwealths were erected and courts of juſtice ordained) in the hand of every man, being equal to and independent of others; but, ſince it has reſided in the hands of the higheſt powers, ſubjection to others hath taken away that primitive right: However, this power and *natural* right of *puniſhing* an equal, ſtill remains in thoſe places where the people are not ſubject to ſome form of government. *Grot. de Jure Belli, lib.* 2. *c.* 21.

The *puniſhment* of offences are many and various, adapted to the ſeveral degrees of crimes, and the countries wherein committed; and in *England* are beheading, hanging, impriſonment, fine, amercement, *&c.* See *Beccaria on Crimes and Puniſhments*, and particularly on the puniſhment by DEATH.

Pur auter vie, Is where lands, *&c.* are held for another's life. See *Occupant.* And *Black. Com.* 2 *V.* 120.

Purchaſe, (*Acquiſitum, perquiſitum, purchaſum*) Signifies the buying or acquiſition of lands, or tenements, with money, or by deed or agreement; and not obtaining it by *deſcent* or *hereditary right*, and *conjunctum perquiſitum* is where two or more perſons join in the *purchaſe. Lit.* 12. *Reg. Orig.* 143.

One cometh in by *purchaſe* when he comes to lands by *legal conveyance*, and he hath *a lawful eſtate:* And a *purchaſe* is always intended *by title*, either from ſome conſideration, or by gift; (for *a gift is in law a purchaſe*) whereas *deſcent* from an anceſtor cometh of courſe *by act of law*; alſo all contracts are comprehended under this word *purchaſe. Co. Lit.* 18. *Doct. and Stud. c.* 24.

Purchaſe in oppoſition to *deſcent* is taken largely; if an eſtate comes to a man from his anceſtors *without writing*, that is *a deſcent:* But where a perſon takes any thing from an anceſtor, or others, *by deed, will* or *gift*, and *not as heir* at law; that is *a purchaſe.* 2 *Lill. Abr.* 403.

When an eſtate doth originally veſt in the heir, and never was nor could be in the anceſtor; ſuch heir *ſhall* take by way of *purchaſe:* But when the thing might have veſted in his anceſtor, tho' it be firſt in the heir, and not in him at all; the heir ſhall have it in nature of *deſcent.* 1 *Rep.* 95, 106.

An heir takes an eſtate by will in another manner than the Common law would have given it; there he takes *by purchaſe*, and *not* by deſcent; but then he muſt be the *right* heir. 2 *Lev.* 79.

1. *Who ſhall be deemed purchaſers.*
2. *Of purchaſers for a valuable conſideration.*

1. *Who ſhall be deemed purchaſers.*

A. enters into partnerſhip in 5ths, with three others, for 21 years, for digging mines in *A.*'s lands, *A.* to have two 5ths, and alſo, in conſideration of his ownerſhip of the land, to have a tenth more out of the ſhare of the other partners. Purſuant to the articles, they ſearched for the mines, and after two years time, and the expence of about 120*l.* they diſcovered a valuable mine, and worked for about three months, and then *A.* dies, and his widow ſets up a voluntary ſettlement, made after marriage. The court inclined that the partners were *as* *purchaſers*, and that the voluntary ſettlement ſhould not ſtand againſt them. 2 *Vern*. 326.

The wiſe joins with the huſband in letting in an incumbrance on her jointure, and barring the eſtate-tail, and then limits the uſes to the huſband for life, remainder to the wife for life, remainder to their daughter. *Per* Lord Keeper *Wright*, The daughters are not *purchaſers* ſo as to ſhut out a *judgment creditor* of the huſband's, *antecedent to barring the eſtate-tail*; it might have been a good conſideration for both, but *it was not expreſſed in the deed*, to be any conſideration for ſettling the eſtate on the daughters, but was a voluntary gift of the wife to her huſband, therefore the daughter's eſtate *muſt* be taken to be voluntary; and ſo a judgment-creditor ought to have the aſſiſtance of this court before them. *Canc. Prec*. 114.

Every leſſee is a *purchaſer*. 9 *Mod*. 59. See 2 *Vern*. 327.

A. ſeiſed in fee, ſettled his eſtate in 1712. to the uſe of himſelf for life, remainder to *B*. in tail, but with power of revocation, by any writing ſigned, *&c*. and atteſted by three, *&c*. credible witneſſes. In 1715, *A*. by deed, atteſted by two witneſſes only, reciting that he was indebted, as in a ſchedule annexed, conveyed his eſtate to *W. R*. and *W. S*. and their heirs, *in truſt* to pay his ſaid debts by profits, mortgage or ſale; and after payment thereof, to pay the overplus, and reconvey ſuch part as ſhould be unſold, to *A*. or ſuch other perſon, *&c*. and for ſuch uſes, *&c*. as he, by any writing ſigned and ſealed, and atteſted, *&c*. ſhould direct. *A*. died without iſſue, but left the ſaid *B*. and *C*. the daughters of two ſiſters, *his heirs at law*. The deed of 1715 was kept private till after the death of *W. S*. the ſurviving truſtee in 1724, and was then laid before counſel, who directed, that the heir of *W. S*. ſhould aſſign the legal eſtate to the *truſtees in the deed of* 1712. which was done. Afterwards, in 1726, on a treaty of marriage between Lord *Fauconbridge* and *B*. a marriage ſettlement was prepared by the ſame counſel, as counſel for Lord *Fauconbridge*, who made a ſettlement on *B*. in conſideration of the great eſtate in land which he was to have with her. The ſurviving truſtee in the deed of 1712, joined in this marriage ſettlement. *C*. brought a bill claiming a moiety of the eſtate of *A*. as coheireſs with *B*. for that the deed in 1715, was a revocation of the deed in 1712. Lord *F*. pleaded that he was a purchaſer under the deed of 1712, *without notice of that in* 1715, and that the ſettlement made by him on *B*. was *in contemplation of that ſettlement in* 1712, and that the ſurviving truſtee in that ſettlement was party to the marriage ſettlement; and that tho' the purchaſe was not of the legal eſtate, but the truſt only, that it will make no difference, according to *Wilker* and *Bodington*'s caſe, 2 *Vern*. 599. and that neither will it differ the caſe, tho' there was no actual conveyance; for as the truſtees in the deed of 1712, always acted under *that* deed for *B*. that truſt ſhall ſubſiſt as to himſelf, who is a fair purchaſer; and that he ſhall not be affected by conſtructive notice to his counſel, as having been adviſed with on theſe two deeds in 1724; for it muſt be intended, that at the time of the counſel's being concerned for him, which was in 1726, he had forgot that he had ever ſeen this deed of 1715, there being an interval of two years between his firſt ſeeing it, and his being counſel for defendant. And for theſe reaſons, the court held, that this could not be notice to his lordſhip. Ld. Ch. B. *Reynolds*, who aſſiſted the Lord Chancellor, held, that the Lord *F*. could be a purchaſer of no more than *B*. had, as no actual conveyance was made to him. The Maſter of the Rolls ſaid, that *to be a purchaſer in the notion of equity, there* MUST *be an* ACTUAL *contract, and a conſideration* PAID; therefore, if at the time of marriage the deed of 1712 ſtood revoked, the truſtees could be ſeiſed only of a moiety for the uſe of *B*. conſequently Lord *F*. can be a purchaſer of no more. Lord Chancellor decreed a moiety of the eſtate, and an account of the rents and profits to *C*. ſince the death of *A*. See *Gibb*. 207. and *Lilly's Pract. Conv*. 391 to 402.

2. *Of purchaſers for a valuable conſideration.*

A purchaſer who comes in without notice of a rent-charge ſhall not be chargeable therewith, altho' given to a charitable uſe. *Toth*. 258.

A bill was to be relieved on a truſt, and charged defendant with notice; defendant pleaded his being a purchaſer for a valuable conſideration; this was objected to as not good, becauſe he did not ſay *what* the valuable conſideration was; for 5*s*. is a valuable conſideration, but yet it is not an equitable one; but the court declared that in this caſe the plea was good enough.

Notice of an incumbrance before the conveyance is executed, ſhall charge the purchaſer. *Chan. Caſes*. 34.

Purchaſer ſhall not be affected by a judgment in equity, without *expreſs* notice of it *before* the purchaſe, otherwiſe it is at law. *Chan. Caſes* 37.

A purchaſer of lands from *A*. which *B*. makes title to, getting the deeds which make out *B*.'s title, is not bound to diſcover them. *Chan. Caſes* 69.

Plea of his being a purchaſer for a valuable conſideration was over-ruled, becauſe he did not plead the purchaſe made *from* one of the plaintiff's anceſtors; for a purchaſe from a ſtranger who might have no good title, was held no good plea. *N. Ch. R*. 135.

A. having a long leaſe of a houſe, in which his wife had ſome intereſt, by her conſent renews it for eighty-one years, and in conſideration of 400*l*. aſſigns it to *B*. who aſſigns it to *C*. his ſon, who married *M*. and died, leaving *M*. his executrix; *M*. on a ſecond marriage, conveys it to truſtees, *&c*. *A*. by bill ſets forth this aſſignment, and that it was a mortgage, and that *B*. agreed to execute a reconveyance thereof, *&c*. and prayed a redemption. The executrix pleads ſhe was a purchaſer *without* notice of ſuch agreement; and in conſideration of a marriage with *J. S*. and of his undertaking to pay her debts, ſhe aſſigned the original leaſe, *&c*. ſuch a day to truſtees, to the uſe of her intended huſband, not having any notice of the agreement prior to the executing the ſaid deed on marriage. It was decreed, that defendants were in nature of purchaſers; and the plea was allowed. *Finch R*. 9.

A. indebted by bond, deviſed a debt to be paid out of his perſonal eſtate; but if it was not ſufficient, then to ſell his real eſtate, and pay it: The eſtate was ſold, and by ſeveral meſne conveyances came to defendant, who was ſued for the debt as charged on the lands which he had bought. Defendant pleaded, that he had no notice of the demand, and was a purchaſer for a valuable conſideration, and that the perſonal eſtate was firſt liable, and that the purchaſe money which was paid to two other of the defendants was liable in the next place; and that there were other lands, which deſcended to one of them on the death of *A*. which ought to come in aid of him, and decreed accordingly. *Fin. R*. 137.

A purchaſer for a valuable conſideration without notice was decreed to pay arrears of an annuity charged on the lands purchaſed, tho' the ſame were due thirty years before, and no demand in all that time. *Rep. temp. Finch*. 252.

A voluntary conveyance decreed againſt a (jointreſs) purchaſer for a valuable conſideration; (but it ſeems, that the not having notice was the laches of the jointreſs *&c*.) See *Chan. Caſes* 291, 292.

A purchaſer from *T. S*. who has a decree againſt him in Chancery for land, ſhall be bound by the decree, tho' he had no notice of it. 2 *Chan. Caſes* 48.

Bill by a dowreſs to remove a truſt term, defendant pleads himſelf a purchaſer, but does not deny notice, and ſo was ordered to anſwer. *Vern*. 179.

Bill was brought to prove a will, and perpetuate the teſtimony of witneſſes; defendant pleaded himſelf a purchaſer without notice of ſuch will, and inſiſted there had been a verdict in affirmance of ſuch will, (nothing hindering the plaintiff, but that if he had a title he might recover at law) the plaintiff ought not to be admitted to examine his witneſſes, thereby to hang a cloud over the purchaſer's eſtate; and on debate the court allowed the plea. *Vern*. 354.

(*A.* mortgaged land to *B.* and afterwards by his will having ſons *D.* and *E.*) deviſed the equity of redemption to *E.*—*B.* and *D.* join in an aſſignment of the mortgage to *F.* though *F.* pleaded *want of notice of the will*, and that *D.* was the viſible heir; yet decreed, that *E.* ſhould have the equity of redemption on the foot of the firſt mortgage. *N. Ch. R.* 153.

A. purchaſes, *having notice* of a ſettlement whereby *B.* the vendor was but tenant for life, remainder to his firſt, *&c.* ſon in tail. Afterwards *A.* ſells to *D.* who had *no* notice; *B.* dies, leaving a ſon; it was decreed that the laſt purchaſer ſhould hold the land, but the firſt ſhould account for the conſideration money, for which he ſold the eſtate, with intereſt from the deceaſe of *B.* thereout diſcounting what was due on a mortgage prior to the ſettlement which he had bought in. 2 *Vern.* 384.

Cowper C. ſaid, He took it to be a rule in equity, that where a man is a purchaſer without notice, he ſhall not be annoyed in equity; not only where he has a prior legal eſtate, but where he has a better title or right to call for the legal eſtate than the other; therefore diſmiſſed the bill. The caſe was; *A.* purchaſes of *B.* who had committed an act of bankruptcy, but *without* notice of it; afterwards a commiſſion is taken out, and there being a term ſtanding out in truſtees, aſſignee brings a bill againſt them, and the purchaſer to have the term aſſigned to him. 2 *Vern.* 599.

A bill was to redeem lands mortgaged in 1694, to defendant's grandfather by plaintiff's father for 500 years, to be void on payment of 126 *l.* and intereſt. Defendant pleads, that he is a deviſee of thoſe lands, under his grandfather's will, who, in 1692, purchaſed them for a two hundred years term without condition of redemption, and had enjoyed fifteen years quiet poſſeſſion. But the court over-ruled the plea for defendant's not anſwering *ſufficiently* as to the mortgage, and the plea of the purchaſe may be true, for it may be only a term for years to attend the inheritance. *G. Equ. R.* 185.

For more learning on this ſubject, ſee 18 Vin. Abr. *tit.* Purchaſer.

Purchaſe and value of Land. Lands are *purchaſed* at divers *rates* in this kingdom; according to their ſituation, *&c.*

An eſtate of fee-ſimple in lands, is uſually valued in the country at twenty years *purchaſe*. Lands near *London* yield about twenty-five years *purchaſe*; and in *Wales*, not above eighteen or nineteeen.

The fee of tithes of perpetual advowſons is worth about twenty-two years *purchaſe:* And fee-farm-rents iſſuing *out* of lands, and the fee of ground-rents, are rated at twenty-four or twenty-five years *purchaſe*.

The fee of houſes in *London* ſells for ſeventeen or eighteen years *purchaſe*, if in good repair, and the ground-rents are not high; otherwiſe for leſs: Houſes not in *London*, but well ſituated, without any lands to them, are ſold for fifteen or ſixteen years *purchaſe:* For a leaſe of a houſe for thirty years, about eight years *purchaſe* is given in *London*; and for one-and-twenty years about ſix years value.

A freehold leaſe for three lives abſolute, or a copyhold eſtate for the like term, where the quit-rents and heriots reſerved are not higher than uſual, is rated at fourteen years *purchaſe*; for the firſt life eight, for the ſecond four, and two for the third life; or ſeven, five and two. A chattel leaſe for three lives, thirteen years *purchaſe*.

The exchanging one life for another is generally one year's *purchaſe*; but if a ſickly life be exchanged for a healthy one, two or three years *purchaſe*. A widowhood in a copyhold, after death of the huſband a third life, is valued at one year's *purchaſe*. The fee in reverſion after lives, is worth nine, ſeven, and five years *purchaſe*, after one, two or three lives; and more where there is timber, or the eſtate improveable. *Land. Purch. Comp.* 1, 2, 3, 4, *&c.*

This valuation is taken from a book publiſhed many years ago, but the value of lands in all parts of *England* and *Wales* is very much increaſed, ſince that publication, owing to the great increaſe of our ſpecie, therefore is not any rule to go by now, but the editor hath let it ſtand, to ſhew what *was formerly* computed to be the value.

Purgation, (*Purgatio*) Is the clearing a man's ſelf of a crime, whereof he is publicly ſuſpected, and accuſed before a judge: Of which there was formerly great uſe in *England*.

Purgation is either *canonica*, or *vulgaris*.

Canonical purgation is, that which is preſcribed by the Canon law, the form whereof uſed in the *Spiritual court*, is that the perſon ſuſpected take his oath, that he is clear of the fact objected againſt him, and bring his honeſt neighbours with him to make oath, that they believe he ſwears truly.

The *vulgar purgation*, according to the ancient manner, was by fire or water *ordeal*, or by *combat*, aboliſhed by canon. *Staundf. P. C. lib.* 2. *cap.* 48. *Stat. Weſtm.* 1. *cap.* 2.

Purgation is one of the puniſhments of the Eccleſiaſtical courts; but the ſtatute 13 *Car.* 2. *c.* 12. having taken away the oath *ex officio*, of perſons accuſing or *purging* themſelves, *&c.* ſome maintain that all the proceedings of *purgation* on common fame fall too; others ſay, there is ſtill a legal *purgation* left, but not canonical. *Wood's Inſt.* 506, 507. Vide *Clergy*, *&c.* And *Black. Com.* 3 *V.* 100. 342, 447. 4 *V.* 361.

Purificatio Beatæ Mariæ Virginis. Mentioned in the ſtatute 32 *Hen.* 8. *c.* 21. See *Candlemas*.

The *purification of the bleſſed virgin Mary*, is one of the general returns of writs, ſtill in uſe, *viz.* the third in *Hilary* term.

Purlieu-Men, Are thoſe who have ground within the *purlieu*, and being able to diſpend forty ſhillings a year *freehold*; who, on theſe two points, are licenſed to hunt in their own *purlieus*, obſerving what is required. *Manw. For. Laws* 151, 157, 180, 186. See the next word.

Purlue, or **Purlieu,** (from the Fr. *pur.* i. e. purus, & *lieu*, locus) Is all that ground near a foreſt, which being added to the ancient foreſts by King *Hen.* 2. *Rich.* 1, and King *John*, was afterwards diſafforeſted and ſevered by the *Charta de Foreſta*, and the perambulations and grants thereon, by *Hen.* 3. ſo that it becomes *purlue*, *viz.* pure and free from the laws and ordinances of the foreſt. *Manw. For. Laws*, *par.* 2. *c.* 20.

Our anceſtors called this ground *purlieu, purum, locum*, becauſe *it* WAS *exempted from that ſervitude which was formerly laid on it:* As *Manwood* and *Crompton* call it *pourallee*, we may derive it from *pur*, *purus*, *&* *allee*, *ambulatio*, becauſe he who walketh or courſeth within that circuit, is not liable to the laws or penalties incurred by thoſe who hunt within the foreſt precincts; but *pourallee* is ſaid to be properly the perambulation whereby the *purlieu* is *deafforeſted*. Stat. 33 Ed. 1. 4 Inſt. 304.

Owners of grounds within the *purlieu* by diſafforeſtation, may fell timber, convert paſtures into arable, *&c.* incloſe them with any kind of incloſure; erect edifices, and diſpoſe of the ſame as if they had never been afforeſted; and a *purlieu-man* may as lawfully hunt to all intents within the *purlieu*, as any man may in his own grounds which were never afforeſted: He may keep his dogs within the *purlieu* unexpeditated; and the wild beaſts belong to the *purlieu-man ratione ſoli*, ſo long as they remain in his grounds, and he may kill them. 4 *Inſt.* 303.

If the *purlieu-man* chaſe the beaſt with grey-hounds, and they fly towards the foreſt for ſafety, he may purſue them to the bounds of the foreſt, and if he then do his endeavour to call back and take off his dogs from the purſuit, although the dogs follow the chaſe in the foreſt, and kill the King's deer there; this is no offence, ſo as he enter not into the foreſt, nor meddle with the deer ſo killed: And if the dogs faſten on the deer before he recover the *foreſt*, and the deer drag the dogs into the foreſt, in ſuch caſe the *purlieu-man* may follow his dogs and take the deer. 4 *Inſt.* 303, 304.

But in the caſe of Sir *Richard Weſton*, it was ſaid, that there was no *purlieu* in law *to hunt*; that it cannot be by preſcription, and there is nothing in ſtatutes as to hunting; therefore *purlieu-men* may only keep out the deer, but cannot kill them, though they be in their ground. 1 *Jones Rep.* 278. See *Moor* 706, 987.

And notwithſtanding *purlieus* are abſolutely diſafforeſted, it hath been permitted, that the ranger of the foreſt ſhall as often as the wild beaſts of the foreſt range into the *purlieu*, with his hounds rechaſe them back to the foreſt. 4 *Inſt.* See 33 *Ed.* 1. *ſtat.* 5.

Purparty, (Fr. *pour part*, i. e. *pro parte)* Is that part or ſhare of an eſtate, firſt held in common by parceners, which is by partition allotted to any of them: To make *purparty* is to divide and ſever the lands which fall to parceners, which till partition they held jointly, and *pro indiviſo.* Old Nat. Br. 11.

Purpreſture, (*Pourpreſtura*, from the Fr. *pourpriſt*, an incloſure) Is when any thing is done to the nuſance of the King's demeſnes, or the highways, *&c.* by incloſure, or buildings, endeavouring to make that private which ought to be public. *Glanvil, lib.* 9. *c.* 11. *Co. Lit.* 38, 272. And when a man takes to himſelf, or incroaches any thing which he ought not, it is a *purpreſture.* Kitch. 10. 2 Inſt. 38. *See* Pourpreſture.

Purſe, A certain quantity of money, containing 500 dollars, or 125 *l.* in *Turkey.* Merch. Dict.

Purſuivant, (from the Fr. *purſuivre*, i. e. *agere, perſequi)* Signifies the King's meſſenger attending on him to be ſent on any buſineſs or meſſage. See *Pourſuivant.*

Purveyance. See **Pourveyance.** As well before as after the conqueſt, the King, on his ancient demeſnes of the crown of *England*, had houſes of huſbandry, and ſtocks for the furniſhing neceſſary proviſions for his houſhold, and the tenants of thoſe manors did by their tenures manure, till, *&c.* and reap the corn on the King's demeſnes, mowed his meadows, *&c.* repaired the fences, and performed all neceſſary things belonging to huſbandry on the King's demeſnes: In reſpect of which ſervices, and to the end they might apply the ſame the better, they had many liberties and privileges, as that they ſhould not be ſued out of the court of that manor, nor impanelled of any jury or inqueſt, nor appear at any other court, but only at the court of the manor, nor be contributory to the expences of the knights of the ſhire which ſerved at parliament, nor pay any toll, *&c.* which liberties and immunities continue to this day, although the original cauſe is ceaſed. 2 *Inſt.* 542, 543 *c.* 2.

Hawkins (Pl. C. 114. *c.* 47. *ſ.* 1.) ſays, that this method being troubleſome and inconvenient, was by degrees diſuſed, and afterwards the King uſed to appoint certain officers to buy in proviſion for his houſhold, who were called *purveyors*, and claimed many privileges by the prerogative of the crown, and ſeem to have had the pre-emption of all ſuch victuals as were bought by any to ſell again.

Purveyance is taken away by the *ſtat.* 12 *Car.* 2. *c.* 24. *ſ.* 12. But temporary acts have been paſſed, ſuſpending that *ſtatute* in favour of the King's royal progreſſes, *viz.* 13 *Car.* 2. *ſt.* 1. *c.* 8. and 1 *Jac.* 2. *c.* 10. and in favour of the navy and ordnance, as 13 & 14 *Car.* 2. *c.* 20.

Purview, (Fr. *pourveu*, a patent or grant) Is the body, or that part of an *Act of Parliament* which begins with *Be it enacted, &c.* The ſtatute 3 *Hen* 7. ſtands upon a *preamble* and *purview* 2 Inſt. 403. 12 Rep. 20.

Putage, *(Putagium, Fornicatio ex parte fœminæ, quod vox nulla Latina expremit, quaſi puttam agere:* From the French *putain*, or the Italian *putta*, i. e. *meretrix)* fornication.

This crime was ſo odious, that if any heir-female under guardianſhip were guilty thereof, they forfeited their part to their co-heirs, or if ſhe were an only heireſs, the lord of the fee took it by eſcheat. *Spelman. Cowell.* A law not now in force.

Putativus, Putative, reputed, or commonly eſteemed, in oppoſition to notorious and unqueſtionable.—*Pater pueri putativus*, the reputed father of the child. *Jo. Brompton* 909.

When a ſingle woman, with child, ſwears that ſuch a man is the father, he is called the *putative father.*

Putting in fear, ſee *Black. Com.* 4 *V.* 242.

Putura, *(q. Potura)* Is a cuſtom claimed by *keepers* in *foreſts*, and ſometimes by *bailiffs of hundreds*, to take man's meat, horſe meat, and dog's meat, of the tenants and inhabitants within the perambulation of the foreſt, hundred, *&c.* and in the liberty of *Knareſburgh* it was long ſince turned into the payment of 4 *d.* in money by each tenant. *MS. de Temp. Ed.* 3. 4 *Inſt.* 307. The land ſubject to this cuſtom is called *Terra Putura.* Plac. apud Ceſtr. 31 Ed. 3.

Pyker, or **Pycar,** A ſmall ſhip or herring boat. 31 *Ed.* 3. *c.* 2.

Q.

QUadrageſima, The fortieth part; alſo the time of *Lent*, from our Saviour's *Forty days Faſt.* Lit. Dict. And *Quadrageſima Sunday*, Is the firſt *Sunday* in *Lent*; ſo called, becauſe about the *fortieth day* before *Eaſter.* Blount.

Quadrageſimalia. In former days it was the cuſtom for people to viſit their mother church on *Midlent-Sunday*, and to make their offerings at the High Altar; as the like devotion was again obſerved in *Witſun-Week*: but as the proceſſion and oblations at *Whitſuntide* were ſometimes commuted into a rated payment of *Penticoſtals*; ſo the *Lent* or *Eaſter* offerings were changed into a cuſtomary rate called *Quadrageſimalia*, and *Denarii Quadrageſimales*, alſo *Lætare Jeruſalem.*

Quadrans, a fourth part of a penny: and before the reign of *Ed.* 1. the ſmalleſt coin was a *ſterling* or penny, *marked with a croſs*, by the guidance whereof a penny might be cut into halves for a half-penny, or into quarters or four parts for farthings; till, to avoid the fraud of unequal cutting, *that* King coined half-pence and farthings in round diſtinct pieces. *Mat. Weſtm. Anno* 1279.

Quadrantata Terræ, The fourth part of an acre. See *Fardingdeal*, or *Quadrarium.*

Quadrivium, The center of four ways, where four roads meet and croſs each other. By ſtatute, poſts with inſcriptions are to be ſet up at ſuch croſs ways, as a direction to travellers, *&c.* 8 & 9 *W.* 3. *c.* 16. And directions are given by the modern *highway* and *turnpike* acts.

Quæ eſt eadem, In pleading is uſed to ſupply the want of a traverſe. 2 *Lil. Abr.* 405.

In a *clauſum fregit* ſuch a day, defendant pleads plaintiff's licence to him to enter on the ſame day, and that *virtute inde* he entered; he need not ſay *Quæ eſt eadem transgreſſio:* ſo in treſpaſs for taking goods; if defendant juſtifies the ſame day and place: And in treſpaſs and battery, if defendant juſtifies that the *ſame* day and place the plaintiff aſſaulted him, and that what damages happened to him was of his own wrong; this is good without *Quæ eſt eadem tranſgreſſio, &c.* though he doth not directly anſwer the aſſault laid by plaintiff; but where he juſtifies at *another* day, or at other place, then he ought to ſay, *Quæ eſt eadem.* 21 Hen. 7. pl. 2.

A fact laid *Nov.* 1. and a juſtification *Nov.* 2. *Quæ eſt eadem*, is well enough *without a traverſe*, the day *not* being material; but it had been naught, if the day had been material. 1 *Lev.* 241.

If a treſpaſs is alledged *Nov.* 10. and a juſtification *Nov.* 11. and there be an averment of *Quæ eſt eadem*, it is here held good without making any traverſe. *Lutw.* 1457.

Where defendant juſtifies *dicto tempore* in the plaintiff's declaration, he hath no occaſion to ſay *Quæ eſt eadem tranſgreſſio*; becauſe he agrees with plaintiff in the time and place mentioned in his declaration, and gives an anſwer to it. *Mich.* 5 *W.* & *M. B. R.* But in all theſe caſes, pleading thus, *which is the ſaid breaking and entring, &c.* whereof plaintiff hath complained againſt defendant, is the ſafeſt way.

Quæ plura, Was a writ which lay where an inquiſition had been taken by an *eſcheator* of lands, *&c.* that a man died ſeiſed of, and all the land was ſuppoſed not to be found by the office or inquiſition; this writ was therefore to enquire of what other lands or tenements the party died ſeiſed: But it is now uſeleſs, ſince the taking away the court of *wards* and *offices poſt mortem.* 12 Car. 2. c. 24. Reg. Orig. 293.

Quære, or *Querie*, Is where any point of law, or matter in debate, is doubted, as not having ſufficient authority to maintain it. 2 *Lil. Abr.* 406.

Quærens non invenit plegium, A return made by the ſheriff, on a writ directed to him with this clauſe, *viz. Si* A. *fecerit* B. *ſecurum de clamore ſuo proſequendo*, *&c.* F. N. B. 38.

Quæ ſervitia. See *Per quæ ſervitia.*

Quæſta, An indulgence or remiſſion of penance expoſed to ſale by the *Pope*; and the retailers of them were called *Quæſtionarii*, and deſired charity for themſelves or others. *Mat. Weſtm. Anno* 1240.

Quæſtus, Is that which a man hath by *purchaſe*; as *hæreditas* is what he hath by *deſcent*—*Aut habet* hæreditatem *tantum*, *vel* quæſtum *tantum*, *&c.* Glanv. lib. 7. cap. 1.

Quakers, (From *Tremulus*) Are ſuch who pretend to tremble or *quake*, in the exerciſe of their religion. The 7 *&* 8 *W*. 3. *c*. 27 enacts, That *Quakers* making and ſubſcribing the declaration of fidelity mentioned in 1 *W. & M.* and owning King *William* to be rightful and lawful King, ſhall not be liable to the penalties againſt others refuſing to take the oaths; and not ſubſcribing the declaration of fidelity, *&c.* they are *diſabled to vote* at election of members of parliament.

Quakers, where an oath is required, are permitted to make a ſolemn *affirmation* or declaration, declaring in the preſence of God the witneſs of the truth, *&c.* But they are *not* capable of being witneſſes in a *criminal* cauſe. 7 *&* 8 *W*. 3. *c*. 34. Unleſs they are *ſworn* like other Proteſtants.

On the *affirmation* of a *Quaker*, the court will not grant an attachment for non-performance of an award. 1 *Strange* 441. Nor ſecurity for the peace. *Ibid.* 527. Nor a rule for an information. 2 *Strange* 856, 872, 946. But a rule to ſhew cauſe why an appointment of overſeers ſhould not be quaſhed being ſerved by a *Quaker*, was made abſolute on his *affirmation*; this not being looked on as a criminal proſecution, though on the crown ſide, and the rule in the King's name. 2 *Strange* 1219.

The *Quakers* affirmation is ordained to be in force *for ever*, and the form of it appointed by 1 *Geo*. 1. *cap*. 6. But the 8 *Geo*. 1. *cap*. 6. authoriſes the affirmation of *Quakers* with the words, *I do promiſe ſincerely and truly declare and affirm, &c.* without ſaying in *the preſence of Almighty God*; but *falſe and corrupt affirming, incurs the penalties of wilful perjury.*

And by 22 *Geo*. 2. *c*. 46. *ſ*. 36. an affirmation ſhall be allowed in all caſes (except criminal) where by any act of parliament an oath is required, though no proviſion therein for admitting a *Quaker* to make his affirmation. *Quakers* refuſing to pay tithes, or church rates, juſtices ot peace are to determine them, and order coſts, *&c.* 7 *&* 8 *W*. 3. *c*. 34. *ſ*. 4. 1 *Geo*. 1. *c*. 6. And *Quakers* may be committed to priſon for non-payment of tithes, on 27 *H*. 8. *c*. 20. whichis not repealed by 7 *&* 8 *W*. 3. which gives another remedy. Ld. *Raym*. 323.

Quale jus, A judicial writ which was brought where a man of religion had judgment to recover land, before execution was made of the judgment; it went forth to the eſcheator *between judgment and execution*, to inquire whether the religious perſon had right to recover, or the judgment were obtained by colluſion between the parties, to the intent that the lord might not be defrauded. *Reg. Judic.* 8, 16, 46. *Stat. Weſtm.* 2. *cap*. 32.

Qualified, Signifies enabled to hold two benefices. See *Plurality*.

Qualified (or *baſe*) **Fee**, Is ſuch a one as hath a qualification ſubjoined thereto, and which *muſt* be determined whenever the qualification annexed to it is at an end. As, in the caſe of a grant to *A.* and his heirs, TENANTS OF THE MANOR OF DALE; in this inſtance, whenever the *heirs* of *A. ceaſe* to be tenants of that manor, the grant is entirely defeated. So when *Hen.* 6. granted to *John Talbot*, lord of the manor of *Kingſtone-Liſle* in *Berks*, that he and his heirs, LORDS OF THE SAID MANOR, ſhould be peers of the realm, by the title of Barons of *Liſle*: here *John Talbot* had a baſe or *qualified fee* in that dignity; and the inſtant *he* or his *heirs* quitted the ſeigniory of *this* manor, the dignity was at an end. *Co. Lit.* 27.

This eſtate is a fee, becauſe *by poſſibility* it *may* endure for ever in a man and his heirs; yet as that duration depends on the concurrence of collateral circumſtances, *which* QUALIFY *and* DEBASE *the purity of the donation*, it is therefore a qualified or baſe fee. *Black. Com.* 2 *V*. 109.

Qualified Property. See *Poſſeſſion*, *Property*, and *Black. Com.* 2 *V*. 391.

Quamdiu ſe bene geſſerit, Is a *clauſe* often inſerted in *letters patent* of the grant of offices, as in thoſe to the *Barons* of the *Exchequer*, *&c.* which *muſt be intended* in matters concerning their office; and is nothing but what the law would have implied, if the office had been granted for life. 4 *Inſt*. 117. It is now in the patents of all the judges of the ſuperior courts at *Weſtminſter*, or at leaſt terms equivalent in *Engliſh*.

Quantum meruit, *i. e. How much he has deſerved*, is an action on the caſe, ſo called, grounded on a promiſe to pay plaintiff for doing any thing ſo much as he ſhould deſerve or *merit*.

If a man retains any perſon to do work or other thing for him; as a taylor to make a garment, a carrier to carry goods, *&c. without any* CERTAIN *agreement*; in ſuch caſe, the law *implies* that he ſhall pay for the ſame, *as much as they are worth*, and ſhall be reaſonably demanded; for which *quantum meruit* may be brought: And if one ſue another on a promiſe to ſatisfy him for work done, *&c.* he *muſt* ſhew and *aver* in his declaration how much he deſerved for his work. See *Black. Com.* 3 *V*. 161.

Quantum valebat, Is where goods and wares ſold are delivered by a tradeſman at *no certain price*, or to be paid for them as much as they are worth in general; then *quantum valebat* lies, and plaintiff is to *aver* them to be worth ſo much: ſo where the law obliges one to furniſh another with goods or proviſions; as an innkeeper his gueſts, *&c.* *Practiſ. Attorn. Edit.* 1. *p*. 72.

It is not very material whether a plaintiff declares on a *quantum valebant*, or a *quantum meruit*, but if either is preferable, it may be the latter, as plaintiff may deſerve more for goods ſold on account of ſcarſity, diſtance of delivery or other circumſtances, than the goods are really worth.

Quare clauſum fregit. Before the ſtatute 19 *Hen*. 7. *c*. 9. giving the proceſs of *capias* in all actions *on the caſe*, a practice had been introduced of commencing the ſuit by bringing an original writ of treſpaſs *quare clauſum fregit*, for breaking the plaintiff's cloſe, *vi et armis*; which, by the old Common law, ſubjected the defendant's perſon to be arreſted by writ of *capias*: and then afterwards, by connivance of the court, the plaintiff might proceed to proſecute for any other leſs forcible injury. This practice (through cuſtom rather than neceſſity, and for ſaving ſome trouble and expence, in ſuing out a ſpecial original adapted to the particular injury) ſtill continues in almoſt all caſes, except in actions of debt. *Black. Com.* 3 *V*. 281.

Quare cum, Are general words uſed in original writs, *&c.* See *Original*.

Quare ejecit infra Terminum, Is a writ which lies for leſſee, where he is *caſt out* of his farm *before* his term is expired, againſt a feoffee of the lands, or the leſſor who *ejects* him; and the effect of it is *to recover his term again*, and damages. *Reg. Orig.* 227. *F. N. B.* 197. *New Nat. Br.* 439.

This writ was deviſed for the following cauſe:

If a man make a leaſe of land for years, and after *ouſts* his leſſee, and then makes a feoffment of the land to a ſtranger in fee; now the leſſee cannot have a writ of *ejectione firmæ* againſt the feoffee, becauſe he did not put him out, and in *that* caſe the leſſee hath no other remedy but to enter again into the land; and if the feoffee *then* put him out, the leſſee may bring *ejectione firmæ vi & armis*; but *before* entry made by leſſee, he had no remedy againſt the feoffee: therefore, by the equity of the ſtatute of *Weſtm*. 2. *cap*. 24. which enacts, "*That where it*
"*ſhall happen in one caſe, a writ is found, and in the like*
"*caſe falling under the ſame law, and wanting the ſame*
"*remedy*, &c. *it is not ſo, the clerks of the Chancery are*

“ *to agree upon a proper writ,*” &c. By reaſon of that ſtatute, this writ was deviſed. *New Nat. Br.* 439.

And if a perſon leaſe lands for years, and the leſſor ſuffer a recovery to be had againſt him on *a feigned title*, and the recoverer entereth; the leſſee ſhall have his writ of *quare ejecit infra terminum, &c.* And the words of the writ are *Occaſione cujus venditionis*; and yet the ſame is not properly a ſale, but thoſe word are only *of form.* Ibid.

It is in the *election* of leſſee, or, if he grants over his term, the ſecond leſſee, to ſue a writ of *ejectione firmæ*, or a *quare ejecit infra terminum* againſt the leſſor, or his heir, or againſt the lord by eſcheat, *&c* if they put the termor out of his term. 19 *Hen.* 6. See *Black. Com.* 3 *V.* 206.

An ejectment will lie, let who will be in poſſeſſion, ſervice on the tenant in poſſeſſion intitling leſſor of plaintiff to judgment by default, if the tenant or the perſon under whom he claims does not appear. If there is an appearance, and the leſſor of the plaintiff makes out a title, unleſs the defendant can make out a better, plaintiff muſt recover.

Quare impedit, Is a writ lying for him who hath purchaſed an *advowſon*, againſt a perſon who diſturbs him in his right of advowſon *by preſenting* a clerk thereto, when the church is void. *F. N. B.* 32. *Stat. Weſtm.* 2. *cap.* 5.

It differs from aſſiſe of *darrein preſentment* (or *ultimæ præſentationis)* becauſe *that* lies where a man or his anceſtors, *under whom he claims*, have formerly preſented to the church; and this for him who is purchaſer *himſelf*; but in both plaintiff recovers the preſentation and damages; though in the writ of *darrein preſentment, &c.* he recovers *only* the preſentation, *not the title* to the advowſon, as he doth in a *quare impedit*; for which reaſon that aſſiſe is ſeldom brought, and for that the proceedings in it are very tedious: where a man may have aſſiſe of *darrein preſentment*, he may have *quare impedit.* 2 Inſt. 356. 3 Nelſ. Abr. 31.

The writ *quare impedit* is to be brought *in ſix months* AFTER *the avoidance*; and by it a patron may be relieved, not only on his preſentation to a *church*, but to a *chapel, prebend, vicarage, &c.* And this writ lies of a *donative*, and *the ſpecial matter is to be ſet forth in the declaration:* It alſo lieth for a *deanery* by the King, although it be elective; and for an *archdeaconry*, but not for a mere *office* of the church. *Co. Lit.* 344. 1 *Leon.* 205. And the *chapter* may have a *quare impedit* againſt the *dean*, of their ſeveral poſſeſſions. 40 *Ed.* 3. 48.

If the *quare impedit* be for a *donative*; the writ ſhall be *quare impedit* to preſent to the *donative*; if of a *parſonage*, then *quare impedit præſentare ad eccleſiam*; if to a *vicarage, ad vicariam*; if to a *prebend, ad præbendum, &c.* 3 Nelſ. Abr. 35.

If a biſhop be diſturbed *to collate*, where he ought to make collation, he may have a writ *quare impedit*, and the writ ſhall be *quod permittat ipſum præſentare, &c.* and he ſhall count on the collation: and if the King be diſturbed in his collation by letters patent, he ſhall have *quare impedit, &c.* New Nat. Br. 73.

Grantee of a next avoidance may bring *this* writ againſt the patron who granted the avoidance. 39 *Hen.* 6.

It may be brought by executors, for a diſturbance *in vita teſtatoris*; and executors, being diſturbed in their preſentation, may bring *quare impedit* as well as their teſtator might. *Owen* 99. *Lutw.* 1.

Huſband and wife jointly, or the huſband *alone* without his wife, may have the writ *quare impedit*; and if a man who hath an advowſon in right of his wife be diſturbed in his preſentation, and dies, the wife ſhall bring it on that diſturbance. 14 *Hen.* 4. 5 *Rep.* 97.

The heir ſhall *not* have *quare impedit*, for a diſturbance *tempore patris*; nor can he have execution on a recovery by the anceſtor. *Br. Q. Imp. pl.* 7, 9. But by 13 *Ed.* 1. *c.* 5. Uſurpation of churches *during wardſhip*, particular eſtates of vacancy, *&c.* ſhall *not bar* an heir at *full* age reverſioner in poſſeſſion, or a ſpiritual perſon in ſucceſſion, from having a writ poſſeſſory of *quare impedit, &c.* as the anceſtor or predeceſſor might have had, if ſuch uſurpation had been in their time: And the ſame form of pleading ſhall be had in *darrein preſentment*, and *quare impedit.*

Where partition is made on record, to preſent by turns, the coparcener who is diſturbed ſhall not be put to a *quare impedit*; but may have remedy on the roll, by *ſcire facias*: it is otherwiſe on an agreement to preſent. Stat. *ibid.* 22 *Ed.* 4. 8.

If tenant in tail ſuffer an uſurpation, and die, and *ſix months paſs*, the iſſue in tail *cannot* bring *quare impedit*; but at the next avoidance he may have it within the ſix months. 46 *Aſſiſe* 4.

This writ is all *in the poſſeſſion*; and the preſentment of grantee of the next avoidance is a good title for the grantor and patron in fee to bring it; and likewiſe for his heir, and other grantees. 9 *Hen.* 7. 23. 5 *Rep.* 97.

Preſentment alledged in leſſee for life, or years, or it is ſaid, *in tenant at will*, is ſufficient in *quare impedit*: ſo of tenant in dower, or by the curteſy; alſo of tenants by ſtatute merchant, ſtaple, or *elegit, &c.* 21 Ed. 4. 2, 5. Rep. 97. Mallory's Q. Imped. 155.

It ſuppoſes *both* a poſſeſſion and a right; and plaintiff *muſt alledge a preſentation in himſelf*, or in thoſe under whom he claims; unleſs it be in caſe of lapſe, *&c.*

In the declaration of plaintiff, it is not ſufficient for him to alledge, that he, or ſuch a perſon for whom he claims, were ſeiſed of the advowſon of the church, but he *muſt alledge a preſentation* MADE *by one of them*; for, if he doth not, defendant *may demur* to the declaration: and the reaſon is, that defendant, by joining the laſt preſentation to his own title, *is to make appear*, that he hath a right to preſent *now* as well as *then.* Cro. Eliz. 518. 5 Rep. 97. Vaugh 57. The writ *muſt* be brought in that county *where the church is*; the patron and incumbent are to be named in it, the one as he may be diſpoſſeſſed of his patronage, the other of his preſentation; and *it is uſual to make the biſhop a defendant*, to prevent a lapſe, where the church is void, *pendente lite.*

Quare impedit will not lie againſt the ordinary and incumbent, *without naming the patron*; becauſe at Common law the incumbent could not plead any thing which concerned the right of patronage, therefore it is unreaſonable that he alone ſhould be named in the writ who could not defend the patronage; but 25 *Ed.* 5. *c.* 7. enables him to plead *againſt the King*, and to defend his incumbency, although he claims nothing in the patronage; and by that ſtatute *he ſhall plead againſt any common perſon*; though with this difference, that when the inheritance of the patron is to be diveſted by judgment in a *quare impedit*, there he *muſt* be named in the writ; but where the next preſentation only is to be recovered, he need *not* be named: yet where the King preſents *without a title*, and his clerk is inducted, the *quare impedit* is to be againſt the ordinary and incumbent; for it will *not* lie againſt the King; but, if he is plaintiff, the writ may be brought againſt the patron alone, without naming the incumbent. 7 *Rep.* 25. *Cro. Jac.* 650. *Palm.* 306.

If the church be full of a preſentation, ſo that there is no danger of lapſe, the biſhop need *not* be named in a *quare impedit*; but it is otherwiſe where it ſtands on diſturbance *only*: And though this writ will lie againſt a patron alone; yet in a common caſe, where any clerk is preſented and inducted, the incumbent ſhall *not* be removed, without naming him alſo. *Hob.* 320. *Gliſs & Gulſt.* 235. *Jenk Cent.* 200. See *poſt.*

The only plea the biſhop hath by the Common law on a *quare impedit* is, that *he claimeth nothing* BUT AS ORDINARY; he could not counterplead the patron's title, or any thing to the right of patronage, nor could the incumbent counterplead ſuch title, till the 25 *Ed.* 3. *c.* 7. by which both *biſhop and incumbent may counterplead the title of the patron*; the one, when he collates *by lapſe*, or makes title *himſelf* to the patronage; the other, being *perſona imperſonata*, may plead his *patron's title*, and counterplead the title of plaintiff: And it has been adjudged, that incumbent cannot plead *to the title of the parſonage*, without ſhewing that he is *perſona imperſonata* of the preſentation of the patron. *W. Jones* 4. *March.* 159. 3 *Nelſ. Abr.* 38.

In a *quare impedit*, though it was found that the church *was full* of another, who was *a ſtranger* to the writ, and it did not appear whether he came in by a better title than that which was found for plaintiff; it was held, that plaintiff might have a general writ to the biſhop, which he is bound by law to execute, or ſhall be amerced, &c. and he *cannot* return that the church is full of another; for *no iſſue can be joined between the biſhop and plaintiff, becauſe he has no day in court.* 6 Rep. 51. 3 Leon 136. *See* ante *and* poſt.

But where plaintiff recovered an advowſon in ejectment, and thereupon had a writ to the biſhop, there being another incumbent in the church, who was not a party to the action; adjudged, that this writ would not lie without a *ſcire facias* to the incumbent. *Sid.* 93.

If it appears in *quare impedit*, either in pleading, or by confeſſion of the parties, that neither of them have a title, but that it is *in the King*; the court may award a writ to the biſhop for the King, to remove the incumbent, and admit *idoneam perſonam ad præſentationem regis*; but this muſt be *when* his title is very plain. *Hob.* 126, 163. 1 *Leon.* 323.

In *quare impedit*, plaintiff and defendant are both *actors*, ſo that defendant *may* have a writ to the biſhop, as well as plaintiff; but *not without a title appearing to the court*; wherefore if defendant never appears, plaintiff muſt make out a title *for form ſake*, and ſo muſt defendant if plaintiff be non-ſuited. *Hob.* 163.

If plaintiff, after appearance, in a *quare impedit* be nonſuited, *it is peremptory*; becauſe defendant on title made, whereby he becomes actor, ſhall have a writ to the biſhop: and it is the ſame in caſe of a diſcontinuance. 7 *Rep.* 27.

It is the nature of a *quare impedit* to be final, either on a diſcontinuance or nonſuit; and a man cannot have two ſuits for the ſame thing in this caſe againſt one perſon, tho' he may have ſeveral *quare impedits* againſt ſeveral perſons. 7 *Rep* 27. *Hob.* 137.

The parſon, patron, and ordinary are ſued; the ordinary diſclaims, and the parſon loſeth by default; plaintiff ſhall have judgment to recover his preſentation, and a writ iſſue to the biſhop, &c. with a *ceſſat executio*, until the plea is determined between the plaintiff and patron. *Vaughan* 6.

Several were plaintiffs in a *quare impedit*, defendant pleaded *the releaſe* of one of them *pending the writ*; and it was reſolved, that this releaſe ſhall only bar *him* who made it, and that the writ ſhall ſtand good for the reſt. 5 *Rep.* 97.

In a *quare impedit* againſt the archbiſhop, the biſhop, and three defendants; the archbiſhop pleaded that *he claimed nothing but as metropolitan*; and the biſhop pleaded that *he claimed nothing but as ordinary*; and the defendants made title; but there was a verdict againſt them: It was a queſtion, *Whether the writ of execution ſhould be awarded to the archbiſhop, or the biſhop*; and it was held, that where neither of them are parties in intereſt, *it may be directed to either*; but if the biſhop is party *in intereſt*, it *muſt* be directed to the archbiſhop. 6 *Rep.* 48. 3 *Bulſt.* 174. And if the archbiſhop of *Canterbury* be plaintiff in a *quare impedit*, the writ *muſt* be directed to the archbiſhop of *York*, &c. *Show.* 329.

If defendant pleads *ne diſturba*, which is in effect the general iſſue in a *quare impedit*, this will be only a defence of the wrong with which he ſtands charged, and is ſo far from controverting the plaintiff's title, that the plea, as it were, *confeſſes it*; and plaintiff may preſently pray a writ to the biſhop, or maintain the diſturbance in order to recover damages. *Hob.* 163.

There *muſt* be a diſturbance to maintain this action: In a *quare impedit*, the patron declared on a diſturbance of him to preſent 1 *November*; the incumbent pleaded, that 1 *May* next after, the preſentation devolved on the Queen *by lapſe*, and ſhe preſented *him* to the church, &c. And on demurrer the plea was held *ill*; becauſe defendant had *not confeſſed and avoided, nor traverſed the diſturbance*, ſet forth in the declaration: And tho' by the demurrer the Queen's title was confeſſed, it appearing that it was already executed, and defendant having loſt his incumbency by ill pleading, the writ ſhall not be awarded to the biſhop *for the Queen* to preſent again, but for the patron. 1 *Leon.* 194.

In all *quare impedits*, defendant may *traverſe the preſentation* alledged by plaintiff, if the matter of fact will bear it; but defendant muſt *not* deny the preſentation alledged, where there was a preſentation. *Vaugh.* 16, 17. And if a preſentment is alledged in the grantor and grantee, the preſentment in the grantor is only traverſable; for *that* is the principal. *Cro. Eliz.* 518.

The courts at *Weſtminſter* are very cautious not to abate the writ of *quare impedit*, for any want of form, &c. yet if the biſhop againſt whom the writ is brought, or any of the defendants are miſnamed, it is *good* cauſe of abatement: If the patron be *not named* in the writ, it may be pleaded in abatement; tho' death of the patron *pending* the writ doth not abate it, if the *quare impedit* is brought againſt the biſhop, patron, and incumbent: And if the incumbent dies, pending the writ, and a diſturber preſent again, and die, *quare impedit* would lie on the firſt diſturbance by *journies accounts*; but the firſt writ is abated by plaintiff's death; alſo if plaintiff bring a new writ within fifteen days after the abatement, that ſhall be a continuance of the firſt writ, and prevent defendant taking any advantage; but if the writ abate for any *fault* in the declaration, defendant *ſhall* have a writ to the biſhop to admit his clerk; ſo if judgment is given on demurrer, &c. *Cro. Eliz.* 324. *Cro. Car.* 651. 7 *Rep.* 57. *Dyer* 240.

In a plea of *quare impedit*, days are given from 15 to 16. or *from three weeks to three weeks*, according to the diſtance of place: And if the diſturber come not in *on the great diſtreſs*, a writ is to be ſent to the biſhop, that he claim not to the prejudice of plaintiff for *that* time; and, on recovery, judgment is to be given to the party *to recover* the preſentation and advowſon. *Stat.* 52 *H.* 3. *c.* 12. 2 *Rol. Abr.* 377. And damages are given by *Weſtm.* 2. *c.* 5. tho' damages ſhall not be had againſt the biſhop, where he claims nothing but *as ordinary*, and is *no diſturber*. 3 Lev. 59.

Before this ſtatute *no* damages were allowed on a *quare impedit*; and the King hath none at this day, for altho' he declares *ad damnum*, &c. *he is not within that ſtatute*; becauſe *by his prerogative he cannot loſe his preſentation*. 6 Rep. 52. If plaintiff hath a verdict, and the church is found *vacant*, the *patron may have the fruits of his preſentation*, and ſo not be intitled to damages; in which caſe, a *remittitur de damnis* is entered. 3 *Lev.* 59.

There are two *judgments* in a *quare impedit*, *viz.*

That plaintiff ſhall have a *writ* to the biſhop; and *this* is the *final* judgment, that goes to the *right* between the parties, and is the judgment at *Common law*: And

Judgment for *damages*, ſince the ſtat. of *Weſtm.* 2. after the points of the writ are inquired into; which judgment is not to be given but *at the inſtance of the party*. 1 Mod. 254, 255.

The points to be inquired of, where the jury find for plaintiff, &c. are, *of whom*, and *on whoſe preſentment*, the church is *full*; *how long* ſince it was *void*; the *yearly value* of the church, &c. which being found, damages are to be given accordingly. 6 *Rep.* 51.

No coſts are recoverable in *quare impedit*, becauſe of the great damages given by the ſtatute of *Weſtm.* 2. *c.* 5. which ordains, that *when ſix months paſs* PENDING *a quare impedit*, &c. ſo that the biſhop preſents by lapſe, the patron ſhall recover *damages to* TWO YEARS VALUE *of the church*; otherwiſe to have only half a year's value. See 10 *Rep.* 36.

Where judgment is given to have a writ to the biſhop in *quare impedit*; it ſhall not be reverſed on writ of error brought on the whole judgment, tho' the judgment by the ſtatute for damages be erroneous and reverſed. 5 *Rep.* 58, 59.

Quare impedit was brought againſt two, one of them caſt an eſſoin, and *idem dies datus eſt* to the other, &c. Then an attachment iſſued againſt them for not appearing at the day, and proceſs continued to the *Grand Cape*; which being returned, and the parties not appearing, it was ruled that final judgment ſhould be entered according to the ſtat 52 *H.* 3. *c.* 12. But on motion to diſcharge this rule, becauſe defendants were not ſummoned either on the attachment or grand diſtreſs, the ſummoners being only the feigned names of *John Doe* and *Richard Roe*, the judgment was ſet aſide; for the deſign of the ſtatute was to have proceſs *duly executed*, and that *muſt* be *with notice, &c.* And where the right is for *ever concluded*, this being ſo fatal, *the proceſs muſt never be ſuffered to be a thing of courſe.* 1 Mod. 248.

Where two defendants in a *quare impedit* plead ſeveral bars, and one of them is found againſt plaintiff, and the other with him; he ſhall *not* have his writ to the biſhop.

If there are many defendants, pleading ſeveral pleas; plaintiff ſhall not have judgment before all the pleas are tried; for tho' ſome be for plaintiff, others may be found againſt him, and *he cannot have judgment without good title.* F. N. B. 30. Hob. 70.

When one recovers in a *quare impedit* againſt an incumbent, the incumbent is ſo removed by judgment, that the recoverer may preſent without any thing farther; but the incumbent continues incumbent *de facto*; till ſuch preſentation is made: And if plaintiff in this ſuit be inſtituted on a writ to the biſhop, defendant cannot appeal; if he doth, a prohibition lies: becauſe in this caſe, *the biſhop acts as the King's miniſter*, not as a judge. 2 *Roll. Abr.* 365. 1 *Roll. Rep.* 62.

If one brings a *quare impedit* againſt the patron and incumbent of a church *within* ſix months, and recovers *after* the ſix months, he ſhall remove the incumbent, if named in the writ. 2 *Rol. Abr.* 373. And the King cannot remove an incumbent, preſented, inſtituted and inducted, altho' on a uſurpation, but by *quare impedit* in a judicial way. *Cro. Jac.* 385.

If a man, by the King's licence, creates a church which ſhall be preſentable, if he be diſturbed to preſent to it, he may have a *quare impedit* without alledging a preſentation in any perſon: but anciently it was held he might not, becauſe he could not alledge a preſentment. 20 *Ed.* 4, 14. *Mallory's Q. Imped.* 153.

It is generally neceſſary to alledge a preſentation in a *quare impedit*, but the want thereof may be cured by verdict. 2 *Strange* 1006. He who claims by a recovery, ſhall maintain a *quare impedit*. 7 *H.* 8. *c.* 4.

A *quare impedit* may be maintained notwithſtanding an uſurpation. 7 *Ann. c.* 18. See *Preſentation*, &c. and *Black. Com.* 3 *V.* 246.

Quare incumbravit, A writ which lieth againſt the biſhop, who *within* ſix months after the vacation of a benefice, confers it on his clerk, whilſt two other are contending at law, for the right of preſentation. *Reg. Orig.* 32.

Or it is a writ brought *after a recovery* in *quare impedit*, or aſſiſe of *darrein preſentment*, againſt the biſhop who thus admits a clerk, notwithſtanding the writ *Ne admittas* ſerved on him: for if the biſhop incumber the church before a *ne admittas* iſſued, *then* the party ſhall have a *quare impedit*; as the ordinary can have no notice till the *ne admittas*. F. N. B. 32, 33. Wood's Inſt. 571.

And if a man hath a *right of advowſon* depending between him and another, and the church is void *pendant the writ*, the plaintiff ſhall not have a *quare incumb.* or *ne admittas*, altho' the biſhop incumber the church; becauſe plaintiff ſhall not recover the preſentment on this writ, but the advowſon: And where he hath title to preſent he may do it; and have *quare impedit*, if he be diſturbed. *New Nat. Br.* 108, 109.

If the biſhop delay the true patron in his preſentation, and the patron ſue a *quare impedit*, he may thereupon have a *ne admittas*; and if the biſhop, *after* receipt of ſuch writ, admit the clerk of any other perſon without a verdict in a *jure patronatus*, the true patron ſhall have *quare incumbravit* againſt the biſhop, and thereby *recover the preſentment with damages.*

Alſo a writ is to be directed to the biſhop to diſincumber the church. *F. N. B.* 37.

This writ may be brought *after* the ſix months; and if plaintiff be nonſuit in a *quare incumbravit*, he may have *another writ*, and vary from his firſt declaration, *&c. Ibid.* 48.

After a *ne admittas* delivered, if the ſix months *paſt*, the biſhop may preſent his clerk *for lapſe*, and ſhall not be charged by the writ of *quare incumbravit* for the preſentation; but he cannot admit the clerk of the other man, for that would be againſt the writ *ne admittas* delivered to him. *F. N. B.* 48.

If the biſhop incumber the church, where there is no diſpute about it, yet this writ *quare incumbravit* lies; but according to the beſt opinions *there ought to be a ſuit depending*, tho' there is no actual recovery. 18 *E.* 3. 17. *Fitz. Q. Imped.* 3. See *Black. Com.* 3 *V.* 248.

The writ is to ſummon the biſhop, to be before the juſtices, &c. *to ſhew cauſe why he hath incumbered the church, to the great damage and injury of plaintiff, contrary to the laws and cuſtoms of the kingdom,* &c.

Quare non admiſit, Is a writ which lies againſt a biſhop where a man hath recovered his advowſon, or preſentation in a writ of right of advowſon, or in *quare impedit*, or other action, and the biſhop refuſes to admit his clerk, *on pretence of lapſe*, &c. it is requiſite in the writ to mention the recovery; and it is to be brought in the county where the refuſal was. *F. N. B.* 47. 7 *Rep. Dyer* 40.

In a *quare non admiſit* the plaintiff ſhall recover damages: And if plaintiff have judgment in a *quare impedit*, and a writ is awarded to the biſhop; if on this writ the biſhop makes a falſe return, plaintiff may have *quare non admiſit* againſt him, and have his damages. *Dyer* 260.

King *Edw.* 1. preſented his clerk to a benefice in *Yorkſhire*, and the archbiſhop of that province refuſed to admit him; on which the King brought a *quare non admiſit*, and the Archbiſhop pleaded that *the Pope* had a long time before *provided* for that church, *as one having ſupreme authority in that caſe*, therefore he could not admit the King's clerk. It was adjudged, that *for his contempt* to execute the King's writ, the Archbiſhoprick ſhould be ſeiſed, *&c.* 5 *Rep.* 12.

If the biſhop refuſe the King's preſentee, and afterwards admit him, yet the King ſhall have *quare non admiſit* for the refuſal; and ſo it is preſumed may a common perſon. *New Nat. Br.* 106. See *Black. Com.* 3 *V.* 250.

Quare non permittit, Is mentioned as an ancient writ which lieth for one who hath a right to preſent to a church for a turn, againſt the *proprietary*. Fleta, lib. 5. cap. 6.

Quarentine or **Quarentaine,** *(Quarentina)* Is a benefit allowed by law to the *widow* of a man dying ſeiſed of lands, whereby ſhe may challenge to continue in his capital meſſuage, or chief manſion-houſe, *(not being a caſtle)* by the ſpace of *forty days* after his deceaſe, in order to the aſſignment of her dower, *&c.* And if the heir, or any other, eject her, ſhe may bring the writ *de quarentena habenda*; but the widow ſhall not have meat, drink, *&c.* tho' if there be no proviſion in the houſe, according to *Fitzherbert*, ſhe may *kill* things for her proviſion. *Magna Charta, cap.* 7. *Bract. lib.* 2. *cap.* 40. *F. N. B.* 161. See *Black. Com.* 2 *V.* 135.

Quarentine, Is alſo the term of *forty days* wherein any perſons coming from foreign parts infected with the *plague*, are not permitted to land or come on ſhore, until ſo many days are expired. 9 *Ann. cap.* 2. 7 *Geo.* 1. *cap.* 3. 1 *Geo.* 2. *c.* 17. See *Plague* and *Black. Com.* 4 *V.* 162.

Quarentine, Likewiſe ſignifies a quantity of ground, containing *forty perches*. Leg. Hen. 1. cap. 16.

Quare obſtruxit, Is a writ which lies for him, who, having a liberty to paſs thro' his neighbour's ground, cannot enjoy his right, becauſe the owner has ſo obſtructed it. *Fleta, lib.* 4. *c.* 26.

Quarel, *(Querela, a querendo,)* Extends not only to actions perſonal, but alſo to mixt, and the plaintiff in them is called *querens*, and in moſt of the writs it is ſaid *queritur*; ſo that if a man releaſe all *quarrels*, (a man's deed being taken moſt ſtrongly againſt himſelf) yet it is as beneficial as all actions, for by it all actions real and perſonal are releaſed. *Co. lib.* 8. 153. and *Co. Lit. lib.* 3. *c.* 8. *ſect.* 511.

Quarrelling in church or church-yard. All affrays in a church or church-yard, are eſteemed very heinous offences, as being indignities to Him to whoſe ſervice thoſe places are conſecrated, therefore mere *quarrelſome* *words*, which are neither an affray nor an offence in any other place, are penal *here*. For it is enacted by 5 & 6 *Edw.* 6 *c.* 4. That if any perſon ſhall, *by words only*, quarrel, chide, or brawl, *in* a church or church-yard, the ordinary ſhall ſuſpend him, if a layman, *ab ingreſſu eccleſiæ*; and, if a clerk in orders, from the miniſtration of his office *during pleaſure*. And, if any perſon *in* ſuch church or church-yard proceed to ſmite or lay violent hands on another, he ſhall be excommunicated *ipſo facto*; or if he ſtrikes him *with a weapon*, or *draws* any weapon *with intent to ſtrike*, he ſhall *beſides* excommunication (being convicted by a jury) have one of his ears cut off; or, having no ears, be branded with the letter F. in his cheek. *Black. Com.* 4 *V.* 145.

Quartelois, Were upper garments with coats of arms quartered on them, the old habit of *Engliſh* knights. *Walſing. in vit. Ed.* 2.

Quarteriſari, To be *quartered*, or cut into four *quarters* in execution.——*Fecit decollari & membratim dividi,* & quarteriſari, & *caput & ejus* quarterias *ad regni certas civitates tranſmitti juſſit.* Artic. Richardi Scrope Archiep. Ebor. apud Angl. Sacr. par. 2. 266.

Quarterizatio, Is part of the puniſhment and execution of a *traitor*, by dividing his body into four quarters. See *Quarteriſari.*

Quarter-Seſſions, Is a general court held by the *juſtices of peace* in every county, once every *quarter* of a year; originally erected only for matters *touching the breach of the peace*, but now its power is greatly increaſed, and extends much farther by many ſtatutes.

The holding theſe *ſeſſions quarterly* was firſt ordained by the 25 *Ed.* 3. *Stat.* 1. *cap.* 8. and the particular times are appointed by 36 *Ed.* 3. *c.* 12. See *Juſtices of Peace.*

By ſtat. 2 *Hen.* 5. *c.* 4. they are appointed to be in the firſt week after *Michaelmas* day; the firſt week after the *Epiphany*; the firſt week after the cloſe of *Eaſter*; and in the week after the tranſlation of Saint *Thomas a Becket*, or the ſeventh of *July*. See *Black. Com.* 4 *V.* 268.

Quarto die poſt, Is the fourth day incluſive after the return of the writ, and if the defendant makes his appearance on this day, it is ſufficient. *Black. Com.* 3 *V.* 278.

Quaſh *Quaſſare*, (from the *French* word *quaſſer*, i. e. *caſſum facere*,) To overthrow or annul. *Bracton, lib.* 5. *tract.* 2. *c.* 3. *nu.* 4. *As if the bailiff of a liberty return any out of his franchiſe, the array ſhall be* quaſhed. And *Co. Litt.* 156. *An array returned by one who hath no franchiſe ſhall be* quaſhed.

The court of *B. R.* hath power to *quaſh* orders of ſeſſions, preſentments, indictments, &c. Tho' this *quaſhing* is by favour of the court, and the court may leave the party to take advantage of the inſufficiency by pleading; as they generally do where an indictment is for an offence very prejudicial to the Commonwealth, as for perjury, &c. 2 *Lill Abr.* 410. 2 *Hawk. P. C.* 258.

The court will not *quaſh* an information; but there muſt be a demurrer to it, if it be inſufficient. 2 *Lill.* 411. Vide Stat. 7 *W.* 3. *c.* 3. See *Indictment, Plea,* and *Black. Com.* 3 *V.* 303. 4 *V.* 315.

Quays. See *Ports.*

Queen, (Lat. *Regina*. Sax. *Cwen*, i. e. *Uxor*, a wife, *ſed propter excellentiam*, the *wife* of the *King*) In our law is, either ſhe who holds the crown of this realm by right of blood, or who is married to the King; the firſt of which is called *Queen Regnant*, the laſt *Queen Conſort*: She who holdeth by blood is, in conſtruction of law, the ſame with the King, and has the like regal power in all reſpects; but the *Queen* Conſort is inferior to the King, and his ſubject. *Staundf. Prærog.* 10. 3 *Inſt.* 7. 1 *Marl. Parl.* 2. *cap.* 1.

To compaſs the death of or violate the *Queen*'s perſon, &c. is treaſon; and if ſhe conſents to the adulterer, it ſhall be treaſon in her. 25 *Ed.* 3. *ſt.* 5. *c.* 2. 3 *Inſt.* 9.

The *Queen*, as the King's wife, partakes of ſeveral *prerogatives* above other women, *viz.*

She is a *public perſon*, exempt from the King; and is capable of lands or tenements of the gift of the King, which no other *feme covert* is; ſhe is of ability, *without the King*, to purchaſe, grant, and make leaſes; and may ſue and be ſued *alone*, in her own name *only*, by *præcipe*, not by petition: She may have in herſelf the poſſeſſion of *perſonal* things during her life, *etc.* But both real and perſonal eſtate goes to the King after her death: if ſhe doth not in her life-time diſpoſe of them, or deviſe them by will. *Co. Lit.* 3, 31, 133. *Finch* 86. 1 *Roll. Abr.* 912.

Acts of parliament relating to her, *need not be pleaded*; for the court muſt take notice of them, becauſe ſhe is a public perſon. 8 *Rep.* 28.

If a tenant of the *Queen* aliens a part of his tenancy to one, and another part to another; the *Queen* may diſtrain in any one part for the whole, as the King may do. *Wood's Inſt.* 22. And in a *quare impedit* brought by the *Queen*, ſome ſay that *plenarty is no plea*; but ſee 2 *Inſt.* 361. The Queen ſhall pay no toll, &c. *Co. Lit.* 133.

By ſtatute, the late King might grant to his *Queen* out of the crown revenues, an annuity of 100,000*l. per annum*, to commence *after* his death, and continue during the *Queen*'s natural life, for ſupporting her royal dignity, &c. Stat. 1 *Geo* 2. *cap.* 3.

And his Majeſty conſtituted the Queen Regent of the kingdom, during his abſence abroad; to be capable of the office, without taking the oaths, or doing any act required by law to qualify any other. 2 *Geo.* 2. *c.* 27.

Queen Dowager, No man may marry the Queen Dowager without licence from the King, on pain to forfeit his lands and goods: But if ſhe marry any of the nobility, or under *that* degree, ſhe loſeth not her dignity; but by the name of Queen may maintain an action. *Co. Lit.* 18, 50.

The ſtatute 25 *Ed.* 3. *ſt.* 5. *c.* 2. making it treaſon to violate the Queen, extends not to a Queen Dowager, but *the King's wife and companion*: And a Queen Conſort and Queen Dowager ſhall be tried, in caſe of treaſon, by the peers. 2 *Inſt.* 50.

Queen-Gold, (*Aurum Reginæ*) Is a Royal duty or revenue belonging to every *Queen of England*, during her marriage to the King, payable by perſons in this kingdom and *Ireland*, on divers grants of the King, by way of fine or oblation, &c. being one full *tenth* part above the entire fines, on pardons, contracts, or agreements, which becomes a real debt to the Queen, by the name of *Aurum Reginæ*, upon the party's bare agreement with the King for his fine, and recording the ſame. *Lib. Nig. Scac. pag.* 43. 12 *Co. Rep.* 21, 22.

Que eſtate. Signifies *which eſtate*; and is a plea, where a man intitling another to land, &c. ſaith that the ſame eſtate ſuch other had, he has from him: As for example, in a *quare impedit*, plaintiff alledges that two perſons were ſeiſed of lands, whereunto the advowſon in queſtion was appendant in fee, and did preſent to the church, and afterwards the church was void: *Which eſtate* of the two perſons he hath now, by virtue whereof he preſented, &c. *Broke* 175. *Co. Lit.* 121.

A man cannot plead a *quæ eſtate* in an eſtate-tail, nor can it be pleaded in eſtates for life, or for years; a *quæ eſtate* of a term may not be pleaded, by reaſon a term cannot be gained by diſſeiſin, as a fee may; but one may plead a *que eſtate* in a term in another perſon, under whom he doth not claim, and be good; for he is not privy to the eſtate of the ſtranger, to know his title. 1 *Rep.* 46. 1 *Lev.* 190. 3 *Lev.* 19. *Lutw.* 81.

A thing which lies in grant, cannot be claimed by a *que eſtate*, directly by itſelf; yet it may be claimed *as appurtenant to* a manor, by *que eſtate* in the manor. 1 *Mod.* 232.

A man may not preſcribe by a *que eſtate* of a rent, advowſon or toll; but he may of a manor, &c. to which theſe are appendant. 2 *Mod.* 144 3 *Mod.* 52.

A perſon cannot plead a *que eſtate*, without ſhewing *the deed* how he came by it. *Cro. Jac.* 673. This is in caſe of a rent in groſs or lands which cannot paſs from one man to another without deed.

Jenk. Cent. 26. See 18 *Vin. Abr. fo.* 133. 140. *Black. Com.* 2. *V.* 264.

Que eſt eadem. See *Quæ eſt eadem,* &c.

Que eſt le meſme, (ſignifying *verbatim,* the ſame thing) Is a word of art, in actions of treſpaſs, &c. for a direct juſtification of the *very act* complained of by plaintiff as a wrong. *Kitch.* 236.

Quem redditum reddat, Is a judicial writ which lies for him, to whom a rent-ſeck or rent-charge is granted, by fine levied in the King's *court* againſt the tenant of the land who refuſeth to attorn to him, thereby to cauſe to attorn. *Old Nat. Brev.* 126. *Weſt. Symbol. par.* 2. tit. *Fines, ſect.* 156

Querela, An action preferred in any court of juſtice, in which the plaintiff was *querens* or complainant, and his brief complaint or declaration, was *querela,* whence our *quarrel* againſt any perſon.

Quietos eſſe a querelis was to be exempted from the cuſtomary fees paid to the King or lord of a court, for the purchaſe of liberty to prefer ſuch an action. But more uſually to be exempted from fines and amercements, impoſed for common treſpaſſes and faults. So King *Henry* II. to *Bernard de S. Walery.*——*Terræ ſuæ ſint quietæ de omnibus placitis & querelis. exceptis murdredo & latrocinio.* Paroch Antiquit. pag. 123. *See* Kennet's Gloſſary.

Querela coram Rege & concilio diſcutienda & terminanda, Is a writ whereby one is called to juſtify a complaint of a treſpaſs made to the King himſelf, before the King and his council. *Reg. Orig.* 124.

Querela freſcae fortiae. See *Freſh Force.*

Queſt, (*Queſta*) A queſt or inqueſt, inquiſition or inquiry on the oaths of an impannelled jury *Cowell.*

Queſtion, or *Torture,* See *Black. Com.* 4 *V.* 320.

Queſtus. See *Quaeſtus.*

Queſtus eſt nobis, Is the form of a writ of *nuſance,* which by the ſtatute of 13 *Edw.* 1. *c.* 24, lies againſt him to whom the houſe or other thing which occaſions the *nuſance,* is alienated, whereas, before the *ſtatute,* this action lay only againſt him who firſt levied the thing to the annoyance of his neighbour. *Cowell.*

Quia Dominus remiſit Curiam, writ of right, to ouſt the lord of his juriſdiction, is reſtrained by *Magna Charta c.* 24. *Black. Com.* 3 *V.* 195.

Quia emptores, ſtatute of, ſee *ib.* 2 *V.* 91. 4 *V.* 419.

Quia improvide, Seems to be a *ſuperſedeas* granted in behalf of a clerk of the Chancery ſued againſt the privilege of that court in the Common Pleas, and purſued to the *exigent,* or in many other caſes where a writ is erroneouſly ſued. See *Dyer* 33. *n.* 18.

Quick with Child. See *Pregnancy.*

Quick-ſets, Damage ſuſtained by deſtroying, burning or defacing them, ſhall be compenſated for by the inhabitants of the place, in the ſame manner as for dikes, &c. overthrown in the night, is provided by 13 *Ed.* 1. *ſt.* 1. *c.* 46. unleſs the offender ſhall be convicted in ſix months. 6 *Geo.* 1. *c.* 16. See *Dikes & Wood.*

Quid juris clamat. Is a judicial writ iſſuing out of the record of the *fine,* which remaineth with the *Cuſtos Brevium* of the Common Pleas, before it be engroſſed; and it lies for the grantee of a reverſion or remainder, when the particular tenant will not attorn. *Weſt. Symbol. part* 2. tit. *Fines, ſect.* 118. *Reg. Judic.* 36, 57. See 18 *Vin. Abr.* 143.

After the fine is ingroſſed, the cogniſee ſhall not have a *quid juris clamat* againſt tenant for life: But the courſe is, when he in reverſion, on the writ of covenant ſued againſt him, maketh recogniſance of the reverſion by fine, &c. then on *that* the cogniſee may have this writ againſt tenant for life; and if he be ſick or not able to travel, a *dedimus poteſtatem* ſhall be granted to take his cogniſance, and to certify the ſame into *C. B.* When, after plea pleaded, the tenant may make attorney; and if he be adjudged to attorn, a *diſtringas ad attornandum* ſhall be awarded againſt him, &c. *New Nat. Br.* 328. This writ ſeems to be obſolete and diſuſed, ſince the *Stat.* 4 & 5 *Ann. c.* 16. *ſ.* 9, 10. See *Attornment.*

Quid pro quo, Signifieth *what for what*; and is uſed in the law, for the giving one thing of value, for another thing, being *the mutual conſideration and performance of both parties to a contract.* Kitch. 184. And as this is the conſideration of a good and binding contract or bargain: So that which is contrary to it, is what the law calleth *nudum pactum.* 5 Rep. 83. Dyer 98.

Quietantia, (*Acquietantia*). See *Acquittance.*

Quietare, To quit, acquit or diſcharge, or ſave harmleſs. The common form in old deeds of donation or other conveyance.——*De prædictis nos & hæredes noſtri* quietabimus *dictos,* &c.

Quiete clamare, Is to quit claim or renounce all pretenſions of right and title.——*De una virgata terræ in* M. Richardus & Aldreda *remiſerunt* & quiete clamaverunt *de ſe & hæredibus,* &c. *prædict.* A. & *hæred. ſuis,* & *pro hac remiſſione* quieta clamatione *idem* A. *dedit,* &c. Bract. lib. 5.

Quietus, (freed or acquitted) Is a word made uſe of by the Clerk of the *Pipe* and Auditors in the *Exchequer,* in their diſcharges given to *Accountants*; uſually concluding with *abinde receſſat quietus* which is called a *quietus eſt*: A *quietus eſt* granted to the ſheriff, will diſcharge him of all accounts due to the King. *Stat.* 21 *Jac.* 1. *cap.* 5. And theſe *quietus's* are mentioned in the acts of general pardon. 12 *Car.* 2. *c.* 11. and 14 *Car.* 2. *c.* 21.

Quietus Redditus. See *Quit-Rent.*

Quinquageſima Sunday, Is that we call *Shrove-Sunday,* and was ſo named, becauſe it is about the fiftieth day before *Eaſter.*

Quinque Portus, The Cinqne ports, which are, 1. *Haſtings,* 2. *Romney,* 3. *Hythe,* 4. *Dover,* and 5. *Sandwich.* To the firſt, *Winchelſea* and *Rye* belong, which are reckoned as part, or members of the Cinque ports. *Cowell.* See *Cinque Ports.*

Quinſieme, or **Quinzime,** (*Decima Quinta*) Is a *French* word, ſignifying *a fifteenth*; with us it is *a tax,* ſo called, becauſe it is raiſed after the *fifteenth* part of men's lands or goods. *Anno* 10 *Rich.* 2. *cap.* 1. and 7 *H.* 7. *c.* 5.

It is well known by the *Exchequer* roll, what every town throughout *England* is to pay for a fifteenth. See *Fifteenth.*

Sometimes this word *Quinſime* or *Quinzime,* is uſed for the fifteenth day after any feaſt, as the *Quinzime* of St. *John Baptiſt.* Stat. 13 Ed. 1. in the preamble.

It is a miſtake that this was a tax of the *fifteenth* part of all lands, for it was of the goods *only,* and it was firſt granted by the parliament 18 *Ed.* 1. *viz. Compotus quintæ decimæ Regi, anno* 18. *per archiepiſcopos, epiſcopos, abbates, priores, comites, barones, & omnes alios de Regno, de omnibus bonis ſuis mobilibus conceſſæ:* The city of *London* paid this year for the *fifteenth,* 2860 *l.* 13 *s.* 8 *d.* and the abbot of *St. Edmunds* 666 *l.* 13 *s.* 4 *d.* which was by compoſitions, and thereupon had all his temporal goods, and the goods of his convent diſcharged of the fifteenth.

The way of collecting it was, by two aſſeſſors appointed in every county by the King; and they appointed twelve in every hundred, who made a true valuation of every man's perſonal eſtate, and then cauſed the *fifteenth* part to be levied. *Cowell.* and ſee *Black. Com.* 1 *V.* 308.

Quintal, (*Quintallus*) A weight of lead, iron and common metals, uſually one hundred pounds, at ſix ſcore *per Cent.* Cowell.

Quintane, (*Quintena*) Was a *Roman* military ſport or exerciſe, by men on horſeback, formerly practiſed in this kingdom to try the agility of the country youth: It was tilting at a mark made in the ſhape of a man to the navel, in his left hand having a ſhield, in his right a wooden ſword; the whole made to turn round, ſo that if it was ſtruck with the lance in any other part but full in the breaſt, it turned with the force of the ſtroke, and ſtruck the horſeman with the ſword which it held in its right hand: This ſport is recorded by *Matt. Paris, anno* 1253.

Quinto exact', (*Quintus exactus*, mentioned in ſtatute 31 *Eliz. cap.* 3.) Is the laſt call of defendant, who is ſued to outlawry, where, if he appear not, he is by the judgment of the coroners returned *outlawed*; if a woman, *waved*. See *Exigent*, *Outlawry*. And *Black. Com.* 3 *V.* 283. xvi. 4 *V.* 319.

Qui tam, Is when an information is exhibited (or action proſecuted) againſt any perſon on a *penal ſtatute*; at ſuit of the King and the party who is informer, where the penalty for breach of the ſtatute is to be divided between them; and the party informer proſecutes for the King and himſelf. *Finch* 340.

If the whole ſum is given by ſtatute to any perſon who will ſue for the ſame, the proſecutor may bring action *Qui tam*, or ſue in his own name, *&c.* 2 *Lil. Abr.* 59. See *Information*, and *Black. Com.* 3 *V.* 160. 4 *V.* 303.

Quit-claim, (*Quieta clamantia*) Is a releaſe or acquitting of a man, for any action which the releaſer hath, might, or may have againſt him. Alſo a *quitting of one's claim or title.* Bracton, lib. 5. tract. 5. c. 9. num. 6. lib. 4. tract. 6. c. 13. num. 1.

Quit-Rent, (*Quietus, Redditus, quaſi* quit-rent) Is a certain ſmall rent, payable by the tenants of manors, in token of ſubjection, and by which the tenant goes *quiet* and free: In ancient records, it is called *white-rent*; becauſe paid in ſilver money, to diſtinguiſh it from rent-corn, *&c.* 2 *Inſt.* 19. See *Alba firma*, *Chief-Rents*, and *Black. Com.* 2 *V.* 42.

Quoad hoc, Is often uſed in law pleadings and arguments, to ſignify, *as to the thing named the law is ſo, &c.*

Quod clerici beneficiati de cancellaria, Is a writ to exempt a clerk of the Chancery from the contribution towards the proctors of the clergy in parliament. *Reg. Orig.* 261.

Quod clerici non eligantur in officio ballivi, *&c.* Is a writ which lies for a clerk, who, by reaſon of ſome land he hath, is made, or about to be made bailiff, beadle, reeve, or ſome ſuch officer. See *Clerico infra ſacros, &c.* Reg. Orig. 187. and F. N. B. 261.

Quod cum, In indictments, *&c.* As *A. B.* was indicted *Quod cum C. D.* he had done ſuch a thing: And this being *by way of recital*, and *not poſitively*, is not good. 2 *Hawk. P. C.* 227. 3 *Salk.* 188.

Quod ei deforceat, A writ for tenant in tail, tenant in dower, by the curteſy, or for term of life, having *loſt* their lands by default, againſt him who recovers, or his heir. *Reg. Orig.* 171. *Stat. Weſtm.* 2. *c.* 4.

And *Quod ei deforceat* may be brought againſt a ſtranger to the recovery; as if a man recover by default, and maketh a feoffment, this writ may be had againſt the *feoffee*.

If a woman loſe by default, and taketh huſband, ſhe and her huſband ſhall have the *Quod ei deforceat*, but where tenant in tail loſeth by default, and dieth, his heirs ſhall not have a writ of *Quod ei deforceat*, but a *formedon:* And if huſband and wife loſe by default the land of the wife, which ſhe holdeth *for term of life*, and the huſband dieth, ſhe may not have this writ, for *cui in vita* is her remedy; and when one bringeth *Quod ei deforceat*, he counts that he was ſeiſed of the land *in his demeſne, as of freehold*, or in tail, *&c.* without ſhewing of whoſe gift he was ſeiſed; alſo he ought to alledge *eſplees* in himſelf, and then defendant is to deny the right of plaintiff, *&c.* and ſhew how *that at another time* he recovered the land againſt plaintiff, by *formedon*, or other action; and ſhall ſay in the end of his plea, *Quod ipſe paratus eſt ad manutenendum jus & titulum ſuum prædict. per donum, &c. unde petit judic. &c.* New Nat. Br. 347, 349.

If tenant in tail, or ſuch other tenant, who hath a particular eſtate, loſe by default, where he is not ſummoned, *&c.* he may have either a *Writ of diſceit*, or *Quod ei deforceat*. Ibid. *See* 16 Vin. Abr. 145, 148. *and* Black. Com. 3 V. 193.

Quod permittat, Is a writ which lieth againſt any perſon who erects a building, tho' on his own ground, ſo near to the houſe of another, that it hangs over, or becomes a *nuſance* to it. 2 *Lill. Abr.* 413.

Formerly where a man built a wall, a houſe, or any thing which was a nuſance to the freehold of his neighbour, and afterwards died; in ſuch caſe he who received any damage thereby, ſued a *Quod permittat* againſt the heir of him who did the nuſance; and the form of it was *Quod permittat proſternere murum, &c.* 3 Nelſ. Abr. 44. The writ was given by the *Stat. Weſt.* 2.

And at the Common law *an aſſiſe of nuſance* did *not lie* againſt the alienee of a wrong doer, for the purchaſer was to take the land in the ſame condition it was conveyed to him; but by the Statute of *Weſt.* 2. *c.* 24. Damages may be renovered againſt the perſon *who ſold* the land, if the nuſance be not abated on requeſt made to him, or againſt the perſon *to whom he ſold it*; though this doth not extend to the alienee of the alienee. 3 *Nelſ.* 45. *Lutw.* 1588. This writ is ſeldom brought, being turned into action on the caſe. Vide *Nuſance*.

Quod permittat lies alſo for the heir of him who is diſſeiſed of his common of paſture, againſt the heir of the diſſeiſor, being dead. *Terms de Ley.*

And, according to *Broke*, this writ may be brought by him whoſe anceſtor died ſeiſed of common of paſture, or other like thing *annexed to his inheritance*, againſt the deforceor: If a man is diſturbed by any perſon in his common of paſture, ſo that he cannot uſe it, he ſhall have a *Quod permittat*; ſo of a turbary, piſcary, fair, market, *&c.* *New Nat. Br.* 272, 273, 275, 276. And a perſon may have a *Quod permittat* againſt a diſſeiſor, *&c. in the time of his predeceſſor*. 13 Ed. 1. c. 24.

The writ *Quod permittat*, on a diſſeiſin of common of paſture, directed to the ſheriff; *Commands* A. *that juſtly*, &c. *he permit* B. *to have common of paſture in*, &c. *which he ought to have, as it is ſaid; and unleſs he ſhall do it*, &c. *then ſummon*, &c.

See *Bro.* hoc tit. *Reg. Orig. fol.* 155. 18 *Vin. Abr.* 150. and *Black. Com.* 3 *V.* 240.

Quod permittat proſternere. See *Quod permittat*, and *Black. Com.* 3 *V.* 221.

Quod perſona nec prebendarii, &c. Is a writ which lies for ſpiritual perſons, who are diſtrained in their ſpiritual poſſeſſions, for payment of a *fifteenth* with the reſt of the pariſh. *F. N. B.* 176.

Quo jure, Is a writ which lies for him who has land, wherein another challengeth *common of paſture* time out of mind: And is to compel him to ſhew *by what title* he challenges it. *F. N. B.* 128. and *Britton* more largely, *c.* 59. *Reg. Orig.* 156.

This is now out of uſe, as, on the claimant's putting his cattle in, the owner may bring treſpaſs, when the claimant muſt by pleading ſtate his title, and on trial prove it, or ſubject himſelf to a verdict, with damages, *&c.*

Quo minus, Is a writ which lies for him who hath a grant of *houſe-bote*, and *hay-bote* in another man's woods, againſt the grantor, making ſuch waſte as the grantee cannot enjoy his grant. *Old Nat. Br.* 148. and *Kitchin* 178.

This writ alſo lies for the King's farmer in the Exchequer, againſt him to whom he ſelleth any thing by way of bargain *touching his farm*, or againſt whom he hath any cauſe of *perſonal* action. *Perkins, Grants*, 5. For he ſuppoſeth by the vendee's detaining any due from him, he is made *leſs liable to* pay the King's rent.

Formerly it was allowed only to ſuch perſons, as were *tenants or debtors to the King*; at this day the practice is become general for the plaintiff to ſurmiſe that for the wrong which defendant doth him, he is *leſs able to ſatisfy* his debt to his Majeſty; which ſurmiſe gives juriſdiction to the court of *Exchequer*, to hear and determine the cauſe. *Pract. Excheq.* 225.

In this caſe a debtor hath a kind of prerogative remedy granted to him, ſuppoſing that he is diſabled to pay the King. *Old Nat. Br.* 148. *Kitch.* 178. *Finch* 66.

If a privileged perſon of the *Exchequer* court ſue out a *Quo minus* in any action in which the King is party, the ſheriff in execution thereof may, after requeſt to open doors, break them open, *&c.* *Pract. Solic.* 194. and 5 *Co.* 91. See *Black. Com.* 3 *V.* 45, 286. xix.

Quorum, (*Lat.*) Often occurs in our ſtatutes, and *commiſſions* both of the peace and others, but particularly in commiſſions to juſtices of the peace; and a *juſtice* of the *quorum* is ſo called, from the words in the commiſſion,

quorum* A. B. *unum eſſe volumus: As where a commiſſion is directed to five perſons, whereof *A. B.* and *C. D.* to be two: In this caſe *A. B.* and *C. D.* are ſaid to be of the ***quorum***, and the reſt cannot proceed without them. They are uſually perſons of greater quality or eſtates than the common commiſſioners. 3 *Hen* 7. *c.* 3. 32 *Hen.* 8. *c.* 43. It is uſual now to make almoſt every one (two or three excepted) of the *quorum*. See *Black. Com.* 1 *V.* 351.

Quorum nomina. In the reign of *Hen.* 6. the King's collectors, and other accountants, were much perplexed in paſſing their accounts, by new extorted fees, and forced to procure a then late invented writ of *quorum nomina*, for allowing and ſuing out their *quietus* at their own charge, without allowance of the King. *Cron. Angl.*

Quota, A tax to be levied in an equal manner. *Chart. Rich* 2.

Quo Warranto, Is a writ which lies againſt any perſon or corporation, that uſurps any franchiſe or liberty *againſt the King, without good title*; and is brought againſt the uſurpers *to ſhew by what right and title* they hold or claim ſuch franchiſe or liberty: It alſo lies for miſ-uſer, or non-uſer of privileges granted; and by *Bracton* it may be brought againſt one who intrudes himſelf as heir into land, *&c.* *Old Nat. Br.* 149. *Finch* 322. 2 *Inſt.* 279.

The ſtatute of *Quo Warranto* is the 18 *Ed.* 1. *ſt.* 2. which is commented on 2 *Inſt.* 494, 495, *&c.*

The Attorney General may exhibit a *Quo Warranto* in the Crown-Office againſt any particular perſon, body politic or corporate, who claim or uſe any franchiſes, privileges or liberties, not having a legal grant or preſcription for the ſame; and *compel them by proceſs* to appear in the Crown-Office; and *ſhew cauſe* or *ſet forth by way of pleading what title* they have to the privileges claimed, and the iſſue ſhall be joined and tried thereon by *niſi prius*, or the plea be determined by the judges on demurrer, as in other caſes: But though on demurrer, *&c.* the queſtion be determined for defendant, yet he has no coſts allowed; if againſt him, he muſt be fined for the uſurpation, and pay large coſts to the proſecutor. *Inſtit. Legal.* 147, 148, 157.

But this is altered by ſtatute 9 *Ann. c.* 20. It has been adjudged, that the ſtatute 4 *&* 5 *W. & M. c.* 18. by which informations in the Crown-Office are not to be filed *without expreſs orders in open court*, *&c.* being a remedial law, extends to informations in the nature of a *Quo Warranto*, which always ſuppoſe the uſurpation of ſome franchiſe; and it is the general practice not to make ſuch an order for an information, without firſt making a rule on the perſon complained of *to ſhew cauſe to the contrary*; and this rule is grounded on an affidavit of the offence, *&c.* and if the perſon on whom the rule is made and perſonally ſerved, do not at the day given ſatisfy the court *by affidavit*, that there is no reaſonable cauſe for the proſecution, the court generally grants the information; and on ſpecial circumſtances, will grant it againſt thoſe who cannot be perſonally ſerved with ſuch rule; as if they purpoſely abſent themſelves, *&c.* but if the party on whom ſuch a rule is made, *ſhew to the court a reaſonable cauſe* againſt ſuch proſecution; as againſt a *Quo Warranto* information, that *his right in the franchiſe in queſtion hath been already determined* on a *mandamus*; or been acquieſced in many years; or that it depends on the right of others which hath not been tried; or that the franchiſe no way concerns the public, but is wholly of private nature, *&c.* the court will not generally grant the information. 2 *Hawk. P. C.* 262, 263.

A *Quo Warranto* was brought for vexation, on forty-eight points; and the court, on motion, ordered the proſecutor ſhould wave that *Quo Warranto*, and bring a new one, and therein inſiſt only on three points; but that he might proceed to trial on his new *Quo Warranto*, in ſuch time as he might have done upon the old. 2 *Lil. Abr.* 414.

A *Quo Warranto* requires to know of defendant by what authority he claims the liberties, and charges him with the wrongful uſurpation of them: In a *Quo Warranto* to ſhew by what authority a perſon claimed to have a *Court Leet*, and alledging farther *quod uſurpavit libertatem ſine aliqua conceſſione, &c.* defendant pleaded *Non uſurpavit*; and it was objected that this was no good plea, for the anſwer to *Quo Warranto* is either to claim or diſclaim; but the better opinion was, that by this plea defendant had anſwered the uſurpation, though it did not ſhew by what title he claimed. *Godb.* 91.

In *Quo Warranto* for uſing a *fair* and *market*, and taking *toll*, iſſue was taken, whether they had toll by preſcription, or not; and it was found they had; it was moved in arreſt of judgment, that here was a diſcontinuance, becauſe there was no iſſue as to the other liberties claimed: but it was held, they were too ſoon to make this objection, and that there can be no diſcontinuance againſt the King *before judgment*; for, by virtue of his prerogative, the Attorney General may proceed to take iſſue on the reſt, or may enter a *nolle proſequi*; but if he will not proceed, the court may make a rule on him *ad replicandum*, and then there may be a ſpecial entry made of it. *Hardres* 504. 3 *Nelſ. Abr.* 43.

A motion was made for an information in nature of a *Quo Warranto*, againſt a mayor and aldermen, to ſhew by what authority they admitted perſons to be freemen of the corporation, who did not inhabit in the borough: The motion was ſaid to be in behalf of the freemen, who by this means were encroached on; and an information was granted, there being no other way to try it, nor to redreſs the parties concerned. 1 *Salk.* 374.

Quo Warranto Information may be brought againſt a perſon voting in the election of a mayor, or other chief magiſtrate of a corporation, who hath no right to do it, on affidavit made that defendant voted in ſuch an election, and that the deponent (the proſecutor) believes he had no right to do it, *&c.*

And by ſtatute 9 *Ann. c.* 20. If any perſon uſurp, intrude into, or unlawfully hold or execute the office of a mayor, bailiff, or other office, the proper officer of the court of *King's Bench*, &c. may exhibit *informations* in the nature of a *Quo Warranto*, at the relation of any perſon deſiring to proſecute, who ſhall be mentioned therein to be the *relator* againſt ſuch uſurper, and proceed as uſual; and if the right of divers perſons may properly be determined in one information, one information ſhall ſerve, and defendants ſhall appear and plead *as of the ſame term*, the information is filed, unleſs the court give further time; and the proſecutor ſhall proceed with all convenient ſpeed: And if defendants be found guilty of an uſurpation, *&c.* the courts may as well give judgment of *ouſter*, as fine defendants; and alſo give judgment that the relator recover coſts; If judgment be given againſt relator, defendants ſhall have coſts to be levied by *Ca. Sa. Fi. fa.* &c.

In a *Quo Warranto*, judgment is final, becauſe *that* is a writ of right; but judgment on information, in nature of a *Quo Warranto*, is not concluſive; the proceedings in one are ſummons, and judgment that the liberties be ſeized, if defendant doth not appear; but in the other the proceſs is a *venire facias* and *diſtringas*. Sid. 86. Kel. 139, *&c.* 3 Nelſ. Abr. 43.

Upon *Quo Warranto*, when liberties are ſeized *quouſque*, *&c.* and they do not replevy them, the courſe is, that judgment final be given, *niſi* they plead within ſuch a time. *Comberbach* 18, 19.

Wherever judgment is given for the King on a *Quo Warranto*, for liberties uſurped, the judgment is *Quod extinguatur*, and that the uſurpers *libertates, &c. nullatenus intromittant*; and in ſuch caſe the writ muſt be brought againſt particular perſons: But where the *Quo Warranto* is for a liberty claimed by *a corporation*, there it is to be brought againſt the body politic; and the liberties may be ſeized, but the corporation ſtill ſubſiſts, and is not diſſolved without cauſe of forfeiture. 4 *Mod.* 52, 58.

A judgment of ſeizure cannot be proper where a thing is diſſolved: And the judgment in the *Quo Warranto* againſt the city of *London*, ſeems contradictory, for the firſt part of it is, *quod libertates & franchiſiæ capiuntur & ſeiſanter in manus Regis*; and the latter part of it is, *quod capiantur ad ſatisfaciend' Domino Regi de fine ſuo pro uſurpatione libertat'*, *&c.* And the corporation was not thereby diſſolved; for it implied that they were not extinguiſhed. *Ibid.*

It has been obſerved, that frequent and violent proſecutions on *Quo Warranto*'s, in behalf of the crown, have been fatal to both King and people.

An information in the nature of a *Quo Warranto*, lies for acting as a truſtee, under an act of parliament, without due appointment. 1 *Strange* 299. Againſt one for uſurping the office of Steward of a court-leet. *Ibid.* 621. For erecting a new office. 2 *Strange* 836. For the office of conſtable. *Ibid.* 1213. For a ferry. *Ibid.* 1161. But not for erecting a warren. 1 *Strange* 637. Nor for the office of churchwarden. *Ibid.* 1196.

R.

RAchetum, (from the Fr. *racheter*, i. e. *redimere)* The compenſation or redemption of a thief.—— *Nullus capiat* rachetum *de latrocinio.* 1 Stat. Rob. K. Scot. c. 9.

Rack, An engine to extort *confeſſion* from delinquents, but utterly unknown to the law of *England*. See *Black. Com.* 4 *V.* 329.

Rack-Rent, Is *the full yearly value* of the land let by leaſe, payable by tenant for life or years, *&c. Wood's Inſt*, 185.

Rack-Vintage, A ſecond vintage, or voyage made by our merchants for *Racked Wines*, i. e. Wines drawn from the lees. *Stat.* 32 *Hen.* 8. *c.* 14.

Rageman, Is a ſtatute of juſtices aſſigned by *Ed.* 1. and his counſel, to hear and determine all complaints of injuries done throughout the realm, within the five years next before *Michaelmas*, in the fourth year of his reign.

Ragloria, A word mentioned in the charter of *Edw.* III. whereby he made his eldeſt ſon *Edward* Prince of *Wales*, in parliament at *Weſtminſter* the ſeventeenth year of his reign, recited by *Selden* in his *Titles of Honour*, 597.——*Cum foreſtis, parcis, chaſeis, boſcis, waremis, hundredis, comotis,* ragloriis, *ringeldiis, wodewardis, conſtabulariis, ballivis, &c. Davis* in his *Dictionary* ſays, that *rhaglaw* among the *Welſh* ſignifies *ſeneſchallus, ſurrogatus, præpoſitus.*

Raglorius, A ſteward. *Selden*, tit. *of Honour*, 597. *Cum hundredis commotis*, ragloriis, *rengeldis*, &c.

Ragman's Roll, *Rectius* Ragimund's Roll, ſo called from one *Ragimund* a legate in *Scotland*, who, calling before him all the beneficed clergymen in that kingdom, cauſed them on oath to give in *the true value* of their benefices; according to which they were afterwards taxed by the court of *Rome:* And this roll, among other records, being taken from the *Scots* by *Ed.* 1. was redelivered to them in the beginning of the reign of *Ed.* 3.

Sir *Richard Baker* ſaith, That *Ed.* 3. ſurrendered, by charter, all his right of ſovereignty to the Kingdom of *Scotland*, and reſtored divers inſtruments of their former homages and fealties, with the famous evidence called *Ragman's Roll.* Bak. Chron. 127.

Ran, (a *Saxon* word) Signifies *aperta rapina*, open or public theft. *Lamb. Archai.* 125. defines it thus, Ran *dicitur aperta rapina, quæ negari non poteſt.*

In the *Saxon* laws of *Canute, cap.* 58. *Si in profectione militari* ran *commiſerit, pro facti ratione emendato, Hoveden* in the latter part of *Henry* II. ſpeaking of ſome things, which *William* the Conqueror amended in the laws of *England*, ſaith, *Decretum eſt etiam ibi, ut ſi Francigena appellaverit Anglicum de perjurio aut murdro, furto, homicidio,* ran *quod dicunt apertam rapinam quæ negari non poteſt, Anglicus ſe defendet, per quod melius voluerit, aut judicio ferri aut duello.* We ſtill ſay, when a man takes away the goods of another by violence, he hath taken all he could *rap and ran. Rap* from *rapio,* to ſnatch. *Cowell.*

Range, From the French *ranger*, to order, diſpoſe of of. It is uſed in the *Foreſt Laws*, both as a verb, as to *range*, and a ſubſtantive as to *make range.* Charta de Foreſta, cap. 6. To *range* alſo, ſignifies to wander and ſtray about.

Ranger, Is a ſworn officer of the foreſt, of which there are twelve. *Id. c.* 7. whoſe authority is in part deſcribed by his oath ſet down by *Manwood, part.* 1. 50. but more particularly *part.* 2. *cap.* 20. *num.* 15, 16, 17. His office chiefly conſiſts in three points, To walk *daily* through his charge, to ſee, hear and inquire, of treſpaſſes in his bailiwick; To drive the beaſts of the foreſt both of venary and chaſe out of the deafforeſted into the foreſted lands: And to preſent all treſpaſſes of the foreſt at the next court holden for the foreſt.

This *ranger* is made by the King's letters patent, and hath a fee of twenty or thirty pounds paid yearly out of the Exchequer, and certain fee-deer. *Rangeator Foreſtæ de whittlewood. Pat.* 14 *R.* 2. *m.* 3.

Ranſome, (Fr. *Rancon*, i. e. *Redemptio)* Is properly the ſum paid for redeeming a captive or priſoner of war; and ſometimes taken in our law for a ſum of money paid for pardoning ſome great offence, and ſetting the offender at liberty who was under impriſonment. *Stat.* 1 *H.* 4. *c.* 7. 11 *H.* 6. *c.* 11.

Fine and *Ranſom* go together, and ſome writers tell us, that they are the ſame; but others ſay, that the offender ought to be firſt impriſoned, and then delivered or *ranſomed* in conſideration of a fine. *Co. Lit.* 127. *Dalt.* 203.

Ranſom differs from *Amerciament*, being a redemption of a corporal puniſhment due to any crime. *Lamb. Eiren.* 556.

A ſhip was taken by the *French*; the maſter (having a ſhare in her) ranſomed her for 1800*l.* and was taken to *France* as an hoſtage for this money. The ranſom money *muſt* be raiſed out of the *profits*, notwithſtanding any former mortgage of the ſhip; for if there was a precedent mortgage, what would become of that ſecurity, if the ſhip had not been redeemed? After the ſhip was redeemed, ſhe performed her intended voyage, and the freight money received after redemption was the firſt profits ariſing, and out of them the ranſom money is to be ſatisfied; the inſurers always pay a part of the ranſom money. 2 *Eq. Abr.* 690.

Rape, *(Rapus vel Rapa)* Is part of a county, ſignifying as much *as a hundred*, and oftentimes contains in it more hundreds than one.

Suſſex is divided into ſix *Rapes* only, *viz.* The *Rape* of *Chicheſter, Arundel, Bramber, Lewis, Pavenſey*, and *Haſtings*; every of which, beſides hundreds, hath a caſtle, river, and foreſt belonging to it. *Camb. Britann.* 225, 229. Theſe *Rapes* are incident to the county of *Suſſex*; as *Lathes* are to *Kent*; and *Wapentakes* to *Yorkſhire*, &c. See *Rape of Women, poſt.*

Rape of the Foreſt, *(Raptus Foreſtæ)* Treſpaſs committed in the foreſt by violence; and is reckoned among thoſe crimes, whoſe cogniſance belonged only to the King.——*Inter delicta numeratur, quorum cognitio ad unicum regem ſpectat.* Leg. Hen. 1. c. 10.

Rape of Women, Is an *unlawful* and *carnal knowledge* of a woman, *by force*, and AGAINST HER WILL: A *raviſhment* of the body, and violent deflouring her; which is felony by the Common and Statute law. *Co. Lit.* 190. The word *Rapuit* is ſo appropriated by law to this offence, that it cannot be expreſſed by any other; even the words *Carnaliter Cognovit, &c.* without it, will not be ſufficient. *Co. Lit.* 124. 2 *Inſt.* 180.

There muſt be *penctration* and *emiſſion*, to make this crime; and it is ſaid emiſſion may be evidence *prima facie* of penetration, though not *full* evidence: If there be no penetration and emiſſion, an attempt to raviſh a woman, though it be never ſo outrageous, will be an aſſault *only.* 1 Hawk. P. C. 108.

It was a queſtion before 18 *Eliz. c.* 7. whether a *rape* could be committed on the body of a child of the age of *ſix* or *ſeven* years; and a perſon being indicted for the *rape* of a girl of ſeven years old, although he was found guilty, the court doubted, whether a child of that age could be raviſhed; if ſhe had been nine years old ſhe might, for *at that age ſhe may be endowed.* Dyer 304.

By the ſtatute 18 *Eliz. c.* 7. *ſ.* 4. whoever ſhall carnally know and abuſe any woman child *under the age of* *ten years*, he ſhall ſuffer as a felon, without benefit of clergy: And on an indictment for this offence, it is no way way material whether ſuch child conſented or were forced; but *it muſt be proved* that the offender *entered her body*, &c. Cro. Car. 332. Dalt. 393.

It is no excuſe or mitigation of the crime, that the woman *at laſt* yielded to the violence, and conſented either after the fact or before, *if* ſuch conſent *was forced* by fear of death or dureſs; or that ſhe was a common ſtrumpet, for ſhe is ſtill under the protection of the law, and may be forced: But it was anciently held to be no *rape* to force a man's own concubine; and it is ſaid by ſome to be evidence of a woman's conſent, that ſhe was a common whore. 1 *Hawk*. 108. *Co. Lit*. 123.

Alſo formerly it was adjudged not to be a *rape* to force a woman, *who conceived at the time*; becauſe *if ſhe had not conſented, ſhe could not have conceived:* Though this opinion hath been ſince queſtioned, by reaſon *the previous violence is no way extenuated by ſuch a ſubſequent conſent*; and if it were neceſſary to ſhew the woman did not conceive, to make the crime, the offender could not be tried till ſuch time as it might appear whether ſhe did or not 2 *Inſt*. 190.

The ſooner complaint is made of a *rape*, the better: In *Scotland* it ought to be complained of the *ſame* day or night it is committed; and our law mentions *forty days: It is a ſtrong preſumption againſt a woman, that ſhe made no complaint in a reaſonable time after the fact*. Co. Lit. 123. 7 Inſt. 59. H. P. C. 117.

On a bill of conſpiracy, &c. where defendant did not indict plaintiff for a *rape*, in a ſhort time after the injury ſuppoſed to be done, but *concealed it for half a year*, and then would have preferred an indictment againſt him; this was *reſolved to be malicious*, and that there not being *Recens proſecutio* argued a conſent. 3 *Nelſ. Abr*. 45.

A woman raviſhed may proſecute and be a witneſs in her own cauſe. 3 *Rep*. 37. Yet a woman's poſitive oath of a *rape*, without concurring circumſtances, *is ſeldom credited:* If a man can prove himſelf to be in *another place*, or in other company, *at the time* ſhe charges him with the fact, *this* will overthrow her oath; ſo if ſhe is *wrong* in the deſcription of the place, or ſwears the fact to be committed in a place *whereto it was impoſſible* the man could have acceſs at that time; as if the room was locked up, and the key in the cuſtody of another perſon, &c.

Aiders and abettors in committing a *rape*, may be indicted as *principal* felons, whether men or women; and Lord *Audley* was indicted and executed *as a principal*, for aſſiſting his ſervant to raviſh his own wife, who was admitted a witneſs againſt him. *Dalt*. 107. *State Trials, Vol*. 1 *p*. 265.

By *Hale* Ch. J. A party raviſhed may give evidence on oath; but the credibility of her teſtimony, and how far ſhe is to be believed, *muſt be left to the jury*, being more or leſs credible according to the circumſtances of fact, and ſigns of the injury, which are many; and though a *rape* is a moſt deteſtable crime, *it is an accuſation eaſily made*, and hard to be proved, but harder to be defended by the man accuſed, although ever ſo innocent: And there are ſeveral inſtances of *rapes* fully proved, but have after been diſcovered to be malicious contrivances. 1 *Hale's Hiſt. P. C*. 635, 636.

Of old time, *rape* was felony, and puniſhed with death; eſpecially if the party raviſhed were *a virgin*, unleſs ſuch virgin would accept of the offender for her huſband, in which caſe ſhe might ſave his life; by marrying him; for if ſhe demanded him for her huſband before judgment paſſed, he eſcaped puniſhment; but by the ſtat. *Weſtm*. 2. her election is taken away: Afterwards it was looked on as a great miſdemeanor only, and not felony, but puniſhed, by loſs of eyes and privy members; and by the ſtatute of *Weſtm*. 1. 3 *Ed*. 1. *c*. 13. it was reduced to treſpaſs, ſubjecting the offender to two years impriſonment, and a fine at the King's will: But the ſtatute *Weſtm*. 2. *c*. 34. made it felony again; and it is excluded from the benefit of the clergy, by 18 *Eliz*. *c*. 7. *Rape* was excepted out of the general pardon. 2 *W*. & *M*. *c*. 10, &c. See *Appeal of Rape*. And *Black. Com*. 4 *V*. 210. And ſee 1 *Hale's P. C*. 633, 635, 636.

All who are preſent, and actually aſſiſt a man to commit a *rape*, may be indicted as principal offenders, whether men or women. 1 *Hawk*. 108.

Rapine, *(Rapina)* To take a thing in private againſt the owner's will, is properly theft; but to take it openly, or by violence, is *rapine*. 14 *Car*. 2. *c*. 22. and 18 *Car*. 2. *c*. 3. See *Black. Com*. 4 *V*. 241.

Raptu heredis, Is a writ for taking away an heir holding in *ſocage*; of which there are two ſorts, one when the heir is married, the other when he is not; ſee *Reg. Orig*. 163.

Raſe, *(Raſeria)* Seems to have been a meaſure of corn now diſuſed. *Toll ſhall be taken by the* raſe, *and not by the heap or cantel*. Ordinance for bakers, brewers, &c. c. 4.

Raſure of a deed, ſo as to alter it in a material part, *without conſent of the parte bound* by it, &c. will make the ſame void, and if it be raiſed in the date, *after delivery*, it is ſaid it goes through the whole. 5 *Rep*. 23. 119.

Raſure, &c. is moſt ſuſpicious, when it is in a deed poll, that there is but one part of the deed, and it makes to the advantage of him to whom made. And where a deed by raſure, addition, or alteration becomes no deed, the defendant may plead *non eſt factum*. Ibid. See *Black. Com*. 2 *V*. 308.

Rate, A valuation of every man's eſtate; or the appointing and ſetting down how much every one ſhall pay, or be charged with to any tax. *Stat*. 43 *Ed*. 2.

Rate-Tithe, Is when any ſheep or other cattle are kept in a pariſh for leſs time than a year, the owner muſt pay tithe for them *pro Rata*, according to the cuſtom of the place. *F. N. B*. 51.

Ratification, *(Ratificatio)* A ratifying or confirming: It is particularly uſed for the confirmation of a clerk in a prebend, &c. formerly conferred on him by the biſhop, where the right of patronage is doubted or ſuppoſed to be in the King. *Reg. Orig*. 304.

Ratihabitio, Confirmation, agreement, conſent. See 18 *Vin. Abr*. 156.

Ratio, Properly ſignifies reaſon; but we take it moſtly for an account, as *reddere rationem*, to give an account, and ſo it is frequently uſed. According to ſome it is a cauſe, or give judgment therein; and *ponere ad rationem*, is to cite one to appear in judgment. *Walſing*. 88.

Rationabilibus diviſis, Is a writ which lies where two lords, in divers towns, have ſeigniories joining together, for him who findeth his waſte by little and little to have been encroached on, againſt the other who hath encroached, thereby to rectify their bounds; in which reſpect *Fitzherbert* calls it in its own nature a *writ of right*. The *Old Nat. Brev*. ſays, That this is a kind of *Juſticies*, and may be removed by a *pone* out of the county to the Common Bench. See the form and uſe in *F. N. B*. 128. and *Reg Orig*. 157. The *Civilians* call this *Judicium finium regendorum*.

Rationabile Eſtoverium, Was alimony heretofore ſo called. *Rot*. 7 *H*. 3.

Rationabili parte, A writ of right for lands, &c. See *Recto de Rationabili parte*. And *Black. Com*. 3 *V*. 194.

Rationabili parte Bonorum, Is a writ which lies for a wife, after the death of her huſband, againſt the executors of the huſband denying her the third part of his goods after debts and funeral charges paid. *F. N. B*. 222.

It appears by *Glanvile*, that by the Common law of *England*, the goods of the deceaſed (his debts firſt paid) ſhall be divided into three parts; one for the wife, another for his children, and the third to the executors: And this writ may be brought by the children, as well as the wife. *Reg. Orig*. 142.

But it ſeems to be uſed only where the cuſtom of the country ſerves for it; and the writs in the regiſter rehearſe the cuſtoms of the counties, &c. *New Nat. Br*. 270, 271.

As to children bringing this writ, their marriage is no advancement, if the father's goods be not given in his life-time; but where a child is advanced by the father, this writ will not lie. *Ibid*. See 18 *Vin. Abr*. 158. and *Black. Com*. 2 *V*. 492.

Rationale, Was the ſame with *pallium:* It was worn by the high prieſt of the old law, as a ſign of the greateſt perfection, and by the pope and biſhops as a token of the higheſt virtue, *quæ gratia & ratione perficitur,* hence it is called *rationale.*

Raviſhment, (Fr. *Raviſſement,* i. e. *Direptio, raptio)* Signifies an unlawful taking away either a woman, or an heir in ward; ſometimes it is uſed in the ſame ſenſe with *rape.*

Raviſhment de gard, A writ which lay for the guardian by knight's ſervice, or in ſocage, againſt a perſon who took from him the body of his ward. *F. N. B.* 140.

By 12 *Car.* 2. *c.* 24. this writ is taken away, as to lands, held by knights-ſervice, *&c.* but not where there is guardian in ſocage, or appointed by will.

The Mayor and Aldermen and Chamberlain of *London,* who have the cuſtody of orphans, if they commit any orphan to another, he ſhall have a writ of *raviſhment* of ward againſt him who taketh the ward out of his poſſeſſion. *New Nat. Br.* 317.

Ray, A word appropriated to cloth never coloured or dyed. Stat 17 *R.* 2. *cap.* 3. 11 *H.* 4. *cap.* 6. and 1 *R.* 3. *cap.* 8.

Reafforeſted, Is where a foreſt which had been *diſafforeſted* is again made foreſt; as the foreſt of *Dean* is by *Stat.* 20 *Car.* 2. *c.* 3.

Realty, Is an abſtract of *real,* as diſtinguiſhed from *perſonalty.*

Reaſon, Is the very life of law; and what is contrary to it is unlawful.

When the *reaſon* of the law once ceaſes, the law itſelf generally ceaſes; becauſe *reaſon* is the foundation of all our laws. *Co. Lit.* 97, 183.

If maxims of law admit of any difference, thoſe are to be preferred which carry with them the more perfect and excellent *reaſon.* Ibid. *See* Black. Com. 1 V. 70.

Reaſonable aid, Was a duty claimed by the lord of the fee of his tenants holding by knights ſervice, to marry his daughter, *&c.* *Stat. Weſtm.* 2. *c.* 24. See the Stat. 12 *Car.* 2. *c.* 24.

Reaſonable part. See *Black. Com.* 2 *V.* 492, 516. 4 *V.* 401, 417.

Reattachment, *(Reattachiamentum)* Is a ſecond *attachment* of him who was formerly attached and diſmiſſed the court without day, by the not coming of the juſtices, or ſome ſuch caſualty. *Broke Reg. Orig.* 35.

A cauſe diſcontinued, or put without day, cannot be revived without *reattachment* or reſummons; which, if they are ſpecial, may revive the whole proceedings; but if general, the original record only. 2 *Hawk.* 300. And on a *reattachment,* the defendant is to plead *de novo, &c.* See *Day.*

Rebate, Is an abating what the intereſt of money comes to, in conſideration of *prompt* payment. *Merch. Dict.*

Rebellion, *(Rebellio)* Among the *Romans,* was where thoſe who had been formerly overcome in battle, and yielded to their ſubjection, made a ſecond reſiſtance: But with us it is generally uſed for the taking up of arms *traiterouſly* againſt the King, whether by natural ſubjects, or others when once ſubdued; and the word *rebel* is ſometimes applied to him who wilfully breaks a law; ſo to a villein diſobeying his lord. *Stat.* 25 *Ed.* 3. *c.* 6. 1 *R.* 2. *c.* 6.

There is a difference between *enemies* and *rebels;* enemies are thoſe who are out of the King's allegiance; therefore ſubjects of the King, either in open war, or *rebellion,* are not the King's enemies, but traitors. And *David Prince of Wales,* who levied war againſt *Ed.* 1. becauſe he was within the allegiance of the King, had ſentence pronounced againſt him *as a traitor and rebel.* Fleta, lib. 1. c. 16. Private perſons may arm themſelves to ſuppreſs *rebels, enemies, &c.* 1 Hawk. P. C. 136.

Rebellious aſſembly, Is a gathering together of *twelve perſons,* or more, *intending* or *going about to practiſe* or put in uſe unlawfully, *of their own authority,* any thing to change the laws or ſtatutes of the realm; or to deſtroy the incloſures of any ground, or banks of any fiſh-pound, pool or conduit, to the intent the ſame ſhall lie waſte and void; or to deſtroy the deer in any park, or any warren of conies, dove-houſes, or fiſh in ponds; or any houſe, barns, mills or bays; or to burn ſtacks of corn; or abate rents, or prices of victuals, *&c.* *Stat.* 1 *Mar. cap.* 12. 1 *Ed.* 6. See *Aſſembly unlawful.* And 3 & 4 *Ed.* 6. *c.* 5. 1 *Mar. ſt.* 2. *c.* 12. 1 *El. c.* 16. & 1 *Geo.* 1. *c.* 5.

Rebutter, (from the Fr. *bouter,* i. e. *repellere,* to put back or bar) Is the anſwer of defendant to plaintiff's *ſurrejoinder:* And plaintiff's anſwer to the *rebutter* is called a *ſurrebutter;* but it is very rare the parties go ſo far in pleading. *Pract. Attorn, edit.* 1. 86.

Rebutter is alſo where a man by deed or fine grants to warranty any land or hereditament to another; and the perſon making the warranty or his heir, ſues him to whom the warranty is made, or his heir or aſſignee, for the ſame thing; if he who is ſo ſued, *plead the deed or fine with warranty,* and pray judgment if the plaintiff ſhall be received to demand the thing which he ought to warrant to the party, againſt the warranty in the deed, *&c.* this is called a *rebutter.* Terms de Ley. And if I grant to a tenant to hold without impeachment of waſte, and afterwards implead him for waſte done, he may *debar* me of this action by ſhewing my grant; which is *rebutter.* Co. Entr. 284. Co. Litt. 365. *See* Black. Com. 3 V. 310.

Recaption, (*Recaptio*) Signifies the *taking a ſecond diſtreſs* of one formerly diſtrained, during the plea grounded on the former diſtreſs; and it is a writ to recover damages for him whoſe goods being diſtrained for rent, or ſervice, *&c.* are diſtrained *again* for the *ſame cauſe,* pending the plea in the country-court, or before the juſtices. *F. N. B.* 71, 72. *Stat.* 47 *Ed.* 3. *c.* 7.

And a *recaption* lies where the lord diſtrains *other* cattle of the tenant than he firſt diſtrained, as well as if he had diſtrained the ſame cattle again, *if it be for one and the ſame cauſe;* but 19 *Ed.* 3. iſſue was taken whether the cattle were other cattle of the plaintiff, *&c.* *New Nat. Br.* 161.

If the lord diſtrain the cattle of a ſtranger for the ſame rent, and not his cattle who was firſt diſtrained; neither the ſtranger, nor the party firſt diſtrained, ſhall have the writ of *recaption:* And if the lord diſtrain for rent or ſervice, and afterwards the lord's bailiff takes a diſtreſs on the ſame tenant for the ſame rent or ſervice, *pending the plea;* the tenant ſhall not have a *recaption* againſt the lord, or againſt the bailiff, altho' the bailiff maketh cogniſance in right of the lord, *&c.* for *it may be the lord had no notice of that diſtreſs,* or *the bailiff had no notice of the diſtreſs taken by the lord;* tho' in ſuch caſe action of *treſpaſs lies;* and if the lord agree to the diſtreſs taken by his ſervant or bailiff, the tenant may have this writ againſt the lord. *Ibid.* 159.

A man is diſtrained within a liberty, and ſues a *replevin* there by plaint or writ, and pendant that plaint in the liberty he is diſtrained again for the ſame cauſe by the perſon who diſtrained before; he ſhall not on that diſtreſs bring a writ of *recaption,* becauſe the plaint is not pendant in the county-court before the ſheriff, nor in *C. B.* before the juſtices: But if the plaint be removed by *pone* or *recordare* out of the liberty before the juſtices, then the party diſtrained may have a *recaption, &c.* And if a perſon be convicted before the ſheriff in a writ of *recaption,* he ſhall not only render damages to the party, but be amerced for the contempt; and be fined. 39 *Ed.* 3.

For damage feaſant beaſts may be diſtrained as often as they be found on the land; becauſe every time is for a new treſpaſs and a new wrong, and no *recaption* lies.

Recaption is alſo a ſpecies of remedy by the mere act of the party injured. This happens, when any one hath deprived another of his property in goods or chattels perſonal, or wrongfully detains one's wife, child, or ſervant; in which caſe the owner of the goods, and the huſband, parent, or maſter, *may lawfully* claim and *retake them,* wherever he happens to find them; ſo it be not in a riotous manner, or attended with a breach of the peace. 3 *Inſt.* 134. *Hal. Annal. ſ.* 46.

The reaſon for this is obvious; ſince it may frequently happen that the owner may have this *only* opportunity of doing himſelf juſtice: His goods may be afterwards conveyed away or deſtroyed; and his wife, children, or ſervants, concealed or carried out of his reach; if he had no ſpeedier remedy than the ordinary proceſs of law. If therefore he can ſo contrive it as to gain poſſeſſion of his property again, without force or terror, the law favours and will juſtify his proceeding. But, as the public peace is a ſuperior conſideration to any one man's private property; and as, if individuals were once allowed to uſe private force as a remedy for private injuries, all ſocial juſtice muſt ceaſe, the ſtrong would give law to the weak, and every man would revert to a ſtate of nature; for theſe reaſons it is provided, that this natural right of *recaption* ſhall never be exerted, where ſuch exertion muſt occaſion ſtriſe and bodily contention, or endanger the peace of ſociety. If, for inſtance, my horſe is taken away, and I find him in a common, a fair, or a public inn, I may lawfully ſeize him to my own uſe: But I cannot juſtify breaking open a private ſtable, or entering on the grounds of a *third* perſon, to take him, except he be feloniouſly ſtolen; but muſt have recourſe to an action at law. 2 *Roll. Rep.* 55, 56, 208. 2 *Roll. Abr.* 565, 566. *Black. Com.* 3 *V.* 4, 5. and 4 *V.* 356.

Receipt, or **Receit**. See *Reſceit.*

Receiver, (*Receptor*) Is by us, as with the *Civilians*, commonly uſed in the evil part, for ſuch as *receive* ſtolen goods, *&c.* And *receiving* a felon, and concealing him and his offence, makes a perſon acceſſary to the felony. 2 *Inſt.* 183. But the *receiver* of a felon, *&c. muſt have notice of the felony* either expreſs or implied, which is to be *expreſly charged in the indictment*; and the felony muſt be compleat at the time of the receipt, and not become ſo afterwards by matter ſubſequent: If a perſon knowing one to have been guilty of felony, barely receive him and permit him to eſcape, without giving him any advice, aſſiſtance or encouragement, it is a high miſdemeanor, but no capital offence; and a wife, in regard to the duty and love ſhe owes her huſband, may *receive* him when he hath committed felony; but no other relation will exempt the *receiver* of a felon from puniſhment. *S. P. C.* 41. *H. P. C.* 218, 219. 2 *Hawk. P. C.* 122, 319, 320.

By ſtatute, if any perſon *receive* or buy knowingly any ſtolen goods, or conceal felons knowing of the felony, *he ſhall be acceſſary* to the felony, and ſuffer death as a felon. *Stat.* 5 *Ann. c.* 31. Such *receivers, &c.* may be tranſported, by 4 *Geo.* 1. *c.* 11. See *Black. Com.* 4 *V.* 132.

Receiver, Annexed to other words, as *receiver of rents* ſignifies an *officer* belonging to the King or other perſonage. *Comp. Juriſd.* 18. See *Accompt.*

Receiver of the Fines, An officer who receives the money of all ſuch as compound with the King on *original* writs ſued out of Chancery. *Weſt. Symb. par.* 2. *ſect.* 106. *Stat.* 1 *Ed.* 4. *c.* 1.

Receiver General of the Dutchy of Lancaſter, An officer of the *dutchy court*, who collects all the revenues, fines, forfeitures and aſſeſſments, within the *dutchy*, or what is there to be received ariſing from the profits of the dutchy lands, *&c.* 39 *Eliz. cap.* 7.

Receivers, What the receivers of the King's rents and tenths ſhall take for acquittances, ſee 33 *H.* 8. *c.* 39. *ſ.* 65.

How the King's receivers and collectors ſhall be charged. See 34 & 35 *H.* 8. *c.* 2.

Officers accountant to the crown ſhall find ſureties, and make their accounts duly. 7 *Ed.* 6. *c.* 1.

Receivers to pay 12 *l. per cent.* in caſe they neglect to account for two months. 20 *Car.* 2. *c.* 2.

The treaſury impowered to make allowances to receivers 3 *Geo.* 1. *c.* 4. *ſ.* 5. 7 *Geo.* 1. *c.* 20. *ſ.* 36.

Recital, (*Recitatio*) Is the rehearſal or making mention in a deed or writing of ſomething which has been done before. 2 *Lill. Abr.* 416.

A *recital* is not concluſive, becauſe *it is no direct affirmation*; and by feigned *recitals* in a true deed, men might make what titles they pleaſed, ſince falſe *recitals* are not puniſhable. *Co. Litt.* 352. 2 *Lev.* 108. *Wood's Inſt.* 225.

If a perſon by deed of aſſignment recite that he is poſſeſſed of an intereſt in certain lands, and aſſign it over by the deed, and become bound by bond to perform all the agreements in the deed; if he is not poſſeſſed of ſuch intereſt, the condition is broken; and tho' a *recital* of itſelf is nothing, yet *being joined and conſidered with the reſt of the deed, it is material.* 1 Leon. 112. And where it is but a *recital*, that before the indenture the parties were agreed to do ſuch a thing, *it is a covenant*; and the deed itſelf confirms it. 3 *Keb.* 466,

The *recital* of one leaſe in another, is *not* a ſufficient proof that there was ſuch a leaſe as is recited. *Vaugh.* 74. But the *recital* of a leaſe *in a deed of releaſe*, is good evidence of a leaſe againſt the releſſor and thoſe who claim under him. *Mod. Ca.* 44.

A new reverſionary leaſe ſhall commence from the delivery, where an old leaſe is recited, and there is none, *&c. Dyer* 93. 6 *Rep.* 36.

A. recites that he hath nothing in ſuch lands, and in truth he hath an eſtate there, and makes a leaſe to *B.* for years: The recital is void, and the leaſe good. *Jenk. Cent.* 255. In this caſe, if the recital were true, the leaſe would not bind. *Ibid.* See *Black. Com.* 2 *V.* 298. iv.

Recognition, (*Recognitio*) Signifies an acknowledgment, and it is the title of the firſt chapter of the *Stat.* 1 *Jac.* 1. whereby the parliament *acknowledged* the crown of *England*, on the death of Queen *Elizabeth*, RIGHTFULLY to have deſcended to King *James*.

Recognitione adnullanda per Vim & Duritiem facta, Is a writ to the juſtices of *C. B.* for ſending a record touching a recognizance, which the recognizor ſuggeſts was acknowledged by force and dureſs; that, if it ſo appear, the recognizance may be diſannulled. *Reg. Orig.* 183.

Recognitors, (*Recognitores*) Are the jury impanelled on an aſſiſe, ſo called, becauſe they acknowledge a diſſeiſin by their verdict. *Bract. lib.* 5.

Recognizance, (Fr. *Recognoiſſance*, i. e. *Recognitio Obligatio*) Is a bond or obligation of *record*, acknowledged to the King, *&c.* And ſome are for debt, ſome for bail; others to appear at the ſeſſions or aſſiſes to proſecute felons, and to be of good behaviour, *&c.*

For debt, or bail, they are taken or acknowledged before the *Judges*, a *Maſter in Chancery*, *&c.* And to appear at the aſſiſes, or ſeſſions, they may be taken by juſtices of peace; which recognizances are to be returned by the juſtices *to the ſeſſions*, or an information lies againſt them. 2 *Lil. Abr.* 417.

When a recognizance of the peace is made, the condition is to be read to the parties bound, calling them by their names thus: *You* A. B. *do acknowledge to owe unto our ſovereign Lord King* George *the Third*, *&c.* And then it is to be ingroſſed on parchment, and the juſtice is to ſubſcribe it. *Dalt.* 479, 480. In theſe recognizances, the principal is bound in double the ſum of the ſureties; and the uſual numbers of ſureties are two, and the uſual penalty 40 *l.* at leaſt; tho' if the party be a very dangerous perſon, a juſtice may inſiſt on a recogniſance of 1000 *l.* penalty. *Style* 322.

Recognizances in general are of ſeveral ſorts; one is founded on 23 *H.* 8. *c.* 6. By which ſtatute, the Chief Juſtices of the *King's Bench* and *Common Pleas* in term-time, or, in their abſence out of term, the Mayor of the Staple at *Weſtminſter*, and the Recorder of *London* jointly, have power to take recognizances for the payment of debts, in this form, *Noverint univerſi per præſentes nos* A. B. & C. D. *teneri & firmiter obligari* E. F. *in centum libris*, *&c.* They are to be ſealed with the ſeal of the cognizor, and of the King *appointed for that purpoſe*, and the ſeal of one of the Chief Juſtices, *&c.* And the recognizees, their executors and adminiſtrators, have the like proceſs and execution againſt the recognizors, as on obligations of ſtatute ſtaple. 2 *Inſt.* 678.

The execution on a *recogniſance* or ſtatute purſuant to 23 *H.* 8. *c.* 6. is called an *extent*; and the body of the cogniſor, (if a layman) and all his lands, *&c.* into whoſe hands ſoever they come, are liable to the extent; goods (not of other perſons *in his poſſeſſion*) and chattels, as leaſes for years, cattle, *&c.* which are in his *own* hands, and not ſold *bona fide* and for valuable conſideration, are alſo ſubject to the extent. 3 *Rep.* 13.

But the land is not the debtor, but *the body*; and land is liable only in reſpect that it was in the hands of the cogniſor at the time of the acknowledgment of the *recogni-*

zance, or after; and *the perſon is charged*, but the lands *chargeable* only. *Plowd*. 72.

Lands held in tail are chargeable only *during life*, and do not affect the iſſue in tail; unleſs a recovery be paſſed, when it is as fee-ſimple land: Copyhold lands are ſubject to the extent, only *during the life of the cogniſor*: The lands a man hath in right of his wife, ſhall be chargeable but *during the lives of huſband and wife* together; and lands which the *cogniſor* hath in *jointenancy* with another, are liable to execution *during the life of cogniſor* and no longer; for after his death, if no execution was ſued in his life, the ſurviving *jointenant* ſhall have all; but if the *cogniſor* ſurvive, all is liable. 2 *Inſt*. 673.

If two or more join in the *recogniſance*, *&c.* the lands of all ought *equally* to be charged: And where a cogniſor, after he hath entered into a *recognizance* or ſtatute, conveys his lands to divers perſons, and the cogniſee ſues execution on the lands of ſome of them, and not all: In this caſe he or they whoſe lands are taken in execution, may by *audita querela* or *ſcire facias* have contribution from the reſt, and have all the lands *equally and proportionably* extended. 3 *Rep*. 14. *Plowd*. 72. But the cogniſor, or his heirs, when he ſells part of his lands, and keeps the remainder, ſhall not have any contribution from a purchaſer, if his land *only* is put in execution. *Ibid.*

If there be a *recogniſance*, and after a ſtatute entered into by one man to two others; his lands may be extended *pro rata*, and ſo taken in execution. *Yelv*. 12.

This kind of *recogniſance* may be uſed for payment of debts; or to ſtrengthen other aſſurance. *Wood*. 288. If a *recognizance* is to pay 100 *l.* at five ſeveral days, *viz.* 20 *l.* on each day, immediately after the firſt failure of payment, the cogniſee may have execution by *elegit* on the *recogniſance* for the 20 *l.* and ſhall not ſtay till the laſt day of payment is paſt, for *this is in nature of ſeveral judgments*. Co. Litt. 292. 2 Inſt. 395, 471. When no time is limited in a ſtatute or *recognizance* for payment of the money, it is due preſently; as in caſe of a bond. *Law Secur*. 61.

A *recognizance* for money lent, tho' it is not a perfect record till entered on the roll; yet, when entered, it is a *recogniſance* from the firſt acknowledgment, and binds perſons and lands from *that* time. *Hob*. 196. But by 29 *Car*. 2. *c*. 3. No *recognizance* ſhall bind lands in the hands of purchaſers *for valuable conſideration*, but *from the time of inrolment* which is to be ſet down in the margin of the roll: and *recognizances*, *&c.* in the counties of *York* and *Middleſex*, ſhall not bind lands unleſs regiſtered, purſuant to the ſtatutes paſſed in 2, 5, 6 & 7 years of Queen *Ann*. Alſo the clerk of the *recognizances* is to keep three ſeveral rolls of the entering *recognizances* taken by the Chief Juſtices, *&c.* and the perſons before whom the *recognizances* are taken, and the parties acknowledging are to ſign their names *to the roll*, as well as to the *recognizance*. 8 Geo. 1. cap. 25.

To make a good *recognizance* or obligation *of record*, the form preſcribed *muſt* be purſued; therefore they may not be acknowledged before any others, beſides the perſons appointed by the ſtatutes; and the ſubſtantial forms of the ſtatute are to be obſerved herein. But a *recognizance* may be taken by the judges in any part of *England*. Dyer 221. Hob. 195.

Recognizances and ſtatutes are like judgments; and the cogniſee ſhall have the ſame things in execution, as after judgment. The body of the cogniſor himſelf, but not of his heir, or executor, *&c.* may be taken, tho' there be lands, goods, and chattels to ſatisfy the debt: And *if a cogniſor is taken by the ſheriff, and he let him go*; *yet his lands and goods are liable*. 12 Rep. 1, 2. Plowd. 62. 1 And 273.

By *recognizances* of debt, and bail, the body and lands are bound; tho' ſome opinions are, that the lands of bail are bound from the time of the recognizance entered into; and ſome, that they are not bound but from the recovery of the judgment againſt the principal. 2 *Leon*. 84. *Cro. Jac*. 272, 449. *Qu.* If the lands of bail are bound, 'till judgment recovered and entered up, againſt them?

In *B. R.* all recognizances are entered *as taken in court*; but in *C. B.* they enter them ſpecially *where* taken, and their recognizances bind from the caption, but thoſe in *B. R.* from the time of entry; In *C. B.* a *ſcire facias* may be brought on their recognizances either in *London* or *Middleſex*; on thoſe in *B. R.* in the county of *Middleſex* only. 2 *Salk*. 659. 3 *Nelſ. Abr*. 46.

A recogniſance of bail in *C. B.* is entered *ſpecially*; the bail are bound to pay a certain ſum of money, if the party condemned doth not pay the condemnation, or render his body to priſon; and in *B. R.* recognizances are entered generally; that if the party be condemned in the ſuit or action, he ſhall render his body to priſon, or pay the condemnation money, or the bail ſhall do it for him. 2 *Lill. Abr*. 417.

It was formerly a queſtion whether a *ca. ſa.* would lie on a recognizance taken in *Chancery*; but adjudged, that immediately after the recognizance is acknowledged, it is a judgment on record; and then by 25 *Ed*. 3. *cap*. 17. a *ca. ſa.* will lie, *it being a debt on record*. 2 Bulſt. 62.

If a recognizance be made before a Maſter in Chancery, for *a debt*; or to perform an order or decree of the court; if the condition be not performed, an extent ſhall iſſue; or a *ſcire facias* is the proper proceſs, for the recogniſor to ſhew *what he can ſay* why execution ſhould not be had againſt him; upon which and a *ſcire fac.* or two *nihils* returned, and judgment thereupon, the proper execution is an *elegit*, &c. *Cro. Jac*. 3.

Where a man is bound by recognizance in Chancery, and the cogniſor hath certain indentures of defeaſance; if the recogniſee will ſue execution on the recognizance, the recogniſor may come into Chancery, and *ſhew the indentures of defeaſance*, and that he is ready to perform them, and thereon he ſhall have a *ſcire facias* againſt the recogniſee, returnable at *a certain day*; and in the ſame writ, he ſhall have a *ſuperſedeas* to the ſheriff not to make execution in the mean time. *New Nat. Br*. 589.

If a perſon is bound in a recognizance in Chancery, or other court of record, and afterwards the recogniſee dieth; his executors may ſue forth an *elegit*, to have execution of the lands of the recogniſor; and if the ſheriff return that the recogniſor is dead, then a ſpecial *ſcire facias* ſhall go againſt the heir of the recogniſor, and thoſe who are tenants of the lands which he had at the day of the recognizance entered into. *Ibid*. 590.

One of the beſt ſecurities we have for a debt is the recognizance in Chancery, acknowledged before a Maſter of that court; which is to be ſigned by ſuch Maſter, and afterwards inrolled: And the King may, by his commiſſion, give authority to one to receive a recognizance of another man, and to return the ſame into Chancery; and on ſuch a recognizance, if the recogniſor do not pay the debt *at the day*, the recogniſee ſhall have an *elegit* on the cognizance ſo taken, as if it were taken in the Chancery. *Pract. Solic*. 131. *New Nat. Br*. 589.

In caſe lands are mortgaged, without giving notice of a recognizance formerly had, if the recognizance be not paid off and vacated in ſix months, the mortgagor ſhall forfeit his equity of redemption, *&c.* 4 & 5 *W. & M. c*. 16.

Recognizances may be diſcharged by defeazance on condition, on performance of ſuch condition; by releaſe; payment of the money; delivery up of the recognizance, *&c.* Proviſions for executions upon ſtatutes merchant, *St. de Mercator* 13 *Ed*. 1. *ſt*. 3. The chancellor and judges may take recognizances. *Idem*. For ſtatutes ſtaple ſee 27 *Ed*. 3. *ſt*. 2. *c*. 9. 15 *R*. 2. *c*. 9. When a ſtatute has been ſhewn in court, and the plea diſcontinued, the conuſee, on a reſummons, may have execution without producing it again. 5 *H*. 4. *c*. 12.

On a *ſcire facias* to defeat a recognizance, the conuſor ſhall find ſurety to the party, as well as to the King. 11 *H*. 6. *c*. 10.

Recognizances for keeping the peace, ſhall be returned to the ſeſſions. 3 *H*. 7. *c*. 1.

Recognizances for debt may be taken before the chief juſtices, *&c.* 23 *H*. 8. *c*. 6. 8 *Geo*. 1. *c*. 25. Statutes ſhall be entered with the clerk of the recognizances, to affect a purchaſer. 27 *El*. *c*. 4. *ſ*. 7. Recognizances ſhall only affect a purchaſer from the day of the inrolment. 29 *Car*. 2. *c*. 3. *ſ*. 18.

See *Peace*, *Statute merchant*, *Statute-ſtaple*, and 18 *Vin. Abr*. 163—170.

Recognizee, He to whom one is bound in a recognizance, mentioned in ſtat. 11 *H*. 6. *c*. 10.

Recogniſor, He who enters into the recognizance.

Record, (*Recordum*, from the Lat. *Recordari*, to remember) Signifies a memorial or remembrance, or an authenic teſtimony *in writing*, contained in rolls of parchtment, and preſerved in a court of *Record. Britton. c.* 27. It is a writing in parchment, wherein are inrolled pleas of land, or common pleas, and criminal proceedings in courts of *record*; and *records* are reſtrained to ſuch courts *only*, and do not extend to the rolls of inferior courts, the regiſtries of proceedings whereof are not properly called *records. Co. Litt.* 260. 2 *Lill. Abr.* 418.

There are three kinds of records, *viz.* A *judicial record*, as an attainder, &c. a *miniſterial record* on oath, being an office or inquiſition found; and a *record* made by conveyance and conſent, as a fine, or a deed inrolled. 4 *Rep.* 54. But it has been held, that a deed inrolled, or a decree in Chancery inrolled, are not *records*, but a deed and a decree recorded; and there is a difference between a *record* and a thing *recorded*. 2 *Lill.* 421.

Records, being the rolls or memorials of the judges, import in themſelves ſuch *incontroulable verity*, that *they admit of no proof or averment to the contrary*, inſomuch that THEY ARE TO BE TRIED ONLY BY THEMSELVES; for otherwiſe there would be no end of controverſies; but during the term wherein any judicial act is done, the roll is alterable in *that* term, as the judges ſhall direct; when the term is *paſt*, then the record admitteth of no alteration, or proof that it is falſe in any inſtance. *C. Lit.* 260. 4 *Rep.* 52.

Matter of *record* is to be proved by the *record* itſelf, and not by evidence, becauſe no iſſue can be joined on it to be tried by a jury like matters of fact; and the credit of a *record* is greater than the teſtimony of witneſſes. 21 *Car. B. R.* Tho' where matter of *record* is mixed with matter of fact, it *ſhall* be tried by jury. *Hob.* 124.

A man cannot regularly aver againſt a Record; yet a jury ſhall not be eſtopped by a Record to find the truth of the fact: And it was adjudged that on evidence, it is at the diſcretion of the court to permit any matter to be ſhewn to prove a Record. 1 *Vent.* 362. *Allen* 18. 3 *Nelſ. Abr.* 48, 49.

A Record may be contradictory in appearance, and yet be good: And tho' it hath apparent falſhood in it, *it is not to be denied*; but a Record may in ſome caſes be avoided by matter in fact. *Style's Reg.* 281. *Co. Lit.* · *Cro. Car.* 329. *Hutt.* 20.

The judges cannot judge of a Record given in evidence, if the Record be not exemplified *under ſeal*: But a jury may find a record altho' it be not ſo, if they have a copy *proved* to them, or other matter given in evidence ſufficient to induce them to believe that there was ſuch a record. 2 *Lill. Abr.* 421.

By ſtatute, judges may reform defects in any record, or proceſs, or variance between Records, &c. And a Record exemplified or inrolled may be amended for variation from the exemplification. Stat. 8 *H.* 6. *c.* 12, 15.

A Record of an iſſue made up *ready for trial* of a cauſe, *on motion and leave of court*, may be amended ſo as not to *deface* the Record; and notwithſtanding it be entered for trial, it ſhall be done on paying coſts to defendant. 2 *Lil.* 420. *B. R.* will amend a Record removed thither out of *C. B.* and alſo Records removed out of inferior courts, as to faults and miſpriſions of clerks, which are adjudged amendable by the ſtatutes of *jeofails*; tho' formerly *B. R.* would not amend Records out of inferior courts, but the law in this caſe is now altered by the *Stat.* 4 *An. c.* 16. 2 *Lil. Abr.* 421, 422.

If the tranſcript of a Record be falſe, the court of *B. R.* will, on motion, order a *certiorari* to an inferior court, to certify *how the Record is below*; and if it be on a writ of error on a judgment of the *Common Pleas*, they will grant a rule to bring the record out of *C. B.* into this court, and then order the tranſcript to be amended *in court*, according to the roll in *C. B.* And a Record cannot be amended without a rule of the court, grounded on motion. *Ibid.*

Where a Record is ſo drawn, that the words may receive a double conſtruction, one to make the record good, and another to make it erroneous, the court will interpret the words that way which will make the record good, as being moſt for the advancement of juſtice: So if a letter of a word in a Record be doubtful, that it may be taken for one letter or another, the court will conſtrue it to be that letter which is for upholding the Record. See *Cro. Eliz.* 161. *Cro. Jac.* 119, 153, 244, &c.

A Record that is raſed, if legible, remains a good Record notwithanding the raſure; but he who raſed it is not to go unpuniſhed for his offence. *Mich.* 1649. And in caſe of a raſure in a judgment, done by practice *to hinder execution*, the Record hath been ordered to be amended, and a ſpecial entry thereof to be made; but tho' the Record by this means be made perfect, the offender may be indicted for felony; for not only ſuch an alteration whereby a judgment is actually reverſed, but alſo ſuch whereby it is reverſable, whether it be or be not afterwards amended by the court, is within the act 8 *H.* 6. *c.* 12. making it felony to take away, or avoid any Record, &c. 2 *Rol. Rep.* 81. 1 *Hawk. P. C.* 113.

The court will not ſupply a blank left in a Record, to make it perfect, when before it was defective; as this would be *to make* a Record, which is not the office of the court to do, but to judge of them. 2 *Lil. Abr.* 420. If a ſubſequent Record hath any relation to one that is precedent; in ſuch caſe it *muſt* appear in pleading, &c. to be the ſame without any variation. 3 *Lutw.* 905.

Where Records are pleaded, they muſt be ſhewn; and one may not plead any Record, if it be not in the ſame court where it remaineth, unleſs he ſhew it under the Great Seal of *England*, if denied: Acts of Record muſt be ſpecially pleaded. *Bro. ca.* 20. *Cro. Jac.* 560. 5 *Rep.* 218. 10 *Rep.* 92. *Style* 22. And Records are to be pleaded intire, and not part of them, with an *inter alia* referring to the Record; and ſo ſhould a ſpecial verdict find a Record, unleſs a judgment be pleaded, or you declare on a judgment in a ſuperior court, when the plaintiff may ſay *recuperavit* generally; but not *in an inferior court*, for *there all the proceedings muſt be ſet forth particularly*. Mich. 22 Car. B. R.

When a Record is pleaded, it is to conclude *prout patet per Recordum*, or the other ſide may anſwer *Nul tiel Record*; but this, being only matter of form, may be ſometimes helped by a general demurrer: alſo writs are matter of Record, but they need not be ſo pleaded. 1 *Salk.* 1. 1 *Lev.* 211. 3 *Nelſ. Abr.* 49.

Records certified out of inferior courts, on writs of error, and the judgments on ſuch Records are to be entered in *B. R.* for until then the Records are not perfected: And if a Record once comes into *B. R.* by writ of error, *it never goes out again*; but a tranſcript of it may go to the Houſe of Lords, on a writ of error there. 2 *Lil.* 422. Writ of error removes the Record; but the original is no part of it. *Jenk. Cent.* 164. A Record cannot be removed by writ of error, until the judgment in that Record is entered: And when and how a Record may be removed, and where and how remanded, ſee *Cro. Jac.* 206. 2 *Brownl.* 145.

Attornies are to enter the whole Record on the roll, after a cauſe is tried, before the next term after the trial, on pain of 20*s.* that the Record may be ſpoken to the next term, if there be cauſe, and the client be not delayed. *Hill.* 1649. Juſtices of aſſiſe, gaol-delivery, &c. are to ſend all their Records and proceſſes determined to the *Exchequer* at *Michaelmas* in every year; and the Treaſurer and Chamberlains, on ſight of the commiſſions of ſuch juſtices, are to receive the ſame Records, &c. under their ſeals, and keep them in the Treaſury. *Stat.* 9 *Ed.* 3. *c.* 5. *Record of a Cauſe* made up for trial, ſee *Trial.*

Recordare facias Loquelam, Is a writ directed to the ſheriff to remove a cauſe depending in an inferiour court, to the *King's Bench* or *Common Pleas*, and it is called a *Recordare*, becauſe it commands the ſheriff *to make a Record* of the proceedings in the county-court, and *then* to ſend up the cauſe. *F. N. B.* 71. 2 *Inſt.* 339.

This writ is in the nature of a *certiorari*; on which plaintiff may remove the plaint, in the *county-court, without cauſe*; but defendant cannot remove it *without cauſe ſhewn in the writ*, as on a plea of freehold, &c. If the plaint is in another court, neither plaintiff or defendant can remove it without cauſe. *Wood's Inſt.* 572.

If a plea is diſcontinued in the county, plaintiff or defendant may remove the plaint into the *Common Pleas* or *King's Bench* by *Recordare*, and it ſhall be good, and plaintiff may declare on the ſame, and the court hold plea thereof. *New Nat. Br.* 158.

The form of this writ in the Regiſter is, *Et Recordum illud habeas*, &c. But in a *Recordare* to remove a Record out of the court of ancient demeſne, the writ ſhall ſay, *Loquelam & proceſſum*, &c. And there is a writ to call a Record, *&c.* to an higher court at *Weſtminſter*, called *Recordo & proceſſu mittendis.* Tab. Reg. Orig. By the uſual writ *recordare, the ſheriff is commanded in his full court, to cauſe to be recorded the plea which is in the ſaid court between* A. *and* B. *of*, &c. *And have that record before the juſtices at* Weſtminſter *the day*, &c. *under the ſeals*, &c. *And to the ſaid parties appoint the ſame day, that they be then there to proceed in that plea, as ſhall be juſt*, &c. See *Black. Com.* 3 *V.* 34, 195.

Recorder, *(Recordator)* Is a perſon whom the mayor and other magiſtrates of any city or town corporate, having juriſdiction, and a court of *record* within their precincts by the King's grant, aſſociate unto them *for their better direction in matters of juſtice, and proceedings according to law:* therefore he is generally a counſellor or other perſon experienced in the law.

The *Recorder* of *London*, is one of the juſtices of *oyer* and *terminer*; and a juſtice of peace of the *quorum*, for putting the laws in execution for preſervation of the peace and government of the city: And being the mouth of the city, he learnedly delivers the ſentences and judgments of the courts therein; and alſo certifies and *records* the city-cuſtoms, *&c.* *Chart.* K. *Charles* 2. *Co. Lit.* 288. He is choſen by the Lord Mayor and Aldermen; and attends the buſineſs of the city, on any warning by the Lord Mayor, *&c.*

Recovery, *(Recuperatio*, from the Fr. *recouvrer, recuperare)* Signifies (in a legal acceptation) obtaining any thing by judgment or trial of law, as *evictio* doth among the *Civilians*.

There is a *true recovery*, and a *feigned one*.

A *true recovery* is an actual or real *recovery*, of any thing, or the value thereof, by judgment; as if a man ſue for any land, or other thing moveable or immoveable, and have a verdict or judgment for him.

A *feigned recovery* is (as the *Civilians* call it) *Quædam fictio juris*, a certain form or courſe ſet down by law to be obſerved, FOR THE BETTER ASSURING LANDS OR TENEMENTS: And the effect thereof is (according to *Weſt. Sym. par.* 2. tit. *Recoveries, ſ.* 1.) *to diſcontinue and deſtroy eſtates-tail, remainders and reverſions, and to bar the intails thereof.*

In this formality three perſons are required, *viz.* the *demandant, tenant*, and *vouchee.* The *demandant* is he who brings the writ of entry, and may be termed *the recoveror.* The tenant is he againſt whom the writ is brought, and may be termed the *recoveree.* *The vouchee* is he whom the tenant voucheth, and calls to warranty for the land in demand.

A *recovery with double voucher* is, where the tenant voucheth one, *who* voucheth another, or the common vouchee. And a *recovery with treble voucher* is, where three are vouched.

But for the further explanation of this point: A man who is deſirous to cut off an eſtate-tail, to the end to ſell, give, or deviſe it, cauſeth a feigned writ of entry *ſur diſſeiſin en le poſt*, to be brought for the lands the intail of which he intends to cut off, and in a feigned count or declaration thereon made, pretends he was diſſeiſed by him, who by a feigned fine or deed of bargain and ſale *is named and ſuppoſed* to be tenant of the land. This feigned tenant, if it be a *ſingle recovery*, is made to appear and vouch the *bagbearer* of writs for the *cuſtos brevium*, or the cryer in the Common Pleas (for there only can ſuch *recoveries* be ſuffered) who makes default. Whereupon the land is recovered by him who brought the writ, and judgment is by ſuch *fiction of law* entered, that demandant ſhall *recover*, and have a *writ of ſeiſin* for the poſſeſſion of the lands demanded, and that the tenant ſhall recover *the value of the lands* againſt the lands of the *vouchee.* This feigned recovery is alſo called a *common recovery*, becauſe *it is a beaten and common path* to the end for which it is appointed, *viz.* to cut off the eſtates above ſpecified. But a true *recovery* is as well of the value as of the thing: For example, If I buy land of another with warranty, which land a third perſon afterwards by ſuit of law recovereth againſt me, I have my remedy againſt him who ſold it me, to recover in value, that is, to recover ſo much in money as the land is worth, or other lands of equal value by way of exchange. *F. N. B.* 134. *Cowell.*

A recovery in a large ſenſe *is a reſtitution to a former right by ſolemn judgment*; and judgments, whether obtained after a real defence made by the tenant to the writ, or whether pronounced on his default or feint plea, had the ſame efficacy to bind the right of the land in queſtion; this was the notion of the Common law, and from *hence men took an opportunity of making uſe of the deciſions of the court to their own advantage*, and to the prejudice of others, who, though in ſome caſes ſtrangers to the action, yet were intereſted in the land for which it was brought. 2 *Inſt.* 75, 429.

For whilſt theſe recoveries were governed by the ſtrict rules of the Common law, particular tenants, as tenant in *dower, courteſy*, in *tail after poſſibility of iſſue extinct*; and for *life* only; all thoſe who had made *leaſes for years*, and thoſe whoſe *wives* were intitled to dower, often took advantage of them, and by ſelling the lands, and ſuffering their purchaſers to recover them, thereby defeated the right of thoſe in *remainder* or *reverſion, &c.* which were inconveniences ſo great, that it was thought neceſſary to provide againſt them by poſitive laws; as ſtatute *Weſtm.* 2. *c.* 3. which makes proviſion for him in reverſion, againſt the recoveries ſuffered either by the tenant in *dower*, by the courteſy, or in *tail after poſſibility of iſſue extinct*, or for *life*; and by the 4th chapter of this ſtatute, the wife is ſecured *as to her dower*; and the ſtatute of *Glouceſter*, 6 *Ed.* 1. *c.* 11. *ſt.* 7. *Hen.* 8. *c.* 4. And 21 *Hen.* 8. *c.* 15. have eſtabliſhed the right of termors, and enabled them to falſify ſuch recoveries. See *Co. Lit.* 104. *Kel.* 109. *F. N. B.* 468. *Plowd.* 57. *Dr. & Stud.* 45.

But there is no expreſs proviſion made by any ſtatute to preſerve the intereſt of the *iſſue in tail*, or of him in *reverſion*, againſt a recovery ſuffered by the donee, yet it ſeems to have been for two hundred years after the making the ſtatute *de donis*, that they were protected by that ſtatute; therefore we find no expreſs reſolution, where ſuch recovery was allowed to bar the *iſſue in tail*, or thoſe in *remainder* or *reverſion*, till the reigns of *Ed.* 4. and *H.* 7. though in ſome caſes the donee in tail was allowed to charge the intail, and even to bar it. See 1 *Rol. Abr.* 342. *Co. Lit.* 343. 10 *Co.* 37. *Plowd.* 436. 2 *Inſt.* 335. *Co. Lit.* 374. 4 *Leon.* 132, 133. See *Eſtate-tail.*

When theſe recoveries were eſtabliſhed *as a common conveyance*, and the beſt way of barring the *iſſue in tail*, and thoſe in *reverſion* or *remainder*, the tenant for *life* began to apply them once more to the prejudice of thoſe who had the inheritance; and though the former ſtatutes gave thoſe who had the inheritance a remedy, yet the proviſion made by them being tedious and expenſive, it was thought proper to make the 32 *H.* 8. *c.* 31. which declares all ſuch *covinous recoveries againſt the particular tenants to be void in reſpect to him in reverſion or remainder*; and though the judges very reaſonably determined recoveries againſt that act to be not only void, but *a forfeiture* of the particular eſtate, becauſe it was a manner of conveyance as much known at that time as a fine or feoffment, therefore by parity of reaſon ought to have the ſame operation; yet that ſtatute did not fully anſwer the end for which it was made. *Co. Lit.* 356. *a.* 1 *Co.* 15. *Vaugh.* 51.

For if *A.* had been tenant for life, and made a leaſe for years to *B.* and *B.* had made a feoffment in fee, if the feoffee had ſuffered a recovery, and vouched the tenant for life, this was no void recovery within the ſtatute; becauſe *A.* the tenant for life was not ſeiſed at the time of the recovery, for the feoffment of the termor was a diſſeiſin to *A.* and him in reverſion; and the ſtatute makes recoveries of tenants for life in poſſeſſion *only* void againſt them *to whom the reverſion* THEN *belongs.* 10 Co. 45. a. Co. Lit. 362.

Yet where tenant for life bargained and ſold his land in fee by indenture inrolled, and the bargainee ſuffered a recovery, and vouched the bargainor, this was a void recovery, and a forfeiture within the 32 *H.* 8. *c.* 31. for though the bargain and ſale was of the inheritance, yet *it paſt only an eſtate for life of the bargainor*, which was the greateſt eſtate he could lawfully paſs, conſequently the reverſioner was not deveſted; therefore the bargainee being *a legal tenant for life in poſſeſſion*, the recovery againſt him, though with a voucher of the bargainor, *was void within that act againſt him in reverſion*, whoſe reverſion was not turned to a right as in the former caſe of a diſſeiſin. 1 *Co.* 15. 1 *Leon.* 123.

But the former defect was cured by 14 *Eliz. c.* 8. which declares all recoveries (had by agreement of the parties, or *by covin*) againſt *tenant for life*, of any lands whereof he is ſo ſeiſed, or againſt any other with voucher over him, *to be void*, as againſt the *reverſioners* and their heirs.

Theſe ſtatutes made no proviſion for reverſions or remainders *expectant* on eſtates-tail; therefore if there be tenant for life, remainder in tail, remainder in fee, and tenant for life ſuffers a recovery, and vouches the remainder-man in tail, who vouches the common vouchee; this is ſo far from being a void recovery within thoſe ſtatutes, that *the reverſion in fee is actually barred by it*; for the intended recompence, which the remainder-man in tail is to have againſt the common vouchee, is to go in ſucceſſion, as the eſtate-tail would have done; and it cannot be a covinous recovery within the act, becauſe *the remainder in tail joined in it*, who may at any time ſuffer ſuch a recovery to deſtroy the remainder in fee. 10 *Co.* 39. *b.* 45. *Co. Lit.* 362. *a.* 3 *Co.* 60. *b.* *Cro. Eliz.* 562. *Moor.* 690. *Cro. Eliz.* 570.

Theſe common recoveries were no ſooner allowed by the judges to bar eſtates-tail, but men began to improve them into *a common way of conveyance*, and to declare uſes on them, as on fines and feoffments. Hence it is, that the ſtatutes, which provide againſt any alienations or diſcontinuances of particular tenants, provide at the ſame time againſt their recoveries; thus 11 *H.* 7. *c.* 20. declares *all recoveries*, as well as *other diſcontinuances* by *fine* or *feoffment* of *women tenants in tail*, of the *gift of their huſbands*, or their *anceſtors*, to be void; ſo a recovery againſt *huſband and wife of the inheritance of the wife, without any voucher*, is declared to be void within 32 *H.* 8. *c.* 28. though the ſtatute ſays, "*ſuffered or* "*done by the huſband*;" for this, like a feoffment by baron and feme in ſubſtance, is the act of the baron only; and ſo within the ſtatute, *but a common recovery ſuffered by a feme covert, where her huſband joins with her*, is good to bar her and her heirs. *Dr. and Stud.* 54. *Co. Lit.* 326. *a.* 8 *Co.* 72. 10 *Co.* 43. 2 *Inſt.* 342. 2 *Rol. Abr.* 205.

1. *Who may ſuffer a recovery; of what things a recovery may be ſuffered, and by what names.*
2. *What eſtates and intereſts may be barred by a common recovery; and of ſingle and double voucher.*
3. *Of erroneous and void recoveries, who may avoid them, and by what method.*

1. *Who may ſuffer a recovery; of what things a recovery may be ſuffered, and by what names.*

When recoveries were improved into a common way of conveyance, it was thought reaſonable that thoſe, whom the law had judged incapable to act for their own intereſt, ſhould not be bound by the judgment given in recoveries, though it was the ſolemn act of the court; for, where defendant gives way to the judgment, it is as much his voluntary act and conveyance, as if he had transferred the land by livery, or any other act *in pais*; therefore *if an infant ſuffers a recovery, he may reverſe it*, as he may a fine by writ of error, *during his minority*; and this was formerly taken for law, as well where the infant appeared by guardian, as by attorney, or in perſon; but now the diſtinction turns on this point, that if an infant ſuffers a recovery *in perſon*, it is erroneous, and he may reverſe it by writ of error; but even in this caſe *the writ of error muſt be brought during his minority, that his infancy may be tried by the inſpection of the court, for at his full age it becomes obligatory and unavoidable*; yet in caſes of neceſſity, the court has admitted the infant to appear by guardian, and to ſuffer a recovery, or come in as vouchee; but this too is ſeldom allowed by the court; and on emergencies, when it tends to the improvement of the infant's affairs, or when lands of equal value have been ſettled on him, and theſe recoveries have been allowed and ſupported by the judges, the infant could not ſet them aſide or ſhake them; beſides, if ſuch recoveries be to the prejudice of the infant, he has remedy for it againſt his guardian, and may reimburſe himſelf out of his pocket, to whom the law hath committed the care of him. 1 *Bulſ.* 235. 2 *Rol. Abr.* 395. *Co. Lit.* 381. *b.* 10 *Co.* 43. 1 *Rol. Abr.* 731, 742. 1 *Sid.* 321, 322. 1 *Lev.* 142. 2 *Saund.* 94. *Cro. Eliz.* 471. *Hob.* 169. *Cro. Car.* 307. 5 *Mod.* 209. But 10 *Co.* 43. and 2 *Rol. Abr.* 395. *cont.* See 2 *Salk.* 567. And 1 *Vern.* 461.

If an infant ſuffers a recovery, and appears by attorney, it ſeems *he may reverſe it* AFTER *his full age*; becauſe here it may be diſcovered, whether he was within age when the recovery was ſuffered, becauſe it may tried *per pais*, whether the warrant of attorney was made by him when an infant. *Sid.* 321. 1 *Lev.* 142. *Q.*

A *recovery*, as well as a *fine* by a *feme covert*, is *good* to bar her; becauſe the *præcipe* in the recovery anſwers the writ of covenant in the fine to bring her into court, where the examination of the judges deſtroys the preſumption of law, that this is done by the coercion of her huſband, for then it is preſumed they would have refuſed her. 10 *Co.* 43. *a.* 2 *Rol. Abr.* 395.

Recoveries, being now ſettled as COMMON ASSURANCES to eſtabliſh men in their purchaſes, are very much favoured by the judges, and not compared to judgments in other real actions or adverſary ſuits. 2 *Inſt.* 353. *Poph.* 22, 23. 2 *Vent.* 32.

If a man be ſeiſed of a reputed manor, which really is no manor, and he ſuffers a common recovery of this *by the name of a manor*, this is a good recovery of the lands which conſtituted the reputed manor; though ſtrictly ſpeaking there is no manor recovered becauſe the law ſupports this, as all other conveyances, according to the intention of the parties; for it would be ſevere to vacate this conveyance, when the purchaſer recovered them by the aſſent of the vendor under ſuch a denomination. 2 *Rol. Abr.* 396. 6 *Co.* 64. 2 *Rol Rep.* 67. 2 *Vent.* 32. S.P. See *Cro. Eliz.* 524, 707. and 1 *Keb.* 591, 691. *cont.*

So if a recovery be ſuffered of a manor with its appurtenances, lands which have been reputed parcel of the manor ſhall paſs; for it is but equitable, *quod voluntas Domini volentis rem ſuam in alium transferre rata habeatur*; and though the recovery does not mention the lands reputed parcel of the manor, but only the manor itſelf, yet this was ſupplied by the indenture which was of the manor, and all lands reputed parcel thereof, and though occupied together but two years. 1 *Sid.* 190. 1 *Lev.* 27. 1 *Keb.* 591, 691. 2 *Mod.* 235. S. C. between *Thynn* and *Thynn*; and note, that in all the books which report this caſe, it is ſaid, that as to Sir *Moyle Finch's* caſe, (which ſee 6 *Co.* 33) all the judges of *England*, gave their opinions under their hands, that the lands *in reputation*, belonging to that manor, ſhould *not* paſs; but that *Coke*, after he was made Chief Juſtice, got it adjudged otherwiſe, and ſo it hath been held ever ſince; and well it was that it was ſo adjudged, becauſe many ſettlements depended thereon.

If a man having a third part of a manor ſuffers a recovery of a moiety, this is good to paſs his intereſt in the third part; for where the words of a conveyance (which a recovery is agreed to be) contain more than the grantor can convey, it would be an unreaſonable interpretation to make this void and entirely uſeleſs, when *they are ſufficient to convey ſo much as he might lawfully paſs*; ſo if the recovery had been in this caſe, of the third part of the manor, by the name of the moiety, part and purparty of the manor, this had been good for the whole third part, and not only for a moiety of the third part. *Cro. Car.* 109, 110.

In ejectment a ſpecial verdict found, that there was a *pariſh* of *Ribton*, and the *vill* of *Ribton*, but the *latter* not of equal extent with the *former*; and that *J. S.* was ſeiſed of land in tail in the *pariſh*, but not in the *vill*; and bargained, and ſold the land in the *pariſh* of *Ribton*, with covenant to levy a fine, and ſuffer a recovery to the uſes in the deed; but the fine and recovery were only of the lands in *Ribton*; the queſtion was, Whether this recovery would ſerve for the land in the *pariſh* of *Ribton*; the court, in favour of common recoveries, extended this recovery to the lands in the *pariſh* of *Ribton*; becauſe the verdict found, that he who ſuffered the recovery had no lands in the *vill*, conſequently that the recovery muſt be void, if not extended to the *pariſh*; and though pariſhes are not ſo ancient as vills, and therefore till lately were never inſerted in writs, yet now they are, and the law takes notice of them. 2 *Vent*. 31, 32. 1 *Mod*. 250. and 2 *Mod*. 233. S. C. But for this ſee *Hut*. 105. *Cro. Car*. 269. 2 *Rol. Abr*. 20. *Cro. Jac*. 120, 574. 1 *Mod*. 206. 2 *Mod*. 47. 1 *Vent*. 143, 170. 1 *Mod*. 78. 2 *Keb*. 802, 821, 848. *Owen* 60. and 2 *Mod*. 236. which ſeems againſt this caſe, but is reconcilable with this diverſity, that in thoſe caſes *there* were lands on which the fine might operate, *viz*. the lands in the *vill* of *Street*, without taking in the *pariſh* of *Street* to carry the lands in *Walton*, a *vill* of that *pariſh*; but here, if thoſe in the *pariſh* ſhould not paſs, there were no other to paſs.

2. *What eſtates and intereſts may be barred by a common recovery; and of ſingle and double voucher.*

In reſpect to eſtates-tail, and barring them by recovery, what is principally to be regarded is, that there muſt be a *legal* tenant to the *præcipe* at the time of the writ purchaſed, or at the return; for ſince eſtates-tail are only barred *on account of the intended recompence* which is to follow the deſcent of the tail, where there happens to be no tenant to the *præcipe*, the demandant can really recover nothing; conſequently the ſuppoſed tenant can have no recompence in value againſt the vouchee, for that is only given againſt the vouchee in conſideration of what the tenant loſt. *Hob*. 262.

As if there be tenant for life, *remainder* in tail, remainder in fee, and tenant for life with the remainder in tail ſuffer a recovery, with voucher over, this ſhall not bar the remainder in tail, nor the remainder in fee, becauſe the remainder-man in tail was not tenant to the *præcipe*, conſequently could not have the intended recompence, becauſe that was given in lieu of the eſtate recovered, which was no greater than the eſtate for life, he only being legal tenant to the *præcipe*. 1 Rol. Abr. 395. Dyer 352. Cro. Eliz. 670. Moor 255, 256.

In a writ of error to reverſe a common recovery, the tenant to the *præcipe* was made by a fine, the recovery was ſuffered, and the fine reverſed; yet it was held a good recovery, for there was a good tenant to the *præcipe* at the time. 2 *Salk*. 568.

If a manor be given to a man and a woman, and the heirs of the body of the man *begotten on the woman*, and they intermarry, and then the huſband ſuffers a recovery of the whole manor; this is good for a moiety, becauſe, *the gift being made before marriage, they had each an undivided moiety*, which they may transfer, but the recovery can operate but for a moiety, becauſe the huſband only was tenant to the *præcipe*, conſequently the demandant only could recover his intereſt in the manor, which was but a moiety. *Moor* 95.

If lands are given to *a man and his wife*, and the *heirs of the body of the huſband*, and a *recovery* is had againſt him *only*, this recovery will neither bar the *reverſion*, nor the *tail*; for the recompence being to go in ſucceſſion, as the eſtate which the tenant loſt would have done, the huſband could not loſe all the land, becauſe he was not a legal tenant to the whole, his wife being jointenant with him *who was no party to the writ*; nor could the recovery be good for a moiety, becauſe there are no moieties between baron and feme, but both are conſidered as one perſon in law; but if the huſband had *levied a fine*, and the *conuſee* ſuffered a *recovery*, and *vouched the huſband*, who *vouched the common vouchee*; this had been a *good bar of the intail*, for there the huſband came in to defend the *eſtate-tail*, which the wife was a ſtranger to, and the aſſets which he recovered over is a recompence for the *eſtate-tail*, which *he only* had a right to *without the feme*, and which the law gives him a power to diſpoſe of. *Moor* 210. 3 *Co*. 5. 2 *Rol. Abr*. 395. 4 *Leon*. 93. 1 *And*. 162. 2 *Salk*. 568.

In ejectment, on ſpecial verdict the caſe was, *A*. ſeiſed in *fee* of the lands in queſtion hath iſſue *B*. his eldeſt ſon, *C*. his ſecond, and *D*. his third ſon; on a marriage intended between *D*. his youngeſt ſon, and one *E*. he *A*. before the marriage covenants to ſtand ſeiſed to the uſe of himſelf for life, *remainder to* D. *and* E. *and the heirs male of their two bodies, remainder to* D. *and the heirs male of his body*, remainder to *C*. and the heirs male of his body, remainder to *B*. and the heirs male of his body, the remainder to his own right heirs; *A*. dies, a *præcipe* is brought againſt one *Upton* as tenant of the freehold, and after, *before the return of the writ*, D. by bargain and ſale conveys the land to *Upton* and his heirs, and the deed was inrolled after the return of the writ, and within ſix months; *Upton* vouches *D*. only *without his wife*, and a common recovery was ſuffered to the uſe of *D*. and his heirs; then *E*. dies, and after *D*. dies without iſſue male, having iſſue four daughters, and between them and *C*. in remainder was the queſtion, what was barred by this recovery. 1ſt, It was agreed on both ſides, that here was a good tenant to the *præcipe*, the bargain and ſale being made to *Upton* before the return, yet it being inrolled in due time, the freehold was in *Upton ab initio*. 2dly, That this ſettlement being made *before marriage*, when the huſband and wife took by *moieties* and not by *intierties*, *the huſband had abſolute power over his own moiety*, therefore for that the recovery was an abſolute bar, wherein this differs from the caſe of *Owen* and *Morgan*, 3 *Co*. 5. where they took by *intierties*. 3dly, That this recovery was no bar to the other moiety of *E*. becauſe ſhe was not party, but her *eſtate-tail* in that continued untouched, though it was urged alſo to be a bar for her moiety, ſhe dying firſt, and ſo her huſband in as ſole tenant of the whole *ab initio*, and that during the coverture the huſband had power to make a good tenant of the whole; but the court held otherwiſe. 4thly, It was held, that the eſtate-tail to *D*. and *E*. being determined, the *remainder to* D. *in tail male general*, and all the other remainders depending thereon *were barred abſolutely* by this recovery; for *D*. coming in as vouchee, comes in privity and repreſentation of all the eſtates he hath or had, conſequently he comes in repreſentation of the remainder to himſelf in tail male general; and then the recompence in value goes to that, and alſo to all the other remainders depending thereupon, and by conſequence all are barred by the recovery. 3 *Lev*. 107.

Tenant in tail, in conſideration of his ſon's marriage, covenats to ſtand ſeiſed to the uſe of himſelf and his heirs *till the marriage*, and *then* to the uſe of himſelf for life, andafter to the uſe of his ſonand to the heirs of his body, and ſuffers a common recovery with ſingle voucher to this purpoſe, and then dies without iſſue; this recovery did *not bar the remainder expectant* on the eſtate-tail, for the covenant had changed the eſtate-tail into a fee, conſequently the recompence could not be in lieu of the intail, ſince the tenant to the *præcipe* was not ſeiſed of the eſtate-tail at the time of the recovery ſuffered. *Yelv*. 51. ſee 2 *Salk*. 619. which ſeems *contrary*.

A. tenant for life, remainder to *B*. in tail, the remainder to *C*. in fee, *A*. and *B*. join in a *fine come ceo, &c*. to a ſtranger, who renders it to *A*. for life, remainder to *B*. and his heirs; afterwards *A*. and *B*. ſuffer a recovery with ſingle voucher to the uſe of *B*. and his heirs; this recovery did *not bar the remainder in fee*, becauſe by the render they were ſeiſed of a new eſtate, and *B*. was not either *tenant in poſſeſſion*, or *ſeiſed in right of the intail*; conſequently the *recompence* being given *in lieu of the eſtate recovered*, the tail could not be docked, nor the remainder man barred by this recovery, becauſe the tenants to the *præcipe* were not ſeiſed of it at the time of the recovery ſuffered. *Cro. Eliz*. 807. *Moor* 634.

As to the *uſe* of the *ſingle* and *double voucher*, it is to be obſerved, that the tenant who loſes the land has, on his vouching over, a recompence in value adjudged againſt his vouchee, which is to go in the ſame ſucceſſion as the land recovered would have done: Now a recovery with ſingle voucher is ſufficient to bar an eſtate-tail where the tenant in tail is tenant to the *præcipe*, and ſeiſed of the lands in tail at the time of the *præcipe* brought againſt him, for the *recompence* in value muſt follow *the deſcent of the land which he loſes*, and when that proves to be the *eſtate-tail*, then the iſſue is ſuppoſed to have an equivalent for it, conſequently not prejudiced by the recovery; but becauſe a ſingle voucher can bar only the eſtate which the tenant is ſeiſed of at the time of the *præcipe* brought, and not any *right* which he hath, it was found neceſſary to admit the uſe of a double voucher; for if ſuch tenant in tail diſcontinue the tail, and take back an eſtate or diſſeiſe the diſcontinuee, a recovery againſt him with a voucher over could not bar the eſtate-tail; for *the recompence comes in lieu of the land recovered*, which was the *defeaſible eſtate*, conſequently the iſſue has nothing in value for the *eſtate-tail*, without which he cannot be barred. *Bro.* tit. *Recovery. Yelv.* 51. 3 *Co.* 5. *Moor* 256.

But if in this caſe *tenant in tail* after diſſeiſin had either by fine, or releaſe, made a tenant to the *præcipe*, and came in himſelf as *vouchee*, and then vouched over the common vouchee; this *double voucher had been ſufficient to bar the tenant in tail and his heirs of every eſtate* which he was at any time ſeiſed; for when the tenant in tail comes in *as vouchee*, it is preſumed he will, and he has an opportunity to ſet up every title he had, to defeat the demandant; and ſince what he offered was not ſufficient to bar demandant, the court takes it for granted, he had no other title than what he ſet up, therefore will give him but one recompence for all. 3 *Co.* 6. *b. Plow.* 8. *Cro. Eliz.* 562. *Poph.* 100. *Moor* 365. *Hob.* 263.

Thus if *A.* be tenant for life, remainder to *B.* in tail, and a ſtranger diſſeiſes *A.* and enfeoffs *B.* if a *præcipe* be brought againſt *B.* and a recovery ſuffered *as uſual*; this ſhall not affect the eſtate-tail, becauſe *B.* had only a *right* to that, and was not ſeiſed of it, and the recompence was not given in lieu of the tail, becauſe the eſtate-tail was not in queſtion on the recovery, for *B.* could not loſe the eſtate he had not; but if in this caſe *B.* had made another tenant to the *præcipe*, and came in himſelf as vouchee, this had barred the intail. 3 *Co.* 58. *b.* 2 *Rol. Abr.* 395.

If *A.* be tenant for life, remainder to *B.* in tail, and *B.* diſſeiſes *A.* and ſuffers a common recovery, himſelf being tenant to the *præcipe*; this recovery with a ſingle voucher is ſufficient to bar the eſtate-tail in *B.* becauſe he was actually ſeiſed of that, at the time of the *præcipe* brought againſt him; for his diſſeiſin did not deveſt his own eſtate, but only gave him a defeaſible eſtate for life, which was immediately *merged in his remainder*, becauſe the eſtate for life, and his inheritance, could not ſubſiſt together at the ſame time in him. 2 *Rol. Abr.* 395.

Thus we ſee how eſtates-tail are barred by recoveries, and the uſes of the ſingle and double voucher; and in this reſpect the operation of a recovery is correſpondent to that of a fine, for *they are but different ways of transferring eſtates-tail for ſecurity of purchaſers*; but the operation of a *fine* differs from a recovery in reſpect to *ſtrangers* who have *reverſions or remainders* expectant on eſtates-tail; for a *fine* does *not* bar them, *unleſs they omit to make their claim within five years after their reverſion or remainder is toexecute*; but a recovery reaches them immediately, and at the ſame time *bars the eſtate-tail and all reverſions and remainders on account of this ſuppoſed and imaginary recompence*. Co. Lit. 372. a. 2 Rol. Abr. 396. Moor 156. Bro. *tit.* Recovery 28, 55.

And as a common recovery ſuffered by tenant in tail bars all reverſions and remainders expectant, ſo it avoids all *charges*, *leaſes* and *incumbrances* made by thoſe *in reverſion* or *remainder*, and *the recoveror ſhall enjoy the land free from any charge, for ever*; as where he in remainder on an eſtate-tail, granted a rent-charge, and the tenant in tail ſuffered a recovery; it was adjudged, that the grantee could not diſtrain the recoveror; for ſince the rent was only at the firſt good, becauſe of the poſſibility of the grantor's remainder coming in poſſeſſion, when that poſſibility ceaſes by the recovery of tenant in tail, ſuch grant muſt *then* become void. *Moor* 158. *Cro. Eliz.* 718. 1 *Co.* 62. 2 *Rol. Abr.* 396. *Moor* 154. 4 *Leon.* 150, &c. *Poph.* 5, 6.

3. *Of erroneous and void recoveries, who may avoid them, and by what method.*

It is already obſerved, that a recovery ſuffered by an infant *in perſon* ſhall not bind him; but though he may avoid it, yet it cannot be done by any entry *in pais*, but *by writ of error*, and this too *during his minority*; for the judgment of the court being on record muſt be ſet aſide *by an act of equal notoriety*; but an infant may avoid a recovery by writ of error, as well where he comes in as vouchee, as where he is tenant to the *præcipe*; for though ſtrictly ſpeaking the recovery is not againſt him where he is not tenant to the *præcipe*, yet for the greater ſecurity of the purchaſer, and to ſtrengthen the recovery by the uſe of the double voucher, the perſon, who really has the right to the land in demand, comes in as vouchee, and then, by vouching over the common vouchee, has one recompence for all his titles; conſequently if he be the perſon who really loſes the land, he ought in reaſon to reverſe the recovery, as well where he comes in as vouchee, as where he is ſeiſed of the land and tenant to the *præcipe*. 1 Rol. Abr. 742. 1 Lev. 142.

If tenant in tail within age comes in as vouchee by attorney in a common recovery, *he in remainder may aſſign this for error*, for he is party in intereſt to the recovery; and where a man's intereſt is bound by another's act, it is but reaſonable he ſhould be allowed to free himſelf from the miſchief by taking advantage of any error in it. 1 *Rol. Abr.* 755, 796.

If *A.* be tenant in tail, remainder to *B.* and *A.* ſuffers an *erroneous* recovery, and the common vouchee releaſes to the recoveror; yet if *A.* dies without iſſue, *B.* may, notwithſtanding the releaſe, reverſe it by writ of error, *for the common vouchee is only called in for form*; and as he has really no intereſt in or title to the land; ſo really neither does he make any recompence to the perſon who loſes the land; therefore it were unreaſonable to carry the notion of the imaginary recompence ſo far as to ſuppoſe him a real ſufferer, and thereby give him the privilege of ſetting aſide the conveyance, by which he is no way affected. *Cro. Eliz.* 2, 3.

In a writ of error to reverſe a recovery ſuffered by an infant who appeared by guardian, the error aſſigned was in the entry of his admiſſion by guardian, *viz. Conceſſ. eſt per curiam hic quod* A. B. *ſequatur pro* J. S. *Armig. qui infra ætat' exiſtit ut guardianus prædict.* J. S. whereas it was objected, that ſince the infant was tenant to the writ, it ought to have been entered, that *the guardian was admitted to defend for the infant*; but this exception was diſallowed, becauſe the words *ad ſequend.* for the infant ſignify the ſame with *ad defendend.* for the infant; for *ad ſequend.* is to follow and attend the buſineſs and ſuit of the infant; and the guardian being aſſigned to do that muſt likewiſe have been aſſigned to take care of, or take upon him the defence of the infant's ſuit. 2 *Saund.* 94, 95. 1 *Mod.* 48.

In a common recovery the writ of error bears date 1 *Martii 7 Eliz. ret. die Lunæ in quarta ſeptimana quadrageſim' proxim' futur'*, the firſt day of *March* being that year the firſt day in *Lent*, the recovery paſt in the uſual form that Lent; and in a writ of error to reverſe it, the error aſſigned was, that the words *proxim' futur'* ſhould be referred to *Quadrageſim'*, and then the writ of entry was not returned till *Monday* in the fourth week of *Lent*, 8 *Eliz.* which was the time the tenant was to appear; conſequently this recovery *muſt be void*, becauſe here was judgment on a voucher, and a recovery in value, *before the writ was returned*, before which the court has no power to proceed. But it was anſwered and reſolved, that ſince *proxim' futur'* were not written at large, they may be indifferently applied either to *die Lunæ*, by ſuppoſing them to ſtand for *proximo futuro*, or to *quartâ ſeptimanâ*, by ſuppoſing them to ſtand for *proximâ futurâ*; and where words abbreviated may be indifferently referred, it is but reaſonable to give them ſuch a relation, as will beſt ſupport the recovery, which is but a voluntary conveyance, *ut res magis valeat quam pereat*; but if the words had been at large *proximæ futuræ*, then they muſt neceſſarily be referred to *quadrageſimæ*, and then the objection had been good, and the recovery for that reaſon muſt have been void.

In error to reverſe a recovery, the errors aſſigned were, 1. That the writ of entry was brought of an *advowſon* of a *rectory*, and of a *rent* iſſuing out of the *rectory*, which was a *bis petitum*, therefore the writ *vicious*; but this was diſallowed, becauſe *the advowſon and rectory are different* things; for he who has the *advowſon* has only the *right* of *preſentation*, but he who has the *rectory* has the *profits* of the *church*, out of which the *rent* iſſues; conſequently there can be no *bis petitum* in this caſe, becauſe by the demand of the *advowſon* of the *rectory*, and of the *rent* iſſuing out of the rectory, the demandant recovers more than by a demand of the *rectory* only: another error aſſigned was in the demand of a rent or penſion of four marks iſſuing out of the rectory, which is ſo uncertain a demand, *a penſion being a different thing from a rent, and recoverable in the Spiritual court*; but this was diſallowed; becauſe it is plain there is but one ſum of four marks demanded, and the penſion or rent muſt be ſynonymous here, becauſe they are demanded *as iſſuing out of the rectory*; therefore the penſion cannot be in nature of an annuity, which charges the *perſon* only, becauſe it is expreſsly to iſſue out of the rectory. *Poph*. 23. 5 *Co*. 41. *a*.

In a writ of error to reverſe a common recovery, the error inſiſted on was, that the warrant of attorney of the vouchee bore date before the *Summoneas ad warrantizand.* iſſued, yet the judgment was affirmed, becauſe the vouchee may come in, if he will, before the *Summoneas ad warrantizand.* and make his attorney; therefore, to ſupport the common recovery, it ſhall be preſumed the vouchee was preſent in court and appointed his attorney; and ſo the *dedimus* for the warrant and the *Summoneas ad warrantizand.* void. 1 *Sid*. 213. 1 *Lev*. 130. *Raym*. 70.

See *Eſtate tail*, and 18 *Vin. Abr*. tit. *Recovery*, alſo *Black. Com*. 2 *V*. 116, 271, 357, 358. xvii. xix. 4 *V*. 422.

Recoupe, (from the Fr. *recouper*) Signifies the keeping back or ſtopping ſomething which is due, and in our law, we uſe it for, *to defalk or diſcount*; as if a perſon hath a rent of ten pounds out of certain lands, and he diſſeiſes the tenant of the land; in an *aſſiſe* brought by the diſſeiſſee, if he recover the land and damages, the diſſeiſor ſhall *recoupe* the rent due in the damages: So if a rent-charge iſſuing out of land, paid by the tenant to another, *&c.* he may *recoupe* the ſame. *Terms de Ley*. *Dyer* 2. And an inn-keeper may keep back and detain his gueſt's horſe, *&c.* till he pay for his entertainment: But a man who receives another's cattle to paſturage, it is ſaid, may not do ſo, unleſs it be agreed between them at firſt. *Cro. Eliz*. 196, 197. *Sed qu.* as to the laſt poſition.

Recreant, (*Fr*) Cowardly, faint-hearted; and was formerly a word very reproachful. *Fleta, lib*. 3. ſee *Black. Com*. 3 *V*. 340. 4 *V*. 342.

Recta priſa Regis, The King's right to a prize, or taking of one butt or pipe of wine before, and another behind the maſt, *as a cuſtom* for every ſhip laden with wines. *Edw*. I. in a charter of many privileges to the barons of the Cinque-ports, diſcharged them of this duty. *Cowell*. Priſage of wines not to pay cuſtom. 12 *Car*. 2. *c*. 4. *ſ*. 15.

Rectitudo Right or juſtice; ſometimes it ſignifies legal dues, a tribute or payment. *Leg. Edw. Confeſſ*. *c*. 30. *Si quis Dei* rectitudines *per vim deforceat, emendet*, *&c. viz.* If any one violently retain the rights of God, (*i. e.* tithes and oblation) let him be ſined or amerced, to make full ſatisfaction. *Leg. Hen*. 1. *c* 6.

Recto, Is uſed for a writ of *right*, which is of ſo high a nature, that as other writs in real actions are only to recover the poſſeſſion of the land, *&c.* in queſtion; this aims *to recover the ſeiſin, and the property*, and thereby both the rights of *poſſeſſion* and *property* are tried together. *Co. Lit*. 158.

It hath two *ſpecies*; writ of *right patent*, and writ of *right cloſe*: The firſt is ſo called, becauſe *it is ſent* OPEN, and *is the higheſt writ* of all others, lying for him who hath *a fee-ſimple* in the lands or tenements ſued for, againſt tenant of the freehold at leaſt, and in no other caſe. *F. N. B.* 1, 2, *&c.* But this writ of *right patent* ſeems to be extended farther than originally intended; for a writ of *right* of *dower*, which lies for tenant in dower is *patent*, as appears by *F. N. B.* 7. And the like may be ſaid in ſome other caſes. *Table Reg. Orig.* Alſo there is a *ſpecial* writ of *right patent* in *London*, otherwiſe termed a *writ of right according to the cuſtom*, which lieth of lands or tenements *within* the city, *&c.* And the writ of *right patent* is likewiſe called *breve magnum de recto*. Reg. Orig. 9. Fleta, lib. 5. c. 32.

A writ of *right cloſe* is brought where one holds lands and tenements by charter in *ancient demeſne*, in fee-ſimple, fee tail, or for term of life, or in dower, and is diſſeiſed; and *is directed to the bailiff of the King's manors*, or *to the lord of ancient demeſne*, if the manor is in the hands of a ſubject, commanding him to do right in his court: This writ is alſo called *breve parvum de recto*. F. N. B. 11. Reg. Orig. 9. Britton, c. 120. And he who holds lands in ancient demeſne by court-roll, if he be ouſted, ſhall not have the writ of *right cloſe*, but *is to ſue by bill in the lord's court, &c.*

If a perſon ſeiſed in fee-ſimple dies ſeiſed of ſuch eſtate, and a ſtranger doth abate and enter into the land, and deforce the heir; the heir may ſue a writ of *Right patent* againſt the tenant of the freehold of the ſame land, or an *aſſiſe of Mortdanceſtor*. 11 Aſſ. 17.

In a writ of *right patent*, the demandant is to count *of his own ſeiſin*, or *of the ſeiſin of his anceſtor*; if one bring the writ *as heir* to an anceſtor, he may lay the ſeiſin and *eſplees* as in pernancy of the profits of the lands in his anceſtors; and where it is brought by a biſhop or body politic, ſeiſin of the *eſplees* is to be laid in themſelves, or in their predeceſſors. *New Nat. Br*. 10.

Where a *writ of right cloſe* is directed to the lord of whom the lands are holden, and he will not hold his court to proceed on it; a writ ſhall iſſue requiring him to hold his court, *&c.* And if the lord hold his court, but will not do the demandant right, or delay it, the plea may be removed by the writ called *Tolt* into the county-court of the ſheriff; and from thence by *recordare* into the Common Pleas. *Ibid* 6, 7.

Writ of right may be had after an *aſſiſe*, writ of *entry ſur diſſeiſin*, *&c.* or other real action, where demandant is barred by action tried; ſo if he loſe by default in a writ of *right*, before the miſe is joined, *&c.* But if a perſon once loſeth his cauſe on a writ of *right* by trial and judgment, *&c* he is without remedy, and ſhall be finally concluded. *New Nat. Br*. 2.

Glanvil ſeems to make every writ, whereby a man ſues for any thing due unto him, a writ of *right*. *Glanv. c*. 10, 11, 12.

Recto de Advocatione Eccleſiæ, Is a writ lying where a man hath *right of advowſon*, and the parſon of the church dying, a ſtranger preſents his clerk to the church, the party who hath right not having brought his action of *quare impedit* nor *darreign preſentment*, but ſuffered the ſtranger to uſurp on him: And it lieth only where an advowſon is claimed *in fee* to him and his heirs. *F. N. B.* 30. 4 *Ed*. 3. *c*. 18.

Recto de cuſtodia terrae & haeredis, Was a writ which lay for him whoſe tenant, holding of him chivalry, died in nonage, againſt a ſtranger who entered on the land, and took the body of the heir; but by the ſtatute of 12 *Car*. 2. *c*. 24. it is become uſeleſs as to lands holden *in capite*, or by *knights ſervice*, but not where there is guardian in *ſocage*, or appointed by the laſt will and teſtament of the anceſtor. The form of it, ſee in *F. N. B.* 139. and *Reg. Orig*. 161.

Recto de Dote, A writ of *right of dower*, which lies for a woman who has received *part* of her dower, and demands the reſidue againſt the heir of the huſband, or his guardian. *F. N. B.* 7, 8, 147. *Co. Litt*. 32, 38.

Recto de dote unde nihil habet, Is a *writ of right*, which lies in caſe where the huſband having divers lands or tenements, hath aſſured *no dower to his wife*, and ſhe thereby is driven to ſue for her *thirds* againſt the heir, or his guardian. *Old Nat. Br*. 6. *Reg. Orig*. 170.

Recto quando Dominus remiſit, Is a writ which lieth where lands or tenements in the ſeigniory of any lord, are in demand by a *writ of right*: If the lord in ſuch caſe holdeth no court at the prayer of demandant or tenant, but ſends to the King's court his writ to put the cauſe thither for that time, (ſaving to him at other times the right of his ſeigniory) then this writ ſhall iſſue out for the other party, and hath its name from the words *therein* contained. *F. N. B.* 16.

Recto de Rationabili parte, A writ lying between privies in blood, as brothers in *Gavelkind,* ſiſters, and other coparceners, for land in fee-ſimple. If there be two ſiſters, and the anceſtor dieth ſeiſed of land in fee, and one of the ſiſters enters into the whole, and deforces the other, ſhe who is deforced ſhall have the writ of right *de rationabili parte:* And if, where there are two ſiſters, after the death of the anceſtor they enter and occupy in common as coparceners, and then one of them deforce the other to occupy that which is appendant or appurtenant to the meſſuage, *&c.* which they have in coparcenary; ſhe who is deforced ſhall have this writ. Alſo if the anceſtor were diſſeiſed of lands, and dieth, and one ſiſter entereth into the whole land, and deforceth her ſiſter, ſhe ſhall have the writ againſt her other ſiſter For it lieth as well on a dying ſeiſed of the anceſtor, if one ſiſter enter on all, as where the anceſtor doth not die ſeiſed; and it is a writ of *right patent, &c.* F. N. B. 9. New Nat. Br. 19, 20.

In this writ the demand ſhall be of *a certain* portion of land, *to hold in ſeveralty;* and voucher and view do not lie in it, becauſe of the privity of blood; but in a *rationabili parte* the view was granted. 15 *H.* 5. for that the anceſtor did not die ſeiſed, *&c.* The proceſs in the writ, after removing into *C. B.* is *Summons, Grand Cape,* and *Petit Cape, &c* Ibid. See *Booth.*

Recto ſur Diſclaimer, Is a writ which lies where the lord, in the court of Common Pleas, avows on his tenant, and the tenant *diſclaims* to hold of him; on which *diſclaimer* the lord ſhall have this writ; and if he avers and proves that the land is holden of him, he ſhall recover the land for ever: This writ is grounded on the ſtatute of *Weſtm.* 2. *c.* 2. Old Nat. Br. 150.

Rector, (*Lat.*) A governor; and *rector eccleſiæ parochialis,* Is he who hath the charge and cure of a pariſh church. It has been held, that *rector eccleſiæ* is one who hath a parſonage *where there is a vicarage endowed.* And when dioceſes were divided into pariſhes, the clergy who had the charge in thoſe places were called *rectors;* afterwards, when their *rectories* were appropriated to monaſteries, *&c.* the Monks kept the great tithes; but the biſhops were to take care that the *rector*'s place ſhould be ſupplied by another, to whom he was to allow the ſmall tithes for his maintenance, and this was the *vicar. Count. Parſ. Comp.* 75.——Rector *tantum jus in eccleſiæ parochiali habet, quantum prælatus in eccleſia collegiata.* Black. Com. 1 V. 384.

Rectorial tithes, ſee *Black. Com.* 1 *V.* 388.

Rectory, (*Rectoria*) Is taken *pro integra eccleſia parochiali, cum omnibus ſuis juribus, prædiis, decimis aliiſque proventuum ſpeciebus* Spelm. Alſo the word *rectoria* hath been often applied to the *rector*'s manſion or parſonage houſe. *Paroch. Antiq.* 549. See *Parſonage.*

Rectum, Right; anciently it was uſed for a trial or accuſation. *Bract. lib.* 3.

Rectum *Eſſe, ad rectum in curia domini,* is the ſame with *ſtare ad* rectum. *Leg. H.* 1. *c.* 43. See *infra.*

Rectum *Rogare,* Is to petition the judge to do right. *Leg. Inæ. c.* 9.

Rectum, *Stare ad* rectum, To ſtand trial at law, or abide the juſtice of the court. *Hoved.* 655.

Rectus in Curia, *i. e. Right in court,* is he who ſtands at the bar, and no man objects any offence againſt him. *Smith de Repub. Angl. lib.* 2. *c.* 3. And when a perſon *outlawed* hath reverſed the outlawry, ſo that he can participate of the benefit of the law, he is ſaid to be *rectus in curia.*

Recuſants, Are ſuch as adhere to the *Pope* as ſupreme head of the church, and who refuſe or deny ſupremacy to the King.

At the reformation, thoſe were deemed *recuſants* who diſputed the authority of the crown in cauſes eccleſiaſtical, and denied the King's ſupremacy; but the acts of parliament made againſt *recuſants,* particularly the 35 *Eliz. c.* 2. deſcribe a *recuſant* to be *one who does not repair to ſome church or chapel* or *uſual place of common prayer, to hear divine ſervice:* Afterwards, receiving the ſacrament of the church was made a farther teſt of conformity: And by the 25 *Car.* 2. *c.* 2. & 30 *Car.* 2. *ſt.* 2. a declaration againſt tranſubſtantition was required, to diſtinguiſh papiſts and popiſh *recuſants* from proteſtants.

All perſons are judged popiſh *recuſants* convict, *who refuſe the oaths of allegiance and ſupremacy,* or *abjuration;* and are liable to ſuffer and forfeit accordingly, *viz.* they incur a *præmunire,* whereupon they forfeit all their goods and chattels, with their lands, *&c. Read. Stat.* 4 *Vol. p.* 315.

Recuſants convict, above the age of ſixteen years, are to go to their place of abode or ſettlement, and *not travel above five miles from thence, without licence* from the King, three of the privy council, or four juſtices of the peace, with the aſſent of the biſhop of the dioceſe or the lieutenant, or deputy lieutenant of the county, on pain of forfeiting their goods, *&c.* And not having lands worth twenty marks *per ann.* or goods to the value of 40*l.* if they do not make the ſubmiſſion of conformity mentioned in 35 *Eliz c.* 2. *being required by a juſtice of peace,* they may be compelled to abjure the realm; which abjuration muſt be certified to the next aſſizes; and *it is felony if they do not depart within the time limited* by the juſtices, or departing and returning again without the King's licence: But if any perſon offending, before conviction, come to ſome pariſh church on a *Sunday,* and make a public declaration of his conformity, he ſhall be diſcharged from all penalties, *&c.* though if ſuch offender afterwards relapſe, and become a *recuſant* again, he ſhall loſe the benefit he might otherwiſe have had on his ſubmiſſion: And *recuſants* required by proceſs to make their appearance, ſhall not incur any forfeiture for travelling on ſuch occaſion. 35 *Eliz. c.* 2. 3 *Jac.* 1. *c.* 5.

As to licenſing a *recuſant* to travel, the biſhop, lieutenant, or deputy lieutenant, who gives his aſſent to it, *muſt* be *a diſtinct perſon from the juſtice of peace who gave the licence;* therefore if one and the ſame perſon be a juſtice of peace, and deputy lieutenant, he cannot act in both capacities, but if he ſign and ſeal the licence as a juſtice of peace, the aſſent of ſome other deputy lieutenant, *&c.* muſt be had: And it is a good exception to a licence by four juſtices, that no particular cauſe of the *recuſant*'s travelling is expreſſed in it. *Cro. Jac.* 352. *Cawley* 210.

A perſon was indicted for *recuſancy,* but conformed before conviction: And ſo again the ſecond time, and was indicted a third time for a relapſe; and on motion, that it might be certified into the Exchequer, becauſe by the ſtat. 35 *Eliz. c.* 2. he is to loſe all the benefit which he was to have by his former conformity, the relapſe was certified accordingly. 1 *Bulſt.* 133.

Juſtices in their ſeſſions are to cauſe proclamation to be made, that popiſh *recuſants* ſhall render themſelves to the ſheriff or bailiff of the liberty where they are, before the next aſſiſes or ſeſſions, *&c.* And if they do not, the default being recorded, ſhall be taken as a ſufficient conviction. 3 *Jac.* 1. *c.* 5. And conſtables and churchwardens of every pariſh, or one of them, or, if none ſuch, the conſtables of the hundred there, are to preſent *once a year* at the quarter-ſeſſions ſuch *recuſants* as ſhall abſent from the church for a month together; the forfeiture of which is 20*l. per* month, *&c. Stat. ibid.* If a *recuſant* conform, and do not receive the ſacrament once a year at leaſt, he ſhall forfeit for the firſt year 20*l.* for the ſecond 40*l.* and for every default after 60*l.* And if after he hath once received it, he make default therein by the ſpace of one year, he ſhall forfeit 60*l. to be recovered at the quarter-ſeſſions by indictment,* and divided between the King and proſecutor: But the huſband is not chargeable with the offence of the wife; nor the wife for the huſband after his death. *Ibid.*

It hath been adjudged, that a writ of error will not lie on a conviction of a *recuſant,* for not rendering himſelf to the ſheriff, *&c.* becauſe *the conviction is no judgment,* but the ſtatute gives proceſs on it for the forfeiture: So that if there be any faults in it, the ſame is to be quaſhed in the Exchequer, the party firſt conforming. *Raym.* 433.

An information *tam quam* was brought againſt defendant, ſetting forth, that before and on ſuch a day he was a *recuſant* convict, and that afterwards he conformed, *&c.*

and for three years after had not received the ſacrament, and ſo demanded 60 *l.* for every year: On Not guilty pleaded, plaintiff had verdict; and thereupon it was moved that the information was incertain, becauſe *neither the time was alledged, nor how, or in what court, nor before whom the conviction was*; and the informer demands the penalty for three years, when by ſtatute no informer can demand a penalty upon the penal law, but by an information exhibited within a year after the offence: But it was reſolved, that *the firſt exception had been good on demurrer*; but defendant having pleaded Not guilty, all the circumſtances of his conviction were admitted, and nothing remained to be tried but the fact: And as for the ſecond exception, it was good againſt the informer for his part, but ſhould not prejudice the King. *Cro. Jac.* 365. 3 *Nelſ. Abr.* 52.

The Stat. 23 *Eliz. c.* 1. gives ſeveral remedies againſt Recuſants; one for the King alone, and there the proſecution *muſt* be by indictment in *B. R.* The other for a common perſon, and that is to be by action of debt, bill plaint or information. And the 28 *Eliz. c.* 6. was made for the benefit of the crown on indictments, and doth not extend to informations; therefore ſuch informations may be brought in any court of record. *Hob.* 204.

Where the defendant is indicted on the ſtatute of Recuſancy, CONFORMITY *is a good plea*; but *not* if an action of debt be brought. 1 *Mod.* 213. But *vide* 2 *Show.* 332.

A Recuſant certified into the court of *King's Bench*, according to the 23 *Eliz. c.* 1. ſhall give ſecurity for his good behaviour, *&c.* 2 *Bulſt.* 155. The judgment in Recuſancy is *quod convictus eſt.* 2 *Strange* 1048.

Fraudulent conveyances to avoid the penalties of Recuſancy, made void 29 *Eliz. c.* 6. The crown may ſeize the goods, and two thirds of the lands of Recuſants, for non payment of the 20 *l.* a month. 29 *Eliz. c.* 6. *ſ.* 4. Jeſuits and prieſts refuſing to anſwer, ſhall be committed. 35 *El. c.* 2. *ſ.* 11. The manner of a Recuſant's ſubmiſſion. 35 *El. c.* 2. *ſ.* 15.

None ſhall go or ſend any other to a popiſh ſeminary, 1 *Jac.* 1. *c.* 4. *ſ.* 6. 11 & 12 *W.* 3. *c.* 4. *ſ.* 6. See alſo 3 *Car.* 1. *c.* 3. 25 *Car.* 2. *c.* 2. *ſ.* 8. It is great pity theſe laws are not enforced, as many perſons, who pretend to be proteſtants, from motives of parſimony, ſend their children abroad to popiſh ſeminaries, to be boarded and educated. They might board and educate their children in *England*, at a diſtance from the metropolis, as well, and for as little expence, every thing duly conſidered. The children are ſubjected to certain diſabilities, if ſent without licence, by 3 *Jac.* 1. *c.* 5. *ſ.* 13. The penalty of retaining Recuſants, 3 *Jac.* 1. *c.* 4. *ſ.* 32.

Recuſants reſtrained from coming into the preſence of the King or the Prince. 3 *Jac.* 1. *c.* 5. 30 *Car.* 2. *ſt.* 2. But by *ſect.* 12. they may come into the King's preſence, by licence of ſix privy counſellors.

Recuſants are diſabled from practiſing law, or phyſic, or bearing office, by 3 *Jac.* 1. *c.* 5. *ſ.* 8. They are ſubjected to the diſabilities of excommunication by 3 *Jac.* 1. *c.* 5. *ſ.* 11.

Penalty on Recuſants having marriages or baptiſms ſolemnized by popiſh prieſts. 3 *Jac.* 1. *c.* 5. *ſ.* 13.

Recuſants are diſabled from preſenting to a church, or granting an advowſon. 3 *Jac.* 1. *c.* 5. *ſ.* 18. This is extended to perſons profeſſing the popiſh religion. 12 *Ann. c.* 14. 11 *Geo.* 2. *c.* 17. *ſ.* 5. The preſentation to churches of Recuſants, given to the univerſities. 3 *Jac.* 1. *c.* 5. *ſ.* 19. And of perſons refuſing the declaration. 1 *W. & M. c.* 26. Recuſants diſabled from being executors or guardians. 3 *Jac.* 1. *c.* 5. *ſ.* 22. Arms and ammunition of Recuſants to be ſeiſed. 3 *Jac.* 1. *c.* 5. *ſ.* 27. Penalies on married women Recuſants. 7 *Jac.* 1. *c.* 6. *ſ.* 28.

Members of either houſe of parliament, not making the declaration againſt popery, to be Recuſants convict. 30 *Car.* 2. *ſt.* 2. Third refuſal of the declaration againſt popery by any perſon, conviction of Recuſancy. 1 *W. & M. c.* 8. *ſ.* 9. Reputed papiſts refuſing the oaths, to remove ten miles from *London*, or be convict of Recuſancy; except tradeſmen regiſtring their names, *&c.* 1 *W. & M. c.* 9. See *Papiſts*, and *Black. Com.* 4 *V.* 55, 124.

Red, (Sax. *ræd*) Is an old word ſignifying advice; and *redbana* is one who adviſed the death of another. See *Dedbana*.

Red Book of the Exchequer, (*Liber Rubeus Scaccarii*) Is an ancient record, wherein are regiſtred the names of thoſe who held lands *per Barroniam* in the time of *Hen.* 2. *Ryley* 667. It is a manuſcript volume of ſeveral miſcellany treatiſes in the keeping of the *King's remembrancer* in his office in the *Exchequer*; and hath ſome things (as the number of the hides of lands in many of our counties, *&c.*) relating to the times before the Conqueſt. There is likewiſe an exact collection of the eſcuages under King *Hen.* 1. *Rich.* 2. and King *John*; and the ceremonies uſed at the coronation of Queen *Eleanor*, wife to King *Henry* the Third, *&c.* See *Privilege*.

Reddendum, Is uſed ſubſtantively for the clauſe in a leaſe, *whereby the rent is reſerved to the leſſor*; and anciently corn, fleſh, fiſh, and other victuals, were for the moſt part reſerved on leaſes. 2 *Rep.* 72. *Wood's Inſt.* 226.

In debt for rent, plaintiff declared on a leaſe made 25 *Auguſt* 11 *W.* 3. of a meſſuage, *&c.* for ſeven years, to commence from the 24th day of *June* before; *reddendum* quarterly at *Michaelmas*, St. *Thomas's* day, *Lady day*, and *Midſummer*, three pounds ten ſhilliugs, the firſt payment to be made at *Michaelmas* then next; and aſſigned for breach that fourteen pounds of the rent was in arrear for one year, ending 24 *December anno* 13 *Will.* And on demurrer to this declaration, it was objected that on this leaſe there was no year could be ended on the the 24th of *December*, but on St. *Thomas's* day, according to the *reddendum*; which was held to be true, becauſe *where ſpecial days are limited in the reddendum, the rent muſt be computed from thoſe days*, not according to the *habendum*; and that the rent is never computed from the *habendum*, but when the *reddendum* is general, *i. e.* paying quarterly ſo much; ſo plaintiff had leave to diſcontinue, *&c.* 1 *Salk.* 141. See *Deed, Leaſe and Reſervation*, and *Black. Com.* 2 *V.* 299. i, iii.

Reddidit ſe, Is where a man procures bail for himſelf to an action in any court at law; if the party bailed at any time before the return of the ſecond *ſcire facias* againſt the bail, *renders himſelf* in diſcharge of his bail, they are thereby diſcharged. 2 *Lill. Abr.* 430.

A *ca. ſa.* was returned *non eſt inventus* againſt the principal, and one *ſcire fac'* and a *nihil*; and on the ſecond *ſcire fac.* he rendered himſelf, and was received: But if there had been a *ſcire feci* and judgment thereon, he had come too late. *Cro. Jac.* 109.

If defendant *renders himſelf* to the Marſhal of *B. R.* on any action in that court, in diſcharge of his bail, *the defendant's attorney is forthwith to give notice of ſuch render to plaintiff's attorney, and ſhall make oath of the notice, &c.* And a *reddidit ſe* will not diſcharge the bail unleſs the attorney who is concerned for defendant or his bail, *enters it in the Marſhal's book*; and having given notice thereof to the attorney for plaintiff, brings the bail-piece to the Secondary, who on producing a note from the Marſhal or his clerk, that defendant is in cuſtody, will diſcharge it; and, until this is done, plaintiff may notwithſtanding proceed to judgment and execution againſt the bail; for *until the bail-piece is diſcharged, there is a record ſtill remaining in court againſt them.* 2 Lill. 431.

A *reddidit ſe* of the principal, in diſcharge of the bail in error, is no plea; for the recogniſance is not to render the body, but to pay the debt. Vide *Bail*.

Redditarius, A renter; and *redditarium* hath been uſed for a rental of a manor, or other eſtate. *Cartular. Abbat. Glaſton. MS.* 92.

Reddition, (*Redditio*) A ſurrendering or reſtoring; being alſo a judicial acknowledgment that the thing in demand belongs to the demandant, and not to the perſon ſo ſurrendering. Stat. 34 & 35 *H.* 8. *c.* 24.

Redditus Aſſiſus, Is ſet or ſtanding rent. Vide *Aſſiſus*.

Re-delivery, Is a yielding and delivery back of a thing: If a perſon has committed a robbery, and ſtolen the goods of another, he cannot afterwards purge the offence by any *re-delivery*, *&c.* *Co. Lit.* 69. *H. P. C.* 72.

Redemiſe, Is a *regranting* of lands demiſed or leaſed. See *Demiſe and Redemiſe.*

Redemption, (*Redemptio*) A ranſom or commutation; and by the old *Saxon* laws, a man convicted of a crime paid ſuch a fine, according to the eſtimation of his head, *pro redemptione ſua.*

Rediſſeiſin, (*Rediſſeiſina*) Is a *diſſeiſin* made by him, who *once before* was found and adjudged to have *diſſeiſed* the *ſame man* of his lands or tenements, for which there lies a ſpecial writ called a *writ of rediſſeiſin.* Old Nat. Br. 106. F. N. B. 188.

The *writ of rediſſeiſin* lieth where a perſon recovers by *aſſiſe of novel diſſeiſin* any lands, *&c.* and is put in poſſeſſion by verdict and judgment, and *afterwards is diſſeiſed of* the ſame by him by whom he was diſſeiſed before. Statute of *Merton, c.* 3. *New Nat. Br.* 417. Alſo this writ lies againſt him who committed the *rediſſeiſin,* and another who was not diſſeiſor, *if he be tenant of the land*; and if a man recover by rediſſeiſin, and after he is diſſeiſed again by the perſon who made the firſt *rediſſeiſin,* he ſhall have a new writ of *rediſſeiſin*; and ſo one *rediſſeiſin* after another, every time he is rediſſeiſed. *Ibid.* 418, 420.

The *rediſſeiſin* being found on the ſheriff's inquiſition, the party who did it is to be committed to priſon, and the land re-ſeiſed; and he who recovereth in *rediſſeiſin,* ſhall have *double damages, &c.* Stat. Weſtm. 2. c. 26. The puniſhment for *rediſſeiſin* ſee in the ſtatute 52 *H.* 3. *c.* 8.

If plaintiff be *rediſſeiſed* of parcel of the tenement formerly recovered, he ſhall have a *rediſſeiſin*: And when coparceners are diſſeiſed, and recover in an *aſſiſe,* if after they make partition and are ſeverally diſſeiſed, they may bring ſeveral writs of *rediſſeiſin, &c.* Co. Lit. 154.

A recovery in *aſſiſe of novel diſſeiſin* is againſt two diſſeiſors, and one of them diſſeiſes the plaintiff again, he may have a *rediſſeiſin* againſt him: But where the recovery is againſt a woman in *aſſiſe,* and ſhe taketh huſband, and both of them diſſeiſe the plaintiff, he ſhall not have this writ; becauſe the huſband is *alius,* and not the ſame firſt diſſeiſor. *Ibid.* And if in a writ of right, *&c.* the demandant makes his proteſtation to ſue in the nature of *aſſiſe,* and after is rediſſeiſed; he ſhall not have a writ of *rediſſeiſin,* the firſt recovery not being by writ of *aſſiſe of novel diſſeiſin.* See 2 Inſt. Com. *on* Weſt. 2. c. 26. *See* Poſt-Diſſeiſin, *and* Black. Com. 3 V. 188.

Redreſs of Injuries. The more effectually to accompliſh the redreſs of injuries, courts of juſtice are inſtituted in every civilized ſociety, in order to protect the weak from the inſults of the ſtronger, by expounding and enforcing thoſe laws, by which rights are defined, and wrongs prohibited: This remedy is therefore principally to be ſought by application to theſe courts of juſtice; that is by civil ſuit or action. *Black. Com.* 3 *V.* 2.

Redubbers, Are thoſe that buy ſtolen cloth, and turn it into ſome other colour or faſhion, that it may not be known again. *Britton, c.* 29. 3 *Inſt.* 134.

Re-entry, (from the Fr. *rentrer* i. e. *rurſus intrare*) Is the reſuming or retaking a poſſeſſion lately had, as if a man makes a leaſe of lands, *&c.* to another, he thereby quits the poſſeſſion; and if he covenants with the leſſee, that, for non-payment of rent at the day, it ſhall be lawful for him to *re-enter*; this is as much as if he conditioned to take again the land into his own hands, and to recover the poſſeſſion by his own act, without aſſiſtance of the law. But *words in a deed give no re-entry, if* A CLAUSE *of re-entry be not added.* Wood's Inſt. 140.

One may reſerve a rent on condition in a feoffment, leaſe, *&c.* That if the rent is behind he ſhall *re-enter,* and hold the lands till he is ſatisfied, or paid the rent in arrear; and in this caſe if the rent is behind, he may *re-enter*; tho' when the feoffee, *&c.* pays or *tenders on the land* all the arrears, he may enter again. *Lit.* 327. *Co. Lit.* 203. And the feoffor, *&c.* by his re-entry gaineth no eſtate of freehold, but an *intereſt* by the agreement of the parties, to take the profits in the nature of a diſtreſs: Here the profits ſhall not go in part of ſatisfaction of the rent; but it is otherwiſe if the feoffor was to hold the land till he was paid by the profits thereof. *Ibid.*

All perſons who would *re-enter* on their tenants for non-payment of rent, *are to make a demand of the rent*; and, to prevent the *re-entry,* tenants are to tender their rent, *&c.* 1 *Inſt.* 201. If there is a leaſe for years, rendring rent with condition, that, if the leſſee aſſigns his term, the leſſor may *re-enter*; and the leſſee aſſigneth, and the leſſor receiveth the rent of the aſſignee, not knowing or hearing of the aſſignment, he may *re enter* notwithſtanding the acceptance of the rent. 3 *Rep.* 65. *Cro. Eliz.* 553.

A feoffment may be made upon condition, That if the feoffor pay to the feoffee, *&c.* a certain ſum of money at a day to come, then the feoffor to *re-enter, &c.* Litt. 322.

Re-exchange, Is the like ſum of money payable by the drawer of a bill of exchange which is returned proteſted, for the exchange of the ſum mentioned in the bill back again to the place whence it was drawn. *Lex Mercat.* 98.

Re-extent, Is a *ſecond extent* on lands or tenements, on complaint that the former was partially made, *&c.* *Broke* 313.

Refare, (from the Sax. *reaf,* or *ræfan*) To bereave, take away, or rob. *Leg. H.* 1. *c.* 83.

Reference, In acceptation of law is, where a matter is *referred* by the court of *Chancery* to a *Maſter,* and by the *courts at law* to a *Prothonotary* or *Secondary,* to examine and report to the court. 2 *Lill. Abr.* 432. Or by the court or parties, to ſome indifferent perſon.

In Chancery, by order of court, irregularities, exceptions, matters of account, *&c.* are referred to the examination of a Maſter of that court. In the court of *B. R.* matters concerning the proceedings in a cauſe, by either of the parties, are proper matters of *reference* under the Secondary, and for him in ſome ordinary caſes to compoſe the differences betwixt them; and in others to make his report how the matters ſtand, that the court may ſettle the differences according to their rules and orders. *Paſch.* 1650.

If a matter in difference between plaintiff and defendant be referred to the Secondary, and one of the parties will not attend at the time appointed, after notice thereof given, to hear the buſineſs referred; the other party may proceed in the *reference* alone, and get the Secondary to make his report without hearing of the party not attending. 2 *Lill.* 342. See *Report.* and *Black. Com.* 3 *V.* 453.

Reference to Words. The King granted to *A.* and *D.* and their heirs *all thoſe meſſuages, &c.* late in the tenure of *J. S.* ſituate, *&c.* in the city of *W.* and in the ſuburbs thereof, and out of the city within the juriſdiction and liberties thereof belonging to the late priory of, *&c.* which meſſuage, *&c.* in the city and ſuburbs belonging to the late priory, were of the clear yearly value of 40*l.* Reſolved, that the words (*all* THOSE *meſſuages, &c.*) make a neceſſary *reference* by reaſon of the word (*thoſe*) as well to the vill as to the tenure of *J. S.* ſo if the one or the other fails, the general grant is void; for (*thoſe*) is not ſatisfied till the ſentence be ended. *Doddington's* caſe. See 18 *Vin. Abr.* 272.

Referendary, (*Referendarius*) An officer abroad, of the ſame nature as *Maſters of Requeſt* were to the King among us: The *Referendaries* being thoſe who exhibit the petitions of the people to the King, and acquaint the judges with his commands. And there was ſuch an officer in the time of the Engliſh *Saxons* here,——*Ego Augemundus* Referendarius *approbavi, &c.* And we read of a *Referendarius Angliæ.* Spelm.

Reformation of Religion, See *Black. Com.* 4 *V.* 423.

Refunding. *A.* an attorney being ill, takes *B.* for his clerk, and receives 120*l.* and by articles agrees with the father of *B.* to return 60*l.* of the money if he died within a year. *A.* died within three weeks. The executor of *A.* was decreed to pay back 100 guineas. *Ver.* 466.

A. was indebted to *B.* by mortgage in 400*l.* principal monies and died. *B.* died leaving *J. S.* executor. On a bill in Chancery, for payment of debts of *A.* out of lands charged with the ſame, the maſter reported 700*l.* due on the mortgage, and the executor received the whole 700*l.* but afterwards it appeared that 353*l.* 13*s.* 1*d.* had been paid to *B.* the teſtator by *A.* in his life-time; whereupon the truſtees and *ceſtui que truſt,* an infant, brought a bill *to be relieved againſt this over-payment*; the executor (defendant) pleaded all the former proceedings, and alſo that he, before any notice of the over-payment, as executor of *B. had paid away* the 700*l.* in the debts of *B.* The Maſter of the Rolls decreed the executor *to repay the ſurplus, and he to be at liberty to ſue ſuch creditors, as through miſtake he had paid,* TO REFUND; and this decree was affirmed by Lord Chancellor *Cowper*, who compared it to the caſe of a judgment obtained by executor, and after reverſed in error, and to that of a decree which is afterwards reverſed by appeal; though he ſaid that in the laſt caſe of an appeal if defendant had delayed the appeal, and willingly ſtood by whilſt the executor paid away the money to the teſtator's creditors, it would be otherwiſe; for this would be drawing the executor into a ſnare. 1 *Wm's Rep.* 355.

A. for 600*l.* purchaſes *B.*'s intereſt and poſſibility in ſuch an eſtate to him and his heirs; the land is evicted. *A.* is not intitled to have his 600*l.* back, but his bill was diſmiſſed. *Fin. Rep.* 288.

Croſs bill was brought for creditors to take their proportionable ſhares, but the debts having been paid to and releaſes given by them, it was diſmiſſed. 2 *Chan. R.* 173.

Refuſal, Is where one hath by law a right and power of having or doing ſomething of advantage to him, and he refuſeth it. An executor may refuſe an *executorſhip*; but the *refuſal* ought to be *before the ordinary:* if an executor be ſummoned to accept or refuſe the executorſhip, and he doth not appear on the ſummons and prove the will, the court may grant adminiſtration, *&c.* which ſhall be good in law till ſuch executor hath proved the will; but no man can be compelled to take on him the executorſhip, unleſs he hath intermeddled with the eſtate. 1 *Leon.* 154. *Cro. Eliz.* 858. Where there are ſeveral executors, and they all refuſe, none of them ſhall adminiſter afterwards; but if there is a *refuſal* by one, and the other proves the will, the *refuſing* executor may adminiſter when he will, during the life of his co-executor. 1 *Rep.* 28. 1 *Nelſ. Abr.* 63. There is a difference where there is but one executor, and where there are more executors than one, as to *refuſal* of an executorſhip; for if there is but one, and in ſuch caſe *he adminiſter*, he cannot *refuſe* afterwards; and if once he *refuſe*, he cannot adminiſter afterwards: As for inſtance; the teſtator being poſſeſſed of lands, *&c.* for a term of years, deviſed the ſame to the Chief Juſtice *Catline*, and made him executor, and died; afterwards the executor wrote a letter to *the judge of the prerogative court*, intimating that he could not attend the executorſhip, and deſiring him to grant adminiſtration to the next of kin to the deceaſed, which was done accordingly; and after this the executor entered on the lands, and granted the term to another; but it was adjudged void, becauſe the letter which he wrote was a ſufficient *refuſal*; and he may not once *refuſe*, and afterwards take upon him the executorſhip. *Moor* 272.

An executor, after a *caveat* entered againſt the will, took the uſual oath of an executor, and *afterwards* refuſed to prove the will; and it was held, that having taken the oath of executor, the court could not admit him to *refuſe* afterwards, but ought to grant *probate* to him notwithſtanding the *caveat*, on another's conteſting for the adminiſtration, *&c.* 1 *Vent.* 335.

There is a refuſal of a clerk preſented to a church, for illiterature, *&c.* And if a biſhop once refuſes a clerk for inſufficiency, he cannot accept of him afterwards, if a new clerk is preſented. 5 *Rep.* 58. *Cro. Eliz.* 27.

In *trover*, a demand of the goods and *refuſal* to deliver them, MUST BE PROVED, *&c.* 10 *Rep.* 56. 1 *Danv. Abr.* 20.

Refutantia, A diſcharge; or renouncing of all future claim.—*Viſis libris, inſtrumentis, regiſtris,* refutationibus, *aliiſque evidentiis,* *&c.* Thorn. *anno* 1389.

Regale Epiſcoporum, The temporal rights and privileges of a biſhop. *Mandatum eſt* Roberto *de* B. *quod faciat habere Epiſcopo* Norwicenſi *totum* Regale *quod ad Epiſcopatum ſuum pertinet.* Brady's Append. to the Hiſtory of England, p. 108.

Regales, The King's ſervants or officers of *Walſingham*, *anno* 1291.

Regal Fiſhes, (mentioned in 1 *Eliz. cap.* 5.) Are *whales* and *ſturgeons*, ſome add *porpuſſes*.

The King by his prerogative ought to have every whale *caſt on ſhore*, or wrecked, in all places within this realm, (unleſs granted to ſubjects by ſpecial words) as a *royal fiſh*. The King himſelf ſhall have the head and body to make oil and other things, and the Queen, the tail, to make whalebones for her royal veſtments. *Pat. Ed.* 1. *m.* 25. *Dorſo.* See *Tract de auro Reginæ, p.* 127.

Regalia, *(dicuntur jura omnia ad fiſcum ſpectantia,* ſaith *Spelman)* The royal rights of a King, which the *Civilians* reckon to be ſix.

1. Power of judicature.
2. Power of life and death.
3. Power of war and peace.
4. Maſterleſs goods, as waifs, eſtrays, *&c.*
5. Aſſeſſments. And
6. Minting of money. See *Royalties*.

Alſo the crown, ſcepter with the croſs, ſcepter with the dove, St. *Edward*'s ſtaff, four ſeveral ſwords, the globe, the orb with the croſs, and other ſuch like things uſed at the coronation of our Kings, are called *regalia*. See the relation of the coronation of King *Charles* the Second in *Baker's Chronicle*.

Regalia is ſometimes taken for the dignity and prerogative of the King. *Regalia* is alſo taken for thoſe rights and privileges which the church enjoys by the grants and other conceſſions of King's, and ſometimes for the patrimony of the church; as *regalia Sancti Petri,* *&c.* It ſignifies alſo thoſe lands and hereditaments which have been given by Kings to the church, *viz. Cepimus in manum noſtram baroniam &* regalia *quæ archiepiſcopus Eborum de nobis tenet.* Pryn. lib. Angl. 2 tom. p. 231. Theſe, whilſt in the poſſeſſion of the church, were ſubject to the ſame ſervices as all other temporal inheritances; and after the death of the biſhop they of right returned to the King, until he inveſted another with them; which in the reign of *William the Conqueror*, and ſome of his immediate ſucceſſors, was often neglected or delayed; and as often the biſhops complained thereof. This appears in *Ordericus Vitalis, lib.* 10. and other writers in thoſe days. *Neubrigenſis, lib.* 3. *cap.* 26. tells us they complained againſt *Hen.* 2. for that *Epiſcopatus vacantes & proventientia perciperet commoda, diu vacare voluit, & eccleſiaſticis potius uſibus applicanda in fiſcum redegit.* So in *Malmſb. lib.* 1. *de Geſt. Pontificum, p.* 285. See *Black. Com.* 1 *V.* 241.

Regalia facere, Is to do homage or fealty when he is inveſted with the *regalia*, *viz.* Regalia *pro more iſtius temporis faciens principi* 7 *Calend. Octobris Cantuariæ aſſedit.* Malmſbury, *de geſtis Pontificum, p.* 219. *de Anſelmo.*

Regard, *(regardum* and *rewardum*, Fr. *regard, i. e. aſpectus, reſpectus)* Signifies generally any care or diligent reſpect, yet it hath alſo a ſpecial acceptation, wherein it is only uſed in matters of the foreſt; and there are two ways, one for the office of *regarder*, the other for the compaſs of the ground belonging to that office. *Crom. Jur.* 175, 199. Touching the former, ſee *Manwood, part.* 1. 194, *&* 198. And touching the ſecond ſignification, the compaſs of the *regarder*'s charge is the whole foreſt, that is, all the ground which is parcel of the foreſt; for there may be woods within the limits of the foreſt, that are no parcel thereof, and thoſe are without the *regard*. *Manwood, part.* 2. *c.* 7. *num.* 4. *anno* 20 *Car.* 2. *c.* 3. As to the *court of regard*, ſee tit. *Foreſt*, and *Black. Com.* 3 *V.* 72.

Regardant, *(Fr.* ſeeing, marking, vigilant) As a *villain regardant* was called *regardant* to the manor, becauſe he had the charge to do *all baſe ſervices* within the ſame, and to ſee the ſame freed of all things that might annoy it. *Co. Lit.* 120. This word is only applied to a *villain* or *nief*, yet in old books it was ſometimes attributed to ſervices. *Ibid.* See *Black. Com.* 2 *V.* 93.

Regarder, *regardator, (Fr. regardeur, ſpectator)* Is the officer of the King's foreſt, who is ſworn to make the *regard* of it, and has been uſed in ancient time; and to view and enquire of all offences of the *foreſt* as well of *vert* as of *veniſon*; and of concealment of any offences or defaults of the foreſters, and all other officers of the King's foreſt, relating to the execution of their offices, *&c. Cromp. Juriſd.* 153. *Manwood.*

This officer was ordained in the beginning of the reign of *Hen.* 2. And the *regarders* of the *foreſt* muſt make their *regard*, before any general ſeſſions of the foreſt, or juſtice ſeat, can be holden; when the *regarder* is to go through the foreſt, and every bailiwick, to ſee and inquire of the treſpaſſes therein; *ad videndum, ad inquirendum, ad imbreviandum, ad certificandum, &c.* Manw. part. 1. p. 194. A *regarder* may be made either by the King's letters patent; or by any of the juſtices of the foreſt, at the general *eyre*, or ſuch times as the *regard* is to be made, *&c. Manw.* See *Foreſt.*

Rege inconſulto, Is a writ iſſued from the King to the judges not to proceed in a cauſe which may prejudice the King, until he is adviſed.

James I. granted the office of *ſuperſedeas* in *C. B.* to one *Mitchel*, and thereupon *Brownlow*, chief prothonotary, brought an *aſſiſe* againſt him; and defendant *Mitchel* obtained the King's writ to the judges, reciting the grant of this office, commanding them not to proceed *rege inconſulto:* And it was argued againſt the writ, that the court might proceed, becauſe *the writ doth not mention that the King had a title to the thing in demand*, nor any prejudice which might happen to the King if they ſhould proceed: The cauſe was compromiſed. *Moor* 844.

A *rege inconſulto* may be awarded, not only for the party to the plea, but on ſuggeſtion of a ſtranger, on cauſe ſhewn that the King may be prejudiced by the proceeding, *&c. Jenk. Cent.* 97. This was the ancient doctrine. *Sed qu.* How far the courts of law would now be bound to pay attention to ſuch a writ?

Regio aſſenſu, A writ whereby the King gives his royal aſſent to the election of a biſhop. *Reg. Orig.* 294.

Regiſter, *(regiſtrarius)* An officer who writes and keeps a *regiſtry*.

Regiſter is the name of a book, wherein are entered moſt of the forms of *writs* original and judicial, uſed at Common law, called the *Regiſter of writs:* Sir *Edward Coke* affirms, that this *Regiſter* is one of the moſt ancient books of the Common law. *Co. Lit.* 159.

The learned *Blackſtone* ſays, it is "the moſt ancient "and highly venerable collection of legal forms, upon "which *Fitzherbert's Natura Brevium* is a comment, and "in which every man who is injured will be ſure to find "*a method* of relief, exactly adapted to his own caſe, de"ſcribed in the compaſs of a few lines, and yet without "the omiſſion of any material circumſtance." *Com.* 3 *V.* 183.

Regiſter of the Pariſh Church, *(regiſtrum eccleſiæ parochialis)* Is that wherein *baptiſms, marriages*, and *burials* are *regiſtred* in each pariſh every year; which was inſtituted by Lord *Cromwell, anno* 13 *Hen.* 8. while he was vicar general to that King.

Theſe *pariſh regiſters* are to be ſubſcribed by the miniſter and churchwardens; and the names of the perſons ſhall be tranſmitted yearly to the biſhop, *&c.*

Regiſtry, *(regiſtrum,* from the old Fr. *giſter*, i. e. *in lecto reponere*, Is properly the ſame with *repoſitory*, and the office books, and rolls wherein the proceedings of the *Chancery*, or any *ſpiritual court*, are recorded, *&c.* are called by this name.

Regiſtry of Deeds. The *regiſtring of deeds* and incumbrances *is a great ſecurity of titles to purchaſers* of lands and to mortgagees; and ſome laws have been made requiring the ſame. By the 2 *Ann. c.* 4. A *regiſtry* is to be kept of all deeds and conveyances affecting lands executed in the *Weſt Riding* of *Yorkſhire*; and a public office erected for that purpoſe; and the *regiſter* is to be choſen by freeholders having 100*l. per annum, &c.* The 6 *Ann. c.* 35. ordains, that a memorial and *regiſtry* of all deeds, conveyances, wills, *&c.* which affect any lands or tenements, ſhall be made in the *Eaſt Riding* of the county of *York*; and the *regiſter* is to be ſworn by the juſtices in quarter-ſeſſions, and *every leaf of his book ſigned by two juſtices.* By 7 *Ann. c.* 20. A memorial and *regiſtry* is to be made of all deeds and conveyances, and of all wills *whereby lands are affected, &c.* in the county of *Middleſex*, in the like manner as in the *Weſt* and *Eaſt Ridings* of *Yorkſhire.* And by theſe ſtatutes, deeds, conveyances and wills, ſhall be void againſt ſubſequent purchaſers or mortgagees, unleſs *regiſtred* before the conveyances under which they claim: Alſo no judgment, ſtatute, or recognizance, ſhall bind any lands in thoſe counties, but *from the time a memorial thereof ſhall be entered* at the *regiſter*'s office; but the acts do not extend to copyhold eſtates, leaſes at a rack-rent, or to any leaſes, not exceeding twenty-one years, *where the poſſeſſion goes with the leaſe*; nor to any chambers in the inns of court. By the 8 *Geo.* 2. *c.* 6. A *regiſtry* ſhall be of all deeds made in the *North Riding* of the county of *York:* The deeds and conveyances *regiſtred* to be in parchment, *under the hand and ſeal of ſome of the grantors, or grantees*, &c. *atteſted by two witneſſes*, who ſhall on oath prove the ſigning and ſealing of the memorial and execution of the deeds. Memorials of wills muſt be *regiſtred* within ſix months after the death of the teſtator; the Regiſter neglecting his duty, or guilty of fraudulent practices, ſhall forfeit his office, and pay treble damages; and perſons counterfeiting any memorial, *&c.* be liable to the common penalties of forgery.

An annuity was granted out of lands lying in *Middleſex*; *A. B.* who had notice of the grant, purchaſes the lands; the grantee ſhall have the annuity againſt *A. B.* though the grant of the annuity was not regiſtered, for the ſtatute was intended *to give notice of incumbrances to purchaſers, that they might not be defrauded*; but if a man *knows* of an incumbrance, and will notwithſtanding purchaſe, he is bound, though the incumbrance was not regiſtered. 1 *Strange* 664.

A mortgage of a leaſe was regiſtered, but not the leaſe itſelf; this will not bar a ſubſequent purchaſer. 2 *Strange* 1064. Deputy of the chief clerk of the King's Bench, appointed a Regiſter for *Middleſex*, inſtead of the chief clerk. 25 *Geo.* 2. *c.* 4.

Regiſtry of Papiſts Eſtates. Papiſts are to regiſter their eſtates, or on default forfeit them. 1 *Geo.* 1. *c.* 55. And all perſons refuſing to take the oaths, are obliged to regiſter their eſtates as papiſts, *&c.* 9 *Geo.* 1. *c.* 24. See *Papiſts.*

Regius Profeſſor, A reader of *lectures* in the *univerſities*, founded by the King: King *Hen.* 8. was the founder of five lectures in each univerſity of *Oxford* and *Cambridge, viz.* of *Divinity, Greek, Hebrew, Law* and *Phyſic*, the readers of which are called in the univerſity ſtatutes *regii profeſſores.*

Regni Populi, A name given to the people of *Surry* and *Suſſex*, and on the ſea coaſts of *Hampſhire.* Blount.

Regnum Eccleſiaſticum. In ſome countries formerly, the clergy held there was a double ſupreme power, or two kingdoms in every kingdom; the one a *regnum eccleſiaſticum*, abſolute and independent of any but the *Pope*, over eccleſiaſtical men and cauſes, exempt from the ſecular magiſtrate; the other a *regnum ſeculare*, of the King or civil magiſtrate, which had ſubordination and ſubjection to the eccleſiaſtical kingdom: But theſe uſurpations and abſurdities were exterminated *here* by *H.* 8. 2 *Hale's Hiſt. P. C.* 324.

Regrator, *(Regratarius,* Fr. *Regrateur)* Signifies him who buys *and* ſells any wares or victuals in the *ſame* market or fair: And *regrators* are particularly deſcribed to be thoſe who *buy* or get into their hands, in fairs or markets, any grain, fiſh, butter, cheeſe, ſheep, lambs, calves, ſwine, pigs, geeſe, capons, hens chickens, pigeons, conies, or other dead victuals whatſoever, brought to a fair or market to be ſold there, and do *ſell the ſame again in the ſame fair*, market, or place, or *in ſome other within four miles thereof.* Stat. 5 & 6 Ed. 6. cap. 14. 13 Eliz. cap. 25.

Regrating is a kind of *huckſtry*, by which victuals are made dearer; for every ſeller will gain ſomething, which muſt of conſequence enhance the price. 3 *Inſt.* 195. And in ancient time, both the *ingroſſer* and *regrator* were comprehended under the word *foreſtaller.* Ibid. *Regrators* are puniſhable by loſs and forfeiture of goods, and impriſonment, in proportion to the firſt, ſecond, or third offence, &c. Vide *Foreſtaller*, and *Black. Com.* 4 *V.* 158.

Regulars, (*regulares*) Are ſuch as profeſs to live under ſome certain rule; ſuch as monks or *canon regulars*, who ought always to be under ſome rule of obedience.

Regulus, Subregulus, Are words often mentioned in the councils of the *Engliſh Saxons*: The firſt ſignifies *comes*, the other *vicecomes*. But in many places they ſignify the ſame dignitary; as in the old book in the *archives* of *Worceſter* cathedral. *Cowell*. See *Subregulus*.

Rehabere facias ſeiſinam, (*Quando vicecomes liberavit ſeiſinam de majore parte, quam deberet*) Is a writ judicial; of which there is another of the ſame name and nature. *Reg. Judic.* 13, 51, 54.

Rehabilitation, (*rehabilitatio*) A reſtoring to former *ability*; and is one of thoſe exactions claimed by the Pope heretofore in *England*, by his bull or brief, for *re-enabling* a ſpiritual perſon to exerciſe his function who had been diſabled. *Stat.* 25 *Hen.* 8. *c.* 21.

Reif, (Sax. *reſian*, i. e. *ſpoliare*) In our old law ſignifies robbery. *Cowell*.

Rejoinder, (*rejunctio*) Is where defendant in any action makes anſwer to plaintiff's *replication*: It is an exception or anſwer thereto, and *it ought to be a ſufficient anſwer to the replication, and follow and inforce the matter of the bar pleaded.* 2 Lil. Abr. 433.

Defendant is not to rejoin on ſuch words as are not contained in the declaration, or replication: and if defendant do in his *rejoinder* depart from his plea pleaded in bar, the *rejoinder* is not good, becauſe this is uncertain, and to ſay and unſay, which the law doth not allow. *Mich.* 22 *Car. B. R.*

It is obſerved, that in many caſes, if plaintiff in his replication alledges any new matter, defendant may there make a new anſwer in the rejoinder; though if defendant pleads a general plea, he ſhall not commonly make that good afterwards, by a particular thing in his rejoinder. 5 *Hen.* 7. 19. *Raym.* 22.

Where a replication is pleaded, which is iſſuable, the clerk of the papers, when he makes up the paper-book, doth of courſe make up the rejoinder, and joins the iſſue in it; and if the Rejoinder be iſſuable, he hath the making up of the Surrejoinder to it, and the iſſue thereupon. 2 *Lil.* 433. See *Departure*, and *Black. Com.* 3 *V.* 310.

Relation, (*relatio*) Is where, *in conſideration of law*, two different times or other things are accounted *as one*; and by ſome act done, the thing ſubſequent is ſaid to take effect by *relation* from the time preceeding: As if one deliver a writing to another, to be delivered to a third perſon, as the deed of him who made it, when ſuch third perſon hath paid a ſum of money; now when the money is paid, and the writing delivered, this ſhall be taken as the deed of him who made and delivered it, at the time of its firſt delivery, to which it has *relation*; and ſo *things relating to a time long before, ſhall be as if they were done at that time.* Terms de Ley. Shep. Epit. 837.

This device is moſt commonly to help acts in law, and make a thing take effect: and ſhall *relate* to the ſame thing, the ſame intent, and between the ſame parties only; and it ſhall never do a wrong, or lay a charge upon a perſon that is no party. *Co. Lit.* 190. 1 *Rep.* 99. *Plowd.* 188.

And when the execution of a thing is done, it hath relation to the thing executory, and makes all but one act or record, although performed at ſeveral times. 1 *Rep.* 199. A judgment had in full term ſhall have relation to the firſt day of the term, which is the *Eſſoin* day; but this muſt be underſtood of a judgment given *after* appearance; and if it be on default, then the *quarta dies poſt* is the day. *Cro. Car.* 102. 1 *Bulſt.* 35. Judgment ſhall have *relation* to the firſt day of the term, *as if given on that very day*, unleſs there is a *memorandum* to the contrary; as where there is a continuance till another day in the ſame term. 3 *Salk.* 212. A verdict was given in a cauſe for plaintiff, and there was a motion in arreſt of judgment within four days; the court took time to adviſe, and in four days afterwards plaintiff died; it was adjudged, that the favour of the court ſhall not prejudice the party, for the judgment ought to have been given *after the firſt four days*; and though it is given after the death of the party, it ſhall have *relation* to the time when it ought to have been given. 1 *Leon.* 187.

Rule was had for judgment, and two days after plaintiff died; yet the judgment was entered, becauſe it ſhall have *relation* to the day, when the rule was given, which was when the plaintiff was alive. *Poph.* 132. Judgment againſt an heir of the obligation of his anceſtor, ſhall have *relation* to the time of the writ *firſt* purhaſed; and from that time it will avoid all alienations made by the heir. *Cro. Car.* 102. If one be bail for defendant, and before judgment he leaſes his lands; they ſhall be liable to the bail, and judgment by *relation*. Poph. 132.

It was formerly holden, (1 *Leon.* 304) that where the defendant in a ſuit after the *teſte* of the *fieri facias*, but before the ſheriff had executed it, ſold the goods, and delivered them to the buyer; the ſheriff might take them in execution in the hands of the buyer; for when ſuch execution is made, it ſhall have *relation* to the *teſte* of the *Fi. Fa.* But by ſtatute 29 *Car.* 2. *cap.* 3. *ſect.* 16. Writs of execution ſhall bind the property of the goods, but from the time of their delivery to the officer.

Sale of goods of a bankrupt, by commiſſioners, ſhall have *relation* to the firſt act of bankruptcy; and be good, notwithſtanding the bankrupt ſells them afterwards. 1 *Jac.* 1. *c.* 15. *Wood's Inſt.* 311. And if a man buys cattle in a market which are ſtolen, and ſelleth them out of the market, though the cattle are afterwards brought into the market, and the ſecond bargain confirmed, and money paid, &c. this bargain will not be good; for it ſhall have *relation* to the beginning, which was unlawful. *Dyer* 99.

Fines, being but common aſſurances, ſhall be guided by the indentures precedent; and the execution thereof have *relation* to the original act. *Cro. Jac.* 110. A bargain and ſale was made to *A. B.* and before it was inrolled, the ſame bargainor levied a fine to the bargainee, and afterwards, and within the ſix months the deed was inrolled, adjudged that *the bargainee was in by the fine*, and not by the deed inrolled, becauſe though the inrollment ſhall have *relation* to the delivery of the deed, that is only to protect the lands from all incumbrances to be made by the bargainor to others after the deed, and before the inrollment, but not to deveſt any lawful eſtate made by him before. 4 *Rep.* 70. After an indenture of bargain and ſale is inrolled, according to the ſtatute, it relates to the delivery; nothing paſſes till inrollment, but *then* it relates. 3 *Nelſ. Abr.* 68.

If an infant or feme covert diſagree to a feoffment to them made, when they are of age, or diſcovert; it ſhall relate as to this purpoſe, to diſcharge them of damages from the time. 3 *Rep.* 29. *Co. Lit.* 310. But generally in caſes at Common law, there is no *relation*; as between the feoffment of lands and livery and ſeiſin; or between the grant of a reverſion and the attornment, which is only the aſſent of the particular tenant, and ſhall not relate to the grant. *Ibid.* Though if one diſtrains for rent as a bailiff, when in truth he is not; if he in whoſe name he took the diſtreſs will afterwards aſſent to it, he ſhall not be a treſpaſſer, for the aſſent ſhall have *relation* to the time of the diſtreſs taken. 2 *Leon.* 196.

Letters of adminiſtration relate to the death of the inteſtate, and not to the time when they were granted. *Style* 341. And when the wife is endowed of lands by the heir, ſhe ſhall be in immediately from the huſband by *relation*. 36 H. 6. 7.

It is a rule in pleadings, grants, &c. *Ad proximum antecedens fiat relatio*; but that rule has an exception, (*viz.*) *niſi impediat ſententia*: And it hath been held, that this rule hath many reſtrictions, i. e. *Fiat relatio*, ſo as there is no abſurdity or incongruity; therefore it is always *ſecundum ſubjectam materiam*. Hard. 77. 3 Salk. 199.

A perſon granted *totam illam portionem decimarum* in *B.* with all other his tithes in *B.* then or late in *occupatione* of *J. C.* here the words *in occupatione* of *J. C.* have *relation* to the whole ſentence, and not only to the precedent words, with all other his tithes, becauſe the pronoun *illam* relates as well to the tenure of the tithes, as to the place where they ariſe. 4 *Rep.* 34.

In debt upon bond conditioned that if *J. M.* died before *Midſummer* day, without iſſue male of her body *then* living, that in ſuch caſe the bond ſhould be void: Defendant pleaded that, before *Midſummer* day, *ſhe did die without iſſue male* THEN living; and the queſtion was, whether the adverb *then* ſhould relate to *Midſummer* day, or to the death of *J. M.* And it was agreed, that it might relate to either; but becauſe it happened in fact that ſhe had a ſon living at her death, which ſon died before *Midſummer* day, therefore the words *then living* ſhall relate to that day, and not her death; becauſe it is moſt beneficial to the obligor, that it ſhould be ſo. *Dyer* 17. 3 *Nelſ. Abr.* 65.

It is a general rule, that relation ſhall not do wrong to ſtrangers. *Per Ventris,* J. 2 *Vent.* 200. *Trin.* 2 *W. & M. C. B.* in the caſe of *Thompſon* v. *Leach.* See 18 *Vin. Abr.* 285—294.

As to *private relations,* ſee *Black. Com.* 1 *V.* 422. *Public Rights, ib.* 146. And as to *relative rights and duties,* ſee *ib.* 1 *V.* 123, 146.

Relator, *(Lat.)* A rehearſer, or teller; alſo applied to an informer. *Stat.* 9 *Ann. c.* 20. See *Quo Warranto.* And *Black. Com.* 3 *V.* 264, 427. 4 *V.* 304.

Releaſe, *(Relaxatio)* Is an inſtrument whereby eſtates, or other things, are extinguiſhed, transferred, abridged, or enlarged. *Weſt. Symbol. part.* 1. *lib.* 2. *ſect.* 509.

1. *Of releaſes, generally.*
2. *Of the words and ceremony required in a releaſe; and how far a covenant, agreement, or a diſpoſition by will, may operate as a releaſe.*
3. *What ſhall be releaſed, by a releaſe of* ALL CLAIMS *and* DEMANDS.
4. *What ſhall be releaſed, by a releaſe of* ALL ACTIONS *and* SUITS.
5. *How far a poſſibility, or contingent intereſt, may be releaſed.*

1. *Of releaſes, generally.*

There is a *releaſe in fact,* and a *releaſe in law.* Perkin's Grants 71. A *releaſe in fact,* is that which the very words expreſsly declare. A *releaſe in law,* is that which doth acquit by way of conſequence or intendment of law; an example whereof you have in *Perkins, ubi ſupra.* How theſe are available and how not, ſee *Littleton* at large, *lib.* 3. *c.* 8. *Cowell.*

A releaſe is the giving or diſcharging of a right of action which a man hath or may claim againſt another, or that which is his, or it is the conveyance of a man's intereſt or right which he hath to a thing, to another who hath poſſeſſion thereof, or ſome eſtate therein. 4 *New Abr.* 263.

According to *Coke,* releaſes are diſtinguiſhed into *expreſs* releaſes in deed, and thoſe ariſing *by operation* of law; and are made of lands and tenements, goods and chattels, or of actions real, perſonal and mixt. *Co. Lit.* 264. *a.*

Theſe are to be adapted to the nature of the caſe, and the purpoſes for which the releaſe is intended; ſo that if a man be diſſeiſed of lands, or diſpoſſeſſed of goods, and releaſe all actions, he may notwithſtanding enter into his lands, or retake his goods, the right and property being ſtill in him, though he has deveſted himſelf of his remedy. *Hob.* 163. 4 *Co.* 63.

So where a man has divers means to come to his right, *he may releaſe one, and yet take advantage of the other;* but if a man has not any means to come to his right but by way of action, there, by a releaſe of all actions, his right *by judgment of law* is gone, becauſe *by his own act* he has barred himſelf of all means to come at it. 8 *Co.* 152. *Co. Lit.* 286.

Heretofore releaſes were conſtrued with much nicety and great ſtrictneſs, and being conſidered as the deed or grant of the party, were, according to the rule of law, taken ſtrongeſt againſt the releaſor; they now receive ſuch interpretation as theſe grants and agreements do, and are favoured by the judges as tending to repoſe and quietneſs. *Dyer* 56. *Plowd.* 289. *Hetl.* 15. 8 *Co.* 148.

Hence it hath been eſtabliſhed as a general rule in the conſtruction of releaſes, that *where there are general words only in a releaſe, they ſhall be taken moſt ſtrongly againſt the releaſor;* but where there is a particular recital in a deed, and then general words follow, *the general words ſhall be qualified by the ſpecial words.* 1 Mod. 99. 1 Ld. Raym. 235.

2. *Of the words and ceremony required in a releaſe; and how far a covenant, agreement, or a diſpoſition by will may operate as a releaſe.*

Littleton tells us, that the proper words of a releaſe are *remiſiſſe, relaxaſſe & quietum clamaſſe,* which have all the ſame ſignification. Lord *Coke* adds, *Renunciare, acquietare;* and ſays, that there are other words which will amount to a releaſe; as if the leſſor grants to the leſſee for life, that he ſhall be *diſcharged* of the rent; this is a good releaſe. *Lit. ſect.* 445. *Co. Lit.* 264. *Plowd.* 140.

So a pardon by act of parliament of all debts and judgments amount to a releaſe of the debt, the word *pardon* including a releaſe. 1 *Sid.* 261.

An expreſs releaſe muſt regularly be in writing and *by deed,* according to the common rule, *eodem modo oritur, eodem modo diſſolvitur;* ſo that a duty ariſing by record muſt be diſcharged by matter of as high a nature; ſo of a bond or other deed. *Co. Lit.* 264. *b.* 1 *Rol. Rep.* 43. 2 *Leon.* 76, 213. 2 *Rol. Abr.* 408. 2 *Sand.* 48. *Moor* 573. *pl.* 787.

But a promiſe by words may *before breach* be diſcharged or releaſed. 1 *Sid.* 177. 2 *Sid.* 78. *Cro. Jac.* 483, 620. Vide *Cro. Car.* 383. 1 *Mod.* 262. 2 *Mod.* 259. 1 *Sid.* 293.

A releaſe of a right in chattels cannot be without deed. 1 *Leon* 283.

A covenant perpetual, as that the covenantor will not ſue without limitation of time, is a defeaſance or abſolute releaſe; and this conſtruction has been made to avoid circuity of action; for if in ſuch caſe the party ſhould contrary to his covenant ſue, the other part would recover preciſely the ſame damages which he ſuſtained by the other's ſuing; but if the covenant be, that he will *not ſue till ſuch a time,* this does not amount to a releaſe, nor is it pleadable in bar as ſuch, but the party hath remedy only on his covenant. *Moor* 23. *pl.* 80, 811. 1 *Rol. Abr.* 939. *Bridg.* 118. 2 *Bulſ.* 95, 290. *Hard* 113. 3 *Lev.* 41. 2 *Salk.* 573, 5. *Carth.* 210. 1 Ld. *Raym.* 419, 691. See *Cro. Eliz.* 352. 1 *And.* 307. 1 *Rol. Abr.* 939. *Carth.* 63. *Salk.* 373. 1 *Show.* 46.

If two are jointly and ſeverally bound in an obligation, and the obligee by deed covenants and agrees not to ſue one of them; this is no releaſe, and he may notwithſtanding ſue the other. *Cro. Car.* 551. *March* 95. 2 *Salk.* 575.

But if two are jointly and ſeverally bound, *a releaſe to one diſcharges the other.* 1 Ld. Raym. 420. *See* 2 Vent. 217. 1 Ld. Raym. 691. 1 Lev. 152.

It ſeems agreed, that a will, though ſealed and delivered, cannot amount to a releaſe, *becauſe it is ambulatory and revokable during the teſtator's life;* and by reaſon of the executor's conſent requiſite to every diſpoſition of a perſonal thing by will, and the injury that might accrue to the teſtator's creditors, were a will allowed to operate as a releaſe. *Stil.* 286. 1 *Vent.* 39.

Therefore where in debt on an obligation, by the repreſentative of a teſtator, defendant pleaded that the teſtator by his laſt will in writing releaſed to defendant; this was adjudged ill, and that no advantage could be taken by plea. 1 *Sid.* 421.

But it hath been held in equity, that though a will cannot enure as a releaſe, yet, provided it were expreſſed to be the intention of the teſtator that the debt ſhould be diſcharged, the will would operate accordingly; and that in ſuch caſe it would be plainly an abſolute diſcharge of the debt though the teſtator had ſurvived the legatee. 1 *Peer Will.* 85. 2 *Vern.* 521.

So in another caſe it was held, that *a releaſe by will can only operate as a legacy,* and muſt be aſſets to pay the

teſtator's

teſtators's debts; and if a debt ſo releaſed by will be afterwards received by the teſtator himſelf in his life-time, the legacy is extinct, and ſuch releaſe by will intimates no more than that the executors ſhould not after the teſtator's death trouble or moleſt the debtor. 2 *Peer Will.* 332.

If a debt is mentioned to be deviſed to the debtor without words of releaſe or diſcharge of the debt, and the debtor die before the teſtator; this will be *a lapſed legacy*, and the debt will ſubſiſt. 2 *Vern.* 522. admitted.

3. *What ſhall be releaſed, by a releaſe of* ALL CLAIMS *and* DEMANDS.

Littleton ſays, that a releaſe of all demands is the beſt releaſe to him to whom it is made; and *Coke* ſays, that the word *demand* is the largeſt word in law except *claim*; and that *a releaſe of demands, diſcharges all ſorts of actions, rights and titles, conditions before or after breach, executions, appeals, rents of all kinds, covenants, annuities, contracts, recognizances, ſtatutes, commons, &c.* Litt. ſect. 508. Co. Litt. 291.

But notwithſtanding the large import of the word *demands*, yet there are ſeveral inſtances (which *vide infra*) where the generality of the word hath been reſtrained to the particular occaſion for which the releaſe was made.

By a releaſe of *all demands*, all actions real, perſonal, and mixed, and all actions of appeal, are extinct. *Litt. ſect.* 509. 8 *Co.* 154.

So a releaſe of *all demands* extends to inheritances, and takes away rights of entry, ſeizures, *&c.* *Co. Lit.* 291. But if the King releaſeth *all demands*, yet as to him the inheritance ſhall not be included. *Bro. Prerogative, pl.* 62. *Bridg.* 124.

By a releaſe of *all demands* made to the tenant of the land, a common of paſture ſhall be extinct. *Co. Lit.* 291.

A releaſe of *all demands* will bar a demand of a *relief*, becauſe the *relief* is by reaſon of the ſeigniory to which it belongs. *Cro. Jac.* 170.

If *A.* being poſſeſſed of goods loſes them, and they come to the hands of *B.* who being in poſſeſſion, *A.* by deed releaſes to *B.* all actions and demands perſonal which at any time before *habuit vel habere potuit* againſt *B.* for any cauſe, matter or thing whatſoever; this ſhall bar *A.* of the property of the goods, ſo that *B.* has the abſolute right in him by this releaſe. 2 *Roll. Abr.* 407.

By a releaſe of all demands, all manner of executions are gone, for the Recoveror cannot ſue out *a fieri facias, capias* or *elegit*, without a demand. *Lit. ſect.* 508. 2 *Rol. Abr.* 407.

By a releaſe of all demands to the conuſor of a ſtatute merchant before the day of payment, the conuſee ſhall be barred of his action, becauſe the duty is always in demand; yet if he releaſes all his right in the land, it is no bar. *Co. Lit.* 291. *Bridgm.* 124.

So a bond conditioned to pay money at a day to come, is a debt and duty preſently, and may be diſcharged by a releaſe of all actions and demands *before* the day of payment. *Cro. Jac.* 300.

But in an action of debt for non-performance of an award made for payment of money at a day to come; there is no preſent debt, nor any duty before the day of payment is come, therefore it cannot be diſcharged before the day, by a releaſe of all actions and demands. *Yelv.* 214. *Cro Jac.* 300.

So if a man deviſes a legacy of 20*l.* to *J. S.* at the age of 23, tho' the legatee, after he attains the age of 21, and before the day of payment, may releaſe it, yet by the ward *demands* it is not releaſed, but there muſt be ſpecial words for the purpoſe. 10 *Co.* 51.

A releaſe of all demands does not diſcharge a covenant not broken *at* the time; but a releaſe of all covenants will releaſe the covenant. *Cro. Jac.* 173. 2 *Roll. Abr.* 407. *Noy.* 123. For the difference when broken or not, ſee *Dyer* 217. *Lit. Rep.* 86. 3 *Leon.* 69. 5 *Co.* 71. *Hoe's* caſe. 10 *Co.* 51. *Co. Lit.* 292. 8 *Co.* 153. 1 *And.* 8, 64.

If a leſſee for life grants over his eſtate by indenture reſerving rent during the continuance of the eſtate, and afterwards releaſes to the aſſignee *all demands*; this ſhall diſcharge the rent, for he had the freehold of the rent in him at the time. 2 *Rol. Abr.* 408. *Cro. Jac.* 486. *Bridgm.* 123. 2 *Roll. Rep.* 20. *Poph.* 136.

So if leſſee for years grants over by indenture all his eſtate, reſerving a rent during the term, and afterwards releaſes to the aſſignee *all demands*; this ſhall releaſe the rent, for tho' he cannot have an action to demand all the eſtate, yet this is an eſtate in him of the rent, and aſſignable over; and in an action of debt for any arrears after, he ſhall claim it *as a duty accrued from the eſtate*; and it ſhall not be ſaid that the duty ariſes annually on taking the profits, but this had its commencement and creation by the reſervation of the contract, which was before. 2 *Roll. Abr.* 408.

If there be leſſee for years rendering rent, and the leſſor grants over the reverſion, and the leſſee attorns, and after leſſee aſſigns over his eſtate, and after the aſſignee of the reverſion releaſes *all demands* to the firſt leſſee, yet this ſhall not releaſe the rent, for there is neither privity of the eſtate or contract between them after the aſſignment; but if the releaſe had been made to the aſſignee, it had extinguiſhed the rent. 2 *Roll. Abr.* 408. *Moor* 544. *Cro. Eliz.* 606.

If he who has a *rent-charge* in fee releaſes to the tenant of the land *all demands* from the beginning of the world till the making of the deed of releaſe; this ſhall diſcharge all the rent, as well that to come as what is paſt. 20 *Aſſ. pl.* 5. 2 *Rol. Abr.* 408.

It is ſaid by *Littleton* and *Coke*, that by a releaſe of *all demands* a *rent-ſervice* ſhall be releaſed; but this it is ſaid is to be intended of a *rent-ſervice in groſs*, as a ſeigniory. *Lit. ſect.* 510. *Co. Lit.* 291. Therefore in the caſe of *Hen* v. *Hanſon*, where in covenant brought on a covenant in a leaſe for years to pay the rent reſerved, defendant pleaded releaſe by the plaintiff of *all demands* at a day before the rent in queſtion became due; plaintiff replied that the releaſe was in performance of an award of all matters in controverſy between the plaintiff and defendant; and on demurrer it was adjudged, that *the rent was not diſcharged by this releaſe*, as it became due by the perception of the profits, and was not like to a rent-charge, or a rent parcel of a ſeigniory; and that this rent being incident to the reverſion, and part thereof, was no more releaſed than the reverſion itſelf; and this conſtruction ſhould the rather prevail, as it was not the intention of the party to releaſe this rent: But *Twiſden* ſaid, that in releaſes and deeds when words are heaped up, the party who is to take advantage may take the ſtrongeſt word and the ſtrongeſt ſenſe, and that is the reaſon they are put in; and as to the intent, that muſt be gathered from the words: and men muſt take care what words they uſe, *oportet politiam obedire legibus, non leges politiæ*; and he ſaid, he could ſee no difference between this rent and a rent in fee, both are rent-ſervices, and neither demandable before they become due, otherwiſe than as in 40 *Ed.* 3. 47. it is ſaid, there is a continual demand betwixt lord and tenant; and in this caſe there is a tenure between the leſſee and him in reverſion; and the reaſon why the reverſion is not touched by this releaſe is, becauſe it can work only by way of extinguiſhment, and not by way of paſſing an intereſt; but it was adjudged *ut ſupra*. 1 Lev. 99, 100. 1 Sid. 141. 1 Keb. 499, 510. See 2 *Salk.* 578.

4. *What ſhall be releaſed, by a leaſe of* ALL ACTIONS *and* SUITS.

A releaſe of *all actions* diſcharges a bond to pay money on a day to come; for it is *Debitum in præſenti, quamvis ſit ſolvendum in futuro*; and it is a thing merely in action, and the right of action in him who releaſes, tho' no action will lie when the releaſe is made. *Co. Lit.* 292.

But a releaſe of *actions* does not diſcharge a rent *before* the day of payment, for it is neither *debitum* nor *ſolven-*

dum at the time of the releaſe; nor is it merely a thing in action, for it is grantable over. *Co. Lit.* 292.

So if a man has an annuity for a term of years, for life or in fee, and he, before it be *in arrear*, releaſes all *actions*; this ſhall not releaſe the annuity, for it is not merely in action, becauſe it may be granted over. *Co. Lit.* 292. 1 *Bulſt.* 178. *Cro Eliz.* 897. *Moor* 113. But ſuch releaſe ſhall releaſe the *arrears incurred before.* 39 H. 6. 43. 2 *Roll. Abr.* 404.

If one releaſe *omnes querelas aut loquelas*, this is as large as a releaſe of all actions, and releaſes all cauſes of action, tho' no action be then depending. *Co. Lit.* 292.

By a releaſe of *all manner of actions*, all actions as well criminal as real, perſonal, and mixed, are releaſed. *Co. Lit.* 287.

A releaſe of actions *real* is a good bar in actions mixed; as aſſiſe of novel diſſeiſin, waſte, *quare impedit*, annuity; and ſo is a releaſe of actions perſonal. *Co. Lit.* 284. But not after the grantee has made his election. 1 *Jones* 215.

In an *appeal* of *robbery* or *felony*, a releaſe of all *actions perſonal* will not bar, becauſe an appeal, in which the appellee is to have judgment of death, is higher than a *perſonal action*; but a releaſe of all manner of actions, or of all actions criminal, or of all actions mortal, or of all actions concerning the pleas of the crown, or of all appeals, or of *all demands*, will be a good bar of any ſuch appeal. *Co. Litt.* 287. 2 *Hawk. P. C.* 196.

And in an *appeal* of *maihem* a releaſe of *all actions perſonal* may be pleaded, becauſe damages, only, are recovered. *Co. Litt.* 288.

A releaſe of all actions is regularly no bar to an *execution*, for *execution is no action, but begins when the action ends.* Co. Lit. 289. 8 Co. 153.

Alſo a releaſe of all actions does not regularly releaſe *a writ of error*, for *it is no action*, but a commiſſion to the juſtices to examine the record; but if therein the plaintiff may recover, or be reſtored to any thing, it may be releaſed by the name of action. 2 *Inſt.* 40. *Yelv.* 209. *Co. Litt.* 288.

But a releaſe of all actions is a good bar to a *ſcire facias*, tho' it be a judicial writ, for defendant may plead to it, and *it is in nature of a new original* given by the ſtatute. *Co. Litt.* 290. *Comb.* 455.

So in *replevin* a releaſe of all actions is a good bar, for the avowant is defendant, tho' in ſome reſpects he is plaintiff. 2 *Rol. Rep.* 75.

By a releaſe of *all ſuits* a man is barred of *a writ of error.* Latch. 110.

So by a releaſe of *all ſuits* a man is barred of *execution*, becauſe it cannot be had without application to the court, and prayer of the party, which is *his ſuit.* Co. Litt. 291. 8 Co. 153.

If a diſſeiſee releaſes to the diſſeiſor all actions; this is no releaſe of his right of entry, for when a man has ſeveral means to come at his right, he may releaſe one and yet take benefit of the other. *Co. Litt.* 28. *b.* 8 *Co.* 141.

So if a man by wrong takes away my goods; if I releaſe to him all actions perſonal, yet by law I may take the goods out of his poſſeſſion. *Co. Litt.* 286. *Skin.* 57.

If a man releaſes all actions, by this he ſhall releaſe as well actions which he hath as executor, as thoſe in his own right. 39 *Ed.* 3. 26. 2 *Roll. Abr.* 404. 2 Ld. *Raym.* 1307. S. C. cited by *Powel*, and ſaid by him to be clearly ſo, unleſs there was an action of his own for the releaſe to work upon.

If a man releaſes *all quarrels*; a man's deed being taken moſt ſtrongly againſt himſelf, it is as beneficial as all actions, for by it all actions real, perſonal, and mixed, are releaſed. *Co. Lit.* 292.

5. *How far a poſſibility or contingent intereſt may be releaſed.*

It is a general rule in our books that a mere poſſibility cannot be releaſed, and the reaſon hereof is, that *a releaſe ſuppoſeth a right in being*, and it was thought to countenance maintenance to transfer choſes in action, poſſibilities and contingent intereſts. *Co. Lit.* 48. *a.* *Cro. Eliz.* 552.

Hence it is held, that an heir at law cannot releaſe to his father's diſſeiſor in the life-time of the father, for *the heirſhip* of the heir is a contingent thing, for he may die in the life-time of the father, or the father may alien the lands. *Litt. ſect.* 446. *Co. Lit.* 265. *a.* 10 *Co.* 51. *Bridgm.* 76. S. P.

So if the conuſee of a ſtatute releaſes to the conuſor all his right to the land, yet he may afterwards ſue execution, for he has no right to the land, but only a poſſibility. 1 *And.* 133. *Co. Litt.* 265. 2 *Roll. Abr.* 405. *Cro Eliz.* 552.

So if a creditor releaſes to his debtor all the right and title which he hath to his lands, and afterwards gets judgment againſt him, he may extend a moiety of the ſame land, for he had no right to the land at the time of the releaſe, and the land is not bound but in reſpect to the perſon. 2 *Mod.* 281. 2 *Lev.* 215.

So if plaintiff releaſes *all demands* to the bail in the King's Bench, and afterwards judgment be given againſt the principal, execution may be ſued againſt the bail, for that at the time of the releaſe there was only a poſſibility of the bail becoming chargeable. 5 *Co.* 70. *Co. Litt.* 265. *Moor* 469. *Cro. Eliz.* 579. *Hut.* 17. and ſee *Moor* 852.

So if *A.* recovers in treſpaſs againſt *B.* in *B. R.* and *B.* brings a writ of error, *pending which A. releaſes to B.* all executions, and after the judgment is affirmed, and new damages given to *A.* for the delay, on the ſtatute of 3 *H.* 7. *c.* 10. this releaſe ſhall not bar *A.* to have execution of thoſe damages, becauſe he had not any right to have execution, nor to any duty when the releaſe was made. 2 *Rol. Abr.* 404. *Cro. Jac.* 337, 1 *Roll. Rep.* 11.

A leaſe to the huſband and wife for life, remainder to the ſurvivor of them for twenty-one years; the huſband grants it over, and tho' he ſurvived, yet the grant was held void becauſe *it was contingent.* Poph. 5. 10 Co. 51. Hut. 17. Raym. 146.

If the next preſentation to a church be granted to *A.* and *B.* and *living the incumbent*, *A.* releaſes all his eſtate, title and intereſt to *B.* this releaſe is void, it being of a choſe in action; *ſecus* had the releaſe been made after the avoidance, at which time the intereſt would have been veſted in *A.* *Cro. Eliz.* 173, 600. *Owen* 85. 1 *Leon.* 167. 3 *Leon.* 256. and *Dyer* 244. 10 *Co.* 48. like point. See *Poſt*, other caſes, in ſome reſpect ſimilar.

From the reaſons herein it was held, that if at Common law a woman before marriage had accepted of a jointure in bar and ſatisfaction of dower, that this would not have bound her, becauſe *at* the time ſhe had no right to dower. 4 *Co.* 1.

A city orphan cannot at law releaſe her orphanage part to her father, for ſhe hath no right in her during the life of her father; but it hath been held in equity, that ſuch releaſe *being for a valuable conſideration*, as on the marriage of a daughter, and a portion given her by the father, ſuch releaſe may operate as an agreement to waive the orphanage, and hath accordingly been ſo decreed in equity. 1 *Peer Will.* 638. 2 *Peer Will.* 527. *Preced. Chan.* 545.

If there be a deviſe of a term for years to *A.* for life, remainder to *B.*——*B.* may releaſe his right to *A.* and ſuch releaſe ſhall extinguiſh his intereſt, tho' it was objected, that *B.* had only a poſſibility at the time of the releaſe made. 10 *Co.* 47.

But it was held, that *B.* could not aſſign over his intereſt to a ſtranger in the life-time of *A.* the ſame being only *a choſe in action*, and a mere poſſibility, inaſmuch as an eſtate for life is in ſuppoſition of law a larger eſtate than for any number of years. 10 *Co.* 47. 4 *Co.* 66. 1 *Sid.* 188. *Raym.* 146.

But later reſolutions, eſpecially thoſe which have been in courts of equity, have made a great alteration in this doctrine. 2 *Vern.* 563.

As where one poſſeſſed of a term deviſed it to *A. for life*, remainder to *B.* and made *A.* executor; *B.* deviſed this remainder to *C.* and died in the life-time of *A.* and in order to defeat C. of his intereſt, *A.* aſſigned his term to a third perſon: And it was decreed by Lord Chancellor *Elleſmere*, that *A.* the executor and deviſee for life was a *truſtee* for *B.* and ſhould not be at liberty to deſtroy this remainder, but that the executor ſhould preſerve the leaſe, ſo as it might go according the the will, with the performance whereof the executor was intruſted. *Moor* 806.

So where the truſt of a term was deviſed to *A.* for life, remainder to *B.* It was agreed by all, that *B. might aſſign over this truſt*, which ſhews that a truſt of a term in remainder may be transferred over by deed. 1 *Chan. Ca.* 4.

One poſſeſſed of a term for years deviſed it to *A.* for life, remainder to B.——*B.* in the life-time of *A.* deviſed his remainder to *J. S.* who deviſed it over; and the queſtion was, Whether *A.* (the deviſee for life) being dead, the deviſee of *J. S.* ſhould have the term, or whether it ſhould go to the adminiſtrator *de bonis non*; and it was decreed for the deviſee of *J. S.* and the adminiſtrator *de bonis non* of *B.* was directed to aſſign over the term to him. 1 *Peer Will.* 572.

And in the caſe of *Theobald* v. *Duffay* in the houſe of Lords, *March* 1729-30; it was *(inter alia)* determined that *a poſſibility of a term is aſſignable for a good conſideration.*

A duty uncertain at firſt, which on a condition precedent is to he made certain afterwards, is but *a poſſibility*, which cannot be releaſed. 5 *Co.* 702. 2 *Mod.* 281.

As a *nominæ pœnæ* waiting on a rent which cannot be releaſed till the rent is behind, as the non-payment of the rent makes the *nominæ pœnæ* a duty. *Yelv.* 215. *Brownl.* 116.

So if a man covenants to pay 10 *l.* on the birth of a child, the covenantor cannot be releaſed of the 10 *l.* it reſting merely in contingency whether ſuch child will ever be born or not. *Yelv.* 192.

So if an award be, that on plaintiff's delivering defendant, *by a certain day*, a load of háy, defendant ſhall pay him 10 *l.* in this caſe the 10 *l.* cannot be releaſed *before the day*, for it reſts merely in poſſibility and contingency, whether the money ſhall ever be paid, for it becomes a duty on delivery of the hay *only*, and not before. *Yelv.* 215.

In debt on bond againſt defendant as adminiſtrator, *&c.* defendant pleaded a releaſe, whereby the plaintiff, reciting there were ſeveral controverſies between defendant and him about a legacy and the right of adminiſtration, releaſes to defendant all his right, title, intereſt and demand of, in, and to *the perſonal eſtate of the inteſtate*; and on demurrer this was held to be no plea; and a difference was taken by *Holt*, between a releaſe of all demands to the perſon of the obligor or adminiſtrator, and a releaſe of all demands to the perſonal eſtate of the obligor or adminiſtrator; that the laſt will not diſcharge the bond as the other may, becauſe *the bond does not give any right or demand upon the perſonal eſtate, &c. until judgment and execution ſued.* Salk. 575. 2 Ld. Raym. 786.

If *A.* promiſes *B.* in conſideration that he will ſell to his ſon, certain merchandize at ſuch a price, that if his ſon does not pay it at the feaſt of St. *Michael* next enſuing, he himſelf will pay it; and before *Michaelmas A.* releaſes *all actions and demands* to him who made the promiſe; this ſhall not releaſe the *aſſumpſit*, for till *Michaelmas* it cannot be known whether his ſon will have paid it or not, and, 'till default by him, the other is not bound to pay it, ſo it is a mere contingency till *Michaelmas*, which cannot be releaſed. 2 *Rol. Abr.* 407-8.

For more learning on this ſubject, ſee 4 New Abr. *and* 18 Vin. Abr. *tit.* Releaſe.

Relegation, *(Relegatio)* A baniſhing, or ſending away; as *abjuration* is forſwearing the realm for ever, ſo *relagation* is baniſhment for a time only. *Co. Lit.* 133.

Relief, *(Relevamen,* but in *Domeſday, Relevatio, relevium)* Signifies a *certain* ſum of money which the tenant, *holding by knight's ſervice*, grant ſerjeanty, or other tenure, (for which homage or legal ſervice is due) and being at full age at the death of his anceſtor paid unto his lord at his entrance. *Mag. Chart. cap.* 2. and 31 *Eliz.* 1. *ſtat.* 1.

Bracton, lib. 2. *c.* 36. affirms, That it is called a *relief*, *Quia hæreditas quæ jacens fuit per anteceſſoris deceſſum relevatur in manus hæredum, & propter factum* relevationem, *facienda erit ab hærede quædam præſtatio quæ dicitur* relevium; and *Britton, c.* 69. Of this alſo ſpeaks the Grand Cuſtumary of *Normandy, c.* 34.

Skene de verbor. ſignif. verb. Relevium, ſaith, *Relief*, is a *French* word, from the Latin *relevare*, which is *to relieve or take up that which is fallen*; for it is given by the tenant or vaſſal who is of perfect age, after the expiring of the wardſhip to his ſuperior lord, of whom he held his lands by knight-ſervice, that is, by ward and *relief*: For, by payment thereof, he relieves, and, as it were, raiſeth up again his lands after they were fallen down into his ſuperior's hands, by reaſon of wardſhip, *&c.* See ſtat. 12 *Car.* 2. *c.* 24.

Relief is otherwiſe thus explained. *viz.* A feudatory or beneficiary eſtate in lands was at firſt granted only for life; and after death of the vaſſal it returned to the chief lord, for which reaſon it was called *feudum caducum, viz.* fallen to the lord by the death of the tenant; afterwards theſe feudatory eſtates being turned into an inheritance by the connivance and aſſent of the chief lord, when the poſſeſſor of ſuch an eſtate died, it was called *hæreditas caduca, i. e.* it was fallen to the chief lord, to whom the heir having paid a certain ſum of money, he did then *relevare hæreditatem caducam* out of his hands; and the money thus paid was called a *relief.*

This muſt be underſtood after the conqueſt; for, in the time of the *Saxons*, there were no *reliefs*, but *heriots* paid to the lord at the death of his tenant, which in thoſe days were horſes, arms, *&c.* and ſuch tributes could not be exacted of the *Engliſh* immediately after the conqueſt, for they were deprived of both by the *Normans*; and inſtead thereof, in many places, the payment of certain ſums of money was ſubſtituted, which they called a *relief*, and which continues to this day.

Relief reaſonable, or as it is ſometimes called *lawful* and *ancient relief*, is injoined by ſome law, or becomes due by cuſtom, and doth not depend on the will of the Lord, *viz.* In a charter of King *John*, mentioned by *Matt. Paris*, 178. *Si quis comitum vel baronum noſtrorum, ſive aliorum tenentium de nobis in capite, per ſervitium militare, mortuus fuerit, & cum deceſſerit hæres ſuus plenæ ætatis fuerit, &* relevium *debeat, habeat hæreditatem ſuam per antiquum* relevium: What that was we may read in the laws of *William* the Conqueror, *c.* 22. and of *Henry* I. *c.* 14. and before that time in the laws of *Canutus, c.* 97. *viz.* The *relief* of an earl was eight war-horſes with their bridles and ſaddles, four *loricas*, four helmets, four ſhields, four pikes, four ſwords, four hunting-horſes and a palfrey, with their bridles and ſaddles: The *relief* of a baron or *thane* was four horſes, two with furniture, and two without, two ſwords, four lances, four ſhields and an helmet, *cum lorica*, and fifty marks in gold. The *relief* of a *vavaſor* was his father's horſe, his helmet, ſhield, lance and ſword which he had at his death. The *relief* of a villain or countryman was his beſt beaſt, *&c. Cowell.* See *Black. Com.* 2 *V.* 56, 65, 87. 4 *V.* 411, 413, 414.

Religion, (*Religio*) Is virtue, as founded on reverence of God, and expectation of future rewards and puniſhments; a ſyſtem of Divine faith and worſhip as oppoſite to others. *Johnſ.* That habit of reverence towards the Divine Nature, whereby we are enabled and inclined to ſerve and worſhip Him after ſuch a manner as we conceive moſt acceptable to Him, is call *religion. Wilkins.*

All blaſphemies againſt God, as denying his being or providence, all profane ſcoffing at the Holy Scripture, or expoſing any part to contempt or ridicule, all impoſtures in religion, as falſly pretending to extraordinary commiſſions from God, and terrifying or abuſing the people with falſe denunciations of judgments, *&c.* All *open lewdneſs* groſsly ſcandalous, ſuch as was that of thoſe perſons who expoſed themſelves naked to the people in a balcony in *Covent-garden*, with moſt abominable circumſtances;—offences of this nature, becauſe *they tend to ſubvert all religion or morality, which are the foundation of* *government*, are puniſhable by the temporal judges with fine and impriſonment, and alſo ſuch corporal infamous puniſhment as to the court in diſcretion ſhall ſeem meet according to the heinouſneſs of the crime. 1 *Hawk. P. C.* 6. 7.

Seditious words in derogation of the eſtabliſhed religion are indictable, as tending to a breach of the peace. 1 *Hawk. P. C.* 7. See *Black. Com.* 4 *V.* 43.

The ſix articles of religion eſtabliſhed, 31 *Hen.* 8. *c.* 14. 35 *Hen.* 8. *c.* 5. Commiſſions to be granted concerning religion, 32 *Hen.* 8. *c.* 15. The authority of the King and the clergy in matters of faith, 32 *Hen.* 8. *c.* 26. 34 & 35 *Hen.* 8. *c.* 1. Repeal of the former acts relating to religion, 1 *Ed.* 6. *c.* 12. *ſ.* 3 Images in churches, *&c.* to be deſtroyed, 3 & 4 *Ed.* 6. *c.* 10. Repeal of the ſeveral acts of *Ed.* 6. 1 *Mar. ſt.* 2. *c.* 2. Preachers, *&c.* to ſubſcribe the articles, 13 *Eliz. c.* 12. Articles to be ſubſcribed by proteſtant diſſenting teachers, 1 *W.* & *M. c.* 18. *ſ.* 8, 10. Profeſſion of Chriſtian belief to be ſubſcribed by Quakers. 1 *W.* & *M. c.* 18. *ſ.* 13. See *Blaſphemy, Hereſy, Nonconformiſts, Papiſts, Quakers, Recuſant, Service and Sacraments.*

Religious Houſes, (*Religioſæ domus*) Are houſes ſet a-part for pious uſes, ſuch as *monaſteries, churches, hoſpitals,* and all other places where charity is extended to the relief of the poor and orphans, or for the uſe or exerciſe of religion.

See *Notitia Monaſtica,* or *A ſhort Hiſtory of the Religious Houſes in* England *and* Wales, *by* Thomar Tanner, Octavo, who, in an alphabetical order of counties, has accurately given a full account of the founders, the time of foundation, titular ſaints, the order, the value, and the diſſolution; with reference to printed authors, and manuſcripts which preſerve any memoirs relating to each houſe; with a learned and judicious Preface of the inſtitution of religious orders, *&c. Cowell.* See *Monaſteries.*

Religious Men, (*Religioſi*) Such as enter into ſome monaſtery or convent, there to live devoutly: And in ancient deeds of ſale of land, the purchaſers were often reſtrained by covenant from giving or alienating it, *viris religioſis,* to the end the land might not fall into *mortmain.* Cowell.

Religious Orders, For the qualification of clergy. See *Ordination.*

Relinquiſhment, Is forſaking, abandoning, or giving over. It hath been adjudged, that a perſon may *relinquiſh* an ill demand in a declaration, *&c.* and have judgment for that which is well demanded. *Style* 175. In aſſiſe the count was of a meſſuage, and four acres of *land* in *B.* and the jury having a view only of the land, the demandant *relinquiſhed* his plaint to the houſe. *Dyer* 66. But on aſſiſe where the plaint was for fifty-three ſhillings and four-pence rent, no part of that rent could be *relinquiſhed,* becauſe *a rent is an intire thing.* Ibid. 61. In a writ of annuity, where the jury found the arrears, but did not aſſeſs damages or coſts, which could never be ſupplied by a writ of enquiry; plaintiff was admitted to *relinquiſh* and releaſe the damages, and had judgment for the arrears. 11 *Rep.* 59.

Reliques, (*Reliquiæ*) Are ſome remainders, ſuch as the bones, *&c.* of ſaints who are dead, preſerved by perſons living, with great veneration, as ſacred memorials of them: They are forbidden to be uſed or brought into *England,* by ſeveral ſtatutes; and juſtices of peace are empowered to ſearch houſes for popiſh books and *reliques,* which when found are to be defaced and burnt, *&c.* 3 *Jac.* 1. *c.* 26.

Remainder, (*Remanentia*) Is an eſtate *limited* in lands, tenements or rents, to be enjoyed *after the expiration of another particular eſtate.* For example, A man may let to one for term of his life, and remainder to another for term of his life. *Lit. cap. Atturnment.* And a remainder may be either for a certain term, or in fee-ſimple, or fee-tail, as appears by *Broke,* tit. *Donee* and *Remainder,* 245. and *Glanvile, lib.* 7. *cap.* 1. The difference between a remainder and reverſion, according to *Spelman,* is this, That by a *reverſion* after the appointed term, *the eſtate returns to the donor, or his heirs, as the proper fountain;* whereas by *remainder* it goes to ſome third perſon, or a ſtranger. *Cowell.*

Remainder is deſcribed to be a remnant of an eſtate in lands or tenements, *expectant on a particular eſtate created together with the ſame, and at the ſame time,* and is ſo expectant on the particular eſtate, that unleſs it can take effect when the particular eſtate determines, it is void. *Co. Lit.* 49, 143. 2 *Co.* 51. *Moor* 344. *Vaugh.* 269.

1. *Of the ſeveral kinds of remainders, as diſtinguiſhed into remainders veſted, or in contingency and abeyance.*
2. *Of croſs remainders, or thoſe ariſing by implication and conſtruction of law.*
3. *Of what things a remainder may be made, or limited.*
4. *What words are ſufficient to create a remainder.*
5. *Of the continuance of the particular eſtate, and when the remainder is to commence.*

1. *Of the ſeveral kinds of remainders, as diſtinguiſhed into remainders veſted, or in contingency and abeyance.*

If an eſtate be limited, either at Common law, or by way of uſe, to one for life, or in tail, remainder to the right heirs of *J. S.* who is *then* dead, this is a good remainder, and *veſts preſently in the perſon who is heir at law to J. S. by purchaſe*; and tho' a daughter be then heir at law, and after a ſon is born, yet ſhall the daughter retain the land againſt him; for ſhe being heir, and coming within the deſcription at the time when the remainder was limited, it then veſted and ſettled in her immediately as a remainder by purchaſe, and ſhall not by any accident after be defeated. 2 *Rol. Abr.* 415. 1 *Co.* 95, 103. *Plow* 56.

A contingent remainder, is, a remainder limited ſo as to depend on an event or condition, which may never happen or be performed; or which may not happen or be performed, till after the determination of the preceding eſtate; for if the preceding eſtate determine before ſuch event or condition happens, the remainder will never take effect. Under this definition, we may properly diſtinguiſh four ſorts of contingent remainders. *Firſt,* where the determination of the preceding eſtate is itſelf dubious and contingent. *Secondly,* where the contingency on which the remainder is to take effect is independent of the determination of the preceding eſtate. *Thirdly,* where the condition upon which the remainder is limited, is certain in event, but the determination of the particular eſtate may happen before it. *Fourthly,* where the perſon to whom the remainder is limited, is not yet aſcertained or not yet in being. *Fearne* 3 *Edn. fo.* 3, 4.

But if *J. S.* in the caſe firſt mentioned, be living at the time of the remainder limited to his right heirs, this puts ſuch remainder in abeyance or contingency, that is, it is in no perſon but *in nubibus* till the contingency happens, for it is not in the feoffor or donor, becauſe he has limited it *out of him,* and all remainders muſt *paſs out of him* at the time of the limitation, tho' they do not preſently veſt in the perſon intended; and in the right heirs of *J. S.* it cannot be, becauſe he cannot have heirs during life; ſo there is no perſon *in rerum natura* within the deſcription, to take it; therefore *it is in the mean time in abeyance or expectancy, to veſt or not veſt, as the caſe happens*; for if *J. S.* dies during the particular eſtate, then the remainder preſently takes place in his heirs; but if the particular eſtate determines by death or otherwiſe in the life of *J. S.* then ſuch remainder is become totally void, and can never veſt, but the eſtate ſettles again in the feoffor or donor, as if no ſuch limitation in remainder had been; and he becomes tenant to the *præcipe,* and is obliged to do the ſervices; and tho' *J. S.* die ſoon after, yet his heir can have no benefit by it, not being capable of taking the remainder when it fell. 1 *Co.* 135. *Co. Lit.* 378. *a.* 2 *Co.* 51. 2 *Rol. Abr.* 415. *Plow.* 28, 556. *Poph.* 74. *Moor* 720. 3 *Co.* 20. 10 *Co.* 50. *Raym.* 145. *Pollex.* 56.

But if there be no ſuch *J. S.* at the time of the limitation, tho' he be after born, and dies, during the particular eſtate; yet his heirs ſhall never have the remainder. So if a remainder be limited to *A.* ſon of *B.* in tail, *&c.* or to *E.* wife of *D.* *where in truth there is no ſuch A.* or *E.* though *B.* has a ſon called *A.* or *D.* marries one *E.* yet they can never take the remainder; becauſe, if there be ſuch perſons as the words of the gift import, there the remainder ought to veſt in them preſently, and they will never after be made capable of taking it; but if there be no ſuch perſon then *in eſſe*, none who come within that deſcription after can lay claim to it, becauſe the *limitation was preſent* to ſuch perſons; but a remainder limited *primogenito filio*, or *proximo hæredi maſculo* of *A.* or *propinquioribus hæredibus de ſanguine puerorum*, or *ſeniori puero* of *A.* or to the right heirs of *A.* there being then ſuch *A.* *in eſſe*, or to the wife *A.* ſhall marry; theſe are good remainders, and veſt when ſuch perſons come *in eſſe* as are within the deſcription; becauſe here appears no preſent regard for any perſon in particular, therefore if they anſwer the deſcription at any time before the particular eſtate determines, it is time enough; and ſo there is a diverſity between a remainder limited to one by name *in particular*, and ſuch remainder limited by *deſcription* or circumlocution, or between a *general* name and a ſpecial name. *Co. Lit.* 3. 1 *Co.* 66. 2 *Co.* 51. *Hob.* 33. *Moor* 104. *Dyer* 337. 2 *Leon.* 210. 1 *Rol. Rep.* 254.

A. makes a leaſe to *B.* for life of *B.* and after the death of *A.* to remain to *B.* and his heirs; this remainder is contingent, and cannot veſt preſently, for if *A.* ſurvives *B.* it is void; and becauſe otherwiſe the operation of livery would be interrupted during the life of *A.* for he cannot give himſelf any eſtate, his livery operating to paſs eſtates from him, not to give any to him who had the whole before; therefore *during his life the operation of the livery muſt ceaſe*, and by conſequence no remainder can take effect in virtue of that livery, which *pro tempore* being at an end, all that depended thereon ceaſes too, and can never after be revived; for the livery muſt carry out all the eſtates at once from the feoffor, and if he comes again into the poſſeſſion before they can all take effect, this breaks the force of the livery, and brings back again to him all that ſuch livery had taken out from him, and then they can never take effect but by a new livery; this is the reaſon of the common caſe, that one cannot give lands to another to begin after his death, becauſe, being to make livery preſently, if that cannot operate preſently, it can never operate at all, for it is a contradiction to give lands to one by a ſolemn livery, which is an act executed and works preſently, and yet by words to reſtrain that operation to a future time; but in the principal caſe, where *A.* dies firſt, there no interruption is of the livery, for *B.* had an eſtate for life by virtue thereof, and before that determines, the ſame livery, which carried the remainder in abeyance, for the uncertainty of its taking effect, does on *A.*'s death direct and ſettle, or bring down the remainder to *B.* and his heirs. 10 *Co.* 85.

If a leaſe be made to *A. B.* and *C.* for their lives, and if *B.* ſurvives *C.* then to remain to *B.* and his heirs, *this remainder is in abeyance*, becauſe though the perſon be certain, yet ſince it depends on *C.*'s dying before him, till that be known the remainder cannot veſt. So if a leaſe be made to *A.* for life, and after the death of *B.* who is a ſtranger, to remain to *C.* in fee, or to *A.* in fee, theſe remainders are in abeyance or contingency, and depend on *B.*'s dying before *C.* or *A.* for if he ſurvives them, the remainder cannot take effect. 3 *Co.* 20. 10 *Co.* 85. *Co. Lit.* 378.

If a leaſe be made to *A.* for life, remainder to the abbot of *D.* and his ſucceſſors, though the abbot be then dead, ſo as there is then no abbot at all, yet the remainder ſhall be good *if* an abbot be made before the death of *A.* So of a remainder to a mayor and commonalty, dean and chapter, prior and convent, *&c.* though there be *then* no mayor, dean or prior. So of a remainder to the biſhop of *D.* parſon of *D.* or other ſole corporation and his ſucceſſors; theſe remainders not being limited to them by name ſpecially, but to them generally, and *ſo whoever comes within the deſcription before the determination of the particular eſtate, is capable of taking by virtue thereof*, are good remainders in abeyance, *&c.* But if there be no ſuch corporations at the time of the limitation, then the remainders are totally void; and none created after, though by the ſame name, can take theſe remainders, not even if a patent be then paſſed to make ſuch corporation. *Co. Lit.* 264. *Hob.* 33. 2 *Co.* 51. 10 *Co.* 30. *Moor* 104. 1 *Rol. Rep.* 254. 2 *Bulſt.* 275.

2. *Of croſs remainders, or thoſe ariſing by implication and conſtruction of law.*

A. having iſſue five ſons, his wife being enſient, deviſed two thirds of his lands to his four younger ſons, and the child *in ventre ſa mere* if he were a ſon, and their heirs, and if they all die without iſſue male of their bodies or any of them, that the lands revert to the right heirs of the deviſor; by this deviſe *the younger ſons were tenants in tail in poſſeſſion, with croſs remainders in tail to each other*, and no part ſhall revert to the heir of the deviſor till all the younger ſons be dead without iſſue male of their bodies. *Dyer* 303.

But where one having iſſue three ſons, *A. B.* and *D.* deviſes one houſe to *A.* and his heirs, another to *B.* and his heirs, and a third to *D.* and his heirs, provided that if all his ſaid children die without iſſue, that then the meſſuages remain and be to his wife and her heirs; it was held by three judges, that *on the death of one of the ſons without iſſue the wife might enter*, and that here there were no croſs remainders from one ſon to another, becauſe being deviſed to them ſeverally by expreſs limitation, there ſhall be no greater eſtate to them by implication; but *Lee* Ch. J. doubted; and *Doderidge* ſaid, that though perhaps croſs remainders may be by implication where there is a deviſe to two ſeveral perſons, yet not ſo if to more; for *when one dies there cannot be ſeveral eſtates by moieties to ſeveral perſons*, and when another dies, remainder again to another, becauſe of the uncertainty and inconvenience; and that it was never ſeen in any book, where an eſtate is limited to divers, that there could be croſs remainders. *Cro. Jac* 655. 2 *Rol. Rep.* 281. 1 *Vent.* 224. *Raym.* 455. *Fitzg.* 97. 2 *Jon.* 82. *Cart.* 173. cited, and admitted to be law. As in 4 *Leon.* 14. *Sed Qu.* If later determinations have not been contrary to this doctrine?

One ſeiſed of lands in fee, by will deviſes *Black Acre* to *A.* his daughter, and her heirs, and *White Acre* to his daughter *B.* and her heirs; and if ſhe die before the age of ſixteen years living *A.* then *A.* to have *White Acre* to her and her heirs; and if *A.* die, having no iſſue, living *B.* then *B.* to have the part of *A.* to her and her heirs; and if both die, having no iſſue, then to *J. S.* and his heirs, and dies; *B.* attains her age of ſixteen years; and *then* dies without iſſue in the life of *A.* and firſt it was held by three juſtices againſt *Dyer*, that *the daughters had an eſtate tail on the whole will*, and not a fee determinable on a contingency ſubſequent; ſecondly, that by the words "*if both die without iſſue*," no croſs *remainders* in tail were created by implication, but that on *B.*'s death without iſſue, after ſixteen, *J. S.* ſhould have her part preſently without ſtaying till the death of *A.* without iſſue. *Dyer* 330. 1 *Benl.* 212. 1 *Rol. Abr.* 839. *Vaugh.* 267.

A. ſeiſed of lands in fee, by will deviſes all his lands in the county of, *&c.* to his two daughters *B.* and *D.* and their heirs, equally to be divided betwixt them; and in caſe they happen to die without iſſue, then to his nephew *J. S.* and the heirs male of his body, and dies; and it was adjudged, that on the death of *B.* one of the daughters of the other ſiſter took her moiety as a croſs *remainder*. Raym. 452. Skin. 17. 2 Jon. 172. 2 Show. 136. Polex. 434. *And ſee* 2 Vern. 545. 3 Mod. 107.

It is clearly agreed, that croſs *remainders* can only ariſe in *laſt* wills, and are not to be allowed of in any deed or conveyance. *Co. Lit.* 25. 1 *Rol. Abr.* 837. 2 *Show.* 136.

Richard Holden ſeiſed in fee, and having iſſue a ſon and three grandchildren, by his will deviſed part of his eſtate to his wife for her life, and the reverſion of ſuch part expectant on her death, and all other his freehold tenements, *&c.* he gave to his ſon *Richard Holden* for life, and after his death to his firſt and other ſons ſucceſſively *in tail male*, and *for default of ſuch iſſue*, and after the determination of the ſaid eſtates, he gave the premiſſes to his grandſon *Richard Holden*, and his granddaughter *Elizabeth Holden*, to be equally divided between them, and to the heirs of their reſpective bodies iſſuing; and for default of ſuch iſſue he gave the premiſſes to his granddaughter *Anne* in fee: the teſtator died ſeiſed, *Richard* the ſon died without iſſue male, whereupon *Elizabeth* and the grandſon entered, and *Elizabeth* died without iſſue generally; *Anne Holden* married *John Jarvis*; and the queſtion was, whether there were croſs *remainders* between *Elizabeth* and *Richard* the grandſon, or whether the moiety of *Elizabeth* ſhould go to *Anne* or to *Richard*? And it was reſolved, that *there were no croſs remainders between them*, becauſe here are no *expreſs* words, nor is there a neceſſary implication, without either of which croſs *remainders* cannot be raiſed; that the words, *and for default of ſuch iſſue*, being relative to what goes before, mean only, and for default of heirs of their reſpective bodies, and there it is no more than as if it had been a deviſe of one moiety to *Richard* and the heirs of his body, and of the other moiety to *Elizabeth* and the heirs of her body, and for default of heirs of their reſpective bodies remainder over; in which caſe there could be no doubt; and it was held that this caſe differed from the caſe *ſupra*, the word *reſpective* being in that caſe, and the firſt deviſees were the teſtator's daughters, and the remainder-man only a nephew; whereas, in the preſent caſe, *Anne* was as near to the teſtator as *Richard*. Comber *v.* Hill. Paſch. 7 Geo. 2. in B. R. *and* Mich. 8 Geo. 2. a like caſe in *B. R.* between *Browne* v. *Williams*.

3. *Of what things a remainder may be made, or limited.*

As to eſtates of inheritance, there can be no doubt but that the grantor, having a perpetual and durable intereſt in the eſtate, may ſhare and divide it, or grant as many remainders over as he thinks proper. 4 *New Abr.* 492.

But as to perſonal goods and chattels, it was formerly held, that *they in their own nature were incapable of any limitation over*, being things *tranſitory*, and by many accidents ſubject to be loſt, deſtroyed, or otherwiſe impaired, and the exigencies of trade requiring a frequent circulation thereof, in which they differ from lands and tenements which are permanent, therefore what is called an *eſtate* in lands, is termed *property* in perſonal chattels; wherefore it was held, that a grantor's deviſe of a perſonal thing to one, though but for an hour or minute, was *a gift for ever*; and an abſolute diſpoſition of the intire property. *Bro. Deviſe* 13. *Plowd.* 521. *Dyer* 74. 8 *Co.* 94.

Hence it was a long time before the courts of juſtice could be prevailed upon to have any regard for a deviſe over *even of a chattel real*, or a term for years after an eſtate for life limited thereon, becauſe the eſtate for life being in the eye of the law of greater regard and conſideration than an eſtate for years, they thought he, who had it deviſed to him for life, had therein included all that the deviſor had a power to diſpoſe of; but *now ſuch remainders over are allowed under the name of executory deviſes*, and are eſtabliſhed both in courts of law and equity, provided they tend not to a perpetuity, ſo as to make eſtates unalienable. 4 *New Abr.* 294.

Alſo a diſtinction was formerly taken between a deviſe of a perſonal chattel to one for life, with a *remainder* over, and of the *uſe* only; that in the firſt caſe the deviſee for life had the abſolute property, but not ſo in the ſecond, for that the firſt deviſee had not the property of the goods, but only a ſpecial intereſt in them, ſo that there ſtill remained a property which might be limited over; but this diſtinction is now exploded in conformity to the Civil law, and the deviſee in remainder is allowed in equity the like remedy in both caſes. *Plowd.* 521. *Cro. Car.* 346. 1 *Rol. Abr.* 610. *March* 106. *Owen* 33. 1 *Ch. Ca.* 129. 2 *Vern.* 245. 1 *P. Wil.* 1. 502, 651. And *Black. Com.* 2 *V.* 398.

But a deviſe of a term for years or perſonal chattel to one for a day or an hour, is a deviſe of the whole term or intereſt, if the limitation over is void, and it appears at the ſame time that the whole was intended to be diſpoſed of from the executors. 1 *P. Wil.* 666.

A. being poſſeſſed of a term for ninty-nine years, deviſed it to *B.* for life, and after to ſix others ſucceſſively, for their lives, if the term ſo long continue; and all the ſeven perſons being dead, and the term continuing, it was adjudged, that it ſhould revert to the executors of the teſtator, and that it did not veſt in the ſurvivor of the deviſees ſo as to tranſmit it to its repreſentatives. 1 *Salk.* 231. 1 *Ld. Raym.* 325.

A farmer deviſed his ſtock (which conſiſted of corn, hay, cattle, *&c.*) to his wife for life, and after her death to plaintiff. It was objected, that no remainder can be limited over of ſuch chattels as theſe, becauſe the uſe of them is to ſpend and conſume them; but the Maſter of the rolls ſaid *the deviſe over was good*, but added, if any of the cattle were worn out in uſing, defendant was not to be anſwerable for them; and if any were ſold as uſeleſs, defendant was only to anſwer the value of them at the time of the ſale; and an account was decreed to be taken accordingly. *Abr. Equ.* 361.

A. gives his ſiſter, by will, 10*l.* and directs that ſuch part of his perſonal eſtate, as his wife ſhould leave of her ſubſtance, ſhould go to the ſiſter; whatever the wife has not employed in that way, ſhall go over and be accounted for. 1 *P. Will.* 651.

But if a chattel real, money, goods, or other perſonal things, are deviſed to one, and the heirs of his body, or to one, and, if he dies without heirs of his body, *remainder* over; this *remainder* is totally void, and the courts of equity will not allow of a bill by the remainder-man to compel ſecurity, *&c.* or to have the money, *&c.* after the death of the firſt deviſee, but it ſhall go to his executors or adminiſtrators; for the firſt deviſee gives the abſolute property of a perſonal eſtate, as the like deviſe of a real eſtate before the ſtatute *de donis* gave the abſolute fee, upon which no limitation could be made further, and as the heirs are the repreſentatives to take the real eſtate, ſo are the executors to take the perſonal eſtate; and this is not within the ſtatute *de donis*, but remains as at Common law. 2 *Vent.* 349. 2 *Vern.* 600. 1 *Salk.* 156. *Abr. Eq.* tit. *Deviſe.*

If *A.* deviſe that his goods and furniture ſhall remain in his houſe to be enjoyed according to the limitations of his will, by thoſe intitled to the houſe, the firſt who would be tenant in tail of the houſe becomes abſolute owner of the goods. *Saunders* v. *Saunders* admitted.

Not only lands and tenements, but alſo rents, commons, eſtovers, or any other intereſt or profits *in eſſe*, wherein the grantor hath the abſolute property to him and his heirs, may be granted *with remainder over*. Plowd. 379. 9 Co. 48, 97.

So if one hath the office of park-keeper, foreſter, gaoler, ſheriff, *&c.* to him and his heirs, he may grant thoſe offices to one for life, remainder to another for life, *&c.* for *omne majus continet in ſe minus*, and as they are grantable over in fee, ſo may they be granted in ſucceſſion to one for life, with remainders over, *&c.* 9 *Co.* 48. 1 *And. pl.* 201.

It was formerly doubted whether there could be a *remainder* of a rent *de novo*, that is, whether a man ſeiſed of lands in fee, could thereout grant a rent-charge to one for life or years, *remainder* to another in fee, or in tail; and this doubt aroſe from *the rent not having any exiſtence before it was created*, conſequently no reverſion could be left to the grantor, out of which the remainder was to ariſe; but it hath been adjudged, and is now ſettled, that *ſuch grant in remainder is good*, the grantor having the abſolute intereſt in the eſtate out of which it is to ariſe, and his intention gives it being for the whole, out of which the leſſer eſtates are carved. But if he grant ſuch rent for life or years, to one without going further, he cannot after grant the reverſion thereof to another, becauſe he has no reverſion in him. 2 *Rol. Abr.* 415. 2 *Co.* 70, 76. 2 *Vent.* 240. 1 *Lev.* 144. 1 *Sid.* 285. 2 *Salk.* 577. 2 *Lutw.* 1225. *Moor, pl.* 100.

The King may grant an eſtate in an office to commence *in futuro*, or on a contingency, for he hath no inheritance in the office, as to the execution of it, but in point of intereſt only to grant. And there is a diverſity between offices in fee exiſting, and ſuch as are granted only for life, which being as a new thing created, may, as a rent *de novo*, be granted to commence *in futuro*. 4 Mod. 275. 1 Ld. Raym. 52. Carth. 350. Salk. 465. Comb. 334.

If one be created Baron, Viſcount, Earl, *&c.* by patent, and after, in the ſame patent, the ſame honour is granted to another in *remainder*, yet *this operates as a new grant*, and not as a *remainder*, for the King had no reverſion of that honour in him, though he had ſtill the ſame power of appointing one in ſucceſſion to take it, as he had of granting it to the firſt. *Show. Par. Ca.* 5, 11.

4. *What words are ſufficient to create a remainder.*

The word *remainder* is *no* term of art, *nor is it neceſſary to create a remainder*. So that *any words*, ſufficient to ſhew the intent of the party, will create a *remainder*; becauſe *ſuch eſtates take their denomination of remainders more from the nature and manner of their exiſtence, after they are limited, than from any previous quality inherent in the word* REMAINDER. To make them ſuch therefore, if a man gives land to *A.* for life, and that after his death the land ſhall revert, or deſcend to *B.* for life, *&c.* this is *a good remainder*, and may be pleaded as ſuch. 1 *Rol. Abr.* 416. *Plowd.* 29. 1 *Rol. Rep.* 319. *Dyer* 125.

So if lands are given to one and the heirs male of his body, and to him and the heirs female of his body, this limitation to the heirs female is *a remainder*; becauſe it is not to take place till the eſtate to the heirs male is ſpent. *Co. Lit.* 377. *a.*

So if lands are given to a widow, and to the heirs of the body of her late huſband, *on her begotten*. This is a remainder to the heirs of the body of the huſband; becauſe it cannot take effect till after the widow's death, who has an eſtate for life. *Co. Lit.* 26, 200. 2 *Mod.* 210.

So an eſtate limited to *A.* for life, or in tail, *& poſt deceſſum ejus*, or *pro defectu talis exitus*, to *B.* and the heirs of his body, is good, though there be not the word *remainder*. So if a leaſe be made to *A.* for life, and that after his death *B.* ſhall have the profit, this is a good remainder to *B.* *Plowd.* 159. *Moor, pl.* 54. *Dyer* 125. 1 *Rol. Rep.* 319. *Cro. Eliz.* 10, 742.

So a leaſe to *A.* for life, and that after his death his children ſhall have it, is a good remainder. 6 *Co.* 17. *b.* *Raym.* 83.

Nay, though an eſtate be limited expreſly as a remainder, yet if it be not ſo in conſtruction of law, the word *remainder* will have no force to make it ſuch. As if *A.* ſeiſed of lands in fee, he and *B.* levy a fine to *D.* in fee, who grants and renders to *B.* in tail, rendring rent to *A.* and if *B.* died without iſſue, *tenementa præd' integre remanebunt* to *A.* and his heirs; *B.* ſuffers a common recovery; *A.* diſtrains for his rent; and *this was adjudged a reverſion*, and as ſuch the rent paſſed with it to *A.* and was chargeable on the land in whoſe hands ſoever it came, by virtue of the contract which cannot be deſtroyed by the recovery, though the reverſion is thereby barred. *Cro. Eliz.* 727, 768, 792. *Moor, pl.* 795. *Co. Lit.* 299. *Raym.* 142.

But here it may be proper to take notice of a ſet of words ſometimes uſed in leaſes for years, which are ſo far a part of the limitation and deſcription of the firſt intereſt, that they cannot again be made uſe of to paſs any further intereſt in the ſame land. As if one make a leaſe to *A.* for eighty years, if he ſo long live, and if he happen to die within the term, then the lands for the reſidue of the term, or for ſo many years as ſhall be then remaining of the term, to go *over* to another, this limitation over is void; becauſe the time, or term, of eighty years was not abſolute to *A.* but *was determinable after his death*, and *by his death the whole term is at an end*; as if a leaſe had been made to him barely for his life, and then to limit the reſidue of a term, when nothing thereof remains, is repugnant and void; but ſome opinions incline, that a deviſe in ſuch a manner would be good, by reaſon of the intent of the party, and the equivocal ſignification of the word *terminus*, which may, though not ſtrictly, ſignify alſo the time or ſpace of eighty years, as well as the eſtate or intereſt for eighty years determinable as aforeſaid. But now if a leaſe be made to *A.* for eighty years, if he ſo long live, and if he die within the term, then the land to go over to another for the reſidue of the eighty years, this is a good *remainder*, becauſe though the term or intereſt be determined, yet *the land, and part of the years, ſtill remain*; theſe years may be made the meaſure of the ſucceeding intereſt, as any other number of years may be. *Cro. El.* 216. 1 *Leon.* 218. 1 *Co.* 153. 3 *Leon.* 195. 2 *Rol. Abr.* 415. *Plowd.* 198. *Moor* 247, 520. *pl.* 441. 1 *And.* 259.

J. S. ſeiſed of lands in fee by indenture demiſes them to *A.* for life, *habendum* to *A. B. D.* and *E.* his three ſons for their lives, and the life of the ſurvivor of them *ſucceſſively*; after the death of the latter it was adjudged in this caſe, Firſt, That if the ſons could take, it muſt be *by way of remainder*, they not being parties to the deed, and then it muſt be as joint-tenants, which could not be by reaſon of the word "*ſucceſſive.*" Secondly, That they could not take in ſucceſſion, for the uncertainty whoſe eſtate or intereſt was to commence firſt. *Hob.* 313. *Hut.* 87.

A. by indenture makes a leaſe to *B.* for forty years, if *A.* ſo long live, and after his death to *D.* (who was no party to the deed) for one thouſand years, and then *A.* levies a fine and dies, and five years paſs after his death, and then plaintiff claiming under *D.* enters, *&c.* this is *no remainder* at all to *D.* for firſt, preſently it cannot veſt by reaſon of the leſſor's life interpoſing, therefore no *remainder* is veſted. Secondly, As a contingent *remainder* it cannot be good; becauſe then *it ought to have a particular eſtate to ſupport it*, and ought to be in abeyance, or contingency, to veſt or not veſt when that determines; but here the firſt leaſe is no ſuch particular eſtate; becauſe that reaches not to the commencement of the *remainder*, nor is the *remainder* limited with any regard to the particular eſtate; becauſe it is not to commence on the determination of that, but at a future time, *viz. on death of the leſſor*, and there is no contingency in the caſe, for it is to take effect at all events, on the death of the leſſor, be it before or after the end of the term, therefore it can be no other than a future *intereſſe termini* to begin after the death of the party who grants it, which being but for years it may well do; becauſe *it enures by way of contract*, and though the grantee *there* was no party to the deed, and therefore, as objected, could take nothing, yet it appears, that judgment was given for plaintiff; which proves, Firſt, That the grantee had an intereſt; Secondly, That this intereſt was not barred by the fine, and five years non-claim after the death of the grantor, not being touched, deveſted or turned to a right; Thirdly, That though the grantee was no party to the indenture, yet he might well take by virtue thereof, if he gets the indenture to make out his title, for the grantor cannot derogate from his own grant, or avoid his own acts *Raym.* 140.

5. *Of the continuance of the particular eſtate, and when the remainder is to commence.*

If a man makes a leaſe to *A.* for life, and that after the death of *A.* and one day after, the land ſhall remain to *B.* for life, *&c.* this is *a void remainder*, becauſe not to take effect *immediately* on the determination of the firſt eſtate, and ſo during that time there would be an interruption of the livery, and no tenant of the freehold, either to do the ſervices, or anſwer to the *præcipes* of ſtrangers. *Plowd.* 25. *Raym.* 144. that the law is nice to an inſtant. 1 *Ld. Raym.* 316.

A. ſeiſed in fee, deviſes his lands to *B.* eldeſt ſon of his brother *D.* for life, *remainder* to the firſt ſon of *B.* in tail, and ſo to all his other ſons in the ſame manner ſucceſſively, *remainder* to *E.* ſecond ſon of *D* for life, *remainder* to his firſt and other ſons in tail ſucceſſively, and dies; *B.* enters and dies, leaving his wife enſient with a ſon, then *E.* enters *as in his remainder*, and ſix months after the ſon is born; and all this matter being found ſpecially, it was adjudged in *D. B.* for *E.* againſt the ſon; Firſt, becauſe this being a contingent *remainder* to the ſon, and he not being born at the time when the particular eſtate determined, became void; Secondly, *E.* being the next in *remainder*, and having entred *before the birth of the ſon*, WAS IN BY PURCHASE, therefore ſhall not loſe his eſtate by a ſon born after; and this judgment was affirmed in *B. R.* for they held it plainly to be *a contingent remainder, and not an executory deviſe*, or a ſpringing *remainder*, for that would introduce a perpetuity not to be barred by a common recovery, becauſe it would be the ſame to all the other ſons; but here it being a contingent *remainder*, and not happening in time, *it is gone for ever*; they relied on *Archer*'s caſe, but on a writ of error brought in parliament, the judgment was reverſed, becauſe, being in a will, they thought that by the meaning and equity thereof they ought not to diſinherit the heir for ſuch a nicety, and a will was otherwiſe to be expounded than a deed; *therefore they conſtrued it an executory deviſe*, or ſpringing *remainder* to the firſt and other ſons, and that the freehold ſhould veſt in *E.* till the ſon was born; but all the judges were much diſſatisfied with it, and did not change their opinions, but blamed the judge who permitted it to be found ſpecially where the law was ſo certain and clear. 4 *Mod.* 259. 3 *Lev.* 408. 1 *Salk.* 227. *Carth.* 309.

Now by the 10 & 11 *W.* 3. *c.* 16. Proviſion is made that *after-born* ſons and daughters, *to whom remainders are limited in contingency, ſhall take in the ſame manner* AS IF THEY HAD BEEN BORN IN THE FATHER'S LIFE TIME, though no eſtate be limited to truſtees to preſerve and ſupport ſuch contingent remainders, which act was made by reaſon of this caſe, and of the ſtrictneſs of the law herein.

For more learning on this ſubject, ſee 4 New Abr. *and* 18 Vin. Abr. *tit.* Remainder, *and tit.* Executory Deviſe and Recovery. *See alſo* Black. Com. 2 V. 164, 398. 3 *V.* 192.

Remanentes, *(remanſi)* Are words uſed to ſignify belonging to———As *de hominibus ſive tenentibus qui huic manerio* remanſi *ſunt*. Domeſday.

Remanet in Cuſtodia. Entry of an action in the Marſhal's book, by *reman. cuſtod.* where a man is actually in cuſtody, is a good commencement of an action in *B. R.* 3 Salk. 150.

Remedy, *(Remedium)* Is the action or means given by law for recovery of a right; and WHENEVER THE LAW GIVETH ANY THING, IT GIVES A REMEDY FOR THE SAME. There is a maxim, *Lex ſemper dabit remedium.* Stud. Compan. 177, 179.

Remedies are favourably extended, and ſometimes to be had without *action* or applying to the courts of juſtice, *viz.* by accord and agreement of the parties; by arbitrament; retaking goods wrongfully taken away; taking diſtreſſes for rent; entry on lands, to regain poſſeſſion, *&c. Wood's Inſt.* 528, 529, 530.

Remembrancers, *(Rememoratores)* Formerly called *Clerks of the Remembrance*, are officers of the *Exchequer*; of which there are three, diſtinguiſhed by the names of the King's Remembrancer, the Lord Treaſurer's Remembrancer, and the Remembrancer of Firſt Fruits: Upon whoſe charge it lies, to put the Lord Treaſurer and the Juſtices of that court in remembrance of ſuch things as are to be called on and dealt in for the King's benefit.

The King's Remembrancer enters in his office all recognizances taken before the Barons for any of the King's debts, for appearances, *&c.* and he takes all bonds for ſuch debts, and makes out proceſs for breach of them; alſo he writes proceſs againſt the Collectors of Cuſtoms, Subſidies, Exciſe, and other public payments for their accounts: All informations on penal ſtatutes are entered and ſued in his office; and he makes the bills of compoſition on penal laws, and takes the ſtallment of debts: And all matters of *Engliſh* bills in the Exchequer-Chamber remain in the office of this Remembrancer. He has delivered into his office the indentures, fines, and other evidences, which concern the paſſing any lands to or from the King. *In Craſtino animarum* yearly he reads in the court the oath of all the officers of the court, when they are admitted Writs of prerogative or privilege, for officers and miniſters of the court are made out by him, and commiſſions of *Niſi prius*, by the King's warrant, on trial of any matters within his office at the aſſiſes in the country he hath the entring of judgments, of pleas, *&c.* And all differences touching irregularities in proceedings ſhall be determined by the King's Remembrancer; who is to ſettle the ſame if he can, and give coſts where he finds the fault; but if not, the court is to determine it, *&c.*

By order of court, his Majeſty's Remembrancer, or his deputy, are diligently to attend in court, and to give an account touching any proceedings as they ſhall be required; and they enter the rules and orders of the court.

The Treaſurer's Remembrancer iſſues out proceſs of *fieri facias* and extents, for debts to the King; and againſt ſheriffs, eſcheators, *&c.* not accounting, he takes the accounts of all ſheriffs, and makes the record, whereby it appears whether ſheriffs and other accountants pay their *profers* due at *Eaſter* and *Michaelmas*; and he makes another record, whether ſheriffs and other accountants keep their days prefixed: There are are alſo brought into his office all the accounts of cuſtomers, controllers, and accountants, to make entry thereof on record. All eſtreats of fines, iſſues and amerciaments, ſet in any of the courts at *Weſtminſter*, or at the aſſiſes or ſeſſions, are certified into his office; and by him delivered to the clerk of the eſtreats to make out proceſs on them; and he may iſſue proceſs for diſcovery of tenures; and all ſuch revenue as is due to the crown by reaſon thereof, *&c.*

The Remembrancer of the Firſt Fruit's office is to take all compoſitions, and bonds for payments of firſt fruits and tenths; he makes proceſs againſt all ſuch perſons as do not pay the ſame. *Stat.* 35 *Eliz. cap.* 5. 5 *R.* 2. *c.* 14. 37 *Ed.* 3. *c.* 4.

Remitter, (from the Lat. *remittere*, to reſtore or ſend back) Is where a man hath *two* rights or titles to land, and he comes to land by the *laſt* title, but that proving defective, *he is reſtored to and judged in by force of his elder or ſurer title, by operation of law.* Lit. 659. Co. Lit. 347.

The reaſon of this invention of the law, is IN FAVOUR OF RIGHT; and that title which is firſt and moſt ancient, is always preferred. *Dyer* 68. *Finch's Law* 119.

In *Remitters* to reſtore rights, the firſt intereſt which works ſuch *Remitter*, muſt be *a right*, and not *a title* of entry; and there can be no *Remitter* before an entry. *Co. Lit.* 348. 2 *Bulſt.* 29.

It is a rule, that *Remitter* ſhall not be, where there is not both *an action and a right*, with a deſcent of the poſſeſſion of the eſtate to the ſame party that is to be *remitted:* Nor may it be, when the party comes to his laſt title by his own wrong, or any folly of his own; or on a void eſtate. *Co. Lit.* 347, 353.

If land deſcend to him who has right to it before, he ſhall be *remitted* to his better and more ancient title, if he will: And a *remitter* muſt be to a precedent right; for regularly to every *remitter* there are two incidents, *viz.* AN ANCIENT RIGHT, AND A DEFEASIBLE ESTATE OF FREEHOLD COMING TOGETHER. *Doct. & Stud. c.* 9. *Wood's Inſt.* 528.

Tenant in tail makes a feoffment in fee on condition, and dieth, and his iſſue being within age enters for the condition broken by virtue of the feoffment; he ſhall be firſt in as tenant in fee-ſimple, and be *remitted* as heir to his father: But if the heir be of age, he ſhall not be *remitted*; but is to bring his writ of *formedon* againſt the feoffee. *Co. Lit.* 202, 349. And if tenant in tail infeoff his ſon or heir apparent, who is within age and after dies, that is a *remitter* to the heir: Though, if he were at full age at the time of ſuch feoffment, it is no *remitter*, becauſe it was his folly, that bneig of full age would take ſuch a feoffment. *Lit.* 655.

If a huſband alien lands which he hath in right of his wife, and after take an eſtate again to him and his wife for their lives, this is a *remitter* to the wife, for the alienation is the act of the huſband, and and not of the woman; yet if the alienation be by fine in a court of record, ſuch a taking again afterwards to the huſband and wife ſhall not make the wife to be in her *remitter*, ſhe being excluded by the fine for ever. *Terms de Ley.*

Lands are given to a man and his wife, and the heirs of their *two* bodies; and after the huſband aliens the land in fee, and then takes back an eſtate to him, and his wife for their lives; here they will be both *remitted:* But if he take an eſtate again to himſelf for life, *remitter* will not be allowed againſt his own alienation. *Co. Lit.* 354.

When the entry of a perſon is lawful, and he takes an eſtate in the land for life; or in fee, *&c.* (except it be by matter of record, or otherwiſe to conclude or eſtop him) he ſhall be *remitted. Co. Lit.* 363. And a *remitter* to one in poſſeſſion, may be a *remitter* to another in remainder; if the remainder be not bound, which eſtops it. *Cro. Car.* 145.

If there be tenant in tail, remainder in fee to *A. B.* and the tenant in tail diſcontinueth, and takes back an eſtate in fee; and then deviſes the lands to his wife for life, with remainder to *W. R.* for years, remainder to the ſame *A. B.* in fee, and dies, and his wife enters and dies: It has been held, that he in remainder in fee may enter and avoid the term for years to *W. R.* becauſe he is *remitted* to his firſt remainder in fee; and a *remitter* avoids a leaſe for years, without entry. *Noy* 48.

A father was tenant for life, remainder to his ſon for life, remainder to the right heirs of the body of the father; he and his ſon conveyed the lands to the uncle in fee, who died without iſſue, ſo that the ſon, who was *heir in tail* to the father, was now *heir at law to the uncle*, and the fee deſcended on him; the wife of the uncle brought dower, but the ſon being *remitted* to his former eſtate, no dower accrued to the wife, for the eſtate of which ſhe claims dower is gone. 1 *Leon.* 37. 9 *Rep.* 136.

Lands were purchaſed by a man, and ſettled on himſelf and his wife in tail, and they had iſſue two ſons; then he made a feoffment to the uſe of himſelf for life, remainder to the wife for life, remainder in fee to his ſecond ſon: The wife after his death entered, and made a feoffment to the iſſue of the ſecond ſon; and then the eldeſt ſon entered for a forfeiture, on the *Stat.* 11 *H.* 7. *cap.* 20. and it was adjudged a forfeiture, by reaſon the wife having two titles, one as tenant in tail, the other as tenant for life, by her entry ſhe is *remitted* to her eſtate for life, ſo that the feoffment made by her is a forfeiture of her eſtate. *Sid.* 63. 3 *Nelſ Abr* 100.

If land be given to a woman *in tail*, the remainder to another and a third in tail, remainder to a fourth in fee; the feme takes huſband, and he diſcontinues the lands in fee, and after an eſtate is made to the huſband and wife for their lives, or other eſtate: This is a *remitter* to all in remainder, and if ſhe die without iſſue, they may enter; and ſo it is of them who have the reverſion after ſuch entails. *Lit. Sect.* 673.

Where a perſon lets land for term of life to another, who granteth it away in fee; if the alienee make an eſtate to the leſſor, it will be a *remitter* to him, becauſe his entry is lawful. *Ibid.* 694.

If one be diſſeiſed, and the diſſeiſor makes a feoffment to the diſſeiſee; in this caſe the diſſeiſee may be *remitted* to his elder title, or he may chooſe to take by the feoffment; and if it be with warranty, he may if he will make uſe of the warranty. 1 *H.* 7. 20. 3 *Shep. Abr.* 237.

Tenant in tail hath two ſons, and leaſes the land intailed to his elder ſon for life, remainder to his youngeſt ſon; it is no *remitter* to the eldeſt: But if he die without iſſue of his body, the youngeſt ſon ſhall be *remitted.* Lit. 682.

If tenant in tail make a feoffment to the uſe of himſelf and his heirs, he ſhall not be *remitted*; but his iſſue ſhall. 3 *Nelſ.* 100. On *remitter* of iſſue in tail, leaſes and other charges on the lands are avoided. *Litt.* 659. 660.

For more learning on this ſubject, ſee 18 Vin. Abr. *tit.* Remitter, *and* Black. Com. 3 V. 19, 189.

Remittitur, The entry in *B. R.* on a writ of error abating in the Exchequer chamber, *&c.* is called by this name. See *Error*.

Removal of Poor. See *Settlement of the Poor.*

Remover, Is where a ſuit or cauſe is *removed* out of one court into another; and for this there are divers writs and means. 11 *Rep.* 41. *Remanding* of a cauſe, is ſending it back into the ſame court, out of which it was called and ſent for. *Marſh* 106. See *Habeas Corpus.*

Renant, Or rather *reniant*, i. e. *negans*, from the Fr. *renier negare*, to deny or refuſe. 32 *H.* 8. *cap.* 2.

Render, (Fr. *rendre* viz. *reddere*) Signifies to yield, give again, or return.

This word is uſed in levying a fine, which is either *ſingle*, where nothing is *rendered* back by the cogniſee; or *double*, when it contains a grant and render back again of the land, *&c.* to the cogniſor. *Weſt's Symb.*

And there are certain things in a manor which lie in *prender*, that is, which may be taken by the lord or his officers when they happen, without any offer made by the tenant, ſuch as eſcheats, *&c.* and certain which lie in *render, i. e.* muſt be *rendered* or anſwered by the tenant, as rents, heriots, and other ſervices: Alſo ſome ſervices conſiſt in *ſeiſance*; and ſome in *render*. Weſt. Symb. par. 2. Perkin's Reſerva. 696.

Renovant, (from *renovo*) To renew or make again: A parſon ſued one for tithes, to be paid of things *renovant*, *&c.* Cro. Jac. 430.

Rent, (*redditus* in *Latin*, from *redeundo*, becauſe, as *Fleta* tells us, *Retroit & quotannis redit.* Lib. 3. c. 14.) Signifies with us *a ſum of money, or other conſideration* ISSUING YEARLY *out of lands or tenements.* Plowden 132, 138, 141.

1. *Of the ſeveral ſorts of rent.*
2. *Statutes concerning rent.*
3. *Of recovering and demanding rent, and in what caſes a demand is neceſſary.*
4. *Of the time of demanding rent, and the place where the demand is to be made.*

1. *Of the ſeveral ſorts of rent.*

There are three ſeveral ſorts, *viz. rent-ſervice, rent-charge* and *rent-ſeck.*

Rent-ſervice is, where a man holds his lands of his lord by fealty and certain *rent*, or by fealty-ſervice, and certain *rent.* Litt. lib. 2. cap. 12. Or that which a man making a leaſe to another for term of years, reſerveth yearly to be paid him for them. In the *terms of the law*, this reaſon is given for it, becauſe it is at his pleaſure either to diſtrain, or bring an action of debt.

Rent-charge is, where man makes over his eſtate to another, by deed indented, either in fee, or fee-tail, or for term of life, yet *reſerves to himſelf, by the ſame indenture, a ſum of money yearly to be paid to him, with clauſe of diſtreſs for non-payment.* See *Littleton ubi ſupra.*

Rent-ſeck, otherwiſe a dry *rent*, is that, which a man, making over his eſtate by deed indented, reſerveth yearly to be paid him, *without clauſe of diſtreſs* mentioned in the indenture. *Lit. ibid.* See the difference between a *rent* and an annuity in *Doctor* and *Student*, and *Cowell.*

Littleton deſcribes a rent-ſervice to be where the tenant holdeth land of his lord by fealty and certain rent, or by other ſervices and certain rent. *Litt. Sect.* 213.

The ſervices are of two ſorts, either expreſſed in the leaſe or contract, or raiſed by implication of law. When the ſervices are expreſſed in the contract, the *quantum* muſt be either certainly mentioned, or be ſuch as by reference to ſomething elſe may be reduced to a certainty; for if the leſſor's demands be uncertain, it is impoſſible to give him an adequate ſatisfaction or compenſation for them, as the jury cannot determine what injury he has ſuſtained. *Co. Lit.* 96. *a. Stil.* 397. 2 *Ld. Raym.* 1160.

The ſervices implied are ſuch as the law obliges the tenant to perform when there are none contracted for in the grant; and theſe are more or leſs according to the duration of the gift; as at Common law, before the ſtatute *Quia emptores terrarum*, if the tenant made a feoffment in fee without any reſervation of ſervices, the feoffee held by the ſame ſervices by which the feoffor held over; becauſe the ſervices being an incumbrance on the land, which the tenant could not diſcharge without his lord's conſent, *muſt follow the land into whoſe hands ſoever it comes.* Co. Lit. 22, 23.

Where a man ſeiſed of lands grants by deed poll or indenture a yearly rent, to be iſſuing out the ſame land, to another in fee, in tail, for life or years, with a clauſe of diſtreſs; this is a *rent-charge*, becauſe *the lands are* CHARGED WITH A DISTRESS *by the* EXPRESS *grant or proviſion of the parties*, which otherwiſe it would not be. See *Annuity*.

So if a man make a feoffment in fee, reſerving rent, and if the rent be behind, that it ſhall be lawful for him to diſtrain, this is a *rent-charge*, the word *reſerving* amounting to a grant from the feoffee. *Lit. ſect.* 217. *Co. Lit.* 170. *a*. *Plow.* 134.

A rent granted for equality of partition by coparceners to another is a rent-charge, and *diſtrainable of common right without clauſe of diſtreſs*; and altho' there be no tenure of the ſiſter who grants it; for as the law for the conveniency of coparceners allows of ſuch grants, it muſt conſequently give a remedy to the grantee for recovery of it. *Lit. ſect.* 252.

A rent-ſeck is ſo called, becauſe *it is unprofitable to the grantee*, as, before ſeiſin had, he can have no remedy for recovery of it; as where a man ſeiſed in fee grants a rent in fee for life or years, or where a man makes a feoffment in fee or for life, remainder in fee, reſerving rent *without any clauſe of diſtreſs*, theſe are rents-ſeck; for which, by the policy of the ancient law, there was no remedy, as there was no tenure between the grantor and grantee, or feoffor and feoffee, conſequently no fealty could be due. *Lit. ſect.* 215, 218. *Cro. Car.* 520. *Kelw.* 104. *Cro. Eliz.* 656.

And it hath been ruled in equity, that where an annuity was deviſed by will to *A*. and the land ſubject to the annuity to *B*. that *B*. ſhould give ſeiſin of the rent-ſeck to *A*. that he might have remedy for recovery of it at Common law, it being the original intention of the gift, that the deviſee ſhould have ſome benefit from it. *Moor* 626. 3 *Chan. Ca.* 92.

So when a bill was brought for 3 *l.* for a rent of 5 *s.* arrear for twelve years, the equity of the bill being that the deeds by which the rent was created were loſt, conſequently no remedy for the rent at law; and the court, on plaintiff's proving conſtant payment till the laſt twelve years, decreed defendant to pay the arrears and growing rent; for ſince by payment it was evident plaintiff had a right to the rent, and that he could not without his deeds make a title at law, therefore the court decreed defendant to pay the rent, and ſo *ſubjected his perſon*, which poſſibly might not have been liable by the deed which created the rent. 1 *Chan. Ca.* 120. But ſee *Stat.* 4 *Geo.* 2. *c.* 28. in the next diviſion of this title.

2. *Statutes concerning rent.*

Stat. 32 *Hen.* 8. *c.* 37. *ſect.* 1. The *executors* or *adminiſtrators* of *tenants in fee-ſimple*, *tenants in fee-tail*, and *tenants for term of life*, of *rent ſervices*, *rent-charges*, *rent-ſecks*, and *fee-farms*, unto whom any ſuch rent or fee-farm be due, ſhall have *an action of debt* for ſuch arrears *againſt the tenants* who ought to have paid in the life-time of their teſtator, or *againſt their executors* and *adminiſtrators*, and *diſtrain* for the arrears *on the land* charged with the payment, ſo long as the lands continue in the ſeiſin or poſſeſſion of the *tenant in demean*, who ought to have paid the rent or fee-farm, or in the ſeiſin or poſſeſſion of any other perſon claiming *only* from the ſame tenant by *purchaſe*, *gift* or *deſcent*, in like manner as their teſtator might have done.

Sect. 2. This act ſhall not extend to any manor in *Wales*, whereof the inhabitants have uſed to pay to every lord at his firſt entry, any ſum of money for diſcharge of all duties and penalties wherewith the inhabitants were chargeable to any of the lord's anceſtors.

Sect. 3. If any man have, in right of his wife, any eſtate in rents or fee-farms, and the ſame be unpaid in the wife's life; the huſband after death of his wife, his executors and adminiſtrators, ſhall have action of debt for the arrears, or may diſtrain.

Sect. 4. If any have any rents or fee-farms for term of life of any other perſon, and the rent, *&c.* be unpaid in the life of ſuch perſon, and after the ſaid perſon doth die; he to whom the rent or fee-farm is due, his executors and adminiſtrators, ſhall have an action of debt, or diſtrain for the ſame.

Stat. 8 *Ann. cap.* 14. *ſect.* 1. On any execution arrears of rent, not exceeding one year, to be paid, which the ſheriff is to levy and pay to plaintiff, as well as the execution money, the plaintiff paying the landlord.

Landlord dead, and after execution executed, adminiſtration is granted to *A*. he is not intitled to a year's rent. 1 *Strange* 97.

The adminiſtrator of the landlord may have an action againſt the officer for taking the goods in execution, and removing them from the premiſſes before the landlord was paid a year's rent. 1 *Strange* 212.

On motion on behalf of the landlord, the ſheriff was ordered to pay him his year's rent without deducting poundage. 1 *Strange* 643.

This ſtatute extends to the *immediate* landlord, and not to the ground landlord. 2 *Strange* 787. After the landlord had been paid a year's rent on one execution, another execution came in, and he moved to be paid another year's rent on the laſt execution, but was denied, for *the intent of the act was only to continue a lien as to one year*, and to puniſh him for his *laches*, if he lets more run in arrear. 2 *Strange* 1024.

Sect. 4. It ſhall be lawful for any perſon, having rent due on any leaſe for life, to bring an action for ſuch arrears, as on a leaſe for years.

Sect. 5. All diſtreſſes hereby impowered to be made, ſhall be liable to ſuch ſales, and in ſuch manner, as by 2 *Will. & Mar. ſtat.* 1. *cap.* 5.

Sect. 6. It ſhall be lawful for any perſon having rent due on any leaſe for life, years, or at will, determined, to diſtrain for ſuch arrears, after determination of the leaſes.

Sect. 7. Provided, That ſuch diſtreſs be made *within ſix calendar months after the determination of ſuch leaſe*, and during the continuance of ſuch landlord's title, and during the poſſeſſion of the tenant from whom ſuch arrear became due.

Stat. 4 *Geo.* 2. *cap.* 28. *ſect.* 1. In caſe any tenant for life or years, or other perſon who ſhall come into poſſeſſion of any lands, *&c.* under or by colluſion of ſuch tenant, WILFULLY *hold over* after the determination of ſuch term, and *after demand made in writing*, *for delivering poſſeſſion*, ſuch perſon holding over ſhall pay DOUBLE the yearly value of the lands, *&c.* ſo detained.

Sect. 2. In all caſes between landlord and tenant, on half a year's rent in arrear, the landlord having a right by law to re-enter for non-payment, may, *without any formal demand or re-entry*, *ſerve a declaration in ejectment*; and in caſe of judgment, or nonſuit for not confeſſing leaſe, entry and ouſter, it ſhall appear that half a year's rent was due before declaration ſerved, and *no ſufficient diſtreſs to be found*, and that the leſſor in ejectment had power to re-enter; the leſſor in ejectment ſhall recover judgment and execution, not to bar the right of any mortgagee of ſuch leaſe, who ſhall *not* be in poſſeſſion, ſo as ſuch mortgagee, within ſix calendar months after execution executed, pay all rent in arrear, and coſts and damages, and perform all covenants and agreements on the part of the firſt leſſee.

Sect. 3. Leſſees *&c.* filing a bill in equity ſhall not have an injunction againſt proceedings at law, unleſs they ſhall, within forty days after anſwer filed, bring into court ſuch money as the leſſors in their anſwer ſhall ſwear to be in arrear, over and above all juſt allowances, and coſts taxed, there to remain till the hearing of the cauſe, or to be paid to the leſſors on good ſecurity, ſubject to the decree of the court; and in caſe ſuch bill ſhall be duly filed, and execution executed, the leſſors ſhall be accountable for only ſo much as they ſhall really make of the premiſes from the time of their re-entry, and if the ſame ſhall happen to be leſs than the uſual rent reſerved, the leſſees ſhall not be reſtored to the poſſeſſion until they ſhall make up the deficiency to the leſſors.

Sect. 4. If tenant at any time before trial tender or pay into court all arrears with coſts, proceedings on ejectment ſhall ceaſe.

Sect. 5. All perſons have like remedy by diſtreſs, and impounding and ſelling the ſame, in caſes of rents-ſeck, rents of aſſize, and chief rents, as in caſe of rent reſerved on leaſe.

By 11 *Geo.* 2. *c.* 19. *ſect.* 10. It ſhall be lawful for any perſon lawfully taking any diſtreſs *for rent* to impound or ſecure the diſtreſs *on ſuch part of the premiſſes chargeable with the rent as ſhall be moſt convenient*, and to appraiſe, ſell and diſpoſe of the ſame on the premiſſes, as any perſon may now do off the premiſſes, by virtue of 2 *Will. & Ma. ſtat.* 1. *cap.* 5. or of 4 *Geo.* 2. *cap.* 28.

Sect. 14. It ſhall be lawful for the landlord, where the agreement is not by deed, to recover a reaſonable ſatisfaction for the tenements occupied by defendants, in *an action on the caſe* for the *uſe and occupation* of what was held; and if in evidence on the trial any parol demiſe, or agreement *not by deed*, whereon a certain rent was reſerved, ſhall appear, plaintiff may make uſe thereof as an evidence of the *quantum* of the damages.

Sect. 15 Where any tenant for life dies before or on the day, on which any rent was reſerved *on any demiſe which determined on the death of ſuch tenant for life*, the executors or adminiſtrators of ſuch tenant for life may in an action on the caſe recover of the under-tenants, if ſuch tenant for life die on the day on which the ſame was made payable, the whole, or if before ſuch a day, then a proportion, of ſuch rent, according to the time ſuch tenant for life lived of the laſt year, or quarter or other time, in which the rent was growing due, making all juſt allowances.

Sect. 16. If any tenant holding tenements at a rack-rent, or where the rent reſerved be full three fourths of the yearly value of the premiſſes, who ſhall be in arrear for one year's rent, deſert the premiſes, and leave the ſame uncultivated or unoccupied, *ſo as no ſufficient diſtreſs can be had* to countervail the arrears; it ſhall be lawful for two juſtices of peace (*having no intereſt in the premiſes*) to go upon and view the ſame, and to affix *on the moſt notorious part* notice in writing, what day (at the diſtance of fourteen days at leaſt) they will return to take a ſecond view; and if on ſuch ſecond view the tenant, or ſome perſon on his behalf, ſhall *not appear and pay the rent in arrear*, or there ſhall not be ſufficient diſtreſs on the premiſſes, the juſtices may put the landlord in poſſeſſion, and the leaſe to ſuch tenants, as to any demiſe therein contained only, ſhall become void.

Sect. 18. In caſe any tenant give notice of his intention to quit, and ſhall not accordingly deliver up the poſſeſſion at the time in ſuch notice contained, the tenant, his executors or adminiſtrators, ſhall pay to the landlord *double the rent* which he ſhould otherwiſe have paid.

Sect. 21. In actions of treſpaſs, or on the caſe, brought againſt perſons intitled to rents or ſervices, their bailiffs or receivers, or other perſons, relating to an entry on the premiſſes chargeable with ſuch rents or ſervices, or to any diſtreſs or ſeizure, ſale or diſpoſal, of any goods thereupon, it ſhall be lawful for defendants to plead the general iſſue; and in caſe plaintiffs become nonſuit, *&c.* defendant ſhall recover double coſts.

By *Stat* 4 *Ann. c.* 16. *ſect.* 10. Tenants ſhall not be prejudiced by payment of rent to a grantor before notice of the grant. And by ſtat. 20 *Geo.* 2. *c.* 52. *ſect.* 42. Arrears of rent due from farmers of revenue are excepted out of the general pardon.

3. *Of recovering and demanding rent, and in what caſes a demand is neceſſary.*

Here the material difference is between a remedy by re-entry, and a remedy by diſtreſs, for non-payment of the rent; for where the remedy is by way of re-entry for non-payment, *there muſt be an actual demand made previous to the entry*, otherwiſe it is tortious; becauſe ſuch condition of re-entry is in derogation of the grant, and the eſtate at law being once defeated is not to be reſtored by any ſubſequent payment; and *it is preſumed that the tenant is there reſiding on the premiſſes in order to pay the rent for preſervation of his eſtate*, unleſs the contrary appears by the leſſor's being there to demand it; therefore unleſs there be a demand made, and the tenant thereby, contrary to the preſumption, appears not to be on the land ready to pay the rent, the law will not give the leſſor the benefit of re-entry, to defeat the tenant's eſtate, *without a wilful default in him*; which cannot appear without a demand hath been actually made on the land. *Co. Lit.* 201. *b. Hob.* 207. 331. 5 *Co.* 56. *Dy.* 51. *Plowd.* 70. 7 *Co.* 56. *Vaugh.* 32. (This was at Common law, but now ſee *Supra*, the *Stat.* 4 *Geo* 2. *c.* 28. *ſ.* 2.)

So if there had been a *nomine pœnæ* given to leſſor for non-payment, the leſſor muſt demand the rent before he can be intitled to the penalty. *Hut.* 114. *Hob.* 207, 331. 7 *Co.* 56.

But where the remedy for recovery of rent is by diſtreſs, there needs *no* demand previous to the diſtreſs; though the deed ſays, that if the rent be behind, being lawfully demanded, that the leſſor may diſtrain, but *the leſſor, notwithſtanding ſuch clauſe, may diſtrain when the rent becomes due.* So it is, if a rent-charge be granted to *A.* and if it be behind, being lawfully demanded, that then *A.* ſhall diſtrain; *he may diſtrain without any previous demand*, becauſe this remedy is not in deſtruction of the eſtate, for *the diſtreſs is only a pledge for payment of it*, and *taking of diſtreſs is a legal demand of the tenant to pay the rent*, which was all that was required by the deed; and the tenant is not injured by the taking of the diſtreſs, becauſe *on tender of the rent the pledges are immediately to be reſtored*, or a writ of detinue leis after the *quantum* of the rent has been ſettled in a replevin; whereas in the caſe of re-entry or of the penalty, the tenant is *really* injured either by loſs of his eſtate, or the payment of a greater ſum than the rent, which cannot be reſtored on payment of the rent; therefore he ſhall not be puniſhed in ſuch caſes without a wilful default in him, which cannot otherwiſe appear than by the proof of a demand, which was not anſwered by the tenant. *Hob.* 207. *Hut.* 13, 23. *Moor* 883. 2 *Rol. Abr.* 426.

But this general diſtinction muſt be underſtood with theſe reſtrictions.

That if the King makes a leaſe, reſerving rent with a clauſe of re-entry for non-payment, he is not obliged to make any demand previous to his re-entry, but the tenant is obliged to pay his rent for the preſervation of his eſtate, becauſe *it is beneath the King to attend his ſubject to demand his rent.* 4 Co. 73. 5 Co. 56. Latch 28. Moor 152. Dyer 87, 88.

But this exception is not to be extended to the dutchy lands though they be in the hands of the King, for the King *muſt* make a demand before he can re-enter into ſuch lands; but this is by the 1 *H.* 4. which provides, that, when the dutchy lands come to the King, they ſhall not be under ſuch government and regulations as the demeſnes and poſſeſſions belonging to the crown. *Moor* 149, 160.

So if a prebend make a leaſe, rendering rent, and if the rent be arrear and demanded, that it ſhall be lawful for the prebend to re-enter; if the reverſion in this caſe comes to the King, the King muſt in this caſe demand the rent, though he ſhall be by his prerogative excuſed of an implied demand; for *the implied demand is the act of the law*, the other, the expreſs agreement of the parties, which the King's prerogative ſhall not defeat; therefore in caſe of the King, if he makes a leaſe, reſerving rent, with a proviſo, that if the rent be in arrear for ſuch a time (being lawfully demanded, or demanded in due form) that then the leaſe ſhall be void; it ſeems that not only the patentee of the reverſion in this caſe, but alſo the King himſelf, whilſt he continues the reverſion in his own hands, *is obliged* to make an actual demand by reaſon of the expreſs agreement for that purpoſe. *Dyer* 87, 210.

But if the King, in caſes where he need not make a demand, aſſigns over the reverſion, the patentee cannot enter for non-payment, without a previous demand, becauſe *the privilege is inſeparably annexed to the perſon of the King.* 4 Co. 73. Moor 404. Cro. Eliz. 462. Dyer 87.

Another exception is, where the rent is payable *at a place off the land*, with a clauſe that if the rent be behind, being lawfully demanded *at the place off the land*, or where the clauſe is, that if the rent be behind, being lawfully demanded of the perſon who is to pay it, that then he may diſtrain; in theſe caſes, tho' the remedy be by diſtreſs only, yet *the grantee cannot diſtrain without a previous demand:* becauſe here the diſtreſs and demand being not complicate, but different acts, to be performed at different places and times, *the demand muſt be previous to the diſtreſs*; for *diſtreſs is an act of grace, not of common right*, and therefore muſt be uſed in the manner that it is given. *Hob.* 208. 2 *Rol. Abr.* 426. *Moor* 883. *Brownl.* 171. and vid. *Hutt.* 23. *cont'.*

But where the clauſe is no more than that if the rent be behind, being lawfully demanded, (without ſaying at any place off the land, or of the perſon of the grantor) that then the grantee may diſtrain, there needs no actual demand, becauſe *here the diſtreſs and demand is but one complicate act*, the one included in the other, and all done at one time and place, *viz.* on the land; for *the diſtreſs is in itſelf a lawful demand*, therefore needs no actual demand previous to it; becauſe all that was required by the deed was a lawful demand, which the diſtreſs in its own nature is. 2 *Rol. Abr.* 426. *Hob.* 208. and ſee *Dyer* 348.

And there ſeems to have been formerly another exception admitted, that where the remedy was by way of *entry for non-payment*, that yet there needed no demand, if the rent were made payable *at any place off the land*; becauſe they looked on the money payable off the land to be in nature of a ſum *in groſs*, which the tenant had at his own peril undertaken to pay; but this opinion has been intirely exploded, for THE PLACE OF PAYMENT DOES NOT CHANGE THE NATURE OF THE SERVICE, but it remains in its nature a rent, as much as if it had been made payable on the land; therefore the preſumption is, that the tenant was *there* to pay it, unleſs it be overthrown by the proof of a demand, and without ſuch demand, and a neglect or refuſal, there is no injury to the leſſor, conſequently the eſtate of the leſſee ought not to be defeated. *Plow.* 70. 4 *Co.* 73. *Moor* 408, 598. *Cro. Eliz.* 415, 435, 536. But *vide ſupra* 4 *Geo.* 2. *c.* 28. *ſ.* 2.

But when the power of re-entry is given to the leſſor for non-payment, without any further demand, there it ſeems that *the leſſee has undertaken to pay it, whether it be demanded or not*; and there can be no preſumption in his favour in this caſe; becauſe, by diſpenſing with the demand, he has put himſelf under the neceſſity of making an actual proof that he was ready to tender and pay the rent. *Dyer* 68.

There is another exception when the remedy is by diſtreſs, and that is, when the tenant was ready on the land to pay the rent at the day, and made a tender of it; there it ſeems there muſt be a demand previous to the diſtreſs, becauſe, where the tenant has ſhewn himſelf ready on the day *by the tender*, he has done all that in reaſon can be required of him; for it would put the tenant to endleſs trouble to oblige him every day to make a tender; it being altogether uncertain when the leſſor will come for his rent, when he has omitted to receive it the day he appointed by the leaſe for payment and receipt; wherefore as the leſſee muſt expect the leſſor, and be ready to pay it at the day appointed, or elſe the leſſor may diſtrain for it without any demand; ſo *where the leſſor has lapſed the day of payment, and was not on the land to receive it, he muſt give the tenant notice to pay it before he can diſtrain*; for the tenant ſhall be put to no trouble where it appears that he has omitted nothing on his part. *Hob.* 207. 2 *Rol. Abr.* 427.

And where the tender was made by tenant on the land at the day, there a demand on the land is ſufficient to juſtify a diſtreſs after the day; becauſe the demand in ſuch caſe is of equal notoriety with the tender, and by parity of reaſon *the tenant ought to take notice of ſuch demand*, as well as the leſſor of the tender on the land. *Hob* 207.

But if the tenant had tendred the rent on the day to the perſon of the leſſor, and he refuſed it, it ſeems by the better opinion, that the leſſor cannot diſtrain for that rent, without a demand *of the perſon of the tenant*; becauſe *the demand ought to be equally notorious to the tenant, as the tender was to the leſſor.* Hob. 207. 2 Rol. Abr. 427.

So if the ſervices by which the tenant holds be perſonal, as homage, fealty, &c. *the demand muſt be of the* PERSON *of the tenant*, becauſe this ſervice is only performable by the very perſon of the tenant; therefore a demand, where he is not, would be improper. *Hut.* 13. *Hob.* 207.

Again, if the rent be ſeck, and the tenant be ready at the *laſt* inſtant of the day of payment to pay the rent, and the grantor is not *there* to receive it, he muſt afterwards demand it of the perſon of the tenant on the lands before he can have his aſſiſe; becauſe *the tenant, by the tender at the day, has done all that was required on his part*; and if the grantee might have his aſſiſe, after ſuch tender on the day, without a demand of the perſon, the tenant might be made a diſſeiſor, and damages for the diſſeiſin laid on him without any wilful default in him; but in the caſe of a rent-charge, after ſuch tender of the tenant on the land, the grantee may afterwards demand the rent on the land, becauſe he has his remedy by diſtreſs, which is no more than *a pledge for the rent*; and this being to be found and taken on the land, the grantee need only demand his rent where he can find his remedy, which is on the land; but in this caſe if the grantee cannot find the tenant on the land to demand the rent, he may, on the next feaſt on which the rent is payable, demand all the arrears on the land; and if the tenant is not there to pay it, he has failed of his duty, and is guilty of a wilful default, which amounts to a denial; and that denial being a diſſeiſin of the rent, the grantee may have his aſſiſe, and by that ſhall recover the arrears. *Cro. Car.* 508. 7 *Co.* 57. *Hob.* 207. 2 *Rol. Abr.* 427.

But if there has been neither a tender of the rent, nor a demand of the grantee on the day, there the grantee may afterwards demand the rent on the land; becauſe the tenant having omitted to do his duty by a tender on the day, he is ſtill obliged to anſwer the legal demands of the grantee, which is well made on the land, becauſe *the rent iſſues thereout*; for where there is no tender on the day of payment, the rent is due and payable every day afterwards; therefore a demand in the ſame manner as the law requires is ſufficient; conſequently *the non-payment, after a demand on the land, is a denial and diſſeiſin*, for which the grantee may have his aſſiſe. *Lit. ſect.* 233. 7 *Co.* 57. 2 *Rol. Abr.* 427.

If a leaſe be made reſerving rent, and a bond given for performance of covenants and payment of the rent, the leſſor may ſue the bond without demanding the rent. *Cro. Eliz.* 332. *Cro. Car.* 76. *Hob.* 8.

If there be ſeveral things demiſed in one leaſe, with ſeveral reſervations, with a clauſe, that, if the ſeveral yearly rents reſerved be behind or unpaid in part, or in all, by the ſpace of one month after any of the days on which the ſame ought to be paid, that then it ſhall be lawful for the leſſor, into ſuch of the premiſſes, whereupon ſuch rents being behind is or are reſerved, to re-enter; *theſe are in the nature of diſtinct demiſes*, and ſeveral reſervations; conſequently *there muſt be diſtinct demands* on each demiſe to defeat the whole eſtate demiſed. *Vaugh.* 71, 72. But ſee *ſupra* 4 *Geo.* 2. *c.* 28. *ſ.* 2.

Alſo as to the neceſſity of a demand of the rent, there is a difference between a condition and a limitation; for inſtance, if tenant for life (as the caſe was by marriage ſettlement with power to make leaſes for twenty-one years, ſo long as the leſſee, his executors or aſſigns ſhall duly pay the rent reſerved) makes a leaſe purſuant to the power; *the tenant is at his peril obliged to pay the rent without any demand of the leſſor*; becauſe the eſtate is limited to continue only *ſo long* as the rent is paid; therefore for non-performance according to the limitation, the eſtate muſt determine; as if an eſtate be made to a woman *dum ſola fuerit*, this is a word of limitation which determines her eſtate on marriage *Vaugh* 31, 32. Vide *Hob.* 331. 2 *Rol. Abr.* 429. 2 *Mod.* 264. 3 *Co.* 64. See *Dyer* 87, 88. *Noy* 145. And the *Stat.* 4 *Geo.* 2. *c.* 28. *ſupra.*

4. *Of the time of demanding rent, and the place where the demand is to be made.*

The time for payment of rent, and conſequently for a demand, is *ſuch a convenient time before the ſun-ſetting of the laſt day, as will be ſufficient to have the money counted*; but if the tenant meet the leſſor on the land at any time of the laſt day of payment, and tenders the rent, that is *ſufficient tender*, becauſe the money is to be paid indefinitely on that day, therefore a tender *on* the day is ſufficient. *Co. Lit.* 202. *a.* *Dalſt.* 44. *Sav.* 253. 4 *Leon.* 171. 1 *Saund.* 287.

If a leaſe is made, rendring rent at *Michaelmas* between the hours of one and five in the afternoon, with a clauſe of re-entry, and the leſſor comes at the day about two in the afternoon, and continues to five, this is ſufficient. *Cro. Eliz.* 15. The demand may be *by attorney.* 4 Leon. 479. But the power *muſt* be ſpecial, for ſuch land and of ſuch tenant. *Yelv.* 37. 1 *Brownl.* 138. Demand muſt be proved by witneſſes. *Dyer* 68. Muſt be made of the *preciſe* ſum due. 1 *Leon.* 305. *Sav.* 121. *Mo.* 207.

If a leaſe be made, reſerving rent, on condition that if the rent be behind at the day, and ten days after, (being in the mean time demanded) and no diſtreſs to be found upon the land, that the leſſor may re-enter; if the rent be behind at the day, and ten days after, and a ſufficient diſtreſs be on the land till the afternoon of the tenth day, and then the leſſee takes away his cattle, and the leſſor demands the rent at the laſt hour of the day, and the leſſee does not pay it, and there is not any diſtreſs on the land; yet the leſſor cannot enter, becauſe *he made no demand in the mean time* between the day of payment and the ten days, which by the clauſe he was obliged to do. *Cro. Eliz.* 63. But ſee 4 *Geo.* 2. *c.* 28. *Supra.*

As to the place of demanding rent, we muſt obſerve the difference between a remedy by re-enty and diſtreſs; for when the rent is reſerved, on condition that if it be behind, that the leſſor may re-enter, in ſuch caſe *the demand muſt be upon* THE MOST NOTORIOUS PLACE *on the land*; therefore if there be a houſe on the land, the demand muſt be at the *fore-door* thereof, becauſe the tenant is preſumed to be *there* reſiding, and the demand being required to give notice to the tenant that he may not be turned out of poſſeſſion without a wilful default, ſuch demand ought to be in the place where the end and intention will be beſt anſwered. *Co. Lit.* 153, 201. 2 *Rol. Abr.* 428.

And it ſeems the better opinion, that *it is not neceſſary to enter the houſe*, though the doors be open, becauſe that is a place appropriated for the peculiar uſe of the inhabitant, into which no perſon is permitted to enter without his permiſſion, and it is reaſonable that the leſſor ſhall go no further to demand his rent, than the tenant ſhould be obliged to go, when he is bound to tender it; and *a tender by the tenant* AT THE DOOR *of the houſe of the leſſor is ſufficient*, though it be open, without entering; therefore, by parity of reaſon, a demand by the leſſor at the door of the tenant, without entering, is ſufficient. *Dalſt.* 59. *Co. Lit.* 201. 1 *And.* 27. 3 *Leon.* 4. and ſee *Cro. Eliz.* 15.

But when the demand is only in order for a diſtreſs, there it is ſufficient, it it be make on any notorious part of the land, becauſe *this is only to intitle him to his* REMEDY *for his rent*; therefore the whole land being equally debtor, and chargeable with the rent, a demand on it, *without going to any particular part of it*, is ſufficient. *Co. Lit.* 153.

See other caſes, on this ſubject, *Co. Lit.* 202. *Bendl.* 59. *Cro. Eliz.* 324. *Cro. Car.* 507, 521. *Co. Lit.* 153. *Co. Lit.* 201. 4 *Co.* 73. *Cro. Eliz.* 462. *Mo.* 404. *Dyer* 37. 2 *Rol. Abr.* 428. *Dyer* 229. But this learning is, in general, rather uſeleſs, ſince the ſtat. 4 *Geo.* 2. *c.* 28. Vide an abſtract of the 2d ſection under *the 2d diviſion of this title.*

For more learning on this ſubject, ſee 4 New Abr. *and* 18 Vin. Abr. *tit.* Rent. *and* Black. Com. 2 V. 41, 42, 57, 299. 3 V. 6, 206, 230, 231. 4 V. 434.

Rental, A roll wherein the *rents* of a *manor* are written and ſet down, by which the lord's bailiff collects the ſame: It contains the lands and tenements let to each tenant, and the names of the tenants, the ſeveral *rents* ariſing, and for what time, uſually a year. *Compl. Court Keep.* 475.

Rents of Aſſiſe, The certain *rents* of freeholders, and ancient copyholders, ſo called, becauſe they were *aſſiſed*, and different from others which were uncertain, paid in corn, *&c.* 2 *Inſt.* 19.

Rents reſolute, *(Redditus reſoluti)* Are accounted among the fee-farm *rents*, to be ſold by 22 *Car.* 2. *c.* 6. and are ſuch rents or tenths as were anciently payable to the crown, from the lands of abbies and religious houſes; and after their diſſolution, notwithſtanding the lands were demiſed to others, yet the *rents* were ſtill reſerved, and made payable again to the crown. *Cowell.*

Reparations. A tenant for life or years may cut down timber-trees to make *reparations*, although he be not compelled thereto; as where a houſe is ruinous at the time of the leaſe made, and the leſſee ſuffers it to fall, he is not bound to rebuild it, and yet if he fell timber for *reparations*, he may juſtify the ſame. *Co. Lit.* 54.

Leſſee covenants, That from and after the amendmeut and *reparation* of the houſes by the leſſor, he at his own charges will keep and leave them in repair: In this caſe the leſſee is not obliged to do it, unleſs the leſſor firſt make good the *reparations*: And if it be well repaired at firſt, when the leaſe began, and after happen to decay; the leſſor *muſt* firſt repair, before the leſſee is bound to keep it ſo. *Cro. Jac.* 645. See alſo 2 *Leon.* *c.* 72. See *Leaſe*, *Covenant*, and *Waſte*.

Reparatione facienda, Is a writ which lies in many caſes; one whereof is where there are tenants in common or jointenants of a houſe, *&c.* which is fallen to decay, and one is willing to *repair* it, but the others are not: In this caſe the party willing to *repair* the ſame, ſhall have this writ againſt the others. *F. N. B.* 127.

And if a man have a houſe adjoining to my houſe, and he ſuffer his houſe to lie in decay to the annoyance of my houſe, I may have a writ againſt him to *repair* his houſe. So if a perſon have a paſſage over a bridge, and another ought to *repair* the bridge, who ſuffers it to fall to decay, *&c.* *New Nat. Br.* 281.

Repeal, (from the Fr. *rappel*, i. e. *revocatio*) Signifies the ſame with revoke; as the *repealing* of a ſtatute is the revoking or diſannulling it. *Raſtal.*

It is ſaid, a pardon of felony, *&c.* may be *repealed* on diſproving the ſuggeſtions. 1 *Keb.* 19.

A deed or will may not ſtand good as to part, and be *repealed* for the reſt. *Style* 241. And a defendant in a ſuit cannot *repeal* or revoke his warrant of attorney, given to an attorney to appear for him, *&c.* 2 *Lil. Abr.* 452. without firſt paying his bill.

Repleader, *(Replacitare)* Is to plead *that again* which was once pleaded before. *Broke.*

On an immaterial iſſue in a cauſe, *repleader* may be awarded; and *repleader* is to be had where the pleading hath not brought the iſſue in queſtion, which was to be tried: Alſo if a verdict be given where there was *no iſſue joined*, there muſt be a *repleader* to bring the matter to trial, *&c.* 2 *Lil. Abr.* 460.

In debt on a ſheriff's bond, for defendant's appearance in *B. R.* upon the return of the writ, the defendant pleaded that he had appeared *ſecundum*, *&c.* and on this they were at iſſue; and there being a verdict for plaintiff, a *repleader* was allowed, becauſe *the appearance was not triable by a jury, but by the record.* 1 Leon. 90. 3 Nelſ. Abr. 123.

It was held, that, at Common law, a *repleader* was granted *before trial*, becauſe a verdict did not cure an immaterial iſſue; but that now a *repleader* ought never to be awarded before trial, becauſe the fault in the iſſue may be helped by the ſtatutes of *jeofails*: That if a *repleader* is denied where it ſhould be granted, or *è converſo*, it is error; and the judgment in *repleader* is general, *(viz.) Quod partes replacitent:* They muſt begin again at the firſt fault, which occaſioned the immaterial iſſue; if the declaration and the bar, and the replication, be all ill, they muſt begin *de novo*; but if the bar be good, and the replication ill, they muſt begin at the replication; and no coſts are allowed on either ſide; and a *repleader* cannot be awarded after a default. 2 *Salk.* 579.

Though a *repleader* is allowed after verdict; it has been adjudged not to be awarded after demurrer: (But a *repleader* hath formerly been granted after demurrer, and likewiſe after the demurrer argued) and that a *repleader* can never be awarded after a writ of error; but only after iſſue joined, *&c.* *Latch* 147. 3 *Lev.* 440. *Mod. ca.* 102. See the *Form* of a *Repleader*, *Lutw.* 1622. And ſee *Black. Com.* 3 *V.* 395. and *New Abr.* tit. *Repleader.*

Replegiare, Is to redeem a thing detajned or taken by another, by putting in legal ſureties. See *Replevin.*

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Replevin, (*Plevina* from *replegiare*, to deliver to the *owner* on pledges.)

1. *Of the definition, and of replevin generally.*
2. *For what things a replevin lies.*
3. *Of the different kinds of replevins; out of what courts they iſſue, and of the power and duty of the ſheriff.*
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5. *Of the original writ, and the* Withernam, *in replevin.*
6. *Of the writ of ſecond deliverance, and the writ* De proprietate probanda.
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Replevin is re-delivering to the owner, (by the ſheriff) his cattle or goods diſtrained on any cauſe, on ſurety that he will purſue the action againſt him who diſtrained; and if he purſue it not, or if it be adjudged againſt him; then he who took the diſtreſs ſhall have it again, and for that purpoſe may have a writ of *returno habendo.* Co. Lit. 145. b. 4 Inſt. 139.

Replevin is a writ, and uſually granted in caſes of diſtreſs, and IS A MATTER OF RIGHT; ſo that if a man grants a rent *with clauſe of diſtreſs*, and grants further, that the diſtreſs taken ſhall be irrepleviſeable, yet they may be replevied; for *ſuch reſtrant is againſt the nature of a diſtreſs*, and no private perſon can alter the common courſe of the law. *Co. Lit.* 145.

In this writ, or action, both plaintiff and defendant are called ACTORS; the one, *i. e.* the plaintiff, ſuing for damages, and the avowant, or defendant, to have a return of the goods or cattle. 2 *Bend.* 84. *Cro. Eliz.* 799. 2 *Mod.* 149.

That the avowant is in nature of a plaintiff, appears, 1ſt, from his being called an actor, which is *a term in the Civil law*, and ſignifies plaintiff; 2dly, from his being intitled to have judgment *de returno habendo*, and damages *as plaintiff*; 3dly, from this, that plaintiff may plead in abatement of the avowry, conſequently ſuch *avowry muſt be in nature of an action.* Carth. 122. 6 Mod. 103. Yelv. 148.

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It is a general rule, that *plaintiff ought to have the property of the goods in him at the time of the taking:* Not only a general property which every owner hath, but alſo *a ſpecial property*, ſuch as a perſon hath who hath goods pledged with him, or who hath the cattle of another to manure his lands, *&c.* is ſufficient to maintain a *replevin*, and in ſuch caſes either party may bring a *replevin.* Co. Lit. 145. Winch 26.

A *replevin* doth not lie of things which are *feræ naturæ*, as conies, hares, monkies, dogs, *&c.* but if things wild by nature are made tame, or are reclaimed, *ſo long as they continue in* THAT *condition, they belong to the perſon who hath the poſſeſſion of them, and he may bring replevin*; and the general rule herein ſeems to be, that A REPLEVIN LIES FOR ANY THING THAT MAY BY LAW BE DISTRAINED. 2 *Rol. Abr.* 430. *Godb.* 124.

A *replevin* lies of a leveret; for it has *animum revertendi*; for the ſame reaſon it lies of *a ferret*; but it is ſaid not to lie for a maſtiff dog, though an action of treſpaſs will. *Br. Repl.* 64. 2 *Rol. Abr.* 430. *Sed. qu.* Why will not *replevin* be for a *maſtiff*, the moſt uſeful, perhaps, of all the ſpecies.

Replevin lies of a ſwarm of bees. *F. N. B.* 68.

But not of trees, or timber growing; *nor of things annexed to the freehold*, becauſe ſuch things cannot be diſtrained; yet *replevin* lies of certain iron belonging to the party's mill. *F. N. B.* 68.

So *replevin* doth *not* lie of deeds or charters concerning lands; for they are of *no value*, but as they relate thereto. *Bro. Rep.* 34.

Nor of money, or leather made into ſhoes. *Moor* 394. 2 *Brownl.* 139.

If a mare in foal, a cow in calf, *&c.* are diſtrained, and they happen to bring forth their young, whilſt they are in the cuſtody of the diſtrainer, a *replevin* lies for the foal, calf, *&c.* *Bro. Repl.* 41. *F. N. B.* 69. 1 *Sid.* 82.

Replevin lies for a ſhip; ſo for the ſails of the ſhip *March* 110. *Raym.* 232. Per *Pollexfen* Ch. J. *replevin* lies not for goods taken beyond ſea, though brought hither by defendant afterwards. 1 *Show.* 91.

3. *Of the different kinds of replevins; out of what courts they iſſue, and of the power and duty of the ſheriff.*

Replevin may be made either by original writ of *replevin* at Common law, or by plaint by the ſtat. of *Marl. c.* 21. *Co. Lit.* 145. *F. N. B.* 69.

By this ſtat. enacted 52 *H.* 3. it is provided, "That if the *beaſts* of any perſon be taken, and wrongfully withholden, the ſheriff, *after complaint made* to him thereof, *may deliver them without let or gainſaying of him that took the beaſts*, if they were taken out of liberties; and if the beaſts were taken within any liberties, and the bailiff of the liberty will not deliver them, then the *ſheriff* for default of thoſe bailiffs ſhould cauſe them to be delivered."

The miſchiefs before this act were the great delay and loſs the party was at, by having his beaſts or goods withholden from him; as alſo that when cattle were diſtrained and impounded within any liberty which had return of writs, the ſheriff was obliged to make a warrant to the bailiff of the liberty to make deliverance; and there was another miſchief when the diſtreſs was taken without and impounded within the liberty. 2 *Inſt*. 139. 13 *Co*. 31. To remedy which,

By this ſtatute the ſheriff, *on plaint made* to him *without writ*, may either by parol or precept command his bailiff to deliver the beaſts or goods, that is, to make *replevin* of them, and by theſe words *(poſt querimoniam ſibi fact')* the ſheriff may take a plaint out of the county court, and make a *replevin* preſently, which he is to enter in the court, as it would be inconvenient, and againſt the ſcope of the ſtatute, that the owner, for whoſe benefit the ſtatute was made, ſhould tarry for his beaſts till the next county court, which is holden from month to month. And by this act the ſheriff may hold plea in the county court on *replevin* by plaint, though the value be of 20 *l.* or above; and yet in other actions he ſhall only hold plea where the matter is under 40*s.* value. 2 *Inſt*. 139. 1 *Keb*. 205. *Dalt*. *Sh*. 430.

By the words of this law, *Si averia capiant', vicecomes poſt querimoniam ſibi fact' deliberare poſſet*; ſo that it becomes the ſheriff's duty on ſuch complaint, by parol or by precept to his bailiff, to replevy them, which *precept may be given before any county court*; but ſuch plaint is afterwards to be entered, and (as holden in *Cum.*) by the party who made the complaint, and not by the ſheriff. *Cum*. 591.

Replevins by writ iſſue properly out of Chancery, returnable into the courts of *K. B.* and *C. B.* at *Weſtminſter*. *F. N. B.* 68. *Gilb. Diſtr.* and *Repl.* 68. and vide *Div*. 5.

Replevins by plaint are made by the ſheriff by force of the above-mentioned ſtatute of *Marleb.* by which he is directed, *on complaint made* to him by the party, that his goods or cattle are diſtrained, to command his bailiff (which may be by parol or precept) to make deliverance; and which plaint may be taken at any time, and as well out of, as in court. *Bro. Rep. pl.* 4. *Co. Lit.* 145. 2 *Inſt*. 139.

Alſo it hath been agreed, that the hundred court, and courts of lords of manors, may *by preſcription* hold plea in *replevin*, ſo may *incidently* have power to replevy goods or cattle; but that, it ſeems, *muſt be by proceſs* of the court after a plaint entred, but not by parol complaint out of court. *Carth*. 380.

Therefore where in treſpaſs for taking goods, &c. defendant juſtified that the place *where, &c.* was a hundred, and time out of mind had a court of all actions, *replevins, &c.* grantable in or out of court, *virtute cujus, &c.* The queſtion was, *If good or not?* And the reaſon of the doubt was, becauſe the county court could not hold plea in *replevin* at Common law; but were enabled by the ſtatute of *Marlebridge*, which extends not to the hundred court, which is *a court derived out of the county court*; but *per cur.* clearly, Suppoſing they may grant them in court, yet they cannot preſcribe to grant them *out* of court. 2 *Salk*. 580. 5 *Mod*. 252. *Skin*. 674. *Carth*. 380. 1 Ld. *Raym*. 219.

The ſheriff is *obliged* to grant *replevins* in all ſuch caſes as they are allowed by law; and the officer who takes the goods by virtue of a *replevin* iſſuing for what cauſe ſoever, is *not liable to an action of treſpaſs*, unleſs the party in whoſe poſſeſſion the goods were, *claims property* in them; and note, that in all caſes of miſbehaviour by the ſheriff or other officers, in relation to *replevins*; they are ſubject to the controul of the King's ſuperior courts, and puniſhable by attachment for ſuch miſbehaviour. *Carth*. 381.

And though the ſheriff may grant *replevins by plaint*, and may proceed thereon in his county court, yet if any thing touching freehold come in queſtion, or ancient demeſne be pleaded, the ſheriff can proceed no further; nor can any ſuch proceedings be carried on in the hundred court, court baron, or any other court claiming a juriſdiction herein by preſcription. 2 *H*. 7. 6. 4 *H*. 6. 30. *Co. Lit*. 145. *b*.

So when the King is party, or the taking is in right of the crown, in theſe caſes the ſheriff is to ſurceaſe. *Bro. Repl. pl.* 3. 1 *Brownl*. 33.

It was ruled in the caſe of one *Bradſhaw*, that where an act of parliament orders a diſtreſs *and ſale* of goods, THIS *is in nature of an execution*, and *replevin* does *not* lie; but if the ſheriff grants one, yet it is not ſuch a contempt as to grant an attachment againſt him; and *Powell* Juſtice ſaid, He remembered a caſe in the Exchequer, where a diſtreſs was taken for a fee-farm rent due to the King, yet on debate no attachment was granted, though it was in the King's caſe. *Trin.* 12 *W*. 3. in *C. B.* *Bradſhaw*'s caſe. See 14 *Car*. 2. *c*. 12.

And for the greater eaſe in bringing *replevins*, and as a duty incumbent on the ſheriff, it is enacted, by the 1ſt and 2d of *Ph. & Mar.* *c*. 18. "That the ſheriff ſhall *at his firſt county day*, or within two months after he receives the patent, depute and proclaim in the ſhire town four deputies to make *replevins*, not dwelling twelve miles diſtant from one another, on pain to forfeit for every month he wants ſuch deputy or deputies 5 *l.* to be divided between the King and the proſecutor."

4. *Of the pledges in replevin, and the proceedings againſt them.*

When the ſheriff makes *replevin* he ought to take two kinds of pledges; *plegii de proſequendo*, by the Common law, and *plegii de returno habendo*, by the ſtatute of *Weſtm*. 2. *c*. 2. by which it is provided, "That ſheriffs or bailiffs from thenceforth ſhall not only receive of plaintiff *pledges for purſuing the ſuit*, before they make deliverance of the diſtreſs but *alſo for return of the beaſts*, if return be awarded; and if any take pledges otherwiſe, he ſhall anſwer for the price of the beaſts, and the lord that diſtrains ſhall have his recovery by writ, that *he ſhall reſtore to him ſo many beaſts or cattle*; and if the plaintiff be not able to reſtore, his ſuperior ſhall reſtore.

In the conſtruction hereof the following caſes have been ruled, and opinions holden:

That if the ſheriff returns inſufficient pledges, he ſhall anſwer according to the ſtatute; for *inſufficient pledges are no pledges in law*; and ſuch pledges muſt not only be ſufficient in eſtate, *viz.* capable to anſwer in value, but likewiſe *ſufficient in law*, and under no incapacity; therefore infants, feme-coverts, perſons outlawed, &c. are not to be taken as pledges, nor are perſons politic, or bodies corporate. *Co. Lit*. 145. 2 *Inſt*. 340. 10 *Co*. 102.

In *replevin* the ſheriff did not return any pledges, and after iſſue joined and found, it was moved, if they could be put in by the court after verdict; and the court held they might, notwithſtanding the ſtatute of *Weſtm*. 2. as before that ſtatute the court might take pledges on the omiſſion of the ſheriff; and a diverſity was taken between pledges for proſecuting, which were at Common law, and *pro returno habendo* given by *this* ſtatute; and the court held, that though on default of the ſheriff he was ſubject to the action of the party, that yet the taking of pledges by the court did not make the judgment erroneous. *Noy* 156.

A *replevin* by plaint was ſued in the ſheriff's court in *London*, and pledges were found *de returno habendo ſi, &c.* this plaint was removed according to *their* cuſtom into the mayor's court, and after into the King's Bench by *certiorari*, and their *oyer* of the *certiorari* being demanded, the party declared in *B. R.* on this a return was awarded, and on an *elongat'* returned, a *ſcire facias* went againſt the pledges in the ſheriff's court of *London*. On demurrer the queſtion was, whether, this caſe being removed by *certiorari*, the pledges in the inferior court are diſcharged, or whether they remain liable to be charged by this *ſcire facias?* It was adjudged, that the pledges were *not* diſcharged. *Skin*. 244. 2 *Show*. 421. *Comb*. 1, 2. 3 *Mod*. 56. S. C.

Plaintiff declared, that he diſtrained for 7 *l.* 10 *s.* rent, *reſerved on a leaſe*, and that defendant delivered the cattle *without taking pledges*; to which defendant pleaded, that plaintiff in *replevin* delivered to him 3 *l.* 10 *s.* for and likewiſe after the demurrer argued) and that a *repleader* can never be awarded after a writ of error; but only after iſſue joined, *&c.* *Latch* 147. 3 *Lev.* 440. *Mod. ca.* 102. See the *Form* of a *Repleader, Lutw.* 1622. And ſee *Black. Com.* 3 *V.* 395. and *New Abr.* tit. *Repleader.*

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It is a general rule, that *plaintiff ought to have the property of the goods in him at the time of the taking:* Not only a general property which every owner hath, but alſo *a ſpecial property,* ſuch as a perſon hath who hath goods pledged with him, or who hath the cattle of another to manure his lands, *&c.* is ſufficient to maintain a *replevin,* and in ſuch caſes either party may bring a *replevin,* Co. Lit. 145. Winch 26.

A *replevin* doth not lie of things which are *feræ naturæ,* as conies, hares, monkies, dogs, *&c.* but if things wild by nature are made tame, or are reclaimed, *ſo long as they continue in* THAT *condition, they belong to the perſon who hath the poſſeſſion of them, and he may bring replevin;* and the general rule herein ſeems to be, that A REPLEVIN LIES FOR ANY THING THAT MAY BY LAW BE DISTRAINED. 2 *Rol. Abr.* 430. *Godb.* 124.

A *replevin* lies of a leveret; for it has *animum revertendi;* for the ſame reaſon it lies of *a ferret;* but it is ſaid not to lie for a maſtiff dog, though an action of treſpaſs will. *Br. Repl.* 64. 2 *Rol. Abr.* 430. *Sed. qu.* Why will not *replevin* be for a *maſtiff,* the moſt uſeful, perhaps, of all the ſpecies.

Replevin lies of a ſwarm of bees. *F. N. B.* 68.

But not of trees, or timber growing; *nor of things annexed to the freehold,* becauſe ſuch things cannot be diſtrained; yet *replevin* lies of certain iron belonging to the party's mill. *F. N. B.* 68.

So *replevin* doth *not* lie of deeds or charters concerning lands; for they are of *no value,* but as they relate thereto. *Bro. Rep.* 34.

Nor of money, or leather made into ſhoes. *Moor* 394. 2 *Brownl.* 139.

If a mare in foal, a cow in calf, *&c.* are diſtrained, and they happen to bring forth their young, whilſt they are in the cuſtody of the diſtrainer, a *replevin* lies for the foal, calf, *&c.* *Bro. Repl.* 41. *F. N. B.* 69. 1 *Sid.* 82.

Replevin lies for a ſhip; ſo for the ſails of the ſhip *March* 110. *Raym.* 232. Per *Pollexfen* Ch. J. *replevin* lies not for goods taken beyond ſea, though brought hither by defendant afterwards. 1 *Show.* 91.

3. *Of the different kinds of replevins; out of what courts they iſſue, and of the power and duty of the ſheriff.*

Replevin may be made either by original writ of *replevin* at Common law, or by plaint by the ſtat. of *Marl. c.* 21. *Co. Lit.* 145. *F. N. B.* 69.

By this ſtat. enacted 52 *H.* 3. it is provided, "That if the *beaſts* of any perſon be taken, and wrongfully withholden, the ſheriff, *after complaint made* to him thereof, *may deliver them without let or gainſaying of him that took the beaſts,* if they were taken out of liberties; and if the beaſts were taken within any liberties, and the bailiff of the liberty will not deliver them, then the *ſheriff* for default of thoſe bailiffs ſhould cauſe them to be delivered."

The miſchiefs before this act were the great delay and loſs the party was at, by having his beaſts or goods withholden from him; as alſo that when cattle were diſtrained and impounded within any liberty which had return of writs, the ſheriff was obliged to make a warrant to the bailiff of the liberty to make deliverance; and there was another miſchief when the diſtreſs was taken without and impounded within the liberty. 2 *Inſt*. 139. 13 *Co.* 31. To remedy which,

By this ſtatute the ſheriff, *on plaint made* to him *without writ*, may either by parol or precept command his bailiff to deliver the beaſts or goods, that is, to make *replevin* of them, and by theſe words *(poſt querimoniam ſibi fact')* the ſheriff may take a plaint out of the county court, and make a *replevin* preſently, which he is to enter in the court, as it would be inconvenient, and againſt the ſcope of the ſtatute, that the owner, for whoſe benefit the ſtatute was made, ſhould tarry for his beaſts till the next county court, which is holden from month to month. And by this act the ſheriff may hold plea in the county court on *replevin* by plaint, though the value be of 20 *l.* or above; and yet in other actions he ſhall only hold plea where the matter is under 40 *s.* value. 2 *Inſt*. 139. 1 *Keb*. 205. *Dalt*. *Sh*. 430.

By the words of this law, *Si averia capiant', vicecomes poſt querimoniam ſibi fact' deliberare poſſet*; ſo that it becomes the ſheriff's duty on ſuch complaint, by parol or by precept to his bailiff, to replevy them, which *precept may be given before any county court*; but ſuch plaint is afterwards to be entered, and (as holden in *Cum.*) by the party who made the complaint, and not by the ſheriff. *Cum*. 591.

Replevins by writ iſſue properly out of Chancery, returnable into the courts of *K. B.* and *C. B.* at *Weſtminſter*. *F. N. B.* 68. *Gilb. Diſtr.* and *Repl.* 68. and vide *Div.* 5.

Replevins by plaint are made by the ſheriff by force of the above-mentioned ſtatute of *Marleb.* by which he is directed, *on complaint made* to him by the party, that his goods or cattle are diſtrained, to command his bailiff (which may be by parol or precept) to make deliverance; and which plaint may be taken at any time, and as well out of, as in court. *Bro. Rep. pl.* 4. *Co. Lit*. 145. 2 *Inſt*. 139.

Alſo it hath been agreed, that the hundred court, and courts of lords of manors, may *by preſcription* hold plea in *replevin*, ſo may *incidently* have power to replevy goods or cattle; but that, it ſeems, *muſt be by proceſs* of the court after a plaint entred, but not by parol complaint out of court. *Carth*. 380.

Therefore where in treſpaſs for taking goods, *&c.* defendant juſtified that the place *where, &c.* was a hundred, and time out of mind had a court of all actions, *replevins, &c.* grantable in or out of court, *virtute cujus, &c.* The queſtion was, *If good or not?* And the reaſon of the doubt was, becauſe the county court could not hold plea in *replevin* at Common law; but were enabled by the ſtatute of *Marlebridge*, which extends not to the hundred court, which is *a court derived out of the county court*; but *per cur.* clearly, Suppoſing they may grant them in court, yet they cannot preſcribe to grant them *out* of court. 2 *Salk*. 580. 5 *Mod*. 252. *Skin*. 674. *Carth*. 380. 1 Ld. *Raym*. 219.

The ſheriff is *obliged* to grant *replevins* in all ſuch caſes as they are allowed by law; and the officer who takes the goods by virtue of a *replevin* iſſuing for what cauſe ſoever, is *not liable to an action of treſpaſs*, unleſs the party in whoſe poſſeſſion the goods were, *claims property* in them; and note, that in all caſes of miſbehaviour by the ſheriff or other officers, in relation to *replevins*; they are ſubject to the controul of the King's ſuperior courts, and puniſhable by attachment for ſuch miſbehaviour. *Carth*. 381.

And though the ſheriff may grant *replevins by plaint*, and may proceed thereon in his county court, yet if any thing touching freehold come in queſtion, or ancient demeſne be pleaded, the ſheriff can proceed no further; nor can any ſuch proceedings be carried on in the hundred court, court baron, or any other court claiming a juriſdiction herein by preſcription. 2 *H*. 7. 6. 4 *H*. 6. 30. *Co. Lit*. 145. *b*.

So when the King is party, or the taking is in right of the crown, in theſe caſes the ſheriff is to ſurceaſe. *Bro. Repl. pl.* 3. 1 *Brownl*. 33.

It was ruled in the caſe of one *Bradſhaw*, that where an act of parliament orders a diſtreſs *and ſale* of goods, THIS *is in nature of an execution*, and *replevin* does *not* lie; but if the ſheriff grants one, yet it is not ſuch a contempt as to grant an attachment againſt him; and *Powell* Juſtice ſaid, He remembered a caſe in the Exchequer, where a diſtreſs was taken for a fee-farm rent due to the King, yet on debate no attachment was granted, though it was in the King's caſe. *Trin*. 12 *W*. 3. in *C. B. Bradſhaw*'s caſe. See 14 *Car*. 2. *c*. 12.

And for the greater eaſe in bringing *replevins*, and as a duty incumbent on the ſheriff, it is enacted, by the 1ſt and 2d of *Ph. & Mar. c.* 18. "That the ſheriff ſhall *at his firſt county day*, or within two months after he receives the patent, depute and proclaim in the ſhire town four deputies to make *replevins*, not dwelling twelve miles diſtant from one another, on pain to forfeit for every month he wants ſuch deputy or deputies 5 *l.* to be divided between the King and the proſecutor."

4. *Of the pledges in replevin, and the proceedings againſt them.*

When the ſheriff makes *replevin* he ought to take two kinds of pledges; *plegii de proſequendo*, by the Common law, and *plegii de returno habendo*, by the ſtatute of *Weſtm*. 2. *c*. 2. by which it is provided, "That ſheriffs or bailiffs from thenceforth ſhall not only receive of plaintiff *pledges for purſuing the ſuit*, before they make deliverance of the diſtreſs but *alſo for return of the beaſts*, if return be awarded; and if any take pledges otherwiſe, he ſhall anſwer for the price of the beaſts, and the lord that diſtrains ſhall have his recovery by writ, that *he ſhall reſtore to him ſo many beaſts or cattle*; and if the plaintiff be not able to reſtore, his ſuperior ſhall reſtore.

In the conſtruction hereof the following caſes have been ruled, and opinions holden:

That if the ſheriff returns inſufficient pledges, he ſhall anſwer according to the ſtatute; for *inſufficient pledges are no pledges in law*; and ſuch pledges muſt not only be ſufficient in eſtate, *viz.* capable to anſwer in value, but likewiſe *ſufficient in law*, and under no incapacity; therefore infants, feme-coverts, perſons outlawed, *&c.* are not to be taken as pledges, nor are perſons politic, or bodies corporate. *Co. Lit*. 145. 2 *Inſt*. 340. 10 *Co*. 102.

In *replevin* the ſheriff did not return any pledges, and after iſſue joined and found, it was moved, if they could be put in by the court after verdict; and the court held they might, notwithſtanding the ſtatute of *Weſtm*. 2. as before that ſtatute the court might take pledges on the omiſſion of the ſheriff; and a diverſity was taken between pledges for proſecuting, which were at Common law, and *pro returno habendo* given by *this* ſtatute; and the court held, that though on default of the ſheriff he was ſubject to the action of the party, that yet the taking of pledges by the court did not make the judgment erroneous. *Noy* 156.

A *replevin* by plaint was ſued in the ſheriff's court in *London*, and pledges were found *de returno habendo ſi, &c.* this plaint was removed according to *their* cuſtom into the mayor's court, and after into the King's Bench by *certiorari*, and their *oyer* of the *certiorari* being demanded, the party declared in *B. R.* on this a return was awarded, and on an *elongat'* returned, a *ſcire facias* went againſt the pledges in the ſheriff's court of *London*. On demurrer the queſtion was, whether, this caſe being removed by *certiorari*, the pledges in the inferior court are diſcharged, or whether they remain liable to be charged by this *ſcire facias?* It was adjudged, that the pledges were *not* diſcharged. *Skin*. 244. 2 *Show*. 421. *Comb*. 1, 2. 3 *Mod*. 56. S. C.

Plaintiff declared, that he diſtrained for 7 *l.* 10 *s.* rent, *reſerved on a leaſe*, and that defendant delivered the cattle *without taking pledges*; to which defendant pleaded, that plaintiff in *replevin* delivered to him 3 *l.* 10 *s.* for pledges, which he accepted; and on demurrer the court held, that pledges being to be found to anſwer the party, if he had good cauſe of avowry, and to be anſwerable for amercement to the King, if nonſuited, or if it be found againſt him; the taking of money or a pledge was not lawful; and that although he might take money for pledges, yet *he ought not to accept leſs than plaintiff's demands*; on which account the court likewiſe held the plea vicious; but they agreed, that if the mayor had taken but one pledge, (if he had been ſufficient) it had been well enough. *Cro. Car.* 446. 1 *Jon.* 378.

But it hath been adjudged, that a bond taken by the ſheriff, conditioned that if the party applying for the *replevin* ſhould appear at the next county court, *&c.* and proſecute his action with effect, and ſhould make return of the thing replevied, if return ſhould be adjudged, and ſave the ſheriff harmleſs, *&c. was good in law*, and agreeable to the intent of the ſtatute of *Marleb.* which requires *pledges* OR SURETIES, of which nature the obligors are; and this method of taking bond inſtead of pledges was ſaid to be of ancient uſage; and that in the old books *plegii* ſignified the ſame as ſureties; and that there being a proper remedy on ſuch bond, it differed from the caſe of taking a depoſite or ſum of money; but the court agreed, that at Common law this bond had been void, becauſe it had been to ſave the ſheriff harmleſs in making *replevin* by plaint, which he could not have done before the ſtatute of *Marleb.* 1 Ld. *Raym.* 278. 2 *Lutw.* 686.

If in *replevin* in an inferior court, the condition of the bond is, if he proſecute his ſuit commenced with effect in the court of, *&c.* and make return, *&c.* if a return be adjudged by law, and it happens, that the plaintiff hath judgment in the court below, which is afterwards reverſed on a writ of error in *B. R.* in ſuch caſe, unleſs the party make a return, he forfeits his bond; for though he had judgment in the court below, yet the words, *if he proſecute his ſuit commenced*, &c. extend to the proſecution of the writ of error, which is part of the ſuit commenced in the court below; and in this caſe, the taking ſuch bond was held to be lawful, and ſaid to be common practice. *Carth.* 248. 1 *Show.* 400. *Fitzg.* 158.

In debt on a *replevin* bond taken by the ſheriff, conditioned that if *C. B.* appear at the next county court, and proſecute with effect for taking, *&c.* and make return, *&c.* if return be adjudged, and ſave harmleſs the ſheriff, *&c.* then, *&c.* defendant after oyer pleaded, that at the next county court, *tent' tali die*, he did appear, and proſecuted, *&c.* until it was removed by *recordari*, and did ſave the ſheriff harmleſs, but doth not ſay, that no *return. habend'* was adjudged; on demurrer the court inclined for plaintiff; for defendant ſhould have ſaid, that *no return was adjudged* at all; and though he proſecuted to the *recordari*, yet *return habend'* might be adjudged afterwards; and *the condition goes to any adjudication of return.* Comb. 228.

An action was brought on a bond in replevin to proſecute his ſuit with effect, and alſo to make return, *&c.* defendant pleaded that *E. G.* did levy a plaint in replevin in the court before the ſteward of *Weſtminſter*, and that afterwards, and before the ſuit was determined, *viz.* ſuch a day, *&c. E. G.* died *per quod* the ſuit abated; plaintiff replied, *quod bene & verum eſt*, that *E. G.* levied ſuch a plaint againſt the defendant, who immediately afterwards exhibited an *Engliſh* bill in the Exchequer againſt plaintiff in that ſuit, and by injunction hindered the proceedings below until ſuch a day, *&c.* on which *E. G.* died; ſo that he did not proſecute his ſuit *with effect*: on demurrer to this replication the defendant had judgment; for *per Holt*, This was a proſecution with effect, becauſe there was neither a nonſuit or verdict againſt *E. G.* Carth. 519.

In action on a replevin bond *common bail* ſhall be filed. 1 *Salk.* 99.

There are two ſorts of pledges, *plegii de proſequendo*, and *plegii de returno habendo*; the pledges of proſecuting were at Common law, but thoſe *de returno habendo* were appointed by *Weſtm.* 2. *cap.* 2. by which ſtatute an action lies againſt the ſheriff, if he omit to take pledges, or if he take thoſe that are inſufficient; for the party may have a *ſcire facias* againſt the pledges, where the ſuit is in any court of record; and though in the county court, *&c.* a *ſcire facias* will not lie againſt the pledges, becauſe theſe are not courts of record, and every *ſcire facias* ought to be grounded on a record, yet there the party may have a precept in nature of a *ſcire facias* againſt the pledges. 1 *Ld. Raym.* 278. See *Comb.* 1, 2. *Cum.* 593.

An *action on the caſe* was brought again a ſheriff for taking *inſufficient* pledges on a replevin; to which he pleaded not guilty, and a verdict being found againſt him, and judgment given thereon in the court of *C. B.* on a writ of error brought in *B. R.* it was objected, firſt, That an *action on the caſe* was *not* the proper remedy; 2dly, Suppoſing ſuch action lay, that there ought to have been a *ſcire facias* firſt ſued out againſt the pledges. As to the firſt, the court held, that the party diſtraining has by the ſtatute of *Weſtm.* 2. an intereſt in the pledges, and if the ſheriff omits to take ſuch, or, which is the ſame thing, takes inſufficient ones, he is aggrieved, and conſequently intitled to his action. 2dly, That though a *ſcire facias* may be brought againſt the pledges, yet it does not follow from thence, that an action does not lie againſt the ſheriff; and ſuch *ſcire facias*, which is only to certify the inſufficiency of the pledges, is the leſs neceſſary in the preſent caſe, *ſuch inſufficiency being ſet forth in the declaration*, and found by the verdict. *Mich.* 12 *Geo.* 2. *Rouſe* v. *Patterſon* in *B. R.*

For the greater ſecurity of perſons diſtraining for rent, it is enacted, by ſtat. 11 *Geo.* 2. *c.* 19. *ſ.* 23. That officers having authority to grant replevins, ſhall in every replevin of a diſtreſs for rent *take in their own names, from plaintiff and two ſureties, a bond in double the value of the goods diſtrained*, (ſuch value to be aſcertained by the oath of one or more witneſſes not intereſted, which oath the perſon granting ſuch replevin is to adminiſter) conditioned for proſecuting the ſuit *with effect without delay, and for returning the goods*, in caſe a return ſhall be awarded, before any deliverance be made of the diſtreſs; and ſuch officer taking ſuch bond, ſhall, *at the requeſt and coſts of the avowant*, or perſon making conuſance, *aſſign ſuch bond to the avowant, &c.* by indorſing the ſame, and atteſting it under his hand and ſeal in the preſence of two witneſſes, which may be done without ſtamp, *provided the aſſignment be ſtamped before any action brought* thereon; and if the bond be forfeited, the avowant, *&c.* may bring an action thereupon *in his own name*, and the court may *by rule* give ſuch relief to the parties on ſuch bond, as may be agreeable to juſtice; and *ſuch rule ſhall have the effect of a* DEFEASANCE.

5. *Of the original writ, and of the withernam in replevin.*

The original writ of replevin iſſues *out of Chancery*, and neither it nor the *alias* replevin are returnable, but are only in nature of a *juſticies* to impower the ſheriff to hold plea in his county court, when a day is given the parties; but the *pluries* replevin is always with this clauſe *vel cauſam nobis ſignifices*, and *it is a returnable proceſs*. F. N. B. 69, 70. Doct. pl. 313, 314. 2 Inſt. 139. Salk. 410. it is uſual to take out the *alias* and *pluries* at the ſame time. *Dalt. Sh.* 273.

A *pluries* replevin returned in *Michaelmas* term, the *defendant claimed property*, and after nothing done, nor any appearance nor continuance till *Eaſter* term following, at which term they appeared and pleaded, and judgment was thereupon given; though no continuance was between *Michaelmas* and *Eaſter*, yet this was not any diſcontinuance, becauſe *there is not any continuance till appearance*; for the parties have not any expreſs day in court, and *where there is not any continuance, there cannot be any diſcontinuance.* 1 Rol. Abr. 485.

The *pluries* replevin ſuperſedes the proceedings of the ſheriff, and the proceedings are *on that*, and not on the plaint, as they are when that is removed by *recordari*, and tho' there is no ſummons in the writ, yet it gives a good day to defendant to appear; and if he does not appear, then a *pone* iſſues, and then a *capias.* 1 Ld. Raym. 617.

Capias and proceſs of outlawry lies in replevin; for when on the *pluries replegiari fac'* the ſheriff returns *averia elongata*, then a *capias* in *withernam* iſſues, and on that being returned *nulla bona*, a *capias* iſſues, and ſo to outlawry. *Capias* and proceſs of outlawry in replevin were given by 25 *Ed.* 3. 17. 6 *Mod.* 84.

If on the *pluries* replevin the ſheriff return, that the cattle are eloigned to places unknown, *&c.* ſo that he cannot deliver them to plaintiff, then ſhall iſſue a *withernam* directed to the ſheriff, commanding him *to take the cattle or goods of defendant, and detain them till the cattle or goods diſtrained are reſtored to plaintiff*; and if on the firſt *withernam* a *nihil* be returned, there an *alias* and *pluries* replevin iſſue, and ſo to a *capias* and *exigent*. F. N B. 73.

The writ of *withernam* ought to rehearſe the cauſe which the ſheriff returns, for which he cannot replevy the cattle or goods; ſo that *it does not lie on a bare ſuggeſtion*, that the beaſts are eloigned, *&c.* *F. N. B.* 69 73.

If on the *withernam* the cattle are reſtored to the party who eloigned them, yet *he ſhall pay a fine for his contempt*. 2 Leon. 174.

Cattle taken in *withernam* may be worked, or, if cows, may be milked; for the party has them in lieu of his own. 1 *Leon.* 220. *Dyer* 280.

And as the party is to have the uſe of the cattle, he is not to have any allowance made him for the expences he has been at in maintaining them. *Owen* 46. *Cro. Eliz.* 162. 3 *Leon.* 235.

Scire facias againſt an executor, reciting, that where replevin was brought againſt teſtator for a cow, and judgment againſt him *de returno habendo*, which was not executed, that he ſhould ſhew cauſe why he ſhould not have execution The executor pleads *plene adminiſtravit*, upon which plaintiff demurred; and *Wyld* juſtice ſaid, that upon the judgment *the cow is in the cuſtody of the law*, therefore he ought to have execution; but the doubt is, becauſe the replevin is determined by the death of the party; yet (by him and *Rainsford*, being only in court) plaintiff ſhall have execution, for defendant cannot be prejudiced; for if the ſheriff return *averia elongata*, he ſhall not have a *withernam*, but of the goods of the teſtator; or if there are no goods of the teſtator, the ſheriff can take nothing, but ſhall return *nulla bona*, and then plaintiff hath his ordinary way to charge defendant, if he hath made a *devaſtavit*; and it was adjudged for plaintiff. *Paſch.* 27 *Car.* 2. in *B. R. Sucklin* v. *Green.*

W. ſues a replevin, *B.* removes it by *recordari* into the King's Bench, plaintiff does not declare, and on that a return awarded to *H.* upon which the ſheriff returns *averia elongata*, and then a *withernam* was awarded and executed; and now plaintiff comes and prays he may be admitted to declare, and prays a deliverance of the *withernam*; and it was teſtified by the clerks, that on plaintiff's ſubmiſſion to a fine for not declaring, and that being impoſed on him by the judges, he ſhall have deliverance of the *withernam*; and a fine of 3 *s.* 4 *d.* being accordingly impoſed on plaintiff, he *then* declared, and had deliverance. *Noy* 50. The courſe of *B. R.* is contrary to that of *C. B.*

If on an *elongata* returned, the ſheriff's cattle are taken in *withernam*, yet on the defendant's appearance, and pleading *non cepit*, or claiming property, defendant ſhall have his cattle again; and if they are eloigned, a *withernam* againſt plaintiff; for if the property or taking be in queſtion, there is no reaſon that plaintiff ſhould have defendant's cattle. 1 *Ld. Raym.* 614.

The *withernam* is but MESNE PROCESS, and cannot be on execution, becauſe it is granted before judgment. 1 *Ld. Raym.* 614. and ſee *Comb.* 201. *Salk.* 582.

6. *Of the writ of ſecond deliverance, and the writ* De proprietate probanda.

At Common law, if plaintiff in replevin had been nonſuited either before or after verdict, defendant who diſtrained ſhould have had return, but not irrepleviſeable; ſo as plaintiff after nonſuit might have had as many replevins as he would, which was vexatious and miſchievous; for remedy whereof the *Stat. Weſtm.* 2. *cap.* 2. reſtrains plaintiff from any more replevins after nonſuit but *gives a writ of ſecond deliverance.* 2 Inſt 340.

And if in ſuch writ of ſecond deliverance plaintiff be nonſuited, or if the plea be diſcontinued, or the writ abates, or if he prevails not in his ſuit, returns irrepleviable ſhall be granted. 2 *Inſt.* 341.

If defendant in replevin has return awarded on nonſuit of plaintiff, on which he ſues a writ *de returno habendo*, upon which writ the ſheriff returns *averia elongata per querentem*, and on this a *withernam* is awarded, and on the *withernam* defendant has *tot catulla* to him delivered of the goods of plaintiff, and thereupon plaintiff ſues a ſecond deliverance; he ſhall ſue it for the *firſt* diſtreſs taken, not for the *withernam*; and this by the nature and form of the writ of ſecond deliverance. 2 *Rol. Abr.* 435.

If a *returno habendo* be awarded to the ſheriff after a writ of ſecond deliverance prayed by plaintiff, this is a *ſuperſedeas* to the *returno habendo*, and cloſes the ſheriff's hand from making any return thereto; and if the ſheriff will not execute the writ of ſecond deliverance, the party has his remedy againſt him. *Dyer* 41. *Dalt. Sh.* 275.

The ſtatute of *Weſtm.* 2. gives the writ of ſecond deliverance *out of the ſame court* where the firſt replevin was granted, and a man cannot have it elſewhere; for if he may, then he ſhall vary from the place limited as to this by the ſtatute. *Plowd.* 206.

In replevin defendant avowed, that plaintiff being nonſuited brought a writ of ſecond deliverance, whereupon it was moved to ſtay the writ of enquiry of damages; *& per curiam*, This is a *ſuperſedeas* to the *returno habendo*, but not to the writ of inquiry of damages; for *theſe damages are not for the thing avowed for*, but are given by 21 *H.* 8. *c.* 19 *As a compenſation for the expence and trouble the avowant has been at.* 1 Salk. 95. and like point adjudged, *Palm.* 403. *Latch.* 72.

Error of judgment in *C. B.* in a ſecond deliverance; on demurrer in pleading the error aſſigned was, becauſe there was not any writ of ſecond deliverance certified, and *in nullo eſt erratum* being pleaded, it was moved not to be material, becauſe *it is awarded on the roll*, and the parties had appeared and pleaded to it; but *it was adjudged ill*, and reverſed for *that* cauſe; for there ought to be a writ, and if it vary from the declaration in the replevin, it ſhall be abated, *Cro. Jac.* 424.

No ſecond deliverance lies *after* a judgment on a demurrer, or after verdict, or confeſſion of the avowry; but in all theſe caſes *the judgment muſt be entered with a return irrepleviſable*; but on a nonſuit, either before or after evidence, a ſecond deliverance will lie, becauſe there is *no determination of the matter*, and there a writ of ſecond deliverance lies *to bring the matter in queſtion*; but in the caſe of demurrer and verdict the matter is determined by confeſſion of the party. 2 *Lill. Reg.* 457.

If plaintiff's writ abates, he may have a new writ, and is not put to his writ of ſecond deliverance. *Cum.* 122.

If plaintiff in replevin be nonſuited for want of delivering a declaration, if it happened thro' ſickneſs of the perſon employed to proſecute, the court will order defendant to accept a declaration on payment of coſts; otherwiſe plaintiff would be remedileſs, the writ of ſecond deliverance being taken away by the 17 *Car.* 2. *c.* 7. 1 *Vent.* 64. See *Avowry.*

If defendant in replevin claims property, the *ſheriff* cannot proceed; for PROPERTY MUST BE TRIED BY WRIT; and in this caſe plaintiff may have the writ *de proprietate probanda* to the ſheriff; and if it be found for plaintiff, then the ſheriff is to make deliverance; if for defendant, then he is to proceed no further; but as this is but an inqueſt of office, if it be found againſt plaintiff, he may have a replevin to the ſheriff; and if he return the claim of property, yet ſhall it proceed in the *C. B.* where the property ſhall be put in iſſue and finally tried. *Co. Litt.* 145. *b.* *F. N. B.* 77. *Dyer* 173. *Cum.* 592.

None but he who is party to the replevin ſhall have the writ *de proprietate probanda*; ſo that if on a replevin the beaſts of a ſtranger are delivered to plaintiff, ſuch ſtranger being no party to the replevin, ſhall not have this writ. 14 *Hen*. 4. 25. 2 *Roll. Abr*. 431.

The ſheriff is to return the claim of property on the *pluries*, before which time the writ *de proprietate probanda* does not iſſue, for it recites the *pluries*. Reg. 83. Cum. 595.

The writ *de proprietate probanda* is an inqueſt of office, and the ſheriff is to give notice to the parties of the time and place of executing it. *Dalt. Sh*. 274.

If defendant claims property in replevin, plaintiff may have the writ *de proprietate probanda* without continuance of the replevin, tho' it be two or three years after, becauſe *by claim of property the firſt ſuit is determined*. Moor 403.

If the party who hath the cattle claims property, the ſheriff cannot determine it without a writ *de proprietate probanda*; and then if the property be found for the party claiming, it is but *an inqueſt of office*, and the party who made the plaint may *after* ſue a writ of replevin, to which *property may again be pleaded*. 7 Hen. 4. 46. Cum. 594.

If plaintiff has property, and omits to claim it before the ſheriff, *he may notwithſtanding plead property in himſelf or in a ſtranger, either in abatement or in bar*, tho' it was formerly held, that property in a ſtranger could only be pleaded in abatement. *Cro. Eliz*. 475. *Winch*. 26. 1 *Show*. 402. *Salk*. 5, 94. 6 *Mod*. 81.

In replevin defendant in his avowry pleads, that the beaſts taken belong to a third perſon, and not to plaintiff, therefore prays a return; to which plaintiff demurs; for on avowant's own ſhewing he ought not to have return, having admitted the property of the beaſts to be in another; but judgment was given for defendant, for *the prior poſſeſſion was in him*, and he hath a right againſt all others but the right owner, and plaintiff by his demurrer hath admitted, that *he* hath no property in them. *Comb*. 477. See 6 *Mod*. 68, 139. And 2 *Mod*. 242.

7. *Of the writ* de returno habendo; *of returns irreplevisable, and in what manner the ſheriff is to return and execute ſuch proceſs.*

The *returno habendo* is a judicial writ, which lies for him who has avowed the diſtreſs, and proved the ſame to be lawfully taken; or where, on removal of the plaint into the courts above, plaintiff, whoſe cattle were replevied, makes default, or does not declare or proſecute his action; and thereby becomes nonſuited, *&c*. and by this writ the ſheriff is commanded *to make a return of the cattle to defendant* in the replevin. 35 *Hen*. 6. 40. *Dyer* 280. *Co. Lit*. 145.

A bailiff who makes conuzance may have judgment of a return, and conſequently a writ *de returno habendo* grounded on ſuch judgment. *Co. Ent*. 59.

If defendant hath a return awarded him, and he ſueth a writ *de returno habendo*, and the ſheriff return on the *pluries*, *quod averia elongata ſunt*, *&c*. he ſhall have a *ſcire facias* againſt the pledges, *&c*. According to the ſtatute of *Weſtm*. 2. and if they have nothing then they ſhall have a *withernam* againſt plaintiff of plaintiff's *own* cattle. *F. N. B*. 172.

Return irreplevisable is a judicial writ directed to the ſheriff *for the* FINAL RESTITUTION *or return of cattle unjuſtly taken by another*, and ſo found by verdict, or after a nonſuit in a ſecond deliverance. 2 *Roll. Abr*. 434.

If the plea be to the writ, or any other plea be tried by verdict, or judged on demurrer, return irrepleviſeable *ſhall* be awarded, and no new replevin ſhall be granted, nor any ſecond deliverance by the act of *Weſtm*. 2. but only on nonſuit. 2 *Inſt*. 340. *Dyer* 280.

If on iſſue joined in replevin plaintiff does not appear on the trial, being called for that purpoſe, yet return irreplevisable ſhall not be awarded, as in caſe of a verdict's being given, but the party may have a writ of ſecond deliverance, as well as if it had been a nonſuit before declaration, or appearance. 3 *Leon*. 49.

If a man has return irrepleviſeable, and a beaſt die in the pound, *he may diſtrain a-new*; ſo if the beaſt die before judgment. *Hob*. 61.

If return irrepleviſeable be awarded, the owner of the cattle may offer the arrears; and if defendant refuſes to deliver the diſtreſs, plaintiff may have detinue, becauſe *the diſtreſs is only in nature of a pledge*. 1 Ld. Raym. 720.

By the ſtatute of *Weſtm*. 1. *cap*. 17. If the party who diſtrains, conveys the diſtreſs into any houſe, park, caſtle, or other place of ſtrength, and refuſes to ſuffer them to be replevied, the ſheriff may take the *poſſe comitatus* and on requeſt and refuſal break open ſuch houſe, caſtle, *&c*. and make deliverance; and this was a neceſſary law ſo ſoon after the irregular time of *Hen*. 3. 2 *Inſt*. 193. 5 *Co*. 93. *Dalt. Sh*. 373.

If the ſheriff returns, that the beaſts are incloſed in a park among ſavages, or incloſed in a caſtle, *&c*. *he ſhall be amerced*, and another writ of replevin ſhall be awarded; for he ought to have taken the *poſſe com*. for this was a denial. *F. N. B*, 257.

If the ſheriff return, *quod mandavi ballivo libertatis*, *&c*. *qui nullum debit mihi reſponſum*, or that the bailiff will not make deliverance of the cattle, *theſe are not good returns*; for by ſtatute of *Weſt*. 1. the ſheriff on ſuch return made to him by the bailiff, ought preſently to enter into the franchiſe, and make deliverance of the cattle taken. *F. N. B*. 157.

If a man ſue a replevin in the county court without writ, and the bailiff return to the ſheriff, that he cannot have view of the cattle to deliver them, the ſheriff *by inqueſt of office* ought to inquire into the truth thereof, and if it be found by a jury, that the cattle are eloigned, *&c*. the ſheriff in the county court may award a *withernam* to take defendant's cattle; and if the ſheriff will not award a *withernam*, then plaintiff may have a writ out of Chancery directed to the ſheriff rehearſing the whole matter, commanding him to award a *withernam*, *&c*. and he may have an *alias*, and after a *pluries*, and an attachment againſt the ſheriff, if he will not execute the King's command. *F. N. B*. 158.

If the ſheriff return, *quod averia elongata ad loco incognito*, this is a good return, and the party muſt purſue his writ of *withernam*; but if the ſheriff return *averia elongata ad loco incognito* INFRA COMITATUM MEUM, he ſhall be amerced, for *the law intends that he may have notice in his county*. Bro. Retur. de Br. pl. 100.

If in replevin the ſheriff return, *quod averia mortua ſunt*, that is a good return. *Bro. Retur. de Br. pl*. 125.

It is a good return, *quod nullus venit ex parte querentis ad demonſtranda averia*; but it ſeems the ſheriff is not obliged to require this. *Dalt. Sh*. 556. *Allen*. 33.

If the ſheriff be ſhewn a ſtranger's goods, and he takes them, an action of treſpaſs lies againſt him, for otherwiſe he could have no remedy; for being a ſtranger he cannot have the writ *de proprietate probanda*, and were he not intitled to this remedy, it would be in the power of the ſheriff to ſtrip a man's houſe of all his goods; but *Keilw*. ſeems to hold, that *the action lies more properly againſt the perſon* WHO SHEWS *the goods*. 2 Roll. Abr. 552. Cum 596.

The ſheriff comes to make replevin of beaſts impounded in another man's ſoil; if the place be incloſed, and has a gate open to the incloſure, he cannot break the incloſure, and enter thereby, when he may enter by the open gate; but if the owner hinders him ſo that he cannot go by the open gate for fear of death, he may break the incloſure, and enter there. 20 *H*. 6. 28. 2 *Roll. Abr*. 532.

The ſheriff is to return, that *the cattle are eloigned*, or that *no perſon came to ſhew*, *&c*. or *a delivery*; but he cannot return, that the defendant *non cepit* the cattle, becauſe it is ſuppoſed in the writ, and is the ground of it, which the ſheriff cannot falſify. 1 *Ld. Raym*. 613. 1 *Lutw*. 581. See *Avowry*, *Diſtreſs*.

And for more learning concerning Replevin, ſee 4 New Abr. *and* 18 Vin. Abr. *tit.* Replevin, *and* Black. Com. 3 V. 13, 145, 170.

A *plaint* entered in *replevin.*

A. B. *complains againſt* C. D. *of his beaſts unjuſtly taken in his houſe, (or his freehold) in,* &c.

Pledges, &c.

Form of a *writ* of *replevin,* or *replegiare de averiis.*

GEORGE the Third, &c. *We command you, that juſtly and without delay you cauſe to be* replevied *to* A. B. *his beaſts which* C. D. *took, and unjuſtly detaineth, as is ſaid; and after do you cauſe juſtly to be done to him,* &c. *that we may hear no more clamor for defect of juſtice,* &c.

Replevy. Tenants having their goods taken as a *diſtreſs* for rent, are to replevy them in five days, or they may be appraiſed and ſold, by *Stat.* 2 *W.* & *M. ſeſſ.* 1. *c.* 5.

A cheat bought goods of defendant upon credit, and ſold them to plaintiff, notwithſtanding they were replevied out of his hands, he ſhall maintain treſpaſs. 6 *Mod.* 69. 2 *Lill.* 459.

To replevy is uſed for the bailing a man. *Stat. Weſtm.* 1. *c.* 11. Vide *Homine Replegiando,* and *Replevin.*

Repleviſh, Signifies to let one to mainpriſe on ſurety. 3 *Ed.* 1. *cap.* 11.

Replication, (*replicatio*) Is an exception or anſwer made by plaintiff to defendant's *plea:* And it is alſo that which the complainant *replies* to the defendant's anſwer in *Chancery,* &c. Weſt's Symb. par. 2.

The *replication* is to contain *certainty,* and *not vary from the declaration,* but *muſt purſue and maintain the cauſe of plaintiff's action;* otherwiſe it will be a departure in pleading, and going to another matter. *Co. Lit.* 304. Tho' as a faulty bar may be made good by the *replication;* ſo ſometimes a *replication* is made good by a rejoinder; but if it wants ſubſtance, a rejoinder can never help it. 2 *Lill. Abr.* 462. A *replication* being intire, and ill in part, is ill in the whole: But if there be three *replications,* and one is ſuperfluous, and the other two ſufficient, and defendant demurs generally, plaintiff may have judgment on thoſe which are ſufficient. 1 *Saund.* 338. 2 *Saund.* 17.

Where defendant pleads in bar, and plaintiff *replies* inſufficiently; if defendant demurs ſpecially on the *replication,* and the bar is inſufficient, if the action be of ſuch a nature that a title is ſet forth in the declaration or count, as in a *formedon,* &c. judgment may be given for plaintiff on the inſufficient bar of defendant: And where the title doth not appear till ſet forth in the *replication,* and that is inſufficient, there judgment ſhall be had for defendant for the ill *replication.* Godb. 138. 1 Leon. 75. 3 Nelſ. Abr. 133.

A *replication* concludes either with *hoc paratus eſt verificare,* or to the country. In action on a bond to pay all ſums expended about certain buſineſs, &c. on defendant's pleading he paid all; plaintiff replies that he had not, *et hoc paratus,* &c. Upon a demurrer it was held plaintiff ought to have concluded to *the country;* becauſe there is an affirmative and negative, and if he might be admitted to aver his *replication* thus, there would be no end in pleading. *Raym.* 98.

But where new matter is offered in a *replication,* plaintiff ſhould aver his plea, ſo as to give defendant an opportunity to rejoin. 4 *Mod.* 285. *Lutw.* 98.

Replication *in criminal caſes.* See *Culprit,* and *Black. Com* 4 *V.* 333. v.

Report, (from the Lat. *reportare*) Is a public relation, or bringing again to memory, of caſes judicially adjudged in courts of juſtice, with the reaſons as delivered by the judges. *Co. Lit.* 293.

There are likewiſe *reports,* when the court of Chancery, or other court, refer the ſtating ſome caſe, &c. to a Maſter of Chancery, or other referee, his certificate therein is called a Report: On which the court makes an abſolute order. *Pract. Solic.* 67.

A Maſter in Chancery, having an order of reference, is to iſſue his ſummons for the parties to attend him at a certain time and place; when and where they may come with their counſel, clerk or ſolicitor, to defend themſelves, and maintain, or object againſt, his Report, or certificate, &c. And Maſters are to draw their Reports briefly and as ſuccinctly as may be, *preſerving the matter clearly for the judgment of the court;* without recital of the ſeveral points of the order of reference, or the debates of counſel before them; *unleſs in caſes doubtful,* when they may ſhortly repreſent the reaſons which induce them to what they do. *Ibid.*

Reports and certificates of Maſters in Chancery are to be filed with the regiſter in four days after the making and ſigning; and to be confirmed by the court, to which exceptions may be made, &c.

None ſhall take any money for Report of an order, or cauſe referred to them by any judges, on pain of 100*l.* &c. ſo as not to prohibit the clerk from taking 12 *d.* for the firſt, and 2 *d.* for every other ſheet. Stat. 1 *Jac.* 1. *cap.* 10. But Maſters in Chancery, may take for every Report or certificate, made on an order on hearing of a cauſe 20 *s.* And for any other Report, &c, made on petition or motion 10 *s.* And their clerks ſhall have 5 *s.* for writing every Report, by 13 *Car.* 2 Vide *Reference.*

A Report by a Maſter in Chancery, is as a judgment of the court. 1 *Wms's Rep.* 653.

By a ſtanding order of the court of Chancery, made by the Lords Commiſſioners in the 4 *W.* & *M.* it was directed, That all Reports ſhould be filed within four days after the making, otherwiſe no decree or proceedings to be had thereupon; but the Regiſter reporting, that it was ſufficient if the Report were filed before any proceedings had thereupon, tho' not done within four days after making, Ld. C. J. *King* agreed thereto. And the court took it to be well enough, tho' in this caſe the motion to confirm the report *niſi cauſa,* was made the ſame day that the Report was filed. 2 *Wms's Rep.* 517.

It is not uſual to confirm Reports of Receiver's accounts, *per* Maſter of the Rolls. 2 *Wms's Rep* 661.

Repoſition of the Foreſt, (*repoſitio foreſtæ,* i. e. a reputting to) Was a *ſtatute* whereby certain foreſt-grounds being made *purlieu* on view, were by a ſecond view put to the foreſt again. *Manw. par.* 1.

Repoſitorium, (*Lat.*) A ſtorehouſe or place wherein things are kept; alſo a warehouſe. *Cro. Car.* 555

Repreſentation, (*repræſentatio*) Is perſonating another: There is an heir by *repreſentation,* where a father dies in the life of the grandfather, leaving a ſon, who ſhall inherit his grandfather's eſtate, before the father's brother, &c. *Bro. Abr.* 303. Alſo executors *repreſent* the perſon of the teſtator, to receive money and aſſets. *Co. Lit.* 209.

Reprieve, (from the Fr. *repris,* tho' *Blackſtone* takes it from *reprendre*) Signifies to take back or ſuſpend a priſoner from the execution and proceeding of law for that time. *Terms de Ley.* Every judge who hath power to order execution, hath power to grant a *reprieve;* and execution is often ſtaid on condition of tranſportation. But no priſoner convicted of any felony, for which he cannot have his clergy, at the ſeſſions at the *Old Bailey* for *London* or *Middleſex,* &c. ought to be reprieved but in open ſeſſions; and *reprieves* are not to be granted otherwiſe, without the King's expreſs warrant, not by order of any juſtices of goal delivery. *Kel.* 4. 2 *Hawk. P. C.* 463. *Wood's Inſt.* 662.

If a woman is condemned for treaſon or felony, and is found by an inqueſt or jury of matrons impanelled by the ſheriff, &c. to be *quick with child,* execution ſhall be reſpited, and the woman reprieved *till her delivery;* tho' ſhe ſhall take this favour but once; and cannot ſave herſelf by this means from pleading on her arraignment; nor from having judgment pronounced againſt her on conviction. *S. P. C.* 198. *H. P. C.* 272 *Finch.* 478.

Where it is found by a jury of women, that a woman convicted of felony, is *with child,* ſome judges have reſpited her execution till a convenient time, *i. e.* a month after her delivery, then to be executed, but this is irregular, for ſhe may have a pardon to plead, therefore to be reprieved till the next ſeſſions. 12 *Aſſ.* 10 1 *Hale's Hiſt. P. C.* 368, 369. See *Pregnancy, and Black. Com.* 4 *V.* 387.

Repriſal, (*repriſale,* or *repriſalia*) Is taking one thing in ſatisfaction for another, derived from the Fr. *repriſe*; and is all one in the *Common* and *Civil* law.

Hen. IV. enacted, That application be made to the Keeper of the Privy Seal, by perſons injured in the loſs of ſhipping at ſea, *contrary to treaties, &c.* on evidence ſhewn, he ſhall ſign *letters of requeſt* to demand reſtitution and reparation; which if not made in convenient time, the Lord Chancellor is to grant *letters of repriſal,* to obtain the ſame *by force,* and for the indemnity of the perſons intereſted: And this is confirmed by the *Stat.* 4 *H.* 5. *c.* 7.

Repriſals are ordinary and extraordinary; ordinary *repriſals* are to arreſt and take the goods of merchant ſtrangers within the realm; and the other is for ſatisfaction out of the realm, and is under the Great Seal, *&c. Lex Mercat.* 120.

If any perſon be killed, wounded, ſpoiled, or any ways damaged in a hoſtile manner, in the territories of any potentate, to whom letters of requeſt are tranſmitted, and no ſatisfaction be made, there is no neceſſity to reſort to the ordinary proſecution, but letters of *repriſal* iſſue forth; and the Prince againſt whom the ſame are iſſued, is obliged to make ſatisfaction *out of the eſtates of the perſons committing the injuries*; and in caſe of a deficiency there, it will then be adjudged *a common debt on his country.* But where miſfortunes happen to perſons, or their goods, reſiding in a foreign country in time of war, *repriſals* are not to be granted: In this caſe they muſt be contented to ſit down under the loſs, for they are at their liberty to relinquiſh the place on the approach of the enemy, when they foreſee the country is ſubject to ſpoil: and if they continue, they muſt partake of the common calamity. *Lex Mercat.* or *Merch. Compan.* 174, 175.

Repriſals may be granted on illegal proſecutions abroad; where wrong judgment is given in matters *not doubtful,* which might have been redreſſed either by the ordinary or extraordinary power of the country or place, and which was apparently denied, *&c.* See *Letters of Marque,* and *Black. Com.* 1 *V.* 258. And as to *Repriſal of Goods,* ſee *Recaption,* and *Black. Com.* 3 *V.* 4.

Repriſes, (Fr. *reſumptions,* or a-taking back) Is uſed for deductions and payments out of a manor or lands, as rent-charges, annuities, *&c.* Therefore when we ſpeak of the clear yearly value of a manor or eſtate or land, we ſay it is ſo much *per annum ultra repriſes,* beſides all *repriſes.*

Republication of Wills. See *Will,* and *Black. Com.* 3 *V.* 379, 501.

Repugnant, (*repugnans*) Is what is contrary to any thing ſaid before: And *repugnancy* in deeds, grants, indictments, verdicts, *&c.* make them void. 3 *Nelſ.* 135.

The Common law abhors *repugnancies* and all incongruities; but the former part of a deed, *&c.* ſhall ſtand, where the latter part is *repugnant* to it. *Jenk. Cent.* 251. 256.

Where contrarieties are in ſeveral parts of *deeds* or *fines,* the firſt part ſhall ſtand; in *wills, the laſt,* if the ſeveral clauſes are not reconcileable. *Jenk.* 96. *pl.* 86.

In contracts, gifts, verdicts, evidence, *&c.* where direct contrarieties are for the ſame thing at the ſame time, *all* is void. *Jenk.* 96. *pl.* 86.

A. made *B.* and *C.* executors, provided that *C.* ſhall not adminiſter his goods, *B.* and *C.* brought debt on bond as executors. It was held that the action was well brought; for the *proviſo* is void. *D.* 3. *b.* 4. *pl.* 7. *&c.*

A. gives lands to *B.* in tail, provided *A.* ſhall take the profits of part for 1000 years; the *proviſo* is void; for in common preſumption it takes away the benefit and intereſt of the grantee in that parcel, *Cro Eliz.* 35.

An award, that each ſhall give the other a general releaſe within four days after the award; *proviſo* that if either diſliked the award within 20 days after made, and ſhould pay to the other within the ſaid 20 days 10 *l.* that then the arbitrement ſhould be void, the *proviſo* is *repugnant,* and judgment for plaintiff. *Cro. Eliz.* 291.

A *proviſo* good in the commencement may by conſequence become *repugnant,* as grant of rent by deed for life, provided that it ſhall not charge his perſon; the *proviſo* is good, but if the rent be arrear, and the grantee die, his executors ſhall charge the perſon of the grantor in debt; for otherwiſe they be remedileſs; and ſo it is now *repugnant,* by conſequence void. 6 *Rep.* 41. *b.* See *Black. Com.* 2 *V.* 156.

Reputation, (*reputatio*) Is defined by Sir *Edw. Coke* to be *vulgaris opinio ubi non eſt veritas*; and he tells us, that *vulgaris opinio ex duplex, viz. Una orta inter graves & diſcretos & quæ vultum veritatis habet; altera orta inter leves & vulgares homines abſque ſpecie veritatis.* 4 Rep. 104. That is not reputation which this or that man ſays; but that which generally hath been, and many men have ſaid or thought. 1 *Leon.* 15.

A little time is ſufficient for gaining Reputation, which needs not a very ancient pedigree to eſtabliſh it; for general acceptation will produce a *Reputation.* Cro. Jac. 308. But it has been held, that *common Reputation* cannot be intended of an opinion which is conceived of four or five years ſtanding; but of long time. 2 *Lill. Abr.* 464. And ſome ſpecial matter muſt be averred to induce a *Reputation.* Ibid.

Land may be *reputed* parcel of a manor; tho' not really ſo. 1 *Ventr.* 51. 2 *Mod.* 69. 3 *Nelſ. Abr.* 137. And there is a pariſh, and office in *Reputation,* &c.

Reputation of Fame, Is under the protection of the law, as all perſons have an intereſt in their good name; and ſcandal and defamation are injurious to it, tho' defamatory words are not actionable, otherwiſe than as they are a damage to the eſtate of the perſon injured. *Wood's Inſt.* 37.

The ſecurity of *Reputation* or good name from the arts of detraction and ſlander, are rights to which every man is intitled, by reaſon and natural juſtice; ſince without theſe it is impoſſible to have the perfect enjoyment of any other advantage or right. *Black. Com.* 1 *V.* 134.

Requeſt, *of things to be done*: Where one is to do a *collateral* thing, agreed on making a contract, there ought to be a *requeſt* to do it. 2 *Lill. Abr.* 464. If a *duty* is *due,* it is payable without *requeſt*; on promiſe to pay a *duty precedent* on *requeſt,* there needs no *actual requeſt*; but on a promiſe for a *penalty* or *collateral* ſum, there ſhould be an *actual requeſt* before the action is brought. *Cro. Eliz.* 74. 1 *Saund.* 33. 1 *Lev.* 289.

If a *debt* is before a promiſe, a *requeſt* is not neceſſary, for then a *requeſt* is not any cauſe of the action; tho' upon a promiſe generally to pay on *requeſt,* the action ariſes on *requeſt,* and not before. *Cro. Jac.* 201. 1 *Lev.* 48. See *poſt.*

Action of debt for money due on a bond, may be brought without alledging a ſpecial *requeſt. Cro. Eliz.* 229, 523.

A man promiſes to re-deliver on *requeſt* ſuch goods as were delivered to him; if an action of detinue is brought, plaintiff need not alledge a ſpecial *requeſt,* becauſe *the action is for the thing itſelf*: But if an action of the caſe is had for theſe goods, then the *requeſt* muſt be ſpecially alledged; as it is not brought for the *thing itſelf,* but for *damages.* Sid. 66. 3 Salk. 309.

If a promiſe is made to pay money to plaintiff, on *requeſt,* no *ſpecial* requeſt is required: But where there are mutual promiſes between two perſons to pay each other money on *requeſt,* If they do not perfom ſuch an award, the requeſt is to be ſpecially alledged. And if there is a promiſe to pay money to a man on *requeſt,* and he dies before any *requeſt* made, it ſhall be paid to his executors; but not till *requeſt* made. 3 *Salk.* 309. 3 *Bulſt.* 259.

Where a perſon promiſes to pay a *precedent duty,* the general allegation *licet ſæpius requiſit'* is ſufficient, becauſe there was a duty without a promiſe: As for inſtance; If one buys or borrows a horſe, and promiſes to pay ſo much on Requeſt: But where the promiſe is collateral, as to pay the debt of a ſtranger on Requeſt, *&c.* the Requeſt is part of the agreement, and *traverſable,* there being no duty before the promiſe made; and for that reaſon the Requeſt muſt be ſpecially alledged, for bringing the action will not be a ſufficient Requeſt. *Latch* 93. 3 *Leon.* 200. 1 *Saund.* 35. 3 *Salk.* 308.

If a debt or duty ariſes either on bond or contract, *licet ſæpius requiſitus* is good; *contra* where it becomes a duty by the Requeſt itſelf, when it is to be alledged ſpecially. 3 *Nelſ. Abr.* 144.

It has been adjudged, that where the thing is a duty before any Requeſt made, a Requeſt is only alledged to aggravate damages, and ſuch Requeſt is not traverſable; but if the Requeſt makes the duty, as in *aſſumpſit* to do ſuch a thing on Requeſt, there *the day, &c.* of the Requeſt ought to be alledged, becauſe *it is traverſable.* Palm. 389.

If a Requeſt is to be ſpecially made, the day and year when made ſhould be ſpecially alledged. 1 *Lutw.* 231. 2 *Lil. Abr.* 466. *Cro. Car.* 280. But where a perſon is not reſtrained to make the Requeſt by a time limited, if made at any time during his life, it has been held to be good. *Cro. Eliz.* 136. And a Requeſt at any other time than named may be given in evidence. *Sid.* 268.

If a debt or duty does not accrue on a promiſe, until requeſt made, the ſtatute of *limitations* runs from the time of the *requeſt*, only, and not from the time of the precedent promiſe. *Cro. Car.* 98.

At a trial, defendant would have plaintiff to prove the Requeſt; but it was ruled that *he need not*; for, not being traverſed in the plea, *it is admitted.* 1 Lev. 166.

Unreaſonable Requeſts are not regarded in law; and there is no difference where a thing is to be done on Requeſt, and reaſonable Requeſt. *Dyer* 218. *Cro. Car.* 176. 3 *Nelſ. Abr.* 140, 142.

Requeſts, (court of) The place where held being anciently called *Camera Alba*, is taken away by act of parliament. See *Court of Requeſts.*

Rere County, Writs ſhall be delivered in the full, or *rere county.* Stat. 2 Ed. 3. cap. 5. *Vide* Rier County.

Reſceit, (*Receptio*) Is an admiſſion or receiving of a third perſon to plead his right in a cauſe formerly commenced between two *other* perſons; as where an action is brought againſt tenant for life or years, or any other particular tenant, and he makes default, in ſuch caſe *he in the reverſion* may move *that he may be received to defend his right*, and to plead with demandant.

Reſceit is likewiſe applied to the admittance of a plea, where the controverſy is between the *ſame* two perſons. *Broke* 205. *Co. Lit.* 192. *Nelſ.* 3 *Abr.* 146.

He in reverſion may come into court, and pray to be *received* in a ſuit againſt his particular tenant; and after ſuch receit the buſineſs ſhall be haſtened, as much as may be by law, without any delay of either ſide. *Stat.* 13 *R.* 2. *cap.* 17. But *reſceit* is admitted only *for thoſe who have eſtates depending on particular eſtates* for life, tenants by the curteſy, or after poſſibility, &c. and not for him in remainder after an eſtate tail, which is perdurable. 1 *And.* 133.

Huſband and wife were tenants for life, remainder to another in fee; a *formedon* was brought againſt the huſband, who made default after default; and thereupon the wife prayed that ſhe might be received to defend her right; but it was denied by the court, becauſe if defendant ſhould recover againſt her huſband, *it would not bar her right* if ſhe ſurvived him, therefore it would be to no purpoſe. Then he in remainder prayed to be received, which at firſt the court doubted, by reaſon if the huſband ſhould recover, he might falſify ſuch recovery; and becauſe his eſtate did not depend on the eſtate of the huſband alone, but on the eſtate of the huſband and wife; but at laſt he was received. 1 *Leon.* 86.

The ſtatute of *Glouceſter* enacts, that a termor *may be received to falſify*, if he hath a deed, and comes before judgment; this is where he in reverſion cauſeth himſelf to be impleaded by colluſion, to make the termor loſe his term, &c. 6 *Ed.* 1. *cap.* 11. And if any ſtranger come in by a collateral title, before he is *received*, he ſhall find ſurety to ſatisfy the demandant the value of the lands if he recovers from that time till final judgment; and demandant recovering, he ſhall be grievouſly amerced, &c. by *Stat.* 20 *Ed.* 1.

Reſceit of Homage, (*Receptio Homagii*) The lord's receiving homage of his tenant, at his admiſſion to the land. *Kitch.* 148.

Reſcous, or **Reſcue,** (*Reſcuſſus*, from the Fr. *reſcouſe*, i. e. *liberatio*) Is a reſiſtance again lawful authority.

1. *Of the different kinds of reſcues,* &c.
2. *Of the offence of making a reſcue, and how the offenders are to be proceeded againſt, and puniſhed.*
3. *Of the form of the proceedings on a reſcue.*
4. *In what caſes the ſheriff may return a reſcue; of the form of the return, and for what defects it may be quaſhed.*

1. *Of the different kinds of reſcues,* &c.

If a bailiff, or other officer, on a writ arreſt a man, and others by violence take him away, or procure his eſcape; this is a *reſcous* IN FACT. So if one diſtrain beaſts for damage feaſant, in his ground, as he drives them in the highway towards the pound, they enter into the owner's houſe, and *he* withholds them *there*, and will not deliver them on demand, this detainer is a *reſcous* IN LAW. *Co. Lit. lib.* 2. *c.* 12, 161. *Caſſanæus* in his book *De Conſuetud. Burg. f.* 294. hath the ſame words coupled with *reſiſtentia.* It is alſo uſed for a writ which lies for this fact called *Breve de reſcuſſu*, whereof you may ſee both the form and uſe in *F. N. B.* 101. *Reg. of Writs*, 125, and *New Book of Entries*, verb. *Reſcous.*

This, in ſome caſes, in matters relating to treaſon, is treaſon; and in matters concerning felony, is felony. *Cromp. Juſt.* 54. *Cowell.*

In other terms, *reſcue* is the *taking away and ſetting at liberty* againſt law any diſtreſs taken for rent, or ſervices, or damage-feaſant; but the more general notion of reſcous is, *the* FORCIBLE *freeing another from an arreſt or ſome legal commitment*, which being a high offence, ſubjects the offender not only to an action at the ſuit of the party injured, but likewiſe to fine and impriſonment at the ſuit of the King. *Co. Lit.* 160. *F. N B.* 226.

But here there can be no reſcous but where the party has had the *actual* poſſeſſion of the cattle, or other things whereof the reſcous is ſuppoſed to be made; for if a man come to arreſt another, or to diſtrain, and is diſturbed, regularly *his remedy is by action on the caſe.* Co Lit. 161. a. Lit. Rep. 296. Hetl. 145

If on a *fi. fa.* the ſheriff ſeiſes goods which are taken away by a *ſtranger*, this is not properly a reſcue; for by ſeiſure of the goods, by virtue of the *fieri facias*, the ſheriff has a property in them, and *may maintain treſpaſs*, or *trover for them*; alſo the party injured may have an action on the caſe againſt the wrong-doer. *Hetl.* 145. *Lit. Rep.* 296.

If on a *fieri facias* the ſheriff returned that he had ſeiſed the goods, but that they were reſcued by *B.* and *C.* &c. *this is not a good return*, but he ſhall be amerced; the party alſo, at whoſe ſuit the execution iſſued, may charge him by *ſcire facias* for the value of the goods. 1 *Vent.* 21. 2 *Saund.* 343. 1 *Show* 180.

If the lord diſtrain for rent when none is due, the tenant may LAWFULLY *make reſcous*; ſo may a ſtranger, if his beaſts be diſtrained when no rent is due. *So if the tenant tender the rent* when the lord comes to diſtrain, and yet he does diſtrain, or if he diſtrain any thing not diſtrainable, as beaſts of the plough, *when other ſufficient diſtreſs may be taken*, the tenant may make reſcous; ſo if the lord diſtrain in the highway or out of his fee. *Co. Lit.* 47, 160. *b.* 161. *a.*

But though there muſt be reaſon for the diſtreſs, and that otherwiſe the reſcue cannot be unlawful; yet it hath been held in a *parco fracto*, that *defendant cannot juſtify breaking the pound and taking out the cattle though the diſtreſs was without cauſe, becauſe they are now in the actual* CUSTODY OF THE LAW. *Salk.* 247.

There is a difference between a man's being arreſted by a warrant on record, and by a general authority in law; for if a *capias* be awarded to the ſheriff to arreſt a man for felony, though he be innocent, he cannot make reſcue; but if the ſheriff will by the general authority committed to him by law arreſt any man for felony, *if he be* *innocent he may reſcue himſelf.* Co. Lit. 161. *See* 5 Co. 68. 6 Co. 54. Cro. Jac. 486.

2. *Of the offence of making a reſcue, and how the offenders are to be proceeded againſt and puniſhed.*

It ſeems agreed, that the reſcuing a perſon impriſoned for felony, *is alſo felony* by the Common law. 1 *Hal. Hiſt. P. C.* 606.

Alſo it is agreed, that a ſtranger who reſcues a perſon committed for, and guilty of high treaſon, *knowing him to be ſo*, is in all caſes guilty of high treaſon. *Staunf. P. C.* 11. 1 *Jon.* 455. Whether he knew that the priſoners were *ſo* committed or not. *Cro. Car.* 583.

To make a reſcue felony, it is neceſſary that the felon *be in cuſtody* or *under arreſt* for felony; therefore if *A.* hinder an arreſt, whereby the felon eſcapes, the townſhip ſhall be amerced for the eſcape, and *A.* ſhall be fined for the hindrance of his taking; but it is not felony in *A.* becauſe *the felon was not taken.* 1 Hal. Hiſt. P. C. 606. 3 Ed. 3. Coron. 333. Staunf. 31.

So to make a reſcue felony, the party reſcued muſt be under cuſtody *for felony* or ſuſpicion of felony; and it is all one whether he be in cuſtody for that account by a private perſon, or by an officer, or warrant of a juſtice; for *where the arreſt of a felon is lawful, the reſcue of him is felony*; but it ſeems neceſſary that he ſhould have knowledge that the perſon is under arreſt *for felony*, if he be in the cuſtody of a *private perſon*. 1 Hal. Hiſt. P. C. 606.

But if he be in cuſtody of an officer, there, *at his peril*, he is to take notice of it; ſo if there be felons in a priſon, and *A* not knowing it, breaks the priſon, and lets out the priſoners, though he knew *not* that there were felons there, it is felony. 1 *Hal. Hiſt. P. C.* 606. *Cro. Car.* 383.

A perſon committed for high treaſon, who breaks the priſon, and eſcapes, is guilty of felony, unleſs he lets others alſo eſcape whom he knows to be committed for high treaſon; in which caſe he is guilty of high treaſon, not in reſpect of his own breaking of priſon, but of the reſcous of the others. 2 *Hawk. P. C.* 140.

If the perſon reſcued were indicted or attainted of ſeveral felonies, yet the eſcape or reſcue of ſuch a perſon makes but *one* felony. 1 *Hal. Hiſt. P. C.* 599.

Wherever the impriſonment is ſo far groundleſs or irregular, or the breaking of a priſon is occaſioned by ſuch a neceſſity, &c. that the party himſelf, breaking priſon, is either by the Common law, or by the ſtatute *De frangentibus priſonam,* ſaved from the penalty of a capital offender, a ſtranger who reſcues him from ſuch impriſonment is in like manner alſo excuſed; & *ſic e converſo.* 2 Hawk. P. C. 139.

The return of a reſcue of a felon, by the ſheriff againſt *A.* is not ſufficient to put him to anſwer for it *as a felony*, without indictment or preſentment, by the ſtatute 25 *Ed.* 3. *c.* 4. 1 *Hal. Hiſt. P. C.* 606.

As in caſe of an eſcape, ſo in caſe of a reſcue, if the party reſcued be impriſoned for felony, and reſcued before indictment, the indictment *muſt ſurmiſe a felony* done, *as well as an impriſonment for felony* or ſuſpicion thereof; but if the party be indicted, and taken by a *capias*, and reſcued, then there needs only a recital that he was indicted *prout*, and taken and reſcued. 1 *Hal. P. C.* 607.

But though the reſcuer may be indicted *before the principal is convicted* and attainted, yet he ſhall not be arraigned or tried *before* the principal be attainted; but if the perſon reſcued were impriſoned for high treaſon, *the reſcuer may immediately be arraigned*, for in high treaſon all are principals; alſo it ſeems that he may be immediately proceeded againſt for a miſpriſion only, if the King pleaſe. 2 *Hawk. P. C.* 140.

The reſcuer of a priſoner for felony, though not within clergy, yet *ſhall have his clergy.* 1 Hal. Hiſt. P. C. 607.

By the 6 *Geo.* 1. *cap.* 23. *ſect.* 5. if any perſon reſcue felons ordered for tranſportation, or aſſiſt them in making their eſcape, he ſhall be guilty of felony, and ſuffer death *without benefit of clergy.* See alſo 9 *Geo.* 1. *c.* 28.

As the offence of reſcuing perſons in caſes of treaſon and felony is uſually puniſhed by indictment, ſo the offence of reſcuing a perſon arreſted on meſne proceſs, or in execution after judgment, ſubjects the offender to a writ of reſcous or a general action of treſpaſs *vi & armis*, or an action on the caſe, in all which *damages are recoverable.* Alſo it is the frequent practice of the courts to grant an attachment againſt ſuch wrong-doers, *it being the higheſt violence and contempt that can be offered to the proceſs of the court.* Co. Lit. 161. Co. Ent. 614. Raſt. Ent. 577.

He who reſcues a priſoner from any of the courts of *Weſtminſter-Hall* without ſtriking a blow, ſhall forfeit his goods and profits of his lands, and ſuffer impriſonment during life; but not loſe his hand, becauſe he did *not* ſtrike. 22 *Ed.* 3. *c.* 13. 3 *Inſt.* 141.

It is clearly agreed, that for a reſcous on meſne proceſs the party injured may have either an action of treſpaſs *vi & armis*, or an action on the caſe, in which he ſhall recover *his debt and damages* againſt the wrong-doer; and the rather, becauſe *on meſne proceſs he can have no remedy againſt the ſheriff.* Cro. Jac. 486. Hob. 180.

Alſo it hath been adjudged, that for reſcous of a perſon in execution on a *ca. ſa.* or *ca. utla.* an action will lie againſt the reſcuer, though the party injured hath his remedy againſt the ſheriff, and the ſheriff hath his remedy againſt the wrong-doer; for *perhaps the ſheriff may be dead or inſolvent*; but herein it hath been held, that if he bring his action againſt the party who made the reſcue, *he may plead it in bar to an action brought by the ſheriff*; ſo if againſt the ſheriff or his bailiff, they may plead that he had ſatisfaction from the party, ſo that if he recovers againſt one, the other is diſcharged. *Hetl.* 95. *Cro. Car.* 109. *Hut.* 98. *Hob.* 180.

By the ſtatute 2 *W. & M. ſtat.* 1. *cap.* 5. *ſect.* 5. on pound-breach or reſcous of goods diſtrained for rent, the perſon grieved ſhall in a ſpecial action on the caſe *recover treble damages and coſts* againſt the offenders, or againſt the owners of the goods if they come to *his* uſe.

In an action on the caſe for a reſcous, on this ſtatute, it hath been held, that plaintiff ſhall recover treble coſts *as well* as treble damages, for the damages are not given by the ſtatue but increaſed; an action on the caſe lying for a reſcous at Common law. 1 *Salk.* 205.

An attachment will be granted not only againſt a common perſon, but even againſt a peer of the realm, for reſcuing a perſon arreſted by due courſe of law; ſo that if the ſheriff in any caſe return to the court, that a perſon arreſted or goods ſeiſed, or poſſeſſion of lands delivered by him, by virtue of the King's writ, were reſcued or violently taken from him, &c. they will award an attachment againſt the reſcuers. *Dyer* 212. 2 *Jon.* 39. *Salk.* 322.

But it ſeems to be the practice, not to grant an attachment in any caſe for a reſcous, *unleſs the officer will return it*; for it hath been found by experience, that officers will take on them to ſwear a reſcous where they will not venture to return one. 2 *Hawk. P. C.* 153.

A diſtinction was taken where an attachment is prayed for a reſcous *in the firſt inſtance*, and where a rule to ſhew cauſe is only aſked; in *this* affidavits of the fact are ſufficient; in the other caſe the ſheriff's return is requiſite. *Trin.* 5 *Geo.* 2. in *B. R. Young* v. *Payne.*

Where, on the return of a reſcue, an attachment is granted, and the party examined on interrogatories, upon anſwering them *he ſhall be diſcharged*; but if the reſcous is returned to the philazer, and proceſs of outlawry iſſues, and the reſcuer is brought into court, he ſhall *not* be diſcharged on affidavits. *Salk.* 586.

3. *Of the form of the proceedings on a reſcue.*

An indictment of a reſcous ought to ſet forth the ſpecial circumſtances of the fact with ſuch certainty, as to enable defendant to make a proper defence. *Dyer* 164. No defect can be aided by the verdict. 1 *Rol. Abr.* 781.

Therefore, if an indictment lay the offence on an uncertain or impoſſible day, as where it lays it on a future day, or lays one and the ſame offence at different days, or lays it on ſuch a day which makes the indictment repugnant to itſelf, it is void. *Moor* 555. *Raſt. Ent.* 263.

It has been adjudged, *on exceptions taken to an indictment* for a reſcous, that it was *not neceſſary to alledge the place where the reſcue was made*, and that it ſhould be intended that where the arreſt was, there alſo was the reſcue without the word *ibidem*. Cro. Jac. 345. 2 Bulſt. 208.

An exception taken to an indictment of reſcous, that it wanted the words *vi & armis* or *manu forti*, but overruled, it being held by the court, that the word *reſcuſſit* implies it to be done *by force*. Cro. Jac. 345. The ſame exception taken in *Cro. Jac.* 473. over-ruled, and there held, that though it were error at Common law, yet it is made good by the ſtatute 37 *Hen.* 8. *c.* 8. Vide *Cro. Jac.* 472. *Hart*'s caſe.

It is ſaid, that an indictment of reſcous is not within the ſtatute of additions, and that naming the perſon indicted of ſuch a pariſh, without giving him any title, *is ſufficient*. 2 Inſt. 665. 2 Show. 84.

Note; On an indictment of reſcous, if it were on an arreſt upon meſne proceſs, and the party has appeared, the court will be eaſily induced to quaſh it; ſo if it be on proceſs out of an inferior court, though the party has not appeared, for *no aid is given to inferior juriſdictions*.

In an action for a reſcue plaintiff *muſt* alledge in his declaration *all the material circumſtances*; as that ſuch a writ iſſued, that he was arreſted, and in cuſtody, and that he was reſcued, *&c.* *Godb.* 125. 1 *Lutw.* 130.

In an action on the caſe for a reſcous on meſne proceſs, the evidence was, the bailiff ſtood at the ſtreet door, and ſent his follower up three pair of ſtairs in diſguiſe with the warrant, who laid hands on the party, and told him that *he arreſted him*; but he with the help of ſome women got from the follower, and ran down ſtairs, and defendant hearing a noiſe ran up, and put the party into a room, locked the door, and would not ſuffer the bailiff to enter. *Holt* doubted whether this was a lawful arreſt, being by the bailiff's ſervant, and *not in his preſence*; but ſaid, that plaintiff muſt prove his cauſe of action againſt the party; that *he muſt prove the writ and warrant by producing ſworn copies of them*; *he muſt prove the manner of the arreſt*, that it may appear to the court to be legal, and in point of damage *he muſt prove the loſs of his debt, viz.* that the party became inſolvent, and could not be retaken. 6 *Mod.* 211.

Form of the writ of *Reſcous.*

GEORGE *the Third*, &c. *To the ſheriff of* M. *greeting: If* A. B. *ſhall make you ſecure*, &c. *then put* C. D. &c. *to ſhew wherefore, whereas the ſaid* A. B. *at*, &c. *certain beaſts of the ſaid* C. D. *had taken, and diſtrained for rent*, &c. *And thoſe, there, according to the law and cuſtom of our kingdom of* England, *would have impounded, the ſaid* C. D. *the beaſts aforeſaid with force and arms* reſcued, *and other enormities there did, to the contempt of us, and grievous damage of the ſaid* A. B. *and againſt our peace*, &c.

Or *put* E. F. *and* G. H. *to anſwer*, &c. *wherefore, whereas the ſaid* A. B. *according to the duty of his office*, C. D. *whom by our ſheriff of the county aforeſaid by writ to him directed, we commanded to be taken, at* L. *by virtue of our ſaid writ had taken, and him to our priſon of*, &c. *there to abide, would have conveyed, the ſaid* E. F. *and* G. H. *him the ſaid* C. D. *at* L. *aforeſaid, with force of arms* reſcued, *and other enormities*, &c.

4. *In what caſes the ſheriff may return a reſcue; of the form of the return, and for what defects it may be quaſhed.*

The diſtinction herein laid down in variety of books and caſes is, that on a reſcue on meſne proceſs the ſheriff may return the reſcue, and is ſubject to no action; for that on a meſne proceſs he was not obliged to raiſe his *poſſe comitatus*, nor would it be convenient ſo to do on the execution of every meſne proceſs. *Cro. Eliz.* 868. 1 *March* 1. 1 *Jon.* 201. 3 *Bulſt.* 198. 1 *Rol. Rep.* 389. *Noy* 40. *Moor* 852. 2 *Lev.* 144. 6 *Mod.* 141. *Lutw.* 130, 131. But the ſheriff may, *if he pleaſes*, take his *poſſe* to arreſt one on meſne proceſs. *Noy* 40.

But if the ſheriff takes a man on an execution, as on a *ca. ſa.* and he is reſcued from him before he can bring him to priſon, though he returns the reſcue, yet *this ſhall not excuſe him*; for when judgment is paſſed, and he and his bail do not ſurrender him, nor pay the condemnation money, and then a *capias* iſſues, to which there can be no bail, there it is preſumed that he will not be forthcoming, becauſe neither he nor his bail have ſatisfied the judgment; therefore the ſheriff *ought* to take the *poſſe comitatus*; conſeqnently it cannot be a good return, that he took the body, but that it was reſcued; and *the party may have an action of eſcape againſt the ſheriff on this return*; and this is provided by the ſtat. *Weſtm.* 2. *c.* 39. which was made to prevent ſheriffs from returning reſcues to the King's writs. *Cro. Jac.* 419. 1 *Rol. Rep.* 388, 440. 3 *Bulſt.* 198. *Moor* 852. S. C. *Probey* v. *Lumley*—Or on a *capias utlagatum* after judgment. *Cro. Jac.* 419. 1 *Rol. Rep.* 389.

In an action on the caſe againſt the ſheriff for an eſcape on meſne proceſs, defendant *pleaded a reſcue*, which on demurrer was held a good plea, though he did not ſhew that the reſcue was returned. 3 *Lev.* 46.

But if one taken on meſne proceſs be once in priſon, the ſheriff cannot return a reſcous, for the law preſumes that he hath a power to keep him there. 1 *Rol. Rep.* 441. 3 *Bulſt.* 198. *Cro. Jac.* 419. But if the priſon is broken by the King's enemies, this *ſhall excuſe* the ſheriff. 4 *Co.* 84. 1 *Vent.* 239. But not if broken by rebels and traitors, for the ſheriff or gaoler hath his remedy over againſt them. 4 *Co.* 84. *Cro. Eliz.* 815. 2 *Mod.* 28. 1 *Vent.* 239.

If a felon be attainted, and in carrying him to execution is reſcued from the ſheriff, the ſheriff is puniſhable notwithſtanding the reſcue; for there is judgment given, and the ſheriff ſhould have taken ſufficient power with him; therefore in that caſe the townſhip is not finable. 1 *Hal. Hiſt. P. C.* 602. and there ſaid that *a reſcue is no excuſe in felony.*

It hath been adjudged, that the return of a reſcue by a ſheriff *muſt ſhew the year and day* on which it was made, ſuch return being in lieu of an indictment. 3 *H.* 7. 11. *pl.* 3. *Bro. Return de Brief* 97. *Fitz. Coro.* 45. *Attach.* 1.

But it hath been held, that the ſheriff's return of a reſcue on a *latitat*, without mentioning the day of the caption, was ſufficient; all the clerks in court affirming the precedents to have been ſo. *Palm.* 532.

The ſheriff's return of a reſcue, without mentioning the place where it was made, was held bad, and the party diſcharged. *Moor* 422. *pl.* 585.

Where the ſheriff returned *virtute brevis mihi direct' feci warrant'* A. & B. *ballivis meis qui virtute inde ceperunt* the defendant, & *in cuſtodia mea habuerunt quouſque* ſuch and ſuch *reſcuſſerunt* him *ex cuſtodia ballivorum meorum*; and this return was on motion quaſhed; for *per Holt* when bailiffs have arreſted the party, he is in fact in *their* cuſtody, but in law *he is in cuſtody of the ſheriff*, an anſwer either way is good, *viz.* that he was reſcued out of the bailiff's cuſtody, or that he was reſcued out of the ſheriff's cuſtody; but to ſay that he was in the cuſtody of theſh eriff, and yet reſcued out of the cuſtody of the bailiff is repugnant. 2 *Salk.* 586.

It ſeems that anciently, when the ſheriff returned a reſcue, *the party was admitted to plead to it as to an indictment*, but the courſe of late has been *not to admit any plea to it*, but drive the party to his action againſt the ſheriff in caſe the return were falſe; hence it is now ſettled that *the return of a reſcue is not traverſable*, but yet it hath been held that ſubmiſſion to the fine doth not conclude the party grieved from bringing his action for the falſe return, if it were ſo. *Cro. Eliz.* 781. *Dyer* 212. 2 *Jon.* 29. 1 *Vent.* 224. 2 *Vent.* 175. *Comb.* 295. See 19 *Vin. Abr.* tit. *Reſcous.*

See farther as to exceptions to returns of reſcue. *Yelv.* 51. 2 *Rol. Rep.* 255. *Stil.* 155. 1 *Sid.* 332. 1 *Lev.* 214. *Lit. Rep.* 2. 1 *Vent.* 2. 2 *Keb.* 436. 2 *Jon.* 197. 6 *Mod.* 220. 5 *Mod.* 218. 2 *Rol. Rep.* 263. 1 *Lev.* 214.

Cro. Jac. 242. *Raym.* 161. 5 *Mod.* 217. See *Black. Com.* 3 *V.* 12, 146, 170. 4 *V.* 125, 131.

Reſcuſſor, The party who commits ſuch a *reſcous*. Cro. Jac. 419.

Reſeiſer, *(Reſeiſire)* Is retaking lands into the hands of the King, where a general livery or *ouſter le main* was formerly miſuſed, contrary to the order of law. *Staundf. Prærog.* 26.

Reſervation, *(Reſervatio)* A keeping aſide, or providing; as when a man lets or parts with his land, but *reſerves* or provides for himſelf a rent *out of it*, for his own livelihood; ſometimes it has the force of a *ſaving* or *exception*. Co. Lit. 143.

Exception is always of part of the thing granted, and of a thing in being: And a *reſervation* is of a thing not in being, but is newly created out of the lands or tenements demiſed; though *exception* and *reſervation* have been uſed promiſcuouſly. *Co. Lit.* 47. The proper place for a *reſervation*, is next after the limitation of the eſtate; and *reſervation* of rent may be every two, three or more years; as well as yearly, half-yearly, quarterly, *&c.* *Co. Lit.* 47. 8 *Rep.* 71.

It muſt be out of an houſe, or lands; and be made either by the words *yeilding and praying*, *&c.* or the word *covenant*, which is of both leſſor and leſſee, therefore makes a *reſervation*. Rol. Rep. 80.

The *reſervation* of rent is good, altho' it is not *reſerved* by apt and uſual words, if the words are equivalent. *Plowd.* 120. 3 *Nelſ. Abr.* 150. But *reſervation* of a rent *ſecundum ratam*, is a void *reſervation*. 2 Vent. 272. *See* Reddendum, Rent, *&c.*

Reſiance, *(Reſiantia)* Signifies a man's abode or continuance; whence comes the participle *reſiant*, that is *continually dwelling or abiding in any place*; and is all one with *reſidence*. Old Nat. Br. 85. Kitch. 33.

Reſiant-Rolls, *i. e.* Rolls containing the *reſiants* names of a tithing, *&c.* which are to be called over by the ſteward on holding courts leet. *Comp. Court Keep.*

Reſidence, *(Reſidentia)* Is peculiarly uſed both in the *Canon* and *Common* law, for the continuance of a parſon or vicar on his benefice: And perſonal *reſidence* is required of eccleſiaſtical perſons on their cures, on pain of forfeiting 10*l.* for every month. *Stat.* 21 *H.* 8. *c.* 13.

One of the great duties incumbent on clergymen, is that they be *reſident* on their livings: And on the firſt erecting parochial churches, every clergyman was obliged to *reſide* on his benefice, for reading of prayers, preaching, *&c.* by the laws and canons of the church; and by ſtatute, the parſon ought to abide on his rectory *in the parſonage-houſe*; for the ſtatute is intended not only for ſerving the cure, and for hoſpitality, but *to maintain the houſe in repair, and prevent dilapidations:* though lawful impriſonment, ſickneſs, *&c.* being *things of neceſſity, are good cauſe of excuſe for abſence*, and excepted out of the act *by conſtruction of law:* And it is the ſame where a perſon is employed in ſome important buſineſs for the church or King; or is entertained in the King's ſervice. 6 *Rep.* 21. *Cro. Eliz.* 580.

In an information on the ſtatute, it was adjudged, that the parſon is to live in the parſonage-houſe, and *not in any other, though in the ſame pariſh*. But as by ſtatute 13 *Eliz. cap.* 20. Leaſes made by parſons are declared void, where the parſon is abſent above eighty days in any one year, *&c.* On this act defendant pleaded to an agreement for tithes, that the parſon was abſent from his parſonage by the ſpace of eighty days in one year; and the jury found that he dwelt in another town adjoining, and came conſtantly to his pariſh church four days in every week, and there read divine ſervice; and it was held, that this was not ſuch an abſence as is intended by the ſtatute to avoid any agreement or leaſe made by the parſon. 1 *Bulſt.* 112.

A perſon allowed to have two benefices, may demiſe or leaſe one of them (on which he is non-reſident) to his curate only; but if the curate leaſes over, ſuch leaſe ſhall laſt no longer than during the curate's reſidence, without abſence above forty days in any one year. 1 *Leon.* 100. See *Cro. Eliz.* 123. Some words in the act 13 *Eliz. c.* 20. as to leaſes by parſons not *reſident*, repealed, *vide* 14 *Eliz. cap.* 11.

An incumbent preſented by the univerſity to a recuſant's living, ſhall loſe it by ſixty days abſence in a year. 1 *W.* & *M. c.* 26. *ſ.* 6. See 19 *Vin. Abr.* tit. *Reſidence*, and ſee *Non-reſidence*. And *Black. Com.* 1 *V.* 390, 392.

Reſiduary Legatee, Is he to whom the *reſiduum* of the eſtate is left by will. And ſuch legatee being made executor with others, ſhall retain againſt the reſt: where there are two *reſiduary legatees*, and one dies inteſtate, his adminiſtrator ſhall have a moiety of the ſurplus of the perſonal eſtate of the teſtator, contrary to joint executors, who are not intitled to moieties; becauſe, by making them *reſiduary legatees*, the teſtator intended an equal ſhare to both: And if a *reſiduary legatee* dies before the will is proved, his executor ſhall have adminiſtration. *&c.* 6 *H.* 7. 1 *Chan. Rep.* 238. *Show.* 26. See *Executor*, and *Black. Com.* 2 *V.* 514.

Reſignation, *(Reſignatio)* Is the yeilding up a benefice into the hands of the ordinary, called by the *Canoniſts Renunciation*; and though it is all one in nature with the word *ſurrender*, yet *it is by uſe reſtrained to yeilding up a ſpiritual living* to the biſhop, as ſurrender is the giving up of temporal land into the hands of the lord. And a *reſignation* may now be made into the hands of the King as well as the dioceſan, becauſe he has *ſupremam authoritatem eccleſiaſticam*, as the *Pope* had in ancient times; tho' it has been adjudged that a *reſignation* ought to be made only to the biſhop of the dioceſe, and not to the King; becauſe the King is not bound to give notice of the *reſignation* to the patron, as the ordinary is; nor can the King make a collation himſelf, without preſenting to the biſhop. *Plowd.* 498. *Rol. Abr.* 358.

Every parſon who *reſigns* a benefice, muſt make the *reſignation* to his ſuperior; as an incumbent to the biſhop, a biſhop to the archbiſhop, and an archbiſhop to the King, *as ſupreme ordinary*; and a donative is to be *reſigned* to the patron, not the ordinary; for in that caſe the clerk received his living *immediately* from the patron. 1 *Rep.* 137.

A common benefice is to be *reſigned* to the ordinary, by whoſe admiſſion and inſtitution the clerk firſt came into the church: And the *reſignation* muſt be made to that ordinary who hath power of inſtitution; in whoſe diſcretion it is either to accept or refuſe the *reſignation*; as the law hath declared him the proper perſon to whom it ought to be made, it hath likewiſe impowered him to judge thereof. *Cro. Jac.* 64, 198.

The inſtrument of *reſignation* is to be directed to the biſhop, and when the biſhop hath accepted of it, the *reſignation* is good, to make void the church, and not before; unleſs it be where there is no cure, when it is good without the acceptance of the biſhop.

A *reſignation* may be made before a public notary, but without the biſhop's acceptation it doth not make the church void: the notary can only atteſt the *reſignation*, in order to its being preſented, *&c.* *Ibid.*

Before acceptance of the *reſignation* by the biſhop, no Preſentation can be had to the church; but, as ſoon as the acceptance is made, the patron may preſent to the benefice *reſigned:* And when the clerk is inſtituted, the church is full againſt all men in caſe of a common perſon; though, before induction, ſuch incumbent may make the church void again by *reſignation*. Count. Parſ. Compan. 106.

A parſonage is not to be granted over by the incumbent, but it may be *reſigned*; and *reſignations* are to be abſolute, and not conditional; for it is againſt the nature of a *reſignation* to be conditional, being *a judicial act*. 3 Nelſ. Abr. 157.

If any incumbent corruptly *reſign* his benefice, or take any reward for *reſigning* the ſame, he ſhall forfeit double the value of the ſum, *&c.* given, and the party giving it, be incapable to hold the living. *Stat.* 31 *Eliz. cap.* 6. But a man may bind himſelf by bond to *reſign*, and it is not unlawful, but may be on good and valuable reaſons; as where he is obliged to *reſign* if he take a ſecond benefice, or if he be *non-reſident* by the ſpace of ſo many months, or to *reſign* on requeſt, if the patron ſhall preſent his ſon or kinſman when he ſhall be of age capable to take the living, *&c.* *Cro. Jac.* 249, 274.

Tho' bonds for *reſignation* of benefices have no encouragement in *Chancery*; for on ſuch bonds generally the incumbent is relieved, and not obliged to *reſign*. 1 *Rol. Abr.* 443.

On debt upon a bond to *reſign* a benefice, the court would not let defendant's counſel argue the validity of the bond, theſe bonds having been ſo often eſtabliſhed even in a court of equity. 1 *Strange* 227. But ſuch a bond will not be allowed, where money has been paid on it. *Ibid.* 534.

A parſon's refuſal to pay his tenths, it is ſaid is a *reſignation*, for which he may be deprived. *Owen* 5. And where *reſignation* is actually made *de eccleſia*, it extends to all the lands and poſſeſſions of the church. *Cro. Jac.* 63.

The uſual words of a *reſignation* are *Renuncio*, *Cedo*, *Dimitto*, and *Reſigno*; and the word *Reſigno* is not a proper term alone. 2 *Rol.* 350. See *Black. Com.* 1 *V.* 382, 393.

Form of a *Reſignation* of a *Benefice*.

IN *Dei Nomine Amen. Ego* A. B. *rector & incumbens eccleſiæ parochialis de, &c. in com. & diæceſ.* Oxon. *Volens, & ex certis cauſis & conſiderationibus veris, juſtis, & legitimis me in hac parte ſpecialiter moventibus, ab onere, cura & regimine dictæ meæ rectoriæ, de, &c. & pertinen. ejuſdem penitus exonerari, eandem rectoriam meam & eccleſiam parochialem præd. una cum ſuis juribus, membris & pertinentiis univerſis, in manus Reverendi Patris* Johannis *permiſſione divina Oxoniæ epiſcopi loci iſtius ordinarii & diæceſani, vel ejuſdem vicarii in ſpiritualibus generalis, ſeu alterius cujuſcunque hanc meam reſignationem admittend. poteſtatem habentis vel habituri, non vel in metu coactus, nec dolo malo ad idem inductus, nec aliqua ſiniſtra machinatione motus, ſed ex certa ſcientia, animo deliberato & ſpontanea voluntate meis pure, ſimpliciter &* ABSOLUTE RENUNCIO *&* RESIGNO, *ac re & verbo vacuam* DIMITTO, *jure quoque titulo & poſſeſſione meis in eadem rectoria ſive parochiali eccleſia, una cum ſuis juribus membris & pertinentiis univerſis præhabitis & mihi hactenus conceſſis omnibus & ſingulis* RENUNCIO *eoſdemque* CEDO *& ab iiſdem recedo totaliter & expreſſe in his ſcriptis. In cujus rei teſtimonium nomen & ſigillum meum hi- præſentibus appoſui die & anno, &c.*

As to reſignation of temporal offices,—declaring at an aſſembly of the corporation, that he would hold the place of alderman no longer is a good reſignation, eſpecially ſince the corporation accepted it, and choſe another in his place; but till ſuch election he had power to waive his reſignation, but not afterwards. 2 *Salk.* 433.

A burgeſs of a corporation came to the mayor, and deſired the mayor to remove and diſmiſs him from the place of burgeſs. On return of this, a *mandamus* was denied to reſtore him; for having reſigned voluntarily, he is eſtopped to ſay, that the mayor had no power to remove him; and the caſe being ſent to *Hale* Ch. B. he agreed, and ſaid that a corporation, as ſuch, have power to take ſuch reſignation. *Sid.* 14.

But giving conſent to be removed, does not amount to a reſignation. *Per Holt* and *Powell*; a man may reſign an office by parol. *Holt's Rep.* 450.

Reſignation by a common-council-man need not be by deed. *Lutw.* 405.

Where an alderman is a juſtice of peace for life, by force of the patent of the King, who created the corporation, he cannot reſign his office of juſtice of peace; becauſe he cannot reſign it but to a ſuperior; *per Coke* Ch. J. *Quod fuit conceſſum*; *per Haughton. Rol. Rep.* 135. *pl.* 19.

Reſignation of Offices. If a man can have no title to the profits of an office, without the admiſſion or confirmation of a ſuperior, there the *reſignation* of that office muſt be to him. 3 *Nelſ. Abr.* 158.

Reſort, (*Reſortum*) Signifies the authority or juriſdiction of a court: *Salvo tamen tam* reſorto *quam aliis jure noſtro et jure etiam alieno.* Spelm.

Dernier reſort, the laſt refuge.

Reſpectu computi Vicecomitis habendo, Is a writ for reſpiting a ſheriff's account, directed to the treaſurer and barons of the *Exchequer*. Reg. Orig. 139.

Reſpite, (*Reſpectus*) A delay, forbearance, or continuation of time. *Glanvil, lib.* 12. *c.* 9.

Reſpite of Homage, (*Reſpectus homagii*) Is the forbearance or delay of *homage*, which ought to be performed by tenants holding by homage, *&c.* tho' it had the moſt frequent uſe for ſuch as held in *knight ſervice* and *in capite*, who formerly paid into the *Exchequer* every fifth term ſome ſmall ſum of money to be *reſpited* their *homage*: But this charge being incident to, and ariſing from *knight ſervice*, it is taken away by the ſtat. 12 *Car.* 2.

Reſpite of Jury, ſee *Jury*, and *Black. Com.* 3 *V.* 354. x.

Reſpondeas, or **Reſpondeat Ouſter,** To anſwer over in an action to the merits of the cauſe, *&c.* If a demurrer is joined on a plea to the juriſdiction, perſon, or writ, *&c.* and it be adjudged againſt defendant, it is a *reſpondeat ouſter*. Jenk. Cent. 306. See *Judgment*. And *Black. Com.* 3 *V.* 303, 396. 4 *V.* 332.

Reſpondeat Superior. If ſheriffs of *London* are inſufficient, the *mayor and commonalty* muſt *anſwer* for them: And *pur inſufficience del bailiff d'un liberty*, reſpondeat *dominus libertates*. 4 Inſt. 114. Stat. 44 Edw. 3. cap. 13.

If a coroner of a county is inſufficient, the county as his *ſuperior* ſhall anſwer for him. *Wood's Inſt* 83.

A goaler conſtitutes another under him, and *he* permits an eſcape, if he be not ſufficient, *reſpondeat ſuperior*; and *ſuperior officers* muſt *anſwer* for their deputies in civil actions, if they are inſufficient to anſwer damages. *Dr. & Stud. c.* 24.

Reſpondentia, ſee *Bottomry*. *Black. Com.* 2 *V.* 459.

Reſponſalis, (*Qui reſponſum defert*) Is he who appears and anſwers for another in court at a day aſſigned. *Glan. lib.* 12. *c.* 1. And *Fleta* makes a difference between *reſponſalem*, *atturnatum*, and *eſſoniatorem*; and ſays that *reſponſalis* was for the tenant, not only to excuſe his abſence, but to ſignify what trial he meant to undergo, the combat or the country. *Fleta, lib.* 6. *c.* 21.

This word is made uſe of in the *Canon law*, & ſignificat procuratorem vel eum qui abſentem excuſat.

Reſtitution, (*Reſtitutio*) Is *reſtoring* any thing unjuſtly taken from another: It ſignifies alſo the ſetting him in poſſeſſion of lands or tenements, who had been unlawfully diſſeiſed of them. *Cromp. Juſt.* 144. And *reſtitution* is a *writ* which lies where judgment is reverſed, to *reſtore* and make good to defendant what he hath loſt: The court which reverſes the judgment, gives, on reverſal, a judgment for *reſtitution*; whereon a *ſcire facias quare reſtitutionem habere non debet*, reciting the reverſal of the judgment, and the writ of execution, *&c.* muſt iſſue forth. 2 *Lill. Abr.* 472. But the law doth often *reſtore* the poſſeſſion to one without a writ of *reſtitution, i. e.* by writ of *habere facias poſſeſſionem*, *&c.* in the common proceeding of juſtice on a trial at law. *Ibid.* 473.

There is a *reſtitution* of the poſſeſſions of lands in caſes of *forcible entry*; a *reſtitution* of lands to an heir, on his anceſtor's being attainted of *treaſon* or *felony*; and *reſtitution* of *ſtolen goods*, *&c.*

A writ of *reſtitution* is not properly to be granted but where the party cannot be *reſtored* by the ordinary courſe of law; and the nature of it is, to *reſtore* the party to the poſſeſſion of a freehold, or other matter of profit, from which he is illegally removed; and it extends to *reſtitution* on *mandamus* to any publick office. 2 *Lill.* 472, 473.

Where a judgment for land is reverſed in *B. R.* by writ of error, the court may grant a writ of *reſtitution* to the ſheriff to put the party in poſſeſſion of the lands recovered from him by the erroneous judgment; tho' there ought to be no *reſtitution* granted of the poſſeſſion of lands, where it cannot be grounded on ſome matter of record appearing to the court. *Hill.* 22 *Car.* And perſons who are to *reſtore*, are to be parties to the record; or they muſt be made ſo by ſpecial *ſcire facias*. Cro. Car. 328. 2 Salk. 587.

If a leaſe is taken in execution on a *Fi. fa.* and ſold by the ſheriff, and afterwards the judgment is reverſed; the *reſtitution* muſt be *of the money* for which it was ſold, not the term. *Cro. Jac.* 246. *Moor* 788. But a ſheriff extended goods and lands on an *elegit*, and returned that he took a leaſe for years, which he ſold and delivered to plaintiff as *Bona & Catalla* of defendant for the debt, and afterwards the judgment was reverſed for error; and it was adjudged, that the party ſhall be reſtored *to the leaſe*, becauſe the *eligit* gave the ſheriff no authority to ſell the term, therefore a writ of *reſtitution* was awarded. *Kel.* 179. And there has been in this caſe a diſtinction made between compulſory and voluntary acts done in execution of juſtice; where the ſheriff is commanded by the writ *to ſell the goods*, and where he is not, when the goods are to be *reſtored*, *&c.* 8 Rep. 96.

If plaintiff hath execution, and the money is levied and paid, and afterwards the judgment is reverſed, there the party ſhall have *reſtitution* without a *ſcire facias*; for it appears on the record what the party had loſt and paid; but if the money was only levied, and not paid, then there muſt be a *ſcire facias* ſuggeſting the ſum levied, *&c.* And where the judgment is ſet aſide after execution for an irregularity, there needs no *ſcire facias* for *reſtitution*; but an attachment of contempt, if on the rule for *reſtitution* the money is not *reſtored*. 2 Salk. 588.

In a *ſcire facias quare reſtitution. &c.* defendant pleaded payment of the money mentioned in the *ſcire facias*, and it was held to be *no* plea. *Cro. Car* 328. But now payment is a good plea to a *ſcire facias* by the *ſtat.* 4 & 5 *Ann. c.* 16. 2 *Lill. Abr.* 479.

Upon a *Vi lacica removenda* a parſon was put out of poſſeſſion; and on a ſuggeſtion thereof, and affidavit made, *reſtitution* was ordered. *Cro. Eliz.* 465.

The juſtices of peace, before whom an indictment for *forcible entry* is found, muſt give the party *reſtitution* of his lands, *&c.* who was put out of poſſeſſion by force. *Stat.* 8 *H.* 6. *c.* 9. But where one is indicted for a forcible entry, and the party indicted traverſes the indictment, there cannot be *reſtitution* before trial and a verdict, and judgment given for the party, tho' the indictment be erroneous; it being too late to move to quaſh the indictment after the traverſe, *which* puts the matter on trial. 2 *Lill.* 473, 474.

A perſon being *attainted of treaſon*, *&c.* he or his heirs may be *reſtored* to his lands, *&c.* by the King's charter of pardon; and the heir by petition of right may be *reſtored* if the anceſtor is executed: But *reſtitution* of blood muſt be by act of parliament; and *reſtitutions* by parliament are ſome of blood only, ſome of blood, honour, inheritance, *&c.* 3 *Inſt.* 240. *Co. Lit.* 8, 391. The King may reſtore the party or his heirs to his lands, and the blood, as to all iſſue begotten after the attainder. *Ibid.*

There ſhall be a writ of *reſtitution* granted to the owner of *ſtolen goods*, by the court where a felon is tried on indictment, after attainder of the felon, as in caſe of appeal of robbery. 21 *H.* 8. *c.* 11. And it may be alſo of money when the felon is convicted of the felony by reaſon of the evidence given by the party robbed, or by his procurement, *&c.* And by this ſtatute executors and adminiſtrators ſhall have *reſtitution* of goods, and it is ſaid *notwithſtanding ſale in market-overt.* 2 Inſt. 714. 3 Inſt. 242. 5 Rep. 109.

If goods ſtolen are not waived by flight, or ſeized for the King, the party robbed may take his goods again without proſecuting the felon; but after they are ſeized for the King, they may not be *reſtored* without appeal or indictment. *Kel.* 48. 2 *Hawk. P. C.* 168.

A ſervant took gold from his maſter, and changed it into ſilver; the maſter ſhall have *reſtitution* of the ſilver by this ſtatute. *Cro. Eliz.* 661. *pl.* 9.

A. ſtole cattle and ſold them at *Coventry*, in an open market, and immediately he was apprehended by the ſheriff of *Coventry*, and they ſeiſed the money; and afterwards the thief was arraigned and hanged at the ſuit of the owner of the cattle. And by the court, the party ſhall have *reſtitution* of the money, notwithſtanding the words of 21 *H.* 8. *c.* 11. the goods ſtolen, *&c.* And *Crooke* ſaid, that it is uſual at *Newgate.* Noy 128.

On this ſtatute of *reſtitution*, ſee 2 *Hawk. P. C.* 171. *c.* 23. *ſect.* 56.

It is ſaid the party who loſes goods and proſecutes the felon to conviction, ſhall have *reſtitution* of goods ſtolen, notwithſtanding ſale in market-overt, unleſs a new property be fairly acquired therein.

Kelyng'e Rep. 47, 48. S. P. *Dalt. Juſt. marg. c.* 164. See *Appeal of Robbery*, and 19 *Vin. Abr.* tit. *Reſtitution.*

Reſtitution on an Indictment for a forcible entry. An indictment lies for one jointenant againſt another for a forcible entry, and the court of King's Bench hath power to award *reſtitution*, upon a removal of the indictment by *certiorari.* And *per Hardwicke* Ch. J. there muſt be a *writ* of *reſtitution*, unleſs the defendant pleads in a reaſonable time. The *King* v. *Marrow.* *Rep. Temp. Hardw. Per Annaly*, 174. Vide *Latch.* 172. 4 *Inſt.* 176. *Salk.* tit. *Entry Forcible. Dalton's Juſtice, c.* 131. *p.* 314. and *c.* 134. *p.* 319. Alſo *vide* the caſe above cited from *Annaly.* And ſee *Forcible Entry.*

Re-reſtitution, Is when there hath been a writ of *reſtitution* before granted: And reſtitution is generally matter of duty; but *re-reſtitution* is matter of grace. *Raym.* 85.

A writ of *re-reſtitution* may be granted on motion, if the court ſee cauſe to grant it. And on quaſhing an indictment of forcible entry, the court of *B. R.* may grant a writ of *re-reſtitution*, *&c.* 2 Lill. Abr. 474.

Reſtitutione extracti ab eccleſia, A writ to reſtore a man to the church, which he had recovered for his ſanctuary, being ſuſpected of felony. *Reg. Orig.* 69.

Reſtitutione Temporalium, A writ directed to the ſheriff to reſtore the temporalties, or barony of a biſhoprick to the biſhop elected and confirmed. *F. N. B.* 169. 1 *Rol. Abr.* 880.

Reſulting uſe. Whenever the uſe limited by a deed expires, or cannot veſt, *it returns back to him who raiſed it*, after ſuch expiration or during ſuch impoſſibility, and is ſtiled a *reſulting* uſe. As, if a man makes a feoffment to the uſe of his *intended* wife for life, with remainder to the uſe of her firſt-born ſon in tail: Here, *till he marries*, THE USE RESULTS BACK TO HIMSELF; after marriage, it is *executed* in the wife for life; and, if ſhe dies without iſſue, the whole *reſults* back to him in fee. *Bacon of Uſes*, 350. 1 *Rep.* 120. See *Uſes*, and *Black. Com.* 2 *V.* 335. And *Com. Dig.* tit. *Uſes.* (K. 7.)

Reſummons, (*Reſummonitio*) Signifies a ſecond ſummons, or calling a man to anſwer an action, where the firſt ſummons is defeated by any occaſion; and when by death, *&c.* of the judges, they do not come on the day to which they were continued, for trial of cauſes, ſuch cauſes may be revived or recontinued by *reſummons*. There is alſo a writ of re-ſummons; which iſſues after *parol demurrer.* Vide tit. *Parol demurrer* and *Re-attachment.*

Reſumption, (*Reſumptio*) Is particularly uſed for taking again into the King's hands ſuch lands or tenements, *&c.* as before on falſe ſuggeſtion *he* had granted by letters patent to any man. *Broke* 298. It is ſaid, that the King cannot grant a prerogative of power ſo, but that he may *reſume* it; otherwiſe it is of a grant of an intereſt. *Skinner's Rep.* 236. *Reſumption of Grants* is mentioned in the *ſtat.* 31 *Hen.* 6. *c.* 7. and other ſtatutes.

Retainer, (From the Latin *Retinere*) Signifies, in a legal ſenſe, a ſervant but *not menial or familiar*, that is, not continually dwelling in the houſe of his maſter, but only *wearing his livery*, and attending ſometimes upon ſpecial occaſions. This livery was wont to conſiſt of hats (or hoods) badges, or other ſuits of one garment by the year; and were many times given by great men, on deſign of maintenance and quarrels, therefore juſtly forbidden by ſeveral ſtatutes; as 1 *R.* 2. *c.* 7. on pain of impriſonment and forfeiture to the King; and again, 16 *R.* 2. *c.* 4. 20 *R.* 2. *c.* 1. and 1 *H.* 4. *c.* 7. by which the offenders ſhould make ranſom at the King's will; and any knight or eſquire thereby duly attainted ſhould loſe his livery, and forfeit his fee for ever, *&c.* Which ſtatute is further confirmed and explained by 2 *H.* 4. *c.* 21. 7 *H.* 4. *c.* 3. and 8 *H.* 6. *c.* 4. And yet this offence was ſo deeply rooted, that *Edward* the Fourth was neceſſitated to confirm the former ſtatutes, and further to extend their meaning, as appears by 8 *Edw.* 4. *cap.* 2. adding a ſpecial penalty of five pounds on every man who gave ſuch *livery*, and as much on every one ſo *retained*, either by writing, oath or promiſe, for every month.

Theſe are by the *feudiſts* called *effidati*, *ſic enim dicuntur qui in alicujus fidem & tutelam recepti ſunt.* And as our retainers are here forbidden, ſo are thoſe *affidats* in other countries. But moſt of the above-mentioned ſtatutes are repealed by 3 *Car.* 1. *c.* 1. *Cowell.*

Retainer of debts, By an executor or adminiſtrator, is a remedy effected by the mere operation of law, ſee *Black. Com.* 2 *V.* 511. 3 *V.* 18. and tit. *Executors and Adminiſtrators.*

Retaining fee, (*Merces retinens*) Is the firſt *fee* given to any ſerjeant or counſellor at law, whereby to make him ſure that he ſhall not be on the contrary part: It is, *Honorarium ſeu præmium cauſidici præcedaneum, quo clienti ſuo obligatur ne adverſarii cauſam agat.*

Retenementum, Is a word uſed for detaining, withholding, or keeping back. And *ſine ullo retenemento* was an uſual expreſſion in old deeds and conveyances of lands. *Cowell.*

Retinentia, A retinue, or perſons retained to a prince or nobleman. *Pat.* 14 *R.* 2.

Retorno habendo, ſee *Returno habendo.*

Retractus Aquæ, The ebb or return of a tide. *Plac.* 30 *Edw.* 1.

Retraxit, Is when plaintiff cometh in perſon in court where his action is brought, and ſaith *he will not proceed in it*; and this is a bar to that action *for ever:* It is ſo called, becauſe it is the *emphatical* word in the Latin entry, entered thus, ſſ. *Et præd. quer. in propria perſona ſua venit & dicit quod ipſe placitum ſuum præd. verſus præd. defenden. ulterius proſequi non vult, ſed abinde omnino* ſe retraxit, *&c.*

A *retraxit* muſt be always *in perſon*; if it is by attorney, it is error: 8 *Rep.* 58. 3 *Salk.* 245.

As to a *retraxit*, it is a bar to any action of equal nature brought for the ſame cauſe or duty; but a nonſuit is not. 1 *Inſt.* 208. See *Wilſ. par.* 1. 90.

If plaintiff ſays he will not *appear*, this is not a *retraxit*, but *nonſuit:* But if the plaintiff ſays he will NOT SUE, it is a *retraxit.* 2 Danv. Abr. 471. And *retraxit* is always on the part of plaintiff or demandant; and it cannot be before a declaration, for before the declaration it is only a nonſuit. 3 *Leon.* 47. 2 *Lill. Abr.* 476.

If paintiff enter a *retraxit* againſt one *joint*-treſpaſſer, it is a releaſe to the other. *Cro. Eliz.* 762. *Sed qu?* and ſee the next caſe. But if a *retraxit* be entered as to one appellee in appeal of murder, the ſuit may be continued againſt the reſt; becauſe the appellant is to have a ſeveral execution againſt every one of them. *H. P. C.* 190. In a prohibition by three, a *retraxit* of one ſhall not bar the other two plaintiffs. *Moor* 469. *Nelſ. Abr.* 165. See *Nolle Proſequi.* And *Black. Com.* 3 *V.* 296, 395.

Rette, (Fr.) A charge or accuſation. *Stat. Weſt.* 1. *cap.* 2.

Return, (*Returna,* or *retorna,* from the Fr. *retour,* i. e. *redditio, recurſus*) Hath many applications in law; but is moſt commonly uſed for the *return* of *writs,* which is the certificate of the ſheriff made to the court, of what he hath done touching the execution of any writ directed to him; and where a writ is executed, or defendant cannot be found, *&c.* then *this matter is indorſed on the back of the writ* by the officer, and delivered into the court whence the writ iſſued, at the day of the *return* thereof in order to be filed. *Stat. Weſtm.* 2. *cap.* 39. 2 *Lill. Abr.* 476.

The name of the ſheriff *muſt* always be to the *return* of writs; otherwiſe it doth not appear how they came into court; If a writ be *returned* by a perſon to whom it is not directed, the *return* is not good, it being the ſame as if there was no *return* on it. And after a *return* is filed it cannot be amended; but before it may. *Cro. Eliz.* 310. 2 *Lil. Abr.* 477, 478.

If the ſheriff doth not make a *return* of a writ, the court will amerce him: ſo if he makes an inſufficient *return*; and if he makes a falſe *return,* the party grieved may have an action on the caſe againſt him. *Wood's Inſt.* 71.

If a ſheriff *return* a vouchee ſummoned, where in truth he is dead and there is no ſuch perſon; or in a *præcipe quod reddat* that the tenant is dead, *&c.* there may be an averment againſt ſuch *returns,* by the *ſtat.* 14 *Ed.* 3. *c.* 8. *Jenk. Cent.* 121, 122.

Some *returns* are *a kind of declaration* of an accuſation; as the *return* of a reſcous, and the like; and *theſe muſt be certain and perfect,* or they will be ill. 11 *Rep.* 40. *Plow.* 63, 117. *Keilw.* 165.

Writs to do things in franchiſes, are directed to, and *returned* by the ſheriff, to whom bailiffs make their *returns:* And an action will lie againſt a ſheriff, who takes the *return* of one who is no bailiff, and againſt him who makes it; and likewiſe againſt the bailiff of a franchiſe, for negligence in execution, *&c.* 7 *Ed.* 4. 14. 12 *Ed.* 4. 15. *Moor, c.* 606.

Sheriffs are to accept of *returns* of *bailiffs* of *liberties,* where they are ſufficient. 1 *Danv.* 191.

There is a *return* of *juries* by ſheriffs; and *returns* of *commiſſions,* by commiſſioners, *&c.*

Return-Days, Are days in *term* called by that name; or days in *bank.* See *Term.*

Returno Habendo, Is a writ which lies where cattle are diſtrained and replevied, and the perſon who took the diſtreſs juſtifies the taking, and proves it lawful; on which the cattle are to be *returned* to him.

This writ alſo lieth when the plaint in replevin is removed by *recordare,* into the *King's Bench* or *Common Pleas,* and he whoſe cattle are diſtrained makes default, and doth not proſecute his ſuit. *F. N. B.* 74. See *Replevin.*

Returns of members to Parliament. See *Parliament.*

Returnum Averiorum, A judicial writ, the ſame with *returno habendo.* Reg. Judic. 4.

Returnum irreplegiabile, Is a writ judicial, directed to the ſheriff for the final reſtitution or *return* of cattle to the owner when unjuſtly taken or diſtrained, and ſo found by verdict; and it is granted after a nonſuit in a ſecond deliverance. *Reg. Judic.* 27.

Reve, or *Gereve,* (From the Saxon word, *Græſa, Præfæctus.* Lambard's *explication* of Saxon *words,* verb. *Præfectus*) Signifies with us the bailiff of a franchiſe or manor eſpecially in the Weſtern part of *England:* Hence *ſhire-reve* for ſheriff. See *Kitchin* 43.

Revelach, rebellion, from *revellare,* to rebel. *Quicunque faciebat* revelach *vel latrocinium vel violentiam fœminæ in domo inferebat,* 20 *ſolidis emendebatur.* Gale. Domeſday, *tit.* Ceſtreſcire.

Reveland, Domeſday book. *ſherefordſc.* *Terra Regis. Hæc terra fuit tempore Edwardi Regis* Tainland, *ſed poſtea converſa eſt in* Reveland. *Et item dicunt legati Regis, quod ipſa terra & cenſus qui inde exit, furtim aufertur a rege.*

The land here ſaid to have been *Thaneland, T. E. R.* and after converted into *Reveland,* ſeems to have been ſuch land as being reverted to the King after the death of his *Thane,* who had it for life, was not ſince granted out to any by the King, but reſted in charge on the account of the *Reve* or bailiff of the manor, who (as it ſeemeth) being in this lordſhip of *Hereford,* like the *Reeve* in *Chaucer,* a falſe brother, concealed the land from the *auditor,* and kept the profit of it, till the ſurveyors, who are here called *legati Regis,* diſcovered this falſhood, and preſented to the King that *furtim aufertur Regi.*

This paſſage from Domeſday-book is imperfectly quoted by Sir *Edward Coke,* in his *Inſtitutes, ſect.* 117. who from theſe words draws a falſe inference, That land holden by knight ſervice was called *Thain-land,* and land holden by *ſocage* was called *reve-land.* *Cowell.* See *Spelman* of *Feuds, c.* 24. See *Teinland.*

Revels, Signify with us ſports of dancing, maſking, *&c.* formerly uſed in Princes courts, the inns of court, or other noblemens houſes, which are commonly performed by night; and there was an officer to order and ſuperviſe them, who was intitled *Maſter of the Revels,* *Cowell.*

Revenue, (*Fr.*) Is properly the yearly rent which accrues to any man from his lands and poſſeſſion; and is generally uſed for the *revenues* or profits of the *crown.*

Whoever chuſes to be informed of the *fiſcal* prerogatives of the King, or ſuch as regard his *revenue;* which the Britiſh conſtitution hath veſted in the royal perſon, in order to ſupport his dignity and maintain his power, will find them very curiouſly and learnedly treated of by *Blackſtone,* in the 8th Chapter of the firſt Vol. of his Commentaries.

Reverſal, Of judgment, is making it void for error, and when, on the return of a writ of error, it appears that the judgment is erroneous, then the court give judgment, *Quod judicium revocetur, adnulletur & penitus pro nullo habeatur.* 2 Lill. Abr. 481.

The eldeſt judge of the court, or in his abſence the next in ſeniority, always pronounces the reverſal of an erroneous judgment *openly in court,* on the prayer of the party; and formerly it was the courſe to pronounce it in *French,* to this effect, *Pur les errors evandit, & auter errors manifeſt in le record, ſoit le judgment reverſe, &c.* Trin. 22 Car. B. R. The judge now only ſays, *judgment affirmed,* or, *judgment reverſed,* as the caſe happens.

Reverſal of a judgment may be pronounced conditionally, *i. e.* That the judgment is reverſed if defendant in the writ of error doth not ſhew good cauſe to the contrary at an appointed time; and this is called a *revocetur niſi;* and if no cauſe be then ſhewn, it ſtands reverſed without further motion. 2 *Lill.* 482.

The *ſtat.* 21 *Jac.* 1. *c.* 16. hath provided a new writ, where judgment is reverſed after verdict, or where an outlawry is reverſed, *&c.* *Lutw.* 264. Vide *Attainder, Error, Judgment, Outlawry.*

Reverſion, (*Reverſio,* from *Revertor*) Signifies *a returning again;* therefore *Reverſio terræ eſt tanquam terra revertens in poſſeſſione donatori ſive hæredibus ſuis poſt donum finitum.* 1 Inſt 142.

A reverſion hath two ſignifications; the one is an eſtate left, which continues during a particular eſtate in being; and the other is the returning of the land after the particular eſtate is ended: It is ſaid to be *an intereſt in the land, when the poſſeſſion ſhall fall, and ſo it is commonly taken;* or it is when the eſtate which was parted with for a time, ceaſeth and is determined in the perſons of the alienees or grantees, *&c.* and returns to the grantor or donor, or their heirs from whence derived. *Plow.* 160. 1 *Inſt.* 142.

But the uſual definition of a *reverſion* is, that *it is the reſidue of an eſtate left in the grantor after a particular eſtate granted away, continuing in him who granted the particular eſtate;* and *where the particular eſtate is derived out of his eſtate:* As in a gift in tail, the *reverſion* of the fee-ſimple is in the donor; and in a leaſe for life, or years, the *reverſion* is in the leſſor: Alſo a *reverſion* takes place *after a remainder,* where a perſon makes a diſpoſition of a leſs eſtate, than that whereof he was ſeiſed at the time of making thereof. 1 *Inſt.* 22, 142. *Wood's Inſt.* 151.

When the particular eſtate determines, then the *reverſion* comes into poſſeſſion, and before it is ſeparated from it; for he who hath the poſſeſſion, cannot have the *reverſion,* becauſe, by uniting them, the one is drowned in the other. 2 *Lill. Abr.* 484.

The *reverſion* of land when it falls, is the land itſelf; and the poſſeſſion of the tenant, preſerves the *reverſion* of the lands, with the rents, *&c.* in the donor, or leſſor. 1 *Inſt.* 324.

A *reverſion* of an eſtate of inheritance, may be granted by bargain and ſale inrolled, leaſe and releaſe, fine, *&c.* And by the grant of lands, a *reverſion* will paſs; tho' by the grant of a *reverſion,* land *in poſſeſſion* will *not* paſs. *Bridgm. Conveyan.* 237. 6 *Rep.* 36. 5 *Rep.* 124. 10 *Rep.* 107.

If one have a *reverſion* in fee, expectant on a leaſe for years, he may make a bargain and ſale of his *reverſion* for one year, and then make a releaſe to the bargainee in fee; by which the *reverſion* in fee will paſs to the bargainee. 2 *Lil. Abr.* 483. And a *reverſioner* may covenant to ſtand ſeiſed of a *reverſion* to uſes, *&c.* 11 *Rep.* 46. Likewiſe a *reverſion* may be deviſed by will; and a teſtator being ſeiſed in fee of lands which he had in poſſeſſion, and of other lands in *reverſion,* deviſed all his lands for payment of debts; adjudged, that by the words all his lands, the *reverſion* as well as the poſſeſſion paſſed. 2 *And.* 59. *Cro. Eliz.* 159.

A perſon deviſed a manor to *A. B.* for ſix years, and ſome other lands to *C. D.* and his heirs; and all *the reſt of his lands* to his brother, and the heirs male of his body; and it was held that theſe words, "*the reſt of his lands,*" did not only extend to the lands which were not deviſed before, but to the *reverſion* in fee of the manor, after the determination of the eſtate for years. *Allen* 28. And by deviſe of all lands, tenements and hereditaments, undiſpoſed of before in a will, a *reverſion* in fee will paſs. 2 *Vent.* 285. 3 *Nelſ. Abr.* 166.

One ſeiſed of lands in fee, deviſes part thereof to *B.* for life, and after, by the ſame will, gives to *C.* all his lands not before particularly diſpoſed of; by this deviſe of "*all lands,*" *&c.* the *reverſion* of the part given for life paſſes to *C.* *Preced. Chanc.* 202. There was leſſee for years, remainder for life, *reverſion* in fee, the tenant for life died, and the leſſee for years did not attorn to him in the *reverſion;* yet it was reſolved, that it paſſed without attornment, and he might bring an action of debt, or avow. *Hetl.* 73.

If tenant for life, and he in *reverſion,* join in a leaſe for life, or gift in tail, rendering rent; it ſhall enure, after the death of tenant for life, to him in *reverſion.* 1 Inſt. 214.

The particular eſtate for life or years, and his eſtate in *reverſion,* are divers and diſtinct; therefore aid may be prayed of him in the *reverſion:* Yet theſe eſtates have relation one to another. 3 *Shep. Abr.* 220.

Copyholder for life, cannot by forfeiture or otherwiſe deſtroy the eſtate in *reverſion:* And he who hath a *reverſion* cannot be put out of it, unleſs the tenant be ouſted of his poſſeſſion alſo. 39 *Hen.* 6. *Plowd.* 162. *Yelv.* 1.

Reverſions expectant on an *eſtate-tail,* are not aſſets, or of any account in law, becauſe they may be cut off by fine and recovery; but it is otherwiſe of a *reverſion* on an eſtate for *life,* or *years.* 1 Inſt. 173. 6 Rep. 38. Wood's *Inſt.* 151.

No leaſe, rent-charge, or eſtate, *&c.* made by tenant in tail in remainder, ſhall charge the poſſeſſion of the *reverſioner.* 2 Lill. 448. But as no ſtatute hath made any proviſion for thoſe who have remainders or *reverſions* on any eſtate-tail, they are barred by a recovery. 10 *Rep.* 32.

There were no *reverſions* or remainders on eſtates in tail, at Common law: And by the Common law, no grantee of a *reverſion* could take advantage of any condition or covenant broken by the leſſees of the ſame land; but by ſtatute, grantees of *reverſions* may take advantage of conditions and covenants againſt leſſees of the ſame lands, as fully as the leſſors and their heirs; and the leſſees may have the like remedies againſt the grantees of *reverſions, etc.* 1 *Inſt.* 327. 32 *H.* 8. *c.* 34.

A *reverſioner* may bring action on the caſe for ſpoiling trees; for any injury to his *reverſion,* he may have this action; but he cannot have treſpaſs, which is founded on the poſſeſſion. 3 *Lev.* 209, 233. 3 *Cro.* 55.

He in *reverſion* ſhall have a writ of *entry ad communem legem,* where tenant for life, *etc.* aliens the lands: And writ of intruſion, after their deaths, *etc.* *New Nat. Br.* 461.

How to plead a *reverſion* in fee. 2 *Lutw.* 1174.

The difference between a *reverſion* and a remainder, is that a *remainder is general,* and may be to any man, but to him who granteth the land, for term of life or otherwiſe; and a *reverſion* is to himſelf from whom the conveyance of the land proceeded, and *is commonly perpetual, &c:* And remainder is an eſtate, appointed over at the ſame time: But the *reverſion* is not always at the ſame time appointed over. See *Remainder.* And *Black. Com.* 2 *V.* 175. *Reverſions in Offices,* vide *Office.*

Review, (Fr. *Reveue*) A *Bill* of *Review* in *Chancery,* is where the cauſe hath been heard, and the decree therein ſigned; but ſome error appears in the body of the decree, or *new matter is diſcovered in time after the decree made:* Which bill muſt be exhibited *by leave of the court,* and is uſually done *on oath* made of the diſcovery of *new matter*, which could not be had or uſed at the time of the decree paſſed; and the ſum of 20*l.* muſt be depoſited in court, on bringing this bill, as a ſecurity for coſts and delay, if the matter be found againſt the party, *&c.* *Ord. in Chan.* 69. *Pract. Solic.* 121, 122.

Where a decree of the court of Chancery is repugnant, or one part of it contradicts another, *&c.* it may be reverſed by bill of *review*. Ibid. *See* Black. Com. 3 V. 454.

Review of Appeal of Delegates, Is a commiſſion granted by the King, to certain commiſſioners, *&c.* See *Appeal to Rome*.

Reviling church ordinances, Is a poſitive offence againſt religion, that affects the *eſtabliſhed* church; and it is puniſhed by the ſtatutes 1 *Ed.* 6. *c.* 1. 1 *Eliz. c.* 1 *&* 2. which *vide*, and *Black. Com.* 4 *V.* 50.

Revival of perſons hanged. It is clear, that if, on judgment to be hanged by the neck *till dead*, the criminal be not throughly killed, but revives, the ſheriff *muſt* hang him again. 2 *Hal. P. C.* 412. 2 *Hawk. P. C.* 463. For the former hanging was no execution of the ſentence; and, if a falſe tenderneſs were to be indulged in ſuch caſes, a multitude of colluſions might enſue. Nay, even while abjurations were in force, ſuch a criminal, ſo reviving, was not allowed to take ſanctuary and abjure the realm; but his fleeing to ſanctuary was held an eſcape in the officer. *Fitzh. Abr. t. corone.* 335. *Finch. L. A.* 67. *Black. Com.* 4 *V.* 399.

Reviving, Is a word metaphorically applied, to rents and actions, and ſignifies renewing them after they are extinguiſhed. Of which ſee many examples in *Broke*, tit. *Revivings of Rents, Actions, &c.* 23. See 19 *Vin. Abr.* 228—230.

Revivor, or *Bill of Revivor*, or *Reviver*, Is when a bill hath been exhibited in *Chancery*, againſt one who anſwers, and before the cauſe is heard, or if heard, and the decree is not inrolled, either party dies: In this caſe a bill of *Revivor* muſt be brought, praying the former proceedings may ſtand *revived*, and be put in the ſame condition as at the time of abatement.

If a party dieth, a female plaintiff marries, or there have been no proceedings on a decree, *&c.* for a year paſt, the decree and proceedings muſt be *revived* by *ſubpœna ſcire facias*, or if the decree be inrolled, by bill of *Revivor:* But if the parties are not heirs or executors, *&c.* to the party dead, the decree or cauſe is to be *revived* by original bill, and not by *ſubpœna ſcire facias* or bill of *Revivor*; and a bill of *Revivor* lies not on a decree of long ſtanding, but an original bill is to be preferred. *Practiſ. Solic.* 122. See *Black. Com.* 3 *V.* 448.

Revocation, (*Revocatio*) Signifies the calling back of a thing granted; or a deſtroying or making void of ſome deed that had exiſtence until the act of *Revocation* made it void. 2 *Lil. Abr.* 485. And a *revocation* may be either general, of all acts and things done before; or ſpecial, to *revoke* ſuch a thing: And where any deed or thing is *revoked*, it is as if it never had been. 5 *Rep.* 90. *Perk. ſect.* 105. In voluntary deeds and conveyances, there are frequently *proviſoes* containing power of *revocation*, which being coupled with an uſe, and tending to paſs by raiſing of uſes, according to the *Stat.* 27 *Hen.* 8. *c.* 10. are allowed to be good, and not repugnant; as where one ſeiſed of an eſtate in fee, covenants to ſtand ſeiſed thereof to the uſe of himſelf for life, and after to the uſe of his ſon in tail, remainder over, *&c.* with *proviſo* that he may *revoke* any of the ſaid uſes; now, if afterwards he *revokes* them, he is ſeiſed again in fee, without entry or claim: But in caſe of a feoffment or other conveyance, whereby the feoffee or grantee is in by the Common law, ſuch proviſo would be merely repugnant and void. 1 *Inſt.* 237. *Stat.* 27 *Hen.* 8. *c.* 10.

Voluntary eſtates made with power of *revocation*, as to *purchaſers*, are held in equal degree with conveyances made by fraud and covin to defraud purchaſers. 27 *Eliz. c.* 4. 3 *Rep.* 82.

Uſes, and powers in contingency and poſſibility, by mutual aſſent of parties may be *revoked* and determined; and as by indenture they may be raiſed, ſo, by proviſo or limitation in the ſame indenture, they may be extinguiſhed and deſtroyed. 10 *Rep.* 86. And where a power of *revocation* is reſerved for a man to diſpoſe of his own eſtate, it ſhall always have a favourable conſtruction; but it ſhall be taken ſtrictly when it is to charge the eſtate of another. 2 *Vent.* 250.

When there is a power to *revoke* uſes, a new declaration of uſes is a ſufficient *revocation* of the former, without any expreſs diſannulling, *&c.* Alſo if power is reſerved to a man to *revoke* a deed by writing, ſubſcribed and ſealed in the preſence of two or more credible witneſſes; if he makes his will in writing, without making any expreſs *revocation*, it will be a good *revocation*, and the will a good execution of the power. *Hob.* 312. *Raym.* 295. 3 *Nelſ. Abr.* 168, 169. Though it hath been held, that all incident circumſtances preſcribed by the proviſo or power of *revocation*, as to ſubſcriptions, witneſſes, *&c.* ought to be obſerved. 6 *Rep.* 33. 10 *Rep.* 143. 2 *Lil.* 487.

It hath been decreed, that the limitation of new uſes is good, where the expreſs power in the firſt deed was only to *revoke*. 1 Chanc. Rep. 242. If a perſon make a feoffment in fee, or levy a fine, *&c.* of the lands, before the deed of *revocation* is executed; theſe amount to a *revocation* in law, and extinguiſh the power of *revocation*. 1 Vent. 371. 1 Rep. 111. Power of *revocation* may be releaſed; and where a man has an intire power of *revocation*, and he ſuſpends or extinguiſhes it as to part, he may revoke as to the reſidue, if the conveyance was by way of uſe; but not where a condition is annexed to the land. 1 *Rep.* 174. *Moor* 615. A *will* is *revocable*; and a laſt will *revokes* the former: Though a new publication of the firſt will, where there are two wills, it is ſaid may *revoke* the laſt. *Perk.* 479. 2 *Sid.* 2. See 3 *Mod.* 207.

Wills are to be *revoked* by ſome other will in writing, ſigned in the preſence of three witneſſes, or by cancelling by the teſtator, *&c.* *Stat.* 29 *Car.* 2. *c.* 3. A will revoking a former, though it muſt be ſubſcribed by three witneſſes, it is ſaid need not be in the teſtator's preſence, as the will of lands muſt be, by the ſtatute. 1 *P. Williams* 344. If a perſon cancels or revokes either the duplicate or original will, this avoids both, they being but one will, and muſt ſtand or fall together.

But where a man makes a ſecond will, and intends that as a revocation of the firſt; if it be inſufficient, it ſhall not deſtroy the firſt will though cancelled. 3 *Mod.* 220, 258. 2 *Vern.* 741.

A. makes his will in 1759, and at the ſame time a duplicate thereof; he ſaid, he made it to pleaſe his wife, but that it was not a will to his liking. The duplicate was left with his daughter. He afterwards ſends for his attorney, tears off the ſeals, and orders the witneſſes names to be cut out; which was done in his preſence. He made a new will the ſame day, with expreſs clauſe of *revocation*, gave it the attorney to keep, ſaying he would not have the heir ſee it. He afterwards ſent to his attorney in order to make a new one, and to bring his ſecond; the will was ſent; but before the attorney came the teſtator was inſenſible; and died that day without making any other will. The *cancellation* of the firſt will in his own poſſeſſion was a revocation both of it and of the duplicate; nor did the revocation of the *ſecond* will, ſet up the *firſt*. Burtenſhaw *v.* Gilbert. Llofft's Reports 465.

The teſtator is to be of a good diſpoſing memory when he revokes his will, as well as when he makes it; he muſt have *animum revocandi*, as well as *animum teſtandi*, to make an effectual *revocation*. Show. 89. Cro. Jac. 497. Hard. 374. 3 Mod. 203.

Writings of *revocation* are to be taken according to the ſubject matter, *viz.* where a laſt will cannot ſtand with the firſt. *Ibid.* A teſtator made his will, and ſome time afterwards made a feoffment of the lands in the will to uſes; and adjudged this was a *revocation* of his will, becauſe a will cannot take effect till after his death. *Dyer* 74. A tenant in tail made his will in writing, which was duly executed; afterwards he made a bargain and ſale of the ſame lands contained in the will, to make a tenant to the *præcipe*, in order to ſuffer a common recovery, which was done accordingly, and he declared the uſes to himſelf and his heirs: by the bargain and ſale, *&c.* the will was *revoked.* 3 Lev. 108.

It hath been admitted to be a ſettled rule in *Chancery*, that where a teſtator deviſes his land in fee to one, and after mortgages it in fee to another, and then dies before the principal and intereſt is paid; this is not a *total revocation* of the will, but only *quoad* ſo much for which the lands were mortgaged, and the *deviſee* ſhall have the *equity of redemption.* 1 Salk. 236, 258. Where lands are deviſed to one in fee, and after mortgaged to the *ſame perſon*, it is a *revocation in toto* of the deviſe; but if the land be mortgaged to a ſtranger, in that caſe it is otherwiſe. *Preced. Canc.* 515. A man ſeiſed of lands, deviſes the ſame in fee, or for life, and afterwards makes a leaſe thereof to another for years, it ſhall not be a *revocation* but during the years: Though in caſe a perſon has deviſed lands to one and his heirs, and after leaſes the ſame to him for a certain term, to commence after his death; this is a *revocation* of the whole eſtate. 1 *Rol. Abr.* 616. 2 *Cro.* 49.

In caſe a fortune be given to a child by the father, ſubſequent to the making of his will, wherein he had bequeathed her a portion; this ſhall be taken as a *revocation* of the legacy and will for ſo much. *Preced. in Chan.* 183. A perſon being unmarried, by will deviſed all his perſonal eſtate to *T. P.* and afterwards he married and had ſeveral children; and died without making any other will: It was ruled by *Commiſſioners of Delegates*, that there being ſuch an alteration of his eſtate and circumſtances, ſo widely different from the time of making his will to his death, there was room to *preſume* a *revocation*, and that he did not continue of the ſame mind when he died. 2 *Salk.* 592.

Letters of attorney, and other authorities, may be *revoked*, by the perſons giving the powers; and as they are *revocable* in their nature, it has been adjudged, that they may be *revoked*, though they are made irrevocable. 8 *Rep.* 82. *Wood's Inſt.* 286. Theſe *revocations* of a power regularly muſt be made after the ſame manner it was given; and there ought to be notice to the party, *&c.* But if once the power be executed, a *revocation* after will come too late. *Dyer* 210.

A warrant of attorney from a defendant to appear and accept a declaration, and plead for the defendant, may not be revoked with an intent to ſtay the plaintiff's proceedings; but the defendant on good cauſe ſhewn to the court may change his attorney, ſo as he plead by another in due time. *Mich.* 24 *Car. B. R.*. 2 *Lil.* 486.

Letters of Adminiſtration, and *Preſentations* to benefices when and *revoked*, *vide* thoſe heads.

See farther as to *Revocation of Deviſes*, Black. Com. 2 V. 376.—Of *Uſes*, ib. 2 V. 335, 339. xi.—Of a *Will*, ib. 2 V. 502.

Revocatione Parliamenti, An ancient writ for recalling a parliament; and *anno* 5 *Ed.* 3. the parliament being ſummoned, was recalled by ſuch writ before it met. *Pryn's Animad.* on 4 *Inſt. fol.* 44.

Rewards. There are Rewards given in many caſes by ſtatute, for the apprehending of criminals, and bringing them to juſtice; as a Reward of 40*l.* for apprehending of robbers on the highway, by 4 *&* 5 *W. & M. c.* 8. Alſo the like reward for the apprehending and taking of burglars. *Stat.* 5 *Ann. c.* 31. The ſame reward for apprehending of money-coiners or clippers, *&c.* 6 *&* 7 *W.* 3. *c.* 17. And the like reward for the apprehenſion of thief-takers, not proſecuting felons; and of perſons reſiſting the officers of the cuſtoms, by force of arms, *&c.* 6 *Geo.* 1. *c.* 20, 22. So for diſcovering of accomplices, in various caſes, by 4 *&* 5 *W. & M. c.* 8. 10 *&* 11 *W.* 3. *c.* 23. And 5 *Ann. c.* 31.

Rewey, A term among clothiers, ſignifying cloth unevenly wrought, or full of *Rewes.* 43 Eliz. c. 10.

Rhandir, Was a part in the diviſion of *Wales* before the Conqueſt: Every townſhip comprehended four gavels, and every gavel had four rhandirs, and four houſes or tenements conſtituted every rhandir. *Taylor's Hiſt. Gav. p.* 69.

Rial, From the Span. *Reale*, i. e. *Royal money*, becauſe it is ſtamped with the King's effigies: Here, in *England*, a *Rial* was a piece of gold coin, current for 10*s.* in the reign of King *Hen.* 6. at which time there were half-rials paſſing for 5*s.* and quarter-rials, or rial farthings, going for 2*s.* 6*d.* In the beginning of Queen *Elizabeth's* reign, golden rials were coined at 15*s.* a piece; and 3 *Jac.* 1. there were roſe-rials of gold at 30*s.* ſpur-rials at 15*s.* *Lownds's Eſſay on Coins, p.* 38.

Ribaud, (Fr. *Ribauld, Ribaldus)* A rogue, vagrant, whoremonger, or perſon given to all manner of wickedneſs: And there was a petition in parliament againſt ribauds and ſturdy beggars. *Ann.* 50 *Ed.* 3.

Rice, To be exported from *Carolina* to other parts of *Europe, &c.* Stat. 8 Geo. 2. cap. 19. Rice, to what duties liable on importation. 4 *&* 5 *W. & M. c.* 5. 3 *&* 4 *Ann. c.* 5. concerning rice, how far confirmed, 3 *Geo.* 2. *c.* 28. See *Plantations.*

Richmond in Surry. *Richmond* old park ſettled on Queen *Charlotte* for life. 2 *Geo.* 3. *c.* 1.

Richmond in Yorkſhire, Spiritual perſons in the archdeaconry of *Richmond*, ſhall not exact portions of the deceaſed's goods. 26 *Hen.* 8. *c.* 15.

Richmond and Lenox, (Duke of) His leaſe of the aulnage of draperies provided for. 11 *&* 12 *Wil. c.* 20 *ſ.* 2.

Rider-Roll, Is a ſchedule or ſmall piece of parchment, often added to ſome part of a roll or record.

Ridge waſhed Kerſey, Is *Kerſey* cloth made of fleece wool, waſhed only on the ſheep's back. See *Stat.* 35 *Eliz. cap.* 10.

Riding armed, With dangerous and unuſual weapons, is an offence at Common law. 4 *Inſt.* 160. By the *Stat.* 2 *Ed.* 3. *c.* 3. None ſhall ride armed by night or day to the terror of the people, or come with force and arms before the King's juſtices, *&c.* during their office, upon pain to forfeit their armour, and ſuffer impriſonment at the King's pleaſure; and a fine may be ſet upon them by the juſtices, by 10 *Rich.* 2. *cap.* 1. And no perſon can excuſe the going or riding armed in public, by alledging that he wears armour for his defence againſt an aſſault; but men may wear common arms according to their quality and the faſhion, and have attendants with them armed agreeable to their characters; alſo perſons may ride or go armed to take felons, ſuppreſs riots, execute the King's proceſs, *&c.* 3 *Inſt.* 162.

Riding-Clerk, Is one of the ſix clerks in *Chancery*, who in his turn, for one year, keeps the controulment books of all grants that paſs the Great Seal. *Blount.*

Ridings, Are the names of the parts or diviſions of *Yorkſhire*, which are three, *viz. Eaſt-Riding, Weſt-Riding*, and *North-riding*, mentioned in the *Stat.* 22 *H.* 8. *c.* 5. And, in indictments for offences in that county, the town and the riding muſt be expreſſed, *&c. Weſt's Symb. par.* 2. See *Regiſtry of Deeds.* The word *riding* is a corruption from *trithing.* See *Black. Com.* 1 *V.* 116.

Riens arrear, A plea uſed in an action of debt for arrearages of account, whereby the defendant alledges that there is *nothing in arrear.* Book Entr.

Riens paſſe per le fait, Signifies that nothing paſſes by the deed; and is the form of an exception taken in ſome caſes to an action. *Broke.*

Riens per Deſcent, Is the plea of an heir, where he is ſued for his anceſtor's debt, and hath no land from him by deſcent, or aſſets in his hands. 3 *Cro.* 151. In an action of debt againſt the heir, who pleads *riens per deſcent*, judgment may be had preſently; and where aſſets deſcend, a *ſcire facias* lies againſt the heir, *&c.* 8 *Rep.* 134. This means a judgment of aſſets, *in futuro.*

Rier County, *(Retro Comitatus*, from the Fr. *arrear*, i. e. *poſterior)* Is oppoſed to full and *open county*; and appears to be ſome public place, which the ſheriff appoints for receipt of the King's money, *after* the end of his county court. 2 *Ed.* 3. *cap.* 5. *Stat. Weſtm.* 2. *c.* 38. *Fleta, lib.* 2. *c.* 67.

Riffiare, (from the Sax. *riefe, rapina)* Is to take away any thing by force; from whence comes our *Engliſh* word *rifle.* Leg. Hen. 1. c. 57.

Riflura, A ſlight wound in the fleſh: It is mentioned in *Fleta, lib.* 1. *c.* 41.

Right, *(jus)* In general ſignification includes not only a right for which a writ of right lies, but alſo any title or claim, either by virtue of a condition, mortgage, or the like, for which *no action* is given by law, but only an *entry*. Co. Lit. lib. 3. cap. 8. ſect. 445.

There is *jus proprietatis*, a right of property; *jus poſſeſſionis*, a right of poſſeſſion; and *jus proprietatis & poſſeſſionis*, a right both of property and poſſeſſion; and this was anciently called *jus duplicatum:* For example, If a man be diſſeiſed of an acre of land, the diſſeiſee hath *jus proprietatis*, the diſſeiſor hath *jus poſſeſſionis*; and if the diſſeiſee releaſe to the diſſeiſor, he hath *jus proprietatis & poſſeſſionis*. Co. Lit. lib. 3. ſect. 447.

Jus eſt ſextuplex. 1. *Jus recuperandi.* 2. *Intrandi.* 3. *Habendi.* 4. *Retinendi.* 5. *Percipiendi.* 6. *Et poſſidendi.* Co. 8 Rep. Edward Altham's *caſe*.

Gilbert, *Treat. of Ten.* 18. ſays, That the diſſeiſor has only the naked poſſeſſion, becauſe the diſſeiſee may enter and evict him; but againſt all other perſons the diſſeiſor has right, and in this reſpect only can be ſaid to have the right of poſſeſſion; for in reſpect to the diſſeiſee he has no right at all. But when a deſcent is caſt, the heir of the diſſeiſor has *jus poſſeſſionis*, becauſe the diſſeiſee cannot enter upon his poſſeſſion, and evict him, but is put to his real action, being the freehold caſt upon the heir; and ſays, That the notions of the law do make this title to him, that there may be a perſon in being to do the feudal duties, to fill the poſſeſſion, and to anſwer the actions of all perſons whatever; and ſince it is the law that gives him this right, and obliges him to theſe duties, antecedent to any act of his own, it muſt defend ſuch poſſeſſion from the act of any other perſon whatever; till ſuch poſſeſſion be evicted by judgment; which being alſo the act of law may deſtroy the heir's title.

There are alſo a *preſent* and *future right*; a *jus in re*, which may be granted to a ſtranger; and what is called a naked *right*, or *jus ad rem*, where an eſtate is turned to a right, on a diſcontinuance, *&c.* *Co. Lit.* 345.

A right in writs and pleadings, is properly in one, when he is ouſted of the poſſeſſion of his eſtate by diſſeiſin or wrong, and hath remedy by entry, or action:

But right doth alſo include an eſtate *in eſſe* in conveyances; and therefore if tenant in fee-ſimple makes a leaſe and releaſe of all his right in the land to another, the whole eſtate in fee paſſes. *Wood's Inſt.* 115, 116.

Sir *Edward Coke* tells us, That of ſuch an high eſtimation is right, that the law preſerveth it from death and deſtruction; trodden down it may be, but never trodden out: And there is ſuch an extreme enmity between an eſtate gained by wrong and an ancient right, that the right cannot poſſibly incorporate itſelf with the eſtate gained by wrong. 1 *Inſt.* 279. 6 *Rep.* 70. 8 *Rep.* 105. A right may ſometimes ſleep, though it never dies; a long poſſeſſion exceeding the memory of man, will make a right; and if two perſons are in poſſeſſion by divers titles, the law will adjudge the poſſeſſion in him that hath the right. *Co. Lit.* 478. 6 *Lit. ſect.* 158. Where there is no remedy, there is preſumed to be no right by law. *Vaugh.* 38.

No commands ſhall be made under the great or little Seal, to diſturb or delay common right *Stat.* 2 *Ed.* 3. *c.* 8. See *Recto*. See alſo *Property*, and 19 *Vin. Abr.* 230—233.

Right Cloſe, *writ of.* See *Recto*, and *Black. Com.* 2 *V.* 99. 3 *V.* 195.

Right Cloſe, *writ of*, (*ſecundum conſuetudinem manerii*) Is a writ which lies for the King's tenants in ancient demeſne, and others of a ſimilar nature, to try the right of their lands and tenements in the court of the lord excluſively. See *Black. Com.* 3 *V.* 195.

Right in Court. See *Rectus in Curia*.

Rights and Liberties. The rights and liberties of the *Engliſh* ſubject are *ſecured* (not *granted*) by *Magna Charta*, confirmed by many ſubſequent ſtatutes, and particularly by the act of the firſt of *William* and *Mary*, *ſtat.* 2. *c.* 2. (36.) See moſt of the laws relative to this ſubject collected together, with many obſervations, and an eſſay on the conſtitution, in an octavo work, called *Britiſh Liberties*, being an enlargement of *Care's Engliſh Liberties*.

Rights and Liberties. The declaration of *rights and liberties* againſt the conduct of King *James* II. ſets forth, That he, by the aſſiſtance of divers evil counſellors, did endeavour to ſubvert the laws and liberties of this kingdom; by exerciſing a power of diſpenſing with, and ſuſpending of laws; by levying money for the uſe of the crown by pretence of prerogative, without conſent of parliament; by raiſing and keeping a ſtanding army, in time of peace; by violating the freedom of election of members to ſerve in parliament; by violent proſecutions in the court of *King's Bench*; and cauſing partial and corrupt jurors to be returned on trials; exceſſive bail to be taken; and exceſſive fines to be impoſed; alſo cruel puniſhments inflicted, *&c.* All which were declared to be illegal, and infringing upon the ancient *rights and liberties* of the people. *Stat.* 1 *W. & M. ſt.* 2. *c.* 2. (36.)

Rine, (Sax. *ryne*) A water-courſe, or little ſtream, which riſes high with floods.

Ringa, A military girdle; from the Sax. *ring*, i. e. *annulus*, *circulus*, becauſe it was girt round the middle: But, according to *Bracton*, ringa *enim dicuntur quod renes circumdant, unde dicitur accingere gladio*. Bract. lib. 1. c. 8.

Ringhead, An engine uſed in ſtretching of cloth. 43 *Eliz.* *c.* 10.

Ringildre, A kind of bailiff or ſerjeant; and ſuch *rhingyl* ſignifies in *Welſh*. Chart. Hen. 7.

Riot, Rout, and unlawful Aſſembly, *Riot*, (*riota* and *riottum*, from the Fr. *riotte*, *quod non ſolum rixam & jurgium ſignificat, ſed vinculum etiam, quo plura in unum, faſciculorum inſtar, colligantur*) Signifies the forcible doing of an unlawful thing by three, or more perſons aſſembled together for that purpoſe. *Weſt. Symbol. part.* 2. tit. *Indictments*, *ſect.* 65. The difference between a *riot*, *rout* and *unlawful aſſembly*, ſee in *Lamb. Eiren. lib.* 2. *c.* 5. *Stat.* 1 *Mar. c.* 12. and *Kitchin* 19. who gives theſe examples of *riots*, the breach of incloſures, banks, conduits, parks, pounds, houſes, barns, the burning of ſtacks of corn, *&c.* *Lamb. ubi ſupra*, mentions theſe, to beat a man, to enter upon a poſſeſſion forcibly. *Cowell*.

Holt Ch. J. in delivering the opinion of the court, ſaid, That the books are obſcure in the definition of riots, and that he took it, that it is not neceſſary to ſay they aſſembled for that purpoſe; but there muſt be an *unlawful aſſembly*; and as to what act will make a riot or treſpaſs, ſuch an act as will make a treſpaſs will make a riot. 11 *Mod.* 116. *pl.* 2. *Trin.* 6 *Ann. B. R.* *The Queen* v. *Soley*.

As if a number of men aſſemble with arms, *in terrorem populi*, though no act is done, it is a riot. *Hob.* 91. If three come out of an alehouſe, and go armed, it is a riot. 3 *H.* 7. 1. *Per Holt* Ch. J. in delivering the opinion of the court. 11 *Mod.* 116, 117. *The Queen* v. *Soley*.

Hawkins ſays, A *riot* ſeems to be a tumultuous diſturbance of the peace by three perſons, or more, aſſembling together of their own authority, with an intent mutually to aſſiſt one another againſt any who ſhall oppoſe them, in the execution of ſome enterprize of a private nature, and afterwards actually executing the ſame in a violent turbulent manner, to the terror of the people, whether the act intended was of itſelf lawful or unlawful. *Hawk. P. C.* 155. *c.* 65. *ſ.* 1.

A *rout* ſeems to be, according to the general opinion, a diſturbance of the peace by perſons aſſembling together with an intent to do a thing, which if it be executed will make them rioters, and actually making a motion towards the execution thereof: but by ſome books, the notion of a riot is confined to ſuch aſſemblies only, as are occaſioned by ſome grievance common to all the company, as the incloſure of land in which they all claim a right of common, *&c.* However, in as much as it generally agrees with a riot, as to all the reſt of the above-mentioned particulars, requiſite to conſtitute a riot, except only in this, that it may be a compleat offence without the execution of the intended enterprize, it ſeems not to require any farther explication. *Hawk. P. C.* 158. *c.* 65. *ſ.* 8.

That an unlawful aſſembly, according to the common opinion, is a diſturbance of the peace by perſons barely aſſembling together, with an intention to do a thing, which, if it was executed, would make them rioters, but neither actually executing it, nor making a motion toward the execution of it; but he ſays this ſeems to be much too narrow a definition; for any meeting whatſoever of great numbers of people with ſuch circumſtances of terror, as cannot but endanger the public peace, and raiſe fears and jealouſies among the King's ſubjects, ſeems properly to be called an unlawful aſſembly; as where great numbers, complaining of a common grievance, meet together armed in a warlike manner, in order to conſult together concerning the moſt proper means for the recovery of their intereſts; for no one can foreſee what may be the event of ſuch an aſſembly. *Hawk, P. C.* 158. *c.* 65. *ſ.* 9.

If a man be in his houſe, and he hears that *J. S.* will come to his houſe to beat him, he may well make an aſſembly of people of his friends and neighbours to aſſiſt and aid him in ſafe keeping his perſon. *Per Fineux* Ch. J. *Br. Riots, pl.* 1. cites 21 *H.* 7. 39.

But if a man be menaced or threatened that if he comes to the market of *B.* or to *W.* that he ſhall be beat, he cannot make an aſſembly of people to aſſiſt him to go there, and this in ſafeguard of his perſon; for he need not go there, and he may have remedy by ſurety of the peace; but the houſe of a man is to him his caſtle and his defence, and where he properly ought to abide, *&c.* *Br. Riots, pl.* 1. cites 21 *H.* 7. 39. *Per Fineux* Chief Juſtice.

Dalt. Juſt. cap. 137. cites S. P. *Hawk. Pl. C.* 158. *cap.* 65. *ſect.* 10. cites S. C. accordingly, and ſays, That ſuch violent methods cannot but be attended with the danger of raiſing tumults and diſorders to the diſturbance of the public peace.—Though a man may ride with arms, yet he cannot take two with him to defend himſelf even though his life is threatened; for he is in the protection oj the law which is ſufficient for his defence. *Per Holt* Ch. J. in delivering the opinion of the court. 11 *Mod.* 116, 117. *pl.* 2. *Trin.* 6 *Ann. B. R.* *The Queen* v. *Soley.*

If a number of people aſſembled together in a lawful manner, and upon a lawful occaſion, as for electing a mayor (as it was in this caſe) or the like, and during the aſſembly a ſudden affray happens, this will not make it a riot *ab initio*; but it is only a common affray. *Ld. Raym,* 965. *Trin.* 2 *Ann. Grampound Corporation*'s caſe.

If a number of people aſſemble in a riotous manner to do an unlawful act, and a perſon, who was upon the place before upon a lawful occaſion, and not privy to their firſt deſign, comes and joins himſelf with them he will be guilty of a riot equally with the reſt. *Per Holt* Ch. J. which *Powell* J. ſeemed to agree. *Ld. Raym. Rep.* 965. *Trin.* 2 *Ann. Grampound Corporation*'s caſe.

Holt Ch. J. thought an aſſembly might meet together with ſuch circumſtances of terror as to be a riot. 2 *Salk.* 594, 595. *pl.* 4. *Trin.* 6 *Ann.* in the caſe of *The Queen* v. *Soley & al'*

If ſeveral are aſſembled lawfully without any ill intent, and an affray happens, none are guilty but ſuch as act; but if the aſſembly was originally unlawful, the act of one is imputable to all. *Per Holt* Ch. J. 2 *Salk.* 595. 6 *Ann. at niſi prius in* Middleſex. *The Queen* v. *Ellis.*

It ſeems agreed, that a number of perſons, being met together at a fair, or market, or church-ale, or any other lawful and innocent occaſion, happen on a ſudden quarrel to fall together by the ears, they are not guilty of a riot, but of a ſudden affray only, of which none are guilty, but thoſe who actually engage in it; becauſe the deſign of their meeting was innocent and lawful, and the ſubſequent breach of the peace happened unexpectedly without any previous intention concerning it; yet it is ſaid, that if perſons innocently aſſembled together, do afterwards, upon a diſpute happening to ariſe among them, form themſelves into parties, with promiſe of mutual aſſiſtance, and then make affray, they are guilty of a riot, becauſe, upon their confederating together with an intention to break the peace, they may as properly be ſaid to be aſſembled together for that purpoſe from the time of ſuch confederacy, as if their firſt coming together had been on ſuch a deſign; however, it ſeems clear, that if, in an aſſembly of perſons met together on any lawful occaſion whatſoever, a ſudden propoſal ſhould be ſtarted of going together in a body to pull down a houſe or incloſure, or to do any other act of violence, to the diſturbance of the public peace, and ſuch motion be agreed to and executed accordingly, the perſons concerned cannot but be rioters, becauſe their aſſociating themſelves together for ſuch a new purpoſe is no way extenuated by their having met at firſt upon another. *Hawk. Pl. C.* 156, 157. *c.* 65. *ſ.* 3.

A mayor and alderman of a town making a riot, are puniſhable in their natural capacities; but where they have countenanced dangerous riots within their precincts, their liberties have been ſeized, or the corporation fined. 3 *Cro.* 252. *Dalt.* 204, 326. Women may be puniſhed as rioters; but infants under the age of fourteen years, are not puniſhable. *Dalt.* 325. *Wood's Inſt.* 429. By the Common law, riots are puniſhed by fine and impriſonment; and, if enormous, by pillory: And by ſtatute, Juſtices of the peace have power to reſtrain rioters, *&c.* to arreſt and impriſon them, and cauſe them to be duly puniſhed. 34 *Ed.* 3. *c.* 1. As ſoon as the ſheriff and other the King's miniſters hear of a riot, or other aſſembly againſt the peace, they, with the power of the county, ſhall apprehend ſuch offenders, and put them in priſon until delivered by law. 27 *R.* 2. *c.* 8. And two or more juſtices of the peace, dwelling near the place where ſuch offences ſhall be committed, together with the ſheriff or under-ſheriff of the county, ſhall, by the power of the county, if need be, ſuppreſs riots, routs, *&c.* arreſt the offenders, and record what ſhall be done in their preſence; by which record the offenders ſhall ſtand convicted, as by *Stat.* 15 *R.* 2. in caſe of forcible entries; and if offenders are departed, the ſaid juſtices, *&c.* ſhall within a month after make inquiry thereof, and hear and determine the ſame; and if the truth cannot be found, then, within a further month, the juſtices and ſheriffs are to certify to the King and council, *&c.* on default whereof, the juſtices, *&c.* ſhall forfeit 100*l.* 13 *H.* 4. *c.* 7.

Theſe ſtatutes are underſtood of great and notorious riots: And the record of the riot within the view of the juſtices, by whom it is recorded, is ſuch a conviction as cannot be traverſed, the parties being concluded thereby; but they may take advantage of the inſufficiency of the record, if the juſtices have not purſued the ſtatute, *&c.* It is ſaid that the offenders being convicted upon the record of their offence, in the preſence of the juſtices, ought to be ſent immediately to gaol, till they pay a fine aſſeſſed by the ſame juſtices; which fine is to be eſtreated into the Exchequer; or the juſtices may record ſuch riot, and commit the offenders, and after certify the record into *B. R.* or to the aſſiſes or ſeſſions: If the offenders are gone, then the juſtices ſhall inquire by a jury; and the riot being found, they are to make a record of it, and fine them, or receive their traverſe, to be ſent by the juſtices to the next quarter-ſeſſions, or into the King's Bench, to be tried according to law. *Dalt.* 200, 201, 202.

It hath been adjudged, that where rioters are convicted upon the view of two juſtices, the ſheriff muſt be a party to the inquiſition on the *Stat.* 13 *H.* 4. *c.* 7. But if they diſperſe themſelves before conviction, the ſheriff need not be a party; for in ſuch caſe the two juſtices may make the inquiſition without him; and this is *pro Domino Rege:* And if the juſtices neglect to make an inquiſition within a month after the riot, they are liable to the penalty for not doing it within that time; but the lapſe of the month doth not determine their authority to make an inquiſition afterwards. 2 *Salk.* 592.

Rioters convicted on view of two juſtices, and of the ſheriff of the county, are to be fined by the two juſtices and the ſheriff; and if the ſheriff do not join in ſetting the fine, it is error; for the ſtatute requires that he ſhould be joined with the juſtices in the whole proceedings. *Raym.* 386. 13 *H.* 4. *c.* 7. By the 2 *H.* 5. *c.* 8. If the juſtices make default in inquiring of a riot; at the inſtance of the party grieved, the King's commiſſion ſhall be iſſued to inquire, by ſufficient and indifferent men of the county, at the diſcretion of the Chancellor; and the coroners ſhall make the panel of inqueſt upon the ſaid commiſſion, which is returnable into the Chancery, *&c.* and by this ſtatute, heinous rioters are to ſuffer one year's impriſonment.

The Lord Chancellor, having knowledge of a riot, may ſend the King's writ to the juſtices of peace, and to the ſheriff of the county, *&c.* requiring them to put the ſtatute in execution; and the Chancellor, upon complaint made, that a dangerous rioter is fled into places unknown, and on ſuggeſtion under the ſeals of two juſtices of peace and the ſheriff, that the common fame runneth in the county of the riot, may award a *capias* againſt the party, returnable in *Chancery* upon a certain day, and afterwards a writ of proclamation returnable in the *King's Bench*, &c. 2 *Hen.* 5. *c.* 9. 8 *Hen.* 6. *c.* 14.

If one juſtice of peace hath notice of a riot, he muſt endeavour to remove it, and may bind the rioters to the good behaviour; and if they have no ſureties, or refuſe to be bound, he may commit them to priſon. 13 *Hen.* 4. *c.* 7. *Mod. Inſt.* 368. Where riots are commited, the ſheriff, upon a precept directed to him, is to return twenty-four perſons dwelling within the county to inquire thereof, *&c.* 19 *Hen.* 7. *c.* 13.

The *Stat.* 1 *Geo.* 1. *ſt.* 2, *c.* 5, enacts, That if any perſons, to the number of *twelve* or more, unlawfully and riotouſly aſſembled againſt the peace, being required by a juſtice of peace, ſheriff, under-ſheriff, mayor, or other head officer of any town, *&c.* by proclamation in the King's name, to diſperſe themſelves, ſhall continue together an hour afterwards, they ſhall be guilty of *felony without benefit of clergy*; and perſons thus aſſembled and continuing, are to be apprehended and carried before a juſtice of peace, *&c.* And if, in reſiſtance, the rioters are killed, the perſons concerned in it ſhall be indemnified: Perſons *by force hindering the proclamation*, it ſhall be adjudged *felony*; and the *offenders nevertheleſs guilty, if they do not diſperſe*, &c.

Rioters demoliſhing any church, chapel, or dwelling-houſe, are guilty of felony; and inhabitants of towns and hundreds are to yield damages for rebuilding or reparation, to be levied and paid in ſuch manner as money recovered againſt the hundred, by perſons robbed on the highway, *&c.* Proſecutions on this act are to be commenced within *one year* after the offence: And this is the ſevereſt ſtatute that hath been made againſt rioters, but it being wholly in the affirmative, it doth not take away any authority in the ſuppreſſing a riot by Common law, or by other ſtatutes. *Wood's Inſt.* 430. See *Rebellious Aſſembly*, and *Black. Com.* 4 *V.* 125, 142, 143, 146, 433.

A *record* of a *riot* on view.

BE it remembered, *That on the firſt day of*, &c. *in the fourteenth year of the reign of our Sovereign Lord* George the Third, *now King of* Great Britain, *&c. We* A. B. *and* C. D. *Eſquires, two of the juſtices of our ſaid Lord the King aſſigned to keep the peace in the county of*, &c. *aforeſaid, and* E. F. *Eſquire, then ſheriff of the ſaid county, upon the complaint and humble ſupplication of* L. B. *of*, &c. *in the county aforeſaid, in our own proper perſons went to the manſion-houſe of the ſaid* L. B. *in the pariſh*, &c. *in the county aforeſaid; and then and there we ſaw* G. H. *of*, &c. *and* J. K. *and* L. M. *of*, &c. *in the county aforeſaid, and other malefactors and diſturbers of the peace of our ſaid Lord the King, to us unknown, to the number of five perſons, armed with ſwords, ſtaves*, &c. *unlawfully and riotouſly aſſembled at the ſaid houſe, threatening great damage to the ſaid* L. B. *to the diſturbance of the peace of the ſaid Lord the King, and terror of his people, againſt the form of the ſtatute*, &c. *And therefore we the ſaid* A. B. *and* C. D. *then and there cauſed the ſaid* G. H. J. K. *and* L. M. *to be arreſted, and carried to the next goal of our ſaid Lord the King in the county aforeſaid, by our view and record being convicted of the unlawful aſſembly, tumult and* riot *aforeſaid, there to remain until they have made fine and ranſom to our ſaid Lord the King for the ſame.* In witneſs *whereof we have ſet our ſeals to this our preſent record, dated at*, &c. *aforeſaid, the day and year above-mentioned.*

Form of an *inquiſition* of a *riot*.

South'ton, ſſ. A*N inquiſition for our Sovereign Lord the King, taken at*, &c. *in the county aforeſaid, the firſt day of*, &c. *in the fourteenth year of the reign*, &c. *on the oath of* A. B. C. D. E. F. G. H. &c. *(the jury) honeſt and lawful men of the ſaid county, before* T. D. *and* J. B. *Eſquires, two juſtices of our ſaid Sovereign Lord the King, aſſigned to keep the peace in the ſaid county*, &c. *Which ſaid jurors upon their oath aforeſaid ſay, that* J. K. *of*, &c. L. M. N. O. &c. *and other malefactors and diſturbers of the peace of our ſaid Lord the King, to the ſaid jurors unknown, on the day of*, &c. *laſt paſt, with force and arms, that is to ſay, with ſwords, ſtaves*, &c. *and other offenſive weapons, into the meſſuage of* T. W. *in the pariſh*, &c. *aforeſaid, in the ſaid county, between the hours*, &c. *of the ſame day, unlawfully and* riotouſly *entered, and him the ſaid* T. W. *aſſaulted, beat and wounded, to the great diſturbance of the peace of our ſaid Lord the King, and terror of his people; and againſt the form of the ſtatute in ſuch caſe made and provided.*

An *indictment* for a riot.

T*HE jurors*, &c. *do preſent, That* J. K. *late of*, &c. *in the county of*, &c. *aforeſaid, yeoman*, L. M. *late of* &c. *and* N. O. *late of*, &c. *on the firſt day*, &c. *in the fourteenth year of the reign*, &c. *at*, &c. *with force and arms*, &c. *did* riotouſly *and unlawfully meet and aſſemble themſelves together, to diſturb the peace of our ſaid Lord the now King; and being ſo aſſembled and met together, did then and there make an aſſault upon one* L. B. *then being in the peace of God and of our ſaid Sovereign Lord the King; and then and there beat, wounded and evilly treated the ſaid* L. B. *and other injuries did to him, to the great damage of the ſaid* L. B. *and againſt the peace of our ſaid Lord the King, his crown and dignity, and alſo againſt the form of the ſtatute*, &c.

Riparia, (from *ripa*, a bank of a river) Is a water running between the banks. *Magn. Chart. c.* 5. *Weſtm.* 2. *c.* 47. 2 *Inſt.* 478.

Ripiers, (*riparii, a fiſcella, qua in devehendis piſcibus utuntur, Anglice*, a rip) Are thoſe that bring fiſh from the ſea-coaſt to the inner parts of the land. *Camb. Brittan.* 234.

Rippers, *Reapers* or cutters down of corn; and *riptowel* was a gratuity or reward given to cuſtomary tenants when they had reaped their lord's corn. *Cowell.*

Rivagium, (*rivage*, or *riverage*) A duty paid to the King on ſome rivers for the paſſage of boats or veſſels. —*Quieti ſint ab omni laſtagio, tallagio, paſſagio*, rivagio, *&c.* Placit. temp. Ed. 1.

Riveare, To have the liberty of a river for fiſhing and fowling. *Pat.* 2 *Ed.* 1.

Rivers, By the ſtatute of *Weſtm.* 2. c. 47. The King may grant commiſſions to perſons to take care of *rivers*, and the fiſhery therein: And the Lord Mayor of *London* is to have the conſervation in breaches and ground overflown as far as the water ebbs and flows in the river *Thames.* 4 Hen. 7. c. 15. Perſons annoying the river *Thames*, making ſhelves there, caſting dung therein, or taking away ſtakes, boards, timber-work, *&c.* off the banks, incur a forfeiture of 5 *l.* *Stat.* 27 *Hen* 8. *c.* 18. Commiſſioners were appointed to prevent exactions of the occupiers of locks, wears, *etc.* upon the river *Thames* weſtward from the city of *London* to *Cricklade* in the county of *Wilts*, and for aſcertaining the rates of water carriage, on the ſaid river, *etc.* by *Stat.* 6 *and* 7 *W.* 3. *c.* 16. And this ſtatute is revived with authority for the commiſſioners to make orders and conſtitutions, to be obſerved under penalties, *etc.* 3 *Geo.* 2. *c.* 11. 24 *Geo.* 2. *c.* 8.

As to annoyances in rivers, either poſitively by actual obſtructions, or negatively, by want of reparations, the perſons ſo obſtructing, or ſuch individuals, as are bound to repair and cleanſe them, or (in default of theſe laſt) the pariſh at large, may be indicted, diſtrained to repair and amend them, and in ſome caſes fined. *Black. Com.* 4 *V.* 167.

167. By 6 *Geo.* 2. *c.* 37. and 10 *Geo.* 2. *c.* 32. it is made felony, without benefit of clergy, maliciouſly to cut down any *river* or *ſea-bank*, whereby lands may be overflowed. By 1 *Geo.* 2. *c.* 19. To deſtroy the *toll-houſes*, or any *ſluice* or *lock* on any navigable river, is made felony to be puniſhed with tranſportation for ſeven years. And by 8 *Geo.* 2. *c.* 20. Deſtroying *ſluices* upon rivers is made felony without benefit of clergy, and the offence may be tried as well in an adjacent county, as in that where the fact is committed.

Rivers made navigable. The river *Wey* is declared a free and common river, for the carrying of goods and paſſengers, with power to truſtees to make it navigable, and ordaining toll or tonnage duties to be paid for carriage of goods, &c. by the Stat 7 & 8 *W.* 3. *c.* 14. Duties and impoſitions are granted to recover and preſerve the *navigation* of the river *Dee*, by 11 & 12 *W.* 3. *c.* 24. And the river *Derwent* is made navigable by *Stat.* 1 *Ann. ſt.* 1. *c.* 20. So of many other rivers. *Vide* 13 *Geo.* 1. *c.* 34. If perſons break down a lock, or other works on any *navigable river*, it is felony; and drawing up floodgates made for preſerving the *navigation* of *rivers*, &c. ſhall be ſent to the houſe of correction for a month. 8 *Geo.* 2. *c.* 20. See the *Tab. to Stat.*

Perſons may juſtify the going of their ſervants or horſes upon the banks of *navigable rivers*, for towing of barges, *etc.* to whomſoever the right of the ſoil belongs. 1 *Ld. Raym.* 725.

Roba, A robe, coat, or garment; and thoſe who *robas accipiebant* of another, are accounted of his family. *Walſingh.* 267.

Robbers. During the middle ages the highways were ſo much infeſted with *banditti*, that it was neceſſary for travellers to form themſelves into companies or caravans, that they might be ſafe from the aſſaults of robbers. *Bouquet Recueil des Hiſt. Vol.* 7. 515. They became ſo frequent and audacious, that the authority of the civil magiſtrate was unable to repreſs them. The eccleſiaſtical juriſdiction was called in to aid it, councils were held with great ſolemnity, the bodies of the ſaints were brought thither, and, in preſence of their ſacred reliques, anathemas were denounced againſt robbers, and other violators of the public peace. *Id. Vol.* 10. 360, 431, 536. *Robert. Hiſt. Emp. Cha.* V. 1 *V.* 329, 330.

Robbery, (*Robaria*) Is a felonious taking away of another man's goods from his perſon or in his preſence againſt his will, putting him in fear, and of purpoſe to ſteal the ſame. *Weſt. Symbol. part.* 2. tit. *Indictments. ſect.* 60. And this offence was called *robbery*, either becauſe they bereaved the true man of ſome of his robes or garments, or becauſe his money or goods were taken out of ſome part of his garment or robe about his perſon. *Co.* 3 *Inſt. cap.* 16. This is ſometimes called *violent theft.* Weſt. Symbol. ibid. which is felony of two-pence. *Kitchin, fol.* 16. and 22 *Lib. aſſ.* 39. See *Skene de verborum ſignif.* verb. *Reif*, and *Cromp. Juſtice of Peace, fol.* 30.

Robbery is a felony by the Common law, committed by a violent aſſault upon the perſon of another, by putting him in fear, and taking from his perſon his money, or other goods of any value whatſoever. 3 *Inſt.* 68. *c.* 16.

1. *What is or amounts to a robbery in reſpect of the manner, or perſon from whom any thing is taken.*
2. *Of raiſing hue and cry, and what kind of robbery it muſt be, to make the hundred chargeable.*
3. *Who is to bring the action, and of the previous ſteps requiſite.*
4. *At what time the action is to be brought; what evidence is neceſſary, and what ſhall excuſe the hundred.*
5. *Of levying the money, on the hundredors.*

1. *What is or amounts to a robbery in reſpect of the manner, or perſon from whom any thing is taken.*

The circumſtance of putting one in fear makes the difference between a robbery and a cut-purſe; both take it from the perſon, but this takes it *clam et ſecrete* without aſſault or putting in fear, and the robber by violent aſſault and putting in fear. 3 *Inſt.* 68. *cap.* 16.

Wherever a perſon aſſaults another, with ſuch circumſtances of terror as put him into fear, and cauſes him, by reaſon of ſuch fear, to part with his money, the taking thereof is adjudged robbery, whether there were any weapon drawn or not, or whether the perſon aſſaulted delivered his money upon the other's command, or afterwards gave it to him upon his ceaſing to uſe force, and begging an alms; for he was put into fear by his aſſault, and gives him his money to get rid of him. *Hawk. Pl. C.* 96, 97. *cap.* 34. *ſect.* 9.

In the caſe of *Macdaniel* and others, at the *Old Bailey* ſeſſions in *December* 1755. Mr. Juſtice *Foſter* was of opinion, that if a man attacked by an highwayman and robbed, previous to the robbery reſiſts, and is overpowered, without being under any fear at all, it is not the leſs robbery upon that account. *Foſt.* 128.

The words of the indictment, *violenter et felonice cepit*, muſt be underſtood that there is an actual taking in deed, and a taking in law, and that may be when a thief receives, *etc.* For example: If thieves rob a true man, and finding but little about him, take it, this is an actual taking; and by threats of death compel him to ſwear upon a book to fetch them a greater ſum, which he does and delivers it to them, which they receive, this is a taking in law by them, and adjudged robbery; for fear made him take the oath, and the oath and fear continuing, made him bring the money, which amounts to a taking in law; and in this caſe there needs no ſpecial indictment, but the general indictment (*Quod violenter & felonice cepit*) is ſufficient. And ſo it is, if at the firſt the true man for fear delivers his purſe, *etc.* to the thief. 3 *Inſt.* 68. *cap.* 16.

See *Hawk. P. C.* 96. *c.* 34. *ſ.* 4. The thief muſt be in poſſeſſion of the thing ſtolen, or otherwiſe he is not guilty of robbery. 3 *Inſt.* 69. *c.* 16. S. P. *Hawk. Pl. C.* 96. *c.* 34. *ſect.* 6. But though he is not guilty of robbery he is highly puniſhable by fine and impriſonment, *etc.* for ſo enormous a breach of the peace. See *infra.*

The words of the indictment are (*a perſona*) *etc.* If the true man, ſeeking to eſcape for the ſafeguard of his money, caſts it into a buſh, which the thief perceiving, takes it: This is a taking in law from the perſon, becaſe it is done at one time. 3 *Inſt.* 69. *cap.* 16. S. P. And ſo he drives my cattle in my preſence out of my paſture, or takes my hat which fell from my head, he may be indicted as having taken things from my perſon. *Hawk. Pl. C.* 96. *cap.* 34. *ſect.* 8. See alſo 3 *Inſt.* 69. *cap.* 16. *And.* 116. *pl.* 161. *Sty.* 156.

In ſome caſes, a man may be ſaid to rob me, where in truth he never actually had any of my goods in his poſſeſſion; as where I am robbed by ſeveral in one gang, and one of them takes my money, in which caſe, in judgment of law, every one of the company ſhall be ſaid to take it, in reſpect of that encouragement which they give to another thro' the hopes of mutual aſſiſtance in their enterprize: Nay, though they miſs of their firſt intended prize, and one of them afterwards rides from the reſt, and robs a third perſon in the ſame highway, without their knowledge, out of their view, and then returns to them, all are guilty of robbery; for they came together with an intent to rob, and to aſſiſt one another in ſo doing. *Hawk. Pl. C.* 96. *cap.* 34. *ſect.* 7.

If a carrier's man or ſon conſpire to rob him, and do it accordingly, the carrier not being privy to it, he may ſue the hundred on the ſtatute of *Winton*; but the conſpiracy may be given in evidence in mitigation of damages; *per Roll* Ch. J. *Style* 427. *Mich.* 1654. *Matthew* v. *The hundred of Godalmin.*

If a man ſervant be robbed of his maſter's goods in his maſter's ſight, this ſhall be taken for a robbing of the maſter. *Style* 156. *Mich.* 1649. *per Roll* Ch. J. in *Wright*'s caſe.

Taking cattle from *A.* which he is driving on the highway, is a taking from his perſon, and ſo a robbery; *per Powel* juſtice; *Quod non fuit negatum.* 2 Salk. 641. *Green* v. *Goddard.*

An attempt to rob is made felony with benefit of clergy, by 7 *Geo.* 2. *c.* 21.

2. *Of*

2. *Of raiſing hue and cry, and what kind of robbery it muſt be to make the hundred chargeable.*

The levying of hue and cry is injoined by ſeveral acts of parliament, and to this purpoſe it is enacted by *Weſtm.* 1. *cap.* 9 "That all be ready and apparelled at the ſummons of the ſheriff, to purſue and arreſt felons."

Though ſome imagined that hue and cry was grounded on this ſtatute; yet Lord *Coke* ſays, That it was uſed long before, as appears even by this ſtatute, which, inſtead of introducing a new law, inforces obedience to that which was founded on the ancient laws of the realm. 2 *Inſt.* 171.

By the ſtatute of 4 *Ed.* 1. *De officio coronatoris*, hue and cry ſhall be levied for all murders, burglaries, men ſlain, or in peril to be ſlain, as other where is uſed in *England*; and all ſhall follow the hue and ſteps as near as they can.

By the ſtatute of *Winton*, or 13 *Ed.* 1. *ſt.* 2. *c.* 1. it is enacted, "That from thenceforth every country ſhall be ſo well kept, that immediately upon robberies and felonies committed freſh ſuit ſhall be made from town to town, and from country to country." And *cap.* 2. of the ſaid ſtatute, if the country will not anſwer for the bodies of ſuch offenders, the people dwelling in the country ſhall be anſwerable for the robberies done, and alſo the damages: And if the robbery be done within the diviſion of the two hundreds, both the hundreds, and the franchiſes within them ſhall be anſwerable.

The ſtatute of *Winton* gives the action againſt the hundred; but by ſubſequent ſtatutes, ſuch as 27 *Eliz. cap.* 13. 8 *Geo.* 2. *cap.* 16. ſeveral alterations and additions have been made therein.

It ſeems to be admitted, that no kind of robbery will make the hundred liable, but that which is done openly, and with force and violence; and that therefore the private ſtealing, or taking any thing from the party does not come within the ſtatutes which make the hundred liable, becauſe the hundred is not liable in not preventing the robbery, but becauſe they did not apprehend the robbers, which in private felonies, and of which they had no notice, it would be difficult, if not impoſſible, for them to do. 7 *Co.* 6, 7. 2 *Salk.* 614.

Alſo it hath been adjudged, and is admittted in all the books which ſpeak of this matter, that a robbery in a houſe, whether it be by day or by night, does not make the hundred liable: The reaſons whereof are, that every man's houſe is in law eſteemed his caſtle, which he himſelf is obliged to defend, and into which no man can enter, to ſee what is doing there, without his leave; alſo being done in a houſe, the inhabitants of the hundred cannot be preſumed to have notice of it, ſo as to be able to apprehend the offenders. 7 *Co.* 6. *a*. *Sendil*'s caſe.

But if a perſon be aſſaulted in the highway, and carried into a houſe, and there robbed, it ſeems the hundred ſhall be liable; for otherwiſe the proviſion made by the ſtatute would be eluded. 1 *Sid.* 263. and ſee 1 *Salk.* 614. *Fareſl.* 159. Alſo it does not ſeem neceſſary, that the robbery ſhould be committed in the highway, nor alledged to have been ſo by the plaintiff in his declaration. *Fareſl.* 159. It may be in a private way, or be in a coppice; and in both caſes the hundred ſhall be chargeable. 2 *Salk.* 614. and *vide Carth.* 71. 3 *Mod.* 258. 1 *Show.* 60. *Comb.* 150. S. C. adjudged between *Young* and the inhabitants of the hundred of *Tolſcomb*.

The robbers ought to be taken in 40 days, to excuſe the hundred. In 3 *Lev.* 320. it is ſaid, that upon ſearch of the parliament roll it appears, that the ſtatute of *Winton* gives only forty days to the country, and that the ſtatute 28 *Ed.* 3. *c.* 11. is but a confirmation thereof; and accordingly it was adjudged, where the plaintiff brought an action on the ſtatute of *Winton*, and declared that he was robbed, and none of the robbers taken within forty days, according to the ſaid ſtatute; and with this the modern precedents agree, as *Raſt. Ent.* 406. *Co. Ent.* 351. *Hern.* 215. *Theſ. Brev.* 141. 2 *Sal.* 376.

Nevertheleſs the inhabitants ſhall make freſh ſuit and purſuit after the offenders.

It is clearly agreed that for a robbery committed in the night the hundred is not chargeable, becauſe they cannot be preſumed to have notice thereof, ſo as to be able to apprehend the robbers. 7 *Co.* 6. *b*. *Milborne*'s caſe. 2 *Inſt.* 569.

But yet it is not neceſſary that the robbery ſhould be committed after ſun-riſe, and before ſun-ſet, for if there be as much day-light at the time that a man's countenance may be diſcerned thereby, though it be before ſun-riſe or after ſun-ſet, the hundred ſhall be liable. 7 *Co.* 6. *a*. *Aſhpole*'s caſe. *Cro. Jac.* 106. 1 *And.* 158. 1 *Leon.* 57. *Savil* 33. *vide Carth.* 71. *Comb.* 150. 3 *Mod.* 258. 1 *Show.* 60. S. P. admitted,

It hath been held, that if robbers drive or oblige the waggoner to drive his waggon from the highway by day, but do not rob or take any thing till night, that yet this is a robbery in the day-time ſo as to charge the hundred. *Sid* 263. *Fareſl.* 159. Alſo ſee *Hutton* 125.

Plaintiff was travelling in the highway in the hundred of *A.* where he was ſet upon and carried into the hundred of *B.* and robbed in a copſe in the highway of this hundred; it was adjudged that the hundred of *B.* ſhould be liable. 2 *Salk.* 614, 6 5. *Fareſl.* 157. S. C. *Cowper* v. *The Hundred of Baſingſtoke*.

By the 27 *Eliz. cap.* 13. *par.* 2. it is enacted, "That the inhabitants and reſiants of every hundred (with the franchiſes within the precinct thereof) wherein negligence, fault or defect of purſuit and freſh ſuit after hue and cry made ſhall happen to be, ſhall anſwer and ſatisfy the one moiety of all ſuch money and damages as ſhall be recovered againſt the hundred, with the franchiſes therein, in which any robbery or felony ſhall be committed, to be recovered by action of debt, &c. by and in the name of the clerk of the peace for the time being, of or in every ſuch county, and recovery by the party or parties robbed ſhall be, without naming the chriſtian name or ſurname of the ſaid clerk of the peace; which moiety ſo recovered ſhall be to the uſe of the inhabitants of the hundred where any ſuch robbery, &c. ſhall be committed,"

3. *Who is to bring the action, and of the previous ſteps requiſite.*

If a ſervant be robbed in the abſence of his maſter, of his maſter's money, it is clear that the maſter may maintain an action for it againſt the hundred, but then the ſervant muſt make oath that he knew not any of the robbers. *Cro. Car.* 37. *Raymond* v *Hundred of Oking* adjudged. Alſo the ſervant being robbed in his maſter's abſence, may himſelf maintain an action againſt the hundred, and may declare that he was poſſeſſed *ut de bonis ſuis propriis*, &c. And though the jury find that he was robbed of his maſter's money, yet ſhall he recover; for the ſervant is poſſeſſed *ut de bonis ſuis propriis*, againſt all, and in reſpect of all, but him that hath the very right. 2 *Salk.* 613-4. 4 *Mod.* 303. *Comb.* 263. S. C. *Combs* v. *The Hundred of Bradley*, S. C. 1 *Sid.* 45.

If a ſervant be robbed in the preſence of the maſter, the maſter muſt ſue; and the oath of the maſter is ſufficient. 2 *Salk.* 613. *per cur'*. *Carth.* 147.

There muſt be an oath, *vide Carth.* 145. 2 *Salk.* 613. 1 *Show.* 94. 3 *Mod.* 287. S. C. *Aſhcomb* v. *The Hundred of Elthorn*: and *vide infra*.

If *A.* and *B.* travelling together are robbed of a ſum of money, to which they are both jointly intitled, they may both join in action againſt the hundred; *ſecus* if they had ſeparate and diſtinct intereſts. *Dyer* 370. *a*. *pl.* 59.

By ſtatute 27 *Eliz. cap.* 13. *par.* 11. it is enacted, That no perſon that ſhall happen to be robbed ſhall maintain any action, or take any benefit of the ſtatutes which make the hundred liable, except the perſon ſo robbed ſhall, with as much convenient ſpeed as may be, give notice of the robbery ſo committed unto ſome of the inhabitants of ſome town, village or hamlet, near unto the place where any ſuch robbery ſhall be committed.

In the conſtruction of this clauſe of the ſtatute it hath been holden,

That if a perſon be robbed in a highway *in diviſis hundredorum*, he need not give notice to the inhabitants of each hundred, but notice to either of them is ſufficient. *Cro. Jac.* 675. *Foſter* v. *The hundred of Specknor and Iſle-*

worth, adjudged, *vide* alſo, *Cro. Car.* 41, 379. 1 *Show.* 94.

It hath been reſolved, that though the notice given be five miles from the place where the robbery was committed, that it is ſufficient; the reaſon whereof is, becauſe that the party, who is a ſtranger to the country, cannot have conuzance of the neareſt place or town. *March.* 11. Sir *John Compton*'s caſe, which *vide*, and ſee alſo 2 *Leon.* 82.

Alſo if the party robbed give notice with as much convenient ſpeed as may be, though he be otherwiſe remiſs in not purſuing the robbers, or refuſes to lend his horſe for that purpoſe, yet he ſhall not loſe his action for this, nor the hundred be excuſed. *March* 11. 2 *Leon* 82. S. P. agreed *per cur'*.

Now by the 8 *Geo.* 2. *cap.* 16. *ſect.* 1. it is further enacted, "That no perſon ſhall maintain any action againſt the hundred, unleſs he ſhall, beſides the notice already required by the laſt ſtatute, with as much convenient ſpeed as may be, after any robbery committed, give notice thereof to one of the conſtables of the hundred, or to ſome conſtable, borſholder, headborough or tithingman of ſome town, pariſh, village, hamlet or tithing, near unto the place where ſuch robbery ſhall happen, or ſhall leave notice in writing of ſuch robbery at the dwelling houſe of ſuch conſtable, *&c.* deſcribing ſo far as the nature and circumſtances of the caſe will admit, the felon, and the time and place of the robbery, and alſo ſhall, within the ſpace of twenty days next after the robbery committed, cauſe public notice to be given thereof in the *London* Gazette, therein likewiſe deſcribing, ſo far as the nature and circumſtances of the caſe will admit, the felon, and the time and place of ſuch robbery, together with the goods and effects whereof he was robbed."

By the 27 *Eliz.* *c.* 13. *par.* 11. it is enacted, "That the party robbed ſhall not have any action, except he ſhall firſt, within twenty days next before ſuch action to be brought, be examined upon his corporal oath, before ſome juſtice of the peace of the county where the robbery was committed, whether he knows the parties that committed the robbery, or any of them: and if, upon examination, it be confeſſed, that he knows the parties, or any of them, that then he ſhall, before the action be commenced, enter into ſufficient bond by recognizance before the ſaid juſtice, effectually to proſecute the ſame perſon and perſons."

In the conſtruction of this clauſe of the ſtatute, the following points have been holden;

That if the party does not know the robbers at the time of the robbery committed, tho' he happens to know them afterwards, it is not material. *March* 11.

It hath been adjudged, that the oath may be taken before a juſtice of the county, though not in the county at the time of adminiſtering it. 1 *Jones* 239. *Helier* v. *The hundred of Benhurſt.*

As to giving bond for payment of coſts, by ſtat. 8 *Geo.* 2. *cap.* 16. it is enacted, "That before any action commenced the party ſhall go before the chief clerk, or ſecondary, or the filazer of the county wherein ſuch robbery ſhall happen, or the clerk of the pleas of that court wherein ſuch action is intended to be brought, or their reſpective deputies, or before the ſheriff of the county wherein the robbery ſhall happen, and enter into a bond to the high conſtable, or high conſtables of the hundred in which the robbery ſhall be committed, in the penal ſum of one hundred pounds with two ſufficient ſureties to be approved of by ſuch chief clerk, *&c.* with condition for ſecuring to ſuch high conſtable or high conſtables, the due payment of his or their coſts, after the ſame ſhall be taxed by the proper officer, in caſe the plaintiff in ſuch action ſhall happen to be nonſuited, or ſhall diſcontinue the action, or in caſe judgment ſhall be given on demurrer, or a verdict againſt him."

4. *At what time the action is to be brought; what evidence is neceſſary; and what ſhall excuſe the hundred.*

By 27 *Eliz.* *c.* 13. *par.* 9. The action is to be brought within *one year* after the robbery committed.

In the conſtruction of this ſtatute it hath been holden; That if a perſon be robbed the 9th of *October* 13 *Jac.* and ſo laid that the teſte of the writ be the 9th *Octob.* 14 *Jac.* that this is not purſuant to the ſtatutes; and that in this action, which is penal againſt the hundred, there is no reaſon to exclude the day on which the fact was done, nor to make ſuch conſtruction as is done in protections and the inrolment of deeds, which have always received a benign interpretation. *Hob.* 139, 140. *Moor* 878. *pl.* 1233. 1 *Brownl.* 156. S. C. *Norris* v. *Hundred of Gawtry.* Vide 1 *Sid.* 139. 1 *Keb.* 495. S. C. *Newman* v. *Inhabitants of Strafford.*

An action was brought by the maſter, on the ſtatute of *Winton*, for a robbery committed on his ſervant, in which he declared of an aſſault and battery done to himſelf, (though then 50 miles from the place) alſo that he made oath that he did not know any of the perſons; the iſſue was entered of record, and the jury appeared at the bar ready to try it; but being for other buſineſs adjourned to another day, the plaintiff obſerving his miſtake moved to amend, by declaring of a robbery on his ſervant, *&c.* and it appearing that the year in which the action muſt be brought was expired, and conſequently the action muſt be loſt if not allowed, the court, after long debate and conſideration of former precedents, admitted him to amend. 3 *Lev.* 347. *Beartroft* ver. *Hundred of Barnham and Stone.*

It ſeems that, from the neceſſity of the caſe, the party himſelf that was robbed is to be admitted as a witneſs, but then his teſtimony muſt be corroborated by collateral proof and circumſtances, and ſuch as may induce a jury to believe that a robbery was actually committed, and that the party loſt what he declared for. 2 *Leon.* 12.

By 8 *Geo.* 2. *c.* 16. it is enacted, "That in any action againſt any hundred, any perſon inhabiting within the hundred, or any franchiſe thereof, ſhall be admitted as witneſs for or on behalf of the hundred."

By 27 *Eliz.* *cap.* 13. *par.* 8. it is enacted, "That where any robbery is committed by two, or a greater number of malefactors, and that it happen any one of the ſaid offenders to be apprehended by purſuit, to be made according to the ſtatutes, that then, no hundred or franchiſe ſhall in any wiſe incur the penalty loſs or forfeiture mentioned in the ſtatutes, although the reſidue of the malefactors ſhall happen to eſcape." See 1 *Vent.* 118, 325. *Raym.* 221. 2 *Lev.* 4. S. C. *Methwin* ver. *Hundred of Thiſtleworth*, and *vide infra*.

If hue and cry be made towards one part of the county, and an inhabitant of the hundred apprehends one of the robbers within another, this is a taking within the ſtatute. 1 *Vent.* 118, 119. *per Hale* Ch. J.

By the 8 *Geo.* 2. *cap.* 16. it is enacted, "That no hundred, or franchiſe therein, ſhall be chargeable by virtue of any of the ſtatutes, if any one or more of the felons, by whom ſuch robbery ſhall be committed, be apprehended within the ſpace of forty days next after public notice given in the *London* Gazette, as by the ſtatute is provided."

5. *Of levying the money on the hundredors.*

By 27 *Eliz.* *c.* 13. *par.* 14. it is enacted, "That after execution of damages by the party or parties ſo robbed had, it ſhall be lawful (upon complaint made by the party charged) to and for two juſtices of the peace (whereof one to be of the *quorum*) of the ſame county, inhabiting within the hundred, or near unto the ſame where any ſuch execution ſhall be had, to aſſeſs and tax rateably and proportionably, according to their diſcretions, all and every the towns, pariſhes, villages and hamlets, as well of the ſaid hundred where any ſuch robbery ſhall be committed, as of the liberties within the ſaid hundred, to and toward an equal contribution, to be had and made for the relief of the inhabitants, againſt whom the party or parties robbed before that time had execution."

The conſtables, *&c.* are to levy the money and pay it over to the juſtices, and they are to deliver it over to the inhabitants, for whoſe uſe it was collected.

The ſame taxation is to be in caſes where there's default or negligence of purſuit and freſh ſuit, for the benefit of inhabitants having damages or money levied on them.

It hath been holden, that a perſon occupying lands in an hundred, although he hath no houſe or dwelling there, is an inhabitant within the meaning of the ſtatute, for that otherwiſe the ſtatute might be eluded. 2 *Saund.* 423. *Leigh* v. *Chapman.*

And now, for the more equal rating and levying the money for which the hundreds are chargeable, by the 8 *Geo.* 2. *cap.* 16. it is enacted, " That no proceſs for appearance in any action to be brought upon either of the ſtatutes againſt any hundred, ſhall be ſerved on any inhabitant thereof, ſave only upon the high conſtable, or high conſtables of the hundred wherein the robbery ſhall happen, who are to cauſe public notice thereof to be given, to enter an appearance, and defend the action, as adviſed. On recovery by the plaintiff and execution iſſued, the ſheriff is to ſhew it to two juſtices, who are to cauſe an aſſeſſment, as directed by 27 *Eliz.* *c.* 13. which is to include the high conſtable's coſts." Vide the *Stat.* and ſee to the ſame purpoſe as to not executing writ of execution on any particular inhabitant, on any judgment obtained by virtue of any act of parliament. *Stat.* 22 *Geo.* 2. *c.* 46. *ſ.* 34.

By ſtat. 22 *Geo.* 2. *cap.* 24. No perſon ſhall recover againſt any inhabitants of any hundred, in any action on any of the ſtatutes of hue and cry, more than 200*l.* unleſs the perſons robbed, at the time of ſuch robbery for which ſuch action is brought, be in company two at leaſt, to atteſt the truth of being ſo robbed.

Robbers, *(Robatores)* Are interpreted to be mighty thieves by *Lambard* in his *Eiren.* *lib.* 2. *c.* 6.——*Latrones validi, qui in perſonas hominum inſilientes bona ſua diripiunt.* Spelm.

Robberſmen, or **Roberdſmen,** Were a ſort of great thieves, mentioned in the ſtatutes 5 *Ed.* 3. *c.* 14. and 7 *R.* 2. *c.* 5. of whom Sir *Edw. Coke* ſays, That *Robin Hood* lived in the reign of King *Rich.* 1. on the borders of *England* and *Scotland*, by robbery, burning of houſes, rapine and ſpoil, *&c.* and that theſe *Roberdſmen* took name from him. 3 *Inſt.* 197. See *Black. Com.* 4 *V.* 244.

Rocheſter. Oyſter fiſhery in the *Medway* how regulated by the corporation of *Rocheſter*, 2 Geo. 2. cap. 19. For repairing *Rocheſter* bridge, 27 *El.* *c.* 25.

Rocheſter, *(Francis,* Lord Biſhop) Subjected to pains and penalties, 9 *Geo.* 1. *c.* 17.

Rochet, Is that linen garment which is worn by biſhops, gathered at the wriſts, and differs from a ſurplice, for that hath open ſleeves hanging down; but a *rochet* hath cloſe ſleeves. *Lindewode*, *lib.* 3. tit. 27.

Rock-ſalt. See *Salt.*

Rod, *(Roda terræ)* A meaſure of ſixteen feet and a half long, otherwiſe called a *perch.*

Rod-knights, (From the Sax. *Rad.* i. e. *Equitatio &* *Cnyt, Famulus, quaſi Miniſtri Equitantes)* Certain ſervitors who held their land by ſerving their lords on horſeback. *Bract.* *lib.* 2. *c.* 35.

Rogation-week, *(Dies Rogationum, Robigalia)* Is a time ſo called, becauſe of the ſpecial devotion of prayer and faſting then injoined by the church for a preparative to the joyful remembrance of *Chriſt's Aſcenſion.* Cowell. —Robigalia, *dies feſtus ſeptimo calend.* Maii *celebrari ſolitus, &c. ut* Robiginem *à ſegetibus averteret: Rogation,* or Gang-week. *Lit. Dict.*

Rogue, *(Fr.)* Signifies an idle ſturdy beggar, who, by ancient ſtatutes, for the firſt offence, was called a *rogue of the firſt degree*, and puniſhed by whipping, and boring through the griſtle of the right ear, with a hot iron; and for the ſecond offence, he was termed a *rogue of the ſecond degree*, and executed as a felon, if he were above eighteen years old. 27 *Hen.* 8. *c.* 25. 14 *Eliz.* *c.* 5, *&c.* But ſee 35 *Eliz* *c.* 7. *ſ.* 24. Repealing ſo much of 14 *Eliz.* *c.* 5. and 18 *Eliz.* *c.* 3. as doth relate to the gaoling, boring, and death of vagabonds of the *ſecond degree.*

By a late act, perſons apprehended as vagabonds, and eſcaping, or refuſing to go before a juſtice, or giving a falſe account of themſelves; and all ſuch perſons breaking priſon, before the expiration of the term, or who having been puniſhed and diſcharged, commit a ſecond offence, are adjudged *incorrigible rogues.* A juſtice of peace may ſend any ſuch *rogue* to the houſe of correction till the next ſeſſions; and then the juſtices ſhall order him to be detained ſix months, and to be kept to hard labour and alſo corrected by whipping, in manner and as often as they think fit; and afterwards the offender is to be paſſed away to his place of ſettlement: And if he make his eſcape from priſon, he ſhall be judged guilty of felony, and be tranſported for ſeven years, *&c.* *Stat.* 13 *Geo.* 2. *c.* 24. See farther directions given by 17 *Geo.* 2. *c.* 5. 25 *Geo.* 2. *c.* 36. *ſ.* 12. and 26 *Geo.* 2. *c.* 34. *ſ.* 2. Vide *Black. Com.* 4 *V.* 170.

Rogus, *(Lat.)* A great fire wherein dead bodies were burned; and ſometimes it is taken for a pile of wood. *Clauſ.* 5 *Hen.* 3.

Roll, *(Rotulus)* Is a ſchedule of parchment that may be turned up with the hand in the form of a pipe. *Staundf.* *P. C.* 11. *Rolls* are parchments on which all the pleadings, memorials, and acts of courts are entered and filed with the proper officer; and then they become records of the court. 2 *Lil. Abr.* 491. And by a rule made by the court of *King's Bench*, every attorney is to bring in his rolls into the office fairly ingroſſed by the times thereby limited, *viz.* The *rolls* of *Trinity*, *Michaelmas*, and *Hilary* terms, before the eſſoin day of every ſubſequent term; and the *Rolls* of *Eaſter* term before the firſt day of *Trinity* term; and no attorney at large, or any other perſon, ſhall file any *rolls*, &c. but the clerks of the chief clerks of this court. *Ord. B. R. Mich.* 1705. If *rolls* are not brought into the office in time, it has been ordered that they ſhall not be received without a particular rule of court for that purpoſe. *Mich.* 9 *W.* 3.

Roll of Court, *(Rotulus curiæ)* The court-roll in a manor, wherein the names, rents, and ſervices of the tenants were copied and inrolled. *Per* rotulum curiæ tenere, by copyhold——*Matildis le Tailur tenet per* rotulum curiæ *unum meſſuagium*, *&c.* Paroch. Antiq.

Rolls office Of the Chancery. There is an office called the *Rolls* Office in *Chancery Lane*, anciently called *Domus Conſervorum*, which contains all the *rolls* and records of the High Court of *Chancery*, the maſter whereof is the ſecond perſon in the *Chancery*, &c. See *Maſter of the Rolls.*

Rolls of the Exchequet, Are of ſeveral kinds, as the great *Wardrobe Roll*, the *Cofferer's Roll*, the *Subſidy Roll*, *&c.*

Rolls of Parliamenr, The manuſcript regiſters of the proceedings of our old parliaments; and our ſtatutes being anciently ingroſſed in parchment: in theſe *rolls* are likewiſe a great many deciſions of difficult points in law; which were frequently in former times referred to the determination of this ſupreme court by the judges of both benches, *&c.* *Nichol. Hiſt. Libr.* 47.

Rolls of the Temple. In the two *Temples* is a *Roll* called the *Calves-head Roll*, wherein every bencher, barriſter, and ſtudent, is taxed yearly at ſo much to the cook and other officers of the houſes, in conſideration of a dinner of *Calves-heads* provided in *Eaſter* term. *Orig. Jurid.* 199.

Roma-peditæ, Pilgrims that travel to *Rome* on foot. *Mat. Paris*, *Anno* 1250.

Rome, Church of, its incroachments of power here, and how ſuppreſſed; and no impoſition to be paid to the biſhop of *Rome.* &c. Vide *Stat.* 25 *Hen.* 8. *c.* 19. and *Pope.*

Rome-Scot, *(Romefeoh vel Romefee, Romepeny,* alias *denarius Sancti Petri & hearth-peny)* Is compounded of *Rome* and *Scot*, from the Sax. *Scot*, ſymbolum. *Mat. Weſtm.* ſays, It was *Conſuetudo Apoſtolica, a qua neq; rex, neq; archiepiſcopus vel epiſcopus, abbas vel prior, aut quilibet in regno immunis erat.* It was an annual tribute of one penny from every family, paid yearly to *Rome*, at the feaſt of St. *Peter ad Vincula*, being the firſt of *Auguſt.* *Camden* in his *Brit.* ſays, *Offa*, the *Saxon*, firſt granted it; but others, that *Ina*, a King of the *Weſt Saxons*, being in pilgrimage at *Rome*, *anno* 725. gave it as an alms, and that it was firſt forbidden by *Edward* the Third. It amounted to three hundred marks and a noble yearly. See *Leg. Hen.* 1. *c.* 1. *Rog. Hoveden*, *par. poſter. ſuor. Annal.*

Annal. fol. 344. *in vita Hen.* 2. and ſee *Peter-Pence* and *Hearth-Penny.* This payment was abrogated 25 *H.* 8. 25. reſtored 1 & 2 *P.* & *M.* but utterly aboliſhed 1 *Eliz.* 1. See *Spelman's Gloſſary,* verbis *Romeſcot, Romeſeah, Romepenny.*

This mark of ſlavery was a burthen and a ſcandal to the *Engliſh* nation. Our free-born anceſtors often complained of it. It was one of the complaints of grievances in parliament, 8 *John,* A. D. 1206. when the King iſſued out this writ of redreſs: *Rex archiepiſcopis, epiſcopis, abbatibus, archidiaconis, & omni clero apud ſanctum Albanum convocatis, ſalutem. Conquerente univerſitate comitum, baronum, militum & aliorum fidelium noſtrorum, audivimus quod non ſolum in laicorum gravem perniciem, ſed in totius regni noſtri intolerabile diſpendium ſuper* Romeſcot *præter conſuetudinem ſolvendo—Mandamus—ne contra regni noſtri conſuetudinem aliquid novum ſtatuatis.*—Teſte me ipſo apud Ebor. 26. die Maii, anno regni noſtri, 8 Cart. 8. Jo. m. 1. Cowell.

Romney-Marſh, Is a large tract of land in the county of *Kent,* containing 24000 acres: and is governed by certain ancient and equitable laws of ſewers compoſed by *Henry de Bathe,* a venerable judge in the reign of King *Henry* the Third; from which laws all commiſſioners of ſewers in *England* may receive light and direction. 4 *Inſt.* 276. The commiſſioners of ſewers, in other parts of *England,* may act according to the laws and cuſtoms of *Romney-marſh,* or otherwiſe at their own diſcretion. *Black. Com.* 3 *V.* 74. But they are ſubject to the diſcretionary coercion of the court of King's Bench. *Ibid.* See *Rumney Marſh.*

Rood, or *Holy Rood,* Signifies the Holy Croſs.

Rood of Land, *(Rodata Terræ)* Is the fourth part of an acre. *Stat.* 5 *Eliz. c.* 5.

Roof-tile. See *Tiles.*

Roots. Deſtroying of trees, *roots,* ſhrubs or plants, *&c.* is by 6 *Geo.* 3. *c.* 36 & 48. made liable to pecuniary penalties for the two firſt offences, the third, felony, puniſhable with tranſportation. Stealing or deſtroying turnips, or the *roots* of madder, *&c.* puniſhable criminally, by whipping, *&c.* Vide 43 *Eliz. c.* 7. 15 *Car.* 2. *c.* 2. 23 *Geo.* 2. *c.* 26. 31 *Geo.* 2. *c.* 35.

Rope-dancers, *&c.* are public nuſances, and may, upon indictment, be ſuppreſſed and fined. 1 *Hawk. P. C.* 198, 225.

Ropes, Old ones may be imported duty-free. 11 *G.* 1. *c.* 7. *ſ.* 10.

Ros, A kind of ruſhes, which ſome tenants were obliged, by their tenures, to furniſh their lords withal. *Brady.*

Roſe-Tile, To lay upon the ridge of a houſe, is mentioned in the ſtatute 17 *Ed.* 4. *c.* 4.

Roſetum, A low watery place of reeds and ruſhes; and hence the covering of houſes with a thatch made of reeds, was called *Roſetum.* Cartular. Glaſton. M. S. 107.

Roſland, Heathy land, or ground full of ling; alſo watery and mooriſh land, from the Br. *Rhos.* 1 Inſt. 5.

Rother-Beaſts. Under this name are comprehended oxen, cows, ſteers, heifers, and ſuch like horned beaſts. 21 *Jac. c.* 18.

Rotulus Wintoniæ, Was an exact ſurvey of all *England, per Comitatus, Centurias, & Decurias,* made by King *Alfred,* not unlike that of *Domeſday;* and it was ſo called, for that it was of old kept at *Wincheſter* among other records of the kingdom; but this roll time hath conſumed. *Ingulph. Hiſt.* 516.

Rouble, Coin in *Muſcovy* going for ten ſhillings, ſterling. *Merch. Dict.*

Rout, (Fr. *Route,* i. e. a company or number) In a legal ſenſe, ſignifies an aſſembly of perſons, going forcibly to commit an unlawful act, though they do not do it. *Weſt. Symb. par.* 2. A *rout* is the ſame which the *Germans* call *rot,* meaning a band or great company of men gathered together, and going to execute, or indeed executing any riot or unlawful act: But the *Stat.* 18 *Ed.* 3. *c.* 1. againſt *routs* before juſtices, or in affray of the people, and 2 *R.* 2. *c.* 6. that ſpeaks of riding in great *routs,* to make entry into lands, *&c.* do ſeem to make it to be where the perſons, unlawfully aſſembled, have moved forward in order to do the unlawful act, but part without doing it; for whether they put their purpoſe in execution or no, if they go, ride, or move forward, after their meeting, it is a *rout.* Broke 4, 5. Dalt. 321. However two things are common to *riots, routs,* and *unlawful aſſemblies;* the one, that three perſons at leaſt be gathered together; the other, that they being together do diſturb the peace, either by words, ſhew of arms, turbulent geſture, or actual violence, *&c. Lamb. Eiren. lib.* 1. *c.* 5. Vide *Black. Com.* 4 *V.* 146. See *Riot.*

Royal Aſſent, *(Regius aſſenſus)* Is that *aſſent* which the King gives to a thing formerly done by others, as to the election of a biſhop by Dean and Chapter; which given, then he ſends a ſpecial writ for the taking of *fealty.* The form of which you may ſee in *F. N. B. fol.* 170. And to a bill paſſed in both houſes of parliament, *Cromp. Jur. fol.* 8. which aſſent in parliament being once given, the bill is indorſed with theſe words, *Le Roy le veult,* i. e. *It pleaſes the King.* But if he refuſe to agree to it, then thus, *Le Roy aviſera,* i. e. *The King will adviſe.* Cowell. *Vide* Black. Com. 1 V. 154, 183.

Royal family. See *Black. Com.* 1 *V.* 219, *&c.*

Royalties, *(Regalitates)* The ſeveral ſorts of, you may ſee under *prerogative* and *regalia.* Thoſe *royalties* which concern government in an high degree, the King may not grant or diſpoſe of. *Jenk. Cent.* 79.

Roynes, Streams, currents, or other uſual paſſages of rivers and running waters. *Cowell.*

Royſton, (town of) Reduced to one pariſh. 32 *Hen.* 8. *c.* 84.

Rozin, In what ſhips to be imported, 12 *Car.* 2. *c.* 18. *ſ.* 8. Importation of it from the *Netherlands* or *Germany;* how prohibited, 13 & 14 *Car.* 2. *c.* 11. *ſect.* 23. To what duties liable on importation, 4 *W.* & *M. c.* 5. *ſ.* 2. Bringing it from *Scotland* how rewarded, 12 *An. ſt.* 1. *c.* 2.

Rubies, May be imported duty-free. 6 *Geo.* 2. *c.* 7.

Rubricks, *(à rubro colore,* becauſe anciently written in red letters) are conſtitutions of our church, founded upon the ſtatutes of uniformity and public prayer, *viz.* 5 & 6 *Ed.* 6. *cap.* 1. 1 *Eliz. cap.* 2. 13 & 14 *Car.* 2. *cap.* 2.

Rudmas-Day, (From the Sax. *Rode,* i. e. *Crux,* and maſs-day, *i. e.* feaſt-day) The feaſt of the *Holy Croſs;* and there are two of theſe feaſts, and on the 3d of *May,* the invention of the croſs; and the other the 14th of *September,* called *Holy Rood* day, and is the exaltation of the croſs.

Rules of Court. Attornies are bound to obſerve the *rules of the court,* to avoid confuſion; alſo the plaintiff and defendant in a cauſe are at their peril to take notice of the *rules* made in court touching the cauſe between them. 2 *Lil. Abr.* 492, 493. The court will not make a rule for a thing which may be done by the ordinary courſe; and if the court be informed that they have made ſuch a *rule,* they will vacate it. *Mich.* 22 *Car. B. R.* And if a *rule* be made by the court grounded upon an affidavit, the other ſide may move the court againſt this *rule;* i. e. that it may be diſcharged; and thereupon ſhall bring into court a copy of the affidavit and *rule* made, that the affidavit may be read, to put the court in mind for what reaſons they made the *rule,* and whether there be ſtronger reaſons for the vacating of it, than there were for the making of it, or not. 2 *Lil. Abr.* 494. Where a *rule* of court is made, and it is not drawn up and entered before the continuance day of the ſame term, the clerk of the *rules* will not draw it up afterwards until the court be moved, and ſhall again order it to be entered. *Paſch.* 1656. For breach and contempt of a *rule* of court, an attachment lies; and if a *rule* of court is made betwixt parties by their conſent, though the court would not have made ſuch *rule* without their conſent, yet, if either party refuſe to obey ſuch *rule* made, the court will, upon motion, grant an attachment againſt the party that diſobeys the *rule.* Hil. 1655. But generally an attachment is not grantable for diſobedience to any *rule,* unleſs the party hath been ſerved with it perſonally; nor for diſobeying a *rule* at *Niſi prius,* till it is made a *rule* of court; or for diſobedience to a *rule* made by a judge at his chambers, if it be not entered. 1 *Salk.* 71, 83. And a *rule* not entered, is of no force to ground a motion upon, *&c.* Service of a *rule* for an information at the houſe, not good where the defendant is gone to ſea. 2 *Strange* 1044.

Rule of court may be granted to any *priſoner* in the *King's Bench* or *Fleet* priſons, every day the court ſits, to go at large, if ſuch priſoner hath buſineſs in law of his own to follow. 2 *Lil. Abr.* 493.

Rum. See *Brandy*, *Plantations*.

Rumney Marſh. King *Hen.* 3. granted a charter to *Rumney Marſh*, in the county of *Kent*, impowering twenty-four men thereunto choſen to make diſtreſſes equally upon all thoſe who have lands and tenements in the ſaid marſh, to repair the walls and watergates of the ſame, againſt the dangers of the ſea. And there are ſeveral laws and cuſtoms obſerved in the ſaid marſh, eſtabliſhed by ordinance of juſtices thereto appointed, in the 42d year of King *Hen.* 3. the 16 *Ed.* 1. the 33 *Ed.* 3, *&c.* See *Romney-marſh*.

Rumours, Spreading ſuch as are falſe, is criminal and puniſhable by Common law. 1 *Hawk. P. C.* 234. See 19 *Vin. Abr.* 272.

Runcaria, (from *Runca)* Land full of brambles and briars. 1 *Inſt. fol.* 5. *a.*

Runcilus and **Runcinus,** Is uſed in Domeſday (ſays *Spelman)* for a load-horſe, *Equus operarius colonicus*, or a ſumpter-horſe, and ſometimes for a cart-horſe, which *Chaucer*, in the *Seaman's Tale* calls a *Rowney*. Cowell.

Runlet, Is a meaſure of wine, oil, *&c.* containing eighteen gallons and a half. 1 *R.* 3. *c.* 13. It is alſo ſaid to be an uncertain quantity of liquor, from three to twenty gallons. *Merch. Dict.*

Runners of Foreign Goods, Who to be deemed ſo, and how puniſhed. 8 *Geo.* 1. *c.* 18.

Ruptarii, Were ſoldiers, or rather robbers, called alſo *rutarii*; and *rutta* was a company of robbers: Hence we derive the word *rout*, and *bankrupt*. Mat. Paris, Anno 1250.

Ruptura. Arable land, or ground broke up, as uſed in ancient *charters*.

Rural Deans, Were certain perſons having eccleſiaſtical juriſdiction over other miniſters and pariſhes near adjoining, aſſigned by the biſhop and archdeacon, being placed and diſplaced by them; ſuch as the dean of *Croydon*, *&c.* Lyndw. c. 1.——*Sunt decani temporales ad aliquod miniſterium ſub epiſcopo vel archiepiſcopo exercendum conſtituti, qui nec habent inſtitutionem canonicum ſecundum doctores.* Spelm. And theſe *rural deans* were anciently termed *archipreſbyteri*, and *decani chriſtianitatis*. Kennet's Paroch. Antiq. *See* Dean.

Rural deanry. As every dioceſe is divided into archdeaconries, (of which there are ſixty) ſo each archdeaconry is divided into *rural deanries*, which are the circuit of the archdeacon's and rural deans juriſdiction: And every deanry is divided into pariſhes. *Black. Com.* 1 *V.* 111.

Ruſca, A tub or barrel of butter, which in *Ireland* is called a *ruſkin*: *Ruſca apum* ſignifies a hive of bees. *Mon. Ang* tom 2. *p.* 986.

Ruſcaria, The place where kneeholm or broom grows. *Co Lit.* 5.

Ruſh-Lights. See *Candles*.

Ruſſia and Ruſſia Company. Goods of the growth or manufacture of *Ruſſia* not to be imported but in *Engliſh* ſhipping, *&c.* 12 *Car* 2. *c.* 18. *ſ.* 8, 9. Any of his Majeſty's ſubjects to be admitted into the *Ruſſia* company, 10 & 11 *W.* 3. *c.* 6. Account of ſtores imported to be laid before parliament, 10 & 11 *W.* 3. *c.* 6. *ſ.* 4. Trade opened to *Perſia* through *Ruſſia*, 14 Geo. 2. c. 36. See *Muſcovy Company*.

Ruſtici. The churls, clowns, or inferior country tenants, who held cottages and lands by the ſervices of ploughing and other labours of agriculture for the lord. The land of ſuch ignoble tenure was called by the Saxons *Gafalland*, as afterwards *ſocage tenure*, and was ſometimes diſtinguiſhed by the name of *terra ruſticorium*. Paroch. Antiq. 136.

Rye, A corn of grain, of which bread is made in ſome parts of *England*.

Rye and Winchelſea, An act againſt ballaſt caſt into the channel at *Rye* and *Winchelſea*, &c. 2 *Ed.* 6. *c.* 30.

S

Sabaia, A ſort of poor ſmall beer. *Lit. Dict.*

Sabbatarius, A *Sabbatarian*, or Jew; of or belonging to the *Sabbath*.

Sabbath-breaking. The profanation of the Lord's Day, which is an offence againſt God and Religion, puniſhed by the Municipal laws of *England*. Vide the Statutes, 27 *H.* 6. *c.* 5. 1 *Car.* 1. *c.* 1. And 29 *Car.* 2. *c.* 7.

Sabbatum, The *Sabbath*, or day of reſt; the ſeventh day from the creation: It is uſed for peace in the book of *Domeſday*.

Saballinæ Pelles, *i. e.* Sable furs, mentioned in *Hoved. p.* 758.—*Statutum fuit in Anglorum gente ne quis eſcarleto*, ſabellino *vario, vel griſeo uteretur.* Brompt. Anno 1188.

Sabulonarium, A gravel-pit; or liberty to dig gravel and ſand; alſo the money paid for the ſame. *Pet. Parl. temp. Ed.* 3.

Sac, *(Saca vel ſacha)* Is an ancient privilege which a lord of a manor claims to have in his court, of holding plea in cauſes of treſpaſs ariſing among his tenants, and of impoſing fines and amercements touching the ſame: But by ſome writers it is the amercement and forfeiture itſelf. *Raſtal.*

In the laws of King *Edward*, ſet forth by *Lambard*, *ſaca* is ſaid to be the *amerciament* paid by him who denies that which is proved againſt him to be true; or affirms that which is not true. *Lamb.* 244 And, according to *Fleta*, Sac *ſignificat acquietantiam de ſecta ad comitatum & hundredum.* Fleta, lib. cap. 47. *Præcipe ut* A. B. *bene & libere habeat* ſocan & ſacam. *Brev. Hen.* 2.

Saca, In the *Saxon* properly ſignifies as much as *Cauſa* in *Lat.* whence we in *England* ſtill retain the expreſſion, For whoſe *ſake*, i. e. For whoſe cauſe, *&c.*

Sacaburh or **Sacabere,** Is he that is robbed, or by theſt deprived of his money or goods, and puts in ſurety to proſecute the felon with freſh ſuit. *Brit. c.* 15 & 29. With whom agrees *Bracton*, *lib.* 3. *c.* 32. The *Scots* term it *Sikerborgh*, that is *certum vel ſecurum plegium vel pignus*; for with them *Siker* ſignifieth *ſecurus*, and *borgh*, *legius*.

Saccini, Monks ſo called, becauſe they wore next their ſkins a garment of goat's hair; and *ſaccus* is applied to coarſe cloth made of ſuch hair. *Walſing.*

Saccis, *Fratres de* ſaccis, the *ſack-cloth* brethren, or the penitential order. *Placit.* 8 *Ed.* 2.

Saccus cum brochia, Is a ſervice or tenure of finding a *ſack* and a *broach* to the King, for the uſe of his army. *Bracton*, *lib.* 2. *c.* 16.

Sack of Wool, A quantity of twenty-ſix ſtone of ſheep's wool; and of cotton wool, from one hundred and a half to four hundred. *Stat.* 14 *Ed.* 3. *c.* 2.

Sacrament, *(Sacramentum)* Is the moſt ſolemn act of worſhip amongſt us, being inſtituted by our Saviour himſelf; and by the *Rubrick* there muſt be three at the leaſt to communicate, and a miniſter is not without lawful cauſe to deny it to any who ſhall devoutly and humbly deſire it: But notorious ſinners are not to be admitted to it till they have repented; nor thoſe who maliciouſly contend, until they are reconciled, *&c.* alſo the *Sacrament* is not to be adminiſtered to ſuch who refuſe to be preſent at the prayers of the church, or to ſtrangers; for a miniſter is not obliged to give it to any but thoſe of his own pariſh; and the partakers of the Holy *Sacrament* ought to ſignify their names to the curate at leaſt a day before it is adminiſtred. *Can.* 27. *Count. Pariſ. Com.* 36, 37, 38.

If a miniſter refuſe to give the *Sacrament* to any one, being required by the biſhop, he is to certify the cauſe of ſuch refuſal; and a parſon refuſing to adminiſter the *Sacrament* to any without juſt cauſe, is liable to be ſued in action on the caſe; becauſe a man may have a temporal loſs by ſuch refuſal. *Right Clergy* 489. By ſtatute, no perſon ſhall be choſen into any office of magiſtracy, or place of truſt, *&c.* unleſs they receive the *Sacrament*, according to the rites of the church of *England*, and deliver a certificate thereof to the court of King's Bench or quarter-ſeſſions, under the hand of the miniſter, and prove it by witneſſes. 13 & 14 *Car.* 2. *c.* 4. 25 *Car.* 2. *c.* 2. In every pariſh church the *Sacrament* is to be adminiſtered three times in the year, (whereof the feaſt of *Eaſter* to be one) and every layman is bound to receive it thrice every year, *&c.* In colleges and halls of the *Univerſities*, the *Sacraments* are to be adminiſtered the firſt or ſecond *Sunday* of every month; and in *Cathedral Churches*, upon all principal feaſt-days, *Canon* 21, 22, 23. The church-wardens, as well as the miniſter, are to take notice whether the pariſhioners come ſo often to the *Sacrament* as they ought, and on a church-warden's preſenting a man for not receiving the *Sacrament*, he may be libelled in the Eccleſiaſtical court and excommunicated, *&c.* Reviling the *Sacrament* of the Lord's Supper is puniſhable by fine and impriſonment. 1 *Eliz. c.* 1.

Sacramentum, Is uſed for an oath: The common form of all *inquiſitions* may, by a jury, run thus, *Qui dicunt ſuper* Sacramentum *ſuum, &c.* whence poſſibly the proverbial offering to take the *Sacrament* of the truth of a thing, was firſt meant by atteſting upon oath.

Sacramentum altaris, The ſacrifice of the maſs, or what is now called the *Sacrament* of the Lord's Supper; for which communion, in the times of popery, the pariſh prieſt provided bread and wine for the people and himſelf, out of the offerings and oblations. *Paroch. Antiq.* 488.

Sacrilege, *Sacrilegium)* Is *church robbery*, or a taking of things out of a holy place; as where a perſon ſteals any veſſels, ornament, or goods of the church: And it is ſaid to be a robbery of God, at leaſt of what is dedicated to his ſervice. 3 *Cro.* 153. If any thing belonging to private perſons, left in a church, be ſtolen, it is only common theft, not *ſacrilege:* But the *Canon law* determines that alſo to be *ſacrilege*; as likewiſe the ſtealing of a thing known to be conſecrated, in a place not conſecrated. *Treat. Laws* 360.

By the *Civil law, ſacrilege* is puniſhed with greater ſeverity than any other thefts; and the *Common law* diſtinguiſhed this crime from other robberies; for it denied the benefit of the clergy to the offenders, which it did not do to other felons: But by *ſtatute* is is put upon a footing with other felonies, by making it felony excluded of clergy, as moſt other felonies are. 2 *Inſt.* 250.

All perſons not in holy orders, who ſhall be indicted, whether in the ſame county where the fact was committed, or in a different county, of robbing any church, chapel, or other holy place, are excluded from their clergy, by 23 *H.* 8. *c.* 1. 25 *H.* 8. *c.* 3. 5 & 6 *Ed.* 6. *c.* 10. And all perſons in general are ouſted of their clergy for the felonious taking of any goods out of any pariſh church, or other church or chapel, by the 1 *Ed.* 6. *c.* 12. But the word *robbing* being always taken to carry with it ſome force, it ſeems no *ſacrilege* is within theſe ſtatutes, which is not accompanied with the actual breaking of a church, *&c.* *Kel.* 58, 69. *Dyer* 224. And the ſtatute 23 *H.* 8. *c.* 1. is the only act which extends to acceſſaries to theſe robberies; except the offence amount to burglary, in which caſe acceſſaries before are ouſted of clergy, by 3 & 4 *W.* & *M. c.* 9. 2 *Hawk. P. C.* 351.

Sacrilege, Or *alienation* to laymen and to profane or common purpoſes of what was given to religious perſons and to pious uſes, was a guilt which our forefathers were very tender of incurring; and therefore when the order of the *Knights Templars* was diſſolved, their lands were given to the *Knights Hoſpitallers of Jeruſalem* for this reaſon——*Ne in pios uſus erogata contra donatorum voluntatem in alios uſus diſtraherentur.* Paroch. Antiq. 390.

Sacriſta, *(Lat.)* A *Sexton*, belonging to a church, in old times called *Sagerſon* and *Sagiſton.*

Safe-conduct, *(Salvus conductus)* Is a ſecurity given by the prince, under the Great Seal, to a ſtranger, for his *ſafe-coming* into and paſſing out of the realm; the form whereof is in *Reg. Orig.* 25. There are letters of *ſafe-conduct* which muſt be inrolled in Chancery; and the perſons to whom granted muſt have them ready to ſhew: And touching which there are ſeveral ſtatutes, *viz.* 9 *H.* 3. *c.* 30. 15 *H.* 6. *c.* 3. 18 *H.* 6. *c.* 8. 20 *H.* 6. *c.* 1. 28 *H.* 8. *c.* 1. 31 *H.* 6. *c.* 4. 14 *Ed.* 4. *c.* 4. Vide alſo *Black. Com.* 1 *V.* 259. 4 *V.* 68.

Safe-guard, *(Salva guardia)* A protection of the King to one who is a ſtranger that fears violence from ſome of his ſubjects, for ſeeking his right by courſe of law. *Reg. Orig.* 26.

Safe-pledge, *(Salvus plegius)* A ſurety given for a man's appearance at a day aſſigned. *Bracton, lib.* 4. *cap.* 2.

Sagaman, (From the Sax. *Saga*, i. e. *Fabula)* Signifies a tale-teller, or ſecret accuſer. *Leg. Hen.* 1. *cap.* 63.

Sagibaro, alias **Sachbaro,** Is the ſame that we now call *juſticiarius*, a judge. *Leg. Inæ, c.* 6.

Sagitta Barbata, A bearded arrow—*Reddendo inde annuatim pro omni ſervitio ſex* ſagittas barbatas *ad feſtum Sancti Michaelis, &c.* Blount.

Sagittarii, A ſort of ſmall ſhips or veſſels, with oars and ſails. *R. de Diceto, anno* 1176.

Sail-Cloth. For encouraging the manufacture of *ſail-cloth*, any perſon may import into this kingdom undreſſed flax, without paying any duty for the ſame, ſo as a due entry be made thereof at the cuſtom-houſe, *&c.* And no drawback is to be allowed on re-exportation of foreign *ſail-cloth:* But an allowance ſhall be made of 1*d.* *per* ell for *Britiſh ſail-cloth* exported, *&c.* 4 *Geo.* 2. *c.* 27. All foreign *ſail-cloth* imported, from which duties are granted, ſhall be ſtamped, expreſſing from whence imported, *&c.* And manufacturers of *ſail-cloth* in this kingdom are to affix, to every piece by them made, a ſtamp containing their names, and places of abode, or, expoſing it to ſale, ſhall forfeit 10*l.* And if any perſons cut off or obliterate ſuch ſtamps, they incur a forfeiture of 5*l.* upon conviction before one or more juſtices, to be levied by diſtreſs, *&c.*

Ships built, on firſt ſetting out to ſea, to have one compleat ſet of ſails manufactured here, on pain of 50*l.* And no ſail-maker may work up into ſails foreign *ſail-cloth* not ſtamped, under 20*l.* penalty: Alſo *ſail-cloth* made in *Great Britain*, the pieces being made of certain lengths and breadths, ſhall weigh ſo many pounds each bolt, and the warp wrought of double yarn, *&c.* And flax-yarn uſed in *Britiſh ſail-cloth* not to be whitened with lime, on forfeiture of 6*d.* a yard. Sail-makers, *&c.* are to cauſe this act to be put up in their ſhops and work-houſes, under the penalty of 40*s.* *Stat.* 9 *G.* 2. *c.* 37.

By the *ſtat.* 19 *Geo.* 2. *c.* 27. Maſters of ſhips are to make entry of all foreign made ſails on board, under the penalty of 50*l.* and pay duty for the ſame, unleſs he chooſes to deliver up the ſails as forfeited: Sails brought from the *Eaſt Indies* are exempted from duty: Foreign made *ſail-cloth* imported, is to be ſtamped at the landing: Forger of ſtamps, *&c.* ſhall forfeit 50*l.* A ſail-maker making foreign *ſail-cloth* unſtamped into ſails, ſhall forfeit 50*l.* A ſail-maker ſhall not repair or amend the ſame under the penalty of 20*l.* By the *ſtat.* 23 *Geo.* 2. *cap.* 32. duties are laid on *ſail-cloths* imported from *Ireland*. See alſo 23 *Geo.* 2. *c.* 21. *ſ.* 26. 26 *Geo.* 2. *c.* 32. and 27 *Geo.* 2. *c.* 18. *ſ.* 8.

Saint Martin le Grand, *Court of.* The chief of the ſeveral courts in *London* are the *Sheriffs Courts*, holden before their ſteward or judge; from which a writ of error lies to the *Court of Huſtings*, before the mayor, recorder and ſheriffs; and from thence to juſtices appointed by the King's commiſſion, who uſed to ſit in the church of *Saint Martin le Grand*, (F. N. B. 32.) and from the judgment of thoſe juſtices a writ of error lies immediately to the Houſe of Lords. *Black. Com.* 3 *V.* 80. *n.*

Saio & Saiones, *Fori vel Magiſtratus Miniſter.* A tipſtaff or ſerjeant at arms; derived from the Sax. *Sagol*, i. e. *Fuſtis*, becauſe they uſed to carry a rod or ſtaff of ſilver.

Salary, *(Salarium)* Is a recompence or conſideration made to a perſon for his pains and induſtry in another man's buſineſs: The word is uſed in the ſtatute 23 *Ed.* 3. *cap.* 1. *Salarium* at firſt ſignified the rents or profits of a *Sala,* hall or houſe; (and in *Gaſcoigne* they now call the ſeats of the gentry *Sala's,* as we do halls) but afterwards it was taken for any wages, ſtipend, or annual allowance.

Sale, *(Venditio)* Is the transferring the property of goods from one to another, upon valuable conſideration: And if a bargain is that another ſhall give me 5 *l.* for ſuch a thing, and he gives me *earneſt,* which I accept, this is a perfect *ſale. Wood's Inſt.* 316. On *ſale* of goods, if earneſt be given to the ſeller, and part of them are taken away by the buyer, he muſt pay the reſidue of the money upon fetching away the reſt, becauſe no other time is appointed; and the earneſt given binds the bargain, and gives the buyer a right to demand the goods; but a demand without paying the money is void: And it has been held, that, after the earneſt is taken, the ſeller cannot diſpoſe of the goods to another, unleſs there is ſome default in the buyer; therefore if he doth not take away the goods and pay the money, the ſeller ought to require him ſo to do; and then if he doth not do it in convenient time, the bargain and ſale is diſſolved, and the ſeller may diſpoſe of them to any other perſon. 1 *Salk.* 113. A ſeller of a thing is to keep it a reaſonable time, for delivery: But where no time is appointed for delivery of things ſold, or for payment of the money, it is generally implied that the delivery be made immediately, and payment on the delivery. 3 *Salk.* 61. Where one agrees for wares ſold, the buyer muſt not carry them away before paid for; except a day of payment is allowed him by the ſeller. *Noy* 87.

It is ſaid a perfect bargain and *ſale* between parties, will be good, tho' the ſeller knows of an execution that is againſt him; and doth ſell the goods to prevent the falling of it upon them. 3 *Shep. Abr.* 115. A *ſale* may be of any living or dead goods in a fair or market, be they whoſe they will, or however the ſeller come by them; if made with the cautions required by law: But if one ſell my goods unduly, I may have them again. *Doct. & Stud.* 328. *Perk. Sect.* 93. If a man affirm a thing ſold is of ſuch a value when it is not, this is not actionable; but if he actually *warrants* it, at the time of the ſale, and not afterwards, it will bear an action, being part of the contract. 2 *Cro.* 5, 386, 630. 1 *Rol. Abr.* 97. See *Contract.* And *Sales of Goods* in *Markets,* to be binding, *&c.* Vide *Market.* And *Black. Com.* 2 *V.* 9. 446.

Salet, Is a head-piece (from the Fr. *Salut,* i. e. *Salus*) A *ſalet* or *ſcull* of iron, *&c.* 20 *R.* 2. *c.* 1. 4 *&* 5 *P. & M.*

Salicetum, The ſoil where willows grow, or an oſier bed. 1 *Inſt* 4.

Salina, Is a ſalt-pit, or place wherein ſalt is made. And *ſalina* is ſometimes wrote for *ſalma, i. e.* a pound weight. *Chart.* 17 *Ed.* 2. and ſtatute *R.* 1.

Salique law, *(Lex* ſalica) A law by which males only are to inherit. *De terra* ſalica *nulla portio hæreditatis mulieri veniat, ſed ad virilem ſexum tota terræ hæreditas perveniat, &c.* It was an ancient law made by *Pharamond,* King of the *Franks,* part of which ſeems to have been borrowed by our *Henry* the Firſt in compiling his laws, as *cap.* 89. *Qui hoc fecerit ſecundum legem* ſalicam *moriatur, &c.*

Salisbury, For better repairing the highways, ſtreets, and water-courſes in the city of *Saliſbury,* and enlightening the ſtreets, *&c.* the mayor, recorder, and juſtices of the ſaid city, with four principal inhabitants of each pariſh, are appointed truſtees, *&c. Stat.* 10 *Geo.* 2. *cap.* 6.

Salmon. No perſon may take *Salmons* in rivers, between the 8th of *September,* (by late acts 1ſt *Auguſt*) and the 11th *November*; and *Salmon* are not to be taken under eighteen inches long, *&c.* under penalties. *Stat.* 13 *Ed.* 1. 1 *Eliz. c.* 17. None ſhall ſell any *ſalmon* in veſſels before it be viewed, unleſs the barrel contain forty-two gallons, and the half barrel twenty-one gallons, well packed, and the great *ſalmon* by itſelf, and ſmall fiſh by themſelves, *&c.* on pain to forfeit for every veſſel 6 *s.* 8 *d. Stat.* 22 *Ed.* 4. *c.* 2. *Salmon* not to be taken in the *Thames* between 24 *Auguſt* and 11th *November.* 9 Ann. c. 26. Fiſhmongers prohibited to buy *ſalmon* under ſix pounds weight. 1 *Geo.* 1. *c.* 18. *Salmon* may be taken in the *Ribble* between 1 *Jan.* and 15 *Sept.* 23 *Geo.* 2. *c.* 26. See *Fiſh.*

Salmon-pipe, An engine to catch *ſalmons* or ſuch like fiſh. 25 *H.* 8. *c.* 7.

Saltatorium, Signifies a deer-leap; *Quod habeat unum* Saltatorium *in Parco de* B. Pat. 1 Ed. 3.

Salt. The price of *ſalt* is to be ſet by juſtices of peace in their ſeſſions; and perſons ſelling it at a higher rate ſhall forfeit 5 *l.* Alſo *ſalt* ſhall be ſold by weight after the rate of 56 *lb.* to the buſhel, under the like penalty. See *Stats.* 7 *&* 8 *W.* 3. *c.* 31. *ſect.* 44, 92. 9 *&* 10 *W.* 3. *c.* 6. A duty is impoſed on *ſalt* by ſtatute; pits to be entered, *&c.* at the *Salt-Office* on pain of 40 *l.* penalty; and proprietors removing *ſalt* from any pit, before weighed in preſence of the proper officer, to forfeit 20 *l. &c.* 10 *&* 11 *W.* 3. *c.* 22. 1 *Ann. c.* 21. But the duties on *ſalt* made in this kingdom were taken off, and duty on foreign *ſalt* to continue, except for the *Britiſh* fiſhery, *&c.* by *Stat. Geo.* 2. *c.* 20. And ſince the duties on *ſalt* have been revived and continued, to be managed by commiſſioners, *&c* who may grant licences to erect houſes for refining of rock *ſalt,* at certain places in the counties of *Eſſex* and *Suſſex.* 5 Geo. 2. c. 6. and 7 Geo. 2. c. 6. The *ſalt* duties continued for a further term, and under the ſame proviſions, *&c* with a clauſe of loan of 500,000 *l.* And proprietors of *ſalt*-works in *Scotland* are not to pay their work-people in *ſalt,* under the penalty of 20 *l. Stat.* 8 *Geo* 2. *c.* 12. By a late ſtatute, the *ſalt* duties are further continued, with a loan of 1,200,000 *l.* at 4 *l. per cent.* intereſt, *&c. Rock-ſalt* may be uſed in the making of *ſalt* from ſea-water in works in *Wales,* paying the duties on both. 14 *Geo.* 2. *c.* 22. The *ſalt* duties are made perpetual by *ſtat.* 26 *Geo.* 2. *c.* 3. And ſee *ſtat.* 26 *Geo.* 2. *c.* 32.

Salt may be imported from any part of *Europe* to *Nova Scotia,* 2 Geo. 3. c. 24.

May be imported from *Europe* into *Quebec* in *America.* 4 Geo. 3. c. 19.

Salt-Duty in *London.* There is a cuſtom duty in the city of *London* called *Granage,* payable to the lord-mayor, *&c.* for *ſalt* brought to the port of *London,* being the twentieth part. *Cit. Lib.* 125.

Salt-petre. What quantity to be delivered yearly into the royal ſtores, 1 *Ann. ſtat.* 1. *c.* 12. *ſect.* 113. The King may prohibit the exportation of it, 29 *Geo.* 2. *c.* 16. *ſect.* 1.

Salt-Silver, One *penny* paid at the feaſt of *St. Martin,* by the tenants of ſome manors, as a commutation for the ſervice of carrying their lord's *ſalt* from market to his larder. *Paroch. Antiq.* 496.

Saltus, A high thick wood or foreſt. See *Boſcus.*

Salva-garda, Is a ſecurity given by the King to a ſtranger, fearing the violence of ſome of his ſubjects, for ſeeking his right by courſe of law;——the form whereof ſee in *Reg. Orig. fol.* 26.

Salvage, Is an allowance made for *ſaving* of ſhips or goods from danger of ſeas, enemies, *&c. Merch. Dict.* And by ſtatute, where a ſhip ſhall be in danger of being ſtranded or run on ſhore, juſtices of peace are to command conſtables to aſſemble as many men as ſhall be neceſſary to ſave the ſhip; and being preſerved by their means, the perſons aſſiſting ſhall within thirty days after be paid a reaſonable reward for the *ſalvage* by the maſter of the ſhip or merchant, in default whereof the ſhip or goods ſhall remain in the cuſtody of the officers of the cuſtoms as a ſecurity. 12 *Ann. c.* 18. The Lord Warden of the cinque ports to appoint perſons to adjuſt *ſalvage* of anchors. 3 *Geo.* 1. *c.* 13. *ſect.* 6. Stranded goods to pay duties, 5 *Geo.* 1. *c.* 11. *ſect.* 13. As to *ſalvage* of goods retaken from enemies. See 13 *Geo.* 2. *c.* 4. *ſ.* 18. 17 *Geo.* 2. *c.* 34. *ſ.* 20. Saving ſhips in diſtreſs, or goods, intitled to ſalvage, by 26 *Geo.* 2. *c.* 19. *ſect.* 5. See *Black. Com.* 1 *V.* 293.

Salvagius, Wild, ſavage; as *ſalvagius catus,* the wild cat. *Rot. Cart.* 1 *Joh.*

Salute, *(Salus)* Was a coin made by King *Hen.* 5. after his conqueſt in *France,* whereon the arms of *France* and *England* were ſtamped and quartered. *Stowe's Cron.* 589.

Sancta, Are the reliques of the ſaints; and *jurare ſuper* ſancta was to make oath on thoſe reliques. *Leg. Canut. c.* 57.

Sanction of Laws. With regard to the *ſanction* of laws, or the evil that may attend the breach of public duties; it is oberved, that human legiſlators have for the moſt part choſen to make the *ſanction* of their laws rather *vindicatory* than *remuneratory,* or to conſiſt rather in puniſhments, than in actual particular rewards. Becauſe, in the firſt place, the quiet enjoyment and protection of all our civil rights and liberties, which are the ſure and general conſequence of obedience to the Municipal law, are in themſelves the beſt and moſt valuable of all rewards. Becauſe, alſo, were the exerciſe of every virtue to be enforced by the propoſal of particular rewards, it were impoſſible for any ſtate to furniſh ſtock enough for ſo profuſe a bounty. And farther, becauſe the dread of evil is a much more forcible principle of human action, than the proſpect of good. (*Locke, Hum. Und. l.* 2. *c.* 21.) For which reaſon, tho' a prudent beſtowing of rewards is ſometimes of exquiſite uſe, yet we find that thoſe Civil laws which enforce and enjoin our duty, do ſeldom, if ever, propoſe any privilege or gift to ſuch as obey the law; but do conſtantly come armed with a penalty denounced againſt tranſgreſſors, either expreſsly defining the nature and quantity of the puniſhment, or elſe leaving it to the diſcretion of the judges, and thoſe who are entruſted with the care of putting the laws in execution.

Of all the parts of a law the moſt effectual is the *vindicatory.* For it is but loſt labour to ſay, "do this, or avoid that," unleſs we alſo declare, "this ſhall be the conſequence of your non-compliance." We muſt therefore obſerve, that the main ſtrength and force of a law conſiſts in the penalty annexed to it. Herein is to be found the principal obligation of human laws. *Black. Com.* 1 *V.* 56, 7.

Sanctuary, (*Sanctuarium*) Is a place privileged for the ſafe-guard of offenders lives, being founded upon the law of mercy, and the great reverence and devotion which the Prince bears to the place whereunto he grants ſuch privilege. *Sanctuaries* were firſt granted by King *Lucius* to our churches and their precincts; and among all other nations, our ancient Kings of *England* ſeem to have attributed moſt to thoſe *ſanctuaries,* permitting them to ſhelter ſuch as had committed both felonies and treaſons; ſo as within forty days they acknowledged their fault, and ſubmitted themſelves to baniſhment; during which ſpace, if any layman expelled them he was excommunicated; and if a clerk, he was made irregular. *Mat. Weſt. Ann.* 187. S *P. C. lib.* 2. *cap.* 38. *Fleta, lib.* 1. *cap.* 29. But ſee *Poſt.*

St. John's of *Beverly* in *Yorkſhire* had an eminent *ſanctuary* belonging to it in the time of the *Saxons:* And *St. Buriens* in *Cornwall* had the like granted by King *Athelſtan, Anno* 935. ſo had *Weſtminſter* granted by King *Edward the Confeſſor:* and *St. Martin le Grand* in *London.* 21 *H.* 8. *&c.* See *Black. Com.* 4 *V.* 326, 358, 429.

Sanctuaries, It has been obſerved, did not gain the name of ſuch till they had the *Pope*'s bull, tho' they had full privilege of exemption from temporal courts by the King's grant only: But no *ſanctuary* granted by *general words,* extended to *high treaſon;* tho' it extended to *all felonies,* except *ſacrilege,* and to all inferior crimes, not committed by a *ſanctuary* man; and it never was a protection againſt any action civil, any farther than to ſave the defendant from execution of his body, *&c.* 2 *Hawk. P. C.* 335, 336. There were ſeveral ſtatutes made relative to ſanctuaries, whilſt they exiſted in this country, ſuch as, *Art. Cler.* 9 *Ed.* 2. *ſt.* 1. *c* 10. 22 *H.* 8. *c.* 14. 32 *H.* 8 *c* 12. *Art Cler.* 9 *Ed.* 2. *ſt.* 1. *c.* 15. 2 *R.* 2. *ſt.* 2. *c.* 3. 21 *H.* 8. *c.* 2. 4 *H.* 8. *c.* 2. 22 *H.* 8 *c.* 2. 27 *H.* 8. *c* 19. & 32 *H.* 8. *c* 12. By 26 *H.* 8. *c.* 13. ſanctuary was taken away from offenders in *high treaſon.* And it is very aſtoniſhing that ſanctuary was ever allowed for ſuch an offence! Now, by Stat. 21 *Jac.* 1. *c.* 28. *ſect.* 7. ſanctuaries are taken away.

Sandal, A merchandiſe brought into *England;* and a kind of red bearded wheat. See 2 *R.* 2. *c.* 1.

F Sand-gavel, Is a payment due to the lord of the manor of *Roaley* in the county of *Glouceſter,* for liberty granted to the tenants to dig *ſand* for their common uſe *Tayl. Hiſt. Gavel* 113.

Sane Memory, *i. e.* Perfect and ſound mind and memory, to do any lawful act, *&c.* See *Non Sane.*

Sanguinem emere, Was where villeins were bound to buy or redeem their blood or tenure, and make themſelves freemen.—*Omnes cuſtumarii tenen. de manerio de* Grendon *debent* ſanguinem *ſuum* emere. *Lib. niger Heref'.*

Sanguis, Is taken for that right or power which the chief lord of the fee had to judge and determine caſes where *blood* was ſhed. *Mon. Angl. tom.* 1. *p.* 1021.

Sang and **Sanke,** Words uſed for blood.

Saphora, To what duty liable on importation. 2 *W.* & *M. ſeſſ.* 2. *c.* 4.

Sarabara, A covering for the head. *Mat. Weſtm. Ann.* 1295.

Sarclin-time, (from the Fr. *Sarcler,* Lat. *Sarclare*) Is the time or ſeaſon when huſbandmen weed their corn.

Sarculatura, Weeding of corn: *Una ſarculatura,* the tenant's ſervice of one day's weeding for the lord.—*Tenet in bondagio, & debet unam* ſarculaturam, &c. *Paroch. Antiq.* 403.

Sarke. See *Guernſey* And *Black. Com.* 1 *V.* 106.

Sarkellus, An unlawful net or engine for deſtroying fiſh. *Inquiſic. Juſtic. Ann.* 1254.

Sarpler of Wool, (*Serplera lanæ,* otherwiſe called a *pocket*) Is half a ſack. *Fleta, lib.* 2. *c.* 12.

Sarſaparilla, May be imported from the *American* plantations, *&c.* if of the growth of *America.* 7 *Ann. cap* 8.

Sart, or *aſſart,* A piece of woodland turned into arable. See *Aſſart.*

Sarum, Is intended for the city of *Salſbury.* It was a form of church-ſervice called *ſecundum uſum* Sarum, and was compoſed by *Oſmond* the ſecond biſhop of *Sarum* in the time of *William* the Conqueror. *Hollingſhead, p.* 17. *col. B.*

Saſſe, Is a kind of wear with flood-gates, moſt commonly in navigable and cut rivers, from the damming and ſhutting up and looſing the ſtream of water, as occaſion requires, for the better paſſing of boats and barges; This in the Weſt of *England* is called a *lock;* and in ſome places a *ſluice.* Stat. 16 & 17 *Car.* 2. *c.* 12.

Saſſons, The corruption of *Saxons,* a name of contempt formerly given to the *Engliſh,* while they affected to be called *Angles;* they are ſtill ſo called by the *Welch.*

Satisfaction, Is the giving of recompence for an injury done; or the payment of money due on bond, judgment, *&c.* In which laſt caſe, it muſt be entered on record. 2 *Lill. Abr.* 495. See *Black. Com.* 4 *V.* 421.

Where money given one by will, ſhall be held to be in *ſatisfaction* of a debt, being more than that amounts to; and where it is not, and both have been allowed. *Preced. Chanc.* 236 394, 395. 2 *Vern* 478. See *Legacy.*

Satisfaction and amends may be pleaded for involuntary treſpaſs, *&c.* by ſtatute 21 *Jac.* 1. *cap.* 5. Vide *Payment.*

Saturday's Stop, A ſpace of time from even-ſong on *Saturday* till ſun-riſing on *Monday,* in which it was not lawful to take ſalmon in *Scotland,* and the Northern parts of *England. MS.*

Saver-Default, Is a law-term ſignifying *to excuſe,* as when a man having made default by not appearing in court, *&c.* comes afterwards and alledges good cauſe for it, *viz.* Impriſonment at the time, or the like. *Book Ent.*

Sankefin, (Fr from *Sang,* i. e. *Sanguis, Fin, & Finis*) Is the determination or final end of the lineal race and deſcent of kindred. *Britton, c.* 119.

Saurus, A hawk of a year old. *Bract. lib.* 5. *tract.* 1. *c.* 2. *par.* 1.

Saxon-lage, *(Saxon-laga, Lex Saxonum)* The law of the Weſt *Saxons* by which they were governed. See *Merchenlage.* And *Black. Com.* 4 *V.* 403, 4, 5.

As to the reaſon why ſo many traces of the *Saxon* laws, language and cuſtoms are to be found in *England, Robertſon,* in his Hiſtory of Emperor *Charles* V. 1 *V.* 197. *Note,* IV. Says, "The *Saxons* carried on the Conqueſt "of that country with the ſame deſtructive ſpirit, which "diſtinguiſhed the other barbarous nations. The ancient "inhabitants of *Britain* were either exterminated; or "forced to take ſhelter among the mountains of *Wales,* "or reduced into ſervitude. The *Saxon* government, "laws, manners, and language were of conſequence introduced into *Britain*; and were ſo perfectly eſtabliſhed, that all memory of the inſtitutions previous to their "Conqueſt was aboliſhed." As to the laws of the *Saxons,* for putting an end to private wars. See *Id.* 285.

Scabini, Is a word uſed for wardens at *Linne* in *Norfolk:*——— *Sciant præſentes & futuri quod nos, &c. Cuſtodes ſive* ſcabini *& fratres fraternitatis ſive gildæ mercatoriæ Sanctæ* Trinitatis *villæ Lenne in Com.* Norf. *Chart. Hen.* 8.

Scalam, *Ad ſcalam,* The old way of paying money into the *Exchequer.* The ſheriff, *&c.* is to make payment *ad ſcalam,* i. e. *ſolvere præter, quamlibet numeratum librum ſex denarios.* Stat. *W.* 1. And at that time ſixpence ſuperadded to the pound made up the full weight, and near the intrinſic value. This was agreed upon as a *medium* to be the common eſtimate for the defective weight of money; thereby to avoid the trouble of weighing it when brought to the *Exchequer.* Lownds's Eſſ. on Coin, pag. 4. Hale's Sher. Accounts, pag. 21.

Scalinga, A quarry or pit of ſtones, or rather ſlates for covering houſes: French *eſcailere,* whence *ſcaling* of houſes, *&c.* *Mon. Angl. tom.* 2. *pag.* 130.

Scandal, Signifies a report or rumour, or an action whereby one is affronted in public. *Chan.*

How the words are to be laid, and what is a material variance between the words laid and proved. See *Rep. Temp. Hardw. Per Annaly,* 305. It is not neceſſary to charge the words to be falſe. *Id.* 340.

Scandal or Impertinence in Bills in Equity. If a bill in equity contain matter either ſcandalous or impertinent, the defendant may refuſe to anſwer it, till ſuch ſcandal or impertinence is expunged, which is done upon an order to refer it to one of the maſters. *Black. Com.* 3 *V.* 442.

Scandalum magnatum, Is the ſpecial name of a ſtatute, and alſo of a wrong done to any high perſonage of the land, as prelates, dukes, earls, barons, and other nobles; and alſo to the chancellor, treaſurer, clerk of the Privy ſeal, ſteward of the houſe, juſtice of one bench or other, and other great officers of the realm, by falſe news, or horrible or falſe meſſages, whereby debates and diſcords betwixt them and the commons, or any ſcandal to their perſons might ariſe. Stat 2 *R.* 2. *cap.* 5. and hath given name to a writ, granted to recover damages thereupon. *Cowell.*

At the time of making the law, on which this action is founded, the conſtitution of this kingdom was martial, and given to arms; the very tenures were military, and ſo were the ſervices; as knight-ſervice, caſtle-guard and eſcuage; ſo that all provocations by vilifying words were revenged by the ſword, which often created factions in the Commonwealth, and endangered the government itſelf; for in this kind of quarrels the great men, or peers of the realm, uſually engaged their vaſſals, tenants and friends; ſo that laws were then made againſt wearing of liveries or badges, and againſt riding armed; ſo the ſtat. *Weſtm.* 2. appoints that the offender ſhall ſuffer impriſonment until he produces the author of a falſe report. 2 *Mod.* 156.

The law on which this action is grounded, is the 2 *Rich.* 2. *ſtat.* 1. *cap.* 5. which, after ſpeaking of "deviſors of falſe news, and horrible lies, of Prelates, Dukes, Earls, Barons, and other nobles and great men of the realm, and alſo of the chancellor, treaſurer, clerk of the Privy ſeal, ſteward of the King's houſe, juſtices of the one bench or of the other, and other great officers of the realm," enacts, "that none contrive or tell any falſe things of Prelates, Lords, and of others aforeſaid, whereof diſcord or ſlander might riſe within the realm, and he who doth the ſame ſhall be impriſoned 'till he have brought him forth that did ſpeak the ſame." This ſtatute is recited by the 12 *R.* 2. *cap.* 11. and thereby it is further provided, that the offender ſhall be puniſhed by the advice of the council. 4 *Inſt.* 51. 4 *Co.* 12. *b.* See *Black. Com.* 1 *V.* 402. 3 *V.* 123.

1. *Who may bring this action, and for what words it lies.*
2. *Of the proceedings in this action.*

1. *Who may bring this action, and for what words it lies.*

It hath been held, that the King is not included in the words *great men of the realm,* as the ſtatute begins with an enumeration of perſons of an inferior rank, as Prelates, Dukes, *&c.* *Cromp. Juriſd.* 19, 35.

Alſo it is held, that a woman noble by birth is not intitled to this action. *Cromp. Juriſ.* 34.

It hath been adjudged, that tho' there was no viſcount at the time of making this ſtatute, (the firſt viſcount being *John Beaumont* who was created viſcount, 18 *Hen.* 6.) yet when created noble, tho' by a new title, he was intitled to his action on this ſtatute. *Cro. Car.* 136. *Palm.* 565. Viſcount *Sey* and *Seal* v. *Stephens.*

Alſo it hath been adjudged, that ſince the union a peer of *Scotland* may have an action on this ſtatute, and that it is not neceſſary for him to alledge that he hath a ſeat and voice in parliament; for by the 5 *Ann. c.* 8, *art.* 23. All peers of *Scotland* after the union ſhall be peers of *Great Britain,* and have rank and precedency, *&c.* be tried, *&c.* and enjoy all privileges of peers as the peers of *England* now do or hereafter may enjoy, except the right and privilege of ſitting in the Houſe of Lords, and the privilege depending thereon, and particularly the right of ſitting upon the trial of peers. *Cum.* 439. Lord Viſcount *Falkland* v. *Phipps.*

It hath been contended for, that no words of ſlander are puniſhable by this ſtatute, unleſs they are actionable at Common law, and that they are only aggravated by the ſtatute, which, in this reſpect, is like the King's proclamation. 2 *Mod.* 161. Sir *Robert Atkins in his argument. Freem.* 222.

But the contrary hereof ſeems to have been holden in moſt of the caſes on this head, and not without reaſon, as it would be to no purpoſe to make a law, and thereby to give a peer an action for ſuch words as a common perſon might have before the making of the ſtatute, and for which the peer himſelf had equally a remedy by the Common law; and therefore the deſign of the ſtatute muſt be, not only to puniſh ſuch things as import a great ſcandal in themſelves, or ſuch for which an action lay at the Common law, but alſo ſuch things as ſavoured of any contempt of the perſons of the peers or great men, and brought them into diſgrace with the Commons, whereby they took occaſion of provocation and revenge. 2 *Mod.* 156.

It hath been obſerved, that no action was brought on this ſtatute 'till 100 years after the making thereof, the Lords ſtill continuing the military way of revenge to which they had been accuſtomed. 2 *Mod.* 156. Sir *Francis Pemberton's* argument.

The firſt caſe on this ſtatute, ſaid to be reported, is in *Keilw.* where the Lord *Beauchamp* brought an action of *ſcan. mag.* againſt Sir *Richard Crofts,* for that the ſaid *Richard* had ſued out a writ of forgery of falſe deeds againſt him; and it was held, that the taking out the writ being done in a legal way, and in a courſe of juſtice, the action did not lie. *Keilw.* 26, 27. 2 *Mod.* 164. cited.

Scan. mag. brought for ſaying of a judge, you are a corrupt judge, and held actionable. *Cromp. Jur.* 35. Ld. Ch. J. *Dyer's* caſe. So for theſe words, He impriſoned me till I gave him a releaſe. 3 *Leon.* 376. Lord *Wincheſter's* caſe, cited *Freem.* 221. So theſe words, You have writ a letter to me, which I have to ſhew, which is againſt the word of God, againſt the Queen's authority, and to the maintenance of ſuperſtition, and that I will ſtand to prove againſt you, were held actionable, and 500 marks damages given. *Cro. Eliz.* 1. *Biſhop of Norwich* v. *Prickett.* So of theſe words, My Lord *Mordant* did know that *Prude* robbed *Shotbolt*, and bid me compound with *Shotbolt* for the ſame, and ſaid he would ſee me ſatisfied for the ſame tho' it coſt him 100*l.* which I did for him, being my maſter, otherwiſe the evidence I could have given would have hanged *Prude*. *Cro. Eliz.* 67. *Ld. Mordant* v. *Bridges.* For theſe words wrote in a letter, I have heard that your Lordſhip hath ſought by uncharitable means to bereft me of my life, lands and liberty, an action lies. *Moor* 142. *Ld. Lumley* v. *Fox.* 4 *Co.* 16. S. C. that the action as well lies for words written as thoſe ſpoken. 2 *Show.* 505.

An action of *ſcan. mag.* was brought for theſe words, There are more jeſuits come into *England* ſince the Earl of *Northampton* was Lord of the Cinque ports than ever there were before, and held actionable. 12 *Co.* 132. Earl of *Northampton*'s caſe. In *ſcan. mag.* for theſe words ſpoken by a parſon in the pulpit, The lord of *Leiceſter* is a wicked and cruel man, and an enemy to the reformation in *England*, adjudged actionable, and 500*l.* damages given. 2 *Sid.* 21. *Ld. Leiceſter* v. *Mandy.*

So for theſe words, The Earl of *Pembroke* is of ſo little eſteem in the country, that no man of reputation hath any eſteem for him, and no man will take his word for 2*d.* and no man of reputation values him more than I do the dirt under my feet; and held actionable, tho' ſaid they would not be ſo in the caſe of a common perſon. *Freem.* 49. Earl of *Pembroke* v. *Saniel.*

If one ſays, I met *J. S.* whom I do not know, but my Lord *P.* ſent after me to take my purſe, an action of *ſcandalum magnatum* lies, tho' not poſitively ſaid my Lord *P.* ſent him, or that it was to take the purſe feloniouſly; which laſt, in caſe of an action by a common perſon, might be a good exception. 1 *Lev.* 277. 1 *Sid.* 434. 2 *Keb.* 537. E. of *Peterborough* v. Sir *John Mordant.* Vide 1 *Sid.* 233. 1 *Keb.* 813. 1 *Lev.* 148. Marquis of *Dorcheſter* v. *Proby.* If one ſays of a peer, He is an unworthy man, and acts againſt law and reaſon; an action of *ſcan. mag.* lies, notwithſtanding the words are general, and charge him with nothing certain: And ſo adjudged by *North*, *Windham*, and *Scroggs* againſt the opinion of *Atkins*, who ſaid the ſtatute extended not to words of ſo ſmall and trivial a nature, but to ſuch only which were of greater magnitude, by which diſcord might ariſe, *&c.* and therefore the words horrible lies were inſerted in the ſtatute. Note; the rule laid down by the court in this caſe was, that words ſhould not be conſtrued either in a rigid or mild ſenſe, but according to the general and natural meaning and agreeable to the common underſtanding of all men. 2 *Mod.* 151, *&c.* 1 *Mod.* 232. *Freem.* 220. Lord *Townſhend* v. Doctor *Hughes.*

2. *Of the proceedings in this action.*

It is now clearly agreed, that tho' there be no expreſs words in the ſtatute which give an action, yet the party injured may maintain one on this principle of law, that when a ſtatute prohibits the doing of a thing, which if done might be prejudicial to another, in ſuch a caſe he may have an action on that very ſtatute for his damages. 2 *Mod.* 152.

That tho the action is to be brought *tam pro domino rege quam pro ſe ipſo*, yet the party is to recover all the damages. 1 *Peer Will.* 690. That if the words are actionable at Common law, the peer hath his election to proceed on the ſtatute, or at Common law. *Freem.* 49. It hath been held, that this being a general law, the plaintiff need not recite it particularly, and that if he ſets forth ſo much thereof as ſhews his caſe to be within the ſtatute, it is ſufficient. *Cro. Car.* 136, 2 *Sid.* 21. *Freem.* 425. That it is now ſettled that no new trial is to be granted in *ſcan. mag.* for exceſſive damages; which points ſeem to have been firſt determined in the caſe of Lord *Townſhend* v. Dr. *Hughes*, where the jury gave 4000*l.* damages. 2 *Mod.* 151. 1 *Mod.* 231.

It has been ruled, that in *ſcan. mag.* the defendant cannot juſtify, let the words be ever ſo true, becauſe the action is brought *qui tam*, in which the King is concerned; but it hath been held that the defendant may explain the words by ſhewing the occaſion of ſpeaking of them, and thereby extenuate the meaning of them, as was done in Lord *Cromwell*'s caſe. 4 *Co.* 14. 2 *Mod.* 166. *Freem.* 220. *Poph.* 67.

In *ſcan. mag.* the court will never change the *venue* on the common affidavit that the words were ſpoken in another county, becauſe a ſcandal raiſed on a peer of the realm reflects on him thro' the whole kingdom; and he is a perſon of ſo great notoriety, that there is no neceſſity of his being tied down to try his cauſe among his neighbourhood. *Carth.* 400. 2 *Salk.* 668. Vide 1 *Lev.* 56. 1 *Keb.* 514. 1 *Sid.* 185. 2 *Mod.* 216.

But in the caſe of Lord *Shafteſbury* v. *Graham*, the court in *ſcan. mag.* on a ſpecial affidavit of the plaintiff's power and intereſt in the county where the action was laid, made a rule for changing the *venue*; but note, that the books, which report and cite this caſe, mention it as a caſe of the times, and that it was owing to the great influence that Lord had in the city of *London* that the court varied from the general rule, and which rule hath ever ſince, notwithſtanding this caſe, been adhered to. 2 *Jo.* 198. 1 *Vent.* 363. *Skin.* 40. 2 *Show.* 200.

It hath been held, that the ſtatute, giving the writ of error in the Exchequer chamber, does not extend to *ſcan. mag.* Cro. Car. 286. Alſo it hath been held, that the ſtatute 27 *Eliz. c.* 8. for bringing a writ of error in the Exchequer chamber does not extend to this action. *Cro. Car.* 385. 1 *Sid.* 143. It hath been held, that in an action of *ſcan. mag.* ſpecial bail is not required. 3 *Mod.* 41. *Holt Rep.* 640. It hath been held, that no coſts are to be given the plaintiff on his obtaining a verdict. 2 *Show.* 506.

Scandalizing the marriage of King *Hen.* 8. with *Anne Bullen* was declared treaſon, by Stat. 25 *Hen.* 8. *c.* 22.

Scarborough, Perſons incorporated there, with power to diſtrain every man for the fifth part of houſes and lands, towards the repairs of the pier and key, *&c.* See Stat. 37 *H.* 8. *c.* 14.

Scatinia Lex, A law againſt buggery.——*Quæ præpoſteræ veneris uſum coercebat, ita dict. a* ſcatinia *iatore.*

Scavage, Scevage, or **Schewage,** (from the Sax. *ſcheawian*, i. e. *oſtendere*) A kind of toll or cuſtom, exacted by mayors, ſheriffs, *&c.* of merchant ſtrangers, for wares *ſhewed* or expoſed to ſale within their liberties; prohibited by the ſtatute 19 *H.* 7. *c.* 7. But the city of *London* ſtill retains this ancient cuſtom to a good yearly profit: And the Lord Chancellor, Treaſurer, Preſident of the Council, Privy Seal, Steward, and two Juſtices of the *King's Bench* and *Common Pleas*, are to aſcertain theſe duties, and order tables to be made, mentioning the particulars, *&c.* by 22 *H.* 8. *c.* 8.

Scavaldus, The officer who collected the *ſcavage* money, which was ſometimes done with great extortion.

Scavengers, (from the Belg. *ſchaven*, to ſcrape or carry away) Are perſons choſen into this office in *London* and its ſuburbs, who hire *rakers* and carts to cleanſe the ſtreets, and carry the dirt and filth thereof away. 14 *Car.* 2. *c.* 2. In *Eaſter* week yearly, two tradeſmen in every pariſh within the weekly bills of mortality muſt be elected *ſcavengers* by the conſtables, churchwardens, and other inhabitants, who are to take upon them the office in ſeven days, under the penalty of 10*l.* Theſe *ſcavengers* every day, except *Sundays* or holidays, are to bring their carts into the ſtreets, and give notice by a bell, or otherwiſe, of carrying away dirt, and to ſtay a convenient time, or ſhall forfeit 40*s.* and juſtices of peace in their petit ſeſſions may give ſcavengers liberty to lodge their dirt in vacant places near the ſtreets, ſatisfying the owner for the damage, *&c.* All perſons, within the weekly bills, are to ſweep the ſtreets before their doors, every *Wedneſday* and *Saturday*, on pain of forfeiting 3*s.* 4*d.* and perſons laying dirt or aſhes before their houſes, incur a forfeiture of 5*s.* Inhabitants and owners of houſes are alſo to pave the ſtreets before their own houſes, on the penalty of 20*s.* for every perch: And conſtables, churchwardens, *&c.* may make a ſcavenger's tax, being allowed by two juſtices of the peace, not exceeding 4*d.* in the pound, *&c.* 2 *W.* *& M. ſt.* 2. *c.* 8.

By the *Stat.* 1 *Geo.* 1. *c.* 48. Juſtices of peace in their quarter-ſeſſions may appoint ſcavengers, and order the repairing and cleanſing the ſtreets in any city or market-town, and appoint perſons to make aſſeſſments, ſo as not to exceed 6*d.* *per* pound *per ann.* to defray the charge of ſuch ſcavengers, to be collected and levied by diſtreſs; and when new ſcavengers are choſen, the old ones muſt account before two juſtices for the money aſſeſſed and collected, and pay what remains in their hands to the new ſcavengers, or be committed to priſon, *&c.* The aſſeſſments for ſcavengers of the pariſhes of St. *Anne*, *Weſtminſter*, and St. *James*, ſhall be rated according to the *cuſtom* of the *city*; and ancient ſtreets in the city are to be maintained according to ancient uſage, *&c.* The Lord Mayor or any Alderman may preſent, upon view, any offence within the city of *London*, and aſſeſs fines not exceeding 20*s.* to be paid to the Chamberlain for the uſe of the city, *&c.* *Stat. ib.* Truſtees and commiſſioners appointed to clean and repair St. *James's Square*, and continue the ſame cleaned; and rates to be made and aſſeſſed on houſes, at ſo much *per* foot in front, leviable by diſtreſs; and annoying the ſquare by filth, is liable to 20*s.* penalty, *&c.* by 12 *Geo.* 1. *c.* 25. For the better paving and cleanſing the ſtreets in the city of *Weſtminſter*, *&c.* ſurveyors are to be nominated by juſtices of peace, who ſhall take a view of all the ſtreets every ſix weeks, and make preſentments of pavements out of repair, cauſe the ſame to be amended, *&c.* And the ſurveyors to have an allowance not exceeding 8*l.* *per ann.* out of the ſcavenger's rates, *&c.* *Stat.* 2 *Geo.* 2. *c.* 11. Perſons authoriſed by 22 *&* 23 *Car.* 2. may order ſuch parts of *London* ſtreets, *&c.* as lie before vacant houſes, to be paved and amended; and impoſe aſſeſſments on the owners, to be paid on their account by the next occupiers, and deducted out of rent; and in the mean time, the Chamberlain of the city ſhall pay the taxes: And ſuch authoriſed perſons may direct poſts to be ſet up in all paſſages within the city, to preſerve foot-paths, and for that purpoſe make aſſeſſments. 10 *Geo.* 2. *c.* 22. A ſcavenger's rate cannot be made for a diviſion in which there is no church-warden or overſeer reſident. 1 *Stra.* 630. See the titles *Highways*, *Paving*, and the *Index* to the *Statutes*.

Sceat, *(Sax.)* A ſmall coin among the *Saxons* equal to four farthings.

Sceithman, (*Sax.*) A pirate or thief. *LL. Æthelredi apud Brompton.*

Sceppa Salis, An ancient meaſure of ſalt, the quantity now not known: And *ſceppa* or *ſceap* was likewiſe a meaſure of corn, from the Lat. *ſchapa*; baſkets, which were formerly the common ſtandard of meaſure, being called *ſkips* or *ſkeps* in the ſouth parts of *England*; and a bee-hive is termed a *bee-ſkip*. Mon. Ang. tom. 2. p. 284. Paroch. Antiq. 604.

Sceurum, A barn or granary. It is mentioned in *Ingulphus*, *p.* 862.

Schaffa, A ſheaf, as *ſchaffa* ſagittarum, a ſheaf of arrows. See *Skene de verbor. ſignif. eod. verbo.*

Scharpeny, A ſmall duty or compenſation: And ſome cuſtomary tenants were obliged to pen up their cattle at night in the pound or yard of the lord, for the benefit of their dung; or, if they did not ſo, they paid a ſmall compenſation called *ſharpenny* or *ſharnpenny*, i. e. *dung penny*, or money in lieu of dung. The Saxon *ſcearn* ſignified muck or dung. In ſome parts of the North they ſtill call cow-dung by the name of *cow-ſkern*, and in *Weſtmorland* a *ſcarny houghs* is a naſty, dirty dunghill-wench. *Cowell.*

Schavaldus, The officer who collected the *ſcavage*-money, which was ſometimes done with extortion and great oppreſſion. *Cowell.*

Schedule, Is a little roll, or long piece of paper or parchment, in which are contained particulars of goods in a houſe let by leaſe, *&c.* Vide *Leaſe.*

Schedules are likewiſe frequently annexed to anſwers in a court of equity, containing an account of eſtates or effects, monies, debts, *&c.* received or diſpoſed of or expended by the perſon putting in the anſwer: And *ſchedule* is a term frequently uſed, inſtead of *inventory.*

Schetes, Was formerly a term for uſury; and the Commons prayed that order might be taken againſt this horrible vice, practiſed by the clergy as well as the laity. *Rot. Parl.* 14 *R.* 2.

Schilla, A little bell uſed in monaſteries, mentioned in our hiſtories. *Eadmer. lib.* 1. *c.* 8.

Schirman, (Sax. *ſcir-man*) A ſheriff. *LL. Inæ Regis apud Brompton.* See *Shireman*, and *Black. Com.* 1 *V.* 398.

Schirrens-geld, (*Shire-geld*) Was a tax paid to ſheriffs for keeping the *ſhire* or *county court*. Cartular. Abbat. St. Edmund 37.

Schiſm, (*ſchiſma*) A rent or diviſion in the church: There was a ſtatute made to prevent the growth of *ſchiſm*. Anno 12 Ann. *See* Black. Com. 4 V. 52, 53.

Schoolmaſter. No perſon ſhall keep or maintain a ſchoolmaſter, who does not conſtantly go to church, or is not allowed by the ordinary; in pain of 10*l.* a month; and the ſchoolmaſter ſhall be diſabled, and ſuffer a year's impriſonment. *Stat.* 23 *Eliz.* *c.* 1. Recuſants are not to be ſchoolmaſters in any public grammar ſchool, nor any other, unleſs the perſons be licenſed by the biſhop; under the penalty of forfeiting 40*s.* a day. 1 *Jac.* 1. *c.* 4. Every ſchoolmaſter keeping any public or private ſchool, and every tutor in any private family, ſhall ſubſcribe the declaration, that he will conform to the liturgy of the church of *England* as by law eſtabliſhed, and be licenſed by the ordinary; or he ſhall for the firſt offence ſuffer three months impriſonment, *&c.* 13 *&* 14 *Car.* 2. *c.* 4. If any papiſt ſhall be convicted of keeping a ſchool, or take upon him the education of youth, he ſhall be adjudged to perpetual impriſonment. 11 *&* 12 *W.* 3. *c.* 4. Perſons keeping ſchools without a licence from the biſhop, and receiving the ſacrament of the church of *England*, taking the oaths, *&c.* (except tutors in reading, writing, and arithmetic) ſhall be committed to the common gaol for three months, *&c.* 12 *Ann. ſeſſ.* 2. *c.* 7. But this laſt ſtatute, as to ſchoolmaſters receiving the ſacrament of the church, is repealed by 5 *Geo.* 1. *c.* 3. By our canons, no man ſhall teach in a public ſchool, or private houſe, but ſuch as is examined and allowed by the biſhop, and of ſober life: And all ſchoolmaſters are to teach the catechiſm of the church in *Engliſh* or *Latin*; and bring their ſcholars to church, and afterwards examine them how they have benefited by ſermons, *&c.* *Can.* 77, 79. Though the act of uniformity obliges ſchoolmaſters only to aſſent to and ſubſcribe the declaration, yet it adds *according to the laws and ſtatutes of this realm*, which preſuppoſes ſome neceſſary qualification. And therefore a biſhop may take time to inquire into the character of an elected ſchoolmaſter, before he licences him. 2 *Strange* 1023. See *Black. Com.* 1 *V.* 453.

Silicet, An *adverb*, ſignifies, that is to ſay, to wit; and hath been often uſed in law proceedings. Sir *John Hobart*, in his expoſition of this word, ſays, it is not a direct and ſeparate clauſe, nor a direct and intire clauſe, but *intermedia*; neither is it a ſubſtantive clauſe of itſelf, but it is rather to uſher in the ſentence of another, and to particulariſe that which was too general before, or diſtribute that which was too groſs, or to explain that which was doubtful and obſcure; and it muſt neither increaſe nor diminiſh, for it gives nothing of itſelf: But it may make a reſtriction, where the precedent words are not ſo very expreſs, but that they may be reſtrained. *Hob.* 171, 172. The word *ſcilicet*, in a declaration, ſhall not make any alteration of that which went before. *Poph.* 201, 204. And yet, in ſome caſes, the *ſcilicet* which introduces a ſubſequent, ſhall not be rejected. 2 *Cro.* 618.

Scire facias, Is a writ judicial, moſt commonly to call a man to ſhew cauſe to the court whence it iſſues, why execution of a judgment paſſed ſhould not be made out. This writ is not granted until a year and a day be elapſed after a judgment given. *Old Nat. Brev. fol.* 151. *Scire facias* upon a fine lies not, but within the ſame time after the fine levied, otherwiſe it is the ſame with the writ of *habere facias ſeiſinam*. Weſt. Symbol. part 2. *tit.* Fines, ſect. 137. *and* 25 E. 3. ſt. 5. cap. 2. *and* 39 Eliz. cap. 7. Other diverſities of this writ you may find in the table of the *Regiſter Judicial* *and Original.* See alſo *Raſtall's Entries,* verb. *Scire facias.* Cowell.

1. *Of the nature of the writ, and in what caſes it is a proper remedy.*
2. *Of the* ſcire facias *to revive judgments, and after what time neceſſary.*
3. *Of the* ſcire facias *on recognizances and ſtatutes.*
4. *Of pleading to a* ſcire facias.
5. *Of* ſcire facias *againſt tertenants, and againſt whom to be brought,* &c.
6. *Of other points generally, not claſſed under the former heads.*

1. *Of the nature of the writ, and in what caſes it is a proper remedy.*

A *ſcire facias* is deemed a judicial writ, and founded on ſome matter of record, as judgments, recognizances and letters patent, on which it lies to inforce the execution of them, or to vacate or ſet them aſide; and though it be a judicial writ of execution, yet it is ſo far in nature of an original, that the defendant may plead to it, and is in that reſpect conſidered as an action; and therefore it is held, that a releaſe of all actions, or a releaſe of all executions, is a good bar to a *ſci. fa.* Lit. ſect. 505. Co. Lit. 290. b. 291. a. F. N. B. 267.

But though it be held that a *ſci. fa.* is in nature of an original, yet it hath been adjudged, that no writ of error lies into the Exchequer chamber on a judgment given in *B. R.* on a *ſci. fa.* the ſtatute 27 *Eliz. cap.* 8. which gives the writ of error, mentioning only ſuits or actions of debt, detinue, covenant, account, actions upon the caſe, *ejectione firmæ,* or treſpaſs. *Cro. Car.* 286, 300, 464. 1 *Rol. Rep.* 264. 1 *Vent.* 38. 1 *Salk.* 263.

Alſo it was formerly held that the plaintiff could not in a *ſci. fa.* recover coſts; but this is now remedied by the ſtatute 8 & 9 *Wil.* 3. *c.* 11. *Dal.* 95. 3 *Bulſ.* 322.

If a bill of exceptions be tendered to a judge, and he ſigns it and dies, a *ſcire facias* lies againſt his executors or adminiſtrators to certify it. 4 *Inſt.* 438. See 2 *Inſt.* 428.

A *ſci. fa.* lies againſt a ſheriff who levies money on a *fi. fa.* and retains it in his hands. *Holt* 32. *Cro. Jac.* 514. 1 *And.* 247. *Godb.* 276.

So a *ſci. fa.* will lie for a fine aſſeſſed on the party at the juſtice ſeat of a foreſt. *Cro. Car.* 409. Lies to have execution of damages recovered in appeal. *Cro. Jac.* 549.

Upon an *elongavit* returned by the ſheriff, a *ſci. fa.* lies againſt the pledges in a replevin, by plaint in the ſheriff's court, tranſmitted to the huſtings, and ſo to *B. R.* by *certiorari.* Comb. 1. A *ſci. fa.* lies againſt the ſheriff for taking inſufficient pledges in replevin. *Hut.* 77.

If one hath judgment in a *quare impedit,* and afterwards, before execution, the party is outlawed, the King may have a *ſci. fa.* to execute the judgment, the King having privity enough in this caſe to ſhew execution, becauſe the thing, as it was in the plaintiff, veſted in the King. *Moor* 241. *Cro. Eliz.* 44, 325. Where having the thing gives a ſufficient privity to maintain a *ſci. fa.* Keilw. 168, 169.

On a motion to diſcharge an outlawry which was pardoned by the act of oblivion, the court held that it could not be done on motion, but that the party muſt bring a *ſci. fa.* on the act. *Stil.* 348.

Where one obtained judgment, and after had judgment on a *ſci. fa.* thereupon, and then became a bankrupt, and the original judgment was aſſigned by the commiſſioners to *S. S.* upon motion, it was entered to intitle him to the benefit of the judgment on the *ſci. fa.* without bringing a new one. 3 *Mod.* 88.

A *ſci. fa.* brought by the ſucceſſor of a preſident of the college of phyſicians in *London,* upon a judgment in debt obtained by him upon the ſtatute 14 & 15 *H.* 8. *c.* 5. againſt practiſing phyſic in *London* without a licence, but died before execution; it was objected on demurrer, that the *ſci. fa.* ought to have been brought by the executor or adminiſtrator of him who recovered: But without argument the court held, that the ſucceſſor might well maintain the action, for the ſuit is given to the college by a private ſtatute, and the ſuit is to be brought by the preſident for the time being; and he having recovered in right of the corporation, the law ſhall transfer that duty to the ſucceſſor of him who recovered. *Cro. Jac.* 159. Dr. *Atkins* v. *Gardinor.*

A *ſci. fa.* was brought in the court of *C. B.* to reverſe a fine in ancient demeſne; and it was ruled, that no ſuch writ lay, but that the party ought to bring his writ of deſceit. *Mich.* 7 *W.* 3. *in C. B. Zouch* v. *Thompſon.*

2. *Of the* ſcire facias *to revive judgments, and after what time neceſſary.*

There have been different opinions whether a *ſci. fa.* lay at Common law or not; but this doubt, ſays my Lord *Coke,* aroſe for want of diſtinguiſhing between *perſonal* and *real* actions. 2 *Inſt.* 469.

At Common law, if after judgment given, or recognizance acknowledged, the plaintiff did not ſue out execution within the year, the plaintiff or his conuſee was driven to his original upon the judgment, and the *ſcire facias* in *perſonal* actions was given by the ſtatute of *Weſtm.* 2. *c.* 45.

But in *real* actions, or upon a fine, though no execution was ſued out within a year after the judgment given or fine levied, yet after the year a *ſci. fa.* lay for the land, &c. becauſe no new original lay upon the judgment or fine. 2 *Inſt.* 470.

A *ſci. fa.* lay as well in *mixed* as *real* actions, and upon a judgment in an aſſiſe. So it lay upon a judgment in a writ of annuity. *Salk.* 258, 600.

It hath been adjudged, that if there be judgment in ejectment, and no execution ſued thereon in a year and a day, an *habere facias poſſeſſionem* cannot be ſued out after without a *ſcire facias;* and *Holt* Ch. J. ſaid, that as to the poſſeſſion of the land an ejectment was real, and the only remedy a termor for years had, and that a recovery therein bound the right of inheritance. *Salk.* 258, 600. *Comb.* 250. *Fareſt.* 64. and ſee 1 *Sid.* 307, 351. 2 *Keb.* 307. *Skin.* 161. 3 *Lev.* 100. *Lutw.* 1268.

But though, after a year and a day, there can be no execution of a judgment without a *ſcire facias,* yet if the plaintiff hath been delayed by a writ of error, he may take out execution within a year and a day after the judgment affirmed. 5 *Co.* 88. *Moor* 566. *pl.* 772. *Cro. Eliz.* 706. *Godb.* 372. *Palm.* 44. See 1 *Rol. Abr.* 899. *Lan.* 20. *Dennis* v. *Drake. Cro. Eliz.* 416. S. P.

So if after the year after the recovery the defendant brings a writ of error, and the judgment is affirmed, tho' before the writ of error brought the recoverer was put to his *ſci. fa.* yet this affirmance is a new judgment, and the recoverer may have within the year after the affirmance a *fi. fa* or *capias* without a *ſcire facias.* 1 Rol. Abr. 899. *and ſee* Palm. 449 Latch 193.

So if he be nonſuit in the writ of error, or if the writ of error be diſcontinued; for though in theſe caſes there is not any new judgment given, yet the bringing of the writ of error revives the firſt judgment. *Cro. Jac.* 364. 1 *Rol Rep.* 104, 113. Vide 1 *Rol. Abr.* 899.

If upon a judgment there be a *ceſſet executio* for a year after the judgment, the plaintiff within the ſubſequent year may take out execution without a *ſci. fa.* 6 Mod. 288. *Fareſt.* 64.

Alſo it hath been held, that where execution hath been taken out after the year and day, it is not *void,* but *voidable* only. 3 *Leon.* 404 *Salk.* 273.

If the execution is ſtaid by injunction, though the act of the defendant, yet the court will not take notice thereof. 6 *Mod.* 28. *Salk.* 322. and ſee tit. *Injunction.*

In ſuch caſe there muſt be a *ſcire facias:* the ſtaying the proceedings by injunction, does not appear to the court, by any record of its own: nor is the filing a bill in equity, any revival of the judgment, as in the caſe of a writ of error.

If judgment be given in debt, and no execution ſued out within the year, yet the plaintiff may after an award of an *elegit* on the judgment roll, as of the ſame term with the judgment, continue it from thence, by *vicecomes non miſit breve;* ſo held on a motion to ſet aſide the execution.

cution; and though the court ſaid that an *elegit* ought to be actually taken out within the year, yet being informed by the clerks of the court, that it had been the practice for many years to make ſuch entry, *&c.* it was ſaid to be the law of the court, and they ordered the execution to ſtand. *Carth.* 283. *Seymour* v. *Greenvil.* 2 *Show.* 235. S. P. *Comb.* 232. S. P.

If the demandant or plaintiff taketh his proceſs of execution within the year, tho' it be not ſerved within the year, yet if he continue the ſame, he may have execution at any time after the year. 2 *Inſt.* 471. *Co. Lit.* 290. *b.* and ſee 2 *Leon.* 77, 78, 87. 3 *Leon.* 259. 4 *Leon.* 44. 1 *Sid.* 59. 1 *Keb.* 159. 6 *Mod.* 288.

If the plaintiff delay the executing of a writ of inquiry till a year after the interlocutory judgment, he cannot do it after without a *ſci. fa.* Caſes in *B. R. Paſch.* 13 *W.* 3. *Haw* v. *Cuton.*

In the caſe of the King there need not be any *ſci. fa.* after the year and day. 2 *Salk.* 603.

If a judgment be above ten years ſtanding, the plaintiff cannot ſue a *ſcire facias* without a motion in court; if under ten, but above ſeven, he cannot have a *ſcire facias* without a motion at the *ſide bar*; which ſide bar rule is obtained of courſe, without any motion by council. Note; after ſuch motion, and judgment revived by *ſci. fa.* if the defendant dies before execution, the plaintiff muſt ſue a new *ſci. fa.* but may have it without motion, for the judgment was revived before. *Salk.* 598. *Hardiſty* v. *Barny.*

After a judgment, if the plaintiff within the year ſues a *ſcire facias* he cannot have a *capias* within the year until he hath a new judgment on the *ſcire facias.* 1 *Rol. Abr.* 900. *Trin.* 13 *Car.* 1. *Roberts* v. *Piſing.* See *Black. Com.* 3 *V.* 421.

3. *Of the* ſcire facias *on recognizances and ſtatutes.*

Recognizances and ſtatutes are conſidered as judgments, being obligations ſolemnly acknowledged, and entered of record, and the *ſci. fa.* on thoſe is the judicial writ and proper remedy which the conuſee hath; but herein we muſt diſtinguiſh between recognizances at Common law and ſtatutes merchant, *&c.* for, upon the former, if the conuſee did not take out execution within a year after the day of payment aſſigned in the recognizance, he was obliged to commence the ſuit again by original; the law preſuming the debt might have been paid, if they did not ſue execution within the year after the money became payable; but this law is altered by *Weſtm.* 2. *c.* 49. by which the conuſee hath a *ſci. fa.* given him to revive the judgment, and put it in execution, if the conuſor cannot ſtop it by pleading ſuch matter as the law judges ſufficient for that end, ſuch as a releaſe, *&c.* but the conuſee of a ſtatute merchant, *&c.* may at any time ſue execution on them without the delay or charge of a *ſci. fa.*. Lit. Rep. 89. That a *capias* lies not on a recognizance, but only a *ſci. fa.* 1 Brownl. 83. Co. Lit. 291. 2 Inſt. 469. F. N. B. 296. Bro. Recog. 17.

Alſo as to recognizances at Common law, and ſtatutes and recognizances introduced by ſtatute law, we muſt further diſtinguiſh, that if on the firſt the conuſee dies before execution ſued, his executor ſhall not ſue it, even within the year, without bringing a *ſci. fa.* againſt the conuſor; the reaſon is, becauſe the law preſumes the debt might have been paid to the teſtator, and therefore will not ſuffer the debtor to be moleſted, unleſs it appear that he hath omitted to perform the judgment; and this is to be done by *ſci. fa.* brought by the executor, for the alteration of the perſon altereth the proceſs at Common law; but this tending to delay, the *ſci. fa.* is taken away in ſtatutes and recognizances by *ſtatute* law, by the ſeveral acts of parliament which introduced them, and therefore upon the death of the conuſee of a ſtatute merchant, *&c.* his executors may come into Chancery, and upon their producing the teſtament and the ſtatute, ſhall have execution without a *ſci. fa.* as the teſtator himſelf might. 2 *Inſt.* 395, 471. *Bro. Stat. Merch.* 16, 43, 50.

If a man be bound in a recogniſance to the King, upon condition to be of good behaviour, *&c.* he cannot be indicted for breach of the good behaviour, by which he forfeits his recognizance, without a *ſci fa.* for if a *ſc. fa.* had been brought, he might have pleaded ſome matter in diſcharge thereof. 4 *Inſt.* 181. 1 *Rol. Abr.* 900. What ſhall be ſaid a breach, ſee *Cro. Car.* 498. and how to be aſſigned, ſee 3 *Bulſt.* 220. *Cro. Jac.* 415. *Stil.* 369.

If a man acknowledges a recognizance to be paid at a day within the year after the date of the recognizance, in this caſe he may have execution by *fi. fa.* or *elegit* within the year after the day of payment, though the year be paſt from the date of the recognizance. 21 *Ed.* 3. 22. *b.* 1 *Rol. Abr.* 899, 900. 2 *Inſt.* 471. Vide 2 *Rol. Abr.* 468. *Co. Lit.* 292.

If a man recovers an annuity, he ſhall have execution for every time that occurs after by *fi. fa.* or *elegit* within the year after the time incurred, though the year be paſt from the judgment, but not after the year without a *ſci. fa.* 1 Rol. Abr. 900. 2 Inſt. 471. Salk. 258, 600.

If two acknowledge a recognizance of 100 *l. quilibet eorum in ſolido,* that is jointly and ſeverally, the conuſee may ſue ſeveral *ſci. fa.* againſt the conuſors upon this recognizance. 2 *Inſt.* 395 See farther as to *ſci. fa.* againſt bail, *Black. Com.* 3 *V.* 416. *et infra.*

4. *Of pleading to a* ſcire facias.

Scire facias may be pleaded to, before judgment given upon it; afterwards it is too late: Though a writ of error may be brought to reverſe the judgment on the *ſcire facias,* if that be not good on which the judgment was grounded. *Ibid.* 503. Payment was no plea at Common law to a *ſcire facias* upon a judgment; becauſe it is a debt upon record. 3 *Lev.* 120. But this was altered by 4 *Ann. c.* 16. *ſ.* 12. which gives defendants liberty to plead ſuch payment.

Whatever is pleadable to the original action in abatement, ſhall not be pleaded to diſable the plaintiff from having execution on a *ſcire facias*; becauſe the defendant had admitted him able to have judgment. 1 *Salk.* 2. If a judgment be obtained againſt an executor, and afterwards a *ſcire facias* is brought againſt him upon that judgment, he cannot plead a judgment recovered againſt his teſtator, and that he hath not aſſets *ultra, &c.* becauſe he might have pleaded it to the firſt action; for it is a ſettled rule that if a defendant hath a matter proper for his defence, and he neglects to plead it in bar to the action at the time he may, he ſhall never take advantage of it after. 2 *Strange* 732. In *ſcire facias* on a judgment in debt, or other perſonal action, the defendant cannot plead non-tenure of the land generally, where it is contrary to the return of the ſheriff; though he may plead a ſpecial non-tenure: But on a *ſcire facias* to have execution in a real action, the defendant may plead non-tenure generally, becauſe the freehold is in queſtion, and that is favoured in law; and the ter-tenants may plead there are other ter-tenants not named, and pray judgment if they ought to anſwer *quouſq*; the others are ſummoned, *&c.* though it would be otherwiſe if the *ſcire facias* had been againſt particular tenants by name. 2 *Salk.* 601. On a *ſcire facias* to have execution upon a judgment in action of *debt*, every ter-tenant is to be contributory; and therefore one ſhall not anſwer, as long as he can ſhew that another is liable, and not warned: *Contra* on a *ſcire facias* upon a judgment in a *real* action; for every tenant is to anſwer for that which he hath, and one may be contributory, and the other not. 2 *Cro.* 507. 3 *Nelſ. Abr.* 204.

5. *Of* ſcire facias *againſt ter-tenants, and againſt whom to be brought,* &c.

There is to be a *ſcire facias* againſt the heir and ter-tenants to reverſe a *common recovery* of lands, the *ſcire facias* is to iſſue againſt all the ter-tenants, for they are to gain or loſe by the judgment in the recovery. *Raym.* 16. 3 *Mod.* 274. A *ſcire facias* to have execution of a *fine*, ſhall not be ſued againſt leſſee for years; but againſt him who hath the freehold, who may have ſome matter to bar the execution *Cro. Eliz.* 471. 2 *Brownl.* 144. In *ejectment*, it was adjudged, that a *ſcire facias* might be brought by the leſſee, though he was but nominal, and that it may be had by the leſſor himſelf; as either of them may have a writ of error on the judgment: And that it might be brought againſt thoſe who were ſtrangers to the judgment, and againſt the executors of the defendant, &c. 2 *Lutw.* 1267.

6. *Of other points generally, not claſſed under the former heads.*

A defendant being ſummoned upon a *ſcire facias*, and the ſummons returned, if he doth not appear, but lets judgment go by default, he is for ever barred. 1 *Lev.* 41, 42. If the ſheriff hath returned him warned, he ſhall not have *audita querela* on a releaſe, &c. for the defendant might have pleaded the ſame on the return of the *ſcire facias*; but if the ſheriff return *nihil*, on which an execution is awarded, he ſhall have *audita querela*. New Nat. Br. 230. In the firſt caſe, he might have appeared and pleaded; in the other, not being warned, he was not bound to appear. Where there has been no *ſcire feci*, and only two *nihils*, the court will often relieve upon motion, and not put the party to an *audita querela*. Salk. 93, 264. 2 *Strange* 1075.

It is a frequent practice, to ſue out two *ſcire facias*'s and yet the ſheriff to return a *nihil*, but where the party hath reaſon to ſuſpect ſuch practice, (which is not, in my opinion, very fair) he may ſearch the office, and, on finding the alias *ſcire facias* left there, for return, appear, though he is not warned or ſummoned.

Where the plaintiff in the judgment releaſeth the defendant of all judgments and executions, &c. the defendant may, upon his releaſe, ſue out a writ of *ſcire facias* againſt the plaintiff in the judgment *ad cognoſcendum ſcriptum ſuum relaxationis*; and he need not ſue out his *audita querela*. Hil. 5 W. & M. B. R.

If one ſues out two writs of *ſcire facias*, one after the other, where it is upon a judgment by bill, there ought to be fifteen days incluſive between the *teſte* of the firſt and return of the ſecond *ſcire facias*. Salk. 559. And the *teſte* of the *alias ſcire facias* is to be the day of the return of the firſt. 3 *Ann. B. R.* 9 *Lil.* 503. Coſts allowed in ſuits on writs of *ſcire facias*, &c. Vide *Stat.* 8 & 9 *W.* 3. *c.* 11.

For more learning on this ſubject, ſee 4 New Abr. *and* 19 Vin. Abr. *tit.* Scire facias, *and* Wilſon, par. 1. 98, 243. par. 2. 61, 372.

Scire facias againſt bail, To an action, is where a *capias ad ſatisfac.* is ſued out and returned *non eſt inventus* againſt the principal, and the writ filed; after which this writ is brought to have execution againſt the bail, &c. And, if upon the *ſcire facias*, or two *nihils* returned, the bail do not appear, judgement ſhall be entered againſt them. 1 *Inſt.* 290. *Lutw.* 1273. (See the preceding head.) In *C. B.* there is but one *ſcire facias* againſt the bail, and, upon a *nihil* returned, there is execution; but in *B. R.* there are two *ſcire facias's* and two *nihils*, and the firſt is to be duly returned, before the ſecond ſued out; and there muſt be fifteen days incluſive between the *teſte* of the firſt and the return of the laſt 2 *Salk.* 599. There muſt be a particular warrant of attorney to a *ſcire facias* againſt the bail; for a warrant in the principal action is no warrant to the *ſcire facias*, becauſe theſe are diſtinct actions; and the particular warrant is to be entered when the ſuit commences, which is when the writ is returned. 2 *Salk.* 603. When a *ſcire facias* is brought againſt the bail, it muſt be *in ea parte*; and where it is brought againſt the defendant in the principal action, it is to be *in hac parte*. 2 Salk. 599. If bail are proſecuted on a *ſcire facias* when a writ of error is depending in the Exchequer-Chamber, and the defendants, the bail will confeſs judgment, and enter into a rule to pay the debt, or to deliver up the principal within four days after the judgment affirmed; in ſuch caſe the proceedings on the *ſcire facias* ſhall be ſtayed. *Mod. Caſ. in L. & E.* 130. And if there be no good judgment againſt the principal, judgment againſt the bail by *ſcire facias* may be reverſed, &c. 3 *Nelſ. Abr.* 190. See *Bail*, and *Black. Com.* 3 *V.* 416.

Scire facias ad audiendum Errores, On *writs of error*. There are to be fifteen days between the *teſte* and return of every *ſcire fac. ad audiend. error.* upon a writ of error returnable in *B. R.* And if on the return of two *nichils*, &c. the defendant in error doth not appear, it is not then with him as in caſe of a *ſci. fac. quare execution' non*, &c. But the cauſe is to be ſet down to be heard by the court, and the plaintiff in errors ſhall be held thereunto *ex parte*. 2 Lil. Abr. 499. If a writ of error is brought in *B. R.* and the record brought in, the defendant appearing may thereupon ſue out a *ſcire facias quare executionem habere non debet*, and an *alias ſcire facias* after that, if there be not a *ſcire feci* returned on the firſt writ; and if the plaintiff in error after a *ſcire feci* or two *nichils* returned, doth not, before the rule for judgment upon the *ſcire facias* is out, appear and aſſign errors, or plead to the *ſcire facias*, there will be judgment againſt him, *Quod habeat executionem*, &c. But the writ of error depends ſtill until judgment is affirmed or reverſed, or the plaintiff in error is nonſuited. *Ibid.* 502.

Scire facias in detinue. In *detinue*, after judgment, the plaintiff ſhall have a *diſtringas*, to compel the defendant to deliver the goods, by repeated diſtreſſes of his chattels; or elſe a *ſcire facias* againſt any third perſon in whoſe hands they may happen to be, to ſhew cauſe why they ſhould not be delivered. *Black. Com.* 3 *V.* 413.

Scire facias to remove an uſurper's clerk. On a *quare impedit*, and *ne admittas* ſued out, if the biſhop, after receipt of the latter writ, admit any perſon, even tho' the patron's right may have been found in a *jure patronatus*, then the plaintiff, after he has obtained judgment in the *quare impedit*, may remove the incumbent, if the clerk of a ſtranger, by writ of *ſcire facias*. Black. Com. 3 V. 248.

Scire facias upon a recognizance In *Chancery*, may be ſued out to extend lands, &c. If upon a *ſcire facias upon a recognizance* in the Chancery, the record be tranſmitted into *B. R.* to try the iſſue, and the plaintiff is nonſuit; he may bring a new *ſcire facias* in *B. R.* upon the record there. 2 *Saund.* 27. Where a ſtatute is acknowledged, and the cogniſor afterwards confeſſeth a judgment, and the land is extended thereon; in this caſe the cogniſee ſhall have a *ſcire facias* to avoid the extent of the lands; but if the judgment be on goods, it is otherwiſe. 1 *Brownl.* 37. 3 *Nelſ. Abr.* 186. *Scire facias* lies on *recognizance of the peace*, &c. removed into *B. R.*

Scire facias to repeal letters patent and grants. Where the crown hath unadviſedly granted any thing by letters patent, which ought not to be granted, or where the patentee hath done an act that amounts to a forfeiture of the grant, the remedy to repeal the patent, is by writ of *ſcire facias* in Chancery. *Black. Com.* 3 *V.* 260, 261. which *vide*.

A *ſcire facias to repeal a patent*, muſt be brought where the record is, which is in *Chancery*; and there are to be two of theſe writs ſued out of the petty-bag office directed to the ſheriff of *Middleſex*, who, by a letter under the ſeal of his office muſt ſend notice to the corporation or perſon whoſe concern the *patent* is, that there is a *ſcire facias* iſſued out returnable at ſuch a time, and remaining with him, for the revocation of ſuch a *patent*, and that if they do not appear thereunto, judgment will be had againſt them by default; and this letter to be delivered to the corporation or perſon intereſted in ſuch *patent*, by ſome perſon who can make oath thereof. *Dalton's Sheriff.* On a *ſci. fac.* out of Chancery returnable in *B. R.* to *repeal letters patent*, it was held, that if the *letters patent* are granted to the prejudice of any perſon, as if a fair is granted to the damage of the fair of another, &c. he may have a *ſcire facias* on the inrollment of ſuch *grant* in Chancery, as well as the King in other caſes; but it may be a queſtion, whether a *ſcire fa.* upon a record in Chancery is returnable in *B. R.* though after it is made returnable into *B. R.* that court, and not the Chancery, hath the juriſdiction of it. *Mod. Caſ.* 229. In all caſes at common law, where the King's title accrues by a *judicial record*, and he grants his eſtate over; the party grieved could not have a *ſcire facias* againſt the *patentee*, but was forced to his petition to the King; otherwiſe it is when his title is by *conveyance on record*, which is *not judicial.* 4 *Rep.* 59. The King hath a right *to repeal a patent* by *ſcire facias*, where he was deceived in his *grant*, or it is to the injury of the ſubject. 3 *Lev.* 220. And where a common perſon is obliged to bring his action, there, upon an inquiſition or office found, the King is put to his *ſcire facias*, &c. 9 Rep. 96. A *ſcire facias* to repeal letters patent doth not abate by the demiſe of the crown. 1 *Strange* 43.

Scire facias's Have iſſued to repeal the grants of *offices*, for conditions broken, non-attendance, &c. And for diſability, or, in caſe of forfeiture, the offices may be ſeized without *ſci. fac.* 3 Nelſ. Abr. 201, 202. *See* Black Com. 3 V. 261.

Scire facias in *appeal* of murder, before a pardon ſhall be allowed: vide *Appeal.*

Scire feci. Is the return of the ſheriff, on a *ſcire facias*, that he hath cauſed notice to be given to the party, againſt whom the *ſcire facias* iſſued. See the return *Black. Com.* 3 *V. Append.* xxv.

Scirewyte, The annual tax or preſtation paid to the ſheriff for holding the aſſizes or county courts.—*In ſolutiis pro quadam penſione vocata* Scirewyte *annuatim* 10 *ſol.*—Paroch. Antiq. p. 573.

Scite, *(Situs)* Signifies the ſetting or ſtanding of any place; the ſeat or ſituation of a capital meſſuage, or the ground whereon it ſtood. *Mon. Ang. Tom.* 2. *fol.* 278. The word in this ſenſe is mentioned in the ſtat. 32 *H.* 8. *c.* 20. and 22 *Car.* 2. *cap.* 11.

Scolds, In a legal ſenſe, are troubleſome and angry women, who, by their brawling and wrangling amongſt their neighbours, break the public peace, and increaſe diſcord. They are indictable in the ſheriff's turn, and puniſhed by the *cucking-ſtool*, &c. Kitch. 13. See *Caſtigatory*, and *Black. Com.* 4 *V.* 169.

Scot and lot, (Sax. *Sceat*, pars, & *Llot*, i. e. *Sors)* Signifies a cuſtomary contribution laid upon all ſubjects, according to their ability. *Spelm.* Nor are theſe old words grown obſolete, for whoever in like manner (tho' not by equal proportion) are aſſeſſed to any contribution, are generally ſaid to pay *ſcot and lot.* Stat. 33 H. 8. c. 9.

Scotal or **Scotale,** Is where any officer of a *foreſt* keeps an *alehouſe* within the foreſt, by colour of his office, cauſing people to come to his houſe, and there ſpend their money for fear of his diſpleaſure: It is compounded of *ſcot* and *ale*, which by tranſpoſition of the words is otherwiſe called an *aleſhot.* This word is uſed in the charter of the foreſt, *cap.* 8.——*Nullus foreſtarius faciat* Scotallas, *vel garbas colligat, vel aliquam collectam faciat*, &c. Manwood 216.

Scottare. Thoſe tenants are ſaid *ſcottare*, whoſe lands are ſubject to pay *ſcot.* Mon. Ang. Tom. 1. pag. 875.

Scotland, Is united to *England* by 5 *Ann. c.* 8. In the reigns of King *James* 2. and King *Charles* 2. Commiſſioners were appointed to treat with commiſſioners of *Scotland*, concerning an union. But the bringing about this great work, was reſerved for the reign of Queen *Anne.* The 1 *Ann. cap.* 14. ordained articles to be ſettled by commiſſioners for the union of the two kingdoms, &c. and by the 5 *Ann. cap* 8. the union was effected; the kingdoms united are to be called *Great Britain*; and the croſs of St. *George* and St. *Andrew* to be conjoined; they are to be repreſented by one parliament, and ſixteen peers of *Scotland*, and forty-five commoners are to be elected for *Scotland*, and have all the privileges of parliament as peers and commoners of *England:* The ſubjects of either kingdom ſhall have freedom of trade, and be liable to the ſame cuſtoms, and like laws for public government, &c. Kirk-government of the church is confirmed; and the courts of juſtice are to remain the ſame as before the union, but ſubject to regulation: When 1,997,763 *l.* ſhall be raiſed in *England* on a land-tax, *Scotland* is to be charged with 48,000 *l.* And *Scotland* is to have an *equivalent* for being charged toward the payments of the debts of *England*, &c. A court of Exchequer is erected in *Scotland*, to be a court of record, revenue, and judicature for ever; and barons of the ſaid court to be appointed, who ſhall be judges there. Statute 6 *Ann. cap.* 26. Peers of *Scotland*, and all officers civil and military, &c. are to take the oath of abjuration, &c. A peer committing high treaſon or felony in *Scotland* may be tried by commiſſion under the Great Seal, conſtituting juſtices to inquire, &c. in *Scotland:* And the King may grant commiſſions of *oyer* and *terminer* in *Scotland*, to determine ſuch treaſon, &c. By 6 *Ann. c.* 14. and 7 *Ann. cap.* 21. Perſons having lands in *Scotland*, guilty of high treaſon by correſponding with, aſſiſting, or remitting money, &c. to the *pretender*, on conviction, are to be liable to the pains of treaſon; and their vaſſals continuing in dutiful allegiance, ſhall hold the ſaid lands of his Majeſty in fee and heritage for ever, where the lands were ſo held of the crown by the offender: And tenants continuing peaceable and occupying land, are to hold the ſame two years rent-free. 1 *Geo.* 1. *cap.* 20. An act for *diſarming the Highlands of Scotland*; and requiring bail of perſons for their loyal and peaceable behaviour, &c. 1 *Geo.* 1. *cap.* 54. Perſons ſummoned are to bring in and deliver up their arms, or, refuſing to do it, ſhall be taken as liſted ſoldiers to ſerve his Majeſty beyond the ſeas; and concealing their arms, are liable to penalties: Alſo the lords lieutenants or juſtices of the peace may appoint perſons to ſearch houſes for arms, &c. Statute 11 *Geo.* 1. *cap.* 26. When any ordinary place is vacant in the court of ſeſſions in *Scotland*, the King may nominate a perſon, who is to be examined by the lords of the ſeſſion, and then admitted, &c. 10 *Geo.* 1. *cap.* 18. And the election of members of parliament for *Scotland*, is particularly regulated by a late ſtatute; requiring the magiſtrates to ſummon the councils of boroughs, and an oath to be taken by every freeholder and voter as to the eſtates to qualify them, that they are actually their own, and not fictitious: and ſheriffs or ſtewards not to make any falſe return, &c. under the penalty of 500 *l.* recoverable in a ſummary way: And no judge of the court of ſeſſion, or baron of the Exchequer in *Scotland*, ſhall be elected a member of parliament. Stat. 7 *Geo.* 2. *cap.* 16. See 16 *Geo.* 2. *c.* 11.

The city of *Edinburgh* in *Scotland*, to forfeit 2000 *l.* on account of the murder of Captain *Porteus*; (who was hanged by the mob, for cauſing his ſoldiers to fire upon perſons hiſſing at an execution) and a reward of 200 *l.* ordered for apprehending the offenders. 10 *Geo.* 2. *cap.* 34.

Acts for regulating the making of plaidings, ſtockings, &c. And of the linen manufactures in *Scotland.* See 6 *Geo.* 1. and 13 *Geo.* 1. *c.* 26. In time of ſcarcity, perſons may import victuals from *Ireland* into *Scotland*, on obtaining a licence for it, &c. 14 *Geo.* 2. *cap.* 7. By the ſtatute 19 *Geo.* 2. *c.* 9. Every juror for trial of high-treaſon or miſpriſion of treaſon, ſhall be poſſeſſed in his own or his wife's right of lands, &c. as proprietor or life-renter within the ſhire, &c. of the yearly value of 40 *s.* ſterling at leaſt, or valued at 30 *s.* ſterling *per ann.* in the tax-roll. By the ſtat. 19 *Geo.* 2. *c.* 38. Paſtors or miniſters not duly qualified are not to officiate in epiſcopal meeting-houſes, and perſons reſorting to unregiſtred meeting-houſes are ſubject to a penalty of 5 *l.* &c. and if a peer, he is diſqualified from voting or being elected.

By the Stat. 20 *Geo.* 2. *c.* 32. the two colleges of St. *Salvator* and St. *Leonard* in the univerſity of St. *Andrews* are united. By the ſtat. 20 *Geo.* 2. *c.* 43. the heritable juriſdictions are taken away and reſtored to the crown, and more effectual proviſion is made for the adminiſtration of juſtice by the King's courts and judges there: And all perſons acting as procurators, writers or agents in the law, are to take the oaths. By the ſtat. 20 *Geo.* 2. *c.* 50. the tenure of ward-holding is taken away, and converted into blanch and fen-holding. The caſualties of ſingle and life-rent eſcheats, incurred by horning and denunciation for civil cauſes, are taken away. A ſummary proceſs is given to heirs and ſucceſſors againſt ſuperiors. The attendance of vaſſals at head-courts is diſcharged. Heirs and poſſeſſors of tailzied eſtates, are empowered to ſell to the crown.

By the ſtat. 21 *Geo.* 2. *c.* 19. Offences of high-treaſon, committed in the ſhire of *Dumbartain*, *Stirling*, *Perth*, *Kin-*

Kincardine, *Aberdeen*, *Inverneſs*, *Nairn*, *Cromartie*, *Argyl*, *Forfa*. *Bamf*, *Sutherland*, *Caithneſs*, *Elgine and Roſs*, or the ſhire or ſtewartry of *Orkney*, may be inquired of in any ſhire in *Scotland*, as ſhall be aſſigned by the King. Jurors may come out of adjoining counties. The practice of taking down evidence in writing, in crimes not affecting life or member, abrogated.

By the Stat. 19 *Geo.* 2. *c.* 39. 20 *Geo.* 2. *c.* 51. and 21 *Geo.* 2. *c.* 34. Proviſion is made for diſarming the Highlands, and reſtraining the uſe of the Highland dreſs; and the maſters and teachers of private ſchools, chaplains, tutors, and governors of youth and children, are to take the oaths to his Majeſty. The Stat. 22 *Geo.* 2. *c.* 29. For order for making an authentic roll of valuation of the ſhire of *Argyl*.

By the Stat. 22 *Geo.* 2. *c.* 48. The court before whom any indictment for high treaſon, or miſpriſion of high-treaſon in *Scotland* ſhall be found, may iſſue writs of *capias*, *proclamation*, and *exigent* againſt the party, if not in cuſtody; whereon the defendant not appearing, ſhall be deemed outlawed and attainted of high treaſon, or miſpriſion of high treaſon; perſons out of the kingdom, and returning within a year, may traverſe the indictment.

See Stat. 25 *Geo.* 2. *c.* 20. to obviate doubts that have ariſen with regard to the admiſſion of the vaſſals of the principality of *Scotland*, and payment of their rents and duties, and Stat. 25 *Geo.* 2. *c.* 41. for annexing certain forfeited eſtates in *Scotland* to the crown unalienable, and for making ſatisfaction to the lawful creditors thereeupon, and applying the rents thereof for the better civilizing the Highlands, and Stat. 26 *Geo.* 2. *c.* 29. for explaining and amending, 19 *Geo.* 2. *c.* 39. and 20 *Geo.* 2. *c.* 51. and Stat. 26 *Geo.* 2. *c.* 36. For erecting public buildings in the city of *Edinburgh*; and for widening and inlarging the ſtreets of the ſaid city.

See the *Tables to the Statutes*. Vide alſo, *Black. Com.* 1 *V.* 95, 168. 4 *V.* 116, 420.

Scots. Aſſeſſments by commiſſioners of ſewers are ſo called.

Scripture. All profane ſcoffing of the Holy *Scripture*, or expoſing any part thereof to contempt and ridicule, is puniſhed by fine and impriſonment. 1 *Hawk. P. C.* 7. Vide *Black. Com.* 4 *V.* 59.

Scriveners, Are mentioned in the ſtatute againſt *uſury* and exceſſive intereſt of money. 12 *Ann. c.* 6. If a *ſcrivener* is intruſted with a bond, he may receive the intereſt; and if he fails, the obligee ſhall bear the loſs; and ſo it is if he receive the principal, and deliver up the bond, for being intruſted with the ſecurity itſelf, it ſhall be preſumed he is truſted with power to receive the principal and intereſt; and the giving up the bond on payment of the money is a diſcharge thereof: But if a *ſcrivener* be intruſted with a mortgage-deed, he hath only authority to receive the intereſt, not the principal; the giving up the deed in this caſe not being ſufficient to reſtore the eſtate, but there muſt be a reconveyance, *&c.* Decreed in Chancery, *Hill.* 7 *Ann.* 1 *Salk.* 157. It is held, where a ſcrivener puts out his client's money on a bad ſecurity, which on inquiry might have been eaſily found ſo; yet he cannot be charged in equity to anſwer the money: for it is here ſaid no one would venture to put out money of another upon a ſecurity, if he were obliged to warrant and make it good, in caſe a loſs ſhould happen, without any fraud in him. *Preced. Chanc.* 146, 149. See 19 *Vin. Abr.* 289—292.

Scutage, (*Scutagium*, Sax. *Scildpenig*) Was a tax or contribution, raiſed by thoſe that held lands by knights-ſervice, towards furniſhing the King's army, at one, two, or three marks for every knight's fee. *Henry* the Third, for his voyage to the holy land, had a tenth granted by the clergy, and *Scutage*, three marks of every knight's fee, by the *laity*. *Baronag. Angliæ*, 1 *Part. fol.* 211. *b.* This was alſo levied by *Henry* the Second, *Richard* the Firſt, and King *John*. See *Eſcuage*, and *Black. Com.* 1 *V.* 309 2 *V.* 74

Scutagio habendo, A writ that anciently lay againſt tenants by *knight-ſervice*, to ſerve in the wars, or ſend ſufficient perſons, or to pay a certain ſum, *etc.* *F. N. B.* 83.

Scute, A *French* gold coin of 3*s.* 4*d.* in the reign of King *Hen.* 5. And *Catherine* Queen of *England* had an aſſurance made her of ſundry caſtles, manors, lands, *&c.* valued at the ſum of forty thouſand *ſcutes*, every two whereof were worth a noble. *Rot. Parl.* 1 *Hen.* 6.

Scutella, (from *Sutum*, Sax. *Scutel*) A ſcuttle, any thing of a flat and broad ſhape, like a ſhield.

Scutella eleemoſynaria, An alms baſket or ſcuttle. *Paroch. Antiq.*

Scutum Armorum, A ſhield or coat of arms—*Noverint univerſi per præſentes me* Johannem *K. dediſſe, &c.* Richardo *P. filio* Humfridi *P.* Scutum Armorum *meorum: Habend' & tenend' ac portand' & utend' ubicunque voluerit ſibi & hæredibus ſuis imperpetuum, ita quod nec* Ego *nec aliquis alius nomine meo aliquod jus vel clameum ſeu calumpniam in prædicto* ſcuto *habere potuerimus, ſed per præſentes ſumus excluſi in perpetuum. In cujus rei teſtimonium, &c. Dat. apud* Knightley, *anno* 14 *H.* 6

Scyldwit, (*Sax.*) Is a mulct for any fault; from the Saxon *Scild*, i. e. *Delictum*, & Wite, *pæna*. Leg. Hen. 1

Scyra, A fine impoſed on ſuch as neglected to attend the *ſcyregemot* court, which all tenants were bound to do. *Mon. Ang. Tom.* 1. *p.* 52.

Scyre-gemot, (*Sax.*) Was a court held by the *Saxons* twice every year by the biſhop of the dioceſe, and the *earldorman*, in ſhires that had earldormen; and by the biſhop and ſheriff, where the counties were committed to the ſheriff, *&c.* wherein both the eccleſiaſtical and temporal laws were given in charge to the county. *Seld. Tit. Hon.* 628. This court was held three times in the year, in the reign of King *Canutus* the *Dane*.—*Et habeatur in anno ter* Bergimotus & Scyremotus. *Leg. Canut. c.* 38. And *Edward the Confeſſor* appointed it to be held twelve times in a year. *Leg. Edw. Conf. c.* 35.

Sea, (*Mare*) By ſtatute the *ſea* is to be open to all merchants. 18 *Edw.* 3. *c.* 3. The main *ſea*, beneath the low-water-mark, and round *England*, is part of *England*; for there the *admiral* hath juriſdiction. 1 *Inſt.* 260. 5 *Rep.* 207. The *ſeas* which inviron *England* are within the juriſdiction of the King of *England*. 1 *Roll. Abr.* 528. Sovereignty of the *ſea*. Vide *Navy*.

Sea-banks. See *Banks*. By the ſtatutes, 6 *Geo.* 2. *c.* 37. & 10 *Geo.* 2. *c.* 32. it is made felony without benefit of clergy, maliciouſly to cut down any river or *ſea-bank*, whereby lands may be overflowed.

Seal, (*Sigillum*) Is a ſtamp engraved with a particular impreſſion, which is fixed upon the wax that cloſes letters, or affixed as a teſtimony. *Johnſ.* The firſt *ſealed* charter we find extant in *England*, is that of King *Edward* the Confeſſor upon his foundation of *Weſtminſter Abbey*. *Dugdale's Warwickſhire, fol.* 138. *b.* Yet we read in the manuſcript hiſtory of *Offa*, King of the *Mercians*—*Rex Offa literas* Regii Sigilli ſui munimine conſignatas eidem nuncio commiſit deferendas. And that ſeals were in uſe in the *Saxons* time, ſee *Taylor's Hiſtory of Gavelkind, fol.* 73. It was uſual in the time of *H.* 2. and before, to *ſeal* all grants with the *ſign of the croſs: Has donationes & ordinationes confirmarunt et cruce ſignarunt Henricus Rex et Mathildis Regina.* Monaſt. 3 tom. fol 7. And *Ordericus Vitalis* tells us, That archbiſhop *Dunſtan* with his ſuffragans, *prædictarum rerum donationem facto crucis in Charta ſigno corroboravit*, lib. 4. That moſt of the charters of the *Engliſh-Saxon* Kings were thus ſigned, appears by *Ingulphus*, and in the *Monaſticon*, and that the croſſes were all good. But it was not ſo much uſed after the conqueſt. *Cowell.* See *Sigillum*, *Wang*.

Writs touching the Common law not to go out under any of the petty ſeals, 28 *Ed.* 1. *ſt.* 3. *c.* 6.

The courſe in which the King's grant ſhall paſs the ſeals, 27 *H.* 8. *c.* 11. Where clerk of the Privy ſeal to make warrants to the chancellor, 27 *H.* 8. *c.* 11. *ſ.* 2. What fees the clerk of the ſignet is intitled to, 27 *H.* 8. *c.* 11. *ſ.* 4, 8. Counterfeiting Great ſeal, *etc.* excepted out of general pardon, 20 *Geo.* 2. *c.* 52. *ſ.* 9.

As to counterfeiting the King's Great or Privy ſeal, it is high treaſon. See *Black. Com.* 4 *V.* 83, 89. and 1 *Mar. ſt.* 2. *c.* 6. With reſpect to the uſe, *etc.* of the Great ſeal, ſee *Black. Com.* 2 *V.* 346. 3 *V.* 47. As to the ſeal of a corporation, *Black. Com.* 1 *V.* 475. And as to the Privy ſeal, *ib.* 2 *V.* 347. With reſpect to ſealing of deeds, *id.* 305. And as to the antiquity of ſeals, *id.* 305.

Sea-Laws, Are laws relating to the ſea; as the *laws of Oleron, etc.* See *Oleron laws.*

Sealer, *(Sigillator)* Is an officer in Chancery appointed by the Lord Chancellor, or Lord Keeper of the Great ſeal of *England*, to *ſeal* the writs and inſtruments there made in his preſence.

Sealing Deeds, Makes perſons parties to them; and if they are not ſealed they are void. *Dyer* 13. If a ſeal is broken off, it will make the deed void, and when ſeveral are bound in a bond, the pulling off the ſeal of one makes it void as to the others. 2 *Lev.* 220. But in a deed of covenants, it is held that a perſon's breaking off the ſeal of one of the covenantors, after making the covenant, ſhall avoid the deed only againſt himſelf. *Cro. Eliz.* 408, 546. In caſe the ſeal of a bond be broken or eat off by rats, or it is any ways cancelled, no action can be brought on ſuch bond, *etc.* 2 *Bulſt.* 246. But relief may be had in equity.

Dutchy ſeal, *Exchequer* ſeal, *Great* ſeal, *Privy* ſeal, *ſeals* of *office*, of *biſhops*, *&c.* Vide the *heads*. As to ſealing of deeds, ſee *Black. Com.* 2 *V.* 305.

Sea-Marks. The erection of beacons, light-houſes and *ſea-marks*, is a branch of the royal prerogative. By 8 *Eliz. c.* 13. The corporation of the Trinity-Houſe are impowered to ſet up any beacons or *ſea-marks* wherever they ſhall think them neceſſary; and if the owner of the land or any other perſon ſhall deſtroy them, or ſhall take down any ſteeple, tree, or other known *ſea-mark*, he ſhall forfeit 100 *l.* or, in caſe of inability to pay it, ſhall be *ipſo facto* outlawed.

Seamen, Retained to ſerve the King, are puniſhable for departing without licence. Stat. 2 *R.* 2. And fighting, quarrelling, and diſturbances of *ſea-men* may be puniſhed by the commiſſioners of the navy by fine and impriſonment. 19 *Car.* 2. *c.* 7. Regiſtred *ſeamen* are exempted from ſerving upon juries, or in any pariſh office, *&c.* And ſhall have 40 *s. per annum* bounty-money, beſides their pay; and on diſability of ſervice be admitted into *Greenwich* hoſpital: And *ſeamen* to the number of 30,000 were to be *regiſtred* for the King's ſervice, by Stat. 7 & 8 *W.* 3. *c.* 21. repealed 9 *Ann.* 24. See Stat. 1 *Geo.* 2. *c.* 19. *Seamen* on board *Engliſh* merchant ſhips, maimed in fight againſt an enemy, ſhall be admitted into the hoſpital at *Greenwich*, as other *ſeamen* wounded in the ſervice of his Majeſty. 8 *Geo.* 2. *c.* 29. Proviſion for relief of widows of *ſea* officers. ſee 6 *Geo.* 2. *c.* 25. Vide *Navy* and *Mariner*, and *Black. Com.* 1 *V.* 418.

Seamens Wages. They are one proper object of the Admiralty juriſdiction, even tho' the contract be made for them upon the land. 1 1 *Ventr.* 146. *Black. Com.* 3 *V.* 107. Yet the court of Common law have juriſdiction; and an action may be maintained for work and labour.

Sean-Fiſh, Seems to be that ſort of *fiſh* which is taken with a large and long net, called a *ſean.* Stat. 1 *Jac.* 1. *c.* 25.

Searcher, An officer of the *Cuſtoms*, whoſe buſineſs it is to *ſearch* and examine ſhips outward bound, if they have any prohibited or uncuſtomed goods on board, *&c.* This officer is mentioned in the Stat. 12 *Car.* 2. And there are *ſearchers* concerned in *alnage* duties; of *leather*, and in divers other caſes.

Sea-reeve, *In villis maritimis eſt qui maritimam Domini juriſdictionem curat, littus luſtrat, & ejectum maris (quod* wreck *appellatur) Domino colligit.* Spelm.

Sea-Rovers, Pirates and robbers at ſea. Stat. 16 *Car.* 2. *c.* 6. Vide *Pirates.*

Secondary, *(Secondarius)* Is an officer who is *ſecond*, or next to the chief officer; as the *Secondaries* to the *Prothonotarios* of the courts of *B. R.* and *C. B.* The *Secondary* of the *Remembrancer* in the *Exchequer*; *Secondary* of the *Compter*, *&c.* 2 Lill. Abr. 506. *Secondary* of the *King's Bench*, may have clerks. 2 *Geo.* 2. *c.* 23.

Secondary of the Office of Privy Seal, Is taken notice of by 1 *Edw.* 4. *c.* 1.

Secondary Conveyances, Thoſe which preſuppoſe ſome other conveyance, precedent, and only ſerve to confirm, alter, reſtrain, reſtore, or transfer the intereſt granted, by ſuch original conveyance. *Black. Com.* 2 *V.* 324.

Secondary Uſe. A uſe, tho' executed, may change from one to another by circumſtances *ex poſt facto*; as, if *A.* makes a feoffment to the uſe of his intended wife and her eldeſt ſon for their lives, upon the marriage the wife takes the whole uſe in ſeveralty; and, upon the birth of a ſon, the uſe is executed jointly in them both. This is ſometimes called a *ſecondary*, ſometimes a *ſhifting* uſe. Vide *Black. Com.* 2 *V.* 334, 335.

Second deliverance, *(ſecunda deliberatione)* Is a judicial writ that lies after a nonſuit of the plaintiff in *replevin*, and a *returno habendo* of the cattle replevied, adjudged to him that diſtrained them; commanding the ſheriff to replevy the ſame cattle again, upon ſecurity given by the plaintiff in the replevin for the re-delivery of them, if the diſtreſs be juſtified. It is a ſecond writ of replevin, *&c.* *F. N. B.* 68.

Second Marriage, *(ſecundæ nuptiæ)* Is when after the deceaſe of one a man marries a *ſecond* wife; which the law terms *bigamus.*

Seconds, To duellers. See *Homicide, Murder.*

Second Surcharge, *writ of.* If after admeaſurement of common, upon a *writ of admeaſurement of paſture*, the ſame defendant ſurcharges the common again, the plaintiff may have this writ of *ſecond ſurcharge, de ſecunda ſuperoneratione*, which is given by the ſtatute *Weſtm.* 2. *c.* 13. *Ed.* 1. *c.* 8. And thereby the ſheriff is directed to inquire by a jury whether the defendant has in fact again ſurcharged the common, contrary to the tenure of the laſt admeaſurement: And if he has, he ſhall then forfeit to the King the ſupernumerary cattle put in, and ſhall alſo pay damages to the plaintiff. *Black. Com.* 2 *V.* 239.

Secretary, *(Secretarius à Secretis)* A title given to him that is *ab Epiſtolis & Scriptis Secretis*; as the two *Secretaries of State*, *&c.* The *Secretaries of State* have an extraordinary truſt which renders them very conſiderable in the eyes of the King, and of the ſubject alſo; whoſe requeſts and petitions are for the moſt part lodged in their hands, to be repreſented to his Majeſty, and to make diſpatches thereupon, purſuant to his Majeſty's directions: They are Privy Counſellors, and a Council is ſeldom or never held without the preſence of one of them; they wait by turns, and one of theſe *Secretaries* always attends the court, and by the King's warrant, prepares all bills or letters for the King to ſign, not being matter of law. And depending on them is the office called the *Paper Office*, which contains all the public writings of ſtate, negotiations, and, diſpatches, all matters of ſtate and council, *&c.* and they have the keeping of the King's ſeal, called the *ſignet*, becauſe the King's private letters are ſigned with it. There was but one *Secretary of State* in this kingdom, 'till about the end of the reign of King *Hen.* 8. but then that great and weighty office was thought proper to be diſcharged by two perſons, both of equal authority, and ſtiled *Principal Secretaries of State.* The correſpondence with all parts of *Great Britain* is managed by either of the Secretaries, without diſtinction; but in reſpect to foreign affairs, all nations which have intercourſe of buſineſs with *Great Britain*, are divided into two provinces, the *Southern* and the *Northern*; of which the Southern is under the *ſenior*, and the Northern is under the *junior Secretary*, *&c.* Our *Secretaries* of State have power to commit perſons for treaſons, and other offences againſt the ſtate, as conſervators of the peace at Common law, or as juſtices of peace all over *England*; and it is incident to their office. 1 *Salk.* 347. *Wood's Inſt.* 458. *Qu.* If they are not conſtantly named in the commiſſions of the peace for every county in *England* and *Wales*; and whether they have any power to commit but in virtue thereof, as juſtices of the peace? See *Black. Com.* 1 *V.* 338.

Touching the power of a *Secretary* of State to commit criminals for high treaſon, writing ſeditious libels, *&c.* ſee *Wilſon, par.* 2. 288.

The *Secretary* of State, as ſuch, is not a *conſervator*, or juſtice of the peace; nor is he, or the King's meſſengers in ordinary acting under his warrant, within the meaning of the ſtatute. 24 *Geo.* 2. *c.* 44. *Entick clerk* v. *Carrington* and others. *C. B. M.* 6 *Geo.* 3. *Wilſon, par.* 2. *fo.* 290, 291.

Secta, or Suit, *(a ſequendo).* By this word was antiently underſtood the witneſſes or followers of the plaintiff. *Seld. in Forteſc. c.* 21. *Black. Com.* 3 *V.* 295.

Secta ad Curiam, Is a writ that lies againſt him who refuſes to perform his ſuit either to the *county* or *court-baron.* F. N. B. f. 158.

Secta ad Juſtitiam faciendam, Is a ſervice which a man is bound to perform by his fee. *Bracton, lib.* 2. *cap.* 16. *num.* 6.

Secta curiæ, Suit and ſervice done by tenants at the court of their lord. *Paroch. Antiq p.* 320.

Secta facienda per illam quæ habet eniciam partem, Is a writ to compel the heir, who hath the elder's part of the coheirs, to perform ſervice for all the coparceners. *Reg. Orig. fol.* 177.

Secta Molendini, A writ lying where a man by uſage time out of mind, *&c.* hath ground his corn at the mill of a certain perſon, and afterwards goeth to another mill with his corn, thereby withdrawing his ſuit to the former: And this writ lies eſpecially for the Lord againſt his tenant, who holds of him to do ſuit at his mill. *Reg. Orig.* 153. *F. N. B.* 122. The count in the writ *ſecta molendini* may be on the tenure of the land; or upon preſcription, *viz.* That the tenant, and all thoſe who held thoſe lands, have uſed to do their ſuit at the plaintiff's mill, *&c.* New Nat. Br. 272. *Secta ad molendinum,* and *aſſiſes of nuſance* are now much turned into actions of the caſe. See *Black. Com.* 3 *V.* 235.

Secta Regalis, A ſuit by which all perſons were bound twice in a year to attend the *ſheriff's tourn*; and was called *regalis,* becauſe the ſheriff's tourn was the King's leet wherein the people were to be obliged by oath to bear true allegiance to the King, *etc.*

Secta unica tantum facienda pro pluribus hæreditatibus, Is a writ that lies for an heir who is diſtrained by the lord to do more ſuits than one, in reſpect of the land of divers heirs deſcended to him. *Reg. Orig.*

Sectis non faciendis, Is a writ that lies for a woman, who, for her dower, ought not to perform ſuit of court. *Reg. Orig. fol.* 174. It lay alſo for one in wardſhip to be freed of all ſuits of court during his wardſhip. *Reg. Orig. fol.* 173. but ſee 12 *Car.* 2. *c.* 24.

Secundary. See *Secondary.*

Secunda Superoneratione Paſturæ, Is a writ which lieth where admeaſurement of paſture hath been made, and he that firſt ſurcharged the common doth it a ſecond time, notwithſtanding the admeaſurement. *Old. Nat. Br.* 73. See *Second Surcharge, writ of.*

De Securitatem inveniendi quod ſe non divertat ad partes exteras ſine Licentia Regis, An ancient writ lying for the King againſt any of his ſubjects, to ſtay them from going out of this kingdom to foreign parts; the ground whereof is, that every man is bound to ſerve and defend the commonwealth, as the King ſhall think fit. *F. N. B.* 85. See *Ne exeat Regnum.*

Securitatis Pacis, Is a writ that lies for one who is threatened death or bodily harm by another, againſt him which ſo threatens; and is iſſued out of the *Chancery* directed to the ſheriff, *etc.* *Reg. Orig.* 88.

Securities for Money, As to their true conſtruction, ſee *Black. Com.* 3 *V.* 439.

Security for good Behaviour, the Peace, and of Perſon, *etc.* See *Peace,* and *Black. Com.* 1 *V.* 129. 4 *V.* 248, 251, 3. See *Surety of the Peace.*

Se Defendendo, Is a plea for him that is charged with the death of another perſon, by alledging that he was driven unto what he did *in his own defence*; and the other ſo aſſaulting him that, if he had not done as he did, he muſt have been in danger of his own life; which danger ought to be ſo great, as that it appears to have been otherwiſe inevitable. *Staundf. P. C. lib.* 1. *c.* 7. Any perſon in his defence may kill another for the ſafety of his life; and where a man is attacked, a defence may be made without expecting the firſt blow, which may render a perſon incapable of making any defence: But a defence ought to be always unblameable, not to take revenge. *Bac. Max.* 25. If a man attack another perſon on a ſudden falling out, and, before a mortal wound is given, the other flies to the wall, or ſome other unpaſſable place, to ſave his life, and being ſtill purſued kills the perſon making the aſſault; from the unavoidable neceſſity of it, this is *ſe defendendo*; and ſo in the like caſes. *Bract.* 3 *Edw.* 3. A flight upon neceſſity, to make killing another *ſe defendendo,* muſt not be a feigned one to gain breath, or opportunity to fall on afreſh; but it muſt be a flying from the danger, as far as the party can, either by reaſon of ſome wall, ditch, company, or the fierceneſs of the aſſailant will permit. 1 *Hale's Hiſt. P. C.* 483. If *A.* aſſaults the maſter, who flies to avoid death, and the ſervant kills *A.* in his maſter's defence, it is *homicide defendendo* of the maſter; tho', if he had not been driven to that extremity, it would have been manſlaughter. *Ibid.* 484. *Plowd.* 100. And if I have a weapon in my hand, and a perſon aſſaults me, if he runs ſo haſtily after me, that he runneth on my ſword which I hold forth for the defence of myſelf, and ſo is killed, it is *ſe defendendo:* But if there be any malice in the caſe, or one kill him before he need to do it, the offence will be of a higher nature. *Fitz. Coron.* 284, 286, 307. *Poult.* 119. There is no expreſs judgment in *chancemedley,* or *ſe defendendo*; but the offender is let to mainpriſe to ſue out his pardon; and yet his goods and chattels are forfeited: Tho' where one kills another in his own defence, upon the *ſpecial matter* found, it is ſaid he may be diſmiſſed without any forfeiture, or pardon purchaſed. 2 *Inſt.* 148. 3 *Inſt.* 220. 1 *Inſt.* 391. *H. P. C.* 138. See the ſtatute 4 *H.* 8. *c.* 5. and *Black. Com.* 1 *V.* 130. 4 *V.* 183.

Sedgmore, In the county of *Somerſet,* an act for draining the ſame. 10 & 11 *W.* 3. *c.* 26.

Seditious Conventicles, To the diſturbance of the peace, *&c* See *Conventicles* and *Hereſy.*

Seduction of Women-Children, By 4 & 5 *P. & M. c.* 8. If any perſon, above the age of fourteen, unlawfully ſhall convey or *take away any woman child unmarried,* (which is held *Stra.* 1162. to extend to baſtards as well as to legitimate children) within the age of *ſixteen* years from the poſſeſſion and againſt the will of the father, *&c.* he ſhall be impriſoned two years, or fined at the diſcretion of the juſtices. See the ſtatute, and *Black. Com.* 4 *V.* 209, 210.

Seed-cod, (from the Sax. *ſæd,* ſeed, and *codde,* a purſe, or ſuch like continent) Is a baſket or other veſſel of wood, carried on one arm of the huſbandman or ſower of ground, to bear the ſeed or grain which he ſows, and ſpreads abroad with the other hand. In *Weſtmorland* a bolſter or pillow is called a *cod*; and in other *northern parts* a pin-cuſhion is termed a *pin-cod.*——Pro uno *ſeed-cod* empto 4 *d.* Paroch Antiq. 549. Kennet's Gloſſ'.

Seeder, A ſeedſman, or one who ſows the land. *Blount.*

Seignior, (Fr. *Seignieur,* i. e. *Dominus)* Is in general ſignification as much as Lord; but particularly uſed for the Lord of the fee, or of a manor, as *Seigneur* among the *Feudiſts* is he who grants a fee or benefit out of the land to another; and the reaſon is, becauſe, having granted away the uſe and profit of the land, the property or *dominium* he ſtill retains in himſelf. *Hotom. F. N. B.* 23.

Seigniorage, Is a royalty or prerogative of the King, whereby he claims an allowance of *gold* and *ſilver* brought in the maſs, to be exchanged for coin. As *ſeigniorage,* out of every pound weight of gold, the King had for his coin 5 *s.* of which he paid to the Maſter of the *Mint* for his work ſometimes 1 *s.* and ſometimes 1 *s.* 6 *d.* Upon every pound weight of ſilver, the *ſeigniorage* anſwered to the King in the time of King *Edw.* 3. was eighteen pennyweight, which then amounted to about 1 *s.* out of which he ſometimes paid 8 *d.* at others 9 *d.* to the Maſter: In the reign of King *Hen.* 5. the King's *ſeigniorage* of every pound of ſilver was 15 *d. &c.* Stat. 9 *Hen.* 5. *cap.* 1. *Hale's Sher. Acc. pag.* 3.

Seignior in groſs, Seemeth to be one that is a Lord, but of no manor, and therefore can keep no court. *F. N. B. fol.* 3. See next title.

Seigniory, *(Dominium)* Is borrowed from the French *ſeigneurie,* i. e. *dominatus, imperium, principatus*; and ſignifies with us a manor or lordſhip, *ſeigniory de Sokemans,* Kitchin, fol. 80. *Seigniory in groſs,* which ſeems to be the title of him who is not lord by means of any manor, but immediately in his own perſon; as *tenure in capite,* whereby one holds of the King as of his crown, is *ſeigniory in groſs.* Kitchin, fol. 206. *See* Seigniory.

Seiſin, *(ſeiſina,* Fr. *ſeiſine)* In the Common law ſignifies poſſeſſion. To ſeiſe is to take poſſeſſion of a thing; and *primer ſeiſin* is the firſt poſſeſſion. *Co. Lit.* 152. There is a ſeiſin in *deed* or in *fact*, and a *ſeiſin* in law; a ſeiſin in *deed* is when an actual poſſeſſion is taken; and ſeiſin in *law* is where lands deſcend, and one hath not actually entered on them, *&c.* 1 *Inſt.* 31. Seiſin in *law* is a right to lands and tenements, though the owner is by wrong diſſeiſed of them: And he who hath an hour's actual poſſeſſion quietly taken, hath *ſeiſin de droit et de claime*, whereof no man may diſſeiſe him, but muſt be driven to his action. *Perk.* 457, 458. A ſeiſin in law is ſufficient to avow upon; but to the bringing an *aſſiſe* actual ſeiſin is required, *&c.* 4 *Rep.* 9. Seiſin of a ſuperior ſervice, is ſeiſin of all inferior ſervices which are incident thereto: And ſeiſin of homage is a ſeiſin of all other ſervices, becauſe in the doing thereof the tenant takes upon himſelf to do all ſervices. 4 *Rep.* 80. 1 *Danv. Abr.* 647. The ſeiſin of rent, or other annual ſervices, is a ſufficient ſeiſin of caſual ſervices. 4 *Rep.* 80. But ſeiſin of one annual ſervice is not ſeiſin of another annual ſervice; as if there be lord or tenant by fealty, ten ſhillings rent, and three days work in the year; in this caſe ſeiſin of the rent is no ſeiſin of the work, nor is ſeiſin of the rent ſeiſin of the ſuit of court, which is annual. 4 *Rep.* 9. 1 *Danv. Abr.* 647. 2 *Lil.* 507. The ſeiſin of the father is not ſufficient for the heir: Though if a fine be levied to one for life, the remainder to another in tail, and the tenant for life takes ſeiſin of the ſervices, this will be a good ſeiſin for him in remainder; and the ſeiſin of a leſſee for years is ſufficient for him in reverſion. 2 *H.* 6. 7. 45 *Ed.* 3. 26. 1 *Danv.* 646, 805. Where a man is ſeiſed of a reverſion, depending upon an eſtate for life, the pleading of it is that he was ſeiſed of it *ut de feodo*, leaving out the word *dominico*; but if it be a reverſion in fee, expectant upon the determination of a leaſe for years, there he may plead that he was ſeiſed of it *in dominico ſuo ut de feodo.* Dyer 185, 257. Rep. 20, 27. 4 Rep. 62. Seiſin is never to be alledged, but where it is traverſable; and when a defendant alledgeth a ſeiſin in fee in any one under whom he claims, the plaintiff cannot alledge a ſeiſin in another, without traverſing, confeſſing or avoiding of the ſeiſin alledged by the defendant. *Cro. El.* 30. 1 *Brownl.* 170. If a ſeiſin in fee is alledged, it ſhall be intended a lawful ſeiſin till the contrary appears. 2 *Lutw.* 1337. But the party is to ſhew of what eſtate he is ſeiſed, *&c.* 3 *Nelſ. Abr.* 215. See *Stat.* 32 *Hen.* 8. *cap.* 2. See *Black. Com.* 2 *V.* 131, 209. Livery of ſeiſin, *id.* 2 *V.* 311. Writ of ſeiſin, *id.* 2 *V.* 359. xix. 3 *V.* 412.

Seiſina habenda, quia Rex habuit Annum, Diem & Vaſtum, Is a writ that lies for delivery of ſeiſin to the lord of lands or tenements, after the King in right of his prerogative hath had the *year, day* and waſte, on a felony committed, *&c.* *Reg. Orig.* 165.

Seiſing of Heriots, Is the ſeiſing of the beſt beaſts, *&c.* (where an heriot is due) on the death of the tenant. It is a ſpecies of ſelf-remedy, not much unlike that of taking of cattle or goods in diſtreſs, only in the latter caſe they are ſeiſed as a *pledge*, in the former, as the *property* of the perſon for whom ſeiſed. See *Black. Com.* 3 *V.* 15.

Seizure of Goods for Offences. No goods of a felon or other offender can be ſeiſed to the uſe of the King, before forfeited: And there are two *ſeiſures*, one verbal only, to make an inventory, and charge the town or place, when the owner is indicted of the offence; and the other actual, which is the taking of them away afterwards on conviction, *&c.* 3 *Inſt.* 103.

Sel, Denotes the bigneſs of a thing to which it is added; as *Selwood* is a great wood.

Selda, (from the Sax. *ſelde*, a ſeat, or ſtool) Is uſed for a ſhop, ſhed, or ſtall in a market. *Aſſiſ.* 9 *R.* 1. It is alſo made to ſignify a wood of ſallows or willows: And Sir *Edward Coke* takes *ſelda* for a ſalt-pit. *Co. Lit.* 4.

Self-bane, (Sax. *ſelf-bana)* Is where a man murders himſelf, called *felo de ſe.*

Self-Defence. As to the defence of one's ſelf, or the mutual and reciprocal defence of ſuch as ſtand in the relations of huſband and wife, parent and child, maſter and ſervant: if the party himſelf, or any of theſe his relations, be forcibly attacked in his perſon or property, it is lawful for him to repel force by force; and the breach of the peace which happens, is chargeable upon him only who began the affray. 2 *Rol. Abr.* 546. 1 *Hawk. P. C.* 131. See *Black. Com.* 3 *V.* 3. Alſo vide *Homicide*, and *Black. Com.* 1 *V.* 130. 4 *V.* 183.

Self-Murder. The law hath ranked this among the higheſt crimes, making it a peculiar ſpecies of felony, a felony committed on one's ſelf. A *felo de ſe* is he that deliberately puts an end to his own exiſtence, or commits any unlawful malicious act, the conſequence of which is his own death. The puniſhment is, an ignominious burial in the highway, with a ſtake driven through his body; and a forfeiture of all his goods and chattels to the King. This forfeiture has *relation* to the time of the act done in the felon's life-time, which was the cauſe of his death. See *Black. Com.* 4 *V.* 189, 190.

Self-Preſervation. Every creature has implanted in it by nature a ſtrong deſire of ſelf-preſervation: And by our ancient law, if a man ſtole victuals merely to ſatisfy his preſent hunger, being for the preſervation of life, it was not felony; but this law is become obſolete. *Staundſ. P. C.* See *Se Defendendo.*

Selion of Land, *(ſelio terræ)* Is derived from the Fr. *ſeillon*, which ſignifies a ridge of ground riſing between two furrows, and contains no certain quantity, but ſometimes more and ſometimes leſs: Therefore *Crompton* ſays, that a *ſelion of land* cannot be in demand, becauſe it is a thing incertain. *Cromp. Juriſd.* 221.

Seme, (Sax. *ſeam*, i. e. *onus)* A horſe-load or eight buſhels of corn. *Blount.* A *ſeme* of *glaſs* is twenty-four ſtone, each ſtone five pounds weight.

Semebole, A pipe or half a ton of wine. *Merch. Dict.*

Seminaries, Perſons are not to go or be ſent to *Popiſh ſeminaries*, to be inſtructed or educated, under divers penalties and diſabilities, by the *Stat.* 1 *Jac.* 1. *c.* 4. And contributing to the maintenance of a popiſh *ſeminary*, is made a *præmunire.* Stat. 27 Eliz. c. 2. See *Papiſt*, and *Recuſant.*

Seminiverbius, A preacher or ſower of words. *Pet. Bleſen'.*

Senage, *(ſenagium,* from *ſenatus*, ſometimes uſed for *ſynod)* Is money paid for *ſinodals.*

Senator, *(Lat.)* As now taken is a parliament man. In the laws of King *Edward the Confeſſor*, we are told, that the *Britons* called thoſe *ſenators* whom the *Saxons* afterwards termed *aldermen*, and borough-maſters; though not for their age, but their wiſdom, for ſome of them were young men, but very well ſkilled in the laws. *Kenulph*, King of the *Mercians*, granted a charter which ran thus, *viz.* *Conſilio & conſenſu epiſcoporum &* ſenatorum *gentis ſuæ largitus fuit dicto monaſterio, &c.* Staundf. P. C. cap. 18.

Sendal, A kind of thin fine ſilk, mentioned in the Stat. 2 *R.* 2. *c.* 1.

Seneſchal, *(Seneſcallus)* derived from the Germ. *Sein*, a houſe or place, and *Schale*, an officer) Is a ſteward; and ſignifies one who hath the diſpenſing of juſtice, in ſome particular caſes: As the *High Seneſchal*, or *Steward of England*; *Seneſchal de la Hotel de Roy*, Steward of the King's Houſhold; *Seneſchal*, or Steward of Courts, *&c.* *Co. Lit.* 61. *Croke's Juriſd.* 102. *Kitch.* 83. See *Steward.*

Seneſchallo & Mareſchallo quod non teneant placita de libero tenemento, A writ directed to the Steward, and *Marſhal* of *England*, inhibiting them to take cogniſance of an action in their court that concerns freehold. *Reg. orig.* 185, 191.

Seneucia, *Widowhood.* If a *widow*, having dower after the death of her huſband ſhall marry *vel filium, vel filiam in ſeneucia peperit*, ſhe ſhall forfeit and loſe her dower in what place ſoever in *Kent.* Tenen. in Gavelkind, Plac. Trin. 17 E. 3.

Seney-Days, Are play-days, or times of pleaſure and diverſion.——*Dies recreationis vocati, Anglice* ſeney-days, *&c.* *Regiſt. Eccl. Ebor. anno* 1562.

Senna, To what duties liable on importation. 1 *G.* 1. *Stat.* 2. *c.* 43.

Separia, *(ſepararia)* Several, or ſevered and divided from other ground. *Paroch. Antiq.* 336.

Separation, *(ſeparatio)* Is the living aſunder of man and wife. See *Divorce, Mulier.*

Septennial Elections. *Blackſtone*, in his *Commentaries*, 1 *V.* 189 ſays, (after obſerving that the utmoſt extent of time that the ſame parliament was allowed to ſit, by the Stat. 6 *W.* & *M. c.* 2. was *three* years) "But by the Stat. 1 *Geo.* 1. *ſt.* 2. *c.* 38. (in order, *profeſſedly* to prevent the great and continued expences of frequent elections, and the violent heats and animoſities conſequent thereupon, and for the peace and ſecurity of the government then juſt recovering from the late rebellion) this term was prolonged to *ſeven* years; and, what alone is an inſtance of the *vaſt authority of parliament*, the very ſame houſe, that was choſen for *three* years, enacted its own continuance for *ſeven*." I may add, they might, with equal juſtice and propriety, have voted themſelves perpetual members, have filled up the vacancies, of their own authority, have totally changed the conſtitution, and formed a moſt deſpotic ariſtocracy, or rather oligarchy! It was a moſt ſhameful breach of the very high truſt the people had repoſed in their conſtituents!

Septuageſima, The third *Sunday* before *Quadrageſima* Sunday in *Lent*, and is called *Septuageſima*, becauſe it is about the *ſeventieth* day before *Eaſter*; as *Sexageſima* and *Quinquageſima*, are thus denominated from their being, the one *ſixty*, and the other *fifty* days before the ſame feaſt, which are all of them days appropriated by the church to acts of penance and mortification, preparatory to the devotion of *Lent*. From *Septuageſima* Sunday until the *Octaves* after *Eaſter*, the ſolemnizing of marriage is forbidden by the *Canon* law; and the laws of King *Canutus* ordained a vacancy from judicature, from *Septuageſima* to *Quindena Paſchæ*. See Stat. *Weſtm.* 1. *c.* 51.

Septuagint. The *ſeventy* interpreters of the *Bible*; who were in truth ſeventy-two, *viz.* ſix out of every one of the *twelve tribes*. Lit. Dict.

Septum, An encloſure ſo called, becauſe it is encompaſſed *cum ſepe* & *foſſa*, with a hedge and a ditch, at leaſt with a hedge; and it ſignifies any place paled in.

Sepulchre, *(ſepulchrum)* Is the place where any *body* lies *buried*; but a *monument* is ſet up for the memorial of the deceaſed, though the corpſe lie not there. *Cowell.*

Sepultura, An offering made to the prieſt for the burial of a dead body. *Domeſd.*

Sequatur ſub ſuo Periculo, Is a writ that lies where a *ſummons ad warrantizand'* is awarded, and the ſheriff returns that the party hath nothing whereby he may be ſummoned; then goes forth an *alias* and a *pluries*, and if he come not in on the *pluries*, this writ ſhall iſſue. *Old Nat. Br.* 163.

Sequela Cauſæ, The proceſs and depending iſſue of a cauſe for trial.

Sequela Curiæ, Is uſed for a ſuit of court.——— *Et quod ſint liberi a* ſequela curia. *Mon. Ang. tom.* 2. *p.* 253.

Sequela molendini, The owing ſuit to a particular mill, or being bound to grind corn in that place only; which was a duty and ſervice laid upon many tenants. *Concedere ſequelam molendini*, was to grant all the toll and profit ariſing from ſuch cuſtomary rights. *Cowell.*

Sequela Villanorum, The retinue and appurtenances to the goods and chattels of *villeins*, which were at the abſolute diſpoſal of the lord. in former times, when any lord ſold his villein, it was ſaid *dedi* B. *nativum meum cum tota* ſequela *ſua*; which included all the villein's offſpring. *Paroch. Antiq.* 216, 288.

Sequendum & Proſequendum, Signify to follow a cauſe; as where a guardian is admitted *ad proſequend'* for an infant, &c. 1 *Vent.* 74.

Sequeſter, *(ſequeſtrare)* Is a term uſed in the *Civil law* for renouncing; as when a widow comes into court, and diſclaims having anything to do, or to intermeddle with her huſband's eſtate who is deceaſed, ſhe is ſaid to *ſequeſter*.

Sequeſtration, *(ſequeſtratio)* Signifies the ſeparating or ſetting aſide of a thing in controverſy, from the poſſeſſion of both the parties that contend for it; and it is two-fold, *voluntary* and *neceſſary*; voluntary, is that which is done by conſent of each party; neceſſary, is what the judge of his authority doth, whether the party will or not. *Forteſcue, cap.* 50. *Dyer* 232, 256. And there is a *ſequeſtration* on a perſon's ſtanding out all the proceſſes of contempt for non-appearance in *Chancery* upon a bill exhibited; ſo, where obedience is not yielded to a decree, the court will grant a *ſequeſtration* of the lands of the party, &c. And a *ſequeſtration* is alſo a kind of execution for debt; eſpecially in the caſe of a *beneficed clerk*, of the profits of the benefice, to be paid over to him that had the judgment, till the debt is ſatisfied. 2 *Inſt.* 472. 2 *Rol. Abr.* 474. But the moſt uſual *ſequeſtration* of a benefice, is upon a vacancy, for the gathering up the fruits of the benefice to the uſe of the next incumbent; and the profits of the church, being in abeyance, are to be received by the churchwardens by appointment of the biſhop, to make proviſion for the cure during the vacancy, &c. Stat. 28 *Hen.* 8. *cap.* 11.

Sequeſtration is alſo the act of the ordinary, diſpoſing of the goods of one that is dead, whoſe eſtate no man will meddle with. See *Kennet's Gloſſary in Sequeſtrare.*

Sequeſtration in the court of Chancery is a commiſſion uſually directed to ſeven perſons therein named, and impowering them to ſeize the defendant's real and perſonal eſtate into their hands, (or it may be ſome particular part or parcel of his lands) and to receive and ſequeſter the rents and profits thereof, until the defendant ſhall have anſwered the plaintiff's bill, or performed ſome other matter which has been ordered and enjoined him by the court, for not doing whereof he is in contempt. *Curſ. Canc.* 89.

A *ſequeſtration* out of Chancery is grounded on the return of the ſerjeant at arms, wherein it is certified that the defendant had ſecreted himſelf; and therefore this proceſs iſſues, and gives authority and power to the *ſequeſtrators* (who are perſons of the plaintiff's own naming) to enter upon and ſeize his, the defendant's, real and perſonal eſtate.

It appears that there were great ſtruggles between the Common law courts and courts of Equity, before this proceſs came to be eſtabliſhed; the former holding that a court of conſcience could only give remedy *in perſonam*, and not *in rem*; that *ſequeſtrators* were treſpaſſers, againſt whom an action lay; and in the caſe of *Colſton* v. *Gardiner*, the Chancellor cites a caſe, where they ruled, that if a man killed a *ſequeſtrator* in the execution of ſuch proceſs, it was no murder. *Cro. Eliz.* 651. *Brograve* v. *Watts*, 1 *Mod.* 259. (But 2 *Mod.* 258. that the Chancellor having iſſued ſuch *ſequeſtration*, it will be as binding as any other proceſs according to the rules of the Common law. 2 *Chanc. Ca.* 44.)

But theſe were ſuch bloody and deſperate reſolutions, and ſo much againſt common juſtice and honeſty, which requires that the decrees of this court, which preſerved men from deceit, ſhould not be rendered illuſory, that they could not long ſtand; but this proceſs got the better of theſe reſolutions on this ground; 1ſt, That the extraordinary juriſdiction might puniſh contempts by the loſs of eſtate as well as the impriſonment of the perſon, becauſe that liberty being a greater benefit than property, if they had a power to commit the perſon, they might take from him his eſtate till he had anſwered his contempts. 2dly, To ſay that a court ſhould have power to decree about things, and yet ſhould have no juriſdiction *in rem*, is a perfect ſoleciſm in the conſtitution of the court itſelf. 2 *Peer Wil.* 621. 2 *Ch. Ca.* 44.

It has been ſaid, that the firſt inſtance of a *ſequeſtration*, after a decree, was Sir *Thomas Read*'s caſe in Lord *Coventry*'s time, and that it was afterwards awarded in Chancery, in the caſe of *Hyde* v. *Pitt*, 1666, and affirmed in parliament: and by the court of Exchequer, *Graves* v. *Fountaine*, 1687, and ſince, without ſcruple. The doubt formerly was, that lands were not liable to execution before the ſtatute *Weſtm.* 2. *cap.* 18. 1 *Ch. Ca.* 92. 2 *Ch. Ca.* 44.

In *Vernon's Reports* it is ſaid, that *ſequeſtrations* were firſt introduced in Lord *Bacon*'s time, and then but ſparingly uſed in proceſs, and after a decree to ſequeſter the thing in demand only. 1 *Vern*. 423. See *Black. Com.* 2 *V*. 444.

1. *In what caſes a ſequeſtration is to be awarded.*
2. *The power and duty of the ſequeſtrators; and when a ſequeſtration is determined.*

1. *In what caſes a ſequeſtration is to be awarded.*

A *ſequeſtration niſi* is the firſt proceſs againſt a peer or member of the Houſe of Commons. 2 *Peer Wil.* 385. 1 *Ch. Ca.* 61, 138. S. P.

A *ſequeſtration* is alſo the firſt proceſs againſt the menial ſervant of a peer, within the words and meaning of the ſtatute 12 & 13 *W*. 3. *c*. 3. for that otherwiſe ſuch ſervant would have greater privilege than his lord. 1 *Peer Wil.* 535.

If there be a *ſequeſtration niſi* againſt a peer for want of an anſwer, and the peer puts in an anſwer, that is inſufficient; yet the order for a *ſequeſtration* ſhall not be abſolute, but a new *ſequeſtration niſi*. 2 Peer Wil. 385.

Notwithſtanding the ſuperintendent power of the courts in this kingdom over thoſe in *Ireland*, and what is ſaid in ſome of our books, it ſeems to be now the better opinion, that the court of Chancery here cannot award a *ſequeſtration* againſt lands in *Ireland*. 1 Vern. 76. 2 Ch. Ca. 189. 2 Peer Wil. 261.

It was ſaid, that ſuch proceſs had been awarded to the governor of *North Carolina*; but herein it was doubted whether ſuch *ſequeſtration* ſhould not be directed by the King's council, where alone an appeal lies from the decrees in the plantations. 2 *Peer Wil.* 261.

Copyholds may be *ſequeſtered*, though not extendible at Common law or the ſtatute of *Weſtm*. 2. for courts of equity have *poteſtatem extraordin' & abſolutam*; but it ſeems a doubt whether ſuch a *ſequeſtration* can be revived againſt the heir of a copyholder, which ariſes from the difficulty of obliging the lord to admit, and depriving the lord of his fine, &c. upon the death of his tenant. 2 *Ch. Ca.* 46. Vide 1 *Bernard.* 431.

A *ſequeſtration* out of Chancery is more effectual than an execution by *fieri facias* at law, for a *ſequeſtration* may lie againſt the goods, though the party is in cuſtody upon the attachment; whereas in law, if a *capias ad ſatisfaciendum* is executed, there can no *fi. fa.* iſſue. *Caſes in Lord Talbot's Time*, 222.

Where the *ſequeſtrators* ſeize the real eſtate of the party, any tenant or other perſon who claims title to the eſtate ſo ſequeſtered, either by mortgage, judgment, leaſe, or otherwiſe, who hath a title paramount to the *ſequeſtration*, ſhall not be obliged to bring a bill to conteſt ſuch title, but he ſhall be let in to conteſt ſuch a title in a ſummary way.

He may move by his counſel as of courſe to be examined *pro intereſſe ſuo*; and in this caſe the plaintiff is to exhibit interrogatories in order to examine him for a diſcovery of his title to the eſtate, and he muſt be examined upon ſuch interrogatories accordingly; and the maſter muſt ſtate the matter to the court; and the parties may enter into proof touching the title to the eſtate in queſtion; and when the maſter hath ſtated the whole matter, the court proceeds to give judgment therein upon the report; and if it appears that the party who is examined *pro intereſſe ſuo* hath a plain title to the eſtate, and is not affected with the *ſequeſtration*, then it is to be diſcharged as againſt him, with or without coſts, as the court ſhall determine upon the circumſtances of the caſe, and ſo *vice verſa*. See *Cum*. 712. 1 *Peer Wil.* 308.

The ſequeſtration binds from the time of awarding the commiſſion, and not only from the time of executing it and its being laid on by the commiſſioners; for if that ſhould be admitted, then the inferior officer would have *ligandi & non ligandi poteſtatem*. 1 Vern. 58.

2. *The power and duty of the ſequeſtrators; and when a ſequeſtration is determined.*

The ſequeſtrators are officers of the court, and as ſuch are ameſnable to the court, and are to act from time to time in the execution of their office as the court ſhall direct; they are to account for what comes to their hands, and are to bring the money into court as the court ſhall direct, to be put out at intereſt, or otherwiſe, as ſhall be found neceſſary; but this money is not uſually paid to the plaintiff, but is to remain in court until the defendant hath appeared or anſwered and cleared his contempt, and then whatſoever hath been ſeized ſhall be accounted for and paid over to him; however, the court hath the whole under their power, and may do therein as they pleaſe, and as ſhall be moſt agreeable to the juſtice and equity of the caſe.

The plaintiff's counſel may move and obtain an order for tenants to attorn and pay their rents to the ſequeſtrators, or for the ſequeſtrators to ſell and diſpoſe of the goods of the party, and to keep the money in their hands, or to bring it into court, as ſhall be moſt adviſeable and diſcretionary, and fitting for the court to do.

Sequeſtrators on meſne proceſs are accountable for all the profits, and can retain only ſo far as to ſatisfy for contempt. 1 *Vern*. 248.

If ſequeſtrators, having power to ſell timber, diſpoſe of 7000*l*. worth, and only bring 2000*l*. to account, they, as officers and agents of the court, are reſponſible, and not the plaintiff. 1 *Vern*. 161.

A ſequeſtration is in nature of a *levari* at Common law, and the party ſequeſtering has neither *jus in rem, vel in re*; the legal eſtate of the premiſſes remaining in every reſpect as before. 1 *Peer Wil.* 307.

Sequeſtrators being in poſſeſſion of a great houſe in St. *James*'s ſquare, which was the defendant's for life, the court ordered that the maſter allow a tenant for the houſe, and the ſequeſtrators to make a leaſe, and the tenant to enjoy. 3 *Ch. Rep.* 87.

It was moved, that the irregularity of a ſequeſtration might be referred to the deputy, which was taken out againſt the defendant for not appearing, by reaſon of its being taken out ſooner than by the courſe of the court it could, and yet the ſequeſtrators had taken the goods off the premiſſes, and threatened to ſell them; the chief baron ſaid, that as to the carrying the goods off the premiſſes, it was clear the ſequeſtrators could do that, becauſe a ſequeſtration upon meſne proceſs anſwers to a *diſtringas* at law; but however, as to ſelling them, the court agreed in the preſent caſe it could not be lawful, and ſaid it had lately been ſettled on debate; and obſerved further, that courts of equity could not authoriſe ſequeſtrators to ſell goods even upon a decree until Lord *Stamford*'s caſe, which makes decrees in this reſpect equivalent to a judgment; and even now, the counſel ſaid, ſequeſtrators cannot ſell but by leave of the court; however, the court ſaid this was a matter proper for them to conſider upon another occaſion, and therefore only referred the irregularity of the ſequeſtration as to the point of time to the deputy. 1 *Barnard. Rep.* 212. *in Scacc'.*

A ſequeſtration that iſſues as a meſne proceſs of the court will be diſcontinued and determined by the death of the party; but where a ſequeſtration iſſues in purſuance of a decree, and to compel the execution of it, there, though the ſame be for a perſonal duty, it ſhall not be determined by the death of the party. 1 *Vern*. 58.

A ſequeſtration was againſt the father, who appeared to be only a tenant for life, and on his death the ſequeſtration was diſcharged. 1 *Ch. Ca.* 241. 2 *Ch. Ca.* 46.

Sequeſtration in London, Is made upon an action of debt; and the courſe of proceeding in it is thus: The action being entered, the officer goes to the ſhop or warehouſe of the defendant, when there is no body within, and takes a padlock and hangs it upon the door, &c. uſing theſe words, *viz.* *I do ſequeſter this warehouſe, and the goods and merchandizes therein of the defendant in the action, to the uſe of the plaintiff*, &c. and ſo puts on his ſeal, and makes return thereof at the *Compter*; then four court days being paſt, the next court after the plaintiff may have judgment to open the doors of the ſhop or warehouſe, and to appraiſe the goods therein by a ſerjeant, who takes a bill of appraiſement, having two freemen to appraiſe them, for which they are to be ſworn at the next court holden for that *Compter*; and then the officer puts his hand to the bill of appraiſement, and the court giveth judgment: Though the defendant in the action may put in bail before ſatisfaction, and ſo diſſolve the *ſequeſtration*; and after ſatisfaction, may put in bail *ad diſproband' debitum*, *&c.* Pract. Solic. 429.

Sequeſtration, Of the eſtates of *peers* and *members of parliament*, not appearing to actions, *&c.* Stat. 12 & 13 *W.* 3. *c.* 3. See *Parliament.*

Sequeſtro habendo, Is a writ judicial for the diſcharging a *ſequeſtration* of the profits of a church benefice granted by the biſhop at the King's command, thereby to compel the parſon to appear at the ſuit of another; and the parſon upon his apppearance, may have this writ for the releaſe of the *ſequeſtration.* Reg. Judic. 36. See *Black. Com.* 3 *V.* 418.

Serement, (Fr.) An oath which is to be taken before a perſon who hath power to adminiſter it, or ſhall be void. 2 *Keb.* 284. See *Oath.*

Serjeant or **Sergeant,** (Lat. *Serviens)* Is a word diverſely uſed in our law, and applied to ſundry offices and callings. Firſt a *Serjeant at law, (Serviens ad legem)* otherwiſe called *Serjeant Counter* or of the *Coif*, is the higheſt degree in the *Common law*, as a *Doctor* is in the *Civil law*; but, according to *Spelman*, a doctor of law is ſuperior to a *ſerjeant*, for the very name of a doctor is magiſterial, but that of a ſerjeant is only miniſterial. To theſe *ſerjeants*, as men beſt learned and experienced in the law and practice of the courts, one court is ſevered to plead in, by themſelves, which is that of the *Common Pleas*, where the Common law of *England* is moſt ſtrictly obſerved; yet they are not ſo limited as to be reſtrained from pleading in any other court, where the judges (who cannot be ſuch till they have taken the degree of *ſerjeant)* call them *brothers*, and hear them with great reſpect; and of which one or more are ſtiled the *King's Serjeants*, being commonly choſen out of the reſt in reſpect of their great learning, to plead for the King in all his cauſes, eſpecially upon indictments for treaſon, *&c.* In other kingdoms the *King's Serjeant* is called *Advocatus Regis:* and here in *England*, in the time of King *Edward* the Sixth, *Serjeant Benloe* wrote himſelf *ſolus ſerviens ad legem*, there being for ſometime none but himſelf; and in *Ireland* at this day there is only a King's *Serjeant*. *Serjeants* at law are made by the King's writ directed unto ſuch as are called, commanding them to take upon them that degree by a certain day; and by the writ or patent of creation it appears that the honour of *ſerjeant* at law, is a ſtate and dignity of great reſpect: In conferring theſe degrees much ceremony is uſed; and the *ſerjeants* choſen hold a ſumptuous feaſt, like that at a coronation, which formerly continued ſeveral days; alſo they make preſents of gold rings to a conſiderable value, *&c.* *Forteſcue, c.* 50. 3 *Cro.* 1. *Dyer* 72. 2 *Inſt.* 213, 214. Their privilege of being impleaded in *C. B. &c.* Vide *Privilege.* See *Black. Com.* 1 *V.* 24. 3 *V.* 28.

Serjeants at Arms. Their office is to attend the perſon of the King; to arreſt perſons of condition offending, and give attendance on the Lord High Steward of *England*, ſitting in judgment on any traitor, *&c.* There may not be above thirty *Serjeants at Arms* in the realm, who ſhall not oppreſs the people, on pain to loſe their offices, and be fined, by the ſtat. 13 *R.* 2. *c.* 6. And two of them, by the King's allowance, do attend on the two houſes of parliament; the office of him in the houſe of commons is, the keeping of the doors, and the execution of ſuch commands touching the apprehenſion and taking into cuſtody of any offender, as that houſe ſhall injoin him. Another of them attends on the Lord *Chancellor* in the *Chancery*; and one on the Lord *Treaſurer* of *England:* Alſo one upon the Lord *Mayor* of *London* on extraordinary ſolemnities, *&c.* They are in the old books called *Virgatories*, becauſe they carried ſilver rods gilt with gold, as they now do maces, before the King. *Stat.* 7 *Hen.* 7. *c.* 3. *Crompt. Jur.* 9. *Fleta, lib.* 2. *c.* 38. See *Black. Com.* 3 *V.* 444.

Serjeants, Of a more inferior kind are *Serjeants of the Mace*, whereof there is a great band in the city of *London*, and other *corporate towns*, that attend the mayor or other head officer, chiefly for matters of juſtice, *&c.* *Kitch.* 143. Formerly all the *Juſtices in Eyre* had certain officers attending them called *Serjeants*, who were in the nature of *tip-ſtaves.* Weſtm. 1. c. 30. And the word *Serjeant* is uſed in *Britton* for an officer belonging to the county; which is the ſame with what *Bracton* calls *Serjeant of the Hundred*, being no more than bailiff of the hundred. *Bract. lib.* 5. *c.* 4. And we read of *ſerjeants* of *manors* of the *peace*, &c.

Johannes Freeman tenet unam virgatam terræ, per ſerjeantiam *menſurandi foſſata & opera Domini Regis, ad caſtrum Domini Regis.* Lib. niger Herefordia. Though ſervices or tenures are now turned into *ſocage*, yet it may be neceſſary to ſhew how they are deſcribed in our old law-books, which ſee under the word *ſervitium.* See *Skene de verbor. ſignif.* and *Kennet's Gloſſary.*

Serjeants of the Houſhold, Are officers who execute ſeveral functions within the *King's Houſhold*, mentioned in the ſtat. 33 *H.* 8. *c.* 12.

Serjeanty, *(ſerjeantia)* Signifies in law a ſervice, that cannot be due from a tenant to any lord but to the King only; and this is either *grand ſerjeanty*, or *petit*; the firſt is a tenure whereby one holds his lands of the King by ſuch ſervices as he ought to do in perſon to the King at his coronation; and may alſo concern matters military, or ſervices of honour in peace, as to be the King's butler, carver, *&c.* *Petit ſerjeanty*, is where a man holds lands of the King, to furniſh him yearly with ſome ſmall thing towards his wars; and in effect payable as rent. Though all tenures are turned into *ſocage* by the 12 *Car.* 2. *cap.* 24. Yet the honourary ſervices of *grand ſerjeanty* ſtill remain, being therein excepted. *Lit.* 153, 159. 1 *Inſt.* 105, 108. See *Chivalry.* And *Black. Com.* 2 *V.* 73, 81.

Sermonium, Was an interlude or hiſtorical play, acted by the inferior orders of the clergy, aſſiſted by youths; in the body of the church, ſuitable to the ſolemnity of ſome high proceſſion day; and before the improvements of the ſtage, theſe ruder ſorts of performances were even a part of the unreformed religion. *Collect. Mat. Hutton, Ex. Reg. Eccl. Lincoln, MS.*

Serples, A mantle or upper coat; from the Lat. *ſuperpellicium.* Blount.

Servage. (Mentioned in ſtat. 1 *Rich.* 2. *c.* 6.) That is, when each tenant, beſides payment of a certain rent, finds one or more workmen for his lord's ſervice. *Inq.* 7 *Ed.* 1. *Nott. Etiam eſt religio illa ita poſita in* ſervagio *per abbates Ciſtercienſes, quod ſervitium Dei in hac parte impeditur.* Pla. Parl. 33 E. 1. See *Service.* King *John* brought the crown of *England* in ſervage to the ſee of *Rome.* 2 Inſt. 274.

Servants, Are ſuch as men of trades and profeſſions employ under them, to aſſiſt them in their particular callings; or ſuch perſons as others retain to perform the work and buſineſs of their families, which comprehends both men and women: And ſervants are *menial*, or not ſo; *menial*, being domeſtics living within the walls of the houſe. *Wood's Inſt.* 51. Every perſon under the age of thirty years, that has been brought up in handicraft trades, and hath not lands of inheritance, or for life, of the yearly value of forty ſhillings, or is not worth ten pounds in goods, and ſo allowed by two juſtices of peace; and not being retained with any perſon in huſbandry, or in the ſaid arts, not being lawfully hired as a *ſervant* with any nobleman or gentleman, or having any farm or other holding whereupon he may employ his labour; ſhall, upon requeſt made by any perſon uſing the myſtery wherein ſuch perſon hath been exerciſed, be obliged to *ſerve* him as a *ſervant* therein, on pain of impriſonment. 5 *Eliz.* *c.* 4. And by the ſame ſtatute, perſons are compellable to *ſerve* in huſbandry by the year, with any perſon that keepeth or uſeth huſbandry, and who will require any proper perſon to *ſerve*; and the juſtices of peace have authority herein, and to aſſeſs the wages of ſuch *ſervants* in huſbandry, order payment, *&c.* Alſo two juſtices, and mayors or head officers of any city or town, may appoint any poor woman of the age of twelve years, and under forty, unmarried, to go to *ſervice* by the year, *&c.* for ſuch wages and in ſuch manner as they think fit; and if any ſuch woman ſhall refuſe to go abroad as a *ſervant*, then the ſaid juſtices, *&c.* may commit ſuch woman until ſhe is bound to ſervice. *Stat. Ibid.*

If any maſter ſhall give more wages than aſſeſſed by the juſtices; or any *ſervant* takes more, or refuſes to *ſerve* for the ſtatute wages; they are puniſhable; but a maſter may reward his *ſervant* as he pleaſes, ſo as it be not by way of contract on the retainer: And,

A maſter cannot put away a *ſervant* nor a *ſervant* depart before the end of his term without ſome reaſonable cauſe, to be allowed by one juſtice; nor after the end of the term without a quarter's warning given before witneſſes, if a maſter diſcharges a *ſervant* otherwiſe he is liable to a penalty of forty ſhillings. 5 *Eliz.* c. 4. And where *ſervants* quit their ſervice, *teſtimonials* are to be given by conſtables and two houſholders, *&c.* declaring their lawful departure; and a *ſervant* not producing ſuch a *teſtimonial* to the conſtable where he deſigns to dwell, is to be impriſoned till he gets one; and in default thereof be whipped as a vagabond; maſters retaining them without ſuch teſtimonial, ſhall forfeit five pounds. But the teſtimonial concerns, only *ſervants* in trades and huſbandry. *Stat. Ibid.*

No perſon may retain a *ſervant* for leſs than a year, by the ancient ſtatutes; if one retains a *ſervant* generally, without expreſſing any time, the law conſtrues it for a year; and where a *ſervant* is hired for a year, according to the ſtatute, and the maſter dieth within that time, the executor muſt pay the wages. *Dalt.* 129. 1 *Inſt.* 42. If a woman *ſervant* marrieth, ſhe is obliged to *ſerve* out her year; but if a ſingle woman who is with child procures herſelf to be retained with a maſter, who knows nothing thereof, this is a good cauſe to diſcharge her from her *ſervice*; and ſo if ſhe be gotten with child during her *ſervice*. *Dalt.* 92. *Reſol. Ann* 1633. A *ſervant* retained for a year, falling ſick, ought not to be diſcharged therefore, or for any diſability by the act of God; neither may his wages be abated for theſe cauſes. *Dalt.* 129.

Maſter and *ſervant* may part by conſent, and then the allowance of the diſcharge by a juſtice of peace is not neceſſary: And a maſter's detaining wages, not allowing ſufficient meat, *&c.* or the maſter's wife beating him, are good cauſes for a *ſervant*'s departure; but they muſt be allowed by a juſtice. *Dalt.* If a maſter put away his *ſervant*, he muſt pay him his wages to the time he *ſerved*, though if the *ſervant* go away from his *ſervice* before the end of the time agreed, he ſhall forfeit all his wages. *Dalt.* 129. A *ſervant* is not to depart from his *ſervice*; and if he refuſeth to do his buſineſs, this is a departure in law, altho' he go not away. *Noy's Max.* 90.

Enticing away a *ſervant*, or retaining and keeping one who departed from his maſter without licence, knowing him to be a *ſervant* to another, the maſter may have action of the caſe againſt the perſon doing it. 2 *Lev.* 63. Stat. 23 *Ed.* 3. In caſe an action is brought for enticing away, or retaining or employing a ſervant, it is adviſable to give notice to the intended defendant, that the party is ſervant to the plaintiff, and to demand him, on proving ſuch notice and a ſubſequent employment during the time for which the plaintiff hired, retained, took and engaged the ſervant, will intitle the plaintiff to a verdict. To this proof muſt be added proof of the contract between the plaintiff and the ſervant, and that the time was not expired. But if a man do retain another's *ſervant*, not knowing that he was in the *ſervice* of the other, he ſhall not be puniſhed for ſo doing, if he do not retain him after notice of his firſt *ſervice*: And if a perſon do retain one to *ſerve* him forty days, and another doth afterwards retain him to *ſerve* for a year, the firſt covenant is avoided, becauſe the retainer was not according to the ſtatute. *New. Nat. Br.* 374, 375. *i. e.* according to the above law.

But there are many caſes, where ſervants may be retained for a longer or ſhorter term than a year, not within the above ſtatute, in which caſes, enticing away or retaining after notice of ſuch ſervants, will ſubject the offender to an action.

A maſter is anſwerable for the actions and treſpaſſes of his *ſervant* in many caſes; but not for treſpaſs of battery, *&c.* nor in criminal caſes, unleſs done by his command. *Noy's Max.* 99. And if the maſter order his *ſervant* to diſtrain another man's cattle, and after he hath diſtrained he kills or abuſes the diſtreſs, the maſter ſhall not anſwer it. *Noy* 111. If a man has a *ſervant* known to be ſuch, and he ſend him to fairs and markets to buy or ſell, his maſter ſhall be charged if the thing come to his uſe; tho' if the *ſervant* makes a contract in his maſter's name, the contract will not be binding, unleſs it were by the maſter's command or aſſent; and where a *ſervant* borrows money in his maſter's name, without order, that does not bind the maſter. *Doct. & Stud. Dial.* 2. c. 42. A *ſervant* buys things in his own name, the maſter ſhall not be charged, except the things bought come to his uſe, and he have notice of it. *Kitch.* 371. Where a maſter always gives his *ſervant* money, he ſhall not anſwer for what the *ſervant* buys on truſt; but if he ſends ſometimes on truſt, he muſt anſwer to his uſual tradeſmen for what is ſo taken up on truſt by him. *Wood's Inſt.* 56.

A maſter uſed to give his *ſervant* money every *Saturday*, to defray the charges of the foregoing week; and the *ſervant* kept the money; *per Holt* Ch. J. the maſter is here chargeable; for the maſter at his peril ought to take care what *ſervant* he employs; and it is more reaſonable that he ſhould ſuffer for the cheats of his *ſervants*, than ſtrangers and tradeſmen who do not employ them. 3 *Salk.* 234. It has been adjudged, that where a *ſervant* uſually buys goods for his maſter upon tick, and takes up things in his maſter's name, but for his own uſe, the maſter is liable; but it is not ſo where the maſter uſually gives him ready money: That if the maſter gives the *ſervant* money to buy goods for him, and he converts the money to his own uſe, and buys the goods upon tick, yet the maſter is anſwerable, if the goods come to his uſe; otherwiſe he is not: Alſo a note under the hand of an apprentice ſhall bind his maſter, where he is allowed to deliver out notes, tho' the money is never applied to the maſter's uſe; but if he be not allowed or accuſtomed to deliver out notes, his note ſhall not bind the maſter, if the money be not applied to the uſe of the maſter. 3 *Salk.* 234, 235.

The act of a *ſervant* ſhall not bind the maſter, unleſs he acts by authority of his maſter; and therefore if a maſter ſends his *ſervant* to receive money, and the *ſervant* inſtead of money takes a bill, and the maſter as ſoon as told thereof diſagrees, he is not bound by this payment: But acquieſcence, or any ſmall matter, will be proof of his maſter's conſent, and that will make the act of the *ſervant* the act of his maſter. *Hill.* 2 *Ann. B. R.* 2 *Salk.* 442. For what is within the compaſs of a *ſervant*'s buſineſs, the maſter ſhall be generally chargeable; and alſo have advantage of the ſame againſt others. *Noy's Max.* An *aſſumpſit* of the *ſervant*, by order and appointment of the maſter, ſhall bind his maſter; and a promiſe to my *ſervant* is good to me: If my bailiff buy cattle to ſtock my ground, I ſhall be chargeable in debt for the money; and if he ſell corn for me, I may have action in my own name againſt the buyer. *Bro.* 24. *Godb.* 360. If one owe me money, and I ſend my *ſervant* for it, and he pay it to him; this is a good payment and diſcharge, tho' the *ſervant* do not bring the ſame to me: But if I ſend him not, it is otherwiſe. *Doct. & Stud.* 138.

A maſter ſends his *ſervant* with deceitful wares to market, and orders him to ſell them, but ſays not to whom, if he ſells them, no action will lie againſt the maſter: Tho' if he had bid the *ſervant* ſell them to ſuch a man in particular, and he had done ſo, the maſter would be chargeable in an action on the caſe. 11 *Ed.* 4. *Kitch.* 185. The maſter is liable for the neglects of his *ſervant*; (tho' not the wilful wrong) where a carrier's *ſervant* loſes things delivered to him, the maſter muſt anſwer it, and action lies againſt him; and if goods be undertaken to be carried ſafely for hire, but by negligence are ſpoiled, it has been held, that whoſoever employs another, is anſwer-ble for him, and undertakes for his care to all that make uſe of him. 2 *Salk.* 440. If a ſurgeon undertakes the cure of a perſon, and, by ſending medicines by his *ſervant*, the wound is hurt and made worſe, the patient ſhall have action againſt the maſter, and not againſt the *ſervant*. 18 *Hen.* 8. And where a ſmith's *ſervant* pricks a horſe in ſhoeing him, the maſter ſhall anſwer the damages. *Wood's Inſt.* 56.

A maſter may maintain the cauſe of his *ſervants*: He may bring an action for the battery of a *ſervant*, whereby he loſes his ſervice, which is to be alledged: And if a *ſervant* is cozened of his maſter's money, the maſter may have action on the caſe againſt the perſon that cozened him. 9 *Rep.* 113. 10 *Rep.* 130. 1 *Roll. Abr.* 98. An action was ſometime ſince tried, againſt a lottery office keeper, for a large ſum of money, paid by the plaintiff's ſervant, the property of the maſter, without his privity, for inſurance of tickets, and a verdict againſt the defendant. *Coram* Lord *Manſfield* at *Guildhall*. In caſe a *ſervant* give away his maſter's goods, the maſter may have action againſt the receiver. *Noy's Max.* 94.

Where a *ſervant* damages goods of his maſter, action lies againſt him; and being employed to ſell goods in his maſter's ſhop, if the *ſervant* carries away and converts them to his own uſe, action of treſpaſs may be brought by the maſter againſt the *ſervant*; for the *ſervant* cannot meddle with them in any other manner than to ſell them. 5 *Rep.* 14. 1 *Leon.* 88. *Moor* 244. But if a *ſervant* be robbed, without his default, *&c.* he ſhall be excuſed, and allowed it in his account. 1 *Inſt.* 9.

Servants going or making away with, imbeziling or purloining any of their maſter's goods, to the value of 40*s.* are guilty of felony, by the ſtat. 21 *Hen.* 8. *c.* 7. and 12 *Ann. c.* 7. And aſſaulting their maſters, they may be bound to the good behaviour, or be committed to priſon for a year, *&c.*

By the ſtat. 20 *Geo. c.* 19. All complaints and diſputes between maſters and *ſervants* in huſbandry hired for a year or longer, or between maſters and artificers, handicraftſmen, miners, colliers, keelmen, pitmen, glaſsmen, potters, and other labourers employed for any certain time, ſhall be heard and determined by a juſtice or juſtices of the peace, altho' no rate of wages hath been made that year by the juſtices, and may order payment of ſo much wages as to him and them ſhall ſeem juſt, provided that the ſum in queſtion ſhall not exceed 10 *l.* to any *ſervant*, nor 5 *l.* to any artificer, *&c.* and in caſe of non-payment by twenty-one days, may iſſue a warrant to levy the ſame of the maſter's goods. And upon complaint on oath of any miſdemeanor, miſcarriage or ill behaviour in any ſuch *ſervant*, artificer, *&c.* ſuch juſtice or juſtices may puniſh the offender by commitment to the houſe of correction, there to be corrected and held to hard labour, not exceeding a calendar month; or by abating ſome part of his or her wages, or by diſcharging ſuch *ſervant*, artificer, *&c.* from his or her ſervice or employment. And on complaint upon oath of any miſuſage, refuſal of neceſſary proviſion, cruelty, or other ill-treatment to ſuch *ſervant*, artificer, *&c.* by any maſter, the juſtice or juſtices may ſummon the Maſter to appear before him or them, and, upon proof thereof upon oath to the ſatisfaction of ſuch juſtice or juſtices, he or they may diſcharge ſuch *ſervant* or artificer, *&c.* from his ſaid ſervice or employment, ſuch diſcharge to be given *gratis*.

Perſons thinking themſelves aggrieved by any ſuch determination, may appeal to the next ſeſſions of the peace. But *Certiorari* lies not to remove any ſuch proceedings to any of the Courts at *Weſtminſter*. There being a proviſo in the act, that nothing therein contained ſhould extend to the ſtannaries in *Devon* and *Cornwall*, by the *ſtat.* 27 *Geo.* 2. *c.* 6. that proviſo is repealed, and it is thereby enacted that all the proviſions and regulations in the ſaid *ſtat.* 20 *Geo.* 2. *c.* 19. relating to *ſervants* in huſbandry, *&c.* ſhall extend to ſuch tinners and miners as ſhall be employed in the ſaid ſtannaries; but not to hinder any perſon from applying to the ſtannary courts, or to the warden, ſub-warden, or ſteward of the ſtannaries, in relation to any of the aforeſaid matters. See *Artificers*, *Felony*, *Labourers*, *Manufacturers*, and *Black. Com.* 1 *V.* 423, 425. 3 *V.* 142, 153. 4 *V.* 230, 231.

Servi, Bond-men, or ſervile tenants. Our northern *ſervi* had always a much eaſier condition than the *Roman* ſlaves. *Servis non in noſtrum morem deſcriptis per familiam miniſteriis utuntur. Suam quiſque ſedem, ſuos penatis regit. Frumenti modum dominus, aut pecoris, aut veſtis, colono, injungit, & ſervus hactenus paret. Tacitus de Moribus Germanorum.* Which plainly deſcribes the condition of our *Saxon* and *Norman* ſervants, natives and villains, whoſe ſervitude did more reſpect their tenure, than their perſons. No author has fixed the diſtinction between *ſervus* and *villanus*, though undoubtedly their ſervile ſtate was different, for they are all along in the *Domeſday-Book* diſtinguiſhed from each other. So in *Burceſter* there were——*Quinqui* ſervi, & *viginti octo villani*, *&c.* It is ſuppoſed the *ſervi* were thoſe, whom our lawyers have ſince called *pure villanes*, and *villanes in groſs*, who, without any determined tenure of land, were at the arbitrary pleaſure of the lord appointed to ſuch ſervile works, and received their wages or maintenance at diſcretion of the lord. The other were of a ſuperior degree, and were called *villani*, becauſe they were *villæ & glebæ adſcripti*, i. e. held ſome cottage and lands, for which they were burdened with ſuch ſtated ſervile offices, and were conveyed as appurtenant to the manor or eſtate to which they belonged. See *Kennet's Gloſſary*.

The name and quality of their bondage do often occur in *Domeſday* regiſter: And their condition, no doubt, was worſe than that of the *bordarii* or *Cotſeti*, who performed likewiſe ſome ſervile offices for their lord, and yet as to their perſons and goods were not obnoxious to ſervitude, as the proper *ſervi* were. Theſe were of four ſorts, 1. Such as ſold themſelves for a livelihood. 2. Debtors that were to be ſold, for being incapable to pay their debts. 3. Captives in war, retained and employed as perfect ſlaves. 4. *Nativi*, ſuch as were born ſervants, and by ſuch deſcent belonged to the ſole property of the Lord.—All theſe had their perſons, their children, and their goods, at the diſpoſal of their Lord, incapable of making any wills, or giving away any thing. *Cowell.* They are alſo ſaid to be *ſervi teſtimentales*, thoſe which we now call *covenant ſervants*. Leg. Athelſt. c. 34.

Service, (*Servitium*) Is that duty which the tenant, by reaſon of his fee or eſtate, oweth unto the lord.

Our ancient law books make many diviſions of it; as into *perſonal* and *real*; free and *baſe*; *continual* or *annual*; *caſual* and *accidental*; *intrinſick* and *extrinſick*, &c. *Bract. lib.* 2. *Brit. c.* 66. 4 *Co. Rep.* 9.

Perſonal ſervice, is where ſomething is to be done by the perſon of the tenant, as homage and fealty; and *real*, was wards and marriages, when in uſe.

Annual and certain *ſervice* is rent, ſuit of court to the lord, *&c.*

Accidental ſervices, are heriots, reliefs and the like: And ſome ſervices are only for the lord's benefit; and ſome *pro bono publico*. Co. Copyhold 22. Co. Litt. 222. 22 E. 4. 3.

Alſo *ſervices* are ſaid to be *intire*; of chattels valuable, ſuch as an ox, or things pleaſureable, as a hawk, *&c.* And ſo are thoſe *perſonal*, and conſiſting of manual work, or to exerciſe ſome office, *&c.*

The ſtatute of *Magna Charta* ordains, that no freeman ſhall ſell ſo much of his lands, but that of the reſidue the lord may have his *ſervices*. 9 Hen. 3. c. 32. In feoffments to a man and his heirs, the feoffee ſhall hold the land of the lord by the ſame *ſervices* as the feoffor, *&c.* *Stat.* 18 *Edw.* 1. And where *ſervices* are intire, and cannot be divided; upon the alienation of parcel of the lands by the tenant, the *ſervices* ſhall be *multiplied*, and every alienee render the whole *ſervice*; tho' by the purchaſe of parcel by the lord, the whole is extinct, except in caſe of fealty and heriot cuſtom. 6 *Rep.* 1. *Wood's Inſt.* 133.

As to *feodal ſervice*, ſee farther *Black. Com.* 2 *V.* 54. And as to *heriot ſervice*, *Id.* 422. And ſee *Heriot*.

Service and Sacraments, The penalty of depraving the ſacrament of the altar, 1 *Ed.* 6. *c.* 1. The bleſſed ſacrament to be adminiſtered in both kinds, 1 *Ed.* 6. *c.* 1. For the uniformity of the ſervice and adminiſtration of ſacraments, 2 & 3 *Ed.* 6. *c.* 1. 5 & 6 *Ed.* 6. *c.* 1. 1 *Eliz.* *c.* 1. 8 *Eliz.* *c.* 1. 13 & 14 *Car.* 2. *c.* 4. Such ſervice ſhall be uſed as in the laſt year of King *Hen.* 8. 1 *Mar.* *ſt.* 2. *c.* 2. The penalty of diſturbing a preacher or prieſt ſaying divine ſervice, or pulling down an altar, *&c.* 1 *Mar.* *ſt.* 2. *c.* 3. The penalty of not repairing to church on *Sundays* and holidays, 1 *Eliz.* *c.* 2. The Bible and divine ſervice ſhall be tranſlated into the *Welch* tongue, 5 *Eliz.* *c.* 28. All eccleſiaſtical perſons to read and ſubſcribe to the Book of Common Prayer, *&c.* 13 & 14 *Car.* 2. *c.* 4. 15 *Car.* 2. *c.* 6. All perſons in office to take the ſacrament, and the declaration againſt tranſubſtantiation, 25 *Car.* 2. *c.* 2. Time given to thoſe in the *Fleet* and beyond ſea till three calendar months after their return, 13 *Geo.* 1. *c.* 29. Four months, 2 *Geo.* 2. *c.* 31. Six months given for taking the ſacrament, 16 *Geo.* 2. *c.* 30. Allowance of impediments for not reading the ſervice, extended to the certificate of ſubſcription, 23 *Geo.* 2. *c.* 28. Reading the articles to indemnify againſt neglect in point of time, *ib.*

Service Secular, Signifies worldly ſervice, contrary to *Spiritual* and eccleſiaſtical. *Stat.* 1 *Ed.* 4. *c.* 1.

Servientibus, Are certain writs touching ſervants and their maſters, violating the ſtatutes made againſt their abuſes, which ſee in *Reg. Orig. f.* 189, 190, 191.

Servitium feodale & praediale, Was not a perſonal ſervice, but only by reaſon of the lands which were held in fee. *Bracton, lib.* 2. *c.* 16. *par.* 7.

Servitium Forinſecum, A ſervice which did not belong to the chief lord, but to the King: it was called *forinſecum* and *foraneum*, becauſe it was done *foris, vel extra ſervitium quod ſit domino capitali:* And we find ſeveral grants of liberties with the appurtenances, *ſalvo forenſi ſervitio, &c.* in Mon. Ang. tom. 2. pag. 48.

Servitium Intrinſecum, Is that ſervice which was due to the chief lord alone from his tenants within his manor. *Bracton, lib.* 2. *Fleta, lib.* 3.

Servitium Liberum, A ſervice to be done by feudatory tenants, who were called *liberi homines*, and diſtinguiſhed from *vaſſals*, as was their ſervice; for they were not bound to any of the *baſe* ſervices of ploughing the lord's land, *&c.* but were to find a man and a horſe, or go with the lord into the army, or to attend his court, *&c.* and ſometimes it was called *ſervitium liberum armorum*; as in an old rental of the manor of *South Malling* in *Eſſex*, mentioned by *Somner* in his treatiſe of *Gavelkind*, *pag.* 56.

Servitium Regale, *Royal* ſervice, or the prerogatives that within a royal manor belonged to the lord of it; which were generally reckoned to be the following, *viz.* power of judicature in matters of property; and of life and death in felonies and murders; right to waifs and eſtrays; minting of money; aſſize of bread and beer; and weights and meaſures: All which privileges it is ſaid were annexed to ſome manors by grant from the King. *Paroch. Antiq.* 60.

Servi teſtamentales, Were thoſe whom we now call covenant ſervants. They are mentioned in the laws of King *Athelſtan*, *c.* 34.

Servitiis Acquietandis, Is a writ judicial that lies for a man diſtrained for ſervices to one, when he owes and performs them to another, for the acquittal of ſuch ſervices. *Reg. Judic.* 27.

Servitor, *(Servulus)* Is a ſerving man; particularly applied to *Scholars* in the colleges of the univerſities, who are upon the foundation.

Servitors of Bills, Such ſervants or meſſengers of the *Marſhal* of the *King's Bench*, as were ſent abroad with *bills* or writs to ſummon men to that court. *Stat.* 2 *H.* 4. *c.* 23.

Seſſeur, Seems to ſignify the aſſeſſing or rating of wages. 25 *Ed.* 3. *c.* 6.

Seſſion, *(Seſſio)* Is a *ſitting* of juſtices in court upon their commiſſion; as the *Seſſions* of *Oyer and Terminer, &c.* See *Black. Com.* 4 *V.* i.

Seſſion of Parliament, *(Seſſio Parliamenti)* The ſitting of the *parliament*; and the *ſeſſion of parliament* continues till it be prorogued or diſſolved, and breaks not off by adjournment. 4 *Inſt.* 27. See *Parliament.* And *Black. Com.* 1 *V.* 186, 7.

Seſſion, *great, of Wales,* By the ſtat. 34 & 35 *H.* 8. *c.* 26. A ſeſſions is to be held in *Wales*, twice in every year in each county by judges appointed by the King, to be called *the great ſeſſions of Wales*, in which all pleas of real and perſonal actions ſhall be held, with the ſame form of proceſs and in as ample a manner as in the court of Common Pleas at *Weſtminſter:* And writs of error ſhall lie from judgments therein (it being a court of record) to the court of King's Bench at *Weſtminſter*.

Seſſion of Gaol Delivery. A *Seſſion* held for delivering a gaol of the priſoners therein being. See *Black. Com.* 4 *V.* iii. And *Crown Circuit Com.* 1 *V.* 6, 57, 58.

Seſſions of the Peace, A court of record, held before two or more juſtices of peace, *(Quorum unus)* for the execution of the authority given them by their commiſſion and certain acts of parliament. And the juſtices in *Seſſions* have power to hear and determine treſpaſſes againſt the public *peace*, &c. and many offences by ſtatute: This court is held four times in a year at ſome place within the county, *&c.* Alſo, beſides the *General Seſſions* of the peace, there are private *Seſſions* held by the juſtices, for divers particular branches of the buſineſs of their offices. *Dalt. Juſt.* 573. See *Black. Com.* 4 *V.* 268.

The *Seſſions* cannot adjourn any matter without expreſsly adjourning the court alſo. *Rep. Temp. Hardw. per Annaly*, 80. The *Seſſions* muſt make a direct and final judgment themſelves, *Id.* 81. The *Seſſions* proceeding on indictments as a court of record at Common law, muſt make formal and regular continuances, but need not when they proceed in making orders on a power given them by ſtatute, *Id* 81. An order of *Seſſions* for diſcharging an apprentice muſt ſet out the appearance of the maſter. *Id.* 101.

Seſſions for ordering Servants, called ſtatute ſeſſions, held by conſtables of hundreds, *&c.* 5 *Eliz.* *c.* 4. See *Statutum Seſſionum.*

Seſſions for Weights and Meaſures, In *London* four juſtices from among the mayor, recorder, and aldermen, (of which the mayor or recorder to be one) may hold a *Seſſions* to inquire into offences of ſelling by falſe *weights and meaſures*, contrary to the ſtatutes; and to receive indictments, puniſh the offenders, *&c.* *Char. K. Cha.* 1.

Set-off. A ſet-off may be either by plea, or notice. In ſuch caſe the defendant acknowledges the juſtice of the plaintiff's demand on the one hand; but, on the other, ſets up a demand of his own, to counter-balance that of the plaintiff, either in the whole or in part. Vide the ſtatutes 2 *Geo.* 2. *c.* 22. and 8 *Geo.* 2. *c.* 24.

Settlement of Poor, in pariſhes, there are ſeveral ſtatutes relating to, *viz.* 43 *Eliz.* *c.* 2. 13 & 14 *Car.* 2. *c.* 12. 3 & 4 *W.* & *M.* *c.* 11. 8 & 9 *W.* 3. *c.* 30. 12 *Ann.* *c.* 18. 9 *Geo.* 1. *c.* 7, *&c.* See *Apprentice, Baſtard, Poor. Burn's Juſtice.* tit. *Poor, and* 19 *Vin. Abr.* tit. *Settlement of the Poor.* And *Black. Com.* 1 *V.* 362.

Settlement, *Act of.* The ſtat. 12 & 13 *W.* 3. *c.* 2. is ſo called, whereby the crown was limited to his preſent Majeſty's illuſtrious houſe, and ſome new proviſions were added at the ſame fortunate æra for better ſecuring our religion, laws and liberties; which the ſtatute declares to be "the birthright of the people of *England*;" according to the ancient doctrine of the Common law. *Black. Com.* 1 *V.* 121. See *Id.* 8. 217. and 4 *V.* 433.

Seven-oake, Wool-key, how veſted in truſtees for the King, ſubject to an agreement concerning the free-ſchool in *Seven-oake.* 8 *Geo.* 1. *c.* 31.

Several Action, Is where two or more perſons are *ſeverally* charged in any *action.*

Several Covenant, A *covenant* by two or more *ſeverally:* And in a deed, where the *covenants* are *ſeveral* between divers perſons, they are as ſeveral deeds, wrote in one piece of parchment. 5 *Rep.* 23.

Several Fiſhery, A free fiſhery, or excluſive right of fiſhing in a public river, is a royal franchiſe; and is conſidered as ſuch in all countries where the feodal polity has prevailed. *Black. Com.* 2 *V.* 39.

Several Inheritance, An inheritance conveyed, ſo as to deſcend, or come to two perſons *ſeverally* by moieties, *&c.* Vide *Inheritance.*

Several Tail, Is that whereby land is given and intailed *ſeverally* to two. *Co. Lit.*

Several Tenancy, *(Tenura ſeparalis)* A plea or exception taken to a writ that is laid againſt two perſons as joint-tenants, who are *ſeveral. Bro.* 273.

Severalty, *Eſtates in.* He that holds lands or tenements in *ſeveralty*, or is ſole tenant thereof, is he that holds them in his own right only, without any other perſon being joined or connected with him in point of intereſt, during his eſtate therein. *Black. Com.* 2 *V.* 179.

Severance, Is the ſingling or *ſevering* of two or more joined in one writ or action. There is a *Severance* of the tenants in an *aſſiſe*, when one or two diſſeiſees appear upon the writ, and not the other. *Book Intr.* 81. A *Severance* in *debet*, where two executors, *&c.* are plaintiffs, and one refuſeth to act or proſecute. *Ibid.* 220. *Severance* in *quare impedit*; in *attaints*, &c. 5 *Rep.* 97. And it lies in real, as well as perſonal actions; and on writs of error. *F. N. B.* 78. 10 *Rep.* 135. In writ of error, if three defendants in the action bring error, and one releaſes the errors, he may be ſummoned and ſevered, and then the other two ſhall proceed to reverſe the judgment. 6 *Rep.* 26. And if in error where there are ſeveral plaintiffs, one only appears and aſſigns errors; this is not good, without ſummoning and *ſevering* the reſt. *Cro. Eliz.* 893.

It has been held, that ſummons and *Severance* lies in partition; yet he who was *ſevered* ſhall have his part: For partition muſt be made of the whole. *Jenk. Cent.* 211. And in caſe of jointenants of lands, by *Severance* the proſecution of the ſuit is *ſevered*, but not the jointure; for where one alone recovers afterwards, the other may enter into the moiety recovered. *Ibid.* 40. Summons and *Severance* is uſually before appearance; as nonſuit is after appearance. 10 *Rep.* 134. But, according to *Hale*, there are two ſorts of *Severances*, one when a plaintiff will not appear; and the other when ſeveral plaintiffs appear, but ſome will not proceed and proſecute. *Hard.* 317. 3 *Nelſ. Abr.* 255. If a plaintiff or defendant on a writ of *Summons* and *Severance*, ſued out againſt him by another, doth not come in upon it, judgment ſhall be had *ad proſequendum ſolum*; and this hath been done in *B. R.* by giving a rule to appear and come in. 2 *Lill. Abr.* 539. See *Summons* and *Severance.*

Severance of Corn. The cutting and carrying it from off the ground: and ſometimes the ſetting out the *tithes* from the reſt of the corn, is called *Severance.* 2 Cro. 325. And where executors of tenants for life, *&c.* dying before *Severance*, ſhall have corn ſown, ſee *Emblements.*

Severance of Jointure, An eſtate in joint-tenancy may be *ſevered* and *deſtroyed*, by deſtroying any of its conſtituent unities. 1. That of *time*, which reſpects only the original commencement of the joint eſtate, cannot indeed (being now paſt) be affected by any ſubſequent tranſactions. But, 2. The joint-tenant's eſtate may be deſtroyed, without any alienation, by merely diſuniting their *poſſeſſion*. For joint-tenants being ſeiſed *per my et per tout*, every thing that tends to narrow that intereſt, ſo that they ſhall not be ſeiſed throughout the whole, and throughout every part, is a *Severance* or deſtruction of the jointure. By ſtatutes 31 *H.* 8. *c.* 1. and 32 *H.* 8. *c.* 32. joint-tenants either of inheritances or other leſs eſtates, are compellable by writ of partition to divide their lands. 3. The jointure may be deſtroyed, by deſtroying the unity of *title*. 4. It may alſo be deſtroyed, by deſtroying the unity of *intereſt*. See *Black. Com.* 2 *V.* 185, 6, 7.

Severity of Puniſhment. It is but reaſonable among crimes of different natures thoſe ſhould be moſt ſeverely puniſhed, which are the moſt deſtructive of the public ſafety and happineſs. See *Black. Com.* 4 *V.* 16. And the Marquis *Beccaria's* excellent Treatiſe on *Rewards and Puniſhments*: Eſpecially *cap.* 6, *&c.*

Severn, A recompence for robberies done on the river *Severn* in *Glouceſterſhire*, may be had by action of debt, according to the ſtatute of *Wincheſter*, 8 *H.* 6. None ſhall be diſturbed in his paſſage over the *Severn*; nor any diſorders committed upon the ſaid river. Stat. 9 *H.* 6. and 19 *H.* 7. Vide *Paſſage.*

Seward, A *Saxon* word for him who *guards* the *ſea-coaſts*; it ſignifies *Cuſtos Maris.*

Sewer, *(Sewera)* Is a freſh-water trench, or little river incompaſſed with banks on both ſides, to carry the water into the ſea, and thereby preſerve the lands againſt inundations, *&c.* The Kings of *England* granted *Commiſſions of Sewers* long before any ſtatute was enacted in parliament for it; and during the reigns of King *Hen.* 6. *Ed.* 4. *&* *Hen.* 7. ſeveral ſtatutes were made for appointing commiſſions of *ſewers* in all parts of the realm where needful; ſome to endure ten years, ſome fifteen years, and others five years, *&c.* with certain powers to the commiſſioners; which commiſſions, by the 23 *Hen.* 8. *c.* 5. are to be ſettled by the Lord Chancellor, Lord Treaſurer, and the two chief juſtices, or any three of them, whereof the Lord Chancellor to be one; and are to continue ten years, unleſs repealed by a new commiſſion: And by this law, the commiſſioners oath is appointed: they are to be qualified as to eſtates, by having lands, tenements or hereditaments, in fee or for life, worth forty marks *per Ann.* beſides repriſes (except they are reſident in and free of a corporation; and have moveables worth 100 *l*) and if they execute the commiſſion, not being thus qualified or before ſworn, they incur a forfeiture of 40 *l.* Commiſſioners that may lawfully act, have an allowance for their pains of 4 *s. per Diem*, and their clerks 2 *s.* out of the taxes to be laid and levied. 23 *H.* 8. *c.* 5.

The commiſſioners of *ſewers* have power to make and ordain laws, but not to continue in force longer than their commiſſion by this ſtatute; and may decree lands to be ſold to levy charges aſſeſſed, upon non-payment, *&c. Stat. Ibid.* All laws, and ordinances of the commiſſioners, are to remain in force till repealed, notwithſtanding the determination of their commiſſion; and clerks of commiſſioners of *ſewers* are to eſtreat fines and penalties impoſed by the commiſſioners yearly into the Exchequer, by 13 *Eliz. c.* 9.

The buſineſs of the commiſſioners of *ſewers* is to repair ſea-banks, and walls, ſurvey rivers, public ſtreams, ditches, *&c.* and make orders for that purpoſe. They have authority grounded on the ſtatutes, to inquire of all nuſances, and offences committed by the ſtopping of rivers, erecting mills, not repairing of banks and bridges, *&c.* and to tax and aſſeſs all whom it may concern, for the amending of defaults, which tend to the obſtruction or hindrance of the free paſſage of the water through its ancient courſes: and they may arreſt carts and horſes, and take trees, paying a reaſonable price for them, for reparations; appoint workmen, bailiffs, ſurveyors, and other officers, *&c. Terms de Ley* 541. 4 *Inſt.* 275. *Laws Sew.* 86, 96.

They proceed by jury and view, in their inquiries into annoyances and defects of repairs; and the jury may amerce for neglects: Alſo the commiſſioners may puniſh by fine for contempts, and where officers are negligent in their duty; though they may not impriſon perſons for diſobedience to their orders. *Laws Sew.* But they cannot intermeddle where there is not a public prejudice; nor can they make a new river.

Upon the ſtatute 23 *Hen.* 8. *c.* 5. of *ſewers*, the commiſſioners decreed, that a new river ſhould be made out of another large river, through the main land for ſeven miles, unto another part of the old river; and for that purpoſe they laid a tax of a ſum in groſs upon ſeveral towns; adjudged that the commiſſioners have no power to make a new river, or any new invention to caſt out water, *&c.* for ſuch things are to be done in parliament: But they may order an old bank to be new made, or alter a *ſewer* upon any inevitable neceſſity; and the tax of a ſum in groſs is not warranted by their commiſſion they being to tax every owner or poſſeſſor of the lands, according to the quality of their lands, rents, and number of acres, and their reſpective portions and profits, whether of paſture, fiſhing, *&c.* 10 *Rep.* 141.

Commiſſioners of ſewers are to tax all equally, who are in danger to receive any damage by the waters, and not only thoſe whoſe lands are next adjoining; becauſe the rage of the waters may be ſo great, that the land contiguous may not be of the value to make the banks; and therefore the *ſtat.* 6 *Hen.* 6. *c.* 6. will have all that are in danger to be contributory. 5 *Rep.* 100. The commiſſioners having made a rate, according to the quantity and quality of the land, *&c.* may grant warrants to diſtrain for it; or the land may be decreed to be ſold to pay the rate: But the decrees of commiſſioners of *ſewers* are to be certified into the *Chancery*, and have the King's aſſent to be binding; and the commiſſioners, and their proceedings, are ſubject to the juriſdiction of the *King's Bench.* 23 Hen. 8. c. 5. 1 Vent. 67.

There are ſeveral cauſes and conſiderations for which perſons may be obliged to repair and maintain *ſewers*; as *frontagers* were bound to the repairs of the walls and banks, *&c.* by reaſon of frontage, by 37 *Lib. Aſſiſ. pl.* 10. The being owner of a bank, wall, or other defence, is a ſufficient inducement to impoſe the charge of the repairs thereof upon ſuch owner. 1 *Hen.* 7. *Preſcription* and *cuſtom* are much of the ſame nature, and the law takes notice of them in this caſe; but preſcription doth not bind a man to the repairs, except it be *ratione tenuræ.* 21 Ed. 4. 38. 19 Hen. 7. By *tenure* of land, a perſon may be bound to repair a wall, bank, or defence mentioned in the ſtatute of *ſewers.* 12 H. 4. A man may bind himſelf and his heirs by *covenant* expreſly to repair a bank, wall, or *ſewer*, and be good; yet this ſhall not bind the heir after his death, where aſſets are not left from the anceſtor, who entered into the covenant. *Callis.*

The *uſe* of defences may tie a man to the reparation thereof; if one and his anceſtors have had the uſe of a river by ſailing up and down the ſame, or have uſed a ferry on or over it, *&c.* *Laws Sew.* 57. If no perſon or grounds can be known, who ought to make repairs by tenure, preſcription, cuſtom, or otherwiſe, then the commiſſioners are to tax the *level:* And by the *laws and ſtatutes of ſewers*, all ſhall be charged, *&c.* *Ibid.* 67, 68. If it is found before commiſſioners of *ſewers*, that ſuch a perſon ought to repair a bank; and this is removed into *B. R.* the court will not quaſh the inquiſition, or grant a new trial, except he repair it; and if afterwards he is acquitted, he ſhall be reimburſed. *Sid.* 78. In caſes of *ſewers*, the court of King's Bench inquire into the nature of the fact, before they grant a *certiorari* to remove orders; that no miſchief may happen by inundations in the mean time, which is a diſcretionary execution of their power. 1 *Salk.* 146.

The court commonly hears counſel on both ſides, where orders of commiſſioners of *ſewers* are removed by *certiorari*, before ſuch orders are filed; for, if good, the court will grant a *procedendo*, which cannot be done after they are filed: but now they will file them in any caſe, where there is no danger likely to enſue. 1 *Salk.* 145. If commiſſioners of *ſewers* proceed after a *certiorari* delivered out of *B. R.* attachment will iſſue againſt them, and they may be fined. 3 *Nelſ. Abr.* 218. An order of *ſewers* was made for levying of 9 *d. per* acre on thirteen hundred and twelve acres, to be paid to the clerk, to be applied towards defraying of charges in and about the execution of the commiſſion; and held to be good, the act does not require it ſhould be on the occupiers; and there is an expreſs power to allow charges. 2 *Str.* 1127. 10 *Co.* 139.

Orders of *ſewers* being removed by *certiorari*, the court would not file the orders till they had heard the objections debated, ſo as to have it in their power to ſend the orders back again. 2 *Str.* 1263. The court held, that a *certiorari* to bring up an order made by the commiſſioners, for the removal of their own clerk, was of common right, and not diſcretionary, as in the caſe of other orders, where great inconveniences may follow by inundations in the mean time. 1 *Str.* 609.

The *ſea*, *creeks*, and *bays*, on the coaſts, are all within the *ſtatutes of ſewers*, in point of extent; but they and the ſhores, and the relinquiſhed grounds, are out of the commiſſion of *ſewers*, to be determined thereby: but *ports* and *havens*, as well as the walls and banks of waters, are within the commiſſion of *ſewers*; and the ſhore and grounds left by the ſea, when they are put in gainage and made profitable, are then within the power of the commiſſion of *ſewers:* And though before, the ground left by the ſea is not, as to defence, within the commiſſion of *ſewers*; yet a wall or bank may be thereon raiſed, for the ſuccour of the country, although not for any private commodity, the commiſſion of *ſewers* aiming at the general good. *Callis's Read.* *Laws Sew.* 31, 32. The ſtat. 3 *Jac.* 1. *cap.* 14. ordains, That all ditches, banks, bridges, ſtreams, and watercourſes, within two miles of *London*, falling into the *Thames*, ſhall be ſubject to the commiſſion of *ſewers:* And the Lord Mayor, *&c.* is to appoint perſons who have power of commiſſioners of *ſewers.* 7 Ann. c. 10.

Repairs of ſea-banks in *Norfolk*, by order of juſtices of peace as highways. See ſtat. 27 *Eliz. c.* 24. Breaking down ſea-banks, whereby lands ſhall be damaged, is felony, by the 6 *Geo.* 2. *cap.* 35. And perſons removing piles, *&c* uſed to prevent inundations of rivers, ſhall forfeit 20 *l.* or be ſent to the houſe of correction for ſix months. *Stat.* 10 *Geo.* 2. *cap.* 32. See *Black Com.* 3 *V.* 73.

Sexageſima *Sunday*, the ſixtieth day before *Eaſter.* See *Septuageſima.*

Sexhindeni, *(Sax)* The middle *Thanes*, valued at 600 ſhillings. *Vide* Hindeni Homines.

Sextary, *(Sextarius)* Was an ancient meaſure, containing about our pint and a half, (according to our *Latin* dictionary.) The town of *Leiceſter* paid among other things to the King yearly, twenty-five meaſures called *Sextaries* of *honey*, as we read in *Domeſday.* And in *Clauſ.* 4 *Ed.* 3. *m.* 26. we find *treſdecem* Sextarios *vini.—Et unum* Sextorium *ſalis apud Wainflete.* Mon. Angl. 2. par. fol. 849. b. *Decem mittas braſii, quatuor* Sextarios *avenæ ad præbendam.* Idem, 1. par. fol. 136. b. where it ſeems to have been uſed for a much greater quantity. A *Sextary of ale* contained ſixteen *Lagenas.* Cowell. *See* Tolſeſter.

Sextery lands, (mentioned in the firſt part of the *Baronage of England, fol.* 324.) Are lands given to a church or religious houſe, for maintenance of the *Sexton* or ſacriſtan. *Cowell.*

Sextons. Pariſh clerks and *ſextons*, are regarded by the Common law, as perſons who have freeholds in their offices; and therefore though they may be puniſhed, yet they cannot be deprived by eccleſiaſtical cenſures. 2 *Rol. Abr.* 234.

Shacke, Is a cuſtom in *Norfolk* to have common for hogs, from the end of harveſt till ſeed-time, in all mens grounds without contradiction. *Co.* 7 *Rep. fol.* 5. *Corbet*'s caſe. And in that country, *To go at ſhacke*, is as much as to go at large. *Cowell.*

Shalloons, Under what penalties not to be exported from *Ireland* to any place but *England*, 10 & 11 W. 3. c. 10.

Sharping-Corn, A cuſtomary gift of corn, which, at every *Chriſtmas*, the farmers in ſome parts of *England* give to their ſmith, for *ſharping* their plough irons, harrow tines, *&c.* *Blount.*

Shaw, Is a grove of trees, or a wood, mentioned in 1 *Inſt.* 4.

Shawaldres, A word unknown to *Somner*, who could not tell what it was, unleſs *Chevaliers*, which may agree with the ſignification, but not with the ſound of the word; for it is more like ſoldiers than chevaliers. *Knight. anno* 1318. According to *Cowell*, the word ſignifies *ſoldiers.*

Sheading, Signifies a riding, tithing, or diviſion in the *Iſle of Man*, where the whole iſland is divided into ſix *ſheadings*, in each of which there is a *Coroner* or chief *Conſtable* appointed by delivery of a rod at the *Tinewald* court, or annual convention. *King's Deſcrip. Iſle of Man* 17.

Shearman's Craft, Is a craft or occupation uſed at *Norwich*; the artificers whereof do *ſhear* worſteds, fuſtians, and all woollen cloth. *Stat.* 19 *H.* 7. *c.* 17. and 22 *&* 23 *Car.* 2.

Sheep. By an ancient ſtatute, no perſon ſhall keep at one time above two thouſand *ſheep*; but lambs are not to be accounted as *ſheep* till they are a year old. 25

Hen. 8. *cap.* 13. Perſons exporting *ſheep* ſhall forfeit them, and 20*s.* for every *ſheep*, &c. 12 *Car.* 2. *c.* 32. And perſons in the counties of *Kent* and *Suſſex*, within ten miles of the ſea, are to give an account in writing, after *ſheep-ſhearing*, of the number of Fleeces to the next officer of the cuſtoms, *&c.* 9 & 10 *W.* 3. *c.* 40.

By late ſtatutes, perſons driving away, or ſtealing *ſheep*, or other cattle, or killing them, with an intent to ſteal the carcaſes, or any part thereof; and thoſe who aſſiſt any one therein, ſhall be adjudged guilty of felony, without benefit of clergy: and a reward of 10*l.* is ordered to be paid by ſheriffs to any perſon who ſhall apprehend and convict ſuch offenders, *&c.* *Stat.* 14 *Geo.* 2. *c.* 6. and 15 *Geo.* 2. *c.* 34. See *Wool.*

Sheep-Silver, A ſervice turned into money, which was paid in reſpect that anciently the tenants uſed to waſh the lord's *ſheep*. W. Jones Rep. 280.

Sheffield. Regulation of the courts baron of *Sheffield* and *Eccleſal*, in *Yorkſhire*, 29 Geo. 2. c. 37.

Shepway, *Court of.* This is a court, held before the Lord Warden of the *Cinque Ports*, a writ of error lies from the mayor and jurats of each port, to the Lord warden, in this court of *Shepway*, and from thence to the King's Bench. *Black. Com.* 3 *V.* 79.

Sherffee, So the body of the lordſhip of *Cardiff* in *South Wales* is called, excluding the members of it. *Powel's Hiſt. Wal.* 123.

Sheriff, Shiriff, or **Shire-reve,** *(Vicecomes)* Sax. *Scire geretha*, i. e. *Pagi vel comitatus præpoſitus*, or rather from the Sax. *Scyrian*, to divide; is the chief officer under the King in every ſhire or county, being ſo called from the firſt diviſion of the kingdom into counties. *Camb. Brit.* 104.

1. *Of ſheriffs generally.*
2. *Who are qualified or exempt from ſerving the office of ſheriff.*
3. *Manner of appointing him, and of his oath.*
4. *The ſheriff can execute no other office; how long to continue in office; and of his juriſdiction.*
5. *The ſheriff cannot diſpoſe of his bailiwick; and of his power and duty in appointing an under ſheriff.*

1. *Of ſheriffs generally.*

It ſeems that anciently the government of the county was by the King lodged in the Earl or Count, who was the immediate officer to the crown; and this high office was granted by the King at will, ſometimes for life, and afterwards in fee; but when it became too burthenſome, and could not be commodiouſly executed by a perſon of ſo high rank and quality, it was thought neceſſary to conſtitute a perſon duly qualified to officiate in his room and ſtead; from hence he is called in Latin *Vicecomes*, and *Sheriff* from *Shire Reeve*, i. e. governor of the ſhire or county. He is likewiſe conſidered in our books as bailiff to the crown: and his county of which he hath the care, and in which he is to execute the King's writs, is called a bailiwick. *Dav.* 60. *Savil* 43. 1 *Rol. Rep.* 274. *Co. Lit.* 168. Vide *Pref.* to 9 *Rep.* 33.

It is ſaid by Lord *Coke* and by *Dalton*, that Earls, by reaſon of their high employments and attendance upon the King, being not able to follow all the buſineſs of the county, were delivered of all that burthen, and only enjoyed the honour as they now do, and that labour was laid upon the ſheriff; ſo that now the ſheriff doth all the King's buſineſs in the county; and the ſheriff, though he be ſtill called *Vicecomes*, yet all he doth, and all his authority, is immediately from and under the King, and not from or under the Earl; ſo that at this day the ſheriff hath all the authority for the adminiſtration and execution of juſtice, which the count or Earl had; the King by his letters patent now committing to the ſheriff *Cuſtodiam Com'.* 9 Co. 49. Dalt. Sher. 2.

He is at this day conſidered as an officer of great antiquity, truſt and authority, having, as Mr. *Dalton* obſerves, from the King the cuſtody, keeping, command and government (in ſome ſort) of the whole county committed to his charge and care; and, according to Lord *Coke*, he is ſaid to have *triplicem cuſtodiam*, viz. *Vitæ juſtitiæ, vitæ legis, & vitæ reipublicæ, &c.* *Vitæ juſtitiæ* to ſerve proceſs, and to return indifferent juries for the trial of mens lives, liberties, lands, and goods; *vitæ legis* to execute proceſs and make execution, which is the life of the law; and *vitæ reipublicæ* to keep the peace. *Co. Lit.* 168. *Dalt. Sh.* 5.

It ſeems that anciently, and before the ſtat. 9 *Ed.* 2. Sheriffs were elected by the freeholders of the county, as the coroners are at this day, and conſequently that their offices did not determine by the death of the King. 2 *Inſt.* 558. 2 *Brownl.* 282.

And though at this day the King hath the ſole appointment of ſheriffs, except in counties palatine, and where there are *jura regalia*, yet it hath been adjudged, that the office of ſheriff is an entire thing, and that therefore the King cannot apportion or divide it, that is, he cannot determine it in part as for one town or one hundred; neither can he abridge the ſheriff of any thing incident to or belonging to his office. *Dav.* 60. 4 *Co.* 33. *Milton's* caſe, *Dalt. Sh.* 6. *Hob.* 13. *Raym.* 363.

The *Lord Mayor* and citizens of *London* have the *ſhrievalty* of *London* and *Middleſex* in fee, by charter; and two *ſheriffs* are annually elected by them, for whom they are to be anſwerable: If one of theſe *ſheriffs* dies, the other cannot act till another is made, and there muſt be two *Sheriffs of London*, which is a city and county, though they make but one *ſheriff* of the county of *Middleſex*: they are ſeveral as to plaints, in their reſpective courts. 3 *Rep.* 72. *Show. Rep.* 289.

2. *Who are qualified or exempt from ſerving the office of ſheriff.*

It is provided by ſeveral acts of parliament, that no man ſhall be ſheriff in any county, except he have ſufficient lands within the ſame county where he ſhall be ſheriff, whereof to anſwer the King and his people in caſe that any perſon ſhall complain againſt them; and that none that is ſteward or bailiff to a great lord ſhall be made ſheriff. 9 *Ed.* 2. 2 *Ed.* 3. *c.* 4. 4 *Ed.* 3. *c.* 9. 5 *Ed.* 3. *c.* 4.

It is holden that the King hath an intereſt in every ſubject, and a right to his ſervice, and that no man can be exempt from the office of ſheriff but by act of parliament or letters patent. *Sav.* 43. 9 *Co.* 46.

And on this foundation it was adjudged in Sir *John Read*'s caſe, who was made high ſheriff of *Hertfordſhire*, at the time he was excommunicated for non-payment of alimony, that an information properly lay againſt him for not executing the office; though it was objected on his behalf, that the oath and ſacrament injoined by act of parliament are neceſſary qualifications for all ſheriffs, which he was diſabled to take by reaſon of the excommunication; but the court held that he was puniſhable for not removing the diſability, it being in his power to get himſelf abſolved from the excommunication; and that therefore it could be no excuſe. 2 *Mod.* 299. *Attorney General* v. Sir *John Read.*

And though in the above caſe it was admitted, that the ſubject was bound to ſerve the King in ſuch capacity as he is in at the time of the ſervice commanded, yet it was inſiſted upon, that he was not obliged to qualify himſelf to ſerve in every capacity; and that therefore a priſoner for debt is not bound nor compellable to be ſheriff, no more than a perſon is bound to purchaſe lands to qualify himſelf to be either a coroner or juſtice of the peace; and it was likewiſe ſaid, that by the ſtatute 3 *Jac.* 1. *c.* 4. Every recuſant is diſabled; he may conform, but he is not bound to it; for if he ſubmits to the penalty, it is as much as is required by law. 2 *Mod.* 301.

Diſſenters are not compellable to ſerve the office of ſheriff. The *Chamberlain of London and Evans*, in the houſe of Lords, 1766.

If a man is diſabled by a judgment in law to bear an office, he is excuſed; *nam judicium redditur in invitum*; for though his fault or neglect was the occaſion of ſuch judgment, yet it is a mark ſet upon him by the government. *Salk.* 168. 4 *Mod.* 273.

And as nothing but an invincible neceſſity can exempt a perſon from ſerving the office of ſheriff, *&c.* on this foundation a by-law made in *London*, that no freeman choſen ſheriff, *&c.* ſhall be excuſed unleſs he voluntarily ſwears he is not worth 10,000*l.* *&c.* and that if he openly refuſes to take the office, then to forfeit the ſum of 400*l.* was adjudged good. *Salk.* 142. *Carth.* 480. 5 *Mod.* 438. *City of London* v. *Vanacre.*

3. *Manner of appointing him, and of his oath.*

The high ſheriff hath his authority given him by two patents; by the one the King commits to him the cuſtody of the county; by the other the King commands all other his ſubjects within that county to be aiding and aſſiſting to him in all things belonging to his office. *Dalt. Sh.* 7. where ſee the form of ſuch patents.

By the ſtat. 9 *Ed.* 2. *ſt.* 2. The chancellor, treaſurer and judges are to meet *craſtino animarum*, being the 3d of *November*, (now on the morrow of St. *Martin*, by 24 *Geo.* 2. *c.* 48.) every year, in the Exchequer chamber, to nominate perſons to be made ſheriffs; and the manner is, the lord chancellor, treaſurer and other high officers, being of the Privy council, together with the judges of both benches and the barons of the Exchequer, being aſſembled in the Exchequer chamber, nominate three perſons in every county to be preſented to the King, that he may prick one of them to be the ſheriff of every county. *Dalt. Sh.* 6. But it may be put off to another day. *Cro. Car.* 13, 595.

And yet the King by his prerogative may make and appoint the ſheriffs without this uſual aſſembly, and election or nomination in the Exchequer, as is the daily practice at this day upon the death of any ſheriff. *Dyer* 225. *Dalt. Sh.* 6.

The ſheriffs in every of the ſhires of *Wales* ſhall be nominated yearly by the lord preſident, council and juſtices of *Wales*, and ſhall be certified up by them; and after appointed and elected by the King as other ſheriffs be, 34 *Hen.* 8. *cap.* 26. *Dalt. Sh.* 6.

The ſheriff, before he doth exerciſe any part of his office, and before his patent is made out, is to give ſecurity in the King's Remembrancer's office in the Exchequer, under pain of 100*l.* for the payment of his proffers, and all other profits of the ſheriffwick; but theſe ſecurities are never ſued, unleſs there is a deficiency in the ſheriff's effects. *Dalt. Sh.* 7.

The ſheriff, before he takes upon him the exerciſe of his office, muſt not only take the oaths of allegiance and abjuration injoined to all officers by divers acts of parliament, but all ſheriffs, except thoſe of *Wales* and the counties palatine, muſt take the oath, appointed by ſtat. 3 *G.* 1. *c.* 15. *ſ.* 18. for the due execution of their office.

If a perſon refuſed to take upon him the office of ſheriff, it was uſual to puniſh him in the Star-chamber; and he may now be proceeded againſt by information in the court of King's Bench. Alſo if he refuſes to take the oaths injoined him, or officiates in the office before he hath thus qualified himſelf, the court, which hath a general ſuperintendancy over all officers and miniſters of juſtice, will grant an information againſt him; and it hath been held, that a refuſal of oaths injoined to be taken, amounts to a refuſal of the office. *Dalt. Sh.* 15. *Dyer* 167. 3 *Lev.* 116. *Carth.* 307.

A ſheriff at the entrance into his ſheriffalty, is to go to the Remembrancer's office in the Exchequer, and there enter into a recognizance with ſureties, with conditions for payment of his proffers or accounts: then his attorney, *&c.* will write him a note, ſignifying that he is choſen ſheriff of ſuch a county, and hath entered a recognizance; which he muſt deliver to one of the ſix clerks in Chancery, to make his patent by; with the writ of aſſiſtance, and writ of diſcharge to his predeceſſor: And, in the next place, the new ſheriff is to go to a maſter in Chancery, if he be in *London*, to take the oaths. *Dalt. Sher.* 291.

If the ſheriff be not in *London*, the oath may be taken by *dedimus poteſtatem*, directed to any two juſtices of the peace of the ſame county, one to be of the *quorum*, or to any other commiſſioner or commiſſioners, or before one of the judges of aſſiſe for that county, or one of the maſters in Chancery, who, it is ſaid, may as well as the judge adminſter ſuch oath without any *dedimus.* Dalt. Sh. 13, 14.

If the commiſſioners return the commiſſion or writ, and the oaths to be taken when they are not taken, they are finable. *Dyer* 168. *Dalt. Sher.* 14.

When a ſheriff is choſen, the old ſheriff continues ſheriff of the county till the new is ſworn, which completes him in his office: But the office of the old ſheriff ceaſes, and is at an end when the writ of diſcharge comes to him.

4. *The ſheriff can execute no other office; how long to continue in office; and of his juriſdiction.*

It is holden, that a ſheriff cannot be elected knight of the ſhire for that county for which he is ſheriff. 4 *Inſt.* 48. *Lit. Rep.* 326. Sir *Simon Dewe's Jour.* 38, 436.

And altho' a ſheriff is by virtue of his office a conſervator of the peace, yet it is enacted by the 1 *Mar. ſt.* 2. *c.* 8. *ſ.* 2. that no perſon having the office of ſheriff of any county ſhall exerciſe the office of juſtice of the peace in any county where he ſhall be ſheriff during the time he ſhall uſe the office of ſheriff. *Dalt. Sh.* 27.

By the 1 *Hen.* 5. *c.* 4. it is enacted, That no under-ſheriff, ſheriff's clerk, receiver, nor ſheriff's bailiff, ſhall be attorney in any of the King's courts during the time that he is in office. *Dalt. Sh.* 454.

By the 14 *Ed.* 3. *c.* 7. Confirmed by 23 *H.* 6. *c.* 8. It is enacted, That no ſheriff, under-ſheriff, nor ſheriff's clerk, ſhall tarry or abide in his office above one year, upon pain to forfeit two hundred pounds a year as long as he occupieth the office; and every pardon made for ſuch offence or forfeiture ſhall be void; and ſee 42 *Ed.* 3. *cap.* 9. *London*, *Middleſex*, &c. are not within theſe ſtatutes. 3 *G.* 1. *c.* 15. *ſ.* 21.

By the 1 *Rich.* 2. *c.* 11. it is enacted, That none that hath been ſheriff of any county a year ſhall be within two years next choſen again, or put in the ſame office, if there be other ſufficient. Confirmed by 23 *H.* 6. *c.* 8.

And by the 1 *H.* 5. *c.* 4. it is enacted, That they that be bailiffs of ſheriffs one year, ſhall be in no ſuch office by three years next following, except bailiffs of ſheriffs which inherit in their office.

By the Common law the patents of ſheriffs, like all other commiſſions, determined by the death or demiſe of the King; but now by the ſtatutes 7 *W.* *&* *M.* and 1 *Ann.* ſuch commiſſion ſhall remain in full force for the ſpace of ſix months next after ſuch death or demiſe, unleſs ſuperſeded, determined or made void by the next ſucceſſion. *Dyer* 165. *Dalt. Sh.* 17. Vide 7 *Co.* 30.

It hath been held, that the office of ſheriff doth not determine by the party's becoming a peer on the death of his father, but that he ſtill remains ſheriff *ad voluntatem Regis.* Cro. Eliz. 12 Sir *Lewis Mordant*'s caſe.

By the fourth of *H.* 4. *c.* 5. it is enacted, That every ſheriff ſhall be dwelling in proper perſon within his bailiwick for the time he ſhall be ſuch officer, and that the ſheriff ſhall be ſworn to do the ſame.

Hence it is clear, that a ſheriff hath no juriſdiction in any other county, nor can he do a judicial act, in which his perſonal preſence is required, out of his county; but it is held that he may do a miniſterial act, as make a panel, or return a writ out of his county, unleſs he is beyond ſea. *Dalt. Sh.* 22. 9 *H.* 4. 1.

See farther, *Plowd.* 37. *Dalt. Sher.* 23.

A ſheriff may make and deliver the return of a writ any where. *Wilſon, par.* 1. *fol.* 328. A ſheriff gives out a blank warrant upon a writ which is filled up by an attorney, this is ill. *Id. par.* 2. *fol.* 47.

5. *The ſheriff cannot diſpoſe of his bailiwick; and of his power and duty in appointing an under-ſheriff.*

By the 23 *Hen.* 6. *cap.* 10. it is provided, "That no ſheriff ſhall let to farm in any manner his county, nor any of his bailiwicks, hundreds, or wapentakes."

In the conſtruction hereof it hath been holden, that this is a particular law, and muſt be pleaded, otherwiſe the judges cannot take notice of it. 3 *Keb.* 678. *Ellis* v. *Nelſon.*

It hath been held, that a leaſe thereof, though no rent was ever received, is within the ſtatute; the intent thereof being that ſheriffs ſhould keep their counties in their own hands. 20 *Hen.* 7. 13. See *Dalt. Sher.* 23, 24. *Plowd.* 87. *Moor* 781.

By the 3 *Geo.* 1. *c.* 15. *ſ.* 10. "It ſhall not be lawful for any perſon to buy, ſell, let or take to farm, the office of under-ſheriff or deputy ſheriff, ſeal-keeper, county-clerk, ſhire-clerk, gaoler, bailiff, or any other office pertaining to the office of high ſheriff, or to contract for any of the ſaid offices, on forfeiture of 500*l.* one moiety to his Majeſty, the other to ſuch as ſhall ſue in any court at *Weſtminſter*, within two years after the offence."

Provided, that nothing in this act ſhall hinder any high ſheriff from conſtituting an under-ſheriff or deputy-ſheriff, as by law he may, nor to hinder the under-ſheriff in any caſe of the high-ſheriff's death, when he acts as high ſheriff, from conſtituting a deputy, nor to hinder the receipt of, or accounting to the ſheriff, *&c.* for legal fees. See *Dalt.* 3, 514. *Hob.* 13. 2 *Brownl.* 281.

The high ſheriff may execute the office himſelf, and the under-ſheriff hath not, nor ought to have, any eſtate or intereſt in the office itſelf; neither may he do any thing in his own name, but only in the name of the high ſheriff, who is anſwerable for him. *Dalt. Sher.* 3. *Salk.* 96.

By the 3 *Geo.* 1. *c.* 15. *ſ.* 8. it is enacted, "That if any ſheriff ſhall die before the expiration of his year, or before he he ſuperſeded, the under-ſheriff ſhall nevertheleſs continue in his office, and execute the ſame *in the name of the deceaſed*, till another ſheriff be appointed and ſworn; and the under-ſheriff ſhall be anſwerable for the execution of the office during ſuch interval, as the high ſheriff would have been; and the ſecurity given by the under-ſheriff and his pledges, ſhall ſtand a ſecurity to the King, and all perſons whatſoever, for the performing of his office during ſuch interval."

The under-ſheriff, before he intermeddle with the office, is to be ſworn; this is injoined by the ſtat. 27 *Eliz. cap.* 12. and the form of the oath there preſcribed. Before this ſtatute the under-ſheriff was never ſworn. 1 *Rol. Rep.* 274. *per Coke.*

And now by the 3 *Geo.* 1. *c.* 15. *ſ.* 19. It is enacted, That all under-ſheriffs of any counties in *South Britain*, except the counties in *Wales*, and county palatine of *Cheſter*, before they enter upon their offices, ſhall take an oath, appointed by that act, for the execution of their office. Vide the *Statute.*

A ſheriff cannot appoint two deputy ſheriffs extraordinary. *Wilſon, par.* 2. *fol.* 378.

See farther, 4 *New Abr.* and 19 *Vin. Abr.* tit. *Sheriff.* See alſo, *Eſcape, Execution, Fieri facias*, &c.

Sheriff's Court in London. The chief of the courts in *London* are the *ſheriff's courts*, holden before their ſteward or judge. *Black. Com.* 3 *V.* 80. Vide 4 *Inſt.* 274, 8. And ſee *Courts.*

Sheriff's Tourn. See *Tourn* or *Turn*, and *Black. Com.* 4 *V.* 270, 404, 417.

Sheriffalty, *(vicecomitatus)* Is the *ſheriff-ſhip*, or time of a man's being ſheriff. 14 *Car.* 1. *c.* 21.

Sheriffwick, The extent of a ſheriff's authority. 13 *Eliz. c.* 22.

Sheriff-geld, A rent formerly paid by the *ſheriff*; and it is prayed that the *ſheriff* in his account may be diſcharged thereof. *Rot. Parl.* 50 *Ed.* 3.

Sheriff-tooth, Seems to be a tenure by the ſervice of providing entertainment for the ſheriff at his county-courts. *Rot. Plac. in Itin. apud Ceſtr.* 14 *Hen.* 7. In *Derbyſhire* the King's bailiffs anciently took 6*d.* of every bovate of land, in the name of *ſheriff-tooth.* Ryl. Plac. Parl. 653. And it is ſaid to be a common tax levied for the ſheriff's diet.

Shewing, *(monſtratio)* Is ſpecially uſed to be quit of attachment in a court, in plaints *ſhewed* and not avowed. *Shep. Epitom.* 1130. Vide *Monſtrans.*

Shield, *(ſcutum)* An inſtrument of defence; (from the Sax. *ſcyldan*) to cover, or the Greek σκυτος a ſkin, anciently ſhields being made with ſkins.

Shifting Uſe. See *Secondary Uſe*, and *Black. Com.* 2 *V.* 335.

Shilling. (Sax. *ſcilling*, Lat. *ſolidus*) Among the *Engliſh Saxons* paſſed but for 5 *d.* afterwards it contained 16 *d.* and often 20 *d.* In the reign of King *William* I. called the Conqueror, a ſhilling was of the ſame value as at this day. *Leg. H.* 1. *Domeſday.*

Shilwite, *Eſt emenda pro tranſgreſſione facta in nativam, tam impregnando.* Monaſt. Rading. MS.

Ship-Money, Was an impoſition charged upon the ports, towns, cities, boroughs, and counties of this realm, in the time of King *Charles* I. by writs commonly called *ſhip-writs*, under the Great Seal of *England*, in the year 1635 and 1636, for the providing and furniſhing certain ſhips for the King's ſervice, *&c.* which was declared to be contrary to the laws and ſtatutes of this realm, the *petition of right*, and liberty of the ſubject, by Stat. 17 *Car.* 1. *c.* 14. See *Black. Com.* 4 *V.* 430.

Shipper, Is a *Dutch* word ſignifying the maſter of a ſhip, mentioned in the Stat. 1 *Jac.* 1. *cap.* 3. We uſe it for any common ſeaman; and commonly ſay *ſkipper.*

Shippey in Kent. Its inhabitants taxable towards the repair of the King's ferry. 18 *Eliz. c.* 10.

Ships and Shipping. None of the King's ſubjects are to export and import merchandiſe in any ſhips but *Engliſh*, on pain of forfeiture. 5 *R.* 2. *c.* 3. But merchants had power to hire other ſhips, by 6 *R.* 2. *c.* 8. and 4 *H.* 7. *c.* 10. Goods imported or exported out of or to any territories belonging to *England* in *Aſia, Africa*, or *America*, ſhall be in ſhips belonging to the *Engliſh*, and the maſter and three-fourths of the mariners to be alſo *Engliſh*, upon pain to loſe ſuch goods and the veſſels, *&c.* 12 *Car.* 2. *c.* 18.

A duty of 5 *s. per* ton is granted on foreign built ſhips, one moiety for the cheſt at *Chatham*, and the other for *Greenwich Hoſpital*, to relieve decayed ſeamen. 1 *Jac.* 2. *cap.* 18.

No owner of a ſhip ſhall be liable to anſwer loſs, by reaſon of imbeziling any gold, ſilver, jewels, *&c.* taken in or put on board, or for any forfeiture incurred, without the privity or knowledge of ſuch owner, further than the value of the ſhip and freight due: But other remedies againſt the maſter and ſeamen of ſuch ſhips, are not taken away. 7 *Geo.* 2. *c.* 15. As a maſter or owner of a ſhip may have an action for the freight; either the one or the other are anſwerable, where goods are damaged in the ſhip. But where there are ſeveral owners, and one diſagrees to the voyage, he ſhall not be liable to any action after for a miſcarriage, *&c.* *Comberb.* 116. See 2 *Str.* 1251. where the owner, and not the freighter, is liable for a loſs of gold ſent by the ſhip.

Owners of ſhips are liable for the goods on acccount of the freight, though robbed of them, and for default of the maſter. *Rep. Temp. Hardw. per Annaly* 86. An action doth not lie againſt a man as owner, but as he hath the benefit of the freight; for when there are ſeveral owners, and one diſſents from the voyage, he ſhall not be liable afterwards for a miſcarriage, *&c.* *Id.* 90. *Comb.* 117. *per Holt* Ch. J. See 2 *Strange* 816. where it was held, that *prima facie* the repairer of a ſhip has his election to ſue the maſter who employs him, or the owners; but if he undertakes it on a ſpecial promiſe from either, the other is diſcharged.

See ſtat. 26 *Geo.* 2. *cap.* 6. to oblige ſhips more effectually to perform quarentine; and for the more effectually preventing the plague being brought from foreign parts.

Ships ballaſt in the *Thames*, how raiſed, and at what prices to be delivered, *&c.* Vide 6 *Geo.* 2. *c.* 29. *Ships of War*, ſee *Navy.*

By 26 *Geo.* 2. *c.* 19. Plundering any veſſel either in diſtreſs or wrecked, and whether any living creature be on board or not, or preventing the eſcape of any perſon that endeavours to ſave his life, or wounding him, *&c.* or putting out falſe lights to bring any veſſel into danger, are capital felonies. For aſſiſting ſhips in diſtreſs, ſee 4 *Geo.* 1. *c.* 12.

Shire, (*comitatus,* from the Sax. *ſcyre,* to part or divide) Is well known to be a part or portion of this kingdom, called alſo county: The old *Latin* word was *ſcyra*; and *ſcyræ, provinciæ indicabantur.* Brompt. 659. King *Alfred* firſt divided this land; and his diviſion was *in ſatrapias,* which we now call *ſhires, in centurias,* now called hundreds, and *decennas,* which we call tithings. *Leg Alfred.* See *Brompton* 956. and *Black. Com.* 1 *V.* 116.

Shire-clerk, Is he that keeps the county court; his office is ſo incident to the ſheriff, that the King cannot grant it. *Mitton*'s caſe. 4 *Rep.*

Shire-man, or **Scyre-man,** Was anciently judge of the county, by whom trials for land, *&c.* were determined before the conqueſt. *Lamb. Peramb. p.* 442.

Shiremote, An aſſembly of the county or ſhire at the *aſſiſes,* &c. See *Scyregemot, Shire, Turn.*

Shoemakers, Are to make their ſhoes of ſufficient leather, or forfeit 3 *s.* 4 *d.* 1 *Jac.* 1. *c.* 22. Journeymen *ſhoemakers,* imbeziling leather, ſhall make ſatisfaction for damage, or be ordered by juſtices to be whipped, *&c.* Alſo perſons buying or receiving ſuch leather are to make reaſonable recompence, to be levied by diſtreſs, *&c.* and ſearch is to be made after the ſame. 9 *Geo.* 1. *cap.* 27. And all journeymen employed in making boots, ſhoes, ſlippers, or gloves, *&c.* that neglect their buſineſs, by working for any other maſter, before they have done the work firſt undertaken, may be committed to the houſe of correction for a month, by 13 *Geo.* 2. *c.* 8. Vide *Leather.*

Shooting. Shooting at perſons in any dwelling houſe, or other place, felony without clergy. 9 *Geo.* 1. *c.* 22

Shop, (*ſhopa*) A place where any thing is openly ſold ——Johannem H. *dediſſ.* Rogero Smith *unam* ſhopam *cum pertin. in, &c. ſituat. in le market-place, &c.* Dat. 27 Feb. 9 Edw. 4.

Shop-books. Theſe are not allowed of themſelves to be given in evidence for the owner; but a ſervant who made the entry may have recourſe to them to refreſh his memory: And if ſuch ſervant (who was accuſtomed to make ſuch entries) be dead, and his hand be proved, the book may be read in evidence. *Black. Com.* 3 *V.* 368. The degree of credit which ſuch evidence deſerves, muſt reſt with a jury.

There are few trials now in *B. R.* of cauſes, where books may be of uſe, to elucidate the point in diſpute, but the party in poſſeſſion of, is expected to, and generally does produce them. It is adviſable in ſuch caſes, for the adverſe party to give reaſonable previous notice to produce them, and if not produced the court will generally compel the party to produce them: And where they are wilfully and obſtinately with-held it is a good ground for the jury to preſume the juſtice of the caſe, againſt the party refuſing.

Shoplifters, Are thoſe that ſteal goods privately out of ſhops; which being to the value of 5 *s.* tho' no perſon be in the ſhop is felony excluded clergy, by the 10 & 11 *W.* 3. *c.* 23.

Shorling and morling, Are words to diſtinguiſh *fells* of ſheep; *ſhorling* being the fells after the fleeces are ſhorn off the ſheep's back; and *morling* the fells flead off after they die or are killed: In ſome parts of *England* they underſtand by a *ſhorling,* a ſheep whoſe face is ſhorn off; and by a *morling,* a ſheep that dies. Stat. 3 *Ed.* 4. *c.* 1. See *Morling.*

Shortford. The ancient cuſtom of the city of *Exeter* is, when the lord of the fee cannot be anſwered rent due to him out of his tenement, and no diſtreſs can be levied for the ſame; the lord is to come to the tenement, and there take a ſtone or ſome other dead thing of the ſaid tenement, and bring it before the mayor and bailiffs; and thus he muſt do ſeven quarter-days ſucceſſively; and if on the ſeventh quarter-day, the lord is not ſatisfied his rent and arrears, then the tenement ſhall be adjudged to the lord to hold the ſame a year and a day; and forthwith proclamation is to be made in the court. That if any man claims any title to the ſaid tenement, he muſt appear within the year and a day next following, and ſatisfy the lord of the ſaid rent and arrears; But if no appearance be made, and the rent not paid, the lord comes again to the court, and prays that, according to the cuſtom, the ſaid tenement be adjudged to him in his demeſne as of fee, which is done accordingly; ſo as the lord hath from thenceforth the ſaid tenement with the appurtenances to him and his heirs: And this cuſtom is called *ſhortford*; being as much as in *French* to *foreclose.* Izack's Antiq. Exet. 48.

Shrewsbury, Regulations of the drapers there. 8 *Eliz. c.* 7. 14 *Eliz. c.* 12. The ſtreets to be paved, *&c.* 29 *Geo.* 2. *c.* 78.

Shrived, or **Shreeved,** (from Sax. *ſcrifan*) A penitent perſon confeſſed by a prieſt. See *Confeſſor.*

Shrowd, *ſtealing of.* If any one in taking up a dead body ſteals the *ſhroud,* or other apparel, it will be felony; for the property thereof remains in the executor, or whoever was at the charge of the funeral. 3 *Inſt.* 110. 12 *Rep.* 113. 1 *Hal. P. C.* 515.

Shrubs, *deſtroying of* ſhrubs, trees, roots, plants, *&c.* by 6 *Geo.* 3. *c.* 36 & 48. is for the two firſt offences liable to pecuniary penalties, and for the third the offender ſhall be guilty of felony, and liable to tranſportation for ſeven years. The *ſtealing* by night of any trees, or of any roots, *ſhrubs* or plants to the value of 5 *s.* is by ſtatute 6 *Geo.* 3. *c.* 36. made felony in the principals, aiders and abettors, and in the purchaſers thereof, knowing the ſame to be ſtolen.

Si Action', &c. Is the concluſion of a *plea to the action,* when the defendant demands judgment *if the plaintiff ought to have his action,* &c.

Sib and **Som,** (Sax.) i. e. *pax & concordia.* Spelm.

Sica, Sicha, A ditch from the Sax *ſic, lacuna.* Mon. Angl. tom. 2. p. 130.

Sich, (*ſichetum* and *ſikettus*) Is a little current of water, which is dry in ſummer; a water furrow or gutter. *Mon. Angl. tom.* 2. *p.* 426.

Siclus, Was a ſort of money current among the old *Engliſh,* of the value of 2 *d.* We read of it in *Egbert in Dialogo de Eccleſiaſtica inſtitutione,* p. 98.

Sicut alias, Another writ like the former; it runs, *Præcipimus tibi* ſicut alias *præcepim', &c.* 4 Co. Rep. 55. See *Alias.*

Sidelings, Are meers betwixt or on the *ſides* of ridges of arable land. *Mon. Ang. tom.* 2. *p.* 275.

Sidesmen, (*rectius* ſynodſmen) Is uſed for thoſe perſons or officers that are yearly choſen in great pariſhes in *London* and other cities, according to cuſtom, to aſſiſt the churchwardens in their preſentment of ſuch offenders and offences to the ordinary, as are puniſhable in the ſpiritual courts: And they are alſo called *queſtmen.* They take an oath for doing their duty; and are to preſent perſons that do not reſort to church on *Sundays,* and there continue during the whole time of divine ſervice, *&c.* *Can.* 90. They ſhall not be cited by the ordinary to appear but at uſual times, unleſs they have wilfully omitted for favour, to make preſentment of notorious public crimes, when they may be proceeded againſt for breach of oath, as for perjury. *Canon.* 117. Vide *Synodales Teſtes.*

Si fecerit te securum, A ſpecies of original writ, ſo called, from the words of the writ, which directs the ſheriff to cauſe the defendant to appear in court, without any option given him, provided the plaintiff gives the ſheriff ſecurity effectually to proſecute his claim. *Black. Com.* 3 *V.* 274.

Sigillum, A ſeal for the ſealing of deeds and charters, *&c.* Before the time of *William the Conqueror* the *Engliſh* did not ſeal with wax, but they uſually made a golden croſs on the parchment, and ſometimes an impreſſion on a piece of lead, which hung to the grant with a ſtring of ſilk; and this was held a ſufficient confirmation of the grant itſelf, without ſigning, or any witneſſes. The colour of the wax with which the King's grants were ſealed, was uſually green, to ſignify *rem in perpetuo vigore permanſuram*; and the impreſſion in laymens ſeals was, a man on horſeback with a ſword in his hand, till the year 1218, and then they began to engrave their coats of arms on their ſeals; only the archbiſhops and biſhops, by a decree of Cardinal *Otto*, who was legate here in the year 1237, were to have *ſigillum, puta nomen dignitatis, officii, ſeu collegii, & etiam illorum proprium nomen, qui dignitatis vel officii perpetui gaudent honore, inſculptum notis & characteribus manifeſtis, ſicque* ſigillum *authenticum habeatur*. Cowell.

Sigla, (from the Sax. *ſegel)* A ſail, mentioned in the laws of King *Ethelred, cap*. 24.

Sign Manual, Is where any bill or writing is *ſigned* under the *hand* of the *King*, and uſually in order to the paſſing of the King's grants, *&c.* thro' the offices of the *Keepers of Seals*. Counterfeiting ſign manual made treaſon. 1 *Mar. ſeſſ.* 2. *c*. 6.

Signet, (Fr.) Is one of the King's ſeals, uſed in ſealing his private letters, and all ſuch grants as paſs his Majeſty's hand by bill ſigned; which ſeal is always in the cuſtody of the King's ſecretaries, and there are four clerks of the *ſignet office* attending them. 2 *Inſt*. 556. The law takes notice of the *ſign-manual* and *privy ſignet*; and it is ſaid a *ne exeat regno* may be iſſued by commandment under the *privy ſignet*, as well as by the King's writ under the Great Seal. *Wood's Inſt*. 457. See *Privy Seal*, and *Black. Com.* 2 *V*. 347.

Significavit, A writ iſſuing out of the *Chancery*, upon a certificate given by the ordinary of a man's ſtanding *ex communicate* by the ſpace of forty days, for the laying him up in priſon till he ſubmit himſelf to the authority of the church: And it is ſo called, becauſe *ſignificavit* is an emphatical word in the writ *Reg. Orig*. There is alſo another writ of this name in the regiſter, directed to the juſtices of the bench, commanding them to ſtay any ſuit depending between ſuch and ſuch parties, by reaſon of an excommunication alledged againſt the plaintiff, *&c Reg. Orig*. 7. And in *Fitzherbert* we find writs of *ſignificavit* in other caſes; as *ſignificavit pro corporis deliberatione, &c. F. N. B.* 62, 66. Stat. 22 & 23 *Car*. 2. The common writ of *ſignificavit* is the ſame with the writ *de excommunicato capiendo*.

Signing of deeds and wills is neceſſary to make them binding; the ſigning a will by the teſtator is an eſſential circumſtance, without which it is not a will; for this is expreſly required by the Stat. 29 *Car*. 2. *c*. 3. See *Black. Com.* 2 *V*. 305.

Sign-Manual. The ſubſcription of the King at the top of grants or letters patent, which firſt paſs by bill, *&c. Black. Com.* 2 *V*. 347 By Stat. 1 *Mar. ſt*. 2. *c*. 6. If any perſon ſhall falſely forge or counterfeit the *ſign-manual*, privy-ſignet, or privy-ſeal, ſuch offences ſhall be deemed high treaſon.

Signum, A croſs prefixed as a ſign of aſſent and approbation to a charter or deed, uſed by the *Saxons*. Vide *Seals*.

Signs. The citizens of *London* are to hang out *ſigns* at their houſes, for the better finding out their reſpective dwellings, *&c*. Chart. K. *Char*. I.

Silentiarius, Signifies one of the privy council; and *ſilentium* was formerly taken for *conventus privatus*, Matt. Paris, anno 1171. According to *Littleton*, it is an uſher, who ſeeth good rule and ſilence kept in court. *Lit. Dict.*

Silk. Certain ſpecies of wrought ſilk prohibited, and other wrought ſilks permitted to be imported, 19 *H*. 7. *c*. 21. Explained by 3 *Geo*. 3. *c*. 21. Regulation of the trade of ſilk-throwing in *London*, 13 & 14 *Car*. 2. *c*. 15. 8 & 9 *W*. 3. *c*. 36. *ſ*. 6. Silk thrown in the gum, 1 *W. & M. c*. 5. *ſ*. 2. Wrought, 2 *W. & M. ſeſſ*. 2. *c*. 4. *ſ*. 3, 4. 4 *W. & M. c*. 5. *ſ*. 2. 9 & 10 *W*. 3. *c*. 44. *ſ*. 80. 11 & 12 *W*. 3. *c*. 3 *ſ*. 1. And raw ſilk, 2 *W. & M. ſeſſ*. 2. *c*. 4. *ſ*. 5. And ſilk-ferret, or floret, to what duties liable, 4 *W. & M. c*. 5. *ſ*. 2. Thrown ſilk to be imported only from *Italy*, 2 *W. & M. ſt*. 1. *c*. 9. 1 *Ann. ſt*. 1. *c*. 27. *c*. 28. 2 & 3 *Ann. c*. 13. Reſtrictions on importing alamodes and luſtrings, 4 & 5 *W. & M. c*. 5. *ſ*. 14. Permiſſion to import fine *Italian* thrown ſilk, 5 *W. & M. c*. 3. Foreign alamodes, *&c*. to be ſealed at the Cuſtom-houſe, 5 *W. & M. c*. 20. *ſ*. 45. 6 & 7 *W*. 3. *c*. 18. *ſ*. 28. Alamodes, *&c*. not ſealed, forfeited, 8 & 9 *W*. 3. *c*. 36. 9 & 10 *W*. 3. *c*. 43. *ſ*. 5. A duty *per* pound weight on imported luſtrings and alamodes, 9 & 10 *W*. 3. *c*. 30. Alamodes and luſtrings to be imported only at *London*, 9 & 10 *W*. 3. *c*. 43. Charter of the luſtring company confirmed, 9 & 10 *W*. 3. *c*. 43. Penalty on officers of King's ſhips importing ſilks, 9 & 10 *W*. 3. *c*. 43. *ſ*. 4. Wearing *French* alamodes, *&c*. prohibited, 5 *Ann. c*. 20. Foreign ſilks mixed with gold or ſilver, forfeited, *&c*. 6 *Ann. c*. 19. *ſ*. 14. A duty on printed ſilks, callicoes and ſtuffs, 10 *Ann. c*. 19. *ſ*. 69.

Perſons printing ſilks, *&c*. at other places than their uſual reſidence, to make a particular entry of the ſilks before printing, 1 *Geo. ſt*. 2. *c*. 36. *ſ*. 21. Premium on ſilk manufactures exported, 8 *Geo*. 1. *c*. 15. The importation of raw ſilk from the Streights, (except from the Grand Seignior's dominions) reſtrained, 6 *Geo*. 1. *c*. 14. Raw ſilk of *China* to pay the ſame duty as *Italy*, 23 *Geo*. 2. *c*. 9. Raw ſilk of the plantations may be imported free, 23 *Geo*. 2. *c*. 20. Raw ſilk of *Perſia*, bought in *Ruſſia*, may be imported from any port in *Ruſſia*, 23 *Geo*. 2. *c*. 34. Foreign ſilks and velvets to be ſealed at the Cuſtom-houſe, 26 *Geo*. 2. *c*. 21. Penalty of importing foreign ſilk ribbands, laces or girdles, 3 *Geo*. 3. *c*. 21. Act to prohibit the importation of foreign wrought ſilks and velvets for a limited time, and for preventing unlawful combinations of workmen employed in the ſilk manufacture, 6 *Geo*. 3. *c*. 28.

Silk-Thrower, and **Throwſter**, Is a trade or myſtery that winds, twiſts, and ſpins or throws ſilk, thereby fitting it for uſe: They are incorporated by ſtatute, and mention is made of ſilk-winders and doublers, who are members of the ſame trade. 14 *Car*. 2. *c*. 15. None ſhall exerciſe the ſilk-throwers trade, but ſuch as have ſerved ſeven years apprenticeſhip to it, on pain of forfeiting 40*ſ*. a month. *Stat. ibid*. Silk-winders, *&c*. imbezilling or detaining ſilk, delivered by ſilk-throwers, ſhall pay ſuch damage as a juſtice ſhall order, or not doing it ſhall be whipt and ſet in the ſtocks; and the receivers are to be committed to priſon by a juſtice of peace till ſatiſfaction is made the party injured. 20 *Car*. 2. *c*. 6. 8 & 9 *W*. 3. *c*. 36.

Silva-Cædua, Wood under twenty years growth, or coppice wood. 45 *Ed*. 3. *c*. 3.

Similitude of Hand-writing. From the reverſal of Colonel *Sidney*'s attainder by act of parliament in 1689, it may be collected that the mere *ſimilitude* of *hand-writing* in two papers ſhewn to a jury, without other concurrent teſtimony, is no evidence that both were written by the ſame perſon. 2 *Hawk. P. C.* 431. *Black. Com.* 4 *V*. 351.

Simnel, or **Simnell**, *(ſiminellus, vel ſimnellus)* Is mentioned in the *aſſiſe of bread*, and is ſtill in uſe, eſpecially in *Lent:* The *Engliſh ſimnel* is *panis purior*, or the pureſt white bread. Stat. 51 H. 3. ſt. 1. *Ord. pro. piſtor in certi temp. c*. 1.

It is ſaid to come from the Lat. *ſimila*, which ſignifies the fineſt part of the flour; *panis ſimilageneus, ſimnell*-bread. It is mentioned in ſtat. *aſſiſa panis*, bread made into a ſimnell ſhall weigh two ſhillings leſs than waſtell-bread. Stat. *ibid*. *Cowell*.

Simony, *(ſimonia, venditio rei ſacræ)*. So called from *Simon Magus*.

1. *Of ſimony, generally.*
2. *What ſhall be deemed ſimony; and the penalty on this offence.*
3. *How far bonds of reſignation are lawful; and the power exerciſed over ſuch bonds by the court of Chancery.*
4. *Whether the ordinary is obliged to accept a reſignation on ſuch bond; and ſome objections to theſe bonds conſidered.*

1. *Of ſimony, generally.*

Simony is a corrupt contract for a preſentation to any benefice of the church, for money, gift, or reward: It is defined to be, *ſtudioſa voluntas emendi vel vendendi aliquid ſpirituale aut ſpirituali annexum opere ſubſecuto.*——Alſo *venditio rei ſacræ*; ſo called from *Simon Magus*. And ſome authors mention *ſimony per munus triplex*; as *per munus a manu, i. e.* by bribery, where money is paid down for a benefice; *per munus a lingua*, by favour and flattery; *per munus ab obſequio, i. e.* by a ſordid ſubjection to the patron, or doing him ſervices: To which has been added, the making of preſents, without taking any notice of expecting a church benefice.

It was agreed by all the juſtices, *Trin.* 8 *Jac.* That if the patron preſent any perſon to a benefice with cure, for money, that ſuch preſentation, *&c.* is void, tho' the preſentee were not privy to it; and the ſtatute gives the preſentation to the King. *Co.* 12 *Rep. fol.* 74. Simony may be by compact between ſtrangers, without the privity of the incumbent or patron. *Cro.* 1 *par. fol.* 331. *Bawderoke*'s caſe. *Hob. Rep. fol.* 165. *Noy's Rep. fol.* 22. *Paſcall*'s caſe. 3 *Inſt.* 153. Some authors mention *ſimoniacum per munus triplex,* and tell us of a perſon who took off the cap of *Groſulan,* an archbiſhop of *Milan,* and ſhaking it told the people, *Iſte Groſulanus qui eſt ſub iſta cappa (& non de alio dico) eſt* ſimoniacus, *&c. per munus a manu, i. e.* by bribery, *per munus a lingua, i. e.* by favour and flattery, *per munus ab obſequio, i. e.* by a ſordid ſubjecting himſelf to the patron. *Cowell.*

Simony is generally ſaid to be the buying or ſelling holy orders, or ſome eccleſiaſtical benefice. An eccleſiaſtical benefice, in the larger ſenſe of it, in which it is here uſed, comprehends not only parochial benefices, but all eccleſiaſtical dignities and promotions. As by this offence worthy and learned men are kept out of the church, and a door is, to the great ſcandal of religion and prejudice of morality, opened to perſons by no means qualified to diſcharge the duties of the ſacred function, it is of the utmoſt conſequence to ſociety that it be prevented. With a view to this, canons were anciently made, by which a very ſtrict oath was enjoined; and it was puniſhed with deprivation or diſability, as the caſe required.

In 1 *Inſt.* 17. *b.* 89. *a.* ſimony is mentioned as a thing ſo deteſtable in the eye of the Common law, that a plaintiff in *quare impedit* could not before the ſtatute of *Weſtm.* 2. recover damages for the loſs of his preſentation, it being conſidered as a thing of no value; nor could a guardian in ſocage preſent to an advowſon in the right of his heir, becauſe, as he could take nothing for it, he could not bring it to account. This doctrine is confirmed in 3 *Inſt.* 176. and the book adds, that it is the more odious to the Common law, becauſe it is frequently accompanied with perjury, for the preſentee is ſworn to commit no ſimony.

In *Cro. Ch.* 353. *Mackaller* and *Todderick,* it is ſaid that this has by the law of God and of the land been always accounted a great offence, In *Hob.* 167. *Wincomb* and *Pulleſton,* it is laid down, that a bond on a ſimoniacal contract is againſt law, becauſe *ex turpi cauſa,* and *contra bonos mores*; nay, that it is as void as an uſurious bond, which, if paid by an executor, is a *devaſtavit.* The ſame is held in *Cro. Car.* 425. *Byrte* and *Manning.* In *Carth.* 252. *Bartlett* and *Vinor,* ſuch bonds are ſaid to be void as being againſt law, altho' they are not ſo declared by the ſtatute. As neither the conſideration of the heinouſneſs of the offence, nor the proviſion made againſt it by the Canon or Common law, was ſufficient to put a ſtop to this miſchief, it was at length reſtrained under ſevere penalties by ſtat. 31 *Eliz. cap.* 6. See farther 4 *New Abr.* 465.

2. *What ſhall be deemed ſimony; and the penalty on this offence.*

By ſtat. 31 *Eliz. c.* 6. *ſect.* 35. it is enacted, 'That if any perſon or perſons, bodies politic or corporate, ſhall for any ſum of money, reward, *&c.* or by reaſon of any promiſe, *&c,* preſent or collate any perſon to any benefice, *&c.* every ſuch preſentation, collation, *&c.* ſhall be utterly void, and it ſhall be lawful for the Queen, her heirs and ſucceſſors, to preſent, *&c.* unto ſuch benefice, *&c.* and that every perſon or perſons, bodies politick or corporate, that ſhall give or take any ſuch ſum of money, *&c.* or take or make any ſuch promiſe, *&c.* ſhall forfeit the double value of one year's profit of every ſuch benefice, *&c.* and the perſon ſo corruptly] taking, *&c.* ſuch benefice, *&c.* ſhall be adjudged a diſabled perſon in law to enjoy the ſame.'

By *ſect.* 6. it is enacted, 'That if any perſon ſhall for any ſum of money, reward, *&c.* admit, inſtitute, inſtall, induct, inveſt, or place any perſon in or to any benefice, *&c.* ſhall forfeit the double value of one year's profit of every ſuch benefice, *&c.*' *Vide* the ſtatute.

A donative is not within the words of the ſtatute; yet, as a corrupt preſentation thereto is within the miſchief intended to be thereby remedied, it is within the meaning of it. *Cro. Car.* 331. *Bawderick* and *Mackaller.* For the ſame reaſon the corrupt promoting to, or obtaining of a curacy, has been held to be ſimony. *Carth.* 485. Biſhop of *St. David*'s and *Lucy.*

This offence is more frequently committed when a church is void; but it may be committed when it is full. If a contract be, when a church is full, to give a ſum of money for a preſentation to it, when it ſhall become void, this is a ſimoniacal contract. 1 *Brownl.* 7. So the buying when a church is full, with intent to preſent a certain perſon, and the preſenting that perſon when the living becomes void, is ſimony. *Lane* 102. *Kitchin* v. *Calvert.* *Noy* 25. *Winchcomb* v. *Pulleſten.* So the purchaſe of the next avoidance of a church when the incumbent is ſick or near dying, with intent to preſent a certain perſon, and the preſenting him, is ſimony. *Winch.* 63. *Sheldon* v. *Brett.* *Noy* 25. *Hughes* 390. See 4 *New Abr.* 469. But it hath been held, that for a father to purchaſe a preſentation, in order to provide for his ſon, is not ſimony; for the ſon is not concerned in the bargain, and the father is by nature bound to make a proviſion for him. *Cro. Eliz.* 686. *Moor* 916.

Notwithſtanding the determinations, that if one perſon purchaſed the next preſentation of a benefice, when full, with deſign to preſent a certain perſon, and did preſent him, it was ſimony, it became a doubt whether it was ſo for a clerk himſelf to purchaſe for himſelf the next turn in a living?. To remove this it was enacted, 'That if any perſon ſhall for money or profit, in his own name, or in the name of any other perſon, procure the next preſentation or collation to any benefice, and be preſented or collated thereto, it ſhall be deemed to all intents and purpoſes a ſimoniacal contract,' 12 *Ann. ſt.* 2. *cap.* 12. *par.* 2.

From all theſe authorities it appears, that altho' it be lawful, except in the caſes excepted, to purchaſe the next avoidance when a church is full, there is great danger of being guilty, at leaſt *in foro conſcientiæ,* of this offence. It is fit it ſhould be ſo, elſe men would be for ever purchaſing for their ſons and friends, and the almoſt neceſſary conſequence of ſuch a traffick in livings, would be the filling the church with very improper perſons. 4 *New Abr.* 469.

It is equally ſimony where the preſentation is by a perſon uſurping the right to preſent, as if it had been by the perſon having a good right. 3 *Inſt.* 153. So if a preſentation be by one uſurping the right of patronage, and pending a *quare impedit* for removing his clerk, who is after removed, the living is ſold, this is ſimony, for the church was never full of that clerk; and by this means the ſtatute might be eluded, for it would only be getting an uſurper to preſent while the living was void, and then ſelling it. 3 *Lev.* 115. *Walk* v. *Hammerſly,* S. C. 2 *Vent.* 32. A corrupt contract with the wiſe of the patron is ſimoniacal, altho' the patron is not privy to it. 1 *Rol. Rep.* 255. *Cro. Jac.* 385. If a clerk contracts to give money for being preſented to a church, and is after preſented *gratis*; this is ſimony. *Lane* 103. *Kitchin* v. *Calvert.* In this caſe the clerk is an unfit perſon, for having at that time been capable of intending to buy a living corruptly. It alſo implies ſome defect in him; for the preſumption is that perſons well qualified will always be preferred, and have therefore no need to purchaſe. With this agrees *Cro. Eliz.* 789. where ſimony is ſaid to be *voluntas ſive deſiderium emendi vel vendendi ſpiritualia vel ſpiritualibus adhærentia.* This offence may be by a corrupt contract between ſtrangers, even when neither the patron nor incumbent is privy to it; for if there be a corrupt contract, it matters not by whom it is made: But in this caſe the preſentee is not *ſimoniacus,* and only *ſimoniace promotus.* *Cro. Car.* 331. *Bawderick* v. *Mackaller.* *Sid.* 329. 3 *Lev.* 337. *Lane* 103. *Kitchin* v. *Calvert.* See *Lane* 73. and 3 *Lev.* 338.

If a ſtranger, the church being void, contracts with the patron for a grant of the void turn, and preſents a clerk not privy to the contract; yet, although the grant being of a choſe in action is void, as the incumbent comes in by a ſimoniacal contract, he is not to be conſidered as an uſurper, but as one *ſimoniace promotus* Cro. Eliz. 788. *Baker* v. *Rogers*. So where a father, the church being void, contracts with the grantee of the void turn to permit the grantor to preſent his ſon, and it is done, this is a ſimoniacal promotion. *Cro. Jac* 533. *Booth* v. *Potter*. So if a father, in conſideration of a clerk's marrying his daughter, doth covenant with the father of the clerk, to procure for him a preſentation to a certain church when it ſhall become void, and he is afterwards thereto preſented, it is a ſimoniacal promotion. *Cro. Car.* 425. *Birt.* v. *Manning*.

Theſe three laſt caſes may ſerve to confirm what has been obſerved, that, in the caſe of ſimony, it is unlawful for a father to do what may not be done by a ſtranger. See *Noy* 142. *Cro. Car.* 426. *Lutw.* 343.

3. *How far bonds of reſignation are lawful; and the power exerciſed over ſuch bonds by the court of Chancery.*

A bond of reſignation is a bond given by the perſon intended to be preſented to a benefice, with condition to reſign the ſame; and is ſpecial or general. The condition of a ſpecial one is to reſign the benefice in favour of ſome certain perſon, as a ſon, kinſman, or friend of the patron, when he ſhall be capable of taking the ſame; by a general bond the incumbent is bound to reſign on the requeſt of the patron. 4 *New Abr.* 470.

A bond with condition to reſign within three months after being requeſted, to the intent that the patron might preſent his ſon when he ſhould be capable, was held good; and the judgment was affirmed in the Exchequer chamber; for that a man may without any colour of ſimony bind himſelf for good reaſons, as if he takes a ſecond benefice, or if he be non-reſident, or that the patron may preſent his ſon, to reſign; but if the condition had been to let the patron have a leaſe of the glebe or tithes, or to pay a ſum of money, it had been ſimoniacal. *Cro. Jac.* 248. *Jones* v. *Lawrence*.

The doctrine laid down in *Jones* and *Lawrence*, which was in the caſe of a ſpecial bond, was not many years after extended to that of a general bond, and the judgment in this laſt was alſo affirmed in the Exchequer Chamber. *Cro. Car.* 180. *Babington* v. *Wood.*

The authority of thoſe two caſes having been repeatedly recogniſed, at length it was conſidered as a point ſettled, that a general bond of reſignation is good, and the court refuſed to let the validity of it be called in queſtion. *Str.* 227. *Peele* v. *Counteſs of Carliſle.*

So in a late caſe, Mr. Serjeant *Draper* being about to argue againſt the validity of ſuch a bond, he was ſtopped by the court. *MS. Rep. Trin.* 27 *Geo.* 2. *Wyndham* v. *Bower*.

If a bond of reſignation, which ought only to be made uſe of to keep the incumbent to reſidence or good behaviour, be made an improper uſe of, the court of Chancery will interpoſe. *Chan. Prec.* 513. 2 *Chan. Rep.* 399. A perpetual injunction was granted againſt ſuch a bond, becauſe it appeared, on hearing the cauſe, that the patron had made uſe of it to prevent the incumbent from demanding his tithes. 1 *Vern.* 411. *Durſton* v. *Sands*.

An injunction has been granted where an ill uſe has been made of the bond, *i. e.* by taking an annuity from the incumbent, for the uſe of the nephew, for whom the living was intended. *Str.* 534.

A bill being brought to be relieved againſt a judgment obtained on a bond to reſign upon requeſt, it appeared to have been offered to the incumbent, that if he would give 700*l.* he ſhould not be ſued upon it. Satisfaction was ordered to be entered upon the judgment, and a perpetual injunction was granted. A new bond of reſignation in penalty of 200*l.* a much leſs ſum was indeed decreed; but no action was to be brought on it without leave of the court: And the Lord Keeper ſaid he did not know that ſuch bonds were uſed before the ſtatute; that they had been ſince allowed only to preſerve the benefice for the patron himſelf, or ſome child or friend of his, or to prevent non-reſidence or a vicious courſe of life in an incumbent; and that though a bond be to reſign generally, he would not allow it to be put in ſuit, unleſs ſome ſuch reaſon was ſhewn for requiring a reſignation, becauſe a door would be thereby opened for ſimony. *Eq. Caſes Abr.* 86. *Hilliard* v. *Stapleton*.

On a bill to be relieved againſt a judgment on ſuch a bond, the defendant proved miſbehaviour, and it was for that reaſon diſmiſſed. *Eq. Caſes Abr.* 228. *Hodgſon* v. *Thornton*. So a bond to reſign on requeſt ſhall not be made uſe of to turn out the incumbent, unleſs there be non-reſidence or groſs miſbehaviour; and if any other uſe be made of it, the court will grant an injunction. *Chan. Prec.* 513. *Hawkins* v. *Turner*. From ſome of theſe caſes, and particularly the laſt, which was *Paſch.* 5 *Geo.* there is reaſon to conclude that general bonds of reſignation were not then held good in equity: But later determinations ſhew that they now are. A bond to reſign generally has been often held good in the court of Chancery. *Str.* 227. *Peele* v. *Counteſs of Carliſle.*

4. *Whether the ordinary is obliged to accept a reſignation on ſuch bond; and ſome objections to theſe bonds conſidered.*

However it may be now ſettled, that ſuch bonds are good both in law and equity; a queſtion has ariſen, and is not perhaps ſettled by judicial determinations, whether the ordinary is obliged to accept a reſignation on ſuch a bond? It is ſaid it is in the power of the ordinary to diſcourage the uſe of ſuch bonds, for he may refuſe to accept a reſignation made by conſtraint of one of them. *Watſ. Com Inc.* 24.

The biſhop refuſed to accept a reſignation on ſuch a bond, and ordered the incumbent to continue to ſerve the cure, declaring that he would never countenance ſuch unjuſt practices. 2 *Chan. Rep.* 398. *Durſton.* v. *Sands*. An ordinary is not obliged to accept a reſignation on ſuch a bond, unleſs there be juſt cauſe to turn the incumbent out of the benefice. *Chan. Prec.* 513. *Hawkins* v. *Turner*.

In a late caſe a grant was to a clerk of the two firſt of three livings which ſhould fall, provided he was capable when they did fall of holding them. In order to make himſelf capable of taking one of theſe benefices, *Griffith* the clerk tendered a reſignation of another benefice to the ordinary, but he refuſed to accept it. One of the queſtions made in this caſe was, whether the ordinary was obliged to accept this reſignation? It was inſiſted by Mr. *Henley* on one ſide, that no caſe could be adduced to ſhew that the ordinary can arbitrarily refuſe to accept a reſignation of a benefice. Mr. Attorney *Murray*, who was on the other ſide, contented himſelf, as to this objection, with ſaying, that the plaineſt points having ſcarce ever been called in queſtion are ſupported by the feweſt authorities. No decree was made as to this point, but Lord *Hardwicke* intimated it once or twice ſo ſtrongly to be his opinion, that the ordinary ought to have accepted the reſignation, that he did afterwards accept it. What fell from theſe great men on this occaſion, is enough to render the doctrine of the two laſt caſes ſuſpicious: For if theſe are law, ſome notice would undoubtedly have been taken of them. This was not indeed in the caſe of a reſignation bond; but it was perhaps a ſtronger caſe; for if the ordinary cannot refuſe, where, as here, a clerk would reſign merely to take another benefice, it would be ſtrange to hold he may refuſe a reſignation made at the requeſt of a patron, in conſequence of an agreement with him, which it has been again and again determined both at law and in equity, he has a right to make. *Marquis of Rockingham* v. *Griffith*, *Eaſter term*, 27 *Geo.* 2.

Whatever doubt may ſtill remain, as to the ordinary's being obliged to accept a reſignation on ſuch a bond, theſe two things have, as will preſently appear, been determined; that the patron cannot preſent again till he has accepted it; and that, whether he does or not, the obligor is liable to the penalty of the bond, if he undertakes as is uſually done for the acceptance of the ordinary. 4 *New Abr.* 473. If a preſentation be made before the biſhop

ſhop accepts the reſignation of the laſt incumbent, it is void. Caſes in the time of *Queen Ann* 276. *Riely* v. *Adams*. *Noy* 147. *Cro. Jac.* 198. If the obligor binds himſelf to reſign a benefice, it is upon him to procure the ordinary's acceptance of his reſignation. *Lutw.* 693. *Studholme* v. *Norriſon.*

To an action upon a bond, with condition ſo to reſign on requeſt that the patron may preſent again, it was pleaded that the ordinary would not accept the defendant's reſignation. On a demurrer this plea was held bad; and *per cur'*, it ſhould have been averred that the ordinary accepted the reſignation, for his acceptance being, as is laid down, *Cro. Jac.* 198. neceſſary to compleat the reſignation, it was the duty of the obligor, who undertook to reſign, to procure this. So if one undertakes to enfeoff another, he undertakes to make livery as incident thereto. The biſhop as to the obligee is a ſtranger, and if an obligor undertakes for the act of a ſtranger, he is at his peril, as is held 1 *Saund.* 215. to procure it. *MS. Reports Hilar.* 28 *Geo.* 2. *Heſcot* v. *Gray.*

The reſult of the whole is, that bonds of reſignation are good in law, and that equity will reſtrain all improper uſe of them. It is not always true, but is ſo much oftner than ſuperficial and haſty thinkers imagine, that the law, and particularly that part of it which is deduced from judicial determinations, is founded in ſolid reaſon; and it may perhaps be ſhewn that it is ſo in the preſent caſe. The attempting this will at leaſt be excuſable, becauſe ſome great and good men have expreſſed their diſlike of theſe bonds. 4 *New Abr.* 473. which *vide.*

The principal of the particular objections is, that which is reported to have fallen from *Holt* Ch. J. *Comb.* 394. that is, that a reſignation bond comes as near ſimony as poſſible; it being eaſy to procure a round ſum of money thereby. By making the penalty of the bond adequate to the value of the benefice, and agreeing privately that the money ſhall be paid, it would without doubt be an oblique way of ſelling it, and more than come near, for it would be downright ſimony. If there was no other way, or not as eaſy a one, to do the ſame thing, this objection would be inſurmountable; but if there is, it can never be of much importance to ſtop this up. The ſame clerk, whoſe conſcience would allow him to do this, might as well advance the money agreed upon at firſt, or, if that did not ſuit him, give an abſolute bond to pay the money at a future day. As the ſame crime might ſtill be committed, and with as much ſecrecy, what good end would it anſwer to prohibit ſuch bonds, which, as is allowed by all, may be made uſe of by a patron to puniſh neglect of duty or immoral conduct in the incumbent, and for other good purpoſes? 4 *New Abr.* 473, 474.

Another objection is, that, when the patron takes a general bond of reſignation, it is only a preſentation during pleaſure. Be it ſo, and ſuppoſe, which is the utmoſt that can be ſuppoſed, that it is not taken with a deſign to awe the incumbent into great care in the diſcharge of his duty, but to let ſome friend or relation afterwards into the benefice. It by no means neceſſarily follows that the church, which is the grand thing to be guarded againſt, will therefore be filled with an unfit perſon. If the ſucceſſor, which may be the caſe, is better qualified for the office, the intereſt of religion will be advanced by the exchange. If he be not ſo well qualified, it is a misfortune; but it is ſuch a one as, in the preſent circumſtances of things, cannot be entirely prevented. While the right of patronage, or while human nature continues as it is, there will be miſtakes in judgment, and patrons will be induced by partiality to judge too well of the abilities of a relation or friend; but it makes no difference, whether either of theſe happens when the benefice is at firſt void, or at any given time after; or if there be any, it is in favour of the practice, for the miſchief, for ſo long at leaſt as the firſt incumbent holds the living, is thereby poſtponed. 4 *New Abr.* 474. For more learning on this ſubject, ſee 19 *Vin. Abr.* & 4 *New Abr.* tit. *Simony*, and *Black. Com.* 1 *V.* 389, 393. 2 *V.* 278. 4 *V.* 62.

Simple-contract, *debt by.* Debts by *ſimple-contract*, are ſuch, where the contract upon which the obligation ariſes, is neither aſcertained by matter of record, nor yet by deed or ſpecial inſtrument, but by mere oral evidence, the moſt ſimple of any; or by notes unſealed, which are capable of a more eaſy proof, and (therefore only) better, than a verbal promiſe. *Black. Com.* 2 *V.* 465.

Simple-larceny, The felonious taking and carrying away of the perſonal goods of another. See *Black. Com.* 2 *V.* 230, *&c.* where the ſubject is fully, methodically, and learnedly treated: and ſee alſo, *Larceny.*

Simplex, Signifies ſimple, or ſingle; as *Charta ſimplex* is a deed-poll or ſingle deed.

Simplex beneficium, A minor dignity in a cathedral or collegiate church, or any other eccleſiaſtical benefice oppoſed to a cure of ſouls; and which therefore is conſiſtent with any parochial cure, without coming under the name of pluralities.

Simplex Juſticiarius, This ſtile was anciently uſed for any *puiſne* judge, that was not chief in any court: and there is a writ in the *Regiſter*, beginning thus:—I *John Wood, a ſimple judge* of the court of Common Pleas, *&c.*

Simul cum, Are words uſed in indictments, and declarations of treſpaſs againſt ſeveral perſons, where ſome of them are known, and others not known: As the plaintiff declares againſt *A. B.* the defendant *ſimul cum* C. D. E. F. and *divers others* unknown, for that they committed ſuch a treſpaſs, *&c.* 2 *Lil. Abr.* 469. If a writ is generally againſt two or more perſons, the plaintiff may declare againſt one of them with a *ſimul cum*; but if a man bring an original writ againſt one only, and declares with a *ſimul cum*, he abates his own writ. *Comber.* 260.

Sine aſſenſu capitali, A writ that lies where a biſhop, dean, prebendary, or maſter of an hoſpital aliens the lands holden in right of his biſhoprick, deanry, houſe, *&c.* without the aſſent of the *chapter* or fraternity; in which caſe his ſucceſſor ſhall have this writ. *F. N. B.* 195. And if a biſhop or prebendary be diſſeiſed, and afterwards he releaſeth to the diſſeiſor; this is an alienation, upon which may be brought a writ *De ſine aſſenſu capitali*: But the ſucceſſor may enter upon the diſſeiſor, if he doth not die ſeiſed, notwithſtanding the releaſe of his predeceſſor; for, by the releaſe, no more paſſeth than he may rightfully releaſe. *New Nat. Br.* 432. A perſon may have this writ of lands upon demiſes of ſeveral predeceſſors, *&c.*

Sine-cure, Is where a *rector* of a pariſh hath a *vicar* under him endowed and charged with the cure; ſo that the *rector* is not obliged either to duty or reſidence. *Degg's Parſ. Counc.* 195. And when a church is fallen down, and the pariſh becomes deſtitute of pariſhioners, it is ſaid to be a *ſine-cure.* Wood's Inſt. 153. *See* Black. Com. 1 V. 386.

Sine Die, *i. e.* Without day: before the act for turning the law into *Engliſh*, when judgment was given againſt the plaintiff in an action, he was ſaid to be *in miſericordia pro falſo clamore ſuo*; and for the defendant *eat inde ſine die*, and the defendant was diſcharged, *&c.* 2 *Lil.* 220.

Single-bond, *Simplex obligatio.* A deed whereby the obligor obliges himſelf, his heirs, executors, and adminiſtrators, to pay a certain ſum of money to another at a day appointed. *Black. Com.* 2 *V.* 340.

Si non omnes, Is a writ on aſſociation of juſtices, by which, if all in commiſſion cannot meet at the day aſſigned, it is allowed that two or more of them may finiſh the buſineſs. *Reg. Orig.* 202. *F. N. B.* 185. And after the writ of aſſociation, it is uſual to make out a writ of *Si non omnes*, directed to the firſt juſtices, and alſo to thoſe who are ſo aſſociated to them, which, reciting the purport of the two former commiſſions, commands the juſtices, that if all of them cannot conveniently be preſent, ſuch a number of them may proceed, *&c.* *F. N. B.* 111.

Sinking Fund, Is a proviſion made by parliament, conſiſting of ſurpluſages of other *funds*, appropriated for paying the public debts of the nation: And many late ſtatutes have been made for applying the growing produce thereof; alſo money is often borrowed on the credit of the *ſinking fund*, uſually one million a year towards raiſing

ing ſupplies for public ſervice. See the ſeveral ſtatutes concerning the funds.

This ſinking fund is the laſt reſort of the nation; its only domeſtic reſource, on which muſt chiefly depend all the hopes we can entertain of ever diſcharging or moderating our incumbrances. And therefore the prudent application of the large ſums, now ariſing from this fund, is a point of the utmoſt importance, and well worthy the ſerious attention of parliament; which was thereby enabled in the year 1765, to reduce above two millions ſterling of the public debt. *Black. Com.* 1 *V.* 329, 330. which *vide*,

Sipeſſocna, Was what we now call a hundred. *Leg. Hen.* 1. *cap.* 6.

Si recognoſcant, A writ that, according to the old books, lies for a creditor againſt his debtor, who before the ſheriff in the county-court hath acknowledged to owe his creditor ſuch a ſum recived of him: The form of which writ is this:——*Rex vicecom.* S. *Salutem. Præcip. tibi quod ſi* A. B. recognoſcat *ſe debere* C. D. *Quinq; lib. ſine ulteriori dilatione tunc ipſum diſtringas ad prædict. debitam eidem* C. *ſine dilatione reddendum.* Teſte, *&c.* Old Nat. Br. 68.

Site of a meſſuage or manor houſe, *&c.* See *Scite.*

Sithcundman, (Sax.) Such a man as had the office to lead the men of a town or pariſh. *Leg. Inæ, cap.* 56. *Dugdale* ſays that in *Warwickſhire* the hundreds were formerly called *Sitheſoca,* and that *Sithſocundman* and *Sithcundman* was the chief officer within ſuch a diviſion, *i. e.* The high conſtable of the hundred. *Dugd. Antiq. Warw.*

Sitheſoca, A *Saxon* word for franchiſe or liberty, a hundred. *Rot. Parl.* 16 *H.* 2.

Six Clerks in Chancery. Theſe are officers in Chancery of ancient continuance, and they were heretofore ſpiritual perſons, as may appear by the Stat. 14 *&* 15 *H.* 8. They are principally concerned in matters of equity; and tranſact and file all proceedings by bill and anſwer; and alſo iſſue ſome patents that paſs the great ſeal, as pardons of men for chancemedley, patents for ambaſſadors, ſheriffs patents, and ſome others: And all theſe matters are tranſacted by their under-clerks, or others by them appointed. They likewiſe ſign all office copies in order to be read in court, and alſo certificates, and attend upon the court in term, by two at a time, at *Weſtminſter,* and there read the pleadings.

The buſineſs of the office is done by their under-clerks, each of which has a ſeat in the office, (in *Chancery-Lane)* and whereof every ſix clerk has a certain number, uſually about ten, beſides two waiting clerks in each diviſion; all which are accountable to their reſpective ſix clerks for the buſineſs they tranſact. *Harriſon's Chan. Pract.* 1 *V.* 25, 26.

Sixhindi, Were ſervants of the ſame nature with *rod-knights, viz.* Bound to attend their lord wherever he went; but they were accounted among the *Engliſh Saxons* as freemen, becauſe they had lands in fee, ſubject only to ſuch tenure. *Leg. Inæ, cap.* 26. See *Hindeni.*

Sizel, Is where pieces of *money* are cut out from the flat bars of ſilver, after drawn through a mill, into the reſpective *ſizes* or dimenſions of the money to be made; the reſidue is called by this name, and is melted down again. *Lownd's Eſſ. upon coin, p.* 96.

Skarkalla, Seems to be an engine for catching of fiſh: It was eſpecially given in charge by the juſtices, that all juries ſhould inquire *de biis qui piſcantur cum kiddellis &* Skarkallis. 2 *Inſt.* 38.

Skerda, A ſcar or wound.——*Si oſſa extrahuntur a capite &* ſkerda *magna levetur, &c.* Bract. lib. 3.

Skerries, (iſland or rock). Patent granted to *William French,* Eſq; for a light-houſe there, confirmed, 3 *Geo.* 2. *c.* 36.

Skinners. None ſhall retain any ſervant, journeyman, *&c.* to work in the trade of a *ſkinner,* unleſs he himſelf hath ſerved ſeven years as an apprentice in the ſame trade, on pain to forfeit double the value of his ware wrought. *Stat.* 3 *Jac.* 1. *c.* 9.

Skins. None ſhall take the wool from any ſheep-ſkin or lambſkin, unleſs he make leather or parchment of it, *&c.* 5 *Eliz. c.* 22. *ſ.* 1. None ſhall buy ſkins but to make leather or parchment, *&c.* 5 *El. c.* 22. *ſ.* 1. Exportation of ſkins and leather prohibited. 5 *El. c.* 2. *ſ.* 2. Of ſheep-ſkins tawed permitted, 8 *El. c.* 14. None but artizans ſkinners ſhall dreſs or export black coney-ſkins, 3 *Jac.* 1. *c.* 9. Merchants ſhall not buy coney-ſkins or morkins in ſmall quantities, 3 *Jac.* 1. *c.* 9. Duty on ſkins imported, 9 *Ann. c.* 11. *ſ.* 1. Drawback of two-thirds on exportation, 9 *Ann. c.* 11. *ſ.* 39. Additional duty on ſkins imported, 10 *Ann. c.* 26. *ſ.* 1. Drawback, on exporter's oath that hides are marked, 10 *Ann. c.* 26. *ſ.* 5. See *Leather.*

Skyvinage, Is uſed for the precincts of *Calais.* Stat. 27 H. 6. c. 2.

Slades, (Sax *Slæd)* A long narrow piece or ſlip of ground. *Paroch. Antiq.* 465.

Slander, Is the defaming of a man in his reputation, profeſſion or livelihood; which is actionable, *&c.* See *Action of the caſe for words,* and *Prohibition,* and *Black. Com.* 3 *V.* 123.

Slaves. There are no *ſlaves* in *England*; one may be a *villein* here, but not a *ſlave.* 2 Salk. 666.

There is not at this day any villenage by tenure, or in groſs. See *Hargrave's* argument on the caſe of *Somerſet,* a negro.

As to ſlavery, as *Blackſtone* obſerves, it is now laid down *(Salk.* 666.) that a ſlave or negro, the inſtant he lands in *England,* becomes a freeman; that is, the law will protect him in the enjoyment of his perſon and his property; yet, with regard to any right which the maſter may have acquired to the perpetual ſervice of *John* or *Thomas,* this will remain exactly in the ſame ſtate as before; for this is no more than the ſame ſtate of ſubjection for life, which every apprentice ſubmits to for the ſpace of ſeven years, or ſometimes for a longer term. *Black. Com.* 1 *V.* 424, 425. From this doctrine it evidently follows, that the maſter may maintain an action againſt any one, who, after notice, retains or harbours, or detains from his maſter's ſervice, a negro, *&c.* againſt the will of the maſter: and this, whether the negro be or be not baptiſed, which does not in any manner alter the caſe.—See *Black. Com.* 1 *V.* 423, 4. and *Monteſq. Spirit of Laws, L.* xv. and of the ſlavery of negroes. *Id. cap.* 5.

Sledge. A ſledge or hurdle is generally allowed to draw offenders guilty of high treaſon to the gallows, to preſerve them from the extreme torture of being dragged on the ground or pavement. 1 *Hal. P. C.* 82.

Slippa, A ſtirrup; and there is a tenure of land by holding the King's *ſtirrup,* in *Cambridgeſhire.* Cart. 5 Hen. 7.

Slough-Silver, A rent paid to the caſtle of *Wigmore,* in lieu of certain days work in harveſt, heretofore reſerved to the lord from his tenants. *Pat.* 43 *Eliz.*

Sluice, *(Excluſa)* Is a frame to keep or let water out of a ground. By ſtat. 1 *Geo.* 2. *c.* 19. to deſtroy any *ſluice* or lock on any navigable river, is made felony to be puniſhed with tranſportation for ſeven years.

Smaka, A ſmack, or ſmall light veſſel. *Cowell.*

Small Debts, *Courts for.* In *London,* and other trading and populous diſtricts, courts are eſtabliſhed for recovery of ſmall debts in a ſummary way, called courts of conſcience. See *Courts,* and *Black. Com.* 3 *V.* 81. 4 *V.* 434.

Smalt, (Ital. *Smalto)* Is that of which painters make their blue colouring; mentioned in the Stat. 21 *Jac.* 1. *c.* 3.

Smoak-Farthings, The pentecoſtals or cuſtomary oblations offered by the diſperſed inhabitants within a dioceſe, when they made their proceſſion to the mother cathedral church, came by degrees into a ſtanding annual rent, called *Smoak-farthings.* Cowell.

Smoke-Silver. Lands were holden in ſome places by the payment of the ſum of 6 *d.* yearly to the ſheriff, called *Smoke-Silver.* Pat. 4 Ed. 6. *Smoke-ſilver* and *ſmoke-penny* are to be paid to the miniſters of divers pariſhes, as a *modus* in lieu of tithe-wood: And in ſome manors, formerly belonging to religious houſes, there is ſtill paid as appendant to the ſaid manors, the ancient *Peter Pence* by the name of *Smoke-money.* Twiſd. Hiſt. Vindicat. 77. The biſhop of *Lincoln, anno* 1444, iſſued out his commiſſion——*Ad levandum le* Smoke-Farthings, *&c.*

Smugglers, Are thoſe perſons that conceal prohibited goods, and defraud the King of his cuſtoms on the *ſea coaſts*, by running of goods and merchandize. *Stat.* 8 *Geo.* 1. *c.* 18. See *Cuſtoms*, and *Black. Com.* 1 *V.* 317. 4 *V.* 155.

Snottering-Silver. There was a cuſtom in the village of *Wylegb*, that all the ſervile tenants ſhould pay for their tenements a ſmall duty called *Snottering Silver*, to the abbot of *Colcheſter*. Placit. 18 Edw. 1.

Snuff or **Snuſh,** Mixing and colouring it with *oaker*, *umber*, or *fuſtick*, *yellow ebony*, *tobacco* duſt, *ſand*, *&c.* incurs a penalty of 3 *l.* for every pound weight. *Stat.* 1 *Geo.* 1. *c.* 46. The penalties of adulterating tobacco, extended to ſnuff, 5 *Geo.* 1. *c.* 11. A duty is granted of 2 *s.* 6 *d.* a pound on ſnuff imported from the *Spaniſh Weſt-Indies*; and 5 *s.* for what is brought from *Spain* and *Portugal*, &c. except *France*, by the *Stat.* 12 *Geo.* 1. *c.* 26.

Soc, (Sax.) Signifies power, or liberty to miniſter juſtice and execute laws; alſo the circuit or territory wherein ſuch power is exerciſed: Whence our law *Latin* word *ſoca* is uſed for a ſeigniory or lordſhip enfranchiſed by the King, with the liberty of holding or keeping a court of his *ſockmen*: And this kind of liberty continues in divers parts of *England* to this day, and is known by the names of *ſoke* and *ſoken*. Bract. lib. 3. Lamb.—*Nullus* ſockman *habeat impune peccandi*; i. e. None hath liberty of ſinning without puniſhment. *Leg. H.* 1.

Socage, or **Soccage,** (*Socagium*, from the Fr. *Soc*, that is, *vomer*, a coulter or plough-ſhare) Is a tenure of lands by or for certain inferior ſervices of huſbandry to be performed to the lord of the fee.

Skene de verbor ſignif. ſays, *Socage* is a tenure of lands, when a man is enfeoffed freely, without any ſervice, ward, relief, or marriage, and pays to his Lord ſuch duty as is called *petit ſerjeanty*, *&c.*

There is *free ſocage*, and *baſe ſocage*, otherwiſe called *villenage.*——And, according to *Bracton*, *Socagium liberum eſt, ubi ſit ſervitium in denariis Dominis capitalibus, & nihil inde omnino datur ad ſcutum & ſervitium Regis.* This *free ſocage* is alſo called *common ſocage*. Stat. 37 H. 8. c. 20. Other diviſions there are in our books, viz. *Bract. lib.* 2. *cap.* 8. *num.* 3. *Old Nat. Brev. fol.* 94. and others.

But by the ſtatute 12 *Car.* 2. *cap.* 24. all tenures ſhall be adjudged and taken to be turned into *free* and *common ſocage*. See *Kennet's Gloſſary in Socage.*

This was a tenure of ſo large an extent, that *Littleton* tells us, all the lands in *England*, which were not held in knights ſervice, were held in *ſocage*. So that it ſeems the land was divided between theſe two tenures, and as they were of different natures, ſo the deſcent of theſe lands was in a different manner; for the lands held in knights ſervice deſcended to the eldeſt ſon; but theſe held *in villano Socagio*, equally among all the ſons; yet if there was but one meſſuage, the eldeſt ſon was to have it, ſo as the reſt had the value of that meſſuage to be divided between them. *Bracton, lib.* 2. *cap.* 35, 36. See *Black. Com.* 2 *V.* 79, 98. 4 *V.* 412, 461.

Socagers, Were thoſe tenants whoſe tenure was called *Socage*; otherwiſe ſtiled *Sockmen*.

Socmans, or **Sokemans,** (*Socmanni*) Are ſuch tenants as hold their lands and tenements by *Socage* tenure, of which there are ſeveral kinds, *viz.* *Sokemans* of frank tenure, *Kitchin, fol.* 81. *Sokemans* of baſe tenures, *ibid.* and *Sokemans* of ancient demeſne, which laſt ſeem properly to be ſtiled *Sockmans*. Cowell.

Socmen. The huſbandmen among our *Saxon* anceſtors were of two ſorts; one, that hired the Lord's outland or tenementary land, like our farmers; the other, that tilled and manured his inland or demeans (yielding *operam*, not *cenſum*, work, not rent) and were thereupon called his *Sockmen*, or ploughmen. *Spelman of Feuds*, *cap.* 7. But after the conqueſt, the proper *Sockmanni*, or *Sokemanni*, often mentioned in *Domeſday*, were thoſe tenants who held by no ſervile tenure, but commonly paid their rent as a *Soke* or ſign of freedom to the Lord, tho' they were ſometimes obliged to cuſtomary duties for the ſervice and honour of their Lord. *Cowell.*

Socna, (Sax. *Socne*) A privilege, liberty, or franchiſe. *Chart. Canut. Reg.*

Socome, Signifieth a cuſtom of grinding corn at the Lord's mill; and *bond ſocome* is where the tenants are bound to it. *Blount.*

Sodomy, The crime of, and how puniſhed, ſee *Buggery*, and *Black. Com.* 4 *V.* 215.

Sodor and **Man,** *Biſhoprick of.* By ſtat. 12 *Geo.* 1. *c.* 28. authority was given to the treaſury to purchaſe the intereſt of the then proprietors of the *Iſle of Man*, (which was formerly a diſtinct juriſdiction) for the uſe of the crown: which purchaſe was at length completed in the year 1765, and confirmed by ſtatutes 5 *Geo.* 3. *c.* 26 & 39. See the Statutes. The Biſhoprick of *Man* or *Sodor*, or *Sodor* and *Man*, was formerly within the province of *Canterbury*, but annexed to that of *York*, by ſtat. 33 *H.* 8. *c.* 31.

Soke, Soc, Sok, Soca, Generally ſignify liberty or privilege of tenants excuſed from cuſtomary burdens and impoſitions. Sometimes *Soka*, or *Soke*, was the territory or precinct in which the chief Lord did exerciſe his *Sac*, *Sake*, or *Saka*, his liberty of keeping court, or holding trials within his own *Soke* or juriſdiction. Sometimes it ſignified a payment or rent to the Lord for uſing his land with ſuch liberty and privilege, as made the tenant a *Socman* or freeholder, upon no other conditions than a quit-rent. *Cowell.*

Soke, Significat libertatem curiæ tenentium quam ſocam *appellamus.* Fleta, lib. 1. cap. 47. Stat. 32 Hen. 8. cap. 15.

Sokemans, and **Sokemanries.** The former certain copyhold tenants ſo called, the latter their tenures. Which *Britton*, *c.* 66. deſcribes to be “ lands and tenements, “ which are not held by knight-ſervice, nor by grand “ ſerjeanty, nor by petit, but by ſimple ſervices, being “ as it were lands enfranchiſed by the King or his predeceſſors from their antient demeſne.” And the ſame name is alſo given them in *Fleta, lib.* 1. *c.* 8. Vide *Black. Com.* 2 *V.* 99, 100. And *Socmans*, *Socmen*, &c.

Soke-reeve, The lord's rent-gatherer in the *ſoke* or *ſoken*. Fleta.

Solarium, A *ſollar*, upper room, or garret: *Unum* ſolarium *vocat'* a loft. *Chart. Antiq.*

Soldiers. The *military ſtate of England* includes the *ſoldiery* by land and ſea; and it is againſt our ancient law to keep up any army of *ſoldiers* in the time of peace. In time of war particular orders are made for the order and diſcipline of officers and *ſoldiers*, which are to be conſulted upon all emergencies: and therefore we are not to expect many ſtanding and perpetual laws on that account. *Wood's Inſt.* 45. The chief ſtatutes relating to the army, and their contents, are as follow, *viz.* By 18 *H.* 6. *c.* 19. *Soldiers* retained, departing from their colours, without licence, are guilty of felony. The 7 *Hen.* 7. *cap.* 1. and 3 *Hen.* 8. *cap.* 5. enact, That if a captain ſhall not have the whole number of his *ſoldiers*, or not pay them their due wages, within ſix days after he hath received it, he ſhall forfeit all his goods and chattels, and ſuffer impriſonment. By the 4 & 5 *Ph.* & *M.* *c.* 3. If any perſon being commanded to muſter, doth abſent himſelf (having no lawful excuſe) he ſhall ſuffer ten days impriſonment, or pay a fine of 40 *s.* And if any one authoriſed to levy or muſter *ſoldiers*, ſhall take any reward to diſcharge or ſpare any from the ſaid ſervice, he ſhall forfeit ten times as much as he ſhall take, *&c.* The ſtatute 1 *Jac.* 1. *cap.* 4. ordains, That if any perſon go beyond ſea, to ſerve any foreign prince, as a *ſoldier*, and he do not take the oath of allegiance before he goes, it is felony; and if he is a gentleman or officer, that is going to ſerve a foreign prince, he is to be bound with two ſureties not to be reconciled to the ſee of *Rome*, *&c.* or it will be felony.

By 31 *Car.* 2. *cap.* 1. no *ſoldiers* ſhall be quartered on any perſons without their conſent; and inhabitants of places may refuſe to quarter any *ſoldier*, notwithſtanding any order whatſoever. The 4 & 5 *W.* & *M.* *&c.* was made for puniſhing mutiny and deſertion, *&c.* And by

10 & 11 *W.* 3. Officers and *ſoldiers* may exerciſe trades. The 1, 4, 7, 9 & 10, *&c. Ann.* were made for puniſhing mutiny and deſertion of *ſoldiers*, and falſe-muſters; and for better payment of the army and quarters, *&c.* Since which there have been a variety of acts to puniſh mutiny and deſertion, *&c.* in general, all formed on the ſame plan. Vide the laſt.

The 3 *Geo.* 1. *cap.* 2. and 4 *Geo.* 1. *cap.* 4. ordain, That no *ſoldier* ſhall be taken out of the ſervice, by any proceſs, except it be for ſome criminal matter or for a real debt amounting to 10*l.* of which affidavit is to be made; and if any *ſoldier* be otherwiſe arreſted, a juſtice of peace by warrant under his hand ſhall diſcharge him: Yet the plaintiff may file an appearance, in an action of debt upon notice thereof given, and proceed to judgment and execution, other than againſt the body of ſuch *ſoldier*. A ſerjeant in the guards cannot be arreſted under 10*l.* *Wilſ. par.* 1. *fol.* 216.

A common ſoldier cannot be a vagrant within the ſtat. 17 *Geo.* 2. *Wilſ. par.* 1. *fol.* 331.

By the 5 *Geo.* 1. *cap.* 5. when an *officer* or *ſoldier* is accuſed of a capital crime, the commanding officer, on application made to him, is to uſe his utmoſt endeavours to deliver over the criminal to the civil magiſtrate, and he is not to be tried by a court-martial in eight days; within which time, application is to be made: but after that the criminal may be tried by a court-martial.

Stat. 11 *Geo.* 2. *c.* 6. No juſtice of peace having a military office, ſhall be concerned in quartering of *ſoldiers* in the company, *&c.* under his command: And victuallers refuſing *ſoldiers* quartered, or conſtables receiving reward to excuſe them, are to forfeit not above 5 *l.* nor under 40*s.* 3 *Geo.* 2. *cap.* 2. By ſubſequent acts, no juſtice, conſtable, *&c.* may direct more billets for quartering *ſoldiers* than there are effective men: And if any *ſoldier* be quartered on a private houſe, without the owner's conſent, he may have his remedy at law; and officers or conſtables that quarter wives, children, or maid ſervants of any officer or *ſoldier* in ſuch manner; the officer ſhall be caſhiered, and conſtable forfeit 20*s.* Likewiſe where perſons are grieved in billeting *ſoldiers*, by conſtables, they may complain to the juſtices of peace, who ſhall order ſo many to be removed as they ſee cauſe.

Officers or *ſoldiers*, if they deſtroy game on their marches, or poultry or fiſh, being convicted before a juſtice, are to forfeit 5 *l.* an officer, and 20*s.* a *ſoldier*. Ibid. When any perſon is inliſted a *ſoldier*, he ſhall within four days be carried before the next juſtice of peace or chief magiſtrate of a town, and declare that he did it voluntarily; upon which the juſtice is to certify it, and give him the oath of fidelity, *&c.* But if then he diſſents, on returning the money received, and 20*s.* for charges, he ſhall be diſcharged: And military officers acting contrary to this act, to incur the like penalty as for making a falſe-muſter. 8 *Geo.* 2. *c.* 2. If a perſon abſconds, or refuſes to go before a juſtice, in order to declare his aſſent or diſſent; he ſhall be deemed a liſted *ſoldier*, and may be proceeded againſt as if he had taken the oath directed by the articles of war. Stat. 10 *Geo.* 2. And in caſe any ſubject here or in *Ireland* ſhall liſt or enter himſelf, or any one procure him, to go beyond the ſeas, with an intent to be inliſted as a *ſoldier*, to ſerve any foreign prince or ſtate, without leave of his Majeſty, he ſhall be guilty of felony; but if ſuch perſon liſted, in fourteen days after diſcover upon oath before any juſtice, *&c.* the perſon by whom he was drawn in, ſo as he may be apprehended and convicted, the party diſcovering is to be indemnified. 9 *Geo.* 2. *c.* 30. His Majeſty may form articles of war, and conſtitute courts-martial as well in *Great Britain* and *Ireland*, as in the iſlands of *Minorca*, *Gibraltar*, *&c.* And if any officer or *ſoldier* deſerts his Majeſty's ſervice beyond ſea, and eſcape into this realm, or *Ireland*, he ſhall be tried here, as if the offence had been committed within this realm. Stat. 11 *Geo.* 2. *c.* 2. and 15 *Geo.* 2. *c.* 4. See *Court Martial*, and *Black. Com.* 1 *V.* 407. 4 *V.* 163.

Sole Corporations. A *corporation ſole* conſiſts of one perſon only and his ſucceſſors, in ſome particular ſtation, who are incorporated by law, in order to give them ſome legal capacities and advantages, particularly that of perpetuity, which in their natural perſons they could not have had. In this ſenſe the King is a *ſole corporation*, ſo is a biſhop; ſo are ſome deans and prebendaries, diſtinct from their ſeveral chapters: And ſo is every parſon and vicar. See *Corporations*, and *Black. Com.* 1 *V.* 469.

Solet & Debet, Words inſerted in writs for recovery of rights, *&c.* Vide *Debet*.

Sole Tenant, *(Solus tenens)* Is he that holds land by his own right only, without any other joined; and if a *man and his wife* hold land for their lives, with remainder to their ſon for life; here the man dying, the lord ſhall not have an heriot, becauſe he dies not *ſole tenant*. Kitch. 134.

Solicitor, *(Solicitator)* A perſon employed to follow and take care of ſuits depending in *courts of law or equity*; and *ſolicitors* are within the late ſtatute to be ſworn and admitted by the judges, like unto attornies, before they ſhall practice in our courts; and attornies may be admitted *ſolicitors* in the courts of equity, *&c.* Stat. 2 *Geo.* 2. *cap.* 23.

There is alſo a *ſolicitor general* to the King, who is a great officer next the *attorney general*. See *Attorney*, and *Black. Com.* 3 *V.* 27.

Solidatum, Uſed in the *neuter gender* is taken for that abſolute right or property which a man hath in any thing. *Malmſb. lib.* 1.

Solinus terræ.——*In communi terra Sancti Martini ſunt 400 acræ & dim. quæ faciunt duos ſolinos & dim. Domeſday.* In which book, this word is only uſed in *Kent*, and no other county. *Septem ſolini terræ ſunt* 17 *Carucatæ.* 1 Inſt. fol. 15. According to this computation *ſolinus terræ* is about 160 acres, and 7 *ſolini* are about 1120 acres, which is leſs than 17 *carucatæ*, for at the loweſt *carucata terræ* is 100 acres. But Lord *Coke* was of opinion, that it did not conſiſt of any certain number of acres. This word *ſolinus* was probably from the Sax. *ſulk* a plough, but what quantity of land this *ſolin*, *ſulling*, or *ſwoling* did contain, is not ſo eaſily determined. It ſeems to have been the ſame with a plough-land; ſo that in *Domeſday*, *Se defendit pro uno ſolino*, is, it is taxed for one *carucate* or plough-land. *Cowell.*

Soller or Solar, *(Solarium)* A chamber or upper room. *Id.*

Solvendo eſſe, Is a term of art, ſignifying that a man hath wherewith to pay, or is a perſon *ſolvent*.

Solvere poenas, To pay the penalty; or undergo the puniſhment inflicted for offences. 3 *Salk.* 32.

Solvit ad Diem, Is a plea in action of debt on a bond, bill, *&c.* that the money was *paid at the day* limited. *Mod. Caſ.* 22. To a bond of thirty years ſtanding the defendant pleaded *ſolvit ad diem*, relying on the preſumption; the plaintiff proved payment of intereſt two years after the day; this falſifies the plea; the defendant ſhould have pleaded upon the act for amendment of the law, that he paid the money after the day. 1 *Strange* 652. See *Payment*.

Solutione feodi militis Parliamenti, and **Solutione feodi Burgenſ. Parliamenti,** Are writs whereby knights of the ſhire and burgeſſes may recover their allowance, if it be denied. Stat. 35 *H.* 8. *c.* 11.

Somerſet-houſe, Aſſured to Queen *Charlotte* for life, 2 *Geo.* 3. *c.* 1.

Somerſetſhire, Its fiſhery how preſerved, 1 *Jac.* 1. *c.* 23.

Son Aſſault Demeſne, Is a juſtification in an action of *aſſault and battery*; becauſe the plaintiff made the firſt aſſault, and what the defendant did was in his own defence. 2 *Lil. Abr.* 523. But *ſon aſſault* cannot be pleaded by a defendant for his *outrageous battery*. Ibid. See *Black. Com.* 3 *V.* 120, 306.

Sontage, Was a tax of forty ſhillings laid upon every knight's fee, according to *Stow*, *p.* 284.

Sope, A duty granted on it for thirty-two years, *&c.* And *ſope-makers* are to give notice of the time of making and working of *ſope* to exciſe officers, on pain of forfeiting 50*l.* Stat. 10 *Ann.* *c.* 19. and 11 *Geo.* 1. *c.* 30.

Sophia, (princeſs) Naturalized, 4 *Ann.* *c.* 1 & 4. She was the youngeſt daughter of *Elizabeth* Queen of *Bohemia*, who was the daughter of *James* the Firſt, and (in the latter end of the reign of *William* the Third) the neareſt of the ancient blood royal, who was not incapacitated (to take the crown) by profeſſing the Popiſh religion. On her therefore, and the heirs of her body, being proteſtants, the remainder of the crown, expectant on the death of King *William* and Queen *Anne* without iſſue, was ſettled by ſtatute 12 *&* 13 *Will.* 3. *c.* 2. See *King*.

Sorcery, (*ſortilegium*) Witchcraft or divination by lots; which was made ſelony by 1 *Jac.* 1. *c.* 12. See *Witchcraft*. By 9 *Geo.* 2. *c.* 5. No proſecution ſhall for the future be carried on againſt any perſon for conjuration, witchcraft, ſorcery, or inchantment. But the miſdemeanor of perſons pretending to uſe witchcraft, tell fortunes, or diſcover ſtolen goods by ſkill in the occult ſciences, is ſtill deſervedly puniſhed with a year's impriſonment, and ſtanding four times in the pillory. *Black. Com.* 4 *V.* 61.

Sors, In ſums of money lent upon *uſury*, the *principal* was anciently called *ſors*, to diſtinguiſh it from the *intereſt*. Pryn's Collect. tom 2. p. 161.

Sorus Accipiter, Is a *ſor* or *ſoar hawk:* King *John* granted to *Robert de Hoſe*, land in *Berton* of the honour of *Nottingham*, to be held by the ſervice of yielding the King yearly one *ſoar-hawk*, *&c.* Cartular. S. Edmund. MS.

Sothail, or **Sothale,** Is conceived to be miſtaken for *ſcotale*. Bract. lib. 3.

Sothſaga, or **Sothſage,** Is an old word which ſignifies hiſtory: From the Sax. *ſoth*, *verum*, and *ſaga*, *teſtimonium*; for all hiſtories ſhould be true, or true ſayings; from hence we derive our *Engliſh* word *ſoothſayer*. Cowell.

Soveraign, or **Sovereign,** Is a chief or ſupream perſon, one higheſt of all; as a King, *&c.*

Sovereign, A piece of gold coin current at 22*s.* in 1 *H.* 8. when, by indenture of the *Mint*, a pound weight of gold of the old ſtandard was to be coined into twenty-four *ſovereigns*. In 34 *H.* 8. *ſovereigns* were coined at 20*s.* a-piece, and half *ſovereigns* at 10*s.* But *anno* 4 *Ed.* 6. the *ſovereign* of gold paſſed for 24*s.* and in 6 *Ed.* 6. at 30*s.*

Sovereign Power, or **Sovereignty,** By this is truly meant, the power of making laws; for, wherever that power reſides, all others muſt conform to and be directed by it, whatever appearance the outward form and adminiſtration of the government may put on. For it is at any time in the option of the legiſlature to alter that form and adminiſtration by a new edict or rule, and to put the execution of the laws into whatever hands it pleaſes: And all the other powers of the ſtate muſt obey the legiſlative power in the execution of their ſeveral functions, or elſe the conſtitution is at an end. *Black. Com.* 1 *V.* 49. In our conſtitution the law aſcribes to the King the attribute of ſovereignty, but that is to be underſtood in a qualified ſenſe, *i. e.* as *ſupreme magiſtrate*, *not* as *ſole legiſlator*, as the *legiſlative power* is veſted in the *King, Lords, and Commons*, not in any one of the three eſtates alone.

Soul-Scot, A mortuary is ſo called in the laws of King *Canute*. *c.* 13. See *Black. Com.* 2 *V.* 425. and *vide Mortuary*.

Sound, Is a narrow ſea, as *Mare Balticum*, the *Sound*; and to *ſound* is to make trial how many fathom a ſea is deep. *Merch. Dict.*

Southampton. Any man may pull down wears, *&c.* in the haven of *Southampton*, between *Calſhford* and *Redbridge*; and whoſoever levieth any other there, ſhall forfeit 100*l.* *Stat.* 11 *H.* 7. *c.* 5. An act was made for confirming ſome part of the charter granted to the mayor, bailiffs and burgeſſes of *Southampton*, and for relief of the town. 4 *Jac.* 1. *c.* 10.

South-Sea Annuities. See *South-Sea Company*.

South-Sea Bonds, Stealing them made felony, 2 *Geo.* 2. *c.* 25. *ſect.* 3.

South-ſea Company, A company of *merchants* trading to the *South-Sea*. They were incorporated, on lending the government ten millions of money, towards paying the debts of the army, *&c.* They may purchaſe lands not exceeding 1000 *l.* *per annum*; and beſides an intereſt for the money advanced the government, 8000 *l.* a year is to be paid them out of the funds towards the management of this company; the corporation ſhall have the ſole trade from the river *Oroonoko* on the eaſt-ſide of *America* to the ſouthermoſt part of *Terra del Fuego*, and from thence through the *South-Sea*, &c. And the company to be owners of all iſlands, ports, *&c.* they can diſcover. *Stat.* 9 *Ann.* *c.* 21. See 1, 6, 7 and 9 *Geo.* 1. 6 *Geo.* 2, *&c.* See *Stat.* 24 *Geo.* 2. *c.* 11. for reducing the intereſt upon the capital ſtock of the *South-Sea* company, from the time, and upon the terms therein mentioned, and for preventing of frauds committed by the officers and ſervants of the ſaid company; and 26 *Geo.* 2. *c.* 16. for reducing the number of directors of the ſaid company, and for regulating the election of the governors and directors of the ſaid company.

Eſtabliſhment of the *South-Sea* company and their fund, 9 *Ann.* *c.* 21. 3 *Geo.* 1. *c.* 9. Creation of the old *South-Sea* annuities, 9 *Geo.* 1. *cap.* 6. *ſ.* 3. Redemption of *South-Sea* annuities out of ſinking fund, 4 *Geo.* 2. *c.* 5. And ſee 6 *Geo.* 2. *c.* 25. 9 *Geo.* 2. *c.* 34. 10 *Geo.* 2. *c.* 19. *ſ.* 35. New *South-Sea* annuities created, 6 *Geo.* 2. *c.* 28. Reſtrained from iſſuing bonds without a general court, 6 *Geo.* 2. *c.* 28. *ſ.* 26. 7 *Geo.* 2. *c.* 17. Fund for their annuity ſupplied, 2 *Geo.* 2. *c.* 3. *ſ.* 60. The company continued till the annuities ſhall be redeemed 24 *Geo.* 2. *c.* 2. *ſ.* 31. The company's annuity reduced, 24 *Geo.* 2. *c.* 11. The firſt and ſecond ſubſcribed *South-Sea* annuities to be conſolidated, 25 *Geo.* 2. *c.* 27. *ſ.* 26. See *Black. Com.* 1 *V.* 328.

Southwark, King *Edward* 3d by charter granted to the city of *London* the village of *Southwark*, paying at the Exchequer the farms thereof due: Alſo the manor and *Borough* were granted; except the capital meſſuage called *Southwark-place*, by chart. *Ed.* 6. The inhabitants of the ſtews there, not to be returned on juries. 11 *Hen.* 6. *c.* 1. No market to be held in the high-ſtreet of *Southwark*, nor hackney coaches, *&c.* to ply there. 28 *Geo.* 2. *c.* 9. Inſtead thereof a market to be held in a place called the *Triangle*. 28 *Geo.* 2. *c.* 23. 30 *Geo.* 2. *c.* 31.

Sowlegrove, Is an old name of the month of *February*, ſo called by the inhabitants of *South Wales*.

Sowne, From the Fr. *Souvenue*, *i. e.* remembred, is a word of art uſed in the *Exchequer*, where *eſtreats that* ſowne *not*, are thoſe that the ſheriff cannot levy, *viz.* Such eſtreats and caſaulties as are not be remembered, and run not in demand; and *eſtreats that ſowne*, are ſuch as he may gather and are leviable. Stat. 4 *Hen.* 5. *c.* 7. 4 *Inſt.* 107.

Spadarius, for *Spatharius*, Is a *ſword-bearer*. Blount.

Spatæ Placitum, A court for the ſpeedy execution of juſtice on military delinquents. *Brad. Append. Hiſt. Engl.* 45.

Spatularia, Is numbered among the holy veſtments, *&c.* in *Mon. Ang. Tom.* 3. *p.* 331.

Spawn and Fry of Fiſh. See *Fiſh*.

Speaker of the Parliament, The chief officer in that high and auguſt court, who is as it were the common mouth of the reſt: And as that Honourable Aſſembly contains two Houſes, the *Lords* and *Commons*; ſo there are two *ſpeakers*, the one termed the *Lord Speaker of the Houſe of Peers*, and is moſt commonly the Lord Chancellor or Lord Keeper of the Great Seal of *England*; the other (being a member of that Houſe) is called *The Speaker of the Houſe of Commons:* the duty of both conſiſts in managing debates, putting queſtions, and thereby collecting the ſenſe of the houſes, the paſſing of bills, ſeeing the orders of each Houſe obſerved, *&c.* Vide *Parliament*.

Speaking with proſecutor. It is not uncommon when a perſon is convicted of a miſdemeanor, which principally and more immediately affects ſome individual, as a battery, impriſonment, or the like, for the court to permit the defendant to *ſpeak with the proſecutor*, before any judgment is pronounced; and, if the proſecutor declares himſelf ſatisfied, to inflict but a trivial puniſhment, *Black. Com.* 4 *V.* 356, 7. 'tis uſual, on ſatisfaction made to the proſecutor, for him to give the perſon convicted, a releaſe, the execution of which being proved, is tantamount to the proſecutor's acknowledgement of being ſatisfied.

Special matter in evidence, Is what comes not into the *General Iſſue,* but is ſpecially alledged and proved on the trial.

Specialty, *(Specialitas)* A bond, bill, or ſuch like inſtrument; a writing or deed, under the hand and ſeal of the parties. *Lit.* See *Black. Com* 2 *V.* 465.

Species. A relative term, expreſſing an idea which is compriſed under ſome general one, called a *genus.* The idea of a ſpecies is formed by adding a new idea to the *genus.* This ſuperadded idea is called the ſpecific difference.

In law, when we treat of *action on the caſe,* generally, we may call it the *genus,* as we may call an action of *aſſumpſit,* of *trover,* &c. a *ſpecies* of that *genus.*

Specific-legacies. A ſpecific legacy, is a legacy left, or a bequeſt of any particular thing, as a piece of plate, a watch, a horſe, &c. and cannot be taken by the deviſee without the conſent of the executor. *Co. Lit.* 111. *Aleyn* 39. *Black. Com.* 2 *V.* 512.

Specific relief in equity. The want of a more ſpecific remedy than can be obtained in the courts of law, gives a concurrent juriſdiction to a court of equity in a great variety of caſes. To inſtance in executory agreements, a court of equity will compel them to be carried into ſtrict execution, unleſs where it is improper, or impoſſible, inſtead of giving damages for their non-performance. 1 *Eq. Caſ. Abr.* 16. *Black. Com.* 3 *V.* 438.

Speleum, The cell of a monk, mentioned in *Malmſb. lib.* 3.

Spices, For garbling ſpices 1 *Jac. c.* 19. Repealed, 6 *Ann. c.* 16.

Duty on ſpices imported, 6 & 7 *W.* 3. *c.* 7. made perpetual by 7 *Ann. c.* 7. and part of bank fund: And the ſurplus part of the aggregate fund, 1 *Geo.* 1. *c.* 12. Licences to import ſpices ſhall ſpecify the quantity and place of landing, 6 *Geo.* 1. *c.* 21. *ſ.* 45. Spices packed in ſmall parcels forfeited, 6 *Geo.* 1. *cap.* 21. *ſ.* 47. Duties on ſpices aſcertained, 8 *Geo.* 1. *c.* 15 *ſect.* 17, 18. Licences to import ſpices ſhall be delivered up at entering the ſhip, 8 *Geo.* 1. *c.* 18. *ſ.* 21. See *Cuſtoms, Funds, Grocery Wares.*

Spigurnel, *(Spigurnellus)* Is the ſealer of the King's writs, from the Sax. *Spicurran,* to ſhut up or incloſe: but the following original has been given of this word, that *Galfridus Spigurnel* being by King *Hen.* 3. appointed to be ſealer of his writs, was the firſt in that office; and therefore in after-times the perſons that enjoyed the office were called *Spigurnels. Pat.* 11. *H.* 3. 4 *Edw.* 1. This office was alſo known by the name of *Spicurnatia* or *Eſpicurnantia*; and *Oliver de Standford* held lands in *Nettlebed in Com. Oxon. per Serjeantiam* Spicurnantiæ *in Cancellaria Domini Regis.* 27 Ed. 1.

Spinacium, A ſort of veſſel which we now call a *pinnace.* Knight. Ann. 1338.

Spindulæ, Were thoſe three golden pins which were uſed about the archiepiſcopal pall; and from thence *Spindulatus* ſignified to be adorned with the pall. *Du Cange.*

Spinſter, Is an addition in law proceedings uſually given to all unmarried women; and it is a good addition for the eſtate and degree of a woman. But it is ſaid a gentlewoman is to be named *generoſa,* and not *ſpinſter,* or it will be ill. *Dyer* 46, 88. 2 *Co. Inſt.* 668. but it is immaterial.

Spirits and ſtrong waters. See *Brandy.*

Spiriting away men and children. This offence is commonly called *Kidnapping* It is a very heinous crime, which the Common law of *England* hath puniſhed by fine, impriſonment, and pillory. *Raym.* 474. 2 *Show.* 221. *Skin.* 47. *Comb.* 10. By ſtatute 11 & 12 *W.* 3. *c.* 7. If any captain of a merchant veſſel, ſhall (during his being abroad) force any perſon on ſhore, or wilfully leave him behind, or refuſe to bring home all ſuch men as he carried out, if able and deſirous to return, he ſhall ſuffer three months impriſonment.

Spiritual Corporations. *Spiritual* or *Eccleſiaſtical Corporations* are where the members that compoſe it, are entirely ſpiritual perſons, ſuch as biſhops, &c. *Black. Com.* 1 *V.* 470.

Spiritual Courts, Have juriſdiction in cauſes matrimonial, and for probate of wills of goods, and granting adminiſtrations; and for tithes, where there is no *modus*; alſo in caſes of defamation, as calling a woman whore, &c. except in *London,* where calling a woman whore is actionable, whores being liable to be carted, by the cuſtom of the city. Their juriſdictions are ſet forth in the *Stat. Articuli Cleri,* 9 *E.* 2. And in the *Stat. de Circumſpecte agatis,* the 23 *H.* 8. *c.* 9. &c. See *Courts Eccleſiaſtical,* and *Black. Com.* 3 *V.* 61.

Spiritualties of a Biſhop, Are thoſe profits which he receives as a biſhop, and not as a baron of parliament; ſuch as the duties of his viſitation, preſtation-money, his benefit growing from ordinations and inſtitutions of prieſts, the income of his juriſdiction, &c. *Staundf. P. C.* 132. The Archbiſhop of the Province is *Guardian of Spiritualties* when a ſee is vacant, and hath the juriſdiction of courts, &c. Vide *Cuſtos Spiritualitatis,* and *Black. Com.* 1 *V* 380.

Spiritualty, As containing the *Clergy of England,* ſtatutes made for preſerving their privileges, &c. 4 *H.* 4. *c.* 2 & 3.

Spittle-houſe, Is a corruption from *Hoſpital,* and ſignifies the ſame thing; or it may be taken from the Teuton. *Spital,* and hoſpital or alms-houſe: It is mentioned in the 15 *Car.* 2. *c.* 9.

Spoliation, *(ſpoliatio)* A writ or ſuit for the fruits of a church, or the church itſelf, to be ſued in the Spiritual court, and not in the temporal, that lies for one incumbent againſt another, where they both claim by one patron, and the right of patronage doth not come in queſtion: As if a parſon be created a Biſhop, and hath diſpenſation to hold his benefice, and afterwards the patron preſents another incumbent, who is inſtituted and inducted; now the biſhop may have a *ſpoliation* in the Spiritual court againſt the new incumbent, becauſe they both claim by one patron, and the right of patronage doth not come in debate; and for that the other incumbent came to the poſſeſſion of the benefice, by the courſe of the Spiritual law, *viz.* by inſtitution and induction; for otherwiſe, if he be not inſtituted and inducted, a *ſpoliation* lies not againſt him, but writ of treſpaſs, or aſſiſe of *Novel diſſeiſin. F. N. B.* 36, 37. So it is where a parſon that hath a plurality accepts of another benefice, by reaſon whereof the patron preſents another clerk, who is inſtituted and inducted; in this caſe one of them may have *ſpoliation* againſt the other, and then ſhall come in queſtion, whether he hath a ſufficient plurality, or not: And it is the ſame of deprivation, &c. *Terms de Ley.* See *Black. Com.* 3 *V.* 91.

Sponte oblata, A free gift or preſent to the King anciently ſo called.

Sportula, Signifies gifts and gratuities, forbidden to be received by the clergy: And St. *Cyprian* calls thoſe clergymen *Sportulantes Fratres,* who accepted ſuch gifts for maintenance. St. *Cyp. Epiſt.* 70, 71.

Spouſals, The betrothing of a man or woman before full marriage. *Lit. Dict.* See *Eſpouſals.*

Spouſe-breach, Is adultery oppoſed to ſimple fornication: The Lady *Katharine* was accuſed to the King of incontinent living before her marriage, and of *Spouſe-breach* after the marriage. *Fox Act. Mon. Vol.* 2. *pag.* 540

Springing uſes, or *contingent uſes,* They differ from an *executory deviſe*; in that there muſt be a perſon ſeiſed to ſuch uſes at the time when the contingency happens, elſe they can never be executed by the ſtatute. See *Black. Com.* 2 *V.* 334. and *Reſulting uſe,* &c.

Spullers of Yarn, Are perſons that work at the *Spole* or wheel; or triers of *yarn* to ſee that it be well ſpun, and fit for the loom. 1 *Mar. c.* 7.

Spur-Royal, *(Spurareum aureum)* An ancient gold coin——*Pro hoc recognitione dedit* Johan. H. *unum* Spurarium aureum, &c. *Paroch. Antiq.* 321.

Squalley, Is a note of faultineſs in the making of cloth. 43 *Eliz. c.* 10. See *Rowey.*

Squibs, The making, ſelling, or expoſing to ſale of *Squibs,* ſerpents, and other fire-works; or throwing, caſting, or firing any *Squibs,* &c. is declared a common nuſance:

ſance: And ſuch perſons who make or ſell *Squibs*, ſhall forfeit 5 *l*. Alſo the perſons throwing them, or aſſiſting therein, incur a forfeiture of 20 *s*. leviable by a juſtice of peace's warrant; and not being paid, the offender is to be ſent to the houſe of correction for any time not exceeding a month. *Stat*. 9 & 10 *W*. 3. *c*. 7. If any perſons ſhall permit *Squibs* to be caſt or thrown from out of their houſes into the ſtreet, they ſhall forfeit 20 *s*. to be levied by diſtreſs and ſale of goods, *&c.*

Notwithſtanding the ſtatute, if any perſon receives an injury by throwing of *Squibs*, the perſon injured may maintain an action at law, for recovery of damages.

Stabbing Of perſons is made felony without benefit of clergy, and puniſhed as murder, by *ſtat*. 1 *Jac*. 1. *cap*. 8. See *Homicide*, *Manſlaughter*. And *Black. Com.* 4 *V*. 193.

Stabilia, A writ called by that name, on a cuſtom in *Normandy*, that where a man in power claimed lands in the poſſeſſion of an inferior, he petitioned the Prince that it might be put into his hands 'till the right was decided; whereupon he had this writ, *Breve de Stabilia:* To this a charter of King *Hen*. 1. alludes in *Pryn's Lib. Angl. tom*. 1. *pag*. 1204.

Stabilitio venationis, The driving deer to a *ſtand*. *Omnes burgenſes de* B. *debent invenire unum hominem ter per annum ad* ſtabilamentum *pro* venatione *capienda*, *&c. Lib. niger Heref*. And, *In* venatione *ſi quis ad* ſtabilitatem *non venit*, *i. e.* He who doth not come to the place where he ought to ſtand. *Leg. H*. 1. *c*. 17.

Stable-ſtand, (*Stabilis ſtatio, vel ſtans in ſtabulo*) Is where a man is found at his *ſtanding* in the foreſt, with a croſs or long bow bent, ready to ſhoot at any deer; or ſtanding cloſe by a tree, with greyhounds in a leaſh, ready to ſlip: And it is one of the four evidences or preſumptions, whereby a perſon is convicted of intending to ſteal the King's deer in the foreſt: the other three are *dog-draw*, *back-bear*, and *bloody-hand*. Manwood, par. 2. cap. 18.

Stack, A quantity of wood three feet long, as many feet broad, and twelve feet high. *Merch. Dict.*

Stadium, Is accounted a furlong of land; which is the eighth part of a mile. *Domeſday*.

Staff-herding, Is the following of cattle within a foreſt; And where perſons claim common in any foreſt, it muſt be inquired by the miniſters whether they uſe *ſtaff-herding*, for it is not allowable of common right; becauſe by that means the deer, which would otherwiſe come and feed with the cattle, are frighted away, and the keeper or follower will drive the cattle into the beſt grounds, ſo that the deer ſhall only have their leavings: Therefore if any man who hath right of common, under colour thereof uſe *ſtaff-herding*, it is a cauſe of ſeizing his common till he pay a fine for the abuſe. 1 *Jon. Rep.* 282.

Stage-Coaches. See *Coaches*.

Stage-plays. See *Plays*. And *Black. Com.* 4 *V*. 168.

Stagiarius, Signifies a reſident; as J. B. *Canonicus &* ſtagiarius *Sancti* Pauli, is a canon reſidentiary of St. *Paul's* church. *Hiſt. Eccl. S*. Paul. But this diſtinction was made between *reſidentiarius*, and *ſtagiarius:* Every canon inſtalled to the privileges and profits of reſidence, was *reſidentiarius*; and while he actually kept ſuch ſtated reſidence, he was *ſtagiarius*. *Statut. Eccleſ*. Paulin. *MS*. 44. *Stagiaria*, the reſidence to which he was obliged; *Stagiari*, to keep reſidence. Hence an old *ſtager*.

Stagnes, (*Stagna*) Are pools of ſtanding water. 5 *Eliz. c*. 21. A pool conſiſts of water and land; and therefore, by the name of *Stagnum*, the water and land ſhall paſs alſo. *Inſt*. 5.

Stake driven through the Body, This is part of the puniſhment of *Suicide*. See *Self murder*.

Stal-boat, Is a kind of fiſhing boat, mentioned in the 27 *Eliz. c*. 21.

Stalking, The going gently ſtep by ſtep, to take *game*; none ſhall *ſtalk* with buſh or beaſt to any deer, except in his own foreſt or park, under the penalty of 10 *l*. *Stat*. 19 *H*. 7. *c*. 11.

Stalkers, Certain fiſhing-nets, by the ſtatute 13 *R*. 2. *c*. 20.

Stallage, (*Stallagium*, from the Sax. *ſtal*. i. e. *ſtabulum ſtatio*) The liberty or right of pitching and erecting *ſtalls* in fairs or markets: or the money paid for the ſame. *Kennet's Gloſſ.*

Stallarius, Is mentioned in our hiſtorians, and ſignifies *præfectus ſtabuli*; it was the ſame officer which we now call maſter of the horſe:———Eadnothus *qui fuit* Haroldi *Regis* ſtallarius, *&c.* *Speim*. Sometimes it hath been uſed for him who hath a *ſtall* in a market. *Fleta, lib*. 4. *c*. 28.

Stamp-Duties. There are certain duties impoſed by parliament on all vellum, parchment, and paper, whereon deeds, grants, commiſſions, or any writings, or proceſs in the law are ingroſſed or written; which duties are as follow, *viz.* For all letters patent, grants of offices, preſentations, diſpenſations, admittances of fellows of the college of phyſicians, and of attornies, pardons of crimes, *&c.* 40 *s*. All conveyances inrolled, writs of covenant for levying fines, *habeas corpus's*, *&c.* Decrees in Chancery, licences of marriage, probates of wills, *&c.* 5 *s*. Warrants under the ſign manual, commiſſions out of eccleſiaſtical courts, judgments, *&c.* 2 *s*. 6 *d*. For admiſſions into any company, bills, anſwers, *&c.* in Chancery 1 *s*. All parchment and paper, upon which common deeds, bonds, writs, *&c.* are written, 6 *d*. And for every ſheet of any declaration, or pleading, *&c.* 1 *d*. Stat. 5 & 6 *W*. & *M*. *c*. 21. And by 9 & 10 *W*. 3. and 12 *Ann*.

Theſe duties are *doubled*, and *trebled:* The common *ſtamp* is treble ſixpenny, *&c.* Commiſſioners are appointed by virtue of theſe acts, to provide *ſtamps* or marks; and inferior officers for the *ſtamping* of parchment and paper, and for levying and collecting the duties; If any commiſſioner or officer, ſhall fix the mark or *ſtamp* to parchment or paper before the duty thereon is paid or ſecured, he ſhall forfeit 100 *l*. And perſons ingroſſing or writing upon any paper, *&c.* any thing for which the ſame is charged with the duty, before it ſhall be *ſtamped*, or writing upon any paper or parchment marked or *ſtamped*, for any lower duty than that which is required, ſhall incur a forfeiture of 5 *l*. and no deed or writing ſhall be good in law till the 5 *l*. is paid, and the ſame is *ſtamped*. Vide *Printing*. See 30 *Geo*. 2. *c*. 19. and 32 *Geo*. 2. *c*. 35. And *Black. Com.* 1 *V*. 323. And ſee the *Table to the Statutes*, tit. *Stamps*.

Stamps, *forging of*, Is, in many inſtances, felony without benefit of clergy. See *the ſeveral Stamp Acts*.

Stand, Is a weight from two hundred and a half to three hundred of pitch. *Merch. Dict.*

Standard, (From the Fr. *Eſtandart*, *&c.* *ſignum*, *vexillum*) In the general ſignification, is an *Enſign in War*. And it is uſed for the *ſtanding meaſure* of the King, to the ſcantling whereof all the meaſures in the land are or ought to be framed, by the clerks of markets, aulnagers, or other officers, according to *Magna Charta* and divers other ſtatutes: And it is not without good reaſon called a *ſtandard*, becauſe it ſtandeth conſtant and immoveable, having all meaſures coming towards it for their conformity; even ſoldiers in the field have their *ſtandard* or colours, for their direction in their march, *&c.* to repair to. *Britton, c*. 30. There is a *ſtandard* of *money*, directing what quantity of fine ſilver and gold, and how much allay, are to be contained in coin of old *ſterling*, *&c.* And *ſtandard* of *plate*, and ſilver manufactures. *Stat*. 6 *Geo*. 1. *c*. 11. See *Allay*.

Standardum Londini. *Vobis mandamus quod* ſtandardum Londini *de hujuſmodi menſuris diligenter aſſiſari & probari, ac alias menſuras per dictum* ſtandardum *fieri ad ſingulos comitatus regni*, *&c.* Clauſ. 14 Edw. 2.

Standardus, True *ſtandard*, or legal weight or meaſure. *Cartular S. Edmund. MS*. 268.

Standel, A young ſtore *oak-tree*, which in time may make timber; and twelve ſuch young trees are to be left ſtanding in every acre of wood, at the felling thereof, by *ſtat*. 35 *H*. 8. *c*. 17. And See 13 *Eliz*. *c*. 25. *ſect*. 18.

Standing-army, Not to be kept in time of peace, without conſent of parliament. 1 *W*. & *M*. *ſeſſ*. 2. *c*. 2.

Stanes. For maintaining the bridge of *Stanes*, and *Egham* cauſeway, a certain toll is appointed by an old ſtatute, 1 *H*. 8. *c*. 9. There is a *turnpike* now erected croſs this bridge; and tolls are taken for all coaches, carts, horſes, cattle, *&c.* going over, and lighters or veſſels paſſing under the ſaid bridge; but the inhabitants of *Stanes* are free for their horſes, *&c.* Stat. 13 *Geo.* 2. *c.* 25.

Stanlaw, A word anciently uſed for a ſtony hill. *Domeſd.*

Stannaries, (*Stannaria*, from the Lat. *ſtannum*, i. e. tin) Are the mines and works where *tin* metal is got and purified; as in *Cornwall and Devonſhire, &c.* *Camden Britt.* 199. The tinners are called *Stannary-men*; who had great liberties granted them by King *Edw.* 1. before they were abridged by the *ſtat.* 50 *Edw.* 3. by which ſtatute the privileges of the tinners are limited and expounded; and the juriſdiction of the *Stannary* courts is ſettled by the 16 *&* 17 *Car.* 1. *c.* 15. All labourers in and about the *Stannaries*, are to have the privilege of the *Stannary court* while they work there; and may not be impleaded in any other court, for any cauſe ariſing within the *Stannaries*; except for pleas of land, life or member: The juriſdiction of this court is guided by ſpecial laws and cuſtoms, and by preſcriptions; and no writ of error lieth upon a judgment in the *Stannary court*, but it ſhall be reverſed, where wrong, by appeal to the ſteward of the court where the matter lieth; or from the ſteward to the deputy-warden of the *Stannaries*; from the under-warden to the lord-warden of the *Stannaries*; and from him to the King's privy-council. 4 *Inſt.* 230, 232. *Plowd.* 327. 12 *Rep.* 9. 1 *Roll. Abr.* 745.

Tranſitory actions between tinner and tinner, *&c.* though not concerning the *Stannaries*, or ariſing therein, if the defendant be found within the *Stannaries*, may be brought into theſe courts, or at Common law; but if one party alone is a tinner, ſuch tranſitory actions which concern not the *Stannaries*, nor ariſe therein, cannot be brought in the *Stannary-courts*. 4 Inſt 231. Labourers in the *Stannaries* may recover their wages before juſtices of peace. 27 *Geo.* 2. *c.* 6. See *Black. Com.* 3 *V.* 80.

Stannarius, A pewterer or dealer in tin; of or belonging to tin. *Lit. Dict.*

Staple, (*Stapulum*) Comes from the Fr. *eſtape*, i. e. *forum vinarium*, a market or ſtaple for wines, which are the principal commodity of *France*; or rather from the Germ. *ſtapulen*, which ſignifieth to gather, or heap any thing together: In an old *French* book it is written *à* Calais Eſtape *de la Laine, &c. i. e.* The *ſtaple* for wool: And with us, it hath been a *public mart* appointed by law to be kept at the following places, *viz. Weſtminſter*, *York*, *Lincoln*, *Newcaſtle*, *Norwich*, *Canterbury*, *Chicheſter*, *Wincheſter*, *Exeter* and *Briſtol*, *&c.* A *Staple court* was held at the *Wool Staple* in *Weſtminſter*, the bounds whereof began at *Temple-Bar* and reached to *Tuthill*; in other cities and towns, the bounds are within the walls; and where there are no walls, they extend through all the towns; and the court of the mayor of the *Staple* is governed by the law merchant in a ſummary way, which is the *Law of the Staple*. 4 *Inſt.* 235. See *ſtat.* 27 *Ed.* 3. *ſt.* 2. The *Staple goods of England* are wool, woolfels, leather, lead, tin, cloth, butter, cheeſe, *&c.* as appears by the ſtatute 14 *R.* 2. *c.* 1. Though ſome allow only the five firſt; and yet of late *Staple goods* are generally underſtood to be ſuch as are vendible, of any kind, and not ſubject to periſh. Vide *Statute Staple*. And *Black. Com.* 1 *V.* 314.

Star, (*Starrum*, a contraction from the Hebr. *ſhetar*, a deed or contract) All the deeds, obligations, *&c.* of the *Jews*, were anciently called *ſtars*, and written for the moſt part in *Hebrew* alone, or in *Hebrew* and *Latin*; one of which yet remains in the treaſury of the *Exchequer*, written in *Hebrew*, without points, the ſubſtance whereof is expreſſed in *Latin* juſt under it, like an *Engliſh* condition under a *Latin* obligation: This bears date in the reign of King *John*; and many *ſtars*, as well of grant and releaſe, as obligatory, and by way of mortgage, are pleaded and recited at large in the plea-rolls. *Paſch.* 9 *Edw.* 1. See *Black. Com.* 2 *V.* 343. 4 *V.* 262.

Star and Bent, Penalty on cutting *ſtar* and *bent* on ſand-hills. 15 *Geo.* 2. *c.* 33. *ſect.* 6.

Star-Chamber, (*Camera ſtallata*, otherwiſe called *Chamber des eſtoylles*,) Was a *chamber at Weſtminſter* ſo called (as Sir *Thomas Smith*, *de Rep. Anglor*, *lib.* 2. *c.* 4. conjectures,) becauſe at firſt the cieling thereof was adorned with images of gilded *Stars*. And in the 25 *Hen.* 8. *cap.* 1. it is written the *ſtarred chamber*. *Henry* the Seventh, and *Henry* the Eighth, ordained by the ſtatutes, *viz.* 3 *Hen.* 7. *cap.* 1. and 21 *Hen.* 8. *cap.* 2. That the Chancellor, aſſiſted by others there named, ſhould have power to puniſh *routs*, *riots*, *forgeries*, *maintenances*, *embraceries*, *perjuries*, and other ſuch *miſdemeanors* as were not ſufficiently provided for by the Common law, and for which the inferior judges were not ſo proper to give correction: And becauſe that place was before ſet apart to the like ſervice, it was ſtill uſed accordingly. Touching the officers belonging to this court, ſee *Camd. p.* 112, 113.

But by the ſtatute 16 *Car.* 1. *c.* 10. This court, commonly called the *Star-chamber*, and all juriſdiction, power, and authority thereto belonging, are aboliſhed. *Cowell.*

Molloy and *Blackſtone* ſeem to think it was called the *Star-chamber*, becauſe the recognizances which the *Jews* formerly entered into, to the crown, and which were called *Stars*, were kept in that chamber. See *Black. Com.* 1 *V.* 230. 4 *V* 263, 422, 426, 430.

Starch and **Starch Powder.** By a late act *ſtarch-makers* are to make uſe of ſquare or oblong boxes only, for boxing and draining green *ſtarch*, before it is dried in the ſtove, under the penalty of 10 *l.* and ſhall give notice to the officers for the duties, when they box and dry their *ſtarch*; and not remove the *ſtarch* made before it is weighed, and an account taken thereof, on pain of forfeiting 50 *l.* Officers may ſearch for *ſtarch* concealed, by virtue of a juſtice's warrant, and ſeize the ſame, *&c.* A penalty is likewiſe inflicted on makers of hair-powder, perfumers, peruke-makers, barbers, *&c.* mixing any powder of alabaſter, chalk, lime, *&c.* with *ſtarch powder*, or making hair-powder of any other materials than powder of *ſtarch*. And makers of powder for hair, are to make entries of their workhouſes at the office of *Exciſe*; and any officer may enter warehouſes and ſhops, and examine the powder, which being mixed ſhall be forfeited, and the ſum of 20 *l.* *Stat.* 4 *Geo.* 2. *c.* 14.

Stated damages. A court of equity cannot, any more than a court of law, relieve againſt a penalty, in the nature of *ſtated damages*; as a rent of 5 *l.* an acre for ploughing up ancient meadow: Nor againſt a lapſe of time, where the time is material to the contract; as in covenants for renewal of leaſes. Both courts will equitably *conſtrue*, but neither pretends to *controul* or *change*, a lawful ſtipulation or engagement. 2 *Atk.* 239. *Black. Com.* 3 *V.* 435.

Staticks, (*Statice, ſcientia ponderum*) Knowledge of weights and meaſures; or the art of balancing or weighing in ſcales. *Merch. Dict.*

Stationarius, (From *Statio*, reſidence) Is the ſame with *Stagiarius*. Or, a canon reſidentiary in a cathedral church. See *Stagiarius*.

Statuarium, A tomb adorned with ſtatutes.—*Ac ejus ſacro corpore terræ illic inter multa alia Romana* ſtatuaria *commendato*, &c. Ingulph. 853.

Status de Manerio, The ſtate of a manor: All the tenants within the manor met in the court of their lord, to do their cuſtomary ſuit, and enjoy their right and uſages; which was termed *omnis* ſtatus de manerio. *Paroch. Antiq.* 456.

Statute, (*Statutum*) Has divers ſignifications: *Firſt*, It ſignifies an act of parliament made by the King, Lords and Commons; and *Secondly*, it is a ſhort writing called a *Statute Merchant*, or *Statute Staple*, which are in the nature of bonds, *&c.* and called *Statutes*, as they are made according to the form expreſly provided in certain *ſtatutes*. 5 *H.* 4. *c.* 12.

To *ſtatutes* enacted in parliament, there muſt be the aſſent of the King, Lords, and Commons, without which there can be no good act of parliament; but there are many acts in force, though theſe three aſſents are not mentioned therein, as *Dominus Rex* ſtatuit *in parliamento*, and *Dominus Rex in parliamento ſuo* ſtatuta *edit*, and *de communi concilio* ſtatuit, *&c.* *Plowd.* 79. 2 *Bulſt* 186. And Sir *Edw. Coke* ſays, that ſeveral *ſtatutes* are penned like charters in the King's name only; though they were made by lawful authority. 4 *Inſt.* 25. Before the invention of printing, all ſtatutes were proclaimed by the ſheriff in every county, by virtue of the King's writ. 2 *Inſt.* 526, 644.

Some *ſtatutes* are *general*, and ſome are *ſpecial*: And they are called general from the *genus*, and ſpecial from the *ſpecies*; as for inſtance: the whole body of the ſpirituality is the genus, but a biſhop, dean, and chapter, *&c.* is the ſpecies: Therefore *ſtatutes* which concern all the clergy, are general laws; but thoſe which concern biſhops only are ſpecial. 4 *Rep.* 76. The *ſtatute* 21 *H.* 8. *c.* 13. which makes the acceptance of a ſecond living by clergymen, an avoidance of the firſt, is a general law, becauſe it concerns all ſpiritual perſons.

All *ſtatutes* concerning myſteries and trades in general, are general or public acts; though an act which relates to one particular trade is a private *ſtatute*. Dyer 75. A *ſtatute* which concerns the King is a public act; and yet the *ſtat.* 23 *Hen.* 8. concerning ſheriffs, *&c.* is a private act. *Plowd.* 38. *Dyer* 119. It is a rule in law, that the courts at *Weſtminſter* ought to take notice of a general *ſtatute*, without pleading it: but they are not bound to take notice of particular or private *ſtatutes* unleſs they are pleaded. 1 *Inſt.* 98.

Statutes againſt the power of ſubſequent parliaments are not binding; notwithſtanding the *ſtatute* 42 *Ed.* 3. *c.* 3. declares that any *ſtatute* made againſt *Magna Charta* ſhall be void: And this is evident, ſeeing many parts of *Magna Charta* have been repealed and altered by ſubſequent acts. *Read. on Stat. Vol.* 4. *p.* 340. And the law has been miſtaken in this point; for the *ſtatutes* which intervene between the 9 *Hen.* 3. and 42 *E.* 3. are not repealed, though they vary from, and are contrary to *Magna Charta.* Jenk. Cent. 2. *Statutes* continue in force although the records of them are deſtroyed, by the injury of time, *&c.* But if a *ſtatute* is againſt reaſon, or impoſſible to be performed, it is void. 4 *Rep.* 76. 2 *Inſt.* 587.

Old *ſtatutes* muſt give place to new, where they are contrary; but when there is a ſeeming variance between two *ſtatutes*, and no clauſe of *non obſtante* in the latter, ſuch conſtruction ſhall be made that both may ſtand. 11 *Rep.* 56. *Dyer* 347. By repealing of a repealing *ſtatute*, the firſt *ſtatute* is revived: And where one ſtatute is repealed by another, the acts done in the mean time are valid. 4 *Vol. Read. Stat. Jenk. Cent.* 233.

Statutes conſiſt of two parts, the words, and the ſenſe; and it is the office of an expoſitor, to put ſuch a ſenſe upon the words of the ſtatute, as is agreeable to equity and right reaſon: Equity muſt neceſſarily take place in the expoſition of ſtatutes; but *explanatory acts* are to be conſtrued according to the *words*, and not by any manner of intendment; for it is incongruous for an explanation to be explained. *Plowd.* 363, 465. *Cro. Car.* 23.

The *preamble* of a ſtatute, which is the beginning thereof, going before, is, as it were, a key to the knowledge of it, and to open the intent of the makers of the act; it ſhall be deemed true, and therefore good arguments may be drawn from the ſame. 1 *Inſt.* 11. It is the moſt natural and genuine expoſition of a ſtatute, to conſtrue one part by another part of the ſame ſtatute, for that beſt expreſſes the meaning of the makers: The words of an act of parliament are to be taken in a lawful and rightful ſenſe, and the conſtruction of ſtatutes in general muſt be made *in ſuppreſſion of the miſchief*, and *for the advancement of the remedy*, intended by the ſtatute; but ſo that no innocent perſon by a *literal* conſtruction ſhall receive any damage. 1 *Inſt.* 24, 381.

The beſt way to expound a ſtatute, is to conſider what anſwer the law-givers would probably have given to the queſtion made, if propoſed to them. *Plowd.* 465. 3 *Nelſ. Abr.* 245.

In the uſual expoſition of ſtatutes, theſe things are to be obſerved, *viz.* 1. What was the Common law before the making of the ſtatute? 2. The miſchief and defect which the Common law did not provide againſt. 3. What remedy the ſtatute hath appointed to cure this miſchief. 4. The true reaſon of the remedy. 3 *Rep.* 5.

Where a ſtatute gives a remedy for any thing, it ſhall be preſumed there was no remedy before at Common law: And the rules to conſtrue acts of parliament, are different from the ſtrict rules of the Common law; Though, in the conſtruction of a ſtatute, the reaſon of the Common law gives great light. *Raym.* 191, 355. 2 *Inſt.* 301. If an act of parliament is dubious, long uſage may be good to expound it by; and the meaning of things ſpoken and written, muſt be as hath been conſtantly received; but where uſage is againſt the obvious meaning of a ſtatute, by the vulgar and common acceptation of words, then it is rather an oppreſſion than an expoſition of the ſtatute. *Vaugh.* 169, 170.

A ſtatute which alters the Common law, ſhall not be ſtrained beyond the words, except in caſes of public utility, when the end and deſign of the act appears to be larger than the words themſelves. *Ibid.* 179. Relative words in any ſtatute, may make a thing paſs as well as if particularly expreſſed: And caſes of the ſame nature ſhall be within the ſame remedy. *Raym.* 54.

Such *ſtatutes* as are beneficial to the people, ſhall be expounded largely, and not with reſtriction. *Style* 302. The expoſition of *ſtatutes* concerning the eccleſiaſtical courts, belongs to the common law courts: And a *ſtatute* made in imitation of the common law, is to be expounded by it. *Hob.* 83, 97. An affirmative act, does not repeal a precedent affirmative *ſtatute*. The affirmative words of *ſtatutes* do not change the common law, without negative words added therein And the *ſtatute* of wills, being in the affirmative, doth not take away the cuſtom to deviſe land in places where it is. *Jenk. Cent.* 212. *Dyer* 155. 1 *Inſt.* 111. If a *ſtatute* be made only in affirmance of the ancient common law, and doth not enact any thing new, but what was before provided for; it is nevertheleſs a *ſtatute*, and may be pleaded: But the defendant hath a plea at common law. *Style's Reg.* 301. An act of parliament in affirmance of the common law, extends to all times after, though it mentions only to give remedy for the preſent; and where a thing is granted by *ſtatute*, all neceſſary incidents are granted with it. 1 *Inſt.* 235.

Wherever a *ſtatute* gives or provides a thing, the common law ſupplies all manner of requiſites. *Hard.* 62. Every *ſtatute* made againſt an injury, gives a remedy by action, expreſly or implicitly. 2 *Inſt.* 55, 74. And beſides an action upon the *ſtatute*, as the ſubjects private remedy; the offender may be puniſhed for contempt at the King's ſuit, by fine, *&c.* 2 *Co. Inſt.* 131, 163. Things for neceſſity ſake, or to prevent failure of juſtice, are excepted out of *ſtatutes*. Ibid. 118.

Statutes made for the public good are to be expounded, ſo as to attain their end. 1 *Strange* 253, 258. *Keble*'s *Statutes* and *Raſtal*'s differed, and they who were for adhering to *Keble* proved they had examined him with the parliament roll. The chief juſtice ruled it was enough, and *Keble* was read. 1 *Strange* 446. Where an act of parliament only gives a remedy to the party grieved, it ſhall not be conſidered as a penal ſtatute. *Wilſon, par.* 1, *fol.* 412. How *ſtatutes* are to be recited, and indictments drawn on them, ſee *Indictment*. And 4 *New Abr.* & 19 *Vin. Abr.* tit. *Statutes*. Alſo vide *Black. Com.* 1 *V.* 85.

Statute of Agreement between the King, Lords, and Commons in parliament. 51 *H.* 3. *Statutes of Limitation* of actions, and of *Jeofails, &c.* Vide the *Heads.*

Statute Merchant. A *Statute Merchant* is a bond of record, acknowledged before the *Clerk of the Statutes Merchant*, and lord mayor of the city of *London*, or two merchants aſſigned for that purpoſe; and before the mayors of other cities and towns, or the bailiff of any borough, *&c.* ſealed with the ſeal of the debtor and the king, upon condition that, if the obligor pays not the debt at the day, execution may be awarded againſt his body, lands, and goods, and the obligee ſhall hold the lands to him, his heirs and aſſigns, till the debt is levied. *Terms de Ley.* The Statute of *Acton Burnel*, 11 *Ed.* 1. And *Stat. de Mercatoribus*, 13 *Ed.* 1. *ſtat.* 3. enact that the merchant ſhall cauſe his debtor to appear before the Mayor of the city of *London*, or other city or town, and there acknowledge the debt, *&c.* by *recogniſance*, which is to be inrolled, the roll whereof muſt be double, one part to remain with the mayor, and the other with the clerk appointed by the King; and then one of the clerks is to write the obligation, which ſhall be ſealed with the debtor's ſeal and that of the King, *&c.*

If the debt be not paid at the day upon the merchant's account, the mayor is to cauſe the debtor to be impriſoned, if to be found, and in priſon to remain until he hath agreed the debt; and if the debtor cannot be found, the mayor ſhall ſend the recogniſance into the *Chancery*, from whence a writ ſhall iſſue to the ſheriff of the county where the debtor is, to arreſt his body, and keep him in priſon till he agree the debt; and within a quarter of a year, his lands and goods ſhall be delivered to him to pay the debt; but if the debtor do not ſatisfy the debt within that time, all his lands and goods ſhall be delivered to the merchant by a reaſonable *extent*, to hold until the debt is levied thereby; and in the mean time he ſhall remain in priſon; but when the debt is ſatisfied, the body of the debtor is to be delivered, together with his lands. If the ſheriff return a *non eſt inventus*, *&c.* the merchant may have writs to all the ſheriffs where he hath any land; and they ſhall deliver all the goods and lands of the debtor by extent, and the merchant ſhall be allowed his damage, and all reaſonable coſts, *&c.*

All the lands in the hands of the debtor, at the time of the recogniſance, acknowledged, are chargeable; though, after the debt is paid, they ſhall return to grantees, if they are granted away, as ſhall the reſt to the debtor: the debtor or his ſureties dying, the merchant ſhall not take the body of the heir, *&c.* but ſhall have his lands until the debt is levied. If the debtor have ſureties they ſhall be proceeded againſt in like manner as the debtor; but ſo long as the debt may be levied of the goods of the debtor, the ſureties are to be without damage. Alſo the merchant ſhall, beſides the payment of his debt, be ſatisfied for his ſtay, and detainer from his buſineſs. In *London*, out of the commonalty, two merchants are to be choſen and ſworn by this ſtatute; and the ſeal ſhall be opened before them, whereof one piece is to be delivered to the ſaid merchants, and the other remain with the clerk; and before theſe merchants, *&c.* *recogniſances* may be taken; a fee of 1 *d. per* pound is allowed to the clerk for fixing the King's ſeal; and a ſeal is to be provided that ſhall ſerve for fairs, *&c.* but the ſtatute extends not to *Jews*. Stat. ibid. Cro. Car. 440, 457.

Statutes Merchant were contrived for the ſecurity of merchants only, to provide a ſpeedy remedy to recover their debts; but at this day they are uſed by others who follow not merchandize, and become one of the common aſſurances of the kingdom. *Bridg.* 21. *Owen* 82. And all obligations made to the King, are of the nature of theſe *Statutes Merchant.* 12 Rep. 2, 3.

The form of a *Statute Merchant* bond, according to *Fleta*, is as follows, *viz.*——*Noverint univerſi per præſentes me* A. B. *de, &c. Teneri* C. D. *in centum libr. ſolvend. eidem* C: D. *ad feſtum. &c. Anno Regni, Regis, &c. Et niſi fecero, concedo quod currant ſuper me & hæredes meos diſtrictio & pœna proviſa in* Statuto *Domini Regis edit. apud* Weſtm. *Datum* London, *tali die, &c.* See 3 *Shep. Abr.* 318. 2 *New Abr.* 331. *Cro. Eliz.* 233, 319. & *Black. Com.* 2 *V.* 160. 4 *V.* 419. And vide *Recognizance.*

Statute Staple, Is a bond of record, acknowledged before the mayor of the ſtaple, in the preſence of all or one of the conſtables; to this end, ſays the ſtatute, there ſhall be a ſeal ordained, which ſhall be affixed to all obligations made on ſuch recognizance acknowledged in the ſtaple; this ſeal of the ſtaple is the only ſeal the ſtatute requires to atteſt this contract; but it is no more under the power or diſpoſal of the mayor, than that appointed by the *Statute Merchant*; for though the ſtatute appoints him the cuſtody of it, yet it is in ſuch a manner, that he cannot affix it to any obligation without their conſent, it being to remain in the mayor's hands, under the ſecurity of their own ſeals. 2 *Rol. Abr.* 466. *Stat.* 27 *Ed.* 3. *c.* 9.

To underſtand a little of the original and conſtitution of the ſtaple, and the advantage the nation had by this eſtabliſhment, we muſt obſerve, that the place of reſidence, whither the merchants reſorted with their ſtaple commodities, was anciently called *Eſtaple*, which ſignifies no more than mart or market; and this was formerly appointed out of the realm, as at *Calais*, *Antwerp*, *&c.* and other ports on the continent, which were neareſt to us, and whither the merchants might with ſafety coaſt it. 4 *Inſt.* 238.

But beſides theſe ſtaple ports appointed abroad, there were others appointed at home, whither all the ſtaple commodities were carried in order to their exportation, ſuch as *London*, *Weſtminſter*, *Hull*, *&c.* this was found to be of great uſe and conſequence to the prince in particular, and to the intereſt and credit of the nation in general; for at theſe ſtaple ports were the King's cuſtoms eaſily collected, and were by the officers of the ſtaple, at two ſeveral payments, returned into the Exchequer; beſides, at theſe ſtaples, all merchants goods were carefully viewed and marked by the proper officers of the ſtaple; and this neceſſarily avoided the exportation of decayed goods, or ill wrought manufactures, and conſequently fixed a ſtamp of credit on the merchandizes exported, which, upon the view, always anſwered the expectation of the buyer. *Maline's Lex Merc.* 337—338. See the 27 *Ed. cap.* 1.

The ſtaple merchandizes, according to Lord *Coke*, are only wool, woolfells, leather, lead and tin; others butter, cheeſe and cloths; but, whatever they were, the mayor and conſtables had not only conuſance of all contracts and debts relating to them, but they had likewiſe juriſdiction over the people, and all manner of things touching the ſtaple; this power was given them, leſt the merchants ſhould be diverted and drawn from their buſineſs and trade, by applying to the Common law, and running through the tedious forms of it, for a determination of their differences, and for the greater encouragement of merchants, that they might have all imaginable ſecurity in their contracts and dealings, and the moſt expeditious method of recovering their debts, without going out of the bounds of the ſtaple. 4 *Inſt.* 238. *Maline's Lex Mer.* 337. 27 *Ed.* 3. *c.* 8.

By this it appears, that this ſecurity was only deſigned for the merchants of the ſtaple, and for debts only on the ſale of merchandizes brought thither; yet in time others began to apply it to their own ends, and the mayor and conſtable would take recognizances from ſtrangers, ſurmiſing it was made for the payment of money for merchandizes brought to the ſtaple; to prevent this miſchief, the parliament in 23 *H.* 8. reduced the ſtatute ſtaple to its former channel, and laid a penalty of 40 *l.* on the mayor and conſtables who ſhould extend the benefit of the ſtatute to any but thoſe of the ſtaple; but though the ſtatute of 23 *H.* 8. *c.* 6. deprived them of this benefit; yet it framed a new ſort of ſecurity, to be uſed *ad libitum* by all men, known by the name of a recognizance on 23 *H.* 8. or a recognizance in the nature of a ſtatute ſtaple, ſo called, becauſe this act limits and appoints the ſame proceſs, execution and advantage in every particular, as is ſet down in the ſtatute ſtaple. *Co. Lit.* 290.

A recogniſance therefore *in nature of a ſtatute ſtaple*, as the words of the act declare, is the ſame with the former, only acknowledged under other perſons; for, as the ſtatute runs, the chief juſtices of the King's bench and Common pleas, or in their abſence, out of term, the mayor of the ſtaple at *Weſtminſter*, and the recorder of *London* jointly together, ſhall have power to take recognizances for payment of debt in the form ſet down in the ſtatute; in this, as in the former caſes, the King appoints a ſeal to atteſt the contract. *Co. Lit.* 290. *a.* 4 *Inſt.* 238. 2 *Rol. Abr.* 466. *Co. Ent.* 12.

Debt lies as well upon a *Statute Staple* as upon a bond: And a ſtatute acknowledged on lands, is a preſent duty, and ought to be ſatisfied before an obligation; a debt due on an obligation being but a *choſe in action*, and recoverable by law, and not a preſent duty by law, as a debt upon a ſtatute, judgment, or recognizance is, upon which preſent execution is to be taken without farther ſuit. *Cro. Eliz.* 355, 461, 494. 2 *Lil. Abr.* 536.

But a judgment in a court of record, ſhall be preferred *in caſe of execution before a Statute:* Though if one acknowledge a *ſtatute*, and *afterwards* confeſs judgment;

if the land be extended thereon, the cogniſee ſhall have a *Scire facias* to avoid the extent upon the judgment. 6 *Rep.* 45. 1 *Brownl.* 37. It is otherwiſe as to goods, for there he that comes firſt, ſhall be firſt ſerved. *Ibid.* The cogniſor of a *ſtatute* grants his eſtate to the cogniſee; by this the execution of the *ſtatute* will be ſuſpended. 2 *Cro.* 424. But if the cogniſee, before execution of a *ſtatute*, releaſe to the cogniſor all his right to the land; it will not be a diſcharge of the whole execution: For, notwithſtanding, he may ſue execution of his body and goods. 3 *Shep. Abr.* 326. Upon a *ſtatute ſtaple*, a *Capias* and extent of lands, goods, and chattels are contained in one writ; but it is not ſo on a *Statute Merchant.* Jenk. Cent. 163. In Chancery the proceedings on a *Statute Staple*, are in the petty bag office; and *Statutes Staple* are ſuable in the King's Bench or Common pleas, as well as in Chancery. *Cro. Eliz.* 208. On a ſtatute's being ſatisfied, it is to be *vacated* by entering ſatisfaction, *&c.* *Statute Staple* and *Statutes Merchant* are to be entered within ſix months, or ſhall not be good againſt purchaſers. 27 *Eliz. c.* 4. See the *ſtat.* 16 & 17 *Car.* 2. for preventing delays in extending *ſtatutes.* Vide *Recognizance.*

Statutes Merchant and Staple, Tenants thereby. He that is in poſſeſſion of lands on a *ſtatute merchant*, or *ſtaple*, is called *tenant* by *ſtatute merchant*, or *ſtatute ſtaple*, during the time of his poſſeſſion: And creditors ſhall have freehold in the lands of debtors, and recovery by *novel diſſeiſin*, if put out; but if tenant by *ſtatute merchant*, or *ſtatute ſtaple*, hold over his term, he that hath right may ſue out a *venire facias ad computand'*, or enter, as upon an *elegit.* 27 Ed. 3, &c

As to recognizance in nature of a *ſtatute ſtaple*, ſee *ſtat.* 23 *H.* 8. *c.* 6. *Black. Com.* 2 *V.* 160, 342. 4 *V.* 424. & tit. *Recognizance.*

Statutes of a Corporation. An incident to a Corporation as ſoon as it is duly erected, and which is annexed of courſe, is, to make by-laws, or private ſtatutes for the better government of the Corporation; which are binding upon themſelves, unleſs contrary to the laws of the land, and then they are void. This is included by law in the very act of incorporation. *Black. Com.* 1 *V.* 475.

Statuto Mercatorio, The writ for impriſoning him that hath forfeited a *ſtatute merchant* bond until the debt is ſatisfied: And of theſe writs, there is one againſt lay-perſons, and another againſt perſons eccleſiaſtical. *Reg. Orig.* 146, 148.

Statuto Stapulæ, Is a writ that lies to take the body to priſon, and ſeiſe upon the lands and goods of one who hath forfeited the bond called *ſtatute ſtaple.* Reg. Orig. 151.

Statutum de Laborariis, An ancient writ for the apprehending of ſuch *labourers* as refuſed to work according to ſtatute. *Reg. Judic.* 27.

Statutum Seſſionem, The *ſtatute ſeſſions,* A meeting in every hundred of conſtables and houſholders, by cuſtom, for the ordering of ſervants, and debating of differences between the maſters and ſervants, rating of ſervants wages, *&c.* 5 *Eliz. cap.* 4.

Staurum, Any ſtore or ſtanding ſtock of cattle, proviſion, *&c.* *Mat. Weſtm. Anno* 1259.

Stealing, Is the fraudulent taking away of another man's goods, with an intent to ſteal them, againſt, or without the will of him whoſe goods they are. The Civil law, judges upon theft to be ſatisfied by the recompence of four-fold; and privy theft, by the recompence of double; but the law of *England* adjudges both thoſe offences to be death, if the value of the thing ſtolen be above twelve-pence. *Cowell.* See **Larceny.**

Stealing an Heireſs. This is the forcible abduction and marriage of an Heireſs. It is made felony in the principal and his acceſſaries by 3 *H.* 7. *c.* 2. and by 39 *Eliz. c.* 9. The benefit of clergy is taken away from all ſuch felons, except acceſſaries *after* the offence.

Steel. See **Iron.**

Steorſman, The ſame with the *ſtiremannus*, or *ſturemannus.*

Stephens *(Joanna)* 5000 *l.* reward granted to her for the diſcoveryof her medicines for diſſolving the ſtone, 12 *Geo.* 2. *cap.* 23.

Stepney. The rector of every church and chapel, converted into a parochial church in the pariſh of *Stepney*, to be nominated by *Brazen-noſe* college, 12 *Ann. ſtat.* 1. *cap.* 17.

Sterling, *(Sterlingum)* Was the epithet for ſilver money current within this kingdom, and took its name from this; that there was a pure coin ſtamped firſt in *England* by the *Eaſterlings*, or merchants of *Eaſt Germany*, by the command of King *John*; and *Hoveden* writes it *Eſterling.* Inſtead of the *pound ſterling*, we now ſay ſo many *pounds* of *lawful Engliſh money*; but the word is not wholly diſuſed, for though we ordinarily ſay lawful money of *England*, yet in the *mint* they call it *ſterling money*; and when it was found convenient, in the fabrication of monies, to have a certain quantity of baſer metal to be mixed with the pure gold and ſilver, the word *ſterling* was then introduced; and it has ever ſince been uſed to denote the certain proportion or degree of fineneſs, which ought to be retained in the reſpective coins. *Lownds's Eſſay upon coins* 14.

Steward, *(Seneſcallus*, compounded of the Sax. *Steda*, i. e. Room, or *Stead*, and *Weard*, a ward or keeper) Is as much as to ſay a man appointed in my place or *ſtead*, and hath many applications, but always denotes an officer of chief account within his juriſdiction. The greateſt of theſe officers is, *The Lord High Steward of England*, who anciently had the ſuperviſing and regulating, next under the King, the adminiſtration of juſtice, and all other affairs of the realm, whether civil or military; and the office was hereditary, belonging to the Earls of *Leiceſter*, till forfeited to King *Hen.* 3. But the power of this officer being very great, of late the office of High *Steward of England* hath not been granted to any one, only *pro hac vice*, either for the trial of a peer of the realm on an indictment for a capital offence; or for the determination of the pretenſions of thoſe who claim to hold by grand ſerjeanty, to do certain honourable ſervices to the King at his coronation, *&c.* for both which purpoſes he holds a court, and proceeds according to the laws and cuſtoms of *England*; and he to whom this office is granted muſt be of nobility and a Lord of parliament. 4 *Inſt.* 58, 59. *Crompt. Juriſd.* 84. 13 *Hen.* 8. 11. 2 *Hawk. P. C.* 5. Of the nine great officers of the crown, the Lord High *Steward* is the firſt; but when the ſpecial buſineſs, for which he is appointed, is once ended, his commiſſion expires. The firſt Lord High *Steward*, that was created for the ſolemnizing of a Coronation, was *Thomas* ſecond ſon of *Hen.* 4th; and the firſt Lord *Steward*, for the trial of a peer, was *Edward Earl of Devon*, on the arraignment of *John Holderneſs* Earl of *Huntingdon* in the ſame reign. *Lex Conſtitution.* 170.

There is a *Lord Steward of the Houſhold*, mentioned *Stat.* 24 *Hen.* 8. *cap.* 13. whoſe name was changed to that of *Great Maſter of the Houſhold*, Anno 32 Hen. 8. But this ſtatute was repealed by 1 *Mar. cap.* 4. and the office of Lord *Steward* of the houſhold revived. He is is the chief officer of the King's court, to whom is committed the care of the King's houſe; he has authority over all officers and ſervants of the houſhold, except thoſe belonging to the chapel, chamber, and ſtable; and the palace royal is exempted from all juriſdiction of any court, but only of the Lord Steward, or, in his abſence, of the treaſurer and comptroller of the houſhold, with the *Steward* of the Marſhalſea, who by virtue of their offices, without any commiſſion, hear and determine all treaſons, murders, felonies, breaches of the peace, *&c.* committed in the King's palace: Beſides the Treaſurer and Comptroller, The Lord *Steward* hath under him a Cofferer, ſeveral Clerks of the *Green Cloth*, &c. He attends the King's perſon at the beginning of parliaments; and is a white ſtaff officer, which he breaks over the hearſe on the death of the King, and thereby diſcharges all officers under him: Of this officer's ancient power, read *Fleta, lib.* 2. and *F. N. B.* 241. In the liberty of *Weſtminſter*, an officer is choſen and appointed, called

High Steward and there is a *Deputy Steward of Weſtminſter*; and the word *Steward* is of ſo great diverſity, that in moſt *corporations*, and all *houſes of honour*, an officer is found of this name and authority. *Stewards of Manors*, ſee *Copyhold*. See *Black. Com.* 4 *V.* 258, 260. As to the Lord High *Steward*, and as to *Steward* of the Houſhold, *Id.* 3 *V.* 76. 4 *V.* 273.

Stewards of Courts, See, **Copyhold**, **Manor**, **Leet**.

Stews, (from the Fr. *Eſtuves*, i. e. *Thermæ Balneum*) Are thoſe places which were permitted in *England* to women of profeſſed incontinency, and that for hire would proſtitute their bodies to all comers; ſo called, becauſe diſſolute perſons are wont to prepare themſelves for venereous acts by *bathing*; and hot *baths* were by *Homer* reckoned among the effeminate ſort of pleaſures. Theſe *ſtews* were ſuppreſſed by King *Henry* 8. about the year 1546.

Stica, A braſs *Saxon* coin, of the value of half a farthing, four of them making a *helſing*.

Stick of Eels, A quantity or meaſure of twenty-five. A *bind* of eels contains ten *ſticks*, and each ſtick twenty-five eels. *Stat. of Weights and meaſures.*

Stickler, An inferior officer who cuts wood within the King's parks of *Clarendon*. Rot. Parl. 1 H. 6.

Stilyard, **Steelyard**, Otherwiſe called the *Style-houſe*, in the pariſh of *Allhallows* in *London*, was by authority of parliament aſſigned to the merchants of the *Hanſe* and *Almaine* or *Eaſterling* merchants, to have their abode in for ever, with other tenements, rendering to the Mayor of *London* a certain yearly rent. Stat. 14 *Ed.* 4. In ſome records it is called *Gildhalda Teutonicorum*; and it was at firſt denominated *ſtilyard*, of a broad place or court where *ſteel* was ſold, upon which that houſe was founded. See 19 *H.* 7. *c.* 32. & 22 *H.* 8. *c.* 8. 1 *Ed.* 6. *c.* 13.

Stint, *common without*. There are commons without ſtint, and which laſt all the year. By the ſtatute of *Merton* however, and other ſubſequent ſtatutes, the lord of the manor may encloſe ſo much of the waſte as he pleaſes, for tillage or wood-ground, provided he leaves common ſufficient for ſuch as are entitled thereto. *Black. Com.* 2 *V.* 34. Not any commoner hath a right to ſurcharge the common to the prejudice of the other commoners. See *Second Surcharge*.

Stipula, Stubble left ſtanding in the field after the corn is reaped and carried away.——*Dedi unam carectatam foragii, duas acras* ſtipulæ, &c. Cart. 2 Ed. 2.

Stipulation in the Admiralty Courts. The firſt proceſs in theſe courts is frequently by arreſt of the defendant's perſon; when they take recognizances or *ſtipulation* of certain fidejuſſors in the nature of bail, and, in caſe of default, may impriſon both them and their principal. *Black. Com.* 3 *V.* 108, 109.

Stiremannus, (*ſturemannus*, Sax. *ſteor-man*) A pilot of a ſhip, or *ſteers-man*. Domeſd.

Stirpes, diſtribution *per*. Under the ſtatute of diſtributions it will ſometimes happen that perſonal eſtates are divided *per capita*, and ſometimes *per ſtirpes*; whereas the Common law knows no other rule of ſucceſſion but that *per ſtirpes* only. They are divided *per capite* to every man an equal ſhare, when all the claimants claim in their own rights, as in equal degree of kindred, and not *jure repreſentationis*, in the right of another perſon. As if the next of kin be the inteſtate's three brothers *A. B.* and *C.* here his eſtate is divided into three equal portions, and diſtributed *per capita*, one to each: But if one of theſe brothers (*A.*) had been dead, leaving three children, and another (*B.*) leaving two; then the diſtribution muſt have been *per ſtirpes, viz.* one third to *A.*'s three children, another third to *B.*'s two children, and the remaining third to *C.* the ſurviving brother: Yet if *C.* had alſo been dead, without iſſue, then *A.*'s and *B.*'s five children being all in equal degree to the inteſtate, would take in their own rights *per capite, viz.* each of them one fifth part. *Prec. Chanc.* 54. *Black. Com.* 2 *V.* 517. It is otherwiſe as to real eſtates. See the next title, or head.

Stirpes, *ſucceſſion in*. The lineal deſcendants, *in infinitum*, of any perſon deceaſed, ſhall repreſent their anceſtor; that is, ſhall ſtand in the ſame place as the perſon himſelf would have done, had he been living.

Thus the child, grandchild, or great-grandchild (either male or female) of the eldeſt ſon ſucceeds before the younger ſon, and ſo *in infinitum*. And theſe repreſentatives ſhall take neither more nor leſs, but juſt ſo much as their principals would have done. As if there be two ſiſters, *Margaret* and *Charlotte*, and *Margaret* dies leaving ſix daughters; and then *John Stiles*, the father of the two ſiſters, dies, without other iſſue: Theſe ſix daughters ſhall take among them exactly the ſame as their mother *Margaret* would have done, had ſhe been living; that is, a moiety of the lands of *John Stiles* in coparcenary. This taking by repreſentation is called a ſucceſſion by *ſtirpes*, according to the roots. *Black. Com.* 2 *V.* 217. So if *Charlotte* had died leaving three children, her three children would be intitled to the moiety the mother would have had, if living: Contrary to the caſe of diſtribution of perſonal eſtates under the ſtatute.

Stock and Stovel, A forfeiture where any one is taken carrying *ſtipites & pabulum* out of the woods; for *ſtoc* ſignifies ſticks, and *ſtovel* pabulum. *Antiq. Chart.*

Stock or Stoke, Syllables added to the names of places, from the Sax. *Socce*, i. e. *Stipes*, *Truncus*; as *Woodſtock*, *Baſingſtoke*, &c.

Stock and Family. If lands were deviſed generally to a *ſtock* or *family*; it ſhall be underſtood of the heir principal of the houſe. *Hob.* 33. See *Tylwith*.

Stockjobbers and Stocks, in *Exchange* Alley. All *ſtockjobbing* not authorized by act of parliament, or by charter, or uſed by obſolete charters, ſhall be void, and the undertakings are declared nuſances, &c. by Stat. 6 *Geo.* 1. *cap.* 18. All *præmiums* to deliver or receive, accept or refuſe any *public ſtock*, or ſhare therein, and contracts in nature of wagers, putts and refuſals relating to the value of the *ſtock*, ſhall be void; and the *præmiums* returned, or may be recovered by action with double coſts; and the perſons entering into or executing any ſuch contract, ſhall forfeit 500 *l.* No money ſhall be given to compound any difference, for not delivering or transferring *ſtock*, or not performing contracts; but the whole money agreed, is to be paid, and the *ſtock* transferred on pain of 100 *l.* Perſons buying, on refuſal or neglect to transfer at the day, may buy the like quantity of *ſtock*, of any other perſon, and recover the damage of the firſt contractor: And contracts for ſale of any Stock, where contractors are not actually poſſeſſed of or intitled unto the ſame, to be void; and the parties agreeing to ſell, &c. incur a penalty of 500 *l.* Brokers making agreements, &c. and doing contrary, are alſo liable to penalties: But this act not to hinder lending money on Stocks, or contracts for re-delivering or transferring thereon, ſo as no *præmium* be paid for the loan more than legal intereſt. Stat. 7 *Geo.* 2. *c.* 8. Made perpetual by 10 *Geo.* 2. *c.* 8. As to Stocks ſold, it is held, that an actual transfer is not neceſſary, unleſs the perſon to whom it ought to be made, was at the place and time ready to accept it; and then the time of tender is the laſt hour of the day on which the Stock was to be transferred. *Mod. Caſ. in L. and E.* 106, 219. If the plaintiff doth not ſet forth in his declaration that he was at the *South-Sea Houſe*, &c. on the day, at ſuch a time, and ſtaid till the laſt hour, to transfer his Stock, he cannot maintain his action. *Paſch.* 8 *Geo.* 1. In equity it has been adjudged, if a truſtee, or executor, with the truſt money buys ſtocks, and thereby gains conſiderably, he ſhall have the advantage of it to himſelf; in reſpect of the hazard he ran of being a loſer by it, which he muſt have borne, if able. *Abr. Caſ. Eq.* 398. But in a like caſe, where money laid out on Stocks was greatly improved; it was decreed, that as, if the Stock had fallen, the truſt muſt have ſuffered; ſo its accidental riſe ſhall be for the benefit of it. 1 *P. Williams* 649. See *Brokers* and *Felony*.

Stocks, (*cippus*) A wooden engine to put the legs of offenders in, for the ſecuring of diſorderly perſons, and by way of puniſhment in divers caſes ordained by ſtatute, &c. And it is ſaid that every vill within the precinct of a torn is indictable for not having a pair of Stocks, and ſhall forſeit 5 *l.* *Kitch.* 13.

Stockland and Bondland. In the manor of *Wadhurſt* in *Suſſex*, there are two ſorts of copyhold eſtates, *viz.* *Stokeland* and *Bondland*, deſcendable by cuſtom in ſeveral manors: As if a man be firſt admitted to *Stockland*, and afterwards to *Bondland*, and dies ſeiſed of both, his *eldeſt* ſon and heir ſhall inherit both eſtates; but if he be admitted firſt to *Bondland*, and after to the other, and of theſe dieth ſeiſed, his *youngeſt* ſon ſhall inherit: And *Bondland* held alone, deſcends to the youngeſt ſon. 2 *Leon.* 55

Stola, Was a garment formerly worn by prieſts, like unto thoſe which we now call hoods. And ſometimes it is taken for the archiepiſcopal pall. *Eadmer. cap.* 188. Alſo a veſtment which matrons wore. *Cowell*

Stolen Goods. To help people to ſtolen goods for reward, without apprehending the felon, is felony, 4 *Geo.* 1. *cap.* 11. Proſecutors of ſuch offenders how rewarded, 6 *G.* 1. *c.* 23. Perſons buying or receiving lead, iron, copper, braſs, bell-metal or ſolder, knowing it to be ſtolen, to be tranſported. 29 *Geo.* 2. *c.* 30. Stat. 3 & 4 *W.* & *M. c.* 9. & 5 *Ann. c.* 31. makes the perſon receiving ſtolen goods, knowing them to be ſtolen, acceſſary to the theft and felony. And by 1 *Ann. c.* 9. and 5 *Ann. c.* 31. the receivers may be proſecuted for a *miſdemeanor*, tho' the principal felon be not taken.

Trover for goods ſtolen from the plaintiff, and ſold to defendant not in a market overt; but in his ſhop (not in *London*) it appeared in evidence that the defendant did not know they were ſtolen goods, and Lord *Hardwicke* ſaid in ſuch caſe, tho' the property was not (ſtrictly ſpeaking) altered, yet, as it was a fair tranſaction, he would hold the plaintiff to ſtrict proof, that theſe were the identical goods ſtolen, and he not being able to prove that was nonſuited. *Rep. Temp. Hardwicke per Annaly*, 349. If the owner of the goods knew they were ſtolen, waived by the felon in his flight, or ſeiſed by the king's officers as ſuſpected to be ſtolen; there the party ſhall not have reſtitution, unleſs he proſecutes the thief to conviction. *Id.* 350. A ſale in a ſhop in *London* (dealing in ſuch goods) which is by cuſtom a market overt, will alter the property. *Id.* 350.

Stone, A weight of 14 pounds, uſed for weighing of wool, *&c.* The ſtone of wool ought to weigh 14 pounds; but in ſome places, by cuſtom, it is leſs, as 12 pounds and a half: A Stone of wax is eight pounds; and in *London* the Sone of beef is no more. 11 *Hen.* 7. *c.* 4. *Rot. Parl.* 17 *Ed.* 3.

Stores of War, Are not to be imbezilled; and none to make *ſtores of war* with the King's marks, but contractors with the principal officers or commiſſioners of the navy, *&c.* under the penalty of 200 *l.* Stat. 9 & 10 *W.* 3. Plantation pitch and tar to be clean, 5 *Geo.* 1. *c.* 11. 24 *Geo.* 2. *cap.* 52. 25 *Geo.* 2. *cap.* 35. Penalty of having ſtores of the King's mark, 9 & 10 *W.* 3. *cap* 41. 9 *Geo.* 1. *c.* 8. Juſtices may mitigate the penalty of concealing ſtores, 9 *Geo.* 1. *cap.* 8. Juſtices of aſſiſe and quarter ſeſſions may hear and determine offences relating to ſtores, 17 *Geo.* 2. *c.* 40. Pre-emption of ſtores imported in neutral ſhips, given to the commiſſioners of the navy, during the war, 19 *Geo.* 2. *c.* 36. Vide *Naval Stores.*

Stotarius, He who had the care of the *ſtud* or breed of young horſes. *Leg. Alfred. c.* 9.

Stoth, *Nativi de W. ſolvit quilibet pro filiabus ſuis Maritandis Gerſon Domino, & Ourlop pro filiabus corruptis, &* Stoth, *& alia ſervitia, &c.* Petr. Bleſſ. contin. Hiſt. Croyl. p. 115.

Stourton. The 29 *Car.* 2. not to make void the leaſe granted by the dean and chapter of *York*, of the parſonage and tythes, in *Stourton* in *Nottinghamſhire*, 22 *Car.* 2. *c.* 8.

Stow, (Sax. i. e. *locus*) A place, and is often joined to other words; as *Godſtow* is a *place* dedicated to *God.*

Stowage, Is the room where goods are laid, or it is the money paid for ſuch places. See *Houſage.*

Straits, A narrow ſea between two lands, or an arm of the ſea. Alſo there is a narrow coarſe cloth anciently ſo called. 18 *Hen.* 6. *c.* 16.

Strand, (Sax) Any ſhore or bank of a ſea or great river. Hence the ſtreet in the weſt ſuburbs of *London*, which lay next the ſhore or bank of the *Thames*; is called the *Strand.* An impunity from cuſtom, and all impoſitions upon goods or veſſels, by land or water, was uſually expreſſed by *ſtrand* and *ſtream*; as King *Hen.* 2. in his charter to the town of *Rocheſter.*—*Concedo et confirmo in perpetuum cum* ſocne *et* ſoke, *et* ſtrand *et* ſtream. *Mon. Angl. tom.* 3. *p.* 4.

Stranded, (from the Sax. *ſtrand*) Is when a ſhip is by tempeſt or ill ſteerage run on ground, and ſo periſhes. 17 *Car.* 1. *c.* 14. Where a veſſel is *ſtranded*, juſtices of the peace, *etc.* ſhall command conſtables near the ſea-coaſts to call aſſiſtance for the preſervation of the ſhip; and officers of men of war are to be aiding and aſſiſting, 12 *Ann. c.* 18. See *Ships* and *Wreck.*

Stranger, (derived from the Fr. *eſtranger*, alienus) Signifies generally, in our language, a man born out of the realm, or unknown. In the law it hath a ſpecial ſignification, for him that is not *privy* to an act: As a *ſtranger* to a judgment, is he to whom a judgment doth not belong; and in this ſenſe it is directly contrary to *party* or *privy.* Old Nat. Br. 128. *Strangers* to deeds ſhall not take advantage of conditions of entry, *etc.* as parties and privies may; but they are not obliged to make their claims on a *fine* levied till five years; whereas privies, ſuch as the heirs of the party that paſſed the fine, are barred preſently. 1 *Inſt.* 214. 2 *Inſt.* 516. 3 *Rep.* 79. *Strangers* have either a *preſent* or *future* right; or an apparent *poſſibility* of right, growing afterwards, *etc.* *Wood's Inſt.* 245. See *Black. Com.* 2 *V.* 356.

Stray, or going *aſtray* of beaſts and cattle, ſee *Eſtray.*

Stream-works, A kind of works in the *Stannaries*, mentioned in the Stat. 27 *H.* 8. *c.* 23.

Streeman, (Sax.) *Robuſtus, vel potens vir.* Leland, vol. 2. p. 188.

Streets. If *ſtreets* in *London* are not well paved, the mayor and aldermen, or any three juſtices there, may ſet fines upon perſons, to be levied by diſtreſs or action, *etc.* 32 *and* 35 *H.* 8. *c.* 10. And for nuſances, diſturbances, revelling, *etc.* in *ſtreets*, certain penalties are inflicted by the *city* laws. *Lex Lond.* 194. It is made felony maliciouſly to aſſault perſons in the *ſtreets*, with intent to tear their clothes, *etc.* Stat. 6 *Geo.* 1. *c.* 23. *ſ.* 11. Vide *London* and *Robbery.*

Strepitus Judicialis, The circumſtances of noiſe and crowd, and other turbulent formalities at a proceſs or trial in a public court of juſtice. And therefore our wiſe anceſtors did in many caſes provide, that right and juſtice ſhould be done in a more private and quiet manner. *Cowell. Paroch. Antiq. p.* 344.

Stretward, Was an officer of the *ſtreets*, like our ſurveyor of the highways, or rather a ſcavenger. *Mon. Ang. tom.* 2. *p.* 187.

Striking in the King's ſuperior *courts* of *juſtice*, in *Weſtminſter hall*, or at the aſſizes, ſubjects the offender to the loſs of the right-hand, impriſonment for life, and forfeiture of goods and chattels, and of the profits of his lands during life. *Staundſ. P. C.* 38. 3 *Inſt.* 140, 141. Maliciouſly *ſtriking* in the King's palace, wherein his royal perſon reſides, whereby blood is drawn, is puniſhable by perpetual impriſonment, and fine at the King's pleaſure; and alſo with loſs of the offender's right-hand, the ſolemn execution of which ſentence is deſcribed at length in the *ſtat.* 33 *H.* 8. *c.* 12. See *Black. Com.* 4 *V.* 125, 273. And ſee *Church, Palaces.*

Strip, (*ſtrepitus*) Deſtruction, mutilation, from the Fr. *eſtropier:* Strepitum *et vaſtum facere*, i. e. to make *ſtrip and waſte*, or *ſtrop and waſte.* See *Eſtrepment.*

Strond, An old *Saxon* word ſignifying the ſame as *ſtrand.*

Strumpet, (*meretrix*) A whore, harlot, or courteſan: This word was heretofore uſed for an addition. *Plac. apud Celtr.* 6 *Hen.* 5.

Stryke, The eighth part of a ſeam or quarter of corn, a *ſtryke* or buſhel. *Cartular. Rading. MS.* 116.

Stud of mares, Is a company of mares kept for breeding of colts; from the Sax. *ſtodmare*, i. e. *equa ad foetum.*

Study of the Law. See *Black. Com.* the Introduction to the firſt Volume.

Stultifying one's ſelf. It hath been ſaid, that a *non compos* himſelf, though he be afterwards brought to a right mind, ſhall not be permitted to alledge his own inſanity, in order to avoid his grant; for that no man ſhall be allowed to ſtultify himſelf, or plead his own diſability: But late opinions, feeling the inconvenience of this rule, have in many points endeavoured to reſtrain it. *Comb.* 469. 3 *Mod.* 310, 311. 1 *Equ. Caſ. Abr.* 279. And it ſeems to be ſettled, that their acts are only binding, in caſe they be afterwards agreed to, when their imbecillity ceaſes. Vide *Black. Com.* 2 *V.* 291, 292.

Sturgeon, May be imported, 10 & 11 *W.* 3. *c.* 24. The King ſhall have Sturgeon taken in the ſea, or elſewhere within the Realm, except in certain places privileged by the King. 17 *Ed.* 2. *ſtat.* 1. *c.* 11.

Style, (*appello*) Is to call, name, or *intitle* one; as the *ſtyle* of the *King* of *England* is *George* the Third, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.*

There is an *Old* and *New Style*, uſed in the *dates* of things abroad; the latter being eleven days before the former.

The *New Stile* was eſtabliſhed by 24 G. 2. *c.* 23. And the opening of Commons, and doing of other things depending on any moveable feaſt, muſt be according to this *Stile*. 25 G. 2. *c.* 30.

Subarrare. *Florence* of *Worceſter* tells us, that King *Alfred* ſubarravit & *duxit* a noblewoman of *Mercia*, *anno* 868.

Sub-deacon, An antient officer in the church, made by the delivery of an empty platter and cup by the biſhop, and of a pitcher, baſon and towel by the archdeacon: His office was to wait on the *deacon* with the linen on which the body, *&c.* was conſecrated, and to receive and carry away the plate with the offerings at ſacraments, the cup with the wine and water in it, *&c.* He is often mentioned by the *monkiſh* hiſtorians, and particularly in the *Apoſtolical Canons*, 42, 43.

Subjection, *civil.* Civil ſubjection is the obligation, whereby the inferior is conſtrained by the ſuperior to act contrary to what his own reaſon and inclination would ſuggeſt. Obedience to the laws in being is undoubtedly a ſufficient extenuation of civil guilt before the municipal tribunal. *Black. Com.* 4 *V.* 28.

Subjects, (*ſubditos*) Are the members of the Commonwealth *under* the King their head. *Wood's Inſt.* 22.

Subinfeudation, Was where the inferior lords, in imitation of their ſuperiors, began to carve out and grant to others minuter eſtates than their own, to be held of themſelves, and were ſo proceeding downwards, *in infinitum*, 'till the ſuperior lords obſerved, that by this method of *ſubinfeudation* they loſt all their feodal profits, of wardſhips, marriages, and eſtreats, which fell into the hands of theſe meſne or middle lords, who were the immediate ſuperiors of the *terretenant*, or him who occupied the land. This occaſioned the Stat. of *Weſtm.* 3. or *quia emptores*, 18 *Ed.* 1. to be made: which directs, that, upon all ſales or feoffments of lands, the feoffee ſhall hold the ſame, not of his immediate feoffor, but of the chief lord of the fee of whom ſuch feoffor himſelf held it. And from hence it is held, that all manors exiſting at this day muſt have exiſted by immemorial preſcription; or at leaſt ever ſince the 18 *Ed.* 1. when the ſtatute of *quia emptores* was made. *Black. Com.* 2 *V.* 91, 92.

Subjugalis, Is any beaſt carrying the yoke. *Matt. Paris*, 1249.

Sublegerius, (from the Sax. *ſybleger*, i. e. *inceſtus*) One who is guilty of inceſtuous whoredom.

Sub-marſhal, An officer in the *Marſhalſea*, who is deputy to the *Chief Marſhal* of the King's Houſe, commonly called the *Knight Marſhal*, and hath the cuſtody of the priſoners there. He is otherwiſe termed *Under Marſhal*. Cromp. Juriſ. 104.

Submiſſion, Of matters to arbitrament, by bond or covenant, *&c.* upon which an action may be brought on non-performance of the *award*, if it is made for payment of money. 10 *Rep.* 131. See *Arbitrament*.

Subnervare, To cut the ſinews of the legs or thighs; to *ham-ſtring*: And it was an old cuſtom in *England*, *meretrices & impudicas mulieres* ſubnervare.

Subornation, (*ſubornatio*) A ſecret under-hand preparing, inſtructing, or bringing in a falſe witneſs; and from hence *ſubornation of perjury* is the preparing or corrupt alluring to perjury. Subornation of witneſſes we read of in the 32 *Hen.* 8. *c.* 9. And procuring or ſuborning a witneſs to give falſe teſtimony in any court of record concerning lands or goods, the offender ſhall forfeit 40 *l.* or ſuffer impriſonment for half a year, ſtand on the pillory, *&c.* by 5 *Eliz.* *c.* 9. See *Perjury*.

Subpoena, Is a writ whereby common perſons are called into Chancery, in ſuch caſes where the Common law hath provided no ordinary remedy; and the name of it proceeds from the words therein, which charge the party called to appear at the day and place aſſigned, *ſub pœna centum librarum*, *&c.* Weſt. Symb. par. 2. Cromp. Juriſdict. 33. The *ſubpœna* is the leading proceſs in the *courts of equity*; and by ſtatute, when a bill is filed againſt any perſon, proceſs of *ſubpœna* ſhall be taken out to oblige the defendant to appear and anſwer the bill, *&c.* 4 & 5 *Ann.* *c.* 16. Where a defendant abſconds, or goes beyond ſea, to avoid being ſerved with proceſs of *ſubpœna* to appear, *&c.* ſee 5 *Geo.* 2. *c.* 25. and *infra ſit ſubpœna in equity*, And there are ſeveral of theſe writs in Chancery; as the *ſubpœna ad reſpondend'*, *ſubpœna ad replicand'* & *ad rejungend'*, *ſubpœna ad teſtificand'* & *ad audiend' judicium*, *&c.* which writs are to be made out by the proper clerks of the *ſubpœna office*; and *ſubpœna's* to *anſwer* muſt be perſonally ſerved by being left with the defendant, or at his houſe with one of the family, on affidavit whereof, if the defendant do not anſwer, attachment ſhall be had againſt him, *&c.* *Pract.* *Solic.* 5, 6. A *ſubpœna ad teſtificandum* lies for the calling in of witneſſes to *teſtify* in any cauſe, not only in *Chancery*, but in all *other courts*; and in that court, and in the *Exchequer*, it is made uſe of in law and equity. The two chief writs of *ſubpœna* are to *appear* and to *teſtify*; and the latter iſſues out of the court where the iſſue is joined, upon which the *evidence* is to be given. 2 *Lill. Abr.* 536. In this writ the 100 *l.* penalty is inſerted only *in terrorem*, being never levied; though if a witneſs, ſerved with a *ſubpœna*, refuſe to appear, on tender of his charges, the party injured thereby may recover 10 *l.* damages, and other recompence by action of the caſe. 5 *Eliz.* *c.* 9. 12. See *Black. Com.* 3 *V.* 369.

Subpoena ad teſtificandum. A writ or proceſs, to bring in witneſſes to give their teſtimony. See *ſtat.* 5. *Eliz.* *c.* 9. If a witneſs on being ſerved with this proceſs does not appear, the court will iſſue an attachment againſt him, or a party plaintiff or defendant, injured by his non-attendance, may maintain an action againſt the witneſs. See *Black. Com.* 3 *V.* 369.

Subpoena duces tecum. This is a writ or proceſs of the ſame kind with the preceding *ſubpœna*, including a cauſe of requiſition, for the witneſs to bring and produce books and papers, *&c.* in his hands, belonging to, or wherein the parties are intereſted; or tending to elucidate the matter in queſtion. See *Black. Com.* 3 *V.* 382.

Subpoena in equity. A proceſs in Equity, calling on a defendant to appear and anſwer to the complainant's bill. See *Black. Com.* 3 *V.* 445. and the *ſtat.* 5 *Geo.* 2. *c.* 25. Which enacts that where the party cannot be found to be ſerved with *ſubpœna*, and abſconds (as believed) to avoid being ſerved, a day ſhall be appointed him to appear to the bill of the plaintiff; which is to be inſerted in the *London Gazette*, read in the pariſh church where the defendant laſt lived, and fixed up at the royal exchange: And if the defendant doth not appear upon that day, the bill ſhall be taken *pro confeſſo*. As to the original of this *ſubpœna*, ſee *Black. Com.* 3 *V.* 51: And ſee ſupra *ſubpœna*.

Subſcription of witneſſes. A will of lands muſt by *ſtat.* 29 *Car.* 2. *c.* 3. ſ. 5. be atteſted or ſubſcribed by three credible witneſſes at leaſt; In other conveyances, the actual ſubſcription of the witneſſes is not required by law, though it is prudent for them ſo to do. *Black. Com.* 2 *V.* 378.

Subſequent Conditions. Theſe are ſuch by the failure or nonperformance of which an eſtate already veſted may be defeated. *Black. Com.* 2 *V.* 154. which *vide*.

Subſequent Evidence. In attaint, he that brings the attaint can give no other evidence to the grand jury, than what was originally given to the petit. *Black. Com.* 3 *V.* 403. The proceeding by attaint is now out of uſe, as the courts of law will grant a new trial, where cauſe ſufficient can be ſhewn, on an application in due time.

On a re-hearing in equity, all the evidence taken in the cauſe, whether read before or not, is admitted to be read; Becauſe it is the decree of the Chancellor himſelf, who only now ſits to hear reaſons why the decree ſhould not be enrolled and perfected; at which time all the omiſſions of either evidence or argument may be ſupplied. *Gill. Rep.* 151, 152. *Black. Com.* 3 *V.* 454. 455.

Subſidy, (*ſubſidium*) Signifies an aid, tax, or tribute, granted to the King for the urgent occaſions of the kingdom, to be levied on every ſubject of ability according to the value of his lands or goods. Some perſons have held, that the *ſubſidy* of tonnage, *&c.* might be taken by the King of his own prerogative; eſpecially in a caſe of neceſſity, and for the publick good, as to make an equality of trade: And that the precedents of the Exchequer make the law herein. But the law was adjudged otherwiſe, by both houſes of parliament. *Jenk. Cent.* 208. *Dyer* 165. *Lane* 24. *Cro. Car.* 601. Vide *Cuſtoms*, and **Tax**.

Hiſtory does not mention that the *Saxon* Kings had any *ſubſidies* after the manner of ours at preſent; but they had both levies of money and perſonal ſervices towards the building and repairing of cities, caſtles, bridges, military expeditions, *&c.* which they called *Burgbote, Brigbote, Herefare, Heregeld, &c.* But when the *Danes* harraſſed the land, King *Ethelred* ſubmitted to pay them for redemption of peace ſeveral great ſums of money yearly. This was called *Danegeld*, for the levying of which every hide of land was taxed yearly at twelve pence, lands of the church only excepted, and thereupon it was after called, *hydagium*, and that name remained afterwards upon all taxes and *ſubſidies* impoſed upon lands; but ſometimes it was laid upon cattle, and then was termed *horngeld*. The *Normans* called theſe ſometimes *taxes*, ſometimes *tallages*, otherwiſe *auxilia & ſubſidia*. The *Conqueror* had theſe *taxes*, and made a law for the manner of their levying, as appears in *Emendationibus ejus, pag.* 125. *ſect. Volumus & firmiter, &c.* Many years after the conqueſt they were levied otherwiſe than now, as every ninth lamb, every ninth fleece, and every ninth ſheaf. 14 *E.* 3. *ſtat.* 1. *cap.* 20. Of which you may ſee great variety in *Raſtal's Abridgment*, tit. *Taxes, Tenths, Fifteenths, Subſidies, &c.* and 4 *Inſt. fol.* 26 and 33. Whence we may gather there is no certain rate, but as the parliament ſhall think fit. *Subſidy* is in our ſtatutes ſometimes confounded with cuſtoms. 11 *H.* 4. *cap.* 7. *Cowell.* See *Black. Com.* 1 *V.* 307, 310, 311, 315. 4 *V.* 416.

No aid to be taken but by aſſent of parliament, 14 *Ed.* 3. *ſt.* 2. *c.* 1.

Subſtance. The *ſubſtance* of things is moſt to be regarded; and therefore our law doth prefer matter of *ſubſtance*, before matters of circumſtance, *&c.* as in the ſtatutes 36 *E.* 3. *c.* 15. 33 *H.* 6. *c.* 10. 21 *H.* 7. *c.* 24. 23 *Eliz. c.* 4.

Subſtitute, (*Subſtitutus*) One placed under another perſon to tranſact ſome buſineſs, *&c.* See *Attorney*.

Subtraction of conjugal Rights. This is when either huſband or wife lives ſeparate from the other without any ſufficient reaſon; in which caſe the eccleſiaſtical juriſdiction (on a ſuit for reſtitution of conjugal rights) will compel them to come together again, if either party be weak enough to deſire it, contrary to the inclination of the other. *Black Com.* 3 *V.* 94.

Subtraction of Legacies. This is the withholding or detaining of Legacies: As a conſequential part of teſtamentary juriſdiction, the ſpiritual court adminiſters redreſs herein, by compelling the executor to pay them. In this caſe the courts of equity exerciſe a concurrent juriſdiction with the eccleſiaſtical courts, as incident to ſome other ſpecies of relief prayed by the complainant; as to compel the executor to account for the teſtator's effects, or aſſent to the legacy, or the like. For, as it is beneath the dignity of the king's courts to be merely ancillary to other inferior juriſdictions, the cauſe, when once brought there, receives there alſo it's full determination. *Black. Com.* 3 *V.* 98.

Subtraction of Rents and Services, &c. This happens, when any perſon, who owes any ſuit, duty, cuſtom, rent, or ſervice to another, withdraws or neglects to perform or pay it, *&c.* See *Black. Com.* 3 *V.* 230.

Subtraction of Tithes. This is the withholding of tithes, from the parſon or vicar, whether the former be a clergyman, or a lay appropriator. See *ſtat.* 27 *H.* 8. *c.* 20. 32 *H.* 8. *c.* 7. And *Black. Com.* 3 *V.* 88, 102. alſo *vide Tithes.*

Suburbani, Are huſbandmen, according to the *Monaſticon.* Tom. 2. p. 468.

Succeſſion to the Crown, ſee **King.**

Succeſſion ab inteſtato. The ſtatute of diſtributions bears ſome reſemblance to the Roman law, of ſucceſſions *ab inteſtato.* See *Black. Com.* 2 *V.* 516.

Succeſſion to Goods and Chattels. The gaining a property in chattels, either perſonal or real, by *ſucceſſion*, is, in ſtrictneſs of law ,only applicable to corporations aggregate of many, as dean and chapter, mayor and commonalty, maſter and fellows, and the like; in which one ſet of men may, by ſucceeding another ſet, acquire a property in all the goods, moveables, and other chattels of the corporation. *Black. Com.* 2 *V.* 430.

Succeſſion to the Crown. The ſucceſſion to the crown hath already been noticed under *Settlement*. See farther *Black. Com.* 1 *V.* 197. 4 *V.* 433.

Succeſſor. (*Lat.*) Is he that followeth or cometh in another's place. *Sole corporations* may take a fee-ſimple eſtate to them and their *ſucceſſors*; but not without the word *ſucceſſors*: And ſuch a corporation cannot regularly take in *ſucceſſion* goods and chattels; and therefore if a leaſe for a hundred years be made to a perſon and his *ſucceſſors*, it hath been adjudged only an eſtate for life: Nor may a ſole corporation bind the *ſucceſſors*. 4 *Rep.* 65. 1 *Inſt.* 8, 46, 94. 4 *Inſt.* 249. An *aggregate corporation* may have a fee-ſimple eſtate in *ſucceſſion* without the word *ſucceſſors*; and take goods and chattels in action or poſſeſſion, and they ſhall go to the *ſucceſſors*. *Wood's Inſt.* 111. Vide *Corporation*, and *Supra*.

Succiſſiones Arborum, The cuttings and croppings of trees. *Chart.* 2 *Hen.* 5.

Sufferance. Tenant at *ſufferance*, is he who holdeth over his term at firſt lawfully granted. *Terms de Ley.* A perſon is tenant at *ſufferance* that continues after his eſtate is ended, and wrongfully holdeth againſt another, *&c.* 1 *Co. Inſt.* 57. See *ſtat.* 4 *Geo.* 2. *c.* 28. and *Black. Com.* 2 *V.* 150.

Sufferentia pacis, A grant or ſufferance of peace or truce.——*Pro quadam* Sufferentia pacis *cum illis habenda, per unum annum duratura.* Clauſ. 16 Ed. 3.

Suffragan, (*Suffraganes, Chorepiſcopus, Epiſcopi vicarius*) Is a *Titular Biſhop* ordained to aid and aſſiſt the biſhop of the dioceſe in his ſpiritual function; or one who ſupplieth the place inſtead of the biſhop. Some writers call theſe *Suffragans* by the name of *Subſidiary Biſhops*, whoſe number is limited by the *ſtat.* 26 *H.* 8. *cap.* 14. By which ſtatute it was enacted, That it ſhould be lawful for every biſhop, at his pleaſure, to elect two honeſt and diſcreet ſpiritual perſons within his dioceſe, and to preſent them to the King, that he might give to one of them ſuch title, ſtile and dignity of ſuch of the Sees in the ſaid ſtatute mentioned, as he ſhould think fit: And that every ſuch perſon ſhould be called *Biſhop Suffragan* of the ſame See, *&c.* This act ſets forth at large for what places ſuch *Suffragans* were to be nominated by the King; and if any one exerciſe the juriſdiction of a *Suffragan*, without the appointment of the biſhop of the dioceſe, *&c.* he ſhall be guilty of a *Præmunire. Stat. Ibid.* See *Chorepiſcopi.*

Sugar, Duty upon *Sugar*, 6 *Geo.* 2. *c.* 13. The drawback on exportation of *ſugar* imported from the *Engliſh* plantations in *America*, 9 & 10 *W.* 3. *cap.* 23. 6 *Geo.* 2. *c.* 13. *Sugar* may be imported from *Spain* and *Portugal* as uſual, 6 *Geo.* 2. *c.* 13. Drawback on *Britiſh* refined *ſugar* out of the laſt *ſubſidy*, 21 *Geo.* 2. *c.* 2.

Suggeſtion, *(ſuggeſtio)* Is in law a ſurmiſe, or repreſenting of a thing; and by *magna charta* no perſon ſhall be put to his law on the *ſuggeſtion* of another, but by lawful witneſſes. 9 *H.* 3. *c.* 28. *Suggeſtions* are grounds to move for prohibitions to ſuits in the ſpiritual courts, *&c*, when they meddle with matters out of their juriſdictions. 2 *Lil. Abr.* 536. Though matters of record ought not to be ſtayed upon the bare *ſuggeſtion* of the party; there ought to be an affidavit made of the matter *ſuggeſted*, to induce the court to grant a rule for ſtaying the proceedings upon the record. 2 *Lill* 537. There are *ſuggeſtions* in *replevin*, for a *returno habendo*; which it is ſaid are not traverſable, as there are for prohibitions to the ſpiritual or admiralty courts. 1 *Plowd.* 76 Breaches of *covenants* and deaths of perſons muſt be *ſuggeſted* upon record, *&c.* 8 *&* 9 *W.* 3. *cap.* 10. See *Black. Com.* 3 *V.* 113. 4 *V.* 305.

Suicide. See *Self Murder*, and *Black. Com.* 4 *V.* 189.

Suit, *(ſecta,* Fr. *ſuite,* i. e. *conſecutio, ſequela)* ſignifies a following another; but in divers ſenſes. The *firſt* is a *ſuit in law*, and is divided into *ſuit real* and *perſonal*; which is all one with *action* real and perſonal. 2. *Suit of court*, an attendance which the tenant owes to the court of his lord. 3. *Suit covenant*, when a man hath covenanted to do *ſuit* in the Lord's court. 4. *Suit cuſtom*, where I and my anceſtors owe *ſuit* time out of mind. 5. *Suit* is the following one in chaſe, as *freſh ſuit*: And this word is uſed for a *petition* made to the King, or any great perſonage. See *Black. Com.* 3 *V.* 295.

Suit and Service. When the tenant had profeſſed himſelf to be the man of his ſuperior or lord, the next conſideration was concerning the *ſervice*, which, as ſuch, he was bound to render for the land he held. This, in pure, proper, and original feuds, was only twofold: To follow, or do *ſuit* to, the lord in his courts in time of peace; and in his armies or warlike retinue, when neceſſity called him to the field. *Black. Com.* 2 *V.* 54.

Suit of Court, That is, *ſuit to the lord's court*, is that ſervice which the feudary tenant was bound to do at the Lord's court. At firſt it was expreſly mentioned in the grant how often theſe courts ſhould be held. This appears by *Fleta, l.* 2. *c.* 71. *par.* 14. *Qui faciant ſectas ad curiam domini & quot ſectas per annum.* Sometimes one or more, but never exceeding three. *Thorn* mentions two, *viz. Et faciant ſectam ad curiam Cantuariæ bis per annum, ſcilicet, in feſto Michaelis & Paſchæ.* But all the lord's tenants were not bound to attend his courts, but only thoſe to whom their eſtates were granted upon that condition; But every man was bound to attend the *ſheriff's turn* twice in every year; which ſee in *ſecta regalis.* And if the inheritance, by reaſon whereof the tenant was bound to attend only at one court, did deſcend to co-heirs, he who had *capitalem partem*, was bound to attend the lord's court both for himſelf and all the coheirs. *Cowell.*

None to be diſtrained for ſuit of court, but they who are bound to it by charter or preſcription, *St. Marleb.* 52 *H.* 3. *c.* 9. Joint tenants and parceners ſhall make but one ſuit, 52 *H.* 3. *c.* 9. The remedy againſt the lord diſtraining for it, where it is not due, and againſt the tenant with-holding it, where it is due, 52 *H.* 3. *c.* 9. It is not taken away, by 12 *Car.* 2. *cap.* 24. *ſ.* 5.

Suits at law. Are to be proſecuted in certain times limited by the ſtatute 21 *Jac* 1. *c.* 16, *&c.* Thoſe perſons who acted as lieutenants, deputy lieutenants, juſtices of peace, *&c.* not authoriſed, at the bringing in of King *William*, were indemnified from vexatious *ſuits*, by 1 *W. & M. c.* 8. So perſons that acted for ſecurity of the government, during the rebellion in the late reign. 1 *Geo.* 1. *c.* 39. Perſons deſiring to end any *ſuits* or controverſies, for which there is no remedy but by perſonal action or bill in equity, may agree that their ſubmiſſion to the award of arbitrators, ſhall be made a rule of court, *&c.* 9 *&* 10 *W.* 3. *c.* 15. See *Black. Com.* 3 *V.* 116.

Suit in equity, The firſt commencement (in Chancery) is by preferring a bill to the Lord Chancellor in the ſtile of a petiton, ſetting forth the circumſtances of the caſe at length, as ſome fraud, truſt or hardſhip, and praying relief, and alſo proceſs of *ſubpoena* againſt the defendant. The defendant is to anſwer, upon oath, to all the matter charged in the bill. Or the defendant may plead and demur, or demur alone, as adviſed by counſel. If the defendant anſwers, and the plaintiff finds ſufficient matter confeſſed in the defendant's anſwer to ground a decree upon, he may proceed to the hearing of the cauſe on bill and anſwer only. But, in that caſe, he muſt take the defendant's anſwer to be true in every point. Otherwiſe the courſe is for the plaintiff to reply generally to the anſwer, averring his bill to be true, certain, and ſufficient, and the defendant's anſwer to be directly the reverſe; which he is ready to prove as the court ſhall award: upon which the defendant rejoins, averring the like on his ſide; which is joining iſſue upon the facts in diſpute. See *Black. Com.* 3 *V.* 442, *&c.* 448, 9.

Suit of the King's Peace, Is the purſuing a man for the breach of the peace. 6 *R.* 2. *c.* 1. 5 *H.* 4. *c.* 15.

Suit-Silver, A ſmall rent or ſum of money paid in ſome manors to excuſe the appearance of freeholders at the courts of their lords.

Sulcus-Aquæ, A little brook or ſtream of water; otherwiſe called *ſike*, and in *Eſſex* a *doke.* Paroch. Antiq. 531.

Sullery, (From the Sax. *Sulth*, i. e. *Aratrum)* A plough-land. 1 *Inſt.* 5.

Sullinga, *Sullingata Terræ*, Is the ſame with *ſwoling.* Thorn. pag. 1931.

Sumage, *(ſumagium & ſummagium)* Toll for carriage on horſeback: *Pro uno equo portante* ſummagium *per dimidium Ann. obolum.* Chart. de Foreſta, c. 14. Cromp. Juriſ. 191.

Summary, *(ſummarium)* Or an abridgment. *Law Lat. Dict.*

Summary convictions. A ſummary proceeding is ſuch as is directed by ſeveral acts of parliament (for the Common law is a ſtranger to it, unleſs in the caſe of contempts) for the conviction of offenders, and the inflicting of certain penalties created by thoſe acts of parliament. In theſe caſes there is no intervention of a jury, but the party accuſed is acquitted or condemned by the ſuffrage of ſuch perſon only, as the ſtatute hath appointed for his judge, as one or more juſtice of the peace, *&c.* See *Black. Com.* 4 *V.* 277, *&c.*

Summer-hus-Silver. A payment to the lords of the wood in the *Wealds* of *Kent*, who uſed to viſit thoſe places in *ſummer-time*, when their under-tenants were bound to prepare little *ſummer-houſes* for their reception, or elſe pay a compoſition in money. *Cuſtum de Sittingburn, MS.*

Summoneas, Is a writ judicial of great diverſity, according to the divers caſes wherein it is uſed. *Tabl. Reg. Judic.*

Summoners, *(ſummonitores)* Are petty officers that cite and warn men to appear in any court; and theſe ought to be *boni homines, &c. Fleta, lib.* 4. The *ſummonitores* were properly the *apparitors*, who warned in delinquents at a certain time and place, to anſwer any charge or complaint exhibited againſt them: And in citations from a ſuperior court, they were to be equals of the party cited; at leaſt the barons were to be ſummoned by none under the degree of knights. *Paroch. Antiq.* 177. See *Black. Com.* 3 *V.* 279.

Summonitores ſcaccarii, Officers who aſſiſted in collecting the King's revenues, by citing the defaulters therein, into the court of Exchequer.

Summons, *(ſummonitio)* Is with us as much as *vocatio in jus*, or *citatio* among the *Civilians.* Fleta, lib. 6. cap. 6. In general, it is a writ to the ſheriff to warn one to appear at a day; and muſt be by certain ſummoners on the tenant's land, not his goods, *&c.* And, if againſt an heir, ſhall be on the lands that did deſcend; or making default, at the *grand cape* he may wage his law of *non ſummons.* 6 Rep. 54. 37 H. 6. c. 26. There is a *ſummons* in writs of *formedon, &c.* And on every *ſummons* upon the land in a *real action*, fourteen days before the return, proclamation is to be made thereof on a *Sunday*, at or near the door of the church or chapel of the place where the land lies, which muſt be returned with the names of the ſummoners: And if ſuch proclamation ſhall not be had, then no *grand cape* ſhall iſſue, but an *alias* and a *pluries ſummons*, until a *ſummons* and proclamation be duly made and returned. *Cro. Eliz.* 42. 2 *Lil. Abr.* 538. In a *præcipe quod reddat*, no man ſhall loſe his land without being *ſummoned*. Jenk. Cent. 98. Summons of members of parliament and diſtreſs is given by 10 *Geo.* 3. *c.* 50. *vide* tit. *Parliament*. See *Black. Com.* 3 *V.* 279.

Summons and ſeverance. This title is diſtinguiſhed in the books by the name of *ſummons and ſeverance*; but the proper name is *ſeverance*; for the *ſummons* is only a proceſs, which muſt, in certain caſes, iſſue before judgment of *ſeverance* can be given. 4 *New Abr.* 660. *Severance* is a judgment, by which, where two or more are joined in an action, one or more of theſe is enabled to proceed in ſuch action without the other or others. 4 *New Abr.* 660.

It is a principle of law, where two or more have a joint right to a thing, they muſt join in an action for the recovery thereof. 4 *New Abr.* 660. Joint-tenants muſt implead jointly; for they claim under one and the ſame title. 1 *Inſt.* 180. So parceners, who make but one heir, muſt, in order to recover the poſſeſſion of their anceſtor, be joined *in præcipe*. 1 Inſt. 163, 164. Executors, becauſe the right of their teſtator devolves on all of them, muſt likewiſe all join in an action for the recovery thereof. *Godolph. Orph. Leg.* 134. *Salk.* 3. *Carth.* 61.

And wherever the right of action is in two or more perſons, and they have not all joined in any action that is brought, the defendant may plead in abatement: for, if one could recover in ſuch caſe ſingly, every other might do the ſame; and by this means a defendant would be liable to anſwer in divers actions for the ſame thing. *Cro. Eliz.* 554. *Deering* v. *Moor.* 9 *Rep.* 37. *Salk.* 3, 32. 2 *Lev.* 113. 3 *Lev.* 354. 1 *Mod.* 102.

It is indeed in the power of any one or more, where two or more have a joint right of action, to commence a ſuit in the name of all whoſe ſuch right is: but, notwithſtanding that a plea in abatement would be thereby prevented, it would ſtill be in the power of any one of them, by neglecting to appear, or refuſing to proceed afterwards in ſuch ſuit, to render it fruitleſs. 1 *Inſt.* 139. *Bro. Summ. and Sev. pl.* 17. For if two or more join in bringing an action, and one makes default, the nonſuit of him is the nonſuit of them all. *Bro. Summ. and Sev. pl.* 5, 7. So if divers join in a writ of error, the aſſignment of errors cannot be by one without the others. *Cro. Eliz.* 192. *Andrews* v. *Ld. Cromwell.*

To prevent the great inconvenience, and the failure of juſtice, which would be if perſons, in whom there is a joint right of action, ſhould be precluded, by the negligence or colluſion of any one of them, from having the effect of a ſuit for the recovery of ſuch right; the law has provided, that if any one of thoſe perſons, in whoſe name a joint action is commenced, does not appear, or after appearance makes default, the other or others may have judgment *ad ſequendum ſolum*, or, in other words, a judgment of ſeverance. *Hard.* 48. *Manly* v. *Lovel. Bro. Summ. and Sev. pl.* 4, 16. And ſee *ib. pl.* 18. *F. N. B.* 128. 1 *Inſt.* 139.

The conſequence of this judgment is, that, notwithſtanding the ſeverance of one or more who did not appear or who made default, the other plaintiff or plaintiffs in the action may proceed in the ſuit. 4 *New Abr.* 661.

Where two or more are plaintiffs in an action, and one of theſe has not appeared, he muſt be ſummoned before judgment of ſeverance can be given againſt him: for it is a general rule, that a nonſuit is in no caſe peremptory before appearance, becauſe a writ may have been purchaſed in the plaintiff's name without his privity. 1 *Inſt.* 139. *Bro. Summ. and Sev. pl.* 10. 2 *Rol. Abr.* 488.

But if two joint plaintiffs have both appeared, and afterwards one makes default, the court may, without iſſuing any ſummons, immediately give judgment of ſeverance. *Bro. Summ. and Sev. pl.* 10. 10 *Rep.* 135. *Hard.* 317. No judgment of ſeverance can be given in a writ of error, unleſs it is prayed before the defendant has pleaded *nullo eſt erratum*. Cro. Jac. 117. Blount *v.* Snedſtone. But ſuch judgment may be after joinder in the aſſignment of error. 2 *Lil. Pr. Reg.* 663.

For more learning on this ſubject, ſee 20 Vin. *and* 4 New Abr. *tit.* Summons and Severance.

Summons to parliament, According to *Blackſtone*, in the main the conſtitution of parliament, as it now ſtands, was marked out ſo long ago as the ſeventeenth year of King *John*, *A. D.* 1215, in the great charter granted by that prince, wherein he promiſes to *ſummons* all archbiſhops, biſhops, abbots, earls, and greater barons perſonally; and all other tenants in chief under the crown, by the ſheriff and bailiffs; to meet at a certain place, with forty days notice, to aſſeſs aids and ſcutages when neceſſary. *Black. Com.* 1 *V.* 149.

Summons ad warrantizandum, *Summoneas ad warrantizand'*, The proceſs whereby the vouchee in a common recovery is called. *Co. Lit.* 101.

Sumptuary Laws, (*Sumptuaria Lex*, from *Sumptuarius*, of or belonging to expences) Are laws made to reſtrain exceſs in apparel, and prohibit coſtly clothes, of which heretofore we had many in *England*, but they are all repealed by 1 *Jac.* 1. 3 *Inſt.* 199. See *Black. Com.* 4 *V.* 170.

Sunday, (*Dies Dominicus*) Is the Lord's Day ſet apart for the ſervice of God, to be kept religiouſly, and not be profaned. Perſons uſing bull-baiting or bear-bating, or ſuch like ſports, on a *Sunday*, ſhall forfeit 3 *s.* 4 *d.* and 5 *s.* for wreſtling, bowling, *&c.* *Stat.* 1 *Car.* 1. *c.* 1. And if any butchers ſhall kill or ſell meat on a *Sunday*, they are liable to a penalty of 6 *s.* 8 *d.* Carriers, drovers, *&c.* travelling on the Lord's Day, incur a forfeiture of 20 *s.* *Stat.* 3 *Car.* 1. *c.* 2. No perſon ſhall do any worldly labour on a *Sunday*, (except works of neceſſity and charity) on pain of 5 *s.* And crying and expoſing to ſale any wares or goods on a *Sunday*, the goods to be forfeited to the poor, *&c.* on conviction before a juſtice of peace, who may order the penalties and forfeitures to be levied by diſtreſs: But this is not to extend to dreſſing meat in families, inns, cook-ſhops, or victualling-houſes; nor to crying of milk on a *Sunday* in the morning or evening. 29 *Car.* 2. *c.* 7. An indictment for exerciſing the trade of a butcher muſt be laid to be *contra formam ſtatuti*; for it was no offence at Common law. 1 *Strange* 702. Law proceſſes are not to be ſerved on *Sunday*, unleſs it be in caſes of treaſon or felony; or on an eſcape, by virtue of 5 *Ann.* *c.* 9. *Sunday* is not a day in law for proceedings, contracts, *&c.* And hence it is, that a ſale of goods on this day in a market overt is not good: And if any part of the proceedings of a ſuit in any court of juſtice, be entered and recorded to be done on a *Sunday*, it makes it all void. 2 *Inſt.* 264. 3 *Shep. Abr.* 181. The ſervice of a citation on a *Sunday* is good, and not reſtrained by the *Stat.* 29 *Car.* 2. *c.* 7. And by two judges, the delivery of a declaration upon a *Sunday* may be well enough, it not being a proceſs; but *Holt* Ch. J. thought it ill, becauſe the act intended to reſtrain all ſorts of legal proceedings. 1 *Ld. Raym.* 706. A writ of inquiry cannot be executed on a *Sunday*. 1 Strange 387.

Supercargo, A perſon employed by merchants to go a voyage, and overſee their cargo, and diſpoſe of it to the beſt advantage. *Merch. Dict.*

Super-inſtitution, (*ſuper-inſtitutio*) Is one *inſtitution* upon another; as where *A. B.* is admitted and *inſtituted* to a benefice upon one title, and *C. D.* is admitted and *inſtituted* on the title or preſentment of another. 2 *Cro.* 463. See *Inſtitution.*

Super-jurare, A term uſed in our ancient law, when a criminal endeavoured to excuſe himſelf by his own oath, or the oath of one or two witneſſes, and the crime objected againſt him was ſo plain and notorious, that he was convicted by the oaths of many more witneſſes: This was called *ſuper-jurare*. Leg. Hen. 1. c. 74. Leg. Athelſtan. c. 15.

Superoneratione Paſturæ, Is a judicial writ that lies againſt him who is impleaded in the county-court for the *ſurcharging* or overburthening a *common* with his cattle, in a caſe where he was formerly impleaded for it in the ſame court, and the cauſe is removed into one of the courts at *Weſtminſter*. Reg. Judic.

Super Prærogativa Regis, A writ which formerly lay againſt the King's tenant's widow for marrying without the King's licence. *F. N. B.* 174.

Superſedeas, Is a writ that lies in a great many caſes; and ſignifies in general a command to ſtay ſome ordinary proceedings at law, on good cauſe ſhewn, which ought otherwiſe to proceed. *F. N. B.* 236. A *ſuperſedeas* is uſed for the ſtaying of an execution, after a writ of error is allowed, and bail put in: but no *ſuperſedeas* can be made out on bringing writ of error, till bail is given, where there are judgments upon verdicts, or by default, in debt. 3 *Jac.* 1. *c.* 8. nor in actions for tithes, promiſe for payment of money, trover, covenant, detinue, and treſpaſs. 13 *Car.* 2. *ſt.* 2. *c.* 9. And execution ſhall not be ſtaid in any judgment after verdict (except in the caſe of executors) by writ of error or *ſuperſedeas* thereon, unleſs bail be put in. 16 & 17 *Car.* 2. *c.* 8. *ſ.* 3.

A *writ of error* is ſaid to be in judgment of law a *ſuperſedeas*, until the errors are examined, &c. that is to the execution; not to action of debt on the judgment at law: from the time of the allowance, a writ of error is a *ſuperſedeas*: and if the party had notice of it before the allowance, it is a *ſuperſedeas* from the time of ſuch notice; but this muſt be where execution is not executed, or begun to be executed. *Cro. Jac.* 534. *Raym.* 100. *Mod. Ca.* 130. 1 *Salk.* 321.

If, before execution, the defendant bring a writ of error, and the ſheriff will execute a *fieri facias* and levy the money, the court will award a *ſuperſedeas, quia erronice emanavit*, and to have reſtitution of the money. *Stile* 414. After an execution, there was a *ſuperſedeas, quia executio improvide emanavit, &c.* iſſued; and there being no clauſe of reſtitution in the *ſuperſedeas*, it was inſiſted that the execution was executed before the *ſuperſedeas* awarded, and that a faulty *ſuperſedeas* is no *ſuperſedeas*; but the court ordered another *ſuperſedeas*, with a clauſe of reſtitution. *Moor* 466. 3 *Nelſ. Abr.* 256.

The *ſuperſedeas, quia erronice emanavit*, lies to reſtore a poſſeſſion, after an *habere facias ſeiſinam*, when ſued out erroneouſly; ſo of a *ſuperſedeas* after execution upon a *capias ad ſatisfaciend.* if it be immediately delivered to the ſheriff. *Jenk. Cent.* 58, 92. It appearing upon affidavit, that there were two writs of execution executed upon one judgment: the party moved for a *ſuperſedeas*, becauſe there cannot be two ſuch executions, but where the plaintiff is hindered either by the death of the defendant, or by ſome act in law, that he can have no benefit of the firſt; and ſo it was adjudged. *Stile* 255. A *ſuperſedeas* is grantable to a ſheriff to ſtay the return of an *habeas corpora*; and if he return it afterwards, and the parties proceed to trial, it is error; and ſo are all the proceedings in an inferior court, after an *habeas corpora* delivered, unleſs a *procedendo* is awarded, in which caſe a *ſuperſedeas* is not to be granted. *Cro. Car.* 43, 350.

When a *certiorari* is delivered, it is a *ſuperſedeas* to inferior courts below; and being allowed, all their proceedings afterwards are erroneous; and they may be puniſhed. The juſtices, &c. to whom a *certiorari* is ſent, are to iſſue a *ſuperſedeas* to the ſheriff to ſtop execution of any award, &c. 2 *Hawk. P. C.* 293. If a ſheriff holds plea of 40*s.* debt in his county-court, the defendant may ſue forth a *ſuperſedeas*, that he do not proceed, &c. Or after judgment he may have a *ſuperſedeas* directed to the ſheriff, requiring him not to award execution upon ſuch judgment; and upon that an *alias*, a *pluries*, and an *attachment*, &c. *New Nat. Br.* 432.

Superſedeas may be granted by the court for ſetting aſide an erroneous judicial proceſs, &c. Alſo a priſoner may be diſcharged by *ſuperſedeas*; as a perſon is impriſoned by the King's writ, ſo he is to be ſet at liberty; and a *ſuperſedeas* is as good a cauſe to diſcharge a perſon, as the firſt proceſs is to arreſt him. *Finch* 453. *Cro. Jac.* 379. If a privileged perſon is ſued in any juriſdiction foreign to his privilege, he may bring his *ſuperſedeas*. Vaugh. 155. But a peer, being arreſted by a bill of *Middleſex*, was ordered to plead his privilege; and not allowed a *ſuperſedeas*. Stile 177. Was a peer to be now arreſted, the houſe of Lords would, in all probability, commit the attorney, plaintiff, officer, and all others concerned in ſuch a flagrant breach of privilege, and perhaps compel the plaintiff to diſcontinue his ſuit. It is falſe impriſonment to detain a man in cuſtody after a *ſuperſedeas* delivered, for the *ſuperſedeas* is to be obeyed; and in ſuch caſe it is a new caption without any cauſe. 2 *Cro.* 379. 3 *Nelſ.* 256. There is a *ſuperſedeas* where an *audita querela* is ſued; and out of the *Chancery*, to ſet a perſon at liberty taken upon an *exigent*, on giving ſecurity to appear, &c. And in caſes of ſurety of the peace and good behaviour, where a perſon is already bound to the peace in the Chancery, &c. *New. Nat. Br.* 524, 529, 532. So where a warrant iſſues againſt a man, on an indictment found againſt him, for a miſdemeanor, or other bailable offence, and he having notice of it, does, before caption, duly put in bail, to appear and traverſe the indictment, &c. he is intitled to a *ſuperſedeas*, to prevent a caption. See farther, 4 *New Abr.* and 20 *Vin. Abr.* tit. *Superſedeas*. And poſt *Supplicavit*.

Superſeding a commiſſion of bankrupt. If a commiſſion of bankrupt iſſues, and there is ſufficient to pay all the creditors, and the charges, and ſatisfaction is made to all the creditors, the commiſſion may be ſuperſeded. 2 *Cha. Ca.* 144. A commiſſion is alſo ſometimes ſuperſeded, on the creditors agreeing with the bankrupt, and conſenting to a *ſuperſedeas*. So, if on an iſſue directed, to try whether the party againſt whom the commiſſion iſſued, is or is not a bankrupt, and a verdict is found in his favour, or upon an action where the bankruptcy comes in queſtion, and a verdict is found in his favour, the chancellor will ſuperſede the commiſſion.

Super ſtatuto 1 *Ed.* 3. *cap.* 12, 13. Is a writ that lay againſt the King's tenants holding in chief, who aliened the King's land without his licence. *F. N. B. fol.* 175.

Super Statuto de Articulis Cleri, *Cap.* 6. A writ lying againſt the ſheriff or other officer that diſtrains in the King's highway, or in the lands anciently belonging to the church. *F. N. B.* 173.

Super Statuto facto pour Seneſchal & Marſhal de Roy, &c. Is a writ that lieth againſt the *Steward* or *Marſhal*, for holding plea in his court of *freehold*, or for *treſpaſs* or *contracts not made and ariſing within the King's houſhold.* F. N. B. 241

Super Statuto verſus Servantes & Laboratores, A writ againſt him who keeps *ſervants* departed out of their ſervices contrary to law. *F. N. B.* 167.

Super Statuto de York, quo nul ſerra viteller, &c. Is a writ lying againſt a perſon that uſes victualling, either in groſs, or by retail, in a city or borough-town, during the time he is mayor, &c. *F. N. B.* 172.

Superſtitious Uſes, Cauſing forfeiture of lands and goods to the King, by *Stat.* 1 *Edw.* 6. *c.* 14. See *Uſes*, and *Black. Com.* 3 *V.* 428.

Superviſor, (*Lat.*) A ſurveyor or overſeer: And it was formerly and ſtill is a cuſtom among the better ſort of people, to make a *ſuperviſor of a will*, to *ſuperviſe* and overſee the executors that they punctually perform the will of the teſtator; but this office is of late very careleſly executed, ſo as to be little purpoſe or uſe. *Superviſor* (now ſurveyor) of the *highways*, is mentioned in the *Stat.* 5 *Eliz. c.* 13. And in the late acts relative to the highways. See *Poſt*, *Surveyors of the Highways.*

Supplemental bill in equity. If a plaintiff hath replied to a defendant's anſwer whereby the cauſe is at iſſue, and afterwards new matter ariſes, which did not exiſt before, he muſt ſet it forth by a *ſupplemental bill. Black. Com.* 3 *V.* 448.

Suppletory oath. The Civil law univerſally requires the teſtimony of two. To extricate itſelf out of this abſurdity, the modern practice of the Civil courts has plunged itſelf into another. Where there is only one witneſs, to make up the neceſſary complement of two, they admit the part himſelf (plaintiff or defendant) to be examined in his own behalf; and adminiſter to him what is called the *ſuppletory oath*: and, if his evidence happens to be in his own favour, this immediately converts the half proof into a whole one. *Black. Com.* 3 *V.* 270, 271.

Supplicavit, Is a writ iſſuing out of *Chancery*, for taking ſurety of the peace, when one is in danger of being hurt in his body by another; it is directed to the juſtices of peace and ſheriff of the county, and is grounded upon the *Stat.* 1 *Ed.* 3. *c.* 16. which ordains, That certain perſons ſhall be aſſigned by the *Chancellor* to take care of the peace, *&c.* *F. N. B.* 80, 81. When a man hath purchaſed a writ of *ſupplicavit*, directed to the juſtices of the peace, againſt any perſon, then he, againſt whom the writ is ſued, may come into the Chancery, and there find ſureties that he will not do hurt or damage unto him that ſueth the writ; and upon that he ſhall have a writ of *ſuperſedeas* directed to the juſtices, *&c.* reciting his having found ſureties in Chancery, according to the writ of *ſupplicavit*; and alſo reciting that writ, and the manner of the ſecurity that he hath found, *&c.* commanding the juſtices, that they ceaſe to arreſt him, or to compel him to find ſureties, *&c.* And if the party who ought to find ſureties, cannot come into the Chancery to find ſureties, his friend may ſue a *ſuperſedeas* in Chancery for him; reciting the writ of *ſupplicavit*, and that ſuch a one and ſuch a one are bound for him in the Chancery in ſuch a ſum, that he ſhall keep the peace according to it; and the writ ſhall be directed to the juſtices, that they take ſurety of the party himſelf according to the *ſupplicavit*, to keep the peace, *&c.* and that they do not arreſt him; or if they have arreſted him for that cauſe, that they deliver him. *New. Nat. Br.* 180.

Sometimes the writ of *ſupplicavit* is made returnable into the Chancery at a certain day; and if ſo, and the juſtices do not certify the writ, nor the recogniſance, and the ſecurity taken, the party who ſued the *ſupplicavit* ſhall have a writ of *certiorari* directed unto the juſtices of peace to certify the writ of *ſupplicavit*, and what they have done thereupon, and the ſecurity found, *&c.* *Ibid.* If a recogniſance of the peace be taken in purſuance of a writ of *ſupplicavit*, it muſt be wholly governed by the directions of ſuch writ; but if it be taken before a juſtice of peace below, the recogniſance may be at the diſcretion of ſuch juſtice. *Lamb.* 100. *Dalt. c.* 70.

To ſue the writ of *ſupplicavit*, the party that deſires it muſt go before one of the Maſters in Chancery, and make oath that he does not deſire the ſame through any malice, but for his own ſafety; upon which the maſter makes out a warrant, and the writ it made by it by one of the clerks in the ſix clerks office; and when made, the *ſupplicavit* is to be delivered to the ſheriff to have his warrant thereupon for arreſting the party, *&c.* and then, having ſued out a *certiorari*, it is to be delivered to them that took bail thereon; and they are required to certify it, *&c.* *Pract. Solic.* 130. See *Surety of the Peace*, and *Black. Com.* 4 *N.* 250.

Supplies. Extraordinary grants to government, by parliament, to ſupply the exigencies of the ſtate. See on this ſubject, *Black. Com.* 1 *V.* 307.

Supremacy, Signifies ſovereign dominion, authority and preheminence, the higheſt eſtate. King *Hen.* 8. was the firſt prince that ſhook off the yoke of *Rome* here in *England*, and ſettled the *ſupremacy* in himſelf, after it had been long held by the *Pope.* *Stat.* 25 *Hen.* 8. *c.* 12, 20. And by 1 *Eliz. c.* 1. all eccleſiaſtical juriſdiction was annexed to the crown; and it was ordained that no foreign potentate ſhould exerciſe any power or authority in this kingdom: Alſo the *oath of ſupremacy* was appointed, *&c.* By theſe laws the great power of *Rome* was ſuppreſſed; and the act of 1 *Eliz.* Sir *Edward Coke* ſays, was an act of reſtitution of the ancient juriſdiction eccleſiaſtical, which always belonged of right to the crown of *England*; and that it was not introductory of a new law, but declaratory of the old, and that which was or of right ought to be, by the fundamental laws of this realm, parcel of the King's juriſdiction; by which laws, the King, as *ſupream head*, had full and intire power in all cauſes eccleſiaſtical as well as temporal: And as in temporal cauſes, the King doth judge by his judges in the courts of juſtice, by the temporal laws of *England*; ſo in cauſes eccleſiaſtical, they are to be determined by the judges thereof, according to the King's eccleſiaſtical laws. 5 *Rep.* 9. *Cawdrey's* caſe. And in this caſe it was reſolved by all the judges, that, by our ancient laws, this kingdom is an abſolute empire and monarchy; conſiſting of one head, which is the King, and of a body politic, made up of many well agreeing members, all which the law divides into two ſeveral parts, the clergy and the laity, both of them immediately under God, ſubject and obedient to the head. And the kingly head of this politick body, is furniſhed with prerogative and juriſdiction, to render juſtice and right to every part and member of this body, of what eſtate or degree ſoever, otherwiſe he would not be at the head of the whole. 5 *Co. Rep.* 8.

There are ſeveral inſtances of eccleſiaſtical juriſdiction exerciſed by the Kings of *England* in former ages; and in this reſpect the King is ſaid to be *perſona mixta & unita cum ſacerdotibus.* The King is the *ſupreme* ordinary, and by the ancient laws of the land might, without any act of parliament, make ordinances for the government of the clergy; and if there be a controverſy between ſpiritual perſons concerning juriſdiction, the King is arbitrator, and it is a right of his crown to declare their bounds, *&c.* *Moor* 755, 1043. *Hob.* 17. See *Appeals to* Rome, *Pope*, and *Præmunire*, and *Black. Com.* 1 *V.* 49, 146, 368. 4 *V.* 115, 423.

Surcharge, An over-charge, beyond what is juſt and right *Merch. Dict.*

Surcharge of common. This is a diſturbance of common of paſture, by any one who hath right of common putting more cattle therein than the paſture and herbage will ſuſtain, or the party hath a right to do. This ſurcharging can, properly ſpeaking, only happen where the common is *appendant* or *appurtenant*, and of courſe limitable by law; or where, when *in groſs*, it is expreſsly limited and certain: for where a man hath common *in groſs*, *ſans nombre*, or *without ſtint*, he cannot be a *ſurcharger.* But even in this caſe there muſt be ſufficient for the lord's own beaſts; for the law will not ſuppoſe that, at the original grant of the common, the lord meant to exclude himſelf. The remedy for ſurcharging common, is by the lord's diſtraining the ſurplus number, or by his bringing treſpaſs, or by action on the caſe, in which any commoner may be plaintiff. *Black. Com.* 3 *V.* 237, 238.

Surcharge of the Foreſt, (*Superoneratio foreſtæ,*) Is when a commoner puts on more beaſts in the foreſt than he has a right to. *Manwood, part* 2. *cap.* 14. *num.* 7. And is taken from the writ *De ſecunda ſuperoneratione Paſturæ*, in the ſame ſenſe when the commoner *ſurchargeth.* 3 Inſt. fol. 293.

Sur Cui in vita, Is a writ that lies for the heir of a woman, whoſe huſband hath aliened her land in fee, and ſhe neglected to bring the writ *Cui in vita* for recovery thereof; in this caſe, her heir may bring this writ againſt the tenant after her deceaſe. *F. N. B.* 193.

Surety, (*Vas Vadas*) A bail that undertakes for another man in a criminal caſe, or action of treſpaſs, *&c.* And there is a *ſurety of the peace*, ſo called, becauſe the party that was in fear is thereby *ſecured*, by bond or recognizance of the other, and his bail bound for him. *Lamb. Eiren. lib.* 2. Vide *Good Behaviour*, and 20 *Vin. Abr.* 101. See *infra.*

Surety of the Peace, (*Securitas Pacis,* ſo called, becauſe the party that was in fear, is thereby ſecured,) Is an acknowledging of a bond to the King, taken by a competent judge of record, for the *keeping of the peace.* This *peace* may a *juſtice of the peace* command, either as a miniſter, when he is commanded thereto by a higher authority; or as a judge, when he doth it of his own power, derived from his commiſſion. Of both theſe, ſee *Lamb. Eiren. lib.* 2. *cap.* 2. *p.* 77. *Cowell.*

A juſtice of peace may, according to his diſcretion, bind all thoſe to keep the peace, who, in his preſence, ſhall make any affray, or ſhall threaten to kill or beat any perſon, or ſhall contend together with hot words, and all thoſe who ſhall go about with unuſual weapons or attendance, to the terror of the people; and all ſuch perſons as ſhall be known by him to be common barrators; and all who ſhall be brought before him by a conſtable, for a breach of the peace in the preſence of ſuch conſtable; and all ſuch perſons, who, having been before bound to keep the peace ſhall be convicted of having forfeited their recognizance. *Lamb.* 77, 78. *Bro. Peace, pl.* 7, 8. 1 *Hawk.* 126.

A wife may demand ſurety of the peace againſt her huſband, if he threatens to beat her outrageouſly, or to kill her. *Fitz. N. B.* 80. *Lamb.* 8. 2 *Leo.* 128. 1 *Hawk.* 127. Vide *Stra.* 1231. Articles of the peace may be exhibited by a huſband againſt his wife. *Str.* 1207. *Sims*'s caſe. 1 *Hawk.* 127. See *Pult.* 18 *Lamb.* 81, 83. *Bro. Peace, pl.* 22. 1 *Hawk.* 127. Infants and feme coverts ought to find ſurety by their friends, and not to be bound themſelves. 1 *Hawk.* 127.

Whenever a perſon has juſt cauſe to fear that another will burn his houſe; or do him ſome corporal hurt, as by killing or beating him; or that he will procure others to do him ſuch miſchief, he may demand the ſurety of the peace againſt ſuch perſon. *Lamb.* 82. 1 *Hawk.* 127. *Str.* 473. Surety of the peace may be demanded by a wife, if her huſband gives her unreaſonable correction. *Mod.* 874. Sir *Thomas Seymour*'s caſe. *Godb.* 215. *F. N. B.* 80. Surety of the peace ought not to be granted to a man for fear of danger to his ſervant or cattle. *Lamb.* 83. It hath however been ſaid, that a man may have the ſurety of the peace againſt one who threatens to hurt his wife or child. *Dalt.* 266. The ſurety of the peace ought not to be granted for any paſt battery, unleſs there is a fear of ſome preſent or future danger: But the offender muſt in ſuch caſe be puniſhed by action or indictment. *Dalt.* 266. The demand of the ſurety of the peace ought to be ſoon after the cauſe of fear; for the ſuffering much time to paſs, before it is demanded, ſhews that the party has been under no great terror. 6 *Mod.* 132. *The Queen* v. *Lane.*

1. *Of granting ſurety of the peace by the court of Chancery.*

2. *Of granting ſurety of peace by the court of King's Bench.*

3. *Of granting ſurety of the peace by a juſtice of the peace.*

4. *Of forfeiting a recognizance for keeping the peace, and how ſuch recognizance may be diſcharged.*

1. *Of granting ſurety of the peace by the court of Chancery.*

At the Common law it was ſufficient, in order to obtain proceſs for ſurety of the peace from the court of Chancery, if the party who demanded it made oath, that he was in fear of ſome corporal hurt, and that he did not crave the ſame out of malice, and for the ſafety of his body. *F. N. B.* 79, 80.

But by the 21 *Jac.* 1. *c.* 8. All proceſs of the peace ſhall be void, unleſs granted on motion in open court on affidavit in writing.

When articles of the peace are exhibited in the court of Chancery, and oath is made that the ſurety of the peace is not craved by the party through malice, but for the ſafety of his life, a writ of *ſupplicavit* iſſues, directed to the juſtices of the peace generally, or to ſome one juſtice of the peace, or to the ſheriff, commanding them or him to take ſecurity in the ſum thereon indorſed, and, if the party refuſes to find ſuch ſecurity, to commit him to the next gaol, until he does find ſuch ſecurity. *F. N. B.* 80. Vide *Bro. Off. pl.* 39. *F. N. B.* 81. *Bro. Peace, pl.* 9. *Lamb.* 101, 107. 1 *Hawk.* 129.

If no return is made to the writ of *ſupplicavit*, the party who ſued it out may have a *certiorari*, directed to the perſon who ought to make a return, commanding him to certify the writ of *ſupplicavit*, and what has been done thereupon. *F. N. B.* 81. 1 *Hawk.* 129. *Lamb.* 109.

When a writ of *ſupplicavit* has iſſued from the court of Chancery againſt any perſon, he may by himſelf, or ſome friend, come into the court of Chancery, and find ſureties there that he will not do any harm to him who hath ſued out the writ; and thereupon he ſhall have a writ of *ſuperſedeas*, reciting the writ of *ſupplicavit*, and the ſecurity given, directed to the juſtice or juſtices of the peace, or to the ſheriff, commanding that they ſurceaſe to arreſt him, or compel him to find ſureties, and if they have arreſted him for that cauſe and no other, that they deliver him. *F. N. B.* 81, 238.

2. *Of granting ſurety of the peace by the court of King's Bench.*

At the Common law the oath of the party was a ſufficient ground for the court of King's Bench to grant the ſurety of the peace; but this cannot, ſince the ſtatute made in the twenty-firſt year of the reign of King *James* the *Firſt*, *c.* 8. be done, unleſs *articles of the peace* are exhibited in this court upon motion in open court. *F. N. B.* 79, 80.

Where *articles of the peace* are exhibited in the court of King's Bench, and oath is made, that the party does not crave the ſecurity of the peace out of hatred or malice, but merely for the preſervation of his life and perſon from danger, an attachment of the peace iſſues to the ſheriff commanding him to take bond for the appearance of the party at the return of the writ to put in bail to the articles in this court; and, if ſuch bond is not given, to commit the party to the next gaol. *Comb.* 427. *Ruſſel*'s caſe. *F. N. B.* 79. Where the party againſt whom articles of the peace are exhibited, comes into court to put in bail, the articles muſt be read to him. 6 *Mod.* 132. *The Queen* v. *Lane.*

Robert Parnel having exhibited articles of the peace againſt Sir *Thomas Allen*, Bart. and three others, an attachment of the peace iſſued againſt them. Before bail was put in, *Parnel*, in a petition to the court recited ſome of the facts ſworn to in the articles, and endeavoured to explain them. Hereupon the counſel for the defendants moved for a rule to review the articles, and ſome affidavits were read to contradict the facts therein charged. Upon reading the petition, and theſe affidavits, in which the facts were flatly contradicted by five or ſix perſons, a rule was made to ſhew cauſe, why the articles ſhould not be reviewed, and that *Parnel* ſhould attend upon the day for ſhewing cauſe. He did attend, and the court was, upon the whole, ſo ſatisfied of his having been guilty of perjury, that he was immediately committed for wilful and corrupt perjury; and a rule was made, that all farther proceedings upon the articles ſhould ſtay. The rule was pronounced in theſe terms, "and not to take the "articles off the file, in order to give the defendants an "opportunity, which could not otherwiſe have been "done, of proſecuting *Parnel* for perjury." *MS. Rep. Rex* v. Sir *Thomas Allen* Bart. and others, *Hil.* 32 *Geo.* 2. See Lord *Vane*'s caſe, *Stra.* 1202.

Articles of the peace having been exhibited, by *John Brown*, againſt *Hanna Bennett*, and three others, a rule was made, upon reading the affidavits of the defendants, to ſhew cauſe, why theſe articles ſhould not be reviewed. In theſe affidavits it was ſworn, that the defendants did not know any ſuch perſon as *Brown* the articulant, and, beſides other ſtrong facts ſworn to, it was ſuggeſted, that this was a contrivance of the defendant *Bennet*'s huſband to oppreſs her. No cauſe being ſhewn, the articles were ordered to be taken off the file. *MS. Rep. Rex* v. *Bennet* and others. *Eaſt.* 32 *Geo.* 2.

If a defendant, through infirmity of age or ſickneſs, be unable to attend the court, you may move for a *mandamus* to be directed to the juſtices in the country, to take ſuch ſecurity. See *Stra.* 835. *Comb.* 427. 4 *New Abr.* 691. Vide the *next clauſe*.

It has not of late years been the practice of the court of King's Bench, to refuſe the receiving of articles of the peace, where the articles contained in them is ſufficient for craving the ſurety of the peace: But it ſeems as if that court is now come to a reſolution of putting a ſtop to this vexation of the ſubject; for in a very late caſe, where a motion was made by *Borough*, to exhibit articles of the peace againſt *Wait*, the court, it appearing that *Wait* lived at the *Devizes*, and that *Borough* had not endeavoured to obtain ſurety of the peace in the county, unanimouſly refuſed the motion: and Lord *Mansfield*, Ch. J. ſaid, Apply to the magiſtrates of the county, and if ſurety of the peace is not granted you, come here again. *MS. Rep. Borough*'s caſe, *Eaſt.* 32 *Geo.* 2.

When ſurety of the peace is granted by the court of King's Bench, if a *ſuperſedeas* comes from the court of Chancery, to the juſtices of that court, their power is at an end; and the party as to them diſcharged. *Bro. Peace, pl.* 17. *Sed qu.*

3. *Of granting ſurety of the peace, by a juſtice of the peace.*

A juſtice of the peace may grant the ſurety of the peace, under the authority of the commiſſion of the peace, by which he is impowered to cauſe to come before him all thoſe, who to any one or more of the King's people, concerning their bodies or the firing of their houſes have uſed threats, to find ſufficient ſecurity for the peace, or their good behaviour, towards the King and his people, and if they ſhall refuſe to find ſuch ſecurity, then them in the King's priſons, until they ſhall find ſuch ſecurity, to cauſe to be ſafely kept. *Lamb.* 36.

Whenever oath is made before a juſtice of peace by any perſon, that he is actually under fear that another will burn his houſe, or do or procure to be done to him ſome corporal hurt, and that he does not crave the ſurety of the peace through malice, but for the ſafety of his life, the juſtice is bound to grant it. *Lamb.* 83. *F. N. B.* 79. 1 *Hawk.* 127. But if the ſecurity of the peace is deſired againſt a peer, the ſafeſt way is to apply to the court of Chancery or King's Bench. 1 *Hawk.* 127. *Lamb.* 81. *Stra.* 473.

If the perſon againſt whom it is demanded, be preſent, the juſtice of the peace may commit him immediately, unleſs he offers ſureties; and *a fortiori* he may be commanded to find ſureties, and be committed for not doing it. *Bro. Mainp. pl.* 39. 1 *Hawk.* 127. But if he is abſent, a warrant for committing him cannot be granted till a warrant is iſſued commanding him to find ſureties; and this warrant, which muſt be under ſeal, ought to ſhew the cauſe for which it is granted, and at whoſe ſuit. *Lamb.* 85. 1 *Hawk.* 128.

The juſtice of the peace, who grants this laſt mentioned warrant, may in this caſe make it ſpecial for bringing the party before himſelf only, for, as he has moſt knowledge of the matter, he is beſt qualified to do juſtice in it. 5 *Co.* 59. *Foſter*'s caſe. 1 *Hawk.* 128. But if the warrant be in general terms to carry the party before any juſtice of the peace, the officer, who executes it, has his election to carry him before what juſtice he pleaſes, and may carry him to gaol, by virtue of the ſame warrant, if he refuſes to find ſureties before ſuch juſtice; for the warrant has theſe words in it, if he ſhall refuſe to find ſurety, *&c.* *Bro. Falſ. Impriſ. pl.* 11. 1 *Hawk.* 128. 5 *Co.* 59.

If one, however, who apprehends that the ſurety of the peace will be demanded againſt him, finds ſureties before any juſtice of the peace of the ſame county, either before or after a warrant is iſſued againſt him, he may have a ſuperſedeas from ſuch juſtice; and this ſhall prevent or diſcharge him from an arreſt, under the warrant of any other juſtice, at the ſuit of the ſame party, for whoſe ſecurity he has found ſuch ſecurities. *Lamb.* 95, 96. 1 *Hawk.* 128.

The recognizance for keeping the peace, which a juſtice of the peace takes upon complaint below, is to be regulated, as to the number and ſufficiency of the ſureties, the largeneſs of the ſum, and the time it is to continue in force, by the diſcretion of ſuch juſtice. *Lamb.* 100. 1 *Hawk.* 129. It has been ſaid that a recognizance taken by a juſtice of peace, to keep the peace as to *A. B.* for a year, or for life, or without expreſſing any certain time, which ſhall be intended to be for life, altho' no time or place is fixed for the party's appearance, or he is not bound to keep the peace as to all the King's leige people, is good. 1 *Hawk.* 129. *Lamb.* 100. But it ſeems to be the ſafeſt way, to bind the party to appear at the next ſeſſions of the peace, and in the mean time to keep the peace as to the King, and all his liege people, and eſpecially as to the party, who has demanded the ſurety of the peace. *Lamb.* 105. 1 *Hawk.* 129.

By the 3 *H.* 7. *c.* 1. it is enacted, “That every juſtice of the peace within this realm, that ſhall take any recognizance for keeping of the peace, ſhall certify, ſend, or bring the ſame recognizance at the next ſeſſions of the peace, where he is or hath been juſtice, that the party ſo bound may be called.” If one of the ſureties of a man who is bound to keep the peace dies, he ſhall not be obliged to find a new ſurety; for the executors or adminiſtrators of him who is dead are bound by the recognizance. *Lamb.* 113. *Bro. Peace, pl.* 17. 1 *Hawk.* 129.

4. *Of forfeiting a recognizance for keeping the peace, and how ſuch recognizance may be diſcharged.*

By the 3 *H.* 7. *c.* 1. it is enacted, “That if the party who is called at a ſeſſions of the peace, upon a recognizance for keeping the peace, makes default, his default ſhall be then and there recorded, and the ſame recognizance, with the record of the default, be ſent and certified into the chancery, or before the King in his Bench, or into the King's Exchequer.”

He who is bound to keep the peace, and to appear at the ſeſſions, muſt appear there, and record his appearance, otherwiſe his recognizance is forfeited. And altho' the party who craved the ſurety of the peace, comes not to pray that it may be continued, the juſtices may in their diſcretion order it to be continued till another ſeſſions. *Bro. Peace, pl.* 17. *Lamb.* 109.

But if an excuſe, which is judged by the court to be a reaſonable one, is given for the non-appearance of a party, it ſeems that the court is not bound peremptorily to record his default, but may diſcharge the recognizance, or reſpite it till the next ſeſſions. 1 *Hawk.* 130. A recognizance for keeping the peace may be forfeited by any *actual violence* to *the perſon of another*, whether it be done by the party bound, or others by his procurement. *Lamb.* 115, 127. *Bro. Peace. pl.* 2. 1 *Hawk.* 130. In ſupport of a rule to ſtay proceedings in a *ſcire facias*, upon a recognizance for keeping the peace, it was ſaid, that the aſſault, which had been made was not upon him at whoſe requeſt the ſurety of the peace was granted, but upon another perſon. It was held that this makes no difference; and the rule was diſcharged. *MS. Rep. Rex.* v. *Stanly and his bail, Trin.* 27 *Geo.* 2. But a recognizance for keeping the peace, is not forfeited, where an officer, having a warrant againſt one who will not ſuffer himſelf to be arreſted, beats or wounds him in the attempt to take him. *Lamb.* 128. 1 *Hawk.* 130.

So it is not forfeited, if a parent in a reaſonable manner chaſtiſes his child; a maſter his ſervant, being actually in his ſervice at the time; a ſchoolmaſter his ſcholar; a gaoler his priſoner; a huſband his wife. 1 *Sid.* 176, 177. *Lamb.* 127, 128. *Hetl.* 149, 150. 1 *Hawk.* 130. *F. N. B.* 80.

And, without enumerating all the actual aſſaults, which a man may make upon the perſon of another, and not forfeit his recognizance for keeping the peace, it may be laid down as a principle, that ſuch a recognizance is not forfeited by any aſſault which could have been juſtified in an action, or upon an indictment, for the aſſault. 4 *New Abr.* 694.

It has been held that a recognizance for the keeping the peace may be forfeited by any treaſon againſt the perſon of the King, or by an unlawful aſſembly *in terrorem populi*. Lamb. 115. 1 Hawk. 130. *Words which tend directly to a breach of the peace*, as challenging a man to fight, or threatning to beat one who is preſent, amount to a forfeiture of ſuch recognizance. *Lamb.* 115. 1 *Hawk.* 130. *Cro. Eliz.* 86. A recognizance is likewiſe forfeited by threatning to beat a perſon who is abſent, if the party, who has ſo threatened, does afterward lie in wait to beat him. *Lamb.* 115. But it is not forfeited by words of heat or choler, as the calling a man knave, liar, or raſcal: For, although ſuch words may provoke a haſty man to break the peace, they do not directly challenge him to do it; nor does it appear, that the ſpeaker intended to carry his reſentment any farther. *Cro. Car.* 198. *Rex.* v. *Heyward, and his bail.* 1 *Hawk.* 130. Nay, it has been held, that a recognizance for *being of good behaviour* ſhall not be forfeited for ſuch words; and *a fortiori* one for *keeping the peace* ſhall not. *Cro. Eliz.* 86. *King's* caſe. *Mo.* 249. 1 *Hawk.* 130.

Such recognizance ſhall not be forfeited by a treſpaſs on the lands or goods of another, unleſs it is with force. *Cro. Jac.* 598. 1 *Hawk.* 193. A man ſhall not forfeit a recognizance for keeping the peace, who does a hurt to another in playing at cudgels, or ſuch like ſport, by conſent; for theſe ſports, which tend to promote activity and courage, are lawful. Dalt. 284. 1 *Hawk.* 131. But he who wounds another in fighting with naked ſwords, forfeits his recognizance, becauſe no conſent, nor even the command of the King, can make ſo dangerous a diverſion lawful. *Bro. Car.* 229. 1 *Hawk.* 131. If a ſoldier hurts another ſoldier, by diſcharging his gun in exerciſing without ſufficient caution, it is no forfeiture of a recognizance for keeping the peace: For altho' he would be liable in an action for the damage occaſioned by his negligence, this, it not being a wilful breach of the peace, is not within the purport of the recognizance. 1 *Hawk.* 131. *Hob.* 134. 2 *Rol. Abr.* 548.

A court of quarter-ſeſſions cannot in any caſe proceed againſt the parties, for a *forfeiture* of a recognizance for keeping the peace; but the recognizance muſt be ſent into ſome of the King's courts in *Weſtminſter Hall.* 1 *Hawk.* 130. All proceedings upon a forfeited recognizance muſt be by *ſcire facias*, and not by indictment; becauſe, where a *ſcire facias* is brought, the parties have an opportunity of pleading any matter in their diſcharge. 1 *Roll. Abr.* 900. *Perrow's* caſe. *Cro. Jac.* 598. 1 *Hawk.* 130.

The demiſe of the King is a diſcharge of a recognizance for keeping the peace; for the condition being *ſervare pacem noſtram*, his ſucceſſor cannot take advantage of a breach thereof. *Bro. Peace, pl.* 15. 1 *Hawk.* 129. *ſedqu.*

After ſuch a recognizance is forfeited, the King may pardon the forfeiture: But he cannot releaſe the condition before it is broken; becauſe the party, at whoſe complaint it was taken, has an intereſt therein. *Bro. Recogn. pl.* 22. *Bro. Chart. de Pard. pl.* 24.

If no time for the continuance of a recognizance for keeping the peace is therein mentioned, it is perhaps in the power of the court, in which it was taken, or to whom it has been certified, to diſcharge it at their diſcretion. 4 *New. Abr.* 695.

The uſual practiſe of a court of quarter-ſeſſions is to continue a recognizance for keeping the peace from ſeſſions to ſeſſions, until the court thinks proper to diſcharge it. It is the conſtant courſe of the court of King's Bench, to take a recognizance for twelve months, and, if no indictment is within that time preferred againſt the party bound to keep the peace, it may at the expiration thereof be diſcharged. 12 *Mod.* 251. *Anon. Str.* 835. This ſeems alſo to be the practice of the court of Chancery; for, upon a motion to diſcharge a writ of *ſupplicavit*, it was refuſed; and by my Lord *Macclesfield*, Chancellor: This application is too early; let the party ſtay till the year is out, and behave himſelf quietly all that time. 2 *Wil.* 202. *Clavering*'s caſe. See farther, *Sav.* 53. 1 *Lev.* 235. 1 *Hawk.* 129. *Bro. Peace, pl.* 17. *Lamb.* 111. 11 *Mod.* 109. *Cro. Jac.* 282. *Yelv.* 207. 2 *Hawk.* 294.

Surgeon, (*Chirurgus*) May be deduced from the Fr. *Chirurgeon*, ſignifying him that dealeth in the mechanical part of phyſick, and the outward cures performed with the hand; and therefore is compounded of the two *Greek* words Χεὶρ, *manus* Ἔργον, *opus*, and for this cauſe *ſurgeons* are not allowed to adminiſter any inward medicine. By the *ſtat.* 32 *H.* 8. *c.* 42. the barbers and *ſurgeons* of *London* are incorporated and made one company; and there ſhall be choſen yearly four maſters for the ſaid company, of which two muſt be expert in *ſurgery*, and the other two in barbery, who ſhall have power to puniſh and correct all defaults; and the company and their ſucceſſors are to have the overſight and correction as well of freemen as foreigners, for ſuch offences as they ſhall commit againſt the good order of barbery and *ſurgery*: They ſhall be exempted from bearing of arms, ſerving on juries, and all manner of pariſh offices, *&c.* but are to pay ſcot and lot, and other charges as formerly; and the ſaid company ſhall have free liberty to take four perſons condemned for felony, for anatomies yearly. No barber in *London*, or within one mile thereof, ſhall practiſe *ſurgery*, letting of blood, or any other thing relating thereto, except drawing of teeth; nor ſhall any perſon who practiſes *ſurgery* within thoſe limits, exerciſe the craft of a barber: Though any man, not being a barber or *ſurgeon*, may retain in his houſe, as a ſervant, a barber or *ſurgeon*, who may exerciſe his art in his maſter's houſe, or elſewhere, *&c.* All perſons practiſing *ſurgery* in *London*, ſhall have an open ſign in the ſtreet where they dwell, that people may know where to reſort to them when wanted: And every perſon offending in any of the articles contained in this ſtatute ſhall forfeit 5 *l.* a month, one moiety to the King, and the other to him who will ſue for the ſame, *&c.* By the *ſtat.* 18 *Geo.* 2. *c.* 15. the *ſurgeons* of *London*, and the barbers of *London* are made two ſeparate and diſtinct corporations. See *Phyſicians.*

Sur lui ſur, *i. e.* Upon his oath, according to ancient laws. *Leg. W.* 1. *c.* 16.

Surmiſe, Is ſomething offered to a court to move it to grant a prohibition, *Audita Querela*, or other writ grantable thereon; and what ſhall be allowed to be a good *ſurmiſe*, or not ſo, ſee 2 *Cro.* 219, 501, 669. Vide *Suggeſtion.*

Surpluſage, (Fr. *Surplus*, Lat. *Surpluſagium*, *Corollarium*) Is a ſuperfluity or addition more than needful, which ſometimes is the cauſe that a writ abates; but in pleading many times it is abſolutely void, and the reſidue of the plea ſhall ſtand good. *Broke. Plowd.* 63. And on a writ of inquiry or damages in waſte, in which the ſheriff was commanded to go to the place waſted, and there to inquire of the waſte done and damages, who returned the inquiſition, without mentioning that he went to the place waſted; this was held to be *ſurpluſage* in the writ that would not hurt, becauſe by not pleading in the action the waſte was acknowledged, ſo that he need not go to the place waſted to view it. *Poph.* 24. A *diſtringas* was returnable *Tres Trin. Niſi prius venerit* Matthæus Hale *Mil. Capital. Baro*, *&c.* on ſuch a day *ejuſdem Menſis Junii*; whereas the month of *June* was not mentioned before; and this was moved in arreſt of judgment as a diſcontinuance; but adjudged that the word *ejuſdem* ſhall be rejected as *ſurpluſage* and void, and then the word *Junii* ſhall be intended *June* next; as a covenant to pay money at *Michaelmas*, ſhall be intended *Michaelmas* next enſuing. *Hard.* 330,

In a declaration for debt, upon demurrer, it was objected againſt the declaration, for that the plaintiff averred the defendant had not paid *præd. ſexaginta Libras*, *&c.* when the word *ſexaginta* was not before-mentioned: And it was reſolved that it ſhall be *ſurpluſage*, when 'tis that the defendant had not paid *præd. Libras*, which muſt be the pounds for which the plaintiff had declared. 1 *Lutw.* 445. *Cro. Eliz.* 647. 3 *Nelſ. Abr.* 262. A plaintiff being right named through all the proceedings, but in the laſt place, where it was ſaid that a *Capias Utlagatum* was proſecuted againſt *prædict Johannem Fowler*, and his true name was *George*: It was ruled that the word *Johannes* ſhall be *ſurpluſage* and be rejected; and then the plea will be that a *Capias Utlagatum* was proſecuted againſt *prædict. Fowler.* 2 *Lutw.* 919. 1 *Lev.* 428. If a jury find the ſubſtance of the iſſue before them to be tried, other ſuperfluous matter is but *ſurpluſage.* 6 *Rep.* 46. And where a verdict or judgment is compleat, if there be any other matter repugnant or uncertain, *&c.* it ſhall be rejected as *ſurpluſage*, 3 *Nelſ.* 262. 2 *Hawk. P. C.* 441.

Surpluſage in an iſſue helped after verdict, where plaintiff to a plea of *plene adminiſtravit* replied that defendant had ſufficient to ſatisfy the *damages* aforeſaid, and it ſhould have been *the debt* and *damages.* The court rejected *damages* as *ſurpluſage*, and then it ſtood ſufficient to ſatisfy, *&c.* which was held good, *Wilſon, par.* 1 *fo.* 238. See *Pleading.*

Surpluſage of Accounts, Signifies a greater disburſement than the charge of the accountant amounts unto. In another ſenſe, *ſurpluſage* is the remainder or overplus of money left. *Litt. Dict.*

Surpluſage of Inteſtates Effects. By the *ſtat.* 22 & 23 *Car.* 2. *c.* 10. the *ſurpluſage* of inteſtates eſtates (29 *Car.* 2. *c.*

2. *c.* 3. *ſ.* 25.) ſhall, after the expiration of one full year from the death of the inteſtate, be diſtributed, *one third* to the *widow*, and the *reſidue* in equal proportions to his *children*, or, if dead, to their *repreſentatives*; that is, their *lineal deſcendants*: If there are no children, or legal repreſentatives, then a *moiety* to the *widow*, a *moiety* to the *next of kindred in an equal degree, and their repreſentatives*: If no widow, the *whole* ſhall go to the *children*: If neither widow nor children, the *whole* ſhall be diſtributed among *the next of kin in equal degree, and their repreſentatives*: But no repreſentatives are admitted among collaterals, farther than *the children* of the *inteſtates brothers* and *ſiſters*, *Black. Com.* 2 *V.* 515. See *Succeſſion*, the ſeveral heads.

Surrebutter, A ſecond Rebutter; or more properly it is the replication or anſwer of the plaintiff to the defendant's Rebutter. See *Rebutter*.

Surrejoinder, Is a ſecond defence of the plaintiff's declaration in a cauſe, and anſwers the *rejoinder* of the defendant. *Weſt. ſymb. pdr.* 2. As a *rejoinder* is the defendant's anſwer to the *replication* of the plaintiff; ſo a *ſurrejoinder* is the plaintiff's anſwer to the defendant's *rejoinder*. *Wood's Inſt.* 586. Where a plaintiff in his *ſurrejoinder* is to conclude to the country, and not with an averment. See *Raym.* 94. After *rejoinder* and *ſurrejoinder*, and *rebutter*, &c. there may be a demurrer.

Surrender, (*Surſum Redditio*) Is a deed or inſtrument teſtifying that the particular *tenant* for *life* or *years*, of lands and tenements, doth yield up his eſtate to him that hath the immediate eſtate in *remainder* or *reverſion*, that he may have the preſent poſſeſſion thereof; and wherein the eſtate for life or years may merge or drown by the mutual agreement of the parties. *Co Litt.* 337.

And of *ſurrenders* there are three kinds; a *ſurrender* properly taken at common law; a *ſurrender* of copyhold or cuſtomary eſtates; and a *ſurrender* improperly taken, as of a deed, a patent, rent newly created, *&c.*

The *ſurrender* at common law is the uſual *ſurrender*, and is of two ſorts, *viz.* A *ſurrender in deed*, or by expreſs words in writing; where the words of the leſſee to the leſſor prove a ſufficient aſſent to give him his eſtate back again: And a *ſurrender in law* being that which is wrought by operation of law, and not actual; as if a leſſee for life or years, take a new leaſe of the ſame land during the term; this will be a *ſurrender in law* of the firſt leaſe. 1 *Inſt.* 338. 5 *Rep.* 11. *Perk.* 601. And in ſome caſes a *ſurrender in law* is of greater force than a *ſurrender in deed*; for if a man makes a leaſe for years to begin at a day to come, this future intereſt cannot be *ſurrendered* by *deed*, becauſe there is no reverſion wherein it may drown; but if the leſſee, before the day, take a new leaſe of the ſame land, it is a good *ſurrender in law* of the former leaſe: And this *ſurrender in law* by taking a new leaſe, holds good, though the ſecond leaſe is for a leſs term than the firſt; and 'tis ſaid, though the ſecond leaſe is a voidable leaſe, *&c.* 5 *Rep.* 11. 6 *Rep.* 69. 10 *Rep.* 67. 1 *Inſt.* 218 *Cro. Eliz.* 873.

If leſſee for life do accept of a leaſe for years, this is a *ſurrender in law* of his leaſe for life; if it ſhould be otherwiſe the leaſe for years would be made to no purpoſe, and both the leaſes cannot ſtand together in one perſon, 2 *Lill. Abr.* 544. Leſſee for twenty-one years takes a leaſe of the ſame lands for forty years to commence after the death of *A. B.* it is not any preſent *ſurrender* of the firſt term; but if *A. B.* dies within the term it is. 4 *Leon.* 83. A leſſee for years took a ſecond leaſe to commence at *Michaelmas* next; adjudged this was an immediate *ſurrender* in law of the firſt, and that the leſſor might enter and take the profits from the time of the acceptance of the ſecond leaſe, until *Michaelmas* following. *Cro. Eliz.* 605. If the leſſor make, and leſſee accept a new leaſe, and it is upon condition; this ſhall be a *ſurrender in law*: And if an aſſignee of tenant for years take a new leaſe, *&c.* the firſt leaſe will be by law *ſurrendered.* 1 *Inſt.* 218, 338. If a woman leſſee for years marries, and afterwards ſhe takes a new leaſe for life without her huſband, this is a *ſurrender* and extinguiſhment of the term; but if the huſband diſagree, then 'tis revived: Though if the new leaſe had been made to the huſband and wife, then, by acceptance thereof, the firſt leaſe had been gone. *Hutt.* 7. A leſſor takes the leſſee to wife, then the term is not drowned or *ſurrendered*; but he is poſſeſſed of the term in her right, during the coverture. *Wood's Inſt.* 285.

A *ſurrender* may be of any thing grantable, either abſolute or conditional; and may be made to an uſe, being a conveyance tied and charged with the limitation of a uſe: But it may not be of an eſtate in fee; nor of rights and titles only to other eſtates for life or years; or for part of ſuch an eſtate; nor may one termor regularly *ſurrender* to another termor; nor can a tenant at will *ſurrender* any more than he can grant. *Perk.* 615. *Noy's Max.* 73. *Cro. Eliz.* 688. 1 *Leon.* 303. Where things will not paſs by *ſurrender*, the deed may enure to other purpoſes, and take effect by way of *grant*, having ſufficient words. *Perk.* 588, 624. And a *ſurrender* may be made by theſe words. *Hath ſurrendered, granted, yielded up, and confirmed*, &c.

To the making of a good *ſurrender in deed* of lands the following things are requiſite; the *ſurrenderor* is to be a perſon able to grant and make a *ſurrender*, and the *ſurrenderee* a perſon able to receive and take it; the *ſurrenderor* muſt have an eſtate in poſſeſſion of the thing *ſurrendered*, and not a future right; and the *ſurrender* is to be made to him that hath the next eſtate in remainder or reverſion, without any eſtate coming between; the *ſurrenderee* muſt have a higher or greater eſtate in his own right, and not in the right of his wife, *&c.* in the thing *ſurrendered*, than the *ſurrenderor* hath, ſo that the eſtate of the *ſurrenderor* may be drowned therein; (for if leſſee for life *ſurrender* to him in remainder for years, *&c.* it is a void *ſurrender*) there is to be a privity of eſtate between the *ſurrenderor* and *ſurrenderee*; and the *ſurrenderee* muſt be ſole ſeiſed of his eſtate in remainder or reverſion, and not in jointenancy; and the *ſurrenderee* agree to the *ſurrender*, &c. 1 *Inſt.* 338. *Perk.* 584. 588. 2 *Roll. Abr.* 494. *Noy's Max.* 73.

A man who hath a fee-ſimple eſtate cannot *ſurrender* it, becauſe it cannot be drowned in another eſtate. 12 *H.* 4. 21. And if a leaſe be made for life or years to *A.* the remainder for life to *B.* remainder in fee-tail to *C.* and the firſt tenant *ſurrenders* to *C.* this will not take effect as a *ſurrender*, by reaſon of the intervening eſtate. *Dyer* 112. The leſſee for life or years may *ſurrender* to him that is next in remainder in fee-ſimple or fee-tail: And if leſſee for life *ſurrenders* his eſtate to one in remainder, that is tenant for his own life; it is a good *ſurrender*, for a man's eſtate for his own life in judgment of law, is greater than that for another's. And where an eſtate is *ſurrendered* for life, there needs no livery and ſeiſin, as in a grant. 1 *Inſt.* 338. *Dyer* 251, 280.

Yet in ſome caſes an eſtate, *&c.* may have continuance, though it be *ſurrendered*; as where leſſee for life makes a leaſe for years, and after doth *ſurrender*, the term for years doth continue; and ſo of a rent-charge granted by ſuch leſſee, *&c. Bro.* 47. 1 *Inſt.* 338. If the leſſee for years rendring rent, *ſurrenders* his eſtate to the leſſor, hereby the rent is extinct: But if the rent were granted away before the *ſurrender*, it would be otherwiſe. 8 *Rep.* 145. *Bro. Surrend.* 42. Tenant for life is diſſeiſed, or for years ouſted, and before entry, or poſſeſſion gained, he *ſurrenders* to him in reverſion; this *ſurrender* is void: And yet if leſſee for years, after his term is begun, before he enters, and when no-body doth keep from him the profits, *ſurrenders*, it will be good. *Perk. ſect.* 600.

If there be leſſee for years, the remainder for life, remainder in fee; the leſſee for years may *ſurrender* to the leſſee during life, and ſo may he to him in the remainder in fee: But if there is tenant for life, the remainder for life, and ſuch remainder in fee; here the ſecond tenant for life cannot *ſurrender* to him in remainder. *Ibid.* 605. *Sed qu.* See *Supra* and *Infra.* May it not operate as a *grant*, if the Remainder-man for life, ſurvive the tenant for life. See the next clauſe.

In caſe of tenant for life, the remainder for life, reverſion in fee; it was a queſtion formerly, whether the remainder man for life, by and with the conſent of the tenant for life, could *ſurrender* to him in reverſion without deed, only by coming on the land and ſaying, that he did *ſurrender* to him in reverſion; the court were divided; but two judges held, that if tenant for life and he in remainder for life, *ſurrendered* to the reverſioner, it ſhould paſs as ſeveral *ſurrenders, viz.* Firſt of him in remainder to the tenant for life, and then by the tenant for life to him in reverſion. *Poph.* 137.

If tenant for life grant his eſtate to him in reverſion, this is a *ſurrender*; and it muſt be pleaded according to the operation it hath in law, or it will not be good. 4 *Mod.* 151. Though if leſſees for life or years, grant their eſtates to him in remainder or reverſion and a ſtranger; it ſhall enure as a *ſurrender* of the one half to him in reverſion, and as a grant of the other moiety to the ſtranger. 1 *Inſt.* 335.

By ſtatute no eſtates of freehold, or of terms for years, ſhall be granted or *ſurrendered* but by deed in writing, ſigned by the parties, or unleſs by operation in law, &c. 29 *Car.* 2. *c.* 2. See *Leaſes*, and 4 *Geo.* 2. *c.* 28. *ſ.* 6. By virtue whereof, leaſes may be renewed without *ſurrender* of under-leaſes. *Surrenders of Copyhold-Eſtates*, ſee *Copyhold*.

A *ſurrender* of a prebendary's leaſe upon condition, that if the then prebendary did not within a week after grant a new leaſe for three lives, the *ſurrender* ſhall be void: Held to be a good *ſurrender* within the ſtatute. 2 *Strange* 1201. By 29 *Geo.* 2. *c.* 31. Infants, lunaticks, and femes covert, may *ſurrender* leaſes, in order to renew them, under the direction of a court of equity. See 20 *Vin. Abr.* 119—146. And *Black. Com.* 2 *V.* 326.

Surrender of a Bankrupt. The bankrupt, at the third meeting of the commiſſioners, at fartheſt, which muſt be on the 42d day after the advertiſement in the Gazette, upon notice perſonally ſerved upon him, or left at his uſual place of abode, muſt ſurrender himſelf perſonally to the commiſſioners, and muſt thenceforth in all reſpects conform to the directions of the ſtatutes of bankruptcy; or, in default thereof, ſhall be guilty of felony without benefit of clergy, and ſhall ſuffer death, and his goods and eſtate ſhall be diſtributed among his creditors. See *Black. Com.* 2 *V.* 481. and *Stat.* 5 *Geo.* 2. *c.* 30.

Surrender of Copyholds. It is the yielding up of the eſtate by the tenant into the hands of the lord, for ſuch purpoſes as in the ſurrender are expreſſed. This method of conveyance is ſo eſſential to the nature of a copyhold eſtate, that it cannot poſſibly be transferred by any other aſſurance. See *Black. Com.* 2 *V.* 365, 367, 8.—*N. B.* The law will in ſome particular caſes ſupply the want of a ſurrender. See *Copyhold.*

Surrender of Letters Patent, and Offices. A *ſurrender* may be made of letters patent to the King, to the end he may grant the eſtate to whom he pleaſes, &c. and a ſecond patent for years, to the ſame perſon for the ſame thing is a *ſurrender* in law of the firſt patent. 10 *Rep.* 66. Letters patent for years were delivered into Chancery to be cancelled, and new letters patent made for years; but the firſt were not cancelled: It was held that the ſecond were good, becauſe they were a *ſurrender* in law of the firſt, and the not cancelling was the fault of the Chancery, which ought to have done it. 10 *Rep.* 66, 67. 2 *Lil. Abr.* 545. If an officer for life accepts of another grant of the ſame office, it is in law a *ſurrender* of the firſt grant: But if ſuch an officer takes another grant of the ſame office to himſelf and another, it may be otherwiſe. 1 *Ventr.* 297. 3 *Cro.* 198. See *Dyer* 167, 198. *Godb.* 415.

Surrogate, *(Surrogatus)* Is one that is ſubſtituted or appointed in the room of another; as the biſhop or chancellor's *ſurrogate*, &c.

Surſiſe, *(Superſiſa)* A word eſpecially uſed in the caſtle of *Dover* for penalties and forfeitures laid upon thoſe that pay not the duties or rent of *Caſtle-ward*, at their days limited. *Stat.* 32 *H.* 8. *c.* 40. It probably comes from the Fr. *Surſiſt*, i. e. forbore or neglected. *Brit.* 52. And *Bracton* hath it ſo in a general ſignification. *Bract. lib.* 5.

Survey, Is to meaſure, lay out, or particularly deſcribe a *manor*, or eſtate in lands; and to aſcertain not only the bounds and royalties thereof, but the tenure of the reſpective tenants, the rent and value of the ſame, &c. In this laſt ſignification, which is according to our law, it is alſo underſtood to be a *court*; for on the falling of an eſtate to a new lord, conſiſting of manors, where there are tenants by leaſe, and copyholders, a *court of ſurvey* is generally held; and ſometimes at other times, to appriſe the lord of the preſent terms and intereſts of the tenants, and as a direction on making further grants, as well as in order to improvements, &c. See *Comp. Court-Keep.*

A *ſurvey* of the manor of *D.* in the county of *G.* belonging to the honourable *W. B.* eſq. Taken this——day of, &c. in the year, &c.

A. B. *of*, &c. *holds by leaſe for his life, and the lives of* T. B. *and* C. B. *his ſons, one meſſuage, and twenty acres of land, meadow and paſture, ſituate in*, &c. *within the ſaid manor, under the yearly rent of* 20 s.———20 l. per Ann.

C. D. *holds by copy of court-roll for his own life and the lives of* M. *his wife and* C. *his ſon (all of them living) one meſſuage or tenement with the appurtenances within the ſaid manor, called*, &c. *quit-rent* 30 s. *heriot* 3 l.——30 l. per Ann.

E. F. *holds, by copy for the lives of* K. *his wife and* T. *his ſon one tenement within the ſaid manor, rent* 10 s. *heriot*, &c.———15 l. per ann.

G. H. *holds, for the term of his own life, one cottage with the appurtenances, quit-rent* 5 s.———10 l. per ann.

J. K. *holds, for her widowhood, a piece of ground called*, &c.

L. M. *holds*, &c.

Examined by *G. J.* gent.

Steward of the ſaid manor.

Surveyor, (Compounded of two *Fr.* words, *Sur.* i. e. *Super*, & Voir, *Cernere)* Signifies one that has the overſeeing or care of ſome great perſon's *lands* or *works*: And there was a *court of ſurveyors* erected by 33 *H.* 8. *c.* 39.

Surveyor of the King's Exchange, An ancient officer belonging to the mint and coinage, mentioned in the ſtatute 9 *H.* 5. *c.* 4.

Surveyor General of the King's Manors and Lands, We read of in *Cromp. Juriſd.* 106.

Surveyors of the Highways. Every pariſh is bound of common right to keep the high roads that go through it, in good and ſufficient repair; unleſs by reaſon of the tenure of lands, or otherwiſe, this care is conſigned to ſome particular private perſon. As it was not (formerly) incumbent on any particular officer to call the pariſh together, and ſet them upon this work; therefore, by *Stat.* 2 & 3 *Ph.* & *M. c.* 8. *Surveyors* of the highways were ordered to be choſen in every pariſh. According to that ſtatute they were originally appointed by the conſtable and churchwardens, but afterwards by *Stat.* 3 *W.* & *M. c.* 12. They were conſtituted by two neighbouring juſtices out of ſuch ſubſtantial inhabitants as had either 10 *l. per ann.* of their own, or rented 30 l. a year, or were worth 100 *l.*——Now by the late highway act (an abſtract of which ſee under *highway)* a liſt of ten perſons, ſo qualified, is to be made out by the pariſh officers and principal inhabitants, from whence the juſtices in ſeſſions are to take one or more.—See *Highways*, & *Stat.* 7 *Geo.* 3. *c.* 42.

Surveyor of the Navy, An officer appointed over all ſtores; and to ſurvey hulls and maſts of ſhips, &c. *Chamberl.*

Surveyor of the King's Ordnance. This officer ſurveys the ordnance and proviſions of war, allows bills of debt, and keeps the checks on labourers works, &c.

Surveyors of the Wards and Liberties, Taken away with the courts of wards and liveries. 12 *Car.* 2. *c.* 24.

Survivor, (From the Fr. *Survivre*, and Lat. *Supervivo)* Is the longer liver of two jointenants, or of any two perſons joined in the right of a thing: He that remaineth alive, after others be dead, &c. *Broke* 33. Where there are *jointennants* in any thing, when one dies, (if but two only) the whole goes to his *ſurvivor*; but if there be more than two, then the part of him who is dead goes among all the *ſurvivors*. 2 *Lill. Abr.* 546. Jointenants take by *ſurvivorſhip*, unleſs they do any act whereby the jointure is ſevered; for then there can be no *ſurvivorſhip*. *Wood's Inſt.* 147. See *Jointenant and Black Com.* 2 *V.* 183, 399.

Suſana Terræ, Is ſaid to be land worn out with ploughing. *Thorn.*

Suſceptor, *(Lat.)* An undertaker or godfather, alſo a receiver of tribute in the *Roman* provinces. *Lit. Dict.*

Suſpenſe, *(Suſpenſio)* Is a temporal ſtop, or hanging up, as it were, of a man's right, for a time; and, in legal underſtanding, is taken to be where a rent, or other profit out of lands, by reaſon of the unity or poſſeſſion of the rent, *&c.* and the land out of which it iſſues, is not *in eſſe* for a certain time, *Et tunc dormiunt*, but may be revived or awaked: And it differs from *extinguiſhment*, which is when it dies or is gone for ever. *Co. Lit.* 213 A *ſuſpenſion* of rent is, when either the rent or land is ſo conveyed, not abſolutely and finally, but for a time, after which the rent will be revived again. *Vaugh.* 109. A rent may be *ſuſpended* by unity for a time; and if a leſſor does any thing which amounts to an entry on the land, though he preſently depart, yet the poſſeſſion is in him ſufficient to *ſuſpend* the rent, until the leſſee do ſome act which amounts to a re-entry. *Vaugh.* 39. 1 *Leon.* 110. As rent is not iſſuing out of a common, the leſſor's incloſing the common cannot ſuſpend his rent. *Cro. Jac.* 679. If part of a condition is *ſuſpended*, the whole condition, as well for payment of the rent, as doing a collateral act, is *ſuſpended*. 4 *Rep.* 52. And a thing or action perſonal once *ſuſpended*, is for ever *ſuſpended*, &c. *Cro. Car.* 373. See *Extinguiſhment*.

Suſpenſion, A cenſure whereby *eccleſiaſtical perſons* are forbidden to exerciſe their office, or take the profits of their benefices: or where they are prohibited for a certain time in both of them in the whole or in part: Hence is *ſuſpenſio ab officio* or *ſuſpenſio à beneficio*, and *ab officio & beneficio*. *Wood's Inſt.* 510. There is likewiſe a *ſuſpenſion* which relates to the *laity*, i. e. *ſuſpenſu ab ingreſſu eccleſiæ*, or from the hearing of divine ſervice, *&c.* In which caſe it is uſed, as in the *Canon law*, *pro minore excommunicatione*. Stat. 24 Hen. 8. cap. 12.

Suſpenſion of the Habeas Corpus Act. This is a meaſure that hath been thought neceſſary—But, (as obſerved by *Blackſtone* 1 *V.* 136.) The happineſs of our conſtitution is, that it is not left to the executive power to determine when the danger of the ſtate is ſo great, as to render this meaſure expedient. For the parliament only, or legiſlative power, can authorize the crown, by ſuſpending the *habeas corpus* act for a ſhort and limited time, to impriſon ſuſpected perſons without giving any reaſon for ſo doing. This ought to be done, only in caſes of great emergency.

See what the great *Monteſquieu* ſaith, alluding to the *habeas corpus* act, and a temporary ſuſpenſion of it. "If the legiſlature leaves the executive power in poſſeſſion of a right to impriſon thoſe ſubjects who can give ſecurity for their good behaviour, there is an end of liberty; unleſs they are taken up in order to anſwer without delay to a capital crime; in this caſe they are really free, being ſubject only to the power of the law."

But ſhould the *legiſlature* think itſelf in danger by ſome ſecret conſpiracy againſt the ſtate, or by a correſpondence with a foreign enemy, it might authorize the executive power, for a ſhort and limited time, to impriſon ſuſpected perſons, who in that caſe would loſe their liberty only for a while, to preſerve it for ever." *L.* 11. *c.* 6. 1 *V.* 210, 211. *4to Ed. a Londres.*

In *L.* 12. *c.* 19. *fo.* 273. The author ſays, "I acknowledge that the practice of the freeſt nation that ever exiſted, induces me to think that there are caſes in which a veil ſhould be drawn for a while over liberty, as it was cuſtomary to veil the ſtatues of the gods."

Suſ per Coll. On the trial of criminals, the uſage now is for the judge to ſign the calendar, or liſt of all the priſoner's names, with their ſeparate judgments in the margin, which is left with the ſheriff. As for a capital felony, it is written oppoſite to the priſoner's name, "Hanged by the neck;" formerly in the days of *Latin*. and abbreviation, "Suſ. per coll." for "*ſuſpendatur per collum*." *N. B.* This is at the aſſizes. *Black. Com.* 4 *V.* 396.

Suſpicion, A perſon may be taken up on *ſuſpicion*, where a felony is done, *&c.* but thoſe who are impriſoned for a light *ſuſpicion* of larceny or robbery, are bailable by ſtatute. 2 *Hawk. P. C.* 101. And the party being a private perſon, that takes up one on *ſuſpicion* of felony, muſt do it of his own *ſuſpicion*, not upon that of another; and he muſt have reaſonable cauſe of it, *&c.* *Hale's Hiſt. P. C.* 78.

Suſpiral, (From the Lat. *Suſpirare*, i. e. *ducere Suſpiria*) Is uſed for a ſpring of water, paſſing under ground towards a conduit or ciſtern. 35 *H.* 8. *cap.* 10.

Suſſex, Its ſhire court, where to be held. 19 *H.* 7. *cap.* 24.

Suthdure, *(Sax.)* *i. e.* The *ſouth door* of a church; it was the place where canonical purgation was performed, that is, where the fact charged upon a perſon could not be proved by ſufficient evidence, and the party accuſed came to the *ſouth* door of the church, and there in the preſence of the people made oath, that he was innocent: And plaints, *&c.* where heard and determined at the *ſuthdure*; for which reaſon large porches were anciently built at the *ſouth* doors of churches. *Gervaſ. Dorob. de Reparation. Eccleſiæ Cantuar.*'

Swan, *(Cygnus)* Is a noble bird of game; and a perſon may preſcribe to have game of *ſwans* within his manor, as well as a warren or park. 7 *Rep.* 17, 18. A *ſwan* is a bird royal; and all white *ſwans* not marked, which have gained their natural liberty, and are ſwimming in an open and common river, may be ſeized to the uſe of the king, by his prerogative: But a ſubject may have a property in white *ſwans* not marked; as any man may have ſuch *ſwans* in his private waters, and the property of them belongs to him, and not to the King; and if they eſcape out of his private waters, into an open and common river, he may retake them; though it is otherwiſe if they have gained their natural liberty, and ſwim in open rivers without ſuch purſuit. *Game Law, par.* 2. *p.* 152. Stealing *ſwans* marked and pinioned, or unmarked, if kept in a mote, pond, or private river, and reduced to tameneſs, is felony. *H. P. C.* 68. And he that ſteals the eggs of *ſwans* out of their neſts, ſhall be impriſoned a year and a day, and be fined at the King's pleaſure. 11 *Hen.* 7. *c.* 17. No fowl can be a ſtray, but a *ſwan*. 4 *Inſt.* 280. See *Black. Com.* 4 *V.* 235.

Swanherd. The King's *ſwanherd*, *magiſter deductus cygnorum*. *Pat.* 16 *R.* 2. See King's *Swanherd*.

Swanimote, or **Swainmote**, (*ſwainmotus*, from the Sax. *ſwang*, i. e. a country *ſwain*, and *gemote*, i. e. *conventus*) ſignifies a court touching matters of the *foreſt*, held by the charter of the foreſt thrice in the year, before the verderors as judges. *Cromp. Juriſd.* 108. 3 *Hen.* 8. *c.* 18. The *ſwainmote* is a court unto which all the freeholders in the foreſt do owe ſuit and ſervice; and all the officers of the foreſt are to appear at every *ſwainmote*, alſo out of every town and village in the foreſt four men and a reeve; or on default ſhall be amerced and diſtrained. *Game Law, par.* 2. 19, 20. A court of *ſwainmote* is incident to a foreſt, as the court of pie-powder to a fair, &c. *Chart. Foreſt. Hen.* 3 See *Foreſt*, and *Sweinmote*.

Swan-mark. No perſon may have a *ſwan-mark*, except he have lands of the yearly value of five marks, and unleſs it be by grant of the King, or his officers lawfully authoriſed, or by preſcription. *Stat.* 22 *E.* 4. *c.* 6. See *Game*.

Swarf-Money, Is mentioned among cuſtoms and ſervices: And this *ſwarf-money* is one penny half-penny, paid before the riſing the ſun; the party muſt go three times about the croſs, and ſay the *ſwarf-money*, and then take witneſs and lay it in the hole; and he is to look well that his witneſs do not deceive him; for if it be not ſo paid, he ſhall pay a great forfeiture, *viz.* xxx s. and a white *bull*. This account was found in an old *MS.* containing the rents due to the *Cateſbys* in *Lodbroke*, and other places in *Warwickſhire*. See *Warth Money*.

Swath, (Sax. *ſwatha*) A *ſwathe*, or as in *Kent* a *ſweath*, and in ſome parts a *ſworth*, is a ſtrait row of cut graſs or corn, as it lies after the ſcithe at the firſt mowing of it. *Paroch. Antiq.* 399.

Swearing (*Imprecatio*) Is an offence againſt God and religion, and a ſin of all others the moſt extravagant and unaccountable, as having no benefit or advantage attending it. There are ſeveral good laws and ſtatutes for puniſhing this crime: The 21 *Jac.* 1. *c.* 20. enacts, That if any perſon ſhall profanely ſwear or curſe in the preſence of a juſtice of peace, or the ſame ſhall be proved before a juſtice, he ſhall forfeit 1 *s.* for every offence, to the uſe of the poor, to be levied by diſtreſs; and for want of a diſtreſs, the offender to be ſet in the ſtocks, *&c.* By the *ſtat.* 19 *Geo.* 2. *c.* 21. If any perſon ſhall profanely curſe or ſwear, and be convicted by the oath of any one witneſs before any juſtice of peace, *&c.* he ſhall forfeit as follows, *viz.* Every day-labourer, common ſoldier, common ſailor, and common ſeaman 1 *s.* Every other perſon under the degree of a gentleman 2 *s.* Every perſon of or above the degree of a gentleman 5 *s.* a ſecond offence double, and every other offence treble. If the offence be committed in the hearing of a magiſtrate, he may convict without further proof. If the offence be committed in the hearing of a conſtable, if the offender be unknown to him he ſhall ſecure him and carry him before a juſtice of peace; but if the offender be known to the conſtable, he ſhall make information againſt him before a juſtice of peace.

On information a juſtice is to order the offender to appear, and if on conviction he do not pay or give ſecurity for the penalty, he ſhall be ſent to the houſe of correction for ten days; or being a common ſoldier or ſailor, be ſet in the ſtocks. On default of duty, juſtices to forfeit 5 *l.* and conſtables 40 *s.* All convictions are to be written on parchment, and returned to the next ſeſſions. Penalties for profane curſing to go to the poor of the pariſh, and offender to pay all charges of conviction, or be committed to the houſe of correction for ſix days extraordinary. All proſecutions to be within eight days. This act to be read in all churches four times a year, under the penalty of 5 *l.* The juſtice's clerk may take for the information, ſummons, and conviction, 1 *s.* and no more. *Mod. Juſt.* 432. A conviction on the ſtat. 6 & 7 *W.* 3. *c.* 11. againſt profane *ſwearing*, and ſetting forth that the defendant was not a ſervant, labourer, *&c.* and the oaths, that the court might judge of the nature of them, for theſe reaſons the ſame was quaſhed; though the counſel for the plaintiff inſiſted that the information was good; for if the defendant was a ſervant, *&c.* he ought to have given it in evidence at the trial. *Mich.* 8 *Geo.* 1. *Mod. Caſ. in L. & E.* 58, 59. See *Black. Com.* 4 *V.* 59.

Swearing the Peace. If any man hath juſt cauſe to fear that another will burn his houſe, or do him a corporal injury, by killing, impriſoning, or beating him; or that he will procure others ſo to do; he may demand ſureties of the peace againſt ſuch perſon: And every juſtice of the peace is bound to grant it, if he who demands it will make oath, that he is actually under fear of death or bodily harm, and will ſhew that he has juſt cauſe to be ſo, by reaſon of the other's menaces, attempts, or having lain in wait for him; and will alſo farther ſwear, that he does not require ſuch ſurety out of malice or for mere vexation. 1 *Hawk. P. C.* 127. This is called *ſwearing the peace* againſt another: and, if the party does not find ſuch ſureties as the juſtice in his diſcretion ſhall require, he may be immediately committed till he does. Ibid. 128. *Black. Com.* 4 *V.* 252. See *Surety of the Peace.*

Sweepage, Is the crop of hay got in a meadow, called alſo the *ſwepe* in ſome parts of *England.* Co. Lit. fol. 4.

Sweets, Made in *Great Britain* for ſale are liable to a duty of exciſe, *&c.* See *Exciſe.*

Sweinmote, *Court of.* The court of *Sweinmote* is one of the *foreſt courts*, and is to be holden before the verderors as judges, by the ſteward of the *ſweinmote* thrice in every year, the ſweins and freeholders within the foreſt compoſing the jury. The principal juriſdiction of this court is, firſt, to enquire into the oppreſſions and grievances committed by the officers of the foreſt; "*de ſuper-oneratione foreſtariorum, & aliorum miniſtrorum foreſtæ; & de eorum oppreſſionibus populo regis illatis.*" And ſecondly, to receive and try preſentments certified from the court of attachments againſt offenders in vert and veniſon. *Stat.* 34 *Ed.* 1. *c.* 1. And this court may not only enquire, but convict alſo, which conviction ſhall be certified to the court of juſtice-ſeat under the ſeals of the jury; for this court cannot proceed to judgment. 4 *Inſt.* 289. *Black. Com.* 3 *V.* 72. See *Swanimote.*

Swine or Hogs, Shall not go unringed in woods, 35 *Hen.* 8. *c.* 17. *ſ.* 17.

Forfeiture for keeping ſwine in *London,* &c. 2 *W. & M. ſeſſ.* 2. *c.* 8. *ſ.* 20. 8 & 9 *W.* 3. *c.* 37. *ſ.* 4. See *Cattle.*

Swoling of Land, (*Solinga vel Swolinga Terræ,* in Sax. *Sulung,* from *Sul*) *aratrum,* (as to this day in the weſt country a plough is called a *Sul*) Is as much as one plough can till in a year: A hide of land; though ſome writers ſay it is an uncertain quantity.—— *Terram Trium Aratrorum, quam Cantiani* Anglice *dicunt* three *Swolings.* Chart. Eccleſ. Cantuar'.

Sword Hilts. Silver ſword hilts may be exported. 9 & 10 *W.* 3. *c.* 28.

Sworn Brothers, (*Fratres Jurati*) Perſons who, by mutual oath, covenanted to ſhare each others fortune: And formerly in any notable expedition, to invade and conquer an enemy's country, it was the cuſtom for the more eminent ſoldiers to ingage themſelves by reciprocal oaths to ſhare the reward of their ſervice: ſo in the expedition of *William* duke of *Normandy* into *England, Robert de Oily,* and *Roger de Ivery,* were ſworn brothers and coparthers in the eſtate, which the conqueror allotted them——Robertus de Oilero & Rogerus de Iverio *Fratres jurati, & per fidem & ſacramentum confœderati venerunt ad conqueſtum Angliæ.* Paroch. Antiq. 57. This practice gave occaſion to our *proverb* of *ſworn brothers* or *Brethren in Iniquity*; becauſe of their dividing plunder and ſpoil.

Sylva Caedua, Wood under twenty years growth; coppice-wood. See the ſtatute 45 *E.* 3. *c.* 3. It is otherwiſe called in law-french *ſubbois.* 2 Inſt. fol. 642. See *Tithes.*

Symbolum, Is a *ſymbol,* or ſign in the ſacrament; and the creed of the apoſtles is often called by this name by our *hiſtorians.*

Syncopare, A word uſed in ſeveral eccleſiaſtical councils and ſynods, ſignifying to cut ſhort or pronounce things ſo as not to be underſtood. *Synod. Wigorn. c.* 10.

Syndicus, An advocate or patron; a burgeſs or recorder of a town, *&c.* *Mat. Paris, Anno* 1245.

Syngraph, (*ſynographus*) A deed, bond or writing, under the hand and ſeal of all the parties; and it was the cuſtom for both the debtor and creditor in writings obligatory to write their names and the ſum borrowed on a piece of paper, with the word *ſyngraphus* in large letters in the middle; which being cut through, one part of the paper was delivered to each party, for their better ſecurity, *&c.* See *Chirograph.* and *Black. Com.* 2 *V.* 296.

Synod, (*ſynodus*) A meeting or aſſembly of eccleſiaſtical perſons concerning religion; being the ſame thing in *greek,* as *convocation* in *latin:* And of *ſynods* there are four kinds, 1ſt, A *general* or *univerſal ſynod* or council, where biſhops of all nations meet. 2dly, A *national ſynod,* of the clergy of one nation only. 3dly, A *provincial ſynod,* where eccleſiaſtical perſons of a province only aſſemble. 4thly, A *dioceſan ſynod,* of thoſe of one dioceſe, *&c.* And our *Saxon* Kings uſually called a *ſynod* or mixed council, conſiſting of eccleſiaſticks and the nobility, three times a year; which is ſaid to have been the ſame with our *Parliament.* See *Black. Com.* 1 *V.* 279.

Synodical, (*ſynodale*) Is a tribute or payment in money, paid to the biſhop or archdeacon, by the inferior clergy, at *Eaſter* viſitation; and it is called *ſynodale* or *ſynodicum, quia in* ſynodo *frequentius debatur.* Right. Clerg. 59. They are likewiſe termed *ſynodies,* in the *ſtat.* 34 *H.* 8. *c.* 16. And ſometimes *ſynodale* is uſed for the *ſynod* itſelf; and *ſynodals provincial,* the canons or conſtitutions of a provincial *ſynod.* 25 Hen. 8 c. 19

Synodales Teſtes, Were the urban and rural deans, whoſe office at firſt was to inform of and atteſt the diſorders of the clergy and people in the epiſcopal *ſynod*; and for which a ſolemn oath was given them to make their preſentments, *&c.* But when they ſunk in their authority, the *ſynodical* witneſſes were a ſort of impanelled grand jury, compoſed of a prieſt and two or three laymen of every pariſh, for the informing of or preſenting offenders; and at length two principal perſons for each dioceſe were annually choſen, till by degrees this office of inqueſt and information was devolved upon the *churchwardens.* Paroch. Antiq. 649.

Synonymous, A thing of the ſame name; or of the like ſignification. *Litt. Dict.*

T.

EVERY perſon convict of any other felony (ſave murder) and admitted to the benefit of his clergy, ſhall be marked with a T. upon the brawn of his thumb. Stat. 4 *H.* 7. *c.* 13.

Tabacum, *Herba ab inſula* Tobaco, *ubi copioſe provenit; qui primus eam ex* India *ad nos adduxit,* ſee *Tobacco.*

Tabard, Tabarder; The *bachelor ſcholars* on the foundation of *Queen*'s college *Oxford,* are called *tabitars* or *tabarders*; and theſe ſcholars were named *tabiters,* from a gown wore by them, called a *tabert, tabarr,* or *tabard:* For *Verſtegan* tells us, that *tabert* anciently ſignified a ſhort gown that reached not farther than the middle of the leg; and it remains for the name of ſuch in *Germany* and other countries, which with the *Teutonick* and *Saxon taber,* ſignify all a kind of garment, *&c.*

Tabardum, A garment like a gown; and uſed for an herald's coat, but generally taken for the gown of eccleſiaſticks.——*Fratres ſacerdotes de &c. habeant unam Robam integram, Tunicam, ſupertunicam,* Tabardum *& capucium nigri Coloris* Matt. Paris, 164.

Tabellion, (*Tabellio*) A notary publick or ſcrivener, allowed by authority, to ingroſs and regiſter writings, *&c.* His office in ſome countries did formerly differ from that of *notary,* but now they are grown or made one. *Matt. Paris, Anno* 1236.

Table-Rents, (*redditus ad menſam*) Were rents paid to biſhops, *&c.* reſerved and appropriated to their *table* or houſe-keeping. See *Bord-land.*

Tabling of Fines, Is the making a table for every county, containing the ſubſtance of fines paſſed; as the name of the county, town or place where the lands or tenements lie, the name of the demandant and deforceant, and of the particular lands, *&c.* mentioned in the fine: This is properly to be done by the *chirographer* of fines of the Common Pleas, who, every day of the next term after the ingroſſing of any ſuch fine, doth fix theſe *tables* in ſome open place of the court during its ſitting; and he alſo delivers to the ſheriff of each county, his under-ſheriff or deputy, fairly written in parchment, a perfect content of the *table* ſo made for that ſhire, in the term next before the aſſiſes, or between the term and aſſiſes, to be ſet up at the aſſiſes in an open place of that court, and continue there ſo long as the juſtices ſhall ſit, *&c.* And if either the chirographer, or ſheriff fail herein, they ſhall be liable to the penalty of 5 *l. Stat.* 23 *Eliz. c.* 3.

Tabula, and *intabulati* of perſons, *&c.* in cathedral churches. Vide *Ebdomadarius.*

Tac or **Tak,** *cuſtumarius in* Bosbury *debet quaſdam conſuetudines, viz.* tak & toll, *&c. Blount's ten.* 155.

Tacfree, Is uſed, in old Charters, as an exemption from payments, *&c.*——*Cum* houſhold & haybold & tacfree *de omnibus propriis porcis ſuis infra omnes metas de* C. that is, they paid nothing for their hogs running within that limit.

Taſtare, for *confirmare.* Fleta, lib. 2: *c.* 61.

Tail, (Fr. *taille,* from *tailler,* to cut or limit, Lat. *feodom talliatum*) Is a limited fee, oppoſed to fee-ſimple: It is that inheritance whereof a man is ſeiſed to him and the heirs of his body begotten or to be begotten: And he that giveth the lands in *tail,* is called the *donor,* and he to whom the gift is made, the *donee. Litt.* 18. All eſtates of inheritance were originally *fee-ſimple* by the common law; but by the ſtatute *de donis condionalibus* (*St. Weſtminſter,* 2. 13 *Ed.* 1. *ſt.* 1.) the inheritance was divided, and a particular eſtate created by ſtatute in the donee, which is, what is called an *Eſtate-tail,* i. e. an eſtate cut and divided from the fee-ſimple; which eſtate is to return to the donor or his heirs after the determination of the *tail.* 3 *Nelſ. Abr.* 266.

Before the ſtatute of *Weſtm.* 2. 13 *Ed.* 1. If lands were given to a man and the heirs of his body, it was interpreted to be a fee-ſimple preſently by the gift upon condition that he had iſſue; and if he had iſſue, the condition was ſuppoſed to be performed for three purpoſes, *viz.* to alien and diſinherit the iſſue; and by the alienation to bar the donor or his heirs of all poſſibility of the reverſion; to forfeit the eſtate for treaſon or felony; and to charge it with rent, *&c.* But, by this ſtatute, the will and intention of the donor is to be obſerved; as that the tenant in *tail* ſhall not alien after iſſue had or before, or forfeit or charge the lands longer than for his own life, *&c.* and the eſtate ſhall remain to the iſſue of the donee, or to the donor or his heirs where there is no iſſue; ſo that whereas the donee had a fee-ſimple before, now he has but an eſtate-*tail,* and the donor a reverſion in fee expectant upon that eſtate-*tail. Co. Lit.* 19. In this manner it continued ſome time, though daily experience ſhewed that much miſchief had crept into the law by intailed inheritances, as frauds to creditors, *&c.* and ſons became diſobedient when they found they could not be diſinherited; wherefore the judges found out a way to bar an eſtate-*tail,* with remainders over, by a feigned recovery. *Ann.* 12 *Ed.* 4. And ſince by a fine to bar the iſſue, by 4 *Hen.* 7. *cap.* 20. and 32 *Hen.* 8. *cap.* 33. And for that owners of land held in *tail* were leſs fearful to commit treaſon on account of the eaſy forfeiture; therefore the *ſtat.* 26 *Hen.* 8. *cap.* 13. was made; and men that had intailed lands, could not make improvements, their eſtates being only for life; for this reaſon the *ſtat.* 32 *H.* 8. *cap.* 18. gave them power to make leaſes for twenty-one years, or three lives, *&c.*

The ſtatute *de donis* creates no intail, but of ſuch an eſtate which was fee-ſimple at the common law; and deſcendible as a fee-ſimple. 1 *Inſt.* 19. Lands of inheritance, and all inheritances ſavouring of the realty may be intailed; ſo rents, profits, offices, dignities, *&c.* which concern lands, or certain places: But if the grant of an inheritance be merely perſonal, or exerciſed with chattels only; it cannot be intailed. 4 *Inſt.* 87. 7 *Rep.* A grant of an annuity, to a man and the heirs of his body, is void; and a leaſe for years to a perſon and the heirs of his body is alſo void; though an aſſignment may be made of a leaſe for years, in truſt to permit the iſſue in *tail* to receive the profits; which is in effect an eſtate *tail.* 10 *Rep.* 87.

Eſtates-*tail* of lands, are *general* or *ſpecial*: *General tail* is where lands or tenements are given to *a man* and *the heirs of his body* begotten; or to a *woman* and *the heirs of her body* begotten: In this caſe, it is called a *general tail,* becauſe, whatever woman the man taketh to wife, the iſſue may inherit the lands; and whatſoever man the woman takes to huſband, the iſſue may inherit; or if ſhe have divers huſbands, and have iſſue by every of them, they ſhall inherit one after another, as heirs of her body.

Special tail is when lands and tenements are given to a man and his wife, and to the heirs of their *two bodies* begotten; in which caſe, no other perſons can inherit but the iſſue that are begotten by him on that particular wife; and it is called ſpecial *tail,* for that if the wife die, and the huſband marries a ſecond wife, by whom he hath iſſue, ſuch iſſue has no benefit, as they have by the *general tail. Lit.* 14, 16. *Co. Litt.* 19, 20.

If lands are given to the huſband and wife, and to the heirs of their bodies, both of them have an eſtate in ſpecial *tail*; by reaſon of the word *heirs,* for the inheritance is not limited to one more than the other; Where lands and tenements are given to a man and his wife, and to the heirs of the body of the man, the huſband hath an eſtate in *general tail,* and the wife an eſtate for *life*; as the word *heirs* relates generally to the body of the huſband: And if the eſtate is made to the huſband and wife; and to the heirs of the body of the wife by the huſband begotten; there the wife hath an eſtate in *ſpecial tail*, and the huſband for term of *life* only; becauſe the word *heirs* hath relation to the body of the wife, to be begotten by that particular huſband: If an eſtate be limited to *a man's heirs which he ſhall beget on his wife*, it creates a ſpecial tail in the huſband; but the wife will be intitled to nothing, *&c.* *Lit.* 26, 28. *Co. Lit.* 22, 26.

Lands given to a man and woman unmarried, and to the heirs of their bodies, will be an eſtate in *ſpecial tail*; for they may marry. 1 *Inſt.* 25. 10 *Rep.* 50. And though lands are given to a married man and another man's wife, and the heirs of their two bodies, it may be a good eſtate-*tail*, for the poſſibility of their intermarrying. 15 *Hen.* 7.

A *general tail*, and a *ſpecial tail*, may not be created at one and the ſame time; if they are, the *general*, which is greater, will fruſtrate the *ſpecial*. 1 Inſt. 28. There are other eſtates-*tail* within the equity of the ſtatute; as if lands are given to a man and his heirs males or females, of his body begotten, the iſſue male or female ſhall only inherit according to the limitation: By virtue of the ſtatute, here *the daughter may be heir by* deſcent, *though there be a ſon:* But in the caſe of a purchaſe, there cannot be an heir female where there is a ſon, who is right heir at law 1 *Inſt* 24, 164. And whoever will make claim, as heir *per formam doni* to an eſtate-*tail*, muſt make his deſcent by ſuch heirs to whom it is limited; if it is to heirs males of the body, there the pedigree is to be derived by heirs males; and, if it be to heirs female, he muſt derive it by heirs female one after another, 1 *Inſt.* 376. If a gift is to one, and the heirs males of his body, and he hath iſſue a daughter, who hath a ſon, and dies; in this caſe the ſon ſhall not inherit the eſtate-*tail*, for he cannot make his deſcent by heirs male. *Ibid.* And where there is no heir to take according to the gift; as when iſſue fails, the land ſhall revert to the donor or deſcend to him that is to have it after the eſtate-*tail* is ſpent. 1 *Inſt.* 25.

It is the word *body*, or other words amounting to it, make the entail: And a gift to the heirs male, or heirs female without any thing further, is a fee-ſimple eſtate, becauſe it is not limited of what body: And hence a corporation cannot be ſeiſed in *tail.* 1 *Inſt.* 13, 20, 27.

In a deviſe or laſt will, an eſtate-*tail* may be created without the word *body*; alſo begotten ſhall be ſupplied and neceſſarily intended. *Ney's Max.* 101. 1 *Inſt.* 26. If one gives lands to a man and his iſſue, or children of his body, without the words, *his heirs*, to convey the inheritance, he has but an eſtate for life: Though ſuch words may be good enough to convey the inheritance in a will; as eſtates-*tail* by *deviſe* are always more favoured in law, than eſtates-*tail* created by *deeds.* 1 *Inſt* 20.

It has been held that if the word *iſſue* is a limitation, it is an *intail*; but if it is by way of deſcription who ſhall take, it is only an eſtate for life. *Mod. Caſ. in L. & E.* 263. The word *heirs* is neceſſary to create an eſtate-*tail* and inheritance by *deed*; and where an uſe was limited to *A. B.* and to his heirs males, lawfully to be begotten; theſe laſt words imply that it muſt be heirs males of his body, becauſe no other heir male can inherit by virtue of his grant, but ſuch who are lawfully begotten by the grantor. 7 *Rep.* 41. If a man makes a feoffment to the uſe of himſelf for life, remainder to the heirs males of his body, this is an *eſtate tail executed* in him; and ſo it is if he covenanted to ſtand ſeiſed in the ſame manner. 1 *Mod.* 159.

By a marriage ſettlement and fine levied, *&c.* to the uſe of the husband and wife, for their joint lives; remainder to the heirs of the body of the wife by the husband to be begotten, remainder (the wife ſurviving the huſband) to her for life, remainder to the right heirs of the husband: this was held to be an eſtate-*tail*, executed in the wife. *Raym.* 127. 3 *Salk.* 338. Land is conveyed to the uſe of a man and his wife for their lives, and after to their next iſſue male in *tail*, then to the uſe of the husband and wife, and of the heirs of their bodies begotten, they having no male iſſue; by this huſband and wife are tenants in *ſpecial tail* executed, and when they have iſſue male, they will be tenants for life, remainder to their ſon in *tail*, the remainder to them in *ſpecial tail.* 1 Inſt. 28.

Where a perſon having an eſtate in fee, conveys it by leaſe and releaſe to the uſe of himſelf for life, with remainder to truſtees for their lives, and remainder to the heirs of his body; he hath an eſtate-*tail* in him; but he is only tenant for life in poſſeſſion: It would be otherwiſe if there had been no intermediate eſtate in the truſtees for their lives. 2 *Ld. Raym.* 855. A man ſeiſed of land in fee, makes a gift of it in *tail*, or leaſe for life, remainder to the right heirs male of the body of the donor, this remainder, it is ſaid, will be a fee-ſimple, and not an *eſtate-tail.* Dyer 156. If the gift or grant of the land be to *J. S.* and his heirs, to hold to him and the heirs of his body, *&c* here he will have an eſtate in *tail*, and a fee-ſimple upon it. *Lit. ch.* 2. 1 *Inſt.* 21. Lands are given to two brothers, *&c.* and to the heirs of their bodies begotten; during their lives they ſhall have joint eſtates, ſo that the ſurvivor will have all for his life; and after their deaths, their heirs have eſtates in general *tail*, by moieties in common one with another. 1 *Inſt* 25. 1 *Rep.* 140.

When a *remainder* is limited to two, and the heirs male of their bodies, they have not joint but ſeveral eſtates-*tail:* And between baron and feme, it is ſaid, ſeveral moieties may be of an eſtate-*tail*, as well as of a fee-ſimple. *Cro. Eliz.* 220. *Moor* 228. 2 *Lil. Abr.* 551. A feoffment was made to the uſe of the feoffor for life, remainder to *W. R.* his ſon and his heirs; and for want of iſſue of him, remainder to the right heirs of the feoffor; adjudged *W. R.* hath only an eſtate in *tail*; for though the firſt words of the ſentence, *viz.* to his ſon and heirs, make a fee ſimple, the ſubſequent words in the ſame ſentence, *i. e. and for want of iſſue of him*, make an eſtate-*tail*, by qualifying and abridging the ſame. 5 *Mod.* 266. 3 *Salk.* 337. See *Hetl.* 57. *Dyer* 334.

If a perſon gives land to *A.* for life, and, after his death without iſſue, then to another perſon; though here is an expreſs eſtate for life given to *A.* the ſubſequent words make an eſtate-*tail:* But where lands are deviſed to *A.* during life, the remainder to truſtees, remainder to his firſt ſon, *&c* and if *A.* dies without iſſue, then, *&c.* The limitation upon the deviſe's death, it is ſaid, will not give an eſtate in *tail* to *A.* but it ſhall be here intended, that if he died without having a ſon. 1 *P. Williams*, 605. A father having two ſons, deviſed his lands to his youngeſt ſon, and if he died without heirs, then to his eldeſt ſon and his heirs; the youngeſt ſon had an eſtate-*tail*, becauſe the deviſe to him, and if he died without heirs, is the ſame as if the teſtator had deviſed it in theſe words, *viz.* If he die without heirs of his body; for otherwiſe the remainder limited to the eldeſt ſon had been void, as the youngeſt ſon cannot die without heirs, ſo long as the eldeſt is living. 1 *Rol. Abr.* 836.

In ejectment the caſe was, the father, having three ſons, deviſed his lands to his *ſecond ſon*, and his heirs for ever; and for want of ſuch heirs, then to the right heirs of the father; then the father died, and his *ſecond ſon* entered, and died without iſſue, living the eldeſt ſon: It was reſolved, that the ſecond ſon had but an eſtate-*tail*, and that the deviſe over by theſe words, and for want of ſuch heirs, is void in point of limitation, for the teſtator's intent was that the lands ſhould deſcend from himſelf, and not from his ſecond ſon; and the words, want of ſuch heirs, could import no other than want of iſſue, *&c.* ſo that the eldeſt ſon takes by deſcent in this caſe, and not by the will. 1 *Salk.* 233.

A perſon deviſed land to his wife for life, remainder to his ſon, and his heirs for ever; and, if he died without heirs, the ſame to remain to his two daughters: In this caſe it was held in *equity*, that the rule is, *where a remainder over is to one, who may be the deviſee's* heir at law, *ſuch limitation will be good*, and the firſt conſtrued an eſtate-*tail*; for the generality of the word *heirs*, ſhall be reſtrained to *heirs of the body*, ſince the teſtator could not but know that the deviſee would not die without an heir, while the remainder-man, or any of his iſſue, continued: But where the ſecond limitation is to a ſtranger, it is merely void, and the firſt is a fee-ſimple. *Talbot's Chan. Ca.* 2.

An eſtate *tail* cannot merge by the acceſſion of the fee-ſimple to it: But it has been adjudged, that two fees immediately expectant upon one another, (as where a man is tenant in *tail*, and remainder in fee to the tenant in *tail*) cannot ſubſiſt in the ſame perſon; and the ſtatute of *Weſtm.* having made eſtates-*tail* a kind of particular eſtates, they muſt, like all other ſuch eſtates, be ſubject to merger and extinguiſhment, when united with the abſolute fee. 8 *Rep.* 74. 1 *Salk.* 338. If there be tenant in *tail*, remainder in *tail*, and tenant in *tail* enfeoffs the reverſioner in fee; it is a *diſcontinuance:* And tenants in *tail* can make no greater eſtate than for their own lives unleſs it be by leaſe, *&c.* according to the *ſtat.* 32 *H.* 8. *c.* 28. 1 *Rep.* 140.

If tenant in *tail* bargain and ſell lands to another and his heirs, or make a leaſe and releaſe to the uſe of himſelf for life, with remainder over to another, *&c.* Theſe eſtates may be avoided by entry of the iſſue in *tail. Farreſt. Mo. Ca.* 23, 28. Eſtates-*tail* are uſually created upon ſettlements: Though an agreement to intail, is no intail; for no agreement ſhall bind the iſſue in *tail*, where there is a firſt intail, without a fine, *Chanc. Rep.* 236. It is incident to an eſtate-*tail*, to be diſpuniſhable of *Waſte*; that the wife of the donee ſhall be *endowed*; the huſband of a feme donee, be *tenant* by the *courteſy*; and that the tenant in *tail* may ſuffer a common *recovery*, &c. and therefore conditions to reſtrain any of theſe, are void. 1 *Inſt.* 224. 10 *Rep.* 38.

As by ſtatute it is incident to eſtates-*tail* to make *leaſes*; ſo by cuſtom, it is to grant lands by copy of court roll, *&c.* Tenant in *tail* of a truſt may bind his heir by articles in equity. See *Eſtate*, *Recovery*, 20 *Vin. Abr.* tit. *Tayle*, and *Black. Com.* 2 *V.* 112, 113, 114.

Tail after Poſſibility of Iſſue extinct, Is where lands and tenements are given to a man and his wife in *ſpecial tail*, and either of them dies without iſſue had between them; the ſurvivor hath an *eſtate in tail after poſſibility of iſſue*, &c. Alſo if they have iſſue, and the iſſue dies without iſſue, whereby there is none left who may inherit by force of the intail, the ſurvivor of the donees hath an eſtate-*tail* after poſſibility. *Litt.* 32. The eſtate of this tenant muſt be created by the act of God, *viz.* by the death of either party without iſſue; none can have this eſtate but one of the donees, or a donee in *ſpecial tail*; for a donee in *general tail* may by poſſibility have iſſue. *Litt.* 32. 1 *Inſt.* 28. 11 *Rep.* 80. And if one gives lands to a man and his wife, and the heirs of their two bodies in *ſpecial tail*, and they live till each of them are one hundred years old, and have no iſſue; yet doth the law ſee no impoſſibility of having children, and they continue tenants in *tail:* But if the wife die without iſſue, there the law ſeeth an apparent impoſſibility. 1 *Inſt.* 28.

Tenants in *tail* after poſſibility of iſſue extinct, are not puniſhable for waſte; as are tenants for life: but ſuch tenants, or tenants by the curteſy, *&c.* may not ſuffer a *recovery*. And though they have more privileges than tenant for life hath; as if they alien the land, he in reverſion cannot have a writ of *entry in caſu conſimili*; and they need not require aid, *&c.* yet as to the quantity of their eſtates, they have no privilege above eſtates for life: For if ſuch tenant in *tail*, after ſuch poſſibility, make a feoffment of his land, he in reverſion may enter for the forfeiture, *&c.* 1 *Inſt.* 27, 28. 9 *Rep.* 139. *Lit. Sect.* 34. A tenant in *tail* cannot be ſeiſed to any uſe expreſſed; for his eſtate is ſo fixed, that none can execute the uſe: And where tenants in *tail* general or ſpecial, *&c.* die without iſſue, the donor or his heirs may enter. *Jenk. Cent.* 195. *Litt.* 18. If tenant in *tail* in remainder, be attainted of treaſon, *&c.* the King ſhall have the land; for it may not be in abeyance, nor in any other, he not being dead, but in law: The chief lord cannot have it, by reaſon the tenant for life is alive; ſo neither he that is in reverſion, *&c.* and it cannot revert, before the tenant in *tail* die without iſſue. 2 *Leon.* 123. See *Black. Com.* 3 *V.* 124.

Taint, (Fr. *teinct.* i. e. *infectus, tinctus)* Is taken ſubſtantively for a conviction; or adjectively for a perſon convicted of treaſon or felony. See *Attaint.*

Taking, *felonious.* A felonious taking muſt be done, *animo furandi:* Or, as the civil law expreſſes it, *lucri cauſa*, *i. e.* with an intent to ſteal. The circumſtances muſt be left to the due and attentive conſideration of the court and jury. *Black. Com.* 4 *V.* 230, 232.

Taking, *unlawful.* When I once have gained a rightful poſſeſſion of any goods or chattels, either by a juſt occupancy, or by a legal transfer, whoever, either by fraud or force, diſpoſſeſſes me of them is guilty of a tranſgreſſion againſt the laws of ſociety, which is a kind of ſecondary law of nature, *Black. Com.* 3 *V.* 145.

Tale, or *count.* The firſt of pleadings, or mutual altercations between the plaintiff and defendant, is the *declaration, narratio,* or *count*, anciently called the *Tale*; in which the plaintiff ſets forth the cauſe of his complaint at length. *Black. Com.* 3 *V.* 293.

Talent, A weight of ſixty-two pounds; alſo a ſum of money among the *Greeks*, of about 100*l.* value. *Merch. Dict.*

Tales, *(Lat.)* Is uſed in the law for a ſupply of men impanelled on a jury and not appearing, or on their appearance challenged as not indifferent; when the judge upon motion orders a ſupply to be made by the ſheriff, *&c.* of one or more *ſuch* perſons preſent in court, equal in reputation to thoſe that were impanelled, to make up a full jury, which he could do by the common law; and this is by the ſtatutes 35 *H.* 8. *c.* 6. 2 *&* 3 *Ed.* 6. *c.* 32. 14 *Eliz. c.* 9. 7 *&* 8 *W.* 3. *c.* 32, *&c.*

Tales are of two ſorts, *i. e. tales de circumſtantibus*, and a *decem tales*; a *tales de circumſtantibus* is where a full jury do not appear at the *niſi prius*, or ſo many are challenged that there is not a full jury; then, on the prayer of the plaintiff's counſel or attorney, the judge will grant this *Tales*, which the ſheriff returns immediately in court: A *decem Tales* is when a full jury doth not appear at a *trial at bar*, and is a writ to the ſheriff *apponere* decem Tales. 10 *Rep.* 102. *Finch.* 414. 2 *Roll. Abr.* 67.

Upon a trial at bar, if the jury do not appear full, the court cannot grant a *Tales de circumſtantibus*, but will grant a *decem Tales*, returnable in ſome convenient time the ſame term, to try the cauſe. 2 *Lill. Abr.* 552. And a *Tales de circumſtantibus* ought not to be in an *aſſiſe*, only at *niſi prius*; the *decem Tales* muſt be awarded in an aſſiſe. *Cro. Car.* 341. A plaintiff or defendant may have a *Tales de circumſtantibus*; and the ſtatutes which authoriſe juſtices of *niſi prius* to award a *Tales de circumſtantibus*, extend as well to capital caſes as to others; but ſuch a *Tales* cannot be prayed for the King upon an indictment, or criminal information, without a warrant from the attorney general, or an expreſs aſſignment from the court before which the inqueſt is taken; though it may be awarded on an information *qui tam*, *&c.* becauſe of the intereſt which the proſecutor hath in ſuch proſecutions. 2 *Hawk. P. C.* 409. 3 *Salk.* 339. A *Tales* is not to be granted where the whole jury is challenged, *&c.* but the whole panel, if the challenge be made good, is to be quaſhed, and a new jury returned; for a *Tales* conſiſts but of ſome perſons to ſupply the places of ſuch of the jurors as were wanting of the number of twelve, and is not to make a new jury. 2 *Lil. Abr.* 252.

If but one juror appears on the principal panel, the court may order a *tales* by the ſtatute 35 *H.* 8. *c.* 6. 10 *Rep.* 102. And if upon a *habeas corpora*, or a *diſtringas jur.* none of the jury appear, it is ſaid a *decem tales* ſhall be awarded: But it ſhall not be had upon a *venire fac'. Cro. Eliz.* 502. *Moor* 528. See *Dyer* 245. 2 *Roll. Rep.* 75. At the aſſiſes, one of the principal panel appeared, and no more, and a *tales* was awarded, the title whereof was *Nomina decem talium*, and under it eleven were returned; this was notwithſtanding held good; for it is only a miſpriſion of the clerk, and *decem* was ſtruck out, and then the title was *Nomina talium*, *&c.* And it was adjudged, that if, after a *tales* granted, the principal panel ſhould be quaſhed, the *tales* ſhould ſtand good, and more be added, *&c.* 4 *Rep.* 103. 2 *Cro.* 316. 3 *Nelſ. Abr.* 275.

No perſon ſhall take any reward or fee upon the account of any *tales* returned; on pain of forfeiting 10*l.* one moiety to the informer, and the other to the king. 4 & 5 *W.* & *M. c.* 24. *ſ.* 20. And by this act the qualification of *taleſmen* is to be 5 *l. per annum* freehold eſtate, &*c.* The *tales de circumſtantibus*, is in ſome meaſure taken away, or rendered uſeleſs, by the late ſtatute for regulating of juries. 3 *Geo.* 2. *c.* 25. *ſ.* 8. See *Black. Com.* 3 *V.* 365. xi. 4 *V.* 348. And ſee the writ, 3 *V.* 364.

Tales, Is alſo the Name of a book in the *King's Bench* office, of ſuch perſons as were admitted of the *tales.* 4 Inſt. 93.

Talionis Lex. The law of Retaliation. This can never be in all caſes (indeed but in few) an adequate or permanent rule of puniſhment. In the caſe of murder, the puniſhment is death—But as to the ſubject, it is too prolix to treat here, fully. We muſt therefore refer to *Black. Com.* 4 *V.* 12, 13, &*c.* where it is judiciouſly treated.

Tallage, (*Tallagium*) From the Fr *Taille*, Is metaphorically uſed for a part or a ſhare of a man's ſubſtance, carved out of the whole, paid by way of tribute, toll, or tax. *Stat. de* tallagio *non concedendo temp. Edw.* 1. *Stow's Ann.* 445. And, according to Sir *Edw. Coke*, *tallage* is a general word for all taxes. 2 *Inſt.* 532. See *Black. Com.* 1 *V.* 310 4 *V.* 412, 419.

Tallagers, Are tax or toll gatherers mentioned by *Chaucer.*

Tallagium facere, To give up accounts in the *Exchequer*, where the method of accounting is by *talleys.* Mem. in Scacc. Mich. 6 *Ed.* 1.

Talley, (*Tallea*, Fr. *Taille*, Ital. *Tagliare*, i. e. *Scindere*,) Is a ſtick cut in two parts, on each whereof is marked with notches, or otherwiſe, what is due between debtor and creditor; as now uſed by brewers, &*c.* And this was the ancient way of keeping all accounts, one part being kept by the creditor, the other by the debtor, &*c.* Hence the *tallier* of the *Exchequer*, whom we now call the *teller.* But there are two kinds of *tallies* mentioned in our ſtatutes to have been long uſed in the *Exchequer*; the one is termed *tallies of debt*, which are in the nature of an acquittance for debts paid to the king, on the payment whereof theſe *tallies* are delivered to the debtors, who carrying them to the clerk of the pipe office, have there an acquittance in parchment for their full diſcharge. 1 *R.* 2. *c.* 5. The other are *tallies of reward* or allowance, being made to ſheriffs of counties as a recompence for ſuch matters as they have performed to their charge, or ſuch money as is caſt upon them in their accounts of courſe, but not leviable, &*c.* 27 *Hen.* 8. *c.* 11. 33 & 34 *H.* 8. 2 & 3 *Ed.* 6. *c.* 4. In the *Exchequer* there is a *talley court*, where the two deputy chamberlains of the *Exchequer* attend, and the *talley cutter*: And a *talley* is generally the king's acquittance for money paid or lent, and has written on it words proper to expreſs on what occaſion the money is received, *Lex Conſtitut.* 205.

Tallia. Every canon and prebendary in our old cathedral churches, had a ſtated allowance of proviſions delivered to him *per modum tulliæ*; and thence their commons in meat and drink were called *tallia.* Stat. Sti. Paul. Ann. 1295.

Tallow, Prohibited to be exported, 18 *El. c.* 9. 13 & 14 *Car.* 2. *cap.* 7. *ſect.* 5. Tallow to what duties liable on importation, 2 *Will.* & *Ma. ſeſſ.* 2. *cap.* 4. *ſect.* 36. May be imported from *Ireland* duty free. 32 *Geo.* 2. *c.* 12. *ſect* 1. Extended to hogs-lard and greaſe. 1 *Geo.* 3. *c.* 10. And continued by 4 *Geo.* 3. *c.* 6.

Tallyman, A perſon that ſells, or lets goods, clothes &*c.* to be paid by ſo much a week, *Merch. Dict.*

Talwood, (*Talliatura*) Fire-wood cleft and cut into billets of a certain length; otherwiſe written *Talgwood*, and *Talſhide* in the ancient ſtatutes. 34 & 35 *H.* 8. *c.* 3. 7 *Ed.* 6. *c.* 7. 43 *Eliz. c.* 14.

Tam Quam, Is in nature of a *qui tam*, being where a man proſecutes as well for the king as for himſelf, on an information for breach of ſome penal law, whereby any penalty is given, one part to the king, the other, or another part, to the party that ſues. In every caſe where the ſtatute prohibits a thing, and doth not annex a penalty to the committing thereof, the party offending may be indicted for a contempt againſt the ſtatute; or action lies againſt him for breach of it, which muſt be brought *tam pro domino rege, quam pro ſeipſo*, as there is a fine to be paid to the king. 2 *Inſt.* 118. *Cro. Eliz.* 655. *Cro. Jac.* 134. In action popular, brought *tam quam*, the king can diſcharge but his own part, and not the informer's; but, beſore action brought, the king may diſcharge the whole. 3 *Inſt.* 238. See *Information.*

Tangier, An ancient city of *Barbary*, formerly part of the dominions of the crown of *England*, as *Gibraltar* is at preſent; mentioned in the ſtatute 15 *Car.* 2. *c.* 7. *Tangier*, deemed not to be a plantation. 22 & 23 *Car.* 2. *c.* 26.

Taniſtry, Seems to be derived from *Thanis*; and is a law or cuſtom in ſome parts of *Ireland* of which Sir *John Davis* ſays thus;——*Quant aſcun perſon moruſt ſeiſie des aſcuns caſtles, manors, terres ou tenements del tenure de* taniſtry; *que donques meſme les caſtles,* &*c. dont diſcender,* & *de temps dont memory de cour ont uſe de deſcender* ſeniori & digniſſimo viro ſanguinis & cognominis; *de tiel perſon iſſint rant ſeiſie,* & *que le file ou les files de tiel perſon iſſint morant ſeiſie de touts temps avant dit, ne fueront inheritabiles de tiels terres ou tenements, ou aſcun parte de eux.* Dav. Rep. 28. Antiq. Hibern. p. 38.

Tannare, Is a word uſed for to dreſs or tan leather. *Plac. Parl.* 18 *Ed.* 1.

Tanners. No perſon ſhall tan leather unleſs he hath been an apprentice for ſeven years with a *tanner*, or he be the ſon of a *tanner*, &*c.* on pain of forfeiting the leather tanned, or the value. *Stat* 1. *J.* 1. *cap.* 22. *Tanners* overliming hides, or uſing in tanning any thing but oak-bark, aſh bark, culver-dung, &*c.* incur a forfeiture of the leather; and haſtening the tanning of the leather by unkind heats, &*c.* are liable to a penalty of 10 *l.* and to ſtand in the pillory. And hides for ſole-leather are to lie in the wooze twelve months, and upper leather nine months, or ſhall be forfeited, &*c. Stat. ibid.* Tanners ſhall not ſhave their hides. 13 & 14 *Car.* 2. *c.* 7.

Tantamount, Is where one thing doth amount to another, and then it is all one as if it was the ſame: as a leaſe and releaſe amount to a feoffment; and licenſe to occupy land for years, to a leaſe for the term, &*c.* 14 *H.* 8. 13. *Shep. Epit.* 1130.

Tape, Exempt from payment of the duties called the two third ſubſidies. 7 *Ann. c.* 7. *ſ.* 14.

Tar, See *Pitch, Stores.*

Tare and **Tret.** The firſt is an allowance in merchandiſe, made the buyer for the weight of the box, bag, or caſks wherein goods are packed: And the laſt is a conſideration in the weight, for waſte in emptying and reſelling the goods by duſt, dirt, breaking, &*c. Book Rates.*

Target, (From the Lat. *Targus*) A ſhield, originally made of leather, wrought out of the back of an ox. *Blount.*

Targia, (*Tarida*) Was a ſhip of burden, ſince called a *Tartan*, and *Tarrita*: Knighton, Anno 1385.

Tariff. Cuſtom, duties, toll, or tribute payable upon merchandiſe exported and imported, are ſo called. See *Black. Com.* 1 *V.* 313.

Tarpaulin, or **Tarpawling,** A tarred canvas to keep the weather out of *ſhips*; but it is commonly uſed for a mariner, or drudge in a ſhip that does the vileſt ſervice. *March. Dict.*

Tartaron, A ſort of fine cloth or ſilk. *Stat.* 4 *Hen.* 8. *c.* 6.

Tas, (Fr.) Is a cock, heap, ſtack or rick of hay or corn. *Law Fr. Dict.*

Taſſale, for *Caſula*, A prieſt's garment covering him over.

Taſſum, A Mow of Corn or Hay, from the Fr. *Taſſer*, to pile up. *Taſſer* to mow or heap up: and *ad taſſum furcare* is to pitch to the mow. *Rot. Hill.* 25 *Ed.* 3.

Tath. In the counties of *Norfolk* and *Suffolk*, the lords of manors, claimed the privilege of having their tenants flocks or ſheep brought at night upon their own demeſne lands, there to be folded for the improvement of the ground; which liberty was called by the name of *Tath.* Spelm.

Tavern. The King may licence any *tavern* for ſelling of wine, *&c.* 16 *Car.* 1. *c.* 21. But perſons who inordinately haunt *taverns*, are indictable by the Common law, and continuing drinking, and tipling, *&c.* is liable to penalties, by the ſtatutes 1 *Jac.* 1. *c.* 9. 21 *Jac.* 1. *c.* 7.

Tau, By *Selden* in his notes upon *Eadmerus*, ſignifies a croſs. *Mon. Ang. Tom.* 3. *p.* 121.

Tauri liberi Libertas, In ancient charters is uſed for a common bull; ſo called, becauſe he is free and common to all the tenants within ſuch a manor or liberty, *&c.*

Tawers. It is ordained that collar-makers, glovers, bridle-cutters, and others, who dreſs *ſkins* in allum, *&c.* and cut the ſame into wares, ſhall be accounted *tawers*, and ſubject to the penalties, for frauds and concealments relating to the duty on *leather*, by *Stat.* 9 *Ann.* *c.* 11.

Tax, (*Taxa*, from the Gr. Τάξις, i. e. *Ordo, Tributum*) A tribute or impoſition laid upon the ſubject, which being certainly and orderly rated, was wont to be yearly paid into the King's Exchequer: And it differs from what is commonly called a *ſubſidy*, in this, That it is always certain as it is ſet down in the Exchequer-book, and levied in general of every town, and not particularly of every man, *&c.* See *Subſidy*, and *Raſtall's Abridgment*, tit. *Taxes, Tenths, Fifteenths, Subſidies*, &c. and 4 *Inſt.* 26, 33.

It is ſaid that in ancient times, *taxes* were impoſed by the King at his pleaſure; but King *Edw.* 1. bound himſelf and his ſucceſſors, in the 25th year of his reign, that from that time forward no tax ſhould be laid upon the ſubject, without the aſſent of the lords and commons in parliament. *Stat.* 25 *Ed.* 1. *c.* 5. But although *taxes*, which are for the defence of the realm, cannot be impoſed but by act of parliament; yet the crown has a right to aſk them upon any emergency, and therefore it is held they have a *virtual* exiſtence always, though no *actual* one. In the 14th year of *Ed.* 3. an aid was granted to the King by the parliament; and *anno* 5 *R.* 2. a *royal aid* for keeping the ſea, and preſerving of rights: And alſo a *ſubſidy* of 1 *s.* in 20 *s.* on goods, and aliens to pay 2 *s.* *&c.* was granted by 3 & 4 *Ed.* 6. Beſides *fifteenths* and *tenths*, payable by the temporality and clergy in two or three years, *&c.* And the way of *taxing* was formerly by *tenths* and *fifteenths*; then by *ſubſidies*, afterwards by *royal aids*, and at laſt by a *pound rate*; the former were all upon the perſon and perſonal eſtate, and were much the ſame; but the pound-rate was upon lands and rents. *Anno* 18 *Ed.* 3. a valuation was made of all the towns in *England*; and returned into the *Exchequer*, and this became the ſtanding rule for *taxing* every town (*viz.*) When a *tax* was given the officers of the *Exchequer* preſently knew to how much it amounted for every town, and the inhabitants taxed the landlords, and occupiers of lands, and they were charged and paid their proportion, *&c.*

A ſubſidy was granted *anno* 32 *H.* 8. and this was a *tax* upon the perſon, both for lands and goods, and payable where the perſons lived; and this continued till the 15 *Car.* 1. and about two years afterwards the firſt aſſeſſment was made upon lands and rents, according to a pound-rate. 2 *Inſt.* 76, 77. 3 *Salk.* 340. In the 16 & 17 *Car.* 1. *Taxes* were granted for relief of, and diſbanding the army, *&c.* And 13 *Car.* 2. *c.* 3 & 4. The ſum of 1,260,000 *l.* was granted for eighteen months at 70,000 *l.* *per* month, charged on the ſeveral counties by lieutenants, for ammunition for the militia, and ſeveral aids were granted, one of 2,477,000 *l.* for fitting out a navy and maintenance of wars, *&c.* in the years 16, 17, 18, 19 & 25 *Car.* 2. Alſo a free and voluntary preſent was granted to King *Charles* 2. but it was ordained that the ſame ſhould not be drawn into example.

King *James* 2. had aids and taxes granted him by parliament; and, after the *Revolution*, heavy taxes were neceſſarily laid on lands and perſonal eſtate, in the reigns of King *William* 3. and *Queen Anne*, to defend the crown and kingdom againſt the efforts of the King of *France*, in favour of the pretended *Prince of Wales*, and ſecure the proteſtant ſucceſſion in the line of his majeſty King *George*. Since this neceſſity joined to others, land taxes have been annually granted of 1 *s.* 2 *s.* 3 *s.* and 4 *s.* in the pound, as the preſent exigences have required; enacted to be levied by commiſſioners on the ſeveral counties, cities, towns, *&c.* And in reſpect of this tax, it is not the quantity but the yearly value of lands that muſt be obſerved; the farmers or occupiers of the land are to be charged, and deduct it out of their rents to the landlords; and a man may be rated for goods as well as lands, but not for both; and in caſe of a rate on goods, the charge muſt be on the perſon: The commiſſioners are to aſcertain the ſeveral proportions of the tax, to be charged on every hundred or diviſion; and appoint fit perſons to be aſſeſſors and collectors in every pariſh to aſſeſs and levy the money, which when received is to be paid to Receivers general, and by them returned to the *Exchequer*, &c.

If any perſon refuſe to pay the tax, the collectors may levy it by diſtreſs and ſale of their goods; but if they are over-rated, they ſhall be relieved on appeal to the commiſſioners, who have power to charge the ſame on others, as they ſhall ſee cauſe, and in caſe of deficiency to make a re-aſſeſſment: aſſeſſors, neglecting their duty, are to be fined not exceeding 40 *l.* And collectors detaining the money, ſhall be impriſoned, and their eſtates ſeized and ſold, *&c.* If a general receiver neglects to return the money by him received, he is liable to the penalty of 500 *l.* And where there is any failure in raiſing and paying the ſums of money charged on any county, proceſs may iſſue againſt the commiſſioners for their neglect, *&c.* By other later ſtatutes, when lands, *&c.* are aſſeſſed at more than an equal *pound-rate*, the commiſſioners, upon complaint made in twenty days, ſhall abate it; and re-aſſeſs ſuch abatements within the whole hundred, *&c.* or on perſons under-rated, ſo as the ſum charged be fully paid. And where aſſeſſors have omitted to charge themſelves to the land-tax for their own eſtates, commiſſioners by ſtatute have been empowered to ſummon and examine them or others on oath, and, upon diſcovery thereof, to award ſatisfaction to be made to the collectors. If lands or houſes are unoccupied, whereby the pariſh is obliged to make good the tax, the collectors at any time after, may enter and diſtrain, and ſell the diſtreſs in four days, and the money ſhall be diſtributed proportionably to the parties who paid for ſuch lands, *&c*

In caſe any perſons, by changing their reſidence, eſcape the taxation, on proof before two of the commiſſioners, or a juſtice of peace, within one year, they are to be charged at treble the value, to be levied by diſtreſs, *&c.* And in the taking theſe diſtreſſes, collectors may break open houſes, cheſts, *&c.* in the day-time, upon a warrant under the hands of two commiſſioners, and calling conſtables to their aſſiſtance: Alſo if any perſon refuſe to pay the tax, by the ſpace of ten days after demand, or convey away his goods, *&c.* the commiſſioners may commit him to the common gaol, till payment. *Papiſts* are doubly taxed; but the *colleges* in the univerſities are exempted from paying any thing to this tax: There is a poundage fee for collecting the tax, of 3 *d.* *per* pound to the collectors, 2 *d.* *per* pound to the general receiver, and 1 *d.* half-penny *per* pound to the commiſſioners clerks. *Stat.* 1 *Geo.* 1, *&c.* See 12, 13, & 15 *Geo.* 2. The above *ſtatutes*, or *land-tax* acts, where 2 *s.* in the pound is granted, have generally clauſes of *loan* of one million, and when the tax is 4 *s.* a pound, two millions for public uſes; likewiſe in the *malt-tax* acts, there is ſuch clauſe of *loan* for 750,000 *l.* at 3 or 4 *per cent.* intereſt, the *loans* to be allowed by the commiſſioners of the treaſury, *&c.*

Although an exciſeman exerciſe his office in two counties, yet he ſhall be taxed for his ſalary in that county where he lives. 1 *Strange* 417. Lands were let at 120 *l.* *per annum*, but by improvements were worth 150 *l.* *per annum*, and taxed accordingly; the tenant ſhall not deduct the whole land-tax, but only in proportion, as 120 *l.* bears to 150 *l.* 2 *Strange* 1191. See *Black. Com.* 1 *V.* 139, 169, 307. 1 *V.* 331. 4 *V.* 419, 432.

Taxatio Bladorum, Is a tax or impoſition laid upon corn, according to *Cowell.*

Taxatio Norwicenſis, The valuation of eccleſiaſtical benefices made through every dioceſe in *England*, on occaſion of the Pope's granting to the King the tenth of all ſpirituals for three year's. Which *taxation* was made by *Walter* Biſhop of *Norwich*, delegated by the pope to this office in 38 *Hen.* 3. and obtained till the 19th of *Edw.* 1. when a new *taxation*, advancing the value, was made by the biſhops of *Wincheſter* and *Lincoln*. Cowell.

Taxers, Are two officers yearly choſen in *Cambridge* to ſee the true gauge of all weights and meaſures; though the name took riſe from *taxing* or rating the rents of houſes, which was anciently the duty of their offices.

Taylors, Shall not make or ſet upon cloaths any button or button-holes of cloth, ſtuff, *&c.* nor ſhall any perſon wear clothes with ſuch buttons, *&c.* on pain of forfeiting 40 *s. per* dozen. 4 *Geo.* 1. Contracts entered into with *journeymen taylors*, for advancing their wages, are declared void; and *taylors* giving greater wages than allowed, ſhall forfeit 5 *l.* and journeymen accepting the ſame, or refuſing to work for the ſettled ſtated wages the hours appointed, may be ſent to the houſe of correction for two months, *&c.* by *Stat.* 7 *Geo.* 1. *c.* 13.

By 8 *Geo.* 3. *c.* 17. Certain new regulations are eſtabliſhed as to maſter taylors and their journeymen. Their hours and price for working are limited within *London* and five miles thereof. The juſtices are impowered to call witneſſes before them on ſuſpicion that the regulation is broken through, and on conviction to commit the offenders. Alſo the quarter-ſeſſions in *London*, are enabled to make new regulations, if requiſite, as to wages and hours of work. Maſters within the limits employing men out of the limits, to evade the act, are to forfeit 500 *l.* a moiety to the King, the other to the informer. See the *Act*.

Tea, Is a pleaſant ſort of liquor, of late much uſed in *England*, and introduced from *China* and the *Eaſt-Indies*, being made of the product of a *ſhrub* growing in thoſe parts: It is mentioned in the *Stat.* 12 *Car.* 2. *c.* 15. And perſons mixing, with *tea* leaves, the leaves of other trees and ſhrubs, are liable to a penalty of 10 *l. &c.* by 4 *Geo.* 2. *c.* 14. The *Eaſt-India* company are to have allowance and drawback, on exporting *tea*. Stat. 6 Geo. 2. c. 38. By the *Stat.* 18 *Geo.* 2. *c.* 26. The duty of 4 *s. per* pound weight of *tea* given by the *Stat* 10 *Geo.* 1. is taken off, and by this act is given a duty of 1 *s. per* pound weight *Averdupois*, and 25 *l. per cent.* on the price of all teas ſold by the *Eaſt-India* company. By the *Stat.* 21 *Geo.* 2. *cap.* 14. *Tea* is permitted to be exported to *Ireland* and his Majeſty's plantations in *America* without paying the inland duties charged by the laſt act. And by 28 *Geo.* 2. *c.* 21. All tea above ſix pounds, found in Britiſh veſſels arriving from foreign parts (*India* company's ſhips excepted) to be forfeited.

Team and Theame, (From the Sax. *Tyman*, i. e. *propagare*, to *teem* or bring forth) Signifies a royalty or privilege granted by the King's charter to the lord of a manor, for the having, reſtraining and judging of bondmen and villeins, with their children, goods and chattels, *&c. Glanvil, lib.* 5. *c.* 2.

Technical words in indictments. In ſome caſes particular words of art muſt be uſed, which are ſo appropriated by the law to expreſs the preciſe idea which it entertains of the offence, that no other words, however ſynonymous they may ſeem, are capable of doing it. Thus, in treaſon, the facts muſt be laid to be done "treaſonably, and againſt his allegiance," elſe the indictment is void. In indictments for murder, it is neceſſary to ſay, that the party indicted "murdered," not "killed" or "ſlew" the other. In all indictments for felonies, the adverb "feloniouſly" muſt be uſed; and for burglaries, "burglariouſly:" and all theſe to aſcertain the intent. In rapes, the word "raviſhed" is neceſſary, *and muſt not be expreſſed by any periphraſis*; in order to render the crime certain. So in larcenies alſo, the words "feloniouſly took and carried away," are neceſſary to every indictment; for theſe only can expreſs the very offence. *Black. Com.* 4 *V.* 302.

Teding-penny, *Tetbing-penny*, *Tithing-penny*, A ſmall duty or payment to the ſheriff from each *tithing*, towards the charge of keeping courts, *&c.* for which ſome of the religious were exempted by charter from the King. *Chart. Hen.* 1.

Teenage, From the Sax *Tynan*, to incloſe or ſhut, is uſed in many parts of *England* for wood for fences and incloſures.

Teinland, *Tainland*, or *Thainland*, The land of a *Thaine*, or noble perſon. See *Thane-Land*.

Teller, Is a conſiderable officer in the *Exchequer*, of which officers there are four; whoſe office is to receive all money due to the King, and to give the *Clerk of the Pells* a bill to charge him therewith: They alſo pay to all perſons any money payable by the King, by warrant from the *Auditor of the Receipt*; and make weekly and yearly books of their receipts and payments, which they deliver to the Lord *Treaſurer*.

Telligraphiæ, (From the Sax. *Tellan*, i. e. *dicere*, and the Gr. *Γεάφω*, *Scribo*, *quaſi* a telling any thing by writing) Are written evidences of things paſt. *Blount*.

Tellwore, Is that work or labour which the tenant was bound to do for his lord, for a certain number of days; from the *Saxon* word *Tællan*, numerare, *& wore*, opus. *Thorn. Ann.* 1364.

Tementale or Tenmentale, A tax of two ſhillings upon every plough-land. *Hov. Hiſt. f.* 419.

Templars, or Knights of the Temple, (*Templarii*) Was a religious order of knighthood, inſtituted about the year 1119, and ſo called becauſe they dwelt in part of the buildings belonging to the *Temple at Jeruſalem*, and not far from the ſepulchre of our Lord. They entertained chriſtian ſtrangers and pilgrims charitably, and in their armour led them through the *Holy-Land*, to view the ſacred monuments of Chriſtianity, without fear of infidels; for at firſt their profeſſion was to defend travellers from highwaymen and robbers. This order continuing and increaſing for near two hundred years, was far ſpread in *Chriſtendom*, and particularly here in *England*. But at length ſome of them at *Jeruſalem*, falling away (as ſome authors report) to the *Saracens* from Chriſtianity, or rather becauſe they grew too potent and rich, the whole order was ſuppreſſed by *Clement Quintus*, *anno* 1307, by the council of *Vienna* 1312, and their ſubſtance given partly to the knights of St. *John* of *Jeruſalem*, and partly to other religious. *Caſſan. de gloria mundi, par.* 9. *Conſid.* 4. And ſee *Anno* 1 *Edw.* 1. *cap.* 24. Theſe flouriſhed here in *England* from the time of *Henry* the ſecond, till they were ſuppreſſed. They had in every nation a particular governor, whom *Bracton, lib.* 1. *cap.* 10. calls *Magiſtrum Militiæ Templi*. The *Maſter* of the *Temple* here was ſummoned to parliament, 49 *H.* 3. *m.* 11. *in Schedula.* And the chief miniſter of the *Temple church* in *London*, is ſtill called *Maſter of the Temple*. Of theſe knights read Mr. *Dugdale's Antiquities of Warwickſhire, fol.* 706. In ancient records they were alſo called *Fratres Militiæ Templi Solomonis*. Mon. Angl. 2. par. fol. 554. b. About nine years after their inſtitution, they were ordered by a council held at *Triers*, to wear a white garment, and afterwards, in the pontificate of pope *Eugenius*, they wore a red croſs on their garments. The *Temples*, which we now call the *Inns of Court*, was the place where they dwelt, and in the *Middle Temple* the King's treaſure was kept. *Cowell*. Templars land ſhall be forfeit for erecting their croſſes, *St. Weſtm.* 2. 13 *Ed.* 1. *c.* 33. The juriſdiction of the conſervators of their privileges reſtrained, *St. Weſtm.* 2. 13 *Ed.* 1. *c.* 43. The lands of the Templars given to the hoſpitals of *Jeruſalem*. St. de terr. Temp. 17 Ed. 2. ſt. 3.

Temple, *Dugdale* and *Stow* both tell us that the *Temple* in *London* is a place of privilege from arreſts, by the grant of the King; but this hath been denied by the court of *B. R. Dugd.* 317, 320. 3 *Salk. Rep.* 45. In the *Middle Temple* the King's treaſure was anciently kept.

Temporalties of Biſhops, Are the revenues, lands, tenements, and lay-fees, belonging to biſhops, as they are barons and lords of parliament; all things which a biſhop hath by livery from the King, as manors, lands, tithes, *&c.* 1 *Rol. Abr.* 881. It was a cuſtom formerly, that when biſhops received from the King their *temporalties*, they did by a ſolemn form in writing renounce all right to the ſame by virtue of any proviſion from the *Pope*, and acknowledged the receipt of them only from the King; which cuſtom continued from the reign of *Edw.* 1. to the time of the reformation: And this practice began by occaſion of a *Bull* of *Pope Gregory* 8. wherein he conferred the ſee of *Worceſter* on a certain biſhop, and committed to him *adminiſtrationem ſpiritualium & temperalium epiſcopatus prædict'.* *Anno* 31 *Edw.* 1. The cuſtody of the *temporalties* of every biſhop and archbiſhop, during the vacancy of the ſees, belongs to the King; and no ſubject can claim the ſame by grant or preſcription. *F. N. B.* 3?, 34. 2 *Inſt.* 15. And the King may commit the *temporalties* during the vacation of the ſees; alſo he may preſent to a void advowſon, when the *temporalties* are in his hands. 1 *Inſt.* 90, 388. *Mag. Chart. c.* 5. 14 *Edw.* 3. *c.* 34. See *Black. Com.* 1 *V.* 282, 380. 4 *V.* 414.

Temptatio or **Tentatio,** Is uſed in ancient records for a trial, or proof. *Chart.* 20 *Ed.* 1.

Tempus Peſſonis, Maſt time in the *foreſt*, which is from about *Michaelmas* to St. *Martin's Day*, November 11.

Tempus pinguedinis & firmationis; The ſeaſon of killing the *Buck* and the *Doe*. MS. Temp. H. 3.

Tena, Was that which we now call a *coif*, worn by eccleſiaſticks:——Tenæ *coronas abſcondunt quaſi cœleſtes radios repellentes*, &c. Counc. Lambeth. Anno 1281.

Tenancies, Are houſes or places for habitation, held of another. 23 *Eliz. c.* 4.

Tenant, (*Tenens*, from the Latin *tenere*, to hold,) Signifies one that holds or poſſeſſes lands or tenements by any kind of right, either in fee, for life, years, or at will. The word in law is uſed with divers additions, as *tenant in dower*, which is ſhe that poſſeſſes land by virtue of her *dower*. *Kitchin. fol.* 160. *Tenant per ſtatute-merchant*, that holds land by virtue of a ſtatute forfeited to him. *Ibid. fol.* 172. *Tenant in frank marriage. Ib. fol.* 158. He that holds lands or tenements by virtue of a gift thereof made to him upon marriage between him and his wife. *Tenant by the curteſy. Id. fol.* 195. He that holds for his life, by reaſon of a child begotten by him of his wife, being an inheritrix, and born alive. *Tenant by elegit*, that holds by virtue of the writ called an *elegit*. *Tenant in mortgage*, that holds by means of a *mortgage*. *Tenant by the verge* in ancient demeſne (*Id. fol.* 81.) is he that is admitted by the rod in the court of ancient demeſne. *Tenant by copy of court-roll* is one admitted tenant of any lands, &c. within a manor, which time out of mind have been demiſable, according to the cuſtom of the manor. *Weſt. Symbol. part.* 1. *lib.* 2. *ſect.* 646. *Tenant by charter* is he that holdeth by feoffment in writing, or other deed. *Kitchin, fol.* 57. There was alſo tenant by *knights-ſervice*, *tenant in burgage*, *tenant in ſocage*, *tenant in frank-fee*, *tenant in villenage*. So there is *tenant in fee-ſimple*. Kitchin, fol, 150. *Tenant in fee-tail*. Id. fol. 153. *Tenant at the will of the lord, according to the cuſtom of the manor*, Id. fol. 132, & 165. *Tenant at will by the Common law*, Ibid. *Tenant upon ſufferance*, Ibid. *Tenant of eſtate of inheritance*, Staundf. Prærog. fol. 6. *Tenant in chief*, that holdeth of the King in right of his crown. *F. N. B. fol.* 5. *Tenant of the King*'s he that holds of the perſon of the King, *Ibid.* or has ſome honour. *Ibid.* *Very tenant*, that holds immediately of his lord. *Kitchin, fol.* 99. For if there be lord, meſne and *tenant*; the *tenant* is *very tenant* of the meſne, but not to the lord above: *Tenant peravail*. See *Peravail*. *Pl. Cor.* 197. and *F. N. B. fol.* 136. See *Dyer's Com. fol.* 25. *num.* 156.

So there are alſo *joint-tenants*, that have equal right in lands and tenements by virtue of one title. *Lit. lib.* 3. *cap.* 3. *Tenants in common*, that have equal right, but hold by divers titles, *Ibid. cap.* 4. *Particular tenant*. *Staundf. Prerog. fol.* 13. that holds only for his term. See *Coke* in Sir *Will. Pellham*'s caſe, *l.* 1. *fol.* 15. called *term for life or years*. See *Plowd. Cothirſt*'s caſe, *fol.* 23. *Sole tenant*, Kitchin, fol. 134. He that hath no other joined with him. *Several tenant* is oppoſite to *joint-tenant*, or *tenants in common*.

Tenant to the præcipe is he againſt whom the writ *præcipe* is to be brought. *Co. Rep. lib.* 3. caſe of *fines*, *fol.* 88. *Tenant in demeſne*, 13 *Ed.* 1. *cap.* 9. 32 *H.* 8. *cap.* 37.
is he that holdeth the demeſne
without ſervice. *Tenant on Ser*
he that holdeth by ſervice. S
cipio & *cap.* 96. *Car. fealt*
tion. 32 *H.* 8. *cap.* 5. that
an execution upon any ſtatute, recogniz
divers others. *Cowell.* See *Joint tenants*, Cur
Dower, *Life-eſtate*, *Eſtate-tail*, *Recovery*, and *Black. Com.* 2 *V.* 59.

Tenants in common, Are ſuch as hold lands for life or years, by ſeveral titles, or by one title and ſeveral rights; and as *jointenants* have one joint freehold, ſo tenants in common have divers freeholds. 1 *Inſt.* 188. If a conveyance is made to two perſons, *habendum* the one moiety to one and his heirs, and the other moiety to the other, &c. it is a *tenancy in common* and the heirs and executors of *tenants in common* ſhall have their parts or ſhares; and not the ſurvivors, as in caſe of *jointenants*. 2 Lill. Abr. 559. *Tenants in common* know not their own part, but take the profits in common: One *tenant in common* cannot bring action of treſpaſs againſt another *tenant in common*; but one ſuch *tenant* may bring waſte againſt his partner, &c. 3 *Leon.* 307. 2 *Lill.* 561. At Common law *tenants in common* were not compellable to make partition; though they are by the *Stat.* 31 *H.* 8. *c.* 1. See *Jointenant*.

Tenant to the præcipe, Is he againſt whom the writ of *præcipe* is to be brought in ſuing out a *recovery*. 3 Kep.

Tende Seems to ſignify as much as *tender*, or offer; it is mentioned in our old books, as to *tend* a traverſe, an averment, &c. *Britton, c.* 76. *Staundf. Prærog.* 16.

Tender, (Fr. *Tendre*) Is the offering of money, or any other thing in ſatisfaction, or circumſpectly to endeavour the performance of a thing; as a *tender of rent* is to offer it at the time and place when and where it ought to be paid: Alſo it is an act done to ſave the penalty of a bond before action brought, &c. *Terms de Ley* 557. *Tender* of rent on any part of the land, or at any time of the laſt day of payment, will ſave the condition for that time, though the landlord refuſe it: But when rent is *tendered*, the leſſor may after bring debt; though he cannot recover any damages; the leſſee's being ready to pay excuſes the damages, but doth not debar the other of his rent. 1 *Inſt.* 200. *Lit. Rep.* 33, 34. 3 *Salk.* 344. A *tender* of rent to ſave the forfeiture muſt be of the whole rent due, without any deduction of taxes or other payments; unleſs it be ſo agreed, &c. ſtoppage being no payment. 1 *Inſt.* 202.

Tender of money on a bond, is to be made to the perſon of the obligee at the day appointed, to ſave the penalty and forfeiture of the bond, and it ought to be done before witneſſes; though, if the obligor be ſued afterwards, he muſt ſtill pay it: But if the obligor be to do any collateral thing, or which is not part of the obligation, as to deliver a horſe, &c. and the obligor offer to do his part, and the obligee refuſeth it, the condition is performed and the obligation diſcharged for ever. 1 *Inſt.* 207, 208. A ſum awarded by an award, was loſt by the *tender*; it being a collateral thing. 3 *Lev.* 277. On award, that the defendant ſhould pay money on ſuch a day, and at ſuch place; the defendant pleaded, that he *tendered* the money at the day and place, and becauſe he did not ſet forth that he continued there ready to pay it at the laſt inſtant of the day till after ſun-ſetting, &c. it was held ill. 2 *Cro.* 243.

Where time and place of doing an act is made certain by agreement of the parties, and they both meet accordingly; he who pleads a *tender*, muſt alſo plead a refuſal of the other party to accept; otherwiſe ſuch plea will be ill upon a demurrer, but not after verdict; and if the plaintiff be abſent, that is to be ſet forth, and that the defendant was at the time and place, & *obtulit ſolvere*, &c. 2 *Salk.* 623.

On a *tender* being pleaded, and the money paid into court, plaintiff replied a ſubſequent demand and refuſal, whereupon iſſue being joined and tried, a verdict was found for defendant. Whereupon he moved to have the money paid into court, returned, in part of his coſts, but the court was of opinion it could not be done. *Rep. Temp. Hardw per Annaly*, 206.

Tender and refuſal ſaid to be conſidered in ſome caſes as payment. See *Wilſon. par.* 1. *fo.* 117.

There is a difference in pleading a *tender* in action of debt, and in action on the caſe; in debt, the damages are but acceſſary, ſo that, in pleading a *tender* to ſuch action, the defendant muſt pray judgment *de damnis*; but in *aſſumpſit*, the damages are principal, and he is to plead *ſemper paratus*, with a *profert hic in curia*, and pray judgment *de ulterioribus damnis*. *Salk.* 622. 3 *Salk.* 344, 345.

Tender may be of money in bags, without ſhewing or telling it, if it can be proved there was the ſum to be *tendered*; it being the duty of him that is to receive the money, to put out and tell it. 5 *Rep.* 115. Though where a perſon held the money on his arm in a bag, at the time of offering; this was adjudged no good *tender*, for it might be counters or baſe money. *Noy.* 74. 3 *Nelſ. Abr.* 281. If a *tender* is made of more than is due, it is good; and the party to whom *tendered* ought to take out what belongs to him. 5 *Rep.* 114. *Tender* of the money is requiſite on contracts for goods ſold, *&c.* to intitle action of trover: And a *tender* of ſtock ſold for ſo much money, if it be well made though not accepted, will intitle the party to the ſum agreed to be paid. 3 *Salk.* 343. See *Bond*, *&c.* 5 *New Abr.* and 20 *Vin. Abr.* tit. *Tender*, and *Black. Com.* 3 *V.* 16, 303.

Tenement, *(Tenementum,)* Signifies properly a houſe or home-ſtall; but more largely it comprehends not only houſe, but all corporeal inheritances which are holden of another, and all inheritances iſſuing out of or exerciſeable with the ſame. *Co. Litt.* 6, 19, 154. A *tenement* may be ſaid to be any houſe, land, rent, or other ſuch like thing, that is any way held, or poſſeſſed; but being a word of a large and ambiguous meaning, and not ſo certain as meſſuage, therefore it is not fit to be uſed to expreſs any thing which requires a particular deſcription. 2 *Lill. Abr.* 566.

The word *tenement* is joined with the adjective *frank*, to denote an eſtate in lands, offices, *&c.* for life or in fee. *Kitch.* 41. See *Black, Com.* 2 *V.* 16, 59.

Tenementary Land, Was the *outland* of manors granted out to tenants by the *Saxon Thanes*, under arbitrary rents and ſervices. *Spelm.*

Tenementis legatis, An ancient writ lying to the city of *London*, or any other corporation; (where the old cuſtom was, that men might deviſe, by will, lands and tenements as well as goods and chattels) for the hearing and determining any controverſy touching the ſame. *Reg. Orig.* 244.

Tenendum, Is a clauſe in a deed wherein the tenure of the land is created and limited: The office of a *tenendum* in a deed, is to limit and appoint the tenure of the land which is held, and how, and of whom it is to be held. Before the ſtatute called *Quia emptores terrarum*, (18 *Ed.* 1.) the *tenendum* was uſually from the feoffor and his heirs, and not of the chief lord of the fee, whereby lords loſt their eſcheats, forfeitures, *&c.* But ſince the ſaid ſtatute the *tenendum*, where the fee-ſimple paſſes, muſt be of the chief lord of the fee, by the cuſtoms and ſervices, whereby the feoffor held; yet this ſtatute does not extend to a gift in tail; for the donee ſhall hold of the donor. *Co. Lit.* 6. *a.* 2 *Inſt.* 66, 67, 500, 501, 502, 505.

The *tenendum* moſt commonly and properly ſucceeds the *habendum*, and was uſually in theſe words, *tenendum per ſervitium*, *&c.* By the ſtat. of *Quia emptores terrarum*, when the fee-ſimple doth paſs, the tenure is always of the chief lord, and is thus ſet forth, *Tenendum de capitalibus dominis*, *&c.* But this clauſe at this day is for the moſt part left out of deeds, and altogether omitted. *Shep. Com. Aſſ.* 391. The *tenendum* ſeems now to be incorporated with the *habendum*, for we ſay, To have and to hold, in which clauſe the eſtate is limited, *&c.* See *Black. Com.* 2 *V.* 298.

Tenentibus in Aſſiſa non Onerandis, Is a writ that lies for him to whom a diſſeiſor hath alienated the land whereof he diſſeiſed another, that he be not moleſted in *aſſiſe* for the damages, if the diſſeiſor have wherewith to ſatisfy them. *Reg. Orig.* 214.

Tenheded, or Tienheofed, A *Saxon* word ſignifying *Decanus, Caput vel Princeps Decaniæ ſive Decuriæ.* Leg. Edw. Conf. c. 29.

Tenmentale, (Sax. *Tienmantale*, i. e. *decem virorum numerus*) *Decennaria*, *Tithinga*. *Leg. Edw. Conf.* Alſo an ancient tax or tribute paid to the King. *Hoveden* 737.

Tenor, *(Lat.)* Of writs, records, *&c.* is the ſubſtance or purport of them; or a tranſcript or copy. *Tenor* of a libel hath been held to be a tranſcript, which it cannot be if it differs from the libel; and *juxta tenorem* imports it, but not *ad effectum*, *&c.* for that may import an identity in ſenſe, but not in words. 2 *Salk.* 417. In action of debt brought upon a judgment in an inferior court, if the defendant pleads *Nul tiel record*, a *tenorem recordi* only ſhall be certified; and by *Hale* Chief Juſtice it may be the ſame on *certiorari's*. 3 *Salk.* 296. A return of the *tenor* of an indictment from *London*, on a *certiorari* to remove the indictment, is good by the city charter; but in other caſes it is uſual to certify the record itſelf. 2 *Hawk. P. C.* 295.

Tenore indictamenti mittendo, Is a writ whereby the record of an *indictment*, and the proceſs thereupon, is called out of another court into the *King's Bench*. Reg. Orig. 69.

Tenore præſentium, The *tenor of theſe preſents*, is the matter contained therein, or rather the intent and meaning thereof; as to do ſuch a thing according to the *tenor*, is to do the ſame according to the true intent of the deed or writing.

Tentates panis, The eſſay or aſſay of bread. *Blount.*

Tenter, A ſtretcher or trier of cloth, uſed by dyers and clothiers, *&c.* mentioned in the ſtatutes 1 *R.* 3. *c.* 8. 39 *Eliz.* *c.* 20.

Tenths, *(Decimæ)* Are the tenth part of the annual value of every ſpiritual benefice, being that yearly portion or tribute which all eccleſiaſtical livings pay to the King. They were anciently claimed by the *Pope*, to be due to him *Jure divino*, as High Prieſt, by the example of the High Prieſt among the *Jews*, who had *tenths* from the *Levites*: But they have been often granted to the King by the Pope upon divers occaſions, ſometimes for one year, and ſometimes for more; and were annexed perpetually to the crown by *Stat.* 26 *H.* 8. *c.* 3. 1 *Eliz.* *c.* 4. And at laſt granted with the *firſt fruits*, towards the augmentation of the maintenance of poor clergymen. 1 *Ann.* *c.* 11. Collectors of this revenue are to be appointed by the King by letters patent, inſtead of the biſhops; and an office is to be kept for management of the ſame, in ſome part of *London* or *Weſtminſter*, *&c.* 3 *Geo.* 1. *c.* 10. *Tenths* ſignify likewiſe a *tax* on the *temporality*, See the ſtatutes of King *Edw.* 6. Queen *Eliz.* and King *James*. And *vide* tax and *Black. Com.* 1 *V.* 284, 308. 4 *V.* 106.

Tents, Robbing of, in fairs and markets, is felony, and puniſhed as burglary. 5 & 6 *Ed.* 6. *c.* 9.

Tenure, *(Tenura, from the Lat. Tenere)* Is the manner whereby lands or tenements are holden; or the ſervice that the tenant owes to his lord: And there can be no *tenure* without ſome ſervice, becauſe the ſervice makes the *tenure*. 1 *Inſt.* 1, 93. A *tenure* may be of houſes, and land or tenements; but not of a rent, common, *&c.* All lands in the hands of a ſubject are held of ſome lord or landlord, by *tenure* or ſervice: And all the lands and tenements in *England* are ſaid to be holden either mediately or immediately of the King; and therefore he is *ſummus dominus ſupra omnes*. 2 Inſt. 531.

Under the word *tenure* is included every holding of an inheritance; but the ſignification of this word, which is a very extenſive one, is uſually reſtrained by coupling other words with it; this is, ſometimes, done by words which denote the *duration* of the tenant's eſtate: As if a man holds to himſelf and his heirs, it is called tenure in fee-ſimple. At other times the tenure is coupled with words pointing out the *inſtrument* by which an inheritance is held; thus, if the holding is by copy of court-roll, it is called tenure by copy of court-roll. At other times, this word is coupled with words that ſhew the *principal ſervice* by which an inheritance is held: As where a man holds by knight's ſervice, it is called tenure by knight's ſervice. 5 *New Abr.* 34.

Tenure ſignifies the eſtate in the land; and *tenures* were anciently divided into the following, *viz. Eſcuage*, which was land held by the ſervice of the ſhield, and by which the tenant was obliged to follow his lord into the wars at his own charge. *Knight's ſervice* and *chivalry*, where lands were held of the King or meſne lord, to perform ſervice in war, and which drew after it homage, eſcuage, wardſhip, *&c. Burgage* tenure, where land was holden of the lord of the borough, at a certain rent. *Villenage* a baſe tenure of lands, whereby the tenant was bound to do all inferior villanous ſervices commanded by the lord. *Grand ſerjeanty*, a tenure of lands by honourary ſervices at the King's coronation, *&c.* And *petit ſerjeanty*, where lands were held of the King to contribute yearly ſome ſmall thing towards his wars. *Frankalmoigne*, a tenure by which land is held by eccleſiaſtical perſons in free and perpetual alms. And *ſocage* tenure, where lands are holden by tenants to plough the land of their lord, and do other ſervices of husbandry at their own expence; but this hath been turned into an yearly rent, for all manner of ſervices, when it is called *free ſocage*.

Of theſe general ancient *tenures*, knight ſervice, chivalry, eſcuage, petit-ſerjeanty, villenage, *&c.* are taken away by ſtat. 12 *Car.* 2. *c.* 24. The common tenures at this day, are *fee-ſimple*, which is an abſolute tenure of lands, to a man and his heirs for ever. *Fee-tail*, a limited fee to a perſon and the heirs of his body begotten, *&c.* By the *Curteſy*, where a man marries a woman ſeiſed of lands in fee-ſimple, *&c.* and hath iſſue by her born alive, after her death he ſhall hold the land during life. In *dower*, where a widow holds for her life the third part of her husband's land, whereof he was ſeiſed in fee. For *life* and *years*, where lands are held by tenants for thoſe terms, on rents reſerved. And *copyhold* tenure, a holding for lives or in fee, at the will of the lord, according to the cuſtom of the manor, under divers ſervices, *&c. Vide* the *Heads*, and ſee *Fee* and *Socage*. See farther as to ancient tenures, *Black. Com.* 2 *V.* 59. and as to modern tenures, *id.* 78. and as to the feudal tenures, ſee *Craig*, *Dalrymple*, and Lord *Lytt. Hiſt. Hen.* 2. *V.* 2. 179—188.

Term, (*Terminus*) Signifies commonly the limitation of time or eſtate; as a leaſe for *term* of life, or years, *&c. Bract. lib.* 2. *Term* is alſo a ſpace of time, wherein the ſuperior courts at *Weſtminſter* ſit. See *Terms*.

Terminum qui Preteriit, Writ of Entry *ad.* This is a writ for the reverſioner, when the poſſeſſion is withheld by the leſſee or a ſtranger, after the determination of a leaſe for years. *F. N. B.* 201. *Black. Com.* 3 *V.* 183. This writ is now diſuſed, ſince the invention of ejectments.

Termor, (*Tenens ex Termino*) Is he that holds lands or tenements for *term* of years or life. *Litt.* 100. A *termor* for years cannot plead in *aſſiſe* like tenant of the freehold; but the ſpecial matter, *viz.* his leaſe for years, the reverſion in the plaintiff, and that he is in poſſeſſion, *&c. Dyer* 246. *Jenk. Cent.* 142. See *Black. Com.* 2 *V.* 142.

Terms, Are thoſe ſpaces of time, wherein the courts of juſtice are open, for all that complain of wrongs or injuries, and ſeek their rights by courſe of law or action, in order to their redreſs; and during which, the *courts in Weſtminſter-hall* ſit and give judgments, *&c.* But the high court of *parliament*, the *Chancery*, and *inferior* courts, do not obſerve the *terms*; only the courts of *King's Bench*, the *Common Pleas*, and *Exchequer*, the higheſt courts at *Common law*. Of theſe *terms* there are four in every year, *viz. Hilary Term*, which begins the 23d of *January*, and ends the 12th of *February*; *Eaſter-Term*, that begins the Wedneſday fortnight after *Eaſter-day*, and ends the Monday next after *Aſcenſion-Day*; *Trinity-Term* which begins the Friday after *Trinity* Sunday, and ends the Wedneſday fortnight after; and *Michaelmas-Term*, that begins the 6th of *Nov.* (if a week day) and ends the 28th of *Nov.* Each *term* has certain *returns*; as *Hilary-Term* has four, *Eaſter* hath five, *Trinity* four, and *Michaelmas* four: And by ſtatute, *Trinity Term* was abridged four returns; and *Michaelmas-Term* two returns; for thoſe *terms* were formerly longer than now, till contracted by the ſtatutes 32 *H.* 8. *c.* 21. and 16 *Car.* 1. *c.* 16. See *Poſt*.

There are four days in *term*, called the *Eſſoin-Day*; the day of *exceptions*; the day of *returns* of writs; and the day of *appearance*, called the *Quarto die poſt*: The *term* is ſaid to begin on the *Eſſoin Day*, when one judge ſits in each court of law at *Weſtminſter*, to take and enter eſſoins; but the third day afterwards is the firſt day of the *term*, at which time the judges in all the courts ſit to do the buſineſs of the *term*. 2 *Lill. Abr.* 569. All the *term* in conſtruction of law is accounted but as one day to many purpoſes; for a plea that is put in the laſt day of a *term*, is a plea of the firſt day of the *term*; and a judgment on the laſt day of *term* is as effectual as on the firſt day. *Trin.* 23 *Car. B. R.* See *Wilſon, Par.* 1, *fo.* 37. And for this reaſon the judges may alter and amend their judgments in the ſame *term*, *&c.* It has been held, that the courts ſit not but in *term*, as to the giving of judgments: And the judges of *B. R.* and *C. B.* before *Trinity Term* 1651, did not ſit longer in court than till one a clock upon the laſt day of *term*; becauſe they would not encourage attornies to neglect their client's buſineſs till the laſt day of *term*, as too commonly they do, to the toil of the court, and too much hurry in diſpatch. *Mich.* 22 *Car.* 2. *Lill.* 91.

Terms have been *adjourned*, and returns of writs and proceſſes confirmed. 1 *W. & M. Seſſ.* 1. *c.* 4. Where there is a *term* intervening between the *teſte* and return of a writ of *Capias*, *&c.* or when the *term* to which a ſuit is continued is adjourned, and the ſuit is not adjourned, it is a diſcontinuance, *&c.* 2 *Hawk.* 298.

The *iſſuable terms* are *Hilary* and *Trinity-terms* only; ſo called, becauſe in them the iſſues are joined and records made up of cauſes, to be tried at the *Lent* and ſummer *aſſiſes*, which immediately follow. 2 *Lill. Abr.* 568. By the *Stat.* 24 *Geo.* 2. *c.* 48. After *Michaelmas* day 1752, there ſhall only be four returns in *Michaelmas-term*, *viz.* The morrow of *All ſouls*, the morrow of St. *Martin*, in eight days of St. *Martin*, and in fifteen days of St. *Martin*. And *Michaelmas-term* ſhall begin on the ſaid morrow of *All Souls*, (except it be *Sunday*, and then on the morrow next after) for the keeping of eſſoins, *&c.* And full *term* ſhall begin on the fourth day of the ſaid morrow of *All Souls*, (except it be *Sunday*, and then on the morrow next after.) And that for the more ſpeedy proceedings in writs of dower *unde nihil habet*, and by writs of entry for common recoveries to be ſued and proſecuted by writs of entry, or by writs of right of advowſon, and in all other real actions, after *Michaelmas* 1752.

If any writ in any ſuch action come in and be returnable in the *Common Pleas* on the morrow of *All-Souls*, then day ſhall be given in fifteen days of St. *Martin*; if on the morrow of St. *Martin*, then in eight days of St. *Hilary*; if in eight days of St. *Martin*, then fifteen days of St. *Hilary*; if in fifteen days of St. *Martin*, then on the morrow of the *Purification*; if in eight days of St. *Hilary*, then in eight days of the *Purification*; if in fifteen days of St. *Hilary*, then in fifteen days of *Eaſter*; if on the morrow of the *Purification*, then in three weeks from the day of *Eaſter*; if in eight days of the *Purification*, then in one month from the day of *Eaſter*; if in fifteen days of *Eaſter*, then in five weeks from the day of *Eaſter*; if in three weeks from the day of *Eaſter*, then on the morrow of the *Aſcenſion*; if in one month from the day of *Eaſter*, then on the morrow of the *Holy Trinity*; if in five weeks from the day of *Eaſter*, then in eight days of the *Holy Trinity*; if on the morrow of the *Aſcenſion*, then in fifteen days of the Holy *Trinity*; if on the morrow of the Holy *Trinity*, then in three weeks from the day of the Holy *Trinity*; if in eight days of the Holy *Trinity*, then on the morrow of *All Souls*; if in fifteen days of the Holy *Trinity*, then on the morrow of St. *Martin*; if in three weeks of the Holy *Trinity*, then in eight days of St. *Martin*.

In writs of dower *unde nihil habet* after iſſue joined, fifteen days between the teſte and return of the *venire facias*, and any other proceſs for the trial ſhall be ſufficient. And all writs having day from the fourth day of the morrow of the *Aſcenſion*, to the morrow of the Holy *Trinity* ſhall be good, though there be no fifteen days between the teſte and return. Special days and returns may be appointed by the judges in ſuch caſes as have been uſual. The days of aſſiſe in *darrein preſentment*, and in a plea of *quare impedit* appointed by the *Stat.* of *Marlebridge*; and the days to be given in attaint by *Stat.* 5 *E.* 3. and alſo in *Stat.* 23 *H.* 8. not being contrary to this act, ſhall be in force. Day for ſwearing the mayor of *London* ninth *November*, unleſs it be *Sunday*, and then the next day. The morrow of St. *Martin* yearly, appointed for nominating ſheriffs in the *Exchequer*.

The *terms* in *Scotland* are *Martinmas*, *Candlemas*, *Whitſuntide* and *Lammas*, at which times the court of *Exchequer*, *&c.* there is to be kept. *Stat.* 6 *Ann. c.* 6. And the *terms* of our *univerſities* for ſtudents, are different in time from the *terms of the courts of law*. See farther as to the original of our law terms, *Black. Com.* 3 *V.* 275. As to the eſſoign-day, *id.* 278. As to the firſt day of the term, *Id. ibid.* And as to the returns. *Id.* 277.

Terms of the Law, Are artificial or technical words and *terms of art*, particularly uſed in and adapted to the profeſſion of the *law*. 2 Hawk. P. C. 239.

Terms for Payment of Rent, Or *rent terms*, the four quarterly feaſts, upon which rent is uſually paid. *Cartular. Sti. Edmund.* 238.

Terra, In all the ſurveys in *Domeſday* regiſter, is taken for *arable land*, and always ſo diſtinguiſhed from the *Pratum*, *&c.* Kennet's Gloſſ.

Terra affirmata, Signifies land let to farm.

Terra Boſcalis, Woody lands, according to an inquiſition. 8 *Car.* 1.

Terra Culta, Land that is tilled or manured; as *terra inculta* is the contrary. *Mon. Ang. tom.* 1. *p.* 500.

Terra debilis, Weak or barren ground. *Inq.* 22. *R.* 2.

Terra dominica vel indominicata, The demeſne land of a manor. *Cowell.*

Terra Excultabilis, Such land as may be ploughed. *Mon. Ang. tom.* 1. *p.* 426.

Terra extendenda, Is a writ directed to the eſcheator, *&c.* willing him to enquire and find out the true yearly value of any land, *&c.* by the oath of twelve men, and to certify the extent into the *Chancery*, *&c.* Reg. of Writs, fol. 293.

Terra fruſca, Freſh-land, or ſuch as hath not been lately ploughed; likewiſe written *Terra friſca*. Mon. Ang. 2. par. fol. 327.

Terra hydata, Was land ſubject to the payment of *hydage*, and the contrary was *terra non hydata*. Selden.

Terra lucrabilis, Land that may be gained from the ſea, or incloſed out of a waſte, to a particular uſe. *Mon. Ang.* 1 *Par. fol.* 406.

Terra Normanorum. In the beginning of *H.* 3. ſuch land in *England* as had been lately held by ſome noble *Norman*, who by adhering to the *French* King, or Dauphin, had forfeited his eſtate in this kingdom, which by this means became an eſcheat to the crown, was called *Terra Normannorum*, and reſtored, or otherwiſe diſpoſed at the King's pleaſure. *Paroch. Antiq. p.* 197.

Terra nova, Is land newly aſſerted and converted from wood ground to arable, *vel terra noviter conceſſa*. Spelm.

Terra Putura, Land in *foreſts* held by the tenure of furniſhing man's meat, horſe-meat, *&c.* to the keepers therein. See *Putura*.

Terra ſabuloſa, Gravelly or ſandy ground. *Inq.* 10 *Ed.* 3. *n.* 3.

Terra veſtita, Is uſed in old charters for land ſown with corn. *Cowell.*

Terra wainabilis, Tillable land. *Id. ib.*

Terra warennata, Land that has the liberty of free warren. *Rot. Parl.* 21 *Ed.* 1.

Terræ boſcales, Woody lands. *Inq.* 2. *par.* 8 *Car.* 1. *num.* 71.

Terræ Teſtamentales, Lands that were held free from feodal ſervices, in *allodio*, in *ſocage*, deſcendible to all the ſons, and therefore called *Gavel-kind*, were deviſeable by will, and thereupon called *Terræ teſtamentales*, as the *Thane* who poſſeſſed them was ſaid to be *teſtamento dignus*. See Sir *Henry Spelman of Feuds*, *cap.* 5.

Terrage. *(Terragium) Edward* the third granted to *John of Gaunt*, and *Blaunch* his wife, for their lives, *quod ſint quieti de thelonio, paſſagio, ſoccagio, laſtagio, tallagio, caruagio, priſcagio, pickagio & terragio*, which ſeems to be an exemption *a precariis*, viz. Boons of ploughing, reaping, *&c.* and perhaps from all land-taxes, or from money paid for digging and breaking the earth in fairs and markets. *Cowell.*

Terrar, Or *Terrier*, *(Terrarium, catalogus Terrarum)* Is a land-roll, or ſurvey of lands, either of a ſingle perſon, or of a town; containing the quantity of acres, tenants names, and ſuch like; and in the *Exchequer*, there is a *terra* of all the glebe-lands in *England*, made about 11 *E.* 3. *Stat.* 18 *Eliz. cap.* 17.

Terrarius, A land-holder, or one who poſſeſſes many farms of land. *Leg. W.* 1.

Terrarius Coenobialis, An officer in religious houſes, whoſe office was to keep a *terrier* of all their eſtates, and to have the lands belonging to the houſes exactly ſurveyed and regiſtred; and one part of his office was to entertain the better ſort of convent-tenants, when they came to pay their rents, *&c.* *Hiſt. Dunelm.*

Terre-tenant, Tertenant, *(Terræ Tenens)* Is he who hath the actual poſſeſſion of the land: For example, a lord of a manor has a freeholder, who letteth out his freehold to another, to be poſſeſſed and occupied by him, ſuch other is called the *Tertenant*. Weſt. Symb. par. 2. Briton, cap. 29. In the caſe of a recognizance, ſtatute or judgment, the heir is chargeable as *tertenant*, and not as heir; becauſe, by the recognizance or judgment, the heir is not bound, but the anceſtor *concedit* that the money *de terris*, *&c. levetur*. 3 Rep. 12. Plea of *tertenancy*, in a *Scire fac.* *&c.* Vide *Cro. Eliz.* 872. *Cro. Jac.* 506. See *Scire facias*, and *Black. Com.* 2 *V.* 91, 328.

Terris, Bonis & Catallis rehabendis poſt Purgationem, A writ for a clerk to recover his lands, goods and chattels formerly ſeized, after he had cleared himſelf of the felony of which he was accuſed, and delivered to his ordinary to be purged. *Reg. Orig.* 68.

Terris & Caſtallis tentis ultra debitum levatum, Is a judicial writ for the reſtoring of lands or goods to a debtor, that is diſtrained above the quantity of the debt. *Reg. Judic.* 38.

Terris liberandis, A writ lying for a man convicted by *attaint*, to bring the record and proceſs before the King, and take a fine for his impriſonment, and then to deliver him his lands and tenements again, and releaſe him of the *Strip* and *Waſte*. Reg. Orig. 232. It is alſo a writ for the delivery of lands to the heir, after homage and relief performed; or upon ſecurity taken that he ſhall perform them. *Ibid.* 293, 313. See *Tenure*.

Tertian, A meaſure of eighty-four gallons; ſo called becauſe it is a *third* part of a tun. 1 *R.* 3. 13. 2 *H.* 6. *c.* 11.

Teſt. As to bring one to the *teſt*, is to bring him to a trial and examination, *&c.* By the act of King *Cha.* 2. commonly called the *Teſt-act*, all officers civil and military are to take the oaths and *teſt*; and if they neglect it, and execute any office within the words of that ſtatute, being legally convicted thereof upon information, preſentment, or indictment, in any of the courts at *Weſtminſter*, or at the aſſiſes, they ſhall forfeit 500 *l.* to be recovered by him who will ſue for the ſame in any action of debt, *&c.* 25 *Car.* 2. *c.* 2. See *Black Com.* 4 *V.* 57, 432.

Teſta de Nevil, Is an ancient record in the cuſtody of the King's remembrancer in the *Exchequer*, compiled by *John de Nevil*, a juſtice itinerant in the 18 & 24 of King *Hen.* 3. containing an account of lands held in grand ſerjeanty, with fees and eſcheats to the King, *&c.*

Teſtament, *(Teſtamentum)* Is thus defined by *Plowden*, *Teſtamentum eſt teſtatio mentis*, a *teſtament* is a witneſs of the mind: But *Aulus Gellius*, *lib.* 6. *cap.* 12. denies it to be a compound word, and ſaith, It is *verbum ſimplex*, as *Calceamentum*, *Plaudamentum*, *&c.* And therefore it may be thus better defined, *Teſtamentum eſt ultimæ voluntatis juſta ſententia, de eo quod quis poſt mortem ſuam fieri vult*, *&c.*

Of *teſtaments* there are two ſorts, *viz.* *a teſtament in writing*, and a *teſtament in words*, called a *Nuncupative teſtament*, which is, when a man being ſick, and for fear, leſt death, want of memory, or ſpeech, ſhould come ſo ſuddenly upon him, that he ſhould be prevented if he ſtaid the writing of his *teſtament*, deſires his neighbours and friends to bear witneſs of his laſt will, and then declares the ſame before them by words, which after his deceaſe is proved by witneſſes, and put in writing by the ordinary, and then ſtands in as good force as if it had at the firſt, into the life of the teſtator, been put into writing, except only for lands, (which are only deviſeable by a *teſtament* put into writing in the life of the teſtator. See *Co. on Lit. lib.* 2. *c.* 10. *ſ.* 167. *Plowd. fol.* 541. *Paramore* and *Jurdley*'s caſe. *Co.* 6 *Rep. Marquis of Wincheſter*'s caſe. *Teſtament* was anciently uſed (according to *Spelman) pro ſcripto charta vel inſtrumento, quo prædiorum rerumve aliarum tranſactiones perficiuntur, ſic dictum quod de ea re vel* teſtimonium *ferret vel teſtium nomina contineret.*——*Si quis contra hoc meæ authoritatis* teſtamentum *aliquod machinari impedimentum præſumpſit.* Charta Croylandiæ ab Æthelbaldo Rege. Anno Domini 716. *Cowell.* A will to paſs lands muſt be executed in the preſence of three witneſſes. See *Wills* and *Teſtaments*, and *Black. Com.* 2 *V.* 10, 12, 373, 489, 499. 4 *V.* 417, 423.

Teſtamentary Cauſes. A ſpecies of cauſes belonging to the eccleſiaſtical juriſdiction. They were originally cognizable in the King's courts of Common law, *viz.* the county courts; and afterwards transferred to the juriſdiction of the church by the favor of the crown, as a natural conſequence of granting to the biſhops the adminiſtration of inteſtates effects.

As obſerved by *Lindewode*, the ableſt canoniſt of the fifteenth century, teſtamentary cauſes belong to the eccleſiaſtical courts "de conſuetudine Anglice, & ſu-" per conſenſu regio & ſuorum procerum in talibus ab "antiquo conceſſo." *Provincial. l.* 3, *t.* 13. *fol.* 176. *Black. Com.* 3 *V.* 95. which *vide*.

Teſtamentary Guardian. By 12 *Car.* 2. *c.* 24. any father may, by deed or will, diſpoſe of the cuſtody of his child, either born or unborn, to any perſon, except a popiſh recuſant, either in poſſeſſion or reverſion, until ſuch child attains the age of one and twenty years. The guardians ſo appointed are called *guardians by ſtatute* or *teſtamentary guardians*. N. B. The power and reciprocal duty of a guardian and ward are the ſame, *pro tempore*, as that of a father and a child. *Black. Com.* 1 *V.* 462.

Teſtamentary Juriſdiction in Equity. For want of a power of diſcovering, at law, what reſts only in the private knowledge of the party, courts of equity have acquired a concurrent juriſdiction with every other court, in all matters of account. As incident to accounts, they take a concurrent cognizance of the adminiſtration of the perſonal aſſets, conſequently of debts, legacies, the diſtribution of the reſidue, and the conduct of executors and adminiſtrators. *Black. Com.* 3 *V.* 437.

Teſtamentary Juriſdiction in Spiritual Courts. See *Teſtamentary Cauſes*, and *vide* farther, *Black. Com.* 3 *V.* 97. 4 *V.* 414.

Teſtamento annexo, Adminiſtration *cum*. If a teſtator makes his will, without naming any executors, or if he names incapable perſons, or if the executors named refuſe to act; in any of theſe caſes, the ordinary muſt grant adminiſtration *cum teſtamento annexo*, to ſome other perſon. *Black. Com.* 2 *V.* 503, 504.

Teſtator, (*Lat.*) He that makes a teſtament. See *Swinburn of Wills and Teſtaments*. And eſpecially ſee a Diſſertation of the probate of wills or teſtaments by the learned Sir *Henry Spelman* among his late remains, *pag.* 127.

Teſtatum, Is a writ in perſonal actions, where the defendant cannot be arreſted upon a *capias* in the county where the action is laid, but is returned *non eſt inventus* by the ſheriff; then this writ ſhall be ſent out into any other county where ſuch perſon is thought to be, or to have wherewith to ſatisfy: And this is termed a *Teſtatum*, by reaſon the ſheriff hath *teſtified* that the defendant was not to be found in his bailiwick. *Kitch. Ret. Writs,* 287.

Teſte, A word generally uſed in the laſt part of all writs; wherein the date is contained; which begin with theſe words, *Teſte meipſo*, &c. if it be an original writ; or *teſte* the *lord chief juſtice*, &c. if judicial. See *Co. Lit.* 134. And ſee *Writs*.

Teſtimonial, Is a certificate under the hand of a juſtice of peace, *teſtifying* the place and time, when and where a *ſoldier* or *mariner* landed, and the place of his dwelling and birth unto which he is to paſs. 39 *Eliz. cap.* 17. And formerly *teſtimonials* were to be given by mayors and conſtables to *ſervants* quitting their ſervices, &c. 5 *Eliz. cap.* 4.

Teſtimonials of Clergy, Are neceſſary to be made by perſons preſent, that a clergyman inducted to a benefice hath performed all things according to the *act of uniformity*; to evidence that the clerk hath complied with what the law requires on his inſtitution and induction, which in ſome caſes he ſhall be put to do. *Count. Parſ. Comp.* 24, 26.

Teſtimoignes, Is *French* for Witneſſes, and *Teſtimoignage*, Teſtimony. *Law Fr. Dict.*

Teſton or **Teſtoon,** Commonly called *Teſter*, a ſort of money which among the *French* did bear the value of 18*d.* but being made of braſs lightly gilt with ſilver, in the reign of K. *Hen.* 8. it was reduced to 12 *d.* and afterwards to 6 *d. Lownd's Eſſ. on Coins, pag.* 22.

Textus, A *text* or ſubject of a diſcourſe, and is mentioned by ſeveral authors to ſignify the *New Teſtament*; it was written in golden letters, and carefully preſerved in the *churches*.

Textus magni Altaris, We read of in *Domeſday* and *Cartular S. Edmund.*

Textus Roffenſis, An ancient manuſcript containing the rights, cuſtoms, and tenures, &c. of the church of *Rocheſter*, drawn up by the biſhop of that *ſee*, anno 1114.

Thames. The Lord Mayor ſhall have the conſervation in the breaches of the *Thames*. 4 *H. c.* 7. *c.* 15. If any perſon procure any thing to be done to the annoyance of the *Thames*, in making ſhelves, digging, &c. or ſhall take away any boards or ſtakes, undermine banks, &c. therein, he ſhall forfeit 5 *l. ſtat.* 27 *H.* 8. *c.* 18. And no fiſherman ſhall caſt any ſoil, gravel, or rubbiſh into the *Thames*; nor drive any piles in the ſaid river whereby the common paſſage may be hindred, on the penalty of 10*l. Ord.* 10 *July* 1763 And there are ſeveral ordinances of the Lord Mayor of *London*, &c. for regulating the fiſhing in the river *Thames*. *Cit. Lib.* 148. See *Watermen*, &c. Shares in the *Thames* water-works, how taxable. 30 *Geo.* 2. *c.* 3. *ſect.* 53. See farther, 3 *Jac.* 1. *c.* 20. as to paſſage by water from *London* to *Oxford*. The *Thames* to be made navigable from *Bernt* to *Oxford*, 21 *Jac. c.* 32.

Exactions by the owners of locks upon the *Thames* prohibited, 6 & 7 *W.* 3. *c.* 16. 3 *Geo.* 2. *c.* 11, 24 *Geo.* 2. *c.* 8. *ſ.* 2.

For ſtopping *Dagenham* breach in the *Thames*, 12 *Ann. ſt.* 2. *c.* 17. 7 *Geo.* 1. *c.* 20. *ſ.* 32.

Commiſſioners appointed for regulating the navigation of the *Thames*, 24 *Geo.* 2. *c.* 8.

For a ferry croſs the *Thames*, from *Ratcliſſe* to *Rotherhithe*, 28 *Geo.* 2. *c.* 43.

Thanage of the King, (*Thanagium Regis*,) Signified a certain part of the King's land or property, whereof the ruler or governor was called *Thane*. *Cowell.*

Thane, (From the *Sax.* Thenian, *miniſtrare*,) Was the title of thoſe who attended the *Engliſh Saxon* Kings in their courts, and who held their lands immediately of thoſe Kings, and therefore, in *Domeſday*, they were promiſcuouſly called *thani et ſervientes Regis*, though not long after the conqueſt the word was diſuſed, and, inſtead thereof, thoſe men were called *Barones Regis*, who, as to their dignity, were inferior to earls, and took place next after Biſhops, Abbots, Barons and Knights. There were alſo *thani minores*, and thoſe were likewiſe called barons: They were lords of manors, and had a particular juriſdiction within their limits, and over their own tenants in their courts, which to this day are called court-barons: But the word ſignifies ſometimes a nobleman, ſometimes a freeman, ſometimes a magiſtrate, but more properly an officer or miniſter of the King. Edward *King grete mine Biſceops, and mine Eorles, and all mine* Thegnes *on that ſhiren, wher mine Preſtes in Paulus miniſter habband land.* Charta Edw. Conf. *Pat.* 18. *H.* 6. *m.* 9. *per Inſpect.* *Lamb.* in his *Expoſition of* Saxon *words*, verb. *Thanus.* And *Skene de verbor. ſignif.* ſaith, That it is a name of dignity, equal with the ſon of an earl.

This appellation was in uſe among us after the *Norman* conqueſt, as appears by *Domeſday*, and by a certain writ of *William the Firſt*. *Willielmus Rex ſalutat Hermannum epiſcopum, & Stewinum, & Britwi, & omnes* Thanos *meos in Dorſeſtrenſi pago amicabiliter.* *MSS.* de Abbatsbury. *Camden* ſays, They were ennobled only by the office which they adminiſtred. *Thanus Regis* is taken for a baron. 1 *Inſt. fol.* 5. 1. And in Domeſday *tenens, qui eſt caput manerii.* See *Mills de Nobilitate, fol.* 132. The Saxon *Thane* was ſo called from *Thenian*, ſervice; and in Latin *miniſter, a miniſtrando.* So that a *Thane* at firſt (in like manner as an earl) was not properly a title of dignity, but of ſervice. But according to the degrees of ſervice, ſome of greater eſtimation, ſome of leſs, So thoſe that ſerved the King in places of eminence, either in court, or commonwealth, were called *Thani majores* and *Thani Regis*. Thoſe that ſerved under them as they did under the King were called *Thani minores*, or the leſſer *Thanes*. *Cowell.* See *Spelman of Feuds, cap.* 7.

Thane-Lands, Such lands as were granted by charter of the *Saxon* Kings to their *Thanes*; which were held with all immunities, except the threefold neceſſity of expeditions, repairs of caſtles, and mending of bridges.——— *Thanæ* ſignified alſo land under the government of a *Thane*. Skene.

Thaſcia, A certain ſum of money or tribute impoſed by the *Romans* on the *Britons*, and their lands. *Leg. H.* 1. *c.* 78.

Theft, (*Furtum*) Is an unlawful felonious taking away of another man's moveable and perſonal goods, againſt the will of the owner; And this is divided into *Theft* ſimply ſo called, and *Petit Theft*; whereof the one is of goods above the value of twelve pence, and is felony; and the other under that value, called *Larceny*. *Theft* is alſo from the *perſon* and in the *preſence* of the owner, and in his *abſence*, and either *open* or *private Theft*; the *civil law* judges open *Theft* to be ſatisfied in its puniſhment by the recompence of double: But the law of *England* adjudges both theſe offences felony. *Weſt. Sym. par.* 2. Vide *Larceny*. *Robbery*. And *Black. Com.* 4 *V.* 229, 237, 413.

Theft-bote, (From the Sax. *Theof*, i. e. *Fur*, & Bote, *compenſatio*) Is the receiving of a man's goods again from a Thief, after ſtolen, or other amends not to proſecute the felon, and to the intent the Thief may eſcape; which is an offence puniſhable with fine and impriſonment, *&c.* *H. P. C.* 130. See *Compounding of Felony*, *Miſpriſion of Felony*, and *Black. Com.* 4 *V.* 133.

Thelonium, or Breve eſſendi quieti de Thelonio, Is a writ lying for the citizens of any city, or burgeſſes of any town, that have a charter or preſcription to free them from *toll*, againſt the officers of any town or market, who would conſtrain them to pay toll of their merchandize contrary to their ſaid grant or preſcription. *F. N. B. fol.* 226.

Thelonmannus, The toll-man, or officer who receives toll. *Cartular Abbat. Glaſton. MS.* 446.

Thelonio rationabili habendo pro dominis habentibus dominica Regis ad firmam, Is a writ that lies for him that hath of the King's demeſne in fee farm to recover reaſonable toll of the King's tenants there, if his demeſne hath been accuſtomed to be *tolled*. Reg. Orig. fol. 87.

Themmagium, A duty or acknowledgment paid by inferior tenants in reſpect of *theme* or *team*. Cowell.

Thenicium, *Thenicii agrorum*, i. e. *Arborum creſcentium circa agros pro clauſura eorum*, vulgarly called hedge-rows, or dike-rows. *Lindw.* *Cowell.*

Theoden, In the degrees or diſtinctions of perſons among the *Saxons*, the earl or prime lord was called *thane*, and the *King's thane*; and the huſbandman or inferior tenant was called *theodan*, or under *thane*. See *Thane* and *Spelman*.

Theowes, The bondmen among our *Saxons* were called *theowes* and *eſnes*, who were not counted members of the commonwealth, but parcels of their maſters goods and ſubſtance. *Spelman of Feuds, cap.* 5.

Theſaurus, Was ſometimes taken in old charters for *theſaurarium*, the *treaſury*; and hence the *domeſday* regiſter preſerved in the *treaſury* or *exchequer*, when kept at *Wincheſter*, hath been often called *Liber Theſauri*. Chart. Q. Maud, wife of King *Henry* 1.

Thethinga, A word ſignifying a tithing: *Tithingmannus*, a tithingman. *Sax.*

Thew or Theowe, (*Sax.*) A ſlave or captive; bondmen among the *Saxons*. See *Theowes*.

Thief-taker. Vide *Felony*.

Things, in *general*, the chief part of every *thing*, is the beginning of it; but the end thereof, though it be laſt in the execution, is firſt in intention, and therefore favoured in law. 1 *Inſt.* 298. 10 *Rep.* 25. *Things* which are more worthy, are ever preferred before thoſe leſs worthy; and draw the others after them. *Plowd.* 169. 1 *Inſt.* 44. But *things* may be deſtroyed by the ſame way or manner they were made. 2 *Rep.* 53. 6 *Rep.* 15. See *Black. Com.* 2 *V.* 1, 16, 384.

Thingus, The ſame with *Thanus*; a nobleman, knight or freeman. *Cromp. Juriſd.* 197.

Thirdborow, Is uſed for a conſtable, by *Lambard* in his *duty of conſtables*, *p.* 6. And in the *ſtat.* 28 *H.* 8. *c.* 10.

Thirdings, *i. e.* The *third* part of the corn growing on the ground, due to the lord for a heriot on the death of his tenant, within the manor of *Turfat* in *Com. Hereford*. Blount. Ten.

Third Night Awn-hinde. (*trium noctium hoſpes*) By the laws of *St. Edward the Confeſſor*, if any man lay a *Third Night* in an *inn*, he was called a *Third Night Awnhinde*, for whom his *hoſt* was anſwerable, if he committed an offence: The *firſt* night *Forman-Night* or *Uncuth*, he was reckoned a ſtranger; the *ſecond* night, *Twa Night*, a gueſt; and the *third* night, an *Agen-hinde*, or *Awn-hinde*, a domeſtic. *Bract. Lib.* 3.

Third-penny. (*Denarius Tertius*) See *Denarius Tertius Comitatus*.

Thiſtle-take. It was a cuſtom within the manor of *Halton*, in the county palatine of *Cheſter*, that if, in driving beaſts over the common, the driver permits them to graze or *take* but a *thiſtle*, he ſhall pay a halfpenny a beaſt to the lord of the fee. And at *Fiſkerton* in *Nottinghamſhire*, by ancient cuſtom, if a native or a cottager killed a ſwine above a year old, he paid to the lord a penny, which purchaſe of leave to kill a hog was alſo called *thiſtle-take*. Reg. Priorat. de Thurgarton. Cowell.

Thokes, Fiſh with broken bellies, 22 *E.* 4. *cap.* 2. which by the ſaid ſtatute are not to be mixt or packed with *tale-fiſh*.

Thorp, Threp, Trop, Either in the beginning or end of names of places, ſignifies a ſtreet or village, as *Aldeſtrop*: From the Sax. *Thorp*, *villa*, *vicus*.

Thrave of Corn, (*Trava bladi*, from the Sax. *Threav*, i. e. a bundle, or the Britiſh *dreſa*, i. e. twenty-four) In moſt parts of *England*, conſiſts of twenty-four ſheaves, or four ſhocks, ſix ſheaves to every ſhock, 2 *H.* 6. *c.* 2. yet in ſome counties they reckon but twelve ſheaves to the *thrave*. King *Athelſtan*, *anno* 923, gave by his charter to St *John of Beverley*'s church, four thraves of *corn* from every plough-land in the Eaſt-Riding of *Yorkſhire*. Cowell.

Thread. Thread, outneal, to what duties liable on importation, 4 *W.* & *M.* *c.* 5. Siſters thread exempt from the two third ſubſidies, 7 *Ann.* *c.* 7.

Threatening Letters. By 9 *Geo.* 1. *c.* 22. Amended by 27 *Geo.* 2. *c.* 15. Knowingly to ſend any *Letter* without a name, or with a fictitious name, *demanding* money, veniſon, or any other valuable thing, or *threatening* (without any demand) to kill or fire the houſe of any perſon, is made felony without benefit of clergy. This offence was formerly high treaſon, by the *ſtat.* 8 *Hen.* 5. *c.* 6.

Threats. *Threats* and menaces of bodily hurt, through fear of which a man's buſineſs is interrupted, a ſpecies of injury to individuals. A menace alone, without a conſequent inconvenience, makes not the injury; but to complete the wrong, there muſt be both of them together. The remedy for this is in pecuniary damages, to be recovered by action of treſpaſs *vi & armis*, this being an inchoate, though not an abſolute violence. *Black. Com.* 3 *V*. 120. As to threats or menaces where bodily harm is juſtly feared. See *Security for the Peace*, *&c.*

Threats of Accuſation, to extort Money. Sending letters, threatening to accuſe any perſon of a crime puniſhable with death, tranſportation, pillory, or other infamous puniſhment, with a view to extort from him any money or other valuable chattels, is puniſhable by ſtatute 30 *Geo.* 2. *c.* 24. at the diſcretion of the court, with fine, impriſonment, pillory, whipping, or tranſportation for ſeven years.

Threngus. See *Drenches*. *Quia vero non erant adhuc tempore Regis Willielmi milites in Anglia, ſed* Threnges, *præcipit Rex ut de eis milites fierent ad defendendum terram, fecit autem* Lanfrancus Threngos *ſuos milites, &c.* Somner's Gavelk. p. 123, 210. They were vaſſals, but not of the loweſt degree of thoſe who held lands of the chief lord; the name was impoſed by the conqueror; for when one *Edward Sharnbourn* of *Norfolk*, and others, were ejected out of their lands, they complained to the Conqueror, inſiſting that they were always on his ſide, and never oppoſed him, which upon enquiry he found to be true, and therefore he commanded that they ſhould be reſtored to their lands, and for ever after be called *drenches*. Spelm.

Thrimſa, (Sax. *Thrim.* Three) Was an old piece of money of three ſhillings, according to *Lambard*, or the third part of a ſhilling, being a *German* coin paſſing for 4 *d*. *Selden's Tit. Hon. p.* 604.

Thrithing, (*Thrithingum*) A court conſiſting of *three* or four hundreds. *Stat. Merton*, 2 *Inſt*. 99.

Throwers and Throwing of Silk. See *Silk*.

Thuanus, The ſole printing thereof granted to *Samuel Buckley*, 7 Geo 2. c. 24.

Thude Weald, (*Sax.*) A woodward, or perſon that looks after the woods.

Thumelum, Signifies a thumb: It is mentioned in *Leg. Inæ, cap.* 55. *apud Brompton.*

Thwertnick, A *Saxon* word, which in ſome old writers is taken for the cuſtom of giving entertainments to the ſheriff, *&c.* for *Three Nights*. Rot. 11 & 12 Rich. 2.

Tick and Ticking, To what duties liable on importation. 4 *W. & M. c.* 5.

Tical, A piece of money in *China*, of two pounds, ſixteen ſhillings, and three pence value. *Merch. Dict.*

Tideſmen, Are certain officers of the *cuſtom-houſe*, appointed to watch or attend upon ſhips, till the cuſtoms are paid; and they are ſo called, becauſe they go aboard the ſhips at their arrival in the mouth of the *Thames*, and come up with the *tide*.

Tierce, (Fr. *Tiers*, i. e. a third) Is a meaſure of wine, oil, *&c.* containing the *third* part of a pipe, or forty-two gallons. *Stat.* 32 *H.* 8. *c.* 14.

Tigh, (Sax. *Teag*) A cloſe or incloſure mentioned in ancient charters; which word is ſtill uſed in *Kent* in the ſame ſenſe. *Chart. Eccl. Cant.*

Tihla, (*Sax.*) Signifies an accuſation in the laws of K. *Canutus*.

Tiles. The earth for *tiles* is to be digged and caſt up before the firſt of *November* yearly, and to be ſtirred and turned before the firſt of *February* following, and be wrought before the firſt of *March*: And every common *tile* muſt be in length ten inches and a half, in breadth, ſix inches and a quarter, and thickneſs half an inch and half a quarter; *roof tiles* are to be thirteen inches in length, and of the ſame thickneſs as the common *tiles*, &c. And if any perſons put to ſale any *tiles* contrary hereto, they ſhall forfeit double value, and be fined. *Stat.* 17 *Ed.* 4. *c.* 4. By a late ſtatute, *pan-tiles* muſt be thirteen inches and a half long, nine inches and a half broad, and half an inch thick, *&c.* and the penalty for making faulty bricks and *tiles* is 20 *s*. for every thouſand ſo made. *Stat.* 12 *Geo.* 1. *c.* 35. See *Bricks*.

Tillage, (*Agricultura*) Is of great account in law, as being very profitable to the commonwealth; and therefore arable land hath the preference before meadows, paſtures, and all other ground whatſoever: And ſo careful is our law to preſerve it, that a bond or condition to reſtrain *tillage*, or ſowing of lands, *&c.* is void. 11 *Rep.* 53. There are divers ancient ſtatutes for incouragement of *tillage* and huſbandry, as the 4 *Hen.* 7. 25 *Hen.* 8. 33 *Hen.* 8. 5 & 35 *Eliz.* 21 *Jac.* 1. 15 *Car.* 2.

Tilting, Where one kills another in fighting at tilting, by the King's command, the accident is excuſable: But if it be by *tilting* without the command of the King; or by parrying with naked ſwords, covered with buttons at the points, *&c.* which cannot be uſed without manifeſt hazard of life, it will be felony of manſlaughter. *H. P. C.* 31.

Timber, Is wood fitted for building, or other ſuch like uſe; and in a legal ſenſe extends to oak, aſh and elm, *&c.* 1 *Rol. Abr.* 649. Leſſees of land may not take *timber trees* felled by the wind; for thereby their ſpecial property ceaſes. 1 *Keb.* 691. *Timber, &c.* ſtolen, is to be ſevered from the ſoil to make it criminal. See *Yelv.* 152. But ſee *poſt*.

As to the importation, *&c.* of *timber*, ſee the ſeveral ſtatutes of 12 *Car.* 2. *c.* 18. 13 & 14 *Car.* 2. *c.* 11. 2 *W. & M. ſeſſ.* 2. *c.* 4. 6 *Geo.* 1. *c.* 15.

Againſt cutting up, barking or deſtroying of *timber*. 1 Geo. 1. ſt. 2. c. 48. 6 Geo. 1. c. 16.

Oak *timber*, (except for building) to be felled in *April*, *May* and *June*. 1 Jac. 1. c. 22. ſ. 20.

By 6 *Geo.* 3. *c.* 36. Any one who ſhall, in the *night-time*, lop, top, cut down, break, throw down, bark, burn, or otherwiſe ſpoil or deſtroy, or carry away, any *oak, beach, aſh, elm, fir, cheſnut*, or *aſp, timber-tree*, or *other tree* or *trees* ſtanding for timber, or likely to become *timber*, without the conſent of the owner; or ſhall, in the night-time, pluck up, dig up, break, ſpoil or deſtroy, or carry away, any root, ſhrub, or plant, roots, ſhrubs, or plants, of the value of five ſhillings, and which ſhall be growing, ſtanding or being in the garden ground, nurſery ground, or other incloſed ground, of any perſon or perſons whomſoever; ſhall be deemed and conſtrued to be guilty of felony, and the offenders may be tranſported. Thoſe who are aſſiſting, and purchaſers, knowing the things to be ſtolen, ſhall be liable to the ſame puniſhment, as if they had ſtolen the ſame.

By 6 *Geo.* 3. *c.* 48. Every perſon convicted of damaging, deſtroying, or carrying away any *timber-tree* or *trees*, or *trees* likely to become *timber*, without conſent of the owner, *&c.* ſhall forfeit for the firſt offence not exceeding 20 *l*. with the charges attending: and on non-payment, are to be committed for not more than twelve, nor leſs than ſix months; for the ſecond offence, a ſum not exceeding 30 *l*. and, on non-payment, are to be committed for not more than eighteen, nor leſs than twelve months; and for the third offence are to be tranſported for ſeven years.

All *oak, beech, cheſnut, wallnut, aſh, elm, cedar, fir, aſp, lime, ſycamore*, and *birch trees* ſhall be deemed and taken to be *timber-trees* within the meaning of the act. Perſons convicted of plucking up, ſpoiling, or taking away, any root, ſhrub, or plant, out of private cultivated ground, ſhall forfeit for the firſt offence, any ſum not exceeding 40 *s*. with the charges; for the ſecond offence a ſum not exceeding 5 *l*. with the charges; and for the third offence are to be tranſported for ſeven years. Perſons hindering, or attempting to prevent ſeizing offenders, forfeit 10 *l*. to the perſon convicting them; and, if not paid down, to be committed to hard labour, not exceeding ſix months. Vide the ſtatute, and *Black. Com.* 2 *V*. 281, 4 *V*. 233.

Timber for the Navy. An act for the increaſe and preſervation of *timber*, within the foreſt of *Dean*. 20 Car. 2. c. 3. And two thouſand acres of land in the *new foreſt* were ordained to be incloſed, for preſerving *timber* for the *navy royal*, by *ſtat.* 9 & 10 *W.* 3. *c.* 36.

Timberlode, A ſervice by which tenants were to carry timber felled from the woods to the lord's houſe. *Thorn's Chron.*

Time and *Place,* Are to be ſet forth with certainty in a declaration; but *time* may be only a *circumſtance* when a thing was done, and not be made part of the iſſue, &c. 5 *Mod.* 286. It has been held, that an impoſſible *time* is no *time*; and where a day or *time* is appointed for the payment of money, and there is no ſuch, the money may be due preſently. *Hob.* 189. 5 *Rep.* 22.

If no certain *time* is implied by law for the doing of any thing, and there is no *time* agreed upon by the parties, then the law doth allow a convenient *time* to the party for the doing thereof, *i. e.* as much as ſhall be adjudged reaſonable, without prejudice to the doer of it. 2 *Lill. Abr.* 572. In ſome Caſes one hath *time* during his life for the performance of a thing agreed, if he be not haſtened to do it by requeſt of the party for whom it is to be done; but if in ſuch caſe he be haſtened by requeſt, he is obliged to do it in convenient *time,* after ſuch requeſt made. *Hill.* 22 *Car.* 1 *B. R.*

Time taken generally, hath alſo its *time:* And what is done in *time of peace,* the law doth more countenance than in *time of war*; in caſe of bar of an entry, or claim by fine, and of deſcents, &c. 1 *Inſt.* 249. 10 *Rep.* 82. 4 *Shep. Abr.* 6.

Regularly, there cannot be any fraction in a day, and therefore the proceedings were ſet aſide, where it appeared the principal ſurrendered on the day of, tho' after, the return of the *ſcire facias.* *Rep. Temp. Hardw. per Annaly,* 208. See *Bond, Month,* &c. and 20 *Vin. Abr.* 266—277.

Time limited, For the proſecution of actions. Vide *Limitation.*

Tinel le Roy, (Fr.) the King's hall wherein his ſervants uſed to dine and ſup. 13 *R.* 2. *c.* 3.

Tineman, or **Tienman,** Was a petty officer in the foreſt, who had the nocturnal care of vert and veniſon, and other ſervile employments. *Conſtitut. Foreſtæ Canuti Regis, cap.* 4.

Tinet, *(Tinettum)* is uſed for bruſhwood and thorns, to make and repair hedges: In *Herefordſhire* to *tine* a gap in a hedge is to fill it up with thorns, that cattle may not paſs through it. *Chart.* 21 *Hen.* 6.

Tinewald, The parliament or annual convention of the people of the *Iſle of Man,* of which this account is given: The governor and officers of that iſland, do uſually call the twenty-four *keys,* being the chief commons thereof, eſpecially once every year, *viz.* upon *Midſummer-day* at *St. John's Chapel* to the court kept there, called the *Tinewald court*; where, upon a hill near the ſaid chapel, all the inhabitants of the iſland ſtand round about, and in the plain adjoining, and hear the laws and ordinances agreed upon in the chapel of St. *John,* which are publiſhed and declared unto them; and at this ſolemnity the lord of the iſland ſits in a chair of ſtate with a royal canopy over his head, and a ſword held before him, attended by the ſeveral degrees of the people, who ſit on each ſide of him, &c. *King's Deſcript. Iſl. of Man.*

Tinkermen, Thoſe fiſhermen who deſtroyed the young fry on the river *Thames,* by nets and unlawful engines, till ſuppreſſed by the mayor and citizens of *London.* Of which, ſee *Stow's Survey of London, p.* 18.

Tenpeny, A tribute ſo called, uſually paid for the liberty of digging in *tin* mines, from the Sax. *Tinnen, Stanneus,* & Penig. *Denarius,* according to *Du Freſne:* But ſome writers ſay it is a cuſtomary payment to the *tithingman* from the ſeveral *friburghs,* as *tedingpeny* ſignified the money paid the ſheriff by the ſeveral tithings; for that *tin* is only a contraction of *teon,* and means the number *ten.* It is mentioned in ſeveral places in the *Monaſticon*———*Non tributa, non* tethingpeny, *non* tinpeny, *exigat.* Mon Angl. Tom. 1. p. 419.

Tipſtaffs, Officers appointed by the *Marſhal* of the *King's Bench,* to attend upon the judges with a kind of rod or *ſtaff tipt* with ſilver, who take into their cuſtody all priſoners either committed, or turned over by the judges at their chambers, &c. See *Baſton. Stat.* 1 *R.* 2.

Tithes, *(Decimæ,* from the Sax. *Teotha, i. e.* tenth,) In ſome of our law-books are briefly defined to be an eccleſiaſtical inheritance, or property in the church, collateral to the eſtate of the lands thereof: But in others they are more fully defined to be a certain part of the fruit, or lawful increaſe of the earth, beaſts and men's labour, which in moſt places, and of moſt things, is the tenth part, which, by the law, hath been given to the miniſters of the goſpel, in recompence of their attending their office. 11 *Co. Rep.* 13. *Dyer* 84.

1. *Of the origin of tithes.*
2. *Of what tithes are in general due; and where perſonal tithes are due.*
3. *Of what predial tithes are due; and of the tithe of agiſtment, corn, hay, and wood.*
4. *Of what mixed tithes are due.*
5. *Of recovering ſmall tithes in a ſummary way; and of recovering tithes due from quakers.*
6. *Of particular things for which tithes are paid, and for which not, in* alphabetical *order.*

1. *Of the origin of tithes.*

Biſhop *Barlow, Selden,* father *Paul,* and others, have obſerved, that neither tithes nor eccleſiaſtical benefices, (which are correlative in their nature) were ever heard of for many ages in the chriſtian church, or pretended to be due to the chriſtian prieſthood; and, as that biſhop affirms, no mention is made of tithes in the grand codex of canons, ending in the year 451, which, next to the Bible, is the moſt authentic book in the world; and that it thereby appears, during all that time, both churches and churchmen were maintained by free gifts and oblations only. *Barlow's Remains, p.* 169. *Selden of Tithes* 82. See *Watſon's Compleat incumbent. p.* 3, 4, &c.

And Mr. *Selden* has ſhewn us, that tithes were not introduced here into *England,* till towards the end of the eighth Century, *i. e.* about the year 786, when pariſhes and eccleſiaſtical benefices came to be ſettled, for, it is ſaid, tithes and eccleſiaſtical benefices being correlative, the one could not exiſt without the other; for whenever any eccleſiaſtical perſon had any portion of tithes granted to him out of certain lands, this naturally conſtituted the benefice; the granting of the tithes of ſuch a manor or pariſh, being in fact, a grant of the benefice; as a grant of the benefice did imply a grant of the tithes: And thus the relation between patrons and incumbents was analogous to that of lord and tenant by the feudal law. *Selden of Tithes,* 86, &c.

About the year, 794, *Offa,* King of *Mercia,* (the moſt potent of all the *Saxon* Kings of his time in this iſland,) made a law, whereby he gave unto the church the tithes of all his kingdom, which the hiſtorians tell us was done to expiate for the death of *Ethelbert,* King of the *Eaſt Angles,* whom in the year preceding he had cauſed baſely to be murdered. But that tithes were before paid in *England* by way of offerings, according to the ancient uſage and decrees of the church, appears from the canons of *Egbert,* archbiſhop of *York,* about the year 750. And from an epiſtle of *Boniface,* archbiſhop of *Mentz,* which he wrote to *Cuthbert,* archbiſhop of *Canterbury* about the ſame time; and from the ſeventeenth canon of the general council held for the whole kingdom at *Chalcuth,* in the year 787. But this law of *Offa* was that which firſt gave the church a civil right in them in this land, by way of property and inheritance, and enabled the clergy to gather and recover them as their legal due, by the coercion of the civil power. Yet this eſtabliſhment of *Offa* reached no further than the kingdom of *Mercia,* over which *Offa* reigned, until *Ethelwulph,* about ſixty years after, enlarged it for the whole realm of *England.* *Prideaux on Tithes* 166, 167.

It is ſaid, tithes, oblations, &c. were orginally the voluntary gifts of chriſtians, and that there was not any canon before that of the fourth council of *Lateran,* an-

no Dom. 1215. that even ſuppoſed *tithes* to be due of common right. *Wilſon, par.* 2. *fo.* 182.

2. *Of what tithes are in general due; and where* perſonal *tithes are due.*

Tithes are due either *de jure*, or by cuſtom: All tithes, which are due *de jure*, ariſe from ſuch fruits of the earth as renew annually; or from the profit that accrues from the labour of a man. Hence it follows, that ſuch tithes can never be part of, but muſt always be collateral to, the land from which they ariſe. 11 *Rep.* 13, 14. *Priddle* v. *Napier.*

Nay, tithes due *de jure* are ſo collateral to every kind of land, that if a leaſe is made of the glebe belonging to a rectory, with all the profits and advantages thereof; and there is beſides a covenant, that the rent to be paid ſhall be in full ſatisfaction of every kind of exaction, and demand, belonging to the rectory; yet, as the glebe is not expreſly diſcharged of tithes, the leſſee ſhall be liable to the payment thereof. 11 *Rep.* 13, 14. *Priddle* v. *Napier.* 1 *Roll. Abr.* 655. *pl.* 1. *Cro. Eliz.* 162, 261. *Cro. Car.* 362.

No tithe is *de jure* of the produce of a mine or of a quarry; becauſe this is not a fruit of the earth renewing annually; but is the ſubſtance of the earth, and has perhaps been ſo for a great number of years. *F. N. B.* 53. *Bro. Diſm. pl.* 18. 2 *Inſt.* 651. 1 *Roll. Abr.* 637. *Cro. Eliz.* 277.

No tithe is due *de jure* of any thing (generally) which is part of the ſoil, and does not renew annually, but may by cuſtom. *Vide* 2 *Vern.* 46. 1 *Roll. Abr.* 637. *pl.* 5. 2 *Mod.* 77. 1 *Mod.* 35. 1 *Roll. Abr.* 642. *S. pl.* 7, 8.

No tithes are due *de jure* of houſes; for tithes are only due *de jure* of ſuch things as renew from year to year. 11 *Rep.* 16. *Graunt*'s caſe. But houſes in *London* are, by decree, which was confirmed by an act of parliament, made liable to the payment of tithes, 2 *Inſt.* 659. 37 *H.* 8. *c.* 2. And, before this decree, houſes in *London* were by cuſtom liable to pay tithes; the *quantum* to be paid being thereby only ſettled, as to ſuch houſes for which there was no cuſtomary payment. 2 *Inſt.* 659. *Hard.* 116. *Gilb. Eq. Rep.* 193, 194. There is likewiſe in moſt ancient cities, and boroughs, a cuſtom to pay tithes for houſes; without which there would be no maintenance in many pariſhes for clergy. 11 *Rep.* 16. *Graunt*'s caſe. *Bunb.* 102.

It was held by three barons of the Exchequer, *Price, Montague*, and *Page*, contrary to the opinion of *Bury* Chief Baron, that two tithes may be due of the ſame thing, one *de jure* the other by cuſtom. *Bunb.* 43. *Earl of Scarborough* v. *Hunter.*

Tithes are of three kinds, PERSONAL, PREDIAL, and MIXT. Such tithes as ariſe from the profit of the perſonal labour of a man, in the exerciſe of any art, trade or employment, are called *perſonal* tithes. 2 *Inſt.* 649.

By the ſtat. 2 & 3 *Ed.* 6. *c.* 13. *par.* 7. Common day labourers are exempted from the payment of perſonal tithes. No perſonal tithes are due from ſervants in huſbandry; for by their labour the tithes of many other things are increaſed. 1 *Rol. Abr.* 646. *pl.* 1. It is now ſettled, by a decree of the houſe of Lords, upon an appeal from a decree of the court of Exchequer, that only perſonal tithes are due from the occupier of a corn mill. 1 *Eq. Caſ. Abr.* 366. *Mewt.* v. *Chamberlain*, 2 *Will. Rep.* 463.

The ſtat. 9 *Ed.* 2. *ſt.* 1. *c.* 5. (as to occupiers of mills, paying tithes,) provides, that new erected mills ſhall be liable to the payment of tithes: But, as nothing therein is ſaid concerning ancient mills there can be no doubt, that ſuch ancient mills as before the making of this ſtatute were liable to pay tithes, continued afterwards to be liable. 12 *Mod.* 243. *Hart* v. *Hale.* 3 *Bulſt.* 212.

No perſonal tithe is due of the profit which a man receives without perſonal labour, or of the profit which one man receives from the labour of another. 1 *Rol. Abr.* 656. *pl.* 1. *pl.* 2. 2 *Inſt.* 621, 6, 9. If a man lets a ſhip to a fiſherman, no perſonal tithe is due of the money received for the uſe of ſuch ſhip; becauſe this is a profit without perſonal labour 1 *Rol. Abr.* 656. *n. pl.* 2. Vide 1 *Rol. Abr.* 656. *n. pl.* 3. 2 *Bulſt.* 141.

3. *Of what* PREDIAL *tithes are due; and of the tithe of agiſtment, corn, hay, and wood.*

Such tithes, as ariſe immediately from the fruits of the earth, as from corn, hay, hemp, hops; and all kinds of fruits, ſeeds and herbs, are called *predial* tithes. 2 *Inſt.* 649. They are ſo called becauſe they ariſe immediately from the fruits of the farm, or earth. 2 *Inſt.* 647. By the *eccleſiaſtical law* many things are liable to the payment of *predial* tithes, which by the *Common law* are not ſo. 2 *Inſt.* 621. 4 *Mod.* 344.

The deſign, under this head, is to ſhew what things are liable by the *Common law* to pay *predial* tithes.

In doing this, it will appear, that ſome things, which are in the general exempted therefrom, become by *cuſtom* liable to the payment of *predial* tithes. 1 *Rol. Abr.* 637. *E. pl.* 2. 1 *Rol. Abr.* 642. *S. pl.* 7. *pl.* 8.

It will alſo appear, that divers things, which are in the general liable thereto, are under particular circumſtances *exempted* from the payment of ſuch tithes. 1 *Rol. Abr.* 645. *pl.* 11. *Cro. Eliz.* 475. *Freem.* 335. 12 *Mod.* 235.

But wherever any fraud is uſed, to bring a thing under thoſe circumſtances, by reaſon of which it would, if it had come fairly under them, have been exempted from the payment of predial tithes, it is by ſuch fraud rendered liable thereto. *Cro. Eliz.* 475. *Freem.* 335.

As it would be tedious, to enumerate all the things which are liable to predial tithes, only thoſe ſhall be mentioned, concerning the tithes of which ſome queſtion has ariſen; but, from ſuch as will be mentioned, it may be eaſily collected of what other things predial tithes are due.

AGISTMENT. Agiſting, in the ſtrict ſenſe of the word, means the depaſturing of a beaſt the property of a ſtranger: But this word is conſtantly uſed, in the books, for depaſturing the beaſt of an occupier of land, as well as that of a ſtranger. 5 *New Abr.* 53. An occupier of land is not liable to pay tithe for the paſture of horſes, or other beaſts, which are uſed in *huſbandry in the pariſh*, in which they are depaſtured: Becauſe the tithe of corn is by their labour increaſed. 1 *Rol. Abr.* 646. *pl.* 2. *pl.* 3. *pl.* 6. *pl.* 7. *Cro. Eliz.* 446. Ld. *Raym.* 130. But if horſes or other beaſts are uſed in *huſbandry out of the pariſh*, in which they are depaſtured, an agiſtment tithe is due for them. 7 *Mod.* 114. *Harrow*'s caſe Ld. *Raym.* 130.

It ſeems to be the better opinion, that no tithe is due for the paſture of a *ſaddle horſe*, which an occupier of land keeps for himſelf or ſervants to ride upon. 1 *Rol. Abr.* 642. *pl.* 4. *Cro. Jac.* 430. *Bulſt.* 171. *Bunb.* 3. No tithe is due for the paſture of *milk cattle*, which are milked in the pariſh, in which they are depaſtured; becauſe tithe is paid of the milk of ſuch cattle. 1 *Rol. Abr.* 646. *pl.* 2. Ld. *Raym.* 130. *Cro. Eliz.* 446.

Milch cattle, which are reſerved for calving, ſhall pay no tithe for their paſture whilſt they are dry: But, if they are afterwards ſold, or milked in another pariſh, an agiſtment is due for the time they were dry. *Hetl.* 100. Ld. *Raym.* 130. No tithe is due, from an occupier of land; for the paſture of *young cattle*, reared to be uſed in *huſbandry*, or for the *pail.* Cro. Eliz. 476. Sheringh *v.* Fleetwood. But, if ſuch young beaſts are ſold, before they come to ſuch perfection as to be fit for huſbandry, or before they give milk, an agiſtment tithe muſt be paid for them. *Hetl.* 86. *Woolmerſton*'s caſe.

An occupier of land is liable to an agiſtment tithe, for all ſuch *cattle* as he keeps *for ſale.* Cro. Eliz. 446, 476. *Jenk.* 28. *pl.* 6. *Cro. Car.* 237. *Show. P. C.* 192. Vide *Cro. Jac.* 430. 1 *Rol. Abr.* 647. *pl.* 14.

But if any *cattle*, which have neither been uſed in huſbandry, nor for the pail, are, after being kept ſome time, *killed*, to be *ſpent in the family* of the occupier of the land on which they were depaſtured, no tithe is due for their paſture *Jenk.* 281. *pl.* 6. *Cro. Eliz.* 446, 476. *Cro. Car.* 237. It is in general true, that an agiſtment tithe is due, for depaſturing any ſort of *cattle* the property of a *ſtranger.* Cro. Eliz. 276. Cro. Jac. 276.

Bunb. 1. *Freem.* 329. No tithe is due for the *cattle*, either of a ſtranger or an occupier, which are depaſtured in grounds, that have in the ſame year paid tithe of hay. *Bunb.* 10. 79. *Popb.* 142. 2 *Rol. Rep.* 191.

No agiſtment tithe is due for ſuch *beaſts*, either of a ſtranger or an occupier, as are depaſtured on the *head lands of ploughed fields*: Provided that theſe are not wider than is ſufficient to turn the plough and horſes upon. 1 *Rol. Abr.* 646. *pl.* 19. No tithe is due for ſuch *cattle* as are depaſtured upon land, that has the ſame year paid tithes of corn. *Bro. Diſm.* 18. 1 *Mod.* 216. If land, which has paid tithe of corn in one year, is left unſown the next year, no agiſtment is due for ſuch land; becauſe, by this lying freſh, the tithe of the next crop of corn is increaſed. 1 *Rol. Abr.* 642. *pl.* 9. But if land, which has paid tithe of corn, is ſuffered to lie fallow longer than by the courſe of huſbandry is uſual, an agiſtment tithe is due for the beaſts depaſtured upon ſuch land. *Shep. Abr.* 1008.

As the queſtion, whether an agiſtment tithe is due for *ſheep*, does not ſeem to be quite ſettled, it will not be amiſs to refer to the principal caſes, in which this has been agitated, which are, 1 *Rol. Rep.* 63. *pl.* 7. *Maſcal* v. *Price*, *Mich.* 12 *Jac.* 1. 1 *Rol. Abr.* 642. *pl.* 8. *Popb.* 197. *Cro. Car.* 207. 1 *Rol. Abr.* 647. *pl.* 13. *Bunb.* 90. *Gilb. Rep. in Equity* 231. *Bunb.* 313.

Agiſtment tithe, is a *ſmall tithe*. *Wilſon, par.* 1. *fo.* 170.

CORN. It is laid down in ſome books, that no tithe is due of the *rakings* of corn *involuntarily ſcattered*. 1 *Rol. Abr.* 645. *pl.* 11. *Cro. Eliz* 278. *Freem.* 335. *Moor* 278. But, if more of any ſort of *corn* is fraudulently ſcattered, than, if proper care had been taken, would have been ſcattered, tithe is due of the *rakings* of ſuch corn. *Cro. Eliz.* 475. *Freem.* 335. And it has been ſaid by *Holt*, Chief Juſtice, that tithe is due of the *rakings* of all corn, *except* ſuch as is *bound up in ſheaves*. 12 *Mod.* 235. No tithes are due of the *ſtubbles* left in corn fields, after mowing or reaping the corn. 2 *Inſt.* 261. 1 *Rol Abr.* 640. *pl.* 14.

HAY. Tithe of *hay* is to be paid, although beaſts of the plough or pail, or ſheep are to be foddered with ſuch *hay*. *Cro. Jac.* 47. *Webb.* v. *Warner*. 1 *Rol. Abr.* 650. *pl.* 12. 12 *Mod.* 497. But no tithe is due of *hay* grown upon the *headlands of ploughed grounds*, provided that ſuch headlands are not wider than is ſufficient to turn the plough and horſes upon. 1 *Rol. Abr.* 646. *pl.* 19. It is laid down in one old caſe, that if a man cuts down *graſs*, and, while it is in the *ſwathes*, carries it away and gives it to his *plough cattle*, not having ſufficient ſuſtenance for them otherwiſe, no tithe is due thereof. 1 *Rol. Abr.* 645. *Crawley* v. *Wells*, *Mich.* 9 *Car.* 1. And in a modern caſe, the court of Exchequer ſeemed to be of opinion, that no tithe is due of *vetches* or *clover*, *cut green*, and given to *cattle in huſbandry*. *Bunb.* 279. *Hayes* v. *Dowſe*, *Hil.* 3 *Geo.* 2. But in another caſe, ſome years before this laſt caſe, it was held, that the right to tithe of *hay* accrues upon *mowing the graſs*, and that the ſubſequent application of this, while it is in graſs, or when it is made into hay, ſhall not, although beaſts of the plough or pail are fed with it, take away this right. 12 *Mod.* 498. And the doctrine of this laſt caſe coincides with that of an old caſe; in which it was held, that *tares cut green*, and given to beaſts of the plough, may by *ſpecial cuſtom* be *exempted* from the payment of tithes; from whence it follows, that ſuch *tares* are not exempted *de iure*. 12 *Mod.* 498. *Selby* v. *Bank*, *Paſch.* 13 *W.* 3.

It is laid down in ſome books, that no tithe is due of *aftermowth hay*; becauſe tithe can only be due *once* in the *ſame year* from the *ſame land*. *F. N. B.* 53. *Bro. Diſm. pl.* 16. 2 *Inſt.* 262. 11 *Rep.* 16. *Cro. Jac.* 42. Ld. *Raym.* 243. But it is held in other books, that tithe is due of *aftermowth hay*. 1 *Rol. Abr* 64. *pl.* 11. *Cro. Eliz.* 660. *Cro. Jac.* 116. *Cro. Car.* 403. 12 *Mod.* 498. *Bunb.* 10. And the principle, upon which the doctrine, that no tithe is due of aftermowth hay is founded, is denied in ſome modern caſes.

In ſome of theſe it is laid down, that tithes ſhall be paid of divers crops grown upon the ſame land in the ſame year, *Bunb.* 19. *Benſon* v. *Watkins*, *Hil.* 3 *Geo.* 1. *Bunb.* 314. *Swanſen* v. *Digby*, *Hil.* 5 *Geo.* 2.

In others it is held, wherever there is in the ſame year a new increaſe from the ſame thing, tithe is due. *Bunb.* 9. *Baker* v. *Sweet*, *Mich.* 8 *Geo.* 1. *Gilb. Rep. in Eq.* 231. *Coleman* v. *Baker*, *Paſch.* 12 *Geo.* 1.

WOOD. Tithe of *wood* is not due of common right, becauſe wood does not renew annually: But it was, in very antient times, paid in many places by *cuſtom*. 2 *Inſt.* 642. 12 *Mod.* 111. *Salk.* 656. *Comb.* 404. *Bunb.* 61.

A conſtitution was made, in the ſeventeenth year of the reign of *Edward* the Third, by *John Stratford*, archbiſhop of *Canterbury*, that tithes ſhall be paid, within this province, of *ſilva cædua*. 2 *Inſt.* 642. *Palm.* 37, 38.

Several petitions having been preſented to the King, complaining of the clergy for taking tithe of *groſs wood* and *underwood*, by virtue of this conſtitution; at length, a ſtatute was made in theſe words: "At the complaint of the Great men and Commoners, ſhewing by their petition, that when they ſell their *groſs wood*, of the age of 20 or 40 years, and of a greater age, to merchants, to their own profit, and to the aid of the King in his wars, the parſons and vicars of Holy church do implead and trouble the ſaid merchants, in court chriſtian, for the tithe of the ſaid wood, under the denomination of *ſilva cædua*, by the reaſon of which they cannot ſell their wood for the real value, to the great damage of themſelves and the realm; it is ordained and eſtabliſhed, that a prohibition in this caſe ſhall be granted, and upon the ſame an attachment, as it hath hitherto been." 45 *Ed.* 3. *c.* 3.

From the petitions and anſwers, from this ſtatute, and from books of the beſt authority, it appears plainly, that no tithe of *groſs wood* was due *de jure* at the Common law; and that the demand thereof as ſuch by virtue of the conſtitution made by the archbiſhop, was an incroachment. 2 *Inſt.* 642. 45 *Ed.* 3. *c.* 3. *Plowd.* 470. *Bro. Paroch. pl.* 1. *Cro. Jac* 100.

After the making of this ſtatute, prohibitions were conſtantly granted to ſuits inſtituted in ſpiritual courts for tithes of *groſs wood*. But two queſtions often aroſe, What is *groſs wood?* And of what age groſs wood muſt be before it is exempted from the payment of tithe? 2 *Inſt.* 643, 644, 645.

For the putting an end to theſe, it hath been long ſettled, that by *groſs wood* is *not* meant *ſmall wood*, nor *large wood*, but ſuch *wood* as is generally, or by the cuſtom of a particular part of the country, *uſed as timber*; and that *all ſuch wood*, if of the age of 20 years, is *exempt* from the payment of tithe. 2 *Inſt.* 642, 643. *Cro. Eliz.* 1. 12 *Mod.* 524. *Bunb.* 127. *Oaks*, *aſhes*, and *elms* being univerſally *uſed as timber*, it has been always held, that ſuch trees, if of the age of 20 years, are *groſs wood*, 2 *Inſt.* 642. It hath been held, upon great deliberation, notwithſtanding what is laid down to the contrary in *Plowd.* 470, that a *horn-beam* tree, if of the age of 20 years, is *groſs wood*; becauſe this is uſed in building and repairing. 2 *Inſt.* 643. It has for the ſame reaſon been held, that an *aſpen tree*, of the age of 20 years, is *groſs wood*. *Ibid.*

Tithes are not in the general due of *beach*, *birch*, *hazel*, *willow*, *ſallow*, *alder*, *maple*, or *white-thorn trees*, or of any *fruit-trees*, of whatſoever age they are: Becauſe theſe are *not timber*. *Plowd.* 470. *Cro. Eliz.* 477. 1 *Cro. Jac.* 190. 1 *Roll. Abr.* 640. *pl.* 5. *pl.* 6. *Brownl.* 94. But, if the wood of any of theſe trees is uſed in a particular part of the country, where timber is ſcarce, in building and repairing, no tithe is due of ſuch wood, if of the age of 20 years, in that part of the country. *Hob.* 289. *Brownl.* 94. It is laid down in ſeveral old books, that, if a *timber-tree*, after it is of the age of 20 years, *decays* ſo as to be unfit to be uſed in building, no tithe is due of the wood of this tree; becauſe it was once privileged, 11 *Rep.* 48. *Cro. Eliz.* 477. *Cro. Jac.* 100. 1 *Roll. Abr.* 640. *pl.* 2.

But the contrary is laid down in ſome other books.

In two of theſe it is laid down, that, if the wood of a *coppice* has been uſually felled *for firing*, ſuch wood ſhall pay tithe, altho' it ſtand till it be 40 years of age, *Sid.* 300. 1 *Lev.* 189. And in another it is laid down, that, if the *wood of a timber-tree* is ſold *for firing*, it is, altho' the tree was of the age of 20 years, liable to pay tithe. *Bunb.* 99. *Greenaway* v. *The Earl of Kent.* The reporter of this laſt caſe mentions four others, in which the ſame had been held; and ſays, that it was in one of them laid down, that the wood of *timber-trees* is only exempted from the payment of tithe, on the account of its being *uſed in building*, *Buckle* v. *Vanacre.*

The doctrine, however, of the old books is confirmed by a very late caſe in the court of Chancery. A bill being brought for tithe of the *loppings* of *timber-trees*, which had been *ſold for firing*, it was inſiſted that this wood, which would otherwiſe have been exempted from the payment of tithes, was liable thereto, becauſe it was ſold to be *uſed for firing*; and the caſes juſt now cited were relied upon: But the bill was diſmiſſed: and by *Hardwicke* Chancellor, in the caſe in 1 *Lev.* 189. and *Sid.* 300. the wood in queſtion was *coppice wood*, which had been *uſually felled for firing*; and ſuch wood, of whatever age it is, is *always titheable.* The caſe of *Greenaway* and the earl of *Kent*, is quite a ſingular one, and is not law; for in the caſe of *Bibye* and *Huxley*, *Hill.* 11 *Geo.* 1. it was agreed, that *no tithe* is *due* of the *wood* of a *timber-tree*, which has been *once privileged* from the payment of tithe, *altho'* ſuch *wood* is *ſold to be uſed for firing*. *MS. Rep. Walton* v. *Tryon, Mich.* 25 *Geo.* 2. See farther *Bro. Diſm. pl.* 14. 11 *Rep.* 4. *Cro. Eliz.* 4. *Godb.* 175. 1 *Roll. Abr.* 640. *pl.* 3. Held in the caſe already cited, by *Hardwicke* Chancellor, that wherever a tree has been lopped before it was of the age of 20 years, all future loppings, altho' ever ſo old, are liable to pay tithe. *MS. Rep. Walton* v. *Tryon.* It has been laid down, that if a tree, which was once privileged from paying tithe, is felled, the germins that ſpring from the root of ſuch tree, are alſo privileged. 11 *Rep.* 48. *Liford*'s caſe, But, in the caſe already cited, it was ſaid by *Hardwicke* Chancellor, that all germins, which ſpring from the roots of trees that hath been felled, are titheable. *MS. Rep. Walton* v. *Tryon.*

The wood of a *coppice*, which has uſually been felled for firing, is liable to pay tithe, altho' the ſame is of the age of 40 years. 1 *Lev.* 189. *Sid.* 300. And in the caſe ſo often cited, it was ſaid by *Hardwicke* Chancellor, if, when the wood of coppice is felled, ſome trees growing therein, which are of the age of 20 years, and have never been lopped, are lopped, and theſe loppings are promiſcuouſly bound up in faggots with the coppice wood, tithe muſt be paid of the whole: becauſe it would be very difficult, to ſeparate the titheable wood from that which is not ſo; and the owner ought to ſuffer for his folly in mixing them. *MS. Rep. Walton* v. *Tryon.*

4. *Of what* mixed *tithes are due.*

Such tithes as ariſe from *beaſts* or *fowls*, which are fed with the *fruits* of the earth, are called mixed tithes. 2 *Inſt* 649. 1 *Roll. Abr.* 635. Many things are by the eccleſiaſtical law liable to pay ſuch tithes, which by the Common law are not. 2 *Inſt.* 621. 4 *Mod.* 344.

The deſign under this head is to ſhew, of what *mixed* tithes are due by the Common law.

In doing this it will appear, that ſome things, which are in the general exempted therefrom, become by *cuſtom* liable to the payment of mixed tithes. 1 *Roll. Abr.* 635. *c. pl.* 3. 636. *pl.* 7. *Cro. Car.* 339. 1 *Ventr.* 5. It will alſo appear, that divers things, which are in the general liable thereto, are under particular circumſtances *exempted* from the payment of mixed tithes. 1 *Roll. Abr.* 645. *pl.* 14. *pl.* 16. But, wherever any fraud is uſed, to bring a thing under theſe circumſtances, by reaſon of which, if it had come fairly under them, it would have been exempted from the payment of a *mixed* tithe, it is by ſuch fraud rendered liable thereto. 1 *Roll. Abr.* 645. *pl.* 15. 646. *pl.* 17.

As it would be tedious, to enumerate all the things, which are liable to pay *mixed* tithes, only thoſe ſhall be mentioned concerning the tithe of which ſome queſtion has ariſen: But, from ſuch as will be mentioned, it may be eaſily collected, of what other things *mixed* tithes are due.

Tythes are in the general due of the *young of all beaſts*, except ſuch as are *feræ naturæ.* But none are due of *young hounds*, *apes*, or the like, becauſe ſuch beaſts are kept only for pleaſure. *Bro. Diſm. pl.* 20. No tithe is due of the *young deer*; for theſe are *feræ naturæ.* 2 *Inſt*, 651. And for the ſame reaſon none is due, but by cuſtom, of *young conies.* 1 *Roll. Abr.* 635. *C. pl.* 3. *Cro. Car.* 339. 1 *Ventr.* 5.

The *young* of all *birds* and *fowls*, except ſuch as are *feræ naturæ*, are in the general liable to pay tithes; unleſs the *eggs* of ſuch birds or fowls have before paid tithes. 1 *Roll. Abr.* 642. *pl.* 6. 2 *Will. Rep.* 463. But no tithes are due either of the *eggs* or *young* of any *birds* or *fowls*, which are kept only for *pleaſure*. *Bro. Diſm. pl.* 20. No tithes are due of the *eggs* or *young* of *partridges* or *pheaſants*, becauſe theſe are *feræ naturæ.* Moor 599. 2 Will. Rep. 463. If a man keeps *pheaſants.* in an incloſed wood, whoſe wings are clipped, and from their eggs hatches and brings up young ones, no tithe is due of theſe *young pheaſants*, although none was paid for their eggs: Becauſe the old ones are not reclaimed, and would go out of the incloſure, if their wings were not clipped. 1 *Roll. Abr.* 636. *pl.* 5.

It was heretofore held, that neither the eggs nor young of *turkies* are titheable; *turkies* being *feræ naturæ.* Moor 599. Hughes *v.* Price. But it has been held in a modern caſe, that, as *turkies* are now as tame as hens or other poultry, tithe is due of their *eggs* or *young*, 2 *Will. Rep.* 463. *Charleton* v. *Brightwell.* No tithe is due of ſuch *young pigeons as are ſpent in the houſe* or the perſon who breeds them. 1 *Roll. Abr.* 644. *Z. pl.* 4. *pl.* 6. 1 *Ventr.* 5. 12 *Mod.* 77. 12 *Mod.* 47. But if any *young pigeons are ſold*, tithe is due to them. 1 *Roll. Abr.* 644. *Z. pl.* 5. *pl.* 6.

If a man pays tithe of *young lambs* at marks-tide, and at midſummer aſſizes ſhears the other nine parts of the lambs, tithe is due of the *wool*: For although there are but two months between the time of paying tithe lambs, which were not ſhorn, and the ſhearing of the reſidue, there is in this caſe a new increaſe. 1 *Roll. Abr.* 642. *R. pl.* 7. *Bunb.* 90. If a man ſhears his *ſheep* about their *necks* at *Michaelmas* time, to preſerve their fleeces from the brambles, *no tithe* is due of this wool: For it appears, that this, which is done before their wool is much grown, can never be for the ſake of the wool. 1 *Roll. Abr.* 645. *pl.* 16. If a man, after their wool is well grown, ſhear his ſheep about their *necks*, to preſerve them from vermin, no tithe is due of the wool. 1 *Roll. Abr.* 645. *pl.* 14.

If a man, a little before ſhearing time, cuts dirty locks of *wool* from his ſheep to preſerve them from vermin, no tithe is due of ſuch *wool.* 1 *Roll. Abr.* 646. *pl.* 17. But in either of theſe caſes, if more *wool* than ought to have been cut off is fraudulently cut off, tithe muſt be paid of the *wool.* 1 *Roll. Abr.* 645. *pl.* 15. 646. *pl.* 17. Tithe is due of the *wool* of ſuch ſheep as are killed to be ſpent in the houſe. 1 *Roll. Abr.* 646. *pl.* 18. *Dent.* v. *Salvin. Paſch.* 14. *Car. Cont. Litt. Rep.* 31. *Civil* v. *Scott.*

Fiſh taken in a *pond*, or in any *incloſed river*, are liable to pay tithe. 1 *Roll. Abr.* 636. *pl.* 4. *pl.* 6. *pl.* 7. But no tithe is due, *except by cuſtom*, of *fiſh* taken in the *ſea*, or in any *open river*, although they are taken by a perſon who has a ſeveral fiſhery; becauſe ſuch fiſh are *feræ naturæ.* Noy 108. 1 Roll. Abr. 636. pl. 4. pl. 6. pl. 7. Cro, Car. 332. 1 Lev. 179. Sid. 278. *Honey* and *bees-wax* are both titheable. *Fitz. N. B.* 51. 1 *Roll. Abr.* 635. *C. pl.* 1. *Cro. Car.* 559. But, where the tithe of their *honey* and *wax* has been paid, no tithe is due of the *bees. Cro. Car.* 404. *Anon'* No tithe is due of the *milk ſpent in the houſe* of a farmer; provided ſuch houſe ſtands in that pariſh in which the cows are milked. *L. Raym.* 129. *Scoles* v. *Lowther.*

5. *Of recovering ſmall tithes in a ſummary way; and of recovering tithes due from quakers.*

By the 7 & 8 *W.* 3. *cap.* 6. *ſ.* 1. It is, for the more eaſy recovery of *ſmall tithes*, where the ſame do not amount to above the yearly value of *forty ſhillings*, from any one perſon, enacted, ‘That if any perſon ſhall fail ‘in payment for twenty days after demand, the parſon ‘may make complaint in writing to two juſtices of ‘the peace, neither being patron, nor intereſted, who, ‘after ſummoning the party, are to hear and determine ‘the complaint, give a reaſonable allowance for the ‘tithes and coſts not exceeding ten ſhillings.’

If the perſon complained againſt inſiſts on any preſcription, compoſition, *modus decimandi*, or other title, delivers the ſame in writing to the juſtices, and gives to the party complaining ſufficient ſecurity to pay coſts at law, if the title is not allowed, the juſtices not to give judgment. The juſtices have power to give coſts, not exceeding ten ſhillings, to the party proſecuted, if they find the complaint falſe and vexatious. The act not to extend to tithes within the city of *London*, or in any other place, where the ſame are ſettled by any act of parliament. An appeal is given to the ſeſſions, and no proceedings, or judgment, had by virtue of this act, to be removed, or ſuperſeded, by any writ of *certiorari*, or other writ whatſoever, unleſs the title of ſuch tithes ſhall be in queſtion.

By the 7 & 8 *W.* 3. *c.* 34. *par.* 4. Where any *quaker* ſhall refuſe to pay, or compound, for his great or ſmall tithes, it ſhall be lawful for the two next juſtices of the peace of the ſame county, other than ſuch juſtice of the peace as is patron of the church, or chapel, to which the tithes belong, or any ways intereſted, upon the complaint, to convene before them ſuch *quaker*, and to examine upon oath the truth of the complaint, and to aſcertain what is due from ſuch *quaker*, and by order under their hands and ſeals to direct the payment thereof, ſo as the ſum ordered do not exceed ten pounds; and upon refuſal of *quaker* to pay, to levy the money. Any perſon, aggrieved, may appeal to the next general quarter-ſeſſions.

No proceedings, or judgment, had by virtue of this act, ſhall be removed or ſuperſeded by any writ of *certiorari*, or other writ out of his majeſty's courts at *Weſtminſter*, or any other court whatſoever, unleſs the title to ſuch tithes ſhall be in queſtion.

By the 1 *Geo.* 1. *ſt* 2. *cap.* 6. *par.* 2. The like remedy is given for the recovery of *all tithes* and *all other eccleſiaſtical dues* from *quakers*, as by the 7 & 8 *W.* 3. *cap.* 34. is given for tithes to the value of *ten pounds*.

And ſuch juſtices of the peace, upon complaint of any parſon, vicar, curate, farmer or proprietor of ſuch tithes, or other perſon who ought to have, receive or collect, any ſuch tithes or dues, may proceed in a ſimilar manner as directed by the former act, touching *quakers*. *Vide* the Statutes.

6. *Of particular things for which tithes are paid, and for which not, in alphabetical order.*

The *particular things* for which *tithes* are paid, and for which not, according to our law, are the following, *viz.*

ACORNS, as they yearly increaſe, are liable to the payment of *tithes*; but this is where they are gathered and ſold, and reduced to a certain profit; not when they drop, and the hogs eat them. 2 *Inſt.* 643. *Hetl.* 27. **AFTERMATH**, or **AFTER-PASTURE** pays no *tithes*, except by cuſtom; being the remains of what was before *tithed*. 2 Inſt. 652. 2 Danv. Abr. 589. Tit. *Diſmes.* **AGISTMENT** of cattle upon paſture-land, which hath paid no other *tithes* that year, pays *tithe* for the cattle; and if a man breeds or buys barren unprofitable cattle and ſells them, he ſhall pay for the *agiſtment*; but if he depaſtures his land with his own ſaddle-horſes, he ſhall pay no *tithes*. If ground is eat up with unprofitable cattle of a man's own, or others, a tenth part of the yearly value of the rent of the land, *i. e.* the ſum of 2 *s.* *per* pound, is payable by the owner of the land, or his tenant; though the twentieth part is uſually accepted. 1 *Roll. Abr.* 646. *Hard.* 184. **ALDER** trees pay *tithes*, notwithſtanding they are above twenty years growth, not being timber. **ASH** is timber, and therefore, if theſe trees are above twenty years growth, they are *tithe* free. **ASP** or **ASPIN** trees are exempted, if beyond that growth, in places where they are uſed for timber. 2 *Cro.* 199. 2 *Inſt.* 643.

BARK of trees is not *titheable*, if the trees whereon produced were timber. 11 *Rep.* 49. **BARREN LAND**, which is ſo of its own nature, pays no *tithe*; where land is barren, and not manurable without ſome extraordinary charge, in reſpect of ſuch charge, and for the advancement of husbandry, ſuch land being converted to tillage, ſhall for the firſt ſeven years after the improvement, be diſcharged from *tithes*, by the act 2 & 3 *Ed.* 6. *cap.* 13. But the *barren land* during the ſeven years of improvement, ſhall pay ſuch *ſmall tithes* as have been accuſtomably paid before; and afterwards to pay the full *tithe* according to the improvement: And if land is over-run with buſhes, or become unprofitable by bad husbandry, it cannot properly be called barren land; for if it be grubbed, or ploughed and ſowed, it immediately pays *tithes*. 2 Inſt, 656. Cro. Eliz. 475. **BEECH-TREES**, where timber is ſcarce, and theſe trees are uſed for building, if above twenty years growth to be timber, are privileged from *tithes*, by the ſtat. 45 *Ed.* 3. *c.* 3. though this tree is not naturally timber, for it is neceſſity makes it ſo. 2 *Danv. Abr.* 589. **BEES** are *titheable* for their honey and wax, by the tenth meaſure, and tenth pound: It has been a queſtion whether the tenth ſwarm can be demanded for *tithes* of *bees*, becauſe bees are *feræ naturæ*; but when the bees are gathered into the hives, they are then under cuſtody, and may pay *tithe* by the hive or ſwarm; but the *tithe* is generally paid in the tenth part of the honey or wax. 1 *Roll. Abr.* 651. 3 *Cro.* 404, 559. **BIRCH** wood is *titheable*, though of above twenty years growth. 2 *Inſt.* 643. **BRICKS** pay not *tithes*, for they are made of parcel of the freehold, and are of the ſubſtance of the earth, not an annual increaſe. 1 *Cro.* 1. **BROOM** ſhall pay *tithe*; but it may be diſcharged by cuſtom, if burnt in the owner's houſe, or kept for huſbandry. 2 *Danv. Abr.* 597.

CALVES are *titheable*, and the tenth calf is due to the parſon when weaned, and he is not obliged to take it before; but if in one year a perſon hath not the number of ten calves, the parſon is not intitled to *tithes* in kind for that year, without a ſpecial cuſtom for it, though he may take it in the next year, throwing both years together; and it is a good cuſtom to pay one calf in ſeven, where there hath been no more in one year; and where a man ſells a calf to pay the tenth of the value, or for the parſon to have the right ſhoulder, &c. 1 *Rol. Abr.* 648. *Raym.* 277. **CATTLE** ſold pay *tithe*; but not *cattle* kept for the plough or pail, which ſhall pay no *tithe* for their paſture, by reaſon the parſon hath the benefit of the labour of plough cattle in tilling the ground, by the *tithe* of corn, and *tithe* milk for thoſe kept for the pail; yet if ſuch cattle bought are ſold before uſed, or if, being paſt their labour, the *cows* are barren, and afterwards fatted in order to ſell, *tithes* ſhall be paid for them; though if the owner kill and ſpend the cattle in his own houſe, no *tithe* is due for them, being for his proviſion to ſupport him in his labour about other affairs, for which the parſon hath *tithes*. *Cattle* feeding on large commons, where the bounds of the pariſh are not certainly known, ſhall pay *tithes* to the parſon of the pariſh where the owner lives; and if fed in ſeveral pariſhes, and they continue above a month in each pariſh, *tithes* ſhall be paid the two parſons proportionably. 1 *Roll. Abr.* 635, 646, 647. *Hardr.* 35. **CHALK** and *chalk-pits*, are not *titheable*; nor is *clay* or *coal*, as they are part of the freehold, and not annual, to pay *tithes*. 2 *Inſt.* 651. **CHEESE** pays *tithe* by cuſtom, where *tithe* is not paid for the milk; but if the milk pays a *tithe*, the cheeſe pays none: And it may be a good cuſtom to pay the tenth cheeſe made in ſuch a month, for all *tithe* milk in that year. 1 *Roll. Abr.* 651. **CHICKENS** are not *titheable*, becauſe *tithe* is paid for the eggs. 1 *Roll. Abr.* 642. **COLTS** pay *tithes* in the ſame manner as calves. *Ibid.* **CONIES** are *titheable* only by cuſtom, for thoſe that are ſold, not for ſuch as are ſpent in the houſe. 2 *Danv. Abr.* 583. **CORN** pays a *predial tithe*; it is *tithed* by the tenth cock, heap, or ſheaf, which if the owner do not ſet out, he may be ſued in an action upon the ſtat. 2 & 3 *Ed.* 6. *c.* 13. And if the pariſhioner will not ſow his land uſually ſown, the parſon may bring his action againſt him. When *tithe* corn is ſet forth, the law gives the parſon a reaſonable time to carry it away; and if he ſuffer the ſame to lie too long on the land to the prejudice of the owner thereof, he may be liable to an action: But the parſon may not ſet out the *tithes* himſelf, or take them away without leave. 1 *Rol. Abr.* 644. 1 *Sid.* 283. 2 *Vent.* 48. *Ley* 70.

Deer are not *titheable*, for they are *feræ naturæ*; tho' in parks, *&c.* they pay *tithes* by cuſtom. 2 *Inſt.* 651. **Doves** kept in a dove-houſe, if they are not ſpent in the owner's houſe, are *titheable.* 1 Vent. 5.

Eggs pay *tithes* when *tithes* are not paid for the young. 1 *Rol. Abr.* 642. **Elm trees** being timber are diſcharged from the payment of *titees*, but not if under twenty years growth. 2 *Inſt.* 643.

Fallow Ground is not *titheable* for the paſture in that year in which it lies fallow, unleſs it remain beyond the courſe of huſbandry; becauſe it improves and renders the land more fertile by lying freſh. 1 *Rol. Abr.* 642. **Fenns** being drained and made manureable, or converted into paſture, are ſubject to the payment of *tithes.* 1 Rol. Rep. 354. **Fish** taken in the ſea or common rivers, are *titheable* only by *cuſtom*, and the *tithe* is to be paid in money, and not the tenth fiſh; but fiſh in ponds and rivers incloſed, ought to be ſet forth as a *tithe* in kind. 2 *Danv. Abr.* 583, 584. **Flax** pays *tithe*; every acre of flax or hemp ſown ſhall pay yearly 5 *s.* for *tithe*, and no more. 11 & 12 *W.* 3. *c.* 16. **Forest** lands ſhall pay no *tithes* while in the hands of the King, though ſuch lands in the hands of a ſubject ſhall pay *tithes*, and if a *foreſt* ſhall be diſafforeſted, and within a pariſh, it ſhall pay *tithes*. 1 Rol. Abr. 655. 3 Cro. 94. **Fowls**, as hens, geeſe, ducks, are to pay *tithes*, either in eggs or the young, according to cuſtom, but not in both: As to *turkies* it is now reſolved, that *tithes* are due of their eggs or young. 2 *Wil. Rep.* 463. *Charleton* v. *Brightwell.* **Fruit**, apples, pears, plumbs, cherries, *&c.* pay *tithes* in kind when gathered; and ought to be ſet out according to the ſtatute. 2 *Inſt.* 621. **Fruit trees** cut down and ſold, are not *titheable*, if they have paid *tithe* fruit that year before cut. *Ibid.* 652. **Furzes**, if ſold, pay *tithe*, not if uſed for fuel in the houſe, or to make pens for ſheep, *&c.* *Wood's Inſt.* 166.

Gardens are *titheable* as lands, and therefore *tithes* in kind are due for all herbs, plants, and ſeeds ſowed in them; but money is generally paid by cuſtom or agreement. *Ibid.* **Grass** mowed is *titheable* by payment of the tenth cock, or according to cuſtom; but for graſs cut in ſwarths for the ſuſtenance of plough cattle only, not made into hay, no *tithe* is to be paid. *Graſs* or *corn*, &c. when ſold ſtanding, the buyer ſhall pay the *tithes*; and if ſold after cut and ſevered, the ſeller muſt pay it. The parſon is not obliged to take *tithe* of *graſs* the day it is cut, but may let it lie long enough to make it into *hay.* 1 Strange 245. 1 Rol. Abr. 644, 645. Wood's Inſt. 166.

Hazle, Holly, and **Maple trees**, *&c.* are regularly *titheable*, although of twenty years growth. 2 *Danv. Abr.* 589. **Hay** pays a *predial tithe*; the tenth cock is to be ſet out and paid, after made into *hay*, by the cuſtom of moſt places; and the pariſhioners ſhall make the *graſs cocks* into hay for the parſon's *tithe*; but if they are not obliged to make the *tithe* into *hay*, they may leave it in cocks, and the parſon muſt make it, for which purpoſe he may come on the ground, *&c.* A preſcription to meaſure out and pay the tenth acre, or part of *graſs* ſtanding, in lieu of all *tithe hay*, may be good; And if meadow ground is ſo rich, that there are two crops of hay in one year, the parſon by *ſpecial cuſtom* may have *tithe* of *both.* 1 Rol. Abr. 643, 647, 950. **Headlands** are not *titheable*, if only large enough for turning the plough; but if larger, *tithe* may be payable. 2 *Inſt.* 653. **Herbage** of ground is *titheable* for barren cattle kept for ſale, which yield no profit to the parſon. *Wood's Inſt.* 167. **Honey** pays a *tithe*, as under *Bees.* **Hops** are *titheable*, and the tenth part may be ſet out after they are picked: There are ſeveral ways of *tithing hops*, *viz.* by the hills, pole or pound; in ſome places they ſet forth the tenth pole for *tithes*; but Lord *Chief Juſtice Roll* tells us, they ought not to be tithed before dried. 1 *Rol. Abr.* 644. **Horses** kept to ſell, and afterwards ſold, *tithes* ſhall be paid for their paſture; though not where horſes are kept for work and labour. *Hut.* 77. **Houses** for dwelling are not properly *titheable:* A *modus* may be paid for *houſes* in lieu of *tithes* of the land upon which they are built, and a great many cities and boroughs have a cuſtom to pay a *modus* for their houſes; as it may be reaſonably ſuppoſed that it was uſual to pay ſo much for the land, before the houſes were erected on it. 11 *Rep.* 16. 2 *Inſt.* 659.

Kids pay a *tithe* as calves, the tenth is due to the parſon. *Wood* 167.

Lambs are *titheable* in like manner as *calves*; but if they are yeaned in one pariſh, and do not tarry there thirty days, no *tithe* is due to the parſon of that place: If there be a cuſtom that the pariſhioners having ſix lambs or under, ſhall pay ſo much for every lamb; and if he have above that number then to pay the ſeventh, it is good. 3 *Cro.* 403. **Lead** may pay *tithe* by cuſtom, as it does in ſome counties; but it doth not without it. 2 *Inſt.* 651. By *cuſtom* only, **Lime** and **Lime-kilns** are *titheable.* 1 Rol. Abr. 642.

Mast of Oak and Beach pays *tithes* as under *Acorns.* **Milk** is titheable when no *tithes* are paid for cheeſe, all the year round, except cuſtom over-rules; and it is payable by every tenth meal, not tenth quart or part of every meal; and it is to be brought to the houſe of the parſon, *&c.* by cuſtom, in which particular this *tithe* differs from all others, which muſt be fetched by the receiver. In ſome places they pay *tithe* cheeſe for milk, and in others ſome ſmall rate according to cuſtom. *Cro. Eliz.* 609. 2 *Danv. Abr.* 596. **Mills**, as there are ſeveral ſorts of them, the *tithes* are different; the *tithes* of *corn-mills* driven by *wind* or *water*, are paid in kind, every tenth toll-diſh of corn to the parſon of the pariſh wherein the mills are ſtanding: But *ancient corn-mills* are *tithe*-free, being ſuggeſted that they are very ancient, and never paid *tithes*, *&c.* And it is queſtioned whether *tithe* is due for any *corn-mills*, unleſs by cuſtom, becauſe the corn hath before paid *tithe*; and it ſeems rather a *perſonal tithe* where due: The *tithes* of *fulling-mills*, *paper-mills*, *powder-mills*, *&c.* are *perſonal*; charged in reſpect to the labour of men, by cuſtom only; and are regarded more as engines of ſeveral trades than as *mills.* 1 Rol. Abr. 656. 2 Inſt. 621. **Mines** pay no *tithes* but by cuſtom, being of the ſubſtance of the earth, and not annually increaſing. 2 *Inſt.* 651.

Nurseries of trees ſhall pay *tithes*, if the owner dig them up and makes profit of them by ſelling. 2 *Danv. Abr.* 585.

Oak trees are privileged as *timber* from the payment of *tithes* by the ſtatute of *Silva Cædua*, 45 Edw. 3. *c.* 3. if of or above twenty years growth; and if oaks are under that age, it is the ſame when they are apt for timber. *Moor* 541. **Offerings**, *&c.* are in the nature of *perſonal tithes.* 2 Inſt. 659, 661. **Orchards** pay *tithes* both for the fruit they produce, and the graſs or grain, if any be ſown or cut therein. 2 *Inſt.* 652.

Parks are *titheable* by cuſtom, for the deer and the herbage; and when diſparked and converted into tillage they ſhall pay *tithes* in kind: The *tithes* of parks may be in part certain, and part caſual; and 2 *s.* a year, and a ſhoulder of every third deer, hath been paid as *tithe* for a *park.* 1 Rol. Rep. 176. Hob. 37, 40. **Partridges** and **Pheasants**, *&c.* as they are *feræ naturæ*, yield no *tithes* of eggs or young. 1 *Rol. Abr.* 636. **Pease**, if gathered for ſale, or to feed hogs, pay *tithes*; but not green peaſe ſpent in the houſe. 1 *Rol. Abr.* 647. **Pigeons** ought to pay *tithes* when ſold; and this holds good if they lodge in holes about an houſe, as well as in a dove-houſe; and by cuſtom if ſpent in the houſe, they may be *titheable*, though not of common right. 2 *Danv. Abr.* 583, 597. **Pigs** are *titheable*, as calves. *Ibid.* **Pollard trees**, ſuch as are uſually lopped, and diſtinguiſhed from timber-trees, pay *tithes*. Plowd. 470.

QUARRIES of ſtone, *&c.* are not ſubject to pay *tithes*; becauſe they are part of the inheritance, and *tithes* ought to be collateral to the land, and diſtinct from it. 1 *Roll.* 644.

RAKINGS OF CORN are not *titheable*, for they are left for the poor, and are properly the ſcatterings of the corn whereof the *tithes* have been paid, left after the cocks ſet out are taken away. *Cro. Eliz.* 660. See *Ante*, *Div.* 3. tit. *Corn*.

SAFFRON pays a *predial* and ſmall *tithe*. 1 *Cro.* 467. SALT is not *titheable*, but by cuſtom only. 1 *Bunb.* 10. SHEEP, a *tithe* is paid for, of lambs and wool, and therefore they pay no *tithe* for their feeding. If ſheep are in the pariſh all the year, they are to pay *tithe* wool to the parſon; but if removed from one pariſh to another, the parſon of each pariſh to have *tithe pro rata*, where they remain thirty days in a pariſh; and if they are fed in one pariſh, and brought into another to be ſhorn, the ſame *tithing* is to be obſerved. 1 *Rol. Abr.* 642, 647. 3 *Cro.* 237. STUBBLE pays no *tithe* under aftermath. 2 *Inſt.* 652.

TARES, vetches, *&c.* are *titheable*; but if they are cut down green, and given to the cattle of the plough, where there is not a ſufficient paſture in the pariſh, no *tithe* ſhall be paid for them. 1 *Cro.* 139. TILES are no yearly increaſe, and not *titheable*. 2 *Inſt.* 651. TIMBER TREES, ſuch as oaks, aſhes, and elms, and in ſome places beech, *&c.* above the age of twenty years, were diſcharged of *tithes* by the Common law, before the ſtatute 45 *Ed.* 3. *c.* 3. and the reaſon of it is, becauſe ſuch trees are employed to build houſes, and houſes when built are not only fixed to, but part of the freehold; and if thoſe trees ſtand ſo long till they become rotten and fit for firing only, no *tithes* are due for them, becauſe they were once privileged; and loppings of timber-trees above twenty years growth, pay no *tithes*, for the branch is privileged as well as the body of the tree; and the roots of ſuch trees are exempted as parcel of the inheritance. *Trees* cut for plough-boot, cart-boot, *&c.* ſhall not pay *tithes*, although they are no timber; but all trees not fit for timber, and not put to thoſe uſes, pay *tithes*. 1 *Roll. Abr.* 650. *Cro. Eliz.* 477, 499. See *Ante Div.* 3. TURFS uſed for fuel are part of the ſoil, and *tithe-free*. 2 Inſt. 651.

UNDERWOOD is *titheable*, though the *tithe* is not of annual payment; and is ſet out while ſtanding, by the tenth acre, pole, or perch, or when cut down, by tenth faggot or billet, as cuſtom directs; and if he that ſells the wood doth not ſet out the *tithe*, he is liable to the treble damages by 2 *&* 3 *Ed.* 6. *cap.* 13. But if the underwood is uſed for firing in a houſe of huſbandry, or to burn brick to repair the houſe, or for hedging and fencing the lands in the ſame pariſh, it may be diſcharged from *tithe*. 2 Inſt. 642, 643, 652. Hob. 250. 2 Danv. Abr. 597.

WARRENS where *titheable*, ſee *Conies*. WASTE GROUND, whereon cattle feed, is liable to the payment of *tithes*. 2 Danv. Abr. WOAD growing in the nature of an herb is a predial and ſmall *tithe*. 2 Danv. 594. WOOD is generally eſteemed to be a great *tithe*. If *wood grounds* have likewiſe timber-trees grown on them, and conſiſt for the moſt part of ſuch trees, the timber-trees ſhall privilege the other wood; but if the wood is the greateſt part, then it muſt pay *tithes* for the whole. 13 *Rep.* 13. If *wood* be cut to make hop-poles, where the parſon hath *tithe* hops, no *tithe* ſhall be paid for it. *Hughes's Abr.* 689. WOOL is a mixed ſmall *tithe*, paid when clipped; one fleece in ten, or in ſome places one in ſeven, is given to the parſon. If there is under ten pounds of wool at the ſhearing, a reaſonable conſideration ſhall be paid, becauſe the *tithes* are due of common right; and if leſs than ten fleeces, they ſhall be divided into ten parts, or an allowance be otherwiſe made. All ſheep killed, and ſheep which die, pay *tithe wool*; and *neck wool* cut off for the benefit of the wool, but not if it is to preſerve the ſheep from vermin, *&c.* Alſo the *wool* of lambs ſhorn at *Midſummer*, though *tithe* was paid for the lambs at *Mark-tide*, is *titheable*. 1 *Roll. Abr.* 646, 647. 2 *Inſt.* 652. Vide *tithe* of *Sheep*.

When any thing is *titheable* only by *cuſtom*; it may be exempted from *tithe* by *cuſtom*; but cuſtom to exempt corn, *&c.* from *tithe* will not be allowed, becauſe for that *tithes* are due *de jure*. *Count. Parſ. Compan.* 155. See *Modus* and *Preſcription*.

Tithes Extraparochial, which do not lie in any pariſh, belong to the King. 2 *Rep.* 2, 44.

GREAT TITHES generally belong to the rector; and SMALL TITHES to the vicar. *Cro. Car.* 20.

GREAT TITHES are *corn*, *hay*, and *wood*; SMALL TITHES comprehend all other *predial tithes* beſides corn and hay, *&c.* as alſo thoſe *tithes* which are perſonal and mixed; ſome things may be great or ſmall *tithes*, in regard of the place; as *hops* in gardens are *ſmall tithes*, and in fields may be *great tithes*; and it is ſaid the *quantity* will turn a ſmall *tithe* into a great one, if the pariſh is generally ſown with it. 1 *Roll. Abr.* 643. 1 *Cro.* 578. *Wood's Inſt.* 162.

For more learning on this ſubject, ſee 5 *New Abr.* tit. *Tithes*, 8 *Vin. Abr.* tit. *Diſmes*, *and* a new treatiſe on the laws concerning Tithes. See alſo, *Black. Com.* 1 *V.* 384, 388. 2 *V.* 24. 3 *V.* 48, 88, 102, 384, 437.

Tithing, (*Tithinga*, from the Sax. *Teothunge*, i. e. *Decuriam*) Is in its firſt appointment the number or company of ten men with their families, held together in a ſociety, all being bound for the peaceable behaviour of each other: And of theſe companies there was one chief perſon who was called *teothung-man*, at this day *tithing-man*; but the old diſcipline of *tithings* is long ſince left off. In the *Saxon* times, for the better conſervation of the peace, and more eaſy adminiſtration of juſtice, every hundred was divided into ten diſtricts or *tithings*; and, within every *tithing*, the *tithing-men* were to examine and determine all leſſer cauſes between villages and neighbours; but to refer greater matters to the then ſuperior courts, which had a juriſdiction over the whole hundred. *Paroch. Antiq.* 633. See *Black. Com.* 1 *V.* 113. 4 *V.* 404.

Tithing-men, Are now a kind of petty conſtables, elected by pariſhes, and ſworn in their offices in the court-leet, and ſometimes by juſtices of peace, *&c.* There is frequently a *tithing-man* in the ſame town with a conſtable, who is as it were a deputy to execute the office in the conſtable's abſence; but there are ſome things which a conſtable has power to do, that *tithing-men* and headboroughs cannot intermeddle with. *Dalt.* 3. When there is no *conſtable* of a pariſh, the office and authority of a *tithing-man* ſeems to be the ſame under another name. *Stat.* 13 *&* 14 *Car.* 2. *cap.* 12. See *Conſtable*, and *Black. Com.* 1 *V.* 114, 406.

Title, (*Titulus*) Is when a man hath lawful cauſe of entry into lands whereof another is ſeiſed; and it ſignifies alſo the means whereby a man comes to lands or tenements, as by feoffment, fine, laſt will and teſtament, *&c.* The word *title* includeth a *right*; but is the more general word: Every *right* is a *title*, though every *title* is not ſuch a *right* for which an action lies; ſo that *titulus eſt juſta cauſa poſſidendi quod noſtrum eſt*, and is the means of holding the lands. *Co. Lit.* 345.

A man may plead in treſpaſs, *&c.* without particularly ſetting forth his *title*, where his *juſtification* is *collateral* to the *title* of the land; ſo if damages are to be recovered, and the *title* of the land is not in queſtion; and in actions on real contracts, where the plaintiff ſhews enough to entitle him to the action, *&c.* 2 *Mod.* 70. 1 *Roll. Rep.* 13. *Cro. Car.* 571. 3 *Nelſ. Abr.* 325. But in treſpaſs for cutting corn on lands, the party muſt ſet forth the title which he hath to the corn, or on demurrer it will be judged ill; for the ſhewing that he is poſſeſſed thereof, is not ſufficient without a *title*, becauſe the property ſhall be intended to be in the owner of the ſoil. 2 *Sand.* 401. 3 *Salk.* 361.

When a perſon will recover any thing from another, he muſt make out and prove a better *title* than the other hath; or it will not be enough to deſtroy his *title*, *&c.* *Hob.* 103. It is not allowed for the party to forſake his own *title*, and fly upon the other's; for he muſt recovers by his own ſtrength, not the other's weakneſs. *ibid.* 104. If by the record it appears that the plaintiff in the cauſe hath no *title*, he ſhall not have judgment. *Lutw.* 1631. The law will not permit *titles* and things in entry, *&c.* to be granted over; and the buying or ſelling any pretended *rights* or *titles* to lands, is prohibited by ſtatute as *Maintenance.* 32 *H.* 8. *c.* 9. See 20 *Vin. Abr.* 278.—288. and *Black. Com.* 2 *V.* 195.

Title of Acts of Parliament. After the Houſe of Commons hath finally agreed (on a third reading) that a bill paſs, the *title* to it is then ſettled; which uſed to be a general one, for all the acts paſſed in the ſeſſion, 'till in the 5th year of *Hen.* 8. diſtinct *titles* were introduced for each chapter. *Black. Com.* 1 *V.* 182, 3.

Title to Lands, pretended, buying or ſelling. By ſtat. 32 *H.* 8. *c.* 9. it is provided that no one ſhall ſell or purchaſe any *pretended right* or *title* to land, unleſs the vender hath *received the profits* thereof *for one whole year* before ſuch grant, or hath been *in actual poſſeſſion* of the land, or of the reverſion or remainder; on pain that both purchaſer and vender ſhall each forfeit the value of ſuch land to the King and the proſecutor.

Title to the Crown. In the opinion of *Blackſtone*, the grand fundamental maxim upon which the *jus coronæ*, or right of ſucceſſion to the throne of theſe kingdoms, depends, is, "That the Crown is, by Common law "and conſtitutional cuſtom, hereditary; and this in a "manner peculiar to itſelf: But that the right of inheritance may from time to time be changed or limited "by act of parliament; under which limitations the "Crown ſtill continues hereditary." *Black. Com.* 1 *V.* 191. which *Vide*, the propoſition being there fully proved at large.

Title to Things perſonal, As to the title to things perſonal, or the various means of *acquiring*, and of *loſing* ſuch property as may be had therein——The methods of acquiſition or loſs are principally twelve; 1. By occupancy. 2. By prerogative. 3. By forfeiture. 4. By cuſtom. 5. By ſucceſſion. 6. By marriage. 7. By judgment. 8. By gift. 9. By contract. 10. By bankruptcy. 11. By teſtament. 12. By adminiſtration. *Black. Com.* 2 *V.* 400. which *Vide*.

Titles of Clergymen, Signify ſome certain place where they may exerciſe their functions. A *title*, in this ſenſe, is the church to which a prieſt was ordained and conſtantly to reſide: And there are many reaſons why a church is called *titulus*; one is becauſe in former days the name of the ſaint to whom the church is dedicated was engraved on the porch, as a ſign that the ſaint had a *title* to that church; from whence the church itſelf was afterwards denominated *titulus.* *Concil. London, Anno* 1125. No perſon ſhall be ordained without a *title*; and this is required to keep out thoſe from the miniſtry who might otherwiſe for want of maintenance bring diſgrace upon the church. And if a biſhop ſhall admit any perſon into the miniſtry without any *title*, he ſhall maintain him till he prefers him to ſome eccleſiaſtical living; or if he refuſes ſo to do, he ſhall be ſuſpended from giving orders for one year. *Can.* 31. Anciently a *title* of clergy was no more than entering their names in the biſhop's roll, and then they had not only authority to aſſiſt in the miniſterial function, but had a right to the ſhare of the common ſtock or treaſury of the church; but ſince, a *title* is an aſſurance of being preferred to ſome eccleſiaſtical benefice, a certificate that the clerk is provided of ſome church, or place, *&c.* or where the biſhop, who ordains him, intends ſhortly afterwards to admit him to a benefice or curacy then void. *Count. Parſ. Comp.* 2, 3.

Title of Entry, Is when one ſeiſed of land in fee, makes a feoffment thereof on condition, and the condition is broken; after which the feoffor hath *title* to enter into the land, and may do ſo at his pleaſure, and by his *entry* the freehold ſhall be ſaid to be in him preſently. And it is called *Title of entry*, becauſe he cannot have a writ of right againſt his feoffee upon condition, for his right was out of him by the feoffment, which cannot be reduced into *entry*; and the *entry* muſt be for the breach of the condition. *Cowell.*

Titinylks, An old word for tale-bearers.——In all realms the *popiſh* practice hath had confederacy of falſe, forſworn, factious, and traiterous *titinylks*, untrue to their ſovereign, *&c.* Letter Secr. State, 28 *H.* 8. to *James* 5. King of *Scotland.*

Timberton in Devon, for rebuilding the town of, 5 *Geo.* 2. *cap.* 14.

Toalia; A towel; and there is a tenure of lands by the ſervice of waiting with a towel at the King's coronation:——*Petrus Picote tenet unum meſuag. &c. per ſerjeantium ſerviendi cum una* toalia *ad coronationem regis.* Inq. Ann. 12, 13. K. *John.*

Tobacco, Is not to be planted in *England*, on pain of forfeiting 40 *s.* for every rod of ground thus planted; but this ſhall not extend to hinder the planting of *tobacco* in phyſic gardens. 12 *Car.* 2. *cap.* 34. And juſtices of peace have power to iſſue warrants to conſtables, to ſearch after and examine whether any *tobacco* be ſown or planted, and to deſtroy the ſame; which they are to do under penalties *&c.* 22 *&* 23 *Car.* 2. *cap.* 26. The 5 *Geo.* 1. *c.* 11. continues the ſtatute 22 *&* 23 *Car.* 2. And by a late act, if any perſon ſhall cut walnut-tree leaves, or other leaves; (not being *tobacco* leaves) or colour them ſo as to reſemble *tobacco*; or ſhall ſell the ſame mixed with *tobacco*, they ſhall forfeit 5 *s. per* pound: And the like penalty is inflicted for exporting ſuch leaves, or engines for cutting, which may be ſeiſed by the officers of the cuſtoms, *&c.* Alſo ſervants employed therein may be committed to gaol, or the houſe of correction, for any time not exceeding ſix months, *&c.* 1 *Geo.* 1. *cap.* 46. See *Stat.* 24 *Geo.* 2. *c.* 41 No drawback allowed on exportation of *tobacco*, unleſs ſhipped from the port at which it was imported, and in the original package if unmanufactured. Importer within fourteen days after the delivery of *tobacco* to any purchaſer to give to the officer where it was imported an account of the marks, numbers, and weights, *&c.* of every hogſhead ſold, and the ſhip's name, *&c.* the account to be ſigned by the importer and purchaſer. No *tobacco* nor *tobacco ſtalks* above 24 *lb.* nor ſnuff above 10 *lb.* to be carried by land from any port of importation without a certificate from the collector, *&c.* of the port where, *&c.* before removal the proprietor to inſert on the back of the certificate the package, marks, numbers, weights and ſpecies, *&c.* of the goods, and to ſubſcribe his name, and make oath of the truth thereof; the certificate to accompany the goods, and to be delivered to the officer where the goods ſhall be conveyed, *&c.* *Tobacco, tobacco ſtalks*, and ſnuff, exceeding the reſpective weights aforeſaid, found removing without ſuch certificates, with the horſes and carriage, ſhall be forfeited, and the carrier may be committed to the county gaol for one month. See further in the ſame act for ſecuring the duties upon *tobacco.* And *Stat.* 26 *Geo.* 2. *c.* 13. For other matters, ſee *Cuſtoms, Plantations, Snuff.*

Tobacco-pipe Clay, Not to be exported. 13 *&* 14 *Car.* 2. *c.* 18. *ſ.* 8. 6 *Geo.* 1. *c.* 21. *ſ.* 32.

Tod of Wool, Contains twenty-eight pounds, or two ſtone mentioned in the ſtatute 12 *Car.* 2. *cap.* 32.

Toft, (*Toftum*) A meſſuage or rather a place or piece of ground where an houſe formerly ſtood, but is decayed or caſually burnt, and not re-edified; it is a word much uſed in fines, wherein we often read *toftum* and *croftum*, *&c.* Weſt's Symb. par. 2.

Toftman, (*Toftmanus*) The owner or poſſeſſor of a *toft*, Reg. Priorat. Lew. pag. 18.

Toile, (*Fr.* i. e. *Tela*) A net to encompaſs or take *deer*, which is forbid to be uſed unlawfully in parks, on pain of 20 *l.* for every deer taken therewith. 3 *&* 4 *W. & M.* *c.* 10.

Tokens *Falſe*, to get money or goods by, from others *&c.* See *Falſe Tokens.*

Toleration. The penalties formerly impoſed on proteſtant diſſenters are all of them ſuſpended by the *Stat.* 1 *W. & M.* *ſtat.* 2. *c.* 18. commonly called The *Toleration Act*; which exempts all diſſenters (except papiſts, and ſuch as deny the Trinity) from all penal laws relating to religion, provided they take the oaths of allegiance and ſupremacy, and ſubſcribe the declaration againſt popery, and repair to ſome congregation regiſtred in the biſhop's court or at the ſeſſions, the doors whereof muſt be always open: And diſſenting teachers are alſo to ſubſcribe the thirty-nine articles, except thoſe relating to church government and infant baptiſm of diſſenters, ſee *Nonconformiſts*.

Toll, or *to toll*, To *bar*, *defeat*, or *take away*; as to *toll* the *entry*, i. e. to *deny* or *take away* the *right* of *entry*. Stat. 8 Hen. 6. c. 9.

Toll, (*Tolnetum, vel Theolonium*) Is a *Saxon* word, and properly a payment in towns, markets, and fairs, for goods and cattle bought and ſold. It is a reaſonable ſum of money due to the owner of the fair or market, upon ſale of things *tollable* within the ſame. 2 *Inſt*. 220.

And it is uſed for a liberty as well to *take*, as to be *free* from *toll*; of which freedom from *toll* the city of *Coventry* boaſts an ancient charter granted by *Leofrick* earl of the *Mercians*, in the time of King *Edw. the Conf.* who at the importunity of *Godeva*, his virtuous lady, granted this freedom to that city.

By the ancient law of this land, the buyers of corn or cattle in fairs or markets ought to pay *toll* to the lord of the market, in teſtimony of the contract there lawfully made; for *toll* was firſt invented that contracts in markets ſhould be openly made before witneſſes; and privy contracts were held unlawful.

But the King ſhall pay no *toll* for any of his goods; and a man may be diſcharged from the payment of *toll*, by the King's grant.

Alſo tenants in ancient demeſne are diſcharged of *toll* throughout the kingdom, for things which ariſe out of their lands, or bought for manurance thereof, &c. not for merchandizes. *Horn's Mir. lib*. 1. 2 *Inſt*. 221. 2 *Rol. Abr*. 198.

Toll doth not of common right belong to a fair; tho' it hath been held, that ſome *toll* is due of common right, as appears from the immunities of ſeveral perſons not to pay *toll*, which proves that, if it was not for thoſe privileges, they ought to pay *toll* of common right; therefore where the King grants a market, *toll* is due, although it is not expreſſed in the grant what *toll* is to be paid; and this, from the neceſſity of it, becauſe the property of things ſold in a market is not altered without paying *toll*. Palm. 76. 2 Lutw. 1377. 3 Nelſ. Abr. 326. See the laſt caſe under this head. But it is ſaid, if the King grants to a man a fair or market, and grants no *toll*, the patentee ſhall have no *toll*; for *toll* being a matter of private right for the benefit of the lord, is not incident to a fair or market, as a court of piepowder is, which is for the benefit of the public and advancement of juſtice, &c. Such a fair, or market, *is free from toll*; and, after the grant made, the King cannot grant a *toll* to ſuch free fair or market, without ſome proportionable benefit to the ſubject: And if the *toll* granted with the fair or market be outrageous, the grant of the *toll* is void, and the ſame is a free *market*, &c. 2 Inſt. 220. Cro. Eliz. 559.

When the King grants a fair, he may likewiſe grant that *toll* ſhall be paid, though it be a charge upon the ſubjects, but then it muſt be of a very ſmall ſum. *Toll* is to be reaſonable, for the King cannot grant a burthenſome *toll*; and one may have *toll* by preſcription for ſome reaſonable cauſe, but ſuch a preſcription to charge the ſubject with a duty of *toll*, muſt import a benefit or recompence for it, or ſome reaſon muſt be ſhewn why it is claimed. *Cro. Eliz*. 559. 3 *Lev*. 424. 2 *Mod*. 143. 4 *Mod*. 323. The *toll* in fairs is generally taken upon the ſale of cattle, as horſes, &c. but in the markets for grain only; and the lord may ſeize until ſatisfaction is made him: It is always to be paid the buyer, unleſs there be a cuſtom to the contrary; and nothing is *tollable* before the ſale, except it be by cuſtom time out of mind; which cuſtom none can challenge that claim the fair or market by grant ſince the reign of King *Richard* 2d; ſo that it is better to have a market or fair by preſcription, than grant. 2 *Inſt*. 220, 221.

At this day there is not any one certain toll to be taken in markets; but if that which is taken be unreaſonable, it is puniſhable by the ſtat. 3 *Ed*. 1. *c*. 31. And what ſhall be deemed reaſonable is to be determined by the judges of the law, when it comes judicially before them: *toll* may be ſaid to be unreaſonable and outrageous, when a reaſonable *toll* is due, and exceſſive *toll* is taken; or when no *toll* is due, and *toll* is unjuſtly uſurped, &c. 2 *Inſt*. 222. If exceſſive *toll* be taken in a market-town, by the lord's conſent, the franchiſe ſhall be ſeized; and if by other officers, they ſhall pay double damages, and ſuffer impriſonment, &c. *Stat. Weſtm*. 1. 3 *Ed*. 1.

Owners of markets and fairs are to appoint *toll-takers*, where toll is to be taken, under penalties, by the 2 & 3 *Ph. & M. c*. 7. And he that hath the *toll*, or profit of the market where no *toll* is, ought to provide a lawful meaſure of braſs, and chain it in the public market-place, or ſhall forfeit 5 *l*. 22 *Car*. 2. *cap*. 8.

Toll is not incident of common right, to a fair. 2 *Strange* 1171. See *Wilſon, par*. 1, 109, &c. and tit. *Market*.

Port-Toll. A preſcription to have *port-toll* for all goods coming into a man's *port* may be good; and this it is ſaid without any conſideration. 2 *Lev*. 96. 2 *Lut*. 1519. And it hath been adjudged, that the liberty of bringing goods into a port for ſafety, implies a conſideration in itſelf. 3 *Lev*. 37. Preſcription of *toll* for goods landed in a manor, or to have *port-toll* for all goods coming into *port*, is a good preſcription; but not to have *toll* of goods brought into a river, &c. 2 *Lev*. 96, 97. *Toll* may be appurtenant to a manor. 2 *Mod*. 144.

Toll-Travers, Is where one claimeth to have *toll* for every beaſt driven over his ground; for which a man may preſcribe, and diſtrain for it *in via Regia*. Cro. Eliz. 710. They who claim theſe *tolls* by grant, ought to aver the certainty of the ſum mentioned in the grant, &c. *Palm*. 76. *Toll-travers* being to paſs a nearer way, he that has it is to repair the way, becauſe he receives money for it. 2 *Lil. Abr*. 585.

Thorough-Toll, Is when a town preſcribes to have *toll* for ſuch a number of beaſts, or for every beaſt that goeth *through* their town; or over a bridge or ferry, maintained at their coſt, which is reaſonable, though it be for paſſing *through* the King's highway, where every man may lawfully go, as it is for the eaſe of travellers that go that way. *Terms de Ley* 561. 562. Perſons may have this *toll* by preſcription or grant; but it muſt be for a reaſonable cauſe, which muſt be ſhewn, *viz*. that they are to repair and maintain a cauſeway, or a bridge, or ſuch like. *Cro. Eliz*. 711. The King granted to a man, to take ſuch *toll* of perſons that paſſed over certain bridges with their cattle, as was taken there and elſewhere in *England*, &c. and it was held void for incertainty. *Bridg*. 88.

Turn-Toll, A *toll* paid for beaſts that are driven to market to be ſold, and do return unſold. 6 *Rep*. 46. There is alſo *in-toll*; and *out-toll*, mentioned in *ancient charters*: But if any one take *toll* where he ought not, the party grieved ſhall have an action on the caſe, or action of treſpaſs, &c. 3 *Nelſ. Abr*. 325, 326. Of *tolls* and grants, cuſtoms and preſcriptions for *tolls*, good, and not ſo, ſee 4 *Mod*. 319. 5 *Mod*. 361. *Lutw*. 1380, 1518. And ſee *Toll*.

Tollage, Is the ſame with *tallage*; ſignifying generally any manner of cuſtom, or impoſition. This word occurs in the ſtatute 17 *Car*. 1. *cap*. 17.

Toll-Booth, The place where goods are weighed, &c.

Toll-Corn, Is *corn* taken for *toll* ground at a *mill*: And an indictment lies againſt a miller for taking too great *toll*. 5 Mod. 13.

Toll Hop, A ſmall diſh or meaſure by which *toll* is taken in a market, &c.

Toll Traverſe, Is properly when a man pays certain *toll* for paſſing over the ſoil of another man in a way not a high ſtreet. 22 *Aſſ*. 58. by *Thorp*, and ſee the caſe of *Smith* v. *Shepherd*, 2 *Rol. Abr*. 522. *Cro. Eliz*. 710. *Moor* 574. The words *toll-through* and *toll-traverſe* are uſed promiſcuouſly. *Arg*. And the court ſeemed to agree. *Mod*. 232. in caſe of *James* v. *Johnſon*. A man cannot preſcribe to have thorough-toll of men paſſing through a vill in the high ſtreet becauſe it is againſt the common law and common right; for the high ſtreet is common to all. 2 *Rol. Abr*. 522. 25 *Aſſ*. 58. by *Thorp*, and the caſe of *Smith* v. *Shepherd*, before cited, *dubitatur* without alledging of a ſpecial conſideration as the repairing the way. And the King cannot have ſuch toll for paſſing in the high ſtreet, as in the caſe aforeſaid, for the cauſe aforeſaid. 2 *Rol. Abr.* 522. 22 *Aſſ.* 58. by *Thorp.*

A man cannot preſcribe to have thorough-toll of men for paſſing through a vill in a place which is not the high ſtreet; for it is no more than the law allows to go there. 2 *Rol. Abr.* 523. 22 *Aſſ.* 58. A man may preſcribe to have toll-traverſe of men paſſing over his ſoil in a way which is not a high ſtreet, and the preſcription ſhall be good. 2 *Rol. Abr.* 522. 22 *Aſſ.* 58. *Bro. Toll. pl.* 6. cites S. C.

Tolſeſter, (*Tolceſtrum*) An old exciſe, or duty paid by the tenants of ſome manors to the lord, for liberty to brew and ſell ale. *Cartular. Rading.* 221. *Chart.* 51 *Hen* 3.

Tolſey, (from the Sax. *Tol.* i. e. *Tributum*, and ſee *Sedes*) Is the place where merchants meet, in a city or town of trade.

Tolt, A writ whereby a cauſe depending in a court baron, is removed into the country court. *Old Nat. Br.* 4. And as this writ removes the cauſe to the *county court*; ſo the writ *pone* removeth a cauſe from thence into the court of *Common Pleas*, &c.

Tolta, Wrong, rapine, extortion, any thing exacted or impoſed contrary to right and juſtice.———*Nec aliquem deprædetur, nec homicidia, vel incendia, roberias,* toltas, *ſeu alia hujuſmodi perpetret enormia.* Pat. 48 H. 3. *in* Brady Hiſt. Eng. Append. p. 235.

Tombs, Defacing of in churches. See *Monument.*

Tomin, A weight of twelve grains uſed by *goldſmiths* and *jewellers.*

Tongue, cutting out or diſabling. By *Stat.* 5 *H.* 4. *c.* 5. to remedy a miſchief that then prevailed, of beating, wounding, or robbing a man, and then cutting out his *tongue*, or putting out his *eyes*, to prevent him from being an evidence againſt them, this offence is declared to be felony, if done of malice prepenſe. See *Black. Com.* 4 *V.* 206, 207.

Tonnage, (*Tonnagium*) Is a cuſtom or impoſt paid to the King for merchandize carried out, or brought in ſhips, or ſuch like veſſels, according to a certain rate upon every ton. *Cowell.* See *Cuſtoms, Tunnage.*

Torcare, Is a word mentioned in *Fleta*, 2 *lib. c.* 75. *par.* 2. viz. *Boves ſtriliare & torcare:* Which is to comb and cleanſe his oxen.

Torra, (Sax. *Tor*) A mount or hill; as Glaſtenbury *Torre.* Chart. Abbat. Glaſton. MS. p. 114. So a variety of high hills, in *Derbyſhire*, are called *Tor*; but generally ſome epithet is prefixed, as *Mam-Tor*, &c.

Tort, (from the Lat. *Tortus*) Is a French word for injury or wrong; as *de ſon tort meſne*, in his own wrong. *Cro. Rep. fol.* 20. *White*'s caſe, Wrong or injury is properly called *tort*, becauſe it is wreſted or crooked, and contrary to that which is right and ſtraight. *Co. Lit. f.* 158. See *de ſon tort demeſne*, and 20 *Vin. Abr.* 305. Alſo *Black. Com.* 3 *V.* 117.

Tortfeaſor, (Fr. *Tortfaiſure*) A wrong-doer, a treſpaſſer. *Co.*

Tortitium, Is mentioned in *Fleta*, and other books, and ſignifies a *torch.*

Torture. The ſtatute law of *England* doth very ſeldom, and the Common law doth never, inflict any puniſhment extending to life or limb, unleſs upon the higheſt neceſſity: And the conſtitution is an utter ſtranger to any arbitrary power of killing or maiming the ſubject without the expreſs warrant of law. "*Nullus liber homo*, ſays the great charter (*c.* 29.) "*aliquo modo deſtruatur, niſi per legale judicium parium* "*ſuorum aut per legem terræ.*" Which words, "*Aliquo* "*modo deſtruatur*," according to Sir *Edward Coke*, (2 *Inſt.* 48.) include a prohibition not only of *killing*, and *maiming*, but alſo of *torturing* (to which our laws are ſtrangers) and of every oppreſſion by colour of an illegal authority.

But note—on an indictment for high treaſon, or for the loweſt ſpecies of felony, *viz.* petit larceny and in all miſdemeanors, ſtanding mute is equivalent to conviction. But, upon appeals or indictments for other felonies or petit treaſon, the priſoner ſhall not be looked upon as convicted, ſo as to receive judgment for the felony; but ſhall, for his obſtinacy, receive the terrible ſentence of *Penance*, or *Paine forte & dure.*

The rack, or queſtion, to extort a confeſſion from criminals, is a practice of a different nature; *this* being only uſed to compel a man to put himſelf upon his trial; *that* being a ſpecies of trial in itſelf. And the trial by rack is utterly unknown to the law of *England.* See *Ruſhw. Coll*, i. 638. *Black. Com.* 4 *V.* 320, 321. *Beccaria*'s Eſſay on Crimes and Puniſhments, *c.* 16. &c. And a work intituled, "*Eſſai ſur l'Uſage & les Inconveniens de la Torture, dans la Procedure Criminelle, par* "*Mr. S. D. C.*" Publiſhed with "*Obſervations ſur des* "*Matieres de Juriſprudence Criminelle.*" Tranſlated from the Latin of *Paul Riſi.*

No perſon to be ſubject to torture in *Scotland.* 7 Ann. c. 21.

Toties quoties, As often as a thing ſhall happen, &c. uſed in deeds and conveyances. 19 *Car.* 2. *c.* 4.

Totted. A good debt to the King, is by the *foreign appoſer* or other officer in the *Exchequer* noted for ſuch by writing the word *tot* to it: And that which is paid ſhall be *totted*——Tot *pecuniæ regi debetur.* Stat 42 Ed. 3. c. 9. 1 Ed. 6. cap. 15.

Tourn, The ſheriff's court ſo called. See *Turn.* and *Black. Com.* 4 *V.* 270, 404, 417.

Tournaments, Martial exerciſes frequent in former ages, wherein the combatants fought with blunt weapons and in great companies; the intent of them was to inure men to the wars. Vide *Juſts.*

Tout tempus priſt & uncore eſt, i. e. Always was, and is at preſent ready; and is a kind of plea by way of excuſe for him that is ſued for any debt or duty. *Broke* 258. See *Black. Com.* 3 *V.* 303.

Towage, (*Towagium*, Fr. *Tavage*) Is the towing or drawing a ſhip or barge along the water by another ſhip or boat faſtened to her; or by men or horſes, &c. on land: It is alſo money which is given by bargemen to the owner of ground next a river where they *tow* a barge or other veſſel. *Plac. Parl.* 18 *Edw.* 1.

Town, (*Oppidum, Villa*) A walled place or borough: The old boroughs were firſt of all *towns*; and upland *towns*, which are not ruled and governed as boroughs, are but *towns*, though incloſed with walls. *Finch.* 80. There ought to be in every *town* a conſtable, or tithingman; and it cannot be a *town* unleſs it hath or had a church, with celebration of ſacraments and burials, &c. But if a *town* is decayed ſo that it hath no houſes left, yet it is a *town* in law. 1 *Inſt.* 115. Under the name of a *town*, or village, boroughs, and it is ſaid, cities are contained; for every borough or city is a *town.* Where a murderer eſcapes untaken in a *town*, in the day-time, the *town* ſhall be amerced. 3 *Hen.* 7. *cap.* 1. And a *townſhip* is anſwerable for felons goods to the King, which may be ſeized by them. 1 *R.* 2. *c.* 3. But by 31 *Ed.* 3. *cap.* 3. if it can alledge any thing in diſcharge of itſelf, and by which another doth become chargeable, it ſhall be heard, and right adminiſtered. A cuſtom may be alledged in a *town*, &c. See *Black. Com.* 1 *V.* 114.

Town-Clerk, Ought not to be a *Popiſh* recuſant convict. 3 *Jack.* 1. *c.* 5. How to deliver a ſchedule of fines, &c. to the ſheriff. 22 & 23 *Car.* 2. *c.* 22. And a duplicate into the court of Exchequer. *Ib.* Diſcharging or concealing an indictment, &c. leviable to a forfeiture of treble the penalty incurred by the original offence. *Ib. ſect.* 3. and by 3 *Geo.* 1. *c.* 15. *ſ.* 12. may be amerced by the barons of the exchequer; and which amercements are leviable according to the uſual practice. *Vide the Statutes.*

Trabariæ, Were little boats, ſo called from their being made out of ſingle beams, or pieces of timber cut hollow. *Florence of Worceſter, pag.* 618.

Trabes in churches, was that we now call *branches*, made uſually with braſs, but formerly with iron. *Cowell.*

Tractus, A *trace* by which horſes in their gears draw a cart, plough, or waggon. *Paroch. Antiq.* 549.

Trade, In general ſignification, is traffick or merchandize: Alſo a private art, and way of living. All the King's ſubjects were to have a free *trade* with *France*, *Spain*, &c. Stat. 3 *Jac.* 1 *cap.* 6. But by 1 *W. & M.*

cap. 34. all *trade* with *France* was prohibited during the *war*, and importing goods was declared a common nuſance, and the commodities were to be ſeized and burnt; the veſſels with their furniture, *&c.* to be forfeited; and landing goods, or aſſiſting therein, incurred a penalty of 500 *l.* Though the prohibition of *trade* to *France* was taken off and repealed by 9 *Ann. cap.* 8. The King was enabled to prohibit all *trade* with *Sweden*, on the intended invaſion of this kingdom, by the late King of *Sweden*, 3 *Geo.* 1. *cap.* 1. All *trade* with *Spain* during the late war, was prohibited; and no goods, of the growth or manufacture of *Old Spain*, to be imported into *Great Britain* or *Ireland*, &c. from any place, mixt or unmixed with commodities of any other nation, on pain of forfeiting the goods and treble value; and alſo the ſhip or veſſel, with all her furniture, *&c. Stat.* 13 *Geo.* 2. *cap.* 27.

None of the King's ſubjects may *trade* to and with a nation of *Infidels* without the King's leave, becauſe of the danger of relinquiſhing Chriſtianity: And Sir *Edward Coke* ſaid, That he had ſeen a licence from one of our Kings, reciting, That he, having a ſpecial truſt and confidence that ſuch a one, his ſubject, would not decline his faith and religion, licenſed him to trade with Infidels, *&c.* 3 *Nelſ. Abr.* 331.

As to *private trades*, at Common law, none was prohibited to exerciſe any particular *trade*, wherein he had any ſkill or knowledge: and if he uſed it unſkilfully, the party grieved might have his remedy againſt him by action on the caſe, *&c.* By the 5 *Eliz. c.* 4. *ſ.* 31. a man muſt ſerve ſeven years apprenticeſhip before he can ſet up any *trade*; though it hath been reſolved that the ſtatute doth not prohibit the uſe of a *trade* for a family, but the publick uſe of it in general. An indictment on 5 *Eliz. c.* 4. for exerciſing a *trade* uſed at that time in *Great Britain*, quaſhed, it ſhould have been *England*, there being then no ſuch kingdom as *Great Britain*. 1 *Strange* 552. 2 *Strange* 788. 11 *Rep.* 53.

If a bond or promiſe reſtrains the exerciſe of a *trade*, though it be to a particular place only, if there was no conſideration for it; it is void; if there be a conſideration, in ſuch a caſe it may be good: But if the reſtraint be general throughout *England*, although there be a conſideration, it will be void. 2 *Lill. Abr.* 179. Lord *Raym.* 1436. 2 *Strange* 739. Hence we ſee how the law favours *trade*, &c. Vide *Black. Com.* 1 *V.* 427. 4 *V.* 154, 160, 167, 412, 417, 421, 424, 427, 432.

Trade, *Companies of*, and their privileges and advantages, ſee *Merchant*.

Tradeſmen, *Actions againſt.* There is in law, always, an implied contract with a common taylor, or other workman, that he performs his buſineſs in a workman-like manner: in which, if they fail, an action on the caſe lies to recover damages for ſuch breach of their general undertaking. 11 *Rep.* 54. 1 *Saund.* 324. But if I employ a perſon to tranſact any of theſe concerns, whoſe common profeſſion and buſineſs it is not, the law implies no ſuch *general* undertaking; but, in order to charge him with damages, a *ſpecial* agreement is required. *Black. Com.* 3 *V.* 160.

Traga, A waggon without wheels; mentioned in *Mon. Ang. Tom.* 1. *pag.* 851.

Train-Oil, ſee *Oil*.

Trait, Bread of *Trait* was formerly what we now call white-bread.

Traitors. Perſons guilty of high treaſon. All traitors, from the time of conviction, are incapable of making teſtaments. *Black. Com.* 2 *V.* 499. See *Treaſon*.

Tranſcript, Is the copy of any original writing, or deed, *&c.* where it is written over again, or exemplified, Stat. 34 *&* 35 *Hen.* 8. *cap.* 14.

Tranſcripto pedes finis levati mittendo in Cancellariam, A writ for certifying the *foot* of a *fine* levied before juſtices in eyre, *&c.* in the Chancery. *Reg. Orig.* 669.

Tranſcripto Recognitionis factæ coram Juſticiariis itinerantibus, *&c.* Is an old writ to certify a recognizance taken by juſtices in eyre. *Reg. Orig.* 152.

Trangreſſione, A writ or action of *treſpaſs*, according to *Fitzherbert*.

Tranſire, (from *Tranſeo*) Is uſed for a warrant from the cuſtom-houſe, to let paſs. 14 *Car.* 2. *cap.* 11.

Tranſitory, Is the oppoſite to *local*: *Tranſitory* actions are thoſe that may be laid in any county, or place; ſuch as perſonal action of treſpaſs, *&c.* See *Local*, and *Black. Com.* 3 *V.* 294.

Tranſlation, (*Tranſlatio*) In a common ſenſe of the word, ſignifies a verſion out of one language into another; but, in a more confined acceptation, it denotes the ſetting from one place to another, and the removal of a biſhop to another dioceſe, *&c.* which is called *Tranſlating*: And ſuch a biſhop writes not *anno* conſecrationis, but *anno* tranſlationis *noſtræ*, *&c.* A biſhop *tranſlated*, is not conſecrated *de novo*: for a conſecration is like an *ordination*, 'tis an indelible character, and holds good for ever. 3 *Salk.* 72. But the biſhop is to be a-new elected, *&c.* 1 *Salk.* 137. See *Poſtulation*.

Tranſportation, Is the baniſhing or ſending away a criminal into another country. And by ſtatute, if any one, convicted of felony, ſhall in open court pray to be *tranſported*, it may be done if the court thinks fit. 31 *Car.* 2. *cap.* 2. The 4 *Geo.* 1. *cap.* 11. was made for the more effectual *tranſportation* of offenders convict of felony, or larceny, within the benefit of clergy, *&c.* And all charges, in tranſporting felons, are to be borne by the place for which the court was held, *&c.* Sed qu. as to *London* and *Middleſex*, as I believe the expence is borne by Government? By the 5 *Geo.* 1. *cap.* 28. Deer-ſtealers may be tranſported to the plantations, *&c.* And if any perſons forcibly hinder officers of the cuſtoms, in executing their office, being armed with weapons, and eight in company, they ſhall be tranſported, by 6 *Geo.* 1. So three perſons aſſembled near the ſea-coaſts, with fire-arms, *&c.* to run uncuſtomed goods. Stat. 9 *Geo.* 2. *c.* 35. Directions for trial of offenders who return from *tranſportation*, or do not *tranſport* themſelves. 16 *Geo.* 2. *c.* 15. Reward for convicting ſuch offenders. *Ibid.*

Returning from tranſportation, or being ſeen at large in *Great Britain* before the expiration of the term for which the offender was ſentenced to be tranſported, is a capital offence againſt public juſtice, and is made felony without benefit of clergy, by ſtatutes 4 *Geo.* 1. *c.* 11. 6 *Geo.* 1. *c.* 23. *&* 8 *Geo.* 3. *c.* 15.

Tranſportation, Of *goods* and *merchandiſe*, is allowed and not allowed, in many caſes by ſtatute, for the advantage of trade. See *Merchant*, &c.

Tranſubſtantiation, (*Tranſubſtantiatio*) Is a converting into another ſubſtance: To *tranſubſtantiate*, i. e. *Quidpiam in aliam ſubſtantiam converto.* Litt. Dict. A *declaration* againſt the doctrine of *tranſubſtantiation* uſed in the church of *Rome*, is required by the Stat. 30 *Car* 2. *cap.* 1.

Travellers. Inn-keepers are to receive *travellers*, and find them lodgings, victuals, &c. And on refuſal, a reaſonable price being tendered, they may be indicted and fined; or action of the caſe lies againſt them. 2 *Hawk.* 225.

Traverſe, (from the Fr. *Traverſer*) Is uſed in the law for the denying of ſome matter of fact, alledged to be done in a declaration or pleadings; upon which the other ſide comes and affirms that it was done; and this makes a ſingle and good iſſue for the cauſe to proceed to trial: And the formal words of a *traverſe* are in our French *Sans ceo*, in Latin *Abſque hoc*, and in Engliſh *without that*, that ſuch a thing was done or not, *&c. Kitch.* 217. *Weſt. Symb. par.* 2. A plea will be ill, which neither *traverſeth*, nor confeſſeth the plaintiff's title, *&c.* And every matter in fact, alledged by the plaintiff, may be *traverſed* by the defendant, but not matter of law, or where it is part matter of law and part matter of fact; nor may a record be *traverſed* which is not to be tried by a jury. And if a matter be expreſly pleaded in the *affirmative*, which is expreſly anſwered in the *negative*, no *traverſe* is neceſſary, there being a ſufficient iſſue joined; alſo where the defendant hath given a particular anſwer in his plea, to all the material matters contained in the declaration, he need not take a traverſe; for when the thing is anſwered, there needs no further denial. *Cro. Eliz.* 755. *Yelv.* 173. 193. 195. 2 *Mod.* 54. If a *traverſe* contain no more than the party hath pleaded before, it will not be good: No *traverſe* ought to be taken but where the thing *traverſed* is iſſuable: And where one will make a *traverſe* to a declaration, he ought to *traverſe* that part of it, the doing whereof will make an end of the matter, when the point is determined by the jury. 2 *Roll. Rep.* 37. 2 *Lill. Abr.* 587. 3 *Nelſ. Abr.* 355.

As one *traverſe* is enough to make a perfect iſſue, a *traverſe* cannot be regularly taken upon a *traverſe*, if 'tis well taken to the material point, and goes to the ſubſtance of the action; but where the firſt *traverſe* is not well taken, nor pertinent to the matter, there, to that which was ſufficiently confeſſed and avoided before, the other party may well take a *traverſe* after ſuch immaterial *traverſe* taken before: And if ſpecial matter alledged in a foreign county in the defendant's plea be falſe, the plaintiff may maintain his action, and *traverſe* that ſpecial matter; and in ſuch a caſe a *traverſe* on a *traverſe* hath been adjudged good. 1 *Saund.* 32. *Poph.* 101.

Theſe rules are to be obſerved in *traverſes*: 1. The *traverſe* of a thing not immediately alledged, vitiates a good bar. 2. Nothing muſt be *traverſed* but what is expreſly alledged. 3. Surpluſage in a plea doth not inforce a *traverſe*. 4. It muſt be always made to the ſubſtantial part of the title. 5. Where an act may indifferently be intended to be at one day or another, there the day is not *traverſable*. 6. In action of treſpaſs generally the day is not material; though, if *a matter be to be done upon a particular day*, there it is material and *traverſable*. 2 *Roll. Rep.* 37. 1 *Roll. Rep.* 235. *Yelv.* 122. 2 *Lill. Abr.* 313. If the parties have agreed on the day for a thing to be done, the traverſe of the day is material; but where they are not agreed on the day, it is otherwiſe; and though 'tis proved to be done on another day, 'tis ſufficient. *Palm.* 280. Per *Holt.* Ch. Juſt.

Where a *traverſe* goes to the matter of a plea, *&c.* all that went before is waved by the *traverſe*; and if the *traverſe* goes to the time only, it is not waved. 2 *Salk.* 642. In action of treſpaſs, a particular place and time were laid in the declaration, and in the plea there was a *traverſe* as to the place, but not as to time: On averment that it was *eadem tranſgreſſio*, the plea was held good. 3 *Lev.* 227. 2 *Lutw.* 1452. Where a plea in juſtification of a thing is not local, a *traverſe* of the place is wrong. 2 *Mod.* 270. Where a juſtification in treſpaſs, relates to a particular place, different from the *Venue* laid in the declaration, 'tis proper to add a *traverſe* at the end of the plea.

The ſubſtance and body of a plea muſt be *traverſed*. *Hob.* 232. But a *traverſe* that a perſon died ſeiſed of land in fee *modo & forma* as the defendant had declared, was adjudged good. *Hutt.* 123. A lord and tenant *differ* in the *ſervices*, there the *tenure* and not the *ſeiſin* ſhall be *traverſed*; but if they *agree* in the *ſervices*, the *ſeiſin* and not the *tenure* is *traverſable*; and it is a general rule, that the tenant ſhall never *traverſe* the *ſeiſin* of the ſervices without admitting the *tenure*. *March* 116. 3 *Nelſ. Abr.* 361. That which is not material nor *traverſable*, is not admitted when it is alledged, and not *traverſed*. 2 *Salk.* 361. But the omitting a *traverſe* where it is neceſſary, is matter of ſubſtance. 2 *Mod.* 60. And a *traverſe* of a debt is ill when a *promiſe* is the ground of the action; which ought to be *traverſed*, and not the debt. *Leon.* 252.

A *traverſe* ſhould have an *inducement* to make it relate to the foregoing matter. And 'tis no good plea for the plaintiff to reply, that a man is alive who is alledged to be dead, without *traverſing* that he is not dead. 3 *Salk.* 357. *Qu.* It is ſaid that where a *traverſe abſque hoc* comprizes the whole matter generally, it may conclude *& de hoc pon. ſe ſuper patriam*; but when it *traverſes* a particular matter, the concluſion ought to be with an *averment*, *&c.* 1 Salk. 4.

Traverſe may be in an *anſwer* in *Chancery*, replication, *&c.* In an action upon a bail-bond the arreſt is not *traverſable*. 1 *Strange* 444. *Traverſe* of a ſeiſin in fee is ill, where a leſs eſtate would be ſufficient. 2 *Strange* 818. Where the party confeſſes and avoids, he ought not to *traverſe*: But it may be paſſed over and iſſue taken upon the *traverſe*. 2 *Strange* 837. See *Chancery*, and *Black. Com.* 3 *V.* 312.

Traverſe of an indictment or preſentment, Is to take iſſue upon, and contradict or deny ſome chief point of it: As in a *preſentment* againſt a perſon for a highway overflowed with water, for default of ſcouring a ditch, *&c.* he may *traverſe* the matter, that there is no highway, or that the ditch is ſufficiently ſcoured; or otherwiſe *traverſe* the cauſe, *viz.* That he hath not the land, or he and they whoſe eſtate, *&c.* have not uſed to ſcour the ditch. *Lamb. Eiren.* 521. *Book Entr.* See *Black. Com.* 4 *V.* 345.

Traverſe of an Office, Is to prove that an inquiſition made of lands or goods by the eſcheator, is defective and untruly made. No perſon ſhall *traverſe* an office, unleſs he can make to himſelf a good right and title: And if one be admitted to traverſe an office, this admiſſion of the party to the *traverſe*, doth ſuppoſe the title to be in him, or elſe he had no cauſe of *traverſe*. Vaugh 64. 2 Lill. Abr. 590, 591. The *traverſe* of an inquiſition for the King is to be conſidered as a debt, and the proſecutor may carry down the record. 2 *Strange* 1208. See *Black. Com.* 3 *V.* 260.

Traverſum, Signifies a ferry: It is mentioned in the *Monaſticon.* Tom. 2. pag. 1002.

Trawlermen, A kind of fiſhermen on the river *Thames*, who uſed unlawful arts and engines to deſtroy fiſh, of which ſome were termed *Tinckermen*, others *Hebbermen*, and *Trawlermen*, &c. And hence come to *trowl* or *trawl* for pikes. *Stow's Surv. Lond. pag.* 19.

Traylbaſton, See *Juſtices of Traylbaſton*; and ſee copies of ſeveral commiſſions granted to them by *Edward* the Firſt, in *Spelman's Gloſſary, verbo Traylbaſton.* The common people in thoſe days called them *Traybaſton, quod ſonat, trabe baculum. Edward* the Firſt, in his thirty-ſecond year, ſends out a new writ of inquiſition, called *Trailbaſton*, againſt intruders on other men's lands, who, to oppreſs the right owner, would make over their lands to great men; againſt batterers hired to beat men, breakers of the peace, raviſhers, incendiaries, murderers, fighters, falſe aſſiſors, and other ſuch malefactors: Which inquiſition was ſo ſtrictly executed, and ſuch fines taken, that it brought in great treaſure to the King. *Chron. fol.* 111. See *Plac. parliamentaria, fol.* 211, *&* 280. And 4 *Inſt.* 186. And in a parliament 1 *Ric.* 2. the commons of *England* petitioned the King, that no commiſſion of *Eyre*, or *Traylbaſton*, might be iſſued during the wars, or for twenty years to come. *Rot. Par.* 1 *R.* 2. *Cowell.*

Traytor, *(Traditor, Proditor)* A ſtate offender, betrayer, *&c.* See *Treaſon.*

Trayterous, *(Perfidioſus)* Treacherous or full of diſloyalty. *Lat. Law Dict.*

Trayterous poſition, Of taking *arms* by the *King's authority againſt his perſon*, and thoſe that are commiſſioned by him, is condemned by the Statute 14 *Car.* 2. *cap.* 3.

T. R. E. *Tempore Regis Edwardi.* Theſe initial letters have this continual note of time in the *domeſday regiſter*, where the valuation of manors is recounted, what it was in the time of *Edward the Confeſſor*: and what ſince the conqueſt. As in *Oxenfordſcir——manerium de Burceſtre*, T. R. E. *valuit quindecim libras, modo ſexdecim. Cowell.*

Treaſon, (From the Fr. *Trahir*, to *betray*, and *Trahiſon*, betraying, contracted into *treaſon*) is the crime of treachery and infidelity to our lawful ſovereign; the *Latin* word for which uſed in law is *proditio.*

Treaſon is divided into

High Treaſon, *Alta proditio*,
and
Petit Treaſon, *Proditio parva.*

Mention is alſo made, in ſome of our ſtatutes, of *accumulative* and *conſtructive* treaſon. *High treaſon* is defined to be an offence committed againſt the ſecurity of the King and kingdom; and as all treaſons include felony, the word *proditorie* muſt be uſed in the indictment for treaſon, to diſtinguiſh it. 3 *Inſt.* 4, 15. The greatneſs of this offence of *treaſon* and ſeverity of the puniſhment thereof, is upon two reaſons, becauſe the ſafety, peace and tranquillity of the kingdom, is highly concerned in the preſervation of the perſon and government of the King; and therefore the laws have given all poſſible ſecurity thereto, under the ſevereſt penalties: And as the ſubjects have protection from the King and his laws; ſo they are bound by their allegiance to be true and faithful to him. 1 *Hale's Hiſt. P. C.* 59.

At *Common law* there were different opinions concerning high-treaſon; and before the ſtatute 25 *Ed.* 3. *ſt.* 5. *c.* 2. *Treaſon* was a very uncertain crime; for the killing of the King's brother, or even of his meſſenger, was taken to be included in it; ſo when acts tended to diminiſh the dignity of the crown, and where a man grew popular, this was conſtrued to be incroaching royal power, and held to be *treaſon*; ſo that, by the exceſs of the times, any crime, by aggravating the circumſtances of it, was heightened into *treaſon*: Wherefore this ſtatute was made to determine what ſhould be *treaſon*; and ſince the making thereof there can be no *conſtructive treaſon*; *i. e.* Nothing can be conſtrued to be *treaſon*, which is not literally ſpecified in that act; nor may the ſtatute be conſtrued by equity, becauſe it is *a declarative law*, and one declaration ought not to be the declaration of another; beſides it was made to ſecure the ſubject in his life, liberty, and eſtate, which, by admitting conſtructions to be made of it, might deſtroy all. 1 *Hawk. P. C.* 34. 3 *Salk.* 358.

The ſtatute 25 *Ed.* 3. *cap.* 2. (reciting that divers opinions having been, what caſes ſhould amount to high treaſon) enacts and declares, That if a perſon doth compaſs or imagine the death of the King, Queen, or their eldeſt ſon and heir; or if he do violate and deflower the King's wife or companion, or his eldeſt daughter unmarried, or the wife of the King's eldeſt ſon; or if he levy war againſt the King in his realm, or adhere to his enemies, give them aid and comfort in the realm, or elſewhere, and thereof be probably attainted of open deed; and if a man conterfeit the King's Great or Privy Seal, or his money, or bring falſe money into the kingdom, like to the money of *England*, to make payment therewith in deceit of the King and his people; or if he kill the Chancellor, Treaſurer, or any of the King's Juſtices in either Bench, Juſtices of Aſſiſe, *&c.* being in their places, doing their offices; theſe caſes are to be adjudged *treaſon*: And if any other caſe happen before the juſtices, ſuppoſed to be *treaſon*, they ſhall not proceed to judgment till it be declared by the King and parliament whether it ought to be judged *treaſon* or not.

This ſtatute may be conſidered as one of the greateſt bulwarks of *Engliſh* liberty.

But to proceed. It was made *high treaſon* to wiſh or deſire, by words or writing, or to imagine the death of the King, Queen, or their heir apparent; or to publiſh, that the King was an heretick, ſchiſmatic, infidel, *&c.* by 26 *H.* 8. *c.* 13. And to endeavour to depoſe the King, or affirm by writing, that he is an uſurper, tyrant, *&c.* was declared *treaſon* by the 1 *Edw.* 6. *c.* 12. But theſe are repealed by 1 *Mar. ſt.* 1. *c.* 1. which enacts, That no act, deed or offence, ſhall be deemed or adjudged *treaſon*, but ſuch as are declared and expreſſed to be ſo by the 25 *Ed.* 3. *ſt.* 5. *c.* 2. concerning *treaſons*. 1 *Mar. Seſſ.* 1. *c.* 1. All treaſons were ſettled by the *Stat.* 25 *Edw.* 3. *c.* 2. And by 1 *Mar. ſt.* 1. *c.* 1. that act was re inforced and confirmed, and made the only ſtandard of *treaſon*; the 1 *Mar.* takes away the power of the King and parliament to adjudge any thing elſe to be *treaſon*, than what is declared to be ſuch therein: So as no crime is at this day *high treaſon*, petit *treaſon*, or miſpriſion of *treaſon*, unleſs it be declared by 25 *Ed.* 3. *ſt.* 5. *c.* 2. or by ſome ſtatute ſince the 1 *Mar. cap.* 1. All other ſtatutes made between thoſe two acts concerning *high treaſon* are abrogated; but ſince 1 *Mar. ſt.* 1. *c.* 1. many offences are made *high treaſon* by ſtatute, which were not ſo before; as relating to the *Pope*, *Popiſh Prieſts* and *Papiſts*, the *Proteſtant Succeſſion*, *&c.* And to ſay that the King is a Papiſt, or that he intends to introduce Popery; intending death or bodily harm, or a reſtraint of the King's perſon; or to incite an invaſion, *&c.* and ſuch intentions declared by printing, writing or ſpeaking, the offenders ſhall be adjudged traitors. 13 *Car.* 2. *c.* 1.

It was declared *treaſon* for perſons to ſend any arms, powder, maſts, cordage, *&c.* to *France*, during the late war, by 3 & 4 *W.* & *M.* *c.* 13. Correſponding with the pretended *Prince of Wales*, or remitting him money, is made *high treaſon*. 13 *W.* 3. *c.* 3. And if any one ſhall maliciouſly, by writing or printing, declare that the King is not lawful King, or that the *Pretender* hath any title to the crown, he ſhall be guilty of *treaſon*. 4 & 5 *Ann.* *c.* 3. Officers or ſoldiers of this realm, holding correſpondence with any rebel, or enemy to the King, or giving them any advice, information by letter, meſſage, *&c.* is declared *treaſon* by the 2 & 3 *Ann.* *c.* 20. And if a ſubject of *Great Britain* or *Ireland* ſhall inliſt himſelf a ſoldier, with intent to go beyond ſea, to ſerve any foreign prince or ſtate, he ſhall ſuffer and forfeit as in *treaſon*. See 12 *Ann. ſt.* 2. *c.* 11. and 9 *Geo.* 2. *c.* 30.

Theſe are the chief of our ſtatutes ancient and modern, declaring what offences ſhall be *treaſon*; and *treaſon* committed *out of the realm* may be *tried* in *B. R.* as if the offence had been done in the county of *Middleſex*; alſo they may be inquired of and tried in ſuch county as the King thinks fit, *&c.* A party, within one year after *outlawry for treaſon*, may ſurrender himſelf to the Chief Juſtice of *England*, and traverſe the indictment; and none ſhall be attainted of *treaſon* but by the teſtimony of *two witneſſes*, *&c.* by *Stat.* 35 *H.* 8. *c.* 2. 5 & 6 *Edw.* 6. *c.* 11.

All trials for *high treaſon* ſhall be according to the courſe of the *Common law*, and not otherwiſe. 1 & 2 *Ph.* & *M.* *cap.* 10. And perſons indicted for *treaſon*, are to have a copy of the indictment five days before trial, to adviſe with counſel; and ſhall be admitted to make a full defence by counſel learned in the law, and by lawful witneſſes, *&c.* and there muſt be *two witneſſes to the ſame overt-act*, or *two acts* of the *ſame treaſon* produced *face to face*, to make out the *treaſon* againſt them. 7 *W.* 3. *cap.* 3.

If one witneſs in *high-treaſon* be poſitive, and the other is only by hearſay; theſe are not two lawful accuſers within the ſtatutes: But two witneſſes are not required either upon the indictment or trial of *treaſon* for *counterfeiting money*, by the proviſo of the ſtatute 1 & 2 *P.* & *M.* Offenders guilty of *high treaſon* by being concerned in the rebellion in the firſt year of K. *Geo.* 1. were to be tried before ſuch commiſſioners of *oyer* and *terminer* and gaol-delivery, and in ſuch county as his Majeſty by any commiſſion under the Great Seal ſhould appoint, by lawful men of the ſame county, as if the fact had been there committed: This extended only to perſons actually in arms. 1 *Geo.* 1. *c.* 33. *All are principals in high treaſon*; and on attainder of *treaſon*, the blood of the criminal is corrupted; he ſhall be drawn, hang'd and quarter'd; and forfeit his lands and goods to the King, *&c.*

Treaſon by the *Stat.* 25 *Ed.* 3. *c.* 2. in *compaſſing and imagining the death of the King*, muſt be manifeſted by ſome overt-act; as by providing arms to do it, conſulting to levy war againſt him, writing letters to excite others to join in it, aſſembling perſons in order to impriſon or depoſe the King, or to get him into their power, *&c.* theſe acts are ſufficient to prove that one compaſſed or imagined the death of the King, and to make a man guilty of high treaſon. 3 *Inſt.* 6, 12. It has been a very great queſtion whether words ſpoken can amount to high treaſon: But it was reſolved in the trial of the *regicides*, that though a man cannot be indicted of high *treaſon* for *words* only; yet if he be indicted for compaſſing the King's death, theſe words may be laid as an overt act, to prove that he compaſſed the death of the King; and to ſupport this opinion, the caſe of a perſon was cited who was indicted of *treaſon*, *Anno* 9 *Car.* 1. for that he, being the King's ſubject, at *Liſbon*, uſed theſe words: *I will kill the King*, (*innuendo* King *Charles*) *if I may come to him*; and afterwards he came into *England* for that purpoſe; and two merchants proving that he ſpoke the words, for that his traiterous intent and the wicked imagination of his heart was declared by theſe words, it was held to be *high treaſon* by the Common law, and within the ſtatute of the 25 *Ed.* 3. *cap.* 2. *Cro. Car.* 242. 1 *Lev.* 57.

Deliberate words, which ſhew a direct purpoſe againſt the King's life, will amount to an overt act of compaſſing or imagining the King's death; as the compaſſing or imagining the death of the King is the *treaſon*, words are the moſt natural way of expreſſing the imagination of the heart, and may be good evidence of it: And any external act which may be a manifeſtation of ſuch imagination, is an *overt act*; but although words may be an overt act of *treaſon*, they muſt be *ſo certain and poſitive*, as *plainly to denote the intention* of the ſpeaker, and be laid with an averment that they were ſpoken *de Rege*, &c. 1 Hawk. P. C. 40. 2 Salk. 631. 3 *Mod.* 52.

The maxim, that no words can amount to *treaſon* at this day, is not generally true; and notwithſtanding the objection made againſt words being high *treaſon*, from the *ſtat.* 1 *M. c.* 1. wherein it is ſaid, that many honourable perſons, and others of good reputation, had then of late for words only ſuffered ſhameful death, that the ſeverity of ſuch like dangerous and painful laws ſhould be aboliſhed: It was enacted, That no offence made *treaſon* by words, writing, cyphering, &c. ſhould be adjudged *treaſon*. It appears from the next part of the preamble of the ſaid ſtatute, that it is applicable only to the ſtatutes in the time of King *Hen.* 8. which made bare words high *treaſon*. And in the firſt edition of *Hale's Pleas of the Crown* it is twice ſaid, that it hath been adjudged that *words* are an *overt act*; though in the latter edition it is ſaid, that compaſſing *by bare words* is not an overt act, &c. 1 *Hawk.* 41.

Ever ſince the revolution it has been the conſtant practice, where a perſon, by *treaſonable diſcourſes*, has manifeſted a deſign to murder or depoſe the King, to convict him upon ſuch evidence: And chief Juſtice *Holt* was of opinion, That expreſs words were not neceſſary to convict a man of *high treaſon*; but if, from the tenor of his diſcourſe, the jury were ſatisfied he was engaged in a deſign againſt the King's life; this was ſufficient to convict the priſoner. *State Trials*, *Vol.* 4. *p.* 172.

Words of *perſuaſion* to kill the King, are *overt acts* of compaſſing his death; and it hath been adjudged, that he who intended by force to preſcribe laws to the King, and to reſtrain him of his power, doth intend to deprive him of his crown and life; that if a man be ignorant of the intention of thoſe who take up arms againſt the King, if he join in any action with them, he is guilty of *treaſon*; and that the law conſtrueth every *rebellion* to be a plot againſt the King's life, and a depoſing him, becauſe a rebel would not ſuffer that King to reign and live, who will puniſh him for rebellion. *Moor* 620. 2 *Salk.* 63. 3 *Nelſ. Abr.* 365.

It is ſaid that words ſpoken to draw away the affection of the people from the King, and to ſtir them up againſt him, tend to his death and deſtruction, and are *treaſon*: But the *imagination* in *high treaſon*, without *act* or *word*, is not puniſhable. *Dyer* 128. 1 *Rep. Jenk. Cent.* 88. If words are ſet down in writing, and kept privately in one's cloſet, they are not an *overt act* of *treaſon*, except the words are publiſhed. *Kel.* 20. But it hath been held, that *treaſonable* matter put into writing, *ſcribere eſt agere*; and though it was not publiſhed, but ſent in a box to the King, it ſhewed the intent of the party to be *high treaſon*. 2 Rol. Rep. 88.

Under the head of compaſſing and imagining the King's death, *intention* of *treaſon*, proved by circumſtances, is *high treaſon*: The law takes notice of intentions to commit *treaſon*, and mens actions are governed by their intentions, &c. 1 *Inſt.* 140. 5 *Mod.* 206. For a man to ſay that he will be King after the King's death, hath been adjudged *treaſon*: And ſo to propheſy when the King ſhall die; for this may imply a knowledge of a conſpiracy. *Rol. Rep.* 88.

There muſt be a compaſſing, intent or imagination, to kill the King, to make the offence *treaſon*; the killing him *per infortunium*, as Sir *Wa. Tyrrel* killed King *Wil.* 2. by the glance of an arrow in *New Foreſt*, is not *treaſon*: And though by the ancient law, if a madman killed, or offered to kill, the King, it was held to be *treaſon*; by the 25 *Ed.* 3. *ſt.* 5. *c.* 2. by force of the words *compaſs* or *imagine*, he that is *non compos mentis*, and totally deprived of all compaſſings and imaginations, cannot commit *high treaſon*; but it muſt be an *abſolute madneſs*, and *total deprivation of memory*. 3 Inſt. 6.

If the huſband of a Queen Regent conſpire her death; or a Queen Conſort ſhall conſpire the King's death, either of theſe acts are *treaſon*: And though the *compaſſing the death of the Queen Conſort* be *treaſon*, by the 25 *Ed.* 3. *ſt.* 5. *c.* 2. this muſt be intended during the marriage; and it doth not extend to a Queen Dowager. 3 *Inſt.* 8. And the *eldeſt ſon and heir of the King*, that is living, is intended by the ſaid act, though he was not the firſt ſon; but if the heir apparent to the Crown be a collateral heir, he is not within the ſtatute; nor is a conſpiracy againſt ſuch collateral heir, *treaſon* by this act. *Ibid.*

Alſo *violating the Queen Conſort* is high *treaſon*, and her yielding and conſenting to it is *treaſon*; but this doth not affect a dowager Queen: So likewiſe violating the *Wife of the Prince* is *treaſon* only during the coverture, 3 *Inſt.* 9. And the *eldeſt daughter of the King* is ſuch a daughter as is eldeſt not married at the time of the violation, which will be *treaſon*, although there was an elder daughter than her, who died without iſſue: for now the elder alive has a right to the inheritance of the Crown, upon failure of iſſue male: And violating the Queen's perſon, &c. was high *treaſon* at Common law, by reaſon it deſtroyed the certainty of the King's iſſue, and conſequently raiſed contention about the ſucceſſion. *H. P. C.* 16.

A *Queen Dowager* after the death of her huſband, is not a Queen within the ſtatute; for though ſhe bears the title, and hath many prerogatives anſwering the dignity of her perſon, yet ſhe is not the King's wife or companion: And a Queen divorced from the King *a vinculo matrimonii*, is no Queen within this act, although the King be living; which was the caſe of Queen *Katharine*, who, after twenty years marriage with King *Hen.* 8. was divorced *cauſa affinitatis*. 1 Hale's Hiſt. P. C. 124.

At Common law compaſſing the death of any of the *King's children*, and declaring it by overt act, was taken to be *treaſon*; though by this ſtatute it is reſtrained to the eldeſt ſon and heir. *Ibid.* 125.

By the Common law, *levying war againſt the King* was *treaſon*: But as, in caſes of *high treaſon*, there muſt be an *overt act*; a conſpiracy or compaſſing to levy war is no *overt act*, unleſs a war is actually levied; though if a war is actually levied, then the conſpirators are all traitors, although they are not in arms: And a conſpiracy to levy war will be evidence of an *overt act* to maintain an indictment for compaſſing the King's death; but if the indictment be for levying war only, proof muſt be made that a war was levied, to bring the offender under this clauſe of the 25 *Ed.* 3. *ſt.* 5. *c.* 2. 3 *Inſt.* 8, 9. *H. P. C.* 14. If two or more conſpire to levy war, and one of them alone raiſes forces; this ſhall be adjudged *treaſon* in all. *Dyer* 98.

Perſons raiſing forces for any public end or purpoſe, and putting themſelves in a poſture of war, by chuſing leaders, and oppoſing conſtables or guards, &c. is high *treaſon*: Formerly there was a great riot in *London* by the apprentices there, ſome whereof being impriſoned, the reſt conſpired to kill the Lord Mayor, and releaſe their comrades; and, in order to it, to provide themſelves with armour, by breaking open two houſes near the *Tower*; they marched with a cloke on a pole, inſtead of an enſign, towards the Lord Mayor's houſe; and in the way meeting with oppoſition from the ſheriffs, reſiſted them; this was held levying of war, and *treaſon*. Trin. 37 Eliz. Sid. 358.

Thoſe who *make an inſurrection in order to redreſs a public grievance*, whether it be a real or pretended one, are ſaid *to levy war againſt the King*, although they have *no direct deſign againſt his perſon*; as they are for doing that *by private authority*, which he *by public juſtice* ought to do, which manifeſtly tends to a rebellion: For example;

where great numbers by force endeavour to remove certain perſons from the King, or to lay violent hands on a privy counſellor, or revenge themſelves againſt a magiſtrate for executing his office, or to deliver men out of priſon, expel foreigners, or to reform the law of religion, to pull down all bawdy-houſes, to throw down all incloſures in general, &c. But where a number of men riſe to remove a grievance to their private intereſt, as to pull down a particular incloſure, they are only rioters; for there is a difference between a pretence that is public and general, and one that is private or particular. 3 *Inſt.* 9. *H. P. C.* 14. *Kel.* 75. 1 *Hawk. P. C.* 37.

It was reſolved by all the judges of *England* in the reign of King *Hen.* 8. that an inſurrection againſt the ſtatute of labourers, for raiſing their wages, was a levying of war againſt the King; becauſe it was generally againſt the King's law, and the offenders took upon them the reformation thereof. *Read. Statutes Vol.* 5. *p.* 150. Not only ſuch as directly rebel and take up arms againſt the King; but alſo thoſe who in a violent manner *withſtand his lawful authority*, or attempt *to reform his government*, do *levy war againſt him*; and therefore to hold a fort or caſtle againſt the King's forces, or keep together armed men in great numbers againſt the King's expreſs command, have been adjudged a levying of war, and *treaſon:* But thoſe who join themſelves to rebels, &c. for fear of death, and return the firſt opportunity, are not guilty of this offence. 3 *Inſt.* 10. *Kel.* 76.

A perſon in arms was ſent for by ſome of the council from the King, and to give in the names of thoſe that were armed with him; but he refuſed, and continued in arms in his houſe, and it was held *treaſon:* Alſo where he went with a troop of captains and others into *London*, to pray help of the city to ſave his life, and bring him to court to the Queen, though there was no intent of hurt to her, was adjudged *treaſon*; and in them who joined with him, though they knew nothing but only a difference between him and ſome courtiers: So if any man ſhall attempt to ſtrengthen himſelf ſo far, that the Prince cannot reſiſt him. *Earl of Eſſex's Caſe. Moor* 620.

To *ſuccour or adhere to the King's enemies*, give them comfort or relief, or for any perſon to be *in council with others to levy any ſeditious wars*, are *high treaſon:* And the delivery or ſurrender of the King's caſtles or forts, by the captains thereof, to the King's enemy, within the realm or without, for reward, &c. is an adhering to the King's enemies, and *treaſon* by 25 *Ed.* 3. *ſt.* 5. *c.* 2. A lieutenant of *Ireland* let ſeveral rebels out of *Dublin Caſtle*, and diſcharged ſome *Iriſh* hoſtages which had been given for ſecuring the peace; and for this he was attainted of *high treaſon* in adhering to the King's enemies. 33 *H.* 8. Adhering to the King's enemies out of the realm is *treaſon*, and one who was beyond ſea, having ſolicited a foreign Prince to invade the kingdom, was held guilty of *high treaſon*, and triable by the ſtatute 35 *Hen.* 8. *cap.* 2. But adherence out of the realm muſt be alledged in ſome places in *England*. 3 Inſt. 10. H. P. C. 14. Dyer 298, 310. If there be war between the King of *England* and *France*, thoſe *Engliſhmen* that live in *France* before the war, and continue there after, are not meerly upon that account adherents to the King's enemies, to be guilty of *treaſon*, unleſs they actually aſſiſt in ſuch war; or at leaſt refuſe to return into *England* upon a privy ſeal, or on proclamation and notice thereof; and this refuſal is but evidence of an adherence, and not ſo in itſelf. 1 *Hale's Hiſt. P. C.* 165. It has been adjudged, that adhering to the King's enemies is an adhering againſt him; and that the *Engliſh* ſubjects joining with rebel ſubjects of the King's allies, and fighting with them under the command of an alien enemy prince, is *treaſon*, in adhering to the King's enemies; and cruiſing in a ſhip with intent to deſtroy the King's ſhips, without doing any act of hoſtility, is an overt act of adhering, comforting and aiding; for where an *Engliſhman* liſts himſelf and marches, this is *treaſon* without coming to battle, or actual fighting. 2 *Salk.* 634.

An indictment for levying of war, or adhering to the King's enemies generally, without ſhewing ſome particular inſtance, is not good; becauſe of theſe words, *viz.* *And thereof ſhall be proveably attainted by overt deed*, which follow and are not connected to the *treaſons* of compaſſing the King's death, levying war, and adhering to the King's enemies; and as theſe *treaſons* are ſeveral and diſtinct *treaſons*, one of them cannot be made an overt-act of another. *Ibid.* There is no neceſſity expreſly to alledge that adherence was againſt the King; but the ſpecial manner of adherence muſt be ſet forth: And it is ſaid, that the ſuccouring a rebel fled into another realm, is not within the ſtatute; for a rebel is not properly an enemy, and the ſtatute is ſtrictly taken. 1 *Hawk.* 38.

Subjects of the King in open war or rebellion, are not the *King's enemies*, but *traitors*; and if a ſubject join with a foreign enemy, and come into *England* with him, if he be taken priſoner, he ſhall not be ranſomed or proceeded againſt as enemy, but as a *traitor* to the King: On the other hand, an enemy coming in open hoſtility into *England*, and taken, ſhall be either executed by martial law, or ranſomed: for he cannot be indicted of *treaſon*, becauſe he never was within the ligeance of the King. 3 *Inſt.* 11.

By the word *proveably*, a perſon ought to be convicted of the *treaſon* on *direct and manifeſt proofs*, and not upon *preſumptions* or *inferences*; and the word *attainted* neceſſarily implies, that the priſoner be proceeded againſt and attainted according to due courſe of law; wherefore if a man be killed in open war againſt the King, or be put to death arbitrarily, or by Martial law, and be not attainted of *treaſon* according to the Common law, he forfeits nothing; for which cauſe ſome perſons killed in open rebellion againſt the King, have been attainted by act of parliament. *Ibid.* 12.

If a perſon be indicted of *treaſon*, and will not anſwer, or if he anſwers impertinently, judgment ſhall be given againſt him as taken *pro confeſſo* that he is guilty. *Style* 104. On a judgment for *high treaſon*, error was brought, for that the indictment did not conclude *contra ligeantiam*, &c. Now though all the particular facts of the *treaſon* were fully expreſſed, ſo that it appeared that it muſt be *contra ligeantiæ ſuæ debitum*, yet the judgment was reverſed. 3 *Lev.* 396. Upon a writ of error to reverſe an attainder in *treaſon*, becauſe the party convicted was not aſked what he had to ſay why judgment ſhould not be given againſt him, the attainder was reverſed; for he might have a pardon, or ſome matter to move in arreſt of judgment. 2 *Salk.* 630. 3 *Mod.* 265. And the omiſſion of any neceſſary part of the judgment for *treaſon*, is error ſufficient to reverſe an attainder, as it is more ſevere and formidable in *treaſon* than for any other crime. 2 *Salk.* 632.

As to the *counterfeiting the King's ſeal*, this was *treaſon* by the Common law; and the ſtatute 25 *Ed.* 3. *ſt.* 5. *c.* 2. mentions only the great ſeal and privy ſeal; for the counterfeiting of the ſign manual or privy ſignet, is not *treaſon* within that act, but by 1 & 2 *P.* & *M.* *c.* 6. Thoſe who aid and conſent to the counterfeiting of the King's ſeal are equally guilty with the actors: But an intent or compaſſing to counterfeit the great ſeal, if it be not actually done, is not *treaſon*; there muſt be an actual counterfeiting, and it is to be like the King's great ſeal. 3 *Inſt.* 15. *S. P. C.* 3. *H. P. C.* 18. And this branch of the ſtatute does not extend to the affixing the great ſeal to a patent, without a warrant for ſo doing; nor to the raſing any thing out of a patent, and adding new matter therein; or to the taking off the wax impreſſed by the great ſeal from one patent, and fixing it to another; yet this, though it be not a counterfeiting, has been adjudged a miſpriſion of the higheſt degree: And a perſon guilty of an act of this nature, with relation to a commiſſion for levying money, &c. had judgment to be drawn and hang'd. 2 *H.* 4. 3 *Inſt.* 16. *Kel.* 80. 'Till a new great ſeal is made, the old one of a late King, being uſed and employed as ſuch, is the King's ſeal within the ſtatute; notwithſtanding its variance in the inſcription, portraiture, and other ſubſtantials: And when an old great ſeal is broken, the counterfeiting of that ſeal, and applying it to an inſtrument of that date wherein it ſtood, or to any patent, *&c.* without date, is *treaſon.* 1 *Hale's Hiſt. P. C.* 177. The adding a crown in a counterfeit privy ſignet, which was not in the true; and omitting ſome words of the inſcription, and inſerting others, done purpoſely to make a little difference, alters not the caſe, but 'tis high *treaſon*; being publiſhed on a feigned patent to be true, *&c. Ibid.* 184.

At Common law *forging of the King's money* was *treaſon*, as *counterfeiting* it is by the 25 *Ed.* 3. *ſt.* 5. *c.* 2. Forging or counterfeiting foreign money made current here by proclamation, is likewiſe high *treaſon*, by 1 *Mar. c.* 6. And if not current here, it is miſpriſion of *treaſon.* Counterfeiting the King's coin, or impairing or lightening it by clipping, *&c.* is *treaſon*; but it ſhall work no corruption of blood. 18 *El. cap.* 1. And as thoſe who coin money without the King's authority are guilty of *treaſon*; ſo are thoſe that have authority to do it, if they make it of greater alloy, or leſs weight than they ought. 3 *Inſt.* 17. 2 *Inſt.* 577. *H. P. C.* 20. If *A.* counterfeit money, and another vent the ſame for his own benefit, he is not guilty of *treaſon*; for it is only a cheat and miſdemeanor in him, puniſhable by fine and impriſonment: But if one counterfeits the King's money, though he never vents it, this is a counterfeiting and *treaſon* within the ſtatute. And if any man doth counterfeit the lawful coin of this kingdom in a great meaſure, but with ſome variation in the impreſſion, *&c.* yet it is counterfeiting of the King's money; and ſhall not evade the ſtatute. 1 *Hale's Hiſt. P. C.* 214, 215. *Treaſon* in making ſtamps, dyes, *&c.* for coining and colouring metal, *&c.* ſee 8 *&* 9 *W.* 3. *c.* 26. and *Coin.*

Bringing falſe money into this kingdom, counterfeited like the money of *England*, knowing it to be falſe, is *treaſon* by the 25 *Ed.* 3. *ſt.* 5. *c.* 2. In this caſe it muſt be counterfeited, according to the likeneſs of *Engliſh* money, and is to be knowingly brought over from ſome foreign nation, not from any place ſubject to the Crown of *England*; and muſt be uttered in payment. 3 *Inſt.* 18.

The killing of the King's chancellor, treaſurer, juſtices of either bench, &c. declared to be *treaſon*, relates to no other officers of ſtate beſides thoſe expreſly named; and to them only when they are *in actual execution of their offices, repreſenting the perſon of the King*, and it doth not extend to any attempt to kill, or wounding them, *&c.* 3 *Inſt.* 18, 38. *H. P. C.* 17. The places for the juſtices to do their offices, are the courts themſelves, where they uſually, or by adjournment, ſit for diſpatch of the buſineſs of their courts. 1 *Hale's Hiſt. P. C.* 232.

By the *ſtat.* 17 *Geo.* 2. *c.* 39. it is made high *treaſon* to hold correſpondence with the Pretender's ſons: And if they land or attempt to land in his majeſty's dominions, they are to be deemed attainted of high *treaſon.* By the *ſtat.* 20 *Geo.* 2. *c.* 30. any perſon impeached by the Commons of high *treaſon*, whereby any corruption of blood, may make his defence by council, not exceeding two, to be aſſigned him on application at any time after articles exhibited. Aſſiſting tranſported rebels to return, or correſponding with them, if they go into *France* or *Spain*, is felony without clergy, by 20 *Geo.* 2. *c.* 46. *ſ.* 2, 3.

Commitment for treaſon may be *general*, without expreſſing the particular ſpecies, 1 *Str.* 3.

One apprehended by an officer may ſurrender within the year in order to reverſe an outlawry, 2 *Stra.* 824. See *Miſpriſion.* See farther as to High *Treaſon*, *Black. Com.* 4 *V.* 75, 421. with reſpect to *trials* in high *treaſon*, *Id.* 345, 433. As to *Miſpriſion* of *Treaſon*, *Id.* 120.

High-Treaſon, *Appeal of.* It was antiently permitted, that any ſubject might appeal another ſubject of high *treaſon*, either in the courts of Common law (*Britt. c.* 22.) or in parliament, or (for *treaſons* committed beyond the ſeas) in the court of the high conſtable and marſhal. The cognizance of appeals in the latter ſtill continues in force; and ſo late as 1631 there was a trial by battle awarded in the court of chivalry, on ſuch an appeal of *treaſon*; (By *Donald* Lord *Rea* againſt *David Ramſey. Ruſhw. Vol.* 2. *part* 2. *pag.* 112.) But the firſt was *virtually* aboliſhed by the ſtatutes 5 *Ed.* 3. *c.* 9. *&* 25 *Ed.* 3. *c.* 24. (1 *Hal. P. C.* 349.) and the ſecond (*i. e.* appeals in parliament) *expreſly by ſtat.* 1 *Hen.* 4. *c.* 14. So that the only appeals now in force for things done within the realm, are *appeals* of *Felony* and *Mayhem Black. Com.* 4 *V.* 310.

Petit Treaſon, Is where one, out of malice, takes away the life of a ſubject, to whom he owes ſpecial obedience: And it is called *petit treaſon* in reſpect to *high treaſon*, which is againſt the King. 3 *Inſt.* 20. It may be committed where a *ſervant* kills his *maſter*, a *wife* her *huſband*, or a *ſecular* or *religious perſon* killeth his *prelate* or *ſuperior.* 25 *Ed.* 3. *c.* 2. And aiders, abettors, and procurers, are within the act; but if the killing is upon a ſudden falling out, or *ſe defendendo, &c.* it is not *petit treaſon*; for perſons accuſed of *petit treaſon* ſhall be adjudged Not guilty, or principal and acceſſary, according to the rules of law in other caſes. *H. P. C.* 24.

Petit treaſon is committed againſt the head, though not againſt the ſupreme head; and if a *ſervant* kills his *miſtreſs*, or the *wife* of his *maſter*, ſhe is *maſter* within the letter of the ſtatute, and it is *petit treaſon*: But this ſtatute is ſo ſtrictly conſtrued, that no caſe which cannot be brought within the meaning of the words of it, ſhall be puniſhed by it; and therefore if a ſon kills his father, he ſhall not be tried for *petit treaſon*, except he ſerved his father for wages, *&c.* in which caſe he ſhall be indicted by the name of a ſervant; and yet the offence is more heinous by far in a child than a ſervant. 3 *Inſt.* 20. *H. P. C.* 23. 11 *Rep.* 34. A ſervant procured another to kill his maſter, who killed him in the ſervant's preſence; this was *petit treaſon*, in the ſervant, and murder in the other; if the ſervant had been abſent, the crime would not have been *petit treaſon*, but murder, to which he would have been acceſſary. 3 *Inſt.* 20. *Moor* 91. *v. infra.* Where a ſervant intended to kill his maſter, and laid in wait for that purpoſe while he was his ſervant, but did not do it till he had been a year out of his ſervice; it was adjudged *petit treaſon.* *H. P. C.* 23. A maid ſervant and a ſtranger conſpired to rob the miſtreſs, and in the night the ſervant opened the door and let in the ſtranger into the houſe, who killed her miſtreſs, ſhe lighting him to her bed, but neither ſaying nor doing any thing, only holding the candle; and this was held murder in the ſtranger, and *petit treaſon* in the ſervant. *Dyer* 128.

If a wiſe and a ſtranger kill the huſband, it is *petit treaſon* in the wiſe, and murder in the ſtranger: And ſo it is of an eccleſiaſtick perſon, killing his prelate, *&c.* *Dalt.* 337. If a wiſe and her ſervant conſpire to kill the huſband, and appoint time and place for it, but the ſervant alone in the abſence of the wiſe killeth him; it ſhall be *petit treaſon* in both: And if the wife procure a ſervant to kill the huſband, both are guilty of *petit treaſon*; alſo if a ſtranger procures a wife or ſervant to kill the huſband or maſter, he may be indicted as acceſſary to *petit treaſon*, *Dyer* 128, 332. *Crompt.* 41.

Where the wife, and another who was not her ſervant, conſpired the death of the huſband, the indictment was that the wiſe *proditorie*, and the other perſon *felonice* gave him poiſon, *&c.* whereof he died; and the wiſe being acquitted on the indictment, ſhe brought an action againſt her ſon-in-law for a malicious proſecution, and recovered damages; but afterwards he brought an appeal of murder againſt her, upon which ſhe was convicted in *B. R.* and carried down into the county where the fact was done, and there executed. *Cro. Car.* 331, 382. *Mod. Ca.* 217. 3 *Nelſ. Abr.* 372. On divorce from the huſband for adultery, a woman is a wife within the ſtatute to be guilty of *petit treaſon* againſt her huſband; for they may cohabit again. But where a man marries a ſecond wiſe, the former being alive, ſhe is not within this law. 1 *Hale's Hiſt. P. C.* 381.

If a clergyman be ordained by the biſhop of *A.* and he kills that biſhop, it is *petit treaſon*, for he hath profeſſed canonical obedience to him: And where a parſon hath benefices in two dioceſes, if he kill the biſhop of either it is *petit treaſon*; but in caſe he kill a biſhop out of the dioceſe where he is beneficed, it is only murder. 1 *Hale's Hiſt. P. C.* 381. A parſon kills the metropolitan of his province, this will be *petit treaſon*, though he be not his immediate ſuperior. *Ibid.* In *petit treaſon*, it is ſaid that there muſt be two witneſſes to the indictment; and need not be to the trial of it, for it is not within the ſtatute 7 *W.* 3. *c.* 3. 2 *Hawk. P. C.* 258. All *petit treaſon* implies murder, and it is the higheſt degree thereof: And an attempt by a wife to kill her huſband; piracy by a ſubject, *&c.* were *petit treaſon* by the Common law. 1 *Hawk.* 87, 88.

This kind of *treaſon* gives forfeiture of lands by eſcheat to the lord of the fee, *&c.* and a man is drawn and hanged for it; and a woman burned. 1 *Inſt.* 37.

On the ſubject of *treaſon*, ſee farther, 5 *New. Abr. tit. Treaſon.* See farther too as to *petit treaſon*, Black. Com. 4 V. 75, 203.

Treaſure, (*Theſaurus*) Signifies riches and wealth; and as the *King's treaſure* is the honour and ſafety of the King, for this reaſon mines of gold and ſilver belong to the King.

Treaſurer, (*Theſaurarius*) Is an officer to whom the *treaſure* of another is committed to be kept, and truly diſpoſed of: The chief of theſe with us is the *Lord Treaſurer of England*, who is a lord by his office, and one of the greateſt men of the kingdom. This great officer holds his place *durante bene-placito*, and is inſtituted by the delivery of a white ſtaff to him by the King; and in former times he received his office by delivery of the golden keys of the *treaſury*: He is alſo *treaſurer* of the *Exchequer*, by letters patent. And by 31 *Edw.* 3. *Stat.* 1. *c.* 12. In writs of error the lord chancellor and lord *treaſurer* ſhall cauſe the record and proceſs of the *Exchequer* to be brought before them, who are judges; but the writ is to be directed to the *treaſurer* and barons, who have the keeping of the records. Under the charge and government of the lord *treaſurer*, is all the King's wealth contained in the *Exchequer*; he has the check of all the officers employed in collecting the cuſtoms and royal revenues; all the offices of the cuſtoms in all ports of *England* are in his gift and diſpoſition; eſcheators in every county are nominated by him; and he makes leaſes of all the lands belonging to the crown, *&c.*

But the high and important poſt of lord *treaſurer* has of late years, like ſome other great offices, been eſteemed too great a taſk for one perſon, and been generally executed by commiſſioners. See more belonging to this office, *Stat.* 20. *Edw.* 3. *c.* 6. 31 *H.* 6. *c.* 5. 4 *Ed.* 4. *c.* 1. 17 *Edw.* 4. *c.* 5. 21 *H.* 8. *c.* 20. and 1 *Edw.* 6. *c.* 13. 4 *Inſt.* 104. See farther *Black. Com.* 3 *V.* 44. 56. If any one kill the *treaſurer*, being in his place, doing his office, it is high-treaſon *per Stat.* 25 *Ed.* 3. *c.* 2.

Beſides the *lord treaſurer*, there is a *treaſurer of the King's houſhold*, who is of the privy council, and with the comptroller, *&c.* has great power. Stat. *Weſtm.* 2. *c.* 1. A *treaſurer of the navy* or *war*. 35 Eliz. c. 4. *Treaſurer of the King's chamber*. 33 H. 8. c. 39. A *treaſurer of the wardrobe*. 25 Ed. 3. c. 21. And there are *treaſurers of corporations*, &c.

Treaſurer in Cathedral Churches, An officer whoſe charge was to take care of the veſtments, plate, jewels, relicks, and other *treaſure* belonging to the ſaid churches; and, at the time of the reformation, the office was extinguiſhed as needleſs in moſt *cathedral churches*; but it is ſtill remaining in thoſe of *Saliſbury*, *London*, &c.

Treaſurer of the County, Is he that keeps the *county ſtock*: There are two of them in each county, choſen by the major part of the juſtices of the peace, *&c.* at *Eaſter* ſeſſions; they muſt have 10 *l.* a year in land, or 150 *l.* in perſonal eſtate, and ſhall not continue in their office above a year; and they are to account yearly at *Eaſter* ſeſſions; or within ten days after to their ſucceſſors, under penalties; The county ſtock, of which this officer hath the keeping, is raiſed by rating every pariſh yearly; and is diſpoſed to charitable uſes, for the relief of maimed ſoldiers and mariners, priſoners in the county goals, paying the ſalaries of governors of houſes of correction, and relieving poor alms-houſes, *&c.* And the duty of thoſe *treaſurers*, with the manner of raiſing the ſtock, *&c.* is particularly ſpecified in the ſtatutes of 43 *El. c.* 2 7 *Jac.* 1. *c.* 4. 11 & 12 *W.* 3. *c.* 18. 5 *Ann. c.* 32. 6 *Geo.* 1. *c.* 23.

Treaſure-Trove (*Theſaurus inventus*) Is where any money is found hid in the earth, but not lying upon the ground, and no man knows to whom it belongs; then the property thereof belongs to the King, or the lord of the manor by ſpecial grant or preſcription: But if the owner may any ways be known, it doth not belong to the King or lord of the liberty, but ſuch owner: By the *civil law*, *treaſure-trove* is given to the finder; but the law of *England* gives it to the King by his prerogative, or ſome other claiming under him, *&c* *Bract. lib.* 3. 3 *Inſt.* 132. *Kitch.* 80. Nothing is ſaid to be *treaſure-trove*, but gold and ſilver; and it is every ſubject's part, as ſoon as he has found any *treaſure* in the earth, to make it known to the coroners of the county, *&c.* and concealing treaſure found is puniſhed by fine and impriſonment. *Briton. cap.* 17. *S. P. C.* 25. Coroners ought to enquire of *treaſure-trove*, being certified thereof by the King's bailiffs or others, and of who were the finders, *&c.* 4 *Edw.* 1. *ſt.* 2. And ſeizures of *treaſure-trove* may be enquired of in the ſheriff's turn. 2 *Haw. P. C.* 67. See *Black. Com.* 1 *V.* 295, 296. 4 *V.* 121.

Treaſury, Signifies ſometimes the place where the King's *treaſure* is depoſited; and at other times the office of *treaſurer*. *Cowell.*

Treaties, Leagues and Alliances. It is the King's prerogative to make treaties, leagues, and alliances with foreign ſtates and princes. For it is by the law of nations eſſential to the goodneſs of a league, that it be made by the ſovereign power; and then it is binding upon the whole community: And in *England* the ſovereign power, *quoad hoc*, is veſted in the perſon of the King. Whatever contracts therefore he engages in, no other power in the kingdom can legally delay, reſiſt, or annul. And yet, leſt this plenitude of authority ſhould be abuſed to the detriment of the public, the conſtitution hath here interpoſed a check, by the means of parliamentary impeachment, for the puniſhment of ſuch miniſters as from criminal motives adviſe or conclude any treaty, which ſhall afterwards be judged to derogate from the honour and intereſt of the nation. *Black. Com.* 1 *V.* 257.

Trebuchet, Trebucket, Tribuch, (*Terbichetum,*) A tumbrel or cucking ſtool. Alſo a great engine to caſt ſtones, to batter walls. 3 *Inſt.* 219. See *Caſtigatory. Matt. Paris,* 1246. and *Black. Com.* 4 *V.* 169.

Trees, The proprietors of trees cut down or taken away how recompenced and the offenders peniſhed, 43 *El. c.* 7. 15 *Car.* 2. *c.* 2. *ſ.* 2. The houſes of perſons ſuſpected to have cut or taken them away, to be ſearched, 15 *Car.* 2. *c.* 2. *ſ.* 3. Perſons deſtroying plantations puniſhed as treſpaſſers, 22 & 23 *Car.* 2. *c.* 7. *ſ.* 5. 1 *Geo.* 1. *Stat.* 2. *c.* 48. 6 *Geo.* 1. *c.* 16. 29 *Geo.* 2. *c.* 36. *ſ.* 6. As FELONS, 9 *Geo.* 1. *c.* 22. *ſ.* 1. The neighbouring inhabitants, 1 *Geo.* 1. *Stat.* 2. *c.* 48. 6 *Geo* 1. *c.* 16. And the hundred anſwerable for damages. 9 *Geo.* 1. *c.* 22. *ſ.* 7. 29 *Geo.* 2. *c.* 36. *ſ.* 9. See *Timber*, 20 *Vin. Abr.* 415—420, and *Black. Com.* 4 *V.* 233, 244, 245.

Treet, (*Triticum*) Fine wheat mentioned in the ſtatute 51 *H.* 3.

Tremagium, Tremeſium, Termiſium, The ſeaſon or time of ſowing ſummer corn, being about *March*, the third month, to which the word may allude; and corn ſowed in *March* is by the *French* called *Tremes* and *Tremois*: *Tremeſium* was the ſeaſon for ſummer corn, barley, oats, beans, *&c.* oppoſed to the ſeaſon for winter-corn, wheat, and rye, called, *Hibernagium*, and is thus diſtinguiſhed in old charters. *Cartular. Glaſton. MS.* 91.

Tremellum, A word uſed for granary, in *Mon. Ang. tom.* 1. *pag.* 470.

Trencheator, (From the Fr. *Trancher*, to cut) A carver of meat at a table; as in the patent rolls mention is made of a penſion granted by the King to *A. B. uni* trenchiatorum *noſtrorum*, *&c.*

Trenchia, A trench, or dike newly cut. *Preamb.* 33 *H.* 3.

Trental, (Fr. *Trentale*) An office for the dead, that continued thirty days, or conſiſting of thirty maſſes;

from the Ital. *Trenta*, i. e. *Triginta.* Stat. 1 Edw. 6. c. 14.

Trepget, A great engine to throw ſtones againſt a wall in ſtorming a town. It is mentioned in *Knighton*, *anno* 1382.

Treſayle. The name of a writ, to be ſued on ouſter, by *abatement*, on the death of the grandfather's grandfather—now obſolete.—See *Black. Com.* 4 *V.* 186.

Treſpaſs, *(Tranſgreſſio)* Is any tranſgreſſion of the law under treaſon, felony, or miſpriſion of either: But it is moſt conſtantly uſed for that wrong or damage, which is done by one private man to another; or to the King in his foreſt, *&c.* In which ſignification it is of two ſorts: *Treſpaſs general*, otherwiſe called *treſpaſs vi & armis*, and *treſpaſs ſpecial*, or upon the *caſe*. Bro. Treſpaſs. Bract. lib. 4.

Treſpaſs ſuppoſes a *wrong* to be done with *force*; and *treſpaſſes* againſt the perſon of man are of ſeveral kinds, *viz.* By menacing or threatening to hurt him; aſſaulting or ſetting upon one, to beat him; battery being the actual beating of another; maiming of a perſon ſo that he loſes the uſe of his limbs; by impriſonment, or reſtraining him of his lawful liberty, *&c.* *Treſpaſſes* againſt a man's property may be committed in divers caſes; as againſt his wiſe, children, or ſervants, or his houſe and goods, *&c.* and againſt his land, by carrying away deeds and evidences concerning it, cutting the trees, or ſpoiling the graſs therein, *&c.* *F. N. B.* 86, 87. *Finch* 198, 201. 2 *Rol. Abr.* 545.

Action of *treſpaſs* lies where a man makes an entry on the lands of another, and does damage: And *treſpaſs vi & armis*, may be brought by him that hath the poſſeſſion of goods, or of a houſe, or land, if he be diſturbed in his poſſeſſion; for the diſturbance, beſides the private damage, is alſo a breach of the public peace. 1 *Inſt.* 57. 2 *Rol. Abr.* 572. 2 *Lil. Abr.* 596.

There is this difference between an action of treſpaſs *vi & armis*, and treſpaſs on the caſe: The one lies where the *original act* was a *wrong* in itſelf, and the other where an *injury* is *conſequential* to a *lawful act*; as for inſtance, it is lawful for a man to make a dam on his own ground; but if, by making it, the water overflows his neighbour's land, an *action on the caſe* lies againſt him. *Mod. Caſ. in L. & E.* 275. 1 *Strange* 634. Entry into a houſe againſt a man's will is *treſpaſs*; but a man may lawfully come into the houſe of another perſon, to demand or pay money; and if *treſpaſs* be brought he may plead it ſpecially. 2 *Lil. Abr.* *Treſpaſs* lies generally for breaking a man's cloſe; for chaſing cattle, whereby they die or are injured; taking away pales, and breaking of fences, or of doors or windows of a houſe; for driving a cart and horſes over the ground of another, where there is no way for it: Fiſhing in another perſon's pond, and for breaking the pond; for eating the corn of another with cattle, and digging in any man's coal mines, and carrying away coals; for taking away ſo much of the plaintiff's money; tearing a bond, *&c.* 1 *Bro.* 338. 1 *Saund.* 220. 2 *Cro.* 463. *Latch* 144. And where a perſon has only the crop and veſture, or paſture of land, he may maintain *treſpaſs.* Moor 456.

Treſpaſs lies for an accidental hurt, as if whilſt a man is uncocking a gun it goes off and wounds another. 1 *Strange* 596. But a man ſhall not be anſwerable criminally, by way of indictment, for a caſual damage done to another. 1 *Strange* 190. *Treſpaſs* lies for ſetting the end of a bridge on another man's ſoil, though it be a highway. 2 *Strange* 1004. And for erecting a ſtall in a market, without agreeing for ſtallage. *Ibid.* 1238. And againſt an officer of the cuſtoms for a wrongful ſeizure, though upon probable cauſe. *Ibid.* 820. Laying hold of a horſe is no *treſpaſs*, without particular damage. *Ibid.* 872.

In *treſpaſs* for taking goods, the plaintiff muſt alledge a property in himſelf; becauſe in ſuch caſe there may be two intendments, one that they were the defendant's own goods, and then the taking is lawful; and the other that they were the goods of the plaintiff, when the taking will be wrongful; but wherever the conſtruction is indifferent, it ſhall always be moſt ſtrong againſt the plaintiff. 2 *Lev.* 20. *Yelv.* 36.

If the defendant makes the place where the *treſpaſs* was done material by his plea, he muſt ſhew it with great certainty; but if it be a *treſpaſs quare clauſum fregit* in *B.* and the defendant pleads that the place where is his freehold, which is the common bar in this caſe, ſo juſtifies as in his freehold, *&c.* if iſſue be taken thereon, the defendant may give in evidence any cloſe in which he hath a freehold; though if the plaintiff had replied and given the cloſe a name, defendant muſt have a freehold in that very cloſe. 2 *Salk.* 453. *Carthew's Rep.* 176.

A plaintiff may make a *new aſſignment* of the place where, *&c.* and then the defendant may vary from his firſt juſtification: As for inſtance; an action of *treſpaſs* aſſigned to be done generally in *D.* the defendant juſtified the taking damage feaſant; and the plaintiff in his replication made a new aſſignment, upon which the defendant juſtified for a heriot; and it was adjudged good. *Moor* 540. 3 *Nelſ. Abr.* 381. The defendant in his plea may put the plaintiff to the new aſſignment; and every new aſſignment is a new declaration, to which the defendant is to give a new anſwer, and he may not traverſe it, but muſt either plead or demur; yet where *treſpaſſes* are alledged to be done in ſeveral places, and the defendant pleads to ſome, and agrees to the places wherein the plaintiff alledged the *treſpaſſes* to be done, there the plaintiff may anſwer that part of the plea by a traverſe, and ſhew a new aſſignment as to the reſt. *Cro. Eliz.* 492, 812.

One action of *treſpaſs* may be brought for a *treſpaſs* committed in lands which lie in ſeveral towns or vills, if they are in one and the ſame county; for elſe they cannot receive one trial, as they are local cauſes of action triable in the county where done. 2 *Lil. Abr.* 595. A man may have one action of *treſpaſs* for ſeveral *treſpaſſes*: And if divers actions of *treſpaſs* are brought for one and the ſame cauſe, the defendant may get them joined into one, if brought to vex him; but the *treſpaſſes* muſt not be of ſeveral natures, which may not be tried in one action. *Mich.* 24 *Car. B. R.* All perſons that are acceſſary to any *treſpaſs*, may be charged as principals; and *treſpaſſes* continued may be laid with a *continuando diverſis diebus & vicibus*; But things muſt lie in continuance, and not terminate in themſelves, or it will not be good: And where a *treſpaſs* is alledged with a continuance, that cannot be continued, the evidence ought only to be to the firſt act. 2 *Salk.* 638, 639.

The beſt way to declare for ſuch *treſpaſſes* which lie in continuance, is for the plaintiff to ſet forth in his declaration that the defendant, between ſuch a day and ſuch a day, cut ſeveral trees, *&c.* and not lay a *continuando tranſgreſſionis* from ſuch a day to ſuch a day; and upon ſuch declaration, the plaintiff may give in evidence a cutting on any day within thoſe days. 3 *Salk.* 360. When a *treſpaſs* is done before the day mentioned in the declaration, it is good enough; becauſe, being once a *treſpaſs*, it is always a *treſpaſs*. *Cro. Eliz.* 32.

The day is not material, whether laid before or after the time when the *treſpaſs* was committed, if it is laid before the action brought.

In all *treſpaſſes* there ought to be a voluntary act, and alſo a damage; and in detinue and trover, where the thing itſelf is in demand, it ſhould be particularly named; if treſpaſs be laid in a declaration for the taking of goods, without expreſſing the quantity and quality of them, or the value, *&c.* it is bad upon a general demurrer; tho', as to the omiſſion of the value, it hath been held to be good after verdict. *Latch.* 13. *Style* 170. 230. *Lutw.* 1384. *Sid.* 39.

If the defendant in *treſpaſs quare clauſum fregit*, diſclaim any title to the land, and the *treſpaſs* is *involuntary* or by *negligence*, he may be admitted to plead a *diſclaimer and tender of amends* before the action brought, *&c.* And if it be found for the defendant, the plaintiff ſhall be barred. 21 *Jac. c.* 16.

Where a defendant juſtifies for a *treſpaſs*, he muſt confeſs it, or it will be ill; And the defendant ſhall never be excuſed in *treſpaſs*, unleſs upon an inevitable neceſſity, *&c.* 3 *Nelſ. Abr.* 379. In a *treſpaſs quare clauſum fregit*, where there is only a force in law: as if one enters into the ground of another, the party muſt be required to go out before hands may be laid on him; for every impoſition of hands is an aſſault which cannot be juſtified upon the account of a force or breaking a cloſe in law, without a requeſt to be gone; but it is otherwiſe where there is an actual force. 2 *Salk.* 644.

For any the leaſt beating of a man's wife the huſband and wife together may bring action of *treſpaſs*: And if it be ſuch a beating as he thereby loſes her company, or ſervice, he alone may have this action. 3 *Rep.* 113. 10 *Rep.* 130.

But he muſt declare *per quod ſervitium amiſit*, *i. e.* that he thereby loſt her ſervice, or company, *&c.*

Treſpaſs for breaking the plaintiff's cloſe, and beating his ſervant; the plaintiff had a verdict, but could never get judgment, becauſe he did not declare *per quod ſervitium amiſit*: The ſervant himſelf may have an action of *treſpaſs* for the beating, tho' his maſter cannot, unleſs it be ſo great that he loſes his ſervice; without which, it is no damage to the maſter. 5 *Rep.* 10. 9 *Rep.* 111. Action of *treſpaſs* may be brought for taking away a man's ſervant; but not for the taking away of a man generally. 5 *Mod.* 191.

Treſpaſs quod cepit & abduxit lies not for the father for taking and carrying away any of his children, except for taking of a ſon or daughter who is heir. *Cro. Eliz.* 769. A man committed adultery with a woman in *Southwark*, where they both dwelt, and the woman went to *Ratcliff* in *Middleſex*, from whence the man brought her to *Richmond* in *Surrey*; the huſband brought an action of *treſpaſs de uxore rapta & abducta cum bonis viri*; and it was a doubt whether, upon the matter given in evidence, the defendant could be found guilty in *London*; but the jury found him guilty generally, and gave the plaintiff 300*l.* damages. *Dyer* 256.

Executors may bring *treſpaſs* for goods taken out of their poſſeſſion, or for goods and chattels taken in the life of the teſtator; alſo adminiſtrators ſhall have it for goods of inteſtates; and an ordinary may bring action of *treſpaſs* for goods in his own poſſeſſion to adminiſter as ordinary, *&c.* If a man voluntarily take away my goods or cattle, and keep them till I pay him money, on pretence that they are his heriot, *&c.* when they are not ſo, I may have action of *treſpaſs*. *Bro. Treſ.* 354. And if the ſheriff have a writ againſt the lands and goods of one man, and he by miſtake execute it upon my lands or goods; this action lies againſt him, and it will be no excuſe that the plaintiff or any other informed him they were the goods, *&c.* of the defendant. *Dyer* 295. *Keilw.* 119, 129.

He that is poſſeſſed of lands, though he hath no good title, ſhall have this action for a treſpaſs againſt one who hath no right to the lands; but not againſt him that hath right: And yet a man, having right or title to land only by deſcent, leaſe, *&c.* may not bring *treſpaſs*, before entry made thereon. *Plowd.* 431, 546. *Keilw.* 163. The leſſee for years, after his leaſe is expired, may have action for a *treſpaſs* on the land before his leaſe was ended. *Bro. Treſp* 456. An action of *treſpaſs* was brought by the lord of a manor, for *treſpaſs* done in the highway, by a tenant's beaſts breaking out of his cloſe into the waſte; and it was adjudged it would not lie. 1 *Bulſt.* 157. The reaſon of this determination ſeems to be, that the *locus* was a *highway* and the cattle had not eaten therein; but that treſpaſs by the lord of a manor, as owner of the ſoil, will lie, is indiſputable. See 3 *Bur.* 1824.

If *A.* is bound to fence his cloſe againſt *B.* and he againſt *C.* a neighbour; and neither of them incloſe againſt one another, ſo that the beaſts of *C.* for want of incloſure go out of the ground to that of *B.* and thence to *A.'s* ground: In this caſe *A.* ſhall have *treſpaſs* againſt *C.* for he is bound only to fence againſt *B.* and every one ought to keep his cattle as well in open grounds, not incloſed, as in ſeveral grounds where there is incloſure. *Dyer* 366. *Jenk. Cent.* 161.

One drives my cattle into another man's land, I may go on the land and fetch them out; yet by this I am a *treſpaſſer* to the owner of the ground, and he may have his action againſt me for it, and I muſt take my counter-remedy againſt him that drove them in. 21 *H.* 7. 27. 1 *Rep.* 54. If another man have a horſe, or other goods in my houſe or ground, and he enter to take it away, without my leave, action of *treſpaſs* lies againſt him: But if I drive the cattle or carry the goods of another into my land, he may come upon the land and take them, and no action lieth. 4 *Shep. Abr.* 135, 136.

If a man hunt my beaſts, in ground belonging to me, or ſome other perſon; he is liable to this action: Though the owner of the land wherein cattle are doing this *treſpaſs*, may gently by himſelf, or his dogs, chaſe them out, and juſtify the ſame. *Hil.* 16 *Jac. B. R. Bro. Treſp.* 421. 8 *Rep.* 67. If any perſon ſhall maliciouſly maim or hurt any cattle, or deſtroy any plantation of trees, or throw down incloſures, he ſhall forfeit treble damages in action of *treſpaſs*. 22 & 23 Car. 2. cap. 7. But in action of *treſpaſs*, if the jury give not 40*s.* damages, the plaintiff ſhall have no more coſts than damages, except the freehold or title of land come in queſtion, or ſomething of the plaintiff's be carried away, *&c.* *Stat.* 23 *Car.* 2. *cap.* 9. Though the plaintiff, where the *treſpaſs* is wilful and malicious, upon certificate thereof by the judge on the back of the record, ſhall recover damages and full coſts, by 8 & 9 *W.* 3. *c.* 11.

In *treſpaſs* for putting diſeaſed cattle into a cloſe, the plaintiff ſhall have full coſts, though the damages found be under 40*s.* 1 *Strange* 192. And in *treſpaſs* for conſuming proviſions. 2 *Strange* 1130. And on an iſſue *extra viam*. Ibid. 1168. And damages being ſmall, under 40*s.* in *treſpaſs*, on motion full coſts have been allowed; where entry was made on the freehold, *&c.* *Skin.* 100. *Carthew* 225.

A court which is not a court of record, cannot hold plea of *treſpaſs vi & armis*. F. N. B. 85. *Writs of treſpaſs* lie either to the ſheriff to determine the matter in the county court, or returnable in *B. R.* or *C. B.* F. N. B. 86, 190. *Treſpaſs quare Vi & Armis clauſum fregit*, was brought, wherein the plaintiff laid damage to the value of 20*s.* and the defendant demurred for that cauſe, alledging that *B. R.* could have no cogniſance at Common law, or by the ſtatute of *Glouceſter*, to hold plea in an action where the damages are under 40*s.* But it was adjudged, that *treſpaſs quare vi & armis* will lie in this court, be the damages what they will. 3 *Mod.* 275.

At Common law in *Treſpaſs vi & armis*, if the defendant was convicted, he was to be fined and impriſoned; but in other *treſpaſſes* only amerced. *Jenk. Cent.* 185. In action of *treſpaſs* againſt two perſons for carrying away goods, *&c.* one lets judgment go by default, and the other juſtifies under a licence from the plaintiff, and has a verdict; this goes to the whole, and judgment ſhall be arreſted as to the other defendant. 2 *Ld. Raym.* 1372, 1374. The proceſs in writ of *treſpaſs* is an attachment and *diſtringas*, and upon a return of a *nihil* by the ſheriff, a *capias*, *alias*, and *pluries* ſhall iſſue; and then exigent and proceſs of outlawry, *&c.* *New Nat. Br.* 193, 203. See *Action on the Caſe*, and *Traverſe*.

Of the difference between a poſitive abuſe of an authority or licence in fact, and of an authority or licence in law.

The reaſon of the difference, between the caſe of a poſitive abuſe of an authority or licence *in fact*, and that of a poſitive abuſe of an authority or licence *in law*, is in one book ſaid to be, that the abuſe in the latter caſe is deemed a treſpaſs with force *ab initio*: Becauſe the law intends from the ſubſequent tortious act, that there was from the beginning a deſign to be guilty thereof. 8 *Rep.* 146. *The ſix carpenters caſe.*

But this reaſon, which equally applies to both caſes, is by no means concluſive: For it may be as well intended in the former caſe, from the ſubſequent tortious act, that there was from the beginning a deſign of being guilty thereof. Perhaps the difference between the two caſes may be better accounted for in the following manner. In the one, where the law has given an authority or licence, it ſeems reaſonable, that the ſame law ſhould, in order to ſecure the perſons, who are without their direct aſſent made the objects thereof, from all poſitive abuſes of ſuch authority or licence, whenever either of theſe is poſitively abuſed, make the ſame void from the beginning; and leave the abuſer thereof in the ſame ſituation, as if he had acted without any authority or licence. And this agrees perfectly with the maxim *Actus legis nemini facit injuriam.* But in the other caſe where a man, who was under no neceſſity of giving an authority or licence to any perſon, has thought proper to give one of theſe to a certain perſon, who is afterwards guilty of a poſitive abuſe thereof, there is no reaſon that the law ſhould interpoſe; and make all that has been done, under the authority or licence by him ſo voluntarily given, void from the beginning: Becauſe it was his own folly to place a confidence in a man, who was not fit to be truſted. 5 *New Abr.* 156.

The interpoſition of the law in ſuch caſe would, moreover, be quite contrary to the maxim, *Vigilantibus non dormientibus ſervit lex.* 5 New Abr. 156. *For more learning on this ſubject, ſee* 20 Vin. Abr. New. Abr. *tit.* Treſpaſs. And *Black. Com.* 3 *V.* 208, 209. As to the *Action* of Treſpaſs, *vi et armis*, *Id.* 3, 120, 121, 123. As to *Coſts* in Treſpaſs, *Id.* 401. And as to *Action of Treſpaſs upon the Caſe*, *Id.* 122. See alſo *Action on the Caſe.*

Treſpaſſants, (Fr.) Is uſed by *Britton*, *cap.* 29. for paſſengers.

Treſpaſſer, Is one who commits a *treſpaſs*; and tho' the law allows a man to enter a tavern, a landlord to diſtrain on land, *&c.* yet if he doth abuſe it by committing a *treſpaſs*, the law will adjudge him a *treſpaſſer ab initio.* 8 Rep. 146. But where perſons for any irregularity in taking a diſtreſs, *&c.* ſhall not be *treſpaſſers ab initio*; ſo as they make ſatisfaction for any ſpecial damage, *vide* Stat. 11 *Geo.* 2. *c.* 19. tit. *Diſtreſs.* And *Black. Com.* 3 *V.* 15.

Treſtornare, To turn or divert another way; as *treſtornare viam*, to turn the road. *Cowell.* Chart. King *John.*

Treyts, (*Fr.*) Signifies, taken out or withdrawn, and is applied to a juror removed or diſcharged. *F. N. B.* 159.

Trial, *(Triatio)* Is the examination of a cauſe, civil or criminal, before a judge who has juriſdiction of it, according to the laws of the land; it is the *trial* and examination of the point in iſſue, and of the queſtion between the parties, whereupon judgment may be given. 1 *Inſt.* 124. *Finch.* 36.

Alſo it is taken for the manner and order of proceeding, in the hearing and determining of matters in difference, being diverſly uſed, according to the nature of the thing to be *tried.* *Ibid.*

And there are many kinds of *trials*; as of matters of *fact*, which ſhall be *tried* by a *jury*; matters of *law* that are *triable* by the *court*; and matters of *record* tried by the *records* themſelves (as whether the defendant be an attorney, or not. 1 *Strange* 76, 532.)

Alſo ſome things ſhall be *tried* by the *biſhop's certificate*; and ſome by *inſpection*, *&c.* 2 *Lill. Abr.* 602.

A lord of parliament upon an indictment of treaſon or felony ſhall be tried without any oath by his peers upon their honour and allegiance; but in appeal at the ſuit of any ſubject, they ſhall be tried *per bonos & legales homines.* If ancient demeſne be pleaded of a manor, and denied, this ſhall be *tried* by the record of *domeſday.* Baſtardy, excommengement, lawfulneſs of marriage, and other eccleſiaſtical matters, ſhall be tried by the biſhop's certificate. Of the ancient manner of *trial* by *combat* and great *aſſize*, ſee *Combat* and *Aſſize.* See alſo *Staundf. Pl. Cor. cap.* 1, 2, 3. and tit. *Twelve men.*

Nothing that is *triable* by an iſſue, can be directed to be *tried* otherwiſe: Irregularities in ſuing out a judgment or execution, are *tried* by reference, *&c.* But other matters ſubſequent to the judgment, by an *audita querela.* Comber. 8, 14.

In criminal caſes, it is uſual to aſk the criminal how he will be *tried*; which was formerly a very ſignificant queſtion, though it is not ſo now, becauſe anciently there were *trials by battle*, by *ordeal*, and by *jury*; and when the offender anſwered the *queſtion*, *By God and his country*, it ſhewed that he made choice to be tried by a *jury:* But now there is no other way of *trial* of criminals. *Blount's Dict.*

It is ordained by *Magna Charta*, that no perſon ſhall be condemned on any accuſation without *trial* by lawful judgment of his peers, or by the law. 9 *Hen.* 3. *cap.* 29. And the moſt general rule has been, that every *trial* ſhall be out of that town, precinct, *&c.* within which the matter of fact *triable* is alledged, or the neareſt thereunto, for the better cogniſance of the fact committed; and not to have things *tried* in foreign counties, where the jury are ſtrangers to the parties, to the witneſſes, and the point in iſſue. 1 *Inſt.* 125. But when an indictment is found againſt a perſon in the proper county, it may be heard and determined in another county by ſpecial commiſſion, *etc.* 3 *Inſt.* 27.

Appeals of things done out of the realm ſhall be tried by the conſtable and marſhal of *England* for the time being; 1 *H.* 4. *c.* 14. If any man die here in one county, of a wound received in another; he ſhall be tried by a jury of the county where his death was; In appeal in ſuch caſe, it is to be there brought, and *trial* be by both counties. *Stat.* 3 *Ed.* 6. *cap.* 24. 3 *H.* 7. *c.* 12. And if one be wounded on the ſea, or out of *England*, and die of the ſame here; or ſhall be wounded in *England*, and die on the ſea, or at any place abroad; an indictment may be found by jurors of the county in which the death or ſtroke, *&c.* happened, and the judges proceed in the *trial* againſt the offenders, as if the felony were there done, *&c.* by *Stat.* 2 *Geo.* 2. *c.* 21.

An iſſue being joined in *B. R.* of a matter *triable* in *Ireland*; this ſhall be ſent into *Ireland* to be *tried*, and after trial be remanded: *Qu* Though if an iſſue be thus joined of a thing in *Wales*, the record ſhall not be ſent there to be *tried*; but it ſhall be *tried* in the next county of *England* adjoining thereto. 1 *Danv. Abr.* 248.

If a foreign iſſue which is local, ſhould happen, it may be tried where the action is laid; and for that purpoſe the plaintiff may enter a ſuggeſtion on the roll, that ſuch a place in ſuch a county is next adjacent; and it may be *tried* in *B. R.* by a jury from that place, according to the laws of that country, which may be given in evidence: Adjudged in action of *debt* for rent, upon a leaſe made in *London* of lands in *Jamaica*; and it was held, that where the leſſor declares upon the *privity of eſtate*, the action muſt be brought where the lands are; but it is otherwiſe when the action is founded on the *privity of contract*, the one being local, and the other tranſitory, as in this caſe. 2 *Salk.* 651.

Seiſin of a houſe in the *Eaſt-Indies* is not *triable* here. 1 *Strange* 646. In covenant the action was laid in *London*, and iſſue joined upon a feoffment in *Oxfordſhire*, of lands in that county, and the cauſe was *tried* in *London*; after verdict it was objected that the *trial* ought to have been in *Oxfordſhire*, but reſolved that by the *Stat.* 17 *Car.* 2. it was well *tried* in the county where the action was brought: But though the words of that ſtatute are, that it ſhall be good, if *tried* by the county where the action is laid, it hath been adjudged, that muſt be underſtood of a *trial* by the county where the matter in iſſue doth ariſe; for otherwiſe it would deſtroy the whole law concerning *trials* by juries. 3 *Salk.* 364.

In ejectment the *venue* ought to come always from the place where the lands lie, and not from the place where the demiſe is laid to be made: But that fault is helped after a verdict. *Mod. Ca.* 265. And by the ſtatute 4 & 5 *Ann. c.* 16. the *venire* for the *trial* of any iſſue in a civil cauſe, ſhall be awarded of the body of the county where the iſſue is. And alſo in any action, or information upon a penal ſtatute. 24 *Geo.* 2. *c.* 18.

On civil cauſes grown to iſſue, if they are to be *tried* in *London* or *Middleſex*, and the defendant live not forty miles from *London*, *eight* days notice of *trial* is to be given; and if the defendant lives that diſtance or further, he muſt have *fourteen* days notice from the plaintiff, before he *tries* his cauſe; but by *ſtat.* 14 *Geo.* 2. *c.* 17. there muſt be *ten days* at leaſt, and the like notice at the aſſiſes, let the defendant live where he will, except on an old iſſue; where a cauſe hath remained four terms without proſecution; in which caſe a term's notice is to be given: Upon due notice of *trial*, the defendant muſt generally go to *trial*, or judgment will paſs againſt him by default; and where the plaintiff proceeds not to *trial* after notice, and there is no countermand, the defendant ſhall have coſts for attendance, &c. or the defendant may give a rule to try the cauſe by *proviſo*, and on notice given the plaintiff, may bring it to *trial*, that he may diſcharge himſelf of the action, and herein he may recover coſts. 2 *Lil. Abr.* 609, 613. 23 *Hen.* 8. *cap.* 15.

A late ſtatute ordains, that where any iſſue is joined in the courts at *Weſtminſter*, &c. if the plaintiff neglects bringing it to be *tried*, according to the uſual practice, the judges on motion made, and due notice given, ſhall paſs the like judgment for the defendant in the action, as in caſe of a nonſuit, and award him coſts; unleſs a judge find cauſe to allow further time for the *trial*: And no cauſe ſhall be tried before any juſtice of aſſiſe or *niſi prius*, or at the ſittings in *London* or *Weſtminſter*, without *ten* days notice at leaſt, if the defendant lives *above forty miles* from the ſaid cities; and when any party gives ſuch notice of *trial*, if he does not countermand it in writing ſix days before, he ſhall pay coſts to the defendant, &c. *Stat.* 14 *Geo.* 2. *c.* 17.

If a cauſe to be *tried*, be not entered in the judge's book, two days before the time of *trial*, a *ne recipiatur* may be entered, that it be not ſet down to be *tried* that time. *Hil.* 22 *Car. B. R.*

To *proceed to trial*, in the *courts at Weſtminſter*, when the declaration is drawn, and the appearance of the defendant made, it muſt be delivered to the defendant's attorney; then it is to be entered upon the roll and docquetted; then a rule muſt be given for the defendant to plead by ſuch a day, or the plaintiff to have judgment: The defendant having pleaded, a copy of the iſſue is to be made out and delivered to the defendant's attorney, giving him notice of *trial*; in order to which, the *venire facias* muſt be had and returned by the ſheriff, and then is ſued out the *habeas corpora*, to bring in the jury, the record is made up, and the parties go to *trial*: But if the defendant neglects to plead, and lets judgment go by default, a writ of enquiry of damages, unleſs in debt, is to be awarded, of the execution whereof the defendant's attorney ſhall have notice; which being executed, and the damage inſerted in a ſchedule annexed to the writ returned by the ſheriff, a rule is to be given upon it, and coſts are taxed; laſtly, it is carried to the clerk of the judgments, who on giving him the number, roll, and term, when the judgment was entered, he will make out a writ of execution, either *a capias ad ſatisfaciend.* or *fieri facias*, &c. for the damages and coſts, &c. *Practiſ. Attorn. Edit.* 1. *p.* 99. The attornies now make out thoſe proceſſes, and get them ſigned, &c.

At the *aſſiſes*, when a cauſe comes on to *trial*, firſt a *diſtringas* of the jury is to be returned by the ſheriff, and then the record muſt be delivered to the judge's marſhal; and the record being put into the hands of the marſhal, briefs prepared for the counſel, and all parties ready, the marſhal delivers the record to the judge, and the crier calls over the jury: The jury are now to be ballotted and ſworn, after which, the junior counſel for the plaintiff, (if the iſſue lies on him, otherwiſe the defendant's counſel) opens the pleadings, the ſenior counſel ſtates the caſe. The evidence is given. If plaintiff begins, the defendant's counſel ſtates his caſe, and if he has any evidence to produce, the ſame is given; the plaintiff's counſel then replies, making obſervations on the defendant's evidence, &c. The judge then ſums up the whole of the evidence, and gives it in charge to the jury to act impartially. If the jury cannot immediately agree on their verdict, and are deſirous of going out of court, to conſult privately among themſelves, a bailiff being ſworn to keep them without meat, drink, &c. till they are agreed, they depart from the bar; and when they are all agreed, they return to give in their verdict: Then the plaintiff is called, and if he do not appear, (or his attorney or counſel for him) a nonſuit ſhall be recorded; but if he appears, the clerk aſks the jury who they find for, and what damages, if they find for the plaintiff. The jury naming the ſum, and what coſts, the aſſociate enters it on the back of the panel, and repeats it to the jury, which finiſhes the *trial*: And after the *trial* is over, the aſſociate delivers to the party recovering the record with the *diſtringas*, and the names of the jury annexed, on the back of which he indorſes the ſubſtance of the verdict, and the coſts given by the jury; and then upon the back of the record is ingroſſed the *poſtea*, which is delivered to the clerk of the rules, and he makes out a four days rule for judgment; and when the rule is out, if judgment be not arreſted, further coſts are taxed, and the judgment is fit to be entered.

But in *trials* at the aſſiſes, the record and *diſtringas* are uſually kept by the aſſociate till the next term, when he is to be called upon for the *poſtea*, and you proceed to have it marked, make out a rule, and ſign judgment; and judgment being entered, execution is thereupon awarded, and writs of *Ca. ſa. Fieri fac. Elegit*, &c.

If a *trial* be had at the ſittings after the term, or the aſſiſes, judgment cannot be given thereon, till the 4th day of the next term. The 4th day excluſive, and *Sunday* not to be reckoned one of the days.

When a defendant is not prepared to *try* his cauſe, upon petition and affidavit of the reaſons, the judge will order the cauſe to be ſtayed till another day the ſame aſſiſes; or in *London* till the next term, on payment of coſts: And in caſe, at a *trial*, the court ſees that one of the parties is ſurpriſed, through ſome caſualty, and not by any fault of his own, they may, in their diſcretion, put off the *trial* to another time, until ſuch party is better prepared. 2 *Lil.* 609, 610.

If the matters conteſted are of great value, or the title in queſtion is difficult or intricate, on motion the judges will order a trial at bar, for the better ſatisfaction of the parties; though it is not uſual to grant *trials* at bar the ſame term moved for: And theſe trials are appointed by the ſtatute of *Weſtm.* 2. where the cauſe requires *magnam examinationem*; alſo officers of the court, and barriſters at law, may inſiſt upon a *trial* at bar; after which a new *trial* is not to be granted. 2 *Salk.* 648, 651, 653. The court will grant a *trial* at bar for the importance of the conſequence. 1 *Strange* 52. And where the whole eſtate is of value, though againſt ſeveral defendants. *Ibid.* 479. And in caſe of a great miſdemeanor. *Ibid.* 644. No rule for a trial at bar before iſſue is joined. *Ibid.* 696. The crown is not intitled to a *trial* at bar of courſe where there is a proſecutor. 2 *Strange* 816. No *trial* at bar can be granted in a cauſe ariſing in *London*, for the citizens are not to be brought out of the city. *Ibid.* 856. It hath been laid down as a rule, that, after a *trial* at bar, no new *trial* ſhall be had in any caſe, except it appear that there hath been ſome corruption in the jury. *Carthew* 507. Sed vide 1 *Strange* 584. 2 *Strange* 1105 *contra*.

New *trials* may be granted generally in ſeveral caſes, *viz.* where the defendant had not ſufficient notice given him of the former *trial*; if exceſſive damages are given; a verdict is againſt evidence; there was any fraud, &c. But a new *trial* ought not to be allowed for want of evidence at the former *trial*, which the party might then have produced: And it hath been denied, where the defendant forgot to bring a ſettlement at the *trial*; ſo likewiſe where very large damages were given, on the report and opinion of the judge who *tried* the cauſe, that he believed the jury gave a verdict according to their conſciences: And no new *trial* ſhall be granted for too ſmall damages; unleſs where action of covenant is brought for a ſum certain, and the jury give damages under the ſame, &c.

The reaſon of granting new *trials* upon verdicts againſt evidence at the aſſiſes is, becauſe the *trials* are ſubordinate to the courts; and ſuch new *trials* have been anciently granted, as appears from this; that it is a good challenge to a juryman to ſay that he hath been a juror before in the ſame cauſe.

Adjudged that a new *trial* cannot be granted in an inferior court. 2 *Salk.* 647, 648, 649, 650. 3 *Nelſ. Abr.* 414, 417. 1 *Strange* 113. New *trial* not granted after a verdict for the defendant in a *quo warranto*. 1 Strange 101. Or in a *qui tam*. 2 Strange 899, 1238. Nor where the party might have had evidence on the firſt trial. 1 *Strange* 691. New *trial* cannot be had a ſecond time for exceſſive damages. *Ibid.* 692. Nor where one of the defendants was rightly acquitted. 2 *Strange* 814. Defendant convicted of forgery muſt appear perſonally when he moves for a new *trial*. Ibid. 968. No new trial for ſmallneſs of damages. *Ibid.* 1051. Nor where there is evidence on both ſides. *Ibid.* 1142. A new *trial* denied, where the jury find a matter left to them againſt the ſtrength of evidence. *Ibid.* 1105. After a motion in arreſt of judgment, the party ſhall not move for a new *trial*; but after motion for a new *trial* he may move in arreſt of judgment. 2 *Salk.* 647. A new *trial* is never granted in criminal caſes, where the defendant is acquitted, if ſome fraud or trick be not proved in the caſe. *Ibid.* But, on conviction, a new *trial* may be granted upon cauſe; ſo if a *trial* on indictment be by a wrong *venue*; and in caſes where appeal may be brought. 2 *Lil.* 606, 613.

If the iſſue *tried* in any cauſe is not joined, it is not a good *trial*; except it be an iſſue in *Chancery* in the petit bag ſide, which is to be ſent from thence to be tried in *B. R. Hil.* 22 *Car.* It is a *miſ-trial* for a thing to be *tried* before a judge, who hath intereſt in the thing in queſtion; and if a cauſe is *tried* by a jury out of a wrong county, or there be any error in the proceſs againſt the jurors, or it is directed to a wrong officer, *&c.* it is a *miſ-trial*; likewiſe where matter of record is *tried* by a jury, it will be a *miſ-trial*; but if the matter of record be mixed with matter of fact, *trial* by jury is good. *Hob.* 124. A *miſ-trial* is helped by the ſtatute of *jeofails*. See *Iſſue*, *Niſi prius*, *&c.* See farther as to *trial*. Black. Com. 3 V. 330. 4 V. 336, 407. and with reſpect to *new trial*, Id. 3 V. 387. 4 V. 355, 431.

Trials in criminal caſes. Firſt the bill of indictment againſt an offender is prepared; and the party proſecutor and others bound over to give evidence, being ordered to attend, the grand jury conſider of the bill; and on examination of the witneſſes, either they find the bill of indictment, or bring it in *ignoramus*: If the jury find the bill, the priſoner is brought to the bar of the court; and the crier, or clerk of the arraigns, ſays to him, *A. B.* hold up thy hand, Thou ſtandeſt indicted by the name of *A. B.* for ſuch a felony, *&c.* (reciting the crime laid in the indictment) How ſayeſt thou, art thou Guilty of this felony, *&c.* whereof thou ſtandeſt indicted, or Not Guilty? To which the priſoner anſwers, Not Guilty; whereupon the clerk of the peace ſays, *Culprit*, How wilt thou be tried? And the offender anſwers by God and my country: when the priſoner has pleaded Not Guilty, (which is the common plea) it is to be recorded; and then the petty jury are called upon the panel, and a full jury appearing, the priſoner is told they are to paſs upon his life and death, and that he may challenge any of them before they are ſworn; for not being indifferent, but partial, or other defect, *&c.* Then the jury are ſworn well and truly to try the priſoner, and to bring in a true verdict, this being done, the indictment is recited, and the jury are acquainted with the particular crimes of which the priſoner ſtands indicted; and the clerk of the peace ſays, To which indictment he hath pleaded Not Guilty, and for his *trial* hath put himſelf upon God and his country, which country you are: ſo that you (the jury) are to inquire whether he be guilty of the felony, *&c.* whereof he ſtands indicted, or not? If you find him Guilty, you are to make enquiry into what goods and chattels he had at the time that the ſaid felony, *&c.* was committed, or at any time ſince: And if you find him not Guilty, you ſhall inquire whether he did fly for it; and if he fled for it, what goods, *&c.* he had at the time of his flight; but if you find him Not Guilty, and that he did not fly, you ſhall then ſay no more. Then the clerk of the peace ſwears the witneſſes to give true evidence; to ſpeak the whole truth, and nothing but the truth; and when the evidence is given to the jury concerning the priſoner, the jury (if they go out of the court to conſider of their verdict) are to be kept in a room, by a ſworn bailiff appointed, without meat, drink, fire or candle; and without any perſons ſpeaking to them, till they bring in their verdict. All things being given in charge, the jury go to their room, and conſider of the matter; when they are all agreed, and returned within or near the bar, the priſoner is brought forth, and the jury are called over; who all appearing, and the priſoner being ſet to the bar, the clerk of the peace ſays to them, Look upon the priſoner, you gentlemen of the jury; How ſay you, Is *A. B.* Guilty of the felony, *&c.* of which he ſtands indicted, or Not guilty? If the jury ſay Not guilty, it is recorded, and the priſoner taken away; if they ſay Guilty, the clerk of the peace, ſays Gentlemen of the jury, hearken to your verdict as the court hath recorded it; You ſay *A. B.* is guilty of the felony, *&c.* whereof he ſtands indicted: To which they anſwer Yes: Then proclamation is made for all perſons to keep ſilence, on which the priſoner is ſet to the bar, and ſentence paſſed upon him; after which an order or warrant is made for his execution.

This is the manner of proceeding againſt common criminals; the court is to be of counſel with the priſoner, and ought to adviſe him for his good, not taking advantage too ſtrictly againſt him. *Mod. Juſt. Edit.* 3. *pag.* 402, 403. 2 *Hawk. P. C.* 9 *Co. Rep.* 9. And a great author obſerves, that through the punctuality required by law in the *trial* of cauſes, there is as much as art and conſcience can contrive againſt corruption, and in favour of right, liberty, life and reputation: And the greateſt criminals here, have privileges which they cannot be debarred of. See *Forteſcue's Laud. Leg. Angl.* 59, 60.

Tribuch and Trebuchet, (*Terbichetum*) A tumbrel, or cucking ſtool. *Cowell.* See *Caſtigatory*, *Trebuchet*.

Tricennale, Is the ſame with *Trental*. 1 Ed. 6,

Triceſima, An ancient cuſtom in a borough in the county of *Hereford*, ſo called, becauſe *thirty burgeſſes* paid 1 *d.* rent for their houſes to the biſhop, who is lord of the manor. *Lib. Nigr. Heref.*

Tridingmote, The court held for a *triding* or *trithing*. Chart, King *Hen.* 1.

Triennial Elections. The utmoſt extent of time that the ſame parliament was allowed to ſit, by the ſtat. 6 *W. & M. c.* 2. was *three* years; after the expiration of which, reckoning from the return of the firſt ſummons, the parliament was to have no longer continuance. But, by the ſtat. 1 *Geo.* 1. *ſt.* 2. *c.* 38. this term was prolonged to *ſeven* years. See *Parliament*, and *Black. Com.* 1 *V.* 153, 189, 430, 432, 433.

Trigintale, ſee *Trental*.

Trihing or **Trithing,** (Sax. *Trithinga*) Contains the *third* part of a county, or three or four hundreds: Alſo it was a court held within that circuit, of the nature of the court-leet, but inferior to the county-court. *Cambd.* 102. *Magn. Chart. cap.* 36. The *Ridings* in *Yorkſhire* are corruptly called by that name, from *Tridings* or *Trithings*: And thoſe who anciently governed thoſe *Trithings*, were termed *Trithing-Reves*, before whom were brought all cauſes which could not be decided in the hundreds; for from the hundred-court ſuits might be removed to the *Tithing*. and thence to the county-court. *Spelm.* See *Lath-reve*.

Trilion, A word uſed by merchants in accounts, to ſhew that the word million is thrice mentioned. *Merch. Dict.* Or it rather ſignifies three millions.

Trimilchi, The *Engliſh Saxons* denominated the month of *May Trimilchi*; becauſe they milked their cattle three times every day in that month. *Beda.*

Trinity, (*Trinitas*) The number of three Perſons in the Godhead or Deity; and denying any one of the Perſons in the *Trinity* to be God, is ſubject to divers penalties and incapacities by the ſtat. 9 & 10 *W.* 3. *c.* 32. See *Religion*.

Trinity-Houſe, Is a kind of college at *Deptford*, belonging to a company or corporation of ſeamen, who have authority by the King's charter to take knowledge of thoſe that deſtroy ſea-marks; alſo to redreſs the faults of ſailors, and divers other things belonging to navigation. 8 *Eliz. c.* 13. By a late ſtatute, pilots of ſhips coming up the *Thames*, are to be examined and approved by the *Maſter* and *Wardens* of *Trinity-Houſe*, &c. 3 *Geo.* 1. *c.* 13. See 5 *Geo.* 2. *c.* 20.

Trink, A fiſhing net, or engine to catch fiſh. 2 *Hen.* 6. *c.* 15.

Trinobantes, The inhabitants of *Middleſex*, *Eſſex*, *Hertfordſhire*, &c.

Trinoda Neceſſitas, Signified a *threefold neceſſary tax*, to which all lands were liable in the *Saxon* times, *i. e.* for *repairing of bridges*; the *maintaining of caſtles* or *garriſons*; and for *expeditions to repel invaſions*; And in the King's grants, and conveyances of lands, theſe three things were excepted in the immunities from other ſervices, *&c.*——*Exceptis his tribus, expeditione, pontis & arcis conſtructione.* Paroch. Antiq. 46: *See* Black. Com. 1 V. 263, 357. 2 V. 102.

Triors, Triours, or **Triers,** Are ſuch as are choſen by the court to examine whether a *challenge* made to the panel of *jurors*, or any of them, be juſt or not. *Broke* 122.

Triors, Lords. On the trial of a peer, in parliament, a precept was formerly iſſued to ſummon only eighteen or twenty, ſelected from the body of the peers: then the number came to be indefinite; and the cuſtom was, for the Lord High Steward to ſummon as many as he thought proper (but of late years, preceding the following *Stat.* not leſs than twenty-three) and that thoſe lords only ſhould ſit upon the trial, which threw a monſtrous weight of power into the hands of the crown, and this it's great officer; of ſelecting only ſuch peers as the then predominant party ſhould moſt approve of. But now by ſtat. 7 *W.* 3. *c.* 3. upon all trials of peers for treaſon or miſpriſion; all the peers who have a right to ſit and vote in parliament ſhall be ſummoned at leaſt twenty days before ſuch trial, to appear and vote therein; and every lord appearing ſhall vote in the trial of ſuch peer, firſt taking the oaths of allegiance and ſupremacy, and ſubſcribing the declaration againſt popery. See *Black. Com.* 4 *V.* 259, 260.

Triors of Jurors. Jurors may be challenged *propter affectum*, for ſuſpicion of biaſs or partiality. This may be either a *principal* challenge or *to the favour*.

A *principal* challenge is ſuch, where the cauſe aſſigned carries with it, *prima facie*, evident marks of ſuſpicion, either of malice or favour: as, that a juror is of kin to either party within the ninth degree; that he has been arbitrator, has an intereſt in the cauſe, *&c.* See *Challenge.*

Challenges *to the favour*, are where the party hath no *principal* challenge; but objects only ſome probable circumſtances of ſuſpicion, as acquaintance and the like; the validity of which muſt be left to the determination of *triors*, whoſe office it is to decide whether the juror be favourable or unfavourable.

The triors, in caſe the firſt man called be challenged, are two indifferent perſons, named by the court; and, if they try one man and find him indifferent, he ſhall be ſworn; and then he and the two triors ſhall try the next; and when another is found indifferent and ſworn, the two triors ſhall be ſuperſeded, and the two firſt ſworn on the jury ſhall try the next. *Co. Lit.* 158. and ſee *Black. Com.* 3 *V.* 363.

Tripodium, *Leg. H.* 1. *cap.* 64. *In quibus vero cauſis triplicem ladam haberet, ferat judicium* tripodii, *i. e.* 60. *ſolid.* The meaning is, that as for a ſmall offence, or for a trivial cauſe, the compoſition was twenty ſhillings; ſo for a great offence, which was to be purged *triplici lada*, the compoſition was to be three times twenty ſhillings, *viz. tripodio. Cowell.*

Triroda terræ, A quantity of land, containing three rods or perches. *MS. Eliam Aſhmole Ar'.*

Triſtega, Was the uppermoſt room in the houſe, a garret or room three ſtories high. 'Tis mentioned in *Matt. Paris*, *Anno* 1247.

Triſtis, (From the Fr. *Traiſt*, i. e. *Truſt*) Is an immunity, whereby a man is freed from attendance on the lord of a foreſt when he is diſpoſed to chaſe within the foreſt; and by this privilege, he ſhall not be compelled to hold a dog, to follow the chace, or ſtand at any place appointed, which otherwiſe he is obliged to, on pain of amerciament. *Manwood, par.* 1. *pag.* 86.

Triſtra, A poſt or ſtation, in hunting. *Cowel.*

Trithing, Trithing-Reeve, The third part of a county, or three more hundreds or wapentakes, were called *a triding* or *trithing*; ſuch ſort of portions are the *laths* in *Kent*, the *rapes* in *Suſſex*, and the *ridings* in *Yorkſhire*, and thoſe who governed theſe trithings, were thereupon called *trithing*-reves, before whom were brought all cauſes that could not be determined in the wapentakes or hundreds. See *Spelman of the ancient government of* England. p. 52. See *Tithing* and *Black. Com.* 1 *V.* 116.

Triumvir, A trithing-man, or conſtable of *three hundreds*. Hiſt. Elienſ.

Tronage, (*Tronagium*) Is a cuſtomary duty or toll for weighing of wool: According to *Fleta*, *trona* is a beam to weigh with, mentioned in the ſtat. *Weſtm.* 2. *cap.* 25. And *tronage* was uſed for the weighing of wool in a ſtaple or publick mart, by a common *trona* or beam; which for the *tronage* of wool in *London*, was fixed at *Leaden-Hall.* Fleta, lib. 2. c. 12. The mayor and commonalty of *London*, are ordained keepers of the beams and weights for weighing merchants commodities, with power to aſſign clerks, and porters, *&c.* of the great *beam and balance*; which weighing of goods and wares is called *Tronage*; And no ſtranger ſhall buy any goods in *London*, before they are weighed at the King's beam, on pain of forfeiture. Chart. King *Hen.* 8.

Tronator, (From *Trona*, i. e. *Statera*) An officer in the city of *London*, who weighs the wool brought thither.

Trope, (*Tropus*) A rhetorical way of ſpeech. *Litt. Dict.*

Troper, (*Troperium*,) Is a book of alternate turns or reſponſes in ſinging maſs; called *Liber ſequentiarum*, by *Lindewoode.* Hoved. Hiſt. p. 283.

Trophy-Money, Signifies money yearly raiſed and collected in the ſeveral counties of *England*, towards providing harneſs and maintenance for the *militia*, &c. Stat. 15 *Car.* 2. 1 *Geo.* 1. See *Militia.*

Trover, (From the Fr. *Trouver*, i. e. *invenire*) Is an action which a man hath againſt one, that, having found any of his goods, refuſeth to deliver them upon demand: Or if another hath in his poſſeſſion my goods, by delivery to him, or otherwiſe, and he ſells or makes uſe of them without my conſent, this is a *converſion* for which *trover* lies; ſo if he doth not actually convert them, but doth not deliver them to me on demand. 2 *Lill. Abr.* 618. The refuſal to deliver, on demand, is only *evidence of a converſion.*

It is called *Trover* and *Converſion*, and is a ſpecial action of the caſe, brought to recover damages to the value of the goods, *&c.* In this action, the plaintiff ſurmiſeth that he loſt ſuch and ſuch goods, and that the defendant hath found them, and converted them to his own uſe at ſuch a place; but the loſing is but a mere ſuggeſtion, and not material: For if the plaintiff delivered the goods to the defendant; or if the defendant take the goods in his preſence, *&c.* this action lies againſt him, if there be a converſion; which is the point of the action, and therefore muſt be particularly alledged: If a man finds goods, he may take poſſeſſion of them, and no action lies; but he ought not to abuſe or uſe them, for therein lies the offence: And where a man finds my goods, and refuſeth to deliver them upon demand, it is a converſion in law; but if he anſwers that he knows not whether I am the true owner or not, and therefore denies to deliver them; this is no converſion if he keeps them from me. 1 *Danv. Abr.* 21, 22. 23. A perſon finds the goods of another, and uſes or wilfully abuſes them; as if it be paper, and he put it into water, or the like, this action of *trover* lies againſt him: But not for any negligence in the keeping of them; as where one finds another's garment, and ſuffers it to be moth-eaten, *&c.* here no action will lie. 1 *Cro.* 219.

If in *trover*, an actual converſion cannot be proved, then proof is to be had of a demand made, before the action brought, of the thing for which the action is commenced, and that the thing demanded was not delivered: in this caſe, though an actual converſion may not be proved, a demand, and refuſing to deliver the things demanded, is a ſufficient evidence to the jury that he converted the ſame, till it appears to the contrary. 10 *Rep.* 56, 491. 2 *Lill.* 619. Such evidence will intitle the plaintiff to a verdict, unleſs the defendant can ſhew a legal cauſe of detention, as, a *lien*, &c.

Where a defendant comes to the poſſeſſion by finding, denial is a converſion; but if he had the goods, *&c.* by delivery, there denial is no converſion, but evidence of a converſion: And in both caſes, the defendant hath a lawful poſſeſſion, either by finding or by delivery; and where the poſſeſſion is lawful, the plaintiff muſt ſhew a demand and a refuſal, to make a converſion: Though if the poſſeſſion was tortious, as if the defendant takes away the plaintiff's hat, the very taking is a ſufficient proof of the converſion, without proving a demand and refuſal. *Sid.* 264. 3 *Salk.* 365.

By *Holt*, *Chief Juſtice*, the denial of goods to him, who hath a right to demand them, is a converſion; and after a demand and refuſal, if the defendant tender the goods, and the plaintiff refuſe to receive them, that will go only in mitigation of damages; not to the right of the action of *trover*, for the plaintiff may have that ſtill. *Mod. Caſ.* 212. 3 *Nelſ. Abr.* 424, 425. An action of *trover* and converſion may be brought for goods, although the goods come into poſſeſſion of the plaintiff before the action is brought; which doth not purge the wrong, or make ſatisfaction for that which was done to the plaintiff by detaining the goods: If a man takes my horſe and rides him, and afterwards delivers him to me, *trover* lies againſt him; for this is a converſion, and the re-delivery is no bar to the action. 1 *Danv. Abr.* 21. 2 *Lill.* 618.

If goods are delivered to one to deliver over to another, and he to whom they were firſt delivered do afterwards refuſe to deliver them over, and converts them to his own uſe; he is liable to action of *trover* not only by him who firſt delivered them, but alſo by him to whom they were to be delivered: And a plaintiff may chuſe to have his action of *trover* againſt the firſt finder of goods; or any other who gets them afterwards by ſale, *&c.* 1 *Bulſt.* 68. 1 *Leon.* 183 If a common carrier has goods delivered to him to carry to a certain place, and a ſtranger takes them out of his poſſeſſion, and converts the goods to his own uſe; action of *trover* and converſion lies for the carrier againſt him. 1 *Mod.* 31.

Trover doth lie againſt a common carrier for negligence in loſing goods; though it doth not for an actual wrong: And if goods are ſtolen from a carrier, he may not be charged in *trover* and converſion; but action upon the caſe on the cuſtom of the realm, *&c.* 2 *Salk.* 655. It has been held, that where goods are ſtolen, and before proſecution of the offender by indictment the party robbed brings action of *trover*, it lies not; for ſo felonies might be compounded: but where *A.* ſteals the goods or money of *B.* and is convicted, and hath his clergy, upon the proſecution of *B.* If he brings *trover* and converſion for the money, and on not guilty pleaded this ſpecial matter is found, the plaintiff ſhall recover. 1 *Hale's Hiſt. P. C.* 546.

If upon a *fieri facias* the ſheriff takes goods in execution, and, before the ſale of them, a ſtranger takes them away and converts them to his own uſe; the ſheriff may have an action of *trover* and converſion, as he had a lawful poſſeſſion, and is anſwerable for them. 2 *Saund* 47. And an executor may have *trover* for the goods of the teſtator; the law gives him a property, which draweth the poſſeſſion to it, though there be not an actual poſſeſſion. *Latch.* 214. There muſt be a right or property in the goods, or a lawful poſſeſſion, *&c.* which is to be proved by the plaintiff in *trover*, before the goods came to the defendant's hands: And if a man finds his goods loſt in the hands of another, if he bought them in open fair or market; this alters the property, and he cannot recover them. 1 *Inſt.* 498. 1 *Danv.* 23. Adjudged that *trover* lay for the finder of a jewel, againſt a goldſmith who defrauded him of it. *Ibid* 505. Drawing out part of a veſſel, and filling it up with water, is converſion of all the liquor. *Ibid.* 576. A recovery in *trover* veſts the property of the goods in the defendant. 2 *Strange* 1078. In *trover*, the plaintiff may declare upon a *devenerunt ad manus* generally; or ſpecially *per inventionem devenerunt*: And the plea on the defendant's part is commonly not guilty, on which the ſpecial matter may be given in evidence, to prove the plaintiff hath no cauſe of action; or to intitle the defendant to the thing in controverſy. 2 *Bulſt.* 313. *Wood's Inſt.* 540. *Vide* alſo, 2 *Salk.* 654. *Yelv.* 198. *Cro. Car.* 27. 2 *Lill.* 622.

In *trover* for a bond, the plaintiff need not ſhew the date; for the bond being loſt or converted, he may not know the date: and if he ſhould ſet out the date, and miſtake it, he would fail in his action. *Cro. Car.* 262. If the defendant find the bond, and receive the money, action of account lieth againſt the receiver, and not *trover*. *Cro. Eliz.* 723.

The place of converſion muſt be generally mentioned in *trover*, or it will be naught. *Cro. Eliz.* 78, 79. And yet where the *trover* of goods is in one county, and the converſion in another county, the action brought for theſe goods may be laid in the county where the converſion was, or in any other county, as it is only a tranſitory action; and neither the place of *trover*, nor converſion, are traverſable. *Paſch.* 23 *Car. B. R.* If there be *trover*, before the marriage of a female plaintiff, and converſion afterwards; the huſband and wife may join, and it will be good. 2 *Lev.* 107.

Trover lies againſt baron and feme, ſetting forth that they converted the goods to the uſe of the huſband; for the feme may be a treſpaſſer, and convert them to the huſband's uſe, or the uſe of the ſtranger, but not to her own uſe; and if the converſion be laid *ad uſum* of herſelf and huſband, or *ad uſum proprium*, *&c.* it will not be good. *Cro. Car.* 494. In *trover* the plaintiff may lay a converſion here, and prove it in *Ireland*; it is otherwiſe in treſpaſs *quare clauſum fregit*, for there the party cannot prove the treſpaſs but where it lies, nor lay it in any other place than where it is. *Stile* 331. 1 *Mod. Entr. Engl.* 393.

Action of *trover* or *detinue*, at the plaintiff's election, may be brought for goods detained; for it is but juſtice that the party ſhould have his goods detained if they may be had, or elſe damages to the value for the detaining and converſion of them. 2 *Lil. Abr.* 618. And treſpaſs or *trover*, lies for the ſame thing; though they cannot be brought in one declaration: And the allegation of the converſion of the goods in treſpaſs, is for aggravation of the damages, *&c.* *Bro. Jac.* 50. *Lutw.* 1526.

Detinue doth not lie for money numbered; but *trover* and converſion lies for it: For though, in the finding and converting generally, the money of one perſon cannot be diſtinguiſhed from that of another, all money being alike; yet the proof that the plaintiff loſt, and defendant converted ſo much, maintains the action, if the verdict finds it. *Jenk. Cent.* 208. Where money is given to a perſon to keep, though it be not in bags, action of *trover* will lie; becauſe this action is not to recover the money, but damages. *Poph.* 91. 3 *Salk.* 365. In caſe a maſter delivers corn to his ſervant to ſell, who does ſo and converts the money, the maſter may bring *trover* againſt the ſervant. 2 *Bulſt.* 307 1 *Roll's Rep.* 59. Money had and received would be better.

There is no proper plea in action of *trover*, where it lies, but the general iſſue not guilty; on which the defendant may give in evidence that the goods and money were not the plaintiff's. *Bro.* 109. *Trover* lieth not for any part of a freehold; but if doors fixed are removed and converted, it will lie. *Wood's Inſt.* 540. In *trover*, the defendant may not wage his law, as he may in detinue; wherefore it often takes place of that action. See *Detinue* and *Black. Com.* 3 *V.* 151. 4 *V.* 356.

Troy-Weight, (*Pondus Trojæ*) A weight of twelve ounces to the pound, having its name from *Troyes* a city in *Champaign*, whence it firſt came to be uſed here.

Truce, (*Treuga*) A league or ceſſation of arms; and anciently there were keepers of *truces* appointed; as King *Edw.* 3. conſtituted by commiſſion two keepers of the *truce* between him and the King of *Scots*, with this clauſe, *Nos volentes* treugam *prædictam quantum ad nos pertinet obſervari*, &c. Rot. Scot. 10 Edw. 3. Vide *Conſervators of the Truce.*

By *Stat.* 2. *Hen.* 5. *Stat.* 1. *c.* 6. Breaking of truce and ſafe-conducts, or abetting and receiving the truce-breakers, was declared to be high-treaſon, againſt the crown and dignity of the King; and conſervators of truce and ſafe-conducts were appointed in every port, &c. See the *Stat.* and 14 *H.* 6. *c.* 8. 20 *H.* 6. *c.* 11. 29 *H.* 6. *c.* 2. and 31 *H.* 6. *c.* 4. Alſo 14 *Edw.* 4. *c.* 4. But *Blackſtone* ſuppoſes 2 *H.* 5. repealed by the general ſtatutes of *Edw.* 6. and Q. *Mary* for aboliſhing new created treaſons, though Sir *Matt. Hale* ſeems to queſtion it, as to treaſons committed on the ſea. 1 *Hal. P. C.* 267. But (according to *Blackſtone*) the *Stat.* of 31 *H.* 6. remains in full force to this day. *Black. Com.* 4 *V.* 69. 70.

Trug-Corn, (*Truga frumenti*) Is a meaſure of corn; and at *Leominſter*, at this day, the vicar hath *trug-corn* allowed him for officiating at ſome chapels of eaſe within that pariſh. *Liber Niger Heref.*

Truncus, A trunk ſet in *churches*, to receive the oblations of pious people; of which, in the times of *popery*, there were many at ſeveral altars and images, like the boxes which ſince the reformation have been placed near the doors of churches for receiving all voluntary contributions for the poor: And the cuſtomary free-will offerings that were dropt into thoſe trunks, made up a good part of the endowment of vicars, and thereby oftentimes rendered their condition better than in latter times——*Vicarius habebit oblationes quaſcunque ad* truncos *tam in dicta eccleſia de*, &c. *quam alibi infra parochiam ipſius eccleſiæ factas.* Ordin. Vic. Lancaſt. Anno 1430.

Truſſa, A truſs or bundle of corn; mentioned among the cuſtomary ſervices done by tenants. *Cartular S. Edmund MS.*

Truſt, (*Fiducia, confidentia,*) Is a confidence which one man repoſes in another—but, as generally uſed in law, it is a right to receive the profits of land, and to diſpoſe of the land itſelf (in many caſes) for particular purpoſes, as directed by the lawful owner, or pointed out by ſettlement, &c. or that deed of conveyance which created the truſt. A truſt is but a new name given to an uſe.—If a perſon in whom a truſt is repoſed, breaks or doth not perform the ſame, the remedy is by bill in *Chancery*, the Common law generally taking no notice of truſts. 2 *Lill. Abr.* 624. A *truſt* and *uſe* were all one at Common law, till the *Stat.* 27 *H.* 8. *c.* 10. which diſtinguiſhes them: The method of making conveyances by way of *truſt*, was invented to evade the ſtatute of uſes; and theſe conveyances are not ſo much favoured in law, as plain and direct conveyances of eſtates. *Paſch.* 23 *Car. B. R.*

Truſts and legal eſtates are to be governed by the ſame rules; and this is a maxim which has univerſally prevailed. It is ſo in the rules of deſcent, as in gavelkind, and borough *Engliſh* lands; there is a *poſſeſſio fratris* of a truſt, as well as of a legal eſtate. The like rules in limitations, and alſo of barring entails of truſts, as of legal eſtates; *per* the maſter of the rolls, who ſaid he thought there was no exception out of this general rule, nor is there any reaſon that there ſhould; and that it would be impoſſible to fix boundaries, and ſhew how far, and no farther, it ought to go; and that perhaps in early times the neceſſity of keeping thereto was not ſeen, or thoroughly conſidered. 2 *P. Wms's Rep.* 645. *Sutton* v. *Sutton.*

Declarations and creations of *truſt*, of lands, tenements or hereditaments, are to be in writing, ſigned by the party empowered to declare ſuch *truſt*, &c. 29 *Car.* 2. *c.* 3. In the explanation of this ſtatute, it is provided, that this ſhall not extend to *reſulting truſts*, or *truſts* ariſing by implication or conſtruction of law: which ſhall be of like force as before that act. 4 & 5 *Ann.* *c.* 16. And there is a ſtatute by which infants ſeiſed of eſtates in fee in *truſt*, may make conveyances of ſuch eſtates, by order of the *Chancery*. 7 Ann. c. 19. If a man buys land in another perſon's name, and pays the money for the land, this will be a *truſt* for him that paid the money, though there be no deed declaring the *truſt*; becauſe the ſtatute of fraud extends not to truſts raiſed by the implication of law: And a bare declaration by parol; on a deed aſſigned, may prevent any reſulting *truſt* to the aſſignor. 2 *Vent. Rep.* 361. 2 *Vern.* 294. Where there has been fraud in gaining a conveyance from another, that is a reaſon of making the grantee conſidered as a *truſtee*: But the *Stat.* 29 *Car.* 2. *c.* 3. relates only to *equitable truſts* and intereſt, and not an uſe, which is a legal eſtate. 1 *P. Williams* 113.

There are only two kinds of *truſts* by *operation of law*; either where the deed or conveyance has been taken in the name of one man, and the purchaſe-money paid by another; or where the owner of an eſtate has made a voluntary conveyance of it, and declared the *truſt* with regard to one part to be for another perſon, but hath been ſilent as to the other part: in which caſe he himſelf ought to have the benefit of that, it being plainly his intent. *Barnardiſt.* 388.

There ſhall be a tenancy by the curteſy, &c. of a *truſt* eſtate; but of ſuch an eſtate a woman ſhall not be endowed. 1 *P. Williams* 109. *Talbot's Caſ.* 139. See 2 *P. Williams* 147. A fine and recovery of *Ceſtui que truſt* ſhall bar and transfer a *truſt*, as it ſhould an eſtate at law, if it were upon a conſideration. *Chanc. Rep.* 49.

In equity *truſts* are ſo regarded, that no act of a *truſtee* will prejudice the *ceſtui que truſt*; for though a purchaſer, for valuable conſideration, without notice, ſhall not have his title any ways impeached, yet the *truſtee* muſt make good the *truſt*: But if he purchaſes, having notice, then he is the *truſtee* himſelf, and ſhall be accountable. *Abr. Caſ. Eq.* 384. Where *truſtees* in a ſettlement, join with tenant for life in any conveyance, to defeat a remainder, before it comes *in eſſe*; this is a plain breach of *truſt*; and thoſe who claim under ſuch deed, having notice of the *truſt*, will be liable to make good the eſtates. 2 *Salk.* 680. Yet in caſe a *truſtee* joins with *ceſtui que truſt* in tail, in a deed to bar the entail; as it is no more than what he may be compelled to, it is no breach of his *truſt*. 1 Chan. Caſ. 49, 213.

It has been decreed, that a *truſt* for a ſon, &c. ſhall paſs with the lands into whoſe hands ſoever they come, and cannot be defeated by any act of the father or *truſtees*. And though a huſband and wife have no children in many years, and they and the *truſtees* agree to ſell the land ſettled, &c. it will not be permitted in Chancery. *Abr. Caſ. Eq.* 391. 1 *Vern.* 181. A termor grants his lands in *truſt* for himſelf for life, and to his wife for life, and after to his children for their lives, and then to *A. B.* This *truſt* to *A. B.* is good; though, if it had been to the heirs of their bodies, it would be otherwiſe: And a remote *truſt* of a term, which tends to a perpetuity, has been decreed a void limitation. *Chanc. Rep.* 230, 239.

If a huſband makes a leaſe for years, in *truſt* for his wife, he may ſell it, and it will bind her: But when a *truſt* is firſt created for a wife *bona fide*, he cannot ſell it, unleſs ſhe join in a fine. *Ibid.* 307, 308. It has been adjudged, where a term is ſettled in *truſt* for a jointure on a wife, or in purſuance of marriage articles, or if the term of the wife be aſſigned by her before marriage; the huſband can neither charge nor ſell it, &c. though if the aſſignment is made after marriage in *truſt* for the wife, it is then voluntary and fraudulent. *Ibid.* 225.

A *truſt* to pay portions, legacies, &c. out of the rents and profits of the lands, at the day prefixed, gives the *truſtees* power to ſell; if the annual profits will not do it within that time, then they may ſell the land, being within the intention of the *truſt*: And they cannot ſell to raiſe the money, except it be to be paid at a certain time. *Ibid.* 176. A *truſtee* for ſale of lands for payment of debts, paying debts to the value of the land, thereby becomes a purchaſer himſelf. *Ibid.* 199. Where a *truſtee* for paying portions, pays one child his full ſhare, and the *truſt* eſtate decays, he ſhall not be allowed ſuch payment. 2 *Chan. Ca.* 132. If one deviſes land to *truſtees* until his debts are paid, with remainder over, and the *truſtees* miſapply the profits, they ſhall hold the land only till they might have paid the debts, if the rents had been duly applied; and after that the land is to be diſcharged, and the *truſtees* are only anſwerable. 1 *P. Williams* 519. And a perſon having granted a leaſe of land to *truſtees*, in *truſt* to pay all the debts which he ſhould owe at his death, in a juſt proportion, without any preference; it was here declared, that the ſimple contract debts became as debts due by mortgage, and ſhould carry intereſt. *Ibid.* 229.

Truſt of a fee-ſimple eſtate, or fee-tail, is forfeited by treaſon, but not by felony; for ſuch forfeiture is by way of eſcheat, and an eſcheat cannot be but where there is a defect of a tenant; and here is a tenant. *Hard* 495. See *Jenk: Cent.* 245. A *truſt* for a term is forfeited to the King in caſe of treaſon or felony; and the *truſtees* in equity ſhall be compelled to aſſign to the King. *Cro. Jac.* 513. If a bond be taken in another's name, or a leaſe be made to another in *truſt* for a perſon, who is afterwards convicted of treaſon or felony, they are as much liable to be forfeited as a bond or leaſe made in his own name, or in his poſſeſſion. 2 *Hawk.* 450. Execution may be ſued, and lands held in *truſt* delivered, where any perſon is ſeiſed or poſſeſſed in *truſt* for another; by the ſtatute of frauds, 29 *Car.* 2. *c.* 3.

Truſtees being obliged to join in receipts, one is not chargeable for money received by the other: In the caſe of executors it is otherwiſe. 1 *Salk.* 318. 2 *Vern. Rep.* 515. A truſtee robbed by his own ſervant, ſhall be diſcharged of it on account; though great negligence may charge him with more than he hath received, in the *truſt*. 2 Chan. Ca. 2. 1 Vern. 144.

There is a breach of *truſt* in ſervants, going away with their maſter's goods delivered them, *&c.*

Of a reſulting truſt, or truſt by implication of law.

It was ruled by lord chancellor *Cowper*, that the ſtatute of frauds, 29 *Car.* 2. *c.* 3. *ſ.* 8. which ſays, 'That all conveyances, where truſts and confidences ſhall ariſe or reſult by implication of law, ſhall be as if that act had never been made,' muſt relate to truſts and equitable intereſts, and cannot relate to any uſe which is a legal eſtate. *Mich.* 1709. in the caſe of *Lamplugh.* v. *Lamplugh*, 1 *P. Wms.* 112.

No rule is more certain than that if a man makes a conveyance in truſt for ſuch perſons, and ſuch eſtates as he ſhall appoint, and makes no appointment, the reſulting truſt muſt be to him and his heirs. The truſt in equity muſt follow the rules of law in the caſe of an uſe, and that it would be ſo in the caſe of an uſe is undoubtedly true, and that was Sir *Edward Cleer*'s caſe in 6 *Rep.* per Lord Chancellor. *Fitz. Gib.* 223. *Fitſgerald* v. *Ld. Faulconbridge.*

Wherever there is a conſideration there can be no reſulting truſt. But if a leaſe be made for years without a conſideration, there will be a reſulting truſt to the leſſor.

Where a daughter's portion was charged upon the father's land, ſhe, at the requeſt of her father, had releaſed her intereſt in the land, to the intent that he might be enabled to make a clear ſettlement thereof upon the ſon. It was declared by the lord keeper, that if this was done by the daughter without any conſideration, there would be a reſulting truſt in the father, whereby he ſhould be chargeable to the daughter for ſo much money. *Freem.* 305. *Lady Tyrell*'s caſe.

But where a truſtee purchaſes lands out of the profits of the truſt eſtate, and takes the conveyance in his own name; tho' probably, if he cannot make other ſatisfaction for the miſapplication, theſe lands may be ſequeſtered, yet they cannot be declared to be a truſt for *ceſtui que uſe*, no more than if *A.* borrows money of *B.* for it is *not a truſt in writing*; and a *reſulting truſt it cannot be*, becauſe that would be to *contradict the deed by parol proof*, directly againſt the ſtatute of frauds. But if this purchaſe had been recited to have been made with the profits of the truſt eſtate, this appearing in writing might ground a reſulting truſt. On appeal to the houſe of lords, this decree was affirmed. *Chan. Prec.* 84. *pl.* 77. *Kirk* v. *Webb.*

So where a teſtator impowered the executor to lay out the perſonal eſtate in land, and ſettled it on *A.* and his heirs: And the executor being about to purchaſe told *A.*'s mother of it, and aſked her conſent, but took the conveyance in his own name, and no truſt in writing was declared, but it was proved that he at ſeveral times declared it muſt be ſold to make *A.* ſatisfaction; yet the court (though inclined to decree a conveyance to *A.* the executor being dead inſolvent) declared it could not, becauſe there was no expreſs proof of the application of the truſt money. *Ch. Prec.* 168. *pl.* 139. *For more learning on this ſubject, ſee* 21 Vin. Abr. *tit.* Truſt, *and* 5 New Abr. *tit. Uſes and Truſts.* See farther as to *Truſts*, *Black. Com.* 2 *V.* 327. 3 *V.* 431, 439.

Truſtees of Papiſts, Are diſabled to make preſentations to churches. *Stat.* 12 *Ann. c.* 14.

Tub, A meaſure containing ſixty pounds weight of *tea*; and from fifty-ſix to eighty-ſix pounds of *camphire*, &c. *Merch. Dict.*

Tub-Man, in the Exchequer. In the court of *exchequer* two of the moſt experienced barriſters, called the *Poſtman*, and the *Tub-man*, (from the places in which they ſit) have a precedence in motions. *Black. Com.* 3 *V.* 28. *n.*

Tumbrell, (*Tumbrellum, Turbichetum,*) Is an engine of puniſhment, which ought to be in every liberty that hath view of frank-pledge, for the correction of ſcolds and unquiet women. *Kitchin, fol.* 13. See *Caſtigatory, Cucking-ſtool.*

Tun, (Sax.) In the end of words ſignifies *a Town*, or dwelling-place.

Tun, (Lat. *Tunellum*) A veſſel of *wine* and *oil*, being four hogſheads. 1 *R.* 3. *c.* 12. A *tun* of *timber* is a meaſure of forty ſolid feet, cut to a ſquare. 12 *Car.* 2. *c.* 14. And a *tun* is twenty hundred weight of *coals*, &c. by *Stat.* 9 & 10 *W.* 3. *c.* 13.

Tunnage, (*Tunnagium*) Is a cuſtom or impoſt granted to the crown for merchandize imported or exported, payable after a certain rate for every *tun* thereof. *Stat.* 12 *Hen.* 4. *c.* 3. 6 *Hen.* 8. *c.* 14. 1 *Ed.* 6. *c.* 13. 12 *Car.* 2. *c.* 4. See *Cuſtoms.*

Tun-greve, (Sax. *Tungeræva*, i. e. *villæ præpoſitus*,) A reeve or bailiff, *qui in villis* (*& quæ dicimus maneriis*) *domini perſonam ſuſtinet, ejuſque vice omnia diſponit & moderatur.* Spelman.

Turbagium, The liberty of digging turfs. *Mon. Ang. Tom.* 1. *p.* 632.

Turbary, (*Turbaria* from *Turba*, an obſolete *Latin* word for *turf*) Is a right to dig *turfs* on a common or in another man's ground. *Kitch.* 94. Alſo it is taken for the place where *turfs* are dug: And *turbus* hath been uſed for the *turfs*; and *turbarius* for the *turbary.*

Turbets, May be imported as they might have been before 10 & 11 *W.* 3. 1 *Geo.* 1. *Stat.* 2. *c.* 18.

Turkey Company of merchants, having divers factories abroad, and which carry on great trade to *Turkey*, &c. created in the time of Queen *Elizabeth.* See *Merchant.*

Turkins, A kind of ſky-colour'd cloth, mentioned in *Stat.* 1 *R.* 2. *c.* 8.

Turn, or **Tourn**, Is the King's leet through all the county; of which the ſheriff is judge, and this court is incident to his office; wherefore it is called the *ſheriff's tourn:* And it had its name originally from the ſheriff's taking a *turn* or circuit about his ſhire, and holding this court in ſeveral places; for the word *turn*, *properly* taken, doth not ſignify the court of the ſheriff, but his perambulation. *Crompt. Juriſd.* 230. 4 *Inſt.* 260. 2 *Hawk. P. C.* 55.

The *turn* is a court of record; and, by the Common law, every ſheriff ought to make his *turn* or circuit throughout all the hundreds in his county, in order to hold a court in every hundred for redreſſing common grievances, and preſervation of the peace; and this court might be holden at any place within the hundred, and as often as the ſheriff thought fit: But this having been found to give the ſheriff too great power of oppreſſing the people, by holding his court at ſuch times and places at which they could not conveniently attend, and thereby increaſe the number of his amercements; by the *Stat.* of *Magna Charta, cap.* 35. it was enacted, That no ſheriff ſhall make his *turn* through a hundred but twice in a year, *viz.* once after *Eaſter*, and once after the feaſt of St. *Michael*; and at the place accuſtomed: Alſo a ſubſequent ſtatute ordained, That every ſheriff ſhall make his *turn* yearly, one time within the month after *Eaſter*, and another time within the month after *Michaelmas*; and if they hold them in any other manner, they ſhall loſe their *turn* for that time. 37 *Ed.* 3. *cap.* 15.

Since theſe ſtatutes, the ſheriff is indictable for holding this court at another time, than what is therein limited, or at an unuſual place: And it has been held, that an indictment found at a ſheriff's *turn*, appearing to have been holden at another time, is void. *Dalt. Sher.* 390, 391. *Dyer* 151. 38 *Hen.* 6.

At Common law the ſheriff might proceed to hear and determine any offence within his juriſdiction, being indicted before him, and requiring a trial, till ſheriffs were reſtrained from holding pleas of the crown by *Magna Charta, cap.* 17. But that ſtatute doth not reſtrain the ſheriff's *turn*, from taking indictments or preſentments, or awarding proceſs thereon; though the power of awarding ſuch proceſs being abuſed, was taken from all the ſheriffs (except thoſe of *London*) by the 1 *Ed.* 4. *c.* 2. and lodged in the juſtices of peace at their ſeſſions, who are to award proceſs on ſuch indictments delivered to them by the ſheriff, as if they had been taken before themſelves, *&c.* 2 *Hawk.* 57, 70, 71.

The ſheriff's power in this court is ſtill the ſame as anciently it was, in all caſes not within the ſtatutes abovementioned; he continues a *judge of record*, and may inquire in his *turn* of treaſons and felonies, by the Common law; as well as the loweſt offences againſt the King, ſuch as purpreſtures, ſeizure of treaſure trove, of waifs, eſtrays, goods wrecked, *&c.* All common nuſances and annoyances, and other ſuch like offences; as ſelling corrupt victuals, breaking the aſſiſe of beer and ale, or keeping falſe weights or meaſures, are here indictable; alſo all common diſturbers of the peace, barretors, and common oppreſſors; and all dangerous and ſuſpicious perſons, *&c.*

And the ſheriff in his *turn* may impoſe a fine on all ſuch as are guilty of contempts in the face of the court; and upon a ſuitor to the court making default, or refuſing to be ſworn on the jury; or on a bailiff not making a panel; on a tithingman neglecting to make his preſentment; or a perſon choſe conſtable refuſing to be ſworn, *&c.* And he may amerce for offences; which fines and amerciaments are leviable and recoverable by diſtreſs, *&c.* *Ibid* 58, 60, 67. But notwithſtanding this it has been obſerved, that great part of the buſineſs of the *turn* and *leet* hath, for ſeveral years paſt, through the negligence of ſheriffs and ſtewards, devolved on the *quarter ſeſſions.* Wood's Inſt. *See* County Court, *and* Court Leet.

Turnips. Penalties on ſtealing turnips, 23 *Geo.* 2. *c.* 26. *ſ.* 13.

Turno Vicecomitum, Is a writ that lieth for thoſe that are called to the *ſheriff's turn* out of their own hundred. *Reg. Orig.* 173.

Turnpikes. There are *ſtatutes* continually made for erecting *turnpikes* for repairing ways; empowering juſtices of peace and other commiſſioners to appoint ſurveyors of the roads to amend the ſame; and alſo collectors of the toll at the places where the *turnpikes* are ſet up.

Now by the *ſtat.* 7 *Geo.* 3. *c.* 40. all the laws relative to the *turnpike* roads are reduced into one law. The ſubſtance of that act is as follows:

By *Sect.* 1. Five or more truſtees for turnpike roads, at a general meeting, are impowered to erect weighing engines, for weighing carriages; and to take 20*s.* (additional tolls) for every hundred weight which every narrow four wheeled carriage, with the loading, ſhall weigh above ſixty hundred weight. So for all broad four wheeled carriages weighing above ſix tuns; and alſo for all carts, or two wheeled carriages, with broad wheels, weighing above three tons;—to be levied as the other tolls, and applied in repair of the road.

2. Not to extend to waggons, *&c.* having axletrees of ſuch different lengths, that the diſtance from wheel to wheel (of the narrower pair) be not more than four feet two inches; and that the diſtance from wheel to wheel of the other pair be ſuch that the fore and hind wheels roll only one ſingle path of ſixteen inches wide at the leaſt, on each ſide, and having the fellies of the breadth of nine inches at the bottom; but that the ſame ſhall paſs on any turnpike road, and through any toll-gate within 100 miles from *London*, on paying only ſo much of the tolls as ſhall not exceed one half of the full toll payable for waggons, *&c.* having the fellies of the breadth of nine inches from ſide to ſide, or for the beaſts of draught drawing the ſame, and not rolling a path of ſixteen inches.

3. Nor to extend to carriages employed in huſbandry.

4. Truſtees are impowered to order the fellies of carriages to be gaged.

5. No compoſition for tolls to be made in reſpect of narrow wheeled carriages.

6. Penalty of 5 *l.* on fraudulently unloading goods at or before the ſame come to any gate or weighing engine or laying on goods after having paſſed the ſame;—the driver to be committed for one month: And collectors neglecting their duty are to be diſcharged, or forfeit 5 *l.* at the option of truſtees.

7. No waggon, *&c.* ſhall paſs along any *turnpike* road, above twenty miles from *London* or *Weſtminſter*, having the fellies of the breadth of nine inches at the bottom, unleſs the ſame be made in ſuch manner, that no pair of wheels (except ſuch as roll a ſurface of ſixteen inches) be wider than four feet ſix inches from inſide to inſide; and that the diſtance from the centre of the fore to the centre of the hind wheel of ſuch waggon, *&c.* (not being uſed for carriage of timber only) be not above nine feet; on forfeiture of 5 *l.* by the owners.——Officers are required to meaſure ſuch carriages:——5 *l.* penalty on obſtructing them, *&c.*

8 No broad wheeled waggon, *&c.* to be drawn with more than eight horſes; nor two wheeled carriages with more than five;—*in pairs.* Narrow four wheeled carriages not to be drawn with more than four horſes, *&c.* nor two wheeled carriages with more than three;—on forfeiture of 20*s.* and the ſupernumerary horſes. *v. ſect.* 13.

9. Five pounds penalty on fraudulently taking off any horſe, or altering the diſtance of the wheels, before coming to any gate, *&c.*

10. And a driver travelling with more horſes the ſame day, than he ſhall have paſſed through any gate with, ſhall be deemed guilty of a fraud.

11. Provided that, where it is neceſſary, truſtees may allow waggons, *&c.* with broad wheels to be drawn up hills by ten horſes; and narrow wheeled carriages by ſix. —The extent of the hills to be ſpecified in the order of allowance, which is to be certified to the general quarter ſeſſions: And the order, if approved, is to be confirmed, and filed; otherwiſe to be vacated; and after ſuch confirmation and filing, no perſon ſhall be liable to any penalty for uſing ſuch number of horſes, as ſhall be allowed.

12. Provided alſo, that if it appear, that any waggon, *&c.* could not, by reaſon of deep ſnow or ice, be drawn with the reſpective weights, and by the number of horſes allowed; then it ſhall be lawful to ſtop all proceedings for recovery of any penalty which may have been incurred by drawing with more horſes than allowed.

13. Narrow wheeled carriages not to be drawn by horſes in pairs; except four wheeled carriages loaden with fiſh, rabbits, poultry, calves alive or ſlaughtered, or lambs only.

14. No carriage to be fraudulently turned out of a *turnpike* road, to avoid the tolls, on forfeiture of one of the horſes, (not being the ſhaft horſe) with all his gears and accoutrements, to the uſe of any perſon who ſhall ſeize and diſtrain the ſame.

16. Driver of any waggon, *&c.* with wheels not duly conſtructed; or drawn by more horſes than authorized; may be apprehended by any perſon, taken before a juſtice; and on conviction forfeits 5 *l.*

17. Drag-irons to be flat at the ſole, and of the breadth of the fellies, on forfeiture of 40 *s.*

18. The owner's real name and place of abode to be painted on the *tilt*, or moſt conſpicuous part of each waggon, *&c.* alſo the words **Common Stage Waggon** or **Cart**, as the caſe may be. Travelling without the owner's name and place of abode, or with a fictitious name thereon, forfeits 5 *l.* And without the WORDS required, 40 *s.*

23. The act not to extend to "any chaiſe marine, "coach, landau, berlin, chariot, chaiſe, calaſh, or "hearſe; or to any caravan, or covered carriage, of any "nobleman or gentleman for his *private* uſe; or to ſuch "ammunition or artillery as ſhall be for his Majeſty's "ſervice; or to any cart or——carriage drawn by one "horſe, or two oxen, and no more; or to any carriage, "having the ſole or bottom of the fellies of the wheels "thereof of the breadth of nine inches, which ſhall be "laden with one ſtone, block of marble, one piece of "metal, or one piece of timber."

24. But perſons fraudulently taking the benefit of any exemption, forfeit not exceeding 5 *l.* nor leſs than 40 *s.*

28. Forty ſhillings penalty on ſurveyors ſuffering any obſtruction to remain on the roads.

30. Direction poſts to be ſet up where ſeveral highways meet; and where the highways are ſubject to deep or dangerous floods; and for guiding travellers in the ſafeſt tract. Mile-ſtones alſo to be ſet up:—Expences to be defrayed out of the tolls.—Surveyors neglecting their duty herein, forfeit 20 *s.*

31. Penalty not exceeding 5 *l.* nor leſs than 10 *s.* on pulling up or deſtroying poſts or banks to be ſet up on the ſides of the roads, for ſecurity thereof, or the parapets of bridges; or defacing mile-ſtones, or direction-poſts; or the offender may be committed and kept to hard labour, not exceeding a month, nor leſs than ſeven days, and whipt.

37. Nuſances on the road may be proſecuted at the expence of the revenues of the *turnpike:* But proſecutions are reſtrained, unleſs on offender's confeſſion, or proof by witneſſes.

48. Any ſeizure or diſtreſs made for any forfeiture incurred, unleſs by warrant, is to be delivered over to the conſtable till proof made of the offence before ſome juſtice; and if not made within ſix days after ſuch delivery, the diſtreſs to be returned to the owner; and the ſeizer to pay expences of keeping; but on conviction, an order to be made for delivering the diſtreſs to the ſeiſer. Seizer not duly proſecuting ſuch ſeizure forfeits 40 *s.*

49. All convictions to be on confeſſion; or oath of one or more witneſſes:—Inhabitants competent witneſſes:—Any juſtice (though a truſtee) may act.

51. Penalties, *&c.* (not otherwiſe directed) are to be levied by diſtreſs and ſale; one half to the informer, the other to the ſurveyor, towards repairs: For want of diſtreſs, *&c.* offender to be committed, not exceeding three months; unleſs the penalty, *&c.* be ſooner paid.

53. Proſecutors or informers at liberty to ſue, either as the act directs; or by action of debt for pecuniary penalties: or by action of trover for any beaſt of draught, or other goods, in which the forfeiture ſhall be ſufficient evidence of property to plaintiff, he need not prove any ſeizure or demand; and ſhall have full coſts:—But *ten days notice in writing*, to be given to the party offending, previous to the commencement of ſuch action:—The ſame to be brought within one month after the offence.

54. Diſtreſs for money to be levied by virtue of the act, ſhall not be deemed unlawful, nor the party making it be deemed a treſpaſſer, for default of form in the proceedings; nor ſhall the party *diſtraining* be deemed a treſpaſſer *ab initio*, on account of any ſubſequent irregularity.

55. But no plaintiff ſhall recover in any action for ſuch irregularity, if tender of ſufficient amends has been made before action brought: And if no tender has been made, defendant may pay money into court before iſſue joined.

56. Appeal to the General Quarter Seſſions, given.

60. Action againſt any perſon for any thing done in purſuance of the act, to be commenced within three months after the fact committed:—To be local. Defendant may plead the general iſſue, and give the ſpecial matter in evidence:—If the action is brought after the time limited, or made *tranſitory*, the jury ſhall find for defendant; who in all caſes ſhall have treble coſts.

By this act the principal parts of all the former *turnpike* acts are repealed. See *Highways*.

Turny, (Fr. *Tourney*) Mentioned in the *Stat.* 24 *H.* 8. *c.* 13. See *Tournament*.

Tutors, The ſtatute relating to, 13 & 14 *Car.* 2. *c.* 4. Vide *Schoolmaſter*.

Twaite, Signifies a wood grubbed up, and converted to arable land. *Co. Lit.* 4.

Twanight Geste, *(Hoſpes Duaram Noctium)* Was a gueſt at an inn a *ſecond Night*; and if he did any injury to any perſon, he was to anſwer for it himſelf; and not his hoſt, as in caſe of a *third Night's Awnbinde.* Sax. Lex. See *Awnbinde.*

Twelthindi, *(Sax.)* The higheſt rank of men, in the *Saxon* government, who were valued at one thouſand two hundred ſhillings; and if any injury were done to ſuch perſons, ſatisfaction was to be made according to their worth. *Leg. King Alfred, cap.* 12, 13, *&c.* and of King *H.* 1. *c.* 76.

Twelve Men, *(Duodecimo homines legales)* Is a number of *twelve* perſons or upwards, by whom and whoſe oath as to matter of fact all trials paſs, both in civil and criminal cauſes, through all courts of the Common law in this realm: They are otherwiſe called the *jury* or *inqueſt*. See *Jury*.

Two Witnesses, *When neceſſary.* In all caſes of high treaſon, petit treaſon, and miſpriſion of treaſon, by *Statutes* 1 *Ed.* 6. *c.* 12. 5 & 6 *Ed.* 6. *c.* 11. & 1 & 2 *Ph. & Mar. c.* 10. *Two* lawful witneſſes are required to convict a priſoner; except in caſes of coining, and counterfeiting the ſeals; or unleſs the party ſhall willingly and without violence confeſs the ſame. Such confeſſion, by *Stat.* 7 *W.* 3. *c.* 3. muſt be in open court.—See the *Statutes* and 1 *Hal. P. C.* 297. *Stat. Tr.* 2 *V.* 144. *Foſter* 235. *Black. Com.* 3 *V.* 350. And ſee alſo *Suppletory Oath.*

Twyhindi, *(Sax.)* Were the lower order of *Saxons* valued at 200 *s.* as to pecuniary mulſts inflicted for crimes, *&c. Leg. Alfred. c.* 12.

Tyhtlan, An accuſation, impeachment, or charge, of any treſpaſs or offence. *Leg. Ethelred. c.* 2.

Tylwith, (Brit. derived from *Tyle*, i. e. *locus ubi ſtetit domus, vel locus ædificandæ domui apt*[illegible], or from *tylath*, *trabs, tignus)* Signifies a place whereon to build a houſe, or a beam in the building: And it is applied to *familia*, a tribe or family branching forth of another, which in the old *Engliſh heraldry* is called *ſecond or third houſes*; ſo that in caſe the great paternal ſtock brancheth itſelf into ſeveral *tylwiths* or houſes, they carry no ſecond or younger houſes farther; and the uſe of theſe *tylwiths* was to ſhew not only the originals of families as to the pedigree, but the ſeveral diſtinctions and diſtances of birth, that in caſe any line ſhould make a failure, the next in any degree may claim their intereſt according to the rule of deſcent, *&c.*

Tynmouth. There is a cuſtomary deſcent of lands in the honour of *Tynmouth*, that if any tenant hath iſſue two or more daughters, and die ſeiſed in fee, the land ſhall go to the eldeſt daughter for life only, and after to the couſins of the male-line; and for default thereof to eſcheat. 2 *Keb.* 111, 114.

Type, *(Typus)* A figure, example, or likeneſs of a thing. *Lit. Dict.* The characters uſed in printing are called *Types.*

Typographia, The trade of printing. *Ibid.*

Tythes, *(Decimæ.)* See *Tithes.*

V.

Vacanus, Vacant, free, that is at leiſure; alſo void. *Litt. Dict.*

Vacaria. A void place, or waſte ground:—— *Dedimus omnia dominica noſtra* vacariis, *& foreſtis, &c.* Mem. in Scacc. Mich. 9 Edw. 1.

Vacat, See *Judgment*, and 21 *Vin Abr.* 536.

Vacating Records. Imbezzling or *vacating records*, or falſifying certain other proceedings in a court of judicature, is a felonious offence againſt public juſtice. See the *Statutes* 8 *H.* 6. *c.* 12. 21 *Jac.* 1. *c.* 26. 4 *W. & M. c.* 4. and *Black. Com.* 4 *V.* 128

Vacation, (*Vacatio*) Is all the time between the end of one term and the beginning of another; and it begins the laſt day of every term as ſoon as the court riſes. The time from the death of a biſhop, or other ſpiritual perſon, till the biſhoprick or dignity is ſupplied with another, is alſo called *vacation*. Stat. Weſtm. 1. c. 21. 14 Ed. 3. c. 4. See *Black. Com.* 3 *V.* 276.

Vacatura, An avoidance of an eccleſiaſtical benefice; as *prima vacatura*, the firſt voidance, *&c.*

Vaccary, (*Vaccaria*) Is a houſe or place to keep cows in; a dairy-houſe, or cow-paſture. *Fleta, lib.* 2.

Vaccarius, The cow-herd, who looks after the common herd of cows. *Ibid.*

Vadiare Duellum, To wage a combat, where two contending parties on a challenge give and take a mutual pledge of fighting. *Cowell.*

Vadium ponere, Is to take ſecurity, bail, or pledges for the appearance of a defendant in a court of juſtice—— *Præcipimus tibi, &c quod ponas per* vadium *& ſalves plegios Johannem de B. &c.* Reg. Orig.

Vadium Mortuum, A mortgage or pawn of lands ſo engaged to the creditor, that he hath a right to the mean profits for the uſe of his debt. *Glanvil. lib.* 10. *cap.* 8. See *Black. Com.* 2 *V.* 157.

Vadium vivum. A living pledge, as when a man borrows a ſum of another, and grants him an eſtate, as of 20*l. per annum*, to hold until the rents and profits ſhall repay the ſum borrowed. *Black. Com.* 2 *V.* 157.

Vagabond, (*Vagabundus*) One that wanders about, and has no certain dwelling; an idle fellow: And rogues, *vagabonds*, and ſturdy beggars, are mentioned in divers ſtatutes. See *Vagrants*, and *Black. Com.* 4 *V.* 170.

Vagrants,)*Vagrantes*) By the ſtatute 17 *Geo.* 2. *c.* 5. They, who threaten to run away and leave their wives or children to the pariſh; or unlawfully return to a pariſh from whence they have been legally removed; or, not having wherewith to maintain themſelves, live idle, and refuſe to work for the uſual wages; and all perſons going from door to door, or placing themſelves in ſtreets, *&c.* to beg in the pariſhes where they dwell, ſhall be deemed *idle and diſorderly perſons.* All perſons going about as patent gatherers, or gatherers of alms, under pretence of loſſes by fire, *&c.* or as collectors for priſons, *&c.* all fencers and bearwards; all common players of interludes, and perſons who for hire, gain, or reward, act, repreſent, or perform, or cauſe to be acted, *&c.* any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the ſtage, or any part therein, not being authoriſed by law; all minſtrels, jugglers; all perſons pretending to be *gypſies*, or wandering in the habit or form of *Egyptians*, or pretending to have ſkill in phyſiognomy, palmeſtry, or other crafty ſcience, or to tell fortunes, or uſing any ſubtle craft to deceive and impoſe on a perſon; or playing or betting at any unlawful games or plays; and all perſons, who run away and leave their wives and children, whereby they become chargeable to any pariſh; all pedlars not duly licenſed; all perſons wandering abroad and lodging in ale-houſes, barns, outhouſes or in the open air, not giving a good account of themſelves; and all perſons wandering abroad, and begging, pretending to be ſoldiers, mariners, or pretending to go to work in harveſt, not having proper certificates; and all other perſons wandering abroad and begging; and all perſons going from door to door, or placing themſelves in ſtreets, *&c.* to beg in the pariſhes where they dwell, and being apprehended for the ſame, ſhall reſiſt or eſcape, ſhall be deemed *rogues and vagabonds*.

All end-gatherers offending againſt the *Stat.* 31 *Geo.* 1. *c.* 23. being convicted; all perſons apprehended as rogues and vagabonds, and eſcaping, or refuſing to go before a juſtice, or to be examined upon oath before ſuch juſtice, or refuſing to be conveyed by paſs; or giving a falſe account of themſelves after warning of the puniſhment; and all rogues or vagabonds breaking or eſcaping out of any houſe of correction; and all perſons who having been puniſhed as rogues and vagabonds ſhall again commit any of the ſaid offences, and offenders againſt this act having children with them, (and ſuch children being put out apprentices or ſervants purſuant to this act) being again found with the ſame children, ſhall be deemed *incorrigible rogues*.

The puniſhment of *idle and diſorderly perſons* is commitment to the houſe of correction, there to be kept to hard labour, not exceeding a month. *Rogues and vagabonds* are to be publicly whipt or ſent to the houſe of correction until the next ſeſſions, or any leſs time, and after ſuch whipping or commitment may be paſſed to their laſt legal ſettlement or place of birth, or if under fourteen, and have a father or mother living, to the place of abode of ſuch father and mother. And if committed until the next ſeſſions and adjudged a rogue or vagabond, the juſtices may order him to be kept in the houſe of correction to hard labour not exceeding ſix months.

A perſon adjudged at the ſeſſions an *incorrigible rogue*, may be kept in the houſe of correction to hard labour, not exceeding two years, nor leſs than ſix months, and during the confinement be corrected by whipping, at ſuch times and places as the juſtices ſhall think fit, and may then be paſſed as aforeſaid: And if a male, and above the age of twelve years, the juſtices before his diſcharge may ſend him to be employed in the King's ſervice, either by ſea or land. If before the expiration of his confinement he ſhall eſcape from the houſe of correction, or offend again in the like manner, he ſhall be deemed to be guilty of felony, and tranſported for any time not exceeding ſeven years.

Any perſon may apprehend and carry before a juſtice any perſons going about from door to door, or placing themſelves in ſtreets, highways or paſſages to beg alms in the pariſhes where they dwell, and the juſtices may order the overſeers of the poor to pay ſuch perſon 5*s.* for every offender, which on refuſal of payment may be levied on the overſeers goods. Any perſon may apprehend an offender againſt this act, and carry him before a juſtice.

A conſtable refuſing or neglecting to uſe his endeavour to apprehend any offender ſhall forfeit not exceeding 5*l.* nor leſs than 10*s.* to the uſe of the poor, to be levied by diſtreſs. And any other perſon charged by a juſtice of peace to apprehend ſuch offender, refuſing ſo to do, ſhall forfeit 10*s.* A juſtice may order the high conſtable to pay to any perſon, whether a conſtable or not, who ſhall apprehend any ſuch offender, 10*s.* for every offender. The juſtices are four times in the year at leaſt, to cauſe a general privy ſearch to be made in one night, for the apprehending rogues and vagabonds.

To prevent expences in paſſing rogues, vagabonds, and incorrigible rogues, the juſtice is to deliver to the officer a note directing how they are to be conveyed, whether in a cart, by horſe, or on foot. The conſtable is to convey ſuch perſon in ſuch manner and time as by the paſs is directed, the next direct way to the place where ſuch perſon is ordered to be ſent, if in the ſame county, *&c.* but if in another county, *&c.* he ſhall deliver the perſon to the proper officer of the firſt town in the next county, *&c.* in the direct way to the place where ſuch perſon is to be conveyed, together with the paſs and duplicate of examination, taking his receipt for the ſame; and ſuch officer is immediately to apply to a juſtice of peace in the ſame county, who is to make a like note, and deliver it to the officer, who is to convey the perſon to the firſt pariſh, *&c.* in the next county, and ſo in like manner from one county to another, till they come to the place where ſuch perſon is ſent: And if the officer who ſhall receive ſuch perſon there, ſhall think the examination to be falſe, he may carry the perſon before a juſtice of peace, who, if he ſee cauſe, may commit ſuch perſon to the houſe of correction, till the next ſeſſions, where the juſtices, if they ſee cauſe, may deal with ſuch perſon as an incorrigible rogue, but he ſhall not be removed but by order of two juſtices.

If the *vagrant* upon ſearch be found to have effects ſufficient to pay all or part of the expence of paſſing him, the juſtice may order the ſame to be ſold and employed for that purpoſe. The juſtices at ſeſſions may direct what rates and allowances ſhall be made for paſſing ſuch rogues, vagabonds, *&c.* and make orders for the more regular proceeding therein. The high conſtable is to pay to the petty conſtable or other officer the rates ſo allowed, on penalty of forfeiting double the ſum, to be levied by diſtreſs.

When a *vagrant* is to be paſſed to *Ireland*, the *Iſle of Man*, *Jerſey*, *Guernſey*, or *Scilly*, the maſter of any ſhip bound to thoſe places ſhall, on a warrant from a juſtice of peace, and being paid ſuch allowance as the juſtice ſhall think proper, receive ſuch *vagrant* and convey him to ſuch place, and give a receipt for the *vagrant* and money on the back of the warrant, on penalty of 5 *l* to the poor, to be levied by diſtreſs; but not to be obliged to take above one *vagrant* for every twenty tons burthen of his ſhip. The pariſh to which any *vagrant* ſhall be paſſed may employ him in work till he ſhall betake himſelf to ſome ſervice, and if he ſhall refuſe to work or go to ſervice, he may be ſent to the houſe of correction.

By the *Stat.* 25 *Geo.* 2. *c.* 36. it ſhall be lawful for any two or more juſtices, in caſe any perſon apprehended, upon any general privy ſearch, or by virtue of any ſpecial warrant, ſhall be charged before them with being a rogue and vagabond, or an idle and diſorderly perſon, or with ſuſpicion of felony (although no direct proof be then made thereof) to examine ſuch perſon upon oath, not only to the pariſh or place where he was laſt legally ſettled, but alſo as to his means of livelihood, the ſubſtance of which examination ſhall be put into writing, and be ſubſcribed by the perſons ſo examined, and the ſaid juſtice ſhall likewiſe ſign the ſame, and tranſmit it to the next ſeſſions of the peace to be there filed and kept on record: And if ſuch perſon ſhall not make it appear to ſuch juſtices, that he has a lawful way of getting his livelihood, or ſhall not procure ſome reſponſible houſekeeper to appear to his character, and to give ſecurity for his appearance before ſuch juſtices, at ſome day to be fixed (if the ſame ſhall be required) to commit ſuch perſon to ſome priſon or houſe of correction, for any time not exceeding ſix days, and in the mean time to order the overſeers of the poor where ſuch perſon ſhall be apprehended, to inſert an advertiſement in ſome public paper, deſcribing ſuch ſuſpicious perſon, and any things which ſhall be found upon him, and which he ſhall be ſuſpected not to have honeſtly come by, and mentioning the place to which he is committed, and the time and place when and where ſuch perſon is to be again brought before them to be re-examined; and if no accuſation ſhall then be laid againſt him, then ſuch perſon ſhall be diſcharged. See *Rogue*, *Lunatic*. For the method of conveying *vagrants*, ſee 26 *Geo.* 2. *c.* 34. See alſo *Black. Com* 4 *V.* 170.

Valet, Valect, or Vadelet, (*Valettus vel Valecta*) Was anciently a name ſpecially denoting young gentlemen, though of great deſcent or quality; but afterwards attributed to thoſe of lower rank, and now a ſervitor, or gentleman of the chamber. *Cam. Selden's Tit Hon. Bract. lib.* 3. In the accounts of the *Inner Temple*, it is uſed for a bencher's clerk or ſervant; and the butlers of the houſe corruptly call them *Varlets*.

Valentia, The value or price of any thing. See *Value*.

Valeſheria, Signifies the kindred of the ſlain, one on the father's ſide, and another on the ſide of the mother, to prove that a man was a *Welſhman*. It is mentioned in *Stat. Walliæ*, 12 *Ed.* 1. *c.* 4.

Valor Maritagii. Under the ancient tenures, while an infant was in ward, the guardian had the power of tendering him or her a ſuitable match without *diſparagement* or inequality: Which if the infants refuſed, they forfeited the value of the marriage, *valorem maritagii*, to their guardian; that is, ſo much as a jury would aſſeſs, or any one would *bona fide* give to the guardian for ſuch an alliance: And if the infants married themſelves without the guardian's conſent, they forfeited double the value, *duplicem valorem maritagii*. This was one of the greateſt hardſhips of our ancient tenures—But, the tenures being taken away, the law is aboliſhed. See *Black. Com.* 2 *V.* 70. and *Value of Marriage*

Valuable Conſideration. Is, in a deed, *&c.* money, marriage, labor, *&c.* See *Black. Com.* 2 *V.* 297.

Valvaſors. The firſt name of dignity, next beneath a peer, was anciently that of *vidames*, *vice domini*, or *valvaſors*, who are mentioned by our ancient lawyers, as *viri magnæ dignitatis*; and Sir *Edward Coke* ſpeaks highly of them. Yet they are now quite out of uſe; and our legal antiquarians are not agreed upon even their original or ancient office. See *Black. Com.* 1 *V.* 403. and *Vavaſor*.

Value, (*Valentia*, *Valor*) Is a known word; and the *value* of thoſe things as to which offences are committed, is uſually compriſed in indictments; which ſeems neceſſary in *theft* to make a difference from *petit larceny*, and in treſpaſs to aggravate the fault, *&c.* But in other caſes a diſtinction has been made between *value* and *price*. If a plaintiff declares in an action of treſpaſs for the taking away of *live cattle*, or *one particular thing*, he ought to ſay that the defendant took them away, *pretii* ſo much; if the declaration be for taking of things *without life*, it muſt be alledged *ad valentiam*, *&c.* ſo that *live cattle* are to be *prized* at ſuch a *price*, as the owner of them did eſteem them to be worth; and *dead things* to be reckoned at the *value* of the market which may be certainly known. Of *coin not current* it ſhall be *pretii*; but of *common coin current*, it ſhall be neither ſaid *pretii* nor *ad valentiam*, for the *value* and *price* thereof is certain: The difference between *pretii* and *ad valentiam* may proceed from the rule in the *regiſter of writs*, which ſhews it to be according to the ancient forms uſed in the law. *Weſt. Symb. par.* 2. 2 *Lil. Abr* 629. A jewel it is ſaid is not *valuable* in law, but only according to the *valuation* of the owner of it, and is very uncertain: But there ſeems to be a certain *value* for diamonds among the merchant jewellers, according to their weight and luſtre, *&c.* *Hil.* 21 *Car. B. R.* 2 *Lil.* 628. A man cannot ſay that another owes him ſo much, when the *value* of the thing owing is uncertain; for which reaſon actions in theſe caſes are always brought in the *detinet*, and the declaration *ad valentiam*, *&c.* 1 Lutw. 484. See *Money*.

Value of Land, May be intended ſuch as it was anciently, and not adjudged according to its improved *value* 2 Leon 117. Lutw. 1304. Vide *Purchaſe*.

Value of Marriage, (*Valore maritagii*) Was a writ that lay for the lord, having offered *marriage* to an infant without diſparagement, if the man refuſed to take the lord's offer, and married another woman, to recover the *value* of the marriage. *Reg. Orig.* 164. This is alſo colled forfeiture of marriage, *forisfactura maritagii*. See the ſtatute 12 *Car.* 2. *c.* 24. And *Valor Maritagii*.

Vang, (*Sax.*) He *vanged* for me at the *vant*, *i. e.* ſtood for me at the font. *Blount*

Vannus, A Vane, *Venti Index*; and *vannus*, a fan to winnow corn with. *Lit. Dict.*

Vantarius, (*Præcurſor*) As *vantarius Regis*, the King's fore footman.——*Richardus R. Miles ten. terras per ſergeantiam eſſe* vantarium regis, *&c.* *Rot. de finibus.* Term. Mich. 2 Ed. 2.

Variance, (*Variantia*, from the Fr. *Varier*, i.e. *Alterare*) Signifies any alteration of a thing formerly laid in a plea, or where the declaration in a cauſe differs from the writ, or from the deed upon which it is grounded, *&c.* 2 *Lil. Abr.* 629. If there is a variance between the declaration and the writ, it is error; and the writ ſhall abate. And if there appear to be a material *variance* between the matter pleaded and the manner of the pleading it, this is not a good plea; for the manner and matter of pleading ought to agree in ſubſtance, or there will be no certainty in it. *Cro. Jac.* 479. 2 *Lil.* 629.

But when the pleading is good in ſubſtance, a ſmall *variance* ſhall not hurt. 3 *Mod.* 227. If the record of *Niſi Prius* agrees with the declaration delivered, a variation from the iſſue is not material. 2 *Strange* 1131. Where the original writ *varies* from the declaration, it is not remedied by any ſtatute of *Jeofails*. 5 *Rep*. 37. Though verdict in ejectment was for a meſſuage next the meſſage of *A. B.* and the judgment for a meſſuage next another meſſuage in the occupation of *A. B.* This is no material *variance*, but is amendable by the *Stat*. 16 & 17 *Car*. 2. *cap*. 8. which enacts, That all omiſſions, *variances*, &c. not being againſt the right of the matter of the ſuit, ſhall be amended. *Raym*. 398. 3 *Salk*. 368. The original writ in *C. B.* concluded *ad damnum* 40 *l.* and the declaration was *ad damnum* 100 *l.* The jury gave 12 *l.* damages; and on a writ of error brought, this *variance* was aſſigned; it was held that this had been a good objection in the original action; but it is not ſo after verdict; not being matter in point of judgment, eſpecially as the jury found only 12 *l.* damages; but if the verdict had found more damages than what was mentioned in the writ, though leſs than what was ſet forth in the declaration, it had been ill, becauſe there was no writ to warrant ſuch damages. 2 *Cro*. 629. 1 *Bulſt*. 49.

If a defendant pleads a *variance* between the writ and declaration, he is to crave *oyer* of the writ before he ſhall have any advantage of the *variance*, becauſe the writ and declaration are not upon the ſame roll; and therefore if the defendant plead to it without demanding *oyer*, on demurrer judgment may be for him to anſwer over, *&c.* 2 *Salk*. 658. If in the imparlance roll the declaration is in debt, and in the plea-roll it is in treſpaſs; this is ſuch a *variance*, that if the plaintiff hath judgment it ſhall be reverſed. 3 *Bulſt*. 229. When a contract is intire, an action of debt cannot be brought for part of the money, without ſhewing how the other is ſatisfied; if it be, this *variance* from the true debt will make it ill. 3 *Nelſ. Abr*. 440.

In writ of error in the *Exchequer* chamber to remove a record out of *B. R.* of a certain treſpaſs the huſband and wife hath done, the record certified was of a treſpaſs done by the woman alone; and for this *variance* the writ was abated, and the record judged not removed. *Sid*. 269. 3 *Salk*. 369.

On *variance* in the perſons or number of acres, *&c.* between a fine and an indenture to lead the uſes; if the party avers, there was not any other conſideration, or new agreement, but that the fine was levied according to the uſes and intents mentioned in the indenture, it is good. 5 *Rep*. 25.

Variance of the ſum in a judgment, not cured by a *remittit*. 2 *Strange* 1171. A ſlight *variance* fatal in the name of a corporation. 2 *Strange* 787. *Variance* in the chriſtian name of an earl immaterial. 1 *Strange* 316. *Segrave* and *Seagrave* no material *variance* upon an iſſue of *nul tiel* record. 2 *Strange* 889. *Variance* in names, *&c.* how ſupplied by averment, that a man is the ſame perſon, and inqueſt of office, *&c.* ſee *Averment*, and *Pardon*. Vide *Amendment* and *Com. Dig. tit. Verdict*.

Vaſſal, (*Vaſſalus*) In our ancient cuſtoms ſignified a tenant or feudatory; or perſon who vowed fidelity and homage to a lord, on account of ſome land, *&c.* held of him in fee; alſo a ſlave or ſervant, and eſpecially a domeſtick of a prince. *Du Cange*. *Vaſſalus* is ſaid to be *quaſi inferior ſocius*, as the *vaſſal* is inferior to his maſter, and muſt ſerve him; and yet he is in a manner his companion, becauſe each of them is obliged to the other. *Skene*. See *Black Com*. 2 *V*. 53.

Vaſſalage, Signifies the ſtate of a *vaſſal*, or ſervitude and dependency on a ſuperior lord: *Liege vaſſalage* belonged only to the *King*.

Vaſſeleria, Was the tenure of holding of vaſſals. *Cowel*.

Vaſto, Is a writ that lies againſt tenants for term of life or years, committing *Waſte*. *F. N. B.* 55. *Reg. Orig* 72. See *Waſte*.

Vaſtum, A *Waſte* or common lying open to the cattle of all tenants who have a right of commoning. *Paroch. Antiq*. 171.

Vaſtum Foreſtae vel Boſci, That part of a foreſt or wood, wherein the trees and underwood were ſo deſtroyed, that it lay in a manner waſte and barren. *Paroch Antiq. p*. 351.

Vavaſor, Is one who was in dignity next to a baron, *Camd. Brit*. 109.——*Sunt & alii Potentes Regni, qui dicuntur Barones hoc eſt, robur belli: et alii ſunt qui dicuntur* Vavaſores, *Viri Magnæ Dignitatis, &c.* Bract. lib. 1. cap. 8. Spelm. Gloſſ. See *Vavaſors*.

Vavaſory, (*Vavaſoria*) The lands that a *Vavaſor* held. *Bract. lib*. 2.

Ubiquity of the King. The legal ubiquity of the King is a conſequence of his prerogative. His Majeſty, in the eye of the law, is always preſent in all his courts, though he cannot perſonally diſtribute juſtice. His judges are the mirror by which the King's image is reflected. It is the regal office, and not the royal perſon, that is always preſent in court, always ready to undertake proſecutions, or pronounce judgment, for the benefit and protection of the ſubject. And from this ubiquity it follows, that the King can never be nonſuit; for a nonſuit is the deſertion of the ſuit or action by the non-appearance of the plaintiff in court. For the ſame reaſon alſo, in the forms of legal proceedings, the King is not ſaid to appear *by his attorney*, as other men do; for he always appears in contemplation of law in his own proper perſon. *Black. Com*. 1 *V*. 270.

Veal Money, The tenants within the manor of *Bradford*, in the county of *Wilts*, pay a yearly rent by this name to their lord, in lieu of *veal* paid formerly in *kind*. *Blount's Ten*'.

Vectigal Judiciarium, Is applied to money or *fines* paid to the King, to defray the charge he is at in maintaining the courts of juſtice, and protection of the people. 3 *Salk* 33.

Vejours, (*Viſores*, from the Fr. *Veior*, i. e. *Cernere*) Are ſuch perſons as are ſent by the court, to take a view of any place in queſtion, for the better deciſion of the right thereto. And it is uſed for thoſe that are appointed to view an offence; as a man murdered, a woman raviſhed, *&c.* *Old Nat. Br*. 112. *Bract. lib*. 5.

Veltraia, (*Miniſterium de* Veltraia,) The office of dog-leader or a courſer. *Rot. Pip*. 5 *Steph*.

Veltraius, One who leads greyhounds, which dogs in *Germany* are called *Welters*, in *Italy*, *Veltres*, &c. And lands are held *per ſervitium inveniend. unum* veltrarium *Canes ducere*, &c. Blount's Tenures, *pag*. 9.

Velum quadrageſimale, A veil or piece of hangings, drawn before the *altar* in *Lent*, as a token of mourning and ſorrow,—*Item ad quodlibet altare, &c.* Velum quadrageſimale, *Velum Nuptiale*, *Palla Mortuorum*, *&c.* Synod. Exon. Anno 1217.

Venaria, Are thoſe beaſts which are caught in the woods by hunting. *Leg. Canut. c*. 108.

Venatio, In the ſtatute of *Charta de Foreſta* ſignifies *Veniſon*, in Fr. *Venaiſon*: It is called *Venaiſon*, of the means whereby the beaſts are taken, *quoniam ex* venatione *capiuntur*, and being hunted are moſt wholeſome: And they are termed beaſts of *venary* (not *venery*) becauſe they are gotten in hunting. 4 *Inſt*. 316.

It is ſometimes taken for the exerciſe of hunting.

Venditioni exponas, Is a judicial writ, directed to the ſheriff, commanding him to ſell goods which he hath formerly taken into his hands, for the ſatisfying a judgment given in the King's court. *Reg. Judic*. 33. *Stat*. 14 *Car*. 2. *cap*. 21. The ſheriff upon a *fieri facias* takes goods in execution, and returns that he hath ſo done, and cannot find buyers; or if he delay to deliver them to the party, *&c.* then the writ, *Venditioni exponas* ſhall iſſue to the ſheriff, to make ſale of the goods, and bring in the money. 13 *H*. 7. 1. *Dyer* 363. If a *Superſedeas* be not delivered to the ſheriff till he hath in part executed a writ of execution, he may afterwards be authoriſed to go through with it by a *Venditioni exponas*; as he may alſo in the like caſe after a writ of error. *Dyer* 98. *Cro. Eliz*. 597. 1 *Roll. Abr*. 894.

Venditor Regis, The King's ſaleſman; being the perſon who expoſed to ſale goods and chattels ſeized or diſtrained to anſwer any debt due to the King: This office was granted by King *Edw*. 1. to *Philip de Lardiner*, in the county of *York*: *Ita quod ipſe vel certus ſuus attornatus ibit ad mandatum vice-comitis de loco in locum infra com. præd. ſumptibus ſuis ad prædict' venditiones faciendas, &*

capiat de unaquaque venditione pro feodo ſuo xxxii *den.* But the office was ſeized into the King's hands for the abuſe thereof. *Anno* 2. *Ed.* 2.

Vendor and Vendee. *Vendor* is a perſon who ſells any thing, and *vendee* the perſon to whom it is ſold. Where a man ſells a thing to another, it is implied that the vendor ſhall make aſſurance by bill of ſale to the vendee, but not unleſs it be demanded; *per Finch* Chancellor. 2 *Chan. Caſes* 5. *Mich.* 32. *Car.* 2. *Legate* v. *Hockwood.* See 21 *Vin. Abr.* tit. *Vendor* and *Vendee.*

Venella, Is a narrow or ſtrait way: It is mentioned in the *Monaſt.* 1 *tom. pag* 408.

Venia, Is uſed for a kneeling or low proſtration on the ground, by penitents. *Walſing.* 196.

Venire facias, A writ judicial awarded to the ſheriff to cauſe a jury of the neighbourhood to appear, when a cauſe is brought to iſſue, to try the ſame; and if the jury come not at the day of this writ, then there ſhall go a *habeas corpora*, and after a *diſtreſs* until they appear. *Old Nat. Br.* 157. But where a *venire* omits part of the iſſue to be tried, or any of the parties; if a juror is named in the *habeas corpora*, by a name different from that in the *venire*; or a juror returned on ſuch a pannel is omitted in the *habeas corpora*; or a *venire* or *diſtringas* are iſſued without any award on the roll to warrant them; it will be ill, and it is ſaid to be a diſcontinuance. 2 *Hawk. P. C.* 298, 299 Formerly many queſtions aroſe concerning the place, or places, from whence a jury ſhould come, *vide* 2 *Lill. Abr.* 633. 636. *Cro. Eliz.* 260. 3 *Salk.* 381. *Yelv.* 104. *Moor* 357, 412. 5 *Rep.* 36. *Lutw.* 213. But now by the ſtatute 4 & 5 *Ann. c.* 16. A *venire facias* may be from the body of the county, *&c.* In an information againſt a county for not repairing a bridge, it was held, that the attorney general might take a *venire* to any adjacent county; and that it might be *de corpore* of the whole, or *de vicineto* of ſome particular place therein next adjoining. *Trin.* 3 *Ann.* 3 *Salk.* 381.

One *venire facias* is ſufficient to try ſeveral iſſues, between the ſame parties, and in the ſame county. 2 *Cro.* 550. And where an action was brought againſt two, they both joined iſſue, and one died; and after the *venire facias* was awarded to try the iſſue between both, which was done; and held to be no error, though it iſſued againſt a dead perſon, becauſe one of the defendants was living. *Cro. Car.* 308. 3 *Nelſ. Abr.* 444. In caſe of the death of one defendant, where the action ſurvives againſt the other, the death ſhould be ſuggeſted on the roll by 8 & 9 *W.* 3. *c.* 11. *ſ.* 7. If a *venire facias* is returned by the coroner for defect of the ſheriff, *&c.* when it ought to be returned by the ſheriff, the trial is wrong, and not remedied by any ſtatute of jeofails. 5 *Rep.* 36. In all caſes, where there is to be a ſpecial jury, the *venire* muſt be *ſpecial:* If the matter to be tried be within divers places, and one and the ſame county, the *venire facias* ſhall be general; and if in ſeveral counties, it ſhall be ſpecial. 2 *Lill. Abr.* 635.

If a matter of law be depending in court undetermined, and an iſſue alſo joined in the cauſe, there is to be a ſpecial *venire* awarded, *tam ad triandum exitum, quam ad inquirendum de dampnis, &c.* as well to try the iſſue, as to find the damages both upon the iſſue and the matter put in judgment of the court. 2 *Lill. Abr.* 636. At a trial at *niſi prius*, the plaintiff changed the *venire facias* and panels, and had a jury the defendant knew not of; and ruled, that the defendant cannot be aided, if the firſt *venire* was not filed: And a difference was taken when the firſt *venire* was not filed, that he cannot be aided, becauſe he may reſort to the ſheriff, and have a view of the panel, to be prepared for his challenges; but if the firſt *venire* was filed, then the defendant ſhall have a new trial. *Raym.* 79.

A *venire facias* after filed, cannot be altered without conſent of parties: Though where a verdict in a cauſe is imperfect, ſo that judgment cannot be given upon it, there ſhall be a *new venire facias* to try the cauſe, and find a new verdict. 2 *Lill.* 634, 635. And if a plaintiff be nonſuit on a miſtake in the *niſi prius* record, and the paper book and roll are right; the nonſuit may be ſet aſide, and a *venire facias de novo* awarded, and the iſſue tried, *&c. Cro. Jac.* 669. A *venire facias* may be amended by the iſſue roll, when that is right, in ſome caſes. 3 *Nelſ.* 446. *Venire* is now little more than form; unleſs in caſe of a trial at bar.

Venire facias, Is the common proceſs upon any *preſentment*, being in nature of a ſummons for the party to appear; and is a proper proceſs to be firſt awarded on an indictment for any crime, under the degree of treaſon, felony, or maihem, except in ſuch caſes wherein other proceſs is directed by ſtatute: And if it appears by the return to ſuch *venire*, that the party has lands in the county whereby he may be diſtrained, the diſtreſs infinite ſhall be awarded till he do appear; and he ſhall forfeit, on every default, ſo much as the ſheriff returns upon him in iſſues: But if a *nihil* be returned, a *capias*, *alias*, and *pluries*, ſhall iſſue, *&c.* 2 *Hawk.* 283. The *venire facias ad reſpondendum* may be without a day certain, becauſe by an appearance the fault in this proceſs is cured; but a *venire facias ad triand. exitum* muſt be returnable on a day certain, *&c.* 3 *Salk.* 371.

Venire facias tot Matronas, Is mentioned in *Lambard's Eiren. lib.* 4. See *Ventre inſpiciendo.*

Venitare, Is the book of *Eccleſiaſticus*; ſo called becauſe of the *Venite exultemus Domino, Jubilate Deo, &c.* written in the hymn-book or pſalter as it is appointed to be ſung, *&c.* It often occurs in the hiſtory of our *Engliſh* ſynods; and is called *Venitarium.* Mon. Ang. Tom. 3. pag. 432.

Venter, Signifies the belly; but it is alſo uſed for the children by a woman of one marriage: There is in law a *firſt and ſecond venter*, &c. where a man hath children by ſeveral wives; and how they ſhall take in diſcents of lands, vide *Diſcent.*

Ventre inſpiciendo, Is a writ to ſearch a woman that ſaith ſhe is with child, and thereby with-holdeth lands from the next heir: The trial whereof is by a *jury of women. Reg. Orig.* 227. The law hath provided this writ for the benefit of right heirs, *contra partus ſuppoſitus*, and it is ſued out of Chancery, and returnable in the Common pleas, *&c.* And if a man having lands in fee-ſimple, or fee tail, dieth, and his wife ſoon after marries again, and feigns herſelf with child by her former huſband, in this caſe, though ſhe be married, the writ *de ventre inſpiciendo* doth lie for the heir againſt her. 2 *Lill. Abr.* 631. *Thomas de Aldham* of *Surry*, brother of *Adam de Aldham, Anno* 4 *Hen.* 3. claimed his brother's eſtate: But *Joan*, widow of the ſaid *Adam*, pleaded ſhe was with child; whereupon the ſaid *Thomas* obtained the writ *ventre inſpiciendo* directed to the ſheriff——*Quod aſſumptis tecum diſcretis & legalibus militibus & diſcretis & legalibus mulieribus de comitatu tuo in propria perſona accedas ad ipſam* Joannam *& ipſam a prædictis mulieribus coram præfatis militibus videri facias & diligenter tractari per ubera &* ventrem, *& inquiſitionem factam certificari facias ſub ſigillo tuo & ſigillo duorum militum juſticiariis noſtris apud* Weſtm. *&c.* And in *Eaſter* term 39 *Eliz.* this writ was ſued out of the Chancery into C. B. at the proſecution of *Percival Willoughby*, who had married the eldeſt of the five daughters of Sir *Francis Willoughby*, who died without any ſon, but left a wife named *Dorothy*, that at the time of his death pretended herſelf to be with child by Sir *Francis*; which if it were a ſon, all the five ſiſters would thereby loſe the inheritance deſcended unto them; which writ was directed to the ſheriffs of *London*, and they were commanded to cauſe the ſaid *Dorothy* to be viewed by 12 knights, and ſearched by 12 women, in the preſence of the 12 knights, *et ad tractandum per ubera & ad ventrem inſpiciendum*, whether ſhe were with child, and to certify the ſame to the court of *Common pleas*; and if ſhe were with child, to certify for how long in their jugments, *et quando ſit paritura*; upon which the ſheriffs accordingly cauſed her to be ſearched, and returned that ſhe was twenty weeks gone with child, and that within twenty weeks more *fuit paritura:* Thereupon another writ iſſued out of *C. B.* requiring the ſheriffs ſafely to keep her in ſuch a houſe, and that the doors ſhould be well guarded; and that every day they ſhould cauſe her to be viewed by ſome of the women named in the writ, and when ſhe ſhould be delivered, that ſome of them ſhould be with her to view her birth, whether it be male or female, to the intent that there ſhould be no falſity: And upon this writ the ſheriffs return'd, That they had cauſed her accordingly to be kept and view'd, and that ſuch a day ſhe was delivered of a daughter. *Cro. Eliz.* 566.

In *Moor* 523. *pl.* 692. it is ſaid the ſheriffs of *London*, with a jury of women, whereof two were midwives, came to the lady's houſe, and into her chamber, and ſent to her the women, ſworn by the ſheriffs before, to ſearch, try, and ſpeak the truth whether ſhe was with child or not. The men all went out, and the women ſearched the lady, and gave their verdict that ſhe was with child; whereupon the ſheriffs returned the writ accordingly.

In the 22d year of K. *James* 1. the widow of one *Duncomb* married within a week after the death of her firſt huſband, and his couſin and heir brought the writ *ventre inſpiciendo* directed to the ſheriff of *L.* who returned that he had cauſed her to be ſearched by ſuch matrons who found her with child, *et quod paritura fuit* within ſuch a time; and thereon it was prayed, that the ſheriff might take her into his cuſtody, and keep her till ſhe was delivered, but becauſe ſhe ought to live with her huſband, they would not take her from him; but he was ordered to enter into a recognizance not to remove her from his dwelling-houſe, and a writ was awarded to the ſheriff to cauſe her to be inſpected every day by two of the women which he had returned had ſearched her, and that three of them ſhould be preſent at her delivery, *&c.* *Cro. Jac.* 685. Theſe two laſt caſes are notable precedents of the form of proſecuting theſe writs: And where women condemn'd for crimes, who plead their bellies, pretending to be with child, are to be viewed, and tried by a jury of matrons, ſee *Reprieve*, and 1 *Black. Com.* 456.

Venue, (*Vicinetum*, or *Viſnetum*) Is taken for a neighbouring place, *locus quem* vicini *habitant*: It is the place from whence a jury are to come for trial of cauſes. *F. N. B.* 115. In actions of treſpaſs and ejectment, the *venue* is to be from the vill or hamlet where the lands in queſtion do lie: And in all real actions, the *venue* muſt be laid in that county where the thing is for which the action is brought. 2 *Lill. Abr.* 634, 635. The jury now come from the body of the County, in all caſes, by virtue of the ſtat. 4 & 5 *Ann. c.* 16. But the judges may, in all tranſitory actions, alter the *venue* from the place where by the law it otherwiſe ſhould be, if they believe, through any juſt cauſe, there cannot be an indifferent trial in the county where the *venue* was firſt laid; though if a defendant will move to change the *venue*, he muſt make *affidavit* that the cauſe of action (if any be) did ariſe in the county where he would have the *venue* to be, and not in the county where the plaintiff hath laid his action or elſewhere: And if upon a motion the court orders the *venue* to be altered, the plaintiff is to alter his declaration, and lay his action in the other county, *&c. Mich.* 22 *Car. B. R.* Motion to change a *venue* muſt be within eight days after the declaration delivered; but this rule is not ſtrictly obſerved: It is never granted after the rules for pleading are out; and it is a rule not to change a *venue* where neceſſary evidence ariſes in two counties to ſupport the action, if the plaintiff will be bound to give ſome material evidence in the county where he laid his action. 2 *Salk.* 668, 669. If the defendant is a barriſter or attorney, on motion the *venue* ſhall be changed into *Middleſex*, and where an attorney is plaintiff, and lays his action in *Middleſex*, there the *venue* ſhall continue. *Ibid.* Where an attorney is defendant he may change the *venue* into *Middleſex*. 2 *Strange* 1049. But not where there is another defendant joined with him. 1 *Strange* 610. A barriſter may lay the *venue in Middleſex*. 2 *Strange* 822. The want of a *venue* is only curable by ſuch a plea which admits the fact, for the trial whereof it was required to lay a *venue*. 3 *Salk.* 381. Vide *Venire facias*.

It is a general rule that the county in the margin of a declaration will help the *venue* laid in the body of it, but will not hurt it. See 1 *Barnes's Notes*, 345.

It is to be obſerved however, that in all *real* actions the *venue* ought to be laid in that county where the thing is for which the action is brought; for, being local, it is only triable there; whereas matters which are tranſitory may be tried in any county. 2 *Lil. Abr.* 782.

With reſpect to criminal caſes it is ordained by the ſtatute 21 *Jac.* 1. *cap.* 4. that all informations on penal ſtatutes ſhall be laid in the counties where the offences were committed. See the ſtatute 21 *Jac. cap.* 4. and ſee 5 *New Abr.* 327, 329. See *Black. Com.* 3 *V.* 294, 484.

Verderor, (*Viridarius*, from the Fr. *Verdeur*, i. e. *Cuſtos Nemoris*) Is an officer in the King's foreſt, whoſe office is properly to look to the *vert*, and ſee it well maintained; and he is ſworn to keep the aſſiſes of the foreſt, and view, receive, and inrol the attachments, and preſentments of treſpaſſes of *vert* and veniſon, *&c. Manwood, par.* 1. *p.* 332.

Verdict, (*Veridictum, quaſi dictum Veritatis*) Is the anſwer of a jury given to the court, concerning the matter of fact in any cauſe committed to their trial; wherein every one of the twelve jurors muſt agree, or it cannot be a *verdict*: And the jurors are to try the fact, and the judges to adjudge according to the law that ariſeth upon it. 1 *Inſt.* 226.

Verdicts are either *general* or *ſpecial*. A *general verdict* is that which is brought into the court in like general terms to the general iſſue; as if a defendant pleads Not guilty, or *nul tort*, then the iſſue is general, whether he be guilty, or the fact be wrong or not; which being committed to the jury, they, upon conſideration of the evidence, ſay for the plaintiff, that the defendant is guilty of the treſpaſs, or the premiſſes, according as the nature of the caſe requires; or for the defendant, that he is not guilty of the treſpaſs, or of the premiſſes, *&c.*

A *ſpecial verdict* is where they find the *matter at large*, according to the evidence given, that ſuch a thing is done by the defendant, *&c.* and declaring the courſe of the fact, as in their opinions it is proved, pray the judgment of the court as to what the law is in ſuch a caſe. *S. P. C.* 1 *Inſt.* 227. And a fact may be found *ſpecially*, *viz.* Where a perſon is indicted of murder; the jury may bring him in guilty of manſlaughter, *&c.* Or they may leave the matter to the judges, in which caſes ſometimes it is referred to the Lord Chief Juſtice of *B. R.* and all the judges, to determine it; wherein it is ſaid a recorder of *London* who tried a priſoner hath given his opinion; and the King himſelf, to whom the matter was reported. (*Sed qu.*) 3 *Lev.* 255. 2 *Nelſ. Abr.* 97.

There are likewiſe *public* and *privy verdicts*: *Public*, when given in open court; and *privy*, when given out of the court, before any of the judges thereof; and is called privy, being to be kept ſecret from the parties until affirmed in court. 1 *Inſt.* 227. But a privy *verdict* is in ſtrictneſs no *verdict*; for it is only a favour which is allowed by the court to the jury for their eaſe: The jury may vary from it, and when come into court give a contrary *verdict*; but this muſt be before the privy *verdict* is recorded. 5 *Mod.* 351. No privy *verdict* can be given in criminal matters, which concern life, as felony, *&c.* but it muſt be openly in court; becauſe the jury are commanded to look upon the priſoner, when they give their *verdict*, and ſo the priſoner is to be there preſent: But in criminal cauſes, where the defendant is not to be perſonally preſent at the time of the *verdict*, and in informations, a privy *verdict* may be given. *Raym.* 191. 1 *Ventr.* 97.

A ſpecial *verdict* may be given in criminal or civil caſes; and where the court directs the jury to find a ſpecial *verdict* in a civil cauſe, one of the counſel on each ſide agree upon notes for it, and draw them up and ſet their hands to them; and then they are to be delivered to the jury in convenient time, or the court will take a general *verdict*: If, at the prayer of the plaintiff or defendant, a ſpecial *verdict* is ordered to be found, the party praying it is to proſecute the ſpecial *verdict*, that the matter in law may be determined; and if either party delay to join in drawing it up, and pay his part of the charges, or if the counſel for the defendant refuſes to ſubſcribe the ſpecial *verdict*, the party deſiring it ſhall draw it up and enter it *ex parte*. 2 Lil. Abr. 645, 653. Where the parties diſagree, or the ſpecial verdict is drawn contrary to the notes agreed upon, the court on motion will rectify it; and the court may amend a ſpecial *verdict*, to bring the ſpecial matter in queſtion. *Ibid.* 646.

The plaintiff and defendant are both of them to appear in court to hear a ſpecial *verdict*, and the jury is to be called and to have a ſpecial verdict read unto them by the ſecondary or aſſociate; and upon the reading of it, if there be any miſtake in the drawing of it up, the counſel on either ſide may except againſt it; and when the counſel are agreed, then the ſecondary demands of the jury, whether they agree to find it ſo; and if they anſwer they do, the *verdict* is found; and it is to be afterwards entered, &c. *Paſch.* 23 *Car. B. R.* 2 *Lil.* 646. A ſpecial *verdict*, though agreed to by the counſel, &c. is not a ſpecial *verdict* until allowed by the court. *Ibid.*

In all caſes and all actions, the jury may give a general or ſpecial *verdict*; and the court is bound to receive it, if pertinent to the point in iſſue; and if the jury doubt, they may refer themſelves to the court, but are not bound ſo to do. 3 *Salk.* 373. Though the plaintiff and defendant in a cauſe conſent to have the jury find a ſpecial *verdict*, yet they may find a general *verdict*; but this is not uſual: And if the jury will take upon them to find, againſt the directions of the court, any thing in matter of law, the court will receive the *verdict*; but if they give a falſe *verdict*, they are liable to attaint. *Paſch.* 23 *Car.*

The ancient courſe of laying a fine on jurors, barely for giving a *verdict* contrary to the directions of the court, is condemned as illegal, and diſuſed: And it is the ſame if the *verdict* be given againſt evidence: for the jury may give it againſt evidence, if they know the facts themſelves. *Kel.* 50, 58. If jurors eat or drink any thing at the charge of him for whom they give their *verdict*, before they are agreed; or if by caſting of lots they find for the plaintiff or defendant; if any writing, letter, &c. be delivered by the plaintiff, or in his behalf to the jury, concerning the matter in iſſue, after the jury are gone from the bar, and the *verdict* is found for the plaintiff; or either of the parties, their attornies or ſolicitors, ſpeak any thing to the jury before agreed on their *verdict*, which relates to the cauſe; as that it is a clear cauſe, or I hope you will find for ſuch a perſon; or if any witneſs be ſent for by the jury, after gone from the bar, and he repeats his evidence again, &c. In theſe caſes the *verdict* ſhall be void and ſet aſide: But though where the jury eat and drink at the charge of the plaintiff, and the *verdict* being found for him, it is void; it is not ſo if given for the defendant: And if the plaintiff, after the jury are gone from the bar, deliver any writing to any of the jurors, although the *verdict* ſhall be void if given for the plaintiff; it is otherwiſe if given for the defendant, and *ſic e converſo*, &c. Alſo if the jury have eat or drank after they went from the bar, and before they gave their *verdict*, this ought to be ſhewn before the *verdict* is given. 1 *Inſt.* 227. 1 *Ventr.* 125. 2 *Lev.* 140. *Moor* 17. 3 *Nelſ. Abr.* 454.

A juryman withdrawing from his fellows, or keeping them from giving their *verdict*, without giving good reaſon for it ſhall be fined; but if he differ from them in judgment, he ſhall not: And although jurymen are puniſhable for miſdemeanors, every miſdemeanor of the jury before they give their *verdict*, is not a ſufficient cauſe to make void the *verdict*. Dyer 53. 2 Lil. Abr. 647. If one of the jury that found a *verdict*, were outlawed at the time of the *verdict*, it is not good: And where a *verdict* is given by thirteen jurors, it is ſaid to be a void *verdict*; becauſe no attaint will lie. 2 *Lil.* 644, 650. If there be eleven jurors agreed, and but one diſſenting, the *verdict* ſhall not be taken, nor the refuſer fined, &c. Though it is ſaid anciently it was not neceſſary, that all the twelve ſhould agree in civil cauſes. 2 *Hale's Hiſt. P. C.* 297.

In capital caſes, a *verdict* muſt be actually given; and if the jury do not all agree upon it, they may be carried in carts after the judges, round the circuit till they agree; and in ſuch caſe they may give their verdict in another county. 1 *Inſt.* 227, 281. 1 *Vent.* 97. The court may ſet aſide a verdict that convicts a man contrary to evidence in a criminal cauſe; but they cannot ſet aſide a verdict which acquits him. *Wood's Inſt.* 648. If the jury acquit a perſon of an indictment of felony againſt evidence, the court, before the verdict is recorded, may order them to go out again and re-conſider the matter; but this hath been thought hard, and of late years is not ſo frequently practiſed as formerly: There are inſtances where defendants, acquitted of crimes contrary to evidence, have been bound to the good behaviour. 2 *Hawk. P. C.* 442.

In caſe a jury acquits a man upon trial againſt full evidence, and being ſent back to conſider better of it, are peremptory in and ſtand to their verdict, the court muſt take it, but may reſpite judgment upon the acquittal: And here the King may have an attaint. And if the jury will by verdict convict a perſon againſt or without evidence, and againſt the opinion of the court; they may reprieve him before judgment, and certify for his pardon. 2 *Hale's Hiſt. P. C.* 310.

When a *verdict* in a civil action is given againſt evidence, it ſhall be ſet aſide, and a new trial had, &c. If the fact upon which the court was to judge, be not found by the *verdict*, a new *venire facias* may be granted. 1 *Rol. Abr.* 693. A *verdict* being given where no iſſue is joined, there can be no judgment upon it; but a *repleader* is to be had. *Mod. Ca.* 4. And if a *verdict* be ambiguous, inſufficient, repugnant, imperfect, or uncertain, judgment ſhall not paſs upon it. 1 *Saund.* 154, 155.

Verdicts muſt in all things directly anſwer the iſſue, or they will not be good; and if a *verdict* finds only part of the iſſue, it may be ill for the whole. 3 *Salk.* 374. But there is a difference between actions founded on a wrong, and on a contract: for where it is founded on a wrong, as on a treſpaſs, or eſcape, &c. it is maintainable if any part of it is found: So in debt for rent, a leſs ſum than demanded may be found by the *verdict*, becauſe it may be apportioned; but where an action is founded on a contract, there it is intire, and otherwiſe. 2 *Cro.* 380. If ſeveral perſons are indicted, or jointly charged in an information, a *verdict* may find ſome of the defendants guilty, and not others. And if the ſubſtance of an iſſue be found, or ſo much as will ſerve the plaintiff's turn, although not directly according to the iſſue, the *verdict* is good. 1 *Lev.* 142. *Hob.* 73. 1 *Mod.* 4. According to *Glyn*, Ch. Juſt. if an action be brought for 500*l.* the jury may find part paid againſt the plaintiff, and part unpaid againſt the defendant, and ſo divide the *verdict*. Trin. 1658. 2 *Lil. Abr.* 649. If the jury find the iſſue and more, it is good for the iſſue, and void for the reſidue: And where a jury find a point in iſſue, and a ſuperfluous matter over and above, that ſhall not vitiate the *verdict*. 2 Lev. 253. Yet if a man brings an action of debt, and declares for 20*l.* and the jury, upon *nil debet* pleaded, find that the defendant owed 40*l.* this *verdict* is ill; for the plaintiff cannot recover more than he demands; and in this caſe he may not recover what he demands, becauſe the court cannot ſever their judgment from the *verdict*. 3 Salk. 376.

A plaintiff failing to prove his iſſue, the *verdict* ought to be found for the defendant, and the court will give judgment for the defendant, where it appears that the plaintiff hath recovered by *verdict* without cauſe of action. 2 *Lil.* 644, 651. A *verdict* found againſt a record, which is of a higher nature than any *verdict*, is not good: But where a *verdict* may be any ways conſtrued to make it good, it ſhall be ſo taken, and not to make it void. *Ibid.* Upon a general iſſue, a *verdict* which is contrary to another record, may be allowed; but not where the *verdict* found is againſt the ſame record upon which it is given. *Dyer* 300. A *verdict* againſt the confeſſion of the party, is void: But it has been held, that the *verdict* may be good in the disjunctive, though it be not formal; but if it find a thing merely out of the iſſue, it is not good. *Jenk. Cent.* 257. *Hob.* 53, 54. And where the jury begin with a direct *verdict*, and end with ſpecial matter, *&c.* that ſhall make the *verdict*: Alſo if they begin with any ſpecial matter, and after make a general concluſion upon it, contrary to law; the judges will judge of the *verdict*, according to the ſpecial matter. *Ibid.* 53.

No *verdict* will make that good, which is not ſo by law, of which the court is to judge; judgment is to be given on *verdicts*, that ſtand with law; and what both parties have agreed in the pleading, muſt be admitted ſo to be, though the jury find it otherwiſe, it being a rule in law. *Hob.* 112. 2 *Cro.* 678. 2 *Mod.* 4. The ſtatute of jeofails helps after *verdict*; as it ſuppoſes the matter left out was given in evidence, and that the judge directed accordingly. 1 *Mod.* 292. If there be no original writ, it is helped by a *verdict* by the ſtatute of jeofails; but not if there be a bad writ: A declaration that is not good, is in many caſes helped after verdict; but not where the declaration doth not make it appear that the plaintiff had ſome cauſe of action, to warrant his declaration, *&c.*

A *verdict* may make an ill plea good, by intendment, *&c.* But a *verdict* will not help, where there is no iſſue; and what is good after *verdict*, would be ill on demurrer; alſo in criminal caſes, real actions, or actions *qui tam*, if there be any errors in the proceedings, they are not helped after *verdict*, by the *Stat.* of jeofails. 2 *Lill. Abr.* 644, 647. 2 *Bulſt.* 41. 2 *Salk.* 664. 3 *Mod.* 161. Where a *verdict* is found for the plaintiff, and he will not enter it, the defendant may compel him to do it, on motion; or the defendant may enter it himſelf. 2 *Lill.* After a *verdict* is returned into court, it cannot be altered, but if there be any miſpriſion, it is to be ſuggeſted before: And a miſtake of the clerk of the aſſiſes appearing to the court, was ordered to be amended. *Cro. Eliz.* 112, 150.

On return of *verdicts*, in civil cauſes, given at the aſſiſes, to the courts at *Weſtminſter*, judgment is had thereon; and generally, if the judgment differ from the verdict, it may be reverſed, *&c.* In debt on a covenant to pay money, the verdict muſt go to every part of the demand, and find as to the whole of the demand. 2 *Strange* 1089. A ſpecial verdict finding nothing as to one of the offences, is an acquittal of that offence. *Ibid.* 845. Where the plaintiff's cauſe of action is confeſſed by the defendant's plea, and thereupon, notwithſtanding the parties go to iſſue, and a verdict is found for the defendant, yet the verdict ſhall be ſet aſide, and a writ of inquiry awarded. *Ibid.* 873. Aſſets on a ſpecial verdict may be ſevered by the court. *Ibid.* 1036. Intire damages ſevered by the court. *Ibid.* 1038. Verdict amended by the judges notes. *Ibid.* 1197. Special verdict amended by affidavit of the evidence. 1 *Strange* 514. See *Iſſue* and *Judgment.* [See 5 *New Abr.* tit. *Verdict*, and *Black. Com.* 3 *V.* 377, 402. 4 *V.* 140, 354.

Verecundium, Is ſpecially uſed for injury done to any one. *Somner of Gavelkind, pag.* 174.

Verge, (*Virgata*) The compaſs of the King's court, which bounds the juriſdiction of the *Lord Steward* of the *Houſhold*; and that ſeems to have been twelve miles about. *Stat* 13 *R.* 2. *cap.* 3. *Britton* 68. *F. N. B.* 24. There is alſo a *verge of land*; which is an uncertain quantity directed by the cuſtom of the country, from 15 to 30 acres, as appears under *Yard-Land.* 28 *Ed.* 1. And the word *verge* has another ſignification, of a ſtick or rod, whereby one is admitted tenant to a copyhold eſtate. *Old Nat. Br.* 17. As to verge of the court, ſee *Black. Com.* 3 *V.* 76.

Verge of land, (*Virgata terræ*,) Mentioned in 28 *Ed.* 1. *Statute of wards.* See *Yard-land.*

Vergers, (*Virgatores*) Are ſuch as carry white wands before the juſtices of either bench. *Fleta, lib.* 2. *cap.* 38. Otherwiſe called *portatores virgæ.*

Verjuice. See *Vinegar.*

Veronica, A word mentioned by our *Hiſtorians*, having its original from this, That, as our Saviour was led towards the croſs, the likeneſs of his face was formed on his handkerchief in a miraculous manner, (as it is ſaid,) which is ſtill preſerved in St. *Peter*'s church at *Rome*, and called *Veronica.* Mat. Paris, Anno 1216. pag. 514. Bromp. 121. *qu.*

Vert, (Fr. *Verd.* i. e. *Viridis*, otherwiſe called *Green-hue*) In the *foreſt* laws ſignifies every thing that beareth a *green* leaf within a foreſt, that may cover a deer; but eſpecially great and thick coverts. Of *vert* there are divers kinds; ſome that bear fruit, which may ſerve for food, as cheſnut-trees, ſervice-trees, nut-trees, crab-trees, *&c.* And for the ſhelter of the game, ſome are called haut-boys, ſerving both for food and browze; alſo for the defence of them, as oaks, beeches, *&c.* and for ſhelter and defence, ſuch as aſhes, poplars, maples, alder, *&c.* Of ſub-boys, ſome for browze and for food of the game; of buſhes and other vegetables, ſome are for food and ſhelter, as the hawthorn, black-thorn, *&c.* And ſome for hiding and ſhelter, ſuch as brakes, gorſe, heath, *&c.* But herbs and weeds, although they be green, our legal *vert* extendeth not to them. 4 *Inſt.* 327.

Manwood divides *vert* into *overt-vert* and *nether-vert*; the *overt-vert* is that which the law books term haut-boys; and *nether-vert*, what they call ſub-boys: And into *ſpecial vert*, which is all trees growing within the foreſt that bear fruit to feed deer; called ſpecial, becauſe the deſtroying it is more grievouſly puniſhed than of any other *vert.* *Manw. par.* 2. *pag.* 33. And *vert* is ſometimes taken for that power which a man hath by the King's grant to cut *green* wood in the foreſt. See farther, *Black. Com.* 3 *V.* 71.

Vervise, A kind of cloth, mentioned in the ſtatute 1 *R.* 3. *c.* 8. See *Plonkets.*

Very lord and very tenant, (*Verus Dominus & Verus Tenens*) Are they that are immediate lord and tenant one to another. *Broke.* In the taking of leaſes there is to be a *very lord and very tenant*; and a man is not a *very tenant*, until he hath attorned to the lord by ſome ſervice, *&c.* *Old Nat. Br.* 19 *H.* 7. *c.* 15.

Veſſels, for beer, ale, and ſope, *&c.* their contents and how to be made. 23 *H.* 8. See *Coopers.*

Veſt, (*Veſtire*,) To inveſt with, to make poſſeſſor of, to place in poſſeſſion. *Plenam poſſeſſionem terræ vel prædii tradere, ſeiſinam dare, infeodare*, ſaith *Spelman.*

Veſta, The veſt, veſture, or crop on the ground. *Hiſt. Croyl. contin. p.* 454.

Veſted. If an eſtate in *remainder* is limited to a child before born, when a child is born the *eſtate* in *remainder* is *veſted*, &c. 2 *Leon.* 219. A remainder muſt veſt in the grantee during the continuance of the particular eſtate, or *eo inſtanti* that it determines. *Plowd.* 25. 1 *Rep.* 66. *Black. Com.* 2 *V.* 168, which *vide ante & poſt.*

Veſted legacy, ſee *Contingent Legacy*, and *Black. Com.* 2 *V.* 513.

Veſtry, A place adjoining to a church, where the veſtments of the minſter are kept; alſo a meeting at ſuch place: And ſometimes the biſhop and prieſts ſat together in *veſtries*, to conſult of the affairs of the church; in reſemblance of which ancient cuſtom, the miniſters, churchwardens, and chief men of moſt pariſhes, do at this day make a *pariſh veſtry.* By cuſtom there may be ſelect *veſtries*, or a certain number of perſons choſen to have the government of the pariſh, make rates, and take the accounts of churchwardens, *&c.* 2 *Strange* 728. And when rates are made, the pariſhioners muſt have notice of a *veſtry* held for that purpoſe; and then all that are abſent ſhall be concluded by a majority of thoſe that are preſent, who in conſtruction of law are the whole pariſh. *Wood's Inſt.* 90. And if a pariſhioner be ſhut out of the *veſtry* room by the clerk of the *veſtry*; and he makes it appear that he hath a right to come into the room, and to be preſent and vote in the *veſtry*, *&c.* action of the caſe lies, as a remedy. *Mod. Ca. in L. & E.* 52, 354.

Veſtrymen in *London* are a ſelect number of the chief pariſhioners in every pariſh within the city and ſuburbs, who yearly chooſe officers for the pariſh, and take care of its concerns, *&c.* by ſtatute 15 *Car.* 2. *c.* 5. On erecting pariſhes for the new churches to be built in or near *London* and *Weſtminſter*, the commiſſioners for building the churches are impowered to name a ſufficient number of the inhabitants of each new pariſh to be *veſtry men*; and, on their deaths or removal, the majority of the pariſhioners to chooſe others, *&c.* And the pariſh officers, with the *veſtry* or principal inhabitants of the new pariſhes, are in *Eaſter* week to aſſeſs the rates for the poor, *&c.* 9 *Ann. c.* 22. *Veſtries* of pariſhes are to be conſulted by pariſh officers, and to give their aſſent on hiring of houſes for the better employing and maintaining of the poor. 9 *Geo.* 1. *c.* 7. The right of adjourning a *veſtry* is in the pariſh at large. 2 *Strange* 1045.

A veſtry was called to conſider about building a work-houſe, where it was agreed to, and to borrow money for that purpoſe: and that whoever ſhould be bound for it ſhould be indemnified by the pariſh. This order was confirmed by another, and both ſigned by the vicar and ſeveral of the inhabitants. 300 *l.* being the ſum agreed upon, was borrowed of *A.* to whom *B.* gave bond for it. An order of veſtry was made for raiſing the money, but upon appeal to the quarter-ſeſſions by ſome new pariſhioners was quaſhed. *B.* was ſued on the bond, and paid the money, and then brought a bill for relief. And the Maſter of the Rolls decreed him his principal, intereſt, and coſts at law, and in this court; and that the defendants the vicar, churchwardens, and overſeers of the poor, call a veſtry to make a rate for payment; and if the inhabitants refuſe payment, the plaintiff to be at liberty to apply to the court: And ſaid that he did not ſee why the court might not as well compel thoſe who are not parties to pay the rate, as order tenants though not parties to pay the rates; and becauſe the defendants had put in a fair anſwer, their coſts were decreed to be raiſed by the ſame rate; but ſaid, that if thoſe who had appealed to the quarter-ſeſſions had been before the court, they ſhould have paid all the coſts. 2 *Wm. Rep.* (332.) *Trin.* 1731. *Blackburn* v. *Webſter & al'.* See 21 *Vin. Abr. p.* 448.

Veſtura, A crop of graſs or corn; and mention is made of *prima veſtura*, and *ſecunda veſtura*, *&c.* Cartular. Abb. St. Edmund, MS. fol. 182. The word was often uſed for a veſt, veſture, livery, delivery, *i. e.* an allowance of ſome ſet portion of the products of the earth, as corn, graſs, wood, *&c.* for part of the ſalary or wages to ſome officer, ſervant or labourer, for their livery or veſt. So foreſters had a certain allowance of timber and underwood yearly out of the foreſt for their own uſe. *Paroch. Antiq. p.* 620.

Veſture, (*Veſtura*) Signifies a garment; but in the law it is metaphorically applied to a poſſeſſion or ſeiſin. *Stat. Weſt.* 2. *cap.* 5. And in this ſignification it is borrowed of the *Feudiſts*, with whom *inveſtitura* imports a delivery of poſſeſſion, and *veſtura* poſſeſſion itſelf. *Hotom. Veſture of an acre of land* is the profit of it; and it ſhall be enquired how much the *veſture* of an acre of ground is worth, and how much the land, *&c.* 4 *Ed.* 1. 14 *Ed.* 3. By grant of *veſtura terræ*, the ſoil will paſs; and the *veſture* being the profit of land, 'tis generally all one to have that, as the land itſelf. 1 *Vent.* 393. 2 *Roll. Abr.* 2.

Vetitum namium, Is where the bailiff of a lord diſtrains beaſts or goods of another, and the lord forbids his bailiff to deliver them when the ſheriff comes to make replevin: The word *namium* ſignifying a taking or diſtreſs, and *vetitum* forbidden; and the owner of the cattle may demand ſatisfaction for the injury, which is called *Placitum de vetito namio.* Divers lords of hundreds and courts baron, had power to hold plea *de vetito namio:* Matilda de Morton *clamat in manerio de* M. *duos* law days, *&c.* Placito de Namio vetito, *ſine Brevi Domini Regis*, *&c.* 2 Inſt. 140. Record. in Theſaur. Scacc. See *Naam*, and *Black. Com.* 3 *V.* 148.

Via militaris, A highway. *Bract. lib.* 4. *cap.* 16. *par.* 7. *Fleta, lib.* 4. *c.* 6. *par.* 3.

Uffingi, The Kings of the *Eaſt Angles* were ſo termed from King *Uffa*, who lived in the year 578. *Matt. Weſt.*

Via Regia, Is the highway or common road, called the King's way, becauſe authoriſed by him, and under his protection: It is alſo denominated *Via Militaris.* Leg. Hen. 1. c. 80. Bract. lib. 4.

Vicar, *(Vicarius, quaſi vice fungens rectoris)* The prieſt of every pariſh is called *Rector*, unleſs the predial tithes are appropriated, and then he is ſtiled *vicar*; and when rectories are appropriated, *vicars* are to ſupply the rectors places. At firſt a *vicar* was a mere curate to the impropriator of the church, temporary, and removeable at pleaſure; as thoſe who are now pariſh prieſts, in ancient times when there were no particular pariſhes, were only curates to the biſhops; but by degrees the vicars got a ſettled maintenance of glebe, and ſome kind of tithes, and now claim their dues either by endowment or preſcription: And where the *vicar* is endowed, and comes in by inſtitution and induction, he hath *curam animarum actualiter*; and is not to be removed at the pleaſure of the rector, who in this caſe hath only *curam animarum habitualiter*; but where the *vicar* is not endowed, nor comes in by inſtitution and induction, the rector hath *curam animarum actualiter*, and may remove the *vicar.* 1 *Vent.* 15. 3 *Salk.* 378. In every church appropriated, one is to be ordained perpetual *vicar*, and to be canonically inſtituted and inducted, and alſo endowed at the diſcretion of the ordinary; which endowment is a part of the rectory, ſet out by the patron, parſon, and ordinary, for maintaining the *vicar:* The inſtitution and induction, *&c.* of *vicars* is done in the ſame manner as that of rectors; and over and above they are to take an oath of perpetual reſidence, but this the biſhop may diſpenſe with; the ſtatutes concerning pluralities, dilapidations, *&c.* relate to them as well as to parſons. 4 *H.* 4. 2 *Roll. Abr.* 337.

Upon endowment, the *vicar* hath an equal, though not ſo great an intereſt in the church as a rector; the freehold of the church, church-yard and glebe is in him; and as he hath the free hold of the glebe, he may preſcribe to have all the tithes in the pariſh, except thoſe of corn, *&c.* Many *vicars* have a good part of the great tithes; and ſome benefices, that were formerly ſevered by impropriation, have, by being united, had all the glebe and tithes given to the *vicars:* But tithes can no other way belong to the *vicar* than by gift, compoſition or preſcription; for all tithes *de jure* appertain to the parſon; and yet generally *vicars* are endowed with glebe and tithes, eſpecially ſmall tithes, *&c.* If a *vicar* be endowed of ſmall tithes by preſcription, and afterwards land, which had been arable time out of mind, is altered, and there are growing ſmall tithes thereon, the *vicar* ſhall have them; for his endowment goes to ſuch tithes, in any place within the pariſh. *Cro. Eliz.* 467. *Hob.* 39. But where the *vicar* is endowed out of the parſonage, he ſhall not have tithes of the parſon's glebe, or of land that was part thereof at the time of the endowment, but now ſevered from it: Yet it ſeems to be otherwiſe, if the glebe lands are in the hands of the parſon's leſſee. *Cro. Eliz.* 479. *Mallor. Q. Imped.* 4. The endowment of *vicarages* hath been always favoured in law, the *vicars* for the moſt part having the cure of ſouls. 2 *Roll.* 335. *Comp. Incumb.* 347. *March Rep.* 11. See *Black. Com.* 1 *V.* 387.

Vicarage, (*Vicaria*) Of places did originally belong to the parſonage or rectory, being derived out of it: The rector of common right is patron of the *vicarage*; but it may be ſettled otherwiſe; for if he makes a leaſe of his parſonage, the patronage of the *vicarage* paſſes as incident to it. 2 *Roll. Abr.* 59. And if a *vicarage* become void, during the vacancy of the parſonage, the patron of the parſonage ſhall preſent to ſuch *vicarage.* 19 *Edw.* 2. 41. If the profits of the parſonage or *vicarage* fall into decay, that either of them by itſelf is not ſufficient to maintain a parſon and *vicar*, they ought again to be re-united: Alſo if the *vicarage* be not ſufficient to maintain a *vicar*, the biſhop may compel the rector to augment the *vicarage.* 2 *Roll.* 337. *Parſ. Counſell.* 195, 196. *Stat.* 29 *Car.* 2. *c.* 8. Upon the appropriation of a church, and endowment of a *vicar* out of the ſame, the parſonage and *vicarage* are two diſtinct eccleſiaſtical benefices: And it hath been held, that where there is a parſonage and *vicarage* endowed, that the biſhop in the vacation may diſſolve the *vicarage*; but if the *parſonage* be *impropriated*, he cannot do it; for on a diſſolution the cure muſt revert, which it cannot into lay hands. *Comp. Incumb.* 2 *Cro.* 518. *Palm.* 219.

For the moſt part *vicarages* were endowed upon appropriations; but ſometimes *vicarages* have been endowed without any appropriation of the parſonage; and there are ſeveral churches, where the tithes are wholly impropriated, and no *vicarage* endowed; and there the impropriators are bound to maintain curates to perform divine ſervice, &c. The parſon, patron and ordinary, may create a *vicarage*, and endow it: And in time of vacancy of the church, the patron and ordinary may do it; but the ordinary alone cannot create a *vicarage*, without the patron's aſſent. 17 *Edw*. 3, 51. *Cro. Jac*. 516. Where there is a *vicarage* and parſonage, and both are vacant, and in one perſon's patronage; if he preſents his clerk as parſon, who is thereupon inducted, this ſhall unite the parſonage and *vicarage* again. 11 *Hen* 6. 32. *Vicarage* or not, is to be tried in the Spiritual court, becauſe it could not begin to be created but by the ordinary, 3 *Salk*. 378. See *Black. Com*. 1 *V*. 387. 4 *V*. 421.

Vicarial Tithes. Privy or ſmall *Tithes*. See *Tithes*.

Vicario deliberando occaſione cujuſdam Recognitionis, &c. Is an ancient writ that lies for a ſpiritual perſon impriſoned, upon forfeiture of a recognizance, &c. mentioned in *Reg. Orig*. 147.

Vice-Admiral, An under admiral at ſea; or admiral on the coaſts, &c.

Vice Admiralty Courts. There are *vice admiralty courts*, in *America*, and our other plantations. From thoſe courts appeals may be brought before the courts of admiralty in *England*, as being a branch of the admiral's juriſdiction, though they may alſo be brought before the King in council. But in caſe of prize veſſels, taken in time of war, in any part of the world, and condemned in any courts of admiralty, or vice-admiralty, as lawful prize, the appeal lies to certain commiſſioners of appeals conſiſting chiefly of the privy council and not to judges delegates. And this by virtue of divers treaties with foreign nations, &c. *Black. Com*. 3 *V*. 69. which *vide*.

Vice-Chamberlain, A great officer next under the *lord chamberlain*: And in his abſence hath the rule and controul of all officers appertaining to that part of his majeſty's houſhold, which is called the *chamber* above ſtairs. 13 *R*. 2. *c*. 1.

Vice-Conſtable of England, An officer whoſe office is ſet forth in *Pat*. 22 *Edw*. 4.

Vice-Conſul, The ſame as *Vicecomes* or ſheriff. *Leg. Ed. Conf. cap*. 12.

Vice-Dominus, The ſame with *vicecomes*.——Vicedominus *dictus eſt præfectus provinciæ*. Leg. Hen. 1. c. 7. Selden's Tit. Hon. par. 2. Ingulphus.

Vice-Dominus Epiſcopi, Is the vicar-general, or commiſſary of a biſhop *Blount*.

Vice-gerent, A deputy or lieutenant. Stat. 31 *Hen*. 8. *c*. 10.

Vice-Marſhal, Is mentioned with *vice-conſtable*. Pryn's Animad, on 4 Inſt. 71.

Vice-Roy, (*Pro. Rex*.) The King's lord lieutenant over a kingdom. *Litt*.

Vice-Treaſurer, An officer under the *lord treaſurer* in the reign of *Hen*. 7. See *Under-Treaſurer of England*.

Vicinage, (Fr. *Voiſinage, Vicinetum*) Neighbourhood, or near dwelling. *Magn. Chart. c*. 14. See *Viſne*.

There is common becauſe of *vicinage*, or neighbourhood, where the inhabitants of two townſhips which lie contiguous, have uſually intercommoned with one another; the beaſts of the one ſtraying mutually into the other's fields, without any moleſtation from either, See *Black. Com*. 2 *V*. 33.

Vicis & Venellis mundandis, Is a writ which lieth againſt a mayor or bailiff of a town, &c. for the clean keeping of their ſtreets. *Reg. Orig*. 267.

Vicount, or Viſcount, (*Vicecomes*) Signifies as much as *ſheriff*: Between which two words, there ſeems to be no other difference, but that the one comes from the *Normans*, the other from our anceſtors the *Saxons*, of which, ſee more in *Sheriff*. *Viſcount* alſo ſignifies a degree of nobility next to an earl, which *Cambd*. (*Briton. pag*. 170.) ſays, is an old name of office, but a new one of dignity, never heard of amongſt us, till *Henry* the ſixth's days, who in his eighteenth year in parliament created *John* lord *Beaumout*, viſcount *Beaumont*, but far more ancient in other countries. *Caſſan. de gloria mundi, par*. 5. *conſider* 55. See *Sheriff* and *Selden's Titles of honour, fol*. 761.

Vicountiel, or Vicontiel, Is an adjective from *viſcount*, and ſignifieth any thing that belongeth to the ſheriff; as writs *vicontiel* are ſuch writs as are triable in the county or ſheriff's court, of which kind there are divers writs of nuſance, &c. mentioned by *Fitzherbert*. Old Nat. Br. 109. F. N. B. 184.

Vicontiels are certain farms, for which the ſheriff pays a rent to the King, and he makes what profit he can of them: And *vicontiel rents* uſually come under the title of *firma comitatus*; and the ſheriff hath a particular roll of them given in to him, which he delivers back with his accounts. 33 & 34 *H*. 8. *c*. 16. 3 *Ed*. 6. 4. 22 *Car*. 2. *c*. 6.

Vicountiel Juriſdiction, Is that juriſdiction which belongs to the officers of a county; as to ſheriffs, coroners, eſcheators, &c.

Vicountiel, or Vicontiel rents mentioned, 22 *Car*. 2. *cap*. 6. See *Vicountiel*. The *vicontiel rents*, uſually came under the title of *Firma comitatus*, which were written generally *ſub nomine vicecom*. without expreſſion of the particulars. See *Hale's ſheriff's accounts*, *pag*. 40.

Victuals, (*Victus*) Suſtenance, and things neceſſary to live by, as meat and proviſions: *victuallers* are thoſe that ſell *victuals*; and we call now all common alehouſe-keepers by the name of *victuallers*. *Victuallers* ſhall ſell their *victuals* at reaſonable prices, or forfeit double value: And *victuallers*, fiſhmongers, poulterers, &c. coming with their *victuals* to *London*, ſhall be under the governance of the lord mayor and aldermen; and ſell their *victuals* at prices appointed by juſtices, &c. 23 & 31 *Edw*. 3. *c*. 6 7 *R*. 2. 13 *R*. 2. No perſon during the time that he is a mayor, or in office in any town, ſhall ſell *victuals*, on pain of forfeiture, &c. But if a *victualler* be choſen mayor, whereby he is to keep the aſſiſe by ſtatute, two diſcreet perſons of the ſame place who are not *victuallers*, are to be ſworn to aſſiſe bread, wine, and *victuals*, during the time that he is in office; and then, after the price aſſeſſed by ſuch perſons, it ſhall be lawful for the mayor to ſell *victuals*, &c. 6 *R*. 2. *c*. 9. 3 *Hen*. 8. *c*. 8. If any one offend againſt theſe ſtatutes, the party grieved may ſue a writ directed to the juſtices of aſſiſe, commanding them to ſend for the parties, and to do right; or an attachment may be had againſt the mayor, officer, &c. to appear in *B. R*. Selling of corrupt *victuals*, or expoſing them to ſale, is puniſhable by ſtatute 1 *R*. 3. *c*. 1. And in ſome manors they chuſe yearly two ſurveyors of *victuals*, to ſee that no unwholeſome *victuals* be ſold, and deſtroy ſuch as are corrupt. 1 *Mod*. 202. If any *victuallers*, butchers, brewers, poulterers, cooks, &c. conſpire and agree together not to ſell their *victuals* but at ſuch prices; they ſhall forfeit for the firſt offence 10 *l*. for the ſecond 20 *l*. for the third 40 *l*. ſtat. 2 & 3 *Edw*. 6. *c*. 15. The rates of *victuals* in all places, except corporations, ſhall be aſſeſſed by the King's juſtices, &c. And *victuals* are not to be tranſported, by 25 *H*. 8. *c*. 2. See *Foreſtallers*.

Vidame, Was the ſame as *Vice-dominus*, the biſhop's deputy in temporal matters. See *Valvaſor*.

Videlicet, A *videlicet* in a deed may make a ſeparation, as well as an *habendum*: And if there be a ſeveral *habend*. of an annuity of 20 *l*. to one, and ſo to four others; it will be to the ſame effect, though it ſays *habendum* 100 *l*. to them, to be equally divided, (*viz*.) 20 *l*. to one, and ſo to the reſt, &c. 5 *Mod. Rep*. 29.

Viduitatis Profeſſio, The making a ſolemn profeſſion to live a ſole and chaſte widow; which was heretofore a cuſtom in *England*. Dugd. Warwickſh. pag. 313, 654.

Vidimus, Mentioned in the 15 *Hen*. 6. *cap*. 3. See *Innoteſcimus*.

Vi & Armis, Are words uſed in indictments, &c. to expreſs the charge of a forcible and violent committing any crime or treſpaſs: But on appeal of death, on a killing with a weapon, the words *vi & armis* are not neceſſary, becauſe they are implied; ſo in an indictment of forcible entry, alledged to have been made *manu forti*, &c. 2 *Hawk. P. C*. 179. 1 *Hawk*. 150, 220. And where the omiſſion of *vi & armis*, &c. is helped in indictments, *vide* the Stat. 4 & 5 *Ann. c*. 16.

View, (Fr. *Veue,* i. e. *Viſus)* Is generally where a real action is brought, and the tenant doth not know certainly what is in demand; in ſuch caſe he may pray that the jury may *view* it. *Briton, cap.* 45. *F. N. B.* 178. This *view* is for a jury to ſee the land or thing claimed, and in controverſy; and lies in ejectment, waſte, aſſiſes of *novel diſſeiſin,* where at leaſt ſix of the *recognitors* muſt have the *view* before the aſſiſes. 2 *Lil. Abr.* 655. Stat. 13 *Ed.* 1. *c.* 48. 12 *Ed.* 2. And tho' formerly there could not have been a *view* in a perſonal action, but upon withdrawing of a juror after they were ſworn, and conſent of the parties by a rule of court; now by the *act for the amendment of the law,* it may be granted in any action brought in the courts at *Weſtminſter,* where neceſſary the better to underſtand the evidence upon the trial; in which caſe the courts may order ſpecial writs of *diſtringas* or *habeas corpora* to the ſheriff, requiring him to have ſix of the jurors, or a greater number of them, at the place in queſtion, ſome convenient time before the trial; who ſhall have the matter ſhewn to them by two perſons named in the writ of *diſtringas,* and appointed by the court; and the ſaid ſheriff executing the writ is ſpecially to return the *view* made accordingly, *&c.* 4 *&* 5 *Ann cap.* 16. Upon a *view,* the thing in queſtion is only to be ſhewn to the jury; and no evidence can be given on either ſide. 2 *Lil.* 656. But where, in action of waſte, ſeveral places are aſſigned, and the jury hath not the *view* of ſome of them, they may find no waſte done in that part which they did not *view:* In waſte for waſting of wood, if the jury *view* the wood without entering into it, it is good; alſo waſte being aſſigned in every room of an houſe, the *view* of an houſe generally is ſufficient. 1 *Leon.* 259, 267. If a rent or common is demanded, the land out of which it iſſues muſt be put in *view.* 1 Leon. 56. And if a *view* be denied, where it ought to be granted, or granted where it ought not to be, *&c.* it is error. 2 *Lev.* 217. So a *view* may be on indictment for a nuiſance.

By *ſtat.* 3 *Geo.* 2. *c.* 25. (the ballotting act) *ſ.* 14. it is provided, ' That where a view ſhall be allowed, ſix of the jurors named in the panel, or more ſhall have the view, and ſhall be the firſt ſworn, (or ſuch of them as appear) before any drawing.' But as the having a view was not, by either of theſe ſtatutes, made a matter of courſe, though ſuch a practice had prevailed, and had been abuſed to the purpoſes of delay, the court thought it their duty to take care that their ordering a view ſhould not obſtruct juſtice, and prevent the cauſe from being tried: And they reſolved not to order one any more, without a full examination into the propriety and neceſſity of it. For they were all clearly of opinion that the act of parliament meant that a view ſhould not be granted, unleſs the court was ſatisfied that it was *proper and neceſſary:* And they thought it better that a cauſe ſhould be tried upon a view had by any ſix, or by fewer than ſix, or even without any view, than be delayed for a greater length of time: Accordingly they added a clauſe to the uſual rules for views, purporting that the party praying a view conſented, ' That in caſe no view ſhould be had; or if a view ſhould be had by any of the jurors whomſoever, (though not being ſix of the firſt twelve) yet the trial ſhould proceed, and no objection be made on account thereof, or for want of a proper return.' Since which, motions for views are become motions of courſe, with ſuch additional conſent annexed to them. *Bur. Rep.* 256.

See the form of the *uſual rule,* and alſo of the modern *addition,* both in cauſes to be tried by ſpecial juries and thoſe to be tried by common juries, reſpectively, recited *verbatum,* in *Bur. Rep.* 257, 258. See *Aſſiſe, Vejours* or *Viewers,* &c. and *Black. Com.* 3 *V.* 298, 358.

View of Frank-pledge, *(Viſus Franci plegii)* Signifies the office which the ſheriff in his *county court* performs in looking to the King's peace, and ſeeing that every man be in ſome *pledge, &c.* Or it is a power of holding a *court-leet,* in which court formerly all perſons at the age of fourteen were bound with their ſureties or *pledges* for their truth to the King, and the ſteward was to certify on *view.* Bract. lib. 2. And there is a writ to exempt a perſon from coming to the *view of frankpledge,* who is not reſident within the hundred; as men are bound to this *view* by reaſon of their habitation only, and not of lands held where they dwell not; which *writ* is called *Viſus Franci Plegii.* Reg. Orig. 175. *See* Frank-pledge, *and* Black. Com. 4 V. 270.

Vigil, *(Vigilia)* Is the eve, or next day before any ſolemn feaſt; becauſe then Chriſtians were wont to watch, faſt, and pray in their churches. *Stat.* 2 *&* 3 *Ed.* 6. *c.* 19.

Vi Laica Removenda, A writ that lies where two parſons contend for a church, and one of them enters into it with a great number of *laymen,* and holds out the other *vi & armis;* then he that is holden out ſhall have this writ directed to the ſheriff, that he *removes the force:* But the ſheriff ought not to remove the incumbent out of the church, whether he is there by right or wrong, but only the force. *F N. B.* 54. 3 *Inſt.* 161. and ſee 5 *R.* 2. *c.* 2. And the writ *vi laica removenda* ought not to be granted, until the biſhop of the dioceſe where ſuch church is, hath certified into the *chancery* ſuch reſiſting and force, *&c.* though it is ſaid in the *New Natura Brevium,* it lieth upon a ſurmiſe made by the incumbent, or by him that is grieved, without any ſuch certificate of the biſhop. *New Nat. Br.* 121. A reſtitution was awarded to one who was put of poſſeſſion by the ſheriff upon a *vi laica amovenda.* Cro. Eliz. 466. 5 Mod. 443.

Vill, or **Village,** *(Villa)* Is ſometimes taken for a Manor, and ſometimes for a pariſh or part of it; But a *vill* is moſt commonly the out-part of a pariſh, conſiſting of a few houſes, as it were ſeparate from it.—— Villa *eſt ex pluribus manſionibus, vicinata, & collata ex pluribus vicinis.* 1 Inſt. 115. *Fleta* mentions the difference between a manſion, a village, and a manor, *viz.* a manſion may be of one or more houſes, but it muſt be but one dwelling place, and none near it; for if other houſes are contiguous, it is a *village;* and a manor may conſiſt of ſeveral *villages,* or one alone. *Fleta, lib.* 6. *cap.* 51. And, according to *Forteſcue,* the boundaries of *villages,* are not by houſes or ſtreets; but by a circuit of ground, within which there may be hamlets, woods, and waſte ground, *&c.* *Forteſc. de Laud. Leg. Ang. cap.* 24.

When a place is named generally, in legal proceedings, it is intended to be a *vill,* becauſe as to civil purpoſes the kingdom was firſt divided into *vills;* and it is never intended a pariſh, that being an eccleſiaſtical diviſion of the kingdom to ſpiritual purpoſes, tho' in many caſes, the law takes notice of pariſhes as to civil purpoſes. 1 *Mod.* 250. 3 *Nelſ. Abr.* 57. If no *vill, &c.* is alledged, where a meſſuage and lands lie, no trial can be had concerning it: But ſome counties in the north of *England,* and in *Wales,* have no *vills* but pariſhes. *Jenk. Cent.* 33, 328. A *vill* and a pariſh by intendment ſhall be all one; and in proceſs of appeal, a pariſh may be intended a *vill.* Cro. Jac. 263. 3 Salk. 380. If a *venue* be laid in *Gray's Inn,* which is no pariſh or *vill;* the defendant muſt plead there is no ſuch *vill* as *Gray's Inn,* or it ſhall be intended a *vill* after verdict, *&c.* 3 *Salk.* 381. Two houſes in an extraparochial place are not enough to denominate a *vill.* 2 Strange 1004, 1071. *See* Pariſh, *and* Venire facias. *See* Black. Com. 1 V. 114.

Villa Regia, A title given to thoſe country *villages,* where the King's of *England* had a royal ſeat, and held the manor in their own demeſne, having there commonly a free chapel, not ſubject to eccleſiaſtical juriſdiction. *Paroch. Antiq.* 53.

Villain, Villein, *(Villanus,* Fr. *Vilain,* i. e. *Vilis)* Signifies a man of baſe or ſervile condition, a bondman, or ſervant. Of thoſe bondmen or *villains* there were two ſorts in *England;* one termed a *villain in groſs,* who was immediately bound to *the perſon of the lord,* and his heirs: The other, a *villain regardant* to a manor, being bound to his lord as a member *belonging and annexed to a manor,* whereof the lord was owner. And he was properly a *pure villain,* of whom the lord took redemption to marry his daughter, and to make him free; and whom the lord might put out of his lands and tenements, goods and chattels at his will, and chaſtiſe, but not maim him: For if he maimed his *villain*, he might have appeal of maihem againſt the lord; as he could bring appeal of the death of an anceſtor againſt his lord, or appeal of rape done to his wiſe. *Bract. lib.* 1. *cap.* 6. *Old Nat. Br.* 8. *Terms de Ley.*

Some were *villains* by title or preſcription, that is to ſay, that all their *blood* had been *villains* regardant to the manor of the lord time out of mind: And ſome were made *villains* by their confeſſion in a court of record, *&c.* Though the lord might make a *manumiſſion* to his *villain*, and thereby infranchiſe him: And if the *villain* brought any action againſt his lord, other than an appeal of maihem, *&c.* and the lord, without proteſtation, made anſwer to it; by this the *villain* was made free. *Terms de Ley* 576.

Villain eſtate was contradiſtinguiſhed to free eſtate, by the ſtatute 8 *Hen.* 6. *c.* 11 And the *villani* were ſuch as dwelt in *villages*, and of that ſervile condition, that they were uſually ſold with the farm to which they reſpectively belonged; ſo that they were a kind of ſlaves, and uſed as ſuch: And *villenage* or bondage, it is ſaid, had beginning among the *Hebrews*. *Ibid.* 455.

Villenage cometh of *villain*, and was a baſe tenure of lands or tenements, whereby the tenant was bound to do all ſuch ſervices as the lord commanded, or were fit for a *villain* to perform: The diviſion of *villenage*, by *Bracton*, was into *purum* villenagium *a quo præſtatur ſervitium incertum & indeterminatum*, & villenagium *ſocagium*; which was to carry the lord's dung into his fields, to plough his ground at certain days, ſow and reap his corn, *&c.* and even to empty his jakes, as the inhabitants of ſome places were bound to do, though afterwards turned into a rent, and that *villanous* ſervice excuſed. Every one that held in *vilenage*, was not a *villain* or bondman; for tenure in *vilenage* could make no freeman *villain*, unleſs it were continued time out of mind; nor could free land make a *villain* free. *Bract. lib.* 2. *c.* 8.

Copyhold tenures ſeem to be ſprung from *villenage*. *F. N. B.* 28. The ſlavery of this cuſtom hath been long ago taken off; for we have hardly heard of any caſe in *villenage* ſince *Crouche*'s caſe in *Dyer's Rep.* There are not properly any *villains* now; and the title and tenure of *villenage* are aboliſhed by the ſtat. of 12 *Car.* 2. *c.* 24.

See *Neif.* See farther as to *Villein*, generally, *Black. Com.* 2 *V* 92. 4 *V.* 413. As to *Villein in groſs*, *id.* 2 V. 92. 4 *V* 413. As to *Villein in groſs*, *id.* 2 V. 93. *Villein regardant*, *Id. Ib.* *Villein ſervices*, *Id* 2 *V.* 61. *Villein ſocage*, *Id* 2 *V.* 98.

Villain eſtate or **condition**, Contradiſtinguiſhed to free eſtate. *Stat.* 8 *H.* 6. 11. They were called *villains* from *villa*, becauſe they dwelt in villages; they were alſo called *pagenſis* and *ruſtici*, *a ruribus quæ excoluerunt*; and they were of that ſervile condition, that they were uſually ſold with the farm to which they reſpectively belonged; ſo that they were ſlaves and uſed as ſuch, and kinder uſage made them inſolent. *Cowell.*

Villanis regis ſubtractis reducendis, Is a writ that lay for the bringing back of the King's bond-men, that had been carried away by others out of his manors whereto they belonged. *Reg. Orig. fol.* 87.

Villanous Judgment, (*Villanum Judicium*) Is that which caſts the reproach of *villany* and ſhame upon him againſt whom it is given, as a conſpirator, *&c.* And the judgment in ſuch a caſe ſhall be like the ancient judgment in *attaint*, *viz.* That the offender ſhall not be of any credit afterwards; nor ſhall it be lawful for him to approach the King's court; and his lands and goods ſhall be ſeized into the King's hands, his trees rooted up, and body impriſoned, *&c.* *Staundf. P. C.* 157. *Lamb Eiren.* 63. Stat. 4 *H.* 5. And the puniſhment at this day appointed for *perjury*, may partake of the name of *villanous judgment*; as it hath ſomewhat more in it than corporal, or pecuniary pain, *i. e.* the diſcrediting the teſtimony of the offender for ever. See *Black. Com.* 4 *V.* 136.

Villein Fleeces, Are bad *fleeces* of wool, ſhorn from ſcabbed ſheep. 31 *Edw.* 3. *cap.* 8.

Villenage, (*Villenagium*) from *villain*, Signifies a ſervile kind of tenure belonging to land or tenements, whereby the tenant was bound to do all ſuch ſervices as the lord commanded, or were fit for a villain to do. *Ubi ſciri non poterit veſpere quale ſervitium fieri debet mane.* For every one that held in *villenage*, was not a villain or bondman: *Villenagium vel ſervitium nihil detrahit libertatis, habita tamen diſtinctione utrum tales ſunt* villani & *tenuerint in* villano *ſocagio de dominico domini regis.* Bract. lib. 1. cap. 6. num. 1.

The diviſion of *villenage* was into *villenage by blood*, and *villenage by tenure*. Tenure in *villenage* could make no freeman *villain* unleſs it were continued, time out of mind, nor even free land make a *villain* free. *Bracton, lib.* 2. *cap.* 8. *num.* 3. divides it into *purum* villenagium, *a quo præſtatur ſervitium incertum & indeterminatum, ubi ſciri non poterit veſpere, quale ſervitium fieri debet mane*, viz. *ubi quis facere tenetur quicquid ei præceptum fuerit*; the other he calls *villanum ſoccagium*, and was tied to the performance of certain ſervices agreed upon between the lord and tenant, and was to carry the lord's dung into his field, to plough his ground at certain days, to reap his corn, plaſh his hedges, *&c.* as the inhabitants of *Bickton* were bound to do for thoſe of *Cluncaſtle* in *Shropſhire*, which was afterwards turned into a rent, now called *Bickton ſilver*, and the ſervice excuſed. There were likewiſe *villani ſockmanni*, which were thoſe who held their land in ſoccage, and there were *villani adventitii*, who were thoſe who held land by performing certain ſervices expreſſed in their deeds. *Bract. lib.* 2. *cap.* 8. See *Socage tenure*, and *Black. Com.* 2 *V.* 90, 92, 98.

Vinagium, (*Tributum a vino*) A payment of a certain quantity of wine, inſtead of rent, to the chief lord for a vineyard. *Mon. Ang.* 2. *tom. pag.* 980.

Vinculo Matrimonii, Divorce *a.* If a marriage is improper through ſome cauſe which exiſted *previous* to the marriage, and was ſuch a one as rendered the marriage unlawful *ab initio*, as conſanguinity, corporal imbecillity, or the like; in this caſe the law looks upon the marriage to have been always null and void, becauſe contracted *in fraudem legis*, and decrees not only a ſeparation from bed and board, but *a vinculo matrimonii* itſelf. *Black. Com.* 3 *V.* 94. See *Divorce.*

Vinegar and **Verjuice.** Duties on vinegar by former acts taken off, and a new duty impoſed, 10 & 11 *W.* 3. *c.* 21. *ſ.* 8, *&c.* What to be deemed vinegar or liquor preparing for vinegar, 10 & 11 *W.* 3. *c.* 21. *ſ.* 11. Thirty-four gallons to be deemed a barrel of vinegar, 10 & 11 *W.* 3. *c.* 21. *ſ.* 15. Informations againſt vinegar-makers for a falſe miſ-entry, *&c.* to be laid within three months, 12 & 13 *W.* 3. *c.* 11. *ſ.* 17. Vinegar made for pickles for ſale to pay duties, 8 *Ann. c.* 7. *ſ.* 4. Vinegar made by the manufacturers of white lead exempt from duties, 8 *Ann. c.* 7. *ſ.* 5. Verjuice bought or made for ſale how chargeable with duties, 7 & 8 *W.* 3. *c.* 30. *ſ.* 28. Every hogſhead to pay 5 *d.* 8 *Ann. c.* 7. *ſ.* 1. Additional duty of 8 *d.* per ton on *French* vinegar imported, 3 *Geo.* 3. *c.* 12. And on all other vinegar imported, 4 *l.* per ton, *ibid.*

Vineyards, The owners of *vineyards* may make wine of *Britiſh* grapes only growing there, free from any duty. *Stat.* 10 *Geo.* 2. *c.* 17.

Vinnet, A flower or border which printers uſe to ornament printed leaves of books; mentioned in the *Stat.* 14 *Car.* 2. *cap.* 33. The true and proper name is *Vignet*, from the French.

Vintners. The *vintners* company of *London* were incorporated 7 *Jac.* 1. with certain privileges for ſelling wine in the city, by all freemen within the ſame, *&c.* 2 *Keb.* 372. See *Wine.*

Violating the Queen, *&c.* If a man do violate the King's companion (*i. e.* the Queen) or the King's eldeſt daughter unmarried, or the wife of the King's eldeſt ſon and heir it is high treaſon—By violation is underſtood carnal knowledge, as well without force as with it: And this is high treaſon in both parties, if both be conſenting. *Contra*, as to violating a Queen or Princeſs *Dowager*. *Black. Com.* 4 *V.* 81.

Violence, (*Violentia*) All *violence* is unlawful: If a man aſſault another with an intention of beating him only, and he dieth, it is felony. And where a perſon knocks another on the head who is breaking his hedges, *&c.* this will be murder, becauſe it is a *violent* act beyond the provocation. *Kel. Rep.* 64, 131. There is a *violence* in committing riots, *&c.*

Violent Preſumption: This is many times equal to full proof; for there thoſe circumſtances appear which neceſſarily attend the fact. See *Black. Com.* 3 *V.* 371.—The enumerating of caſes, would be of little uſe, as every caſe muſt be governed according to its own peculiar circumſtances.

Virga, A rod or white ſtaff, ſuch as ſheriffs, bailiffs, *&c.* carry as a badge or enſign of their office. *Cowell.*

Virgata terrae, A yard land, *ex* 24 *acris conſtat, quatuor* virgatæ *hidam faciunt, & quinque hidæ feodum militis.* Kennet's Gloſſ.

Virge, *Tenant by.* A ſpecies of copyholders, *i. e.* ſuch as are ſaid to hold by the virge, or rod. In fact copyholders and cuſtomary tenants differ not ſo much in nature as in name, for though called by different names, yet they all agree in ſubſtance and kind of tenure: Their lands are holden in one general kind, that is, by cuſtom and continuance of time. See *Calthorpe* on *Copyholds*, 51, 54, and *Black. Com.* 2 *V.* 147, 148.

Viridario eligendo, Is a writ that lies for the choice of a *verderor* in the foreſt. *Reg. Orig.* 177.

Viridis Roba, A coat of many colours; for in the old books *viridis* is uſed for *varius.* Bract. lib. 3.

Virilia, The privy members of a man; to cut off which was felony by the Common law, though the party conſented to it. *Bract. lib.* 3. *pag.* 144.

Vis, *(Lat.)* Is any kind of force, violence, or diſturbance relating to a man's perſon, or his goods, right in lands, *&c.* See *Force.*

Viſcount, (*Vicecomes*) A degree of nobility next to an earl. See *Viſcount.* They are now made by patent, as an earl; but their number is ſmall in this kingdom, in compariſon with the other degrees of peerage. Vide *Black. Com.* 1 *V.* 399.

Viſitation, (*Viſitatio*) Is that office which is performed by the biſhop of every dioceſe once every three years, or by the archdeacon once a year, by *viſiting* the churches and their rectors throughout the whole dioceſe; *Ut populus illorum curæ commiſſus ſalubriter a paſtoribus & ordine gubernetur: Et ne quid detrimenti capiat eccleſia, &c.* Reform. Leg. Eccl. pag. 124. And when a *viſitation* is made by the archbiſhop, all acts of the biſhop are ſuſpended by *inhibition, &c.* A commiſſary at his *court of viſitation,* cannot cite lay pariſhioners, unleſs it be churchwardens and ſideſmen; and to thoſe he may give his articles, and inquire by them. *Noy* 123. 3 *Salk.* 370. *Proxies* and *Procurations* are paid by the parſons whoſe churches are *viſited, &c. Ibid.*

Viſitation Books of Heralds. The original viſitation books of heralds, compiled when progreſſes were ſolemnly and regularly made into every part of the kingdom, to enquire into the ſtate of families, and to regiſter ſuch marriages and deſcents as were verified to them upon oath, are allowed to be good evidence of pedigrees. *Comb.* 63. *Black. Com.* 3 *V.* 105.

Viſitor, Is an inſpector of the government of a corporation, *&c.* The ordinary is *viſitor* of ſpiritual corporations; but corporations inſtituted for private charity, if they are lay, are *viſitable* by the founder, or whom he ſhall appoint, and from the ſentence of ſuch *viſitor* there lies no appeal. 3 *Salk.* 381. By implication of law, the founder and his heirs are *viſitors* of lay foundations, if no particular perſon is appointed by him to ſee that the charity is not perverted. *Ibid.* And where founders are *viſitors* of hoſpitals, *&c.* The appointment of a biſhop without his chriſtian name to be a *viſitor,* extends to his ſucceſſors. 2 *Strange* 913. The *viſitor* in his citation muſt purſue his authority. *Ibid.* He may puniſh one man for acts done by him jointly with others. *Ibid.* Offences againſt the ſtatutes of a college are not pardoned by an act of grace. *Ibid.* 912. See *Stat.* 39 *Eliz. c.* 5. 43 *Eliz. c.* 4. See farther as to viſitor generally *Black. Com.* 1 *V.* 479. of *Civil Corporations. Id.* 1 *V.* 481 of *Colleges. Id.* 1 *V.* 482 of *Hoſpitals, id. ib.*

Viſitor of Manners, In ancient time was wont to be the name of the *Regarder*'s office in the foreſt. *Manwood,* *par.* 1. *pag.* 195.

Viſne, (*Viſnetum*) Signifies a neighbouring place, or place near at hand. 19 *R.* 2. *cap.* 6. See *Venue.*

Viſus, View, or inſpection; as wood is to be taken *per viſum foreſtarii, &c.* Hoved. 784.

Vita Juſtitiae & Legis, A ſheriff of the county is ſaid to be the *life of juſtice,* as no ſuit begins, and no proceſs is ſerved but by him; and after ſuits are ended, he hath the making execution, which is the *life of the law.* Co. Litt.

Vivary, (*Vivarium*) A place by land or water, where living creatures are kept: And in law it is moſt commonly uſed for a park, warren, piſcary, *&c.* 2 *Inſt.* 100.

Viva voce, Is where a witneſs is examined perſonally in open court. See *Depoſition.*

Vivo vadio, Eſtate *in.* When a man borrows a ſum of another, and grants him an eſtate until the rents and profits ſhall repay the ſum borrowed; he is then ſaid to have an eſtate *in vivo vadio.* See *Vadium Vivum,* and *Black. Com.* 2 *V.* 157.

Vlcus, A hulk of a ſhip of burden. *Leg. Ethelred.*

Ullage, Is when there is want of meaſure in a caſk, *&c.*

Ulnage, The ſame with *Alnage.* Vide *Alnage.*

Ulna ferrea, Is the ſtandard *ell of iron,* kept in the *Exchequer* for the rule of meaſure. *Mon. Angl. Tom.* 2. *pag.* 383.

Umpirage, Is where there is but one arbitrator of matters ſubmitted to award; and is uſually when the parties ſubmit themſelves to the arbitrament of certain perſons; and if they cannot agree, or are not ready to deliver their award in writing before ſuch a time, then to the judgment of another as *umpire:* And this is often the effect of bonds of ſubmiſſion to arbitration. 1 *Roll. Abr.* 261, 262. See *Arbitration.*

Umpire, (*Arbiter*) One choſen by compromiſe to deal indifferently between both parties. *Litt.* See *Arbitrament. Award.*

Una cum omnibus aliis, In the grant of a deed, is a new addition of other things than were granted before; and hath its own concluſion attending it. *Hob.* 175.

Unanimity of Juries. The neceſſity of a total unanimity of the jurors, on every *trial,* ſeems to be peculiar to our own conſtitution. See *Black. Com.* 3 *V.* 376.

Unceaſeſath: This is an obſolete word, mentioned in *Leg. Inæ, cap.* 37. *viz.* He who kills a thief, may make oath that he killed him in flying for the fact, *& parentibus ipſius occiſi juret* unceaſeſath, that is, that his kindred will not revenge his death: From the Saxon *ceas, litis,* and *un,* which is a negative particle, and ſignifies without, and *ath,* which is oath, *i. e.* to ſwear that there ſhall be no contention about it. *Cowell.*

Uncertainty of the Law. On this ſubject we will ſtate what is ſaid, by one of our beſt authors, in his own words.

" The uncertainty of legal proceedings is a notion ſo generally adopted, and has ſo long been the ſtanding theme of wit and good humour, that he who ſhould attempt to refute it would be looked upon as a man, who was either incapable of diſcernment himſelf, or elſe meant to impoſe upon others——yet it may not be amiſs, before we enter into the ſeveral modes whereby certainty is meant to be obtained in our courts of juſtice, to inquire a little wherein the uncertainty, ſo frequently complained of, conſiſts, and to what cauſes it owes its original.——It has ſometimes been ſaid to owe its original to the number of our municipal conſtitutions, and the multitude of our judicial deciſions; which occaſion, it is alledged, abundance of rules, that militate and thwart with each other, as the ſentiments or caprice of ſucceſſive legiſlatures and judges have happened to vary. ——The fact of multiplicity is allowed, and that thereby the reſearches of the ſtudent are rendered more difficult and laborious: But that, with proper induſtry, the reſult of thoſe inquires will be doubt, and indeciſion, is a conſequence that cannot be admitted. People are apt to be angry at the want of ſimplicity in our laws: They miſtake *variety* for *confuſion*, and *complicated* caſes for *contradictory*.—They bring us the examples of arbitrary governments, of *Denmark*, *Muſcovy*, and *Pruſſia*; of wild and uncultivated nations, the ſavages of *Africa* and *America*; or of narrow domeſtic republics in ancient *Greece* and modern *Switzerland*; and unreaſonably require the ſame paucity of laws, the ſame conciſeneſs of practice, in a nation of freemen, a polite and commercial people, and a populous extent of territory.—In an arbitrary, deſpotic government, where the lands are at the diſpoſal of the prince, the rules of ſucceſſion, or the mode of enjoyment, muſt depend upon his will and pleaſure.—Hence there can be but few legal determinations relating to the *property*, the *deſcent*, or the *conveyance* of real eſtates; and the ſame holds in a ſtronger degree with regard to goods and chattels, and the contracts relating thereto. Under a tyrannical ſway trade muſt be continually in jeopardy, and of conſequence can never be extenſive: This therefore puts an end to the neceſſity of an infinite number of rules, which the *Engliſh* merchant daily recurs to for adjuſting commercial differences.—Marriages are there uſually contracted with ſlaves; or at leaſt women are treated as ſuch: No laws can be therefore expected to regulate the rights of dower, jointures and marriage ſettlements. Few alſo are the perſons, who can claim the privileges of any laws; the bulk of thoſe nations, *viz.* the commonalty, boors or peaſants, being merely villeins and bondmen.—Thoſe are therefore left to the private coercion of their laws, are eſteemed (in the contemplation of theſe boaſted legiſlators) *incapable* of either *right* or *injury*, and of conſequence are *intitled to no redreſs*. We may ſee in theſe arbitrary ſtates how large a field of legal conteſt is already rooted up and deſtroyed.—Again, were we a poor and naked people, as the ſavages of *America* are, ſtrangers to ſcience, to commerce, and the arts, as well of convenience as of luxury, we might perhaps be content, as ſome of them are ſaid to be, to refer all diſputes to the next man we met upon the road, and ſo put a ſhort end to every controverſy. For in a ſtate of nature there is no room for municipal laws; and the nearer any nation approaches to that ſtate, the fewer they will have occaſion for. When the people of *Rome* were little better than ſturdy ſhepherds, or herdſmen, all their laws were contained in ten or twelve tables; but as *luxury*, *politeneſs*, and *dominion increaſed*, the *civil law increaſed in the ſame proportion*, and ſwelled to that amazing bulk which it now occupies, though ſucceſſively pruned and retrenched by the emperors *Theodocius* and *Juſtinian*.

"In like manner we may laſtly obſerve, that in petty ſtates, and narrow territories, much fewer laws will ſuffice than in large ones, becauſe there are fewer objects upon which the laws can operate. *The regulations of a private family are ſhort and well known; thoſe of a prince's houſhold are neceſſarily more various and diffuſe.*—The cauſes therefore of the multiplicity of the *Engliſh* laws are the extent of the country which they govern; the commerce and refinement of its inhabitants; *but above all, the* LIBERTY *and* PROPERTY *of the ſubject*. Theſe will naturally produce an infinite fund of diſputes; which muſt be terminated in a judicial way: And it is eſſential to a FREE PEOPLE, that theſe determinations be publiſhed and adhered to; that their property may be as certain and fixed as the very conſtitution of their ſtate. For though in many other countries every thing is left in the breaſt of the judge to determine, yet with us he is only to *declare* and *pronounce*, not to *make* or *new model*, the law. Hence a multitude of deciſions, or caſes adjudged, will ariſe; for ſeldom will it happen that any one rule will exactly ſuit with many caſes.—And in proportion as the deciſions of the courts of judicature are multiplied, the law will be loaded with decrees, that may ſometimes (though rarely) interfere with each other: Either becauſe ſucceeding judges may not be apprized of the prior adjudication; or becauſe they may think differently from their predeceſſors; or becauſe the ſame arguments did not occur formerly as at preſent; or, in fine, becauſe of the natural imbecillity and imperfection that attends all human proceedings. But, wherever this happens to be the caſe in any material point, the legiſlature is ready, and, from time to time, both may, and frequently does, intervene to remove the doubt; and, upon due deliberation had, determines by a declaratory ſtatute how the law ſhall be held for the future.

"Whatever inſtances therefore of contradiction or uncertainty, may have been gleaned from our records, or reports, muſt be imputed to the defects of human laws in general, and are not owing to any particular ill conſtruſtion of the *Engliſh* ſyſtem. Indeed the reverſe is moſt ſtrictly true. The *Engliſh* law is leſs embarraſſed with inconſiſtent reſolutions and doubtful queſtions, than any other known ſyſtem of the ſame extent and the ſame duration. I may inſtance in the civil law: The texts whereof, as collected by *Juſtinian* and his agents, is extremely voluminous and diffuſe; but the idle comments, obſcure gloſſes, and jaring interpretations grafted thereupon by the learned juriſts, are literally without number. And theſe gloſſes, which are mere private opinions of ſcholaſtic doctors, (and not, like our books of reports, judicial determinations of the court) are all of authority ſufficient to be vouched and relied on; which muſt needs breed great diſtraction and confuſion in their tribunals. The ſame may be ſaid of the Canon law; though the text thereof is not of half the antiquity with the Common law of *England*; and though the more ancient any ſyſtem of laws is, the more it is liable to be perplexed with the multitude of judicial decrees. When therefore a body of laws, of ſo high antiquity as the *Engliſh*, is in general ſo clear and perſpicuous, it argues deep wiſdom and foreſight in ſuch as laid the foundations, and great care and circumſpection in ſuch as have built the ſuperſtructure.

"But is not (it will be aſked) the multitude of law-ſuits, which we daily ſee and experience, an argument againſt the clearneſs and certainty of the law itſelf? by no means: For, among the various diſputes and controverſies which are daily to be met with in the courſe of legal proceedings, it is obvious to obſerve how very few ariſe from obſcurity in the rules or maxims of law. An action ſhall ſeldom be heard of to determine a queſtion of inheritance, unleſs the fact of the deſcent be controverted. But the dubious points, which are uſually agitated in our courts, ariſe chiefly from the difficulty there is of aſcertaining the *intentions of individuals*, in their ſolemn diſpoſitions of property; in their contracts, conveyances, and teſtaments. It is an object indeed of the utmoſt importance in this free and commercial country, to lay as few reſtraints as poſſible upon the transfer of poſſeſſions from hand to hand, or their various deſignations, marked out by the prudence, convenience, or neceſſities, or even by the caprice of their owners: Yet *to inveſtigate the intention of the owner* is frequently matter of difficulty among heaps of entangled conveyances or wills of a various obſcurity. The *law rarely heſitates in declaring its own meaning*: But the judges are frequently puzzled to find out *the meaning of others*. Thus the powers, the intereſt, the privileges, and properties of a tenant for life, and a tenant in tail, are clearly diſtinguiſhed and preciſely ſettled by law: But, *what words in a will ſhall conſtitute this or that eſtate*, has occaſionally been diſputed for more than two centuries paſt; and will continue to be diſputed as long as the careleſſneſs, the ignorance, or ſingularity of teſtators ſhall continue to cloath their intentions in dark or new fangled expreſſions."

"But, notwithſtanding ſo vaſt an acceſſion of legal controverſies, ariſing from ſo fertile a fund as the ignorance and wilfulneſs of individuals, theſe will bear no compariſon in point of number to thoſe which are founded upon *the diſhoneſty and diſingenuity of the parties*: By either their ſuggeſting complaints that are falſe in fact, and thereupon bringing groundleſs actions; or by their denying ſuch facts as are true, in ſetting up unwarrantable defences, *ex facto oritur jus*: If therefore, the fact be perverted or miſrepreſented, the law which ariſes from thence will unavoidably be unjuſt or partial. And, in order to prevent this, it is neceſſary *to ſet right the fact*, and eſtabliſh the truth contended for, by appealing to ſome mode of probation or trial, which the law of the country has ordained for a criterion of truth and falſehood."

"These modes of probation or trial form, in every civilized country, the great object of judicial deciſions. And experience will abundantly ſhew, that above a hundred of our law-ſuits ariſe from *diſputed facts*, for one where the law is doubted of. About twenty days in the year are ſufficient, in *Weſtminſter-Hall*, to ſettle (upon ſolemn argument) every demurrer or other ſpecial point of law that ariſes throughout the nation: But two months are annually ſpent in deciding the truth of facts, before ſix diſtinct tribunals, in the ſeveral circuits of *England*; excluſive of *Middleſex* and *London*, which afford a ſupply of cauſes much more than equivalent to any two of the largeſt circuits." *Blackſtone's Com.* 3 *V.* 325, *&c.*

We may here with *Blackſtone* obſerve, that *trial* is the examination of the matter of fact in iſſue; of which there are many different ſpecies, according to the difference of the ſubject, or thing to be tried. For the law of *England* ſo induſtriouſly endeavours to inveſtigate truth at any rate, that it will not confine itſelf to one, or to a few manners of trial; but varies its examination of facts according to the nature of the facts themſelves: This being the one invariable principle purſued, that as well the beſt method of trial, as the beſt evidence upon that trial, which the nature of the caſe affords, and no other, ſhall be admitted in the *Engliſh* courts of juſtice.

N. B. The ſpecies of trial in civil caſes are *ſeven*. By *Record*; by *Inſpection* or *Examination*; by *Certificate*; by *Witneſſes*; by *Wager* of *Battle*; by *Wager* of *Law*; and by *Jury*.

Uncia terrae, Uncia agri. Theſe phraſes often occur in the charters of the *Britiſh* Kings, and ſignify ſome meaſure or quantity of land. It was the quantity of 12 *modii*, and each *modius* poſſibly 100 feet ſquare. *Mon. Ang. tom.* 3. *p.* 198.

Uncore priſt, Is a plea of a defendant in nature of a plea in bar, where being ſued for a debt due on bond at a day paſt, to ſave the forfeiture of the bond, he ſays that he tendered the money at the day and place, and that there was none there to receive it; and that he is alſo ſtill ready to pay the ſame. This will ſave the defendant from the penalty of his obligation; and if the plaintiff now refuſeth to receive the money, but takes iſſue upon the tender, and it is found againſt him, he loſeth his money for ever. 7 *Ed.* 6. 6. 9 *Rep.* 70. *Pract. Attorn. Edit.* 1*ſt*, *pag.* 82, 83. See *Black. Com.* 3 *V.* 303.

Uncuth, A *Saxon* word, ſignifying as much as *incognitus, i. e.* unknown; and is uſed in the old *Saxon* laws for him that cometh to an inn gueſtwiſe, and lies there but one night. *Bract. lib.* 3.

Unde nihil habeat, A writ of dower, for which ſee *Dote unde nihil habet.*

Under-Chamberlain of the Exchequer, Is an officer there that cleaves the tallies, written by the clerk of the tallies, and reads the ſame, that the clerk of the pell, and comptrollers thereof, may ſee their entries be true. He alſo makes ſearches for all records in the treaſury, and hath the cuſtody of *Domeſday book.* There are two officers there of this name. *Cowell.* Vide *Exchequer.*

Under-Eſcheator, *(Sub-Eſcheator)* Mentioned in *ſtat.* 5 *E.* 3. *c.* 4. See *Eſcheator.*

Under-Sheriff, *(Sub-Vicecomes.)* See *Sheriff*, 21 *Vin. Abr.* 592. and *Black. Com.* 1 *V.* 345.

Undertakers, Are ſuch as the *King's Purveyors* employed as their deputies: And thoſe that *undertake* any great work; as draining of fens, *&c.* *Stat.* 2 *&* 3 *P. & M. c.* 6. 43 *Eliz. c.* 11. 12 *Car.* 2. *c.* 24. Alſo perſons that undertake funerals, are particularly ſo called.

Under Treaſurer of England. *(Vice Theſaurarius Angliæ)* An officer firſt created in the time of King *Hen.* 7th, but ſome think he was of a more ancient original: His buſineſs was to cheſt up the King's treaſure at the end of every term, to note the content of money in each cheſt, and ſee it carried into the King's treaſury for the eaſe of the *lord treaſurer*, as being a thing beneath him, but fit to be performed by a man of great truſt and ſecrecy: And, in the vacancy of the lord treaſurer's office, he did all things in the receipt, *&c.* This officer is mentioned in ſeveral ſtatutes; and named *treaſurer of the exchequer* till the reign of Queen *Eliz.* when he was termed *under-treaſurer of England.* 39 Eliz. cap. 7.

Underwood, *Stealing of.* Stealing *underwood*, *&c.* is puniſhable criminally, by whipping, ſmall fines, impriſonment, *&c.* See 43 *Eliz. c.* 7. 15 *Car.* 2. *c.* 2. 23 *Geo.* 2. *c.* 26. and 31 *Geo.* 2. *c.* 35.

Un Dieu, & Un Roy, Was the learned judge *Littleton*'s motto.

Undres, A word uſed for minors, or perſons under age; not capable to bear arms, *&c.* *Fleta, lib* 1. *c.* 9.

Unfrid, One that hath no quiet or peace. *Sax.*

Ungeld, A perſon out of the protection of the law, ſo that, if he were murdered, no *geld* or fine ſhould be paid, or compoſition made by him that killed him. *Leg. Ethelred.*

Ungilda Aker: This is mentioned in *Brompton, Leg. Athelred, p.* 898. and it ſignifies almoſt the ſame as *ungeld, viz.* where a man was killed attempting any felony, he was to lie in the field unburied, and no pecuniary compenſation was to be paid for his death: From the Sax. *un*, without, *gilda*, *ſolutio*, and *acera*, *ager*. Cowell.

Uniformity, *(Uniformitas)* One form of public prayers and adminiſtration of ſacraments, and other rites and ceremonies of the church of *England*, preſcribed by ſtatutes, to which all muſt ſubmit. 1 *Eliz. c.* 2. 14 *Car.* 2. *c.* 4. But ſee *Diſſenters.*

Union, (*Unio*) Is a combining and conſolidating of two *churches* into one: Alſo it is when one church is made ſubject to another, and one man is rector of both; and where a conventual church is made a cathedral. *Lyndewode.* In the firſt ſignification, if two churches were ſo mean, that the tithes would not afford a competent proviſion for each incumbent, the ordinary, patron, and incumbents might *unite* them at Common law, before any ſtatute was made for that purpoſe; and in ſuch caſe it was agreed which patron ſhould preſent firſt, *&c.* for though, by the *union*, the incumbency of one church was loſt, yet the patronage remained, and each patron might have a *quare impedit* upon a diſturbance to preſent in his turn. 3 *Nelſ. Abr.* 480. The biſhop, patron, and incumbent may *unite* churches, without licence from the King, by the ſtatute of 37 *H.* 8. *c.* 21. The licence of the King is not neceſſary to an *union*, as it is to the *appropriation* of advowſons; for an appropriation cannot be made by them without the King's licence; becauſe that is a mortmain, and the patronage of the advowſon is loſt, and by conſequence all tenths for firſt fruits. *Dyer* 259. *Moor* 409, 661.

By aſſent of the ordinary, patron, and incumbent, two churches lying not above a mile diſtant one from the other, and whereof the value of the one is not above ſix pounds a year in the King's books of firſt fruits, may be *united* into one. *Stat.* 37 *H.* 8. *c.* 21. And by another ſtatute, in cities and corporation towns, it ſhall be lawful for the biſhop, patrons and mayors, or chief magiſtrates of the place, *&c.* to *unite* churches therein; but where the income of the churches *united* exceeds 100*l.* a year, the major part of the pariſhioners are to conſent to the ſame; and, after the *union* made, the patrons of the churches *united* ſhall preſent, by turns, to that church only which ſhall be preſentative, in ſuch order as agreed; and notwithſtanding the *union*, and each of the pariſhes *united* ſhall continue diſtinct as to rates, charges, *&c.* though the tithes are to be paid to the incumbent of the united church. 17 *Car.* 2. *c.* 3. A *union* where made of churches of greater yearly value than mentioned in the ſtatute 37 *H.* 8. was held good at Common law; and, by the Canon law, the ordinary, with conſent of the patron, might make an *union* of churches, of what value ſoever.

So by ſtatute, with the aſſent of the King. *Dyer* 295. 2 *Rol. Abr.* 778. And when two parochial churches were thus *united*, the reparations continued ſeveral as before; and therefore the inhabitants of the pariſh where any ſuch church was demoliſhed, were not obliged to contribute to the repairs of the remaining church to which it was *united.* Hob. 67. And this occaſioned the ſtatute 4 & 5 *W.* & *M.* by which it is ordained, That where any churches have been *united*, by virtue of the ſtatute 17 *Car.* 2. *c.* 3. and one of them is demoliſhed; when the other church ſhall be out of repair, the pariſhioners of the pariſh whoſe church is down ſhall pay in proportion towards the charge of ſuch repairs, &c. *Stat.* 4 & 5 *W.* & *M. c.* 12.

Union of England and Scotland, When and how brought about, and the laws relating to it, ſee *Scotland.* And *Black Com.* 1 *V.* 96. 4 *V.* 420, 433.

Unity of Poſſeſſion, *(Unitas Poſſeſſionis)* Is where a man hath a right to two eſtates, and holds them together jointly in his own hands; as if a man take a leaſe of lands from another at a certain rent, and after he buys the fee-ſimple, this is an *unity of poſſeſſion*, by which the leaſe is extinguiſhed, becauſe that he who had before the occupation only for his rent, is now become lord and owner of the land. *Terms de Ley.* A leſſee for years of an advowſon, on the church becoming void, was preſented by the leſſor, and inſtituted and inducted; and it was held, that this was a ſurrender of his leaſe; for they cannot ſtand together in one perſon, and by the *unity of poſſeſſion* one of them is extinguiſhed. *Hut.* 105. No *unity* will extinguiſh or ſuſpend tithes; but notwithſtanding any *unity* they remain, &c. 11 *Rep.* 14. 2 *Lill.* 658. *Unity of poſſeſſion* extinguiſheth all privileges not expreſly neceſſary; but not a way to a cloſe, or water to a mill, &c. becauſe they are thus neceſſary. A way of eaſe is deſtroyed by *unity of poſſeſſion*; and a rent, or eaſement, do not exiſt during the *unity*, wherefore they are gone. *Latch.* 153, 154. 1 *Vent.* 95. *Trin.* 7 *W.* See *Black. Com.* 2 *V.* 180.

Univerſity, *(Univerſitas)* Is a place where all kinds of literature are *univerſally* taught: It is likewiſe uſed by *civilians* for any corporation, or body politick. The *univerſities* with us are taken for theſe two bodies which are the nurſeries of learning and liberal ſcience in this kingdom, *viz. Oxford* and *Cambridge*; endowed with great privileges. And by the 13 *Eliz. c.* 27. it is enacted, That each of the *univerſities* ſhall be incorporated by a certain name, though they were ancient corporations before; and that all letters patent and charters granted to the *univerſities*, ſhall be good and effectual in law: That the chancellor, maſters, and ſcholars of either of the ſaid *univerſities*, ſhall enjoy all manors, lands, liberties, franchiſes, and privileges, and all other things which the ſaid corporated bodies have enjoyed, or of right ought to enjoy, according to the intent of the ſaid letters patent; and all letters patent, and liberties, franchiſes, &c. ſhall be eſtabliſhed and confirmed, any law, uſage &c. to the contrary notwithſtanding.

The *univerſities* have the keeping of the aſſiſe of bread and beer, and are to puniſh offences concerning it: Alſo they have the aſſiſe of wine and ale, &c. And the chancellor, his commiſſary, and deputy, are juſtices of peace for the vill of *Oxon*, county of *Oxon*, and *Berks*, by virtue of their offices; ſee the *Stat.* 51 *H.* 3. 31 *Ed.* 1. 7 *Ed.* 6. 2 & 3 *P.* & *M.* and the Chart. 29 *Ed.* 3. 14 *H.* 8. &c. By letters patent, *Anno* 11 *Car.* 1. granted to the *univerſity* of *Oxford*, the old privileges are explained, and larger granted: And the privilege of the *univerſity* is allowed to ſcholars, and ſervants, &c. 14 *Car.* 2. *c.* 4. Perſons acting theatrical performances within the precincts of either *univerſity*, or five miles thereof, ſhall be deemed vagrants; and the chancellor, &c. may commit them to the houſe of correction, or common gaol for one month. *Stat.* 10 *Geo.* 2. *c.* 19.

Their courts are called the chancellor's courts. The chancellors are uſually peers of the realm, and are appointed over the whole univerſity. But the courts are kept by their vice-chancellors their aſſiſtants or deputies; the cauſes are managed by advocates or proctors. *Id. ibid.* By charter of 14 *H.* 8.

Theſe courts have juriſdiction in all cauſes eccleſiaſtical and civil (except *mayhem*, *felony* and *freehold*,) where a ſcholar, ſervant or miniſter of the univerſity is one of the parties in ſuit. *Id. ibid.* and *Cro. Car.* 73. *Wilcocks* v. *Bradnell.* But ſee the petition againſt the grant of *H.* 4. in *Prynn's Animad. p.* 368, 369.

Their proceedings are in a ſummary way according to the practice of the civil law; and in their ſentences they follow the juſtice and equity of the civil law, or the laws, ſtatutes, privileges, liberties and cuſtoms of the univerſities, or the laws of the land at the diſcretion of the chancellor. *Cro. Car.* 73. *Wilcocks* v. *Bradnell. Hetley* 25. *Thomas Wilcocks's* caſe. *Hard.* 508. *Caſtle* v. *Litchfield.*

If there is an erroneous ſentence in the chancellor's court of the univerſity of *Oxford*, an appeal lies to the congregation, thence to the convocation, and from thence to the King in chancery, who nominates judges delegates to hear the appeal; the appeal is of the ſame nature in *Cambridge.* Wood's Inſt. 549. 2 Ld. Raym. 1346. *The King* v. *The chancellor*, &c. *of* Cambridge.

As by charter confirmed, as abovementioned, by act of parliament, cognizance is granted to the univerſity of all ſuits ariſing any where in law or equity againſt a ſcholar, ſervant or miniſter of the univerſity, depending before the juſtices of the King's bench, Common pleas and others there mentioned, and before any other judge, tho' the matter concern the King: If an *indebitatus aſſumpſit* is brought by *quo minus* in the exchequer againſt a ſcholar or other privileged perſon, the univerſity ſhall have conuſance, for the court of exchequer is included in the general words. *Cro. Car.* 73. *Wilcocks* v. *Bradnell. Hard.* 505. *Caſtle* v. *Litchfield.*

If a debtor and accountant to the King ſues a ſcholar by bill in equity in the exchequer, or if an attorney ſues a ſcholar by writ of privilege, it is ſaid that the univerſities ſhall not have conuſance, for a general grant ſhall not take away the ſpecial privilege of any court. *Hard.* 189. *Wilkins* v. *Shalcroft. Lit. Rep.* 304. *Oxford Letter patent.* S. P. 3 *Leon.* 149. *The lord Anderſon's* caſe. 2 *Danv. Abr.* 164.

But in the caſes where privilege is allowable, a ſcholar, &c. cannot waive his privilege, and have a prohibition in the courts of *Weſtminſter*, for the univerſity by right has the conuſance of the plea, where one is a privileged perſon; and a ſtranger is forced to ſue a privileged perſon in their courts by reaſon of that right veſted in them. *Cro. Car.* 73. *Wilcocks* v. *Bradnell. Hetl.* 28. *Thomas Wilcocks's* caſe.

But a ſcholar ought to be reſident in the univerſity at the time of the ſuit commenced; and no other ought to be joined in the action with him, for in ſuch caſe he ſhall not have privilege. *Hetl.* 28. *Thomas Wilcocks's* caſe. Tho' it is ſaid that ſervants of the univerſity are privileged, yet it has been held, that a bailiff of a college was not capable of privilege. *Brownl.* 74. *Carrel.* v. *Paſk.* Neither is a townſman intitled to privilege, to exempt him from an office in the town, if he keeps a ſhop and follows a trade, tho' he is matriculated as ſervant to a ſcholar. 2 *Ven.* 106. *The city of Oxford's* caſe.

It is to be obſerved, that tho' *mayhem*, *felony* and *freehold* appear, as above, to be the only cauſes excepted in their charter; yet it has been held that in actions for the recovery of the poſſeſſion of a term, without claiming title to the freehold, they ſhall have no privilege, becauſe the freehold may come in queſtion. *Cro. Car.* 87. 88. *Hayley's* caſe. *Litt. Rep.* 252. *Cripp's* and *Webb's* caſe.

It hath been diſputed how far the words of the grant intitled them to privilege in matters of equity. And the general principle of conſtruction ſeems to be, that where *chattels only* are concerned, or where *damages only* are to be given, there their privilege is allowable, but where the ſuit is for the *thing itſelf*, there their privilege cannot be allowed. *Vide* 2 *Vent.* 362.

The franchiſes of the univerſities are confirmed by the *Stat.* 13. *Eliz. c.* 29. Where any fellow, *&c.* reſigns for reward, the perſon for whom it is given made incapable, *&c.* 31 *Eliz. c.* 6. *ſ.* 3. The univerſities and royal colleges excepted out of the ſtatute of charitable uſes, 43 *El. c.* 4. *ſ.* 2. The preſentation of benefices belonging to papiſts given to the two univerſities, 13 *Jac.* 1. *c.* 5. *ſ.* 18, 19. 1 *W. & M. c.* 26. 12 *Ann. c.* 14. Univerſities may file a bill in equity to diſcover truſts, 12 *Ann. ſt.* 2. *c.* 14. *ſ.* 4. Pending *quare impedit*, a rule may be made for examining patron and clerk, 12 *Ann. ſt.* 2. *c.* 14. *ſ.* 5.

Collegians refuſing to take the oaths, King may nominate perſons to ſucceed, 1 *Geo.* 1. *c.* 10. *ſ.* 12. Mandamus lies to admit the King's nominee, 1 *Geo.* 1. *c.* 13. *ſ.* 13. Vice-chanceller of *Cambridge* may act as juſtice of the county without the landed qualification, 7 *Geo.* 2. *c.* 10. The univerſities and royal colleges excepted out of the *mortmain* act, 9 *Geo.* 2. *c.* 36. *ſ.* 4. Colleges poſſeſſed of more advowſons than a moiety of the fellows, not to purchaſe more, 9 *Geo.* 2. *c.* 36. *ſ.* 5.

Grants made by papiſts of eccleſiaſtical livings veſted in the univerſities, void, 11 *Geo.* 2. *c.* 17. *ſ.* 5.

See 5 *New Abr.* and 22 *Vin. Abr. tit. Univerſity.*

See *courts of the univerſities*, and *Black. Com.* 1 *V.* 471. 3 *V.* 83. 4 *V.* 274.

Unknown Perſons, *larceny from.* An indictment will lie, for ſtealing the goods of a perſon unknown. 1 *Hal. P.C.* 512. *Black. Com.* 4 *V.* 236.

Unlage, A *Saxon* word, denoting an unjuſt law; in which ſenſe it is uſed in *Leg. Hen.* 1. *cap.* 34.

Unlawful Aſſembly, (*Illicita Congregatio*) The meeting of three perſons or more together, by force, to commit ſome unlawful act. *Lamb.* Vide *Aſſembly.*

Unnatural, (*Præternaturalis*) That which is not of or by nature: And what is *unnatural* to man generally, muſt be the ſame to all men, and at all times; but what *is unnatural* to this or that perſon, is to him only, and but for the time 'tis ſo. Argument on *inceſtuous* marriages. *Vaugh.* 224.

Unques priſt, Always ready to perform a thing: Uſed in pleading to an action, which if the plaintiff cannot prove to the contrary, he ſhall recover no damages. *Kitch.* 243. *Sed qu.* If a tender or offer to pay, or perform, *&c.* muſt not be alſo proved by the defendant?

Vociferatio, An out-cry, or hue and cry. *Leg. Hen.* 1. *cap.* 12.

Voidance, (*Vacatio*) Is a want of an incumbent upon an eccleſiaſtical benefice. Vid. *Avoidance.*

Void and voidable. In the law ſome things are abſolutely *void* and ſome are *voidable.* A thing is *void* which is done againſt law at the very time of the doing of it, and it ſhall bind no perſon: But a thing which is only *voidable*, and not *void*, although it be what he that did it ought not to have done, yet, when it is done, the doer cannot *avoid* the ſame; though by ſome act in law it may be made *void* by his heir, *&c.* 2 *Lil. Abr.* 653. But ſee *poſt.* Where a grant is void at the commencement, no act afterwards can make it good: If a leaſe is abſolutely *void*, acceptance of rent will not affirm it; it is otherwiſe when a leaſe is only *voidable*, there it will make it good. 3 *Rep.* 64. A leaſe for life which is *voidable* only, muſt be made *void* by re-entry, *&c. Ibid.* This poſition is very general, and perhaps wrong—— If an ejectment is brought, the want of entry is cured by the defendant's entering into the rule to confeſs leaſe, *entry*, and ouſter, in all caſes, except where a fine is to be avoided. It is generally held that covenants made in a *void* leaſe or deed, are alſo *void*, *Yelv.* 18. See *Owen* 136.

A deed of exchange, entered into by an infant, or one *non ſanæ memoriæ*, is not *void*; but may be *avoided* by the infant, when arrived at age, or by the heir of him who is *non ſanæ memoriæ.* Perk. 281. But it hath been adjudged, that a bond of an infant, or of one *non compos*, is *void*, becauſe the law hath not appointed any thing to be done to *avoid* ſuch bonds; for the party cannot plead *non eſt factum*, as the cauſe of nullity doth not appear upon the face of the deed. 2 *Salk.* 675. 3 *Nelſ. Abr.* 486. Where the condition of a bond is *void*, in part by *ſtatute*, it may be *void* totally; though it is otherwiſe if *void* in part by the *Common law*, for there it ſhall be good for the reſidue. *Moor* 856. 1 *Brownl.* 64. A deed being *voidable*, is to be *avoided* by ſpecial pleading; and where an act of parliament ſays, that a deed, *&c.* ſhall be *void*, it is intended that it ſhall be by pleading, ſo as it is *voidable*, but not actually vacated. 5 *Rep.* 119. A judgment given by perſons who had no good commiſſion to do it, is *void*, without writ of error: But an erroneous attainder is not *void*, but *voidable* by writ of error, *&c.* 2 *Hawk. P. C.* 459, 321.

Voire, A *French* word ſignifying truly. *Law Fr. Dict.*

Voire dire, (Fr. *Veritatem dicere*) Is when it is prayed upon a trial at law, that a witneſs may be ſworn upon a *voire dire*; which is, that he ſhall on his oath ſpeak the *truth*, whether he ſhall get or loſe by the matter in controverſy; and if it appears that he is unconcerned, his teſtimony is allowed, otherwiſe not. *Blount.* On a *voire dire*, a witneſs may be examined by the court, if he be not a party intereſted in the cauſe, as well as the perſon for whom he is a witneſs; and this has been often done, where a buſy evidence, not otherwiſe to be excepted againſt, is ſuſpected of partiality. *Terms de Ley.* 581.

Volumus, Is the firſt word of a clauſe in the King's writs of protection and letters patent; of protections ſome are *cum clauſula volumus.* 13 R. 2. c. 16. Co. Litt. 199.

Voluntary, As applied to a *deed*, is where any conveyance is made without a conſideration, either of money, or marriage, *&c.* And remainders limited in ſettlements, to a man's right heirs, *&c.* are deemed *voluntary* in equity, and the perſons claiming under them called *volunteers.* *Abr. Caſ. Eq.* 385. 3 *Salk.* 174. See *Fraud.* So an eſcape may be voluntary. See *Eſcape*, and *Black. Com.* 3 *V.* 415. 4 *V.* 130. So may oaths, ſee *Oath*, and *Black. Com.* 4 *V.* 137. So may waſte, ſee *Waſte*, and *Black. Com.* 2 *V.* 281.

Voluntas, Is when a tenant by leaſe holds lands at the *will* of the leſſor; or a copyholder holdeth his lands at the will of the lord, by copy of court-roll, according to the cuſtom of the manor, *&c.* But the will of the lord is bound and governed by the cuſtom of the manor, and he cannot turn out the tenant, or deprive him of his eſtate unleſs for a forfeiture, and then only according to due courſe of law.

Votum, A vow or promiſe, uſed by *Fleta* for *nuptiæ*; ſo *dies votorum*, is the wedding day. *Fleta, lib.* 4.

Vouche, (Fr. in Latin *Voco*) Signifies to call one to warrant lands, *&c.*

Vouchee. The perſon who is vouched, in a writ of right, ſee *Voucher*, and *Black. Com.* 2 *V.* 358. xviii.

Voucher, Is a word of art, when the tenant in a writ of right calls another into the court, who is bound to him to warranty; and is either to defend the right againſt the demandant, or yield him other lands to the value, *&c.* (but that is only form.) And it extends to lands or tenements of freehold or inheritance, and not to any chattel real, perſonal, or mixed: He that *voucheth* is called the *voucher*, (*vocans*) and he that is *vouched*, is called the *vouchee*, (*warrantatus*) and the proceſs whereby the *vouchee* is called, is a *ſummoneas ad warrantizandum*; on which writ if the ſheriff return that the party hath nothing whereby he may be ſummoned, then goes out another writ called *ſequator ſub ſuo periculo*, *&c.* Co. Litt. 101.

There is alſo a *foreign voucher*, when the tenant being impleaded within a particular juriſdiction, as in *London*, *voucheth* one to warranty in ſome other county out of the juriſdiction of that court, and prays that he may be ſummoned, *&c.* 2 *Rep.* 50 On a ſuit in *England*, a *voucher* doth not lie in *Ireland*: But it lies in *Wales*, and the tenant ſhall be ſummoned in the next county to it. A *vouchee* by entering into warranty, becomes tenant in law of the lands; and when the demandant counts againſt him, he may plead a releaſe, *&c.* *Jenk. Cent.* 41, 100. In a writ of entry in the degrees, none ſhall *vouch* out of the line: And in writs of right and poſſeſſion, it is a good counterplea, that neither the *vouchee* nor his anceſtors had ever ſeiſin of the land. *Stat.* 3 *Ed.* 1. *c.* 40.

And the demandant may aver a *vouchee* to be dead, and that there is no ſuch perſon, where the tenant *voucheth* a perſon deceaſed, to warranty. 14 *Ed.* 3. *c.* 18. *Single, double*, and *treble voucher*. See *Recovery*, where this doctrine is fully explained. See alſo *Warranty*.

Voucher, Is alſo uſed for a *leiger-book,* or book of *accounts*, wherein are entered the acquittances or *warrants* for the accountant's diſcharge. *Stat.* 19 *Car.* 2. *cap.* 1. Voucher ſignifies alſo, any acquittance or receipt, diſcharging a perſon, or being evidence of a payment.

Vox, *Vocem non habere,* A phraſe made uſe of by *Bracton*, ſignifying an infamous perſon, one who is not to be admitted to be a witneſs. *Bract. lib.* 3.

Upholſters, None ſhall put to ſale any beds, bolſters, *&c.* except ſuch as are ſtuffed with one ſort of dry pulled feathers, or clean down; and not mixed with ſcalded feathers, fen-down, thiſtle-down, ſand, *&c.* on pain to forfeit the ſame, or the value: And they are to ſtuff quilts, mattraſſes, and cuſhions, with clean wool, and flocks; without uſing horſe-hair, *&c.* therein, under the like forfeiture. *Stat.* 11 *H.* 7. *c.* 19. and 5 & 6 *Ed.* 6. *c.* 23.

Upland, High ground, or *terra firma*, as it is called by ſome, contrary to marſhy and low ground. *Ingulph.*

Uſa, Is the river *Iſis*; which river was termed *Iſis* from the goddeſs of that name; for it was cuſtomary among the *Pagans* to dedicate hills, woods, and rivers, to favourite goddeſſes, and to call them after ther names; and the *Britons* having the greateſt reverence for *Ceres* and *Proſerpina*, who was alſo called *Iſis*, did for that reaſon name the river *Iſis*: And ſhe being the goddeſs of the *Night*, from thence they computed days by nights; as *Seven Night, &c.* Blount.

Uſage, Differs from *cuſtom*, and *preſcription*: No man may claim a *rent, common*, or *other inheritance* by *uſage*; though he may by *preſcription*. 6 *Rep.* 65. See *Preſcription*.

Uſance, A calendar month, as from *May* 20, to *June* 20, and *double uſance*, is two ſuch months; words uſed in *Bills of Exchange*. Merch. Dict.

Uſe, *(Uſus)* Is, in application of law, the profit or benefit of lands and tenements; or a truſt and confidence repoſed in a man for the holding of lands, That he to whoſe *uſe* the truſt is made ſhall take the profits thereof. *Weſt. Symb. par.* 1. 1 *Inſt.* 272.

An *uſe* is only a truſt or confidence which one man puts in another; and therefore it is not a thing iſſuing out of the land, but collateral to it, and annexed to the privity of eſtate between them, (*viz.*) That he to whom the *uſe* is made ſhall have the profits; and that the tenant of the land ſhall make an eſtate as he ſhall direct: But the *ceſtui que uſe* hath neither *jus in re* or *ad rem,* his only remedy being in Chancery to compel the *ceſtui que truſt* to execute the *uſe*. 3 *Nelſ. Abr.* 487. But ſee *infra.*

The limitation of an *uſe*, was at the Common law but a matter of equity: But now feoffments to *uſes, &c.* have the ſame acceptation as deeds at Common law; and *uſes* limited by any conveyance, are governed and directed according to the rules of law. 2 *Lill. Abr.* 664. There were two inventors of *uſes*; fear in the time of trouble and civil war, for the ſaving of inheritances from forfeiture; and fraud in time of peace, to defeat debts, eſcheats, *&c.* And it is ſaid the original of *uſes* was the ſtatute of *Mortmain,* which cramped the clergy ſo much that they were forced to take ſhelter under the laity, and make uſe of them to purchaſe lands in truſt for them and to their *uſe*: Afterwards the wars between the houſes of *York* and *Lancaſter* coming on, truſts and *uſes* increaſed more than ever; and although the Common law could take no cogniſance of them, yet there were always, until King *Henry* 8th's reign, clergymen chancellors, who were ready upon all occaſions to decree the performance of the truſt and *uſe*. 2 *Lill.* 662, 663.

It hath been obſerved by ſome writers, that there were no ſuch things as *uſes* at Common law; the reaſon was, becauſe the feoffee was always taken as the owner of the land; and it was very inconvenient and abſurd that there ſhould be two ſeveral fees, and the owners of the ſame land *ſimul & ſemel*; therefore by the Common law the feoffees to *uſes* were the very tenants, *&c.* But the ſtatute of *uſes* hath united the eſtate to the *uſe*, ſo that now the feoffees to *uſes* have no eſtate or intereſt at all, but in reſpect of the contingent eſtate and *uſes* limited in the deed. 3 *Salk.* 386. Becauſe in time many deceits were invented, by ſettling the poſſeſſion in one man, and the *uſe* in another, inſomuch that the poſſeſſion and the *uſe* were divided, which opened a gap for frauds: To avoid theſe inconveniencies, the ſtatute of 27 *H.* 8. *c.* 10. gives the poſſeſſion to him who has the *uſe*, and as before the ſtatute the poſſeſſion ruled the *uſe*, ſo now the *uſe* governs the poſſeſſion; for this reaſon in conveyances, it is ſet down in the *habendum* to whoſe uſe the lands are conveyed, and whatever eſtate a man hath in the *uſe*, the ſame he hath in the poſſeſſion at this day. 1 *Rep.* 121. 2 *Leon. cap.* 25.

The *Stat.* 27 *H.* 8. *cap.* 10. enacts, That where any are or ſhall be ſeiſed of lands, to the *uſe* of any other, by reaſon of any bargain and ſale, feoffment, fine, recovery, contract, agreement or will, *&c.* he to whoſe *uſe* the lands are ſettled in fee-ſimple, fee-tail, for life, or otherwiſe, ſhall be eſteemed in poſſeſſion of the land to all intents and purpoſes: And where one is ſeiſed of lands to the *uſe* or intent that another ſhall have an yearly rent out of the ſame, *ceſtui que uſe* ſhall be deemed in poſſeſſion and ſeiſin of the ſaid rent, and of like eſtate as in the *uſe, &c.* And if there are any *uſes* limited in a new manner, they are void. 1 *Rep.* 129, 138.

But there are *uſes* that are not executed by this ſtatute; as if lands are granted to others in truſt, that *the feoffees ſhall take the profits*, and *deliver them to the feoffor* and his heirs; alſo leaſes for years of lands in *uſe*, (which leaſes had their being before, and are granted over in *uſe* and truſt) where the leſſee is poſſeſſed only of his term, and not ſeiſed of any freehold, *&c.* and there ſtill remains an *uſe* of goods and chattels perſonal, which is properly a *Chancery* truſt, wherein the *uſe* and poſſeſſion are divided; though in other caſes the ſtatute executes agreements as the *Chancery* would have done before. *Wood's Inſt.* 256, 257.

All lands of inheritance, liberties, franchiſes, viſible or local, may be conveyed by way of *uſe*; But inheritances perſonal, which have no relation to lands or local hereditaments, cannot be conveyed by way of *uſe*. And ſome queſtions having been made, out of what an *uſe* ſhall ariſe, it hath been held, That *uſes* ſhall be raiſed only out of a *freehold*; that they cannot be raiſed out of a *chattel,* nor out of an *uſe*, or a *bare right or power,* nor out of *an intended purpoſe, &c.* Moor 509. 1 Leon. 148. 3 Salk. 386.

In *uſes* there ought to be privity of eſtate to erect the *uſe* upon: And there are four things required to the execution of a *uſe* within the ſtatute, *viz.* There muſt be a perſon ſeiſed; but the King or a corporation, an alien, *&c.* cannot be ſeiſed to the *uſe* of another: There is to be a *ceſtui que uſe* in being; for the words of the act are, Stand and be ſeiſed to the *uſe* of any perſon or perſons: There muſt be an *uſe in eſſe*, in poſſeſſion, remainder, or reverſion; and the eſtate of the feoffees, *&c.* out of which the *uſes* ariſe, is to be veſted or transferred to *ceſtui que uſe*; and if any of theſe fail, the *uſe* will not be executed. 1 *Rep.* 126. 1 *Inſt.* 19. 2 *Cro.* 50, 401.

Uſes are *in eſſe*, either in poſſeſſion, remainder, or reverſion; or in *contingency*, which by poſſibility may fall into poſſeſſion, or in reverſion, *&c.* Contingent *uſes in poſſe*, may be created though they are not executed by the ſtatute, but remain at Common law: But when they come in *eſſe*, then the ſtatute executes them; and before that, they may be deſtroyed, diſcontinued, or ſuſpended. 1 *Rep.* 135.

An *uſe* is alſo expreſs, or implied; expreſs, as when a feoffment is made of land to *A. B.* and his heirs, to the *uſe* of C. *D.* and the heirs of his body, *&c.* Implied, where the *uſe* is not declared between the parties, but is left to the conſtruction of the law: And if a man ſeiſed of lands makes a feoffment in fee without any conſideration, and it is not declared to whoſe *uſe*, by implication of law it ſhall be to the *uſe* of the feoffor, *&c.*

It hath been adjudged, that if by feoffment, or leaſe and releaſe, a man conveys any particular eſtate mediate or immediate to another perſon, there the reſidue of the eſtate ſhall by implication remain to the uſe of the party himſelf: But where no eſtate is limited to another, the whole conveyance is to no purpoſe, if the party be conſtrued to have the *reſulting uſe* in him; indeed upon a fine or recovery perſons may have their particular eſtates in other reſpects, as barring upon nonclaims, &c. 1 *Rep.* 121. 2 *Roll. Abr.* 781, 782. 2 *Salk.* 678. 3 *Salk.* 387.

An uſe may be raiſed two manner of ways, 1ſt, By tranſmutation, or departing with the poſſeſſion of the eſtate. 2dly, Without tranſmutation of the eſtate, by keeping the land in a man's own hands, and making the poſſeſſion be to the uſe of another: Thoſe uſes that ariſe by tranſmutation of eſtate, are by feoffment, fine, recovery, &c. And thoſe which ariſe without tranſmutation, being by bargain and ſale inrolled, and covenant to ſtand ſeiſed to uſes. 1 *Plowd.* 301. 1 *Inſt.* 271.

Conveyances to uſes are of three ſorts; a covenant to ſtand ſeiſed; a feoffment, fine, or recovery to uſes; and a bargain and ſale; by which laſt a contingent uſe cannot be ſupported, though by the two firſt it may; and there is a difference between a feoffment to uſes, and a covenant to ſtand ſeiſed, becauſe the feoffor departs with his whole eſtate, but the covenantor departs with no more than what is actually veſted in the *ceſtui que uſe.* 2 *Sid.* 64, 129. In bargains and ſales, and covenants to ſtand ſeiſed, ſome conſideration is neceſſary to make thoſe deeds operate to uſes; the conſideration of money in a bargain and ſale, and natural affection, blood, affinity, marriage, &c. in the covenant to ſtand ſeiſed: And they may be good to a man's wife or family without any conſideration; but not to others. *Plowd.* 301. *Dyer* 169. 3 *Lev.* 306. The conſideration, or a reſervation of 12 *d.* a penny, or a pepper-corn, are ſufficient conſiderations to raiſe an uſe. 2 *Mod.* 251. 3 *Salk.* 387.

If a man covenants in conſideration of marriage, or of a ſum of money paid to him, that the covenantee ſhall have ſuch lands; the ſame ſhall change the uſe immediately, for theſe are good conſiderations either to change or raiſe uſes. *Dyer* 6. But if a perſon covenants to make an eſtate to certain perſons to certain uſes, in conſideration of marriage; no uſe ariſes by ſuch bare covenant, unleſs the eſtate be made accordingly: So where upon marriage there is a covenant to levy a fine, except the fine be levied; but if a fine be levied, it ſhall be to the *uſes.* *Daliſ.* 112. 3 *Lev.* 306. *Cro. Eliz.* 401.

An *uſe* ariſes when declared by *eſtate executed*, which needs no conſideration: A fine itſelf, without any conſideration, doth raiſe *uſes*, where a marriage is intended; but in other conveyances, the conſideration of marriage will not raiſe an *uſe*, if the marriage take not effect; becauſe the conſideration muſt be executed before the *uſe* ſhall ariſe. 1 *Leon.* 138.

A conſideration of money given by one, may extend to all the eſtates; but if it be of blood, &c. it is ſingular, and will raiſe the *uſe* of that only to which it goeth: Though if I covenant with *B.* in conſideration of the marriage of my ſon with his daughter, to be ſeiſed to the *uſe* of a ſtranger for life, and after to my ſon and his wife in tail; here the *uſe* ſhall ariſe to the ſtranger, to bear up the remainder, which is not good without a particular eſtate. *Plowd.* 307. *Dyer* 174. 11 *Rep.* 24. Yet if ſuch covenant be to ſtand ſeiſed to the *uſe* of myſelf for life, and after to *C.* a ſtranger for the term of twenty years, and after that to my ſon in tail; in this caſe the *uſe* limited to *C.* is void, and my ſon after my death ſhall have the land. 1 *Rep.* 155.

A. covenanted for natural affection, to be ſeiſed to the *uſe* of himſelf for life, and after his death that the land ſhould *deſcend or remain* to his couſin *B.* in fee; reſolved by all the judges that no *uſe* is raiſed to *B.* by reaſon of the disjunctive, *deſcend* or *remain.* *Jenk. Cent.* 267. An *uſe* cannot be raiſed by any covenant, proviſo, or bargain and ſale, upon a general conſideration, without ſpecial averment: And although he that hath the fee-ſimple of land, may make what *uſes* he will of it in fee, for life or years; yet tenant in tail may not. 4 *Shep. Abr.* 180. 2 *Cro.* 400, 401. On a covenant to ſtand ſeiſed in conſideration of natural love and affection, one named in the deed may aver himſelf to be a relation. 2 *Strange* 934. *Uſes* may be made to a man and the wife he ſhall marry, or to his firſt, ſecond, or third wife, &c. And if parties to a deed declare, that one of them ſhall make a feoffment, or levy a fine to the *uſe* and intent that one ſhall hold the land for life, and after his death another in tail, and after that a third in fee-ſimple, &c. the eſtate ſettleth according to the *uſes* declared by the deed. 1 *Rep.* 13, 121.

A deviſe may be to an *uſe*, and be ſo executed: A man makes a feoffment to the *uſe* of his will, he hath the *uſe* in the mean time; and when the feoffor by will limits the eſtate purſuant to his power, the eſtate takes effect by the feoffment, and the uſe is directed by the will. *Lutw.* 823. 6 *Rep.* 17, 18. If *uſes* are ſettled upon condition, the condition muſt firſt be performed; and a future *uſe* may well ariſe upon the non-performance of a condition. 2 *Lil. Abr.* 668.

There may be a future *ſpringing uſe*, without a precedent eſtate made to ſupport it, as a man covenants to ſtand ſeiſed after his death to the *uſe* of his kinſman and his heirs, the eſtate in the mean time is in him; for it cannot paſs out of him during his life, and therefore in caſe of covenant he hath ſuch eſtate. 1 *Rep.* 154. 2 *Lev.* 77.

An *uſe* is conſtrued as favourably as may be, to comply with the intent of the party: Intention is the foundation of *uſes*, but it ought to be out of the words of the deed, to be agreeable to law, and collected and taken from the intire deed. 1 *Mod.* 98. *Lutw.* 700, 790. If the meaning of the party doth appear, that he intended to paſs his eſtate by way of raiſing an *uſe*; there the words *give*, *grant*, &c. ſhall enure as a covenant to ſtand ſeiſed: But where it doth not appear, that he intended to paſs it by way of *uſe*, but by conveyance at Common law, no uſe is raiſed. *March* 50. Lands being once ſold and ſettled to *uſes*, the party that makes the *uſe* may not create any farther *uſes*: Where the eſtate out of which an *uſe* ariſeth is gone, the *uſe* is gone likewiſe; and *uſes* may be made void by releaſe, or power of *revocation.* Dyer 186. 1 Inſt. 237. Deeds of gift of goods, &c. made in truſt to the *uſe* of the grantor, ſhall be void. 3 *Hen.* 7. *c.* 4. And no *uſe* will prevent dower of a woman after her huſband's death, &c. See *Covenant to ſtand ſeiſed*, *Gilbert's Law of Uſes*, *Lord Bacon's Law Tracts*, 5 *New Abr.* and 22 *Vin. Abr.* tit. *Uſes*, and *Black. Com.* 2 *V.* 327, &c.

Superſtitious uſes. By ſtatute, a deviſe of lands or goods to *ſuperſtitious uſes*, is where it is to find or maintain a chaplain or prieſt to pray for the ſouls of the dead, or lamp in a chapel, a ſtipendiary prieſt, &c. Theſe, and ſuch like, are declared to be *ſuperſtitious uſes*; and the lands and goods ſo deviſed are forfeited to the King. 1 *Ed.* 6. *c.* 14. But a man deviſed lands to truſtees and their heirs, to find a prieſt, to pray for his ſoul, ſo long as the laws of the land would permit; and if the laws would not permit it, then to apply the profits to the poor, with power to convert the profits to either of the ſaid *uſes*; adjudged this was not a deviſe to any *ſuperſtitious uſe.* 3 Nelſ. Abr. 259. And where certain profits ariſing out of lands are given to *ſuperſtitious uſes*, the King ſhall have only ſo much of the yearly profits, which were to be applied to the *ſuperſtitious uſes*; though when the land itſelf is given to the teſtator, declaring that the profits, without ſaying how much, ſhall be employed for ſuch *uſes*, in this caſe the King ſhall have the land itſelf. *Moor* 129. If a ſum certain is given to a prieſt, and other goods which depend upon the *ſuperſtitious uſe*, all is forfeited to the King; yet if land, &c. is given to find an *obit*, or anniverſary, and for another good *uſe*; and there is no certainty how much ſhall be employed to the *ſuperſtitious uſe*, the gift to the good *uſe* ſhall preſerve the whole from forfeiture. 4 *Rep.* 104. 2 *Rol.* 205. It has been held, where a *ſuperſtitious uſe* was void, ſo that the King could not have it, that it was not ſo far void, as to reſult to the heir at law; and therefore the King might apply it to charity. 1 *Salk.* 163. See the *Stat.* 23 *H.* 8. under *Mortmain*; and the 1 *Geo.* 1. Title *Forfeiture.*

Uſer de Action, Is the purſuing or bringing an action, in the proper county, &c. *Broke* 64.

Uſher, (Fr. *Huiſſier,* a door-keeper) Is an officer in the King's houſe, as of the privy chamber, *&c.* And there are *uſhers* of the courts of *Chancery* and *Exchequer.*

Uſucaption, *(Uſucaptio)* Signifies the enjoying by continuance of time; a long poſſeſſion, or preſcription. *Terms de Ley.*

Uſufructuary, *(Uſufructuarius)* One that hath the *uſe* and reaps the profit of a thing.

Uſurious contract, Is any bargain or contract, whereby any man is obliged to pay more intereſt for money than the law allows. See *Uſury.*

Uſurpation, *(Uſurpatio)* Is the uſing that which is another's; an interruption or diſturbing a man in his right and poſſeſſion, *&c.* And *uſurpations* in the Civil and Canon law are called intruſions; and ſuch intruders having not any right ſhall ſubmit, or be excommunicated and deprived, *&c.* by *Boniface's Conſt. Gibſ. Codex* 817. The *uſurpation* of a *church benefice* is, when one that hath no right, preſenteth to the church, and his clerk is admitted and inſtituted into it, and hath quiet poſſeſſion ſix months after inſtitution before a *quare impedit* brought: It muſt commence upon a preſentation, not a collation; becauſe by a collation the church is not full, but the right patron may bring his writ at any time to remove the uſurper. 1 *Inſt.* 227. 6 *Rep.* 30. And by *uſurpation,* the fee of an advowſon may be gained, as well as the avoidance upon which the *uſurpation* is made: And the true patron cannot remove the incumbent to regain the poſſeſſion, without a writ of right advowſon, which he is driven to for recovery of the inheritance. 6 *Rep.* 49. See *poſt.*

It has been formerly held, that upon an *uſurpation* the uſurper gains a fee-ſimple in the advowſon; in like manner as he who enters into land during a vacation, and claims the ſame as his inheritance by wrong: But as the dying ſeiſed of lands in that caſe, will not take away the entry of the ſucceſſor; no more ſhall the *uſurpation* on a vacancy, take away his right of preſentation when the church becomes void. 2 *Co. Inſt.* 360. 17 *Ed.* 3. *c.* 37. At Common law the patron in fee was put out of poſſeſſion by an *uſurpation,* and was put to recover the advowſon itſelf by a writ of right; but he hath no remedy for the preſentation *hac vice,* nor if another avoidance happen, unleſs he bring his writ of right of advowſon, and re-continue the advowſon: If the patron had the advowſon in tail, or for life, this turn and alſo his whole advowſon was gone. 3 *Salk.* 388. vide *Infra.* An *uſurpation* upon a leſſee for years, gains the fee-ſimple, and puts the true patron out of poſſeſſion; and tho' by the *Stat. Weſtm.* 2. he in reverſion after the determination of the leaſe for years, may have a *quare impedit* when the church is void, or may preſent; and if his clerk is inſtituted and inducted, then he is remitted to his former title; yet till that is done, the *uſurper* hath the fee, and the writ of right of advowſon lies againſt him. *Hut.* 66. 3 *Salk.* 389. Upon the *Stat.* 1 *Eliz.* *c.* 19. If an *uſurpation* be on a biſhop, it ſhall bind him; but his ſucceſſor may preſent to the next avoidance, or bring a *quare impedit,* although he is out of poſſeſſion: All *uſurpations* ſhall bind the biſhop who ſuffers them, not their ſucceſſors. 2 *Cro.* 673.

No one can *uſurp* upon the King; but an *uſurpation* may diſpoſſeſs him of his preſentation; ſo as he ſhall be obliged to bring a *quare impedit;* though it will not ſo diveſt his eſtate in an advowſon, as to bind his inheritance, and put him to a writ of right. 3 *Salk.* 389. One Coparcener or jointenant, *&c.* cannot *uſurp* upon the other: But where there are two patrons of churches united, if one preſents in the other's turn, it is an *uſurpation;* for they are not as coparceners, who are privy in blood. *Dyer* 259. 17 *Ed.* 3. If one preſents to a church in time of war, the preſentment ſhall not put the rightful patron out of poſſeſſion: And a preſentation which is void in law, as in caſe of ſimony, or to a church that is full, *&c.* makes no *uſurpation.* 2 Rep. 93. Wood's Inſt. 160. Now by a late ſtatute, no *uſurpation* on any avoidance, ſhall diſplace the eſtate or intereſt of any perſon intitled to an advowſon; or hinder him to preſent upon the next avoidance, or to maintain a *quare impedit* to recover poſſeſſion, *&c.* 7 *Ann.* *c.* 18. This ſtatute hath quite altered the law concerning *uſurpations* of churches. *Mallor. Q. Imped.* 146. See *Black. Com.* 3 *V.* 242.

Uſurpation of Franchiſes and Liberties, Is when a ſubject unjuſtly uſes any royal franchiſes, *&c.* And it is ſaid to be an *uſurpation* upon the *King,* who ſhall have the writ of *quo warranto* againſt the *uſurpers.* See *Quo Warranto,* and *Black. Com.* 3 *V.* 262.

Uſury, *(Uſura)* Is money given for the *uſe* of money; and is particularly defined to be the gain of any thing by contract above the principal, or that which was lent, exacted in conſideration of *loan* thereof, whether it be of money, or any other thing. 3 *Inſt.* 151. Some make *uſury* to be the profit exacted for a loan made to a perſon in want and diſtreſs; but properly it conſiſts in extorting an unreaſonable rate for money, beyond what is allowed by *ſtatute.* The letting money out at *intereſt,* or upon *uſury,* was againſt the Common law; and in former times, if any one after his death had been found to be an *uſurer,* all his goods and chattels were forfeited to the King, *&c.* And according to ſeveral ancient ſtatutes, all *uſury* is unlawful; but at this time neither the Common or Statute law abſolutely prohibit *uſury,* 3 *Inſt.* 151, 152. By this is meant *Intereſt* for money lent, not exceeding what is the ſettled rate of intereſt, by the ſtatute law.

Though exceſſive *uſury* is liable to forfeiture of treble value of the money taken by ſtatute; and if judgment cannot be given on the ſtatute, if it be fonnd that a perſon took money for forbearance by corrupt agreement, judgment may be given againſt him at Common law, which is fine and impriſonment. 3 *Salk.* 391.

Reaſonable intereſt may be taken for the uſe of money at this day: The *Stat.* 27 *Hen.* 8. *cap.* 2. allowed 10 *l. per cent.* for money lent on mortgages, *&c.* The 13 *Eliz.* *c.* 8. ordained 8 *l. per cent.* And the 21 *Jac.* 1. *c.* 17. the like intereſt. The 12 *Car.* 2. *c.* 13. lowered the intereſt to 6 *l. per cent.* And the 12 *Ann.* *cap.* 16. to 5 *l. per cent. per annum.* But it is ſaid, that the *Stat.* 13 *Eliz.* and 21 *Jac.* 1. allowed not *uſury,* but puniſhed the exceſs of it; and the 12 *Ann.* is called the *Statute* againſt *Exceſſive Uſury.*

By the *Stat.* 12 *Ann.* *c.* 16. no perſon ſhall take directly or indirectly, for loan of any money, or any thing, above the value of 5 *l.* for the forbearance of 100 *l.* for a year, and ſo proportoinably for a greater or leſs ſum; and all bonds, contracts, and aſſurances made for payment of any principal ſum to be lent on *uſury,* above the rate of 5 *l. per cent,* ſhall be void: And whoever ſhall take, accept or receive by way of corrupt bargain, loan, *&c.* a greater intereſt, ſhall forfeit treble the value of the money lent; and ſcriveners, ſolicitors, and drivers of bargains, are not to take above 5 *s.* for procuring the loan of 100 *l.* for a year, on pain of forfeiting 20 *l.* *&c.*

It hath been adjudged on this ſtatute, that a contract for 6 *l. per cent.* made before the ſtatute, is not within the meaning of it; and therefore that it was ſtill lawful to receive ſuch intereſt, in reſpect of any ſuch contract: And if a man, when intereſt was at 6 *l. per cent.* lent money at that rate, and after the ſtatute comes and ſinks the intereſt to 5 *l. per cent.* if he continues the old intereſt on that bond, the bond ſhall not be void as *uſurious;* but it is ſaid the party ſhall be liable to forfeit treble value. 1 *Hawk.* 246. 1 *Mod.* 69. The receipt of higher intereſt than is allowed by the ſtatute, by virtue of an agreement ſubſequent to the firſt contract, doth not avoid an aſſurance fairly made; and a bond made to ſecure a juſt debt, payable with lawful intereſt, ſhall not be avoided by a corrupt *uſurious* agreement between others, to which the obligee was no ways privy: Nor ſhall miſtakes in drawing writings make void a fair agreement. *Ibid.*

If the original contract be not *uſurious,* nothing done afterwards can make it ſo; And a counter-bond to ſave one harmleſs againſt a bond made upon a corrupt agreement, will not be void by the ſtatutes. But if the original agreement be corrupt between all the parties, and ſo within the ſtatute, no colour will exempt it from the danger of the ſtatutes againſt *uſury.* 1 *Brownl.* 73. 2 *And.* 428. 4 *Shep. Abr.* 170.

A fine levied, or judgment ſuffered as a ſecurity for money, in purſuance of an *uſurious* contract, may be avoided by an averment of the corrupt agreement; as well as any common ſpecialty, or parol contract: And it is not material, whether the payment of the principal and the *uſurious* intereſt, be ſecured by the ſame, or by different conveyances; for all writings whatſoever for the ſtrengthening ſuch a contract are void; alſo a contract reſerving to the lender a greater advantage than allowed, is *uſurious*, if the whole is reſerved by way of intereſt, or in part only under that name, and in part by way of rent for a houſe, let at a rate plainly exceeding the known value; ſo where part is taken before the end of the time, that the borrower hath not the profit of the whole principal money, *&c.* 1 *Hawk. P. C.* 248. 3 *Nelſ. Abr.* 509.

By *Holt* chief juſtice, if *A.* owes *B.* 100*l.* who demands his money, and *A.* acquaints him, that he hath not the money ready, but is deſirous to pay it, if *B* can procure it to be lent by any other perſon; and thereupon *B.* having preſent occaſion for his money, contracts with *C.* that if he will lend *A.* 100*l* he will give him 10*l.* on which *C.* lends the money, and the debt is paid to *B.* this is a good and lawful contract, and not *uſurious* between B. and C. *Carthew's Rep.* 252. It is not *uſury*, if there be not a *corrupt agreement*, for more than the ſtatute intereſt; and the defendant ſhall not be puniſhed, unleſs he receive ſome part of the money in affirmance of the *uſurious agreement*. 3 Salk. 390.

There can be no *uſury*, without a *loan*; and the court hath diſtinguiſhed between a *bargain* and a *loan*. 1 *Lutw.* 273. *Sid.* 27. If a man lend another 100*l.* for two years, to pay for the loan 30*l.* and if he pays the principal at the year's end, he ſhall pay nothing for intereſt; this is not *uſury*, becauſe the party may pay it at the year's end, and ſo diſcharge himſelf. *Cro. Jac.* 509. 5 *Rep.* 69. And it is the ſame where a perſon, by ſpecial agreement, is to pay double the ſum borrowed, *&c.* by way of penalty, for non-payment of the principal debt; the penalty being in lieu of damages, and the borrower might repay the principal at the time agreed, and avoid the penalty. 2 *Inſt.* 89. 2 *Roll. Abr.* 801.

A man ſurrenders a copyhold eſtate to another upon condition that if he pays 80*l.* at a certain day, then the ſurrender to be void; and after it is agreed between them that the money ſhall not be paid, but that the ſurrenderor ſhall forfeit, *&c.* In conſideration whereof, the ſurrenderee promiſes to pay to the ſurrenderor on a certain day 60*l.* or 6*l.* *per annum* from the ſaid day *pro uſu & intereſſe* of the ſaid 60*l.* till that ſum is paid: This 6*l.* ſhall be taken to be *intereſſe damnorum*, and not *lucri*, and but limited as a penalty for non payment of the 60*l.* as a *nomine pœnæ*, *&c.* 2 *Roll. Rep.* 469. 1 *Danv. Abr.* 44. On a loan of 100*l.* or other ſum of money for a year, the lender may agree to take his intereſt half-yearly, or quarterly: or to receive the profits of a manor or lands, *&c* and be no *uſury*, though ſuch profits are rendered every day. *Cro. Jac.* 26.

If a grant of rent, or leaſe for 20*l.* a year of land which is worth 100*l.* *per annum*, be made for one hundred pounds, it is not *uſurious*; if there be not an agreement, that this grant or leaſe ſhall be void, upon payment of the principal and arrears, *&c.* *Jenk. Cent.* 249. But if two men ſpeak together, and one deſires the other to lend him an hundred pounds, and, for the loan of it, he will give more than legal intereſt; and, to evade the ſtatute, he grants to him 30*l* *per Annum* out of his land for ten years, or makes a leaſe for one hundred years to him, and the leſſee regrants it upon condition that he ſhall pay 30*l.* yearly for the ten years: In this caſe it is *uſury*, tho' the lender never have his own hundred pounds again. 1 *Cro.* 27. See 1 *Leon.* 119.

A man granted a large rent for years, for a ſmall ſum of money: The ſtatute of *uſury* was pleaded; and it was adjudged, that if it had been laid to be upon a loan of money, it had been *uſurious*; though it is otherwiſe if it be a contract for an annuity. 4 *Shep. Abr.* 170. If one hath a rent-charge of 30*l.* a year, and another aſketh what he ſhall give for it, and they agree for 100*l.* this is a plain contract for the rent-charge, and no *uſury*. 3 *Nelſ.* 510. The grant of an annuity for lives, not only exceeding the rate allowed for intereſt, but alſo the proportion for contracts of this kind, in conſideration of a certain ſum of money, is not within the ſtatutes againſt *uſury*; and ſo of a grant of an annuity, on condition, *&c.* *Cro Jac.* 253. 2 *Lev.* 7. See 1 *Sid.* 182. Where intereſt exceeds 5 *l* *per cent. per annum* on a bond, if poſſibly the principal and intereſt are in hazard, upon a contingency, or caſualty; or if there is a hazard that one may have leſs than his principal, as when a bond is to pay money upon the return of a ſhip from ſea, *&c.* theſe are not *uſury*. 2 *Cro.* 208, 508. 1 *Cro.* 27. *Show.* 8. Though where *B.* lends to *D.* three hundred pounds on bond, upon an adventure during the life of *E.* for ſuch a time; if therefore *D.* pays to *B.* twenty pounds in three months, and, at the end of ſix months, the principal ſum, with a further *præmium*, at the rate of 6 *d.* *per* pound a month; or if before the time mentioned *E.* dies, then the bond to be void: This, differing from the hazard in a *bottomry* bond, was adjudged an *uſurious* contract. *Carthew* 67, 68. *Comberb.* 125. *See the next caſe.*

One hundred pounds is lent to have 120*l* at the year's end, upon a caſualty; if the caſualty goes to the *intereſt only*, and *not* the *principal*, it is *uſury*: The difference in the books is, that where the *principal and intereſt* are *both in danger of being loſt*, there the contract for extraordinary intereſt is *not uſurious*; but when the *principal is well ſecured*, it is otherwiſe. 3 *Salk.* 391.

Diſcounting notes beyond legal intereſt held *uſurious*. 2 *Strange* 1243. A perſon ſecures the intereſt and principal, if it be at the will of the party who is to pay, it is no *uſury*. 2 *Cro.* 509. And a lender accepting a *voluntary gratuity* from the borrower, on payment of the principal and intereſt; or receiving the intereſt before due, *&c.* without any *corrupt agreement*, ſhall not be within the ſtatutes againſt *uſury*. 2 Cro. 677. 3 Cro. 501. Alſo if one gives an *uſurious* bond, and tenders the whole money; yet if the party will take only legal intereſt, he ſhall not forfeit the treble value by *Statute* 4 *Leon.* 43. Judgment on an indictment for *uſury* was arreſted, becauſe it only laid a *corrupt agreement*, without any *loan*, or *taking exceſſive intereſt* in purſuance of it. 2 *Strange* 816.

On an information upon the ſtatute of *uſury*, he who borrows the money may be a witneſs, after he hath paid the money. *Raym.* 191. But cannot be a witneſs to prove the repayment of the money, becauſe till that is proved he is no witneſs at all. 1 *Strange* 633. In action for *uſury*, a *corrupt agreement* muſt be ſet forth: It is not ſufficient to plead the ſtatute, and ſay that for the lending of 20*l.* the defendant took more than 5*l.* *per cent* without ſetting forth a *corrupt agreement* or *contract* *Lutw.* 466. 2 *Lill.* 672. 3 *Nelſ.* 514. In caſe of *uſury*, &c. an obligor is admitted to aver againſt the condition of a bond, or againſt the bond itſelf, for neceſſity's ſake. *Paſch.* 6 *W.* & *M.* *B. R.*

As to pleading the ſtatute of *uſury*, vide *Com. Dig.* 5 *V.* Tit. *Pleader*. Alſo ſee farther on this ſubject, 5 *New Abr.* and 22 *Vin. Abr.* Tit. *Uſury*. See as to *uſury*, *Black. Com.* 2 *V.* 455. 4 *V.* 115, 156.

Utas, *Octava*, Is the eighth day following any term or feaſt; as the *utas* of St. *Michael*, &c. And any day between the feaſt and the *Octave* is ſaid to be within the *utas*: The uſe of this is in the return of writs; as appears by the *Stat.* 51 *H.* 3. *ſt.* 2.

Utenſil, Is any thing neceſſary for *uſe* and occupation; as houſhold ſtuff, *&c.* *Cowell.*

Uterinus Frater. A brother by the mother's ſide. *Frater fratri uterino non ſuccedit in hæreditate paterna.* Forteſc. de Laud. LL. Angl, 5.

Utfangthef, (*Fur extra captus, ſcilicet, extra dominium, vel juriſdictionem,*) Is an ancient privilege or royalty granted to a lord of a manor, by the King which gives him power to puniſh a *thief* dwelling out of his liberty, and committing *theft* without the ſame, if he be taken within his fee. *Bracton, lib.* 2. *tract.* 2. *cap.* 35. ſays thus, Utfangthef *dicitur extraneus latro, veniens aliunde de terra aliena, & qui captus fuit in terra ipſius qui tales habet libertates.* See *Outfangthef.*

Utlagato capiendo quando utlagatur in uno comitatu & poſtea fugit in alium, Is a writ the nature whereof of is ſufficiently expreſſed by the name. See *Reg. Orig. fol.* 133.

Utlegh, (*Uthlagus*) An outlaw, ſignifies *Bannitum extra legum.* Fleta, lib. 1. cap. 47. See *Outlaw.*

Utlawry. (*Utlagaria, vel Utlagatio*) See *Outlawry.*

Utlepe, (*Sax.*) Signifies an eſcape of a felon out of priſon. *Fleta, lib.* 1. *c.* 47.

Utrum, A writ now of little uſe. *Terms de Ley.* See *Aſſiſe de utrum.*

Utter Barriſters, (*Juris conſulti*) Are barriſters at law, newly called, who plead without the bar, *&c.* Vide *Barriſter.*

Uttering falſe Money. By 1 & 2 *P.* & *M. c.* 11. If any perſon bring into the realm falſe or counterfeit foreign money, being current here, knowing the ſame to be falſe, and ſhall utter the ſame in payment, they ſhall be deemed offenders in high treaſon. See *Black. Com.* 4 *V.* 89. By 15 & 16 *Geo.* 2. c. 28. If any perſon ſhall tender in payment any counterfeit coin, knowing it ſo to be, he ſhall for the firſt offence be impriſoned ſix months, and find ſureties for his good behaviour ſix months more; for the ſecond offence ſhall be impriſoned and find ſureties for two years; and for the third offence ſhall be guilty of felony without benefit of clergy. See the *Stat.* and *Black. Com.* 4 *V.* 99.

Vulgaris Purgatio. The moſt ancient ſpecies of trial, was that by *ordeal,* which was peculiarly diſtinguiſhed by the appellation of *Judicium Dei*; and ſometimes *vulgaris purgatio,* to diſtinguiſh it from the canonical purgation, which was by the oath of the party. See *Black. Com.* 4 *V.* 336.

Vitiva, A wound in the face——*Vultivam* 50 *ſol. componat.* Leg. Sax.

Vultus de Luca, The image of our crucified Saviour kept at *Lucca* in the church of the Holy Croſs: And *Wil.* 1. called the Conqueror, often ſwore *per ſanctum vultum de Luca.* Eadmer. lib. 1. Malmſb. lib. 4.

Uxorium, A mulct or fine paid for not marrying. *Lit. Dict.*

W.

WADE, (*Vado*) To *wade* or ford over a river *Lit.*

Waſtors, (*Waſtores*) Are conductors of veſſels at ſea; King *Ed.* 4. conſtituted certain officers with naval power, whom he ſtiled *cuſtodes, conductores,* and *waſtores,* to guard our fiſhing veſſels on the coaſts of *Norfolk* and *Suffolk.* Pat. 22 Ed. 4.

Wage, (*Vadiare,* from Fr. *Gage*) Signifies the giving of ſecurity for performance of any thing; as to *wage* or *gage deliverance,* to *wage law,* &c. *Co. Lit.* 294. But ſee *Wager of Law.*

Wager of Battle. A ſpecies of trial of great antiquity, but much diſuſed; though ſtill in force if the parties chuſe to abide by it. This mode of trial was uſed in the court-martial, or court of chivalry and honour: In appeals of felony; and on iſſues joined in writs of right. See *Black. Com.* 3 *V.* 337, 339. iii. 4 *V.* 340, 411, 414, 417.

Wager of Law, (*Vadiare Legem*) Is where an action of debt is brought againſt a man upon a ſimple contract between the parties, without deed or record; and the defendant ſwears in court in the preſence of his purgators, that he oweth the plaintiff nothing in manner and form as he hath declared: And the reaſon of *waging of law* is, becauſe the defendant might have paid the plaintiff his debt in private or before witneſſes who may be all dead, and therefore the law allows him to *wage* his law in his diſcharge; and his oath ſhall rather be accepted to diſcharge himſelf, than the law will ſuffer him to be charged upon the bare allegation of the plaintiff. 2 *Inſt.* 45. *Wager of law* is uſed in actions of debt without ſpecialty; and alſo in action of detinue, for goods or chattels lent or left with the defendant, who may ſwear on a book, and certain perſons with him, that he detaineth not the goods in manner has the plaintiff has declared, and his compurgators are to be ſix, eight, or twelve of his neighbours, as the court ſhall aſſign him. *Terms de Ley.*

The manner of *waging law* is thus: He that is to do it, muſt bring ſix compurgators with him into court, and ſtand at the end of the bar towards the right hand of the chief juſtice; and the ſecondary aſks him whether he will *wage his law*? If he anſwers that he will, the judge admoniſheth him to be well adviſed, and tells him the danger of taking a falſe oath; and if he ſtill perſiſts, the ſecondary ſays, and he that *wages his law* repeats after him: *Hear this ye juſtices, That I* A. B. *do not owe to* C. D. *the ſum of,* &c. *nor any penny thereof in manner and form as the ſaid* C. D. *hath declared againſt me: So help me God.* Though, before he takes the oath, the plaintiff is called by the crier thrice; and if he do not appear he becomes nonſuited, and then the defendant goes quit without taking his oath; and if he appear, and the defendant ſwears that he owes the plaintiff nothing, and the compurgators do give it upon oath that they believe he ſwears true, the plaintiff is barred for ever; for when a perſon has *waged his law,* it is as much as if a verdict has paſſed againſt the plaintiff: If the plaintiff do not appear to hear the defendant perform his law, ſo that he is nonſuit; he is not barred, but may bring a new action. 1 *Inſt.* 1[illegible]5. 2 *Lil. Abr.* 674.

In an action of debt on a by-law, the defendant *waged law*; a day being given on the roll for him to come and make his law, he was ſet at the right corner of the bar, and the ſecondary aſked him if he was ready to *wage his law*; who anſwering that he was, he laid his hand on the book, and then the plaintiff was called: Then the judges admoniſhed him and his compurgators not to ſwear raſhly; and thereupon he made oath, that he did not owe the money *modo & forma* as the plaintiff had declared; and then his compurgators, who were ſtanding behind him, were called, and each of them laying his right hand upon the book, made oath that they believed what the defendant had ſworn was true. 2 *Vent.* 171. 2 *Salk.* 682. The defendant cannot *wage his law* in any action, but perſonal actions, where the cauſe is ſecret; and *wager of law* has been denied on hearing the caſe, and the defendant been adviſed to plead to iſſue, *&c.* Alſo this *wager of law* being, it is ſaid, abuſed by the iniquity of the times, the law was forced to find another way to do juſtice, and that was by turning actions of debt on ſimple contract, *&c.* into action upon the caſe by *indebitat. aſſumpſit,* which hath ouſted the defendant of his *ley gager.* 2 Lil. 675, 676. See *Black. Com.* 3 *V.* 341. 4 *V.* 407, 417.

Wagering Policies. By *Stat.* 19 *Geo.* 2. *c.* 37. All inſurances intereſt or no intereſt, or without further proof of intereſt than the policy itſelf, or by way of gaming or wagering, or without benefit of ſalvage to the inſurer, ſhall be totally null and void, except upon privateers, or ſhips in the *Spaniſh* and *Portugueſe* trade. See the *Statute.*

Wagers. By ſtatute, all *wagers* laid upon a contingency relating to the late war with *France,* and all ſecurities, *&c.* therefore, were declared to be void; and perſons concerned to forfeit double the ſums laid. 7 *Ann. cap.* 17.

Wages, Is what is agreed upon by a maſter to be paid to a ſervant, or any other perſon which he hires to do buſineſs for him. 2 *Lil. Abr.* 677. The *wages* of ſervants, labourers, *&c.* is to be aſſeſſed by juſtices. 5 *Eliz. c.* 4. 1 *Jac.* 1. *c.* 6. And juſtices of peace may order payment of *wages* for *huſbandry, &c* but not in other caſes. *Mod. Caſ.* 204, 205. The *ſtatute* of labourers *wages* extends to covenant ſervants in huſbandry; though an order of *juſtices* was quaſhed in *B. R.* becauſe made upon the ſervant's oath, without other evidence. 2 *Ld. Raym.* 1305. See *Servants. Wages* of ſeamen, vide *Stat.* 4 & 5 *Ann.* 1 *Geo.* 1. *c.* 25. For the better adjuſting and more eaſy recovery of the *wages* of certain ſervants, ſee *Stat.* 20 *Geo.* 2. *c.* 19. 27 *Geo.* 2. *c.* 6.

Wages of Members of Parliament. The rate of theſe wages eſtabliſhed in the reign of *Edw.* 3. was four ſhillings a day for a knight of the ſhire, and two ſhillings for a citizen or burgeſs.

Waggons and **Waggoners.** See *Carts, Highways, Turnpikes.*

Waifs, (From the Sax. *Waſian*, Fr. *Choſe guaive*, Lat. *Bona Waviata)* Are goods which are ſtolen and *waved*, or left by the felon, on his being purſued, for fear of being apprehended; which are forfeited to the King or lord of the manor. *Kitch.* 81. If a felon in purſuit *waives* the goods, or, having them in his cuſtody, and thinking that purſuit was made, for his own eaſe and more ſpeedy flight, flies away and leaves the goods behind him; then the Kings officer or the bailiff of the lord of the manor, within whoſe juriſdiction they are left, who hath the franchiſe of *waif*, may ſeize the goods to the King's or lord's uſe and keep them; except the owner makes freſh purſuit after the felon, and ſue an appeal of robbery within a year and a day, or give evidence againſt him whereby he is attainted, *&c.* In which caſe, the owner ſhall have reſtitution of his goods ſo ſtolen and *waived*. 21 H. 8. c. 11. 5 Rep. 109. Goods *waived* by a felon, in his flight from thoſe who purſue him, ſhall be forfeited: And tho' *waif* is generally ſpoken of goods ſtolen; yet if a man be purſued with *hue and cry* as a felon, and he flies and leaves his own goods, theſe will be forfeited as goods ſtolen; but they are properly *fugitive's goods*, and not forfeited till it be found before the coroner, or otherwiſe of record, that he fled for the felony. 2 *Hawk.* 450. The law makes a forfeiture of goods *waived*, as a puniſhment to the owner of the goods, for not bringing the felon to juſtice: But if the thief had not the goods in his poſſeſſion, when he fled, there is no forfeiture: If a felon ſteals goods and hides them, and afterwards flies, theſe goods are not forfeited; ſo where he leaves ſtolen goods any where, with an intent to fetch them at another time, they are not *waived*; and in theſe caſes the owner may take his goods where he finds them, without freſh ſuit, *&c.* *Cro. Eliz.* 694. 5 *Rep.* 109. *Moor* 785.

Waifs and *ſtrays* are ſaid to be *nullius in bonis*; and therefore they belong to the lord of the franchiſe where found. *Briton, cap.* 17. We read of *placita coronæ & waif*, in the manor of *Upton*, &c. *in com. Salop.* See 22 *Vin. Abr.* 408—410.

Wain, *(Plauſtrum)* A cart, waggon, or plough to till land.

Wainable, *i. e.* That may be ploughed, or manured; land tillable. *Chart. ſine dat'.*

Wainage, *(Wainagium)* According to Sir *Edw. Coke*, ſignifies the contenement of a villain; or the furniture of his cart or *wain*. 2 Inſt. 28. And the villain of any other, if he fall into our mercy, ſhall be amerced ſaving his *wainage*. Magn. Chart. c. 14. *Wainage* has been alſo uſed for tillage. *Mon. Ang. Tom.* 2. *p.* 612. See *Gainage.*

Waive, *(Waivare)* In the general ſignification, is to forſake; but is ſpecially applied to a woman, who for any crime, for which a man may be *outlawed*, is termed *Waive*. Reg. Orig. 132.

Waiver, Signifies the paſſing by of a thing, or a refuſal to accept it: Sometimes it is applied to an eſtate, or ſomething conveyed to a man, and ſometimes to a plea, *&c.* And a *waiver* or diſagreement as to goods and chattels, in caſe of a gift, will be effectual. *Lit. Sect.* 710. If a jointure of lands be made to a woman after marriage, ſhe may *waive* this after her huſband's death. 3 *Rep.* 27. And an infant, or, if he die, his heirs may by *waiver* avoid an eſtate made to him during his minority. 1 *Inſt.* 23, 348. But where a particular eſtate is given with a remainder over, there regularly he that hath it may not *waive* it, to the damage of him in remainder: Though it is otherwiſe where one hath a reverſion; for that ſhall not be hurt by ſuch *waiver*. 4 Shep. Abr. 192. After ſpecial iſſue joined in any action, the parties cannot *waive* it, without motion in court. 1 *Keb.* 225. Aſſignment of Error by attorney on an outlawry, ordered to be *waived*, and the party to aſſign in perſon, after demurrer for this cauſe. See 2 *Keb.* 15.

Wake, The eve-feaſt of the *dedication of churches*; which, in many country places, is obſerved with feaſting and rural diverſions, *&c.* *Paroch. Antiq.* 609.

Wakeman, *(Quaſi* watchman) The chief magiſtrate of the town of *Rippon* in *Yorkſhire*, is ſo called. *Camd.*

Wales, (*Wallia*) Is part of *England* on the weſt ſide formerly divided into three provinces, *North-Wales*, *South-Wales*, and *Weſt-Wales*, and inhabited by the offſpring of the ancient *Britons*, chaſed thither by the *Saxons*, called in to aſſiſt them againſt the *Picts* and *Scots*. Lamb. Stat. Wallia, 12 Edw. 1. *England* and *Wales* were originally but one nation, and ſo they continued till the time of the *Roman* conqueſt: but when the *Romans* came, thoſe *Britons* who would not ſubmit to their yoke, betook themſelves to the mountains of *Wales*, from whence they came again ſoon after the *Romans* were driven away by their diſſenſions here: After this came the *Saxons*, and gave them another diſturbance, and then the kingdom was divided into an *heptarchy*; and then alſo began the *Welſh* to be diſtinguiſhed from the *Engliſh*: Yet it is obſervable that though *Wales* had princes of their own, the King of *England* had ſuperiority over them, for to him they paid homage. *Camd.* 67. 2 *Mod.* 11.

The *Stat.* 28 *Edw.* 3. *c.* 2. annexed the *marches of Wales* perpetually to the crown of *England*; ſo as not to be of the principality of *Wales*. And by the 27 *Hen.* 8. *c.* 26. *Wales* was incorporated to and united with *England*; and all perſons born in *Wales* ſhall enjoy the like liberties as thoſe born in *England*, and lands deſcend there according to the *Engliſh* laws: The laws of *England* are to be executed in *Wales*; and the King to have a *Chancery* and *Exchequer* at *Brecknock* and *Denbigh*: Officers of law and miniſters ſhall keep courts in the *Engliſh* tongue; and the *Welſh* laws and cuſtoms to be inquired into by commiſſion, and ſuch of them as ſhall be thought fit continued; but the laws and cuſtoms of *North Wales* are ſaved. By 34 & 35 *Hen.* 8. *cap.* 26. A diviſion of *Wales* was made into twelve counties; and a preſident and council ſhall remain in *Wales* and the marches thereof, with officers, *&c.* Two juſtices are to be aſſigned to hold a ſeſſion twice every year, and determine pleas of the crown, and aſſiſes, and all other actions; and juſtices of peace ſhall be appointed as in *England*, *&c.* The 18 *Eliz. cap.* 8. enacts, That the King may appoint two other perſons, learned in the laws, to be judges in each of the *Welſh* circuits, which had but one juſtice before; or grant commiſſions of aſſociation, *&c.*

An office for inrolments was erected, and the fees and proceedings regulated in paſſing fines and recoveries in *Wales*, by 27 *Eliz. cap.* 9. Perſons living in *Wales*, may give and diſpoſe of their goods and chattels by will, in like manner as may be done within any part of the province of *Canterbury* or elſewhere. 7 & 8 *W.* 3. *c.* 38. Jurors returned to try iſſues in *Wales*, are to have 6*l.* a year of freehold or copyhold, above repriſes: And none ſhall be held to bail in *Wales*, unleſs affidavit be made that the cauſe of action is 20 *l.* or upwards. 11 & 12 *W.* 3. *c.* 9. *ſ.* 2. In actions where the debt, *&c.* amounts not to 10 *l.* in the court of great ſeſſions in *Wales*, the plaintiff ſhall ſue out a writ or proceſs, and ſerve the defendant with a copy eight days before holding of the ſaid court, *&c.* who ſhall appear at the return, or before the third court; or the plaintiff may enter an appearance, and proceed. 6 *Geo.* 2. *c.* 14.

Murders and felonies in any part of *Wales* may be tried in the next *Engliſh* county. 1 *Strange* 553. A *certiorari* lies to *Wales* on indictments for miſdemeanours. 1 *Strange* 704. A *habeas corpus* may be granted of courſe to remove a priſoner from *Wales* to an *Engliſh* county. 2 *Strange* 945. A prohibition granted to the great ſeſſions to ſtay a ſuit on a *ſubpœna* ſerved out of the juriſdiction. 1 *Strange* 630. Of proceſs into *Wales*, judgments, and courts there, *&c.* See 3 *Nelſ. Abr.* 519, 520, 522, *and Courts of Wales. Prince of Wales*, vide *Prince.*

Waleſheria, The learned *Spelman* ſays ſignifies *Walliæ pars:* But by others is it interpreted *parentela homines interfecti*; the ſame with *valeſheria*.

Waliſcus, (i. e. *Servus*) A ſervant, or any miniſterial officer. *Leg. Inæ, c.* 34.

Walkers, Are *foreſters* within a certain ſpace of ground, aſſigned to their care in foreſts, *&c.* *Crompt. Juriſd.* 145.

Wall, Sea-Wall, A bank of earth. See *Water-gage.*

Walſingham. The demeſne lands in *Walſingham* may be let by copy, and ſhall be copyholds. 35 *Hen.* 8. *c.* 13.

Walſham Blacks. In the reign of K. *Geo.* 1. there ſprung up a ſet of deſperate villains called *Waltham Blacks*, headed by one whom they ſtiled K. *John*; who *blacking* their faces, and uſing other diſguiſes, robbed foreſts, parks, and warrens, deſtroyed cattle, levied money on their neighbours, by threats and menaces to fire their houſes, and committed divers others violences and outrages to the great terror of the people; but they were ſuppreſſed, and declared *felons*, by *Stat.* 9 *Geo.* 1. *c.* 22.

Wandering Soldiers and Mariners. Such, or perſons pretending ſo to be, wandering about, and not having a teſtimonial from a juſtice of peace, *&c.* guilty of felony, *per Stat.* 39 *Eliz.* *c.* 17. which *vide*.

Wang, (*Sax.*) We uſe for the cheek, or jaw wherein the teeth are ſet: Hence *Chaucer* called the cheek-teeth or grinders, *Wangs* or *wang-teeth*; which is recorded in this old way of ſealing writings:

And in witneſs that this is ſooth,
I bite the wax with my wang-tooth,

Wanga, An iron inſtrument with teeth. *Conſuetud. Dom. de Farend. MS.* 18.

Wanlaſs, or *driving* the *wanlaſs*, is to drive deer to a *ſtand*, that the lord may have a ſhoot; which is one of our ancient cuſtomary tenures of lands. *Blount's Ten.* 140.

Want. Whether a man in extreme want of food or clothing, may juſtify ſtealing either, to relieve his preſent neceſſity; hath occaſioned great ſpeculation among the writers of general law. Some of our own lawyers have held that he might. *Britton. c.* 10. *Mirr. c.* 4. *ſ.* 16. But it is now antiquated, the law of *England* admitting no ſuch excuſe at preſent. 1 *Hal. P. C.* 54. *Black. Com.* 4 *V.* 31. And we may add, very properly, as a judge may reſpite, and a merciful king pardon. The ancient doctrine, if now in force, would open a door to many villainies.

Wapentake, (From the Sax. *Weapen*, i. e. *Armatura*, & *Tac, tactus*) Is all one with what we call a hundred; ſpecially uſed in the *north* countries beyond the river *Trent*. *Bract. lib.* 3. *Lamb.* The words ſeem to be of *Daniſh* original, and to be ſo called for this reaſon; when firſt this kingdom, or part thereof, was divided into *wapentakes*, he who was the chief of the *wapentake* or hundred, and whom we now call a high conſtable, as ſoon as he entered upon his office, appeared in the field on a certain day on horſeback with a pike in his hand, and all the chief men of the hundred met him there with their lances, and touched his pike; which was a ſign that they were firmly united to each other, by the *touching their weapons*. *Hoveden. Fleta, lib.* 2. But Sir *Thomas Smith* ſays, that antiently muſters were made of the armour and *weapons* of the ſeveral inhabitants of every *wapentake*; and from thoſe that could not find ſufficient pledges for their good abearing, their *weapons* were taken away, and given to others; from whence he derives this word. *Rep. Angl. lib.* 2. *cap.* 16. *Camd. Brit.* 159. 2 *Inſt.* 99. *Stat.* 3. *Hen.* 5. *c.* 2. 9 *H.* 6. *cap.* 10. 15 *Hen.* 6. *cap.* 7.——Wapentak *hoc eſt quietancia de ſectis & hundredis quod dicitur* Wapentake. *MS. in Bibl. Cotton.*

Wapping, An act was made for the partition of *Wapping* marſh. *Stat.* 35. *H.* 8. *c.* 9. And perſons ſheltering themſelves from debts, and obſtructing the execution of writs in *Wapping*, *Stepney*, &c. to be guilty of felony, by 11 *Geo.* 1. *c.* 22.

War, (*Bellum*) A fighting between two Kings, princes, or parties, in vindication of their juſt rights; alſo the ſtate of *war*, or all the time it laſts. By our law, when the courts of juſtice are open, ſo that the King's judges diſtribute juſtice to all, and protect men from wrong and violence, it is ſaid to be a time of *peace*: But when by invaſion, rebellion, *&c.* the peaceable courſe of juſtice is ſtopt, then it is adjudged to be a time of *war*: And this ſhall be tried by the records and judges, whether juſtice at ſuch a time had her equal courſe of proceeding or not. For *time of war* gives *privilege* to them that are in *war*, and all others within the kingdom. 1 *Inſt.* 249. In the *civil wars* of K. *Char.* 1. it was computed that there were not fewer than 200,000 foot and 50,000 horſe in arms on both ſides; which was an extraordinary hoſt, conſidering it compoſed of *Britains* ſufficient to have ſhaken *Europe*, though it was otherwiſe fatally employed. And in ancient times, when the Kings of *England* were to be ſerved with ſoldiers in their *wars*, a knight or ſquire that had revenues, farmers and tenants, would covenant with the King by indenture inrolled in the *Exchequer*, to furniſh him with ſuch a number of military men; and thoſe men were to ſerve under him, whom they knew and honoured, and with whom they muſt live at their return. 1 *Inſt.* 71. This was an excellent inſtitution; but we have had many ſtatutes which have altered this method of recruiting the army, by introducing the liſting of ſoldiers, and retaining them by virtue of money paid and advanced, *&c.* The *ſtatute* 25 *Edw.* 3. enacted, That none ſhould be conſtrained to find men of arms but by tenure of land, or grant in parliament. And what perſons are obliged to attend upon the King, when he goes in perſon himſelf to the *wars*, &c. Vide 11 *H.* 7. *c.* 18. See *Law of arms*, and *Soldiers*. See *Black. Com.* 1 *V.* 257.

Wara, A certain quantity or meaſure of ground. *Mon. Ang. Tom.* 1. *p.* 172.

Ward, (*Cuſtodia*) Is variouſly uſed in our old books: A *ward* in *London* is a diſtrict or diviſion of the city, committed to the ſpecial charge of one of the aldermen; and in *London* there are twenty-ſix *wards*, according to the number of the mayor and aldermen, of which every one has his *ward* for his proper guard and juriſdiction. *Stow's Surv.* A *foreſt* is divided into *wards*. *Manwood, par.* 1. *p.* 97. And a priſon is called a *ward*. Laſtly, The heir of the King's tenant, that held *in capite*, was termed a *Ward*, during his nonage: But this wardſhip is taken away by the *Stat.* 12 *Car.* 2. *c.* 24.

Warda, The cuſtody of a town or caſtle, which the inhabitants were bound to keep at their own charge. *Mon. Ang. Tom.* 1. *p.* 372.

Wardage, (*Wardagium*) Seems to be the ſame with *Wardpeny*.

Warden, (*Guardianus*, Fr. *Gardin*) Is he that hath the keeping or charge of any perſons or things by office; as the *wardens* of the fellowſhips or companies in *London*. 14 H. 8. cap. 2. *Wardens* of the marches of *Wales*, &c. 14 *H.* 7. *cap.* 8. *Wardens* of the peace. 2 *Ed.* 3. *c.* 3. *Wardens* of the tables of the King's exchange. 2 *Ed.* 3. *c.* 7. *Warden* of the armour in the *Tower*. 1 Ed. 4. c. 1. *Wardens* of the rolls of the Chancery. 1 *Ed.* 4. *c.* 5 *Warden* of the King's writs and records of his court of Common Bench. *Ibid.* *Warden* of the lands for repairing *Rocheſter* bridge. 18 *Eliz.* *c.* 7. *Warden* of the ſtannaries. 14 *Car.* 2. *c.* 3. *Warden* and minor Canons St. *Paul's* church. 22 & 23 *Car.* 2. *Warden* of the *Fleet* priſon. 8 & 9 *W.* 3. *c.* 27. *&c.* See *Guardian*.

Wardmote, (*Wardmotus*) Is a court kept in every *ward* in *London*; ordinarily called the *Wardmote court*: And the *wardmote* inqueſt hath power every year to inquire into and preſent all defaults concerning the watch, and conſtables doing their duty; that engines, *&c.* are provided againſt fire; perſons ſelling ale and beer be honeſt, and ſuffer no diſorders, nor permit gaming, *&c.* that they ſell in lawful meaſures; and ſearches to be made for vagrants, beggars, and idle perſons, *&c.* who ſhall be puniſhed. *Chart. K. Hen.* 2. *Lex Lond.* 185.

Wardpeny, Money paid and contributed to watch and *ward*. Domeſday.

Wardwit, Is to be quit of giving money for keeping of *wards*. Terms de Ley.

Wards, Was a court firſt erected in the reign of King *Hen.* 8. and afterwards augmented by him with the office of *Liveries*; wherefore it was ſtiled the *Court of Wardens and Liveries*, now diſcharged by the 12 *Car.* 2. *c.* 24.

Ward-Staff, The conſtable or watchman's *ſtaff*: And the manor of *Langbourn* in *Eſſex* is held by the ſervice of the *ward-ſtaff*, and watching the ſame in an extraordinary manner, when it is brought to the town of *Aibridge*. Camd.

Warectare, To plough up land deſigned for wheat in the ſpring, in order to let it lie fallow for better improvement;

ment; which in *Kent* is called *Summer-land:* Hence *warectabilis campus*, a ſallow field; *campus ad warectam*, *terra warectata*, *&c.*

Wares. Certain *wares* not to be brought into this realm from abroad, to be ſold or exchanged here, on pain of forfeiture. See *Stat.* 5 *Eliz. cap.* 7.

Wargus, A baniſhed rogue. *Leg. Hen.* 1. *cap.* 83.

Warniſtura, Is uſed for garniture, furniture, proviſion, *&c. Pat.* 9 *Hen.* 3.

Warnoth. It is an ancient cuſtom, if any tenant holding of the caſtle of *Dover* failed in paying his *rent* at the day, that he ſhould forfeit double, and for the ſecond failure treble: And the lands ſo held are called *Terris cultis & terris de* Warnoth. *Mon. Angl. Tom.* 2. *pag.* 589.

Warrant, A precept under hand and ſeal to ſome officer to bring any offender before the perſon granting it: And *warrants* of commitment are iſſued by the privy council, a ſecretary of ſtate, or a juſtice of peace, *&c.* where there hath been a private information, or a witneſs has depoſed againſt an offender. *Wood's Inſt.* 614. Any one, under the degree of nobility, may be arreſted for a miſdemeanor, or any thing done againſt the peace of the kingdom, by *warrant* from a juſtice of peace; though, if the perſon be a peer of the realm, he muſt be apprehended for a breach of the peace by proceſs out of *B. R.* &c. *Dalt. Juſt.* 263. *Sed qu?* A conſtable ought not to execute a juſtice's *warrant*, where the *warrant* is unlawful, or the juſtice hath no juriſdiction; if he doth, he may be puniſhed. *Plowd.* 394. But if any perſon abuſe by throwing in the dirt, *&c.* or refuſe to execute a lawful *warrant*; it is a contempt of the King's proceſs, for which the offender may be indicted and fined. *Crompt.* 149. See *Conſtable*, *Juſtices of Peace.* For the apprehending perſons in any county, upon *warrants* granted by juſtices of any other county. See *Stat.* 24 G. 2. *c.* 55. For *warrants of diſtreſs*, ſee *Stat.* 27 *Geo.* 2. *c.* 20.

Warrant of Attorney, Is an authority and power given by a client to his *attorney*, to appear and plead for him; or to ſuffer judgment to paſs againſt him by confeſſing the action, by *Nil dicit*, *non ſum informatus*, *&c.* And although a *warrant of attorney* given by a man in cuſtody to confeſs a judgment, no attorney being preſent, is void as to the entry of a judgment; yet it may be a good *warrant* to appear and file common bail. 2 *Lill. Abr.* 682. A *warrant of attorney* which *warrants* the action, is of courſe put in by the attornies for the plaintiff and defendant; ſo that it differs from a *letter of attorney* which paſſes ordinarily under the hand and ſeal of him that makes it, and is made before witneſſes, *&c.* Though a *warrant of attorney* to ſuffer a *common recovery* by the tenant, is acknowledged before ſuch perſons as a commiſſion for the doing thereof directs. *Weſt's Symb. par.* 2. A *warrant* of attorney filed of any term *pendente Lite* is ſufficient. 1 *Strange* 526. 2 *Strange* 807. Vide *Stat.* 4 & 5 *Ann. c.* 16.

Warrantia Chartae, is a writ that lieth where a man is infeoffed of lands with *warranty*, and then he is ſued or impleaded. And if the feoffee be impleaded in *aſſiſe*, or other action, in which he cannot vouch or call to *warranty*, he ſhall have this writ againſt the feoffor, or his heirs, to compel them to *warrant* the land unto him; and if the land be recovered from him, he ſhall recover as much lands in value againſt the *warrantor*, *&c.* But the *warrantia chartæ* ought to be brought by the feoffee depending the firſt writ againſt him, or he hath loſt his advantage. *F. N. B.* 134. *Terms de Ley* 372, 588. And if a perſon doth infeoff another of lands by deed with *warranty*, and the feoffee make a feoffment over, and taketh back an eſtate in fee, the *warranty* is determined; and he ſhall not have the writ *warrantia chartæ*, becauſe he is in of another eſtate: Alſo where one makes a feoffment in fee with *warranty* againſt him and his heirs, the feoffee ſhall not have a *warrantia chartæ* upon this *warranty* againſt the feoffor or his heirs, if he be impleaded by them; but the nature of it is to *rebut* againſt the feoffor and his heirs. *Dalt.* 48. 2 *Lill. Abr.* 684.

This writ may be ſued forth before a man is impleaded in any action, but the writ doth ſuppoſe that he is impleaded; and if the defendant appear and ſay, that he is not impleaded, by that plea he confeſſeth the *warranty*, and the plaintiff ſhall have judgment, *&c.* and the party ſhall recover in value of the lands againſt the vouchee, which he had at the time of the purchaſe of his *warrantia chartæ*; and therefore it may be good policy to bring it againſt him before he is ſued, to bind the lands he had at that time; for if he have aliened his lands before the voucher, he ſhall render nothing in value. *New Nat. Br.* 298, 299. If a man recover his *warranty* in *warrantia chartæ*, and after he is impleaded; he ought to give notice to him againſt whom he recovered, of the action, and pray him to ſhew what plea he will plead, to defend the land, *&c.* And where one upon a *warranty* doth vouch and recover in value, if he is then impleaded of the land recovered, he may not vouch again, for the *warranty* was once executed. 23 *Ed.* 3. 12. In a *warranty* to the feoffee in land, made by the feoffor; upon voucher if ſpecial matter be ſhewn by the vouchee, when he entered into the *warranty*, viz. That the land at the time of the feoffment was worth only 100 *l.* and now at the time of the voucher it is worth 200 *l.* by the induſtry of the feoffee; the plaintiff in a *warrantia chartæ*, *&c.* ſhall recover only the value as it was at the time of the ſale. *Jenk. Cent.* 35. If the vouchee can ſhew cauſe why he ſhould not warrant, that muſt be tried, *&c.*

Warrantia Diei, Is an ancient writ lying where one having a day aſſigned perſonally to appear in court to any action, is in the mean time employed in the King's ſervice, ſo that he cannot come at the day appointed: And it is directed to the juſtices to this end, that they neither take nor record him in default for that time. *Reg. Orig.* 18. *F. N. B.* 17. See *Eſſoin.*

Warranty, *(Warrantia)* Is a promiſe or covenant by deed made by the bargainor, for himſelf and his heirs, to *warrant* or ſecure the bargainee and his heirs, againſt all men for the enjoying of the thing granted. *Bract. lib.* 2 & 5. *Weſt's Symb. par.* 1.

A *warranty* is *real* or *perſonal*; *real*, when it concerns lands and tenements, granted in fee, or for life, *&c. perſonal*, when it concerns goods and chattels; and it is created by implication; for the purchaſer of goods may have a ſatisfaction from the ſeller, if he ſells them as his own, and the title proves deficient although there be no expreſs warranty to that purpoſe. And real *warranties* are either *in deed*, as by the word *warrantizo* or *warrant* expreſly; or in *law*, by the word *dedi*, *&c.* And a deed of gift and exchange, hath a *warranty* in law implied. *Lit.* 697. Sir *Edward Coke* defines a *real warranty* to be a covenant real annexed to lands, whereby a man and his heirs are bound to *warrant* the ſame to ſome other and his heirs; and that they ſhall quietly hold and enjoy the lands, and upon voucher, or by writ of *warrantia chartæ*, to yield other lands and tenements to the value of thoſe that ſhall be evicted by elder title: And *warranty* being a covenant real, bindeth to yield lands in recompence. 1 *Inſt.* 365, 384.

Warranty is alſo of three ſorts, *viz. Warranty lineal*, *warranty collateral*, and *warranty* that commences by *diſſeiſin*: *Warranty lineal* is where a man ſeiſed in fee makes a feoffment, and binds himſelf and his heirs by the deed to *warranty*, and hath iſſue a ſon and dies, and the *warranty* deſcends to his ſon and heir; for if no deed with *warranty* had been made, then the right of the lands ſhould have deſcended to the ſon as heir to his father, and he would have conveyed the deſcent from father to ſon: This *warranty* binds the right of fee-ſimple; but not the right of an eſtate-tail, unleſs the lineal *warranty* be with aſſets in fee-ſimple. *Lit.* 697, 703. 1 *Inſt.* 370.

Collateral warranty is when the party upon whom the *warranty* deſcends, cannot convey the title which he hath in the land from him that made the *warranty*, or ſhew that he is his heir, *&c.* As if tenant in tail diſcontinues the tail, or alienates the land, and then dieth, leaving iſſue, and the uncle of the iſſue releaſes to the diſcontinuee with *warranty*, and dies without iſſue; this is a collateral *warranty* to the iſſue in tail, and bindeth his right, without aſſets, it deſcending upon him, and he cannot make a title to the intail from his uncle. *Lit.* 704. 1 *Inſt.* 373, 376.

Warranty by diſſeiſin, is where one that hath no right to the freehold of another, entereth and conveyeth it away with *warranty*; which ſhall not bind or bar the perſon diſſeiſed, or the right heir that ought to have the land: And if where tenant for life, remainder in tail, leaſes for years with agreement with the leſſee, that he ſhall make a feoffment of the land, and then he will releaſe with *warranty*, which is done accordingly; adjudged, that this collateral *warranty* commencing by diſſeiſin, ſhall not bind the heir in tail, upon whom it deſcended. *Lit.* 698. 1 *Inſt.* 366, 367. *Cro. Car.* 483. *Accomp. Conv.* 1 *V.* 56.

He that makes a *warranty*, may make it as large, or as ſtrait, as he pleaſes; as for himſelf and his heirs, and what heirs, *&c.* And if the *warranty* be made for life, or in tail, it is good, and ſhall bind for ſo long only. 1 *Inſt.* 387. 1 *And.* 262, 305. But no *warranty* can inlarge an eſtate granted; for if the leſſor by deed doth releaſe to his leſſee for life, and *warrant* the land to him and his heirs, it ſhall not make his eſtate greater. 1 *Inſt.* 389. And where one binds him and his heirs to *warranty*; by this they are not bound to *warrant* new titles, or any right that commences after *warranty* made, but ſuch as were *in eſſe* at that time. *Bridgm.* 77. If one make an eſtate, and grant to *warrant* the land, but doth not ſay for how long; it ſhall be taken for ſo long as the eſtate to which the *warranty* is knit doth laſt: A man grants to *warrant* lands to another, and ſays not againſt what perſons; here it will be held a general *warranty* againſt all men. 1 *Rep.* 1.

A *warranty* may be annexed to eſtates of inheritance or freehold, and that not only to houſes and lands, but alſo rents, advowſons, commons, *&c.* which iſſue out of lands or tenements. 1 *Inſt.* 366, 389. And to every good *warranty* in deed, to make it binding; the perſon that doth *warrant* muſt be a perſon able; it is neceſſary that there be ſome eſtate to which the *warranty* is annexed, to ſupport it; that the *warranty* deſcend upon him who is heir of the whole blood by the Common law, to him that made it, and not upon another; and that the heir claim by the ſame right as the anceſtor; that it take effect in the life-time of ſuch anceſtor; and he be bound thereby; and the eſtate of freehold, which is to be barred, be put to a right before, or at the time of the *warranty*; and that he to whom the *warranty* deſcends, have then but right to the land. 1 *Inſt.* 367, 370, 384, 388. 10 *Rep.* 96, 97. If one be a ſucceſſor only in caſe of a corporation, he ſhall not be bound by the *warranty* of his natural anceſtor; and he that comes into land merely by act of law, as the lord by eſcheat, *&c.* ſhall never take advantage of a *warranty*; but it is otherwiſe where the eſtate ariſes by limitation of uſe, or a common recovery, which is the act of the party. 1 *Inſt.* 370. 3 *Rep.* 62. Though if the eſtate the *warranty* is annexed to be ſpent, the *warranty* is gone: So if a feoffment with *warranty* be made to two or more, and they, being jointenants, do after by deed make partition.

But where one enfeoffs two men and their heirs, and a feoffment is made in fee by one of them; the other may, notwithſtanding, have the benefit of the *warranty*. 6 Rep. 12. 10 Rep. 96. 1 Inſt. 385. Two perſons make a feoffment with *warranty*, the ſurvivor ſhall not be charged alone, without the heir of the other; and if both die, the heirs of both ſhall be equally bound. 3 *Rep.* 14.

All *warranties* before the *Statute* of *Glouceſter*, which deſcended to thoſe who were heirs to the *warrantors*, were bars to the ſame heirs to demand any of the lands; except the *warranty* began by diſſeiſin; That ſtatute hath ordained, that the *warranty* of the father ſhall be no bar to his ſon for the lands which come by the heritage of the mother; nor the *warranty* of the mother be binding to the ſon for the lands which come by the heritage of the father; but neither the ſtatute 11 *H.* 7. *c.* 20. nor any other ſtatute hath provided any remedy againſt a collateral *warranty*; therefore ſuch *warranty* is yet in force, and ſhall be a bar to the iſſue in tail. *Terms de Ley* 370, 371. * See *Lit.* tit. *Warranty.* But by the 4 & 5 *Ann.* *c.* 16. for *amendment of the law*, *warranties* made by tenant for life, of any lands, coming or deſcending on him in reverſion or remainder, ſhall be void; and all collateral *warranties* made of any lands, *&c.* by any anceſtor, who hath not an eſtate of inheritance in poſſeſſion therein, ſhall be alſo void againſt the heir.

If lands are held of a man and his heirs, by certain ſervice, without any clauſe of *warranty*, they are bound to *warranty*: But when the deed is *dedi & conceſſi*, *&c.* to be holden of the chief lord of the fee, or of others, and not of the feoffors and their heirs, reſerving no ſervice, and without the aforeſaid clauſe; here the heirs of the feoffor ſhall not be bound to *warranty*. Stat. de Big. 4 Ed. 1. ſt. 3. c. 6. A *warranty*, according to law, is intire, and extends to all the lands, and is a bar to every perſon on whom it deſcends; and where ſeveral have a right, jointly or ſeverally, every one of them are barred: Though there is this difference as to *warranties*; where the entry is gone, and only a right of action is left, there a *warranty* deſcending upon the heir at law, ſhall bind: And where there is a right of entry, it ſhall not bind. 8 *Rep.* 54. 2 *Lil. Abr.* 684. And if any perſon make a deed with *warranty*, by which his heir ſhould be barred, and after the *warrantor* is attainted of felony; his heir ſhall not be bound by ſuch *warranty*, for it cannot deſcend upon him, the blood being corrupted. *Lit.*

If a *warranty* deſcend upon an infant, it ſhall not bind him, in caſe his entry into the lands be lawful; but he muſt take care not to ſuffer a deſcent after his full age, before he hath made his re-entry. 1 *Rep.* 140. *Poph.* 71. *Warranty* may be added to any conveyance of lands, tenements, or hereditaments; as upon fines, feoffments, gifts, releaſe, and confirmation, *&c.* And the ancient form of a *warranty* is in this manner——*Et ego præfatus* A. B. *& hæredes mei prædict. meſſuag. & decem acras terræ cum pertinentiis ſuis, præfato* D. *hæredibus & aſſignatis ſuis contra omnes gentes* warrantizabimus *in perpetuum per præſentes, &c.*

Warranty of goods ſold, A man offers plate to ſale with a *warranty*, and ofterwards ſells it to the ſame perſon for leſs money, the *warranty* does not extend to this ſale. 1 *Strange* 414. Vide *Action on the Caſe, Sale.* *Black. Com.* 2 *V.* 300, 452. and 3 *V.* 165.

Warren, (*Warrenna,* from Germ. *Wahren,* i. e. *Cuſtodire,* or the Fr. *Garenne*) Is a franchiſe or place privileged, by preſcription or grant from the King, for the keeping of beaſts and fowls of the *warren*; which are hares and conies, partridges, pheaſants, and ſome add quails, woodcocks, and water-fowl, *&c.* *Terms de Ley* 589. 1 *Inſt.* 233. A perſon may have a *warren* in another's land, for one may alien the land, and reſerve the franchiſe: But none can make a *warren*, and appropriate thoſe creatures that are *feræ naturæ*, without licence from the King, or where a *warren* is claimed by preſcription. 8 *Rep.* 108. 11 *Rep.* 87. A *warren* may lie open; and there is no neceſſity of incloſing it, as there is of a park. 4 *Inſt.* 318. If any perſon offend in a *free warren*, he is puniſhable by the Common law, and by *Stat.* 21 *Ed.* 3. And if any one enter wrongfully into any *warren*, and chaſe, take or kill any conies, without the conſent of the owner, he ſhall forfeit treble damages, and ſuffer three months impriſonment, *&c.* by 22 & 23 *Car.* 2. *c.* 25. When conies are on the ſoil of the party, he hath a property in them by reaſon of the poſſeſſion, and action lies for killing them; but if they run out of the *warren*, and eat up a neighbour's corn, the owner of the land may kill them, and no action will lie. 5 *Rep.* 104. 1 *Cro.* 548. In waſte, *&c.* againſt a leſſee of a *warren*, the waſte aſſigned was for ſtopping coney-boroughs; and it was held, that this action did not lie, becauſe a man cannot have the inheritance of conies; and action may be brought againſt him who makes holes in the land, but not againſt him that ſtops them, by reaſon the land is made better by it. *Owen* 66. 3 *Nelſ. Abr.* 530.

Warſcot, Was a contribution uſually made towards *armour,* In the time of the *Saxons.* Leg. Canut.

Warth, A cuſtomary payment for caſtle-guard. *Blount's Ten.* 60.

Waſh, A ſhallow part of a river, or arm of the ſea; the *waſhes* in *Lincolnſhire, &c.* Knight 1346.

Waſſaile, (*Sax.*) A feſtival ſong, heretofore ſung from door to door about the time of the *Epiphany*.

Waſte, (*Vaſtum*) Hath divers ſignifications: *Firſt,* It is a ſpoil made either in houſes, woods, lands, *&c.* by the tenant for life or years, to the prejudice of the heir, or of him in the reverſion or remainder. *Kitchin, fol.* 168. Whereupon the writ of *waſte* is brought, for the recovery of the thing *waſted*, and treble damages. *Waſte* of the foreſt is moſt properly where a man cuts down his own woods within the foreſt, without licence of the King, or Lord Chief *Juſtice in Eyre*. See *Manwood, part* 2. *cap.* 8. *numb.* 4 *&* 5.

Secondly, Waſte is taken for thoſe lands which are not in any man's occupation, but lie common; which ſeem to be ſo called becauſe the lord cannot make ſuch profit of them as of his other lands, by reaſon of that uſe which others have of it in paſſing to and fro; upon this none may build, cut down trees, dig, *&c.* without the lord's licence.

Thirdly, Year, day and waſte, Annus, dies & vaſtum, is a puniſhment or forfeiture belonging to petit treaſon or felony, whereof ſee *Staundf. Pl. Cor. lib.* 3. *cap.* 30. And ſee *Year, Day* and *Waſte*.

Upon waſte committed in houſes, lands, *&c.* by tenants, to the damage of the heir, or of him in reverſion or remainder: The writ or action of waſte is brought for the recovery of the thing waſted, and damages for the waſte done. 5 *New Abr.* 459.

1. *Of the ſeveral kinds of* waſte, *and of the* Stat. *of* Marlebridge, *with obſervations thereon.*
2. *What acts ſhall be deemed* waſte.
3. *What* waſte *ſhall be deemed excuſable and juſtifiable.*
4. *Who may bring an action of* waſte, *and againſt whom it may be brought.*
5. *In what caſes general* waſte *may be reſtrained by injunction in equity.*
6. *What relief may be given in equity in caſes of* waſte.
7. *Of the proceſs,* &c. *in* waſte.

1. *Of the ſeveral kinds of* waſte, *and of the* Stat. *of* Marlebridge, *with obſervations thereon.*

There are two kinds of waſte, viz. *voluntary* or *actual,* and *negligent* or *permiſſive*. *Voluntary* waſte may be done by pulling down or proſtrating houſes, or cutting down timber-trees: *negligent* waſte may be by ſuffering a houſe to be uncovered, whereby the ſpars or rafters, planches or other timber of the houſe are rotten. 1 *Inſt.* 53. *a.* Vide *Dyer* 38. *pl.* 35. *Owen* 92. *Dyer* 281. *pl.* 21.

The ſtatute of *Marlebridge,* 52 *Hen.* 3. *c.* 23. *ſect.* 2. enacts, that "Farmers, during their terms, ſhall not make waſte, ſale, nor exile, of houſes, woods, and men, nor of any thing belonging to the tenements that they have to farm, without ſpecial licence had by writing of covenant, making mention that they may do it; which thing if they do, and thereof be convict, they ſhall yield full damage, and ſhall be puniſhed by amerciament grievouſly."

This act provideth remedy for waſte done by leſſee for life, or leſſee for years, and it is the firſt ſtatute that gave remedy in thoſe caſes: For the rule of the Regiſter is, that there are five manner of writs for waſte, *viz.* two at the Common law, as for waſte done by tenant in dower, or by the guardian; and three by ſtatute or ſpecial law, as againſt tenant for life, tenant for years, and tenant by the curteſy. 2 *Inſt.* 145. This ſtatute is a penal law, and yet, becauſe it is a remedial law, it has been interpreted by equity. *Arg.* 10 *Mod.* 281. In caſe of *Hammond* v. *Webb.*

Farmers] Here farmers do comprehend all ſuch as hold by leaſe for life or lives, or for years, by deed or without deed. 2 *Inſt.* 145. It has been reſolved likewiſe that it ſhould extend to ſtrangers. *Arg.* 10 *Mod.* 281. In caſe of *Hammond* v. *Webb.* Although the Regiſter ſays *ſciend'* that *per ſtatutum de Marlebridge, cap.* 23. *data fuit quædam probibitio vaſti verſus tenementum annorum,* which is true; yet the ſtatute extends to farmers for life alſo, but this act extended not to tenant by the curteſy, for he is not a farmer, but if a leaſe be made for life or years, he is a farmer though no rent be reſerved. 2 *Inſt.* 145.

Shall not make waſte] By theſe words they are prohibited to *ſuffer* waſte, for it has been reſolved that this act extends to waſte *omittendo,* tho' the word is *faciant,* which literally imports *active* waſte. *Arg.* 10 *Mod.* 281. In caſe of *Hammond* v. *Webb.*

Nor of any thing] Houſes, woods, and men were before particularly named, and theſe words do comprehend lands and meadows belonging to the farm. 2 *Inſt.* 146. Alſo theſe general words have a further ſignification, and therefore, if there had been a farmer for life, or years, of a manor, and a tenancy had eſcheated, this tenancy ſo eſcheated did belong to the tenement, that he held in farm, and therefore this extended to it; and the leſſor ſhall have a writ generally, and ſuppoſe a leaſe made of the lands eſcheated by the leſſor, and maintain it by the ſpecial matter. 2 *Inſt.* 146.

Special licence by writing] This grant ought to be by deed, for all waſte tends to the diſinheritance of the leſſor, and therefore no man can claim to be diſpuniſhable of waſte without deed. 2 *Inſt.* 146. Likewiſe this ſpecial grant is intended to be *abſque impetitione vaſti;* without impeachment of waſte. 2 *Inſt.* 146.

Yield full damage] And this muſt be underſtood ſuch a prohibition of waſte upon this ſtatute as lay againſt a tenant in dower at the Common law, and ſingle damages were given by this ſtatute againſt leſſee for life, and leſſee for years. 2 *Inſt.* 146.

But waſte may be committed not only in houſes and lands, but in gardens, orchards, timber-trees, dove-houſes, warrens, parks, fiſh-ponds, and other ſubjects of property, as will be ſhewn. 1 *Inſt.* 53. *a.*

2. *What acts ſhall be deemed waſte.*

It has been laid down as a general principle, that the law will not allow that to be waſte, which is not any way prejudicial to the inheritance. *Hetl.* 35. *Barret* v. *Barret.* Nevertheleſs it has been held, that a leſſee or tenant cannot change the nature of the thing demiſed: though, in ſome caſes, the alteration may be for the greater profit of the leſſor. Thus if a leſſee converts a corn-mill into a fulling-mill, it is waſte; although the converſion be for the leſſor's advantage. *Cro. Jac.* 182. *Civit. Lond.* v. *Greyme.* Alſo converting a brewhouſe of 120*l. per ann.* into other houſes let for 200*l.* a year, is waſte; becauſe of the alteration of the nature of the thing, and of the evidence. 1 *Lev.* 309. *Cole* v. *Green.*

We will now conſider what ſhall be deemed waſte with reſpect to particular ſubjects of property.

Waſte in lands. If the tenant converts arable into wood, or *é converſo,* it is waſte; for it not only changes the courſe of huſbandry, but alſo the proof of evidence. *Hobart's Rep.* caſe 296. *p.* 234. But if a leſſee ſuffers arable land to lie freſh, and not manured, ſo that the land grows full of thorns, *&c.* this is not waſte, but ill huſbandry. 2 *Roll. Abr.* 814. Likewiſe the converſion of meadow into arable is waſte, for it not only changes the courſe of huſbandry, but the proof of his evidence. 1 *Inſt.* 53. *b.* But if meadow be ſometimes arable, and ſometimes meadow, and ſometimes paſture, there the plowing of it is not waſte. 2 *Roll. Abr.* 815. Neither is the diviſion of a great meadow into many parcels, by making of ditches, waſte; for the meadows may be better for it, and it is for the profit and eaſe of the occupiers of it. 2 *Le.* 174. *pl.* 210.

Likewiſe converting a meadow into a hop-garden, is not waſte; for it is employed to a greater profit, and it may be meadow again; *per Windham* and *Rhodes* J. But *Periam* ſaid tho' it be a greater profit, yet it is alſo with greater labour and charges. 2 *Le.* 174. *pl.* 210. But converting a meadow into an orchard, is waſte, tho' it be to the greater profit of the occupier. *Per Periam. Id. ibid.* If a leſſee ploughs the land ſtored with conies, this is no waſte; unleſs it be a warren by charter or preſcription. 2 *Rol. Abr.* 815. So if a leſſee of land deſtroys the coney-boroughs in the land, it not being a free warren by charter or preſcription, it ſeems is not waſte; for a man can have no property in them, but only a poſſeſſion. *Id. ibid.* *Ow.* 66. *Moyle* v. *Moyle*.

It is waſte to ſuffer a wall of the ſea to be in decay, ſo as by the flowing and reflowing of the ſea the meadow or marſh is ſurrounded, whereby the ſame becomes unprofitable. But if it be ſurrounded ſuddenly by the rage and violence of the ſea, occaſioned by wind, tempeſt, or the like, without any default in the tenant, this is not waſte. Yet if the tenant repair not the banks or walls againſt rivers or other waters, whereby the meadows or marſhes be ſurrounded and become ruſhy and unprofitable, this is waſte. 1 *Inſt.* 53. *b.* So *a fortiori*, if arable land be ſurrounded by ſuch default; for the ſurrounding waſhes away the marle and other manurance from the land. 2 *Rol. Abr.* 816.

Waſtes in trees and woods. Trees are parcel of the inheritance, and therefore, if a leſſee aſſigneth his term, and excepts the timber-trees, it is void; for he cannot except that which doth not belong to him by law. 5 *Rep.* 12. *Saunders*'s caſe. The leſſor, after he has made a leaſe for life or years, may by deed grant the trees, or reaſonable eſtovers out of them, to another and his heirs; and the ſame ſhall take effect after the death of the leſſee. But ſuch a gift to a ſtranger is void during the eſtate for life, becauſe of the particular prejudice which might be done to the leſſee. 11 *Rep.* 48. *Liford*'s caſe. The leſſee hath but a particular intereſt in the trees, but the general intereſt of the trees doth remain in the leſſor: for the leſſee ſhall have the waſte and fruit of the trees, and the ſhadow for his cattle, *&c.* But the intereſt of the body of the tree is in the leſſor, as parcel of his inheritance. Therefore if trees are overthrown, by the leſſee or any other, or by wind or tempeſt, or by any other means disjoined from the inheritance, the leſſor ſhall have them in reſpect of his general ownerſhip. 11 *Rep.* 81. *Bowles*'s caſe.

With reſpect to timber-trees, ſuch as oak, aſh, elm, (which are timber trees in all places) waſte may be committed in them, either by cutting them down, or lopping of them, or doing any act *whereby the timber may decay*. Alſo in countries where timber is ſcarce, and beeches or the like are converted to building for the habitation of man, they are alſo accounted timber. 1 *Inſt.* 53. *a.* 54. *b.* Thus, waſte may be committed in cutting of beeches in *Buckinghamſhire*, becauſe there by the cuſtom of the country it is the beſt timber. 2 *Roll. Abr.* 814.

So waſte may be committed in cutting of birches in *Berkſhire*, becauſe they are the principal trees there for the moſt part. *Ibid.* If the tenant cut down timber-trees, or ſuch as are accounted timber, as mentioned above, this is waſte; and if he ſuffer the young germins to be deſtroyed, this is a deſtruction. So it is, if the tenant cut down underwood (as he may by law), yet if he ſuffer the young germins to be deſtroyed, or if he ſtub up the ſame, this is deſtruction. 1 *Inſt.* 53. *a.* If leſſee or his ſervants ſuffer a wood to be open, by which beaſts enter and eat the germins, tho' they grow again, yet it is waſte; for after ſuch eating they never will be great trees, but ſhrubs. 2 *Roll. Abr.* 815. If a termor cuts down underwood of hazel, willows, maple, or oak, which is ſeaſonable, it is not waſte. 2 *Roll. Abr.* 817. If aſhes are ſeaſonable wood to cut from ten years, it is not waſte to cut them down for houſe-boot. *Ibid.*

But if the aſhes are groſs of the age of nine years, and able for great timber, it is waſte to cut them down. *Id. ibid.*

If oaks are ſeaſonable, and have been uſed to be cut always at the age of twenty years, it is not waſte to cut them at ſuch age, or under, for in ſome countries, where there is a great plenty, oaks of ſuch age are but ſeaſonable wood. *Id. ibid.* But after the age of twenty-one years oaks cannot be ſaid to be wood ſeaſonable, and therefore it ſhall be waſte to cut them down. *Id. ibid.* Cutting down of willows, beech, birch, aſp, maple, or the like, ſtanding in the defence and ſafeguard of the houſe, is deſtruction. If there be a quickſet fence of white thorn, if the tenant ſtub it up, or ſuffer it to be deſtroyed, this is alſo deſtruction: And for all theſe and the like deſtructions an action of waſte lieth. 1 *Inſt.* 53. *a.* The cutting of horn-beams, hazels, willows, ſallows, though of forty years growth, is no waſte, becauſe theſe trees would never be timber. *Per Meade* Juſt. *Godb.* 4. *pl.* 6.

If the leſſee covenant, that he will leave the wood at the end of the term as he found it; if the leſſee cut down the trees, the leſſor ſhall preſently have an action of covenant: For it is not poſſible for him to leave the trees at the end of the term. So that the impoſſibility of performing the covenant ſhall give a preſent action on a future covenant. But it is otherwiſe in the caſe of a houſe; for there, though the leſſee commit waſte, yet he may repair the waſte done, before the term expires. 5 *Rep.* 21. *Mayne*'s caſe.

The cutting down of trees is juſtifiable for houſe-boot, hay-boot, plow-boot, and fire-boot. 1 *Inſt.* 53. *b. Hob. Rep. c.* 296. *Br. Waſte,* 130. By the Common law leſſee ſhall have them, though the deed does not expreſs it; but if he takes more than is neceſſary he ſhall be puniſhed in waſte. *Bro. Waſte, pl.* 30. The tenant may take ſufficient wood to repair the walls, pales, fences, hedges and ditches as he found them, but he cannot make new. 1 *Inſt.* 53. *b.* Cutting of dead wood is no waſte. 1 *Inſt.* 53. But converting trees into coals for fuel, where there is ſufficient dead wood, is waſte. *Id. ibid.*

Waſte in digging for gravel, mines, &c. If the tenant digs for gravel, lime, clay, brick, earth or ſtone, hid in the ground, or for mines of metal or coal, or the like, not being open at the time of the leaſe, it is waſte. 1 *Inſt.* 53 *b.* If a man hath land in which there is a mine of coals, or the like, and maketh a leaſe of the land (without mentioning any mines) for life or for years, the leſſee for ſuch mines as were open at the time of the leaſe made, may dig and take the profits thereof. But he cannot dig for any new mine that was not open at the time of the leaſe made, for that would be adjudged waſte. 1 *Inſt.* 54. *b.* Likewiſe if there be open mines in the land, and the owner leaſes it to another, *with the mines in it*, he may dig in the open mines, but not in the cloſe mines; but otherwiſe it would be if there was not any open mine there; for then the leſſee might dig for mines, otherwiſe the grant would take no effect. *Id. ibid.* If leſſee dig ſlate-ſtone out of the land, it is waſte. And, digging for ſtones, unleſs in a quarry, is waſte, though the leſſee fill it up again. 2 *Roll. Abr.* 816. *Ow.* 66. *Moyle* v. *Moyle*. Likewiſe, if he have a leaſe of land, in which there was a coal mine, but not open at the trme of the leaſe; if the leſſee open it, and aſſigns his intereſt, it is ſtill waſte in the aſſignee; but where the leaſe is of lands, and *all mines* in it, there he may dig in it. 5 *Rep.* 12. *a. b.* *Saunder*'s caſe.

But if leſſee of land, with mines of coals, iron, and ſtone, digs the coals, iron, and ſtones, ſo much as is neceſſary for him to uſe without ſelling, it is not waſte. 2 *Roll. Abr.* 816. *q.* if this does not mean *open mines?* If a leſſee digs earth, and carries it out of the land, action of waſte lies. *Id. ibid.* If a leſſee digs for gravel or clay, for reparation of the houſe, not being open at the time of the leaſe, it is not waſte, any more than the cutting of trees for reparation. 1 *Inſt.* 53. *b.*

Waſte in gardens, orchards, fiſh-ponds, dove-houſes, parks, &c. If the tenant cut down or deſtroy any fruit-trees growing in the garden or orchard, it is waſte: But if ſuch trees grow upon any of the ground, which the tenant holdeth out of the garden or orchard, it is no waſte. 1 *Inſt.* 53. *a.* Breaking a hedge alſo is no waſte. *Id. ibid.* Likewiſe deſtruction of ſaffron heads in a garden, is not waſte. *Bro. Waſte, pl.* 143. cites 10 *H.* 7. *c.* 2. If the tenant of a dove-houſe, warren, park, vivary, eſtangues, or ſuch like, takes ſo many that ſo much ſtore is not left as he found at the time of the demiſe, it is waſte. 1 *Inſt.* 53. *a. Hob. Rep. c.* 296. Likewiſe if the leſſee of a pigeon-houſe ſtops the holes, that the pigeons cannot build, it is waſte. 1 *Inſt.* 53. *a.* So likewiſe, ſuffering the pales of a park to decay, whereby the deer are diſperſed; is waſte. *Id. ibid.* Alſo, if the leſſee of a hop-ground plow it up and ſow grain there, it is waſte. *Ow.* 66. *Moyle* v. *Moyle.*

The breaking a weare is waſte, and ſo of the banks of a fiſh-pond, ſo that the water and fiſh run out. *Ow.* 66. *Moyle* v. *Moyle.*

Waſte with reſpect to houſes. Waſte may be done in houſes, by pulling them down or proſtrating them, or by ſuffering the ſame to be uncovered, whereby the ſpars or raſters, planches or other timber of the houſe are rotten. 1 *Inſt.* 53. *a.* Default of coverture of an houſe is waſte, though the timber be ſtanding. 2 *Roll. Abr.* 815. But if the houſe be uncovered, when the tenant cometh in, it is no waſte in the tenant to ſuffer the ſame to fall down. 1 *Inſt.* 53. *a.* Though there be no timber growing upon the ground, yet the tenant at his peril muſt keep the houſes from waſting. 1 *Inſt.* 53. *a.* If a leſſee raſes the houſe, and builds a new houſe, if it be not ſo long and wide as the other, it is waſte. 2 *Roll. Abr.* 815. So if he rebuilds it more large than it was before, it is waſte; for it will be more charge for the leſſor to repair it. 1 *Inſt.* 53. *a.*

But if a leſſee of land makes a new houſe upon the land where there was not any before, this is not waſte; for it is for the benefit of the leſſor. 2 *Roll. Abr.* 815. But, according to lord *Coke*, if the tenant build a new houſe, it is waſte; and if he ſuffer it to be waſted, it is a new waſte. Yet if the houſe be proſtrated by enemies or the like, without default of the tenant, or was ruinous at his coming in, and fall down, the tenant may build the ſame again with ſuch materials as remain, and with the other timber, which he may take growing on the ground, for his habitation; but he muſt not make the houſe larger than it was. 2 *Roll. Abr* 815. 1 *Inſt.* 53. *a.* If the houſe be uncovered by tempeſt, the tenant muſt in convenient time repair it. 1 *Inſt.* 53. *a.* If a leſſee flings down a wall between a parlour and a chamber, by which he makes a parlour more large, it is waſte; it cannot be intended for the benefit of the leſſor, nor is it in the power of the leſſee to tranſpoſe the houſe. 2 *Roll. Abr.* 815. So if he pulls down a partition between chamber and chamber, it is waſte. *Bro. Waſte,* 143. Or if a leſſee pulls down a hall or parlour, and makes a ſtable of it, it is waſte. 2 *Roll. Abr.* 815. If a leſſee pulls down a garret over head, and makes it all one and the ſame thing, it is waſte. *Id. ibid.* If a leſſee permits a chamber *fore in decaſu pro defectu plauſtrationis, per quod groſſum maheremium devenit putridum, & camera illa turpiſſima & fædiſſima devenit,* action of waſte lies for it. *Id. ibid.* So if a leſſee permits the wall to be in decay for default of daubing, *per quod maheremium devenit putridum,* action of waſte lies. *Id. ibid.* Breaking of a pale or of a wall uncovered, is not waſte. *Bro. Waſte, pl.* 94. But breaking of a wall covered with thatch, and of a pale of timber covered, is waſte. *Id. Ibid.* Burning the houſe by negligence or miſchance, is waſte. 1 *Inſt.* 53. *a.* But by the 6 *Ann. c.* 31. No action is to be proſecuted againſt any perſon in whoſe houſe, or chamber, any fire accidentally begins.

If the tenant do or ſuffer waſte to be done in his houſes, yet if he repair them before any action brought, there lieth no action of waſte againſt him, but he cannot plead, *quod non fecit vaſtum,* but the ſpecial matter. 1 *Inſt.* 53. *a.*

Waſte in things annexed to the freehold. The removing a poſt in a houſe is waſte. 42 *Edw.* 3. 6. So the removing of a door. *Id. ibid.* 1 *Inſt.* 53. So the removing of a window. 42 *Edw.* 3. 6. The digging up a furnace annexed to the frank-tenement, and ſelling it, is waſte, *Bro. Waſte, pl.* 143. The removing of a bench is waſte, though annexed by the tenant himſelf. *Bro. Waſte, pl.* 143. 1 *Inſt.* 53. *a.* But theſe are ſuch trifles that a landlord would now ſcarce obtain a verdict in an action of *waſte,* it being ſo very penal—unleſs very great injury was done by the act. As to the furnace he might maintain *Trover* for the value. If wainſcot annexed to the houſe be taken away, it is waſte. 1 *Inſt.* 53. *a.* Of tables dormant and fixed in the land, and not to the walls by termor, and taken off within his term, waſte does not lie; for the houſe is not impaired by it. *Per Kingſmill* J. and *Grevil* Serj. *Bro. Waſte, pl.* 104.

Beating down a wooden wall, or ſuffering a brick wall to fall, is no waſte, unleſs it be expreſſly alledged, that the walls were coped or covered. *Dyer* 108. *b. pl* 31, Earl of *Bedford* v. *Smith.* If waſte be aſſigned in pulling up a plank floor and mangers of a ſtable, plaintiff muſt ſhew that the ſame were fixed. *Id. ibid.* If leſſee erects a partition, he cannot break it down without being liable to an action of waſte, for he has joined it to the frank tenement. *Mo.* 178. *Cook's* caſe. Shelves are parcel of the houſe, and not to be taken away; and though it is not ſhewn that the ſhelves were fixed, it ought to be intended that they were fixed. *Per Coke* Chief Juſtice. 2 *Bulſt.* 113. Lady *St. John* v. *Piott.* Pavement is a ſtructure, for they uſe lime to finiſh it. *Id. ibid.* If the tenant ſuffers the groundſels to waſte, in his default of defence or removing the water from off them, or of dirt or dung or other nuſance which lies or hangs upon it, the tenant ſhall be charged, for he is bound to keep it in as good caſe as he took it. *Ow.* 43. *Strickleborne* v. *Hatchman.*

3. *What waſte ſhall be deemed excuſable, and juſtifiable.*

It may be obſerved in general, that waſte which enſues from the act of God is excuſable: Thus if a houſe falls by tempeſt, the tenant ſhall be excuſed in action of waſte; but if it be uncovered by tempeſt, and ſtands, there, if the tenant has ſufficient timber to repair it, and does not, the leſſor, if the leaſe be made on condition of re-entry for waſte, may re-enter, but not immediately upon the tempeſt, for it is no waſte until the tenant ſuffers it to be ſo long unrepaired, that the timber be rotted, and then it is waſte. *Per Hull. Br. Cond. pl.* 40.

Likewiſe, if a houſe be abated by lightning, or thrown down by a great wind, it is not waſte. 1 *Inſt.* 53. *a.* So if apple-trees are torn up by a great wind, if leſſee afterwards cuts them, it is not waſte. *Bro. Waſte, pl.* 39. If the banks are well repaired by the leſſee, and the water notwithſtanding ſubverts them, and ſurrounds his meadow, by which it is become ruſhy, it is not waſte. 2 *Rol. Abr.* 280. *Contra,* 20 *H.* 6. *c.* 1. *b.* The leſſor cannot give trees during the tenant's leaſe. But if he grants them to a ſtranger, and commands the tenant to cut and deliver them, who does it, this ſhall excuſe him in an action of waſte. And yet the tenant was not bound by law to obey and execute this command. *Bro. Done, &c.* 13. Tenant in tail may commit waſte in houſes as well as in all other parts of the eſtate, notwithſtanding any reſtraint to the contrary, and no inſtance can be ſhewn, where a tenant in tail has been reſtrained from committing waſte by injunction of the court of Chancery. *Caſ. Temp. Ld. Talb.* 16. *Glenorchy* v. *Boſville.*

If tenant in tail grants all his eſtate, his grantee is diſpuniſhable of waſte; ſo ſuch grantee's grantee is alſo diſpuniſhable; *Per Clerk* J. 3 *Le.* 121. *pl.* 173. *Anon.* If a man deviſes land to two in tail, and after the one deviſee dies without iſſue, by which the reverſion in fee of one moiety reverts to the heir of the donor; but the other deviſee is tenant for life of the whole, and after he commits waſte, action of waſte lies againſt him by the heir of the donor for the one moiety *New Abr.* 469. But action of waſte does not lie againſt tenant in tail after poſſibility, for the greatneſs of the eſtate of inheritance which was once in him; and alſo, as ſome ſay, becauſe the eſtate was not within the ſtatute at the creation. 11 *Rep.* 80. *a.* *Lewis* v. *Bowles.*

If lands are given to the huſband and wife, and to the heirs of the body of the huſband, the remainder to the huſband and wife, and to the heirs of their two bodies begotten, and the huſband dies without iſſue: The wife ſhall not be tenant in tail after poſſibility; for the remainder in ſpecial tail was utterly void, for that it could never take effect. For, ſo long as the huſband ſhould have iſſue, it ſhould inherit by force of the general tail; and if the huſband die without iſſue, then the ſpecial tail cannot take effect, inaſmuch as the iſſue, which ſhould inherit in ſpecial tail, muſt be begotten by the huſband; and ſo the general, which is larger and greater, hath fruſtrated the ſpecial, which is leſſer; and the wife, in that caſe, ſhall be puniſhed for waſte. 1 *Inſt.* 28. *b.*

It has been agreed, that tenant for years may cut wood; but it has been doubted, if tenant at will may; but it ſeems, that as long as tenant at will is not countermanded he may cut ſeaſonable wood, *&c. Bro. Waſte, pl.* 114. Where a man leaſes a wood which conſiſts only of great trees, the leſſee cannot cut them. *Hobart's Rep. Caſ.* 296. Nevertheleſs, if the leſſee cuts trees for reparation, and ſells them, and after buys them again, and employs them in reparation, yet it is waſte by the ſale. 1 *Inſt.* 53. *b.* So if leſſee cuts trees, and ſells them for money, though with the money he repairs the houſe, yet it is waſte. *Id. ibid.* As to the cutting of timber-trees for repairs by leſſee, there is no difference whether the leſſor or leſſee covenants to repair the houſes; for in either caſe it is not waſte, if leſſee cuts them. *Mo.* 23. *pl.* 80. *Anon'.*

If a houſe be proſtrated by enemies of the King, or ſuch like, without default of the leſſee, the leſſee may rebuild it again with the ſame materials that remain, and may cut other timber upon the land to rebuild it, but he muſt not make the houſe larger than it was. 1 *Inſt.* 53. *a.* So if the houſe was ruinous at the time of the leaſe, and fell within the term, this is not waſte in the tenant. 1 *Inſt.* 53. *a. Bro. Waſte, pl.* 130. But the leſſee ſhall not cut trees to make a new houſe where there was not any at the time of the leaſe. *Hobart's Rep. Caſ.* 296. So if a leſſee ſuffers a houſe to fall for default of covering, which is waſte, he cannot cut trees to repair the houſe *Br. Waſte, pl.* 39. And in general, if the tenant ſuffer the houſe to be waſted, he cannot juſtify the felling of timber to repair it. 1 *Inſt.* 53. *b.* If a houſe be ruinous at the time of the leaſe, though the leſſee is not bound to repair it, yet he may cut trees to repair it, 1 *Inſt.* 54. *b.* The tenant may likewiſe dig for gravel or clay for the reparation of the houſe, though the ſoil was not open when the tenant came in; and it is juſtifiable as well as cutting of trees. 1 *Inſt.* 53. *b.* So with regard to a ſtable, if it fall without default of the leſſee in time of the leſſor, the leſſee may take trees of the heir to make a new ſtable, if it be of neceſſity. *Bro. Waſte, pl.* 67. But if the ſtable falls in default of the leſſee, in time of the leſſor, he cannot in time of the heir cut trees to make a new ſtable. *Br. Waſte, pl.* 67.

Cutting wood to burn, where the tenant has ſufficient hedge-wood is waſte. *F. N. B.* 59. (M.) Where leſſee for years has power to take hedge-boot by aſſignment, yet he may take it without aſſignment; for the affirmative does not take away the power which the law gives him. *Dy.* 19. *pl.* 115. If leſſor excepts his trees in his leaſe, the leſſee ſhall not have fire-boot, hay-boot, *&c.* which he ſhould have otherwiſe; and the property of the trees is in the leſſor himſelf. 4 *Le.* 162. *pl.* 269 Sir *Richard Lewkner's* caſe. Yet it has been ſaid, that leſſee for years, the trees being excepted, has liberty to take the ſhrouds and loppings for fire-boot; but if he cuts any tree, it ſhall be waſte, as well for the lopping as for the body of the tree. *Noy* 29. *Rich.* v. *Makepeace.* If a tenant that has fire-boot to his houſe in another man's land, cuts wood for that Intent to make his boot-wood, and the owner of the land takes it away, an action of trover and converſion lies againſt him by the tenant of the land who hath ſuch fire-boot. *Clayt.* 40. *pl.* 69. *Coram Berkley, Anon'.* See *Dyer* 36. *pl.* 38. *Clayt.* 47. *pl.* 81. 1 *Lev.* 171. Cutting of dead wood is no waſte. *F. N. B.* 59. (M)

If a man leaſes lands with general words of *all mines of coals*, where there is not any mine of coals open at the time of the demiſe, and after the leſſee opens a mine, he cannot juſtify the cutting of timber-trees for making puncheons, corſes, roll-ſcoops, and other utenſils in and about the mine, though without them he could not dig and get the coals out of the mine: And this is like a new houſe built after the demiſe, for the reparation of which he cannot take timber upon the land; and it had been waſte to open it, if it had not been granted by expreſs words: And it was ſaid by *Hobart*, that the law had been the ſame if the mine was open at the time of the demiſe. *Hobart's Rep. c.* 296. *Lady Darcy* v. *Aſhwith.* And ſee *Hutt.* 19. where the caſe is more fully reported.

4. *Who may bring an action of waſte, and againſt whom it may be brought.*

By *Stat.* 13 *Ed.* 1. *cap.* 28. the action of waſte is given to one tenant in common againſt another.

Where there are tenants in common for life, the one ſhall not have treſpaſs of trees cut againſt the other, but ſhall have waſte *pro indiviſo*, though they are only tenants for term of life, *&c. Br. Waſte, pl.* 79. If one coparcener before partition makes feoffment to another, and one of them does waſte in the trees, waſte lies. 11 *Rep.* 49. *a. Lifford's* caſe. Likewiſe, if two jointenants do waſte, and after the one enters into religion, waſte lies againſt the other alone. 2 *Rol. Abr.* 828.

By the 20 *Edw.* 1. *Stat.* 2. An action of waſte is maintainable by the heir for waſte done in the time of his anceſtor, as well as for waſte done in his own time.

This action muſt be brought by him that hath the immediate eſtate and inheritance in fee ſimple or fee-tail, but ſometimes another may join with him. 1 *Inſt* 53. *a.* 285. *a.* It is ſaid that the reverſion muſt continue in the ſame ſtate that it was at the time of the waſte done, and not granted over; for tho' the reverſioner taketh the eſtate back again, the action is gone, becauſe the eſtate did not continue: But in ſome ſpecial caſes an action of waſte ſhall lie; tho' the leſſor had nothing in the reverſion at the time of the waſte done: for if a biſhop makes a leaſe for life or years and dies, and the leſſee, the fee being void, doth waſte, the ſucceſſor ſhall have an action of waſte. This is allowed, though the ſtatute of 20 *Edw.* 1. ſpeaks of thoſe that are inheritors. 1 *Inſt* 53. *b.* 356. *a.* 2 *Roll. Abr.* 825.

A tenant for life cannot have this action, but a parſon, *&c.* may have an action of waſte, and the writ ſhall ſay, *Ad exhæredationem eccleſiæ*, for it is the dowry of the church. If a tenant doth waſte, and he in reverſion dieth, the heir ſhall not have an action of waſte for waſte done in the life of the anceſtor: For he cannot ſay that the waſte was done to his diſinheriſon, neither ſhall a biſhop, maſter of an hoſpital, parſon, *&c.* have an action of waſte done in the time of their predeceſſors. 1 *Inſt.* 341. *a.* 1 *Inſt.* 53 *b.* 356. *a.* See *Supra.* & 94. If a leaſe is made to *A.* for life, the remainder to *B.* for life, remainder to *C.* in fee; no action of waſte lieth againſt the firſt leſſee during the eſtate in the mean remainder, for then his eſtate would be deſtroyed. Otherwiſe if *B.* had a mean remainder for years, for that would be no impediment, the recovery not deſtroying the term of years. 5 *Rep.* 76, 77. 1 *Inſt.* 54. *a. Sed. qu.* if an *action on the caſe*, in nature of an action of waſte, for the the recovery of *damages*, would not lie?

If leſſee for years commit waſte, and the years do expire, yet the leſſor ſhall have an action of waſte for treble damages, tho' he cannot recover the place waſted; but if the leſſor accepteth of a ſurrender of a leaſe after the waſte done, he ſhall not have his action of waſte. *Sed qu.* as above? It is ſaid that if a tenant repairs before action brought, he in reverſion cannot have an action of waſte; but he cannot plead that he did no waſte, therefore he muſt plead the ſpecial matter. 1 *Inſt.* 283. *a.* 285 *a.* 306. 5 *Rep.* 119. 2 *Cro.* 658. Likewiſe, by 11 *H.* 6. *c.* 5. where tenants for life, or for another's life, or for years, grant over their eſtates, and take their profits to their own uſe, and commit waſte, they in reverſion may have an action of waſte againſt them. 2 *Inſt.* 302. He in the remainder as well as the reverſioner may bring this action, and every aſſignee of the firſt leſſee, mediate or immediate, is within this act, 5 *Rep.* 77. *Paget*'s caſe. 2 *Inſt.* 302.

It has been ſaid, that there are five writs of waſte, two at the Common law, as for waſte done by tenant in dower, or by guardian; three by ſtatute, as againſt tenant for life, tenant for years, and tenant by the curteſy. It has been ſaid however, that tenant by the curteſy was puniſhable, for waſte by the Common law, for that the law created his eſtate as well as that of the tenant in dower, and therefore the law gives like remedy againſt them. 1 *Inſt*. 54. *a*. 2 *Inſt*. 145, 299. 301, 305. But on this ſubject the authorities in the books are very contradictory, as the reader will perceive by attending to the note ſubjoined to the following clauſe of the ſtatute of *Glouceſter*, 6 Ed. 1. cap. 5. which enacts, that, “ A man from henceforth ſhall have a writ of waſte in the Chancery againſt him that holdeth by the law of *England*, or otherwiſe for term of life, or for term of years, or a woman in dower.

No action of waſte lay before the ſtatute of *Glouceſter*, but againſt tenant in dower and guardian, and by the ſtatute action of waſte is given againſt the tenant by the curteſy, tenant for term of life, and tenant for term of years. *Br. Waſte, pl.* 88. Lord *Coke* ſays, a reaſon is required, (that ſeeing as well the eſtate of the tenant by the curteſy, as the tenant in dower are created by act in law,) wherefore the prohibition of waſte did not lie as well againſt tenant by the curteſy as the tenant in dower as the Common law; and the reaſon he aſſigns is this, for that by having iſſue the ſtate of the tenant by the curteſy is originally created, and yet after that he ſhall do homage alone in the life of the wife, which proves a larger eſtate; and ſeeing that at the creation of his eſtate he might do waſte, the prohibition of waſte lay not againſt him after his wife's deceaſe; but, in the caſe of tenant in dower, ſhe is puniſhable of waſte at the firſt creation of her eſtate. 2 *Inſt*. 145. But 2 *Inſt*. 299 ſays, that, at the Common law, waſte was puniſhable in three perſons, (*viz*.) tenant in dower, tenant by the curteſy, and the guardian, but not againſt tenant for life or tenant for years; and the reaſon of the diverſity was, for that the law created their eſtates and intereſt; and therefore the law gave remedy againſt them; but tenant for life and for years came in by demiſe and leaſe of the owner of the land, *&c.* and therefore he might in his demiſe provide againſt the doing of waſte by his leſſee; and if he did not, it was his negligence and default.

Shall have a writ of waſte] Neither this act, nor the ſtatute of *Marlebridge*, doth create *new* kind of waſtes, but gives new remedies for old waſtes; and what is waſte, and what is not, muſt be determined by the Common law. 2 *Inſt*. 300, 301.

Againſt him] If two are jointenants for years or for life, and one of them does waſte, this is the waſte of them both as to the place waſted, notwithſtanding the words of the act are, (*him* that holds) 2 *Inſt*. 302.

Holds by the law of England] Here tenant by the curteſy is named for two cauſes. 1ſt, For that albeit the common opinion was, that an action of waſte did lie againſt him, yet ſome doubted of the ſame in reſpect to this word (*tenet*) in the writ, for that the tenant by the curteſy did not hold of the heir, but of the lord *Paramount*; and after this act, the writ of waſte grounded thereupon doth recite this ſtatute; 2dly, for that greater penalties were inflicted by this act than were at the Common law. 2 *Inſt*. 301.

Or otherwiſe for term of life or for term of years] A leſſee for his own life, or for another man's life, is within the words and meaning of this law, and in this point this act introduces that which was not at the Common law. 2 *Inſt*. 301. If feme leſſee for life takes huſband, the huſband does waſte, the wife dies, the huſband ſhall not be puniſhed by this law; for the words of this act be (a man that holds, *&c.* for life) and the huſband held not for life; for he was ſeiſed but in right of his wife, and the eſtate was in his wife. 2 *Inſt*. 301. He that hath an eſtate for life by conveyance at Common law, or by limitation of uſe, is a tenant within the ſtatute. 2 *Inſt*. 302. Tenant for years of a moiety, 3d or 4th part, *pro indiviſo*, is within this act; and ſo it is of a tenant by the curteſy, or other tenant for life of a moiety, *&c.* 2 *Inſt*. 302.

Or a woman in dower] This is to be underſtood of all the five kinds of dower whereof *Littleton* ſpeaks, *viz*. dower at Common law, dower by the cuſtom, dower *ad oſtium eccleſiæ*, dower *ex aſſenſu patris*, and dower *de la pluis beale*; and againſt all theſe the action of waſte did lie at the Common law. 2 *Inſt*. 303. If tenant in dower be of a manor, and a copyholder thereof commits waſte, an action of waſte lies againſt tenant in dower. 2 *Inſt*. 303. Action of waſte lies againſt an occupant for life, becauſe he has the eſtate of the leſſee for life, and holds for life, as the ſtatute mentions. 6 *Rep*. 37. *b*. *Dean and chapter of Worceſter*. If a leſſee forlife be attainted of treaſon, by which the leaſe is forfeited to the King, who grants it over to *I. S.* and he afterwards does waſte, though he comes *en le poſt*, yet action of waſte lies againſt him. 2 *Rol. Abr*. 826. So if a man diſſeiſes the tenant for life, and does waſte, yet action of waſte lies againſt the tenant for term of life; for he may have his remedy over againſt the diſſeiſor. *Br. Waſte, pl*. 138. Likewiſe, if an eſtate be made to *A*. and his heirs, during the life of *B*. *A* dies, the heir of *A*. ſhall be puniſhed in an action of waſte. 1 *Inſt*. 54. *a*.

But an action of waſte does not lie againſt tenant by ſtatute merchant, elegit or ſtaple, becauſe it is not an eſtate for life or years, and the ſtatute mentions thoſe who hold in any manner for life or years. *Contra*, *Fitzh. Nat*. 58 *H*. and there ſaid, that in the regiſter is a writ againſt him. 6 *Rep*. 37 Some books give the reaſon of it to be, becauſe the conuſor, if he commits waſte, may have a *venire facias ad computandum*, and the waſte ſhall be recovered in the debt. *Fitz. Nat*. 58. *b*. (K.) If a man makes a leaſe for years, and puts out the leſſee, and makes a leaſe for life, and the leſſee for years enters upon the leſſee for life, and does waſte, the leſſee for life ſhall not be puniſhed for it 2 *Inſt*. 303. If leſſee for years makes a leaſe of one moiety to *A*. and of the other moiety to *B*. and *A*. does waſte; the action ſhall be againſt both; for the waſte of the one is the waſte of the other. *Brownl*. 38. *Anon'*.

An action of waſte lies againſt a deviſee, and the writ may ſuppoſe it *ex legatione*, for it is within equity of the ſtatute. *Br. Waſte, pl*. 132. If an eſtate of land to be made to baron and feme, to hold to them during the coverture, *&c.* if they waſte, the feoffor ſhall have writ of waſte againſt them. *Lit. ſect*. 381. If feme leſſee for life marries, and the huſband does waſte, action lies againſt both. 2 *Rol. Abr*. 827. And if, in the above caſe, the huſband dies, action of waſte lies againſt the feme for the waſte he committed. *Id. ibid.*

But if tenant in dower marries, and the huſband does waſte and dies, the feme ſhall not be puniſhed for this. *Id. ibid*. Likewiſe, if baron and feme are leſſees for life, and baron does waſte, and dies, the feme ſhall be puniſhed in waſte, if ſhe agrees to the eſtate. *Id. ibid*. 1 *Inſt*. 54. *Kel*. 113. But if ſhe waives the eſtate, ſhe ſhall not be charged. 2 *Roll. Abr*. 827. So upon leaſe for years made to the baron and feme, waſte lies againſt both. *Id. ibid.* And if baron and feme are joint leſſees for years, and baron does waſte, and dies, action of waſte lies for this againſt the feme. *Id. ibid*. Upon leaſe for life, to baron and feme, waſte lies againſt both. *Id. ibid*. Likewiſe, if feme commits waſte, and then marries, the action ſhall be brought againſt both. *Id. ibid*. And the writ may be *Quod fecerunt vaſtum*, or *Quod uxor, dum ſola fuit, fecit vaſtum*. Br. Waſte, pl. 55.

If baron, ſeiſed for life of his wife in right of his wife, does waſte, and after the feme dies, no action of waſte lies againſt the baron in the *tenuit*, becauſe he was ſeiſed only in right of his wife, and the frank-tenement was in the feme. 1 *Inſt*. 54. 5 *Rep*. 75. *b*. But if the baron, poſſeſſed for years in right of the feme, does waſte, and after the feme dies, action of waſte lies againſt the baron, becauſe the law gives the term to him, 1 *Inſt*. 54. See *Godb*. 4, 5. *pl*. 6. *Ow*. 49.

It is proper before we cloſe this diviſion to obſerve, that few caſes, if any, can happen of waſte or injury done to premiſes, but the landlord, or perſon whoſe inheritance, or even who has a longer term in the premiſes, or who is himſelf liable to anſwer over, may maintain *an action on the caſe in nature of an action of waſte*, againſt the perſon committing the injury, for *damages*.

5. *In what caſes in general, waſte may be reſtrained by injunction in equity.*

If a tenant for life plant wood on the land, which is of ſo poiſonous a quality that it deſtroys the principles of ve-

vegetation, without an expreſs power in his leaſe, where it is uſual to have ſuch powers, it may be conſidered as waſte; and the court of Chancery may grant an injunction. 5 *New Abr*. 493. *MSS. Rep*. Marquis of *Powis* v. *Dorall, Canc'*.

If there be leſſee for life, remainder for life, the reverſion or remainder in fee, and the leſſee in poſſeſſion waſte the lands, though he is not puniſhable for waſte by the Common law, by reaſon of the mean remainder for life; yet he ſhall be reſtrained in Chancery, for this is a particular miſchief. *Moor* 554. S. P. 1 *Vern*. 23. S. P.

But if ſuch leſſee has in his leaſe an expreſs clauſe of *without impeachment of waſte*, he ſhall not be injoined in equity. 1 *Vern*. 23.

If *A*. is tenant for life, remainder to *B*. for life, remainder to firſt and other ſons of *B*. in tail male, remainder to *B*. in tail, &c. and *B*. (before the birth of any ſon) brings a bill againſt *A*. to ſtay waſte, and *A*. demurs to this bill, becauſe the plaintiff had no right to the trees, and no one that had the inheritance was party; yet the demurrer will be over-ruled, becauſe waſte is to the damage of the public, and *B*. is to take care of the inheritance for his children, if he has any, and has a particular intereſt himſelf, in caſe he comes to the eſtate. *Darpel* v. *Chapneſs*. 1 *Eq. Caſ. Abr*. 400. See *ibid*. *Cook* v. *Whaley*, and *Carew* v. *Carew*.

It ſeems to be a general principle, that tenant in tail, after poſſibility, ſhall be reſtrained in equity from doing waſte by injunction, &c. becauſe the court will never ſee a man diſinherited; *per* Chan. *Finch*. And he took a diverſity where a man is not puniſhable for waſte, and where he hath a right to do waſte; and cited *Uvedale's* caſe, 24 *Car*. 1. Ruled by lord *Roll*, to warrant that diſtinction. 2 *Show*. 69. *pl*. 53. *Abrahal* v. *Bubb*.

A. deviſed lands, on which timber was growing, to his wife for life, remainder to *B*. in fee, paying ſeveral legacies within a limited time, and in default of payment, the remainder to *C*. he paying the legacies; and on a bill brought by *B*. the court gave him leave to cut timber for the payment of the legacies, though it was oppoſed by the tenant for life and the deviſee over, he making ſatisfaction to the widow for breaking the ground by carriage, waſte, &c. 2 *Vern*. 152. *Claxton* v. *Claxton*. See *ib*. 218. *Aſſimwale* v. *Leigh & al'*.

A leaſe *without impeachment of waſte* takes off all reſtraint from the tenant of doing it; and he may in ſuch caſe pull up or cut down wood or timber, or dig mines, &c. at his pleaſure, and not be liable to any action. *Plowd*. 135. But though the tenant may let the houſes be out of repair, and cut down trees, and convert them to his own uſe; yet where a tenant in fee-ſimple made a leaſe for years without impeachment of waſte, it was adjudged that the leſſor had ſtill ſuch property, that if he cut and carried away the trees, the leſſee could only recove damages in action for the treſpaſs, and not for the trees: Alſo it hath been held, that tenant for life, without impeachment of waſte, if he cuts down trees, is only exempt from an action of waſte, &c. 11 *Rep*. 82. 1 *Inſt*. 220. 2 *Inſt*. 146. 6 *Rep*. 63. *Dyer* 184. And if the words are, to hold without impeachment of waſte, or any writ or action of waſte, the leſſor may ſeize the trees, if the leſſee cuts them down, or bring trover for them. *Wood's Inſt*. 574.

In many caſes, likewiſe, the court of Chancery will reſtrain waſte, though the leaſe, &c. be made without impeachment of waſte. For—the clauſe, of *without impeachment of waſte*, never was extended to allow *the deſtruction of the eſtate itſelf*, but only *to excuſe for permiſſive waſte*, and therefore ſuch a clauſe would not give leave to fell or cut down trees ornamental or ſheltering of a houſe, much leſs to deſtroy or demoliſh a houſe itſelf. See 5 *New Abr*. 495. *MSS. Rep. in Chan*. 1744. *Packington* v. *Packington*, and 2 *Freem. Rep*. 53. *Abraham* v. *Bubb*. Where *A*. on the marriage of his eldeſt ſon, in conſideration of 10,000 *l*. portion, ſettled *(inter alia)* *Raby* caſtle on himſelf for life, without impeachment of waſte, remainder on his ſon for life, and to his firſt and other ſons in tail male; afterwards, having taken ſome diſpleaſure to his ſon, he got two hundred work-men together, and of a ſudden ſtripped the caſtle of the lead, iron, glaſs, doors, and boards, &c. to the value of 3000 *l*. And the court, on the ſon's filing his bill, granted an injunction to ſtay committing waſte in pulling down the caſtle, and, upon hearing the cauſe, not only the injunction to continue, but that the caſtle ſhould be repaired, and put in the ſame condition it was in; and for that purpoſe a commiſſion was to iſſue to aſcertain what ought to be repaired, and a maſter to ſee it done at the charge and expence of the father, and the ſon to have his coſts. 2 *Vern*. 738, 739. 1 *Salk*. 161, S. C. *Vane* v. *Ld. Bernard*. Vide 1 *P. Wil*. 527.

6. *What relief may be given in equity, in caſes of waſte.*

A bill was brought to reſtrain tenant in dower from getting peat; Lord Chancellor diſmiſſed it with coſts, as it appeared to be vexatious; the peat ſhe ſold not being above the value of 10 *d*. But herein it was ſaid, that digging peat is in many places the ordinary boot; and perhaps the only fruit that can riſe from the land. They do not carry away the ſoil, for they dig off the turff, then take away the peat, and lay the turff down again: And the tenant for life can no more dig peat to ſell, than cut down timber to ſell; and the Chancellor ſaid, if he was to give any relief, he muſt direct an iſſue; but that the cauſe was of too frivolous a nature to maintain the expence. 5 *New Abr*. 496. *MSS. Rep*. *Wilſon* v. *Bragg*. 1742. Vide 2 *Vern*. 392. *Hanſon* v. *Derby*.

A. tenant for life, remainder to truſtees to preſerve, &c. remainder to *D*. the plaintiff in tail, remainder over, with power to *A*. with conſent of truſtees, to ſell timber, and the money ariſing to be veſted in lands, &c. to the ſame uſes, &c. *A*. felled timber to the value of 3000 *l*. without conſent of truſtees, who never intermeddled; and *A*. had ſuffered ſome of the houſes to go out of repair, *D*. by bill prayed an account and injunction. The maſter of the rolls ſaid, that the timber might be conſidered under two denominations, to wit, ſuch as was thriving and not fit to be felled; and ſuch as was unthriving, and what a prudent man and good huſband would fell, &c. and ordered the maſter to take an account, &c. and the value of the former, which was waſte, and therefore belongs to the plaintiff, who is next in remainder of the inheritance, is to go to the plaintiff, and the value of the other is to be laid out according to the ſettlement, &c. but as to repairs, the court never interpoſes in caſe of permiſſive waſte, either to prohibit or give ſatisfaction, as it does in caſe of wilful waſte; and where the court hath juriſdiction of the principal, *viz*. the prohibiting, it does in conſequence give relief for waſte done, either by way of account, as for timber felled, or by obliging the party to rebuild, &c. as in caſe of houſes, &c. and mentioned Lord *Bernard's* caſe as to *Raby* Caſtle. 2 *Vern*. 738. But as to repairs, it was objected, that the plaintiff here had no remedy at law by reaſon of the demeſne eſtate for life, to the truſtees, between plaintiff's remainder in tail, and the defendant's eſtate for life, and that therefore equity ought to interpoſe, &c. and that it was a point of conſequence. *Sed non allocatur*. 5 *New Abr*. 496. *MSS. Rep Mich. vac*. 1733. *Caſtlemain* v. *Lord Craven*.

A lord of a manor may bring a bill for an account of ore dug, or timber cut, by the defendant's teſtator. Thus,

A cuſtomary tenant of lands, in which was a copper mine, that never had been opened, opened the ſame, and dug out and ſold great quantities of ore, and died; and his heir continued digging and diſpoſing of great quantities out of the ſame mine. The lord of the manor brought a bill in equity againſt the executor and heir, praying an account of the ſaid ore; and alledged that theſe cuſtomary tenants were as copyhold tenants, and that the freehold was in the plaintiff as lord of the manor and owner of the ſoil; and that the manner of paſſing the premiſſes, was, by ſurrender, into the hands of the lord to the uſe of the ſurrendree. It was inſiſted for the defendants, that it did not appear, that the admittance in this caſe was to hold *ad voluntatem domini ſecundum conſuetudinem*, &c. without which words, it was inſiſted, that there could be no copyhold, as had been adjudged in Lord Ch.

Juſt. *Holt*'s time. And Lord Chan. *Cowper* ſaid it would be a reproach to equity to ſay, that where a man has taken another's property, as ore, or timber, and diſpoſed of it in his life-time, and dies, there ſhould be no remedy. *P. Wil. Rep* 406. *pl.* 112. *Biſhop of Wincheſter* v. *Knight.* Vide *Fin. Rep.* 135. *Wild* v. *Sir Edw. Stradling.* 2 *Vern.* 263. *pl.* 247.

One ſeized in fee of lands in which there were mines, all of them unopened, by a deed conveyed thoſe lands, and all mines, waters, trees, *&c.* to truſtees and their heirs, to the uſe of the grantor for life, (who ſoon after died) remainder to the uſe of *A.* for life, remainder to his firſt, *&c* ſon in tail male ſucceſſively, remainder to *B.* for life, remainder to his firſt, *&c.* ſon in tail male ſucceſſively, remainder to his two ſiſters *C.* and *D.* and the heirs of their bodies, remainder to the grantor in fee. *A.* and *B.* had no ſons, and *C.* one of the ſiſters died without iſſue, by which the heir of the grantor, as to one moiety of the premiſſes, had the firſt eſtate of inheritance: *A.* having cut down timber and ſold it, and threatned to open the mines; the heir of the grantor, being ſeiſed of one moiety *ut ſupra*, by the death of one of the ſiſters without iſſue, brought his bill for an account of the moiety of the timber, and to ſtay *A.*'s opening of any mine: And it was adjudged the right of this timber belongs to thoſe, who at the time of its being ſevered from the freehold, were ſeiſed of the firſt eſtate of inheritance, and the property becomes veſted in them. 2 *P. Wil.* 240. *Whitfield* v. *Bewit.*

A bill was brought againſt the executors of a jointreſs, to have a ſatisfaction out of aſſets for permiſſive waſte upon the jointure of the teſtatrix, *&c.* But by *Cowper* J. the bill muſt be diſmiſſed, for here is no covenant that the jointreſs ſhall keep the jointure in good repair; and in the common caſe, without ſome particular circumſtances, there is no remedy in law or equity for permiſſive waſte after the death of the particular tenant. *Vin. Abr.* tit. *Waſte, p.* 523. cites *MSS. Rep.* 1 *Geo.* 1. *in Canc'. Turner* v. *Buck.*

It has been ſaid in equity, that remainder-man for life ſhall, in waſte, recover damages in proportion to the wrong done to the inheritance, and not in proportion only to his own eſtate for life. 1 *Vern.* 158. *Brown* v. *Brown.*

A. being tenant for ninety-nine years, if he ſhould ſo long live, with truſtees to preſerve remainder to his firſt and other ſons in tail, remainder to *B.* in tail. *A.* and *B.* before iſſue born of *A.* fell timber. The eldeſt ſon of *A.* afterwards brings his bill, for an account and ſatisfaction of the timber againſt *B. Per* Lord Chan. Plaintiff has no remedy at *law* either in his own name, or in the name of his truſtees. *A.* if he had not conſented to it, ſhould have brought treſpaſs; for tenant for years is conſidered as a fiduciary for remainder-man or his leſſor. If *A.* had an eſtate for life, and no limitation to truſtees, the plaintiff could have had no remedy; becauſe tenant for life might have barred, or ſurrendered the whole eſtate to the remainder-man: But here the freehold was in the truſtees; and the poſſeſſion of leſſee for years is in law the poſſeſſion of the owner of the freehold. The truſtees however could not here have maintained waſte, becauſe the Common law gave no action of waſte, but to the owner of the inheritance; and the ſtatute of *Glouceſter* gives the writ to the ſame perſon; but the truſtees are in no other condition than remainder-man for life. Truſtees may bring a bill in equity to ſtay waſte, before the contingent remainder comes in *eſſe.* If the truſtees had brought ſuch a bill, the court, as to trees actually cut, would have obliged them to have made ſatisfaction in money, to have been ſecured to attend the contingent uſes. Where there is tenant for life or years ſubject to waſte, and timber is blown down, the owner of the firſt remainder in tail veſted, ſhall have it; for the Common law conſiders an eſtate in contingence as no eſtate; and when the tree is ſevered the property veſts in ſomebody. If there be tenant for life, remainder for life, remainder in fee, remainder-man can have no action for waſte, becauſe plaintiff muſt recover the place waſted, which would be injuſtice to the remainder over; but ſuch a remainder-man of the inheritance after the intervening eſtate may have trover for the trees, and if remainder-man for life dies in the life of remainder-man in fee, he may bring waſte.—Though an injunction is a proper remedy, yet it has never been determined that a bill for an account cannot be maintained afterwards: And though a recovery was ſuffered after waſte done, it was to the uſe of plaintiff and his heirs, which is no new uſe, and ought not to bar waſte in equity. It is true, action of waſte dies with the perſon, but though waſte will not lie at law, as the perſon committing is dead, yet *he may have relief in this court.* It has been held in all caſes of fraud, the remedy never dies with the perſon, but relief may be had againſt the executor out of aſſets; and this court will follow the aſſets of the party liable to the demand; and colluſion in this court is the ſame as fraud. Decreed *a ſatisfaction to be made to the plaintiff for the value of the timber,* as he is now tenant in fee of the eſtate; but would not give any intereſt, as that would be carrying it too far. 5 *New Abr.* 499. *Garth* v. *Cotton.*

See as to *waſte* generally, *Black. Com.* 2 *V.* 281. 3 *V.* 223. *How prevented in equity,* Id. 3 V. 438. *Impeachment* of *waſte,* Id. 2 V. 283. As to *waſte* of *lands,* Id. 2 V. 14, 91. and as to the *writ* of *waſte,* Id. 3 V. 227. *For more learning on this ſubject, ſee* 5 New Abr. *and* 22 Vin. Abr. *tit.* Waſte. See the cloſe of *Div.* 5.

7. *Of the proceſs,* &c. *in waſte*

The proceſs incident to action of *waſte,* is firſt a writ of *ſummons* made by the curſitor of the county where the land lies, and on the return of this writ the defendant may *eſſoin,* and the plaintiff *adjourn, &c.* Then a *pone* is to be made out by the filazer of the county, on the return of which a *diſtringas* iſſues for the defendant to appear, and upon his appearing the plaintiff declares, and the defendant pleads, *&c.* Or, if the defendant makes default, a writ of enquiry goes to the ſheriff to enquire by the oath of twelve jurors what damage the plaintiff hath ſuſtained, and then the party hath judgment to recover the treble of it; alſo, after judgment entered, a *writ of ſeiſin* is awarded to the ſheriff to give poſſeſſion to the plaintiff of the place waſted. *Comp. Attorn.* 250, 251, 258, 259. And a plaintiff ſhall have coſts in all actions of *waſte,* where the damages found do not exceed twenty nobles, which he could not by the Common law. *Stat.* 8 *&* 9 *W.* 3. *c.* 11.

A common writ of *waſte* is of this form, GEORGE *the Third,* &c. *To the ſheriff of* S. *greeting: If* A. B. *ſhall ſecure you,* &c. *then ſummon by good ſummoners* C. D. *that he be before our juſtices,* &c. *to ſhew wherefore, whereas by the common council of this kingdom of* England, *it is provided, that it ſhall not be lawful for any man to commit waſte, ſpoil, or deſtruction in lands, houſes, woods or gardens to him demiſed for term of life or years; the ſaid* C. *in a houſe, lands and woods at* W. *which he holds for the term of his life, of the demiſe of the ſaid* A. *hath made* waſte, *ſpoil, and deſtruction, to the diſinheriting of him the ſaid* A. *and againſt the form of the proviſion aforeſaid,* &c. See *Supra.*

Waſtel-Bowl, (From the Sax. *Waſ-heal,* i. e. Health be to you) A large ſilver cup or bowl, wherein the *Saxons,* at their entertainments, drank a health to one another, in the phraſe of *waſs-heal:* And this *waſtel* or *waſs-heal bowl,* was ſet at the upper end of the table in religious houſes for the uſe of the *Abbot,* who began the health or *poculum charitatis* to ſtrangers, or to his fraternity. Hence cakes and fine white bread, which were uſually ſopped in the *waſtel bowl,* were called *Waſtel Bread.* Mat. Paris, 141.

Waſtors, Were a kind of thieves ſo called; mentioned among robbers, draw-latches, *&c. Stat.* 4 *Hen.* 4. *c.* 27.

Watch, Is to ſtand ſentry or attend as a guard, *&c.* And *watching* is properly for the apprehending of rogues in the night, as *warding* is for the day; and for default of *watch* and *ward* the townſhip may be puniſhed. In all towns, *&c.* between the day of *Aſcenſion* and *Michaelmas-day, night-watches* are to be kept, in every city with ſix men at every gate; and ſix or four in towns; and every borough ſhall have twelve men to *watch*, or according to the number of the inhabitants of the place, from ſun-ſetting to ſun-riſing; who are to arreſt ſtrangers ſuſpected, and may make hue and cry after them, and juſtify the detaining them until the morning: And *watches* ſhall be kept on the ſea-coaſts, as they have been wont to be. *Stat.* 13 *Ed.* 1. *c.* 4. 5 *Hen.* 4. *c.* 3.

Every juſtice of peace may cauſe theſe *night-watches* to be duly kept; which is to be compoſed of men of able bodies, and ſufficiently weaponed: And none but inhabitants in the ſame town are compellable to *watch*, who are bound to keep it in turn; or to find other ſufficient perſons for them, or, on refuſal, are indictable, *&c.* *Co. Lit.* 70. *Cro. Eliz.* 204.

By the following ſtatute, the *watch* of St. *James's* pariſh and *Hanover-Square* are regulated; the veſtry to chuſe a ſufficient number of *watchmen*, and one beadle for each ward, and appoint ſtands, and what wages or allowances ſhall be made them; and may make orders for their better government, *&c.* The *watchmen* ſhall apprehend all rogues, vagabonds, and other diſturbers of the peace, and deliver them to the conſtable of the night, in order to be carried before a juſtice, *&c.* Veſtries may aſſeſs houſes to defray the charge of *watchmen* and beadles, not exceeding 4*d.* in the pound of yearly value, and collectors to account, *&c.* *Stat.* 8 *Geo.* 2. *c.* 15. The like particular acts, for regulating the *nightly watch* in the pariſhes of St. *Martin* in the Fields, St. *Paul Covent-Garden*, St. *Margaret*, and St. *John* the Evangeliſt, and St. *Anne*, within the liberties of *Weſtminſter*; alſo conſtables ſhall, twice or oftener every night, go about their pariſhes, and with the *watchmen* uſe endeavours to prevent fires, murders, and robberies, *&c.* and to that end apprehend malefactors, ſuſpected perſons, *&c.* 9 *Geo.* 2. *c.* 8, 13, 17, & 19. The *watch* of the pariſh of St. *Andrew Holborn*, in the County of *Middleſex*, to be under the ſame regulation, by *Stat.* 10 *Geo.* 2. *c.* 25. *Watchmen* in the city of *London*, ſee *Conſtables of London*.

Perſons aggrieved by aſſeſſments for watch and ward may appeal to the Mayor, *&c.* 11 *Geo.* 1. *c.* 18. *ſ.* 13.

Watches, Made by artificers, are to have the makers names, *&c.* under the penalty of 20*l.* *Stat.* 9 & 10 *W.* 3. *c.* 28.

Water, In which are included *navigable* rivers and ſtreams, the ſtatutes relating to, Vide *Rivers*.

Water-Bailiff, An officer in *port-towns*, for the ſearching of ſhips. Alſo in the city of *London*, there is a *water-bailiff* who hath the ſuperviſing and ſearch of fiſh brought thither; and the gathering of the toll ariſing from the *Thames*: And he attends on the *Lord Mayor*, having the principal care of marſhalling the gueſts at his table; and arreſts men for debt, or other perſonal or criminal matters upon the river of *Thames*. 28 H. 6. c. 5.

Water-courſe. A water-courſe does not begin by preſcription, nor yet by aſſent, but begins *ex jure naturæ* having taken this courſe naturally, and cannot be diverted. *Per Whitlock* J. 3 *Bulſt.* 340. in caſe of *Surry* v. *Piggot*.

Action on the caſe lies for diverting a water-courſe to my prejudice. See *Action on the caſe*, and *Het.* 32. *Skin.* 316, 389. 5 *Mod.* 206. and 22 *Vin. Abr.* 525, 528.

Water-gage, A ſea wall or bank, to reſtrain the current and overflowing of the *water*: And it ſignifies an inſtrument to *gauge* or meaſure the quantity or deepneſs of any *waters*.

Water-gang, *Watergangium)* Is a *Saxon* word for a trench or courſe to carry a ſtream of *water*; ſuch as are commonly made to drain *water* out of marſhes. *Ordin. Nariſc. de Romn. Chart.* *H.* 3.

Water-gavel, Was a rent paid for fiſhing in, or other benefit received from, ſome river. *Chart.* 15 *Hen.* 3.

Water-meaſure, Is greater than *Wincheſter meaſure*, and uſed for ſelling of *coals* in the pool, *&c.* mentioned in the *Stat.* 22 *Car.* 2. *c.* 11.

Watermen. The Lord Mayor and court of aldermen in *London*, have a great power in the government of the *Company of Watermen*, and appointing the fares for plying on the *Thames*; and the juſtices of peace for *Middleſex*, and other adjoining counties, have likewiſe authority to hear and determine offences, *&c.* *Watermens* names are to be regiſtered; and their boats be twelve feet and a half long, and four feet and half broad, or be liable to forfeiture: And *watermen* taking more than according to the fares aſſeſſed, ſhall forfeit 40 *s.* and ſuffer half a year's impriſonment; and refuſing to carry perſons for their fare, be impriſoned for twelve months: Alſo none ſhall ply on the river, but ſuch as have been apprentices to *watermen* for ſeven years, *&c.* *Stat.* 2 & 3 *P.* & *M.* *c.* 16. 29 *Car.* 2. *c.* 7. The *lightermen* on the *Thames*, and *watermen* are made a company; and the Lord Mayor and Aldermen are yearly to elect eight of the beſt *watermen*, and three of the beſt *lightermen*, to be overſeers and rulers; and the *watermen* to chuſe aſſiſtants at the principal ſtairs, for preſerving good government; and the rulers and aſſiſtants may make rules to be obſerved under penalties, *&c.* The rulers, on their court-days, ſhall appoint forty *watermen* to ply on *Sundays*, for carrying paſſengers croſs the river; and pay them for their labour, and apply the overplus of the money to the poor decayed *watermen*: And where perſons travel on a *Sunday* with boats, they are to be licenſed and allowed by a juſtice, on pain of forfeiting 5 *s.* 11 & 12 *W.* 3. *c.* 21. No perſon working any wherry boats, or barges, on the river *Thames*, ſhall take an apprentice or ſervant, but ſuch *watermen* as are houſekeepers, *&c.* on pain of 10 *l.* And no apprentice ſhall take upon him the care of any boat, till he is ſixteen years of age, if a *waterman's* ſon; and ſeventeen, if a landſman's; unleſs he hath worked with ſome able *waterman* for two years, under the penalty of 10 *s.* And if any perſon, not having ſerved ſeven years to a *waterman*, &c. row any boat on the ſame river for hire, he ſhall forfeit 10 *l.* But gardeners boats, dung-boats, fiſhermen, wood-lighters, weſtern barges, *&c.* are excepted. The penalties to be levied by diſtreſs, for want of which the Lord Mayor, or a juſtice of peace may commit the offenders to the houſe of correction for any time not exceeding a month, nor leſs than 14 days, *&c.* *Stat.* 2 *Geo.* 2. *c.* 26. *Watermen* uſing boats, *&c.* upon the *Thames*, are not to take any apprentice under 14 years old, who ſhall be bound for ſeven years, and inrolled in the book of the *watermens* company, on pain of 10 *l.* And no more than two apprentices to be taken at one time, when the firſt hath ſerved four years, under the like penalty. No tilt-boat, row-barge, *&c.* ſhall take in above thirty-ſeven paſſengers, and three more by the way: nor any other boat above eight paſſengers, and two by the way, on forfeiture of 5 *l.* for the firſt offence, and 10 *l.* for the ſecond, *&c.* And in caſe any perſon be drowned, where a greater number is taken in, the *watermen* to be guilty of felony, and tranſported: Alſo tilt-boats uſed between *London-Bridge* and *Graveſend* ſhall be 15 tuns, and not under, and the other boats 3 tuns. And rulers of the company of *watermen* are to appoint two officers, one at *Billingſgate* at high water, and another at *Graveſend*, to ring a bell for the tilt-boats, *&c.* to put off; and they not immediately proceeding in their voyage with two ſufficient men, ſhall forfeit 5 *l.* leviable on their boats, tackle, *&c.* Perſons navigating flat-bottomed boats or barges, not ſubject to the penalties of the act 10 *Geo. c.* 31. The *fares of watermen* aſſeſſed by the court of aldermen, are from *London-Bridge* to *Limehouſe*, *Ratcliff-Croſs*, *&c.* Oars 1 *s.* Skullers 6 *d.* *Wapping* dock, *Rotherhith* church ſtairs, *&c.* Oars 6 *d.* and ſkullers 3 *d.* From either ſide of the water above the *Bridge* to *Lambeth* and *Vaux-hall*, oars 1 *s.* ſkullers 6 *d.* All the ſtairs between *London Bridge* and *Weſtminſter*, oars 6 *d.* and ſkullers 3 *d.*

Water-Ordeal, A way of purgation uſed by the *Saxons*. See *Ordeal*, and *Black. Com.* 4 *V.* 336.

Waterſcape, (From the Sax. *Waeter*, *Aqua*, & Schap, *ductus*) An aqueduct, or paſſage for *water*.

Watling-ſtreet, Is one of thoſe *four ways* which the *Romans* are ſaid to have made here, and called them *Conſulares*, *Prætorias*, *Militares* & *Publicas*. This *ſtreet* is otherwiſe called *Werlam ſtreet*. *Et ſtrata quam filii Wethe regis ab orientali mari uſque ad occidentale per Angliam ſtraverunt.* R. Hov. f. 248. a. n. 10. This *ſtreet* leads from *Dover* to *London*, *St. Albans*, *Dunſtable*, *Towerceſter*, *Atherſton*, and the *Severn*, near the *Wrekin* in *Shropſhire*, extending itſelf to *Angleſey* in *Wales*. Anno 39 El. c. 2.

The *ſecond* is called *Ikenild-ſtreet*, ſo called *ab Icenis*, ſtretching from *Southampton* over the river *Iſis*, at *Newbridge*; thence by *Cambden* and *Litchfield*; then it paſſeth the river *Derwent* by *Derby*, ſo to *Bolſeover* caſtle, and ends at *Tinmouth*.

The *third* was called *The Foſſe*, becauſe in ſome places it was never perfected, but lies as a large ditch, leading from *Cornwall* through *Devonſhire*, by *Tethbury*, near *Stow in the Wolds*, and beſides *Coventry* to *Leiceſter*, *Newark*, and ſo to *Lincoln*.

The *fourth* was called *Ermine* or *Erminage-ſtreet*, beginning at St. *David's* in *Weſt Wales*, and going to *Southampton*. See the laws of *Edward the Confeſſor*, whereby theſe four publick ways had the privilege of *Pax Regis*. See *Hollingſhed's Chron. vol.* 1. *cap.* 19. and *Henry* of *Huntingdon*, *lib.* 1. *in principio*. And in *Leg. Will.* 1. *c.* 30. there are three ways mentioned; but *Ikenild-ſtreet* is omitted, which was called *Iknild* from the *Iceni*, and *ſtreat*, which ſignifies a way. See an old deſcription of theſe ways, made by *Robert* of *Glouceſter*. *Dug. Antiq. of Warw. p.* 6. Cowell.

Wadeſon, Is uſed for ſuch goods as after ſhipwreck do appear ſwimming upon the *waves*. Chart. 18 Hen. 8. See *Jetſon*.

Wax-chandlers. Juſtices of peace ſhall examine the goodneſs of *wax-candles*; and *chandlers* are to take but 3 *d.* a pound for the *candles*, *&c.* more than the common price of the *wax*, on pain of forfeiture and to be fined by the juſtices, *&c. Stat.* 11 *H.* 6. *c.* 12. *Wax-chandlers* mixing with their *wax*, tallow or other deceitful ſtuff, ſhall forfeit the *candles*; and they are to have ſtamps or marks, which ſhall not be counterfeited, under penalties, *&c.* 23 *Eliz. c.* 8.

Waxſcot, (*Ceragium*) A duty anciently paid twice a year towards the charge of *wax candles in churches*.——*Tributum quod in eccleſiis, pendebatur ad ſubminiſtrationem ceræ & luminarium*. Spelm.

Way, *(Via,)* A paſſage, ſtreet, or road. *Litt.* And where a man has a *way* to his cloſe, he cannot go further without a preſcription; but it is held if he go to a mill or bridge, it may be otherwiſe. 1 *Ld. Raym.* 75. See *Highway*.

See farther *Black Com.* 2 *V.* 35. And as to diſturbance of a way, ſee *Action on the Caſe*, and *Black. Com.* 3 *V.* 241.

Ways and means, *Committee of.* When the Commons of *Great Britain*, in parliament aſſembled, have voted a *ſupply* to his Majeſty, and ſettled the *quantum* of that ſupply, they uſually reſolve themſelves into what is called a committee of ways and means, to conſider of ways and means to raiſe that ſupply ſo voted. See *Black. Com.* 1 *V.* 307, 308.

Weald or **Wald**, In the beginning of names of places, ſignifies a ſituation near wood, from the Sax. *Weald*, *i. e.* a wood: And the woody parts of the counties of *Kent* and *Suſſex*, are called the *Wealds*; though miſprinted *wildes* in the ſtatute 13 & 14 *Car.* 2. *c.* 6.

Wealreaf, (From the Sax. *Weal*, i. e. *Strages*, & Reaf, *Spoliatio*) Is the robbing of a dead man in his grave. *Leg. Ethelred. cap.* 21.

Wear, A great dam made a-croſs a river, accommodated for the taking of fiſh, or to convey a ſtream to a mill. And all *wears*, for the taking of fiſh, are to be put down, except on the ſea-coaſts, by the ſtatutes 9 *H.* 3. *c.* 23. and 25 *Ed.* 3. *c.* 4. Alſo commiſſions ſhall be granted to juſtices, to keep the waters, ſurvey *wears* and mills, and to inquire of and correct abuſes; and where it is found by them that any new *wears* are made, or others altered to the nuſance of the publick, the ſheriff by *ſcire facias* is to give the perſon making them notice of it; and if he do not amend the ſame in three months, he ſhall forfeit 100 marks, *&c. Stat.* 1 & 4 *H. c.* 12. 4 *H.* 4. *c.* 11 & 12 *Ed.* 4. *c.* 7.

Weavers. Perſons uſing the trade of a *weaver*, ſhall not keep a cucking or fulling-mill, or uſe dying, *&c.* Or have above two looms in a houſe, in any corporation or market-town, on pain of forfeiting 20 *s.* a week: And ſhall ſerve an apprenticeſhip of ſeven years to a *weaver* or clothier, or ſhall forfeit 20 *l. &c. Stat.* 2 & 3 *P.* & *M. c.* 11.

Wed, (*Sax.*) A covenant or agreement; whence to *wedd*, a *wedded* huſband, *wedded* bond-ſlave. *Cowell.*

Wedbedrip, the cuſtumary ſervice which inferior tenants paid to their lord in cutting down their corn, or doing other harveſt duties. From the *Sax. Wed*, a covenant or agreement (whence to *wedd*, *wedding*, a *wedded* huſband, a *wedded* bond-ſlave, *&c.* and *Biddan* to pray or deſire, and *rippan* to reap or mow. As a covenant of the tenant to reap for the lord at the time of his bidding or commanding. *Paroch. Antiq.* 401. *Cowell.*

Week, (*Septimana*) Seven days of time; four of which *weeks* make a month, *&c.* And the *week* was originally divided into ſeven days, according to the number of the ſeven *planets*. Skene.

Weigh, (*Waga*) Is a weigh of *cheeſe* or *wool*, containing two hundred and fifty-ſix pounds; and in *Eſſex* the weigh of *cheeſe* is three hundred pounds. A *weigh* of *barley* or *malt* is ſix quarters, or forty-eight buſhels: And we read of a *weigh* of *ſalt*, *&c.* 9 H. 6. c. 8.

Weights, *(Pondera)* and *Meaſures*, Are uſed between buyers and ſellers of goods and merchandiſe, for reducing the quantity and price to a certainty, that there may be the leſs room for deceit and impoſition. There are two ſorts of *weights* in uſe with us, *viz. Troy-weight* and *Averdupois*: *Troy-weight* contains twelve ounces to the pound, and no more; by which are weighed gold, ſilver, pearl, jewels, medicines, ſilk, wheat-bread, *&c.* and *Averdupois* contains ſixteen ounces in the pound, by which grocery wares, copper, iron, lead, fleſh, cheeſe, butter, tallow, hemp, wool, *&c.* are weighed: and here twelve pounds over are allowed to every hundred, ſo as one hundred and twelve pounds make the hundred weight. *Dalt.* 248.

In the compoſition of *Troy-weight*, twenty pennyweights make an ounce, twenty-four grains a pennyweight, twenty mites a grain, twenty-four droits a mite, twenty perits a droit, and twenty four blanks a perit: And the *Troy-weight* is ſaid to be 20 *s.* ſterling in the pound; and the *Averdupois weight* 25 *s.* ſterling. 4 *Shep. Abr.* 194.

Fleta mentions a weight, called a *Trone-weight*, being the ſame with what we now call *Troy-weight*; and, according to the ſame author, all our *weights* have their compoſition from the penny *ſterling*, which ought to weigh thirty-two wheat-corns of the middle ſort; twenty of which pence make an ounce, and twelve ſuch ounces a pound; but fifteen ounces make the merchants pound. *Fleta, lib.* 2. *c.* 12.

By *Magna Charta*, 9 *H.* 3. *c.* 25. 14 *Ed.* 3. *c.* 12. 25 *Ed.* 3. *c.* 10. 27 *Ed.* 3. *&c.* There is to be but one weight, *&c.* throughout the kingdom; but this is to be underſtood of the ſame *ſpecies of goods*, otherwiſe the *Troy* and *Averdupois* weights would not be permitted. Every city, borough, and town, ſhall have a common balance, with common weights ſealed; on pain of 10 *l.* in the city, 5 *l.* the borough, and 40 *s.* the town. 8 *H.* 6. *c.* 5. But only cities and market-towns are injoined to have common balances, weights and meaſures, by 11 *H.* 7. *c.* 4. And by this ſtatute, weights are to be marked by the chief officers of places, and ſealed, *&c.* Refuſing or delaying to do it, is liable to a penalty of 40 *s.* And allowing weights not agreeable to the ſtandard, incurs a forfeiture of 5 *l. &c.*

And the mayors and ſuch officers are once a year to view all weights and meaſures, and burn and deſtroy thoſe which are defective; alſo fine the offenders, *&c.* And two juſtices of peace have power to hear and determine the defaults of mayors. See the ſtatutes 17 *Car.* 1. *c.* 19. 22 *Car.* 2. *c.* 8. *&c.* and *vide* Meaſure.

Weights of Auncel, mentioned in ſtat. 14 *Ed.* 3. *ſt.* 1. *c.* 12. See *Auncel-weight*.

Wend, (*Wendus, i. e. Perambulatio*, from the Sax. *Wendam*) Signifies a certain quantity or circuit of ground. *Rental. Regal. Maner. de Wye, pag.* 31.

Were, (Sax. *Wera*) Is the ſum paid in ancient time for killing a man, when ſuch crimes were puniſhed with pecuniary mulcts, not death: Or it is *pretium redemptionis* of the offender. *Leg. Ed. Conf. cap.* 11.

Wereláda, (From the Sax. *Were*, i. e. *Pretium Capitis Hominis Occiſi*, *&* Ladian *purgare*) Was where a man was ſlain, and the price at which he was valued not paid to his relations; but the party denied the fact; when he was to purge himſelf by the oaths of ſeveral perſons, according to his degree and quality, which was called *Werelada*. *Leg. H.* 1. *c.* 12.

Wergild, Weregild, *(Wergildus)* The price of *homicide*; paid partly to the King for the loſs of a ſubject, partly to the lord whoſe vaſſal he was, and partly to the next of kin of the perſon ſlain. *LL. H.* 1. See *Black. Com.* 4 *V.* 188, 308, 406.

Weſt-Saxonlage, Was the law of the *Weſt-Saxons*. See *Merchenlage*, and *Black. Com.* 1 *V.* 65. 4 *V.* 405.

Weſtminſter, *(Weſtmonaſterium*, Sax. *Weſt-mynſter*, i. e. *Occidentale Monaſterium)* The ancient ſeat of our Kings; and is now the well known place where the High Court of Parliament, and courts of judicature ſit: It had great privileges granted by *Pope Nicholas*; among others, *Ut amplius in perpetuum Regiæ conſtitutionis locus ſit atque repoſitorium regalium inſignium.* 4 Inſt. 255. By the *Stat.* 22 *Geo.* 2. *c.* 49. A free market is to be erected for the ſale of fiſh in the city of *Weſtminſter*.

Weſtmony and Iſeland, Fiſhing veſſels not to proceed thither till the 10th of *March*, 15 *Car.* 2. *c.* 15.

Whales, And *Sturgeon*, vide *Regal Fiſhes*, and *Black. Com.* 1 *V.* 223.

Whale-Fiſhing, In the northern ſeas, *&c.* See *Fiſh*, and *Fiſhing*, and *Greenland*.

Wharf, *(Wharfa)* A broad plain place, near ſome creek or haven, to lay goods and wares on that are brought to or from the water. 12 *Car.* 2. *c.* 4.

Wharfage, *(Wharfagium)* Is money paid for landing of goods at a *wharf*, or for ſhiping and taking goods into a boat or barge from thence: It is mentioned in the ſtatutes 17 *H.* 8. *c.* 26. and 22 *Car.* 2. *c.* 11.

Wharfs. By ſtatutes 1 *Eliz. c.* 11. and 13 *&* 14 *Car.* 2. *c.* 11. *ſect.* 14. the crown is enabled by commiſſion to aſcertain the limits of all ports, and to aſſign proper *wharfs* and quays in each port, for the excluſive landing and loading of merchandize. *Vide* the Statutes.

Wharfinger, Is he that owns or keeps a *wharf*. 12 *Car.* 2. and 22 *Car.* 2. And *wharfingers* commonly keep boats or lighters of their own, for the carrying out and bringing in of goods, in which if a loſs or damage happens, they may in ſome caſes be made anſwerable. *Lex Mercat.* 133. *Qu.* If not in all caſes, where they have a reward?

Wheelage, *(Rotagium) Tributum eſt quod rotarum nomine penditur; hoc eſt, pro plauſtris & carris tranſeuntibus.* Spelm.

Wherlicotes, The ancient *Britiſh* chariots, that were uſed by perſons of quality before the invention of coaches. *Stow's Surv. Lond. pag.* 70.

Whiniard, A ſword, from the Sax. *Winn. i. e.* to get, and *Are* honour; becauſe honour is gained by the ſword.

Whipping, A puniſhment inflicted for many of the ſmaller offences.

White-Aſhes. None ſhall ſhip, lade, or convey away any *white-aſhes*, to parts beyond ſea, under the penalty of 6 *s.* 8 *d.* a buſhel. *Stat.* 2 *&* 3 *Ed.* 6. *cap.* 6.

Whitehart-Silver, Is a mulct on certain lands in or near the foreſt of *Whitehart*, paid yearly into the *Exchequer* impoſed by King *Hen.* 3. upon *Thomas de la Linde*, for killing a beautiful *white hart* which that King before had ſpared in hunting. *Camb. Brit.* 150.

White-meats, Are milk, butter, cheeſe, eggs, and any compoſition of them, which before the reformation were forbid in *Lent* as well as fleſh, till King *Hen.* 8. publiſhed a proclamation allowing the eating of *white-meats* in *Lent*. *Anno* 1543.

White-Rent, A duty or rent payable by the *tinners* in *Devonſhire* to the Duke of *Cornwall*. See *Quit-Rent*.

White-Rents. Payments or chief rents reſerved in ſilver or white money, called *white-rents* or *blanch-farms*, *reditus albi*; in contradiction to rents reſerved in work, grain, *&c.* *Black. Com.* 2 *V.* 42. See *Alba firma*.

White-ſpurs, A kind of Eſquires called by this name.

Whitſontide, The feaſt of *Pentecoſte*, being the fiftieth day after *Eaſter*: And is ſo called, ſaith *Blount*, becauſe thoſe who were newly baptized came to the church between *Eaſter* and *Pentecoſte* in *white* garments. *Blount's Dict.*

Whitſon-farthings, Mentioned in letters patent of King *Hen.* 8. to the Dean of *Worceſter*. See *Pentecoſtals*.

White-ſtraits, A kind of coarſe cloth in *Devonſhire*, about a yard and half a quarter broad, raw, mentioned in *Stat.* 5 *H.* 8. *c.* 2.

Whole-blood. A kinſman of the whole blood is he that is derived, not only from the ſame anceſtor, but from the ſame couple of anceſtors. See *Black. Com.* 2 *V.* 227.

Wic, A place on the ſea-ſhore, on the bank of a river. 1 *Inſt.* 4. But it more properly ſignifies a town, village, or dwelling place; and it is often in the *Saxon* language made a termination to the name of the town, which had a complete name without it, as *Lunden-wic*, i. e. *London town*; ſo *Ipſwich* is written in ſome old charters *Villo de Gippo Wico*, which is the ſame thing, for *Gipps* is the name, and *Gipps Wic* is *Gipps Town*.

Wica, A country houſe or farm, and there are many ſuch houſes now called the *Wick* and the *Wike*. Cartular Abbat. Glaſton. pag. 29.

Wichencrif, A *Saxon* word for *witchcraft*, which occurs in the laws of K. *Canut, cap.* 27.

Widow, *(Vidua, Relicta)* A married woman bereft of her huſband, left all alone. *Litt.* The *widow* of a freeman of *London*, may uſe her huſband's trade, ſo long as ſhe continues a *widow*. Chart. K. Cha. I.

Widows-Chamber. In *London* the widow of a freeman, is, by the cuſtom of the city, intitled to her apparel, and the furniture of her bed-chamber, called the Widow's Chamber.

Widow of the King, *(Vidua Regis)* Was ſhe that after her huſband's death, being the King's tenant *in capite*, could not marry again without the King's conſent. *Staundf. Prærog. cap.* 4. *Stat.* 17 *Edw.* 2. and 32 *H.* 8. *cap.* 46.

Widowhood, *(Viduitas)* The ſtate and condition of a widow.——*Sciant quod ego Margeria de R. in* viduitate *& legitima poteſtate mea, remiſi, relaxavi, &c.* Dat. apud, &c. Ann. 9 Hen. 4.

Wife, *(Uxor)* Is a woman married; and after marriage the will of the *wife*, in judgment of law, is ſubject to the will of the huſband; and it is ſaid a *wife* hath no will, *ſed fulget radiis mariti.* Plowd. 344. A *wife* cannot contract for any thing; or bring actions, *&c.* without her huſband. See *Baron and Feme*.

Wigreve, (From the Sax *Wig.* i. e. *Sylva*, and *Greve*, *Præpoſitus)* The overſeer of a wood. *Spelm.*

Wight Iſland, Was anciently called *Guith* by the *Britains*: whence it had many other names, as *Icta*, *Wotha*, &c. *Law Lat. Dict.* See *Stat.* 4 *Hen.* 7. *c.* 16,

Wild-fowl, Are not to be deſtroyed by nets or otherwiſe, nor their eggs taken, under divers penalties by *Stat.* 25 *Hen.* 8. *c.* 11. 1 *Jac.* 1. *c.* 17. 9 *Ann. c.* 25. Vide *Game*.

Will, *Defect of.* An involuntary act, as it hath no claim to merit, ſo neither can it induce any *guilt*: The concurrence of the will, when it hath its choice either to do, or to avoid, the fact in queſtion, being the only thing that renders human actions either praiſe-worthy or culpable. See *Black. Com.* 4 *V.* 20. 21. But note, treſpaſs will lie for an accidental hurt. Yet ſuch actions now, meet with little or no encouragement.

Will, *Eſtates at.* An eſtate at will is where lands or tenements are let by one man to another, to have and to hold at the will of the leſſor; and the tenant by virtue of this leaſe obtains poſſeſſion, Every eſtate at will is at the will of both parties, landlord and tenant, ſo that either of them may determine his will, and quit his connections with the other at his own pleaſure. Note, if tenant at will ſows his lands, and the landlord before the corn is reaped, puts him out, yet the tenant ſhall have the emblements and free ingreſs, egreſs, and regreſs, to cut and carry away the profits. See *Black. Com.* 2 *V.* 145, 146. A tenancy at will is now ſeldom known.

Will of the Lord. Though in general copyholders are ſtill ſaid to hold their eſtates at the will of the lord, yet it is ſuch a will as is agreeable to the cuſtom of the manor; which cuſtoms are preſerved and evidenced by the rolls of the ſeveral courts baron in which they are entered or kept on foot by the conſtant immemorial uſage of the ſeveral manors in which the lands lie. See *Black. Com.* 2 *V.* 95, 147.

Will, *vitious.* In all temporal juriſdictions an *overt* act, or ſome open evidence of an intended crime, is neceſſary in order to demonſtrate the depravity of the will, before the man is liable to puniſhment. And, as a vitious will without a vitious act is no civil crime, ſo, on the other hand, an unwarrantable act, without a vitious will is no crime at all. So that to conſtitute a crime againſt human laws, there muſt be, firſt, a vitious will; and, ſecondly, an unlawful act conſequent upon ſuch vitious will. See *Black. Com.* 4 *V.* 20, 21.

Will, or Laſt Will and Teſtament, (*Teſtamentum, ultima voluntas*) Is a ſolemn act or inſtrument, whereby a perſon declares his mind and intention, as to the diſpoſal of his lands, goods or effects, and what he would have done after his death. *Co. Lit.* 111.

1. *Of wills generally, and the technical terms,* &c.
2. *Who are capable of making a will or teſtament.*
3. *What are the requiſites, to conſtitute a good will.*
4. *Of wills to paſs lands and tenements.*
5. *In what language a will may be written, and of the circumſtances of ſigning, ſealing, atteſtation and publication.*
6. *Of re-publiſhing of a will; what ſhall amount to a re-publication, and where a re-publication ſhall make a deviſe good.*
7. *What ſhall be a ſufficient proof of a will, and in what caſes deviſees, legatees and creditors may be admitted to prove a will.*
8. *Of nuncupative wills.*
9. *Of the nature and effect of a will or teſtament and of a codicil; and how wills ſhall be conſtrued.*
10. *Of revoking a will, and where a will ſhall be ſet aſide for fraud.*

1. *Of wills generally, and the technical terms,* &c.

The Common law calls that a *will* when *lands* or *tenements* are given; and where it concerns *goods* and *chattels alone*, it is termed a *teſtament*: In a *will* of goods there muſt be an executor appointed, but not of lands only without goods; an executor having nothing to do with the freehold. 1 *Inſt.* 111. If lands are given by *will*, it is called a *deviſe*; and goods and chattels a *legacy*: And there is this diverſity between lands and goods given by a *will*, that when lands are deviſed in fee, or for life, the *deviſee* ſhall enter without the appointment of others: In caſe of goods and chattels there muſt be the aſſent of the executor, *&c.* *Swinb.* 24. If lands are given and deviſed by *will*, the *will* ought to be proved in the *Chancery*; and of goods it muſt be in the *ſpiritual court*: A *will* both of lands and goods, may be proved in the ſpiritual court. *Ibid.* A will hath not force till after the teſtator's deceaſe; but then without any further grant, livery, *&c.* it gives and transfers eſtates, and alters the property of lands and goods, as effectually as any deed or conveyance executed in a man's life-time; and hereby deſcents may be prevented, eſtates in fee-ſimple, fee-tail, for life or years, *&c.* be made: And he that takes land by deviſe, is in nature of a purchaſer. *Litt.* 167. A deviſee is in by act executed in the deviſor's life-time, tho' it be not conſummated till his death. *Roll. Rep.* 478. And therefore a deviſe ſhall take effect, before a deſcent: But an heir may be in the land by deſcent, notwithſtanding a deviſe made to him; and to give a thing by will to ſuch a perſon to whom the law gives it, is as if it had not been given. 2 *And.* 11. *Moor. Ca.* 496. *Styles*, 149.

He who makes the teſtament, is called the *teſtator*; and when a man dies without a will, he is ſaid to die *inteſtate*. *Shep. Abr. part.* 4. *voc. Teſtament.* A teſtamentary ſchedule without witneſſes, or an executor, has been declared a will. 2 *Lord Raym.* 1282. *Powell* v. *Breresford.* There are two ſorts of wills or teſtaments: *Firſt*, in *writing*, which is, where the mind of the teſtator, in his life-time, by himſelf, or ſome other by his appointment, is put in *writing*: Or, *ſecondly*, by *word*, or *without writing*, which is, where a man is ſick, and for fear that death, or want of memory or ſpeech, ſhould ſurprize him, that he ſhould be prevented, if he ſtaid the writing of his teſtament, deſires his neighbours and friends to bear witneſs of his laſt will, and then declares the ſame preſently, by *word*, before them: And this is called a *nuncupative* or *nuncupatory will* or *teſtament*; and this being after the death proved by witneſſes, and *put in writing* by the ordinary, is of as great force for any other thing, but land, as when at the firſt in the life of the teſtator it is put in writing. 1 *Inſt.* 111. *Perk. ſ.* 476. *Wood. part* 1. 187. See *poſt Div.* 8. A *codicil* is alſo in writing or by word, as a will or teſtament is. The civilians have other diviſions of wills and teſtaments, ſolemn and unſolemn, privileged and unprivileged, whereof the Common law makes no mention. *Id. ibid.*

2. *Who are capable of making a will or teſtament.*

An *infant*, until he be of the age of 21 years, can make no will of his *lands* by ſtatute 32 *H.* 8. *c.* 1. But by *ſpecial cuſtom* in ſome places, where land is deviſeable by cuſtom, he may deviſe it ſooner; and of his *goods and chattels*, if he be a *boy*, he may make a will at *fourteen* years of age, and not before; and if a *maid*, at *twelve* years of age, and not before: And then they may do it without and againſt the conſent of their tutor, father, or guardian. 32 *H.* 8. *c.* 1. 34 *H.* 8. *c.* 5. *Swinb. part* 11. *ſect.* 2.

If he or ſhe hath attained to the laſt day of 14 or 12 years, the teſtament by him or her in the very laſt day of their ſeveral ages aforeſaid, is as good and lawful, as if the ſame day were already then expired. *Ibid.* Likewiſe, if after they have accompliſhed theſe years of 14 or 12, he or ſhe do expreſsly approve the teſtament made in their minority, the ſame by the new will and declaration is made ſtrong and effectual. *Swinb. part* 11. *ſect.* 2. And yet ſome ſay an infant cannot make a will of his goods and chattels until he be of 18 years of age. 1 *Inſt.* 89. *b.* It has however been agreed in equity, that a female may make a will at 12 years of age of a *perſonal eſtate*, and a male at 17 years of age or 15, if he be a perſon of diſcretion. 2 *Vern.* 469.

A *feme covert* cannot make a will of her lands and goods, except it be in ſome ſpecial caſes: For of her lands ſhe can make no will with or without her huſband's conſent, ſtat. 32 *H.* 8. *c.* 1. 4 *Rep.* 51. *Bro. Teſtament*, 13. But of the goods and chattels ſhe hath, as *executrix* to any other, ſhe may make an *executor* without her huſband's conſent; for if ſhe does not ſo, the adminiſtration of them muſt be granted to the next akin to the deceaſed teſtator, and ſhall not go to the huſband. 12 *H.* 7. *c.* 24. *Perk. ſect.* 502. *Fitz. Exec.* 40. But now even of them ſhe can make no *deviſe* with or without her huſband's leave, for they are not deviſeable; and if ſhe deviſes them, the deviſe is void. *Plowd.* 526.

Of the things due to the wife, whereof ſhe was not poſſeſſed during the marriage, as things in action, and the like, ſhe may make her will, at leaſt ſhe may make her huſband executor of her *paraphernalia*, viz. her neceſſary wearing apparel, being that which is fit for one of her rank. Some ſay, ſhe may make a will without her huſband's leave, others doubt of this; however all agree, that ſhe, and not his executor, ſhall have this after her huſband's death; and that the huſband cannot give it away from her, and of the goods and chattels her huſband has either by her or otherwiſe, ſhe may not make a will without the licence and conſent of her huſband firſt had ſo to do: But with leave and conſent ſhe may make a will of goods, and make him her executor if ſhe will. And it is ſaid alſo, that if ſhe does make a will of his goods in truth without his leave and conſent, and after her death he ſuffers the will to be proved, and delivers the goods accordingly, in this caſe the teſtament is good: And yet if the huſband gives the wife leave to make a will of his goods, and ſhe does ſo, he may revoke the ſame at any time in her life-time, or after her death, before the will is proved. But a woman after a contract with any man, before a marriage, may make a will as well as any other, and it is not at all diſabled hereby. 12 *H.* 7. 24. 18 *Ed.* 4. 11. *Perk. ſect.* 501. *Fitz. Exec.* 28, 109. *Bro. Teſta.* 11. But if ſhe marries afterwards, the marriage will be a revocation of the will.

A wife, whoſe huſband is baniſhed by act of parliament for life, may make a will as a feme ſole. 2 *Vern.* 104.

A mad or lunatick perſon, during the time of his inſanity of mind, cannot make a will of lands or goods; but ſuch a one as hath his *lucida intervalla,* clear or calm intermiſſions, may, during the time of ſuch quietneſs and freedom of mind, make his will, and it will be good; *Swinb.* 11. *ſ.* 3. An ideot, *i. e.* ſuch an one as cannot number twenty, or tell what age he is, or the like, cannot make a will or diſpoſe of his lands or goods; and although he make a wiſe, reaſonable, and ſenſible will, yet it is void: But ſuch a one as is of a mean underſtanding only, that has *groſſum caput,* and is of the middle ſort, between a wiſe man and a fool, is not prohibited to make a will. *Id. part* 11. *ſ.* 4. An old man likewiſe, who, by reaſon of his great age, is childiſh, again, or ſo forgetful that he forgets his own name, cannot make a will, for a will made by ſuch an one is void. *Id. ibid. par.* 11. *ſ.* 1. 6 *Rep.* 23. *Marquis of Wincheſter*'s caſe. So alſo it ſeems a drunken man, who is ſo exceſſively drunk that he is deprived of the uſe of his reaſon and underſtanding, during that time may not make a will, for it is requiſite that when the teſtator makes his will, he ſhould be of ſound and perfect memory, *i. e.* that he have a competent memory and underſtanding to diſpoſe of his eſtate with reaſon. *Swinb. part* 11. *ſ.* 1. and *ſect.* 6.

A man who is *both deaf and dumb,* and is ſo by nature, cannot make a will. But *qu.* if a will made by ſuch a perſon who hath from long uſe and frequent practice converſed by ſigns, and is clearly proved to underſtand others, and convey his own ideas, *&c.* may not make a valid will.

A man who is deaf and dumb by accident, may by writing or ſigns make a will. *Swinb. par.* 11. *ſ.* 1. & 10. And ſo alſo may a man that is blind. *Id. part* 1 *ſ.* 1. & 11. But an alien enemy, perſons convicted and attainted, and recuſants convict, cannot make a teſtament of lands or goods. *Wood's Inſt.* 335. Neither may the head, or any of the members of a corporation, make a will of the lands or goods they have in common, for they ſhall go in ſucceſſion. *Fitz. Abr. Teſt.* 1. *Perk.* 498.

A *traitor attainted,* from the time of the treaſon committed, can make no will of his lands or goods, for they are forfeited to the King: But after the time he has a pardon from the King for his offence, he may make a will of his lands and goods to another man. *Swinb. part* 11. *ſ.* 12. 5 & 6 *Edw.* 6. *c.* 11. *ſ.* 9. A man who is *attainted or convicted of felony* cannot make a teſtament of his lands or goods, for they are forfeited; but if a man be only indicted, and dies before the attainder, his will is good for his lands and goods both; and if he be indicted, and will not anſwer upon his arraignment, but *ſtands mute, &c.* in this caſe his lands are not forfeited, and therefore he may make a will of them. *Swinb. part* 11. *ſ.* 13. *N. B.* If a man *kill himſelf,* his will as to his *goods and chattels* is void, but as to his *lands* it is good. *Plowd.* 261. *Hales* v. *Pettit.*

A man likewiſe, who is *outlawed* in a *perſonal action,* cannot make a will of his *goods and chattels,* ſo long as the outlawry continues in force, but of *lands* he may make a will. *Swinb. part* 11. *ſ.* 21. But note, that however the wills of traitors, aliens, felons, and outlawed perſons are void as to the King or lord that has right to the lands or goods by forfeiture or otherwiſe; yet the will is good againſt the teſtator himſelf, and all others but ſuch perſons only. *Shep. Abr. part* 4. *voc. Teſtament.* And note alſo, by the *civil law* the wills of divers others, as *excommunicate* perſons, *hereticks, uſurers, inceſtuous perſons, ſodomites, libellers,* and the like, are void; but by our law the wills of ſuch perſons, at leaſt as to their *lands,* are good by the ſtatutes that enable men to deviſe their lands. *Id. ibid.*

In ſhort, all perſons whatſoever, male or female, old or young, lay or ſpiritual, at any time before their death, whilſt they are able to ſpeak ſo diſtinctly, or write ſo plainly, that another may underſtand them; and perceive that they underſtand themſelves, may make wills of their lands, goods and chattels, and that although they have ſworn to the contrary; and none are reſtrained of this liberty, but ſuch as are before named. *Id. ibid.*

3. *What are the requiſites to conſtitute a good will.*

To conſtitute a good will it is neceſſary,

1. That the *teſtator* be a perſon *legally capable* of making a will.

2. The ſecond thing required to the making of a good teſtament, is, that there be *a perſon to take,* and one that is *capable*; for in all gifts by deviſe, or otherwiſe, that are good, there muſt be a *donee* in *eſſe,* and not *poſſe* only, and one that ſhall have capacity to take the thing given, when it is to veſt, or the gift ſhall be void. *Shep. Abr. part* 4. *ſ.* 13. *voc. Teſt.*

And hence it is, that where the deviſee of lands or goods, or an executor of a will, doth die before the deviſor, or him that makes the will, the deviſe and will is void, and neither the heir or executor (of the deviſee) ſhall have the thing deviſed. *Id. ibid. Plowd.* 345. *Brett.* v. *Rigden* A deviſe to the wife for life, and after to the children unpreferred, is good. 1 *And.* 60. *Amner* v. *Luddington.* But a deviſe by a man to his heir and his heirs, is void. 2 *And.* 11. *Garmyn* v. *Arſtate.*

One deviſed his leaſe of lands to *B.* his eldeſt ſon, except the ſum of 140 *l.* to be paid out for portions for his daughters, and made *B.* his executor; and held a good deviſe to them after this manner, and that the daughters might ſue for it in the eccleſiaſtical court, or court of equity. *Shep. part* 4. *p.* 13. *voc. Teſt'.*

If one deviſe to the ſon in tail, and if he die without iſſue, to the next of his name; the daughter after married cannot have it, for ſhe is not of his name. *Cro. Eliz.* 532. *Bon* v. *Smith.* One ſeized of a manor and lands, deviſeth the ſame to his ſon, and after, by another part of his will, deviſeth part of the ſame to another of his ſons; theſe deviſes are good, and they ſhall be jointenants. 3 *Leo.* 11.

3. That the *teſtator,* at the time of making his will, have *animum teſtandi,* i. e. a mind or ſerious intention to make ſuch a will.

For it is the mind, not the words of the teſtator that gives life to the will: Since if a man raſhly, unadviſedly, incidently, jeſtingly or boaſtingly, and not ſeriouſly, writes or ſays, that ſuch a one ſhall be his executor, or have all his goods, or that he will give to ſuch a one ſuch a thing; this is no will, nor to be regarded. And the mind of the teſtator herein is to be diſcovered by circumſtances; for if at the time he be ſick, or ſets himſelf ſeriouſly to make his will, or requires witneſſes to bear witneſs of it, it ſhall be deemed in earneſt; but if it be by way of diſcourſe only, or ſomewhat he will do hereafter, or the like, it ſhall be taken for nothing. *Swinb. part* 1. *ſ.* 3.

4. That the *mind* of the *teſtator* in making his will be *free,* and not moved by *fear, fraud,* or *flattery.*

For when the teſtator is moved to make his teſtament by fear, or circumvented by fraud, or overcome by ſome *immoderate flattery,* the ſame is void, or at leaſt voidable by exception: And therefore, if a man, by occaſion of ſome preſent fear or violence, or threatning of future evil, does at the ſame time, or afterwards by the ſame motive, make a will, it is void, not only as to him that puts him in fear, but as to all others, altho' the teſtator confirms it with an oath; but if the cauſe of fear be ſome vain matter, or, being weighty, is removed, and the teſtator afterwards, when the fear is paſt, confirms the teſtament, in this caſe, perhaps, the will may be good. And if a man, by occaſion of ſome fraud or deceit, be moved to make a will, if the deceit be ſuch as may move a prudent man or woman, and if the end be evil alſo, the will is void, or voidable at the leaſt; but if the deceit be light and ſmall, or if it be to a good end, as where a man is about to give all his eſtate to ſome lewd perſon, from his wife and children, and they perſuade the teſtator that the lewd fellow is dead, or the like, and thereby procure him to give his eſtate to them, this is a good will. And one may, by honeſt interceſſions, and modeſt perſuaſions, procure another, to make himſelf or a ſtranger executor to him, or the like, and this will not hurt the will; alſo a man may uſe fair and flattering ſpeeches to move the teſtator to make his will, and to give his eſtate unto himſelf or ſome friend of his; except it be in caſe where the flatterer firſt threatens him, or puts him in fear, or to his flattery joins fraud and deceit; or where the teſtator is a perſon of weak judgment, or under the government of the flatterer, or in danger from him; as when the phyſician ſhall perſuade his patient under his hand to make his will, and give his eſtate to himſelf: or the wife in his ſickneſs ſhall neglect him, and in the mean time flatter him to give her all: Or where the perſuader is importunate, and will have no denial: Or where there is another teſtament made before; for in all theſe caſes, the will will be in danger to be avoided. If I be much privy to another man's mind, and he tells me often in his health how he intends to ſettle his eſtate, and, he being ſick, I of my own head draw a will according to his mind, before declared to me, and bring it to him, and aſk him whether this ſhall be his will or no; and he conſiders of it, and then delivers it back to me, and ſays, yes; this is a good will. But if otherwiſe, ſome friends of a ſick man, of their own heads ſhall make a will, and bring it to a man in extremity of ſickneſs, and read it to him, and aſk him, whether this ſhall be his will, and he ſays, yes, yes. Or if a man be in great extremity, and his friends preſs him much, and ſo wreſt words from him; eſpecially if it be in advantage of them, or ſome friends of theirs; in theſe caſes the wills are very ſuſpicious. *Id. ibid. part* 11. *ſ.* 25. *and part* 7. *ſect.* 2, 3, & 4.

5. That the *will* be made *in the form* preſcribed by law.

4. *Of wills to paſs lands and tenements.*

By the Common law, no lands or tenements (except by particular cuſtom) were deviſeable by any laſt will or teſtament, neither could they be transferred from one to another, but by ſolemn livery of ſeiſin, matter of record or ſufficient writing. Becauſe it was preſumed, that the teſtator would do that *in extremis*, that he would not do in his health; that it proceeded from the diſtemper of his mind by the anguiſh of his diſeaſe, or by ſiniſter perſuaſion to which in his ſickneſs he was more ſubject. 1 *Inſt.* 111. *b.* 1 *Roll. Abr.* 608.

The true reaſon ſeems to be from the nature of the feudal tenure, and the relation that was firſt eſtabliſhed betwixt the lord and his tenant. For though donations after length of time were made to the tenant and his heirs, or the heirs males or females of his body, under certain duties and ſervices, expreſly reſerved, or which the law created; and though the word *heirs, &c.* be words of *limitation*, and appropriated to meaſure out the length or continuance of the eſtate: yet they were always underſtood, the heirs of the *preſent* tenant, who being liable to the ſame ſervices when they came into the tenancy, the lord was to have the tuition and education of ſuch heirs, in caſe they happened, by reaſon of their minority, to be incapable of performing the ſervices, that ſo he might, by his care and diſcipline, ſecure to himſelf tenants always capable thereof, either in their own perſons, if they happened to be males, or by proper marriages with his tenants if they proved to be females; and therefore by no act of the tenants could he diſpoſe of the feud, ſo as to defeat the lord of the advantages of his ſeigniory; and hence it was, that a tenant could not deviſe it even to his own heir, ſo as to make him a purchaſer thereof; for then he coming in, not by the donation of the lord, but the diſpoſition of the tenant, though he remained liable to the naked ſervices, yet the lord loſt the advantages of wardſhip, marriages, *&c.* which were annexed only to thoſe who came in upon the terms of his own donation by deſcent. 1 *Eq. Caſ. Abr.* 401.

The *Stat.* 32 *H.* 8. *cap.* 1. uſually called the ſtatute of wills, enacts, "That every perſon having manors, lands, *&c.* ſhall have power to give, diſpoſe, will, and deviſe by will, in writing or otherwiſe, by act executed in his life-time, all his ſaid manors, *&c.* any law, ſtatute *&c.* to the contrary notwithſtanding."

There have been ſeveral reſolutions concerning wills made purſuant to this ſtatute ſince the making thereof: But as the *Stat.* 29 *Car.* 2. *c.* 3. (*vide infra*) is now the proper pattern to follow, having altered the forms, by requiring more ceremony and greater exactneſs, it will be ſufficient barely to mention ſome of the caſes on this ſtatute of 32 *H.* 8. *c.* 1. viz. That the lands muſt be *ſua*, and therefore lands purchaſed after a will is made will not paſs. *Vide Plow.* 344. A deviſe of an authority to executors to ſell is within the act. *Moor* 341. A man beyond ſea wrote a letter, in which he declared his will to be, that his lands ſhould go in ſuch a manner; and adjudged a good will. *Moor* 177. So if a man had ordered one to make his will, and thereby to deviſe Whiteacre to *A.* and his heirs, and Blackacre to *C.* and his heirs, and he had written the deviſe to *A.* but, before the deviſe to *C.* was wrote, the deviſor died, yet as to *A.* this had been a good deviſe. 3 *Co.* 31. *b.* So a will was held good where a lawyer took only ſhort notes, with deſign to reduce it into form, which he afterwards did, but the deviſor died before it was read to him. 1 *And.* 34. A will wrote without the appointment of the teſtator, if read to him, and approved by him, was held good; ſigning and ſealing was not neceſſary. *Cro. Eliz.* 100. *Dyer* 72. *a.* 2 *Leon.* 35. As to ſigning ſee *infra.*

By the ſtatute of frauds and perjuries, 29 *Car.* 2. *c.* 3. *ſ.* 5. All deviſes and bequeſts of any lands or tenements deviſeable by the ſtatute of wills, or by any particular cuſtom, ſhall be in writing, and ſigned by the party deviſing the ſame, or ſome other perſon in his preſence, and by his expreſs directions, and ſhall be atteſted and ſubſcribed in the preſence of the ſaid deviſor by three or four credible witneſſes, or elſe they ſhall be utterly void and of none effect.

And by *ſect.* 6. "No deviſe in writing of lands, tenements or hereditaments, or any clauſe thereof, ſhall be revocable other than by ſome other will or codicil in writing, or other writing declaring the ſame, or by burning, cancelling, tearing or obliterating the ſame by the teſtator himſelf, or in his preſence, and by his directions and conſent: But all ſuch deviſes and bequeſts ſhall remain in force until the ſame be burnt, *&c.* in manner aforeſaid, or unleſs the ſame be altered by ſome other will or codicil in writing, or other writing of the deviſor, ſigned in the preſence of three witneſſes, declaring the ſame."

Therefore, if a will be of lands or tenements, it muſt be in writing, and it muſt be committed to writing at the time of the making thereof; and it is not ſufficient that it be put in writing after the death of the teſtator, being firſt made by word of mouth only, for then it is but nuncupative ſtill. See *Wood, part* 1. 798. *Dyer* 72. *Plowd.* 345.

5. *In what language a will may be written, and of the circumſtances of ſigning, ſealing, atteſtation and publication.*

It is not material in what matter or ſtuff, whether in paper or parchment, nor in what language, whether in *Latin, French, Dutch*, or any other tongue, or in what hand or letters, whether in ſecretary hand, roman hand, or court hand, or in any other hand, a will be written, ſo that it be fair and legible, that it be read and underſtood; neither is it material whether the ſame be written at large or by notes or characters uſual or unuſual, as XX. for twenty, or when the figure 1 is uſed inſtead of the letter *A.* if it be uſual in the teſtator's writings, or the like; for the will is good notwithſtanding. So alſo, if ſome words be omitted, or improper ſentence uſed, when the intent and meaning is apparent; as where a man ſays, I make my wife of this my laſt will and teſtament, leaving out the word executrix, yet the will is good; and this ſhall be underſtood. But if it be ſo done as it cannot be read, or by reading the mind of the teſtator cannot be known, then the will is void and of no force, in like manner as a nuncupative will is when the words ſpoken are ſo ambiguous, obſcure, and uncertain that thereby the meaning of the teſtator cannot be known or underſtood. *Swinb. part* 4. *ſect.* 28.

The clauſes of the 29 *Car.* 2. *c.* 3. above recited, having rendered the circumſtances of ſigning, *&c.* neceſſary, it is next to be inquired, when, in legal conſtruction, theſe requiſites ſhall be deemed to have been complied with; which may be beſt collected by an attention to the following caſes.

It has been held, that ſealing of a will, is a ſigning within the ſtatute of frauds and perjuries. 2 *Str.* 764. *Warneford* v. *Warneford.* But a will in writing need not be ſealed. *Perk.* 477.

Where the teſtator owns his hand before the witneſſes who ſubſcribe the will in the teſtator's preſence, the will is good, though all the witneſſes did not ſee the teſtator ſign; and it is obſervable that the ſtatute of frauds does not ſay that the teſtator ſhall ſign his will in the preſence of three witneſſes; but requires theſe three things,

Firſt, That the will ſhould be in *writing.* *Secondly*, That it is *ſigned* by the teſtator. And *thirdly*, That it ſhould be *ſubſcribed* by *three witneſſes* in the *preſence* of the teſtator. 3 *P. Wil.* 254. *Stonehouſe and ux'* v. *Evelyn.*

Nevertheleſs a will has been held to have been well executed, though it was not mentioned in the atteſtation to have been ſigned in the preſence of the teſtator. 2 *Str.* 1109. *Croft* v. *Pawlet.* If a will be atteſted by three witneſſes, who ſeverally ſigned their names, not being preſent together; yet each ſigning being in the preſence of the teſtator, makes it a good will within the ſtatute. 2 *Chan. Caſes* 109. *Anon'.*

But if a man ſubſcribes his will in the preſence of two witneſſes, and they ſubſcribe it in his preſence, and after makes a codicil in writing, reciting that he had made a former will and confirmed the ſame, (except what was excepted by the codicil) and declares, that the codicil ſhall be taken as part of his will, and publiſhes it in the preſence of one of the witneſſes to the firſt will, and another new witneſs, this is not a good will, for there were not three ſubſcribing witneſſes in the preſence of the teſtator; and one of the witneſſes to the codicil never ſaw the will. Adjudged, though it was objected, the will and codicil made but one will, and the circumſtance of three witneſſes wanting, the will was perfected by the codicil. 3 *Mod.* 263. *Lea* v. *Lib.* *Sed qu.* So if a man makes a will in ſeveral pieces of paper, and there are three witneſſes to the laſt paper, and none of them ever ſaw the firſt, this is not a good will. 3 *Mod.* 263. v. *infra.*

A will of lands was originally executed in the preſence of two witneſſes only, and, at the diſtance of four years afterwards, the teſtator re-executed his will, by drawing a pen on the old ſtrokes, in the preſence of one other perſon, who likewiſe ſubſcribed his name as a witneſs to it. Upon an ejectment brought by the heir at law, and on a ſpecial verdict, it was determined by the court, that this will was properly executed, and atteſted, under the ſtatute of frauds and perjuries. 5 *New Abr.* 509. *MSS. Rep. Jones* v. *Dale, B. R. Hill.* 16 *Geo.* 2.

It was determined by the lord chancellor, that a will is well proved, though the witneſſes did not ſee the teſtator ſign his name; if he declares it to be his hand-writing to them, and they atteſt it in his preſence, and in the preſence of each other. 5 *New Abr.* 509. *MSS. Rep. Grayſon* v. ——— *in Chan.* 25, 26 *Geo.* 2.

A will was atteſted by three witneſſes, in the preſence of the teſtator and of each other, but the teſtator did not write his name or put his ſeal in their preſence, but pointed to the paper, and ſaid, that was his will, and he had writ it, and that his name, *William Ellis* ſubſcribed, was his writing and name; and laid his hand on the ſeal, and ſaid, that was his ſeal. Determined by Lord *Hardwicke*, aſſiſted by Lord Ch. J. *Willes*, *Strange* maſter of the Rolls, and the Ch. Baron, on a queſtion in this cauſe, whether this will ſo executed, was good as a revocation of a former will, under the ſixth ſection of the ſtatute of frauds? And held clearly that it was; it not being doubted but that it was good, as an original will, according to the authorities determined on this head, that the owning it to be his hand-writing was ſufficient. 5 *New Abr.* 509. *MSS. Rep.* *Ellis* v. *Smith*, *Hill.* & *Mich.* 27 *Geo.* 2.

The teſtator deſired the witneſſes to go into another room, ſeven yards diſtance, to atteſt his will, in which there was a window broken, through which the teſtator might ſee them. And it was held, that this will was according to the ſtatute of frauds; for though the ſtatute requires atteſting in his preſence, to prevent obtruding another will in the place of a true one, yet it is enough if the teſtator might ſee. It is not neceſſary that he ſhould actually ſee them ſigning; for, at that rate, if a man ſhould but turn his back, or look off, it would vitiate the will: And the ſigning was in the view of the teſtator; he might have ſeen it, and that is enough. So if the teſtator, being ſick, ſhould be in bed and the curtain drawn. 2 *Salk.* 688. *Shires* v. *Glaſcock.*

But where one deviſed lands to *I. S.* and his heirs, and duly ſubſcribed his will in the preſence of three witneſſes; who, for the eaſe of the teſtator, went down ſtairs into another room, and atteſted the will there, which was out of the preſence of the teſtator; and the heir at law was prevailed on to join in a leaſe and releaſe of the deviſed premiſſes, in truſt for the deviſee; the will and the releaſe were both ſet aſide, for the releaſe reciting that the will was duly executed, was *ſuggeſtio falſi*, and the concealing from the heir, that it was not duly executed, was *ſuppreſſio veri*; either of which circumſtances are good reaſons for ſetting aſide a releaſe or conveyance. 1 *P. Wil.* 239. *Broderick* v. *Broderick.*

If the teſtator writes the will with his own hand, though he does not ſubſcribe his name, but ſeals and publiſhes it, and three witneſſes ſubſcribe their names in his preſence, it is a good will; for his name being wrote in the will it is a ſufficient ſigning: And the ſtatute does not direct, whether it ſhall be at the top, bottom, *&c.* and by three judges againſt one, ſealing is a ſigning within the act. And note, it is not ſaid in the act, that the ſigning ſhall be in the preſence of the three witneſſes at the ſame time. 3 *Lev.* 1. *Lemayne* v. *Stanley.* See *Comyn's Rep.* 197. *Peate* v. *Ougley.* 2 *Raym.* 1282.

A. by will in writing, atteſted by three witneſſes, deviſed a copyhold eſtate to his wife: And afterwards the teſtator, on the day of his death, directed his nephew to obliterate ſome deviſes, but ſaid nothing as to the copyhold deviſed to his wife, and then cauſed a memorandum to be written, that he examined, peruſed, and approved of the will as ſo obliterated and altered by his nephew, in his preſence, but did not republiſh it in the preſence of three witneſſes, but directed his nephew to have it wrote out fair; but before it was brought back he became delirious; and this was held a good will as to the copyhold. 2 *Vern.* 498. *Burkitt* v. *Burkitt.*

It has been determined, that a truſt of an inheritance muſt be deviſed in the ſame manner as a legal eſtate. Vide 2 *Wil. Rep.* 258.—*Wagſtaff* v. *Wagſtaff.*

J. S. poſſeſſed of a term of five hundred years in Blackacre, afterwards purchaſes the fee-ſimple in *B.*'s name, and deviſes Blackacre by will, all of his own hand-writing, to *C.* in fee; but the will was neither dated,

ted, ſubſcribed, or atteſted. Decreed *per* his honour, that as this was a term which would have attended the inheritance, and in equity have gone to the heir, and not to the executor, in which reſpect it was to be conſidered as part of the inheritance; ſo the will which was not atteſted by three witneſſes, as the law required it to be, when land was to paſs, ſhould not carry this term. 2 *Wil. Rep.* 236. *Whitchurch* v. *Whitchurch.*

An ejectment by the heir at law, the queſtion for the opinion of the court was, whether it ſhould be left to a jury to determine, whether the witneſſes to a will (being all dead) ſet their names in the preſence of the teſtator, and this merely upon circumſtances without any poſitive proof? *Per Cur.* This is a matter fit to be left to a jury, which is all that is referred to the court. The witneſſes, by the ſtatute of frauds, ought to ſet their names as witneſſes in the preſence of the teſtator; but it is not required by the ſtatute that this ſhould be taken notice of in the ſubſcription to the will: And whether inſerted or not, it muſt be proved: If inſerted, it does not conclude but it may be proved *contra*, and the verdict may find *contra*; then if not concluſive when inſerted, the omiſſion does not conclude it was not ſo, and therefore muſt be proved by the beſt proof the nature of the thing will admit. In caſe the witneſſes be dead there cannot probably be any expreſs proof, ſince at the execution of wills few are preſent but the deviſor and witneſſes; then, as in other caſes, the proof muſt be circumſtantial, and here are circumſtances. Firſt, three witneſſes have ſet their names, and it muſt be intended they did it regularly. Secondly, one witneſs was an attorney of good character, and may be preſumed to underſtand what ought to be done, rather than the contrary. And there may be circumſtances to induce a jury to believe, that the witneſſes ſet their hands in the preſence of the teſtator, rather than the contrary; and it being a matter of fact, was proper to be left to them; as whether the livery was given on a feoffment, when no livery is indorſed; whether a deed was executed when only a counterpart was produced, *&c.* And the court was of opinion, that the plaintiff ought to be nonſuited. *Comyns's Rep.* 531. *Hands* v. *James.* See alſo *Vin. Abr.* tit. *Deviſe.* (*N.* 9.) *Ca.* 4, *p.* 128. *Croft on Dem'. of Dalby* v. *Pawlet.*

A will ſhall not be read in proof of a witneſs's hand, unleſs there be poſitive proof that he is dead. *Comyns's Rep.* 614. *Biſhop* v. *Burton.*

If a copyholder, after admittance, ſurrenders the lands to the uſe of his laſt will, and by his will gives them to *A.* but the will is not atteſted by any witneſſes; yet *A.* is well intitled to the lands. *Per* Lord Chan. *Barnard Rep. in Chan.* 11, 12. *Tuffnel* v. *Page.*

N. B. It was conſidered as ſufficient to *declare the uſes* of the *ſurrender.*

A ſurrender was made of a copyhold eſtate to truſtees, to the uſe of the will; which was made with only two witneſſes to it. It was admitted, that a will of a copyhold eſtate does not require three witneſſes. *Select Ca. in Chan.* 42. *Appleyard* v. *Wood.*

A will made beyond-ſea, of lands in *England*, muſt be atteſted by three witneſſes. 2 *Wil. Rep.* 293. See *Vin. Abr.* tit. *Deviſe,* (N. 2.) *ca.* 16. *p.* 119. and (N. 10.) *ca.* 3. *p.* 128.

If a teſtator ſigns his will, but delivers it as his act and deed; yet this will be a ſufficient publication. *Vin. Abr.* tit. *Deviſe,* (N. 7.) *ca.* 13. *pl.* 125.

An uncle having deviſed his eſtate from his nephew and heir at law, a younger brother of the heir at law, at the uncle's funeral, ſnatched the will out of the hands of the executor, and tore it in many ſmall pieces, but moſt of them, and particularly ſuch part wherein was the deviſe of the land, were picked up and ſtitched together again: And on a bill to have he will eſtabliſhed, it was decreed that the deviſee ſhould hold againſt the heir, and he to convey him, although there was no direct proof made that the heir directed the tearing of the will. 2 *Vern.* 441. *Haynes* v. *Haynes.*

6. *Of re-publiſhing a will; and what ſhall amount to a re-publication, and where a re-publication ſhall make a deviſe good.*

If a man deviſes certain lands, and after aliens the land to a ſtranger, and re-purchaſes; and after ſhews his intent, that the ſaid will ſhall be his will: This is a new publication, and the land ſhall paſs by the deviſe. 1 *Vern.* 330. *Hall* v. *Dunch.*

So the teſtator's ſaying his will was in a box in his ſtudy, amounted to a new publication. 2 *Vern.* 209. *Cotton* v. *Cotton.*

If a man ſeiſed of lands, deviſes all the lands to *I. S.* and afterwards purchaſes the manor of *D.* and afterwards writes his will that *I. D.* ſhall be his executor: yet this is not any new publication, to make the land paſs. 1 *Rol. Abr.* 618.

But if after the purchaſe of the manor of *D.* he delivers the firſt will as his will, and ſays, that it ſhall be his will, without putting any words thereto: yet this is a new publication to make the lands newly purchaſed paſs. *Id. ibid.* 1 *Salk.* 237.

So if a man ſeiſed of lands in *D.* deviſes to another, by his will in writing, all his lands in *D.* and after purchaſes other lands in *D.* and after one *I. S.* comes to him, and requeſts him to give him the buying of the lands laſt purchaſed: And he anſwers him, that he will not, but that his intent was, that thoſe lands ſhould go to the executors (the deviſee being made executor by the will) as his other lands ſhould: And after the deviſor cauſes a codicil to be written, in which there is a deviſe of ſeveral perſonal things, as corn and implements of houſhold, and annexes it to his firſt will: And after dies without other publication; yet this ſhall be a ſufficient publication to make the lands newly purchaſed to paſs by the will, for there need no other words in the will than there were before; and his intent appears, that it ſhould be his will, by the annexing the codicil. 1 *Rol. Abr.* 618.

But if a man has iſſue two daughters *A.* and *B.* and he deviſes lands to *A.* and to the heirs of her body, and for want of iſſue to *B.* and *A.* dies in the life-time of the teſtator, leaving iſſue; though after the teſtator annexes a codicil to his will, and thereby diſpoſes of ſome part of his perſonal eſtate; yet this will not amount to a republication of the will, nor give any title to the iſſue of *A.* though the teſtator had declared in his will, that *B.* had married againſt his conſent, and that what he had given her was in full of her portion, and in bar of any further part of his real eſtate. 1 *Abr. Eq. Caſes* 407. 2 *Vern.* 722. *Hutton* v. *Simpſon.*

It has been ſaid, that if a codicil be executed after making a will and purchaſing lands, it will amount to a republication, and paſs the land purchaſed after making the will, and that it was ſo determined by all the judges in the caſe of *Acherley* and *Vernon*; which ſee *infra*, *ſed Q.* Unleſs it appears he had his real eſtate under conſideration. 5 *New Abr.* 516. *MSS. Rep. Gibſon* v. *Rogers, in Chanc. Trin.* 23 *Geo.* 2.

A. having given a legacy *inter alia* to his ſon *Joſeph*; *Joſeph* died, and he afterwards had another *Joſeph*, and then by a codicil to his will, confirming his will, he took notice, that, ſince the laſt, it had pleaſed God to give him another ſon, and gave him a ſmaller legacy. Determined, that this was a re-publication of his will, and amounted to a ſubſtituting *Joſeph* in the place of the firſt; and gave him the firſt legacy as well as the ſecond. *MSS. Rep. Perkins* v. *Micklethwaite.* See *Cro. Eliz.* 422. 1 *Lev.* 243. 1 *Vent.* 341. 2 *Jones* 135. *Raym.* 408.

J. S. after making his will, and deviſing his real and perſonal eſtate, to truſtees, for particular purpoſes, purchaſes ſeveral fee farm-rents, aſſarts rents, and other lands and tenements, and then by a codicil he recites that he made a will, dated 17th *Jan.* 1711, and then ſays, "I hereby ratify and confirm the ſaid will, except in the alterations hereafter mentioned. The portion to my niece *L.* ſhall be made up 6000*l.* and what I have given to my ſiſter and niece, ſhall be accepted by them in ſatisfaction of all they may claim out of my real and perſonal eſtate, and on condition they releaſe all right, *&c.* to my executors and truſtees in my will named; and thus having provided for my ſiſter and niece, I deviſe all the lands by me purchaſed ſince my will, to my truſtees and executors in my will named, to the ſame uſes, and ſubject to the ſame truſts, to which I have mentioned to deviſe the manor of *H.* and the bulk of my eſtate; and I revoke that part of my will, whereby I appoint *A. B.* and *C.* three of my truſtees, in my will, and I deſire *K.* and *N.* to be two of my truſtees, and deviſe my ſaid real eſtate to them accordingly." Lord *Maccleſfield*, 20th *Nov.* 1723, decreed, that the will was confirmed by the codicil; that *I. S.* ſigning and publiſhing his codicil in the preſence of three witneſſes was a republication of his will, and both together made but one will; and by the ſaid will and codicil, his fee-farm rents, aſſart rents, and lands, contracted to be purchaſed, and all his real and perſonal eſtate (except the copyhold purchaſed before his will) did well paſs. On appeal to the lords, the decree was affirmed. *Comyns's Rep.* 381. *Acherley* v. *Vernon*.

It was determined upon the opinon of all the judges, that if a will be made, and afterwards another will without cancelling the former; and then, by an act ſubſequent to both, the firſt will be confirmed, the limitations in that will ſo confirmed will take place: Alſo that if there are two inconſiſtent wills of the ſame date, neither of which can be proved to be laſt executed; they are both void by the Common law for uncertainty, and will let in the heir at law: Alſo, that although the wills are dated the ſame day, the limitations may take place if they are conſiſtent in both, to the diſinheriſon of the heir at law: And, upon this opinion, the order appealed from, which was a diſmiſſion of the plaintiff's bill in the court of Exchequer in *Ireland*, was confirmed in favour of Lord *Angleſey*, by the houſe of lords. 5 *New Abr.* 517. *MS. Rep. Phips* v. *Angleſey in Dom. proc. June* 1751. See the printed copy.

7. *What ſhall be a ſufficient proof of a will; and in what caſes deviſees, legatees, and creditors may be admitted to prove a will.*

A written will, when it is written with the teſtator's own hand, proves itſelf, and therefore needs not the help of witneſſes to prove it; and for this cauſe, if a man's will be found written fair and perfect, with his own hand, after his death, although it be not ſubſcribed with his name, ſealed with his ſeal, or have any witneſſes to it, if it be known or can be proved to be his hand, it is held to be a good teſtament, and a ſufficient proof of itſelf; but if it be ſealed with his ſeal, and ſubſcribed with the name of the teſtator, and can be proved by witneſſes, it is more authentic; and when it is found amongſt the choiceſt evidences of the teſtator, or faſt locked up in a ſafe place, it is the more eſteemed, for if it be written in another hand, and the teſtator's hand and ſeal, or one of them, not to it, although it be found in ſuch a place as before, yet ſome proof will be expected of it further by witneſſes in that caſe; and if a writing be found under the teſtator's own hand, yet if it be but a ſcribling writing, written copywiſe, with a great diſtance between every line, without any date, in ſtrange characters, with many interlineations, and lying amongſt his void papers, or the like: This will not be eſteemed a ſufficient will, nor a good proof of it, but it ſhall be accounted rather a draught or image of the teſtator's will, for a direction to him after to make his will by; and yet, if it can be proved that the teſtator did declare himſelf that this ſhould be his will, this will be a good will, and a good proof of it. *Swinb. part* 4. *ſect.* 28. *and part* 7. *ſect.* 13. This as to perſonal.

If it be proved, that the teſtator ſaid his teſtament was in ſuch a ſchedule, in the hands of *J. S.* and *J. S.* produces a writing, depoſing it to be the ſame, this is a ſufficient proof; *qu.* But if he ſays withal, it is written with his own hand, then it ſeems ſome other proof, as by comparing hands, or the like, that it is his hand wherein it is written, will be expected. *Id. Ibid.* If the witneſſes will prove the writing produced to be the laſt will of the teſtator, or that he ſaid it was, or it ſhould be his laſt will, or that it was the ſame writing that was ſhewn to them, and whereunto they are witneſſes, although they never heard it read, or ſet their hands to it, it is a ſufficient proof. *Id. ibid.*

Where there is no queſtion or oppoſition moved or had about or againſt a will, there the oath of the executor alone is eſteemed a ſufficient proof of it; and in that caſe regularly no other proof is required; and where more proof is neceſſary, it is in the diſcretion of the ordinary what proof to admit and allow: And thoſe witneſſes, for number, nature and quality, or ſuch other proof that he deems and accepts for ſufficient, is ſufficient; and the will ſo proved by ſuch witneſſes, or ſuch other proof, is ſufficiently proved. 5 *New Abr.* 519. This as to perſonal.

All perſons, male and female, rich and poor, are eſteemed competent witneſſes to prove a will, ſave only ſuch as are infamous, as perjured perſons, and the like; ſuch as want underſtanding and judgment, as children, infants, and the like; and ſuch as are preſumed to bear affection, as kindred, tenants, ſervants, *&c. Swinb. par.* 4. *ſect.* 24. *Qu.* as to the latter ſort.

But an intereſted witneſs, ſuch as a legatee, *&c.* was not, (before the ſtat. 25 *Geo.* 2. *c.* 6.) a credible witneſs, 5 *New. Abr.* 519. *MSS. Rep. Anſty* v. *Dowſing. Mich.* 1746. *B. R.*

Witneſſes have been examined to prove the teſtator's intent. 2 *Ld. Raym.* 1326. *Cliffe & al'* v. *Gibbons & al'.* The probate of a will cannot be controverted at Common law. *Ld. Raym.* 262. Sir *Richard Raine's* caſe. A recital of a will in a copyhold admittance is evidence againſt any but the heir. *Id.* 735. According to *Holt.* Ch. J. the regiſter's book is good evidence to prove a will concerning lands. 1 *Ld. Raym.* 731. *St. Leger* v. *Adams.* One of the ſubſcribing witneſſes to the atteſtation of a will, having an annuity deviſed to his wife, was held not to be a credible witneſs within the ſtatute. 2 *Str.* 1253. *Holdfaſt on dem. of Anſty* v. *Dowſing.* Parol evidence is not admitted to contradict the words of a will. *Id.* 1261. *Lowfield.* v. *Stoneham*, and *Caſ. Temp. Talbot*, *Brown* v. *Selvin*, 240. A proof of a will cannot be made againſt a man by confeſſion of his own witneſs. 1 *Ld. Raym.* 730. *Pyke* v. *Crouch.* An executor may be ſued for a legacy where he proves the will, tho' he does not live in that dioceſe. *Id.* 847. *Edgworth* v. *Smalridge.*

Deviſees, legatees, and creditors, are now made competent witneſſes to wills, for by the act of the 25 *Geo.* 2. *c.* 6. for avoiding and putting an end to certain doubts and queſtions, relating to the atteſtation of wills and codicils, concerning real eſtates, in that part of *Great Britain* called *England*, and in his Majeſties colonies and plantations in *America*, it is enacted, That if any perſon ſhall atteſt the execution of any will or codicil, which ſhall be made after the 24th of *June* 1752, to whom any beneficial deviſe, legacy, eſtate, intereſt, gift or appointment of, or affecting any real or perſonal eſtate, (other than and except charges on lands, tenements, or hereditaments, for payment of any debt or debts which ſhall be thereby given or made,) ſuch deviſe, *&c.* or appointment, ſhall, ſo far only as concerns ſuch perſons atteſting

teſting the execution of ſuch will or codicil, or any perſon claiming under him, be utterly null and void; and ſuch perſon ſhall be admitted as a witneſs to the execution of ſuch will or codicil, within the intent of the act of 29 *Car.* 2. notwithſtanding ſuch deviſe, *&c.*

And it is alſo enacted, That in caſe by any will or codicil made or to be made, any lands, tenements, or hereditaments are or ſhall be charged with debts; and any creditor whoſe debt is ſo charged, hath atteſted, or ſhall atteſt, the execution of ſuch will or codicil, ſuch creditor ſhall be admitted as a witneſs to the execution of ſuch will or codicil, within the intent of the ſaid act. That if any perſon hath atteſted the execution of any will already made, or ſhall atteſt the execution of any will, *&c.* made on or before the 24 *June* 1752, to whom any legacy is or ſhall be thereby given, whether charged upon lands, tenements or hereditaments, or not; and ſuch perſon before he ſhall give his teſtimony concerning the execution of ſuch will, *&c.* ſhall have been paid, or have accepted or releaſed, or ſhall have refuſed to accept ſuch legacy or bequeſt, upon tender made thereof; ſuch perſon ſhall be admitted as a witneſs to the execution of ſuch will, *&c.* within the intent of the ſaid act. Provided that in caſe of tender and refuſal, ſuch legatee ſhall in no wiſe be intitled to ſuch legacy.

This act not to extend to the caſe of any heir at law, or of any deviſee in a prior will or codicil of the ſame teſtator, executed and atteſted according to the act of 29 *Car.* 2. or any perſon claiming under them reſpectively, who has been in quiet poſſeſſion for two years next preceding the *6th* of *May* 1751; as to ſuch lands, tenements, or hereditaments, whereof he has been in quiet poſſeſſion as aforeſaid. This act not to extend to any will or codicil, the validity or due execution whereof hath been conteſted in law or equity by the heir of ſuch deviſor, or deviſee, in any ſuch prior will or codicil ſo conteſted, or any part thereof, or for obtaining any other judgment or decree for the lands, *&c.* mentioned to be deviſed, in any other judgment, or decree relative thereto, on or before the ſaid *6th* of *May* 1751, and which has been already determined in favour of ſuch heir at law, or deviſee in ſuch prior will or codicil, or any perſon claiming under them reſpectively, or which is ſtill depending, and has been proſecuted with due diligence; but the validity of every ſuch will or codicil, and the competency of the witneſſes thereto, ſhall be adjudged and determined in the ſame manner as if this act had never been made.

No poſſeſſion of any heir at law, or deviſee in ſuch prior will or codicil as aforeſaid, or of any perſon claiming under them reſpectively, which is conſiſtent with, or may be warranted by or under any will or codicil atteſted according to the intent of this act, or where the eſtate deſcended or might have deſcended to ſuch heir at law, till a future or executory deviſe by virtue of any will or codicil atteſted according to this act, ſhould or might take effect, ſhall be deemed to be a poſſeſſion within the intent of the clauſe herein laſt contained. This act ſhall extend to ſuch of the *Britiſh* colonies in *America*, where the 29 *Car.* 2. is by act of aſſembly made, or by uſage received as a law; or where, by act of aſſembly or uſage, the atteſtation and ſuſcription of a witneſs or witneſſes, are made neceſſary to deviſes of lands, *&c.* And ſhall have the ſame force and effect in the conſtruction of, or for the avoiding of doubts upon the ſaid acts of aſſembly, and laws of the ſaid colonies, as the ſame ought to have in the conſtruction of, or for the avoiding doubts, upon the ſaid act in *England.* Provided always, that as to the caſes ariſing in any of the ſaid colonies, no ſuch deviſe, legacy, or bequeſt aforeſaid, ſhall be made null and void by virtue of this act, unleſs the will or codicil whereby ſuch deviſe, *&c.* ſhall be given, ſhall be made after *March* 1. 1753.

In the caſe of *Wyndham* v. *Chetwynd* in *B. R. Bur. Rep.* 414 to 431. On a will of land, dated 14 *May* 1750, and a codicil of the ſame date, an objection was made, "that the ſubſcribing witneſſes to the will were not, at the *time* of their *atteſtation, credible* witneſſes," the witneſſes being *creditors.* But in that caſe, it was reſolved *they were credible witneſſes.*

In another caſe, which afterwards came before the court of Common Pleas for determination (the preſent Lord *Camden* Chief Juſtice,) *viz.* the caſe of *Doe* on the demiſe of *Hindſon* v. *Kerſey*, the principles laid down in the former caſe, were controverted.

In the latter caſe, there was a deviſe to certain poor perſons, of the pariſh of *A.* Some of the *pariſhioners* were witneſſes; and adjudged they were *not credible*, for that a deviſe to the poor of any place, being in eaſe of the poor rate, the pariſhioners were *intereſted.* Theſe two laſt caſes, and the arguments at length, as delivered in the reſpective caſes, by Lord *Mansfield* and Lord *Camden*, are publiſhed together, in a *quarto* pamphlet, to which we refer, as being too long to ſtate fully, in a work of this kind.

8. *Of nuncupative wills.*

By the ſtat. 29 *Car.* 2. *c.* 3. *ſ.* 19. For the preventing fraudulent practices, it is enacted "That no nuncupative will ſhall be good where the eſtate thereby bequeathed ſhall exceed the value of 30 pounds, that is not proved by the oaths of three witneſſes, at the leaſt, that were preſent at the making thereof, and bid by the teſtator to bear witneſs that ſuch was his will, or to that effect." And by ſtat. 4 *Ann. c.* 16. *ſ.* 14. it is declared, "That all ſuch witneſſes, as are and ought to be allowed to be good witneſſes upon trial at law by the laws and cuſtoms of this realm, ſhall be deemed good witneſſes to prove any nuncupative will, or any thing relating thereto. Nor unleſs ſuch nuncupative will were made in the time of the laſt ſickneſs of the deceaſed, and in the habitation where he or ſhe has been reſident for ten days next before making of ſuch will, except where ſuch perſon was ſurpriſed or taken ſick, being from his own home, and died before he returned. That after ſix months paſſed after the ſpeaking of the teſtamentary words, no teſtimony ſhall be received to prove any will nuncupative, except the ſaid teſtimony, or the ſubſtance thereof, were committed to writing within ſix days after the making of the ſaid will. That no letters teſtamentary, or probate of any nuncupative will, ſhall paſs the ſeal of any court, till fourteen days, at the leaſt, after the deceaſe of the teſtator be fully expired, nor ſhall any nuncupative will be at any time received to be proved, unleſs proceſs have firſt iſſued to call in the widow, or the next of kindred to the deceaſed, to the end they may conteſt the ſame, if they pleaſe. That no will in writing concerning any goods or chattels, or perſonal eſtate, ſhall be repealed; nor ſhall any clauſe, deviſe, or bequeſt therein, be altered or changed by any words, or will by word of mouth only, except the ſame be in the life of the teſtator committed to writing, and after the writing thereof read to the teſtator, and allowed by him, and proved to be ſo done by three witneſſes at the leaſt."

"Provided that any ſoldier in actual military ſervice, or any mariner or ſeaman being at ſea, may diſpoſe of his moveables, wages, and perſonal eſtate, as before the making of this act."

A. being ill, deſired *B.* to make her will, who wrote down only names and initial letters to this effect, viz. to *Tho. Weſt* 200 *l.* to *Jo. Dav.* 100 *l.* to *Reb. Cro.* 50 *l.* to ſelf, 10 *l.* and to ſeveral other perſons in like manner, to above 400 *l.* which being more than her eſtate, *B.* made an alteration in the ſecond column, by ſubſtracting part of the ſums of the legatees, as ſet down in the ſecond column, and then told *A.* the ſenſe of the propoſed deviſes: There were two perſons in the room that did not hear any thing that paſſed between *A.* and *B.* but only heard the teſtatrix at laſt pronounce, that all was well. *B.*

went to a ſcrivener to have the deviſes drawn out at length and in form, and before ſhe returned the teſtatrix died: The judge below pronounced for this will; but, upon appeal to the delegates, it was reverſed; and in this caſe it was agreed that if the will had been written in words at length, ſo as they had carried a ſenſe and meaning in themſelves, it had been a good will; for that there was one witneſs that wrote it, and two that heard the teſtatrix pronounce, that it was well: Which would have been intended to have amounted to a ſecond witneſs, in regard it appeared on all hands, by ſeveral witneſſes, that the teſtatrix did then ſeriouſly diſpoſe herſelf to make her will; and for that was quoted the caſe of one *Pepper*, where a perſon diſpoſed herſelf to made her will, and dictated it to a perſon who wrote it down; and another, not called in as a witneſs, lay behind the hanging out of curteſy; and yet ſuch will was allowed to be good, being proved by theſe two witneſſes: But they diſtinguiſhed this caſe becauſe the will was not ſubſtantive, but was to take its ſenſe from the interpretation of the witneſſes; and ſo there would be innuendo upon innuendo, which made purely a nuncupative will: And as ſuch, not being atteſted by the number of witneſſes appointed by the ſtatute of frauds and perjuries, the will and legacies were void. 1 *Abr. Eq. Caſ.* 403.

Dr. *Shallmer*, by will in writing, gave 200 *l.* to the pariſh of St. *Clement's Danes*, and after, *Prew* the reader coming to pray with him, his wife put him in mind to give 200 *l* more towards the charges of building their church, at which, tho' Dr. *Shallmer* was at firſt diſturbed, yet after, he ſaid he would give it, and bid *Prew* take notice of it: And the next day he bid *Prew* remember of what he had ſaid to him the day before, and died that day. Within three or four days after, the doctor's wife puts down a memorandum in writing of the ſaid laſt deviſe, and ſo did her maid. *Prew* died about a month after, and amongſt his papers was found a memorandum of his own writing, dated three weeks after the doctor's death, of what the doctor ſaid to him about the 200 *l.* and purporting that he had put it in writing the ſame day it was ſpoken: But the writing which was mentioned to be made the ſame day it was ſpoken did not appear, and theſe three memorandums did not expreſsly agree. About a year after, on application by the pariſh to the commiſſioners of charitable uſes, and producing theſe memorandums and proof by Mrs. *Shallmer* and her maid, they decreed the 200 *l.* but, on the exceptions taken by the executors, the decree was diſcharged of this 200 *l.* and Lord Chancellor held it not good, becauſe it was not proved by the oath of three witneſſes; for tho' Mrs. *Shallmer* and her maid had made proof, yet *Prew* was dead; and the ſtatute in that branch requires not only three to be preſent, but that the proof ſhall be by the oath of three witneſſes. 1 *Abr. Eq. Caſ.* 404.

A daughter depoſits 180 *l.* in the hands of her mother (the defendant), and afterwards makes her will in writing, and thereby deviſes ſeveral legacies, and makes her mother executrix, but takes no manner of notice of this 180 *l.* afterwards, by word of mouth, ſhe deſires her mother to give this 180 *l.* to the plaintiff, if ſhe thought fit, and then ſoon after died: The mother proved the will, and this bill was brought againſt her, to have the 180 *l.* paid. The mother, by her anſwer, admits ſhe had ſuch a ſum in her hands, and that her daughter did make ſuch a requeſt to her, but that ſhe left it to her election, whether ſhe would give it to the plaintiff or not, by the very form of the deviſe: And inſiſted that ſhe did not think fit to give it to the plaintiff. And in this caſe it was agreed, that this was not as a nuncupative will, being above 30 *l.* and not reduced into writing within ſix days after the ſpeaking, as the ſtatute requires. 2dly, That if the defendant had inſiſted on the ſtatute of frauds and perjuries, the court could not have relieved the plaintiff as upon a truſt: But in this caſe the defendant having by anſwer confeſſed the truſt, there was no danger of perjury from variety of proof, which was the miſchief the ſtatute intended to provide againſt; and therefore the court took it to be in nature of a truſt, and decreed for the plaintiff: Tho' the defendant expreſsly ſwore, ſhe did not think fit to give it to the plaintiff, and that the teſtatrix had left her at liberty, But this decree was againſt the opinion of ſeveral at the bar, who thonght it too hard on the election left in the mother: But the court principally relied on the caſe of *Kingſman* v. *Kingſman*, where a man deviſed away an eſtate of 2000 *l. per ann.* and upwards, from his ſon and heir to a bargeman. And by his will deviſed 20 *l. per ann.* to his ſon, with this clauſe, that if he behaved himſelf well, and gave no trouble or diſturbance concerning his will, that he might make it up 80 *l.* if he thought fit. And the court decreed the 80 *l. per ann.* to the ſon. But note, the 80 *l. per ann.* in the caſe of *Kingſman* v. *Kingſman* ſeems to have been decreed purely upon the circumſtances and hardſhips of the caſe: But in the preſent caſe there were no ſuch circumſtances or ingredients of hardſhip on the plaintiff: But *qu.* for it ſeems to be a truſt in the hands of the mother. *Id. ibid. Gil. Eq. Rep.* 146. *Jones* v. *Nabbs.*

9. *Of the nature and effect of a will or teſtament, and of a codicil; and how wills ſhall be conſtrued.*

A will or teſtament is of that nature, that it differs much from other acts and deeds that men do and execute in their life-time: For although it be made, ſealed, and publiſhed in ever ſo ſolemn a manner, yet it has no life, no virtue in it, until the teſtator's death; For it is a maxim in law, *Omne teſtamentum morte conſummatum eſt, & voluntas eſt ambulatoria uſque ad extrèmum vitæ exitum*; it is therefore reſembled until death to the interlocutory ſentence, and after death to the definitive ſentence of a judge; and hence it is ſaid, *Sed legum ſervanda fides, ſuprema voluntas quod mandat fierique jubet parere neceſſe eſt.* 1 *Inſt.* 112. 4 *Rep.* 61. *b. Forſe* v. *Hembling's* caſe.

And for this reaſon a man may alter or make void his will at his pleaſure; and he may make as many new wills and teſtaments as he pleaſes, and there is no way to bar a man of this liberty. *Shep. Abr. par.* 4. *p.* 9. *Voc. Teſt'.*

And the latter teſtament always revokes and overthrows the former: But otherwiſe it is of a codicil, for a man may make as many of theſe as he will, and make no teſtament at all: Or if he makes a teſtament, he may afterwards make as many codicils as he will, and one of them will not overthrow the other; for in the firſt caſe they muſt be all annexed to the letters of adminiſtration, and the adminiſtrator muſt perform them; and in the latter caſe they muſt be all annexed to the teſtament, and the executor muſt take care to perform them. *Lit.* 168. *Swinb. p.* 1. *ſect.* 5. *Br. Teſtament* 20.

A teſtament therefore is ſaid to have three degrees. 1ſt, An inception, which is the making of it. 2dly, A progreſſion, which is the publication of it. 3dly, A conſummation, which is the death of the teſtator. *Shep. Abr. part* 4. *p.* 9. *Voc. Teſt'.*

In grants therefore the firſt is of the greateſt force, but in teſtaments the laſt is of greateſt force. 1 *Inſt.* 112. *b.*

But when a teſtament is perfect by the death of the party, it as effectually gives and transfers eſtates, and alters the property of lands and goods, as acts executed by deed in the life-time of the parties: For hereby deſcents of lands are prevented. And a man may make eſtates in fee-ſimple, or fee-tail, for life or years, of lands, teſtaments, rents, reverſions or ſervices, as effectually as by deed; and theſe eſtates alſo will be good without any livery of ſeiſin or attornment, and hereby alſo rents and power er to diſtrain for them, may be reſerved, conditions created and annexed to eſtates or things deviſed. *Shep. Abr. part.* 4. *p.* 10. *Voc. Teſt'.* And therefore they that take by deviſes of land, are ſaid to take in the nature of *purchaſers.* And therefore if a tenant in tail makes a feoffment to the uſe of himſelf in fee, and after deviſes the ſame to his wife in fee, and dies, the ſon is not remitted though the father dies ſeiſed, for the deviſe prevents the deſcent.

It is to be obſerved, that where the words of a will have a plain ſenſe, and no doubt is in any matter within or without the words, touching the matter of the deviſe, there the words of the will ſhall always be taken to be the intent of the deviſor, and his intent to be what the words ſay. 2 *And.* 17. *Lowen* v. *Bedd.* That all the words of a will are to be carried to anſwer the intent of the deviſor; but this is to be underſtood in caſes where the intent of the party may be known by the words that are in the will. 2 *And.* 10, 11, 134. That if there are inconſiſtent and contradictory words in a will, ſome words muſt be rejected to make it ſenſe. Thus where a teſtator gave the intereſt of a ſum of 6000*l.* to *Mary Comfortle,* his daughter, for her life, and after her deceaſe gave the money between *Charles Comfortle* her huſband, and their children: And in another part of the will he ſaid, and in caſe there be no ſuch child or children, I give it to *Charles Comfortle* and ſuch children.—Lord Chancellor rejected theſe latter words, as they were abſurd and contradictory. 5 *New Abr.* 525. *MS. Rep. Boon* v. *Comfortle, Paſc.* 24 *Geo.* 2. *in Chan'.*

A. having a wife and no children, made his will, and ſaid, leſt it ſhould pleaſe God that he ſhould not return, he gave and deviſed a real and perſonal eſtate, or to that effect. He returns, has children and dies, without altering his will: The plaintiff being a legatee, and there being a direction in the will, for the ſale of the real eſtate to pay his legacy; Lord Chancellor was of opinion, that the diſpoſition was merely contingent, and that no part of the will was to take effect but on the contingency of his return. 5 *New Abr.* 525. *MSS. Rep. Parſons* v. *Lenow, Hill.* 22 *Geo.* 2. *in Chan'.*

That a will muſt have a favourable interpretation, and as near to the mind and intent of the teſtator as may be, and yet ſo withal as his intent may ſtand with the rules of law, and not be repugnant thereunto; it being a rule or maxim of law, *Quod ultima voluntas teſtatoris perimplenda eſt, ſecundum veram intentionem*; and that, *ſed legum ſervanda fides, ſuprema voluntas quod mandat fierique jubet parere neceſſe eſt.* In *deeds* the rule of conſtruction is, that the *intention* muſt be directed by the *words*, but in *wills*, the *words* muſt follow the *intent* of the deviſor; and ſuch a conſtruction is to be made of them, as to make uſe of all the words, and not of part, and ſo as they may ſtand together, and have no contrariety in them. *Shep. Abr. part* 10. *Voc. Teſtament. Bridg.* 105. *Standiſh* v. *Short.*

That ſuch a ſenſe ſhall be made of a deviſe, that it may be for the profit of the deviſee, and not to his prejudice. *Shep. Abr.* 11. *p.* 11. *Voc. Teſt.'* That general and doubtful words in a will, ſhall not alter an expreſs deviſe before, nor carry any thing contrary to the apparent intent. *Id. ibid.* That the clauſes and ſentences of a will ſhall be ſeverally tranſpoſed to ſerve the meaning of it. And conſtruction ſhall be made of the words to ſatisfy the intent, and they ſhall be put in ſuch order as the intent may be fulfilled. *Id. ibid.* That no ſenſe may be framed upon the words of a will, wherein the teſtator's meaning cannot be found. *Id. ibid.* That to give a thing to ſuch a perſon to whom the law gives it, is as if it had not been given; and ſo a deviſe of a man's land to his heirs is void. *Styles* 148, 149. That a conſtruction of a will muſt be gathered out of the words of the will, and not by any averment. *Shep. Abr. part* 11. *p.* 11. *Voc. Teſt.'*

That though a parol averment ſhall not be admitted to explain a will, ſo as to expound it contrary to the import of the words, yet, when the words will bear it, a parol averment may be admitted. As, for inſtance, to aſcertain a perſon, but in no caſe to alter the eſtate. 1 *Freem.* 292. *Sleede* v. *Bertier.* 5 *Rep.* 68. Lord *Cheyney*'s caſe.

That one part of a will ſhall be expounded by another: as where a man leaves an eſtate to another and his heirs, and afterwards mentions to have given him an eſtate tail, heirs ſhall be taken to mean heirs of the body, and the deviſee ſhall take only an eſtate tail. 2 *Freem.* 267. *Bamfield* v. *Popham.* See farther on this ſubject, the caſes of *Strong, Clerk,* v. *Teatt, leſſee of Mervyn, & al'. Bur. Rep.* 912—924.—*Doe ex Dm. Long,* v. *Laming. Bur. Rep.* 1110—1113.—*Bagſhaw* v. *Spencer, & al'.* 1 *Vezey,* 142, &c. before Lord *Hardwicke* on an appeal from the rolls.

The caſe in ſhort was, *Benjamin Aſhton,* by will of 7 *September* 1725, deviſed all his manors, lands, *&c.* to five truſtees, in truſt, *int. al'.* as to one moiety to *Benjamin Bagſhaw* for his natural life without impeachment of waſte, and after determination of that eſtate to the truſtees to preſerve contingent uſes, but to permit *Benjamin Bagſhaw* to receive the rents for his natural life, and after his deceaſe, then to the uſe and behoof of the heirs of the body of the ſaid *Benjamin Bagſhaw* lawfully begotten, and to be begotten, and in default of ſuch iſſue, then, *&c.*

Benjamin Bagſhaw ſuffered a common recovery of his moiety: At the rolls, his honour declared, that *Benjamin Bagſhaw* took an *eſtate-tail,* and decreed accordingly.

On the appeal, the caſe was reduced by the chancellor to two general queſtions, *viz.*

1. Whether the eſtate deviſed to *Benjamin Bagſhaw* was a legal eſtate, that is an uſe executed by the ſtatute of uſes, or a mere truſt in equity?

2. Suppoſing it to be a mere truſt in equity, whether it was an eſtate-tail, or an eſtate for his life only, with contingent remainders over to all the iſſue of his body reſpectively?

As to the firſt queſtion, Lord *Hardwicke* was of opinion, that it was a truſt in equity.

As to the ſecond queſtion, his lordſhip obſerved, it would depend on the conſtruction of the words, "heirs of the body of *Benjamin Bagſhaw,* lawfully begotten or to be begotten," as they ſtood in the will. If they were to be taken as words of *limitation,* then he was tenant in tail, and his recovery was good in equity: if words of *purchaſe,* then he was tenant for life only, and his recovery was void.

And his lordſhip was of opinion, that he was tenant for life only, and therefore his recovery was void. And his judgment was to reverſe ſo much of the decree made at the rolls, as declared that *Benjamin Bradſhaw* took an eſtate-tail by the will, *&c.* See the reaſonings at large in *Vezey.*——It is a caſe of great conſequence and treated in a very maſterly manner by the chancellor.

10. *Of revoking a will; and where a will ſhall be ſet aſide for fraud.*

By *Stat.* 29 *Car.* 2. *cap.* 3. it is enacted, "that no deviſe in writing of lands, tenements, or hereditaments, or any clauſe thereof ſhall be revocable, otherwiſe than by ſome other will, or codicil in writing, or other writing, declaring the ſame, or by burning, cancelling, tearing or obliterating the ſame, by the teſtator himſelf, or in his preſence, and by his directions and conſent, but ſhall continue, *&c.* unleſs altered by ſome other will or codicil in writing, or other writing of the deviſor, ſigned in the preſence of three or more credible witneſſes, declaring the ſame: And by the ſame act, no will in writing, concerning perſonal eſtates, ſhall be repealed, nor any clauſe or bequeſt therein altered by words, or will by word of mouth only, except the ſame be, in the life of the teſtator, committed to writing, and read to and allowed by him, and proved to be done by three witneſſes."

But where a man, by will in writing, deviſed the reſidue of his *perſonal* eſtate to his wife, and after, ſhe dying, he, by a nuncupative codicil, bequeathed to *J. S.* all that he hath given to his wife, it was reſolved good; for, by the death of the wife, the deviſe of the reſidue was totally void; and the codicil was no alteration of the former will, but a new will for the reſidue. *Raym.* 334.

Revocations by the act of the party are either *expreſs*, as where the deviſor expreſsly declares his mind, that his will ſhould be revoked; or *implied*, as where the eſtate or thing deviſed is altered after making of the will. 2 *Abr. Eq. Caſ.* 769. Sir *Richard Templeman*'s caſe. *Mich.* 4 *Ann.* in *C. B.*

Lord *Hardwicke* Lord Chancellor: The general principle is, that at the time of the deviſe the deviſor muſt have a diſpoſing capacity, and an eſtate in the land deviſed; and the eſtate muſt remain in the ſame plight and condition until his death: For the leaſt alteration, by an act of his, makes it a different eſtate, and ſhews a different intention, and therefore is an actual revocation. Thus if one ſeiſed in fee deviſes, then inſeoffs another to the uſe of himſelf in fee, tho' it is the old uſe that remains, yet it is a revocation, though it is his own feoffment. So of a bargain and ſale without inrolment. So if a man, thinking himſelf tenant in fee, deviſes, and then, apprehending himſelf to be only tenant in tail, ſuffers a recovery, with intent to confirm his will, it is a revocation. As to mortgages, they are exceptions out of the rule. At law a mortgage for years, and in equity a mortgage in fee, are revocations *pro tanto* only; and the reaſon is, that a mortgage is only a ſecurity; and tho' it be a conveyance of a real eſtate, yet in this court it is a chattel intereſt only, and goes to the executor, and it gives no dower. In the caſe wherein theſe leading principles were eſtabliſhed, after the teſtator had deviſed all the manors, lands, tenements, and hereditaments, he by a deed conveyed an advowſon which he was ſeiſed of at the time of making his will, to and to the uſe of truſtees and their heirs; in truſt to preſent the church when void to a particular perſon, if qualified, on the terms preſcribed therein: And if ſuch a perſon ſhould be incapable, then to preſent ſuch clerk as *A.* ſhould nominate; and in default of nomination by him, as the truſtees ſhould think fit. The perſon intended was preſented; and on a bill brought by the heir at law of the teſtator, to have a legal conveyance of the reſidue of the advowſon, the queſtion was, Whether this deed, being only a truſt for a particular purpoſe, as it was alledged, was a total or partial revocation? And determined by Lord Chancellor, after arguing as above, that it was a total revocation; it being a grant of the legal intereſt; and the truſt was a real and beneficial intereſt given by it to the truſtees, that of nominating themſelves in default of *A.*'s nominating: And he decreed, a conveyance to be made according to the prayer of the bill. 5 *New Abr.* 527. cites *MS. Rep.* *Sparrow* v. *Hardcaſtle* in *Canc. Paſc.* 17 *Geo.* 2.

I. S. ſeiſed of a leaſe for lives, deviſes it; and afterwards *I. S.* ſurrenders the old leaſe, and takes a new one to him and his heirs for three lives. Decreed by Lord Chancellor *King*, that this renewal of the leaſe was a revocation of the will, as to this particular. 3 *P. Will. Rep.* 166, 170. *Marwood* v. *Turner*.

So where a teſtator deviſed by his will, a leaſehold eſtate under *Magdalen College Oxon*, and after the making of this will, before his death, renewed his leaſe, by ſurrendering the old one, and taking a new leaſe. Determined by Lord Chancellor, that this was a revocation of his will. And tho' the teſtator, after the renewal, looking amongſt his papers, had ſaid, this is my will, that was held to be no republication. 5 *New Abr.* 527. cites *MS. Rep.* Sir *Tho. Abney* v. *Miller*, in *Canc. Trin.* 1743.

If the latter part of a will is inconſiſtent with the former part of it, it ſuperſedes and revokes it. *Per Reynolds Ch. B.* and *Comyns* and *Thompſon*, Barons *in Scacc. Fitzgibbons* 195. *Attorney General* v. *Governor and Co. of Chelſea water-works.*

It was agreed to be the conſtant rule of this court, that where a legacy was given to a child, who afterwards upon marriage, or otherwiſe, hath the like or greater ſum, it ſhould be intended in ſatisfaction of the legacy, unleſs the teſtator ſhould declare his intent otherwiſe; and it was ſaid the words of ratifying and confirming do not alter the caſe, though they amount to a new publication, being only words of form, and declaring nothing of the teſtator's intent in this matter. 2 *Freem. Rep.* 224. *Irod* v. *Hurſt.*

Defendant's teſtator by his will gave his four daughters 600*l.* a-piece and afterwards married his eldeſt daughter to the plaintiff, and gave her 700*l.* portion; after that he makes a codicil, and gives 100*l.* a-piece to his unmarried daughters, and thereby ratifies and confirms his will, and dies. Plaintiff preferred his bill for the legacy of 600*l.* given to his wife by the ſaid will. And his honour held, that the portion given by the teſtator in his life-time, ſhould be intended in ſatisfaction of the legacy. *Id. ibid.* See farther, *Prec. in Chan.* 183. *Ward* v. *Lant. Vin. Abr.* tit. *Deviſe, (R. 2.) ca.* 16. *p.* 140. *Parker* v. *Lamb. Prec. in Chan.* 263. *Hoſkins* v. *Hoſkins. Vin. Abr.* tit. *Deviſe, (P.) Ca.* 10. *p.* 136. *Prec. in Chan.* 298. *Bird* v. *Hooper.*

A man makes his will duly executed and atteſted according to the ſtatute of frauds and perjuries, and at the ſame time, in like manner, executes a duplicate thereof; ſome time after, the teſtator, having a mind to change one of his truſtees, orders his will to be wrote over again, without any variation whatſoever from the firſt, ſave only in the name of that truſtee. And when it was ſo wrote over, he executes it in the preſence of three witneſſes, and the three witneſſes ſubſcribed their names, but not in his preſence. After this the teſtator cancels the duplicate, by tearing off the ſeal, and then dies. And the queſtion was, Whether this ſecond will, not being good, as a will to paſs lands, ſhould yet be a revocation of the firſt, and if it ſhould not, whether the cancelling the other ſhould be a revocation thereof within the ſtatute of frauds and perjuries. And it was decreed, that neither the making of the ſecond, nor the cancelling the firſt, was a revocation thereof; though in the ſecond there was an expreſs clauſe, that he did thereby revoke all former and other wills; wherein my Lord Chancellor took this diſtinction, that the ſecond was not intended barely a revocation of the firſt, ſo as to ſignify his intention of dying inteſtate, or without any will; but it was intended as an effectual will to paſs the lands to the perſons, and in the manner thereby deviſed: And therefore if it was not good as a will to that purpoſe, it was no revocation of the firſt, but as it was ſuppoſed to be valid as a will for paſſing the lands by the ſecond: And if a man by his will deviſes land to *A.* and after makes a ſecond will, and thereby deviſes the lands to *B.* if this ſecond will be not good, as a will to paſs the lands to *B.* it ſhall be no revocation of the deviſe in the firſt to *A.* for it is plain *A.* was to loſe only what *B.* was to gain; and if *B.* gains nothing by the ſecond, *A.* ſhall loſe nothing that was given him by the firſt: But if a man executes a ſecond will, which appears to have no other intention than to revoke the firſt, and to die inteſtate, though this ſecond be not in all circumſtances duly executed as a will whereby to paſs lands, yet it will operate as a revocation of the firſt: And as to the cancelling or tearing of the firſt will, that is no revocation of it in this caſe, becauſe that was no ſelf-ſubſiſting independent act, but done to accompany, or in a way of affirmation of the ſecond: It was done from an opinion, that the ſecond had effectually revoked the firſt, and therefore he tears the firſt as of no uſe: But the firſt was not effectually revoked by the ſecond: And the act of tearing the firſt will, not deſtroy it neither: For though a man may, by the ſtatute of frauds, as effectually deſtroy his will, by tearing or cancelling it, as by making a ſecond; yet if he does make a ſecond, and intends that as revocation of the firſt, if it be inſufficient for that purpoſe, as in the principal caſe, the tearing and cancelling being only in conſequence of his opinion, that he made a good ſecond will, it ſhall not deſtroy the firſt; but it ought to be ſet up again in equity. 1 *Abr. Eq. Caſes* 407. See as to part, *Cont.* 10 *Mod.* 233. *Vin. Abr.* tit. *Deviſe*, (*R.* 3.) *p.* 141.

But if a man cancels or revokes either the duplicate or original will, this is an effectual avoiding of both, they being both but one will, and therefore muſt ſtand or fall together. 2 *Vern.* 742. *Onions* v. *Tyrer.*

A man makes his will in writing, and thereby deviſes all his real and perſonal eſtate to his wife, her heirs and executors, in truſt to pay his debts and legacies; and then deviſes ſeveral legacies to his children and other perſons, and concludes, "In witneſs whereof I have, to this my laſt will and teſtament, containing nine ſheets of paper, and to a duplicate thereof, to be left in the hands of ſuch a one, ſet my ſeal to every ſheet thereof, and to the laſt of the ſaid ſheets my hand and ſeal, in the preſence of three witneſſes, who all ſubſcribed their names in due form of law." Afterwards the teſtator, being minded to add other truſtees to his wife, and make ſome alterations in his will, ſends for a ſcrivener, and gave directions to prepare a draft of inſtructions for another will, which the ſcrivener does accordingly, and the teſtator read it over and approved of it very well, and ſets his hand to it; and being at a tavern, thinking he had now made a new will, he pulls out of his pocket the firſt will and tears off the ſeal from the firſt eight ſheets, which the ſcrivener ſeeing, aſked him what he was doing; why ſays he, I am cancelling my firſt will. Pray ſays the ſcrivener hold your hand, the other will is not perfected; it will not paſs your real eſtate for want of being executed purſuant to the ſtatute of frauds and perjuries. I am ſorry for that, ſays he, and immediately deſiſted from tearing off any more of the ſeals; and in ſome ſhort time dies without having done any thing further to perfect the ſecond will, or to cancel the firſt.

Lord Chancellor held, that the ſubſequent will could be no revocation as to the real eſtate, not being executed according to the ſtatute of frauds and perjuries: And that as to the tearing off the ſeals from the firſt eight ſheets, that not being done *animo cancellandi*, was no revocation; and that the ſeal remaining whole to the laſt ſheet was ſufficient, and in ſtrictneſs it was not neceſſary that all the ſheets ſhould be ſealed. *Abr. Eq. Caſ.* 409. *Hyde* v. *Hyde.* 3 *Chan. Rep.* 155. S. C. See *Vin. Abr.* tit. *Deviſe*, (*R.* 4.) *Ca.* 3. *p.* 142. *Townſend* v. *Pearce.*

If *A.* deviſes lands to *B.* and his heirs, and afterwards mortgages the ſame lands to *J. S.* for years, or in fee, though a mortgage in fee be a total revocation at law, yet in equity it ſhall be a revocation *pro tanto* only. 1 *Vern.* 97, 141, 182, 329, 342. 1 *Salk.* 158. S. P. So if a man ſeized in fee deviſes to *J. S.* in fee or for life, and afterwards makes a leaſe to *J. D.* for years, this, even at law, ſhall not be a revocation, but during the years: for his intent does not appear further than during the term for years. 1 *Rol. Abr.* 616. *Montague* v. *Jeffries.* So if a huſband poſſeſſed of a term for forty years, deviſes it to his wife, and after leaſes the land to another for twenty years, and dies; this leaſe is not any revocation of the whole eſtate; but only during the twenty years, and the wife ſhall have the reſidue of the deviſe. *Id. ibid. Wilcox*'s caſe.

But if *A.* deviſes lands to *B.* and his heirs, and twelve years after leaſes the ſame lands to *B.* for ſixty years, to commence after his death, and delivers the deed to a ſtranger, to the uſe of *B.* who does not deliver it to *B.* till after the death of *A.* This is a revocation of the whole eſtate, for both eſtates are not conſiſtent nor can veſt in *B.* at the ſame time; and it was plainly the intention of the deviſor, that *B.* ſhould have the leſs eſtate only And it was ſo adjudged, though objected, that it was the intention of *A.* that *B.* ſhould have his liberty to take by the leaſe or deviſe, *B.* not having agreed to the leaſe in the life time of *A.* 1 *Abr. Eq. Caſ.* 410. But if the leaſe made to the deviſee had been to begin either *in præſenti* or *futuro*, in the life of the deviſor, it had not been a revocation, for inaſmuch as the leaſe might have determined in his life, it was conſiſtent with his will. *Cro. Jac.* 49. *Coke* v. *Bullock.* So where *A.* by will deviſed to his younger ſon a certain meſſuage for ninety-nine years, if three lives lived ſo long, yielding and paying to his ſiſter the plaintiff 20 *l. per ann.* until twelve years old, and thence 40 *l. per ann.* for life: And afterwards the ſaid *A.* for 300 *l.* fine, demiſed the ſaid meſſuage to *J. S.* for ninety-nine years, if three lives lived ſo long, yielding and paying 50 *l. per ann.* to *A.* the teſtator, his heirs and aſſigns; and though it was held at the *Rolls* to be a revocation, yet, on an appeal to my Lord Keeper, he decreed it to be no revocation, and that the daughter ſhould be paid her annuity; and he ſaid, that the rule is, where a ſubſequent act ſhall amount to a revocation by implication, it muſt be a neceſſary implication: And the act muſt be wholly inconſiſtent with the deviſe. 2 *Vern.* 495. *Lamb.* v. *Parker.* 2 *Freem.* 284. S. C.

So if *A.* deviſes lands to truſtees to pay his debts, and then to pay his wife 200 *l. per ann.* for her life; and the teſtator living ſeveral years after, his debts increaſed from 2000 *l.* to 10,000 *l.* for 8000 *l.* whereof his ſaid truſtees were bound, and afterwards *A.* the teſtator, by deed and fine, conveys his lands to his ſaid truſtees, to ſell to pay his debts, and the ſurplus to him and his heirs, and tho' the wife joined with him in the fine and conveyance, yet this ſhall be no revocation of the wife's 200 *l. per ann.* and ſhe ſhall have the 200 *l. per ann.* out of the ſurplus money after the debts are paid. 2 *Vern.* 241. *Vernon* v. *Jones.* 2 *Freem.* 117. S. C. See the caſe of *Clinton* and *Wynn.* 1 *Abr. Eq. Caſ.* 411. 2 *Freem.* 102. 1 *Abr. Eq. Caſ.* 412. *Pollen* v. *Huſband.*

A. having iſſue four daughters, and no male iſſue, deviſes lands to truſtees, in truſt to permit his daughter *S.* to receive the rents and profits until her marriage or death, and in caſe ſhe married with the conſent of two of the truſtees and her mother, then to convey the premiſſes to her and her heirs: But if ſhe died before marriage, or married without ſuch conſent, then to convey to other perſons: Afterwards *S.* married in the lifetime of her father, and with his conſent, and he ſettled part of thoſe lands on her and her huſband, and died. And it was held, that this ſettlement was no revocation of the will, as to the deviſe of the other lands. 2 *Vern.* 720. *Clarke* v. *Berkley.* See *Vin. Abr. tit. Deviſe, Ca.* 11. *p.* 154. *Clarke and Ux.* v. *Lucas & al'.* 1 *Vern.* 23. 1 *Abr. Eq. Caſ.* 413. *Brown* v. *Thompſon.*

If *A.* by his will deviſes all the reſidue of his perſonal eſtate to *B.* and *C.* and makes them executors; and after, by a codicil, cancels and revokes every legacy, thing, and part relating to *B.* and revokes his being executor; *C.* ſhall have the whole. A revocation, with a new gift, ſhall have the ſame effect as if it had been expreſsly given; and whether it be by codicil or obliteration, it is the ſame. 5 *New Abr.* 535. *MSS. Rep. Humphries* v. *Taylor, in Chan. Hil.* 25 *Geo.* 2.

Though marriage and the having of children has been deemed a revocation of a will, yet it is only a preſumptive revocation; for if it appears by any expreſſion, or other means, to be the intent of the deviſor, that his will ſhould continue in force, the marriage will be no revocation of it. 1 *Ld. Raym.* 441. *Lugg.* v. *Lugg.* Vide *Vin. Abr. tit. Deviſe,* (*Y*) *Ca.* 2. *Saunders* v. *Hawkins. Ib.* (*R.* 6.) *Ca.* 25. *p.* 147. *Barnardiſton* v. *Carter.*

If lands are deviſed to one in fee, and afterwards mortgaged to the ſame deviſee, it is a revocation *in toto*, being inconſiſtent with the deviſe; though it was agreed, if the mortgage had been to a ſtranger, it had been a revocation *quoad* the mortgage only. Decreed *per* Lord *Macclesfield*, *Prec. in Chanc.* 514. *Hackneſs* v. *Bayley*. Vide 1 *P. Will* 681. *Hartop.* v. *Whitmore*, *and Vin. Abr.* (*Y.* 2.) *Ca.* 10. 2 *P. Wms.* 328. *Rider* v. *Wager*.

I. S. on his marriage with *F.*'s daughter, ſettled 500 *l. per annum* on her; he afterwards ſurrendered ſome copyhold eſtates to the uſe of his will which he made, and gave the copyhold to his wife. Afterwards *I. S.* on the death of his wife's father, became intitled to 1500 *l.* in right of his wife; then *I. S.* levied a fine, and made a new ſettlement, and increaſed her jointure 300 *l. per annum*, but never altered his will. And *per* Lord Chancellor, The ſettlement is a revocation of the will, for ſuch lands as are comprized in it; but the copyhold is not, and therefore paſſes by the will. *Select Caſes in Chan.* 48. *Lannoy* v. *Lannoy*. See *Select Caſes in Chanc.* 63. *Vin. Abr. tit. Deviſe*, (*R.* 6.) *Ca.* 30. *p.* 148. *Luther* v. *Kirby*.

By marriage articles it was agreed, that the wife's lands, whereof ſhe was ſeiſed in tail, ſhould be conveyed to the huſband in fee; they married, the huſband made his will and deviſed theſe lands; then the huſband and wife ſuffered a recovery of theſe lands, to ſuch uſes, and for ſuch eſtates, as they ſhould jointly appoint, and in default of ſuch appointment, to the uſe of the huſband and his heirs. She died without appointing. *Per Hardwicke* Chanc. This amounts to a revocation of the will. And in this caſe the following rules were laid down.

If a man ſeized in fee deviſes, and then makes a conveyance by fine, feoffment, or recovery, and takes back a new eſtate, it is certainly a revocation; and ſo if he takes back the old uſe unaltered, from a preſumption that he could not have made ſuch a conveyance, without an intention to alter his will: But if after making his will he had made a leaſe, or charged it with a ſum of money, *&c.* it would only have been a revocation *pro tanto*. The rules are the ſame in the deviſe of a real, and of a perſonal eſtate, with regard to charges made afterwards: But if a man, having an equitable eſtate in fee, deviſes it, and then takes a conveyance of the legal eſtate; it is no revocation. The equitable eſtate will not paſs by will, but the heir at law by deſcent of the legal eſtate, may become a truſtee for the deviſee, who may call for a conveyance of the eſtate. If a man contracts by articles for the purchaſe of lands, and before a conveyance deviſes the lands and dies; the deviſee ſhall have the lands, and call for a conveyance from the vendor. If a man, ſeiſed of a legal eſtate, makes his will, and then conveys the legal eſtate to another in truſt for himſelf, it is a revocation. If in this caſe the huſband had only taken the legal eſtate by the recovery to execute it into the equitable eſtate, it would have been no revocation; but new uſes are appointed, and tho' the wife died without making any appointment, that will not alter the caſe, for here he took the fee by the recovery differently qualified, ſubject to different conditions, differently conveyed. But if two parceners make partition, levy a fine, and declare the uſe, that will not be a revocation, becauſe it is to effectuate the partition. 5 *New Abr.* 538. *MSS. Rep. Parſons* v. *Freeman. In* 25 *Geo.* 2. Vide *Fitzgib. Rep.* 207.

Though a covenant or articles do not at law revoke a will, yet if entered into for a valuable conſideration, amounting in equity to a conveyance, they muſt conſequently be an equitable revocation of a will, or of any writing in nature thereof. A woman's marriage is alone a revocation of her will. 2 *P. Will. Rep.* 624. *Cotter* v. *Layer*. See S. P. reſolved in the caſe of Sir *Bernham Ryder* v. Sir *Charles Wager*. *Ibid.* 332. See 4 *Rep.* 61.

Tenant in tail, remainder to himſelf in fee, deviſes his lands to *A.* and then ſuffers a recovery to the uſe of himſelf in fee, and dies without iſſue male; this is revocation of the will. 3 *P. Will. Rep.* 163. *Marwood* v. *Turner*. See *Vin Abr. tit. Deviſe*, (*R.* 2.) *Ca.* 17. *p.* 140. *Hyde* v. *Maſon*. 5 *New Abr.* 541. *MSS. Rep. Loyd and Ux'*, *&* *al'*. v. *Spillet* *&* *al'*. *Id. ib. Weld* v. *Acton*, &c.

As to ſetting aſide wills for fraud, *Jekyl* Lord Commiſſioner took a difference between a will and a deed gained upon a weak man, and upon a miſrepreſentation or fraud; for if a will be gained from ſuch by miſrepreſentation, this is not a ſufficient reaſon to ſet it aſide in equity; as was determined in the Duke of *Newcaſtle*'s will, betwixt Lord *Thanet* and Lord *Clare*, and in the caſe of *Bodvil* and *Roberts*: But where a deed, which is not revocable as a will is, is ſo gained from ſuch a perſon, and without any valuable conſideration, the ſame ought to be ſet aſide in equity. 2 *P. Will. Rep.* 270. *James* v. *Greaves*. A will obtained *in extremis*, and upon importunity of teſtator's wife, his hand being guided in the writing of his name, has been ſet aſide. *Vin. Abr.* tit. *Deviſe*, (Z. 2.) *Ca.* 7. *p.* 167. *Moneypenny* v. *Brown*. A will likewiſe concerning land may be good at law, as being well executed, and yet be ſet aſide in equity for fraud. 1 *P. Will.* 287, 289. *Goſs* v. *Tracy*. See *Vin. Abr.* tit. *Deviſe*, (*Z.* 2.) *Ca.* 11. *p.* 167. *Branſby* v. *Kerridge*, &c. 2 *P. Will.* 286. *Stephenſon* v. *Gardiner*.

Where a bill is brought to prove a will of lands, the ſanity of the teſtator muſt be proved; but it is otherwiſe in caſe of a deed of truſt to ſell for payment of debts. 3 *P Will Rep.* 93. *Harris* v. *Ingledew*. *N. B.* A will having relation only to the teſtator's death, and not to the making, (for till his death he is maſter of his own will,) therefore the will of a papiſt in *Ireland*, was held to be avoided by a ſubſequent ſtatute made in that kingdom, which enacts, that the lands of papiſts there ſhall not be deviſeable, but deſcend in gavelkind. *Vin. Abr.* tit. *Deviſe*, (H. 6.) *Ca.* 7. *p.* 273. *Burk* v. *Morgan*. It has been ſaid, that wills (of perſonal eſtates only) though gained by fraud, if proved in the Spiritual court, are not to be controverted in equity. 2 *Vern.* 8, 9 *Archer* v. *Moſſe*. 1 *P. Will.* 388. *Plume* v. *Beale*.

So where an executor proved a will of a perſonal eſtate, wherein one of the legacies was forged; it was decreed, that the executor had no remedy in equity; but ought to have proved the will, with a ſpecial reſervation as to that legacy. 1 *P. Williams*, 388. *Plume* v. *Beale*. But though wills (of perſonal eſtates only) gained by fraud, and proved in the Spiritual court, are not to be controverted in equity, yet if the party claiming under ſuch will comes for any aid in equity he ſhall not have it. 2 *Vern.* 76. *Ne ſon* v. *Oldfield*. It has been determined likewiſe, that the courts of equity can hold plea concerning a legacy, and likewiſe concerning the deviſe of the *reſiduum*, which is but a legacy: And they may in notorious caſes decree a legatee, who has obtained a legacy by fraud, to be a truſtee for another: As if the drawer of the will ſhould inſert his own name inſtead of the name of the legatee. 1 *Str.* 673. *Marriot* v. *Marriot*. But it has been decreed in the Houſe of Lords, that a will of a real eſtate could not be ſet aſide in a court of equity for fraud or impoſition, but muſt firſt be tried at law on *deviſavit vel non*, being matter proper for a jury to inquire into. 1 *Abr. Eq. Caſes* 406. *Branſby* v. *Kerridge*.

As to the forms of wills, of various ſorts, ſee the 3d vol. of *Wood's Body of Conveyancing*.

Win, (*Sax.*) In the beginning or ending of the names of places, ſignifies that ſome battle was fought, and victory gained there.

Winchelſea, The hundred of *Winckelſea* where to be deemed as two diſtinct hundreds. 9 *&* 10 *W.* 3. *c.* 40.

Winches, A kind of engines to draw barges againſt the ſtream of a river. 21 *Jac.* 1. *cap.* 32.

Wincheſter meaſure. A ſtandard originally kept at *Wincheſter*: and we find in the laws of King *Edgar*, near a century before the conqueſt, an injunction that one meaſure, which was kept at *Wincheſter*, ſhould be obſerved throughout the realm. See *Black. Com.* 1 *V.* 274, 275.

Windas, or Windlaſs, Corruptly *wanlaſs*, is a term for hunting of deer in foreſts to a ſtand, *&c.* See *Wanlaſs.*

Wind-Mill, A man may not erect a *wind-mill* within any foreſt, becauſe it frights deer, and draws company to the diſquiet of the game. *W. Jones Rep.* 293.

Window-Tax. By the ſtatutes 20 *Geo.* 2. *c.* 3, 42. 21 *Geo.* 2. *c.* 10. A yearly duty is laid on every dwelling houſe inhabited of 2 *s.* having 10, 11, 12, 13, or 14 windows 6 *d. per* window, having 15, 16, 17, 18, or 19 windows, 9 *d. per* window, having 20 or more windows 1 *s. per* window, beſides the 2 *s.* Every kitchen, ſcullery, buttery, pantry, larder, waſh-houſe, laundry, bake-houſe, brew-houſe, and lodging-room belonging to, or occupied with, any dwelling-houſe, whether within or not, or contiguous or disjoined from ſuch dwelling-houſe, ſhall be deemed part of ſuch dwelling houſe. When two or more windows are fixed in one frame, if there be a diviſion between them of twelve inches breadth, they ſhall be charged as diſtinct windows; and ſo if they extend to give light into more rooms than one. Sky-lights, and lights in garrets, ſtair-caſes, cellars and paſſages are chargeable. An inhabitant of any chamber in any of the inns of court or *Chancery* ſhall be chargeable for every window in his chamber, but not to the 2 *s.* on a houſe-keeper. The regulation of this act is under the direction of the commiſſioners of the land-tax. On default of payment, this duty is to be levied by diſtreſs, and if no ſufficient diſtreſs, the party is to be ſent to gaol without bail or mainpriſe till payment. See *Stat.* 26 *Geo.* 2. *c.* 17. For the more effectual levying the *window-tax* in *Scotland.*

Windſor. The mayor and bailiffs, *&c.* of *Windſor* are to maintain the great bridge there, and receive tolls for carriages, cattle, *&c.* paſſing over it, and barges going under the ſame. *Stat.* 9 *Geo.* 2. *c.* 15.

Wine, (*Vinum*) Is to be tried twice a year, *viz.* at *Eaſter* and *Michaelmas*; and none ſhall ſell *wine* but at a reaſonable price, by *Stat.* 4 *Ed.* 3. *cap.* 22. The Lord Chancellor hath authority to ſet the prices of *wines* by the butt, barrel, *&c.* Perſons ſelling at greater prices ſhall forfeit 40 *l.* and no perſons may ſell *wine* by retail, but ſuch as are licenſed by juſtices of peace, *&c.* 28 *H.* 8. *cap.* 14. 7 *Ed.* 6. *cap.* 5. By ſtatute, *Canary wine, Alicant*, and other *Spaniſh* or ſweet *wines* were not to be ſold for above 1 *s.* 6 *d.* a quart, and *Gaſcoign* and *French wine* not above 8 *d.* the quart, *&c.* unleſs appointed at a higher price: And when the Lord Chancellor, Treaſurer, *&c.* ſet the prices of all *wines*, they were to cauſe them to be written, and proclamation made thereof in the *Chancery* in term-time, or in the cities, towns, *&c.* where it is to be ſold at thoſe prices. Alſo the number of retailers of *wines*, in every city and market-town, was particularly limited. *Stat.* 7 *Ed.* 6. 12 & 13 *Car.* 2. The King may grant commiſſions to commiſſioners to licence perſons to retail *wine*; and they may under their ſeal of office grant *licences*, for any term not exceeding 21 years, under certain rents, *&c.* the revenue whereof is to be paid into the *Exchequer*; but the privileges of the *Univerſities*, and of the company of *Vintners* in *London*, *&c.* were ſaved by this ſtatute, 12 *Car.* 2. *cap.* 25. And the revenue of wine licences is granted to the King, his heirs and ſucceſſors, by the 22 & 23 *Car.* 2. *cap.* 6. One ſingle act is ſelling by retail. 2 *Strange* 718. But ſelling a dozen quart bottles of *wine* is not ſelling by retail meaſure within the ſtatutes, ſo as to require a licence. *Ibid.* 1124. Merchants, *&c.* ſelling *wines*, who ſhall adulterate the ſame, or utter any adulterated *wine*, are liable to a penalty of 300 *l.* And retailers of mixed *adulterated wine*, incur a forfeiture of 40 *l.* *Stat.* 12 *Car.* 2. 1 *W.* & *M.* *c.* 34. Alſo if any retailer of *wine* ſells it in meaſures not made of pewter, and ſealed, he ſhall pay 50 *s.* for every offence, leviable by a juſtice of peace's warrant, *&c.* 2 *W.* & *M.* *c.* 14. But ſee 4 & 5 *W.* & *M.* Perſons retailing *Engliſh* made *wines*, (on which there is a duty of 12 *s. per* barrel) muſt be licenſed by two juſtices of peace; and be keepers of publick houſes, by *Stat.* 10 *Geo.* 2. *c.* 17. By the *Stat.* 18 *Geo.* 2. *c.* 9. is given an additional duty of 8 *l.* for every ton of *French wine* and vinegar, and 4 *l.* for every ton of all other *wines* and vinegars. See *Stat.* 26 *Geo.* 2. *c.* 12. To prevent *wines* imported from any of the out-ports, being afterwards brought into the port of *London* or parts adjacent, without paying the *London* duty. See *Black. Com.* 1 *V.* 288. 4 *V.* 162.

Winter-heyning, Is a ſeaſon between the eleventh day of *November* and the three and twentieth day of *April*; which is excepted from the liberty of commoning in the *Foreſt of Dean*, *&c.* *Stat.* 20 *Car* 2. *cap.* 3.

Wire, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 *Car.* 2. *c.* 19. Iron wire, 2 *W.* & *M. ſeſſ.* 2. *c.* 4. *ſ.* 16. Steel wire, 2 *W.* & *M. ſeſſ.* 2. *c.* 4 *ſ.* 17. Latten, braſs or copper wire, and gold and ſilver wire imported, to what duties liable. 4 *W.* & *M.* *c.* 5. *ſ.* 2. Braſs wire how exempt from payment of duties on exportation. 7 *An.* *c.* 8. *ſ.* 8.

Wire-Drawers. It is enacted by ſtatute, that ſilver *wire-drawn*, for making gold and ſilver thread, ſhall contain certain quantities to the pound weight, on pain of 5 *s. per* ounce wanting. 9 & 10 *W.* 3. *c.* 39. The ſilver *wire* to be *drawn* for ſilver thread, is to hold eleven ounces and fifteen penny weights, and all ſilver to be gilt and uſed in the *wire-drawers* trade, ſhall hold eleven ounces and eight penny-weights of fine ſilver on the pound weight Troy; and four penny-weights and four grains of gold, to be laid upon each pound of ſilver, on forfeiture of 5 *s.* for every ounce made otherwiſe. 15 *Geo.* 2. *cap.* 20.

Wiſta, A meaſure of land among the *Saxons*; being the quantity of half a hide, and the hide 120 acres.—*Octo virgatæ unam* hidam *faciunt*; wiſta *vero quatuor virgatis conſtat.* Mon. Ang. Tom. 1. p. 133.

Witam, *Secundum* witam *jurare*, Was for a perſon to purge himſelf by the oaths of ſo many witneſſes, as the offence required. *Leg. Inæ*, *cap.* 63.

Witchcraft, Uſing of, was felony by *Stat.* 1 *Jac.* 1. *cap.* 12. repealed by 9 *Geo.* 2. *c.* 5. See *Conjuration* and *Black. Com.* 4 *V.* 60, 429.

Wite, A *Saxon* word, uſed for puniſhment; a pain, penalty, mulct, *&c.* And *witefree* is a term of privilege or immunity from fines and amercements. *Sax. Dict.* From hence come the words *Bloodwite, Lecherwite*, &c.

Witena-gemot, or Wittena-gemot, (Sax. *Conventus ſapientum*) Was a convention or aſſembly of great men to adviſe and aſſiſt the King, anſwerable to our parliament, in the time of the *Saxons*; or, rather an aſſembly of the whole nation. See *Diets*, and *Squire's Anglo-Saxon Government* 165, *&c.*

Witens, Were the chief of the *Saxon* Lords or *Thanes*, their nobles and wiſe men. *Sax. Dict.*

Witerden. A taxation of the *Weſt Saxons*, impoſed by the publick council of the kingdom. *Chart. Ethelwolf. Reg. Anno.* 855.

Withdrawing from allegiance. By 3 *Jac.* 1. *c.* 4. if any natural-born ſubject be withdrawn from his allegiance, and reconciled to the Pope or See of *Rome*, or any other prince or ſtate, both he and all ſuch as procure ſuch reconciliation ſhall incur the guilt of high treaſon.

Withernam, (From the Sax. *Wither*, i. e. *altera*, or, as ſome ſay, *contra*, & Nam, *captio*) Is where a diſtreſs is driven out of the county, and the ſheriff upon a *replevin* cannot make deliverance to the party diſtrained: In this caſe the writ of *withernam* is directed to the ſheriff, for the taking as many of *his* beaſts or goods, who did thus unlawfully diſtrain, into his keeping till the party make deliverance of the firſt diſtreſs, *&c.* It is a *taking* or repriſal of *other* cattle or goods, in lieu of thoſe that were formerly unjuſtly taken and eſloined, or otherwiſe witholden. *F. N. B.* 68, 69. 2 *Inſt.* 140. *Stat. Weſt.* 2. 13 *Ed.* 1. *c.* 2. This writ is granted on the return of the ſheriff upon the *alias* and *pluries* in replevin, that the cattle, *&c.* are eſloined, by reaſon whereof he cannot replevy them; and it appears by our books, that the ſheriff may award *withernam* on replevin ſued by plaint, if it be found by inqueſt in the county, that the cattle were eſloined according to the bailiff's return, *&c.* Though upon the *withernam* awarded in the county-court, if the bailiff doth return that the other party hath not any thing, there ſhall be an *alias* and *pluries*, and ſo infinite, and no other remedy there: But on a *withernam* returned in the *King's Bench*, or *Common Pleas*, if the ſheriff return that the party hath not any thing, *&c.* a *capias* ſhall iſſue againſt him, and exigent and outlawry. *New. Nat. Br.* 166. In replevin, *&c.* the ſheriff returns *averia elongata ſunt* by the defendant; thereupon a writ of *withernam* is awarded; and if he return *nihil*, the plaintiff proceeds to outlawry by *alias* and *pluries cap. in withernam*, and ſo to exigent: And there is ſome difference where the defendant appeareth upon the return of the *pluries capias*, and when he ſtays longer, and appears on the return of the exigent and not before; for in the firſt caſe his cattle ſhall not be taken in *withernam:* but he muſt find pledges to make deliverance, or be committed; and, in the laſt caſe, he ſhall not only find pledges for making deliverance, but ſhall be fined, and his cattle may be taken in *withernam:* In both caſes, the plaintiff may declare for the unjuſt taking, and yet detaining of his cattle, and ſo go to trial upon the right; and if 'tis found for him, then he ſhall recover the value of the cattle with coſts and damages, or may have the cattle again by a *retorn. habendo* directed to the ſheriff; but if it be found for the defendant, he ſhall keep the cattle, and have coſts and damages for the unjuſt proſecution. 1 *Brownl.* 180. 3 *Nelſ. Abr.* 553, 554.

A defendant in replevin may have a writ of *withernam* againſt the plaintiff; as if the defendant hath a return awarded for him, and he ſueth a writ *de retorn. habendo*, and the ſheriff return upon the pluries, *quod averia elongata ſunt*, he ſhall have a *ſci. fac.* againſt the pledges which the plaintiff put in to proſecute, *&c.* and if they have nothing, then he ſhall have a *capias ad withernam* againſt the plaintiff. *Ibid.* And the cattle taken in *withernam* are to be *ad valentiam, i. e.* to the value of the cattle that were firſt taken and detained; for it is to be underſtood not only of the number of the cattle, but according to the worth and value; otherwiſe he that brings the *replevin* and *withernam*, will be deprived of his ſatisfaction. 3 *Lill. Abr.* 690. Where cattle have been taken in *withernam*, they have been by a rule of court delivered back and reſtored to the owner, on his payment to the plaintiff of all his damages, coſts and expences. *Ibid.* Cattle taken in *withernam* may be milked, or worked reaſonably; becauſe they are delivered to the party as his own cattle, *&c.* *Contra* of cattle diſtrained. 1 *Leon.* 302. This word *withernam* alſo ſignifies repriſals taken at ſea by letters of mart ſhips. See *Replevin.*

Witherſake, An apoſtate, or perfidious renegado. *Leg. Canut. cap.* 27.

Witneſs, *(Teſtis)* Is one that gives evidence in a cauſe; an indifferent perſon to each party, ſworn to ſpeak the truth, the whole truth, and nothing but the truth: And if he will be a gainer or loſer by the ſuit, he ſhall not be ſworn as a *witneſs.* 2 *Lill. Abr.* 700. If a witneſs to a bond becomes adminiſtrator of the obligee, his hand may be proved. 1 *Strange* 34. If a *witneſs* becomes intereſted, his depoſition taken before cannot be read. *Ibid.* 101. *qu.* A party whoſe deed is forged, is no *witneſs* on an indictment for the forgery. 2 *Strange* 728. Party ſuppoſed to be defrauded, allowed a *witneſs* in perjury. *Ibid.* 1229. The proprietor of a note allowed a *witneſs* on an indictment for tearing it. 1 *Strange* 595. Giver of a note no *witneſs* on an indictment for perjury, in denying an agreement relating to it. 2 *Strange* 1043. Defendant in ejectment no *witneſs*, on an indictment for perjury at the trial. *Ibid.* 1104. The creditor of a bankrupt is no *witneſs* to prove him a gameſter. 1 *Strange* 507. A creditor allowed to prove the debtor not intitled to his diſcharge on the *mint* act. *Ibid.* 650. The vendor *witneſs* to a title, where there is no covenant for warranty. *Ibid.* 445. *qu.* Wife of *prochein amy* a *witneſs.* Ibid. 506. *Prochein amy* no *witneſs.* 2 Strange 1026. A guardian on record, no *witneſs.* 1 Strange 506. Wife of a party, admitted to prove her huſband's death. *Ibid.* 568. Wife *witneſs* againſt her huſband, on an indictment for an aſſault on herſelf. *Ibid.* 633. The wife of one defendant cannot be a *witneſs* for the other, on an indictment againſt two. 2 *Strange* 1095. Sheriff's bailiff no *witneſs* to prove an attempt to arreſt. 1 *Strange* 650. In an action againſt the maſter for the negligence of his ſervant, the ſervant, having a releaſe from the defendant, is a competent *witneſs* 2 *Strange* 1083. A goldſmith's ſervant, who overpays money, is a witneſs in an action for it again. 1 *Strange* 647.

A witneſs to a deed becoming adminiſtrator, *&c.* his hand may be proved. *Stran.* 34. Laying a wager on the cauſe does not incapacitate for a witneſs. *Stran.* 652. Party whoſe deed is forged, no witneſs. *Stran.* 728. Bankrupt not admitted to prove his own act of bankruptcy. *Stran.* 828. If the witneſs to a deed becomes infamous, he is conſidered as dead. *Stran.* 833. Quaker no witneſs in an appeal of murder. *Stran* 856. This is, on his affirmation; but if a quaker will take an oath, he may be a witneſs in any criminal proceeding. Affidavit of one convicted of forgery not to be read to ſupport a complaint. *Stran.* 1148. Party ſuppoſed to be defrauded, allowed a witneſs in perjury. *Stran.* 1229. A bond proved by co-obligor. *Stran.* 35.

If a *witneſs* being ſerved with a *ſubpœna* does not attend, the court will grant an attachment againſt him. 1 *Strange* 510. 2 *Strange* 810. But he ought to have reaſonable notice of the trial. 1 *Stran.* 510. To be ſerved perſonally. 2 *Stran.* 1054. And reaſonable expences tendered to him. *Ibid.* 1150. See *Evidence.*

See alſo farther as to witneſſes, *Black. Com.* 3 *V.* 369. Witneſſes for priſoners, *Id.* 4 *V.* 352, 434. Tampering with witneſſes, *Id.* 4 *V.* 126. The expences of witneſſes, *Id.* 3 *V.* 369 4 *V.* 355. Witneſſes to deeds, *Id.* 2 *V.* 307. Witneſſes to wills, *Id.* 2 *V.* 501. Trial by witneſſes, *Id.* 3 *V.* 336. Where two witneſſes are neceſſary, *Id.* 3 *V.* 370. 4 *V.* 350.

Wittena-gemote. See *Witena-gemote*, and *Black. Com.* 1 *V.* 148. 4 *V.* 405.

Woad, A profitable herb much uſed for the dying of *blue* colours, mentioned in the *Stat.* 27 *H.* 8. *cap.* 2.

Wold, *(Sax.)* Signifies a down, or open champaign ground, void of wood; as *Stow* in the *Wolds*, *Cotſwold* in *Glouceſterſhire*, &c.

Wolfeſhead, or **Wolferhefod,** (Sax.) *Caput Lupinum*, Was the condition of ſuch as were *outlawed* in the time of the *Saxons*; who, if they could not be taken alive to be brought to juſtice, might be ſlain, and their heads brought to the King; for they were no more accounted of than a *wolf's* head, a beaſt ſo hurtful to man. *Leg. Edw. Conſ. Bract. lib.* 3.

Women, Laws relating to. A *woman* is capable of being a ſexton, and of voting at an election for one. 2 *Strange* 1114 A baſtard is within the ſtatute of *P. & M.* againſt taking away *young women*, Ibid. 1161. See *Baron and Feme, Forcible Marriage,* &c.

Wong, A *Saxon* word for field.——*Tres acras terræ jacentes in le* wongs, *i. e. in Campis opinor ſeminalibus.* Spelm.

Wood. If any perſon purpoſely burn any pile of *wood*, or bark any trees, *&c* the owner may recover treble damages for it in treſpaſs. *Stat.* 37 *Hen.* 6. *c.* 6. None may deſtroy any *woods*, by turning them into tillage or paſture, *&c.* if two acres or more in quantity, on pain of 40*s.* an acre: And no perſon ſhall ſuffer his ſwine to go in a wood unringed, under penalties. Where there is *wood* or coppice in common, the lord may incloſe a fourth part, *&c.* 35 *H.* 8. *c.* 17. 13 *Eliz.* *c.* 25. If coppice *wood* is felled at or under twenty-four years growth, there muſt be left twelve ſtandils of oaks in every acre, or the like number of aſh, elm, *&c.* on pain of forfeiting 3 *s.* 6 *d.* for every ſtandil wanting; and they are not to be cut down till ten inches ſquare within three foot of the ground, or until ſo many years after left, under the penalty of 6 *s.* 8 *d.* *&c.* *Stat.* 35 *Hen.* 8. *cap.* 17. All *woods* or coppices felled at fourteen years growth, ſhall be preſerved from deſtruction for eight years; and no cattle be put into the ground from the time of felling, till five years afterwards, by 13 *Eliz.* *cap.* 25. The ſtatutes 43 *Eliz.* *cap.* 7. and 15 *Car.* 2. *cap.* 2. provide againſt *woodſtealing*, ordaining recompence to be made, and inflicting a forfeiture of 10 *s.* *&c.* Burning *woods*, or underwood, is made felony: And perſons maliciouſly cutting or ſpoiling timber-trees, fruit-trees, *&c.* are to be ſent to the houſe of correction for three months, and whipt once a month, by 1 *Geo.* 1. *c.* 48. Alſo where perſons deſtroy trees, woods, or break open hedges, the owners ſhall have ſatisfaction from the inhabitants of the place, as for dikes overthrown in the *night*, provided by 13 *Ed.* 1. under *approvement:* If the offenders be not convicted in ſix months, *&c.* 6 *Geo.* 1. *cap.* 16. It has been adjudged, that if *A.* plant a tree upon his own ground, and in growing its roots extend into the land of *B.* adjoining, they are tenants in common of this tree: But if all the root grows in the ground of *A.* though the boughs overſhadow *B.*'s land, yet the branches follow the root, and the property of the whole is in *A.* 1 *Ld. Raym.* 737.

Wood-corn, A certain quantity of grain paid by the tenant of ſome manors to the lord, for the liberty to pick up dead or broken wood. *Cartular. Burgi* S. *Petri MS.* 142.

Wood-geld, Is taken to be the cutting of wood within the foreſt, or rather money paid for the ſame to the foreſters; or it ſignifies to be free from payment of money, for taking wood in any foreſt. *Crômp. Juriſ.* 157. *Co. Lit.* 233.

Woodmen, Seem to be thoſe in foreſts, that have their charge particularly to look to the King's *woods* there. *Cromp. Juriſd.* 146.

Woodmote, Is the old name of that court of the foreſt which is now called the *Court of Attachments*; and was wont to be held at the will of the chief officers of the foreſt, without any certain time, till ſince the ſtatute of *Charta de Foreſta.* Manwood, cap. 22. pag. 207. See *Black. Com.* 3 *V.* 71.

Wood-plea-Court, A court held twice in the year in the foreſt of *Clun* in *Shropſhire*, for determining all matters of *wood* and agiſtments there.

Woodſtock. Wool and yarn may be ſold in *Woodſtock* on market and fair days, 18 *Eliz.* *c.* 21. See *Marlborough.*

Woodward, Is an officer of the foreſt, whoſe office conſiſts in looking after the woods, and vert and veniſon, and preſenting offences relating to the ſame, *&c.* And *wood-wards* may not walk with bow and ſhafts, but with foreſt bills. *Cromp. Juriſ.* 201. *Man-wood, par.* 1. 189.

Wool, Being a *ſtaple commodity* of the greateſt value in this kingdom; the employment of our poor at home, and our moſt beneficial trade abroad, depending in a great meaſure upon it; there have been divers good laws made to preſerve the ſame intirely to ourſelves, and to prevent its being tranſported to other nations. The *Stat.* 27 *Ed.* 3. declared it felony to tranſport *wool:* But the felony was repealed by 38 *Ed.* 3. *cap.* 6. By the 12 *Car.* 2. *cap.* 32. If any perſon ſhall export any *wool*, yarn, *&c.* he ſhall forfeit the ſame, and for every pound weight of goods 3 *s.* And the owners of the ſhip in which it ſhall be tranſported, being privy to the offence, ſhall forfeit all their intereſt in the ſaid ſhip; alſo the maſter and mariners aſſiſting, all their goods; and any perſons may ſeize ſuch *wool*, and ſhall be intitled to one moiety, and the King to the other moiety of forfeitures, *&c.* The 13 & 14 *Car.* 2. *cap.* 18. made the tranſportation of *wool* felony again; though this being thought too ſevere, the 7 & 8 *W.* 3 *cap.* 28. a ſecond time repeals the felony, and ordains that exporting *wool* beyond ſea ſhall incur a forfeiture of the veſſel, and treble value; and perſons aiding and aſſiſting, to ſuffer three years impriſonment.

By the ſtat. 9 & 10 *W.* 3. *cap.* 40. the former laws are explained, and a further proviſion is made againſt tranſporting *wool*; by obliging entries to be made of *wool* ſhorn, and *wool* not to be carried near the ſea-coaſts, but between ſun-riſing and ſun-ſetting, *&c.* Unlawful exporters of *wool*, where judgment is obtained againſt them, are to pay the ſum recovered within three months; or be liable to tranſportation for ſeven years as felons. 4 *Geo.* 1. *cap.* 11. The *Admiralty* ſhall appoint three ſixth rate ſhips, and eight ſloops to cruiſe on the coaſts, and ſearch and ſeize veſſels having manufactures of *wool* of the kingdom of *Ireland*, to be exported to foreign parts; which with the ſhips ſhall be forfeited, *&c.* *Stat.* 5 *Geo.* 2. *cap.* 21. All *woollen* manufactures are to be ſhipped from *Dublin*, and certain other ports in *Ireland*, and imported here into *Biddeford*, and ports named, and none others; and be brought from thence hither in ſhips built in *Great Britain* or *Ireland*, and duly regiſtred on oath. 12 *Geo.* 2. *c.* 21. *Wool-fells*, *&c.* ſhall be packed up in leather, or canvas marked, and not in any box, *&c.* on pain of forfeiting 3 *s.* for every pound: Alſo no coverlets, waddings, or beds, *&c.* ſtuffed with combed *wool*, may be exported under the like penalties as for exportation of *wool*. Stat. *Ibid.* Perſons that, by way of inſurance, undertake to carry *woollen* goods abroad, ſhall forfeit 500 *l.* And if they give a bribe or reward to any officer to connive at exporting *wool*, they are liable to 300 *l.* forfeiture; and perſons obſtructing the officer, or being armed, *&c.* reſcuing any goods, ſhall be tranſported as felons, for ſeven years. *Ibid.* See 13 *Geo.* 2. *c.* 8.

Wool-drivers, Are ſuch as buy *wool* in the country of the ſheep owners, and carry it on horſeback to the clothiers, or to market-towns, to ſell again. 2 & 3 *P.* & *M.* *c.* 13.

Woolferhefod. See *Wolfeſhead.*

Wool-key, Its ground, wharf and key, in the pariſh of *All-ſaints, Barking*, in *London*, veſted in truſtees for his Majeſty, his heirs and ſucceſſors, *&c.* 8 G 1. *c.* 31.

Woollen Manufactures, Combination of weavers, wool-combers, *&c.* prohibited, 12 *G.* 1. *c.* 34. 29 *G.* 2. *c.* 33. Extended to combers of *Jerſey* wool, frame-work-knitters and ſtocking-makers, 12 *G.* 1. *c.* 34. *ſ.* 8. and to other manufactures, by 22 *G.* 2. *c.* 27. *ſ.* 2. Regulations for the payment of wages, 13 *G.* 1. *c.* 25. *ſ.* 5, 9. 29 *G.* 2. *c.* 23. 30 *G.* 2. *c.* 12. Puniſhment of endgatherers, 13 *G.* 1. *c.* 23. *ſ.* 8. Having in cuſtody cloth ſtolen from the rack, or wool left to dry, firſt offence treble value, third tranſportation, 15 *Geo.* 2. *c.* 27.

Wool-ſtaple, Mentioned in *ſtat.* 51 *H.* 3. *ſtat.* 5. is, That city or town where wool was ſold. See *Staple.*

Woolwinders, Thoſe that *wind* up every fleece of *wool*, intended to be packed and ſold by weight, into a kind of bundle, after it is cleanſed as required by ſtatute, to avoid deceits by thruſting in locks of refuſe *wool*, and thrumbs, to gain weight: They muſt be ſworn to perform this office truly, between the owner and the *wool* buyer or merchant, by *Stat.* 8 *Hen.* 6. *c.* 22. 23 *Hen.* 8. *c.* 17. Perſons winding and ſelling deceitful *wool*, ſhall forfeit for every fleece 6 *d.* And if *wool-packers* do not make good and due packing, without putting any locks, pelt *wool*, ſand, earth, dirt, *&c.* in fleeces, action of treſpaſs and deceit lies againſt them, *&c.* Stat. *Ibid.*

Worceſter. A market for hops to be held by the guardians of the poor of the city of *Worceſter*; and the liberty of holding the ſaid market, and all tolls uſually had by the mayor, aldermen and citizens, ſhall be veſted in ſuch guardians, for the uſes expreſſed in the act 2 & 3 *Ann. c.* 8. *Stat.* 4 *Geo.* 2. *c.* 25.

Worceſters, and *worſted* cloths, are mentioned in many of our old ſtatutes, as 17 *R* 2. 7 *E.* 4. 14 & 15 *Hen.* 8. *c.* 3. *&c.* See *Abr. Stat.*

Words, Which may be taken or interpreted by law in a general or common ſenſe, ought not to receive a ſtrained or unuſual conſtruction: And ambiguous *words* are to be conſtrued ſo as to make them ſtand with law and equity; and not to be wreſted to do wrong. A *Latin* word in pleading, which ſignified divers things, was well uſed to expreſs that thing intended to be expreſſed by it: Incertain *words* in a declaration, are made good and certain by a plea in bar, where notice is taken of the meaning of them; and *words* which are in themſelves uncertain, may be made certain by ſubſequent or following *words*. The different placing of the ſame *words* may cauſe them to have a different ſenſe, and conſtruction: A *word* which is written ſhort or abbreviated, is not good without a daſh to diſtinguiſh it: And ſenſeleſs *words* are void and idle; though they ſhall not hurt where it is good without them. Nor ſhall words in deeds that are needleſs, impeach a clauſe certain and perfect without ſuch *words*. 2 *Lill. Abr.* 711, 712, 713, 714. *Hob.* 313. Vide *Scilicet.*

Words Defamatory that are actionable, and criminal, making libels, and high treaſon; *words* how expounded in wills, *&c.* See the *Heads.*

Words, treaſonable. It ſeems clearly to be agreed, that by the Common law, and the ſtatute of *Edward* 3. words ſpoken amount only to a high miſdemeanor, and no treaſon. See *Black. Com.* 4 *V.* 80.

Work-houſes. The moſt conſiderable *work-houſe* in the city of *London*, is that in *Biſhopſgate-ſtreet*; wherein ſome hundreds of idle perſons are conſtantly employed in beating hemp, *&c.* and a great many poor children maintained and educated. *Stat.* 13 & 14 *Car.* 2. And in the city of *Briſtol* a great *work-houſe* is erected, for the better employing and maintaining the poor, governed by a corporation, *&c.* 7 & 8 *W.* 3. So in the cities of *Worceſter*, *Glouceſter*, and *Canterbury*, by the *Stat.* 3 *Ann.* 13 *Geo.* 1. and 1 *Geo.* 2. Parochial *Work-houſes*, ſee *Poor.*

Wormtak. *Item eſt ibidem, apud, &c.* de Wormtak, *vi ſol viii den. ſolvend annuatim ad Feſtum* S. Martini. *Inquiſic. Heref.* 22 *Rich.* 2.

Wort, or **Worth,** (From the Sax. *Weorth*) A curtilage or country farm. *Mat. Weſtm.* 870.

Worthieſt of blood. An expreſſion of the lawyers, ſignifying the preference given in deſcents, to ſons before daughters.

Worthine of Land, Is a certain quantity of ground, ſo called in the manor of *Kingſland* in the county of *Hereford*: And in ſome places the tenants are called *Worthies.* Conſuetud. Maner. de Hedenham in Com. Bucks. 18 Edw. 3.

Wreck, (Lat. *Wreccum Maris*, Fr. *Wreck de Mer*, ſometimes writ *Wrecbe*, *Werec*, & *Seup werpe*, quaſi *Sea-up-werp*, i. e. *Ejectus Maris)* Signifies in our law ſuch goods as, after a *ſhip-wreck*, are caſt upon the land by the ſea, and left there within ſome county; for they are not *wrecks* ſo long as they remain at ſea, in the juriſdiction of the *Admiralty.* 2 *Inſt.* 167. Where a ſhip periſheth on the ſea, and no man eſcapes alive out of it, this is called *wreck:* And the goods in the ſhip being brought to land by the waves, belong to the King by his prerogative, or to the lord of the manor. 5 *Rep.* 106. By the Common law all *wrecks* belonged to the crown; and therefore they are not chargeable with any cuſtoms, and for that goods coming into the kingdom by *wreck*, are not imported by any body, but caſt aſhore by the wind and ſea: But it was uſual to ſeize *wrecks* to the King's uſe, only when no owner could be found; and in that caſe, the property being in no man, it of conſequence belongs to the King, as lord of the narrow ſeas, *&c. Bract. lib.* 2. *cap.* 5. And by the *Stat.* of *Weſtm.* 1. 3 *Ed.* 1. *cap.* 4. it is enacted, that when a man, or any living creature, eſcapes alive out of a ſhip caſt away, whereby the owner of the goods may be known, the ſhip or goods ſhall not be *wreck*; but the ſame ſhall be kept a year and a day by the ſheriff, to be reſtored to any perſon that can prove a property in the goods within that time; and if no body comes, then the ſame ſhall be forfeited as *wreck.* The year and day ſhall be accounted from the ſeizure; and if the owner of the goods dies within the year, his executors or adminiſtrators may make proof: And when the goods are *bona peritura*, the ſheriff may ſell them within the year; ſo as he diſpoſes of them to the beſt advantage, and accounts for them, *&c.* 2 *Inſt.* 167. 5 *Rep.* 106. *Wood's Inſt.* 214. If a man have a grant of *wreck*, and goods are *wrecked* upon his lands, and another taketh them away before ſeizure, he may bring action of treſpaſs *&c.* For before they are ſeized, there is no property gained, to make it felony. 1 *Hawk. P. C.* 94.

If goods *wrecked* are ſeized by perſons having no authority, the owner may have his action againſt them; or if the wrong-doers are unknown, he may have a commiſſion to enquire, *&c.* 2 *Inſt.* 166. Goods loſt by tempeſt, or piracy, *&c.* and not by *wreck*, if they afterwards come to land ſhall be reſtored to the owner. 27 *Ed.* 3. *cap.* 13. Where a ſhip is ready to ſink, and all the men therein, for the preſervation of their lives, quit the ſhip, and afterwards ſhe periſhes; if any of the men are ſaved and come to land, the goods are not loſt: A ſhip on the ſea was chaſed by an enemy; the men therein for the ſecurity of their lives forſook the ſhip, which was taken by the enemy, and ſpoiled of her goods and tackle, and then turned to ſea; after this by ſtreſs of weather ſhe was caſt on land, where it happened her men ſafely arrived; and it was reſolved that this was no *wreck.* 2 *Inſt.* 167. If a *wreck* happens by any fault or negligence in the maſter or mariners, the maſter muſt make good the loſs; but if the ſame was occaſioned by tempeſt, enemies, *&c.* he ſhall be excuſed: And making holes in ſhips, or doing any thing wilfully tending to the loſs thereof, is felony, by *Stat.* 12 *Ann.* Which act requires juſtices of peace to command aſſiſtance for preſerving ſhips in danger of *wrecks* on the coaſts; and officers of men of war, and other ſhips, are to be aiding, *&c.* under the penalty of 100 *l.* No perſon ſhall enter any ſuch ſhip without leave from the commander, or a conſtable, *&c.* And perſons carrying away goods from ſuch ſhips, are liable to pay treble value; but the perſons giving aſſiſtance, ſhall be paid by the maſters a reaſonable reward for ſalvage, *&c.* 12 *Ann. St.* 2. *c.* 18. See *Pilot.* Mariners *ſhip-wrecked* how relieved abroad, by *Stat.* 1 & 9 *Geo.* 2. See *Stat.* 26 *Geo.* 2. *c.* 19. For enforcing the laws againſt perſons, who ſhall ſteal or detain *ſhip-wrecked* goods, and for the relief of perſons ſuffering loſſes thereby: Whereby it is enacted (amongſt other things) That perſons convicted of plundering, ſtealing, *&c. ſhip-wrecked* goods, *&c.* or of obſtructing the eſcape of any perſon from a *wreck*, or of putting out falſe lights to bring any ſhip or veſſel into danger, ſhall ſuffer death. Vide *Mariner.*

Wreckfree, Is to be exempt from the forfeiture of ſhip-wrecked goods and veſſels; which K. *Edw.* 1. by charter granted to the *Barons* of the *Cinque Ports.* Placit. temp. Edw. 1.

Writ, *(Breve* in Sax. *Writan*, i. e. *Scribere)* In general is the *King's precept*, in writing under ſeal, iſſuing out of ſome court to the ſheriff, or other perſon, and commanding ſomething to be done touching a ſuit or action, or giving commiſſion to have it done. *Terms de Ley.* 1 *Inſt.* 73. Alſo a writ is ſaid to be a formal letter of the King's, in parchment ſealed with a ſeal, directed to ſome judge, officer, or miniſter, *&c.* at the ſuit or plaint of a ſubject, requiring to have a thing done, for the cauſe *briefly* expreſſed, which is to be diſcuſſed in the proper court according to law. *Old Nat. Br.* 4. *Shep. Abr.* 245. Of *writs* there are divers kinds, in many reſpects; ſome *writs* are grounded on *rights of action*, and ſome in nature of *commiſſions*; ſome *mandatory* and extrajudicial, and others *remedial*; and ſome are *patent* or open, and ſome *cloſe* or ſealed up; ſome *writs* iſſue at the ſuit of *parties*; ſome are of *office*, ſome *ordinary*, and others of *privilege*; and ſome *writs* are directed to the ſheriffs, and in ſpecial caſes to the party, *&c.* 1 *Inſt.* 289. 2 *Inſt.* 39. 7 *Rep.* 20.

The *writs* in *civil actions* are either *original* or *judicial*: *Original writs* are iſſued out in the court of *Chancery*, for the ſummoning a defendant to appear, and are granted before the ſuit is begun, to begin the ſame; and *judicial writs* iſſue out of the court where the original is returned, after the ſuit is begun: The originals bear date in the name of the King; but judicial *writs* bear teſte in the name of the chief juſtice: And it is obſerved, that a *writ* without a *teſte* is not good, for the time may be material when it was taken out, and it is proved by the *teſte*; and if it be out of the *Common law courts*, it muſt bear date ſome day in term, (not being *Sunday*) but in *Chancery writs* may be iſſued in vacation as well as term-time, as that court is always open; alſo there are to be fifteen days between the teſte and return of all *writs*, where the ſuit is by original; but by ſtatute delays in actions by reaſon of fifteen days between the teſte and return of *writs* in perſonal actions, and ejectments, are remedied. *F. N. B.* 51, 147. 2 *Inſt.* 40. *Lutw.* 337. 13 *Car.* 2. *cap.* 2.

Writs in actions are likewiſe *real*; concerning the poſſeſſion of lands, called *Writs* of *Entry*, or of right touching the property, *&c.* *Perſonal*, relating to goods, chattels, and perſonal injuries; and *mixed*, for the recovery of the thing, and damages. 2 *Inſt.* 39. And *writs* may be *poſſeſſory*, of a man's own poſſeſſion; or *anceſtrel*, of the ſeiſin and poſſeſſion of his anceſtor: And there are certain *writs* of *prevention* or *anticipation*; and of *reſtitution*, &c. But the moſt common *writs* in daily uſe, are in debt, detinue, treſpaſs, action upon the caſe, accompt, and covenant, *&c.* which with others muſt be rightly directed, or they will be naught. *F. N. B.* *Style* 42, 237. And in all *writs* care is to be taken, that they be laid and formed according to the cauſe or ground of them, and ſo purſued in the proceſs thereof: Though the *writ* in ſome caſes may be general; and the count or declaration ſpecial. *Hob.* 18, 84, 251. After the action is fixed on, for a wrong done, or right detained, ſuch a *writ* muſt be taken out as is ſuitable to the action; for the *writ* is different from the action; though they are often confounded: The writ is to be grounded upon the action, and is the means to bring the plaintiff to his right. *Wood's Inſt.* 560.

The King's *writs* cannot be denied to the ſubject; and it is regularly true, that no man ſhall be puniſhed for ſuing of *writs* in the King's courts, be it of right or wrong: But *writs* may be abated in ſeveral caſes, *&c.* *Ibid.* An original *writ* defective in form is abateable; but no abatement of the *writ* is admitted after judgment in the cauſe, the *writ* being allowed by the pleadings and proceedings; and a *writ* that did not purſue the exact form of the regiſter, has been held good. 2 *Lill. Abr.* 717. *Hob.* 51. 3 *Nelſ. Abr.* 575. *Writs* judicial, if erroneous, may be amended; original *writs* are not amendable, if the error be by default of the party who gave inſtructions; yet a new original may be taken out, where it is not amendable. 2 *Lill.* 716.

Writs may be renewed every term, until a defendant is arreſted; but in *B. R.* if the *latitat* be not renewed in five terms, a new *writ* is to be taken out, and the plaintiff may not renew the old one. The ſheriff's bailiffs cannot execute a *writ* directed to the ſheriff, without his warrant; and if in a *writ* ſeveral perſons are included, (for four defendants may be in one *writ*) there muſt be ſeveral warrants from the ſheriff to execute the ſame. *Comp. Attorn.* All *writs* are to be returned and filed in due time, to avoid *poſt-terminums*; and it is very unſafe to keep *writs* unfiled, becauſe the filing them is the warranty for the proceedings: And where a *writ* is iſſued out directed to the ſheriff, when it comes to his hands, though the plaintiff requires the *writ* back again, the ſheriff muſt return and file it in the court where returnable; unleſs the plaintiff procure a *writ of ſuperſedeas*. 2 *Lill. Abr.* 720. Attachment lies againſt ſheriffs, *&c.* for not executing a *writ*, or for doing it oppreſſively by force, extorting money thereon, or not doing it effectually, thro' any corrupt practice. Vide 8 *Rep.* 86. The court of *B. R.* cannot give judgment of a *writ* but where it is before them; and has deferred to quaſh it, becauſe the defendant was not preſent in court. 1 *Ld. Raym.* 618, 620. See *Arreſts*, *Variance*, &c.

Writ of Aſſiſtance, Is a *writ* iſſuing out of the *Exchequer*, to authoriſe any perſon to take a conſtable, or other publick officer, to ſeize goods or merchandize prohibited and uncuſtomed, *&c.* And there is a *writ* of this name iſſued out of the *Chancery*, to give poſſeſſion of land. *Stat.* 14 *Car.* 2. *cap.* 1.

Writ of Delivery, In what caſes grantable, 13 & 14 *Car.* 2. *c.* 11. *ſ.* 30.

Writ of Entry. See *Entry*.

Writ of Inquiry of Damages, Is a judicial *writ*, that iſſues out to the ſheriff upon a judgment by default, in action, of the caſe, covenant, treſpaſs, trover, *&c.* commanding him to ſummon a jury to enquire what damages the plaintiff hath ſuſtained *occaſione præmiſſorum*; and when this is returned with the inquiſition, the rule for judgment is given upon it; and if nothing be ſaid to the contrary, judgment is thereupon entered. 2 *Lill. Abr.* 721. This *writ* lies on a *nihil dicit*, *non ſum informatus*, or a demurrer; but not upon a verdict; and it is executed before the ſheriff, or his deputy, at the which time both parties have the liberty of being heard before the ſheriff, by their counſel or attornies, and evidence may be given on both ſides: It is the duty of the jury diligently to inquire what damages have been ſuſtained by the plaintiff, and this cannot be without evidence given them; and if where an *indebitat. aſſumpſit* is brought for 100 *l.* for goods ſold, and the defendant lets this go by default; if the plaintiff, at the executing the *writ* of inquiry, gives no evidence to the jury of any goods ſold or delivered to the defendant: In this caſe, the jury muſt find ſome damages, becauſe the defendant hath confeſſed the action, and admitted that there is damage; but there not being any proved, they ought to find only a penny, or ſome ſuch ſmall matter. 2 *Lill. Abr.* 721, 722.

If a *writ* of inquiry be executed without giving due *notice* thereof to the defendant, it ſhall be quaſhed. 2 *Lill.* 721. In action of covenant, judgment was given for the plaintiff in the *Common Pleas* by default, and a *writ* of inquiry of damages executed, and final judgment for the plaintiff. And on a *writ* of error brought in *B. R.* amongſt other exceptions, one was, that no day was given on the *writ* of *inquiry*, and therefore it might be a diſcontinuance; but the court reſolved, that they never give a day in *C. B.* on this writ, nor is it neceſſary, becauſe nothing is done but to aſcertain the damages. 1 *Ld. Raym.* 388. A *writ* of inquiry was ordered to be executed before the Lord Chief Juſtice, the action being laid for very large damages: And ſuch *writ* hath been ſet aſide where the jury gave too little damages; and a new *writ* of inquiry ordered by rule of court, on payment of coſts, *&c.* *Mod. Caſ. in L. and E.* 213, 240. A judgment ſhall not be ſet aſide, after a *writ* of inquiry executed, unleſs in particular caſes.

Writ of Rebellion, A *writ* out of the *Chancery*, or *Exchequer*, againſt a perſon in contempt, for not appearing in thoſe courts, *&c.* See *Commiſſion of Rebellion*.

Writer of Tallies (*Scriptor talliarum*) Is an officer in the *Exchequer*, being clerk to the auditor of the receipt, who writes upon the *tallies*, the whole letters of the *tellers* bills. *Cowell.*

Writing, *(Scriptum)* A ſimple writing or declaration, not in the manner of a deed, made to a certain perſon, *&c.* ſhall be good in law. *Hob.* 312.

Wrong, *(Injuria)* Signifies any damage or injury, being in law conſtruction that which is contrary to right. *Co. Litt.* Vide *Tort.*

Wronglands, Seem to be ill grown trees that will never prove timber: ſuch as *wrong* the ground they grow in. *Kitch.* 169.

Wudeheth, (From the Sax. *Wude,* i. e. *Sylva*) a felling of wood, *Leg. Hen.* 1. *c.* 37.

Wydraught, A water-paſſage, gutter, or watering-place; often mentioned in old leaſes of houſes, in the covenants for repairs, *&c.*

Wyke, Wyka,——*Et totam* Wykam *cum hominibus, &c.* Mon. Ang. tom. 2. p. 154. See *Wic* and *Wica.*

Wyte, *Pœna, Mulcta.*——Saxones *duo mulctarum genera ſtatuere, i. e.* Weram, *&* Wytam. Vide *Wite.*

X.

Xantus, Is uſed for *Sanctus:* Xanta *Dei lex eſt quæ mortuos vivere doret.*

Xenia, *Dicuntur muſcula, quæ a provincialibus rectoribus provinciarum efferebantur: Vox eſt in privilegiorum chartis non inſueta; ubi quietus eſſe a* Xeniis *immunes notat ab hujuſmodi muneribus aliiſque donis regi vel reginæ præſtandis, quando ipſi per prædia privilegiatorum tranſierint.* Chart. Dom. Semplingham. *Concedo ut omnia monaſteria & eccleſiæ regni mei a publicis vectigalibus, operibus & oneribus abſolvantur:*——*Nec munuſcula præbeant regi vel principibus, niſi voluntaria.* Spelm. Gloſſ. *Nulla autem perſona, parva vel magna, ab hominibus & terra radingenſis monaſterii exigat, non equitationem ſive expeditionem, non ſummagia, non vectigalia, non navigia, non opera, non tributo, non* Zenia, *&c.* Mem. Scacc. Anno 20 Edw. 3.

Xenodochium, Is interpreted an inn, allowed by publick licence for the entertainment of ſtrangers and other gueſts: Alſo an hoſpital, *In qua valetudinarii & ſenes,* i. e. *Infirmi recipiuntur & aluntur.* Vocab. utriuſque Juris.

Xerophagia, A kind of Chriſtian faſt; the eating of dry meat. *Litt. Dict.*

Xylopola, A woodmonger, or dealer in wood. *Litt.*

Xyſtigus, Is a wreſtler, or champion: And *xyſtus* was a covered place or theatre, where men uſed wreſtling and other exerciſes in the winter. *Ibid.*

Y

Ya and Nay,—*Quod homines de* Rippon *ſint credendi per ſuum* ya, *& per ſuum* nay *in omnibus querelis, &c.* Charta Athelſtan. Reg. Mon. Angl. tom. 1. p. 173.

Yard, Is a well known meaſure, three feet in length; by which cloth, linen, *&c.* are meaſured: It was ordained by King *Hen.* 1. from the length of his own arm. *Baker's Chron.*

Yardland, (*Virgata Terræ*) Is a quantity of land, different according to the place or country; as at *Wimbleton* in *Surrey,* it is but fifteen acres, in other counties it is twenty, in ſome twenty-four, and in others thirty, and forty acres. *Bract. lib.* 2. *c.* 10.

Yards belonging to the Navy, Perſons making diſturbance, or counterfeiting the hands of ſigning or vouching officers in yards, how puniſhed, 1 *Geo.* 2. *c.* 25. *ſect* 6.

Yarmouth. There is an act for regulating the time of bringing in and ſelling *herrings* at the fair of *Great Yarmouth,* fixing the prices and quantity by the laſt, *&c.* 31 *Edw.* 3. *c.* 2.

Yarn. No perſon ſhall buy *yarn* or wool, but he that makes cloth of it: And none may tranſport *yarn* beyond the ſea, by *Stat.* 8 *H.* 6. *c.* 5. 33 *H.* 8. *c.* 16.

Yaugh, A *yatcht,* or little bark; alſo a fly-boat, pinnace, *&c.* In *Lat.* called *Celox, à celeritudine,* from its ſwiftneſs. *Litt. Dict.*

Yeonomous, *Oeconomus;* an advocate, patron, or defender. *Vit. Abbat. S. Albani.*

Year, (*Annus*) In the full extent of the word, contains a ſyſtem or cycle of ſeveral months uſually twelve; and is the time wherein the *ſun* goes round his compaſs through the twelve ſigns, *viz.* three hundred and ſixty-five days, and about ſix hours. A *year* is twelve months, as divided by *Julius Cæſar:* And the church begins the *year* on the firſt day of *January,* called *New year's day;* but the civil account formerly, not till *March* the 25th. It appears by ancient grants and charters, that our anceſtors began the *year* at *Chriſtmas,* which was obſerved here till the time of *William* I. commonly called the *Conqueror;* but afterwards, for ſome time the *year of our Lord* was ſeldom mentioned in grants, only the *year* of the *reign* of the *King. Mon. Ang. Tom.* 1. *p.* 62.

There is a *year of the world,* and a *year of Chriſt:* And beſides the *annus ſolaris:* the *lunar year,* being the time in which any of the celeſtial bodies finiſh their courſe; and thirty days, by which the *Ægyptians* reckoned. *Year* is alſo taken for time in general; and the age of man. *Litt.* By the *Stat.* 24 *Geo.* 2. *c.* 23. It is enacted, That the firſt day of *January* next following the laſt day of *December* 1751, ſhall be the firſt day of the *year* 1752. And that the firſt day of *January* next after the firſt day of *January* 1752, ſhall be the firſt day of the *year* 1753. And ſo on, the firſt day of *January* in every *year,* ſhall be the firſt day of the *year.* And that after the firſt day of *January* 1752, the ſeveral days of each month ſhall go on in the ſame order; and the feaſt of *Eaſter,* and other moveable feaſts thereon depending, ſhall be aſcertained according to the ſame method they then were until the ſecond day of *September* 1752, and that the natural day next following the ſaid ſecond day of *September,* ſhall be reckoned the fourteenth day of *September,* omitting for that time only the eleven intermediate days. And that the ſeveral natural days which ſhall ſucceed the ſaid fourteenth day of *September,* ſhall be reckoned in numerical order according to the order and ſucceſſion of days now uſed in the preſent calendar. All writings, *&c.* after the firſt of *January* 1752. to be dated according to the new ſtile. After 2 *September* 1752. *Hilary* and *Michaelmas* terms, and all courts to be held on the ſame nominal days and times they then were. The ſeveral years 1800, 1900, 2100, 2200, 2300, or any other hundredth *year,* (except every four hundredth *year,* of which the year 2000 ſhall be the firſt) ſhall not be deemed *Biſſextile* or *Leap Year,* but common *years* conſiſt only of 365 days. The *years* 2000, 2400, 2800, and every other four hundredth *year* from the *year* 2000 incluſive, and all other *years,* which are now eſteemed *Biſſextile* or *Leap Years,* ſhall for the future be eſteemed *Biſſextile* or *Leap Years,* conſiſting of 366 days.

A calendar, and certain tables and rules for the fixing the true time for the celebration of the feaſt of *Eaſter,* and the finding of the times of the full moons on which the ſame depends, are annexed to this act, which ſhall be prefixed to all future editions of the Common-Prayer Book. Courts of Seſſion and *Exchequer* in *Scotland,* and markets, fairs, and marts to be held upon the ſame natural days they ſhould have been holden on, if this act had not been made. The natural days and times for the opening and incloſing of commons of paſture, not altered by this act. The natural days and times of payment of rents, annuities, ſums of money or intereſt, or of the delivery of goods, commencement or expiration of leaſes, *&c.* Or of attaining the age of 21 years, *&c.* not altered by this act. See 25 *Geo.* 2. *c.* 30. 26 *Geo.* 2. *c.* 9, 34.

Year and Day, (*Annus & Dies*) Is a time that determines a right, or works a preſcription in many caſes by law; as in caſe of an eſtray, if the owner challenge it not within that time, it belongs to the lord; ſo of a wreck, *&c.* A *year and a day* is given to proſecute appeals; and for actions in a writ of right, *&c.* after entry or claim, to avoid a fine: And if a perſon wounded die in a *year and day*, it makes the offender guilty of murder, *&c.* 3 *Inſt.* 53. 6 *Rep.* 107. See as to year and day in *Appeals* of Death, *Appeal*, and *Black. Com*, 4 *V.* 311, 329. In *Continual Claims*, See *Claim*, *Entry*, *Fine*, and *Black. Com.* 3 *V.* 175. In *Copyhold Forfeiture*, ſee *Copyhold*, and *Black. Com.* 2 *V.* 284. In *Eſtrays*, ſee *Eſtray*, and *Black. Com.* 1 *V.* 297. In *Fines*, ſee *Fine*, and *Black. Com.* 2 *V.* 354. In *Murder*, ſee *Appeal*, *Homicide*, *Murder*, and *Black. Com.* 4. *V.* 197. In *Wreck*, ſee *Wreck*, and *Black. Com.* 1 *V.* 292.

Year, Day, and Waſte, *(Annus, Dies, & Vaſtum)* Is a part of the King's prerogative, whereby he hath the profits of lands and tenements for a *year and a day* of thoſe that are attainted of petit treaſon or felony, whoſoever is lord of the manor whereto the lands or tenements do belong; and the King may cauſe *waſte* to be made on the tenements, by deſtroying the houſes, ploughing up the meadows and paſtures, rooting up the woods, *&c.* except the lord of the fee agree with him for the redemption of ſuch *waſte*; afterwards reſtoring it to the lord of the Fee. *Staundſ. Prærog.* 44.

Stat. 9 *H.* 3. *cap.* 22. "We will not hold the lands of them that be convict of felony but one year and one day, and then thoſe lands ſhall be delivered to the lords of the fee."

This appears by *Glanvill* to be due to the King by his ancient prerogative, 2 *Inſt.* 36. cites *Glanvill* 7. *cap.* 17. *fol.* 59.

This chapter of *Magna Charta* doth expreſs that which doth belong to the King, *viz.* the year and the day, and omits the waſte as not belonging to him; and this is notably explained by our ancient books with an uniform conſent. 2 *Inſt.* 36. cites *Bracton*, *lib.* 3. *fol* 129, *&* 137. and *Britton*, *cap.* 5. *fol.* 14. and *Fleta*, *lib.* 1. *cap.* 28. and *Mirror*, *c.* 5. *ſ.* 2. The *mirror*, ſpeaking of this chapter, ſaith, *Le point des terres aux felons tener per un an, eſt de ſuſie, car per la ou le roy ne duiſt aver que le gaſt de droit, ou l'an in noſme de fine pur ſalver le fief de l' eſtripment preignont les miniſters le roy ambideux.* Upon all which it appears, that the King originally was to have no benefit in this caſe upon the attainder of felony, where the free land was holden of a ſubject, but only in deteſtation of the crime. *Ut pœna ad paucos, metus ad omnes perveniat*; to proſtrate the houſes, to extirpate the gardens, to eradicate his wood and to plow up the meadows of the felon; for ſaving whereof, and *pro bono publico*, the lords, of whom the lands were holden, were contented to yield the lands to the king for a year and a day; and therefore not only the waſte was juſtly omitted out of this chapter of *Magna Charta*, but thereby it is enacted, that after the year and day the land ſhall be rendered to the lord of the fee, after which no waſte can be done. 2 *Inſt.* 37. Serjeant *Hawkins* ſays it ſeems agreed, that by the Common law, upon an attainder of felony, the King had a right utterly to waſte the lands holden of any but himſelf, whereof the perſon attainted was ſeiſed of an eſtate of inheritance, either in his own or in his wife's right. And it is ſaid by ſome, that the King hath both this right, and alſo a right to hold ſuch lands for a year and a day. But it is holden by others, that the right to hold over the lands for a year and a day was given to the King in lieu of the waſte, and it ſeems implied in *Magna Charta*, *cap.* 22. which ſaying, that the King ſhall uot hold over the lands of thoſe, convicted of felony but for one year and a day, and making no mention of the waſte, it ſeems plainly to intimate, that at the time of the making that ſtatute the King was thought to have no other right but only to the year and day, 2 *Hawk. Pl. C.* 449. *cap.* 49. *ſ.* 8. *ibid.* in marg. ſays it ſeems admitted, 8 *Edw.* 3. *Fitz-Trav.* 489. *Preſcription* 50. That the King was intitled to the waſte, as well as to the year and day ſince that ſtatute.

And where the treatiſe of *prerogativa regis*, made in 17 *Edw.* 2. ſays, *Et poſtquam dominus rex habuerit annum, diem, & vaſtum, tunc reddatur tenementum illud capitali domino feodi illius, niſi prius faciat finem pro anno, die, & vaſto*; which is ſo to be expounded, that foraſmuch as it appears in the ſaid old books, that the officers and miniſters did demand both for the waſte and for year and day, that came in lieu thereof, therefore this treatiſe named both, not that doth were due, but that a reaſonable fine might be paid for all that which the King might lawfully claim. But if this act of 17 *Ed.* 2. be againſt this branch of *Magna Charta*, then it is repealed by the act of 42 *Ed.* 3. *cap.* 1. 2 *Inſt.* 37. 2 *Hawk. Pl. C.* 449. *cap.* 49. *ſ.* 8. ſays, that the ſtatute *de prærogativa regis*, made in 17 *Ed.* 2. having declared the King's right to the year and day, and alſo to the waſte, it ſeems to have been the more general opinion ſince that time, that he hath a right to both. Indeed if this ſtatute had been againſt the expreſs purview of *Magna Charta*, it would have been clearly repealed by thoſe many ſubſequent ſtatutes, which repeal all ſtatutes contrary to *Magna Charta*; but being not contrary to the expreſs words of it, but only to what is argumentatively drawn from it, it may be well argued that it is ſtill in force. 2 *Hawk. Pl. C.* 449. *cap.* 49. *ſ.* 8.

Hereby it alſo appears how neceſſary the reading ancient authors is for underſtanding of ancient ſtatutes. And out of theſe old books you may obſerve, that when any thing is given to the King in lieu or ſatisfaction of any ancient right of his crown, when once he is in poſſeſſion of the new recompence, and the ſame in charge, his officers and miniſters will many times demand the old alſo, which may turn to great prejudice, if it be be not duly and diſcreetly prevented. 2 *Inſt.* 37.

If there be lord, meſne, and tenant, and the meſne is attainted of felony, the lord paramount ſhall have the meſnalty, preſently; for this prerogative belonging to the King, extends only to the land, which might be waſted, in lieu whereof the year and day was granted, 2 *Inſt.* 37. And this is to be underſtood when a tenant in fee ſimple is attainted: for when tenant in tail, or tenant for life is attainted, there the King ſhall have the profits of the lands during the life of tenant in tail, or of the tenant for life. 2 *Inſt.* 37.

That be convict] Here *convict*, in a large ſenſe, is taken for *attincti*: For the nature and true ſenſe of both theſe words, ſee the firſt part of the *Inſtitutes*; and likewiſe for this word felony there. 2 *Inſt.* 37.

Of felony] Muſt be underſtood of all manner of felonies puniſhed by death, and not of petit larceny, which notwithſtanding is felony. 2 *Inſt.* 38. If lord and tenant are, and the tenant is attainted of felony, and the King has *annum, diem, & vaſtum*, yet if the lord enters without due proceſs, and the writ ſued to the eſcheator, the land ſhall be re-ſeiſed, and he ſhall anſwer for the meſne iſſues and profits. *Br. Re-Seiſer*, *pl.* 36. cites *Ed.* 2. and *Fitz. Traverſe*, 48.

The ſtatute *de prærogativa Regis*, *cap.* 15. wills, that if a felon has land, *tunc Rex ſtatim illam habeat, & habeat inde annum & vaſtum & terra deſtruetur, &c. & tunc reddatur capitali domino, &c.* *Quære*, if this word *(ſtatim)* ſhall be otherwiſe intended but after office found. *Br. Corone*, *pl.* 209.

Tenant by copy of court-roll by the verge in ancient demeſne committed felony, and was attainted of it, and *annum, diem, & vaſtum* was awarded for the King; and the reaſon ſeems to be, inaſmuch as franktenants in ancient demeſne have no other evidence but copies of court-rolls; for otherwiſe it ſeems to be of a mere copyholder out of ancient demeſne for other frank tenement. *Br. Tenant per copie*, &c. *pl.* 22. cites 3 *Ed.* 3.

A man was ontlawed of felony, and aliened his land to *J. N.* on which *ſcire facias* iſſued againſt him, who came and would have traverſed the felony; and the court doubted if he might traverſe it, by reaſon that he is a ſtranger to the record; but *per Pigot* by 7 *Ed.* 4. *c.* 2. he cannot traverſe it in caſe of felony being a ſtranger to the record; *contra* in caſe of treſpaſs; on which it was prayed for the King, that year, day, and waſte be adjudged for the King immediately, and ſo it was immediately from that day till a year and a day next after; *quod nota.* *Quære*, if the King may take the year and the day at what time he pleaſes; it ſeems he cannot. *Br. Corone*, *pl.* 205. cites 49 *Aſſ.* 2.

The King ſhall have the firſt year and day and waſte of the land of him who is attainted of felony, which comes after the attainder, and whoſoever takes the profits this year ſhall anſwer the profits to the King; *per Fitzherbert.* But it ſeems that this is to be underſtood after office found, or that the inqueſt which attaints him finds alſo what lands he had at the time of the felony committed, or after. And in the caſe above of 49 *Aſſ.* 2. the outlawry of felony was 18 *Ed.* 3. and writ iſſued to the coroners to inquire of his goods, lands and tenements, 48 *Ed.* 3. which returned that he had land, and aliened to *J. N.* after the outlawry; and upon this *ſcire facias* iſſued againſt *J. N.* who came and would have traverſed the felony; and the year and day was awarded to the King with the waſte. And ſo it ſeems that the King cannot take it, unleſs after office, which was thirty years after, as there. But *Quære* if, upon the office found, he who receives the profits the firſt year after the felony ſhall not be charged; it ſeems he ſhall *per Fitzb.* above; *Quære* the experience thereof in *B. R. Br. Corone, pl.* 207. cites *F. N. B. fol.* 144.

Year books. Reports in a regular ſeries from the reign of King *Edw.* 2. incluſive, to the time of *Hen.* 8. which were taken by the prothonotaries, or chief ſcribes of the court, at the expence of the crown, and publiſhed *annually*, whence they are known under the denomination of the *year-books*. Black. Com. 1 V. 71, 72.

Years, *Eſtates for*. An eſtate for years is a contract, for the poſſeſſion of lands or tenements, for ſome determinate period: and it happens where a man letteth them to another, for the term of a certain number of years, agreed between the leſſor and leſſee, and the leſſee enters thereon. If the leaſe be but for half a year, or a quarter, or any leſs time, this leſſee is reſpected as a tenant for years, and is ſtiled ſo in ſome legal proceedings. See *Leaſe* and *Black. Com.* 2 *V.* 140.

Yeman, or Yeoman, or Yoman, A derivative of the *Saxon*, *geman*, i. e. *communis*. Theſe *Camd.* in his *Brit. pag.* 105. placeth next in order to gentlemen, calling them *ingenuos*, whoſe opinion the ſtatute affirms, *anno* 6 *Rich.* 2. *cap* 4. and 20 *Rich.* 2. *cap.* 2. Sir *Thomas Smith* in his *Republ. Anglorum, lib.* 1. *c.* 23. calls him a *yeoman*, whom our law calls *legalem hominem*, which (ſays he) is in the *Engliſh* a free-born man, that may diſpend of his own free-land in yearly revenues to the ſum of forty ſhillings *ſterling*. *Verſtegan* in his *Reſtitution of decayed Intelligence, cap.* 10. writes, That *gemen* among the ancient *Teutonicks*, and *gemein* among the modern, ſignifies as much as *common*, and the letter *g* being turned into *y*, is written *yemen*, which therefore ſignifies a *commoner*. *Yeoman* alſo ſignifies and officer in the King's houſe, in the middle place between the ſergeant and the groom, as *yeoman* of the *chandry*, *yeoman* of the *ſcullery*, 33 *H.* 8. *cap.* 12. *yeoman* of the crown, 3 *E.* 4, 5. The word *youngmen* is uſed for *yeomen*, in the ſtatute 33 *Hen.* 8. *cap.* 10. *Cowell.* See *Black. Com.* 1 *V.* 406.

Yeme, Is an ancient corruption of *hieme*, winter. *Ib. id.*

Yeven, or Yeoven, (as we uſe at the end of indentures and other inſtruments, *Yeoven, the day and year firſt above written*) Is derived from the *Saxon*, *ceorian*, i. e. *dare*, and is the ſame with *given*. So *Dictum de Kenelworth* concludes with—*Yeoven, and proclaimed in the caſtle of* Kenelworth *the day before the calends of* Nov. *anno* 1256. *Cowell.*

Yew, Is derived from the Greek ἴπλω, to hurt, and probably becauſe before the invention of guns our anceſtors made *bows* with this wood, with which they annoyed their enemies, and therefore they took care to plant the trees in the church-yards, where they might be often ſeen and preſerved by the people. *Minſheu.*

Yielding and paying, *(Reddendo & Solvendo)* Comes from the Sax. *Geldan & Gildan*; and in *Domeſday*, *Gildare* is frequently uſed for *Solvere*, *Reddere*, the Saxon G. being often turned into *Y*.

Yingman, Mentioned in the laws of King *Hen.* 1. *c.* 15. *Spelman* thinks may be a miſtake for *Ingliſhman*, or as we now ſay *Engliſhman*: But perhaps the *yingmen* were rather *youngmen*, printed for *yeomen* and *yemen*, in *Stat.* 33 *H.* 8. *cap.* 10.

Yokelet, (Sax. *Jocelet*) Is a little farm, &c. in ſome parts of *Kent*, ſo called from its requiring but a *yoke* of oxen to till it. *Sax. Dict.*

York and Yorkſhire. Perſons inhabiting, or thoſe who have any goods within the province of *York*, may by will diſpoſe of all their perſonal eſtate, &c. 4 & 5 *W.* & *M. cap.* 2. And a regiſtry of deeds, conveyances, and wills, &c. of lands, is ordained in the *Weſt Riding* of *Yorkſhire*, by 2 *Ann. c.* 4. And ſo in the *Eaſt* and *North Riding* by ſubſequent acts. Large waſtes in the *Weſt-Riding* of the county of *York*, by conſent of lords of manors, &c. to be incloſed; a ſixth part for the benefit of poor clergymen, &c. 12 *Ann. ſt.* 1. *c.* 4. *York* market is regulated for ſale of butter, &c. which ſhall be viewed, ſearched and weighed before ſold, by *Stat.* 8 *Geo.* 1. *Yorkſhire cloths* are to be of certain lengths and breadths, under the penalty of 20*s.* leviable by juſtices of peace, &c. And narrow woollen cloths ſhall have the names of the maker, millman, and ſearcher ſtamped thereon; and not to be ſtretched above a yard in length, &c. under divers penalties. See *Stat.* 7 *Ann. c.* 13. 1 *Geo.* 1. *c.* 15. 11 *Geo.* 1. *c.* 24. 7 *Geo.* 2. *c.* 25. 11 *Geo.* 2. *c.* 28. and 14 *Geo.* 2. *c.* 35.

York, *Cuſtom of*. In the city of *London*, and province of *York*, the effects of an inteſtate after payment of his debts, are in general divided, according to the ancient univerſal doctrine of the *pars rationabilis*. If the deceaſed leaves a widow and children, his ſubſtance, deducting the widow's apparel and furniture of her bed-chamber, which in *London* is called the *widow's chamber*, is divided into three parts; one of which belongs to the widow, another to the children, and the third to the adminiſtrator: if only a widow, or only children, they ſhall reſpectively, in either caſe, take one moiety, and the adminiſtrator the other: if neither widow nor child, the adminiſtrator ſhall have the whole. And this portion or *dead man*'s part the adminiſtrator was wont to apply to his own uſe, 'till the Stat. 1 *Jac.* 2. *c.* 17. declared that the ſame ſhould be ſubject to the ſtatutes of diſtribution. So that if a man dies worth 1800*l.* leaving a widow and two children, the eſtate ſhall be divided into eighteen parts; whereof the widow ſhall have eight, ſix by the cuſtom, and two by the ſtatute; and each of the children five, three by the cuſtom, and two by the ſtatute: if he leaves a widow and one child, they ſhall each have a moiety of the whole, or nine ſuch eighteenth parts, ſix by the cuſtom, and three by the ſtatute: if he leaves a widow and no child, the widow ſhall have three-fourths of the whole, two by the cuſtom, and one by the ſtatute; and the remaining fourth ſhall go by the ſtatute to the next of kin. If the wife be provided for by a jointure before marriage, in bar of her cuſtomary part, it puts her in a ſtate of nonentity, with regard to the cuſtom only; but ſhe ſhall be intitled to her ſhare of the *dead-man*'s part, under the ſtatute of diſtributions, unleſs barred by ſpecial agreement. and if any of the children are advanced by the father in his life-time, with any ſum of money, (not amounting to their full proportionable part) they ſhall bring that portion into hotchpot with the reſt of the brothers and ſiſters, (but not with the widow,) before they are intitled to any benefit under the cuſtom: but if they are fully advanced, the cuſtom intitles them to no farther dividend. *Black. Com.* 2 *V.* 518, 519. In the province of *York*, the heir at Common law, who inherits any lands in fee or in tail, is excluded from any filial portion, or reaſonable part. *Black. Com.* 2 *V.* 519.

York-Buildings Company, A corporation or company erected by ſtatute for raiſing *Thames water*, in *York-buildings*; and this company having bought the *forfeited eſtates* in *Scotland* on the rebellion *anno* 1 *Geo.* 1. to enable them to make good their engagements to the government, they were empowered to diſpoſe of rent-charges, grant annuities &c. and any perſon may purchaſe annuities of the ſaid company. 7 *Geo.* 1. *cap.* 20.

Ypſdremeta, In Latin *Altitonans*, ſignifies God, the thunderer.

Yvernagium, (From the *French Hyvernee*, that is, the winter ſeaſon) Was anciently uſed for the winter ſeedneſs, or ſeaſon for ſowing of corn. *Cowell.* See *Hybernagium.*

Yule. In the *North* of *England*, the country people call the *Feaſt of the Nativity of our Lord* by the name of *Yule*, which is the proper *Scotch* word for *Chriſtmas*; and the ſports uſed at *Chriſtmas* here, called *Chriſtmas Gambols*, in *Scotland* they term *Yule Games*. A ſtatute was made not long ſince for the repeal of a repealing act paſſed in the parliament of *Scotland*, intitled an act for diſcharging the *Yule-vacance*. 1 Geo. 1. c. 8.

Z.

Zabolus, i. e. *Diabolus*, as uſed in many old writers, *viz. Edgar. in Leg. Monach. Hydens. c.* 4. *Orderic. Vitalis* 460, *&c.*

Zabulum, (*Latin, Sabulum*) Groſs ſand or gravel. *Quinque plauſtratas zabuli*, for five wain loads of ſand. *Computus temp. H.* 6. *Cowell.*

Zachine, A foreign coin of gold. *Merch. Dict.*

Zala, i. e. *Incendium*; from whence we derive the *Engliſh* word *zeal*.

Zancha, A kind of veſture or garment. *Litt.*

Zant-killow, A meaſure containing ſix *Engliſh* buſhels.

Zatovin, Sattin, or fine ſilk; mentioned in *Mon. Ang. Tom.* 3. *p.* 177.

Zealot, (*Zelotes*) Is for the moſt part taken in *pejorem ſenſum*, ſo that we term one that is a ſeparatiſt or *ſchiſmatick* from the church of *England*, a *Zealot* or *Fanatick*.

Zereth, An *Hebrew* meaſure of nine inches. *Lit. Dict.*

Zeta, A room kept warm like a ſtove; a withdrawing chamber with pipes conveyed along in the walls, to receive from below either the cool air in the ſummer, or the heat of fire, *&c.* in winter: It is called by our *Engliſh hiſtorians* a dining-room, or parlour. *Oſborn vita S. Elphegi apud* Wharton *Angl. par.* 2. *p.* 127.

Zigarus, A ſtrolling thief or gipſy. *Litt.*

Zodiack, (*Zodiacus*) A circle in the heavens, containing the twelve ſigns through which the ſun paſſes every year. *Litt.*

Zuche, (*Zucheus, Stirps ſiccus & aridus*) A withered or dry ſtock of a tree.——*Rex, &c Quia accepimus per inquiſitionem, quod non eſt ad dampnum ſeu præjudicium noſtrum aut aliorum, ſi concedimus dilecto valecto noſtro* Richard S. *de omnes* Zucheos *aridos, qui Anglice vocantur* Stovenes *infra Haiam de* Backwood, *infra Foreſtam noſtram de* Shirewood, *&c. Placit. Foreſt in Com. Nott. de Anno* 8 *H.* 3. This ſeems to have been the writ of *ad quod damnum* iſſued, on granting of *zuches* or dead wood in a foreſt, *&c. Auxilium faciend. Burgenſibus Salop. de veteribus Zuchis, & de mortuo boſco, &c.* Clauſ. 4 Hen. 3. m. 10. *Rex conceſſit* Thomæ de C. *omnes* Zucheos *aridos, vocat.* Stubbs, *arborum ſucciſarum in foreſta de* G. *ibidem capiend. per viſum cuſtodis foreſtæ ultra Trentam.* Pat. 22 Ed. 3.

Zygoſtata, Is a clerk of the market, to ſee to weights *&c. Litt. Dict.*

Zythum, A drink made of corn, uſed by the old *Gauls*; ſo called from the *ſeething* or boiling it, whence *ſyder* had its name.

FINIS.